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Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–15 of February 24, 2000

U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO): Certification and Waiver Under the Heading "Nonproliferation, Anti-Terrorism, Demining and Related Programs" in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, as Enacted in Public Law 106–113

Memorandum for the Secretary of State

Pursuant to section 576(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (the Act), as enacted in the Omnibus Consolidated Appropriations Act, 2000 (Public Law 106–113), I hereby certify that:

(1) the parties to the Agreed Framework have taken and continue to take demonstrable steps to implement the Joint Declaration on Denuclearization of the Korean Peninsula in which the Government of North Korea has committed not to test, manufacture, produce, receive, possess, store, deploy, or use nuclear weapons, and not to possess nuclear reprocessing or uranium enrichment facilities;

(2) the parties to the Agreed Framework have taken and continue to take demonstrable steps to pursue the North-South dialogue; and

(3) North Korea is complying with all provisions of the Agreed Framework.

Pursuant to the authority vested in me by section 576(d) of the Act, I hereby determine that it is vital to the national security interests of the United States to furnish up to $15 million in funds made available under the heading "Nonproliferation, Anti-Terrorism, Demining, and Related Programs" of the Act, for assistance for KEDO, and therefore I hereby waive the requirement in section 576(b) to certify that:

(4) North Korea has not diverted assistance provided by the United States for purposes for which it was not intended; and

(5) North Korea is not seeking to develop or acquire the capability to enrich uranium, or any additional capability to reprocess spent nuclear fuel.

You are hereby authorized and directed to report this certification and waiver to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, February 24, 2000.

[FR Doc. 00–5070
Filed 2–29–00; 8:45 am]
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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AG13

1999 Crop and Market Loss Assistance

AGENCIES: Commodity Credit Corporation; USDA.

ACTION: Final rule; correction.

SUMMARY: The Commodity Credit Corporation published in the **Federal Register** of February 16, 2000, a final rule promulgating regulations for Crop and Market Loss programs. Inadvertently, a reference to eligibility for tobacco loss assistance for tobacco growers on a farm used to produce tobacco during the 1998 crop year was omitted. This document corrects that omission.

EFFECTIVE DATE: February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, FSA, USDA, STOP 0540, 1400 Independence Avenue, SW, Washington, D.C. 20250–0540, Telephone: (202) 205–5851.

SUPPLEMENTARY INFORMATION: The Commodity Credit Corporation published in the **Federal Register** of February 16, 2000, (65 FR 7960) a final rule promulgating regulations for Crop and Market Loss programs. The provisions of that rule related to Tobacco Loss Assistance at 7 CFR 1464 stated, in addition to other eligibility requirements, that for a person to be considered an eligible tobacco grower such person must own, operate, or produce tobacco on a farm that was used for the production of tobacco during the 1999 crop year. Eligibility for farms that produced tobacco in the 1998 crop year was inadvertently omitted. This correction provides that farms used for the production of tobacco during the 1998 crop year will be included in the eligibility requirements.

In rule FR Doc. 00–3406, published on February 16, 2000, (65 FR 7942) make the following correction. On page 7960, in the second column, in § 1464.203(b)(2), add the phrase "1998 or" before the phrase "1999 crop year".

Signed at Washington, DC, on February 25, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–5033 Filed 2–28–00; 12:46 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1721

Post-Loan Policies and Procedures for Insured Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of confirmation of effective date.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice that no adverse comments were received regarding the direct final rule on the Post-Loan Policies and Procedures for Insured Electric Loans, published in the **Federal Register**, December 28, 1999, at 64 FR 72488, and confirms the effective date of the direct final rule.

DATES: The direct final rule, which published at 64 FR 72488, is effective February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Charles M. Philpott, Chief, Engineering Branch, Northern Regional Division, U. S. Department of Agriculture , Rural Utilities Service, Room 4034 South Bldg., 1400 Independence Ave., SW., Washington, DC 20250–1522. Telephone: (202) 720–1432. E-mail: cphilpot@rus.usda.gov.

Confirmation of Effective Date

This is to confirm the effective date of the direct final rule, 7 CFR part 1721, Post-Loan Policies and Procedures for Insured Electric Loans—Advances, published December 28, 1999, at 64 FR 72488, and is to advise that RUS did not receive any written adverse comments and no written notice of intent to submit adverse comments on this rule.

Dated: February 22, 2000.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 00–4764 Filed 2–29–00; 8:45 am]

BILLING CODE 3410–15–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 724 and 745

Trustees and Custodians of Pension Plans; Share Insurance and Appendix

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is revising its rules regarding a federal credit union's authority to act as trustee or custodian of pension plans. The revised rule permits federal credit unions in a territory, including the trust territories, or a possession of the United States, or the Commonwealth of Puerto Rico, to offer trustee or custodian services for Individual Retirement Accounts (IRAs), where otherwise permitted.

EFFECTIVE DATE: This rule is effective March 31, 2000.

FOR FURTHER INFORMATION CONTACT: Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: NCUA published a proposal to revise its rules to permit federal credit unions in a territory, including the trust territories, or a possession of the United States, or the Commonwealth of Puerto Rico, to offer trustee or custodian services for Individual Retirement Accounts (IRAs), where otherwise permitted. 64 FR 55871, Oct. 15, 1999. NCUA received just one comment letter, which was strongly supportive of the proposal. The final regulation is unchanged from the proposal.

NCUA's legal analysis and a discussion of the rule's basis and purpose were set out in the proposed regulation. *Id.* Briefly summarized, the current regulation relies, in part, on the Internal Revenue Code (IRC), which applies only in the United States and the District of Columbia, effectively excluding FCUs in U.S. territories and possessions. In several territories and

possessions, the income tax laws mirror the IRC or have provisions similar to the IRC that recognize FCUs as permissible trustees for IRAs. The final amendment allows FCUs in those U.S. territories and possessions to act as trustee or custodian for IRAs, where otherwise permitted. To ensure that IRAs in the territories and possessions are treated the same as IRAs in the United States, the final amendment modifies Part 745 to clarify that the accounts will be separately insured.

Regulatory Procedures

Paperwork Reduction Act

This regulation will impose no additional information collection, reporting or record keeping requirements.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), NCUA certifies that these amendments will not have a significant economic impact on a substantial number of small entities. NCUA expects that these regulations will not: (1) Have significant secondary or incidental effects on a substantial number of small entities; or (2) create any additional burden on small entities. These conclusions are based on the fact that the regulations merely extend the authority to offer a service to members. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive Order. Since this regulation will only apply to federal credit unions, it will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that this rule is not major for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

12 CFR Part 724

Credit unions, Pensions, Trusts and trustees.

12 CFR Part 745

Credit unions, Pensions, Share insurance, Trusts and trustees.

By the National Credit Union Administration Board on February 24, 2000.

Becky Baker,

Secretary of the Board.

For the reasons set out in the preamble, the NCUA revises 12 CFR chapter VII to read as follows:

PART 724—TRUSTEES AND CUSTODIANS OF PENSION PLANS

1. The authority citation for part 724 continues to read as follows:

Authority: 12 U.S.C. 1757, 1765, 1766 and 1787.

2. In § 724.1, remove the first sentence and add 2 sentences in its place to read as follows:

§ 724.1 Federal credit unions acting as trustees and custodians of pension and retirement plans.

A federal credit union is authorized to act as trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States and forming part of a pension or profit-sharing plan which qualifies or qualified for specific tax treatment under sections 401(d), 408, 408A and 530 of the Internal Revenue Code (26 U.S.C. 401(d), 408, 408A and 530), for its members or groups of members, provided the funds of such plans are invested in share accounts or share certificate accounts of the federal credit union. Federal credit unions located in a territory, including the trust territories, or a possession of the United States, or the Commonwealth of Puerto Rico, are also authorized to act as trustee or custodian for such plans, if authorized under sections 401(d), 408, 408A and 530 of the Internal Revenue Code as applied to the territory or possession or under similar provisions of territorial law. * * *

PART 745—SHARE INSURANCE AND APPENDIX

3. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

4. Amend § 745.9–2 by revising the first sentence of paragraph (a) to read as follows:

§ 745.9–2 IRA/Keogh Accounts.

(a) The present vested ascertainable interest of a participant or designated beneficiary in a trust or custodial account maintained pursuant to a pension or profit-sharing plan described under section 401(d) (Keogh account) or sections 408, 408A or 530 (IRA) of the Internal Revenue Code or similar provisions of law applicable to a U.S. territory or possession, will be insured up to $100,000 separately from other accounts of the participant or designated beneficiary. * * *

* * * * *

[FR Doc. 00–4853 Filed 2–29–00; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–78–AD; Amendment 39–11599; AD 2000–04–16]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Models ASH 25M and ASH 26E Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Models ASH 25M and ASH 26E sailplanes. This AD requires that you accomplish the following:

- Check to see if the sailplane has a muffler marked with an X on the front plate;
- Accomplish pre-flight checks on the carbon reinforced plastic fairing for signs of overheat traces and/or perform boroscope inspections, depending on the number of sailplane hours accumulated; and
- Replace the muffler with an improved design muffler either at a certain time period or immediately if discrepancies are found during any inspection.

This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent excessive radiation from causing the carbon fiber shroud on the engine muffler to delaminate. The carbon fiber shroud serves the same

function as a firewall and delamination could cause a fire to spread throughout the sailplane.

DATES: Effective March 20, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 20, 2000.

The FAA must receive any comments on this rule on or before March 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–78–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36161 Poppenhausen, Federal Republic of Germany; telephone: ++49 6658 89–0; facsimile: ++ 49 6658 89–40. You may examine this information at the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–78–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all Alexander Schleicher Models ASH 25M and ASH 26E sailplanes. The LBA advises that the current design engine mufflers could be defective. Specifically, excessive temperature radiation could cause the carbon fiber shroud to delaminate.

What Are the Consequences if the Condition Is Not Corrected?

The carbon fiber shroud serves the same function as a firewall and delamination could cause a fire to spread throughout the sailplane.

What Is the Cause of the Problem?

Design of the engine muffler.

Relevant Service Information

Is there service information that applies to this subject?

Yes. Alexander Schleicher has issued the following service information:

—ASH 25 M Technical Note No. 15, dated September 3, 1999; and
—ASH 26 E Technical Note No. 8, dated August 23, 1999.

What Are the Provisions of This Service Bulletin?

The service bulletin specifies and/or includes procedures for:

—Checking to see if the sailplane has a muffler marked with an X on the front plate;
—Accomplishing pre-flight checks on the carbon reinforced plastic fairing for signs of overheat traces and/or performing boroscope inspections, depending on the number of sailplane hours accumulated; and
—Replacing the muffler with an improved design muffler either at a certain time period or immediately if discrepancies are found during any inspection.

The Foreign Airworthiness Authority's Action

What Action Did the LBA Take?

The LBA classified these service bulletins as mandatory and issued the following in order to assure the continued airworthiness of these sailplanes in Germany:

—German AD 1999–376, dated December 2, 1999; and
—German AD 1999–311, dated September 8, 1999.

Was This in Accordance With the Bilateral Airworthiness Agreement?

Yes. These sailplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the AD

What Has the FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above including that received from the LBA, the FAA has determined that:

—An unsafe condition exists or could develop on all Alexander Schleicher Models ASH 25M and ASH 26E sailplanes;
—The actions of the above-referenced service bulletin should be accomplished on the affected sailplanes; and
—AD action should be taken in order to prevent excessive radiation from causing the carbon fiber shroud on the engine muffler to delaminate. The carbon fiber shroud serves the same function as a firewall and delamination could cause a fire to spread throughout the sailplane.

What Does This AD Require?

This AD requires you to accomplish the following:

—Check to see if the sailplane has a muffler marked with an X on the front plate;
—Accomplish pre-flight checks on the carbon reinforced plastic fairing for signs of overheat traces and/or perform boroscope inspections, depending on the number of sailplane hours accumulated; and
—Replace the muffler with an improved design muffler either at a certain time period or immediately if discrepancies are found during any inspection.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The initial actions of this AD are required "within 30 calendar days after the effective date of this AD."

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Why Is the Compliance in Calendar Time Instead of Hours Time-in-Service?

We have established the compliance in calendar time instead of hours time-in-service (TIS) because the unsafe condition described by this AD is not directly related to sailplane operation. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it would be for a sailplane with 500 hours TIS. A calendar time for compliance will assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Why Is the Compliance Time of This AD Different Than the German AD and the Service Information?

The service information specifies the check required in this AD "prior to

further flight" and the German AD mandates this check "prior to further flight" for sailplanes registered for operation in Germany. We do not have justification for requiring the check prior to further flight. Instead, we have determined that 30 calendar days is a reasonable time period for you to accomplish this check.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, the FAA invites comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99–CE–78–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. We determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If the FAA determines that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation and place it in the Rules Docket (otherwise, an evaluation is not required). You may obtain a copy of this evaluation, if filed, from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–04–16 Alexander Schleicher Segelflugzeugbau: Amendment 39–11599; Docket No. 99–CE–78–AD. (a) *What sailplanes are affected by this AD?* Models ASH 25M and ASH 26E sailplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes on the U.S. Register.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent excessive radiation from causing the carbon fiber shroud on the engine muffler to delaminate. The carbon fiber shroud serves the same function as a firewall and delamination could cause a fire to spread throughout the sailplane.

(d) *What procedures must be used to accomplish the actions of this AD?* You should use the procedures in whichever of the following (referred to as service information in the rest of this document), as applicable:

(1) Alexander Schleicher ASH 25 M Technical Note No. 15, dated September 3, 1999; or

(2) Alexander Schleicher ASH 26 E Technical Note No. 8, dated August 23, 1999.

(e) *What must I do to address this problem?* Within the next 30 calendar days after the effective date of this AD, determine whether the sailplane has a muffler marked with an X on the front plate, and then accomplish the following, as applicable:

If	Then
(1) The muffler front plate does not have an X on the front plate and the engine operating time is less than 40 hours time-in-service (TIS),	(i) Within 30 calendar days after the effective date of this AD, accomplish a preflight inspection on the carbon fiber reinforced plastic fairing for any signs of overheat traces. (ii) Upon accumulating 40 hours TIS on the engine and thereafter at intervals not to exceed 2 hours TIS until accumulating 60 hours TIS, accomplish the boroscope inspection specified in the service information. (iii) Upon accumulating 60 hours TIS on the engine, replace the muffler with an improved design muffler obtained from the manufacturer, or other FAA-approved equivalent.
(2) The muffler plate does not have an X on the front plate and the engine operating time is either 40 hours TIS or more than 40 hours TIS, but less than 60 hours TIS,	(i) Within 30 calender days after the effective date of this AD and thereafter at intervals not to exceed 2 hours TIS, until accumulating 60 hours TIS on the engine, accomplish the boroscope inspection specified in the service information.

If	Then
	(ii) Upon accumulating 60 hours TIS on the engine, replace the muffler with an improved design muffler obtained from the manufacturer, or other FAA-approved equivalent part.
(3) The muffler plate does not have an X on the front plate and the engine operating time is either 60 hours TIS or more than 60 hours TIS,	Within 30 calendar days after the effective date of this AD, replace the muffler with an improved design muffler obtained from the manufacturer, or other FAA-approved equivalent part.
(4) If any discrepancies are found during any preflight check or inspection required by this AD,	Prior to further flight, replace the muffler with an improved design muffler obtained from the manufacturer, or other FAA-approved equivalent part.
(5) If the muffler has an X marked on the front plate,	Upon accumulating 100 hours TIS on the engine or within the next 30 calendar days after the effective date of this AD, whichever occurs later, replace the muffler with an improved design muffler obtained from the manufacturer, or other FAA-approved equivalent part.

(f) *May the pilot accomplish any of the actions of this AD?* Yes. The owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish the check to determine whether an X is marked on the engine muffler front plate and the preflight inspection. You must make an entry into the aircraft records that shows compliance with these portions of the AD, in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(g) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(h) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

(i) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(j) *Who should I contact if I have questions regarding the service information?* Questions or technical information related to Alexander Schleicher ASH 25 M Technical Note No. 15, dated September 3, 1999, and Alexander Schleicher ASH 26 E Technical Note No. 8, dated August 23, 1999, should be directed to Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36161 Poppenhausen, Federal Republic of Germany; telephone: ++49 6658 89–0; facsimile: ++49 6658 89–40. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(k) *Are any service bulletins incorporated into this AD by reference?* Yes. The actions required by this AD must be done in accordance with Alexander Schleicher ASH 25 M Technical Note No. 15, dated September 3, 1999, and Alexander Schleicher ASH 26 E Technical Note No. 8, dated August 23, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36161 Poppenhausen, Federal Republic of Germany. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(l) *Has the airworthiness authority for the State of Design addressed this action?* Yes. The subject of this AD is addressed in German AD 1999–376, dated December 2, 1999, and German AD 1999–311, dated September 8, 1999.

(m) *When does this amendment become effective?* This amendment becomes effective on March 20, 2000.

Issued in Kansas City, Missouri, on February 18, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certifications Service.

[FR Doc. 00–4434 Filed 2–29–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–64–AD; Amendment 39–11603; AD 2000–04–20]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron Canada (BHTC) Model 407 helicopters, that requires replacing a certain hydraulic relief valve (valve) with a different valve. This amendment is prompted by the discovery of a manufacturing defect in a valve. The actions specified by this AD are intended to prevent intermittent loss of hydraulic pressure to the flight controls and subsequent loss of control of the helicopter.

DATES: Effective April 5, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 5, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, Aerospace Engineer,

FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0170, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to BHTC Model 407 helicopters was published in the **Federal Register** on December 8, 1999 (64 FR 68639). That action proposed to require replacing a certain valve with a different valve.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except that the wording of Note 1 has been changed slightly to reflect the current standard language of this AD note. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 146 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,380. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $210,240.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–04–20 Bell Helicopter Textron Canada: Amendment 39–11603. Docket No. 98–SW–64–AD.

Applicability: Model 407 helicopters, serial numbers 53000 through 53266, inclusive, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 300 hours time-in-service, unless accomplished previously.

To prevent intermittent loss of hydraulic pressure to the flight controls and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the hydraulic relief valve (valve), part number (P/N) 206–076–036–101, and replace it with an airworthy valve, P/N 206–076–036–105, in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 407–98–20, dated July 3, 1998.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 407–98–20, dated July 3, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 5, 2000.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–98–28, dated August 31, 1998.

Issued in Fort Worth, Texas, on February 22, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–4794 Filed 2–29–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–54–AD; Amendment 39–11604; AD 2000–04–21]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters Inc. Model MD600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to MD Helicopters Inc. (MDHI) Model MD600N helicopters, that requires inspecting each internal fuel hose connection to verify proper installation. This amendment is prompted by the discovery that certain fuel hose connections between the fuel cells and the engine can be incorrectly installed. The actions specified by this AD are intended to prevent fuel starvation of the engine while the fuel gage indicates fuel remaining in the

tank, engine flameout, and a subsequent forced landing.

DATES: Effective April 5, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 5, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–891–6342, fax 480–891–6782. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (310) 627–5265; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to MDHI Model MD600N helicopters was published in the **Federal Register** on December 8, 1999 (64 FR 68646). That action proposed to require inspecting each internal fuel hose connection to verify proper installation.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 40 helicopters of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,200.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–04–21 MD Helicopters, Inc.: Amendment 39–11604. Docket No. 99–SW–54–AD.

Applicability: Model MD600N helicopters, serial numbers with a prefix of "RN" 003 through 045, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel starvation of the engine while the fuel gage indicates fuel remaining in the tank, engine flameout, and subsequent forced landing, accomplish the following:

(a) Within 100 hours time-in-service, verify that the internal fuel hose connections have been properly installed in accordance with either Method A or Method B of the Accomplishment Instructions of MD Helicopters Service Bulletin SB 600N–025, dated July 2, 1999. Prior to further flight, make any necessary corrections.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The inspections shall be done in accordance with either Method A or Method B of the Accomplishment Instructions of MD Helicopters Service Bulletin SB 600N–025, dated July 2, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–891–6342, fax 480–891–6782. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 5, 2000.

Issued in Fort Worth, Texas, on February 22, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–4795 Filed 2–29–00; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators; Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend Rule 4.5 by adding a plan defined as a church plan in Section 3(33) of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") [1] ("Church Plan") to the employee benefit plans that the rule currently provides shall not be construed to be commodity pools. The CFTC also is proposing certain technical conforming amendments to the existing paragraphs under Rule 4.5 to which this amendment would be added.

DATES: Comments on the proposed rule change must be received by March 31, 2000.

ADDRESSES: Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, DC, 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to *secretary@cftc.gov*. Reference should be made to "Proposed Amendment to Rule 4.5 for Church Plans."

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Assistant Chief Counsel, or Christopher W. Cummings, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC, 20581. Telephone: (202) 418–5450.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 4.5

The term "commodity pool operator" ("CPO") is defined in section 1a(4) of the Commodity Exchange Act, as amended, (the "Act") [2] to mean:

> Any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, except that the term does not include such persons not within the intent of the definition of the term as the Commission may specify by rule, regulation, or order.

Section 4m(1) of the Act [3] makes it unlawful for any person to engage in business as a CPO without being registered as such. Part 4 of the Commission's regulations [4] governs the operations and activities of CPOs, through specific operational, disclosure, reporting and recordkeeping requirements set forth in Subpart B thereof.[5] In particular, Rule 4.10(d)(1) defines the term "pool" to mean "any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests." [6]

In connection with the adoption of the Futures Trading Act of 1982,[7] the Senate Committee on Agriculture, Nutrition, and Forestry (the "Committee") considered an amendment to the Act that would have exempted certain persons from the CPO definition. In lieu of adopting such an amendment to the CPO definition, the Committee directed the Commission to issue regulations that would have the effect of providing relief from regulation as a CPO for certain otherwise regulated persons.[8] Pursuant to this directive, in 1985 the Commission adopted Rule 4.5.[9]

Rule 4.5 makes available an exclusion from the definition of the term "commodity pool operator" to certain "eligible persons" with respect to their operation of "qualifying entities" as follows: investment companies registered as such under the Investment Company Act of 1940; state-regulated insurance companies with respect to their operation of separate accounts; state-or federally-regulated financial depository institutions with respect to their operation of separate units of investment; and trustees, named fiduciaries and employers of pension plans subject to Title I of ERISA with respect to their operation of such plans.[10] To claim relief under Rule 4.5, an eligible person must file a notice of eligibility with the National Futures Association and the CFTC, which notice must contain specified identifying information and operating representations, *e.g.*, that the qualifying entity will: (1) Use commodity interests solely for *bona fide* hedging purposes provided, that in addition, with respect to speculative positions, it will not commit more than five percent of its assets to establish such positions; and (2) submit to special calls from the CFTC to demonstrate compliance with the operating criteria set forth in Rule 4.5.[11]

Rule 4.5 further provides that certain pension plans are not commodity pools and, thus, no notice needs to be filed and no operating criteria need to be followed for exclusionary relief to be available.[12] Specifically, Rule 4.5(a)(4) states:

> That for purposes of this § 4.5 the following employee benefit plans shall not be construed to be pools:
>
> (i) A noncontributory plan, whether defined benefit or defined contribution, covered under title I of the Employee Retirement Income Security Act of 1974;
>
> (ii) A contributory defined benefit plan covered under title IV of the Employee

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[1] 29 U.S.C. 1002(33)(1994).

[2] 7 U.S.C. 1a(4) (1994).

[3] 7 U.S.C. 6m(1) (1994).

[4] 17 CFR Ch. I, Part 4 (1999).

[5] See Rules 4.20 through 4.26. Part 4 similarly governs the operations and activities of commodity trading advisors ("CTAs"). See Rules 4.30 through 4.36.

[6] The term "commodity interest" is defined in Rule 4.10(a) to mean:

(1) Any contract for the purchase or sale of a commodity for future delivery; and

(2) Any contract, agreement or transactions subject to Commission regulation under section 4c or 19 of the Act.

[7] Pub. L. No. 97–444, 96 Stat. 2294 *et seq.* (1983).

[8] See S. Rep. No. 384, 97th Cong., 2d Sess. 79–80 (1982). Specifically, the Committee Report states:

> The Committee beleives, consistent with the amendment offered by Chairman Helms, that certain entities are not within the intent of the definition of the term 'commodity pool operator', as that term is defined in the Act, unless these entities have other attributes or features which would warrant their regulation as a commodity pool operator. Specifically, an entity regulated under the Investment Company Act of 1940 or an insurance company or a bank or trust company acting in its fiduciary capacity and subject to regulation by any state or the United States could ordinarily be excluded from the definition of the term 'commodity pool operator,' provided that (1) the entity uses commodity futures contracts or options thereon solely for hedging purposes; (2) initial margin requirements or premiums for such futures or options contracts will never be in excess of 5 percent of the fair market value of the entity's assets (in the case of an investment company) or of the assets of any trust, custodial account or other separate unit of investment for which the entity is acting as a fiduciary; (3) the entity has not been and will not be, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodities markets; and (4) the entity will disclose to each prospective participant the purpose of and limitations on the scope of the commodity futures or commodity option trading it conducts for such participants.
>
> Also, a defined benefit plan that is subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and is insured by the Pension Benefit Guaranty Corporation, or any fiduciary thereof, ordinarily could be excluded from the definition of the term "commodity pool operator", provided that its commodity futures (or options on futures) trading activity is solely incidental to the conduct of its business as such a plan or as a fiduciary thereof. The Committee understands that such a plan and its fiduciaries are subject to extensive regulation under ERISA. Therefore, while the Commission should retain discretion in this area, the Committee believes that, unless otherwise inappropriate, exemption by rule, regulation, or order from commodity pool operator registration and related requirements, other than antifraud provisions, should generally be granted to these classes of entities.

[9] 50 FR 15868 (Apr. 23, 1985); amended 58 FR 6371 (Jan. 28, 1993); 58 FR 43791 (Aug. 18, 1993).

[10] Rules 4.5(a) and (b).

[11] Rules 4.5(c) through (f).

[12] The operators of these "non-pools," then, are not subject to Rules 4.5(c) through (f).

Retirement Income Security Act of 1974; *Provided, however,* That with respect to any such plan to which an employee may voluntarily contribute, no portion of an employee's contribution is committed as margin or premiums for futures or options contracts; and

(iii) A plan defined as a governmental plan in section 3(32) of title I of the Employee Retirement Income Security Act of 1974.

(iv) Any employee welfare benefit plan that is subject to the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974.

With respect to Rule 4.5(a)(4)(iii) in particular, it should be noted that these governmental plans are exempted from Titles I and IV of ERISA,[13] which concern, respectively, the protection of employee rights (*e.g.,* disclosure and reporting) and the fiduciary responsibility provisions of ERISA. In adopting Rule 4.5(a)(4)(iii) the Commission stated that—

[it] agrees with those commenters who contended that governmental pension plans are not appropriate subjects for regulation and, therefore, that they need not qualify for any exclusion from such regulation. As was stated in connection with excluding such plans from coverage under ERISA:

State and local governments must be allowed to make their own determination of the best method to protect the pension rights of municipal employees. These are questions of state and local sovereignty and the Federal government should not interfere.[14]

B. Church Plans

Section 3(33)(A) of ERISA defines the term "church plan" to mean "a plan established and maintained * * * by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26." [15]

However, a plan that is a Church Plan is exempted from Titles I and IV of ERISA, provided that the Church Plan does not elect under Section 410(d) of Title 26 [16] to be subject to certain provisions of ERISA from which it is otherwise exempt—*e.g.,* participation, vesting and funding provisions. The purpose of this exemption was "to avoid excessive Government entanglement with religion in violation of the First Amendment to the Constitution." [17] In drafting ERISA, "Congress recognized that there were serious Constitutional objections to subjecting the churches, through their plans, to the examination of books and records and possible levy on church property to satisfy plan liabilities. As a consequence, 'church plans' were excluded from the purview of ERISA." [18]

As stated above, Rule 4.5(a)(4) makes an exclusion from the CPO definition available to the operators of pension plans that are subject to Title I of ERISA. Church Plans, however, are not so subject. As also stated above, Rules 4.5(a)(4)(i) through (iv) provide that certain pension plans shall not be deemed to be commodity pools—*e.g.,* a plan defined as a "governmental plan" in Section 3(32) of ERISA—but these rules do not provide for Church Plans. Thus, under existing Rule 4.5 the operators of Church Plans are not among the eligible persons who may claim an exclusion from the CPO definition and Church Plans are not among the pension plans that are deemed not to be commodity pools.

II. The Proposed Amendments to Rule 4.5

A. The Substantive Amendment: Church Plans Deemed Not To Be Commodity Pools

In connection with its adoption of Rule 4.5 the Commission stated:

Whether any other pension plan not specified in § 4.5 merits such relief as the rule provides, or any other regulatory relief, remains to be determined on a case-by-case basis in light of the facts particular to such plan—*e.g.,* whether, and to what extent, the operations of such plan are subject to other regulation. As explained above, the Commission intends that its staff shall issue such determinations. The Commission further intends that, as it gains experience in this area, it will reevaluate this aspect of the rule.[19]

Accordingly, after the adoption of Rule 4.5, Commission staff issued several CPO registration no-action letters to the operators of pension plans defined as Church Plans in response to requests for those positions.[20] Staff issued those letters based upon, among other things, the requesters' explanations, as stated above, of Congress' reasons for exempting Church Plans from Titles I and IV of ERISA in connection with its adoption of ERISA—*i.e.,* to avoid excessive Government entanglement in religion in violation of the First Amendment to the Constitution. As also stated above, Titles I and IV concern, respectively, the protection of employee rights (*e.g.,* disclosure and reporting) and fiduciary responsibility provisions of ERISA.

Commission staff subsequently has received further requests from the operators of other Church Plans for a no-action position with respect to CPO registration under Section 4m(1) of the Act.[21] In support of this no-action position, one of the requesters stated that in connection with the adoption of

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[13] 29 U.S.C. 1001 (1994 and Supp. III 1997)) and 1301 (1994), respectively.

[14] 50 FR 15868 at 15873, citing I Legislative History of the Employee Retirement Income Security Act of 1974, 97th Cong., 2d Sess. 224 (Comm. Print 1976).

[15] Specifically, Section 3(33)(A) of ERISA states:

The term "church plan" means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26.

Section 3(33)(B)(ii) of ERISA generally provides that a plan is not a "church plan" if less than substantially all of the individuals included in the plan are individuals described in Section 3(33)(A), set forth above, or in Section 3(33)(C), which provides in relevant part that:

(i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(ii) The term employee of a church or a convention or association of churches includes—

(I) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 51 of title 26 and which is controlled by or associated with a church or a convention or association of churches; and

(III) an individual described in clause (v).

(iii) A church or a convention or association of churches which is exempt from tax under section 501 of title 26 shall be deemed the employer of any individual included as an employee under clause (ii).

(iv) An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that Church or convention or association of churches.

26 U.S.C. 501(c) (1994) provides in relevant part that the following organizations are exempt from federal income taxation:

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes * * * no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided * * *) and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

[16] 26 U.S.C. 410(d) 1994).

[17] 124 Cong. Rec. 12,108 (1998).

[18] Hearings on S. 209, Etc. Before the Subcomm. on Private Pension Plans and Employee Fringe Benefits of the Senate Comm. on Finance, 96th Cong., 1st Sess. 364 (1979).

[19] 50 FR 15868 at 15873–74

[20] See, *e.g.,* Unpublished letter dated July 30, 1990; CFTC Staff Interpretative Letter No. 87–11, [1987–90 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,019 (December 4, 1987). In each letter the staff stated that it would not recommend enforcement action to the Commission if the operator of the Church Plan at issue did not register as a CPO under Section 4m(1) of the Act.

[21] Letters to the Director of the Division of Trading and Markets dated November 20, 1998 and July 11, 1997.

ERISA Congress expressed the concern that—

> the examinations of books and records that may be required in any particular case as part of the careful and responsible administration of the insurance system might be regarded as an unjustified invasion of the confidential relationship that is believed to be appropriate with regard to churches and their religious activities. Sen. Rep. 93–383, 93rd Cong., 2d Sess. 1974–3 C.B. Supp. 160.

This requester further noted that in connection with the adoption of the National Securities Markets Improvement Act of 1996,[22] Congress adopted new Section 3(c)(14) of the Investment Company Act of 1940 ("ICA"), which specifically provides that church plans are not investment companies under the ICA and therefore that they are not subject to registration under the ICA.[23]

While the issuance of another CPO registration no-action letter to the operator of a Church Plan would be consistent with past staff practice, the Commission believes at this time that this practice should be formalized through an amendment to Rule 4.5. As the Commission articulated in connection with its recent adoption of Rule 140.99, it now intends, to the extent practicable, to handle repetitive requests such as these through rulemaking.[24]

Accordingly, the Commission is proposing to amend Rule 4.5 by adding Church Plans to the existing employee benefit plans in Rule 4.5(a)(4) that "shall not be construed to be pools," and for which no notice needs to be filed and no operating criteria need to be followed for exclusionary relief to be available. Specifically, the Commission is proposing to add a new Rule 4.5(a)(4)(v) that will contain this Church Plan exclusion. However, just as ERISA restricts the exclusion of Church Plans from coverage under Title I and Title IV of that statute to Church Plans with respect to which no election has been made under Section 410(d) of Title 26, proposed Rule 4.5(a)(4)(v) similarly would restrict its exclusion to Church Plans with respect to which no election has been made under Section 410(d).[25]

In making this proposal to include Church Plans among those employee benefit plans that shall not be construed to be pools under Rule 4.5(a)(4), the Commission notes that the basis for its action would be similar to its rationale for providing in Rule 4.5(a)(4)(iii) that state and local government pension plans shall not be construed to be pools. As stated above, Congress exempted from Titles I and IV of ERISA: (1) Governmental plans, to avoid Federal interference with these questions of state and local sovereignty; and (2) Church Plans, to avoid excessive Federal entanglement with religion in violation of the first amendment to the Constitution. The Commission further notes that the proposal would be broader than the CPO registration no-action positions that its staff previously has issued to the operators of Church Plans.[26] Also, under this proposal the operators of Church Plans would not need to file a Notice of Eligibility to claim relief and they would not need to restrict their Plans' activities to the operating criteria of Rule 4.5(c). The Commission believes the breadth of its proposal is appropriate in light of Congress' rationale in excluding Church Plans from coverage under Titles I and IV of ERISA. The Commission nonetheless requests comment on whether rather than adding Church Plans to the list of plans that should not be construed to be a pool as proposed, the Commission should include the operator of a Church Plan as an eligible person who may claim an exclusion from the CPO definition. The Commission also requests comment on whether relief under Rule 4.5 should be available solely to those Church Plans that have not made an election under Section 414(e) of the IRC to be subject to certain provision of ERISA.

B. The Technical Amendments: Conforming the Rule

When the Commission initially adopted Rule 4.5 there were three types of pension plans that Rule 4.5(a)(4) stated "shall not be construed to be pools": the plans set forth in paragraphs (a)(4)(i); (a)(4)(ii); and (a)(4)(iii) of the rule.[27] The Commission subsequently amended Rule 4.5 to add in new paragraph (a)(4)(iv) another type of pension plan that would not be construed to be a pool.[28] However, the Commission did not at that time concurrently conform the punctuation of the rule. Moreover, if the proposed substantive amendment to Rule 4.5 for Church Plans is adopted, the rule further will have to be amended to accommodate grammatically this new paragraph.

Accordingly, the Commission also is proposing certain technical, conforming amendments to Rule 4.5. Specifically, the Commission is proposing to amend Rule 4.5 by removing the word "and" at the end of existing paragraph (a)(4)(ii), by removing the period and adding a semi-colon at the end of existing paragraph (a)(4)(iii), and by removing the period and adding a semi-colon and the word "and" at the end of existing paragraph (a)(4)(iv). The text of each of the foregoing paragraphs under Rule 4.5 would remain intact.

III. Related Matters

A. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 (the "PRA")[29] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In

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[22] Pub. L. No. 104–290, 110 Stat. 3416 (1996).

[23] 15 U.S.C. 80a–3(c)(14) (Supp. II 1996). Specifically, Section 3(c)(14) provides that a "church plan" described in Title 26 is not an investment company if: under any such plan, no part of the assets may be used for, or diverted to, purposes other than the exclusive benefits of plan participants or beneficiaries, or any company or account that is—

(A) established by a person that is eligible to establish and maintain such a plan under section 414(e) of title 26; and

(B) substantially all of the activities of which consist of—

(i) managing or holding assets contributed to such church plans or other assets which are permitted to be commingled with the assets of church plans under title 26; or

(ii) administering or providing benefits pursuant to church plans.

Section 414(e) of Title 26, generally defines the term "church plan" to mean a pension plan established and maintained (to the extent specified) by a church or by a convention or association of churches which is exempt from tax under Section 501 of the IRC. 26 U.S.C. 414(e) (1994).

[24] 63 FR 68175 at 68176 (December 10, 1998).

[25] As stated above, a Church Plan is exempted from Titles I and IV of ERISA, provided the Church Plan does not elect under Section 410(d) of Title 26 to be subject to certain provisions of ERISA from which it is otherwise exempt—*e.g.*, participation, vesting and funding provisions.

[26] If a collective investment vehicle (such as a Church Plan) is not Commodity pool, the oopeprator of the vehicle would not be a CPO. The operator would nonetheless be a person for all other purposes of the Act and CFTC rules—*e.g.*, it would be subject to the general antifraud provisions of section 4b of the Act, 7 U.S.C. 6b (1994), and to the large trader reporting requirements of Part 18 of the regulations. If a collective investment vehicle is a pool, in addition to being a person for the purposes of the Act and the rules, its operator would be a CPO subject to all provisions of the Act and Commission rules applicable to CPOs regardless of registration status—*e.g.*, to the special antifraud provisions for CPOs (and CTAs) in section 40 of the Act, 70 U.S.C. 6*o* (1994), the operational requirements for CPOs in Rule 4.20 and the advertising requirements for CPOs (and CTAs) in Rule 4.41.

In this regard, the Commission wishes to emphasize that the status of a collective investment vehicle as a pool or a "non-pool" does not affect the registration or Part 4 requirements of any CTA to the vehicle. But see Rule 4.14(a)(8), which makes available an exemption from CTA registration to certain registered investment advisers who, among other things, provide commodity interest trading advice to Rule 4.5 trading vehicles in a manner solely incidental to their business of providing securities advice to those vehicles.

[27] 50 FR 15868.

[28] 58 FR 43791.

[29] 44 U.S.C. 3501 *et seq.* (Supp. II 1996).

compliance with the PRA, the Commission previously has submitted Rule 4.5 in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget has approved the collection of information of which this proposed rule is a part through September 30, 2001, OMB Control Number 3038–0005: Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants. While this proposed rule has no burden, the group of rules (3038–0005) of which it is a part has the following burden:

Average Burden Hours Per Response: 7.49.

Number of Respondents: 6,949.

Frequency of Response: Monthly, Quarterly, Annually, On Occasion.

Copies of the OMB approved information collection package associated with this rule are available from the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [30] requires each federal agency to consider in the course of proposing substantive rules the effect of those rules on small entities. The definitions of small entities that the Commission has established for this purpose do not address the persons and qualifying entities set forth in Rule 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by Federal and State authorities other than the Commission. Assuming, arguendo, that church plans would be small entities for purposes of the RFA, the Commission believes that the proposed amendment to Rule 4.5 would not have a significant economic impact on them because it would not require the filing of a notice containing specified operating criteria with the Commission to claim the relief available under proposed Rule 4.5(a)(4)(v). Moreover, the Commission notes that the proposed amendment potentially would relieve a greater number of persons (*i.e.*, the operators of Church Plans) from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to Section 3(a) of the RFA [31] that the proposed rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 4

Commodity pool operators, Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 1a(4), 4k, 4*l*, 4m, 4n, 4*o* and 8a, 7 U.S.C. 1a(4), 6k, 6*l*, 6m, 6n, 6*o* and 12a, the Commission hereby proposes to amend Chapter I of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for Part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

2. In § 4.5, in paragraph (a)(4) introductory text, the proviso text is republished and paragraph (a)(4) is proposed to be amended by removing the word "and" at the end of paragraph (a)(4)(ii), by removing the period and adding a semi-colon at the end of paragraph (a)(4)(iii), by removing the period and adding a semi-colon and the word "and" at the end of paragraph (a)(4)(iv), and by adding a new paragraph (a)(4)(v), to read as follows:

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term "commodity pool operator."

(a) * * *

(4) * * * *Provided, however,* That for purposes of this § 4.5 the following employee benefit plans shall not be construed to be pools:

* * * * *

(v) A plan defined as a church plan in Section 3(33) of title I of the Employee Retirement Income Security Act of 1974 with respect to which no election has been made under 26 U.S.C. 410(d).

* * * * *

Issued in Washington, DC on February 22, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–4747 Filed 2–29–00; 8:45 am]

BILLING CODE 6351–01–P

[30] 5 U.S.C. 601 *et seq.* (1994 and Supp. II 1996).

[31] 5 U.S.C. 605(b).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 127, 154, 155, 159, 164, and 183

46 CFR Parts 28, 30, 32, 34, 35, 38, 39, 54, 56, 58, 61, 63, 76, 77, 78, 92, 95, 96, 97, 105, 108, 109, 110, 111, 114, 119, 125, 151, 153, 154, 160, 161, 162, 163, 164, 170, 174, 175, 182, 190, 193, 195, and 199

[USCG–1999–5151]

RIN 2115–AF80

Update of Standards From the American Society for Testing and Materials (ASTM)

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On December 1, 1999, the Coast Guard published a direct final rule [64 FR 67170]. This rule notified the public of our intent to amend Titles 33 and 46, Code of Federal Regulations, to render current the standards incorporated by reference from ASTM. We have not received an adverse comment, or notice of intent to submit an adverse comment, objecting to this rule. Therefore, this rule will go into effect as scheduled.

DATES: The direct final rule is, as we said it would be, effective on February 29, 2000. The incorporation by reference of publications in this rule was approved by the Director of the Federal Register to be effective on February 29, 2000.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Ms. Janet Walton, Office of Standards, Evaluation and Development (G–MSR), U.S. Coast Guard, telephone 202–267–0257.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

The Coast Guard received no comments in response to the direct final rule. Therefore, this rule will go into effect as scheduled.

Dated: February 24, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–4806 Filed 2–29–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 231–0206a; FRL–6540–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the California State Implementation Plan. The revision concerns a rule from the South Coast Air Quality Management District (SCAQMD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) and hydrogen sulfide (H_2S) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC and H_2S emissions from refinery vacuum-producing devices or systems. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

This direct final action will incorporate this rule into the federally approved SIP and also stop the sanctions and Federal Implementation Plan clocks, which were started on August 14, 1998 when EPA published a final limited disapproval of the State's submittal of a previous version of this Rule.

DATES: This rule is effective on May 1, 2000 without further notice, unless EPA receives adverse comments by March 31, 2000. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is SCAQMD Rule 465, Refinery Vacuum-Producing Devices and Systems. This rule was submitted by the California Air Resources Board (CARB) to EPA on October 29, 1999.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the SCAQMD. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the SCAQMD's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance. [1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. SCAQMD is classified as extreme for ozone [2]; therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

This document addresses EPA's direct final action for SCAQMD Rule 465, Refinery Vacuum-Producing Devices and Systems. SCAQMD adopted Rule 465 on August 13, 1999. This rule was submitted by the CARB on October 29, 1999 and was found to be complete on December 16, 1999 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [3] and is being finalized for approval into the SIP.

Rule 465 controls the emission of VOCs and H_2S from refinery vacuum-producing devices and systems. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. Control of H_2S is not required for purposes of the SIP, because H_2S is not a criteria air pollutant. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] SCAQMD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to this rule is entitled, "Control of Refinery Vacuum-Producing Systems, Wastewater Separators, and Process Unit Turnarounds," EPA 450/2–77–025. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On August 14, 1998, EPA granted limited approval and limited disapproval to a version of Rule 465 that had been adopted by SCAQMD on November 1, 1991. SCAQMD Rule 465 as adopted on August 13, 1999 includes the following significant changes from the current SIP:

- SCAQMD deleted the listing of exempt compounds and referenced SCAQMD Rule 102, which correctly does not list carbon tetrachloride as an exempt compound.
- SCAQMD eliminated the requirement to reduce VOC emissions from vacuum-producing devices or systems by at least 90% and the requirement to limit exhaust gases from vacuum-producing devices or systems to not exceed 800 ppm of sulfur compounds expressed as H_2S.
- SCAQMD replaced the above requirements with a requirement to continuously collect exhaust gases from vacuum-producing devices or systems and add them to a fuel gas system or combustion device that is approved and permitted. Fuel gas systems (with subsequent combustion) and combustion devices will achieve significantly greater than 90% VOC emissions removal from the exhaust gases. The use of other control devices, such as carbon absorbers, is no longer allowed under this rule.
- SCAQMD removed test methods associated with the deleted emission limits. Compliance is now being determined by visual inspection of the valves, flanges, and piping for leaks to the ambient air. Inspection and recordkeeping for valves and flanges is regulated by SCAQMD Rule 466.1, Valves and Flanges.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 465, Refinery Vacuum-Producing Devices or Systems, is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

This approval action will incorporate this rule into the federally approved SIP and also stop the sanctions process and Federal Implementation Plan clock, which were started on August 14, 1998, when a limited disapproval action was published in the **Federal Register**. 63 FR 43627.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 1, 2000 without further notice unless the Agency receives adverse comments by March 31, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on May 1, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 1, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: February 11, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(270)(i)(C)(*1*)to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(270) * * *

(i) * * *

(C) South Coast Air Quality Management District.

(*1*) Amended Rule 465, adopted on August 13, 1999.

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[FR Doc. 00–4778 Filed 2–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300972; FRL–6490–9]

RIN 2070–AB78

Dimethyl Silicone Polymer With Silica; Silane, Dichloromethyl-, Reaction Product With Silica; Hexamethyldisilizane, Reaction Product With Silica; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the polymers dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica when used as inert ingredients in growing crops, when applied to raw agricultural commodities after harvest, or to animals. Cabot Corporation submitted petitions to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica.

DATES: This regulation is effective March 1, 2000. Objections and requests for hearings, identified by docket control number OPP–300972, must be received by EPA on or before May 1, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit XI. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300972 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Vera Soltero, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9359 and e-mail address: soltero.vera@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300972. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record

does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 25, 1999 (64 FR 46378) (FRL–6096–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of pesticide tolerance petitions by Cabot Corporation, 1557 Concord Road, Billerica, MA 01821. This notice included a summary of the petitions prepared by the petitioner. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.1001(c) and (e) be amended by establishing exemptions from the requirement of a tolerance for residues of dimethyl silicone polymer with silica, CAS No. 67762–90–7, PP 9E6017; silane, dichloromethyl-, reaction product with silica, CAS No. 68611–44–8, PP 9E6018; and hexamethyldisilizane, reaction product with silica, CAS No. 68909–20–6, PP 9E6019.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue..." and specifies factors EPA is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymers, dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica, are not cationic polymers nor are they reasonably anticipated to become cationic polymers in a natural aquatic environment.

2. The polymers do contain as an integral part of their composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymers do not contain as an integral part of their composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymers are neither designed nor can they be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymers are manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymers are not water absorbing polymers with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymers, dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica, also meet as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymers' number average MW of 1,100,000 daltons; 3,340,000 daltons; and 645,000 daltons, respectively are greater than or equal to 10,000 daltons. The polymers contain less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on their conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MWs of dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica are 1,100,000; 3,340,000; and 645,000 daltons, respectively. Generally, polymers of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. Since the Agency has determined that there is a reasonable certainty that no harm will result from aggregate exposure to dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; or hexamethyldisilizane, reaction product with silica a tolerance is not necessary.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." The Agency has not made any conclusions as to whether or not dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica share a common mechanism of toxicity with any other chemicals. However, dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica conform to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; or hexamethyldisilizane, reaction product with silica.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica are endocrine disruptors.

B. Existing Exemptions from a Tolerance

There are no existing exemptions from a tolerance for the polymers dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting dimethyl silicone polymer with silica; silane, dichloromethyl-, reaction product with silica; and hexamethyldisilizane, reaction product with silica from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300972 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 1, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300972, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

XIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a

"major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 14, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.1001, the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * *		
Dimethyl silicone polymer with silica (CAS No. 67762–90–7).	.....	Moisture barrier, anti-caking agent, anti-settling agent
* * * * *		
Hexamethyldisilizane, reaction product with silica (CAS No. 68909–20–6).	.....	Moisture barrier, anti-caking agent, anti-settling agent
* * * * *		
Silane, dichloromethyl-, reaction product with silica (CAS No. 68611–44–9).	.....	Moisture barrier, anti-caking agent, anti-settling agent, anti-thickening agent
* * * * *		

* * * * * (e) * * *

Inert ingredients	Limits	Uses
* * * * *		
Dimethyl silicone polymer with silica (CAS No. 67762–90–7).	.....	Moisture barrier, anti-caking agent, anti-settling agent
* * * * *		
Hexamethyldisilizane, reaction product with silica (CAS No. 68909–20–6).	.....	Moisture barrier, anti-caking agent, anti-settling agent
* * * * *		
Silane, dichloromethyl-, reaction product with silica (CAS No. 68611–44–9).	.....	Moisture barrier, anti-caking agent, anti-settling agent, anti-thickening agent
* * * * *		

[FR Doc. 00–4659 Filed 2–29–00; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 193

[Docket No. RSPA–97–3002; Amdt. 193–17]

RIN 2137–AD11

Pipeline Safety: Incorporation of Standard NFPA 59A in the Liquefied Natural Gas Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule incorporates by reference an industry consensus standard for liquefied natural gas (LNG) facilities subject to the pipeline safety regulations. This standard, developed by the National Fire Protection Association (NFPA), specifies siting, design, construction, equipment, and fire protection requirements that apply to new LNG facilities and to existing facilities that have been replaced, relocated, or significantly altered. All new, replaced, relocated, and significantly altered facilities are also subject to the new operating and maintenance requirements, and all other requirements specified in this rule, as well as the unchanged portions of the regulations. The fire protection requirements also apply to existing LNG facilities. The incorporation by reference of this standard will allow the LNG industry to use the latest technology, materials, and practices while maintaining the current level of safety.

DATES: This final rule takes effect March 31, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, or by e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this final rule, or the Dockets Facility (202) 366–9329, for copies of this final rule or other material in the docket. All materials in this docket may be accessed electronically at http://dms.dot.gov. General information about the RSPA/Office of Pipeline Safety programs can be obtained by accessing OPS's Internet home page at http://ops.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 1996, the NFPA petitioned RSPA to replace substantive portions of 49 CFR Part 193 with ANSI/NFPA 59A (1996 edition), titled "Standards for the Production, Storage

and Handling of Liquefied Natural Gas (LNG)". The petition specifically recommends removing the Subparts on siting, design, construction, equipment, and fire protection, and instead referencing chapters 1 through 9 of ANSI/NFPA 59A (1996 edition). The petition recommends retaining, with minor changes, the Subparts on operation, maintenance, personnel qualification and training, and security.

The current Federal safety standards for LNG facilities were developed as a requirement of the Pipeline Safety Act of 1979, now re-codified in 49 United States Code Section 60103. In 1979, Congress determined that the public would be better served if the U.S. Department of Transportation (DOT) developed its own standards for the LNG industry. Prior to July 1, 1976, no Federal standards for LNG facilities existed. The current standard, which addresses LNG facilities used in gas pipeline transportation, was issued as a Final Rule on February 11, 1980 [45 FR 9203] and now appears at 49 CFR Part 193. Between July 1, 1976, and February 11, 1980, LNG facilities were required to comply with ANSI/NFPA 59A (1972 edition) and Part 192.

A report issued on July 31, 1978, by the General Accounting Office titled "Liquefied Energy Gases" highlighted some of the safety concerns in the transportation and storage of LNG. Foremost among those were: (1) protection of persons and property near an LNG facility from thermal radiation caused by ignition of a major spill of LNG, (2) protection of persons and property near an LNG facility from dispersion and delayed ignition of a natural gas cloud arising from a major spill of LNG, and (3) reduction of the potential for a catastrophic spill of LNG.

RSPA identified many deficiencies in the pre-1980 LNG standards which needed to be corrected to reduce the potential for a major spill of LNG and provide an acceptable level of safety. Because of the difference in format and the need for regulatory language to facilitate enforcement, a few sections of ANSI/NFPA 59A were rewritten for their adoption in Part 193.

There have been significant changes in the ANSI/NFPA 59A since 1980. The 1996 edition of the ANSI/NFPA 59A includes the latest developments in LNG facility design and safety. Many of these developments have not been incorporated into current Part 193. The format and language of the ANSI/NFPA 59A has also changed significantly, over the years, to facilitate enforcement. ANSI/NFPA 59A is revised on a regular basis, and the revision process includes input from a wide variety of experts and a broad representation of interests.

RSPA has been very active in incorporating by reference voluntary consensus standards in its pipeline safety regulations. RSPA has participated for many years on several voluntary committees that develop consensus standards, including the ANSI/NFPA 59A technical committee. The existing Part 193 references provisions of ANSI/NFPA 59A in eight different locations. Recent amendments to the LNG regulations (February 25, 1997; 62 FR 8402 and August 1, 1997; 62 FR 41311) have brought Part 193 closer to ANSI/NFPA 59A. Unlike older editions of the ANSI/NFPA 59A, text in the current standard is in a regulatory format that makes it more suitable for incorporation by reference. RSPA is adopting the 1996 version of the ANSI/NFPA 59A. When the standard is revised in the future, RSPA will incorporate by reference the revised versions, as appropriate.

This rule replaces major subparts covering siting, design, construction, equipment, and fire protection with provisions of NFPA standard, and makes minor changes in the operation and maintenance requirements. These changes apply only to new and significantly altered facilities. Incorporation by reference of ANSI/NFPA 59A will maintain current levels of safety and allow industry flexibility in applying the latest technology. Based on the above factors and the potential benefits to Federal and State regulators, the LNG industry, and most of all, to public safety, RSPA decided to consider the adoption of ANSI/NFPA 59A into Part 193.

In November 1997 and May 1998, RSPA briefed the Technical Pipeline Safety Standards Committee (TPSSC) on proposed changes to the LNG regulations. In February and April 1998, RSPA held meetings with the National Association of Pipeline Safety Representatives (NAPSR) LNG Part 193 committee to receive their input on the proposed changes.

On March 31, 1998, RSPA met with representatives of the LNG industry, State and local governments, and the public to gather information on experiences with the current Federal LNG safety regulations and with ANSI/NFPA 59A. On April 22, 1998. RSPA held a joint meeting with NFPA, the American Gas Association (AGA) and the NAPSR LNG review committee to discuss technical differences between Part 193 and ANSI/NFPA 59A.

Proposed Rule

RSPA published an NPRM [63 FR 70737; December 22, 1998], proposing to replace most LNG requirements for siting, design, construction, equipment, and fire protection in Part 193 by referencing the American National Standards Institute (ANSI), National Fire Protection Association (NFPA) Standard 59A (1996 edition), titled "Standards for the Production, Storage and Handling of Liquefied Natural Gas (LNG)". The NPRM also proposed some minor amendments to operation and maintenance requirements for new and significantly altered facilities. (Existing facilities need only comply with previously existing operations and maintenance requirements.) RSPA proposed these changes because ANSI/NFPA 59A more accurately reflects current technology and practices in the LNG industry. Only those requirements which ANSI/NFPA does not address or adequately cover were retained. On May 18, 1999, at the AGA conference in Cleveland, commenters requested, and were granted, an additional month for comments. RSPA received comments on the NPRM from 11 sources. Commenters included two trade associations, two standards organizations, six operators, and one State agency.

Advisory Committee Review

We submitted the proposed LNG rule to the Technical Pipeline Safety Standards Committee (TPSSC) for comments on technical feasibility, reasonableness, cost-effectiveness, and practicality. On May 5, 1999, the TPSSC voted unanimously to approve the proposed rule without comment.

Discussion of Comments and Changes in the Final Rule

We received comments from the following in response to the NPRM:

Trade associations: American Gas Association (AGA); The New England Gas Association (NEGA)

Standards organization: National Fire Protection Association (NFPA); American Society of Safety Engineers (ASSE);

Operators: Duke Energy Corporation; Philadelphia Gas Works (PGW); William's Gas Pipeline, KeySpan Energy Corporation; Paiute Pipeline Company, Alaska North Slope LNG project.

State agency: Iowa Utilities Board (Iowa).

All 11 commenters generally supported the NPRM, but expressed some concerns or suggested changes. All significant comments on the NPRM are

summarized below along with RSPA's responses.

General Comment: Partial Adoption of ANSI/NFPA 59A

Four commenters, including AGA and NEGA, requested adoption of ANSI/NFPA 59A for siting, design, construction, equipment, and fire protection, without modification except for regulatory language consistency. They expressed concerns over selectivity of various parts of 49 CFR Part 193, and ANSI/NFPA 59A. AGA commented that adoption of only portions of ANSI/NFPA 59A will make the standards difficult to administer by both the regulatory agencies and the LNG facility operators. AGA feels that RSPA's approach would require substantial cross-referencing between two documents and various referenced standards, to determine which one is applicable in any given situation, resulting in confusion, errors and potential violations of the final rule. In AGA's view, this could have significant cost impact to operators without much safety benefit.

Response—During proposed rule development, our analysis of Part 193 and ANSI/NFPA 59A showed that certain LNG safety requirements in design, siting, construction, and equipment were not adequately addressed in ANSI/NFPA 59A. Following discussions with state regulators and LNG consultants, we decided to retain all of those requirements in the proposed rule that were not adequately addressed in ANSI/NFPA 59A. However, after review of comments received on the NPRM, and detailed discussions on specific requirements with the industry, trade associations, LNG consultants, and regional directors, we have concluded that only some of the safety requirements proposed in the NPRM are critical, therefore, should be retained. However, most of proposed safety requirements are already covered in performance language in ANSI/NFPA 59A, therefore, those requirements should be removed from Part 193. This final rule reflects those changes.

General Comment: Limit ANSI/NFPA 59A References to Only Design, Construction, and Siting Issues

AGA, NEGA, and two plant operators expressed concern over the proposed changes in Subpart F—Operations, and Subpart G—Maintenance. They said that in meetings leading up to the NPRM, DOT indicated that operations and maintenance requirements in part 193 would not be revised because ANSI/NFPA 59A does not adequately address these issues. They also said DOT's revisions to operations and maintenance areas are broad and unclear. Specific examples of such instances offered by commenters are discussed below.

Response—Under operation and maintenance subparts of this rule, operators of new and significantly altered LNG facilities are required to maintain design and construction related inspection, testing and investigation records specified under NFPA 59A. We have specified frequency of those tests and duration of recordkeeping. Operators are also reminded in the operation and maintenance subparts that these requirements only apply to new and significantly altered LNG facilities constructed after the effective date of this rule.

Editorial Comments

One commenter noted inconsistencies in listing subparts affected by this rule. This commenter suggested that reference be made to subparts A–E and I throughout the text. This commenter also pointed out that the preamble indicated that section 193.2119 would be retained, yet in the rule this section has been removed.

Response—We have removed inconsistencies regarding affected subparts in the final rule. We inadvertently removed Section 193.2119 from the proposed rule. This final rule retains it.

Listed below are comments or changes to specific sections:

Subpart A—General

Section 193.2001 Scope of Part

In the NPRM, we revised Section 193.2001 to include reference to ANSI/NFPA 59A. Because ANSI/NFPA 59A is not applicable to all subparts in Part 193, we have removed the reference. Therefore, Section 193.2001 as currently specified will remain unchanged.

Section 193.2003 Semisolid Facilities Has been removed from the rule as proposed in the NPRM.

Section 193.2005 Applicability

This section 193.2005 has been restructured to clarify that new requirements apply to new and significantly altered LNG facilities after the effective date of this rule unless otherwise noted.

Proposed Sections 193.2007 Through 193.2019 Are unchanged in the final rule.

Subpart B—Siting Requirements

Section 193.2051 Scope

We proposed that this section would be retained because ANSI/NFPA 59A does not specify where siting is needed. One commenter argued that sections 2–1, 2–2 and 2–3 of ANSI/NFPA 59A clearly delineate siting requirements for process equipment, building and structures, transfer systems, flammable containers, LNG containers, and spill and leak control in important process areas. This commenter said that it is the combination of section 193.2051 and ANSI/NFPA 59A that will cause confusion and misinterpretation. The commenter suggested that the standards simply reference ANSI/NFPA 59A.

Response—We agree that ANSI/NFPA 59A specifies where siting is required, therefore, we have revised the text of the scope under this section to avoid duplication and confusion. The revised scope now states that each LNG facility after effective date of the final rule must be provided with siting requirements in accordance with requirements of this part and of ANSI/NFPA 59A. In the event of a conflict between this part and ANSI/NFPA 59A, this part prevails. Operators are reminded that the requirements retained in this part are not covered in ANSI/NFPA 59A.

Section 193.2057 Thermal Radiation Protection

In the NPRM we proposed that the thermal radiation distances calculations use: (1) wind speed and ambient temperatures which produce maximum exclusion distances except that values that occur less than 5% of the time shall not be used; (we regret that in the preamble of the NPRM we explained this requirement incorrectly.) (2) LNGFIRE III model; (3) offsite targets currently listed in paragraph (d). We also proposed deletion of paragraph (b)(4) which required use of highest anticipated heating value of LNG.

The NFPA and the Iowa Utility Board commented on the preceding requirements. NFPA commented that wind speed need not be included in the calculation, because it is already included in the acceptable heat flux for offsite targets. NFPA also pointed out that Part 193 does not specify how wind speed is to be determined and what figure (maximum or average) is to be used.

NFPA recommended that Part 193 should reference ANSI/NFPA 59A because NFPA cites a method (from a

GRI report) rather than specific computer model, such as LNGFIRE III, for calculating thermal radiation distances. NFPA also commented that number of "offsite targets" listed in paragraph (d) in section 193.2057 does not provide the source of these numbers or how to calculate an area, whereas the NFPA numbers are taken from widely used NFPA 101, the Life Safety Code. This code provides a method to calculate the area occupied by persons for use as an offsite target.

Response—(1) The old formula for calculating thermal radiation distance $d=F.A^{1/2}$ (where d=distance, F=flux correlation factor, A=surface area within impoundment), which was replaced in Part 193 with the LNGFIRE model, is still allowed under NFPA 59A in certain applications. That formula calculates distances based on the assumption that the flame is at a 45 degree angle. In other words, the formula already accounts for wind speed. But, in the LNGFIRE model, wind speed is one of the input factors. We specify that the maximum wind speeds be used, except for those that occur less than 5% of the time. Therefore, the wind speed portion of the requirement is retained.

(2) We disagree with NFPA comment that a method rather than specific computer model be specified. We review and analyze each specific model before adoption thus, making the compliance process easier for both the operator and inspector. This rule requires that the LNGFIRE III model be used. Other models may be used, subject to the Administrator's approval.

(3) NFPA 101, the Life Safety Code, is basically a building code. For building design one needs to know area occupied by an individual person. The LNGFIRE model *does not* require the area of an individual person. Incident flux gives intensity of heat in Btu/hr-square foot, which means, Btu's that would be received by one square foot of the target if it were exposed to the thermal radiation for one hour. Number of persons or size of a person does not change the Btu/square foot received by the target. The 20 and 50 person criteria used for an 'offsite target' in Part 193 and ANSI/NFPA 59A, respectively, are arbitrary numbers. Because we do not see justification for using different figures, in the final rule we have eliminated the Offsite target and incident radiant flux figures and simply referenced ANSI/NFPA 59A.

Comment on 193.2057 (b)(4)—The Iowa Utility Board questioned deletion of use of "highest anticipated heating value of LNG" in the calculations of thermal radiation distances. Iowa Utility Board said in their experience higher heating value (HHV) of "aged" LNG has reached 1200 Btu/scf compared to 1023 Btu/scf for methane. And based on the potential for the buildup of heavier hydrocarbons in stored LNG, the Iowa Utility Board asked for clarification of our decision to delete this requirement.

Response—The common units for higher heating values used in the natural gas industry are British thermal units (Btu) per standard cubic foot (scf). But, in reality HHV in Btu/lb determines the size of the flame, and the thermal radiation distances. The mass per unit volume of gas changes with composition for LNG mixture. In fact, decrease in Btu/lb is more significant than increase in Btu/scf for aged LNG as compared to methane. Therefore, flame size for aged LNG is lower than the flame size of methane, resulting in shorter thermal radiation distance. In reality, there is only 0.1 to 0.2% difference in radiation distances. Therefore, this requirement has been deleted.

Section 193.2059 Flammable Vapor-Gas Dispersion Protection

In the NPRM we proposed to: (1) retain minimum 10 minute spill duration for vaporization design rate; (2) delete planned vapor control; (3) retain 2.5% lower flammable concentration limit at the outer boundary of flammable vapor; and (4) add one hour time duration necessary for spill detection and response for tanks with an internal shutoff valve. AGA, NEGA, NFPA, two operators and the Iowa Utility Board each offered comments against one or more of those requirements.

AGA, NEGA and one operator commented that NFPA standard 59A does not set a 10 minute spill duration limit so that operators can take advantage of technology by using controls that can provide response time in less than 10 minutes.

NEGA said that by deleting planned vapor control to mitigate the emerging vapor from a design LNG spill increases burden on the operator and denies the operator alternative credit.

The Iowa Utility Board supported the proposal to retain the 2.5% lower limit for gas concentration. NFPA said that the 5% lower flammability limit is sufficient because the model takes concentration variations into account, and our requirement is too conservative.

One operator said there is no rationale for a one hour response time for spill detection for a tank with an internal shutoff valve.

Response—(1) We agree with the commenters that with the current technology and control system operators can respond to spills in less than 10 minutes. We have revised this requirement to agree with the ANSI/NFPA 59A standard that 10 minute spill time can be reduced if the operator can demonstrate by instrument surveillance and emergency shutdown system that less than 10 minutes is needed to respond to spills.

(2) We have deleted, as we proposed in the NPRM, the planned vapor control requirement from the regulations. We do not believe, any facility would opt for this alternative. In this final rule planned vapor control requirement will still be allowed as an alternative through a waiver.

(3) We have retained the requirement for 2.5% lower flammable limit (LFL) concentration at the outer boundary of flammable vapor to provide a reasonable margin of safety. The DEGADIS model predicts only average concentration of LNG. Because vapor does not disperse uniformly, pockets of 5% LFL concentration could be adjacent to the average distance line predicted by the model. In other words, the model can under predict the actual concentration of LNG. Because many assumptions go in the formula, the distances predicted are not always accurate. Using a 2:1 safety margin was suggested by those who developed this model. On August 19, 1999, the NFPA 59A committee discussed this issue in great detail and voted to revise ANSI/NFPA 59A standard to require a 2.5% LFL in lieu of 5% LFL. Therefore, we see no need to revise the current concentration level in the regulations.

In this final rule, we are allowing use of the FEM3A vapor dispersion model as an alternate to DEGADIS. The FEM3A model accounts for additional cloud dilution which may be caused by the complex flow patterns induced by tank and dike structures. Dispersion distances are calculated in accordance with this model described in Gas Research Institute report GRI–96/0396.5, "Evaluations of Mitigation Methods for Accidental LNG Releases. Volume 5: Using FEM3A for LNG Accident Consequence Analyses."

(4) ANSI/NFPA 59A standard also requires a one hour duration for spills from tanks fitted with internal shutoff valves. We have referenced ANSI/NFPA 59A for determining design spills.

Proposed requirement on determining Vaporization design rate under 193.2059(d) has been deleted in this rule to allow operators more flexibility in computing.

Section 193. 2063 Flooding Section; 193. 2069—Other Severe Weather and Natural Conditions; and Section 193.2071—Adjacent Activities

We proposed to retain these sections because the subjects that these sections cover are not addressed adequately in ANSI/NFPA 59A. NFPA commented the "general plant site consideration" requirement under section 2–1.1 of ANSI/NFPA 59A adequately addresses these subjects.

Response—We agree that NFPA standard requires evaluation of potential incidents and the inclusion of safety measures in the design or operation of the facility in lieu of specifying natural disasters. Also, the NFPA standard requires consideration of factors applicable to the specific site that may have a bearing on the safety of plant personnel and the public. We believe this performance language meets the intent of our regulation. Therefore, requirements in sections 193. 2063, 193.2069, and 193.2071 have been removed.

Section 193.2067 Wind Forces

We proposed to retain this section because ANSI/NFPA 59A does not take into consideration uncertainties associated with high winds and storms, such as hurricanes. NFPA commented that Paragraph 4–1.4 of ANSI/NFPA 59A does take into account wind and snow loads by reference to ASCE 7 (90–100 mph), using a 100-year mean occurrence. NFPA also said this reference applies to LNG tanks, and noted that spill prevention during a hurricane is a maximum priority of this reference. Therefore, NFPA suggested reference for this section be given to ANSI/NFPA 59A.

Response—In the proposal, we reduced wind speed from 200 to 150 mph under (b)(2)(i), because 94% of hurricanes, according to a study, have wind speeds of less than 150 mph. Further, lower wind speed design may be approved by the Administrator, so long as the reduction is justified by adequate supportive data. Therefore, this section has been retained as proposed.

Subpart C—Design

Section 193.2101 Scope

We have revised the text of the scope under this section to avoid duplication and confusion. The revised scope now states that each LNG facility designed after the effective date of the final rule must be designed in accordance with requirements of this part and of ANSI/NFPA 59A. In the event of a conflict between this part and ANSI/NFPA 59A, this part prevails.

Section 193.2119 Records

In the preamble of the NPRM we said this Section was necessary to verify material properties. However, in the rule section of the NPRM we inadvertently omitted it. In this final rule, we are retaining this requirement.

Section 193.2125 Automatic Shutoff Valves

In the NPRM we proposed to retain this section because it requires avoidance of fluid-hammer, and because Part 193 better defines fail-safe. NFPA commented that ANSI/NFPA 59A has specific reference to ASME B31.3, B31.5, B31.8, and API 6D for valve design and selection criteria. And these consensus standards provide sufficient safeguards including fluid-hammer.

Response—We agree with the NFPA comment that consensus standards like ASME B31.3, B31.8, and API 6D referenced in the ANSI/NFPA 59A for the valve design and selection criteria provide sufficient safeguards. Also, discussions with LNG plant designers and consultants revealed that fluid-hammer is taken into consideration as standard practice in the selection of valves for LNG pipes. Therefore, we are deleting this specific requirement by removing § 193.2125.

Section 193.2149 Impoundment Required

In the NPRM we proposed to retain this section because it requires grading, drainage or an impounding system around transfer piping and parking areas for loaded LNG trucks. These items are not covered in the ANSI/NFPA 59A. NFPA and two operators objected to this requirement. NFPA said that impoundment is not required for transfer piping because spills are controlled by the valves in the piping. NFPA and one operator alleged that there is no data to support impoundment for the truck parking areas at the LNG plants, when they are able to park in other areas, and are intended for movement over streets and highways.

Response—After discussions with the LNG plant operators, designers and consultants we have determined that the most likely sources of leaks within LNG plant are LNG storage tanks, cargo transfer areas, and vaporizers and process equipment, which are all addressed in paragraph 2–2.1.2 of the ANSI/NFPA 59A. Therefore, we believe ANSI/NFPA 59A will satisfy this requirement, and we are removing § 193.2149.

Section 193.2155 Structural Requirements

Proposed paragraph (b) under section 193.2155 reduced distance requirements from LNG tanks to airport runways. It also removed requirements for concrete dikes capable of withstanding the impact of the largest aircraft serving that airport. One commenter suggested that the proposed paragraph (b) should be moved into Subpart B (Siting requirements), because it relates to siting and not structural requirements.

Response—This requirement was originally placed under the Design subpart because it contains structural performance and integrity specifications. Although this regulation also relates to siting, we rather retain it under the Design subpart so readers do not misunderstand and think this requirement has been removed.

Section 193.2159 Floors

The NPRM proposed retaining this section because ANSI/NFPA 59A did not address this requirement adequately. Further review of ANSI/NFPA 59A reveals that Section 2–2 of this standard covers the same requirement with performance-related language. Therefore, we are deleting this section from the final rule.

Section 193.2161 Dikes, General

The NPRM proposed retaining the prohibition on any penetration through dike walls. AGA stated that prohibiting dike penetration is unjustified given the safety record of LNG facilities.

Response—Paragraph 2–2.2.4 in the ANSI/NFPA 59A permits penetration of the dike only if they are designed to withstand the full hydrostatic head of the impounded LNG or flammable refrigerant, the effect of rapid cooling to the temperature of the liquid to be confined, any anticipated fire exposure, and natural forces, such as earthquakes, wind, and rain. We are satisfied with the dike penetration requirements in ANSI/NFPA 59A. Therefore, this requirement has been removed in this rule.

We are retaining paragraph (b) of the proposed rule.

Section 193.2167 Covered Systems

We had proposed retaining this provision in the NPRM. However, because covered impoundment systems are considered unsafe, we do not anticipate that such systems will be built in the future. This requirement has been deleted, except for concrete wall tanks where the concrete wall is an outer wall serving as a dike.

Section 193.2171 Sump Basins

The NPRM proposed requiring a sump basin in each impounding system. Upon further reconsideration, we believe requiring a sump basin in each impoundment system for collection of water is design restrictive, so we have removed this requirement.

Section 193.2173 Water Removal

This section of the proposed rule is retained with some modification to paragraph (a). Paragraph (a) now states that impoundment areas must be constructed such that all areas drain completely to prevent water collection. Sump pumps and piping must be provided to remove water from the sump basin. Alternative means of drainage may be acceptable subject to the RSPA Administrator's approval.

Paragraph (b) has been retained as proposed.

Section 193.2175 Shared Impoundment

The NPRM proposed retaining this requirement. Upon reconsideration this provision been removed because it is covered in paragraph 2–2.2.1 of ANSI/NFPA 59A.

Section 193.2179 Impoundment Capacity: General

The NPRM proposed retaining this requirement. This provision has been removed because it is covered in paragraph 2–2.2.1 of ANSI/NFPA 59A.

Section 193.2183 Impoundment Capacity: Equipment and Transfer Systems

We proposed a minimum 10 minute spill period to avoid confusion among operators because spill time was not specified. AGA, NEGA, and two operators objected to our minimum 10 minute spill time requirement and suggested DOT should follow ANSI/NFPA 59A and allow for design of an impounding area with a volumetric capacity to accommodate a discharge period less than 10 minutes. The commenters indicated this would enable operators to utilize current technology, materials, and practices. The commenters also suggested that a shorter period (less than 10 minutes) should be allowed based on demonstrable instrument surveillance and emergency shutdown provisions.

Response—We agree that current technology, instrumentation, and control systems could achieve emergency shutdown in a very short time. Therefore, we are removing section 193.2183 as proposed and instead in the final rule allowing a shorter design spill time based on demonstrable instrument surveillance and emergency shutdown systems by referencing ANSI/NFPA 59A.

In the same section of impoundment capacity for transfer systems, one operator objected to including discharge from permanent transfer piping in the impoundment capacity calculations, and suggested we should instead use failure of cargo transfer piping. The commenter's justification is that impoundment along the permanent piping from liquefaction process to the LNG tanks and from the LNG tanks to loading arms, adds significantly to the plant cost without addressing a realistic release scenario. This commenter said that ANSI/NFPA 59A specifically excludes permanent plant piping from the definition of transfer area.

Response—We agree and have removed this requirement as explained above in Section 193.2149.

Section 193.2185 Impoundment Capacity: Parking Areas, Portable Containers

The NPRM proposed retaining this requirement. We are removing this section because it is covered in performance language in ANSI/NFPA 59A.

Section 193.2187 General

The NPRM retained this section. In this rule, the title of this Section is changed to Nonmetallic membrane liner. Paragraph (a) has been removed because it is no longer applicable. Paragraph (b) has been retained.

Section 193.2191 Stratification

The NPRM proposed retaining this requirement because it specified a method to prevent rollover. In this rule, this requirement is removed because all plant designers are familiar with rollover prevention methods and it is addressed in ANSI/NFPA 59A.

Sections 193.2205 Frost Heave and 193.2207 Insulation

The NPRM proposed retaining these requirements. Further review indicates that both requirements are addressed in ANSI/NFPA 59A. Therefore, they have been removed in this rule.

Section 193.2209 Instrumentation for LNG Storage Tanks

We retained this section in the NPRM because ANSI/NFPA 59A does not require any recorders. One commenter said ANSI/NFPA 59A adequately covers it. Continuous monitoring or short interval scanning, trending, and multi-level alarms for process variables and tank levels are standard features of current computer based monitoring and control devices. This commenter said that ANSI/NFPA 59A and sound engineering practice make it unnecessary to retain this section to provide an added level of safety.

Response—We agree that all plants designed today will have necessary instrumentation and electronic recording systems. ANSI/NFPA 59A covers basic requirements for instrumentation. Therefore, we have removed this section from the final rule.

Subpart D—Construction

Section 193.2301

We have revised the text in the scope section to avoid duplication and confusion. The revised scope now states that each LNG facility constructed after the effective date of the final rule must be constructed in accordance with requirements of this part and of ANSI/NFPA 59A. In the event of a conflict between this part and ANSI/NFPA 59A, this part prevails.

Section 193.2303 Construction Acceptance

Is unchanged except that a reference to ANSI/NFPA 59A has been added.

Section 193.2304 Corrosion Control Overview Is Unchanged

Section 193.2305 Procedures; Section 193.2307 Inspection; Section 193.2315 Piping Connections; and Section 193.2317 Retesting

The NPRM proposed retaining some provisions that we believed were not adequately addressed in ANSI/NFPA 59A. One commenter said that the NPRM did not adequately explain why these sections should be retained. The commenter said that the procedures and specifications in ANSI/NFPA 59A and the various codes and consensus standards it incorporates by reference, such as, ASME, ASTM, ACI, ASCE, TEMA, API and others, provide more detail and necessary requirements for design, selection, construction, testing procedures. The commenter further said these codes and consensus standards provide appropriate requirements for inspection and piping connections. The commenter cited a few specific sections of ANSI/NFPA 59A where requirements for inspection and piping connections are detailed.

Response—Upon reconsideration we agree with the comment that ANSI/NFPA 59A coverage is adequate. Therefore, the above sections have been removed from this rule.

Section 193.2321 Nondestructive Tests

We revised this section in the NPRM by retaining requirements not adequately addressed in ANSI/NFPA 59A. One commenter suggested that material in this section is covered in section 6–6.3 of ANSI/NFPA 59A, and the section could be deleted without compromising safety.

Response—We agree that proposed Section 193.2321 paragraphs (a) and (b) are covered in ANSI/NFPA 59A. However, the requirement in paragraph (c) which states that welds on ASME tanks that are subject to cryogenic temperatures be subject to 100% radiographic tests is critical and therefore, is retained.

Section 193.2325 Testing Control Systems

In the NPRM we retained this requirement, but further review indicates NFPA does not use the term "control system" but instead uses the terms "testing of components" or "testing of component systems" in various sections of ANSI/NFPA 59A. Thus, ANSI/NFPA 59A covers this requirement. Therefore, this requirement is removed in the rule.

Section 193.2329 Construction Records

Paragraphs 6–6.2, 6–6.5, and 6–6.6 of ANSI/NFPA 59A cover this requirement adequately. Therefore, section has been deleted from this rule.

Subpart E—Equipment

Section 193.2401 Scope

The scope in this rule has been revised. It states that after the effective date of the final rule, vaporization equipment, liquefaction equipment, and control systems must be designed, fabricated, and installed in accordance with requirements of this part and of ANSI/NFPA 59A. In the event of a conflict between this part and ANSI/NFPA 59A, this part prevails.

Section 193.2407—Operation control; Section 193.2409—Shutoff Valves; Section 193.2413—Combustion Air Intakes; Section 193.2417—Control of Incoming Gas; Section 193.2419—Backflow, Section 193.2421—Cold Boxes; Section 193.2427—General; Section 193.2429—Relief Devices; Section 193.2431—Vents; Section 193.2433—Sensing Devices; Section 193.2435—Warning Devices; Section 193.2437—Pump and Compressor control; and Section 193.2439—Emergency Shutdown Control Systems

These requirements have been deleted from the final rule. All of these requirements are equivalent to requirements in ANSI/NFPA 59A.

Sections 193.2441 Control Center, and 193.2445—Sources of Power

Have been retained in the rule.

Section 193.2443 Fail-safe Control

This section is deleted because it is covered in section 7–5 of ANSI/NFPA 59A.

Subpart F—Operations & Subpart G—Maintenance

Section 193.2521 Operating Records and Section 193.2639 Maintenance Records

In the NPRM, we revised these sections to include operation records of results of inspection tests, investigation and data of instrument recorders, and maintenance records of periodic tests and inspections requirements, of both Part 193 and ANSI/NFPA 59A. AGA, NEGA, and two other operators raised concerns that this revision requires existing recordkeeping requirements and unspecified additional recordkeeping requirements from ANSI/NFPA 59A. The commenters assert that this revision may lead to confusion unless specific sections of ANSI/NFPA 59A are identified. In existing facilities, they argue, it may not be possible to produce the new records required by ANSI/NFPA 59A. The commenters suggested that current operations and maintenance requirements should not be changed.

Response—The additional operation and maintenance records that ANSI/NFPA 59A requires are applicable only to those LNG facilities that are designed and constructed after the effective date of this final rule. Operations and maintenance requirements of existing LNG facilities will not be affected by this rulemaking. This final rule clarifies that ambiguity.

Section 193.2609—Support Systems

We proposed adding an inspection time frame to the existing inspection requirements for support systems. AGA and NEGA objected to placing additional burdens on LNG operators, especially when Section 193.2605 allows operators to determine and perform necessary periodic inspections consistent with generally accepted engineering practice. Both commenters supported keeping maintenance requirements under 193.2609 unchanged.

Response—We agree with the comment that Section 193.2609 provides operator sufficient flexibility to determine inspection time frames. Therefore, this proposed requirement is deleted.

Section 193.2611 Fire Protection

In the NPRM, we proposed an additional requirement that would require operators to have a maintenance program for all plant fire protection equipment. AGA commented that the proposed change was unnecessary since 193.2605(b) already covers it.

Response—We agree with the AGA's comment that Section 193.2605(b) covers this proposed requirement. Therefore, it has been deleted.

Section 193.2619 Control Systems

We proposed under section 193.2619(c) a yearly (not exceeding 15 months) inspection and testing of control systems in service, but not normally in operation, such as relief valves and automatic shutdown devices, and internal shutoff valves. AGA, NEGA and one operator disagreed with this proposed change. NEGA said this requirement could be erroneously interpreted as a requirement to inspect the valve itself (inside the tank) rather than the control system associated with the valve. One operator commented that this requirement should be clarified to apply only to those tanks with external pumps. AGA said this requirement is excessive, impractical, and impossible to enforce.

Response—We have revised the wording to clarify that the control system for internal shutoff valves for bottom penetration tanks must be inspected and tested every year. It means that valve operation must be tested. This should not be interpreted as inspection of the valve inside the tank. Revised wording should alleviate any confusion. This requirement is important because we have allowed shorter design spill times for tanks with internal shutoff valves.

Another commenter suggested that under section 193.2619(c)(2) inspection and testing requirements for control systems intended for fire protection be extended from six months to yearly not exceeding 15 months. This commenter said that six months is excessive for this type of system inspection.

Response—We believe a six month interval for inspection and testing is necessary to ensure proper operation of fire protection systems. Fire protection systems are the most critical safety feature of an LNG facility and the smallest possible margin for error must be sought. Therefore, the current requirement is not changed.

Subpart H—Personnel Qualification and Training

Section 193.2717 Training: Fire Protection

Although DOT did not propose any changes to the subpart on training, AGA recommended incorporating the fire protection training requirements under section 9–1.4.2 of ANSI/NFPA 59A. AGA believes the fire protection training requirements of NFPA, the experts in the industry, should supercede any other standards.

Response—Currently Part 193 requires fire protection training every two years and ANSI/NFPA 59A requires training every year. With the excellent safety record of LNG industry we do not see a need for making this requirement more burdensome.

Subpart I—Fire Protection

Section 193.2801 Scope

We proposed to replace subpart I, except for a few sections with important safety features which are not adequately addressed in ANSI/NFPA 59A, by referencing ANSI/NFPA 59A, Chapters 2 and 9. AGA, NEGA, and two operators commented that combining some requirements of Part 193 and the requirements of ANSI/NFPA 59A would create duplicate and conflicting requirements, would be expensive, and would not enhance safety. One commenter said that exclusion from the fire protection requirements of ANSI/NFPA 59A for existing LNG plants that temporarily do not contain LNG should be expanded to include fire protection at all existing LNG plants.

Response—After review of requirements in this subpart and ANSI/NFPA 59A, and discussions with LNG plant operators, designers and consultants, we have determined that the fire protection requirements of ANSI/NFPA 59A are adequate. Therefore, in this rule we are referencing ANSI/NFPA 59A without any additional requirements in subpart I.

Section 193.2807 Smoking

We proposed to retain paragraph (c) regarding "No Smoking" signs. One commenter said this requirement would result in excessive signage and not necessarily control smoking at the plant.

Response—This requirement had been removed along with all other fire protection requirements contained in Subpart I for reasons stated above.

Section 193.2817 Fire Equipment and Section 193.2821 Fire detection

One commenter said that the revision to this section requires additional fire protection equipment, additional unspecified fire alarms from ANSI/NFPA 59A, and additional protection or cooling requirements for critical components. The commenter said these requirements should be specifically identified with reference to the appropriate section of ANSI/NFPA 59A.

Response—These requirements have been removed in Subpart I for reasons stated above. The ANSI/NFPA 59A requirements will apply to LNG facilities designed and constructed after the effective date of this final rule.

Section 193.2819 Gas detection

Response—This requirement had been removed in Subpart I for reasons stated above.

Subpart J—Security.

This subpart is retained.

Appendix A to Part 193

Is revised to reflect changes in the list of Organizations and addresses and list of documents incorporated by reference due to Part 193 revisions. One new document added in the list is the GRI–96/0396.5—"Evaluation of Mitigation Methods for Accidental LNG Releases, Volume 5: Using FEM3A for LNG Accident Consequence Analysis."

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Department of Transportation (DOT) does not consider this action to be a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4,1993). Therefore, it was not forwarded to the Office of Management and Budget. This final rule is not significant under DOT's regulatory policies and procedures (44 FR 11034: February 26, 1979).

This final rule amends 49 CFR Part 193 by replacing substantive sections of the current regulation with ANSI/NFPA Standard 59A, titled "Standard for the Production, Storage and Handling of Liquefied National Gas (LNG)". The purpose of this adoption is to enable operators to utilize current technology, materials, and practices, thereby reducing costs and enhancing national growth. This change to Part 193 will eliminate unnecessary and burdensome requirements. Further the adoption of industry standards is consistent with the President's goals of regulatory reinvention and improvement of customer service to the American people. Adoption of industry standards also meets the goals of OMB's Budget Circular A–119, "Federal Participation in the Development and Use of Voluntary Standards," promoting adoption of voluntary consensus standards wherever possible.

The NFPA has a standing committee which regularly reviews ANSI/NFPA 59A. RSPA has a representative on this committee, and RSPA sought the committee's input in several discussions concerning the adoption of ANSI/NFPA 59A into Part 193. Members of the ANSI/NFPA 59A technical committee include: RSPA, Federal Energy Regulatory Commission, Coast Guard, State governments, insurance interests, contractors, and fire departments. Representation by this group ensures that essentially all interests involved in LNG safety issues have been represented in this standard. The NFPA has over 67,000 individual members and includes over 100 national trade and professional groups. Its goal as an organization is to reduce the burden of fire on the quality of life by advocating scientifically based consensus codes and standards, research, and education for fire safety issues.

As mentioned above, there should be little to no cost to the industry to adopt these regulations as LNG operators are already well aware of these standards and they are already being implemented by the industry. In fact adoption of this rule should actually reduce the costs to industry as the main purpose of this rule is to allow the adoption of newer technology that was not anticipated when the earlier LNG regulations were promulgated. Because this rule does not represent any new burden to the industry and in fact will reduce costs, RSPA believes that a regulatory evaluation of this rule is unnecessary. Furthermore, adoption of this rule meets the guidelines of Federal Government policy discussed above while reducing the administrative burdens on industry and allowing for the use of the latest technology and practices.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether a rulemaking would have a significant economic impact on a substantial number of small entities. As discussed above, RSPA is amending part 193 by replacing substantive portions of this subpart with the adoption of consensus industry standards developed by the NFPA. These safety standards are well known and have been implemented by operators of LNG facilities throughout the United Sates. The replacement of major portions of Part 193 with the ANSI/NFPA 59A standard should in fact reduce costs of the present regulations to LNG operators, including

any small operators, and allow the use of more current technologies as mentioned in the previous section. RSPA invited comments from small business operators who objected to this rule, and received no comments addressing this issue. Based on the above discussion, I certify pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the action will not have a significant economic impact on a substantial number of small entities.

Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that:

(1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on States and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255; August 10, 1999) do not apply. Nevertheless, in February and April 1998, RSPA held meetings with the National Association of Pipeline Safety Representatives (NAPSR) LNG Part 193 committee, which includes state pipeline safety regulators, to receive their input on the changes to this rule.

Unfunded Mandates

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is least burdensome alternative that achieves the objective of the rule.

Paperwork Reduction Act

This rule does not substantially modify the paperwork burden on LNG industry. OPS does not believe that LNG industry will have any additional paperwork burden because of the incorporation by reference of these consensus standards, and therefore no separate paperwork submission is required.

National Environmental Policy Act

RSPA has analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined that this action would not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact are in the docket.

Impact on Business Processes and Computer Systems

We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to "Y2K" or related computer problems. This final rule does not mandate business process changes or require modifications to computer systems. Because this rule does not affect organizations' ability to respond to those problems, we are not delaying the effectiveness of the requirements.

List of Subjects in 49 CFR Part 193

Construction, Design, Equipment, Fire protection, Incorporation by reference, Liquefied natural gas, Maintenance, Operation, Pipeline safety, Reporting and recordkeeping, and Siting requirements.

Accordingly, RSPA amends 49 CFR 193 as follows:

PART 193—[AMENDED]

1. The authority citation for part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60111, 60118 and 49 CFR 1.53.

Subpart A—General

* * * * *

§ 193.2003 [Removed and reserved]

2. Section 193.2003 is removed and reserved.

3. Section 193.2005 is revised to read as follows:

§ 193.2005 Applicability.

(a) Safety requirements mandating compliance with standard ANSI/NFPA 59A and other changes in this part governing siting, design, construction, equipment, fire protection, operation and maintenance apply to LNG facilities placed in service after March 31, 2000 unless otherwise noted.

(b) If an existing LNG facility (or facility under construction before March 31, 2000 is replaced, relocated or significantly altered after March 31, 2000, the facility must comply with the applicable requirements of this part governing, siting, design, installation, and construction, except that:

(1) The siting requirements apply only to LNG storage tanks that are significantly altered by increasing the original storage capacity or relocated, and

(2) To the extent compliance with the design, installation, and construction requirements would make the replaced, relocated, or altered facility incompatible with the other facilities or would otherwise be impractical, the replaced, relocated, or significantly altered facility may be designed, installed, or constructed in accordance with the original specifications for the facility, or in another manner subject to the approval of the Administrator.

§ 193.2007 Definitions.

4. Section 193.2007 is amended by removing "including an underground cavern" from definition of Storage tank, "or solidifying" from definition of LNG facility, and "or semisolid" from definitions of *Liquefied natural gas* or *LNG, Vaporization,* and *Vaporizer.*

Subpart B—Siting Requirements

5. Section 193.2051 is revised to read as follows:

§ 193.2051 Scope.

Each LNG facility designed, constructed, replaced, relocated or significantly altered after March 31, 2000 must be provided with siting requirements in accordance with the requirements of this part and of ANSI/NFPA 59A. In the event of a conflict between this part and ANSI/NFPA 59A, this part prevails.

§ 193.2055 [Removed and reserved]

6. Section 193.2055 is removed and reserved.

7. Section 193.2057 is revised to read as follows:

§ 193.2057 Thermal radiation protection.

Each LNG container and LNG transfer system must have a thermal exclusion zone in accordance with section 2–2.3.1 of ANSI/NFPA 59A with the following exceptions:

(a) The thermal radiation distances shall be calculated using Gas Research

Institute's (GRI) report GRI–89/0176, which is also available as the "LNGFIRE III" computer model produced by GRI. The use of other alternate models which take into account the same physical factors and have been validated by experimental test data shall be permitted subject to the Administrator's approval.

(b) In calculating exclusion distances, the wind speed producing the maximum exclusion distances shall be used except for wind speeds that occur less than 5 percent of the time based on recorded data for the area.

(c) In calculating exclusion distances, the ambient temperature and relative humidity that produce the maximum exclusion distances shall be used except for values that occur less than five percent of the time based on recorded data for the area.

8. Section 193.2059 is revised to read as follows:

§ 193.2059 Flammable vapor-gas dispersion protection.

Each LNG container and LNG transfer system must have a dispersion exclusion zone in accordance with section 2–2.3.2 of ANSI/NFPA 59A with the following exceptions: (a) Flammable vapor-gas dispersion distances must be determined in accordance with the model described in the Gas Research Institute report GRI–89/0242, "LNG Vapor Dispersion Prediction with the DEGADIS Dense Gas Dispersion Model." Alternatively, in order to account for additional cloud dilution which may be caused by the complex flow patterns induced by tank and dike structure, dispersion distances may be calculated in accordance with the model described in the Gas Research Institute report GRI 96/0396.5, "Evaluation of Mitigation Methods for Accidental LNG Releases. Volume 5: Using FEM3A for LNG Accident Consequence Analyses". The use of alternate models which take into account the same physical factors and have been validated by experimental test data shall be permitted, subject to the Administrator's approval.

(b) The following dispersion parameters must be used in computing dispersion distances:

(1) Average gas concentration in air = 2.5 percent.

(2) Dispersion conditions are a combination of those which result in longer predicted downwind dispersion distances than other weather conditions at the site at least 90 percent of the time, based on figures maintained by National Weather Service of the U.S. Department of Commerce, or as an alternative where the model used gives longer distances at lower wind speeds, Atmospheric Stability (Pasquill Class) F, wind speed = 4.5 miles per hour (2.01 meters/sec) at reference height of 10 meters, relative humidity = 50.0 percent, and atmospheric temperature = average in the region.

(3) The elevation for contour (receptor) output H = 0.5 meters.

(4) A surface roughness factor of 0.03 meters shall be used. Higher values for the roughness factor may be used if it can be shown that the terrain both upwind and downwind of the vapor cloud has dense vegetation and that the vapor cloud height is more than ten times the height of the obstacles encountered by the vapor cloud.

(c) The design spill shall be determined in accordance with section 2–2.3.3 of ANSI/NFPA 59A.

§§ 193.2061–193.2065 [Removed and reserved]

9. Sections 193.2061 through 193.2065 are removed and reserved.

10. Section 193.2067 is amended by revising paragraphs (b)(1) and (b)(2)(i) to read as follows:

§ 193.2067 Wind forces

* * * * *

(b) * * *

(1) For shop fabricated containers of LNG or other hazardous fluids with a capacity of not more than 70,000 gallons, applicable wind load data in ASCE 7.

(2) * * *

(i) An assumed sustained wind velocity of not less than 150 miles per hour, unless the Administrator finds a lower velocity is justified by adequate supportive data; or

* * * * *

§§ 193.2069–193.2073 [Removed and reserved]

11. Sections 193.2069 through 193.2073 are removed and reserved.

Subpart C—Design

12. Section 193.2101 is revised to read as follows:

§ 193.2101 Scope.

Each LNG facility designed after March 31, 2000 must comply with requirements of this part and of ANSI/NFPA 59A. In the event of a conflict between this part and ANSI/NFPA 59A, this part prevails.

§§ 193.2103–193.2117 [Removed and reserved]

13. Sections 193.2103 through 193.2117 are removed and reserved.

§§ 193.2121–193.2153 [Removed and reserved]

14. Sections 193.2121 through 193.2153 are removed and reserved.

15. Section 193.2155 is amended by removing paragraph (b), redsignating paragraph (c) as paragraph (b), and revising paragraph (a) introductory text and newly designated paragraph (b) to read as follows:

§ 193.2155 Structural requirements.

(a) The structural members of an impoundment system must be designed and constructed to prevent impairment of the system's performance reliability and structural integrity as a result of the following:

* * * * *

(b) An LNG storage tank must not be located within a horizontal distance of one mile (1.6 km) from the ends, or ¼ mile (0.4 km) from the nearest point of a runway, whichever is longer. The height of LNG structures in the vicinity of an airport must also comply with Federal Aviation Administration requirements in 14 CFR Section 1.1.

§§ 193.2157–193.2159 [Removed and reserved]

16. Sections 193.2157 through 193.2159 are removed and reserved.

17. Section 193.2161 is revised to read as follows:

§ 193.2161 Dikes, general.

An outer wall of a component served by an impounding system may not be used as a dike unless the outer wall is constructed of concrete.

§§ 193.2163–193.2165 [Removed and reserved]

18. Sections 193.2163 through 193.2165 are removed and reserved.

19. Section 193.2167 is revised to read as follows:

§ 193.2167 Covered systems.

A covered impounding system is prohibited except for concrete wall designed tanks where the concrete wall is an outer wall serving as a dike.

§§ 193.2169–193.2171 [Removed and reserved]

20. Sections 193.2169 through 193.2171 are removed and reserved.

21. Section 193.2173 is amended by revising paragraphs (a) and (b) to read as follows:

§ 193.2173 Water removal.

(a) Impoundment areas must be constructed such that all areas drain completely to prevent water collection. Drainage pumps and piping must be provided to remove water from

collecting in the impoundment area. Alternative means of draining may be acceptable subject to the Administrator's approval.

(b) The water removal system must have adequate capacity to remove water at a rate equal to 25% of the maximum predictable collection rate from a storm of 10-year frequency and 1-hour duration, and other natural causes. For rainfall amounts, operators must use the "Rainfall Frequency Atlas of the United States" published by the National Weather Service of the U.S. Department of Commerce.

* * * * *

§§ 193.2175–193.2179 [Removed and reserved]

22. Sections 193.2175 through 193.2179 are removed and reserved.

23. Section 193.2181 is revised to read as follows:

§ 193.2181 Impoundment capacity: LNG storage tanks.

Each impounding system serving an LNG storage tank must have a minimum volumetric liquid impoundment capacity of:

(a) 110 percent of the LNG tank's maximum liquid capacity for an impoundment serving a single tank;

(b) 100 percent of all tanks or 110 percent of the largest tank's maximum liquid capacity, whichever is greater, for the impoundment serving more than one tank; or

(c) If the dike is designed to account for a surge in the event of catastrophic failure, then the impoundment capacity may be reduced to 100 percent in lieu of 110 percent.

§ 193.2183 and 193.2185 [Removed and reserved]

24. Sections 193.2183 and 1913.2185 are removed and reserved.

25. Section 193.2187 is revised to read as follows:

§ 193.2187 Nonmetallic membrane liner.

A flammable nonmetallic membrane liner may not be used as an inner container in a storage tank.

§§ 193.2189–193.2233 [Removed and reserved]

26. Sections 193.2189 through 193.2233 are removed and reserved.

Subpart D—Construction

27. Section 193.2301 is revised to read as follows:

§ 193.2301 Scope.

Each LNG facility constructed after March 31, 2000 must comply with requirements of this part and of ANSI/NFPA 59A. In the event of a conflict between this part and ANSI/NFPA 59A, this part prevails.

28. Section 193.2303 is amended by adding a phrase "and ANSI/NFPA 59A." at the end of the section.

§ 193.2305–193.2319 [Removed and reserved]

29. Sections 193.2305 through 193.2319 are removed and reserved.

30. Section 193.2321 is revised to read as follows:

§ 193.2321 Nondestructive tests.

The butt welds in metal shells of storage tanks with internal design pressure above 15 psig must be radiographically tested in accordance with the ASME Boiler and Pressure Vessel Code (Section VIII Division 1), except that hydraulic load bearing shells with curved surfaces that are subject to cryogenic temperatures, 100 percent of both longitudinal (or meridional) and circumferential (or latitudinal) welds must be radiographically tested.

§§ 193.2323–193.2329 [Removed and reserved]

31. Sections 193.2323 through 193.2329 are removed and reserved.

Subpart E—Equipment

32. Section 193.2401 is revised to read as follows:

§ 193.2401 Scope.

After March 31, 2000, each new, replaced, relocated or significantly altered vaporization equipment, liquefaction equipment, and control systems must be designed, fabricated, and installed in accordance with requirements of this part and of ANSI/NFPA 59A. In the event of a conflict between this part and ANSI/NFPA 59A, this part prevails.

§§ 193.2403–193.2439 [Removed and reserved]

33. Sections 193.2403 and 193.2439 are removed and reserved.

§ 193.2443 [Removed and reserved]

34. Section 193.2443 is removed and reserved.

Subpart F—Operation

35. Section 193.2521 is revised to read as follows:

§ 193.2521 Operating records.

Each operator shall maintain a record of results of each inspection, test and investigation required by this subpart. For each LNG facility that is designed and constructed after March 31, 2000 the operator shall also maintain related inspection, testing, and investigation records that ANSI/NFPA 59A requires. Such records, whether required by this part or ANSI/NFPA 59A, must be kept for a period of not less than five years.

Subpart G—Maintenance

36. Section 193.2619 in Subpart G is amended by revising paragraph (c) introductory text to read as follows:

§ 193.2619 Control systems.

* * * * *

(c) Control systems in service, but not normally in operation, such as relief valves and automatic shutdown devices, and control systems for internal shutoff valves for bottom penetration tanks must be inspected and tested once each calender year, not exceeding 15 months, with the following exceptions:

* * * * *

37. Section 193.2639 is amended by revising paragraph (a) to read as follows:

§ 193.2639 Maintenance records.

(a) Each operator shall keep a record at each LNG plant of the date and type of each maintenance activity performed on each component to meet the requirements of this part. For each LNG facility that is designed and constructed after March 31, 2000 the operator shall also maintain related periodic inspection and testing records that ANSI/NFPA 59A requires. Maintenance records, whether required by this part or ANSI/NFPA 59A, must be kept for a period of not less than five years.

* * * * *

Subpart I—Fire Protection

38. Section 193.2801 is revised to read as follows:

§ 193.2801 Scope.

Each LNG facility must meet fire prevention and fire control provisions of ANSI/NFPA 59A.

§§ 193.2803–193.2821 [Removed and reserved]

39. Sections 193.2803 through 193.2821 are removed and reserved.

* * * * *

40. Appendix A to Part 193 is revised to read as follows:

Appendix A to Part 193—Incorporation by Reference

I. List of Organizations and Addresses

A. American Gas Association (AGA), 400 North Capital St., Washington, D.C. 20001.

B. American National Standards Institute (ANSI), 11 West 42nd St., New York, NY 10036.

C. American Society of Civil Engineers (ASCE), Parallel Centre, 1801 Alexander Bell Dr., Reston, VA 20191–4400.

D. American Society of Mechanical Engineers (ASME), Three Park Ave., New York, NY 10016–5990.

E. Gas Research Institute (GRI), 8600 West Bryn Mawr Ave., Chicago, IL 60631.

F. National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.

II. Documents Incorporated by Reference, (Numbers in Parentheses Indicate Applicable Editions)

A. American Gas Association (AGA):
1. "Purging Principles and Practices"—(1975)

B. American Society of Civil Engineers (ASCE):
1. ASCE 7–95 "Minimum Design Loads for Buildings and Other Structures" (1995).

C. American Society of Mechanical Engineers (ASME):
1. ASME Boiler and Pressure Vessel Code, Section VIII, Divisions 1 and 2 (1998).

D. Gas Research Institute (GRI):
1. GRI–89/0176 "LNGFIRE: A Thermal radiation Model for LNG Fires" (June 29, 1990).
2. GRI–89/0242 "LNG Vapor Dispersion Prediction with the DEGDIS Dense Gas Dispersion Model" (April 1988–July 1990).
3. GRI–96/0396.5 "Evaluation of Mitigation Methods for Accidental LNG Releases, Volume 5: Using FEM3A for LNG Accident Consequence Analyses."

E. National Fire Protection Association (NFPA):
1. ANSI/NFPA 59A "Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)" (1996 edition).

Issued in Washington, D.C. on February 11, 2000.

John P. Murray,

Acting Deputy Administrator.

[FR Doc. 00–3799 Filed 2–29–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–2000–6940]

RIN 2127–AG66

Anthropomorphic Test Dummy; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document amends 49 CFR Part 572 by adding design and performance specifications for a new dummy whose height and weight are representative of a fifth percentile female adult. This new dummy, which is part of the family of Hybrid III test dummies, can be used to accurately assess the potential for injuries to small-statured adults and teenagers. The new dummy is especially needed both to ensure that air bags protect small-statured adults and teenagers in frontal crashes and to minimize the risk of injury from air bags during those crashes. The dummy will also provide a means of gathering useful information in a variety of crash environments to better evaluate vehicle safety.

Adding the dummy to Part 572 is the first step toward using the dummy to evaluate the safety and effectiveness of air bags for small-statured adults and teenagers. The issue of amending various safety standards to specify use of the dummy in determining compliance with the performance requirements of those standards, *e.g.*, the agency's occupant protection standard, will be addressed in other rulemakings, particularly the agency's advanced air bag rulemaking for which a notice of proposed rulemaking was published in September 1998 and a supplemental notice of proposed rulemaking was published in November 1999.

DATES: *Effective Date:* This regulation becomes effective March 31, 2000. The incorporation by reference of the publications listed in the rule is approved by the Director of the Federal Register as of March 31, 2000.

Petitions: Petitions for reconsideration must be received by April 17, 2000.

ADDRESSES: Petitions for reconsideration should refer to the docket number of this rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Stan Backaitis, Office of Crashworthiness Standards, at 202–366–4912.

For legal issues, you may call Rebecca MacPherson, Office of the Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION:

I. Summary of Decision

Based on our use of the Hybrid-III 5th percentile female (H–III5F) dummy in calibration tests and in frontal impact tests involving restraints such as air bags and belts, and after consideration of the public comments on our September 3, 1998 notice of proposed rulemaking (NPRM) (63 FR 46981), we have concluded that this dummy is suitable for both research and safety compliance assessments. Depending on the intended injury assessment needs, the dummy has the necessary instrumentation to measure the potential for injuries to the head, the upper and lower ends of the neck, the chest, the lumbar spine, the pelvis, and the femurs, as well as the forces on the iliac crests [1] caused by the lap belt. In extensive agency tests, the dummy exhibited excellent durability and robustness as a measuring test tool. Although other dummy users were invited to provide comments on their test experience with the H–III5F dummy, their responses to the NPRM were based primarily on data from calibration-type tests. Little of the data was from the dummy's response in systems tests. Accordingly, our judgment about the adequacy of the dummy in systems tests is based on our own test data. However, we believe that our conclusion is consistent with the calibration data submitted in response to the NPRM by other dummy users, since those data provide a reasonably good match with the agency data.

We have decided to add the H-III5F dummy to Part 572 as Subpart O, and designate it as the alpha version of the dummy. This dummy is not significantly different from the one proposed in the NPRM. Further changes to the dummy will be designated as beta, gamma, etc., to assure that modifications can be easily tracked and identified. The new dummy is defined by a drawing and specification package; a new procedures document for disassembly, assembly, and inspection; and performance parameters including associated calibration procedures as noted in Subpart O.

II. Background

Air bag-related fatalities and injuries to small female drivers seated close to the deploying air bag in low speed crashes have raised serious concerns about the safety of air bags for this portion of the population.[2] One way to

[1] The ilium is the expansive-superior segment of the three bones composing the left or right half of the pelvis.

[2] Close proximity to the air bag is one of the primary factors leading to serious injury or fatality. Several factors can lead to an individual being too close to the air bag at the time of deployment, including failure to wear a safety belt. Nevertheless, very small-statured women appear to constitute the largest segment of the driver population that may not be able to sit a safe distance from the air bag.

Continued

evaluate the protection provided by and the risks associated with air bag systems is through the use of human mechanical surrogates with a high degree of biofidelity, such as the family of Hybrid III-type crash test dummies. The desirability of a second adult-sized crash dummy, such as the fifth percentile adult female, has been apparent for a number of years. During a March 1997 National Transportation Safety Board hearing on the safety of air bag systems, several industry commenters addressed the need to revise Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection, by adopting new test procedures and test devices and by assessing the safety of the occupant protection systems with suitable injury assessment criteria. The commenters noted that the Hybrid III-type 5th percentile female dummy has been used by industry for research purposes for several years and supported its use in air bag certification programs.

The 5th percentile adult female dummy (H–III5F) is part of a family of Hybrid III-type dummies. The first Hybrid III dummy was a 50th percentile male dummy. NHTSA has specified use of that dummy for compliance testing under FMVSS No. 208 since 1986, initially on an optional basis, and more recently on a mandatory basis. The need for a family of Hybrid III-type dummies having considerably improved biofidelity and anthropometry was recognized by the Centers for Disease Control and Prevention (CDC) in 1987 when it awarded a contract to Ohio State University under the title "Development for Multi-Sized Hybrid III Based Dummy Family." Development of the H–III5F dummy, along with the development of other family members,[3] has continued since then under the guidance of the Hybrid III Dummy Family Task Force of SAE.[4] The task force invited experts from biomechanics, instrumentation, and dummy design to guide this development. In defining the specifications for a small adult female dummy, the task force selected key body lengths and weights based on anthropometry data for the smallest fifth percent of the United States adult female population. Geometric and mass scale factors were developed to assure that each body segment had the same or similar mass densities as the corresponding Hybrid III body segment.

In 1997, we began an extensive test and evaluation program of the H–III5F dummy. The dummies were exposed to a variety of crash environments to determine their suitability and stability as measuring tools in the most severe crashes.

Upon completion of its evaluation of the H-III5F dummy, the agency tentatively concluded that it was ready for incorporation into Part 572. NHTSA placed in the docket a technical report entitled "Development and Evaluation of the Hybrid III 5th Percentile Adult Female Dummy," minutes of SAE Hybrid III dummy family task group meetings relating to the dummy, and drawings of the proposed dummy. These documents provide the technical information relevant to rulemaking on the H–III5F dummy. On September 3, 1998, we published an NPRM proposing to incorporate the H–III5F dummy into Part 572 as subpart O, and invited comments (63 FR 46981).

We received comments from 14 organizations and one individual: First Technology Safety Systems (FTSS), Applied Safety Technology Corporation (ASTC), Robert A. Denton, Inc., Transportation Research Center, Inc. (TRC), International Electronic Engineering (IEE), TRW, Advocates for Highway and Auto Safety (Advocates), SAE Dummy Test Equipment Subcommittee (DTES), the American Automobile Manufacturers Association (AAMA), Florida International University (FIU), Toyota Motor Company (Toyota), the Insurance Institute for Highway Safety (IIHS), General Motors, North America (GM), DaimlerChrysler Corp. (DC), and Laurel Barker, a private citizen.

The comments tended to fall into two groups. Commenters either simply supported the rulemaking generally without being specific as to any particular aspect of the proposal, or, in addition to indicating overall support, provided very technical comments on specific portions of the proposal. Often, the latter group of comments dealt with procedures on how the dummy is set up and positioned for calibration tests or with the sufficiency and clarity of the dummy drawings. These highly technical comments are addressed at greater length in the "Technical Analysis of Issues Report" (TAIR–H–III5F) supporting this final rule. Where we have agreed with the comments, we have made appropriate changes in either the drawing package or the regulatory text. The TAIR–H–III5F is in the docket.

III. Dummy Drawings

Several of the commenters, including ASTC, FTSS, and to a lesser extent Denton, raised questions about the specifications in the drawings. To simplify analysis of the large number of detailed issues related to design specifications, we divided the comments into four categories: design, performance, manufacturing, and other issues.

Design Issues: This group of issues concerns those requested changes that, in our opinion, are essential to assure the dummy's structural consistency and its appropriate functioning. They involve a series of questions essential to dummy design, as well as missing or incomplete significant specifications. The issues involve dummy drawings that need to be changed either by adjusting existing specifications or adding further specifications to assure a correct fit and interface between components and their appropriate functioning in the impact environment. While these changes are important, they must be addressed with a degree of technical specificity that will likely be appreciated only by the two dummy manufacturers who commented on the NPRM. Accordingly, they are fully discussed in the TAIR–H–III5F .

Performance Issues: This group of issues involves comments on drawings and specifications that we believe relate primarily to production decisions which dummy manufacturers need to address on their own. We believe further that the requested changes to the specifications falling in this category are of little consequence to the fit and function of the dummy. The performance issues primarily concern requests for the addition of new dimensions and specifications that have little, if any, functional significance for the part in question; expanding the specifications to include manufacturing processes and further details for material specifications; and assignment of dimensional and surface finish controls on parts that have no foreseeable effects to their fit and overall dummy performance.

In general, we have found no reason to include the requested information in the drawing set of the final rule. The inclusion of such information would be of little value, if any, and would not assure better quality of the manufactured dummy. Indeed, the addition of the specifications may reduce a dummy manufacturer's

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even when properly restrained. Additionally, differences in body size may lead to more severe injury for a small-statured woman than for an unrestrained average-size male.

[3] The second dummy, the six-year-old child, was the subject of an NPRM published on June 28, 1998 (63 FR 35170), and a Final Rule published on January 13, 2000 (65 FR 2059).

[4] Minutes of the meetings of the taskforce are located in NHTSA's docket, Room 5111, 400 Seventh St., SW, and are available for public inspection. The minutes address development of the entire family of Hybrid III dummies, including the six-year-old dummy that is the subject of a previous rulemaking.

flexibility in selecting a superior production technique or process, and may inhibit competition.

The one exception is a comment by ASTC that the damping material to the ribs is not specified in the drawings package. Although the damping material and the bonding-to-the-rib processes are generally known, the agency is reluctant to specify them. We do not wish to inhibit the development and use of improved materials and bonding techniques. However, to assist those manufacturers that may not be aware of the existing technology, we have decided to add a note to drawing 880105–361 referencing the damping materials and bonding process used for the manufacture of ribs for the Hybrid III 50th percentile adult male dummy (H–III50M) (see drawings 78051–35 through –40). All comments addressing performance issues are fully discussed in the TAIR–H–III5F.

Manufacturing Issues: ASTC commented that the proposed drawing set does not allow another manufacturer to produce this dummy because it lacks surface contour information. ASTC stated that the surface contour information affects not only outside vinyl skin pieces, but also many internal structures such as skull, clavicle, clavicle link, and pelvic bone. ASTC argued the lack of surface contour information would create problems in interchangeability and equivalency between dummies produced by different manufacturers, and could also affect dummy performance. ASTC requested that the agency provide opportunities for commenters to review the dummy to answer their questions and provide patterns or parts for the surface contour information.

We gave careful consideration to these comments and examined several options for resolving ASTC's concerns. The drawing review option was impracticable for this dummy, since drawings were already released as part of the NPRM package. There was no way to assure that any contour definitions placed on the drawings would address all the concerns raised by the commenters. The availability of molds and patterns was also impracticable, since the agency does not own any molds and patterns for this dummy.

The agency has therefore decided to adopt a third option, *i.e.*, making a copy of the dummy available to interested manufacturers for non-destructive dimensional inspection and extraction of surface contour information. In order to provide all interested parties with the opportunity to inspect and measure the dummy, NHTSA will continue to make the dummy available to any interested party for a period of six months after the issuance of this final rule. Such access is subject to the following terms:

- All inspections are to take place at NHTSA's Vehicle Research and Testing Center (VRTC) and at VRTC's convenience, although reasonable attempts will be made to accommodate the interested party's schedule.
- An individual or company wishing to inspect the dummy will need to contract directly with TRC to make arrangements for an individual to oversee the measurement process. This oversight by TRC is necessary to ensure that the dummies are not damaged and are reassembled correctly without the undue expenditure of agency resources.

ASTC has already availed itself of this opportunity, although it was advised that, prior to the issuance of this rule, the dummy was subject to changes.

Other Issues: Some issues do not fall into any of the above categories. These issues relate to requests that the agency add new dimensions or specifications; incorporate a newly-developed ball bearing knee slider; specify a neck wrap for the dummy; specify a different hand design for the dummy; and adopt a dummy that is more representative of the overall adult female population than the H–III5F.

We believe that the new addition of new dimensions and specifications to the drawing package would serve little value. We have evaluated the specific comments and related drawings and have determined that, with a few exceptions, the requested additions would be of little value and would not assure better quality of the manufactured dummy. To the extent we believe the additions would be useful, we have made those changes to the drawing package. A more detailed explanation of the agency's examination of the comments and their related drawings can be found in the TAIR–H–III5F.

While the new ball bearing knee slider may be appropriate for future rulemaking, it has not been fully evaluated yet by either NHTSA or the SAE. Accordingly, we believe that incorporating it into Part 572 at this time would be premature.

VRTC, in cooperation with the SAE Hybrid-III Dummy Family Task Force, has developed a new head skin to prevent the air bag from becoming wedged into a small cavity between the chin and neck of the dummy during a crash test. This head skin incorporates a vinyl cover that provides a more realistic jaw line (temporomandibular joint (TMJ) design). Our tests indicated that the TMJ significantly reduces the likelihood that an air bag will become caught between the dummy's chin and neck. In contrast, tests on various neck wraps did not produce the expected improvements.[5] Accordingly, the agency proposed in the NPRM incorporating the TMJ as part of the H–III5F head skin. The TMJ appears to adequately reduce the likelihood that the air bag will be caught in the dummy's head/neck junction. Accordingly, we have incorporated the TMJ as part of the final rule. We note that significant advances in neck wraps that will better control air bag wedging are still possible. If such an improved design becomes available, it could be added to the dummy in a future rulemaking.

Denton expressed concern that the proposed hand for the dummy was incapable of gripping, was too large for the dummy, and was subject to excessive wear. We believe that the change in the size of the hand proposed by Denton would have no significant impact on the performance of the dummy. The SNPRM for the FMVSS No. 208 advanced air bag rulemaking did not propose a requirement that the dummy be able to grip the steering wheel. Since the only rulemaking for which the use of the H–III5F is presently contemplated will not have a gripping requirement, we do not believe we need to incorporate a grippable hand at this time. We have also not experienced any problems with durability in the more than fifty tests that we have conducted using the H–III5F.

Finally, the single private citizen who commented on the NPRM stated that she believed we should use a dummy that is more representative of adult females than the H–III5F dummy, i.e., one that is approximately 5′3″ tall and 125 pounds. A dummy this size would be representative of a 50th percentile adult female. Since no one has developed such a dummy, we are unable to give consideration to incorporating one into Part 572 at this time. While numerous dummies of various sizes could be developed for test purposes, practical and financial concerns limit the agency to base the selection of representative dummies to those sizes that address the safety needs of the entire range of the population. By incorporating both the H–III5F, which is representative of the smaller end of the driving population, and the existing H–III50M, which is representative of a mid-size male, we believe the majority of the adult female population is adequately represented in the applicable crash tests.

[5] A summary report of this evaluation has been placed in the docket.

IV. Calibration Procedures

The agency proposed calibration tests involving head drop tests, neck pendulum tests, thorax and knee impacts, and torso flexion tests. AAMA, TRC, GM, TRW and Toyota were the principal commenters on test procedures.

Discussion of the vast majority of these comments is left to the TAIR–H–III5F because they raise relatively minor issues related to adjustments in the test procedure. However, the comments raise an issue as to whether the proposed semi-static torso flexion test should be a calibration test or simply an initial, as received, inspection test. This distinction is important because inspection tests usually are performed at the time the dummy is received from the manufacturer and are not necessarily repeated to establish the dummy's suitability for vehicle or vehicle component testing. An additional concern, unrelated to the inspection test issue, was raised that the impact probes specified for the knee and thorax tests were unduly design restrictive.

The semi-static torso flexion test (upper torso half relative to the lower half) was proposed as a calibration specification for this dummy. AAMA and TRC objected to characterizing this procedure as a calibration test, claiming it is not critical to the dummy's performance. Rather, they suggested it be retained as an inspection test as shown in the SAE User's Manual. Further, they claimed that the preflexion test is not needed and that the upper torso return angle upon release of the bending force should be eliminated.

The commenters have not provided any factual support for the claim that flexion stiffness of the mid-torso is not critical to the dummy's performance, and that the occasional assessment of stiffness during the dummy's inspection is sufficient. They have argued that the SAE User's Manual lists this test as an "inspection test" which is supplemental to the calibration tests to ensure that a component meets its design intent. They note that inspection tests are performed by the dummy manufacturer on new parts, but that the dummy user may conduct inspection tests only after a part is damaged or replaced. The agency does not agree that the test should be limited to inspection. The dummy's torso midsection provides an important coupling and transfer of loads between the upper and lower torso halves. The lumbar spine and the pelvis bone cavity control the fit of the abdomen at the rear and bottom of the torso while the upper torso flesh and the ribcage control the fit of the upper torso half. Thus, the bottom of the ribcage as it glides around and pushes on internal surfaces of the abdomen has a substantial influence not only on the extent the torso will flex, but also on how the load transfer between the upper and lower torso halves will be distributed. We believe the flexion procedure is necessary as a calibration test to ensure that when the dummy is used, its torso flexion stiffness is consistent, provides consistent upper torso kinematics relative to the lower torso, and does not cause or contribute to the variability of dummy response measurements in other body segments. A procedure relegated to an inspection category would not serve these purposes. Without calibration tests, a user will not know if the dummy has the correct mid-section stiffness and if the responses of the other body segments were or were not affected by mid-section variability.

We also disagree with the suggestion that the return angle during the bending stiffness test of the lumbar spine/upper torso assembly is not needed. There will be a substantial difference in overall torso kinematics between a seated dummy that can and a seated dummy that cannot return its upper torso half from a flexed position to an upright posture, particularly after full flexion has occurred. Without return, the flexion is substantially plastic, while evidence of a specific return would be indicative of the torso mid-section having certain elastic, more human-like properties. Evidence of consistent return would indicate that the forces of restitution are intact, while no or indefinite return would indicate a substantial change within the internal mechanisms of the mid-torso structure, such as failure of the lumbar spine, abdomen, or a substantial shift between interfacing body segments within the abdominal cavity. Analysis of all of the test results indicate that the upper torso of a structurally intact dummy returns consistently within 8 degrees of the starting position, indicating the adequacy of the specified return angle.

The commenters also suggested removal of the preflex provision, claiming such a provision is not needed and would interfere with the waiting time between tests recommended in the SAE User's Manual. A preflex provision was proposed to provide an opportunity for the mating parts to inter-align between themselves, so that the internal structures within the dummy's mid-torso are not sprung or misaligned at the time of testing. This would be of particular importance, for example, after either a severe test exposure or a lengthy period of non-use. The agency conducted preflexing in its tests, and found that the procedure developed a stabilized set-up posture. We see no reason to remove a provision that helps to assure a stabilized posture and better and more consistent measurements, including the integrity of the interconnection between the upper and the lower torso halves. In response to FTSS' comments about excessive flexing angle of the torso for stabilization purposes, the proposed provision for flexing the torso 3 times by 40 degrees from its initial vertical upright position is being reduced to a nominal 30 degrees in the forward direction. The agency found 30 degrees of flexion sufficient to achieve stabilized interalignment of parts within the dummy's abdominal area.

The impact probes specified by the NPRM for knee and thorax tests were meant to be generally cylindrical in shape and of a certain diameter and mass. TRC stated that the type of test probe specified in the NPRM unnecessarily restricts the design of the probe and puts additional maintenance burden on test laboratories. TRC prefers the wording used in current drafts of the SAE User's Manuals. TRC states that the wording was chosen by committee consensus to allow a wide range of design options without affecting impact results. In the case of the SAE H–III6C manual, TRC claims, the wording for the knee probe is more correct and preferred.

Up to now, all of the agency-specified dummy impact probes have been defined as rigid body cylinders of a specified diameter and mass. Similarly, with a few exceptions, most SAE User's Manuals, which are patterned after the agency's test procedures, also specify cylindrical impact probes, although in practice such probes may not be perfectly cylindrical. The addition of several new dummies to 49 CFR Part 572 may make it necessary for some dummy calibration laboratories to equip the existing test facilities with several new impact probes. Some of those probes, particularly those made of a light-weight material, may be difficult to design in a pure cylindrical form.

We agree with TRC that more latitude in the selection of impact probes will allow the various laboratories greater flexibility in the use of existing impactors and/or in developing new ones. At the same time, it is essential that alternate impact probes do not create problems such as imprecision in the geometry of the impact face which could lead to inappropriate interface with dummy components at the time of impact, introduction of vibratory effects

due to potential resonances, inter-mass impacts within the impactor, and kinematic differences due to differences in shape and mass moments of inertia. Similarly, the measurement of impact force must be sensed by an accelerometer in a location whose signal is not distorted by insufficient rigidity and geometry of the structures on which it is mounted. It is also noted that while the current specification for impactors defines the general shape of the impactor the agency intends to use, that specification does not prohibit any test facility from using an impactor of its choice, as long as the user is confident that the alternate impactor will generate the same results under identical test conditions.

While the agency believes that, for the sake of consistency and simplicity, it would be best if all impact probes for dummy testing were of cylindrical design as defined in the NPRM, we also believe that TRC's comments have merit and would provide the test laboratories with sufficient flexibility when selecting impactors. Accordingly, we have redefined the impact probes in generic terms and will accept other impactor configurations for compliance purposes, as long as they have the same (1) Mass, (2) Impact surface configuration, (3) Defined mass moment of inertia in yaw and pitch with respect to the principal axis, (4) Structural integrity, (5) An identically aligned accelerometer on the rear face of the impactor, (6) Free air resonant frequency of not less than 1000 Hz, and (7) Functionality and freedom of interference with the dummy's other body segments during the impact.

V. Calibration Response Corridors

The agency proposed calibration corridors for the head, neck flexion/extension, thorax resistive force and deflection, knee load and torso-flexion. Comments on the response corridors were received from the following organizations: TRC, AAMA, GM, DC and TRW. During the agency's data analysis process, we contacted AAMA and SAE DTESC for further details and clarification of their comments. All comments are discussed in the TAIR–H–III5F.

None of the commenters objected to the proposed head response corridor of 250 G to 300 G. All of the commenters either directly or indirectly agreed with the proposed response corridor for the head. Accordingly, the 250 G to 300 G impact response corridor is retained in the Final Rule as proposed in the NPRM.

We proposed neck response corridors in flexion in terms of neck moments, maximum head flexion-rotation angle, and moment decay time. For flexion, we specified a deflection range of the D plane from 80–92 degrees, a peak moment of 69 N-m to 83 N-m, and a positive moment decay for the first 10 N-m between 80 and 100 ms after time-zero. FTSS, AAMA, TRW, and TRC provided specific comments on neck flexion response corridors and a process for defining the measurement of the peak moment.

The commenters recommended we set the D plane rotation value between 77 and 91 degrees, the same as the value contained in SAE Engineering Aid 25 (February, 1999). Our analysis of D plane rotation data pooled from TRW, TRC, GM, DC, FTSS, and NHTSA yielded a mean of 85 degrees with a standard deviation of 4.78 based on a sample of n=76. The technical community agrees that the acceptable rate of variability could be as high as ± 8% from the mean but should not exceed 10%. The 8% limit suggests a calibration corridor of 77–91 degrees. While this is a slightly broader corridor than the one proposed in the NPRM, we believe the specification, based on the 8% limit, makes it acceptable for the final rule.

Commenters also recommended we adopt the SAE maximum value of 69–84 N-m for flexion moment. Analysis of the pooled data yielded a mean of 74.8 N-m with a standard deviation of 4.22 based on a sample of n=66. Allowing 8% variability, the pooled data-based response corridor would be between 69 and 81 N-m, slightly smaller than the range proposed in the NPRM. Inasmuch as the NPRM proposed a nearly identical moment corridor, we have chosen to retain the proposed range of 69–83 N-m, at approximately 9% variability level. The analysis of the pooled data vis-a-vis positive moment decay likewise supported the retention of the 80–100 ms time range proposed in the NPRM.

The agency proposed neck response corridors in extension in terms of neck moments, maximum head extension angle, and moment decay time. For extension, we specified a head deflection range from 97–109 degrees, a peak negative moment corridor of −55 N-m to −69 N-m, and a negative moment decay for the first −10 N-m between 94 and 114 ms after time-zero. Commenters recommended a corridor of 99–114 degrees for neck extension, a corridor of −52 to −66 N-m for peak moment, and, for moment decay time, a corridor of 94–114 ms after time zero as a more reasonable fit to the existing data base, based largely on the SAE Engineering Aid 25.

Upon review of the substantial neck extension data submitted in comments, we reevaluated the proposed corridors and found a substantial degree of agreement with the commenters' recommendations for revising the head rotation and decay time. For the peak moment corridors, we believe a range narrower than the SAE recommended corridor is appropriate. Based on an analysis of pooled data with a mean of 58.7 N-m with a standard deviation of 3.6 N-m based on a sample of n=67, the SAE corridor would allow a variance of 11.86% from the mean. Since dummy neck performance at full extension is less important in the rebound mode than in a frontal impact, a variation in response range slightly larger than 8% is acceptable. Nevertheless, a variation of 10% is at the outer limits of an acceptable range. Accordingly, we have revised the neck extension corridor to center on the mean value at 107 degrees for a range of head rotation between 99 and 114 degrees, with a decay time corridor value of 94–114 ms. We have also changed the peak moment corridor to a range between −53 N-m and −65 N-m to center better on the mean value of −59 N-m while staying within a 10% variability limit.

The agency proposed thorax impact response corridors in terms of sternum to spine compression at 48–55 mm and peak force at 3900 N to 4400 N. AAMA, FTSS, TRC, and TRW urged the agency to adopt the 50–58 mm compression corridor contained in SAE Engineering Aid 25. AAMA suggested the adoption of the peak force resistance corridor of 3900 N to 4400 N. Upon review of all available data, we agreed with the commenters' requests that the chest compression corridor be adjusted to 50–58 mm and the peak force level be retained at 3900–4400 N as proposed in the NPRM

Commenters also urged that the pertinent regulatory text regarding measurement of peak force "at any time" be changed to "after 25 mm displacement and prior to reaching the minimum permissible sternum displacement" to accommodate an inertial data spike at the beginning of the test that is an artifact of the test. Since this initial spike is neither biofidelic in nature nor an indicator of a bad rib set, we believe establishing limitations for the moment outside the required compression corridor is appropriate. We examined all of the available impactor force-chest deflection data traces and found that the first force peak occurs between 7–8 mm and drops down to a minimum value at around 15 mm of sternum displacement. A 25 mm displacement allowance would be far in

excess for any spike that would be an artifact and could discount spikes that are indicative of a bad chest. The data indicates that a 18 mm sternum displacement will adequately discount artifacts and still account for deficiencies in the chest structure. Accordingly the peak force may be exceeded by five percent in a transition compression zone that is between 18 mm and 50 mm, *i.e.*, prior to reaching the minimum required sternum displacement limit of 50 mm.

The AAMA and TRC expressed concern over the torso flexion test and the knee response. TRW and FTSS expressed concern over the knee response as well. During the data analysis process, we contacted AAMA and SAE DTESC for further details and clarification of their recommendations for modifying the torso flexion and knee impact response corridors.

In the NPRM, the agency proposed a semi-static torso resistance flexion force value of 289–378 N. Our analysis of the pooled data indicated that the torso flexion force should be adjusted to reflect the mean of the larger, pooled data and be set at 320–390 N when the torso flexion angle is 45 degrees.

The NPRM proposed a knee impact response corridor of 3360 N to 4080 N. Commenters recommended a corridor between 3400 N and 4200 N, based on the SAE corridor. Upon receipt of comments and supplemental data from TRW, DC, and FTSS, we recomputed the response corridor. The resultant average values were found to be very close to the proposed mean in the NPRM. A corridor of 3456–4057 N for that data would fall within an 8% variation. Inasmuch as the SAE recommended corridor is well beyond even a 10% variation and is not supported by available data, we have concluded that the range of the recomputed data should be rounded off and set at 3450 N to 4060 N.

VI. Instrumentation (Accelerometers and Load Cells)

In the NPRM, the agency proposed "generic" specifications for dummy-based sensors. The generic specifications apply to the following sensors: (1) The accelerometer (SA572–S4), (2) Force and moment transducers for upper neck (SA572–S11) and lower neck (SA572–S26), lumbar spine (SA572–S12), anterior-superior iliac spine load cell (SA572–S13), single axis femur load cell (SA572–S10), and (3) The thorax based chest deflection potentiometer (SA572–S50). Of the 20 comments received, only three addressed the generic specifications for transducers. They were: Robert A. Denton, Inc., GM, and AAMA. A full discussion of comments can be found in the TAIR–H–III5F.

After analyzing the comments received, we have concluded that generic specifications for the transducers or sensors used in crash test dummies can be defined sufficiently and will provide a broader latitude for the user industry to select suitable sensors. The input from these comments is being incorporated into generic sensor specifications in the drawing set.

VII. Biofidelity, Pressure Distribution and Occupant Sensing Capability

Biofidelity is a desirable and useful feature of this dummy which, because of the extended measuring capability, is largely endorsed by the commenters. However, IEE said there was a need to improve the dummy's proximity sensing and the pressure profile of the seated dummy's buttocks. Likewise, AAMA recommended we include a lower neck cell and an instrumented tibia as optional transducers.

The IEE request for redesign of the dummy buttocks and for proximity sensing are technically premature and beyond the scope of this rulemaking. This dummy in its original design was not intended to have such sensing and pressure profile capabilities. The development of such capabilities are still in the early stages of research. Considerably more research, testing and evaluation will need to be done before such technologies mature and become acceptable for safety certification activities. Nevertheless, IEE's comment may indicate a direction for possible future research and development.

Likewise, AAMA's comments on the lower neck load cell and instrumented tibia are worthy of consideration. The lower neck load cell and instrumented tibia have both been used by NHTSA in its research programs. However, their use in a compliance application is not anticipated for the near future. We have not evaluated their responses systematically for consistency and stability. Additionally, the instrumented tibia is currently patented by Denton.

Based on our test experience with the upper neck load cell, we believe the lower neck load cell would provide stable and repeatable measurements. Accordingly, we are willing to incorporate it into Part 572 as optional instrumentation. Unless the patent rights on the Denton tibia are freely licensed or expire, any incorporation into the CFR, even as optional instrumentation, would be inappropriate.

VIII. User's Manual—Procedures for Assembly, Disassembly and Inspection (PADI)

The NPRM noted in sections 572.130(a)(2) and 572.131(b) that the final rule package will contain a "User's Manual for the Hybrid III 5th Percentile Female Dummy." Responding to the NPRM, TRC recommended and DTES requested that the agency incorporate the SAE User's Manual by reference in the final rule. We acknowledge the DTES" diligent development efforts and contribution toward clarifying several assembly and disassembly issues and in illustrating the importance of this document. NHTSA commends the DTES for their excellent work, and encourages the manual's further development as the test data begins to accumulate from the dummy's application in the field. Nevertheless, we have decided against incorporating the manual into part 572.

During initial dummy assessment stages, the agency had to establish methods for an initial dummy inspection and assembly. Part of the agency test protocol was based on draft SAE user's manuals of December 1994 and February 1998. Subsequent to the issuance of the NPRM, the SAE provided user's manual updates in February and July, 1999. The final manual consists basically of two parts: inspection/assembly and calibration.

We have examined and worked with the SAE User's Manual. We found it to be well suited for research use. However, because of redundancies, ambiguities, and in some areas subjectivity, it is far less suitable for regulation and compliance purposes. If employed in its present form, it could become a source of different interpretations and misunderstandings, and as a result create difficulties for both the agency and dummy users in enforcement and compliance certification programs. Also, the SAE User's Manual is copyrighted by both SAE and FTSS. Until the copyright status of the document is resolved, its usefulness as a reference document would be highly limited, particularly for publication by the agency through the electronic media. Further, the recommended SAE User's Manual includes both inspection and calibration procedures, while the agency format requires only an inspection document involving the dummy's initial conformance to dimensional mass and fit-for-assembly specifications, as well as objective assembly and disassembly procedures.

For these reasons, NHTSA has decided against adopting the SAE User's Manual and has developed a

publication, "Procedures for Assembly, Disassembly, and Inspection (PADI) of the Hybrid III 5th Percentile Small Adult Female Crash Test Dummy, Alpha Version" (PADI–5F),[6] dated January 2000, for the following reasons:

- The agency-developed procedure for disassembly, assembly and inspection provide unambiguous, direct and straightforward instructions;
- The document references only essential and updated drawings based on the final rule parts list;
- It includes important and detailed photographic views to facilitate the assembly-disassembly process, including the mounting of generic instrumentation;
- It provides specific information for calibration laboratories, particularly useful for disassembly of any single major component, checkout procedures for instrumentation polarity, and measurement of impactor moment of inertia;
- It provides recommendations for cable and connector routing and attachment based on lessons learned in the agency test program;
- It includes important torque specifications for all fasteners used in the dummy;
- It supports all elements of the final rule and will facilitate the dummy's use in agency required testing activities; and
- Its publication and copying are not hampered by copyright claims.

IX. Dummy Availability for Evaluation

At the issuance of the NPRM, both FTSS and ASTC had been manufacturing the H–III5F dummy for several years. Numerous organizations possessed the dummy when the NPRM was published. Since the publication of the NPRM, the proposed dummies have been available through both FTSS and ASTC. We believe that over 100 post-NPRM dummies have been sold. Additionally, over a year has passed since the issuance of the NPRM. During this time, all interested parties have had ample time to procure and evaluate the dummy and provide additional comments. The agency expressly invites and routinely considers all comments submitted outside of the comment period, but prior to arriving at a final agency position. Also, during this period, considerable further discussions have taken place at the SAE DTES regarding the adequacy of the dummy in calibration and other test applications. In addition, the agency has made available the master dummy for review and inspection, as well as test data from this dummy developed in the advanced air bag crash test program. Interested parties have had sufficient opportunity to avail themselves of the information that is contained in the minutes of those meetings. Inasmuch as no comments were received regarding the availability of the dummy, it is assumed that dummy availability is not a problem.

[6] NHTSA believes that the name "user's manual" for this document is a misnomer given its intended purpose. As the name implies, the user's manual should provide instructions on how to use the dummy, rather than how to inspect it and perform its assembly/disassembly.

X. Other Issues

When we published the NPRM for the H–III5F dummy, we decided to specify that the dummy conform to this part in every respect before its use in any test, but not after. The NPRMs for the Hybrid III 3-year-old child test dummy (January 28, 1999; 64 FR 4385) and the 12-month-old infant dummy (CRABI) (March 8, 1999; 64 FR 10965) proposed the same specification as the one proposed for the small adult female dummy. A full explanation of the agency's rationale can be found in the NPRM for the H–III5F dummy. The AAMA argued that post-test dummy compliance information remains important, particularly if a noncompliance may be related to a failure of the test dummy.

We continue to believe that a post-test calibration requirement is not in the public interest. Generally the post-test calibration provides an objective check of the validity of the electronic data acquired during the test, but this will not be true if the severity of the test damaged the dummy. The pre-test calibration should adequately address the suitability of the dummy for testing. Accordingly, we see no need to require post-test calibration checks.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rule is not considered a significant regulatory action under section 3(f) of the Executive Order 12866. Consequently, it was not reviewed by the Office of Management and Budget. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

This document amends 49 CFR Part 572 by adding design and performance specifications for a new 5th percentile adult female dummy which the agency may later separately propose for use in the Federal motor vehicle safety standards. This rule indirectly imposes requirements on only those businesses which choose to manufacture or test with the dummy, in that the agency will only use dummies for compliance testing that meet all of the criteria specified in this rule. It may indirectly affect vehicle and air bag manufacturers if it is incorporated by reference into the advanced air bag rulemaking.

The cost of an uninstrumented H–III5F dummy is approximately $33,400. Instrumentation would add $29,000 to $99,100 to the cost, depending on the amount of instrumentation.

Because the economic impacts of this proposal are so minimal, no further regulatory evaluation is necessary.

Executive Order 13132

We have analyzed this rule in accordance with Executive Order 13132 ("Federalism"). We have determined that this rule does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other

potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. It also does not involve decisions based on health risks that disproportionately affect children.

Executive Order 12778

Pursuant to Executive Order 12778, "Civil Justice Reform," we have considered whether this rule will have any retroactive effect. This rule does not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it does preempt a state regulation that is in actual conflict with the federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the federal statute.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) and certify that this proposal will not have a significant economic impact on a substantial number of small entities. The rule does not impose or rescind any requirements for anyone. The Regulatory Flexibility Act does not, therefore, require a regulatory flexibility analysis.

National Environmental Policy Act

We have analyzed this amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not propose any new information collection requirements.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The H–III5F dummy that is the subject of this document was developed under the auspices of the SAE. All relevant SAE standards were reviewed as part of the development process. The following voluntary consensus standards have been used in developing the dummy:

- SAE Recommended Practice J211, Rev. Mar95 "Instrumentation for Impact Tests"; and
- SAE J1733 of 1994–12 "Sign Convention for Vehicle Crash Testing, Surface Vehicle Information Report".

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This rule does not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rule does not meet the definition of a Federal mandate because it does not impose requirements on anyone. Further, it will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 572

Incorporation by reference. Motor vehicle safety.

In consideration of the foregoing, NHTSA amends 49 CFR Part 572 as follows:

PART 572—ANTHROPOMORPHIC TEST DUMMIES

1. The authority citation for Part 572 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. 49 CFR Part 572 is amended by adding a new Subpart O consisting of 572.130–572.137 to read as follows:

Subpart O—Hybrid III 5th Percentile Female Test Dummy, Alpha Version

Sec.

572.130 Incorporation by reference.
572.131 General description.
572.132 Head assembly and test procedure.
572.133 Neck assembly and test procedure.
572.134 Thorax assembly and test procedure.
572.135 Upper and lower torso assemblies and torso flexion test procedure.

572.136 Knees and knee impact test procedure.
572.137 Test conditions and instrumentation.

Subpart O—Hybrid III 5th Percentile Female Test Dummy, Alpha Version

§ 572.130 Incorporation by reference.

(a) The following materials are hereby incorporated into this Subpart by reference:

(1) A drawings and specification package entitled "Parts List and Drawings, Part 572 Subpart O Hybrid III Fifth Percentile Small Adult Female Crash Test Dummy (H–III5F, Alpha Version)" (January 2000), incorporated by reference in § 572.131, and consisting of:

(i) Drawing No. 880105–100X, Head Assembly, incorporated by reference in §§ 572.131, 572.132, 572.133, 572.134, 572.135, and 572.137;

(ii) Drawing No. 880105–250, Neck Assembly, incorporated by reference in §§ 572.131, 572.133, 572.134, 572.135, and 572.137;

(iii) Drawing No. 880105–300, Upper Torso Assembly, incorporated by reference in §§ 572.131, 572.134, 572.135, and 572.137;

(iv) Drawing No. 880105–450, Lower Torso Assembly, incorporated by reference in §§ 572.131, 572.134, 572.135, and 572.137;

(v) Drawing No. 880105–560–1, Complete Leg Assembly—left, incorporated by reference in §§ 572.131, 572.135, 572.136, and 572.137;

(vi) Drawing No. 880105–560–2, Complete Leg Assembly—right incorporated by reference in §§ 572.131, 572.135, 572.136, and 572.137;

(vii) Drawing No. 880105–728–1, Complete Arm Assembly—left, incorporated by reference in §§ 572.131, 572.134, and 572.135 as part of the complete dummy assembly;

(viii) Drawing No. 880105–728–2, Complete Arm Assembly—right, incorporated by reference in §§ 572.131, 572.134, and 572.135 as part of the complete dummy assembly;

(ix) The Hybrid III 5th percentile small adult female crash test dummy parts list, incorporated by reference in § 572.131;

(2) A procedures manual entitled "Procedures for Assembly, Disassembly, and Inspection (PADI) of the Hybrid III 5th Percentile Small Adult Female Crash Test Dummy, Alpha Version" (January 2000), incorporated by reference in § 572.132;

(3) SAE Recommended Practice J211/1, Rev. Mar 95 "Instrumentation for Impact Tests—Part 1—Electronic Instrumentation", incorporated by reference in § 572.137;

(4) SAE Recommended Practice J211/2, Rev. Mar 95 "Instrumentation for Impact Tests—Part 2—Photographic Instrumentation" incorporated by reference in § 572.137; and

(5) SAE J1733 of 1994–12 "Sign Convention for Vehicle Crash Testing", incorporated by reference in § 572.137.

(b) The Director of the Federal Register approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the materials may be inspected at NHTSA's Technical Reference Library, 400 Seventh Street S.W., room 5109, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(c) The incorporated materials are available as follows:

(1) The Parts List and Drawings, Part 572 Subpart O Hybrid III Fifth Percentile Small Adult Female Crash Test Dummy, (H–III5F, Alpha Version) (January 2000) referred to in paragraph (a)(1) of this section and the Procedures for Assembly, Disassembly, and Inspection (PADI) of the Hybrid III 5th Percentile Small Adult Female Crash Test Dummy, Alpha Version referred to in paragraph (a)(2) of this section, are available from Reprographic Technologies, 9000 Virginia Manor Road, Beltsville, MD 20705 (301) 419–5070.

(2) The SAE materials referred to in paragraphs (a)(3) and (a)(4) of this section are available from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, Pa. 15096.

§ 572.131 General description.

(a) The Hybrid III fifth percentile adult female crash test dummy is defined by drawings and specifications containing the following materials:

(1) Technical drawings and specifications package P/N 880105–000 (refer to § 572.130(a)(1)), the titles of which are listed in Table A;

(2) Parts List and Drawings, Part 572 Subpart O Hybrid III Fifth Percentile Small Adult Female Crash Test Dummy (H–III5F, Alpha Version) (January 2000) (refer to § 572.130(a)(1)(ix)).

TABLE A

Component assembly	Drawing No.
Head Assembly	880105–100X
Neck Assembly	880105–250
Upper Torso Assembly	880105–300
Lower Torso Assembly	880105–450
Complete Leg Assembly—left	880105–560–1
Complete Leg Assembly—right.	880105–560–2

TABLE A—Continued

Component assembly	Drawing No.
Complete Arm Assembly—left	880105–728–1
Complete Arm Assembly—right.	880105–728–2

(b) Adjacent segments are joined in a manner such that, except for contacts existing under static conditions, there is no contact between metallic elements throughout the range of motion or under simulated crash impact conditions.

(c) The structural properties of the dummy are such that the dummy conforms to this Subpart in every respect before use in any test similar to those specified in Standard 208, Occupant Crash Protection.

§ 572.132 Head assembly and test procedure.

(a) The head assembly (refer to § 572.130(a)(1)(i)) for this test consists of the complete head (drawing 880105–100X), a six-axis neck transducer (drawing SA572–S11) or its structural replacement (drawing 78051–383X), and 3 accelerometers (drawing SA572–S4).

(b) When the head assembly is dropped from a height of 376.0±1.0 mm (14.8±0.04 in) in accordance with subsection (c) of this section, the peak resultant acceleration at the location of the accelerometers at the head CG may not be less than 250 G or more than 300 G. The resultant acceleration vs. time history curve shall be unimodal; oscillations occurring after the main pulse must be less than 10 percent of the peak resultant acceleration. The lateral acceleration shall not exceed 15 G (zero to peak).

(c) *Head test procedure.* The test procedure for the head is as follows:

(1) Soak the head assembly in a controlled environment at any temperature between 18.9 and 25.6 °C (66 and 78 °F) and a relative humidity from 10 to 70 percent for at least four hours prior to a test.

(2) Prior to the test, clean the impact surface of the skin and the impact plate surface with isopropyl alcohol, trichloroethane, or an equivalent. The skin of the head must be clean and dry for testing.

(3) Suspend and orient the head assembly as shown in Figure 19 of 49 CFR 572. The lowest point on the forehead must be 376.0±1.0 mm (14.8±0.04 in) from the impact surface. The 1.57 mm (0.062 in) diameter holes located on either side of the dummy's head shall be used to ensure that the head is level with respect to the impact surface.

(4) Drop the head assembly from the specified height by means that ensure a smooth, instant release onto a rigidly supported flat horizontal steel plate which is 50.8 mm (2.0 in) thick and 610 mm (24.0 in) square. The impact surface shall be clean, dry and have a micro finish of not less than 203.2×10^{-6} mm (8 micro inches) (RMS) and not more than 2032.0×10^{-6} mm (80 micro inches) (RMS).

(5) Allow at least 2 hours between successive tests on the same head.

§ 572.133 Neck assembly and test procedure.

(a) The neck assembly (refer to § 572.130(a)(1)(ii)) for the purposes of this test consists of the assembly of components shown in drawing 880105–250.

(b) When the head-neck assembly consisting of the head (drawing 880105–100X), neck (drawing 880105–250), bib simulator (drawing 880105–371), upper neck adjusting bracket (drawing 880105–207), lower neck adjusting bracket (drawing 880105–208), six-axis neck transducer (drawing SA572–S11), and either three accelerometers (drawing SA572–S4) or their mass equivalent installed in the head assembly as specified in drawing 880105–100X, is tested according to the test procedure in subsection (c) of this section, it shall have the following characteristics:

(1) *Flexion.* (i) Plane D, referenced in Figure O1, shall rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline between 77 degrees and 91 degrees. During the time interval while the rotation is within the specified corridor, the peak moment, measured by the neck transducer (drawing SA5572–311), about the occipital condyles may not be less than 69 N-m (51 ft-lbf) and not more than 83 N-m (61 ft-lbf). The positive moment shall decay for the first time to 10 N-m (7.4 ft-lbf) between 80 ms and 100 ms after time zero.

(ii) The moment shall be calculated by the following formula: Moment (N-m)= $M_y - (0.01778m) \times (F_x)$.

(iii) M_y is the moment about the y-axis, F_x is the shear force measured by the neck transducer (drawing SA572–S11), and 0.01778m is the distance from force to occipital condyle.

(2) *Extension.* (i) Plane D, referenced in Figure O2, shall rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline between 99 degrees and 114 degrees. During the time interval while the rotation is within the specified corridor, the peak moment, measured by the neck transducer (drawing SA5572–S11), about the occipital condyles shall be not more than −53 N-m (−39 ft-lbf) and not less than −65 N-m (−48 ft-lbf). The negative moment shall decay for the first time to −10 N-m (−7.4 ft-lbf) between 94 ms and 114 ms after time zero.

(ii) The moment shall be calculated by the following formula: Moment (N-m) = $M_y - (0.01778m) \times (F_x)$.

(iii) M_y is the moment about the y-axis, F_x is the shear force measured by the neck transducer (drawing SA572–S11), and 0.01778 m is the distance from force to occipital condyle.

(3) Time-zero is defined as the time of initial contact between the pendulum striker plate and the honeycomb material. All data channels shall be at the zero level at this time.

(c) *Test Procedure.* The test procedure for the neck assembly is as follows:

(1) Soak the neck assembly in a controlled environment at any temperature between 20.6 and 22.2 °C (69 and 72 °F) and a relative humidity between 10 and 70 percent for at least four hours prior to a test.

(2) Torque the jam nut (drawing 9000018) on the neck cable (drawing 880105–206) to 1.4 ± 0.2 N-m (12.0 ± 2.0 in-lb).

(3) Mount the head-neck assembly, defined in subsection (b) of this section, on the pendulum described in Figure 22 of 49 CFR 572 so that the midsagittal plane of the head is vertical and coincides with the plane of motion of the pendulum as shown in Figure O1 for flexion tests and Figure O2 for extension tests.

(4)(i) Release the pendulum and allow it to fall freely from a height to achieve an impact velocity of 7.01 ± 0.12 m/s (23.0 ± 0.4 ft/s) for flexion tests and 6.07 ± 0.12 m/s (19.9 ± 0.40 ft/s) for extension tests, measured by an accelerometer mounted on the pendulum as shown in Figure 22 of 49 CFR 572 at the instant of contact with the honey comb.

(ii) Stop the pendulum from the initial velocity with an acceleration vs. time pulse which meets the velocity change as specified below. Integrate the pendulum acceleration data channel to obtain the velocity vs. time curve:

TABLE B

Pendulum pulse				
Time	Extension		Flexion	
ms	m/s	ft/s	m/s	ft/s
10	2.1–2.5	6.9–8.2	1.5–1.9	4.9–6.2
20	4.0–5.0	13.1–16.4	3.1–3.9	10.2–12.8
30	5.8–7.0	19.5–23.0	4.6–5.6	15.1–18.4

§ 572.134 Thorax assembly and test procedure.

(a) Thorax (Upper Torso) Assembly (refer to § 572.130(a)(1)(iii)). The thorax consists of the part of the torso assembly shown in drawing 880105–300.

(b) When the anterior surface of the thorax of a completely assembled dummy (drawing 880105–000) is impacted by a test probe conforming to section 572.137(a) at 6.71± 0.12 m/s (22.0 ± 0.4 ft/s) according to the test procedure in subsection (c) of this section:

(1) Maximum sternum displacement (compression) relative to the spine, measured with chest deflection transducer (drawing SA572–S5), must be not less than 50.0 mm (1.97 in) and not more than 58.0 mm (2.30 in). Within this specified compression corridor, the peak force, measured by the impact probe as defined in section 572.137 and calculated in accordance with paragraph (b)(3) of this section, shall not be less than 3900 N (876 lbf) and not more than 4400 N (989 lbf). The peak force after 18.0 mm (0.71 in) of sternum displacement but before reaching the minimum required 50.0 mm (1.97 in) sternum displacement limit shall not exceed by more than five percent the value of the peak force measured within the required displacement limit.

(2) The internal hysteresis of the ribcage in each impact as determined by the plot of force vs. deflection in paragraph (1) of this section shall be not

less than 69 percent but not more than 85 percent. The hysteresis shall be calculated by determining the ratio of the area between the loading and unloading portions of the force deflection curve to the area under the loading portion of the curve.

(3) The force shall be calculated by the product of the impactor mass and its deceleration.

(c) Test procedure. The test procedure for the thorax assembly is as follows:

(1) The dummy is clothed in a form fitting cotton stretch above-the-elbow sleeved shirt and above-the-knee pants. The weight of the shirt and pants shall not exceed 0.14 kg (0.30 lb) each.

(2) Soak the dummy in a controlled environment at any temperature between 20.6 and 22.2 °C (69 and 72 °F) and a relative humidity between 10 and 70 percent for at least four hours prior to a test.

(3) Seat and orient the dummy on a seating surface without back support as shown in Figure O3, with the limbs extended horizontally and forward, parallel to the midsagittal plane, the midsagittal plane vertical within ±1 degree and the ribs level in the anterior-posterior and lateral directions within ±0.5 degrees.

(4) Establish the impact point at the chest midsagittal plane so that the impact point of the longitudinal centerline of the probe coincides with the midsagittal plane of the dummy within ±2.5 mm (0.1 in) and is 12.7 ±1.1 mm (0.5±0.04 in) below the horizontal-peripheral centerline of the No. 3 rib and is within 0.5 degrees of a horizontal line in the dummy's midsagittal plane.

(5) Impact the thorax with the test probe so that at the moment of contact the probe's longitudinal center line falls within 2 degrees of a horizontal line in the dummy's midsagittal plane.

(6) Guide the test probe during impact so that there is no significant lateral, vertical or rotational movement.

§ 572.135 Upper and lower torso assemblies and torso flexion test procedure.

(a) Upper/lower torso assembly. The test objective is to determine the stiffness effects of the lumbar spine (drawing 880105–1096), and abdominal insert (drawing 880105–434), on resistance to articulation between the upper torso assembly (drawing 880105–300) and the lower torso assembly (drawing 880105–450) (refer to § 572.130(a)(1)(iv)).

(b)(1) When the upper torso assembly of a seated dummy is subjected to a force continuously applied at the head to neck pivot pin level through a rigidly attached adaptor bracket as shown in Figure O4 according to the test procedure set out in subsection (c) of this section, the lumbar spine-abdomen assembly shall flex by an amount that permits the upper torso assembly to translate in angular motion relative to the vertical transverse plane 45 ± 0.5 degrees at which time the force applied must be not less than 320 N (71.5 lbf) and not more than 390 N (87.4 lbf), and

(2) Upon removal of the force, the torso assembly must return to within 8 degrees of its initial position.

(c) *Test procedure.* The test procedure for the upper/lower torso assembly is as follows:

(1) Soak the dummy in a controlled environment at any temperature between 18.9 and 25.6 °C (66 and 78 °F) and a relative humidity between 10 and 70 percent for at least four hours prior to a test.

(2) Assemble the complete dummy (with or without the legs below the femurs) and attach to the fixture in a seated posture as shown in Figure O4.

(3) Secure the pelvis to the fixture at the pelvis instrument cavity rear face by threading four ¼ inch cap screws into the available threaded attachment holes. Tighten the mountings so that the test material is rigidly affixed to the test fixture and the pelvic-lumbar joining surface is horizontal.

(4) Attach the loading adapter bracket to the spine of the dummy as shown in Figure O4.

(5) Inspect and adjust, if necessary, the seating of the abdominal insert within the pelvis cavity and with respect to the torso flesh, assuring that the torso flesh provides uniform fit and overlap with respect to the outside surface of the pelvis flesh.

(6) Flex the dummy's upper torso three times between the vertical and until the torso reference plane, as shown in Figure O4, reaches 30 degrees from the vertical transverse plane. Bring the torso to vertical orientation and wait for 30 minutes before conducting the test. During the 30 minute waiting period, the dummy's upper torso shall be externally supported at or near its vertical orientation to prevent it from drooping.

(7) Remove all external support and wait two minutes. Measure the initial orientation angle of the torso reference plane of the seated, unsupported dummy as shown in Figure O4. The initial orientation angle may not exceed 20 degrees.

(8) Attach the pull cable and the load cell as shown in Figure O4.

(9) Apply a tension force in the midsagittal plane to the pull cable as shown in Figure O4 at any upper torso deflection rate between 0.5 and 1.5 degrees per second, until the angle reference plane is at 45 ± 0.5 degrees of flexion relative to the vertical transverse plane.

(9) Continue to apply a force sufficient to maintain 45 ± 0.5 degrees of flexion for 10 seconds, and record the highest applied force during the 10-second period.

(10) Release all force at the attachment bracket as rapidly as possible, and measure the return angle with respect to the initial angle reference plane as defined in paragraph (6) 3 minutes after the release.

§ 572.136 Knees and knee impact test procedure.

(a) Knee assembly. The knee assembly (refer to §§ 572.130(a)(1)(v) and (vi)) for the purpose of this test is the part of the leg assembly shown in drawing 880105–560.

(b)(1) When the knee assembly, consisting of sliding knee assembly (drawing 880105–528R or –528L), lower leg structural replacement (drawing 880105–603), lower leg flesh (drawing 880105–601), ankle assembly (drawing 880105–660), foot assembly (drawing 880105–651 or 650), and femur load transducer (drawing SA572–S14) or its structural replacement (drawing 78051–319) is tested according to the test procedure in subsection (c), the peak resistance force as measured with the test probe-mounted accelerometer must be not less than 3450 N (776 lbf) and not more than 4060 N (913 lbf).

(b)(2) The force shall be calculated by the product of the impactor mass and its deceleration.

(c) *Test procedure.* The test procedure for the knee assembly is as follows:

(1) Soak the knee assembly in a controlled environment at any temperature between 18.9 and 25.6 °C (66 and 78 °F) and a relative humidity from 10 to 70 percent for at least four hours prior to a test.

(2) Mount the test material and secure it to a rigid test fixture as shown in Figure O5. No part of the foot or tibia may contact any exterior surface.

(3) Align the test probe so that throughout its stroke and at contact with the knee it is within 2 degrees of horizontal and collinear with the longitudinal centerline of the femur.

(4) Guide the pendulum so that there is no significant lateral vertical or rotational movement at the time of initial contact between the impactor and the knee.

(5) The test probe velocity at the time of contact shall be 2.1 ± 0.03 m/s (6.9 ± 0.1 ft/s).

§ 572.137 Test conditions and instrumentation.

(a) The test probe for thoracic impacts shall be of rigid metallic construction, concentric in shape, and symmetric about its longitudinal axis. It shall have a mass of 13.97 ± 0.023 kg (30.8 ± 0.05 lbs) and a minimum mass moment of inertia of 5492 kg-cm^2 (4.86 lbs-in-sec^2) in yaw and pitch about the CG. ⅓ of the weight of the suspension cables and their attachments to the impact probe must be included in the calculation of mass, and such components may not exceed three percent of the total weight of the test probe. The impacting end of the probe, perpendicular to and concentric with the longitudinal axis, must be at least 25 mm (1.0 in) long, and have a flat, continuous, and non-deformable 152.4 ± 0.25 mm (6.00 ± 0.01 in) diameter face with a maximum edge radius of 12.7 mm (0.5 in). The probe's end opposite to the impact face must have provisions for mounting of an accelerometer with its sensitive axis collinear with the longitudinal axis of the probe. No concentric portions of the impact probe may exceed the diameter of the impact face. The impact probe shall have a free air resonant frequency of not less than 1000 Hz.

(b) The test probe for knee impacts shall be of rigid metallic construction, concentric in shape, and symmetric about its longitudinal axis. It shall have a mass of 2.99 ± 0.01 kg (6.6 ± 0.022 lbs) and a minimum mass moment of inertia of 622 kg-cm^2 (0.55 lbs-in-sec^2) in yaw and pitch about the CG. ⅓ of the weight of the suspension cables and their attachments to the impact probe may be included in the calculation of mass, and such components may not exceed five percent of the total weight of the test probe. The impacting end of the probe, perpendicular to and concentric with the longitudinal axis, must be at least 12.5 mm (0.5 in) long, and have a flat, continuous, and non-deformable 76.2 ± 0.2 mm (3.00 ± 0.01 in) diameter face with a maximum edge radius of 12.7 mm (0.5 in). The probe's end opposite to the impact face must have provisions for mounting an accelerometer with its sensitive axis collinear with the longitudinal axis of the probe. No concentric portions of the impact probe may exceed the diameter of the impact face. The impact probe must have a free air resonant frequency of not less than 1000 Hz.

(c) Head accelerometers shall have dimensions, response characteristics, and sensitive mass locations specified in drawing SA572–S4 and be mounted in the head as shown in drawing 880105–000 sheet 3 of 6.

(d) The upper neck force/moment transducer shall have the dimensions, response characteristics, and sensitive axis locations specified in drawing SA572–S11 and be mounted in the head neck assembly as shown in drawing 880105–000, sheet 3 of 6.

(e) The thorax accelerometers shall have the dimensions, response characteristics, and sensitive mass locations specified in drawing SA572–S4 and be mounted in the torso assembly in triaxial configuration within the spine box instrumentation cavity and as optional instrumentation in uniaxial for-and-aft oriented configuration arranged as corresponding pairs in three locations on the sternum on and at the spine box of the upper torso assembly as shown in drawing 880105–000 sheet 3 of 6.

(f) The optional lumbar spine force-moment transducer shall have the dimensions, response characteristics, and sensitive axis locations specified in drawing SA572–S15 and be mounted in the lower torso assembly as shown in drawing 880105–450.

(g) The optional iliac spine force transducers shall have the dimensions and response characteristics specified in drawing SA572–S16 and be mounted in the torso assembly as shown in drawing 880105–450.

(h) The pelvis accelerometers shall have the dimensions, response characteristics, and sensitive mass locations specified in drawing SA572–S4 and be mounted in the torso assembly in triaxial configuration in the pelvis bone as shown in drawing 880105–000 sheet 3.

(i) The single axis femur force transducer (SA572–S14) or the optional multiple axis femur force/moment transducer (SA572–S29) shall have the dimensions, response characteristics, and sensitive axis locations specified in the appropriate drawing and be mounted in the femur assembly as shown in drawing 880105–500 sheet 3 of 6.

(j) The chest deflection transducer shall have the dimensions and response characteristics specified in drawing SA572–S51 and be mounted to the upper torso assembly as shown in drawings 880105–300 and 880105–000 sheet 3 of 6.

(k) The optional lower neck force/moment transducer shall have the dimensions, response characteristics, and sensitive axis locations specified in drawing SA572–S27 and be mounted to the upper torso assembly as shown in drawing 880105–000 sheet 3 of 6.

(l) The optional thoracic spine force/moment transducer shall have the dimensions, response characteristics, and sensitive axis locations specified in drawing SA572–S28 and be mounted in the upper torso assembly as shown in drawing 880105–000 sheet 3 of 6.

(m) The outputs of acceleration and force-sensing devices installed in the dummy and in the test apparatus specified by this part shall be recorded in individual data channels that conform to SAE Recommended Practice J211/10, Rev. Mar95 "Instrumentation for Impact Impact Tests;—Part 1—Electronic Instrumentation," and SAE Recommended Practice J211/2, Rev Mar95 "Instrumentation for Impact Tests—Part 2—Photographic Instrumentation", (refer to §§ 572.130(a)(3) and (4) respectively) except as noted, with channel classes as follows:

(1) Head acceleration—Class 1000
(2) Neck:
(i) Forces—Class 1000
(ii) Moments—Class 600
(iii) Pendulum acceleration—Class 180
(3) Thorax:
(i) Rib acceleration—Class 1000
(ii) Spine and pendulum accelerations—Class 1000
(iii) Sternum deflection -Class 180
(iv) Forces—Class 1000
(v) Moments—Class 600
(4) Lumbar:
(i) Forces—Class 1000
(ii) Moments—Class 600
(iii) Torso flexion pulling force—Class 60 if data channel is used
(5) Pelvis:
(i) Accelerations—Class 1000
(ii) Iliac wing forces—Class 180
(6) Femur forces—Class 600

(n) Coordinate signs for instrumentation polarity shall conform to the Sign Convention For Vehicle Crash Testing, Surface Vehicle Information Report, SAE J1733, 1994–12 (refer to section 572.130(a)(4)).

(o) The mountings for sensing devices shall have no resonance frequency less than 3 times the frequency range of the applicable channel class.

(p) Limb joints must be set at one G, barely restraining the weight of the limb when it is extended horizontally. The force needed to move a limb segment shall not exceed 2G throughout the range of limb motion.

(q) Performance tests of the same component, segment, assembly, or fully assembled dummy shall be separated in time by not less than 30 minutes unless otherwise noted.

(r) Surfaces of dummy components may not be painted except as specified in this subpart or in drawings subtended by this subpart.

Issued: February 22, 2000

Rosalyn G. Millman,

Acting Administrator.

BILLING CODE 4910–59–U

FIGURE O1
NECK FLEXION TEST SETUP SPECIFICATIONS

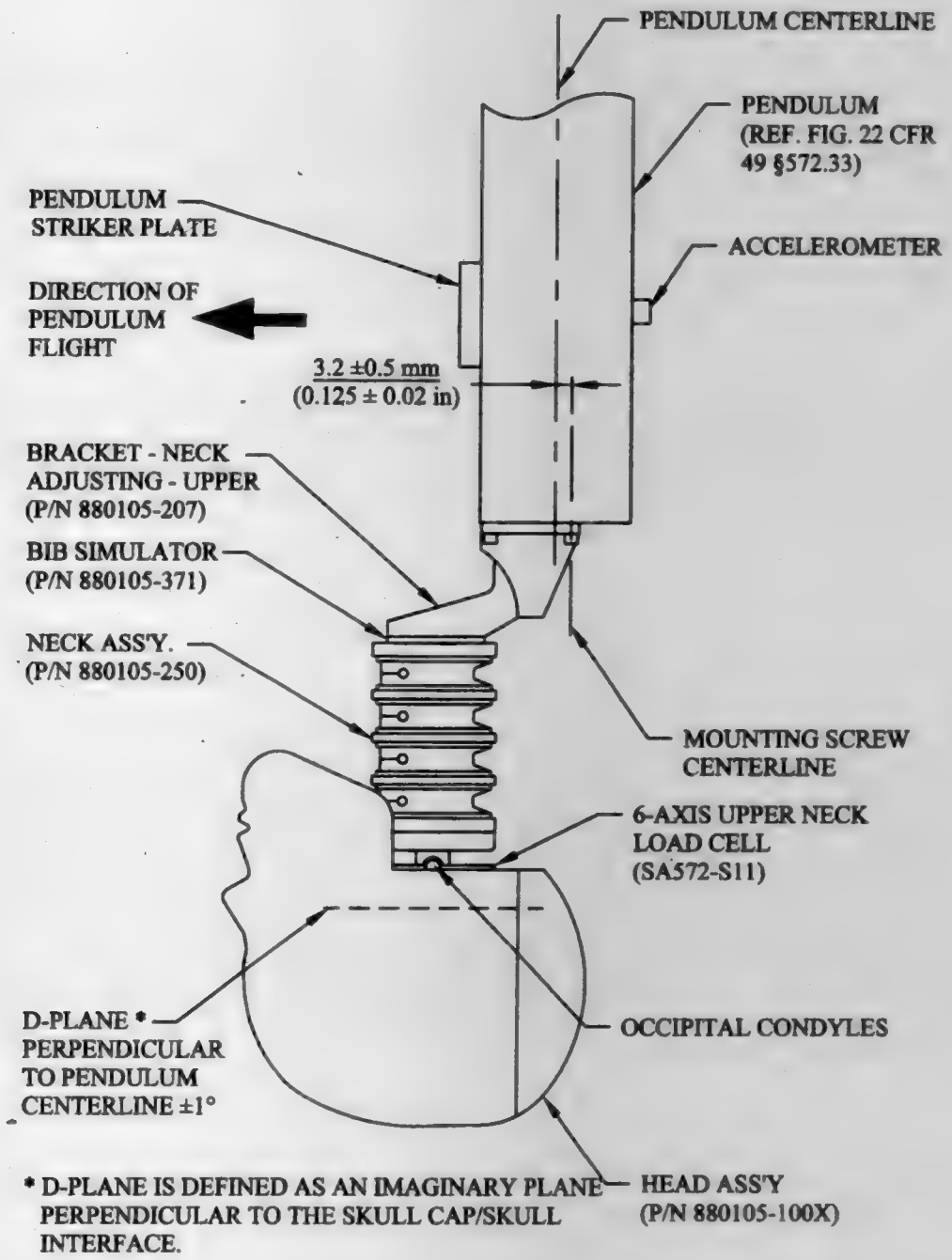

* D-PLANE IS DEFINED AS AN IMAGINARY PLANE PERPENDICULAR TO THE SKULL CAP/SKULL INTERFACE.

FIGURE O2
NECK EXTENSION TEST SETUP SPECIFICATIONS

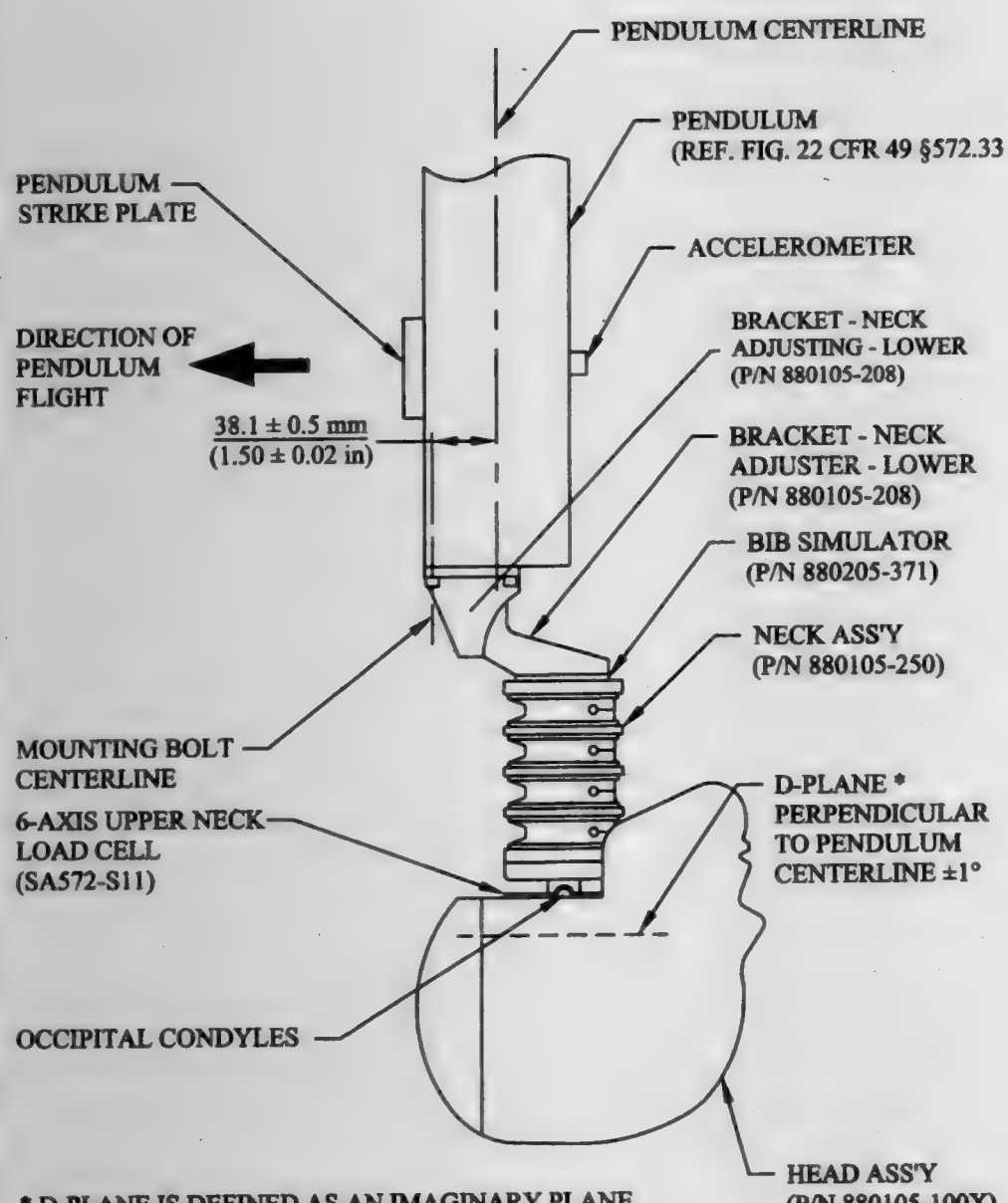

* D-PLANE IS DEFINED AS AN IMAGINARY PLANE PERPENDICULAR TO THE SKULL CAP/SKULL INTERFACE.

FIGURE 03
THORAX IMPACT TEST SETUP SPECIFICATIONS

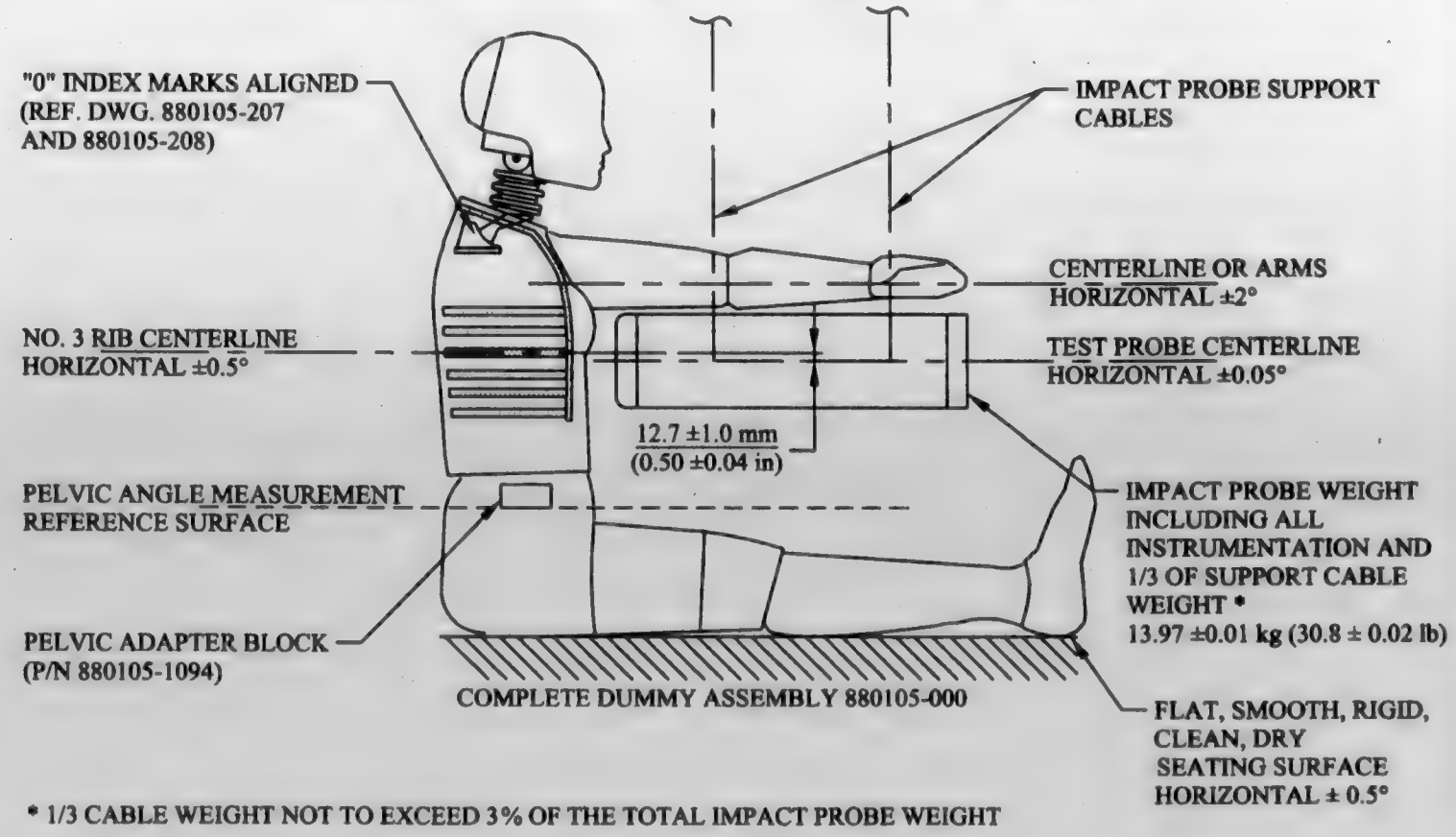

* 1/3 CABLE WEIGHT NOT TO EXCEED 3% OF THE TOTAL IMPACT PROBE WEIGHT

FIGURE O4
TORSO FLEXION TEST SET UP SPECIFICATIONS

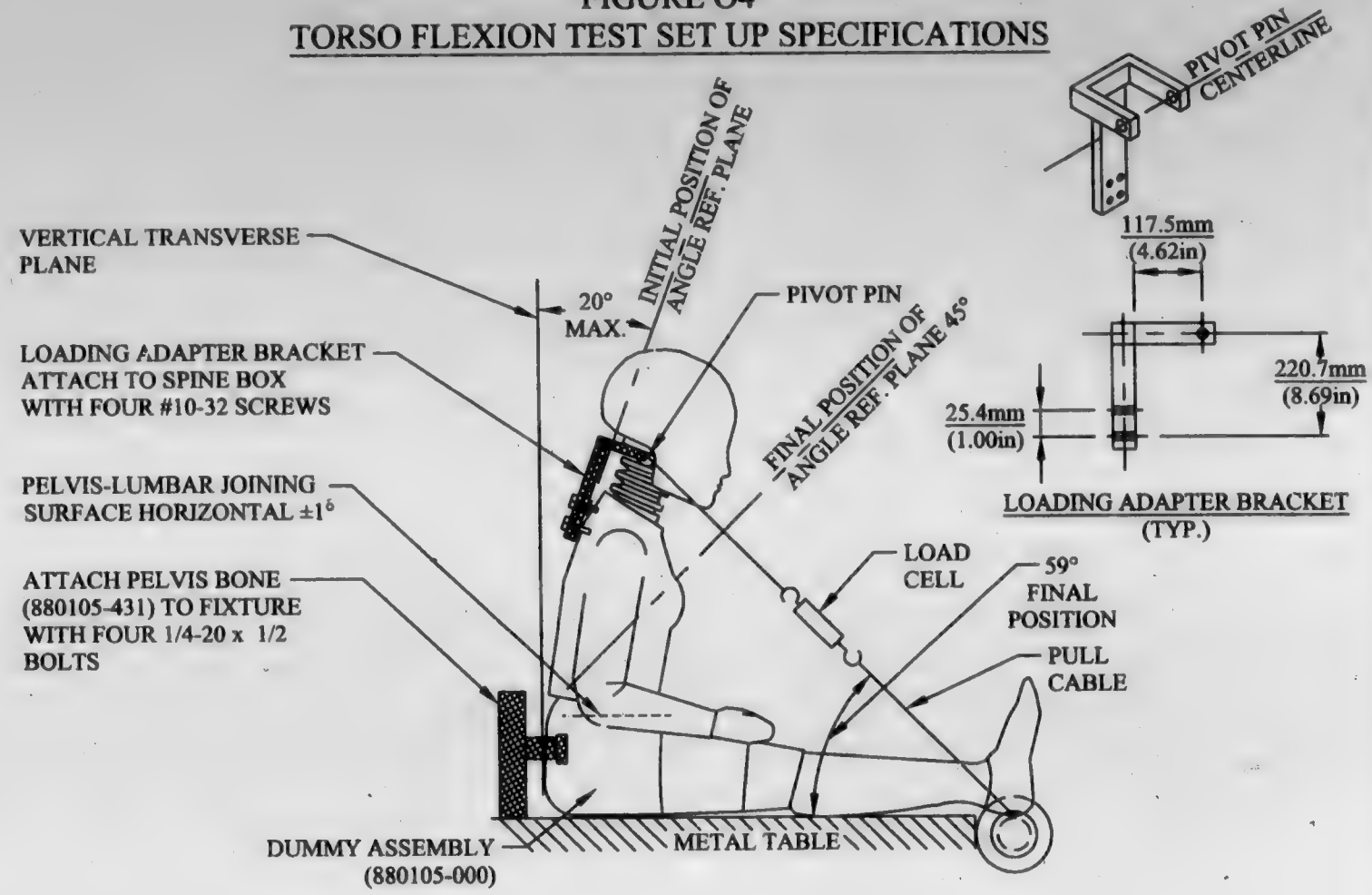

Issued: February 22, 2000.

Rosalyn G. Millman,

Acting Administrator.

[FR Doc. 00–4590 Filed 2–29–00; 8:45 am]

BILLING CODE 4910–59–C

FIGURE O5
KNEE IMPACT TEST SETUP SPECIFICATIONS

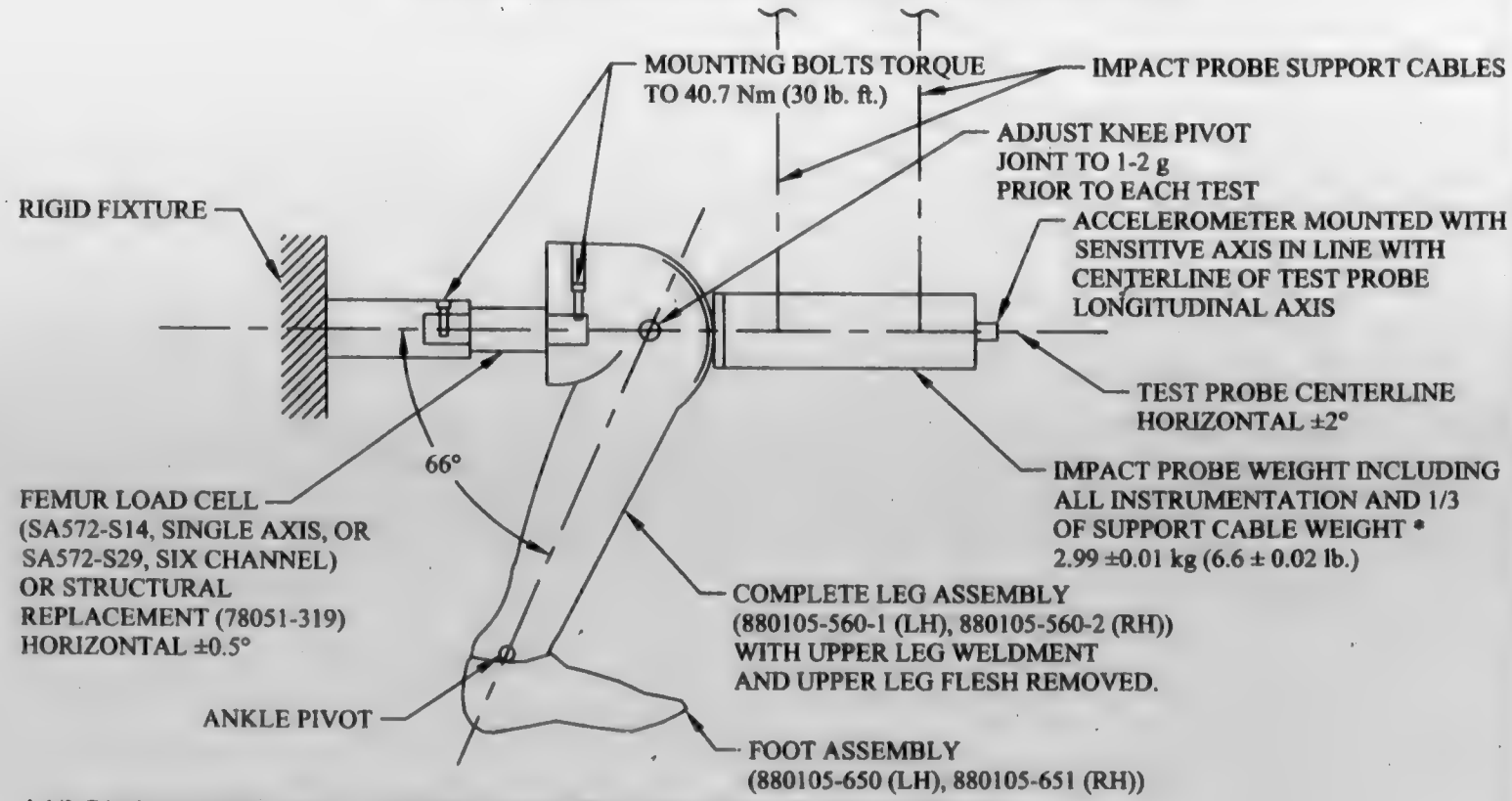

* 1/3 CABLE WEIGHT NOT TO EXCEED 5% OF THE TOTAL IMPACT PROBE WEIGHT

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981224323–9226–02; I.D. 120198B]

RIN 0648–AL23

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule for recordkeeping and reporting that was published in the **Federal Register** on November 15, 1999.

DATES: Effective December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: A final rule was published in the **Federal Register** on November 15, 1999 (64 FR 61964), to revise recordkeeping and reporting regulations. The new product code, 42, that was added to Table 1 to 50 CFR part 679 was inadvertently omitted from Table 3 to 50 CFR part 679.

Correction

In the final rule Revisions to Recordkeeping and Reporting Requirements published in 64 FR 61964, November 15, 1999, FR Doc. 99–28294, on page 62011, under TABLE 3, PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT, in the fourth column, remove the column heading "3 Bled" and add in its place "3, 42 Bled".

Dated: February 23, 2000 .

Andrew A. Rosenberg,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–4775 Filed 2–29–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 41
Wednesday, March 1, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27 and 28

[CN–00–001]

RIN 0581–AB67

Revision of Cotton Classification Procedures for Determining Upland Cotton Color Grade

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to revise the procedure for determining the official color grade for Upland cotton. The color grade for Upland cotton is a part of the official classification which denotes cotton fiber quality used in the marketing and manufacturing of cotton. Previously, the color grade was determined by visual examination and comparison to the Official Cotton Standards by qualified cotton classers. The proposed revision will replace the classer's color determination with the instrument color measurement made by the High Volume Instrument (HVI) system used for official cotton classification for Upland Cotton since 1991.

DATES: Comments must be received by March 31, 2000.

ADDRESSES: Comments and inquiries should be addressed to, Cotton Programs, AMS, USDA, Room 2641-S, P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Rm. 2641-South Building, 14th & Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 35,150 cotton growers, merchants, and textile manufacturers in the U.S. who voluntarily use the AMS cotton classing services annually under the United States Cotton Standards Act, the Cotton Statistics and Estimates Act, and the Cotton Futures Act. The majority of these entities are small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). The change in procedure will not significantly affect small businesses as defined in the RFA because:

(1) Classification will continue to be based upon the Official Standards for Upland Cotton Color Grade established and maintained by the Department;

(2) The High Volume Instrument color measurement has been a part of the official classification record since 1991. Implementation of the revision for all cotton classification will not affect competition in the marketplace or adversely impact on cotton classification fees; and

(3) The use of cotton classification services is voluntary. For the 1999 crop, 15,825,000 running bales were produced by growers, and virtually all of them were voluntarily submitted for USDA classification. Classification services provided for merchants and manufacturers during the same period totaled approximately 404,000 bales.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Background

Pursuant to the authority contained in the United States Cotton Standards Act, the Secretary of Agriculture maintains official cotton standards of the United States and provides classification and testing services to cotton producers, textile manufacturers, merchants, and others in the domestic and international cotton industry. The standards are used for the classification of American upland cotton and provide a basis for the determination of value for commercial purposes. Classification services provide information on quality of cotton. The National Cotton Council represents the interests of all seven segments of the U.S. cotton industry: growers, ginners, warehousers, merchants, cooperatives, manufacturers, and cottonseed oil crushers.

Need for Revisions

High Volume Instrument classification was adopted for all USDA classification of American upland cotton in 1991. The color grade is a component of the official USDA classification. Although High Volume Instrument colormeter readings have been reported since 1991, at the request of the industry, USDA continued the procedure of determining the official color grade by human cotton classers because of the historical importance of color in determining the quality of cotton. With the passage of time, confidence in USDA High Volume Instrument measurements of fiber quality characteristics for classification of cotton grew to the extent that industry representatives requested that High Volume Instrument colormeter readings be used for the official determination of color grade.

AMS conducted a pilot project during the 1998 and 1999 cotton classing seasons to implement an adjustment to the existing High Volume Instrument

color measurement so that it would more closely match the Official Cotton Standards used by classers for official color grade determination. Data from the project, which the AMS Cotton Program conducted in cooperation with the National Cotton Council's Quality Task Force, showed that the HVI color measurement closely matched the Official Cotton Grade Standards for color. Results from the 1998 and 1999 crops showed that the HVI colormeter determines Official color grades as accurately as cotton classers. In December of 1999, the National Cotton Council Quality Task Force recommended that AMS replace the cotton classer determination with the HVI colormeter determination for color grade. AMS proposes to use the HVI colormeter determination as the official component of classification of American Upland cotton for color grade.

For the reasons set forth above, this proposal would amend the sections in Parts 28—COTTON CLASSING, TESTING, AND STANDARDS, Subpart A—Regulations Under the United States Cotton Standards Act, which establish the procedures for determining official cotton classification based on the Official Cotton Grade Standards. Since cotton classification services under the United States Cotton Futures Act must conform to the requirements of the Cotton Standards Act, this proposal would also amend the sections in Part 27—COTTON CLASSIFICATION UNDER COTTON FUTURES LEGISLATION which establish the procedures for determining cotton classification for cotton submitted for futures certification.

Accordingly, under Part 27, in § 27.2 (n), the definition of the term classification would be changed to reflect the changes in procedures made under Part 28.

Also under Part 27, § 27.31 would be revised to reflect the deletion of the requirement for cotton classers to determine color grade. The revised heading and section would reflect the changes made in procedures for determination of cotton quality in accordance with the official standards.

In Part 28, § 28.8 would be revised to reflect the proposed change in cotton classification procedures to replace classer visual examinations to fix color with instrument color measurement by High Volume Instruments. Miscellaneous other changes are made to the sections to better reflect current procedures in view of color determination change. For example, those determinations made by cotton classers or by authorized Cotton Program employees would be specified.

AMS anticipates that the change in procedures for official cotton classification, if adopted, would become effective on July 1, 2000, when classification of newly harvested 2000 crop cotton will begin. Further, a 30 day comment period is provided and deemed appropriate in order to allow adequate time to complete this rulemaking for the 2000 cotton crop.

List of Subjects

7 CFR Part 27

Commodity Futures, Cotton.

7 CFR Part 28

Administrative practice and procedure, Cotton, Reporting and recordkeeping requirements, Warehouses.

For the reasons set forth in the preamble, 7 CFR parts 27 and 28 are proposed to be amended as follows:

PART 27—[AMENDED]

1. The authority citation for 7 CFR part 27 continues to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g).

2. In § 27.2, paragraph (n) is revised to read as follows:

§ 27.2 Terms defined.

* * * * *

(n) Classification. The classification of any cotton shall be determined by the quality of a sample in accordance with Official Cotton Standards of the United States for the color grade and the leaf grade of American upland cotton, the length of staple, and fiber property measurements such as micronaire. High Volume Instruments will determine all fiber property measurements except leaf grade and extraneous matter. High Volume Instrument colormeter measurements will be used for determining the official color grade. Cotton classers, designated as such by the Director, will determine the official leaf grade and extraneous matter, and authorized Cotton Program employees will determine all fiber property measurements using High Volume Instruments.

* * * * *

3. Section 27.31 is revised to read as follows:

§ 27.31 Classification of cotton.

For the purposes of subsection 15b (f) of the Act, classification of cotton is the determination of the quality of a sample in accordance with the Official Cotton Standards of the United States for the color grade and the leaf grade of American upland cotton, the length of staple, and fiber property measurements such as micronaire. High Volume Instruments will determine all fiber property measurements except leaf grade and extraneous matter. High Volume Instrument colormeter measurements will be used for determining the official color grade. Cotton classers, designated as such by the Director, will determine the official leaf grade and extraneous matter, and authorized Cotton Program employees will determine all fiber property measurements using High Volume Instruments.

PART 28—[AMENDED]

1. The authority citation for 7 CFR part 28, subpart A, is revised to read as follows:

Authority: 7 U.S.C. 55 and 61.

2. Section 28.8 is revised to read as follows:

§ 28.8 Classification of cotton; determination.

For the purposes of the Act, the classification of any cotton shall be determined by the quality of a sample in accordance with Official Cotton Standards of the United States for the color grade and the leaf grade of American upland cotton, the length of staple, and fiber property measurements such as micronaire. High Volume Instruments will determine all fiber property measurements except leaf grade and extraneous matter. High Volume Instrument colormeter measurements will be used for determining the official color grade. Cotton classers will determine the official leaf grade and extraneous matter, and authorized Cotton Program employees will determine all fiber property measurements using High Volume Instruments. The classification record of a classing office or the Quality Assurance Unit with respect to any cotton shall be deemed to be the classification record of the Department.

Dated: February 28, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–5034 Filed 2–29–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1140

[Docket No. DA–00–06]

Proposed Rule for Forward Pricing Pilot Program and Opportunity to File Comments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes a pilot program which would exempt handlers regulated under the Federal milk order program from paying producers and cooperative associations the minimum Federal order price(s) for that portion of their milk for non-fluid use that is under forward contract. Establishment of the pilot program is required by a November 1999 amendment to the Agricultural Marketing Agreement Act of 1937 (AMAA).

DATES: Comments must by submitted on or before March 16, 2000.

ADDRESSES: Comments should be submitted to Nicholas Memoli, Order Formulation Branch, Dairy Programs, USDA/AMS, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments also may be sent by fax to (202) 690–0552 or by e-mail to Nicholas.Memoli@usda.gov.

All comments submitted in response to this proposal will be available for public inspection at the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, South Building, 14th and Independence Avenue, S.W., Washington, D.C. during normal business hours (7 CFR 1.27(b)). Anyone wishing to view the comments is requested to make an appointment in advance by calling Richard M. McKee at (202) 720–4392.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas.Memoli@usda.gov.

The USDA Fact Sheet and other information on the proposed pilot program is available from market administrators' offices or can be downloaded from our web site (www.ams.usda.gov/dairy).

SUPPLEMENTARY INFORMATION: This proposed rule would implement an amendment to the AMAA which directs the Secretary of Agriculture to establish a temporary pilot program for forward contracting of milk under Federal milk marketing orders. The effect of this amendment is to permit a handler to pay producers or cooperative associations a negotiated price, rather than the minimum Federal order price, for milk that is under forward contract. The amendment appears in Section 3 of H.R. 3428 of the 106th Congress, as enacted by Section 1001(a)(8) of Public Law 106–113 (113 Stat. 1536). It was signed into law on November 29, 1999. The amendment specifies that the pilot program shall only apply to federally regulated milk that is not classified as Class I milk or otherwise intended for fluid use and that is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce in federally regulated milk. The pilot program expires December 31, 2004.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, the proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to judicial challenge to the provisions of this rule.

Executive Order 12866

The Department is issuing this proposed rule in conformance with Executive Order 12866. This proposed rule is not economically significant for the purposes of Executive Order 12866.

The forward pricing pilot program is a voluntary program that will permit a handler and a producer to negotiate prices that may be below the minimum order prices that would otherwise apply to such milk. Some producers, proprietary handlers, and cooperative associations now negotiate forward contracts on part or all of their milk. The pilot program will expand the opportunities to engage in forward contracting by exempting participating proprietary handlers from the minimum prices to producers and cooperative associations required under Federal milk marketing orders. These regulations would not affect the ability of cooperative associations to forward contract with their members.

The Regulatory Flexibility Act and the Effects on Small Businesses

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of the proposed rule on small entities and has prepared this initial regulatory flexibility analysis.

The legal basis for the proposed rule is set forth in an amendment to the AMAA signed into law on November 29, 1999, that directs the Secretary of Agriculture to establish the dairy forward pricing pilot program. The Secretary was directed "to establish a temporary pilot program under which milk producers and cooperatives are authorized to voluntarily enter into forward price contracts with milk handlers."

The pilot program would provide the dairy industry, which has experienced substantial price volatility in recent years, with another tool to deal with such volatility. With the phase-down of the dairy price support program to a safety-net program, the prices of dairy products have fluctuated to a much greater extent than they did during the prior 20 years. This price fluctuation has created problems for processors of manufactured dairy products (*e.g.*, butter, nonfat dry milk, and cheese), the dairy farmers who supply these processors, and the retailers, school systems, and other public institutions who provide these products to consumers.

Under the Small Business Administration's definition of a "small business," a dairy farm is a small business if it has less than $500,000 in gross annual sales and a handler is a small business if it has fewer than 500 employees. As of February 2000 under the Federal milk order program, there are 142 cooperative associations representing approximately 63,000 dairy farmers. In addition, there are 11,600 dairy farmers who are not affiliated with any cooperative association. Of these nonmember producers, 10,900 meet the SBA's definition of a small business.

There are nearly 1,000 milk plants that are regulated under the Federal milk order program. Based on the best data available, approximately one-third of these plants would be classified as small businesses. These requirements are further discussed in the Paperwork Reduction Act section.

The recordkeeping and reporting requirements for this proposed rule are minimal. At the present time, any handler that enters into a forward contract with a producer presumably has written proof for such an arrangement. Under the proposed pilot program, a handler would be required to submit a copy of each forward contract with a producer to the market administrator of the order in which the

handler's plant is regulated. In addition, the handler would be required to attach a disclosure statement to each forward contract. The disclosure statement, which would be attached to general guidelines concerning the contracting process, would have to be signed by each dairy farmer entering into a forward contract. The disclosure statement explains that a dairy farmer entering into a forward contract under the pilot program forfeits his or her right to receive the minimum order price(s) for that portion of their milk that is under contract for the duration of the contract period.

In drafting the proposed rule, the Department considered whether any limit should be established for the amount of milk that a dairy farmer could forward contract. We decided not to impose such a limit because we did not wish to interfere with a dairy farmer's desire to forward contract all of his or her milk. Also, in order to gain as much knowledge as possible about the types of forward contracts that might be offered by handlers, we believe it is beneficial to allow handlers and dairy farmers to decide between themselves how much milk to put under forward contract and how much milk to keep under minimum Federal order pricing.

Since the forward contracting of milk may be new to many dairy farmers, the Department decided to incorporate two provisions, in addition to the disclosure statement, to help dairy farmers adjust to the new program. First, the proposed rule requires that each forward contract under the pilot program must contain a clause that gives a dairy farmer 3 days to change his or her mind about forward contracting their milk. If a dairy farmer does change his or her mind after signing a forward contract, the farmer would be required to contact the handler with whom he or she had contracted by the 3rd business day following the date that the contract was signed.

The proposed rule would also limit the contract period for first-time contracts under the pilot program to 6 months. The reason for limiting the initial contract period is to give producers a chance to familiarize themselves with this new way of pricing their milk.

The Department does not believe that the forward pricing pilot program would unduly burden small entities or impair their ability to compete in the marketplace. In fact, by providing another tool to reduce price risk, the proposed pilot program may aid small businesses in competing with larger entities that have the ability to use existing futures and options markets, and other means, to reduce their price risks. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with the proposed rule.

Comments are specifically requested on the impact of this proposed rule on small businesses in addition to other aspects of the rule discussed above and throughout this document.

Paperwork Reduction Act of 1995

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) for emergency approval. Due to a 15-day comment period for the proposed rule, a separate 60-day notice seeking public comment on the information collection will be published with regard to permanent approval.

Under the proposed pilot program for the forward contracting of milk under Federal milk orders, a one-page disclosure statement was designed so that the Secretary's representatives administering the pilot program can be certain that dairy farmers have entered into the pilot program voluntarily. The disclosure statement would be attached to a fact sheet containing general guidelines to help the dairy farmer understand the forward contracting process. It also explains to the dairy farmer that the program is voluntary and that by entering into the program with a handler, the dairy farmer will be forfeiting his or her right to the minimum prices provided under the order. The form should take no more than 15 minutes to be read, understood, and signed by a dairy farmer. We estimate that the number of dairy farmers involved would be approximately 8,000, and the total annual time burden would not exceed 2,000 hours.

Handlers would be required to submit their forward contracts under the pilot program to their respective market administrator's office. There are two reasons for this. First, the market administrator must be able to review the contract to ensure it is signed and to verify that it complies with the regulations proposed here. Second, the Department is required to conduct a study of forward contracting under the pilot program to determine the impact on milk prices paid to producers in the United States. This study must be submitted to Congress no later than April 30, 2002. In order to do such a study, the Secretary will have to review, summarize, and evaluate the different types of contracts that were written under the pilot program. The time required for handlers to prepare and submit copies of contracts would approximate 30 minutes per contract. Of the less than 700 manufacturing plants associated with Federal orders, fewer than 300 would be anticipated to participate with a total annual burden of 500 hours.

Discussion of Proposed Rules Applicable to Pilot Program

Under the rules proposed here to administer the pilot program, a proprietary handler will not be subject to the order minimum prices with respect to payments to dairy farmers and cooperative associations for milk under forward contract that does not exceed the handler's Class II, III, and IV utilization for the month in the market where the handler's plant or plants are regulated. (In the rule proposed here, this amount of milk is defined as "eligible milk." For convenience in the discussion that follows, a handler's combined Class II, III, and IV utilization will be referred to as the handler's eligible milk.) In the case of a multi-plant handler, the handler's Class II, III, and IV utilization would be combined together for all of the handler's plants regulated under one order. On a monthly basis if a handler's forward contracts exceed that amount, the handler would only be exempt from paying the order's minimum price(s) on its quantity of eligible milk.

The proposed rule leaves the determination of which producers' milk is over-contracted to the handler. If the handler fails to make this determination, the market administrator would prorate the over-contract milk to each producer and cooperative association having a contract with the handler.

Although handlers participating in the pilot program would not be required to pay producers and cooperative associations the order's minimum uniform or component prices for contract milk, they would still be required to account to the pool for all milk they receive at the respective order's minimum class prices. In the case of milk received by transfer from a cooperative association's pool plant, a handler may forward contract for all such transferred milk that is not used in Class I and would be exempt from paying the cooperative the minimum class prices for contract milk.

Any handler participating in the pilot program would still be required to file all of the reports that are now required under an order. This includes reports of receipts and utilization of milk and monthly payroll reports that show all

information now required under the orders.

Handlers participating in the pilot program would have to submit to the market administrator a copy of each contract for which it is claiming exemption from the order's minimum pricing. This contract must be signed prior to the first day of the first month for which the contract applies and would have to be received by the market administrator by the 15th day of that month. It would be the responsibility of each handler to give to each contracting dairy farmer or cooperative association a disclosure statement informing them of the nature of the pilot program and providing them with certain information that they should consider before entering into a forward contract. The disclosure statement would have to be signed on the same date as the contract by the dairy farmer or cooperative association representative and would have to be returned to the market administrator together with the contract by the 15th day of the month. Any contract that is submitted to the market administrator without the disclosure statement would be considered to be invalid for the purpose of being exempt from the order's minimum pricing and would be returned to the handler.

Each forward contract submitted to the market administrator must contain a provision that gives the dairy farmer signing the contract 3 business days in which to change his or her mind about forward contracting their milk. At midnight on the 3rd business day following the contract date, the contract would become irrevocable.

If a producer wishes to cancel a forward contract within the 3-day period, he or she would have to notify the handler in writing. Such notification could be faxed, e-mailed, or mailed, but it would have to be in the possession of the handler by midnight of the 3rd business day following the contract date. A copy of the notification should be retained by the producer together with evidence verifying its date and time of receipt.

The first time that a producer or cooperative association forward contracts under this pilot program the contract would be limited to 6 months. Thereafter, the producer or cooperative association could enter into forward contracts with proprietary handlers for whatever period they wish so long as the contract does not extend beyond December 31, 2004. If a handler violates this rule by submitting to the market administrator a contract that is longer than 6 months, the market administrator would return the contract to the handler and the handler would not be exempt from minimum order pricing with respect to that contract. The reason for proposing to limit the initial contract period is to give producers a chance to familiarize themselves with this new way of pricing their milk.

Payments specified under a forward contract would have to be made on the same dates as order payments which they replace. In addition, the basis for pricing milk under a forward contract would be the same basis that is used to price milk under the respective order regulating the pooling of such milk. For example, under the 4 orders that provide for skim milk and butterfat pricing (*i.e.*, Parts 1005, 1006, 1007, and 1131), forward contracts would have to be written in terms of skim milk and butterfat pricing. On the other hand, in the 7 markets providing for component pricing of milk (*i.e.*, Parts 1001, 1030, 1032, 1033, 1124, 1126, and 1135), forward contracts under the pilot program would have to be written in terms of the component pricing provided under those orders.

Consideration was given to leaving the pricing and payment for milk under forward contracts open. However, this approach was considered to be undesirable for several reasons. First, with respect to the timing of payments, nearly every handler entering into forward contracts would have some milk that is subject to minimum order pricing. It is highly unlikely that these handlers would establish a dual accounting and payment system even if they thought that different payment dates would be preferable to those specified under the order. Second, if handlers paid producers under contract at different times than producers not under contract, this disparate treatment could cause problems which might influence the success of the pilot program for reasons entirely apart from more predictable pricing. Third, from an administrative standpoint, we believe that it would be much easier to administer the pilot program if payments are made on the same day as minimum order payments. Also, we believe that the program would be easier for producers to understand if payments continue to be made on the dates with which they have grown accustomed.

With respect to the form of pricing—*i.e.*, skim milk/butterfat versus component—we believe that it would be unduly confusing and administratively burdensome to allow contract milk to be priced on a different basis than milk subject to minimum order pricing. Market administrator offices are set up to test milk according to the way it is priced under the order. While they may be able to test milk on some other basis, such testing could result in additional labor, possibly the purchase of additional equipment, and perhaps additional training of market administrator personnel. Finally, disparate pricing of milk to a producer could be confusing, especially if over-contracted milk has to be repriced using minimum order pricing.

Since this pilot program is authorized through an amendment to the AMAA, it is reasonable to conclude that if the pilot program results in disorderly marketing conditions, the program would be in conflict with the objectives of the Act and would have to be modified to remedy such conflict.

Participation in the pilot program must be entirely voluntary on the part of dairy farmers and handlers. If the Department believes that the program is being used to coerce dairy farmers into signing contracts providing for prices that, on average, are consistently below minimum order prices, steps would be taken to halt such practices. One indication that such practices could be occurring would be complaints from dairy farmers that they were dropped because they refused to sign a forward contract with a handler. Another indication might be manifested by the replacement of one group of dairy farmers with another group of dairy farmers who have entered into forward contracts with the handler. It is conceivable that some farmers might intentionally enter into a forward contract that would consistently provide a price below the minimum order price simply to get their milk pooled on a particular market. This type of activity would undermine the concept of minimum prices to dairy farmers and lead to the type of conditions that the AMAA was enacted to remedy. Should these types of activities occur after the pilot program becomes effective, the Secretary would consider amending, suspending, or terminating the pilot program.

Additional information about the pilot program is included in the Department's program announcement. The information is also available on the Dairy Programs' web site (www:ams.usda.gov/dairy) and is available from local market administrator offices.

A 15-day comment period is provided in this proposed rule. This comment period is deemed appropriate because: (1) In enacting the legislation authorizing the pilot program, Congress intended that it be established early this year; (2) the dairy industry is anticipating, and has already been preparing to take part in, the pilot program; and (3) the program represents

another means which the industry may need to deal with price volatility.

For the reasons set forth in the preamble, it is proposed that Title 7 of Chapter X of the CFR be amended by adding a new Part 1140 as follows:

PART 1140—DAIRY FORWARD PRICING PILOT PROGRAM

Subpart A—Definitions

Sec.
1140.1 General definitions.

Subpart B—Rules Governing Forward Contracts

1140.2 Rules governing forward contracts.

Authority: 7 U.S.C. 601, *et seq.*

Subpart A—Definitions

§ 1140.1 General definitions.

(a) *Pilot program* means the dairy forward pricing pilot program provided by an amendment to the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601, *et seq.*) signed into law on November 29, 1999 (Section 3 of H.R. 3428 of the 106th Congress, as enacted by section 1001(a)(8) of Public Law 106–113 (113 Stat. 1536)).

(b) *Eligible milk* means the quantity of milk equal to a handler's Class II, III, and IV utilization during the month, combining all pool plants of a single handler that are regulated under a single Federal order.

(c) *Forward contract* means an agreement covering the terms and conditions for the sale of milk from a producer defined in section 12 of Parts 1001 through 1135 to a handler defined in § 1000.9.

(d) *Contract milk* means the producer milk covered by a forward contract.

(e) *Disclosure statement* means the following statement which must be signed and returned to the market administrator by each producer entering into a forward contract with a handler before the market administrator will recognize the terms and conditions provided in such contract.

Disclosure Statement

I am voluntarily entering into a forward contract with _____ (handler's name). I have been given a copy of the contract and I have received the USDA's Pilot Program Fact Sheet to which this disclosure statement was attached. By signing this form, I understand that I am forfeiting my right to receive the order's minimum uniform or component prices for that portion of my milk that is under forward contract for the duration of the contract. I also understand that my milk will be priced in accordance with the terms and conditions of the contract.

Printed Name:
Signature: _____
Date: _____
Address: _____
Producer No: _____

(f) *Other definitions.* Any term used in this part that is defined in Parts 1000–1135 is incorporated in this part.

Subpart B—Rules Governing Forward Contracts

§ 1140.2 Rules governing forward contracts. .

(a) A handler that operates one or more pool plants may enter into forward contracts with producers or cooperative associations for the handler's *eligible milk* received at such plants and be exempt from the minimum payment provisions that would apply to such milk in section 73 of Parts 1001 through 1135 for the period of time covered by the contract, except that a contract with a producer or cooperative association participating for the first time in this pilot program may not exceed 6 months. In no event shall a forward contract executed pursuant to this part extend beyond December 31, 2004.

(b) Forward contracts must be signed and dated by the contracting handler and producer (or cooperative association) prior to the first day of the first month for which they are to be effective and must be in the possession of the market administrator by the 15th day of that month. The *disclosure statement* provided in § 1140.2(e) must be signed on the same date as the contract by each producer or cooperative association entering into a forward contract under the pilot program and this signed disclosure statement must be attached to each contract submitted to the market administrator.

(c) Each forward contract submitted for approval must contain a clause that allows the dairy farmer signing the contract to revoke the contract by notifying the handler in writing within 3 business days. This written notification, which may be faxed, mailed, or E-mailed, must be in the possession of the handler by midnight of the 3rd business day following the signing of the contract. The producer is responsible for verifying the time and date of receipt of this notification.

(d) In the event that a handler's contract milk exceeds the handler's *eligible milk* for any month in which the specified contract price(s) are below the order's minimum prices, the handler must designate which producer milk shall not be contract milk. If the handler does not designate the owners of the over-contracted milk, the market administrator shall prorate the over-contracted milk to each producer and cooperative association having a forward contract with the handler.

(e) Payments for milk covered by a forward contract must be made on the same dates as payments for milk that is not under forward contract under the respective Federal order.

(f) The basis for pricing milk under forward contract must be the same basis—but not at the same rate or level—as is used to price milk that is not under forward contract under the respective order. Under orders providing for skim milk and butterfat pricing, forward contracts must price milk on the basis of skim milk and butterfat, and under orders with component pricing of milk, forward contracts must price milk according to the components priced under the respective order.

(g) Handlers participating in the pilot program will continue to be required to file all reports that are currently required under the respective marketing orders and will continue to be required to account to the pool for all milk they receive at their respective order's minimum class prices.

(h) Nothing in this part shall impede the contractual arrangements that exist between a cooperative association and its members.

Dated: February 25, 2000.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 00–4920 Filed 2–29–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM–STD–00–100]

RIN No. 1904–AB06

Energy Efficiency Program for Commercial and Industrial Equipment: Efficiency Standards for Commercial Heating, Air Conditioning and Water Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of preliminary screening analysis.

SUMMARY: The Energy Policy and Conservation Act, as amended by the Energy Policy Act of 1992 (EPCA), establishes energy efficiency standards for certain commercial heating, air conditioning and water heating

equipment. On October 29, 1999, the efficiency standards in American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) and Illuminating Engineering Society of North America (IES) ASHRAE/IES Standard 90.1 were amended for some of these products. This notice outlines the process the Department plans to follow in deciding which of these amended efficiency standards to adopt immediately and which to analyze further.

ADDRESSES: You can view copies of the ASHRAE/IES Standard 90.1–1999 in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. You can also obtain copies from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, and you can obtain electronic versions at ASHRAE's web site, http://www.ashrae.org/book/bookshop.htm. The Preliminary Screening Analysis described in this notice is expected to be available for viewing in the Department of Energy's Freedom of Information Reading Room by the end of March 2000, and copies may be requested from the contacts listed below. The report will also be accessible via the Internet at http://www.eren.doe.gov/buildings/codes_standards/index.htm, which contains additional information on Department of Energy codes and standards programs as well.

FOR FURTHER INFORMATION CONTACT: Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–41, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–9138, FAX (202) 586–4617, e-mail: Cyrus.Nasseri@ee.doe.gov, or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station, GC–72, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–9507, e-mail: Edward.Levy@hq.doe.gov.

SUPPLEMENTARY INFORMATION: This notice refers to certain industry standards established by the ASHRAE and IES. These industry standards are referenced by the single comprehensive "ASHRAE/IES Standard 90.1–1999."

I. Introduction
A. Authority
B. Background
1. General
2. ASHRAE Action
II. Discussion
A. Preliminary Screening Analysis
B. Products Not Included in the Preliminary Screening Analysis
C. DOE Decision Process

I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA) of 1975, Pub. L. 94–163, as amended, by the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, and the Energy Policy Act of 1992 (EPACT), Pub. L. 102–486, established the Energy Conservation Program for Consumer Products other than Automobiles. Part 3 of Title IV of NECPA amended EPCA to add "Energy Efficiency of Industrial Equipment," which included air conditioners, furnaces, and other types of equipment.

EPACT also amended EPCA with respect to industrial equipment, providing definitions, test procedures, labeling provisions, energy conservation standards, and authority to require information and reports from manufacturers. See 42 U.S.C. 6311–6316. For example, EPCA now specifies explicit minimum energy efficiency levels for certain commercial packaged air conditioning and heating equipment, packaged terminal air conditioners and heat pumps, warm air furnaces, packaged boilers, water heaters and hot water storage tanks. 42 U.S.C. 6313(a)(1)–(5). The efficiency requirements in the statute correspond with the levels in effect on October 24, 1992, in ASHRAE/IES Standard 90.1. The statute provides that if the ASHRAE/IES Standard 90.1 levels are amended after that date for any of the covered equipment, the Secretary of Energy must establish an amended uniform national standard at the new minimum level for each effective date specified in ASHRAE/IES Standard 90.1, unless (s)he determines, through a rulemaking supported by clear and convincing evidence, that a more stringent standard is technologically feasible and economically justified and would result in significant additional energy conservation. 42 U.S.C. 6313(a)(6)(A).

If the Secretary elects to publish such a rule, it must contain the amended standard, and the determination must consider, to the greatest extent practicable: the economic impact on the manufacturers and consumers of the affected products; savings in operating cost throughout the life of the product, compared to any increases in initial cost or maintenance expense; the total projected amount of energy savings likely to result directly from the imposition of the standard; any lessening of the utility or performance of the affected products; the impact of any lessening of competition; the need for national energy conservation; and other factors the Secretary considers relevant. The Secretary may not prescribe such an amended standard if (s)he finds (and publishes the finding) that interested persons have established by a preponderance of evidence that the amended standard is likely to result in unavailability in the United States of products with performance characteristics (including reliability), features, sizes, capacities and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. 42 U.S.C. 6313(a)(6)(B).

Finally, the Secretary may not prescribe any amended standard which increases maximum allowable energy use or decreases minimum required energy efficiency. 42 U.S.C. 6313(a)(6)(B)(ii).

B. Background

1. General

The Department of Energy (DOE or the Department) has an energy conservation program for consumer products, conducted under Part B of Title III of EPCA, 42 U.S.C. 6291–6309. The consumer appliance standards program consists of four principal parts: Test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. The Federal Trade Commission (FTC) is responsible for labeling, and the Department implements the remainder of the program as codified in Title 10 of the Code of Federal Regulations (CFR), Part 430—Energy Conservation Program for Consumer Products.

Pursuant to the EPACT amendments to EPCA in 1992, DOE extended its program to cover commercial and industrial equipment and created a new Part 431 in Title 10 of the Code of Federal Regulations, entitled Energy Conservation Program for Commercial and Industrial Equipment. This part includes commercial heating, air conditioning and water heating equipment. This new program consists of: test procedures, Federal energy conservation standards, labeling, certification and enforcement procedures. EPCA directs the Department, rather than the FTC, to administer the statute's efficiency

labeling provisions for commercial equipment.

2. ASHRAE Action

ASHRAE revised ASHRAE/IES Standard 90.1 on October 29, 1999. ASHRAE changed the standards for some products but not for others. Of those products for which standards have not changed, some levels were considered by ASHRAE in the course of revising ASHRAE/IES Standard 90.1 and left at their preexisting values, while consideration of other products was deferred. Among those products that were deferred were standards for commercial (3 phase) small air conditioners and heat pumps (under 65 thousand Btu per hour), which are closely related to consumer products for which the Department is independently developing standards under NAECA. The standard levels in EPACT and ASHRAE/IES Standard 90.1–1999 appear in Tables 1 and 2.

TABLE 1.—EPCA SECTION 342(a) 1, 2, 3 AIR CONDITIONERS AND HEAT PUMPS

Equipment category	Equipment subcategory	EPCA section	EPCA date	Efficiency levels	
				EPCA 92	90.1–1999
Small Commercial Packaged Air Conditioning and Heating Equipment.	AC/HP <65—Air Cooled 3 Phase, Central Split System.	Cooling Eff. 342(a)(1)(A)	1/1/94	SEER 10.0	SEER 10.0
		Heating Eff. 342(a)(1)(D)		HSPF 6.8	HSPF 6.8
	AC/HP <65—Air Cooled 3 Phase, Central Single Package.	Cooling Eff. 342(a)(1)(B)	1/1/94	SEER 9.7	SEER 9.7
		Heating Eff. 342(a)(1)(E)		HSPF 6.6	HSPF 6.6
	AC/HP 65—135 Air Cooled Central.	Cooling Eff. 342(a)(1)(C)	1/1/94	EER 8.9	EER 10.3
		Heating Eff. 342(a)(1)(F)		COP 3.0	COP 3.2
	AC/HP <65—Water Cooled Evap. Cooled Water-Source Central.	Cooling Eff. 342(a)(1)(G)	1/1/94	EER 9.3	EER 12.1
		Heating Eff. Water-Source *only* 342(a)(1)(I).		COP 3.8	COP 4.2
	AC/HP 65–135 Water Cooled Evap. Cooled Water-Source Central.	Cooling Eff. 342(a)(1)(H)	1/1/94	EER 10.5	EER 11.5
		Heating Eff. Water-Source *only* 342(a)(1)(I).		COP 3.8	COP 4.2
Large Commercial Packaged Air Conditioning and Heating Equipment.	AC/HP 135–240—Air Cooled Central.	Cooling Eff. 342(a)(2)(A)	1/1/95	EER 8.5	EER 9.7
		Heating Eff. 342(a)(2)(B)		COP 2.9	COP 3.1
	AC/HP 135–240 Water Cooled Evap. Cooled Central.	Cooling Eff. 342(a)(2)(A)	1/1/95	EER 9.6	EER 11.0
		No Heating Eff. Requirement			
Packaged Terminal Air Conditioners and Heat Pumps.	PTAC/PTHP (Air Cooled)	Cooling Eff. 342(a)(3)(A)	1/1/94	EER varies by capacity COP varies by capacity.	EER and COP vary by capacity (different formulas)
		Heating Eff. 342(a)(3)(B)			

TABLE 2.—EPCA (AS AMENDED) SECTION 342(a) 4, 5 FURNACES, BOILERS, AND STORAGE WATER HEATER

Equipment category	Equipment subcategory	EPCA section	EPCA date	Efficiency levels	
				EPCA 92	90.1–1999
Warm Air Furnaces	≥225,000:	Gas Fired Eff. 342(a)(4)(A)	1/1/94	Thermal Efficiency:.	Thermal Efficiency:
	Gas Fired	Oil Fired Eff. 342(a)(4)(A)		80% Gas	80% Gas
	Oil Fired			81% Oil	81% Oil
Package Boilers	≥300,000:	Gas Fired Eff. 342(a)(4)(C)	1/1/94	Combustion Efficiency:.	Combustion Efficiency:
	Gas Fired	Oil Fired Eff. 342(a)(4)(D)		80% Gas	80% Gas
	Oil Fired			83% Oil	83% Oil
Storage Water Heaters ...	Electric	Standby Loss 342(a)(5)(A)	1/1/94	0.3+27/Va	20+35 √V
	≤155,000 and V≤ 40 gal	Thermal Eff. and Standby Loss 342(a)(5)(B).	1/1/94	Thermal Eff. 78%, Standby Loss Varies by Volume.	Thermal Eff. 80%, Standby Loss Varies by Volume
	>155,000 and V≤140 gal	Thermal Eff. and Standby Loss 342(a)(5)(C).	1/1/94	Thermal Eff. 78%, Standby Loss Varies by Volume.	Thermal Eff. 80%, Standby Loss Varies by Volume
Instantaneous Water Heaters.	V<10 gal Instantaneous	Thermal Eff. 342(a)(5)(D)	1/1/94	Thermal Eff. 80%.	Thermal Eff. 80%
	10 gal <V <140 gal Instantaneous.	Thermal Eff. and Standby Loss 342(a)(5)(E).	1/1/94	Thermal Eff. 77% Standby Loss Varies by Volume.	Thermal Eff. 80%, Standby Loss Varies by Volume
Storage Tanks	V ≤140 gal Unfired	Heat Loss 342(a)(5)(F)	1/1/94	Heat Loss 6.5 Btu/hr/ft^2.	Heat Loss 6.5 Btu/hr/ft^2
	Storage Water Heaters and Storage Tanks >140 gal.	Prescriptive 342(a)(5)(G)	1/1/94	R–12.5, IID	R–12.5, IID

In response to ASHRAE's action, the Department initiated a Preliminary Screening Analysis to aid the Department in deciding what action it should take at this point with respect to the efficiency levels in ASHRAE/IES Standard 90.1–1999.

II. Discussion

A. Preliminary Screening Analysis

In conducting the Preliminary Screening Analysis, the Department is using existing data from industry and other sources, including, among others, analysis performed for ASHRAE in support of its deliberations over the new ASHRAE/IES Standard 90.1–1999 efficiency levels. For each product category, the Department is estimating the likely cost of achieving several higher, technologically feasible efficiency levels and then will calculate for each such level the corresponding rate of energy consumption required to fulfill the product's function. Applying appropriate climate data, typical building design characteristics, inventories of buildings in different regions of the country, equipment sales volumes, and economic discount rates and energy prices, DOE will compute cost/benefit measures corresponding to the hypothetical efficiency levels and also estimate the nationwide energy and net cost savings, if any, that would result from more stringent standards than the levels in ASHRAE/IES Standard 90.1–1999.

For the products analyzed, the Department is examining the range of efficiency levels specified in EPCA and ASHRAE/IES Standard 90.1–1999, as well as more efficient levels, including those associated with the most efficient product available in the market and the lowest life-cycle cost. For each level above the EPCA standard, DOE will estimate: (1) The incremental national energy and carbon emission savings that would result from a standard set at that level, and (2) the net nationwide direct economic benefit (net present value) that would result from a standard set at that level, as compared to the corresponding ASHRAE/IES Standard 90.1–1999 and EPCA standards. The products being studied in the Preliminary Screening Analysis are:

- Central Air Source Air Conditioners, ≥135 kBtu/h—<240 kBtu/h
- Central Air Source Heat Pump, ≥135 kBtu/h—<240 kBtu/h (cooling performance only)
- Central Water Cooled Air Conditioners, ≥135 kBtu/h—<240 kBtu/h
- Central Air Source Air Conditioners, ≥65 kBtu/h—<135 kBtu/h
- Central Air Source Heat Pump, ≥65 kBtu/h—<135 kBtu/h (cooling performance only)
- Central Water Source Heat Pump, ≥65 kBtu/h—<135 kBtu/h (cooling performance only)
- Central Water Cooled Air Conditioners, ≥65 kBtu/h—<135 kBtu/h
- Packaged Terminal Air Conditioners
- Packaged Terminal Heat Pumps (cooling performance only)
- 3-Phase Single Pkg. Air Source Air Conditioners, <65 kBtu/h
- 3-Phase Split Air Source Air Conditioners, <65 kBtu/h
- 3-Phase Single Pkg. Air Source Heat Pump, <65 kBtu/h (cooling performance only)
- 3-Phase Split System Air Source Heat Pump, <65 kBtu/h (cooling performance only)
- Central Water Cooled Air Conditioners, <65 kBtu/h
- Central Water Source Heat Pump, ≥17 kBtu/h—<65 kBtu/h (cooling performance only)
- Central Water Source Heat Pump, <17 kBtu/h (cooling performance only)
- Large Gas-Fired Hot Water Boilers, ≥2.5 MMBtu/h
- Large Gas-Fired Steam Boilers, ≥2.5 MMBtu/h
- Small Gas-Fired Boilers, <2.5 MMBtu/h
- Gas-Fired Warm Air Furnaces, >225 kBtu/h
- Gas Storage Water Heaters, ≥155 kBtu/h
- Gas Storage Water Heaters, <155 kBtu/h
- Electric Water Heaters
- Tankless Instantaneous Water Heaters
- Instantaneous Water Heaters with Tanks

B. Products Not Included in the Preliminary Screening Analysis

Several products were not included in the formal Preliminary Screening Analysis:

- Central Air Source Heat Pumps, ≥135 kBtu/h—<240 kBtu/h (heating performance)
- Central Air Source Heat Pumps, ≥65 kBtu/h—<135 kBtu/h (heating performance)
- 3-Phase Single Package, Air Source Heat Pumps, <65 kBtu/h (heating performance)
- 3-Phase Split Air Source Heat Pumps, <65 kBtu/h (heating performance)
- Packaged Terminal Heat Pump (heating performance)
- Central Water Source Heat Pumps <135 kBtu/h (heating performance)
- Water Source Heat Pumps ≥135 kBtu/h—<240 kBtu/h
- Evaporatively Cooled Products
- Oil-Fired Warm Air Furnaces >225 kBtu/h
- Oil-Fired Storage Water Heaters ≥155 kBtu/h
- Oil-Fired Storage Water Heaters <155 kBtu/h
- Tankless Oil-Fired Instantaneous Water Heaters
- Oil-Fired Instantaneous Water Heaters with Tanks
- Oil-Fired Small Boilers ≥2.5 MMBtu/h
- Oil-Fired Large Boilers <2.5 MMBtu/h (steam and hot water)

The reasons for excluding these products involve insufficient data describing baseline energy consumption and cost-efficiency relationships, small markets for the products in question or lack of product shipment data, or, in the case of the heating performance of air-source heat pumps, absence of a suitable methodology to discriminate their heating function from that of supplemental heat sources with which they are often used.

C. DOE Decision Process

The Department plans to review the results of the Preliminary Screening Analysis and to announce the availability of the document in the **Federal Register**. The announcement will also contain DOE's preliminary inclination with respect to actions it will take on the EPCA commercial product categories covered by ASHRAE/IES Standard 90.1–1999 efficiency levels and will invite comments related to: (1) The analysis contained in the Preliminary Screening Analysis, (2) DOE's interpretation of the results, (3) DOE's treatment of the product categories; and (4) any other information or evidence that bears on the adoption of ASHRAE/IES Standard 90.1–1999 efficiency levels as uniform national standards under the terms of EPCA.

After receiving comments in response to the Announcement, the Department expects to pursue, for each product category, one of four courses of action:

- Adopt the ASHRAE/IES Standard 90.1–1999 efficiency level as a uniform national standard;
- Reject the ASHRAE/IES Standard 90.1–1999 efficiency level if it increases maximum allowable energy use or decreases minimum required efficiency;
- Propose consideration of an addendum to ASHRAE/IES Standard 90.1–1999 if ASHRAE did not consider a more efficient level, and a more efficient level appears warranted; or
- Propose consideration of an addendum to ASHRAE/IES Standard

90.1–1999 and undertake a more thorough evaluation to determine whether a rulemaking is justified, if ASHRAE considered amending or amended the standard, and a more efficient level appears warranted than is contained in ASHRAE/IES Standard 90.1–1999.

DOE expects to announce the availability of the Preliminary Screening Analysis in March 2000, along with the Department's preliminary inclinations with respect to the EPCA commercial product efficiency levels covered by ASHRAE/IES Standard 90.1–1999.

Issued in Washington, DC, on February 23, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 716 and 741

Privacy of Consumer Financial Information; Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The NCUA Board is proposing a new privacy rule applicable to all federally-insured credit unions, as required by the recently enacted Gramm-Leach-Bliley Act (the GLB Act or Act). The proposed rule requires credit unions to have a privacy policy and provide certain disclosures and notices to individuals about whom credit unions collect nonpublic personal information. It also restricts a credit union's ability to disclose nonpublic personal information, including giving individuals in some cases an opportunity to opt out of the disclosure. In drafting the proposed rule, the NCUA participated as part of an interagency group composed of representatives from the NCUA, the Federal Trade Commission, the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, Secretary of the Treasury, and Securities and Exchange Commission (collectively, the Agencies). The other Agencies are also required to issue regulations to implement the GLB Act. NCUA's proposed rule takes into account the unique circumstances of federally-insured credit unions and their members but is comparable and consistent with the regulations of the other Agencies as required by the GLB Act.

DATES: NCUA must receive comments by March 31, 2000.

ADDRESSES: Direct comments to: Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or you may fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp or Regina M. Metz, Staff Attorneys, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 1999, President Clinton signed the GLB Act (Pub. L. 106–102, codified at 15 U.S.C. 6801 *et seq.*) into law. Subtitle A of Title V of the GLB Act, captioned Disclosure of Nonpublic Personal Information, limits the instances when a financial institution may disclose nonpublic personal information of a consumer to nonaffiliated third parties. It requires a financial institution to disclose to all its customers the institution's privacy policies and practices with respect to information sharing with affiliates and nonaffiliated third parties.

As required by the GLB Act, the NCUA has consulted with the other Agencies to ensure that its proposed rule is consistent and comparable with the proposed rules of the other Agencies. However, the NCUA's proposed rule takes into account the unique nature of credit union structure and operations, particularly, the relationship between a credit union and its members, credit union investment in credit union service organizations (CUSOs), and, generally, the significant difference between credit union and CUSO activities as compared with other financial institutions and their subsidiaries or affiliates.

A credit union is a not-for-profit, cooperative financial institution, formed to permit those in the field of membership specified in the credit union's charter to save, borrow, and obtain related financial services. Member ownership and control make credit unions unique from other financial institutions. Federal credit union investment in affiliates is limited to CUSOs, which are organizations that primarily serve credit unions or their members and whose business is related to the daily and routine operations of credit unions. 12 U.S.C. 1757(5)(D), 1757(7)(I). This is also generally true for state-chartered credit unions.

A key focus of the GLB Act is protecting the privacy of consumers and the customers of financial institutions while permitting financial institutions to make disclosures to their affiliates. In the credit union context, this means that the provisions of the Act and the requirements of NCUA's proposed regulation will apply *primarily* to a credit union's members and *ordinarily* permit sharing of information with CUSOs. Nevertheless, the Act and the proposed regulations impose requirements on credit unions with respect to nonmembers who are deemed to be consumers or customers receiving a financial product or service from the credit union. Thus, credit unions must understand when individuals qualify as a consumer or customer and what responsibilities the credit union has to them. While the GLB Act uses the term customer to describe a category of individuals to whom certain obligations are owed, the term customer should not be equated with the term member. Members in a credit union, as noted above, are its owners with a relationship to their credit union that is inherently different than that of customers to a financial institution. In addition, whether a CUSO will qualify as an affiliate to which a credit union may make disclosures will depend on the extent to which a credit union exercises control over the CUSO.

NCUA's proposed rule mirrors the other Agencies' proposed rules except for modifications appropriate to address the different circumstances of credit unions such as references to credit unions, CUSOs, members, nonmember customers, and other nonmembers. NCUA has also incorporated much of the preamble discussion from the Agencies' joint notice of proposed rulemaking in this preamble. The section-by-section analysis of the rule that follows points out those provisions that differ from the other Agencies' proposed rules. Besides differences in terms or definitions, a significant modification is in the use of examples in the rule. All the Agencies' proposed rules contain examples to aid understanding. NCUA has attempted to use examples pertinent to credit union circumstances and, therefore, has changed or deleted some examples used in the other Agencies' proposals.

The NCUA requests comment on all aspects of the proposed rule as well as comment on the specific provisions and issues highlighted in the section-by-section summary below. The NCUA

specifically requests comment on the examples in the proposed rule and on any additional examples that would be helpful.

NCUA and the other Agencies are developing examination standards and guidelines. A credit union's compliance with this rule will be reviewed as part of the regular examination process.

NCUA and the other Agencies have coordinated their comment periods to end on March 31, 2000. Although, NCUA's Interpretive Ruling and Policy Statement 87–2 states that the public should be given at least 60 days to comment on a proposed rule, this abbreviated comment period is necessary because of the statutory requirement that the final rule be issued by May 12, 2000.

II. Section-by-Section Analysis

Section 716.1 Purpose and Scope

Proposed paragraph (a) of this section identifies three purposes of the rule. First, the rule requires a credit union to provide notice to consumers, defined in § 716.3(e), about the credit union's privacy policies and practices. Second, the rule describes the conditions under which a credit union may disclose nonpublic personal information about a consumer to a nonaffiliated third party. Third, the rule provides a method for a consumer to "opt out" of the disclosure of that information to nonaffiliated third parties, subject to the exceptions in §§ 716.9, 716.10, and 716.11, discussed below.

Proposed paragraph (b) sets out the scope of the NCUA rule, stating that it applies to all federally-insured credit unions. Section 505(a)(2) of the GLB Act provides that the NCUA Board has enforcement authority for federally-insured credit unions and any subsidiaries. The NCUA notes that, while CUSOs may be considered "subsidiaries," the Federal Credit Union Act does not give the NCUA direct regulatory or supervisory authority over CUSOs. Therefore, CUSOs, depending on the type of businesses in which they engage, may be subject to the GLB Act and the regulations of the agency having jurisdiction over that business activity. For example, a CUSO engaged in securities brokerage activities would be subject to the Securities and Exchange Commission privacy regulation.

The NCUA Board specifically requests comment on whether it would be appropriate to exempt federally-insured corporate credit unions from the regulation. The membership of corporate credit unions is natural person credit unions; they are operated primarily to serve other credit unions and limit natural person members to the minimum required by state or federal law to charter and operate the credit union. 12 CFR 704.2. Corporate credit unions function as a "credit union's credit union" and provide a source of liquidity and investment for natural person credit unions as well as acting as clearing houses for financial transactions. The Board is particularly interested in comments that illustrate whether and to what extent corporate credit unions actually collect nonpublic personal information about consumers or customers within the meaning of the GLB Act and this regulation.

This paragraph also notes that the rule applies only to information about individuals who obtain a financial product or service from a credit union for personal, family, or household purposes.

Section 716.2 Rule of Construction

Proposed § 716.2 of the rule sets out a rule of construction intended to clarify the effect of the examples used in the rule. Given the wide variety of transactions that Title V of the GLB Act covers, the NCUA proposes to adopt a rule of general applicability and then provide examples of conduct that would comply with the rule as well as examples of conduct that would not. While the NCUA's general rule is consistent with the other Agencies' proposals, NCUA's examples differ on occasion from those used by the other Agencies in order to provide guidance that is more applicable to credit unions.

The examples are provided to fulfill NCUA's goal of understandable regulations. These examples are not intended to be exhaustive; rather, they are intended to provide guidance about how the rule would apply in specific situations.

Section 716.3 Definitions

(a) *Affiliate.* The proposed rule adopts the definition of "affiliate" used in section 509(6) of the GLB Act. An affiliation will be found when one company controls, is controlled by, or is under common control with another company. Control is defined in § 716.3(g). The definition of affiliate applies to financial institutions and entities that are not financial institutions.

NCUA's proposed rule includes examples of entities that will be affiliates for credit unions. For a federal credit union, the only entity that can be an affiliate is a CUSO, as addressed in 12 CFR part 712, that is controlled by the federal credit union. For a state-chartered credit union, an affiliate will be a company that the credit union controls.

(b) *Clear and conspicuous.* Title V of the GLB Act and the proposed rule require that various notices be "clear and conspicuous." The proposed rule defines this term to mean that the notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice.

The proposed rule does not mandate the use of any particular technique for making the notices clear and conspicuous, but instead allows each credit union the flexibility to decide for itself how best to comply with this requirement. Ways in which a notice may satisfy the clear and conspicuous standard would include, for instance, using a plain-language caption, in a type set easily seen, that is designed to call attention to the information contained in the notice. Other plain language principles are provided in the examples that follow the general rule.

(c) *Collect.* The proposed rule defines "collect" to mean obtaining any information that is organized or retrievable on a personally identifiable basis, irrespective of the source of the underlying information. Several sections of the proposed rule, for example, §§ 716.6 and 716.7, impose obligations when a credit union collects information about a consumer. This proposed definition clarifies that these obligations arise when the information enables the user to identify a particular consumer. It also clarifies that the obligations arise regardless of whether a credit union obtains the information from a consumer or some other source.

(d) *Company.* The proposed rule defines "company," which is used in the definition of "affiliate," as any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Consumer.* The proposed rule defines "consumer" to mean an individual who obtains, from a credit union, financial products or services that are to be used primarily for personal, family, or household purposes. An individual also will be deemed to be a consumer for purposes of a credit union if that credit union purchases the individual's account from some other institution. The definition also includes the legal representative of an individual.

The GLB Act distinguishes "consumers" from "customers" for purposes of the notice requirements imposed by the Act. As explained more fully in the discussion of proposed § 716.4 which covers initial notices, a

credit union must give a "consumer" an initial notice only if it intends to disclose nonpublic personal information about the consumer to a nonaffiliated third party for a purpose that is not authorized by one of several exceptions in the Act. By contrast, a credit union must give all "customers," at the time of establishing a customer relationship and annually thereafter during the continuation of the customer relationship, a notice of the institution's privacy policy.

A person is a "consumer" under the proposed rule if he or she obtains a financial product or service from a credit union. A credit union that intends to share nonpublic personal information about a consumer with nonaffiliated third parties outside of the exceptions described in §§ 716.10 and 716.11 will have to give the requisite notices, even if the consumer does not enter into a customer relationship with the institution.

The examples that follow the definition of "consumer" clarify when someone is a consumer. The examples for credit unions deviate from the examples for the other Agencies and use the terms member and nonmember where applicable. The other Agencies' examples include situations where someone: Applies for a loan or provides information for the purpose of determining whether he or she prequalifies for a loan; provides information in connection with seeking to obtain financial advisory services; and negotiates a workout of a loan. These examples do not apply to credit unions, because someone in the above situations will necessarily be a member of a credit union, and therefore, also a customer. The examples also clarify the status of someone whose loan has been sold.

(f) *Consumer reporting agency.* The proposed rule adopts the definition of "consumer reporting agency" that is used in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)). This term is used in proposed §§ 716.11 and 716.13 which deal with exceptions to notice and opt out and limitations on sharing.

(g) *Control.* The proposed rule defines "control" using the tests applied in section 23A of the Federal Reserve Act (12 U.S.C. 371c). This definition is used to determine when companies are affiliated (*see* discussion of proposed § 716.2(a), above), and would result in a financial institution and a company being considered as affiliates regardless of whether the control is by a company or individual.

The proposed definition mirrors the definition of the other Agencies. NCUA is interested in receiving comment on whether this definition should be amended to reflect the particular relationship between a credit union and a CUSO. Historically, a federal credit union that invested in or made a loan to a CUSO was defined as an affiliated credit union of the CUSO. 51 FR 10353, 10360 (March 26, 1986); former 12 CFR 701.27(c)(1). The Board is particularly interested in receiving comment on whether a CUSO that is 100% owned by credit unions should be considered an affiliate of all of the investing credit unions, regardless of whether any one credit union owns 25%.

(h) *Credit union.* NCUA has defined credit union as a federally-insured credit union.

(i) *Customer.* The proposed rule defines "customer" as any consumer who has a customer relationship with a particular credit union. This definition parallels the one used for the term "customer" in the other Agencies" proposed rules. A customer relationship, which is separately defined, basically means that there is an ongoing relationship between the credit union and a consumer. For credit unions, it is obvious that their members will fall under the meaning of customer but the term customer will also include certain nonmembers. A nonmember may also have a customer relationship with a credit union in certain circumstances.

As explained more fully in the discussion of proposed § 716.4, a consumer becomes a customer of a credit union at the time of entering into a continuing relationship with the credit union. Ordinarily, a consumer will enter into a continuing relationship with the credit union at the time the consumer becomes a member. In some cases, a nonmember may also enter into a continuing relationship with a credit union. This may occur, for example, when a nonmember acts as a guarantor on a loan for a member or is listed by a member as a joint account holder. Another example of nonmembers who would qualify as customers are individuals who establish a share account at a low-income designated credit union.

The distinction between consumers and customers determines what notices a credit union must provide. If a consumer never becomes a customer, then, unless the credit union intends to disclose nonpublic personal information outside of the exceptions about that consumer to nonaffiliated third parties, the credit union is not required to provide any privacy notices. By contrast, if a consumer becomes a customer, the credit union must provide a copy of its privacy policy prior to the time it establishes the customer relationship and at least annually thereafter during the continuation of the customer relationship.

(j) *Customer relationship.* The proposed rule defines "customer relationship" to mean a continuing relationship between a consumer and the credit union whereby the credit union provides a financial product or service to a consumer that is to be used primarily for personal, family, or household purposes. NCUA's definition parallels the other Agencies' definition of customer relationship, but highlights in the examples the circumstances as applicable to members and nonmembers.

Because the GLB Act requires annual notices of the credit union's privacy policies to customers, NCUA and the Agencies have interpreted the Act as requiring more than isolated transactions between a financial institution and a consumer to establish a customer relationship, unless it is reasonable to expect further contact between the institution and consumer afterwards. Thus, the proposed rule defines "customer relationship" as one that is of a continuing nature.

NCUA has changed the examples in this subsection to reflect that a member will necessarily have a continuing relationship with a credit union but that certain nonmembers may also have a continuing relationship and, therefore, be entitled to the same notices and disclosures that the credit union must provide to its members. These circumstances include where a nonmember has a joint account with a member, where a nonmember has an account with a low-income credit union, or where a credit union owns or services a nonmember's loan.

The examples that follow the definition of "customer relationship" clarify, for instance, that using an automated teller machine at a credit union at which a consumer transacts no other business or purchasing of traveler's checks would not constitute a continuing relationship. While a person engaging in one of these types of transactions would be a consumer under the regulation (thereby requiring the credit union to provide notices *if* the credit union intends to disclose nonpublic personal information about the consumer to nonaffiliated third parties outside of the exceptions), the consumer would not be a customer. Even if a consumer repeatedly engages in transactions of this sort, such as withdrawing funds at regular intervals from an ATM owned by a credit union with whom the consumer has no

customer relationship, the consumer will not be considered a customer.

The examples also clarify that a nonmember will have a customer relationship if a credit union has purchased the nonmember's loan or services a nonmember's loan.

(k) *Financial institution.* The proposed rule defines "financial institution" as any institution the business of which is engaging activities that are financial in nature, or incidental to such financial activities, as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). The proposed rule also exempts from the definition of "financial institution" those entities specifically excluded by the GLB Act.

(l) *Financial product or service.* The proposed rule defines "financial product or service" as a product or service that a financial institution could offer as an activity that is financial in nature, or incidental to such a financial activity, under section 4(k) of the Bank Holding Company Act of 1956, as amended. It includes the credit union's evaluation of information collected in connection with an application by a consumer for a financial product or service. It also includes the distribution of information about a consumer for the purpose of assisting the consumer to obtain a financial product or service. Thus the definition includes nonpublic personal information provided by a consumer in an application for a financial product or service that ultimately is rejected or withdrawn. An activity that is complementary to a financial activity, as described in section 4(k), is not included in the definition of "financial product or service" under this part.

(m) *Government regulator.* The proposed rule adopts the definition of "government regulator" that includes each of the Agencies with enforcement authority under the statute, including State insurance authorities under the circumstances identified in the definition. This term is used in the exception set out in proposed § 716.11(a)(4) for disclosures to law enforcement agencies, "including government regulators."

(n) *Nonaffiliated third party.* The proposed rule defines "nonaffiliated third party" as any person (which includes natural persons as well as corporate entities such as corporations, partnerships, trusts, and so on) except (1) an affiliate of a credit union, and (2) a joint employee of a credit union and a third party. This definition is intended to be substantively the same as the definition used in section 509(5) of the GLB Act.

(o) *Nonpublic personal information.* Section 509(4) of the GLB Act defines "nonpublic personal information" to mean "personally identifiable financial information" (which term is not defined in the Act) that is: provided by a consumer to a financial institution; results from any transaction with the consumer or any service performed for the consumer; or is otherwise obtained by the financial institution. Any list, description, or other grouping of consumers—and "publicly available information" (which also is undefined in the GLB Act) pertaining to them—that is derived using any nonpublic personal information other than publicly available information also is included in the definition of "nonpublic personal information."

The proposed rule implements this provision of the GLB Act by restating, in paragraph (1) of proposed § 716.2(o), the two categories of information described above. The example that follows the general definition clarifies that publicly available information and other identifying information about consumers, such as addresses and social security numbers, would be considered nonpublic personal information if the information is derived from information provided by a consumer or from customer accounts at, or other relationships with, a financial institution.

The proposed rule excludes publicly available information from the scope of "nonpublic personal information" only in two circumstances. The first is when the information is part of a list, description, or other grouping of consumers that is derived without using personally identifiable financial information. The second is when information, not provided by a consumer and not resulting from a transaction with the consumer, is otherwise obtained by a credit union in connection with providing a financial product or service to the consumer. However, in order for the information to be considered "publicly available", the information must be obtained from government records, widely distributed media, or government-mandated disclosures. The fact that information is available from those sources is immaterial if the credit union does not actually obtain the information from one of them.

Some of the other Agencies are considering an alternative definition of "nonpublic personal information" that would permit a financial institution to release publicly available information regardless of the source but would still prohibit the release of this information as part of a list, description or other grouping of consumers that is derived using personally identifiable financial information. This will produce a different result in the situation where a credit union wants to disclose the name, address, or other information available to the general public about an individual. In that situation, the proposed rule requires compliance with the notice and opt out requirements if the credit union received the information from the individual. The alternative definition would not, because the information would not be part of a list, description, or other grouping of consumers. NCUA invites comment on both alternatives.

NCUA also specifically invites comment on whether the definition of "nonpublic personal information" would cover information about a consumer that contains no indicators of a consumer's identity. For instance, if a credit union provided aggregate information about its mortgage loans (such as loan-to-value ratios, interest rates, census tracts of mortgaged property, payment history, credit scores, and income) to a nonaffiliated third party for the purpose of preparing market studies, would the lender, without notice or opt out to the consumer, be permitted to do so if the information contains no personal identifiers?

(p) *Personally identifiable financial information.* The GLB Act defines "nonpublic personal information" to include "personally identifiable financial information" but does not define the latter term.

As a general matter, the rule treats any personally identifiable information as financial if it is obtained by a credit union in connection with providing a financial product or service to a consumer. NCUA believes that this approach creates a workable and clear standard for distinguishing information that is financial from information that is not, while at the same time giving meaning to the word "financial." NCUA recognizes that this may result in certain information being covered by the rules that typically is not thought of as financial, such as health status. However, the broad scope of what is deemed a "financial product or service" under the GLB Act requires a comparably broad scope of what is deemed "financial information." NCUA specifically invites comment on the proposed definition of "personally identifiable financial information."

The proposed rule defines "personally identifiable financial information" to include three categories of information. The first category is any information that a consumer provides a

credit union in order for the credit union to provide a financial product or service to that consumer. As noted in the examples that follow the definition, this would include information provided on an application to obtain a loan, credit card, or other financial product or service. If, for instance, medical information is provided on an application to obtain a financial product or service, that information would be considered "personally identifiable financial information" for purposes of the proposed rule.

The second category of information covered by the proposed definition of "personally identifiable financial information" includes any information resulting from any transaction between the consumer and the credit union involving a financial product or service. This would include, as noted in the examples following the definition, account balance information, payment or overdraft history, and credit or debit card purchase information.

The third category includes any financial information about a consumer otherwise obtained by the credit union in connection with providing a financial product or service. This would include, for example, information obtained from a consumer report or from an outside source to verify information a consumer provides on an application to obtain a financial product or service. It would not include, however, information that is publicly available.

The examples note that the definition of "personally identifiable information" does not include a list of names and addresses of people who are customers of an entity that is not a financial institution. Thus, the names and addresses of people who subscribe, for instance, to a particular magazine fall outside the definition. If, however, a credit union incorporates those names and addresses into a listing of one or more of the credit union's members or nonmember customers, then the entire list becomes nonpublic personal information.

NCUA notes that there are other laws that may impose limitations on disclosures of nonpublic personal information in addition to those imposed by the GLB Act and this proposed rule. For instance, the Fair Credit Reporting Act imposes conditions on the sharing of application information between affiliates and nonaffiliated third parties. The recently proposed Department of Health and Human Services regulations that implement the Health Insurance Portability and Accountability Act of 1996 would, if adopted in final form, limit the circumstances under which medical information may be disclosed. 64 FR 59918 (Nov. 3, 1999). State laws may also affect a credit union's ability to disclose information. Thus, credit unions will need to monitor and comply with relevant legislative and regulatory developments that affect the disclosure of consumer information.

(q) *Publicly available information.* The proposed rule defines "publicly available information" as information lawfully made available to members of the general public that is obtained from three broad types of source. First, it includes information from official public records, such as real estate recordations or security interest filings. Second, it includes information from widely distributed media, such as a telephone book, television or radio program, or newspaper. Third, it includes information from disclosures required to be made to the general public by federal, state, or local law, such as securities disclosure documents. The proposed rule states that information obtained over the Internet will be considered publicly available information if the information is obtainable from a site available to the general public without requiring a password or similar restriction. NCUA invites comment on what information is appropriately considered publicly available, particularly in the context of information available over the Internet.

(r) *You.* This term refers to all federally-insured credit unions.

Section 716.4 Initial Notice to Consumers of Privacy Policies and Practices Required

The GLB Act requires a financial institution to provide an initial notice of its privacy policies and practices in two circumstances. For customers, the notice must be provided at the time of establishing a customer relationship. For credit unions, ordinarily this will be at the time an individual applies for membership. For consumers who do not become customers, the notice must be provided prior to disclosing nonpublic personal information about the consumer to a nonaffiliated third party. In addition, as discussed more fully in § 716.8, a revised notice must be provided to consumers prior to disclosing nonpublic personal information if a credit union's policies have changed.

Proposed § 716.4(a) states the general rule regarding these notices. It requires a credit union to provide a clear and conspicuous notice that accurately reflects the credit union's privacy policies and practices. A notice is clear and conspicuous if it is reasonably understandable and designed to call attention to the nature and significance of the information it provides. A credit union may not represent in the notice that it will provide certain protections and then fail to provide them; that would mean the notice is not accurate. NCUA expects that credit unions will take appropriate measures to ensure adherence to their stated privacy policies.

Affiliated institutions may use a common initial, annual, or opt out notice, so long as the notice is delivered in accordance with the rule and is accurate for all recipients. Similarly, the rule permits a credit union to establish different privacy policies and practices for different customers, so long as they receive notices that are accurate with respect to them. Credit unions could, for example, have different notices for members and for nonmember customers.

The proposed rule requires a credit union to provide an individual a privacy notice prior to the time that it establishes a customer relationship. Ordinarily, this will be at the time an individual applies for membership. For a nonmember, a credit union could provide the notice at the same time it provides other required notices, such as those required by the Truth-in-Lending Act. This approach is intended to strike a balance between (a) ensuring that consumers will receive privacy notices at a meaningful point along the continuum of "establishing a customer relationship" and (b) minimizing unnecessary burdens on credit unions that may result if a credit union is required to provide a consumer with a series of notices at different points in a transaction. Nothing in the proposed rule is intended to discourage a credit union from providing a privacy notice at an earlier point in the relationship to make it easier for an individual to compare several institutions' privacy policies and practices in advance of conducting transactions.

Proposed § 716.4(c) identifies the time the customer relationship is established as the point at which a credit union and a consumer enter into a continuing relationship. The examples NCUA provides differ from other Agencies to account for the member or nonmember relationship and the financial products or services that credit unions offer. The examples after the statement of the general rule inform the reader that, for a member, the relationship is established when the individual becomes a member. For nonmembers in relationships that are contractual in nature, such as share accounts, loans, or purchases of a nondeposit product, a customer relationship is established

when the individual executes the contract necessary to conduct the transaction in question. In the case of a credit card, the nonmember customer relationship is established when the necessary step to open the credit card account is taken under a credit union's procedures.

For consumers that are not customers, the initial notice may be provided at any point before the credit union discloses nonpublic personal information to nonaffiliated third parties. An initial notice is not required if the credit union does not intend to disclose the information or intends to make only disclosures authorized by one of the exceptions in §§ 716.10 and 716.11.

NCUA recognizes that in some circumstances a nonmember customer does not have a choice as to the credit union with which he or she has a nonmember customer relationship, such as when a credit union purchases the nonmember customer's loan in the secondary market. In these situations, it may not be practicable for the credit union to provide a notice prior to establishing the nonmember customer relationship. NCUA invites comment on whether an exception is necessary for such circumstances and how an exception should be formulated.

Proposed § 716.4(d) sets out the rules governing how credit unions must provide the initial notices. The general rule requires initial notice be provided so that each recipient can reasonably be expected to receive actual notice. NCUA invites comment on who should receive a notice in situations where there is more than one party to an account.

The notice may be delivered in writing or, if the consumer agrees, electronically. Oral notices alone are insufficient. In the case of members or nonmember customers, the notice must be given in a way so that the member or nonmember customer may either retain it or access it at a later time. This would permit a credit union to provide access to an electronic version of the notice if the consumer agrees. This requirement that the notice be given in a manner permitting access at a later time does not preclude a credit union from changing its privacy policy. See proposed 12 CFR 716.8(c). Rather, the rules are intended only to require that a member or nonmember customer be able to access the most recently adopted privacy policy. NCUA requests comment on the regulatory burden of providing initial notices. Specifically, NCUA would appreciate learning the methods credit unions expect to use to provide initial notices.

Examples of acceptable ways the notice may be delivered include hand-delivering a copy of the notice, mailing a copy to the consumer's last known address, or sending it via electronic mail to a consumer who obtains a financial product or service from the credit union electronically. It would not be sufficient to provide only a posted copy of the notice in a lobby. Similarly, it would not be sufficient to provide the initial notice only on a Web page, unless the consumer is required to access that page to obtain the product or service in question. Electronic delivery generally should be in the form of electronic mail so as to ensure that a consumer actually receives the notice. In those circumstances where a consumer is in the process of conducting a transaction over the Internet, electronic delivery also may include posting the notice on a Web page as described above. If a credit union and consumer orally agree to enter into a contract for a financial product or service over the telephone, the credit union may provide the consumer with the option of receiving the initial notice after providing the product or service so as not to delay the transaction.

NCUA requests comment on whether there are situations where providing notice by mail is impracticable.

Section 716.5 Annual Notice to Customers Required

Section 503 of the GLB Act requires a financial institution to provide notices of its privacy policies and practices at least annually to its customers. The proposed rule implements this requirement by requiring a clear and conspicuous notice that accurately reflects the privacy policies and practices then in effect to be provided at least once during any period of twelve consecutive months. The rule governing how to provide an initial notice also applies to annual notices.

Section 503(a) of the GLB Act requires that the annual notices be provided "during the continuation" of a customer relationship. To implement this requirement, the proposed rules states that a credit union is not required to provide annual notices to a customer with whom it no longer has a continuing relationship. The examples that follow this general rule provide guidance on when there no longer is a continuing relationship for purposes of the rules. NCUA has changed these examples to reflect the concept of member and nonmember customer relationships. The examples include, for instance, when the member terminates the member relationship. For nonmembers, the examples include share accounts that are treated as dormant by a credit union, loans that are paid in full or charged off, or assets sold without retaining servicing rights. NCUA invites comment on whether the example of dormant accounts provides a sufficiently clear standard and whether the applicable standard should be the credit union's policies or applicable state law. In addition, NCUA invites comment on whether the standard should apply to members as well as nonmembers.

There may be certain nonmember customer relationships that do not present a clear event after which there is no longer a nonmember customer relationship. The proposed rule contains an example intended to cover these situations, stating that a relationship will no longer be deemed continuing for purposes of the proposed rule if the credit union has not communicated with a nonmember customer, other than providing an annual privacy policy notice, for a period of twelve consecutive months.

NCUA requests comment on the regulatory burden of providing annual notices. Specifically, NCUA would appreciate learning the methods credit unions expect to use to provide annual notices and whether credit unions will use different methods for providing initial notices than for providing annual notices.

Section 716.6 Information To Be Included in Initial and Annual Notices of Privacy Policies and Practices

Section 503 of the GLB Act identifies the items of information that must be included in a financial institution's initial and annual notices. Section 503(a) of the GLB Act sets out the general requirement that a financial institution must provide customers with a notice describing the institution's policies and practices with respect to, among other things, disclosing nonpublic personal information to affiliates and nonaffiliated third parties. Section 503(b) of the Act identifies certain elements that must be addressed in that notice.

The required content is the same for both the initial and annual notices of privacy policies and practices. While the information contained in the notices must be accurate as of the time the notices are provided, a credit union may prepare its notices based on current and anticipated policies and practices.

The information to be included is as follows:

(1) *Categories of nonpublic personal information that a credit union may collect.*

A credit union must inform its customers about the categories of nonpublic personal information it

collects. The proposed rule provides an example of how to comply with this requirement that focuses the notice on the source of the information collected. As noted in the example, a credit union will satisfy this requirement if it categorizes the information according to the sources, such as application information, transaction information, and consumer report information. Credit unions may choose to provide more detail about the categories of information collected but are not required to do so by the proposed rule.

(2) *Categories of nonpublic personal information that a credit union may disclose.*

A credit union's initial and annual notice must provide information about the categories of nonpublic personal information that may be disclosed either to affiliates or nonaffiliated third parties. This requirement is in proposed § 716.6(a)(2). The examples of how to comply focus on the content of information to be disclosed. As stated in the examples, a credit union may satisfy this requirement by categorizing information according to source and providing illustrative examples of the content of the information. These categories might include application information (such as assets and income), identifying information (such as name, address, and social security number), transaction information (such as information about account activity, account balances, and purchases), and information from consumer reports (such as credit history).

Credit unions are free to provide more detailed information in the initial and annual notices if they choose. Conversely, if a credit union does not disclose, and does not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, its initial and annual notices may simply state this fact without further elaboration about categories of information disclosed.

(3) *Categories of affiliates and nonaffiliated third parties to whom a credit union discloses nonpublic personal information.*

Section 503(a) of the Act includes a general requirement that a financial institution provide a notice to its customers of the institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties. Section 503(b) states that the notice required by section 503(a) shall include certain specified items. Among those is the requirement, in section 503(b)(1), that a financial institution inform its customers about its policies and practices with respect to disclosing nonpublic personal information to nonaffiliated third parties. NCUA and the other Agencies believe that, when read together, sections 503(a) and 503(b) of the GLB Act require a financial institution's notice to address disclosures of nonpublic personal information to both affiliates and nonaffiliated third parties.

The proposed rule states that a credit union will adequately categorize the affiliates and nonaffiliated third parties to whom it discloses nonpublic personal information about consumers if it identifies the types of businesses that they engage in. Types of businesses may be described by general terms, such as financial products or services, if the credit union provides illustrative examples of the significant lines of businesses of the recipient, such as mortgage lending, insurance brokerage, or securities brokerage.

The GLB Act does not require a financial institution to list the categories of persons to whom information may be disclosed under one of the exceptions set out in proposed §§ 716.10 and 716.11. The proposed rule states that a credit union is required only to inform consumers that it makes disclosures as permitted by law to nonaffiliated third parties in addition to those described in the notice. NCUA invites comment on whether such a disclosure would be adequate.

If a credit union does not disclose, and does not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, its initial and annual notices may simply state this fact without further elaboration about categories of third parties.

(4) *Information about former members and nonmember customers.* Section 503(a)(2) requires the financial institution's initial and annual privacy notices to include the institution's policies and practices with respect to disclosing nonpublic personal information of persons who have ceased to be customers of the institution. Section 503(b)(1)(B) requires that this information be provided with respect to information disclosed to nonaffiliated third parties.

NCUA and the other Agencies have concluded that, when read together, sections 503(a)(2) and 503(b)(1)(B) require a financial institution to include in the initial and annual notices the institution's policies and practices with respect to sharing information about former customers with all affiliates and nonaffiliated third parties. This requirement is set out in the proposed rules at § 716.6(a)(4).

(5) *Information disclosed to service providers.* Section 502(b)(2) of the GLB Act permits a financial institution to disclose nonpublic personal information about a consumer to a nonaffiliated third party for the purpose of the third party performing services for the institution, including marketing financial products or services under a joint agreement between the financial institution and at least one other financial institution. In this case, a consumer has no right to opt out. However, the financial institution must inform the consumer that it will be disclosing the information in question, unless the service falls within one of the exceptions listed in section 502(e) of the Act.

The proposed rule implements these provisions, in proposed § 716.6(a)(5), by requiring that, if a credit union discloses nonpublic personal information to a nonaffiliated third party under the exception for service providers, the credit union is to include in the initial and annual notices a separate description of the categories of information that are disclosed and the categories of third parties providing the services. A credit union may comply with these requirements by providing the same level of detail in the notice as is required to satisfy the requirements in proposed §§ 716.6(a)(2) and (3).

(6) *Right to opt out.* As previously noted, sections 503(a)(1) and 503(b)(1) of the GLB Act require a financial institution to provide customers with a notice of its privacy policies and practices concerning, among other things, disclosing nonpublic personal information consistent with section 502 of the Act.

The proposed rule implements this requirement, in proposed § 716.6(a)(6), by requiring the initial and annual notices to explain the right to opt out of disclosures of nonpublic personal information to nonaffiliated third parties, including the methods available to exercise that right.

(7) *Disclosures made under the FCRA.* Section 503(b)(4) of the GLB Act requires a financial institution's initial and annual notice to include the disclosures required, if any, under section 603(d)(2)(A)(iii) of the FCRA. Section 603(d)(2)(A)(iii) excludes from the definition of "consumer report" the communication of certain consumer information among affiliated entities if the consumer is notified about the disclosure of such information and given an opportunity to opt out of that information sharing. The information that can be shared among affiliates under this provision includes information from consumer reports and

applications for financial products or services. In general, this information represents personal information provided directly by the consumer to the institution, such as income and social security number, in addition to information contained within credit bureau reports.

The proposed rule implements section 503(b)(4) of the GLB Act by including the requirement that a credit union's initial and annual notice include any disclosures a credit union makes under section 603(d)(2)(A)(iii) of the FCRA.

(8) *Confidentiality, security, and integrity.* Section 503(a)(3) of the GLB Act requires the initial and annual notices to provide information about a financial institution's policies and practices with respect to protecting the nonpublic personal information of consumers. Section 503(b)(3) of the Act requires the notices to include the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information, in accordance with section 501. Section 501 requires the Agencies to establish standards governing the administrative, technical, and physical safeguards of customer information.

The proposed rule implements these provisions by requiring a credit union to include in the initial and annual notices the credit union's policies and practices for protecting the confidentiality, security, and integrity of nonpublic personal information. The example in the proposed rules states that a credit union may comply with the requirement as it concerns confidentiality and security if it explains matters such as who has access to the information and the circumstances under which the information may be accessed. The information about integrity should focus on the measures the credit union takes to protect against reasonably anticipated threats or hazards. The proposed rule does not require a credit union to provide technical or proprietary information about how it safeguards consumer information.

The Agencies are in the process of preparing the section 501 standards relating to administrative, technical, and physical safeguards, and intend to have those standards in place at the time the final privacy rules are issued. This will enable credit unions to reflect those standards in the initial and annual notices.

Section 716.7 Limitation on Disclosure of Nonpublic Personal Information About Consumers to Nonaffiliated Third Parties

Section 502(a) of the GLB Act generally prohibits a financial institution from sharing nonpublic personal information about a consumer with a nonaffiliated third party unless the institution provides the consumer with a copy of the institution's privacy policy. Section 502(b) of the Act adds the requirements that the financial institution provide the consumer with a clear and conspicuous notice that the consumer's nonpublic personal information may be disclosed to nonaffiliated third parties, that the consumer be given an opportunity to opt out of that disclosure, and that the consumer be informed of how to opt out.

Section 716.7 of the proposed rule implements these provisions. Paragraph (a)(1) of § 716.7 sets out the criteria that a credit union must satisfy before disclosing nonpublic personal information to nonaffiliated third parties. These criteria apply to direct and indirect disclosures through an affiliate. NCUA invites comment on how the right to opt out should apply in the case of joint accounts. Should, for instance, a credit union require all parties to an account to opt out before the opt out becomes effective? If not, and only one of the parties opts out, should the opt out apply only to information about the party opting out or should it apply to information about all parties to the account? NCUA also requests comment on how the opt out rights should be handled with respect to commingled trust accounts, where a trustee manages a single account on behalf of multiple beneficiaries.

Paragraph (a)(2) defines "opt out" in a way that incorporates the exceptions to the right to opt out stated in proposed §§ 716.9, 716.10, and 716.11. These exceptions permit disclosures of nonpublic personal information to nonaffiliated third parties without first providing the initial privacy notice and giving the consumer the right to opt out.

The proposed rule requires that a consumer be given an opportunity to opt out before information is disclosed by requiring that the opportunity be reasonable. The examples that follow the general rule provide guidance in situations involving notices that are mailed and notices that are provided in connection with isolated transactions. In the former case, a consumer will have a reasonable opportunity to opt out if the credit union provides 30 days in which to opt out. In the latter case, opportunity will be reasonable if the consumer must decide as part of the transaction whether to opt out before completing the transaction. NCUA invites comment on whether 30 days is a reasonable opportunity to opt out in the case of notices sent by mail, and on whether an example in the context of transactions conducted using an electronic medium would be helpful.

The requirement that a consumer have a reasonable opportunity to opt out does not mean that a consumer forfeits that right once the opportunity lapses. The consumer always has the right to opt out (this point is discussed further in proposed § 716.8, below). But, a decision to opt out at a time after the opportunity first is presented may result in nonpublic personal information being disclosed to nonaffiliated third parties for the period of time necessary to implement the consumer's opt out direction.

Paragraph (b) of proposed § 716.7 clarifies that the right to opt out applies regardless of whether a consumer has established a member or nonmember customer relationship with a credit union. As noted above, all members or nonmember customers are consumers under the proposed rules. Thus, the fact that a consumer establishes a member or nonmember customer relationship with a credit union does not change the credit union's obligations to comply with the requirements of proposed § 716.7(a) before sharing nonpublic personal information about that consumer with nonaffiliated third parties. This also applies in the context of a consumer who had a member or nonmember customer relationship with a credit union but then terminated that relationship. Paragraph (b) also clarifies that the consumer protections afforded by paragraph (a) of proposed § 716.7 apply to all nonpublic personal information collected by a credit union, regardless of when collected. Thus, if a consumer elects to opt out of information sharing with nonaffiliated third parties, that election applies to all nonpublic personal information about that consumer in the credit union's possession, regardless of when the information is obtained.

Paragraph (c) of proposed § 716.7 states that a credit union may, but is not required to, provide consumers with the option of a partial opt out in addition to the opt out required by this section. This could enable a consumer to limit, for instance, the types of information disclosed to nonaffiliated third parties or the types of recipients of the nonpublic personal information about that consumer. If the partial opt out option is provided, a credit union must

state this option in a way that clearly informs the consumer about the choices available and consequences thereof.

Section 716.8 Form and Method of Providing Opt Out Notice to Consumers

Paragraph (a) of proposed § 716.8 requires that any opt out notice provided by a credit union under § 716.7 must be clear and conspicuous and accurately explain the right to opt out. The notice must inform the consumer that the credit union may disclose nonpublic personal information to nonaffiliated third parties, state that the consumer has a right to opt out, and provide the consumer with a reasonable means by which to opt out.

The examples that follow the general rule state that a credit union will adequately provide notice of the right to opt out if it: identifies the categories of information that may be disclosed; the categories of nonaffiliated third parties to whom the information may be disclosed; and that the consumer may opt out of those disclosures. A credit union that plans to disclose only limited types of information or to only a specific type of nonaffiliated third party may provide a correspondingly narrow notice to consumers. However, to minimize the number of opt out notices a credit union must provide, the credit union may wish to base its notices on current and anticipated information sharing plans. A new opt out notice is not required for disclosures to different types of nonaffiliated third parties or of different types of information, provided that the most recent opt out notice is sufficiently broad to cover the entities or information in question. Nor is a credit union required to provide subsequent opt out notices when a consumer establishes a new type of relationship with that credit union, such as becoming a member or nonmember customer, unless the credit union's opt out policies differ depending on the type of member or nonmember customer relationship.

The examples also suggest several ways in which a credit union may provide reasonable means to opt out, including check-off boxes, self-addressed stamped reply forms, and electronic mail addresses. A credit union does not provide a reasonable means of opting out in the opt out notice by requiring consumers to send their own letter informing the credit union of an opt out election. A credit union may honor letters, particularly with respect to delayed opt outs as described in paragraph (d).

Paragraph (b) applies the same rules to delivery of the opt out notice that apply to delivery of the initial and annual notices. In addition, paragraph (b) clarifies that the opt out notice may be provided together with, or on the same form as, the initial and annual notices. However, if the opt out notice is provided after the initial notice, a credit union must provide a copy of the initial notice along with the opt out notice. If a credit union and consumer orally agree to enter into a customer relationship, the credit union may provide the opt out notice within a reasonable time thereafter if the consumer agrees. NCUA invites comment on whether a more specific time by which the notice must be given would be appropriate.

Paragraph (c) sets out the rules governing a credit union's obligations in the event the credit union changes its disclosure policies. As stated in that paragraph, a credit union may not disclose nonpublic personal information to a nonaffiliated third party unless the credit union first provides a revised notice and new opportunity to opt out. The credit union must wait a period of time that is reasonable under the circumstances before disclosing information according to the terms of the revised notice in order to afford the consumer a reasonable opportunity to opt out. A credit union must provide the revised notice of its policies and practices and opt out notice to a consumer using the means permitted for providing the initial notice and opt out notice to that consumer under § 716.4(c) or § 716.8(b), respectively, which require that the notices be given in a manner so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, in electronic form.

Paragraph (d) states that a consumer has the right to opt out at any time. NCUA considered whether to include a time limit by which credit unions must effectuate a consumer's opt out election, but decided that the wide variety of practices of credit unions made one limit inappropriate. Instead, NCUA's rule requires that the sharing of nonpublic personal information stop promptly.

Paragraph (e) states that an opt out will continue until a consumer revokes it. The rules require that such revocation be in writing, or, if the consumer has agreed, electronically.

NCUA requests comment on the regulatory burden of complying with opt out notices. How do credit unions expect to give opt out opportunities? How many opt outs do credit unions expect to receive and need to process?

Section 716.9 Exception to Opt Out Requirements for Service Providers and Joint Marketing

Section 502(b) of the GLB Act creates an exception to the opt out rules for the disclosure of information to service providers and for marketing. A consumer will not have the right to opt out of disclosing nonpublic personal information about the consumer to nonaffiliated third parties under these circumstances, if the credit union satisfies certain requirements.

First, the credit union must, as stated in section 502(b), "fully disclose" to the consumer that it will provide this information to the nonaffiliated third party before the information is shared. This disclosure should be provided as part of the initial notice that is required by § 716.4. NCUA invites comment on whether the proposed rules appropriately implement the requirement of "full" disclosure in section 502(b).

Second, the credit union must enter into a contract with the third party that requires the third party to maintain the confidentiality of the information. This contract should be designed to ensure that the third party (a) will maintain the confidentiality of the information at least to the same extent as is required for the credit union that discloses it, and (b) will use the information solely for the purposes for which the information is disclosed or as otherwise permitted by §§ 716.10 and 716.11 of the proposed rules. NCUA invites comment on the application of proposed § 716.9(a)(2)(ii) in the context of credit unions that contract with credit scoring vendors to evaluate borrower creditworthiness. Specifically, would that section prohibit the vendor from using the consumer's information without the indicators of personal identity to re-validate the underlying model? Would using the information in this manner be beyond the lender's immediate purpose of determining the consumer's propensity to perform acceptably?

The GLB Act allows the Agencies to impose requirements on the disclosure of information pursuant to the exception for service providers beyond those imposed in the statute. NCUA, like the other Agencies, has not done so in the proposed rules, but NCUA invites comment on whether additional requirements should be imposed, and, if so, what those requirements should address. NCUA notes, for instance, that joint agreements have the potential to create reputation risk and legal risk for a credit union entering into such an agreement. NCUA seeks comment on whether the rule should require a credit

union to take steps to assure itself that the product being jointly marketed and the other participants in the joint marketing agreement do not present undue risks for the credit union. These might include, for instance, ensuring that the credit union's sponsorship of the product or service in question is evident from the marketing of that product or service. NCUA also invites comments on any other requirements that would be appropriate to protect a consumer's financial privacy, and on whether the rules should provide examples of the types of joint agreements that are covered.

Section 716.10 Exceptions to Notice and Opt Out Requirements for Processing and Servicing Transactions

Section 502(e) of the GLB Act creates exceptions to the requirements that apply to the disclosure of nonpublic personal information to nonaffiliated third parties. Paragraph (1) of that section sets out certain exceptions for disclosures made, generally speaking, in connection with the administration, processing, servicing, and sale of a consumer's account.

Paragraph (a) of proposed § 716.10 sets out those exceptions, making only stylistic changes to the statutory text that are intended to make the exceptions easier to read. Paragraph (b) sets out the definition of "necessary to effect, administer, or enforce" that is contained in section 509(7) of the GLB Act.

The exceptions set out in proposed § 716.10, and the exceptions discussed in proposed § 716.11, below, do not affect a credit union's obligation to provide initial notices of its privacy policies and practices prior to the time it establishes a member or nonmember customer relationship and annual notices thereafter. Those notices must be provided to all members and nonmember customers, even if the credit union intends to disclose the nonpublic personal information only pursuant to the exceptions in § 10.

Section 716.11 Other Exceptions to Notice and Opt Out Requirements

As noted above, section 502(e) contains several exceptions to the requirements that otherwise would apply to the disclosures of nonpublic personal information to nonaffiliated third parties. Proposed § 716.11 sets out those exceptions that are not made in connection with the administration, processing, servicing, and sale of a consumer's account.

One of the exceptions stated in proposed § 716.11 is for disclosures made with the consent or at the direction of the consumer, provided the consumer has not revoked the consent. Following the list of exceptions is an example of consent in which a credit union that has received an application from a consumer for a mortgage loan informs a nonaffiliated insurance company that the consumer has applied for a loan and may need to purchase homeowner's insurance. Consent in such a situation would enable the credit union to make the disclosure to the third party without first providing the initial notice required by § 716.4 or the opt out notice required by § 716.7, but the disclosure must not exceed the purposes for which consent was given. The example also states that consent may be revoked by a consumer at any time by the consumer exercising the right to opt out of future disclosures. NCUA invites comment on whether safeguards should be added to the exception for consent in order to minimize the potential for consumer confusion. Such safeguards might include, for instance, that consent be written or that it be indicated on a separate signature line in a relevant document or on a distinct Web page.

Section 716.12 Limits on Redisclosure and Reuse of Information

Section 716.12 of the proposed rule implements the GLB Act's limitations on redisclosure and reuse of nonpublic personal information about consumers. Section 502(c) provides that a nonaffiliated third party that receives nonpublic personal information from a financial institution shall not, directly or through an affiliate of the third party, disclose the information to any person that is not affiliated with either the financial institution or the third party, unless the disclosure would be lawful if made directly by the financial institution. Paragraph (a)(1) sets out the GLB Acts redisclosure limitation as it applies to a credit union that receives information from another financial institution. Paragraph (b)(1) mirrors the provisions of paragraph (a)(1), but applies the redisclosure limits to any nonaffiliated third party that receives nonpublic personal information from a credit union.

The GLB Act appears to place the institution that receives the information into the shoes of the institution that disclosed the information for purposes of determining whether redisclosures by the receiving institution are "lawful." Thus, the GLB Act appears to permit the receiving institution to redisclose the information to (1) an entity to whom the original transferring institution could disclose the information pursuant to one of the exceptions in §§ 716.9, 716.10, or 716.11, or (2) an entity to whom the original transferring institution could have disclosed the information as described under its privacy policies and practices, unless the consumer has exercised the right to opt out of that disclosure. Because a consumer can exercise the right to opt out of a disclosure at any time, the GLB Act may effectively preclude third parties that receive information to which the opt out right applies from redisclosing the information, except pursuant to one of the exceptions in §§ 716.9, 716.10, or 716.11. NCUA invites comment on whether the rule should require a credit union that discloses nonpublic personal information to a nonaffiliated third party to develop policies and procedures to ensure that the third party complies with the limits on redisclosure of that information.

Sections 502(b)(2) and 502(e)(as implemented by §§ 716.9, 716.10, and 716.11 of the proposed rule) describe when a financial institution may disclose nonpublic personal information without providing the consumer with the initial privacy notice and an opportunity to opt out, but those exceptions apply only when the information is used for the specific purposes set out in those sections. Paragraph (a)(2) of proposed § 716.12 clarifies this limitation on reuse as it applies to credit unions. Paragraph (a)(2) provides that a credit union may use nonpublic personal information about a consumer that it receives from a nonaffiliated financial institution in accordance with an exception under §§ 716.9, 716.10, or 716.11, only for the purpose of that exception. Paragraph (b)(2) applies the same limits on reuse to any nonaffiliated third party that receives nonpublic personal information from a credit union.

NCUA invites comment on the meaning of the word "lawful" as that term is used in section 502(c). NCUA specifically solicits comment on whether it would be lawful for a nonaffiliated third party to disclose information pursuant to the exception provided in proposed § 716.9. Under that exception, a credit union must comply with certain requirements before disclosing information to a nonaffiliated third party. Given that the statute and proposed rules impose those requirements on credit unions making the initial disclosure, NCUA invites comment on whether subsequent disclosures by the third party could satisfy the requirement that those disclosures be lawful when the credit union is not party to the subsequent disclosure.

Section 716.13 Limits on Sharing of Account Number Information for Marketing Purposes

Section 502(d) of the GLB Act prohibits a financial institution from disclosing, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer. Proposed § 716.13 restates this statutory prohibition with minor stylistic changes intended to make the rule easier to read.

NCUA notes that there is no exception in Title V to the flat prohibition established by section 502(d). The Statement of Managers contained in the Conference Report to S. 900 encourages the Agencies to adopt an exception to section 502(d) to permit disclosures of account numbers in limited instances. It states—

> In exercising their authority under section 504(b) [which vests the Agencies with authority to grant exceptions to section 502(a)–(d) beyond those set out in the statute], the agencies and authorities described in section 504(a)(1) may consider it consistent with the purposes of this subtitle to permit the disclosure of customer account numbers or similar forms of access numbers or access codes in an encrypted, scrambled, or similarly coded form, where the disclosure is expressly authorized by the customer and is necessary to service or process a transaction expressly requested or authorized by the customer.

NCUA, like the other Agencies, has not included an exception to the prohibition of section 502(d) in the proposed rules, however, because of concerns about the potential for abuse that exists when someone other than a credit union is able to access a consumer's account.

NCUA seeks comment on whether section 502(d) prohibits the disclosure by a credit union to a marketing firm of encrypted account numbers if the credit union does not provide the marketer the key to decrypt the number, and on whether an exception to the section 502(d) prohibition could avoid creating the risks that may arise when a third party is provided access to a consumer's account. NCUA also seeks comment on whether a flat prohibition as set out in section 502(d) might unintentionally disrupt routine, unobjectionable practices, such as the disclosure of account numbers to a service provider who handles the preparation and distribution of monthly checking account statements for a credit union coupled with a request by the institution that the service provider include literature with the statement about a product. In addition, NCUA invites comment on whether a consumer ought to be able to consent to the disclosure of his or her account number notwithstanding the general prohibition in section 502(d) and, if so, what standards should apply.

Section 716.14 Protection of Fair Credit Reporting Act

Section 506 makes several amendments to the FCRA to vest rulemaking authority in various agencies and to restore the Agencies' regular examination authority. Paragraph (c) of section 506 states that, except for the amendments noted regarding rulemaking authority, nothing in Title V is to be construed to modify, limit, or supersede the operation of the FCRA, and no inference is to be drawn on the basis of the provisions of Title V whether information is transaction or experience information under section 603 of the FCRA.

Proposed § 716.14 implements section 506(c) of the GLB Act by restating the statute, making only minor stylistic changes intended to make the rule clearer.

Section 716.15 Relation to State Laws

Section 507 of the GLB Act states, in essence, that Title V does not preempt any state law that provides greater protections than are provided by Title V. Determinations of whether a state law or Title V provides greater protections are to be made by the Federal Trade Commission (FTC) after consultation with the agency that regulates either the party filing a complaint or the credit union about whom the complaint was filed. Determinations of whether state or federal law afford greater protections may be initiated by any interested party or on the FTC's own motion.

Proposed § 716.15 is substantively identical to section 507, noting that the proposed rules (as opposed to the statute) do not preempt state laws that provide greater protection for consumers than does the regulation.

Section 716.16 Effective Date; Transition Rule

Section 510 of the GLB Act states that, as a general rule, the relevant provisions of Title V take effect 6 months after the date on which rules are required to be prescribed. However, section 510(1) authorizes the Agencies to prescribe a later date in the rules enacted pursuant to section 504. The provisions in sections 504 and 506 that vest various agencies with rulemaking authority have been effective as of the date on which the GLB Act was enacted, namely, November 12, 1999.

Proposed § 716.16 states, in paragraph (a), an effective date of November 13, 2000. This assumes that a final rule will be enacted within the time frame prescribed by section 504(a)(3). NCUA intends to provide at least six months following the enactment of a final rule for credit unions to bring their policies and procedures into compliance with the requirements of the final rule. NCUA invites comment on whether six months following adoption of final rules is sufficient to enable credit unions to comply with the rules.

Paragraph (b) of proposed § 716.16 provides a transition rule for consumers who were members or nonmember customers as of the effective date of the rules. Those member or nonmember customer relationships already will have been established as of the effective date so, the rules require that the initial notice be provided within 30 days of the effective date. NCUA invites comment on whether 30 days is enough time to permit a credit union to deliver the required notices, bearing in mind that the GLB Act contemplates at least a six-month delayed effective date from the date the rules are adopted.

If a credit union intends to disclose nonpublic personal information about someone who was a consumer before the effective date but who has not obtained any financial product or service from the credit union since then, it must first provide the notices required by §§ 716.4 and 716.7 and provide a reasonable opportunity to opt out.

If, in this instance, the credit union already is disclosing information about such a consumer, it may continue to do so without interruption until the consumer opts out, in which case the credit union must stop disclosing nonpublic personal information about that consumer to nonaffiliated third parties as soon as reasonably practicable.

Section 741.220 Privacy of Consumer Financial Information

This provision requires all federally-insured credit unions to adhere to the provisions in part 716.

III. Regulatory Procedures

A. Paperwork Reduction Act

NCUA invites comment on:

(1) Whether the collections of information in the proposed 12 CFR part 716 are necessary for the proper performance of NCUA's functions, including whether the information has practical utility;

(2) The accuracy of NCUA's estimate of the burden of the information collections;

(3) Ways to enhance the quality, utility, and clarity of the information NCUA must collect under this regulation;

(4) Ways to minimize the burden of the information collections on credit unions, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. NCUA is currently requesting a control number for this information collection from OMB.

This proposed regulation contains several disclosure requirements. Credit unions must prepare and provide the initial notice to all current members and nonmember customers and all new members and nonmember customers upon the commencement of a member or nonmember customer relationship. 12 CFR 716.4(a). Subsequently, credit unions must provide an annual notice to all members and nonmember customers at least once during a twelve-month period during the continuation of the member or nonmember customer relationship. 12 CFR 716.5(a). The credit union must provide the consumer with the opt out notice (and partial opt out notice, if applicable (*see* 12 CFR 716.7(a)(1)(iii)) prior to disclosing nonpublic personal information to certain nonaffiliated third parties. If a credit union wishes to disclose information in a way that is inconsistent with the notices previously given to a consumer, the credit union must provide consumers with revised notices. 12 CFR 716.8(c)).

This proposed regulation contains consumer reporting requirements. In order for consumers to invoke their right to opt out, they must respond to the credit union's opt out notice. 12 CFR 716.7(a)(2), (3)(i), and (c). The consumer has the right to change or update their opt out status with the credit union at any time. 12 CFR 716.8(d) and (e).

NCUA requests public comment on all aspects of the collections of information contained in this proposed rule, including consumer responses to the opt out notice and consumer changes to their opt out status with a credit union. In light of the uncertainty regarding what credit unions will do to comply with the opt out requirements and how consumers will react, NCUA estimates a nominal burden stemming from consumer responses of one hour per credit union, and will revisit this estimate in light of the comments NCUA receives.

NCUA will submit the collection of information requirements contained in the regulation to the OMB in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3507. The NCUA will use any comments received to develop its new burden estimates. Comments on the collections of information should be sent to Office of Management and Budget, Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Alex T. Hunt, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

The likely respondents are federally-insured credit unions.

Estimated number of respondents: 10,627.

Estimated average annual burden hours per respondent: 45 hours.

Estimated total annual disclosure and recordkeeping burden: 478,215.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA either to prepare an initial regulatory flexibility analysis (IRFA) with this proposed rule or certify that the proposed rule would not have a significant economic impact on a substantial number of small credit unions. For purposes of the Regulatory Flexibility Act and in accordance with NCUA's authority under 5 U.S.C. 601(4), NCUA has determined that small credit unions are those with less than one million dollars in assets. *See* 12 CFR 791.8(a). NCUA cannot at this time determine whether the proposed rule would have a significant economic impact on a substantial number of small credit unions. Therefore, NCUA includes the following IRFA.

The supplementary material above contains a description of the reasons why NCUA is considering action and a statement of the objectives of, and legal basis for, the proposed rule. NCUA's proposed rule will apply to approximately 1,626 small credit unions, out of a total of approximately 10,627 federally-insured credit unions.

Overlap with other federal rules. While the scope of the proposed regulation (pursuant to the GLB Act) is unique, it may, in certain circumstances, overlap with the following statutes and regulations:

1. The Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)) requires a credit union that (i) does not want to be treated as a consumer reporting agency and (ii) desires to share certain consumer information (that is, application or credit report information) with its affiliates, to provide the consumer with a clear and conspicuous notice and an opportunity to opt out of such information sharing.

2. At the time a consumer contracts for an electronic fund transfer service, the Electronic Funds Transfer Act (15 U.S.C. 1693c(a)(9)) requires the credit union to disclose the terms and conditions of the transfer, including under what circumstances the credit union will in the ordinary course of business disclose information concerning the consumer's account to third persons.

3. The recently proposed Department of Health and Human Services regulations that implement the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 3120d–1 *et seq.*) would, if adopted in final form, limit the circumstances under which medical information may be disclosed. 64 FR 59918 (Nov. 3, 1999).

4. The Children's Online Privacy Protection Act of 1998 (15 U.S.C. 6502) (under which the NCUA must enforce the Federal Trade Commission's implementing regulations) generally requires online service operators collecting personal information from a child to obtain parental consent and post a privacy notice on the web site.

New compliance requirements. The proposed rule contains new compliance requirements for credit unions, most of which are required by the GLB Act. The credit unions will be required to prepare notices of their privacy policies and practices and provide those notices to consumers as the rule specifies. Credit unions that disclose nonpublic personal information about consumers to nonaffiliated third parties will be required to provide opt out notices to consumers as well as a reasonable opportunity to opt out of certain disclosures. Credit unions will have to develop systems for keeping track of consumers' opt out directions. Some credit unions, particularly those that decide to disclose nonpublic information about consumers to nonaffiliated third parties, will likely need the advice of legal counsel to ensure that they comply with the rule, and may also require computer programming changes and additional staff training. NCUA does not have a practicable or reliable basis for quantifying the costs of the proposed rule or any alternatives, but seeks comment on the potential costs.

Exemptions for small credit unions. NCUA seeks comment on whether the

requirements of the Act and this rule will create additional burden for small credit unions, particularly those that disclose nonpublic personal information about consumers to nonaffiliated third parties. The rule applies to all federally-insured credit unions, regardless of size. The Act does not provide NCUA with the authority to exempt a small credit union from the requirement to provide a notice of its privacy policies and practices to a consumer with whom it establishes a member or nonmember customer relationship. Although NCUA could exempt small credit unions from providing a notice and opportunity for consumers to opt out of certain information disclosures, NCUA does not believe that such an exemption would be appropriate, given the purpose of the Act to protect the confidentiality and security of nonpublic personal information about consumers. NCUA believes that the burden is relatively small for credit unions that do not disclose nonpublic personal information about consumers to nonaffiliated third parties. These credit unions may provide relatively simple initial and annual notices to consumers with whom they establish member or nonmember customer relationships.

NCUA recognizes that the Congressional Conferees on the Act wished to ensure that smaller financial institutions are not placed at a competitive disadvantage by a statutory regime that permits certain information to be shared freely within an affiliate structure while limiting the ability to share that same information with nonaffiliated third parties. The Conferees stated that, in prescribing regulations, the federal regulatory agencies should take into consideration any adverse competitive effects upon small commercial banks, thrifts, and credit unions. *See* H.R. Conf. Rep. No. 106–434, at 173 (1999). At this time, it is not clear if information-sharing among affiliates in large institutional entities will place small credit unions at a disadvantage. NCUA believes that further experience under the regulation would be appropriate before considering any exemptions in this area for small credit unions.

NCUA requests comment on the burdens associated with the proposed rule and whether any exemptions for small credit unions would be appropriate.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule, if adopted, will apply to all federally-insured credit unions, but it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Section 507 of the GLB Act states that state law may provide greater consumer protections than this proposed rule. In that event, federal law would not preempt state law. NCUA has determined the proposed rule does not constitute a policy that has federalism implications for purposes of the Executive order.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

IV. Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed amendment is understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR Part 716

Consumer protection, Credit unions, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit Unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on February 24, 2000.

Becky Baker,

Secretary of the Board.

For the reasons set out in the preamble, it is proposed that 12 CFR chapter VII be amended by adding a new part 716 to read as follows:

PART 716—PRIVACY OF CONSUMER FINANCIAL INFORMATION

Sec.

716.1 Purpose and scope.
716.2 Rule of construction.
716.3 Definitions.
716.4 Initial notice to consumers of privacy policies and practices required.
716.5 Annual notice to customers required.
716.6 Information to be included in initial and annual notices of privacy policies and practices.
716.7 Limitation on disclosure of nonpublic personal information about consumers to nonaffiliated third parties.
716.8 Form and method of providing opt out notice to consumers.
716.9 Exception to opt out requirements for service providers and joint marketing.
716.10 Exceptions to notice and opt out requirements for processing and servicing transactions.
716.11 Other exceptions to notice and opt out requirements.
716.12 Limits on redisclosure and reuse of information.
716.13 Limits on sharing of account number information for marketing purposes.
716.14 Protection of Fair Credit Reporting Act.
716.15 Relation to state laws.
716.16 Effective date; transition rule.

Authority: 15 U.S.C. 6801 *et seq.*, 12 U.S.C. 1751 *et seq.*

§ 716.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the credit unions listed in paragraph (b) of this section. This part:

(1) Requires a credit union to provide notice to consumers about its privacy policies and practices;

(2) Describes the conditions under which a credit union may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a credit union from disclosing that information to nonaffiliated third parties by "opting out" of that disclosure, subject to the exceptions in §§ 716.9, 716.10, 716.11.

(b) *Scope.* The rules in this part apply only to nonpublic personal information about individuals who obtain financial products or services for personal, family or household purposes. This part does not apply to information about companies or about individuals who obtain financial products or services for business purposes. This part applies to federally-insured credit unions. This part refers to a federally-insured credit union as "you" or "the credit union."

§ 716.2 Rule of construction.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

§ 716.3 Definitions.

As used in this part, unless the context requires otherwise:

(a)(1) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(2) *Examples.* (i) An affiliate of a federal credit union is a credit union service organization (CUSO), as provided in 12 CFR part 712, that is controlled by the federal credit union.

(ii) An affiliate of a federally-insured state-chartered credit union is a company that is controlled by the credit union.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice.

(2) *Examples.* (i) You make your notice reasonably understandable if you:

(A) Present the information contained in the notice in clear, concise sentences, paragraphs and sections;

(B) Use short explanatory sentences and bullet lists, whenever possible;

(C) Use definite, concrete, everyday words and active voice, whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology; and

(F) Avoid boilerplate explanations that are imprecise and readily subject to different interpretations.

(ii) You design your notice to call attention to the nature and significance of the information contained in it if, to the extent applicable, you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read; and

(C) Provide wide margins and ample line spacing.

(iii) If you provide a notice on the same form as another notice or other document, you design your notice to call attention to the nature and significance of the information contained in the notice if you use:

(A) Larger type size(s), boldface or italics in the text;

(B) Wider margins and line spacing in the notice; or

(C) Shading or sidebars to highlight the notice, whenever possible.

(c) *Collect* means to obtain information that is organized or retrievable on a personally identifiable basis, irrespective of the source of the underlying information.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association or similar organization.

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you, that is to be used primarily for personal, family or household purposes, and that individual's legal representative.

(2) *Examples.* (i) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain credit union membership is your consumer regardless of whether you establish a member relationship.

(ii) An individual who provides nonpublic personal information to you in connection with using your ATM is your consumer.

(iii) An individual is not your consumer solely because you process information about the individual on behalf of a financial institution that extends credit to the individual.

(f) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as determined by the National Credit Union Administration. With respect to state-chartered credit unions, NCUA will consult with the appropriate state regulator prior to making its determination.

(h) *Credit union* means a federal or state-chartered credit union that the National Credit Union Share Insurance Fund insures.

(i) *Customer* means a consumer who has a customer relationship with you.

(j)(1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family or household purposes.

(2) *Examples.* (i) A consumer has a customer relationship with you if the consumer:

(A) Is your member;

(B) Is a nonmember who has a share, share draft, or credit card account with you jointly with a member;

(C) Is a nonmember who has a loan that you own or service;

(D) Is a nonmember who has an account with you and you are a credit union that has been designated as a low-income credit union;

(E) Is a nonmember who has an account in a federally-insured state-chartered credit union pursuant to state law.

(ii) A consumer does not, however, have a customer relationship with you if the consumer is a nonmember and:

(A) The consumer only obtains a financial product or service in an isolated transaction, such as withdrawing cash from your ATM or purchasing travelers checks; or

(B) You sell the consumer's loan and do not retain the rights to service that loan.

(k)(1) *Financial institution* means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activity as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(l)(1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes your evaluation, brokerage or distribution of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(m) *Government regulator* means-

(1) The National Credit Union Administration Board;

(2) The Board of Governors of the Federal Reserve System;

(3) The Office of the Comptroller of the Currency;

(4) The Board of Directors of the Federal Deposit Insurance Corporation;

(5) The Director of the Office of Thrift Supervision;

(6) The Securities and Exchange Commission;

(7) The Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping);

(8) A state insurance authority, with respect to any person domiciled in that insurance authority's state that is engaged in providing insurance; and

(9) The Federal Trade Commission.

(n) *Nonaffiliated third party* means any person except:

(1) Your affiliate; or

(2) A person employed jointly by you and any company that is not your affiliate. The other company that jointly employs the person would still be a nonaffiliated third party.

(o)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information.

(2) *Nonpublic personal information* does not include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information.

(3) *Example.* Nonpublic personal information includes any list of individuals' street addresses and telephone numbers that is derived using any information consumers provide to you on an application for a financial product or service.

(p)(1) *Personally identifiable financial information* means any information:

(i) Provided by a consumer to you to obtain a financial product or service from you;

(ii) Resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer, other than publicly available information.

(2) *Examples.* (i) Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, credit card, insurance or other financial product or service, including, among other things, medical information;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you, unless that fact is derived using only publicly available information, such as government real estate records or bankruptcy records;

(D) Other information about your consumer if it is disclosed in a manner that indicates the individual is or has been your consumer;

(E) Any information provided by a consumer or otherwise obtained by you or your agent in connection with collecting on a loan or servicing a loan; and

(F) Information from a consumer report.

(ii) Personally identifiable financial information does not include a list of names and addresses of customers of an entity that is not a financial institution.

(q)(1) *Publicly available information* means any information lawfully made available to the general public obtained from:

(i) Federal, state or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public required to be made by federal, state or local law.

(2) *Examples.*

(i) *Government records.* Publicly available information contained in government records includes information contained in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or an Internet site that is available to the general public without requiring a password or similar restriction.

(r) *You* means a federally-insured credit union.

§ 716.4 Initial notice to consumers of privacy policies and practices required.

(a) *When initial notice is required.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) An individual who becomes your customer, prior to the time that you establish a customer relationship, except as provided in paragraph (d)(2) of this section; and

(2) A consumer, prior to the time that you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 716.10 and 716.11.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a)(2) of this section if:

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 716.10 and 716.11; and

(2) You do not have a member or nonmember customer relationship with the consumer.

(c) *When you establish a customer relationship.*

(1) *General rule.* You establish a customer relationship at the time you and the consumer enter into a continuing relationship.

(2) *Examples.* You establish a customer relationship when the consumer:

(i) Becomes your member;

(ii) Is a nonmember and opens a credit card account with you jointly with a member under your procedures;

(iii) Is a nonmember and executes the contract to open a share or share draft account with you or obtain credit from you, jointly with a member;

(iv) Is a nonmember and opens an account with you and you are a credit union designated as a low-income credit union;

(v) Is a nonmember and opens an account with you pursuant to state law and you are a state-chartered credit union.

(d) *How to provide notice.*

(1) *General Rule.* You must provide the privacy notice required by paragraph (a) of this section so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, in electronic form.

(2) *Exceptions to allow subsequent delivery of notice.* You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) You purchase a loan from another financial institution and the customer of that loan does not have a choice about your purchase; or

(ii) You and the consumer orally agree to enter into a customer relationship and the consumer agrees to receive the notice thereafter.

(3) *Oral description of notice insufficient.* You may not provide the initial notice required by paragraph (a) of this section solely by orally explaining your privacy policies and practices in person or over the telephone.

(4) *Retention or accessibility of initial notice for members and nonmember customers.* For customers only, you must provide the initial notice required by paragraph (a)(1) of this section so that it can be retained or obtained at a

later time by the customer, in a written form or, if the customer agrees, in electronic form.

(5) *Examples.* (i) You may reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(A) Hand-deliver a printed copy of the notice to the consumer;

(B) Mail a printed copy of the notice to the last known address of the consumer;

(C) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(D) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(ii) You may *not*, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(A) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices;

(B) Send the notice via electronic mail to a consumer who obtains a financial product or service with you in person or through the mail and who does not agree to receive the notice electronically.

(iii) You provide the initial privacy notice to the customer so that it can be retained or obtained at a later time if you:

(A) Hand-deliver a printed copy of the notice to the customer;

(B) Mail a printed copy of the notice to the last known address of the customer upon request of the customer;

(C) Maintain the notice on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and who agrees to receive the notice electronically.

§ 716.5 Annual notice to customers required.

(a) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of twelve consecutive months during which that relationship exists.

(b) *How to provide notice.* You must provide the annual notice required by paragraph (a) of this section to a customer using a means permitted for providing the initial notice to that customer under § 716.4(d).

(c)(1) *Termination of member or nonmember customer relationship.* You are not required to provide an annual notice to an individual with whom you no longer have a continuing relationship.

(2) *Examples.* You no longer have a continuing relationship with an individual if:

(i) the individual is no longer your member and is not a nonmember customer;

(ii) In the case of a nonmember's share or share draft account, the account is dormant under the credit union's policies;

(iii) In the case of a nonmember's closed-end loan, the loan is paid in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(iv) In the case of a credit card relationship or other open-end credit relationship with a nonmember, you no longer provide any statements or notices to the nonmember concerning that relationship or you sell the credit card receivables without retaining servicing rights; or

(v) For other types of relationships with nonmembers, you have not communicated with the nonmember about the relationship for a period of twelve consecutive months, other than to provide annual notices of privacy policies and practices.

§ 716.6 Information to be included in initial and annual notices of privacy policies and practices.

(a) *General rule.* The initial and annual notices about your privacy policies and practices under §§ 716.4 and 716.5 must include each of the following items of information:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§ 716.10 and 716.11;

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose it, other than those parties to whom you disclose information under §§ 716.10 and 716.11;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 716.9 (and no other exception applies to that disclosure), a separate description of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the right under § 716.8(a) of the consumer to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the methods by which the consumer may exercise that right;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (*i.e.*, notices regarding the ability to opt out of affiliate information sharing); and

(8) Your policies and practices with respect to protecting the confidentiality, security and integrity of nonpublic personal information.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information about a consumer to third parties as authorized under §§ 716.10 and 716.11, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 716.4 and 716.5. When describing the categories with respect to those parties, you are only required to state that you make disclosures to other nonaffiliated third parties as permitted by law.

(c) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(d) *Examples.*

(1) *Categories of nonpublic personal information that you collect.* You adequately categorize the nonpublic personal information you collect if you categorize it according to the source of the information, such as application information, information about transactions (such as information regarding your share, loan, or credit card account), and credit reports.

(2) *Categories of nonpublic personal information you disclose.* You adequately categorize nonpublic personal information you disclose if you categorize it according to source, and provide a few illustrative examples of the content of the information. These might include application information, such as assets and income; identifying information, such as name, address, and social security number; and transaction information, such as information about

account balance, payment history, counterparties and credit card usage; and information from credit reports, such as a consumer's creditworthiness and credit history. You do not adequately categorize the information that you disclose if you use only general terms, such as transaction information about the consumer.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You adequately categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about consumers if you identify the types of businesses that they engage in. Types of businesses may be described by general terms only if you use a few illustrative examples of significant lines of business. For example, you may use the term financial products or services if you include appropriate examples of significant lines of businesses, such as mortgage lending, life insurance, or securities brokerage. You also may categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about consumers using more detailed categories.

(4) *Simplified notices.* If you do not disclose, and do not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8)and (b) of this section.

(5) *Confidentiality, security and integrity.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you explain who has access to the information and the circumstances under which the information may be accessed. You describe your policies and practices with respect to protecting the integrity of nonpublic personal information if you explain measures you take to protect against reasonably anticipated threats or hazards. You are not required to describe technical information about the safeguards you use.

§ 716.7 Limitation on disclosure of nonpublic personal information about consumers to nonaffiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 716.4;

(ii) You have provided to the consumer an opt out notice as required in § 716.8;

(iii) You have given the consumer a reasonable opportunity, before the time that you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 716.9, 716.10 and 716.11.

(3) Examples of reasonable opportunity to opt out.

(i) *By mail.* You provide a consumer with whom you have a customer relationship with a reasonable opportunity to opt out if you mail the notices required in paragraph (a)(1) to this section to the consumer and allow the consumer a reasonable period of time, such as 30 days, to opt out.

(ii) *Isolated transaction with consumer.* For an isolated transaction, such as the purchase of a traveler's check by a consumer, you provide a reasonable opportunity to opt out if you provide the consumer with the required notices at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information.*

(1) This section applies regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through an affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 716.8 Form and method of providing opt out notice to consumers.

(a)(1) *Form of opt out notice.* You must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under § 716.7(a)(1). The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples.*

(i) You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose to nonaffiliated third parties as described in § 716.6 and state that the consumer can opt out of the disclosure of that information.

(ii) You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a detachable, pre-addressed form or self-addressed, stamped reply form together with the opt out notice; or

(C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your web site, if the consumer agrees to the electronic delivery of information.

(b) *How to provide opt out notice.*

(1) *Delivery of notice.* You must provide the opt out notice required by paragraph (a) of this section in a manner so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, in electronic form. If you and the consumer orally agree to enter into a member or nonmember customer relationship, you may provide the opt out notice required by paragraph (a) of this section within a reasonable time thereafter if the consumer agrees.

(2) *Oral description of opt out right insufficient.* You may not provide the opt out notice solely by orally explaining, either in person or over the telephone, the right of the consumer to opt out.

(3) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with § 716.4.

(4) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice at a later time than required for the initial notice in accordance with § 716.4, you must also include a copy of the initial notice in writing or, if the consumer agrees, in an electronic form with the opt out notice.

(c) *Notice of change in terms.*

(1) *General rule.* Except as otherwise authorized in this part, you must not,

directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to the consumer under § 716.4, unless:

(i) You have provided to the consumer a revised notice that accurately describes your policies and practices;

(ii) You have provided to the consumer a new opt out notice;

(iii) You have given the consumer a reasonable opportunity, before the time that you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *How to provide notice of change in terms.* You must provide the revised notice of your policies and practices and opt out notice to a consumer using the means permitted for providing the initial notice and opt out notice to that consumer under § 716.4(d) or § 716.8(b), respectively.

(3) *Examples.*

(i) Except as otherwise permitted by §§ 716.9, 716.10 and 716.11, a change-in-terms notice is required if you—

(A) Disclose a new category of nonpublic personal information to any nonaffiliated third party; or

(B) Disclose nonpublic personal information to a new category of nonaffiliated third party.

(ii) A change-in-terms notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that is adequately described by your prior notice.

(d) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time, and you must comply with the consumer's direction promptly.

(e) *Duration of consumer's opt out direction.* A consumer's direction to opt out under this section is effective until revoked by the consumer in writing, or if the consumer has agreed to accept notices in electronic form.

§ 716.9 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* The opt out requirements in §§ 716.7 and 716.8 do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(1) Provide the initial notice in accordance with § 716.4; and

(2) Enter into a contractual agreement with the third party that—

(i) Requires the third party to maintain the confidentiality of the information to at least the same extent that you must maintain that confidentiality under this part; and

(ii) Limits the third party's use of information you disclose solely to the purposes for which the information is disclosed or as otherwise permitted by §§ 716.10 and 716.11 of this part.

(b) *Service may include joint marketing.* The services performed for you by a nonaffiliated third party under paragraph (a) may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, *joint agreement* means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 716.10 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 716.4(a)(2), the opt out in §§ 716.7 and 716.8 and service providers and joint marketing in § 716.9 do not apply if you disclose nonpublic personal information:

(1) As necessary to effect, administer, or enforce a transaction requested or authorized by the consumer;

(2) To service or process a financial product or service requested or authorized by the consumer;

(3) To maintain or service the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(4) In connection with a proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: Account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by federal or state law;

(vi) In connection with settling a transaction, including:

(A) The authorization, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein; or

(C) The audit of debit, credit or other payment information.

§ 716.11 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice to consumers in § 716.4(a)(2), the opt out in §§ 716.7 and 716.8 and service providers and joint marketing in § 716.9 do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations,

guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including government regulators), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*, or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7) (i) To comply with federal, state or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.*

(1) A consumer may specifically consent to your disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to you for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 716.8(d).

§ 716.12 Limits on redisclosure and reuse of information.

(a) *Limits on your redisclosure and reuse.*

(1) Except as otherwise provided in this part, if you receive nonpublic personal information about a consumer from a nonaffiliated financial institution, you must not, directly or through an affiliate, disclose the information to any other person that is not affiliated with either the financial institution or you, unless the disclosure would be lawful if the financial institution made it directly to such other person.

(2) You may use nonpublic personal information about a consumer that you receive from a nonaffiliated financial institution in accordance with an exception under §§ 716.9, 716.10 or 716.11 only for the purpose of that exception.

(b) *Limits on redisclosure and the reuse by other persons.*

(1) Except as otherwise provided in this part, if you disclose nonpublic personal information about a consumer to a nonaffiliated third party, that party must not, directly or through an affiliate, disclose the information to any other person that is not affiliated with either the third party or you, unless the disclosure would be lawful if you made it directly to such other person.

(2) A nonaffiliated third party may use nonpublic personal information about a consumer that it receives from you in accordance with an exception under §§ 716.9, 716.10 or 716.11 only for the purpose of that exception.

§ 716.13 Limits on sharing of account number information for marketing purposes.

You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, share account or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

§ 716.14 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 716.15 Relation to state laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order or interpretation in effect in any state, except to the extent that such state statute, regulation, order or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under state law.* For purposes of this section, a state statute, regulation, order or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Federal Trade Commission, after consultation with the National Credit Union Administration, on the Federal Trade Commission's own motion or upon the petition of any interested party.

§ 716.16 Effective date; transition rule.

(a) *Effective date.* This part is effective November 13, 2000.

(b) *Notice requirement for consumers who were your members or nonmember customers on the effective date.* No later than thirty days after the effective date of this part, you must provide an initial notice, as required by § 716.4, to consumers who were your members or nonmember customers on the effective date of this part.

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, and 1781–1790. Section 741.4 is also authorized by 31 U.S.C. 3717.

2. Add § 741.220 to part 741 to read as follows:

§ 741.220 Privacy of consumer financial information.

Any credit union which is insured pursuant to Title II of the Act must adhere to the requirements stated in part 716 of this chapter.

[FR Doc. 00–4814 Filed 2–29–00; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–43–AD]

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 222, 222B, 222U, and 230 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) applicable to BHTC Model 222, 222B, 222U, and 230 helicopters. This proposal would require inspecting each flapping bearing to yoke attachment bolt (bolt) and replacing each bolt that shows thread damage, shank wear, or corrosion

pitting with an airworthy bolt. This proposal is prompted by the discovery of a fractured bolt during a post-flight inspection. The actions specified by the proposed AD are intended to prevent a fracture of a bolt, failure of the bearing and yoke interface, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 1, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–43–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–43–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–43–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 222, 222B, 222U, and 230 helicopters. Transport Canada advises that an inspection revealed a fractured bolt due to stress corrosion. Stress-corrosion from a combination of mechanical wear, fatigue, and environmental exposure caused the bolt to fail.

BHTC has issued Alert Service Bulletins (ASB's) 230–98–15, 222–98–83, and 222U–98–54, all dated October 12, 1998, which specify inspecting the bolts and replacing each bolt that shows thread damage, shank wear, or corrosion pitting with an airworthy bolt. Transport Canada classified these ASB's as mandatory and issued AD's CF–99–12 and CF–99–13, both dated April 21, 1999, to ensure the continued airworthiness of these helicopters in Canada.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 222, 222B, 222U, and 230 helicopters of the same type designs registered in the United States, the proposed AD would require inspecting the bolts and replacing each bolt that shows thread damage, shank wear, or corrosion with an airworthy bolt.

The FAA estimates that 101 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $20 per bolt. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $20,200.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron Canada: Docket No. 99–SW–43–AD.

Applicability: Model 222 helicopters, serial number (S/N) 47006 through 47089; Model 222B helicopters, S/N 47131 through 47156;

Model 222U helicopters, S/N 47501 through 47574; and Model 230 helicopters, S/N 23001 through 23038 inclusive, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 150 hours time-in-service, unless accomplished previously.

To prevent the fracture of a flapping bearing to yoke attachment bolt (bolt), failure of the bearing and yoke interface, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove one bolt at a time and inspect each bolt located as shown in Figure 1.

Note 2: For main rotor hubs installed on rotorcraft, the bolts may be removed, inspected, and installed one at a time.

Note 3: Bell Helicopter Textron Canada Alert Service Bulletins 230–98–15, 222–98–83, and 222U–98–54, all dated October 12, 1998, pertain to the subject of this AD.

(1) Clean each bolt with a cloth dampened with methyl ethyl ketone, RHO SOLV756, Desoto 110, or equivalent.

(2) Visually inspect each bolt and discard those that have thread damage, shank wear, or corrosion.

(3) Apply corrosion preventative compound MIL-C–16173 GR2, or equivalent, to the shank of the bolt only.

(4) Install, torque, and lockwire each bolt.

(5) Coat each bolt head and nut with corrosion preventative compound MIL–C–16173 GR1 or equivalent.

BILLING CODE 4910–13–U

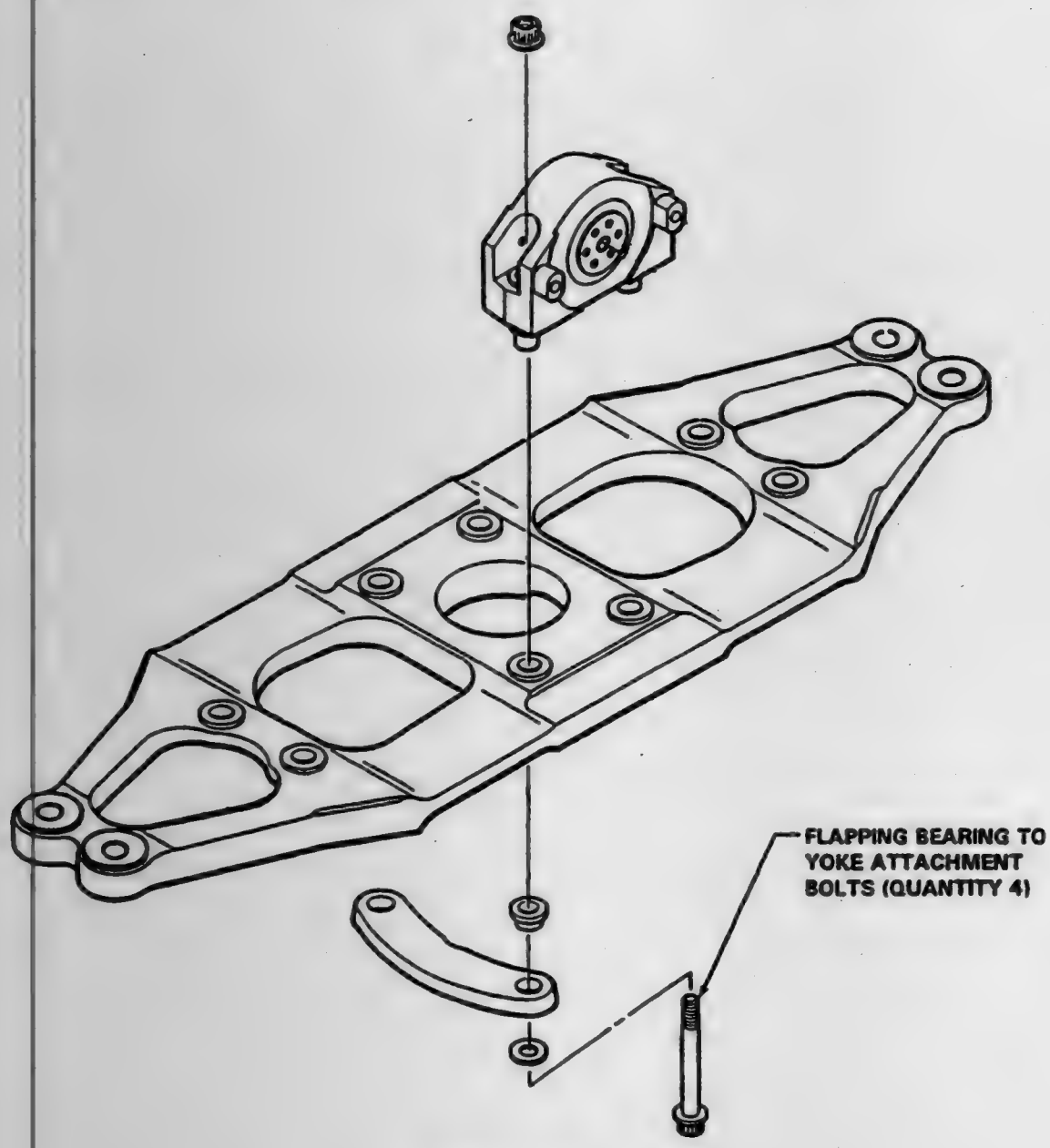

MAIN ROTOR HUB

FIGURE 1

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(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Transport Canada (Canada) AD's CF–99–12 and CF–99–13, both dated April 21, 1999.

Issued in Fort Worth, Texas, on February 22, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–4798 Filed 2–29–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–2000–6984]

RIN 2105–AC75

Third Extension of Computer Reservations Systems (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to revise its rules governing airline computer reservations systems (CRSs), 14 CFR Part 255, for the third time by changing the rules' expiration date from March 31, 2000, to March 31, 2001. If the Department does not change the expiration date, the rules will terminate on March 31, 2000. The proposed extension of the current rules will keep them in effect while the Department carries out its reexamination of the need for CRS regulations. The Department tentatively believes that the current rules should be maintained because they appear to be necessary for promoting airline competition and helping to ensure that consumers and their travel agents can obtain complete and accurate information on airline services. The rules were previously extended from December 31, 1997, to March 31, 1999, and then to March 31, 2000.

DATES: Comments must be submitted on or before March 13, 2000.

ADDRESSES: Comments must be filed in Room PL–401, Docket OST–2000–6984, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file six copies of its comments.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: In 1992 the Department adopted its rules governing CRS operations, 14 CFR Part 255, because almost all airlines operating in the United States relied on the CRSs in marketing their airline services. 57 FR 43780 (September 22, 1992). We found that the rules were necessary to ensure that the owners of the systems—all of which were then airlines or airline affiliates—did not use them to unreasonably prejudice the competitive position of other airlines or to provide misleading or inaccurate information to travel agents and their customers. Travel agents relied on CRSs to provide airline information and make bookings for their customers, and almost all airlines received most of their bookings from travel agencies. These factors made CRS rules necessary. As revised, our rules will expire on March 31, 2000, unless we readopt them or extend the expiration date. 64 FR 15127 (March 30, 1999). We began a proceeding to determine whether the rules are necessary and should be readopted and, if so, whether they should be modified, by issuing an advance notice of proposed rulemaking. 62 FR 47606 (September 10, 1997). We are proposing here to extend the expiration date for the current rules to March 31, 2001, so that they will remain in force while we conduct our overall reexamination of the rules.

We have set a short comment period of ten days so that we can publish a final decision on this proposal before the rules' current expiration date. Our advance notice of proposed rulemaking has given interested persons an opportunity to comment on whether the rules should be maintained. Almost all of the commenters support a continuation of the rules, albeit with changes, and virtually none urges us to end the rules.

The CRS Business

Four firms provide CRS services in the United States. Each of them is affiliated with one or more U.S. or foreign airlines, although public shareholders now hold a significant amount of stock in three of them. A CRS provides information on airline services and other travel services sold through the system to its users, who are typically travel agents but include consumers using Internet reservations services and corporate travel departments. A person using a CRS can find out what airline seats and fares are available and book a seat on each airline that "participates" in the system, that is, that makes its services saleable through the CRS. Travel agents access a CRS through computer terminals.

Most of the revenues received by the systems consist of the fees paid by airlines and other travel suppliers participating in a system. An airline participant pays a fee whenever a booking on that airline is made through the system (most systems also charge fees for related transactions, such as booking changes and cancellations). Other travel suppliers pay similar fees. Many, but not all, travel agencies subscribing to a system also pay fees, but such subscriber fees, unlike airline fees, are generally disciplined by competition. The systems' competition for subscribers enables some travel agencies to obtain CRS equipment and services at little or no charge.

Regulatory Background

The Civil Aeronautics Board ("the Board"), the agency formerly responsible for the economic regulation of the airline industry, initially adopted the CRS rules. The Board did so because the systems had become essential for airline distribution in the early 1980s due to the travel agents' reliance on the systems for investigating and booking airline services. 49 FR 32540 (August 15, 1984). At that time each system operating in the United States, with one minor exception, was owned by a single airline, and each owner airline was using its system to prejudice competing airlines and to give consumers biased or incomplete information in order to obtain more bookings. The Board found that regulations were essential to keep the systems from substantially injuring airline competition and from misleading consumers. The Board adopted its regulations primarily under its authority under section 411 of the Federal Aviation Act, later recodified as 49 U.S.C. 41712, to prevent unfair methods of competition and unfair and deceptive practices in air transportation and the sale of airline transportation. The Board's rules were affirmed on review. *United Air Lines* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985).

The Board's major rules required each system to make participation available to all airlines on non-discriminatory

terms, to offer at least one unbiased display, and to make available to each airline participant any marketing and booking data from bookings for domestic travel that it chose to generate from its system. The rules also prohibited certain CRS contract terms that limited the travel agencies' ability to switch systems or use more than one system.

The Board's rules contained a sunset date to ensure that they would be reexamined, December 31, 1990. Since we became responsible for airline economic regulation after the Board's sunset on December 31, 1984, we conducted that reexamination. During our reexamination we maintained the rules by extending their expiration date. 55 FR 53149 (December 27, 1990); 56 FR 60915 (November 29, 1991); 57 FR 22643 (May 29, 1992).

Our reexamination caused us to readopt the rules with several revisions designed to strengthen them. 57 FR 43780 (September 22, 1992). We determined that the rules were still necessary. Market forces did not discipline the price or level of service offered participating airlines by the systems. In addition, without rules CRS owners could use their control of the systems to prejudice airline competition, and the systems could bias their displays of airline services. 57 FR at 43783–43787.

Like the Board, we included a sunset date—December 31, 1997—in our rules. 14 CFR 255.12; 57 FR at 43829–43830 (September 22, 1992). We began our current reexamination of the rules by publishing an advance notice of proposed rulemaking requesting comments on whether we should readopt the rules and, if so, with what changes. 62 FR 47606 (September 10, 1997). We then amended the rules twice to further promote competition. 62 FR 59784 (November 5, 1997); 62 FR 66272 (December 18, 1997). We adopted those amendments largely because market forces did not appear to discipline the CRS firms' terms for airline participation.

Almost all of the parties responding to our advance notice of proposed rulemaking urged us to maintain CRS rules, although they also argued that the rules required changes, mostly changes that would strengthen them. No party urged us to eliminate the rules, and few disputed the need for the continued regulation of the CRS business. Thus we believe that an extension of the current rules pending completion of the current reexamination of those rules would be consistent with the positions already taken by the commenters.

Previous Extension of the Rules' Sunset Date

Because we could not complete our reexamination of the rules by the original sunset date, December 31, 1997, we have amended the rules twice to extend them, first to March 31, 1999, and then to March 31, 2000. 62 FR 66272 (December 18, 1997); 64 FR 15127 (March 30, 1999). We found the extensions necessary to prevent the harm that would arise if the CRS business were not regulated, and we concluded that extending the rules would not impose substantial costs on the industry. The only party that commented on the first proposed extension—America West Airlines—supported it, as did three parties that commented on the second proposed extension—Amadeus Global Distribution System, America West, and the Association of Asia-Pacific Airlines. Worldspan's comment on the second proposed extension did not oppose the extension.

Our Proposed Extension of the CRS Rules

We are again proposing to change the expiration date for our CRS rules to March 31, 2001, so that the rules will remain in effect while we conduct our reexamination of the need for the rules and the rules' effectiveness. The completion of our overall reexamination of our rules, including the need to give parties an adequate opportunity to file comments and reply comments in response to our future notice of proposed rulemaking, will require substantial time and cannot be finished by the current expiration date, March 31, 2000. In addition, the rulemaking has increasingly come to involve issues related to the distribution of airline services over the Internet, which will require additional time for analysis.

We are aware that the delay in completing the reexamination of the rules is unfortunate due to the importance of adapting our rules on CRS operations to current industry conditions. We have had to address other airline competition issues that required expedited action, however. In addition, such industry developments as the continuing and rapid growth of Internet services and the major airlines' cuts in travel agency commissions on bookings made both by traditional travel agencies and Internet services require additional study by the staff. At the same time, notwithstanding the desirability of updating the current rules, those rules appear to address the most serious potential competitive and consumer protection issues created by the use of computer reservations systems in airline distribution.

A number of parties have requested prompt action on certain additional CRS regulations, such as rules limiting airline booking fees and giving travel agency subscribers additional rights to cancel CRS contracts. *See, e.g.,* the petition filed by America West on airline booking fees; the Emergency Petition for Rulemaking filed by the Association of Retail Travel Agents in Docket OST–98–4775 on travel agency contracts; and the petition filed by Amadeus in Docket OST–99–5888 on the tying of an airline's corporate discount fares with the agency's use of that airline's CRS. We recognize that some issues may be of such overriding importance that they should be addressed before the completion of the overall reexamination of the rules.

We tentatively conclude that we should amend the rules to change the sunset date from March 31, 2000, to March 31, 2001. This proposed temporary extension of the current rules will preserve the status quo until we determine which rules, if any, should be adopted. Allowing the current rules to expire would be disruptive, since the systems, airlines, and travel agencies have been conducting their operations in the expectation that each system will comply with the rules. Systems, airlines, and travel agencies, moreover, would be unreasonably burdened if the rules were allowed to expire and we later determined that those rules (or similar rules) should be adopted, since they could have changed their business methods in the meantime.

The principal basis for extending the rules is the need to protect airline competition and consumers against unreasonable practices. Our past examinations of the CRS business and airline marketing convinced us that CRSs were still essential for the marketing of the services of almost all airlines. 57 FR 43780, 43783–43784 (September 22, 1992). We found that rules were needed because the airlines depended on travel agencies as their principal distribution arm, because travel agencies relied on CRSs, because most travel agency offices used only one CRS, because creating alternatives for CRSs and getting travel agencies to use them had been difficult, and because non-owner airlines were unable to cause agencies to use a CRS that provided airlines better or less expensive service instead of another that provided poorer or more expensive service. 57 FR at 43783–43784, 43831. If an airline did not participate in a system used by a travel agency, that agency was less likely to book its customers on that

airline. Since marginal revenues are important in the airline industry, an airline could not afford to lose access to a significant source of revenue. An airline (or other firm) could not practicably create a system that could compete with the existing systems. Almost all airlines therefore had to participate in each CRS, and CRSs did not need to compete for airline participants. 57 FR at 43783–43784.

We believe that these findings are still valid. Travel agencies still make most airline bookings in the United States, travel agencies still rely heavily on CRSs to determine what airline services are available and to make bookings, and few travel agency offices make extensive use of more than one CRS. That CRS participation is essential for almost all airlines is demonstrated by the decision of the low-fare airlines to participate in each system, even though several initially believed that they could reduce their costs while not forfeiting much traffic by declining to participate in the systems. 62 FR at 47608. The rapid growth in the use of the Internet by consumers may not reduce the importance of the systems, for Internet sites (except many airline sites) typically use a system as their booking engine. We doubt that the systems' growing proportion of public shareholders has invalidated our earlier findings, although that may change in the future.

As noted above, almost all of the parties that responded to the advance notice of proposed rulemaking stated that the rules remained necessary, and most urged us to strengthen them further to protect airlines and travel agencies against potential abuses by system owners.

Thus, while our staff has not completed its current study of the CRS business and we have not issued a notice of proposed rulemaking finding that the rules should be readopted, we tentatively find that our past findings on the need for CRS rules are still valid, at least for the purpose of a short-term extension of the rules' expiration date. Maintaining the current rules will protect airline competition and consumers against the injuries that would otherwise occur, given our earlier findings on the market power of the systems and each airline owner's potential interest in using its affiliated CRS to prejudice the competitive position of other airlines. Continuing the rules in effect should not impose significant costs on the systems and their owners, since they have already adjusted their operations to comply with the rules and since the rules do not impose costly burdens of a continuing nature on the systems.

Finally, our obligation under section 1102(b) of the Federal Aviation Act, recodified as 49 U.S.C. 40105(b), to act consistently with the United States' obligations under treaties and bilateral air services agreements further supports our continuation of the rules. Many of those bilateral agreements assure the airlines of each party a fair and equal opportunity to compete. We have held that the fair and equal opportunity to compete includes, among other things, a right to have an airline's services fairly displayed in CRSs. Our rules against display bias and discriminatory treatment help to provide foreign airlines with a fair and equal opportunity to compete in the United States. 57 FR at 43791–43792. The European Union, Canada, and Australia, for example, have adopted rules regulating CRS operations that help give U.S. airlines a fair opportunity to sell their services in the countries covered by the rules.

Regulatory Process Matters

Regulatory Assessment

This rulemaking is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that order. The proposal is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

Keeping the current rules in force should not impose significant costs on the systems. They have already taken all the steps necessary to comply with the rules' requirements on displays and functionality, and complying with those rules on a continuing basis does not impose a substantial burden on the systems. Maintaining the rules will benefit participating airlines, since otherwise they could be subjected to unreasonable terms for participation, and will benefit consumers, who might otherwise obtain incomplete or inaccurate information on airline services. The rules also contain provisions that are designed to prevent abuses in the systems' competition with each other for travel agency subscribers.

When we conducted our last major CRS rulemaking, we included a tentative regulatory impact statement in our notice of proposed rulemaking and made that analysis final when we issued our final rule. We believe that analysis remains applicable to our proposal to extend the rules' expiration date. As a result, no new regulatory impact statement appears to be necessary. However, we will consider comments from any party on that analysis before we make our proposal final.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Small Business Impact

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. and foreign airlines and smaller travel agencies. Our notice of proposed rulemaking sets forth the reasons for our proposed extension of the rules' expiration date and the objectives and legal basis for that proposed rule.

Furthermore, maintaining the current rules will not modify the existing regulation of small businesses. Our final rule in our last major CRS rulemaking contained a regulatory flexibility analysis on the impact of the rules. As a result of that analysis, we determined that this regulation did not have a significant economic impact on a substantial number of small entities. Our analysis appears to be valid for our proposed extension of the rules' termination date. Accordingly, we adopt that analysis as our tentative regulatory flexibility statement and will consider any comments filed on that analysis in connection with this proposal.

The continuation of our existing CRS rules will primarily affect two types of small entities, smaller airlines and travel agencies. To the extent that airlines can operate more efficiently and reduce their costs, the rules will also affect all small entities that purchase airline tickets, since airline fares may be somewhat lower than they would otherwise be, although the difference may be small.

Continuing the rules will protect smaller non-owner airlines from several potential system practices that could injure their ability to operate profitably and compete successfully. No smaller airline has a CRS ownership interest. Market forces do not significantly influence the systems' treatment of airline participants. As a result, if there were no rules, the systems' airline owners could use them to prejudice the competitive position of other airlines. The rules provide important protection to smaller airlines. For example, by

prohibiting systems from ranking and editing displays of airline services on the basis of carrier identity, they limit the ability of each system to bias its displays in favor of its owner airlines and against other airlines. The rules also prohibit charging participating airlines discriminatory fees. The rules, on the other hand, impose no significant costs on smaller airlines.

The CRS rules affect the operations of smaller travel agencies, primarily by prohibiting certain CRS practices that could unreasonably restrict the travel agencies' ability to use more than one system or to switch systems. The rules prohibit CRS contracts that have a term longer than five years, give travel agencies the right to use third-party hardware and software, and prohibit certain types of contract clauses, such as minimum use and parity clauses, that restrict an agency's ability to use multiple systems. By prohibiting display bias based on carrier identity, the rules also enable travel agencies to obtain more useful displays of airline services.

Our proposed rule contains no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

Interested persons may address our tentative conclusions under the Regulatory Flexibility Act in their comments submitted in response to this notice of proposed rulemaking.

I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law. No. 96–511, 44 U.S.C. Chapter 35.

Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule will not limit the policymaking discretion of the States. Nothing in this proposal would directly preempt any State law or regulation. We are proposing this amendment primarily under the authority granted us by 49 U.S.C. 41712 to prevent unfair methods of competition and unfair and deceptive practices in the sale of air transportation. We believe that the policy set forth in this proposed rule is consistent with the principles, criteria, and requirements of the Federalism Executive Order and the Department's governing statute. Comments on these conclusions are welcomed and should be submitted to the docket.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and recordkeeping requirements, Travel agents.

Accordingly, the Department of Transportation proposes to amend 14 CFR Part 255, Carrier-owned Computer Reservations Systems, as follows:

PART 255—[AMENDED]

1. The authority citation for Part 255 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

2. Section 255.12 is revised to read as follows:

§ 255.12 Termination.

The rules in this part terminate on March 31, 2001.

Issued in Washington, D.C. on February 25, 2000, under authority delegated by 49 CFR § 1.56a(h)2.

Robert S. Goldner,

Acting Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–4922 Filed 2–29–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209601–92]

RIN 1545–AR19

Taxation of Tax-Exempt Organizations' Income From Corporate Sponsorship

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of previous proposed rules, notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the tax treatment of sponsorship payments received by exempt organizations. The Taxpayer Relief Act of 1997 amended the Internal Revenue Code to provide that unrelated trade or business does not include the activity of soliciting and receiving qualified sponsorship payments. This action affects exempt organizations that receive sponsorship payments. This document provides notice of a public hearing on these proposed regulations. This document also withdraws proposed rules published on January 22, 1993.

DATES: Written or electronic comments must be received by May 30, 2000. Outlines of topics to be discussed at the public hearing scheduled for June 21, 2000, at 10 a.m. must be received by May 31, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209601–92), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209601–92), room 5226, Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. The public hearing will be held in room G–043, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephanie Lucas Caden, (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Exempt organizations generally must pay tax on unrelated business taxable income, as defined in section 512. Section 512(a)(1) defines *unrelated business taxable income* (UBTI) as the gross income derived by an organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions that are directly connected with the carrying on of the trade or business, both computed with the modifications provided in section 512(b).

Section 513(a) defines *unrelated trade or business* as any trade or business the conduct of which is not substantially related (aside from the need of an organization for income or funds or the use it makes of the profits derived) to the exercise or performance by the organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501. Section 513(c), captioned "Advertising, Etc., Activities," provides that the term *trade*

or business includes any activity carried on for the production of income from the sale of goods or the performance of services, and that an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. See § 1.513–1(b).

The IRS first published a Notice of Proposed Rulemaking (1993 proposed regulations) on January 22, 1993 (58 FR 5687), proposing that the regulations under section 513 be amended to provide guidance on the proper tax treatment of sponsorship payments received by an exempt organization. The 1993 proposed regulations focused on the nature of the services provided by the exempt organization rather than the benefit received by the sponsor. The 1993 proposed regulations distinguished advertising, which is an unrelated trade or business activity, from acknowledgments, which are the mere recognition of a sponsor's payment, and therefore do not result in UBTI. Advertising was defined as any message or other programming material, broadcast or otherwise transmitted, published, displayed or distributed in exchange for any remuneration, that promotes or markets any company, service, facility or product. Acknowledgments were defined as mere recognition of sponsorship payments or identification of the sponsor rather than promotion of its products, services or facilities. Under the 1993 proposed regulations, the term acknowledgment included: sponsor logos and slogans that do not contain comparative or qualitative descriptions; locations and telephone numbers; value-neutral descriptions including displays or visual depictions; and sponsor brand or trade names and product or service listings.

In a so-called "tainting rule," the 1993 proposed regulations provided that if any activities, messages or programming material constituted advertising with respect to a sponsorship payment, then all related activities, messages or programming material that might otherwise be acknowledgments would be considered advertising.

The 1993 proposed regulations clarified that the rules regarding corporate sponsorship apply uniformly to all sponsorship activities, both broadcast and nonbroadcast activities, unless otherwise expressly stated, without regard to the local nature of the organization or activities or to the amount of the sponsorship payment. The 1993 proposed regulations expressly did not apply to qualified convention and trade show activities or to the sale of advertising in exempt organization periodicals.

The 1993 proposed regulations also proposed to amend the regulations under section 512(a) by adding examples of the allocation rule governing exploitation of exempt activities in cases involving sponsorship income.

A public hearing on the 1993 proposed regulations was held on July 8, 1993.

Public comments received by the IRS generally welcomed the guidance as an important step in clarifying this area of the law, but suggested modifications. Several comments concerned the effective date of the amendments, but there was no consensus as to an appropriate effective date. In addition, numerous comments requested elimination of the tainting rule. One comment expressed concern that the approach taken in the 1993 proposed regulations to the exploitation rules of § 1.512(a)–1(d) was likely to create confusion and could lead to application of the exploitation exception in a manner far broader than was intended.

The Taxpayer Relief Act of 1997, Public Law 105–34, section 965 (111 Stat. 788, 893–94), amended the Internal Revenue Code by adding section 513(i). Section 513(i) governs the treatment of certain sponsorship payments by providing that qualified sponsorship payments are not subject to the unrelated business income tax (UBIT). Section 513(i) defines *qualified sponsorship payments* as payments made by a person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgment of the name or logo (or product lines) of the person's trade or business in connection with the exempt organization's activities. Section 513(i) further provides that use or acknowledgment does not include advertising (including messages containing qualitative or comparative language, price information or other indications of savings or value, or an endorsement or other inducement to purchase, sell, or use a sponsor's products or services). The legislative history to section 513(i) indicates that the use of promotional logos or slogans that are an established part of the sponsor's identity does not, by itself, constitute advertising. H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 476 (1997). Section 513(i)(2)(B)(i) provides that qualified sponsorship payments do not include payments where the amount is contingent upon the level of attendance at an event, broadcast ratings, or other factors indicating the degree of public exposure to an activity. However, the fact that a payment is contingent upon a sponsored activity actually being conducted or broadcast does not, by itself, cause the payment to fail to be a qualified sponsorship payment. The legislative history to section 513(i) further indicates that mere display or distribution, whether for free or remuneration, of a sponsor's products by the sponsor or the organization to the general public at a sponsored event is not considered advertising. H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 474 (1997).

Section 513(i) differs from the 1993 proposed regulations in that section 513(i) has no tainting rule. Instead, section 513(i) specifically provides that, to the extent a portion of a payment would (if made as a separate payment) be a qualified sponsorship payment, that portion of such payment and the other portion of such payment are treated as separate payments. For example, if a sponsorship arrangement entitles the sponsor to both product advertising and use or acknowledgment of the sponsor's name or logo by the organization, the section 513(i) safe harbor applies only to the amount, if any, of the payment that exceeds the fair market value of the product advertising provided to the sponsor. Similarly, providing facilities, services or other privileges to a sponsor or the sponsor's designees (e.g., complimentary tickets, pro-am playing spots in golf tournaments, or receptions for major donors) in connection with a sponsorship arrangement is evaluated as a separate transaction in determining whether the organization has UBTI. A license granted to a sponsor as part of a sponsorship arrangement that allows a sponsor to use an intangible asset of the organization (e.g., the organization's trademark, patent, logo, or designation) is likewise treated as a separate transaction. H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 475 (1997). Whether a separate transaction that falls outside of the section 513(i) safe harbor is subject to the UBIT depends on the application of existing rules under sections 512, 513, and 514.

Section 513(i) applies to payments solicited or received after December 31, 1997. Section 513(i) does not apply to qualified convention and trade show activities (described in section 513(d)(3)(B)) or to the sale of an acknowledgment or advertising in exempt organization periodicals. For this purpose, the term *periodicals* means regularly scheduled and printed

material published by or on behalf of an exempt organization that is not related to and primarily distributed in connection with a specific event conducted by the exempt organization.

Although section 513(i) codifies the 1993 proposed regulations in many respects, there are significant differences, including the elimination of the tainting rule. To reflect these differences, and in response to comments submitted on the 1993 proposed regulations, a number of changes are made in these proposed regulations, and some additional areas are addressed, such as exclusivity arrangements. In light of these changes, the IRS and the Treasury Department decided to issue regulations in proposed form, rather than final form, to provide an opportunity for further comment.

Discussion of Proposed Regulations

These proposed regulations amend the regulations under section 513 to provide guidance in the area of corporate sponsorship. Following section 513(i), these proposed regulations provide that qualified sponsorship payments are not UBTI. These proposed regulations define the term *qualified sponsorship payments* to mean payments made by any person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit in exchange for making the payment.

These proposed regulations define the *phrase* substantial return benefit to mean any benefit other than (1) a use or acknowledgment of the payor's name or logo in connection with the exempt organization's activities, or (2) certain goods or services that have an insubstantial value under existing IRS guidelines. Generally, benefits such as complimentary tickets, pro-am playing spots, and receptions for donors have an insubstantial value only if they have a fair market value of not more than 2% of the payment, or $74 (for tax years beginning in calendar year 2000), whichever is less. See § 1.170A–13(f)(8)(i)(A); Rev. Proc. 90–12 (1990–1 C.B. 471), as adjusted for inflation (see Rev. Proc. 99–42, 1999–46 I.R.B. 568 (November 15, 1999)). If a payor receives a substantial return benefit (such as complimentary tickets having a fair market value in excess of $74) in exchange for a payment, the section 513(i) safe harbor does not apply to the payment (or portion thereof) attributable to the substantial return benefit. In that case, whether the payment (or portion thereof) is subject to UBIT must be determined under existing principles and rules. Thus, the payment may not be subject to UBIT because the exempt organization's activity is not an unrelated trade or business within the meaning of section 513(a) (for example, because substantially all of the work in carrying on the trade or business is performed by volunteers) or is not "regularly carried on" within the meaning of section 512(a)(1), or because one of the section 512(b) modifications applies.

These proposed regulations clarify that sponsored activities within the scope of the section 513(i) safe harbor may include a single event (such as a bowl game, a walkathon or a television program); a series of related events (such as a concert series or a sports tournament); an activity of extended or indefinite duration (such as an art exhibit); or continuing support of an exempt organization's operation. A payment (or portion thereof) may be a qualified sponsorship payment regardless of whether the sponsored activity conducted by the organization is substantially related to its tax exempt purpose. H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 474 n.44 (1997).

Consistent with section 513(i)(3), the tainting rule of the 1993 proposed regulations has been removed. However, these proposed regulations clarify that for an exempt organization to avail itself of the section 513(i) safe harbor, it must establish that some portion of the payment exceeds the fair market value of any substantial return benefit received by a payor in return for making the payment. In a sponsorship arrangement, the fair market value of the substantial return benefit may equal the entire amount of the sponsorship payment. The burden of establishing the fair market value of any substantial return benefit falls on the exempt organization because the exempt organization has superior access to relevant information regarding its sponsorship arrangements. These proposed regulations state that the exempt organization's determination of the fair market value of a substantial return benefit provided to the payor will not be set aside for purposes of applying the section 513(i) safe harbor so long as the organization makes a reasonable and good faith valuation of the substantial return benefit received by the payor.

These proposed regulations provide that the right to be the only sponsor of an activity, or the only sponsor representing a particular trade, business or industry is generally not a substantial return benefit. Any portion of the payment attributable to the exclusive sponsorship arrangement, therefore, may be a qualified sponsorship payment. However, if in return for a payment, the exempt organization agrees that products or services that compete with the payor's products or services will not be sold or provided in connection with one or more activities of the exempt organization, the payor has received a substantial return benefit and the portion of the payment attributable to the exclusive provider arrangement is not a qualified sponsorship payment. Consistent with the allocation rule described above, when a payor receives both exclusive sponsorship and exclusive provider rights in exchange for making a payment, the fair market value of the exclusive provider arrangement and any other substantial return benefit is determined first (i.e., without regard to the existence of the exclusive sponsorship arrangement).

The IRS and the Treasury Department have concluded that the examples included in the 1993 proposed regulations interpreted § 1.512(a)–1(d) too broadly by allowing exempt organizations to apply excess expenses directly connected with the conduct of an exempt activity (such as the conduct of a bowl game) to offset income from a separate, unrelated business activity (such as the sale of clothing featuring the name and logo of the bowl game) which does not have a proximate and primary relationship to the exempt activity. An example in these proposed regulations clarifies that § 1.512(a)–1(d) applies only in circumstances where the unrelated business activity and the exempt activity are closely connected, such that a taxable entity pursuing the same business activity would normally also conduct the exempt activity. The example involves the sale of advertising in a museum's exhibition catalog. In this example, the sale of advertising exploits an activity—the publication of editorial material—normally conducted by taxable entities that sell advertising. Therefore, the example concludes that any net loss related to the museum's publication of its exhibition catalog (after taking into account any income derived from or attributable to publication of the catalog) may be applied to offset any net unrelated business income from the museum's sale of advertising in the catalog. In contrast, expenses related to the costs of the exhibition itself are not directly connected with the unrelated advertising activity and cannot be applied to offset income from the advertising activity.

As discussed above, existing principles and rules will determine the UBIT consequences of any portion of a payment that falls outside the section

513(i) safe harbor. Existing principles and rules will also determine the non-UBIT consequences of sponsorship arrangements, including benefits to the payor. For example, see Rev. Rul. 77–367 (1977–2 C.B. 193), and Rev. Rul. 66–358 (1966–2 C.B. 218), regarding inurement and private benefit.

These proposed regulations do not specifically address the Internet activities of exempt organizations. However, the IRS and the Treasury Department are reviewing the application of existing tax laws governing exempt organizations, including the UBIT rules, to Internet activities. Comments are specifically requested on the application of the rules governing periodicals and trade shows in section 513(i)(2)(B)(ii) to an exempt organization's Internet sites, and on whether providing a link to a sponsor's Internet site is advertising within the meaning of section 513(i)(2)(A) and § 1.513–4(c)(2)(iv).

These proposed regulations clarify that qualified sponsorship payments in the form of money or property (but not services) are treated as contributions received by the exempt organization for purposes of determining public support to the organization under section 170(b)(1)(A)(vi) or section 509(a)(2). The exclusion of contributed services for purposes of determining public support is consistent with the general rule regarding donated services. See §§ 1.509(a)–3(f), 1.170A–9(e)(7)(i), 1.170A–1(g). Thus, qualified sponsorship payments in the form of money or property are treated as contributions for purposes of Part I (Revenue, Expenses, and Changes in Net Assets or Fund Balances) of Form 990, "Return of Organization Exempt from Income Tax." The fact that a payment is a qualified sponsorship payment that is treated as a "contribution" to the payee organization does not determine whether the payment is deductible by the payor under section 162 or section 170.

Proposed Effective Date

These regulations are proposed to apply on the date they are published as final in the **Federal Register**, although organizations may rely on these proposed regulations for payments received between January 1, 1998, and the date the regulations are published as final in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. In particular, the IRS and the Treasury Department request comments on whether further clarification is needed regarding the application of § 1.512(a)–1(d) in the context of corporate sponsorship payments or other unrelated business activities. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 21, 2000, at 10 a.m. in room G–043, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by May 31, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information: The principal author of these regulations is Stephanie Lucas Caden, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments

Accordingly, under the authority of 26 U.S.C. 7805, the proposed amendments to 26 CFR part 1, relating to § 1.512(a)–1 and § 1.513–4, published in the **Federal Register** for January 22, 1993 (58 FR 5687), are withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.170A–9, a sentence is added to the end of paragraph (e)(6)(i) to read as follows:

§ 1.170A–9 Definition of section 170(b)(1)(A) organization.

* * * * *

(e) * * *

(6) *Definition of support; meaning of general public*—(i) *In general.* * * * For purposes of this paragraph (e), the term *contributions* includes qualified sponsorship payments (as defined in § 1.513–4) in the form of money or property (but not services).

* * * * *

Par. 3. In § 1.509(a)–3, a sentence is added to the end of paragraph (f)(1) to read as follows:

§ 1.509(a)–3 Broadly, publicly supported organizations.

* * * * *

(f) *Gifts and contributions distinguished from gross receipts*—(1) *In general.* * * * For purposes of section 509(a)(2), the term *contributions* includes qualified sponsorship payments (as defined in § 1.513–4) in the form of money or property (but not services).

* * * * *

Par. 4. In § 1.512(a)–1, paragraph (e) is amended by:

1. Revising the heading and introductory text for paragraph (e);
2. Redesignating the current *Example.* as *Example 1*;
3. Adding *Example 2.*

The revisions and additions read as follows:

§ 1.512(a)–1 Definition.

* * * * *

(e) *Examples.* This section is illustrated by the following examples:

Example 1. * * *

Example 2. (i) P, a manufacturer of photographic equipment, underwrites a photography exhibition organized by M, an art museum described in section 501(c)(3). In return for a payment of $100,000, M agrees that the exhibition catalog sold by M in connection with the exhibit will advertise P's product. The exhibition catalog will also include educational material, such as copies of photographs included in the exhibition, interviews with photographers, and an essay by the curator of M's department of photography. For purposes of this example, assume that none of the $100,000 is a qualified sponsorship payment within the meaning of section 513(i) and § 1.513–4, that M's advertising activity is regularly carried on, and that the entire amount of the payment is unrelated business taxable income to M. Expenses directly connected with generating the unrelated business taxable income (i.e., direct advertising costs) total $25,000. Expenses directly connected with the preparation and publication of the exhibition catalog (other than direct advertising costs) total $110,000. M receives $60,000 of gross revenue from sales of the exhibition catalog. Expenses directly connected with the conduct of the exhibition total $500,000.

(ii) The computation of unrelated business taxable income is as follows:

(A) Unrelated trade or business (sale of advertising):

Income	$100,000	
Directly-connected expenses	(25,000)	
Subtotal	75,000	75,000

(B) Exempt function (publication of exhibition catalog):

Income (from catalog sales)	60,000	
Directly-connected expenses	(110,000)	
Net exempt function income (loss)	(50,000)	(50,000)
Unrelated business taxable income		25,000

(iii) Expenses related to publication of the exhibition catalog exceed revenues by $50,000. Because the unrelated business activity (the sale of advertising) exploits an exempt activity (the publication of the exhibition catalog), and because the publication of editorial material is an activity normally conducted by taxable entities that sell advertising, the net loss from the exempt publication activity is allowed as a deduction from unrelated business income under paragraph (d)(2) of this section. In contrast, the presentation of an exhibition is not an activity normally conducted by taxable entities engaged in advertising and publication activity for purposes of paragraph (d)(2) of this section. Consequently, the $500,000 cost of presenting the exhibition is not directly connected with the conduct of the unrelated advertising activity and does not have a proximate and primary relationship to that activity. Accordingly, M has unrelated business taxable income of $25,000.

Par. 5. Section 1.513–4 is added to read as follows:

§ 1.513–4 Certain sponsorship not unrelated trade or business.

(a) *In general.* Under section 513(i), the receipt of qualified sponsorship payments by an exempt organization which is subject to the tax imposed by section 511 does not constitute receipt of income from an unrelated trade or business.

(b) *Exception.* The provisions of this section do not apply with respect to payments made in connection with qualified convention and trade show activities. For rules governing qualified convention and trade show activity, see § 1.513–3. The provisions of this section also do not apply to income derived from the sale of advertising or acknowledgments in exempt organization periodicals. For this purpose, the term *periodical* means regularly scheduled and printed material published by or on behalf of the exempt organization that is not related to and primarily distributed in connection with a specific event conducted by the exempt organization. For rules governing the sale of advertising in exempt organization periodicals, see § 1.512(a)–1(f).

(c) *Qualified sponsorship payment*—(1) *Definition.* The term *qualified sponsorship payment* means any payment of money, transfer of property, or performance of services by any person engaged in a trade or business with respect to which there is no arrangement or expectation that the person will receive any substantial return benefit. In determining whether a payment is a qualified sponsorship payment, it is irrelevant whether the sponsored activity is related or unrelated to the recipient organization's exempt purpose. It is also irrelevant whether the sponsored activity is temporary or permanent.

(2) *Substantial return benefit*—(i) *In general.* For purposes of this section, a *substantial return benefit* means any benefit other than goods, services or other benefits of insubstantial value that are disregarded under paragraph (c)(2)(ii) of this section, or a use or acknowledgment described in paragraph (c)(2)(iii) of this section.

A substantial return benefit includes advertising as defined in paragraph (c)(2)(iv) of this section, providing facilities, services or other privileges to the payor or persons designated by the payor (except as provided in paragraph (c)(2)(ii) of this section), and granting the payor or persons designated by the payor an exclusive or nonexclusive right to use an intangible asset (e.g., trademark, patent, logo, or designation) of the exempt organization.

(ii) *Certain goods or services disregarded.* (A) For purposes of paragraph (c)(2)(i) of this section, goods, services or other benefits are disregarded if—

(*1*) The goods, services or other benefits provided to the payor or persons designated by the payor have an aggregate fair market value of not more than 2% of the amount of the payment, or $74 (adjusted for tax years beginning after calendar year 2000 by an amount determined under section 1(f)(3), by substituting "calendar year 1999" for "calendar year 1992" in section 1(f)(3)(B)), whichever is less (or such other amount(s) as may be specified in a revenue procedure or other form of

guidance issued by the Commissioner); or

(*2*) The only benefits provided to the payor or persons designated by the payor are token items (e.g., bookmarks, calendars, key chains, mugs, posters, tee shirts) bearing the exempt organization's name or logo that have an aggregate cost within the limit established for low cost articles under section 513(h)(2) (or such other limit as may be specified in a revenue procedure or other form of guidance issued by the Commissioner); however, token items (as described above) provided to employees of the payor, or to partners of a partnership that is the payor, are disregarded if the combined total cost of the token items provided to each employee or partner does not exceed the limit stated in this paragraph (c)(2)(ii)(A)(*2*).

(B) If the fair market value of the benefits (or the cost, in the case of token items) exceeds the amount or limit specified in paragraph (c)(2)(ii)(A) of this section, then (except as provided in paragraph (c)(2)(iii) of this section) the entire fair market value (as opposed to cost) of such benefits, not merely the excess amount, is a substantial return benefit.

(iii) *Use or acknowledgment.* For purposes of this section, a substantial return benefit does not include the use or acknowledgment of the name or logo (or product lines) of the payor's trade or business in connection with the activities of the exempt organization. Use or acknowledgment does not include advertising as described in paragraph (c)(2)(iv) of this section, but may include the following: logos and slogans that do not contain qualitative or comparative descriptions of the payor's products, services, facilities or company; a list of the payor's locations, telephone numbers, or Internet address; value-neutral descriptions, including displays or visual depictions, of the payor's product-line or services; and the payor's brand or trade names and product or service listings. Logos or slogans that are an established part of a payor's identity are not considered to contain qualitative or comparative descriptions. Mere display or distribution, whether for free or remuneration, of a payor's product by the payor or the exempt organization to the general public at the sponsored activity is not considered an inducement to purchase, sell or use the payor's product for purposes of this section and, thus, will not affect the determination of whether a payment is a qualified sponsorship payment.

(iv) *Advertising.* For purposes of this section, the term *advertising* means any message or other programming material which is broadcast or otherwise transmitted, published, displayed or distributed, and which promotes or markets any trade or business, or any service, facility or product. Advertising includes messages containing qualitative or comparative language, price information or other indications of savings or value, an endorsement, or an inducement to purchase, sell, or use any company, service, facility or product. A single message that contains both advertising and an acknowledgment is advertising. This section does not apply to activities conducted by a payor on its own. For example, if a payor purchases broadcast time from a television station to advertise its product during commercial breaks in a sponsored program, the exempt organization's activities are not thereby converted to advertising.

(v) *Exclusivity arrangements*—(A) *Exclusive sponsor.* An arrangement that acknowledges the payor as the exclusive sponsor of an exempt organization's activity, or the exclusive sponsor representing a particular trade, business or industry, generally does not, by itself, result in a substantial return benefit. For example, if in exchange for a payment, an organization announces that its event is sponsored exclusively by the payor (and does not provide any advertising or other substantial return benefit to the payor), the payor has not received a substantial return benefit.

(B) *Exclusive provider.* An arrangement that limits the sale, distribution, availability, or use of competing products, services, or facilities in connection with an exempt organization's activity generally results in a substantial return benefit. For example, if in exchange for a payment, the exempt organization agrees to allow only the payor's products to be sold in connection with an activity, the payor has received a substantial return benefit.

(d) *Allocation of payment*—(1) *In general.* If there is an arrangement or expectation that the payor will receive a substantial return benefit with respect to any payment, then only the portion, if any, of the payment that exceeds the fair market value of the substantial return benefit (determined on the date the sponsorship arrangement is entered into) is a qualified sponsorship payment. However, if the exempt organization does not establish that the payment exceeds the fair market value of any substantial return benefit, then no portion of the payment constitutes a qualified sponsorship payment. The unrelated business income tax (UBIT) treatment of any payment (or portion thereof) that is not a qualified sponsorship payment is determined by application of sections 512, 513 and 514. For example, payments related to an exempt organization's providing facilities, services, or other privileges to the payor or persons designated by the payor, advertising, exclusive provider arrangements described in paragraph (c)(2)(v)(B) of this section, a license to use intangible assets of the exempt organization, or other substantial return benefits, are evaluated separately in determining whether the exempt organization realizes unrelated business taxable income. The fair market value of any substantial return benefit provided as part of a sponsorship arrangement is the price at which the benefit would be provided between a willing recipient and a willing provider of the benefit, neither being under any compulsion to enter into the arrangement, and both having reasonable knowledge of relevant facts, and without regard to any other aspect of the sponsorship arrangement.

(2) *Anti-abuse provision.* To the extent necessary to prevent avoidance of the rule stated in paragraph (d)(1) of this section, where the exempt organization fails to make a reasonable and good faith valuation of any substantial return benefit, the Commissioner (or the Commissioner's delegate) may determine the portion of a payment allocable to such substantial return benefit and may treat two or more related payments as a single payment.

(e) *Special rules*—(1) *Written agreements.* The existence of a written sponsorship agreement does not, in itself, cause a payment to fail to be a qualified sponsorship payment. The terms of the agreement, not its existence or degree of detail, are relevant to the determination of whether a payment is a qualified sponsorship payment. Similarly, the terms of the agreement and not the title or responsibilities of the individuals negotiating the agreement determine whether a payment (or any portion thereof) made pursuant to the agreement is a qualified sponsorship payment.

(2) *Contingent payments.* The term qualified sponsorship payment does not include any payment the amount of which is contingent, by contract or otherwise, upon the level of attendance at one or more events, broadcast ratings, or other factors indicating the degree of public exposure to the sponsored activity. The fact that a payment is contingent upon sponsored events or activities actually being conducted does not, by itself, cause the payment to fail to be a qualified sponsorship payment.

(3) *Determining public support.* Qualified sponsorship payments in the form of money or property (but not

services) are treated as contributions received by the exempt organization for purposes of determining public support to the organization under section 170(b)(1)(A)(vi) or section 509(a)(2). See §§ 1.509(a)–3(f)(1) and 1.170A–9(e)(6)(i). The fact that a payment is a qualified sponsorship payment that is treated as a contribution to the payee organization does not determine whether the payment is deductible by the payor under section 162 or section 170.

(f) *Examples.* The provisions of this section are illustrated by the following examples. The tax treatment of any payment (or portion of a payment) that does not constitute a qualified sponsorship payment is governed by general UBIT principles. In these examples, the recipients of the payments at issue are section 501(c) organizations. The only benefits received by the payors are those specifically indicated in the example. The examples are as follows:

Example 1. M, a local charity, organizes a marathon and walkathon at which it serves to participants drinks and other refreshments provided free of charge by a national corporation. The corporation also gives M prizes to be awarded to winners of the event. M recognizes the assistance of the corporation by listing the corporation's name in promotional fliers, in newspaper advertisements of the event and on T-shirts worn by participants. M changes the name of its event to include the name of the corporation. M's activities constitute acknowledgment of the sponsorship. The drinks, refreshments and prizes provided by the corporation are a qualified sponsorship payment, which is not income from an unrelated trade or business.

Example 2. N, an art museum, organizes an exhibition and receives a large payment from a corporation to help fund the exhibition. N recognizes the corporation's support by using the corporate name and established logo in materials publicizing the exhibition, including banners, posters, brochures and public service announcements. N also hosts a dinner for the corporation's executives. The fair market value of the dinner exceeds the amount specified in paragraph (c)(2)(ii) of this section. N's use of the corporate name and logo in connection with the exhibition constitutes acknowledgment of the sponsorship. However, the dinner for corporate executives is a substantial return benefit. Only that portion of the payment, if any, that N can demonstrate exceeds the fair market value of the dinner is a qualified sponsorship payment.

Example 3. O coordinates sports tournaments for local charities. An auto manufacturer agrees to underwrite the expenses of the tournaments. O recognizes the auto manufacturer by including the manufacturer's name and established logo in the title of each tournament as well as on signs, scoreboards and other printed material. The auto manufacturer receives complimentary admission passes and pro-am playing spots for each tournament that have a fair market value in excess of the amount specified in paragraph (c)(2)(ii) of this section. Additionally, O displays the latest models of the manufacturer's premier luxury cars at each tournament. O's use of the manufacturer's name and logo and display of cars in the tournament area constitute acknowledgment of the sponsorship. However, the admission passes and pro-am playing spots are a substantial return benefit. Only that portion of the payment, if any, that O can demonstrate exceeds the fair market value of the admission passes and pro-am playing spots is a qualified sponsorship payment.

Example 4. P conducts an annual college football bowl game. P sells to commercial broadcasters the right to broadcast the bowl game on television and radio. A major corporation agrees to be the exclusive sponsor of the bowl game. The detailed contract between P and the corporation provides that the name of the bowl game will include the name of the corporation. The contract further provides that the corporation's name and established logo will appear on players' helmets and uniforms, on the scoreboard and stadium signs, on the playing field, on cups used to serve drinks at the game, and on all related printed material distributed in connection with the game. The agreement is contingent upon the game being broadcast on television and radio, but the amount of the payment is not contingent upon the number of people attending the game or the television ratings. The contract provides that television cameras will focus on the corporation's name and logo on the field at certain intervals during the game. P's use of the corporation's name and logo in connection with the bowl game constitutes acknowledgment of the sponsorship. The exclusive sponsorship arrangement is not a substantial return benefit. The entire payment is a qualified sponsorship payment, which is not income from an unrelated trade or business.

Example 5. Q organizes an amateur sports team. A major pizza chain gives uniforms to players on Q's team, and also pays some of the team's operational expenses. The uniforms bear the name and established logo of the pizza chain. During the final tournament series, Q distributes free of charge souvenir flags bearing Q's name to employees of the pizza chain who come out to support the team. The flags cost $2 each. The flags are not a substantial return benefit because they are token items that qualify as low cost articles under paragraph (c)(2)(ii) of this section. Q's use of the name and logo of the pizza chain in connection with the tournament constitutes acknowledgment of the sponsorship. The funding and supplied uniforms are a qualified sponsorship payment, which is not income from an unrelated trade or business.

Example 6. R is a liberal arts college. A soft drink manufacturer makes a substantial payment to the college's English department, and in exchange, R names a writing competition after the soft drink manufacturer. In addition, R agrees to limit all soft drink sales on campus to the manufacturer's brand of soft drink. R's use of the manufacturer's name in the writing competition constitutes acknowledgment of the sponsorship. However, limiting all soft drink sales on campus to the manufacturer's brand of soft drink, i.e., the exclusive provider arrangement, is a substantial return benefit. Only that portion of the payment, if any, that R can demonstrate exceeds the fair market value of the exclusive provider arrangement is a qualified sponsorship payment.

Example 7. S is a noncommercial broadcast station that airs a program funded by a local music store. In exchange for the funding, S broadcasts the following message: "This program has been brought to you by the Music Shop, located at 123 Main Street. For your music needs, give them a call today at 555–1234. This station is proud to have the Music Shop as a sponsor." Because this single broadcast message contains both advertising and an acknowledgment, the entire message is advertising and constitutes a substantial return benefit. Unless S establishes that the amount of the payment exceeds the fair market value of the advertising, none of the payment is a qualified sponsorship payment.

Example 8. T, a symphony orchestra, performs a series of concerts. A program guide that contains notes on guest conductors and other information concerning the evening's program is distributed by T at each concert. The Music Shop makes a payment to T in support of the concert series. As a supporter of the event, the Music Shop is recognized in the program guide and on a poster in the lobby of the concert hall. The Music Shop receives complimentary tickets to the concert series. The fair market value of the complimentary tickets exceeds the amount specified in paragraph (c)(2)(ii) of this section. The lobby poster states that "The T concert is sponsored by the Music Shop, located at 123 Main Street, telephone number 555–1234." The program guide contains the same information and also states, "Visit today for the finest selection of music CDs and cassette tapes." T's use of the Music Shop's name and address in the lobby poster constitutes acknowledgment of the sponsorship. However, the promotion in the program guide and complimentary tickets are a substantial return benefit. Only that portion of the payment, if any, that T can demonstrate exceeds the fair market value of the promotion in the program guide and complimentary tickets is a qualified sponsorship payment.

Example 9. U, a national charity dedicated to promoting health, organizes a campaign to inform the public about potential cures to fight a serious disease. As part of the campaign, U sends representatives to community health fairs around the country to answer questions about the disease and inform the public about recent developments in the search for a cure. A pharmaceutical company makes a payment to U to fund U's booth at a health fair. U places a sign in the booth displaying the pharmaceutical company's name and slogan, "Better Research, Better Health," which is an established part of the company's identity. In addition, U grants the pharmaceutical company a license to use U's logo in

marketing its products to health care providers around the country. U's display of the pharmaceutical company's name and slogan constitutes acknowledgment of the sponsorship. However, the license granted to the pharmaceutical company to use U's logo is a substantial return benefit. Only that portion of the payment, if any, that U can demonstrate exceeds the fair market value of the license granted to the pharmaceutical company is a qualified sponsorship payment.

Example 10. V, a trade association, publishes a monthly scientific magazine for its members containing information about current issues and developments in the field. A textbook publisher makes a large payment to V to have its name displayed on the inside cover of the magazine each month. Because the monthly magazine is a periodical within the meaning of paragraph (b) of this section, the section 513(i) safe harbor does not apply. See § 1.512(a)–1(f).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–4848 Filed 2–29–00; 8:45 am]

BILLING CODE 4830–01–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN 3046–AA57

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission (the Commission or EEOC) proposes to amend its regulation governing federal sector equal employment opportunity to reflect the 1992 amendment of section 501 of the Rehabilitation Act of 1973. Congress amended section 501 in October 1992 to state that the nondiscrimination standards of Title I of the Americans with Disabilities Act apply to section 501 of the Rehabilitation Act.

DATES: Comments must be received by May 1, 2000.

ADDRESSES: Comments should be submitted to the Office of the Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507. Copies of comments submitted by the public will be available for review on weekdays, except federal holidays, at the Commission's library, Room 6502, 1801 L Street, N.W., Washington, D.C., between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel, at (202) 663–4689 or TDD (202) 663–7026. This document is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this document in an alternative format should be made to the Publications Information Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: With the Rehabilitation Act Amendments of 1992, Public Law 102–569, 106 Stat. 4344 (1992 Amendments or Rehabilitation Act Amendments), Congress added a new subsection (g) to section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791 (section 501). Subsection (g) provides that the standards used to determine whether section 501 has been violated in a complaint alleging "nonaffirmative action employment discrimination" [1] are the standards of Title I of the Americans with Disabilities Act of 1990 (ADA), as well as sections 501 through 504, and 510 of the ADA, as such sections relate to employment.[2] This notice of proposed rulemaking (NPRM) sets forth proposed regulatory revisions to implement the Rehabilitation Act Amendments.

Summary of Proposal

The Commission promulgated its latest regulation under section 501 of the Rehabilitation Act in April, 1992, several months before Congress enacted the Rehabilitation Act Amendments in October, 1992. The Commission now proposes to update this section 501 regulation, found at 29 CFR 1614.203, by deleting all of the current provisions and adding a new paragraph (b)(1) that cross-references the ADA regulation at 29 CFR Part 1630.[3]

Effect of the ADA Standards

As a general matter, the ADA regulation is more extensive than the requirements in place under § 1614.203.[4] In other respects, however, the ADA regulation closely corresponds to provisions in § 1614.203. The following discussion compares each paragraph in § 1614.203 to the corresponding section(s) of the ADA regulation, and identifies major consequences of applying the ADA regulation to the federal sector.

Definitions: Change from Paragraph 1614.203(a) to 29 CFR 1630.2

Subparagraphs 1614.203(a)(1)—(a)(5)

The Commission proposes to delete 29 CFR 1614.203(a)(1)—(a)(5) because these sections are repetitive of ADA definitions at 29 C.F.R. 1630.2. For example, the definition of "disability" in the two regulations is virtually identical, referring in both instances to an impairment that substantially limits one or more major life activities, a record of such a substantially limiting impairment, or being regarded as having such a substantially limiting impairment.[5] The ADA regulation also defines several important terms that are not defined in § 1614.203, such as "essential functions," "qualification standards," and "direct threat."

Subparagraph 1614.203(a)(6): Safety Issues and "Qualified Individual with [a Disability]"

The Commission proposes to delete 29 CFR 1614.203(a)(6) because it is inconsistent with the ADA's standard on safety issues. Under the ADA, an employer can disqualify an individual from employment if the employer shows that the individual poses a "direct threat" to health and safety, even after considering reasonable accommodation. The ADA regulation defines "direct threat" as a "significant risk of substantial harm," and states that an employer must consider individualized medical or other objective evidence to decide if a particular individual poses a "direct threat." 29 CFR 1630.2(r). By contrast, the old subparagraph 1614.203(a)(6) did not even use "direct

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[1] Accordingly, the 1992 Amendments do not alter affirmative action duties under section 501. For simplicity, the phrase "employment discrimination" will be used in this document in lieu of the statutory phrase "nonaffirmative action employment discrimination."

[2] See 42 U.S.C. 12101–12117, 12201–12213 (1994) (codified as amended).

[3] The fact that the ADA's definition of "employer" excludes the United States does not impact this proposal. See 42 U.S.C. 12111(5)(B)(i); 29 CFR 1630.2 (e)(2)(i). The NPRM does not state that the ADA regulation applies directly to the federal government as an employer. Rather, the NPRM simply implements the Rehabilitation Act Amendments by applying ADA employment discrimination standards through Section 501 to the federal sector.

[4] Under the 1992 Amendments, the federal sector is subject to all ADA employment discrimination standards through Section 501.

[5] Compare 29 CFR 1614.203(a)(1) with 29 CFR 1630.2(g). In a decision focused closely on the wording of the ADA definition of "disability," the Supreme Court held in Sutton v. United Airlines, 119 S. Ct. 2139, 9 AD Cas. (BNA) 673 (1999), that the positive and negative effects of corrective or mitigating measures must be considered when judging whether an impairment substantially limits one or more of an individual's major life activities and, therefore, whether the individual is "disabled" under the first prong of the ADA's definition of "disability." See also Murphy v. United Parcel Service, Inc., 119 S. Ct. 2133, 9 AD Cas. (BNA) 691 (1999); and Albertsons, Inc. v. Kirkingburg, 119 S. Ct. 2162, 9 AD Cas. (BNA) 694 (1999). The Court's decision in Sutton does not affect the text of the ADA regulation because the regulation does not address mitigating measures. The Sutton holding, however, alters the Commission's subregulatory ADA guidance to the extent such guidance sets forth a position on mitigating measures that is contrary to the Court's holding.

threat" as a defined term, and instead, addressed safety concerns by requiring the employee to show that s/he could work without endangering health or safety as part of the larger showing that s/he was a "qualified individual with a disability."

The Commission has applied this ADA "direct threat" standard in federal sector decisions subsequent to the 1992 Amendments. See *Kahout* v. *USPS*, EEOC Appeal No. 01954900 (June 19, 1997); *Hobbs* v. *USPS*, EEOC Appeal No. 01944181 (January 26, 1996); *Robinson* v. *USPS*, EEOC Request No. 05940034 (September 16, 1994).

Paragraph 1614.203(b): Nondiscrimination Obligation and Model Employer

The Commission proposes to redesignate current paragraph (b) as new paragraph (a), and to replace the term "handicaps" with "disabilities" in its text.[6] Thus, new paragraph (a) sets forth the basic principle that federal agencies have an obligation not to discriminate in employment on the basis of disability. Moreover, paragraph (a) states that "[t]he [f]ederal [g]overnment shall be a model employer of individuals with disabilities." Finally, this paragraph requires agencies to give full consideration to the hiring, placement, and advancement of qualified individuals with mental and physical disabilities.

Reasonable Accommodation and Undue Hardship: Change From Paragraph 1614.203(c) to 29 CFR 1630.2(o), (p) and 1630.9

The Commission proposes to delete 29 CFR 1614.203(c) and instead apply the pertinent ADA standards, thereby providing federal employers with more guidance about reasonable accommodation and undue hardship than the pre-ADA standards.[7] For example, the ADA regulation defines the phrase "reasonable accommodation" as "a means by which barriers to the equal employment opportunity of an individual with a disability are removed or alleviated," and thereby articulates a basic principle that may help federal employers and employees to evaluate potential accommodations.[8] The ADA regulation also states that, if an employee requests reasonable accommodation but the most appropriate accommodation is not obvious, the employer needs "to initiate an informal, interactive process with the qualified individual with a disability" to identify an effective accommodation. *See* 29 C.F.R. 1630.2(o)(3). In terms of specific accommodations, the ADA regulation adds reassignment and "modification of examinations, training materials, or policies" to the familiar list included in the pre-ADA regulation. *See* 29 CFR 1630.2(o)(2).[9] Finally, the ADA regulation provides an extensive discussion of the employer defense of "undue hardship," directing the employer to consider a range of financial and operational factors to evaluate whether a particular reasonable accommodation would impose an undue hardship on its operations.[10]

For the federal employer, the most notable change resulting from the 1992 Amendments is that reassignment is now treated as a reasonable accommodation pursuant to express language in the ADA. 42 U.S.C. 12111(9)(B). An employer's duty to provide reassignment is limited only by "undue hardship." The change will be discussed in detail in the section titled "Reassignment."

Employment Criteria: Change from Paragraph 1614.203(d) to 29 CFR 1630.10 and 1630.11

The Commission proposes to eliminate paragraph (d), which governed the use of tests and selection criteria, and instead apply the ADA standards at 29 CFR 1630.10 and 1630.11. Under the ADA, it is unlawful to use qualification standards, tests, or other selection criteria that screen out or tend to screen out individuals with disabilities, based on disability, unless the standards or criteria are shown to be job-related and consistent with business necessity. 29 CFR 1630.10. Consideration must be given to whether an individual with a disability can satisfy a qualification standard or other selection criteria with reasonable accommodation. *See* 29 CFR 1630.15.

Moreover, an individual with a disability must not be excluded from employment simply because his/her disability prevents him/her from taking a test, or negatively influences the results of a test. The Interpretive Guidance appended to the ADA regulation states that employment tests must be administered using accessible test sites and formats, and in a way that measures ability rather than disability. 29 CFR part. 1630 app. 1630.11.

Preemployment Inquiries: Change from Paragraph 1614.203(e) to 29 C.F.R. 1630.13 and 1630.14

The Commission proposes to delete paragraph (e) and apply the pertinent ADA standards at 29 CFR 1630.13 and 1630.14. Under the ADA standards, a federal agency employer remains prohibited from making inquiries as to whether an applicant is an individual with a disability, or as to the nature or severity of such disability, and may not conduct a pre-offer medical examination. *See* 29 CFR 1630.13(a). To the extent that an employer wants to determine if an applicant's medical condition will prevent him/her from performing a job, the ADA only permits a few specified preemployment inquiries.[11] By contrast, the preemployment inquiry provision in old paragraph 1614.203(e) gave agencies broader discretion to ask applicants

[6] The term "handicaps" is changed to "disabilities" throughout this document.

[7] For a discussion of reasonable accommodation and undue hardship, see 29 CFR 1630.2(o), (p) (defining reasonable accommodation and undue hardship, respectively) and 29 CFR 1630.9 (discussing failure to provide reasonable accommodation as a discriminatory practice). The Commission issued guidance on reasonable accommodation and undue hardship in its "EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act," 8 FEP Manual (BNA) 405:7601(1999) [hereinafter "Guidance on Reasonable Accommodation and Undue Hardship"]. The analysis in this Enforcement Guidance applies to federal sector employment discrimination complaints arising under section 501 of the Rehabilitation Act. *See id.*

[8] *See* 29 CFR part 1630 app. 1630.9.

[9] A reasonable accommodation that has increasing significance in the federal workplace is providing accessible electronic and information technology to make facilities and services readily accessible to individuals with disabilities. *See* 29 CFR 1630.2(o)(2)(i) (it is a reasonable accommodation to make "existing facilities used by employees readily accessible to and usable by individuals with disabilities"); *id.* at 1630.2(o)(2)(ii) ("other similar accommodations for individuals with disabilities" may be required).

[10] A reasonable accommodation imposes an "undue hardship" on an employer's operation when it results in "significant difficulty or expense." 42 U.S.C. 12111(10). In assessing undue hardship, an employer should consider several factors including: (1) The nature and net cost of the accommodation; (2) the overall financial resources of the facility or facilities involved in making the accommodation; (3) the overall financial resources of the covered entity; (4) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce, and the geographic separateness and the administrative and fiscal relationship of the facility or facilities in question to the covered entity; and (5) the impact of the accommodation on the operation of the facility. *See* 42 U.S.C. 12111(10)(B); 29 C.F.R. 1630.2(p)(2).

[11] For a detailed discussion of pertinent ADA requirements, see the Appendix to 29 CFR 1630.14, and "ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations," 8 FEP Manual(BNA) 405:7191 (1995) [hereinafter "Guidance on Preemployment Inquiries"]. Note that the ADA also permits pre-offer disability-related inquiries that are necessary for affirmative action purposes. *See* Guidance on Preemployment Inquiries, 8 FEP Manual (BNA) at 405:7196–97 (1995). The proposed deletion of paragraph (e) will not affect federal sector affirmative action efforts.

about their medical conditions, expressly permitting agencies to inquire "into an applicant's ability to meet the essential functions of the job, or the medical qualification requirements if applicable, with or without reasonable accommodation, * * * i.e. the minimum abilities necessary for safe and efficient performance of the duties of a position."

The ADA allows medical inquiries or examinations after a conditional offer of employment but before work begins, assuming all individuals in the same job category are subjected to the same inquiries or examinations regardless of disability. *See* 29 CFR 1630.14(b). An employer may ask specific individuals for more follow-up information if the request is medically related to the previously obtained information.[12] Under the ADA, however, an employer who withdraws a conditional offer of employment based on disability-related information obtained during a post-offer inquiry or examination can defend against a charge of discrimination only by showing: (1) that it used exclusionary criteria that were job-related and consistent with business necessity; and (2) that it considered reasonable accommodation but the person could not have performed the essential job functions even with reasonable accommodation. *See* 29 C.F.R. 1630.14(b)(3).

The ADA also prohibits employers from making disability-related inquiries or requiring medical examinations of *employees* unless those inquiries or examinations are job-related and consistent with business necessity. 42 USC 12112(d)(4); 29 CFR part. 1630, app. 1630.14(c).[13] Finally, the federal employer should note that part 1630 imposes confidentiality restrictions on all medical information obtained from employees and applicants. *See* 29 CFR 1630.14 (b)(1) and (c)(1).

Physical Access to Buildings: Change from Paragraph 1614.203(f) to 29 CFR part 1630

The Commission proposes to delete paragraph 1614.203(f), concerning physical access to buildings. If an applicant or employee is denied equal employment opportunity because she cannot obtain physical access to a building, then the nondiscrimination standards of part 1630 control.

As a practical matter, federal agencies' obligations in this area are not expected to change significantly. Under the old paragraph 1614.203(f), an agency may not have an inaccessible facility. Additionally, federal agencies already must comply with the Architectural Barriers Act of 1968 and the ADA's accessibility requirements. By adopting the ADA's employment nondiscrimination standards, the NPRM would require agencies to provide reasonable accommodation if an applicant or employee would be denied equal employment opportunity because she could not obtain physical access to a building.

Reassignment: Change From Paragraph 1614.203(g) to New Paragraph 1614.203(b)(2)

The Commission proposes to delete paragraph 1614.203(g) and to add a new paragraph 1614.203(b)(2) stating the ADA's requirement of reasonable accommodation as it pertains to reassignment. In the ADA, Congress listed "reassignment to a vacant position" as a form of reasonable accommodation. 42 U.S.C. 12111(9)(B). The ADA treats reasonable accommodation as a nondiscrimination obligation.[14] An employer's duty to provide reassignment, like any reasonable accommodation, is limited by "undue hardship." By applying the ADA standard to reassignment, federal employees will now benefit from the same protections provided employees in the private sector.

The Obligation To Reassign

Reassignment to a vacant position is the reasonable accommodation of last resort and is required only if: (1) There are no effective accommodations that will enable the employee to perform the essential functions of his/her position, or (2) all other reasonable accommodations would impose an undue hardship. *See* S. Rep. No. 101–116, at 31 (1989); H.R. Rep. No. 101–485, pt. 2 at 63 (1990); *Smith* v. *Midland Brake, Inc.*, 180 F.3d 1154, 9 AD Cas. (BNA) 738 (10th Cir. 1999) (*en banc*); *Aka* v. *Washington Hosp. Ctr.*, 156 F.3d 1284, 8 AD Cas. (BNA) 1093 (D.C. Cir. 1998) (*en banc*); *Stone* v. *City of Mount Vernon*, 118 F.3d 92, 100–01, 6 AD Cas. (BNA) 1685, 1693 (2d Cir. 1997), cert. denied, 118 S. Ct. 1044 (1998); *Kitaura* v. *USPS*, EEOC Petition No. 03980089 (March 11, 1999); but *see, e.g., Foreman* v. *Babcock & Wilcox Co.*, 117 F.3d 800, 7 AD Cas. (BNA) 331 (5th Cir. 1997), cert denied, 118 S. Ct. 1050 (1998). Reassignment means that the employee receives the vacant[15] position if s/he is qualified for it. Cf. Smith, *supra* (stating that "the reassignment obligation must mean something more than merely allowing a disabled person to compete equally with the rest of the world for a vacant position").

The Employee Must Be Qualified

Probationary Employee

A probationary employee with a disability is eligible for reassignment to a new position as long as s/he adequately performed the essential functions of her/his original position, with or without reasonable accommodation, before the need for reassignment arose. The longer a newly hired probationary employee has adequately performed the essential functions of the original job, with or without reasonable accommodation, the more likely it is that reassignment is appropriate when the employee becomes unable to continue performing such functions due to a disability.[16]

Employee Qualified for New Job

An employee is "qualified" for the new position if s/he: (1) Satisfies the requisite skill, experience, education, and other job-related requirements of that position; and (2) can perform the essential functions of the position, with or without reasonable accommodation. *See Stone* v. *Mount Vernon*, 118 F.3d 92, 100–01, 6 AD Cas. (BNA) 1685, 1693 (2d Cir. 1997), cert. denied, 118 S. Ct. 1044 (1998). The employer is not obliged to provide training so that an employee can acquire new skills for a particular reassignment. However, the employer must provide any training routinely given to other individuals

[12] *See supra* note 11, Guidance on Preemployment Inquiries, 8 FEP Manual (BNA) at 405:7197–99 (1995).

[13] For a discussion of this standard, see "EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities," at question 14, 8 FEP Manual (BNA) 405:7461,7467–70 (1997).

[14] Consequently, the Commission now considers reassignment a reasonable accommodation rather than affirmative action for purposes of Section 501. Cf. 57 Fed. Reg. 12634, 12637–12638 (April 10, 1992) (preamble to regulation at 29 CFR 1614.203(g), which was issued before the 1992 Amendments, stated that reassignment was affirmative action).

[15] A position is "vacant" if it is available when the employee asks for reasonable accommodation, or if it is expected to become available within a reasonable amount of time. See 29 CFR part 1630 app. § 1630.2(o). In the federal government, a position is vacant for purposes of reassignment if it is funded and not yet encumbered, even if the agency has already posted a notice advertising the position. *See Schuetter* v. *DOD*, EEOC Petition No. 03970140 (January 15, 1999). An employer is not obligated to create a new position to implement a reassignment. *See Mitchell* v. *DOD*, EEOC Petition No. 03930164 (January 21, 1994).

[16] See Guidance on Reasonable Accommodation and Undue Hardship, *supra* note 7, 8 FEP Manual (BNA) at 405:7622–23 (1999). Applicants are not entitled to reassignment. An applicant for a position must be qualified for, and be able to perform with or without reasonable accommodation, the essential functions of the position s/he seeks. See 29 CFR part 1630 app. § 1630.2(o).

hired for, or transferred into, the same job. *See Quintana* v. *Sound Distribution Corp.*, 6 AD Cas. (BNA) 842, 846 (S.D.N.Y. 1997). *See also Schuetter* v. *DOD*, EEOC Petition No. 03970140 (January 15, 1999).

The Interactive Process

As with reasonable accommodation generally, the federal employer and the individual with a disability who has requested reassignment may need to engage in an interactive process to identify an appropriate position. The employer may not know about all of the individual's skills, and the individual may not be aware of the range of available positions. *See Mengine* v. *Runyon*, 114 F.3d 415 (3d Cir. 1997). The interactive process need not be onerous. The aim is to identify the employee's qualifications, potential new jobs, and the employee's willingness to accept a particular transfer, through a flexible process involving a two-way dialogue between the employer and the qualified individual with a disability.

The Extent of the Agency's Duty to Search for Another Position

The Federal Employer Must Search for Vacant Positions

The federal employer must search for available vacancies. The employee does not have the burden of identifying open positions without the employer's assistance. *Taylor* v. *Phoenixville School District*, 1999 WL 649376 (3d Cir. August 18, 1999). Of course, the employee should assist the employer in identifying appropriate positions, to the extent s/he can gather such information.[17]

The employer first should search for vacant positions that are equivalent to the current position in terms of pay, status, and other relevant factors (*e.g.*, geographical location or benefits), and for which the individual is qualified. When it is not possible to identify a vacant position that is substantially equivalent to the original job, the federal employer needs to broaden its search. During interagency coordination, a question was raised about when a job technically becomes "vacant" and therefore available for reassignment in the federal government. The Commission solicits comment on this point.

[17] Additionally, in a unionized workplace, the employer and the union, as a collective bargaining representative, must negotiate in good faith over a variance to the collective bargaining agreement (CBA) if no reasonable accommodation exists that avoids violating the CBA. See Guidance on Reasonable Accommodation and Undue Hardship, *supra* note 7, 8 FEP Manual (BNA) at 405: 7633 (1999).

The ADA does not limit the obligation to reassign to positions within the same appointing authority or commuting area as the original job.[18] Indeed, reassignment to a different component of the same department may now be required, barring undue hardship. See Kitaura *supra*. If an employee is being reassigned to a different geographical area, s/he must pay for any relocation expenses unless the employer routinely pays such expenses when granting other employees' requests for transfers.[19]

The Undue Hardship Defense

Because Congress deemed reassignment to be a reasonable accommodation, a federal employer can deny a request for reassignment if it poses an undue hardship. See 42 U.S.C. 12111(10)(B); 29 CFR 1630.2(p). See *supra* note 10. The Commission evaluates undue hardship on a case-by-case basis. For example, if a federal employer claims that it would be an undue hardship to search for vacancies at different facilities in the same department, the Commission would examine the administrative and financial links between the department and its separate facilities to determine whether such a search would, in fact, impose "significant difficulty or expense" on the federal employer. Reassignment outside of the department—to a different department in the federal government—will be presumed to be an undue hardship at this time. Under current procedures, one federal department cannot compel another to accept a transferred employee, even as a reasonable accommodation.

Proposal To Delete Paragraph 1614.203(h): Exclusion From Definition of "Individual(s) With [Disabilities]"

This paragraph is deleted because it is duplicative of equivalent provisions in part 1630. Deletion of this paragraph does not change the nondiscrimination standards applicable to federal employers.

[18] *See Gile* v. *United Airlines, Inc.*, 95 F.3d 492, 5 AD Cas. (BNA) 1466 (7th Cir. 1996) (stating that lower court erroneously limited a plaintiff's request for documents since plaintiff should be able to present evidence about reassignment possibilities in other departments); *Malabarba* v. *Chicago Tribune Co.*, 149 F.3d 690, 8 AD Cas. (BNA) 1505 (7th Cir. 1998) (stating that company conducted conscientious intra-company search for position, even though its efforts could not result in reassignment); *see Kitaura supra*; *but see Riley* v. *Weyerhaeuser Paper Co.*, 898 F. Supp. 324 (W.D.N.C. 1995), 5 AD Cas. (BNA) 325, aff'd 77 F.3d 470, 8 AD Cas. (BNA) 1536 (4th Cir. 1996).

[19] If an employee freely states that s/he would not move to a different geographical area, the federal employer need not continue its search for a position in that geographic area.

Effective Date of a Finalized Rule After Public Comment

This regulation would be effective 30 days after publication of a final rule in the **Federal Register**. Like the recently-finalized procedural changes to part 1614, the current NPRM would apply to all pending Section 501 discrimination complaints.

Additional Amendment

The Commission proposes to delete the provision in § 1614.102(a)(9) which refers to reassignment pursuant to § 1614.203(g).

The Commission invites comment on these proposed changes. The Commission will consider all comments received in conjunction with this NPRM.

Regulatory Procedures

Executive Order 12866

Pursuant to Executive Order 12866, EEOC has coordinated this final rule with the Office of Management and Budget. Under section 3(f)(1) of Executive Order 12866, EEOC has determined that the regulation will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

Paperwork Reduction Act

This regulation contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

In addition, the Commission certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, because it applies exclusively to employees and agencies and departments of the federal government. For this reason, a regulatory flexibility analysis is not required.

List of Subjects in 29 CFR Part 1614

Administrative practice and procedure, Equal employment opportunity, Government employees, Individuals with disabilities.

For the Commission.

Ida L. Castro,

Chairwoman.

For the reasons set forth in the preamble, EEOC proposes to amend Chapter XIV of Title 29 of the Code of Federal Regulations as follows:

PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

1. the authority citation for part 1614 continues to read as follows:

Authority: 29 U.S.C. 206(d), 633(a), 791 and 794a; 42 U.S.C. 2000e–16; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR 1978 Comp., p. 321.

§ 1614.102 [Amended]

2. Section 1614.102 is amended by removing paragraph (a)(9) and redesignating paragraphs (a)(10) through (a)(14) as paragraphs (a)(9) through (a)(13), respectively.

3. Section 1614.203 is revised to read as follows:

§ 1614.203 Rehabilitation Act.

(a) *Model employer.* The Federal Government shall be a model employer of individuals with disabilities. Agencies shall not discriminate against qualified individuals with disabilities. Agencies shall give full consideration to the hiring, placement, and advancement of qualified individuals with disabilities.

(b) *ADA standards.* (1) The standards used to determine whether section 501 of the Rehabilitation Act of 1973 has been violated in a complaint alleging nonaffirmative action employment discrimination under this part shall be the standards applied under Titles I and V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12102, 12111–12117, 12201–12213) as such sections relate to employment. These standards are set forth in the Commission's ADA regulations at 29 CFR part 1630.

(2) Agencies must provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability, unless the agency can demonstrate that the accommodation would impose an undue hardship. Reasonable accommodation may include reassignment to a vacant position. Reassignment is the reasonable accommodation of last resort and is required only after it has been determined either that:

(i) There are no effective accommodations that will enable the employee to perform the essential functions of his/her current position; or

(ii) All other accommodations would impose an undue hardship.

[FR Doc. 00–4596 Filed 2–29–00; 8:45 am]

BILLING CODE 6570–01–P

POSTAL SERVICE

39 CFR Part 20

International Postal Rates; Proposed Changes

AGENCY: Postal Service.

ACTION: Proposed changes in international postal rates.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is proposing changes in international postal rates for certain surface mail categories. As required under the Postal Reorganization Act, the proposed changes will result in international postal rates that do not apportion the costs of the service so as to impair the overall value of the service to the users, are fair and reasonable, and are not unduly or unreasonably discriminatory or preferential.

DATES: Comments on the proposed changes must be received on or before March 31, 2000.

ADDRESSES: Written comments should be sent to the Manager, International Pricing, International Business, U.S. Postal Service, 475 L'Enfant Plaza SW Room 370–IBU, Washington DC 20260–6500. Copies of all written comments will be available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, in International Business, 10th Floor, 901 D Street SW, Washington DC.

FOR FURTHER INFORMATION CONTACT: John Alepa, (202) 268–4071.

SUPPLEMENTARY INFORMATION: The proposed international rates, shown in the tables below, are needed by the Postal Service to accommodate changes in the cost of providing international mail service.

The Postal Service is proposing to change only the rates contained in the charts below. These rates include the surface rates for regular printed matter and small packets to Mexico; the publishers' periodicals surface rates for Mexico and all other countries except Canada; and the books and sheet music surface rates for Mexico and all other countries except Canada. No other rates are changed at this time. Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service proposes to adopt the following rates and to amend the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual will be amended to incorporate the following postage rates:

MEXICO—REGULAR PRINTED MATTER AND SMALL PACKETS (SURFACE)

Weight not over— Lb.	Oz.	Rate
0	1	$0.72
0	2	0.96
0	3	1.27
0	4	1.50
0	5	1.80
0	6	1.80
0	7	2.22
0	8	2.22
0	9	2.63
0	10	2.63
0	11	2.96
0	12	2.96
0	13	3.37
0	14	3.37
0	15	3.77
1	0	3.77
1	2	4.12
1	4	4.46
1	6	4.81
1	8	5.16
1	10	5.50
1	12	5.84
1	14	6.19
2	0	6.54
3	0	8.84
4	0	11.15
Each additional pound or fraction of a pound		2.30

(**Note:** Maximum weight is 4 pounds for small packets and 11 pounds for regular printed matter.)

PUBLISHERS' PERIODICALS (SURFACE)

Weight not over— Lb.	Oz.	Mexico	All other [1]
0	1	$0.48	$0.44
0	2	0.60	0.55
0	3	0.78	0.71
0	4	0.90	0.83
0	5	1.13	1.05
0	6	1.13	1.05
0	7	1.36	1.27

PUBLISHERS' PERIODICALS (SURFACE)—Continued

Weight not over— Lb.	Oz.	Mexico	All other [1]
0	8	1.36	1.27
0	9	1.57	1.50
0	10	1.57	1.50
0	11	1.80	1.71
0	12	1.80	1.71
0	13	2.03	1.93
0	14	2.03	1.93
0	15	2.26	2.15
0	16	2.26	2.15
0	18	2.46	2.36
0	20	2.68	2.56
0	22	2.88	2.77
0	24	3.10	2.98
0	26	3.30	3.19
0	28	3.52	3.39
0	30	3.72	3.60
0	32	3.94	3.81
3	0	5.38	5.13
4	0	6.82	6.45
5	0	8.26	7.77
6	0	9.70	9.10
7	0	11.14	10.42
8	0	12.58	11.74
9	0	14.02	13.06
10	0	15.46	14.39
11	0	16.90	15.71
Each additional pound or fraction of a pound		1.44	1.32

[1] All other countries (except Canada and Mexico).

BOOKS AND SHEET MUSIC (SURFACE)

Weight not over (lbs.)	Mexico	All other [1]
1	$2.26	$2.24
2	3.94	3.97
3	5.38	5.35
4	6.82	6.73
5	8.26	8.11
6	9.70	9.49
7	11.14	10.87
8	12.58	12.25
9	14.02	13.63
10	15.46	15.01
11	16.90	16.39
Each additional pound or fraction of a pound	1.44	1.38

[1] All other countries (except Canada and Mexico).

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–4810 Filed 2–29–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6542–8]

RIN 2060–AH88

Stay of the Eight-Hour Portion of the Findings of Significant Contribution and Rulemaking for Purposes of Reducing Interstate Ozone Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In today's action, EPA is proposing to amend a final rule it issued under section 110 of the Clean Air Act (CAA) related to interstate transport of pollutants. The EPA is proposing to stay its finding in the nitrogen oxides State Implementation Plan Call (NO_X SIP Call) related to the 8-hour ozone standards.

In the final NO_X SIP Call, EPA found that emissions of NO_X from 22 States and the District of Columbia (23 States) significantly contribute to downwind areas' nonattainment of the 1-hour ozone National Ambient Air Quality Standards (NAAQS). The EPA also separately found that NO_X emissions from the same 23 States significantly contribute to downwind nonattainment of the 8-hour ozone NAAQS. The EPA's findings under the 8-hour standards were completely separate from its 1-hour findings and were an independent basis for the rule.

Subsequently, the revised 8-hour ozone standards were remanded in *American Trucking Associations, Inc.* v. *EPA*, 175 F.3d 1027 (D.C. Cir. 1999). On October 29, 1999, a panel of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) granted in part and denied in part EPA's rehearing request in that case, and the full Court denied EPA's request for rehearing *en banc*. The panel granted rehearing as to certain parts of its original opinion which address EPA's authority to implement the 8-hour ozone NAAQS. The rehearing decision continues to create uncertainty with respect to EPA's ability to rely upon the 8-hour standards as an alternative basis for the NO_X SIP Call at this time.

DATES: The comment period on this notice of proposed rulemaking (NPR) ends on April 17, 2000. Comments must be postmarked by the last day of the comment period and sent directly to the Docket Office listed in **ADDRESSES** (in duplicate form if possible). The EPA must receive requests for a hearing by March 13, 2000. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and public hearing.

ADDRESSES: Comments may be submitted to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–96–56, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No confidential business information (CBI) should be submitted through e-mail.

Documents relevant to this action are available for inspection at the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–96–56, at the above address between 8 a.m. and 5:30 p.m., Monday though Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions concerning today's action should be addressed to Kimber Scavo, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC, 27711, telephone (919) 541–3354, e-mail at scavo.kimber@epa.gov.

SUPPLEMENTARY INFORMATION:

Public Hearing

If you contact EPA requesting a public hearing, it will be held at Research Triangle Park, NC. If you wish to attend the hearing or wish to present oral testimony, you should notify Ms. Joann Allman, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–1815, e-mail allman.joann@epa.gov. The EPA will publish a notice of a hearing if a hearing is requested, in the **Federal Register**. Any hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below. Any member of the public may file a written statement by the close of the comment period. Written statements (duplicate copies preferred) should be submitted to Docket No. A–96–56 at the above address. A verbatim transcript of the hearing, if held, and written statements will be made available for copying during normal working hours at the Air and Radiation Docket and Information Center at the above address.

Availability of Related Information

The official record for the NO_X SIP Call rulemaking as well as the public

version of the record, has been established under docket number A–96–56 (including comments and data submitted electronically as described below). The EPA has added new sections to that docket for purposes of today's proposed rulemaking. The public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. In addition, the **Federal Register** rulemakings and associated documents are located at http://www.epa.gov/ttn/rto/.

Outline

I. Background
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B. Court Decisions
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2. Stay of SIP Submittal Schedule for NO_X SIP Call
II. Proposal
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A. Executive Order 12866: Regulatory Impact Analysis
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C. Executive Order 13132: Federalism
D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
E. Executive Order 12898: Environmental Justice
F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. National Technology Transfer and Advancement Act
I. Paperwork Reduction Act

I. Background

A. Findings Under Section 110 To Reduce Interstate Ozone Transport

On September 24, 1998 (63 FR 57356, October 27, 1998), EPA took final action to prohibit specified amounts of emissions of one of the main precursors of ground-level ozone, NO_X, from transporting across State boundaries in the eastern half of the United States. The EPA found that sources and emitting activities in 23 States emit NO_X in amounts that significantly contribute to nonattainment of the 1-hour and 8-hour ozone NAAQS downwind. The EPA set forth requirements for each of the affected upwind States to submit SIP revisions prohibiting those amounts of NO_X emissions which significantly contribute to downwind air quality problems. The reduction of those NO_X emissions will bring NO_X emissions in each of those States to within the resulting statewide NO_X emissions budget levels established in the rule.

B. Court Decisions

1. 8-Hour NAAQS

On May 14, 1999, the D.C. Circuit issued an opinion questioning the constitutionality of the CAA authority to review and revise the NAAQS, as applied in EPA's revision to the ozone and particulate matter NAAQS. See *American Trucking Ass'ns* v. *EPA* No. 97–1441 and consolidated cases (D.C. Cir. May 14, 1999). The Court stopped short of finding the statutory grant of authority unconstitutional, instead providing EPA with another opportunity to develop a determinate principle for promulgating NAAQS under the statute. The Court continued by addressing other issues, including EPA's authority to classify and set attainment dates for a revised ozone standard. Based on the statutory provisions regarding classifications and attainment dates under sections 172(a) and 181(a), the Court's ruling curtailed EPA's ability to require States to comply with a more stringent ozone NAAQS. In response to EPA's petition for rehearing, the D.C. Circuit on October 29, 1999 granted in part and denied in part EPA's rehearing request. The panel granted rehearing as to certain parts of its original opinion, which address EPA's authority to implement the 8-hour ozone NAAQS. The rehearing decision continues to create uncertainty with respect to EPA's ability to rely upon the 8-hour standards as an alternative basis for the NO_X SIP Call at this time. On January 27, 2000, the Administration filed a petition of certiorari with the Supreme Court seeking review of this opinion.

2. Stay of SIP Submittal Schedule for NO_X SIP Call

On May 25, 1999, the D.C. Circuit stayed the deadline for submission of the SIP revisions required under the NO_X SIP Call. The NO_X SIP Call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the NO_X SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the Court. *Michigan* v. *EPA*, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

II. Proposal

The EPA is proposing in this action to amend the final NO_X SIP Call to address the issues raised by the Court's rulings on the 8-hour NAAQS. The EPA is only soliciting comment on the specific changes proposed here in response to the Court's rulings. The EPA is not reopening the remainder of the final NO_X SIP Call for public comment and reconsideration.

The EPA's belief is that EPA should not continue implementation efforts under section 110 with respect to the 8-hour standard that could be construed as inconsistent with the Court's ruling. In light of the uncertainty, EPA believes the most prudent course—and one respectful of the Court's conclusions in *American Trucking*—is to stay the findings in the SIP Call that emissions in certain States contribute significantly to nonattainment of the 8-hour ozone standards in certain downwind States.[1] The effect of such a stay would be to remove the 8-hour findings as an independent basis for the SIP Call. Given this position, EPA believes that the Agency should not continue to move forward with findings under section 110 based on the 8-hour standard. Thus, EPA is proposing to stay indefinitely the findings of significant contribution based on the 8-hour standard, pending further developments in the NAAQS litigation. The requirements of the SIP Call, including the findings of significant contribution by the 23 States, the emissions reductions that must be achieved, and the requirement for States to submit SIPs meeting statewide NO_X emissions budgets, are fully and independently supported by EPA's findings under the 1-hour NAAQS alone. Since the rule was based independently on the 1-hour standards, a stay of the findings based on the 8-hour standards would have no effect on the required remedy. Therefore, this stay does not affect EPA's findings based on the 1-hour standards and the requirements of the SIP Call remain in effect.

III. Administrative Requirements

A. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order 12866, (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget (OMB) because this action is simply proposing to stay its finding in the NO_X SIP Call related to the 8-hour

[1] The EPA's approach here is consistent with its action on a rule related to the NO_X SIP Call, commonly referred to as the "Section 126 Rule." On December 17, 1999, EPA took final action on the section 126 petitions. This action indefinitely stayed its technical findings on the 8-hour ozone standards.

ozone standards. The final NO_X SIP Call was submitted to OMB for review. The EPA prepared a regulatory impact analysis (RIA) for the final NO_X SIP Call titled "Regulatory Impact Analysis for the NO_X SIP Call, FIP, and Section 126 Petitions." The RIA and any written comments from OMB to EPA and any written EPA responses to those comments are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble. This proposed action does not create any additional impacts beyond what was promulgated in the final NO_X SIP Call; therefore, no additional RIA is needed.

B. Unfunded Mandates Reform Act

This proposed action also does not impose any additional enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). The EPA did not reach a final conclusion as to the applicability of the requirements of the UMRA to the final NO_X SIP Call. The EPA prepared a statement that would be required by UMRA if its statutory provisions applied and has consulted with governmental entities as would be required by UMRA. Because today's action does not create any additional mandates, no further UMRA analysis is needed.

C. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's action does not impose an enforceable duty on these entities. This action proposes to stay its finding in the NOx SIP Call related to the 8-hour ozone standards and imposes no additional burdens beyond those imposed by the final NOx SIP Call. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. The EPA stated in the final NOx SIP Call that Executive Order 13084 did not apply because the final rule does not significantly or uniquely affect the communities of Indian tribal governments or call on States to regulate NOx sources located on tribal lands. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Executive Order 12898: Environmental Justice

In addition, this action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). For the final NOx SIP Call, the Agency conducted a general analysis of the potential changes in ozone and particulate matter levels that may be experienced by minority and low-income populations as a result of the requirements of the rule. These findings are presented in the RIA. Today's action does not affect that analysis.

F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 12.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's technical amendment on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

This proposed action will not impose any requirements on small entities. This action proposes to stay its finding in the NO_X SIP Call related to the 8-hour ozone standards and does not itself establish requirements applicable to small entities.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This proposed action also is not subject to Executive Order 13045

(Protection of Children from Environmental Health Risks and Safety Risks) (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks and is not economically significant under Executive Order 12866.

H. National Technology Transfer and Advancement Act

In addition, the National Technology Transfer and Advancement Act of 1997 does not apply because today's proposed action does not require the public to perform activities conducive to the use of voluntary consensus standards under that Act. The EPA's compliance with these statutes and Executive Orders for the underlying rule, the final NO_X SIP Call, is discussed in more detail in 63 FR 57477–81 (October 27, 1998).

I. Paperwork Reduction Act

The EPA stated in the final NO_X SIP Call that an information collection request was pending. Today's action imposes no additional burdens beyond those imposed by the final NO_X SIP Call. Any issues relevant to satisfaction of the requirements of the Paperwork Reduction Act will be resolved during review and approval of the pending information collection request for the NO_X SIP Call.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: February 18, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410, 7414, 7421, 7470–7479, 7491, 7492, 7601, and 7602.

Subpart G—Control Strategy

2. Section 51.121 is amended by adding paragraph (q) to read as follows:

§ 51.121 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen.

* * * * *

(q) *Stay of Findings of Significant Contribution with respect to the 8-hour standards.* Notwithstanding any other provisions of this subpart, the effectiveness of the provisions in paragraph (a)(2) of this section is stayed.

[FR Doc. 00–4519 Filed 2–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 231–0206b; FRL–6540–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the California State Implementation Plan (SIP) which concerns the control of volatile organic compound (VOC) emissions from refinery vacuum-producing devices and systems.

The intended effect of this action is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further action is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by March 31, 2000.

ADDRESSES: Mail comments to: Andrew Steckel, Chief, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted rule revisions and our technical support documents (TSDs) may be inspected at our Region IX office from 8:00 am to 4:30 pm, Monday through Friday. To see copies of the submitted rule revisions, you may also go to the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1135.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District Rule 465, Refinery Vacuum-Producing Devices and Systems, submitted to EPA on October 29, 1999 by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: February 11, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–4779 Filed 2–29–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, 179, 180

[Docket No. RSPA–99–6283 (HM–230)]

RIN 2137–AD39

Hazardous Materials Regulations; Compatibility With the Regulations of the International Atomic Energy Agency

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advance notice of proposed rulemaking: extension of time to file comments.

SUMMARY: RSPA is extending for 90 days, until June 29, 2000, the period for filing comments to an advance notice of proposed rulemaking (ANPRM) published under Docket HM–230. RSPA is taking this action in response to a petition filed by the United States Department of Energy (DOE). DOE requested that RSPA allow additional time for interested persons to review and provide comments on the ANPRM and the recent changes contained in the International Atomic Energy Agency (IAEA) publication titled "IAEA Safety Standards Series: Regulations for the Safe Transport of Radioactive Material, 1996 Edition, Requirements, No. ST–1" (hereafter referred to as ST–1).

DATES: Comments must be received on or before June 29, 2000. To the extent practicable, we will consider comments received after this date.

ADDRESSES: Submit written comments to the Dockets Management System, U.S. Department of Transportation, PL 401, 400 Seventh Street, SW, Washington, D.C. 20590–0001. Comments should refer to Docket Number RSPA–99–6283 and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on "Help & Information" to obtain instructions for filing the comment electronically. In every case, the comment should refer to the Docket number "RSPA–99–6283".

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at "http://dms.dot.gov/."

FOR FURTHER INFORMATION CONTACT: Dr. Fred D. Ferate II, Office of Hazardous Materials Technology, (202) 366–4545, or Charles E. Betts, Office of Hazardous Materials Standards, (202) 366–8553; RSPA, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On December 28, 1999, RSPA published an ANPRM in the **Federal Register** under Docket HM–230 (64 FR 72633) that solicits comments on the development of regulations to harmonize the radioactive materials requirements in the Hazardous Materials Regulations (HMR) with the recent changes contained in the IAEA publication, ST–1, on the transportation of radioactive materials. In the ANPRM, specific comments are requested from interested persons in defining the scope of the notice of proposed rulemaking, i.e., extent to which differences between the HMR and the IAEA publication ST–1 should be considered in proposing changes to the HMR.

RSPA received a petition from DOE requesting an extension of the comment period to the ANPRM for an additional 90 days. DOE stated that it is still in the process of obtaining and distributing the information in ST–1 to its sizeable transportation community. RSPA agrees additional time should be allowed and is extending the comment period from March 29, 2000 to June 29, 2000.

Issued in Washington, DC on February 23, 2000, under authority delegated in 49 CFR Part 106.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. 00–4926 Filed 2–29–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 021500A]

RIN 0648–AM75

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment 12 to the Fishery Management Plan (FMP) for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 12)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Amendment 12; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) have submitted Amendment 12 for review, approval, and implementation by NMFS. Amendment 12 contains a single action that would extend the expiration date of the commercial king mackerel vessel permit moratorium through October 15, 2005. Written comments are requested from the public.

DATES: Comments must received at the appropriate address or fax number, (see **ADDRESSES**), no later than 5:00 p.m., eastern standard time, on May 1, 2000.

ADDRESSES: Written comments should be sent to Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of Amendment 12, which includes an environmental assessment and a regulatory impact review, may be obtained from the Gulf of Mexico Fishery Management Council, Suite 1000, 3018 U.S. Highway 301 North, Tampa, FL 33619; telephone: 813–228–2815; fax: 813–225–7015; e-mail: gulf.council@noaa.gov; or from the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366; fax: 843–769–4520; e-mail: safmc@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727–570–5305; fax 727–570–5583; e-mail: steve.branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit an FMP or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment.

Amendment 8 to the FMP for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic established the commercial king mackerel vessel permit moratorium in March 1998. Amendment 12 would extend the moratorium from its current expiration date of October 15, 2000, to October 15, 2005, or until the moratorium can be replaced with a license limitation, limited access, and/or individual fishing quota or individual transferrable quota system, whichever occurs earlier. The intended effects of extending the permit moratorium through the proposed action are to prevent increases in fishing effort, to possibly reduce the number of permittees in the king mackerel fishery, and to stabilize the economic performance of current participants while protecting king mackerel from overfishing.

Currently, various hook-and-line and run-around gillnet fisheries for king mackerel in the Gulf of Mexico and the South Atlantic region are subject to closures when the quotas are filled before the end of their respective fishing years. Such closures in recent years indicate that fleet size and fishery effort still exceed that needed to harvest the allowable quotas. The Councils are concerned that allowing the current moratorium to expire would increase the number of participants in the king mackerel fishery, thereby negating any reductions in effort that have been achieved as a result of the current moratorium. An increase in participants would exacerbate the current derby fisheries that occur in the western Gulf zone and in the Florida west coast gillnet fishery, would lead to even earlier closures, and would have an adverse impact on the economic returns to the current participants. Increased participation would also compound the complexity of the Councils' future task in developing a controlled access system for this fishery. For example, if the future assignment of fishing privileges under a new limited access system is weighted more toward historical rather than current participation, new fishery entrants may lose a good part of their new investments.

In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to implement Amendment 12 to determine if it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

NMFS will consider comments received by May 1, 2000, whether specifically directed to Amendment 12 or its proposed rule, in its decision to approve, disapprove, or partially disapprove the amendment. NMFS will address all the comments received during the respective comment periods for Amendment 12 and its proposed rule in the preamble of the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 24, 2000.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–4911 Filed 2–29–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000223051–0051–01; I.D. 020300A]

Fisheries of the Northeastern United States; Deep-sea Red Crab Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; notice of a control date for the purposes of controlling entry in the deep-sea red crab fishery.

SUMMARY: NMFS announces that it is considering, and is seeking public comment on, proposed rulemaking to control future access to the deep-sea red crab (*Chaceon quinquedens*) resource if a management regime is developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that limits the number of participants in the fishery. This announcement is intended, in part, to promote awareness of potential eligibility criteria for future access so as to discourage speculative entry into the fishery while the New England Fishery Management Council (Council) and NMFS consider whether and how access to the red crab fishery should be controlled. The date of publication of this notice, March 1, 2000, shall be known as the "control date" and may be used for establishing eligibility criteria for determining levels of future access to the red cab fishery subject to Federal authority.

DATES: Written comments must be received on or before 5:00 p.m., local time, March 31, 2000.

ADDRESSES: Written comments should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Mark the outside of the envelope, "Comments on Deep-sea Red Crab Control Date." Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 978-281-9221, email: regina.l.spallone@noaa.gov

SUPPLEMENTARY INFORMATION: The deep-sea red crab (red crab, *Chaceon quinquedens*) is a deep-water benthic species that supports a small commercial fishery on the Atlantic coast in southern New England and on the southern slope of Georges Bank. Although not regulated, the commercial fishery appears to be limited to approximately six vessels, with some seasonal participation by offshore lobster vessels likely.

Information is limited for this resource, but annual landings in 1998 by directed vessels of 3.5 million lbs (1,600 mt) appear to be close to the lower range of the estimate of maximum sustainable yield (MSY) (4.0–5.5 million lb (1,800–2,500 mt)). This MSY estimate was developed by NMFS Northeast Fisheries Science Center based on studies conducted in the late 1970's. No formal assessment was ever conducted. Current capacity in this fishery is sufficient to harvest or exceed this MSY. Seasonal participation by the offshore lobster fleet may have already pushed landings of red crab over the lower estimate of MSY. Also, there is concern that vessels that are not traditional participants in the red crab fishery may enter the fishery soon due to the decline of other resources, thereby increasing the likelihood of excess harvest capacity.

While there currently is no fishery management plan (FMP) for red crab, the Council has announced its intention

to prepare one. As part of that FMP, the Council is considering development of a controlled access system in the red crab fishery to address the principle of matching harvest capacity to sustainable harvest level. The limitation of entry into the fishery may be based on levels of participation (e.g., permit categories based on harvest levels of a vessel) or other criteria such as domestic harvest capacity.

The control date is intended to discourage speculative entry into the red crab fishery while controlled access schemes are developed by the Council. The control date will help to distinguish established participants from speculative entrants to the fishery. Although participants are notified that entering the fishery after the control date will not ensure them of future access to the red crab resource on the grounds of previous participation, additional and/or other qualifying criteria may also be applied. The Council may choose different and variably weighted methods to qualify participants based on the type and length of participation in the fishery.

This notification establishes March 1, 2000, as the control date for potential use in determining historical or traditional participation in the deep-sea red crab fishery. Consideration of a control date does not commit the Council or NMFS to develop any particular management regime or criteria for participation in this fishery. The Council or NMFS may choose a different control date, or may choose a management program that does not make use of such a date.

Fishermen are not guaranteed future participation in the fishery, regardless of their entry dates or intensity of participation in this fishery before or after the control date. The Council and NMFS may choose to give variably weighted consideration to fishermen active in the fishery before and after the control date. The Council and NMFS may also choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded. Any action by the Council or NMFS will be taken pursuant to the requirements for FMP development established under the Magnuson-Stevens Act.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the red crab fishery in Federal waters.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 23, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–4910 Filed 2–29–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 41
Wednesday, March 1, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. ST–00–001]

Plant Variety Protection Board; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Plant Variety Protection Board.

DATES: March 23, 2000, 9 a.m. to 5 p.m., open to the public.

ADDRESSES: The meeting will be held at the George Washington Carver Center, 5602 Sunnyside Avenue, Beltsville, Maryland, 20705.

FOR FURTHER INFORMATION CONTACT: Ann Marie Thro, Commissioner, Plant Variety Protection Office, Science & Technology, AMS, USDA. Address: Room 500, National Agricultural Library Building, 10301 Baltimore Blvd., Beltsville, MD 20705–2351, (301) 504–5518 or –7475, or fax: (301) 504–5291.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the Federal Advisory Committee At (Pub. L. No. 92–463 5 U.S.C. App.), this notice is given concerning a Plant Variety Protection Board meeting. The Board is constituted under section 7 of the Plant Variety Protection Act (7 U.S.C. 2327).

The proposed agenda for the meeting will include discussions of: Plant Variety Protection Office Application Process, Plant Variety Protection Office Progress Report, and other related topics. Written comments may be submitted to the contact person listed above before or after the meeting.

Dated: February 25, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

Tentative Agenda

Plant Variety Protection Board Meeting, March 23, 2000. USDA/AMS/S&T/PVPO—George Washington Carver Center, 5602 Sunnyside Avenue, Beltsville, Maryland, 20705.

Call to Order
  Ann Marie Thro, Commissioner, PVPO
Introductions
  William J. Franks, Jr., Deputy Administrator, AMS/S&T
Opening Remarks
  Kathleen A. Merrigan, Administrator, AMS
Adoption of Agenda
Adoption of 1999 Minutes
Introduction for new Board members to the Plant Variety Protection Act (PVPA) and the Plant Variety Protection Office (PVPO)
  Senior Examining Staff, PVPO
PVPO Progress report
  Ann Marie Thro, Commissioner, PVPO
Appeals to the Secretary of Agriculture (if any)
  Ann Marie Thro, Commissioner, PVPO
Topics brought forward by Board Members
  PVPO Board Members
Meeting summary
  Ann Marie Thro, Commission, PVPO
Adjourn

[FR Doc. 00–4904 Filed 2–29–00; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–004N]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0597]

Codex Alimentarius: Meeting of the Codex Committee on General Principles, Organization for Economic Cooperation and Development: Meeting of the Ad Hoc Group on Food Safety

AGENCIES: Food Safety and Inspection Service, USDA; Food and Drug Administration, HHS.

ACTION: Notice; public meeting and request for comments.

SUMMARY: The Office of Food Safety, and the Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA); and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on March 22, 2000, to provide information and receive public comments on agenda items that will be discussed at the Fourteenth Session of the Codex Committee on General Principles, April 10–14, 2000, and to provide information and receive public comments on papers submitted and issues to be discussed at the Second Session of the Organization for Economic Cooperation and Development (OECD) Ad Hoc Group on Food Safety, scheduled for March 27–28, 2000. Both groups are scheduled to meet in Paris, France. The co-sponsors of the March 22nd public meeting recognize the importance of providing interested parties the opportunity to obtain background information on the General Principles Committee of the Codex Alimentarius Commission (CAC), and the Ad Hoc Task Force on Food Safety of the OECD, and to address issues coming before those bodies.

DATES: The public meeting is scheduled for Wednesday, March 22, 2000, from 1:00 p.m. to 5:00 p.m. Comments must be received by April 24, 2000.

ADDRESSES: The public meeting will be held in the Madison Room, Washington Plaza Hotel, 10 Thomas Circle, Massachusetts Avenue and 14th Street, NW, Washington, DC, 20005. Copies of the documents listed in the notice will be available for inspection at the office of the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, or the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The Codex documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/codex/ccgp15/gp00 01e.htm*. Copies of the United States' submission to the OECD compendium of national food safety systems will be available on the Internet at *http://vm.cfsan.fda.gov/~dms/fs-toc.html* on approximately March 1, 2000. Send an original and two copies of comments to: FSIS Docket Clerk, Docket #00–004N, U.S. Department of Agriculture, Food Safety

and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700 or FDA/ Dockets Management Branch (HFA–305), 5630 Fishers Lane, Rm. 1601, Rockville, MD 20852. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW, Washington, DC, 20250; Telephone: (202) 205–7760; Fax: (202) 720–3157; or, for the OECD Ad Hoc Working Group on Food Safety, Lois Ann Beaver, Office of International Programs, FDA, 5600 Fishers Lane, 15A16, Rockville, MD 20852; Telephone: (301) 827–4480; Fax: (301) 443–0235. Persons requiring a sign language interpreter or other special accommodations should notify Patrick J. Clerkin, telephone (202) 205–7760; Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

Codex Committee on General Principles

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

The Codex Committee on General Principles was established to deal with such procedural and general matters as are referred to by the Codex Alimentarius Commission. Such matters have included the establishment of the general principles that define the purpose and scope of the Codex Alimentarius, the nature of Codex standards and the forms of acceptance by countries of Codex standards, and the development of guidelines for Codex committees.

Codex Issues To Be Discussed at the Public Meeting

(1) Matters referred by the Codex Alimentarius Commission and other Codex Committees; Document: *CX/GP 00/2*

(2) Risk Analysis

• Working Principles for Risk Analysis; Documents: CL1999/16GP, CX/GP 00/3, Government comments CX/GP00/3–Add.1

• Food Safety Objectives; Document: CX/GP 00/4

(3) Measures intended to facilitate consensus; Document: CX/GP 00/5

(4) Composition of the Executive Committee and related matters; Document: CX/GP 00/6

(5) Review of the Statements of Principle on the Role of Science and the Extent to which Other Factors are taken into account; Documents: CX/GP 00/7 Role of science and other factors in relation to risk analysis

(6) Revision of the Code of Ethics for International Trade in Foods; Documents: *CL 1999/19–GP, CX/GP 00/8*, Government comments CX/GP00/8–Add.1

(7) Consumer Participation in Codex Work and related matters; Documents: *CX/GP 00/9*, Government comments, CX/GP00/9–Add.1

OECD Ad Hoc Group on Food Safety

The Ad Hoc Group on Food Safety convened for its first session January 24–25, 2000, in Paris at the Organization for Economic Cooperation and Development. This group was established by the OECD Council late last year in response to the request for reports on biotechnology and other aspects of food safety issued by the G–8 (Group of 7 largest economies in the world: US, Japan, Germany, France, UK, Italy, Canada and Russia) after its June 1999 Summit in Cologne. The Ad Hoc Group on Food Safety was formed to develop a report on national food safety systems, including how controversial issues related to biotechnology and other aspects of food safety are managed, and a report based on submissions from international organizations involved in food safety. These reports, in the form of compendia, as well as reports from the OECD Working Group on Harmonization of Regulatory Oversight in Biotechnology and the OECD Task Force on Novel Foods and Feeds will be submitted to the G–8 in advance of the July, 2000, Summit in Okinawa.

On November 18, 1999, the OECD Council agreed that the mandate for the Ad Hoc Group on Food Safety, was to: (1) Supervise the compilation of a compendium of international food safety systems; (2) compile a compendium of national food safety systems; and (3) provide a report to the Council on the results of its work. Operational guidance indicated that the final report to the OECD Council should reflect the views of member countries, not the Secretariat, identify food safety activities without evaluations or policy recommendations, be finished by the end of April, 2000, and be based on current information without undertaking new work.

Participants in the First Session of the Ad Hoc Group on Food Safety, which included 130 representatives from the 29 OECD member countries and five representatives from the EC Commission, with one Russian observer, met to design the program of work for the Ad Hoc Group on Food Safety. Representatives of WHO, FAO and WTO were also present as observers. The US delegation was co-led by USDA Undersecretary for Food Safety Catherine Woteki and FDA Commissioner Jane Henney, Deputy Commissioner Sharon Smith Holston, Robert Lake, and Lois Ann Beaver from FDA, Sally McCammon from USDA and Richard White from EPA. Members of the US Mission to the OECD present during the session included Ambassador Bondurant, Gary Larson, Peter O. Thomas and Breck Milroy.

To guide its activities, the Ad Hoc Group elected a Bureau Chaired by E. Wermuth, The Netherlands, with USDA Undersecretary Woteki and K. Tomita, Japan, as Vice-Chairs.

The Ad Hoc group adopted a program of work under which:

(1) Countries would submit reports for a compendium of national food safety systems that would identify what is being done to address current and emerging food safety issues. The national reports should be 5–10 pages in length, include factual information, and have a one-page synthesis identifying key principles, changes, and areas of continuing development, and an optional annex. Food quality, availability and costs, animal welfare and biodiversity were cited as emerging issues. It was agreed that member countries might address in their national reports how such non-scientific concerns are treated in national decision-making processes in the national reports. As envisaged by the Terms of Reference, the "precautionary approach and principles" will be addressed by member countries in their reports and in optional annexes of relevant references. Under the guidance of the Bureau, the Secretariat will present the information received on the

precautionary approach and principles in a structured manner to the Second Session of the Ad Hoc Group on Food Safety.

(2) Selected international organizations (the World Health Organization, the Food and Agriculture Organization of the United Nations, the Office of International Epizootics, the World Trade Organization and the OECD) would contribute to a compendium of international food safety activities.

The Draft reports from OECD members and from international organizations are due to the OECD Secretariat by the end of February, 2000, in preparation for the Ad Hoc Group's second session, scheduled for March 27–28.

The time-frame for completion of the work of the Ad Hoc Group on Food Safety is very short. Participants agreed that the two compendia should be in suitable form by the end of April 2000 for transmittal, via the OECD Council, to the G–8.

The program of work described above, and the US' submission to the compendium of national food safety systems will be discussed at the public meeting.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this meeting notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/ stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: February 24, 2000.

Patrick J. Clerkin,

Associate U.S. Manager for Codex Alimentarius.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–4849 Filed 2–29–00; 8:45 am]

BILLING CODE FSIS 3410–DM–P; FDA 4160–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Reinstatement of a Previously Approved Information Collection; Request for Comments; Visitor's Permit Form FS–2300–30 and Visitor Registration Card FS–2300–32

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to request reinstatement of a peviously approved information collection for Visitor's Permit Form FS–2300–30 and Visitor Registration Card Form FS–2300–32. The collected information will help the Forest Service ensure that visitors' use of National Forest System lands is in the public interest and is compatible with the mission of the agency. Information will be collected from National Forest System land visitors, who will be asked to describe their intended use of the land and their estimated duration of use.

DATES: Comments must be received in writing on or before May 1, 2000.

ADDRESSES: All comments should be addressed to the Wilderness Program Manager; Recreation, Heritage, and Wilderness Resources Staff; Mail Drop 1125; Forest Service, USDA; P.O. Box 96090; Washington, DC 20090–6090.

Comments also may be submitted via facsimile to (202) 205–1145 or by email to jstokes/wo@fs.fed.us.

The public may inspect comments in the Office of the Director, Recreation, Heritage, and Wilderness Resources Staff, 201 14th Street, SW, Washington DC Visitors are encouraged to call (202) 205–1706 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Jerry Stokes, Wilderness Program Manager, Recreation, Heritage, and Wilderness Resources Staff at (202) 205–0925.

SUPPLEMENTARY INFORMATION:

Background

The Organic Administration Act (16 U.S.C. 473), Wilderness Act (16 U.S.C. 1131), Wild and Scenic Rivers Act (16 U.S.C. 1271), and Executive Order 11644 of February 8, 1972, (Use of Off-Road Vehicles on the Public Lands) authorize the Forest Service to manage National Forest System lands to benefit the land and the people for present and future generations.

Each year, millions of people visit National Forest System lands. These lands include wilderness and special management areas, such as wild and scenic rivers, restricted off-road vehicle areas, and campgrounds. Access to many of these areas requires reservations and/or permits.

The Forest Service developed Visitor's Permit Form FS–2300–30 and Visitor Registration Card Form FS–2300–32 to facilitate visitor access to wilderness and special management areas. Forest Service personnel collect information from visitors as they register or apply for permits to use or visit wilderness or special management areas.

Visitors will be asked to provide their name and address, the site they plan to visit, their expected length of stay, the number of people in their group, their point of entry and point of exit, their primary method of travel, the number of pack or saddle animals they plan to bring, and number of watercraft or vehicles they plan to bring.

Data gathered in this information collection is not available from other sources.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: FS–2300–30, Visitor's Permit.

OMB Number: 0596–0019.

Expiration Date of Approval: October 31, 1999.

Type of Request: This is a request for reinstatement of an information collection previously authorized by the Office of Management and Budget.

Abstract: The Forest Service will analyze the collected data to identify the National Forest System lands and wilderness areas most frequently visited by the public.

Visitor's Permit Form FS–2300–30 will be used only where public access must be managed and/or monitored to prevent damage to the natural resources, to preserve the quality of the visitor's experience, or to provide for public safety.

When asking visitors to complete Form FS–2300–30, Forest Service personnel will take the opportunity to discuss with visitors how they can protect the natural resources while visiting, proper camping techniques they should use, fire prevention, safety, and sanitation requirements. The very

issuance of this permit will provide information that will help the Forest Service identify the wilderness and special management areas that will be visited most frequently and will provide the agency with opportunities to encourage people to visit less popular sites.

To determine the estimate of burden, three Forest Service employees not familiar with the form were requested to individually complete Visitor's Permit Form FS–2300–30.

Estimate of Burden: 3 minutes.

Type of Respondents: Individuals and groups requesting use of National Forest System wilderness and special management areas.

Estimated Number of Respondents: 100,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5,000 hours.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: FS–2300–32, Visitor Registration Card.

OMB Number: 0596–0019.

Expiration Date of Approval: October 31, 1999.

Type of Request: This is a request for reinstatement of an information collection previously authorized by the Office of Management and Budget.

Abstract: The Visitor Registration Card FS–2300–32, like the Visitor Permit Form FS–2300–30, will provide the Forest Service with information that will help the agency identify National Forest System wilderness and special management areas most frequently visited and will provide the agency with opportunities to encourage people to visit less popular sites. Completing the Visitor Registration Card will be a voluntary exercise by visitors; it is not a requirement for visitation to a site.

Visitor Registration Cards will be available to visitors at field locations, such as trailheads. Visitors will complete the cards and place them in a container designed for that purpose.

To determine the estimate of burden, one Forest Service employee not familiar with the form was asked to complete the Visitor Registration Card FS–2300–32.

Estimate of Burden: 3 minutes.

Type of Respondents: Individuals and groups visiting National Forest System wilderness and special management areas.

Estimated Number of Respondents: 210,000 respondents.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10,500 hours.

Comment is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: February 22, 2000.

Paul Brouha,

Associate Deputy Chief, National Forest Systems.

[FR Doc. 00–4863 Filed 2–29–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Big Creek Resource Management Project, Flathead National Forest, Flathead County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to harvest trees; conduct prescribed burning; pre-commercially thin trees; reconstruct recreational trails and facilities; implement access management changes, including road reclamation; and conduct rehabilitation activities in aquatic habitat within the Big Creek watershed. The area is located 10 miles north of Columbia Falls, Montana.

The Forest Service is seeking further information and written comments from Federal, State and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. These comments will be used to prepare the draft EIS.

DATES: Comments concerning the scope of the analysis should be received in writing by April 4, 2000. The draft EIS is expected to be filed with the Environmental Protection Agency and made available for public review in September, 2000. No date has yet been determined for filing the final EIS.

The comment period on the draft environmental impact statement will be 45 days from the date of the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

ADDRESSES: Send written comments to David Ondov or Jimmy DeHerrera, Glacier View Ranger District, P.O. Box 290340, Hungry Horse, Montana, 59919.

FOR FURTHER INFORMATION CONTACT: David Ondov, Planning Team Leader, 406–387–3800.

SUPPLEMENTARY INFORMATION:

Nature and Scope of the Proposed Action

This proposal is necessary to address resource conditions related to wildlife, forest health, fisheries and watershed, recreation use, and other human uses within the 58,000 acre Big Creek watershed which are outside desired ranges. There is also the desire to maintain resource conditions across the landscape that are similar to what fire and other natural disturbance processes would have created historically.

The purpose of the proposal is to restore landscape composition, structure, and patterns to conditions similar to that expected under natural disturbance and succession regimes, and to restore fire as an important ecological process in this watershed; to reduce existing populations of selected invasive (noxious) weeds; to improve diversity of viewing opportunities into Glacier National Park and the east facing slope of Demers Ridge; to protect human and environmental values in this watershed from the effects of catastrophic fire; to improve the quality and quantity of ungulate winter and spring range forage; to improve grizzly bear security; to improve water quality and fisheries habitat; to reconstruct the Smokey Range Trail to an acceptable standard for visitor use; to provide a developed trailhead and visitor information at the northern terminus of the Demers Ridge Trail; and to relocate a portion of the Canyon Creek Snowmobile Trail onto a route that is suitable for grooming.

The proposed action includes approximately 3,700 acres of vegetation treatment (fuels reduction through slashing or tree thinning, prescribed burning, tree harvest along with associated fuels treatments and reforestation activities, and pre-commercial thinning), 70 miles of road reclamation and yearlong closure of other roads, placement of large woody debris in streams, stabilization or removal of several log jams in streams, review and rehabilitation of old skid roads on 20–25 acres, repair of 7 streamside slumps, reconstruction of a trail, construction of a new trailhead facility, and improvement and relocation of 6 miles of a groomed snowmobile trail system.

This EIS will tier to the Flathead National Forest Land and Resource Management Plan (LRMP) and EIS of January, 1986, and its subsequent amendments, which provide overall guidance of all land management activities on the Flathead National Forest.

Decision To Be Made

Should the Forest Service implement the proposed action or any action to meet the purpose and need established for the project, or defer any action at this time within the Big Creek watershed? The deciding official for the project is Jimmy DeHerrera, District Ranger, Hungry Horse/Glacier View Ranger Districts, Flathead National Forest.

Preliminary Issue and Alternatives

Preliminary scoping for the Big Creek project was conducted in November, 1999, through an open house and a field trip. The purpose of these public forums was to introduce a preliminary proposal which could be refined based on public comment. A public mailing is planned at the same time this notice of intent is published in the **Federal Register** to present the refined proposed action and purpose and need for the project. Based on public and internal comments, the following issues have emerged:

1. Economic feasibility of some proposed vegetation treatments.
2. Aquatic effects from vegetation treatments.
3. Sediment effect from road reclamation.
4. Effects of road management changes on human access and use of the area.

The interdisciplinary team has not yet developed any alternatives to the proposed action that respond to these issues.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

Dated: February 23, 2000.

Jimmy DeHerrera,

District Ranger.

[FR Doc. 00–4878 Filed 2–29–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[00–A–W]

Designation of Springfield (IL) to provide Class X or Class Y Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Springfield Grain Inspection, Inc. (Springfield), to provide Class X or Class Y weighing services under the United States Grain Standards Act, as amended (Act), in the Springfield geographic area.

EFFECTIVE DATE: March 1, 2000.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 1, 1999, **Federal Register** (64 FR 67246), GIPSA announced the designation of Springfield to provide official inspection services under the Act, effective March 1, 2000, and ending December 31, 2002. Subsequently, Springfield asked GIPSA to amend their designation to include official weighing services. Section 7A(c)(2) of the Act authorizes GIPSA's Administrator to designate authority to perform official weighing to an agency providing official inspection services within a specified geographic area, if such agency is qualified under Section 7(f)(1)(A) of the Act. GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and determined that Springfield is qualified to provide official weighing services in their currently assigned geographic area.

Effective March 1, 2000, and terminating December 31, 2002 (the end of Springfield's designation to provide official inspection services), Springfield's present designation is amended to include Class X or Class Y weighing within their assigned geographic area, as specified in the July 1, 1999, **Federal Register** (64 FR 35586). Official services may be obtained by contacting Springfield at 217–522–5233.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: February 4, 2000.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 00–4680 Filed 2–29–00; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[99–04–s]

Designation for the Lincoln (NE), Memphis (TN), Omaha (NE), Jamestown (ND), Sioux City (IA), and Fort Dodge (IA) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act):

Lincoln Inspection Service, Inc. (Lincoln);
Memphis Grain Inspection Service (Memphis);
Omaha Grain Inspection Service, Inc. (Omaha);
Grain Inspection, Inc. (Jamestown);
Sioux City Inspection and Weighing Service Company (Sioux City); and
A. V. Tischer and Son, Inc. (Tischer).

EFFECTIVE DATES: May 1, 2000, for Lincoln, Memphis, and Omaha; July 1, 2000, for Jamestown, Sioux City, and Tischer.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 1, 1999, **Federal Register** (64 FR 53312), GIPSA asked persons interested in providing official services in the geographic areas assigned to Lincoln, Memphis, Omaha, Jamestown, Sioux City, and Tischer to submit an application for designation. Applications were due by October 30, 1999. Lincoln, Memphis, Omaha, Jamestown, Sioux City, and Tischer, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them. Since these official agencies were the sole applicants, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Lincoln, Memphis, Omaha, Jamestown, Sioux City, and Tischer are able to provide official services in the geographic areas for which they applied.

The following organizations are designated to provide official services in the geographic areas specified in the October 1, 1999, **Federal Register**.

Official agency	Designation start	Designation end	Telephone
Lincoln	05/01/2000	03/31/2003	402–435–4386
Memphis	05/01/2000	03/31/2003	901–942–3216
Omaha	05/01/2000	03/31/2003	402–341–6739
Jamestown	07/01/2000	03/31/2003	701–252–1290
Sioux City	07/01/2000	03/31/2003	712–255–8073
Tischer	07/01/2000	03/31/2003	515–955–7012

Interested persons may obtain official services by calling the telephone numbers listed above.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: February 4, 2000.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 00–4681 Filed 2–29–00; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[00–01–a]

Opportunity for Designation in the Ohio Valley (IN), Idaho (ID), Lewiston (ID), Utah, Minnesota, and Mississippi Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in October, November, and December 2000. GIPSA is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies:

Ohio Valley Grain Inspection, Inc. (Ohio Valley);
Idaho Grain Inspection Service, Inc. (Idaho);
Lewiston Grain Inspection Service, Inc. (Lewiston);
Utah Department of Agriculture (Utah);
Minnesota Department of Agriculture (Minnesota); and
Mississippi Department of Agriculture and Commerce (Mississippi).

DATES: Applications and comments must be postmarked or sent by telecopier (FAX) on or before March 30, 2000.

ADDRESSES: Applications and comments must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604. Applications and comments may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at this address located at 1400 Independence Avenue, SW, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

1. Current Designations Being Announced for Renewal

Official agency	Main office	Designation start	Designation end
Ohio Valley	Newburg, IN	11/01/1997	10/31/2000
Idaho	Pocatello, ID	12/01/1997	11/31/2000
Lewiston	Lewiston, ID	12/01/1997	11/31/2000
Utah	Salt Lake City, UT	12/01/1997	11/31/2000
Minnesota	St. Paul, MN	01/01/1997	12/31/2000
Mississippi	Jackson, MS	01/01/1997	12/31/2000

a. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Indiana, Kentucky, and Tennessee, is assigned to Ohio Valley.

Daviess, Dubois, Gibson, Knox (except the area west of U.S. Route 41 (150) from Sullivan County south to U.S. Route 50), Pike, Posey, Vanderburgh, and Warrick Counties, Indiana.

Caldwell, Christian, Crittenden, Henderson, Hopkins (west of State Route 109 south of the Western Kentucky Parkway), Logan, Todd, Union, and Webster (west of Alternate U.S. Route 41 and State Route 814) Counties, Kentucky.

Cheatham, Davidson, and Robertson Counties, Tennessee.

b, Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Idaho, is assigned to Idaho.

The southern half of the State of Idaho up to the northern boundaries of Adams, Valley, and Lemhi Counties.

c. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Idaho, is assigned to Lewiston.

The northern half of the State of Idaho down to the northern boundaries of Adams, Valley, and Lemhi Counties.

d. Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Utah, is assigned to Utah.

e. Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Minnesota, except those export port locations within the State, is assigned to Minnesota.

f. Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Mississippi, except those export port locations within the State, is assigned to Mississippi.

g. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Indiana, is assigned to Northeast Indiana.

Bounded on the North by the northern Lagrange and Steuben County lines;

Bounded on the East by the eastern Steuben, De Kalb, Allen, and Adams County lines;

Bounded on the South by the southern Adams and Wells County lines; and

Bounded on the West by the western Wells County line; the southern Huntington and Wabash County lines; the western Wabash County line north to State Route 114; State Route 114 northwest to State Route 19; State Route 19 north to Kosciusko County; the western and northern Kosciusko County lines; the western Noble and Lagrange County lines.

The following grain elevator, located outside of the above contiguous geographic area, is part of this geographic area assignment: E.M.P. Coop, Payne, Paulding County, Ohio (located inside Michigan Grain Inspection Services, Inc.'s, area).

2. Opportunity for Designation

Interested persons, including Ohio Valley, Idaho, Lewiston, Utah, Minnesota, and Mississippi, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

DESIGNATION TERMS

Ohio Valley	10/31/2000 to 09/30/2003.
Idaho, Lewiston, and Utah.	11/30/2000 to 09/30/2003.
Minnesota and Mississippi.	12/31/2000 to 09/30/2003.

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the Ohio Valley, Idaho, Lewiston, Utah, Minnesota and Mississippi. Commenters are encouraged to submit pertinent data concerning these official agencies including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: February 4, 2000.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 00–4682 Filed 2–29–00; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census 2000 Evaluation of the Multiple Response Resolution

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 1, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to David Phelps, Bureau of the Census, PRED, Mailstop 9200, Washington, DC 20233–0001, (301)457–4142.

SUPPLEMENTARY INFORMATION:

I. Abstract

To make it easier for people to be counted in the Census 2000, the Census Bureau will provide several ways for households to respond. In addition to receiving responses through mailed questionnaires and enumerator operations, the Census Bureau will enable the public to initiate responses on forms available in public places, by telephone, or via the Internet.

While multiple methods of responding increases the opportunities for people to be counted, these methods also increase the likelihood of receiving multiple responses for some housing units. The Census Bureau has devised an automated process to manage this situation, called multiple response resolution.

To evaluate this process, we will conduct a survey of those housing units which were affected by the multiple response resolution process. We will conduct this survey shortly after Census 2000 and ask questions about the residency status of the persons that were listed on the multiple responses for that housing unit on Census Day (April 1, 2000). All information collected will be pertinent to verifying the accuracy of the multiple response resolution process.

The sample will consist of approximately 7,500 housing units with the household being contacted via a personal visit in late October through early November, 2000. We will use the data collected to determine how well the multiple response resolution process functioned.

II. Method of Collection

Specially trained interviewers will administer the survey using a paper questionnaire designed for this evaluation.

III. Data

OMB Number: Forthcoming.
Form Number: Forthcoming.
Type of Review: Regular Submission.
Affected Public: Those persons who reside at a housing unit for which the Bureau received more than one response.
Estimated Number of Respondents: 7,500.
Estimated Time Per Response: 12 minutes.
Estimated Total Annual Burden Hours: 1,500.
Estimated Total Annual Cost: There is no cost to the respondent other than the time taken to complete the survey.
Respondent's Obligation: Voluntary.
Legal Authority: Title XIII United States Code, Section 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 24, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–4872 Filed 2–29–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 5–99]

Foreign-Trade Zone 22—Chicago, IL; Application for Subzone Status; Amendment of Application—Clark Refining & Marketing, Inc. (Oil Refining Complex)

Notice is hereby given that the application of the Illinois International Port District, grantee of FTZ 22, requesting authority for special-purpose subzone status for the oil refinery complex of Clark Refining & Marketing, Inc., in Cook County, Illinois (64 FR 6877, 2/11/99), has been amended to add a contiguous parcel (6 acres, 9 tanks, 46,000 barrel capacity) to proposed Site 2, the crude oil tank farm located at 131st and Homan. The additional parcel will be used for final product storage.

The application remains otherwise unchanged.

The comment period is reopened until March 31, 2000.

Dated: February 22, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–4919 Filed 2–29–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

National Institutes of Health; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–028. *Applicant:* National Institutes of Health, Bethesda, MD 20892–4094. *Instrument:* Robot and Microplate Filler with accessories, Models Q–BOT and Q-Fill. *Manufacturer:* GENETIX, United Kingdom. *Intended Use:* See notice at 64 FR 70213, December 16, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a unique multi-tasking robot for selecting recombinant DNA inserts from neural tissue with: (1) a pneumatic picking head for sampling 3500 colonies per hour, (2) replication of plates (96 or 384 wells) to distribute clones to others, (3) ability to create high density arrays of bacteria on nylon filters and (4) a re-arraying package. A university-based genomic research project advised February 8, 2000 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–4917 Filed 2–29–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Department of Energy; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational,

Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–033. *Applicant:* U.S. Department of Energy, Ames, IA 50011–3020. *Instrument:* UHV Surface Analysis System, Model Multiprobe S. *Manufacturer:* Omicron Vakuum Physik GmbH, Germany. *Intended Use:* See notice at 65 FR 284, January 4, 2000.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides an ultra-high vacuum chamber with compatible scanning tunneling, scanning electron and scanning Auger microscopes with the following: (1) An operating temperature of 50 to 1500 degrees K, (2) adequate internal and external vibration isolation and (3) a sample manipulator that can be heated or cooled. A university center for advanced microstructural devices and the National Institute of Standards and Technology advise that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–4918 Filed 2–29–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022500A]

Atlantic Tunas Vessel Permits; Proposed Information Collection; Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 1, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; 301–713–2347.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), NOAA is responsible for management of the nation's marine fisheries. In addition, NOAA must comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act as amended (16 U.S.C. 1801 *et seq.*). The National Marine Fisheries Service (NMFS) collects information via landings reports, logbooks and surveys to monitor the U.S. catch of Atlantic tunas in relation to applicable quotas and to provide catch and effort information for stock assessment, thereby ensuring that the United States complies with its international obligations to the International Commission for the Conservation of Atlantic Tunas. Permit applications allow NMFS to determine who will be subject to reporting requirements and provides the information needed to send outreach materials and information on the domestic and international regulations to affected fishermen. For example, NMFS periodically distributes compliance guides on size limits, area closures, fishing seasons, and regional quotas for the Atlantic tunas fisheries. The information obtained through permitting provides NMFS with telephone and mailing lists to obtain data necessary to assess the status of the Atlantic tuna resources and regulatory impacts on the commercial and recreational fishing sectors. Additionally, permit lists provide essential information for domestic management policy and rulemaking. Finally, permit numbers are used to identify vessels whose operators report bluefin tuna landings to NMFS via an automated landings reporting system accessible toll free by touch tone telephone.

II. Method of Collection

Recreational and commercial fishermen who fish for or retain any regulated Atlantic tunas (bigeye, albacore, yellowfin, skipjack and bluefin) are required to obtain a vessel permit. The permit fee is $25.00 and the permit is valid for the fishing year of issuance. Permit applications can be obtained via mail, fax or can be printed off of the Internet. When paying by credit card, vessel owners may quickly renew permits via an automated system accessible toll free by touch tone telephone or over the Internet. Completed permits may be mailed or faxed back to vessel owners, as requested, or printed directly off the Internet.

III. Data

OMB Number: 0648–0327.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals (private anglers) and business or other for-profit (charter boat operators and commercial fishermen).

Estimated Number of Respondents: 25,000.

Estimated Time Per Response: 6 minutes for automated telephone renewals, 30 minutes for new permit applications.

Estimated Total Annual Burden Hours: 4,500.

Estimated Total Annual Cost to Public: $625,000 (including permit fees).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 23, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 00–4912 Filed 2–29–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

February 24, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: March 1, 2000.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.P='04'≤

The Committee for the Implementation of Textile Agreements (CITA) has determined that OshKosh B'Gosh has violated the requirements for participation in the Special Access Program, and has suspended OshKosh B'Gosh from participation in the Program for the period March 1, 2000 through August 31, 2000.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of OshKosh B'Gosh during the period March 1, 2000 through August 31, 2000, and to prohibit entry by or on behalf of OshKosh B'Gosh under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 24, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended OshKosh B'Gosh from participation in the Special Access Program for the period March 1, 2000 through August 31, 2000. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of OshKosh B'Gosh during the period March 1, 2000 through August 31, 2000. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of OshKosh B'Gosh manufactured from fabric exported from the United States during the period March 1, 2000 through August 31, 2000.

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–4869 Filed 2–29–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

February 24, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: March 20, 2000.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.P='04'≤

The Committee for the Implementation of Textile Agreements (CITA) has determined that Quitman Manufacturing has violated the requirements for participation in the Special Access Program, and has suspended Quitman Manufacturing from participation in the Program for the period March 20, 2000 through June 19, 2000.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of Quitman Manufacturing during the period March 20, 2000 through June 19, 2000, and to prohibit entry by or on behalf of Quitman Manufacturing under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 24, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended Quitman Manufacturing from participation in the Special Access Program for the period March 20, 2000 through June 19, 2000. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of Quitman Manufacturing during the period March 20, 2000 through June 19, 2000. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of Quitman Manufacturing manufactured from fabric exported from the United States during the period March 20, 2000 through June 19, 2000.

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–4870 Filed 2–29–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on a Request That the United States Consult With Mexico and Canada Concerning a Certain Filament Viscose Rayon Yarn

February 24, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for consultations on a certain filament viscose rayon yarn.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The purpose of this notice is to advise the public that CITA has been petitioned to initiate consultations with Mexico and Canada under Section 7(2) of Annex 300–B of the North American Free Trade Agreement (NAFTA) for the purpose of amending the NAFTA rules of origin in Chapters 51 through 63 to permit the use of non-North American filament viscose rayon yarn classified in HTS headings 5403.10, 5403.31, 5403.32 and 5403.41 of the Harmonized Tariff Schedule of the United States in NAFTA originating goods.

There will be a 30-day comment period beginning on March 1, 2000 and extending through March 31, 2000. Anyone wishing to comment or provide data or information regarding domestic production or availability of filament viscose rayon yarn classified in HTS headings 5403.10, 5403.31, 5403.32 and 5403.41 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute a "foreign affairs function of the United States."

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–4871 Filed 2–29–00; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, AmeriCorps*VISTA, Rosezina Dunn, (202) 606–5000, extension 244. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–5256 between 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Mr. Danny Werfel, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C. 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

Type of Review: Revision of a currently approved information collection.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*VISTA Project Application, Part A and Part B.

OMB Number: 3045–0038.

Agency Number: CNS 1421 (Part A), and CNS 1421B (Part B).

Affected Public: All eligible public and private non-profit organizations.

Total Respondents: 2,200.

Frequency: Part A is completed initially when the project is being developed, and Part B is completed for each renewal year.

Average Time Per Response: Part A—1 hour; Part B—8 hours.

Estimated Total Burden Hours: 9,200.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $104,780.

Description: The Corporation seeks public comment on the AmeriCorps*VISTA Project Application, Part A and Part B. This application is being resubmitted for OMB approval for a new 3-year period. The project application is submitted in order for projects to receive Federal assistance either in the form of an AmeriCorps*VISTA member, or grant of funds to support a project approved for members. It is used by potential project sponsors, as well as continuing previously approved projects.

Dated: February 25, 2000.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 00–4914 Filed 2–29–00; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Air Force Battlelab Review Group will meet at Kelly Air Force Base (AFB), Texas and Lackland AFB, Texas on March 28–29, 2000 from 8 a.m. to 5 p.m.

The purpose of the meeting is to receive briefings and discuss the direction of the study. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–4938 Filed 2–29–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Hypersonic Research in the Air Force Study will meet in Washington, DC and Seattle, Washington on March 28–30, 2000 from 8 a.m. to 5 p.m.

The purpose of the meeting is to receive briefings and discuss the direction of the study. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–4940 Filed 2–29–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Spectrum Photonics Inc., a company doing business in Lake Oswego, Oregon an exclusive license in any right, title and interest the Air Force has in U.S. Patent No. 5,521,386. The inventor, John Taboada was a government employee at the time of the invention. The invention is entitled "Gamma Ray Camera Method and Apparatus."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Associate General Counsel (Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304, Arlington, VA 22209–2310. Mr. Heald can be reached at (703) 588–5091 or by fax at (703) 588–8037.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–4939 Filed 2–29–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 1, 2000. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 1, 2000.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 24, 2000.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: New.

Title: The Special Leveraging Educational Assistance Partnership (SLEAP) Program.

Abstract: The SLEAP Program is a subprogram under the Leveraging Educational Assistance Partnership (LEAP) Program and was authorized by the 1998 Amendments to the Higher Education Act of 1965. The SLEAP Program uses matching Federal/State funds to provide (1) Aid to students with financial need to help them pay for their postsecondary education costs or (2) helps the State to carry out service programs to strengthen the opportunities for elementary and secondary students with financial need to enter postsecondary education. On this application the states provide information the Department requires to obligate program funds and for program management. The signed assurances legally bind the States to administer the program according to statutory requirements.

Additional Information: Due to the time constraints of having to make awards to States by July 1, 2000 under the SLEAP Program, Education is requesting an emergency approval of this form for this initial year. After publication in the **Federal Register** of the availability of this application and its closing date, the States will need 30 days to complete and return their applications. Therefore, Education needs clearance of this material by March 17, 2000.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 308.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–4858 Filed 2–29–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 31, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: February 24, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office for Civil Rights.

Type of Review: Revision.

Title: 2000 Elementary and Secondary School Civil Rights Compliance Report.

Frequency: Biennially.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 105,000

Burden Hours: 506,250

Abstract: The Elementary and Secondary School Civil Rights Compliance Report is a biennial survey which collects data from schools and school districts on issues, including emerging issues, of interest to the Office for Civil Rights, U.S. Department of Education. Data from the Compliance Report is used by OCR to aid in identifying sites for compliance reviews and tracking trends and issues related to civil rights compliance. The Compliance Report collects data related to Title VI of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of race, color, or national origin), Title IX of the Education Amendments of 1972 (which prohibits discrimination on the basis of sex) and Section 504 of the Rehabilitation Act of 1973 (which prohibits discrimination on the basis of handicap). For the 2000 Compliance Report, data will be collected from all districts and schools.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Questions regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–4859 Filed 2–29–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program; Notice

AGENCY: Department of Education.

ACTION: Notice—Computer matching between the Department of Education and the Immigration and Naturalization Service (INS), Department of Justice.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the computer matching program between the Department of Education (ED) (the recipient agency), and the Immigration and Naturalization Service (INS), Department of Justice (the source agency).

Notice of the matching program was originally published in the **Federal Register** on September 29, 1997 (62 FR 50994); the program became effective on October 29, 1997. Duration was 18 months plus a one-year extension permitted by the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a(o)(2)(D)). The one-year extension will expire on April 29, 2000. This notice represents the approval of a new agreement by the Department of Justice and Department of Education Data Integrity Boards to continue the matching program on the effective date as indicated below.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Final Guidance on Interpreting the Provisions of Pub. L. 100–503, Computer Matching and Privacy Act of 1988 (54 FR 25818, June 19, 1989), and OMB Bulletin 89–22, the following information is provided:

1. Name of Participating Agencies

The Department of Education (ED) and the Department of Justice (DOJ).

2. Purpose of the Match

The matching program entitled "Systematic Alien Verification for Entitlement (SAVE) INS/ED" will permit ED to confirm the immigration status of alien applicants for, or recipients of, assistance as authorized by Title IV, section 484(a)(5), of the Higher Education Act of 1965, as amended (HEA); 20 U.S.C. 1091(a). The Title IV programs include: The Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, Federal Perkins Loan, Leveraging Educational Assistance Partnership, Federal Family Education Loan, and William D. Ford Direct Loan Programs.

3. Authority for Conducting the Matching Program

The information contained in the INS data base is referred to as the Alien Status Verification Index (ASVI), and is authorized under the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603. ED seeks access to this database under the Higher Education Act of 1965, as amended (section 484(g)); 20 U.S.C. 1091. The INS is authorized to confirm immigration status under the authority of section 103 of the Immigration and Nationality Act.

4. Categories of Records and Individuals Covered

The records to be used in the match and the roles of the matching participants are described as follows:

Through the use of user identification codes and passwords, authorized persons from ED will transmit electronically to INS data from its Privacy Act system of records entitled, "Federal Student Aid Application File (18–11–01)." The data will include the alien registration number and date of birth of the alien applicant for, or recipient of, Title IV assistance. This action will initiate a search for corresponding data elements in an INS Privacy Act system of records entitled "Alien Status Verification Index (JUSTICE/INS–009)." Where there is a match of records, the system will provide to ED the immigration status code of the alien applicant or recipient. In accordance with 5 U.S.C. 552a(p), ED will verify any adverse finding (independently or through the alien applicant or recipient) and provide the alien applicant or recipient with 30 days notice and opportunity to contest such finding.

5. Effective Dates of the Matching Program

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Jeanne Saunders, Acting Director, Application Processing, Students Channel, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW, (Room 4636, ROB–3), Washington, DC 20202, Telephone: (202) 708–9874. If you use a telecommunications device for the deaf (TTD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ifap.ed.gov/dev__csb/new/home.nsf

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498, or in Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html.

Dated: February 24, 2000.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 00–4893 Filed 2–29–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Environment, Safety and Health; Submission for OMB Review; Comment Request

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) has submitted the proposed collections of information described in this notice to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB is particularly interested in receiving public comments which evaluate: (1) Whether the proposed collection of information is necessary, (2) the accuracy of DOE's estimate of the burden of the proposed information collection, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of the collection of information on those who choose to respond.

DATES: Comments regarding this collection of information should be sent on or before March 31, 2000.

ADDRESSES: Comments should be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: OMB Desk Officer for DOE, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington DC 20503. A copy of the comments should also be sent to: Jacqueline D. Rogers, Office of Environment, Safety and Health, EH–51, U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: A copy of the paperwork submission, with applicable supporting documentation, may be obtained from: Jacqueline D. Rogers, Office of Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585; (301) 903–5684.

SUPPLEMENTARY INFORMATION: The following proposed collection of information has been sent to OMB for clearance:

Title: Chronic Beryllium Disease Prevention Program.

OMB Control Number: None.

Type of request: New collection.

Frequency of response: Monthly, weekly, on occasion (multiple collections).

Respondents: DOE and DOE contractor employers of workers exposed or potentially exposed to beryllium; current workers.

Estimated number of respondents: 1,648.

Total annual burden hours: 54,762 hours.

Summary/description of need: On December 8, 1999, DOE published a final rule to implement a Chronic Beryllium Disease Prevention Program or CBDPP (64 FR 68854). The CBDPP is aimed at reducing the number of workers currently exposed to beryllium in the course of their work at DOE facilities managed by DOE or its contractors; minimizing the levels of and potential exposure to beryllium; and establishing medical surveillance requirements to ensure early detection of the disease. DOE invited public comment on the proposed collections of information in the Notice of Proposed Rulemaking for the Chronic Beryllium Disease Program. DOE now invites the public to send comments on the collections of information in the final rule to the desk officer for DOE in the Office of Information and Regulatory Affairs.

Issued in Washington, DC on February 23, 2000.

David Michaels,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 00–4879 Filed 2–29–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–183–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

February 24, 2000.

Take notice that on February 17, 2000, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective April 1, 2000.

CIG states it is making this filing to broaden its Rate Schedule HUB–1 Service to (i) remove the condition that the transfer of gas would be between third party pipelines to allow nominations from a CIG transportation agreement to a Rate Schedule HUB–1 Agreement, and (ii) provide for the use of compressor capacity in addition to providing the service when no compression is required. CIG's Cheyenne Station Hub currently has 6 interconnecting pipelines. These connections are between CIG and KN Interstate Gas Transmission Company (Pony Express), Public Service Company of Colorado (Front Range), Cheyenne Light, Fuel and Power Company, Trailblazer Pipeline Company and Wyoming Interstate Company, Ltd. The proposed revision to CIG's wheeling-without-compression service will allow CIG customers much more flexibility in transporting gas between these connections at the Cheyenne Station Hub. CIG also proposes to provide a Park and Loan Service option as part of the Rate Schedule HUB–1 service.

CIG states, because the service is scheduled after all other services, it will have no adverse impact on other shippers or other services. The Cheyenne Station Hub Park and Loan Service is proposed to be the same as CIG's existing Park and Loan Service in form and functionality.

CIG states it proposes to charge shippers utilizing Rate Schedule HUB–1 Service, where compression is required, a rate based on the currently effective Interruptible Transportation Rate Schedule TI–1 rate. However, CIG notes that this issue will be fully examined in its next rate case which is required to go into effect on or before October 1, 2001. CIG proposes to offer shippers two options concerning fuel. First, CIG proposes to adjust these rates to include the cost of fuel so shippers will have the option of wheeling through the hub without a requirement of in-kind Cheyenne Hub Fuel reimbursement.

CIG further states its existing customers will not subsidize fuel when this option is chosen as CIG proposes to credit this fuel in its Fuel Reimbursement calculation. Second, CIG proposes to allow shippers the option of in-kind fuel reimbursement. CIG also proposes to charge a separate rate for Park and Loan Service at this location which is the same as CIG's existing Rate Schedule PAL–1 Rate for this service.

CIG further states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–09208–09222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4899 Filed 2–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP92–508–008]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 24, 2000.

Take notice that on February 18, 2000, National Fuel Gas Supply Corporation (Applicant) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 2 to be effective March 19, 2000 and January 19, 1994.

Applicant states that the purpose of the filing is to reflect the cancellation of Rate Schedule X–44, a service that is no longer in effect. Applicant further states that it is also filing revised tariff sheets to update the Table of Contents in Volume No. 2 to correct typographical errors. Applicant indicates that copies of this filing were served upon its customers and interested state commissions.

Any questions regarding this filing should be directed to Mr. David W. Reitz, Assistant General Counsel for Applicant, 10 Lafayette Square, Buffalo, New York 14203 at (716) 857–7949.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest on or before March 6, 2000, with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public reference Room. This filing may also be viewed on the web at http://

www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4901 Filed 2–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–39–002]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

February 24, 2000.

Take notice that on February 7, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet No. 344, to be effective February 1, 2000.

Natural states that the filing is submitted in compliance with the Commission's order issued February 1, 2000 in Docket No. RP00–39–001 (February 1st Order), which directed Natural to file a revised tariff sheet to remove reference to any damages to the facilities of any third-party and clarifying that "receiving party" as stated in new Section 26.3(b) of the General Terms and Conditions of Natural's Tariff refers to Natural as the transporter and no other party.

Natural requested any waivers which may be required to permit Substitute First Revised Sheet No. 344 to become effective February 1, 2000, consistent with the February 1st Order.

Natural states that copies of the filing have been mailed to its customers, interested state regulatory agencies and all parties set out on the Commission's official service list in Docket No. RP00–39.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4898 Filed 2–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–184–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

February 24, 2000.

Take notice that on February 18, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective April 1, 2000.

Natural states that the filing is being submitted to reflect changes to its Tariff to: (1) establish a new inclusive rate form which would be an option available to all shippers under Natural's Rate Schedules FTS and DSS, (2) add to Natural's pro forma service agreement language which would allow adjustment of rate components to the extent consistent with a recent Commission order and (3) provide clarification of balancing service charges applicable to service under Natural's Rate Schedule PALS.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective April 1, 2000.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be take, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4900 Filed 2–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1609–000]

West Penn Power Company, West Penn Transferring Agent L.L.C. and Allegheny Energy Supply Company, L.L.C., Notice of Filing

February 24, 2000.

Take notice that on February 11, 2000, West Penn Power Company (West Penn), West Penn Trafsferring Agent LLC (Transferring Agent), and Allegheny Energy Supply Company, L.L.C., tendered for filing agreements assigning West Penn's right, title and interest in an Inter-Company Power Agreement among Ohio Valley Electric Corporation, Appalachian Power Company, The Cincinnati Gas & Electric Company, Columbus Southern Power Company, The Dayton Power and Light Company, Indiana Michigan Power Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Monongahela Power Company, Ohio Edison Company, Pennsylvania Power Company, The Potomac Edison Company, Southern Indiana Gas and Electric Company, The Toledo Edison Company, ans West Penn, dated July 10, 1953, as amended from time to time. The Applicants state the Commission previously authorized this assignment in an order dated October 25, 1999. Allegheny Energy Supply Company, 89 FERC ¶ 62,063 (1999).

The Applicants request that the Commission accept the proposed assignment effective on February 12, 2000, one day after filing.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission the Virginia State Corporation Commission, the West Virginia Public Service Commission and all parties of record.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426,

in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 3, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–4895 Filed 2–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–96–000, et al.]

Mexican Business Trust No. 111014–6, et al.; Electric Rate and Corporate Regulation Filings

February 22, 2000.

Take notice that the following filings have been made with the Commission:

1. Mexican Business Trust No. 111014–6; Banco Nacional de Mexico, S.A.,; Institución de Banca Multiple, División; Fiduciaria, Grupo Financiero; Banamex-Accival (as Trustee under Mexican Business Trust No. 111014–6) and Termoele–AE1ctrica del Golfo, S. de R.L. de C.V.

[Docket Nos. EG00–96–000, EG00–95–000 and EG00–97–000]

Take notice that on February 11, 2000 Mexican Business Trust No. 111014–6 (the Trust); Banco Nacional de Me–AE1xico, S.A., Institución de Banca Múltiple, Divisio–AE1n Fiduciaria, Grupo Financiero Banamex-Accival (the Trustee under Mexican Business Trust No. 111014–6); and Termoeléctrica del Golfo, S. de R.L. de C.V. (TEG and together with the Trust and Trustee, Applicants), Ave. Constitucion 444 Pte. Centro, Monterrey, N.L., Mexico C.P. 64000, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Trust states that it is a trust organized under the laws of Mexico, the Trustee, for the purposes of acting as trustee to the Trust only, states that it is a company organized under the laws of Mexico, and TEG states that it is a limited liability company organized under the laws of Mexico and that they will own and/or operate a 230 MW Circulation Fluidised Bed Petroleum Coke Power Plant and auxiliary facilities located in Tamuin, San Luis Potosi, Mexico.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. MEP–II LLC

[Docket No. EG00–98–000]

Take notice that on February 16, 2000, MEP–II LLC (Applicant), a Delaware limited liability company with its principal place of business at 120 Long Ridge Road, Stamford, Connecticut 06927, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant will be owning and operating a 79.9 MW natural gas-fired qualifying cogeneration facility located in North East, Pennsylvania (the Facility), which it acquired from Norcon Power Partners, L.P. All capacity and energy from the Facility is and will be sold exclusively at wholesale.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Essential Utility Resources, L.L.C.

[Docket No. ER00–1453–000]

Take notice that on January 31, 2000, Essential Utility Resources, L.L.C. (EUR), applied to the Commission for (1) blanket authorization to sell electricity at market-based rates; (2) acceptance of EUR's proposed Rate Schedule FERC No. 1; (3) waiver of certain Commission Regulations; and (4) such other waivers and authorizations as have been granted to other power marketers, all as more fully set forth in EUR's application on file with the Commission.

EUR states that it intends to engage in electric power transactions as a broker and as a marketer. In transactions where EUR acts as a marketer, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with purchasing parties.

Comment date: March 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. PJM Interconnection, L.L.C.

[Docket No. ER00–1579–000]

Take notice that on February 8, 2000, PJM Interconnection, L.L.C. (PJM) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed service agreement with Cargill-Alliant, L.L.C. for firm point-to-point transmission service under the PJM Open Access Transmission Tariff.

A copy of this filing was served upon Cargill-Alliant, L.L.C.

PJM requests an effective date for the agreement of January 1, 2000.

Comment date: March 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER00–1632–000]

Take notice that on February 16, 2000, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Monroe Power Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. CP&L is requesting an effective date of January 28, 2000 for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of New Mexico

[Document No. ER00–1633–000]

Take notice that on February 16, 2000, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement, for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff with the City of Azusa Light and Water (dated February 11, 2000). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to the City of Azusa and to the New Mexico Public Regulation Commission.

Comment date: March 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Energy, Inc.

[Docket No. ER00–1634–000]

Take notice that on February 16, 2000, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Avista Corporation (Avista Corp.).

A copy of the filing was served upon Avista Corp.

Comment date: March 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Detroit Edison Company

[Docket No. ER00–1635–000]

Take notice that on February 16, 2000, Detroit Edison Company (Detroit Edison), tendered for filing an addendum to certain rate schedules that would permit the incremental cost of sulfur dioxide (SO_2) emissions allowances to be included in the calculation of rates under those rate schedules.

The change is designed to conform the rate schedules to the Commission's rule regarding the ratemaking treatment of SO_2 emissions allowances for Phase II units issued under the Clean Air Act Amendments of 1990.

Copies of the filing were served upon Detroit Edison's jurisdictional customers and the Michigan Public Service Commission.

Comment date: March 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC

[Docket No. ER00–1636–000]

Take notice that on February 16, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed Amendment No. 1 to Supplement No. 5 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy requests a waiver of notice requirements to make service available as of November 18, 1999, to Public Service Electric and Gas Company, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER00–1637–000]

Take notice that on February 16, 2000, Cinergy Services, Inc. (Services), on behalf of its Operating Companies (The Cincinnati Gas & Electric Company and PSI Energy, Inc.—collectively the Cinergy Operating Companies), tendered for filing unexecuted Service Agreements for service under the Cinergy Operating Companies FERC Electric Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff, Original Volume No. 8, applicable to customers which the Cinergy Operating Companies does business with in commodity.

Services requests an effective date of February 21, 2000.

Copies of the filing were served upon all parties listed in Attachment B of the filing.

Comment date: March 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Kansas City Power & Light Company

[Docket No. ER00–1639–000]

Take notice that on February 17, 2000, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated February 1, 2000, between KCPL and the University of Missouri. KCPL proposes an effective date of February 4, 2000 and requests waiver of the Commission's notice requirement. This Agreement provides for Market Based Sales Service.

Comment date: March 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Central Maine Power Company

[Docket No. ER00–1638–000]

Take notice that on February 17, 2000, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to § 35.12 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.12, an unexecuted Interconnection Agreement (IA) with Boralex Athens Energy Inc. (Boralex), and an unexecuted service agreement for Firm Local Point-to-Point Transmission Service (TSA). The IA provides for interconnection service to Boralex at the rates, terms, charges, and conditions set forth therein. The TSA provides for Firm Point-to-Point Transmission Service.

CMP is requesting that the IA and the TSA become effective on February 17, 2000.

Copies of this filing have been served upon the Maine Public Utilities Commission and Boralex.

Comment date: March 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. California Power Exchange Corporation

[Docket No. ER00–1641–000]

Take notice that on February 17, 2000, California Power Exchange Corporation (CalPX), tendered for filing proposed amendments to its tariff to accommodate new arrangements in California for the provision of ancillary services. In addition to selling to and buying from the California Independent System Operator (CAISO), ancillary services sellers and buyers will be able to register bilateral contracts or make forward trades in the California Trading Services (CTS) division of CalPX, for delivery in the CalPX Day Ahead Market. The proposed tariff changes provide for such delivery in the CalPX Day Ahead Market and provide for adjustments when sellers and buyers exceed or fall short of their ancillary services obligations as determined in real time by CAISO.

CalPX requests an effective date of May 1, 2000.

Comment date: March 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. California Power Exchange Corporation

[Docket No. ER00–1642–000]

Take notice that on February 17, 2000, California Power Exchange Corporation (CalPX), on behalf of its CalPX Trading Services Division (CTS), tendered for filing proposed changes in Appendices 1, 2, 3 and 5 of its CalPX Trading Services Rate Schedule FERC No. 1. CTS states that the changes are designed to accommodate the trading of ancillary services and the registration of bilateral agreements for ancillary services in the CTS Market.

CTS requests an effective date of May 1, 2000 for most of the changes but requests a March 1, 2000 effective date for a few specific changes related to giving notice on new software.

Comment date: March 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company Kentucky Utilities Company

[Docket No. ER00–1643–000]

Take notice that on February 17, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an executed unilateral Service Agreement between the Companies and Dynergy Power Marketing, Inc. under the Companies Rate Schedule MBSS.

Comment date: March 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. The Montana Power Company

[Docket No. ER00–1644–000]

Take notice that on February 18, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an executed Firm Point-To-Point Transmission Service Agreement with PacifiCorp Power Marketing, Inc. under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff), replacing a previously filed unexecuted service agreement.

A copy of the filing was served upon PacifiCorp Power Marketing, Inc.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. The Montana Power Company

[Docket No. ER00–1645–000]

Take notice that on February 18, 2000, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 executed Firm and Non-Firm Point-To-Point Transmission Service Agreements with Duke Energy Trading and Marketing, LLC under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff), replacing previously filed unexecuted service agreements.

A copy of the filing was served upon Duke Energy Trading and Marketing, LLC.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Energy Corporation

[Docket No. ER00–1646–000]

Take notice that on February 18, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Sempra Energy Trading Corp (Sempra) for Non-Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement be permitted to become effective on February 1, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Duke Energy Corporation

[Docket No. ER00–1648–000]

Take notice that on February 18, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with FPL Energy Power Marketing, Inc. (FPL) for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on January 21, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Duke Energy Corporation

[Docket No. ER00–1647–000]

Take notice that on February 18, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with FPL Energy Power Marketing, Inc. (FPL) for Non-Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on January 21, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Duke Energy Corporation

[Docket No. ER00–1649–000]

Take notice that on February 18, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Sempra Energy Trading Corp (Sempra), for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 1, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4894 Filed 2–29–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 24, 2000.

Take notice that the following hydrolectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 2232–407.

c. *Date filed:* January 31, 2000.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* On the Catawba River, in Lancaster, York, and Fairfield Counties, South Carolina and Gaston, Lincoln, and Burke Counties, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 10016 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

i. *FERC Contact:* Robert Fletcher, robert.fletcher@ferc.fed.us, 202–219–1206.

j. *Deadline for filing comments, motions to intervene and protest:* 30 days from the issuance date of this notice. Please include the project number (2232–407) on any comments or motions filed. All documents (original and eight copies) should be filed with:

David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

k. *Description of Application:* The licensee requests an amendment to its license to: (1) Grant an easement to the Charlotte-Mecklenburg Utilities Department (CMUD) for three parcels of project land containing a total of 0.33 acres (a requested increase of 0.2 acres) for maintenance of intake and raw water pumping facilities for Cells 1, 2, and 3, and construction of intake and raw water pumping facilities for Cell 4; (2) grant an easement to CMUD for a water withdrawal to be increased at the CMUD Catawba River Raw Water Pump Station located on the Mountain Island reservoir from the currently authorized maximum instantaneous withdrawal rate of 165 million gallons per day (MGD) to 330 MGD for the purpose of improving CMUD's water supply system reliability; and (3) permit CMUD to conduct maintenance and dredging to recreate the original channels associated with the three existing intake structures and to conduct the additional dredging necessary to accommodate the expansion of the pumping capacity at Cell 1.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–4896 Filed 2–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–381–000]

Wyoming Interstate Company, Ltd.; Notice of Informal Settlement Conference

February 24, 2000.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. on Friday, March 3, 2000, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161, or Michael D. Cotleur at (202) 208–1076.

David P. Boergers,

Secretary.

[FR Doc. 00–4897 Filed 2–29–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34219; FRL–6494–8]

Organophosphate Pesticides; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for two organophosphate pesticides, ethyl parathion and fenitrothion. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control numbers OPP–34171A for ethyl parathion and OPP–34197A for fenitrothion, must be received by EPA on or before May 1, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control numbers OPP–34171A for ethyl parathion and OPP–34197A for fenitrothion in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on ethyl parathion and fenitrothion, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not

attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. *In person.* The Agency has established an official record for this action under docket control numbers OPP–34171A for ethyl parathion and OPP–34197A for fenitrothion. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control numbers OPP–34171A for ethyl parathion and OPP–34197A for fenitrothion in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control numbers OPP–34171A for ethyl parathion and OPP–34197A for fenitrothion. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for two organophosphate pesticides, ethyl parathion and fenitrothion. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA–USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the ethyl parathion and fenitrothion preliminary risk assessments, which where released to the public January 15, 1999 (64 FR 10) (FRL–6056–9) for ethyl parathion and September 2, 1999 (64 FR 170) (FRL–6380–9) for fenitrothion through notices in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk managements for ethyl parathion and fenitrothion. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific ethyl parathion and fenitrothion use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time

interval between application and harvest ("pre-harvest intervals"), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commenters may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate pesticide tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before May 1, 2000 at the addresses given under the **ADDRESSES** section. Comments and proposals will become part of the Agency record for the organophosphate pesticides specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: February 22, 2000.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–4789 Filed 2–29–00; 8:45 am]

BILLING CODE 6450–01–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–916; FRL–6489–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–916, must be received on or before March 31, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–916 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Tracy Keigwin, Registration Support Branch, Registration Division (7505), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6605; e-mail address: keigwin.tracy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–916. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–916 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in

Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–916. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summaries announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Bayer Corporation

EPA has received a pesticide petition (PP5F4475) from Bayer Corporation, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120-0013 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of cyfluthrin, cyano (4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2- in or on the raw agricultural commodity (RAC) cereal grains group; corn, starch; corn, refined oil (wet milling); corn, flour; corn, refined oil (dry milling); wheat, bran; corn, milled by-products; rice, hulls; wheat, milled by-products at 2.0, 3.0, 12, 4.0, 15, 3.0, 4.0, 9.0, 3.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cyfluthrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabeled cyfluthrin in various crops all showing similar results. The residue of concern is cyfluthrin.

2. *Analytical method.* Adequate analytical methodology (gas/liquid chromatography with an electron capture detector (GLC/EC) is available for enforcement purposes.

3. *Magnitude of residues.* Cyfluthrin is the active ingredient (a.i.) in the registered end-use product Tempo 2E Grain, Bin and Warehouse Insecticide , EPA FR 3125-ULO. Data to support the proposed tolerances have been submitted to the Agency.

B. Toxicological Profile

1. *Acute toxicity.* There is a battery of acute toxicity studies for cyfluthrin supporting an overall toxicity Category II for the active ingredient.

2. *Genotoxicty.* Mutagenicity tests were conducted, including several gene mutation assays (reverse mutation and recombination assays in bacteria and a Chinese hamster ovary (CHO)/HGPRT assay); a structural chromosome aberration assay (CHO/sister chromatid exchange assay); and an unscheduled DNA synthesis (UDS) assay in rat hepatocytes. All tests were negative for genotoxicity.

3. *Reproductive and developmental toxicity.* An oral developmental toxicity study in rats with a maternal and fetal no observed adverse effect level (NOAEL) of 10 milligrams/kilograms body weight/day (mg/kg bwt/day) highest dose tested (HDT). An oral developmental toxicity study in rabbits with a maternal NOAEL of 20 mg/kg bwt/day and a maternal lowest effect level (LEL) of 60 mg/kg bwt/day, based on decreased bwt gain and decreased food consumption during the dosing period. A fetal NOAEL of 20 mg/kg bwt/day and a fetal LEL of 60 mg/kg bwt/day were also observed in this study. The LEL was based on increased resorptions and increased postimplantation loss. A 3–generation reproduction study in rats with systemic toxicity NOAELs of 7.5 and 2.5 mg/kg bwt/day for parental animals and their offspring, respectively. At highest dose levels (HDLs), the bwts of parental animals and their offspring were reduced.

4. *Subchronic toxicity.* A subchronic toxicity feeding study using rats demonstrated a NOAEL of 22.5 mg/kg bwt/day, the HDT. A 6–month toxicity feeding study in dogs established a NOAEL of 5 mg/kg bwt/day. The LEL

was 15 mg/kg bwt/day based on clinical signs and reduced thymus weights.

5. *Chronic toxicity.* A 12–month chronic feeding study in dogs established a NOAEL of 4 mg/kg bwt/day. The LEL for this study is established at 16 mg/kg bwt/day, based on slight ataxia, increased vomiting, diarrhea, and decreased body weight. A 24–month chronic feeding/carcinogenicity study in rats demonstrated a NOAEL of 2.5 mg/kg bwt/day and LEL of 6.2 mg/kg bwt/day, based on decreased body weights in males, decreased food consumption in males, and inflammatory foci in the kidneys in females. A 24–month carcinogenicity study in mice was conducted. Under the conditions of the study there were no carcinogenic effects observed. A 24–month chronic feeding/carcinogenicity study in rats was conducted. There were no carcinogenic effects observed under the conditions of the study.

6. *Animal metabolism.* A metabolism study in rats showed that cyfluthrin is rapidly absorbed and excreted, mostly as conjugated metabolites in the urine, within 48 hours. An enterohepatic circulation was observed.

7. *Metabolite toxicology.* No toxicology data have been required for cyfluthrin metabolites. The residue of concern is cyfluthrin.

8. *Endocrine disruption.* There is no evidence of endocrine effects in any of the studies conducted with cyfluthrin, thus, there is no indication at this time that cyfluthrin causes endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Dietary exposure was estimated using Novigen's Dietary Exposure Evaluation Model (DEEM) software; results from field trial and processing studies; consumption data from the Department of Agricultural (USDA) Continuing Surveys of Food Intake by Individuals (CSFIIs), conducted from 1994 through 1996; and information on the percentages of crops treated with cyfluthrin. Cyfluthrin is currently registered for use in alfalfa, carrots, citrus, cotton, sweet corn, sorghum, sunflower, sugarcane, potatoes, peppers, radishes, and tomatoes. In addition, it has an import tolerance for hops. Various formulations are registered for use in food handling establishments and in combination with another active ingredient, for use in field corn, pop corn, and sweet corn. Chronic dietary exposure estimates with the current label uses plus the proposed uses on stored grain, field and pop corn, soybeans, hops, peas and lentils, lettuce, head and stem brassica, and mustard greens for the overall U.S. population were 5% of the population adjusted dose (PAD) (0.008 mg/kg bwt/day). For the most highly exposed population subgroup, children 1 to 6 years of age, the exposure was estimated to be 15% of the PAD. Acute dietary exposure estimates with the current label uses plus the proposed uses on stored grain, field and pop corn, soybeans, hops, peas and lentils, lettuce, head and stem brassica, and mustard greens for the overall U.S. population were 11% of the aPAD (0.07 mg/kg bwt/day). For the most highly exposed population subgroup, children 1 to 6 years of age, the exposure was estimated to be 18% of the aPAD.

ii. *Drinking water.* Cyfluthrin is immobile in soil, therefore, will not leach into ground water. Additionally, due the insolubility and lipophilic nature of cyfluthrin, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment, therefore, not contributing to potential dietary exposure from drinking water. A screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at 2 meters are essentially zero (<0.001 parts per billion (ppb)). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 52 parts per trillion (ppt). Concentration in actual drinking water would be much lower. Based on these analyses, the contribution of water to the dietary risk estimate is negligible.

2. *Non-dietary exposure.* Non-occupational exposure to cyfluthrin may occur as a result of inhalation or contact from indoor residential, indoor commercial, and outdoor residential uses. Pursuant to the requirements of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended by the Food Quality Protection Act (FQPA) of 1996 non-dietary and aggregate risk analyses for cyfluthrin were conducted. The analyses include evaluation of potential non-dietary acute application and post-application exposures. Non-occupational, non-dietary exposure was assessed based on the assumption that a flea infestation control scenario represents a "worst case" scenario. For the flea control infestation scenario indoor fogger, and professional residential turf same day treatments were included for cyfluthrin. Deterministic (point values) were used to present a worse case upper-bound estimate of non-dietary exposure. The non-dietary exposure estimates were expressed as systemic absorbed doses for a summation of inhalation, dermal, and incidental ingestion exposures. These worst case non-dietary exposures were aggregated with chronic dietary exposures to evaluate potential health risks that might be associated with cyfluthrin products. The chronic dietary exposures were expressed as an oral absorbed dose to combine with the non-dietary systemic absorbed doses for comparison to a systemic absorbed dose NOAEL. Results for each potential exposed subpopulation (of adults, children 1-6 years, and infants <1 year) were compared to the systemic absorbed dose NOAEL for cyfluthrin to provide estimates of margins of exposure (MOE). The large MOEs for cyfluthrin clearly demonstrate a substantial degree of safety. The total non-dietary MOEs are 3,800, 2,700, and 2,500 for adults, children (1-6 years), and infants (<1 year), respectively. The aggregate MOE for adults is approximately 3,700 and the MOEs for infants and children exceed 2,400. The non-dietary methods used in the analyses can be characterized as highly conservative. This is due to the conservatism inherent in the calculation procedures and input assumptions. An example of this is the conservatism inherent in the jazzercise methodology's over-representation of residential post-application exposures. It is important to acknowledge that these MOEs are likely to significantly underestimate actual MOEs due to a variety of conservative assumptions and biases inherent in the derivatization of exposure by this method. Therefore, it can be concluded that large MOEs associated with potential non-dietary and aggregate exposures to cyfluthrin will result in little or no health risks to exposed persons. The aggregate risk analysis demonstrates compliance with the health-based requirements of the FQPA of 1996 for the current label uses. The additional use of cyfluthrin on field corn and soybean crops will have no impact on the analysis for non-dietary exposure.

D. Cumulative Effects

Bayer will submit information for EPA to consider concerning potential cumulative effects of cyfluthrin consistent with the schedule established by EPA at 62 FR 42020 (August 4, 1997) (FRL–5734-6) and other EPA publications pursuant to the FQPA.

E. Safety Determination

1. *U.S. population.* Based on the exposure assessments described above and on the completeness and reliability of the toxicity data, it can be concluded that total aggregate exposure to cyfluthrin from all label uses will utilize less than 20% of the RfD for chronic dietary exposures and that MOE in excess of 1,000 exist for aggregate exposure to cyfluthrin for non-cupational exposure. EPA generally has no concerns for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. MOE of 100 or more (300 for infants and children) also indicate an adequate degree of safety. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to cyfluthrin residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of cyfluthrin, the data from developmental studies in both rat and rabbit and a 2–generation reproduction study in the rat can be considered. The developmental toxicity studies evaluate any potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates any effects from exposure to the pesticide on the reproductive capability of mating animals through 2–generations, as well as any observed systemic toxicity. The toxicology data which support these uses of cyfluthrin include: A rat oral developmental toxicity study in which maternal and fetal NOAELs of 10 mg/kg bwt/day HGT were observed. An oral developmental toxicity study in which rabbits had a maternal NOAEL of 20 mg/kg bwt/day and a maternal LEL of 60 mg/kg bwt/day, based on decreased bodyweight gain and decreased food consumption during the dosing period. A fetal NOAEL of 20 mg/kg bwt/day and a fetal LEL of 60 mg/kg bwt/day were also observed in this study. The LEL was based on increased resorptions and increased postimplantation loss. An oral developmental toxicity study performed with beta-cyfluthrin, the resolved isomer mixture of cyfluthrin, has been submitted to the Agency and is currently under review. A developmental toxicity study in rats exposed via inhalation to liquid aerosols of cyfluthrin revealed developmental toxicity, but only in the presence of maternal toxicity. The developmental NOAEL was 0.46 mg/m^3 on the basis of reduced placental and fetal weights, and delayed ossification. The NOAEL for overt maternal toxicity was <0.46 mg/m^3, the LDT. In a rat 3–generation reproduction study, systemic toxicity NOAELs of 7.5 and 2.5 mg/kg bwt/day for parental animals and their offspring, respectively, were observed. At HDL, the bwts of parental animals and their offspring were reduced. Another multiple-generation reproduction study in rats has been submitted to the Agency and is currently under review. To assess acute dietary exposure and determine a MOE for the overall U.S. population and certain subgroups, the Agency has used the rabbit developmental toxicity study which had a maternal NOAEL of 20 mg/kg bwt/day. Because the toxicological endpoint is one of developmental toxicity, the population group of concern for this analysis was women aged 13 and above. This subgroup most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOAEL to the exposure. The Agency calculated the MOE to be over 600. Generally, MOE's greater than 100 for data derived from animal studies are regarded as showing no appreciable risk. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children. The additional safety factor may be used when prenatal and postnatal threshold effects were observed in studies or to account for incompleteness of the toxicity data base. The results of the 3–generation study in rats provided evidence suggesting that, with respect to effects of cyfluthrin on body weight, pups were more sensitive than adult rats. Thus, the Agency determined that an additional 3-fold uncertainty factor (UF) should be used in risk assessments to ensure adequate protection of infants and children. Generally, EPA considers MOEs of at least 100 to indicate an adequate degree of safety. With an additional 3x uncertainty factor, this would be 300 for infants and children.

F. International Tolerances

There is a Codex maximum residue level (MRLs) for maize of 0.05 ppm. There is a Codex MRL for sweet corn of 0.02 ppm.

2. *Bayer Corporation.* EPA has received a pesticide petition (PP0F6084) from Bayer Corporation, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120-0013 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of cyfluthrin, cyano (4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2- in or on the RAC, mustard greens, greens; lettuce, head; lettuce, leaf; head and stem brassica subgroup (5A) at 7.0, 2.0, 3.0, 2.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cyfluthrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabeled cyfluthrin in various crops all showing similar results. The residue of concern is cyfluthrin.

2. *Analytical method.* Adequate analytical methodology GLC/EC detector is available for enforcement purposes.

3. *Magnitude of residues.* Cyfluthrin is the active ingredient in the registered end-use product Baythroid 2 Emulsifiable Pyrethroid Insecticide, EPA FR 3125-351. Data to support the proposed tolerances have been submitted to the Agency.

B. Toxicological Profile

1. *Acute toxicity.* There is a battery of acute toxicity studies for cyfluthrin supporting an overall toxicity Category II for the active ingredient.

2. *Genotoxicity.* Mutagenicity tests were conducted, including several gene mutation assays (reverse mutation and recombination assays in bacteria and a CHO/HGPRT assay; a structural chromosome aberration assay (CHO/sister chromatid exchange assay); and an UDS assay in rat hepatocytes. All tests were negative for genotoxicity.

3. *Reproductive and developmental toxicity.* An oral developmental toxicity study in rats with a maternal and fetal NOAEL of 10 mg/kg bwt/day HDT. An oral developmental toxicity study in rabbits with a maternal NOAEL of 20 mg/kg bwt/day and a maternal LEL of 60 mg/kg bwt/day, based on decreased body weight gain and decreased food consumption during the dosing period. A fetal NOAEL of 20 mg/kg bwt/day and a fetal LEL of 60 mg/kg bwt/day were also observed in this study. The LEL was based on increased resorptions and increased post-implantation loss. A 3–generation reproduction study in rats with systemic toxicity NOAELs of 7.5 and 2.5 mg/kg bwt/day for parental animals and their offspring, respectively. At HDLs, the body weights of parental animals and their offspring were reduced.

4. *Subchronic toxicity.* A subchronic toxicity feeding study using rats demonstrated a NOAEL of 22.5 mg/kg bwt/day, the HDT. A 6–month toxicity feeding study in dogs established a NOAEL of 5 mg/kg bwt/day. The LEL was 15 mg/kg bwt/day based on clinical signs and reduced thymus weights.

5. *Chronic toxicity.* A 12–month chronic feeding study in dogs established a NOAEL of 4 mg/kg bwt/day. The LEL for this study is established at 16 mg/kg bwt/day, based on slight ataxia, increased vomiting, diarrhea and decreased body weight. A 24–month chronic feeding/carcinogenicity study in rats demonstrated a NOAEL of 2.5 mg/kg bwt/day and LEL of 6.2 mg/kg bwt/day, based on decreased body weights in males, decreased food consumption in males, and inflammatory foci in the kidneys in females. A 24–month carcinogenicity study in mice was conducted. Under the conditions of the study there were no carcinogenic effects observed. A 24–month chronic feeding/carcinogenicity study in rats was conducted. There were no carcinogenic effects observed under the conditions of the study.

6. *Animal metabolism.* A metabolism study in rats showed that cyfluthrin is rapidly absorbed and excreted, mostly as conjugated metabolites in the urine, within 48 hours. An enterohepatic circulation was observed.

7. *Metabolite toxicology.* No toxicology data have been required for cyfluthrin metabolites. The residue of concern is cyfluthrin.

8. *Endocrine disruption.* There is no evidence of endocrine effects in any of the studies conducted with cyfluhrin, thus, there is no indication at this time that cyfluthrin causes endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Dietary exposure was estimated using Novigen's Dietary Exposure Evaluation Model (DEEM) software; results from field trial and processing studies; consumption data from the USDA Continuing Surveys of Food Intake by Individuals (CSFIIs), conducted from 1994 through 1996; and information on the percentages of crops treated with cyfluthrin. Cyfluthrin is currently registered for use in alfalfa, carrots, citrus, cotton, sweet corn, sorghum, sunflower, sugarcane, potatoes, peppers, radishes, and tomatoes. In addition, it has an import tolerance for hops. Various formulations are registered for use in food handling establishments and in combination with another active ingredient, for use in field corn, pop corn, and sweet corn. Chronic dietary exposure estimates with the current label uses plus the proposed uses on stored grain, field and pop corn, soybeans, hops, peas and lentils, lettuce, head and stem brassica, and mustard greens for the overall U.S. population were 5% of the PAD (0.008 mg/kg bwt/day). For the most highly exposed population subgroup, children 1 to 6 years of age, the exposure was estimated to be 15% of the PAD. Acute dietary exposure estimates with the current label uses plus the proposed uses on stored grain, field and pop corn, soybeans, hops, peas and lentils, lettuce, head and stem brassica, and mustard greens for the overall U.S. population were 11% of the aPAD (0.07 mg/kg bwt/day). For the most highly exposed population subgroup, children 1 to 6 years of age, the exposure was estimated to be 18% of the aPAD.

ii. *Drinking water.* Cyfluthrin is immobile in soil, therefore, will not leach into ground water. Additionally, due the insolubility and lipophilic nature of cyfluthrin, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment, therefore, not contributing to potential dietary exposure from drinking water. A screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at 2 meters are essentially zero (<0.001 ppb). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using Standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 52 ppt. Concentration in actual drinking water would be much lower. Based on these analyses, the contribution of water to the dietary risk estimate is negligible.

2. *Non-dietary exposure.* Non-occupational exposure to cyfluthrin may occur as a result of inhalation or contact from indoor residential, indoor commercial, and outdoor residential uses. Pursuant to the requirements of FIFRA as amended by the FQPA of 1996 non-dietary and aggregate risk analyses for cyfluthrin were conducted. The analyses include evaluation of potential non-dietary acute application and post-application exposures. Non-occupational, non-dietary exposure was assessed based on the assumption that a flea infestation control scenario represents a "worst case" scenario. For the flea control infestation scenario indoor fogger, and professional residential turf same day treatments were included for cyfluthrin. Deterministic (point values) were used to present a worse case upper-bound estimate of non-dietary exposure. The non-dietary exposure estimates were expressed as systemic absorbed doses for a summation of inhalation, dermal, and incidental ingestion exposures. These worst case non-dietary exposures were aggregated with chronic dietary exposures to evaluate potential health risks that might be associated with cyfluthrin products. The chronic dietary exposures were expressed as an oral absorbed dose to combine with the non-dietary systemic absorbed doses for comparison to a systemic absorbed dose NOAEL. Results for each potential exposed subpopulation (of adults, children 1-6 years, and infants <1 year) were compared to the systemic absorbed dose NOAEL for cyfluthrin to provide estimates of MOE. The large MOEs for cyfluthrin clearly demonstrate a substantial degree of safety. The total non-dietary MOEs are 3,800, 2,700, and 2,500 for adults, children (1-6 years), and infants (< 1 year), respectively. The aggregate MOE for adults is approximately 3,700 and the MOEs for infants and children exceed 2,400. The non-dietary methods used in the analyses can be characterized as highly conservative. This is due to the conservatism inherent in the calculation procedures and input assumptions. An example of this is the conservatism inherent in the jazzercise methodology's over-representation of residential post-application exposures. It is important to acknowledge that these MOEs are likely to significantly underestimate actual MOEs due to a variety of conservative assumptions and biases inherent in the derivatization of exposure by this method. Therefore, it can be concluded that large MOEs associated with potential non-dietary and aggregate exposures to cyfluthrin will result in little or no health risks to exposed persons. The aggregate risk analysis demonstrates compliance with the health-based requirements of the FQPA of 1996 for the current label uses. The additional use of cyfluthrin on field corn and soybean crops will have no impact on the analysis for non-dietary exposure.

D. Cumulative Effects

Bayer will submit information for EPA to consider concerning potential cumulative effects of cyfluthrin consistent with the schedule established by EPA at 62 FR 42020 (August 4, 1997) (FRL–5734-6) and other EPA publications pursuant to the FQPA.

E. Safety Determination

1. *U.S. population.* Based on the exposure assessments described above and on the completeness and reliability of the toxicity data, it can be concluded that total aggregate exposure to cyfluthrin from all label uses will utilize less than 20% of the RfD for chronic dietary exposures and that MOEs in excess of 1,000 exist for aggregate exposure to cyfluthrin for non-occupational exposure. EPA generally has no concerns for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. MOE of 100 or more (300 for infants and children) also indicate an adequate degree of safety. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to cyfluthrin residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of cyfluthrin, the data from developmental studies in both rat and rabbit and a 2–generation reproduction study in the rat can be considered. The developmental toxicity studies evaluate any potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates any effects from exposure to the pesticide on the reproductive capability of mating animals through 2–generations, as well as any observed systemic toxicity. The toxicology data which support these uses of cyfluthrin include: A rat oral developmental toxicity study in which maternal and fetal NOAELs of 10 mg/kg bwt/day HDT were observed. An oral developmental toxicity study in which rabbits had a maternal NOAEL of 20 mg/kg bwt/day and a maternal LEL of 60 mg/kg bwt/day, based on decreased bwt gain and decreased food consumption during the dosing period. A fetal NOAEL of 20 mg/kg bwt/day and a fetal LEL of 60 mg/kg bwt/day were also observed in this study. The LEL was based on increased resorptions and increased postimplantation loss. An oral developmental toxicity study performed with beta-cyfluthrin, the resolved isomer mixture of cyfluthrin, has been submitted to the Agency and is currently under review. A developmental toxicity study in rats exposed via inhalation to liquid aerosols of cyfluthrin revealed developmental toxicity, but only in the presence of maternal toxicity. The developmental NOAEL was 0.46 mg/m^3 on the basis of reduced placental and fetal weights, and delayed ossification. The NOAEL for overt maternal toxicity was < 0.46 mg/m^3, the LDT. In a rat 3–generation reproduction study, systemic toxicity NOAELs of 7.5 and 2.5 mg/kg bwt/day for parental animals and their offspring, respectively, were observed. At HDL, the body weights of parental animals and their offspring were reduced. Another multiple-generation reproduction study in rats has been submitted to the Agency and is currently under review. To assess acute dietary exposure and determine a MOE for the overall U.S. population and certain subgroups, the Agency has used the rabbit developmental toxicity study which had a maternal NOAEL of 20 mg/kg bwt/day. Because the toxicological endpoint is one of developmental toxicity, the population group of concern for this analysis was women aged 13 and above. This subgroup most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOAEL to the exposure. The Agency calculated the MOE to be over 600. Generally, MOEs greater than 100 for data derived from animal studies are regarded as showing no appreciable risk. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children. The additional safety factor may be used when prenatal and postnatal threshold effects were observed in studies or to account for incompleteness of the toxicity data base. The results of the 3–generation study in rats provided evidence suggesting that, with respect to effects of cyfluthrin on body weight, pups were more sensitive than adult rats. Thus, the Agency determined that an additional 3-fold uncertainty factor (UF) should be used in risk assessments to ensure adequate protection of infants and children. Generally, EPA considers MOEs of at least 100 to indicate an adequate degree of safety. With an additional 3x UF, this would be 300 for infants and children.

F. International Tolerances

There are currently no Codex maximum residue levels for mustard greens, lettuce or head and stem brassicas.

[FR Doc. 00–4791 Filed 2–29–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50862; FRL–6388–7]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: By mail: Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

In person or by telephone: Contact the designated person at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the designated contact person listed for the individual EUP.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. EUPs

EPA has issued the following EUPs:

70515–EUP–1. Amendment. J.P. BioRegulators, Inc., IR–4 Project Rutgers University, Cook College, P.O. Box 231, New Brunswick, NJ 08903–0231. This experimental use permit allows the use of 72 kilograms each year of the

biochemical phospholipid plant growth regulator Lyso-PE (lysophosphatidylethanolamine) on 570 acres of apples, citrus, cranberries, grapes, nectarines, peaches, pears, strawberries, and tomatoes to evaluate ripening and extended storage shelf life. The program is authorized only in the States of Arizona, California, Florida, Massachussetts, Michigan, Ohio, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from June 3, 1998 to June 1, 2001. (Sheila A. Moats; Rm. 910W17, Crystal Mall #2; telephone number: (703) 308–1259; e-mail address: moats.sheila@epa.gov).

70515–EUP–2. Amendment. J.P. BioRegulators, Inc., IR–4 Project Rutgers University, Cook College, P.O. Box 231, New Brunswick, NJ 08903–0231. This experimental use permit allows the use of 72 kilograms each year of the biochemical phospholipid plant growth regulator Lyso-PE (lysophosphatidylethanolamine) on 570 acres of apples, citrus, cranberries, grapes, nectarines, peaches, pears, strawberries, and tomatoes to evaluate ripening and extended storage shelf life. The program is authorized only in the States of Arizona, California, Florida, Massachussetts, Michigan, Ohio, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from August 18, 1998 to June 1, 2001. (Sheila A. Moats; Rm. 910W17, Crystal Mall #2; telephone number: (703) 308–1259; e-mail address: moats.sheila@epa.gov).

34704–EUP–13. Issuance. Platte Chemical Company, 419 18th Street, Greeley, CO 80632. This experimental use permit allows the use of 5,000 pounds of the plant growth regulator 2,6-diisopropylnaphtalene on 300 million pounds of stored potatoes to inhibit sprouting. The program is authorized only in the States of Idaho, Maine, Minnesota, North Dakota, Oregon, Washington, and Wisconsin. The experimental use permit is effective from September 18, 1999 to September 28, 2000. A temporary tolerance has been established for residues of the active ingredient in or on stored potatoes. (Driss Benmhend; Rm. 937, Crystal Mall #2; telephone number: (703) 308–9525; e-mail address: benmhend.driss@epa.gov)

Persons wishing to review these EUPs are referred to the designated contact person. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: February 8, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–4658 Filed 2–29–00; 8:45 am]

BILLING CODE 6560–50–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection under review; state and local government information (EEO–4).

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request for an extension of the existing information collection listed below.

DATES: Written comments on this notice must be submitted on or before May 1, 2000.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street NW, Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4078 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available to review at the Commission's library, Room 6502, 1801 L Street NW, Washington, DC 20507 between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW, Room 9222, Washington, DC 20507, (202) 663–4958 (voice) or (202) 663–7063 (TTD).

SUPPLEMENTARY INFORMATION: The Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

Collection Title: State and Local Government Information (ERO–4).

OMB Number: 3046–0008.

Frequency of Report: Biennial.

Type of Respondent: State and local government jurisdictions with 100 or more full-time employees.

Description of Affected Public: State and local governments excluding elementary and secondary public school districts.

Responses: 10,000.

Reporting Hours: 40,000.

Number of Forms: 1.

Federal Cost: $47,000.

Abstract: Section 709(c) of Title VII of the civil rights Act of 964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations which set forth the reporting requirement for various kinds of employers. State and local governments with 100 or more full-time employees have been required to submit EEO–4 reports to the EEOC since 1973 (biennially in odd-numbered years since 1993). The individual reports are confidential.

EEO–4 data are used by the EEOC to investigate charges of discrimination against state and local governments. In addition, the data are used to support EEOC decisions and conciliations, and for research. The data are shared with several other Federal government agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–4 data are also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs). Aggregated data are used by researchers and the general public.

Burden Statement: The estimated number of respondents included in the EEO–4 survey is 5,000 state and local governments. The estimated number of responses per respondent is approximately 2 EEO–4 reports and the reporting burden averages between 1 and 5 hours per response, including the time needed to review instructions, search existing data sources, gather and maintain the data, and complete and review the collection of information. The total number of responses is thus 10,000 reports while the total burden is estimated to be 40,000 hours, including recordkeeping burden. In order to help reduce burden, respondents are encouraged to report data on electronic media such as magnetic tapes and interactive diskettes.

Dated: February 24, 2000.

For the Commission.

Ida L. Castro,

Chairwoman.

[FR Doc. 00–4854 Filed 2–29–00; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 98–146; FCC 00–57]

Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission begins its second inquiry into whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.

DATES: Comments are due on or before March 20, 2000. Reply Comments are due on or before April 4, 2000.

FOR FURTHER INFORMATION CONTACT: *Information:* John Berresford, Senior Antitrust Attorney, Industry Analysis Division, Common Carrier Bureau, at (202) 418–1886.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry released February 18, 2000 (FCC 00–57). The full text of the Inquiry is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC 20554. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 1231 20th Street, NW, Washington, DC 20037. Additionally, the complete item is available on the Commission's website at <http://www.fcc.gov/Bureaus/Common_Carrier/Orders/2000>.

Synopsis of the Inquiry

1. In the document summarized here, the Federal Communications Commission begins its second inquiry into whether advanced telecommunications capability, commonly known as "broadband," is being deployed to all Americans. Congress charged the FCC with monitoring the deployment advanced telecommunications capability and gave the FCC authority, if necessary, to accelerate deployment if the FCC determined that deployment was not occurring in a reasonable and timely fashion. In order to make an informed judgment about whether deployment is reasonable and timely, the Inquiry seeks from various groups objective, empirical data about the current state of broadband deployment.

2. Specifically, the Inquiry seeks comment on four areas: (1) Definitional issues of "advanced telecommunications capability" (2) information about the present deployment of advanced telecommunications capability to various groups; (3) long-term economic analysis of the market forces bringing advanced telecommunications capability to the residential market and other historically underserved areas; (4) actions available to the FCC and state authorities if it is determined that advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion. Once the FCC has gathered this information, it will release a Report within 180 days detailing its findings.

Ordering Clauses

Accordingly, It is ordered that, pursuant to sections 706 of the Telecommunications Act of 1996, this Notice of Inquiry is adopted.

Federal Communications Commission.

Peyton Wynns,

Chief, Industry Analysis Division, Common Carrier Bureau.

[FR Doc. 00–4836 Filed 2–29–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 00–60]

Federal Communications Commission Announces Change to the Election Date for 218–219 MHz Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (Commission) is changing the election date for 218–219 MHz service in order to address the issues raised in the various petitions for reconsideration received sufficiently in advance of the deadline for mailing. A Public Notice announcing the new election date will be issued after the Order addressing the petitions is released.

FOR FURTHER INFORMATION CONTACT: Ben Freeman or Nicole Oden, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released February 18, 2000 (Notice). The complete text of the Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20035, (202) 857–3800. It is also available on the Commission's web site at http://www.fcc.gov/wtb/auctions.

1. On September 7, 1999, the Commission adopted the *218–219 MHz Order*, 64 FR 59656 (November 3, 1999), which, among other things, modified service and technical rules for the band and extended the license term from five to ten years. The Commission also adopted a restructuring plan for existing licensees that:

(i) Were current on installment payments as of March 16, 1998;

(ii) Were less than ninety days delinquent on the last installment payment due before March 16, 1998; or

(iii) Had pending properly filed grace period requests under the former installment payment rules ("Eligible Licensees").

The Commission permitted Eligible Licensees to choose between three options: (a) Reamortization and Resumption of Payments; (b) Amnesty; or (c) Prepayment. Eligible Licenses that fail to submit an election with respect to any license by Election Day will be assumed to have elected Amnesty.

2. On December 28, 1999, a Preliminary Implementation Procedures, *Public Notice* (15 FCC Rcd. 22) was issued which announced that Eligible Licensees had to make their elections by 7:00 p.m., Tuesday, February 29, 2000.

3. The Commission has received various petitions for reconsideration of the *218–219 MHz Order*. In order to address the issues raised in the petitions for reconsideration sufficiently in advance of Election Day, the Commission has determined to change the Election Day. The new date will be the last, business day of the first full month after an Order on the petitions for reconsideration is released by the Commission. A public notice announcing the new election date will be issued after the Order addressing the petitions is released.

4. Documents related to this rule making proceeding and its implementation may be found on the Federal Communications Commission web site located at *http://www.fcc.gov/wtb/auctions/21lrest/218rest.html.*

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–4835 Filed 2–29–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–3018]

Acceptance of Applications for Amateur Service Club and Military Recreation Station Call Sign Administrators

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the Commission will accept requests from organizations interested in processing applications for amateur service club and military recreation station call signs. An organization requesting designation as a "Club Station Call Sign Administrator" will be permitted to process applications for amateur service club and military recreation station call signs.

DATES: Requests may be filed on or after March 1, 2000.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680.

SUPPLEMENTARY INFORMATION: The *Public Notice* released on January 3, 2000, announced that the Commission will accept requests from organizations interested in processing applications for amateur service club and military recreation station call signs. On October 21, 1998, the Federal Communications Commission (FCC) adopted a *Report and Order*, 63 FR 68904, 12/14/98, reinstituting the use of volunteer organizations for the purpose of processing applications for amateur service club and military recreation station call sign. A club station license is an amateur service station license granted only to the trustee of an amateur service club, which must be composed of at least four persons and have a name, a document of organization, management, and a primary purpose devoted to amateur service activities consistent with part 97 of the FCC's rules. A military recreation station license is an amateur service station license granted only to the person who is the license custodian designated by the official in charge of the United States military recreational premises where the station is situated.

The purpose of this *Public Notice* is to announce that beginning March 1, 2000, the FCC will accept requests from organizations interested in processing applications for amateur service club and military recreation station call signs. Requests received before this date will not be considered. We will accept the services of any organization meeting the requirements of section 4(g)(3)(B) of the Communications Act. Organizations interested in processing applications for amateur service club and military recreation station call signs should familiarize themselves with the *Report and Order* and the requirements of the statute.

An organization requesting designation as a "Club Station Call Sign Administrator" so that it can process applications for amateur service club and military recreation station call signs must provide information showing: (1) That it is an amateur radio organization; (2) that it has tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986; (3) that it will provide voluntary, uncompensated and unreimbursed services for processing applications for club and military recreation station call signs; (4) that it will submit the information to the FCC in an electronic batch file; and (5) that it will retain the application information for at least 15 months and make it available to the FCC upon request. The Club Station Call Sign Administrator may collect all necessary information in any manner of its choosing, including creating its own forms.

All requests must be signed by a responsible official of the organization and include the telephone number of a person familiar with the request. Interested organizations must file their request with the Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, 445 Twelfth Street, SW, Room 4–C330, Washington, DC 20554, ATTENTION: CLUB STATION CALL SIGN ADMINISTRATOR. Failure to follow these filing procedures will result in the request being returned without consideration.

Qualified organizations that successfully complete a pilot autogrant batch filing project will be authorized as Club Station Call Sign Administrators to process applications for amateur service club and military recreation station call signs and submit the information to the FCC in an electronic batch file. The FCC will announce by public notice the names and addresses of Club Station Call Sign Administrators.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–4838 Filed 2–29–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 99–168; DA 00–397]

Notice

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document invites oppositions to petitions for reconsideration of the First Report and Order in this proceeding, which established service rules for the auction of spectrum on the 700 MHz bands, and replies to the oppositions. The accelerated schedule for opposition and

reply comments to these petitions for reconsideration is necessary to expedite resolution of issues affecting the auction beginning May 10, 2000.

DATES: Submit oppositions on or before March 10, 2000, submit reply on or before March 17, 2000.

ADDRESSES: Send oppositions and replies to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Oppositions and replies may be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html, or by e-mail to ecfs@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Stan Wiggins, 202–418–1310.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that the parties listed below have petitioned the Commission for reconsideration of the First Report and Order in WT Docket No. 99–168. (65 FR 3139, January 20,2000.) The First Report and Order established service rules for the auction of spectrum on the 700 MHz bands, that is scheduled to commence May 10, 2000. The auction schedule in turn reflects the Congressional mandate that receipts from auctioning this spectrum be deposited into the U.S. Treasury by September 30, 2000. (*See* Public Law. 106–113, 113 Stat. 1501, Appendix E, Section 213. *See also* 145 Cong. Rec. at H12494, H12501 ((Nov. 17, 1999)), "Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.")

2. In light of the auction schedule necessary to implement the Congressional mandate, and the separate statutory requirement that interested parties have a sufficient time after issuance of bidding rules "to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services" (*See* 47 U.S.C. 309(j)(3)(E)(ii). the Wireless Telecommunications Bureau has determined that good cause exists in this instance to alter the periods specified in § 1.429 of the Commission's Rules for oppositions and replies to petitions for reconsideration. (*See* 47 CFR 0.331 ((authority delegated to Wireless Telecommunications Bureau)); 47 CFR 1.3 ((suspension, amendment, and waiver of Commission Rules)). *See also* 5 U.S.C. 553((b))((B).)The bidding rules for the auction have been announced. Auction of Licenses in the 747–762 and 777–792 MHz Bands, Auction Notice and Filing Requirements for 12 Licenses in the 700 MHz Bands, Auction Scheduled for May 10, 2000, DA 00–292 ((Feb. 18, 2000)).

3. Preliminary review of the petitions indicates they raise certain issues that potentially affect petitioners' decision whether to participate in the auction. To preserve the possibility of considering and resolving such issues sufficiently in advance of the auction to provide timely guidance to prospective bidders, we must close the record on reconsideration issues on an expedited schedule. Accordingly, oppositions to petitions for reconsideration of the First Report and Order shall be filed no later than March 10, 2000, and replies shall be filed no later than March 17, 2000.

4. The list of petitions reflects Commission records as of February 23, 2000. Any petitions subsequently posted on the ECFS system, or received in paper form, that were timely filed will be subject to the filing schedule for oppositions and replies adopted herein.

Procedural Matters

5. Parties submitting oppositions and replies should address the petitions for reconsideration in light of the requirements of 47 U.S.C. 309, 47 CFR 1.429 and any other public interest considerations. All oppositions and replies should reference the docket number of this proceeding, WT 99–168.

6. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200(a) and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

7. Parties may obtain the First Report and Order and petitions for reconsideration at the FCC website, *http://www.fcc.gov/e-file/ecfs.html.* The petitions are also available for public inspection and copying in the Reference Center, Room CY A257, 445 12th St., SW, Washington, DC 20554. Copies of the petitions are also available from ITS at 1231 20th St. NW, Washington, DC 20036, or by calling (202) 857–3800.

8. Oppositions to petitions for reconsideration, and replies, may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Oppositions and replies filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, parties should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic opposition or reply by Internet e-mail. To get filing instructions for e-mail filings, parties should send an e-mail to *ecfs@fcc.gov*, including "get form <your e-mail address> in the body of the message. A sample form and directions will be sent in reply.

9. Interested parties who choose to file by paper must file an original and four copies of their filings with the Office of the Secretary, Federal Communications Commission, TW B204, 445 12th St. SW Washington, DC 20554. In addition, parties should send two copies to Stan Wiggins, Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th St. SW Washington, DC 20554, and one copy to ITS, at 1231 20th Street, NW, Washington, DC 20036.

Parties Filing Petitions for Reconsideration in WT Docket 99–168

Adaptive Broadband Corporation (Feb. 22, 2000)
ArrayComm, Inc. (Feb. 22, 2000)
Association of Local Television Stations, Inc. (Feb. 22, 2000)
Association of Public-Safety Communications Officials-International, Inc. (Feb. 22, 2000)
Association for Maximum Service Television, Inc. (Feb. 22, 2000)
National Association of Broadcasters (Feb. 22, 2000)
Nelson Repeater Services, Inc. (Feb. 22, 2000)
Northcoast Communications, LLC (Feb. 7, 2000)
Rand McNally & Company (Feb. 22, 2000)
TRW Inc. (Feb. 11, 2000)
U.S. GPS Industry Council (Feb. 22, 2000)
US WEST Wireless, LLC (Feb. 3, 2000)

Federal Communications Commission.

Kris A. Monteith,

Chief, Policy Division, Wireless Telecommunications Bureau.

[FR Doc. 00–4927 Filed 2–29–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Recordkeeping and Confirmation Requirements for Securities Transactions.

OMB Number: 3064–0028.

Annual Burden.

Estimated annual number of respondents: 5,094.

Estimated time per response: 19.44 hours.

Average annual burden hours: 99,027 hours.

Expiration date of OMB Clearance: April 30, 2000.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before March 31, 2000 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The collection ensures that banks effecting securities transactions maintain adequate records and controls over securities transactions they effect.

Dated: February 23, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–4840 Filed 2–29–00; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Consumer Privacy in the Financial Services Industry

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Notice of public forum.

SUMMARY: The FDIC is hosting an interagency public forum on Consumer Privacy in the Financial Services Industry. This notice sets forth the details concerning this public forum.

DATES: Thursday, March 23, 2000.

ADDRESSES: Federal Deposit Insurance Corporation, L. William Seidman Center, 3501 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: David E. Wright, Community Affairs Officer, Division of Compliance and Consumer Affairs, (202) 898–3960, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC will host an interagency public forum on Consumer Privacy in the Financial Services Industry on March 23, 2000 from 8:30 a.m. to 1:00 p.m. The meeting will be held at the Federal Deposit Insurance Corporation, L. William Seidman Center, 3501 North Fairfax Drive, Arlington, Virginia. The purpose of this meeting is to explore different perspectives in three primary areas: Privacy of Consumer Information, the Regulators' Perspective on Consumer Privacy, and the Future of Privacy Law. These topics will be presented in moderated panel discussions. Members of the audience will have the opportunity to pose specific questions to the panel members.

The participants will include financial services industry leaders, consumer privacy experts, financial institution regulators, and government leaders. Donna Tanoue, Chairman of the FDIC, will host the meeting.

As required by Title V of the Gramm-Leach-Bliley Act, the FDIC, together with the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, recently issued a notice of Proposed Rulemaking entitled "Privacy of Consumer Financial Information." 65 FR 8769 (February 22, 2000). The FDIC will be accepting comments on this proposal until March 31, 2000. Any discussion of this proposed rule at the public forum will be transcribed and become part of the public record for the FDIC's consideration in promulgating the final rule. Individuals may submit written comments concerning the proposed rule to the FDIC as further detailed in the proposed rule or through the FDIC's "Electronic Public Comment" Internet site at *http://www.fdic.gov.* In addition, individuals attending the public meeting may bring their comments with them, and FDIC personnel will accept the comments for inclusion in the public record at that time.

The meeting is free and open to the public. However, space is limited to the first 300 registrants. We ask that you reserve a space in advance by calling David E. Wright, at (202) 898–3960 by March 20, 2000.

Further information concerning this event will be made available on the FDIC's web site (*www.fdic.gov*) and through other media.

Dated at Washington, DC, this 24th day of February, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–4841 Filed 2–29–00; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1315–DR]

Georgia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1315–DR), dated February 15, 2000, and related determinations.

EFFECTIVE DATE: February 18, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include Utilities (Category F) under Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 15, 2000:

Colquitt, Grady, Mitchell, and Tift Counties for utilities (Category F) under Public Assistance (already designated for debris removal (Category A) and emergency

protective measures (Category B), including direct Federal assistance, under Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–4820 Filed 2–29–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1313–DR]

South Carolina; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina, (FEMA–1313–DR), dated January 31, 2000, and related determinations.

EFFECTIVE DATE: February 18, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Carolina is hereby amended to include Road Systems (Category C) under Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 31, 2000:

Chesterfield, Darlington, Kershaw, Lancaster, Laurens, Newberry, and Spartanburg Counties for road systems (Category C) under Public Assistance (already designated for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F) under Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–4819 Filed 2–29–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the FEDERAL REGISTER.

Agreement No.: 217–011557–003
Title: Contship/ZIM/ML Space Charter Agreement
Parties:
Contship Med/Gulf Line Ltd.
Zim-Israel Navigation Co., Ltd.
Mexican Line Limited
Synopsis: The proposed Amendment expands the scope of the Agreement to include South Carolina ports.

Agreement No.: 217–011693
Title: FESCO/ANZDL Space Charter Agreement
Parties:
FESCO Ocean Management, Inc.
Australia-New Zealand Direct Line
Synopsis: The proposed Agreement would permit the parties to charter space to one another in the trade between ports on the Pacific Coast of the United States and ports in Australia and New Zealand.

Dated: February 25, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–4933 Filed 2–29–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding revocation dates shown below:

License Number: 26
Name: Advance Brokers Ltd.
Address: 135 American Legion Highway, Revere, MA 02151
Date Revoked: June 23, 1999
Reason: Failed to maintain a valid bond

License Number: 3603
Name: Alianza Enterprises, Inc.
Address: 3701 Williams Blvd., Suite 201, P.O. Box 640126, Kenner, LA 70064–0126
Date Revoked: December 21, 1999
Reason: Surrendered license voluntarily

License Number: 1643
Name: All Sea & Air Forwarding Co., Inc.
Address: 841 Pioneer Avenue, Wilmington, CA 90744–3748
Date Revoked: December 1, 1999
Reason: Surrendered license voluntarily

License Number: 1626
Name: Dulles International Customhouse Brokerage Corp. d/b/a Chantilly Freight Corporation
Address: 44845 Falcon Place, Suite 109, Sterling, VA 20166
Date Revoked: December 3, 1999
Reason: Failed to maintain a valid bond

License Number: 3310
Name: Fond Express, Inc.
Address: 10420 La Cienega Blvd., Inglewood, CA 90304
Date Revoked: June 26, 1999
Reason: Failed to maintain a valid bond

License Number: 4311
Name: International Exports and Marketing Inc.
Address: 116 Jane Street, St. Rose, LA 70087
Date Revoked: July 8, 1999
Reason: Failed to maintain a valid bond

License Number: 3392
Name: Junior R. Wong d/b/a JBJ Shipping
Address: 285 Archer Avenue, Copiague, NY 11726
Date Revoked: June 27, 1999
Reason: Failed to maintain a valid bond

License Number: 3373
Name: Kil Moon Chang
Address: 17518 Sybrandy Avenue, Cerritos, CA 90703
Date Revoked: August 29, 1999
Reason: Failed to maintain a valid bond

License Number: 4303
Name: Michael W. Birch d/b/a Central Export Services
Address: 502 13th Street, Modesto, CA 95354

Date Revoked: July 29, 1999
Reason: Failed to maintain a valid bond
License Number: 2574
Name: Stute International Inc.
Address: 10 Exchange Place, Suite 1608, Jersey City, NJ 07302
Date Revoked: December 31, 1999
Reason: Surrendered license voluntarily
License Number: 2254
Name: Victoria Genaro d/b/a Gulf-Continental Forwarding Co.
Address: 4844 Sierra Madre Drive, P.O. Box 26605, New Orleans, LA 70186–6605
Date Revoked: July 23, 1999
Reason: Failed to maintain a valid bond

T. A. Zook,

Deputy Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 00–4934 Filed 2–29–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Cardinal Financial Corporation, Fairfax, Virginia; to acquire 100 percent of the voting shares of Cardinal Bank Alexandria/Arlington, N.A., (in organization), Alexandria, Virginia.

Board of Governors of the Federal Reserve System, February 24, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–4839 Filed 2–29–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, March 6, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 25, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–4986 Filed 2–29–00; 8:45 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of Proposed Statement of Federal Financial Accounting Standards (SFFAS) No. 18, *Amendments to Accounting Standards for Direct Loans and Loan Guarantees.*

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999 notice is hereby given that the Federal Accounting Standards Advisory Board on February 18, 2000, submitted to its principals for review for a period of 90 days a proposed Statement of Federal Financial Accounting Standards (SFFAS) No. 18, Amendments to Accounting Standards for Direct Loans and Loan Guarantees. If there is no objection from any of the principals, SFFAS No. 18 will be issued as a final FASAB statement as of May 19, 2000.

A summary of the proposed Statement follows:

SFFAS No. 18 amends SFFAS No. 2, Accounting for Direct Loans and Loan Guarantees, issued in August 1993, by adding several new requirements. The objectives of these amendments are to improve financial reporting for subsidy costs and performance of Federal credit programs. The new reporting requirements are:

- Report subsidy reestimates in two distinct components: the interest rate reestimate and the technical/default reestimate. The former is a reestimate due to a change in interest rates from the rate assumed in budget preparation and used in calculating the subsidy expense to the rates that are prevailing at the time the direct or guaranteed loans are disbursed. The latter is a reestimate due to changes made in projected cash flows under the terms of the direct loans or loan guarantees after reevaluating all the risk factors as of the financial statement date, except for the effect of interest rate reestimates.
- Display a reconciliation between the beginning and the ending balances of the subsidy cost allowance for direct loans and the liability for loan guarantees, reported in an entity's balance sheet. The reconciliation displays activities that affect the subsidy cost allowance or the loan guarantee liability. such as the subsidy expense for direct or guaranteed loans disbursed during the reporting period, subsidy reestimates, fees received, interest supplements paid, loans written off, claim payments made to lenders,

recoveries obtained, and other adjustments.

• Provide a description of program characteristics and disclose: (1) The amounts of direct or guaranteed loans disbursed in each program during reporting year, (ii) the estimated subsidy rates for the total subsidy and the subsidy components at the program level in the current year's budget for the current year's cohorts, (iii) events and changes in economic conditions, other risk factors, legislation, credit policies, and subsidy estimation methodologies and assumptions, that have had a significant and measurable effect on subsidy rates, subsidy expense, and subsidy reestimates, and (iv) events and changes in conditions that have occurred and are more likely than not to have a significant impact but the effects of which are not measurable at the reporting date. Reporting entities should discuss how those events and changes have affected or would affect credit programs' subsidy costs, subsidy reestimates, and the subsidy rates estimated in the budget.

The amendments, if finally issued, will be effective for periods beginning after September 30, 2000

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., N.W., Room 6814, Washington, D.C. 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: February 25, 2000.

Wendy M. Comes,

Executive Director.

[FR Doc. 00–4937 Filed 2–29–00; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Human Immunodeficiency Virus Prevention Projects for Community-Based Organizations, Program Announcement #00023

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Human Immunodeficiency Virus Prevention Projects for Community-Based Organizations, Program Announcement #00023.

Times and Dates: 8:30 a.m.–12:30 p.m., March 20, 2000 (Open). 12:30 p.m.–4:30 p.m., March 20, 2000 (Closed). 8:30 a.m.–4:30 p.m., March 21–24, 2000 (Closed).

Place: Crowne Plaza Atlanta Airport, 1325 Virginia Avenue, East Point, Georgia, Phone 404/768–6660.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #00023.

Contact Person for More Information: Megan Foley or Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail MZF3@cdc.gov or EOW1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 24, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–4861 Filed 2–29–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 1:30 p.m.–4:30 p.m., March 21, 2000. 8:30 a.m.–3:15 p.m., March 22, 2000.

Place: Radisson Hotel Atlanta—Northlake, 4156 LaVista Road, Atlanta, Georgia 30084.

Status: Open to the public, limited only by the space available.

Purpose: The Committee advises and makes recommendations to the Secretary, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance of intramural and extramural research, and also provides guidance on the needs, structure, progress and performance of intramural programs, and on extramural scientific program matters. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee also recommends areas of research to be supported by contracts and cooperative agreements and provides concept review of program proposals and announcements.

Matters To Be Discussed: The purpose of the March 21 meeting is for the Science and Program Review Work Group (SPRWG) to review program oversight issues which include discussion of (1) current/future program Injury Control Research Center program activities; (2) review of violence against women and youth violence request for applications; (3) overview of external projects from NCIPC divisions; (4) site visit for trauma center evaluation project; (5) 1999 work-in progress monitoring workshops summary; and (6) NCIPC research priorities.

At the March 22 meeting of the full Committee, following the NCIPC Acting Director's update on NCIPC, discussions will include (1) NCIPC's Division of Acute Care, Rehabilitation Research, and Disability Prevention updates on key activities in spinal cord injury, traumatic brain injury, and poison control centers; (2) reports from the March 21 meetings of the Subcommittee on Family and Intimate Violence Prevention and SPRWG; (3) follow up report on NCIPC research priorities; and (4) update on the SafeUSA Partnership.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Thomas E. Blakeney, Acting Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1481.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 25, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–4860 Filed 2–29–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N–0102]

Cumulative List of Orphan Drug and Biological Designations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the cumulative list of orphan drug and biological designations as of December 31, 1999. FDA has announced the availability of previous lists, which are updated monthly, identifying the drugs and biologicals granted orphan designation under the Federal Food, Drug, and Cosmetic Act (the act).

ADDRESSES: Copies of the cumulative list of orphan drug and biological designations are available from the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and the Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3666.

FOR FURTHER INFORMATION CONTACT: Melvin Lessing or Stephanie Donahoe, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3666.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development (OPD) reviews and takes final action on applications submitted by sponsors seeking orphan designation of their drug or biological under section 526 of the act (21 U.S.C. 360bb). In accordance with this section of the act which requires public notification of designations, FDA maintains a cumulative list of orphan drug and biological designations. This list includes the name of the drug or biological, the specific disease/condition for which the drug or biological is designated, and information about the sponsor such as the name, address, telephone, and contact.

At the end of each calendar year, the agency publishes a cumulative list of orphan drug and biological designations current through the calendar year. The list that is the subject of this notice is the cumulative list of orphan drug and biological designations through December 31, 1999, and, therefore, brings the February 26, 1999 (64 FR 9515), publication up to date. This list is available upon request from the Dockets Management Branch (address above). Those requesting a copy should specify Docket No. 84N–0102, which is the docket number for this notice. In addition, the list is updated monthly and is available upon request from OPD or the FDA's Dockets Management Branch. The current list is also available on the Internet at http://www.fda.gov/orphan.

The orphan designation of a drug or biological applies only to the sponsor who requested the designation. Each sponsor interested in developing a drug or biological for an orphan indication must apply for orphan designation in order to obtain exclusive marketing rights. Any request for designation must be received by FDA before the submission of a marketing application for the proposed indication for which designation is requested (21 CFR 316.23). Copies of the orphan drug regulations (21 CFR part 316) (57 FR 62076, December 29, 1992) and explanatory background materials for use in preparing an application for orphan designation may be obtained from OPD (address above).

The names of the drugs and biologicals shown in the cumulative list of orphan designations may change upon marketing approval/licensing, reflecting the established, proper name approved by FDA. Because drugs and biologicals not approved/licensed for marketing are investigational, the appropriate established, proper name has not necessarily been assigned.

Dated: February 24, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–4875 Filed 2–29–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the Addiction Technology Transfer Center Program (New)

The Substance Abuse and Mental Health Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) intends to conduct an evaluation of its Addiction Technology Transfer Centers (ATTCs). The goal underlying the training and education opportunities provided through the ATTCs is to enhance the competencies of professionals in a variety of disciplines to address the clinical needs of individuals with substance abuse problems using research-based curricula and training materials through both traditional and non-traditional technologies.

The ATTCs disseminate current health services research from the National Institute on Drug Abuse (NIDA), National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institute of Mental Health (NIMH), Agency for Health Care Policy and Research (ACHPR), National Institute of Justice (NIJ), and other sources and applied knowledge development activities from SAMHSA using innovative technologies by developing and updating state-of-the-art research-based curricula and developing faculty and trainers. Participants in ATTC trainings are self-identified and participate in either academic courses or continuing education/professional development trainings. Academic courses are offered at all levels. Continuing education/professional development trainings are designed to meet identified needs of counselors and other professionals who work with individuals with substance abuse problems.

Both a process and an outcome evaluation will be conducted. The process evaluation will describe the

training and education needs of pre-service and currently practicing professionals, the types of training events that students/trainees receive through the ATTCs, and student/trainee satifaction with services. The outcome evaluation will focus on specific changes in clinical practice made by trainees as a result of knowledge received.

Analysis of this information will assist CSAT in documenting the numbers and types of participants in ATTC education/training offerings, describing the extent to which participants improve in their clinical competency, and which method is most effective in disseminating knowledge to the various audiences. This type of information is crucial to support CSAT in complying with GPRA reporting requirements and will inform future development of knowledge dissemination activities.

The evaluation design for students and trainees will be a description of each course/training event, and a pre-post design that collects identical information at initiation of ATTC courses/trainings, at the completion to the course/training, and again after 3 months. This time frame is necessary to allow students/trainees the opportunity to implement changes in clinical practice. In addition, the evaluation will collect satisfaction measures after each course/training event. A formal comparison group is not available.

The 13 ATTCs anticipate providing courses/trainings for 12,000 students/trainees per year over the next 2 years. Data collection burden will be borne primarily by the ATTC faculty for course descriptions (15 minutes) and students/trainees for pre and post and follow-up (30 minutes for each). ATTC staff will conduct follow-up mailings and/or interviews. The chart below summarizes the annualized burden for this project over a two-year period.

Respondent type	Number of respondents	Average responses/ respondent	Average time/ response (hours)	Annual burden (hours)
Students/trainees	12,000	3	.50	18,000
Faculty/trainers	195	1	.25	49
ATTC summary reports	13	4	8	416
Total	12,208			18,465

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 23, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–4862 Filed 2–29–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activity; potential applicants must obtain a copy of Parts I and II of the Guidance for Applicants (GFA) before preparing an application. Part I is entitled National Youth Substance Abuse Prevention Initiative (State Incentive Cooperative Agreements for Community-Based Action) (short title: State Incentive Grants). Part II is entitled General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements.

Activity	Application deadline	Estimated funds available, FY 2000	Estimated Number of awards	Project period
State Incentive Grants	5/10/00	$12 million	4 awards	3 years.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA has published additional notices of available funding opportunities for FY 2000 in past issues of the **Federal Register**.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face

Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 4 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710*

(* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines: The deadline for receipt of applications is May 10, 2000.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 4).

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 2000 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics.

The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 2000 KD&A program will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and it is question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, and preparation of special materials will be used, in addition to normal communication means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

3.1 General Review Criteria

Review criteria that will be used by the peer review groups are specified in the application guidance material.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 2000 SAMHSA Activities

National Youth Substance Abuse Prevention Initiative (State Incentive Cooperative Agreement for Community Based Action (short title: State Incentive Program, SP00–004)

- Application Deadline: The receipt date is May 10, 2000.
- Purpose: The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of funds for the State Incentive Cooperative Agreements for Community-based Action (known as State Incentive Grants). This program calls upon Governors to coordinate, leverage and/or redirect, as appropriate and legally permissible, all Federal and State substance abuse prevention resources directed at communities, families, schools, and workplaces to develop and implement an effective comprehensive, new Statewide prevention strategy aimed at reducing drug use by youth.
- Eligible Applicants: Eligibility is limited to the Office of the Governor in those entities that to date have not received State Incentive Grant funds in FY1997, FY 1998, and FY 1999. Applications may be submitted only by the Office of the Governor in those entities that receive the Substance

Abuse Prevention and Treatment Block Grant (SAPT), Title XIX, Part B, Subpart II of the Public Health Service Act, 42 U.S.C. 300x–21, *et seq.* (hereinafter referred to as "States"). The Term "Governor" means the Chief Executive Officer of the eligible entity, whether a Governor of a State or territory, the Mayor of the District of Columbia, the President of those territories with a president, or the Chairman of the Tribal Council of the Red Lake Band of Chippewa.

Eligibility is limited to the Office of Governor so that a consistent State-wide strategy on substance abuse prevention will be implemented by the Governor and comprehensively evaluated as to the effectiveness in the strategies used.

• Amount: $12 million in total costs (direct and indirect) to support four awards in FY2000.

Period of Support: Support may be requested for a period of up to 3 years.

• *Catalog of Federal Domestic Assistance Number:* 93.230.

• Program Contact: For questions concerning program issues, contact: Dave Robbins or Patricia Getty, DSCSD, Systems Applications Branch, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 930, 5600 Fishers Lane, Rockville, MD 20857 (301) 443–0369.

For questions regarding grants management issues, contact: Edna Frazier, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 640, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–6816.

• Application kits are available from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20857, Telephone: 1–800–729–6686, TDD: (800) 487–4889, Fax: (301) 468–6433.

5. Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 24, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–4876 Filed 2–29–00; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Funding Availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 3 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Program Announcement, including Part I, Programmatic Guidance for Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need, and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing an application.

Activity	Application Deadline	Est. Funds FY 2000	Est. Nunber of awards	Project period
Grants for Evaluation of Outpatient Treatment Models for Persons With Co-Occurring Substance Abuse and Mental Health Disorders.	May 23, 2000	Up to $3 million	Approx. 9	Up to 3 years.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA will publish additional notices of available funding opportunities for FY 2000 in subsequent issues of the **Federal Register**.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 3).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 4 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710*

(* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Applications sent to an address other than the address specified above will be returned to the applicant without review.

Application Deadlines: The deadlines for receipt of applications are listed in the table above. Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the deadline date will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 3).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 3).

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

2. Criteria for Review and Funding

2.1 General Review Criteria

Competing applications requesting funding under the specific project activity in Section 3 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

2.2 Award Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

3. Special FY 2000 SAMHSA Activities

Grants for Evaluation of Outpatient Treatment Models for Persons with Co-Occurring Substance Abuse and Mental Health Disorders (Short Title: The Co-Occurring Disorders Study), number TI 00–002).

- *Application Deadline:* May 23, 2000.
- *Purpose:* The Center for Substance Abuse Treatment (CSAT) of the Substance Abuse and Mental Health Services Administration (SAMHSA) announces the availability of funds for grants to identify effective substance abuse treatment projects or models of care that show promise for replication elsewhere. In fiscal year 2000, grants will be made to identify promising projects that provide substance abuse treatment services for persons with co-occurring substance abuse and mental health disorders.

This program, referred to as "The Co-Occurring Disorders Study," solicits applications for projects that will identify, refine, test, and document approaches and procedures for delivery of substance abuse treatment services within outpatient substance abuse treatment agencies to persons with co-occurring substance abuse and mental health problems. Funds are available for evaluation and documentation purposes and may not be expended to provide treatment services.

- *Eligible Applicants:* Applications may be submitted by units of State or local government, Indian Tribes and tribal organizations, and by public and private domestic nonprofit and for-profit entities such as community-based organizations, universities, colleges, and hospitals. If the applicant is not the provider of substance abuse treatment services—the site for observations and data collection—the applicant must have a documented working relationship with the treatment provider. The proposed service provider must at a minimum: have been providing outpatient substance abuse treatment services for the target population(s) for a minimum of two years prior to the date of the application; have been collecting data on clients in the target population(s) that include admission, course of treatment, outcome, and follow-up for at least two years; and have been in compliance with all local, city, county and/or State licensing and/or accreditation/certification requirements.
- *Amount:* It is estimated that $3 million will be available to support approximately nine awards under this GFA in fiscal year 2000. Awards are expected to range from approximately

$300,000 to $400,000 in total annual costs (direct plus indirect). No award in excess of $400,000 will be made. Actual funding levels and the number of awards will depend upon the availability of appropriated funds.

- *Period of Support:* Support may be requested for a period of up to three years. Annual awards will be made subject to continued availability of funds and progress achieved.
- *Catalog of Federal Domestic Assistance Number:* 93.230.
- *Program Contact:* For questions concerning program issues, contact: Edith Jungblut, Project Officer, Division of Practice and Systems Development, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6669.

For questions regarding grants management issues, contact: Christine Chen, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–8926.

- *Application kits are available from:* National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

4. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

5. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 24, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–4873 Filed 2–29–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Funding Availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 3 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Program Announcement, including Part I, Programmatic Guidance for Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need, and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing an application.

Activity	Application Deadline	Estimated funds available, FY 2000	Estimated number of awards	Project period
Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services.	June 13, 2000	$16,000,000	30–40	Up to 3 years.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in

this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA will publish additional notices of available funding opportunities for FY 2000 in subsequent issues of the **Federal Register**.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 3).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 4 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to:

SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710*

(*Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Applications sent to an address other than the address specified above will be returned to the applicant without review.

Application Deadlines: The deadline for receipt of applications is listed in the table above. Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the deadline date will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 3).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 3).

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

2. Criteria for Review and Funding

2.1 General Review Criteria

Competing applications requesting funding under the specific project activity in Section 3 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

2.2 Award Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

3. Special FY 2000 SAMHSA Activities

Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services (Short Title: TCE/HIV Grant Program), number TI 00–005).

- *Application Deadline:* June 13, 2000.
- *Purpose:* The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of funds for grants to enhance and expand substance abuse treatment and HIV/AIDS services in African American, Hispanic/Latino, and/or other racial/ethnic minority communities highly affected by the twin epidemics of substance abuse and HIV/AIDS. This Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services, or TCE/HIV, seeks to address gaps in substance abuse treatment capacity by increasing the accessibility and availability of substance abuse treatment and HIV/AIDS related services (including treatment for STDs, TB and hepatitis B and C) to African American, Hispanic/Latino, and/or other racial/ethnic minority substance abusers. This Guidance for Applicants (GFA) solicits applications for innovative targeted responses to the epidemic of substance abuse and related HIV/AIDS, and is consistent with Congressional report language.

Note: SAMHSA CSAT has two FY 2000 programs under which funding is available for substance abuse treatment and HIV/AIDS services.

The two programs are: PA 00–001—Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need, and this program, TI 00–005—Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services. The eligibility

requirements vary for each program; therefore, potential applicants must refer to the specific announcement to determine if they are eligible to apply.

• *Eligible Applicants:* Applications may be submitted by public and domestic private non-profit and for-profit entities, such as units of State or local government and grassroots and/or community-based organizations that have the capacity to provide substance abuse treatment services to African American, Hispanic/Latino, and/or other racial/ethnic minority communities. SAMHSA's CSAT encourages applications from substance abuse treatment programs that have a good record of reaching and serving hardcore, chronic drug users and their sex/needle-sharing partner(s) and facilitating their entry into substance abuse treatment. Targeted communities must be located in a metropolitan statistical area (MSA) with an annual AIDS case rate of, or greater than, 15/100,000 or in a State with an annual AIDS case rate of, or greater than, 10/100,000. SAMHSA CSAT's intention is to target areas at highest risk for HIV transmission. In the absence of consistent reporting of HIV data by all jurisdictions, the best indicator of the magnitude of the epidemic is AIDS case rates derived from CDC HIV/AIDS Surveillance Reports.

In addition to the basic requirements for eligibility, providers of services must be in compliance with all local, city, county, and/or State licensing and/or accreditation/certification requirements, and must also have been providing substance abuse treatment services for a minimum of two years prior to the date of the application. SAMHSA believes that only existing experienced providers have the infrastructure and expertise to provide services and to address emerging and unmet needs as quickly as possible.

• *Amount:* Approximately $16.0 million will be available to support approximately 30–40 awards under this GFA in FY 2000. Awards are expected to range from $100,000 to $500,000 (direct and indirect costs) for projects directed to the following substance abusing populations in African American, Hispanic/Latino, and other racial/ethnic minority communities:

- Women, and women and their children
- Adolescents
- Injecting drug users including men who have sex with men and inject drugs (MSM)
- Men or women who have been released from prisons and jails

Prohibitions: Federal funds awarded under this GFA may not be used to carry out syringe exchange programs, such as the purchase and distribution of syringes and/or needles, nor can funds authorized under this program be used to pay for pharmacologics for antiretroviral therapy, STDs, TB and hepatitis B and C.

• Period of Support: Support may be requested for a period of up to three (3) years. Annual awards will be made subject to continued availability of funds and progress in meeting the goals and objectives of this program.

• *Catalog of Federal Domestic Assistance Number:* 93.230.

• *Program Contact:* For questions concerning program issues, contact: Lisa A. Manley, Treatment and Systems Improvement Branch, Division of Practice and Systems Development, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, 7th Floor 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2297.

• For questions regarding grants management issues, contact: Christine Chen, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301)443–8926.

• Application kits are available from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

4. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

5. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 24, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–4874 Filed 2–29–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE023308–0

Applicant: U.S. Fish and Wildlife Service, Twin Cities Field Office, Bloomington, Minnesota (Russ Peterson, Field Supervisor)

The applicant requests a permit to take (collect, hold in captivity, propagate, and release) endangered Higgins' eye pearlymussels (*Lampsilis higginsi*) from locations within their historic range in the States of Iowa, Minnesota, and Wisconsin (St. Croix River, Upper Mississippi River, Chippewa River, and Wisconsin River). The applicant proposes to propagate captive mussels at: (1) The U.S. Fish and Wildlife Service's Genoa National Fish Hatchery; (2) a temporary facility at the Upper Mississippi River, Pools 1–4 (River Mile 853–787); (3) a temporary facility at the lower Chippewa River (RM 0–15); and (4) a temporary facility at the lower Wisconsin River (RM 0–15). The applicant proposes to subsequently relocate host fish infected with glochidia (resulting from propagation) to a temporary facility in the lower Bad Axe River adjacent to the Genoa NFH. Artificially propagated and temporarily held specimens will be reintroduced into the wild at the Upper Mississippi River, Lower Chippewa River, and lower Wisconsin River. The Field Supervisor, Twin Cities Field Office, proposes to serve as project manager including, but not limited to, designation of individuals who meet issuance criteria to work under this permit. This permit is proposed for the enhancement of survival of the species in the wild (protection from zebra mussel (*Dreissena polymorpha*) infestation, in the interest of recovery.)

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5350); FAX: (612/713–5292).

Dated: February 24, 2000.

Stanley L. Smith,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 00–4928 Filed 2–29–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–1020–DH]

Notice of Intent to Amend Redding Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Amend a Redding Resource Management Plan and Initiation of Public Scoping.

SUMMARY: Pursuant to the Federal Land Policy and Management Act (Public Law 94–579), and the National Environmental Policy Act (Public Law 91–190), the Bureau of Land Management, Redding Field Office, will consider a proposal to amend the existing boundary of the Horseshoe Ranch Wildlife Area as delineated in the Redding Resource Management Plan.

DATES: Written scoping comments will be accepted until Friday, March 31, 2000. Written comments on the issues that should be addressed in this proposed Resource Management Plan amendment should be sent to the Bureau of Land Management, Redding Field Office, 355 Hemsted Drive, Redding, CA 96002, Attention: Ilene Emry.

SUPPLEMENTARY INFORMATION: The Redding Field Office has received a proposal from the County of Siskiyou to review the existing boundary of the Horseshoe Ranch Area of the Klamath Management Area, Redding Resource Management Plan, dated July 27, 1993. The Horseshoe Ranch Area is located along the California-Oregon border, east of Interstate 5. The current western boundary of the Horseshoe Ranch Area is Interstate 5. The County has proposed moving the boundary back to the 1983 Horseshoe Ranch Management Plan boundary. This was a joint plan between the BLM and California Department of State Fish and Game. The BLM and the California Department of Fish and Game have a successful cooperative management relationship at Horseshoe Ranch which protects the natural values while minimizing taxpayer costs.

This relationship is mirrored by the BLM and Oregon Department of Fish and Wildlife on the north side of the state boundary. In the existing Redding Resource Management Plan, expansion of public land administration westward to Interstate 5 was to complement public management (Pacific Crest Trail, Soda Mountain Wilderness Study Area, existing public land ownership, etc.) in Oregon, enhance public accessibility, and provide more effective long term protection of the interstate deer herd.

The environmental analysis for the Redding Resource Management Plan Amendment will look at alternatives for the current Horseshoe Ranch Area Boundary, which will include no action, reduction, and expansion alternatives. These alternatives will be developed based on internal staff discussions, and public and agency input provided during this scoping process.

The Bureau of Land Management's scoping process will include: (1) identification of issues to be addressed; (2) identification of viable alternatives; and (3) notification of interested groups, individuals, Native American groups, and agencies to determine level of participation and obtain additional information.

FOR FURTHER INFORMATION CONTACT: Charles M. Schultz or Ilene Emry at (530) 224–2100, (530) 224–2172 (fax), or e-mail *iemry@ca.blm.gov.*

Charles M. Schultz,

Field Manager.

[FR Doc. 00–4543 Filed 2–29–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a General Management Plan (GMP)/Draft Environmental Impact Statement (EIS) for Big South Fork National River and Recreation Area (National Area), Kentucky and Tennessee

AGENCY: National Park Service; Interior.

SUMMARY: The National Area was established by Congress in 1974 for the purposes of conserving and interpreting an area containing unique cultural, natural, and recreational values, preserving as a free-flowing stream the Big South Fork of the Cumberland River and portions of its Clear Fork and New River stems and portions of their tributaries, and the development of the area's potential for healthful outdoor recreation.

This is the first GMP for the National Area prepared under National Park Service (NPS) policies and procedures. The Plan presents a long-term framework for managing the National Area by: (1) Examining the elements of required management found in its establishing and related legislation and NPS policy; and (2) identifying different applications of management units that would achieve two alternative management concepts. The alternative of "no-action" is also examined for comparison.

DATES: The comment period will extend for ninety (90) days from the date of this notice. A series of public meetings will be held in surrounding communities during this period. Local media will announce the times and locations and the National Area may be contacted for this information.

FOR FURTHER INFORMATION CONTACT: Superintendent Big South Fork NRRA, 4564 Leatherwood Ford Road; Oneida, TN 37841; Telephone (423) 569–9778, e-mail: biso__superintendent@nps.gov.

SUPPLEMENTARY INFORMATION: Comments on this Draft GMP/EIS are solicited at this time. Comments may be provided to the Superintendent at the address below or at public meetings to be announced. Copies of the document may be obtained from the Superintendent.

Our practice is to make comments, including names and homes addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: February 10, 2000.

Daniel W. Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 00–4831 Filed 2–29–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10) that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, March 17, 2000.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore. The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, MA for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval Minutes Previous 3 Meetings: October 1, 1999, November 19, 1999, January 14, 2000
3. Reports of Officers
4. Subcommittee Report—Personal Watercraft
5. Superintendent's Report
   - Salt Pond Visitor Center—funding and design
   - Nominations process—alternate Adv. Commission members
   - Highlands Center
   - Shuttle—Provincetown
   - Fort Hill—burn update
   - Horseshoe crabs
   - Outer Cape water study—USGS
6. Old Business
   - Commercial Certificates—Head of the Meadow Gas Station (deferred) and Jack's Gas
   - Adv. Commission Handbook
7. New Business
8. Agenda for next meeting
9. Date for next meeting
10. Public Comment
11. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: February 22, 2000.

Maria Burks,

Superintendent.

[FR Doc. 00–4833 Filed 2–29–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items in the Possession of the Denver Art Museum, Denver, CO

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Denver Art Museum, Denver, CO which meet the definition of "object of cultural patrimony" under Section 2 of the Act.

The five cultural items are a Motoki Society buffalo headdress bundle consisting of a parfleche and a cap made of bison fur with horns; a Motoki Society belt constructed from a bison tail; a Dog Society bundle consisting of parfleche and a feather headdress, the headdress has a leather cap and trailer with feathers (possibly hawk) attached; a Dog Society headdress which consists of a separate head piece and trailer or sash; and a Dog Society bundle consisting of a parfleche, dog skin sash, and a stick rattle covered with red flannel.

The Motoki Society buffalo headdress bundle was in the keeping of a society member named Black Faced Woman until 1938, when her son, Jack Low Horn, sold this bundle to Madge Hardin Walters. In 1939, Walters sold the bundle to the Denver Art Museum where it was accessioned as 1939.127. Oral traditions of the descendants of Black Faced Woman state that she died in 1946.

The Motoki Society belt is a component of a Motoki Society buffalo headdress bundle which was in the keeping of a society member named Handsome Woman until her death in early 1938. In June 1938, Handsome Woman's daughter, Mrs. Strangling Wolf, sold the bundle to Madge Hardin

Walters. In 1939, Walters sold the bundle to the Denver Art Museum where it was accessioned as 1939.68. In 1948, this bundle was exchanged to the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, but the belt was retained by the Denver Art Museum.

In 1939, the Dog Society bundle was sold by its keeper, a citizen of the Piegan Nation named Bull Plume, to Percy Creighton, a citizen of the Blood Tribe. In April 1939, Creighton sold the headdress bundle to Madge Hardin Walters. In 1940, Walters sold this bundle to the Denver Art Museum where it was accessioned as 1940.157.

In 1937, the Dog Society headdress was in the keeping of an unnamed woman who was probably a member of the Dog Society until her death in March or April of 1937. In April 1937, a citizen of the Blood Tribe named Big Sorrel Horse acquired the headdress and sold it to Madge Hardin Walters. In 1938, Walters sold this headdress to the Denver Art Museum, where it was accessioned as 1938.142.

In 1938, the Dog Society sash bundle was sold by a man named Running Weasel to Percy Creighton, and that same year Creighton sold this bundle to Madge Hardin Walters. In January 1939, Walters sold this Dog Society sash bundle to the Denver Art Museum where it was accessioned as 1939.124. Creighton's correspondence to Walters contains the statement that the Dog Society wished to retain the bundle for society usage, but Running Weasel sold it anyway.

Denver Art Museum records show that the above five cultural items originated from two societies of the Blood Tribe during the 1930s. Consultation in 1998 with representatives and religious leaders of the Blood Tribe confirm the identifications of the cultural items as originating from the two societies of the tribe. The Blood Tribe is one of four tribes comprising the Blackfoot Confederacy, which also includes the Blackfeet Nation, the Piegan Nation, and the Siksika Nation. The present-day Blackfoot Confederacy is descended from the four tribes of the Blackfoot Confederacy as it existed during the 1930s.

The Blackfeet Nation, acting on behalf of the Blackfoot Confederacy, submitted a claim to the Denver Art Museum containing evidence showing that society organizations hold communal title to bundles which are ritually transferred from one keeper to the next. Denver Art Museum's analysis of the records of transactions showed that the individuals who sold each of the above five cultural items were acting as individuals who lacked authority to alienate these communally-owned cultural items.

Based on the above mentioned information, officials of the Denver Art Museum have determined that, pursuant to 43 CFR 10.2 (d)(4), these five cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual and were considered inalienable at the time the objects were separated from the group. Officials of the Denver Art Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Blackfeet Nation on behalf of the Blackfoot Confederacy (Blackfeet Nation, Piegan Nation, Blood Tribe, and Siksika Nation).

This notice has been sent to officials of the Blackfeet Nation and the Blackfoot Confederacy (Blackfeet Nation, Piegan Nation, Blood Tribe, and Siksika Nation). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Nancy J. Blomberg, Curator of Native Arts, Denver Art Museum, 100 West 14th Avenue Parkway, Denver, CO 80204; telephone: (720) 913-0161 before March 31, 2000. Repatriation of these objects to the Blackfeet Nation on behalf of the Blackfoot Confederacy (Blackfeet Nation, Piegan Nation, Blood Tribe, and Siksika Nation) may begin after that date if no additional claimants come forward.

Dated: February 24, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–4829 Filed 2–29–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Heard Museum, Phoenix, AZ

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Heard Museum, Phoenix, AZ which meets the definition of "sacred object" under Section 2 of the Act.

The cultural items consist of two rattles and four paddles. The first rattle is made of leather, bamboo, porcupine quills and fur. The second rattle is made of leather, cotton string, fur, and feathers. The four paddles are painted wood.

In 1973, the first rattle was donated to the Heard Museum by Dr. and Mrs. Byron Butler; and the rattle was collected at an unknown date in an unknown location. In 1974, the second rattle was donated to the Heard Museum by Woodard's Indian Arts; and the rattle was collected at an unknown date in an unknown location. In 1983, the four paddles were donated to the Heard Museum by Mr. and Mrs. Byron Harvey III; and these paddles were collected at an unknown date in an unknown location.

Consultation evidence presented by representatives of the Navajo Nation indicates that these rattles and paddles are used in a number of ceremonies including the Male Shooting Way Chant. Consultation further indicates these six cultural items are specific ceremonial objects needed by traditional Navajo medicine men for the practice of traditional Navajo ceremonies.

Based on the above-mentioned information, officials of the Heard Museum have determined that, pursuant to 43 CFR 10.2(d)(3), these six cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Heard Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Navajo Nation.

This notice has been sent to officials of the Navajo Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Gloria Lomahaftewa, Assistant to the Director for Native American Relations, Heard Museum, 2301 N. Central Ave., Phoenix, AZ 85004–1480; telephone: (602) 252–8840 before March 31, 2000. Repatriation of these objects to the Navajo Nation may begin after that date if no additional claimants come forward.

Dated: February 9, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–4828 Filed 2–29–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Georgia in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Georgia in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

A detailed assessment of the human remains was made by the Peabody Museum of Arhcaeology and Ethnography professional staff in consultation with representatives of the Choctaw Nation of Oklahoma; the Jena Band of Choctaw Indians, Louisiana; and the Mississippi Band of Choctaw Indians, Mississippi.

In 1959, human remains representing one individual were permanently loaned to the Peabody Museum by the Warren Anatomical Museum, Harvard Medical School. No known individual was identified. No associated funerary objects are present.

Based on museum documentation, these human remains are believed to have been collected from an unknown location in Georgia, possibly by an individual names Hoyt. Museum documentation further describes these human remains as Choctaw. The attribution of such a specific cultural affiliation to these human remains indicates that the interment post-dates sustained contact between indigenous groups and Europeans beginning in the 17th century.

Although these human remains were from an area commonly thought to be outside traditional Choctaw territory, oral traditions and historic evidence support cultural affiliation with the Choctaw Nation of Oklahoma. Representatives of the Choctaw Nation of Oklahoma have described wide-ranging population movements by Choctaw individuals from Georgia. Representatives of the Jena Band of Choctaw Indians, Louisiana and the Mississippi Band of Choctaw Indians of Mississippi have indicated they were not part of those population movements. Based on consultation evidence, the condition of the human remains, and the occupation of this region by Choctaw people, these human remains have been affiliated solely with the Choctaw Nation of Oklahoma.

Based on the above mentioned information, officials of the Peabody Museum of Arhcaeology and Ethnography have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnography have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Choctaw Nation of Oklahoma.

This notice has been sent to officials of the Choctaw Nation of Oklahoma; the Jena Band of Choctaw Indians, Louisiana; and the Mississippi Band of Choctaw Indians, Mississippi. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Ave., Cambridge, MA 02138; telephone: (617) 495–2254, before March 31, 2000. Repatriation of the human remains to the Choctaw Nation of Oklahoma may begin after that date if no additional claimants come forward.

Dated: February 9, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–4826 Filed 2–29–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Kansas in the Possession of the Peabody Museum of Natural History, Yale University, New Haven, CT

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Kansas in the possession of the Peabody Museum of Natural History (Yale Peabody Museum), Yale University, New Haven, CT.

A detailed assessment of the human remains was made by Yale Peabody Museum professional staff in consultation with representatives of the Pawnee Indian Tribe of Oklahoma.

In 1873, human remains representing two individuals recovered from the upper fork of the Solomon River, Kansas, were donated to the Yale Peabody Museum by Joseph Savage. No known individuals were identified. No associated funerary objects are present.

Based on documentary evidence and consultation with representatives of the Pawnee Indian Tribe, these individuals have been determined to be Native American. Based on geographic origin of these human remains, published accounts of the traditional territory of the Pawnee, and historical information provided by the Pawnee Indian Tribe of Oklahoma, the preponderance of the evidence for cultural affiliation of these human remains has been determined to be with the Pawnee Indian Tribe of Oklahoma.

Based on the above mentioned information, officials of the Yale Peabody Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Yale Peabody Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pawnee Indian Tribe of Oklahoma.

This notice has been sent to officials of the Pawnee Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Richard Burger, Director, Yale Peabody Museum of Natural History, 170 Whitney Avenue, P.O. Box 208118, New Haven, CT 06520–8118; telephone: (203) 432–3752, before March 31, 2000. Repatriation of the human remains to the Pawnee Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: February 9, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–4825 Filed 2–29–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Madison and Oneida Counties, NY in the Possession of the Rochester Museum and Science Center, Rochester, NY

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Madison County, NY in the possession of the Rochester Museum and Science Center, Rochester, NY.

A detailed assessment of the human remains was made by Rochester Museum and Science Center professional staff in consultation with representatives of the Cayuga Nation of New York, the Oneida Nation of New York, the Oneida Tribe of Wisconsin, the Onondaga Nation of New York, the Seneca Nation of New York, the Seneca-Cayuga Tribe of Oklahoma, the St. Regis Band of Mohawk Indians of New York, the Stockbridge-Munsee Community of Mohican Indians of Wisconsin, the Tonawanda Band of Seneca Indians of New York, and the Tuscarora Nation of New York.

At an unknown date, human remains representing two individuals were recovered from the Deraway site (Msv 005) near Stockbridge, Madison County, NY by person(s) unknown. In 1979, these human remains were donated to the Rochester Museum and Science Center by Gilbert Hagerty. No known individuals were identified. The six associated funerary objects include blanket fragments, chert flakes, and a perforated cut brass fragment.

Based on skeletal morphology and the associated funerary objects, these individuals have been identified as Native American. Based on site location and continuities of material culture, the Deraway site has been identified as an Oneida occupation dating to c. 1696–1720 A.D.

At an unknown date, human remains representing 16 individuals were recovered from the Quarry site (Msv 004) near Stockbridge, Madison County, NY by person(s) unknown. In 1979, these human remains were donated to the Rochester Museum and Science Center by Gilbert Hagerty. No known individuals were identified. The 39 associated funerary objects include a chert chunk, brass fragments, a brass bead, a shell claw pendant, cut bone, charred maize kernels, and pottery sherds.

Based on the associated funerary objects and skeletal morphology, these individuals have been determined to be Native American. Based on the type of associated funerary objects, site location, and condition of the human remains, the Quarry site has been identified as an Oneida occupation dating to c. 1640–1650 A.D.

At an unknown date, human remains representing three individuals were recovered from the Sullivan site (Ond 003) near Stockbridge, Madison County, NY by person(s) unknown. In 1979, these human remains were donated to the Rochester Museum and Science Center by Gilbert Hagerty. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on excavation reports, site location, condition of the human remains, and continuities of material culture, the Sullivan site has been identified as an Oneida occupation dating to c. 1660–1677 A.D.

At an unknown date, human remains representing three individuals were recovered from the Thurston site (Msv 001), Eaton Township, Madison County, NY by Herbert Bigford, who donated these human remains to the Rochester Museum and Science Center in 1945. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture, the Thurston site has been identified as an Oneida occupation dating to c. 1625–1637 A.D.

At an unknown date, human remains representing one individual were recovered from the Sterling site, in Verona, Madison County, NY by person(s) unknown. In 1979, these human remains were donated to the Rochester Museum and Science Center by Gilbert Hagerty. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, this individual has been identified as Native American. Based on site location and continuities of material culture, the Sterling site has been identified as an Oneida occupation dating to c. 1750–10.21767 A.D.

Based on the above mentioned information, officials of the Rochester Museum and Science Center have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 25 individuals of Native American ancestry. Officials of the Rochester Museum and Science Center have also determined that, pursuant to 43 CFR 10.2(d)(2), the 45 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Rochester Museum and Science Center have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Oneida Nation of New York and the Oneida Tribe of Wisconsin.

This notice has been sent to officials of the Cayuga Nation of New York, the Oneida Nation of New York, the Oneida Tribe of Wisconsin, the Onondaga Nation of New York, the Seneca Nation of New York, the Seneca-Cayuga Tribe of Oklahoma, the St. Regis Band of Mohawk Indians of New York, the Stockbridge-Munsee Community of Mohican Indians of Wisconsin, the Tonawanda Band of Seneca Indians of New York, and the Tuscarora Nation of New York. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Connie Bodner, NAGPRA Liaison, Rochester Museum and Science Center, 657 East Avenue, Rochester, NY 14607–2177; telephone: (716) 271–4552, ext. 345, before March 31, 2000. Repatriation of the human remains and associated funerary objects to the Oneida Nation of New York may begin after that date if no additional claimants come forward.

Dated: February 23, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–4827 Filed 2–29–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the School of American Research, Santa Fe, NM

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the School of American Research, Santa Fe, NM which meet the definition of "sacred object" and "object of cultural patrimony" under Section 2 of the Act.

The four cultural items consist of four Kiva jars.

In 1923, the Indian Arts Fund, Inc. purchased a Kiva jar from J.F. Collins. In 1956, Mr. Fank Tilgham collected a Kiva jar from the Pueblo of Zia and the Indian Arts Fund, Inc. purchased this jar from Mr. Tilgham the same year. In 1931, Mr. Andrew Dasburg collected a Kiva jar from the Pueblo of Zia and donated the jar to the Indian Arts Fund, Inc.. In 1928, the Indian Arts Fund Inc. purchased a Kiva jar from the Spanish and Indian Trading Co., Santa Fe, NM. In 1972, these four Kiva jars were transferred to the School of American Research.

The six cultural items consist of three matalotes, a club, a feather bundle, and a headdress.

In 1925, Mr. Frank Applegate collected the headdress at the Pueblo of Zia and donated this headdress to the Indian Arts Fund, Inc. In 1958, Mr. Frank Tilgham collected the three matalotes, club, and feather bundle from the Pueblo of Zia, and donated these cultural items to the Indian Arts Fund, Inc. In 1972, these cultural items were transferred to the School of American Research.

Based on accession information and consultation with representatives of the Pueblo of Zia, these ten cultural items have been clearly identified as having come from the Pueblo of Zia. Representatives of the Pueblo of Zia have indicated that these ten cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Representatives of the Pueblo of Zia have also indicated that these ten cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual.

Based on the above-mentioned information, officials of the School of American Research have determined that, pursuant to 43 CFR 10.2 (d)(3), these ten cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the School of American Research have also determined that, pursuant to 43 CFR 10.2 (d)(4), these ten cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Lastly, officials of the School of American Research have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Pueblo of Zia.

This notice has been sent to officials of the Pueblo of Zia. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Ms. Christy Sturm, Collections Manager, Indian Arts Research Center, School of American Research, P.O. Box 2188, Santa Fe, NM 87594; telephone: (505) 954–7205 before March 31, 2000. Repatriation of these objects to the Pueblo of Zia may begin after that date if no additional claimants come forward.

Dated: February 9, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–4824 Filed 2–29–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Extension of Comment Period for an Environmental Assessment and Plan of Operations for Oil and Gas Exploration (Plan) Within Big Cypress National Preserve, Florida

AGENCY: National Park Service; Interior.

SUMMARY: The Preserve published a Federal Register Notice on December 14, 1999, announcing the availability of the Environmental Assessment (EA) and Plan of Operations for comment and public review. At the request of the applicant, the review period has been extended until February 21, 2000. The Plan was submitted pursuant to Title 36 of the Code of Federal Regulations, Part 9, Subpart B (36 CFR 9B). The National Park Service has prepared an Environmental Assessment in accordance with the National Environmental Policy Act to evaluate the proposed activity.

DATES: The Plan and EA are available for public review at Preserve Headquarters in Ochopee, FL. Copies of the EA can be requested at the address below. Written comments should be submitted to: Superintendent, Big Cypress National Preserve, HCR 61 Box 110, Ochopee, FL 34141; Telephone: (941) 695–2000, extension 325.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: The Plan calls for the construction of approximately 8 miles of road, a drilling pad, drilling an exploratory well and conducting a 41-square mile, three-dimensional geophysical survey. In 1992, the National Park Service finalized a Minerals Management Plan (MMP) for the Preserve. The MMP along with other appropriate laws and regulations provide the framework for assessing proposals from owners of non-federal oil and gas rights. The MMP was evaluated as part of the Preserve's General Management Plan/Environmental Impact Statement.

The EA for the Plan of Operations evaluates three alternatives: (1) Denial of the Plan of Operations; (2) approval of the Plan as submitted; and (3) approval of the Plan with stipulations.

Dated: February 11, 2000.

Daniel W. Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 00–4832 Filed 2–29–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Proposed Land Exchange: U.S. Reservation 515

SUMMARY: Notice is hereby given that the National Park Service (NPS) is proposing to conduct an exchange of perpetual easement interests with Saint Paul's English Lutheran Church, (St. Paul's) located at 4900 Connecticut Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chief, Land Resources Program Center, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

SUPPLEMENTARY INFORMATION: Public Law 90–401, enacted July 15, 1968, authorizes the Secretary of the Interior to accept title to any non-Federal property or interests therein within a unit of the National Park System or miscellaneous area under his administration, and in exchange therefore he may convey to the grantor of such property or interest any Federally-owned property or interest therein under his jurisdiction which he determines is suitable for exchange or other disposal and which is located in the same state as the non-Federal property to be acquired. Such an exchange of land or interests therein must be conducted in accordance with all NPS Land Exchange Guidelines.

As proposed, NPS intends to convey to St. Paul's certain interests in land located within U.S. Reservation 515, Washington, DC, and more particularly identified as portions of Lot 809, Square 1983. Specifically, NPS will convey to St. Paul's easement interests in 3 parcels containing 2,341 square feet, 1,035 square feet and 342 square feet, respectively, to allow St. Paul's to construct a designated handicapped parking area and paving associated with a proposed colonnade and connecting walkways located adjacent to the existing church structure. In return, St. Paul's will convey to NPS certain interests in 2 adjacent parcels of land more particularly identified as portions of Lot 64 in Square 1983 and containing 6,197 square feet and 424 square feet, respectively. The easement interests St. Paul's will convey to NPS are intended to retain and enhance the continuity of open space within that portion of U.S. Reservation 515, located adjacent to St. Paul's property.

A recently completed independent appraisal of the land interests to be conveyed as part of the proposed exchange indicates that the respective land interests are of equal value.

NPS has concluded that the proposed exchange of land interests will have no impact either directly or indirectly on natural or cultural resources associated with U.S. Reservation 515.

Detailed information concerning this proposed exchange is available from the Land Resources Program Center, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

For a period of 45 calendar days from the date of this notice, interested parties may submit comments to the above address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the NPS.

Dated: February 9, 2000.

Joseph M. Lawler,

Acting Regional Director, National Capital Region.

[FR Doc. 00–4830 Filed 2–29–00; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: United States International Trade Commission.

ACTION: Agency proposal for the collection of information submitted to the Office of Management and Budget (OMB) for review; comment request.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35), the Commission intends to seek approval from the Office of Management and Budget to ask users of its on-line documents imaging system to provide certain information about themselves. Comments concerning the proposed information collection are requested in accordance with 5 CFR 1320.8(d).

DATES: To be assured of consideration, written comments must be received on or before May 1, 2000.

ADDRESSES: Signed comments should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed data input screen and draft Supporting Statement to be submitted to the Office of Management and Budget are posted on the Commission's World Wide Web site at http://www.usitc.gov or may be obtained from Donna R. Koehnke, Secretary, U.S. International Trade Commission, telephone, 202–205–1802.

SUPPLEMENTARY INFORMATION:

Request for Comments

Comments are solicited as to (1) whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond.

Summary of the Proposed Information Collection

The Commission seeks to ensure that only the minimal necessary information is collected for its needs and that the burden remain as little as possible on respondents.

The collection form asks that the respondent enter a userid and password and also describe her/his organization, whether he/she is a party to an action before the USITC, his/her geographic location, and whether she/he may be contacted.

The Commission estimates that the survey will impose an average burden of less than two (2) minutes on each respondent.

By order of the Commission.

Issued: February 23, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–4908 Filed 2–29–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–856 (Final)]

Certain Ammonium Nitrate From Russia

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: February 22, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Taylor (202–708–4101), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–

205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On January 7, 2000, the Commission established a schedule for the conduct of the final phase of the subject investigation (65 FR 2643, January 18, 2000). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from March 20, 2000, to May 22, 2000 (65 FR 6983, February 11, 2000). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than May 15, 2000; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on May 17, 2000; the prehearing staff report will be placed in the nonpublic record on May 11, 2000; the deadline for filing prehearing briefs is May 18, 2000; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on May 24, 2000; the deadline for filing posthearing briefs is June 1, 2000; the Commission will make its final release of information on June 20, 2000; and final party comments are due on June 22, 2000.

For further information concerning this investigation, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 23, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–4909 Filed 2–29–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Certain Cigarettes and Packaging Thereof; Notice of Commission Determination To Review and Affirm an Initial Determination Terminating the Investigation as to Respondent Allstate Cigarette Distributors, Inc. on the Basis of a Consent Order; Issuance of Consent Order

[INV. NO. 337–TA–424]

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and affirm an initial determination ("ID") (Order No. 30) issued by the presiding administrative law judge ("ALJ") terminating the above-referenced investigation as to respondent Allstate Cigarette Distributors, Inc. ("Allstate") on the basis of a consent order; to grant complainant Brown & William Tobacco Corp.'s ("complainant") motion for leave to reply to Allstate's motion to strike the petition for review; and to deny Allstate's motion to strike the petition for review.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3090, e-mail saranoff@usitc.gov.

SUPPLEMENTARY INFORMATION: The Commission instituted this trademark-based investigation on September 16, 1999, based on a complaint filed by Brown & Williamson Tobacco Corp. ("complainant") alleging violations of section 337 by reason of: (a) Infringement of 11 federally registered U.S. trademarks; (b) unfair competition under the Lanham Act; (c) improper importation of products under the Lanham Act; and (d) dilution of the registered trademarks. On January 7, 2000, Allstate filed a motion to terminate the investigation based on a proposed consent order. Complainant opposed the motion and the Commission investigative attorney ("IA") supported the motion. On January 20, 2000, the ALJ issued the subject ID granting the motion to terminate the investigation as to Allstate by consent order. On January 27, 2000, complainant timely moved for a two-day extension of time within which to file its petition for review. The Chairman granted the request pursuant to Commission rule 210.14(b) (19 CFR 210.14(b)). On January 31, 2000, complainant timely filed a petition for review. On February 7, 2000, Allstate and the IA filed timely responses to the petition for review, and Allstate filed a motion to strike the petition for review. On February 8, 2000, complainant filed a motion for leave to respond to the motion to strike and an opposition to the motion.

Having examined the record in this investigation, the final ID, the petition for review, and the responses thereto, the Commission has determined to review the ID, because it raises an issue of Commission policy. Specifically, the Commission has considered whether it is appropriate, as a matter of Commission policy, to grant a motion to terminate based on a consent order, over the objection of the complainant, in the circumstances of this investigation.

The Commission's rules no longer provide that a motion to terminate an investigation based on a consent order must be a joint motion of the respondent(s) and the complainant(s). However, there may be circumstances where granting a consent order motion over a complainant's objection may be inappropriate as a matter of policy. Such circumstances may include, for example, where granting a consent order and terminating an investigation as to a respondent would deprive the complainant of the opportunity to obtain a general exclusion order. Another circumstance may be where the respondent has failed to provide sufficient discovery such that a consent order may undermine the complainant's ability to obtain a general exclusion order. These circumstances are not presented by this ID. We agree with the administrative law judge's conclusion that this motion does not present a situation where the movant's discovery conduct undermines complainant's ability to seek a general exclusion order, and there is no indication that complainant would be deprived of its opportunity to pursue a general exclusion order given the particular circumstances of the participation of the intervener and the remaining respondents in this investigation. Accordingly, the Commission has determined to affirm the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.45).

Copies of the public versions of Order No. 30 and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E

Street SW, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: February 22, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–4905 Filed 2–29–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–302 (Review) and 731–TA–454 (Review)]

Fresh and Chilled Atlantic Salmon From Norway

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty and antidumping duty orders on fresh and chilled Atlantic salmon from Norway would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on July 1, 1999 (64 F.R. 35680, July 1, 1999) and determined on October 1, 1999 that it would conduct expedited reviews (64 F.R. 55957, October 15, 1999). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on February 24, 2000. The views of the Commission are contained in USITC Publication 3282 (February 2000), entitled Fresh and Chilled Atlantic Salmon from Norway: Investigations Nos. 701–TA–302 (Review) and 731–TA–454 (Review).

Issued: February 23, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–4907 Filed 2–29–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–853–854 (Final)]

Certain Structural Steel Beams From Japan and Korea

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–853–854 (Final) under section 735(b) of the Act (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Japan and Korea of certain structural steel beams, provided for in subheadings 7216.32.00, 7216.33.00, 7216.50.00, 7216.61.00, 7216.69.00, 7216.91.00, 7216.99.00, 7228.70.30, and 7228.70.60 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: February 11, 2000.

FOR FURTHER INFORMATION CONTACT: John T. Fry (202–708–4157), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain structural steel beams are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigations were requested in a petition filed on July 7, 1999 by counsel on behalf of Northwestern Steel &: Wire Co., Sterling, IL; Nucor-Yamato Steel Co., Blytheville, AR; TXI-Chaparral Steel Co., Midlothian, TX; and The United Steelworkers of America AFL–CIO, Pittsburgh, PA.

The petition also alleged that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Korea of certain structural steel beams that were being subsidized by the Government of Korea. The Commission made an affirmative preliminary injury determination with regard to those imports. Subsequently, however, Commerce made a negative preliminary determination concerning whether manufacturers, producers, or exporters of certain structural steel beams in Korea received subsidies. In the event Commerce makes an affirmative final determination regarding the issue of subsidies, the Commission will activate the final phase of its countervailing duty investigation on certain structural steel beams from Korea (inv. No. 701–TA–401 (Final)). The briefing schedule, hearing, and other deadlines applicable to the final phase of inv. No. 731–TA–854 (the antidumping investigation on Korea), as outlined below, will also apply to inv. No. 701–TA–401.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as

[1] For purposes of these investigations, Commerce has defined the subject merchandise as "doubly-symmetric shapes, whether hot-or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products ("structural steel beams") include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of these investigations unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of these investigations: structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches."

provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on April 12, 2000, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on April 25, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 13. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 17, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is April 19, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 2; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before May 2. On May 24, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 26, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. Parties may also submit supplementary final comments on July 6 pertaining to Commerce's final determination(s) on certain structural steel beams from Korea. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: February 25, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–4906 Filed 2–29–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; Liberian Deferred Enforced Departure (DED) Supplement to Form I–765.

The Department of Justice, Immigration and Naturalization Service has submitted on the following information collection request (ICR) for review and clearance in accordance with the Paperwork Reduction Act of 1995; The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 1, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Liberian Deferred Enforced Departure (DED) Supplement to Form I–765.

(3) *Agency form number, if any, and the applicable component of the*

Department of Justice sponsoring the collection: Form I–765D. Office of Examinations, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract;* Primary: Individuals or households. The information collected on this form is used by the INS to determine eligibility for the requested benefit. The data will enable adjudication officers to adjudicate the underlying benefit without the need of requiring individual interviews in local INS offices on the majority of application.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 15,000 responses; at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 15,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: February 23, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice Immigration and Naturalization Service.

[FR Doc. 00–4935 Filed 2–29–00; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; Application to Extend/ Change Nonimmigrant Status.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 1, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of previously approved collection.

(2) *Title of the Form/Collection:* Application to Extend/change Nonimmigrnat Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–539. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by a nonimmigrant to apply for an extension of stay or change of nonimmigrant status. The INS will use the data on this to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 256,210 responses at 45 minutes (.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 192,158 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: February 23, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice Immigration and Naturalization Service.

[FR Doc. 00–4936 Filed 2–29–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, Departmental Management is soliciting comments concerning the proposed revision of the "Customer Satisfaction Surveys and Conference Evaluations Generic Clearance."

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed

below in the addresses section of this notice.

DATES: Written comments must be submitted to the Office listed in the addresses section below on or before May 1, 2000.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, OASAM–ITC, 200 Constitution Avenue, NW, Washington, DC 20210. Ms. Kurz can be reached on 202—218–5095, extension 159 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor (DOL) plans to conduct a variety of voluntary Customer Satisfaction Surveys of regulated/non-regulated entities which will be specifically designed to gather information from a customer's perspective as prescribed by E.O. 12862, Setting Customer Service Standards, September 11, 1993.

These Customer Satisfaction Surveys will provide information on customer attitudes about the delivery and quality of agency products/services and will be used as part of an ongoing process to improve DOL programs. This generic clearance will allow agencies to gather information from both Federal and non-Federal users.

II. Current Actions

Over the past three years the DOL has conducted more than two dozen Customer Satisfaction Surveys which have helped assess the Departments products and services and has led to improvements in areas deemed necessary. In addition to conducting Customer Satisfaction Surveys, the Department would like to include the use of evaluation forms for those DOL agencies conducting user conferences. These evaluations will be helpful in determining the success of the current conference, in developing future conferences, and in meeting the needs of the Department's product/service users.

Type of Review: Revision of a currently approved collection.

Agency: Office of Assistant Secretary for Administration and Management, Departmental Management.

Title: Customer Satisfaction Surveys and Conference Evaluations Generic Clearance.

OMB Number: 1225–0059.

Affected Public: Individuals and households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; and State, Local, or Tribal Government.

Total Respondents: Varies by survey/evaluation; may range from as few as 10 to over 63,750.

Frequency: On occasion.

Total Responses: Varies by survey/evaluation; may range from as few as 10 to over 63,750.

Average Time Per Response: Varies by survey/evaluation with an average of 9.5 minutes per survey and 2.5 minutes per evaluation.

Total Burden Hours: 13,500.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 24th day of February 2000.

Karin G. Kurz,

Lead Analyst, Office of the Assistant Secretary for Administration and Management.

[FR Doc. 00–4903 Filed 2–29–00; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0184(2000)]

Methylenedianiline (MDA) Standard for General Industry (29 CFR 1910.1050); Extension of the Office of Management of Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information-collection requirements contained in the Methylenedianiline Standard for General Industry (the "MDA General Industry Standard") (29 CFR 1910.1050).

Request for Comment

The Agency has a particular interest in comments on the following issues:

- Whether the information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

DATES: Submit written comments on or before May 1, 2000.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0184(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information-collection requirements

in the MDA General Industry Standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Todd R. Owen at (202) 693–2444. For electronic copies of the ICR on the MDA General Industry Standard, contact OSHA on the Internet a *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of the 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information-collection requirements specified in the MDA General Industry Standard protect employees from the adverse health effects that may result from their exposure to MDA. The major information-collection requirements of the MDA General Industry Standard include notifying employees of their MDA exposures, implementing a written compliance program, providing examining physicians with specific information, ensuring that employees receive a copy of their medical-examination results, maintaining employees' exposure-monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected employees, and their authorized representatives.

II. Proposed Actions

OSHA proposes to reduce the existing burden hour estimate, and to extend OMB's approval of, the collection-of-information (paperwork) requirements contained in the MDA General Industry Standard. The Agency is reducing its previous burden hour estimate of 722 hours, by 401 hours, as a result of lowering the estimate of MDA establishments in the general industry section. OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information-collection requirements contained in the MDA General Industry Standard.

Type of Review: Extension of currently approved information-collection requirements.

Title: MDA General Industry Standard (29 CFR 1910.1050).

OMB Number: 1218–0184.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 10.

Frequency: On occasion.

Total Responses: 652.

Average Time per Response: Varies from 5 minutes to provide information to the examining physician to 2 hours to update and review compliance plans.

Estimated Total Burden Hours: 294.

Estimated Cost (Operation and Maintenance): $13,787.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No 6–96 (62 FR 111).

Signed at Washington, DC on February 24, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–4865 Filed 2–29–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0183 (2000)]

Methylenedianiline (MDA) Standard for Construction (29 CFR 1926.60); Extension of the Office of Management of Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information-collection requirements contained in the Methylenedianiline Standard for Construction (the "MDA Construction Standard") (29 CFR 1926.60).

Request for Comment

The Agency has a particular interest in comments on the following issues:

- Whether the information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

DATES: Submit written comments on or before May 1, 2000.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0183 (2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information-collection requirements in the MDA Construction Standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Todd R. Owen at (202) 693–2444. For electronic copies of the ICR on the MDA Construction Standard, Contact OSHA on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed an continuing information-collection requirements in accordance with the Paperwork Reduction Act or 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and

OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of the 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information-collection requirements specified in the MDA Construction Standard protect employees from the adverse health effects that may result from their exposure to MDA. The major information-collection requirements of the MDA Construction Standard include notifying employees of their MDA exposures, implementing a written compliance program, providing examining physician with specific information, ensuring that employees receive a copy of their medical-examination results, maintaining employees' exposure-monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected employees, and their authorized representatives.

II. Proposed Actions

OSHA proposed to reduce the existing burden hour estimate, and the extend OMB's approval of, the collection of information (paperwork) requirements contained in the MDA Construction Standard. The Agency is reducing its previous estimate, 1,796 hours, by 418 hours which occurred because the burden associated with information used for respirator fit-testing is already included in the burden estimates calculated for the Respiratory Protection Standard (29 CFR 1926.103). OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information-collection requirements contained in the MDA Construction Standard.

Type of Review: Extension of currently approved information-collection requirements.

Title: MDA Construction Standard (29 CFR 1926.60).

OMB Number: 1281–0183.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number or Respondents: 66.

Frequency: On occasion.

Total Response: 2,859.

Average Time per Response: Varies from 5 minutes to provide information to the examining physician to 2 hours to update and review compliance plans.

Estimated Total Burden Hours: 1,378.

Estimated Cost (Operation and Maintenance): $69,276.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, D.C. on February 24, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–4866 Filed 2–29–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0061 (2000)]

1, 2-dibromo-3-chloropropane (DBCP); Extension of the Office of Management of Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information-collection requirements contained in the Cotton Dust Standard (29 CFR 1910.1043).

Request for Comment

The Agency has a particular interest in comments on the following issues:

- Whether the information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

DATES: Submit written comments on or before May 1, 2000.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0061 (2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information-collection requirements in the Cotton Dust Standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Todd R. Owen at (202) 693–2444. For electronic copies of the ICR on the Cotton Dust Standard, contact OSHA on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of the 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information-collection requirements specified in the Cotton Dust Standard provide protection for employees from the adverse health effects associated with exposure to cotton dust. In this regard, the Cotton Dust Standard requires employers to monitor employee's exposure to cotton dust, monitor employee health, and provide employees with information about their exposures and the health effects of exposure to cotton dust.

II. Proposed Actions

OSHA proposes to reduce the existing burden hour estimate, and to extend the

OMB approval of, the collection-of-information (paperwork) requirements contained in the Cotton Dust Standard (29 CFR 1910.1043). The Agency is reducing its previous burden hour estimate of 138,184 hours by 57,974 mainly due to a reduction of its earlier estimate of the number of employees potentially exposed to cotton dust. OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information-collection requirements contained in the Cotton Dust Standard (29 CFR 1910.1043).

Type of Review: Extension of currently approved information-collection requirements.

Title: Cotton Dust Standard.

OMB Number: 1218–0101.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government

Number of Respondents: 547.

Frequency: On occasion.

Total Responses: 280,655.

Average Time per Response: Varies from 5 minutes to provide information to the examining physician to 2 hours to conduct exposure monitoring.

Estimated Total Burden Hours: 80,210.

Estimated Cost (Operation and Maintenance): $5,777,108.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No 6–96 (62 FR 111).

Signed at Washington, D.C., on February 24, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–4867 Filed 2–29–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0101(2000)]

1,2-dibromo-3-chloropropane (DBCP); Extension of the Office of Management of Budget's (OMB Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information collection requirements contained in the DBCP Standard 929 CFR 1910.1044).

Request For Comment

The Agency is particularly interested in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

DATE: Submit written comments on or before May 1, 2000.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0101(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Comments may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in the DBCP Standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Todd R. Owen at (202) 693–2444. For electronic copies of the ICR on the DBCP Standard, contact OSHA on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95)(44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of the 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information collection requirements in the DBCP Standard provide protection for employees from the adverse health effects associated with exposure to DBCP. In this regard, the DBCP Standard requires employers to monitor employees' exposure to DBCP, monitor employee health, and provide employees with information about their exposures and the health effects of exposure to DBCP.

II. Proposed Actions

OSHA proposes to extend the OMB approval of the collection of information (paperwork) contained in the DBCP Standard (29 CFR 1910.1044). OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the DBCP Standard (29 CFR 1910.1044).

Type of Review: Extension of currently approved information collection requirements.

Title: 1,2-dibromo-3-chloropropane Standard.

OMB Number: 1218–0101.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 1.

Frequency: On occasion.

Estimated Total Burden Hours: 1.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, D.C., on February 24, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–4868 Filed 2–29–00; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required the deletion of the following item from the previously announced closed meeting (**Federal Register**, Vol. 65, No. 35, page 8748, February 22, 2000) scheduled for Thursday, February 24, 2000.

2. One (1) Personnel Matter. Closed pursuant to exemptions (2), (5), (6), (7) and (9)(B).

The Board voted unanimously that agency business required that this item be deleted from the closed agenda and that no earlier announcement of this change was possible.

The previously announced items were:

1. Administrative Action under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

2. Three (3) Personnel Actions. Closed pursuant to exemptions (2), (5), (6), (7) and (9)(B).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–5085 Filed 2–28–00; 3:46 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–20, issued to Consumers Energy Company for operation of the Palisades Plant located in Van Buren County, Michigan.

The proposed amendment would change Current Technical Specification (CTS) 4.9a.2, "Auxiliary Feedwater System Tests—Surveillance Requirements—Auxiliary Feedwater Pumps," by removing the surveillance requirement with respect to the backup steam supply to turbine-driven auxiliary feedwater (AFW) pump P–8B. As changed, the monthly surveillance requirement would apply to the switch for the primary steam supply valve (CV–0522B) and the pump test-key switch on the automatic AFW actuation system, but not to the switch for the manual backup steam supply valve.

Related changes would also be made to the Improved Technical Specification (ITS) 3.7.5, "Auxiliary Feedwater (AFW) System," as issued November 30, 1999 (Amendment 189). Condition A for ITS 3.7.5 currently provides a completion time of 7 days for restoration if one of the two steam supplies for the turbine-driven AFW pump becomes inoperable (provided the other supply is operable). The proposed amendment would delete ITS 3.7.5 Condition A, and the remaining conditions and their associated actions would be relettered. ITS 3.7.5 Condition B currently allows a completion time of 72 hours for restoration of an inoperable AFW pump (provided that at least 100% of required AFW flow and at least two operable AFW pumps are available). Condition B also specifies a second completion time: "10 days from discovery of failure to meet the LCO [limiting condition for operation]." The proposed amendment would delete this second completion time in Condition B. The proposed amendment would also revise ITS Surveillance Requirement 3.7.5.1 to only require verification of valve alignment in the remaining steam supply to P–8B (*i.e.*, reference to the backup steam supply would be eliminated). The licensee also forwarded associated changes for the CTS and ITS Bases.

Exigent circumstances exist which cause the Commission to act promptly upon the proposed amendment request. During a maintenance outage on February 5, 2000, a steam leak developed beneath the floor of the turbine building from the underground piping that provides a manual backup steam supply to AFW pump P–8B. The licensee states that this manual backup steam supply line provides no required safety function, but it does provide an alternative steam supply to P–8B for operational flexibility. The licensee subsequently excavated the area immediately surrounding the leak and removed and replaced the leaking pipe section. Since the apparent cause of the leak was corrosion originating from the exterior of the pipe, the licensee concluded that the integrity of the remainder of the line, which has not been completely inspected, cannot be quantitatively proven and cannot easily be demonstrated to be in compliance with the requirements of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code for the entire length of underground pipe. Therefore, the licensee decided on February 13, 2000, to consider this manual backup steam supply line inoperable. Since the plant was scheduled to start up, the licensee requested in a letter and telephone call on February 16, 2000, that the Commission grant enforcement discretion to permit plant startup and subsequent operation until a TS change request could be processed. During the phone call, and in a subsequent letter dated February 18, 2000, the Commission noted its intention to exercise enforcement discretion for the period of time necessary to process a license amendment to change the TS. In its letter granting enforcement discretion, the Commission stated that the license amendment application was to be submitted no later than 12:50 p.m. on February 18, 2000. Thus, the licensee's application for amendment, dated February 18, 2000, is in response to the degraded condition of an underground pipe that is not needed for any safety function and to the Commission's actions in granting enforcement discretion.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed Technical Specifications changes would allow plant operation without requiring the manual backup steam supply to the turbine driven auxiliary feedwater pump.

The connections to the former underground backup steam supply for Pump P–8B turbine will be isolated from the main steam piping using at least one manual isolation valve, and from the P–8B turbine driver with a pipe cap or flanged connection prior to leaving Cold Shutdown from the current outage. Since the backup underground steam supply is not credited in any plant safety analyses nor required for any design or license basis events, adequate redundancy in other required sources of supplying auxiliary feedwater exists such that no increase in consequences of an accident will result. Probabilistic Safety Analysis, comparing plant operation with and without the manual backup steam supply, has shown there to be no significant change in risk. Therefore, operation of the plant in accordance with the proposed Technical Specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Operation of the plant in accordance with the proposed Technical Specifications would not add any new equipment, settings, or alter any plant operating methodology. The only change is the elimination of a testing requirement for a removed plant component. Functioning of that plant component is not assumed in any safety analyses. Since there will be no change in operating plant equipment, settings, or normal operating methodology, operation in accordance with the proposed Technical Specifications would not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. Does this change involve a significant reduction in a margin of safety?

The proposed Technical Specifications change would allow operation of the plant without the manual backup steam supply to the turbine driven auxiliary feedwater pump. There are no analyzed accidents which require the manual backup steam supply to mitigate the effects of the accident. A Probabilistic Safety Analysis, comparing plant operation with and without the manual backup steam supply, has shown there to be no significant change in risk.

Therefore, operation of the plant in accordance with the proposed Technical Specifications would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 31, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to

relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, MI 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 18, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 24th day of February, 2000.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–4892 Filed 2–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al. (Millstone Nuclear Power Station, Unit 3); Order Approving Transfer of License and Conforming Amendment

I

Northeast Nuclear Energy Company (NNECO) is authorized to act as agent for the joint owners of the Millstone Nuclear Power Station, Unit 3 (Millstone 3), and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility as reflected in Facility Operating License No. NPF–49. Montaup Electric Company (Montaup), one of the joint owners, currently owns a 4.0-percent interest in Millstone 3; New England Power Company (NEP), another of the joint owners, currently owns a 12.2 percent interest. The U.S. Nuclear Regulatory Commission (NRC) issued Facility Operating License No. NPF–49 on January 31, 1986, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located in New London County, on the southern coast of the State of Connecticut.

II

Under cover of a letter dated June 15, 1999, Montaup and NEP submitted an application requesting approval of the direct and indirect transfers of the license to the extent held by Montaup in connection with its 4.0-percent ownership interest in Millstone 3, regarding a proposed acquisition of that interest by NEP. The June 15, 1999, application, which incorporated by reference a related application dated March 15, 1999, filed by NEP (NEP—National Grid submittal), was supplemented July 20, September 3, and November 29, 1999, and January 18, 2000 (collectively hereinafter "the application"). In addition, the application requested approval of a conforming amendment to reflect the direct transfer.

According to the application, on February 1, 1999, New England Electric System (NEES), the parent company of NEP, entered into an Agreement and Plan of Merger and Consent Agreement (Merger Agreement) with Eastern Utilities Associates (EUA), a Massachusetts business trust, which is the indirect parent of Montaup. Under the Merger Agreement, certain transactions will occur that will ultimately result in the indirect transfer of Montaup's interest in Millstone 3 to NEES and the direct transfer of that interest to NEP. NEP would then own a 16.2-percent interest in Millstone 3.

In addition, by virtue of a separate merger agreement between NEES and the National Grid Group, plc (National Grid), an indirect transfer of Montaup's Millstone 3 license to National Grid would occur by virtue of National Grid acquiring NEES and, indirectly, NEP. NNECO, the sole licensed operator of the facility, would remain the managing agent for the joint owners of the facility and continue to have exclusive responsibility for the management, operation, and maintenance of Millstone 3. The application did not propose a change in the rights, obligations, or interests of the other joint owners of Millstone 3. In addition, no physical changes to Millstone 3 or operational changes were proposed.

The proposed conforming amendment, submitted by NNECO on behalf of NEP to address the proposed direct transfer of the license from Montaup to NEP with regard to NEP's acquisition of Montaup's 4.0-percent interest in Millstone 3, would remove references to Montaup in the license and change the number of license holders as stated in the license from 14 to 13. NEP is currently referenced in the license as a licensee, given its existing 12.2-percent ownership interest in Millstone 3, and therefore would not need to be added to the license.

Approval of the above described license transfers and conforming license amendment was requested pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on January 19, 2000 (65 FR 2990). No hearing requests were filed.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall

give its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that (1) the merger between EUA and NEES will not affect the qualifications of Montaup as a holder of Facility Operating License NPF–49, (2) NEP is qualified to hold the license following the acquisition of Montaup's ownership interest in Millstone 3 by NEP, and (3) the acquisition of NEES by National Grid will not affect the qualifications of NEP to hold the license as proposed in the application; and that the direct and indirect transfers of the license, to the extent effected by the described mergers and acquisitions, are otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein.

The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations, and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated February 24, 2000.

III

Accordingly, pursuant to Sections 161B, 161i, 161o, and 184 of the Atomic Energy Act of 1954 (AEA), as amended, 42 U.S.C. § 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the direct and indirect license transfers referenced above are approved, subject to the following conditions:

(1) No later than the time the proposed NEES merger with National Grid is consummated, NEP shall establish and make operational a Special Nuclear Committee, as described in the NEP-National Grid submittal, having the composition, authority, responsibilities, and obligations specified in the NEP-National Grid submittal, provided, however, the Special Nuclear Committee may also have exclusive authority on behalf of NEP over taking any action which is ordered by the NRC or any other agency or court of competent jurisdiction. No material changes with respect to the Special Nuclear Committee may be made without the prior written consent of the Director, Office of Nuclear Reactor Regulation. The foregoing provisions may be modified by the Commission upon application and for good cause shown.

(2) The Special Nuclear Committee, once established in accordance with Condition (1) above, shall have the responsibility and exclusive authority to ensure, and shall ensure, that the business and activities of NEP with respect to the Millstone 3 license are at all times conducted in a manner consistent with the protection of the public health and safety and common defense and security of the United States.

(3) NEP shall provide the Director, Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from NEP to its current or proposed direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of NEP's consolidated net utility plant, as recorded on NEP's book of accounts.

(4) Should any of the proposed license transfers approved by this Order not be completed by February 28, 2001, this Order shall become null and void with respect to such transfer, provided, however, upon application and for good cause shown, such date may be extended.

It is Further Ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes the changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject direct license transfer from Montaup to NEP is approved. Such amendment shall be issued and made effective at the time the proposed direct license transfer from Montaup to NEP is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated June 15, 1999, and supplements dated July 20, September 3, and November 29, 1999, and January 18, 2000, the NEP-National Grid submittal dated March 15, 1999, and the safety evaluation dated February 24, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site http://www.nrc.gov.

Dated at Rockville, Maryland, this 24th day of February 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–4883 Filed 2–29–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–49 issued to Northeast Nuclear Energy Company for operation of the Millstone Nuclear Power Station, Unit No. 3 (Millstone 3) located in New London County, Connecticut.

The proposed amendment request dated February 1, 2000, would revise limiting conditions for operation (LCOs) 3.0.1 and 3.0.2 and add LCO 3.0.5 to the Technical Specifications (TSs) for Millstone 3. LCO 3.0.5 establishes allowances for restoring equipment to service under administrative controls when the equipment has been removed from service or declared inoperable to comply with actions in the TS. LCOs 3.0.1 and 3.0.2 would be revised by adding an exception that states "except as provided in Specification 3.0.5." The Bases to the TS would also be changed.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a

significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [The proposed amendment does not] involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of Technical Specification 3.0.5 allows restoration of equipment to service under administrative controls when it has been removed from service or declared inoperable to comply with action requirements [of the TS]. The potential impact of temporarily returning the equipment to service is considered to be insignificant since the equipment has been restored to a condition which is expected to provide the required safety function. As stated in Generic Letter 87–09, "The vast majority of surveillances do in fact demonstrate that systems or components are operable." Also, returning the equipment to service for testing will promote timely restoration of the equipment and reduce the probability of events that may have been prevented or mitigated by such operable equipment. Therefore, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

Since the equipment to be restored is already out of service, the availability of the equipment has been previously considered in the evaluation of consequences of an accident. Temporarily returning the equipment to service in a state [in] which [the equipment] is expected to function as required to mitigate the consequences of a previously analyzed accident will promote timely restoration of the equipment and restore the capabilities of the equipment to mitigate the consequences of any events previously analyzed. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. [The proposed amendment does not] create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not introduce a new mode of plant operation and do not involve [a] physical modification to the plant. Operation with the inoperable equipment temporarily restored to service is not considered a new mode of operation since existing procedures and administrative controls prevent the restoration of equipment to service until it is considered capable of providing the required safety functions.

Performance of the surveillance is considered to be a confirmatory check of that capability which demonstrates that the equipment is indeed operable in the majority of the cases. For those times when equipment which may be temporarily returned to service under administrative controls is subsequently determined to be inoperable the resulting condition is comparable to the equipment having been determined to be inoperable during operation, with continued operation for a specified time allowed to complete required actions. Since this condition has been previously evaluated in the development of the current Technical Specifications, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. [The proposed amendment does not] involve a significant reduction in a margin of safety.

Temporarily returning [previously declared] inoperable equipment to service for the purpose of confirming operability, places the plant in a condition which has been previously evaluated and determined to be acceptable for short periods. Additionally, the equipment has been determined to be in a condition which provides the previously determined margin of safety. The performance of the surveillance simply confirms the expected result and capability of the equipment. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 31, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut, 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 1, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically from the ADAMS Public Electronic Reading Room link at the NRC Web site *(http://www.nrc.gov)*.

Dated at Rockville, Maryland, this 24th day of February 2000.

For the Nuclear Regulatory Commission.

James W. Clifford,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–4884 Filed 2–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric & Gas Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–70 and DPR–75 issued to Public Service Electric & Gas Company for operation of the Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem Units 1/2) located in Salem County, New Jersey.

The proposed amendment request dated January 24, 2000, would revise the radiological effluent technical specifications (RETS) and administrative controls requirements (*i.e.*, Sections 3/4.3, Instrumentation; 3/4.11, Radioactive Effluents; 3/4.12, Radiological Environmental Monitoring; 6.0, Administrative Controls, and the table of contents and definitions) in the Salem Units 1/2 Technical Specifications (TS) by implementing programmatic controls for RETS in the administrative controls section and relocating procedural details of the RETS, with various changes, to the offsite dose calculation manual (ODCM) or to the process control program (PCP). The proposed changes follow the guidance and requirements in the Commission's Generic Letter (GL) 89–01, "Implementation of Programmatic Controls in the Technical Specifications for Radiological Effluent Technical Specifications (RETS) in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program," that was issued in 1989. There is also the proposed change to add the word "oxygen" to the title of "Radioactive Gaseous Effluent Monitoring Instrumentation" on page iv of the table of contents.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the

facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or precursors and do not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The proposed changes do not alter or prevent the ability of structures, systems, or components to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological effluents.

Implementation of programmatic controls for RETS in [the] TS will assure that the applicable regulatory requirements pertaining to the control of radioactive effluents will continue to be maintained. Since there are no changes to previous accident analyses, the radiological consequences associated with these analyses remain unchanged. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not alter the design assumptions, conditions, or configuration of the facility; nor do the proposed changes change the manner in which the plant is operated. The proposed changes have no impact on component or system interactions. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological effluents. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

There is no impact on equipment design or operation and there are no changes being made to the TS required safety limits or safety system settings that would adversely affect plant safety as a result of the proposed changes. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological effluents. A comparable level of administrative control will continue to be applied to those design conditions and associated surveillances being relocated to the ODCM or PCP. Therefore, the proposed changes do not involve a significant reduction in a margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 31, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner

shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 24, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 23rd day of February 2000.

For the Nuclear Regulatory Commission.

William C. Gleaves,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–4887 Filed 2–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 070–00784 and 040–07044]

Notice Consideration of the Approval of the Site Remediation Plan for the Formerly Licensed Union Carbide Facility in Lawrenceburg, TN

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) is considering a Remediation (Decommissioning) Plan (RDP) submitted by UCAR Carbon Company, Inc. (UCAR) to authorize decommissioning of its formerly licensed Union Carbide Corporation (UCC) facility in Lawrenceburg, Tennessee.

SUPPLEMENTARY INFORMATION: On August 19, 1998, UCAR submitted the RDP of its formerly licensed facility in Lawrenceburg, Tennessee. The RDP summarized the decommissioning activities that will be undertaken to remediate the contamination identified in three buildings, on an incinerator pad, and in the surrounding outdoor areas. Radioactive contamination at the UCC facility consists of building structures and soil contaminated with enriched uranium and thorium resulting from licensed operation that occurred from 1963 to 1974.

NRC will require the licensee to remediate the UCC facility to meet NRC's decommissioning criteria, and during the decommissioning activities, to maintain effluents and doses within NRC requirements and as low as reasonably achievable.

Prior to approving the RDP, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

UCAR has submitted the RDP and NRC hereby provides notice that the RDP is under review. Please address any questions or comments to the information contact person listed below.

The RDP for the formerly licensed UCC facility, Lawrenceburg, Tennessee, License Nos. SNM–00724 (Terminated) and SMB–00720 (Terminated), is available for inspection at the NRC's Public Document Room, 2120 L Street NW, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Rebecca Tadesse, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, at (301) 415–6221 or e-mail rxt@nrc.gov.

Dated at Rockville, Maryland, this 24th day of February 2000.

For the Nuclear Regulatory Commission.

Michael C. Layton,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–4886 Filed 2–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of the Staff's Intention to Combine Draft Regulatory Guide DG–4006 With the Standard Review Plan for Decommissioning

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) plans to combine the guidance in Draft Regulatory Guide DG–4006, with the Standard Review Plan (SRP) for decommissioning currently being developed by NRC staff.

SUPPLEMENTARY INFORMATION: In August 1998, NRC issued "Draft Regulatory Guide DG–4006, Demonstrating Compliance with the Radiological Criteria for License Termination" for a 2-year use and comment period. DG–4006 addressed the release from regulatory control of buildings and soil but did not pertain to the release of contaminated equipment. It included

regulatory positions on dose modeling, methods for conducting final status surveys, as low as reasonably achievable analysis, and license termination under restricted conditions. DG–4006 also discussed how these regulatory positions should be integrated during license termination activities. NRC staff initially intended to finalize the DG by July 2000. In September 1999, NRC staff stated that it would accept comments on DG–4006 until November 1999. NRC staff received approximately 185 comments on DG–4006 from four professional organizations, one Federal agency, three State regulatory agencies and the Conference of Radiation Control Program Directors, and two private concerns.

In late 1999, NRC staff, in recognition that similar guidance was being presented in the SRP, decided to combine the guidance in DG–4006 with the guidance in the SRP and use the SRP as the primary guidance document. This action will aid in consolidating decommissioning guidance in a user-friendly manner. As such, NRC staff does not plan to publish a final version of the Regulatory Guide. Comments submitted by interested individuals on DG–4006 will be considered as NRC staff finalizes the SRP.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, at (301) 415–6749.

Dated at Rockville, Maryland, this 24th day of February 2000.

For the Nuclear Regulatory Commission.

Michael C. Layton,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–4888 Filed 2–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530]

Arizona Public Service Company; Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating Licenses Nos. NPF–41, NPF–51, and NPF–74, issued to the Arizona Public Service Company (the licensee), for operation of the Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, located in Maricopa County, Arizona.

Environmental Assessment

Identification of Proposed Action

The proposed action would increase the number of fuel assemblies that can be stored in the Palo Verde spent fuel pools (SFPs) from 1034 fuel assemblies per SFP (1033 fuel assemblies for the Unit 2 SFP) to 1205 fuel assemblies per SFP. The increase in storage capacity is based on taking credit for fuel assembly burnup, for soluble boron, and for fuel assembly configuration in the SFP. In addition, the proposed action would increase the maximum radially averaged fuel enrichment from 4.3 weight percent to 4.8 weight percent.

The proposed action is in accordance with the licensee's application for amendments dated June 8, 1999, as supplemented by letters dated July 20 and November 24, 1999.

The Need for the Proposed Action

The licensee is planning on implementing dry cask storage in the second half of 2002. Since all three Palo Verde SFPs will lose the capacity to fully offload the core prior to that time, the licensee needs to increase the maximum number of fuel assemblies that can be stored in the SFPs. The higher enrichment limit is needed to provide flexibility in future core designs.

Environmental Impacts of the Proposed Action

Thermal Impact

The change in temperature of the SFP water was evaluated for the potential increase in reactivity. The current design basis for the SFP cooling system is based on the proposed increased capacity of the SFP, so no significant increase in SFP temperature is expected. In addition, because the reactivity coefficient in the SFP is negative, a temperature increase will result in a decrease in reactivity. Since increasing the capacity of the SFPs would increase the maximum heat load, the pool temperature would tend to be higher, not lower, after the proposed action was implemented. Therefore, the thermal impact of the proposed action would tend to increase the ability of the SFP system to maintain criticality parameters within the design bases of the plants.

The increased heat loads that result from increasing the SFP capacity would cause the total heat load rejected to the environment to increase. The maximum increase in heat rejection to the environment is less than 0.1 percent of the total heat load rejected to the environment by an operating Palo Verde unit, and is not considered a significant impact to the environment.

Radioactive Waste Treatment

The Palo Verde units use waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems were evaluated in the Final Environmental Statement (FES) dated February 1982 (NUREG–0841). The proposed increase in the capacity of the SFPs and the proposed increase in the enrichment limit will not involve any change in the waste treatment systems described in the FES.

Gaseous Radioactive Wastes

The storage of additional and higher enriched spent fuel assemblies in the pools is not expected to affect the releases of radioactive gases from the SPFs. Gaseous fission products such as krypton-85 and iodine-131 are produced by the fuel in the core during reactor operation. A small percentage of these fission gases is released to the reactor coolant from the small number of fuel assemblies that are expected to develop leaks during reactor operation. During refueling operations, some of these fission products enter the pools and are subsequently released into the air. Since the frequency of refueling (and, therefore, the number of freshly offloaded spent fuel assemblies stored in the pools at any one time) will not increase, there would be no increase in the amounts of these types of fission products released to the atmosphere as a result of the increased pool fuel storage capacity.

The increased heat load on the pools from the storage of additional spent fuel assemblies would potentially result in an increase in the pools' evaporation rate. However, this increased evaporation rate is not expected to result in an increase in the amount of gaseous tritium released from the pool. The overall release of radioactive gases from Palo Verde would remain a small fraction of the limits of 10 CFR 20.1301.

Solid Radioactive Wastes

Spent resins are generated by the processing of SFP water through the pools' purification system. These spent resins are disposed of as solid radioactive waste. Resin replacement is determined primarily by the requirement for water clarity and is normally done approximately once per year. No significant increase in the volume of solid radioactive waste is

expected with the expanded storage capacity.

Liquid Radioactive Wastes

The release of radioactive liquids would not be affected directly as a result of increasing the capacity of the SFPs. The SFP ion exchanger resins remove soluble radioactive materials from the pool water. When the resins are replaced, the small amount of resin sluice water that is released is processed by the radwaste systems. Resin replacement is determined primarily by the requirement for water clarity and is normally done approximately once per year. The increase in the amount of radioactive liquid released to the environment as a result of increasing the capacity of the SFPs is expected to be negligible.

Occupational Dose Consideration

There are no physical modifications needed to increase the capacity of the Palo Verde SFPs, so no increase in occupational doses will result from this proposed action. The existing procedures for normal activities associated with handling fuel assemblies limit the radiological exposure for plant workers, and these limits are not affected by the higher enrichment limits or increased SFP capacity.

Accident Considerations

The licensee evaluated three events related to the proposed action to verify that the previous accident analyses as incorporated in the plants' design bases remain bounding. They are a fuel handling accident, a fuel misloading event, and a boron dilution event.

The design-basis fuel handling accident is the dropping of a single fuel assembly during fuel handling. Increasing the SPF capacity and increasing the enrichment limit does not affect the method of handling spent fuel or the design of the fuel handling equipment. The fuel assembly design (clad material and structural components) is not affected by this change. The equilibrium source term used in the fuel handling accident analysis is based on rated core thermal power and an infinite cycle, and therefore is independent of fuel assembly enrichment. Therefore, the radiological consequences of the fuel handling accident remains unchanged.

The effect of a single misloaded spent fuel assembly on the SFP maximum effective multiplication factor has been analyzed and shown to remain within the design limit for this parameter (≤0.95). Therefore, the radiological consequences of a misloaded fuel assembly remains unchanged.

Analyses were conducted to evaluate the possibility of unacceptable dilution of the soluble boron in the SFPs due to operational events or accidents. The analyses verified that the SFP maximum effective multiplication factor remained ≤0.95 for all credible accident scenarios. Therefore, the proposed action will not result in a criticality event and no increases in radiological consequences will occur as a result of a boron dilution event.

The NRC has reviewed the above analyses conducted by the licensee and concludes that increases in the enrichment limit and in the capacity of the SFPs at Palo Verde will not be accompanied by an associated increase in the radiological consequences of fuel-handling accidents. The potential offsite doses will not be increased over the values given in the updated Final Safety Analysis Report.

Environmental Impact Conclusions

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with this action.

Alternatives to the Proposed Action

Shipping Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, the U.S. Department of Energy's (DOE's) high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. To date, no location has been identified and an interim Federal storage facility has yet to be identified in advance of a decision on a permanent repository. Therefore, shipping the spent fuel to the DOE repository is not considered a viable alternative to increased onsite fuel storage capacity at this time.

Shipping Fuel to a Reprocessing Facility

Reprocessing of spent fuel from Palo Verde is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. Additionally, the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium; reprocessing represents an added cost.

Shipping the Fuel Offsite to Another Utility

The shipment of fuel to another utility would provide short-term relief from the fuel storage problems at Palo Verde. The Nuclear Waste Policy Act of 1982, Subtitle B Section 131(a)(1), however, clearly places the responsibility for the interim storage of spent fuel with each owner or operator of a nuclear plant. The SFPs at the other reactor sites were designed with capacity to accommodate spent fuel from those particular sites. Therefore, transferring spent fuel from Palo Verde to other sites would create storage capacity problems at those locations.

Alternatives Creating Additional Storage Capacity

Alternative technologies that would create additional storage capacity include rod consolidation, dry cask storage, modular vault dry storage, and constructing a new pool. Rod consolidation involves disassembling the spent fuel assemblies and storing the fuel rods from two or more assemblies into a stainless steel canister that can be stored in the spent fuel racks. Industry experience with rod consolidation is currently limited, primarily due to concerns for potential gap activity release due to rod breakage, the potential for increased fuel cladding corrosion due to some of the protective oxide layer being scraped off, and because the prolonged consolidation activity could interfere with ongoing plant operations. Dry cask storage is a method of transferring spent fuel, after storage in the pool for several years, to high capacity casks with passive heat dissipation features. The licensee is planning on implementing dry cask storage at the Palo Verde site, but the SFPs will lose the capacity to fully offload the core prior to the time dry cask storage will be available. Vault storage consists of storing spent fuel in shielded stainless steel cylinders in a horizontal configuration in a reinforced

concrete vault. The concrete vault provides missile and earthquake protection and radiation shielding. Concerns for vault dry storage include security, land consumption, eventual decommissioning of the new vault, and high cost. The alternative of constructing and licensing new SFPs is not practical for Palo Verde because such an effort would require about 10 years to complete and would not be available in the time frame needed.

The alternative technologies that could create additional storage capacity involve additional fuel handling with an attendant opportunity for a fuel handling accident, involve higher cumulative dose to workers affecting the fuel transfers, require additional security measures that are significantly more expensive, and would not result in a significant improvement in environmental impacts compared to the proposed action to increase the capacity of the current SFPs.

Reduction of Spent Fuel Generation

Generally, improved usage of the fuel and/or operation at a reduced power level would be an alternative that would decrease the amount of fuel being stored in the SFPs and, thus, increase the amount of time before the maximum storage capacities of the SFPs are reached. However, operating the plant at a reduced power level would not make effective use of available resources, and would cause unnecessary economic hardship on the licensee and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

The No-Action Alternative

The NRC staff also considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Palo Verde, Units 1, 2, and 3.

Agencies and Persons Contacted

In accordance with its stated policy, on January 27, 2000, the staff consulted with the Arizona State official, Mr. Audbry Godwin of the Arizona Radiation Protection Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated June 8, July 20, and November 24, 1999, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 24th day of February 2000.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Project Manager, Section 2, Project Directorate IV & Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–4890 Filed 2–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1026]

BNFL Fuel Solutions Corporation; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption From Requirements of 10 CFR Part 72

By letter dated January 14, 2000, BNFL Fuel Solutions Corporation (BFS or applicant) requested an exemption, pursuant to 10 CFR 72.7, from the requirements of 10 CFR 72.234(c). BFS, located in Scotts Valley, California, is seeking Nuclear Regulatory Commission (NRC or the Commission) approval to procure materials for and fabricate 14 Wesflex W150 storage casks prior to receipt of a Certificate of Compliance (CoC) for the Wesflex Spent Fuel Management System (Wesflex System). The Wesflex storage cask is a basic component of the Wesflex System, a cask system designed for the dry storage of spent fuel. The Wesflex System is intended for use under the general license provisions of Subpart K of 10 CFR part 72 by Consumers Energy at the Palisades Nuclear Plant, located in Covert, Michigan, and at the Big Rock Point Nuclear Plant, located in Charlevoix, Michigan. The application for the CoC was submitted by BFS to the Commission on February 3, 1998, as supplemented.

Environmental Assessment (EA)

Identification of Proposed Action

BFS is seeking Commission approval to procure materials for and fabricate 14 Wesflex W150 storage casks prior to receipt of the CoC. The applicant is requesting an exemption from the requirements of 10 CFR 72.234(c), which states that "Fabrication of casks under the Certificate of Compliance must not start prior to receipt of the Certificate of Compliance for the cask model." The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

Need for the Proposed Action

BFS requested the exemption to 10 CFR 72.234(c) to ensure the availability of storage casks so that Consumers Energy can maintain full core offload capability at the Palisades Nuclear Plant. Palisades will lose full core offload capability after its planned April 2001 refueling outage. Currently, the Ventilated Storage Cask—24 (VSC–24), fabricated by Sierra Nuclear Corporation, is used at Palisades for the dry storage of spent fuel. However, the licensee requires another cask option because the storage capability of the VSC–24 is limited by its burnup and enrichment requirements. Beyond April 2001, a significant portion of the remaining and future spent fuel inventory at Palisades will not meet the VSC–24 burnup and enrichment limits. Already, there are nearly 250 spent fuel assemblies at Palisades that do not qualify for storage in the VSC–24.

BFS is also requesting the exemption to ensure the availability of dry storage casks at Big Rock Point to support its decommissioning schedule. The Big Rock Point decommissioning schedule requires that all fuel be loaded into dry storage casks by 2002.

To maintain full core offload at Palisades and to meet Big Rock Point's decommissioning schedule, Consumers Energy anticipates that fuel loading of Wesflex Systems would need to begin in 2001 at both sites. Thus, at both Palisades and Big Rock Point, the availability of the Wesflex System is needed in 2000 to support training and dry runs in anticipation of loading fuel in the following year. To meet this schedule, procurement of the W150

storage cask materials must begin promptly.

The Wesflex System CoC application is under consideration by the Commission. It is anticipated that, if approved, the CoC would be issued in early 2001.

The proposed procurement and fabrication exemption will not authorize use of the Wesflex System to store spent fuel. That will occur only when, and if, a CoC is issued. NRC approval of the procurement and fabrication exemption request should not be construed as an NRC commitment to favorably consider BFS's application for a CoC. BFS will bear the risk of all activities conducted under the exemption, including the risk that the 14 storage casks that BFS plans to construct may not be usable because they may not meet specifications or conditions placed in a CoC that NRC may ultimately approve.

Environmental Impacts of the Proposed Action

The Environmental Assessment for the final rule, "Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites" (55 FR 29181 (1990)), considered the potential environmental impacts of casks which are used to store spent fuel under a CoC and concluded that there would be no significant environmental impacts. The proposed action now under consideration would not permit use of the Wesflex System, but only procurement and fabrication. There are no radiological environmental impacts from procurement or fabrication since the storage cask material procurement and fabrication does not involve radioactive materials. The major non-radiological environmental impacts involve use of natural resources due to fabrication. Each W150 storage cask weighs approximately 127 tons and is made of reinforced concrete and steel. The amount of steel required for these storage casks is expected to have very little impact on the steel industry. Fabrication of the steel liner and guide rails would be at a metal fabrication facility, not at the reactor site. Fabrication of the storage casks is insignificant compared to the amount of metal fabrication performed annually in the United States. If the storage casks are not usable, they could be disposed of or recycled. The amount of material disposed of is insignificant compared to the amount of steel that is disposed of annually in the United States. Based upon this information, the procurement of materials and fabrication of the storage cask will have no significant impact on the environment since no radioactive materials are involved, and the amount of natural resources used is minimal.

Alternative to the Proposed Action

Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption and, therefore, not allow procurement of materials and fabrication of the storage cask until a CoC is issued. This alternative would have the same, or greater, environmental impact.

Given that there are no significant differences in environmental impacts between the proposed action and the alternative considered and that the applicant has a legitimate need to procure materials and fabricate prior to certification and is willing to assume the risk that any material procured or any storage cask fabricated may not be approved or may require modification, the Commission concludes that the preferred alternative is to approve the procurement and fabrication request and grant the exemption from the prohibition on fabrication prior to receipt of a CoC.

Agencies and Persons Consulted

Mr. Lou Brandon, an official from the Michigan Department of Environmental Quality, was contacted on February 2, 2000, about the EA for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.234(c) so that BFS may procure materials for and fabricate 14 Wesflex W150 storage casks prior to issuance of a CoC for the Wesflex System will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

The request for the exemption from 10 CFR 72.234(c) was filed by BFS on January 14, 2000. For further details with respect to this action, see the application for a CoC for the Wesflex System, dated February 3, 1998, as supplemented. The exemption request and CoC application are docketed under 10 CFR part 72, Docket 72–1026. The exemption request and the non-proprietary version of the CoC application are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 22nd day of February 2000.

For the Nuclear Regulatory Commission.

Susan F. Shankman,

Deputy Director, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–4889 Filed 2–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company and Donald C. Cook, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License No. DPR–58 and No. DPR–74, issued to the Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant (D. C. Cook), Units 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would delete Technical Specification (TS) 5.4.2, "Reactor Coolant System Volume," regarding the reactor coolant system (RCS) volume information. This information is not required to be in the TS for compliance with 10 CFR 50.36(c)(4). Information concerning the RCS volume is included in the D. C. Cook Updated Final Safety Analysis Report and any changes to the information are controlled in accordance with 10 CFR 50.59. In addition, format changes are proposed to TS page 5–5 for both Unit 1 and Unit 2.

The proposed action is in accordance with the licensee's application for amendment dated December 22, 1999.

The Need for the Proposed Action

The proposed action is necessary to correct the plant Technical Specifications. This information is not required to be in the TS for compliance with 10 CFR 50.36(c)(4) and is redundant to information contained in the D. C. Cook Updated Final Safety Analysis Report.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the removal of the RCS volume from the TSs and the associated format changes to the TS pages do not impact any other requirements.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the D. C. Cook Nuclear Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on February 18, 2000, the staff consulted with the Michigan State official, Mr. David Minnaar of the Michigan Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 22, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 23d day of February 2000.

For the Nuclear Regulatory Commission.

John F. Stang,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–4885 Filed 2–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission

DATE: Weeks of February 28, March 6, 13, 20, 27, and April 3, 2000

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland

STATUS: Public and Closed

MATTERS TO BE CONSIDERED:

Week of February 28

Tuesday, February 29

1:30 p.m. Briefing on Draft 50.59 Regulatory Guide (Public Meeting) (Contact: Eileen McKenna, 301–415–2189)

Thursday, March 2

9:25 a.m. Affirmation/discussion and Vote (Public Meeting)

(a) Private Fuel Storage L.L.C., Docket No. 72–22–ISFSI, Memorandum and Order (Denying Request for Admission of Late-Filed Amended Contention Utah C), LBP–99–43, 50 NRC 306 (November 4, 1999)

(b) In the Matter of Michel A. Philippon (Denial of Senior Reactor Operator License Application), LBP–99–44 (December 9, 1999)

9:30 a.m. Meeting with ACRS on Risk Informing Part 50 (Public Meeting) (Contact: John Larkins, 301–415–7360)

Friday, March 3

9:30 a.m. Briefing on Calvert Cliffs License Renewal (Public Meeting) (Contact: Chris Grimes, 301–415–1183)

Week of March 6—Tentative

Monday, March 6

1:30 p.m. Meeting with NARUC (Public Meeting)

Tuesday, March 7

1:00 p.m. Briefing on Improvements in the Reactor Oversight Process (Public Meeting) (Contact: Bill Dean, 301–415–1257)

Week of March 13—Tentative

There are no meetings scheduled for the Week of March 13.

Week of March 20—Tentative

Wednesday, March 22

9:25 a.m. Affirmation Session (Public Meeting) (if needed)

9:30 a.m. Briefing on Risk-Informed Regulation Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790)

Friday, March 24

9:30 a.m. Briefing on Evaluation of the Requirement for Licensee to Update Their Inservice Inspection and Inservice Testing Program Every 120 Months (Public Meeting) (Contact: Tom Scarbrough, 301–415–2794)

Week of March 27—Tentative

Thursday, March 30

8:55 a.m. Affirmation/Discussion and Vote (Public Meeting) (If needed)

9:00 a.m. Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Week of April 3—Tentative

There are no meetings scheduled for the Week of April 3.

* THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on February 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Management Issues" (Closed-Ex. 2 & 6) be held on February 22, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

February 24, 2000.
William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.
[FR Doc. 00–5003 Filed 2–28–00; 11:18 am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549.

Extension: Rule 204–3, SEC File No. 270–42, OMB Control No. 3235–0047

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget request for extension of the previously approved collection of information discussed below.

Rule 204–3 requires an investment adviser to deliver, or offer, to prospective clients a disclosure statement, or "brochure," containing specified information as to the business practices and background of the adviser. The rule also requires that an investment adviser deliver, or offer, its brochure on an annual basis to existing clients. Investors use this information to determine whether to retain or continue to employ the investment adviser. There are currently approximately 8,300 investment advisers subject to this rule; the estimated burden resulting from the rule is 203,350 total annual hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 22, 2000.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 00–4850 Filed 2–29–00; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42444; File No. SR–CTA/CQ–00–01]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of Second Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and the First Substantive Amendment to the Restated Consolidated Quotation Plan

February 18, 2000.

Pursuant to Rule 11A3–2 [1] of the Securities Exchange Act of 1934 ("Act"),[2] notice is hereby given that on January 19, 2000, the Consolidated Tape Association ("CTA") and the Consolidated Quotation ("CQ") Plan Participants ("Participants") [3] filed with the Securities and Exchange Commission ("Commission" or "SEC") amendments to the Restated CTA Plan and CQ Plan. The amendments propose to adopt, as an additional form under Exhibit D of the Plans, a Consolidated Subscriber Form for use in connection with the implementation of new procedures under which vendors (rather than Network B) will now: (1) Execute directly with professional subscribers a Consolidated Subscriber Form for receipt and use of Network B market data that runs to the benefit of the Network B Participants and (2) assume responsibility for the billing, collecting and forwarding of all Network B subscriber charges to Network B.

Pursuant to Rule 11Aa3–2(c)(3)(ii), the CTA and CQ Participants have designated the amendments as a matter concerned solely with the administration of the Plans on behalf of all of the sponsors and the participants, which renders the amendments effective upon receipt of this filing by the Commission. At any time within 60 days of the filing of the amendments, the Commission may summarily abrogate the amendment and require that the amendment be refiled in accordance with the paragraph (b)(1) of this section and reviewed in accordance with paragraph (c)(2) of this section, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission is publishing this notice to solicit comments from interested persons on the amendments.

I. Description and Purpose of the Amendments

A. Rule 11Aa3–2

Purpose of the Amendments

Currently, Network B uses a Consolidated Subscriber Form that it executes directly with professional subscribers. While the subscriber also executes an agreement with its vendor to receive Network B market data from the vendor (the "Vendor-Subscriber Agreement"), Network B generally bills all subscriber charges directly to the subscriber and collects the fees itself.[4]

Network B is now proposing to shift the billing and collecting functions to the vendors. As part of that effort, Network B is proposing to amend the CTA and CQ Plans by adding a new Consolidated Subscriber Form to Exhibit D of each Plan. The new form implements new procedures pursuant to which vendors will replace Amex as the party that will now (1) execute directly with professional subscribers a Consolidated Subscriber Form for receipt and use of Network B market data that runs to the benefit of Network B Participants and (2) bill and collect all Network B subscriber charges for Network B. The new Consolidated Subscriber Form that will be used for Network B vendor billing will be virtually identical to the existing Consolidated Subscriber Form, except for (1) the vendor signature block (replacing the Network B signature block), (2) language indicating that the agreement runs to the benefit of the Network B Participants as third-party beneficiaries; and (3) minor changes reflecting the shift of the billing and collection functions to the vendors (including such things as allowing vendors to examine records and request equipment descriptions).

The Network B Participants believe that the shift to vendor billing will

[1] 17 CFR 240.11Aa3–2.

[2] 15 U.S.C. 78k–1.

[3] The amendments were executed by each Participant in each of the Plans. The Participants include American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicagao Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc.

[4] Exhibit D to each Plan sets forth the forms of market data subscriber agreements currently in use.

significantly improve customer service for all subscribers to Network B market data services. Professional subscribers will now receive one bill from the vendor, instead of two bills (one from the vendor and one from Network B). As CTA currently relies on vendor data for subscriber billing and vendors are often late in furnishing such data, many discrepancies occur in billing subscribers. Vendor billing, with single bill and single point of contact, should streamline the billing process and reduce confusion among Network B subscribers. In this regard, the Network B subscriber community has been very supportive of this proposal to shift to vendor billing for Network B market data.

Vendor billing will also enable Network B to reduce its administrative function and thereby realize significant cost savings. Vendors will be able to utilize their current billing infrastructures to bill for Network B subscriber charges, taking advance of existing efficiencies. This should also allow for a tighter receivable cycle.

These amendments further the objectives of the national market system regarding the dissemination of last sale information delineated in Sections 11A(a)(1)(C), 11A(a)(1)(D) and 11A(a)(3)(B) of the Act.

B. Governing or Constituent Documents

See Exhibit 1 to CTA and CQ Plan Amendments.

C. Implementation of Amendment

The Participants have manifested their approval of the proposed amendments to the CTA and CQ Network B by means of their execution of the amendments. The Participants will begin the conversion process to vendor billing as soon as practicable after the Plan amendments are filed with the Commission.

To accomplish this conversion, the Network B administrator intends to provide written notice to all Network B vendors and subscribers of the planned shift to vendor billing for Network B subscribers. It then plans to visit all Network B vendors, explaining the new procedures to them as well as reconciling their subscriber inventory. Vendors will be required to use the new Consolidated Subscriber Form for all new professional subscribers to Network B market data, executing it directly with those subscribers. All current Network B professional subscribers will be allowed to continue receiving Network B market data under their existing Consolidated Subscriber Form (which they entered into with Amex) without being required to sign the new form.

The administrator plans to have the new vendor billing program implemented by the end of the third quarter of 2000.

D. Development and Implementation Phases

See Item I(C).

E. Analysis of Impact on Competition

The proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plans

In accordance with Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan, each of the Participants has approved the Plan amendments.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I(A) above.

J. Method of Determination and Imposition, and Amount of Fees and Charges

Vendors will perform the billing and collection functions with respect to all Network B subscriber charges.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3–1 (Solely in Its Application to the Amendment to the CTA Plan)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transactions Reports

See Item I(A).

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The CTA has designated these amendments as a matter concerned solely with the administration of the Plans on behalf of all of the sponsors and participants which, under Section 11Aa3–2(c)(3)(ii) of the Act, renders the proposal effective upon receipt of this filing by the Commission.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendments by Commission order pursuant to Section 11Aa3–2(c)(3)(iii), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendments that are filed with the Commission, and all written communications relating to the proposed plan amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CTA. All submissions should refer to the file number in the caption above and should be submitted by March 22, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4851 Filed 2–29–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3236]

Culturally Significant Objects Imported for Exhibition; Determinations: "Art and Oracle: Spirit Voices of Africa"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "Art and Oracle: Spirit Voices of Africa," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, from on or about April 24–July 30, 2000, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44; 301–4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 24, 2000.

William P. Kiehl,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–4916 Filed 2–29–00; 8:45 am]

BILLING CODE 4710–08–U

[5] 17 CFR 200.30–3(a)(27).

DEPARTMENT OF STATE

[Public Notice # 3224]

Advisory Committee on Labor Diplomacy; Notice of Meeting

The Advisory Committee on Labor Diplomacy (ACLD) will hold a meeting from 9:30 a.m. to 4:00 p.m. on March 14, 2000, in room 1107, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. Committee Chairman Thomas Donahue, former President of the AFL–CIO, will chair the meeting.

The ACLD is comprised of prominent persons with expertise in the area of international labor policy and labor diplomacy. The ACLD advises the Secretary of State and the President on the resources and policies necessary to implement labor diplomacy programs efficiently, effectively and in a manner that ensures U.S. leadership before the international community in promoting the objectives and ideals of U.S. labor policies now and in the 21st century. The ACLD will make recommendations on how to strengthen the Department of State's ability to respond to the many challenges facing the United States and the federal government in international labor matters. These challenges include the protection of worker rights, the elimination of exploitative child labor, and the prevention of abusive working conditions.

The agenda for the March 14 meeting includes discussion of operational aspects of the State Department's labor diplomacy function and State Department policy as it relates to labor diplomacy.

Members of the public are welcome to attend the meeting as seating capacity allows. As access to the Department of State is controlled, persons wishing to attend the meeting must be pre-cleared by calling or faxing the following information, by close of business March 10, to Mark Simonoff at (202) 647–4327 or fax (202) 647–0431 or email simonoff@state.gov: name; company or organization affiliation (if any); date of birth; and social security number. Pre-cleared persons should use the C Street entrance to the State Department and have a driver's license with photo, a passport, a U.S. Government ID or other valid photo identification.

Members of the public may, if they wish, submit a brief statement to the Committee in writing. Those wishing further information should contact Mr. Simonoff at the phone and fax numbers provided above.

Dated: February 24, 2000.

Harold Hongju Koh,

Assistant Secretary, Bureau of Democracy, Human Rights and Labor, U.S. Department of State.

[FR Doc. 00–4915 Filed 2–29–00; 8:45 am]

BILLING CODE 4710–18–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Public Hearings for the Petitions for the GSP 1999 Country Practices Review, Change in Schedule of Hearings and Deadlines for Submitting Comments on Petitions for the GSP 1999 Country Practices Review

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice of change in schedule of hearings and deadlines for submitting comments on petitions for the GSP 1999 Country Practices Review.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518; Washington, DC 20508 (Tel. 202/395–6971).

SUPPLEMENTARY INFORMATION: Notice is hereby given of changes in the dates and location, and changes in dates for submission of comments, for the GSP public hearings to be held for country practice petitions accepted for review in the GSP 1999 Country Practices Review. These hearings were scheduled for April 3 and April 4, 2000, beginning at 10 a.m. A **Federal Register** notice regarding these hearings was published on February 14, 2000 (65 FR 7410–7412).

The scheduled dates for the GSP public hearings are changed from Monday, April 3, and Tuesday, April 4, to Thursday, April 13, and Friday, April 14. The location of the GSP hearings is changed from the Annex of the Office of the U.S. Trade Representative to the White House Conference Center, the Truman Room, 726 Jackson Place, NW, Washington, DC 20500. The deadline for Requests to Appear at Public Hearings and Submission of Pre-Hearing Briefs is changed to March 16. The deadline for submission of Post-Hearings Briefs and Rebuttal Briefs is changed to April 28. The hearings will begin at 10 a.m. each day. See attached calendar.

All other information in the notice at 65 FR 7410 (February 14, 2000) remains the same.

Jon Rosenbaum,

Assistant USTR for Trade and Development.

BILLING CODE 3190–01–M

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

Rev. 2-22-2000

GENERALIZED SYSTEM OF PREFERENCES (GSP)

1999 GSP ANNUAL REVIEW

IPR COUNTRY PRACTICE CASES ACCEPTED FOR REVIEW

Armenia	**005-CP-99**
Dominican Republic	**007-CP-99**
Kazakhstan	**008-CP-99**
Moldova	**011-CP-99**
Ukraine	**015-CP-99**
Uzbekistan	**016-CP-99**

PUBLIC HEARINGS AND COMMENT SCHEDULE

March 16, 2000	Deadline for **REQUESTS TO APPEAR AT PUBLIC HEARINGS** and submission of **PRE-HEARING BRIEFS.** Deadline for providing the name, address, and organization of witnesses.
April 13 and 14, 2000	**PUBLIC HEARINGS**, White House Conference Center, 726 Jackson Place, N.W., Washington, D.C. 20500
April 28, 2000	Deadline for submission of **POST-HEARING BRIEFS and REBUTTAL BRIEFS.**
Future Federal Register Notice	Date Modifications to GSP List of Beneficiary Developing Countries will take effect.
For further information contact:	GSP Information Center Office of the U.S. Trade Representative 600 17th Street Washington, D.C. 20508 202-395-6971
Notification of any changes will be given in the Federal Register.	

[FR Doc. 00–4932 Filed 2–29–00; 8:45 am]
BILLING CODE 3910–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–07]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 22, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW, Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 25, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: 29848.
Petitioner: Baltimore County Police Department.
Section of the CFR Affected: 14 CFR 1.1 and 61.45(a).
Description of Relief Sought: To permit BCPD pilots to undergo part 61 flight training and practical tests in the BCPD's public aircraft, specifically former military Bell OH–58 helicopters.

Docket No.: 29875.
Petitioner: Airbus Industrie.
Section of the CFR Affected: 14 CFR 25.785(d), 25.791, 25.807(c)(1), 25.807(d)(1), 25.809(f)(1), 25.811(a), 25.812(g), 25.857(e), and 25.1447(c)(1), (c)(3) 25.807(c)(1).
Description of Relief Sought: To allow carriage of up to four supernumeraries on the Airbus Model A300F4–600R series airplanes.

Dispositions of Petitions

Docket No.: 29028.
Petitioner: Mobil Business Resources Corporation.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit MBRC to operate certain Bell Model 206L and Sikorsky S–76A helicopters under part 135 without a TSO–C112 transponder installed on each helicopter. *Grant, 10/28/99, Exemption No. 6696A.*

Docket No.: 29716.
Petitioner: Century Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Century to operate its Israel Aircraft Industries 1124 Westwind (Registration No. N598JM, Serial No. 222) under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 10/28/99, Exemption No. 7059.*

Docket No.: 29728.
Petitioner: Air Wilmington.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Air Wilmington to operate its Beechcraft King Air A90 (Registration No. N198BC, Serial No. LJ–147) under part 135 wtihout a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 10/28/99, Exemption No. 7060.*

Docket No.: 29161.
Petitioner: World Airways Inc.
Section of the FAR Affected: 14 CFR 121.434(e).
Description of Relief Sought/Disposition: To permit World to use flight attendants trained and qualified by Garuda Indonesia Airlines (Garuda) to act as required flight attendants during Hadj-related flight operations without each of those flight attendants having received 5 hours of supervised in-flight operating experience required by 14 CFR 121.434(e). *Grant, 2/4/00, Exemption No. 7116.*

Docket No.: 29651.
Petitioner: Experimental Aircraft Association, Inc.
Section of the FAR Affected: 14 CFR 135.251, 145.255, 135.353, and appendices I and J of part 121.
Description of Relief Sought/Disposition: To allow the EAA to conduct local sightseeing flights at charity or community events, for compensation or hire, without complying with certain anti-drug and alcohol prevention requirements of part 135, subject to the following conditions and limitations. *Partial Grant, 2/3/00, Exemption No. 7111.*

Docket No.: 29648.
Petitioner: Aircraft Owners and Pilots Association.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.
Description of Relief Sought/Disposition: To allow those AOPA members who can demonstrate current AOPA membership to conduct local, nonstop, sightseeing flights for charity or community events, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135, subject to the following conditions and limitations. *Grant, 2/3/00, Exemption No. 7112.*

Docket No.: 29630.
Petitioner: National Air Transportation Association.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.
Description of Relief Sought/Disposition: To allow NATA members to conduct local sightseeing flights for charity or community events, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135, subject to the following conditions and limitations. *Grant, 2/3/00, Exemption No. 7113.*

Docket No.: 29578.
Petitioner: Hawaiian Airlines, Inc.
Section of the FAR Affected: 14 CFR 121.433(c)(1)(iii) and 121.411(a)(1) and (b)(1) and appendix F of part 121.

Description of Relief Sought/ Disposition: To allow Hawaiian to combine recurrent flight and ground training and proficiency checks for Hawaiian's flight crewmembers into a single annual training and proficiency evaluation program. Grant, 1/31/00, Exemption No. 7108.

Docket No.: 29841.

Petitioner: BD Aviation, Inc.

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/ Disposition: To permit DB Aviation pilots to accomplish a line operational evaluation (LOE) in a Level C or Level D flight simulator in lieu of a line check in an aircraft. *Denial, 2/3/00, Exemption No. 7109.*

[FR Doc. 00–4902 Filed 2–29–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 13, 1999, [64 FR 69582]. No comments were received.

DATES: Comments must be submitted on or before March 31, 2000.

FOR FURTHER INFORMATION CONTACT: Frederick A. Slaugh, Office of Financial and Rate Approvals, Maritime Administration, MAR 561, 400 7th St., SW, Washington, DC 20590. Telephone 202–366–2324, or FAX 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Records Retention Schedule

OMB Control Number: 2133–0501.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. shipping companies.

Form(s): None.

Abstract: Section 801, Merchant Marine Act, 1936, as amended, requires retention of Construction Differential Subsidy (CDS) or Operating Differential Subsidy (ODS) records. The records are required to be retained to permit proper audit of pertinent records at the conclusion of a CDS or ODS contract.

Annual Estimated Burden Hours: 150 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited On: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on February 23, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–4925 Filed 2–29–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Return-Free Tax Filing System Focus Group Interviews

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Return-Free Tax Filing System Focus Group Interviews.

DATES: Written comments should be received on or before May 1, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Return-Free Tax Filing System Focus Group Interviews.

OMB Number: 1545–1682.

Abstract: As required by the IRS Restructuring and Reform Act of 1998, the IRS will be reporting to Congress annually on its progress in developing a Return-Free Tax Filing System. The purpose of these focus groups is to collect information to accurately and objectively establish a benchmark of current levels of taxpayer acceptance and potential use of a Return-Free Tax System. The focus groups would also provide the IRS with information to be used in marketing and communications efforts related to such a system.

Current Actions: There are no changes being made to the information collection at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Focus Group Participants: 48.

Estimated Time Per Focus Group Participant: 2 hrs., 30 min.

Estimated Total Annual Burden Hours for Focus Group Participants: 120.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 15, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–4821 Filed 2–29–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2000–12

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Notice 2000–12, Pre-filing Agreements Pilot Program.

DATES: Written comments should be received on or before May 1, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Pre-filing Agreement Pilot Program.

OMB Number: 1545–1684.

Notice Number: Notice 2000–12.

Abstract: Notice 2000–12 describes a pilot program under which certain large business taxpayers may request examination and resolution of specific issues relating to tax returns they expect to file between September and December, 2000. The resolution of such issues under the pilot program will be memorialized by a type of closing agreement under Code section 7121 called a pre-filing agreement.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 24.

Estimated Average Time Per Respondent/Recordkeeper: 40 hours, 17 minutes.

Estimated Total Annual Reporting/Recordkeeping Hours: 967.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 22, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–4822 Filed 2–29–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on proposed changes to the Thrift Financial Report. The proposed changes, which are discussed in more detail below, are comprised of collection of additional information on: (1) High loan-to-value loans; (2) trust assets administered; (3) residual interests in financial assets sold; and (4) structured liabilities. OTS would also delete asset maturity data in Schedule SI and margin accounts in Schedule CMR.

DATES: Submit comments on or before May 1, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention 1550–0223. Hand deliver comments to 1700 G Street, NW, from 9 a.m. to 5 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW, from 9 a.m. until 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Trudy Reeves, Financial Reporting Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, (202) 906–7317. Interested persons may also obtain additional information on the Internet at www.ots.treas.gov/tfrpage.html, or by calling (202) 906–6078.

SUPPLEMENTARY INFORMATION:

Title: Thrift Financial Report.

OMB Number: 1550–0023.
Form Number: OTS 1313.
Abstract: All Office of Thrift Supervision (OTS) regulated savings associations must comply with the information collections described in this notice. OTS collects this information each calendar quarter. OTS needs this information to monitor and supervise the thrift industry.

Current Actions: After reviewing its current supervisory and examination needs, OTS proposes to revise the Thrift Financial Report (TFR), effective with the September 30, 2000 report. OTS deferred the decision to propose changes until after the impact of the rollover to 2000 was known.

High Loan-to-Value Loans

OTS has considerable supervisory concerns regarding high loan-to-value (LTV) lending. Currently, OTS expects associations to report loans with LTV ratios in excess of supervisory limits to their board of directors quarterly (12 CFR 560.101 (Appendix A. Interagency Guidelines for Real Estate Lending Policies)). However, OTS does not require associations to report LTV data on the TFR. Due to increased supervisory concern regarding high LTV lending, coupled with OTS's need to effectively monitor potential high risk lending, OTS proposes to collect high LTV balances in Schedule SI (Supplemental Information). With this change, the TFR will be more useful in promptly identifying regulated institutions involved in this activity.

Trust Assets

There has been a substantial increase in the number of institutions granted fiduciary powers as well as in the assets administered by those institutions. Currently all institutions with fiduciary powers file the Federal Financial Institutions Examination Council's (FFIEC's) Annual Report of Trust Assets. Quarterly data would enable OTS to better monitor and analyze trust activities, would provide information used in examination planning, and would provide information to be used in the OTS assessment. OTS proposes to add six items and delete one item in Schedule SI (Supplemental Information) to collect the volume and amount of fiduciary accounts and nonfiduciary accounts with administrative responsibilities. OTS proposes to not publicly release the detail information on trust activities at the thrift level, but to publicly release the market value of total assets administered at the individual thrift level. All items collected will be released in the aggregate. After collection of this data for several periods, OTS will reconsider its policy on the public release of trust information.

OTS recently issued Thrift Bulletin 48–16, which addressed how OTS will compute assessments under the complexity component for trust assets administered by a savings association. *See* 12 CFR 502.25. The Thrift Bulletin provides different assessment rates for trust assets administered in a fiduciary and non-fiduciary capacity. OTS will use the information reported under the new items to compute assessments.

Residual Interests in Financial Assets Sold

Residual interests in financial assets sold (RIFAS) are certain financial assets retained after the transfer of loans, securities, or other financial assets, where the transfer is recorded as a sale under Statement of Financial Accounting Standards (SFAS) No. 125. RIFAS represent the right to receive "residual" cash flows from the transferred assets. The "residual" cash flows are those that are available after payment of all other contractual obligations to holders of other beneficial interests in the transferred assets, and after all payments for servicing fees and other costs. RIFAS may be acquired by either origination or purchase, and may be in either security or nonsecurity form. Examples of RIFAS include, but are not limited to, interest-only strips, spread accounts, and cash collateral accounts.

Credit enhancement RIFAS are those that are structured, through subordination provisions or other credit enhancement techniques, to absorb more than a pro rata share of credit loss in relation to the transferred assets. Depending on their form, RIFAS may be included in Schedule SC (Statement of Condition in four lines: Mortgage Derivatives (SC150), Other Investment Securities (SC185), Interest-only Strip Receivables and Certain Other Instruments (SC655, and Other Assets (SC690). Because three of these lines (SC150, SC185, and SC690) may contain other instruments, OTS cannot currently determine the total residual interests retained or purchased by an institution. Therefore, OTS proposes to add two memoranda lines in Schedule SI (Supplemental Information); one to collect credit enhancement residual interests in financial assets sold and one to collect other residual interests in financial assets sold. The addition of these two items will provide OTS with more complete information for monitoring and supervisory purposes.

Federal Home Loan Bank (FHLB) Structured Advances and Other Structured Liabilities

In recent years, structured liabilities (especially FHLB structured advances) have become an increasingly popular funding source for savings associations. Because such liabilities often have complex embedded options, the use of these instruments can raise safety and soundness concerns. OTS proposes to change Schedule CMR (Consolidated Maturity/Rate) to collect estimates of the market value of structured liabilities to better evaluate the interest rate risk they pose. Market value data for structured liabilities may be provided at the option of the institution, unless otherwise directed by OTS.

Asset Maturity Data

OTS proposes to delete five lines that collect data on asset maturities on Schedule SI (Supplemental Information). Currently, only savings associations that meet the Schedule CMR (Consolidated Maturity/Rate) exemption criteria (assets less than $300 million and risk-based capital in excess of 12%) and that opt not to file Schedule CMR must provide these data. OTS no longer needs to collect these data.

Margin Accounts

OTS proposes to delete CMR452, Margin Accounts, as it is no longer used.

A Detailed Description of the Proposed Changes Follows

I. Schedule SI (Supplemental Information)

A. Delete Five Lines as Follows

Asset Repricing/Maturing Data

S1700: Will the reporting association file Schedule CMR for this quarter?
Assets Repricing/Maturing in Three Years or Less:
S1710: Mortgage Loans and Securities
S1720: Nonmortgage Loans, Interest-earning Deposits and Investment Securities
Assets Repricing/Maturing in More Than Three Years:
S1730: Mortgage Loans and Securities
S1740: Nonmortgage Loans, Interest-earning Deposits and Investment Securities

B. Add the Following 12 Lines

High Loan-to-Value Loans (Outstanding Balances)

Loans Without PMI or Government Guarantee

Permanent Mortgages on 1–4 Dwelling Units:
S1412: ≥90 to 100 LTV
S1415: Over 100 LTV
Consumer Loans Secured (In whole or in part) by Real Estate, Reported on SC316 and SC340:
S1422: ≥90 to 100 LTGV

S1425: Over 100 LTV

Note: Savings Associations should determined Loan-to-Value ratios at origination in accordance with the definition in the interagency guidelines attached to 12 CFR 5670.101.

Trust Assets

Fiduciary accounts for which you have discretion
S1351: Value
S1352: Number
Fiduciary accounts for which you have no discretion
S1353: Value
S1354: Number
Nonfiduciary accounts for which you have administrative responsibilities
S1355: Value
S1356: Number

Residual Interests in Financial Assets Sold

S1490: Credit Enhancement Residual Interests in Financial Assets Sold
Sl495. Other Residual Interests in Financial Assets Sold

II. Schedule CMR (Consolidated Maturity/Rate)

A. Delete:
CMR542: Margin Account
B. Variable-rate, Fixed-maturity Liabilities, Page 32:
Delete all existing cells under this heading. Outstanding balances for these instruments will be reported in new fields for deposits and borrowings as described below. Additionally, detailed information will be reported on these instruments on page 36 in Supplemental Reporting for Assets/Liabilities.
1. Delete:
CMR721 through CMR748
2. Add:
Liabilities Reported in Supplemental Reporting for Assets and Liabilities
CMR749: Outstanding Balance of Variable-Rate, Fixed-Maturity Deposits (reported under liability code 200)
CMR751: Outstanding Balance of Variable-Rate Fixed-Maturity Borrowings (reported under liability codes 220 or 229)
CMR753: Outstanding Balance of FHLB Structured Advances (reported under liability codes 280, 281, 282, 283 or 289)
CMR754: Outstanding Balance of Other Structured Liabilities (reported under liability code 290)
C. Reporting of Market Value Estimates, Page 35:
Delete the values for the plus and minus 400 basis point rate shocks. Thrift Bulletin 13a no longer requires institutions to maintain interest rate risk limits for the plus and minus 400 basis point interest rate scenarios. Also delete the column for Options on Liabilities, which will be replaced by the new reporting of structured liabilities.
Delete: CMR911, CMR921, CMR941 through CMR949, CMR951, CMR961, CMR919, CMR929, CMR949, CMR959, and CMR969
D. Optional Supplemental Reporting for Assets/Liabilities, Page 36:
Rename this section as "Supplemental Reporting for Assets/Liabilities." The current nine column headings (for example, "asset/liability code," "rate index code," etc.) will continue to apply for existing instruments. New codes will be added for reporting: (a) internal valuations of nonmortgage servicing rights (as reported on SC644); (b) certain nonsecurity financial instruments (as reported on SC655); (c) FHLB structured advances (as reported on SC720); and (d) other structured liabilities (as reported on SC730 through SC760). The nine columns will be modified for these instrument codes to collect the instrument's code, book value, and institution-reported valuation in the seven interest-rate scenarios (plus/minus 300, plus/minus 200, plus/minus 100, and no change). These instrument-specific fields (rather than fixed column definitions) will improve the ability of institutions to report financial information in a more detailed manner than is currently collected and will improve interest rate risk measures produced by the OTS model. This change to the form will also facilitie the addition of future codes for new instruments with customized cell content.

Type of Review: Revision.

Affected Public: Business or For Profit.

Estimated Number of Respondents and Recordkeepers: 1100.

Estimated Time Per Respondent: 33 hours average.

Estimated Total Annual Burden Hours: 145,200 hours.

Because these proposed changes will not affect all savings associations that file the TFR, the burden hours reflected above are unchanged from the current burden. We invite comment on how savings associations think the burden will change given these form changes.

Request for Comments: OTS will summarize or include comments submitted in response to this notice with the request for OMB approval, and will include these comments in the public record. OTS invites comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 25, 2000.

Margaret Celia Winter,

Manager, Dissemination Branch.

[FR Doc. 00–4931 Filed 2–29–00; 8:45 am]

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Federal Register

Wednesday,
March 1, 2000

Part II

Office of Personnel Management

SES Positions That Were Career Reserved During 1999; Notice

OFFICE OF PERSONNEL MANAGEMENT

SES Positions That Were Career Reserved During 1999

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: As required by the Civil Service Reform Act of 1978, this gives notice of all positions in the Senior Executive Service (SES) that were career reserved during 1999.

FOR FURTHER INFORMATION CONTACT: Charles Vaughn, Office of Executive Resources Management, (202) 606–1927.

SUPPLEMENTARY INFORMATION: Below is a list of titles of SES positions that were career reserved at any time during calendar year 1999, regardless of whether those positions were career reserved on December 31, 1999. Section 3132(b)(4) of title 5, United States Code, requires that the head of each agency publish such list by March 1 of the following year. OPM is publishing a consolidated list for all agencies.

Office of Personnel Management.

Janice R. Lachance,

Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999

Agency and organization	Career reserved positions
Advisory Council on Historic Preservation:	
OFC of the Exec Director	Executive Director.
	Special Assistant.
Department of Agriculture:	
OFC of the Inspector General	Asst Inspector General for Investigations.
	Dep Asst Inspector General for Investigation.
	Asst Inspector General for Audit.
	Dep Assistant Inspector General for Audit.
	Dep Assistant Inspector General for Audit.
	Asst Inspector Gen for Pol Dev & Res Mgmt.
	Dep Asst Insp Gen for Invest Immediate Office.
	Deputy Inspector General.
Office of the Chief Economist	Dir Ofc of Risk Assessment & Cost-benefit ANL.
	Dir Global Change Program Office.
	Director, Office of Energy Policy and New Uses.
World Agricultural Outlook Board	Chairperson
	Director, USDA Program Outreach Division.
Office of Chief Information Officer	Deputy Chief Information Officer
	Associate Deputy Director, NTIC.
Office of Operations	Director Office of Operations.
Office of the Chief Financial Officer	Deputy Chief Financial Officer
	Project Manager.
National Finance Center	Director, Applications Systems Division.
	Dir, Info Resources Management Division.
	Director, Financial Services Division.
	Dir. Thrift Savings Plan Division.
	Deputy Director.
Rural Housing Service	Conroller
	Deputy Administration for Operations & Mgmt
	Director Centralized Servicing Center.
Rural Business Service	Deputy Administrator for Business Programs.
Agricultural Marketing Service	Director, Fruit & Vegetable Division.
	Director, Cotton Division.
	Director, Dairy Division.
	Director, Livestock Division.
	Director, Tobacco Division.
	Agricultural Marketing SVC, Dir Poultry Div.
	Director, Compliance Staff.
	Director.
	Director.
Grain Inspection, Packers & Stockyards Administration	Dir Field Management Division.
Animal & Plant Health Inspection Service	Deputy Administrator for Management & Budget,
	Deputy Administrator.
Veterinary Services	Director, Northern Region.
	Dir, SE Region, Veterinary Services.
	Director, Western Region.
	Director, South Central Region.
	Dep Admr, Animal Damage Control.
	Dir, Operational Support, Veterinary Services.
	Dir, Natl Ctr for Veterinary Epidemiology.
Plant Protection & Quarantine Service	Dep Admr, International Services.
	Director, South Central Region.
	Director, Western Region.
	Director, Operational Support PPQ.
	Director.
Food Safety and Inspection Service	Asst Dep Admin (Admin Mgt).
	Deputy Administrator.
	Deputy Administrator.
	Deputy Administrator.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	U.S. Coordinator for Codex Alimentarius.
	Assistant Deputy Administrator.
	Director.
	Associate Deputy Administrator.
	Assistant Deputy Administrator.
	Deputy Administrator.
	Assistant Deputy Administrator.
	Assistant Deputy Administrator.
	Assistant Deputy Administrator.
	Deputy Administrator.
	Associate Deputy Administrator.
	Assistant Deputy Administrator.
	Assistant Deputy Administrator.
	Asst Deputy Administrator.
	Assistant Deputy Administrator.
	Director.
	Deputy Administrator.
	Director.
	Assistant Deputy Administrator.
	Assistant Deputy Administrator.
	Assistant Deputy Administrator.
	Assistant Deputy Administrator.
	Associate Deputy Administrator.
	Deputy Administrator.
	Administrator.
Food and Consumer Service	Deputy Admin for Financial Management.
	Deputy Admr for Management.
	Director, Office of Analysis and Evaluation.
Farm Service Agency	Controller.
	Assistant Dept Administrator for Mgmt.
	Director Management Services Division.
	Director, Budget Division.
	Deputy Administrator for Farm Loan Programs.
Foreign Agricultural Service	Dir, Grain & Feed Div.
	Assistant Deputy Administrator Management.
	Director, Cotton, Oilseeds, Tobacco and Seeds Division.
Risk Management Agency	Asst Manager for Research & Development
	Director, Insurance Services Division.
Agriculture Research Service	Asst Administrator for Technology Transfer.
	Assistant Administrator for Genetic Resources.
	Dep Admin for Admin & Financial Mgmt.
	Director, Office of Pest Management Policy.
	Director, National Animal Disease Center.
	Associate Administrator, Special Interagency Programs.
	Associate Deputy Admin Financial Management.
National Program Staff Office	Deputy Administrator National Program Staff.
	Assoc Dep Admr.
	Assoc Deputy Administrator for Animal PPV&S
	Assoc Dep Admin for Natural Resources & SAS.
	Associate Deputy Administrator for Crop Production, Product Value and Safety.
Beltsville Area Office	Director Beltsville Area Office.
	Assoc Dir Beltsville Area.
	Dir US National Arboretum.
	Dir Beltsville Human Nutrition Research Ctr.
	Director Plant Sciences Institute.
	Dir Livestock & Poultry Sciences Institute.
	Dir Natural Resources Institute.
North Atlantic Area Office	Director, Eastern Regl Research Center.
	Director, North Atlantic Area.
	Assoc Dir, North Atlantic Area.
	Director, Plum Island Animal Disease Center.
	Director, North Atlantic Area.
South Atlantic Area Office	Associate Dir South Atlantic Area.
	Supervisory Research Geneticist.
	Director, South Atlantic Area.
	Dir, Center for Medical A&V Entomology.
Midwest Area Office	Dir Midwest Area.
	Assoc Dir, Midwest Area.
	Supervisory Veterinary Medical Office.
	Dir Natl Ctr for Agri Utilization.
Midsouth Area Office	Dir, Southern Regional Res Center, New Orlean.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Southern Plains Area Office	Director, Mid-South Area. Associate Director, Mid South Area. Director Southern Plains Area. Assoc Dir, Southern Plains Area. Dir, Subtropical Agricultural Res Laboratory.
Northern Plains Area Office	Director, Northern Plains Area. Associate Director, Northern Plains Area Ofc. Dir R.L. Hruska US Meat Animal Res Center.
Pacific West Area Office	Director, Western Regional Research Center. Dir, Western Human Nutrition Research Center. Director, Pacific West Area Office. Associate Director, Pacific West Area Office. Dir, Western Cotton Research Laboratory. Supervisory Soil Scientist.
Cooperative State Res Education, & Extension Service	Deputy Administrator Partnerships. Deputy Admin for Rural, Economic & Social Dev. Special Asst to the Administrator, CSREES.
Economic Research Service	Admr, Economic Research Service. Associate Administrator-Economic Rsch Svc. Dir, Natural Res & Environment Division. Director, Information Services Division. Budget Coordinator and Strategic Planner. Dir Food & Consumer Economics Division. Director, Market and Trade Economics Division.
National Agricultural Statistics Service	Admr, National Agricultural Statistics Serv. Dir Estimates Div. Dir, Systems & Information Division. Director, Survey Management Division. Deputy Administrator for Field Operations. Associate Administrator. Dir Census Division.
Natural Resources Conservation Service	Director Engineering Division. Dir Ecological Sciences and Technology Divisi. Dir, Consv Planning and App. Dir, Community Asst & Rural Development Div. Dir, Soils (Soil Scientist). Director, Strategic Planning Division. Director, Operations Management and Oversight. Dir Conservation Operations Division. Dep. Chief for Mgnt & Strategic Planning. Spec Asst to the Dep Chf for Soil S/R Assesmt. Natural Resources Manager. Special Asst to the Chief (Program Manager). Deputy Chief for Strategic Planning and Accountability. Director, Resource Conservation & Community Development Division. Director, Resource Inventory Division. Director, Animal Husbandry and Clean Water Programs Division. Regional Conservationist—Northern Plains. Director, Resource Economics & Social Sciences Division.
Forest Service	Dep Chf for Administration. Associate Deputy Chief-Administration. Dir Forest Pest Mgmt Staff. Dir Fiscal & Accounting Services. Director, Fire and Aviation Staff. Deputy Chief for Operations. Deputy Chief Financial Operations. Deputy Chief, Business Operations. Chief Operating Officer.
Research	Director, Vegetation Management & Protection Research Staff. Director, Resource Valuation and Use Research Staff. Director, Wildlife, Fish & Watershed Research Staff. Director, Science Policy, Planning, and Information Staff.
Natl Forest System	Dir, Range Management Staff. Dir, Recreation, Mgmt Staff. Dir Timber Management Staff. Director, Engineering Staff. Director, Lands Staff. Dir Land Management Planning Staff. Dir, Wildlife & Fisheries Mgmt Staff. Dir, Minerals & Geology Staff. Director, Watershed & Air Management Staff. Dir, Recreation, Heritage, & Wilderness Res.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
State & Private Forestry	Dir Cooperative Forestry.
Field Units	Ne Area Dir, State & Private Forestry, U Darb.
	Dir N Eastern Forest Experiment Station.
	Dir, North Central Forest Exp Station.
	Dir, Pacific NW Forest & Range Exp Station.
	Dir, Pacific SW For & Range Exper Stat.
	Director Rocky Mt Forest & Range Exper Stat.
	Dir S Eastern Forest Experiment Station.
	Director, Forest Products Laboratory.
	Dep Regional Forester, Pacific NW Region.
International Forest System	Dir International Institute of Tropical Forest.
American Battle Monuments Commission:	
Office of Executive Director	Executive Director.
Department of Commerce:	
Commerce Department	Deputy Director for Financial Service/Deputy CFO.
	Chief Financial Officer and Chief Administrative Officer.
Office of the Chief Financial Officer and Assistant Secretary for Administration.	Director for Y2K Outreach.
	Deputy Director, Office of Budget.
	Deputy Chief Information Officer.
	Director for Administrative Services.
Office of the General Counsel	Asst General Counsel for Finance & Litigation.
	Director, Office of Intelligence Liaison.
Director for Human Resources Management	Director for Human Resources Management.
	Dep Dir of Human Resources Management.
Director for Financial Management	Dir for Financial Management.
Office of Budget Mgmt & Info & Chief Information Offcr	Director, Office of Budget.
	Chief Information Officer.
Director for Executive Budgeting & Assistance Mgmt	Dir for Federal Asst & Management Support.
Office of Security and Administrative Services	Director, Office of Security.
	Director, Office of Acquisition Management.
Office of the Assistant Secretary for Administration	Director for Technology Management.
	Deputy Assistant Secretary for Security.
Office of Inspector General	Asst Inspect Genrl for Compliance Admin.
	Asst Inspector General for Syst Evaluation.
Office of Counsel to the Inspector General	Counsel to the Inspector General.
Office of Inspections and Program Evaluation	Assistant Inspector General for Inspections and Program Evaluation.
Office of Audits	Assistant Inspector General for Auditing.
Office of Investigations	Asst Inspector General for Investigations.
Economics and Statistics Administration	Director, STAT–USA.
Bureau of the Census	Assistant Director for Marketing and Customer Liaison.
	Chief, Human Resource Division.
Office of the Director	Assoc Dir for Field Operations.
	Chief Decennial Sys & Contracts Magnt Office.
	Principal Assoc Dir and Chief Financial Offc.
	Principal Associate Director for Programs.
	Chief, Policy & Strategic Planning Division.
	Assistant to the Director.
Administrative and Customer Services Division	Chief Admin & Customer Services Division.
Associate Director for Information Technology	Assoc Dir for Information Technology.
Data Preparation Division	Chief National Processing Center.
Associate Director for Economic Programs	Associate Director for Economic Programs.
	Assistant Director for Economic Programs.
Economic Planning and Coordination Division	Chf, Economic Planning & Coordination Div.
Economic Statistical Methods and Programming Division	Chf, Economic Statistical M&P Division.
Agricutlure and Financial Statistics Division	Chief Company Statistics Division.
Services Division	Chief Service Sector Statistics Division.
Foreign Trade Division	Chf, Foreign Trade Div.
Governments Division	Chf, Government Div.
Manufacturing and Construction Division	Chf, Manufacturing & Construction Division.
Associate Director for Decennial Census	Associate Director for Decennial Census.
	Asst to the Assoc Dir for Decennial Census.
	Assistant Director for Decennial Census.
Decennial Management Division	Chief Decennial Management Division.
Geography Division	Chf, Geography Div.
Decennial Statistical Studies Division	Chief, Decennial Statistical Studies Div.
Associate Director for Demographic Programs	Associate Dir for Demographic Progs.
	Chf, Population Div.
	Chief Demographic Surveys Division.
Housing & Household Economic Statistics Division	Chf, Housing & Household Econ Statistics Div.
Demographic Statistical Methods Division	Chief, Statistical Methods Division.
Associate Director for Methodology & Standards	Chief, Planning, Research, and Evaluation Division.
	Assoc Dir for Methodology & Standards.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Statistical Research Division	Chief Statistical Research Division.
Bureau of Economic Analysis	Associate of Economic Analysis.
Office of the Director	Director.
	Dep Dir, Bur of Economic Analysis.
	Chief Economist.
	Chf Statistician.
Associate Director for Regional Economics	Assoc Dir for Regional Economics.
Associate Director for International Economics	Assoc Dir for International Economics.
Assoc Director for Natl Income, E&W Accounts	Assoc Dir for Natl Inc, Exp, Wealth Accounts.
	Chf Natl Income & Wealth Div.
	Chief International Investment Division.
	Chief, Computer Systems and Services Division.
Director of Administration	Director of Administration.
Office of the Asst Secretary for Export Enforcement	Deputy Assistant Secretary for Export Enforcement.
	Director Office of Export Enforcement.
Office of the Asst Secretary for Economic Development	Chief Financial Officer/Chief Administrative Officer (CFO/CAO).
Office of the Under Secretary	Chief, Financial Officer & Director of Admin.
Office of Consumer Goods	Director Office of Consumer Goods.
DAS for Market Access and Compliance	Dir Trade Compliance Center.
Market Access and Compliance	Director, Office of Eastern Europe, Russia, and Independent States.
Deputy Assistant Secretary for Agreement Compliance	Associate Director for Management.
National Oceanic and Atmospheric Administration	Chief Financial Officer/Chief Admin Officer.
	Dir Staff Ofc for International Programs.
	Director, Office of Operations, Management and Information.
Office of International Affairs	Chief Financial Officer/Admin Officer.
Office of Finance and Administration	Director, Budget Office.
	Chief Information Officer.
	Dir. for Human Resources Management.
	Dir. Finance Office/Comptroller (FO/COMPT).
Office of High Performance Computing and Communications	Dir for High Performance Computing Commun.
Systems Acquisition Office	Information Technology Acquisition Manager.
National Ocean Service	Chf Fin Ofcr/Chf Adm Ofcr (Dir M&B Ofc).
	Director, National Centers for Coastal Ocean Science and Scientists for NOS.
	Deputy Director, National Centers for Coastal Ocean Science.
	Dir, Office of National Geodetic Survey (NGS).
Strategic Environmental Assessments Division	Chf, Strategic Environmental Assessments Div.
Coastal Monitoring and Bioeffects Assessment Division	Chief Coastal Monitoring Bioeffects Asses Div.
Hazardous Materials Response and Assessment Division	Chf, Hazardous Materials R&A Division.
Office of Assistant Administrator, Weather Services	Dir, Ofc of Aeronautical Charting/Cartography.
Management and Budget Office	Dep Chf Fin Ofc/Chief ADM Officer.
Office—Fed Coordinator—Meteorology	Senior Advisor.
	Dir, Ofc of the Fed Coord for Meterology.
Office of Meteorology	Dir, Office of Meteorology.
Service Division	Chief, Service Division.
Office of Hydrology	Director, Office of Hydrology.
Hydrologic Operations Division	Chief, Hydrologic Services Division.
Hydrologic Research Laboratory	Chief, Hydrologic Research Laboratory.
Office of Systems Development	Director, Office of Systems Development.
Techniques Development Laboratory	Chief, Techniques Devel Laboratory.
Office of Systems Operations	Dir, Office of Systems Operations.
Systems Integration Division	Chief, Systems Integration Division.
Systems Operations Center	Chief Telecommunications Operations Center.
Engineering Division	Chief, Engineering Division.
WSR–88D Operational Support Facility	Dir, Nexrad Operational Support Facility.
National Data Buoy Center	Director, NOAA Buoy Office.
Eastern Region	Dir Eastern Region NWS.
Southern Region	Dir Southern Region, Ft Worth.
Central Region	Director Central Region.
Western Region	Dir, Salt Lake City Region.
Alaska Region	Dir, Alaska Region, Anchorage.
National Centers for Environmental Prediction	Dir Nat'l Severe Storms Lab.
	Dir Nat'l Severe Storms Lab.
	Dir Nat'l Ctr for Environmental Prediction.
	Director, Environmental Modeling Center (EMC) and Deputy Director for Science.
NCEP Central Operations	Director, Central Operations.
	Director, Aviation Weather Center (AWC).
Hydrometeorological Prediction Center	Chf, Meteorological Operations Division.
Climate Prediction Center	Dir Climate Prediction Ctr (CPC)
Storm Prediction Center	Director, Storm Prediction Center.
Tropical Prediction Center	Dir Tropical Prediction Ctr/Natl Hurricane Ct.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
National Marine Fisheries Service	Dir Seafood Inspection Program.
	Dir Ofc of Inspection Fisheries (SF).
	Dir Ofc of Sustainable Fisheries (SF).
	Director, Office of Habitat Protection.
Office of Fisheries Conservation and Management	Chief Intergovernmental & Recreational F&M.
Office of Protected Resources	Dir Ofc of Science & Technology.
Northeast Fisheries Science Center	Science & Research Dir Northeast Region.
Southeast Fisheries Science Center	Science & Research Dir.
Northeast Fisheries Science Center	Science & Research Dir.
Southwest Fisheries Science Center	Science & Research Dir Southwest Region.
Alaska Fisheries Science Center	Science and Research Director.
Office of Asst Administrator Satellite, Data Info Serv	Sr Sci for Environ Satel, D&I Serv (NESDIS)
	Director, Information Technology Mgmt Office.
Director NPOESS Integrated Program	Systems Program Director.
National Climatic Data Center	Director, National Climatic Data Center.
National Oceanographic Data Center	Dir, Natl Oceanographic Data Center.
National Geophysical Data Center	Dir, National Geophysical Data Center.
Office of Systems Development	Dir Ofc of Sys Development.
Ofc of Asst Administrator, Ocean & Atmospheric Research	Program Director for Weather Research.
	Director, Weather and Air Quality Research.
	Dep Asst Admr for Extramural Research.
National Sea Grant College Program	Director, National Sea Grant College Program.
Aeronomy Laboratory	Director, Aeronomy Laboratory.
Air Resources Laboratory	Director Air Resources Laboratory.
Atlantic Ocean and Meteorology Laboratory	Dir, Atlantic Oceanographic & Meterological.
Geophysical Fluid Dynamics Laboratory	Director.
Great Lake Environmental Research Laboratory	Dir Great Lakes Environmental Research Lab.
Pacific Marine Environmental Research Laboratory	Dir Pacific Marine Environmental Lab.
Space Environment Center	Dir Space Environment Laboratory.
Environmental Technology Laboratory	Director.
Forecast Systems Laboratory	Director, Forecast Systems Laboratory.
Climate Monitoring and Diagnostics Laboratory	Dir Climate Monitoring & Diagnostics Lab.
Institute for Telecommunication Sciences	Assoc Admr for Telecommunication Science.
ITS, Systems and Networks Division	Deputy Dir for Systems & Networks.
Patent and Trademark Office	Dep Admin for Legislative & International Aff.
Chemical Patent Exam Groups	Group Director—110.
	Group Director—120.
	Group Director—120.
	Group Director—130.
	Group Director—150.
	Deputy Group Director—110.
	Group Director—180.
	Deputy Group Director—150.
Office of Asst Commissioner for Patents	Administrator for Search & Information Res.
Electrical Patent Exam Groups	Dep Asst Comm for Patent Process Services.
	Deputy Group Director—1300.
	Group Director for—260.
	Group Director—210.
	Group Director for—230.
	Group Director—240.
	Group Director—250.
	Deputy Group Director—250.
	Deputy Group Director—260.
	Deputy Group Director—230.
Mechanical Patent Exam Groups	Group Director—310.
	Group Director—320.
	Group Director—330.
	Group Director—340.
	Group Director—350.
Office of Asst Commissioner for Trademarks	Chairman, Trademark Trial & Appeal Board.
	Deputy Asst Commissioner for Trademarks.
	Director, Trademark Examining Operation.
National Institute of Standards and Technology	Deputy Director, NIST Center for Neutron Research.
	Chief, Optical Technology Division.
	Director, Information Technology and Applications Office.
Office of the Director, NIST	Director for Administration and Chief Financial Officer.
	Deputy Director for Management Services.
	Deputy Director for Safety and Facilities.
	Executive Director, Visiting Committee on Advanced Technology Program.
Office of Quality Programs	Director for Quality Programs
	Dep Dir, Ofc of Quality Programs.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Program Office	Director, Program Office
	Deputy Director, Information Tech Laboratory.
Office of International and Academic Affairs	Dir International & Academic Affairs
	Chief Financial Officer.
Office of the Director for Technology Services	Deputy Director, Technology Services.
Manufacturing Extension Partnership Program	Assoc Dir for National Programs.
	Dir, Manufacturing Extension Partnership Prog.
	Dep Dir, Manufacturing Ext Partnership Prog.
Directors Office, Technology Innovation	Dir, Ofc of Technol Evaluation & Assessment.
Directors Ofc, Advanced Technology Program	Dir Information Technology Laboratory.
	Associate Dir for Policy & Operations.
	Dep Director, Advanced Technology Program.
	Director, Advanced Technology Program.
	Dir, Materials & Manufacturing Technology Ofc.
	Dir Electronics & Photonics Tech Office.
Electronics and Electrical Engineering Laboratory Ofc	Dir, Electronics & Electrical Eng Laboratory.
	Chief Optoelectronics Division.
	Deputy Directory.
	Dir, Office of Microelectronics Programs.
Manufacturing Engineering Laboratory Office	Chief, Office of Manufacturing Programs.
	Dep Dir, Manufacturing Engineering Laboratory.
	Dep Dir, Manufacturing Engineering Laboratory.
Precision Engineering Division	Chief, Precision Engineering Division.
Intelligent Systems Division	Chief, Intelligent Systems Division.
Chemical Science and Technology Laboratory Office	Chief, Process Measurements Division.
	Dir, Chemical Sci & Technology Laboratory.
	Dep Dir, Chemical Sci & Technol Laboratory.
Physical and Chemical Properties Division	Chief, Physical & Chemical Properties Div.
Analytical Chemistry Division	Chief, Analytical Chemistry Division.
Physics Laboratory Office	Mgr, Fundamental Constants Data Center.
	Director, Physics Laboratory.
	Deputy Director, Physics Laboratory.
Electron and Optical Physics Division	Chief Electron & Optical Physics Division.
Atomic Physics Division	Chief Quantrum Metrology Division
	Chief Atomic Physics Division.
Time and Frequency Division	Chief, Time and Frequency Division.
Quantum Physics Division	Senior Scientist & Fellow of JILA.
	Senior Scientist & Fellow of JILA.
	Chief, Quantum Physics Division.
Materials Science and Engineering Laboratory Office	Dir, Materials Sci & Eng Laboratory.
Ceramics Division	Dep Dir, Materials Sci & Eng Lab
	Chief, Ceramics Division.
Materials Reliability Division	Chief Materials Reliability Div.
Reactor Radiation Division	Chief, Reactor Radiation Division.
	Group Leader Neutron Condensed Matter Science.
	Chief, Reactor Operations.
Building and Fire Research Laboratory	Chief, Fire Safety Engineering Division.
	Dir, building & Fire Research Laboratory.
	Dep Dir, Building & Fire Research Laboratory.
	Chief, Fire Safety Engineering Division.
Building Materials Division	Chf, Building Materials Div.
Building Environment Division	Chief, Building Environment Division.
Fire Science Division	Chief, Fire Science Division.
Computer Systems Laboratory Office	Associate Director for Program Implementation.
Advanced Network Technologies Division	Chief Advanced Network Technologies Div.
Computing and Applied Mathematics Laboratory Office	Associate Director for Computing
	Chief High Perf Systems & Services Division.
National Technical Information Service	Deputy Director, Natl Technical Info Service.
O/AD for Financial & Administrative Management	Assoc Dir for Finance & Administration
	Comptroller.
Commodity Futures Trading Commission:	
Office of the General Counsel	Deputy General Counsel (Litigation).
	Deputy General Counsel (Opinions & Review)
	Deputy General Counsel (Reg & Adm)
	Deputy General Counsel
Office of the Executive Director	Dep Exec Dir.
	Dir, Ofc in Information Resources Mgmt.
	Director, Office of Financial Management.
Division Economic Analysis	Dep Chf Economist.
	Chief Counsel.
	Associate Director for Surveillance.
Division of Enforcement	Deputy Director (Western Operations).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Division of Trading and Markets	Deputy Director (Eastern Operations). Associate Director. Associate Director. Associate Director. Deputy Director (Contract Markets). Chief Counsel. Counsel for Special Projects.
Consumer Product Safety Commission:	
Ofc of Executive Dir	Assistant Executive Director for Compliance. Associate Executive Dir for Field Operations. Asst Exec Director for Information Services.
Office of Hazard Identification & Reduction	Assoc Exec Dir for Engineering Science. Associate Executive Director for Economic. Asst Exec Dir for Hazard I&R. Deputy Assistant Executive Director for Hazard Identification and Reduction. Assoc. Exec. Director for Epidemiology.
Corporation for National and Community Service:	
Department of the Chief Financial Officer	Senior Director for Budget & Trust Operations.
Office of the Secretary of Defense:	
Office of the Secretary	Asst to the Secry of Def Intelligence Oversig. Deputy Assistant to the Secretary of Defense (Intelligence Oversight).
Office of Under Secretary for Policy	Foreign Relations and Defense Policy Manager. Foreign Relations and Defense Policy Manager.
Office of the ASD (Strategy & Requirements)	Principal Director for Strategy. Director for Nuclear Safety and Security NATO Policy. Dusd for Technology Security Policy/Director, Technology Security.
Office of Assistant Secretary (SOLIC)	Dep Asst secy of Defense (Forces & Resources). Director for Programs, Resources and Assessments. Dir Requirements & Technology & Acquisition.
Director Operational Test and Evaluation	Dep Dir for Live Fire Test & Evaluation. Associate Director for Test and Evaluation Studies & Analyses. Deputy Director for Resources and Ranges.
Ofc of Inspector General	Deputy Inspector General. Asst Inspector General for Investigations. Dep Asst Inspector Gen for Investigations. Dep Asst Inspector General for Inspections. Asst Insp Gen for Adm & Info Management. Dep Asst Inspector Gen for Adm & Info Mgmt. Dir, Audit Planning & Technical Support. Director, Logistics and Support. Director, Contract Management. Director, Financial Management. Deputy Asst Inspector General for Auditing. Asst Inspector General for Auditing. Dir for Investigative Operations. Dep Asst Inspector Gen for Program Evaluation. Director, Readiness & Operational Support. Director, Acquisition Management Directorate. Asst Inspector General for Policy & Oversight. Director, Audit Followup Directorate. Dep Asst Insp Gen for Criminal Invest P&O. Dep Asst Inspect General Audit Policy Ovesight. Director, Office of Departmental Inquiries. Deputy Inspector General for Intelligence.
Ofc of Asst Secy of Defense (Reserve Affairs)	Principal Director (Manpower and Personnel).
Ofc Dep Asst Secy (Civilian Personnel P/E Opportunity)	Principal Director and Director, Workforce Relations and Development.
ODASD (Requirements & Resources)	Director, Program and Budget Coordination.
Department of Defense Education Activity	Chief of Educational Support Policy & Legisl. Associate Director for Management. Deputy Director Dept of Defense Education.
Office Assistant Sec Health Affairs	Dir Info Management Tech & Reengineering. Director Acquisition Management & Support. General Counsel.
Office of Asst Secy of Def for Public Affairs	Director, AFIS. Dir Armed Forces Radio & Television Service. Deputy Director, American Forces Information Service.
Deputy Comptroller (Program Budget)	Dir, Prog & Fin Control. Dep Dir for Program & Financial Control.
Deputy Comptroller (Management Systems)	Deputy Chief Financial Officer.
Washington Headquarters Services	Director of Personnel and Security. Dir, Freedom of Information & Security Review.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Director Real Estate and Facilities.
	Dep Dir, Real Estate & Facilities.
	Dep Dir, Personnel and Security.
Office of the General Counsel	Deputy General Counsel (IG).
	Dir Def Ofc of Hearings & Appeals.
Ofc of Under Secy of Def for Acq & Technology	Executive Director, Defense Science Board.
	Dep Dir Arms Control Implementation Compl.
Principal Deputy Under Secretary of Defense (Acquisition & Technology).	Director for Defense Procurement.
	Deputy Dir, Cost Pricing & Finance.
	Dep Dir, Contract Pol & Administration.
	Director, Pacific Armaments Cooperation.
	Dep Dir, Def Syst Procurement Strategies.
	Dir Planning & Analysis.
	Dep Dir, Foreign Contractor.
	Dep Dir Mayor Policy Initiatives.
	Dir OSD Studies & FFRDCA.
	Director Ind Capabilities & Assessments.
	Assistant Deputy Under Secretary of Defense (Acquisition Process & Policies).
	Principal Assistant Deputy Under Secretary of Defense (Acquisition Reform).
	Director, Acquisition Resources and Analysis.
Asst to the Sec of Def for Nuclear & Chemical & Biological Defense Programs.	Das of Def (Nuclear Treaty Programs).
	Deputy Assistant to the Under Secretary of Defense (Nuclear Matters)
Office of the Director of Defense Research & Engineering	Dep Dir Naval Warfare.
	Dep Dir Munitions.
	Sr Staff Special for Air Superiority Systems.
	Dep Dir Land Warfare.
	Dep Dir Electronic Warfare.
	Special Asst Concepts & Plans.
	Deputy Director Defensive Systems.
	Princ Dep Dir, Strategic & Tactical Systems.
	Deputy Director Air Warfare.
	Asst Dep Dir, Arms Control I&C.
	Dir for Infor Tech.
	Director, Sensor & Electronics Technology.
	Dir Weapons Technology.
	Deputy Director, Developmental Test and Evaluation.
	Assistant Deputy Under Secretary of Def (FDP).
	Director for Life Sciences.
	Director for Science and Technology Plans and Programs.
	Assistant Deputy Under Secretary of Defense (Dominant Maneuver).
Ofc of Asst Secy (Command, Control, Commun & Intel)	Director, Program Analysis & Integration.
	Director, Counterintelligence.
	Director, International Affairs.
Director, Strategic & Theater Nuclear Forces	Director, IT Acquisition and Investment.
Deputy Assistant Secretary of Defense (Intelligence)	Director, Intelligence Policy and Collection.
Deputy Assistant Secretary of Defense (Defense-Wide C3)	Deputy Director, Communications and C2 Battle Management.
Director for Special Technology	Director, Technology and Evaluation.
Defense Advanced Research Project Agency (DARPA)	Dir, Contracts Management Office.
	Special Asst, Information Technology.
	Dep Dir for Warfare Info Technology.
	Deputy Director Darpa.
	Prog Manager (Joint Applications Study Group).
	Director, Tactical Technology Office.
	Deputy Director for Management.
	Program Manager (Acquisition Innovation).
	Director, Microsystems Technology Office.
Office of the Joint Chiefs of Staff	Dep Dir for Wargaming, Simulation & Analysis.
Ballistic Missile Defense Organization	Deputy for Program Operations.
	Director, Contracts Directorate.
	Deputy for Technology.
	Asst Dep for Theater Air & Missile Defense.
	Deputy for System Integration.
	Chief Architect/Engineer.
	Deputy Chief Architect/Engineer.
	Asst Deputy for Technical Operations.
	Deputy for System Development.
	Executive Director.
	Deputy Program Manager, National Missile Defense Joint Program Office.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Defense Contract Audit Agency	Deputy Director, DCAA.
	Assistant Director, Operations.
	Asst Dir, Policy & Plans.
	Director, Field Detachment.
	Director, DCAA.
	Deputy Regional Director, Western Region.
Regional Managers	Regional Director, Eastern.
	Regional Director, Northeastern.
	Regional Director, Central.
	Regional Director, Western.
	Regional Director, Mid-Atlantic.
	Dep Regional Director Eastern Region.
	Deputy Regional Director Northeastern Region.
	Deputy Regional Dir Central Region.
	Dep Reg Dir Mid Atlantic Region.
Defense Logistics Agency	Special Asst for Integrity in Contracting.
	Chief Actuary.
	Dir, Defense Manpower Data Center.
	Dep Gen Counsel (Acquisition & Contract Mgmt).
	Dep Commander, Def Construction Supply Ctr.
	Director CPMS.
	Deputy Commander Defense Distribution Center.
	Exe Dir, Resource, Planning & Performance Dir.
	Chief Information Officer.
	Dir, Civilian Personnel Mgmt Service.
	Director, Defense Property Accountability System (DPAS) Program Management Office.
	Director Defense Energy Support Center.
	Executive Director Human Resources.
	Executive Director, International Logics.
	Executive Director Logistics Management.
	Director, Defense Automated Printing Service.
	Executive Director, Business Operations.
	Deputy Chief Information Officer.
Office of Deputy Director, Acquisition	Executive Director, Contract Mgmt Operations.
	Dep Commander, Def Contract Mgmt Command.
Ofc of Staff Dir—Small & Disadvantaged Business Until	Staff Dir, Small & Disadv Busin Utilization.
Office of General Counsel	General Counsel, DLA.
	Deputy General Counsel (Administration).
Office of the Comptroller	Comptroller.
Office of Deputy Director, Material Management	Executive Director Procurement.
	Deputy Commander, Defense General Supply Ctr.
	Executive Dir, Info System & Technology Dir.
	Deputy Commander (DLSC).
Defense Personnel Support Center	Deputy Commander, DPSC.
Defense Training & Performance Data Center	Deputy Dir Defense Manpower Data Center.
Defense Contract Management	Executive Director, Program Integration.
Defense Information Systems Agency	Dep Director for Strategic Plans & Policy.
	Special Assistant for Liaison Activities.
	Chief, Technology & Standards Division.
	Professor of Information Science.
	Special Asst/Infrstructure & Info Assurance.
	Dir, Joint Electronic Commerce Prog Office.
	Chief Engineer, Information Systems Security.
	Technical Adv, C4I Sys, Program & Info Assurance.
	Chief, Networks Division.
	Advisor for Cross Program Integration.
	Chief Spectrum Anal & Mangnt Division.
	Commander, DISA Westhem.
	Deputy Chief Engineering Executive for Electronic Commerce.
	Chief, Policy, Plans, and Appropriated Programs Division.
	Chief, Defense Computing Business Office.
	Chief, Defense Information Systems Network Business Office.
	Principal Information for 2000 Operations.
	Deputy Chief Engineering Executive for Information Processing.
	Associate Deputy Director for Acquisition Strategy.
	Assistant for Program Oversight.
	Defense Message Systems Implementation/Integration Manager.
	Chief Engineering Executive for Information Transport.
Office of the Director	Deputy Manager National Commun Systems.
	Inspector General.
Directorate for Strategic Plans and Policy	Chief, Information Officer.
	Tech Adviso, Strategic Plans, Program & Policy.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
DISA (Field Activity)	Dep Comm Ctr for Computer Systems Engineering.
Directorate for C4 & Intelligence Programs	Tech Dir Joint Intero & Eng Comm (JIEO).
	Tech Dir Adv Info Tech Services Joint Prog.
	Dep Dir for C4I Programs.
	Dep Dir for C4I Modeling, Simulation & Assess.
	Chief Current Network Operations.
Directorate for Operations	Asst Deputy Dir for Operations.
	Technical Director, Space Information Syst Office.
Directorate DISA, for Logistics, F & S Projects	Dep Dir for Procurement & Logistics.
	Chief Management Support Operations DISA West.
Directorate for Personnel and Manpower	Dep Dir for Personnel & Manpower.
Directorate for Engineering & Interoperability	Assoc for Technical & Management Support.
Directorate for C4 Modeling, Simulation and Assessment	Assoc Deputy Director for C41 Modeling, S&A.
Directorate for Enterprise Integration	Deputy Director for Joint RA&I.
Comptroller Directorate	Comtroller.
Defense Threat Reduction Agency	Staff for Spec Tech Program.
	Chief, Weapons Lethality Division.
	Dir, Acquisition Management.
	Deputy Director, Operations Directorate.
	Director for Electronics and Systems.
	Director for Weapons Effects.
	Chief, Simulation and Test Division.
	Director for Programs.
	Prog Dir, Hard Target Defeat Program Office.
	Program Director, Special Programs Office.
	Dir for Counterproliferation Programs.
	Comptroller.
	Deputy Director, On Site Inspection Plans and Resources.
Defense Security Assistance Agency	Chief Information Officer.
Defense Finance & Accounting Service	Deputy Director, Cleveland Center.
	Deputy Director Defense Finance and Accounting Service.
Defense Security Service	Dir, Defense Investigative Service.
	Special Asst to the Director.
	Deputy Director for Policy.
	Dir DOD Polygraph Institute.
	Chief Operating Officer.
	Comptroller.
Defense Commissary Agency	Executive Director for Operations.
Department of Air Force:	
Office of the Secretary	Association Director, Legislative Liaison.
Office of Administrative Assistant to the Secretary	Administrative Assistant.
	Dep Admin Assistant.
Office of Small & Disadvantaged Business Utilization	Dir, Ofc of Small, & Disadv Bus Utilization.
Office of the Inspector General	Dep Asst Inspector Gen/Spec Investigations.
Office of ASAF for Financial Management & Comptroller	Principal Dep Asst Secry (Financial Mgmt).
ODAS Budget	Director of Budget Investment.
	Director of Budget Management & Execution
	Deputy for Budget.
ODAS Cost & Economics	Dep Asst Secy (Cost of Economics).
Office of ASAF for Acquisition	Principal DAS (Acquisition & Mgmt).
Centralized Rep Support Team Office	DIR, Centralized Rep Support Team.
ODAS Science, Technology & Engineering	DAS (Science, Technology & Engineering).
ODAS Management Policy & Program Integration	Dep Asst Secy (Mgmt Pol & Prog Integration).
ODAS Contracting	Assoc Dep Asst Sect (Contracting).
Air Force Program Executive Office	Program Exec Officer, Info Systems.
	Prog Exec Ofcr, Conventional Strike.
	Prog Executive Officer Logistics Systems.
	Program Executive Officer Space.
OFC Of ASAF for Manpower, Reserve Affairs, Install & Env.	Dep for Air Force Review Boards.
Air Force Base Conversion Agency	Dir Air Force Base Conversion Agency.
Office of the Chief of Staff	Air Force Historian.
Test and Evaluation	Deputy Dir Test & Evaluation.
Deputy Chief of Staff, Communications & Information	Director of CIO Support, AFCIC.
Deputy Chief of Staff, Installations & Logistics	Deputy Director of Supply.
Civil Engineer	Deputy Civil Engineer.
Services	Director of Services.
Maintenance	Associate Director of Maintenance.
Logistics Support & Integration	Director of Plans & Integration.
	Deputy Dir or Global Combat Support System.
Supply	Chief Modification & O&M Programs Division.
	Chief, Combat Support Division.
Filed Operating Agencies	Dir AF Center for Environmental Excellence.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Deputy Chief of Staff, Plans, Programs	Asst Deputy Chief of Staff Plans & Programs.
Manpower, Organization & Quality	Deputy Director, Manpower and Organization.
Programs	Associate Director or Programs & Evaluation.
Stategic Planning	Dep Dir of Strategic Planning.
Deputy Chief of Staff, Personnel	Asst Deputy Chief of Staff Personnel.
	Dir of Personnel Force Development.
	Dep Dir Personnel Management.
	Director, Palace Compass Program Management Office.
Deputy Chief or Staff, Air and Space Operations.	Dep Dir of Operational Requirements.
	Assoc Dir Modeling Simulation & Analysis.
	Director Nuclear Weapons and Counter Proliferation Agency.
	Associate Director for Ranges and Airspace.
	Associate Director for Civil Aviation.
Air Force Material Command	Executive Director.
Personnel	Director, Personnel.
Contracting	Deputy Director Contracting.
Logistics	Deputy Director, Logistics.
	Deputy Director for Depot Maintenance.
	Deputy Director for Supply Management.
Engineering & Technical Management	Director, Engineering & Technical Mgmt.
Financial Management & Comptroller	Dep Director, Financial Mgmt & Comptroller.
Communications & Information	Director, Communications & Information.
Plans & Programs	Deputy Director, Plans & Programs.
Space and Missile Systems Center	Executive Director.
	Director Contracting.
Electronic Systems Center	Director, Plans & Advanced Programs.
	Executive Director.
	Prog Dir Strategic & Nuclear Deterrence C2.
	Director, Material Systems Group.
	Program Director, Defense Information Infrastructure Air Force.
	Director, Information Programs Office.
	Director, Contracting.
Standard Systems Center	Director, Standard Systems Center.
Aeronautical Systems Center	Executive Director.
	Director System Management.
	Program Director, Mobility Spo.
	Dir Financial Management & Comptroller.
Development Planning	Dir Advanced Systems Analysis.
Engineering Directors	Dir Systems Engineering.
Directors of Engineering	Dir of Engineering F–22.
	Director of Engineering, C–22
	Director of Engineering Propulsion.
	Director of Engineering Joint Strike Fighter.
Systems Program Officers	Prog Dir Joint Air-to-Surface Standoff Miss.
	Program Dir Air to Joint SPO.
Human Systems Center	Executive Director.
Air Force Research Laboratory	Executive Director, AFRL.
	Director, Plans & Programs.
	Assoc Dir for Investment Strategy.
	Director, AFRL Washington Office.
	Dir High Perf Computing Modernization.
Air Vehicles Directorate	Assoc Dir for Air Platforms.
Space Vehicles Directorate	Director, Space Vehicles.
	Assoc Dir for Space Vehicles.
Information Directorate	Dir Information.
Air Armaments Center	Director, Plans and Programs.
Directed Energy Directorate	Director Directed Energy.
Materials and Manufacturing Directorate	Director, Materials & Manufacturing.
	Assoc Dir for Manufacturing Tech & Afford.
Sensors Directorate	Director Sensors.
	Associate Director for Sensors.
Propulsion Directorate	Director, Propulsion.
Human Effectiveness Directorate	Director, Human Effectives.
Arnold Engineering Development Center	Executive Director.
Air Force Development Test Center	Executive Director.
Air Force Flight Test Center	Executive Director.
Air Logistics Center, San Antonio	Director, Financial Management.
	Executive Director.
	Product Group Manager, Propulsion Systems.
	Dir, Privatization & Realignment.
Air Logistics Center, Oklahoma City	Director, Financial Management.
	Director, Commodities Management.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Air Logistics Center, Warner Robins	Executive Director. Director, Contracting. Director, Financial Management. Director, Technology & Industrial Support.
Air Logistics Center, Ogden	Executive Director. Director, Contracting. Director, Financial Management.
Air Logistics Center, Sacramento	Executive Director. Director Commodities. Director, Contracting. Director, Financial Management.
Air Force Audit Agency	Executive Director. Director, Contracting. Asst Aud Gen (Materiel & Systems Audits). Auditor General of the Air Force. Asst Aud Gen (Field Activities). Asst Aud Gen (Operations). Asst Aud Gen (Financial & Support Audits).
Air Combat Command	Senior Technical Director ASC2 Agency.
Air Education & Training Command	Provost, Air University.
Air Mobility Command	Principal Dep Dir of Operations for Transport.
Air Force Reserve Command	Air Commander 4th Air Force. Air Commander 10th Air Force. Air Commander 22nd Air Force. Assistant Vice Commander. Director, Plans. Director of Operations.
AF Space Command	SR Scientist & Tech Advisor for AFSPACECOM.
AF Operational Test & Eval Ctr	Technical Director.
U.S. Central Command	Scientific Advisor.
U.S. Strategic Command	Assoc Dir for Strategic Planning. Dep Dir Comd Ctrl Comm Computer & Intel Sys.
Department of Army:	
Office Deputy Under Secretary of Army (OPS Research)	Spec Asst for Air & Missile Defense. Asst Dep Under Secy of the Army for Oper Res. Special Assistant for Electronic Systems.
Office Deputy Under Secretary of the Army (Intl Affairs)	Dir, Test and Evaluation Management Agency. Dir of International Dev & Security Asst.
Office Administrative Asst to the Sec of Army	Adm Asst to the Secy of the Army. Dep Admin Asst to the Secy of the Army. Dir Single Agency Mgr for Pentagon Info Tech. Chief, Technical Officer & Director Engineering & Product Development.
Office of the General Counsel	Deputy General Counsel (Ethics & Fiscal).
Ofc Asst Secretary Army (Civil Works)	Deputy ASA (Management & Budget). DAS of the Army (Policy & Legislation).
Ofc Asst Sec Army (Financial Management & Comptroller	Assistant Deputy ASA for Army Budget. Deputy for Cost Analysis. Dir of Investment. DAS of the Army (Financial Operations). Spec Adv for Economic Pol & Productivity Prog.
Ofc Asst Sec Army (Manpower & Reserve Affairs)	Director for Business Resources. Director for Civilian Personnel Mgmt & Ops. Deputy Asst Secy of the Army (ARBA). Deputy Assistant Secretary of the Army (Civilian Personnel Policy).
Ofc Asst Sec Army (Acquisition, Logistics and Technology)	DAS for Res & Tech/Chief Scientist. Deputy Asst Secy of the Army (Procurement). Dep Asst Secy for Plans & Programs. Director for Research. Director for Technology. Director for Assessment & Evaluation. Director, Procurement Policy and Acquisition Reform.
HQDA Army Acquisition Executive	Dep Prog Mgr for Chem Demilitarization Oper. Deputy PEO, Armored Systems Modernization. Dep Prog Exec Ofcr, Command & Control Systems. Deputy Prog Executive Officer Comm Systems. Program Executive Officer Stamis. Dep Program Executive Officer for Aviation. Dep Peo, Intelligence & Electronic Warfare. Deputy Prog Executive Ofcr, Missile Defense. Program Manager, National Missile Defense. Dep Prog Executive Ofcr Tactical Missiles.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Prog Manager for Chemical Demi Operations.
	Dep Prog Executive Officer for Fire Supp Sys.
Ofc of Dir of Info Sys for Comm, Contl, Comms/Computers	Dir of Army Information
	Vice Director to the Disc4.
Army Audit Agency	The Auditor General.
	Deputy Auditor General.
	Director, Logistical & Financial Audits.
	Dir, Acquisitions & Force Mgmt.
	Director, Policy and Operations Management.
Operations Test & Evaluation Command (OCSA FOA)	Tech Dir, Test & Exper Command
	Dir Evaluation Analysis Center.
Army Center or Military History (OCSA FOA)	Chief Historian.
Office, Assistant Chief of Staff for Installation Mgmt	Dep Asst Chief of Staff for Installation Mgmt.
Office, Deputy Chief of Staff for Logistics	Asst Dir for Transportation.
	Director for Resources and Management.
	Executive Director, Strategic Logistics Agcy.
	Chief Aviation Logistics Office.
	Associate Dir for Supply & Maintenance.
Office Dep Chf of Staff for Operations & Plans	Tech Adv to the DCSOPS
	Director, Army Model & Simulation Office.
Office, Dep Chief of Staff for Personnel	Director of Manprint.
Army Research Institute (DCSPER FOA)	Dir, Manp & Pers Res Lab & Assoc Dir, Ari
	Dir, US Army Res Inst & Chief Psychologist.
U.S. Total Army Personnel Command (DCSPER FOA)	Director, Army Declassification Activity.
National Guard Bureau	Program Executive Officer for Information Systems & Chief Information Officer.
Walter Reed Army Institute of Research	Chief Dept of Pharmacology.
USA Space and Missile Defense Command	Prin Assistant Resp for Contracting
	Dir, Advanced Technology Directorate.
	Director, Weapons Directorate.
	Dir, Miss Def Battle Integration Ctr.
Training and Doctrine Command (TRADOC)	Asst Deputy Chief of Staff for Resources Mgmt.
	ADCOS for Training Policy Plans and Programs.
	Deputy to the Commanding Gen, CASCOM.
	Asst Dep Chief of Staff for Base Ops Support.
	Asst Dep Chief of Staff for Combat Develop.
	Dep Chief of Staff for Base Operations Supp.
TRADOC Analysis Center	Director of Operations.
	Director of Operations.
	Director.
U.S. Army Nuclear and Chemical Agency	Dir, U.S. Army Nuclear & Chemical Agency.
Military Traffic Mgmt Command	Special Asst for Transportation Engineering
	Deputy to the Commander.
U.S. Army Forces Command	Deputy Director Resource Management
	Asst DCS for Pers & Inst Mgnt.
	Assistant Deputy Chief of Staff for Logistics and Readiness.
US Army Signal Command	Technical Director/Chief Engineer.
U.S. Army Corps of Engineers	Dir of Real Estate.
	Director of Human Resources.
	Director Resource Management.
	Director, U.S. Army Center for Public Works.
	Principal Asst Responsible for Contracting.
	Dep to the Commander for Prog & Tech Mgnt.
	Deputy Chief of Staff for Corporate Information.
Directorate of Research & Development	Deputy Chief of Staff for Research & Development.
	Asst Dir for Research & Dev (Civil Works Prog).
	Asst Dir Research & Dev (Military Prog).
Directorate of Civil Works	Chief, Programs Management Division.
	Chief, Planning Division.
	Principal Assistant for Civil Works.
	Chief Engineering Division.
	Chf, Ops, Construction & Readiness Division.
	Chief Policy Review & Analysis Division.
Directorate of Military Programs	Chief Construction Division.
	Deputy Director, Military Programs.
	Chief, Engineering Division.
	Chief, Programs Management Division.
	Chief, Environmental Restoration Division.
Directors of Programs Management	Dir Programs Management, MVD.
	Dir Programs Management, NAD.
	Director of Programs Management.
	Director Programs Management.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Directors of Engineering & Technical Services	Dir Programs Management, POD.
	Dir of Programs Management, SAD.
	Dir Programs Management, SPD.
	Dir Programs Management, SWD.
	Director of Engineering & Technical Services.
	Dir Engineering & Technical Services, NWD.
	Dir Engineering & Technical Services, NAD.
	Dir Engineering & Technical Services, LRD.
	Dir Engineering & Technical Services, NWD.
	Dir Engineering & Technical Services, LRD.
	Dir Engineering & Technical Services, POD.
	Dir Engineering & Technical Services, SAD.
	Dir Engineering & Technical Services, SPD.
	Dir of Engineering & Technical Services, SWD.
Engineer Waterways Experiment Station, COE	Director, Geotechnical Laboratory.
	Director Hydraulics Laboratory.
	Director Environmental Lab.
	Director, Structures Laboratory.
	Director Coastal Engineering Research Center.
Engineer Waterways Experiment Station, COE	Dir Waterways Experiment Station.
Engineer Topographic Laboratories, C of Engineers	Director.
Construction Engineering Res Lab Champaign, IL	Director.
Cold Regions Research & Engineering Lab Hanover, NH	Director.
U.S. Army Material Command	Deputy Chief of Staff for Corporate Information/CIO.
Office of Dcs for Logistic & Operations	Asst Dep Chief of Staff for Logs & Operations.
Office Deputy Commanding General	Principal Deputy for Logistics.
	Principal Deputy for Acquisition.
	Principal Deputy for Technology.
Office of Dcs for Research, Dev and Acquisition	ADCS for RDA Science Technology & Engineering
	ADCS for RDA—Business OPS/Director AMC Tocr Program.
Office of Deputy Chief of Staff for Ammunition	Asst Deputy Chief of Staff for Ammunition.
Office of Dcs for Acquisition	Asst Dep Chief of Staff for Res DAAC & P Mgmt.
Office of Deputy Chief of Staff for Personnel	Dep Chief of Staff for Personnel.
Office of the Deputy Chief of Staff for Res Management	ADCS for Resource Mgmt/Exec Dir for Busin
	Deputy Chief of Staff for Resource Management.
USA Security Assistance Command	Deputy.
US Army Industrial Operations Command	Deputy to the Commander.
U.S. Army Soldier & Biological Command (SBCCOM)	Deputy to the Commander
	Director for Operations, Remediation and Restoration.
US Army (SBCCOM)—Edgewood Biological Chemical Center	Director, Engineering Directorate.
	Dir, Res & Technology Directorate.
	Technical Director.
Natick Soldier Center	Director, Natick Rd & E Center.
US Army Communications Elect Comd (CECOM)	Director CECOM Acquisition Center.
	Assoc Dir, CECOM Acq Center—Washington Operations Office.
	Deputy to the Commander.
CECOM Research, Development & Engineering Center	Dir—Night Vision/Electro Sensors Directorate.
	Dir, Space & Terrestrial Comm Directorate.
	Dir, I&E Warfare Directorate.
	Dir, Software Engineering Directorate.
	Director/Army Systems Engineer.
	Dire for C4I Log & Readiness Center.
	Assoc Tech Dir Research Devel & Engineering Ctr.
	Director, Command, Ctrl & Syst Integration Dir.
U.S. Army Research Laboratory	Director.
	Dir, Research & Technology Integration.
	Director US Army Research Laboratory.
	Associate Director for Plans, Programs and Budget.
	Dep Dir Info Sci/Tech/Dir of Atmospherics Res.
	Director, Engineering Sciences Directorate.
	Director, Physical Science Directorate.
	Deputy Director.
Survivability/Lethality Analysis Directorate	Director, Survivability/Lethality Analysis Directorate.
Information Science and Technology Directorate	Dir, Information Sci & Technology Directorate.
Sensors and Electron Devices Directorate	Deputy Director and Director Electron Devices Research Director.
Corporate Information and Computing Center	Dir Corporate Information & Computing Ctr.
Weapons and Material Research Directorate	Deputy Director and Directorate Materials Research
	Director.
Human Research and Engineering Directorate (ARL)	Director, Human R&E Directorate.
U.S. Army Aviation and Missile Command (AMCOM)	Executive Director, Acquisition Center.
	Executive Dir, Integrated Materiel Mgmt Ctr.
	Deputy Executive Director for Tmde.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Missile Res Development & Engineering Center (RDEC)	Deputy to the Commander. Deputy to the Commander. Executive Director Acquisition Center. Executive Dir Integrated Material Magnt Ctr. Director for Propulsion. Dir for Systems Simulation & Development. Tech Dir for M&D Res, Dev. & Eng Center. Dir for System Engineering & Production. Associate Director for Systems, Missiles Director for Weapons Sciences. Dir for Missile Guidance.
Aviation Research, Development and Engineering Center	Techn Dir (Aviation) & Ed-US Army Ard & Ec. Director of Aviation Engineering. Dir of Aeroflight Dynamics. Dir of Advanced Syst/Assoc Dir for Technol. Assoc Dir for Tech Appl/Dir of Spec Prog.
Tank—Automotive and Armaments Comd (TACOM)	Director of Acquisition Center. Director, Integrated Materiel Mgmt Center. Dir US Army Armament & Chemical A&L Act.
Tank—Automotive Res, D&E Center (TARDEC)	Deputy to the Commander. Vice President for Research. President/Director. Vice President for Customer Engineering. Vice President for Product Development.
US Army Armament Research, D&E Center (ARDEC)	Technical Director for Armament. Asst Technical Director (System Development & Engineering). A/Tech/Dir (Systems Concepts & Technology).
Warleads, Energetics & Combat Support Armaments Center	Dir, WE & Combat Support Armaments Center.
Fire Support Armaments Centers	Senior Technical Executive for Fire Support.
Close Combat Armaments Center	Senior Technical Executive for Close Combat.
US Army Simulation, Training & Instrumentation Command	Deputy to the Commander.
US Army Test and Evaluation Command, (TECOM)	Tech Dir & Chf Sci. Director, Technical Mission Dir, Joint Prog OFC for Test & Evaluation
US Army Materiel Systems Analysis Activity	Director.
Headquarters, US Army, Europe	Chief, Combat Integration Division. Asst Dep Chf of Staff, Personnel (CIV Pers). Asst Dep Chief of Staff Eng for Eng & Housing. Asst Dep Chf of Staff for Eng (Intl Affairs). Deputy Chief of Staff for Resource Management.
U.S. Army Military District of Washington	Director of Cemetery Operations.
U.S. Southern Command	Spec Asst for Technology & Requirements Integ.
Department of Navy:	
Office of the Secretary	Chief Information Officer.
Office of the Under Secretary of the Navy	Senior Advisor for Small Business Support Assistant for Administration.
Office of the Auditor General	Auditor General of the Navy.
Naval Audit Service	Eastern U.S. Audit Services Facilitator. Director, Plans and Policy. Dir, Naval Audit Service Western Region. Dir, Naval Audit Service Capital Region. Dir Program & Financial Audits Directorate.
Naval Criminal Investigative Service	Dir Naval Criminal Invest Service. Asst Dir of Counterintelligence. Special Agent in Charge Norfolk Field Ofc. Special Agent in Charge. Deputy Director, NCIS.
Ofc of the Asst Secy of Navy (Manpwr & Res Affs)	Dir, Human Resources Operations Center. Assist Gen Coun (Manpower & Reserve Affairs). Director, Plans, Programs & Diversity.
OAS of Navy (Installations & Environment)	Dep A/S of the Navy (Civilian Persnl P/EEO). Asst General Counsel (Install & Environment).
OAS of the Navy (Research, Dev & Acquisition)	Director, Navy Acquisition R&S Improvement. Director, Procurement Policy. Head, Contract Policy. Asst Gen Coun (Res. Dev & Acquisition). Dir, Intl Agreements, TTSARB & Special Proj. Director, Acquision Career Management. Dasn Plann & Programming & Resource. Dep Dir Navy International Programs Office.
Program Executive Officers	Chief Systems Engineer, Theater Air Defense. Deputy Program Executive Officer for DD–21.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Deputy PEO for Aircraft Carriers.
	Director, Plans & Programs Division.
	Chf Engr.
	Asst for Fire Control & Guidance Systems.
	Branch Head, Reentry Systems Branch.
	DEP P/E Officer for Unmanned Aerial Vehicles.
	Dep Prog Exec Officer for Theater Air Defense.
	Technical Plans Officer.
	Head, Res Branch & De Dir, Plans & Progs Div.
	Assistant for Missile Engineering Systems.
	DEP P/E Officer for Cruise Missiles Program.
	Prog Manager for Comm Satellite programs.
	Dep Prog Officer Submarines.
	Program Executive Officer, Undersea Warfare.
	Asst for Systems Integration & Compatibility.
	Dep Prog Exec Ofcr for ASW, A/S Mission Prog.
	Dep Prog Exec Ofcr for Tactical Air Programs.
	Deputy PEO, Mine Warfare.
	Prog Exec Officer for Space Comms & Sensors.
	Aegis Deputy Program Manager.
	Prog Exec Officer ASW Assault & Spec Miss Pro.
	Chief Engineer, PEO, SCS.
	Deputy Program Mgr., Future Carrier Program Office.
Ofc of the Asst Secy of Navy (Fin Mgmt Comptroller)	Assoc Dir, Budget & Reports/Fiscal Manag Div.
	Asst General Counsel (Financial Management).
	Dir, Investment & Dev Div.
	Dir, Financial Mgmt Pol & Systems Division.
	Dir, Budget Evaluation Group.
	Dir Resource Allocation & Analysis Division.
	Director, Financial Management Division.
	Director, Business and Civilian Resources Division.
Naval Center for Cost Analysis	Dir Naval Center for Cost Analysis.
Office of the Naval Inspector General	Deputy Naval Inspector General.
Office of the General Counsel	Special Counsel for Litigation.
Chief of Naval Operations	Asst Dep Chf of Naval Operations (Logistics).
	Dep Dir of Naval Training.
	Asst Dep Chief Naval Oper Res Warfare.
	Asst Dep Chf of Naval Oper Manpower/Personnel.
	Head, Readiness & Sustainability Branch.
	Associate Director, Assessment Division.
	Tech Dir, Submarine & SSBN Security Program.
	Technical Director.
	Deputy Director for Programming.
	Head Assessement & Affordability Branch.
	Assoc Dir, Expeditionary Warfare Division.
	Dir Naval History/Dir, Naval Historical Ctr.
	Head Deep Submergence Systems Branch.
	Dep Dir Envir Protection Safety Occp Heal Div.
	Director Strategic Sealift Division.
Bureau of Naval Personnel	ACNP for MPN Financial Management.
Bureau of Medicine & Surgery	Dep Commander for Fin Mgmt & Comptroller.
Military Sealift Command	Counsel.
	Comptroller.
	Asst Dep Comdr for Business Operations.
Naval Meteorology & Oceanography Comm, Stennis SC, MS.	
Ofc of Commander in Chf/Allied Forces/Southern Eur	Dir Joint Train Analysis & Simulation Ctr.
	Dep Dir Fleet Maintenance.
	Director, Joint Battle Lab.
	Director, Command, Control Communications and Computers Systems
	Deputy Director, Shore Activities Readiness.
Ofc of the Commander-in-Chief, U.S. Pacific Command	Chief Information Officer.
Cincpacflt	Deputy Director Fleet Maintenance.
	Deputy Director Shore Installation Management.
	Executive Director, Planning & Resources.
	Fleet Human Resources Mgr and Policy Director.
Ofc of the Chief of Naval Education and Training	Conptroller.
Naval Recruiting Command	Deputy Commander.
Naval Air Systems Command Headquarters	Acquisition Reform, Strategy and Metrics Executive.
	Executive Dir, Corporate Operations.
	Deputy Commander for Acquisition & Operations.
	Executive Director for Logistics.
	Executive Director for Contracts.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Deputy Comptroller.
	Counsel, Naval Air Systems Command.
	Assoc Director Weapons Sys Eng Division.
	Deputy Head, Avionics Dept.
	Deputy Head Air Vehicle Dep.
	Dep Head Logistics Management.
	Head, Tactical A&M Contracts Department.
	Head Aircraft Support Dept.
	Head Cost Department.
	Deputy Acquisition Executive.
	Executive Director for Engineering.
	Dir Industrial Operations.
	Head Concepts Analysis Evaluation Plan Dept.
	Head Propulsion & Power Systems Dept.
	Dep Head Aircraft Sys Engineering Department.
	Head Logistics Support Department.
	Deputy Commander, Naval Air Sys Command.
	Head, Cruise Missiles, Uav & Navair Programs, Contracts Department.
	Dir Budget Formulation Justification Exe Div.
	Deputy Counsel, Navair.
	Executive Dir for Industrial Capabilities.
	Dir Naval Aviation Science & Tech Office.
	Asst Commander for Corporate Operations.
	Joint Eng Data Mgmt I&C Syst Prog Manager.
	Head Air Asw Assault & Special Mission Prog.
	Special Asst for Navy test & Evaluation.
Naval Air Warfare Center Aircraft Division Lakehurst	Director, Engineering & Research
	HD Supp Equip Aircraft Launch & Recovery Dept.
Naval Air Warfare Center Aircraft Division	Exec Dir, T&E Group Nawc-Aircraft Div
	Head, Avionics Department.
	Dir of Atlantic Ranges & Facilities Dept.
Naval Air Warfare Center Weapons Div, China Lake, CA	Head, Res and Technology Division.
	Head, Pacific Ranges & Facilities Depart.
	Head, Avionics Dept.
	Head Test Evaluation Engineering Department.
	Head, Syst Engineering Department.
	Director for Test & Evaluation.
	Head Weapons Engineering Dept
	Dir for Eng, Nawc-Weapons Division.
	Director of Corporate Operations.
	Head, Threat/Target Syst Depart.
Naval Training Systems Center	Executive Director
	Dir of Acq, Analysis, Engineering & Research.
Space & Naval Warfare Systems Command	Exec Dir, Contracts.
	Deputy Comptroller.
	Counsel Space & and Naval Warfare Systems Com.
	Chief Engineer Command Sys Prog Directorate.
	Executive Dir, Space Tech Systems Prog Dir.
	Exec Dir, Undersea Surveillance Prog Dir.
	Exe Dir, Intelligence S&R System Prog Dir.
	Dir of Tech Head Engineering Tech Group.
	Prog Dir Command C&C System Program Dir.
	Prog Dir, I&E Warfare Syst Program Dir.
	Deputy Commander.
	Deputy Chief Engineer.
	Dir Strategic Corporate Plann & Devel Office.
	Exec Dep Dir Info Supp Sys Progr Directorate.
Space and Naval Warfare Systems Center	Head Intelligence S&R Department.
	Executive Director.
	Head Navigation & Applied Sciences Dept.
	Head, Command and Control Department.
	Dep Exec Dir Sci Tech Engineering.
	Head Communication & Information Sys Dept.
	Dep Executive Dir for Corporate Operations.
Space and Naval Warfare Systems Center, Charleston	Executive Director.
Naval Facilities Engineering Command	Director Navy Crane Center.
	Counsel Naval Facilities Engineering Command.
	Deputy Comptroller.
	Director for Contracts Support.
	Chief Engineer.
	Dir of Real Estate Support.
	Dir of Base Closure.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Naval Sea Systems Command	Director of Environment.
	Executive Director.
	Counsel Naval Sea Systems Command.
	Executive Director for Contracts.
	Executive Director/Deputy Comptroller.
	Director, Reactor Materials Divisions.
	Director, Secondary Plant Components Division.
	Head, Advanced Reactor Branch.
	Director, Hydrodynamics Group.
	Dep Dir Surface Ship Design & Sys Eng Group.
	Dir Cost Engineering & Industrial Analysis.
	Dir, Shipbuilding Contracts Division.
	Assistant Deputy Cdr for Industrial Ops.
	Executive Director, Surface Ship Directorate.
	Exec Dir Submarine Directorate.
	Dep Commander for Warfare Systems.
	Director, Corporate Operations.
	Chief Information Officer.
	Executive Director for Logistics, M&I OPS.
	Dep Prog Mgr/Techn Dir, New Attack Submarines.
	Dep Prog Mgr for S&A Submarine Program.
	Dep Prog Manager, Aircraft Carrier Prog Ofc.
	Director, Auxillary and Crew Systems Group.
	Dir Reactor Plant Components Auxil Equip Div.
	Dep Dir/Advanced Submarine Reactor S&SF Mgmt.
	Dir Surface Ship Systems Division.
	Dir, Reactor Plant Safety & Analysis Division.
	Dir, Ship S&S Integrity Group.
	Dir Power Systems Group.
	Director, Materials Engineering Office.
	Exec Dir, Ship Design & Engrng Directorate.
	Program Manager for Commissioned Submarines.
	Dir, Surface Systems Contracts Division.
	Dep Cdr Ssd/Dep Peo for Clw & Auxiliary Ships.
	Director, Office of Resources Management.
	Dir, Reactor Refueling Division.
	Deputy Counsel, Naval Sea Systems Command.
	Dir Environmental Protection Office.
	Deputy Dir Environmental Health & Safety.
	Program Manager, Commercial Ship/Craft Program Office.
	Asst Deputy Commander, Fleet Maintenance Policy and Process Division.
	Asst Deputy Cdr Fleet Logistics Support.
	Director, Fleet Readiness Division.
	Deputy Program Mgr., Stnd., Missile Program Mgmt. Office.
Norfolk Naval Shipyard	Naval Shipyard Nuclear Engineering & Plan Mgr.
	Nuclear Eng & Planning Manager Budget Naval Ship.
Naval Surface Warfare Center	Technical Director.
Naval Undersea Warfare Center	Technical Director.
Naval Surface Warfare Center, Crane Division.	Executive Director.
Naval Undersea Warfare Center Div, Keyport, WA	Executive Director.
Naval Surface Warfare Center, Pt. Hueneme Division	Executive Director.
Naval Surface Warfare Center, Indian Head Division	Director.
Coastal Systems Station	Executive Director.
	Head, Coastal Sci, Technology & Analysis Dept.
	Head, Coastal Warfare Systems Department.
Naval Surface Warfare Center, Carderock Division	Director.
	Assoc Dir for Hydromechanics/Head, Hd.
	Assoc Dir for Syst/P&H Ship S/P Directorate.
	Assoc Dir for Ship A/E S/H S/Directorate.
	Assoc Dir for SS & M/HSS & M Directorate.
	Associate Director for Machinery.
Naval Surface Warfare Center, Dahlgren Division	Head, Weapons Systems Department.
	Head, Combat Systems Department.
	Exec Director.
	Deputy Executive Director.
	Head Strategic & Strike Systems Dept.
	Head, Systems Res & Technology Department.
	Head Joint Warfare Applications Dept.
	Dir, Combat Systems Design & Eng Group.
	Head Warfare Analysis & Systems Dept.
Naval Undersea Warfare Center Division, Newport, RI	Head, Submarine Sonar Department.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Naval Supply Systems Command Hdqtrs	Executive Director. Head Test and Evaluation Dept. Director for Submarine Combat Systems. Director, Submarine Warfare Systems. Director, Surface Undersea Warfare. Hd, Submarine Electromagnetic Sys Dept. Head Combat Control Systems Department. Head Torpedo Systems Technology Dept. Asst Dep Commander for Fin Mgmt/Comptroller. Counsel. Executive Director Office of Special Projects. Assistant Commander for Fleet Logistics Ops.
Naval Inventory Control Point	Executive Director. Vice Commander.
Navy Fleet Material Support Office	Executive Director.
U.S. Marine Corps Headquarters Office	Dep Dir Facilities & Services Division. Dir Contracts Division. Counsel for the Commandant. Director of Administration and Resources. Deputy Counsel for the Commandant. Director Dep Chf for Prog & Resourc Fiscal Div. Asst Dep Chf of Staff for Installations & Log. Assistant to the Deputy Commandant of the Marine Corps for M & RA. Asst Dep. Chf of Staff for Requirements & Prog.
Marine Corps Systems Command	Director, C41. Executive Director. Deputy for Financial Management.
Marine Corps Logistics Base, Albany GA	Deputy Commander for Logistics Operations.
Office of Naval Research	Dir, Ship Structures & Systems S&T Div. Dir, Mechanics & Energy Conversion S&T Div. Director, Marine Corps Science & Technology. Executive Director/Technical Director. Head Special Programs Department. Executive Dir for Acquisition Management. Dir Financial Management Comptroller. Patent Counsel. Counsel, Office of Naval Research. Head Engineering. Dir Strike Technology Division. Dir Math Computer & Information Science Div. Dir OAS S&T Processes & Prediction Division. Dir OAS at Sensing & Systems Division. Head Industrial Programs Department. Dir Congitive & Neural Science & Tech Div. Head, Human Systems S&T Department. Dir, Bimolecular & Biosyst Sci & Techn Div. Head Info Electronics & Surveil Sci Tech Dept. Dir of Surveillance Communications Electronic. Director, Electronics Division. Head Ocean Atmosphere Space Sci Tech Dept. Associate Technical Director. Director, Naval Fleet/Force Tech Innovation Office. Dir Materials Sci and Technology Division. Assoc for Intergration OAS St Sensing Sys Div.
Naval Research Laboratory	Chf Sci, Lab for Structure of Matter. Dir of Research. Assoc Dir of Res For Matl Sci & Comp Technol. Superintendent, Chemistry Division. Superintendent, Optical Sciences Div. Superintendent Space Science Div. Supt, Radar Div. Supt, Materials Sci and Tech Division. Supt, Acoustics Div. Superintendent, Plasma Physics Div. Superintendent Electronics Technology Div. Superintendent, Info Technol Div. Supt, Tactical Electronic Warfare Div. Chief Scientist Lab for Compt Phy Fluid Dynam. Superintendent, Remote Sensing Division. Assoc Dir of Res for Business Operations. Chief Sci & Head, Beam Physics Program.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Superintendent, Marine Meteorology Division.
	Mgr, Joint Space Systems Technology Programs.
	Assoc Dir Res for Ocean & Atmospheric Sci Tec.
	Superintendent Ctr Bio/Molecular Science Eng.
	Head Elect Warfare Strategic Planning Org.
	Assoc Dir of Res for Warfare Sys & Senors Res.
	Superintendent, Space Syst Development Dep.
	Superintendent, Oceanography Division.
	Superintendent, Spacecraft Engineering Dep.
	Dir, Naval Center for Space Technology.
	Superintendent, Marine Geosciences Division.
Defense Nuclear Facilities Safety Board:	
Defense Nuclear Facilities Safety Board	Dep Gen Counsel for Pol & Litigation
	Deputy General Manager.
	Tech Adv for Hazards Anal & Health Physics.
	Technical Advisor for Technical Studies.
	Technical Lead for Engineering Programs.
	Technical Lead for Nuclear Weapons Programs.
	Technical Lead for Materials Processing & Environmental Restoration Programs.
	Technical Lead for Materials Processing & Environmental Restoration.
Department of Education:	
Ofc of the Chief Financial Officer	Director, Grants and Contracts Service.
	Deputy Chief Financial Officer.
	Director, Fin Rep & Systems Operations.
	Dir Financial Management Operations.
Office of the Chief Information Officer	Deputy Chief Information Officer.
	Chief Information Officer.
Office of Management	Dir Admin Resource Management Service.
	Chairperson, Education Appeal Board.
	Dir Human Resources Group.
Office of Inspector General	Assistant Inspector General for Audits.
	Dep Asst Gen for Audit Operations.
	Dep Asst Inspector Gen for Techn Audit Svc.
	Associate Inspector General.
	Counsel to the Inspector General.
	Deputy Inspector General.
	Asst Inspector General for Operations.
	Asst Inspec General for Operations East Area.
	Asst Inspec Gen for Investigation Services.
	Asst Inspector General for Audit Services.
	Deputy Assistant IG for Audit Services.
Office of the General Counsel	Asst Gen Coun For Busin & Adm Law.
	Asst General Counsel for Educational Equity.
	Asst Gen Counsel for Regulations.
	Asst Gen Coun for Div of Legislative Counsel.
	Asst Gen Coun for Postsecondary Ed & Ed Res.
Office of Educational Research and Improvement	Special Assistant to Assistant Secretary.
National Center for Education Statistics	Assoc Commr/Surveys & Cooperative Syst Group.
	Associate Commr for Data Collection and Dissemination.
	Assoc Comr for Stat Std & Methodology Div.
	Assoc Commissioner Educ Assessment Division.
Student Financial Assistance	Chief Financial Officer.
Department of Energy:	
Office of Counterintelligence	Deputy Director.
Offfice of Security and Emergency Operations	Dir Ofc of Classification & Technology.
	Director, Office of Security Affairs.
Office of Safeguards & Security Evaluations	Director.
	Deputy Director.
Office of Chief Financial Officer	Dir Ofc of Budget.
	Dep Dir Ofc of Budget.
	Director, Budget Analysis Division.
	Director Capital Accounting Center.
	Director, Budget Operations Division.
	Dir Ofc of Dep Accounting & Fin Sys Dev.
	Dir Ofc of Financial Policy.
	Dir Ofc Compliance and Audit Liaison.
	Deputy Controller.
	Controller.
Asst Secy for Defense Programs	Assoc Dep Asst Secy for Military Application.
	Nuclear Weapons Complex Project Manager.
	Assoc Das for Human & Administrative Res.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Assoc Das for Program A&F Management.
Office of Economic Impact & Diversity	Dir of Sm and Disadv Bus Utilz.
Asst Secy for Energy Efficiency & Renewable Energy	Assoc Dep Asst Secretary for Utility Tech.
	Manager, Golden Field Office.
Asst Secy for Environment, Safety & Health	Dir Nuclear Operations & Analysis.
	Dir Office of Environmental Compliance.
	Deputy Director Ofc of ES&H Evaluations.
	Dir Office of Enforcement & Investments.
	Dir Ofc of Nuclear Safety Policy & Standards.
	Dir Occupational Safety & Health Policy.
Energy Information Administration	Dir, Ofc of Oil and Gas.
	Dir Ofc of Coal Nucl Elec & Altern Fuels.
	Director, Ofc of Energy Markets & End Use.
	Director Economics & Statistic Division.
	Director, Statistical and Methods Group.
	Director Quality Assurance Division.
	Director, Natural Gas Division.
	Director, Petroleum Division.
	Dir, Ofc of Integration Nal & Forecasting.
	Director, Coal 7 Electrical Power Division.
	Director, Electrical Power Division.
	Director, International Economic & Greenhouse Gases Division.
	Dir Survey Mgmt Div.
	Director, Information Technology Group.
Asst Secy for Environmental Management	Director, Office of Research & Development.
	Assoc DAS for Oversight & Self-Assessment.
	Director, Office of Acquisition Management.
	Director, Office of Budget.
Office of Science	Dir Chem Sci Div.
	Dir Adv Egy Proj Div.
	Chf Processes and Tech Br.
	Dir High En Physics Div.
	Director, Human Health & Assessment Div.
	Deputy Dir for Management.
	Dir, Health Effects & Life Sci Research Div.
	Deputy Dir for Nuclear Safety Safeguard.
	Dir, Office of Assessment & Support.
	Assoc Dir Ofc of Computational & Tech Research.
	Director, Financial Management Division.
Office of Field Management	Dir, Ofc of Resource Management & Services.
Albuquerque Operations Office	Director, Weapons Surety Division.
	Dir Transportation Safeguards Div.
	Dir, Production Assurance & Ops Division.
	Dir, Weapons Programs Div.
	Dir of Emergency Plans & Operations.
	Asst Manager for Management & Administration.
	Carlsbad Area Office Manager.
	Chief Financial Officer.
	Director, Ops Management Division.
Chicago Operations Office	Acquisition & Asst Group Manager.
	Fermi Group Manager
	Asst Mgr for Laboratory Management.
	Chief Financial Officer.
Idaho Operations Office	Assistant Manager for Administration.
	Chief Financial Officer.
	Asst Mgr Ofc of Program Execution.
	Asst Manager for Applied E&T Transfer.
Nevada Operations Office	Chief Counsel.
	Assistant Manager for Administration.
	Asst Manager for Business & Financial Service.
Ohio Field Office	Manager Ohio Filed Ofc.
	Deputy Manager, Ohio Field Office.
	Director, Fernald Environmental Management Projects.
Oakland Operations Office	Field Chf Fin Officer and Business Manager
	Assoc Manager for Site Management.
Oak Ridge Operations Office	Asst Manager for Administration
	Chief Financial Officer.
Rocky Flats Office	Manager, Rocky Flats Field Office.
	Deputy Manager, Rocky Flats Field Office.
	Dep Asst Mgr for Matl Stabilization & Disp.
Richland Operations Office	Asst Mgr Business Mgmt & Chief Fin Ofcr
	Source Evaluation Board Advisor.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Savannah River Operations	Asst Manager for Business & Logistics.
Office of Hearings & Appeals	Dep Dir for Legal Analysis.
	Dep Dir for Financial Analysis.
	Dep Dir for Econ Analysis.
Office of Management and Administration	Dir HQ Personnel Operations Div.
	Director, Office of Administration.
	Associate Dir, Office of Resource Mgmt.
	Dep Dir of Administrative Services (Wash, DC).
	Dep Dir of Personnel.
	Director, Office of Procurement and Assistance Policy.
	Dir Ofc of Mgnt Sys (Competition Advocate).
	Director Ofc Contract & Resource Management.
	Executive Assistant to the Director.
	Dir, Headquarters & Executive Personnel Serv.
	Chief Information Officer/Director of Information Management.
Office of Inspector General	Asst Inspector General for Investigations.
	Manager, Western Regional Audit Office.
	Director, Audit Policy, Plans & Programs.
	Manager, Eastern Regional Audit Office.
	Dir Capitol Regional Audit Office.
	Deputy Asst Inspector Gen for Investigations.
	Spec Asst for Policy and Planning.
	Counsel to the Inspector General.
	Dir, Office of Contractor Employee Protection.
	Asst Inspector General for Resource Mgmt.
	Principal Deputy Inspector General.
	Assistant Inspector General for Audits.
	Deputy Inspector General for Inspections.
	Deputy Inspector General for Audits.
	Director for Financial Audits.
Office of Fissile Materials Disposition	Deputy Director.
Office of Nuclear Energy, Science & Technology	Dir Advanced Submarine Systems Division.
	Dir Instrumentation & Control Div.
	Asst Program Manager for Surface Ships.
	Deputy Director for Naval Reactors.
	Senior Naval Reactors Rep (Pearl Harbor).
	Director Nuclear Technology Div.
	Dir Reactor Engineering Division.
	Head, Core Manufacturing Branch.
	Dep Director Reactor Materials Division.
	Director, Fiscal Division.
	Asst Manager for Operations.
	Program Manager for Shipyard Matters.
	Dir Nuclear Components Division.
	Senior Naval Reactors Representative.
	Manger, Idaho Branch Office.
	Program Manager Submarine Technology Develop.
	Assoc Dir, Isotope Production & Distribution.
	Prog Mgr for Analysis & Regulatory Matters.
	Director Acquisition Division.
	Director for Submarine Refuelings.
	Senior Naval Reactors Representative.
	Dep Program Mgr for Commissioned Subs.
	Prog Mgr Prototype & Mooored Training Ship.
	Dir Regulatory Affairs.
Office of Nonproliferation and National Security	Special Asst to the Ast Secretary.
	Dir Ofc of Security Affairs.
	Dep Dir, Ofc of Security Affairs.
Western Area Power Administration	Asst Admr for Mgmt Svcs.
	Chief Administrative Officer.
	Chief Financial Officer.
Environmental Protection Agency:	
Office of the Chief Financial Officer	Deputy Chief Financial Officer.
Office of the Comptroller	Deputy Comptroller.
	Dir Ofc of the Comptroller.
	Deputy Comptroller
	Director, Annual Planning & Budget Division.
	Director, Financial Services Division.
Office of Planning, Analysis & Accountability	Director, Office of Planning Analy & Account.
Ofc of the Asst Admr for Admin & Resources Management	Director, Ofc of Pol & Resource Mgmt
	Principal Dep Asst Admr for Amd & Res Mgmt.
Office of Administration	Dir Ofc of Administration.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Deputy Dir Ofc of Administration.
	Dir, Facilities & Support Services Division.
	Dir, Sfty, Health & Environmental Mgmt Div.
Office of Information Resources Management	Dir, Ofc of Information Resources Management
	Dep Dir Ofc of Information Resources Mgmt.
Ofc of Administration & Resources Mgmt—Cincinnati OH	Dir Ofc of Admin and Resources Management.
Office of Administration & Resources Mgmt—Rtp, NC	Director Office of Administration & Res Mgmt.
Ofc of Human Resources and Organizational Services	Dir Office of Human Resources & Org Services.
	Dep Dir Ofc of Human Resources & Org Services.
	Assoc Director for Reengineering & Automation.
	Dir Exec Resources & Special Programs Staff.
	Director, Org & Management Consulting Serv.
	Dir Strategic Planning & Policy Systems.
Office of Acquisition Management	Dir, Superfund/Rcra Regl Procurement Ops/Div.
	Director, Office of Acquisition Management.
	Dep Dir, Office of Acquisition Management.
Office of Grants and Debarment	Dir, Grants Admin Div.
	Director, Office of Grants & Debarment.
	Dep Dir Ofc of Grants and Debarment.
Office of the Asst Admr for Enf & Comp Assurance	Director, Ofc of Environmental Justice.
Office of Federal Activities	Dir, International Enforcement Program Div.
Office of Regulatory Enforcement	Director, Office of Regulatory Enforcement.
	Dep Dir, Office of Regulatory Enforcement.
	Dir Air Enforcement Division.
Office of Criminal Enforcement, Forensics & Training	Dir Natl Enforcement Training Institute.
	Dir Ofc of Criminal Enforce Forensics Train.
	Director, Criminal Investigations Division.
	Deputy Director, Office of Criminal Enforcement, Forensics Training.
Office of Compliance	Director, Office of Compliance.
	Dir, Enforcement Planning, T&D Division.
	Dir, Manufacturing E&T Division.
	Deputy Director, Office of Compliance.
	Dir Import Export Program.
Office of Site Remediation Enforcement	Director, Ofc of Site Remediation Enforcement
	Dep Dir, Ofc of Site Remediation Enforcement.
Federal Facilities Enforcement Office	Dir Federal Facilities Enforcement Office.
Office of the Inspector General	Deputy Inspector General
	Asst. Inspector General for Planning, Analysis & Results.
Office of Investigations	Assist Inspector Gen for Investigations
	Dep Asst Inspector General for Investigations.
Office of Audit	Asst Inspector General for Audits.
	Prin Dep Asst Inspector Gen for A&F Audits.
	Dep Asst Inspector General for External Audits.
	Dep Asst Inspector General for Internal Audit.
Office of Management	Assistant Inspector General for Management.
Office of Wastewater	Director, Municipal Support Division
	Deputy Director, Municipal Support Division.
Office of Science and Technology	Dir, Standards & Applied Science Division
	Dir, Health & Ecological Criteria Division.
Office of Wetlands, Oceans and Watersheds	Dir, Assessment & Watershed Protection Div.
	Dir, Oceans & Coastal Protection Division.
	Director, Wetlands Division.
	Director, Engineering & Analysis Division.
Office of Ground Water & Drinking Water	Dir, E&P Implementation Division.
	Director, Standards & Risk Mgmt Division.
	Dir Implementation & Assistance.
Ofc of the Asst Admr for Solid Waste and Emgy Resp	Director, Outreach and Special Projects Staff
	Director, Federal Facilities Restoration and Reuse Office.
Office of Solid Waste	Dir Hazardous Waste Identification Division.
	Dir Permits & State Prog Division.
	Director, Hazardous Waste Minimization & Management Division.
Office of Air Quality Planning and Standards	Dir, Emission Standards Division.
	Dir Air Quality Strategies & Standards Div.
	Dir Emissions Monitoring & Analysis Division.
	Deputy Dir Ofc of Air Quality Planning & Stds.
Office of Mobile Sources	Dir Advanced Technology Support Division
	Dir Fuels & Energy Division.
Office of Radiation & Indoor Air	Director, Indoor Environments Division.
Office of Atmospheric Programs	Director, Acid Rain Division
	Director, Atmospheric Pollution Prevention Division.
Office of the Asst Admr for Prevention P&T Substances	Dir Ofc of Program Management Operations.
Office of Pesticide Programs	Dir-Registration Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Office of Pollution Prevention and Toxics	Dir, Biological & Economic Analysis Division. Dir, Spec Review & Reregistration Division. Dir, Envir Fate and Effects Division. Dir Policy & Special Projects Staff. Dir Antimicrobials Division. Dir Field & External Affairs Division. Dir Inf Resources & Services Division. Director, Biopesticides and Pollution Prevention Division. Director, Environmental Assistance Division. Dir, Economic Exposure and Technology Div. Director, Chemical Control Division. Director, Information Management Division. Dir, Pollution Prevention Div. Dir Chemical Management Division. Dir Health Effects Division. Director, of Risk Assessment Division.
Office of Resources Management and Administration	Dir Ofc of Resources Mgnt & Admin.
Office of Science Policy	Director, Office of Science Policy.
National Health & Environmental Effects Res Lab (RTP)	Dir Natl Health & Envir Effects Res Lab (RPT). Assoc Dir for Health NHEERL (RTP). Association Director for Ecology NHEERL (RTP). Deputy Director for Management.
Western Ecology Division—Corvallis	Dir Western Ecology Division Corvallis.
Gulf Ecology Division—Gulf Breeze	Director, Gulf Ecology Division.
Mid-Continent Ecology Division	Director, Mid-Continent Ecology Division.
National Exposure Research Laboratory (RTP)	Dir Natl Exposure Res Laboratory (RTP). Dep Dir for Management NERL (RTP). Assoc Dir for Ecology NERL (RTP).
Environmental Sciences Division—Las Vegas	Dir Environmental Sciences Division.
Ecosystems Research Division—Athens	Dir Ecosystems Res Div Athens.
National Risk Mgmt Research Laboratory (Cincinnati)	Dir Natl Risk Mgmt Lab (CINN). Dep Dir for Mgmt NRML (CINN). Assoc Dir for Health NRML (CINN). Director, Water Supply & Water Resources Division.
Air Pollution Prevention and Control Division—RTP	Dir Air Pollution Prevention & Control Div.
Subsurface Processes and Systems Division—ADA	Dir Sub-Surface Process & Systems Division.
National Center for Environmental Assessment	Dir Natl Ctr for Environmental Assessment. Associate Director for Health, NCEA. Associate Director for Ecology NCEA. Deputy Director for Management.
National Center for Environmental Assessment—Washington	Dir Natl Ctr Environ Assessment.
National Center for Environmental Assessment—RTP	Dir Natl Ctr Environ Assessment.
National Center for Environmental Assessment—Cincinnati	Dir Natl Ctr for Environmental Assessment.
Natl Center for Environmental Res & Quality Assurance	Deputy Dir for Mgmt (NCERQA). Dir Environmental Engineer Research Division. Associate Director for Science (NCERQA). Dir Natl Ctr for Env Res & Quality Assurance.
Region I—Boston	Regional Counsel. Dir Ofc of Ecosystem Protection. Dir Ofc of Site Remediation Restoration. Asst Regional Administrator. Dir, Ofc of Administration & Resources Mgmt. Special Assistant to Regional Administrator.
Region II—New York	Director, Office of Environmental Stewardship. Asst Regl Admr for Policy and Management. Regional Counsel. Dir, Office of Emergency & Remedial Response. Dir Div of Environmental Plnng & Protection. Dir, Div of Enforcement & Compliance Asst. Dir, Div of Environmental Science & Assessment. Director, Caribbean Environmental Protection Division.
Region III—Philadelphia	Director, Water Management Division. Regional Counsel. Director, Hazardous Waste Mgmt Div. Asst Reg Admin for Policy & Management. Dir, Air Management Division. Dir Chesapeake Bay Program Office. Director, Science & Ecosystem Support Div. Director, Air Protection Division. Director, Hazardous Site Cleanup Division.
Region IV—Atlanta	Dir Water Management Division. Asst Regional Admin for Policy and Mgmt.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Region V—Chicago	Regional Counsel. Director Waste Management Division. Director, Air, Pesticides and Toxics Management Division. Director Air Management Division. Director Water Management Division. Director, Resources Management Regional Counsel. Dir Waste Pesticides & Toxics Division. Dir Great Lakes Natl Prog Ofc.
Region VI—Dallas	Director Superfund Division. Asst Regional Admr for Management. Regional Counsel. Director, Compliance A&E Division. Dir Superfund Division. Dir Water Quality Protection Division. Dir Multimedia Plann & Permitting.
Region VII—Kansas City	Regional Counsel. Asst Regional Admin for Policy & Management. Dir Superfund Division. Dir Air RCRA and Toxics Division. Dir Water Wetlands & Pesticides Division.
Region VIII—Denver	Dir Ecosystems Protection & Remediation. Dir Ofc of Pollution Prevention State Tribal. Dir Ofc of Tech & Mgmt Services.
Region IX—San Francisco	Regional Counsel. Director, Water Management Division. Director, Air Management Division. Regional Counsel. Asst Regional Admr for Policy & Management. Dir, Strategic Planning & Emerging Issues. Dir Superfund Division. Director, Cross Media Division.
Region X—Seattle	Director, Water Management Division. Regional Counsel. Asst Reg Admr for Environmental Cleanup Ofc. Asst Regl Admr for Policy & Management. Dir Superfund Division. Director, Water Management Division. Director, Office of Ecosystems and Communities. Director, Office of Environmental Cleanup.
Equal Employment Opportunity Commission:	
Office of the Chairman	Inspector General.
Office of Field Programs.	District Director (Baltimore). Dist Dir (New York). Dist Dir (Atlanta). Dist Dir (Houston). District Director (Detroit). Dist Dir (San Francisco). Dist Dir (Dallas). Dist Dir (Chicago). Dist Dir (St Louis). Dist Dir (Miami). Dist Dir (Indianapolis). Dist Dir (Memphis). District Director (Los Angeles). Dist Dir (Denver). Dist Dir (Birmingham). Dist Dir (New Orleans). Dist Dir (Phoenix). District Dir (San Antonio). Dist Dir (Charlotte). District Director (Seattle). District Director (Cleveland). Dist Dir (Philadelphia). District Director (Milwaukee). Program Manager.
Field Management Programs	Director Field Management Programs.
Field Coordination Programs	Director Field Coordination Programs.
Federal Communications Commission:	
Office of Inspector General	Inspector General.
Office of the Managing Director	Assoc Managing Director/Human Resources Mgmt.
Office of Engineering & Technology	Assistant Bureau Chief for Technology.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Compliance and Information Bureau	Chief Enforcement Division.
Common Carrier Bureau	Chief, Competitive Pricing Division.
	Chief Accounting & Audits Division.
Mass Media Bureau	Chief Audio Services Division.
	Chief Video Services Division.
	Chf, Enforcement Div.
Federal Emergency Management Agency:	
Office of the Director.	Chief of Staff.
Office of Financial Management	Chief Financial Officer.
	Deputy Chief Financial Officer.
	Senior Procurement Executive.
Office of Human Resources Management	Director, Ofc of Human Resources Management.
Office of Inspector General	Deputy Inspector General.
	Asst Inspector General for Auditing.
	Asst Inspector General for Investigations.
Mitigation Directorate	Sr Policy Advisor to the Associate Director.
	Director, Program Support Division.
Response & Recovery Directorate	Div Dir, Human Services Support Division.
	Div Dir, Infrastructure Support Division.
Federal Insurance Administration	Deputy Administrator.
Federal Energy Regulatory Commission (DOE):	
Ofc of Chief Accountant	Director, Division of Accounting Systems.
	Director, Division of Gas and Oil Operations.
	Dir, Div of Planning & Policy Development.
	Chief Accountant and Deputy Director.
Ofc of Hydropower Licensing	Dir Div of Dam Safety & Inspections.
Federal Labor Relations Authority:	
Office of the Chair	Solicitor, Chief Counsel.
Office of Member	Chief Counsel.
Office of Member	Chief Counsel.
Federal Service Impasses Panel	Exec Director FSIP.
Ofc of the Executive Director	Executive Director.
Ofc of the General Counsel	Deputy General Counsel,
	Director of Operations & Resources Management.
Regional Offices	Regional Director, Washington, D.C.
	Regional Director, Boston.
	Regional Director, Atlanta.
	Regional Director, Dallas.
	Regional Director, Chicago Illinois.
	Regional Director, San Francisco.
	Regional Director, Denver.
Federal Maritime Commission:	
Office of the Secretary	Secretary.
Office of the General Counsel	Dep Gen Cnsl for Reports Opinions & Decisions.
Office of the Managing Director	Dep Managing Dir,
	Deputy Managing Director.
Bureau of Tariffs, Certification and Licensing	Prog Mgr (Dir Bur of Tariffs C&L).
Bureau of Administration	Dir, Bureau of Administration.
Bureau of Economics & Agreement Analysis	Prog Manager (Dir Bur of E&A Analysis).
Bureau of Enforcement.	Deputy Director Bureau of Enforcement.
	Dir Bureau of Enforcement.
Federal Retirement Thrift Investment Board:	
Federal Retirement Thrift Investment Board	Director of Investments.
	Director of Contracts & Administration.
	Director of Automated Systems.
	Director of Accounting.
	Director of Communications.
	Associate General Counsel.
	Director of the Office of Benefits & Investments.
Federal Trade Commission:	
Office of the Inspector General	Inspector General.
Ofc of Executive Director	Deputy Exec Dir for Management.
	Chief Information Officer.
	Deputy Executive Director.
General Services Administration:	
Office of Management and Workplace Programs	Director of Human Resources.
	Dir of Management Services.
Office of the Chief People Officer	Chief Information Officer.
Office of Governmentwide Policy	Deputy Associate Admin for Acquisition Policy.
	Director, Governmentwide Information Systems.
	Deputy Assoc Administrator for Real Property.
	Director of Intergovernmental Solutions.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Office of Inspector General	Asst Inspector Gen for Auditing.
	Deputy Inspector General.
	Deputy Asst Inspector General for Auditing.
	Counsel to the Inspector General.
	Asst Inspector Gen for Investigations.
	Dep Asst Inspector General for Investigations.
Office of the Chief Financial Officer	Director of Finance.
	Director of Budget.
	Chief Financial Officer.
	Dir of Financial Management Systems.
Public Buildings Service	Assistant Commr for Fed Protective Service.
	Dep Asst Commissioner for Property Management.
	Asst Comm for Portfolio Management.
	Dep Asst Comr for Special Projects.
	Asst Comr for Property Acq & Realty Services.
	Asst Commr for Business Development.
	Assistant Commr for Property Disposal.
	Assistant Commissioner for Property Devel.
	Asst Commissioner for Strategic Innovations.
	Asst Commissioner for Financial & Info System.
	Assistant Commissioner for Business Performance.
Federal Technology Service	Assistant Commissioner for Serv Development.
	Assistant Reg Admin for Fed Tech Service.
	Assistant Commissioner for Service Delivery.
	Asst Commr for Info Technology Integration.
	Assistant Commissioner for Regional Services.
	Asst Commissioner for SP & Business Dev.
	Asst Commissioner for Acquisition.
	Senior Executive Blue Pages Project.
	Assistant Commissioner for Information Security.
	Assistant Commissioner for Sales.
Office of the Chief Information Officer	Assistant Chief Information Officer.
	Assistant Chief Information Officer.
Federal Supply Service	Asst Commissioner for Acquisition.
	Asst Comr for Transportation & Property Mgt.
	Asst Comm for Bus Management & Marketing.
	Asst Comm for Distribution Mgt.
	Dep Asst Commissioner for Acquisition.
	Asst Chief Information Officer.
	Asst Comm for Vehicle Acquisition & Leasing Svc.
New England Region	Asst Reg Admr for Public Bldg Service.
Northeast & Caribbean Region	Asst Reg Admr for Public Blds Service.
	Asst Reg Admr for Federal Supply Service.
Mid-Atlantic Region	Asst Reg Admr for Public Blds Service.
	Asst Regl Admr Federal Supply Service.
National Capital Region	Assistant Regional Administration, PBS, Ncr.
Southeast Sunbelt Region	Asst Reg Admr for Public Blds Service.
	Asst Reg Admr for Federal Supply & Services.
Great Lakes Region	Asst Reg Admr for Public Blds Service.
The Heartland Region	Asst Reg Admr for Public Blds Service.
Greater Southwest Region	Asst Reg Admr for Public Blds Service.
	Asst Regional Admin for Federal Tech Service.
	Asst Reg Admr for Federal Supply Service.
Rocky Mountain Region	Asst Reg Admr for Public Blds Service.
Pacific Rim Region	Asst Regl Admr for Public Buildings Services.
	Asst Reg Admr for Federal Supply Service.
	Senior Advisor.
Northwest/Arctic Region	Asst Regional Administrator, PBS Region 10.
Department of Health and Human Services:	
Odas for Budget	Dir Div of Integrity & Organ Review.
Odas for Finance	Dep Asst Sec, Finance.
	Dir, Office of Financial Policy.
Odas for Grants & Acquisition Management	Dep Asst Secy, Ogam.
OAS for Planning and Evaluation	Dept to Deputy Asst Secry for Plann & Evaluat.
OAS for Public Health and Science	Dir Div of Research Investigations.
	Dir Ofc of HIV/AIDS Policy.
	Dep Dir Ofc of Management.
	Reg Health Administrator.
	Director, Office of Research Integrity.
Associate General Counsel Divisions	Assoc Gen Coun, Business & Adm Law Division.
	Dep Assoc Gen Counl, Bus & Adm Law Div.
Office of the Inspector General	Principal Dep Inspector General.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Deputy Inspector General for Mgmt & Policy.
	DEO Inspector General for Legal Affairs.
Odig for Investigations	Dep Insp Gen for Investigations.
	Asst Insp General for Criminal Investigations.
	Asst Insp Gen for Civil & Adm Remedies.
	Asst Insp Gen for Investigation P&O.
	Dep Insp General for Enforcement & Compliance.
Odig for Audit Services	Dep Inspector General for Audit Services.
	Asst Insp Gen for Adm of C/F & Agin Audits.
	Asst Inspector Gen for Health Care Fin Audits.
	Asst Inspector Gen for Audit Pol & Oversight.
	Asst Insp Gen for Public Health Serv Audits.
Odig for Evaluation & Inspections	Dep Insp Gen for Evaluation & Inspections.
Program Support Center	Dir Program Support Center.
	Dep Dir of Operations.
Office of Financial Management Service	Director, Financial Management Service.
Office of Program Support	Dir Ofc of Financial Management.
Health Care Financing Administration	Director, Ofc of Internal Customer Suupport.
Office of the Actuary (OACT)	Dir, Ofc of the Actuary (Chief Actuary).
Center for Beneficiary Services (CBS)	Deputy Director, Center for Beneficiary Services (Medicare Contractor Mgmt).
Center for Medicaid and State Operations (CMSO)	Director, Ofc of Medicare & Medicaid Cost Est.
Office of Information Services (OIS)	Director, Office of Information Services (Chief Information Officer)
	Dep Dir Ofc of Info Services.
Office of Financial Management (OFM)	Deputy Director, Ofc of Financial Management.
	Dep Dir Ofc Financial Management.
	Dir Program Integrity Group.
	Dir Financial Services Group.
Substance Abuse & Mental Health Services Administration	Assoc Admin for Policy & Prog Coordinator.
Center for Substance Abuse Prevention	Director, Division of Workplace Programs
	Dir, Div of State & Community Systems Dev.
Center for Mental Health Services	Director Center for Mental Health Services
	Dir Div of State & & Community Systems Develop.
Centers for Disease Control & Prevention	Director, Financial Management Office.
Natl Institute for Occupational Safety & Health	Assoc Director for Management & Operations.
National Center for Chronic Disease Prevention & Hlth Promotion	Director, Office on Smoking and Health.
Center for Veterinary Medicine	Director, Office of Surveillance.
Office of Chief Counsel	Deputy Chief Counsel for Program Review.
Office of Management and Systems	Director, Office of Financial Mgmt.
Office of Regulatory Affairs	Assoc Comr for Regulatory Affairs.
	Dep Assoc Comr for Regulatory Affairs.
	Regl Food & Drug Director, NE Region.
	Regl Food & Drug Director, Mid-Atlantic Region.
	Regl Food & Drug Director, Southeast Region.
	Regl Food & Drug Director, Southwest Region.
	Regl Food & Drug Director, Pacific Region.
	Dir Ofc of Criminal Investigations.
Center for Biologics Evaluation and Research	Dir Div of Biostatistics & Epidememiology.
	Dir Ofc of Therapeutics Research & Review.
	Dir Ofc of Blood Research & Review.
	Dir Ofc of Sys & Management.
	Director, Office of Compliance and Biologics Quality.
	Special Advisor.
Center for Drug Evaluation and Research	Dir, Center for Drug Evaluation & Research.
	Director, Office of Management.
	Assoc Dir for Med Pol Dir Ofc of Drug Eval I.
	Dir, Div of Neuropharmacological Drug Prod.
	Dir, Div of Midical Imaging S&D Products.
	Director, Office of Generic Drugs.
	Associate Director for Drug Monograph.
	Dir, Office of Epidemiology & Biostatistics.
	Dep Dir, Ofc of Epidemiology & Biostatistics.
	Director, Office of Compliance.
	Dir, Div of Scientific Investigations.
	Director, Division of Biopharmacentics.
	Dep Ctr for Pharmaceutical Science.
	Senior Advisor for Policy.
	Deputy for Scientific & Medical Affairs.
	Dir Ofc of Drug Evaluation V.
Center for Devices and Radiological Health	Dir Office of Device Evaluation.
	Dir, Division of Cardiovascular Devices.
	Dir, Div of General & Restorative Devices.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Center for Food Safety and Applied Nutrition	Dir, Office of Compliance. Dir, Office of Science and Technology. Dir, Div of Reproductive Abdominal Ear Throat. Director, Office of Seafood Dir Ofc of Premarket Approval. Dir Ofc of Field Programs. Dir, Ofc of Plant & Diary Foods & Beverages. Director, Office of Food Labeling. Dir, Ofc of Pol, P&S Initiatives.
Center for Veterinary Medicine	Director, Office of Science Dir, Ofc of New Animal Drug Evaluation.
National Center for Toxicological Research	Director, Div of Biometry.
Health Resources & Services Administration	Director, Office of Special Programs Director, Office of Science and Epidemiology.
Bureau of Health Resources Development	Dep Dir, Bureau of Health Resources Dev.
Office of the Director	Director, Div of Financial Management. Director, Division of Contracts & Grants. Associate Director for Extramural Affairs. Associate Director for Disease Prevention. Dir, Ofc of Medical Applications of Research. Associate Director for Administration. Director, Office of Policy for Extramural Research Administration. Assistant Director for Financial Management. Senior Advisor for Policy. Chief Operating Officer.
Natl Heart, Lung, & Blood Institute	Director, Office of Reports and Analysis. Dir Div of Lung Diseases. Dir, Div of Blood Diseases & Resources. Director, Division of Extramural Affairs. Assoc Dir for International Programs. Dir Ofc of Biostatics Research. Dep Dir Div of Heart Vascular Diseases. Dep Dir Div of Epidem & Clinical Application. Director, Epidemiology and Biometry Program. Director, National Center for Sleep Disorders.
Intramural Research	Chf Lab of Biochemical Genetics. Chf Lab of Biochemistry. Chief Lab of Biophysical Chemistry. Chief Macromolecules Section. Chf, Intermediary M & B Section. Chf, Lab of Kidney & Electrolyte Metabolism. Chief Lab of Cardiac Energetics. Chief, Metabolic Regulation Section.
National Cancer Institute	Assoc Dir for Intramural Management. Assoc Director for Extramural Management. Associate Director, Cancer Diagnosis Program. Chief Financial Officer. Associate Director, Referral Review and Program Coordination. Deputy Director for Administrative Operations.
Division of Cancer Biology, Diagnosis and Centers	Chf, Microbial G & B Section, Lab of Biochem. Chief, Lab of Biochem Intramural Res Prog. Assoc Dir, Extramural Research Program. Dep Dir, Div of Cancer Biology Diag & Centers. Chief Dermatology Br, Intramural Res Prog. Chief, Cell Mediated Immunity Section. Chief, Lab of Tumor & Biol Immunology, IRP. Dir, Div of Cancer Biology Diagnosis & Ctrs. Assoc Dir, Ctrs Training & Resources Prog.
Division of Cancer Etiology	Chief Lab of Biology. Chief Laboratory of Molecular Carcinogenesis. Chf Lab of Experimental Pathology Dir, Div of Cancer Etiology.
Division of Cancer Prevention & Control	Dep Dir, Div of Cancer Prevention & Control. Associate Dir, Surveillance Program, DCPC. Assoc Dir, Early D & C Oncology Program.
Division of Extramural Activities	Dir, Div of Extramural Activities Deputy Dir, Div of Extramural Activities.
Division of Cancer Treatment	Chf-Radiation Oncology Br Assoc Dir,Cancer Therapy Evaluation Program.
Natl Institute of Diabetes & Digestive & Kidney Dis	Dir Div Kidney Urologic & Hematologic Diseases. Dir Division of Extramural Activities. Chf, Lab of Molecular & Cellular Biology.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Intramural Research	Dep Dir for Management & Operations. Associate Director for Management and Operations. Chief Section on Biochemical Mechanisms. Chf Sect on Metabolic Enzymes. Chf Sect on Physical Chemistry. Chief, Section on Molecular Structure. Chief Theoretical Biophysics Section. Chief, Laboratory of Bio-Organic Chemstry. Chief Oxidation Mechanisms Section L B C Chief Laboratory of Biochemistry & Metabolism. Clinical Dir & Chief, Kidney Disease Section. Chief, Section on Molecular Biophysics. Chf, Sec Carbohydrates Lab of Chemistry/NIDDK. Chief, Laboratory of Neuroscience, NIDDK. Chf, Laboratory of Medicinal Chemistry. Chief, Morphogenesis Section.
Natl Inst of Arthr & Musculoskeletal & Skin Diseases	Director, Extramural Program Deputy Dir.
National Library of Medicine	Dep Dir, Natl Lib of Medicine. Dep Dir for Res and Education. Associate Director for Library Operations. Assoc Dir for Extramural Programs. Dir, LHNC for Biomedical Commun. Dep Dir Lister Hill Natl Ctr for Biomed Comms. Director, Information Systems. Dir Natl Ctr for Biotech Info. Assoc Dir for Health & Info Prog Development.
Natl Inst of Allergy & Infectious Diseases	Associate Director for Administrative Management. Dir, Div of Allergy/Immunology/Transplantatn. Chf, Lab of Parasitic Diseases. Dir, Div of Microbiology/Infectious Diseases. Chief, Lab of Immunogenetics. Dir, Div of Extramural Activities. Ch, Lab of Microbial Structure and Function. Chief Lab of Molecular Microbiology. Dir, Div Acquired Immunideficiency Syndrome. Chief, Biological Resources Branch. Head, Lymphocyte Biology Section. Chief, Laboratory of Infectious Diseases. Dep Dir Div of Acquired Immunodeficiency. Head Epidemiology Section. Chief, Laboratory of Malaria Research. Dir Div Intramural Research. Dep Chief Lab of Imm & Head Lymp Biol Section.
Natl Inst on Aging	Scientific Director Gerontology Rsch Cntr. Clin Director and Chief Clin Physiology Br. Associate Dir for Behavioral Sciences Res. Assoc Dir Biology of Aging Program. Assoc Dir, Office of Extramural Affairs. Assoc Dir, Epidemi, Demo, & Biometry Program. Assoc Dir, Ofc of Plnng, A & I Activities. Assoc Dir Neurosci & Neuropsych of Aging Prog. Associate Director for Administration.
Natl Inst of Child Health & Human Development	Chief, Laboratory of Molecular Genetics. Chf, Endocrinology & Reproduction Research Br Director Ctr Forres for Mothers & Children Director Cntr for Population Research. Chief, Section on Growth Factors. Assoc Dir for Prevention Research. Chief Laboratory of Mamalian Genes & Develop. Chief, Section on Molecular Endocrinology. Chief Section Neuroendocrinology. Chief Section on Microbial Genetics. Chief, Laboratory of Comparative Ethology. Associate Director for Administration. Dir, Natl Center for Medical Rehab Research.
Natl Inst of Dental Research	Chief, Laboratory of Immunology Dir, Extramural Program Associate Director for Management.
Natl Inst of Environmental Health Sciences	Chf Lab of Pulmonary Pathobiology. Head Mutagenesis Section. Head Mammalian Mutagenesis Section.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Natl Inst of General Medical Sciences	Senior Scientific Advisory. Associate Director for Management. Chief Lab of Molecular Carcinogenesis. Dir Natl Inst of Environmental Health Science. Dir Environmental Toxicology Program. Dir Genetics Program. Assoc Dir for Program Activities Director, Division of Pharamcology, Physiology, and Biological Chemistry. Dir Bio Phys Sciences Program Branch. Dep Dir Natl Institute of General Med Sci. Dir, Minority Opportunities in Res Prog Br.
Natl Inst of Neurological Disorders and Stroke	Associate Director for Administration and Operations. Dir, Div of Fundamental Neurosciences. Associate Director for Administration. Dir, Basic Neurosci Prog/Chf/Lab of Neurochem
Intramural Research	Chf, Lab of Molecular & Cellular Neurobiology. Chief Lab of Central Nervous System Studies Chf, Dev & Metabolic Neurology Branch. Deputy Chief, Lab of Central Nervous Sys Stud. Chief, Neuroimaging Branch. Chief, Laboratory of Neurobiology. Chief, Laboratory of Neura Control. Chief Brain Structural Platicity Section. Chief Stroke Branch.
Natl Eye Institute	Chief Laboratory of Retinal Cell & Mol Biolog
Natl Inst on Deafness & Other Communication Disorders	Chief, Lab of Molecular & Dev. Biology Chief, Laboratory of Sensorimotor Research. Director, Division of Human Communication Chief Laboratory of Cellular Biology Associate Director for Administration Director, Division of Extramural Research.
NIH Clinical Center	Associate Director for Planning Assoc Chf, Position Emission T&R Deputy Director for Magament and Operations.
Division of Computer Research & Tech	Chief, Computer Center Branch Deputy Director Assoc Dir Ofc of Computing Resources Services.
John E Fogarty Intl Center	Assoc Dir for Int'l Advance Studies.
National Center for Research Resources	Dir, Natl Center for Research Resources Dir, Gen Clinical Res Ctr for Res Resources Dep Dir, Natl Center for Research Resources.
Division of Research Grants	Associate Director for Referral and Review Assoc Dir for Statistics & Analysis Director, Division of Physiological Systems Director, Division of Clinical & Population-Based Studies.
National Center for Nursing Research	Director National Cntr for Nursing Research.
National Center for Human Genome Research	Deputy Director. Dir Div of Intramural Res Natl Ctr H G R Chief Diag Devel Br Natl Ctr Human Gen Res Chf, Lab of Genetic Dis Res Natl Ctr for HGR
National Institute on Drug Abuse	Associate Director for Management. Assoc Dir for Planning & Resources Management. Dir, Office of Extramural Program Review. Director Division of Clinical Research. Dir, Medications Development Division.
National Institute of Mental Health	Chief, Neuroscience Research Branch. Associate Director for Clinical Neuroscience & Medical Affs. Division of Treatment Research & Development. Dep Dir, National Institute of Mental Health. Associate Director for Special Populations. Associate Director for Prevention. Exec Ofcr, Natl Institute of Mental Health. Dir, Ofc of Legislative Analysis & Coord. Dir, Div of Neuroscience & Behavioral Sci. Chief, Neuropsychiatry Branch. Chief, Child Psychiatry Branch. Chief, Biological Psychiatry Branch. Chief, Laboratory of Clinical Science. Chief, Section on Histopharmacology. Director, Office on Aids. Director, Division of Mental Disorders, Behavioral Research and Aids.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Director, Division of Services and Intervention Research.
National Institute on Alcohol Abuse & Alcoholism	Dir, Natl Institute on Alcohol A&A
	Director, Division of Basic Research.
Agency for Healthcare Research and Quality	Dir Ctr for Outcomes & Effectiveness Research.
Department of Housing and Urban Development:	
Office of the General Counsel	Assoc Gen Coun for Program Enforcement.
Office of the Inspector General	Asst Inspector General for Investigations.
	Assistant Inspector General for Audit
	Deputy Inspector General.
	Asst Inspector General for Management & Pol.
	Deputy Asst Inspector Gen for Audit Operation.
	Dep Asst Inspector Gen for P&O.
	Dep Asst Inspector General for Investigation.
	Counsel to the Inspector General.
Office of the Chief Financial Officer	Assistant Chief Financial Officer for Budget.
	Assoc Dep Chief Financial Officer for Account.
	Dep Chief Financial Officer for Accounting.
	Dep Chief Financial Officer for Finance.
	Deputy Chief Financial Officer.
Office of the Chief Procurement Officer	Director, Office of Procurement & Contracts
	Senior Advisor for Procurement Planning and Program Liaison.
Departmental Enforcement Center	Chief Counsel
	Deputy Director, Departmental Enforcement Center
	Associate Director.
Departmental Real Estate Assessment Center	Deputy Director for Finance.
Assistant Secretary for Administration	Deputy Director, Office of Human Resources
	Special Advisor/Comptroller.
Assistant Secy for Housing	Director Office of Financial Services.
	Dir Ofc of Multifamily Asset Management Dispo.
	Housing/Fed Housing Adm Comptroller.
	Dir of Multifamily Housing Development.
	Housing—FHA Deputy Comptroller.
	Program Systems Project Officer.
Asst Secy for Fair Housing and Equal Opportunity	Director, Office of Investigations.
	Dir, Ofc of Fair Housing I&V Programs.
	Director, Office of Enforcement.
	Director, Office of Programs.
Office of Departmental Equal Employment Opportunity	Dep Dir Ofc of Equal Employment Opportunity.
	Dir, Ofc of Departmental Equal Employ Opport.
Asst Secy for Community Planning and Development	Director, Office of Economic Development.
	Director, Ofc of Community Viability.
	Comptroller.
	Deputy Assistant Secretary for Special Needs Programs.
Government National Mortgage Association	Vice President for Finance.
	Vice President, Ofc of Pol, P&R Management.
	Vice President Ofc of Customer Service.
	VP Office of Multifamily Programs.
Asst Secy for Public and Indian Housing	Gen Dep Asst Secy for Public & Indian Housing.
	Public & Indian Housing-Comptroller.
	Dep Asst Secry for Public & Asst Housing Oper.
	Deputy Public & Indian Housing Comptroller.
	Dir, Ofc of Public Housing Partnership.
	Director Office of Troubled Agency Recovery.
Department of Interior	
Office of the Inspector General	Assistant Inspector General for Auditing.
	Asst Inspector General for Investigations.
	Assistant Inspector General for Management and Policy.
	Assistnat Inspector Genral for Strategic Initiatives.
	General Counsel.
	Deputy Asst Inspector General for Audits.
Office of Special Trustee for American Indians	Special Assistant (Special Projects Officer).
Office of the Solicitor	Deputy Assoc Solicitor, General Law.
	Asst Solicitor Bureau of Parks and Recreation.
	Deputy Associate Solicitor—Mineral Resources.
	Associate Solicitor for Administration.
	Dep Assoc Solicitor Land & Water Resources.
	Dep Associate Solicitor—Indian Affairs.
Assistant Secretary—Policy, Management and Budget	Asst Dir for Economics.
	Manager, Science and Engineering.
	Natural Resource Damage Assessment Prog Mgr.
	Dir, Ofc of Fin Mgmt & Dep Chf Fin Officer.
	Chief Div of Budget & Program Review.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
National Park Service	Chief Div of Budget Admin.
	Deputy Agency Ethics Staff Officer.
	Park Manager—Grand Canyon.
Field Offices	Park Manager—Yosemite (Superintendent).
	Park Manager Everglades.
	Park Manager—Yellowstone (Superintendent).
	Asst Dir, Design & Construction (Mgr, Dsc).
	Park Manager—Independence Natl Historic Park
Field Offices	Executive Dir Regional Ecosystem Office.
Field Offices	Research Director.
Field Offices	Director, Technical Services Center.
	Spec Asst to the Dir, Reclamation Serv Center.
	Project Manager/Arizona Projects Office.
	Director, Management Services Office.
U.S. Geological Survey	Assoc Chief Geologist for Operations.
	Associate Chief Geologist for Science.
	Regional Geologist Western Region.
	Regional Geologist, Eastern Region.
	Regional Chief Biologist, Eastern Region.
National Mapping Division	Chief, National Mapping Division.
	Assoc Chief Programs & Finances.
	Associate Chief for Operations.
Field Offices	Chief, EROS Data Center.
	Chief Mid-Continent Mapping Center.
	Chief Rocky Mountain Mapping Center.
	Chief Mapping Applications.
Water Resources Division	Chief Hydrologist.
	Assoc Chief Hydrologist.
	Asst Chief Hydrologist for Operations.
	Chief, Natl Water Quality Assessment (NAWQA).
	Asst Chief Hydrologist for Tech Support.
	Asst Chief Hydrologist for Water Information.
	Chf, Ofc of Hydrologic Research.
	Chf, National Water Data Exchange Program.
Field Offices	Regional Hydrologist Central Region.
	Regl Hydrologist Southeastern Region.
	Regional Hydrologist, Western Region.
	Regional Hydrologist, Northeastern Region.
Geologic Division	Chief Geologist.
	Chief, Ofc of Scientific Publications.
	Assoc Chf Geologist.
	Chf Ofc of Mineral Resources.
	Assistant Chief Geologist for Programs.
Biological Resources Division	Asst Dir, Budget and Administration.
	Associate Chief Biologist for Operations.
	Asst Dir for Information & Technology Service.
Field Offices	Spec Asst to the Reg Dir Research & Develop.
	Assistant Director for Inventory & Monitoring.
Bureau of Land Management	Director National IRM/Center.
	International Tech Asst Program Manager.
	Helium Program Administrator.
Office of Surface Mining	Regional Director.
	Regional Director.
	Regional Director.
Minerals Management Service	Associate Dir for Policy and Mgmt Improvement.
	Assistant Assoc Dir for Offshore Minerals Mgt.
	Special Assistant to the Director.
Field Offices	Regional Director, Gulf of Mexico OCS Region.
	Regional Director, Alaska OCS Region.
	Regional Director, Pacific OCS Region.
	Dir Program Reengineering Office.
	Dep Assoc Dir for Audit.
	Dep Assoc Dir for Valuation & Operations.
	Deputy Assoc Director for Administration.
	Deputy Assoc Dir for Royalty Mgmt.
Bureau of Indian Affairs	Deputy Director, Office of Indian Education Programs.
Department of Justice:	
Office of the Attorney General	Counsel on Professional Responsibility.
	Dep Counsel on Professional Responsibility.
Ofc of the Legal Counsel	Special Counsel.
	Special Counsel.
Office of the Inspector General	Asst Inspector General for Inspections.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Assistant Inspector General for Audit.
	Assistant Inspector General for Investigation.
	Asst Inspector Gen for Management & Planning.
	Deputy Inspector General.
	General Counsel.
	Dir, Special Investigational Review.
Office of the Deputy Attorney General	Director, Office of Legal Education.
	Director, Professional Responsibility Advisory Office.
	Correctional Prog Ofcr/Sr Dep Asst Dir Prd.
Justice Management Division	Asst Attorney General for Administration.
	Deputy Asst Attorney General.
	Dir, Security & Emergency Plnng Staff.
	Dep Asst Attorney Gen Human Res/Admin.
	Dir Library Staff.
	Dir, Facilities and Administrative Svc Staff.
	Dir Telecommunications Services Staff.
	Director Management and Planning Staff.
	Director, Budget Staff.
	Senior Policy Advisory.
	Dep Asst Attorney General, Info Res Mgt.
	Dir Procurement Services Staff.
	Dir, Systems Technology Staff.
	General Counsel.
	Dir, Equal Employment Opportunity Staff.
	Senior Counsel.
	Director, Department Ethics Office.
	Deputy Director, Budget Staff.
Office of the Controller	Dir Finance Staff.
	Dep Asst Attorney General; Controller.
	Director, Debt Collection Management Staff.
	Asst Dir, Management & Planning Staff.
Office of Human Resources and Administration	Director Personnel Staff.
	Director, Ofc of Atty Pers Mgmt.
Office of Info & Admin Services	Director, Computer Services Staff.
	Director, Information Mgmt & Security Staff.
Executive Office for Immigration Review	Chief Immigration Judge.
	Assistant to the Director.
	Chairman, Board of Immigration Appeals.
	General Counsel.
	Attorney-Examiner (Immigration).
	Chief Admin Hearing Officer.
Antitrust Division	Senior Litigator.
	Executive Officer.
	Chief Computers and Finance Section.
	Senior Litigator.
	Senior Litigator, Atlanta Field Office.
	Deputy Chief, Litigation II Section.
Office of Litigation	Dep Dir of Operations.
	Chief, Competition Policy Section.
Civil Division	Director of Management Programs.
	Deputy Director, Commercial Litigation Branch.
	Appellate Litigation Counsel.
	Deputy Director, Tobacco Litigation Team.
	Deputy Director, Appellate Staff.
Commercial Litigation Branch	Spec Litigation Counsel (Foreign Litigation).
	Spec Litigation Coun, C/L Branch.
	Deputy Branch Director/Commercial Litigation.
	Deputy Branch Dir Civil Frauds.
	Deputy Branch Director.
Federal Programs Branch	Special Litigation Counsel (Federal Programs).
	Deputy Branch Director.
Torts Branch	Spec Litigation Counsel.
	Spec Litigation Counsel.
	Deputy Branch Director.
	Deputy Branch Director.
	Deputy Branch Director.
	Director Office of Consumer Litigation.
Civil Rights Division	Special Litigation Counsel.
Environment and Natural Resources Division	Executive Officer.
Office of Environmental Resources	Senior Litigation Coun Attorney-Examiner.
	Dep Chf, Environmental Enforcement Section.
	Principal Deputy Chief Environ Enforce Sec.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Tax Division	Chief Civil Trial Section Southwestern Region.
	Executive Officer.
Deputy Assistant Attorney General—I	Special Litigation Counsel.
	Sr Trial Attorney.
	Special Litigation Counsel.
	Spec Litigation Counsel.
Immigration and Naturalization Service	Asst Commissioner for Detention & Deportation.
	Asst Commissioner for Adjudication & Natural
	Assistant Commissioner for Border Patrol.
	Director of Internal Audit.
	Director of Security.
	Asst Comr, Budget.
	Regional Director Central Region.
	Asst Commissioner Administration.
	Chief Patrol Agent.
	District Director.
	Chief Patrol Agent.
	District Dir, Western Reg, Phoenix District.
	Asst Commissioner Data Systems.
	Deputy General Counsel.
	Chief Patrol Agent, El Paso, TX.
Associate Commissioner for Examinations	Asst Comm for Inspections.
Associate Commissioner for Enforcement	Assistant Commissioner for Investigations.
Executive Associate Commissioner for Management	Assistant Comr, Human Resources & Development.
Regional Offices—INS	District Director Newark District.
	District Director, Newark, District.
Ofc of the Associate Attorney General	Executive Officer (Principal Assoc Director).
	Deputy Director for Support Services.
Executive Ofc for U.S. Attorneys	Dir Ofc of Mgnt Information Systems Support.
	Dir, Office of Administration & Review
	Dep Dir for Operations.
	Deputy Director, Financial Management Staff.
Criminal Division	Senior Counsel to the Assistant Attorney General.
	Deputy Chief, Fraud Section.
	Dir Ofc of Asset Forfeiture.
	Senior Appellate Counsel.
	Senior Counsel.
	Executive Officer.
	Dir Intl Criminal Invest Train Asst Program.
	Chief, General Litigation & Legal Advice Sect.
	Senior Counsel for Natl Security Matters.
	Dep Chief Terrorism & Violent Crime Section.
	Chf of International Training & Dev Programs.
	Senior Counsel to the Assistant Attorney General.
Ofc of Senior Counsels	Sr Counsel for Litigation.
Ofc of Deputy Asst Attorney General I	Counsel to the Office Fraud Section.
Ofc of Deputy Asst Attorney General II	Chf Public Integrity Section.
	Deputy Chief Public Integrity Section.
Federal Bureau of Prisons	Asst Dir for Planning and Development
	General Counsel.
	Assoc Commr, Fed Prisons Industries, Unicor.
	Dep Assoc Commr Fed Prison Industries.
	Warden Ft. Worth Texas.
	Warden Marianna FL.
	Asst Director for Human Res Mgmt
	(Warden) Miami, FL.
	Senior Deputy Asst Dir Health Services Div.
	Regional Director Mid Atlantic Division.
	Asst Dir., Community Corrections & Detention.
	Asst Dir, Info, Pol, & Public Afrs Div.
	Gen Counsel, Fed Prison Industries (Unicor)
	Warden, Allenwood, Pennsylvania.
	Sr Mgt Counsel, (Federal Bureau of Prisons).
	(Warden) Fort Dix, NJ.
	(Warden) FCC, Floren, CO.
	Correctional Inst Admr (ARD) SCR, Dallas, TX.
	Corrl Inst Admr (SDAD), CC & D Div, Wash, DC.
	Warden, USP, Florence, CO.
	CIA (Warden) Fed Medical Center, Carswell, TX.
	CIA (Warden) U.S. Penitentiary, Allenwood, PA.
	(Warden) FTC, Oklahoma, OK.
	Senior Dep Asst Dir (Administration).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	CIA (Warden) Fed Cortl Inst/El Reno, OK.
	CIA (Warden) Fed Medical Center/Miami, FL.
	Correctional Prog Offcr/Sr Dep Regl Dir.
	Correctional Inst Admr (Warden) FCI.
	Correctional Program Officer.
	Correctional Prog Officer (WFCI, Estill, SC).
	Correctional Prog Officer (Warden Fed CI, SC).
	Correctional Institution Admin (W, FMC, FTC, MA).
	Correctional Institution Administrator.
	Correctional Institution Admr (Warden).
	Correction Institution Administrator (Warden, U.S. Penitentiary, Beaumont, TX).
	Correctional Program Officer (Assistant Director).
	Deputy Assistant Director.
	Correctional Program Officer.
Office of Correctional Program	Asst Dir Correctional Program Div.
Northeast Region	Regional Director, Northeast Region.
	Warden, Lewisburg, PA.
	Warden, McKean, PA.
	(Warden), Oakdale, LA.
	Correctional Institution Admr (Warden).
	Warden.
Southeast Region	Regional Director, Southeast Region.
	Warden Atlanta.
	Warden, Lexington, Kentucky.
	Warden, Butner, North Carolina.
North Central Region	Regional Director, North Central Region.
	Warden, Leavenworth, Kansas.
	Warden, Springfield, MO.
	Warden, Marion, IL.
	Warden, Terre Haute, IN.
	Correctional Institution Admr.
South Central Region	Regional Director, South Central Region.
	Warden, El Reno, Okla.
Western Region	Regional Director, Western Region.
	Warden, Lompoc, CA.
	Warden, Phoenix, AZ.
	Warden Federal Correctional Institution.
	Correctional Institution Admr (Warden).
Ofc of Justice Programs	Director of Administration.
	Dep Director, National Institute of Justice.
	General Counsel.
	Comptroller.
	Deputy Director, Office for Victims of Crime (Policy and International Programs).
Ofc of Juvenile Justice and Deliquency Prevention	Deputy Administrator, Office Discretionary Grants.
Bureau of Justice Statistics	Supervisory Statistician.
U.S. Marshals Service	Assistant Director for Human Resources.
	Assoc Director for Operational Support.
	Senior Management Advisor.
	Assistant Director for Prisoner Services.
	Assistant Director for Business Services.
	Associate Director for Mgmt and Budget.
	Assistant Director for Executive Service.
	Assistant Director for Investigative Servs.
	Assistant Director for Judicial Security.
	Asst Director for Organizational Development.
	Assistant Director for Training.
Department of Labor	
Office of the Secretary	Deputy Assistant Secretary for Information Technology.
Ofc of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Investigations.
	Asst Inspector Gen for Audit.
	Deputy Assistant Inspector General for Audit.
	Asst Inspector Gen for Labor Racketeering.
	Asst Inspector Gen for Mgmt & Counsel.
	Asst Inspector Gen/Analysis Complaints/Eval.
Office of the Solicitor	Associate Solicitor for Labor-Management Laws.
	Assoc Solicitor for Plan Benefits Security.
	Assoc Solicitor for Civil Rights.
	Assoc Solicitor for Occupational Safety & Hlt.
	Assoc Solicitor for Mine Safety & Health.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Regional Solicitors	Assoc Solicitor for Fair Labor Standards. Assoc Solicitor for Employee Benefits. Deputy Solicitor (Regional Operations). Assoc Sol for Spec Appel & Sup Court Lit. Dep Solicitor for Planning and Coordination. Associate Solicitor for Black Lung Benefits. Regional Solicitor. Regional Solicitor Region IV—Atlanta. Regl Solicitor Boston. Regl Solicitor New York. Regional Solicitor Philadelphia. Regl Solicitor Dallas. Regl Solicitor Kansas City. Regl Solicitor San Francisco.
Chief Financial Office	Deputy Chief Financial Officer.
OAS for Administration and Management	Das for Admin & Mgmt/Chf Information Ofcr. Director of Human Resources. Director of Information Technology. Director Office of Budget. Deputy Assistant Secy for Budget. Director Business Operations Center. Director of Civil Rights. Dir of Program Devel for Human Resources. Dir Div of Agency Programs. Director of Safety and Health. Deputy Assistant Secretary for Administration and Management.
Office of Management, Administration and Planning	Dir Ofc of Mgmt, Administration and Planning.
Ofc of Federal Contract Compliance Programs	Director Division of Programs Operations.
Wage and Hour Division	Asst Admin for Policy Planning & Review. Dep Wage & Hour Admin.
Ofc of Workers Compensation Programs	Dep Natl Ofc Program Administrator. Dir Federal Employees Compensation. Dir Coal Mine Workers Compensation.
Pension & Welfare Benefits Administration	Dir of Regulations & Interpretations. Dep Asst Secy for Program Operations. Director of Exemption Determinations. Senior Policy Advisor. Regional Director. Regional Director. Regional Director. Regional Director. Dir of Enforcement. Director of Health Plan Standards Compliance and Assistance.
Bureau of Labor Statistics	Associate Commissioner for Field Operations. Deputy Commissioner.
Data Analysis	Assoc Commr for Publications & Spec Studies. Asst Commr for Consumer Prices/Price Indexes. Asst Commr for Fedl/State Coop Stat Programs. Assoc Commissioner for Employment Projections. Assoc Comr for Prices and Living Conditions. Assoc Commr Productivity & Technology. Assoc Commissioner/Survey Methods Research. Assoc Comm for Employment & Unempl Statistics. Asst Commr for Industrial Prices & Price Indexes. Asst Commr for Indust Prices & Price Indexes. Assistant Commissioner for Economic Research. Asst Commissioner for Federal-State Programs. Asst Commissioner for Current Employ Analysis. Asst Comr for Compensation Levels & Trends. Asst Comr for Safety, H&W Conditions. Assoc Comr Compensation & Working Conditions. Asst Comm for Survey Methods Research. Asst Comm for International Prices.
Administrative and Internal Operations	Associate Commissioner for Administration. Director of Survey Processing. Dir of Technology & Computing Svcs. Asst Comr for Technology & Survey Processing. Dir Quality & Info Management.
Office of Financial & Administrative Management	Comprtroller. Admr, Ofc of Financial & Administrative Mgmt.
Administrative Programs	Dir, Adm Progs.
Health Standards Programs	Dir Health Standards Programs.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Safety Standards Programs	Director Safety Standards Programs.
Federal/State Operations	Director, Federal/State Operations.
Technical Support	Director, Technical Support.
Mine Safety and Health Administration	Chf of Standards, Regulations & Variances.
	Director of Administration and Management.
	Director of Technical Support.
	Director of Prog Evaluation & Info Resources.
Merit Systems Protection Board:	
Office of the Board, Chairman	Director, Information Resources Management.
	Director, Financial and Administrative Management.
Office of the General Counsel	Deputy General Counsel.
Office of the Clerk of the Board	Clerk of the Board.
Office of Policy and Evaluation	Director, Office of Policy & Evaluation.
Office of Planning & Resource Management Services	Director, Office of Administration.
Office of Regional Operations	Director, Office of Regional Operations.
Atlanta Regional Office	Regional Director, Atlanta.
Central Regional Office	Regional Director, Chicago.
Northeastern Regional Office	Regional Director, Philadelphia.
Washington Office	Regional Director, Washington, D.C.
Western Regional Office	Regional Director, San Francisco.
National Aeronautics and Space Administration:	
National Aeronautics and Space Administration	Technical Assistant to the Director, Office of Space Science.
	Manager, Earth Sciences Department.
	Director, Aviation Safety Program Office.
	Associate Director for Program Integration.
	Dep Dir of Safety and Mission Assurance.
	Director, for Systems Engineering.
	Senior Program Executive, Advanced Technology Program Management.
	Senior Systems Engineer.
	Director, Aerospace Proj Directorate.
	Dep, Director, Aerospace Projects.
	Aerospace Engineer (Ch Engineer).
Office of the Chief Financial Officer/Comptroller	Deputy Chief Financial Officer.
	Director, Financial Management Division.
	Director, Resources Analysis Division.
	Deputy Dir, Financial Management Division.
Office of Headquarters Operations	Chief, Information Syst & Technol Office.
	Director Headquarters Acquisition Division.
Office of Equal Opportunity Programs	Director, Discrimination Complaints Division.
	Director, Multicultural Prog & Support Div.
Office of Human Resources & Education	Associate Administrator for Human Resources.
	Director, Education Division.
	Director, Personnel Division.
	Director, Management Systems Division.
	Dep Assoc Adm for Human Res & Education.
	Special Asst to the Associate Admr.
Office of Procurement	Asst Admr for Procurement.
	Director, Program Operations Division.
	Director, Contract Management Division.
	Dep Assistant Administrator for Procurement.
	Dir Contract Management Division.
	Director Analysis Division.
Office of External Relations	Dep Assoc Admin for External Relationships.
Defense Affairs	Director, Space Flight Division.
Policy Coordination	Manager, International Technol Transfer Pol.
Office of Management Systems & Facilities	Special Assistant to the Assoc Administrator.
Environmental Management	Dir Environmental Management Division.
Security, Logistics & Industrial Relations	Dir, Logistics & Security Division.
Aircraft Management	Director, Aircraft Management Office.
Information Resources Management	Director, Information Resources Mgmt Division.
Facilities Engineering	Deputy Director, Facilities Engineering Div.
	Dir Environmental Management Division.
	Director, Facilities Engineering Division.
Office of Small & Disadvantaged Business Utilization	Assoc Admr for S&D Business Utilization.
Office of Legislative Affairs	Dep Assoc Admin.
	Dep Assoc Admin for Programs.
Office of Space Flight	Spec Asst to Dep Assoc Adm for Space Shuttle.
	Director, Advanced Project Office.
	Senior NASA Representative.
	Dep Assoc Administrator for Space Flight Dev.
	Deputy Assoc Admr for Space Communications.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Institutions	Deputy Associate Admr for Business Mgmt.
	Techn Asst to the Dep Assoc Adm for Bus Mgmt.
Chief Engineer	Tech Asst to the Chief Engineer.
	Deputy Chief.
	Senior Engineer.
Mission Director	Asst Mission Dir Mir.
Space Flight Operations	Manager Space Shuttle Syst Integration.
	Mgr, Natl Space Trans Syst Integration & Ops.
	Manager, Safety & Obsolescence.
Space Flight Development	Manager Strategic Utilization & Ops Office.
	Deputy Director, Space Station Program.
	Senior Engineer Space Station Program.
Center Operations Directorate	Dir Environmental Engineering & Mgnt Office.
Johnson Space Center	Chief Financial Officer.
	Director of Human Resources.
	Dir of Tech Transfer & Commercialization.
	Chief Information Officer.
	Deputy Chief Information Officer.
	Manager, Phase One Program Office.
	Associate Director (Technical).
	Assistant Director, Space Operations.
	Manager Advanced Communications Operations.
	Technical Assistant for External Reviews.
	Associate Director (Management).
	Assistant Director for University Research and Affairs.
	Manager EVA Project Office.
	Business Manger.
	Director, Public Affairs Office.
Space Operations Office	Manager, Space Operation Mgmt Office.
	Manager, Space Ops Engineering Office.
	Director, Space Operations Office.
	Deputy Dir, Space Operations Office.
	Director Space Operations.
	Space Operations Commercialization Manager.
Space Station Program Office	Space Station Program Manager.
	Space Station Vehicle Manager.
	Director, Management Operations.
	Deputy Space Station Vehicle Manager.
	Manager International Partners Office.
	Tech Asst to the Mgr, Space Station Program.
	Dep Program Manager for Business Management.
	Deputy Program Mgr for Technical Development.
	Manager, Research Programs.
	Manager, Space Station Payloads Office.
	Space Station Program Manager.
Space Shuttle Program Office	Mgr, Space Shuttle Vehicle Engineer Ofc.
	Mgr, Space Shuttle Mgmt Integration Office.
	Manager, Shuttle Projects Office (MSFC)
	Mgr, Launch Integration (KSC).
	Director, Space Shuttle Operations.
	Mgr, Space Shuttle Business Office.
	Asst Mgr, Space Shuttle Prog Space Flight o/c.
	Asst Manager Space Shuttle Program.
	Manager for Space Shuttle Program Development.
	Manager, Space Shuttle Program Integration.
Mission Operations	Director, Mission Operations.
	Chief Flight Director Office.
	Deputy Director, Mission Operations.
	Asst Dir for Operations.
	Chief Integrated Planning System Office.
	Chief Simulator & Operations Technology Div.
	Chief Engineer, Mission Operations Directorate.
	Flight Director.
Flight Crew Operations	Chief, Aircraft Operations Division.
	Dep Dir, Flight Crew Operations.
	Asst Chief, Aircraft Operations Division.
Engineering	Chief Structures and Mechanics Division.
	Chief, Crew & Thermal Systems Division.
	Deputy Director, Engineering.
	Chief, Autcmation, R & S Division.
	Director, Engineering.
	Chief Engineer Space Station Program.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Chief Avionic Systems Division.
	Assistant to the Director, Engineering.
	Deputy Chief, Avionic Systems Division.
	Chief, Aeroscience & Flight Mechanics Div.
	Manager, Advanced Development Office.
	Deputy Mgr, Advanced Development Office.
	Asst Mgr, Advanced Development Office.
	Deputy Manager for Exploration.
	Special Assistant for Program Planning.
	Chief Energy Systems Division.
	Chief, Manufacturing, Materials, & Process Tech Div.
	Deputy Director of Engineering for Flight.
Space & Life Sciences.	Chief, Medical Sciences Division.
	Assistant Director for Engineering.
	Assistant to the Director for Russian Progs.
	Chief, Flight Crew Support Division.
	Associate Director, Space & Life Sciences.
	Deputy Director, Space and Life Sciences.
	Manager Science Payloads Management Office.
	Chief, Solar System Exploration Division.
	Deputy Director, Space and Life Sciences.
	Assistant Director for Flight Programs.
	Assistant Director for Space Medicine.
	Asst Director, Space and Life Sciences.
Information Systems	Director, Business Manager.
	Director, Information Systems.
	Manager Management Configuration Office.
	Dep Dir Information Systems.
	Director, Information Systems.
Business Management	Procurement Officer.
	Assistant Director, Business & Info Systems.
	Special Assistant to the Director.
	Manager Space Station Business Office.
	Asst Dir Business Management.
	Deputy director, Business Management.
Center Operations	Special Assistant for Facility Management.
	Dir Center Operations.
	Deputy Director, Center Operations.
Safety, Reliability & Quality Assurance.	Dir, Safety, Reliability & Quality Assurance
	Dep Dir, Safety, Reliability & Qual Assurance.
	Deputy Director for Russian Projects.
	Deputy Director SR&QA.
White Sands Test Facility	Manager, NASA White Sands Test Facility.
Kennedy Space Center	Dir Public Affairs.
	Associate Director.
	Assdir for Advanced Devel & Shuttle Upgrades.
	Dir, Space Station Hardware Integration OFC.
	Director, Safety Assurance.
	Deputy Director for Planning and Projects.
	Manager Launch Integration (KSC).
	Dep Mgr Elv & Payload Carriers Program Office.
Shuttle Management & Operations	Dir of Shuttle Operations.
	Director Process Integration
	Deputy Dir of Shuttle Processing.
	Director Process Engineering.
Installation Operations	Director, Installation Operations.
	Deputy Dir, of Installation Mgmt & Operations.
Payload Processing	Director, Expendable Vehicles.
	Director Logistics Operations.
	Dir Inter Space Station Launch Site Support.
Procurement	Director, Procurement.
Biomedical Office	Director, Biomedical Office.
Marshall Space Flight Center	Chief Financial Officer.
	Director, Safety & Mission Assurance Office.
	Associate Director.
	Assistant to the Center Dir for Space Station.
	Associate Director (Technical).
	Manager, Space Transportation Prog Office.
	Manager X–34 Program.
	Assistant to the Manager, X–34 Program.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Science Directorate	Deputy Manager for Space Station Research.
	Deputy for Management.
	Assistant Director for Space Propulsion Systems.
Program Development	Deputy Director, Program Development.
	Deputy Manager, Technology Transfer Office.
	Dir, Research & Technology Office.
Engineering Directorate	Director, Space Sciences Lab.
	Director, Propulsion Laboratory.
	Director, Syst Anal & Integration Laboratory.
	Dep Dir Structures & Dynamics Laboratory.
	Deputy Dir, Materials & Processes Laboratory.
	Dep Dir, Mission Operations Laboratory.
	Dep Dir, Syst Anal & Integration Laboratory.
	Deputy Director, Propulsion Laboratory.
	Dir Astrionics Laboratory.
	Dir Structures Dynamics Laboratory.
	Deputy Director, Structures & Dynamics Lab.
	Chief Engineer Space Shuttle Main Engine Proj.
	Asst Director Science & Engineering.
	Manager Space Station Furnace Facility.
	Director, Mission Operations Laboratory.
	Dep Manager Super Lightweight External Tank.
	Deputy Director, Space Sci Laboratory.
	Chf Eng, Reusable Launch Vehicle Project.
	Assistant Director, Science Engineering Dir.
	Assistant to the Director, Engineering.
	Deputy Director, Engineering.
	Deputy Manager, Materials, Processes and Manufacturing Dept.
Center Operations Directorate	Director, Information Systems Services Office.
	Dir Center Operations.
	Director, Procurement Office.
	Dep Dir, Institutional & Program Support.
	Director, Facilities Office.
	Director Center Operations.
	Deputy Director, Center Operations.
Space Shuttle Projects	Manager, External Tank Project.
	Mgr Solid Rocket Booster Project.
	Manager Space Shuttle Main Engine Projects.
	Manager, Reusable Solid Rocket Motor Project.
	Chief Engineer Space Shuttle Main Engine Prog.
Global Hydrology Research Office	Manager, Global Hydrology Research Office.
	Dep Dir Science & Engineering.
	Dir. Materials & Processes Laboratory.
	Manager Microgravity Projects.
	Manager Microgravity Research Program Office.
Chandra X-Ray Observatory Program Office	Manager, Observatory Projects Office.
	Dep Mgr, Observatory Projects Office.
Flight Projects Directorate	Assistant to the Director, Flight Projects.
	Manager, Ground Systems Department.
	Manager, Flight Systems Department.
Space Transportation Directorate	Director, Advanced Transportation Syst Office.
	Dep Manager Space Transportation Prog Ofc.
	Manager X–33 Program.
	Manager, Vehicles and Systems Development Department.
	Manager, Technology Evaluation Department.
Technology Transfer	Director, Technology Transfer Office.
	Mgr. Earth & Space Sciences Projects.
Customer and Employee Relations Directorate	Director, Customer and Employee Relations.
	Deputy Dir, Customer and Employee Relations.
Stennis Space Center	Director Center Operations & Support Director.
	Deputy Director, NASA Stennis Space Center.
	Dep Dir NASA Stennis Space Center.
	Assoc Director for Institution.
	Director, Propulsion Test Directorate.
	Deputy Director, Propulsion Test Directorate.
	Manager, Test Management Support.
	Chief Financial Officer.
	Director, Commercial Remote Sensing Program Office.
Office of Space Communications	Chief, Communications Systems Branch.
Ground Networks	Assistant Associate Administrators (Plans).
Communications & Data Systems	Dep Dir, Ground Network Division.
Office of Public Affairs	Senior Public Affairs Advisor.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Office of Safety & Mission Assurance	Dep Assoc Adm for Safety & Mission Quality.
	Director, Programs Assurance Division.
	Mgr Intl Sp Stn Indep A & O Act.
	Technical Advisor for Sr M QA Initiatives.
	Dir, Human E & D of Space (HEDS) Indep Assur.
Safety & Risk Management	Director, Safety & Risk Management Division.
Payloads & Aeronautics	Dir, Enterprise Safety & Mission Assurance.
Engineering & Quality Management	Director, Quality Management Office.
Office of Aerospace Technology	Dep Assoc Admin for Aeronautics Mgmt.
	Dir Space Transportation Division.
	Senior Engineer.
	Director, Inter-Enterprise Operations.
Resources & Management Systems	Director, Resources Management Office.
High Performance Aircraft	Assistant Director for Program Evaluation.
High Speed Research	Director, Alliance Development Office.
National Aero-Space Plane	Assistant Dir for Aircraft Certification Serv.
Ames Research Center	Chief Financial Officer.
	Dir, National Rotorcraft Technology Center.
	Deputy Director of Information Systems.
	Manager, NASA Consolidated Supercomputing Ops.
	Deputy Director Ames Research Center.
	Assistant Director for Planning.
	Deputy Director for Space.
	Chief Systems Engineering Division.
	Assistant Director for Information Technology.
	Director, Office of Safety, Environment & Mission Assurance.
	Assistant to the Director.
	Chief, Wind Tunnel Operations Division.
	Chief, Computational Sciences Division.
	Associate Director for Astrobiology & Space Programs.
	Chief Counsel.
	Associate Director for Systems Management and Planning.
	Director of Aviation Systems Capacity Program.
Aerospace Systems	Dep Dir Flight Projects Office.
	Chief Aeronautical T & S Division.
	Chief Flight Mgmt & Human Factors Division.
	Associate Director for Aeronautics.
	Deputy Director of Aeronautics.
	Chief, Applied Aerodynamics Division.
	Chief, Aviation Systems Research Technology & Simulation.
Flight Operations	Deputy Chf, Airborne Science & Flight Res Div.
	Chief, Flight Operations Office.
Aerophysics	Dir Software Independent Vertication Facility.
	Chief, Space Technology Division.
	Chief, NAS Systems Division.
Space Research	Chief, Information Sciences Division.
	Director of Space.
	Chief, Life Sciences Division.
Administration	Deputy Director of Center Operations (Adm).
	Chief, Airborne Science & Flight Res Div.
	Dep Director, Center Operations Directorate.
Engineering & Technical Services	Director, Research and Development Services.
Dryden Flight Research Center	Asst Chief, Flight Operations Division.
	Director, Intercenter Aircraft Operations.
	Asst Dir for Program Integration.
	Assistant Director of Research Facilities.
	Associate Director for Operations.
	Chief Information Officer.
Flight Operations	Chf, Flight Operations Division.
Aerospace Projects	Dir Aerospace Projects Directorate.
	Director, Airborne Science Directorate.
Langley Research Center	Chief Atmospheric Sciences Division.
	Dir Independent Prog Assess Office.
	Dir of Education Programs.
	Assistant Director for Planning.
	Chief, Power & On-Board Propulsion Techn Div.
	Special Assistant for Outreach.
	Manager, Hyper-X Phase One Program.
	Dep Dir Indep Progr Assessment Office.
	Associate Director.
	Director.
	Special Assistant to the CFO

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Aeronautics	Chief, Aeronautics Systems Analysis Div.
	Deputy Director, Airframe Systems Prog Office.
Space & Atmospheric Sciences	Deputy Dir, S&A Sciences Program Group.
	Dir, Aerospace Transportation Program Office.
	Chief, Space Systems and Concepts Division.
Research & Technology	Director.
	Chief Structures Division.
	Chief Information & Electromagnetic Tech.
	Chf, Flight Dynamics & Controls Division.
	Chief, Fluid Mechanics Division.
	Deputy Dir, Research & Technology Group.
	Chief Aerodynamics Division.
	Director, Research & Technology Group.
	Chief, Aero & Gas Dynamics Division.
	Chief, Materials Division.
Technology Applications	Manager Space Technologies Thrust Office.
Internal Operations	Deputy Dir, Internal Ops Group (FE & O).
	Chief Aerospace Mechanical Systems Division.
	Chief Experimental Testing Technology Div.
	Special Asst, Internal Operations Group.
	Special Assistant.
	Procurement Officer.
	Chief Aerospace Mechanical Systems Division.
	Director, Internal Operations Group.
	Chief, Simulation and Research Aircraft Div.
High-Speed Research Project	Director for High-Speed Res Project Office.
	Chief Engineer, High-Speed Research.
Aerospace Transportation Technology Office	Dep Dir Aerospace Trans Technol Office
	Dep Dir Aerospace Transportation Tech Ofc.
	Dir Aerospace Transport Technology Office.
Safety, Environmental & Mission Assurance	Dir, Ofc of Safety, E&M Assurance.
Comptroller	Chief Financial Officer.
Lewis Research Center	Chief, Turbomachinery & Propulsion Syst Div.
	Chief, Materials Division.
	Chief Microgravity Division.
	Special Assistant to the Director for Policy.
	Chief Financial Officer.
	Deputy Director for Operations.
	Chief, Systems Engineering Division.
	Assistant Deputy Director for Policy.
	Chief, Ultra Efficient Engine Technology Office.
Aeronautics	Chf, Internal Fluid Mechanics Division.
	Chf, Aeropropulsion Analysis Office.
	Deputy Director of Aerospace Technology.
	Chief, High-Speed Systems Office.
	Chief, Subsonic Systems Office.
Aerospace Technology	Chief, Space Propulsion Technology Division.
	Chief, Structures Division.
	Chief, Space Communications Division.
	Chief, Interdisciplinary Technology Office.
Space Flight Systems	Chief, Space Experiments Division.
	Deputy Director of Space Flight Systems.
	Chief Power Systems Project Office.
	Senior Advisor for Advanced Concepts.
Engineering	Chf, Electronics & Control Systems Division.
	Director of Engineering & Technical Services.
	Chief Engineer.
Technical Services	Deputy Dir of Engineering & Tech Services.
Administration & Computer Services	Chief, Computer Services Division.
	Dir, Adm & Computer Services Directorate.
External Programs	Director, External Programs.
Mission Safety & Assurance	Dir, Ofc of Sfty, Environml & Mission Assur.
Office of Space Science	Special Asst to the Deputy Assoc Admin.
	Asst Associate Admr for Technology.
Solar System Exploration	Science Program Director.
	Director, Mission & Payloa Development Div.
	Senior Program Executive for JPL Programs.
	Dir, Advanced Technol & Mission Studies Div.
Space Physics	Senior Program Executive for GSFC/APL Progs.
	Science Program Dir, Sun-Earth Connection.
	Sr Sci Prog Executive for Review & Evaluation.
	Director, Research Program Management.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Technology & Information Systems	Sr Sci Program Executive for Information Syst.
Astrophysics	Science Program Director, Galaxy & Universe.
	Deputy Dir Astrophysics Division.
	Asst Assoc Admr for Education & Outreach.
	Science Prog Dir, Origins & Planetary Systems.
Office of Life & Microgravity Sciences & Applications	Dir, Space Processing Division.
	Dir, Microgravity Sciences & Applications Div.
Life & Biomedical Sciences	Manager, Life Sciences and Technology.
	Dir Life & Biomedical Science & Applics Div.
Flight Systems	Chief Mission Management Branch.
Office of Inspector General	Assistant Inspector General for Auditing.
	Assist Inspector General for Investigation.
	Manager, Advanced Technology Programs.
	Assistant Inspector General for Inspections, Administrative Investigations, and Assessments.
	Counsel to the Inspector General.
	Assistant Inspector General, Network and Advanced Technology Protections Office.
Office of Space Access & Technology	Manager Systems Integration.
	Manager, Communications Experiments.
	Director, Commercial Dev & Technol Transfer.
	Manager for Propulsion Technology.
	Special Assistant for Special Projects.
Office of Earth Science	Dep Assoc Admr for Mission to Planet Earth.
	Senior Science Advisor for Intl Programs.
	Director, Mission to Planet Earth.
	Senior Engineer, Program Integration.
	Dir Applications & Outreach Division.
	Director, Business Division.
Science	Director Science Division
Goddard Space Flight Center	Dir of University Programs.
	Chief, NASA Somo Mission Services Offices.
	Associate Director/Program Manager for Explorers.
	Deputy Associate Director for EOS–G Development
	Associate Director/Program Manager for the Hubble Space Telescope (HST).
	Deputy Associate Director for Hubble Space Telescope (HST) Development.
	Deputy Director of Applied Engineering and Technology for Planning and Development.
Human Resources	Director, Management System Division.
	Director of Human Resources.
Comptroller	Chief Financial Officer/Comptroller.
Management Operations	Dep Dir of Management Operations.
	Associate Director for Acquisition.
Flight Assurance	Director of Flight Assurance.
	Dep Dir of Flight Assurance.
Flight Projects	Deputy Director of Flight Projects.
	Project Mgr, OPNS & Ground Systems.
	Project Mgr, Earth Observing Syst AM Project.
	Geostationary OPL Environmental Satellite PM.
	Dir of Flight Projects.
	Tracking & Data Relay Satellite TDRS Proj Mgr.
	Assoc Dir for Earth Sci Data & Info System.
	Proj Mgr, EOS–PM Proj Flight Proj Direct.
	Project Mgr, Earth Sci D&I Syst Project.
	Dep Dir Flight Projects for Plan & Bus Mgnt.
	Project Manager, POES.
	Associate Director of Flight Projects for EOS.
Applied Engineering & Technology Directorate	Deputy Asso Dir of Flight Proj Cor Net & Miss Serv Proj.
	Asso Dir of Flight Proj for Network & Miss Serv Proj.
	Deputy Director of Applied Eng & Technology.
	Chief Information Systems Center.
Systems, Technology and Advanced Concepts	Dep Dir of Systems, Tech & Advanced Concepts.
Space Sciences	Chief, Lab for Astronomy and Solar Physics.
	Chief, Lab for Extraterrestrial Physics.
	Director of Space Sciences.
	Chief, Goddard Institute for Space Studies.
	Chief Laboratory for High Energy Astrophysics.
	Deputy Director of Space Sciences.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Engineering	Chief Engineer.
	Associate Director of Flight Projects.
	Chief, Mechanical System Center.
	Chief, Systems Engineering Division.
	Chief Technology Commercialization Office.
Earth Sciences	Chief Lab for Hydrospheric Processes.
	Chief, Space Data and Computing Division.
	Asst Dir of Earth Sci for Projects Eng.
	Chf, Laboratory for Atmospheres.
	Deputy Director for Earth Sciences.
	Director for Earth Sciences.
	Chief Laboratory for Terrestrial Physics.
	Deputy Assoc Dir for Earth Sci D & I Syst.
	Asst Dir of Mission to P/E Prog for Globe.
Office of Policy and Plans	Director of Special Studies.
	Director of Special Projects.
National Archives & Records Administration:	
Archivist of US Dep Archivist of the US/Chf of Staff	Deputy Archivist of the United States.
Office of Administrative Services	Assistant Archivist for Administrative Serv.
Office of the Federal Register	Director of the Federal Register.
Office of Regional Records Services	Asst Archivist for Regional Records Services.
Office of Human Resources and Information Services	Asst Archivist for Human Resources & Info Ser.
Office of Records Services—Washington, DC	Asst Archivist for Records Services.
Office of Presidential Libraries	Asst Archivist for Presidential Libraries.
	Director, Lyndon B. Johnson Library.
National Capital Planning Commission:	
National Capital Planning Commission Staff	Executive Director.
	Assistant Executive Director (Management).
	Deputy Executive Director.
	Assistant Executive Director (Programs).
	General Counsel.
National Endowment for the Arts:	
National Endowment for the Arts	Deputy Chairman for Guidelines, Panel and Council Operations.
	Deputy Chairman for Management and Budget.
	Chief Information Officer.
National Endowment for the Humanities:	
National Endowment for the Humanities.	Dir, Office of Planning & Budget.
	Director, Office of Strategic Planning.
National Labor Relations Board:	
Ofc of the Board Members	Executive Secy.
	Deputy Executive Secretary.
	Inspector General.
Div of Enforcement Litigation	Deputy Assoc. Gen. Counsel Appellate Court Br.
	Director, Office of Appeals.
Div of Advice	Associate Gen Counsel, Div of Advice.
	Deputy Assoc Gen Counsel.
Div of Administration	Director of Administration.
	Deputy Director of Administration.
	Chief Information Technology Branch.
Div of Operations Management	Assoc General Counsel, Div of Operation—Mgmt.
	Dep Asso Gen Counsel, Div of Operations—Mgmt.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
Regional Offices	Regl Dir Reg 1 Boston.
	Regional Director, Reg. 2, New York.
	Regional Director, Reg. 3, Buffalo.
	Regl Dir Reg 4 Philadelphia.
	Regional Director, Reg. 5, Baltimore.
	Regional Director, Reg. 6, Pittsburgh.
	Regl Dir, Region 7, Detroit Mich.
	Regional Director, Reg. 8, Cleveland.
	Regional Director, Reg. 9, Cincinnati.
	Regl Dir Reg 10 Atlanta.
	Regl. Dir., Reg. 11, Winston Salem.
	Regional Director, Reg 12, Tampa.
	Regional Director, Reg 13, Chicago.
	Regl Dir Reg 14 St Louis.
	Regl Dir Reg 15 New Orleans.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Regl Dir Reg 16 Ft Worth.
	Regl Dir Reg 17 Kansas City.
	Regl Dir Reg 18 Minneapolis.
	Regl Dir Reg 19 Seattle.
	Regional Dir, Reg. 20, San Francisco.
	Regional Director, Reg 21, Los Angeles.
	Regional Director Reg 22 Newark.
	Regional Director Reg 24 Hato Rey Puerto Rico.
	Regl Dir, Reg 25, Indianapolis.
	Regl Dir Reg 26 Memphis.
	Regl Dir Reg 27 Denver.
	Regl. Dir, Reg. 28 Phoenix.
	Regl Dir Reg 29 Brooklyn.
	Regl Dir Reg 30 Milwaukee.
	Regl. Dir., Reg 32, Oakland.
	Regional Director, Reg. 33 Peoria, ILL.
	Regl Dir Reg 31 Los Angeles.
	Regional Director Reg 34 Hartford.
National Science Foundation:	
Office of the Director	Senior Advisor.
Office of Integrative Activities	Senior Science Advisor.
	Senior Scientist.
Office of the General Counsel	Deputy General Counsel.
Office of Polar Programs	Head Polar Research Support Section.
Office of the Inspector General	Inspector General.
	Dep Inspector Gen & Senior Legal Advisor.
	Associate Inspector General for Efficiency.
	Associate Inspector General for Scientific Integrity.
National Science Board	Senior Policy Officer.
Directorate for Geosciences	Senior Science Associate for Spatial Data and Information.
	Sr Science Assoc for Geosciences Education.
Division of Atmospheric Sciences	Head, Upper Atmosphere Section.
	Head Lower Atmosphere Section.
Division of Earth Sciences	Head Major Projects Section.
	Head Research Grants Section.
Division of Ocean Sciences	Head Ocean Sciences Research Section.
Division of Engineering Education & Centers	Deputy Division Director (Education).
	Senior Staff Associate.
	Senior Engineering Advisor.
Division of Design, Manufacture & Industrial Innovation	Senior Advisor, Technology Integration.
	Senior Advisor.
Division of Civil and Mechanical Systems	Senior Advisor.
Directorate for Biological Sciences	Deputy Assistant Director.
Division of Environmental Biology	Deputy Division Director.
Directorate for Mathematical and Physical Sciences	Executive Officer.
	Special Assistant to the Assistant Director.
Division of Physics	Executive Officer.
Division of Astronomical Sciences	Executive Officer.
Division of Mathematical Sciences	Executive Officer.
Division of Materials Research	Executive Officer.
	Senior Staff Scientist.
Directorate for Education & Human Resources	Deputy Assistant Director.
	Dep Asst Dir for Integrative Activities.
Division of Research, Evaluation Communication	Senior Advisor for Research.
Directorate for Social, Behavioral and Economic Sciences	Executive Officer.
	Senior Advisor.
Division of International Programs	Deputy Division Director.
	Senior Staff Associate.
	Head, Office of Trans-Regional Affairs.
Directorate for Computer & Info Science & Engineering	Chief Science & Technology Officer.
	Executive Officer.
	Senior Scientist.
Division of Computer-Communications Research	Dep Division Director.
Office of Budget, Finance and Award Management	Director, BFZ and CFO.
	Deputy Chief Financial Officer
	Executive Officer.
Budget Division	Division Director.
Division of Financial Management	Division Director and Deputy CFO.
Division of Grants & Agreements	Division Director.
Division of Contracts, Policy & Oversight	Division Director.
Office of Information and Resource Management	Deputy Director, OIRM and Deputy CIO.
Division of Information Systems	Dep Dir, Div of Information Systems.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Division of Human Resource Management	Division Director.
	Deputy Division Director.
Division of Administrative Services	Division Director
	Deputy Division Director.
National Transportation Safety Board:	
Office of the Managing Director	Deputy Managing Director.
	Assoc Managing Dir Safety & Development.
	Assoc Managing Director for Quality Assurance.
Office of Aviation Safety	Director Ofc of Aviation Safety.
	Dep Dir, International Aviation Safety Affairs.
	Deputy Director, Tech and Inv Operations.
Office of Research & Engineering	Dir Ofc of Research and Engineering.
	Deputy Dir Ofc of Research and Engineering.
Office of Chief Financial Officer	Chief Financial Officer.
Office of Safety Recommendations and Accomplishments	Dir Ofc of Safety Recommendations & Accomplis.
Nuclear Regulatory Commission:	
Nuclear Regulatory Commission	Dir Division of Budget and Analysis.
Atomic Safety and Licensing Brd Panel	Chief Administrative Judge.
	Deputy Chief Administrative Judge (Executive).
Office of the Chief Information Officer	Dir, Applications Development Division.
	Dir, Information Technology Infrastructure.
	Director, Information Mgmt Division.
	Director, Plannning & Resource Mgmt Division.
Office of Chief Financial Officer	Dir, Division of Accounting and Finance.
	Special Assistant for Internal Controls.
	Deputy Chief Financial Officer.
Office of the Inspector General	Asst Inspector General for Audits.
	Deputy Inspector General.
	Assistant Inspector Gen for Investigations.
Deputy GC for Licensing & Regulation	Deputy Assistant GC/Legislative Counsel.
Dep GC for Hearings, Enforcement & Administration	Deputy Assistant GC for Administration.
Assistant GC for Hearing and Enforcement	Dep Asst GC for Mtrls, Antitrust, & Sp.
	Deputy Assistant General Counsel.
	Deputy Assistant GC for Mtrls, Antitrust & Sp.
	Chief Nuclear Waste Management Branch.
Office of Commission Appellate Adjudication	Dir Ofc of Comm Appellate Adjudication.
Division of Operational Assessment	Deputy Director, Div Incident Response.
	Special Assistant to the Director.
Division of Safety Programs	Chief Reactor Analysis Branch.
	Chf Reliability & Risk Assessment Branch.
Office of Administration	Director Div of Contracts & Prop Mgmt.
	Director, Div of Security.
	Dir, Div of Administrative Services.
Office of Human Resources	Special Assistant.
Ofc of Small and Disadv Bus Utilization/Civil Rights	Director.
Office of Nuclear Reactor Regulation	Proj Dir Project Directorate II 1.
Division of Inspection and Support Programs	Dir, Inspection & Support Programs.
	Chf, Inspection Program Branch.
	Chf, Special Inspections Branch.
Division of Reactor Projects I/II	Project Dir, Project Directorate I–1.
	Project Director, Project Directorate I–2.
	Project Director, Project Directorate I–4.
	Proj Dir Project Directorate II 2.
	Proj Dir Project Directorate II 2.
	Project Dir Project Directorate II 3.
	Deputy Dir, Div of Reactor Project I/II.
Division of Reactor Projects III/IV	Chf, Technical Specification Branch.
	Proj Dir Project Directorate III 1.
	Proj Dir Project Directorate III 2.
	Proj Director Project Directorate III 3.
	Proj Dir, Project Directorate IV–1.
	Chf, Events A & G Communications Sp Insp Brch.
	Proj Dir, N–P Reactor, D & E Proj Directorate.
	Project Dir, Proj Directorate IV–2.
	Chief, Generic Issues & Envir Proj Branch.
Division of Engineering	Chief, Materials & Chemical Engineering Br.
	Chf, Mechanical Engineering Branch.
	Chief Civil Eng & Geosciences Branch.
	Chief Electrical Engineering Branch.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Division of Systems Safety & Analysis	Chf, Plant Systems Branch.
	Chf, Reactor Systems Branch.
	Chief, Probablistic Safety Assessment Branch.
	Chief, Containment Sys & Severe Accident Branch.
Division of Reactor Controls and Human Factors	Chf, Human Factors Assessment Branch.
	Chf, Human Factors Assessment Branch.
	Chf, Operator Licensing Branch.
	Chf, Instrumentation & Control Branch.
	Chf, Quality Assur & Maint Branch.
	Project Dir Project Directorate I–3.
Division of Reactor Program Management	Chf, Chf, Emergency P & R Protection.
	Chf, Safeguards Branch.
	Project Dir, Standardization Proj Directorate.
	Proj Dir License Renewal & Environmental Rev.
	Special Assistant to the Director.
Office of Nuclear Material Safety and Safeguards	Deputy Director, Spent Fuel Project Ofc.
	Chief Transportation & Storage Safety.
Division of Fuel Cycle Safety & Safeguards	Chief,Operations Branch.
	Chief, Regl & Intl Safeguards Branch.
	Chief Special Projects.
	Chief, Licensing Branch.
Div of Industrial & Medical Nuclear Safety	Chief, Operations Branch
	Chief, Medical, Acod & Com Use Sfty Branch.
Division of Waste Management	Chf, High Level Waste & Uranium Recovery Proj.
	Chief, Perf Assess & Hydrology Branch.
	Chief, Engineering & Geosciences Branch.
	Deputy Dir, Prog Mgmt Policy Devel & Analysis.
	Chf, Low Level Waste & Decommissioning Proj.
Ofc of Nuc Regulatory Research	Director: Fin Mgt, Procurement & Admin Staff.
	Director for Inspector Special Projects.
Divison of Engineering Technology	Chief, Generic Safety Issues Branch.
	Chief, Elect, M & M Engineering Branch.
	Chief, Structural & Geological Eng Branch.
Division of Regulatory Applications	Chief, Regulation Development Branch.
	Chief Waste Management Branch.
Divison of Systems Technology	Chf, Chief Accident Evaluation Branch.
	Chf, Probabilistic Risk Analysis Branch.
	Chf, Radiation Protection & Health Effects Br.
	Chief, Reactor and Plant Systems Branch.
	Chief, Control Instr & Human Factors Branch.
Region I	Deputy Regional Administrator.
	Dir, Div of Nuclear Materials Safety.
	Deputy Director, Division of Reactor Projects.
	Director Division of Reactor Safety.
	Director, Division of Reactor Projects.
	Dep Dir, Div of Reactor Safety.
	Dep Dir, Div of Nuclear Materials Safety.
	Director, Millstone Inspection Directorate.
Region II	Deputy Regional Administrator Region II.
	Dir, Div of Nuclear Materials Safety.
	Deputy Director, Division of Reactor Projects.
	Director, Division of Reactor Projects.
	Director, Division of Reactor Safety.
	Dep Dir, Div of Reactor Safety.
Region III	Director, Division of Reactor Safety.
	Director, Division of Reactor Projects.
	Dep Regional Administrator Region III.
	Dir, Div of Nuclear Materials Safety.
	Deputy Director Division of Reactor Projects.
	Dep Dir, Div of Reactor Safety.
	Dep Dir, Nuclear Materials Safety.
Region IV	Deputy Regional Administrator Region IV.
	Deputy Director, Div of Reactor Projects.
	Director Div of Reactor Projects.
	Dir, Div of Nuclear Materials Safety.
	Dir, Division of Reactor Safety.
	Dep Dir, Division of Reactor Safety.
Office of Government Ethics:	
Office of Government Ethics	Deputy, Director.
	Deputy Dir., for Government R & S Projects.
	Senior Assoc Director for Agency Programs.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Office of Management and Budget:	
Office of the Director	Deputy, Associate Dir for Economic Policy.
	Senior Advisor to the Dep Dir for Management.
Legislative Reference Division	Asst Dir Legislative Reference.
	Chief, Economics, Science & Govt. Branch.
	Chief, Resources-Defense-International Branch.
	Chief, Labor, Welfare, Personnel Branch.
	Associate General Counsel for Budget.
Office of Federal Procurement Policy	Dep Admin for Procurement Law & Legislation.
Office of Information and Regulatory Affairs	Chief, Information Policy & Technology Branch.
	Chief, Human Resources and Housing Branch.
	Chief, Commerce and Lands Branch.
	Chief Statistical Policy Branch.
	Chief, Natural Resources Branch.
	Senior Advisor.
Office of Federal Financial Management	Chief Management Integrity Branch.
	Deputy Controller.
	Chief Federal Financial Systems Branch.
	Senior Advisor to the Director.
Budget Review Division	Dep Asst Dir for Budget Review & Concepts.
	Dep Chief Budget Analysis Branch.
	Chief Budget Analysis Branch.
	Asst Dir for Budget Review.
	Dep Asst Dir for Budget Analysis & Systems.
	Chief, Budget Concepts Branch.
	Chief, Budget Systems Branch.
International Affairs Division	Chief, State—USIA Branch.
	Chief, Economic Affairs Branch.
	Dep Assoc Dir for Internatl Affairs.
National Security Division	Chief, Command, Ctrl, Coms, & Intellig Branch.
	Chief, Force Structure & Investment Branch.
	Dep Assoc Dir for National Security.
	Chief Operations Sup Branch.
Associate Director for Educ, Income Maintenance & Labor	Chief, Labor Branch.
	Chief, Education Branch.
	Dpt Assoc Dir for Ed, Income Maint & Labor.
	Chf, Income Maintenance Branch.
Transportation, Commerce, Justice & Services Division	D/A for Transp Commerce, Justice & Services.
	Chief Commerce Branch,
	Chief Transport Branch.
	Chief, Justice/GSA Branch.
Housing, Treasury and Finance Division	Deputy Assoc Dir for Housing Treasury Finance.
	Chief, Treasury Branch.
	Senior Advisory for Cash & Credit Mgmt.
	Chief, Financial Institutions Branch.
	Chief, Housing Branch.
Assoc Dir for Natural Resources, Energy, and Science	Senior Advisor.
Natural Resources Division	Dep. Associate Dir. for Natural Resources.
	Chief, Agricultural Branch.
	Chief, Environmental Branch.
	Chief Interior Branch.
Energy and Science Division	Chief, Water and Power Branch.
	Chief Science and Space Programs Branch.
	Dep. Assoc. Dir for Energy & Science.
	Chief, Energy Branch.
Health Division	Deputy Associate Director for Health.
	Chief Health Programs & Services Branch.
	Chief Health & Financing Branch.
	Chief, Health & Human Services Branch.
VA/Personnel Division	Chf Veteran Affairs Branch.
	Deputy Assoc Director for VA & Personnel.
	Chief, Personnel, Portal, EXOP Branch.
Office of the Chief Financial Officer	Chief Financial Officer.
	Dep Chf Fin Ofc/Asst Dir for Financial Mgmt.
Office of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Audits.
	Assistant Inspector Gen for Investigations.
	Deputy Aig for Audits.
Retirement and Insurance Service	Asst Dir for Retirement Programs.
	Director, Office of Acturaries.
	Asst Dir for Insurance Program.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Employment Service	Director, Personnel Res & Development Center.
	Director, Staffing Automation.
	Senior Advisor.
	Special Assistant to the Associate Director.
Office of Workforce Relations	Director, Office of Workforce Relations.
	Dir Ctr for Partnership/Labor Mgmt Relations.
	Assistant Dir for Human Resources Development.
Investigations Service	Director, Fed Investigation Systems.
Office of the Chief Information Officer	Chief Information Officer.
Office of Contracting and Administrative Services	Director of Contracting & Administrative Serv.
Office of Merit Systems Oversight and Effectiveness	Asst Dir for Merit Systems Oversight.
Office of Special Counsel:	
Headquarters, Office of Special Counsel	Assoc Special Counsel (Prosecution).
	Assoc Spec Counsel (Investigation).
	Deputy Associate Spec Counsel for Prosecution.
	Assoc Special Counsel for Disclosure and Complaints Examination.
	Director for Management.
	Assoc Special Counsel Planning and Oversight.
	Associate Special Counsel for Plan & Advice.
Railroad Retirement Board:	
Board Staff	Chief of Technology Service.
	Director of Hearings and Appeals
	Chief Actuary
	Director of Field Service.
	Director of Administration.
	Deputy General Counsel.
	Asst Inspector General for Investigations.
	Chief Financial Officer.
	Assistant Inspector General for Audit.
	Director of Taxation.
	General Counsel.
	Director of Programs.
	Chief Information Officer.
	Dir of Operations.
	Dir of Policy & Systems.
	Director of Fiscal Operations.
Securities and Exchange Commission:	
Office of the Chief Accountant	Dep Chf Accountant.
Office of the Executive Director	Associate Executive Director (Finance).
	Associate Executive Director (Administration).
Div of Corporation Finance	Associate Director (Operations).
	Associate Director (Legal).
Small Business Administration:	
Office of the Inspector General	Asst Inspector General for Auditing.
	Asst Inspector for Investigations.
	Deputy Inspector General.
	Assistant Inspector Gen/Inspection & Eval.
	Asst Inspection General for Magnt Legal Cousl.
Office of the General Counsel	Associate General Counsel for General Law.
	Assoc Gen Counsel Litigation.
	Assoc Gen Counsel for Financial Law.
Office of Equal Employment O & C Rights Compliance	Asst Admr for Equal Employ O & C Right Compl.
Office of Hearings and Appeals	Asst Administrator for Hearings and Appeals.
Office of the Chief Financial Officer	Deputy Chief Financial Officer.
Office of Economic Development	Dep to the Admin for Capital Access.
Office of Financial Assistance	Assoc Administrator for Financial Assist.
	Dep Assoc Admr for Financial Assistance.
	Asst Admr for Borrower and Lender Servicing.
Office of Surety Guarantees	Assoc Administrator for Surety Guarantees.
Office of Government C & M Enterprise Development	Associate Administrator for Procurement Policy and Liaison.
Office of Minority Enterprise Development	Assoc Admin for Minority Small Bus Cap Owners.
Office of Entrepreneurial Development	Deputy to the Ada for Entrepreneurial Dev.
Office of Information Resource Management	Chief Information Officer.
Office of Human Resources	Asst Administrator for Human Resources.
District Directors	District Director.
	District Director.
	District Director.
	District Director.
	District Director.
	District Director.
	District Director.
	District Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Social Security Administration:	
Office of the Inspector General	Deputy Inspector General.
	Counsel to the Inspector General.
Office of Investigations	Asst Inspector General for Investigations.
	Dep Asst Inspector General for Investigations.
Office of Audits	Asst Inspector Gen for Audits.
	Dep Asst Inspector General for Audits.
Office of Actuary	Chief Actuary.
	Deputy Chief Actuary (Long-Range).
	Deputy Chief Actuary (Short-Range).
Office of Human Resources	Dir Ofc Labor-Management Employee Relations.
Office of Finance, Assessment & Management	Senior Financial Executive.
Office of Financial Policy and Operations	Assoc Comr, Office of Fin Policy & Operations.
	Dep Assoc Comm Financial Policy & Operations.
Office of Acquisition and Grants	Assoc Commissioner for Acquisition & Grants.
Office of Telecommunications and Systems Operations	Assoc Comm for Telecommunications & Sys Oper.
	Deputy Associate Commissioner for T&SO.
	Dep Assoc Commr for T & S Ops (Telecomm).
Division of General Law	Associate General Counsel for General Law.
Department of State:	
Office of the Inspector General	Assistant Inspector General for Audits.
	Asst Inspector General for Investigations.
	Counsel to the Inspector General.
	Dep Asst Inspector General for Audits.
	Asst Insp Gen for Policy, Plng and Management.
	Dep Asst Inspector Gen for Inspections.
	Deputy Inspector General.
	Asst Inspector Gen for Security Oversight.
	Senior Inspector—Thematic Review.
Bureau of Intelligence and Research	Executive Director.
Bureau of Administration	Director, Office of Acquisitions.
Bureau of Personnel	Director, Ofc of Civil Service Personnel Mgmt.
	Ses Long Term Training.
Bureau of Arms Control	Office Director.
	Office Director.
	Office Director.
	Deputy Asst. Secretary.
Bureau of Nonproliferation.	Office Director.
Department of Transportation:	
Office of Inspector General	Deputy Inspector General.
	Senior Counsel.
	Associate Deputy Inspector General.
	Assistant Inspector General for Rail, Transit, and Special Program Audits.
Assistant Inspector General for Auditing	Asst Insp General for Auditing.
Office of Finance, Economic and Information Technology	Depty Asst Inspector General.
Office of Aviation	Dep Asst Inspector General.
Office of Highways and Highway Safety	Deputy Assistant Inspector General for Highways & Highway Safety.
Assistant Inspector General for Investigations	Asst Inspector General for Investigations.
	Dep Asst Inspector General for Investigations.
Assistant Inspector General for Maritime & Departmental Programs	Deputy Asst Inspector General.
Asst Secretary for Budget & Programs	Deputy Chief Financial Officer.
Asst Sec for Administration	Asst Secy for Administration.
	Senior Procurement Executive.
Assoc Admr for Safety	Assoc Admr for Safety.
Office of Safety Enforcement	Director, Office of Safety Enforcement.
Associate Administration for Pipeline Safety	Assoc Admr for Pipeline Safety.
Office of Shipyard Revitalization	Dir Ofc of Shipyard Revitalization.
Ofc of Assoc Admr for Ship Financial A & C Prefernce	Assoc Admr for Ship fin A & C Preference.
Office of the Administrator	Senior Advisor.
Federal Highway Administration	Executive Director.
Office of Fiscal Services	Dir Ofc of Budget & Finance.
Office of Motor Carrier Standards	Director, Office of Research and Standards.
Office of Real Estate Services	Dir Ofc of Real Estate Services.
Motor Carrier and Highway Safety	Director, Office of Motor Carrier Enforcement.
Research, Development and Technology	Director, Office of Safety RD&T.
Associate Administrator for Safety Assurance	Associate Administrator for Safety Assurance.
Ofc of Defects Investigation	Dir-Ofc of Defects Investigation.
Ofc of Vehicle Safety Comp	Dir-Ofc of Vehicle Safety Compliance.
US Coast Guard	Deputy Assistant Commandant for Acquisition.
Office of the Chief of Staff	Director of Finance and Procurement.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Surface Transportation-Board	Director of Economics, Environmental A & A.
Office of Proceedings	Deputy Director—Legal Analysis.
Department of Treasury:	
Assistant Secretary (International Affairs)	Dir Ofc of Foreign Exchange Operations.
Under Secretary for Domestic Finance	Director, Office of Procurement.
Fiscal Assistant Secretary	Fiscal Assistant Secretary.
	Deputy Assistant Secretary for Fiscal Operations and Policy Dep Asst Secretary Accouting Operations
Financial Management Service	Dir, Regional Financial Center (Chicago).
	Director, Regl Fin Ctr (San Francisco).
	Director, Regl Fin Ctr (Austin).
	Comptroller.
	Director Platform Services Directorate.
	Assistant Commissioner, Governmentwide Accounting.
	Commr of Financial Management Service.
	Asst Commissioner, Information Resources.
	Assistant Commissioner, Federal Finance.
	Director Operations Group.
	Dep Com Financial Management Service.
	Asst Comr, Management (Chief Fin Ofcr).
	Director Systems 90 Implementation.
	Director, Systems Management Directorate.
	Assistant Commissioner (Agency Services).
	Deputy, Chief Information Officer.
	Chief Accounting Officer.
	Assistant Commissioner, Financial Operations.
	Assistant Commissioner Debt Management Sercs.
Bureau of the Public Debt	Commissioner.
	Dep Commr of the Public Debt.
	Asst Commissioner (Savings Bond Operations).
	Asst Commr (Financing).
	Asst Commr (Administration).
	Executive Director.
	Government Securities Policy Advisor.
	Asst Commr/Securities & Accounting Services.
	Assistant Commissioner (Office of Informaiton Technology).
	Asst Commissioner (Public Debt Accounting).
Assistant Secretary (Enforcement)	Dep Dir, Financial Crimes Enforcement Network
	Director Fincen.
	Executive Assistant Director, Fincen.
	Assoc Dir, Ofc of Mgmt/Chf Fin Ofcr, Fincen.
	Senior Advisor to the Asst Secy (Enforcement).
	Dir Exe Ofc for Asset Forfeiture.
Bureau of Alcohol, Tobacco and Firearms	Special Agent in Charge (NY Field Division)
	Spec Agen in Charge (Washington Field Div).
	Assistant Director (Inspection).
	Dep Asst Dir (Liaison & Public Information).
	Dep Assoc Dir Reg Enforcement Field Operation.
	Deputy Asst Director (Inspection).
	Deputy Asst Dir (CE Field Operations)—East.
	Deputy Asst Dir (CE Field Operations)—West.
	Asst Dir (Science & Technology).
	Asst Dir (Field Operations).
	Deputy Asst Dir (Field Operations).
	Deputy Asst Dir (Science & Technology).
	Director Laboratory Services.
	Deputy Director.
	Asst Dir (Firearms Explosives & Arson).
	Asst Dir (Alcohol & Tobacco).
	Deputy Asst Director (Alcohol & Tobacco).
	Dep Asst Dir (Firearms Explosives Arson).
	Asst Dir (Liaison & Public Information).
Chief Counsel	Associate Chief Counsel (Admin & Ethics).
US Customs Service	Dir, International Trade Compliance Division.
	Dir Ofc of Regulatory Audit.
	Special Agent in Charge, Miami.
	Director, Investigative Operations Division.
	Dir, Applied Technology.
	Special Agent in Charge—New York.
	Special Agent in Charge—Los Angeles.
	Deputy Assistant Commissioner, Internal Affairs.
	Regional Special Agent in Charge (SAIC).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Regional Special Agent in Charge (SAIC).
	Regional Special Agent in Charge (SAIC).
	Dir Customs Management Center New York.
	Area Dir, Newark.
	Dir Customs Management Center N Atlantic.
	Asst Commissioner, Field Operations.
	Dir Customs Management Center Gulf.
	Dir Customs Management Center Mid-America.
	Dir Customs Management Center—S. Texas.
	Dir Customs Management Center—Mid Pacific.
	Project Executive.
	Asst Commissioner, Regulations & Rulings.
	Dir Strategic Trade Center Chicago.
	Deputy Asst Commissioner (Investigations).
	Area Director, JFK Airport.
	Asst Commissioner Chief Information Officer.
	Dir Customs Management Center South Florida.
	Special Agent in Charge (New Orleans).
	Director, Public Affairs.
	Dep Dir, Ofc of Regulatory Audit.
	Director, Investigative Programs.
	Asst Commissioner, Investigations.
	Director Strategic Trade Center-Plantation.
	Dir Laboratories & Scientific Services.
	Project Executive.
	Chief Operations Officer.
	Special Agent in Charge—Boston.
	Deputy Assistant Commissioner, Field Operations.
	Director Budget.
	Exec Dir The Interdiction Committee.
	Assistant Commissioner, Finance.
	Executive Director, Mission Support Service.
	Project Executive.
	Dir Tariff Classification Appeals Division.
	Dir Strategic Trade Center Long Beach.
	Processes and Policy Executive.
	Director, OFC of Air Interdiction.
	Special Agent in Charge (Houston).
	Dir Customs Management Center—S California.
	Dir Office of Planning.
	Director, Strategic Trade Center Operations.
	Director, Budget Division.
	Executive Dir4ector Customs Management Center.
	Dir Customs Management Center South Pacific.
	Director, Strategic Trade Center.
	Project Exec (Dir Intervention Management).
	Associate Executive Director (West).
	Director, Administration Policy & Planning.
	Asst Commissioner, Strategic Trade.
	Special Agent-In-Charge (San Diego).
	Technology Manager.
	Asst Commissioner, Human Resources Mgmt.
	Regional Special Agent in Charge.
	Director, Ofc of Automated Commercial Systems.
	Associate Executive Director, East.
	Assistant Commissioner, Office of Training and Development.
	Director, Infrastructure Division.
	Director, Management Inspection.
	Special Agent-in-Charge—Dallas.
	Associate Executive Director, Central.
	Deputy Chief Financial Officer.
	Special Agent in Charge—El Paso.
	Special Advisor (Enforcement).
Customs Chief Counsel	Associate Chief Counsel (Miami).
	Associate Chief Counsel (Chicago).
	Associate Chief Counsel (New York).
	Associate Chief Counsel Enforcement.
	Assoc Chief Counsel (Trade Tariff & Leg).
	Associate Chief Counsel (Houston).
	Assoc Chief Counsel (Administration).
	Associate Chief Counsel (Los Angeles).
Secret Service	Director of the Secret Service.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Deputy Director U.S. Secret Service.
	Asst Director, Investigations.
	Asst Dir (Protective Operations).
	Asst Dir (Protective Research).
	Assistant Director, Administration.
	Assistant Director Inspection.
	Dep Asst Dir (Protective Operations).
	Spec Agent in Charge—Presidential Protective.
	Special Agent in Charge, New York Office.
	Special Agent in Charge, Chicago.
	Special Agent in Charge, Los Angeles Office.
	Dep. Asst. Dir. (Protective Research).
	Assistant Director—Training.
	Asst Director—Govt Liaison and Public Aff.
	Spec Agent in Charge—VP Protect Div.
	Spec Agent in Charge—Tech Sec Div.
	Spec Agent in Charge—Intelligence Div.
	Spec Agent in Charge—Washington Field Office.
	Spec Agent in Charge—Philadelphia Field Office.
	Special Agent in Charge, Dallas Field Office.
	Deputy Asst Dir Investigations.
	DAD—Administration.
	Deputy Special Agent in Charge Pres Prot Div.
	DAD (Uniformed Forces, F & E Dev), Ofc Trng.
	Dep Special Agent in Charge—PPD White House.
	Special Agent in Charge—Houston Field Ofc.
	Deputy Assistant Director—Technology.
	Deputy Asst Director Office of Inspection.
	Spec Agent in Charge—Miami Field Office.
	Deputy Special Agent in Charge—VP Prot Div.
	Dep Asst Dir Protective Operations.
	Chf, Info Resources Management Division.
	Spec Agent in Charge—Atlanta Field Office.
	Deputy Asst Dir Protective Operations.
	Special Agent in Charge.
Ofc of the Inspector General	Dep Asst Inspector Gen for Audit (Fin Mgmt).
	Dep Insp Gen Investigation (DAIGI) Tid.
	Counsel to the Inspector General.
	Assistant Inspector General for Management Services.
	Assistant Inspector General for Audit.
	Dep Asst Inspect General for Audit Prog Audit.
	Dep Asst Inspector Gen for Investigations.
	Asst Inspector General for Investigations.
Office of the General Counsel	Chief Counsel.
Inspector General for Tax Administration	Regional Inspector, Southwest Reg.
	Regional (Inspector General for Tax Administration—SE).
	Assistant Inspector General for Management Services.
	Associate Inspector General for Audit.
	Associate Inspector General for Audit (Wage and Investment).
	Associate Inspector General for Audit (Small Business and Tax Exempt).
	Deputy Inspector General for Audit.
	Deputy Inspector General for Tax Administration.
	Associate Inspector General for Investigation (Investigative Support).
Assistant Secretary (Economic Policy)	Sr Economist.
Assistant Secretary (Tax Policy)	Dir (Economic Mod & Computer Applications).
Assistant Secretary (Management)	Director, Office of Procurement.
	Deputy Chief Financial Officer.
United States Mint	Assiciate Dir. Information Resources/CIO.
	Chief Technology Officer.
	Associate Director for Circulating.
	Dep Assoc Dir for Financial & Dep Chief Fin Ofc.
	Associate Director for Marketing.
	Assoc Dir For Pol & Mgmt Chf Fin Officer.
Internal Revenue Service	Regional Commissioner, Northeast.
	Regional Commissioner, Southeast.
	District Dir, Los Angeles.
	District Director, New Jersey.
	District Director, Illinois.
	District Dir, Manhattan.
	District Dir, Brooklyn.
	District Director, New England.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	District Director, S Texas.
	District Director, N Texas.
	District Director, Kansas-Missouri.
	District Director, Michigan.
	District Director, N California.
	District Director, Georgia.
	National Director, Tax Forms and Publications.
	Dir Martinsburg Computing Center.
	Dir, IRS Data Center Detroit.
	Service Center Director, Memphis.
	Dir Service Ctr Cincinnati.
	Service Center Dir, Philadelphia.
	Service Center Director, Andover, Mass.
	Srvc Ctr. Dir, Brookhaven.
	Srvc Ctr. Dir., Kansas City.
	Service Center Dir, Ogden.
	SRVC Ctr Dir, Atlanta.
	District Director, Connecticut-Rhode Island.
	District Director, N Central.
	District Director, Upstate NY.
	District Director, North-South Carolina.
	District Director, Indiana.
	District Director, Kentucky-Tennessee.
	District Director, Pacific-Northwest.
	District Director, Arkansas-Oklahoma.
	District Director, Gulf Coast.
	District Director, Ohio.
	District Director, Midwest.
	District Director, Virginia-West Virginia.
	District Director, Southwest.
	District Director, Rocky Mountain.
	Assistant District Director, Illinois.
	Assistant District Director, Manhattan.
	Asst District Dir, Los Angeles.
	Assistant District Director, N California.
	Asst District Director, New England.
	Assistant District Director, N Texas.
	Assistant District Director, Delaware-Maryland.
	Regional Dir of Appeals North Atlantic Region.
	Regional Director of Appeals-Western Region.
	Regional Inspector Western Region.
	Natl Dir, Equal Opportunity & Diversity.
	Assistant District Director, Georgia.
	Controller National Dir for Financial Mgmt.
	Director, Technical Contract Management Division.
	Deputy Assistant Commissioner (Procurement).
	Director, Submission Processing Division.
	National Director, Commissioner's Review Group.
	Assistant to the Commissioner.
	Director, Exempt organizations Rulings and Agreements.
	Commissioner, Tax Exempt & Government Entities Division.
	District Director, Delaware-Maryland.
	Assistant Commissioner (Service Center Operations):
	Asst Deputy Commissioner (Modernization).
	Dir Exempt Organizations Technical Division.
	D/Employee Plans Tech & Actuarial Division.
	District Director, South Texas.
	National Director for Financial Management.
	Director, Legislative Affairs Division.
	Director, Statistics of Income Division.
	Dep Asst Commr (Criminal Investigation).
	Director, Submission Processing Center, Memphis.
	Director, Customer Service Center—Cincinnati.
	Assistant Service Center Director, Fresno.
	Director, Customer Service Center—Brookhaven.
	Director, Submission Processing Center—Kansas City.
	Director, Customer Service Center—Ogden.
	Deputy Chief, Customer Service Field Operations (Atlanta).
	Asst District Director Buffalo.
	Deputy Division Commissioner, Large and Mid-size Business.
	Regional Director of Appeals.
	Regional Director of Information Systems, Mid States.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

	Agency and organization	Career reserved positions
		Asst Comr (Electronic Tax Administration).
		National Director for Financial Analysis.
		Assistant District Director—New Jersey.
		Assistant District Director, Southwest.
		Project Director.
		Regional Chief Customer Service, Northeast.
		Privacy Advocate.
		Assistant Commissioner (Is National Operations).
		District Director, Central-California.
		Assistant Service Center Director, Austin.
		Asst Service Center Director, Philadelphia.
		National Director of Appeals.
		Director of Investigations, Eastern Area OPS.
		Dir of Investigations.
		Dir of Investigations, Southern Area of OPS.
		Director, Office of National Operations.
		Director of Support Services, Northeast.
		Director of Support Services, Midstates.
		Director of Support Services, Southeast.
		Natl Dir for Communication Education Quality.
		Asst District Director, Kentucky-Tennessee.
		Chief Compliance, Northeast.
		Chief Compliance.
		Dir, Customer Serv Compliance & Mgmt Sys Div .
		Associate Inspector General for Audit (Information System and Financial Mgmt).
		District Director, Pennsylvania.
		Assistant Service Center Director, Ogden.
		National Dir, Customer Service Operations.
		Regional Director of Information Systems—Western.
		Assistant District Director, Houston.
		Service Center Director, Austin.
		District Director, Houston.
		Dir of Investigations, Central Area of Ops.
		Deputy Executive Officer for Customer Service.
		Project Director.
		Deputy Chief Financial Officer.
		Chief Communications and Liaison.
		Special Assist to Chief Mgmt & Administration.
		Exec Asst to the Natl Dir Ofc of Quality.
		Director of Procurement.
		Dean School of Information Technology.
		Dean School of Professional Development.
		Deputy Commissioner (Operations).
		Dir Ofc of Media Relations.
		Natl Director, Strategic Planning Division.
		District Director, North Florida District.
		Deputy National Taxpayer Advocate.
		National Director, Telephone Operations.
		Project Dir Disciplinary Action Review.
		Natl Dir, Submission Processing Division.
		Assistant District Director, S California.
		Asst Commissioner (Collections).
		Director, Submission Processing Center, Fresno.
		Executive Ofcr for Service Center Operations.
		Natl Dir Real Estate Planning & Management.
		Assistant District Dir, Central California.
		Director, Collection Redesign.
		Regional Director of Information Systems-Southeast.
		Director, of Systems Life Cycle S&E.
		Director, Systems Support Division.
		Executive Director, Modernization Design.
		Assistant Commissioner (is Field Operations).
		Project Director, Customer Service Site.
		Director, Customer Service Center—Andover.
		Natl Director Corporate Examinations.
		Regional Director of Information Systems, Ne.
		Assistant Director Dir, north-South Carolina.
		Regional Chief Customer Service, Midstates.
		Regional Chief Customer Service, Western.
		Director, Chief Customer Service Western.
		Director, Customer Service Center—Atlanta.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	Director, Submission processing Center—Philadelphia.
	National Dir, Customer Serv Planning & Syst.
	Director, Tennessee Computing Center.
	National Director, Tax Refund Fraud.
	Asst District Director, Ohio.
	National Director Personnel.
	District Director, S Florida.
	Project Director.
	Assistant Service Center Director, Cincinnati.
	Director, Submission Processing Center—Brookhaven.
	Assistant Commissioner (Product Assurance).
	Assistant Commissioner (International).
	Project Director.
	Asst District Director, Rocky Mountain.
	Executive for Service Center Customer Service and Support.
	Asst Dist Dir, Virginia-West Virginia.
	Assistant Disrict Director—Pennsylvania.
	Assistant District Director—Manhatan.
	Director, Submission Processing Center—Ogden.
	Assistant Director Operations (Customer Service Center—Atlanta).
	Deputy National Dir of Appeals.
	Regional Commissioner, Midstates.
	Project Director.
	Director, Program and Project Manager Division.
	Deputy Chief Operations Officers.
	Director, Architecture Division.
	Dep Chief Info Officer (Infro Resources Mgmt).
	Chief Compliance, Western.
	National Director of Quality.
	Asst Comr (Forms & Submission Process).
	Diector, Submission Processing Center—Austin.
	Regional Director of Appeals Midstates.
	National Director, Compliance Specialization.
	Dean School of Taxation.
	National Director Speciality Taxes.
	Regional Chf Compliance, Midstates.
	Customer Service Transition Executive.
	Assistant Commissioner Office of Program E&R Analysis.
	National Dir, Electronic Program Operations.
	National Director, Communications.
	Director, Security Standards and Evaluation Office.
	Project Director.
	Director, Telecommunications and Operations Division.
	Dir. Office of System Standards & Evaluation.
	District Director, S California.
	Deputy Division Counsel and Deputy Associate Chief Counsel (Tax Exempt & Government Entities).
	Project Director.
	Deputy Chief, Management and Finance.
	Project Director.
	Director, Customer Service Center, Philadelphia.
	Director, Submission Processing Center—Atlanta.
	Project Director.
	Program Executive for Organizational Performance Management.
	National Dir, Multimedia Production Division.
	Deputy Chief, Customer Service Field Operations (Dallas).
	Deputy Chief Information Officer (Systems).
	National Dir, Collection Field Operations.
	Assistant District Director—N. Florida.
	Modernization Support Program Management Executive.
	Director, Customer Service Center—Memphis.
	Executive for Service Center Submission Processing.
	Regional Commissioner, Western.
	Director, Corporate Processing Division.
	Director of Support Services, Western.
	Director, Information Resources Management Office.
	Asst to the Senior Dep Commissioner.
	National Director Compliance Research.
	Chief Human Resource Officer.
	Director, Submission Processing Center—Cincinnati
	Deputy Division Commissioner, Tax Exempt and Government Entities.
	Director, International District Operations.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	National Director for Systems & Account Stds.
	Deputy Asst Commissioner (International)
	Project Director.
	Director, Business Systems Requirements.
	Asst Commissioner (Support Services).
	Chief of Operations Officers.
	Assistant District Director, S Florida.
	Project Director.
	Project Coordinator for Criminal Investigation Division Review.
	Program Executive for TT&SI
	Asst Commr (Examination & Govntl Liaison)
	Assistant Service Center Director—Andover.
	Chief, Customer Service Field Operations.
	Director, Customer Service Center—Kansas City.
	Service Center Director, Fresno.
	Asst Comr (Procurement).
	Natl Director, Electronic Prog Enhancement.
	National Director for Budget.
	Chief Management and Administration.
	Electronic Tax Administration Modernization Executive.
	Deputy Assistant Commissioner (Program Management & Architecture).
	Assistant Commissioner (Systems Development).
	Director, Submission Processing Center—Andover.
	Director, Customer Service Center—Fresno.
	Deputy Chief, Agencywide Shared Services.
	Assistant District Director, Michigan.
	Project Director.
	Project Director.
	Asst Chief Counsel (General Litigation).
	Asst Chief Counsel (Criminal Tax).
	Asst Chief Counsel (General Legal Services.)
	Asst Chief Counsel (Disclosure Litigation).
	Assistant Chief Counsel (International).
	Assistant Chief Counsel (Corporate).
	Dep Asst Chf Coun (Income Tax & Accounting).
	Dep Asst Chf Coun (Passthroughs/Spec Indust).
	Asst Chief Counsel (Field Service).
	Asst Chf Coun (Passthroughs/Spec Industries).
	Deputy Asst Chief Counsel (Corporate).
	Dep Assoc Chief Counsel (Fin & Management).
	Dep Asst Chief Counsel (Field Service).
	Dep Asst Chief Coun (Financial Inst & Prod).
	Dep Assoc Chf Coun (Enforcement Litigation).
	Deputy Assoc Chief Counsel (International).
	Asst Chf Coun (Fin Institutions & Products).
	Dep Asst Chief Coun (Income Tax & Accounting).
	Dep Assoc Chief Counsel (EBEO).
	Asst Chief Counsel (Income Tax & Accounting).
	Special Counsel to the National Taxpayer Advocate.
	Assistant Chief Counsel (International)(Technical).
	Assoc Chief Counsel (Enforcement Litigation).
	Assoc Chief Coun (Emp Benefits Exempt Org).
	Special Counsel (Modernization & Strat Plnng).
	Deputy Chief Counsel (Technical).
	Asst Chief Counsel (EBEO).
	Dep Assoc Chief Counsel (Domestic)(Technical).
	Associate Chief Counsel (International).
	Assoc Chf Counsel (Finance & Management).
	Associate Chief Counsel/Operating Division Counsel (TEGE).
	Dep Assoc Chief Coun (Domestic)(Field Serv).
	Deputy Chief Counsel (Operations).
	Assoc Chief Counsel (Domestic).
Regional Counsels	Regional Counsel SE Region.
	District Counsel, New England.
	District Counsel, Los Angeles.
	District Counsel, Ohio.
	District Counsel, Pennsylvania.
	District Counsel, New Jersey.
	District Counsel, Illinois.
	District Counsel, Manhattan.
	District Counsel, N Texas.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
	District Counsel, N California.
	District Counsel, S California.
	District Counsel, S Florida.
	Regional Counsel, Western.
	Deputy Regional Counsel, Northeast.
	District Counsel, Midstates.
	District Counsel, Northeast.
	Deputy Regional Counsel (Southeast).
	Deputy Regional Counsel, Western Region.
	District Counsel, Pacific Northwest.
	District Counsel, Delaware-Maryland.
	District Counsel, Brooklyn.
	Deputy Regional Counsel, Midstates.
	District Counsel, Houston.
	District Counsel, Rocky Mountain.
Comptroller of the Currency	Deputy Associate Inspector General for Investigations.
	Deputy Inspector General for Investigations.
	Counsel to the Treasury Inspector Genral for Tax Administration.
	Associate Inspector General for Investigations (Field Operations).
Regional Operations	Assistant Commissioner, Regional Operations.
US Agency for International Development:	
Office of the Administrator	Counselor to the Agency.
Office of the General Counsel	Deputy General Counsel.
	Asst General Counsel for Ethnic & Adm.
Office of the Inspector General	Counsel to the Inspector General.
	Deputy Inspector General.
Office of Security	Director, Office of Security.
Office of Equal Opportunity Programs	Dir Ofc Equal Opportunity Programs.
Bureau for Global Programs, Field Support and Research	Assoc Asst Admr Center for Economic Growth
	Senior Deputy Assistant Administrator.
	Dep Asst Admr Ctr for Pop, H/N BFGP, FS/Res.
	Associate Assistant Administrator.
Bureau for Europe and the New Independent States	Deputy Asst Administrator.
Bureau for Management	Chf Fin Ofcr, Office of Financial Management.
	Dir Office of Information Resource Management.
	Deputy Director Ofc of Procurement.
	Deputy Director, Office of Human Resources.
	Dir, Ofc of Admin Services.
	Deputy Director, Ofc of Procurement.
	Deputy Asst Admr Bureau for Management.
	Dep Director, Office of Financial Management.
US Arms Control and Disarmanent Agency:	
Strategic and Eurasian Affairs Bureau	Chief, Strategic Transition Division.
Broadcasting Board of Governors:	
Bureau of Management	Director, Office of Personnel.
	Director, Office of the Comptroller.
	Director, Office of Technology.
International Broadcasting Bureau	Dir Engineering and Technical Operations.
	Deputy for Engineering Resource Control.
	Deputy for Network Operations.
	Director for Spectrum Management.
	Senior Advisor.
Office of Information Resources	Director, Ofc of Information Resources.
OFC of the Gen Counsel	Deputy General Counsel.
US International Trade Commission:	
Office of Industries	Dir Ofc of Industries.
Office of Investigations	Dir, Ofc of Investigations.
Department of Veterans Affairs:	
Office of the Secretary and Deputy	Director, Office of Edca.
Office of the Inspector General	Assistant Inspector General for Auditing.
	Asst Inspector General for Investigations.
	Dep Inspector General.
	Asst Inspector Gen for Dept Rev & Magnt Sup.
	Dep Asst Inspector General for Investigations.
	Counseling to the Inspector General.
	Asst Inspector General for Healthcare Inspect.
	Dep Asst Inspector General for Auditing.
	eputy Assistant Inspector General for Healthcare Inspections.
	Deputy Assistant Inspector General for Management and Administration.
Board of Veterans Appeals	Vice Chairman.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1999—Continued

Agency and organization	Career reserved positions
Office of Finance	Deputy Assistant Secretary for Finance.
	Assoc Dep Asst Secy for Financial Operations.
	Director, Financial Services Center.
Office of Acquisition and Material Management	Dep Asst Sec for Acquisition & Material Mgmt.
	Assoc Dep Assistant Secy for Acquisitions.
	Assoc Dep Asst Secy for Prog Mgmt & Oper.
	Executive Director/Chief Operating Officer.
OFCC Asst Secy for Planning and Analysis	Chief Acturay.
Office of Human Resources Management	Assoc Dep Asst Secy for Human Res Management.
	Assoc Dep Asst Secy for Human Res Management.
Office of Security and Law Enforcement	Dep Asst Secy for Security & Law Enforcement.
Office Asst Secretary for Information and Technology	Dir, VA Automation Ctr, Austin, TX.
	Assoc Dep Asst Secy for Telecommunications.
	Assoc Dep Asst Secy for Pol & Prog Assistance.
Veterans Benefits Administration	Deputy Chief Financial Officer.
	Dep Dir Compensation & Pension Service.
	Chief Financial Officer.
Veterans Health Administration	Director, Resource Formulation Office.
	Dir, Office of Real Property Management.
	Dir VA/Dod Medical Sharing Office.
	Dir, Medical Care Cost Recovery Office.
	Dir Emergency Medical Preparedness Office.
	Deputy Director Emergency Medical Prep Ofc.
	Chief Financial Officer.
	Director, Western Area Office.
	Director, Eastern Area Office.
	Director, Facilities Quality Office.
	Dir Consulting Support Office.
	Director, Financial Management Office.
	Associate Chief Financial Officer for Compliance.
	Deputy Chief Financial Officer.
Veterans Inegrated Service Network Directors	Dir Canteen Service.

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Federal Register

Wednesday,
March 1, 2000

Part III

Federal Trade Commission

16 CFR 313
Privacy of Consumer Financial Information; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 313

Privacy of Consumer Financial Information

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Trade Commission (the "Commission" or "FTC") issues a Notice of Proposed Rulemaking that is required by Section 504(a) of the Gramm-Leach-Bliley Act, (the "G-L-B Act" or "Act") with respect to financial institutions and other persons under the Commission's jurisdiction, as set forth in Section 505(a)(7) of the Act. The Commission requests comment on this proposed privacy Rule. Section 504 of the Act requires the Commission and other federal agencies to issue regulations implementing notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties. Pursuant to Section 503 of the G-L-B Act, a financial institution must provide its customers with a notice of its privacy policies and practices. Section 502 of the Act prohibits a financial institution from disclosing nonpublic personal information about a consumer to nonaffiliated third parties unless the institution satisfies various disclosure requirements and the consumer has not elected to opt out of the disclosure. This proposed Rule would implement the requirements outlined above.

DATES: Comments must be received on or before March 31, 2000.

ADDRESSES: Written comments should be addressed to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The Commission requests that commenters submit the original plus five copies, if feasible. Comments should also be submitted if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a disk label stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII format.) Alternatively, the Commission will accept comments submitted to the following E-mail address: GLBRule@ftc.gov. Those commenters submitting comments by e-mail are advised to confirm receipt by consulting the postings on the Commission's website at *www.ftc.gov*. Individual members of the public filing comments need not submit multiple copies or comments in electronic form. All submissions should be captioned: "Gramm-Leach-Bliley Act Privacy Rule, 16 CFR Part 313—Comment."

Comments related to the Paperwork Reduction Act should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for FTC.

FOR FURTHER INFORMATION CONTACT: Kellie A. Cosgrove or Clarke Brinckerhoff, Attorneys, Division of Financial Practices, Federal Trade Commission, Washington, DC 20580, 202–326–3224.

SUPPLEMENTARY INFORMATION:

Section A. Background

On November 12, 1999, President Clinton signed the G-L-B Act (Public Law 106–102, codified at 15 U.S.C. 6801 *et seq.*) into law. Subtitle A of Title V of the Act, captioned Disclosure of Nonpublic Personal Information, limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and requires a financial institution to disclose to all of its customers the institution's privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties. Title V also requires the Commission, along with the Federal banking agencies and other authorities (Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Secretary of the Treasury, and Securities and Exchange Commission (hereinafter referred to collectively as "the Agencies")), after consulting with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, to prescribe such regulations as may be necessary to carry out the purposes of the provisions in Title V, Subtitle A, that govern disclosure of nonpublic personal information.

The Commission and the Agencies have prepared proposed rules to implement Subtitle A that are consistent and comparable to the extent possible, as is required by the statute. The Commission requests comment on all aspects of its proposed Rule, as well as comment on the specific provisions and issues highlighted in the Section-by-Section Analysis of the Proposed Rule, below.

Section B. Section-by-Section Analysis of the Proposed Rule

The discussion that follows explains in detail each section of the Commission's proposed Rule.

Section 313.1 Purpose and Scope

Proposed paragraph (a) of this section identifies three purposes of the Rule. First, the Rule requires a financial institution to provide notice in specified circumstances to consumers about the institution's privacy policies and practices. Second, the Rule describes the conditions under which a financial institution may disclose nonpublic personal information about a consumer to a nonaffiliated third party. Third, the Rule provides a method for a consumer to "opt out" of the disclosure of that information to nonaffiliated third parties, subject to the exceptions in proposed §§ 313.9, 313.10, and 313.11, as discussed below.

Proposed paragraph (b) sets out the scope of the Commission's proposed Rule, and tracks the scope of enforcement set out in section 505(a)(7) of the G-L-B Act. This paragraph states that the Rule applies only to information about individuals who obtain a financial product or service from a financial institution to be used for personal, family, or household purposes. The principal type of entity subject to the Rule is a "financial institution," a term which is very broad under the Act. Section 509(3) defines the term to mean "any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956" (12 U.S.C. 1843(k)). Those "financial activities" include not only a number of traditional financial activities specified in Section 4(k) itself,[1] but also those activities that the Federal Reserve Board has found to be closely related to banking,[2] or usual

[1] Section 4(k)(4)(A-E) states "the following activities shall be considered to be financial in nature: (A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities. (B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any State. (C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940). (D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly. (E) Underwriting, dealing in, or making a market in securities."

[2] Section 4(k)(4)(F). The Board's list of such activities is set forth in 12 CFR 225.28. They

in connection with the transaction of banking or other financial operations abroad.[3] The Commission invites comment on whether the activities as set forth in the Board regulations (many of which are listed in notes 2–3 below) may be interpreted narrowly under the language of those regulations.[4] Issues relating to the scope of the Act are also discussed in the Section-by-Section Analysis of the definition of the term "financial institution" in § 313.3(j).

Paragraph (b) lists some examples of "financial institutions" subject to Commission jurisdiction under the Act. The Commission is also authorized to enforce the Act against "other persons" who are not financial institutions, but receive protected information from a financial institution and are subject to the Act's restrictions on reuse of the information set forth in proposed § 313.12.

Section 313.2 Rule of Construction

Proposed § 313.2 of the Rule sets out a rule of construction intended to clarify the effect of the examples used in the Rule. Given the wide variety of transactions that Title V, Subtitle A, of the G-L-B Act covers, the Commission and Agencies propose to adopt rules of general applicability and provide examples of conduct that would, and would not, comply with the Rule. While the general rules are consistent among the Commission's and Agencies' proposals to the extent possible, the examples used by the Commission and individual agencies differ on occasion from those used by the other agencies in order to provide guidance that may be most meaningful to entities within a given agency's jurisdiction. These examples are not intended to be exhaustive; rather they are intended to provide guidance about how the Rule would apply in specific circumstances. The Commission invites comment on whether including examples in the Rule is useful and suggestions on additional or different examples that may be helpful in illustrating compliance with the Rule.

Section 313.3 Definitions

a. *Affiliate.* The proposed Rule adopts the definition of "affiliate" that is used in section 509(6) of the G-L-B Act. An affiliation will be found when one company "controls" (which is defined in § 313.3(g)), is controlled by, or is under common control with another company. The definition includes both financial institutions and entities that are not financial institutions.

b. *Clear and conspicuous.* Title V, Subtitle A, of the G-L-B Act and the proposed Rule require that various notices be "clear and conspicuous." The proposed Rule defines this term to mean that the notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice.

The proposed Rule does not mandate the use of any particular technique for making the notices clear and conspicuous, but instead allows each financial institution the flexibility to decide for itself how best to comply with this requirement. Ways in which a notice may satisfy the clear and conspicuous standard would include, for instance, using a plain-language caption, in a type set easily seen, that is designed to call attention to the information contained in the notice. Other plain language principles are provided in the examples that follow the general rule.

c. *Collect.* The proposed Rule defines "collect" to mean obtaining any information that is organized or retrievable on a personally identifiable basis, irrespective of the source of the underlying information. Several sections of the proposed Rule (*see, e.g.*, §§ 313.6 and 313.7) impose obligations that arise when a financial institution collects information about a consumer. This proposed definition clarifies that these obligations arise when the information enables the user to identify a particular consumer. It also clarifies that the obligations arise regardless of whether a financial institution obtains the information from a consumer or from some other source.

d. *Company.* The proposed Rule defines "company," which is used in the definition of "affiliate," as any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

e. *Consumer.* The proposed Rule defines "consumer" to mean an individual who obtains, from a financial institution, financial products or services that are to be used primarily for personal, family, or household purposes. An individual also will be deemed to be a consumer of a financial institution if that institution purchases the individual's account from some other institution. The definition also includes the legal representative of an individual.

The G-L-B Act distinguishes "consumers" from "customers" for purposes of the notice requirements imposed by the Act. As explained more fully in the discussion of proposed § 313.4, below, a financial institution is required to give a "consumer" the notices required under Title V, Subtitle A, only if the institution intends to disclose nonpublic personal information about the consumer to a nonaffiliated third party for a purpose that is not authorized by one of several exceptions set out in proposed §§ 313.10 and 313.11. By contrast, a financial institution must give all "customers" a notice of the institution's privacy policy at the time of establishing a customer relationship and annually thereafter during the continuation of the customer relationship.

A person is a "consumer" under the proposed Rule if he or she obtains a financial product or service from a financial institution. The definition of "financial product or service" in proposed § 313.3(k), below, includes,

include in certain circumstances: brokering or servicing loans; leasing real or personal property (or acting as agent, broker, or advisor in such leasing) without operating, maintaining or repairing the property; appraising real or personal property; check guaranty, collection agency, credit bureau, and real estate settlement services; providing financial or investment advisory activities including tax planning, tax preparation, and instruction on individual financial management; management consulting and counseling activities (including providing financial career counseling); courier services for banking instruments; printing and selling checks and related documents; community development or advisory activities; selling money orders, savings bonds, or traveler's checks; and providing financial data processing and transmission services, facilities (including hardware, software, documentation or operating personnel), data bases, advice, or access to these by technological means.

[3] Section 4(k)(4)(G). The scope of the Act is not limited to activities abroad, because the text of Section 4(k)(4)(G) is "Engaging, in the United States, in any activity that (i) a bank holding company may engage in outside of the United States; and (ii) the Board has determined [by regulation in effect on November 11, 1999] to be usual in connection with the transaction of banking and financial operations abroad." (Emphasis added.) The Board has provided a list of such activities in 12 CFR 211.5(d). They include leasing real or personal property (or acting as agent, broker, or advisor in such leasing) where the lease is functionally equivalent to an extension of credit; acting as fiduciary; providing investment, financial, or economic advisory services; and operating a travel agency in connection with financial services.

[4] For example, 12 CFR 225.28(b)(1) and (b)(2) includes "Extending credit and servicing loans" and "Activities related to extending credit" as activities that are closely related to banking. Subsection (b)(2) delineates activities related to extending credit: real estate and personal property appraising; check guaranty services; collection agency services; credit bureau services; and real estate settlement servicing. The Commission requests comment on whether an entity engaged in (for example) real estate settlement servicing is a "financial institution" only if it also extends credit or services loans, or whether real estate settlement servicing alone constitutes a financial activity that results in an entity that engages in that activity being classified as a "financial institution." Similarly, 12 CFR 211.5(d)(15) includes operating a travel agency "in connection with financial services * * *" The Commission requests comment on how the quoted language limits the activity of operating a travel agency, and the extent to which travel agencies are in fact operated in connection with financial services.

among other things, the evaluation by a financial institution of an application that a person submits to obtain a financial product or service. Thus, a financial institution that intends to share nonpublic personal information about a consumer with nonaffiliated third parties, outside of the exceptions described in §§ 313.10 and 313.11, will have to give the requisite notices, even if the consumer does not enter into a customer relationship with the institution.

The examples that follow the definition of "consumer" clarify when someone is a consumer. They include situations where someone applies for credit or provides information for the purpose of determining whether he or she prequalifies for a loan, or a person provides information in connection with seeking to obtain financial advisory services. The examples also clarify the status of someone whose credit account has been sold.

f. *Consumer reporting agency.* The proposed Rule adopts the definition of "consumer reporting agency" that is used in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)). This term is used in proposed §§ 313.11 and 313.13.

g. *Control.* The proposed Rule defines "control" using the tests applied in section 23A of the Federal Reserve Act (12 U.S.C. 371c). This definition is used to determine when companies are affiliated (*see* discussion of proposed § 313.3(a) above), and would result in financial institutions being considered affiliates regardless of whether the control is by a company or individual. The Commission invites comment on whether "control" should be defined by a more flexible standard than the percentage test set forth in proposed § 313.3(g)(1).

h. *Customer.* The proposed Rule defines "customer" as any consumer who has a "customer relationship" with a particular financial institution. As is explained more fully in the discussion of proposed § 313.4 below, a consumer becomes a customer of a financial institution at the time of entering into a continuing relationship with the institution. Thus, for instance, a consumer would become a customer at the time the consumer executes the documents needed to borrow money from a financial institution, or agrees to employ a broker to obtain (or try to obtain) a mortgage loan.

The distinction between consumers and customers determines what notices a financial institution must provide. If a consumer never becomes a customer, the institution is not required to provide any notices to the consumer unless the institution intends to disclose nonpublic personal information about that consumer to nonaffiliated third parties outside of the exceptions as set out in proposed §§ 313.10 and 313.11. By contrast, if a consumer becomes a customer, the institution must provide a copy of its privacy policy prior to the time it establishes the customer relationship and at least annually thereafter during the continuation of the customer relationship even if the institution is not going to share the consumer's information with nonaffiliated third parties.

i. *Customer relationship.* The proposed Rule defines "customer relationship" as a continuing relationship between a consumer and a financial institution whereby the institution provides a financial product or service to a consumer that is to be used primarily for personal, family, or household purposes. The Commission has interpreted the Act as requiring more than isolated transactions between a financial institution and a consumer to establish a customer relationship. The proposed Rule defines "customer relationship" as being of a "continuing" nature in order to encompass those business dealings that are not isolated, including those that involve a consumer becoming a client of the institution. As noted in the examples that follow the definition, these would include, for instance, cases where an institution opens a credit account for the consumer, a loan broker undertakes to assist a consumer to obtain a home mortgage, or an automobile dealer helps a consumer arrange credit to purchase a vehicle.

A one-time transaction may be sufficient to establish a customer relationship, depending on the nature of the transaction. The examples that follow the definition of "customer relationship" clarify, for instance, that the purchase of an insurance policy would be sufficient to establish a customer relationship, whereas using an automated teller machine at a bank at which a consumer transacts no other business, cashing a check, purchasing travelers checks or money orders, or making a wire transfer would not. Similarly, simply purchasing airline tickets would not establish a customer relationship.[5] While a person engaging in one of these latter types of transactions would be a consumer under the regulation (thereby requiring the financial institution to provide notices *if* the institution intends to disclose nonpublic personal information about the consumer to nonaffiliated third parties outside of the exceptions), the consumer would not be a customer. A consumer would not necessarily become a customer simply by repeatedly engaging in isolated transactions, such as withdrawing funds at regular intervals from an ATM owned by an institution with whom the consumer has no account.

The examples also clarify that a consumer will have a customer relationship with a financial institution that makes a loan to the consumer and then sells the loan but retains the servicing rights. In that case, the person will be a customer of both the institution that sold the loan and the institution that bought it.

A consumer has a "customer relationship" with a debt collector that purchases an account from the original creditor (because he or she would have a credit account with the collector), but not with a debt collector that simply attempts to collect amounts owed to the creditor. However, the latter type of debt collector would still be generally bound by the limits on redisclosure and reuse of nonpublic personal information as set forth in proposed § 313.12.[6]

j. *Financial institution.* The proposed Rule adopts the definition of "financial institution" that is used in the G-L-B Act, namely, any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). The exceptions to this definition contained in the G-L-B Act also are set out in the proposed Rule. As indicated by proposed §§ 313.3(j)(2) and 313.3(j)(3)(iv), the Commission views an entity as a financial institution "the business of which is engaging in financial activities" only if it is significantly engaged in a financial activity. Thus, a retail business that issues its own credit card directly to consumers is a financial institution engaged in the extension of credit, but a retail business that merely establishes

[5] Thus, an institution that operated a travel agency in connection with financial services would have a customer relationship with an individual for whom it plans a trip, but not with an individual to whom it simply sells tickets or traveler's checks (even on a repeated basis). The Commission specifically requests information on (1) the extent to which travel agencies are operated in connection with financial services and (2) the nature of specific business relationships that exist between consumers and such travel agents, as well as more general comments on the application of the proposed Rule to travel agents.

[6] This includes data obtained by the collector in collecting the debt because proposed § 313.3(o)(2)(E) specifically includes information obtained by a creditor's "agent in connection with collecting on a loan" in the definition of "personally identifiable financial information." The Commission specifically requests comment on the application of the proposed Rule to debt collectors.

layaway or deferred payment plans is not a financial institution. The Commission invites comment concerning whether "significantly engaged" should be specifically defined in the Rule and, if so, how such a definition should be drafted. The Commission also invites comment on whether an individual who otherwise meets the definition (for example the sole proprietor of a mortgage loan brokerage business) can be a financial institution.

Due to the wide range of activities that are defined as financial in nature under Section 4(k) of the Bank Holding Company Act, the definition of "financial institution" encompasses a broad spectrum of businesses. (*See* discussion of the scope of the Act and the Rule at § 313.1.) The Commission recognizes that the plain meaning of the Act mandates this broad scope and requests general comment on this interpretation as well as comment on the application of the Rule to what might be considered the nontraditional financial institutions included in its scope.[7]

Many entities that come within the broad definition of financial institution will likely not be subject to the disclosure requirements of the Rule because not all financial institutions have "consumers" or establish "customer relationships." For example, management consulting is a "financial activity" but it is not likely that any individual obtains management consulting services for personal, family or household purposes. Likewise, courier services and data processors who perform services for a financial institution, but do not provide financial products or services to individuals, will not be required to make the disclosures mandated by the Rule because they do not have "consumers" or "customers" as defined by the Rule.[8] The Commission invites comment on these and other entities that may be "financial institutions" under the Act, but may not be subject to the disclosure requirements of the Rule because they have no "consumers" or "customers" under the Rule.

Proposed § 313.3(j)(3)(iii) also incorporates the Act's exception for institutions chartered by Congress to engage in secondary market sales and similar transactions related to consumers, as long as the institution does not sell or transfer nonpublic personal information to a third party. The Commission interprets this exception in its proposed Rule to apply even if the chartered institution sells or transfers information as permitted by the exceptions to the notice and opt out requirements in proposed §§ 313.10 and 313.11. The proposed Rule reflects this interpretation. The Commission invites comment on this interpretation and on whether those entities that receive consumers' nonpublic personal information from such chartered institutions are nonetheless subject to the Rule's limitations on reuse. The Commission also seeks comment on whether chartered institutions should be required to enter into a confidentiality agreement with those nonaffiliated third parties with whom they share information pursuant to §§ 313.10 and 313.11 as a condition of their exemption.

k. *Financial product or service.* The proposed Rule defines "financial product or service" as a product or service that a financial holding company could offer by engaging in an activity that is financial in nature under section 4(k) of the Bank Holding Company Act of 1956. It includes the financial institution's evaluation of information collected in connection with an application by a consumer for a financial product or service. The proposed Rule states that the definition includes the financial institution's evaluation of information collected in connection with an application by a consumer for a financial product or service even if the application ultimately is rejected or withdrawn. It also includes the distribution of information about a consumer for the purpose of assisting the consumer in obtaining a financial product or service (by, for example, a mortgage broker or automobile dealer).

A product or service that does not result from a financial activity is not within the definition, even if the business is a financial institution; thus, a department store that issues its own credit card directly to consumers provides a financial service (credit) to consumers who utilize the card, but when it sells merchandise, it provides a nonfinancial product or service (retail sale of merchandise).

l. *Government regulator.* The proposed Rule adopts the definition of "government regulator" that includes the Commission, the Agencies, and state insurance authorities under the circumstances identified in the definition. This term is used in the exception set out in proposed § 313.11(a)(4) for disclosures to law enforcement agencies, "including government regulators."

m. *Nonaffiliated third party.* The proposed Rule defines "nonaffiliated third party" as any person (which includes natural persons as well as business entities such as corporations, partnerships, trusts, and so on) except (1) an affiliate of a financial institution, and (2) a joint employee of a financial institution and a third party. This definition is intended to be substantively the same as the definition used in Section 509(5) of the G-L-B Act.

n. *Nonpublic personal information.* Section 509(4) of the G-L-B Act defines "nonpublic personal information" to mean "personally identifiable financial information" (which term is not defined in the Act) that is provided by a consumer to a financial institution, results from any transaction with the consumer or any service performed for the consumer, or is otherwise obtained by the financial institution. The definition of "nonpublic personal information" also includes any list, description, or other grouping of consumers—and "publicly available information" (which also is undefined in the G-L-B Act) pertaining to them—that is derived using any nonpublic personal information other than publicly available information."

The proposed Rule implements this provision of the G-L-B Act by restating, in paragraph (1) of proposed § 313.3(n), the categories of information described above. However, the proposed Rule presents two alternatives (labeled Alternative A and Alternative B) concerning the treatment, for purposes of the definition of "nonpublic personal information," of information that can be obtained from sources available to the general public.

The alternatives are based on differences in the definitions of "personally identifiable financial information" and "publicly available information," which, when read together, result in more information being treated as "nonpublic personal information" under Alternative A than would be the case under Alternative B. The primary difference arises in the two definitions of "publicly available information." Under Alternative A, information is "publicly available information" only if the financial

[7] These may include, but are not limited to: personal property appraisers; real estate appraisers; career counselors for employees in financial occupations; digital signature services; courier services; real estate settlement services; manufacturers of computer software and hardware; and travel agencies operated in connection with financial services.

[8] If such financial institutions receive consumers' nonpublic personal information from nonaffiliated financial institutions pursuant to one of the exceptions set forth in §§ 313.10 and 313.11, they would be required to observe the § 313.12 limitations on reuse of that information.

institution actually obtains the information from a public source. Under Alternative B, information is "publicly available information" if it could be obtained from a public source, regardless of its actual source. The Commission invites comment on both Alternatives. The Commission also invites comment on whether a variation of Alternative A and Alternative B should be adopted that would require a financial institution to undertake reasonable procedures to establish that information is, in fact, available from public sources before the financial institution may disclose it without restriction as "publicly available information."

The two Alternatives are substantially similar when viewed in the context of a list, but differ considerably in what information a financial institution can disclose about an individual who is not included on a list. Based on the definitions of "publicly available information" and "personally identifiable financial information" under Alternative A, any information that a financial institution obtains from an individual consumer is "nonpublic personal information" and cannot be disclosed by the financial institution without first providing notice and opt out to the consumer. Under Alternative B, however, if that same information could be obtained from public sources, the definitions dictate that the information is not "nonpublic personal information" and the financial institution may disclose it without restriction as "publicly available information." Thus, if a consumer provided name and address as part of an application for a financial product or service, a financial institution could not, under Alternative A, disclose the consumer's name and address without providing notice and opt out. Under Alternative B, however, if that same individual consumer's name and address could otherwise be obtained from a public source, the financial institution could disclose it without restriction.

While an *individual* consumer's information may be treated differently under the two Alternatives, a *list* of consumers receives virtually identical protection. Both alternatives include in the definition of "nonpublic personal information" any list, description, or other grouping of consumers that is derived using "personally identifiable financial information." The proposed Rule makes clear that "personally identifiable financial information" includes the fact that an individual is a consumer or customer of a financial institution. Therefore, any list of a financial institution's customers is nonpublic personal information because it is necessarily derived from the fact of the customer relationship.[9] Thus, under Alternative B, even if the names and addresses of the financial institution's customers could have been obtained from a public source (and are, therefore, publicly available), the financial institution cannot reveal them as part of a customer list because that list was derived using personally identifiable financial information (the fact of the customer relationship).[10]

o. *Personally identifiable financial information.* As discussed above, the G-L-B Act defines "nonpublic personal information" to include, among other things, "personally identifiable financial information" but does not define the latter term.

As a general matter, the proposed Rule treats any personally identifiable information as financial if it is obtained by a financial institution in connection with providing a financial product or service to a consumer. The Commission believes that this approach reasonably interprets the word "financial" and creates a workable and clear standard for distinguishing information that is financial from other personal information. The Commission recognizes that this interpretation may result in certain information being covered by the rules that may not be considered intrinsically financial, such as health status, and specifically invites comment on the proposed definition of "personally identifiable financial information."

The proposed Rule defines "personally identifiable financial information" to include three categories of information. While the three categories are for the most part identical in both Alternatives (*see* discussion concerning differences in the third category, below), the differences in how Alternatives A and B treat publicly available information result in different applications of what "personally identifiable financial information" is included within the definition of "nonpublic personal information."

The first category of information considered to be "personally identifiable financial information" is any information that a consumer provides to a financial institution in order to obtain a financial product or service. As noted in the examples that follow the definition, this would include information provided on an application to obtain a loan, credit card, or other financial product or service. If, for instance, medical information is provided on an application to obtain a financial product or service (such as would be the case if a consumer applies for a life insurance policy), that information would be considered "personally identifiable financial information" for purposes of the proposed Rule.

The second category of information covered by the proposed definition of "personally identifiable financial information" includes any information resulting from any transaction between the consumer and the financial institution involving a financial product or service. This would include, as noted in the examples following the definition, account balance information, payment or overdraft history, and credit or debit card purchase information.

The third category includes any financial information about a consumer otherwise obtained by the financial institution in connection with providing a financial product or service. This would include, for example, information obtained from a consumer report or from an outside source to verify information a consumer provides on an application to obtain a financial product or service. There is a difference in the statement of this third category between Alternatives A and B. Alternative A expressly excludes from this category "publicly available information," while Alternative B does not. However, given the definitions of "nonpublic personal information" and "publicly available information" in Alternative B, the result is that any of the three categories of personally identifiable financial information in Alternative B will exclude publicly available information from the personally identifiable financial information that is considered "nonpublic personal information."

The examples clarify that the definition of "personally identifiable information" does not include a list of names and addresses of people who are customers of an entity that is not a financial institution. Thus, the names and addresses of people who subscribe, for instance, to a particular magazine fall outside the definition. If, however, a financial institution discloses those

[9] If the fact of the customer relationship could be obtained from the public record, under Alternative B the list is not derived from "personally identifiable financial information" and the notice and opt out requirements are not implicated (as long as the names and addresses could be obtained from the public record). Thus, under Alternative B, a list of a financial institution's mortgage customers is not "nonpublic personal information" if all of the information on the list could be obtained from public sources.

[10] Under Alternative A, the names and addresses themselves are "personally identifiable financial information" if the financial institution did not actually obtain them from the public record.

names and addresses as part of a list of the institution's customers, then the names and addresses become nonpublic personal information.

The Commission notes that there are other laws that may impose limitations on disclosures of nonpublic personal information in addition to those imposed by the G-L-B Act and this proposed Rule. For instance, the Fair Credit Reporting Act imposes conditions on the sharing of application information and credit report information between affiliates and nonaffiliated third parties.[11] The recently proposed Department of Health and Human Services regulations[12] that implement the Health Insurance Portability and Accountability Act of 1996 would, if adopted in final, limit the circumstances under which medical information may be disclosed. There may be State laws that affect a financial institution's ability to disclose information. Thus, financial institutions will need to comply with relevant laws and monitor legislative and regulatory developments that affect the disclosure of consumer information.

The Commission seeks comment on whether further definition of "personally identifiable" would be helpful.

p. *Publicly available information.* The proposed Rule contains two versions of the definition of "publicly available information." The definitions differ in that Alternative A does not treat information as publicly available unless it is obtained from one of the public sources listed in the proposed Rule. Alternative B, by contrast, treats information as publicly available if it could be obtained from one of the public sources listed in the rules, even if it was obtained from a source not listed in the definition. The Commission invites comment on which alternative is more appropriate.

The remaining parts of the two alternative versions are identical. Thus, under either alternative, the definition of "publicly available information" includes information from official public records, such as real estate recordations or security interest filings. It also includes information from widely distributed media (such as a telephone book, television or radio program, or newspaper) and information that is required to be disclosed to the general public by Federal, State, or local law (such as securities disclosure documents). The proposed Rule states that information obtained over the Internet will be considered publicly available information if the information is obtainable from a site available to the general public without requiring a password or similar restriction. The Commission invites comment on what information is appropriately considered publicly available, particularly in the context of information available over the Internet.

(q) *You* includes each "financial institution" (but excludes any "other person") over which the Commission has enforcement jurisdiction pursuant to Section 505(a)(7) of the Act.

§ 313.4 Initial Notice to Customers and Consumers of Privacy Policies and Practices Required.

Initial notice required. The G-L-B Act requires a financial institution to provide an initial notice of its privacy policies and practices in two circumstances. For customers, the notice must be provided at the time of establishing a customer relationship. For consumers who do not become customers, the notice must be provided prior to disclosing nonpublic personal information about the consumer to a nonaffiliated third party. In addition, as discussed more fully in § 313.8(c) below, a revised notice must be provided to such consumers prior to disclosing nonpublic personal information to nonaffiliated third parties if a financial institution's policies or practices have changed and previous notices do not accurately describe the financial institution's policies or practices.

Paragraph (a) of proposed § 313.4 states the general rule regarding these notices. Pursuant to that paragraph, a financial institution must provide a clear and conspicuous notice (*i.e.*, a notice that is reasonably understandable and designed to call attention to the nature and significance of the information it provides) that accurately reflects the institution's privacy policies and practices. Thus, a financial institution may not fail to maintain the protections that it represents in the notice that it will provide. The Commission expects that financial institutions will take appropriate measures to adhere to their stated privacy policies.

The proposed Rule does not prohibit affiliated institutions from using a common initial, annual, or opt out notice, so long as the notice is delivered in accordance with the Rule and is accurate for all recipients. Similarly, the Rule does not prohibit an institution from establishing different privacy policies and practices for different categories of consumers, customers, or products, so long as each customer or consumer receive a notice that is accurate with respect to him or her.

Notice to customers. The proposed Rule requires that a financial institution provide a privacy notice to the consumer prior to the time that it has established a customer relationship. Thus, the notices may be provided at the same time a financial institution is required to give other notices, such as those required by the Board's regulations implementing the Truth-in-Lending Act. (12 CFR § 226.6) This approach is intended to strike a balance between (1) ensuring that consumers will receive privacy notices at a meaningful point along the continuum of "establishing a customer relationship" and (2) minimizing unnecessary burdens on financial institutions that may result if a financial institution is required to provide a consumer with a series of notices at different times in a transaction. Nothing in the proposed Rule is intended to discourage a financial institution from providing an individual with a privacy notice at an earlier point in the relationship if the institution wishes to do so in order to make it easier for the consumer to compare its privacy policies and practices with those of other financial institutions in advance of conducting transactions.

Paragraph (c) of proposed § 313.4 identifies the time a customer relationship is established as the point at which a financial institution and a consumer enter into a continuing relationship. The examples that are provided after the statement of the general rule inform the reader that, for customer relationships that are contractual in nature (including, for example, loans), a customer relationship is established upon the execution by the consumer of the contract that is necessary to conduct the transaction in question. In the case of a credit card account, the customer relationship is established when the consumer opens the account. A consumer opens a credit card account when he or she becomes obligated on the account, such as when he or she makes the first purchase, receives the first advance, or becomes

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[11] The Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 *et seq*, provides no limitation at all on communication by an entity of its own "transactions or experiences" with the consumer (*e.g.*, the individual's account history). However, it strictly limits the reporting of information obtained from other sources, such as consumer applications or credit reports. An institution may normally share such data with its affiliates only if it has complied with the notice and opt-out procedures set forth in FCRA § 603(d)(2)(A)(iii), which are very similar to those set forth in Section 502(b)(1) of the Act. Sharing such data with nonaffiliates may be effectively prohibited in most cases by the FCRA, because the institution would become a consumer reporting agency subject to its restrictions on reporting of information to third parties.

[12] 64 FR 59918 (Nov. 3, 1999).

obligated for any fee or charge under the account other than an application fee or refundable membership fee. For transactions that may not involve a contract (including, for instance, providing investment advisory, loan brokerage, or tax preparation services), a customer relationship will be established when the consumer pays or agrees to pay a fee or commission for the service, and/or becomes a client of the business.

Notice to consumers. For consumers who do not establish a customer relationship, the initial notice may be provided at any point before the financial institution discloses nonpublic personal information to nonaffiliated third parties. An initial notice is not required, as provided in paragraph (b) of the proposed Rule, if the institution does not intend to disclose the information in question or intends to make only those disclosures that are authorized by one of the exceptions set out in §§ 313.10 and 313.11 of the proposed Rule.

How to provide notice. Paragraph (d) of proposed § 313.4 sets out the rules governing how financial institutions must provide the initial notices. The general rule requires that the initial notice be provided so that each recipient can reasonably be expected to receive actual notice. The Commission invites comment on whether, when there is more than one party to an account, there are instances where all parties to the account need not receive the notice.

The notice may be delivered in writing or, if the consumer agrees, electronically. Oral notices alone are insufficient. In the case of customers, the notice must be given in a way so that the customer may either retain it or access it at a later time. This requirement that the notice be given in a manner permitting access at a later time does not preclude a financial institution from changing its privacy policy. *See* proposed § 313.8(c), below. Rather, the Rule is intended only to require that a customer be able to access the most recently adopted privacy policy.

Examples of acceptable ways the notice may be delivered include hand-delivering a copy of the notice, mailing a copy to the consumer's last known address, or sending it via electronic mail to a consumer who obtains a financial product or service from the institution electronically. It would not be sufficient to provide only a posted copy of the notice in a lobby. Similarly, it would not be sufficient to provide the initial notice only on a Web page, unless the consumer is required to access that page to obtain the product or service in question. Electronic delivery generally should be in the form of electronic mail so as to ensure that a consumer actually receives the notice. In those circumstances where a consumer is in the process of conducting a transaction over the Internet, electronic delivery also may include posting on a Web page as described above. If a financial institution and consumer orally agree to enter into a contract for a financial product or service over the telephone, the institution may provide the consumer with the option of receiving the initial notice after providing the product or service so as not to delay the transaction. The Commission invites comment on the regulatory burden of providing the initial notices and on the methods financial institutions anticipate using to provide the notices.

The Commission recognizes that in some circumstances a customer does not have a choice as to the institution with which he or she has a customer relationship, such as when an institution purchases the customer's loan in the secondary market. In these situations, it may not be practicable for the institution to provide a notice prior to the time the customer relationship is established. The proposed Rule provides that if a financial institution purchases a loan or assumes a deposit liability from another financial institution or in the secondary market and the customer does not have a choice about the purchase or assumption, the acquiring financial institution may provide the initial notice within a reasonable time thereafter. The Commission invites comment on whether there are other similar situations for which an exception is necessary.

The Commission also recognizes that certain consumers may have requested that a financial institution not send statements, notices, or other communications to them, such as in certain private banking relationships. The Commission requests comment on whether and how the Rule should address these situations with respect to the notices required by this Rule. The Commission also requests comment on whether there are other situations where providing notice by mail is impracticable.

Section 313.5 Annual Notice to Customers of Privacy Policies and Practices Required

Section 503 of the G-L-B Act requires a financial institution to provide notices of its privacy policies and practices at least annually to its customers. The proposed Rule implements this requirement by requiring a clear and conspicuous notice that accurately reflects the privacy policies and practices then in effect to be provided at least once during any period of twelve consecutive months. The rules governing how to provide an initial notice also apply to annual notices.

Section 503(a) of the G-L-B Act requires that the annual notices be provided "during the continuation" of a customer relationship. To implement this requirement, the proposed Rule states that a financial institution is not required to provide annual notices to a customer with whom it no longer has a continuing relationship. The examples that follow this general rule provide guidance on when there no longer is a continuing relationship for purposes of the Rule. These include, for instance, loans that are paid in full or charged off, or accounts sold without retaining servicing rights.

There will be certain customer relationships (such as obtaining investment advice from a stock broker) that do not present a clear event after which there is no longer a customer relationship. The proposed Rule contains an example intended to cover these situations, stating that a relationship will no longer be deemed continuing for purposes of the proposed Rule if the financial institution has not communicated with a customer, other than providing an annual privacy policy notice, for a period of 12 consecutive months.

The Commission invites comment generally on whether the examples provided in proposed § 313.5 are adequate and on whether the proposed standard deeming an account relationship to have terminated after 12 months of no communication is appropriate. The Commission also invites comment on the regulatory burden of providing the annual notices and on the methods financial institutions anticipate using to provide the notices.

Section 313.6 Information to be Included in Initial and Annual Notices of Privacy Policies and Practices

Section 503 of the G-L-B Act identifies the items of information that must be included in a financial institution's initial and annual notices. Section 503(a) of the G-L-B Act sets out the general requirement that a financial institution must provide customers with a notice describing the institution's policies and practices with respect to, among other things, disclosing nonpublic personal information to affiliates and nonaffiliated third parties. Section 503(b) of the Act identifies

certain elements that must be addressed in that notice.

The required content is the same for both the initial and annual notices of privacy policies and practices. While the information contained in the notices must be accurate as of the time the notices are provided, a financial institution may prepare its notices based on current and anticipated policies and practices.

The information to be included is as follows:

1. *Categories of nonpublic personal information that a financial institution may collect.* Section 503(b) requires a financial institution to inform its customers about the categories of nonpublic personal information that the institution collects. The proposed Rule implements this requirement in proposed § 313.6(a)(1) and provides an example of how to comply with this requirement that focuses the notice on the source of the information collected. As noted in the example, a financial institution will satisfy this requirement if it categorizes the information according to the sources, such as application information, transaction information, and credit report information. Financial institutions may provide more detail about the categories of information collected but are not required to do so by the proposed Rule.

2. *Categories of nonpublic personal information that a financial institution may disclose.* Section 503(a)(1) of the G-L-B Act requires the financial institution's initial and annual notice to provide information about the categories of nonpublic personal information that may be disclosed either to affiliates or nonaffiliated third parties.

The proposed Rule implements this requirement in proposed § 313.6(a)(2). The examples of how to comply with this rule focus on the content of the information to be disclosed. As stated in the relevant examples, a financial institution may satisfy this requirement by categorizing information according to source and providing illustrative examples of the content of the information. These categories might include application information (such as assets and income), identifying information (such as name, address, and social security number), transaction information (such as information about account activity, account balances, and purchases), and information from credit reports (such as credit history).

Financial institutions are free to provide more detailed information in the initial and annual notices if they choose to do so. Conversely, if a financial institution does not disclose, and does not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, its initial and annual notices may simply state this fact without further elaboration about categories of information disclosed.

3. *Categories of affiliates and nonaffiliated third parties to whom a financial institution discloses nonpublic personal information.* As previously noted, section 503(a) includes a general requirement that a financial institution provide a notice to its customers of the institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties. Section 503(b) states that the notice required by section 503(a) shall include certain specified items. Among those is the requirement, set out in section 503(b)(1), that a financial institution inform its consumers about its policies and practices with respect to disclosing nonpublic personal information to nonaffiliated third parties. The Commission believes that, when read together, Sections 503(a) and 503(b) of the G-L-B Act require a financial institution's notice to address disclosures of nonpublic personal information to both affiliates and nonaffiliated third parties.

The proposed Rule implements this requirement in § 313.6(a)(3). The example illustrating how a financial institution may comply with the Rule states that a financial institution will adequately categorize the affiliates and nonaffiliated third parties to whom it discloses nonpublic personal information about consumers if it identifies the types of businesses in which they engage. Types of businesses may be described by general terms only if the financial institution provides illustrative examples of the significant lines of businesses of the recipient. The Commission's intent is that any illustrations must be reasonably designed to be meaningful to consumers. Proposed § 313.6 includes examples of general types of businesses and appropriate corresponding illustrative examples for each. Other appropriate examples include an institution that referred to "retail stores" and explained that this includes grocery stores and drug stores, or to "manufacturers of consumer products" and provided meaningful examples such as pharmaceutical products and children's toys.

The G-L-B Act does not require a financial institution to list the categories of persons to whom information may be disclosed pursuant to one of the exceptions set out in proposed §§ 313.10 and 313.11. The proposed Rule states that a financial institution is required only to inform customers that it makes disclosures as permitted by law to nonaffiliated third parties in addition to those described in the notice. The Commission invites comment on whether such a notice would be adequate.

If a financial institution does not disclose, and does not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, its initial and annual notices may simply state this fact without further elaboration about categories of third parties.

4. *Information about former customers.* Section 503(a)(2) of the Act requires the financial institution's initial and annual privacy notices to include the institution's policies and practices with respect to disclosing the nonpublic personal information of persons who have ceased to be customers of the institution. Section 503(b)(1)(B) requires that this information be provided with respect to information disclosed to nonaffiliated third parties.

The Commission has concluded that, when read together, Sections 503(a)(2) and 503(b)(1)(B) require a financial institution to include in the initial and annual notices the institution's policies and practices with respect to sharing information about former customers with all affiliates and nonaffiliated third parties. This requirement is set out in the proposed Rule at § 313.6(a)(4). This requirement does not require a financial institution to provide a notice and opportunity to opt out to a former customer before sharing nonpublic personal information about that former customer with an affiliate.

5. *Information disclosed to service providers.* Section 502(b)(2) of the G-L-B Act permits a financial institution to disclose nonpublic personal information about a consumer to a nonaffiliated third party for the purpose of the third party performing services for the institution, including marketing financial products or services under a joint agreement between the financial institution and at least one other financial institution. In this case, a consumer has no right to opt out. However, the financial institution must inform the consumer that it will be disclosing the information in question, unless the service falls within one of the exceptions listed in Section 502(e) of the Act.

Proposed § 313.6(a)(5) implements these provisions by requiring that, if a financial institution discloses nonpublic personal information to a nonaffiliated third party pursuant to the exception for service providers and joint marketing,

the institution is to include in the initial and annual notices a separate description of the categories of information that are disclosed and the categories of third parties providing the services. However, proposed §§ 313.6(a)(3) and (a)(4) specify that no disclosure is required if a financial institution discloses nonpublic personal information to a nonaffiliated third party service provider pursuant to proposed §§ 313.10 or 313.11. A financial institution may comply with these requirements by providing the same level of detail in the notice as is required to satisfy the requirements in proposed §§ 313.6(a)(2) and (3).

6. *Right to opt out.* As previously noted, Sections 503(a)(1) and 503(b)(1) of the G-L-B Act require a financial institution to provide customers with a notice of its privacy policies and practices concerning, among other things, disclosing nonpublic personal information consistent with Section 502 of the Act.

Proposed § 313.6(a)(6) implements this requirement by requiring the initial and annual notices to explain the right to opt out of disclosures of nonpublic personal information to nonaffiliated third parties, including the methods available to exercise that right.

7. *Disclosures made under the FCRA.* Section 503(b)(4) of the G-L-B Act requires a financial institution's initial and annual notice to include the disclosures required, if any, under Section 603(d)(2)(A)(iii) of the FCRA. Section 603(d)(2)(A)(iii) excludes from the definition of "consumer report" the communication of certain consumer information among affiliated entities if the consumer is notified about the disclosure of such information and given an opportunity to opt out of that information sharing. The information that can be shared among affiliates under this provision includes, for instance, information from consumer reports and applications for financial products or services. In general, this information represents personal information provided directly by the consumer to the institution, such as income and social security number, in addition to information contained within credit bureau reports.

The proposed Rule implements Section 503(b)(4) of the G-L-B Act by including the requirement that a financial institution's initial and annual notice include any disclosures a financial institution is required to make under Section 603(d)(2)(A)(iii) of the FCRA.

8. *Confidentiality, security, and integrity.* Section 503(a)(3) of the G-L-B Act requires the initial and annual notices to provide information about a financial institution's policies and practices with respect to protecting the nonpublic personal information of consumers. Section 503(b)(3) of the Act requires the notices to include the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information, in accordance with section 501 (which requires the Commission and the Agencies to establish standards governing the administrative, technical, and physical safeguards of customer information).

The proposed Rule implements these provisions by requiring a financial institution to include in the initial and annual notices the institution's policies and practices with respect to protecting the confidentiality, security, and integrity of nonpublic personal information. The relevant example in the proposed Rule states that a financial institution may comply with the requirement as it concerns confidentiality and security if the institution explains matters such as who has access to the information and the circumstances under which the information may be accessed. The information about integrity should focus on the measures the institution takes to protect against reasonably anticipated threats or hazards. The proposed Rule does not require a financial institution to provide technical or proprietary information about how it safeguards consumer information.

The Commission is in the process of preparing the section 501 standards, and will publish a separate notice of proposed rulemaking concerning them as soon as practicable.

§ 313.7 Limitation on Disclosure of Nonpublic Personal Information About Consumers to Nonaffiliated Third Parties

Section 502(a) of the G-L-B Act generally prohibits a financial institution from sharing nonpublic personal information about a consumer with a nonaffiliated third party unless the institution provides the consumer with a notice of the institution's privacy policies and practices. Section 502(b) further requires that the financial institution provide the consumer with a clear and conspicuous notice that the consumer's nonpublic personal information may be disclosed to nonaffiliated third parties, that the consumer be given an opportunity to opt out of that disclosure, and that the consumer be informed of how to opt out.

Section 313.7 of the proposed Rule implements these provisions. Paragraph (a)(1) of § 313.7 sets out the criteria that a financial institution must satisfy before disclosing nonpublic personal information to nonaffiliated third parties. As stated in the text of the proposed Rule, these criteria apply to direct and indirect disclosures through an affiliate. The Commission invites comment on how the right to opt out should apply in the case of joint accounts. Should, for instance, a financial institution require all parties to an account to opt out before the opt out becomes effective? If not, and only one of the parties opts out, should the opt out apply only to information about the party opting out or should it apply to all parties to the account?

Paragraph (a)(2) defines "opt out" in a way that incorporates the exceptions to the right to opt out stated in proposed §§ 313.9, 313.10, and 313.11.

The proposed Rule implements the requirement that a consumer be given an opportunity to opt out before information is disclosed by requiring that the opportunity be reasonable. The examples that follow the general rule provide guidance in situations involving notices that are mailed and notices that are provided in connection with isolated transactions. In the former case, a consumer will have a reasonable opportunity to opt out if the financial institution provides 30 days in which to opt out. In the latter case, an opportunity will be reasonable if the consumer must decide as part of the transaction whether to opt out before completing the transaction. The Commission invites comment on whether 30 days is a reasonable opportunity to opt out in the case of notices sent by mail, and on whether an example in the context of transactions conducted using an electronic medium would be helpful.

The requirement that a consumer have a reasonable opportunity to opt out does not mean that a consumer forfeits that right once the opportunity lapses. The consumer always has the right to opt out (as discussed further in proposed § 313.8, below). However, if an individual does not exercise that opt out right when first presented with an opportunity, the financial institution would be permitted to disclose nonpublic personal information to nonaffiliated third parties for some period of time necessary to implement the consumer's opt out direction.

Paragraph (b) of proposed § 313.7 clarifies that the right to opt out applies regardless of whether a consumer has established a customer relationship with a financial institution. As noted above, all customers are consumers under the proposed Rule. Thus, the fact that a

consumer establishes a customer relationship with a financial institution does not change the institution's obligations to comply with the requirements of proposed § 313.7(a) before sharing nonpublic personal information about that consumer with nonaffiliated third parties. This also applies in the context of a consumer who had a customer relationship with a financial institution but then terminated that relationship. Paragraph (b) also clarifies that the consumer protections afforded by paragraph (a) of proposed § 313.7 apply to all nonpublic personal information collected by a financial institution, regardless of when collected. Thus, if a consumer elects to opt out of information sharing with nonaffiliated third parties, that election applies to all nonpublic personal information about that consumer in the financial institution's possession, regardless of when the information is obtained.

Paragraph (c) of proposed § 313.7 states that a financial institution may, but is not required to, provide consumers with the option of a partial opt out in addition to the opt out required by this section. This could enable a consumer to limit, for instance, the types of information disclosed to nonaffiliated third parties or the types of recipients of the nonpublic personal information about that consumer. If the partial opt out option is provided, a financial institution must state this option in a way that clearly informs the consumer about the choices available and consequences thereof.

Section 313.8 Form and Method of Providing Opt Out Notice to Consumer

Paragraph (a) of proposed § 313.8 requires that any opt out notice provided by a financial institution pursuant to proposed § 313.7 be clear and conspicuous and accurately explain the right to opt out. The notice must inform the consumer that the institution may disclose nonpublic personal information to nonaffiliated third parties, state that the consumer has a right to opt out, and provide the consumer with a reasonable means by which to opt out.

The examples that follow the general rule state that a financial institution will adequately provide notice of the right to opt out if it identifies the categories of information that may be disclosed and the categories of nonaffiliated third parties to whom the information may be disclosed and that the consumer may opt out of those disclosures. A financial institution that plans to disclose only limited types of information, or to only a specific type of nonaffiliated third party, may provide a correspondingly narrow notice to consumers. However, to minimize the number of opt out notices a financial institution must provide, the institution may wish to base its notices on current and anticipated information sharing plans. A new opt out notice is required if the financial institution discloses information to different types of nonaffiliated third parties, or discloses different types of information, unless the most recent opt out notice is sufficiently broad to cover the entities or information in question. Nor is a financial institution required to provide a subsequent opt-out notice when a consumer establishes a new type of customer relationship with that financial institution, unless the institution's opt out policies differ depending on the type of customer relationship.

The examples also suggest several ways in which a financial institution may provide reasonable means to opt out, including check-off boxes, reply forms, self-addressed stamped envelopes, toll-free phone numbers, and electronic mail addresses. A financial institution does not provide a reasonable means to opt out if the only means provided is for a consumer to write his or her own letter to the institution to exercise the right, although an institution may honor such a letter if received. The Commission invites comment on whether financial institutions should be required to accept opt outs through any means the institution has already established to communicate with consumers. For example, if a financial institution has established a toll free telephone number for its customer service department, should the institution be required to accept opt outs at that number? Similarly, if a financial institution has established a Web site, should it be required to accept opt outs at that site?

Paragraph (b) applies the same rules to delivery of the opt out notice that apply to delivery of the initial and annual notices. In addition, paragraph (b) clarifies that the opt out notice may be provided together with, or on the same form as, the initial and annual notices. However, if the opt out notice is provided after the initial notice, a financial institution must provide a copy of the initial notice along with the opt out notice. If a financial institution and consumer orally agree to enter into a customer relationship, the institution may provide the opt out notice within a reasonable time thereafter if the consumer agrees. The Commission invites comment on whether a more specific time by which the notice must be given would be appropriate.

Paragraph (c) sets out the rules governing a financial institution's obligations in the event the institution changes its disclosure policies. As stated in that paragraph, a financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless the institution first provides a revised notice and new opportunity to opt out. The institution must wait a reasonable period of time before disclosing information according to the terms of the revised notice in order to afford the consumer a reasonable opportunity to opt out. A financial institution must provide the revised notice of its policies and practices and opt out notice to a consumer using the means permitted for providing the initial notice and opt out notice to that consumer under §§ 313.4(c) and 313.8(b), respectively, which require that the notices be given in a manner so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, in electronic form.

Paragraph (d) states that a consumer has the right to opt out at any time. The Commission considered whether to include a time limit by which financial institutions must effectuate a consumer's opt out election, but decided that the wide variety of practices of financial institutions made one limit inappropriate. Instead, the Commission's proposed Rule requires that the disclosures stop as soon as reasonably practicable. The Commission solicits comment on whether it would be more appropriate to require a specific time to implement these opt-outs.

Paragraph (e) states that an opt out will continue until a consumer revokes it. The proposed Rule requires that such revocation be in writing, or, if the consumer has agreed, electronically.

The Commission invites comment on the likely burden of complying with the requirement to provide opt out notices, the methods financial institutions anticipate using to deliver the opt out notices, and the approximate number of opt out notices they expect to deliver and process.

Section 313.9 Exception to opt out Requirements for Service Providers and Joint Marketing

Section 502(b) of the G–L–B Act creates an exception to the opt-out rules for the disclosure of information to a nonaffiliated third party for use by the third party to perform services for, or functions on behalf of, the financial institution, including the marketing of the financial institution's own products

or services or financial products or services offered pursuant to a joint agreement between two or more financial institutions.[13] A consumer will not have the right to opt out of disclosing nonpublic personal information about the consumer to nonaffiliated third parties under these circumstances, if the financial institution satisfies certain requirements.

First, the institution must, as stated in section 502(b), "fully disclose" to the consumer that it will provide this information to the nonaffiliated third party before the information is shared. This disclosure should be provided as part of the initial notice that is required by § 313.4. The Commission invites comment on whether the proposed Rule appropriately implements the "fully disclose" requirement in section 502(b)(2).

Second, the financial institution must enter into a contract with the third party that requires the third party to maintain the confidentiality of the information. This contract should be designed to ensure that the third party (a) will maintain the confidentiality of the information at least to the same extent as is required for the financial institution that discloses it, and (b) will use the information solely for the purposes for which the information is disclosed or as otherwise permitted by §§ 313.10 and 313.11 of the proposed Rule. The Commission invites comment on whether third party contractors should be permitted to use information received pursuant to proposed § 313.9 to improve credit scoring models or analyze marketing trends, as long as the third parties do not maintain the information in a way that would permit identification of a particular consumer.

Section 502(b)(2) of the G–L–B Act allows the Commission to impose requirements on the disclosure of information pursuant to the exception for service providers beyond those imposed in the statute. The Commission has not done so in the proposed Rule, but invites comment on whether additional requirements should be imposed, and, if so, what those requirements should address. The Commission also invites comments on any other requirements that would be appropriate to protect a consumer's financial privacy, and on whether the Rule should provide examples of the types of joint agreements that are covered.

Section 313.10 Exceptions for Processing and Servicing Transactions

Section 502(e) of the G–L–B Act creates exceptions to the requirements that apply to the disclosure of nonpublic personal information to nonaffiliated third parties. Paragraph (1) of that section sets out certain exceptions for disclosures made, generally speaking, in connection with the administration, processing, servicing, and sale of a consumer's account.

Paragraph (a) of proposed § 313.10 sets out those exceptions, making only stylistic changes to the statutory text that are intended to make the exceptions easier to read. Paragraph (b) sets out the definition of "necessary to effect, administer, or enforce" that is contained in section 509(7) of the G–L–B Act, making only stylistic changes intended to clarify the definition.

The exceptions set out in proposed § 313.10, and the exceptions discussed in proposed § 313.11, below, do not affect a financial institution's obligation to provide initial notices of its privacy policies and practices prior to the time it establishes a customer relationship and annual notices thereafter. Those notices must be provided to all customers, regardless of whether the institution intends to disclose the nonpublic personal information.

Section 313.11 Other Exceptions to opt out Requirements

As noted above, section 502(e) contains several exceptions to the requirements that otherwise would apply to the disclosures of nonpublic personal information to nonaffiliated third parties. Proposed § 313.11 sets out those exceptions that are not made in connection with the administration, processing, servicing, and sale of a consumer's account, and makes stylistic changes intended to clarify the exceptions.

One of the exceptions stated in proposed § 313.11 is for disclosures made with the consent or at the direction of the consumer, provided the consumer has not revoked the consent. Following the list of exceptions is an example of consent in which a financial institution that has received an application from a consumer for a mortgage loan informs a nonaffiliated insurance company that the consumer has applied for a loan so that the insurance company can contact the person about homeowner's insurance. Consent in such a situation would enable the financial institution to make the disclosure to the third party without first providing the initial notice required by § 313.4 or the opt out notice required by § 313.7, but the disclosure must not exceed the purposes for which consent was given. The example also states that consent may be revoked by a consumer at any time by the consumer exercising the right to opt out of future disclosures. The Commission intends that a "consent" that was not clearly made by a consumer (for example, one in the form of a line buried in a document or a negative option not clearly explained to the consumer) would not provide an effective exception to the opt-out right. The Commission invites comment on whether specific safeguards should be added to the exception for consent in order to minimize the potential for consumer confusion. Such safeguards might include, for instance, a requirement that consent be written or that it be indicated on a separate signature line in a relevant document or on a distinct Web page, or that it may be effective for only a limited period of time.

Section 313.12 Limits on Redisclosure and Reuse of Information

Section 313.12 of the proposed Rule implements the Act's limitations on redisclosure and reuse of nonpublic personal information about consumers. Section 502(c) of the Act provides that a nonaffiliated third party that receives nonpublic personal information from a financial institution shall not, directly or indirectly through an affiliate, disclose the information to any person that is not affiliated with either the financial institution or the third party, unless the disclosure would be lawful if made directly by the financial institution. Paragraph (a)(1) sets out the Act's redisclosure limitation as it applies to a financial institution that receives information from another nonaffiliated financial institution. Paragraph (b)(1) mirrors the provisions of paragraph (a)(1), but applies the redisclosure limits to any nonaffiliated third party that receives nonpublic personal information from a financial institution.

The Act appears to place the institution that receives the information into the shoes of the institution that disclosed the information for purposes of determining whether redisclosures by the receiving institution are "lawful." Thus, the Act appears to permit the receiving institution to redisclose the information only to: (1) An entity to whom the original transferring institution could disclose the information pursuant to one of the exceptions in § 313.9, 313.10, or 313.11;

[13] Section 502(e) also sets forth some exceptions for transmitting information to third parties for servicing and processing purposes, and exempts them from the notice, as well as the opt-out, provisions of the Act. These are discussed in more detail in §§ 313.10 and 313.11. In those cases, the consumer has no disclosure or opt-out rights.

or (2) an entity to whom the original transferring institution could have disclosed the information as described under its notice of privacy policies and practices, unless the consumer has exercised the right to opt out of that disclosure. Because a consumer can exercise the right to opt out of a disclosure at any time, the Act may effectively preclude third parties that receive information to which the opt out right applies from redisclosing the information, except pursuant to one of the exceptions in §§ 313.9, 313.10, or 313.11. The Commission invites comment on whether the Rule should require a financial institution that discloses nonpublic personal information to a nonaffiliated third party to develop policies and procedures to ensure that the third party complies with the limits on redisclosure of that information.

Sections 502(b)(2) and 502(e) (as implemented by §§ 313.9, 313.10, and 313.11 of the proposed Rule) describe when a financial institution may disclose nonpublic personal information without providing the consumer with initial privacy notice and an opportunity to opt out, but those exceptions apply only when the information is used for the specific purposes set out in those sections. Paragraph (a)(2) of proposed § 313.12 clarifies this limitation on reuse as it applies to financial institutions. Paragraph (a)(2) provides that a financial institution may use nonpublic personal information about a consumer that it receives from a nonaffiliated financial institution in accordance with an exception under §§ 313.9, 313.10, or 313.11 only for the purpose of that exception. Paragraph (b)(2) applies the same limits on reuse to any nonaffiliated third party that receives nonpublic personal information from a financial institution. The Commission requests comment on whether proposed §§ 313.12(a)(2) and 313.12(b)(2) would restrict a nonaffiliated third party from using information obtained in accordance with the exceptions in §§ 313.9, 313.10, and 313.11 for purposes beyond the scope of those exceptions if the information is not used in a personally identifiable form. This might occur, for example, in the case of a credit scoring vendor using information to improve its scoring models.

The Commission invites comments on the meaning of the word "lawful" as that term is used in section 502(c). The Commission specifically solicits comment on whether it would be lawful for a nonaffiliated third party to disclose information pursuant to the exception provided in proposed § 313.9 of the Rule. Under that exception, a financial institution must comply with certain requirements before disclosing information to a nonaffiliated third party. Given that the statute and proposed Rule impose those requirements on the financial institution making the initial disclosure, the Commission invites comment on whether subsequent disclosures by the third party could satisfy the requirement that those disclosures be lawful when the financial institution is not party to the subsequent disclosure.

Section 313.13 Limits on Sharing of Account Number Information for Marketing Purposes

Section 502(d) of the G–L–B Act prohibits a financial institution from disclosing, other than to a consumer reporting agency, account numbers or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer. Proposed § 313.13 applies this statutory prohibition to disclosures made directly or indirectly by a financial institution.

The Commission notes that there is no exception in Title V, Subtitle A, to the flat prohibition established by section 502(d). The Statement of Managers contained in the Conference Report to S. 900 encourages the Commission and Agencies to adopt an exception to section 502(d) to permit disclosures of account numbers in limited instances. It states:

> In exercising their authority under section 504(b) [which vests the Commission and Agencies with authority to grant exceptions to section 502(a)–(d) beyond those set out in the statute], the agencies and authorities described in section 504(a)(1) may consider it consistent with the purposes of this subtitle to permit the disclosure of customer account numbers or similar forms of access numbers or access codes in an encrypted, scrambled, or similarly coded form, where the disclosure is expressly authorized by the customer and is necessary to service or process a transaction expressly requested or authorized by the customer.

Managers' Statement at 18. The Commission has not proposed an exception to the prohibition of section 502(d) because of the risks associated with third parties' direct access to a consumer's account. The Commission seeks comment on whether an exception to the section 502(d) prohibition that permits third parties access to account numbers is appropriate, the circumstances under which an exception would be appropriate, and how such an exception should be formulated to provide consumers with adequate protection. The Commission also seeks comment on whether a flat prohibition as set out in section 502(d) might unintentionally disrupt certain routine practices, such as the disclosure of account numbers to a service provider who handles the preparation and distribution of monthly account statements for a financial institution coupled with a request by the institution that the service provider include marketing literature with the statement about a product. In addition, the Commission invites comment on whether a consumer ought to be able to consent to the disclosure of his or her account number, notwithstanding the general prohibition in section 502(d) and, if so, what standards should apply. The Commission also seeks comment on whether section 502(d) prohibits the disclosure by a financial institution to a marketing firm of encrypted account numbers if the financial institution does not provide the marketer the key to decrypt the number.

Section 313.14 Protection of Fair Credit Reporting Act

Section 506 makes several amendments to the FCRA to vest rulemaking authority in various agencies and to restore the Agencies' regular examination authority. Paragraph (c) of section 506 states that, except for the amendments noted regarding rulemaking authority, nothing in Title V, Subtitle A is to be construed to modify, limit, or supersede the operation of the FCRA, and no inference is to be drawn on the basis of the provisions of Title V, Subtitle A as to whether information is transaction or experience information under section 603 of the FCRA.

Proposed § 313.14 implements section 506(c) of the G–L–B Act by restating the statute, making only minor stylistic changes intended to make the Rule clearer.

Section 313.15 Relation to State Laws

Section 507 of the G–L–B Act states, in essence, that Subtitle A of Title V does not preempt any state law that provides greater protections than are provided by that Subtitle of the Act. Determinations of whether a State law or Subtitle A of Title V provides greater protections are to be made by the Commission after consultation with the agency that regulates either the party filing a complaint or the financial institution about whom the complaint was filed. Determinations of whether

State or Federal law afford greater protections may be initiated by any interested party or on the Commission's own motion.

Proposed § 313.15 is substantively identical to section 507, noting that the proposed Rule (as opposed to the statute) does not preempt state laws that provide greater protection for consumers than does the Rule.

Section 313.16 Effective Date; Transition Rule

Section 510 of the G–L–B Act states that, as a general rule, the relevant provisions of Subtitle A of Title V take effect 6 months after the date on which rules are required to be prescribed. However, section 510(1) authorizes the Commission and the Agencies to prescribe a later date in the rules enacted pursuant to section 504.

Proposed § 313.16 states, in paragraph (a), an effective date of November 13, 2000. This assumes that a final Rule will be enacted within the time frame prescribed by section 504(a)(3). The Commission intends to provide at least six months following the adoption of a final Rule for financial institutions to bring their policies and procedures into compliance with the requirements of the final Rule. The Commission invites comment on whether six months following adoption of a final Rule is sufficient to enable financial institutions to comply with the Rule.

Paragraph (b) of proposed § 313.16 provides a transition rule for consumers who were customers as of the effective date of the Rule. Since those customer relationships already will have been established as of the Rule's effective date (thereby making it inappropriate to require a financial institution to provide those customers with a copy of the institution's initial notice at the time of establishing a customer relationship), the Rule requires instead that the initial notice be provided within 30 days of the effective date. The Commission invites comment on whether 30 days is enough time to permit a financial institution to deliver the required notices, bearing in mind that the G–L–B Act contemplates at least a six-month delayed effective date from the date the Rule is adopted.

If a financial institution intends to disclose nonpublic personal information about someone who was a consumer before the effective date, the institution must provide the notices required by §§ 313.4 and 313.7 and provide a reasonable opportunity to opt out before the effective date. If, in this instance, the institution already is disclosing information about such a consumer, it may continue to do so without interruption until the consumer opts out, in which case the institution must stop disclosing nonpublic personal information about that consumer to nonaffiliated third parties as soon as reasonably practicable.

Section C. Invitation to Comment

Before adopting this Rule as final, the Commission will give consideration to any written comments submitted to the Secretary of the Commission on or before March 31, 2000. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. Comments will also be posted on the Commission website; <*www.ftc.gov*>.

Section D. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR. § 1.26(b)(5) (1998).

Section E. Regulatory Flexibility Act

The Commission believes that the proposed Rule's requirements are expressly mandated by the G–L–B Act, and the Act's requirements account for most, if not all, of the economic impact of the proposed Rule. While the Commission believes that it could certify that the proposed Rule will not have a significant impact on a substantial number of small entities, the Commission has decided, nonetheless, to publish the following initial regulatory flexibility analysis pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, as amended, and request public comment on the impact on small businesses of its proposed Rule implementing the G–L–B Act.

Description of the Reasons That Action by the Agency is Being Considered

Section 504 of the G–L–B Act requires the Commission to promulgate this Rule not later than six months after the date of enactment of the Act, or May 12, 2000.

Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

To implement the disclosure requirements and restrictions on certain financial institutions' abilities to disclose nonpublic personal information about consumers to nonaffiliated third parties. The legal basis for the proposed Rule is Section 504 of the G–L–B Act.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

In general, the Rule will apply to any financial institution subject to the Commission's jurisdiction that shares nonpublic personal information with nonaffiliated third parties or that establishes customer relationships with consumers. The definition of "financial institution" includes any institution the business of which is engaging in a financial activity, as defined under Section 4(k) of the Bank Holding Company Act, which incorporates by reference the activities listed in 12 CFR 225.28 and 12 CFR 211.5(d). (G–L–B Act § 509(3)(A).) A precise estimate of the number of small entities that are financial institutions within the meaning of the proposed Rule is not currently feasible. In addition, of those small entities that are financial institutions, there is no way to precisely estimate the number that share consumers' nonpublic personal information with nonaffiliated third parties or that establish customer relationships with consumers. The Commission seeks any information or comment on these issues, as noted below.

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The statute and proposed Rule do not directly impose any "reporting" or "recordkeeping" requirements on financial institutions within the meaning of the Paperwork Reduction Act, but would require that financial institutions, in specified circumstances, make certain third party disclosures to the public. These disclosures include: notice of the financial institution's privacy policy to consumers at the time of establishing a customer relationship with a consumer (Proposed Rule § 313.4); annual notice of the financial institution's privacy policy to those consumers with whom it continues to have a customer relationship (Proposed Rule § 313.5); notice to consumers, regardless of whether a customer relationship has been established, of a financial institution's privacy policy and notice and opportunity to opt-out

prior to the financial institution's sharing of a consumer's nonpublic personal information with nonaffiliated third parties (Proposed Rule § 313.8(a)); and notice to customers of any changes that the financial institution makes in its policies concerning sharing nonpublic personal information with nonaffiliated third parties (Proposed Rule § 313.8(c)). The Commission is seeking clearance from the Office of Management and Budget ("OMB") for these requirements and the Commission's Supporting Statement submitted as part of that process will be made available on the public record of this rulemaking.

Because the proposed Rule does not directly mandate "reporting" or "recordkeeping" within the meaning of the Paperwork Reduction Act, the Rule does not require professional skills for the preparation of "reports" or "records" under the Act. The disclosures and other burdens referenced above likely will require some amount of managerial and/or professional (including attorney), clerical, and in some instances, skilled technical time to develop and disseminate the required disclosures. For purposes of its Supporting Statement to OMB under the Paperwork Reduction Act, the Commission estimated that the average yearly burden over the three-year period of clearance is 4.03 million hours and $87.3 million. The Commission, as noted below, seeks further comment on the costs and burdens of small entities in complying with the requirements of the proposed Rule.

Identification, to the Extent Practicable, of all Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

While the scope of the proposed Rule is unique, there may be some overlap in certain circumstances with other Federal laws. Because there is a relationship between the proposed requirements and the notice requirements under the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681–1681u, the proposed Rule requires that the financial institution's initial and annual notices shall also include any disclosure that it is required to make under the FCRA. (Rule § 313.6(a)(7).) Also, at the time a consumer contracts for an electronic fund transfer service, the Electronic Funds Transfer Act requires the terms and conditions of such transfer to be disclosed, including under what circumstances the entity will in the ordinary course of business disclose information concerning the consumer's account to third persons. Finally, the Children's Online Privacy Protection Act generally requires online service operators collecting personal information from a child to obtain parental consent and post a privacy notice on the Website. As noted below, the Commission seeks comment and information on any other rules that may be duplicative, overlapping, or in conflict with this proposed rule.

Description of any significant alternatives to the proposed Rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed Rule on small entities, including alternatives considered, such as: (1) Establishment of differing compliance or reporting requirements or timetables that take into account resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; (4) any exemption from coverage of the rule, or any part thereof, for such small entities. In drafting the proposed Rule, the Commission has made every effort to avoid unduly burdensome requirements for financial institutions of all sizes. In a number of respects the proposed Rule is flexible and allows financial institutions to select methods of compliance that are reasonable, taking into account the financial institution's business practices and capabilities.

For example, financial institutions that are required to provide disclosures to consumers must provide the notice so that the consumer can reasonably be expected to actually receive it. (Proposed Rule § 313.4(d).) The proposed Rule allows the financial institutions to choose a delivery method that imposes the least burden on the financial institution while also complying with the statutory mandate that the consumer be provided with the appropriate disclosures. Regarding the law's clear and conspicuous requirements, the proposed Rule does not mandate the use of any particular technique for making the notices clear and conspicuous, but instead allows each financial institution the flexibility to decide for itself how best to comply with this requirement. (Proposed Rule § 313.4(b).) In addition, the proposed Rule requires that a financial institution provide the opportunity to opt-out directly to a consumer but provides alternate means of providing that notice—a small entity, or any entity, can choose a means that is reasonable taking into account its circumstances. (Proposed Rule § 313.8(b).) No recordkeeping requirement has been included in the proposed Rule. Thus, no entity, regardless of size, is unnecessarily burdened by recordkeeping requirements.

The Commission has made every effort to minimize the burden on small entities—and all entities—and to be reasonable in its rulemaking. To that end, the Commission has clarified the breadth of the statutory term "financial institution" to include an institution significantly engaged in a financial activity. (Proposed Rule § 313.3(j).) The effect of this definition is twofold: it encompasses and subjects to its requirements those institutions that are not solely in the business of a financial activity but that are significantly engaged in such an activity as part of their business; and excludes from coverage those entities, large or small, that may engage in financial activities as some small, insignificant portion of their business.

The proposed Rule also provides for a streamlined version of the content of an institution's privacy policy for any entity that does not share nonpublic personal information with third parties. (Proposed Rule § 313.4(b).) Thus, entities of any size that do not share information are not unduly burdened. Moreover, those financial institutions, regardless of size, that engage in only one-time isolated transactions with consumers are not required to provide a privacy policy to consumers unless they intend to share the consumer's nonpublic personal information with a nonaffiliated third party. (Proposed Rule § 313.4(b).)

Questions for Comment To Assist Regulatory Flexibility Analysis

1. Please provide information or comment on the number and type of small entities affected by the proposed Rule. Include in your comments the number of small entities that share consumers' nonpublic personal information with nonaffiliated third parties or that establish customer relationships with consumers.

2. Please provide comment on any or all of the provisions in the proposed Rule with regard to (a) the impact of the provision(s) (including any benefits and costs), if any, the Commission should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the Rule on small entities in light of the above analysis. Costs to implement and comply with the Rule include expenditures of time and money for: any employee training; attorney or other

professional time; preparing relevant materials; and processing materials.

3. Please describe ways in which the Rule could be modified to reduce any costs or burdens for small entities consistent with the G–L–B Act's mandated requirements.

4. Please provide any information quantifying the economic benefits to financial institutions of sharing consumers' nonpublic personal information.

5. Please identify all relevant Federal, state or local rules that may duplicate, overlap or conflict with the proposed Rule. In addition, please identify any industry rules or policies that require financial institutions to implement business practices (*e.g.*, disclosure of privacy policy and right to opt-out, etc.) that would already comply with the requirements of the Commission's proposed Rule.

Section F. Paperwork Reduction Act

The Commission has submitted this proposed Rule to the Office of Management and Budget for review under the Paperwork Reduction Act ("PRA") (44 U.S.C. 3501–3517). As required by the G–L–B Act, the proposed Rule specifies disclosure requirements for financial institutions subject to the Commission's jurisdiction that are subject to the requirements of PRA. The required disclosures include: (1) Initial notice of the financial institution's privacy policy at the time it establishes a customer relationship with a consumer and/or prior to its sharing a consumer's nonpublic personal information with nonaffiliated third parties; (2) notice of the consumer's right to opt-out of information sharing with nonaffiliated third parties; (3) annual notice of the financial institution's privacy policy to any continuing customer; and (4) notice to consumers when the financial institution changes its practices on information sharing with nonaffiliated third parties. Although the proposed Rule's disclosure requirements are expressly required by the G–L–B Act, the Commission has adopted a performance standard to provide flexibility in implementing the requirements.

The Commission has estimated the paperwork burden of the proposed Rule for financial institutions that are subject to the Commission's jurisdiction, based on staff's knowledge of the financial services industry. Under Section 505(a)(7) of the G–L–B Act, the Commission has jurisdiction over an estimated 100,000 businesses that are not subject to the jurisdiction of one of the other agencies responsible for enforcing the G–L–B Act. FTC staff considered many variables affecting the broad spectrum of covered businesses. Some covered businesses may already make the required disclosures in the ordinary course of business. Some may use highly automated means of providing the required disclosures. Others may use low-technology means. The burden estimate also acknowledges that significant start-up burden and attendant costs, such as for determining compliance obligations and developing necessary privacy policies, will be born in the first year that the Rule takes effect. The paperwork burden in subsequent years will be significantly lower. Factoring in start-up costs, the Commission has estimated that the average annual burden during the three year period for which OMB clearance is sought will be 4.03 million burden hours. The estimated annual labor cost associated with these paperwork burdens is $87.3 million. The estimate is also based on the determination that the time required for consumers to respond affirmatively to financial institutions' opt-out notices (be it manually or electronically) will be minimal.

The Commission invites comment that will enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

2. Evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Section G. Questions Concerning Comprehensibility of the Rule

The Commission invites your comments on how to make this proposed Rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could the material be better organized?
- Are the requirements in the Rule clearly stated? If not, how could the Rule be more clearly stated?
- Does the Rule contain technical language or jargon that is not clear? If not, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the Rule easier to understand? If so, what changes to the format would make the Rule easier to understand?
- Would more (but shorter) sections be better? Which ones?
- What else could we do to make the Rule easier to understand?

Section H. Proposed Rule

List of Subjects in 16 CFR Part 313

Consumer protection, Credit, Data protection, Privacy, Trade practices.

Accordingly, the Commission proposes to amend 16 CFR Ch. I, Subchapter C, by adding a new Part 313 to read as follows:

PART 313—PRIVACY OF CONSUMER FINANCIAL INFORMATION

Sec.

313.1 Purpose and scope.
313.2 Rule of construction.
313.3 Definitions.
313.4 Initial notice to consumers of privacy policies and practices required.
313.5 Annual notice to customers required.
313.6 Information to be included in initial and annual notices of privacy policies and practices.
313.7 Limitation on disclosure of nonpublic personal information about consumers to nonaffiliated third parties.
313.8 Form and method of providing opt out notice to consumer.
313.9 Exception to opt out requirements for service providers and joint marketing.
313.10 Exceptions to notice and opt out requirements for processing and servicing transactions.
313.11 Other exceptions to notice and opt out requirements.
313.12 Limits on redisclosure and reuse of information.
313.13 Limits on sharing of account number information for marketing purposes.
313.14 Protection of Fair Credit Reporting Act.
313.15 Relation to state laws.
313.16 Effective date; transition rule.

Authority: 15 U.S.C. 6804(a).

§ 313.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution in specified circumstances to provide notice to consumers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by "opting out" of that disclosure, subject to the exceptions in §§ 313.9, 313.10, and 313.11.

(b) *Scope.* The rules established by this part apply only to nonpublic personal information about individuals who obtain financial products or services for personal, family or household purposes from the institutions listed in this paragraph. This part does not apply to information about companies or about individuals who obtain financial products or services for business purposes. This part applies to those "financial institutions" and "other persons" over which the Federal Trade Commission ("Commission") has enforcement authority pursuant to Section 505(a)(7) of the Gramm-Leach-Bliley Act. An entity is a "financial institution" if it is engaged in a financial activity described in Section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k), which incorporates by reference activities enumerated by the Federal Reserve Board in 12 CFR 211.5(d) and 12 CFR 225.28. The "financial institutions" subject to the Commission's enforcement authority are those that are not otherwise subject to the enforcement authority of another regulator under Section 505 of the Gramm-Leach-Bliley Act. More specifically, those entities include, but are not limited to, mortgage lenders, "pay day" lenders, finance companies, mortgage brokers, account servicers, check cashers, wire transferors, travel agencies operated in connection with financial services, debt collectors, credit counselors and other financial advisors, and tax preparation firms. They are referred to in this part as "You." The "other persons" to whom this part applies are third parties that are not financial institutions, but that receive nonpublic personal information from financial institutions with whom they are not affiliated.

§ 313.2 Rule of construction.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

§ 313.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice.

(2) *Examples.* (i) You make your notice reasonably understandable if, to the extent applicable, you:

(A) Present the information contained in the notice in clear, concise sentences, paragraphs and sections;

(B) Use short explanatory sentences and bullet lists, whenever possible;

(C) Use definite, concrete, everyday words and active voice, whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology; and

(F) Avoid boilerplate explanations that are imprecise and readily subject to different interpretations.

(ii) You design your notice to call attention to the nature and significance of the information contained in it if, to the extent applicable, you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read; and

(C) Provide wide margins and ample line spacing.

(iii) If you provide a notice on the same form as another notice or other document, you design your notice to call attention to the nature and significance of the information contained in the notice if you use:

(A) Larger type size(s), boldface or italics in the text;

(B) Wider margins and line spacing in the notice; or

(C) Shading or sidebars to highlight the notice, whenever possible.

(c) *Collect* means to obtain information that is organized or retrievable on a personally identifiable basis, irrespective of the source of the underlying information.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association or similar organization.

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family or household purposes, and that individual's legal representative.

(2) *Examples.* (i) An individual who applies to you for credit for personal, family or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family or household purposes is a consumer of a financial service, regardless of whether the loan is extended by you or another financial institution.

(iii) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain financial, investment or economic advisory services is a consumer of a financial service, regardless of whether you establish a customer relationship.

(iv) An individual who has a credit account with you is a consumer even if you:

(A) Hire an agent to collect on the account;

(B) Sell the rights to service the account; or

(C) Bought the account from the financial institution that originally extended credit.

(v) An individual who makes payments to you on a loan where you own the servicing rights is a consumer. An individual is not your consumer, however, solely because you service the individual's loan on behalf of a financial institution that made the loan to the individual.

(f) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company.

(h) *Customer* means a consumer who has a customer relationship with you.

(i)(1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family or household purposes.

(2) *Examples.* (i) A consumer has a continuing relationship with you if the consumer:

(A) Has a deposit, credit, trust or investment account with you;

(B) Purchases an insurance product from you;

(C) Holds an investment product through you;

(D) Enters into an agreement or understanding with you whereby you

undertake to arrange or broker a home mortgage loan, or credit to purchase a vehicle, for the consumer;

(E) Has a loan that you service where you own the servicing rights;

(F) Enters into a lease of personal property with you;

(G) Obtains financial, investment or economic advisory services from you for a fee;

(H) Becomes your client for the purpose of obtaining tax preparation or credit counseling services from you; or

(I) Obtains career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a company or financial institution).

(ii) A consumer does not, however, have a continuing relationship with you if:

(A) The consumer only obtains a financial product or service in an isolated transaction such as: withdrawing cash from your ATM; purchasing a cashier's check or money order from you; cashing a check with you; or making a wire transfer through you;

(B) You sell the consumer's loan and do not retain the rights to service that loan; or

(C) You sell the consumer airline tickets, travel insurance or traveler's checks in an isolated transaction.

(j)(1) *Financial institution* means any institution the business of which is engaging in activities that are financial in nature as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Example.* An entity is a financial institution if it is significantly engaged in financial activities, such as a retailer that extends credit by issuing its own credit card directly to consumers.

(3) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party other than as permitted by §§ 313.10 and 313.11.

(iv) A business that only accepts payment by check or cash, or through credit cards issued by others, or through deferred payment or "lay-away" plans.

(k)(1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes your evaluation, brokerage or distribution of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(l) *Government regulator* means—

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Director of the Office of Thrift Supervision;

(5) The National Credit Union Administration Board;

(6) The Securities and Exchange Commission;

(7) The Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping);

(8) A State insurance authority, with respect to any person domiciled in that insurance authority's State that is engaged in providing insurance; and

(9) The Federal Trade Commission.

(m) *Nonaffiliated third party* means any person except:

(1) Your affiliate; or

(2) A person employed jointly by you and any company that is not your affiliate (but *nonaffiliated third party* includes the other company that jointly employs the person).

[§ 313.3(n-o-p)] Alternative A.

(n)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information.

(2) *Nonpublic personal information* does not include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information.

(3) *Example.* Nonpublic personal information includes any list of individuals' street addresses and telephone numbers that is derived using any information consumers provide to you on an application for a financial product or service.

(o)(1) *Personally identifiable financial information* means any information:

(i) Provided by a consumer to you to obtain a financial product or service from you;

(ii) Resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer, other than publicly available information.

(2) *Examples.* (i) Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, credit card, insurance or other financial product or service, including, among other things, medical information;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you, unless that fact is derived using only publicly available information, such as government real estate records or bankruptcy records;

(D) Other information about your consumer if it is disclosed in a manner that indicates the individual is or has been your consumer;

(E) Any information provided by a consumer or otherwise obtained by you or your agent in connection with collecting on a loan or servicing a loan; and

(F) Information from a consumer report.

(ii) Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; or

(B) A list of names and addresses of consumers to whom you provided a nonfinancial product or service.

(p)(1) *Publicly available information* means any information that is lawfully made available to the general public that is obtained from:

(i) Federal, State or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by Federal, State or local law.

(2) *Examples.* (i) *Government records.* Publicly available information

contained in government records includes information contained in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or an Internet site that is available to the general public without requiring a password or similar restriction.

[§ 313.3(n-o-p)] Alternative B.

(n)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as provided in paragraph (n)(1)(ii) of this section; or

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information.

(3) *Example.* Nonpublic personal information includes any list of individuals' street addresses and telephone numbers that is derived using personally identifiable financial information, such as account numbers.

(o)(1) *Personally identifiable financial information* means any information:

(i) Provided by a consumer to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) *Examples.* (i) Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, credit card, insurance or other financial product or service, including, among other things, medical information;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you, unless that fact is derived using only publicly available information, such as government real estate records or bankruptcy records;

(D) Other information about your consumer if it is disclosed in a manner that indicates the individual is or has been your consumer;

(E) Any information provided by a consumer or otherwise obtained by you or your agent in connection with collecting on a loan or servicing a loan; and

(F) Information from a consumer report.

(ii) Personally identifiable financial information does not include a list of names and addresses of customers of an entity that is not a financial institution.

(p)(1) *Publicly available information* means any information that is lawfully made available to the general public from:

(i) Federal, State or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by Federal, State or local law.

(2) *Examples.* (i) *Government records.* Publicly available information contained in government records includes information contained in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or an Internet site that is available to the general public without requiring a password or similar restriction.

(q) *You* means those financial institutions over which the Commission has enforcement jurisdiction pursuant to section 505(a)(7) of the Gramm-Leach-Bliley Act.

§ 313.4 Initial notice to consumers of privacy policies and practices required.

(a) *When initial notice is required.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) An individual who becomes your customer, prior to the time that you establish a customer relationship, except as provided in paragraph (d)(2) of this section; and

(2) A consumer, prior to the time that you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 313.10 and 313.11.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a)(1) of this section if:

(1) You do not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by §§ 313.10 and 313.11; and

(2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship.* (1) *General rule.* You establish a customer relationship at the time you and the consumer enter into a continuing relationship.

(2) *Examples.* You establish a customer relationship when the consumer:

(i) Opens a credit card account with you;

(ii) Executes the contract to obtain credit from you, or purchase insurance from you;

(iii) Agrees to obtain financial, economic or investment advisory services from you for a fee;

(iv) Becomes your client for the purpose of your providing credit counseling or tax preparation services, or to obtain career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a company or financial institution);

(v) Provides any personally identifiable financial information to you in an effort to obtain a mortgage loan through you; or

(vi) Makes his or her first payment to you on a loan account for which you have obtained the servicing rights.

(d) *How to provide notice.* (1) *General rule.* You must provide the privacy notice required by paragraph (a) of this section so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, in electronic form.

(2) *Exceptions to allow subsequent delivery of notice.* You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) You purchase a loan from another financial institution and the customer of that loan does not have a choice about your purchase; or

(ii) You and the consumer orally agree to enter into a customer relationship and the consumer agrees to receive the notice thereafter.

(3) *Oral description of notice insufficient.* You may not provide the initial notice required by paragraph (a) of this section solely by orally explaining, either in person or over the telephone, your privacy policies and practices.

(4) *Retention or accessibility of initial notice for customers.* For customers only, you must provide the initial notice required by paragraph (a)(1) of this section so that it can be retained or obtained at a later time by the customer, in a written form or, if the customer agrees, in electronic form.

(5) *Examples.* (i) You may reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(A) Hand-deliver a printed copy of the notice to the consumer;

(B) Mail a printed copy of the notice to the last known address of the consumer;

(C) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or

(D) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(ii) You may *not*, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(A) Only post a sign in your office or generally publish advertisements of your privacy policies and practices; or

(B) Send the notice via electronic mail to a consumer who obtains a financial product or service with you in person or through the mail and who does not agree to receive the notice electronically.

(iii) You provide the initial privacy notice to the customer so that it can be retained or obtained at a later time if you:

(A) Hand-deliver a printed copy of the notice to the customer;

(B) Mail a printed copy of the notice to the last known address of the customer upon request of the customer; or

(C) Maintain the notice on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and who agrees to receive the notice electronically.

§ 313.5 Annual notice to customers required.

(a) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of twelve consecutive months during which that relationship exists.

(b) *How to provide notice.* You must provide the annual notice required by paragraph (a) of this section to a customer using a means permitted for providing the initial notice to that customer under § 313.4(d).

(c) (1) *Termination of customer relationship.* You are not required to provide an annual notice to a customer with whom you no longer have a continuing relationship.

(2) *Examples.* You no longer have a continuing relationship with an individual if:

(i) In the case of a closed-end loan, the consumer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(ii) In the case of a credit card relationship or other open-end credit relationship, you no longer provide any statements or notices to the consumer concerning that relationship or you sell the credit card receivables without retaining servicing rights; or

(iii) For other types of relationships, you have not communicated with the consumer about the relationship for a period of twelve consecutive months, other than to provide annual notices of privacy policies and practices.

§ 313.6 Information to be included in initial and annual notices of privacy policies and practices.

(a) *General rule.* The initial and annual notices that you provide about your privacy policies and practices under §§ 313.4 and 313.5 must include each of the following items of information:

(1) The categories of nonpublic personal information about your consumers that you collect;

(2) The categories of nonpublic personal information about your consumers that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your consumers, other than those parties to whom you disclose information under §§ 313.10 and 313.11;

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§ 313.10 and 313.11;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 313.9 (and no other exception applies to that disclosure), a separate description of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the right under § 313.8(a) of the consumer to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the methods by which the consumer may exercise that right;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates); and

(8) Your policies and practices with respect to protecting the confidentiality, security and integrity of nonpublic personal information.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information about a consumer to third parties as authorized under §§ 313.10 and 313.11, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 313.4 and 313.5. When describing the categories with respect to those parties, you are only required to state that you make disclosures to other nonaffiliated third parties as permitted by law.

(c) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(d) *Examples.* (1) *Categories of nonpublic personal information that you collect.* You adequately categorize the nonpublic personal information you collect if you categorize it according to the source of the information, such as application information, information about transactions (such as information regarding your deposit, loan, or credit card account), and consumer reports.

(2) *Categories of nonpublic personal information you disclose.* You adequately categorize nonpublic personal information you disclose if you categorize it according to source, and provide illustrative examples of the content of the information. These might include application information, such as assets and income; identifying information, such as name, address, and social security number; and transaction information, such as information about account balance, payment history,

parties to the transaction, and credit card usage; and information from consumer reports, such as a consumer's creditworthiness and credit history. You do not adequately categorize the information that you disclose if you use only general terms, such as transaction information about the consumer.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You adequately categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about consumers if you identify the types of businesses that they engage in. Types of businesses may be described by general terms only if you use illustrative examples of significant lines of business. For example, you may use the term "financial products or services" if you include appropriate examples of significant lines of businesses, such as consumer banking, mortgage lending, life insurance or securities brokerage. Likewise, you may refer to "retail products" if you include examples such as clothing. household furnishings, and health-related items, or to "magazine subscription products" if you include such examples as health-related or investment-related publications. You also may categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about consumers using more detailed categories.

(4) *Simplified notices.* If you do not disclose, and do not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), and (b) of this section.

(5) *Confidentiality, security and integrity.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you explain who has access to the information and the circumstances under which the information may be accessed. You describe your policies and practices with respect to protecting the integrity of nonpublic personal information if you explain measures you take to protect against reasonably anticipated threats or hazards. You are not required to describe technical information about the safeguards you use.

§ 313.7 Limitation on disclosure of nonpublic personal information about consumers to nonaffiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 313.4;

(ii) You have provided to the consumer an opt out notice as required in § 313.8;

(iii) You have given the consumer a reasonable opportunity, before the time that you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 313.9, 313.10 and 313.11.

(3) *Examples of reasonable opportunity to opt out.* (i) *By mail.* You provide a consumer with whom you have a customer relationship with a reasonable opportunity to opt out if you mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer a reasonable period of time, such as 30 days, to opt out.

(ii) *Isolated transaction with consumer.* For an isolated transaction, such as the purchase of a cashier's check by a consumer, you provide a reasonable opportunity to opt out if you provide the consumer with the required notices at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information.* (1) This section applies regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 313.8 Form and method of providing opt out notice to consumer.

(a)(1) *Form of opt out notice.* You must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under § 313.7(a)(1). The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples.* (i) You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose to nonaffiliated third parties as described in § 313.6 and state that the consumer can opt out of the disclosure of that information.

(ii) You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice and clearly identify where to send the notice;

(B) Include a detachable form and self-addressed stamped envelope together with the opt out notice;

(C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your Web site, if the consumer agrees to the electronic delivery of information; or

(D) Designate a toll-free number that the consumer can call to opt out.

(b) *How to provide opt out notice.* (1) *Delivery of notice.* You must provide the opt out notice required by paragraph (a) of this section in a manner so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, in electronic form. If you and the consumer orally agree to enter into a customer relationship, you may provide the opt out notice required by paragraph (a) of this section within a reasonable time thereafter if the consumer agrees.

(2) *Oral description of opt out right insufficient.* You may not provide the opt out notice solely by orally explaining, either in person or over the telephone, the right of the consumer to opt out.

(3) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with § 313.4.

(4) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice at a later time than required for the initial notice in accordance with

§ 313.4, you must also include a copy of the initial notice in writing or, if the consumer agrees, in an electronic form with the opt out notice.

(c) *Notice of change in terms.* (1) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to the consumer under § 313.4, unless—

(i) You have provided to the consumer a revised notice that accurately describes your policies and practices;

(ii) You have provided to the consumer a new opt out notice;

(iii) You have given the consumer a reasonable opportunity, before the time that you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *How to provide notice of change in terms.* You must provide the revised notice of your policies and practices and opt out notice to a consumer using the means permitted for providing the initial notice and opt out notice to that consumer under § 313.4(d) or paragraph (b) of this section, respectively.

(3) *Examples.* (i) Except as otherwise permitted by §§ 313.9, 313.10 and 313.11, a change-in-terms notice is required if you—

(A) Disclose a new category of nonpublic personal information to any nonaffiliated third party; or

(B) Disclose nonpublic personal information to a new category of nonaffiliated third party.

(ii) A change-in-terms notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that is adequately described by your prior notice.

(d) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time, and you must comply with the consumer's direction as soon as reasonably practicable.

(e) *Duration of consumer's opt out direction.* A consumer's direction to opt out under this section is effective until revoked by the consumer in writing or, if the consumer agrees, in electronic form.

§ 313.9 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* The opt out requirements in §§ 313.7 and 313.8 do not apply when you provide nonpublic personal information about a consumer to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(1) Provide the initial notice in accordance with § 313.4; and

(2) Enter into a contractual agreement with the third party that:

(i) Requires the third party to maintain the confidentiality of the information to at least the same extent that you must maintain that confidentiality under this part; and

(ii) Limits the third party's use of information you disclose solely to the purposes for which the information is disclosed or as otherwise permitted by §§ 313.10 and 313.11.

(b) *Service may include joint marketing.* The services performed for you by a nonaffiliated third party under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, *joint agreement* means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§§ 313.9 313.10 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 313.4(a)(2), the opt out in §§ 313.7 and 313.8, and service providers and joint marketing in § 313.9 do not apply if you disclose nonpublic personal information:

(1) As necessary to effect, administer, or enforce a transaction requested or authorized by the consumer;

(2) To service or process a financial product or service requested or authorized by the consumer;

(3) To maintain or service the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(4) In connection with a proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law;

(vi) In connection with settling a transaction, including:

(A) The authorization, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein; or

(C) The audit of debit, credit or other payment information.

§ 313.11 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice to consumers in § 313.4(a)(2), the opt out in §§ 313.7 and 313.8, and service providers and joint marketing in § 313.9 do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including government regulators), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with Federal, State or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by Federal, State or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to you for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 313.8(d).

§ 313.12 Limits on redisclosure and reuse of information.

(a) *Limits on your redisclosure and reuse.* (1) Except as otherwise provided in this part, if you receive nonpublic personal information about a consumer from a nonaffiliated financial institution, you must not, directly or through an affiliate, disclose the information to any other person that is not affiliated with either the financial institution or you, unless the disclosure would be lawful if the financial institution made it directly to such other person.

(2) You may use nonpublic personal information about a consumer that you receive from a nonaffiliated financial institution in accordance with an exception under §§ 313.9, 313.10 or 313.11 only for the purpose of that exception.

(b) *Limits on redisclosure and the reuse by other persons.* (1) Except as otherwise provided in this part, if you disclose nonpublic personal information about a consumer to a nonaffiliated third party, that party must not, directly or through an affiliate, disclose the information to any other person that is a nonaffiliated third party of both you and that party, unless the disclosure would be lawful if you made it directly to such other person.

(2) A nonaffiliated third party may use nonpublic personal information about a consumer that it receives from you in accordance with an exception under §§ 313.9, 313.10 or 313.11 only for the purpose of that exception.

§ 313.13 Limits on sharing of account number information for marketing purposes.

You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

§ 313.14 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 313.15 Relation to state laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order or interpretation in effect in any State, except to the extent that such state statute, regulation, order or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under state law.* For purposes of this section, a State statute, regulation, order or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Commission on its own motion or upon the petition of any interested party, after consultation with the applicable government regulator or other authority.

§ 313.16 Effective date; transition rule.

(a) *Effective date.* This part is effective November 13, 2000.

(b) *Notice requirement for consumers who were your customers on the effective date.* No later than thirty days after the effective date of this part, you must provide an initial notice, as required by § 313.4, to consumers who were your customers on the effective date of this part.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–4881 Filed 2–29–00; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 1451/P.L. 106–173

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Poison Control Center Enhancement and Awareness Act (Feb. 25, 2000; 114 Stat. 18)

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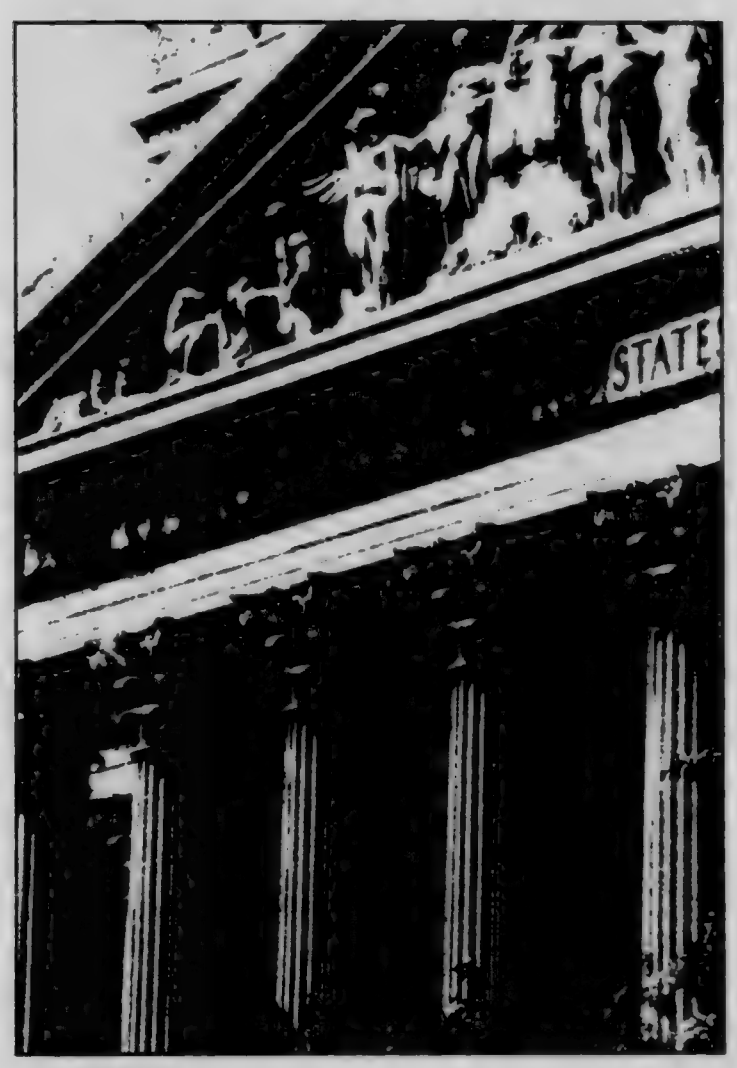

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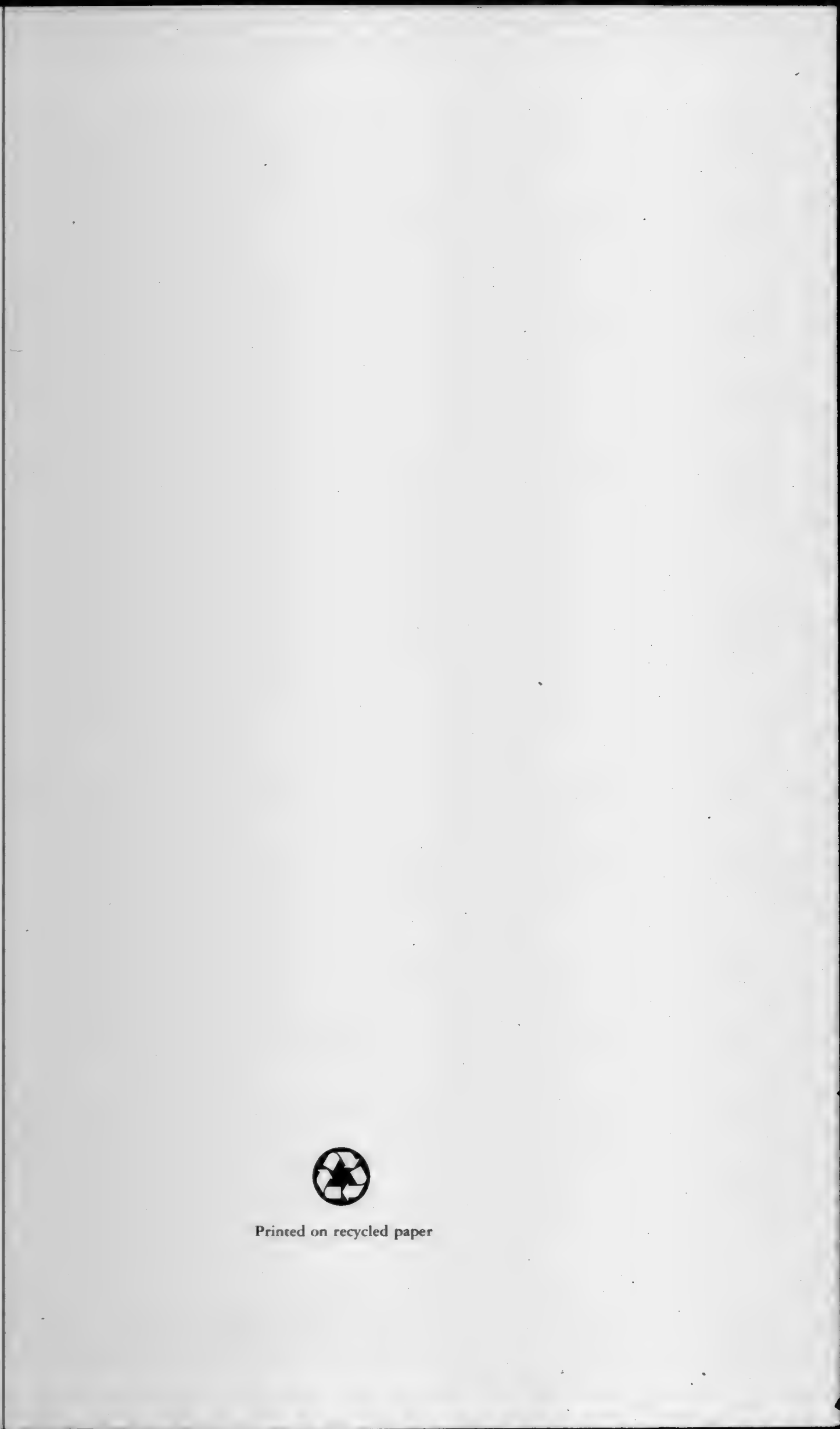

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By the President of the United States of America

A Proclamation

Colorectal cancer is the second leading cause of cancer-related deaths in the United States. Estimates show that physicians will diagnose approximately 130,000 new cases of colorectal cancer this year, and, of those persons diagnosed, more than 56,000 will die from the disease. Colorectal cancer takes such a deadly toll because it usually has no identifiable symptoms and often goes undetected until it is too late to treat.

Our most effective weapon in defeating colorectal cancer is early detection and treatment. Through a regular screening program that includes fecal blood testing, periodic partial or full colon examinations, or both, health professionals can detect and remove pre-cancerous polyps before they turn into cancer. Such cancer screening should become a routine part of preventive health care for anyone over the age of 50, because the risk of developing colorectal cancer increases with age. Individuals with a personal or family history of inflammatory bowel disease, colorectal cancer or polyps, or ovarian, endometrial, or breast cancer are also at a higher risk for developing colorectal cancer.

We can draw hope from the progress that is being made in colorectal cancer research. The National Cancer Institute of the National Institutes of Health recently launched a large research study to test two of the most promising drugs to treat colorectal cancer, and new technologies are giving us more powerful tools to increase the ease and accuracy of colorectal screening. By continuing to support such research, raising awareness of risk factors for the disease, promoting the widespread adoption of regular screening, and encouraging everyone to exercise regularly, we can save thousands of lives each year and dramatically reduce the risk of colorectal cancer.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2000 as National Colorectal Cancer Awareness Month. I encourage health care providers, advocacy groups, policymakers, and concerned citizens across the country to help raise public awareness of the risks and methods of prevention of colorectal cancer and to use the power of our knowledge to defeat this silent disease.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of February, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–5207
Filed 3–1–00; 8:45 am]
Billing code 3195–01–P

Federal Register
Vol. 65, No. 42
Thursday, March 2, 2000

Presidential Documents

Proclamation 7277 of February 29, 2000

Women's History Month, 2000

By the President of the United States of America

A Proclamation

Last spring, three women astronauts paused during a shuttle mission to pay homage to the past. Thousands of miles into space, floating above the floor of the shuttle, they raised a women's suffrage banner and posed for a picture. Astronaut Ellen Ochoa, a participant in this special tribute and a member of the President's Commission on the Celebration of Women in American History, said, "We wanted to show how far women have come in this century and to honor the people who fought for our rights." Each year during the month of March, citizens across our country pause to honor the many heroes whose diligence and determination have helped to forge our Nation and enable people like Ellen Ochoa and her colleagues to soar so high.

Women's History Month is about highlighting the extraordinary achievements of women throughout our history, while recognizing the equally significant obstacles they had to overcome along the road to success. It is about the women who bravely donned uniforms and fought for our country. It is about the passion and vision of women educators like Mary McLeod Bethune, who, with only $1.50 in her pocket, founded a school for young black women. It is about the perseverance and pioneering spirit of women like Margaret Chung, the first Chinese American woman physician, who supported herself through medical school by washing dishes and lecturing on China. It is about Alice Paul's fight for the vote and Elizabeth Wanamaker Peratrovich's campaign to end discrimination against Alaska Natives. It is about the writings of Zora Neale Hurston, the paintings of Georgia O'Keeffe, the leadership of labor organizer Dolores Huerta, and the trailblazing artistry of photographer Margaret Bourke-White. It is also about the millions of unsung women whose contributions have made life better for their families and their communities.

Inspired by the courageous pioneers who came before them, women today continue to shape our Nation's destiny. Last year, Air Force Lieutenant Colonel Eileen Collins became the first woman commander of a space shuttle mission. American violinists Sarah Chang, Pamela Frank, and Nadja Salerno-Sonnenberg were the first women to take home the prestigious Avery Fisher Prize in its 25-year history. And, in a game attended by the largest crowd of all time for a women's sporting event, the U.S. women's soccer team captured the World Cup. Today, 58 women hold seats in the U.S. House of Representatives, and 9 women are United States Senators. More women hold high-level positions in my Administration than in any other in history. And in the private sector, women own nearly 9 million small businesses, employing millions of Americans and contributing significantly to the strength of our economy.

As we honor the past and celebrate the present, we must also focus on the future. Our choices today will have an enormous impact on the destiny of our daughters and granddaughters, our sons and grandsons. We must rededicate ourselves to forging a society in which gender no longer predetermines a person's opportunities or station in life. We must shatter the glass ceiling; eradicate wage discrimination; and ensure that every American has

the tools to meet both family and work responsibilities and to retire in security. By breaking down the remaining barriers and opening wide the doors of opportunity, we can make the future brighter for women and for all Americans.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do herebyproclaim March 2000 as Women's History Month. I encourage all Americans to observe this month with appropriate programs, ceremonies, and activities, and to remember throughout the year the many contributions of courageous women who have made our Nation strong.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of February, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–5208
Filed 3–1–00; 8:45 am]
Billing code 3195–01–P

Federal Register
Vol. 65, No. 42
Thursday, March 2, 2000

Presidential Documents

Executive Order 13146 of February 29, 2000

President's Council on the Future of Princeville, North Carolina

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to develop recommendations for Federal agency actions to address the future of Princeville, North Carolina, it is hereby ordered as follows:

Section 1. *Policy.* Princeville, North Carolina (Princeville) has a unique place in American history. This small city in eastern North Carolina was the first city in the United States founded by ex-slaves. In its history, Princeville has been damaged by floods many times. Recently, it was devastated by floods caused by Hurricane Floyd. In response to the damage, appropriate Federal agencies have already begun repair and recovery efforts to assist Princeville. However, it is the policy of this Administration to do more to help this city that occupies such a significant place in our history. Therefore, this order will create an interagency council to develop recommendations for further actions to address the future of Princeville.

Sec. 2. *Establishment.* (a) There is established the "President's Council on the Future of Princeville, North Carolina" (Council). The Council shall comprise the Secretaries of Defense, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, the Director of the Office of Management and Budget (OMB), the Administrator of the Environmental Protection Agency, the Commander of the Army Corps of Engineers, the Administrator of the Small Business Administration, the Director of the Federal Emergency Management Agency, the Assistant to the President for Domestic Policy, the Assistant to the President for Economic Policy, and the Assistant to the President for Intergovernmental Affairs, or their designees, and such other executive department and agency (agencies) representatives as the President may deem appropriate. The Council shall consult with other agencies and State and local governments, as appropriate.

(b) The Director of the Office of Management and Budget, or his designee, shall serve as Chair of the Council.

Sec. 3. *Functions.* The Council shall develop recommendations for the President on further agency and legislative actions that can be undertaken to address the future of Princeville. In developing the recommendations, the Council shall consider, among other things: (a) the unique historic and cultural importance of Princeville in American history; (b) the views and recommendations of the relevant State and local governments, the private sector, citizens, community groups, and non-profit organizations, on actions that they all could take to enhance the future of Princeville and its citizens; and (c) agency assessments andrecommendations to repair and rebuild Princeville, and, to the extent practicable, protect Princeville from future floods. The Council, through its Chair, shall submit its recommendations to the President. Where appropriate, the Council's recommendations shall include draft legislation requesting additional funding or other authorities to aid in the reconstruction and protection of Princeville.

Sec. 4. *Coordination.* At the request of the Chair, agencies shall cooperate with and provide information to the Council.

Sec. 5. *Judicial Review.* This order is not intended to, nor does it create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States, it agencies, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
February 29, 2000.

[FR Doc. 00–5209
Filed 3–1–00; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 65, No. 42
Thursday, March 2, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–009–1]

Pink Bollworm Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pink bollworm regulations by removing the previously regulated area in Poinsett County, AR, from the list of suppressive areas for pink bollworm. We are also removing Arkansas from the list of States quarantined because of the pink bollworm. We are taking this action because trapping surveys show that the pink bollworm no longer exists in this area. This action is necessary to relieve unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

DATES: This interim rule is effective March 2, 2000. We invite you to comment on this docket. We will consider all comments that we receive by May 1, 2000.

ADDRESSES: Please send your comment and three copies to:

Docket No. 00–009–1, Regulatory Analysis and Development, PPD APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238

Please state that your comment refers to Docket No. 00–009–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Grefenstette, Assistant Director, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 138, Riverdale, MD 20737–1236; (301) 734–8676.

SUPPLEMENTARY INFORMATION:

Background

The pink bollworm, *Pectinophora gossypiella* (Saunders), is one of the world's most destructive pests of cotton. This insect spread to the United States from Mexico in 1917 and now exists throughout most of the cotton-producing States west of the Mississippi River.

The pink bollworm regulations, contained in 7 CFR 301.52 through 301.52–10 (referred to below as the regulations), quarantine certain States and restrict the interstate movement of regulated articles from regulated areas in quarantined States for the purpose of preventing the interstate spread of the pink bollworm.

Regulated areas for the pink bollworm are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the movement of pink bollworm into noninfested areas.

Prior to the effective date of this document, a portion of Poinsett County, AR, was designated as a suppressive area. Based on 2 years of negative trapping surveys conducted by inspectors of Arkansas and the Animal and Plant Health Inspection Service, we have determined that the pink bollworm no longer exists in this area. We are, therefore, removing this area from the list of suppressive areas in § 301.52–2a.

As of the effective date of this document, there will be no areas in Arkansas regulated because of the pink bollworm. We are, therefore, also removing Arkansas from the list of States in § 301.52–2a quarantined because of the pink bollworm.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to relieve unnecessary restrictions on the interstate movement of regulated articles from areas where the pink bollworm no longer exists.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the pink bollworm regulations by removing the previously regulated area in Poinsett County, AR, from the list of suppressive areas for pink bollworm. We are also removing Arkansas from the list of States quarantined because of the pink bollworm. We are taking this action because trapping surveys show that the pink bollworm no longer exists in this area. This action is necessary to relieve unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604

of the Regulatory Flexibility Act in our final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) Has no retroactive effect; and (3) Does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.52 [Amended]

2. In § 301.52, paragraph (a) is amended by removing the word "Arkansas,".

§ 301.52–2A [Amended]

3. Section 301.52–2a is amended by removing the entire entry for Arkansas.

Done in Washington, DC, this 24th day of February 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–5054 Filed 3–1–00; 8:45 am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150–AG08

Revision of Fee Schedules; 100 Percent Fee Recovery, FY 1999: Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: On July 20, 1999 (64 FR 38816), the NRC published a document that corrected a final rule that appeared in the **Federal Register** on June 10, 1999 (64 FR 31448) concerning the licensing, inspection, and annual fees charged to its applicants and licensees in compliance with the Omnibus Budget Reconciliation Act of 1990. This document corrects an inadvertent typographical error in the July 20, 1999, correction document.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–6057.

SUPPLEMENTARY INFORMATION: In the final rule correction, FR Doc. 99–18469, published on July 20, 1999 (64 FR 38816), in the third column on page 38816, instruction number 3 for § 170.12 is corrected to read as follows:

3. On page 31470, in the first column, paragraphs (b)(7)(ii) and (b)(7)(iii) are redesignated as paragraphs (b)(7)(ii)(B) and (b)(7)(ii)(C), respectively, and a new paragraph (b)(7)(ii)(A) is added to read as follows:

§ 170.12 Payment of fees.

* * * * *

(b) * * *

(7) * * *

(ii)(A) In the case of a design which has been approved but not certified and for which no application is pending, if the design is not referenced, or if all costs are not recovered within five years after the date of the preliminary design approval (PDA), or the final design approval (FDA), the applicant shall pay the costs, or remainder of those costs, at that time.

* * * * *

Dated at Rockville, Maryland, this 24th day of February, 2000.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 00–4882 Filed 3–1–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–336–AD; Amendment 39–11495; AD 99–27–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–211, –212, –213, –311, –312, and –313 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 99–27–14 that was published in the **Federal Register** on January 6, 2000 (65 FR 697). The typographical error resulted in a reference to an incorrect AD number. This AD is applicable to all Airbus Model A340–211, –212, –213, –311, –312, and –313 series airplanes. This AD requires repetitive operational tests to ensure proper operation of the actuator of the secondary locks of the thrust reversers, and corrective actions, if necessary.

EFFECTIVE DATE: Effective January 21, 2000.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 99–27–14, amendment 39–11495, applicable to all Airbus Model A340–211, –212, –213, –311, –312, and –313 series airplanes, was published in the **Federal Register** on January 6, 2000 (65 FR 697). That AD requires repetitive operational tests to ensure proper operation of the actuator of the secondary locks of the thrust reversers, and corrective actions, if necessary.

As published, AD 99–27–14 contains an erroneous reference to the AD number cited in the paragraph preceding the applicability of the AD. That paragraph incorrectly references AD 99–01–05, Amendment 39–10980. The correct reference is AD 99–01–15, Amendment 39–10980.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of this AD remains January 21, 2000.

§ 39.13 [Corrected]

On page 699, in the first column, the paragraph preceding the applicability of AD 99–27–14 is corrected to read as follows:

99–27–14 Airbus Industrie: Amendment 39–11495. Docket 99–NM–336–AD. Supersedes AD 99–01–15, Amendment 39–10980.

* * * * *

Issued in Renton, Washington, on February 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5010 Filed 3–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0044]

RIN 0910–AB97

Regulations on Statements Made for Dietary Supplements Concerning the Effect of the Product on the Structure of Function of the Body; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 2000 (65 FR 1000). The document issued final regulations defining the types of statements that can be made concerning the effect of a dietary supplement on the structure or function of the body.

DATES: The final rule is effective February 7, 2000.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 00–53 appearing on page 1000 in the **Federal Register** of Thursday, January 6, 2000, the following corrections are made:

1. On page 1034, in the 3d column, in the 2d full paragraph, beginning in the 16th line, the phrase "The agency also notes that as discussed" is corrected to read "The agency also notes that as discussed in comment 95 of section III.A of this document".

2. On page 1046, in the 2d column, in the 28th line, the sentence is corrected to read "Even this 62 percent figure is too high, however, because RTI over-sampled herbal products, which have a higher probability of claims. Thus, FDA believes that the true percentage of dietary supplement products with claims would not exceed 60 percent and has used this figure as its final estimate."

3. On page 1047, in the 2d column, in the 2d full paragraph, in the 14th line "not" is corrected to read "now".

Dated: February 25, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–4946 Filed 3–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8877]

RIN 1545–AX82

Tax Shelter Disclosure Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations requiring certain corporate taxpayers to file a statement with their Federal corporate income tax return under section 6011(a). The temporary regulations affect corporations participating in certain reportable transactions. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG–103735–00 published elsewhere in this issue of the **Federal Register.**

DATES: *Effective date.* These temporary regulations are effective for Federal corporate income tax returns filed after February 28, 2000.

Applicability date. For dates of applicability, see § 1.6011–4T(g) of these regulations.

FOR FURTHER INFORMATION CONTACT: Richard Castanon, (202) 622–3080, or Mary Beth Collins, (202) 622–3070, (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1685. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The Treasury Department and the IRS are concerned about the proliferation of corporate tax shelters. These temporary regulations are intended to provide the Service with early notification of large corporate transactions with characteristics that may be indicative of such tax shelter activity.

Accordingly, this document amends 26 CFR part 1 regarding the general filing requirement for persons required to file a return for a taxable year with respect to a tax imposed under section 11. Section 6011(a) provides that any person made liable for any tax imposed by the Internal Revenue Code (Code), or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary of the Treasury.

Explanation of Provisions

I. Disclosure Statement Required for Certain Corporate Taxpayers

The temporary regulations provide that every person that is required to file a return for a taxable year with respect to any tax imposed under section 11 (corporate taxpayers) and that has participated in a reportable transaction shall attach a disclosure statement to its return for each taxable year for which the taxpayer's Federal income tax liability is affected by its participation

in the reportable transaction. In addition, a copy of the disclosure statement must be sent to the IRS in Washington, DC for the first taxable year for which the transaction is disclosed on the taxpayer's Federal income tax return. The temporary regulations outline the form and content of the disclosure statement and also provide an example of the statement.

Where the temporary regulations require a taxpayer to attach a disclosure statement to its return, the information required to be set forth thereon is a required part of the return to the same extent as information required pursuant to prescribed forms. See § 1.6011–1. Therefore, when a taxpayer verifies its return, which includes a declaration that the return is complete, a taxpayer affirms that it has accurately made all disclosures required by these temporary regulations.

In the event of an underpayment attributable to a reportable transaction, a taxpayer's failure to satisfy the disclosure requirements of the temporary regulations may affect its exposure to penalties under sections 6662 and 6663 of the Code. Section 6664(c)(1) provides that such penalties may not be imposed with respect to any portion of a taxpayer's underpayment "if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion." (Emphasis added.) Whether a taxpayer is considered to have satisfied the requirements of section 6664(c)(1) is determined on a case-by-case basis, taking into account all pertinent facts and circumstances. See § 1.6664–4(b)(1).

The fact that a professional tax advisor has advised a taxpayer that its return position is more likely than not the proper tax treatment is not necessarily sufficient to satisfy the requirements of section 6664(c)(1). If a taxpayer has an underpayment attributable to its participation in a reportable transaction that has not been properly disclosed on its return, the nondisclosure could indicate that the taxpayer has not acted in "good faith" with respect to the underpayment, even if the taxpayer's return position has sufficient legal justification to meet the minimum requirements of section 6664(c)(1). In such a case, the determination of whether a taxpayer has acted in "good faith" will depend on all of the facts and circumstances, including the reason or reasons why the taxpayer failed to make the required disclosure.

II. Reportable Transactions

The temporary regulations define two categories of reportable transactions. The first category includes certain types of transactions identified by the Treasury and the Service as tax avoidance transactions. The second category includes transactions that warrant further scrutiny because they possess certain identified characteristics that are common in corporate tax shelters.

The regulations require disclosure only for large transactions that provide tax savings in excess of certain dollar thresholds (the projected tax effect test). In addition, the regulations contain exceptions to ensure that normal business transactions are not subject to disclosure. The fact that a transaction is reportable or not reportable under these regulations shall not affect the legal determination whether the tax benefits claimed with respect to the transaction are allowable.

The first category of reportable transactions includes any transaction that is the same as or substantially similar to one of the specified types of tax avoidance transactions that the IRS has identified by published guidance as a listed transaction for purposes of section 6011 and that is expected to reduce the taxpayer's Federal income tax liability by more than $1 million in any single taxable year or by a total of more than $2 million for any combination of taxable years. However, a listed transaction is not treated as a reportable transaction if it has affected the taxpayer's Federal income tax liability as reported on any tax return filed on or before February 28, 2000.

The second category of reportable transactions includes transactions entered into after February 28, 2000 that are expected to reduce a taxpayer's Federal income tax liability by more than $5 million in any single taxable year or by a total of more than $10 million for any combination of taxable years and that have at least two of the following characteristics:

(A) The taxpayer has participated in the transaction under conditions of confidentiality (as defined in § 301.6111–2T(c)).

(B) The taxpayer has obtained or been provided with contractual protection against the possibility that part or all of the intended tax benefits from the transaction will not be sustained, including, but not limited to, recission rights, the right to a full or partial refund of fees paid to any person, fees that are contingent on the taxpayer's realization of tax benefits from the transaction, insurance protection with respect to the tax treatment of the transaction, or a tax indemnity or similar agreement (other than a customary indemnity provided by a principal to the transaction that did not participate in the promotion of the transaction to the taxpayer).

(C) The taxpayer's participation in the transaction was promoted, solicited, or recommended by one or more persons who have received or are expected to receive fees or other consideration with an aggregate value in excess of $100,000, and such person or persons' entitlement to such fees or other consideration was contingent on the taxpayer's participation in the transaction.

(D) The expected treatment of the transaction for Federal income tax purposes in any taxable year differs or is expected to differ by more than $5 million from the treatment of the transaction for purposes of determining book income as taken into account on the schedule M–1 (or comparable schedule) on the taxpayer's Federal corporate income tax return for the same period.

(E) The transaction involves the participation of a person that the taxpayer knows or has reason to know is in a Federal income tax position that differs from that of the taxpayer (such as a tax exempt entity or a foreign person), and the taxpayer knows or has reason to know that such difference in tax position has permitted the transaction to be structured on terms that are intended to provide the taxpayer with more favorable Federal income tax treatment than it could have obtained without the participation of such person (or another person in a similar tax position).

(F) The expected characterization of any significant aspect of the transaction for Federal income tax purposes differs from the expected characterization of such aspect of the transaction for purposes of taxation of any party to the transaction in another country.

However, a transaction that has at least two of the foregoing characteristics is not a reportable transaction if any of the following conditions is satisfied—

(A) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that it would have participated in the same transaction on substantially the same terms irrespective of the expected Federal income tax benefits;

(B) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that

there is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Code for substantially similar transactions;

(C) The taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction; or

(D) The transaction is identified in published guidance as being excepted from disclosure.

A transaction involving the acquisition, disposition, or restructuring of a business, including the acquisition, disposition, or other change in the ownership or control of an entity that is engaged in a business, or a transaction involving a recapitalization or an acquisition of capital for use in the taxpayer's business, shall be considered a transaction carried out in the ordinary course of a taxpayer's business.

III. Record Retention

The taxpayer must retain all documents related to a transaction subject to disclosure under this section until the expiration of the statute of limitations for the first taxable year for which a disclosure statement is filed with its tax return. (This obligation is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) Such documents include, but are not limited to, the following: all marketing materials related to the transaction; all written analyses used in decision-making related to the transaction; all correspondence and agreements related to the transaction between the taxpayer and any promoter, advisor, lender, or other party to the reportable transaction; all documents discussing, referring to, or demonstrating the tax benefits arising from the reportable transaction; and all documents, if any, referring to the business purposes for the reportable transaction.

IV. Effective Date

The temporary regulations apply to Federal corporate income tax returns filed after February 28, 2000.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the persons responsible for filing the statement required by these regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6011–4T also issued under 26 U.S.C. 6001 and 6011(a).* * *

2. Section 1.6011–4T is added to read as follows:

§ 1.6011–4T Requirement of statement disclosing participation in certain transactions by corporate taxpayers (Temporary).

(a) *In general.* Every taxpayer that is required to file a return for a taxable year with respect to a tax imposed under section 11 and that has participated, directly or indirectly, in a reportable transaction within the meaning of paragraph (b) of this section must attach to its return for the taxable year described in paragraph (d) of this section a disclosure statement in the form prescribed by paragraph (c) of this section. For this purpose, a taxpayer will have indirectly participated in a transaction if its Federal income tax liability is affected by the transaction even if it is not a direct party to the transaction (*e.g.*, it participates through a partnership or through a controlled entity). A separate disclosure statement is required for each reportable transaction. The fact that a taxpayer files a disclosure statement for a reportable transaction shall not affect the legal determination whether the tax benefits claimed with respect to the transaction are allowable.

(b) *Definition of reportable transaction*—(1) *In general.* A reportable transaction is a transaction that is described in either paragraph (b)(2) or (3) of this section and that meets the projected tax effect test in paragraph (b)(4) of this section. The term *transaction* includes all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, and includes any series of related steps carried out as part of a prearranged plan and any series of substantially similar transactions entered into in the same taxable year.

(2) *Listed transactions.* A transaction is described in this paragraph (b)(2) if the transaction is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction for purposes of section 6011. However, a listed transaction is not treated as a reportable transaction if it has affected the taxpayer's Federal income tax liability as reported on any tax return filed on or before February 28, 2000. The fact that a transaction becomes a listed transaction does not imply that the transaction was not otherwise a reportable transaction prior thereto.

(3) *Other reportable transactions*—(i) *In general.* Except as provided in paragraph (b)(3)(ii) of this section, a transaction is described in this paragraph (b)(3) if it is entered into after February 28, 2000 and has at least two of the following characteristics:

(A) The taxpayer has participated in the transaction under conditions of confidentiality (as defined in § 301.6111–2T(c)).

(B) The taxpayer has obtained or been provided with contractual protection against the possibility that part or all of the intended tax benefits from the transaction will not be sustained, including, but not limited to, recission rights, the right to a full or partial refund of fees paid to any person, fees

that are contingent on the taxpayer's realization of tax benefits from the transaction, insurance protection with respect to the tax treatment of the transaction, or a tax indemnity or similar agreement (other than a customary indemnity provided by a principal to the transaction that did not participate in the promotion of the transaction to the taxpayer).

(C) The taxpayer's participation in the transaction was promoted, solicited, or recommended by one or more persons who have received or are expected to receive fees or other consideration with an aggregate value in excess of $100,000, and such person or persons' entitlement to such fees or other consideration was contingent on the taxpayer's participation in the transaction.

(D) The expected treatment of the transaction for Federal income tax purposes in any taxable year differs or is expected to differ by more than $5 million from the treatment of the transaction for purposes of determining book income as taken into account on the schedule M–1 (or comparable schedule) on the taxpayer's Federal corporate income tax return for the same period.

(E) The transaction involves the participation of a person that the taxpayer knows or has reason to know is in a Federal income tax position that differs from that of the taxpayer (such as a tax exempt entity or a foreign person), and the taxpayer knows or has reason to know that such difference in tax position has permitted the transaction to be structured on terms that are intended to provide the taxpayer with more favorable Federal income tax treatment than it could have obtained without the participation of such person (or another person in a similar tax position).

(F) The expected characterization of any significant aspect of the transaction for Federal income tax purposes differs from the expected characterization of such aspect of the transaction for purposes of taxation of any party to the transaction in another country.

(ii) *Exceptions.* A transaction is not a reportable transaction under paragraph (b)(3) of this section if paragraph (b)(3)(ii)(A), (B), (C), or (D) of this section is satisfied.

(A) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that it would have participated in the same transaction on substantially the same terms irrespective of the expected Federal income tax benefits.

(B) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that there is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Internal Revenue Code (Code) for substantially similar transactions.

(C) The taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. Such a determination must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, authoritative administrative guidance, and judicial decisions that establish principles of general application in the tax law (*e.g., Gregory* v. *Helvering,* 293 U.S. 465 (1935)).

(D) The transaction is identified in published guidance as being excepted from disclosure under this section.

(iii) *Ordinary course of business.* For purposes of paragraphs (b)(3)(ii)(A) and (B) of this section, a transaction involving the acquisition, disposition, or restructuring of a business, including the acquisition, disposition, or other change in the ownership or control of an entity that is engaged in a business, or a transaction involving a recapitalization or an acquisition of capital for use in the taxpayer's business, shall be considered a transaction carried out in the ordinary course of a taxpayer's business.

(4) *Projected tax effect*—(i) *In general.* A transaction described in paragraph (b)(2) of this section meets the projected tax effect test if, at the time the taxpayer enters into the transaction or at any time thereafter, the taxpayer reasonably estimates that the transaction will reduce the taxpayer's Federal income tax liability by more than $1 million in any single taxable year or by a total of more than $2 million for any combination of taxable years in which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability. A transaction described in paragraph (b)(3) of this section meets the projected tax effect test if, at the time the taxpayer enters into the transaction or at any time thereafter, the taxpayer reasonably estimates that the transaction will reduce the taxpayer's Federal income tax liability by more than $5 million in any single taxable year or by a total of more than $10 million for any combination of taxable years in which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability. For purposes of this paragraph (b)(4), a transaction will be treated as reducing a taxpayer's Federal income tax liability for a taxable year if, and to the extent that, disallowance of the tax treatment claimed or expected to be claimed would result in an increase in the taxpayer's Federal income tax liability for that year. These dollar thresholds may be adjusted pursuant to forms prescribed for reporting under this section and the instructions to such forms.

(ii) *Estimation of projected tax effect.* A taxpayer's estimate of the effect of a transaction on its Federal income tax liability shall take into account all projected Federal income tax consequences of the transaction, including all deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, and any other tax consequences that may reduce the taxpayer's Federal income tax liability by affecting the timing, character, or source of any item of income, gain, deduction, loss, or credit. The estimate shall not take into account the potential Federal income tax effect of any other transaction or transactions that the taxpayer might have entered into if the taxpayer had not entered into the transaction in question. Gross income may not be taken into account if the elements of the transaction that result in the creation of the gross income are not necessary to achieve the intended tax results of the transaction, whether or not these elements are an integral part of the transaction. For example, gross income may not be taken into account to the extent that it would have been reasonably possible for the taxpayer to have participated in the transaction in a manner that would have been expected to produce less gross income without a commensurate effect on the other tax consequences of the transaction. In addition, gain on property that the taxpayer acquired independent of its participation in the transaction may not be taken into account.

(5) *Examples.* The following examples illustrate the application of paragraph (b) of this section. Assume, for purposes of these examples, that the transactions are not the same as or substantially

similar to any of the types of transactions that the IRS has identified as listed transactions under section 6011 and, thus, are not described in paragraph (b)(2) of this section. The examples are as follows:

Example 1. In March of 2000, C, a domestic corporation, invests $100 million to purchase certain financial instruments the terms of which have been structured to enable the holder to claim a deductible tax loss upon the disposition of one or more of the instruments a short time after acquisition while deferring gain on the retained instruments. C purchased the instruments on the recommendation of X, which is expected to receive direct or indirect compensation in excess of $100,000 contingent on C's purchase. C disposes of certain of the financial instruments in November of 2000, and reports a loss from the disposition of those financial instruments on its 2000 Federal corporate income tax return which reduces its reported Federal income tax liability by more than $5 million. That loss is not reflected on C's income statement for purposes of determining book income as taken into account on the schedule M–1 on C's Federal corporate income tax return. Further, C is unable to reasonably determine that it would have entered into the transaction irrespective of the Federal income tax benefits, or that the transaction is a customary form of transaction giving rise to tax consequences for which there is a long-standing and generally accepted understanding that such tax consequences are allowable under the Code for similar transactions, or that the Commissioner would have no reasonable basis to deny the claimed loss. The transaction involving C's purchase and disposition of the financial instruments has the characteristics described in paragraphs (b)(3)(i)(C) and (D) of this section. None of the exceptions in paragraph (b)(3)(ii) of this section applies. Therefore, the transaction involving C's purchase and disposition of the financial instruments is a reportable transaction because it is described in paragraph (b)(3) of this section.

Example 2. In the year 2001, D, a domestic corporation, completes construction of an office building to be used in its business. After completion of the building but before D files its tax return for the year 2001, it is approached by Y, a professional services organization, which advises D that Y has developed a set of programs that will enable D to maximize its depreciation deductions with respect to the building and the related furniture and fixtures. Y allows D to review Y's programs subject to D's agreement that it will not use any portion of the programs in establishing its depreciation accounts for Federal tax purposes unless it pays Y a fee of $150,000. In addition, D makes a commitment to Y that it will not divulge any information relating to the programs to any person, whether or not D decides to use the programs. D agrees to use Y's programs for purposes of computing its depreciation allowances for 2001 and later taxable years. D expects its use of the programs to reduce its Federal income tax liability by more than $10 million over the life of the building. However, D reasonably determines that it would have constructed and owned the office building in the same manner irrespective of the enhanced depreciation that it expects to derive from the use of Y's programs. Therefore, regardless of whether D's depreciation deductions on the building may be subject to disallowance, the transaction encompassing the construction of the building and the use of Y's programs is not a reportable transaction by reason of the exception under paragraph (b)(3)(ii)(A) of this section.

Example 3. E is a domestic corporation, which is a calendar year taxpayer. E is engaged in the leasing business. In 2001, E enters into a large number of substantially similar arrangements described in paragraph (b)(3)(i) of this section under which it acquires and leases tangible personal property to U.S. persons who use such property in their businesses. E treats the leases as leases for Federal income tax purposes and as loans for financial accounting purposes. During the first three taxable years in which the leases are in effect, E reasonably expects that its reported taxable income will be more than $30 million lower than it would be if the leases were treated as loans for Federal income tax purposes, giving rise to a total expected reduction of E's Federal income tax liability for those years in excess of $10 million. E cannot conclude that it would have entered into the leases on substantially the same terms irrespective of the expected Federal income tax benefits, nor can it conclude that the Commissioner would have no reasonable basis to deny its tax treatment of the leases. However, E does reasonably determine that the terms of the leases are consistent with customary commercial form in the leasing industry, and that there is a long-standing and generally accepted understanding that the combination of Federal income tax consequences it is claiming with respect to the leases are allowable under the Code for similar transactions. The substantially similar leases would be treated for purposes of this section as a single transaction that would satisfy the projected tax effect test described in paragraph (b)(4) of this section. However, the leases would not be a reportable transaction by reason of the exception under paragraph (b)(3)(ii)(B) of this section.

(c) *Form and content of disclosure statement.* (1) The disclosure statement for each reportable transaction must include the information required by paragraph (c)(1)(i) through (c)(1)(vi) of this section and shall be presented in a format (preferably no longer than one page) similar to that shown in the *Example* in paragraph (c)(2) of this section or on such form as may be prescribed for use under this section.

(i) The name, if any, by which the transaction is known or commonly referred to by the taxpayer; if no name exists, provide a short-hand designation of this transaction to distinguish it from other reportable transactions in which the taxpayer may have participated (or may participate in the future).

(ii) A statement indicating whether, to the best knowledge of the taxpayer, the transaction has been registered as a tax shelter under section 6111. If the transaction has been registered as a tax shelter under section 6111, indicate whether Form 8271, "Investor Reporting of Tax Shelter Registration Number", has been filed with the taxpayer's return and provide the registration number, if any, that has been assigned to the tax shelter.

(iii) A brief description of the principal elements of the transaction that give rise to the expected tax benefits.

(iv) A brief description of the expected tax benefits of the transaction (*e.g.*, loss deductions, interest deductions, rental deductions, foreign tax credits, etc.).

(v) An identification of each taxable year (including prior taxable years) for which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability and an estimate (which may be rounded to the nearest $1 million) of the amount by which the transaction is expected to reduce the taxpayer's Federal income tax liability for each such taxable year.

(vi) The names and addresses of any parties who promoted, solicited, or recommended the taxpayer's participation in the transaction and who had a financial interest, including the receipt of fees, in the taxpayer's decision to participate.

(2) *Example.* The following example illustrates the application of paragraph (c) of this section: In January of 1999, X, a domestic corporation which is a calendar year taxpayer, entered into an arrangement under which it purported to lease a building owned and occupied by the government of a municipality located in foreign country W and lease the building back to the municipal government. X determines that the transaction is a reportable transaction described in paragraph (b)(1) of this section because it is described in paragraph (b)(2) of this section and satisfies the projected tax effect test in paragraph (b)(4) of this section. As of February 28, 2000, X had not filed its 1999 Federal corporate income tax return. The following form of disclosure statement would satisfy the requirements described in paragraph (c)(1) of this section.

DISCLOSURE STATEMENT FOR REPORTABLE TRANSACTION

Corporation X (EIN)
(address)

1. Identification of transaction: LILO—Country W.

2. Registration status under section 6111: Not registered.

3. Description of transaction: We leased a building from a municipality in W. We made an advance payment of rent of $89 million. The lease term is 34 years. The foreign municipality subleased the asset back from us for a term of 20 years. The foreign municipality has the option, at the end of the sublease term, to buy out our interest for $50 million. Our advance lease payment has been financed with a bank loan of $60 million. The foreign municipality placed $75 million of the advance rental payment in special accounts to satisfy the sublease and buyout obligations.

4. Principal tax benefits: Deductions for rental and interest payments in excess of income from leaseback rental payments.

5. Estimates of expected reduction of Federal income tax liability for affected taxable years: 1999–2002, $5 million per year; 2003–2013, $4 million per year; and 2014–2017, $3 million per year.

6. Promoters:
Financial Institution Y
(address)
(telephone number)
Professional Service Firm Z
(address)
(telephone number)

(d) *Time of providing disclosure*—(1) *In general.* The disclosure statement for a reportable transaction shall be attached to the taxpayer's Federal corporate income tax return for each taxable year for which the taxpayer's Federal income tax liability is affected by its participation in the transaction. In addition, at the same time that the disclosure statement is first attached to the taxpayer's Federal income tax return, a copy of that disclosure statement must be sent to: Internal Revenue Service LM:PF, Large & Mid-Size Business Division, 1111 Constitution Ave., N.W., Washington, DC 20224. If a transaction becomes a reportable transaction on or after the date the taxpayer has filed its return for the first taxable year for which the transaction affected the taxpayer's Federal income tax liability (*e.g.*, there is a change in facts affecting the expected Federal income tax effect of the transaction, or the transaction subsequently becomes one identified in published guidance as a listed transaction described in (b)(2) of this section), the disclosure statement shall be filed as an attachment to the taxpayer's Federal corporate income tax return next filed after the date the transaction becomes a reportable transaction. If a disclosure statement is required as an attachment to a Federal corporate income tax return that is filed earlier than 180 days after February 28, 2000, the taxpayer may either attach the disclosure statement to the return, or file the disclosure statement as an amendment to the return no later than 180 days after February 28, 2000.

(2) *Example.* The following example illustrates the application of this paragraph (d): In December of 2000, F, a domestic corporation which is a calendar year taxpayer, enters into a transaction described in paragraph (b)(3) of this section but not described in paragraph (b)(2) of this section. At the time F enters into the transaction and thereafter, F reasonably estimates that the transaction will reduce F's Federal income tax liability by $2 million in any single taxable year and by a total of $8 million for any combination of taxable years in which the transaction is expected to have the effect of reducing F's Federal income tax liability. Consequently, the transaction does not meet the projected tax effect test described in paragraph (b)(4) of this section for transactions described in paragraph (b)(3) of this section. On March 1, 2002, the IRS publishes a notice identifying the transaction as a listed transaction described in paragraph (b)(2) of this section. Thus, upon issuance of the notice, the transaction becomes a transaction described in paragraph (b)(2) of this section. As a result of the lower dollar thresholds of the projected tax effect test with respect to transactions described in (b)(2) of this section, the transaction meets the projected tax effect test in paragraph (b)(4) of this section. Consequently, the transaction becomes a reportable transaction described in paragraph (b)(1) of this section, and F is required to file a disclosure statement meeting the requirements of paragraph (c)(1) of this section for the transaction as an attachment to F's next filed Federal corporate income tax return. If F's 2001 return has not been filed on or before the date the Service identifies the transaction as a listed transaction, the disclosure statement must be attached to F's 2001 return.

(e) *Retention of documents.* The taxpayer must retain all documents related to a transaction subject to disclosure under this section until the expiration of the statute of limitations applicable to the first taxable year for which disclosure of the transaction was made in accordance with the requirements of this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) Such documents include, but are not limited to, the following: all marketing materials related to the transaction; all written analyses used in decision-making related to the transaction; all correspondence and agreements related to the transaction between the taxpayer and any promoter, advisor, lender, or other party to the reportable transaction; all documents discussing, referring to, or demonstrating the tax benefits arising from the reportable transaction; and all documents, if any, referring to the business purposes for the reportable transaction.

(f) *Affiliated groups.* For purposes of this section, an affiliated group of corporations that joins in the filing of a consolidated return under section 1501 shall be considered a single taxpayer.

(g) *Effective date.* This section applies to Federal corporate income tax returns

filed after February 28, 2000. However, paragraph (e) of this section applies to documents and other records that the taxpayer acquires, prepares, or has in its possession on or after February 28, 2000.

PART 602—[AMENDED]

3. In § 602.101, paragraph (b) is amended by adding the entry for § 1.6011–4T to read in part as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6011–4T	1545–1685
* * * * *	

Approved: February 23, 2000.

Charles O. Rossotti,

Commissioner of Internal Revenue.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–4842 Filed 2–28–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8875]

RIN 1545–AX80

Requirements To Maintain List of Investors in Potentially Abusive Tax Shelters

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations requiring the maintenance of lists of investors in potentially abusive tax shelters described in section 6112. The temporary regulations affect organizers of potentially abusive tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG–103736–00 published elsewhere in this issue of the **Federal Register**.

DATES: *Effective date.* These temporary regulations are effective February 28, 2000.

Applicability date. For dates of applicability, see A–22 of § 301.6112–1T of these regulations.

FOR FURTHER INFORMATION CONTACT: Richard Castanon, (202) 622–3080, or Mary Beth Collins, (202) 622–3070, (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1686. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document amends 26 CFR part 301 regarding the requirement to maintain lists of investors in potentially abusive tax shelters under section 6112. Section 6708 provides penalties for failing to maintain the investor list under section 6112.

The temporary regulations have been drafted in question and answer format. No inference should be drawn regarding issues not raised or because certain questions and not others are included. The temporary regulations contained in this document will remain in effect until additional temporary or final regulations are published in the **Federal Register**.

Explanation of Provisions

I. Potentially Abusive Tax Shelter

Section 6112 provides that any person who organizes or sells any interest in a potentially abusive tax shelter must maintain a list identifying each person who was sold an interest in such shelter. A potentially abusive tax shelter under section 6112 includes any investment that is required to be registered with the IRS as a tax shelter under section 6111, and any other entity, plan, or arrangement, if specified in regulations, that has a potential for tax avoidance or evasion. Any person who is required to maintain a list under section 6112 must make the list available for inspection upon request by the Secretary of the Treasury, and generally must retain any information required to be included on the list for seven years. References in these regulations to the term "transaction" include all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, including any series of related steps carried out as part of a prearranged plan.

Section 6112 authorizes the Secretary of the Treasury to specify in regulations transactions other than those subject to registration under section 6111 that have a potential for tax avoidance or evasion. The conference report accompanying section 6112 explains that "in designating these other arrangements, the Secretary may, for example, specifically identify types of investments, or may provide that any investment falling within a modified form of the definition of tax shelter for registration purposes is subject to the listing requirement." H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 982 (1984).

Concurrent with the addition of these amendments to the temporary regulations under section 6112, the Service has issued temporary and proposed regulations under section 6111(d) relating to the registration of confidential corporate tax shelters. These regulations under section 6112 follow a modified form of the definition of a confidential corporate tax shelter under section 6111(d)(1) for purposes of defining the potentially abusive tax shelters that are subject to the list requirement under section 6112. Under the modified definition, as under section 6111(d)(1)(A), the term "potentially abusive tax shelter" includes a transaction for which a significant purpose of the structure of the transaction is the avoidance or evasion of Federal income tax. The rules set forth in the temporary regulations under section 6111(d) are applicable in determining whether a significant purpose of the structure of a transaction

is the avoidance or evasion of Federal income tax.

For purposes of section 6112, the definition of tax shelter under section 6111(d)(1) has been modified in two respects: (1) The limitation of section 6111(d)(1)(B) to transactions offered to any potential participant under conditions of confidentiality does not apply for purposes of section 6112; and (2) the limitation of section 6111(d)(1)(C) to transactions in which the promoters may receive fees in excess of $100,000 does not apply for purposes of section 6112. Therefore, certain categories of transactions that are not subject to registration under section 6111 may be subject to the list requirement of section 6112, including any non-confidential transactions offered directly or indirectly to corporate participants a significant purpose of the structure of which is the avoidance or evasion of Federal income tax within the meaning of section 6111(d) and the regulations thereunder.

Section 301.6111–2T provides a procedure for obtaining rulings as to whether a transaction is subject to registration under § 301.6111–2T. The same procedure shall be available to a person who is uncertain whether a transaction constitutes a potentially abusive tax shelter for which a list must be maintained under section 6112, and the requirement to maintain a list available for inspection by the Secretary shall be suspended during the period that such ruling request is pending and for sixty days thereafter.

II. Organizer Also Includes Promoter

The regulations provide that for purposes of the list requirement, an organizer includes a promoter as defined in section 6111(d)(2), as well as any person designated as an organizer under the existing temporary regulations. A promoter is any person who participates in the organization, management, or sale of the tax shelter or any related person (within the meaning of section 267 or 707).

III. Information To Be Included on List

Section 6112 authorizes the Secretary of the Treasury to specify the information that organizers and sellers of interests in potentially abusive tax shelters are required to include as part of the lists of persons who were sold interests in the tax shelters. The temporary regulations modify the information that must be included as part of the lists and made available for inspection by the IRS. The regulations provide that in addition to the information currently required under A–17 of § 301.6112–1T, each list must include (1) a detailed description of the tax shelter that describes both the structure of the tax shelter and the intended tax benefits for participants in the tax shelter, (2) the amount of money invested or to be invested by each person who is required to be included on the list, (3) a summary or schedule of the tax benefits that each such person is intended or expected to derive from participation in the tax shelter, if known by the organizer or seller, and (4) copies of any additional written materials, including tax analyses and opinions, relating to the tax shelter that have been given to any potential participant in the tax shelter or to any representatives, tax advisors, or agents of potential participants by the organizer or seller or by any other person who has participated in the offering of the tax shelter (excluding any written materials that the organizer or seller has never possessed).

Generally, a separate list must be maintained for each potentially abusive tax shelter. Moreover, the temporary regulations provide that interests in substantially similar tax shelter transactions that are sold to different persons generally are to be treated as interests in the same tax shelter for purposes of section 6112. To ensure that the IRS is able to identify all of the tax shelters that have been offered by an organizer or seller and that are structured in a similar manner, the regulations further provide that the list for each tax shelter must identify each other tax shelter (if any) that the organizer or seller has offered that has not been treated as part of the same tax shelter, but that utilizes a similar structure or is intended to produce similar tax benefits.

It is recognized that, in the absence of a limitation on the disclosure obligation under section 6112, there could be situations in which section 6112 and the temporary regulations would require an organizer or a seller of a potentially abusive tax shelter to disclose information that is otherwise protected by the common law attorney-client privilege or by the privilege for confidential tax advice under section 7525(a). The temporary regulations provide that, in any case in which an organizer or a seller of a potentially abusive tax shelter believes that information required to be maintained as part of the list for that tax shelter is protected by the attorney-client privilege or constitutes confidential tax advice protected under section 7525(a), such information may be withheld from disclosure to the Service, provided that the organizer or seller provides the Service with a statement signed under penalties of perjury with information and representations required in that statement that are the same as those required by the regulations under section 6111(d) if the promoter of a confidential corporate tax shelter asserts that information required to be included with Form 8264, "Application for Registration of a Tax Shelter," is privileged.

IV. Effective Date

An organizer or a seller must maintain a list with respect to any interest acquired by an investor in a potentially abusive tax shelter after February 28, 2000. If a transaction becomes a potentially abusive tax shelter after interests are acquired by investors, an organizer or a seller must maintain a list with respect to any interest in the transaction acquired after the transaction becomes a potentially abusive tax shelter. Additionally, the IRS will not ask to inspect any list for a potentially abusive tax shelter, other than a tax shelter described in section 6111(c), until August 29, 2000. The lists required by the preceding two sentences with regard to interests acquired in potentially abusive tax shelters must contain the information required by A–17 of this section as it relates to such interests. The rules that apply with respect to interests acquired in potentially abusive tax shelters on or before February 28, 2000, are contained in 26 CFR part 301 revised as of April 1, 1999.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that persons responsible for maintaining the investor lists described in the regulations are principally large publicly traded corporations and the burden is not significant, as described in the preamble. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6112–1T also issued under 26 U.S.C. 6112.* * *

Par. 2. Section 301.6112–1T is amended as follows:

1. The last sentence of A–3 is revised.
2. A–4 is revised.
3. Two sentences are added at the end of A–5.
4. A sentence is added at the end of A–7.
5. Paragraph (c) of A–8 is revised.
6. The first sentence of A–9 is removed, and two new sentences are added in its place.
7. The second sentence of the introductory text of A–11 is revised.
8. Paragraphs (a) and (b) of A–13 are revised.
9. A–14 is revised.
10. The first sentence of the introductory text of A–15 is revised.
11. A–17 is revised.
12. Two sentences are added at the end of A–18.
13. A–22 is revised.

The additions and revisions read as follows:

§ 301.6112–1T Questions and answers relating to the requirement to maintain a list of investors in potentially abusive tax shelters (temporary).

* * * * *

A–3. * * * See § 301.6111–1T for rules relating to tax shelter registration and § 301.6111–2T for rules relating to confidential corporate tax shelter registration.

* * * * *

A–4. (a) Yes. For purposes of the list requirement, a tax shelter includes any tax shelter that is a projected income investment, as defined in A–57A of § 301.6111–1T, and any transaction a significant purpose of the structure of which is the avoidance or evasion of Federal income tax within the meaning of section 6111(d)(1)(A) and § 301.6111–2T(b). For this purpose, as under § 301.6111–2T, the term *transaction* includes all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, including any series of related steps carried out as part of a prearranged plan.

(b) Section 301.6111–2T provides a procedure for obtaining rulings as to whether a transaction is subject to registration under § 301.6111–2T. The same procedure shall be available to a person who is uncertain whether a transaction constitutes a tax shelter for which a list must be maintained under this section. The requirement to make a list which contains the information required by this section available for inspection by the Secretary shall be suspended during the period that such ruling request is pending and for sixty days thereafter; however, if it is ultimately determined that the transaction is a tax shelter, the pendency of such a ruling request shall not affect the requirement to maintain the list or limit the participants required to be included on the list or the other information required to be included as part of the list.

* * * * *

A–5. * * * An organizer also includes a promoter described in section 6111(d)(2). Under section 6111(d)(2), a promoter is any person who participates in the organization, management, or sale of the tax shelter or any related person (within the meaning of section 267 or 707).

* * * * *

A–7. * * * In addition, in any case in which a person has directly or indirectly paid consideration to an organizer or seller for the right to participate in a tax shelter, for services necessary to the organization or structure of such tax shelter, or for information that is integral to participation in such tax shelter, the participant shall be considered to have acquired an interest in the tax shelter and to have been sold an interest in the tax shelter by the organizer or seller.

* * * * *

A–8. * * * (c) Any transfer of an interest made by or through a person related (as defined in section 465(b)(3)(C)) to the organizer or the tax shelter (provided the organizer is involved in the tax shelter on the date of the transfer);

* * * * *

A–9. An organizer has a duty to make a reasonable inquiry only with respect to transfers of interests in the tax shelter made by a seller described in paragraph (a) of A–6 of this section who acquired the interests from the organizer or a person related (as defined in section 465(b)(3)(C)) to the organizer, or the tax shelter or a person related (as defined in section 465(b)(3)(C)) to the tax shelter (provided the organizer is involved in the tax shelter on the date the interest is transferred to the seller). See Q&A–8 of this section. * * *

* * * * *

A–11. * * * Organizers and sellers may not designate one person to maintain a list for the tax shelter, however, unless the tax shelter is timely and properly registered under section 6111 or unless the tax shelter is described in Q&A–4 of this section. * * *

* * * * *

A–13. (a) If the tax shelter is required to be registered under section 6111 at the time an agreement under A–12 of this section is signed, a seller or an organizer who signs the agreement shall not be subject to penalty under section 6708 for failing to maintain a list provided that the seller or organizer—

(1) Submits to the designated person all of the information that the organizer or seller otherwise would be required to maintain on a list (as described in A–8, A–10, and A–17 of this section); and

(2) Provides to each investor (within the meaning of paragraph (c) of A–6 of this section) otherwise required to be included on a list maintained by such organizer or seller a notice in the form prescribed in paragraph (c) of this A–13.

(b) If the tax shelter is described in A–4 of this section at the time an agreement under A–12 of this section is signed, a seller or an organizer who signs the agreement shall not be subject to penalty under section 6708 for failing to maintain a list provided that the seller or organizer submits to the designated person all of the information that the organizer or seller otherwise would be required to maintain on a list (as described in A–8, A–10, and A–17 of this section). If the tax shelter ceases to be a projected income investment

under A–57G of § 301.6111–1T, or the tax shelter becomes subject to the registration requirements under section 6111, the designated person must provide to each investor (within the meaning of paragraph (c) of A–6 of this section) required to be included on the list an explanation that the tax shelter has ceased to be projected income investment or that the tax shelter is subject to the registration requirements of section 6111, whichever applies, and a notice substantially in the form prescribed in paragraph (c) of this A–13.

* * * * *

A–14. Yes. Any seller described in paragraph (a) of A–6 of this section who does not sign a designation agreement under A–12 of this section (including organizers who are such sellers) with respect to a tax shelter that is required to be registered under section 6111 must provide a notice to all investors (within the meaning of paragraph (c) of A–6 of this section) who acquire interests in the tax shelter from the seller. The notice must be substantially in the form prescribed in paragraph (c) of A–13 of this section except that the notice must include the name and address of the designated person. In the case of a tax shelter described in A–4 of this section, a notice to investors need not be provided until such time, if any, as the tax shelter ceases to be a projected income investment under A–57G of § 301.6111–1T, or the tax shelter becomes subject to the registration requirements under section 6111. In such a case, the seller shall provide, with the notice, an explanation that the tax shelter has ceased to be a projected income investment, or that the tax shelter has otherwise become subject to the registration requirements under section 6111, whichever applies.

* * * * *

A–15. An investor who retransfers an interest in a tax shelter that is described in A–4 of this section, is not required to maintain a list with respect to the retransfer unless prior to the retransfer the tax shelter ceases to be a projected income investment under A–57G of § 301.6111–1T or otherwise becomes subject to the registration requirements under section 6111.

* * * * *

A–17. (a) A list must contain the following information—

(1) The name of the tax shelter and the registration number, if any, obtained under section 6111;

(2) The TIN (as defined in section 7701(a)(41)), if any, of the tax shelter;

(3) The name, address, and TIN (as defined in section 7701(a)(41)) of each person who is required to be included on the list under A–8 or A–10 of this section and, in the case of a tax shelter that is a transaction described in section 6111(d)(1)(A) and § 301.6111–2T(b), the name, address, and TIN of any indirect corporate participant in the shelter if known to the organizer or seller;

(4) If applicable, the number of units (*i.e.*, percentage of profits, number of shares, etc.) acquired by each person who is required to be included on the list;

(5) The date on which each interest was acquired;

(6) The amount of money invested in the tax shelter by each person required to be included on the list under A–8 or A–10 of this section;

(7) A detailed description of the tax shelter that describes both the structure of the tax shelter and the intended tax benefits for participants in the tax shelter;

(8) A summary or schedule of the tax benefits that each person is intended or expected to derive from participation in the tax shelter, if known by the organizer or seller;

(9) Copies of any additional written materials, including tax analyses or opinions, relating to the tax shelter that have been given to any potential participants in the tax shelter or to any representatives, tax advisors, or agents of such potential participants by the organizer or seller or by any other person who has participated in the offering of the tax shelter (excluding any written materials that the organizer or seller has never possessed);

(10) If the interest was not acquired from the person maintaining the list, the name of the person from whom the interest was acquired; and

(11) The name and address of each agent of the person maintaining the list who is described in paragraph (b) of A–6 of this section.

(b) In any case in which an organizer or a seller of a potentially abusive tax shelter believes that information required to be maintained as part of the list for that tax shelter is protected by the attorney-client privilege or constitutes confidential tax advice protected under section 7525(a), such information may be withheld from disclosure to the Service, provided that the organizer or seller provides the Service with a statement signed under penalties of perjury with information and representations required in that statement that are the same as those required by § 301.6111–2T if the promoter of a confidential corporate tax shelter asserts that information required to be included with Form 8264, "Application for Registration of a Tax Shelter," is privileged.

* * * * *

A–18. * * * Interests in substantially similar tax shelter transactions that are sold to different persons generally are to be treated as interests in the same tax shelter for purposes of this section. Further, the list for each tax shelter must identify each other tax shelter (if any) that the organizer or seller has offered that has not been treated as part of the same tax shelter, but that utilizes a similar structure or is intended to produce similar tax benefits.

* * * * *

A–22. An organizer or seller must maintain a list with respect to any interest acquired by an investor (within the meaning of paragraph (c) of A–6 of this section) in a potentially abusive tax shelter after February 28, 2000. If a transaction becomes a potentially abusive tax shelter after interests are acquired by investors, an organizer or a seller must maintain a list with respect to any interest in the transaction acquired after the transaction becomes a potentially abusive tax shelter. Additionally, the Internal Revenue Service will not ask to inspect any list for a potentially abusive tax shelter, other than a tax shelter described in section 6111(c), until August 29, 2000. The lists required by the preceding two sentences with regard to interests acquired in potentially abusive tax shelters must contain the information required by A–17 of this section as it relates to such interests. The rules that apply with respect to interests acquired in potentially abusive tax shelters acquired on or before February 28, 2000, are contained in 26 CFR part 301 revised as of April 1, 1999.

Par. 3. In § 602.101, paragraph (b) is amended by revising the entry for § 301.6112–1T to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

* * * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.6112–1T	1545–0865 1545–1686
* * * * *	

Approved: February 23, 2000.

Charles O. Rossotti,

Commissioner of Internal Revenue.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–4846 Filed 2–28–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8876]

RIN 1545–AX83

Corporate Tax Shelter Registration

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations requiring the registration of confidential corporate tax shelters pursuant to section 6111(d) as amended by section 1028(a) of the Taxpayer Relief Act of 1997 (the Act). The temporary regulations affect persons responsible for registering confidential corporate tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG–110311–98 published elsewhere in this issue of the **Federal Register**.

DATES: *Effective date.* These temporary regulations are effective February 28, 2000.

Applicability date. For dates of applicability, see § 301.6111–2T(h) of these regulations.

FOR FURTHER INFORMATION CONTACT: Richard Castanon, (202) 622–3080, or Mary Beth Collins, (202) 622–3070; concerning international issues Rebecca Rosenberg, (202) 622–3870 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1687. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

In enacting section 6111(d), Congress added confidential corporate tax shelters as a type of tax shelter that must be registered under section 6111. Congress intended the provision to improve tax compliance by giving the Treasury Department earlier notification of transactions that may not comport with Federal tax law and by discouraging taxpayers from entering into questionable transactions. See H.R. Rep. No. 148, 105th Cong., 1st Sess. 469 (1997); S. Rep. No. 33, 105th Cong., 1st Sess. 148 (1997).

Section 1028(e)(1) of the Act provides that the registration requirements of section 6111 and the penalty provisions of section 6707 for failing to comply with the registration requirements apply to confidential corporate tax shelters in which interests are offered to potential participants after the IRS issues guidance on the registration requirements. These regulations provide the guidance necessary to activate the registration requirements of section 6111 and the penalty provisions of section 6707 for confidential corporate tax shelters.

These temporary regulations relate to disclosure obligations for tax shelter organizers and promoters under section 6111. Although the terms of section 6111(d)(1)(A), which are part of the definition of a confidential corporate tax shelter, are similar to the definition of tax shelter under section 6662(d)(2)(C)(iii), these temporary regulations are not intended to define a tax shelter for purposes of section 6662, which relates to the imposition of penalties.

Explanation of Provisions

I. In General

Under section 6111(d)(1) and the temporary regulations, a confidential corporate tax shelter is any entity, plan, arrangement, or transaction that satisfies the following three requirements: (1) A significant purpose of the structure of the transaction is the avoidance or evasion of Federal income tax for a direct or an indirect corporate participant; (2) the transaction is offered to any potential participant under conditions of confidentiality; and (3) the tax shelter promoters may receive fees in excess of $100,000 in the aggregate.

II. Significant Purpose of Tax Avoidance or Tax Evasion

Under the temporary regulations, there are three categories of transactions for which the avoidance or evasion of Federal income tax is considered a significant purpose of the structure of the transaction.

First, the avoidance or evasion of Federal income tax is considered a significant purpose of the structure of a transaction if the transaction is the same as or substantially similar to one of the specified types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction for purposes of section 6111.

Second, the avoidance or evasion of Federal income tax is generally considered a significant purpose of the structure of a transaction if the present value of the participant's reasonably expected pre-tax profit (after taking into account foreign taxes as expenses and transaction costs) from the transaction is insignificant relative to the present value of the participant's expected net Federal income tax savings from the transaction. However, if the substance of the transaction is the borrowing of money or the acquisition of financial capital by a corporate participant, the transaction falls within this second category if the present value of the Federal income tax deductions of the taxpayer to whom the loan or financial capital is provided significantly exceeds the present value of the pre-tax return of the person providing the loan or financial capital.

Third, the avoidance or evasion of Federal income tax is generally considered to be a significant purpose of the structure of a transaction if the transaction has been structured to produce Federal income tax benefits that constitute an important part of the intended results of the transaction and the tax shelter promoter (or other person

who would be responsible for registration under this section) reasonably expects the transaction to be presented (in the same or substantially similar form) to more than one potential participant. However, a transaction does not come within this third category if the promoter reasonably determines that the potential participant is expected to participate in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the promoter reasonably determines that there is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Code for substantially similar transactions.

Except for listed transactions, the avoidance or evasion of Federal income tax will not be considered a significant purpose of the structure of a transaction if the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction.

The IRS may make a determination, by published guidance, individual ruling, or otherwise, that a transaction is not required to be registered under the temporary regulations. If a tax shelter promoter (or other person who would be responsible for registration under this section) is uncertain whether a transaction is properly classified as a confidential corporate tax shelter or is otherwise uncertain whether registration is required under this section, that person may, on or before the date that registration would otherwise be required under this section, submit a request to the IRS for a ruling as to whether the transaction is subject to the registration requirements of this section. If the request fully discloses all relevant facts relating to the transaction, that person's potential obligation to register the transaction will be suspended during the period that the ruling request is pending and, if the Service subsequently concludes that the transaction is a confidential corporate tax shelter subject to registration under this section, until the sixtieth day after the issuance of the ruling (or, if the request is withdrawn, sixty days from the date that the request is withdrawn). In the alternative, that person may register the transaction in accordance with the requirements of this section and append a statement to the Form 8264, "Application for Registration of a Tax Shelter," which states that the person is uncertain whether the transaction is required to be registered as a confidential corporate tax shelter, and that the Form 8264 is being filed on a protective basis.

III. Conditions of Confidentiality

Section 6111(d)(2) describes when an offer is made under conditions of confidentiality. The determination of whether an offer is made under conditions of confidentiality is based on all the facts and circumstances surrounding the offer, including prior conduct of the parties. If an offeree's disclosure of the structure or tax aspects of the transaction is limited in any way by an express or implied understanding or agreement with or for the benefit of a tax shelter promoter, an offer is considered made under conditions of confidentiality, whether or not such understanding or agreement is legally binding. An offer will also be considered made under conditions of confidentiality in the absence of any such understanding or agreement if any tax shelter promoter knows or has reason to know the transaction is protected from disclosure or use in any other manner, such as where the transaction is claimed to be proprietary to the tax shelter promoter or any party other than the offeree. An offeree's privilege to maintain the confidentiality of a communication relating to a tax shelter in which the taxpayer might participate or has agreed to participate, including an offeree's confidential communication with the offeree's attorney, is not itself a condition of confidentiality.

The temporary regulations provide that, unless facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter enters into a written agreement with each person who participates or discusses participation in the transaction and such agreement expressly authorizes such persons to disclose every aspect of the transaction to any and all persons, without limitation of any kind.

IV. Fees

The third requirement that must be satisfied for a transaction to be treated as a confidential corporate tax shelter is that the tax shelter promoters, whether or not related, may receive fees in excess of $100,000 in the aggregate. In determining whether the tax shelter promoters may receive fees in excess of $100,000, all the facts and circumstances surrounding the transaction are considered. For this purpose, all consideration that may be received by the tax shelter promoters is taken into account, including contingent fees, fees in the form of equity interests, and fees the promoters may receive for other transactions as consideration for promoting the tax shelter.

For example, if a tax shelter promoter may receive a fee for arranging a transaction that is a confidential corporate tax shelter and/or a separate fee for another transaction that is not a confidential corporate tax shelter, part or all of the fee paid with respect to the other transaction may be treated as a fee paid with respect to the confidential corporate tax shelter if the facts and circumstances indicate that the fee paid for the other transaction is in consideration for the confidential corporate tax shelter. For purposes of determining whether the tax shelter promoters may receive fees in excess of $100,000, the fees from all substantially similar transactions are considered part of the same tax shelter and must be aggregated.

V. Registration Requirements

To register a confidential corporate tax shelter, the person responsible for registering the tax shelter must file Form 8264, "Application for Registration of a Tax Shelter." (Form 8264 is also used to register tax shelters defined in section 6111(c).) The exemptions from the registration requirements contained in the instructions to the current Form 8264 apply only to tax shelters defined in section 6111(c). Form 8264 will be revised and will include specific requirements and instructions for registering confidential corporate tax shelters. Until that time, persons responsible for registering confidential corporate tax shelters should follow the registration procedures outlined in these regulations.

The temporary regulations provide that the person registering a confidential corporate tax shelter must provide a detailed description of the tax shelter, including the structure of the tax shelter and the tax benefits. Any written materials presented in connection with an offer to participate in the shelter are required to be submitted with the registration form.

Consistent with the registration requirements for tax shelters defined in section 6111(c), the temporary regulations provide that any transactions involving similar business assets or similar plans or arrangements that are offered to corporate taxpayers by the same person or by related persons are aggregated and treated as a single tax shelter. However, in contrast with the registration requirements

applicable to tax shelters defined in section 6111(c), the temporary regulations allow the tax shelter promoter to file a single Form 8264 with respect to any such aggregated tax shelter, provided an amended Form 8264 is filed to reflect any material changes and to include any additional or revised written materials presented in connection with an offer to participate in the shelter. Furthermore, the temporary regulations require all transactions that are part of the same tax shelter and that are to be carried out by the same corporate participant (or one or more other members of the same affiliated group within the meaning of section 1504) to be registered on the same Form 8264.

The temporary regulations provide that in cases in which an attorney or federally authorized tax practitioner acts as a tax shelter promoter with respect to a client's participation in a confidential corporate tax shelter and believes that information which would otherwise be required to be disclosed on Form 8264 is protected by the common law attorney-client privilege or the confidentiality privilege under section 7525(a), such promoter may omit the information believed to be privileged from Form 8264 if the promoter attaches a statement to the Form 8264 as described in these temporary regulations.

Section 6111(a)(1) requires a tax shelter to be registered not later than the day on which the first offering for sale of interests in such shelter occurs. Section 6111(d)(4) provides that an offer to participate in a confidential corporate tax shelter shall be treated as an offer for sale.

Registration under these temporary regulations will be limited to confidential corporate tax shelters that are offered for sale after February 28, 2000. If interests in a confidential corporate tax shelter were first offered for sale on or before February 28, 2000, the first offer for sale of interests in the shelter that occurs after February 28, 2000 shall be considered the first offer for sale under this section. The temporary regulations provide that the IRS will consider a registration as timely made for a confidential corporate tax shelter in which interests are offered for sale after February 28, 2000 if the confidential corporate tax shelter is registered no later than August 29, 2000.

If a transaction becomes a confidential corporate tax shelter (*e.g.*, because of a change in the law or factual circumstances, or because the transaction becomes a listed transaction) subsequent to the first offering for sale after February 28, 2000, and the transaction was not previously required to be registered as a confidential corporate tax shelter under this section, the transaction must be registered under this section if interests are offered for sale after the transaction becomes a confidential corporate tax shelter. The transaction must be registered by the later of the next offering for sale of interests in the shelter or August 29, 2000. However, because transactions identified as listed transactions are generally considered to have been structured for a significant tax avoidance purpose, such transactions ordinarily will have been subject to registration under this section before becoming listed transactions.

The temporary regulations provide that if an interest in a confidential corporate tax shelter is first offered for sale after February 28, 2000 and that shelter is also a tax shelter under section 6111(c), the person responsible for registering the shelter may either (1) complete and file Form 8264, including the information required by these temporary regulations for confidential corporate tax shelters, not later than the day on which an interest in the shelter is first offered for sale after February 28, 2000, or (2) complete and file Form 8264 for the section 6111(c) tax shelter not later than the day on which an interest in the tax shelter is first offered for sale under section 6111(a) and then file an amended Form 8264 with the information required by these temporary regulations not later than August 29, 2000.

VI. Tax Shelter Promoter and Person Required to Register

The temporary regulations provide that the term "tax shelter promoter" as described in section 6111(d)(2) includes a tax shelter organizer under section 6111(e)(1) and § 301.6111–1T(Q&A–26 through Q&A–32) and any other person who participates in the organization, management or sale of a tax shelter (other than a person who merely performs services of the kind described in Q&A–33 of § 301.6111–1T) or any person related (within the meaning of section 267 or 707) to such tax shelter organizer or such other person.

In addition to the registration rules in section 6111, the rules in § 301.6111–1T(Q&A–34 through Q&A–39) apply for determining who must register a confidential corporate tax shelter.

The temporary regulations specify that, if all of the tax shelter promoters of a confidential corporate tax shelter are foreign persons and none of such promoters registers the shelter, any person who discusses participation in the shelter must register the shelter under section 6111(a). Pursuant to the authority in section 6111(f)(4), under limited circumstances, the temporary regulations apply to foreign as well as United States persons. For example, a foreign corporation that participates in a tax shelter with a significant purpose of reducing its United States taxes would be required to register the tax shelter if there were no U.S. promoters and the other requirements of the temporary regulations were satisfied.

Under the temporary regulations, if all the tax shelter promoters of a confidential corporate tax shelter are foreign persons, any person who discusses participation in the confidential corporate tax shelter with a tax shelter promoter must register the shelter within 90 days of beginning such discussions unless one or more of the following occurs: (1) the person does not participate in the shelter and notifies the promoter in writing, within the 90-day period, that the person will not participate; or (2) within the 90-day period, the person obtains and reasonably relies on both a written statement from one of the tax shelter promoters that such promoter has registered the tax shelter under this section and a copy of the registration.

To prevent avoidance of the purposes of section 6111(d)(3), the temporary regulations treat any person that participates in a shelter as having discussed that participation. Such discussion will be treated as occurring on the date of the agreement to participate or, if earlier, any other date the person is treated as having discussed participation under any other provision of these regulations. Thus, the participant is treated as having discussed participation in the shelter even if the agreement to participate is made without direct discussions by the participant. This might occur, for example, if participation is agreed to through an intermediary acting on the participant's behalf.

The temporary regulations also state that a person (first person) will be treated as participating indirectly in (and therefore as discussing) a tax shelter if a foreign person in which the first person has at least a 10 percent interest participates in the shelter with a significant purpose of avoiding or evading the first person's Federal income tax. For example, if a foreign corporation participates in a confidential corporate tax shelter with a significant purpose of reducing its 10 percent corporate shareholder's Federal income taxes, the temporary regulations would require the shareholder to register the tax shelter if all promoters are foreign.

For purposes of the registration requirements under section 6111(d)(3), it is presumed that the tax shelter promoters may receive fees in excess of $100,000 in the aggregate unless the person who would be responsible for registering the tax shelter can show otherwise.

VII. Investor List Requirement of Section 6112

Any person who organizes or sells an interest in a confidential corporate tax shelter must maintain a list of persons who were sold an interest in the tax shelter and such other information as required by section 6112. See § 301.6112–1T. Amendments to the temporary regulations under section 6112 have been published concurrently with the temporary regulations under section 6111(d). Among other things, the amended temporary regulations under section 6112 require lists to be maintained with respect to transactions for which the avoidance or evasion of Federal income tax is considered to be a significant purpose of the structure of the transaction, as determined in these temporary regulations under section 6111(d)(1)(A), whether or not the transactions are offered under conditions of confidentiality.

VIII. Effective Date

The regulations apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the persons responsible for promoting and registering the transactions described in these regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Chief Counsel (Passthroughs and Special Industries) and Rebecca Rosenberg, Office of Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6111–2T also issued under 26 U.S.C. 6111(f)(4). * * *

Par. 2. Section 301.6111–2T is added to read as follows:

§ 301.6111–2T Confidential corporate tax shelters (Temporary).

(a) *In general*—(1) Under section 6111(d) and this section, a confidential corporate tax shelter is treated as a tax shelter subject to the requirements of sections 6111(a) and (b).

(2) A confidential corporate tax shelter is any transaction—

(i) A significant purpose of the structure of which is the avoidance or evasion of Federal income tax, as described in paragraph (b) of this section, for a direct or indirect corporate participant;

(ii) That is offered to any potential participant under conditions of confidentiality, as described in paragraph (c) of this section; and

(iii) For which the tax shelter promoters may receive fees in excess of $100,000 in the aggregate, as described in paragraph (d) of this section.

(3) For purposes of this section, references to the term *transaction* include all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, including any series of related steps carried out as part of a prearranged plan.

(4) A transaction described in paragraph (b) of this section is for a direct or an indirect corporate participant if it is expected to provide Federal income tax benefits to any corporation (U.S. or foreign) whether or not that corporation participates directly in the transaction.

(b) *Transactions structured for avoidance or evasion of Federal income tax*—(1) *In general.* The avoidance or evasion of Federal income tax will be considered a significant purpose of the structure of a transaction if the transaction is described in paragraph (b)(2), (3), or (4) of this section. However, a transaction described in paragraph (b)(3) or (4) of this section need not be registered if the transaction is described in paragraph (b)(5) of this section. For purposes of this section, Federal income tax benefits include deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, and any other tax consequences that may reduce a taxpayer's Federal income tax liability by affecting the timing, character, or source of any item of income, gain, deduction, loss, or credit.

(2) *Listed transactions.* A transaction is described in this paragraph (b)(2) if the transaction is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction for purposes of section 6111. If a transaction becomes a listed transaction after the date on which registration would otherwise be required under this section, and if the transaction otherwise satisfies the confidentiality and fee requirements of paragraphs (a)(2)(ii) and (iii) of this section, registration shall in all events be required with respect to any interests in the transaction that are offered for sale after the transaction becomes a listed transaction. However, because a transaction identified as a listed transaction is generally considered to have been structured for a significant tax avoidance purpose, such a transaction ordinarily will have been subject to registration under this section before becoming a listed transaction if the transaction previously satisfied the confidentiality and fee requirements of

paragraphs (a)(2)(ii) and (iii) of this section.

(3) *Transactions lacking economic substance*—(i) Except as provided in paragraph (b)(3)(ii) of this section, a transaction is described in this paragraph (b)(3) if the present value of the participant's reasonably expected pre-tax profit (after taking into account foreign taxes as expenses and transaction costs) from the transaction is insignificant relative to the present value of the participant's expected net Federal income tax savings from the transaction.

(ii) If the substance of the transaction is the borrowing of money or the acquisition of financial capital by a corporate participant, the transaction is described in this paragraph (b)(3) only if the present value of the Federal income tax deductions of the taxpayer to whom the loan or financial capital is provided significantly exceeds the present value of the pre-tax return of the person providing the loan or financial capital.

(4) *Other tax-structured transactions.* A transaction is described in this paragraph (b)(4) if it has been structured to produce Federal income tax benefits that constitute an important part of the intended results of the transaction and the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably expects the transaction to be presented in the same or substantially similar form to more than one potential participant, unless the promoter reasonably determines that—

(i) The potential participant is expected to participate in the transaction in the ordinary course of its business (including transactions described in § 1.6011–4T(b)(3)(iii)) in a form consistent with customary commercial practice; and

(ii) There is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Internal Revenue Code for substantially similar transactions.

(5) *Excepted transactions.* The avoidance or evasion of Federal income tax will not be considered a significant purpose of the structure of a transaction if the transaction is described in either paragraph (b)(5)(i) or (ii) of this section.

(i) In the case of a transaction other than a transaction described in paragraph (b)(2) of this section, the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. Such a determination must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, authoritative administrative guidance, and judicial decisions that establish principles of general application in the tax law (*e.g., Gregory* v. *Helvering*, 293 U.S. 465 (1935)).

(ii) The IRS makes a determination, by published guidance, individual ruling under paragraph (b)(6) of this section, or otherwise, that the transaction is not subject to the registration requirements of this section.

(6) *Requests for ruling.* If a tax shelter promoter (or other person who would be responsible for registration under this section) is uncertain whether a transaction is properly classified as a confidential corporate tax shelter or is otherwise uncertain whether registration is required under this section, that person may, on or before the date that registration would otherwise be required under this section, submit a request to the IRS for a ruling as to whether the transaction is subject to the registration requirements of this section. If the request fully discloses all relevant facts relating to the transaction, that person's potential obligation to register the transaction will be suspended during the period that the ruling request is pending and, if the IRS subsequently concludes that the transaction is a confidential corporate tax shelter subject to registration under this section, until the sixtieth day after the issuance of the ruling (or, if the request is withdrawn, sixty days from the date that the request is withdrawn). In the alternative, that person may register the transaction in accordance with the requirements of this section and append a statement to the Form 8264, "Application for Registration of a Tax Shelter," which states that the person is uncertain whether the transaction is required to be registered as a confidential corporate tax shelter, and that the Form 8264 is being filed on a protective basis.

(7) *Examples.* The following examples illustrate the application of paragraphs (b)(1) through (b)(5) of this section. Assume, for purposes of these examples, that the transactions are not the same as or substantially similar to any of the types of transactions that the IRS has identified as listed transactions for purposes of section 6111 and thus are not described in paragraph (b)(2) of this section. The examples are as follows:

Example 1—(i) *Facts.* Promoter organizes a transaction between X, a U.S. corporation, and FC, a foreign entity that is not subject to Federal income tax. FC contributes cash to PRS, a partnership, in exchange for a 99 percent partnership interest in PRS. Promoter is initially the only other partner in PRS. FC will receive a market rate of return on its cash contribution and a fee for participating in the transaction. PRS purchases personal property and then leases it. PRS sells its right to the lease payments in exchange for cash. PRS allocates 99 percent of the income from the sale to FC and one percent to Promoter. PRS retains the leased property. Shortly after PRS's sale of the lease payments, X buys FC's 99 percent partnership interest in PRS. The depreciation deductions on the leased property are then allocated 99 percent to X and one percent to Promoter.

(ii) *Analysis.* The transaction is described in paragraph (b)(3)(i) of this section because the present value of X's reasonably expected pre-tax profit from the transaction is insignificant relative to the present value of X's expected net Federal income tax savings from the transaction. Therefore, unless Promoter can reasonably determine that the IRS would have no reasonable basis for denial of any significant portion of the Federal income tax benefits intended for X, the transaction is described in paragraph (b)(1) of this section.

Example 2—(i) *Facts.* Y has designed a combination of financial instruments to be issued as a package by corporations. The financial instruments are expected to be treated as equity for financial accounting purposes and as debt giving rise to allowable interest deductions for Federal income tax purposes. Y reasonably expects to present this method of raising capital to more than one potential corporate participant. Assume the transaction is not described in paragraph (b)(3) of this section. Assume that, because of the unusual nature of the combination of financial instruments, Y cannot conclude either that the transaction represented by the financial instruments is in customary commercial form or that there is a long-standing and generally accepted understanding that interest deductions are available to issuers of substantially similar combinations of financial instruments. Further, assume that Y cannot reasonably determine that the IRS would have no reasonable basis to deny the deductions.

(ii) *Analysis.* The transaction represented by this combination of financial instruments is a transaction described in paragraph (b)(4) of this section. However, if Y is uncertain whether this transaction is described in paragraph (b)(4) of this section, or is otherwise uncertain whether registration is required, Y may apply for a ruling under paragraph (b)(6) of this section, and the transaction will not be required to be registered while the ruling is pending or for sixty days thereafter.

(c) *Conditions of confidentiality*—(1) *In general.* All the facts and circumstances relating to the transaction will be considered when determining whether an offer is made under conditions of confidentiality as described in section 6111(d)(2), including prior conduct of the parties. Pursuant to section 6111(d)(2)(A), if an offeree's disclosure of the structure or tax aspects of the transaction is limited in any way by an express or implied understanding or agreement with or for the benefit of any tax shelter promoter, an offer is considered made under conditions of confidentiality, whether or not such understanding or agreement is legally binding. Pursuant to section 6111(d)(2)(B), an offer will also be considered made under conditions of confidentiality in the absence of any such understanding or agreement if any tax shelter promoter knows or has reason to know that the transaction is protected from disclosure or use in any other manner, such as where the transaction is claimed to be proprietary to the tax shelter promoter or any party other than the offeree. An offeree's privilege to maintain the confidentiality of a communication relating to a tax shelter in which the taxpayer might participate or has agreed to participate, including an offeree's confidential communication with the offeree's attorney, is not itself a condition of confidentiality.

(2) *Presumption.* Unless facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter enters into a written agreement with each person who participates or discusses participation in the transaction and such agreement expressly authorizes such persons to disclose every aspect of the transaction with any and all persons, without limitation of any kind.

(d) *Determination of fees.* All the facts and circumstances relating to the transaction will be considered when determining the amount of fees, in the aggregate, that the tax shelter promoters may receive. For purposes of this paragraph (d), all consideration that tax shelter promoters may receive is taken into account, including contingent fees, fees in the form of equity interests, and fees the promoters may receive for other transactions as consideration for promoting the tax shelter. For example, if a tax shelter promoter may receive a fee for arranging a transaction that is a confidential corporate tax shelter and a separate fee for another transaction that is not a confidential corporate tax shelter, part or all of the fee paid with respect to the other transaction may be treated as a fee paid with respect to the confidential corporate tax shelter if the facts and circumstances indicate that the fee paid for the other transaction is in consideration for the confidential corporate tax shelter. For purposes of determining whether the tax shelter promoters may receive fees in excess of $100,000, the fees from all substantially similar transactions are considered part of the same tax shelter and must be aggregated.

(e) *Registration*—(1) *Time for registering*—(i) *In general.* A tax shelter must be registered not later than the day on which the first offering for sale of interests in the shelter occurs. An offer to participate in a confidential corporate tax shelter shall be treated as an offer for sale. If interests in a confidential corporate tax shelter were first offered for sale on or before February 28, 2000, the first offer for sale of interests in the shelter that occurs after February 28, 2000 shall be considered the first offer for sale under this section.

(ii) *Certain registrations deemed timely*—(A) *In general.* The IRS will consider a registration as timely made for a confidential corporate tax shelter in which interests are offered for sale after February 28, 2000, if the tax shelter is registered no later than August 29, 2000. If an interest in a confidential corporate tax shelter is first offered for sale after February 28, 2000 and the tax shelter also constitutes a tax shelter under section 6111(c), the persons responsible for registering the tax shelter may either complete and file Form 8264, "Application for Registration of a Tax Shelter", including the information required by paragraph (e)(2) of this section, not later than the day on which an interest in the tax shelter is first offered for sale after February 28, 2000, or complete and file Form 8264, "Application for Registration of a Tax Shelter", for the section 6111(c) tax shelter not later than the day on which an interest in the tax shelter is first offered for sale under section 6111(a) and then file an amended Form 8264 with the information required by paragraph (e)(2) of this section not later than August 29, 2000.

(B) *Special rule.* If a transaction becomes a confidential corporate tax shelter (e.g., because of a change in the law or factual circumstances, or because the transaction becomes a listed transaction) subsequent to the first offering for sale after February 28, 2000, and the transaction was not previously required to be registered as a confidential corporate tax shelter under this section, the transaction must be registered under this section if interests are offered for sale after the transaction becomes a confidential corporate tax shelter. The transaction must be registered by the later of the next offering for sale of interests in the shelter or August 29, 2000.

(2) *Procedures for registering*—(i) *In general.* To register a confidential corporate tax shelter, the person responsible for registering the tax shelter must file Form 8264, "Application for Registration of a Tax Shelter". (Form 8264 is also used to register tax shelters defined in section 6111(c).) The exemptions from the registration requirements contained in the instructions to the current Form 8264 apply only to tax shelters defined in section 6111(c). Similar to the treatment provided under Q&A–22 and Q&A–48 of § 301.6111–1T, transactions involving similar business assets and similar plans or arrangements that are offered to corporate taxpayers by the same person or related persons are aggregated and considered part of a single tax shelter. However, in contrast with the requirement of Q&A–48 of § 301.6111–1T, the tax shelter promoter may file a single Form 8264 with respect to any such aggregated tax shelter, provided an amended Form 8264 is filed to reflect any material changes and to include any additional or revised written materials presented in connection with an offer to participate in the shelter. Furthermore, all transactions that are part of the same tax shelter and that are to be carried out by the same corporate participant (or one or more other members of the same affiliated group within the meaning of section 1504) must be registered on the same Form 8264.

(ii) *Interim registration procedure.* Until Form 8264 and its instructions are revised to incorporate the provisions of this paragraph (e)(2)(ii), the person responsible for registering a confidential corporate tax shelter must—

(A) Type or legibly print "Confidential Corporate Tax Shelter Filed Under § 301.6111–2T" at the top of Form 8264 (Rev. 11–99), "Application for Registration of a Tax Shelter";

(B) Complete Part I and lines 1a, 2, 3, 4, 6, and 12 in Part II of Form 8264;

(C) In the section titled "Explanation of Items" on Form 8264, provide a detailed description of the tax shelter, including a description of the structure of the tax shelter and the intended tax benefits;

(D) Attach any written materials that are presented to potential participants in connection with the offering of sales of interests in the tax shelter, including

any analyses or opinions relating to the intended tax benefits of the shelter; and

(E) Sign the Form 8264 and send it to the Internal Revenue Service Center, Kansas City, MO 64999.

(iii) *Use of subsequent versions of Form 8264.* If a person who is required to register a confidential corporate tax shelter under section 6111 uses a subsequent version of the Form 8264, the person must complete the appropriate parts of the revised form and follow the applicable instructions.

(iv) *Tax shelters that constitute both section 6111(c) and section 6111(d) tax shelters.* If a person is registering an arrangement that is both a confidential corporate tax shelter and a section 6111(c) tax shelter, the person must follow the requirements of this section and the instructions for Form 8264. In such a situation, the taxpayer must complete the entire form because the tax shelter is a section 6111(c) tax shelter and, if using Form 8264 (Rev. 11–99), type or legibly print "Confidential Corporate Tax Shelter filed under § 301.6111–2T" at the top of Form 8264 and include the information required in paragraphs (e)(2)(ii)(C) and (D) of this section because the tax shelter is also a confidential corporate tax shelter. If an arrangement is both a section 6111(c) tax shelter and a confidential corporate tax shelter and is a transaction described in the "Exemptions from Registration" section of the instructions for Form 8264 (Rev. 11–99), the person registering the arrangement must comply with the requirements of this section to register the arrangement as a confidential corporate tax shelter.

(3) *Claims of privilege.* (i) In any case in which an attorney or federally authorized tax practitioner within the meaning of section 7525 is the person required to register a confidential corporate tax shelter, and that person believes that information required to be disclosed under paragraph (e)(2) of this section is protected by the attorney-client privilege or by the confidentiality privilege of section 7525(a), any information omitted from the Form 8264 on the basis of such a claim must be supported by a statement attached to Form 8264 which satisfies the requirements set forth in paragraph (e)(3)(ii) of this section.

(ii) A statement supporting a claim of privilege must be signed by the attorney or federally authorized tax practitioner under penalties of perjury, must identify each document or category of information for which a claim of privilege is made, and must include the following representations with respect to each document or category of information for which the privilege is claimed—

(A) Specifically represent that the information was a confidential practitioner-client communication and, in the case of information which a federally authorized tax practitioner claims is privileged under section 7525, that the omitted information was not part of tax advice that constituted the promotion of a tax shelter within the meaning of section 7525(b);

(B) Specifically represent that the person required to register (and, to the best of such person's knowledge and belief, all others in possession of the omitted information) did not disclose the omitted information to any person whose receipt of such information would result in a waiver of the privilege.

(f) *Definition of tax shelter promoter.* For purposes of section 6111(d)(2) and this section, the term "tax shelter promoter" includes a tax shelter organizer as defined in section 6111(e)(1) and § 301.6111–1T(Q&A–26 through Q&A–32) and any other person who participates in the organization, management or sale of a tax shelter (other than a person who merely performs services of the kind described in Q&A–33 of § 301.6111–1T) or any person related (within the meaning of section 267 or 707) to such tax shelter organizer or such other person. Any person that satisfies this requirement must comply with the requirements under section 6112.

(g) *Person required to register*—(1) *Tax shelter promoters.* In addition to the rules in section 6111, taxpayers must use the rules of § 301.6111–1T (Q&A–34 through Q&A–39) in determining the circumstances under which a tax shelter promoter must register a confidential corporate tax shelter described in section 6111(d).

(2) *Persons who discuss the transaction; all promoters are foreign persons*—(i) *In general.* If all of the tax shelter promoters of a confidential corporate tax shelter are foreign persons, any person who discusses participation in the transaction must register the shelter under this section within 90 days after beginning such discussions.

(ii) *Exceptions.* Registration by a person discussing participation in a transaction is not required if either—

(A) The person does not participate, directly or indirectly, in the shelter and notifies the tax shelter promoter in writing, within 90 days of beginning such discussions, that the person will not participate; or

(B) Within 90 days after beginning such discussions, the person obtains and reasonably relies on both—

(*1*) A written statement from one of the tax shelter promoters that such promoter has registered the tax shelter under this section; and

(*2*) A copy of the registration.

(iii) *Determination of foreign status.* For purposes of this paragraph (g)(2), a person must presume that all tax shelter promoters are foreign persons unless the person either—

(A) Discusses participation in the tax shelter with a promoter that is a United States person; or

(B) Obtains and reasonably relies on a written statement from one of the promoters that at least one of the promoters is a United States person.

(iv) *Discussion.* Discussing participation in a transaction includes discussing such participation with any person that conveys the tax shelter promoter's proposal. For purposes of this paragraph (g)(2), any person that participates directly or indirectly in a transaction will be treated as having discussed participation in the transaction not later than the date of the agreement to participate. Thus, a tax shelter participant will be treated as having discussed participation in the transaction even if all discussions were conducted by an intermediary and the agreement to participate was made indirectly through another person acting on the participant's behalf (for example, through an intermediary empowered to commit the participant to participate in the shelter).

(v) *Special rule for controlled entities.* A person (first person) will be treated as participating indirectly in a confidential corporate tax shelter if a foreign person controlled by the first person participates in the shelter, and a significant purpose of the shelter is the avoidance or evasion of the first person's Federal income tax. For purposes of this paragraph (g)(2)(v), control of a foreign corporation or partnership will be determined under the rules of section 6038(e)(2) and (3), except that such section shall be applied by substituting "10" for "50" each place it appears and "at least" for "more than" each place it appears. In addition, section 6038(e)(2) shall be applied for these purposes without regard to the constructive ownership rules of section 318 and by treating stock as owned if it is owned directly or indirectly. Section 6038(e)(3) shall be applied for these purposes without regard to the last sentence of section 6038(e)(3)(B). Any beneficiary with a 10 percent or more interest in a foreign trust or estate shall be treated as controlling that trust or estate for purposes of this paragraph (g)(2)(v).

(vi) *Other rules*—(A) For purposes of the registration requirements under section 6111(d)(3), it is presumed that the tax shelter promoters will receive fees in excess of $100,000 in the aggregate unless the person responsible for registering the tax shelter can show otherwise.

(B) Any person treated as a tax shelter promoter under section 6111(d) solely by reason of being related (within the meaning of section 267 or 707) to a foreign promoter will be treated as a foreign promoter for purposes of this paragraph (g)(2).

(h) *Effective date.* This section applies to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000. If an interest is sold after February 28, 2000, it is treated as offered for sale after February 28, 2000 unless the sale was pursuant to a written binding contract entered into on or before February 28, 2000.

Par. 3. In § 602.101, paragraph (b) is amended by adding an entry for § 301.6111–2T to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.6111–2T	1545–0865 1545–1687
* * * * *	

Charles O. Rossotti,

Commissioner of Internal Revenue.

Approved: February 23, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–4844 Filed 2–28–00; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6542–9]

RIN 2060–AH10

Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: The EPA is revising the nitrogen oxides (NO_X) statewide emissions budgets for the 22 States and the District of Columbia which are required to submit State implementation plan (SIP) revisions to address the regional transport of ozone (also referred to as the NO_X SIP call) (63 FR 57356, October 27, 1998). These revisions are mainly based on comments received for emissions inventory revisions to 2007 baseline information used to establish each State's budget during the comment periods for both the NO_X SIP call and the "Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone" which was published on May 14, 1999. Some revisions were made based on comments received after the comment periods but deemed to be technically justified.

EFFECTIVE DATE: This rule is effective April 3, 2000.

ADDRESSES: Dockets containing information relating to this rulemaking (Docket Nos. A–96–56, A–97–43, and A–98–12) are available for public inspection at the Office of Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M St., SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Docket materials may be sent by electronic mail to A-and-R-Docket@epa.gov. Documents related to this notice are available on EPA's website at http://www.epa.gov/ttn/oarpg/otagsip.html, and http://www.epa.gov/ttn/rto/.

FOR FURTHER INFORMATION CONTACT: General questions concerning today's technical amendment should be addressed to Jan King, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5665; e-mail: king.jan@epa.gov. Specific questions on the revised NO_X emissions budgets should be directed to Gregory Stella, Office of Air Quality Planning and Standards, Emissions Monitoring and Analysis Division, MD–14, Research Triangle Park, NC 27711, telephone (919) 541–3649; e-mail: stella.greg@epa.gov. Specific questions on the electric generating unit (EGU) sector should be directed to Kevin Culligan, Office of Atmospheric Programs, Clean Air Markets Division, 401 M Street SW, 6204J, Washington, D.C., 20460, telephone (202) 564–9172; e-mail; culligan.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: By notice dated October 27, 1998, EPA published the final NO_X SIP call. The final NO_X SIP call provided the opportunity for comments on 2007 baseline sub-inventory revisions. If data submitted by commenters were determined to be technically justified, the State baseline inventory and budgets for the NO_X SIP call would be revised to include the new data. In response to the comments received during this comment period, revised baseline inventories and budgets were published in the May 14, 1999 technical amendment (64 FR 26298).

The EPA is proceeding to final action now on a second technical amendment based on further comments received from the public in response to the SIP call and the request for comments on inventory revisions as well as the May 14, 1999 technical amendment. The final NO_X SIP call required that the SIPs be submitted by September 30, 1999 and the controls be implemented by May 1, 2003. On May 25, 1999, the courts granted a stay on the SIP submittal date of September 30, 1999. However, we are moving forward with these corrections because some States are voluntarily submitting SIPs as soon as they can incorporate the new emissions inventory and statewide budget numbers. Also, today's changes are necessary to make the NO_X SIP Call inventory consistent with the inventory adopted when EPA granted Section 126 petitions on December 17, 1999. The NO_X SIP Call and the Section 126 petitions are to be based on the same inventory. To the extent relevant, the corrections contained in today's action have already been incorporated in the section 126 inventory.

To the extent the Administrative Procedure Act might require publication of an additional notice of proposed rulemaking for this action, EPA finds good cause to dispense with such a proposal. The EPA finds it would be contrary to the public interest, because a number of States are proceeding with revisions to their SIPs that are dependent upon finalization of these inventories. Any delay in finalizing these inventories would require States to delay submitting their SIP revisions and therefore could delay emissions reductions that would be realized as a result of these SIP revisions. Furthermore, EPA has already provided a sufficient opportunity for public comment on the inventory issues (5

U.S.C. 553(b)(B)) through the prior comment period on the SIP call and the first technical amendment.

I. Changes to the Inventory

Subsequent to the publication of the May 14, 1999 technical amendment revising the emission budgets for the NO_X SIP call, a number of commenters raised concerns about EPA's interpretation of their comments. In addition, new information was also submitted by commenters after May 14, 1999. Further, EPA conducted a thorough review of all the comments received regarding the May 14 technical amendment. This was done in an attempt to identify other mistakes made in incorporating the revision requests. The Agency modified the base inventories and budget calculations in areas where these reviews uncovered incorporation errors or where new data was found to be technically valid.

As part of the above review, EPA became aware of an error common to many stationary reciprocating internal combustion (IC) engines in several States. The error generally occurred because the permits issued to the sources used only one point and stack identification number for each of several engines located at one site; *i.e.*, individual engines at one site that were permitted together received the same identification number. Then, in calculating the total emissions from that source, the inventory resulted in identifying the source incorrectly as a large source instead of several small sources with separate emission points.

In some cases, this common error was noted by individual companies during the original comment period for the NO_X SIP call. In the process of making the corrections described above, EPA also made minor corrections to the IC engine inventory based on further discussions with the industry and where concurrence of the relevant State agency was obtained.

In addition, on August 9, 1999, (64 FR 43124) EPA issued a Notice of Data Availability seeking comment on heat input and electrical output data that could be used to allocate NO_X allowances under a Federal NO_X Budget Trading Program. EPA received a number of comments on that Notice that have also lead to review of earlier comments submitted by those commenters. In some cases this review has led to changes in the electricity generating unit (EGU) and non-electricity generating unit (non-EGU) portions of the budget.

II. Changes to Statewide Sub-Inventory Sector NO_X Emissions Budgets

Changes to the Statewide NO_X emissions budgets made in this technical amendment are mainly in response to the comments submitted during prior comment periods for the NO_X SIP call and the May 14, 1999 technical amendment. Each of the sub-inventory sectors of electricity generating unit (EGU), non-electricity generating unit(non-EGU) point, area, nonroad mobile, and highway mobile were commented on and affected to some extent by this EPA action. The changes made in each sub-inventory sector are further described below. The total emissions budget for all of the sub-inventory sectors decreased less than 1 percent from the May 14, 1999 technical amendment to this action.

As a result of these revisions, EPA anticipates that full implementation of the NO_X SIP call will reduce total NO_X emissions by 1.111 million tons in the 2007 ozone season. This is a slight decrease from the 1.157 million tons in total NO_X reductions identified in the final NO_X SIP call. The total overall percent reduction decreased slightly from 28 percent to 25 percent as a result of the smaller amount of emissions reductions and an increase in the emissions inventory baseline. Even though there was a slight increase in the overall NO_X emissions inventory, EPA expects that the impact on air quality benefits and cost effectiveness would be small because the emissions changes are minor.

The EGU source budgets increased by less than 1 percent from the final SIP call. A number of EGU point source units were reclassified to the non-EGU source sector and some non-EGU sources were reclassified to the EGU source sector. Further, in response to comments, the EGU budget also adds previously unidentified EGUs. Overall, the emissions reductions from this sector are similar to the emissions reductions of the final NO_X SIP call.

On September 15, 1999, EPA took a direct final rulemaking (64 FR 49987) action modifying the EGU portions of the budget for the States of Connecticut, Massachusetts and Rhode Island. On November 1, 1999, after receiving adverse comment, EPA withdrew that final action (64 FR 58792).

Therefore, today's action does not include the modifications to the budgets for those three States that were finalized on September 15, 1999. EPA is reviewing the comments received on that action and intends to address them in a future rulemaking action. As explained in the September 15, 1999 action, such an action would be a redistribution of the budget among the three States and would have no affect on the budget or compliance supplement pool for any other states.

The non-EGU source budgets increased by 13 percent from the final NO_X SIP call for several reasons. First, many sources were reclassified from large non-EGUs to small non-EGUs, thereby removing them from the category of non-EGU sources requiring budget level controls (*i.e.*, 30 percent reduction from large cement kilns, 60 percent reduction from large industrial boilers and large gas turbines, and 90 percent reduction from large IC engines). Second, some non-EGU units for which EPA assumed controls were reclassified to categories for which controls were not assumed; this reclassification results in excluding them from budget level controls (*e.g.*, large industrial boiler reclassified as a glass manufacturer). Many State and local agencies submitted revised non-EGU point source inventories which replaced their final NO_X SIP call inventory for non-EGUs. A number of non-EGU point source units were reclassified to the EGU source sector and a number of EGU sources were reclassified to the non-EGU source sector. The result of all of these reclassifications is that fewer non-EGUs would be subject to EPA's assumed control strategy. Finally, corrections to the growth rates of many non-EGU sources were made to reflect the growth misapplied in the May 14, 1999 version of the budget. Because the 2007 base budget increased, but the total number of units that would be subject to controls under EPA's assumed control strategy decreased, these changes lower the amount of emissions expected to be reduced by the NO_X SIP call by 44,072 tons.

Changes in the stationary area source budgets resulted in an increase of 10 percent from the final NO_X SIP call to that portion of the budget. Some State and local agencies submitted revised stationary area source inventories to replace their final NO_X SIP call inventory. In addition, EPA is applying a more consistent method for calculating ozone season emissions based on typical ozone season daily emissions. To retain consistency in State ozone season estimation methods, EPA is estimating seasonal emissions budgets by multiplying the typical ozone season day emission value by the number of days (153) in the ozone season. Since EPA does not apply any controls to this source sector in calculating the reductions for the final NO_X SIP call, there is no expected effect

on the overall reduction due to these changes.

Changes in the nonroad mobile source budget resulted in an overall increase of 15 percent to the nonroad mobile source budget from the nonroad source budget in the final NO_X SIP call. The EPA applied the same ozone season estimation methods change described above for stationary area sources to the nonroad mobile source budget. Several State and local agencies provided emissions growth and control data for use in estimating the nonroad sector of the budgets. Since EPA did not apply any controls to this source sector in calculating the reductions for the final NO_X SIP call, there is no expected affect on the overall reduction due to these changes.

Changes in the highway mobile source sector resulted in a 10 percent increase to the highway mobile source budget from the final NO_X SIP call budget. Differences in the highway sector of the State emissions budgets are in response to State and local agency comments on vehicle miles traveled (VMT), VMT growth, vehicle mix throughout the State, State-to-county level VMT allocations, speed changes by vehicle and roadway type, and inspection and maintenance program application, as well as EPA's inclusion of excess NO_X emissions from the use of "defeat devices" on highway heavy-duty diesel engines. This latter effect is discussed more fully in the following section. Since EPA did not apply any controls to this source sector in calculating the reductions for the final NO_X SIP call, there is no expected effect on the overall reduction due to these changes.

Neither overall size of the compliance supplement pool, nor the methodology for distributing the compliance supplement pool has changed as a result of this rulemaking. Consistent with the final SIP Call, EPA has distributed the compliance supplement pool based on a State's share of the overall emissions reductions required. Therefore, if the inventory revisions contained in this final rule resulted in a decrease in any State's share of the overall emission reductions required by the SIP call, then there is a corresponding decrease in that State's compliance supplement pool. Conversely, if any of the inventory revisions resulted in an increase in a State's share of the overall emissions reductions required, then the State would receive a larger share of the 200,000 ton compliance supplement pool.

III. Heavy-Duty Diesel Emission Estimates

The final NO_X budget numbers EPA is presenting today, include corrected estimates for the effects of excess NO_X emissions from highway heavy-duty diesel engines with "defeat devices." These diesel engines use computer software that cause the effectiveness of the engines' emission control systems to be reduced. In essence, the computer software alters the fuel injection timing when the engine operates in certain modes (such as highway driving), causing the engine to emit higher levels of NO_X than indicated by their certification standards or by EPA's existing emission models. The EPA believes that the emissions impact of defeat devices peaked in the late 1990s and subsequently will decline rapidly as newer engines replace defeat device-equipped engines and as manufacturers undertake the mitigation commitments required under the consent decrees reached with the manufacturers of highway heavy-duty diesel engines equipped with defeat devices.

As of July 1, 1999, these consent decrees have become final. The consent decrees commit the manufacturers to reduce emissions from their engines and cease equipping them with defeat devices according to an agreed-upon schedule, and to take steps to mitigate the emissions effects of existing engines equipped with defeat devices. These mitigation commitments include the early introduction of heavy-duty diesel engines that will meet the more stringent NO_X standards scheduled to take effect in 2004, rebuilding existing diesel engines to meet more stringent standards, and accelerating the introduction of lower-emitting nonroad diesel engines. Additional information regarding the defeat device consent decrees can be found in "Notices of Filing of Consent Decree under the Clean Air Act" (63 FR 59330–59334, November 3, 1998). Additional information about defeat devices and their emissions effects can be obtained from the U.S. EPA's Office of Mobile Sources by contacting the Engine Compliance Programs Group at (202) 564–9240 and requesting document VPCD–98–13 (HD Engine), dated October 15, 1998.

In the May 14, 1999 technical amendment, EPA presented updated estimates of NO_X emissions from heavy-duty diesel engines that included the added emissions due to defeat devices and also accounted for the early introduction of engines that meet the 2004 highway heavy-duty diesel engine standards, as specified by the proposed consent decrees reached with the manufacturers of diesel engines equipped with these devices. Since the consent decrees became final, we have improved our estimates of the impact of defeat devices and the mitigation measures contained in the consent decrees. These improved estimates reflect the rebuild provisions of the consent decrees and more accurately account for the effects of defeat devices and the early introduction of engines meeting the 2004 standards. The final baseline NO_X emission projections and NO_X budgets presented in this notice include these improved estimates.

The EPA is including revised estimates of the effects of defeat devices in this technical amendment even though they were not available at the time of our proposal, for the final NO_X SIP call, or for the May 14, 1999 technical amendment (note that as explained above, the May 14, 1999 technical amendment did include the best estimates that EPA had at that time of the effect of the defeat devices). The EPA finds good cause to use this information without prior proposal. Comment would be unnecessary, since EPA will be including the effects of the defeat devices in both the calculation of the baseline inventories and the establishment of the SIP call budgets. Because the effects of the defeat devices will be included in both the baseline and the emission levels that must be achieved, inclusion of the effects will not alter the obligations that the affected States must meet to comply with the SIP call. The result of this change does not alter the tons of NO_X reductions that the States must achieve, nor does it change the type of controls States are expected to select to reduce NO_X emissions. This change will more accurately reflect EPA's current understanding of emissions from highway mobile sources and the provisions of the final consent decrees. Therefore, EPA finds good cause to include these effects in this final action.

As described above, including the emissions due to defeat devices in the statewide NO_X emissions budgets will not, by itself, alter the emissions reductions that will result from the final NO_X SIP call, because the change in baseline and budget amounts is identical. The change in NO_X budgets varies from State to State but averages approximately 3.5 percent across the entire 37-State Ozone Transport Assessment Group (OTAG) domain, which EPA believes approximates the increase in the States covered by the final NO_X SIP call. The EPA does not believe this change is sufficiently large to alter the conclusions regarding

significant contribution or estimates of the overall benefits of the rule, although it may alter the projected benefits of the rule in specific locations.

IV. Revised Statewide NO_X Emissions Budgets

The final percent reductions from the final October 1999 base year inventory to the final February 18, 2000 budget for each sub-inventory sector are shown in Tables 1–5. The February 18, 2000 final statewide emissions budgets are shown in Table 6. Table 7 shows the percent change between the statewide NO_X emissions budgets promulgated on May 14, 1999 and the revised final statewide NO_X emissions budgets of February 18, 2000. Table 8 shows each State's final compliance supplement pool.

TABLE 1.—FINAL NO_X BUDGET COMPONENTS AND PERCENT REDUCTION FOR ELECTRICITY GENERATING UNITS

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Percent reduction
Alabama	76,926	29,022	62
Connecticut	5,636	2,652	53
Delaware	5,838	5,250	10
District of Columbia	3	207	n/a
Georgia	86,455	30,402	65
Illinois	119,311	32,372	73
Indiana	136,773	47,731	65
Kentucky	107,829	36,503	66
Maryland	32,603	14,656	55
Massachusetts	16,479	15,146	8
Michigan	86,600	32,228	63
Missouri	82,097	24,216	71
New Jersey	18,352	10,250	44
New York	39,199	31,036	21
North Carolina	84,815	31,821	62
Ohio	163,132	48,990	70
Pennsylvania	123,102	47,469	61
Rhode Island	1,082	997	8
South Carolina	36,299	16,772	54
Tennessee	70,908	25,814	64
Virginia	40,884	17,187	58
West Virginia	115,490	26,859	77
Wisconsin	51,962	17,381	67
Total	1,501,775	544,961	64

TABLE 2.—FINAL NO_X BUDGET COMPONENTS AND PERCENT REDUCTION FOR NON-ELECTRICITY GENERATING POINT SOURCES

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Percent reduction
Alabama	60,465	43,415	28
Connecticut	5,397	5,216	3
Delaware	2,821	2,473	12
District of Columbia	300	282	6
Georgia	37,245	29,716	20
Illinois	70,948	59,577	16
Indiana	69,011	47,363	31
Kentucky	29,486	25,669	13
Maryland	16,216	12,585	22
Massachusetts	11,210	10,298	8
Michigan	68,801	60,055	13
Missouri	25,964	21,602	17
New Jersey	15,975	15,464	3
New York	32,678	25,477	22
North Carolina	33,114	26,434	20
Ohio	50,001	40,194	20
Pennsylvania	82,107	70,132	15
Rhode Island	1,635	1,635	0
South Carolina	37,960	27,787	27
Tennessee	53,262	39,636	26
Virginia	42,108	35,216	16

TABLE 2.—FINAL NO_X BUDGET COMPONENTS AND PERCENT REDUCTION FOR NON-ELECTRICITY GENERATING POINT SOURCES—Continued

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Percent reduction
West Virginia	24,473	20,238	17
Wisconsin	23,734	19,853	16
Total	794,911	640,317	19

TABLE 3.—FINAL NO_X BUDGET COMPONENTS FOR STATIONARY AREA SOURCES

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Percent reduction
Alabama	28,762	28,762	0
Connecticut	4,821	4,821	0
Delaware	1,129	1,129	0
District of Columbia	830	830	0
Georgia	13,212	13,212	0
Illinois	9,369	9,369	0
Indiana	29,070	29,070	0
Kentucky	31,807	31,807	0
Maryland	4,448	4,448	0
Massachusetts	11,048	11,048	0
Michigan	31,721	31,721	0
Missouri	7,341	7,341	0
New Jersey	12,431	12,431	0
New York	17,423	17,423	0
North Carolina	11,067	11,067	0
Ohio	21,860	21,860	0
Pennsylvania	17,842	17,842	0
Rhode Island	448	448	0
South Carolina	9,415	9,415	0
Tennessee	13,333	13,333	0
Virginia	27,738	27,738	0
West Virginia	5,459	5,459	0
Wisconsin	11,253	11,253	0
Total	321,827	321,827	0

TABLE 4.—FINAL NO_X BUDGET COMPONENTS FOR NONROAD MOBILE SOURCES

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Percent reduction
Alabama	20,146	20,146	0
Connecticut	10,736	10,736	0
Delaware	5,651	5,651	0
District of Columbia	3,135	3,135	0
Georgia	26,467	26,467	0
Illinois	56,724	56,724	0
Indiana	26,494	26,494	0
Kentucky	15,025	15,025	0
Maryland	20,026	20,026	0
Massachusetts	20,166	20,166	0
Michigan	26,935	26,935	0
Missouri	20,829	20,829	0
New Jersey	23,565	23,565	0
New York	42,091	42,091	0
North Carolina	22,005	22,005	0
Ohio	43,380	43,380	0
Pennsylvania	30,571	30,571	0
Rhode Island	2,455	2,455	0
South Carolina	14,637	14,637	0
Tennessee	52,920	52,920	0
Virginia	27,859	27,859	0

TABLE 4.—FINAL NO_X BUDGET COMPONENTS FOR NONROAD MOBILE SOURCES—Continued

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Percent reduction
West Virginia	10,433	10,433	0
Wisconsin	17,965	17,965	0
Total	540,215	540,215	0

TABLE 5.—FINAL NO_X BUDGET COMPONENTS FOR HIGHWAY MOBILE SOURCES

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Percent reduction
Alabama	51,274	51,274	0
Connecticut	19,424	19,424	0
Delaware	8,358	8,358	0
District of Columbia	2,204	2,204	0
Georgia	88,775	88,775	0
Illinois	112,518	112,518	0
Indiana	79,307	79,307	0
Kentucky	53,268	53,268	0
Maryland	30,183	30,183	0
Massachusetts	28,190	28,190	0
Michigan	78,763	78,763	0
Missouri	51,615	51,615	0
New Jersey	35,166	35,166	0
New York	124,2611	124,261	0
North Carolina	73,695	73,695	0
Ohio	94,850	94,850	0
Pennsylvania	91,578	91,578	0
Rhode Island	3,843	3,843	0
South Carolina	54,494	54,494	0
Tennessee	66,342	66,342	0
Virginia	72,195	72,195	0
West Virginia	20,844	20,844	0
Wisconsin	69,319	69,319	0
Total	1,310,466	1,310,466	0

TABLE 6.—FEBRUARY 18, 2000 FINAL STATEWIDE NO_X BUDGETS AND PERCENT REDUCTION

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Tons reduced	Percent reduction
Alabama	237,573	172,619	64,954	27
Connecticut	46,015	42,849	3,166	7
Delaware	23,798	22,861	937	4
District of Columbia	6,471	6,658	−187	−3
Georgia	252,154	188,572	63,582	25
Illinois	368,870	270,560	98,310	27
Indiana	340,654	229,965	110,689	32
Kentucky	237,415	162,272	75,143	32
Maryland	103,476	81,898	21,578	21
Massachusetts	87,092	84,848	2,244	3
Michigan	292,820	229,702	63,118	22
Missouri	187,845	125,603	62,242	33
New Jersey	105,489	96,876	8,613	8
New York	255,653	240,288	15,365	6
North Carolina	224,697	165,022	59,675	27
Ohio	373,223	249,274	123,949	33
Pennsylvania	345,201	257,592	87,609	25
Rhode Island	9,463	9,378	85	1
South Carolina	152,805	123,105	*29,700	19
Tennessee	256,765	198,045	58,720	23
Virginia	210,784	180,195	30,589	15
West Virginia	176,699	83,833	92,866	53
Wisconsin	174,234	135,771	38,463	22
Total	4,469,196	3,357,786	1,111,410	25

TABLE 7.—PERCENT CHANGES BETWEEN MAY 14, 1999 BUDGETS AND FEBRUARY 18, 2000 BUDGETS

[Tons/season]

State	5/14/99—total 2007 budget	2/18/00—total 2007 budget	Percent change
Alabama	172,037	172,619	0
Connecticut	43,081	42,849	−1
Delaware	22,789	22,861	0
District of Columbia	6,672	6,658	0
Georgia	189,634	188,572	−1
Illinois	274,799	270,560	−2
Indiana	238,970	229,965	−4
Kentucky	155,619	162,272	4
Maryland	81,625	81,898	0
Massachusetts	85,296	84,848	−1
Michigan	224,582	229,702	2
Missouri	128,146	125,603	−2
New Jersey	100,133	96,876	−3
New York	240,123	240,288	0
North Carolina	168,373	165,022	−2
Ohio	250,930	249,274	−1
Pennsylvania	257,441	257,592	0
Rhode Island	9,810	9,378	−4
South Carolina	124,211	123,105	−1
Tennessee	197,664	198,045	0
Virginia	185,027	180,195	−3
West Virginia	91,216	83,833	−8
Wisconsin	136,172	135,771	0
Total	3,384,350	3,357,786	−1

TABLE 8.—STATE COMPLIANCE SUPPLEMENT POOL

[Tons]

State	February 18, 2000—final base	February 18, 2000—final budget	Tonnage reduction	Compliance supplement pool
Alabama	237,573	172,619	64,954	11,687
Connecticut	46,015	42,849	3,166	569
Delaware	23,798	22,861	937	168
District of Columbia	6,471	6,658	(187)	0
Georgia	252,154	188,572	63,582	11,440
Illinois	368,870	270,560	98,310	17,688
Indiana	340,654	229,965	110,689	19,915
Kentucky	237,415	162,272	75,143	13,520
Maryland	103,476	81,898	21,578	3,882
Massachusetts	87,092	84,848	2,244	404
Michigan	292,820	229,702	63,118	11,356
Missouri	187,845	125,603	62,242	11,199
New Jersey	105,489	96,876	8,613	1,550
New York	255,653	240,288	15,365	2,764
North Carolina	224,697	165,022	59,675	10,737
Ohio	373,223	249,274	123,949	22,301
Pennsylvania	345,201	257,592	87,609	15,763
Rhode Island	9,463	9,378	85	15
South Carolina	152,805	123,105	29,700	5,344
Tennessee	256,765	198,045	58,720	10,565
Virginia	210,784	180,195	30,589	5,504
West Virginia	176,699	83,833	92,866	16,709
Wisconsin	174,234	135,771	38,463	6,920
Total	4,469,196	3,357,786	1,111,410	200,000

V. Administrative Requirements

A. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 804 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

B. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order 12866, (58 FR 51735, October 4, 1993), this technical amendment is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget (OMB) because this action simply revises the emissions budget numbers of the NO_X SIP call final rule. The final NO_X SIP call was submitted to OMB for review. The EPA prepared a regulatory impact analysis (RIA) for the final NO_X SIP call titled "Regulatory Impact Analysis for the NO_X SIP Call, FIP, and Section 126 Petitions." The RIA and any written comments from OMB to EPA and any written EPA responses to those comments are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble. This technical amendment does not create any additional impacts beyond what was promulgated in the final NO_X SIP call, therefore, no additional RIA is needed.

C. Unfunded Mandates Reform Act

This technical amendment also does not impose any additional enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). The EPA did not reach a final conclusion as to the applicability of the requirements of the UMRA to the final NO_X SIP call. The EPA prepared a statement that would be required by UMRA if its statutory provisions applied and has consulted with governmental entities as would be required by UMRA. Because today's technical amendment does not create any additional mandates, no further UMRA analysis is needed.

D. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's action does not impose an enforceable duty on these entities. This action corrects the emissions inventory and statewide budgets for the NO_X SIP call and imposes no additional burdens beyond those imposed by the final NO_X SIP call. These corrections were made in response to comments received on the NO_X SIP call and the May 14, 1999 technical correction. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The EPA stated in the final NO_X SIP call that Executive Order 13084 did not apply because the final rule does not significantly or uniquely affect the communities of Indian tribal governments or call on States to regulate NO_X sources located on tribal lands. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Executive Order 12898: Environmental Justice

In addition, since today's action is only a technical amendment, this action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). For the final NO_X SIP call, the Agency conducted a general analysis of the potential changes in ozone and particulate matter levels that may be experienced by minority and low-income populations as a result of the requirements of the rule. These findings are presented in the RIA.

G. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 12.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's technical amendment

on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

This technical amendment will not impose any requirements on small entities. This action corrects the emissions inventory and statewide budgets for the NO_X SIP call and does not itself establish requirements applicable to small entities.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This technical amendment also is not subject to Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks) (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This technical amendment is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks and is not economically significant under Executive Order 12866.

I. National Technology Transfer and Advancement Act

In addition, the National Technology Transfer and Advancement Act of 1997 does not apply because today's technical amendment does not require the public to perform activities conducive to the use of voluntary consensus standards under that Act. The EPA's compliance with these statutes and Executive Orders for the underlying rule, the final NO_X SIP call, is discussed in more detail in 63 FR 57477–57481 (October 27, 1998).

J. Judicial Review

Section 307(b)(1) of the Clean Air Act (CAA) indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

Any final action related to the NO_X SIP call is "nationally applicable" within the meaning of section 307(b)(1). As an initial matter, through this rule, EPA interprets section 110 of the CAA in a way that could affect future actions regulating the transport of pollutants. In addition, the NO_X SIP call requires 22 States and the District of Columbia to decrease emissions of NO_X. The NO_X SIP call also is based on a common core of factual findings and analyses concerning the transport of ozone and its precursors between the different States subject to the NO_X SIP call. Finally, EPA has established uniform approvability criteria that would be applied to all States subject to the NO_X SIP call. For these reasons, the Administrator has also determined that any final action regarding the NO_X SIP call is of nationwide scope and effect for purposes of section 307(b)(1). Thus, any petitions for review of final actions regarding the NO_X SIP call must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**.

K. Paperwork Reduction Act

The EPA stated in the final NO_X SIP call that an information collection request was pending. Today's action imposes no additional burdens beyond those imposed by the final NO_X SIP call. Any issues relevant to satisfaction of the requirements of the Paperwork Reduction Act will be resolved during review and approval of the pending information collection request for the NO_X SIP call.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: February 18, 2000.

Carol M. Browner,

Administrator.

40 CFR part 51 is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410, 7414, 7421, 7470–7479, 7491, 7492, 7601, and 7602.

Subpart G—Control Strategy [Amended]

2. Section 51.121 is amended to revise paragraphs (e)(2), (e)(3)(iii), and (g)(2)(ii) to read as follows:

§ 51.121 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen.

* * * * *

(e) * * *

(2) The State-by-State amounts of the NO_X budget, expressed in tons per ozone season, are as follows:

State	Budget
Alabama	172,619
Connecticut	42,849
Delaware	22,861
District of Columbia	6,658
Georgia	188,572
Illinois	270,560
Indiana	229,965
Kentucky	162,272
Maryland	81,898
Massachusetts	84,848
Michigan	229,702
Missouri	125,603
New Jersey	96,876
New York	240,288
North Carolina	165,022
Ohio	249,274
Pennsylvania	257,592
Rhode Island	9,378
South Carolina	123,105
Tennessee	198,045
Virginia	180,195
West Virginia	83,833
Wisconsin	135,771
Total	3,357,786

(3) * * *

(iii) The State-by-State amounts of the compliance supplement pool are as follows:

State	Compliance supplement pool (tons of NO_X)
Alabama	11,687
Connecticut	569
Delaware	168
District of Columbia	0
Georgia	11,440
Illinois	17,688
Indiana	19,915
Kentucky	13,520
Maryland	3,882
Massachusetts	404
Michigan	11,356
Missouri	11,199
New Jersey	1,550
New York	2,764
North Carolina	10,737
Ohio	22,301
Pennsylvania	15,763
Rhode Island	15
South Carolina	5,344
Tennessee	10,565

State	Compliance supplement pool (tons of NO_X)
Virginia	5,504
West Virginia	16,709
Wisconsin	6,920
Total	200,000

* * * * *

(g) * * *

(2) * * *

(ii) The revised NO_X emissions sub-inventories for each State, expressed in tons per ozone season, are as follows:

State	EGU	Non-EGU	Area	Nonroad	Highway	Total
Alabama	29,022	43,415	28,762	20,146	51,274	172,619
Connecticut	2,652	5,216	4,821	10,736	19,424	42,849
Delaware	5,250	2,473	1,129	5,651	8,358	22,861
District of Columbia	207	282	830	3,135	2,204	6,658
Georgia	30,402	29,716	13,212	26,467	88,775	188,572
Illinois	32,372	59,577	9,369	56,724	112,518	270,560
Indiana	47,731	47,363	29,070	26,494	79,307	229,965
Kentucky	36,503	25,669	31,807	15,025	53,268	162,272
Maryland	14,656	12,585	4,448	20,026	30,183	81,898
Massachusetts	15,146	10,298	11,048	20,166	28,190	84,848
Michigan	32,228	60,055	31,721	26,935	78,763	229,702
Missouri	24,216	21,602	7,341	20,829	51,615	125,603
New Jersey	10,250	15,464	12,431	23,565	35,166	96,876
New York	31,036	25,477	17,423	42,091	124,261	240,288
North Carolina	31,821	26,434	11,067	22,005	73,695	165,022
Ohio	48,990	40,194	21,860	43,380	94,850	249,274
Pennsylvania	47,469	70,132	17,842	30,571	91,578	257,592
Rhode Island	997	1,635	448	2,455	3,843	9,378
South Carolina	16,772	27,787	9,415	14,637	54,494	123,105
Tennessee	25,814	39,636	13,333	52,920	66,342	198,045
Virginia	17,187	35,216	27,738	27,859	72,195	180,195
West Virginia	26,859	20,238	5,459	10,433	20,844	83,833
Wisconsin	17,381	19,853	11,253	17,965	69,319	135,771
Total	544,961	640,317	321,827	540,215	1,310,466	3,357,786

Note to paragraph (g)(2)(ii): Totals may not sum due to rounding.

* * * * *

[FR Doc. 00–4518 Filed 3–1–00; 8:45 am]
BILLING CODE 6560–50–p

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6545–2]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Arizona Department of Environmental Quality; Maricopa County; Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to delegate the authority to implement and enforce specific national emission standards for hazardous air pollutants (NESHAPs) to the Maricopa County Environmental Services Department (MC) in Arizona. The preamble outlines the process that MC will use to receive delegation of any future NESHAPs, and identifies the NESHAP categories to be delegated by today's action. EPA has reviewed MC's request for delegation and has found that this request satisfies all of the requirements necessary to qualify for approval. Thus, EPA is hereby granting MC the authority to implement and enforce the unchanged NESHAP categories listed in this rule. This action is also notifying the public of additional NESHAPs that were delegated to the Arizona Department of Environmental Quality (ADEQ) on November 10, 1999.

DATES: This rule is effective on May 1, 2000, without further notice, unless EPA receives relevant adverse comments by April 3, 2000. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the request for delegation and other supporting documentation are available for public inspection (docket number A–96–25) at the following location:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, California 94105–3901.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1200.

SUPPLEMENTARY INFORMATION:

I. Background

A. Delegation of NESHAPs

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to state or local air pollution control agencies the authority to implement and enforce the standards set out in 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR Part 63, Subpart E (hereinafter referred to as "Subpart E"), establishing procedures for EPA's approval of state rules or programs under section 112(l) (*see* 58 FR 62262).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and 40 CFR Part 63, Subpart E. To streamline the approval process for future applications, a state or

local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the state or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program.

B. Maricopa County Delegation Request

On October 30, 1996, EPA approved the Maricopa County Environmental Services Department's (MC's) program for accepting delegation of section 112 standards that are unchanged from Federal standards as promulgated (see 61 FR 55910). The approved program reflects an adequate demonstration by MC of general resources and authorities to implement and enforce section 112 standards. However, formal delegation for an individual standard does not occur until MC obtains the necessary regulatory authority to implement and enforce that particular standard, and EPA approves MC's formal delegation request for that standard.

MC informed EPA that it intends to obtain the regulatory authority necessary to accept delegation of section 112 standards by incorporating section 112 standards into local codes of regulation. The details of this delegation mechanism are set forth in a Memorandum of Agreement (MOA) between MC and EPA, and are available for public inspection at the U.S. EPA Region IX office (docket No. A–96–25).

On February 1, 2000, MC requested delegation for several individual section 112 standards that have been incorporated by reference into the Maricopa County Air Pollution Control Regulations. The standards that are being delegated by today's action are listed in the table at the end of this rule.

C. ADEQ delegations

On July 17, 1998, EPA published a direct final action delegating to ADEQ several NESHAPs and approving ADEQ's delegation mechanism for future standards (see 63 FR 38478). That action explained the procedure for EPA to grant delegations to ADEQ by letter, with periodic Federal Register listings of standards that have been delegated. On October 6, 1999, ADEQ requested delegation of the following NESHAPs contained in 40 CFR Part 63:

Subpart S—NESHAP from the Pulp and Paper Industry

Subpart LL—NESHAP for Primary Aluminum Reduction Plants

Subpart EEE—NESHAP for Hazardous Waste Combustors

On November 10, 1999, EPA granted delegation to ADEQ for these NESHAPs. Today's action is serving to notify the public of the November 10, 1999, delegation and to codify these delegations into the Code of Federal Regulations.

II. EPA Action

A. Delegation to Maricopa County for Specific Standards

After reviewing MC's request for delegation of various NESHAPs, EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91. Accordingly, MC is granted the authority to implement and enforce the requested NESHAPs. These delegations will be effective on May 1, 2000. A table of the NESHAP categories that will be delegated to MC is shown at the end of this rule. Although MC will have primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. In addition, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112.

After a state or local agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency becomes the primary point of contact with respect to that NESHAP. Pursuant to 40 CFR sections 63.9(a)(4)(ii) and 63.10(a)(4)(ii), EPA Region IX waives the requirement that notifications and reports for delegated standards be submitted to EPA as well as to MC.

In its February 1, 2000 request, MC included a request for delegation of the regulations implementing CAA section 112(i)(5), codified at 40 CFR Part 63, Subpart D. These requirements apply to state or local agencies that have a permit program approved under title V of the Act (see 40 CFR 63.70). MC received final interim approval of its title V operating permits program on October 30, 1996 (see 61 FR 55910). State or local agencies implementing the requirements under Subpart D do not need approval under section 112(l). Therefore, EPA is not taking action to delegate 40 CFR Part 63, Subpart D to MC.

MC also included a request for delegation of the regulations implementing CAA sections 112(g) and 112(j), codified at 40 CFR Part 63, Subpart B. These requirements apply to major sources only, and need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing section 112(g), EPA stated its view that "the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g)" (*see* 61 FR 68397). Similarly, when promulgating the regulations implementing section 112(j), EPA stated its belief that "section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements" (*see* 59 FR 26447). Therefore, state or local agencies implementing the requirements under sections 112(g) and 112(j) do not need approval under section 112(l). As a result, EPA is not taking action to delegate 40 CFR Part 63, Subpart B to MC.

B. Maricopa's delegation mechanism for future standards

Today's document serves to notify the public of the details of MC's procedure for receiving delegation of future NESHAPs. As set forth in the MOA, MC intends to incorporate by reference, into local codes of regulation, each newly promulgated NESHAP for which it intends to seek delegation. MC will then submit a letter to EPA Region IX, along with proof of regulatory authority, requesting delegation for each individual NESHAP. Region IX will respond in writing that delegation is either granted or denied. If a request is approved, the delegation of authorities will be considered effective upon the date of the response letter from Region IX. Periodically, EPA will publish in the **Federal Register** a listing of the standards that have been delegated. Although EPA reserves its right, pursuant to 40 CFR section 63.96, to review the appropriateness of any future delegation request, EPA will not institute any additional comment periods on these future delegation actions. Any parties interested in commenting on this procedure for delegating future unchanged NESHAPs should do so at this time.

C. Notice of Delegations to ADEQ

Today's document serves to notify the public that on November 10, 1999, EPA granted delegation to ADEQ for the following NESHAPs contained in 40 CFR Part 63:

- Subpart S—NESHAP from the Pulp and Paper Industry
- Subpart LL—NESHAP for Primary Aluminum Reduction Plants
- Subpart EEE—NESHAP for Hazardous Waste Combustors

Today's action will codify these delegations into the Code of Federal Regulations.

D. Opportunity for Public Comment

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this action should relevant adverse comments be filed. This action will be effective May 1, 2000, without further notice unless the Agency receives relevant adverse comments by April 3, 2000.

If EPA receives such comments, then EPA will publish a document withdrawing this final rule and informing the public that the rule will take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the rule. Any parties interested in commenting on the rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 1, 2000, and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

This final rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Delegations of authority to implement and enforce unchanged Federal standards under section 112(l) of the Clean Air Act do not create any new requirements but simply transfer primary implementation authorities to the State. Therefore, because this action does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the delegation action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 1, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: February 18, 2000.

David P. Howekamp,

Director, Air Division, Region IX.

Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for Part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by revising paragraph (a)(3) to read as follows:

§ 63.99 Delegated Federal Authorities

(a) * * *

(3) *Arizona.* The following table lists the specific Part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Arizona. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA

Subpart	Description	ADEQ[1]	MCESD[2]	PDEQ[3]	PCAQCD[4]
A	General Provisions	X	X	X	X
F	Synthetic Organic Chemical Manufacturing Industry	X	X	X	X
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X	X	X	X
H	Organic Hazardous Air Pollutants: Equipment Leaks	X	X	X	X
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X	X	X	X
L	Coke Oven Batteries	X	X	X	X
M	Perchloroethylene Dry Cleaning	X	X	X	X
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks	X	X	X	X
O	Ethylene Oxide Sterilization Facilities	X	X	X	X
Q	Industrial Process Cooling Towers	X	X	X	X
R	Gasoline Distribution Facilities	X	X	X	X
S	Pulp and Paper Industry	X	.....	.....	.....
T	Halogenated Solvent Cleaning	X	X	X	X
U	Group I Polymers and Resins	X	X	.....	X
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X	X	X	X
X	Secondary Lead Smelting	X	X	X	X
CC	Petroleum Refineries	X	X	X	X
DD	Off-Site Waste and Recovery Operations	X	X	.....	X
EE	Magnetic Tape Manufacturing Operations	X	X	X	X
GG	Aerospace Manufacturing and Rework Facilities	X	X	X	X
JJ	Wood Furniture Manufacturing Operations	X	X	X	X
KK	Printing and Publishing Industry	X	X	X	X
LL	Primary Aluminum Reduction Plants	X	.....	.....	.....
OO	Tanks—Level 1	X	X	.....	X
PP	Containers	X	X	.....	X
QQ	Surface Impoundments	X	X	.....	X
RR	Individual Drain Systems	X	X	.....	X
VV	Oil-Water Separators and Organic-Water Separators	X	X	.....	X
EEE	Hazardous Waste Combustors	X	.....	.....	.....
JJJ	Group IV Polymers and Resins	X	X	.....	X

[1] Arizona Department of Environmental Quality.
[2] Maricopa County Environmental Services Department.
[3] Pima County Department of Environmental Quality.
[4] Pinal County Air Quality Control District.

[FR Doc. 00–5036 Filed 3–1–00; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300981; FRL–6492–6]

RIN 2070–AB78

Fenpropathrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenpropathrin (alpha-cyano-3-phenoxy-benzyl 2,2,3,3-tetra-methylcyclopropanecarboxylate) in or on citrus, grapes, head and stem *Brassica* (crop subgroup 5A), melon (crop subgroup 9A) and pome fruits. Valent USA Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective March 2, 2000. Objections and requests for hearings, identified by docket control number OPP–300981, must be received by EPA on or before May 1, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300981 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: William Sproat, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8587; and e-mail address: sproat.william@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300981. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 5, 1998 (63 FR 41835) (FRL–6017–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of pesticide petitions (PP 7F3485, 6F4648, 1F3949) for a tolerance by Valent USA Company, 1333 North California Boulevard, Suite 600, Walnut Creek, CA 94596–8025. This notice included a summary of the petition prepared by Valent USA Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.466 be amended by establishing a tolerance for residues of the insecticide fenpropathrin, in or on various food commodities as follows: (1) PP7F3485 proposes the establishment of tolerances for the pome fruit crop group (crop group 11) at 5.0 parts per million (ppm); (2) PP1F3949 proposes the establishment of tolerances for grapes at 5.0 ppm and the processed product raisins at 10 ppm; for the citrus fruit crop group (crop group 10) at 2.0 ppm and the processed product citrus oil at 50.0 ppm and dried citrus pulp at 4.0 ppm. Based on EPA's review of processing studies submitted by Valent, the petition was revised by the petitioner to propose the tolerance on citrus oil at 75.0 ppm; (3) PP6F4648 proposes the establishment of tolerances for the head and stem Brassica crop group (crop group 5A) at 3.0 ppm and the melons crop group (crop group 9A) at 0.5 ppm.

Fenpropathrin is the active ingredient in DANITOL 2.4 EC Spray (EPA Reg. No. 59639–35) and TAME 2.4 EC Spray (EPA Reg. No. 59639–77). Tolerances have been established on cottonseed; cottonseed oil; meat, meat byproducts, and fat of cattle, goats, hogs, horses, sheep and poultry; eggs; milkfat; peanuts; peanut hay; strawberries; and tomatoes. Fenpropathrin is currently proposed for use on pome fruits (crop group 11) including apples to control spotted tentiform leafminer, white apple leafhopper, tarnished plant bug, rosy apple aphid, potato leafhopper, apple maggot, codling moth, European apple sawfly, green fruitworm, lesser appleworm, Pandemis leafroller, plum curculio, obliquebanded leafroller, oriental fruitmoth, redbanded leafroller, spirea aphid, tufted apple budmoth, variegated leafroller, Japanese beetle, European red mite, twospotted spider mite, and pears to control pear psylla (overwintering adults) and codling moth; grapes to control eastern grape leafhopper, western grape leafhopper, variegated grape leafhopper, grape leaf skeletonizer, grape berry moth, and Japanese beetles; head and stem Brassica (crop group 5A) including cabbage, broccoli, Brussels sprouts, and cauliflower to control yellowstriped armyworms, cabbage looper, imported cabbageworm, silverleaf whitefly, sweetpotato whitefly, diamondback moth southern cabbageworm, cabbage webworm, green peach aphid, and cabbage aphid; citrus fruits (crop group 10) to control citrus thrips, citrus blackfly, citrus flat mite, citrus red mite, citrus rust mite, Texas citrus mite, and twospotted spider mite; and melons (crop group 9A) including watermelons, honeydews, and muskmelons to control fall armyworms, twospotted spider mite (except in CA), silverleaf whitefly and sweetpotato whitefly.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *"

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of fenpropathrin on pome fruit (crop group 11) and grapes at 5.0 ppm; head and stem Brassica (crop group 5A) at 3.0 ppm; citrus fruit (crop group 10) at 2.0 ppm; melons (crop group 9A) at 0.5 ppm; and in the processed products citrus oil at 75 ppm, raisins at 10 ppm, and dried citrus pulp at 4.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the

toxic effects caused by fenpropathrin are discussed in this unit.

1. Acute toxicity studies with technical fenpropathrin. Oral LD_{50} in the rat is 54.0 milligram/kilogram (mg/kg) for males and 48.5 (mg/kg) for females—Toxicity Category I; dermal LD_{50} is 1,600 mg/kg for males and 870 mg/kg for females—Category II; acute inhalation (unable to generate sufficient test article vapor or aerosol to elicit toxicity)—Category IV; primary eye irritation (no corneal involvement, mild iris and conjunctival irritation)—Category III; and primary dermal irritation (no irritation)—Category IV. Fenpropathrin is not a sensitizer.

2. In a subchronic oral toxicity study, rats were dosed at concentrations of 0, 3, 30, 100, 300, or 600 ppm in the diet. The lowest effect level (LEL) is 600 ppm (30 mg/kg/day) based on body weight reduction (female), body tremors, and increased brain (female) and kidney (male) weights. The no observed adverse effect level (NOAEL) is 300 ppm (15 mg/kg/day).

3. In a subchronic oral toxicity study, dogs were dosed at concentrations of 0, 250, 500, or 1,000 ppm in the diet. A 1,000 ppm dog was sacrificed moribund during the third week after having tremors and showing other signs of poisoning caused by the test article. Because of this death, the dose for this group was reduced to 750 ppm for the remainder of the study. The lowest observed adverse effect level (LOAEL) is 250 ppm (7.25 mg/kg/day) based on signs of GI tract disturbance. There was no NOAEL—note dog chronic, below).

4. In a 21-day dermal toxicity study, rabbits were dosed 5 days/week for 3 weeks on abraded or unabraded skin at doses of 0, 500, 1,500, or 3,000 mg/kg/day. There were no dose-related effects on body weight, food consumption, clinical pathology, gross pathology, or organ weights. Trace or mild inflammatory cell infiltration was seen in the intact and abraded skin in all groups, including controls, and was attributed to the test article. The systemic NOAEL is > 3,000 mg/kg/day. Local irritation only. Although a 21-day dermal toxicity study in rabbits is available, the Agency has determined that rats are the most sensitive species to ascertain the dermal toxicity potential of pyrethroid insecticides. Although these data are lacking, EPA has sufficient toxicity data to support these tolerances and these additional studies are not expected to significantly change the risk assessment.

5. In a 1-year feeding study, dogs were dosed at 0, 100, 250, or 750 ppm in the diet. The systemic LEL is 250 ppm (6.25 mg/kg/day) based on tremors in all dogs. The neurologic NOAEL is 100 ppm (2.5 mg/kg/day); the systemic NOAEL is 100 ppm (2.5 mg/kg/day).

6. In a chronic feeding/carcinogenicity study, rats were dosed at 0, 50, 150, 450, or 600 ppm in the diet (0, 1.93, 5.71, 17.06, or 22.80 mg/kg/day in males, and 0, 2.43, 7.23, 19.45, or 23.98 mg/kg/day in females). There was no evidence of carcinogenicity at any dose up to and including 600 ppm. The systemic NOAEL (male) is 450 ppm (17.06 mg/kg/day). The systemic NOAEL (female) is 150 ppm (7.23 mg/kg/day). Systemic LEL (male) is 600 ppm highest dose tested (HDT) based on increased mortality, body tremors, increased pituitary, kidney, and adrenal weights. The systemic LEL (female) is 450 ppm (19.45 mg/kg/day) based on increased mortality and body tremors.

7. In a chronic feeding/carcinogenicity study, mice were dosed at 0, 40, 150, or 600 ppm in the feed (0, 3.9, 13.7, or 56.0 mg/kg/day in males, and 0, 4.2, 16.2, or 65.2 mg/kg/day in females). Mortality was highest during the final quarter of the study, but the incidence was similar in all dosed and control groups. No other indications of toxicity or carcinogenicity were seen. The systemic NOAEL is > 600 ppm (HDT; male/female, 56.0/65.2 mg/kg/day).

8. In a developmental toxicity study in rats, pregnant female rats were dosed by gavage on gestation days 6–15 at 0 (corn oil control), 0.4, 1.5, 2.0, 3.0, 6.0, or 10.0 mg/kg/day. The maternal NOAEL is 6 mg/kg/day; maternal LEL is 10 mg/kg/day based on death, moribundity, ataxia, sensitivity to external stimuli, spastic jumping, tremors, prostration, convulsions, hunched posture, squinted eyes, chromodacryorrhea, and lacrimation; developmental NOAEL is 10 mg/kg/day.

9. In a developmental toxicity study in rabbits, pregnant female New Zealand rabbits were dosed by gavage on gestation days 7 through 19 at 0, 4, 12, or 36 mg/kg/day. Maternal NOAEL is 4 mg/kg/day; maternal LEL is 12 mg/kg/day based on grooming, anorexia, flicking of the forepaws; developmental NOAEL is > 36 mg/kg/day (HDT).

10. A 3-generation reproduction study was performed in rats. Rats were dosed with fenpropathrin at concentrations of 0, 40, 120, or 360 ppm (0, 3.0, 8.9, or 26.9 mg/kg/day in males; 0, 3.4, 10.1, or 32.0 mg/kg/day in females, respectively). Parents (male/female): Systemic NOAEL = 40 ppm (3.0/3.4 mg/kg/day). Systemic LEL = 120 ppm (8.9/10.1 mg/kg/day) based on body tremors with spasmodic muscle twitches, increased sensitivity and maternal lethality; reproductive NOAEL = 120 ppm (8.9/10.1 mg/kg/day). Reproductive LEL = 360 ppm (26.9/32.0 mg/kg/day) based on decrease mean F_{1B} pup weight, increased F_{2B} loss. Pups (male/female): Developmental NOAEL = 40 ppm (3.0/3.4 mg/kg/day). Developmental LEL = 120 ppm (8.9/10.1 mg/kg/day) based on body tremors, increased mortality.

11. Studies on gene mutation and other genotoxic effects: An Ames Assay was negative for *Salmonella* TA98, TA100, TA1535, TA1537, and TA1538; and *E. coli* WP2uvrA (trp-) with or without metabolic activation. Sister Chromosome Exchange in CHO–K1 Cells—there were no increases in sister chromatid exchanges seen in the CHO–K1 cells treated with S–33206 or the DMSO vehicle. Cytogenetics *in vitro* (CHO/CA)—negative for chromosome aberrations (CA) in Chinese hamster ovary (CHO) cells exposed *in vitro* to toxic doses (≧30 µg/mL) without activation; and to limit of solubility (1,000 µg/mL) with activation. In Vitro Assay in Mammalian Cells—equivocal results—of no concern. DNA Damage/Repair in *Bacillus subtilis*—not mutagenic or showing evidence of DNA damage at ≥5,000 µg/paper disk.

12. In a metabolism study in rats, animals were dosed with radiolabeled fenpropathrin radiolabeled in either the alcohol or acid portion of the molecule. Rats received 14 daily oral low-doses of 2.5 mg/kg/day of unlabeled fenpropathrin followed by a 15th dose of either the alcohol or acid radiolabeled fenpropathrin. Groups of rats received a single dose of either of the two radiolabeled test articles at 2.5 mg/kg or 25 mg/kg. No clinical signs were seen in any rats. The major biotransformations included oxidation at the methyl group of the acid moiety, hydroxylation at the 4'-position of the alcohol moiety, cleavage of the ester linkage, and conjugation with sulfuric acid or glucuronic acid. Four metabolites were found in the urine of rats dosed with alcohol labeled fenpropathrin. The major metabolites were the sulfate conjugate of 3-(4'-hydroxyphenoxy)benzoic acid and 3-phenoxybenzoic acid (22–44% and 3–9% of the administered dose, respectively). The major urinary metabolites of the acid-labeled fenpropathrin were TMPA-glucuronic acid and TMPA–CH_2OH (11–26% and 6–10% of the administered dose, respectively). None of the parent chemical was found in urine. The major elimination products in the feces included the parent chemical (13–34% of the administered dose) and four metabolites. The fecal metabolites (and the percentage of administered dose) included CH_2OH-fenpropathrin (9–

20%), 4'-OH-fenpropathrin (4–11%), COOH-fenpropathrin (2–7%), and 4'-OH–CH_2OH-fenpropathrin (2–7%). There are no qualitatively unique plant metabolites. The primary aglycones are identical in both plants and animals; the only difference is in the nature of the conjugating moieties employed.

13. The metabolism and potential toxicity of the small amounts of terminal plant metabolites have been tested on mammals. Glucoside conjugates of 3-phenoxy-benzyl alcohol and 3-phenoxybenzoic acid, administered orally to rats, were absorbed as the corresponding aglycones following cleavage of the glycoside linkage in the gut. The free or reconjugated aglycones were rapidly and completely eliminated by normal metabolic pathways. The glucose conjugates of 3-phenoxybenzyl alcohol and 3-phenoxy-benzoic acid are less toxic to mice than the corresponding aglycones.

B. Toxicological Endpoints

1. *Acute toxicity.* An acute reference dose (RfD) of 0.06 mg/kg/day was established based on clinical signs of neurotoxicity on the day of dosing in dams during a developmental toxicity study in rats. The NOAEL was 6.0 mg/kg/day to which an uncertainty factor of 100 was applied.

2. *Short- and intermediate-term toxicity.* EPA did not select an end-point for short and intermediate dermal risk assessments based on the lack of dermal or systemic toxicity at 3,000 mg/kg/day in a 21-day dermal study in rabbits. Therefore, a dermal risk assessment is not necessary.

3.*Chronic toxicity.* EPA has established the RfD for fenpropathrin at 0.025 milligrams/kilograms/day (mg/kg/day). This RfD is based on the observance of tremors in dogs in the 1-year oral feeding study. The NOAEL was 2.5 mg/kg/day to which an uncertainty factor of 100 was applied.

4. *Carcinogenicity.* As no indication of carcinogenicity was seen in rats or mice, fenpropathrin was classified as a group E chemical. A cancer risk assessment is therefore not necessary.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.466) for the residues of fenpropathrin, in or on a variety of raw agricultural commodities. Tolerances are established on plant commodities ranging from 0.6 ppm on tomatoes to 20 ppm on peanut, hay. Tolerances are also established on animal commodities, including meat, milk, poultry, and eggs. Fenpropathrin is a pyrethroid insecticide with broad spectrum activity on insects and mites. When formulated as the product DANITOL 2.4 EC Spray, the product is registered for agricultural use on outdoor terrestrial food crops. A separate fenpropathrin product, TAME 2.4 EC Spray, is registered for commercial, professional non-food use on indoor and outdoor ornamental and nursery stock. There are no uses registered for professional indoor pest control, termite prevention, homeowner use, or turf application. Danitol 2.4 EC Spray contains 30.9% fenpropathrin by weight (2.4 pounds of fenpropathrin per gallon). Danitol 2.4 EC Spray is not to be applied through any type of irrigation system. Risk assessments were conducted by EPA to assess dietary exposures from fenpropathrin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The Dietary Exposure Evaluation Model (DEEM) acute analysis provides an estimate of the distribution of single-day exposures for the overall U.S. population and certain subgroups. The analysis evaluates individual food consumption as reported by respondents in the USDA 1989–1992 Continuing Survey of Food Intake by Individuals (CSFII) and accumulates exposure to the chemical for each commodity.

The percent acute population adjusted dose (aPAD) is a measure of how close the high end exposure comes to the aPAD. The percent aPAD that would be above EPA's level of concern is 100%. For this analysis the FQPA 10x safety factor was removed. As a result, the aPAD is equivalent to the acute RfD: 0.06 mg/kg/day. The exposure of all subgroups at the 99.9th percentile is below 100% aPAD with two exceptions: nursing infants and children 1–6 years (164% and 107%, respectively). In the analysis submitted by Valent all subgroups had exposures which were below 100% aPAD. However, Valent used the 1994–1996 food consumption survey. The Agency is in the process of reviewing the recipe translation for this survey. This review has not been completed. Therefore it is current EPA policy to use the 1989–1992 survey.

In the 1989–1992 survey there is a consumption value associated with grapes which can be considered to be aberrant. A single 10-month old nursing infant consumed ⅔ of a pound (310 grams) of grapes in 1-day. This is an unusually high quantity of grapes for an infant less than 1 years old to consume in 1-day. The percent aPAD for nursing infants at the 99.5th percentile of exposure is 92%. The exposure at the 99.5th percentile places less weight on the extreme value in the food consumption survey. There were only 4 nursing infants in the 1989–1992 survey who ate grapes. Because of the aberrant data point, the analysis was run using the 1994–1996 food consumption survey. When this survey is used the exposure of nursing infants at the 99.9th percentile of exposure is 50%. As for the subgroup children 1–6 years, EPA notes that at the 99.75th percentile of exposure (1989–1992 survey) the aPAD for this group decreases to 62%. In addition, when the analysis was run using the 1994–1996 food consumption database, the exposure of children 1–6 years decreased to 77% aPAD (99.9th percentile). The analysis was also run with grapes removed from the commodity residue list. The 1989–1992 food consumption survey was used. The most highly exposed subgroup is females (13+/nursing) which utilized 61% of the aPAD. This analysis confirms that in the 1989–1992 survey grapes is a major driver for acute dietary risk.

The acute analysis for fenpropathrin provides refined estimates (Tier 3) of dietary exposure for the U.S. population and all population subgroups. These estimates were made with the use of field trial values and percent crop treated (PCT) estimates. When the 1989–1992 food consumption survey is used, the U.S. population and most of the population subgroups are below EPA's level of concern. The population subgroups which are above EPA's level of concern are nursing infants and children 1–6 years. If the Agency uses data from the 1994–1996 food consumption survey for nursing infants and children 1–6 years, the exposure to these population subgroups is below EPA's level of concern. EPA feels that this action is justified for the following reasons: (1) There were only 4 nursing infants in the 1989–1992 survey who ate grapes (the one data point will therefore exert an inordinate amount of influence on the results of the analysis, particularly at the 99.9th percentile); (2) for most population subgroups the aPAD values given by the two consumption surveys were comparable; (3) field trial data were used in the analysis which makes the analysis more conservative than if monitoring data had been available; (4) although the analysis is refined there is still room for further refinement—100% PCT was assumed for the following crops: grapes, pome fruits, citrus, head and stem Brassica, and melons (based on PCT values for

registered uses, the PCT for proposed uses will probably be well below 100% once the uses are granted); and (5) although acute exposure to fenpropathrin resulting from residues present in animal commodities is refined, there is room for further refinement here also. Animal diets which are more realistic can be constructed. For this analysis the nutritional value of the diets has not been considered. Instead, maximum theoretical dietary burdens were constructed. EPA anticipates that the 1994–1996 food consumption survey will be available for use in the first quarter of calendar year 2000.

(ii). Chronic, non-carcinogenic dietary risk a DEEM chronic dietary exposure analysis was performed using anticipated residues (field trial data) and PCT data provided by the Agency. As with the acute analysis, EPA used the 1989–1992 food consumption data base whereas Valent used the 1994–1996 data base. The FQPA 10x safety factor was removed. As a result, the chronic PAD (cPAD) is equivalent to the chronic RfD: 0.025 mg/kg/day. Based on the 1989–1992 data base, the most highly exposed subgroup (children 1–6 years) utilized 9% of the cPAD. As a result, exposure to fenpropathrin of the U.S. population and all population subgroups is below EPA's level of concern.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual PCT for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which may be applied in a particular area.

2. *From drinking water.* Fenpropathrin is persistent and immobile. There are no established Maximum Contaminant Levels for residues of fenpropathrin in drinking water. No health advisory levels for fenpropathrin in drinking water have been established (EPA Safe Drinking Water Hotline, 1(800)426–4791, date of call: September 7, 1999). EPA has used drinking water numbers based on Generic Estimated Environmental Concentration (GENEEC) and Screening Concentration in Ground Water (SCI–GROW) modeling.

The Agency used its SCI–GROW (Screening Concentration in Ground Water) screening model and environmental fate data to determine the estimated environmental concentration (EEC) for fenpropathrin in ground water. SCI–GROW is an empirical model based upon actual ground water monitoring data collected for the registration of a number of pesticides that serve as benchmarks for the model. The current version of SCI–GROW appears to provide realistic estimates of pesticide concentrations in shallow, highly vulnerable ground water sites (i.e., sites with sandy soils and depth-to-ground water of 10 to 20 feet). EPA reported a ground water EEC of 0.006 ppb for fenpropathrin applied to pears and citrus fruits.

The Agency used its GENEEC screening model and environmental fate data to determine the EECs for fenpropathrin in surface water. GENEEC is used to estimate pesticide concentrations in surface water for up to 56 days after a single runoff event. GENEEC simulates a 1 hectare by 2 meters deep edge-of-the-field farm pond which receives pesticide runoff from a treated 10 hectare field. GENEEC provides an upper-bound concentration value. GENEEC can substantially overestimate (by a ≥3-fold factor) true pesticide concentrations in drinking water. The acute (peak) value for use of fenpropathrin on pears and citrus fruits at the maximum application rate is 2.72 ppb and the chronic (average 56-day) value is 0.34 ppb.

A Drinking Water Level of Comparison (DWLOC) is a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Different populations will have different DWLOCs. The Agency uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. They do have an indirect regulatory impact through aggregate exposure and risk assessments.

i. *Acute exposure and risk.* For purposes of this acute risk assessment, the estimated acute maximum concentration (EEC) for fenpropathrin in surface and ground waters (2.72 ppb) was used for comparison to the back-calculated DWLOCs for the acute endpoint. The drinking water EEC (when determined using dietary

exposures at the 99.9th percentile of exposure) exceeds the DWLOCs for the population subgroups nursing infants and children 1–6 years. The DWLOCs, which were calculated based on the exposure values at the 99.5th percentile of exposure for nursing infants and at the 99.75th percentile of exposure for children 1–6 years, were above the drinking water EEC. The same is true for the DWLOCs calculated based on the 99.9th percentile exposure values from the 1994–1996 food consumption survey. EPA anticipates that the 1994–1996 food consumption survey will be available for use in the first quarter of calendar year 2000. For this risk assessment only, the Agency is using the data from the 1994–1996 food consumption survey for these two population subgroups. Although the dietary exposure estimates are highly refined, EPA notes that 100% crop treated was used for the following crops: grapes, pome fruits, melons, citrus, and head and stem Brassica. Based on PCT values for registered uses, the PCT for proposed uses will probably be significantly less than 100%.

The DWLOCs were calculated based on the dietary analysis in which grapes were eliminated. Based on this analysis, for all population subgroups the acute DWLOCs exceed the drinking water EEC. For the population subgroup nursing infants and children 1–6 years, the DWLOC's were 400 and 250 ppb, respectively. Therefore, the acute risk of exposure to fenpropathrin from food and drinking water is below EPA's level of concern for the U.S. population and all population subgroups.

ii. *Chronic exposure and risk.* EPA generally reduces GENEEC model values by a factor of three when determining whether or not a chronic level of comparison has been exceeded. If the GENEEC model value is > 3 times the chronic DWLOC, the pesticide is considered to have passed the screen and no further assessment is needed. Acute DWLOCs are to be compared directly to GENEEC estimates; both acute and chronic DWLOCs are to be compared directly to SCI–GROW estimates. (Interim Guidance for Conducting Drinking Water Exposure and Risk Assessments, December 2, 1997).

Based on the chronic dietary food exposure estimates, chronic DWLOCs for fenpropathrin were calculated. The lowest DWLOC is 230 ppb for nursing infants and children 1–6 years. The highest EEC for fenpropathrin in surface water is from the application of fenpropathrin to pears and citrus fruits (0.34 ppb) and is substantially lower than the DWLOCs calculated. Therefore, chronic exposure to fenpropathrin residues in drinking water do not exceed EPA's level of concern.

3. *From non-dietary exposure.* There are no current registered residential uses for fenpropathrin. However, the label for TAME 2.4 EC SprayTM does include nonfood use on indoor and outdoor ornamental and nursery plantings. According to the label, this product can be applied by Professional Certified Operators (PCO) only. Therefore, an assessment for residential handlers is not required.

There is potential for dermal and oral exposure to adults and children during postapplication activities. Because no dermal endpoint of concern was found in dermal studies, no risk from dermal exposure is expected. However, an exposure assessment was performed for the following postapplication exposure scenarios: (1) incidental non-dietary ingestion of pesticide residues on garden plants from hand-to-mouth transfer, and (2) incidental non-dietary ingestion of soil from pesticide-treated areas.

i. *Acute exposure and risk.* Using EPA Standard Operating Procedures for Residential Exposure Assessments (Draft, December 18, 1997), the Short-Term Exposure Estimates and Risk Assessment (day "0", postapplication must be assessed on the same day the pesticide is applied because it is assumed that toddlers could play in the ornamental site or garden immediately after application) were calculated. The MOE's for hand to mouth and soil ingestion are 120 and 460,000 respectively. These short term MOEs are above 100 and do not exceed EPA's level of concern.

The exposure estimates that were generated are based on some upper-percentile (i.e., maximum application rate, available residues, duration of exposure) and some central tendency (i.e., transfer coefficient, surface area, hand-to-mouth activity, and body weight) assumptions and are considered to be representative of high-end exposures. The uncertainties associated with this assessment stem from the use of an assumed amount of pesticide available from ornamentals, and assumptions regarding dissipation, transfer of chemical residues, and hand-to mouth activity. The estimated exposures are believed to be reasonable high-end estimates based on observations from chemical-specific field studies and professional judgement.

ii. *Chronic exposure and risk.* Intermediate-term and chronic postapplication exposures are not expected because these activities (incidental non-dietary ingestion of pesticide residues on garden plants from hand-to-mouth transfer and incidental non-dietary ingestion of soil from pesticide-treated areas) will not occur everyday at ornamental and nursery sites.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether fenpropathrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fenpropathrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenpropathrin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For this risk assessment, the acute aggregate risk is equivalent to the risk from food + water. Using the 1994–96 Food Consumption Survey, it is estimated that acute exposure to fenpropathrin from food for the most highly exposed population subgroup, children (1–6 years), will utilize 77% of the acute PAD (see discussion in Unit III.C.). An acute dietary exposure (food + water) of 100% or less of the acute PAD is needed to protect the safety of all population subgroups. The EEC's of fenpropathrin in surface and ground water for acute exposure are below the DWLOCs. Thus, the acute aggregate risk of exposure to fenpropathrin from food and drinking water is below EPA's level of concern for the U.S. population and all population subgroups

2. *Chronic risk.* For this risk assessment, the chronic aggregate risk is equivalent to the risk from food + water. This is because there is no chronic residential exposure scenario. In

addition, no chronic dermal or inhalation endpoints were identified. As discussed above, EPA has concluded that exposure to fenpropathrin from food for the most highly exposed subgroup (children 1–6 years) will utilize 9% of the cPAD. EPA generally has no concern for exposure below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The EEC's for fenpropathrin in drinking water are substantially lower than the DWLOCs. Therefore, chronic aggregate risk does not exceed EPA's level of concern.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. A short-term aggregate risk assessment was performed for infants and children because of the existence of short-term postapplication residential exposure scenarios. There is a hand-to-mouth exposure of 0.049 mg/kg/day and a soil ingestion exposure of 0.000013 mg/kg/day. These exposures were aggregated with the average food exposure to arrive at short-term aggregate DWLOCs. These DWLOCs were then compared with the 56-day GENEEC maximum EEC of 0.34 ppb. For all infant/children population subgroups the DWLOCs exceeded the maximum EEC. As a result, the short-term aggregate risk from exposure to fenpropathrin does not exceed EPA's level of concern for any of the infant/children population subgroups. Intermediate-term endpoints were not identified. In addition, intermediate-term postapplication exposures are not expected from the registered residential use of fenpropathrin.

4. *Aggregate cancer risk for U.S. population.* The Agency has determined that there is no evidence of carcinogenicity in studies in either the mouse or rat.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenpropathrin residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of fenpropathrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* See Toxicological Profile in Unit III.A. of this preamble.

iii. *Reproductive toxicity study.* See Toxicological Profile in Unit III.A. of this preamble.

iv. *Prenatal and postnatal sensitivity.* There is no evidence of sensitivity to young rats or rabbits following prenatal or postnatal exposure to fenpropathrin.

v. *Conclusion.* There is a complete toxicity data base for fenpropathrin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on the above, EPA concludes that reliable data support use of the 100-fold uncertainty factor and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* (Food + Water) The percentages of the acute PAD utilized at the 99.9 percentile exposure are 56% for infants and 77% for children (1–6 years), the most highly exposed population subgroup. The EEC for fenpropathrin in drinking water is below the DWLOC. The Agency has no cause for concern if total acute exposure is 100% or less of the acute PAD. Therefore, the Agency has no acute aggregate concern due to exposure to fenpropathrin through food and drinking water.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fenpropathrin from food will utilize 5% of the cPAD for infants and 9% for children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenpropathrin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* See Aggregate Risks and Determination of Safety for US Population in Unit III (D)(3) above.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants is adequately understood. Adequate metabolism studies with three dissimilar crops have been submitted. The metabolism of fenpropathrin in apples, tomatoes, and cotton has been reviewed and has been considered adequate. The residue of concern is the parent compound fenpropathrin.

The nature of the residue in animals is adequately understood. Metabolism studies with goats and poultry dosed with radiolabeled fenpropathrin were submitted. The majority of the residue in muscle, fat, and milk and eggs was found to be the parent compound, fenpropathrin. The residue in kidney and liver consisted mainly of various metabolites. Livestock metabolites, with the possible exception of TMPA lactone, have also been identified in rat metabolism studies and their contributions to the overall toxicity of fenpropathrin have been considered. For the apple and pear tolerances, the levels of the metabolites in livestock were low enough not to be included in the tolerance expression. The organs in which metabolites of the synthetic pyrethroids are found (i.e., liver and kidney) are minor human food consumption items. As a result, the nature of the residue in animals is adequately understood for the purposes of this tolerance petition. The residue of

concern in livestock commodities is the parent compound.

B. Analytical Enforcement Methodology

EPA has concluded that adequate methodology is available for enforcement of the proposed tolerances for plant and animal commodities. Method RM–22–4 can be used for the analysis of fenpropathrin in citrus, grapes, head and stem Brassica crops, melons, and pome fruits. This method includes cleanup procedures for oily crops and oils. Residues are extracted with acetone/hexane, cleaned up with silica gel and C18 Sep Pak chromatography and detection is by gas chromatography. Oily crops are extracted with acetone/hexane, partitioned into hexane, cleaned up by gel permeation, silica gel, and C18 Sep Pak chromatography and detected by gas chromatography. Oils are partitioned between hexane and acetonitrile, cleaned up on an alumina column and determined by electron capture gas chromatography using a split/splitless capillary column. The limit of detection is reported as 0.01 ppm. An EPA trial of Method RM–22–4 to determine fenpropathrin residues in apples was successfully conducted. The method was also validated for meat and milk. Recovery of fenpropathrin was tested through FDA multiresidue methods and fenpropathrin was found to be completely recovered by the PAM I Section 302 Method (Luke Method).

C. Magnitude of Residues

An adequate number of residue field trials reflecting the proposed use rates were submitted to EPA to demonstrate that tolerances for pome fruit (crop group 11) and grapes at 5.0 ppm; head and stem Brassica (crop group 5A) at 3.0 ppm; citrus fruit (crop group 10) at 2.0 ppm; melons (crop group 9A) at 0.5 ppm; processed products citrus oil at 75 ppm, raisins at 10 ppm, and dried citrus pulp at 4.0 ppm will not be exceeded when fenpropathrin products labeled for these uses are used as directed.

D. International Residue Limits

There are Codex maximum residue levels MRLs of 5 ppm for both grapes and pome fruit. EPA is establishing tolerances of 5 ppm for these commodities which will result in harmonized tolerances.

E. Rotational Crop Restrictions

Rotational crop studies are not required for grapes, citrus, and pome fruit. The registrant submitted the results of confined and rotational crop studies. These studies are adequate to support the proposed use of fenpropathrin on head and stem Brassica and melons. No rotational crop restrictions or tolerances are required.

F. Endocrine Disruption

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. * * *" The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for further endocrine disrupter effects.

V. Conclusion

Therefore, the tolerance is established for residues of fenpropathrin in pome fruit (crop group 11) and grapes at 5.0 ppm; head and stem Brassica (crop group 5A) at 3.0 ppm; citrus fruit (crop group 10) at 2.0 ppm; melons (crop group 9A) at 0.5 ppm; and in the processed products citrus oil at 75 ppm, raisins at 10 ppm, and dried citrus pulp at 4.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need To Do To File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300981 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 1, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office

of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300981, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. In § 180.466, by amending paragraph (a) by alphabetically adding the following entries to the table:

§ 180.466 Fenpropathrin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Brassica, head and stem, crop subgroup 5–A	3.0
* * * * *	*
Citrus, dried pulp	4.0
Citrus, oil	75

Commodity	Parts per million
* * * * *	
Fruits, citrus, crop group 10	2.0
Fruits, pome, crop group 11	5.0
* * * * *	
Grapes	5.0
* * * * *	
Raisins	10.0
* * * * *	
Vegetable, cucurbit, melon, crop subgroup 9–A	0.5

* * * * * *

[FR Doc. 00–5046 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300980; FRL–6493–2]

RIN 2070–AB78

Imidacloprid; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety in or on corn, field fodder, forage, and grain. Gustafson, Incorporated requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996. The tolerance will expire on December 31, 2000.

DATES: This regulation is effective March 2, 2000. Objections and requests for hearings, identified by docket control number OPP–300980, must be received by EPA on or before May 1, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300980 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Peg Perreault, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5417; and e-mail address: Perreault.Peg@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and hen look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300980. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 25, 1997 (62 FR 34269) (FRL–5719–6), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA of 1996 (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by Gustafson, Incorporated, P.O. Box 660065, Dallas, TX 75255–0065. This notice included a summary of the petition prepared by Gustafson, Incorporated, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.472(a) be amended by establishing tolerances for combined residues of the insecticide imidacloprid, (1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as (1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine), in or on corn, field fodder at 0.2 parts per million (ppm), corn, field forage at 0.1 ppm, and corn, field grain at 0.05 ppm. The tolerances will expire on December 31, 2000. Time-limited tolerances are being established based on EPA's initial review of the crop field trial data for seed-treatment of field corn, which indicates that the data support the proposed tolerances for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety. The time-limited tolerances for field corn are being established until a full review of

the residue data is completed and permanent tolerances are established.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for combined residues of imidacloprid on corn, field fodder, forage, and grain at 0.2, 0.1, and 0.05 ppm, respectively. EPA's assessment of the exposures and risks associated with establishing the tolerance was included in the preamble to two separate final rules on imidacloprid pesticide tolerances, published in the **Federal Register** on September 18, 1998 (63 FR 49837) (FRL–6027–1) and August 2, 1999 (64 FR 41804) (FRL–6090–2). The risk assessment supporting the tolerance actions in the August 2, 1999 **Federal Register** Notice also assumed that tolerances would be established on corn, field fodder, forage, and grain at 0.2, 0.1, and 0.05 ppm, respectively. Accordingly, the analysis and findings in the August 2, 1999 preamble apply equally to the tolerances for corn, field fodder, forage, and grain being established by this final rule and EPA reaffirms those findings in promulgating this rule.

IV. Other Considerations

A. Metabolism in Plants and Animals

Data concerning the metabolism of imidacloprid in apples, potatoes, tomatoes, eggplant, cottonseed, field corn, ruminants and poultry have previously been submitted. The nature of imidacloprid residues in plants and animals is adequately understood. The residue of concern is imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, as specified in 40 CFR 180.472.

B. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of the regulated imidacloprid residue in plant (Bayer GC/MS Method 00200 and Bayer HPLC–UV Confirmatory Method 00357) and animal (Bayer GC/MS Method 00191) commodities. These methods have successfully completed EPA Tolerance Method Validation, and are awaiting publication in the Pesticide Analytical Manual II (PAM II). In the interim, these methods are available from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

Bayer Corporation has previously submitted adequate multiresidue method (MRM) recovery data for imidacloprid and its olefin, hydroxy, guanidine, and 6-chloronicotininc acid metabolites through FDA's Protocols A through E. Imidacloprid and its metabolites were not recoverable by these methods. These data have been forwarded to FDA and we expect them to be published in PAM, Vol I, Appendix I in a future update. Additional MRM recovery data are not required.

C. Magnitude of Residues

An initial review of the crop field trial data for seed-treatment of field corn support the proposed tolerances for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety. Time-limited tolerances for field corn are being established until a full review of the residue data is completed and permanent tolerances are established.

D. International Residue Limits

There are no established CODEX, Canadian or Mexican residue limits for imidacloprid in/on field corn fodder, forage, and grain. Thus, harmonization of the proposed tolerances with CODEX, Canada and Mexico is not an issue for these petitions.

E. Rotational Crop Restrictions

Data concerning the metabolism of imidacloprid in confined rotational crops was previously submitted. The nature of the residue in rotational crops is adequately understood and is nearly identical to that identified in the primary crops. The residue of concern in rotational crops is imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent. Treated areas may be replanted with any crop specified on an imidacloprid label, or any crop for which a tolerance exists for imidacloprid, as soon as practical following the last application, with the exception of cereals, legumes, and safflower, which have a 30–day plant-back restriction. A 12–month plant-back restriction must be observed for crops not listed on an imidacloprid label and for crops for which no tolerances for imidacloprid have been established.

V. Conclusion

Therefore, tolerances are established for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, in or on corn, field fodder at 0.2 ppm, corn, field forage at 0.1 ppm, and corn, field grain at 0.05 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need To Do To File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300980 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 1, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300980, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to

include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 15, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.472 is amended by alphabetically adding three entries to the table in paragraph (a) to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/Revocation date
* * * * *		
Corn, field fodder	0.20	12/31/00
Corn, field forage	0.10	12/31/00
Corn, field grain	0.05	12/31/00
* * * * *		

* * * * *

[FR Doc. 00–5047 Filed 3–1–00; 8:45 am]
BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

48 CFR Chapter 5

RIN 3090–AE90

General Services Administration Acquisition Regulation

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is adopting as final, with changes, the interim rule published in the **Federal Register** at 64 FR 37200, July 9, 1999, the reissuance of the General Services Administration Acquisition Regulation (GSAR). GSA rewrote the GSAR in plain language, included only regulatory material, and removed internal agency guidance. GSA also updated the GSAR to reflect recent changes to the Federal Acquisition Regulation (FAR) The interim rule was effective September 1, 1999.

GSA is also issuing final regulations providing guidance on selection criteria for architect-engineer contracts.

DATES: Effective March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, GSA Acquisition Policy Division, (202) 208–6726.

SUPPLEMENTARY INFORMATION:

A. Background

The GSAR, as reissued—

—Uses plain language to improve clarity and understanding.
—Reduces the amount of regulatory material.
—Eliminates internal operating procedures that do not have significant effect beyond GSA, or a significant cost or administrative impact on contractors or offerors.
—Eliminates guidance which merely implements or supplements the Federal Acquisition Regulation (FAR) without a significant cost or administrative impact on contracts or offerors, or an effect beyond GSA's internal operating procedures.
—Updates GSA rules for consistency with recent Federal Acquisition Regulation (FAR) changes.

GSA published and interim rule in the **Federal Register** on July 9, 1999 (64 FR 37200). One respondent submitted comments in response to the interim rule. GSA considered those comments in developing the final rule. The changes in this rule:

—Update references to the GSA Order on use of the credit card to reflect the new order issued by GSA on September 1, 1999, and updating related procedures. The changes include updating the clause at section 552.232–77 to reflect Federal Supply Service (FSS) requirements that FSS contractors accept payment by the Govermentwide commercial purchase card for orders that do not exceed the micropurchase threshold.
—Correct an error at section 515.408 in a reference to the clause to section 552.215–72.
—Update the warranty clause applicable to multiple award schedule contracts to apply to both domestic and overseas locations and deletes the clause applicable to international multiple award schedules to reflect updated Federal Supply Schedule programs.
—Correct a typographical error at section 552.209–70.
—Revise section 552.216–70 to eliminate a duplicated paragraph.
—Revise section 552.232–76 to clarify that electronic funds transfer

payments under acquisitions of leasehold interests in real property occur through the Automated Clearing House.

—Clarify protest procedures on exchange of information between the parties.

—Update section 552.247–71 to refer to common rates instead of tariffs. GSA also published a proposed rule in the **Federal Register** on August 17, 1999 (64 FR 44683) on selection criteria for architect-engineer contracts. No public comments were submitted on the proposed rule. The final rule clarifies the requirement to establish a significant production capability in the general geographical area of the project and makes editorial changes into plain language.

B. Executive Order 12866

This order was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

GSA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The GSAR rewrite adds guidance on disclosure and use of proprietary information when GSA will release proposals outside the Government for evaluation and provided a contract clause to ensure that evaluation contractors protect proposal information appropriately. The rewrite also adds GSA agency protest procedures. These procedures offer vendors an alternate forum which is quicker and less expensive than protests to the General Accounting Office or the Courts. The guidance on use of selection criteria for architect-engineer contracts eliminates unnecessary restrictions to competition in GSA's use of geographic limitations in the evaluation process for these contracts. The other revisions do not add any new requirements; but reduce the number of agency regulations, restate existing requirements in plain language, and provide consistency with the FAR. These revisions streamline GSA acquisition rules, provide greater flexibility, and promote understanding.

D. Paperwork Reduction Act

The reissued GSAR contains information collection requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) which were approved previously by OMB and assigned the control numbers shown in section 501.106.

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule under 5 U.S.C. 804. This rule was submitted to Congress and GAO under 5 U.S.C. 801.

List of Subjects in 48 CFR Chapter 5

Government procurement.

Interim Rule Adopted as Final With Changes

Accordingly, GSA adopts the interim rule reissuing 48 CFR Chapter 5, which was published in the **Federal Register** on July 9, 1999 (64 FR 37200), as final with the following changes:

1. The authority citation for 48 CFR Parts 513, 515, 532, 536, 546, and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 513—SIMPLIFIED ACQUISITION PROCEDURES

2. In section 513.302–70, revise paragraph (a) to read as follows:

513.302–7 Purchase order and related forms.

(a) See GSA Order, Guidance on Use of the Credit Card for Purchases (CFO 4200.1), for forms required for purchase card actions.

* * * * *

PART 515—CONTRACTING BY NEGOTIATION

3. In section 515.408, revise paragraph (d) to read as follows:

515.408 Solicitation provisions and contract clauses.

* * * * *

(d) Insert the clause at 552.215–72, Price Adjustment—Failure to Provide Accurate Information, in solicitations and contracts under the MAS program.

* * * * *

PART 532—CONTRACT FINANCING

4. Revise sections 532.7002 and 532.7003 to read as follows:

532.7002 Solicitation requirements.

(a) In solicitations for supplies and services, except FSS schedule solicitations, request offerors to indicate if they will accept payment by Governmentwide commercial purchase card. Identify the card brand(s) under the GSA SmartPay program that may be used to make payments under the contract, on the cover page or in Section L of the solicitation.

(b) For FSS schedule contracts, identify the card brand(s) under the GSA SmartPay program that may be used to make payments under the contract in the contract award letter.

(c) For orders placed by GSA, you may authorize payment by Governmentwide commercial purchase card only for orders that do not exceed $100,000 (see GSA Order, Guidance on Use of the Credit Card for Purchases (CFO 4200.1)).

(d) Consider requesting offerors to designate different levels for which they may accept payment by Governmentwide commercial purchase card, for example:

"If awarded a contract under this solicitation, the offeror agrees to accept payment by Governmentwide commercial purchase card for orders of:

—$2,500 or less
—$25,000 or less
—$50,000 or less
—$100,000 or less"

532.7003 Contract Clause.

(a) *Indefinite-delivery, indefinite-quantity (IDIQ) contracts other than Federal Supply Service.* Insert the clause at 552.232–77, Payment by Governmentwide Commercial Purchase Card, in IDIQ solicitations and contracts for supplies and services if the contract will provide for payment by Governmentwide commercial purchase card as an alternative method of payment for orders.

(b) *Federal Supply Service Contracts.* Use Alternate I of the clause at 552.232–77 for all FSS schedule solicitations and contracts. You may use the clause in other FSS IDIQ contract as appropriate.

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

5. Add subpart 536.6 to read as follows:

SUBPART 536.6—ARCHITECT-ENGINEER SERVICES

536.602 Selection of firms for architect-engineer contracts.

536.602–1 Selection criteria.

(a) FAR 36.602–1 requires that agencies include "location in the general geographical area of the project and knowledge of locality of the project" as one of several selection criteria.

(1) Do not use this evaluation factor as a minimum qualification requirement for determining whether a firm is eligible to compete for a proposed project.

(2) This factor must not exceed 5 percent of the total weight of all evaluation criteria. In order to receive maximum score for this factor, the

architect-engineer firm(s) must demonstrate that at least 35 percent of the architect-engineer contract services (based on the total contract price) will be accomplished within the geographical boundaries established for the project.

(3) Under an approved class deviation from FAR 36.602–1(a)(5), this factor does not apply to projects that the Chief Architect of GSA determines have national significance.

(b) The public announcement (Commerce Business Daily notice) for a proposed project should identify the general geographical area of the project by either:

(1) A radius in miles or other appropriate unit of measure.

(2) The Standard Metropolitan Statistical Area, county(ies), state(s) surrounding the project, or other appropriate geographic boundaries.

(c) Architect-engineer selections under the Design Excellence Program must apply the geographical evaluation criteria in the second phase.

(d) The public announcement (Commerce Business Daily notice) must provide the number of calendar days the architect-engineer of record has to establish a production capability within the general geographical area of the project. You may allow the architect-engineer of record up to 45 calendar days after contract award to establish this production capability.

PART 546—QUALITY ASSURANCE

6. In section 546.710, revise paragraph (b) to read as follows, remove paragraph (c), and redesignate paragraphs (d) and (e) as paragraphs (c) and (d) respectively:

546.710 Contract clauses.

* * * * *

(b) *Multiple award schedules.* Insert the clause at 552.246–73, Warranty—Multiple Award Schedule, in solicitations and contracts.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7.–9. Amend section 552.232–76 to revise the date and paragraph (b)(1) to read as follows:

552.232–76 Electronic Funds Transfer Payment.

ELECTRONIC FUNDS TRANSFER PAYMENT (MAR 2000)

* * * * *

(b) * * *

(1) The American Bankers Association 9-digit identifying number for Automated Clearing House (ACH) transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

* * * * *

10. Revised section 552.232–77 to read as follows:

552.232–77 Payment By Governmentwide Commercial Purchase Card.

PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE CARD (MAR 2000)

(a) Definitions. "Governmentwide commercial purchase card" means a uniquely numbered credit card issued by a contractor under GSA's Governmentwide Contract for Fleet, Travel, and purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

"Oral order" means an order placed orally either in person or by telephone.

(b) At the option of the Government and if agreeable to the Contractor, payments of _____* __ or less for oral or written orders may be made using the Governmentwide commercial purchase card.

(c) The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item under other contract requirements, the Contractor must immediately credit a cardholder's account for items returned as defective or faulty.

(d) Payments made using the Governmentwide commercial purchase card are not eligible for any negotiated prompt payment discount. Payment made using a Government debit card will receive the applicable prompt payment discount.
(End of clause)

* Enter amount not to exceed $100,000.

Alternate I (MAR 2000). For FSS schedule solicitations and contracts, replace paragraph (b) of the basic clause and add paragraph (c) as follows. Redesignate paragraphs (c) and (d) of the basic clause as (d) and (e) respectively.

(b) The Contractor must accept the Governmentwide commercial purchase card for payments equal to or less than the micro-purchase threshold (see Federal Acquisition Regulation 2.101) for oral or written orders under this contract.

(c) The Contractor and the ordering agency may agree to use the Governmentwide commercial purchase card for dollar amounts over the micro-purchase threshold, and the Government encourages the Contractor to accept payment by the purchase card. The dollar value of a purchase card action must not exceed the ordering agency's established limit. If the Contractor will not accept payment by the purchase card for an order exceeding the micro-purchase threshold, the Contractor must so advise the ordering agency within 24 hours of receipt of the order.

11. Amend section 552.233–70 to revise the clause date and paragraphs (h)(4) and (h)(5) to read as follows, and to remove paragraph (h)(6):

552.233–70 Protests Filed Directly with the General Services Administration.

PROTESTS FILED DIRECTLY WITH THE GENERAL SERVICES ADMINISTRATION (MAR 2000)

* * * * *

(h) * * *

(4) Except as provided in paragraph (5)(ii) below, the parties are encouraged, but not required, to exchange information submitted to the Agency Protest Official for GSA.

(5) If the agency makes a written response to the protest, the following filling requirements apply unless the deciding official approves other arrangements:

(i) The agency must file its response to the protest with the deciding official within five (5) days after the filing of the protest.

(ii) The agency must also provide the protester with a copy of the response on the same day it files the response with the deciding official. If the agency believes it needs to redact or withhold any information in the response from the protester, it must obtain the approval of the deciding official.

* * * * *

12. Revise section 552.246–73 to read as follows:

552.246–73 Warranty—Multiple Award Schedule.

WARRANTY—MULTIPLE AWARD SCHEDULE (MAR 2000)

(a) *Applicable to domestic locations.* Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the Contractor's commercial price list applies to this contract.

(b) *Applicable to overseas destinations.* Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the commercial price list applies to this contract, except as follows:

(1) The Contractor must provide, at a minimum, a warranty on all non-consumable parts for a period of 90 days from the date that the Government accepts the product.

(2) The Contractor must supply parts and labor required under the warranty provisions free of charge.

(3) The Contractor must bear the transportation costs of returning the products to and from the repair facility, or the costs involved with Contractor personnel traveling to The Government facility for the purpose of repairing the product onsite, during the 90-day warranty period.

552.246–74 [Removed]

(End of clause)

13. Remove and reserve section 552.246–74

14. Revise the prescription at section 552.246–75 to read as follows:

552.246–75 Guarantees.

As prescribed in 546.710(c), insert the following clause.

* * * * *

15. Revise the prescription at section 552.246–76 to read as follows:

552.246–76 Warranty of Pesticides.

As prescribed in 546.710(d), insert the following clause:

* * * * *

16. Amend section 552.247–71 to revise the clause date and paragraph (c)(2) to read as follows:

552.247–71 Diversion of Shipment Under f.o.b. Destination Contracts.

* * * * *

DIVERSION OF SHIPMENT UNDER F.O.B. DESTINATION CONTRACTS (MAR 2000)

* * * * *

(c) * * *

(2) If (i) shipments to the new destination are made by the Contractor's owned or leased trucks or (ii) shipments to the original destination were or would have been made by the Contractor's owned or leased trucks, the Government shall determine the adjustment by substituting a rate equal to 70 percent of the lowest applicable rate published in common carrier rates as of the date of shipment for the Contractor's actual rate or contemplated transportation costs.

* * * * *

Dated: February 18, 2000.

J. Les Davison,

Acting Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 00–4699 Filed 3–1–00; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 022500B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District and Bering Sea subarea of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal allowance of Atka mackerel total allowable catch (TAC) specified for the Central Aleutian District.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 26, 2000, until 1200 hrs, A.l.t., September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 2000 Harvest Specifications for Groundfish (65 FR 8282, February 18, 2000) established the first seasonal allowance of Atka mackerel TAC specified for the Central Aleutian District as 11,424 metric tons (mt). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal allowance of Atka mackerel TAC specified for the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 11,174 mt, and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently attained from the fishery. It must be implemented immediately to prevent overharvesting the first seasonal allowance of Atka mackerel TAC specified for the Central Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 25, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–4942 Filed 2–25–00; 4:15 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 42
Thursday, March 2, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 709

Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally-Insured Credit Unions in Liquidation

AGENCY: National Credit Union Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Credit Union Administration (NCUA) is publishing for notice and comment a proposed rule regarding the treatment by the NCUA Board (Board), as conservator or liquidating agent, of financial assets transferred by a federally-insured credit union to another party: in connection with a securitization or in the form of a participation. The proposal also addresses the treatment by the Board, as conservator or liquidating agent, of agreements entered into by a federally-insured credit union to collateralize public funds. The proposal generally provides that the Board will not, by exercise of its statutory power to repudiate contracts, recover, reclaim, or recharacterize as property of the credit union or the liquidation estate financial assets that were transferred by the credit union to another party in connection with a securitization or in the form of a participation. The proposal also establishes that the Board will not seek to avoid an otherwise legally enforceable and perfected security interest in collateral for public funds solely because the collateral was not acquired contemporaneously with the approval and execution of the security agreement. The Board will also not seek to avoid a security interest solely because the collateral was changed, increased or subject to substitution from time to time.

DATES: Written comments must be received by the NCUA on or before April 3, 2000.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may also fax comments to (703) 518–6319. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Chrisanthy J. Loizos or Mary F. Rupp, Staff Attorneys, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

Section 709.10

Under generally accepted accounting principles, a transfer of financial assets is accounted for as a sale if the transferor surrenders control over the assets. One of the conditions for determining whether the transferor has surrendered control is that the assets have been isolated from the transferor, i.e., put presumptively beyond the reach of the transferor, its creditors, a trustee in bankruptcy, or a receiver. This is known as the "legal isolation" condition.

Where the transferor is a federally-insured credit union for which the Board may be appointed conservator or liquidating agent, the issue arises whether financial assets transferred in connection with a securitization or in the form of a participation would be put beyond the reach of the Board as conservator or liquidating agent. The issue arises because of the Board's statutory authority to repudiate credit union contracts and, also, sections 207(b)(9) and 208(a)(3) of the Federal Credit Union Act (the Act) regarding the enforceability of agreements against the NCUA. 12 U.S.C. 1787(b)(9), 1788(a)(3). The specific issues are: whether the Board might exercise its authority to repudiate contracts, and avoid a transfer of financial assets in connection with a securitization or a participation to recover assets; and whether the Board, with respect to an agreement executed in relation to a transfer of financial assets in connection with a securitization or a participation, might assert the requirements of sections 207(b)(9) and 208(a)(3) of the Act. Those sections provide, that, to be enforceable against the NCUA, any agreement that tends to diminish or defeat the NCUA's interest in an asset must be executed contemporaneously with the acquisition of the asset by the credit union (the "contemporaneous" requirement).

The Federal Deposit Insurance Corporation (FDIC) published a Notice of Proposed Rulemaking, 64 FR 48968, Sept. 9, 1999, to resolve the issues raised above in the Statement of Financial Accounting Standards No. 125 (SFAS 125), issued by the Financial Accounting Standards Board. FDIC addressed whether its statutory authority to repudiate contracts under section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) would prevent a transfer of financial assets by an insured depository institution in connection with a securitization or in the form of a participation from satisfying the "legal isolation" condition of SFAS 125. The Federal Credit Union Act contains provisions substantially similar to 12 U.S.C. 1821(e) that apply when the Board is appointed conservator or liquidating agent for a federally-insured credit union. *See* 12 U.S.C. 1787, 1788. As such, this preamble and proposed rule track the language of the FDIC's proposed rule, 12 CFR 360.6.

Under 12 U.S.C. 1787(c)(1), the Board, when acting as conservator or liquidating agent of any federally-insured credit union, has the power to disaffirm or repudiate any contract or lease (i) to which the credit union is a party; (ii) the performance of which the conservator or liquidating agent, in the conservator's or liquidating agent's discretion, determines to be burdensome; and (iii) the disaffirmance or repudiation of which the conservator or liquidating agent determines, in the conservator's or liquidating agent's discretion, will promote the orderly administration of the credit union's affairs. Repudiation of a contract relieves the Board from performing any unperformed obligations remaining under the contract. Repudiation also entitles the other party to the contract to a claim for damages, which are limited by statute to actual direct compensatory damages determined as of the date of the appointment of the liquidating agent or conservator. *See* 12 U.S.C. 1787(c)(3).

Under sections 207(b)(9) and 208(a)(3) of the Act, no agreement that tends to diminish or defeat the NCUA's interest in an asset acquired from a federally-insured credit union is enforceable against the NCUA unless such

agreement meets certain requirements. One of those requirements is that the agreement be executed by the credit union and any person claiming an adverse interest thereunder contemporaneously with the acquisition of the asset by the credit union.

In order for a transfer of financial assets by a federally-insured credit union in connection with a securitization or in the form of a participation to be accounted for as a sale, the proposed rule provides that the Board, by exercise of its authority to disaffirm or repudiate contracts under 12 U.S.C. 1787(c), will not reclaim, recover, or recharacterize as property of the credit union or the liquidation estate any financial assets transferred by a federally-insured credit union to another party in connection with a securitization or in the form of a participation. Although the repudiation of a securitization or participation will not affect transferred financial assets, repudiation will excuse the Board from performing any continuing obligations imposed by the securitization or participation. If the Board, in order to terminate such continuing obligations or duties, seeks to disaffirm or repudiate an agreement or contract under which a federally-insured credit union has transferred financial assets to another party in connection with a securitization or a participation, the Board will not seek to reclaim, recover, or recharacterize as property of the credit union or the liquidation estate such financial assets.

The proposed rule applies only to those securitizations or participations in which the transfer of financial assets meets all of the conditions for sale accounting treatment under generally accepted accounting principles, other than the "legal isolation" condition, which the proposed rule is intended to address. While the proposed rule enables a credit union to meet the "legal isolation" condition, it does not replace the credit union management's responsibility to establish evidence supporting the isolation criterion of SFAS 125.

As part of the definition of "participation," the proposed rule provides that a participation must be "without recourse," that is, the participation must not be subject to any agreement that requires the lead institution to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation. The term "without recourse" does not, however, preclude the lead institution from retaining a subordinated interest in the participated obligation, against which losses are initially allocated.

The proposed rule does not apply unless the federally-insured credit union received adequate consideration for the transfer of financial assets at the time of the transfer. Also, the documentation effecting the transfer of financial assets must reflect the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

The proposed rule will not waive, limit or otherwise affect the rights or powers of the Board to take any action or to exercise any power not specifically limited by this section. This includes any rights, powers or remedies of the Board regarding transfers taken in contemplation of the credit union's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of the credit union, or that is a fraudulent transfer under applicable law.

The proposed rule further provides that the Board will not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by a federally-insured credit union solely because such agreement does not meet the "contemporaneous" requirement of sections 207(b)(9) and 208(a)(3) of the Act. 12 U.S.C. 1787(b)(9), 1788(a)(3).

The Board intends the proposed rule to apply to securitizations and participations engaged in by federally-insured credit unions while the rule is in effect, even if the rule is later amended or repealed. Paragraph (g) of the proposed rule provides that the rule will be effective unless repealed by the NCUA upon 30 days notice and opportunity for comment provided in the **Federal Register**. This paragraph also provides that any repeal or amendment of the rule by the NCUA will not apply to any transfer of financial assets made in connection with a securitization or participation that was in effect before such repeal or amendment. As a result of paragraph (g), where a transfer of financial assets in connection with a securitization or in the form of a participation is made by a credit union and the securitization or participation was in effect before any repeal or amendment of the rule by the NCUA, such transfer will continue to satisfy the legal isolation requirement notwithstanding the repeal or amendment.

Section 709.11

The Act authorizes federally-insured credit unions to become depositories of public money. 12 U.S.C. 1767 and 12 U.S.C. 1789a. Federal credit unions may receive payments, representing equity, on shares, share certificates and share draft accounts from nonmember units of federal, state, local or tribal governments and political subdivisions as enumerated in section 207(k)(2)(A) of the Act. 12 U.S.C. 1757(6). As a public depository, a federal credit union may pledge any of its assets to secure the payment of the public funds. 12 U.S.C. 1767(b).

NCUA received an inquiry as to the enforceability of security interests for public funds in federally-insured credit unions when the granting of security interests to protect public funds is authorized or required by state or federal law. On April 30, 1993, the FDIC addressed this precise issue in its "Statement of Policy Regarding Treatment of Security Interests After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver." The FDIC found that, provided the following five assumptions were met, when acting as conservator or receiver, it would not seek to avoid an otherwise legally enforceable and perfected security interest solely because the security agreement granting or creating such security interest did not meet the "contemporaneous" requirements of sections 11(d)((), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act.

In its analysis, FDIC assumed the following: (1) the agreement was undertaken in the ordinary course of business, not in contemplation of insolvency, and with no intent to hinder, delay or defraud the depository institution or its creditors; (2) the secured obligation represented a bona fide and arm's length transaction; (3) the secured party or parties were not insiders or affiliates of the depository institution; (4) the grant or creation of the security interest was for adequate consideration; and (5) the security agreement evidencing the security interest was in writing, approved by the depository institution's board of directors or loan committee (which approval is reflected in the minutes of a meeting of the board of directors or committee) and has been, continuously from the time of its execution, an official record of the depository institution. 58 FR 16833, March 31, 1993. Congress enacted the tenor of FDIC's policy statement in section 317 of the Riegle Community Development and Regulatory Improvement Act of 1994. 12 U.S.C. 1823(e)(2).

The Board believes it should limit its extraordinary authority as a conservator or liquidating agent with special provisions for security interests related to public funds. This will allow

federally-insured credit unions to offer governmental depositors the same protections the Federal Deposit Insurance Act provides them for deposits in banks. As such, the proposed rule establishes that the Board, acting as conservator or liquidating agent for a federally-insured credit union, will not seek to avoid an otherwise legally enforceable and perfected security interest in collateral for public funds solely because the security agreement granting or creating such security interest does not meet the contemporaneous requirement of sections 207(b)(9) and 208(a)(3) of the Federal Credit Union Act. The Board will not avoid a security interest because the collateral was not acquired contemporaneously with the approval and execution of the security agreement or because the collateral changed, increased or was subject to substitution from time to time.

Under NCUA's Interpretive Ruling and Policy Statement 87–2, the Board's general policy is to provide a 60-day comment period for a proposed regulation. In this case, the Board believes that a 30-day comment period will be adequate and is appropriate given that the proposal has the effect of providing greater flexibility for federally-insured credit unions.

Regulatory Procedures

Paperwork Reduction Act

NCUA has determined that the proposed amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any final regulation may have on a substantial number of small entities (primarily those under $1 million in assets). For purposes of this analysis, credit unions under $1 million in assets will be considered small entities. As of June 30, 1999, there were 1,690 such entities with a total of $807.3 million in assets, with an average asset size of $0.5 million. These small entities make up 15.6 percent of all credit unions, but only 0.2 percent of all credit union assets.

The proposed rule addresses the manner in which the Board will enforce its rights as a conservator or liquidating agent when evaluating financial assets transferred during a securitization or participation, or reviewing the collateralization of public funds. The proposed rule does not impose additional reporting or recordkeeping burdens that are not already a function of entering into such transactions. Therefore, the Board has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule, if adopted, will apply to all federally-insured credit unions, but it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed amendment is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 709

Credit unions, Liquidations.

By the National Credit Union Administration Board on February 24, 2000.

Becky Baker,

Secretary of the Board.

For the reasons set out in the preamble, the NCUA proposes to amend 12 CFR part 709 as follows:

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY-INSURED CREDIT UNIONS IN LIQUIDATION

1. The authority citation for part 709 is revised to read as follows:

Authority: 12 U.S.C. 1757; 12 U.S.C. 1766; 12 U.S.C. 1767; 12 U.S.C. 1786(h); 12 U.S.C. 1787; 12 U.S.C. 1788; 12 U.S.C. 1789; 12 U.S.C. 1789a.

2. Amend § 709.0 by revising the first sentence to read as follows:

§ 709.0 Scope.

The rules and procedures set forth in this part apply to charter revocations of federal credit unions under 12 U.S.C. 1787(a)(1)(A), (B), the involuntary liquidation and adjudication of creditor claims in all cases involving federally-insured credit unions, the treatment by the Board as conservator or liquidating agent of financial assets transferred in connection with a securitization or participation, and the treatment by the Board as conservator or liquidating agent of public funds held by a federally-insured credit union. * * *

3. Add § 709.10 to part 709 to read as follows:

§ 709.10 Treatment by conservator or liquidating agent of financial assets transferred in connection with a securitization or participation.

(a) *Definitions.* (1) *Beneficial interest* means debt or equity (or mixed) interests or obligations of any type issued by a special purpose entity that entitle their holders to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.

(2) *Financial asset* means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

(3) *Legal isolation* means that transferred financial assets have been put presumptively beyond the reach of the transferor, its creditors, a trustee in bankruptcy, or a receiver, either by a single transaction or a series of transactions taken as a whole.

(4) *Participation* means the transfer or assignment of an undivided interest in all or part of a loan or a lease from a seller, known as the "lead," to a buyer, known as the "participant," without recourse to the lead, under an agreement between the lead and the participant. *Without recourse* means that the participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation.

(5) *Securitization* means the issuance by a special purpose entity of beneficial interests:

(i) The most senior class of which at time of issuance is rated in one of the four highest categories assigned to long-

term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by one or more nationally recognized statistical rating organizations; or

(ii) Which are sold in transactions by an issuer not involving any public offering for purposes of section 4 of the Securities Act of 1933, as amended, or in transactions exempt from registration under such Act under 17 CFR 230.901 through 230.905 (Regulation S) thereunder (or any successor regulation).

(6) *Special purpose entity* means a trust, corporation, or other entity with a distinct standing at law separate from the federally-insured credit union that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets, and in activities related or incidental thereto, in connection with the issuance by such special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from such special purpose entity) of beneficial interests.

(b) The Board, by exercise of its authority to disaffirm or repudiate contracts under 12 U.S.C. 1787(c), will not reclaim, recover, or recharacterize as property of the credit union or the liquidation estate any financial assets transferred to another party by a federally-insured credit union in connection with a securitization or participation, provided that a transfer meets all conditions for sale accounting treatment under generally accepted accounting principles, other than the "legal isolation" condition addressed by this section.

(c) Paragraph (b) of this section will not apply unless the federally-insured credit union received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

(d) Paragraph (b) of this section will not be construed as waiving, limiting, or otherwise affecting the power of the Board, as conservator or liquidating agent, to disaffirm or repudiate any agreement imposing continuing obligations or duties upon the federally-insured credit union in conservatorship or the liquidation estate.

(e) Paragraph (b) of this section will not be construed as waiving, limiting or otherwise affecting the rights or powers of the Board to take any action or to exercise any power not specifically limited by this section, including, but not limited to, any rights, powers or remedies of the Board regarding transfers taken in contemplation of the credit union's insolvency or with the intent to hinder, delay, or defraud the credit union or the creditors of such credit union, or that is a fraudulent transfer under applicable law.

(f) The Board will not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by a federally-insured credit union solely because such agreement does not meet the "contemporaneous" requirement of sections 207(b)(9) and 208(a)(3) of the Federal Credit Union Act.

(g) This section may be repealed by the NCUA upon 30 days notice and opportunity for comment provided in the **Federal Register**, but any such repeal or amendment will not apply to any transfers of financial assets made in connection with a securitization or participation that was in effect before such repeal or modification. For purposes of this paragraph, a securitization would be in effect on the earliest date that the most senior level of beneficial interests is issued, and a participation would be in effect on the date that the parties executed the participation agreement.

4. Add § 709.11 to part 709 to read as follows:

§ 709.11 Treatment by conservator or liquidating agent of collateralized public funds.

An agreement to provide for the lawful collateralization of funds of a federal, state, or local governmental entity or of any depositor or member referred to in section 207(k)(2)(A) of the Act will not be deemed to be invalid under section 208(a)(3) of the Act solely because such agreement was not executed contemporaneously with the acquisition of collateral or with any changes in the collateral made in accordance with such agreement.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB37

Exemption for Commodity Pool Operators With Respect to Offerings to Qualified Eligible Participants; Exemption for Commodity Trading Advisors With Respect to Advising Qualified Eligible Clients

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to revise Commission Rule 4.7 ("Proposal").[1] Rule 4.7 provides a simplified regulatory framework for commodity pool operators ("CPOs") operating commodity pools consisting of certain highly accredited pool participants, termed "qualified eligible participants" ("QEPs"), and for commodity trading advisors ("CTAs") directing or guiding the commodity interest trading accounts of certain highly accredited clients, termed "qualified eligible clients" ("QECs"). The Proposal would revise the rule both substantively and technically.

The proposed substantive revisions are intended to make Rule 4.7 available to more CPOs and CTAs and under more situations, by bringing within the scope of the rule those additional persons who the Commission now believes should be included in the QEP and QEC definitions. The Proposal would add, among others, the following persons to the existing QEP and QEC definitions: Principals of the registered investment professionals currently defined as QEPs and QECs; certain registered securities investment advisers and their principals; "qualified purchasers" and "knowledgeable employees" as those terms are defined under the federal securities laws; certain employees of pools, CPOs and CTAs and certain of those employees' immediate family members; and trusts whose advisors and settlors are QEPs or QECs. In addition, the Proposal would make it easier for certain charitable organizations, trusts and collective investment vehicles to be QEPs and QECs, and, under certain circumstances, it would include persons who are not "United States persons" in the QEC definition. Certain of the proposed technical revisions, *i.e.*, those which would reorganize the rule, are intended

[1] Commission rules referred to herein are found at 17 CFR Ch. I.

to facilitate a determination of whether a person is (or is not) a QEP or a QEC. Other proposed technical revisions would conform various references in the existing rule to those in the proposed rule.

In light of the breadth of the proposed revisions, the Commission is publishing for comment in this release the entire text of Rule 4.7 as it would appear if the Commission's proposed amendments were adopted. The Commission also is including in this release a chart that compares the provisions of the proposed rule with the provisions of the existing rule.

DATES: Comments must be received on or before May 1, 2000.

ADDRESSES: Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to *secretary@cftc.gov*. Reference should be made to "Proposed Amendments to Rule 4.7."

FOR FURTHER INFORMATION CONTACT: Barbara Stern Gold, Assistant Chief Counsel, or Helene D. Schroeder, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581. Telephone: (202) 418–5450.

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I. Background

A. Regulation of CPOs and CTAs Under the Commodity Exchange Act

Section 4m(1) of Commodity Exchange Act (the "Act")[2] requires each person who comes within the definition of the term "commodity pool operator" in Section 1a(4) of the Act[3] or "commodity trading advisor" in Section 1a(5) of the Act[4] to register with the Commission as a CPO or CTA, respectively, or to satisfy the requirements for exemption from such registration.[5] Part 4 of the Commission regulations[6] relates to the operations and activities of CPOs and CTAs. Part 4 includes disclosure, reporting and recordkeeping requirements for CPOs (Rules 4.21 through 4.26) and disclosure and recordkeeping requirements for CTAs (Rules 4.31 through 4.36). In addition, regardless of registration status, Rules 4.20 and 4.30 prohibit certain activities by CPOs and CTAs, respectively, and Rule 4.41 sets forth certain advertising requirements for CPOs, CTAs and the principals thereof.

The Commission has endeavored to construct a regulatory framework for CPOs and CTAs that avoids unnecessary burdens while, at the same time, maintains customer protection. From time to time the Commission has refined that framework as appropriate to respond to changing market conditions and to simplify and to streamline the regulatory structure without creating regulatory gaps.[7]

B. Rule 4.7

In 1992, the Commission adopted Rule 4.7 as part of the Commission's ongoing program for review of its rules.[8] Rule 4.7(a) provides an exemption from certain disclosure, reporting and recordkeeping requirements for registered CPOs in connection with their operation of commodity pools whose participants are QEPs. The exemption provides relief from all of the specific disclosures required by Rules 4.21 and 4.24 through 4.26 and streamlines the reporting and recordkeeping requirements of Rules 4.22 and 4.23, respectively. In proposing Rule 4.7(a), the Commission stated that it had the dual objective, consistent with its customer protection role, of:

> (1) Reducing unnecessary regulatory prescriptions for CPOs offering pool participations only to persons who, based upon the qualifying criteria in the proposed rule, do not appear to need the full protections offered by the part 4 framework; and (2) coordinating its rules with those of the [Securities and Exchange Commission] applicable to private offerings exempt from registration pursuant to Section 4(2) of the Securities Act so that most qualifying offerings may operate under an exemption from otherwise applicable requirements of both the Commodity Exchange Act and the securities laws.[9]

Under Rule 4.7(a), however, a registered CPO operating a pool for which it has claimed Rule 4.7 relief ("exempt pool") remains subject to all other applicable requirements of the Act and the Commission's regulations issued thereunder with respect to the exempt pool and any other pool the CPO operates or intends to operate.[10] For example, it remains subject to the antifraud provisions of Sections 4b and 4*o* of the Act,[11] the prohibited activities and advertising provisions applicable to CPOs in Rules 4.20 and 4.41, respectively, and the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations. Moreover, if a CPO distributes an offering memorandum in connection with soliciting participations in an exempt pool, the memorandum must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading.[12]

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[2] 7 U.S.C. 6m(1) (1994).

[3] 7 U.S.C. 1a(4) (1994).

[4] 7 U.S.C. 1a(5) (1994).

[5] Rule 4.13 provides exemption from CPO registration for the persons specified therein. Section 4m(1) of the Act, 7 U.S.C. 6m(1) (1994), and Rule 4.14 provide exemption from CTA registration for the persons specified therein.

[6] Part 4 includes Rules 4.1–4.41.

[7] *See*, e.g., Rules 4.5, 4.12(b) and 4.14(a)(8), which provide exceptions from registration or particular Part 4 requirements based upon, among other things, the applicability of another federal regulatory framework to the CPO or CTA. Rule 4.5 was published at 50 FR 15868 (Apr. 23, 1985); Rules 4.12(b) and 4.14(a)(8) were published at 52 FR 41975 (Nov. 2, 1987).

[8] 57 FR 34853 (Aug. 7, 1992). The Commission made certain technical, non-substantive amendments to Rule 4.7 in 1995. See 60 FR 38146, 38182 (July 25, 1995). These amendments were necessary to conform certain of the references in Rule 4.7 to other Part 4 rules the Commission had renumbered in connection with revising the disclosure rules generally applicable to CPOs and CTAs.

[9] 57 FR 3148, 3150–51 (Jan. 28, 1992).

[10] Rule 4.7(a)(4).

[11] 7 U.S.C. 6b and 6*o* (1994).

[12] Rule 4.7(a)(2)(i)(A).

Rule 4.7(b) provides similar relief from the specific disclosure requirements of Rules 4.31 and 4.34 through 4.36 and recordkeeping requirements of Rule 4.33 to registered CTAs who direct or guide the commodity interest trading accounts of QECs ("exempt accounts"). In proposing Rule 4.7(b), the Commission stated that its rationale "is analogous to that for proposing relief for CPOs, *i.e.*, that QEPs are sophisticated investors who have the financial ability and experience necessary to understand the risks of futures trading and to obtain the information they require." [13]

Under Rule 4.7(b), a CTA that has claimed Rule 4.7 relief with respect to a QEC likewise remains subject to all other applicable requirements of the Act and the Commission's regulations with respect to the QEC and any other client to which the CTA provides or intends to provide commodity interest trading advice.[14] Similarly, if a CTA delivers a brochure or other disclosure statement to QECs, the brochure or statement must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading.[15]

C. Developments Subsequent to the Adoption of Rule 4.7

Subsequent to the adoption of Rule 4.7, and consistent with the purposes of the rule, Commission staff has permitted a CPO to treat as a QEP and a CTA to treat as a QEC certain persons who did not meet the specified criteria of the rule. Various of these letters are cited infra at Part III.

In addition, in 1996, Congress enacted the National Securities Markets Improvement Act of 1996 ("NSMIA").[16] Many collective investment vehicles trade both securities and commodity interests, and absent an exemption, they are subject to registration as an investment company under the Investment Company Act of 1940 (the "ICA") and their operators are subject to registration as a CPO under the Act.[17] Among other things, NSMIA added Section 3(c)(7) to the ICA [18] thereby providing an additional exemption from the definition of the term "investment company" under the ICA with respect to funds comprised exclusively of qualified purchasers ("QPs"). NSMIA also directed the Securities and Exchange Commission ("SEC") to, promulgate rules that would permit ownership by knowledgeable employees of the securities of the issuer (or affiliate) without loss of the issuer's definitional exemption under Section 3(c)(1) [19] or 3(c)(7) of the ICA. In 1997, the SEC adopted Rule 3c–5 under the ICA,[20] which defines the term "knowledgeable employee." [21]

Based upon staff's experience in administering Rule 4.7 and taking into account these recent developments in the federal securities laws, the Commission is proposing to expand the QEP and QEC definitions, which would have the effect of permitting registered CPOs and CTAs to claim relief in additional circumstances under Rule 4.7. In taking this action, the Commission has been guided by the purposes of Rule 4.7. As stated above, with respect to CPOs, these purposes are to: (1) Reduce unnecessary regulatory burdens with respect to persons who appear not to need the full protections of the Part 4 framework; and (2) coordinate the Commission's rules with certain federal securities laws.[22] As for CTAs, the rationale for relief "is analogous to that for * * * CPOs, *i.e.*, that QEPs are sophisticated investors who have the financial ability and experience necessary to understand the risks of futures trading and to obtain the information they require." [23]

The Commission also is proposing to reorganize Rule 4.7. In light of the breadth of the proposed actions, the Commission is publishing in this release the entire text of Rule 4.7 as it would appear if the proposed rule amendments were adopted. Moreover, to assist interested persons in providing comments on the Proposal, the Commission is including in this release a chart that compares the provisions of the proposed rule with the provisions of the existing rule. This chart is set forth below at Part IV.

II. Proposed Technical Revisions: Reorganization

A. Organization of Existing Rule 4.7

Commission staff's experience in administering Rule 4.7 has been that, as the rule currently is organized, CPOs and CTAs frequently have experienced difficulties in determining whether a particular person is a QEP or a QEC. Accordingly, the Commission is proposing to reorganize Rule 4.7 to facilitate these determinations.

Existing Rule 4.7 is divided into three paragraphs. Paragraph (a), captioned "Relief for commodity pool operators," contains provisions relating to the definition of a QEP, the relief a CPO may claim under Rule 4.7, the notice a CPO must file to claim exemption under Rule 4.7 and the effect the filing of the notice has on the CPO's other obligations under the Act and other provisions of the Commission's rules.[24] Paragraph (b), captioned "Relief for commodity trading advisors," contains similar provisions for CTAs. [25] Paragraph (c), captioned "Insignificant deviations from a term, condition or requirement of Rule 4.7," contains provisions relating to a failure to comply with Rule 4.7. Persons have found determining the availability of relief under Rule 4.7 difficult at times because of, among other things, the multiple definitional criteria and the manner in which the text is subdivided under the existing organization.

B. Proposed Reorganization

Under the Proposal, Rule 4.7 would be reorganized into four paragraphs. Proposed paragraph (a), which would be captioned "Definitions," would contain all of the definitions under Rule 4.7, including both the QEP and QEC definitions. Proposed paragraph (b), which would be captioned "Relief for commodity pool operators," would contain the other existing provisions applicable to CPOs (relief, notice and effect).[26] Proposed paragraph (c), which would be captioned "Relief for

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[13] 57 FR at 3151.

[14] Rule 4.7(b)(4).

[15] Rule 4.7(b)(2)(i)(A).

[16] Pub. L. No. 104–290, 110 Stat. 3416 (codified as amended in scattered sections of 15 U.S.C. and 29 U.S.C.).

[17] See, *e.g.*, Peavey Commodity Futures Funds I, II, III [1983–1984 Transfer Binder], Fed. Sec. L. Rep. (CCH) ¶ 77,511 (June 2, 1983). In discussing certain recent amendments to the federal securities laws concerning the jurisdiction of the SEC and the Commission, staff of the SEC's Division of Investment Management stated:

[A]n entity investing in [futures on certain securities or options on such futures] is not subject to the jurisdiction of the SEC under the Investment Company Act of 1940 unless such entity is otherwise an investment company under the Investment Company Act of 1940. (Emphasis in original.)

Id. at 78,651.

[18] 15 U.S.C. 80a–3(c)(7) (Supp. III 1997). Section 3(c)(7) is further discussed infra at Part III. B.2.c.

[19] 15 U.S.C. 80a–3(c)(1) (1994 & Supp. III 1997). Section 3(c)(1) of the ICA exempts from the definition of investment company any issuer that is not making and does not propose to make a public offering of its securities whose outstanding securities (other than short-term paper) are owned by not more than 100 beneficial owners.

[20] 17 CFR 270.3c–5 (1999).

[21] See 62 FR 17512 (Apr. 9, 1997). According to the SEC, Congress' purpose in directing the SEC to adopt this provision "appears to be to allow privately offered funds to offer persons who participate in the funds' management the opportunity to invest in the fund as a benefit of employment." Id. at 17514 n.22.

[22] See 57 FR at 3150–51.

[23] 23 Id. at 3151.

[24] Rules 4.7(a)(1), (2), (3) and (4), respectively.

[25] Rules 4.7(b)(1), (2), (3) and (4), respectively.

[26] Existing paragraphs (a)(2), (a)(3) and (a)(4) would be redesignated as paragraphs (b) and (b)(1), (b)(2) and (b)(3), respectively, with references to existing paragraphs of Rule 4.7 being conformed to refer to the proposed paragraphs.

commodity trading advisors," would contain the other existing provisions applicable to CTAs.[27] Proposed paragraph (d), which would be captioned "Insignificant deviations from a term, condition or requirement of Rule 4.7," would contain the text of existing paragraph (c).[28]

Proposed paragraph (a)(1) would contain the general definitions that would be used throughout Rule 4.7. Proposed paragraphs (a)(2) and (a)(3) would contain the QEP and QEC definitions, respectively, with each of those paragraphs being divided into persons who are QEPs or QECs irrespective of the Portfolio Requirement[29] and persons who must satisfy the Portfolio Requirement to be QEPs or QECs.

The Commission believes that this proposed reorganization will be of great assistance to CPOs and CTAs in determining the availability of Rule 4.7 to them.

III. Proposed Substantive Revisions: Section-by-Section Analysis

As stated above, paragraph (a) would contain all of the definitions employed in Rule 4.7. To assist CPOs and CTAs in their reading of this paragraph, the introductory text of this paragraph would explain that paragraph (a)(1) contains general definitions, paragraph (a)(2) defines the term "qualified eligible participant" and paragraph (a)(3) defines the term "qualified eligible client." The proposed introductory text also would make clear, as existing introductory text now does, that these definitions are "for the purposes of this section," *i.e.*, for the purposes of Rule 4.7 only.

A. General Definitions: Proposed Paragraphs (a)(1)(i) Through (vi)

Proposed paragraph (a)(1) would contain general definitions, *i.e.*, those other than the QEP and QEC definitions, which would be set forth alphabetically. Certain of the rules in this paragraph, those defining "exempt account" and "exempt pool,"[30] would be taken intact from existing text,[31] as would the rule defining "United States."[32] Other rules in this paragraph also would be taken from existing text, but they would have certain technical, non-substantive revisions made to them. These rules would define the terms "Non-United States person"[33] and "Portfolio Requirement."[34]

The term "Portfolio Requirement" would be set forth in two parts and would be taken intact from existing text, except that the introductory text would contain certain technical revisions necessary as a result of the proposed reorganization of Rule 4.7. The first part, (A), would pertain to QEPs and the second part, (B), would pertain to QECs. The need for, in effect, two separate definitions of "Portfolio Requirement" is due to differences in activities between the two categories of registrants for whom Rule 4.7 provides relief: CPOs operate pools and sell participations therein, whereas CTAs provide advice and open trading accounts for clients. In proposing the portfolio requirement, the Commission explained that using the "accredited investor" definition in Rule 501 under the Securities Act of 1933 ("Securities Act"), 17 CFR 230.501 (1999), as a foundation, the Commission intended to define categories of QEPs and QECs based upon objective indicia that persons—

> possess either the investment expertise and experience necessary to understand the risks involved, as evidenced by the registered status of certain investment professionals [discussed at Part III.B.2.a, infra, who need not satisfy the portfolio requirement to be defined as a QEP or a QEC] or have an investment portfolio of a size sufficient to indicate that the [person] has substantial investment experience and thus a high degree of sophistication with regard to investments as well as financial resources to withstand the risks of their investments.[35]

The remaining provision in this paragraph would be entirely new. It would be the definition of the term "affiliate" of a specified person or a person "affiliated" with the specified person.[36] This definition is being proposed in furtherance of the Commission's goals of providing relief under Rule 4.7 to appropriate persons and of harmonizing its rules with those of the SEC. Specifically, the Commission is proposing that for the purposes of Rule 4.7, an "affiliate" or a person "affiliated" with a specified person means "a person that directly or indirectly through one or more persons, controls, is controlled by, or is under common control with the specified person."[37] The proposed definition is based upon the "affiliate" definition in Rule 501 of Regulation D under the Securities Act of 1933 ("Securities Act")[38] and the "affiliated person" definition in Section 2(a)(3)(C) of the ICA.[39] As stated above, when it adopted Rule 4.7 the Commission used the "accredited investor" definition in Rule 501 under Regulation D as a foundation for determining the persons who would come within the QEP and QEC definitions. As also stated above, the Commission is now proposing amendments to the QEP and QEC definitions based upon, among other things, certain amendments to the ICA. Accordingly, the Commission believes that these two sources provide appropriate criteria for the purposes of this rule proposal.[40]

B. Persons Who Are QEPs and QECs Irrespective of the Portfolio Requirement: Proposed Paragraphs (a)(2)(i)(A) Through (L) for CPOs and (a)(3)(i)(A) Through (F) for CTAs

1. Summary Overview of the Proposed Revisions

Proposed paragraphs (a)(2)(i) and (a)(3)(i) would include in the QEP and QEC definitions, respectively, persons who qualify as QEPs and QECs irrespective of whether they satisfy the Portfolio Requirement. Some of these definitions would be based upon

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[27] Existing paragraphs (b)(2), (b)(3) and (b)(4) would be redesignated as paragraphs (c) and (c)(1), (c)(2) and (c)(3), respectively, also with conforming references.

[28] The text of proposed paragraph (d) similarly contains conforming references.

[29] The term "Portfolio Requirement," which is not separately defined in existing Rule 4.7, would be defined in proposed paragraphs (a)(1)(v)(A) for QEPs and (a)(1)(v)(B) for QECs. See infra at Part III.A. These definitions would be taken from existing text.

[30] Proposed Paragraphs (a)(1)(ii) and (a)(1)(iii), respectively.

[31] Existing paragraphs (b)(1)(i) and (a)(1)(i), respectively.

[32] Proposed Paragraph (a)(1)(vi), which would be taken from existing paragraph (a)(1)(ii)(C).

[33] Proposed paragraph (a)(1)(iv). Existing paragraph (a)(1)(ii)(C) defines as a QEP "a person that is not a United States person" and lists those persons who are not considered to be "United States persons."

[34] Proposed paragraph (a)(1)(v). The portfolio requirements for QEPs and QECs currently are set forth in existing paragraphs (a)(1)(ii)(B)(1)(i) through (iii) and (b)(1)(ii)(B)(1)(i) through (iii), respectively.

[35] 51 FR at 3151–52.

[36] Proposed paragraph (a)(1)(i). As discussed *infra* at Part III.B.2.e., the Proposal would provide that certain affiliates of CPOs and CTAs are QEPs and QECs, respectively. See, *e.g.*, CFTC Staff Letter No. 98–35 [1996–1998 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 27,329 (May 12, 1998) (CPO permitted to treat as QEPs the employees of its affiliate); CFTC Staff Letter No. 98–10, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,261 (Feb. 5, 1998) (CPO permitted to treat as QEPs the principals of an affiliate of the CPO).

[37] See, *e.g.*, CFTC Staff Letter No. 98–10 at 46,144, n.2 (CPO and its affiliate were related by common ownership in that they were both owned by the same persons).

[38] 17 CFR 230.501(b) (1999).

[39] 15 USC 80a–2(a)(3)(C) (1994). See also *infra* at Part III.B.2.d for the text of the definition of the term "affiliated person."

[40] In making this proposal, the Commission considered the alternative criteria included in the definition of "affiliated person" in the ICA, *i.e.*, in Sections 2(a)(3)(A), (B), (D) and (E), and in particular, criteria such as percentage of ownership. It decided that for the purposes of Rule 4.7, "control" is a better gauge of affiliation and further, that an arbitrary ownership threshold might be too restrictive for the purposes of the rule.

existing text and others would be entirely new. The introductory text that would apply to these definitions would be taken from existing text.[41]

With respect to QEPs in particular, the Proposal would retain the four classes of investment professionals currently defined as QEPs, and it also would include their principals as QEPs.[42] Entirely new rules would include in the QEP definition such persons as investment advisers, qualified purchasers, knowledgeable employees, certain other employees, family members of persons involved with the pool, certain trusts, and certain organizations within the meaning of Section 501(c)(3) of the Internal Revenue Code ("Section 501(c)(3) Organizations").[43]

Other rules, which would include in the QEP definition Non-United States persons and entities in which all of the unit owners or participants are QEPs, would be based upon existing text. Currently, the requirement that these persons be QEPs for a CPO to claim relief under Rule 4.7 is not qualified by a "who the commodity pool operator reasonably believes" standard.[44] Due to the proposed reorganization of Rule 4.7, however, a CPO who seeks to treat any of these persons as QEPs would have to reasonably believe that the person is a Non-United States person or that it is an entity comprised of QEPs. The Commission does not believe that this proposed revision should impose any additional burdens on CPOs, because it is a sound business practice that they likely have been following, notwithstanding the absence of an explicit requirement in existing text. Nonetheless, the Commission specifically requests comment on this proposed revision.

As for QECs, the text of the Proposal similarly would be taken from the current text of Rule 4.7[45] and would continue to incorporate by reference persons who qualify as QEPs irrespective of whether they satisfy the Portfolio Requirement. Because of the proposed addition of several persons who would qualify as QEPs irrespective of the Portfolio Requirement and because the rationale for providing relief to CTAs is analogous to that for CPOs, the Commission is proposing generally to include as QECs the same persons it is proposing to include as QEPs. Entirely new rules also would include in the QEC definition such persons as certain employees of the CTA, family members of those employees, and certain trusts. As with CPOs, due to the proposed reorganization of Rule 4.7, CTAs who seek to qualify such persons as QECs would have to reasonably believe that these persons meet the QEC criteria. Here too, and for the reasons provided above with respect to CPOs, the Commission does not believe that this proposed revision should impose any additional burdens on CTAs.

2. The Proposed Revisions

a. Principals of Certain Registered Investment Professionals—Proposed Paragraphs (a)(2)(i)(A) Through (D) and (a)(3)(i)(A)

Rule 4.7 would continue to include in the QEP and QEC definitions the four classes of registered investment professionals specified in the existing rule,[46] and it would be amended to include the principals of such persons. For the purposes of Part 4, the term "principal" is defined in Rule 4.10(e) to mean:

(i) Any person including, but not limited to, a sole proprietor, general partner, officer or director, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of the entity;

(ii) Any holder or any beneficial owner of ten percent or more of the outstanding shares of any class of stock of the entity; and

(iii) Any person who has contributed ten percent or more of the capital of the entity.

When it proposed Rule 4.7, the Commission noted that these registered investment professionals "may be presumed to have sufficient expertise to evaluate the risks and benefits of investing in a commodity pool."[47] Commission staff's experience has been that most of the persons comprising the classes of investment professionals listed in Rules 4.7(a) and 4.7(b) have principals, inasmuch as these persons typically are not natural persons. Commission staff further has found that it is mainly the principals of these investment professionals, and not the investment professionals themselves, who seek to participate in an exempt pool or open an exempt account.[48] Accordingly, the Commission is proposing to include the principals of these investment professionals as QEPs and QECs.

b. Registered Investment Advisers and Their Principals—Proposed Paragraphs (a)(2)(i)(E) and (a)(3)(i)(A)

As stated above, the Commission included the investment professionals specified in existing Rule 4.7 as QEPs and QECs because they "may be presumed to have sufficient expertise to evaluate the risks and benefits of investing in a commodity pool" (or opening a managed account). Upon consideration, the Commission believes that certain investment advisers also may be presumed to have such expertise as to come within the purpose of the QEP and QEC definitions and that, for the reasons provided above with respect to the Commission's proposal to include as QEPs and QECs the principals of the investment professionals defined as QEPs and QECs,[49] the principals of these investment advisers also should be included in the QEP and QEC definitions.[50]

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[41] Because of the proposed reorganization of Rule 4.7, the introductory text of existing paragraphs (a)(1)(ii)(A) and (b)(1)(ii)(A) would be set forth in proposed paragraphs (a)(2)(i) and (a)(3)(i), respectively.

[42] To make clear that the existing eligibility criteria of registration and two years' activity are alternate to and independent of the assets under management criterion, proposed paragraphs (a)(2)(i)(C) and (D) each present these criteria as (1) and (2). The Commission also is proposing to add a reference to Section 4m of the Act in these paragraphs to clarify the registration qualifications of CPOs and CTAs.

[43] 26 U.S.C. 501(c)(3)(1994) provides an exemption from federal income taxation for the following persons:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided * * *), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Currently, the rule provides that Section 501(c)(3) Organizations qualify as QEPs if they satisfy the Portfolio Requirement (existing paragraph (a)(1)(ii)(B)(2)(vii)). This would be retained, but redesignated (proposed paragraph (a)(2)(ii)(G)). See infra at Part III.B.2.h.

[44] See existing paragraph (a)(1)(ii)(A).

[45] As discussed above, however, the introductory text would be redesignated as paragraph (a)(3)(i).

[46] Existing paragraphs (a)(1)(ii)(A)(1) through (4).

[47] 57 FR at 3152.

[48] See, *e.g.*, CFTC Staff Letter No. 98–65, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,413 (Aug. 24, 1998) (two CPOs permitted to treat as QEPs the principals of the CPOs); CFTC Staff Letter No. 96–36 [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,686 (May 2, 1996) (CPO permitted to treat as a QEP a vice president of the CPO who was the managing director and principal of a broker-dealer subsidiary of the CPO).

[49] See supra at Part III.B.2.a.

[50] See, *e.g.*, CFTC Staff Letter No. 94–63, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,152 (March 24, 1994) (CPO permitted to treat the principal of an investment adviser as a QEP). These proposed changes, and the proposed inclusion as QEPs and QECs of, among other persons, qualified purchasers and knowledgeable

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Specifically, these new rules would provide that, to be a QEP or a QEC, an investment adviser must be registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 ("IAA")[51] or pursuant to the laws of any state. Additionally, the investment adviser: (1) Must have been registered and active as such for two years; or (2) must provide securities investment advice to securities accounts which, in the aggregate, have total assets in excess of $5 million on deposit with one or more registered securities brokers. These criteria would be consistent with the current criteria applicable to investment professionals in general[52] and CTAs in particular.[53]

c. Qualified Purchasers—Proposed Paragraphs (a)(2)(i)(F) and (a)(3)(i)(A)

As previously stated, NSMIA added Section 3(c)(7) to the ICA, which provides an exemption from the definition of the term "investment company" to issuers whose securities are held exclusively[54] by persons who come within the definition of the term "qualified purchaser" set forth in Section 2(a)(51)(A)[55] of the ICA. This section defines a QP as:

(i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 80a–3(c)(7) of this title with that person's qualified purchaser spouse) who owns not less than $5,000,000 in investments, as defined by the Commission;

(ii) any company that owns not less than $5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;

(iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii) or (iv); or

(iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25,000,000 in investments.

Section 3(c)(7) was added to the ICA for the purposes of eliminating certain regulatory impediments for private investment pools, such as hedge funds and venture capital firms raising capital for new and growing businesses.[56]

The Commission is proposing to include QPs in the QEP and QEC definitions for two reasons. First, the Commission believes that persons defined as QPs, like those currently defined as QEPs and QECs, are sophisticated investors who have the financial ability and experience necessary to understand the risks of commodity interest trading and to obtain the information they require. Second, treating QPs as QEPs would further the Commission's objective in proposing Rule 4.7 to coordinate its rules with those of the SEC applicable to private offerings exempt from registration under the Securities Act.[57]

d. Knowledgeable Employees—Proposed Paragraphs (a)(2)(i)(G) and (a)(3)(i)(A)

As also previously stated, NSMIA directed the SEC to promulgate rules that would permit the ownership by knowledgeable employees of the securities of an issuer (or an affiliated person of the issuer) without loss of the issuer's exemption from the investment company definition under Section 3(c)(1) or 3(c)(7) of the ICA. In 1997, the SEC adopted Rule 3c–5 under the ICA, which defines the term "knowledgeable employee" as a natural person who is:

(i) An Executive Officer,[58] director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the Covered Company[59] or an Affiliated Management Person[60] of the Covered Company; or

(ii) An employee of the Covered Company or an Affiliated Management Person of the Covered Company (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of such Covered Company, other Covered Companies, or investment companies the investment activities of which are managed by such Affiliated Management Person of the Covered Company, provided that such employee has been performing such functions and duties for or on behalf of the Covered Company or the Affiliated Management Person of the Covered Company, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(A) Any person directly or indirectly owning, controlling, or holding with power to vote 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by or under common control with, such other person. (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

Rule 3c–5(a)(1) further provides that "[f]or purposes of this definition, the term 'investment company' as used in section 2(a)(3) of the Act includes a Covered Company."

In furtherance of the Commission's goal of providing relief under Rule 4.7 to appropriate persons and of harmonizing its rules with those of the SEC, the Commission is proposing to include knowledgeable employees in the QEP and QEC definitions.

In this regard, the Commission notes that in April of 1999, staff of the SEC's Division of Investment Management responded to a series of inquiries from the Subcommittee on Private Investment Entities of the Federal Regulation of Securities Committee, Section of Business Law of the American Bar Association ("ABA") concerning the scope of both the QP and knowledgeable employee definitions.[61] With respect to knowledgeable employees in particular, SEC staff, among other things, clarified the criterion that a knowledgeable employee "participate in investment activities." In particular, SEC staff stated that "[t]he rule * * * is clearly intended to encompass persons who actively participate in the management of a Fund's investments. The rule is not intended to include employees who

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employees, would cause existing paragraph (a)(1)(ii)(A)(5) to be redesignated as paragraph (a)(2)(i)(H)(1) and paragraph (a)(3)(i)(A) to refer to "[a] person described in paragraph (a)(2)(i)(A), (B), (C), (D), (E), (F), (G), (J) or (K) of this section."

[51] 15 U.S.C. 80b–3 (1994 & Supp. III 1997).

[52] For example, brokers or dealers who are registered pursuant to section 15 of the Securities Exchange Act of 1934 are defined as QEPs and QECs under existing paragraphs (a)(1)(ii)(A)(2) and (b)(1)(ii)(A), respectively.

[53] See existing paragraphs (a)(1)(ii)(A)(4) and (b)(1)(ii)(A).

[54] But see supra at Part I.C. (knowledgeable employees may acquire the securities of Section 3(c)(7) and 3(c)(1) funds).

[55] 15 U.S.C. 80a–2(a)(51)(A) (Supp. III 1997).

[56] H.R. Rep. No. 622, 104th Cong., 2d Sess., at 16 (1996), reprinted in 1996 U.S.C.C.A.N. 3877.

[57] A private placement under the Securities Act is a prerequisite to eligibility under Sections 3(c)(1) and 3(c)(7) of the ICA.

[58] Rule 3c–(a)(3) further defines an "Executive Officer" as "the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person wo performs similar policy-making functions, for a covered Company or for an Affiliated Management Person of the Covered Company."

[59] Rule 3c–5(a)(2) defines a "Covered Company" as a Section 3(c)(1) Company or a Section 3(c)(7) Company.

[60] Rule 3c–5(ak)(1) defines an "Affiliated Management Person" of the Covered Company as an "an affiliated person, as such term is defined in section 2(a)(3) of the Act [15 USC 80a–2(a)(3)], that manages the investment activities of a Covered Company." Section 2(a)(3) of the ICA, 15 U.S.C. 80a–2(a)(3)(1994), defines an "affiliated person" of another person as:

[61] American Bar Ass'n, [Current Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 7,548 (April 22, 1999) (the "ABA Letter").

merely obtain information regarding the investment activities of these Funds."[62] SEC staff further stated that the following types of employees described in the ABA Letter generally would not qualify as knowledgeable employees within the meaning of the rule: marketing and investor relations professionals; attorneys who participate in preparing offering documents and negotiating related agreements, and who provide advice concerning ongoing fund investments, operation and compliance matters; registered brokers and traders for a related broker-dealer; and financial, compliance, operational and accounting officers who have management responsibilities. As for research analysts, SEC staff stated that, as a general matter, unless the research analyst "researches all potential portfolio investments and provides recommendations to the portfolio manager," the analyst would not qualify as a knowledgeable employee.

Further with respect to knowledgeable employees, in adopting Rule 3c–5 under the ICA the SEC clarified the criterion that a knowledgeable employee must have been performing the requisite functions or duties "for at least 12 months." The SEC stated:

> The rule, as proposed, would have required employees who are knowledgeable employees by virtue of their participation in investment activities to have been engaged in these activities on behalf of the fund or the Management Affiliate for a period of at least 12 months. Several commenters suggested that the 12-month period would unnecessarily limit the ability of new employees who had equivalent experience with their previous employer to invest in the fund. The Commission has concluded that it is not necessary to require that an employee work for the particular fund or Management Affiliate for the entire 12-month period as long as the employee has the requisite experience to appreciate the risks of investing in the fund. The rule, as adopted, therefore includes as knowledgeable employees those employees who performed substantially similar functions or duties for or on behalf of another person during the preceding 12 months.[63]

The Commission intends to follow interpretations issued by the SEC and its staff of the QP and knowledgeable employee definitions.[64] The Commission has the right further to interpret or to amend Rule 4.7 to exclude from the QEP and QEC definitions any person that the SEC or its staff found to be a QP or knowledgeable employee or to include in the QEP and QEC definitions any person the SEC or its staff excluded from the QP or knowledgeable employee definition, if such action is found to be necessary to effectuate the purposes of the Act and the Commission's regulations. The Commission expects that it would exercise this right infrequently.

e. The CPO, CTA and Investment Adviser of the Exempt Pool and Their Affiliates; Affiliates of the CTA of the Exempt Account—Proposed Paragraphs (a)(2)(i)(H)(1) and (a)(3)(i)(B)(1)

Rule 4.7 currently defines as a QEP the CPO or the CTA of "the exempt pool offered or sold."[65] The Proposal would incorporate this text and it also would include in the QEP definition an investment adviser of the exempt pool and an affiliate of the CPO, CTA or investment adviser.[66]

When it included CTAs of exempt pools in the QEC definition the Commission explained that:

> [s]ince CTAs as well as CPOs may take an interest in a pool being offered, absent [inclusion of CTAs in the QEP definition], this may result in the pool losing its qualified status as a CTA client by virtue of such participation. The inclusion of this provision avoids the discrepancy that would otherwise exist.[67]

Commission staff has found that Rule 4.7(a) exempt pools typically trade both commodity interests and securities, and thus may have CPOs, CTAs and securities investment advisers associated with them. Since the investment adviser and affiliates of the CTA, CPO and investment adviser likewise may take an interest in the pool, the Commission is proposing to include each of these persons in the QEP definition.

An affiliate of a CTA similarly may have an account traded by the CTA. Accordingly, the Commission also is proposing to include in the QEC definition an affiliate of the CTA of the exempt account.

f. Principals, Employees and Family Members—Proposed Paragraphs (a)(2)(i)(H)(2) through (5) and (a)(3)(i)(B)(2) through (5)

The Proposal would include in the QEP and QEC definitions persons such as the principals and employees of CPOs and CTAs, along with certain of their family members. Each of these proposed rules is discussed separately below. Preliminarily, however, it should be noted that because certain of these rules[68] would be based upon the "knowledgeable employee" definition, the "12 months" and "24 months" referred to therein would refer to the preceding 12 months and 24 months, as the case may be. Thus, an employee would be a QEP or QEC under these rules if it has worked the requisite time period for a relevant employer, discussed below—who need not be the CPO or CTA seeking to treat the employee as a QEP or QEC.

i. Principals—Proposed Paragraphs (a)(2)(i)(H)(2) and (a)(3)(i)(B)(2)

The Proposal would include in the QEP definition a principal of the exempt pool, the CPO, the CTA or the investment adviser of the exempt pool, or a principal of an affiliate of the pool, CPO, CTA or investment adviser.[69] It similarly would include in the QEC definition a principal of the CTA of the exempt account or of an affiliate of the CTA.[70] These rules would be parallel to, and would be based upon the same rationale underlying, the rules to include in the QEP and QEC definitions the principals of those persons comprising the classes of investment professionals who currently are, and under the Proposal would continue to be, QEPs and QECs.[71]

ii. Employees Involved in Investment Management Activities—Proposed Paragraphs (a)(2)(i)(H)(3) and (a)(3)(i)(B)(3)

The Proposal would include in the QEP definition an employee of the exempt pool, the CPO, the CTA or the investment adviser of the exempt pool, or of an affiliate of the pool, CPO, CTA or investment adviser, provided that the employee: (1) In connection with his or her regular functions or duties participates in the investment activities of the exempt pool or other commodity pools operated by the CPO of the exempt pool or other accounts advised by the CTA or the investment adviser of the exempt pool, or by an affiliate; and (2) has been performing such functions

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[62] ABA Letter at 78,746 (footnote omitted).

[63] 62 FR at 17524–25.

[64] In this regard, however, SEC staff has stated that whether an employee "actively participates in the investment activities of a Fund is a factual determination that must be made on a case-by-case basis by the Fund," and that consequently, SEC staff generally will not entertain any requests on its views "with respect to whether a particular employee or type of employee meets this aspect of the knowledgeable employee definition." ABA Letter at 78,746.

Proposed Paragraphs (a)(2)(i) and (a)(3)(i), which are based on existing paragraphs (a)(1)(ii)(A) and (b)(1)(ii)(A), similarly require CPOs and CTAs, respectively, to make a factual determination, *i.e.*, to "reasonably believe" that a person does in fact satisfy the requisite QEP or QEC criteria.

[65] Existing paragraph (a)(1)(ii)(A)(5).

[66] The term "affiliate" is discussed supra at Part III.A.

[67] 57 FR at 34855.

[68] Proposed paragraphs (a)(2)(i)(H)(3) and (4) and (a)(3)(i)(B)(3) and (4).

[69] Because many collective investment vehicles trade both commodity interests and securities, and they would have both CTAs and investment advisers providing trading advice to them.

[70] See supra at Part III.B.2.a. for a discussion of the term "principal."

[71] See, *e.g.*, CFTC Staff Letter No. 98–69, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,438 (Sept. 24, 1998) (CPO permitted to treat as QEPs the principals of the CPO).

or duties for the employer, or substantially similar functions or duties for another person engaged in providing commodity interest, securities or other financial services, for at least 12 months. This rule specifically would exclude employees who perform solely clerical, secretarial or administrative functions.

In proposing this rule, the Commission is seeking to harmonize its rules with those of the SEC. Thus, the employee that would qualify under this rule must, for example, "actively participate" in the management of the pool's investments. The rule would not include as QEPs employees such as financial, compliance and operational professionals, brokers, traders, or attorneys who merely obtain information regarding the investments, nor would it include research analysts, unless such persons research all potential investments for the pool and provide their recommendations to the person who makes the investment decisions for the pool. The foregoing is intended to ensure that if the employee of a person specified under the rule would qualify as a knowledgeable employee but for the fact that the employee is an employee of a commodity pool, its operator, advisor or affiliate and is not an employee of a Covered Company or an Affiliated Management Person, then the employee may be considered a QEP.

Similarly, the Proposal would include in the QEC definition an employee of the CTA of the exempt account or of an affiliate of the CTA provided that the employee: (1) In connection with his or her regular functions and duties participates in the management of the investment activities of the CTA or the affiliate; and (2) has been performing such functions and duties for the employer or substantially similar functions or duties for another person engaged in providing commodity interest, securities or other financial services for at least 12 months.[72] Here, too, the rule specifically would exclude employees who perform solely clerical, secretarial or administrative functions. The Commission intends that this rule would be applicable under the same types of situations as discussed above with respect to certain employees as QEPs and thus, an employee who merely obtains information about the investment activities of a CTA or an affiliate, but does not "actively participate" in such investment activities, would not qualify as a QEC under this rule.[73]

iii. Other Employees-Proposed Paragraphs (a)(2)(i)(H)(4) and (a)(3)(i)(B)(4)

The Proposal also would include in the QEP definition any other employee of the exempt pool, CPO, CTA or investment adviser of the exempt pool, or of an affiliate of the pool, CPO, CTA or investment adviser, provided the employee: (1) Is an accredited investor as defined in Rule 501(a)(5)[74] or 501(a)(6)[75] under the Securities Act ("Accredited Investor"); and (2) has been employed by such person, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months. Employees who perform solely clerical, secretarial or administrative functions would be expressly excluded from this rule. Thus, the financial, compliance and operational professionals, brokers, traders and attorneys who would not qualify as QEPs because they do not "actively participate" in investment management activities would qualify as QEPs under this rule if they are Accredited Investors and have two years of relevant experience. A research analyst responsible for performing research with respect to one commodity or one market also would qualify under this provision, if the employee otherwise meets the requirements of the proposed rule, *i.e.*, that he or she has two years of relevant experience and is an Accredited Investor.

Similarly, the Proposal would include in the QEC definition any other employee of the CTA of the exempt account or of an affiliate of the CTA (other than employees performing solely clerical, secretarial or administrative functions), provided that the employee: (1) Is an Accredited Investor; and (2) has been employed by such person, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months.

The Commission is proposing these new rules because it believes that defining as QEPs and QECs persons who satisfy the foregoing criteria would be consistent with the intent of Rule 4.7 of reducing unnecessary regulatory prescriptions for CPOs and CTAs with respect to persons who do not appear to need the full protections offered by the Part 4 framework.[76]

iv. Family Members—Proposed Paragraphs (a)(2)(i)(H)(5) and (a)(3)(i)(B)(5)

The Proposal further would include in the QEP definition the spouse, child, sibling or parent of a person who is associated with the exempt pool in which the family member seeks to invest,[77] provided that an investment in the exempt pool by any such family member is made with the knowledge and at the direction of the person. Similarly, the Proposal would include in the QEC definition the spouse, child, sibling or parent of the CTA of the exempt account or of a person who is associated with the CTA, provided that the establishment of an exempt account by any such family member is made with the knowledge and at the direction of the trading advisor or person. Given the very limited scope of these definitions, the Commission further is proposing that the family member would be a QEP or a QEC solely for the purposes of the applicable paragraph. Thus, for example, the sibling of a person who is associated with the exempt pool (*e.g.*, the person is the sole owner of the pool's CPO) would not be a QEP for the purposes of any other provision under Rule 4.7.[78]

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[72] The courts generally have held that an account that trades solely commodity interests is not a "security" within the meaning of the federal securities laws. See, *e.g.*, Salcer v. Merrill Lynch, Pierce, Fenner and Smith Inc., 682 F.2d 459 (3d Cir. 1982); Hirk v. Agri-Research Council, Inc., 561 F.2d 96 (7th Cir. 1977). Accordingly, such an account would not have an investment adviser. For this reason, proposed paragraphs (a)(3)(i)(B)(1) through (5) do not refer to an investment adviser of the exempt account (or to a principal, affiliate or employee of an investment adviser of the exempt account).

[73] Here, too, the Commission intends that a determination of whether an employee is a QEP or a QEC under proposed paragraph (a)(2)(i)(H)(3) or (a)(3)(i)(B)(3), respectively, would be made on a case-by-case basis by the CPO of the exempt pool or the CTA of the exempt account-based on the "reasonably believes" standard set forth in proposed paragraphs (a)(2)(i) and (a)(3)(i), respectively.

[74] Rule 501(a)(5) under the Securities Act defines an accredited investor as:

Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase [of securities exempt from registration under the Securities Act] exceeds $1,000,000.

[75] Rule 501(a)(6) under the Securities Act defines an accredited investor as:

Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

[76] See 57 FR at 3150. See also CFTC Staff Letter No. 98–14, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,265 (Feb. 27, 1998) (CPO permitted to treat as QEPs certain employees of the CPO).

[77] See, *e.g.*, CFTC Staff Letter No. 98–47, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,383 (July 22, 1998) (CPO permitted to treat as QEPs the parents of the sole owner, managing member and principal of a CPO).

[78] For example, the sibling would not be a QEP under proposed paragraph (a)(2)(ii)(L), which would require, among other things, that for a pool to be a QEP, the pool's participation in the exempt pool must be directed by a QEP.

g. Trusts—Proposed Paragraphs (a)(2)(i)(I) and (a)(3)(i)(C)

The Proposal would provide alternate criteria for trusts to qualify as QEPs and QECs. Rule 4.7 currently provides that trusts qualify as QEPs and QECs if, among other things, they meet a portfolio requirement and have total assets in excess of $5 million.[79] In the course of administering Rule 4.7, Commission staff has become aware of situations where a trust cannot meet the existing QEP criteria for trusts, but the person who makes the investment decisions for the trust and the person who has contributed assets to the trust is a QEP. Because the decision-maker and settlor of a trust are critically integral to the trust, staff has permitted CPOs to treat trusts as QEPs in these situations.[80] The proposed rules would include these trusts as QEPs and QECs, provided they were not formed for the purpose of participating in an exempt pool or opening an exempt account.

These proposed rules are modeled after Section 2(a)(51)(A)(iii) of the ICA, which, as stated above, defines as QPs trusts that meet similar criteria, except that a trust qualifies as a QP under Section 2(a)(51)(A)(iii) if it was not formed for the specific purpose of "acquiring the securities of the exempt issuer." Neither the Act nor the Commission's regulations, however, contain provisions directly relating to the acquisition of securities, or the "securities of an exempt issuer." Accordingly, the Proposal would provide that trusts not formed for the specific purpose of "participating in the exempt pool" or "opening an exempt account" would be QEPs or QECs, respectively.

h. Section 501(c)(3) Organizations—Proposed Paragraphs (a)(2)(i)(J) and (a)(3)(i)(A)

The Proposal would provide alternate criteria for Section 501(c)(3) Organizations to qualify as QEPs and QECs. Rule 4.7 currently provides that such organizations qualify as QEPs and QECs if they meet a portfolio requirement and have total assets in excess of $5,000,000.[81] Here, too, Commission staff has become aware of situations where a Section 501(c)(3) Organization itself cannot meet the requisite QEP criteria, but the person who makes the investment decisions for the organization and the person who established the organization is a QEP. Because the decision-maker and person who has established the organization are critically integral to the organization, staff has permitted CPOs to treat Section 501(c)(3) Organizations as QEPs in these situations.[82] The proposed rules would include these organizations as QEPs and QECs.

i. Non-United States Persons as QECs—Proposed Paragraph (a)(3)(i)(A)(2)

The Proposal would include, under certain circumstances, a Non-United States person in the QEC definition.[83] Specifically, a Non-United States person would come within the QEC definition where the CTA who seeks to direct or guide the commodity interest trading account of the person: (1) Provides commodity interest trading advice solely to persons who are QECs (including persons who are Non-United States persons); and (2) has filed a notice of claim for exemption pursuant to proposed Rule 4.7(c).

Currently, persons who are not United States persons are QEPs,[84] but they are not also QECs. In adopting Rule 4.7 the Commission stated that it had defined persons who are not United States persons as QEPs with the objective of facilitating multijurisdictional offerings,[85] an objective that is not applicable in the context of CTAs and individual managed accounts. In this regard, the Commission noted that Rule 4.7 would provide relief to CTAs that would not be generally available to investment advisers under the securities laws and that therefore investment advisers advising QECs would be obligated to deliver a brochure to such clients. On this basis, the Commission determined not to include persons who were not United States persons as QECs. The Commission further stated that inclusion of these persons as QECs without regard to qualifying criteria should await further experience with the QEC concept.[86]

Currently, then, a CTA is ineligible for relief under Rule 4.7 with respect to those of its advisory clients who are Non-United States persons (and who are not otherwise QECs). In the past, Commission staff has provided exemptive relief from the specific Disclosure Document requirements of Rules 4.31, 4.34, 4.35 and 4.36 where a CTA directs or guides exclusively the accounts of Non-United States persons.[87] The Proposal would codify this practice. It also would incorporate Commission staff's belief that where the clients for which a CTA directs or guides accounts are a mix of Non-United States persons and persons who are QECs, Rule 4.7 should be available to the CTA.

If a CTA additionally directs or guides the accounts of United States persons who are not QECs, however, under the Proposal, Rule 4.7 relief would remain unavailable to the CTA with respect to its clients who are Non-United States persons. This is because in such case (*i.e.*, where the CTA directs or guides the accounts of persons who are QECs and persons who are not QECs), the CTA is subject to the Disclosure Document requirements of Rules 4.31, 4.34, 4.35 and 4.36 and the recordkeeping requirements of Rule 4.33 with respect to its clients who are not QECs. Requiring the CTA also to comply with these Disclosure Document and recordkeeping requirements with respect to its clients who are Non-United States persons should not impose any additional burden on the CTA, since these are requirements with which it already is subject to compliance.

The Commission believes that the limitations of the proposed rule are consistent both with prior staff practice and the purposes of Rule 4.7. The Commission nonetheless specifically requests comments on this proposed rule.

C. Persons Who Must Satisfy the Portfolio Requirement To Be QEPs and QECs—Proposed Paragraphs (a)(2)(ii)(A) Through (L) and (a)(3)(ii)(A) and (L)

The text of this portion of the Proposal would be based upon existing

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[79] Existing paragraphs (a)(1)(ii)(B)(2)(xi) and (b)(1)(ii)(B)(2)(xi), respectively. Under proposed paragraphs (a)(2)(ii)(L) and (a)(3)(ii)(L), trusts would continue to qualify as QEPs and QECs, respectively, subject to meeting the Portfolio Requirement and certain other criteria.

[80] *See, e.g.*, CFTC Staff Letter No. 98–48, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,384 (June 22, 1998) (CPO permitted to treat a trust that was established for estate-planning purposes and had total assets of approximately $77,000 as a QEP where the decision-maker and the settlor of the trust was himself a QEP).

[81] Existing paragraphs (a)(1)(ii)(B)(2)(vii) and (b)(1)(ii)(B)(2)(vii), respectively. Under proposed paragraphs (a)(2)(ii)(G) and (a)(3)(ii)(G), Section 501(c)(3) Organizations would continue to qualify as QEPs and QECs, respectively, subject to meeting the criteria of the existing rules.

[82] See *e.g.*, CFTC Staff Letter No. 97–16, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,008 (March 21, 1997) (CPO permitted to treat a Section 501(c)(3) charitable organization as a QEP where the investment decisions were made by an individual who was a QEP and that individual also established the charitable organization).

[83] As discussed supra at Part III.A., the term "Non-United States person" would be defined in proposed paragraph (a)(1)(iv), and it would be based on the text of existing paragraph (a)(1)(ii)(C).

Proposed paragraph (a)(3)(i)(A) would include Non-United States persons as QECs through incorporation by reference to the fact that they would be QEPs under proposed paragraph (a)(2)(i)(K).

[84] Existing paragraph (a)(1)(ii)(C).

[85] See 57 FR at 34856.

[86] See *Id.* at n.21.

[87] See, *e.g.*, CFTC Staff Letter No. 97–09, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. ¶ 26, 976 (Feb. 6, 1997); CFTC Staff Letter No. 95–73, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. ¶ 26, 503 (Aug. 24, 1995).

text, and it would continue to include in the QEP and QEC definitions those persons who must satisfy a portfolio requirement [88] in order to qualify as QEPs or QECs.

With respect to QEPs in particular, all but one of the proposed rules [89] would be taken from existing text,[90] with various technical revisions made to them.[91] The remaining proposed rule would be taken from existing text but would be amended, as discussed below, to make it easier for pools, trusts, insurance company separate accounts and bank collective trusts to qualify as QEPs.

With respect to these collective investment vehicles, Rule 4.7 currently provides that a QEP is:

> A pool, trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000, not formed for the specific purpose of participating in the exempt pool, and whose participation in the exempt pool is directed by a qualified eligible participant; Provided, That except where the pool, trust, insurance company separate account or bank collective trust would constitute a qualified eligible participant under paragraph (a)(1)(ii)(D) of this section, no more than 10 percent of the fair market value of the assets of such entity are used to purchase units in exempt pools.[92]

The foregoing proviso is sometimes referred to as the "Ten Percent Restriction." The Commission stated that it proposed this restriction "because participants in these entities may not be QEPs and thus could not invest in a qualified eligible pool based on their own financial qualifications and investment sophistication." [93] Based upon staff's experience with the Ten Percent Restriction, the Commission has come to the view that the other criteria of the rule—*i.e.* that the collective investment vehicle must satisfy a portfolio requirement, must have total assets in excess of $5 million, may not be formed for the specific purpose of participating in the exempt pool and must have its participation in the exempt pool directed by a QEP—are sufficient to satisfy the Commission's concerns.[94] Accordingly, the Commission is proposing to eliminate the Ten Percent Restriction.[95]

As for QECs, the Proposal would continue to include in the QEC definition those persons who, subject to satisfying a portfolio requirement, would be QECs.[96] The Proposal also would continue to include certain trusts, insurance company separate accounts and bank collective trusts in the QEC definition.[97] To parallel the action proposing to eliminate the Ten Percent Restriction, and for the reasons stated above in support of that action, the Commission also is proposing to eliminate the current requirement that these trading vehicles are vehicles "in which all of the unit owners or participants, other than the commodity trading advisor claiming relief under this section, are qualified eligible participants."

IV. Comparison Chart

The following chart compares proposed Rule 4.7 with existing Rule 4.7. For each proposed paragraph, the chart indicates the corresponding existing paragraph, with any substantive revision ("SR") or technical revision ("TR") to the existing paragraph noted. The chart also indicates by "—" any proposed paragraph that does not correspond to an existing paragraph. To avoid what otherwise would be a very lengthy presentation, as appropriate the chart groups together certain paragraphs.

Proposed rule 4.7	Existing rule 4.7	Proposed rule 4.7	Existing rule 4.7	Proposed rule 4.7	Existing rule 4.7
(a)	(a)(1), SR	(a)(2)(i)(K)–(L)	(a)(1)(ii)(C)–(D), SR, TR.	(b)(1)(iv)	(a)(2)(iv),TR
(a)(1)		(a)(2)(ii)	(a)(1)(ii)(B)(1)–(2), TR	(b)(2)	(a)(3)
(a)(1)(i)		(a)(2)(ii)(A)	(a)(1)(ii)(B)(2)(i), TR	(b)(2)(i)	(a)(3)(i)
(a)(1)(ii)	(b)(1)(i), TR	(a)(2)(ii)(B)–(D)	(a)(1)(ii)(B)(2)(ii)–(iv)	(b)(2)(i)(A)–(C)	(a)(3)(i)(A)–(C)
(a)(1)(iii)	(a)(1)(i), TR	(a)(2)(ii)(E)–(G)	(a)(1)(ii)(B)(2)(v)–(vii), TR.	(b)(2)(i)(D)	(a)(3)(i)(D), TR
(a)(1)(iv)	(a)(1)(ii)(C), TR	(a)(2)(ii)(H)–(J)	(a)(1)(ii)(B)(2)(viii)–(x)	(b)(2)(i)(E)–(H)	(a)(3)(i)(E)–(H)
(a)(1)(iv)(A)–(C)	(a)(1)(ii)(C)(1)–(3)	(a)(2)(ii)(K)	(a)(1)(ii)(B)(2)(xii), TR	(b)(2)(i)(I)(1)	(a)(3)(i)(I)(1), TR
(a)(1)(iv)(D)	(a)(1)(ii)(C)(4), TR	(a)(2)(ii)(L)	(a)(1)(ii)(B)(2)(xi), SR	(b)(2)(i)(I)(2)	(a)(3)(i)(I)(2), TR
(a)(1)(iv)(E)	(a)(1)(ii)(C)(5)			(b)(2)(ii)–(iii)	(a)(3)(ii)–(iii)
(a)(1)(v)		(a)(3)	(b)(1)(ii), TR		
(a)(1)(v)(A)	(a)(1)(ii)(B), SR, TR	(a)(3)(i)	(b)(1)(ii)(A), TR	(b)(3)	(a)(4)
(a)(1)(v)(A)(1)–(2)	(a)(1)(ii)(B)(1)(i)–(ii)	(a)(3)(i)(A)	(b)(1)(ii)(A), SR, TR		
(a)(1)(v)(A)(3)	(a)(1)(ii)(B)(1)(iii), TR	(a)(3)(i)(B)–(C)		(c)	(b)(2), TR
(a)(1)(v)(B)	(b)(1)(ii)(B), SR, TR	(a)(3)(i)(D)	(b)(1)(ii)(C), SR, TR	(c)(1)	
(a)(1)(v)(B)(1)–(2)	(b)(1)(ii)(B)(1)(i)–(ii)	(a)(3)(i)(E)	(b)(1)(ii)(D), SR, TR	(c)(1)(i)–(ii)	(b)(2)(i)–(ii)
(a)(1)(v)(B)(3)	(b)(1)(ii)(B)(1)(iii), TR	(a)(3)(i)(F)	(b)(1)(ii)(E), SR, TR		
(a)(1)(vi)	(a)(1)(ii)(C)	(a)(3)(ii)	(b)(1)(ii)(B)(1)–(2), TR	(c)(2)	(b)(3)
		(a)(3)(ii)(A)–(B)	(b)(1)(ii)(B)(2)(i)–(ii), TR.	(c)(2)(i)–(iii)	(b)(3)(i)–(iii)
(a)(2)	(a)(1)(ii), TR	(a)(3)(ii)(C)–(D)	(b)(1)(ii)(B)(2)(iii)–(iv)		
(a)(2)(i)	(a)(1)(ii)(A), TR	(a)(3)(ii)(E)–(G)	(b)(1)(ii)(B)(2)(v)–(vii),TR.	(c)(3)	(b)(4)
(a)(2)(i)(A)–(B)	(a)(1)(ii)(A)(1)–(2), SR	(a)(3)(ii)(H)–(J)	(b)(1)(ii)(B)(2)(viii)–(x)		
(a)(2)(i)(C)(1)–(2)	(a)(1)(ii)(A)(3), TR	(a)(3)(ii)(K)	(b)(1)(ii)(B)(2)(xii),TR	(d)	(c)

[88] As discussed supra at Part III.A, the portfolio requirement would be set forth in the definitional section of the rule. See Proposed paragraph (a)(1)(v).

[89] Proposed paragraphs (a)(2)(ii)(A) through (K).

[90] See existing paragraphs (a)(1)(ii)(B)(2)(i) through (x) and (xii).

[91] Compare existing paragraph (a)(1)(ii)(B)(2)(i), which uses a full citation to the ICA, with proposed paragraph (a)(2)(ii)(A), which would use a short form citation to the ICA.

[92] Existing paragraph (a)(1)(ii)(B)(2)(xi).

[93] 57 FR at 3152. In light of the differences between an exempt pool, which is owned by two or more pool participants, and an exempt account, which as a non-pooled investment vehicle may only be owned by one client, existing paragraph (b)(1)(ii)(B)(2)(xi) does not contain a proviso corresponding to the Ten Percent Restriction.

[94] See, e.g., CFTC Staff Letter No. 98–37 [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,360 (June 5, 1998) (CPO granted relief from the Ten Percent Restriction with respect to a trust that was comprised of a QEP and his non-QEP wife, where the trust met the portfolio requirement, had total assets in excess of $5 million, was not formed for the specific purposes of participating in the exempt pool and had its participation in the exempt pool directed by a QEP).

[95] Proposed paragraph (a)(2)(ii)(L).

[96] Proposed paragraph (a)(3)(ii)(A) through (L). Thus, the Proposal would continue to include within the QEC definition those persons who are defined as QECs under existing paragraphs (b)(1)(ii)(B)(2)(i) through (x) and (xii).

[97] Proposed paragraph (a)(3)(ii)(L). These collective investment vehicles currently are included as QECs under existing paragraph (b)(1)(ii)(B)(2)(xi).

Proposed rule 4.7	Existing rule 4.7	Proposed rule 4.7	Existing rule 4.7	Proposed rule 4.7	Existing rule 4.7
(a)(2)(i)(D)	(a)(1)(ii)(A)(4), SR, TR.	(a)(3)(ii)(L)	(b)(1)(ii)(B)(2)(xi), SR	(d)(1)	(c)(1)
(a)(2)(i)(E)–(G)				(d)(1)(i)–(iii)	(c)(1)(i)–(iii)
(a)(2)(i)(H)(1)	(a)(1)(ii)(A)(5), SR	(b)	(a)(2), TR		
(a)(2)(i)(H)(2)–(5)		(b)(1)		(d)(2)	(c)(2), TR
(a)(2)(i)(I)–(J)		(b)(1)(i)–(iii)	(a)(2)(i)–(iii).		

V. Related Matters

A. Paperwork Reduction Act

Rule 4.7 affects information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget for its review.

Collection of Information

Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants, OMB Control Number 3038–0005.

The expected effect of the proposed amended rule will be to reduce the burden previously approved by OMB for this collection of information by 1,644 hours because, while it will result in an increase in the number of filings under Rule 4.7, it will result in a larger decrease in the information collection requirements under the disclosure, reporting and recordkeeping rules.

Specifically:

The burden associated with Commission Rule 4.7, as applied to CPOs and CTAs, is expected to be increased by 30 hours:

Estimated number of respondents (after proposed exemption): 660.

Annual responses by each respondent: 1.

Estimated average hours per response: 0.50.

Annual reporting burden: 330 hours.

This annual reporting burden of 330 hours represents an increase of 30 hours as a result of the proposed amendments to Rule 4.7.

The burden associated with Commission Rule 4.21, as applied to CPOs is expected to be decreased by 73.84 hours:

Estimated number of respondents (after proposed exemption): 565.

Annual responses by each respondent: 0.88.

Estimated average hours per response: 2.80.

Annual reporting burden: 1,392.16.

While the estimated burden figure of 1,392.16 for Rule 4.21 is higher than the burden figure previously reported to OMB, the Commission believes that the previously reported burden figure was based on an incorrect figure for the number of CPOs and the burden figure should have been reported at 1,466. This annual reporting burden of 1,392.16 hours represents a decrease of 73.84 hours as a result of the proposed amendments to Rule 4.7.

The burden associated with Commission Rule 4.22(a), as applied to CPOs, is expected to be decreased by 548.63 hours:

Estimated number of respondents (after proposed exemption): 420.

Annual responses by each respondent: 4.75.

Estimated average hours per response: 3.85.

Annual reporting burden: 7,680.75.

This annual reporting burden of 7,680.75 hours represents a decrease of 548.63 hours as a result of the proposed amendments to Rule 4.7.

The burden associated with Commission Rule 4.22(c) is expected to be reduced by 270 hours:

Estimated number of respondents (after proposed exemption): 480.

Annual responses by each respondent: 1.

Estimated average hours per response: 9.

Annual reporting burden: 4,320.

This annual reporting burden of 4,320 hours represents a decrease of 270 hours as a result of the proposed amendments to Rule 4.7.

The burden associated with Commission Rule 4.23 is expected to be reduced by 1,260 hours:

Estimated number of respondents (after proposed exemption): 472.

Annual responses by each respondent: 1.

Estimated average hours per response: 42.

Annual reporting burden: 19,824

This annual reporting burden of 19,824 hours represents a decrease of 1,260 hours as a result of the proposed amendments to Rule 4.7.

The burden associated with Commission Rule 4.31 is expected to be reduced by 55.86 hours:

Estimated number of respondents (after proposed exemption): 620.

Annual responses by each respondent: 1.33.

Estimated average hours per response: 1.40.

Annual reporting burden: 1,154.44.

This annual reporting burden of 1,154.44 hours represents a decrease of 55.86 hours as a result of the proposed amendments to Rule 4.7.

The burden associated with Commission Rule 4.33 is expected to be reduced by 780 hours:

Estimated number of respondents (after proposed exemption): 1,970.

Annual responses by each respondent: 1.

Estimated average hours per response: 26.

Annual reporting burden: 51,220.

This annual reporting burden of 51,220 hours represents a decrease of 780 hours as a result of the proposed amendments to Rule 4.7.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235 New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the

Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street N.W., Washington, DC 20581, (202) 418–5160.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[98] requires each federal agency to consider in the course of proposing substantive rules the effect of those rules on small entities. The proposed amendments to Rule 4.7 would affect registered CPOs and CTAs. The Commission previously has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[99] The Commission determined that registered CPOs are not small entities for the purposes of the RFA.[100] With respect to CTAs, the Commission stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs should be considered to be small entities and, if so, that it would analyze the economic impact on them of any rule.[101]

Existing Rule 4.7 provides exemptive relief from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs and CTAs with respect to pools and accounts owned solely by QEPs and QECs, respectively. The relief that is provided reduces rather than increases the regulatory requirements that apply to registered CPOs and CTAs. The proposed amendments to Rule 4.7 would expand this relief by bringing within the QEP and QEC definitions persons not included in the existing rules. Further, this expanded relief would be available to all registered CPOs and CTAs, regardless of size. The Commission thus believes that the proposed amendments, if adopted, would further reduce the regulatory burdens on registered CPOs and CTAs.

Accordingly, pursuant to 5 U.S.C. § 605(b), the Chairman, on behalf of the Commission, certifies that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

[98] 5 USC 601 *et seq.* (1994 & Supp. II 1996).
[99] 47 FR 18618 (April 30, 1982).
[100] *Id.* at 18619–20.
[101] *Id.* at 18620.

List of Subjects in 17 CFR Part 4

Advertising, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 1a(4), 1a(5), 4b, 4*l*, 4m, 4n, 4*o* and 8a, 7 U.S.C. 1a, 6b, 6*l*, 6m, 6n, 6*o* and 12a, the Commission hereby proposes to amend Part 4 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Section 4.7 is proposed to be revised to read as follows:

§ 4.7 Exemption from certain part 4 requirements with respect to pools whose participants are limited to qualified eligible participants and with respect to commodity trading advisors' accounts for clients that are qualified eligible clients.

(a) *Definitions.* Paragraph (a)(1) of this section contains general definitions, paragraph (a)(2) of this section contains the definition of the term "qualified eligible participant" and paragraph (a)(3) of this section contains the definition of the term "qualified eligible client." For the purposes of this section:

(1) In general. (i) *Affiliate of*, or a person affiliated with, a specified person means a person that directly or indirectly through one or more persons, controls, is controlled by, or is under common control with the specified person.

(ii) *Exempt account* means the account of a qualified eligible client that is directed or guided by a commodity trading advisor pursuant to an effective claim for exemption under § 4.7.

(iii) *Exempt pool* means a pool that is operated pursuant to an effective claim for exemption under § 4.7.

(iv) *Non-United States person* means:

(A) A natural person who is not a resident of the United States;

(B) A partnership, corporation or other entity, other than an entity organized principally for passive investment, organized under the laws of a foreign jurisdiction and which has its principal place of business in a foreign jurisdiction;

(C) An estate or trust, the income of which is not subject to United States income tax regardless of source;

(D) An entity organized principally for passive investment such as a pool, investment company or other similar entity; Provided, That units of participation in the entity held by persons who do not qualify as Non-United States persons represent in the aggregate less than 10% of the beneficial interest in the entity, and that such entity was not formed principally for the purpose of facilitating investment by persons who do not qualify as Non-United States persons in a pool with respect to which the operator is exempt from certain requirements of Part 4 of the Commission's regulations by virtue of its participants being Non-United States persons; and

(E) A pension plan for the employees, officers or principals of an entity organized and with its principal place of business outside the United States.

(v) *Portfolio Requirement* means:

(A) With respect to a qualified eligible participant, that the person:

(1) Owns securities (including pool participations) of issuers not affiliated with such participant and other investments with an aggregate market value of at least $2,000,000;

(2) Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding the date of sale to that person of a pool participation in the exempt pool, at least $200,000 in exchange-specified initial margin and option premiums for commodity interest transactions; or

(3) Owns a portfolio comprised of a combination of the funds or property specified in paragraphs (a)(1)(v)(A)(1) and (2) of this section in which the sum of the funds or property includable under paragraph (a)(1)(v)(A)(1), expressed as a percentage of the minimum amount required thereunder, and the amount of futures margin and option premiums includable under paragraph (a)(1)(v)(A)(2), expressed as a percentage of the minimum amount required thereunder, equals at least one hundred percent. An example of a composite portfolio acceptable under this paragraph (a)(1)(v)(A)(3) would consist of $1,000,000 in securities and other property (50% of paragraph (a)(1)(v)(A)(1)) and $100,000 in exchange-specified initial margin and option premiums (50% of paragraph (a)(1)(v)(A)(2)).

(B) With respect to a qualified eligible client, that the person:

(1) Owns securities (including pool participations) of issuers not affiliated with such client and other investments with an aggregate market value of at least $2,000,000;

(2) Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding the date that person opens an exempt account with the commodity trading advisor, at least $200,000 in exchange-specified initial margin and option premiums for commodity interest transactions; or

(3) Owns a portfolio comprised of a combination of the funds or property specified in paragraphs (a)(1)(v)(B)(1) and (2) of this section in which the sum of the funds or property includable under paragraph (a)(1)(v)(B)(1), expressed as a percentage of the minimum amount required thereunder, and the amount of futures margin and option premiums includable in paragraph (a)(1)(v)(B)(2), expressed as a percentage of the minimum amount required thereunder, equals at least one hundred percent. An example of a composite portfolio acceptable under this paragraph (a)(1)(v)(B)(3) would consist of $1,000,000 in securities and other property (50% of paragraph (a)(1)(v)(B)(1)) and $100,000 in exchange-specified initial margin and option premiums (50% of paragraph (a)(1)(v)(B)(2)).

(vi) *United States* means the United States, its states, territories or possessions, or an enclave of the United States government, its agencies or instrumentalities.

(2) *Qualified eligible participants*—(i) Persons who are qualified eligible participants irrespective of the Portfolio Requirement. *Qualified eligible participant* means any person, acting for its own account or for the account of a qualified eligible participant, who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool, is:

(A) A futures commission merchant registered pursuant to section 4d of the Act, or a principal thereof;

(B) A broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, or a principal thereof;

(C) A commodity pool operator registered pursuant to section 4m of the Act, or a principal thereof; *Provided,* That the commodity pool operator:

(1) Has been registered and active as such for two years; or

(2) Operates pools which, in the aggregate, have total assets in excess of $5,000,000;

(D) A commodity trading advisor registered pursuant to section 4m of the Act, or a principal thereof; *Provided,* That the commodity trading advisor:

(1) Has been registered and active as such for two years; or

(2) Provides commodity interest trading advice to commodity accounts which, in the aggregate, have total assets in excess of $5,000,000 deposited at one or more futures commission merchants;

(E) An investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940 (the "Investment Advisers Act") or pursuant to the laws of any state, or a principal thereof; *Provided,* That the investment adviser:

(1) Has been registered and active as such for two years; or

(2) Provides securities investment advice to securities accounts which, in the aggregate, have total assets in excess of $5,000,000 deposited at one or more registered securities brokers;

(F) A "qualified purchaser" as defined in section 2(51)(A) of the Investment Company Act of 1940 (the "Investment Company Act");

(G) A "knowledgeable employee" as defined in § 270.3c–5 of this title;

(H)(1) The commodity pool operator, commodity trading advisor or investment adviser of the exempt pool offered or sold, or an affiliate of any of the foregoing;

(2) A principal of the exempt pool or the commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or of an affiliate of any of the foregoing;

(3) An employee of the exempt pool, commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or of an affiliate of any of the foregoing (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of the exempt pool, other commodity pools operated by the commodity pool operator of the exempt pool or other accounts advised by the commodity trading advisor or the investment adviser of the exempt pool, or by the affiliate; *Provided,* That such employee has been performing such functions and duties for or on behalf of the exempt pool, commodity pool operator, commodity trading advisor, investment adviser or affiliate, or substantially similar functions or duties for or on behalf of another person engaged in providing commodity interest, securities or other financial services, for at least 12 months;

(4) Any other employee of the exempt pool, commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or of an affiliate of any of the foregoing (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments); *Provided,* That such employee:

(i) Is an accredited investor as defined in § 230.501(a)(5) or (6) of this title; and

(ii) Has been employed by the exempt pool, commodity pool operator, commodity trading advisor, investment adviser or affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months; or

(5) The spouse, child, sibling or parent of a person who satisfies the criteria of paragraph (a)(2)(i)(H)(1), (2), (3) or (4) of this section; *Provided,* That:

(i) An investment in the exempt pool by any such family member is made with the knowledge and at the direction of the person; and

(ii) The family member is a qualified eligible participant only for the purposes of this paragraph (a)(2)(i)(H)(5);

(I) A trust; Provided, That:

(1) The trust was not formed for the specific purpose of participating in the exempt pool; and

(2) The trustee or other person authorized to make investment decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a qualified eligible participant;

(J) An organization described in section 501(c)(3) of the Internal Revenue Code (the "IRC"); *Provided,* That the trustee or other person authorized to make investment decisions with respect to the organization, and the person who has established the organization, is a qualified eligible participant;

(K) A Non-United States person; or

(L) An entity in which all of the unit owners or participants are persons listed in paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

(ii) Persons who must satisfy the Portfolio Requirement to be qualified eligible participants. Qualified eligible participant means any person who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool, satisfies the Portfolio Requirement and is:

(A) An investment company registered under the Investment Company Act or a business development company as defined in section 2(a)(48) of such Act not formed for the specific purpose of investing in the exempt pool;

(B) A bank as defined in section 3(a)(2) of the Securities Act of 1933 (the "Securities Act") or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act acting for its own account

or for the account of a qualified eligible participant;

(C) An insurance company as defined in section 2(13) of the Securities Act acting for its own account or for the account of a qualified eligible participant;

(D) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

(E) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA"); *Provided,* That the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a bank, savings and loan association, insurance company, or registered investment adviser; or that the employee benefit plan has total assets in excess of $5,000,000; or, if the plan is self-directed, that investment decisions are made solely by persons that are qualified eligible participants;

(F) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act;

(G) An organization described in section 501(c)(3) of the IRC, with total assets in excess of $5,000,000;

(H) A corporation, Massachusetts or similar business trust, or partnership, other than a pool, which has total assets in excess of $5,000,000, and is not formed for the specific purpose of participating in the exempt pool;

(I) A natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase in the exempt pool exceeds $1,000,000;

(J) A natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(K) Except as provided for the governmental entities referenced in paragraph (a)(2)(ii)(D) of this section, if otherwise authorized by law to engage in such transactions, a governmental entity (including the United States, a state, or a foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency, or department of any of the foregoing; or

(L) A pool, trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000, not formed for the specific purpose of participating in the exempt pool, and whose participation in the exempt pool is directed by a qualified eligible participant.

(3) Qualified eligible clients—(i) Persons who are qualified eligible clients irrespective of the Portfolio Requirement. Qualified eligible client means any person, acting for its own account or for the account of a qualified eligible client, who the commodity trading advisor reasonably believes, at the time that person opens an exempt account with the commodity trading advisor, is:

(A)(1) A person described in paragraph (a)(2)(i)(A), (B), (C), (D), (E), (F), (G) or (J) of this section;

(2) A person described in paragraph (a)(2)(i)(K) of this section; *Provided, however,* that the CTA who seeks to direct or guide the commodity interest trading account of the person:

(i) Provides commodity interest trading advice exclusively to persons who are qualified eligible clients, including persons described in paragraph (a)(2)(i)(K) of this section; and

(ii) Has filed a notice of claim for exemption pursuant to paragraph (c) of this section;

(B)(1) An affiliate of the commodity trading advisor of the exempt account;

(2) A principal of the commodity trading advisor of the exempt account or of an affiliate of the trading advisor;

(3) An employee of the commodity trading advisor of the exempt account or of an affiliate of the trading advisor (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of the commodity trading advisor or the affiliate; *Provided,* That such employee has been performing such functions and duties for or on behalf of the commodity trading advisor or the affiliate, or substantially similar functions or duties for or on behalf of another person engaged in providing commodity interest, securities or other financial services, for at least 12 months;

(4) Any other employee of the commodity trading advisor of the exempt account or of an affiliate of the trading advisor (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments); *Provided,* That such employee:

(i) Is an accredited investor as defined in § 230.501(a)(5) or (6) of this title; and

(ii) Has been employed by the commodity trading advisor or the affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months; or

(5) The spouse, child, sibling or parent of the commodity trading advisor of the exempt account or of a person who satisfies the criteria of paragraph (a)(3)(i)(B)(1), (2), (3) or (4) of this section; *Provided,* That:

(i) The establishment of an exempt account by any such family member is made with the knowledge and at the direction of the trading advisor or person; and

(ii) The family member is a qualified eligible client only for the purposes of this paragraph (a)(3)(i)(B)(5);

(C) A Trust; *Provided,* That:

(1) The trust was not formed for the specific purpose of opening an exempt account with the commodity trading advisor; and

(2) The trustee or other person authorized to make investment decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a qualified eligible client;

(D) An exempt pool; or

(E) An entity in which all of the unit owners or participants, other than the commodity trading advisor claiming relief under this section, are persons listed in paragraphs (a)(3)(i)(A) through (D) and (a)(3)(ii) of this section.

(F) Notwithstanding paragraph (a)(3)(ii) of this section, an entity as to which a notice of eligibility has been filed pursuant to § 4.5 which is operated in accordance with such rule and in which all unit owners or participants, other than the commodity trading advisor claiming relief under this section, are qualified eligible participants.

(ii) Persons who must satisfy the Portfolio Requirement to be qualified eligible clients. Qualified eligible client means any person who the commodity trading advisor reasonably believes, at the time that person opens an exempt account with the commodity trading advisor, satisfies the Portfolio Requirement and is:

(A) An investment company registered under the Investment Company Act or a business development company as defined in section 2(a)(48) of that Act not formed for the specific purpose of opening an exempt account with the commodity trading advisor;

(B) A bank as defined in section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act acting for its own account or for the account of a qualified eligible client;

(C) An insurance company as defined in section 2(13) of the Securities Act acting for its own account or for the account of a qualified eligible client;

(D) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

(E) An employee benefit plan within the meaning of ERISA; Provided, That the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a bank, savings and loan association, insurance company, or registered investment adviser; or that the employee benefit plan has total assets in excess of $5,000,000; or if the plan is self-directed, that investment decisions are made solely by persons that are qualified eligible clients;

(F) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act;

(G) An organization described in section 501(c)(3) of the IRC, with total assets in excess of $5,000,000;

(H) A corporation, Massachusetts or similar business trust, or partnership, other than a pool, which has total assets in excess of $5,000,000, and is not formed for the specific purpose of opening an exempt account with the commodity trading advisor;

(I) A natural person whose individual net worth, or joint net worth with that person's spouse, at the time that person opens an exempt account exceeds $1,000,000;

(J) A natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has reasonable expectation of reaching the same income level in the current year;

(K) Except as otherwise provided in paragraph (a)(3)(ii)(D) of this section, if otherwise authorized by law to engage in such transactions, a governmental entity (including the United States, a state, or a foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency, or department of any of the foregoing;

(L) A trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000, not formed for the specific purpose of opening an exempt account with the commodity trading advisor, whose investment in the exempt account is directed by a qualified eligible client or participant.

(b) Relief for commodity pool operators. Subject to the conditions specified in paragraph (b)(2) of this section, any registered commodity pool operator who offers or sells participations in a pool solely to qualified eligible participants in an offering which qualifies for exemption from the registration requirements of the Securities Act pursuant to section 4(2) of that Act or pursuant to Regulation S, 17 CFR 230.901 *et seq.*, and any bank registered as a commodity pool operator in connection with a pool that is a collective trust fund whose securities are exempt from registration under the Securities Act pursuant to section 3(a)(2) of that Act and are offered or sold, without marketing to the public, solely to qualified eligible participants, may claim any or all of the following relief with respect to such pool by filing the notice required by paragraph (b)(2) of this section.

(1) Relief—(i) Disclosure. (A) Exemption from the specific requirements of §§ 4.21, 4.24, 4.25 and 4.26 with respect to each exempt pool; *Provided,* That if an offering memorandum is distributed in connection with soliciting prospective participants in the exempt pool, such offering memorandum must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading; and that the following statement is prominently disclosed on the cover page of the offering memorandum, or, if none is provided, immediately above the signature line on the subscription agreement or other document that the prospective participant must execute to become a participant in the pool: "PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH POOLS WHOSE PARTICIPANTS ARE LIMITED TO QUALIFIED ELIGIBLE PARTICIPANTS, AN OFFERING MEMORANDUM FOR THIS POOL IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A POOL OR UPON THE ADEQUACY OR ACCURACY OF AN OFFERING MEMORANDUM. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS OFFERING OR ANY OFFERING MEMORANDUM FOR THIS POOL."

(B) Exemption from disclosing the past performance of exempt pools in the Disclosure Document of non-exempt pools except to the extent that such past performance is material to the non-exempt pool being offered; *Provided, however,* That a pool operator that has claimed exemption hereunder and elects not to disclose any such performance in the Disclosure Document of non-exempt pools shall state in a footnote to the performance disclosure therein that the operator is operating or has operated exempt pools whose performance is not disclosed in this Disclosure Document.

(ii) Periodic reporting. Exemption from the specific requirements of §§ 4.22(a) and (b); *Provided,* That a statement signed and affirmed in accordance with § 4.22(h) is prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. This statement must indicate:

(A) The net asset value of the exempt pool as of the end of the reporting period;

(B) The change in net asset value from the end of the previous reporting period; and

(C) The net asset value per outstanding unit of participation in the exempt pool as of the end of the reporting period.

(iii) Annual report. (A) Exemption from the specific requirements of §§ 4.22(c) and (d); *Provided,* That within 90 calendar days after the end of the exempt pool's fiscal year, the commodity pool operator files with the Commission and with the National Futures Association and distributes to each participant in lieu of the financial information and statements specified by those sections, an annual report for the exempt pool, signed and affirmed in accordance with § 4.22(h) which contains, at a minimum:

(1) A Statement of Financial Condition as of the close of the exempt pool's fiscal year (elected in accordance with § 4.22(g));

(2) A Statement of Income (Loss) for that year; and

(3) Appropriate footnote disclosure and any other material information.

(B) Such annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and, if certified by an independent public accountant, so certified in accordance with § 1.16 as applicable.

(C) Legend. (1) If a claim for exemption has been made pursuant to this section, the commodity pool operator must make a statement to that

effect on the cover page of each annual report.

(2) If the annual report is not certified in accordance with § 1.16, the pool operator must make a statement to that effect on the cover page of each annual report and state that a certified audit will be provided upon the request of the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator.

(iv) Recordkeeping. Exemption from the specific requirements of § 4.23; *Provided,* That the commodity pool operator must maintain the reports referred to in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section and all books and records prepared in connection with his activities as the pool operator of the exempt pool (including, without limitation, records relating to the qualifications of qualified eligible participants and substantiating any performance representations) at his main business address and must make such reports and records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(2) Notice of claim for exemption. (i) The notice of a claim for exemption under this section must:

(A) Be in writing;

(B) Provide the name, main business address, main business telephone number and the National Futures Association commodity pool operator identification number of the person claiming the exemption;

(C) Provide the name(s) of the pool(s) for which the request is made; *Provided,* That a single notice representing that the commodity pool operator anticipates operating single-investor pools may be filed to claim exemption for single-investor pools and such notice need not name each such pool;

(D) Contain representations that:

(1) Neither the commodity pool operator nor any of his principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed in connection with a previous application for registration if such registration was granted or which was disclosed more than thirty days prior to the filing of the notice under this paragraph (b)(2)(i)(D);

(2) The commodity pool operator will comply with the applicable requirements of § 4.7; and

(3) The exempt pool will be offered and operated in compliance with the applicable requirements of § 4.7;

(E) Specify the relief claimed under § 4.7;

(F) State the closing date of the offering or that the offering will be continuous;

(G) Be signed by the pool operator, as follows:

If the pool operator is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer;

(H) Be filed in duplicate with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department); and

(I)(1) Except as provided in paragraph (b)(2)(i)(C) of this section with respect to single-investor pools and in paragraph (b)(2)(i)(I)(2) of this section, be received by the Commission:

(i) Before the date the pool first enters into a commodity interest transaction, if the relief claimed is limited to that provided under paragraphs (b)(1)(ii), (iii) and (iv) of this section; or

(ii) Prior to any offer or sale of any participation in the exempt pool if the claimed relief includes that provided under paragraph (b)(1)(i) of this section.

(2) Where participations in a pool have been offered or sold in full compliance with this part 4, the notice of a claim for exemption may be filed with the Commission at any time; *Provided,* That the claim for exemption is otherwise consistent with the duties of the commodity pool operator and the rights of pool participants and that the commodity pool operator notifies the pool participants of his intention, absent objection by the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator within twenty-one days after the date of the notification, to file a notice of claim for exemption under § 4.7 and such holders have not objected within such period. A commodity pool operator filing a notice under this paragraph (b)(2)(i)(I)(2) shall either provide disclosure and reporting in accordance with the requirements of this part 4 to those participants objecting to the filing of such notice or allow such participants to redeem their units of participation in the pool within three months of the filing of such notice.

(ii) The notice will be effective upon receipt by the Commission with respect to each pool for which it was made; *Provided,* That any notice which does not include all the required information shall not be effective, and that if at the time the Commission receives the notice, an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity pool operator or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and that in such case an exemption may be denied by the Commission or made subject to such conditions as the Commission may impose.

(iii) Any exemption claimed hereunder shall cease to be effective with respect to a particular pool upon any change which would cause the commodity pool operator for the pool to be ineligible for the relief claimed with respect to such pool. The commodity pool operator must promptly file a notice advising the Commission of such change.

(3) Any exemption from the requirements of § 4.21, 4.22, 4.23, 4.24, 4.25 or 4.26 with respect to a pool shall not affect the obligation of the commodity pool operator to comply with all other applicable provisions of Part 4, the Act and the Commission's rules and regulations, with respect to the pool and with respect to any other pool such pool operator operates or intends to operate.

(c) Relief for commodity trading advisors. Subject to the conditions specified in paragraph (c)(2) of this section and upon filing the notice required by paragraph (c)(2) of this section, any registered commodity trading advisor who anticipates directing or guiding the commodity interest accounts of qualified eligible clients will be exempt as follows with respect to the accounts of qualified eligible clients who have given due consent to their account being an exempt account under § 4.7.

(1) Relief—(i) Disclosure. (A) Exemption from the specific requirements of §§ 4.31, 4.34, 4.35 and 4.36; Provided, That if the commodity trading advisor delivers a brochure or other disclosure statement to such qualified eligible clients, such brochure or statement shall include all additional disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading; and that the following statement is prominently displayed on the cover page of the brochure or statement or, if none is provided, immediately above the signature line of the agreement that the client must execute before it opens an account with the commodity trading advisor: "PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH ACCOUNTS OF QUALIFIED ELIGIBLE CLIENTS, THIS

BROCHURE OR ACCOUNT DOCUMENT IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A TRADING PROGRAM OR UPON THE ADEQUACY OR ACCURACY OF COMMODITY TRADING ADVISOR DISCLOSURE. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS TRADING PROGRAM OR THIS BROCHURE OR ACCOUNT DOCUMENT."

(B) Exemption from disclosing the past performance of exempt accounts in the Disclosure Document for non-exempt accounts except to the extent that such past performance is material to the non-exempt account being offered; *Provided, however,* That a commodity trading advisor that has claimed exemption hereunder and elects not to disclose any such performance in the Disclosure Document for non-exempt accounts shall state in a footnote to the performance disclosure therein that the advisor is advising or has advised exempt accounts for qualified eligible clients whose performance is not disclosed in this Disclosure Document.

(ii) Recordkeeping. Exemption from the specific requirements of § 4.33; *Provided,* That the commodity trading advisor must maintain, at its main business office, all books and records prepared in connection with his activities as the commodity trading advisor of the qualified eligible clients (including, without limitation, records relating to the qualifications of such qualified eligible clients and substantiating any performance representations) and must make such records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(2) Notice of claim for exemption. (i) The notice of a claim for exemption under this section must:

(A) Be in writing;

(B) Provide the name, main business address, main business telephone number and the National Futures Association commodity trading advisor identification number of the person claiming the exemption;

(C) Contain a representation that the commodity trading advisor anticipates providing commodity interest trading advice to qualified eligible clients and that it will comply with the applicable requirements of § 4.7 with respect to accounts of such clients;

(D) Contain a representation that neither the commodity trading advisor nor any of its principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed in connection with a previous application for registration if such registration was granted or which was disclosed more than thirty days prior to the filing of the notice under this paragraph;

(E) Specify the relief claimed under § 4.7;

(F) Be signed by the commodity trading advisor, as follows: If the commodity trading advisor is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer;

(G) Be filed in duplicate with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department); and

(H) Be received by the Commission before the date the commodity trading advisor first enters into an agreement to direct or guide the commodity interest account of a qualified eligible client pursuant to § 4.7.

(ii) The notice will be effective upon receipt by the Commission; *Provided,* That any notice which does not include all of the required information shall not be effective, and that if at the time the Commission receives the notice, an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity trading advisor or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and that in such case an exemption may be denied by the Commission or made subject to such conditions as the Commission may impose.

(iii) Any exemption claimed hereunder shall cease to be effective upon any change which would cause the commodity trading advisor to be ineligible for the relief claimed. The commodity trading advisor must promptly file a notice advising the Commission of such change.

(3) Any exemption from the requirements of § 4.31, 4.33, 4.34, 4.35 or 4.36 made hereunder shall not affect the obligation of the commodity trading advisor to comply with all other applicable provisions of part 4, the Act and the Commission's rules and regulations, with respect to any qualified eligible client and with respect to any other client to which the commodity trading advisor provides or intends to provide commodity interest trading advice.

(d) Insignificant deviations from a term, condition or requirement of § 4.7. (1) A failure to comply with a term or condition of § 4.7 will not result in the loss of the exemption with respect to a particular pool or client if the commodity pool operator or the commodity trading advisor relying on the exemption shows that:

(i) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular qualified eligible participant or client;

(ii) The failure to comply was insignificant with respect to the exempt pool as a whole or to the particular qualified eligible client of the commodity trading advisor; and

(iii) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of § 4.7.

(2) A transaction made in reliance on § 4.7 must comply with all applicable terms, conditions and requirements of § 4.7. Where an exemption is established only through reliance upon paragraph (d)(1) of this section, the failure to comply shall nonetheless be actionable by the Commission.

Issued in Washington, D.C. on February 17, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–4746 Filed 3–1–00; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103735–00]

RIN 1545–AX81

Tax Shelter Disclosure Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cross-reference notice of proposed rulemaking and notice of public hearing.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations requiring certain corporate taxpayers to file a statement under section 6011 and maintain certain documents under section 6001. The temporary regulations affect corporations participating in certain reportable transactions. The text of

those temporary regulations also serves as the text of these proposed regulations. This document also gives notice of a public hearing on this subject.

DATES: Written comments, requests to speak and outlines of topics to be discussed at the public hearing scheduled for Tuesday, June, 20, 2000, from 10 a.m. through 1 p.m. must be received by May 31, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–103735–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–103735–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax—regs/regslist.html. A public hearing will be held at 10 a.m. on Tuesday, June 20, 2000, in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Richard Castanon or Mary Beth Collins, (202) 622–3070; concerning submissions and the hearings, Guy Traynor, (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by May 1, 2000. Comments are specifically requested concerning:

Whether the proposed collections of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 1.6011–4T(a), (c), (d), and (e). This information is required to provide the Service with notice of certain large corporate transactions that provide tax savings in excess of certain dollar thresholds. This information will be used to ensure compliance with the Federal tax laws. The collections of information are mandatory. The likely respondents and recordkeepers are business or other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 25 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 30 minutes.

Estimated number of respondents and/or recordkeepers: 50.

Estimated annual frequency of responses: Once annually.An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The temporary regulations amend the Income Tax regulations (26 CFR part 1) relating to section 6011. The temporary regulations contain rules relating to the filing and records requirements for certain corporate taxpayers.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the persons responsible for filing the statement required by these regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand.

Further, the IRS and Treasury specifically request comments on (1) the scope and breadth of the characteristics used in the proposed regulations to identify reportable transactions; (2) the exceptions to disclosure provided for in the proposed regulations; and (3) whether particular types of transactions should be identified as excepted from disclosure. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 20, 2000, from 10 a.m. through 1 p.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 1111 Constitution Avenue entrance, located between 10th and 12th streets. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the access list to attend the

hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 31, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Part 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6011–4 is added to read as follows:

§ 1.6011–4 Requirement of statement disclosing participation in certain transactions by corporate taxpayers.

[The text of this proposed section is the same as the text of § 1.6011–4T published elsewhere in this issue of the **Federal Register**.]

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 00–4843 Filed 2–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–103736–00]

RIN 1545–AX79

Requirement To Maintain List of Investors in Potentially Abusive Tax Shelters

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cross-reference notice of proposed rulemaking and notice of public hearing.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations requiring the maintenance of lists of investors in potentially abusive tax shelters described in section 6112. The temporary regulations affect organizers of potentially abusive tax shelters. The text of those temporary regulations also serves as the text of these proposed regulations. This document also gives notice of a public hearing on this subject.

DATES: Written comments, requests to speak and outlines of topics to be discussed at the public hearing scheduled for Tuesday, June, 20, 2000, from 10 a.m. through 1 p.m. must be received by May 31, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–103736–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–103736–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. A public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Richard Castanon or Mary Beth Collins, (202) 622–3070; concerning submissions and the hearings, Guy Traynor, (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by May 1, 2000. Comments are specifically requested concerning:

Whether the proposed collections of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 301.6112–1T, A–4, A–13, A–14, A–17, and A–22. This information is required to comply with the list maintenance requirement of section 6112 and to avoid the penalty provisions of section 6708 for failing to maintain the investor list under section 6112. This information will be used to ensure compliance with the Federal tax laws. The collections of information are mandatory. The likely respondents and recordkeepers are business or other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 102 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 2.04 hours.

Estimated number of respondents and/or recordkeepers: 50.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control

number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The temporary regulations amend temporary Procedure and Administration regulations (26 CFR Part 301) regarding the requirement to maintain lists of investors in potentially abusive tax shelters under section 6112. Section 6708 provides penalties for failing to maintain the investor list under section 6112.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the persons responsible for maintaining the investor lists described in the regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 22, 2000, from 10 a.m. to 1 p.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 1111 Constitution Avenue entrance, located between 10th and 12th Streets. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 31, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes,Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6112–1 also issued under 26 U.S.C. 6112. * * *

§ 301.6112–1 [Amended]

Par. 2. Section 301.6112–1 as proposed at 49 FR 34246 (August 29, 1984) is amended as follows:

[The text of the amendments to this proposed section is the same as the text of the amendments to § 301.6112–1T published elsewhere in this issue of the **Federal Register**.]

Charles O. Rosotti,

Commissioner of Internal Revenue.

[FR Doc. 00–4847 Filed 2–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–110311–98]

RIN 1545–AW26

Corporate Tax Shelter Registration

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cross-reference notice of proposed rulemaking and notice of public hearing.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations requiring the registration of confidential corporate tax shelters pursuant to section 6111(d) as amended by section 1028(a) of the Taxpayer Relief Act of 1997 (the Act). The temporary regulations affect persons responsible for registering confidential corporate tax shelters and corporations participating in confidential corporate tax shelters. The text of those temporary regulations also serves as the text of these proposed regulations. This document also gives notice of a public hearing on this subject.

DATES: Written comments must be received by May 31, 2000.

Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Tuesday, June, 20, 2000, from 10 a.m. through 1 p.m. must be received by May 31, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–110311–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–110311–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW.,

Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. A public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Richard Castanon or Mary Beth Collins, (202) 622–3070; concerning submissions and the hearings, Guy Traynor, (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by May 1, 2000. Comments are specifically requested concerning:

Whether the proposed collections of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 301.6111–2T(b)(6), (e)(1)(ii)(A), (e)(2), (e)(3), (g)(2)(ii) and (g)(2)(iii). This information is required to comply with the registration requirements of section 6111(d) and to avoid the penalty provisions of section 6707 for failing to register a confidential corporate tax shelter. This information will be used to ensure compliance with the Federal tax laws. The collections of information are mandatory. The likely respondents and recordkeepers are business or other for-profit institutions.

The burden for the collection of information in § 301.6111–2T(b)(6), (e)(1)(ii)(A), (e)(2), and (e)(3) will be reflected on Form 8264. The burden for the collection of information in § 301.6111–2T(g)(2)(ii) and (iii) is as follows:

Estimated total annual reporting and/or recordkeeping burden: 1 hour.

Estimated average annual burden hours per respondent and/or recordkeeper: 15 minutes.

Estimated number of respondents and/or recordkeepers: 4.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The temporary regulations amend temporary procedure and administrative regulations (26 CFR part 301) relating to section 6111. These regulations provide the guidance necessary to activate the registration requirements of section 6111 and the penalty provisions of section 6707 for confidential corporate tax shelters.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the persons responsible for promoting and registering the transactions described in the regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand.

Further, the IRS and Treasury specifically request comments on (1) the scope and breadth of the characteristics used in the proposed regulations to identify transactions structured for the avoidance or evasion of Federal income tax; (2) the exceptions to registration provided for in the proposed regulations; and (3) whether particular types of transactions should be identified as excepted from registration. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 20, 2000, from 10 a.m. through 1 p.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 1111 Constitution Avenue entrance, located between 10th and 12th streets. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to

each topic (signed original and eight (8) copies) by May 31, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6111–2 also issued under 26 U.S.C. 6111(f)(4).

* * * * *

Par. 2. Section 301.6111–2 is added to read as follows:

§ 301.6111–2 Confidential corporate tax shelters.

[The text of this proposed section is the same as the text of § 301.6111–2T published elsewhere in this issue of the **Federal Register**.]

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 00–4845 Filed 2–28–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–00–010]

RIN 2115–AE46

Special Local Regulations: Miami Super Boat Grand Prix, Miami Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Temporary Special Local Regulations are being proposed for the Miami Super Boat Grand Prix. The event will be held from 11 a.m. to 3 p.m. on April 30, 2000, offshore Miami Beach, FL. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before April 17, 2000.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard Group Miami, 100 McArthur Causeway, Miami Beach, FL 33139. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Petty Officer Rick Storey, Coast Guard Group Miami at (305) 535–4472.

SUPPLEMENTARY INFORMATION:

Background and Purpose

These regulations are required to provide for the safety of life on navigable waters because of their inherent danger of high speed competition boat racing in the vicinity of spectator craft during the Miami Super Boat Grand Prix, Miami Beach, FL. Although a permanent regulation has been established for this event (33 CFR 100.730), the organizers asked that the event be moved for this year to April 30. The permanent regulations create a regulated area that prohibit non-participating vessels from entering the regulated area during the event. The practical effect of this proposed rule is to change the date of the event for this year from the third Sunday in April until April 30th, and to slightly modify the boundaries of the spectator area.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD07–00–010] and the specific section of this proposal to which their comments apply and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8″x11″ unbound format suitable for copying and electronic filling. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans on public hearings. Persons may request a public hearing by writing to Commander Coast Guard Group Miami at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Regulatory Evaluation

This proposal is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The regulated area will only be in effect for 4½ hours on one day.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic effect upon a substantial number of small entities. "Small entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have

a significant economic impact on a substantial number of small entities as the regulations will only be in effect for 4½ hours in a limited area of Miami Beach, FL.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may sent comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman the Regional Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposal calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

We have analyzed this proposal under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This proposal will not impose an unfunded mandate.

Taking of Private Property

This proposal will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposal meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposal under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this proposal and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this proposal is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46, and 33 CFR 100.35.

2. Temporary § 100.35T–07–010 is added to read as follows:

§ 100.35T–07–010 Miami Superboat Grand Prix, Miami Beach, FL.

(a) *Regulated Area:* A regulated area is established 1000 feet off shore of Miami Beach FL from Miami Beach Clock Tower to Atlantic Heights. The regulated area for the race course is defined by a line joining the following coordinates: 25°51.38′ N., 080°06.84′ W., thence to 25°46.54′ N., 080°07.40′ W., thence to 25°46.60′ N., 080°07.18′ W., thence to 25°51.37′ N., 080°06.71′ W., thence to the starting point.

(b) *Spectator Area:* The spectator area is defined by a line joining the following coordinates: 25°50.56′ N., 080°06.60′ W., thence to 25°47.21′ N., 080°06.91′ W., thence to 25°47.20′ N., 080°06.55′ W., thence to 25°50.54′ N., 080°06.25′ W., thence to the starting point. All coordinates reference use Datum: NAD 1983.

(c) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Group Miami, FL.

(d) *Special Local Regulations:* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft must remain in the spectator area as established by these regulations.

(e) *Dates:* This section becomes effective at 10:45 a.m. and terminates at 3:15 p.m. EST on April 30, 2000.

Dated: February 18, 2000.

G.W. Sutton,

Captain, Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 00–4998 Filed 3–1–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 154–0211; FRL–6544–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) for ozone. These revisions concern the control of oxides of nitrogen (NO_X) from cement kilns. The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the Federally approved SIP. EPA has evaluated this rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments on this proposed action must be received in writing on or before April 3, 2000.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

FOR FURTHER INFORMATION CONTACT: Max Fantillo, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for limited approval and limited disapproval into the SIP is Mojave Desert Air Quality Management District (MDAQMD) Rule 1161, Portland Cement Kilns. This rule was submitted by the California Air Resources Board (CARB) to EPA on June 29, 1995.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a proposed rule entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The Southeast Desert Air Basin managed by MDAQMD is classified as severe,[1] therefore this area was subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline, cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions, are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for MDAQMD, Rule 1161, Portland Cement Kilns. MDAQMD adopted Rule 1161 on June 28, 1995. The State of California submitted this rule on June 29, 1995. Rule 1161 was found to be complete on July 3, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.[2]

NO_X emissions contribute to the production of ground level ozone and smog. Rule 1161 controls emissions of oxides of nitrogen (NO_X) from portland cement kilns within MDAQMD area. The rule was adopted as part of MDAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for this action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

There is currently no version of MDAQMD's Rule 1161, Portland Cement Kilns, in the SIP. The submitted rule includes the following provisions: applicability, exemptions, emission limits, compliance determination, compliance alternative, test methods, monitoring and recordkeeping, and compliance schedule.

With exception of the deficiencies discussed below, EPA has determined that the emission limits and other provisions of Rule 1161 meet the RACT requirement of section 182(b). Although Rule 1161, Portland Cement Kilns, will strengthen the SIP, this rule contains the

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[1] Southeast Desert Air Basin managed by MDAQMD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

following appendix D/RACT deficiencies:

• The Alternative Compliance Strategy (ACS) is not approvable as written because it lacks substantive detail. ACS provisions must be consistent with the EPA Emissions Trading Policy Statement (ETPS), the Economic Incentive Program Rules (EIP), and EPA policies regarding alternative control and alternative methods of compliance. The EIP and other EPA policies require bubble provisions to meet, among other things, a 10 percent (%) or greater reduction in emissions beyond the established baseline.

• The rule allows exemption from the emission limits during start-up/shutdown(su/sd). EPA policy on excess emissions during su/sd generally disallows automatic exemption from emission limits during these periods. Automatic exemptions might aggravate ambient air quality by excusing excess emissions that cause or contribute to a violation of an ambient air quality standard.

• The rule references submitted Rule 430 which is not State Implementation Plan (SIP) approved. Referenced rules must be SIP approved.

A more detailed discussion of the sources controlled, the controls required, justification for why these controls represent RACT, and the rule deficiencies can be found in the Technical Support Document (TSD), dated December 29, 1999.

Because of the above deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of MDAQMD'S submitted Rule 1161 under sections 110(k)(3) and 301(a) of the CAA as meeting the requirements of section (110)(a) and part D. At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), and part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this document has been adopted by the MDAQMD and is currently in effect in the MDAQMD area. EPA's final limited disapproval action will not prevent MDAQMD or EPA from enforcing this rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 17, 2000.

Felicia Marcus,

Regional Administrator Region IX.

[FR Doc. 00–5041 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6545–3]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Arizona Department of Environmental Quality; Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the 1990 Clean Air Act (CAA), the Maricopa County Environmental Services Department (MC) in Arizona requested delegation of specific national emission standards for hazardous air pollutants (NESHAPs). In the Rules section of this **Federal Register**, EPA is granting MC the authority to implement and enforce specified NESHAPs. The direct final rule also explains the procedure for future delegation of NESHAPs to MC. EPA is taking direct final action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by April 3, 2000.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted requests are available for public inspection at EPA's Region IX office during normal business hours (docket number A–96–25).

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION: This document concerns delegation of unchanged NESHAPs to the Maricopa County Environmental Services Department and the Arizona Department of Environmental Quality. For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: February 18, 2000.

David P. Howekamp,

Director, Air Division, Region IX.

[FR Doc. 00–5037 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 503

[FRL –6546–3]

RIN 2040–AC25

Standards for the Use or Disposal of Sewage Sludge; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Reopening of Comment Period.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing a reopening of the public comment period to March 23, 2000 for its Proposed Rule on Standards for the Use or Disposal of Sewage Sludge which was published in the **Federal Register** on December 23, 1999 at (64 FR 72045).

DATES: The comment period is reopened until March 23, 2000.

ADDRESSES: Written comments and enclosures should be mailed or hand-delivered to: Part 503 Sewage Sludge Use or Disposal Rule; Docket Number W–99–18, Comment Clerk, Water

Docket MC–4101, Environmental Protection Agency, Room 57 East Tower Basement, 401 M Street, SW, Washington, DC 20460. Comments may also be submitted electronically to *OW-Docket@epamail.epa.gov*. For additional information see Additional Docket Information in the **SUPPLEMENTARY INFORMATION** section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Arleen Plunkett, U.S. Environmental Protection Agency, Office of Water, Health and Ecological Criteria Division (4304), 401 M Street, SW., Washington, DC 20460. (202) 260–3418.

SUPPLEMENTARY INFORMATION:

Additional Docket Information

The record for this rulemaking has been established under docket number W–99–18 and includes supporting documentation as well as the printed paper versions of electronic materials. When submitting written comments to the Water Docket, (see **ADDRESSES** section above) please reference docket number W–99–18 and submit an original and three copies of your comments and enclosures (including references). For an acknowledgment that we have received your information, please include a self-addressed, stamped envelope. EPA will not accept facsimiles (faxes). Comments may also be submitted electronically to: *OW-Docket@epamail.epa.gov*. Electronic comments must be submitted as an ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by docket number W–99–18. Comments and data will also be accepted on discs in WP5.1, WP6.1, WP8, or ASCII file format. To ensure that EPA can read, understand, and, therefore, properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commentors should use a separate paragraph for each issue.

The record is available for inspection from 9:00am to 4:00pm Eastern Standard or Daylight time, Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M Street, SW, Washington, D.C. 20460. For access to the docket materials, please call 202–260–3027 to schedule an appointment.

For information on the existing rule in 40 CFR Part 503, you may obtain a copy of A Plain English Guide to the EPA Part 503 Biosolids Rule on the Internet at *http://www.epa.gov/owm/bio.htm* or request the document (EPA publication number EPA/832/R–93/003) from: Municipal Technology Branch, Office of Wastewater Management (4204), Office of Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Background

On December 23, 1999, EPA (64 FR 72045) proposed to amend management standards for sewage sludge by adding a numeric concentration limit for dioxin and dioxin-like compounds ("dioxins") in sewage sludge that is applied to the land, and monitoring, record keeping and reporting requirements for dioxins in sewage sludge that is land applied. EPA did not propose additional numeric standards or management practice requirements for dioxins in sewage sludge that is placed in surface disposal units or incinerated in sewage sludge incinerators. The proposal was based on the results of risk assessments for dioxins in sewage sludge that is applied to the land, placed in surface disposal units, or incinerated.

EPA established a 60-day public comment period which is scheduled to close on February 22, 2000. Subsequently, we received requests to extend the public comment period. The requests were based on the time that it would take to review the technical support documents of the proposed rule. We agree that a reopening is warranted to allow adequate time for the review of the technical support documents for this proposal. Therefore, the public comment period will now close on March 23, 2000.

Dated: February 24, 2000.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 00–5044 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–P

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 00–001–2]

Declaration of Emergency Because of Plum Pox Virus

An exotic plant virus, plum pox virus, has been detected in the United States. The disease was detected in Pennsylvania and had not previously been detected in the United States.

Plum pox virus is the cause of an extremely serious plant disease, affecting a number of *Prunus* species, including peach, nectarine, apricot, plum, and almond. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. There is no cure or treatment for the disease once a tree becomes infected. In Europe, where plum pox has been present for a number of years, the disease is considered to be the most serious disease affecting susceptible *Prunus* species. The disease is spread over short distances by a number of different aphid species, and over longer distances through the movement of infected budwood and nursery stock. The strain of virus now present in the United States is known not to be seed-transmitted.

If plum pox is allowed to become established and to spread, the overall crop loss and impact on quality could be significant. The estimated annual value of stone fruit at the farm gate for the entire United States is at least $1.8 billion. If steps are not taken to eradicate plum pox in the very limited area in Pennsylvania where it is now known to be present, there is every possibility the disease will eventually spread to other areas in the United States where host crops are produced. This would result in substantial losses to producers of these important fruit crops, and to those industries that transport, process, or otherwise utilize this fruit. Consumers would also be affected by a reduction in the quantity and quality of fruit available, and by increased prices.

There are three components to controlling and eradicating plum pox: (1) A regulatory program to prevent the movement of plant material infected with plum pox virus from the area where it is now known to be present to other areas where the host plants are likely to be present; (2) a survey program adequate to detect any additional infestations of plum pox virus that may be present; and (3) a control program to remove all infested orchards. Initial action was taken by the Pennsylvania Department of Agriculture (PDA). The PDA has instituted a quarantine that encompasses the two townships that include the area where plum pox virus is now known to be present. The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture intends to establish a parallel Federal quarantine of this area.

APHIS has insufficient funds to conduct the control and eradication programs deemed necessary to protect stone fruit production areas. Once funded, APHIS can continue a control and eradication program.

Therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. 953 (7 U.S.C. 147b), I declare that there is an emergency that threatens the stone fruit crops of this country, and I authorize the transfer and use of such sums as may be necessary from appropriations or other funds available to agencies or corporations of the United States Department of Agriculture for the conduct of a program to control and prevent the spread of plum pox to noninfested areas of the United States, and to eradicate plum pox wherever it may be found in the United States.

EFFECTIVE DATE: This declaration of emergency shall become effective January 20 , 2000.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 00–4987 Filed 3–1–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 00–001–1]

Declaration of Extraordinary Emergency Because of Plum Pox Virus

An exotic plant virus, plum pox virus, has been detected in the United States. The disease was detected in Pennsylvania and had not previously been detected in the United States.

Plum pox virus is the cause of an extremely serious plant disease, affecting a number of *Prunus* species, including peach, nectarine, apricot, plum, and almond. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. There is no cure or treatment for the disease once a tree becomes infected. In Europe, where plum pox has been present for a number of years, the disease is considered to be the most serious disease affecting susceptible *Prunus* species. The disease is spread over short distances by a number of different aphid species, and over longer distances through the movement of infected budwood and nursery stock. The strain of virus now present in the United States is known not to be seed-transmitted.

If plum pox is allowed to become established and to spread, the overall crop loss and impact on quality could be significant. The estimated annual value of stone fruit at the farm gate for the entire United States is at least $1.8 billion. If steps are not taken to eradicate plum pox in the very limited area in Pennsylvania where it is now known to be present, there is every possibility the disease will eventually spread to other areas in the United States where host crops are produced. This would result in substantial losses to producers of these important fruit crops, and to those industries that transport, process, or otherwise utilize this fruit. Consumers would also be affected by a reduction in the quantity and quality of fruit available, and by increased prices.

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likely to be present; (2) a survey program adequate to detect any additional infestations of plum pox virus that may be present; and (3) a control program to remove all infested orchards. Initial action was taken by the Pennsylvania Department of Agriculture (PDA). The PDA has instituted a quarantine that encompasses the two townships that include the area where plum pox virus is now known to be present. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (the Department) intends to establish a parallel Federal quarantine of this area.

It is essential to the control and eradication of the plum pox virus that orchards known to be infested be removed promptly, along with any additional orchards that are determined to be infested in surveys to be conducted this spring. The Department has reviewed the measures being taken by Pennsylvania to survey, regulate, and control plum pox virus and has consulted with the Governor of Pennsylvania. Based on such review and consultation, the Department has determined that Pennsylvania does not have authority or funds to compensate growers for the removal of infested orchards. Without such funds, it will be unlikely to achieve expeditious removal of the orchards.

The infestation of plum pox virus represents a threat to U.S. stone fruit crops. It constitutes a real danger to the national economy and a potential serious burden on interstate and foreign commerce. Therefore, the Department has determined that an extraordinary emergency exists because of the existence of plum pox virus in Pennsylvania.

In accordance with 7 U.S.C. 150dd, this declaration of extraordinary emergency authorizes the Secretary to: (1) Seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as the Secretary deems appropriate, any product or article of any character whatsoever, including means of conveyance, that the Secretary has reason to believe is infected by or contains the plum pox virus; and (2) quarantine, treat, or apply other remedial measures to, in such manner as the Secretary deems appropriate, any premises, including articles on such premises, that the Secretary has reason to believe are infected by or contaminated by the plum pox virus. The Governor of Pennsylvania has been informed of these facts.

EFFECTIVE DATE: This declaration of extraordinary emergency shall become effective January 20 , 2000.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 00–4988 Filed 3–1–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the Federally owned invention U.S. Patent No. 5,968,541, issued October 19, 1999, entitled "Composition and Method for the Control of Diabroticite Insects" is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Florida Food Products, Inc., of Eustis, Florida, an exclusive license to Serial No. 08/917,852.

DATES: Comments must be received on or before May 31, 2000.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention is assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Florida Food Products, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.

Assistant Administrator.

[FR Doc. 00–4989 Filed 3–1–00; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–008–1]

Public Meetings; Imported Fire Ant

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings and request for comments.

SUMMARY: The Animal and Plant Health Inspection Service plans to hold four public meetings to discuss issues related to how we should administer our imported fire ant program in light of reduced funding.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by May 1, 2000.

The public meetings will be held in: (1) Raleigh, NC, on March 21, 2000; (2) Orlando, FL, on March 23, 2000; (3) Austin, TX. on March 28, 2000; and (4) Santa Ana, CA, on March 30, 2000. Each public meeting will begin at 9 a.m. and is scheduled to end at 5 p.m.

ADDRESSES: If you cannot attend a public meeting, please send your written comment and three copies to: Docket No. 00–008–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–008–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

The public meetings will be held at the following locations:

(1) Raleigh, NC: Wake County Commons Buildings, 4011 Carya Drive, Raleigh, NC.

(2) Orlando, FL: Radisson Barcelo Hotel, 8444 International Drive, Orlando, FL.

(3) Austin, TX: Clements Building, Committee Room 5, 15th and Lavaca Streets, Austin, TX.

(4) Santa Ana, CA: Hall of Administration, Board of Supervisors Ante Room—First Floor, 10 Civic Center Plaza, Santa Ana, CA.

FOR FURTHER INFORMATION CONTACT: Ron Milberg, Operations Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5255.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) plans to hold four public meetings to discuss how we should administer our imported fire ant program in light of reduced funding.

Our imported fire ant program is based on our imported fire ant regulations (7 CFR 301.81–1 through 301.81–10, referred to below as the regulations). The regulations govern the interstate movement of regulated articles from areas quarantined because of imported fire ant. Section 301.81–2 of the regulations provides a list of articles regulated because of imported fire ant. Regulated articles are imported fire ant queens and reproducing colonies of imported fire ants, soil (except potting soil shipped in its original container), baled hay or straw stored in direct contact with the ground, nursery stock (except plants maintained indoors in a home or office environment and not for sale), used soil-moving equipment, and any other article determined to present a risk of spreading imported fire ant. Section 301.81–3 of the regulations lists areas quarantined because of imported fire ant. Quarantined areas are all or portions of the following States and territories: Alabama, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas. Sections 301.81–4 through 301.81–10 provide requirements for moving regulated articles interstate from quarantined areas to nonquarantined areas. These sections include requirements for certificates and limited permits and for treatment of regulated articles.

For fiscal year (FY) 2000, Congress gave APHIS $100,000 to cover the costs of administering the imported fire ant program and directed APHIS to use $58,000 of that amount to administer the program in New Mexico. Although $100,000 is considerably less than the amount allotted to the program for FY 1999, this amount is actually more than APHIS requested. For several years, APHIS has sought to eliminate its imported fire ant control activities because no economical, environmentally acceptable control agents specific to imported fire ant are available for large-scale application on agricultural land. Also, APHIS has not received any requests from States for cooperative treatment programs since 1985. In past years, APHIS has provided States with technical knowledge, treatment guidelines, and regulatory guidelines to help control imported fire ant populations; the States have conducted regulatory and survey activities. Through this arrangement, States have maintained a strong regulatory program and have even eradicated small, isolated infestations outside quarantined areas.

In support of these efforts to control imported fire ant, APHIS successfully tested the insecticide fipronil in FY 1998. Fipronil would be used to treat nursery stock and grass sod moving interstate from quarantined areas. The U.S. Environmental Protection Agency (EPA) is currently reviewing this insecticide; it may be registered by the EPA for use in the spring of 2001. APHIS plans to continue to evaluate the efficacy of new regulatory treatments for imported fire ant under its plant methods development laboratories? budget line item.

The public meetings will provide an opportunity for interested persons to comment on whether APHIS should continue to administer the imported fire ant program in accordance with the regulations (and if so, how we should manage the program in light of current funding) or if we should pursue another course of action. Please note, however, that while the information gathered during the meetings may indicate the need for changes to our current regulatory program, the meetings will not directly result in any changes to the regulations. If we determine that changes to the regulations are appropriate, we will propose those changes in the **Federal Register**.

Issues

We have identified three potential courses of action with respect to the imported fire ant program. They are:

(1) Maintain our imported fire ant program with minimal Federal regulatory activity, in line with current funding.

This option would, through APHIS regulations, continue to provide uniform standards for the regulated industry and consistent interstate shipping requirements. Under this option, States would continue to enforce the Federal quarantine without Federal funding. When alerted by States, APHIS personnel would continue to investigate noncompliance with the regulations and examine the origin and pathway of introduction of imported fire ants found on regulated articles.

(2) Eliminate the imported fire ant regulations (*i.e.*, rescind the Federal quarantine) and develop model guidelines for States to use in harmonizing their quarantines.

This option would reduce Federal resource requirements and may provide uniformity without Federal regulation. However, in the absence of Federal regulations, States may independently impose more or less stringent requirements for the entry of currently regulated articles. Requirements could differ from State to State.

(3) Eliminate the imported fire ant regulations (*i.e.*, rescind the Federal quarantine) and establish a voluntary nursery self-certification program.

This option would also reduce Federal resource requirements and may provide uniformity without Federal regulation. However, a voluntary self-certification program is not a mandatory program and could, therefore, result in less than 100 percent participation by producers.

Comments on these, or any other options, are welcome during the public meetings.

Meeting Procedures/Registration

A representative of APHIS will preside at each public meeting. Any interested person may appear and be heard in person, by attorney, or by another representative. Written statements may be submitted and will be made part of the meeting record. Persons who wish to speak at a meeting will be asked to provide their names and organizations. We ask that anyone who reads a statement or submits a written statement provide two copies to the presiding officer at the meeting.

Registration for each public meeting will take place from 8:30 a.m. to 9 a.m. on the day of the meeting at the meeting room. Each public meeting will begin at 9 a.m. and is scheduled to end at 5 p.m., local time. However, any meeting may end at any time after it begins if all persons desiring to speak have been heard. If the number of speakers at a meeting warrants it, the presiding officer may limit the time for presentations so that everyone wishing to speak has the opportunity.

Written Comments

If you cannot attend a public meeting, you may submit written comments on the issues raised in this notice. To submit written comments, please follow the instructions listed under the heading **ADDRESSES** near the beginning of this document.

Done in Washington, DC, this 24th day of February 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–5053 Filed 3–1–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–006N]

Exemption for Retail Stores; Adjustment for Dollar Limitations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) has increased the limitation on annual sales of meat and meat food products by retail stores whose operations are exempt from Federal inspection. The dollar limitation for poultry products has been kept unchanged at $39,000 for calendar year 2000. The dollar limitation for meat and meat food products has been increased from $41,000 to $42,500 for calendar year 2000. This increase conforms to the price change for meat and meat food products indicated by the Consumer Price Index.

EFFECTIVE DATE: March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250, (202) 720–5627, fax number (202) 690–0486.

SUPPLEMENTARY INFORMATION

Background

Under the regulations in 9 CFR 303.1(d) and 381.10(d), FSIS exempts certain operations of types traditionally and usually conducted at retail stores from routine Federal inspection of meat and poultry products. Whether a retail store operation qualifies for an exemption depends, in part, on the percentage and volume of trade in meat and poultry products that a retail store conducts with non-household consumers (hotels, restaurants, or similar institutions). The regulations state in dollars the annual maximum amount of meat and poultry products that a retail store may sell to non-household consumers if that store's operations are to remain exempt from inspection.

FSIS adjusts the dollar limitation during the first quarter of each calendar year if the Consumer Price Index, published by the Bureau of Labor Statistics, indicates at least a $500 increase or decrease in the price of the same volume of product during the previous year. FSIS publishes a notice of the adjusted dollar limitation in the **Federal Register**.

The Consumer Price Index for 1999 indicates an average annual price increase in meat and meat food products of 3.6 percent and an average annual price decrease in poultry products of 2.8 percent. When rounded off to the nearest $100, the price increase for meat and meat food products amounts to $1,500 and the price decrease for poultry products amounts to $200. Prices of meat and meat food products, therefore, have changed in excess of $500, and those of poultry have decreased by less than $500. In accordance with §§ 303.1(d)(2)(iii)(b) and 381.10(d)(2)(iii)(b) of the regulations, FSIS has increased the dollar limitation of permitted sales of meat and meat food products from $41,000 to $42,500 and has kept the dollar limitation of permitted sales for poultry products at $39,000.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: February 24, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–5055 Filed 3–1–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revision to Solitude Mountain Resort Master Development Plan Update, Wasatch-Cache National Forest, Salt Lake Ranger District, Salt Lake County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Salt Lake Ranger District, of the Wasatch-Cache National Forest, will conduct a new public scoping process and prepare an EIS on Solitude Ski Resort's (Solitude) revised proposal to update their Master Development Plan.

DATES: Comments concerning the scope of the analysis should be received in writing by April 4, 2000.

ADDRESSES: Send written comments to Daniel J. Jiron, District Ranger, 6944 South 3000 East, Salt Lake City, Utah 84121.

FOR FURTHER INFORMATION CONTACT: Steve Scheid, Project Manager, (801) 733–2689.

SUPPLEMENTARY INFORMATION: Solitude is proposing to revise its Master Development Plan Update. During the spring and summer of 1995, Solitude Ski Resort submitted to the Forest Service an updated Master Development Plan (MDP) detailing proposed ski area and facility modifications. Public comment was initially solicited on August 4, 1995 through the issuance of a scoping document, followed by a public meeting on August 25, 1995. A second public scoping notice was issued for Solitude in July 1996, after the Forest Service determined that an EIS needed to be prepared. A public field review was also held in September 1997 to view and discuss proposed projects and potential alternatives for Solitude's MDP update.

The planning horizon for Solitude's original MDP update was approximately five years. Due to the substantial elapse of time (four years), there is now a need to extend the planning horizon of Solitude's MDP update. In addition, Solitude's desire to address public and Agency issues pertaining to their proposed facilities has resulted in a

number of additions and modifications to the MDP update. The vast majority of projects originally proposed for Solitude's MDP update remain unchanged. Solitude's proposal, if approved, would require Forest Plan amendments to incorporate projects located outside its special use permit boundary; install the proposed Sol-Bright lift; meet the proposed expansion of Solitude's skiers at one time (SAOT) capacity; meet visual quality objectives (VQO's) for existing and proposed parking areas and the proposed Highway accelerations and deceleration lane improvements.

Solitude proposes to improve their base facilities by replacing their outdated Main and Eagle Express lodges with two new buildings, which will house ski operations, skier services (restrooms, food service, day care, ski school and ski patrol) and a connected Salt Lake County Fire Station. They also propose to construct additions to the existing Moonbeam Center and Last Chance Mining Camp day lodges to help alleviate overcrowded conditions.

Solitude's proposed base area projects include the following: a landing pad for rescue helicopters, recreational vehicle hookups, expanding Moonbeam parking lot, upgrading base transportation and visitor circulation systems, a satellite and communications base station, and upgrading the snowmaking system (stream diversion points, a pump house and dredging Lake Solitude) to provide snowmaking capacity for 250 acres.

Solitude is also proposing to upgrade its lift system by constructing three new double chairlifts, a pulse gondola for internal resort (base area) transportation and upgrading three existing lifts to high-speed detachable quads. They are also proposing numerous improvements to their trail system and a new trail near the Sunrise lift. Solitude is also proposing to provide lighted nighttime activities including sliding, snowboarding, skiing, and ice skating adjacent to the Village base area. Solitude is also proposing summertime recreation use improvements by upgrading its mountain bike trail system and constructing an alpine slide.

Additional information on the proposed actions is available through the Salt Lake Ranger District office. Before any decision is made on this proposal, Solitude must obtain the following: a water change application from the Utah Department of Natural Resources, Division of Water Rights, State Engineer; all applicable building permits from Salt Lake County; a 404 permit from the Army Corps of Engineers; and consultation with the Environmental Protection Agency.

A scoping document, dated August 4, 1995, was sent to more than 540 individuals, organizations, and local and state government agencies. A second scoping notice, dated July 16, 1996 was sent to more than 250 individuals, organizations, and local and state government agencies. Preliminary issues identified by a Forest Service interdisciplinary team include effects on riparian and wetland areas, visual quality, transportation, parking, wildlife and vegetation, soil erosion, and water quality and quantity in a culinary watershed. Two preliminary alternatives have been identified. The proposed action alternative would permit Solitude to implement all of its proposed upgrades and may require Solitude to convert to a new Ski Area Term Special Use Permit. The no action alternative would permit use as it presently exists with no new improvements.

The public is invited to submit comments or suggestions to the address above. The responsible official is Bernie Weingrardt, Forest Supervisor. A Draft EIS is expected to be filed in December of 2000 and the final EIS filed in November of 2001.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in this proposed action participate during that time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that the reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, (9th Circuit, 1986), and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

Dated: February 25, 2000.

Daniel J. Jiron,

District Ranger.

[FR Doc. 00–5005 Filed 3–1–00; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 1 p.m. on Tuesday, March 14, 2000, at the Holiday Inn-South/ Convention Center, 6820 South Cedar Street, Lansing, Michigan 48911. The purpose of the meeting is to hold a press conference to release the Committee's report, Employment Rehabilitation Services in Michigan. The Committee will also review and act on its report, "Civil Rights Issues Facing Arab Americans," and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Roland Hwang, 517–373–1480, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 25, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–4982 Filed 3–1–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–805]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Michael Grossman, at (202) 482–1775 or (202) 482–3146, respectively, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce ("the Department") to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On July 29, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide from the Netherlands, covering the period June 1, 1998 through May 31, 1999 (64 FR 41075). The preliminary results are currently due no later than March 1, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the preliminary results until no later than June 29, 2000. *See* Decision Memorandum from John Brinkmann, Acting Director, AD/CVD Enforcement, Office VI, to Holly Kuga, Acting Deputy Assistant Secretary for Import Administration, Group II, dated February 14, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: February 24, 2000.

Holly Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 00–5076 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon From Chile: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 2, 2000.

FOR FURTHER INFORMATION: Edward Easton at (202) 482–3003, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the Date of publication of the preliminary determination.

Background

On August 30, 1999, the Department published a notice of initiation of administrative review of the antidumping order on Fresh Atlantic Salmon from Chile, covering the period July 28, 1998, through June 30, 1999 (64 FR 47167). The preliminary results are currently due no later than March 31, 2000.

Extension of Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, we are extending the time limit for completion of the preliminary results until no later than July 31, 2000. *See* Decision Memorandum from Gary Taverman to Holly Kuga, dated February 16, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: February 24, 2000.

Holly Kuga,

Acting Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 00–5074 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor at (202) 482–5831 or Ron Trentham at (202) 482–6320, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary

determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On August 30, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on Silicon Metal from Brazil, covering the period July 1, 1998 through June 30, 1999 (64 FR 47167). The preliminary results are currently due no later than April 1, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 30, 2000. *See* Decision Memorandum from Thomas Futtner to Holly A. Kuga, dated February 25, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: February 25, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 00–5075 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022500D]

North Carolina and Louisiana Commercial King and/or Spanish Mackerel Fishermen Pilot Economic Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed Collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 1, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 507, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Vondruska, Department of Commerce, NCAA, National Marine Fisheries Service, Fisheries Economics Office, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

SUPPLEMENTARY INFORMATION:

I. Abstract

The North Carolina and Louisiana Commercial King and/or Spanish Mackerel Fishermen Pilot Economic Survey will consist of telephone screening with in-person interviews of commercial fishermen in North Carolina and Louisiana possessing Federal commercial mackerel fishing permits. The survey will provide NMFS with economic information to better estimate the effects of regulations proposed for the King and Spanish mackerel commercial fisheries. The survey will also provide a better basis for designing statistically-random surveys for other strata of the population of boats that engage in these and other fisheries in a seasonally-complex round of economic activity throughout the Southeast (coastal states from North Carolina to Texas). Monitoring of these fisheries is required under the Magnuson-Stevens Fishery Conservation and Management Act.

II. Method of Collection

The information sought will be collected through telephone screener interviews and in-person data collection. The frame of vessels in North Carolina and Louisiana holding Federal commercial mackerel fishing permits will be randomly sampled (separately by state).

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations (commercial mackerel fishermen in North Carolina and Louisiana).

Estimated Number of Respondents: 103.

Estimated Time Per Response: Average response times are estimated at 12 minutes per telephone screening interview, 15 minutes per captain interview, 20 minutes per owner interview, and 45 minutes (15 minutes x 3 times) per typical trip interview for a total time of 92 minutes per respondent.

Estimated Total Annual Burden Hours: 160 hours.

Estimated Total Annual Cost to Public: $0 (no capital expenditures).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 24, 2000

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–5064 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022500E]

Alaska Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed Collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 1, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, 907–586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

Fishermen wanting to fish in regulated fisheries in the Exclusive Economic Zone off Alaska must apply for a Federal Fisheries Permit, a Federal Processor Permit, a High Seas Power Troller Permit, or an Experimental Fishing Permit. The issuance of a permit is an essential ingredient in the management of fishery resources. Identification of the participants, harvest gear types, descriptions of vessels or shoreside facilities, and expected activity levels is needed to measure the consequences of management controls, and is an effective tool in the enforcement of other fishery regulations. Experience has shown that fines for violations of specific fishery regulations are not as effective as the threat of a permit revocation that would exclude the vessel from the fishery altogether. Experimental fishing provides information not otherwise available through research or commercial fishing operations.

II. Method of Collection

Each of the four permits is mandatory for certain fishery participants. A permit is obtained through completion of an application form.

III. Data

OMB Number: 0648–0206.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 2,814.

Estimated Time Per Response: 20 minutes for a Federal Fisheries Permit or Federal Processor Permit application, 30 minutes for applications for a Scallop Moratorium Permit Transfer or High Seas Power Troller Permit in the Salmon Fishery, and 30 hours for an Experimental Fishing Permit application.

Estimated Total Annual Burden Hours: 358.

Estimated Total Annual Cost to Public: $1,413.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 24, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–5065 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.022800A]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council Scientific and Statistical Committees (SSC) will hold a joint public meeting.

DATES: The meeting will be held on Monday, March 13, 2000, from 10:00 a.m.- 5:00 p.m.

ADDRESSES: This meeting will be held at the Sheraton International Hotel at Baltimore International Airport, 7032 Elm Road, Baltimore, MD; telephone 410–859–3300.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic and New England Fishery Management Councils recently initiated management of spiny dogfish *(Squalus acanthias)* pursuant to the Magnuson-Stevens Fishery Conservation and Management Act of 1976 as amended by the Sustainable Fisheries Act through the development of the Spiny Dogfish Fishery Management Plan (FMP). The New England and Mid-Atlantic Fishery Management Councils adopted recommendations relative to second year management measures for spiny dogfish at their respective meetings in November and December 1999. The Councils failed to reach agreement relative to the preferred measures for spiny dogfish in 2000–2001. As such, the respective measures recommended by each Council were presented to the Regional Administrator. The FMP specifies that the Regional

Administrator shall review the recommendations and, if necessary, may modify the annual quota and other management measures to assure that the target F specified in the FMP will not be exceeded. The Regional Administrator may modify the recommendations using any of the measures that were not rejected by both Councils.

The purpose of the joint SSC meeting is to provide scientific peer review of analyses relating to alternative management measures for spiny dogfish not considered by the Councils during the quota setting process for the fishing year 2000–2001. The measures may include quotas, seasons, trip limits or any other measure or set of measures specified in the FMP. In addition, alternative stock rebuilding targets and schedules, as well as analyses of discard mortality, may be presented and reviewed.

Although non-emergency issues not contained in this agenda may come before the Committees for discussion, these issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 28, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5068 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021800A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research and enhancement permits (1238, 1239).

SUMMARY: Notice is hereby given that NMFS has received permit applications from Mr. Ken Bergstrom, of the Western Massachusetts Center for Sustainable Aquaculture (WMCSF)(1238) and Dr. Boyd Kynard, of USGS-BRD-Conte Anadromous Fish Research Center (CAFRC) (1239).

DATES: Comments or requests for a public hearing on either of these applications must be received at the appropriate address or fax number (*see* **ADDRESSES**) no later than 5:00 pm eastern standard time on April 3, 2000.

ADDRESSES: Written comments on either of these applications should be sent to Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph: 301–713–1401).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (*see* **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species is covered in this notice: Endangered shortnose sturgeon (*Acipenser brevirostrum*).

New Applications Received

WMCSF has requested a 5-year enhancement permit to maintain up to 300 captively bred juvenile shortnose sturgeon currently held by the US Fish and Wildlife Service—Conte Anadromous Fish Research Center. The fish will be used as part of an education program emphasizing conservation of Connecticut River fishes.

CAFRC has requested a 5-year permit to lethally take up to 200 spawned eggs, embryos and larvae annually; capture, PIT tag and release up to 350 juvenile and adult sturgeon annually; and authorization to lethally take up to 1000 pre-spawned eggs; radio tag and release 3 pre-spawned females and 7 pre-spawned males for three years of the permit. The applicant is proposing to continue research on life history of shortnose sturgeon in the Connecticut river, and plans to collect new information on spawning, migration, habitat and fish passage of the species.

Dated: February 24, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–5067 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022300B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits (1240, 1241, 1242, 1243, 1244); receipt of an application to modify a permit (1136); issuance of a permit (1215); and issuance of amendments and modifications to existing permits (1119, 1130, 1140).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received permit applications from the U.S. Geological Survey at Cook, WA (USGS) (1240, 1241) and the Fish Ecology Division, Northwest Fisheries Science Center, NMFS at Seattle, WA (FED–NWFSC) (1242, 1243, 1244); NMFS has received an application for modifications to a permit from the Oregon Cooperative Fishery and Wildlife Research Unit at Corvallis, OR (OCFWRU) (1136); NMFS has issued a permit to Mr. Charles Cortelyou of Washington Department of Natural Resources at Olympia, WA (WDNR) (1215); NMFS has issued an amendment to a scientific research permit to the U.S. Fish and Wildlife Service (USFWS) (1119); and NMFS has issued modifications to scientific research permits to USGS (1130) and the Environmental Conservation Division, Northwest Fisheries Science Center, NMFS, at Seattle, WA (ECD–NWFSC)(1140).

DATES: Comments or requests for a public hearing on any of the new applications or the modification request must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00pm pacific standard time on April 3, 2000.

ADDRESSES: Written comments on any of the new applications or the modification request should be sent to the Protected Resources Division (PRD), F/NWR3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (503–230–5400).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1130, 1140, 1242, 1243, and 1244: Leslie Schaeffer, Portland, OR (ph: 503–230–5433, fax: 503–230–5435, e-mail: Leslie.Schaeffer@noaa.gov).

For permits 1119, 1136, 1215, 1240, and 1241: Robert Koch, Portland, OR (ph: 503–230–5424, fax: 503–230–5435, e-mail: Robert.Koch@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened Snake River (SnR) fall, threatened SnR spring/summer, endangered upper Columbia River (UCR) spring, threatened lower Columbia River (LCR).

Coho salmon (*O. kisutch*): Threatened southern Oregon/ northern California coast (SONCC).

Sockeye salmon (*O. nerka*): Endangered SnR.

Steelhead (*O. mykiss*): Threatened SnR; endangered UCR; threatened middle Columbia River (MCR); threatened LCR.

To date, final protective regulations for threatened LCR chinook salmon and threatened SnR, MCR, and LCR steelhead under section 4(d) of the ESA have not been promulgated by NMFS. Protective regulations are currently proposed for threatened LCR chinook salmon (65 FR 169, January 3, 2000) and threatened SnR, MCR, and LCR steelhead (64 FR 73479, December 30, 1999). This notice of receipt of applications requesting takes of these species is issued as a precaution in the event that NMFS issues final regulations that prohibit takes of threatened LCR chinook salmon and threatened SnR, MCR, and LCR steelhead. The initiation of a 30-day public comment period on the applications, including their proposed takes of threatened LCR chinook salmon and threatened SnR, MCR, and LCR steelhead does not presuppose the contents of the final regulations.

New Applications Received

USGS (1240) requests a 5-year ESA section 10(a)(1)(A) permit for annual takes of juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, and juvenile SnR steelhead associated with a study designed to provide managers with data on the distribution, abundance, movement, and habitat use of the anadromous fish that migrate through Lower Granite Reservoir on the Snake River in the Pacific Northwest. In particular, the study will provide detailed information on the response of outmigrating smolts to the operation of a surface bypass collector prototype in the forebay of Lower Granite Reservoir. Project objectives and sampling plans will accommodate ESA-listed species recovery needs and constraints. The ESA-listed juvenile fish to be used for the study will be collected at pre-selected trap sites operated by the Idaho Department of Fish and Game and/or Smolt Monitoring Program (SMP) personnel under separate take authorizations and provided to USGS. ESA-listed juvenile fish may also be collected by purse seines in Lower Granite pool or from the juvenile fish bypass facility at Lower Granite Dam. The fish will then be transported as necessary, anesthetized, implanted with radio transmitters, allowed to recover, transported to an upstream release site, released, and tracked electronically. ESA-listed juvenile fish indirect mortalities are also requested.

USGS (1241) requests a 5-year ESA section 10(a)(1)(A) permit for annual takes of juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, juvenile naturally produced and artificially propagated UCR spring chinook salmon, juvenile LCR chinook salmon, juvenile SnR steelhead, juvenile naturally produced and artificially propagated UCR steelhead, juvenile MCR steelhead, and juvenile LCR steelhead associated with a study designed to provide managers with data on the timing, passage, and survival of outmigrating smolts in relation to the operations of John Day, The Dalles, and Bonneville Dams. Project objectives and sampling plans will accommodate ESA-listed species recovery needs and constraints. The target fish for the study consist of juvenile hatchery spring chinook salmon, subyearling fall chinook salmon, and juvenile hatchery steelhead. The fish to be used for the

study will be collected from the juvenile bypass facilities at Bonneville, John Day, and/or McNary Dams on the lower Columbia River by SMP personnel under a separate take authorization and provided to USGS. The fish will then be transported as necessary, anesthetized, implanted with radio transmitters, allowed to recover, transported to an upstream release site, released, and tracked electronically. ESA-listed juvenile fish indirect mortalities associated with the research are also requested. In association with the radio transmitter tagging study, USGS proposes two tasks that will result in lethal takes of ESA-listed juvenile fish. USGS proposes to (1) statistically evaluate the survival rates of juvenile salmonids through John Day, The Dalles, and Bonneville Dams; and (2) evaluate the stress of juvenile salmonids that pass through the new bypass outfall pipe at Bonneville Dam's Second Powerhouse Downstream Migration Facility by measuring physiological indices (blood cortisol and lactate concentrations). For Task 1, fish will be acquired from SMP personnel at the dams, exposed to a lethal dose of anesthetic, and released in paired groups with the live radio-tagged fish to test the potential for dead research fish to be mistaken for live research fish. For Task 2, run-of-the-river fish are proposed to be netted from the sampling flume at Bonneville Dam to acquire the target fish; ESA-listed juvenile fish are proposed to be captured, handled, and released or captured and sacrificed.

FED–NWFSC (1242) requests a 5-year ESA section 10(a)(1)(A) permit to replace scientific research permit 946, which is due to expire on December 31, 2000. The permit is requested for annual takes of juvenile SnR sockeye salmon, juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, and juvenile SnR steelhead associated with research designed to evaluate inriver migration versus transportation from Lower Granite Dam on the Snake River to below Bonneville Dam on the Columbia River. Whether the transportation of depressed anadromous fish species should be maximized to enhance recovery is one of the most controversial and critical questions before the fisheries community today. The proposed scientific research is designed to provide definitive information relative to this important question. ESA-listed juvenile fish are proposed to be captured at Lower Granite Dam, handled (checked for condition), and released or captured at Lower Granite Dam, tagged with passive integrated transponders (PIT), and returned to the river below the dam. PIT-tagged fish will then be tracked downriver as juveniles, and later when they return to the Snake River Basin as adults, using automated PIT tag detectors at the hydropower dams on the Columbia and Snake Rivers. ESA-listed juvenile fish indirect mortalities associated with the research are also requested.

FED–NWFSC (1243) requests a 5-year ESA section 10(a)(1)(A) permit for annual takes of juvenile SnR sockeye salmon, juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, and juvenile SnR steelhead associated with research designed to evaluate juvenile fish survival at the Ice Harbor Dam spillway on the Snake River. Survival estimates for juvenile chinook salmon that migrate through the reservoirs, hydroelectric projects, and free-flowing sections of the Snake and Columbia Rivers are essential for developing effective strategies to recover depressed stocks. Recent survival studies have evaluated passage through various routes at all dams on the lower Snake River except Ice Harbor Dam. ESA-listed juvenile fish are proposed to be collected at Lower Monumental Dam on the Snake River by Smolt Monitoring Program personnel (authorized to collect fish under a separate authorization) and provided to FED–NWFSC. The fish are then proposed to be tagged with radio transmitters and/or PITs, transported to Ice Harbor Dam, held a minimum of 24 hours for recovery, and released into the spillway or transferred to a small barge, transported, and released into the tailrace. Tagged fish will then be tracked downriver as juveniles, and later when they return to the Snake River Basin as adults, using automated PIT tag detectors at the hydropower dams on the Columbia and Snake Rivers. ESA-listed juvenile fish indirect mortalities associated with the research are also requested.

FED–NWFSC (1244) requests a 2-year ESA section 10(a)(1)(A) permit to partially replace scientific research permit 1213, which is due to expire on December 31, 2000. The permit is requested for annual takes of juvenile SnR sockeye salmon, juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, juvenile naturally produced and artificially propagated UCR spring chinook salmon, juvenile LCR chinook salmon, juvenile SnR steelhead, juvenile naturally produced and artificially propagated UCR steelhead, juvenile MCR steelhead, and juvenile LCR steelhead associated with six studies designed to evaluate the juvenile fish bypass facilities at selected Snake and Columbia River dams. There is general agreement among the scientific community that problems associated with juvenile fish passage through mainstem river hydropower facilities have been a major factor in the decline of ESA-listed anadromous fish species in the Columbia River Basin. Based on the results from bypass studies, guidance devices and bypass system components can be redesigned, modified, or deployed using specific configurations to improve juvenile fish passage. ESA-listed juvenile fish are proposed to be collected at Ice Harbor Dam (Study 1) on the Snake River and McNary Dam (Studies 2 and 3), John Day Dam (Study 4), and Bonneville Dam (Studies 5 and 6) on the Columbia River. Once collected, the fish will be routed to holding tanks, handled (checked for fish condition and fork length), and released or routed to holding tanks, tagged/marked (with PITs, radio transmitters, and/or fin clips), and released. Tagged fish will then be tracked downriver as juveniles, and later when they return to the Columbia/Snake River Basins as adults, using automated PIT tag detectors at the hydropower dams on the Columbia and Snake Rivers. ESA-listed juvenile fish indirect mortalities associated with the research are also requested. In association with the scientific research, lethal takes of ESA-listed juvenile fish are requested for Studies 4 and 5. For Study 4, previously PIT-tagged hatchery yearling chinook salmon with different migration histories are proposed to be collected at John Day Dam, held in an artificial seawater recirculation system for extended periods, and ultimately sacrificed for physiological characteristics and disease profiles. For Study 5, ESA-listed juvenile fish are proposed to be collected in fyke nets at Bonneville Dam and sacrificed as a means to estimate the number of unguided fish during the submersible traveling screens fish guidance efficiency research at the dam.

Modification Requests Received

OCFWRU requests modifications to ESA section 10(a)(1)(A) permit 1136, which currently authorizes annual takes of juvenile SnR sockeye salmon, juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, and juvenile naturally produced and artificially propagated UCR steelhead associated

with research designed to compare biological and physiological indices of wild and hatchery juvenile fish exposed to stress from bypass, collection, and transportation activities at the dams on the Snake and Columbia Rivers. The purpose of the research is to determine effects of manmade structures and management activities on outmigrating salmonids and to provide information that can be used to improve their survival. Lethal and non-lethal takes of ESA-listed juvenile fish are authorized by permit 1136. For the modifications, OCFWRU requests annual takes of juvenile MCR steelhead, juvenile LCR steelhead, and juvenile LCR chinook salmon. ESA-listed juvenile fish are proposed to be captured using lift nets or dipnets at McNary Dam and/or John Day Dam on the Columbia River or acquired from SMP or NMFS personnel at Bonneville Dam on the Columbia River, handled, and released while obtaining target fish for the research (primarily hatchery-produced chinook salmon and steelhead). OCFWRU also requests increases in takes of all ESA-listed juvenile fish species currently authorized to be taken by the permit, including both lethal and non-lethal takes. Finally, OCFWRU requests a 2-year extension of the permit. The modifications are requested to be valid for the duration of the permit, which is now proposed to expire on December 31, 2002.

Permits, Amendments, and Modifications Issued

Notice was published on March 2, 1998 (63 FR 10198) that USFWS had applied for a scientific research permit. Permit 1119 was issued on May 15, 1998, and authorized the annual take of adult and juvenile, naturally produced and artificially propagated UCR steelhead associated with studies designed to gather data on emerging juvenile salmon and steelhead and to conduct snorkel surveys in various watersheds as part of inventory and artificial structure monitoring projects. NMFS issued an amendment to permit 1119 on February 22, 2000, that authorizes USFWS annual direct takes of adult and juvenile, naturally produced and artificially propagated UCR spring chinook salmon associated with the studies. An associated indirect mortality of juvenile, naturally produced and artificially propagated UCR spring chinook salmon is also authorized. The amendment to permit 1119 is valid for the duration of the permit, which expires on December 31, 2002.

Notice was published on February 2, 1999 (64 FR 5030) that USGS had applied for a modification to scientific research permit 1130. Modification 1 to permit 1130 was issued on February 22, 2000, and authorizes USGS to tag a higher number of fish at John Day Dam and reduce the number tagged at Bonneville Dam due to an increased priority for evaluating fish passage efficiency at John Day Dam. USGS is also authorized annual takes of juvenile, naturally produced and artificially propagated UCR spring chinook salmon. Indirect mortalities of juvenile naturally produced and artificially propagated UCR spring chinook salmon associated with the research are also authorized. Modification 1 to permit 1130 is valid for the duration of the permit, which expires on December 31, 2002.

Notice was published on April 26, 1999 (64 FR 20266) that ECD had applied for a modification to scientific research permit 1140. Modification 1 to permit 1140 was issued on February 22, 2000, and authorizes ECD annual take of juvenile naturally produced and artificially propagated UCR spring chinook salmon. Modification 1 to permit 1140 is valid for the duration of the permit, which expires on December 31, 2002.

Notice was published on April 26, 1999 (64 FR 20266) that Mr. Charles Cortelyou, of DNR had applied for a scientific research permit that would authorize takes of juvenile UCR spring chinook salmon and juvenile UCR steelhead associated with salmonid presence/absence surveys in proposed timber sale areas in the State of Washington. The stream surveys will determine the correct stream classification and place the stream in the correct Riparian Management Zones (RMZ). The correct RMZ designation will protect listed fish by requiring proper riparian buffers be left along streams. Permit 1215 was issued on February 22, 2000, and expires on December 31, 2003.

Dated: February 25, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–5069 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011300A]

Marine Mammals; Scientific Research Permit No. 982–1530

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Stephen D. Busack, Director Research and Collections, North Carolina State Museum of Natural Sciences, 102 North Salisbury St., Raleigh NC 27603 has been issued a permit to import a marine mammal specimen for scientific purposes.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment. (*see* **SUPPLEMENTARY INFORMATION**)

SUPPLEMENTARY INFORMATION: On November 10, 1999 notice was published in the **Federal Register** (64 FR 61278) that a request for a scientific research permit to import one blue whale skeleton as a scientific specimen had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing and exporting of endangered fish and wildlife (50 CFR 222.23).

Issuance of this permit as required by the ESA is based on a finding that such permit: (1) Was applied for in good faith: (2) Will not operate to the disadvantage of the endangered species which are the subject of this permit: and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Addresses: Documents are available in the following offices: Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2289 (508/281–9250);

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5301);

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg., 1, Seattle, WA 98115–0070 (206/526–6150); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Dated: February 25, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–5066 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Mercantile Exchange for Designation as a Contract Market for Futures and Options on the FORTUNE e–50 Index™

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and options contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market for futures and options on the FORTUNE e–50 Index™. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before April 3, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to *secretary @cftc.gov*. Reference should be made to the Chicago Mercantile Exchange (CME) for futures and options on the FORTUNE e–50 Index™.

FOR FURTHER INFORMATION CONTACT: Please contact Thomas Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washingotn, DC (202) 418–5278. Facsimile number: (202) 418–5527. Electronic mail: tleahy@cftc.gov

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitted written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on February 25, 2000.

Richard A. Shilts,

Acting Director.

[FR Doc. 00–4967 Filed 3–1–00; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent (NOI) To Prepare an Environmental Impact Statement for the Future Development and Operations at Fort Meade, MD

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Fort George G. Meade, Maryland, announces its intent to prepare an Environmental Impact Statement (EIS) that will address the future development and operations of Fort Meade's Real Property Master Plan (RPMP) for the Years 2000–2004. The planned projects which will occur during this time include the following: construction of new facilities that will consolidate tenants from dilapidated World War II structures and off post leased facilities into more cost efficient and effective facilities, demolition and construction of barracks and mess halls and providing on post development opportunities for tenants on installations that are currently faced with Base Realignment and Closure. It is the purpose of this EIS to further assess the impacts, most specifically to air and traffic, that were identified in the Environmental Assessment entitled "Future Development and Operations Environmental Assessment" dated April 1999.

ADDRESSES: Questions or written comments may be forwarded to the U.S. Army Corps of Engineers, Baltimore District, Planning Division, Planning and Environmental Services Branch (Attn: Ft. Meade EIS), 10 South Howard Street, P.O. Box 1715, Baltimore, Maryland 21203–1715, Telephone (410) 962–4939.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Gebhardt, Environmental Engineer, Directorate of Public Works Environmental Management Office, at (301) 677–9365.

SUPPLEMENTARY INFORMATION: The Fort Meade RPMP has the potential to significantly impact certain natural, economic, social and cultural resources of the Fort Meade community. The objective is to prepare a comprehensive EIS which will serve as a planning tool, a public information source and a reference for mitigation tracking.

Alternatives may consist of alternate locations for specific projects, partial implementation of the specific project or modifications to the specific project. The alternatives will be developed during the preparation of the Draft EIS (DEIS) as a result of public input and the environmental analysis of the proposals within the plan. The objective Fort Meade's DEIS is to identify and evaluate any environmental implications that may result from developing the Master Plan. The DEIS will describe the impacts of existing environmental, cultural and natural resources, social, economic and environmental justice conditions associated with the proposed projects at Fort Meade.

The Army will initiate a scoping process to discuss significant issues related to the DEIS through public meetings and local publications. These efforts are designed to encourage public

input that will inevitably help determine and better define the underlying issues of the DEIS. Planned public meetings will be announced through local publications and online Internet access in advance of any proposed action, announcing meeting time and location.

A public meeting will be held on Fort Meade to facilitate input to the EIS process by citizens and organizations. The date and time of these meetings will be announced in the general media and will be at times and locations convenient to the public. To be considered in the Draft EIS, comments and suggestions should be received not later than 15 days following the public scoping meeting.

Significant issues: Within Fort Meade's boundaries lie numerous historic and prehistoric sites that were identified through the Cultural Resources Management Plan. Fort Meade also maintains historically significant structures which are eligible for inclusion on the National Register and may be directly affected by the actions proposed in the long range Master Plan. Equally important is the impact Fort Meade has on the Chesapeake Bay and the crucial role it plays in maintaining and protecting which is considered one of the world's most diverse ecosystems. Fort Meade is also home to eleven State Endangered Species, including the Glassy Darter which is one of only two locations in the State of Maryland where the fish is known to exist.

Dated: February 24, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 00–5082 Filed 3–1–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Information Collection Request

AGENCY: National Assessment Governing Board; Department of Education.

ACTION: Notice of amended information collection request.

SUMMARY: The National Assessment Governing Board (NAGB) is amending the Notices of Proposed Information Collection Request (ICR) published on January 18, 2000 and revised on February 18, 2000. The present notice is to inform the public that the Governing Board has cancelled one of two proposed research studies. The study that was cancelled is on the feasibility of establishing a calibration linkage between a test form resembling an individual test and a survey of group results—the National Assessment of Educational Progress. The study is described in the January 18 and February 18, 2000 notices.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs; Attention: Danny Werfel, Desk Officer: Department of Education; Office of Management and Budget; 725 17th Street, N.W., Room 10235; New Executive Office Building; Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Submit written comments, on or before March 17, 2000, identified by "ICR: VNT Research and Validation Support Studies (Option Year 2)." The National Assessment Governing Board will forward to OMB any comments received from the public in response to the January 18, 2000 notice inviting requests for public comment on this ICR.

SUPPLEMENTARY INFORMATION: Section 3506 of the Act (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or federal law, or substantially interfere with any agency's ability to perform its statutory obligations. In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice amends a proposed information collection request (ICR) of the National Assessment Governing Board (the Governing Board, or NAGB) published on January 18, 2000 and revised on February 18, 2000. The information collection is to conduct a research and validation support study related to test development for the proposed Voluntary National Test (VNT) during Spring 2000.

ADDITIONAL INFORMATION: Copies of this ICR may be obtained from Ray Fields, Assistant Director, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC 20002. Telephone: (202) 357–0395; e-mail: Ray__Fields@ED.Gov.

Dated: February 28, 2000.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 00–5072 Filed 3–1–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Quarterly Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming quarterly meeting of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATES: March 16, 2000.

TIME: 9 a.m. to 5 p.m.

LOCATION: Room 100, 80 F St., NW., Washington, DC 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel.: (202) 219–2065; fax (202) 219–1528; e-mail: Thelma__Leenhouts@ed.gov, or nerpph@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (OERI) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The meeting is open to the public. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Thelma Leenhouts at (202) 219–2065 by no later than March 9. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

The Board will hear reports from the Assistant Secretary for OERI and from the chair and executive director. The Board will review its recommendations for the reauthorization of OERI and consider proposals for a major study of the infrastructure of educational research and development.

A final agenda will be available from the Board office on March 9, and will be posted on the Board's web site, *http://www.ed.gov/offices/OERI/NERPPB/*.

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, DC 20208–7564.

Dated: February 28, 2000.

Eve M. Bither,

Executive Director.

[FR Doc. 00–5013 Filed 3–1–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Federal Student Aid Application File (18–11–01)

AGENCY: Department of Education.

ACTION: Correction.

SUMMARY: The Chief Information Officer for the Department of Education publishes this correction to the Federal Student Aid Application File (18–11–01). This system was republished on June 4, 1999 (64 FR 30159) in response to the President's direction that agencies review system notices to be sure that each notice was current and accurately reflected how the system was used by the agency. In the process of converting this system of records to a newer, easier to read style, some of the routine uses that the Department decided to apply to all systems of records were dropped. This notice adds the intended routine uses to the system of records.

DATES: The routine uses added by this notice are effective on March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Bill Burrow, Office of Chief Information Officer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5624 Regional Office Building 3, Washington, DC 20202–4580. Telephone: 202–401–0250. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

General

In a memorandum dated May 14, 1998, President Clinton directed executive departments and agencies (agencies) to conduct a thorough review for accuracy and completeness of all agency systems of records. He directed agencies to make sure that the routine uses continue to be necessary and compatible with the purposes for which they were collected.

On June 4, 1999, 64 FR 30105, the Department republished virtually all of its systems of records, including this system of records, in response to the President's memorandum. In that notice, the Department committed to using standard routine uses for all its revised systems. Unfortunately, the standard routine use for research was omitted from the Federal Student Aid Application File (18–11–01), due to technical errors. This notice adds this and other standard routine uses to that system of records. ED needs the research routine use in this system of records so that ED may conduct research on the extent to which applicants inaccurately report income needed to determine eligibility for various forms of student financial assistance. These routine uses do not affect the day-to-day operation of this system as its program specific routine uses were not affected by the technical errors.

Correction

In the Notice of New, Amended, Altered and Deleted Systems of Records published in the **Federal Register** on June 4, 1999 (64 FR 30105), make the following correction beginning on page 30160, in the first column, in the notice entitled "Federal Student Aid Application File (18–11–01)," under the heading "Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Users," add the following numbered paragraphs after paragraph (9):

(10) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.*The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(11) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: Complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(12) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(13) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(14) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(15) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Dated: February 25, 2000.

Craig B. Luigart,

Chief Information Officer.

[FR Doc. 00–5120 Filed 2–29–00; 9:56 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4718–011

Cocheco Falls Associates; Notice of Meeting

February 25, 2000.

Staff from the Federal Energy Regulatory Commission (Commission) will hold a meeting on March 9, 2000, to entertain resolution of issues discussed in the Commission staffs Draft Environmental Assessment (DEA) for the Cocheco Falls Project (FERC No. 4718), issued on December 16, 1999. The project is located on the Cocheco River in Dover, New Hampshire.

The meeting will be held at 1:00 p.m. at the New Hampshire Fish and Game Department, Region 3, 225 Main Street, Durham, NH 03824. Any questions concerning the meeting should be directed to Robert Grieve at (202) 219–2655 or by electronic mail at *robert.grieve@ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 00–4992 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–036]

Columbia Gas Transmission Corporation; Notice of Refund Report

February 28, 2000.

Take notice that on February 22, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing a refund report in the above referenced docket, pursuant to Section 154.501(e) of the Commission's regulations.

Columbia states that it made a filing on December 15, 1999, pursuant to a settlement approved by the Commission in Docket No. RP95–408–013 (79 FERC 61,044), to share gains from the sale of certain gathering and products extraction facilities. The Commission approved the filing by letter order dated February 11, 2000 in Docket No. RP95–408–032, authorizing Columbia to make the refund and directing Columbia to calculate additional interest to the date of the refund. Columbia states that the instant filing shows that Columbia made the refund, including interest through the date of the refund, which was January 20, 2000.

Columbia states that copies of its filing have been mailed to all affected customers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 3, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5023 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–363–002

Equitrans, L.P.; Notice of Request for Limited Waiver

February 25, 2000.

Take notice that on February 3, 2000, Equitrans, L.P. (Equitrans) tendered for filing a request for a one-year waiver, until March 1, 2001, to comply with the following GISB Standards (Version 1.3): Nomination Standards 1.4.1 through 1.4.7, Flowing Gas Standards 2.4.1 through 2.4.6, Invoicing Standards 3.4.1 through 3.4.4, EDM Standards 4.3.1 through 4.3.3, and to the extent applicable to EDI transactions, 4.3.9 through 4.3.15, Capacity Release Standards 5,4,1 through 5.4.17.

Equitrans states upon granting of the request, it will submit revised General Terms and Conditions to remove any reference to information being submitted or obtained via EDI transmission.

Equitrans states that in June 1999 it contracted with Altra Energy Technologies, Inc. (Altra) to install and help implement a new gas transportation management system. Unforseen problems in the implementation of the new system and problems with the maintenance of the current system necessitates this filing. The new Altra system is expected to be operational by December 31, 2000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 3, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims/htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4994 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–100–000, *et al.*]

Central Generadora Electrica San Jose, Limitada, *et al.*; Electric Rate and Corporate Regulation Filings

February 23, 2000.

Take notice that the following filings have been made with the Commission:

1. Central Generadora Eléctrica San José, Limitada

[Docket No. EG00–100–000]

Take notice that on February 18, 2000 Central Generadora Eléctrica San José, Limitada (Central) with its principal office c/o TECO Power Services Corporation, 702 North Franklin Street, Tampa, Florida 33602, filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Central states that it is a Sociedad de Responsibilidad Limitada organized under the laws of Guatemala. Central will be engaged directly and exclusively in the business of owning and operating an approximately 120 MW electric generating facility located in the area of Masagua, Department of Escuintla, Guatemala. Electric energy produced by the facility will be sold at wholesale or at retail exclusively to foreign consumers.

Comment date: March 15, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. ISO New England Inc.

[Docket No. ER98–3554–004]

Take notice that on February 17, 2000, ISO New England Inc. (the ISO) filed a Compliance Report detailing refunds made pursuant to the settlement of the ISO's Tariff for Transmission Dispatch and Power Administration Services, a request for privileged treatment of the information contained in the Compliance Report and request for partial waiver of the Commission order regarding the Compliance Report.

Copies of said filing have been served upon all parties to this proceeding, all Participants in the New England Power Pool (NEPOOL) and all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as, on the governors and utility regulatory agencies of the six New England States.

Comment date: March 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. The Alliance Companies:

[Docket Nos. ER99–3144–002 and EC99–80–002 (not consolidated)]

American Electric Power Service Corporation on behalf of Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company; Consumers Energy Company; The Detroit Edison Company;

FirstEnergy Corp. on behalf of The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company; Virginia Electric and Power Company

Take notice that on February 18, 2000, the Alliance Companies (American Electric Power Service Corporation, Consumers Energy Company, The Detroit Edison Company, FirstEnergy Corp. and Virginia Electric and Power Company) on behalf of themselves and their public utility operating company subsidiaries submitted a transmittal letter and attached documents in compliance with the December 20, 1999 Order On Proposed Disposition and Related Rate Filings (Order) in the above-referenced proceedings. The filing provides explanation for certain aspects of the Applicants' proposal as required by the Order, modifications to the proposed ISO Bylaws, modifications to the Transco Term Sheet and modifications to the Operating Protocol.

The Alliance Companies state that copies of this filing have been served on each person designated on the official service list.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Consumers Energy Company

[Docket No. ER00–1651–000]

Take notice that on February 18, 2000, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Firm Point-to-Point Transmission Service with Northern Indiana Public Service Company.

The agreement was pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison) and has an effective date of February 2, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and Northern Indiana Public Service Company.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company

[Docket No. ER00–1652–000]

Take notice that on February 18, 2000, Central Power and Light Company (CPL), Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO), and West Texas Utilities Company (WTU) (collectively, the CSW Operating Companies) tendered for filing transmission and ancillary services agreements under the CSW Operating Companies' Open Access Transmission Tariff with FPL Energy Power Marketing, Inc. (FPL Energy).

The CSW Operating Companies seek an effective date of January 21, 2000 for the agreements.

Copies of the filing were served on FPL Energy and the Public Utility Commission of Texas.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Illinova Power Marketing, Inc.

[Docket No. ER00–1653–000]

Take notice that on February 18, 2000, Illinova Power Marketing, Inc. (IPMI), tendered for filing Electric Power Transaction Service Agreements under which certain customers will take service pursuant to IPMI's power sales tariff, Rate Schedule FERC No. 1.

Copies of this filing have been served upon each purchaser.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Coral Power, L.L.C.

[Docket No. ER00–1654–000]

On February 18, 2000, Coral Power, L.L.C. (Coral), a limited liability company formed under the laws of Delaware, tendered for filing a petition for acceptance of revisions to its market-based rate schedule to provide for the sale of ancillary services and firm transmission rights.

Coral also requested waiver of the 60-day notice requirement.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER00–1655–000]

Take notice that on February 18, 2000, Southern Company Services, Inc. (SCSI), acting as agent for Alabama

Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the Operating Companies), tendered for filing the amended and restated Southern Company System Intercompany Interchange Contract (IIC) dated February 17, 2000. The amended and restated IIC incorporates previously approved amendments, simplifies and streamlines the contract, recognizes an internal organizational change, and adopts several revisions that are intended to promote equitable treatment among the participants. In addition, SCSI submitted revisions to the Operating Companies' Market Based Rate Power Sales Tariff to reflect this same organizational change and to update references to the interest calculation and to the Open Access Transmission Tariff.

SCSI requests an effective date of April 18, 2000 for this submittal.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Deseret Generation & Transmission Co-operative

[Docket No. ER00–1660–000]

Take notice that Deseret Generation & Transmission Co-operative on February 18, 2000, tendered for filing a Wholesale Power Agreement For Large Industrial Loads [Implementing Deseret Rate Schedule ML-"PC1"] between Deseret Generation & Transmission Co-operative and Moon Lake Electric Association, Inc. The Agreement supercedes Supplement No. 8 to Service Agreement No. 5 under FERC Electric Tariff, Original Volume No. 1, and Supplements No. 1 and 2 thereto. The proposed change would result in a rate decrease in accordance with the provisions of the current rate schedules contained in Supplement No. 8 to Service Agreement No. 5 under FERC Electric Tariff, Original Volume 1, and Supplements No. 1 and 2 thereto.

The proposed change is being made by agreement of the parties and pursuant to the provisions of Service Agreement No. 5 under FERC Electric Tariff, Original Volume No. 1 which is already on file with the Commission.

Copies of this filing have been served upon Deseret's member cooperatives.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4990 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–25–006, *et al.*]

Northern States Power Company, *et al.*; Electric Rate and Corporate Regulation Filings

February 24, 2000.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket Nos. OA97–25–006, OA97–606–006, ER98–1890–007, ER98–2060–007 and EL98–40–006]

Take notice that on February 22, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (NSP) submitted the refund report required by the Commission's December 20, 1999 letter order approving the Offer of Settlement filed on March 23, 1999, in the above-captioned dockets. (89 FERC ¶ 61,200 (1999).

NSP states that a copy of the Refund Report has been served on all parties on the official Commission service list for these proceedings, on all affected transmission service customers and on affected state commissions.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Western Area Power Administration

[Docket No. EF00–5071–000]

Take notice that on February 18, 2000, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–87, did confirm and approve on an interim basis, to be effective on April 1, 2000, the Western Area Power Administration's firm power rate formula extension for the Provo River Project.

The extension of the rate formula will be in effect on an interim basis pending the Federal Energy Regulatory Commission's (Commission) approval of it or a substitute rate formula on a final basis. If approved, the final rate formula will be effective until March 31, 2005.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. New Century Services, Inc.

[Docket No. ER00–938–000]

Take notice that on February 22, 2000, New Century Services, Inc. (NCS), on behalf of Public Service Company of Colorado (PSCo), tendered for filing the following amended and restated agreements under Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6), namely, four separate transaction agreements for specific sales by PSCo to Municipal Energy Agency of Nebraska (MEAN) of capacity and associated energy for durations of longer than one year.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. PSI Energy, Inc.

[Docket No. ER00–1366–000]

Take notice that on February 18, 2000, PSI Energy, Inc. (PSI), tendered for filing the Transmission and Local Facilities (T&LF) Agreement Calendar Year 1998 Reconciliation between PSI and Wabash Valley Power Association, Inc. (WVPA), and between PSI and Indiana Municipal Power Agency (IMPA). The T&LF Agreement has been designated as PSI's Rate Schedule FERC No. 253.

Copies of the filing were served on Wabash Valley Power Association, Inc., the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Electric Company

[Docket No. ER00–1650–000]

Take notice that on February 22, 2000, Pennsylvania Electric Company (Penelec), tendered for filing an

amendment to the Interconnection Agreement, dated as of July 22, 1999, by and between Cleveland Electric Illuminating Company (CEI) and Penelec. The amendment consists of a Reactive Power Compensation Agreement.

Copies of the filing were served upon CEI and regulators in the Commonwealth of Pennsylvania.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. New Century Services, Inc.

[Docket No. ER00–1656–000]

Take notice that on February 18, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and British Columbia Power Exchange Corporation (Powerex).

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. The Montana Power Company

[Docket No. ER00–1657–000]

Take notice that on February 22, 2000, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 the executed Firm and Non-Firm Point-to-Point Service Agreements with, Sierra Pacific Energy Company and Amoco Energy Trading Corporation, under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Sierra Pacific Energy Company Amoco Energy Trading Corporation.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER00–1658–000]

Take notice that on February 22, 2000, New England Power Company (NEP), tendered for filing a Firm Local Generation Delivery Service Agreement with D. Hobbs Contracting, Inc.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Pool

[Docket No. ER00–1659–000]

Take notice that on February 22, 2000, the New England Power Pool (NEPOOL) Participants Committee submitted the Fifty-First Agreement Amending the Restated New England Power Pool Agreement (the Fifty-First Agreement).

The Fifty-First Agreement seeks to extend the current congestion cost allocation methodology until the earlier of June 1, 2000, or the beginning of the first calendar month sixty (60) days after the filing of an amendment to the Restated NEPOOL Agreement and/or NEPOOL Tariff.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the NEPOOL Participants.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Electric Power Company

[Docket No. ER00–1663–000]

Take notice that on February 18, 2000 Southwestern Electric Power Company (SWEPCO), tendered for filing actuarial reports in support of the amounts to be collected in SWEPCO's 1999 actual and 2000 projected formula rates for post-employment benefits other than pensions as directed by the Statement of Financial Accounting Standard No. 106 (SFAS 106), issued by the Financial Accounting Standards Board, and the collection in such formula rates of other post-employment benefits as directed by SFAS 112.

SWEPCO has served copies of the transmittal letter on all of its formula rate customers, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas. SWEPCO will provide copies of the actuarial reports to any customer or state commission upon request.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Southwest Power Pool, Inc.

[Docket No. ER00–1672–000]

Take notice that on February 18, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing a correction to a service agreement previously filed with the Commission in Docket No. ER00–834. SPP seeks an effective date of January 1, 2000, for the corrected agreements.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5022 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2609–013–NY]

Curtis/Palmer Hydroelectric Company LP, International Paper Company; Notice of Availability of Final Environmental Assessment

February 25, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Curtis/Palmer Falls Hydroelectric Project, located in Warren and Saratoga Counties, New York, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The FEA may be viewed on the web at http://

www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4991 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant Prepared Environmental Assessment Accepted for Filing; Requesting Interventions and Protests; Establishing Procedural Schedule and Final Amendment Deadline; Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions; Requesting Reply Comments

February 25, 2000.

Take notice that the following license application has been filed with the Commission. An Applicant-Prepared Environmental Assessment (APEA) for the Upper and Middle Dams Storage Project, which includes the project below, has been filed with the Commission. Both documents are available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 11834–000 [1]

c. *Dated filed:* December 23, 1999.

d. *Applicant:* FPL Energy Maine Hydro LLC.

e. *Name of Project:* Upper and Middle Dams Storage Project.

f. *Location:* The project is located on the Rapid River at the headwaters of the Androscoggin River in Oxford and Franklin Counties, Maine. The project would not utilize any Federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Frank Dunlap, Senior Environmental Coordinator, FPL Energy Maine Hydro LLC, 100 Middle Street, Portland, ME 04101 (207) 771-3534.

i. *FERC Contact:* Any questions on this notice should be addressed to Mark Pawlowski, E-mail address mark.pawlowski@ferc.fed.us, or telephone (202) 219–2795.

j. *Deadline for filing motions to intervene, protests, comments, final terms and conditions, recommendations, and prescriptions: 60 days from the issuance date of this notice.*

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St. NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, the intervenor must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* On September 25, 1995, the Director, Office of Hydropower Licensing, approved FPL Energy Maine Hydro LLC's (FPLE Maine) use of the Alternative Licensing Process. Scoping, pursuant to the National Environmental Policy Act of 1969, as amended, for the project was conducted through scoping documents issued in November 1995 and February 1999, and in public scoping meetings on December 13, 1995. On August 28, 1998, the Upper Androscoggin River Storage Settlement Agreement was signed by the parties. The draft license application and APEA were distributed by the applicant for comment on September 1, 1999.

The Commission staff has reviewed the license application and APEA and has determined that the application is acceptable for processing and no additional information or studies are needed to prepare the Commission's environmental assessment. Comments, as indicated above, are being requested from interested parties. The applicant will have 45 days following the end of this period to respond to those comments, or may elect to seek a waiver of this deadline.

1. *Description of Project:* The proposed project consists of two dams (Upper Dam and Middle Dam): (1) the Upper Dam consists of: (a) 200-foot-long and 25-foot-high concrete crib; (b) a 15,740-acre impoundment (Mooselookmeguntic Lake) at full pond elevation 1,468 feet U.S. Geological Survey (USGS) Datum; (c) a gatehouse containing 17 gates, ranging from 10 feet high and 6 feet wide, and 10.5 feet high and 15 feet wide; (d) two earthen dikes that extend 300 feet to the north and 1,000 feet at the south of the gatehouse; and (e) appurtenant facilities. (2) the Middle Dam consists of: (a) 244-foot-long and 22-foot-high concret crib; (b) a 7,470-acre impoundment (Richardson Lake) at full pond elevation 1,450 feet USGS Datum; (c) a 560-foot-long earth embankment situation to the north and a 200-foot-long embankment situated to the south of the gatehouse structure; (d) a gatehouse structure containing 20 gates, ranging from 10 feet high and 7 feet wide, and 12 feet high and 15 feet wide; and (e) appurtenant facilities. Two-thousand feet to the southeast of Middle Dam is Black Cat Dike, which is a 180-foot-long earthen embankment.

The Upper and Middle Dams Storage Project is a water storage facility with no generating facilities.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application and APEA.

o. Filing and Service of Responsive Documents—The Commission is requesting comments, recommendations, terms and conditions, prescriptions, and reply comments.

The Commission directs, pursuant to 18 CFR 4.34(b) of the regulations, that all comments, recommendations, terms and conditions, and prescriptions concerning the application and APEA be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

p. All filings must: (1) bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE,"

[1] On August 1, 1994, the Upper and Middle Dams Storage Project (UL94–1) was the subject of a jurisdictional order issued by the Commission, which required the project owner to prepare and submit an Application for Initial License to the Commission. The Commission has designated the Upper and Middle Dams Storage Project as P–11834–000.

"COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," "PRESCRIPTIONS," or "REPLY COMMENTS," (2) set forth in the heading the name of the applicant and the project number of the application and APEA to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application and APEA directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to: Director, Division of Environmental Review, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–4993 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

February 25, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2001(e)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. CP98–150–000 and CP98–151–000, 2–9–00, Jennifer Kerrigan, FERC
2. CP98–150–000 and CP98–151–000, 2–10–00, Jennifer Kerrigan, FERC
3. CP98–150–000 and CP998–151–000, 2–3–00, Gordon P. Buckley
4. CP00–6–000, 2–15–00, Marian Ryan
5. CP00–6–000, 2–15–00, James Martin, FERC
6. CP98–150–000 and CP98–151–000, 2–15–00, Jennifer Kerrigan, FERC
7. CP00–14–000, 2–15–00, Kim Jessen
8. Project No. 459–105, 2–18–00, Congressman Ike Skelton
9. CP98–150–000 and CP98–151–000, 2–16–00, Matthew J. Brower
10. CP99–94–000, 2–7–00, George Craciun

Prohibited

1. ER00–996–000 and ER00–971–000, 2–3–00, ISO New England Inc.
2. EL99–57–000, 2–7–00, Jacquelyn M. Frick
3. CP99–94–000, 2–16–00, David Parham

David P. Boergers,

Secretary.

[FR Doc. 00–5024 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Provo River Project—Rate Order No. WAPA–87

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–87 placing a rate formula extension into effect on an interim basis beginning on April 1, 2000, for power marketed by the Western Area Power Administration (Western) from the Provo River Project (PRP). The rate formula will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places it into effect on a final basis or until it is replaced by another rate formula.

DATES: The provisional rate formula extension will be placed into effect on an interim basis on April 1, 2000, and will be in effect until the FERC approves the rate formula extension or a substitute rate formula and places the formula in effect on a final basis for a 5-year period ending March 31, 2005, or until superseded.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Loftin, Rates Manager, Colorado River Storage Project Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1534, telephone (801) 524–6380, email loftinc@wapa.gov.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC.

Delegation Order No. 0204–172, effective November 24, 1999, reinstates the authority delegated to the Deputy Secretary in Amendment No. 3 to Delegation Order No. 0204–108, which authority was rescinded in the Secretary's Order of April 15, 1999. Existing DOE procedures for public participation in power rate adjustments are located at 10 CFR part 903, effective on September 18, 1985 (50 FR 37835).

DOE procedures have been followed by Western in developing this provisional firm power rate formula.

The Provo River Project was authorized in 1935. Construction on the PRP, which includes Deer Creek Dam and Powerplant on the Provo River in Utah, began in 1938, but was not completed until 1951. The powerplant, authorized on August 20, 1951, was completed and generation began in 1958. Its maximum operating capacity is 5,300 kilowatts (kW).

Provo River Project power is now marketed independently from the Salt Lake City Area/Integrated Projects pursuant to a marketing plan that was approved and published in the **Federal Register** on November 21, 1994. This marketing plan allows Western to market the output of the PRP to Utah Municipal Power Agency and Utah Associated Municipal Power Systems (Customers), located in the Provo River drainage area.

Contract Nos. 94–SLC–0253 and 94–SLC–0254 (Contracts) require that the amount of each annual installment be established in advance by Western and submitted to the Customers on or before August 31 of the year preceding the appropriate fiscal year (FY). Each FY Western estimates Deer Creek Powerplant (DCP) expenses by preparing a power repayment study that includes estimates of operation, maintenance, and replacement (OM&R) costs for the DCP.

Each annual installment pays the annual amortized portion of the United States investment in the Deer Creek Dam and Reservoir hydroelectric facilities with interest, and the associated OM&R costs. This repayment schedule does not depend upon the power and energy made available for sale or the rate of generation each year, but is a contract in which the Customers pay all OM&R expenses of the PRP and, in return, receive all of the energy produced by the PRP. Western will continue to provide the Customers a revised annual installment by August 31 of each year using the same methodology.

Rate Order No. WAPA–87, confirming, approving, and placing the proposed Provo River firm power rate formula extension into effect on an interim basis, is issued, and the extension will be promptly submitted to FERC for confirmation and approval on a final basis.

Dated: February 14, 2000

T. J. Glauthier,

Deputy Secretary.

Order Confirming, Approving, and Placing a Rate Formula Extension for the Provo River Project Into Effect on an Interim Basis (April 1, 2000)

This rate formula extension is established pursuant to the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101–7352, through which the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the PRP, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

By subsequent Order, effective April 15, 1999, the Secretary rescinded all delegation of authority to the Deputy Secretary, whether contained in Delegation Orders, Departmental Directives, or elsewhere, concerning the Department's Power Marketing Administrations, including, but not limited to, authority delegated or affirmed in Delegation Order No. 0204–108, as amended.

Delegation Order No. 0204–172, effective November 24, 1999, reinstates the authority delegated to the Deputy Secretary in Amendment No. 3 to Delegation Order No. 0204–108, which authority was rescinded in the Secretary's Order of April 15, 1999. Existing Department of Energy procedures for public participation in power rate adjustments are located at 10 CFR part 903, effective on September 18, 1985 (50 FR 37835). Filing requirements and procedures for approving Power Marketing Administration rates by FERC are found at 18 CFR part 300.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

CRSP: Colorado River Storage Project.

Contracts: Contract No. 94–SLC–0254 with Utah Municipal Power Agency effective December 22, 1994, and Contract No. 94–SLC–0253 with Utah Associated Municipal Power Systems effective January 19, 1995.

Customers: Utah Associated Municipal Power Systems and Utah Municipal Power Agency.

DCP: Deer Creek Powerplant.

DOE: Department of Energy.

DOE Order RA 6120.2: A Department of Energy order dealing with power marketing administration financial reporting.

FERC: Federal Energy Regulatory Commission.

FY: Fiscal year, October 1 to September 30.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

NEPA: National Environmental Policy Act of 1969.

OM&R: Operation, maintenance, and replacement.

PRP: Provo River Project.

PRS: Power Repayment Study.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

SLCA/IP: Salt Lake City Area/ Integrated Projects.

Western: United States Department of Energy, Western Area Power Administration.

Effective Date

This extension will become effective on an interim basis beginning April 1, 2000, and will be in effect pending FERC's approval of this or a substitute rate formula on a final basis for a 5-year period ending March 31, 2005, or until superseded.

Public Notice and Comment

On February 4, 1999, and again on March 26, 1999, Western met with the Customers and notified them of Western's intent to extend the present rate formula. This request is for approval of an extension of the present methodology used for calculating the annual installment. Western also discussed the FY 2000 budget and capital expenditures. Western has met with the Customers, and the Customers want to continue the present rate formula.

Project History

Construction of the PRP began in May 1938. The powerplant was completed in 1958 and has a generating capacity of

5,300 kW. Only energy excess to PRP purposes has been available for Federal marketing. Between 1963 and 1994, SLCA/IP needed additional energy and purchased the available PRP energy at an amount established annually to enable the PRP to cover its costs, including OM&R costs and repayment expenses. These expenses included $1.6 million of irrigation assistance to the water users. PRP's original power investment has been repaid, therefore the customers are responsible for only the replacement investments of the project.

PRP power is now marketed independently from the SLCA/IP pursuant to a marketing plan approved and published in the **Federal Register** on November 21, 1994. This marketing plan allows Western to market the output of the PRP to Utah Municipal Power Agency and Utah Associated Municipal Power Systems, located in the Provo River drainage area.

Power Repayment Studies

The Contracts require that the amount of each annual installment be established in advance by Western and submitted to the Customers on or before August 31 of the year preceding the appropriate FY. Each FY, Western estimates DCP expenses by preparing a PRS that includes estimates of OM&R costs for the DCP for the next FY.

Each annual installment pays the annual amortized portion of the United States investment in the Deer Creek Dam and Reservoir hydroelectric facilities with interest and the associated OM&R costs. This repayment schedule does not depend upon the power and energy made available for sale or the rate of generation each year.

A PRS is prepared each FY to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to be repaid by the PRP power function. Repayment criteria are based on law, policies, and authorizing legislation, in particular DOE Order RA 6120.2.

Certification of Rate

Western's Administrator has certified that the PRP firm power rate formula placed into effect on an interim basis herein is consistent with applicable laws and that the rate is the lowest consistent with sound business principles.

Discussion

According to Reclamation law, Western must establish power rates sufficient to recover operation, maintenance, and purchase power expenses, and to repay the Federal Government's investment in generation and transmission facilities. Rates must also be set to cover interest expenses on the unpaid balance of facilities' investments, replacements and additions, and certain non-power costs in excess of the irrigation users' ability to pay.

Western prepares an annual PRS that identifies the anticipated expenses. In accordance with the Contracts, minor replacements and additions are included in the annual expenses. The methodology of annual charges satisfies the cost-recovery criteria set forth in DOE Order RA 6120.2.

Statement of Revenue and Related Expenses

The revenue requirements for the PRP are based upon PRS calculations for future requirements, which will be adjusted when FY actuals are known. The following table provides a summary of revenues and expenses for the current 6-year firm power rate formula and also the actual revenues and expenses.

PROVO RIVER COMPARISON OF 6-YEAR REVENUE AND EXPENSES FY 1995–2000

[$1,000]

Item	Actual [1]	Projected	Difference [2]
Total Revenue	1,743	1,644	99
Expenses:			
O&M	1,233	1,158	75
Transmission	[3] 96	185	(89)
Interest	144	156	(12)
Investment Repayment	[4] 76	145	(69)
Prior Year Adjustments	194	.....	194
Total Expenses	1,743	1,644	99

[1] Amounts for FY 1999 and FY 2000 are estimates taken from the FY 1999 preliminary PRS.
[2] Reflects estimates to actual revenue requirements.
[3] The amount projected is the actual amount of transmission costs owed to CRSP. An adjustment to the financial statements will be made in the future to reflect these costs.
[4] The projected replacements were overstated.

The following table provides a summary of revenue and expense data through the 5-year proposed rate methodology approval period.

PROVO RIVER PROJECT 5-YEAR PROJECTIONS REVENUES AND EXPENSES

[$1,000]

	FY 2001—2005 Projections
Total Revenues	1,463
Costs:	
O&M [1]	1,151
Transmission	149
Interest	124
Investment Repayment	39
Total Costs	1,463

[1] Includes $78,000 in FY 2001 to overhaul generators.

Basis for Rate Development

Each Customer is billed for electric service calculated every FY, payable in 12 equal monthly payments. Every FY, Western estimates PRP expenses by preparing a PRS that includes estimates of OM&R costs for the DCP. The amount of each monthly payment is established in advance by Western and submitted to the Customers on or before August 31 of the year preceding the appropriate FY.

The calculation of the amount of the annual installment and the monthly payments includes adjustments to the OM&R charges. These adjustments are

the difference between estimated and actual OM&R expenses. If OM&R charges are underestimated, an amount equal to the difference is added to the next installment. Conversely, if OM&R charges are overestimated, the amount is deducted from the next installment.

In accordance with the Contracts, minor replacements and additions are included in the annual operation and maintenance expenses of the DCP. If major replacements and additions exceeding $5,000, but not greater than $25,000, in costs are needed, the Customers are given the option of financing their individual shares of the cost or of having the cost capitalized and amortized over the life of the replacement or addition or over the life of the contract. If the Customer chooses the latter, the cost is capitalized at the current interest rate prescribed by the DOE, pursuant to RA 6120.2 11B "Basic Policy for Rate Adjustment; Interest Rate Formula," in the FY in which the replacement or addition is made. Such costs are based on prudent and businesslike management practices and in accordance with established electric industry operation and maintenance practices. If extraordinary replacements exceeding $25,000 in costs are needed, Western will consult with Reclamation, the water users, and the Customers about financing the replacement.

The rate is not dependent upon the power and energy made available for sale. Instead, Customers will pay total PRP annual powerplant expenses in return for the total marketable PRP production. Each customer pays its proportional share of the OM&R expenses identified in the PRS in 12 monthly installments.

Environmental Compliance

In compliance with NEPA, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations 40 CFR parts 1500–1508; and DOE NEPA Regulations 10 CFR Part 1021, Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

Information regarding this rate formula extension, including PRSs, letters, memorandums, and other supporting material made or kept by Western for the purpose of extending provisional rate formulas, is available for public review in the Colorado River Storage Project Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1534; and in the Corporate Services Office, Western Area Power Administration,12155 West Alameda Parkway, Lakewood, CO 80228–2802.

Submission to Federal Energy Regulatory Commission

The rate formula extension herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority vested in me as the Deputy Secretary of Energy, I confirm and approve on an interim basis, effective April 1, 2000, an extension of the rate formula for the Provo River Project of the Western Area Power Administration. The rate formula shall remain in effect on an interim basis, pending the Federal Energy Regulatory Commission's confirmation and approval of it or a substitute rate on a final basis through March 31, 2005.

Dated: February 14, 2000.

T.J. Glauthier,

Deputy Secretary.

[FR Doc. 00–5020 Filed 3–1–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Applications for the Post-2004 Resource Pool Power Allocations, Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of extension and modification of application requirements.

SUMMARY: Western Area Power Administration (Western) published a Notice of Allocation Procedures and Call for Applications, Post-2004 Resource Pool—Salt Lake City Area Integrated Projects (SLCA/IP) in the **Federal Register** on September 8, 1999. This notice extends the filing date for applications for an allocation of SLCA/IP power from the Post-2004 Power Pool by 3 months and waives the requirement for a Letter of Interest from applicants.

DATES: Entities interested in applying for an allocation of Western power must submit applications as described in the September 8, 1999, notice to Western's CRSP Management Center at the address in the **ADDRESSES** section. Applications must be received by 4 p.m., MDT, on June 8, 2000. Applicants are encouraged to use certified mail to deliver applications. Applications will be accepted via regular mail through the United States Postal Service if postmarked at least 3 days before June 8, 2000, and received no later than June 12, 2000. Western will not consider applications that are not received by the prescribed dates. Western will publish a Notice of Proposed Allocations in the **Federal Register** after evaluating all applications. Application procedures are provided in the September 8, 1999, notice.

ADDRESS: Applications must be submitted to the CRSP Power Marketing and Contracts Team Lead, CRSP Management Center, P.O. Box 11606, Salt Lake City, UT 84147–0606.

FOR FURTHER INFORMATION CONTACT: Burt Hawkes, CRSP Power Marketing and Contracts Team Lead, telephone (801) 524–3344, e-mail hawkes@wapa.gov; or Lyle Johnson, Public Utilities Specialist, telephone (801) 524–5585, e-mail ljohnson@wapa.gov.

SUPPLEMENTARY INFORMATION:

Authorities

Power resources are marketed pursuant to the Department of Energy Organization Act (42 U.S.C. 7101–7352); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485(c); and other acts specifically applicable to the projects involved.

Background

This notice provides an extension to file an application for power from the Post-2004 Resource Pool from March 8, 2000, to June 8, 2000, and waives the requirement for a Letter of Interest from applicants.

The September 8, 1999, (64 FR 48825) notice established a date 6 months after publication or March 8, 2000, for Applicant Profile Data (APD) to be received by the CRSP Management Center. Through the process of contacting potential applicants, it has become apparent that many potential new customers will not be able to meet this deadline. Western has received several requests to extend the time allowed for completion of the APD. A 3-month extension will allow applicants

sufficient time to contact serving utilities and collect the information requested in the APD.

Western originally required that a Letter of Interest from applicants be received by Western by October 25, 1999. Western's intent in requiring this Letter of Interest was to provide Western with advance information about the number of applicants, particularly Native American applicants. Western anticipated that receiving this information in advance would allow time to assist these applicants in preparing their APD. A number of Letters of Interest were received prior to the announced deadline. However, several letters were submitted and accepted after the deadline had passed. Since these letters were requested for Western's convenience, the requirement for a Letter of Interest will be waived. Applicants are still encouraged to provide Western a letter indicating that they intend to apply for an allocation and name the points of contact within their organization.

Preference entities who want to apply for a new allocation of power from Western's SLCA/IP must submit formal applications conforming to the procedures described previously. Eligibility criteria, allocation criteria, and procedures for applying for power from the SLCA/IP are provided in the September 8, 1999, notice.

Dated: February 17, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–5019 Filed 3–1–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6545–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements Under EPA's WasteWise Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Reporting and Recordkeeping Requirements Under EPA's WasteWise Program; EPA ICR No. 1698.04; and OMB Control No. 2050–0139, expiring 7/31/00. This is a request for extension of a currently approved information collection EPA ICR No. 1698.03. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 1, 2000.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–2000–WRIP–FFFFF to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also be identified by the docket number F–2000–WRIP–FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0002.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

The ICR is available on the Internet at http://www.epa.gov/wastewise/icr.htm.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rulemaking, contact Barbara A. Nichols, Office of Solid Waste (5306W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460–0002, 703–308–8659, nichols.barbaraa@epa.gov.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are those businesses, institutions, and government agencies that voluntarily sign up to participate in EPA's WasteWise program.

Title: Reporting and Recordkeeping Requirements Under EPA's WasteWise Program (OMB No. 2050–0139; EPA ICR No. 1698.04), expiring July 31, 2000.

Abstract: EPA's voluntary WasteWise program encourages businesses and other organizations to reduce solid waste through waste prevention, recycling, and the purchase or manufacture of recycled-content products. WasteWise participants include partners, which commit to implementing waste reduction activities of their choice, and endorsers, which choose to promote the WasteWise program and waste reduction to their members. Endorsers, which are typically trade associations or other membership-based associations, are asked to submit only a one-page form, the Endorser Registration Form, either electronically or in hard copy. This form identifies the organization, the principal contact, and the activities to which the Endorser commits. Partners are asked to fill out three forms as follows. The Partner Registration Form identifies the organization and the facilities that will participate in WasteWise, and includes the signature of a senior official that can commit the organization to the program. This form can be submitted either electronically or in hard copy. Each partner develops its own waste reduction goals and submits a one-page Goals Identification Form to EPA every three years, either electronically or in hard copy. Partners also report annually on the progress made toward achieving these goals in the Annual Reporting Form, estimating amounts of waste prevented and recyclables collected,

and describing buying or manufacturing recycled-content products, either electronically or in hard copy.

The EPA WasteWise program uses the voluntarily-submitted information to: (1) Identify and recognize outstanding waste reduction achievements by individual organizations, (2) compile aggregate results that indicate overall accomplishments of WasteWise partners, (3) identify cost-effective waste reduction strategies to share with other organizations, and (4) identify topics on which to develop assistance and information efforts.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The respondent burden for this collection is estimated to average 16 hours per response for the Endorser Registration Form; 16 hours per response for the Partner Registration Form; 25 hours per response for the Goals Identification Form; and 45 hours per response for the Annual Reporting Form. This results in an estimated one-time respondent burden of 16 hours for Endorsers, and an annual Partner respondent burden of 41 hours for new partners and 70 hours for current partners needing to reset 3 year goals and 45 hours for current partners not needing to reset goals. The estimated number of respondents is 1,120 in year 1; 1,270 in year 2; and 1,430 in year 3. Estimated total annual burden on all respondents is 57,510 hours in year 1; 64,260 hours in year 2; and 71,010 hours in year 3.

Burden estimates include the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 17, 2000.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–5040 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6545–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Performance Track Program—Environmental Achievement Track

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Performance Track Program—Environmental Achievement Track, EPA ICR 1949.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 1, 2000.

ADDRESSES: Roberta White (2129), U.S. EPA, 401 M Street, S.W., Washington D.C. 20460. Interested persons may obtain a copy of the ICR without charge by contacting Roberta White at (202) 260–5616

FOR FURTHER INFORMATION CONTACT: Ken Munis, (202) 260–9560. Fax number: (202) 401–3998

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which voluntarily choose to participate in the EPA Performance Track.

Title: Performance Track Program—Environmental Achievement Track, EPA ICR 1949.01

Abstract: The Environmental Protection Agency is developing a national Performance Track Program to reward and motivate top environmental performance. The Performance Track program is the outcome of the July, 1999 report, "Aiming for Excellence: Actions to Encourage Stewardship and Accelerate Environmental Progress." In this report, the Agency committed to developing a Performance Track Program to encourage good environmental performers to continue striving to improve their environmental performance.

The Performance Track is a two-tiered, voluntary program designed to promote leadership in environmental protection through the use of Environmental Management Systems (EMS), Pollution Prevention Programs, and public reporting. Qualifying program participants will benefit from a variety of incentives, including, but not limited to, public recognition, reduced monitoring and reporting, and operational flexibility. EPA will announce and begin to solicit applications for level one of the Performance Track, the Environmental Achievement Track, in June of 2000. Level two, the Environmental Stewardship Track, will be announced in May of 2001.

Participation in the Performance Track program is voluntary. To be considered for acceptance into the program, applicants for the Environmental Achievement Track will be asked to submit information documenting their Environmental Managements System (EMS), history of compliance with EPA regulations, commitment to continuous environmental performance improvement, and commitment to public outreach and performance reporting. EPA will review the applications and notify the applicant within a specified time frame whether they qualify for the program. Upon acceptance to the Environmental Achievement Track, participants will be required to make environmental performance reports accessible to the public.

The EPA would like to solicit comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

EPA estimates that approximately 250 facilities may voluntarily apply to the Performance Track annually. EPA further estimates that 200 facilities will be selected to participate in the Environmental Achievement Track (Tier 1). The Agency estimates that the burden required by this action for facilities will range from 120 hours to 270 hours. The best estimate burden is 230 hours. Facilities that have operational environmental management systems in place and currently share some environmental performance information with the public will experience burden at the lower end of the range. Other facilities may require more burden to demonstrate how they meet the entry criteria.

The following table summarizes the estimate burden for the Environmental Achievement Tier.

	Facility burden hours	Facility burden cost	Number of facilities	Total burden hours	Total burden cost
Application	40	$1,070	250	10,000	$270,000
Compliance Demonstration	80	2,375	200	15,550	475,000
EMS Documentation and Reporting	40	1,110	200	8,100	220,000
Continuous Performance Demonstration	40	1,060	200	7,500	210,000
Reporting & Public Outreach	30	860	200	6,400	175,000
Total	230	6,475	.....	47,550	1,340,000

Dated: February 25, 2000.

Daniel J. Fiorino,

Acting Director Office of Policy/Office of Policy Development.

[FR Doc. 00–5042 Filed 3–1–00; 8:45 am]

BILLING CODE 6050–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00287; FRL–6488–3]

Substantial Risk Information Reporting Under Section 8(e) of the Toxic Substances Control Act (TSCA); Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): Substantial Risk Information Reporting Under Section 8(e) of the Toxic Substances Control Act (TSCA) (EPA ICR No. 0794.08, OMB No. 2070–0046). This ICR involves a collection activity that is currently approved and scheduled to expire on June 30, 2000. The information collected under this ICR helps EPA identify and take steps to mitigate any substantial risk of injury to human health or the environment caused by chemical substances. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPPTS–00287 and administrative record number AR–223, must be received on or before May 1, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00287 and administrative record number AR–223 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Joseph S. Carra, Deputy Director, Office of Pollution Prevention and Toxics (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Richard Hefter, Risk Assessment Division (7403), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3470; fax number: (202) 260–1283; e-mail address: hefter.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process or distribute a TSCA-covered chemical substance or mixture. Potentially affected categories and entities may include, but are not limited to:

Type of business	SIC codes
Chemicals and allied products	28
Petroleum refining	2911

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The Standard Industrial Classification (SIC) codes are provided to assist you and others in determining

whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 4080 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPPTS–00287 and administrative record number AR–223. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00287 and administrative record number AR–223 on the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00287 and administrative record number AR–223. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Substantial Risk Information Reporting Under Section 8(e) of the Toxic Substances Control Act (TSCA).

ICR numbers: EPA ICR No. 0794.08, OMB No. 2070–0046.

ICR status: This ICR is currently scheduled to expire on June 30, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: TSCA section 8(e) requires that any person who manufactures, imports, processes or distributes in commerce a chemical substance or mixture and who obtains information that reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment must immediately inform EPA of such information. EPA routinely disseminates TSCA section 8(e) data it receives to other Federal agencies to provide information about newly discovered chemical hazards and risks.

Responses to the collection of information are mandatory (see 15 U.S.C. 2607(e)). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 27.0 hours per response for initial TSCA section 8(e) submissions, and 5.0 hours per follow-up/supplemental section 8(e) submission. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Persons who manufacture, import, process or distribute a TSCA-covered chemical substance or mixture.

Estimated total number of potential respondents: 267.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 8,209.

Estimated total annual burden costs: $747,019.

VI. Are There Changes in the Estimates from the Last Approval?

Compared with the information collection most recently approved by OMB, there is a decrease of 1,291 hours in the estimated burden to respondents, from an estimated annual total burden of 9,500 hours currently approved to an average annual total burden of 8,209 hours in this request. This decrease reflects a reduction in the anticipated number of follow-up or supplemental TSCA section 8(e) notices received. In previous ICR renewals, EPA used an average ratio of 2.2 follow-up notices per each initial submission, based on historical experience. In recent years, however, the number of follow-up notices has fallen dramatically, due to changes in the nature of EPA's review of initial notices. As a result, EPA chose to use for this request an estimated average ratio of 0.75 follow-up or supplemental section 8(e) notices per each initial section 8(e) notice received.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 18, 2000.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–5049 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6546–5]

Ambient Air Monitoring Reference and Equivalent Methods: Designation of a new Equivalent Method for O_3

AGENCY: Environmental Protection Agency.

ACTION: Notice of designation and receipt of application.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, a new equivalent method for measuring concentrations of O_3 in ambient air. Notice is also given that EPA has received a new application for an equivalent method determination from Andersen Instruments, Incorporated, Smyrna, Georgia, for a PM_{10} monitor.

FOR FURTHER INFORMATION CONTACT: Frank F. McElroy, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711, Phone: (919) 541–2622, email: mcelroy.frank@epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA examines various methods for monitoring the concentrations of certain pollutants in the ambient air. Methods that are determined to meet specific requirements for adequacy are designated as either reference or equivalent methods, thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the National Ambient Air Quality Standards. EPA hereby announces the designation of a new equivalent method for measuring O_3 in ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new equivalent method for O_3 is an automated method which utilizes the measurement principle based on UV photometry. The newly designated method is identified as follows:

EQOA–0200–134, "DKK Corporation Model GUX–113E Ozone Analyzer," operated at any temperature in the range of

15 °C to 35 °C and on any of the following measurement ranges: 0–0.100 ppm, 0–0.200 ppm, 0–0.5 ppm, or 0–1.000 ppm.

An application for an equivalent method determination for the method based on this DKK analyzer was received by the EPA on December 2, 1999. The analyzer is available commercially from the applicant, DKK Corporation, 4–13–14, Kichijoji Kitamachi, Musashino-shi, Tokyo, 180, JAPAN.

A test analyzer representative of this method has been tested by the applicant in accordance with the test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and the specifications and limitations (*e.g.*, operating temperature or measurement range) specified in the applicable designation method description (see the identification of the method above). Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, EPA/600/R–94/0386." Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in parts 50 and 53 for at least one year after delivery when main-tained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

(h) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to maintain the manufacturing facility in which the sampler is manufactured as an ISO 9001-certified facility.

(i) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to submit annually a properly completed Product Manufacturing Checklist, as specified in part 53.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–77), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of this method should be directed to the applicant.

Receipt of New Application

EPA is also hereby announcing that it has received a new application for an equivalent method determination under 40 CFR part 53. Publication of a notice of receipt of such applications is required by section 53.5.

On January 12, 2000, EPA received an application for an equivalent method determination from Andersen Instruments, Incorporated, 500 Technology Court, Smyrna, Georgia for its Series FH 62 C14 Suspended Particle Monitor for monitoring PM_{10} in the atmosphere. If, after appropriate technical study, the Administrator determines that this method should be designated as an equivalent method under 40 CFR part 53, notice thereof will be published in a subsequent issue of the **Federal Register**.

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 00–5079 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30490; FRL–6488–7]

Pesticide Products; Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30490, must be received on or before April 3, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA. It is imperative that you identify docket control number OPP–30490 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Judy Loranger, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; office location/telephone number: 1921 Jefferson Davis Highway, Arlington, VA, 703 308–8056; and e-mail address: loranger.judy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS), codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30490. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30490 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30490. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

· Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Application

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

File Symbol: 66053–E. *Applicant:* ISP Fine Chemicals, Inc., 1979 Atlas St., Columbus, OH 43228. *Product Name:* Trimedlure. Pheromone. *Active ingredient:* Cyclohexanecarboxylic acid, 4 (or 5)-chloro-2-methyl-,1,1,-dimethylethyl ester at 98.0%. *Proposed classification/Use:* None. For Use in manufacturing or formulating registered pesticide products.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: February 16, 2000.

Janet L. Andersen,

Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–5051 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–921; FRL–6494–3]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food; Cry1F Plant-Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–921, must be received on or before April 3, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–921 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8375; e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–921. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–921 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information

Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–921. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

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1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 23, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Mycogen Seeds c/o Dow AgroSciences LLC

0F6078

EPA has received a pesticide petition (0F6078) from Mycogen Seeds c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the plant-pesticide *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production in plants in or on all food commodities.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Mycogen Seeds c/o Dow AgroSciences LLC has submitted the following summary of information, data, and arguments in support of their pesticide petition.

Bacillus thuringiensis subspecies *aizawai* Cry1F insect control protein is expressed in corn plants to provide protection from key lepidopteran insect pests such as the European corn borer. Cry1F-protected field corn provides growers with a highly efficacious tool for controlling important insect pests in corn in a manner that is fully compatible with integrated pest management practices.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The Cry1F gene was isolated from *Bacillus thuringiensis* subspecies *aizawai* modified before it was inserted into corn plants. The Cry1F insecticidal protein has been adequately characterized. Several safety studies were conducted using a microbially produced test substance that contained 11.4% Cry1F protein. Studies conducted to establish the equivalence of the Cry1F protein obtained from corn or from a microbial source demonstrate that the materials are similar with respect to molecular weight, immunoreactivity, lack of post-translational modification (glycosylation) N-terminal amino acid sequence, and spectrum of bioactivity.

2. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* No analytical method is included because this petition requests an exemption from the requirement for a tolerance.

C. Mammalian Toxicological Profile

Cry proteins have been deployed as safe and effective pest control agents in microbial *Bacillus thuringiensis* formulations for almost 40 years. There are currently 180 registered microbial *Bacillus thuringiensis* products in the United States for use in agriculture, forestry, and vector control. The numerous toxicology studies conducted with these microbial products show no significant adverse effects, and demonstrate that the products are practically non-toxic to mammals. An exemption from the requirement of a tolerance has been in place for these products since at least 1971 (40 CFR 180.1011).

Toxicology studies conducted to determine the toxicity of Cry1F insect control protein demonstrated that the protein has very low toxicity. In an acute oral toxicity study in the mouse, the estimated acute LD_{50} by gavage was determined to be > 5,050 milligrams/kilograms of the microbially produced test substance. This dose is 12,190 × greater than the estimated 95th percentile for human dietary exposure to Cry1F protein resulting from consumption of foods derived from Cry1F protected corn. This estimate assumes that 100% of the corn crop produces Cry1F protein and that the protein is not degraded or otherwise eliminated in food processing. This extremely conservative estimate of the margin of exposure further supports the safety of Cry1F proteins to humans.

In an *in vitro* study, Cry1F protein was rapidly and extensively degraded in simulated gastric conditions in the presence of pepsin. Cry1F was completely proteolyzed to amino acids and small peptide fragments within 5 minutes at molar ratios approximating 1:100 (Cry1F:pepsin). This indicates that the protein is highly susceptible to digestion in the human digestive tract and that the potential for adverse health effects from chronic exposure is virtually nonexistent. Moreover, proteins in general are not known to be carcinogenic. A search of relevant data bases indicated that the amino acid sequence of the Cry1F protein exhibits no significant homology to the sequences of known allergens or protein toxins. Thus, Cry1F is highly unlikely to exhibit an allergic response.

The genetic material necessary for the production of the Cry1F insect control protein are nucleic acids unscheduled DNA synthesis which are common to all forms of plant and animal life. There are no known instances of where nucleic acids have caused toxic effects as a result of dietary exposure.

Collectively, the available data on Cry1F protein along with the safe use history of microbial *Bacillus thuringiensis* products establishes the safety of the plant pesticide *Bacillus thuringiensis* subspecies *aizawai* Cry1F insect control protein and the genetic material necessary for its production in all raw agricultural commodities.

D. Aggregate Exposure

In summary the potential for significant aggregate exposure to Cry1F protein is highly unlikely.

1. *Dietary exposure*—i. *Food.* Significant dietary exposure to Cry1F protein is unlikely to occur. Dietary exposures at very low levels, via ingestion of processed commodities, although they may occur, are unlikely to be problematic because of the low toxicity and the high degree of digestibility of the protein.

ii. *Drinking water.* In addition, the protein is not likely to be present in drinking water because the protein is deployed in minute quantities within the plant, and studies demonstrate that Cry1F protein is rapidly degraded in soil.

2. *Non-dietary exposure.* Because *Bacillus thuringiensis* subspecies *aizawai* Cry1F insect control protein is expressed in minute quantities and is retained within the plant, there is virtually no potential for dermal or inhalation exposure to the protein.

E. Cumulative Exposure

Common modes of toxicity are not relevant to consideration of the cumulative exposure to *Bacillus thuringiensis* Cry1F insect control protein. The product has demonstrated low toxicity and these effects do not appear to be cumulative with any other known compounds.

F. Safety Determination

1. *U.S. population.* The deployment of the product in minute quantities within the plant, the very low toxicity of the product, the lack of allergenic potential, and the high degree of digestibility of the protein, are all factors in support of Mycogen's assertion that no significant risk is posed by exposure of the U.S. population to *Bacillus thuringiensis* subspecies *aizawai* Cry1F insect control protein.

2. *Infants and children.* Non-dietary exposure to infants and children is not anticipated, due to the proposed use pattern of the product. Due to the very low toxicity of the product, the lack of allergenic potential, and the high degree of digestibility of the protein, dietary exposure is anticipated to be at very low levels and is not anticipated to pose any harm to infants and children.

G. Effects on the Immune and Endocrine Systems

Given the rapid digestibility of Cry1F delta endotoxin, no chronic effects are expected. Cry1F delta endotoxin, or metabolites of the endotoxin are not known to, or are expected to have any effect on the immune or endocrine systems. Proteins in general are not carcinogenic, therefore, no carcinogenic risk is associated with the Cry1F protein.

H. Existing Tolerances

There are no existing tolerances or exemptions from tolerance for *Bacillus thuringiensis* subspecies *aizawai* Cry1F.

I. International Tolerances

There are no existing tolerances or exemptions from tolerance for *Bacillus thuringiensis* subspecies *aizawai* Cry1F.

[FR Doc. 00–5050 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6546–4]

Agency Compliance Assistance Activity Plan: Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Draft Annual Compliance Assistance Activity Plan (Plan) reflects EPA's commitment to help entities comply with regulatory requirements and improve environmental performance through compliance assistance. In this draft Plan, EPA catalogues compliance assistance activities planned across the entire Agency for FY 2001. This comprehensive approach allows interested stakeholders to understand the Agency's current compliance assistance priorities and activities and to suggest where tools or additional emphasis are still needed. The consolidated information will also assist compliance assistance providers in determining how to focus their resources without duplicating EPA's efforts. Additionally, the regulated community will be able to anticipate what compliance assistance will be available to them in the near future.

The Agency is seeking stakeholder input on the content, structure and usefulness of the Plan. EPA intends to utilize this feedback in the FY02 budget

development process and the FY01 budget implementation process.

DATES: Comments must be submitted on or before April 17, 2000.

ADDRESSES: Interested persons may obtain a copy of the Annual Compliance Assistance Activity Plan from the Internet at *www.seattle.battelle.org/epa-icaa*. Copies may also be by obtained by contacting Joanne Berman at the contact information provided below.

FOR FURTHER INFORMATION CONTACT: Joanne Berman, (202) 564–7064; e-mail at *berman.joanne@epa.gov*; or by mail at U.S. Environmental Protection Agency, Office of Compliance, Mail Code 2224A, 1200 Pennsylvania Ave. NW, Washington, DC 20004.

SUPPLEMENTARY INFORMATION: The Agency is committed to listening to stakeholders as we continuously improve the way we do business. In early 1999 the Agency held a series of stakeholder meetings to ask how we can better serve our customers. The "Aiming for Excellence" report (Report) released by Administrator Browner in July 1999 responds to key issues raised during the stakeholder meetings. EPA's commitment to develop the Annual Agency Compliance Assistance Activity Plan is one of the most ambitious actions items identified in the Report.

Objectives of the Plan are to: (1) Identify and coordinate similar activities to leverage resources; (2) provide an inventory of the Agency activities to assist stakeholders in planning their activities; and (3) seek stakeholder input on the Agency's compliance assistance priorities. The FY01 Plan is the first attempt to undertake this intra-agency planning. EPA will strive to consider stakeholder comments as we begin implementing the FY01 activities, but any major change in strategic direction would be difficult since the Agency's FY01 budget submission already includes specific projects. However, stakeholder comments will have a more significant impact on the FY02 planning and budgeting cycle that begins this spring. It is the Agency's expectation that as future (FY02 and beyond) Plans are developed, stakeholder input will influence the directions in which we focus our compliance assistance resources.

Dated: February 25, 2000.

Michael M. Stahl,

Acting Director, Office of Compliance.

[FR Doc. 00–5043 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–65458]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–1998

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–1998 is available for public review. Annual U.S. emissions for the period of time from 1990–1998 are summarized and presented by source category and sector. The inventory contains estimates of carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), Hydrofluorocarbons (HFC), perflourocarbons (PFC), and sulfur hexaflouride (SF6) emission. The inventory also includes estimates of carbon sequestration in U.S. forests and, new this year, estimates of soil carbon. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC). The Inventory of U.S. Greenhouse Gas Emissions and Sinks is the latest in a series of annual U.S. submissions to the Secretariat of the United Nations Framework Convention on Climate Change.

DATE: To ensure your comments are considered for the final version of this document, please submit your comments prior to April 3, 2000. However, comments received after that date will still be welcomed and will be considered for the next edition of this report.

ADDRESSES: Comments should be submitted to Mr. Wiley Barbour at: Environmental Protection Agency, Climate Policy and Programs Division (2175), 401 M Street, SW, Washington, DC 20460, Fax: (202) 260–6405.

If you wish to send an email with your comments, you may send the email to *barbour.wiley@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Wiley Barbour, Environmental Protection Agency, Office of Air and Radiation, Climate Policy and Programs Division, (202) 260–6972.

SUPPLEMENTARY INFORMATION: You may view and download the document referenced above on the US EPA global warming site at http://www.epa.gov/globalwarming/publications/emissions/.

Dated: February 23, 2000.

Robert Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 00–5038 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 24, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 1, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT:

For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: *OMB Approval Number:* 3060–0751.

Title: Reports Concerning International Private Lines Interconnected to the U.S. Public Switched Network.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 10.

Estimated Time Per Response: 8 hours.

Frequency of Response: Annual.

Total Annual Burden: 80 hours.

Total Annual Costs: $0.

Needs and Uses: The filings will be used by the Commission in reviewing the impact, if any, that end-user private line interconnections have on U.S. international settlements policy. The data will also enhance the ability of both the Commission and interested parties to monitor for unauthorized resale of international private lines that are interconnected to the U.S. public switched network.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5032 Filed 3–1–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: March 15, 2000.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Craig A. Jordan, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180; 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4961 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

February 23, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) The accuracy of the Commission's burden estimate; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 3, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0095.

Title: Annual Employment Report—Cable Television.

Form Number: FCC 395–A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,950.

Estimate Time Per Response: 0.116 to 2.417 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 3,301 hours.

Total Annual Costs: None.

Needs and Uses: The Annual Employment Report, FCC Form 395–A, is used to assess industry trends. Every cable company with six or more full-time employees and all Satellite Master Antenna Television Systems serving 50 or more subscribers and having six or more full-time employees must complete FCC Form 395–A. It must be filed annually. Form 395–A identifies employees by gender, race, color, and/or national origin in 15 job categories and lists data on each entity's employees by their full or part-time employment status, job title, and job category. Cable companies with five or fewer employees only need to complete and file Sections I, II, and VIII of this form, and thereafter, only need file again if their employment increases. In addition, cable companies with six or more full-time employees must file a Supplemental Investigation Sheet once every five years. On January 20, 2000, the FCC adopted a Report and Order in MM Docket 98–204 and 96–16, Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding. FCC Form 395–A has been revised to reflect the new rules and policies adopted in this Report and Order.

OMB Control Number: 3060–0113.

Title: Broadcast EEO Program Report.

Form Number: FCC 396.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit Institutions.

Number of Respondents: 2,000.

Estimated Time Per Response: 1.0 hours.

Frequency of Response: Reporting required upon license expiration.

Total Annual Burden: 3,000 hours.

Total Annual Cost: $100,000.

Needs and Uses: On January 20, 2000, the FCC adopted a Report and Order which modified the Commission's broadcast and EEO rules and policies consistent with the D.C. Circuit Court's decision in *Lutheran Church—Missouri Synod* v. *FCC* to ensure equal employment opportunity in the broadcast industry. The Commission is modifying FCC Form 396, the Broadcast Equal Employment Opportunity Program, to reflect the new rules and policies in this Report and Order. The FCC has reinstated the requirement that all AM, FM, TV, Low Power TV, and International stations broadcast licensees with five or more full-time employees, must file FCC Form 396 at the time of the renewal of their licensees. This form is used to evaluate a broadcaster's EEO program to ensure that satisfactory efforts are being made to comply with the FCC's EEO requirements.

OMB Control Number: 3060–0120.

Title: Broadcast Equal Employment Opportunity Model Program Report.

Form Number: FCC 396–A.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 5,000 hours.

Total Annual Cost: None.

Needs and Uses: Applicants seeking authority to construct a new broadcast station, to obtain assignment of construction permit or license, and/or to seek authority to acquire control of an entity holding construction permit or license must file FCC Form 396–A. The form is designed to assist the applicant in establishing an effective EEO program for their station. On January 20, 2000, the FCC adopted a Report and Order in MM Docket 98–204 and 96–16, Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding. This form has been revised to reflect the new rules and policies in this Report and Order. The revisions include new instructions and questions in Section IV to clarify that recruitment measures should be broad and inclusive. Form 396–A will no longer ask applicants to list certain categories of proposed recruitment sources but will allow applicants to propose recruitment contacts which they believe will achieve wide dissemination and be productive in generating qualified applicants. Applicants will also be required to identify in Section V whether they elect to utilize the supplemental recruitment measures or to use the alternative recruitment program.

OMB Control Number: 3060–0574.

Title: Annual Employment Report.

Form Number: FCC 395–M.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 251.

Estimated Time Per Response: 0.166 to 2.417 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 394 hours.

Total Annual Cost: None.

Needs and Uses: FCC Form 395–M, Multi-Channel Video Programming Distributor (MVPD) Annual Employment Report, is used to assess industry employment trends. The report identifies employees by gender, race, color, and/or national origin in 15 job categories and collects data on full and part-time employment status, job titles, and job categories. Every MVPD with six or more full-time employees must file FCC Form 395–M annually, and a Supplemental Investigation sheet once every five years. An MVPD with five or fewer employees must file Sections I, II, and VIII only once, unless the MVPD's employment increases. On January 20, 2000, the FCC adopted a Report and Order, Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding, which modified the Commission's broadcast, cable, and MVPD EEO rules and policies consistent with the D.C. Circuit Court's decision in *Lutheran Church-Missouri Synod* v. *FCC*. Form 395–M has been revised to reflect the new rules and policies adopted in this Report and Order.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5031 Filed 3–1–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 16, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Jimmie Michael Luecke, Giddings, Texas; Timothy Alan Kleinschmidt—Trustee for: Fred Luecke Trust, Giddings, Texas, and Susan Luecke Trust, Giddings, Texas; and Jimmie Luecke Children Partnership, Ltd., Giddings, Texas; to acquire additional voting shares of Giddings Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire additional voting shares of First National Bank, Giddings, Texas.

Board of Governors of the Federal Reserve System, February 25, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–4984 Filed 3–1–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 27, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Bay National Corporation, Baltimore, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Bay National Bank (in organization), Baltimore, Maryland.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Union Bancshares, MHC, Freeport, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of USB Bankshares, Inc., Freeport, Illinois, and thereby indirectly acquire Union Savings Bank, Freeport, Illinois.

2. USB Bankshares, Inc., Freeport, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Union Savings Bank, Freeport, Illinois.

Board of Governors of the Federal Reserve System, February 25, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–4983 Filed 3–1–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 27, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Terre Haute Savings MHC, Inc., Terre Haute, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Terre Haute Savings Bank, Terre Haute, Indiana.

Board of Governors of the Federal Reserve System, February 28, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5077 Filed 3–1–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 16, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. The Bank of New York Company, Inc., New York, New York; The Chase Manhattan Corporation, New York, New York; Comerica Incorporated, Detroit, Michigan; First Union Corporation, Charlotte, North Carolina; FleetBoston Financial Corp., Boston, Massachusetts; HSBC Holdings plc, London, England; HSBC Holdings BV, Amsterdam, Netherlands; HSBC USA Inc., Buffalo, New York; The Royal Bank of Scotland Group, plc; The Royal Bank of Scotland plc; RBSG International Holdings Ltd; all of Edinburgh, United Kingdom; Citizens Financial Group, Inc., Providence, Rhode Island; and Summit Bancorp, Princeton, New Jersey; to assume through NYCE Corporation, Woodcliff, New Jersey, certain obligations of FleetBoston Financial Corp. relating to FleetBoston Financial Corp's shared electronic funds transfer network and thereby engage in the following data processing activities: (1) ATM services; (2) point of sale services; (3) terminal driving; (4) card authorization and management services; (5) gateway services; and (6) administrative services, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, February 25, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–4985 Filed 3–1–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 30, 2000. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E of the Martin Building (Terrace level). The meeting will begin at 8:45 a.m. and is expected to conclude at 1 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Gramm-Leach-Bliley Act Privacy Regulations: Discussion of the proposed Regulation P which would enable consumers to prevent a financial institution from sharing personal information with third parties that are not affiliated with the financial institution.

Gramm-Leach-Bliley Act Sunshine Provisions: Discussion of the proposal regarding disclosure of CRA agreements between financial institutions and community groups.

Credit Card Disclosures in Solicitations: Discussion of whether credit card disclosures in solicitations are provided in a clear and conspicuous manner.

Committee Reports: Council committees will report on their work.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit views to the Council regarding any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Bistay, 202–452–6470. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, 202–452–3544.

Board of Governors of the Federal Reserve System, February 28, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–5078 Filed 3–1–00; 8:45 am].

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m., March 13, 2000.

PLACE: National Finance Center, TANO Building, Conference Room 7, 13800 Old Gentilly Road, New Orleans, Louisiana.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Approval of the minutes of the February 14, 2000, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Approval of selection criteria for C and F Fund Managers and Annuity Vendor.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs (202) 942–1640.

Dated: February 29, 2000.

Elizabeth S. Woodruff,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 00–5170 Filed 2–29–00; 1:08 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: (1) TANF Data Report, ACF–199 (Including TANF Sampling and Statistical Methods Manual); (2) SSP–MOE Data Report, ACF–209 (Including TANF Sampling and Statistical Methods Manual).

OMB No.: 0970–0199.

Description: 42 U.S.C. 611 requires States and Tribal grantees to collect on a monthly basis and report to DHHS on a quarterly basis a wide variety of disaggregated case record information for their programs funded under TANF. If a State wants to qualify for a high performance bonus or receive a caseload reduction credit, the State must submit similar data for its separate State programs. A State or Tribal grantee may comply with these requirements by collecting or submitting case record information for its entire caseload or for a portion of the caseload that is obtained through the use of scientifically acceptable sampling methods. Currently 22 States are sampling their monthly caseloads to submit the required disaggregted data. We expect similar numbers to use sampling in the future and be subject to the following revisions. We are proposing to revise the current information collection requirements by: (1) Issuing the "TANF Sampling and Statistical Methods Manual" to provide guidance to States and Tribal grantees on the sampling process; (2) adding a section four to both data collection forms. The TANF Data Report—Section Four is designed to collect the weighting data for the TANF program. The SSP–MOE Data Report—Section Four is designed to collect the weighting for the SSP–MOE programs. The current OMB inventory indicates an approved burden of 516,680 hours for the TANF Data Report and the SSP–MOE Data Report. We estimate that the proposed revisions will increase the burden by 2,952 hours for a total revised estimated annual burden of 519,632 hours.

Respondents: State, Local or Tribal Government

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Data Report	55	4	2,153.56	473,783
SSP–MOE Data Report	17	4	674.25	45,849

Estimated Total Annual Burden Hours: 519,632

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of

Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: February 25, 2000.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 00–4969 Filed 3–1–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Program Narrative Objective Work Plan (OWP).

OMB No.: 0980–0204.

Description: Program Narrative (OWP) information is collected as part of a competitive, discretionary grant application submitted to the Administration for Native Americans (ANA). Included with the OWP are standard, government-wide Federal assistance application forms (*e.g.*, SF–424, 424A, 424B, Non-Constructions Assurances, and various OMB certifications). The OWP provides information used by legislatively mandated project evaluation panels to compete and rank applications. ANA uses the OWP information to perform legislatively mandated project evaluations supporting the basis for recommendations to award or not award ANA grants. After funding, the OWP is used to reflect funded objectives and to administer and monitor ANA grants.

OWP information presents the grant applicants' locally-determined project objectives and plan to achieve those objectives. Economic development projects may attach a business plan. OWP information is presented as narrative and transcribed onto a government form titled, "ANA Objective Work Plan". In the past, ANA used two forms to collect the program narrative; *i.e.*, "Program Narrative Objective Work Plan" and "Program Narrative Approach." The new, single form combines the two old forms and eliminates some information items.

Instructions for completing the OWP are provided in the "Administration for Narrative Americans Application Packet for Financial Assistance." Instructions for compiling a complete application are provided in the packet. The OWP and instruction packet are used in all ANA competitive discretionary grant programs such as Social and Economic Development Strategies (SEDS), Native American Languages Preservation, Environmental Regulatory Enhancement, etc.

Resondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OWP	650	1	28	18,200

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: February 25, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–5029 Filed 3–1–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00F–0786]

Eka Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Eka Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of chlorine dioxide produced by another method.

DATES: Submit written comments on the petitioner's environmental assessment by April 3, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0A4716) has been filed by Eka Chemicals, Inc., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 173.300 Chlorine dioxide (21 CFR 173.300) to

provide for the safe use of chlorine dioxide produced by another method.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may submit to the Dockets Management Branch (address above) written comments by April 3, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 14, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–5015 Filed 3–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00F–0789]

National Center for Food Safety and Technology; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the National Center for Food Safety and Technology, Illinois Institute of Technology, has filed a petition proposing that the food additive regulations be amended to expand the conditions of safe use for X-radiation and electron beam energy sources for the treatment of prepackaged foods by irradiation.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0M4711) has been filed by the National Center for Food Safety and Technology, Illinois Institute of Technology, 6502 South Archer Rd., Summit-Argo, IL 60501–1933. The petition proposes to amend the food additive regulations in § 179.45 *Packaging materials for use during the irradiation of prepackaged foods* (21 CFR 179.45) to expand the conditions of safe use for X-radiation and electron beam energy sources for the treatment of prepackaged foods by irradiation.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: February 14, 2000.

Alan L. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–5014 Filed 3–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Urology Subcommittee of the Advisory Committee for Reproductive Health Drugs; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Urology Subcommittee of the Advisory Committee for Reproductive Health Drugs

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 10, 2000, 9 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Sandra Titus or Jayne E. Peterson or Robin M. Spencer, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or e-mail: TITUSS@CDER.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12537. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will consider the safety and efficacy of new drug application 21–118, Uprima™ (apomorphine HCl tablets, sublingual, TAP Holdings) proposed for use in the treatment of erectile dysfunction.

Procedure: Interested persons may present data, information, or views, orally or in writing on issues pending before the subcommittee. Written submissions may be made to the contact person by April 5, 2000. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 5, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 18, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–4947 Filed 3–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other

reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: March 29–0930, 2000.

Time: March 29, 2000, 8:30 am to 5:30 pm.

Agenda: The agenda includes a presentation on Racial and Ethnic Minority issues, report of the Director, OAR, and other business of the Council.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Time: March 30, 2000, 8:30 am to 12:30 pm.

Agenda: The agenda includes a briefing and membership comment and input session on the FY 2002 draft plan for HIV-Related Research.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Linda Reck, Head, Program, Planning and Evaluation, Office of AIDS Research, NIH, Bethesda, MD 20892, (301) 402–8655.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

February 17, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4957 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Biology and Transplantation of the Human Stem Cell.

Date: March 19–21, 2000.

Time: 7 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson University Hotel, 615 Washington Avenue, S.E., Minneapolis, MN 55414.

Contact Person: William Merritt, PhD, Scientific Review Administrator, National Cancer Institute, National Institutes of Health, Grant Review Branch, 6116 Executive Boulevard, Room 8034, Bethesda, MD 20892, 301/496–9767.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.392, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4960 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–46; review of contract N01DE72623.

Date: March 6, 2000.

Time: 2 pm to 4:30 pm.

Agenda: To review and evaluate contract proposals.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892; (301) 594–2372.

The notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–28, R01 Review, Applicant Interview.

Date: March 27–28, 2000.

Time: 2 pm to 5 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yasaman Shirazi, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Dental & Craniofacial Res., Bethesda, MD 20892; (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–29; Review of R01.

Date: April 13, 2000.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892; (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–38; Review of K–23.

Date: April 19, 2000.

Time: 10:30 am to 11:30 am.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yasaman Shirazi, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes Institutes of Health, of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–21, Review of R01.

Date: April 20, 2000.

Time: 10:30 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yasaman Shirazi, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892; (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–31, Review of R42.

Date: April 24, 2000.
Time: 11:30 am to 1 pm.
Agenda: To review and evaluate grant applications.
Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892; (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4948 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel: Immunobiology of Aging.
Date: March 1–2, 2000.
Time: 7 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Empress Hotel, 7766 Fay Avenue, La Jolla, CA 92037.
Contact Person: James P. Harwood, Deputy Chief, Scientific Review Office, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892; (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel: Review of Grant Applications.
Date: March 2, 2000.
Time: 9 am to 11 am.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Gateway Building Rm 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ramesh Vemuri, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892; (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel: To Review a Program Project Grant Application.
Date: March 7–8, 2000.
Time: 7 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Columbia East, 1612 North Providence Road, Columbia, MO 65202.
Contact Person: Arthur Schaerdel, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892; (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel: Review of Grant Application.
Date: March 10, 2000.
Time: 7:30 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Lawrence Center, 200 McDonald Drive, Lawrence, KS 66044.
Contact Person: Ramesh Vemuri, Office of Scientific Review, National Institute on Aging, the Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892; (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel: To review R03 grant applications.
Date: March 14–15, 2000.
Time: 2 pm to 12 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.
Contact Person: Jeffrey M. Chernak, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212; (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Review of Program Project Grant.
Date: April 6–7, 2000,
Time: 7 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Montgomery Village Ave, Gaithersburg, MD 20879.
Contact Person: Paul Lenz, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892; (301) 496–9666.
(Catalogue of Federal domestic Asistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4949 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.
Date: March 21, 2000.
Time: 10 a.m. to 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Craig A. Jordan, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180; 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4950 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: March 31, 2000.

Time: 3 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Sheehy, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529; 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4951 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: March 6–7, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Helen R. Sunshine, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892; (301) 594–2881.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4952 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 22–24, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC 20037.

Contact Person: Houmam H Araj, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608; 301–443–1340.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4953 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 21, 2000.

Time: 9 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of

Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443—7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 21, 2000.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443—7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4954 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Community Based Prevention and Intervention Research (RFA ES–012).

Date: March 8–10, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hawthorn Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

Contact Person: David P. Brown, MPH, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, K Grant Applications.

Date: March 31, 2000.

Time: 10 am to 2 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, NIEHS, PO Box 12233 EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: February 17, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4956 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 13–15, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: L.R. Stanford, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 28–29, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Health, NIH, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 6–7, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: L.R. Stanford, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–433–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4959 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Immunogenics of Marrow Allografting.

Date: March 9, 2000.

Time: 11:15 am to 1:15 pm.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, Room 2156, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Edward W. Schroder, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610; 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93–855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4962 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Training and Career Development.

Date: March 8–9, 2000.

Time: 5 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.

Contact Person: Khursheed Asghar, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, Msc 9547, Bethesda, MD 29089–2954; 301–443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4963 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncological Sciences Initial Review Group, Metabolic Pathology Study Section.

Date: March 13–15, 2000.

Time: 8 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, N.W., Washington, DC 20007–3701.

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group, Cell Development and Function 6.

Date: March 13–14, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7804, Bethesda, MD 20892, (301) 435–1022, ehrenspeckg@nih.csr.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 13–14, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Bruce Maurer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 13, 2000.

Time: 10:30 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela M. Pattatucci, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14–15, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Angela M. Pattatucci, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14–15, 2000.

Time: 8:30 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Herman Teitelbaum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Houston Baker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1175, bakerh@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14, 2000.

Time: 10 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn National Airport, 2650 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14–15, 2000.

Time: 7:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, corsaroc@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 23, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4955 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular Sciences Initial Review Group, Experimental Cardiovascular Sciences Study Section.

Date: March 6–7, 2000.

Time: 8 am to 6:30 pm.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW, Washington, DC 20007–3701.

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 6–7, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The American Inn, 8130 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 6–7, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.

Contact Person: Nadarajen A. Vydelingum, PhD, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 6–7, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave., NW, Washington, DC 20007.

Contact Person: Patricia H. Hand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: March 6, 2000.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Initial Review Group, Respiratory and Applied Physiology Study Section.

Date: March 6–7, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, sinnett@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Cardiovascular and Renal Study Section.

Date: March 6–7, 2000.

Time: 8:30 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, MD 20814.

Contact Person: Anthony C. Chung, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7802, Bethesda, MD 20892, (301) 435–1213.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 6–7, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Houston Baker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1175 bakerth@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 6, 2000.

Time: 4 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 6, 2000.

Time: 12 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 1489 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Virology Study Section.

Date: March 7–8, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7880, Bethesda, MD 20892, (301) 435–1151.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 7, 2000.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 7, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 7, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eugene M. Zimmerman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220, zimmerng@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 7, 2000.

Time: 1:30 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW, Washington, DC 20007–3701.

Contact Person: Robert Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7840, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 7, 2000.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela M. Pattatucci, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Hematology Subcommittee 2.

Date: March 8–9, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892–7802, 301–435–1777, friedj@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 8–10, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Club Quarters DC, 839 17th Street, NW, Washington, DC 20006.

Contact Person: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center of Scientific Review Special Emphasis Panel.

Date: March 8–10, 2000.

Time: 8:30 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Angela M. Pattatucci, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435-1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 8, 2000.
Time: 11 am to 12 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 8, 2000.
Time: 1 pm to 2 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 8–10, 2000.
Time: 7 pm to 10 am.
Agenda: To review and evaluate grant applications.
Place: The Inn at Longwood Medical, 342 Longwood Avenue, Boston MA 02115.
Contact Person: Marjam G. Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 9, 2000.
Time: 8 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Westin Fairfax Hotel, 2100 Massachusetts Ave, NW, Washington, DC 20008.
Contact Person: Ranga V Srinivas, PhD. Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 9–10, 2000.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Clarion Hampshire Hotel, 1310 New Hampshire Ave, NW, Washington, DC 20036.
Contact Person: Jay Joshi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 9–10, 2000.
Time: 9 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.
Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–EVR–01.
Date: March 9, 2000.
Time: 10 am to 11:30 am.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Garrett V. Keefer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HEM–2 (02).
Date: March 9, 2000.
Time: 11 am to 3 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, Versailles IV Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 9–10, 2000.
Time: 2 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.
Contact Person: Nancy Shinowara, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, shinowan@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 9–11, 2000.
Time: 5 p.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Regal Harvest House, 1345 Twenty-Eight Street, Boulder, CO 80302.
Contact Person: Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

Name of Committee: Center for Scientific Review Special Emphasis Panel, The History of Medicine Study Section.
Date: March 10, 2000.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Luigi Giacometti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 10, 2000.
Time: 8:30 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–0676.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 10, 2000.
Time: 12 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 60461, MSC 7890, Bethesda, MD 20892, 301–435–1159, ameros@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4958 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences, National Toxicology Program; Request for Comments on Substances Nominated to the National Toxicology Program (NTP) for Toxicological Studies and on the Testing Recommendations Made by the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC); Solicitation of Information on Nominated Substances

Summary

The National Toxicology Program (NTP) routinely solicits, accepts and reviews for consideration nominations for toxicological studies to be undertaken by the Program on substances of potential human health concern. Nominations are received from Federal agencies, industry, the public, and other interested parties and undergo several levels of review before toxicological studies are designed and implemented. The NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC) serves as the first level of review for NTP nominations. At the December 13, 1999 meeting of the ICCEC, 12 new nominations were reviewed and testing recommendations made. As part of an effort to inform the public and to obtain input about the selection of chemicals for evaluation, the NTP routinely seeks public comment on (1) substances nominated to the Program for toxicological studies and (2) the testing recommendations made by the ICCEC. This announcement outlines briefly the process for nomination and selection of substances for NTP study, presents the testing recommendations made by the ICCEC at the December 13, 1999 meeting, requests comment on those nominations and recommendations, and solicits the submission of additional information for consideration by the NTP in its subsequent evaluation of the nominations.

Background

1. Nomination and Selection of Substances for NTP Studies

The nomination and selection for study of chemicals and agents with the highest potential for adversely impacting public health are essential to the success of the NTP's testing program. The nomination process is open and nominations are solicited from academia, Federal and State regulatory and health agencies, industry, and labor unions, as well as from environmental groups and the general public. Particular assistance is sought for the nomination of studies to be undertaken by the NTP that permit the testing of hypotheses to enhance the predictive ability of future NTP studies, address mechanisms of toxicity, or fill significant gaps in the knowledge of the toxicity of chemicals or classes of chemicals. Substances selected for study generally fall into two broad overlapping categories: (1) Those substances of greatest concern for public or occupational health and (2) chemicals for which toxicological data is needed to reduce uncertainty in risk assessment by aiding species-to-species extrapolation and understanding dose-response relationships. Substances may be studied for a variety of health-related effects, including but not limited to, reproductive and developmental toxicity, genotoxicity, immunotoxicity, metabolism and disposition, as well as carcinogenicity. The possible public health consequences of exposure remain the over-riding factor in the decision to study a particular chemical or agent. Selections for government testing are based on the principle that responsible manufacturers will evaluate their own chemicals or agents for health and environmental effects as mandated by Congress under legislative authorities. Increased efforts continue to be focused on: (1) Improving the quality of the nominations of chemicals, environmental agents, or issues for study so that public health and regulatory needs are addressed; (2) broadening the base and diversity of nominating organizations and individuals; and (3) increasing nominations for studying toxicological endpoints in addition to carcinogenesis.

II. Review Process for Substances Nominated for NTP Studies

Nominations are first reviewed by a multi-disciplinary NIEHS committee to determine whether the nominated agent has undergone adequate toxicological testing or has been previously considered by the NTP. For nominations not eliminated from consideration or deferred at this stage, the available literature is examined in detail to prepare Toxicological Summaries that describe and summarize relevant information for each nominated substance. Included in each Toxicological Summary are information on chemical and physical properties, production levels, use, human exposure, regulatory status, toxicological effects, and rationale for the nomination. The Toxicological Summaries are distributed to the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC), which is composed of representatives from the Agency for Toxic Substances and Disease Registry, Consumer Product Safety Commission, Department of Defense, Environmental Protection Agency, Food and Drug Administration's National Center for Toxicological Research, Occupational Safety and Health Administration, National Cancer Institute, National Institute of Environmental Health Sciences, National Institute for Occupational Safety and Health, and the National Library of Medicine. ICCEC members are assigned as reviewers for each substance after consideration of the nature of its uses and exposure so that, to the extent possible, appropriate regulatory concerns will be addressed. Members are requested to identify their agency's interests, if any, in the chemical and to provide any relevant information from their respective agencies regarding the nominated chemicals or structurally related substances. During the evaluation process, the NTP works actively with regulatory agencies and interested parties to supplement the information about nominated substances and to ensure that the nomination and selection process meets regulatory and public health needs.

At its meeting to consider the nominated substances, the ICCEC makes testing recommendations including testing priorities and also may make recommendations for studies in addition to those requested by the nominator. Summaries of the ICCEC recommendations and any public comments received on these nominations are then presented to the NTP Board of Scientific Counselors (the Program's external scientific advisory committee) for review and comment in an open public session. The ICCEC's recommendations, NTP Board of Scientific Counselors' recommendations, and public comments are incorporated into recommendations that are then submitted to the NTP Executive Committee, the Federal interagency policy oversight body. For each substance nominated for the various types of studies, the NTP Executive Committee reviews and approves action to move forward to test, defer testing, or remove from testing consideration, and recommends testing priorities. The selection of a substance by the Executive Committee does not automatically commit the NTP to its evaluation. The priority of the nominations and the proposed studies are assessed during the nomination and

selection process and reassessed during the study design process. During any of these stages, a chemical or study may be withdrawn if applicable research data or higher priority studies are identified, or if a study proves impractical. A broad range of regulatory and toxicological concerns is addressed during the nomination and selection process through the participation of representatives from Federal agencies concerned with public health issues. In addition, representatives from non-government organizations including academia, industry, labor, and public interest sit on the NTP Board of Scientific Counselors, and thus have input into chemical selection decisions.

Nominated Substances and ICCEC Review

At its meeting on December 13, 1999, the ICCEC reviewed 12 nominations for NTP studies. For six of these nominations, metabolism, toxicity, or carcinogenicity studies were recommended. No studies were recommended at this time for two nominations, and a testing recommendation for four chemicals was deferred pending receipt of (1) additional data from other organizations on related studies completed, anticipated, or in progress or (2) information on production, exposure, and use patterns. The nominated substances with CAS numbers, nomination source, types of studies recommended, study rationale, and other information are given in the attached tables.

Request for Comment

Interested parties are encouraged to provide comments or supplementary information on the nominated substances and recommendations that appear in this announcement. The Program would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies, as well as information on current production levels, human exposure, use patterns, or environmental occurrence for any of the substances listed in the attached tables. To provide comments or information, please contact Dr. William Eastin at the address given below within 60 days of the publication date of this announcement. Persons submitting comments or additional information are asked to include their name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization (if any) with the submission. An electronic copy of this announcement as well as further information on the NTP and the NTP Chemical Nomination and Selection Process can be accessed through the NTP web site. The URL for the NTP homepage is http://ntp-server.niehs.nih.gov.

Contact may be made by mail to Dr. William Eastin, NIEHS/NTP, P. O. Box 12233, Research Triangle Park, North Carolina 27709; by telephone at (919) 541–7941; by FAX at (919) 558–7057; or by email at eastin@niehs.nih.gov.

Dated: February 17, 2000.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

Attachment—Substances Nominated to the NTP for Study and Testing Recommendations Made by the ICCEC on December 13, 1999

TABLE 1.—SUBSTANCES RECOMMENDED FOR TESTING

Substance [CAS No.]	Nominated by	ICCEC recommendations	Study rationale; other information
1-Bromopropane [106–94–5] and 2-Bromopropane [75–26–3].	OSHA NIOSH	*1-Bromopropane* —carcinogenicity —reproductive and developmental toxicity —toxicokinetics —mechanistic studies —neurotoxicity —genotoxicity —exposure studies in workers 2-Bromopropane —subchronic toxicity	Reported increasing production and use in many industrial applications as an alternative to ozone depleting substances; available data from limited repeat dose studies indicate toxicity to multiple organ systems. 2-Bromopropane is a contaminant in reagent grade 1-Bromopropane with known reproductive toxicity.
Chitosan [9012–76–4]	NCI	—mechanistic studies to evaluate vitamin E and mineral depletion	Significant human exposure through use as a dietary supplement and other commercial applications; potential for toxicity from interference with dietary fat absorption.
DNA-based products	FDA	—establish joint NIEHS/FDA program to evaluate long-term toxicity in anticipation of regulatory needs	Rapidly growing market for DNA-based therapeutic agents and a lack of adequate mechanisms and methodologies for evaluating safety.
Juglone [481–39–0]	NCI	—mechanistic studies —metabolism studies —mouse lymphoma assay —mammalian mutagenicity —carcinogenicity testing pending results of preliminary studies	Potential human exposure resulting from use of walnut-based products as dietary supplements and natural dyes and stains; suspicion of carcinogenicity based on quinone structure.
Potassium ferricyanide [13746–66–2]	NCI.	—genotoxicity —subchronic toxicity	Potential consumer and worker exposure resulting from use in photographic processing; suspicion of toxicity based on potential for redox cycling; inadequate toxicity information available.
Radio frequency radiation emissions of wireless communication devices.	FDA	—establish interagency program to design studies assessing cancer and non-cancer health effects to fulfill regulatory needs	Widespread consumer and worker exposure; available data is inadequate to properly assess safety.

TABLE 2.—SUBSTANCES FOR WHICH NO TESTING IS RECOMMENDED AT THIS TIME

Substance [CAS No.]	Nominated by	Nominated for	Rationale for not testing
Cafestol [469–83–0] and Kahweol [6894–43–5].	Private individual	—toxicity and carcinogenicity testing.	Anti-carcinogenic effects demonstrated in animal studies; limited data indicate low potential for toxicity; other natural products with higher potential for toxicity and human exposure exist; ongoing research efforts as opposed to new testing may provide basis for determining relevance of metabolic modulatory effects to chronic toxicity.
Plumbagin [481–42–5].	NCI	—mechanistic studies —metabolism studies —mouse lymphoma assay —mammalian mutagenicity —carcinogenicity	Structurally similar to Juglone which is selected for study; low magnitude and/or prevalence of human exposure; adequate evidence of acute and reproductive toxicity.

TABLE 3.—SUBSTANCES FOR WHICH A TESTING RECOMMENDATION IS DEFERRED PENDING RECEIPT AND CONSIDERATION OF ADDITIONAL INFORMATION

Substance [CAS No.]	Nominated by	Nominated for	Additional information needed
Ethylenebis (tetrabromophthalimide) [32588–76–4].	NIEHS	—toxicity and carcinogenicity testing	Ongoing and planned industry testing efforts; better characterization of uses and potential human exposures.
Terpinolene [586–62–9]	NIEHS	—toxicity and carcinogenicity testing	Ongoing and planned industry testing efforts; better characterization of uses and potential human exposures; study results for structurally related compounds.
Tetrabromophthalic anhydride [632–79–1].	NIEHS	—toxicity and carcinogenicity testing	Ongoing and planned industry testing efforts; better characterization of uses and potential human exposures.
Texanol benzyl phthalate [16883–83–3] or [32333–99–6].	NIEHS	—toxicity and carcinogenicity testing	Ongoing and planned industry testing efforts; better characterization of uses and potential human exposures.

[FR Doc. 00–4964 Filed 3–1–00; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 3 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of Parts I and II of the Program Announcement (PA) before preparing an application. Part I is entitled Community Action Grants for Service Systems Change (PA00–003). Part II is entitled General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements.

Activity	Application deadline	Estimated funds available, FY 2000	Estimated Number of awards	Project period
Community Action Grants for Service Systems Change.	4/19/00* recurring submission dates of May 10 and September 10 thereafter for Phase I & II.	$3 million, phase I $1.5 million, phase II.	20–30, phase I .... 10–20, phase II ...	1 year. 1 year.

*Only Phase II applications will be received on April 19, 2000. Thereafter, the schedule provided above will be in effect for Phase II applications starting with the next receipt date of September 10, 2000.

There are two addenda to PA00–003: American Indian and Alaska Native Youth Priority Initiative, Phase I; and Hispanic Priority Initiative, Phase I.

The American Indian and Alaska Native (AI/AN) Youth Priority Initiative addendum provides funds to support the adoption of exemplary practices related to the delivery and organization of services for AI/AN Youth with serious emotional and substance abuse problems. $450,000 in FY 2000 is available to support 5 to 10 awards under this initiative. Federally recognized tribal governments, tribal organizations, and urban Indian organizations as defined by the Indian Self Determination Act and the Indian Health Care Improvement Act are eligible. The terms "Indian," " tribal," "AI/AN," and "Native American" include Alaska Native organizations. The receipt date for Phase I applications under this initiative is May 10, 2000.

The Hispanic Priority Initiative addendum provides funds to support the adoption and implementation of exemplary practices related to the delivery and organization of services for Hispanic adults and adolescents with mental health and/or substance abuse problems. Up to $1.5 million in FY 2000 is available to support 8–10 awards. Applications may be submitted by units of State and local governments including tribal governments and by domestic private non-profit and for profit organizations such as community-based organizations, universities, colleges, and hospitals. In addition to the above, applications for this Initiative must target Hispanics, identify an exemplary practice specific to the needs of Hispanics, and demonstrate the involvement of leadership from the Hispanic community.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA has published additional notices of available funding opportunities for FY 2000 in past issues of the **Federal Register**.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 3).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 3 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7701, Bethesda, Maryland 20882–7701.*

Application Deadlines: The deadline for receipt of Phase II applications is April 19, 2000 and September 10, 2000. Thereafter receipt dates for Phase II will be May 10 and September 10 each year. For Phase I, the receipt dates are May 10 and September 10 each year.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 3).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 3).

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 2000 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 2000 KD&A program will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and it is question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, and preparation of special materials will be used, in addition to normal communication means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

* Applicants who wish to use express mail or courier service should change the zip code to 20817.

2. Criteria for Review and Funding

2.1 General Review Criteria

Review criteria that will be used by the peer review groups are specified in the application guidance material.

2.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

3. Special FY 2000 SAMHSA Activities

Community Action Grants for Service Systems Change (short title: Community Action Grants, PA00–003).

• *Application Deadline:* The deadline for receipt of Phase II applications is April 19, 2000 and September 10, 2000. Thereafter receipt dates for Phase II will be May 10 and September 10 each year. For Phase I, the receipt dates are May 10 and September 10 each year.

• *Purpose:* The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS), in partnership with the Center for Substance Abuse Prevention and the Center for Substance Abuse Treatment, announces the availability of funds to support the adoption and implementation of exemplary practices related to the delivery and organization of services for children with serious emotional disturbance or adults with serious mental illness. The target population may also have co-occurring disorders, such as substance abuse or other mental, emotional, or behavioral disorder. This program is made up of two types of grants: Phase I Grants: Consensus building and decision support; and Phase II Grants: Implementation support.

• *Eligible Applicants:* Phase I applications may be submitted by units of State or local government and by domestic private non-profit and for profit organizations such as community-based organizations, provider and consumer groups, universities, colleges, and health care organizations. SAMHSA encourages applications from consumer and family organizations.

Phase II applications are restricted to past or current Phase I grantees. To be eligible, Phase II applicants must demonstrate that they have met the Phase I requirement and are ready to implement their exemplary practices. This restriction is due to limited funding availability to support a second phase of the program and to SAMHSA's desire to document, monitor, and evaluate the process and outcome of both the consensus building and implementation phases.

• *Amount:* Approximately $3 million will be available to support 20 to 30 Phase I awards each year. About $1.5 million will be available to support 10 to 20 Phase II awards each year.

Period of Support: The period of support for both Phase I and Phase II will be for one year each.

• *Catalog of Federal Domestic Assistance Number:* 93.230.

• *Program Contact:* For questions concerning program issues with CMHS, contact: Santo J. (Buddy) Ruiz, Community Support Program Branch, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Room 11C–22, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3653.

CSAT: Jane Ruiz, Division of Practice and Systems Development, Clinical Interventions Branch, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8237.

CSAP: Donna Simms d'Almeida, Division of State and Community Systems Development, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 930, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1789.

For questions regarding grants management issues, contact: Steve Hudak, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Room 15C–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301)443–4456.

• *Application kits are available from:* National Mental Health Services, Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015, Telephone: 1–800–789–2647, TTY: (301) 443–9006, Fax: (301) 984–8796.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should

send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 24, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–4944 Filed 3–1–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 3 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of Parts I and II of the Guidance for Applicants (GFA) before preparing an application. Part I is entitled Community Initiated Prevention Interventions. Part II is entitled General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements.

Activity	Application deadline	Estimated funds available, FY 2000	Estimated number of awards	Project period
Community Initiated Prevention Interventions	9/10/00	$2 million	7 awards	3 years

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA has published additional notices of available funding opportunities for FY 2000 in past issues of the **Federal Register**.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 3).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 3 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.*

Application Deadlines: The deadline for receipt of applications is September 10, 2000.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 3).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 3).

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the

*Applicants who wish to use express mail or courier service should change the zip code to 20817.)

prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 2000 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 2000 KD&A program will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and it is question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, and preparation of special materials will be used, in addition to normal communication means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Criteria for Review and Funding

2.1 General Review Criteria

Review criteria that will be used by the peer review groups are specified in the application guidance material.

2.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

3. Special FY 2000 SAMHSA Activities

Community-Initiated Prevention Interventions (short title Community-Initiated Interventions: SP00–001).

- *Application Deadline:* The receipt date is September 10, 2000.
- *Purpose:* The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of community-initiated grants to support Knowledge Development with At-Risk Populations. The purpose of this grant program is to support knowledge development by soliciting applications for studies that field test effective substance abuse prevention interventions that have been shown to prevent, delay or reduce alcohol, tobacco, or other illegal drug use and/or associated social, emotional, behavioral, cognitive and physical problems among at-risk populations in their local community(ies) and/or other domains. These other domains include the individual, the family, the school, the health care provider, and the workplace.
- *Eligible Applicants:* Applications may be submitted by units of State and local or Indian Tribal governments, universities and colleges, and by domestic private non-profit and for profit organizations such as community-based organizations and health care delivery systems including managed care organizations and hospitals.
- *Amount:* $2 million in total costs (direct and indirect) to support seven awards in FY2000.

Period of Support: Support may be requested for a period of up to 3 years.

- *Catalog of Federal Domestic Assistance Number:* 93.230.
- *Program Contact:* For questions concerning program issues, contact: Soledad Sambrano, Ph.D., Division of Knowledge Development and Evaluation, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 1075, 5600 Fishers Lane, Rockville, MD 20857, (301)443–9110.

For questions regarding grants management issues, contact:, Edna Frazier, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 640, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6816.

- Application kits are available from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20857, Telephone: 1–800–729–6686, TDD: (800) 487–4889, Fax: (301) 468–6433.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance.

Applicants (other than federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 24, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–4943 Filed 3–1–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of Parts I and II of the Guidance for Applicants (GFA) before preparing an application. Part I is entitled Cooperative Agreements for Parenting and Family Strengthening Prevention Interventions: A Dissemination of Innovations Initiative. Part II is entitled General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements.

Activity	Application deadline	Estimated funds available, FY 2000	Estimated number of awards	Project period
Parenting and Family Strengthening Prevention Interventions: A Dissemination of Innovations Initiative.	6/13/00	$2.5 million	20–30	2 years.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA has published additional notices of available funding opportunities for FY 2000 in past issues of the **Federal Register**.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 4 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health. Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.*

Application Deadlines: The deadline for receipt of applications is June 13, 2000.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 4).

*Applicants who wish to use express mail or courier service should change the zip code to 20817.

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 2000 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 2000 KD&A program will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and it is question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, and preparation of special materials will be used, in addition to normal communication means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

3.1 General Review Criteria

Review criteria that will be used by the peer review groups are specified in the application guidance material.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 2000 SAMHSA Activities

Cooperative Agreement for Parenting and Family Strengthening Prevention Interventions: A Dissemination of Innovations Initiative (short title: Family Strengthening, SP00–002).

- *Application Deadline:* The receipt date is June 13, 2000.
- *Purpose:* The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP), with funding from the Center for Mental Health Services, announces the availability of cooperative agreements to support the Family Strengthening program. This program will solicit applications to (1) increase the capacity of local communities to deliver best practices in effective parenting and family programs in order to reduce or prevent substance abuse, (2) document the decision making processes for the selection and testing of effective interventions in community settings, and (3) determine the impact of the interventions on the target families within this study. All grantees are expected to modify the program they select to further tailor interventions to heighten cultural appropriateness and increase effectiveness for their local families. The selected intervention should maximize effectiveness in preventing or reducing alcohol, tobacco or other illegal drug use as well as associated social, emotional, behavioral, cognitive, and physical problems of parents and their children.
- *Eligible Applicants:* Applications may be submitted by domestic public or private non-profit and for profit entities, and units of State or local governments, (such as community-based organizations, universities, colleges, and hospitals).
- *Amount:* Up to $2.5 million in total costs (direct and indirect) to support 20–30 awards in FY2000.

Period of Support: Support may be requested for a period of up to 2 years.

- *Catalog of Federal Domestic Assistance Number:* 93.230.
- *Program Contact:* For questions concerning program issues, contact: Rose Kittrell, Acting Team Leader, High Risk Youth/Replication Team, Division of Knowledge Development and Evaluation, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 1075, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0353.

Technical Assistance Line: (301) 443–6612 or Anne Mathews-Younes, Ed.D., Chief, Special Programs Branch, Division of Program Development/Special Populations and Projects, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17C–17, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0554.

For questions regarding grants management issues, contact: Edna Frazier,, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 640, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6816.

- Application kits are available from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847, Telephone: 1–800–729–6686, TDD: (800) 487–4889, Fax: (301) 468–6433.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 24, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–4945 Filed 3–1–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan for Ouray National Wildlife Refuge, Vernal, UT

AGENCY: Fish and Wildlife Service. Interior.

ACTION: Notice of availability; correction.

SUMMARY: In the original submission published on February 24, 2000, the public comment period and who to send written comments to was inadvertently omitted.

DATES: Submit written comments by April 3, 2000.

ADDRESSES: Send written comments to Allison Banks, U.S. Fish and Wildlife Service, P.O. Box 25486, DFC, Denver, CO 80225. A copy of the Plan may be obtained by writing to U.S. Fish and Wildlife Service, 266 West 100 North, Suite 2, Vernal, UT 84078; or download from http://www.r6.fws.gov/larp/.

FOR FURTHER INFORMATION CONTACT: Allison Banks, U.S. Fish and Wildlife Service, P.O. Box 25486, DFC, Denver, CO 80225, 303/236–8145 extension 626; fax 303/236–4792.

SUPPLEMENTARY INFORMATION: Ouray NWR is located in northeast Utah. Implementation of the Plan will focus on adaptive resource management of wetland, grassland, and semidesert shrubland habitats, restoration and improved management of riparian bottomlands, recovery of endangered fish species of the Upper Colorado River Ecosystem, and opportunities for compatible wildlife-dependent recreation. Habitat monitoring and evaluation will be emphasized as the Plan is implemented. Opportunities for compatible wildlife-dependent recreation will continue to be provided.

The Notice of Availability published on February 24, 2000 (65 FR 9291), is corrected as follows: on page 9291, middle column, a date paragraph is added and the addresses paragraph is revised on where to send written comments.

[FR Doc. 00–5006 Filed 3–1–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and an Associated Environmental Assessment for the Turnbull National Wildlife Refuge; and Notice of Public Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and associated environmental assessment; and notice of public meetings.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and an Environmental Assessment for Turnbull National Wildlife Refuge (Refuge), Stevens County, Washington. The Service is furnishing this notice in compliance with Service CCP policy and the National Environmental Policy Act (NEPA) and implementing regulations for the following purposes: (1) To advise other agencies and the public of our intentions; (2) to obtain suggestions and information on the issues to be addressed in the CCP; and (3) to announce public meetings for scoping. We estimate that the draft CCP and associated Environmental Assessment will be available in March of 2001.

DATES: Submit comments on or before April 3, 2000. The Service will host two public meetings, the first on February 29, 2000, and the second on March 1, 2000. See **ADDRESSES** for meeting locations.

ADDRESSES: Address comments and requests for more information to: Refuge Manager, Turnbull National Wildlife Refuge, 26010 South Smith Road, Cheney, Washington, 99004. Public meetings will be held on February 26, from 6 to 9 p.m., at the Cheney High School Library, 460 North 6th Street, Cheney, Washington, and March 1, from 6 to 9 p.m. at Spokane Falls Community College, Building 17, Lounges A, B, and C, at 3410 West Fort George Right Drive, Spokane, Washington.

FOR FURTHER INFORMATION CONTACT: Nancy Curry, Refuge Manager (509) 235–4723.

SUPPLEMENTARY INFORMATION:

Background Information

The Service is beginning the process of developing a 15-year management plan for Turnbull National Wildlife Refuge. The Refuge has recently completed a Habitat Management Plan, which outlines objectives and strategies for managing Refuge habitats in a way to achieve the Refuge purpose and the system mission. The Refuge also recently completed a Fire Management Plan. These two plans will be incorporated with no anticipated changes to the CCP.

The CCP will include the following topics: (1) An assessment of existing public uses on the Refuge and within the region; (2) an assessment of Refuge facilities and programs available for public use and enjoyment; (3) the biological and physical resources and their condition (to be excerpted from the Habitat Management Plan); (4) identification of the long term goals and objectives of the Refuge, consistent with the National Wildlife Refuge System mission; (5) strategies for management of public access and uses, including but not limited to the existing uses of wildlife observation and photography, environmental education and interpretation, and hiking; (6) strategies for management of other Refuge resources including cultural resources; and (7) strategies for protecting neighboring resources that affect the Refuge. In addition, the habitat and fire management objectives and strategies already described in the Habitat Management Plan and the Fire Management Plan will be incorporated into this document.

We have identified preliminary issues and opportunities to address in the CCP. Comments and concerns received will be used to identify additional issues and prepare draft alternatives. The preliminary issues fall under two categories, Public Uses and Land Protection. Brief descriptions of those issues follow.

Public Uses. The new Refuge Improvement Act specifies that hunting, among other wildlife-dependent uses, is to be considered. Turnbull Refuge has always been closed to hunting. There are concerns about whether a large enough area exists for safe big game hunting, whether the big game population is in need of harvest management, and whether or not fall waterfowl populations are large enough in this area to support a recreational hunt.

Does the public wish to see any further developments in the public use area (*i.e.*, improved access, expansion of the public use area, added facilities, interpretive signs, and staff facilitated activities)? What effect would expanded public uses have on existing wildlife populations and distribution? Is the current sanctuary status of the Refuge a necessary benefit to wildlife in an area of rapid urban expansion?

A recent "rails-to-trails" conversion has occurred in the area and five miles of the Columbia Plateau Trail, extending from Pasco to Spokane, now runs right through the heart of the Refuge's closed area. Visitors on this trail will possibly triple Refuge visitation. The staff at the Refuge has concerns about managing this new use.

Should the Service support community demand for environmental education and interpretation on the Refuge?

Land Protection. The Refuge recently completed a Habitat Management Plan which identified the protection of water quality and quantity and the protection of native habitat and species as Refuge goals. These goals include objectives to protect Refuge water sources, water quality, and key habitats that affect Refuge resources from outside the current boundary. These goals also support the maintenance of biologically effective landscape linkages and corridors between the Refuge and other undeveloped areas of this ecoregion. Several tools exist to accomplish this, ranging from public education to voluntary conservation by neighboring landowners, partnerships and incentive programs such as the consideration of conservation easements on private land, and land acquisition from willing sellers. The CCP will explore various strategies for protecting the lands and habitats within the ecosystem.

Public Meetings

With the publication of this notice, the public is encouraged to attend public meetings and/or submit written comments for staff to consider in developing the CCP. Two public scoping meetings will be held in February. The format will be a presentation on the planning process and the Refuge followed by facilitated breakout sessions to record public interests. Dates, locations, and times follow.

(1) February 29, 2000, 6 p.m. to 9:00 p.m., Cheney High School Library, 460 N. 6th Street, Cheney, Washington, 99004. The presentation portion of the meeting will begin at 6:30 p.m.

(2) March 1, 2000, 6 p.m. to 9 p.m., Spokane Falls Community College, Building 17, Lounges A, B, and C, 3410 West Fort George Right Drive, Spokane, Washington, 99224. The presentation portion of the meeting will begin at 6:30 p.m.

Public Comments

Comments already received are on record and need not be resubmitted. All comments received from individuals on Environmental Assessments and Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations (40CFR 1506.6(f)), and other Service and Departmental policy and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, telephone numbers of commenting individuals will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the commentator's name, address, or other identifying information. Such comments may be submitted anonymously to the Service.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

Dated: February 24, 2000.

William B. Zimmerman,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–4974 Filed 3–1–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council (Council) Meeting Announcement

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Council will meet at 9 a.m., March 9, 2000, to select North American Wetlands Conservation Act (NAWCA) proposals for recommendation to the Migratory Bird Conservation Commission. The meeting is open to the public.

DATES: March 9, 2000, 9 a.m.

ADDRESSES: The meeting will be held in Room S–128, U.S. Capitol Building, 119 D Street, NE, Washington, DC. The Council Coordinator is located at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia, 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Council Coordinator, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Migratory Bird Conservation Commission. Proposals require a minimum of 50 percent non-Federal matching funds.

Dated: February 25, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–5028 Filed 3–1–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Conservation Strategy for the Grizzly Bear in the Yellowstone Ecosystem

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service), announces the availability for public review of the Draft Conservation Strategy for the grizzly bear *(Ursus arctos horribilis)* in the Yellowstone Ecosystem. The Conservation Strategy is the management plan for the grizzly in the Yellowstone ecosystem that will be used when the population is recovered and delisted. Completion of the Conservation Strategy is a task in the Grizzly Bear Recovery Plan. We solicit review and comment from the public on this draft information.

DATES: Comments on the draft supplemental information must be received on or before May 31, 2000 to ensure that they will be received in time for our consideration prior to finalization of the document.

ADDRESSES: Persons wishing to review the Draft Conservation Strategy may obtain a copy by contacting the Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, Montana 59812. The document also is available for viewing and downloading at: <http://www.r6.fws.gov/endspp/grizzly/>. Written comments and materials regarding this information should be sent to the Recovery Coordinator at the address given above, or can be mailed electronically to <FW6__grizzly@fws.gov>. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above), at telephone (406) 243–4903.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the our endangered species program. Recovery plans guide the recovery efforts for listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

Under the provisions of the Endangered Species Act of 1973 (Act) as amended (16 U.S.C. 1531 *et seq.*), we approved the revised Grizzly Bear Recovery Plan on September 10, 1993.

The grizzly bear was listed under the Act as a threatened species in the 48 conterminous States on July 28, 1995 (40 FR 31734). Threats to grizzly bear populations come primarily from habitat modification caused by human activities and from direct bear/human conflicts resulting from recreational and resource use activities, highway and railroad corridors, illegal mortality, etc. The grizzly bear population in each of the ecosystems included in the Plan can be delisted independently once recovery criteria stated in the Plan are met.

The Plan provides that prior to delisting of the grizzly bear population in each ecosystem a conservation strategy will be developed and implemented that outlines all habitat and regulatory mechanisms that will be in force after recovery of that population.

The Yellowstone Ecosystem Draft Conservation Strategy is now available for review and comment.

Public Comments Solicited

We solicit written comments on the supplemental information described above. All comments received by the date specified in the **DATES** section above will be considered prior to finalization of the strategy.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 15, 2000.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado

[FR Doc. 00–5073 Filed 3–1–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a tour and meeting of the Arizona Resource Advisory Council (RAC). A pre-tour briefing will be conducted on March 30, 2000 from 8–10 a.m. at the BLM Safford Field Office located at 711 14th Avenue, Safford, Arizona. BLM staff will provide a review of the Standards for Rangeland Health and Guidelines for Grazing Administration (S&Gs) and the implementation process. After this two-hour briefing, BLM staff and RAC will

tour a BLM grazing allotment called Johnny Creek near Safford. The tour objectives are to provide the RAC with field training on resource evaluation and on-the-ground S&G application. The business meeting will be held on March 31 at the Ramada Inn located at 420 E. Highway 70 in Safford, Arizona. It will begin at 9 a.m. and will conclude at approximately 4 p.m. The agenda items to be covered include the review of the January 21, 2000, meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Emerging Recreation Issues on Public Land; Wild Horse and Burro National Strategy Update; Growing Smarter in Arizona Initiative Presentation; Discussion on New Monument Designation Process; Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on March 31, 2000, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Denise P. Meridith,

Arizona State Director.

[FR Doc. 00–5007 Filed 3–1–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

AGENCY National Park Service; Interior.

ACTION Notice of Boundary Revision, Indiana Dunes National Lakeshore, Indiana.

SUMMARY: This notice announces a revision of the boundaries of Indiana Dunes National Lakeshore, Indiana, to include within the boundaries fifteen (15) parcels of land.

FOR FURTHER INFORMATION CONTACT: Superintendent, Indiana Dunes National Lakeshore, 1100 N. Mineral Springs Road, Porter, Indiana 46304, or by telephone 219–938–7561.

SUPPLEMENTARY INFORMATION: Notice is hereby provided that the boundaries of Indiana Dunes National Lakeshore are revised. This revision is effective upon publication of this notice, to include certain parcels of real property situated in the Counties of LaPorte and Porter, State of Indiana. These parcels have been donated to the United States and they are contiguous to the National Lakeshore boundaries. These parcels contain 0.36 of an acre more or less in LaPorte County, and 31.67 acres more or less in Porter County.

The parcels are identified as follows:

LaPorte County:

Tract 98–108 on Segment Map 98 Drawing No. 626/35,098.

Porter County:

Tract 09–113 on Segment Map 09 Drawing No. 626/35,009.

Tracts 22–106 and 22–107 on Segment Map 22 Drawing No. 626/35,022.

Tract 35–118 on Segment Map 35 Drawing No. 626/35,035.

Tract 41–103 on Segment Map 41 Drawing No. 626/35,041.

Tract 72–110 on Segment Map 72 Drawing No. 626/35,072.

Tracts 99–134, 99–135, 99–136, and 99–137, on Segment Map 99 Drawing No. 626/35,099.

Tracts 101–11, 101–12, 101–13, and 101–14, on Segment Map 101 Drawing No. 626/35,101.

All of the above-cited Segment Maps are dated January 3, 2000. These maps and related detailed information are on file at the National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102–2571.

Dated: January 20, 2000.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 00–5004 Filed 3–1–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

TIME AND DATE: March 3, 2000 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436; Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. Nos. 701–TA–393 and 731–TA–829–830, 833–834, 836, and 838 (Final) (Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on March 13, 2000.)
5. Outstanding action jackets:
   (1.) Document No. (E)GC–00–001: Administrative matters.

In accordance with Commission policy, subject matter listed above not disposed of at the scheduled meeting may be carried over to the agenda of the following meeting.

Issued: February 25, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–5171 Filed 2–29–00; 2:25 pm]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

TIME AND DATE: March 3, 2000 at 11 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436; Telephone: (202) 205–2000.

STATUS: Closed to the public.

AGENDA ITEM TO BE CLOSED:

#5: Outstanding action jackets:
   (1.) Document No. (E)GC–00–001: Administrative matters.

Pursuant to 5 U.S.C. 552b(c) and Commission rule 19 C.F.R. § 201.36(b), the Commission has unanimously determined to close a portion of the meeting of Friday, March 3, 2000, to public observation, in order to avoid disclosure of information of a personal nature which would constitute a clearly unwarranted invasion of personal privacy. The General Counsel has certified that a portion of the meeting is being properly closed to the public by the Commission. Persons permitted to attend this closed portion of the meeting include Commissioners, their staff, and other Commission personnel who need to be available for the discussion or to conduct the meeting.

Issued: February 28, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–5172 Filed 2–29–00; 2:25 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that on February 7, 2000, a proposed consent decree in *United States* v. *Ashland, Inc., et al.*, Civil Action No. 3:00 CV 252 (AVC), was lodged with the United States District Court for the District of Connecticut. This proposed

consent decree resolves the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency ("EPA") against thirty potentially responsible parties relating to certain response costs that have been or will be incurred at or from a Site known as the Gallup's Quarry Superfund Site ("Site") located in the Town of Plainfield, Connecticut, and the performance of the remedial action at the Site.

The Consent Decree requires the defendants to fund and perform the selected remedy, specifically natural attenuation of contaminants in the soil and groundwater, a long-term sampling and analysis program, implementation of institutional controls to restrict the site use, five year site reviews to assure that the remedy continues to protect human health and the environment, and to pay certain of the United States' future costs at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ashland, Inc., et al.*, D.J. Ref. 90–11–2–984A.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Connecticut, 450 Main Street, Hartford, Ct., 06103; and at the Region I Office of the Environmental protection Agency, One Congress Street, Boston, MA., 021114–2023. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. When requesting a copy please refer to the referenced case and enclosed a check made payable to the Consent Decree Library in the amount of $26.00 (there is a 25 cent per page reproduction costs).

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–4971 Filed 3–1–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act, Clean Water Act and Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States* v. *California Office of State Printing*, Civil No. CS–00–294–DFL/PAN was lodged on February 11, 2000, with the United States District Court for Eastern District of California.

The consent decree settles claims for civil penalties and injunctive relief against the California Office of State Printing ("OSP") under the Clean Air Act, Clean Water Act and the Resource Conservation and Recovery Act and regulations promulgated thereunder. The complaint sought injunctive relief and civil penalties against OSP pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b); Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319 (b) and (d); and Sections 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6928(a) and (g), for violations of the Clean Air Act, Clean Water Act, and RCRA and the regulations promulgated thereunder, including the Sacramento Metropolitan Air Quality Management District ("SMAQMD") Rules 201 (formerly numbered as Rule 50), 202, 441, and 450 and title 22 of the California Code of Regulations, Sections 66262.10 to 66262.70. The violations occurred at the State Printing facility located at 344 North 7th Street, Sacramento, California.

Pursuant to the consent decree, OSP will pay a civil penalty of $320,500 and will operate under interim emission limits set forth in the consent decree until OSP's application for permits from the SMAQMD has been resolved. OSP will also certify that it is in compliance with the provisions of the Clean Water Act and the Resource Conservation and Recovery Act that it violated.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *California Office of State Printing*, DOJ Ref. # 90–7–1–900.

The proposed consent decree may be examined at the office of the United States Attorney, for the Eastern District of California, 650 Capitol Mall, Sacramento, CA 95814 (916) 554–2766; and the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–4972 Filed 3–1–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 194–2000]

Privacy Act; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify a system of records. Specifically, the "National Institute of Corrections Technical Assistance Resource Persons Directory, JUSTICE/BOP–101" (last published on April 18, 1983, (48 FR 16556,)) has been re-titled, the "National Institute of Corrections Technical Resource Provider Record System, JUSTICE/BOP–101."

This system, which will become effective 60 days from the date of publication, has been revised to include an expanded group of individuals who provide training and technical assistance to correctional agencies through the National Institute of Corrections (NIC). These individuals are now referred to as Technical Resource Providers (TRPs). The system is being re-titled to reflect this new term.

The Bureau is further modifying the system to add a statement on the purpose of this system and to add new categories of records and new record source categories. Appropriate sections have been revised to reflect technological advances and new agency practices regarding the storage, retrieval, access, retention and disposal of records in the system. The system manager has been re-designated from the Technical Assistance Manager to the Director, National Institute of Corrections.

The Routine Use section has been re-organized to group similar Routine Uses together. Two new Routine Uses have been added to allow for disclosure to law enforcement officials for law enforcement purposes and to employees and/or contractors of the National

Archives and Records Administration and the General Services Administration for records management inspections pursuant to 44 U.S.C. 2904 and 2906.

The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

A description of the modified system of records is provided below. In addition, in accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: February 14, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/BOP–101

SYSTEM NAME

National Institute of Corrections Technical Resource Provider Record System.

SYSTEM LOCATION

Records may be retained at the National Institute of Corrections (NIC) headquarters in Washington, DC or in NIC field Offices, *e.g.*, the NIC Academy campus currently located in Longmont, Colorado.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Individuals who have been identified and have agreed to provide technical and/or training assistance to state, local, tribal, foreign and international correctional agencies in order to strengthen and improve the practice of corrections. These individuals are referred to as Technical Resource Providers (TRPs).

CATEGORIES OF RECORDS IN THE SYSTEM

Records in this system include: (1) Identification and/or logistical information for each TRPs, including name, mailing address and telephone numbers; (2) resume and/or biographical information of each TRP, including educational and work experience; (3) program information concerning the subject area of expertise and descriptive comments provided by each TRP; and (4) records generated by the system listing TRPs *i.e.* database printouts which include information enumerated in (1), (2), and (3) above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

This system is established and maintained under the authority of 18 U.S.C. 4352.

PURPOSE(S)

Recent technological developments are making it possible for the National Institute of Corrections (NIC) to consolidate and automate its directory of individuals available to provide technical and/or training assistance to corrections agencies. These individuals are currently called Technical Resource Providers (TRPs) and the information about each TRP that is contained in this system assists NIC in identifying appropriate TRPs to staff corrections seminars and provide technical assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

RELEVANT DATA FROM THIS SYSTEM WILL BE DISCLOSED AS FOLLOWS:

(a) To federal agencies, and/or state, local, tribal, foreign and international government agencies that have a need for the information in the performance of their official duties.

(b) To individuals, groups or private correction companies who request technical assistance and/or training in corrections.

(c) To officials and/or contractors of federal, state, local, tribal, foreign and international law enforcement agencies for law enforcement purposes such as investigations, possible criminal prosecutions, civil court actions, and/or regulatory proceedings.

(d) to employees and/or contractors of the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE

Information maintained in the system is stored in hard copy and/or electronic media in NIC facilities via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, floppy diskettes, magnetic tapes and/or optical disks. Documentary records are maintained in manual file folders and/or index cards.

RETRIEVABILITY

Records are retrievable by identification/logistical information, *e.g.* name and address of TRP, and/or by the subject area of expertise.

SAFEGUARDS

Information is safeguarded in accordance with Department of Justice and Bureau of Prisons rules and policy governing automated information systems security and access. These safeguard include the maintenance of records and technical equipment in restricted areas, *e.g.* locked offices and locked file cabinets in controlled-access buildings, and the required use of proper passwords and user identification codes to access the system. Only those NIC personnel who require access to perform their official duties may access the system equipment and the information in the system.

RETENTION AND DISPOSAL

Electronic records generated by the system are retained until such time as the records no longer serve the purpose described by this system. At such time, these records may be updated and/or incorporated into an appropriate, published system or records with an approved retention schedule, or otherwise destroyed by shredding and/or degaussing. Documentary records are retained for eight (8) years and then destroyed by shredding.

SYSTEM MANGER(S) AND ADDRESS

Director, National Institute of Corrections, Room 5007, 320 First St. NW, Washington, DC 20534.

NOTIFICATION PROCEDURE

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES

All requests for records may be made in writing to the Director, National Institute of Corrections, Room 5007, 320 First St. NW, Washington, DC 20534, and should be clearly marked "Privacy Act Request."

CONTESTING RECORD PROCEDURES

Same as above.

RECORD SOURCE CATEGORIES

Records are generated by individuals listed as a TRP, by NIC staff, and/or staff from other correctional and/or other law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT

None.

[FR Doc. 00–4973 Filed 3–1–00; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–98]

NSF International, Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of NSF International (NSF) for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties must be received no later than May 1, 2000.

ADDRESSES: Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program at the above address, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that NSF International (NSF) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). NSF's expansion request covers the use of additional test standards.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products "properly certified" by the NRTL.

OSHA processes applications related to an NRTL's recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish this public notice of the preliminary finding on an application.

The most recent notices published by OSHA for the NSF recognition covered its initial recognition, which OSHA announced on August 8, 1998 (63 FR 46082) and granted on December 10, 1998 (63 FR 68309).

The current address of the NSF facility (site) recognized by OSHA is: NSF International, 789 Dixboro, Ann Arbor, Michigan 48105.

General Background on the Application

NSF has submitted a request, dated December 17, 1998 (see Exhibit 6A), to expand its recognition as an NRTL for six (6) additional test standards. Also, NSF has submitted a similar request, dated March 1, 1999 (see Exhibit 6B), for four (4) other test standards. OSHA has determined that two of the standards listed in the December 17 request are not "appropriate test standards," as specified in 29 CFR 1910.7(c). Therefore, the expansion will only cover the eight (8) test standards listed below. OSHA temporarily withheld its consideration of NSF's requests pending notification by the NRTL of the certification of its first products under the NRTL Program. The Agency imposed a condition requiring such a notification when it recognized NSF. However, NSF recently informed the NRTL Program staff that it has not performed this certification. NSF would appear to have less opportunity to do so without this expansion, and the NRTL Program office has decided to proceed with granting NSF's requests. OSHA will continue to impose the condition for notification, which we state again in this notice.

NSF seeks recognition for testing and certification of products to demonstrate compliance to the eight (8) test standards listed below, and OSHA has determined the standards are appropriate, as prescribed by 29 CFR 1910.7(c). OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. As a result, the Agency's recognition of an NRTL for a test standard excludes any product(s), falling within the scope of the test standard, for which OSHA has no such requirements.

ANSI/UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances

ANSI/UL 621 Ice Cream Makers

ANSI/UL 651 Schedule 40 and 80 PVC Conduit

ANSI/UL 651A Type EB and A Rigid PVC Conduit and HDPE Conduit

ANSI/UL 749 Household [Electric] Dishwashers

UL 763 Motor-Operated Commercial Food Preparing Machines

ANSI/UL 1081 [Electric] Swimming Pool Pumps, Filters, and Chlorinators

UL 1821 Thermoplastic Sprinkler Pipe and Fittings for Fire Protection

The designations and titles of the above test standards were current at the time of the preparation of this notice.

Condition

As previously mentioned, OSHA included a condition in the **Federal Register** notice for the recognition of NSF, published on December 10, 1998 (63 FR 68309). The condition currently applies to NSF and will continue to apply as part of the expansion. The condition is as follows:

Within 30 days of certifying its first products under the NRTL Program, NSF will notify the OSHA NRTL Program Director so that OSHA may review NSF's implementation of procedures for testing and follow-up inspections of products covered within the scope of the above-listed test standards.

Preliminary Finding on the Application

NSF has submitted acceptable requests for expansion of its recognition as an NRTL. In processing these requests, OSHA did not perform an on-site review of NSF's NRTL testing facilities. However, NRTL Program assessment staff reviewed information pertinent to the request and, in a memo dated October 21, 1999 (see Exhibit 7), recommended the expansion of NSF's recognition to include the additional test standards listed above.

Following a review of the application file, the assessor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant, to the NSF facility listed above, the expansion of recognition to use the additional eight (8) test standards, with the condition to be applied as noted. The staff therefore recommended to the Assistant Secretary that the applications be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the NSF International facility listed above can meet the recognition requirements, as prescribed by 29 CFR 1910.7, for the

expansion of recognition, subject to the above condition. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether NSF has met the requirements of 29 CFR 1910.7 for the expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESSES**), no later than the last date for comments (see **DATES** above). You may obtain or review copies of NSF requests, the memo on the recommendation, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–2–98, the permanent record of public information on the NSF recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant the NSF expansion requests. The Assistant Secretary will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, D.C. this 10th day of February, 2000.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 00–4965 Filed 3–1–00; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–3–92]

TUV Rheinland of North America, Inc., Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of TUV Rheinland of North America, Inc., (TUV) for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties must be received no later than May 1, 2000.

ADDRESSES: Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program at the above address, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that TUV Rheinland of North America, Inc., (TUV) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). TUV's expansion request covers the use of additional test standards.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products "properly certified" by the NRTL. OSHA processes applications related to an NRTL's recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish this public notice of the preliminary finding on an application.

The most recent notices published by OSHA for the TUV recognition covered an expansion of recognition, which OSHA announced on January 8, 1998 (63 FR 1127) and granted on April 2, 1998 (63 FR 16280).

The current address of the TUV facility (site) recognized by OSHA is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470.

General Background on the Application

TUV has submitted a request, dated May 5, 1999 (see Exhibit 19A), to expand its recognition as an NRTL for one hundred forty (140) additional test standards. TUV also submitted information in support of its request with a letter, dated July 6, 1999 (see Exhibit 19B). OSHA has determined that twenty-one (21) of the standards that TUV requested are not "appropriate test standards," as specified in 29 CFR 1910.7(c). Therefore, the expansion will only cover the one hundred-nineteen (119) test standards listed below.

The NRTL has submitted documentation that shows its general capability for testing to the standards for which it seeks recognition. The testing capabilities required under these standards are very similar to those standards for which it is already recognized. TUV will develop more specific documentation for testing to the standards requested. Since the Agency has not yet reviewed these procedures, it has concerns regarding the actual procedures that TUV will develop and utilize for testing. In addition, OSHA temporarily withheld its consideration of TUV's expansion request due to discrepancies noted during a review of TUV's site. TUV has presented documentation to OSHA to address the issues raised by the review. Although OSHA has decided to proceed with this preliminary finding on the expansion request, the Agency is concerned that the NRTL's resolution to the issues will take some time to implement. Due to these concerns, OSHA plans to conditionally recognize TUV for the additional standards.

TUV seeks recognition for testing and certification of products to demonstrate compliance to the 119 test standards listed below, and OSHA has determined the standards are appropriate, as prescribed by 29 CFR 1910.7(c). OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. As a result, the Agency's recognition of an NRTL for a test standard excludes any product(s), falling within the scope of the test standard, for which OSHA has no such requirements.

ANSI/UL 22 Amusement and Gaming Machines
ANSI/UL 48 Electric Signs
ANSI/UL 67 Panelboards
ANSI/UL 73 Motor-Operated Appliances
ANSI/UL 82 Electric Gardening Appliances
ANSI/UL 122 Photographic Equipment
ANSI/UL 130 Electric Heating Pads
ANSI/UL 136 Pressure Cookers
ANSI/UL 141 Garment Finishing Appliances
ANSI/UL 153 Portable Electric Lamps
ANSI/UL 174 Household Electric Storage Tank Water Heaters

ANSI/UL 197 Commercial Electric Cooking Appliances
ANSI/UL 250 Household Refrigerators and Freezers
ANSI/UL 298 Portable Electric Hand Lamps
ANSI/UL 430 Waste Disposers
ANSI/UL 443 Steel Auxiliary Tanks for Oil-Burner Fuel
UL 444 Communications Cables
ANSI/UL 448 Pumps for Fire Protection Service
ANSI/UL 452 Antenna-Discharge Units
ANSI/UL 469 Musical Instruments and Accessories
ANSI/UL 471 Commercial Refrigerators and Freezers
ANSI/UL 474 Dehumidifiers
ANSI/UL 482 Portable Sun/Heat Lamps
ANSI/UL 499 Electric Heating Appliances
ANSI/UL 506 Specialty Transformers
ANSI/UL 507 Electric Fans
ANSI/UL 508 Industrial Control Equipment
ANSI/UL 508C Power Conversion Equipment
ANSI/UL 541 Refrigerated Vending Machines
ANSI/UL 561 Floor Finishing Machines
ANSI/UL 583 Electric-Battery-Powered Industrial Trucks
ANSI/UL 621 Ice Cream Makers
ANSI/UL 696 Electric Toys
ANSI/UL 697 Toy Transformers
ANSI/UL 745–1 Portable Electric Tools
ANSI/UL 745–2–1 Particular Requirements of Drills
ANSI/UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
ANSI/UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
ANSI/UL 745–2–4 Particular Requirements for Sanders
ANSI/UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
ANSI/UL 745–2–6 Particular Requirements for Hammers
ANSI/UL 745–2–8 Particular Requirements for Shears and Nibblers
ANSI/UL 745–2–9 Particular Requirements for Tappers
ANSI/UL 745–2–11 Particular Requirements for Reciprocating Saws
ANSI/UL 745–2–12 Particular Requirements for Concrete Vibrators
ANSI/UL 745–2–14 Particular Requirements for Planers
ANSI/UL 745–2–17 Particular Requirements for Routers and Trimmers
ANSI/UL 745–2–30 Particular Requirements for Staplers
ANSI/UL 745–2–31 Particular Requirements for Diamond Core Drills
ANSI/UL 745–2–32 Particular Requirements for Magnetic Drill Presses
ANSI/UL 745–2–33 Particular Requirements for Portable Bandsaws
ANSI/UL 745–2–34 Particular Requirements for Strapping Tools
ANSI/UL 745–2–35 Particular Requirements for Drain Cleaners
ANSI/UL 745–2–36 Particular Requirements for Hand Motor Tools
ANSI/UL 745–2–37 Particular Requirements for Plate Jointers
ANSI/UL 749 Household Dishwashers
ANSI/UL 751 Vending Machines
UL 763 Motor-Operated Commercial Food Preparing Machines
UL 775 Graphic Arts Equipment
ANSI/UL 778 Motor Operated Water Pumps
ANSI/UL 826 Household Electric Clocks
ANSI/UL 858 Household Electric Ranges
ANSI/UL 859 Household Electric Personal Grooming Appliance
ANSI/UL 867 Electrostatic Air Cleaners
ANSI/UL 875 Electric Dry Bath Heaters
ANSI/UL 921 Commercial Electric Dishwashers
ANSI/UL 923 Microwave Cooking Appliances
ANSI/UL 935 Fluorescent-Lamp Ballasts
ANSI/UL 961 Electric Hobby and Sports Equipment
ANSI/UL 982 Motor-Operated Household Food Preparing Machines
ANSI/UL 984 Hermetic Refrigerant Motor-Compressors
ANSI/UL 987 Stationary and Fixed Electric Tools
ANSI/UL 1004 Electric Motors
ANSI/UL 1005 Electric Flatirons
ANSI/UL 1012 Power Units Other than Class Two
ANSI/UL 1017 Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018 Electric Aquarium Equipment
ANSI/UL 1026 Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1028 Hair Clipping and Shaving Appliances
ANSI/UL 1042 Electric Baseboard Heating Equipment
ANSI/UL 1081 Swimming Pool Pumps, Filters and Chlorinators
ANSI/UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083 Household Electric Skillets and Frying-Type Appliances
ANSI/UL 1230 Amateur Movie Lights
ANSI/UL 1236 Battery Chargers for Charging Engine-Starter Batteries
UL 1240 Electric Commercial Clothes-Drying Equipment
ANSI/UL 1278 Movable and Wall-or Ceiling-Hung Electric Room Heaters
ANSI/UL 1310 Class 2 Power Units
ANSI/UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
ANSI/UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1418 Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
ANSI/UL 1419 Professional Video and Audio Equipment
ANSI/UL 1431 Personal Hygiene and Health Care Appliances
ANSI/UL 1445 Electric Water Bed Heaters
ANSI/UL 1459 Telephone Equipment
ANSI/UL 1559 Insect-Control Equipment, Electrocution Type
ANSI/UL 1561 Dry Type General Purpose and Power Transformers
ANSI/UL 1563 Electric Spas, Equipment Assemblies, and Associated Equipment
ANSI/UL 1564 Industrial Battery Chargers
ANSI/UL 1570 Fluorescent Lighting Fixtures
ANSI/UL 1571 Incandescent Lighting Fixtures
ANSI/UL 1572 High Intensity Discharge Lighting Fixtures
ANSI/UL 1573 Stage and Studio Lighting Units
ANSI/UL 1574 Track Lighting Systems
ANSI/UL 1585 Class 2 and Class 3 Transformers
UL 1594 Sewing and Cutting Machines
ANSI/UL 1647 Motor-Operated Massage and Exercise Machines
ANSI/UL 1693 Electric Radiant Heating Panels and Heating Panel Sets
ANSI/UL 1727 Commercial Electric Personal Grooming Appliances
ANSI/UL 1776 High-Pressure Cleaning Machines
ANSI/UL 1786 Nightlights
UL 1795 Hydromassage Bathtubs
UL 1838 Low Voltage Landscape Lighting Systems
ANSI/UL 1995 Heating and Cooling Equipment
UL 2021 Fixed and Location-Dedicated Electric Room Heaters
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type
UL 8730–2–8 Automatic Electrical Controls for Household and Similar

Use; Part 2: Particular Requirements for Electrically Operated Water Valves

The designations and titles of the above test standards were current at the time of the preparation of this notice.

Conditions

As indicated above, OSHA has concerns regarding the additional documentation and procedures that TUV will develop and utilize in testing products to the standards for which the NRTL seeks recognition. Also, the Agency is concerned about TUV's actual implementation of the resolution to the discrepancy noted during an on-site review of TUV's Newtown site. As a result, OSHA plans to recognize TUV subject to a later assessment of the relevant documentation and procedures.

TUV has general "procedures" that it can adapt for each specific test standard covered by this notice, but it must have specific testing procedures for a test standard in-place before it undertakes any testing, and therefore before any certification, of products covered by the particular test standard. If these procedures are not in place, TUV would not meet the requirements for continued recognition of the particular test standard(s). As a result, OSHA plans to impose a condition on granting the expansion to ensure that TUV does develop and implement appropriate written procedures for testing to the test standards covered in this notice. During future on-site visits of the NRTL, the NRTL Program staff would audit for compliance to the condition. The Agency would commence the process to revoke recognition for any test standards for which TUV does not meet the condition.

Similarly, OSHA wants assurance that TUV will properly implement its resolution to the discrepancy already mentioned. The Agency does not reveal the specific findings of its on-site reviews because they often contain specific details that may be confidential or privileged to the NRTL. For purposes of this notice, OSHA proposes the condition in terms that the Agency believes are fair to the NRTL and provide appropriate information to the public.

The conditions that OSHA plans to impose are as follows:

a. TUV must have specific written testing procedures in place before testing products covered by any test standard for which it is recognized and must use these procedures in testing and certifying those products.

b. TUV must restrict the administration, certification, and qualification activities that it performs in its capacity as an NRTL only to its Newtown facility. TUV must perform these activities in accordance with OSHA's relevant policies and criteria for these activities, and in accordance with its response, to the applicable on-site review, that OSHA has accepted.

Preliminary Finding on the Application

TUV has submitted an acceptable request for expansion of its recognition as an NRTL. In processing this request, OSHA performed an on-site assessment (review) of TUV's facility in Newtown, Connecticut, on July 12–14, 1999. TUV has addressed the discrepancies noted by the assessor during the on-site review, following the on-site evaluation. The resolution to the discrepancies are factored into the on-site review report (see Exhibit 20).

Following a review of the application file, the on-site review report, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant to the TUV facility listed above the expansion of recognition to use the additional one hundred-nineteen (19) test standards, with the conditions to be applied as noted. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the TUV Rheinland of North America, Inc., facility listed above can meet the recognition requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition, subject to the above conditions. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, on whether TUV has met the requirements of 29 CFR 1910.7 for the expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESS**), no later than the last date for comments (see **DATES** above). You may obtain or review copies of the TUV request, the on-site review report, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–3–92, the permanent record of public information on the TUV recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant the TUV expansion request. The Assistant Secretary will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, D.C. this 10th day of February, 2000.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 00–4966 Filed 3–1–00; 8:45 am]

BILLING CODE 4510–26–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4),

and (6) of section 552b of Title 5, United States Code.

1. *Date:* March 10, 2000
Time: 9:00 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2000 deadline

2. *Date:* March 13, 2000
Time: 9:00 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2000 deadline

3. *Date:* March 17, 2000
Time: 9 a.m. to 5:10 p.m.
Room: 415
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2000 deadline

4. *Date:* March 20, 2000
Time: 9 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 1, 2000 deadline

5. *Date:* March 23, 2000
Time: 9 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications for Special Projects, submitted to the Division of Public Programs at the February 1, 2000 deadline

6. *Date:* March 24, 2000
Time: 9 a.m. to 5:30 p.m.
Room: 730
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2000 deadline

7. *Date:* March 31, 2000
Time: 9 a.m. to 5:30 p.m.
Room: 426
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 1, 2000 deadline

8. *Date:* March 31, 2000
Time: 9 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2000 deadline

Dated:

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 00–4968 Filed 3–1–00; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–90, issued to the Tennessee Valley Authority (TVA, the licensee), for operation of the Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee.

The proposed amendment would add a footnote to Technical Specification (TS) Table 3.3.2–1 (page 3 of 7) that deletes applicability of Surveillance Requirement (SR) 3.3.2.10, "Turbine Trip and Feedwater Isolation," for the period February 23, 2000, until restart of the main turbine following the next time the turbine is removed from service.

TVA submitted an exigent license amendment request on February 25, 2000, as described above, to amend the WBN TS on a one-time basis to alleviate an inadvertent noncompliance resulting from a component replacement. Specifically, WBN entered TS 3.0.3 on February 22, 2000, as the result of a determination that response time testing (RTT) had not been performed for the Train B turbine trip solenoid valve (1–FSV–47–027–B) following replacement during WBN's Unit 1 Cycle 2 Refueling Outage during the Spring of 1999. The subject surveillance test (SR 3.3.2.10) had been performed within the required frequency of once every 36 months. However, the last test was partially invalidated by replacement of the subject solenoid valve because response time data on the valve was not obtained following installation of the new valve. The plant must be in a shutdown condition to obtain this data. Therefore, TS relief was sought by TVA to avoid an unnecessary plant shutdown for the sole purpose of obtaining this response time data. The response time data will be obtained during the next occasion involving removal of the main turbine from service.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(A) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested discretionary enforcement will not result in a significant increase in the consequences of an accident as the turbine trips have been functionally verified in accordance with the technical specifications and the turbine protection program and turbine trip response time is not a significant contributor to the accident analysis. Accordingly, there would be no impact on projected offsite doses.

(B) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the safety function of the solenoid valve was confirmed during the post maintenance testing. Further, during the functional testing the control room operator observed normal operation of the trip function. Although the response time was not quantitatively determined for the end device, this deficiency cannot create a new or different accident from any previously evaluated.

(C) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Again as discussed above, the trip function was confirmed by post maintenance testing, and the operator did not observe any abnormal delay in response. This clearly indicates there would be no significant reduction in a margin of safety associated with the lack of quantitative documentation of the response time for a portion of the Steam Generator Water Level High High turbine trip function.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently. Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 15, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley Authority, 400 West Summit Drive, ET 10H, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley

Authority, 400 West Summit Drive, ET 10H, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to General Counsel, Tennessee Valley Authority, 400 West Summit Drive, ET 10H Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 25, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 25th day of February 2000.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5017 Filed 3–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–1014]

Holtec International; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Request for Exemption From Requirements of 10 CFR Part 72; Correction

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 19, 2000 (65 FR 2995). This action is necessary to correct an erroneous Unit number.

FOR FURTHER INFORMATION CONTACT: Thomas Matula, Office of Nuclear Material Safety and Safeguards, Washington, D.C. 20555–0001, telephone 301–415–8563, e-mail tom1@nrc.gov.

SUPPLEMENTARY INFORMATION: On page 2995, in the center column, in the last sentence, "Units 2 and 3" is corrected to read "Unit 1".

Dated at Rockville, Maryland, this 23rd day of February 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–5018 Filed 3–1–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549

[Extension: Rule 30b2–1; SEC File No. 270–213; OMB Control No. 3235–0220]

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("Act") [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 30b2–1 Under the Investment Company Act of 1940, Filing of Copies of Reports to Stockholders

Rule 30b2–1 under the Investment Company Act of 1940 [17 CFR 270.30b2–1] requires the filing of four copies of every periodic or interim report transmitted by or on behalf of any registered investment company to its stockholders.[1] This requirement ensures that the Commission has information in its files to perform its regulatory functions and to apprise investors of the operational and financial condition of registered investment companies.[2]

[1] Most filings are made via the Commission's electronic filing system; therefore, paper filings under Rule 30b2–1 occur only in exceptional circumstances. Electronic filing eliminates the need for multiple copies of filings.

[1] Annual and periodic reports to the Commission become part of its public files and, therefore, are available for use by prospective investors and stockholders.

It is estimated that approximately 3,490 registered management investment companies are required to send reports to stockholders at least twice annually. The annual burden of filing the reports is estimated to be negligible.

The burden estimate for Rule 30b2–1 is made solely for the purposes of the Act and is not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C., 20549.

Dated: February 23, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4980 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24314; 812–11904]

Harris & Harris Group, Inc.; Notice of Application

February 24, 2000.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Issuance of Certification Pursuant to Section 851(e) of the Internal Revenue Code of 1986, as amended ("Code").

SUMMARY: The SEC is issuing a certification pursuant to section 851(e) of the Code that applicant Harris & Harris Group, Inc. ("Harris") was, for the fiscal year ended December 31, 1999, principally engaged in the furnishing of capital to other corporations which are principally

engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available.

FILING DATES: The application was filed on December 22, 1999, and amended on February 24, 2000.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0609; Applicant, One Rockefeller Plaza, 14 Wast 49th Street, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Paula L. Kashtan, Senior Counsel, at (202) 942–0615, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application and a certification. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. Harris is a New York corporation. On July 26, 1995, Harris elected to become regulated as a business development company pursuant to section 54(a) of the Investment Company Act of 1940.

2. Harris proposed to qualify as a "regulated investment company" under section 851(a) of the Code pursuant to section 851(e) of the Code. Section 851(b) of the Code imposes certain portfolio diversification requirements on investment companies that seek to qualify as a regulated investment company. Section 851(e) of the Code provides an exemption from these diversification requirements if the investment company, among other things, obtains a certification from the SEC that the investment company is principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available (collectively, "Development Corporations").

3. Harris has filed an application seeking a certification pursuant to section 851(e) of the Code for the fiscal year ended December 31, 1999. The application describes certain companies in Harris' portfolio during the fiscal year ended December 31, 1999, that Harris believes to be Development Corporations. Harris states that, in making this determination, it relied upon information provided by the portfolio companies to Harris and to others, including but not limited to, offering circulars, prospectuses, analyst reports, internal company memoranda, patent applications and similar documents. In addition, Harris generally is represented on the boards of directors of its portfolio companies through member or observe status, and also has direct access to senior management of the companies.

4. The following table shows the composition of the total assets of Harris as of each of the calendar quarters ended March 31, June 30, September 30, and December 31, 1999, as set forth in the application.

Assets (at value)	Mar. 31, 1999	June 30, 1999	Sept. 30, 1999	Dec. 31, 1999
Investments representing capital furnished to corporations believed to be Development Corporations	$14,947,426	$18,845,689	$20,952,249	$59,806,703
Other investments, cash and U.S. Government securities	10,540,419	9,007,741	6,897,452	4,945,693
Other Assets	646,226	1,328,451	546,593	568,372
Total Assets	26,134,071	29,181,881	28,396,294	65,320,768

As reflected in the table above, Development Companies comprised the following percentages of the total assets of Harris at the end of each calendar quarter of 1999; March 31, 57.2%; June 30, 64.6%; September 30, 73.8%; and December 31, 91.6%.

Certification

On the basis of the information set forth in the application, it appears that Harris was principally engaged in the furnishing of capital to Development Corporations within the meaning of section 851(e) of the Code in the fiscal year ended December 31, 1999. IT IS THEREFORE CERTIFIED to the Secretary of the Treasury, or his delegate, pursuant to section 851(e) of the Code, that Harris was, for the twelve months ended December 31, 1999, principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–4981 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42449; File No. SR–CHX–99–14]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to "Stop" and "Stop Limit" Orders

February 22, 2000.

On August 28, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] to add Article XX, Rule 28A to the Exchange's Rules relating to "stop" and "stop limit" orders to clarify that the existing Rule 28 of Article XX relates solely to "stopped" orders. Notice of the proposed rule change was published on October 7, 1999, in the **Federal Register**, to solicit comment from interested persons.[3] On February 7, 2000, the Exchange withdrew the proposed rule change.[4]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5061 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] Securities Exchange Act Release No. 41969 (September 30, 1999), 64 FR 54702.

[4] *See* letter from Kathleen Boege, Associate General Counsel, CHX, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated, February 7, 2000.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42454; File No. SR–CHX–00–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Amend its Rules Relating to the Filing of FOCUS Reports

February 24, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2000, the Chicago Stock Exchange, Inc. (the "CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 16, 2000, the Exchange filed with the Commission Amendment No. 1, designating the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to accelerate the operative date of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to codify the CHX requirement that certain financial and operational reports be filed with the Exchange electronically, utilizing software provided by the Exchange for this purpose. Specifically, the CHX proposed to add Interpretation and Policy .03 to Article XI, Rule 4 of the Exchange's rules. The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's rules currently require members and member organizations to file with the Exchange, or to arrange for the timely submission to their designated examining authority ("DEA"), financial and operational reports ("FOCUS" Reports") pursuant to the provisions of Article XI, Rule 3 of the CHX Rules.[4]

In 1999, the Exchange licensed software, and provided it to those CHX members for which the CHX acts as the DEA to permit these members to file their monthly and quarterly FOCUS Reports electronically. Specifically, the Exchange licensed the use of the WINJAMMER™ software developed by the Chicago Mercantile Exchange. Members install the software on a personal computer and enter the required FOCUS Report information. Members then send this information to the Exchange as a password-protected attachment to an e-mail message. The program contains an additional encryption tool to allow the Exchange to verify the authenticity of the sender. The Exchange believes that these precautions provide adequate protection to Exchange members in their filing of FOCUS Reports.[5]

Because these electronically-filed reports are much easier to file and maintain, most member firms immediately chose to file their FOCUS Reports electronically.[6] The CHX is proposing this rule change to require that FOCUS Reports be filed electronically by all members for which the CHX acts as the DEA, to take advantage of the increased efficiency and the decreased errors associated with electronic filing. The proposed rule change would require the electronic filing of FOCUS beginning with the January 2000 FOCUS Reports, which are due on or before February 24, 2000. The Exchange represents that all members affected by this change have been notified that electronic filing of FOCUS Reports will be required.[7] Because the Exchange has provided affected members with the necessary software and systems support to commence electronic filing, the Exchange believes that no affected member or member organization will sustain any burden as a result of this requirement. To the contrary, the Exchange believes that electronic filing of FOCUS Reports constitutes a long-awaited convenience.

2. Statutory Basis

For these reasons, the Exchange believes the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the Exchange believes that that the proposed rule is consistent with Section 6(b)(5) of the Act/[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, the protect investors and the public interest.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange has represented that the proposed rule change: (i) Will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on the competition; and (iii) will not become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Commission is waiving the five business day notice requirement as permitted by Rule 19b–4(f)(6) under the Act. *Id.* The Commission notes that the Exchange has requested that the Commission accelerate the operative date of the rule change to permit the Exchange to apply it to the January FOCUS Reports, which are due on or before February 24, 2000. Amendment No. 1 also confirmed information about security-related protections built into the software system. *See* Letter from Ellen Neely, Vice President and General Counsel, CHX, to Melinda Diller, Attorney, Division of Market Regulation ("Division"), Commission dated February 15, 2000 ("Amendment No. 1").

[4] *See* 17 CFR 240.17a–5.

[5] *See* Amendment No. 1, *supra* note 3.

[6] The Exchange represents that for the month of December 1999, 82 members filed FOCUS Reports with the CHX. Of those 82 members, 64 (78%) filed electronically, 18 (22%) filed manually. However, CHX is no longer the DEA for 4 of those members that filed their December 1999 FOCUS Reports manually. Therefore, 14 members (17%) of the CHX would be affected by this proposed rule change. Voice Mail Message from Ellen Neely, Vice President and General Counsel, CHX, to Melinda Diller, Attorney, Division of Market Regulation, Commission, on February 14, 2000.

[7] The Exchange represented to the Commission that a memo was sent to all firms for which the CHX acts as DEA on October 22, 1999, detailing the licensing agreement for the software and stating that the Exchange was proposing to make electronic filing a requirement beginning with the January 2000 FOCUS Reports. The Exchange also represented that it subsequently reiterated the proposed change through telephone conversations the Exchange conducted with the members affected by the change and during this inspections and testing of the software. Telephone conversation between Ellen J. Neeley, Vice President and General Counsel, CHX, and Melinda R. Diller, Attorney, Division of Market Regulation, Commission, on February 17, 2000.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule filing has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, (3) by its terms does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, and (4) the Commission is waiving the required written notice of intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

The Commission has determined, consistent with the protection of investors and the public interest, to make the proposed rule change operative upon filing, pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii).[14] Under Rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time.[15] The Commission believes that it is consistent with the protection of investors and the public interest to make the proposed rule change operative upon filing because: (1) Members were notified in October that the Exchange would propose that the electronic filing requirement become effective beginning with the filing of the January 2000 FOCUS Reports, (2) the Exchange provided the necessary software for electronic filing, and (3) the purpose of the electronic filing requirement is to facilitate the filing process for members.

At any time within 60 days of the filing of the amended proposed rule change, the Commission may summarily abrogate such rule if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the amended proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–00–01 and should be submitted by March 23, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5062 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *Id.*

[16] In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42452; File No. SR–NASD–99–41]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Opening of Day-Trading Accounts

February 23, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 1 to the proposed rule change, File No. SR–NASD–99–41, as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The NASD submitted the proposed rule change to the Commission on August 20, 1999, which was published in the **Federal Register** on September 21, 1999 ("Original Notice").[3] The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As described in the Original Notice, NASD Regulation is proposing to amend the 2300 Series of the Rules of the NASD to include new Rule 2360 and Rule 2361 regarding the opening of day-trading accounts. Below is the text of the proposed rule change, as amended. Proposed new language from Amendment No. 1 is in *italics*. Proposed deletions from the language proposed in the Original Notice is in [brackets].

Rule 2360. Approval Procedures for Day-Trading Accounts

(a) No member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer, unless, prior to opening the account, the member has furnished to the customer the risk disclosure statement set forth in Rule 2361 and has:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41432 (September 14, 1999), 64 FR 51165.

(1) Approved the customer's account for a day-trading strategy in accordance with the procedures set forth in paragraph (b) and prepared a record setting forth the basis on which the member has approved the customer's account; or

(2) Received from the customer a written agreement that the customer does not intend to use the account for the purpose of engaging in a day-trading strategy, except that the member may not rely on such agreement if the member knows that the customer intends to use the account for the purpose of engaging in a day-trading strategy.

(b) In order to approve a customer's account for a day-trading strategy, a member shall have reasonable grounds for believing that the day-trading strategy is appropriate for the customer. In making this determination, the member shall exercise reasonable diligence to ascertain the essential facts relative to the customer, including [his or her financial situation, tax status, prior investment and trading experience, and investment objectives.]:

(1) Investment objectives;

(2) Investment and trading experience and knowledge (e.g., number of years, size, frequency and type of transactions);

(3) Financial situation, including: estimated annual income from all sources, estimated net worth (exclusive of family residence), and estimated liquid net worth (cash, securities, other);

(4) Tax status;

(5) Employment status (name of employer, self-employed or retired);

(6) Marital status; number of dependents; and;

(7) age.

(c) If a member that is promoting a day-trading strategy opens an account for a non-institutional customer in reliance on a written agreement from the customer pursuant to paragraph (a)(2) and, following the opening of the account, knows that the customer is using the account for a day-trading strategy, then the member shall be required to approve the customer's account for a day-trading strategy in accordance with paragraph (a)(1) as soon as practicable, but in no event later than 10 days following the date that such member knows that the customer is using the account for such a strategy.

(d) Any record or written statement prepared or obtained by a member pursuant to this rule shall be preserved in accordance with Rule 3110(a).

(e) For purposes of this rule, the term "day-trading strategy" means an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

(f) For purposes of this rule, the term "non-institutional customer" means a customer that does not qualify as an "institutional account" under Rule 3110(c)(4).

(g) A firm will not be deemed to be "promoting a day-trading strategy" for purposes of this Rule solely by its engaging in the following activities:

(1) Promoting efficient execution services or lower execution costs based on multiple trades;

(2) Providing general investment research or advertising the high quality or prompt availability of such general research; and

(3) Having a Web site that provides general financial information or news or that allows the multiple entry of intra-day purchases and sales of the same securities.

Rule 2361. Day-Trading Risk Disclosure Statement

(a) Except as provided in paragraph (b), no member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer unless, prior to opening the account, the member has furnished to [the] *each* customer, *individually,* in writing or electronically, the following disclosure statement:

You should consider the following points before engaging in a day-trading strategy. For purposes of this notice, a "day-trading strategy" means [a] *an overall trading* strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

• Day trading can be extremely risky. Day trading generally is not appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day-trading activities with retirement savings, student loans, second mortgages, emergency funds, funds set aside for purposes such as education or home ownership, or funds required to meet your living expenses.

• Be cautious of claims of large profits from day trading. You should be wary of advertisements or other statements that emphasize the potential for large profits in day trading. Day trading can also lead to large and immediate financial losses.

• Day trading requires knowledge of securities markets. Day trading requires in-depth knowledge of the securities markets and trading techniques and strategies. In attempting to profit through day trading, you must compete with professional, licensed traders employed by securities firms. You should have appropriate experience before engaging in day trading.

• Day trading requires knowledge of a firm's operations. [You should be familiar with a securities firm's business practices, including the operation of the firm's order execution systems and procedures] Under certain market conditions, you may find it difficult or impossible to liquidate a position quickly at a reasonable price. This can occur, for example, when the market for a stock suddenly drops, or if trading is halted due to recent news events or unusual trading activity. The more volatile a stock is, the greater the likelihood that problems may be encountered in executing a transaction. In addition to normal market risks, you may experience losses due to system failures.

• Day trading may result in your paying large commissions. Day trading may require you to trade your account aggressively, and you may pay commissions on each trade. The total daily commissions that you pay on your trades may add to your losses or significantly reduce your earnings.

• Day trading on margin or short selling may result in losses beyond your initial investment. When you day trade with funds borrowed from a firm or someone else, you can lose more than the funds you originally placed at risk. A decline in the value of the securities that are purchased may require you to provide additional funds to the firm to avoid the forced sale of those securities or other securities in your account. Short selling as part of your day-trading strategy also may lead to extraordinary losses, because you may have to purchase a stock at a very high price in order to cover a short position.

(b) In lieu of providing the disclosure statement specified in paragraph (a), a member that is promoting a day-trading strategy may provide to the customer, *individually,* in writing or electronically, prior to opening the account, an alternative disclosure statement, provided that:

(1) The alternative disclosure statement shall be substantially similar to the disclosure statement specified in paragraph (a); and

(2) The alternative disclosure statement shall be filed with the Association's Advertising Department (Department) for review at least 10 days prior to use (or such shorter period as the Department may allow in particular

circumstances) for approval and, if changes are recommended by the Association, shall be withheld from use until any changes specified by the Association have been made or, if expressly disapproved, until the alternative disclosure statement has been refiled for, and has received, Association approval. The member must provide with each filing the anticipated date of first use.

(c) For purposes of this rule, the term "day-trading strategy" shall have the meaning provided in Rule 2360(e).

(d) For purposes of this *R*[r]ule, the term "non-institutional customer" means a customer that does not qualify as an "institutional account" under Rule 3110(c)(4).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its Original Notice with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change.[4] The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

To address investor protection concerns arising from day-trading activities, NASD Regulation is proposing to amend the NASD rules to include new Rules 2360 and 2361. As described in the Original Notice and Amendment No. 1 herein, the proposed rule change would require a member firm that is promoting a day-trading strategy to furnish a risk disclosure statement to a non-institutional customer prior to opening an account for the customer and either to: (1) Approve the customer's account for a day-trading strategy, or (2) obtain from the customer a written agreement that the customer does not intend to use the account for day-trading purposes. As part of the account approval process, the firm would be required to make a threshold determination that day trading is appropriate for the customer.

[4] *See supra* note 3.

In April 1999, NASD Regulation issued *Special Notice to Members* 99–32 ("NTM 99–32") to solicit comment on the proposed rules regarding approval procedures for day-trading accounts. In response to NTM 99–32, the Association received 39 comment letters. The majority of the letters generally supported NASD Regulation's efforts to address the investor protection concerns raised by individuals engaging in day-trading activities. Commenters, however, raised varied suggestions on how best to regulate day-trading activities and presented disparate views on the scope of the activities that should be covered by the rules. The proposal discussed in NTM 99–32 differed in a number of respects from the proposal subsequently filed with the Commission as the Original Notice.[5]

As indicated in the Original Notice, the Association modified the proposed day-trading rule outlined in NTM 99–32, in response to the comment letters. Many of these changes were significant, and included: limiting the application of the rule to those firms that are "promoting a day-trading strategy," as compared to "recommending an intra-day-trading strategy"; applying the rule to all non-institutional customers; requiring firms promoting a day-trading strategy to have reasonable grounds for believing that the strategy is appropriate for the customers and to exercise reasonable diligence to ascertain the essential facts relative to the customers; revising the definition of "intra-day-trading strategy"; requiring firms promoting a day-trading strategy to deliver the risk disclosure statement to all non-institutional customers prior to opening an account for such customers; and revising the risk disclosure statement to include the additional key point that day trading generally is not appropriate for persons of limited resources and limited investment or trading experience and low risk tolerance.

In September 1999, the Commission published the Association's modified proposal, the Original Notice, in the **Federal Register**.[6] The Commission specifically solicited comments on: whether the proposal should cover existing day-trading accounts; whether the proposed definition of "day-trading strategy" is appropriate; whether the proposed risk disclosure statement is adequate; and whether the firms should be required to obtain a customer's acknowledgment of receipt of the risk disclosure document.

[5] *Id.*

[6] *Id.*

The Commission received three comment letters in response to the Original Notice. The comment letters were from the Electronic Traders Association ("ETA"), the North American Securities Administrators Association, Inc. ("NASAA"); and the Federal Regulation Committee, the Discount Brokerage Committee and Ad-hoc Committee on Technology & Regulation of the Securities Industry Association ("SIA").[7] In addition to the specific questions for which the Commission solicited input, the commenters expressed their views on a variety of other issues. Many of the issues raised by the commenters in response to the Original Notice also were raised in the comments in response to NTM 99–32. The comments sent to the Commission are summarized by issue below.

After considering this most recent set of comments, the Association has made additional changes to the subject proposed day-trading rules. The text of the proposed rule language provided herein reflects these changes, which include: modifying the disclosure statement; revising the prescribed method for delivering the disclosure statement; describing certain activities that will not trigger application of the proposed day-trading rules; and clarifying the information-gathering requirements. In addition to describing the proposed amendments, the discussion below clarifies some issues raised by the commenters.

Issues Raised in Comment Letters

Persons Covered by Proposed Rules

As proposed in NTM 99–32, proposed Rules 2360 and 2361 would apply to new customers only. Several

[7] *See* Letters from James H. Lee, President, Electronic Traders Association ("ETA"), to Jonathan G. Katz, Secretary, SEC, dated October 11, 1999; Bradley W. Skolnik, President, Indiana Securities Commissioner, North American Securities Administrators Association ("NASAA"), to Jonathan G. Katz, Secretary, SEC, dated October 12, 1999; and Lee B. Spencer, Jr., Chairman, Federal Regulation Committee, Everett Lang, Co-Chairman, Discount Brokerage Committee, Michael L. Michael, Chairman, Ad-Hoc Committee on Technology and Regulation, and Michael Anderson, Co-Chairman, Discount Brokerage Committee, Securities Industry Association ("SIA"), to Margaret H. McFarland, Deputy Secretary, SEC, dated October 22, 1999. Each of these commenters represents a group of interested parties. ETA is a trade association of on-site day-trading firms. It has approximately 15 supporting organizations, including six of the ten largest on-site daytrading firms. NASAA is an international organization of securities regulators devoted to investor protection. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico and Puerto Rico. SIA brings together the shared interests of more than 740 securities firms. Its member firms are active in all U.S. and foreign markets and in all phases of corporate and public finance.

commenters to NTM 99–32, including NASAA, responded that all existing customers should be covered by day-trading rules or, at a minimum, receive a risk disclosure statement. On the other hand, several firms argued that the proposal should apply only to new customers because it would be difficult to review all existing accounts to determine which accounts should be classified as day-trading accounts. In its rule filing, the Association revised the proposal so that the day-trading rules would apply to all new accounts. The proposed day-trading rules would not apply to an existing customer, unless the customer opens a new account at a firm that is promoting a day-trading strategy.

In the Original Notice, the Commission solicited comment on whether the proposal should cover existing day-trading accounts. NASAA was the only commenter to respond to this question. NASAA continues to believe that the proposed rules should apply to both new and existing accounts. However, no new arguments were raised in support of this proposition in NASAA's letter. Accordingly, the Association continues to believe that it struck the appropriate balance in the rule filing.

Further, in response to the rule filing, NASAA argues that a requirement to deliver a disclosure statement should apply to all parties whose funds are being handled by third parties. ETA, however, is concerned with how such a requirement would apply to entities such as hedge funds. The Association believes that as a practical matter, it would be difficult (or virtually impossible) for a firm routinely to inquire as to the identity of all parties involved in such arrangements. The Association will continue to examine for abuses involving third parties trading on behalf of others, and notes that such arrangements may raise investment adviser or broker-dealer registration issues.

Definition of Day-Trading Strategy

Proposed Rule 2360, set forth in NTM 99–32, stated that an "intra-day-trading strategy" is "an overall trading strategy characterized by the regular transmission by a customer of multiple intra-day electronic orders to effect both purchase and sale transactions in the same security or securities." Several commenters to NTM 99–32 suggested a broader definition, while others suggested limiting the scope of the definition. In its rule filing, NASD Regulation changed the proposed rule language to provide that a "day-trading strategy" is "an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities." The rule filing explained that the Association believes that this definition includes those instances where an individual regularly transmits one or more purchase and sale transactions in a single day. The revised proposal also amended the definition of "day-trading strategy" to include orders transmitted by non-electronic means, such as by telephone.

In the Original Notice, the Commission solicited comment on whether NASD Regulation's revised definition of "day-trading strategy" is appropriate. NASAA believes that this definition should be further revised to state that a day-trading strategy "often involves the 'use of margin borrowing and short-selling' and that trading accounts frequently are composed of 'equities' only and contain no long-term time horizon investments." The Association, however, believes that the definition included in the rule filing would not benefit from the inclusion of this additional language.

Disclosure Statement

Proposed Rule 2360, set forth in NTM 99–32, stated that the account approval procedures would require the member, prior to effecting an initial day-trading transaction, to provide the disclosure statement contained in proposed Rule 2361 to the customer.[8] The disclosure statement lists several factors that a customer should consider before engaging in day trading, including that the customer should be prepared to lose all of the funds that he or she uses for day trading, and that day trading on margin may result in losses beyond the initial investment. In the rule filing, NASD Regulation revised the proposed disclosure statement to include the additional key point that day trading generally is not appropriate for persons of limited resources and limited investment or trading experience and low risk tolerance.

In the Original Notice, the Commission requested comment on whether the proposed disclosure statement is adequate. NASAA responded by stating that certain structured arrangement entered into by participants of "day-trading strategies" may violate laws governing investment advisers. NASAA contends that the disclosure statement should state that persons trading for others may need to register as investment advisers.[9] The purpose of the disclosure statement, however, is to highlight for customers the unique risks posed by their engaging in day trading. The Association believes that the issue of whether an individual trading for others is required to register as an adviser or a broker/dealer should not be addressed in this risk disclosure statement.

ETA supports the concept of a risk disclosure statement. ETA, however, proposes alternative language in three sections of the disclosure statement. First, ETA proposes that the Association replace the following language:

> Day trading requires knowledge of a firm's operations. You should be familiar with a securities firm's business practices, including the operations of the firm's order execution systems and procedures.

ETA proposes the following alternative language:

> Under certain market conditions, you may find it difficult or impossible to liquidate a position quickly at a reasonable price. This can occur, for example, when the market for a stock suddenly drops, or if trading is halted due to recent news events or unusual trading activity. The more volatile a stock is, the greater the likelihood that problems may be encountered in executing a transaction.
>
> In addition to normal market risk, you may experience losses due to system failures. The firm and its clearing broker rely upon sophisticated computer software and hardware to execute transactions, which are subject to failure due to a variety of factors. Among other events, you may experience losses due to: system crashes during both peak and low volume periods; the loss of orders on both SOES and SelectNet; and, delayed, conflicting and inaccurate confirmations on orders or cancellations which you initiate.

In Amendment No. 1, the Association is modifying its proposed disclosure statement based on ETA's comment. NASD Regulation is replacing the language in question with the entire first paragraph and the first sentence of the second paragraph of ETA's recommended language. NASD Regulation believes that this language is an improvement over the language proposed by the NASD.[10] NASD

[8] The firm would be permitted to develop an alternative risk disclosure statement, provided that the alternative statement was substantially similar to the mandated statement and was filed with, and approved by, the Association's Advertising/Investment Companies Regulation Department.

[9] Specifically, NASAA believes that the disclosure statement should "include a warning that parties who trade the accounts of others, whether through trading authorizations, partnership agreements or otherwise, or who trade with funds furnished by others, whether through pooled fund arrangements or otherwise, and [sic] may be subject to the law and regulations governing investment advisers and may be required to register as investment advisers under state and federal law."

[10] The NASD is retaining the caption heading for this paragraph: "Day trading requires knowledge of a firm's operations."

Regulation, however, believes the remaining language in ETA's recommended second paragraph over emphasizes the fallibility of outside systems.

ETA also proposes alternative language to two other sections of the proposed disclosure statement. ETA recommends changes to the section captioned: "Day-trading may result in your paying large commissions." ETA suggests language which omits any direct reference to total daily commissions possibly adding to an individual's losses. The Association rejects this recommendation because it incorrectly assumes that there will be earnings. Finally, ETA proposes alternative language to the section of the proposed disclosure statement captioned: "Day-trading can be extremely risky." In this section, ETA recommends the Association include a discussion on the difficulty in earning money during the first three to five months of day trading. The Association believes that this language may actually encourage people to continue day trading in hopes that results will improve with time and experience. There does not, however, appear to be any reliable statistical evidence that supports such an assertion.

Finally, in Amendment No. 1, the Association is making a technical revision to the definition of "day-trading strategy." The change is not the product of any of the comment letters. The definition of day trading in the proposed Rule 2361 disclosure statement is being changed to conform with the definition as it appears in the text of proposed Rule 2360.

Customer Acknowledgment

The proposal, set forth in NTM 99–32, would not require customers to sign or otherwise acknowledge receipt of the disclosure statement. Commenters to NTM 99–32 expressed divergent views in response to this issue. Both ETA and NASAA expressed the view that it was appropriate to require a firm to retain a copy of the disclosure document with an acknowledgment of its receipt by the customer. Other commenters argued that the customer should not be required to sign or otherwise acknowledge receipt of the disclosure statement. For instance, E*TRADE argued that the customer's acknowledgment is unnecessary in this context because the statement is a disclosure of risks, and not an agreement between the firm and the customer. After considering the comments, NASD Regulation concluded that it is sufficient for firms to have written procedures in place for delivery of the document and to be able to identify those procedures to any examiners.

In the Original Notice, the Commission solicited comments on whether firms should be required to obtain a customer's acknowledgment of receipt of the disclosure statement. Again, NASAA and ETA expressed the view that customers should be required to acknowledge in writing that they have read and understand the statement. Lastly, NASAA suggests that a principal of the firm sign the statement. In response to these comments, in Amendment No. 1, the Association is revising proposed Rule 2361 to require firms to deliver the disclosure statement to each customer individually, by mail or electronic means, prior to opening the account. This approach would protect against a firm posting the disclosure statement in a remote place on its Web site, and claiming that it was delivered to all customers in such manner. The Association is not proposing to require customers to sign the disclosure statements. The Association believes that any abuses of the delivery requirement could be detected during routine examinations.

Individual Solicitations

As noted above, commenters raised several issues that the Commission did not specifically address in the "Solicitation of Comments" section of the rule filing published in the Original Notice. One of these issues is whether the proposed day-trading rule could be triggered only by firms' general promotional efforts, or whether individual solicitations could alone trigger application of the proposed rules. SIA believes that obligations under the proposed rules should not arise in situations where there are no general promotional efforts by firms. SIA argues that "[i]ndividual solicitations are already covered by suitability and recordkeeping rules and a new rule would not add anything new to investor protection." This, however, is not necessarily true if firms are recommending strategies rather than specific securities. Further, SIA argues that "[e]ven if individually targeted promotions [are] subject to the [proposed day-trading] rule, the rule does not address whether such a promotion would trigger the account opening requirements for *all* new customers of the firm." SIA believes that "in the absence of general promotional efforts, an individual solicitation [should] not trigger obligations under the rule to any customers but those targeted by the promotion." It appears that SIA is concerned that the rule filing text could be read to mean that if one broker at a full-service firm targeted, for example, five customers for day trading without the firm's knowledge, then the firm itself would be deemed to be promoting day trading and would need to adhere to the rules for all accounts.

The Association does not believe that such individual solicitations alone would trigger application of proposed Rules 2360 and 2361. Rather, these proposed rules would only be triggered by firms' general promotional efforts or by firm-sponsored promotional efforts. However, firms may not promote day trading through individuals in an effort to circumvent the rules. In addition, if a principal or officer of the firm is aware that brokers in the firm are soliciting customers for day trading, then the firm will be deemed to be promoting day trading.

SIA also notes that the rule filing does not state how long the account review obligation continues after a firm stops promoting a day-trading strategy. Firms, however, working with counsel, if necessary, can reasonably determine whether a sufficient amount of time has passed to remove a firm from coverage of the rules. Finally, SIA seeks "clarification that the rule[s are] not intended to apply to discretionary or managed accounts, in which brokers execute a variety of strategies that may or may not constitute day trading." As noted above, however, the proposed rules would apply only to those firms promoting a day-trading strategy through general or firm-sponsored promotional efforts.

Promoting Day Trading Strategy

As noted above, proposed Rules 2360 and 2361 would apply only to firms "promoting a day-trading strategy." Although the proposed rule language does not define the phrase "promoting a day-trading strategy," the rule filing states that none of the following actions alone would trigger the requirements under the proposed rule change: (1) The promotion by a member of efficient execution services or lower execution costs based on multiple trades; (2) providing general investment research or advertising the high quality or prompt availability of such general research; or (3) having a Web site that provides general financial information or news or that allows the multiple entry of intra-day purchases and sales of the same securities. SIA believes that the day-trading rules should include a safe harbor that codifies the above activity that NASD Regulation does not deem to be "promoting a day-trading strategy" for purposes of the rules. SIA recommends including a new paragraph

(g) of Rule 2360 that would state that "[f]or purposes of this rule, the term 'promoting a day-trading strategy' shall not include [the type of activities listed in the rule filing (and above)]." [11]

NASD Regulation believes that it would be helpful to describe actions in the text of the proposed rule language that the Association does not consider to be "promoting a day trading strategy." In Amendment No. 1, NASD Regulation is modifying the proposed rule language to state that a member will not be deemed to be "promoting a day-trading strategy" for purposes of the rules solely by its engaging in the listed activities.

Other-Use Agreement

As an alternative to approving an account for a day-trading strategy, proposed Rule 2361(a)(2) would permit a firm that is promoting a day-trading strategy to obtain a written agreement from a customer stating that the customer does not intend to use the account for day trading ("other-use agreement"). [12] The firm would be required to provide a risk disclosure statement to the customer even if the firm obtains an other-use agreement. The firm would not be allowed to rely on the other-use agreement if the firm knows the customer intends to use the account for day trading. If the firm opens the account but later knows that the customer is day trading, the firm would then be required to approve the account for day trading.

SIA raises a number of concerns with this provision, including that it "sets a dangerous precedent by encouraging customers to 'disavow their written pledges with impunity' in order to engage in riskier forms of trading." SIA also fears that "[e]very customer that loses money could claim that he [or she] conveyed an *intention* to day trade, but the firm ignored it." They also question how the provision would be interpreted when a firm obtains an other-use agreement from a customer, stops promoting a day-trading strategy, but later knows that the customer is day trading. On balance, the Association believes that the provision is workable and not overly burdensome. The standard is one of actual knowledge, and it seems unlikely that other-use agreements would be widely used at firms that promote day-trading strategies. If a firm stops promoting a day-trading strategy, but later discovers that a customer that provided an other-use agreement is in fact day-trading, the firm should approve that customer for a day-trading strategy. If the firm determines that a day-trading strategy is not appropriate for the person, the firm should prohibit the customer from using the account for day-trading purposes or close the account and return all funds to the customer.

Appropriateness Determination

ETA does not believe that the appropriateness determination for day trading is either useful or necessary. ETA disagrees with the concept that day trading is not appropriate for someone of limited resources and limited investment or trading experience. For example, ETA states that day trading does not require great resources (risk resources of $50,000 to $100,000 are sufficient), and that the proposed rules ignore the benefits provided by training on day-trading techniques. ETA also questions at what point NASD Regulation would consider day traders to be sophisticated given that these traders often make more than 2,000 trading decisions in 30 market days.

The Association does not find ETA's arguments persuasive. The rules are aimed at preventing firms that are actively promoting day-trading strategies from opening accounts for customers who may have limited resources and experience and low risk tolerance. A firm promoting day trading should be required to assess whether a strategy that may require a person to make thousands of trading decisions is appropriate for that individual. The Association recognizes that a person with $50,000 to $100,000 of risk capital may have sufficient resources to open a day-trading account. This factor should be considered as part of the total mix in making the appropriateness determination.

Options Model

ETA argues that the NASD's options rules offer a good model for any proposed day-trading rule. ETA notes that, under the options rules, an individual receives a "risk disclosure document, signs a new account form verifying the accuracy of the information [the customer has] provided regarding his [or her] finances and market experience, and then, based on this information, is initially allowed to trade the spectrum of available strategies." ETA states that "[t]his sensibly is a one-time analysis, and under the Rule[,] suitability applies only to recommended transactions." The day-trading proposal, however, does incorporate many of the same principles contained in the options rules. The appropriateness determination is in fact a one-time analysis to be made by a firm prior to opening the day-trading account.

Further, in Amendment No. 1, the Association is modifying proposed Rule 2360 to incorporate an additional principle from the options rules. The NASD options rules set forth obligations that members must fulfill before conducting certain forms of options trading. NASD Interpretive Material 2860–2 states that in fulfilling their obligations under the NASD rules with respect to options customers who are natural persons, members shall obtain the following information at a minimum: (1) Investment objectives; (2) employment status; (3) estimated annual income from all sources; (4) estimated net worth; (5) estimated liquid net worth; (6) marital status and number of dependents; (7) age; and (8) investment experience and knowledge. The Association is amending proposed Rule 2360 to incorporate a similar information-gathering requirement in the day-trading context.

2. Statutory Basis

NASD Regulation believes that the proposed rule change, as amended, is consistent with Section 15A(b)(6) of the Act [13] in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change codifying the obligation of firms promoting day-trading strategies to disclose the risks of these strategies to non-institutional customers and to determine whether the strategy is appropriate for a customer will help to protect investors and the public interest in an increasingly more sophisticated trading environment.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD *Special Notice to Members* 99–32 (April 15, 1999). The comment period expired

[11] The actual list of activities in the recommended SIA rule language is a modified version of the language proposed in the Original Notice.

[12] The other-use agreement was proposed in both NTM 99–32 and the rule filing.

[13] 15 U.S.C. 78o–3(b)(6).

on May 31, 1999. Thirty-nine comment letters were received in response to the Notice. Copies of the comment letters and a brief summary of the comment letters have been provided to the Commission. Of the 39 comment letters received, approximately 13 were in favor of the proposed rule change, 8 supported risk disclosure only, 12 were opposed to the proposed rule change, and 6 expressed no opinion or addressed broader issues. Further, on September 21, 1999, the Commission published the Association's modified proposal and solicited comments in the **Federal Register** on the Original Notice. This comment period expired on October 12, 1999. The Commission received three comment letters in response to the Original Notice. Many of the issues raised by the commenters in response to the Original Notice, also were raised in the comments in response to NTM 99–32. After considering this most recent set of comments, the Association is proposing Amendment No. 1 to the rule filing, as outlined above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–41 and should be submitted by March 23, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4979 Filed 3–1–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42461; File No. SR–NASD–99–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Regulation ATS

February 25, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 21, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend Rules 4623 and 4613(e) of the NASD to incorporate the requirements of Regulation ATS into the NASD's rule. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

4623. *Alternative Trading Systems* [Electronic Communications Networks]

(a) The Association may provide a means to permit *alternative trading systems ("ATSs"), as such term is defined in Regulation ATS, and* electronic communications networks ("ECNs"), as such term is defined in SEC Rule 11Ac1–1(a)(8),

(1) to [meet] *comply with SEC Rule 301(b)(3);*

(2) to comply with the terms of the ECN display alternative provided for in SEC Rule 11Ac1–1(c)(5)(ii)(A) and (B) ("ECN display alternatives"); *or*

(3) to provide orders to Nasdaq voluntarily.

In providing any such means, the Association shall establish a mechanism that permits the *ATS or* ECN to display the best prices and sizes of orders entered *into the ATS or ECN* by Nasdaq market makers (and other [entities] *subscribers of the ATS or ECN,* if the ECN *or ATS* so chooses [)] *or is required by SEC Rule 301(b)(3) to display a subscriber's order in Nasdaq*) [into the ECN], and allows any NASD member the electronic ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with a Nasdaq market maker quotation in Nasdaq operated systems.

(b) An *ATS or* ECN that seeks to utilize the Nasdaq-provided means to comply with *SEC Rule 301(b)(3),* the ECN display alternatives, *or to provide orders to Nasdaq voluntarily* shall:

(1) demonstrate to the Association that *it is in compliance with Regulation ATS or* that it qualifies as an ECN meeting the definition in the SEC Rule;

(2) be registered as a NASD member;

(3) enter into and comply with the terms of a Nasdaq Workstation Subscriber Agreement, as amended for *ATSs and* ECNs;

(4) agree to provide for Nasdaq's dissemination in the quotation data made available to quotation vendors the prices and sizes of Nasdaq market maker orders (and *orders from* other [entities] *subscribers of the ATS or ECN,* if the *ATS or* ECN so chooses [)] *or is required by SEC Rule 301(b)(3) to display a subscriber's order in Nasdaq),* at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the *ATS or* ECN; and prior to entering such prices and sizes, register with Nasdaq Market Operations as an *ATS or* ECN; [and]

(5) provide an automated execution or, if the price is no longer available, an automated rejection of any order routed

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On November 10, 1999, Nasdaq filed Amendment No. 1, which refiled the proposed rule change pursuant to Rule 19(b)(2) rather than pursuant to Rule 19(b)(3)(A) and Rule 19b–4(f)(6), as it was originally filed. Letter from Peter R. Geraghty, Assistant General Counsel, the Nasdaq Stock Market Inc., to Richard Strasser, Assistant Director, SEC, Market Regulation, dated November 10, 1999.

to the *ASTS or* ECN through the Nasdaq-provided system[]; *and*

(6) not charge to broker-dealers that access the ATS or ECN through Nasdaq any fee that is inconsistent with the requirements of SEC Rule 301(b)(4).

(c) When a NASD member attempts to electronically access through a Nasdaq-provided system an *ATS or* ECN-displayed order by sending an order that is larger than the *ATS's or* ECN's Nasdaq-displayed size and the *ATS or* ECN is displaying the order in Nasdaq on a reserved size basis, the NASD member that operates the *ATS or* ECN shall execute such Nasdaq-delivered order:

(1) Up to the size of the Nasdaq-delivered order, if the *ATS or* ECN order (including the reserved size and displayed portions) is the same size or larger than the Nasdaq delivered order; or

(2) Up to the size of the *ATS or* ECN order (including the reserved size and displayed portions), if the Nasdaq-delivered order is the same size or larger than the *ATS or* ECN order (including the reserved size and displayed portions).

No *ATS or* ECN operating in Nasdaq pursuant to this rule is permitted to provide a reserved-size function unless the size of the order displayed in Nasdaq is 100 shares or greater. For purposes of this rule, the term "reserved size" shall mean that a customer entering an order into an *ATS or* ECN has authorized the *ATS or* ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.

4613. Character of Quotations

* * * * *

(e) Locked and Crossed Markets

(1) * * *

The prohibitions of this rule include the entry of a locking or crossing quotation at or after 9:25:00 a.m. Eastern Time if such quotation continues to lock or cross the market at the market's opening, and requires a market maker, [or] ECN, *or an ATS* that enters a locking or crossing quotation at or after 9:25:00 a.m. Eastern Time to take action to avoid the lock or cross at the market's open or immediately thereafter, but in no case more than 30 seconds after 9:30:00 a.m.

(2) No Changes

(3) For purposes of this rule, the term "market maker" shall include:

([i]*A*) any NASD member that enters into an ECN, as that term is defined in SEC Rule 11Ac1–1(a)(8), priced order that is displayed in The Nasdaq Stock Market; [and]

([ii]*B*) any NASD member that operates the ECN when the priced order being displayed has been entered by a person or entity that is not a NASD member;[.]

(C) any NASD member that enters into an ATS, as that term is defined in SEC Regulation ATS, an order that is displayed in The Nasdaq Stock Market; and

(D) any NASD member that operates the ATS when the order being displayed ha been entered by a person or entity that is not an NASD member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, the Commission adopted a set of rules under the Act[4] that govern alternative trading systems, including electronic communication networks ("ECN").[5] Regulation ATS governs alternative trading systems that choose to register as broker-dealers (hereinafter referred to as "ATSs"). The most familiar type of ATS is an ECN; however, the definition of ATS encompasses other types of trading systems that register as broker dealers. For example, an electronic trading system that only accepts orders from institutions and non-market-maker broker-dealers would be an ATS. Such a system would not be an ECN, however, because, by definition, an ECN is a system that accepts orders from market makers.[6]

The NASD's current rules capture only those ATSs that meet the definition of ECN. Therefore, it is necessary to amend these rules to capture those ATSs that do not meet the definition of ECN. The NASD also must make several other changes to incorporate the requirements of Regulation ATS into its rules. Nasdaq is proposing to amend NASD Rule 4623, which currently governs ECNs that display orders in Nasdaq ("ECN Rule"), and NASD Rule 4613(e), which governs locked and crossed markets ("Locked and crossed Market Rule"). The amendments will: (1) Incorporate into the ECN Rule the new obligations that are imposed on ECNs under Regulation ATS, (2) extend the current ECN Rule so that it captures other types of ATSs, and (3) extend the current Locked and Crossed Market Rule to capture other types of ATSs.

ECN Rule

Regulation ATS requires ATSs (including ECNs) that account for a significant percentage of the volume in a security listed on Nasdaq to display in the public quotation stream the orders of all subscribers of the ATS, which includes orders from institutions and broker-dealers that are not market makers.[7] Currently, the ECN Rule only requires ECNs to display orders entered by market makers. Accordingly, Nasdaq is proposing to amend the ECN Rule to require ECNs to display in Nasdaq any subscriber orders required under Regulation ATS.

As discussed above, Regulation ATS also governs alternative trading systems that are organized other than as ECNs. Consequently, these other types of ATSs may be required to display orders in Nasdaq. Nasdaq is proposing to expand the current ECN Rule to encompass these other types of ATSs. These systems will have to fulfill a series of obligations identical to those imposed on ECNs that display orders in Nasdaq.

Locked and Crossed Markets

The Locked and Crossed Markets Rule, NASD Rule 4613(e), is designed to limit locked and crossed markets by imposing on market makers an obligation to take reasonable measures

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[4] 17 CFR 242.300 *et seq.* ("Regulation ATS").

[5] *See* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

[6] SEC Rule 11Ac1–1(a)(8), 17 CFR 240.11Ac1–1(a)(8).

[7] Specifically, if during at least 4 of the preceding 6 calendar months an ATS accounts for five percent or more of the aggregate average share volume in a Nasdaq National Market ("NNM") or SmallCap security, the ATS must display the best prices of orders entered by all subscribers (*e.g.*, market makers, non-market makers, and institutions). For example, if as calculated on July 1, 1999 an ATS accounted for 7% of the trading volume in an NNM security during January, February, April, and May 1999, the ATS would be required to reflect in Nasdaq its best priced order even if the order is from an institution or other entity that is not a Nasdaq market maker. The Nasdaq securities subject to this requirement are being phased-in according to a schedule set by the Commission. *See* Securities Exchange Act Release No. 41297 (April 16, 1999), 64 FR 19450 (April 21, 1999).

before locking or crossing a market. Currently included within the definition of market maker for purposes of this rule is: (1) Any NASD member that enters orders into an ECN, or (2) any NASD member that operates as an ECN (when the priced order being displayed by the ECN has been entered by an entity that is not an NASD member). Reasonable measures include attempting to execute against the contra side of the market prior to entering an order into Nasdaq's systems that would lock or cross the market in a security. Nasdaq is proposing to amend the Locked and Crossed Markets Rule to capture NASD members that place orders in an ATS or operate as an ATS (when the priced order being displayed by the ATS has been entered by an entity that is not an NASD member).

* * * * *

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 11A and 15A(b)(6) of the Act.[8] Section 11A(a)(1)(C)[9] provides that is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer. Section 15A(b)(6)[10] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Nasdaq believes the proposal is consistent with Sections 11A(a)(1)(C) and Section 15A(b)(6)[11] because it will permit Nasdaq to incorporate ATS orders into the Nasdaq quote montage and provide NASD members with the ability to access these orders. In addition, to limit market disruptions caused by locked or crossed markets, the proposal would require members that submit orders to ATSs and ATSs, in certain circumstances, to take reasonable measures before locking or crossing a market. Finally, the amendments would incorporate into the NASD's rules the new obligations imposed on ECNs by Regulation ATS.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rue change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submisisons should refer to SR–NASD–99–49 and should be submitted by March 23, 2000.

For the Commissien, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5060 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78k–1 and 78o–3(b)(6).

[9] 15 U.S.C. 78k–1(a)(1)(C).

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78k–1 and 78o–3(b)(6).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Applicant No. 99000356]

EDF Ventures, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that EDF Ventures, L.P. ("EDF"), 425 North Main Street, Ann Arbor, MI 48104, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the completed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (1998)). An exemption may not be granted by SBA until Notices of this transaction have been published. EDF Ventures, LP plans to provide equity financing to Xtera Communications, Inc., 1334 Bordeaux Drive, Sunnyvale, CA 94089. The financing will be used for research, development, and working capital purposes.

The financing is brought within the purview of section Sec. 107.730(a)(1) of the Regulations because Enterprise Development Fund II, L.P., an associate of EDF Ventures, LP owns greater than 10 percent of Xtera Communications, Inc., and therefore Xtera Communications is considered an Associate of EDF Ventures, LP as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business

Administration, 409 Third Street, SW, Washington, DC 20416.

A copy of this notice shall be published, in accordance with Sec. 107.730(g), in the **Federal Register** by SBA.

Dated: February 24, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–5025 Filed 3–1–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Applicant No. 99000356]

EDF Ventures, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that EDF Ventures, L.P. ("EDF"), 425 North Main Street, Ann Arbor, MI 48104, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the completed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (1998)). SBA may not grant an exemption until Notices of this transaction have been published. EDF Ventures, LP plans to provide equity financing to Centromine, Inc., 3756 Plaza Street, Ann Arbor, MI 48108. The financing will be used for marketing and working capital purposes.

The financing is brought within the purview of section Sec. 107.730(a)(1) of the Regulations because Enterprise Development Fund II, L.P., an associate of EDF Ventures, LP owns greater than 10 percent of Xtera Communications, Inc., and therefore Xtera Communications is considered an Associate of EDF Ventures, LP as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

A copy of this notice shall be published, in accordance with Sec. 107.730(g), in the **Federal Register** by SBA.

Dated: February 24, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–5026 Filed 3–1–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3237]

Culturally Significant Objects Imported for Exhibition; Determinations: "Kremlin Gold—1000 Years of Russian Gems & Jewels"

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "Kremlin Gold—1000 Years of Russian Gems & Jewels," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Houston Museum of Natural Science, Chicago, from on or about April 15—September 7, 2000, then The Field Museum, Chicago, on or about October 21, 2000—April 1, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301–4th Street, S.W., Room 700, Washington, DC 20547–0001.

Dated: 23 February 2000.

William P. Kiehl,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–5063 Filed 3–1–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice #3231]

Secretary of State's Arms Control and Nonproliferation Advisory Board; Notice of Closed Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(a)(2)(1996), the Secretary of State announces the following changes and additions to the Arms Control and Nonproliferation Advisory Board (ACNAB) meetings:

Date and Location

March 8–9, 2000—Department of State, Washington, DC
April 24–25, 2000—Livermore National Laboratory, Livermore, CA
May 8–9, 2000—Department of State, Washington, DC

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(d)(1996), and in accordance with Executive Order 12958, in the interest of national defense and foreign policy, it has been determined that these Board meetings will be closed to the public, since the ACNAB members will be reviewing and discussing classified matters.

The purpose of this Advisory Board is to advise the President and the Secretary of State on scientific, technical, and policy matters affecting arms control. The board will review specific arms control and nonproliferation issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Convention on Conventional Weapons and the Chemical and Biological Weapons Convention.

For more information, please contact Robert Sherman, Executive Director, Arms Control and Nonproliferation Advisory Board, at (202) 647–1192.

Dated: February 25, 2000.

Robert Sherman,

Executive Director, Secretary of State's Arms Control and Nonproliferation Advisory Board.

[FR Doc. 00–5173 Filed 2–29–00; 2:11 pm]

BILLING CODE 4710–27–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The Regional Resource Stewardship Council (RRSC) will hold its first meeting to consider various

matters. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following:

1. Introductions/TVA River System Overview
2. FACA responsibilities and committee operation
3. Public comments
4. RRSC member comments

The meeting is open to the public. Members of the public who wish to make oral public comments may do so during the Public comments portion of the agenda. Up to one hour will be allotted for the Public comments with participation available on a first-come, first-served basis. Each speaker will have from 2–5 minutes to address the Council depending on the number who register at the door. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902–1499, or faxed to (865) 632–3146.

DATES: The meeting will be held on March 17, 2000, from 8:00 a.m. to 4:30 p.m., EST.

ADDRESSES: The meeting will be held at the Chattanooga Marriott, 2 Carter Plaza, Chattanooga, Tennessee, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902–1499, (865) 632–2333.

Dated: February 24, 2000.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 00–4975 Filed 3–1–00; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment Regarding Softwood Lumber Practices in Canada and Softwood Lumber Trade Between the United States and Canada

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for comments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) seeks public comment concerning softwood lumber trade betweem the United States and Canada, in light of the pending expiration of the U.S.-Canada Softwood Lumber Agreement in April 2001. The TPSC invites public comment with respect to Canadian softwood lumber practices. Furthermore, the TPSC invites comment with respect to economic and environmental aspects of: (a) Those softwood lumber practices, (b) related U.S.-Canada softwood lumber trade issues, and (c) a possible negotiation concerning Canadian provincial lumber practices and softwood lumber trade between the United States and Canada.

FOR FURTHER INFORMATION CONTACT: For Procedural questions concerning public comments, contact Gloria blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative at (202) 395–3475. All other questions concerning the U.S.-Canada lumber trade issues should be addressed to Mary Ryckman in the agency's Office of North American Affairs at (202) 395–3412.

SUPPLEMENTARY INFORMATION:

U.S.-Canada Softwood Lumber Agreement

On May 29, 1996, the United States and Canada signed the U.S.-Canada Softwood Lumber Agreement. The five-year Agreement went into effect April 1, 1996. Under the Agreement, fee free exports of softwood lumber from the four major lumber producing provinces in Canada (Alberta, British Columbia, Ontario and Quebec) were limited to 14.7 billion board feet fee-free a year. These four provinces account for 95% of lumber shipments from Canada. The Agreement does not impose any restrictions on lumber coming from other provinces because timber there is sold competitively.

The details of the Agreement are as follows:

- Softwood lumber means articles classified under tariff items 4407.10.00, 4409.10.10, 4409.10.20, and 4409.10.90 of the Harmonized Tariff Schedule of the United States.
- The Agreement establishes an export fee system. Shipments from the four provinces in excess of 14.7 billion board feet in any year are subject to a surcharge of US$50 per thousand board feet up to an additional 650 million board feet. Once that level is reached, the surcharge is increased to US$100 per thousand board feet. While US$100 per thousand board feet acts as a substantial deterrent to additional shipments in all but the strongest markets, there is no point at which shipments from Canada are prohibited outright.
- The Agreement contains a trigger price mechanism, whereby an additional 92 million board feet is allowed into the United States free of charge for every quarter in which the price of lumber equals of exceeds the trigger price (a quarterly average price of $405 per thousand board feet of eastern spruce-pine-fir, standard or better, kiln-dried, Great Lakes delivered lumber as reported in *Random Lengths*).
- The U.S. Customs Service monitors shipment levels and fee payments to ensure that the Agreement is being properly implemented.

Modification of the Softwood Lumber Agreement

On August 26 1999, the United States and Canada resolved a U.S. dispute settlement case under the Agreement over a 1998 timber stumpage reduction in British Columbia. The United States considered the reduction to be a violation of the 1996 U.S.-Canada Softwood Lumber Agreement. British Columbia's June 1, 1998 stumpage change applied to all timber grown on provincially-owned lands, which accounts for the overwhelming majority of timber harvested in the province. The province reduced its timber harvesting fees by an average of C$8.10 per cubic meter, or 24%, for timber harvested in coastal areas and by C$3.50 per cubic meter, or 14%, on average for inland timber. Estimates are that the new, lower fees resulted in an overall price reduction of some C$234 million during the first year they were in effect and will lower harvesting fees by approximately C$640 million over three years.

The settlement covers exports from British Columbia for the remainder of the Agreement. The settlement calls for Canada to impose a new, higher fee on B.C. lumber exports when exports from the province exceed recent average annual shipments to the United States. The settlement also requires Canada to begin imposing what was, until now, the highest export surcharge called for under the Agreement at lower lumber export levels than previously was the case. During year four of the Agreement (1999/2000), exports from British Columbia subject to the lower fee will be limited to 272 million board feet, while upper-fee exports will be limited to 110 million board feet. All British Columbia exports beyond those amounts will be subject to a new fee of US$146.25/thousand board feet. In year five, the export volumes triggering fees will be the same or lower, and the new fee will be adjusted for inflation.

History of Softwood Lumber Trade Between the United States and Canada

On December 30, 1986, the United States and Canada entered into a

Memorandum of Understanding (MOU) to settle a pending countervailing duty (CVD) investigation of Canadian softwood lumber. Among other things, the MOU provided for Canada to assess a 15% export fee on certain lumber exports to the United States. The fee could be reduced or eliminated for exports from a province that too, so-called replacement measures to increase stumpage or other charges on lumber.

In September 1991, as permitted under the MOU, Canada provided notice that it was unilaterally terminating the MOU in 30 days. In response, in October 1991, Commerce self-initiated a section 301 investigation, immediately determining Canada's action to be unreasonable and to burden or restrict U.S. commerce, and took section 301 action.

The section 301 action applied to imports that entered during the 5-month period (October 1991–March 1992) prior to Commerce's preliminary CVD determination. (Imports entering after that time could be assessed duties under the CVD laws.) Under the section 301 action, USTR required importers of softwood lumber from certain provinces to post a bond in an amount up to 15 percent. The amount was lower or zero where a province had replacement measures in place. USTR indicated that these entries during the interim period prior to Commerce's preliminary CVD determination would ultimately be assessed fees in the amount of Commerce's final CVD determination.

Canada challenged in the GATT both the section 301 action and the self-initiation of the CVD investigation. The GATT panel issued a mixed decision, finding that the initiation of the CVD investigation did not violate GATT but that the section 301 action did.

When the final CVD determination was issued in May 1992 (and while the GATT panel proceedings were pending), both the U.S. domestic industry and Canadian parties sought review by a binational panel under Chapter 19 of the U.S.-Canada FTA. The binational panel found Commerce's subsidy determination to be inconsistent with U.S. law and directed Commerce to issue a negative CVD determination. An Extraordinary Challenge Committee (ECC) requested by the United States upheld the panel's decision. Consequently, Commerce revoked the CVD order in August 1994, and USTR terminated the section 301 action in October 1994.

In September 1994, the domestic industry filed a lawsuit in U.S. court alleging that the binational panel process was unconstitutional. In December 1994, the industry withdrew this complaint following the establishment of a consultative process between the United States and Canada regarding softwood lumber trade. This process ultimately led to the signing of the Softwood Lumber Agreement in May 1996.

Request for Comments

Given that the U.S.-Canada Softwood Lumber Agreement expires in April 2001, the TPSC invites public comment with respect to Canadian softwood lumber practices. Furthermore, the TPSC invites comment with respect to economic and environmental aspects of: (a) Those softwood lumber practices, (b) related U.S.-Canada softwood lumber trade issues, and (c) a possible negotiation concerning Canadian provincial lumber practices and softwood lumber trade between the United States and Canada.

Those persons wishing to submit written comments, should submit ten (10) typed copies, no later than noon, Friday, April 14, 2000, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 122, 600 Seventeenth Street, NW, Washington, DC 20508. Comments should state clearly the position taken and should describe with particularly the evidence supporting that position. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a non-confidential summary thereof.

Non-confidential submissions will be available for public inspection at the USTR Reading Room, Room 101, Office of the U.S. Trade Representative, 600 Seventeenth Street, NW, Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 00–5084 Filed 3–1–00; 8:45 am]

BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending February 18, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–6935.
Date Filed: February 14, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 ME–TC3 0086 dated 15 February 2000
Mail Vote 063—TC23 Middle East–TC3
Special Passenger Amending Resolution from Thailand
Intended effective date: 1 March 2000

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 00–4997 Filed 3–1–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending February 18, 2000.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1998–3404 and OST–1998–3479.
Date Filed: February 14, 2000.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 13, 2000.
Description: Application of Aero Micronesia, Inc. d/b/a Asia Pacific Airlines ("Asia Pacific") pursuant to 49 U.S.C. Section 41102 and Subpart Q, applies for renewal of its Certificates of Public Convenience and Necessity for Interstate Charter Air Transportation and Foreign Charter Air Transportation, which authorize Asia Pacific to engage in interstate and foreign charter air transportation of property and mail.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 00–4996 Filed 3–1–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (00–02–C–00–TWF) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Joslin Field-Magic Valley Regional Airport, Submitted by the City of Twin Falls, Joslin Field-Magic Valley Regional Airport, Twin Falls, Idaho

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Joslin Field-Magic Valley Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before April 3, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to, Mr. David Allen, Airport Manager, at the following address: 321 Second Avenue East, P.O. Box 1907, Twin Falls, Idaho 83303–1907.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Joslin Field-Magic Valley Regional Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang; Seattle Airports District Office, SEA–ADO, Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (00–02–C–00TWF) to impose and use PFC revenue at Joslin Field-Magic Valley Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 23, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Twin Falls, Joslin Field-Magic Valley Regional Airport, Twin Falls Idaho, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 23, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 2002.

Proposed charge expiration date: January 1, 2007.

Total requested for use approval: $483,040.

Brief description of proposed project: Reconstruct Northwest Apron, Airport Signing System Update, Aircraft Rescue and Fire Fighting (ARFF) Vehicle and Equipment, Terminal Building Auto Parking and Lighting, Apron Expansion, Medium Intensity Taxiway Lighting System, ARFF Building, Runway 7/25 Cable System Rehabilitation and Wind Cone Replacement, and Rehabilitation of Runway 7/25.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air taxi/commercial operators utilizing aircraft having a seat capacity of less than twenty passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airport Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055–4056.

In addtion, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Joslin Field-Magic Valley Regional Airport.

Issued in Renton, Washington on February 23, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–5058 Filed 3–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–6985]

Insurance Cost Information Regulation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces publication by NHTSA of the 2000 text and data that all car dealers must include in an insurance cost information booklet that they must make available to prospective purchasers, pursuant to 49 CFR 582.4. This information may assist prospective purchasers in comparing differences in passenger vehicle collision loss experience that could affect auto insurance costs.

ADDRESSES: Interested persons may obtain a copy of this booklet by contacting the U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. [Docket hours are from 10:00 am to 5:00 pm].

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Chief, Consumer Programs Division, NHTSA, 400 Seventh Street S.W., Washington, DC 20590 (202–366–0846).

SUPPLEMENTARY INFORMATION: Pursuant to section 201(e) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1941(e), on March 5, 1993, 58 FR 12545, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR Part 582, *Insurance Cost Information Regulation*, to require all dealers of automobiles to distribute to prospective customers information that compares differences in insurance costs of different makes and models of passenger cars based on differences in damage susceptibility. On March 17, 1994, NHTSA denied a petition submitted by the National Automobile Dealers Association (NADA) for NHTSA to reconsider Part 582 insofar as it requires all automobile dealers to prepare the requisite number of copies for distribution of the insurance cost information to prospective purchasers. 59 FR 13630.

On March 24, 1995, NHTSA published a Final Rule to amend Part 582 in a number of respects. 60 FR 15509. These changes included wording clarifications and a change in the availability date of the booklet.

Pursuant to 49 CFR 582.4, all automobile dealers are required to make available to prospective purchasers booklets that include this comparative information as well as certain mandatory explanatory text that is set out in section 582.5. Early each year, NHTSA publishes the annual **Federal Register** document updating the Highway Loss Data Institute's (HLDI) December Insurance Collision Report. Booklets reflecting the updated data must be available for distribution to prospective purchasers without charge

within 30 days from the date of the **Federal Register**.

NHTSA is mailing a copy of the 2000 booklet to each dealer on the mailing list that the Department of Energy uses to distribute the "Gas Mileage Guide." Dealers will have the responsibility of reproducing a sufficient number of copies of the booklet to assure that they are available for retention by prospective purchasers by [30 days after date of publication]. Dealers who do not receive a copy of the booklet within 15 days of the date of this notice should contact Ms. Rosalind Proctor of NHTSA's Office of Planning and Consumer Programs (202) 366–0846 to receive a copy of the booklet and to be added to the mailing list. Dealers may also obtain a copy of the booklet through the NHTSA web page at: www.nhtsa.dot.gov/cars/problems/studies/InsCost/InsCost. (49 U.S.C. 32302; delegation of authority at 49 CFR 1.50(f).)

Issued on: February 28, 2000.

Stephen R. Kraztke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–5059 Filed 3–1–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33746]

Mississippi Rail Group, Inc.—Lease Exemption—State of Mississippi

Mississippi Rail Group, Inc. (MRG), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease from the State of Mississippi approximately 21.4 miles of rail line from milepost 0.2, at Aberdeen Junction, to milepost 21.66, at Kosciusko, in Holmes and Attala Counties, MS. MRG will be the operator of the line.

MRG states that the lease of the rail line was consummated on or about October 27, 1998. MRG filed its verified notice of exemption with the Board on February 14, 2000. Thus, the effective date of the exemption is February 21, 2000 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33746, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Mr. David E. Delatte, Sr., President, Mississippi Rail Group, Inc., P.O. Box 278, Kosciusko, MS 39090.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: February 24, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–4924 Filed 3–1–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of International Investment; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of International Investment within the Department of the Treasury is soliciting comments concerning the information collection provisions of the Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons, 31 CFR 800.402.

DATES: Written comments should be received on or before May 1, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Gay Sills, Director, Office of International Investment, Department of the Treasury, 1500 Pennsylvania Ave., N.W., 4201NY, Washington, D.C. 20220 (Tel.: 202/622–1860).

FOR FURTHER INFORMATION CONTACT: Jack Dempsey, Economist (Tel.: 202/622–1860), Office of International Investment, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220; Francine McNulty Barber, Senior Counsel, Department of the Treasury, Room 2010, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220, (202/622–1947).

SUPPLEMENTARY INFORMATION:

Title: Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons.

OMB Number: 1505–0121.

Abstract: The information request in this proposed collection is contained in section 800.402. The information collected under these regulations is used by the Committee on Foreign Investment in the United States (CFIUS), an inter-agency committee chaired by the Secretary of the Treasury and comprised of the Secretaries of State, Defense, Treasury and Commerce, the Attorney General, the U.S. Trade Representative, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and the Assistants to the President for National Security, National Economic Policy, and Science and Technology. The President has delegated to CFIUS the President's authority under section 721 of the Defense Production Act to determine the effects on the national security of acquisitions proposed or pending after the date of enactment (August 23, 1988) by or with foreign persons that could result in foreign control of persons engaged in interstate commerce in the United States.

Current Actions: Extension.

Type of Review: Extension.

Affected Public: Foreign businesses and foreign individuals.

Estimated Number of Responses: 100.

Estimated Time Per Respondent: This varies, depending on individual circumstances, with an average of 60 hours.

Estimated Total Annual Burden Hours: 6000 hours.

Requests for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 14, 2000.

Francine McNulty Barber,

Senior Counsel, Office of the Assistant General Counsel for International Affairs.

[FR Doc. 00–5071 Filed 3–1–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–12]

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice; correction.

SUMMARY: This document corrects an erroneous Treasury Decision (T.D.) designation on a document recently published in the **Federal Register**.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 2000, Customs published in the **Federal Register** (65 FR 10152) a general notice advising the public that three Customs broker license references had been erroneously included in a list of revoked Customs broker licenses previously published in the **Federal Register**. However, that February 25, 2000, notice was incorrectly designated in the headings section as Treasury Decision (T.D.) 00–9; the designation should have read "T.D. 00–12". This document corrects that designation error.

Correction of Publication

In the general notice published in the **Federal Register** at 65 FR 10152 on February 25, 2000, as Treasury Decision 00–9, the reference to "T.D. 00–9" in the headings section is corrected to read T.D. 00–12".

Dated: February 28, 2000.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 00–5080 Filed 3–1–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Renewal of the Generalized System of Preferences

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: The Generalized System of Preferences (GSP) is a renewable preferential trade program that allows the eligible products of designated developing countries to directly enter the United States free of duty. The GSP program expired on June 30, 1999, but has been renewed through September 30, 2001, effective December 17, 1999, with retroactive effect to July 1, 1999, by a provision in the Ticket To Work and Work Incentives Improvement Act of 1999. This document provides notice to importers that Customs is again accepting claims for GSP duty-free treatment for merchandise entered, or withdrawn from a warehouse, for consumption and that Customs is processing refunds on all duties paid, with interest from the date the duties were deposited, on GSP-eligible merchandise that was entered during the period that the GSP program was lapsed.

FOR FURTHER INFORMATION CONTACT: For general operational questions:

Formal entries: Leon Hayward, 202–927–9704

Informal entries: John Considine, 202–927–0042

Mail entries: Robert Woods, 202–927–1286

Passenger claims: Wes Windle, 202–927–0167

For specific questions relating to the Automated Commercial System: James Halpin, Office of Information and Technology, 703–921–7128.

Questions from filers regarding ABI transmissions should be directed to their ABI client representatives. Persons with other questions regarding this notice may contact Leon Hayward, International Agreements, 202–927–9704.

SUPPLEMENTARY INFORMATION:

Background

Section 501 of the Trade Act of 1974, as amended (19 U.S.C. 2461), authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary countries for specific time periods. Pursuant to 19 U.S.C. 2465, as amended by section 1011(a) of Pub. L. 105–277, 112 Stat. 2681, duty-free treatment under the GSP program expired on June 30, 1999.

On December 17, 1999, the President signed the Ticket To Work and Work Incentives Improvement Act of 1999 (Pub.L. 106–170, 113 Stat. 1860). Section 508 of Pub. L. 106–170 pertains to the extension of duty-free treatment and the retroactive application for certain liquidations and reliquidations under the GSP. Section 508 provides that GSP duty-free treatment shall be applied to eligible articles from designated beneficiary countries that are entered, or withdrawn from warehouse, for consumption on or after July 1, 1999, through September 30, 2001. Further, regarding any entries made after June 30, 1999 through December 16, 1999, to which duty-free treatment would have applied if GSP had been in effect during that time period, any duty paid with respect to any such entry shall be refunded provided that a request for liquidation or reliquidation of that entry, containing sufficient information to enable Customs to locate the entry or to reconstruct the entry if it cannot be located, is filed with Customs by June 14, 2000 (within 180 days after the date of Pub. L. 106–170's enactment).

Recognizing the impact that retroactive renewal and consequent numerous reliquidations will have on both importers and Customs, Customs developed a mechanism to facilitate refunds (*see*, **Federal Register** Notice of June 4, 1997, 62 FR 30672). On January 7, 2000, Customs began processing refunds due to the recent renewal of the GSP. Customs expects the processing of refunds to take from four to eight weeks for certain formal Automated Broker Interface (ABI) entries.

Duty-Free Entry Summaries

Effective December 17, 1999, filers again are entitled to file GSP-eligible entry summaries without the payment of estimated duties.

Refunds With Interest

A. Formal Entries

Customs will liquidate or reliquidate all affected entry summaries and refund any duties deposited for items qualifying for GSP and for which requests for liquidation or reliquidation are timely filed. Field locations shall not issue GSP refunds except as instructed to do so by Customs Headquarters.

If an ABI entry summary was filed with payment of estimated duties using the Special Program Indicator (SPI) for the GSP (the letter "A") as a prefix to the tariff number, no further action by the filer is required; filings with the SPI "A" will be treated as conforming requests for refunds. If an ABI entry summary was filed with payment of estimated duties without the use of the SPI "A" as a prefix to the tariff number, a refund of duties deposited must be requested in writing as described below for non-ABI entry summaries.

Non-ABI filers must request a refund in writing from the Port Director at the port of entry by June 14, 2000, regardless if they previously designated a refund on the Customs Form 7501 by using the SPI "A" code. The letter may cover either single entry summaries or

all entry summaries filed by an individual filer at a single port. To expedite refunds, Customs recommends the following information be included in each letter:

1. A statement requesting a refund, as provided by section 508 of the Ticket To Work and Work Incentives Improvement Act of 1999;

2. An enumeration of the entry numbers and line items for which refunds are requested; and

3. The amount requested to be refunded for each line item and the total amount owed for all entry summaries.

Interest on duties deposited will be paid, pursuant to section 505 of the Tariff Act of 1930, as amended (19 U.S.C. 1505), based on the quarterly Internal Revenue Service interest rates used to calculate interest on refunds of Customs duties as follows:

	July 1, 1999–December 16, 1999
Corporate Rate	7%
Non-Corporate Rate	8%

B. Informal Entries Filed via ABI

Refunds with interest on informal entries filed via ABI on a Customs Form 7501 with the SPI "A" will be processed in accordance with the procedures discussed above.

C. Mail Entries

The addressees on mail entries must request a refund of GSP duties and return it, along with a copy of the CF 3419A, to the appropriate International Mail Branch (address listed on bottom right hand corner of CF 3419A). It is essential that a copy of the CF 3419A be included, as this will be the only means of identifying whether GSP products have been entered and estimated duties and fees have been paid.

D. Baggage Declarations and Non-ABI Informals

If travelers/importers wrote a statement directly on their Customs declarations (CF 6059B) or informal entries (CF 363 or CF 7501) requesting a refund, no further action by the traveler/importer will be required; the statement will be treated as a conforming request for a refund. Failure to request a refund in this manner does not preclude a traveler/importer from otherwise making a timely request in writing, as described above for non-ABI filers.

Dated: February 25, 2000.

Robert J. McNamara,

Acting Assistant Commissioner, Field Operations.

[FR Doc. 00–5081 Filed 3–1–00; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 65, No. 42

Thursday, March 2, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

RIN 3038-ZA08

Average Price Calculations by Futures Commission Merchants

Correction

In notice document 00–1907 beginning on page 4807 in the issue of Tuesday, February 1, 2000, make the following correction:

On page 4808, in the second column, in paragraph 5., in the fourth line remove "maintains them in accounts".

[FR Doc. C0–1907 Filed 3–1–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

List of Correspondence–Office of Special Education and Rehabilitative Services

Correction

In notice document 00–4258, beginning on page 9178, in the issue of Wednesday, February 23, 2000, make the following correction.

On page 9179, in the second column, in the second full paragraph, " Letter dated February 5, 1999 to U.S. Senator Richard J." should be added before "Durbin".

[FR Doc. C0–4258 Filed 3–1–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42396; File No. SR-CBOE-99-40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Operation of the Retail Automatic Execution System

Correction

In notice document 00–3370, beginning on page 7404, in the issue of Monday, February 14, 2000, make the following corrections:

1. On page 7404, in the second column, the docket number is corrected to read as set forth above.

2. On page 7407, in the first column, in the ninth line from the bottom, "[insert date 21 days from date of publication]" should read "March 6, 2000".

[FR Doc. C9–3370 Filed 3–1–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ASO-23]

Amendment of Class E Airspace; London, KY

Correction

In rule document 00–2773 beginning on page 5999 in the issue of Tuesday, February 8, 2000, make the following correction:

§71.1 [Corrected]

On page 6000, in §71.1, in the second column, in the ninth line "with an" should read "within an".

[FR Doc. C0–2773 Filed 3–1–00; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Thursday,
March 2, 2000

Part II

Environmental Protection Agency

40 CFR Part 141

Unregulated Contaminant Monitoring Regulation for Public Water Systems: Analytical Methods for Perchlorate and Acetochlor; Announcement of Laboratory Approval and Performance Testing (PT) Program for the Analysis of Perchlorate; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6544–6]

Unregulated Contaminant Monitoring Regulation for Public Water Systems; Analytical Methods for Perchlorate and Acetochlor; Announcement of Laboratory Approval and Performance Testing (PT) Program for the Analysis of Perchlorate

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Safe Drinking Water Act (SDWA), as amended in 1996, requires the U.S. Environmental Protection Agency to establish criteria for a program to monitor unregulated contaminants and to publish a list of contaminants to be monitored. In fulfillment of this requirement, EPA published the Revisions to the Unregulated Contaminant Monitoring Rule (UCMR) on September 17, 1999 (64 FR 50556), which included a list of contaminants to be monitored.

Both perchlorate and acetochlor were placed on the UCMR (1999) List 1, Assessment Monitoring, with the method listed as "Reserved" pending imminent conclusion of EPA refinement and review of the analytical methods for perchlorate and acetochlor. EPA is taking direct final action on this rule. This rule specifies the approved analytical methods for measurement of perchlorate and acetochlor in drinking water and includes notice to all laboratories interested in supporting perchlorate monitoring of the laboratory approval requirements, including participation in a perchlorate Performance Testing (PT) Program. The rule also includes minor technical changes to correct or clarify the rule published on September 17, 1999.

DATES: This rule is effective on January 1, 2001, without further notice, unless EPA receives adverse comment by April 3, 2000. If EPA receives such comment we will publish a timely withdrawal in the **Federal Register** and inform the public that the rule will not take effect.

The incorporation by reference of the publications listed in today's rule is approved by the Director of the **Federal Register** as of January 1, 2001.

For judicial review purposes, this final rule is promulgated as of 1:00 p.m. (Eastern time) on March 16, 2000, as provided in 40 CFR 23.7.

Any laboratory interested in conducting perchlorate monitoring must participate in the Performance Testing (PT) Program and should submit a request letter to EPA, received at the EPA by March 31, 2000. EPA will not be able to consider any letters received after this date. Any interested laboratory which does not meet this deadline or fails to successfully pass the initial PT study and would still like to support this monitoring, will need to submit a request letter by October 6, 2000 in order to be eligible for a second PT study.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–99–19, Water Docket (MC 4101), U.S. EPA, 401 M Street, SW, Washington DC, 20460. Please submit an original and three copies of your comments and enclosures (including references). The full record for this document has been established under docket number W–99–19 and includes supporting documentation as well as printed, paper versions of electronic comments. The full record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, East Tower Basement, U.S. EPA, 401 M Street, SW, Washington DC. For access to docket (Docket No. W–99–19) materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m., Eastern Time, Monday through Friday, to schedule an appointment. A reasonable fee may be charged for copying. Laboratories interested in supporting perchlorate monitoring must send a request letter to: Daniel P. Hautman, Perchlorate PT Program Coordinator, MLK 140, U.S. EPA, 26 W. Martin Luther King Dr., Cincinnati, OH 45268.

FOR FURTHER INFORMATION CONTACT: Rachel Sakata, Standards and Risk Management Division, U.S. Environmental Protection Agency, 401 M Street (MC 4607), Washington DC 20460, (202) 260–2527. For technical information regarding the methods, contact David Munch, Technical Support Center, U.S. Environmental Protection Agency, 26 W. Martin Luther King Dr., Cincinnati OH, 45268, (513) 569–7843.

General information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION: For copies of EPA Method 314.0, "Determination of Perchlorate in Drinking Water Using Ion Chromatography," contact the EPA Safe Drinking Water Hotline within the United States at (800) 426–4791 (Hours are Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time). Alternately, the method can be assessed and downloaded directly on-line at www.epa.gov/safewater/methods/sourcalt.html.

Abbreviations and Acronyms Used in the Preamble and Final Rule

2,4-DNT	2,4-dinitrotoluene.
2,6-DNT	2,6-dinitrotoluene.
4,4′-DDE	4,4′-dichloro dichlorophenyl ethylene, a degradation product of DDT.
Alachlor ESA	alachlor ethanesulfonic acid, a degradation product of alachlor.
AOAC	Association of Official Analytical Chemists.
ASTM	American Society for Testing and Materials.
CAS	Chemical Abstract Service.
CASRN	Chemical Abstract Service Registry Number.
CCL	Contaminant Candidate List.
CFR	Code of Federal Regulations.
CWS	community water system.
DCPA	dimethyl tetrachloroterephthalate, chemical name of the herbicide dacthal.
DCPA mono- and di-acid degradates.	degradation products of DCPA.
EPA	Environmental Protection Agency.
EPTC	s-ethyl-dipropylthiocarbamate, an herbicide.
EPTDS	Entry Point to the Distribution System.
ESA	ethanesulfonic acid, a degradation product of alachlor.
FSIS	federalism summary impact statement.
IC	ion chromatography.
ICR	Information Collection Rule.
MCL	maximum contaminant level.
MCT	Matrix Conductivity Threshold.
MDL	method detection limit.
MRL	minimum reporting level.
MS	sample matrix spike.
MSD	sample matrix spike duplicate.
NCOD	National Drinking Water Contaminant Occurrence Database.
NTNCWS	non-transient non-community water system.
NTTAA	National Technology Transfer and Advancement Act.
OGWDW	Office of Ground Water and Drinking Water.

ABBREVIATIONS AND ACRONYMS USED IN THE PREAMBLE AND FINAL RULE—Continued

OMB	Office of Management and Budget.
PBMS	Performance-based Measurement System.
PWS	Public Water System.
QA	quality assurance.
QC	quality control.
RFA	Regulatory Flexibility Act.
SBREFA	Small Business Regulatory Enforcement Fairness Act.
SDWA	Safe Drinking Water Act.
SM	Standard Methods.
SOP	standard operating procedure.
TDS	total dissolved solid.
UCMR	Unregulated Contaminant Monitoring Regulation/ Rule.
UCM	Unregulated Contaminant Monitoring.
UMRA	Unfunded Mandates Reform Act of 1995.
USEPA	United States Environmental Protection Agency.
VOC	volatile organic compound.
ug/L	micrograms per liter.
uS/cm	microsiemens per centimeter.

Preamble Outline

I. Regulatory Background
II. Explanation of Today's Action
A. Relation to the UCMR Published in September 1999
B. Systems Affected by This Rule
C. Analytical Methods
1. Perchlorate
2. Acetochlor
3. Quality Control and Analytical Confirmation
D. Peer Review
1. Perchlorate
2. Acetochlor
E. Laboratory Approval and Certification
1. Perchlorate
2. Acetochlor
F. Implementation
G. Performance-based Measurement System
III. Technical Changes and Clarification to § 141.40
A. Change to § 141.40 (a)(5)(ii)(C)
B. Change to § 141.40 (a)(5)(ii)(G)
C. Change to § 141.40 (a)(5)(iii)(G)
D. Change to § 141.40 (b)(1)(i)
E. Change to § 141.40 (b)(1)(vii)
F. Clarification of Monitoring for DCPA Mono and Di-Acid Degradate
IV. Cost and Benefits of the Rule
V. Administrative Requirements
A. Executive Order 12866—Regulatory Planning and Review
B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
C. Unfunded Mandates Reform Act
D. Paperwork Reduction Act
E. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et.seq.*
F. National Technology Transfer and Advancement Act
G. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
H. Executive Order 13132—Federalism
I. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments
J. Administrative Procedure Act
K. Congressional Review Act
VI. Public Involvement in Regulation Development

Potentially Regulated Entities

The regulated entities are public water systems. All large community and non-transient non-community water systems serving more than 10,000 persons are required to monitor under the revised UCMR. A community water system (CWS) is a public water system which serves at least 15 service connections used by year-round residents or regularly serve at least 25 year-round residents. Non-transient non-community water system (NTNCWS) means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year. Only a national representative sample of community and non-transient non-community systems serving 10,000 or fewer persons are required to monitor for perchlorate and acetochlor. Transient non-community systems, which are systems that do not regularly serve at least 25 of the same persons over six months per year, are not required to monitor. States, Territories, and Tribes, with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act sometimes conduct analyses to measure for contaminants in water samples and are regulated by this action. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities	SIC
State, Territorial, and Tribal governments ..	States, territorial and tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; States, Territorial and tribal governments that themselves operate community and non-transient non-community water systems required to monitor.	9511
Industry	Private operators of community and non-transient non-community water systems required to monitor.	4941
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	9511

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 141.40 of the revised Unregulated Contaminant Monitoring Rule, published September 17, 1999 in 64 FR 50556. If you have questions regarding the applicability of this action to a particular entity, consult the first person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Regulatory Background

SDWA section 1445 (a)(2), as amended in 1996, requires EPA to establish criteria for a program to monitor unregulated contaminants and to publish a list of contaminants to be monitored. To meet these requirements, EPA published the Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR) for Public Water Systems on September 17, 1999, (64 FR 50556) which substantially revised the previous Unregulated Contaminant Monitoring (UCM) Program, codified at 40 CFR 141.40. The UCMR revised the regulations at 40 CFR 141.35, 141.40, 142.16 and deleted and reserved 142.15(c)(3). The UCMR covered: (1) The frequency and schedule for monitoring, based on PWS size, water source, and likelihood of finding contaminants; (2) a new, shorter list of contaminants for which systems will monitor, referred to as the UCMR (1999) List; (3) procedures for selecting and monitoring a nationally representative sample of small PWSs (those serving

10,000 or fewer persons), and; (4) procedures for entering the monitoring data in the National Drinking Water Contaminant Occurrence Database (NCOD), as required under section 1445. This final rule included a list of contaminants which must be monitored beginning January 2001 to obtain data on contaminants occurring or likely to occur in the drinking water of public water systems.

Perchlorate and acetochlor were included on the UCMR (1999) List 1, with their analytical methods listed as "reserved", pending the imminent conclusion of EPA refinement and review of the analytical methods and implementation of a laboratory approval for perchlorate and validation studies for acetochlor. Today's rule amends the 1999 UCMR to specify methods for monitoring of perchlorate and acetochlor. Today's rule also contains several technical corrections to the September 1999 rule.

II. Explanation of Today's Action

Today's action promulgates analytical methods for measurement of perchlorate and acetochlor in drinking water, contaminants which were placed on the UCMR (1999) List 1.

A. Relation to the UCMR Published in September 1999

The final UCMR, published on September 17, 1999, consisted of many program elements designed to enhance and improve the unregulated contaminant monitoring program in several important ways. The rule specifies (1) which systems must monitor, including a statistical approach to select a representative sample of small public water systems; (2) a list of contaminants for which systems must monitor; (3) the monitoring time, frequency, and location of sampling; (4) methods to be used for analyzing the contaminants; (5) reporting requirements; and (6) State and Tribal participation concerning the implementation of the monitoring program.

EPA divided the list of contaminants for which systems must monitor into three separate lists based on the availability of analytical methods. List 1, Assessment Monitoring, consisted of 12 contaminants for which analytical methods were available at the time the rule was promulgated, with the exception of perchlorate and acetochlor. List 2, Screening Survey, consisted of 16 contaminants for which analytical methods are expected to be developed by the time of initial monitoring in 2001. List 3, Pre-Screen Testing, consisted of 8 contaminants for which analytical methods research is being conducted. Only the contaminants on List 1 must be monitored at all 2,774 large community and non-transient non-community public water systems serving more than 10,000 persons and at a representative sample of approximately 800 systems serving 10,000 or fewer persons. EPA believed that this three-tiered approach to the UCMR, which was recommended by stakeholders, reflected a balance between the implementability of current analytical methods and the need to obtain data in time frames that are useful for responding to concerns about the contaminants identified.

Although methods were not available at the time of publication, perchlorate and acetochlor were both included on List 1, Assessment Monitoring, because EPA was engaged in the final validation of their analytical methods. EPA felt that, with the validation, the analytical methods would be sufficiently ready for monitoring by 2001. Therefore, these contaminants were added to List 1, Assessment Monitoring. Today's rule publishes the analytical methods, minimum reporting levels, and sampling locations for perchlorate and acetochlor. This rule will enable monitoring of these contaminants to begin with all the other List 1, Assessment Monitoring contaminants in 2001.

As required in the September 1999 UCMR, surface water systems will monitor for perchlorate and acetochlor quarterly for one year and ground water systems will monitor twice in one year. Assessment Monitoring must be done within the three years of 2001 to 2003, which will allow coordination with the three-year compliance monitoring cycle for regulated contaminants. One of these quarterly or semiannual sampling events must occur in the most vulnerable period of May through July, or an alternate vulnerable period designated by the State, to ensure monitoring of elevated contaminant concentrations.

B. Systems Affected by This Rule

The UCMR states that monitoring in the rule focuses on the occurrence or likely occurrence of contaminants in drinking water of community and non-transient, non-community water systems. For regulatory purposes, public water systems are categorized as "community water systems" or "non-community water systems". Community water systems are specifically defined as "public water systems which serve at least 15 service connections used by year-round residents or regularly serve at least 25 year round residents." (40 CFR 141.2) A "non-community water system" means any other public water system. Non-community water systems include non-transient non-community water systems and transient non-community water systems. Non-transient non-community systems are those that regularly serve at least 25 of the same persons over 6 months per year (*e.g.*, schools, industrial buildings). Transient systems are all other non-community systems, which typically serve a transient population such as restaurants or hotels. In the September 1999 UCMR, EPA excluded transient water systems from this monitoring. The variation in the 97,000 transient systems would be difficult to reflect in a national representative sample and would be very costly to monitor. The results from the very small community and non-transient non-community systems can be extrapolated to the transient non-community systems.

With respect to size, about 2,800 large systems (defined here as those serving more than 10,000 persons) provide drinking water to about 80 percent of the US population served by public water systems. The SDWA does not provide for EPA funding of this monitoring. Under the UCMR program all large systems will be required to monitor for unregulated contaminants. Only a representative sample of systems serving 10,000 persons or fewer will be required to monitor for unregulated contaminants. SDWA requires EPA to pay for the reasonable testing costs for the representative sample of small systems.

C. Analytical Methods

1. Perchlorate. In today's rule, EPA is amending the September 1999 UCMR to include EPA Method 314.0 "Determination of Perchlorate in Drinking Water Using Ion Chromatography, Revision 1 (November 1999)" for the analysis of perchlorate. In this method, perchlorate is separated and measured, using a system comprised of an ion chromatographic pump, sample injection valve, guard column, analytical column, suppressor device, and conductivity detector. This method recommends an ion chromatography (IC) column and analytical conditions which were determined to be the most effective for the widest array of sample matrices.

The development of Method 314.0 included investigations into the performance of alternate 4 millimeter IC guard and analytical separator columns which are specified for the IC analysis of perchlorate specified by the California Department of Health Services and also by Dionex

Corporation. These alternate guard /separator columns included the Dionex AG5/AS5 and the Dionex AG11/AS11, respectively. The AG5/AS5 is currently specified in the standard operating procedure (SOP) for the IC analysis of perchlorate written by the State of California, Department of Health Services. The AG5/AS5 is a hydrophilic analytical column which was developed several years ago for higher valence anions such as tripolyphosphate and trimetaphosphate as well as polarizable anions such as iodide, thiocyanate and thiosulfate. The AG11/AS11 is used by several commercial laboratories conducting IC analysis for perchlorate and is recognized by California as an acceptable alternate to the AG5/AS5. A multi-laboratory validation study included both of these analytical columns and indicated comparable results could be attained. In the Agency's studies, both the AG5/AS5 and the AG11/AS11 performed well for reagent water and simulated drinking water samples with low to moderate common anion levels, such as sulfate, chloride and carbonate, but as these levels increased, performance began to diminish for both columns. The more recently developed AG16/AS16 columns could tolerate much higher levels of these anions and are therefore recommended in Method 314.0 as the columns of choice although alternate columns such as the AS5 and AS11 are permitted to be used.

The Agency's primary reason for publishing Method 314.0 instead of simply approving the published SOPs was the impact of high concentrations of total dissolved solids (TDS); primarily sulfate, carbonate, and chloride on the accuracy of perchlorate determinations. Neither the California Department of Health Services nor the Dionex Corporation method incorporate a quality control element to assess the impact of high concentrations of TDS. Sample matrices with high concentrations of common anions such as chloride, sulfate and carbonate can make the analysis problematic by destabilizing the baseline in the retention time window for perchlorate. This is evidenced by observing a protracted tailing following the initial elution of the more weakly retained anions which extends into the perchlorate retention time window. These common anion levels can be indirectly assessed by monitoring the conductivity of the matrix. Consequently, Method 314.0 specifies that all sample matrices must be monitored for conductivity prior to analysis. When the laboratory determined Matrix Conductivity Threshold (MCT) is exceeded, procedures incorporating sample dilution and/or pretreatment must be performed.

The columns and conditions identified in Method 314.0 are recommended since they bear the highest tolerance for the very highest levels of common inorganic anions interference; however, use of the columns and conditions recommended in other ion chromatographic methods for the analyses of perchlorate are also permitted as long as they meet the performance criteria specified in Method 314.0.

In addition to recommending the AG16/AS16 column used in Method 314.0, the primary advantages of Method 314.0 are the requirements associated with determining the matrix conductivity threshold (MCT) and reducing the impact of TDS on the accuracy of perchlorate determinations. The MCT is the highest permitted conductance of an unknown sample matrix, measured prior to conducting the analysis, which is used to determine when sample matrix dilution or pretreatment is required. The conductance of a sample matrix is proportional to the common anions present in the matrix (which contribute to the TDS level) which can greatly affect the integrity of this analysis. The MCT is dependent upon the chromatographic column used, its age and condition, the instruments used, and the analyst. Consequently, this threshold is not method defined and must be determined by the individual analytical laboratory during the initial demonstration of capability and confirmed in each analysis batch using an instrument performance check solution. At EPA's laboratory the MCTs determined varied from approximately 3000 microsiemens per centimeter (uS/cm) for the AS5 and AS11 columns to approximately 6000 uS/cm for the AS16 column. Instructions on how to determine a laboratory's MCT are included in EPA Method 314.

Both pretreatment cartridges and, in some cases, sample dilution can be effective as a means to eliminate or minimize the impact of certain matrix interferences. With any proposed pretreatment, Method 314.0 specifies that the analyst must verify that the target analyte is not affected by monitoring recovery after pretreatment and that no background contaminants are introduced by the pretreatment. Use of advanced analytical separator column technology which employs higher capacity anion exchange resins, such as the AG16/AS16 which is recommended in Method 314.0, greatly reduces the need for these cartridges.

2. Acetochlor. Several commenters on the proposed UCMR revisions asserted that acetochlor could be reliably measured using EPA Method 525.2. At the time that EPA issued the final UCMR, EPA did not have available the laboratory data necessary to support those assertions. In addition, no data were available concerning the sample and extract storage stability of acetochlor when stored under the preservation conditions specified in EPA Method 525.2. Since that time, EPA has obtained those data necessary to support approval of EPA Method 525.2 for the analysis of acetochlor. Today's rule, therefore, amends the September 1999 UCMR to specify this method for acetochlor analysis.

3. Quality Control and Analytical Confirmation. Additional guidance for quality control and analytical confirmation are specified in a supplement to the "Supplement to UCMR Analytical Methods and Quality Control Manual", available by the time this rule is published.

D. Peer Review

EPA conducted two separate peer reviews, one for the perchlorate method and the other to determine if acetochlor could be added to EPA Method 525.2. The results of the peer review are summarized here:

1. Perchlorate. The peer review for EPA Method 314.0 was conducted in early November 1999 by three experts, external to the EPA and familiar with perchlorate issues, occurrence, and monitoring. All three peer reviewers concluded the method was "acceptable after minor revision". The majority of comments were editorial, requiring either typographical editing or further text clarification and explanation. All reviewers provided either verbal or written support for including the MCT as a quality control parameter used to monitor matrix conductance as it relates to reducing interference problems associated with high TDS levels.

2. Acetochlor. In November 1999, EPA provided peer reviewers with a memorandum titled "Documentation of Agency Decisions Concerning the Analyses of Acetochlor in the Unregulated Contaminant Monitoring Regulation". This memorandum detailed the minimum detection level, precision and accuracy, analyte stability, and current health effects information that was used in the decision to approve EPA Method 525.2 for the analysis of acetochlor in the UCMR, and to set the Minimum Reporting Level (MRL) at 2 ug/L. This

memorandum was reviewed by three methods experts external to the Agency, with one reviewer representing a State and the other two reviewers representing drinking water utilities. All three were supportive of the Agency's decision to approve EPA Method 525.2 for the analysis of acetochlor, and with the decision to set the MRL at 2 ug/L.

Reports of these peer reviews and our responses to their comments are in the docket referred to above under **ADDRESSES.**

E. Laboratory Approval and Certification

1. Perchlorate. In order to allow data on perchlorate occurrence in PWSs that were obtained prior to January 2001 to be grandparented, the data must meet the reporting requirements of the UCMR which include the successful completion of the perchlorate PT Program by a laboratory approved to perform the original analyses. Approximately 2,800 large PWSs that serve more than 10,000 persons will be required to monitor for perchlorate using an approved laboratory. For the small PWSs serving 10,000 or fewer persons, EPA will contract with an approved laboratory for perchlorate laboratory analysis.

Since this rule specifies the approved analytical method for analyses of perchlorate and is a new method which includes matrix specific quality control criteria, laboratories must go through a separate approval process to test for perchlorate. Laboratories certified under 40 CFR 141.28 for compliance analysis using the EPA analytical methods specified in the UCMR (1999) List, whether the laboratory uses EPA or non-EPA analytical methods on the List, are automatically certified to do analyses of UCMR List 1 contaminants using the listed methods for which it is certified, with the exception of perchlorate.

Those laboratories interested in performing perchlorate testing must be previously certified (by the primacy agency in the State where the laboratory is located) to conduct laboratory analysis supporting regulatory compliance monitoring of drinking water for any inorganic anion using an approved ion chromatographic method (such as nitrate analysis by EPA Method 300.0). In addition, the laboratory must successfully complete the perchlorate Performance Testing (PT) Program. This PT Program involves a blind control study, using a test sample with an unknown value.

Any laboratory, wishing to participate in the perchlorate PT Program and obtain approval, must submit a letter requesting this information to EPA, received no later than March 31, 2000. Any interested laboratory which does not meet this deadline or fails to successfully pass this initial PT study and still wishes to support this monitoring, will need to submit a request letter by October 6, 2000 in order to be eligible for a second PT study. EPA will not be able to consider any laboratory request letters received after October 6, 2000 and does not intend to conduct any additional PT studies. Any laboratory gaining approval in the first PT study will not be required to participate in the second PT study. These will be the only two PT studies offered for laboratories wishing to gain approval to conduct perchlorate analysis in support of UCMR assessment monitoring. Any laboratory which does not request participation by October 6, 2000 and fails to pass either of these two PT studies will not be approved to support this perchlorate monitoring. The submitted request letter must be signed by the laboratory manager with a statement that the laboratory is currently certified, by the primacy agency in which the laboratory is located, to perform drinking water compliance monitoring using an approved ion chromatographic method. A copy of the letter or certificate issued by the State or primacy agency detailing this certification must also be submitted. Details pertaining to laboratory certification can be found on-line at www.epa.gov/OGWDW/labcint.html.

A laboratory's request letter must include the following information:

(1) Laboratory Name.

(2) Complete Laboratory Mailing Address.

(3) Ion chromatography analytical method the laboratory is certified to perform.

(4) A copy of the letter or certificate issued by the State or primacy agency which issued the certification to the laboratory.

(5) Contact Person.

(6) Contact Phone, FAX, and e-mail (if available).

The letter should be mailed to: Perchlorate PT Program Coordinator, U.S.EPA, MLK 140, 26 W. Martin Luther King Dr., Cincinnati, Ohio 45268.

To participate successfully in this program the laboratory will also need to become proficient in the application of U.S. EPA Method 314.0, "Determination of Perchlorate in Drinking Water Using Ion Chromatography". Laboratories must follow the procedure as well as all the QC protocols prescribed in the method. To obtain a copy of EPA Method 314.0, contact the Safe Drinking Water Hotline at 1–800–426–4791 or access an electronic copy of the method directly on-line at *www.epa.gov/safewater/methods/sourcalt.html.*

Upon successful completion of the perchlorate PT Program, EPA will provide each successful laboratory with an approval letter identifying the laboratory by name and the approval date. This letter may then be presented to any Public Water System (PWS) as evidence of laboratory approval for perchlorate analysis supporting the UCMR. Laboratory approval is retained as long as the laboratory maintains certification by the State or primacy agency in which the laboratory is located, to perform drinking water compliance monitoring using an approved ion chromatographic method. If a laboratory maintains this certification, the laboratory approval for perchlorate analysis supporting the UCMR will be limited to the time period beginning on the date specified in the EPA issued approval letter and extending through January 28, 2004. Additionally, EPA will establish a website indicating which laboratories are approved to conduct perchlorate monitoring.

2. Acetochlor. No performance testing sample analyses are required for laboratory approval for the analysis of acetochlor under the UCMR. All laboratories currently certified to perform drinking water compliance monitoring using EPA Method 525.2 are automatically approved to perform acetochlor analysis in the UCMR.

F. Implementation

Implementation of this rule will allow monitoring for perchlorate and acetochlor using the specified methods in this rule. Systems will follow the monitoring requirements described in the September 1999 UCMR at the designated sampling location four times a year for surface water systems, or two times six months apart for ground water systems, with one of the sampling times during the May-July vulnerable time, or an alternate vulnerable period specified by the State.

G. Performance-based Measurement System

EPA's Office of Water plans to implement a performance-based measurement system (PBMS) that would allow the option of using either performance criteria or reference methods in its drinking water regulatory programs, removing the requirement that only EPA-specified and approved analytical methods be used in SDWA regulatory programs. The requirement to use approved methods for SDWA

regulatory programs would, however, be maintained for certain method-defined analytes (*e.g.*, Total Coliform and asbestos), and for data gathering prospective to regulation, such as the contaminant monitoring in this rule.

As noted above, many of the contaminants of interest for the Unregulated Contaminant Monitoring (UCM) program can be classified as "emerging'and thus do not have existing performance criteria or reference methods. In addition to collecting information about contaminant occurrence, the UCM program will enable the development of reference methods and performance criteria. UCM testing will provide data to assist the Agency in developing performance criteria that would be proposed with the MCL, monitoring requirements, etc. for an analyte. For these reasons, the Agency is specifying the method to be used for UCM testing. Once, however, a contaminant proceeds to regulation development as a National Primary Drinking Water Regulation, EPA expects to have sufficient data and method development information to be able to propose both performance criteria and a validated reference method, either of which could be used for compliance monitoring of the contaminant.

III. Technical Changes and Clarification to § 141.40

After reviewing the UCMR subsequent to its publication in the *Federal Register* on September 17, 1999, EPA found five changes that should be made to correct or clarify the wording of the regulation. These changes are at § 141.40 (a)(5)(ii)(C), (a)(5)(iii)(G), (b)(1)(i), and (b)(1)(vii) and described here.

A. Change to § 141.40 (a)(5)(ii)(C)

This paragraph describes the location at which unregulated contaminant monitoring is to occur. However, the paragraph provides an exception where a State determines that no treatment is instituted between the source water and the distribution system that would affect measurement of the contaminants listed in § 141.40 (a)(3). EPA is correcting this provision to delete redundant wording that does not help to clarify the exception.

B. Change to § 141.40 (a)(5)(ii)(G)

This paragraph describes the requirements for testing of the contaminants listed in § 141.40 (a)(3) by a certified laboratory. This paragraph states that laboratories certified to conduct compliance analysis using EPA analytical methods in column 3, § 141.40 (a)(3), may conduct analyses for the UCMR contaminants. EPA is adding a paragraph to address laboratory approval to analyze for perchlorate in drinking water samples.

C. Change to § 141.40 (a)(5)(iii)(G)

This paragraph specifies that sampling forms must be completed by owners or operators of small systems conducting the sampling for unregulated contaminants before sending the results to the EPA designated laboratory. The data elements that the owner or operator must complete are incorrectly specified as 1 through 6. The rule corrects the language to identify the data elements to be 1 through 4: Public Water System Identification Number; Public Water System Facility Identification Number—Source, Treatment Plant, and Sampling Point; Sample Collection Date; and Sample Identification Number.

The rule also corrects the reporting for small systems to include data elements 5 through 10 if water quality parameters are required to be reported from the field. These parameters include: Contaminant/Parameter; Analytical Results-sign; Analytical Results-Value; Analytical Result-Unit of Measure; Analytical Method Number; and Sample Analysis Type. This clarification makes this section consistent with § 141.40 (a)(4)(i)(B) which applies to all systems analyzing for water quality parameters.

D. Change to § 141.40 (b)(1)(i)

This paragraph describes the process for States and Tribes to accept or modify the State Monitoring Plans for small systems. The paragraph incorrectly refers to "distribution line." This reference should be to a "distribution system" to be consistent with other sections of and the intent of the rule.

E. Change to § 141.40 (b)(1)(vii)

This paragraph describes the process for a State or Tribe to participate in monitoring for the Screening Surveys for small and large systems. This paragraph contains an exclusion for systems purchasing water (unless the system is to conduct microbiological contaminant monitoring)[emphasis added]. The intent of the exception identified in the parenthetical phrase "unless the system is to conduct microbiological monitoring" was to address any contaminants for which the distribution system should be the appropriate location for monitoring, not just microbiological contaminants. The reference to microbiological contaminant monitoring is an artifact of a previous draft of the rule which was not corrected. Today's rule provides the intended wording and allows the exclusion of certain systems "(unless the system is to conduct monitoring for a contaminant with the sampling location specified as the "distribution system")."

F. Clarification of Monitoring for DCPA Mono and Di-Acid Degradate

In the September 17, 1999, **Federal Register** (64 FR 50556), EPA included as separate contaminants both DCPA mono-acid and DCPA di-acid degradates on the UCMR (1999) Monitoring List. As noted in the "UCMR Analytical Methods and Quality Control Manual," August 1999, all of the approved methods identify total mono and di-acid forms as a single analytical result. None of the approved methods allow for the identification and quantification of the individual acids. To provide for the consistent reporting of results and to avoid confusion, EPA is specifying in Table 1 of § 141.40 (UCMR List 1, 1999) that the single analytical result obtained from these methods should be reported as total DCPA mono- and di-acid degradates.

IV. Cost and Benefits of the Rule

Today's amendment to the UCMR (64 FR 50555) adds methods for monitoring perchlorate and acetochlor to the UCMR (1999) List 1. These contaminants will be collected as part of the Assessment Monitoring component of the UCMR program. Perchlorate and acetochlor were part of the original UCMR (1999) List 1 contaminants, but were withheld from the September 1999 Final Rule pending finalization of their analytical methods. As described elsewhere in this Preamble, Assessment Monitoring will be conducted over a 3-year period from 2001 to 2003 by all 2,774 large PWSs and a randomly selected representative sample of 800 small systems.

Since perchlorate and acetochlor will be analyzed by laboratories using water samples that are collected at the same time as the other 10 Assessment Monitoring contaminants, there are no additional labor costs related to today's addition of these contaminants. Systems will only be required to collect one additional sample for perchlorate analysis at the same sampling point where they are collecting the other Assessment Monitoring samples. No measurable added labor burden is associated with filling one more sample bottle. Additional non-labor costs are solely attributed to the laboratory fees/costs associated with analyzing samples for these contaminants. These costs will only be incurred by EPA and by large PWSs. No additional shipping costs will be incurred, since the weight of one sample bottle will not increase the shipment pricing category.

EPA assumes that no additional costs will be incurred for analysis of acetochlor, since this contaminant will be analyzed under method 525.2, along with 2,4-dinitrotoluene and 2,6-dinitrotoluene. EPA estimates that the average laboratory fee/cost for perchlorate analysis, using the ion chromotography Method 314.0 will be $60 per sample. The additional costs for laboratory analysis are calculated as follows: the product of the number of systems and the number of entry or sampling points is multiplied by the sampling frequency and then multiplied by the cost of analysis.

The details of EPA's cost assumptions and estimates for Assessment Monitoring contaminants, with the exception of perchlorate and acetochlor, can be found in the Information Collection Request (ICR) previously prepared for the UCMR (OMB number 2040–0208), which presents estimated cost and burden for the 1999–2001 period. The Office of Management and Budget (OMB) approved the ICR on June 30, 1999. An inventory correction worksheet (ICW) was prepared for this rule to address the hours and dollars associated with monitoring and analyzing for perchlorate and acetochlor. Copies of the ICR may be obtained from Sandy Farmer by mail at: OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at: farmer.sandy@epa.gov, or by calling: (202) 260–2740. For technical information regarding the ICR, please contact Chuck Job, U.S. Environmental Protection Agency, (4607); 401 M St., S.W.; Washington DC 20460, by email at: *job.charles@epa.gov*, or by calling (202) 260–7084. A copy may also be downloaded from the Internet at: http://www.epa.gov/icr.

In preparing the UCMR ICR and the ICW, EPA relied on standard assumptions and data sources used in the preparation of other drinking water program ICRs. These include the public water system inventory, number of entry points per system, and labor rates. To estimate the labor burden for State and some system activities, the Agency used its standard State Resource Model, which is documented in the Resource Analysis Computer Program for State Drinking Water Agencies (January 1993). Other assumptions are discussed below.

Over the UCMR implementation period of 2001 through 2005, EPA estimates that the average annual cost of the nationwide addition of perchlorate and acetochlor to Assessment Monitoring is approximately $560,700, as follows:

1. EPA: $70,200, exclusively for the additional testing costs for small systems.
2. States: $0.
3. Small systems: $0.
4. Large systems: $490,500.

The estimated average annual cost is approximately $177 per large system.

V. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this Rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This Rule is not subject to Executive Order 13045 because it is not "economically significant" as defined under Executive Order 12866. Further, this rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule makes purely clarifying changes to the September 1999 UCMR and establishes analytical test methods for measurement of the unregulated contaminants perchlorate and acetochlor.

However, this Rule is part of the Agency's overall strategy for deciding whether to regulate the contaminants under the Safe Drinking Water Act (see discussion of the Contaminant Candidate List (CCL) at 63 FR 10273). Its purpose is to ensure that EPA obtains data on the occurrence of contaminants on the CCL—specifically perchlorate and acetochlor—where those data are currently lacking. EPA is also taking steps to ensure that the Agency will have data on the health effects of these contaminants on children through its research program. The Agency will use these occurrence and health effects data to decide whether to regulate these contaminants.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative, if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal

governments, it must have developed under UMRA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any one year. Total annual costs of today's rule (across the implementation period of 2001–2005), for State, local, and tribal governments and the private sector, are estimated to be $560,700, of which EPA will pay $70,200, or approximately 12 percent. Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because EPA will pay for the reasonable costs of sample testing for the small PWSs required to sample and test for unregulated contaminants under this rule, including those owned and operated by small governments. Small systems will incur minimal additional labor or non-labor costs as a result of this rule, since laboratory analysis of perchlorate and acetochlor will be conducted using samples that systems were already collecting under the September 1999 UCMR. Thus, today's rule is not subject to the requirements of UMRA section 203.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0208. As part of the September 1999 UCMR, the information to be collected under today's Rule fulfills the statutory requirements of section 1445(a)(2) of the Safe Drinking Water Act, as amended in 1996. The data to be collected will describe the source water, location, and test results for samples taken from PWSs. The concentrations of any identified UCMR contaminants will be evaluated regarding health effects and will be considered for future regulation accordingly. Reporting is mandatory. The data are not subject to confidentiality protection.

For a discussion of the costs for the full monitoring program from 2001 through 2005, please refer to Section V., "Costs and Benefits of the Rule" in the preamble. EPA has an approved ICR for the 10 UCMR Assessment Monitoring contaminants and is in the process of processing the ICW for the addition of perchlorate and acetochlor methods to the UCMR. This discussion focuses on the estimated costs during the ICR period of 1999–2001.

The cost estimates described below for the additional contaminants, perchlorate and acetochlor, are solely attributed to additional laboratory fees/costs. No additional labor or hour burden will be incurred because of the addition of these contaminants to the UCMR (1999) List 1. For Assessment Monitoring, the respondents are the 800 small water systems (in the national representative sample of systems serving 10,000 or fewer people), the 2,774 large public water systems, and the 56 States and primacy agents (3,630 total respondents). The frequency of response varies across respondents and years. However, there are no additional responses associated with this rule amendment, and thus no additional hour burden for any respondents. Minimal additional costs will be incurred by small systems or States. Large systems and EPA will incur the additional laboratory fees/costs for the analysis of perchlorate and acetochlor. For the three year ICR period only, each large system respondent will incur an annual average additional cost of $295. This was calculated by the average cost per system over three years. [E.g., ($884 per large system) divided by three years]. The additional cost for perchlorate and acetochlor is estimated to be $300 per response by a large system. This is calculated by the average cost per system over the three years [E.g., ($884 per large system) divided by the average number of responses per system over the entire three year period (2.9 per large system)].

EPA will incur no additional labor or hour costs for implementation of today's rule. EPA's annual non-labor costs (for the ICR period 1999–2001) are estimated to be $36,400 for the analysis of small system perchlorate and acetochlor Assessment Monitoring samples. Non-labor costs are solely attributed to the cost of sample testing for the 800 small systems.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and aintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

E. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on all three categories of small entities, EPA considered small entities to be systems serving 10,000 or fewer customers because this is the size of system specified in SDWA as requiring special consideration with respect to small system flexibility. In accordance with the RFA requirements, EPA proposed using this alternative definition for all three categories of small entities in the **Federal Register**, (63 FR 7605, February 13, 1998) requested public comment, consulted with SBA regarding the alternative definition as it relates to small

businesses, and finalized the alternative definition in the Consumer Confidence Reports rulemaking, (63 FR 44511, August 19,1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

For the UCMR, published on September 17, 1999, EPA analyzed separately the impact on small privately and publicly owned water systems because of the different economic characteristics of these ownership types. For publicly owned systems, EPA used the "revenue test," which compares a system's annual costs attributed to the rule with the system's annual revenues. EPA used a "sales test" for privately owned systems, which involves the analogous comparison of UCMR-related costs to a privately owned system's sales. EPA assumes that the distribution of the national representative sample of small systems will reflect the proportions of publicly and privately owned systems in the national inventory. The estimated distribution of the representative sample, categorized by ownership type, source water, and system size, is presented below in Table 1.

TABLE 1.—NUMBER OF PUBLICLY AND PRIVATELY OWNED SYSTEMS TO PARTICIPATE IN ASSESSMENT MONITORING

[Including perchlorate and acetochlor]

Size category	Publicly owned systems		Privately owned systems		Total—All systems
	Non-index systems	Index systems	Non-index systems	Index systems	
Ground Water Systems					
500 and under	20	1	76	2	99
501 to 3,300	146	6	67	3	222
3,301 to 10,000	144	7	40	2	193
Subtotal ground	310	14	183	7	514
Surface Water Systems					
500 and under	18	0	49	0	67
501 to 3,300	51	2	23	1	77
3,301 to 10,000	106	5	30	1	142
Subtotal surface	175	7	102	2	286
Total	485	21	285	9	800

The basis for the UCMR RFA certification for today's rule, which adds perchlorate and acetochlor to the Assessment Monitoring program, is as follows: the average annual compliance costs of the rule represent less than 1 percent of revenues/sales for the 800 small water systems that will be affected. The EPA estimates that EPA and small system costs for adding perchlorate and acetochlor to the Assessment Monitoring program (2001–2005) will be approximately $350,890. Since the Agency specifically structured the rule to avoid significantly affecting small entities by assuming all costs for laboratory analyses, shipping, and quality control for small entities, EPA incurs the entirety of the costs associated with adding methods for monitoring perchlorate and acetochlor to the Assessment Monitoring list. Table 2 presents the annual costs to EPA for the small system sampling program, along with the number of participating small systems during each of the 5 years of the program. The table also illustrates that no additional costs are incurred by the small systems.

TABLE 2.—EPA COSTS FOR SMALL SYSTEMS FOR THE ADDITION OF PERCHLORATE AND ACETOCHLOR METHODS TO UCMR ASSESSMENT MONITORING

Cost description	2001	2002	2003	2004	2005	Total
Total Costs to EPA for Small System Sampling of Perchlorate and Acetochlor: analytical costs						
	$109,150	$109,150	$109,150	$11,720	$11,720	$350,890
Costs to Small Systems: no additional labor or non-labor costs incurred						
	$0	$0	$0	$0	$0	$0
Total Costs to EPA and Small Systems for UCMR						
	$109,150	$109,150	$109,150	$11,720	$11,720	$350,890
Number of Systems to be conducting Assessment Monitoring each Year (thus collecting perchlorate and acetochlor samples): Non-Index and Index in 2001–2003, Index only in 2004–2005[1]						
Public	182	182	182	107	21	533
Private	104	104	104	81	9	267
Total	286	286	286	188	30	800

[1] Total number of systems is 800. All 30 Index systems sample during each year 2001–005. One-third of Non-Index systems sample during each year from 2001–2003. The rows do not add across, because the same 30 Index systems sample during every year of 5-year implementation cycle.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that the addition of perchlorate and acetochlor to the UCMR data collection will not affect small water utilities. The rationale for this conclusion is that those 800 small PWSs that will participate in Assessment Monitoring will not be required to conduct additional activities related to this rule. Further, EPA will assume all additional costs for testing of the samples for small systems. We have therefore concluded that today's final rule will impose no regulatory burden for small entities. Also, the minor amendments to the UCMR are purely for clarification or correction, and do not impose any costs.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA searched for but did not find any voluntary consensus standards for the measurement of acetochlor or perchlorate. Analytical methods for perchlorate have been published by the California Department of Health and by Dionex Corporation, however neither of these methods incorporates a quality control element which assesses the impact of high concentrations of total dissolved solids (TDS), frequently present in water samples. The presence of these high TDS in samples can result in inaccurate quantitation of perchlorate or may even mask its presence. Therefore, EPA developed EPA Method 314.0 for the analysis of perchlorate which incorporates a quality control element that both identifies the presence of high concentrations of TDS and provides a mechanism to reduce their concentrations, thereby permitting accurate quantitation of perchlorate. In addition, EPA's Method 314.0 permits the use of both the California Department of Health and the Dionex procedures within its scope; therefore, laboratories currently using either of these procedures can convert to using EPA Method 314.0 simply by adopting the quality control element specified in EPA Method 314.0 without needing to change any other aspects of their analyses.

G. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations' (February 11, 1994), focuses federal attention on the environmental and human health conditions of minority and low-income populations with the goal of achieving environmental protection for all communities. By seeking to identify unregulated contaminants that may pose health risks via drinking water from all PWSs, this regulation furthers the protection of public health for all citizens, including minority and low-income populations using public water supplies.

H. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely specifies the analytical methods approved for the measurement of perchlorate and acetochlor in drinking water, thereby allowing these contaminants to be included in the UCMR Assessment Monitoring program and makes other minor corrections to the September UCMR. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

I. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose substantial direct compliance costs on them. Only one tribal water system serves more than 10,000 persons. All the other tribal water systems serve 10,000 or fewer persons, and in today's rule have an equal probability of being selected in the national representative sample of small systems, for which EPA will pay the costs of unregulated contaminant testing. Thus, these tribal water systems will be treated the same as water systems of a State and the impact of the rule on them will not be significant.

This rule will not impose substantial direct compliance costs on such communities because, with the exception of the one large tribal water system, the Federal government will provide most of the funds necessary to pay the direct costs incurred by tribal governments in complying with the rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Administrative Procedure Act

EPA is publishing this methods rule without prior proposal because it views this as a noncontroversial amendment and anticipates no adverse comment. While developing these methods, EPA worked closely with those people involved in similar work or developing similar methods. For perchlorate, Method 314.0 is an adaptation of the current methods available to test for perchlorate, but with additional QC requirements. For the UCMR, public comment indicated that EPA Method 525.2 could perform analyses for acetochlor. However, elsewhere in this issue of the **Federal Register**, EPA is publishing a separate document that will serve as the proposal for the Unregulated Contaminant Monitoring Regulation for Public Water Systems; Analytical Methods for Perchlorate and Acetochlor if adverse comments are filed. This rule will be effective on January 1, 2001, without further notice unless EPA receives adverse comment by April 3, 2000. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Finally, the minor amendments made to the September 1999 UCMR in today's rule are purely clarifying changes and thus public comment is unnecessary under the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(B).

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by U.S.C. 804(2). This rule will be effective January 1, 2001.

VI. Public Involvement in Regulation Development

EPA's Office of Ground Water and Drinking Water has developed a process for stakeholder involvement in its regulatory activities to provide early input to regulation development. Today's rule amends the September 1999 UCMR, by establishing the method requirements for perchlorate and acetochlor. At the time of UCMR publication—September 1999—the methods for these contaminants were still under review by the EPA. For a description of public involvement activities please see the discussion at 64 FR 50556.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: February 23, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of Code of Federal Regulations, are amended as follows.

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–l, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Effective January 1, 2001 § 141.40 as revised on 9/17/99 (64 FR 50556) and effective January 1, 2001 is further amended by:

a. Revising Table 1, List 1, in paragraph (a)(3) and revising the column heading notations and footnotes at the end of paragraph (a)(3);

b. Revising paragraphs (a)(5)(ii)(C) and (a)(5)(ii)(G);

c. Revising paragraph (a)(5)(iii)(G);

d. Revising paragraph (b)(1)(i); and

e. Revising paragraph (b)(1)(vii).

The Revisions read as follows:

§ 141.40 Monitoring requirements for unregulated contaminants.

(a) * * *

(3) * * *

TABLE 1.—UNREGULATED CONTAMINANT MONITORING REGULATION (1999) LIST

[List 1—Assessment Monitoring Chemical Contaminants]

1—Contaminant	2—CAS registry number	3—Analytical methods	4—Minimum reporting level	5—Sampling location	6—Period during which monitoring to be completed
2,4-dinitrotoluene	121–14–2	EPA 525.2[a]	2 ug/L[e]	EPTDS[f]	2001–2003
2,6-dinitrotoluene	606–20–2	EPA 525.2[a]	2 ug/L[e]	EPTDS[f]	2001–2003
Acetochlor	34256–82–1	EPA 525.2[a]	2 ug/L[e]	EPTDS[f]	2001–2003
DCPA mono-acid degradate[n]	887–54–7	EPA 515.1[a] EPA 515.2[a] D5317–93[b] AOAC 992.32[c]	1 ug/L[e]	EPTDS[f]	2001–2003
DCPA di-acid degradate[n]	2136–79–0	EPA 515.1[a] EPA 515.2[a] D5317–93[b] AOAC 992.32[c]	1 ug/L[e]	EPTDS[f]	2001–2003
4,4'-DDE	72–55–9	EPA 508[a] EPA 508.1[a] EPA 525.2[a] D5812–96[b] AOAC 990.06[c]	0.8 ug/L[e]	EPTDS[f]	2001–2003
EPTC	759–94–4	EPA 507[a] EPA 525.2[a] D5475–93[b] AOAC 991.07[c]	1 ug/L[e]	EPTDS[f]	2001–2003
Molinate	2212–67–1	EPA 507[a] EPA 525.2[a] D5475–93[b] AOAC 991.07[c]	0.9 ug/L[e]	EPTDS[f]	2001–2003
MTBE	1634–04–4	EPA 524.2[a] D5790–95[b] SM 6210D[d] SM 6200B[d]	5 ug/L[g]	EPTDS[f]	2001–2003
Nitrobenzene	98–95–3	EPA 524.2[a] D5790–95[b] SM6210D[d] SM6200B[d]	10 ug/L[g]	EPTDS[f]	2001–2003
Perchlorate	14797–73–0	EPA 314.0	4 ug/L[o]	EPTDS[f]	2001–2003
Terbacil	5902–51–2	EPA 507[a] EPA 525.2[a] D5475–93[b] AOAC 991.07[c]	2 ug/L[e]	EPTDS[f]	2001–2003

* * * * * * *

Column headings are:

1—Chemical or microbiological contaminant: the name of the contaminants to be analyzed.

2—CAS (Chemical Abstract Service Number) Registry No. or Identification Number: a unique number identifying the chemical contaminants.

3—Analytical Methods: method numbers identifying the methods that must be used to test the contaminants.

4—Minimum Reporting Level: the value and unit of measure at or above which the concentration or density of the contaminant must be measured using the Approved Analytical Methods.

5—Sampling Location: the locations within a PWS at which samples must be collected.

6—Years During Which Monitoring to be Completed: The years during which the sampling and testing are to occur for the indicated contaminant.

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes b-d and m was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460 (Telephone: 202–260–3027); or at the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[a] The version of the EPA methods which you must follow for this Rule are listed at § 141.24 (e).

[b] *Annual Book of ASTM Standards*, 1996 and 1998, Vol. 11.02, American Society for Testing and Materials. Method D5812–96 is located in the *Annual Book of ASTM Standards*, 1998, Vol. 11.02. Methods D5790–95, D5475–93, and D5317–93 are located in the *Annual Book of ASTM Standards*, 1996 and 1998, Vol 11.02. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[c] Official Methods of Analysis of AOAC (Association of Official Analytical Chemist) International, Sixteenth Edition, 4th Revision, 1998, Volume I, AOAC International, First Union National Bank Lockbox, PO Box 75198, Baltimore, MD 21275–5198. 1–800–379–2622.

[d] SM 6210 D is only found in the 18th and 19th editions of Standard Methods for the Examination of Water and Wastewater, 1992 and 1995, American Public Health Association; either edition may be used. SM 6200 B is only found in the 20th edition of Standard Methods for the Examination of Water and Wastewater, 1998. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

[e] Minimum Reporting Level determined by multiplying by 10 the least sensitive method's minimum detection limit (MDL=standard deviation times the Student's T value for 99% confidence level with n-1 degrees of freedom), or when available, multiplying by 5 the least sensitive method's estimated detection limit (where the EDL equals the concentration of compound yielding approximately a 5 to 1 signal to noise ratio or the calculated MDL, whichever is greater).

[f] Entry Points to the Distribution System (EPTDS), After Treatment, representing each non-emergency water source in routine use over the twelve-month period of monitoring; sampling must occur at the EPTDS, unless the State has specified other sampling points that are used for compliance monitoring 40 CFR 141.24 (f)(1), (2), and (3). See 40 CFR 141.40(a)(5)(ii)(C) for a complete explanation of requirements, including the use of source (raw) water sampling points.

[g] Minimum Reporting Levels (MRL) for Volatile Organic Compounds (VOC) determined by multiplying either the published Method Detection Limit (MDL) or 0.5 ug/L times 10, whichever is greater. The MDL of 0.5 ug/L (0.0005 mg/L) was selected to conform to VOC MDL requirements of 40 CFR 141.24(f)(17(E).

[h] To be Determined at a later time.

[i] Compound currently not listed as a contaminant in this method. Methods development currently being conducted in an attempt to add it to the scope of this method.

[j] Methods development currently in progress to develop a solid phase extraction/high performance liquid chromatography/ultraviolet method for the determination of this compound.

[k] Compound listed as being a contaminant using EPA Method 525.2; however, adequate sample preservation is not available. Preservation studies currently being conducted to develop adequate sample preservation.

[l] Methods development currently in progress to develop a solid phase extraction /gas chromatography /mass spectrometry method for the determination of this compound.

[m] Method 314.0, "Determination of Perchlorate in Drinking Water Using Ion Chromatography," Revision 1.0, EPA 815–B–99–003, November 1999. Available by requesting a copy from the EPA Safe Drinking Water Hotline within the United States at (800) 426–4791 (Hours are Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time). Alternately, the method can be assessed and downloaded directly on-line at www.epa.gov/safewater/methods/sourcalt.html.

[n] The approved methods do not allow for the identification and quantification of the individual acids, the single analytical result obtained should be reported as total DCPA mono- and di-acid degradates.

[o] MRL was established at a concentration, which is at least 1/4th the lowest known adverse health concentration, at which acceptable precision and accuracy has been demonstrated in spiked matrix samples.

* * * * *

(5) * * *

(ii) * * *

(C) *Location.* You must collect samples at the location specified for each listed contaminant in column 5 of the Table 1, UCMR (1999) List, in paragraph (a)(3) of this section. The sampling location for chemical contaminants must be the entry point to the distribution system or the compliance monitoring point specified by the State or EPA under 40 CFR 141.24 (f)(1), (2), and (3). If the compliance monitoring point as specified by the State is for source (raw) water and any of the contaminants in paragraph (a)(3) of this section are detected, then you must also sample at the entry point to the distribution system at the frequency indicated in paragraph (a)(5)(ii)(B) of this section with the following exception: If the State or EPA determines that no treatment was instituted between the source water and the distribution system that would affect measurement of the contaminants listed in paragraph (a)(3) of this section, then you do not have to sample at the entry point to the distribution system.

* * * * *

(G) *Testing.* Except as provided in paragraph (a)(5)(ii)(G)(*2*) of this section for new methods, you must arrange for the testing of the contaminants by a laboratory certified under § 141.28 for compliance analysis using the EPA analytical methods listed in column 3 for each contaminant in Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, whether you use the EPA analytical methods or non-EPA methods listed in Table 1.

(*1*) *Laboratory certification for previously approved methods used for the UCMR.* Laboratories are automatically certified for the analysis of UCMR contaminants if they are already certified to conduct compliance monitoring for a contaminant included in the same method being approved for UCMR analysis.

(*2*) *Laboratory approval for new methods used for the UCMR.* To receive approval to conduct analyses for perchlorate, you must be certified to conduct compliance monitoring using an approved ion chromatographic method as listed in § 141.28 and you must analyze and successfully pass the Performance Testing (PT) Program administered by EPA.

(iii) * * *

(G) *Sampling forms.* You must completely fill out the sampling forms sent to you by the laboratory, including the data elements 1 through 4 listed in § 141.35(d) for each sample. If EPA requests that you conduct field analysis of water quality parameters specified in paragraph (a)(4)(i)(B) of this section, you must also complete the sampling form to include the information for data elements 5 through 10 listed in § 141.35(d) for each sample. You must sign and date the sampling forms.

* * * * *

(b) * * *

(1) * * *

(i) *Accept or modify the initial plan.* EPA will first specify the systems serving 10,000 or fewer persons by water source and size in an initial State Monitoring Plan for each State using a random number generator. EPA will also generate a replacement list of systems for systems that may not have been correctly specified on the initial plan. This initial State Monitoring Plan will also indicate the year and day, plus or minus two (2) weeks from the day, that each system must monitor for the contaminants in List 1 of Table 1 of this section, Unregulated Contaminant Monitoring Regulation (1999) List. EPA will provide you with the initial monitoring plan for your State or Tribe, including systems to be Index systems and those systems to be part of the Screening Surveys. Within sixty (60) days of receiving your State's initial plan, you may notify EPA that you either accept it as your State Monitoring Plan or request to modify the initial plan by removing systems that have closed, merged or are purchasing water from another system and replacing them with other systems. Any purchased water system associated with a non-purchased water system must be added to the State Monitoring Plan if the State determines that its distribution system is the location of the maximum residence time or lowest disinfectant residual of the combined distribution system. In this case, the purchased water system must monitor for the contaminants for which the "distribution system" is identified as the point of "maximum residence time" or "lowest disinfectant residual," depending on the contaminant, and not the community water system selling water to it. You must replace any systems you removed from the initial plan with systems from the replacement list in the order they are listed. Your request to modify the initial plan must include the modified plan and the reasons for the removal and replacement of systems. If you believe that there are reasons other than those previously listed for removing and replacing one or more other systems from the initial plan, you may include those systems and their replacement systems in your request to modify the initial plan. EPA will review your request to modify your State's initial plan. Please note that information about the actual or potential occurrence or non-occurrence of contaminants at a system or a system's vulnerability to contamination is not a basis for removal from or addition to the plan.

* * * * *

(vii) *Participate in monitoring for the Screening Surveys for small and large systems.* Within 120 days prior to sampling, EPA will notify you which systems have been selected to participate in the Screening Surveys, the sampling dates, the designated laboratory for testing, and instructions for sampling. You must review the small systems that EPA selected for the State Monitoring Plan to ensure that the systems are not closed, merged or purchasing water from another system (unless the system is to conduct monitoring for a contaminant with the sampling location specified as "distribution system"), and then make any replacements in the plan, as described in paragraph (b)(1)(i) of this section. You must notify the selected systems in your State of these Screening Surveys requirements. You must provide the necessary Screening Surveys information to the selected systems at least ninety (90) days prior to the sampling date.

* * * * *

[FR Doc. 00–4761 Filed 3–1–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6544–7]

Unregulated Contaminant Monitoring Regulation for Public Water Systems; Analytical Methods for Perchlorate and Acetochlor; Announcement of Laboratory Approval and Performance Testing (PT) Program for the Analysis of Perchlorate

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Safe Drinking Water Act (SDWA), as amended in 1996, requires the U.S. Environmental Protection Agency to establish criteria for a program to monitor unregulated contaminants and to publish a list of contaminants to be monitored. In fulfillment of this requirement, EPA published the Revisions to the Unregulated Contaminant Monitoring Rule (UCMR) on September 17, 1999 (64 FR 50556) which included a list of contaminants to be monitored.

Both perchlorate and acetochlor were placed on the UCMR (1999) List 1, Assessment Monitoring, with the method listed as "Reserved" pending imminent conclusion of EPA refinement and review of the analytical methods for perchlorate and acetochlor. In this issue of the **Federal Register**, EPA is revising the UCMR by promulgating analytical methods for the measurement of perchlorate and acetochlor in drinking water as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. EPA has addressed the regulatory text and explained the authority, purpose, and rationale for the rule and the Agency's compliance with the laws and executive orders affecting rulemaking in the preamble to the direct final rule. If EPA receives no adverse comment, it will not take further action on this proposed rule. If EPA receives adverse comment, the Agency will withdraw the direct final rule and it will not take effect. EPA would then address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing by April 3, 2000.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–99–19, Water Docket (MC 4101), U.S. EPA, 401 M Street, SW, Washington, DC 20460. Please submit an original and three copies of your comments and enclosures (including references).

The full record for this document has been established under docket number W–99–19 and includes supporting documentation as well as printed, paper versions of electronic comments. The full record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, East Tower Basement, U.S. EPA, 401 M Street, SW, Washington, DC. For access to docket (Docket No. W–99–19) materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m., Eastern Time, Monday through Friday, to schedule an appointment. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Rachel Sakata, Standards and Risk Management Division, U.S. Environmental Protection Agency, 401 M Street (MC 4607), Washington, DC 20460, (202) 260–2527. For technical information regarding the methods contact David Munch, Technical Support Center, U.S. Environmental Protection Agency, 26 W. Martin Luther King Dr., Cincinnati OH, 45268, (513) 569–7843. General information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION: To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to *ow-docket@epamail.epa.gov*. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–99–19. Comments and data will also be accepted on disks in WordPerfect in 5.1 format or ASCII file format. Electronic comments on this document may be filed online at many Federal Depository Libraries.

This document concerns the Unregulated Contaminant Monitoring Regulation for Public Water Systems; Analytical Methods for Perchlorate and Acetochlor; Announcement of Laboratory Approval and Performance Testing (PT) Program for the Analysis of Perchlorate. For further information, please see the information provided in the direct final rule published elsewhere in this issue of the **Federal Register**.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: February 23, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–4762 Filed 3–1–00; 8:45 am]

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Federal Register

Thursday,
March 2, 2000

Part III

Securities and Exchange Commission

In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange; Findings and Opinion of the Commission and Order Granting Registration; Notices

Joint Industry Plan; Notice of Filing of Proposed Option Market Linkage Plans by the American Stock Exchange, Chicago Board Options Exchange, Pacific Exchange, and Philadelphia Stock Exchange; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42455; File No. 10–127]

In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange; Findings and Opinion of the Commission

February 24, 2000.

I. Introduction

On February 2, 1999, the International Securities Exchange LLC ("ISE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") a Form 1 application ("Form 1") under the Securities Exchange Act of 1934 ("Exchange Act"), seeking registration as a national securities exchange pursuant to Section 6 of the Exchange Act. Notice of the application was published for comment in the **Federal Register** on June 1, 1999.[1] The Commission received twenty-one comments on the proposal.[2] The ISE filed an amendment to its application on September 27, 1999.[3] Notice of the amendment was published for comment in the **Federal Register** on October 26, 1999.[4] The Commission received nine comments on Amendment No. 1.[5] On February 23, 2000, the ISE filed another amendment to its application.[6] This order approves the ISE's application for registration as a national securities exchange, as amended.

II. Discussion

Under Sections 6 and 19(a) of the Exchange Act, the Commission will grant an order for registration as a national securities exchange if it finds that the exchange is so organized and has the capacity to carry out the purposes of the Exchange Act and can comply, and can enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the exchange. The rules of the exchange must be adequate to insure fair dealing and to protect investors, and may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

After a review of the ISE's amended application in accordance with these standards, the Commission has determined to grant the registration of the Exchange. In taking this action, the Commission notes that the ISE will not be permitted to begin trading until after it satisfies a number of conditions, which are discussed below.

The Commission finds that the ISE's Constitution and rules are consistent with Section 6 of the Exchange Act in that they are designed to: (1) Assure fair representation of an exchange's members in the selection of its directors and administration of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer; (2) to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and (3) to protect investors and the public interest. Finally, the Exchange's rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Overall, the Commission believes that granting registration to the ISE as a national securities exchange offers the promise of important benefits to the public and should provide U.S. market participants with a new, innovative method of trading options. As a fully electronic options market, the ISE's entrance to the marketplace should potentially reduce the costs of trading to investors and market professionals, enhance innovation, and increase competition between and among the options exchanges, resulting in better prices and executions for investors.

This discussion does not review every rule and representation made by the ISE that has been filed as a part of its application; rather, it focuses on the most prominent rules and policy issues considered in review of the ISE's application.

III. Consideration of Certain of ISE's Governance Provisions and Trading Rules

A. Corporate Structure

The ISE is organized as a limited liability company ("LLC") under New York law and will be owned by certain of its members. This corporate structure is substantially the same as the existing exchanges are structured, with one exception. As an LLC, the Exchange will not pay state and federal taxes on its income. Instead, the income will be "allocated" to the Class A and Class B memberships (described below), and the owner of each membership will pay taxes on the income. The Exchange will distribute to each owner of a membership the amount necessary to pay the taxes on its allocated portion of the Exchange's net income.

Several commenters believed that, because ISE is organized as a for-profit entity,[7] it is structured to provide owners of memberships a profit from Exchange-generated revenue. Although ISE's expectation is to have net income and it will create a budget and set fees based upon that expectation, it will not distribute profits to its owners. Net income will be used by the ISE to finance capital improvements and to provide for financial reserves. Generally, existing exchanges control the amount of annual net income by adjusting their fees. Some exchanges rebate fees collected, or reduce or eliminate fees temporarily when they exceed projected earnings. ISE's LLC structure provides for a similar financial model as the existing exchanges with the exception of the manner in which taxes are paid.

Many commenters also suggested that because the ISE is organized as a "for-profit" entity, its structure creates the potential for conflicts of interest. The Commission notes that conflicts of interest are an inherent part of self-regulation. To the extent that ISE's organization as an LLC, rather than as a not-for-profit corporation, heightens or changes those conflicts of interest, the Commission has evaluated the conflicts of interests and believes that a number

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[1] *See* Exchange Act Release No. 41439 (May 24, 1999), 64 FR 29367 (June 1, 1999).

[2] A summary of comments received on the original application is available in the Public Reference Room at the Commission (File No. 10–127).

[3] *See* Letter from David Krell, President and CEO, ISE, to Jonathan G. Katz, Secretary, Commission, dated September 23, 1999 ("Amendment No. 1"). The ISE included a narrative response to the comment letters in Amendment No. 1. *See* Amendment No. 1, Exhibit 6.

[4] *See* Exchange Act Release No. 42042 (October 20, 1999), 64 FR 57668 (October 26, 1999).

[5] A summary of comments received on Amendment No. 1 is available in the Public Reference Room at the Commission (File No. 10–127).

[6] *See* Letter from David Krell, President and CEO, ISE, to Jonathan G. Katz, Secretary, Commission, dated February 17, 2000 ("Amendment No. 2"). Although Amendment No. 2 was not published for comment, the changes are either responsive to comment letters and the concerns of the Commission or technical in nature. Any other substantive changes to the ISE's rules will be published in the **Federal Register** for notice and comment.

[7] Seven of the eight current U.S. exchanges are "not-for-profit" organizations. In its release concerning the regulation of exchanges and alternative trading systems, the Commission expressed its view that registered exchanges may structure themselves as for-profit exchanges. *See* Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("ATS Release").

of factors alleviate these concerns.[8] First, ISE will not be the Designated Examining Authority ("DEA") or Designated Options Examining Authority ("DOEA") for its members. In other words, ISE is not the primary SRO and, therefore, will not be responsible for the financial oversight of its members, or for disciplining or enforcing common SRO rules. Nor will ISE be responsible for enforcing the rules of another SRO. This alleviates concerns that possible profit-making motives could influence ISE to use its examining authority to profit its members or to harm a competitor-SRO for which it had assumed regulatory obligations. Second, the ISE has filed an interpretation, which will be considered a rule of the Exchange pursuant to Section 3(a)(27) of the Exchange Act, that states that the ISE will make distributions solely to cover members' tax liability for the ISE's income. Cash available for distributions to members will not include revenues received by the Exchange from regulatory fees or regulatory penalties. This will prevent the possibility that regulatory fines and fees might be "dividended" out to members.[9] Third, non-industry directors comprise a majority (eight out of fifteen) of the ISE's Board of Directors. Because these non-industry directors are not affiliated with members of the Exchange, they provide a significant safeguard against possible abuse by limiting the influence and control of any one group over the activities of the Exchange. In sum, given that ISE is not a DEA or DOEA, is not a publicly-owned entity, and is not structured to provide its members a profit from Exchange-generated revenue, the Commission does not believe that the concerns regarding a "for-profit" exchange functioning as an SRO are serious in the ISE context.

B. Corporate Governance

1. Fair Representation

Section 6(b)(3) of the Exchange Act requires that the rules of an exchange assure fair representation of its members in the selection of its directors and administration of its affairs and, among other things, provide that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer. Public representation and individuals who are not affiliated with broker-dealers on an exchange's board of directors helps to satisfy this requirement. This provision is designed to ensure that members have a voice in the use of self-regulatory authority that may affect the members, and to protect members from unfair, unfettered disciplinary actions under the rules of the exchange.

a. ISE's Board of Directors

The Commission finds that the ISE has been structured in such a manner as to satisfy the principles of fair representation as required by Section 6(b)(3) of the Exchange Act. The ISE's Board of Directors will be the governing body of the Exchange and possess all the powers necessary for the management of the business and affairs of the Exchange and for the promotion of its welfare, objects and purposes. The Board will consist of 15 directors: (i) 6 member representatives, comprised of two Class A member representatives ("Primary Market Maker" or "PMM"), two Class B member representatives ("Competitive Market Maker" or "CMM"), two Class C member representatives ("Electronic Access Member" or "EAM"); (ii) eight non-industry directors,[10] at least two of whom must be representatives of the public; [11] and (iii) the President of ISE. Thus, the Board provides members six representatives, yet still consists of a majority of non-industry representatives.

Representatives of Class A, B, and C members will be nominated by a nominating committee [12] and elected to the Board by a plurality of their respective classes.[13] No member organization may have more than one representative elected to the Board.[14] Non-industry directors will be nominated by the nominating committee and elected by an affirmative vote of a majority of the Class A members, a majority of the Class B members and a majority of the Class C members voting by class if the election is uncontested.[15] Industry and non-industry candidates may also be placed on the ballot by petition.[16] All directors will serve for a two-year term,[17] except that the President will serve until removed. No director, other than the President, who has been elected to three consecutive terms is eligible for election as a director again except after a minimum of a two-year interval.

The Chairman and Vice Chairman of the Board will be appointed from among the directors by the affirmative vote of at least two-thirds of the directors then in office. The Chairman and Vice Chairman each will serve for a one-year term and will not be officers of the Exchange.

PMM and CMM directors have special voting rights regarding the approval of proposed rule changes by the Board. Specifically, in order to adopt, amend or repeal certain governance and trading rule changes, there must be a majority of the entire Board that votes in favor of the proposed change. In addition, at least one PMM director *and* one CMM director must vote in favor of the proposed change.[18] One commenter asserts that this provision gives an effective veto power to the PMM and CMM classes.[19] In response to this comment, the ISE has amended its Constitution to reflect that approval of a proposed rule change will now require a favorable vote by a majority of the Board, including *either* one PMM director and one CMM director *or* five out of eight of the non-industry directors.[20] The revised provision therefore permits an override of the objecting PMM and CMM directors in a situation where a majority of the non-industry directors vote in favor of the

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[8] The Commission believes that assessing conflicts of interest concerns in the context of an SRO can be highly dependent on, among other things, corporate and membership structure, which must be analyzed on a continuous case-by-case basis. Although the factors described in this release are helpful in allaying concerns over the ISE's for-profit status, the Commission recognizes that there may be other factors that could be considered in addressing these concerns in the future.

[9] *See* Amendment No. 2.

[10] A "non-industry representative" means any person that would not be considered an "industry representative," as well as (i) a person affiliated with a broker or dealer that operates solely to assist the securities-related activities of the business of non-member affiliates, (ii) an employee of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity and who is primarily engaged in the business of the non-member entity. *See* ISE Constitution, Article I, Section 1(r).

[11] A "representative of the public" means a non-industry representative who has no material business relationship with a broker or dealer or the Exchange. *See* ISE Constitution, Article I, Section (1)(v).

[12] *See* ISE Constitution, Article VI, Section 3(c). *See, e.g.*, National Association of Securities Dealers, Inc. ("NASD") Bylaws, Article VII, Section 10. The Nominating Committee is composed of a representative from each class, as well as three non-industry representatives, at least one of which must be public.

[13] *See* ISE Constitution, Article IV, Section 1(a).

[14] *See* ISE Constitution, Article IV, Section 1(c).

[15] If there are more candidates than the number of vacancies to be filled, non-industry directors are elected by a plurality of all members using a weighting system. *See* ISE Constitution, Article V, Section 1(d).

[16] *See* ISE Constitution, Article VI, Section 3(e).

[17] One half of each class of directors will be elected at each annual meeting of the members. *See* ISE Constitution, Article IV, Sec. 1(b). At the initial election meeting, the Board will randomly select one Class A director, one Class B director, one Class C director, and four non-industry directors (at least one of which must be a public director) who will serve for an initial term of three years. *See* ISE Constitution, Article IV, Sec. 1(e)(6).

[18] *See* ISE Constitution, Article VII, Sec. 1.

[19] *See* American Stock Exchange ("Amex") Letter.

[20] *See* Amendment No. 2.

proposed rule change.[21] Essentially, a PMM director and a CMM director who vote against a proposed rule change will only succeed in vetoing the proposed change if four or more non-industry directors also vote against the proposal.

Although this special voting provision provides a limited veto power to PMMs and CMMs with regard to proposed rule changes, the Commission believes that a certain level of protection to the equity owners-members in the Exchange is reasonable.[22] Inherent in the concept of a for-profit entity is the notion that those with equity interests in the entity should be afforded rights to protect those interests. It is impractical to expect persons to take up an equity interest in an exchange if they are not permitted to protect that interest in some fair and reasonable manner. In the scheme of self-regulation, however, this notion must be balanced with the requirement of fair representation of all members, not just those with equity interests. The Commission believes that the ISE's voting provision with respect to approval of proposed rule changes reaches an acceptable balance between protecting owner-members, non-owner-members, and the public interest.

b. Rights to Vote on Certain Corporate Actions

Each of the current exchanges has several different types of memberships with differing equity interests and voting rights.[23] ISE's voting structure is set up to recognize the difference in ownership interests among its members. PMMs and CMMs own memberships that represent equity interests in the Exchange. These memberships may be leased or sold to approved persons or entities. In contrast, EAMs do not own an equity interest in the Exchange. EAMs essentially have rights to trade on the Exchange, which are not transferable. Although all three classes of memberships elect representatives to the Board, as well as participate in the election of the non-industry directors,[24] when a vote of the membership is required to take certain action, the EAMs do not have the same rights as the PMMs and CMMs. Specifically, PMM members and CMM members have the right to vote on corporate actions like mergers, consolidations or dissolution of the Exchange, changes to the structure of the Exchange such as adding additional classes of members or increasing the number of memberships in a class, and amendments to the Constitution.[25] EAMs, however, do not generally have the right to vote on such actions.[26] EAMs only have the right to vote on changes to the Constitution or Operating Agreement that would affect their economic status on the Exchange, alter their voting rights, or change the composition of the Board of Directors.[27]

c. ISE's Structure Provides Fair Representation

Two commenters believe that the ISE's proposed governance structure provides the two classes of market makers, PMMs and CMMs, with undue influence over the operation of the Exchange, thereby not satisfying the fair representation requirement of the Exchange Act.[28] The Commission disagrees. First, only four out of the fifteen Board members will be representative of market makers (who are the equity owners). Second, the nominating committee is composed of a representative from each class and three non-industry representatives, at least one of whom must be a public representative, thereby providing for input in the nominating process from more than just the market makers. Third, the Board is composed of a majority of non-industry directors. Finally, although voting rights are determined by the type of ownership interest in the Exchange, *i.e.*, equity versus non-equity, all members and classes have an input in Exchange governance. Specifically, each class of members elects two representatives to the Board of Directors and participates equally in the election of the non-industry directors. Given these provisions, the Commission believes that the ISE's governance structure satisfies the fair representation requirement under the Exchange Act.

2. Chairman's Affiliation with a Member

The rules of certain national securities exchanges currently do not permit their respective chairmen to be a member of the exchange or affiliated with a member of the exchange.[29] The ISE's first Chairman, however, is affiliated with a member of the Exchange.[30]

As many commenters note, the affiliation of the Chairman with one of the Exchange's members implicates certain conflicts of interest, or at least gives the appearance of such conflicts. ISE asserts that the choice of their first chairman is very important to the success and credibility of the Exchange. To address the conflicts raised, the ISE's Constitution provides certain protections limiting the functions and role of the Chairman. First, the Chairman of the ISE is not an officer of the Exchange.[31] Thus, the Chairman does not have the authority to bind the Exchange. Second, no later than two years after the start-up of trading on the ISE, the Chairman will be appointed from among the non-industry directors.[32] Third, the functions that the Chairman will perform are substantially limited. The Chairman may preside over meetings of the Board of Directors, vote at meetings of the Board, serve on the Executive Committee of the Exchange,[33] call a special meeting of the ISE's members,[34] and receive resignations from Board members.[35] Given these safeguards and given the highly limited role of the Chairman, the Commission believes that the conflict concerns related to an affiliated chairman have been adequately addressed. Furthermore, the Commission notes that an interested director is prohibited from participating as a member of the Board or of any committee in any matter that would substantially affect his interest or the interests of any person in whom he is directly or indirectly interested.[36] This prohibition provides additional assurance that the Chairman will not participate in a matter in which he may have an interest by virtue of his

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21 *See* Amendment No. 2.

22 The Commission notes that this analysis applies only to situations where the equity owners are also members of the exchange. The analysis would be different where equity owners in an exchange were not also members of the exchange. In the event that equity owners were not also members of an exchange, the Commission might find that the non-equity members of the exchange were entitled to further special protections or rights.

23 *See, e.g.*, New York Stock Exchange ("NYSE") Constitution, Article II, Section 1 (concerning regular memberships, electronic access members and physical access members).

24 *See* ISE Constitution, Article IV, Section 1(a) and (d).

25 *See* ISE Constitution, Article III, Section 11(a).

26 *See* ISE Constitution, Article III, Section 11(b).

27 *See* ISE Constitution, Article III, Section 11(b).

28 *See* Chicago Board Options Exchange ("CBOE") Letter I, Amex Letter.

1 *See, e.g.*, CBOE Constitution, Article VIII, Section 8.1; Amex Constitution, Article II, Section 3. *But see* File No. SR–Amex–99–25. Amex has filed a proposed rule change with the Commission that would permit the Amex Chairman to be affiliated with a member.

30 The ISE's Chairman is Mr. William Porter. Mr. Porter is also Chairman of Adirondack Trading Partners, LLC ("ATP"), a founding member of the ISE and a proposed PMM on the Exchange. *See* ISE Form 1, Exhibit G.

31 *See* ISE Constitution, Article IV, Section 2.

32 *Id.*

33 The ISE's Executive Committee is composed of six directors, including the Chairman, the Vice Chairman, President of the Exchange, and three non-industry directors (at least one of whom must be public). The President of the Exchange is the Chairman of the Executive Committee. *See* ISE Constitution, Article VI, Section 2(a).

34 A majority of the Board, as well as a set number of members may also call a special meeting. *See* ISE Constitution, Article III, Section 3.

35 *See* ISE Constitution, Article IV, Section 4(a).

36 *See* ISE Constitution, Article IV, Section 11. Interested directors may be counted in determining the presence of a quorum.

affiliation with a member of the Exchange.

3. Officers

The Exchange will have a President, one or more Vice Presidents, a Treasurer, a Secretary and any other officers as may be appointed by the President. The President will be elected by a majority of the Board and is the Chief Executive Officer.

Generally, officers of the Exchange are not permitted to be members of the Exchange or be affiliated with members of the Exchange. If an officer owns a membership or is affiliated with a member upon his election to office, the officer must abstain from exercising voting rights with respect to the membership and must also lease the membership. The terms of the lease by an officer must be reasonable and approved by a majority of the non-industry directors.[37]

An exception to the general prohibition on officers owning memberships has been provided with respect to two individuals who are founders and who own CMM memberships.[38] Specifically, the initial President and Chief Executive Officer of the ISE is Mr. David Krell. The initial Senior Vice President of Marketing and Business Development is Mr. Gary Katz. As founders of ISE, Mr. Krell and Mr. Katz are to be compensated with memberships. Mr. Krell will receive four memberships and Mr. Katz will receive two. Again, commenters note that conflicts of interest arise where officers are permitted to own memberships or be affiliated with members. The ISE has provided a number of safeguards to protect against such conflicts. First, an officer of the Exchange who owns one or more memberships must abstain from exercising any voting rights associated with the membership(s).[39] Second, an officer who owns a membership must lease that membership and the terms of the lease must be reasonable and approved by a majority of non-industry directors.[40] Finally, except in the case where one or more officers is also a founder, the ISE will only permit one officer to be an owner of one or more memberships.[41] The Commission believes that these provisions should protect against an officer allowing his economic interest in the success of his membership from affecting his duties as an officer of the Exchange.

4. Delegation of Authority

Several commenters criticize the manner in which the ISE will delegate decision-making authority within the Exchange. These commenters believe that the ISE should be required to specify who or what will have the relevant decision-making authority, rather than stating that such authority resides with "the Exchange." In response, the ISE has amended several of its rules to provide more specificity.[42] The Commission believes that these and other rules are sufficiently specific to insure fair dealing and to protect investors.

C. Membership

As noted above, there will be three types or classes of members at the ISE: PMMs, CMMs, and EAMs.[43] The Exchange has established limitations on the number of memberships that a member may own, as well as on the number of memberships for which a member may be approved to trade on the Exchange.

1. Concentration Limits on Memberships

Several commenters criticize the concentrated ownership of the ISE in a few founders. Specifically, these commenters contend that a large portion of the ISE will be controlled or owned for a significant number of years by individuals, namely the ISE's founders, who will own the memberships for investment purposes and not for the purpose of conducting a securities business. Commenters also criticize the ISE for not requiring members to lease memberships if they are not engaged in trading on the ISE.[44]

The ISE has adopted concentration limits to restrict the number of memberships that one person, together with any person who directly or indirectly controls, is controlled by, or is under common control with the person, may own or lease. Generally, one person may not own or lease more than twenty percent of any class of memberships. The Exchange has the authority to further limit the number of Class A and Class B memberships that may be owned or leased by a member.[45] Specifically, ISE Rule 303(g) states that an applicant will be denied approval to purchase a membership if, together with any person who directly or indirectly controls, is controlled by, or is under common control with the applicant, that approval would result in the applicant owning and/or leasing more than one PMM membership or more than ten CMM memberships, unless the restriction is waived by the Board for good cause shown.

Many commenters noted that the ISE's Rules 303(g) and 317(a)[46] failed to define "good cause shown." In response, the ISE has defined "good cause shown" to mean a demonstrated operational, business or regulatory need. The ISE states that in those cases where such a need has been demonstrated to the Board, the Board will also consider any operational, business or regulatory concerns that might be raised if such a waiver were granted. Furthermore, the Board will only waive such limitations when, in its judgment, such action is in

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[37] *See* ISE Constitution, Article V, Section 2.

[38] *See* ISE Form 1, Exhibit I.

[39] *See* ISE Constitution, Article V, Section 2.

[40] *Id.* As founders, Mr. Krell and Mr. Katz will not be required to immediately lease or sell their respective memberships. *See* ISE Rules 300(a)(5) and 310. During the time that their memberships are held without being leased, however, there will be no voting rights associated with the memberships.

[41] *See* ISE Constitution, Article V, Section 2.

[42] *See* Amendment No. 2. Specifically, the ISE has amended the following rules: (1) Rule 411(h) (Significant Business Transaction) has been amended to specify that any exemption from the requirements of the rule receive approval by the Chief Regulatory Officer of the ISE; (2) Rule 417 (Limit on Uncovered Short Positions) has been amended to specify that the Board or a committee or Exchange official designated by the Board will make determinations or take action under this rule; (3) Rules 702 (Trading Halts), 704 (Unusual Market Conditions) and 717(g) (Limitations on Orders—Orders for the Account of Another Member) have been amended to specify that an Exchange official designated by the Board will make determinations and take actions under these rules; (4) Rule 802 (Appointment of Market Makers) has been amended to specify that the Exchange's Board or a committee designated by the Board will have responsibility for appointing, reviewing and suspending market makers; (5) Rule 804(e)(2)(iii) (Market Maker Quotations) has been amended to specify that an official designated by the Board will be responsible for calling upon a CMM to submit a single quote or to maintain continuous quotes in options when in the judgment of such official, it is necessary to do so in the interest of fair and orderly markets; and (6) Rule 1500 (Imposition of Suspension) has been amended to specify that the Board or a committee or Exchange official designated by the Board will determine when and if summary suspension is necessary or whether access to services by the Exchange may be limited or prohibited with respect to any person or member. In addition, ISE Rule 801 (Designated Trading Representatives) has been amended to remove reference to a "registration" requirement for Designated Trading Representatives ("DTR"). The text of the rule now makes clear that a DTR must be approved by the Exchange before he or she will be permitted to enter quotations and orders into the ISE's system on behalf of an ISE market maker member. The reference to a "registration" requirement had implied that the ISE was creating a new registration category for purposes of Form U–4, which it was not. ISE Rule 801(b)(4) also has been amended to specify that any conditional approvals of DTRs will be made by the Chief Regulatory Officer.

[43] Brokers that clear for other members must be approved EAMs. *See* ISE Constitution, Article I, Section 1(a)(f).

[44] *See, e.g.*, CBOE Letter 1.

[45] *See* ISE Constitution, Article II, Section 11(a); ISE Rule 303(g).

[46] ISE Rule 317(a), discussed below, concerns the limitation on the number of memberships with respect to which a member may be approved to trade on the Exchange.

the best interest of the Exchange.[47] As a general matter, the Exchange states that it anticipates granting such waivers primarily on a temporary basis when needed to address mergers, acquisitions and similar business combinations.[48] Accordingly, only in truly necessary circumstances will the Exchange permit a member to own or operate more than one PMM membership, and even in that case the member may not own or operate more than two PMM memberships.

Although founders of the Exchange have a temporary exemption from the above ownership concentration limits, not to exceed ten years,[49] a number of other limitations have been placed on founders' ownership of memberships. First, founders may not vote on changes to the Constitution (other than those that fall within ownership voting rights, *i.e.*, mergers, consolidations, dissolution). Second, founders may not exercise the right to vote for directors except with respect to those memberships that have been approved for trading on the Exchange. Third, when a founder leases a membership, it is required to transfer the membership voting rights to the lessee. Fourth, membership voting rights with respect to memberships for which a founder has not been approved to trade on the Exchange or which have not been leased are not considered "active" or "outstanding" either for voting or quorum purposes. Finally, to address the concern that founders might retain control of the exchange indefinitely, they are required to sell all of their memberships that exceed the concentration limitations within ten years of initiation of trading on the Exchange. The Commission believes that these restrictions adequately prevent the founders from having an undue ability to control the election of directors or the operation of the Exchange. In the Commission's view, the ISE's concentration limits and divestiture requirements address both the economic needs of the Exchange as a start-up venture and the statutory requirements that all members are fairly represented and that conflicts of interest are minimized.

2. Restrictions on the Number of Memberships That May Be Approve for Trading

a. Generally

The Exchange has established limitations on the number of memberships with respect to which the Exchange will approve a member to trade on the Exchange. Generally, the Exchange will approve a member to effect Exchange transactions pursuant to only one PMM membership. If a member can show good cause,[50] the Exchange may approve a member to effect Exchange transactions with respect to two PMM memberships.[51] Founders are subject to the same limits on how many memberships they may use for trading.

b. Initial Approval of Memberships

The Exchange also has established further limitations on the number of memberships that a member initially may use for trading.[52] These limits are based upon the number of members in each class that have been approved to effect Exchange transactions. Specifically, the Exchange will not initially approve a member to effect Exchange transactions with respect to more than one PMM membership until the Exchange has approved at least five other members to effect exchange transactions with respect to PMM memberships.[53] In addition, the Exchange has adopted a tiered approach with respect to multiple CMM memberships. The Exchange will not initially approve a member to use multiple CMM memberships for trading until the Exchange has approved a minimum number of different members to effect Exchange transactions with respect to CMM memberships.[54] The Commission believes that the ISE's approach to activating trading rights will protect against one or a few market makers dominating trading on the Exchange and, therefore, will promote competition.

3. Divestiture of Memberships Owned by Founders

To diversify the Exchange's membership, the Exchange's rules require the transfer of the memberships owned by founders that exceed the concentration limits over a certain timeframe. As noted above, founders will be permitted to exceed the ownership concentration limits on a temporary basis. The Exchange, however, has the authority to assure that founders make memberships available and divest their ownership of memberships within a reasonable time period where they exceed the concentration limits. Specifically, six years after trading begins on the ISE, the Exchange can offer those membership(s) for sale if a founder fails to lease or sell at least forty percent of the memberships that exceed the concentration limitations.[55] Within ten years of initiation of trading on the Exchange, founders must sell all memberships that exceed the concentration limitations. Again, if a founder does not meet this requirement, the Exchange may sell the number of memberships that exceed the concentration limits for the benefit of the founder.[56] The Commission believes that providing the ISE with the authority to sell off memberships where a founder does not dispose of memberships exceeding the concentration limits is appropriate to ensure that, over time, the interests on, and control over, the Exchange become increasingly diversified.

D. Discipline and Oversight of Members

As a prerequisite for the Commission's approval of an exchange's application for registration, the exchange must be organized and have the capacity to carry out the purposes of the Exchange Act. Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the federal securities laws and the rules of the exchange.[57]

The ISE's rules generally provide that it has disciplinary jurisdiction over its

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[47] *See* Amendment No. 2.

[48] The ISE states that the Exchange's management currently anticipates recommending that the Board grant a waiver of this provision only to ATP, a founder of the Exchange. This recommendation is due to ATP's position in funding the Exchange, and also due to the unique nature of ATP's membership. Specifically, ATP is owned by a consortium of broker-dealers and other entities, and thus ATP itself represents widespread ownership in the securities industry. The Board, which will have a majority of non-industry Directors, must determine that approval of management's recommendation is in the best interest of the ISE.

[49] *See* ISE Constitution, Article II, Section 11(c).

[50] *See supra* notes 46–48 and accompanying text (defining "good cause shown").

[51] *See* ISE Rule 317(a).

[52] *See* ISE Constitution, Article II, Section 11(b); ISE Rule 317(b)(1) and (2).

[53] *See* ISE Rule 317(b)(1).

[54] *See* ISE Rule 317(b)(2). To reiterate, although founders are exempt from the concentration limits on ownership of memberships for ten years, they are not exempt with respect to limitations on the number of memberships for which they may approve for trading on the Exchange. *See* ISE Constitution, Article II, Section 11(b).

[55] *See* ISE Rule 310(b)(5).

[56] *See* ISE Rule 310(b)(4). For example, if a member owned twenty CMM memberships, it would be required to lease or sell at least four (40% of 10 is 4) prior to six years after the date trading on the Exchange commences. If that member only leases or sells two of the memberships by six years after the date trading began on the Exchange, the Exchange would take control of two memberships and sell them for the member's benefit.

[57] Section 6(b)(1) of the Exchange Act, 15 U.S.C. 78f(b)(1). For purposes of ISE's regulatory authority and rules, EAMs are "Members" of the Exchange. *See also* Section 3(a)(3)(A) of the Exchange Act, 15 U.S.C. 78c(a)(3)(A) (defining the term "member").

members to enforce their compliance with the ISE's rules and the federal securities laws.[58] The ISE's rules also permit it to sanction members for violations of the Exchange's rules and violations of the federal securities laws by, among other things, expelling or suspending members, limiting members' activities, functions or operations, fining or censuring members, or suspending or barring a person from being associated with a member.[59] The Exchange's rules also provide for the imposition of fines for minor rule violations in lieu of commencing disciplinary proceedings.[60]

The Commission finds that the ISE's Constitution and rules concerning its disciplinary and oversight programs are consistent with the requirements of Sections 6(b)(7) and 6(d) of the Exchange Act in that they provide for fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the rules of the Exchange adequately provide it with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

1. Exchange Act Rule 17d–2 Agreements

Section 17 of the Exchange Act and Rule 17d–2 thereunder permit self-regulatory organizations ("SROs"), through so-called Rule 17d–2 agreements, to allocate certain regulatory responsibilities. Under Exchange Act Rule 17d–1,[61] a broker-dealer that is a member of more than one SRO has only one DEA, an SRO that is responsible for financial aspects of that broker-dealer's regulatory oversight. Exchange Act Rule 17d–2[62] permits SROs to enter into agreements whereby one SRO assumes regulatory responsibilities for member firms (so-called "joint members") that are members of both the examining SRO and another SRO. SROs that delegate an area of regulation to another SRO under a Rule 17d–2 arrangement are relieved of regulatory responsibility under the Exchange Act for that area. These agreements help to avoid duplicative oversight and regulation. Generally, these agreements cover such regulatory functions as personnel registration, branch office examinations and sales practices. All existing SROs have entered into such agreements. These agreements must be filed with and approved by the Commission.[63]

The ISE intends to enter into a Rule 17d–2 agreement with NASD Regulation and with the DOEAs under the Options Designation Plan ("examining SROs"). The ISE's rules require that all EAMs be members of at least one of the examining SROs.[64] Under these agreements, the examining SROs will examine firms that are joint members of the ISE and the particular examining SRO for compliance with certain provisions of the Exchange Act, certain of the rules and regulations adopted thereunder, certain examining SRO rules, and certain ISE rules. As noted above, these agreements must be filed with, and approved by, the Commission. Once filed, the Commission will publish these agreements for comment.

2. "Contracting Out" of Certain Regulatory Functions

Not all of the ISE's regulatory responsibilities will be allocated to another SRO under a Rule 17d–2 agreement. For those responsibilities that fall outside the scope of any Rule 17d–2 agreement, the ISE has contracted with NASD Regulation on a payment for services basis ("Regulatory Services Agreement").[65] Under the Regulatory Services Agreement, NASD Regulation will perform certain regulatory functions as an agent on behalf of the ISE. Specifically, NASD Regulation will process membership applications, will conduct certain "upstairs" investigations and will prosecute ISE enforcement actions. The ISE also intends to use the hearing panel infrastructure of NASD Regulation to conduct enforcement hearings.[66] Notwithstanding the fact that the Exchange will contract with NASD Regulation to perform these functions, the Exchange continues to bear ultimate regulatory responsibility.

Several commenters suggest that the ISE is attempting to abdicate its self-regulatory responsibilities by contracting out many of these functions to another SRO. The Commission disagrees. The Commission has previously recognized that contractual regulatory agreements between SROs outside of the Rule 17d–2 context may be permissible in instances where it is consistent with the public interest.[67] The Commission believes that it is reasonable and consistent with the public interest to allow an SRO to contract with another SRO to perform disciplinary and enforcement functions. Discipline and enforcement are fundamental elements to a regulatory program, and constitute core self-regulatory functions. It is essential to the public interest and the protection of investors that these functions are carried out in an exemplary manner, and the Commission believes that NASD Regulation has the expertise and experience to perform these functions.

At the same time, the Commission believes that it is important for, and that the Exchange Act requires, the ultimate responsibility and primary liability for self-regulatory failures to rest with the Exchange itself, rather than the SRO retained to perform the disciplinary and enforcement functions. Thus, the ISE will bear ultimate legal responsibility for the performance of its self-regulatory obligations. The SRO performing the function, however, may nonetheless bear liability for causing or, in appropriate circumstances, aiding and abetting the Exchange's violations.[68]

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[58] *See* ISE Rules, Chapter 16.

[59] *See* ISE Rules, Chapter 15.

[60] *See* ISE Rule 1614. Minor ISE rule violations include, for example, violating the position limit rules, failing to file FOCUS reports, failing to provide trade data, violating conduct and decorum policies, violating the order entry rules (Rule 717(a), (c)—(e)), violating the quotation parameters, or failing to execute orders in appointed options.

[61] 17 CFR 240.17d–1.

[62] 17 CFR 240.17d–2.

[63] For example, the Commission has approved a regulatory plan ("Options Designation Plan") filed by the Amex, CBOE, NASD, NYSE, Pacific Exchange ("PCX") and Philadelphia Stock Exchange ("Phlx") that allocates the regulatory responsibilities among these SROs for common members, by designating four of the participating SROs as the options examination authority for a portion of the common members. The SRO designated under the plan as a broker-dealer's options examination authority is responsible for conducting options-related sales practice examinations and investigating option-related customer complaints and terminations for cause of associated persons. The designated SRO is also responsible for examining a firm's compliance with the provisions of applicable federal securities laws and the rules and regulations thereunder, its own rules, and the rules of any SRO of which the firm is a member. *See* Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41265 (September 14, 1983).

[64] *See* ISE Rule 600. Although the rules of the ISE do not require that PMMs and CMMs be members of an SRO with which the ISE has entered into a Rule 17d–2 agreement, the ISE's membership application, which has been included as part of the Exchange's Form 1, states such a requirement. Accordingly, the ISE is not accepting membership applications from entities seeking to be members solely of the ISE. To change this requirement, the ISE would have to file a proposed rule change with the Commission under Exchange Act Rule 19b–4.

[65] Although the ISE's rules provide for disciplinary jurisdiction and procedures, investigatory processes, and arbitration procedures, the Exchange's Constitution provides it with the authority to contract with an SRO to perform some or all of these functions. *See* ISE Rules 1615 (disciplinary functions); 1706 (hearings and review); and 1835 (arbitration).

[66] *See* Amendment No. 1.

[67] *See* ATS Release, *supra* note 7.

[68] For example, if failings by NASD Regulation have the effect of leaving ISE in violation of any aspect of the Exchange's self-regulatory obligations, ISE would bear direct liability for the violation.

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Accordingly, although NASD Regulation will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for the ISE, NASD Regulation also may have secondary liability if the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws by the ISE.

The Commission has reviewed the terms of the Regulatory Services Agreement, which provides a detailed description of the functions NASD Regulation agrees to perform.[69] The Commission believes that this agreement provides for oversight of ISE members and enforcement of ISE rules and federal securities laws in a manner consistent with the public interest. Moreover, the terms under which NASD Regulation will perform certain regulatory functions for the ISE are sufficiently described so as to ensure a regulatory program that will satisfy the statutory requirements, including safeguarding against manipulation and fraud. Under this agreement, NASD Regulation will perform various regulatory functions, whereas the ISE will retain decision-making authority. For example, although NASD Regulation will process membership applications to ensure their completeness, the ISE will make all determinations regarding approval or denial of membership on the Exchange. The ISE will also determine whether to bring enforcement actions. Any hearing will be before an ISE hearing panel, consisting of a hearing officer (likely hired from NASD Regulation) and representatives of ISE members. In addition, the ISE's Board will have the opportunity to consider all appeals of ISE disciplinary actions before they can become final actions of the Exchange.

3. Surveillance

A number of commenters expressed concern about ISE's surveillance program, stating that they did not have enough information about it to make a determination concerning its adequacy. The Commission notes that, as a matter of Commission policy, surveillance programs and procedures are generally kept confidential.[70] The ISE has represented that it intends to administer its own surveillance system for trading on the Exchange. The ISE's staff will operate the system and be responsible for conducting all aspects of the daily surveillance of trading and its market activities.[71] These responsibilities will include, among other things, a real-time audit trail to monitor market participants and to detect abusive trading activity.

4. "Information Barrier" Between Market Making and "Other Business Activities"

Currently, the rules of several of the SROs impose certain restrictions on the business activities of a member or member organization that is affiliated with a specialist or member organization. However, a member or member organization that is affiliated with a specialist or market maker may obtain an exemption from these restrictions if certain procedures are established that restrict the flow of material, non-public information between the affiliated member and the specialist or market maker, *i.e.*, an "information barrier." For example, the rules of the NYSE provide that in order to obtain such an exemption, a member or member organization affiliated with a specialist or market maker must, among other things, establish another organization separate and distinct from the specialist or market making business. That is, "[t]he specialist member organization must function as an entirely freestanding, separate entity responsible for its own trading decisions, and may not function in any manner as a 'downstairs' extension of the 'upstairs' trading desk."[72] The rules of the PCX, however, do not require that a separate corporate entity be formed with respect to these business activities. PCX requires only functional separation, not organizational separation.[73]

Similar to the rules of the PCX, the ISE will permit its market makers to engage in other business activities, or to be affiliated with broker-dealers that engage in other business activities,[74] if there is an information barrier between the market making activities and the other business activities, *i.e.*, functional separation.[75] In other words, the ISE will not require a separate, affiliated broker-dealer organization to be established. Thus, a market maker on the ISE will be permitted to also be an EAM provided sufficient procedures are in place to ensure that the flow of material, non-public information between the two businesses is restricted. As with the rules of the other SROs, a member seeking an exemption from the restrictions on engaging in other business activities must obtain approval of its information barrier procedures from the Exchange.

The Commission finds that the provisions governing "other business activities" of market makers are consistent with Section 6(b)(5) of the Exchange Act in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Commission believes that the ISE's Constitution and rules provide for a clear separation of the market making activities of a firm and its affiliated brokerage business.[76] The information barrier between a market maker and affiliated EAM should protect against an inappropriate sharing of information that could result in market manipulation. The Commission expects the ISE to be vigilant in monitoring for possible abuses in this context.

E. The ISE Trading System

The ISE will operate an automated trading system for standardized equity options. It will conduct an agency auction market similar to the exchange markets currently in operation, although the auction will occur electronically and not on a floor. This section describes the most significant rules and procedures governing trading on the ISE.

1. Generally

Generally, each PMM and CMM on the ISE will enter its own independent quotations into the ISE System ("System"). PMMs and CMMs will enter size with their quotations, which must meet the minimum size requirements, established by the Exchange for the execution of customer orders. EAMs will enter agency and principal orders into the System. PMMs will have terminals that provide them with

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while NASD Regulation may bear liability for causing or aiding and abetting the violation.

[69] The ISE and NASD Regulation have requested confidential treatment for their contractual agreement pursuant to Section 24(b)(2) of the Exchange Act and 17 CFR 240.24b–2 thereunder.

[70] Disclosure of specific surveillance procedures could provide market participants with information that could aid potential attempts at avoiding regulatory detection of inappropriate trading activity.

[71] The ISE's operations are subject to inspection by the Commission. In addition, the ISE's surveillance plan and procedures, as well as the implementation of them, are subject to Commission inspection to ensure that the ISE adequately monitors its market and its members, and enforces its rules and the federal securities laws, including the anti-fraud provisions.

[72] *See* NYSE Rule 98 (and subsequent Guidelines).

[73] *See* PCX Rule 4.20.

[74] "Other Business Activities" means (1) conducting an investment or banking or public securities business; (2) making markets in the stock underlying the options in which it makes markets; or (3) functioning as an Electronic Access Member. *See* ISE Rule 810(a).

[75] *See* ISE Rule 810.

[76] One of the commenters asserts that the information barrier requirement is not sufficient to address concerns over internalization of order flow. *See* Sutherland Asbill Letter 2. This concern is discussed in conjunction with internalization below.

information on all of the orders and quotations pending in the System, while CMMs and EAMs will have terminals that display the best bid and offer ("BBO") currently quoted on the ISE in each options series, as well as the aggregate size of the BBO.

On the existing exchanges, market makers are appointed to options classes within particular physical "zones" on the trading floor.[77] Because the ISE will not have a physical trading floor, options classes will be divided into Groups of options classes.[78] Each Class A membership will represent the right to be the PMM in one Group,[79] and each Class B membership will represent the right to be a CMM in one Group.[80] One PMM and at least two CMMs will be appointed to each options class traded on the Exchange.[81]

Overall, there will be a total of 10 PMMs (one in each Group) and 100 CMMs (ultimately 10 in each Group). In addition to being able to enter quotations, PMMs and CMMs will be able to enter "immediate or cancel" orders[82] for options in their assigned Groups. Subject to certain limitations, PMMs and CMMs also will be permitted to place orders in any of the other Groups of options classes, but will not be allowed to enter quotations outside their assigned Group(s).[83] EAMs will not be permitted to enter orders that would effectively result in market making on the Exchange.[84]

2. Order Execution and Priority Rules

a. Generally

Trades will occur when orders or quotations match in the System. A customer order in the System (on the book) will always have priority. If more than one customer order has been entered into the System at the same price, priority will be based on the time of order entry. The System will not automatically execute a public customer order at a price inferior to the price quoted on another options exchange.[85] In this situation, the PMM must address such orders either by establishing parameters for matching away-market quotations or by handling them individually. The ISE states that, if a PMM decides to attempt to get the better price from the away market for the customer order, the order will remain in the System during this process. Thus, while a PMM may be seeking the away market price for the order, that order can be executed against a new incoming ISE market order at a price that would not "trade through" the away market.[86]

If a member enters a limit order into the System that crosses trading interest already in the System, a trade will occur, to the extent that size is available, at the price of the trading interest already in the System. After executing against that trading interest, the limit order will trade against other trading interest in the System until the limit order is filled in its entirety or the order depletes the available size at that price. If any amount of the limit order remains unexecuted, the balance of the order will become the best bid or offer.[87]

b. Internalization Issues

With the increase of multiple trading of options classes, the options markets are under significant pressure to attract or retain business. One approach to increasing business on an exchange is to allow members, including primary market makers and order entry firms, a preference in trading with customer orders they bring to the market. These preferences have the effect of reducing intramarket price competition by giving priority to a member based on its status as a specialist or as the firm that brought the order to the exchange as opposed to giving priority to a member first to quote at the best price. If exchange rules do not provide a fair opportunity to compete for orders based on price, firms and individuals could have less incentive to be competing market makers on an exchange and price competition may suffer. Eventually, if execution guarantees to particular exchange members become too great, competitive market makers within markets could diminish, and with them active or potential intramarket price competition. As a result, the published quotations, and the prices available on a market, could deteriorate—ultimately harming investors.

A number of commenters expressed concerns that the ISE's trading system would not foster vigorous intramarket competition, and would permit an inordinate amount of internalization of order flow on the ISE.[88] The Commission does not view the basic trading structure of the ISE as inconsistent with intramarket competition, or necessarily resulting in the pervasive internalization of order flow.[89] Therefore, the Commission finds that the ISE's trading system is consistent with Section 6(b)(5) of the Exchange Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[90] As with any other options market, however, the degree of intramarket competition is determined by the market's specific trading procedures, which will be set forth in the ISE's rules. As explained further below, for purposes of beginning trading, the ISE will need to file certain rule change proposals with the Commission pursuant to Exchange Act Rule 19b–4 to specify in the rules how it intends to allocate order flow.[91]

(i) Allocation Algorithm

ISE Rule 713(e) states that the Exchange will determine a procedure for allocating executions among non-customer orders and market makers in cases where all public customer orders have been executed and there are two or more non-customer orders or market maker quotes at the best price. The ISE, however, did not include this allocation algorithm in its Form 1 registration application. Commenters assert that the absence of the algorithm from the rule made meaningful comment unfeasible. The Commission does not believe it is necessary to address the allocation algorithm referred to in this provision for the purposes of registering the ISE as a national securities exchange. Following the approval of the ISE's

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[77] *See, e.g.*, PCX Rule 6.35 (providing that market makers may select up to six contiguous posts to comprise a "Primary Appointment Zone)".

[78] *See* ISE Rule 802(b). The ISE intends to trade all of the series of approximately six hundred actively-traded options classes, which it will divide into ten Groups of approximately sixty classes each. *See* ISE Form 1, Exhibit N.

[79] *See* ISE Constitution, Article II, Section 1(c).

[80] *See* ISE Constitution, Article II, Section 2(c).

[81] *See* ISE Rule 802(c).

[82] An "immediate-or-cancel" order requires that all or part of the order be executed as soon as the broker enters a bid or offer; the portion not executed is automatically canceled.

[83] *See* ISE Rules 805(b) and 804(a).

[84] *See* ISE Rule 717(b).

[85] *See* ISE Rule 714(a).

[86] *See* Amendment No. 1, Exhibit 6. The Commission notes that ISE may need to address certain of its order execution and priority rules when a national linkage is developed for the options markets. *See infra* note 108 and accompanying text and section E.2.c (discussing the proposed options linkage plans).

[87] In addition, trades will not necessarily occur when quotes of PMMs and CMMs match or cross each other. Such matches or crosses possibly could occur because market maker auto-quotation systems respond at different speeds. To address this issue, a trade between two or more market makers will only occur after the quotes remain matched for a defined amount of time, which will be less than one second.

[88] *See, e.g.*, Sutherland, Asbill and Brennan Letters 2 and 3, CBOE Letters 1 and 2, and Timber Hill Letter.

[89] "Internalization" is generally known as the direction of order flow by a broker-dealer to an affiliated specialist or order flow executed by that broker-dealer as market maker. *See* Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) at n.357 (File No. S7–30–95).

[90] *See* 15 U.S.C. 78f(b)(5).

[91] The Commission intends to publish these proposals in the **Federal Register** for comment.

registration application, the ISE will need to file a rule proposal with the Commission pursuant to Rule 19b–4 under the Exchange Act to establish the Exchange's order allocation algorithm.[92] Although the ISE has not included the allocation algorithm in its rules as currently proposed, it describes generally in its narrative response to the comment letters the principles by which the allocation algorithm will operate.[93] Specifically, all customer orders must be executed in full before any market maker quotes or professional orders are executed. In addition, a market maker quote or professional order must be at the ISE BBO to participate in an execution, and a market maker quote or professional order may never execute in an amount greater than the number of contracts in the quote or order. Priority among CMM quotes and professional orders at the ISE BBO will be based on size, participating in an execution based upon their proportion of the inside displayed size. A PMM, however, will participate in an execution in a somewhat greater proportion in relation to its quote size than a CMM, and when at the BBO will be guaranteed the right to trade against an entire order up to a size determined by the Exchange.[94] In other words, if the PMM is quoting at the ISE's BBO, it will have precedence over non-customer orders and CMM quotes for the execution of orders that are for a specified number of contracts or less ("Minimum Size"). The ISE did not include in its registration application what number of contracts would constitute the Minimum Size for purposes of this provision in ISE Rule 713(e). Two commenters assert that this provision granting PMMs the right to trade ahead of all other market participants (other than public customers) on all orders of less than the Minimum Size not only lacks specificity, but also could discourage other market participants, including CMMs and EAMs, from improving the quotes of a particular option series.[95] The Commission does not believe that failing to specify the Minimum Size referred to in this provision precludes registering the ISE as a national securities exchange because allocating some small orders exclusively to a PMM is not necessarily inconsistent with adequate intramarket competition. Following the approval of the ISE's registration application, however, the ISE will need to file a rule proposal with the Commission pursuant to Rule 19b–4 under the Exchange Act to establish the Exchange's Minimum Size referred to in this Rule.[96] This rule proposal must be consistent with statutory standards.

(ii) Block Order Mechanism

The ISE's rules provide a mechanism for handling block-size orders on the Exchange.[97] This mechanism generally adapts the block trading procedures followed on the existing options exchanges to the ISE's electronic system.[98] Specifically, a special "block order trading mechanism" ("BOM") will be available to EAMs to enable them to solicit market participation for block-size orders of fifty or more contracts.[99] As on the other exchanges, this mechanism is intended to minimize the market impact of large orders and uses a "quote request" methodology.

In general, the BOM will permit an EAM to seek out liquidity for the execution of block-size orders by electronically soliciting indications of the prices and sizes at which "crowd participants"[100] would be willing to trade with block-size orders. The BOM will enable an EAM to enter a block order along with a limit price.[101] The System will then broadcast an anonymous message to the crowd participants. The members of the trading crowd will have a specified amount of time in which to respond to the broadcast message with their indications.[102] The ISE represents that the responses are internal to the System and are not disclosed to any market participants, including the EAM entering the block-size order. At the end of the response period, the order will automatically be executed, unless there is insufficient size to execute the order consistent with the terms of the order.

Bids (offers) on the ISE at the time the block order is executed that are priced higher (lower) than the block execution price, as well as responses to the broadcast message that are priced higher (lower) than the block execution price, will be executed at the block execution price. Responses to broadcast messages, quotes and non-customer orders at the block execution price will participate in the execution of the block-size order.[103] After the trade is executed (or if there is no trade), all unexecuted responses are removed from the System and have no further standing.

One commenter contends that fifty contracts is a relatively small order size to be called block-size.[104] The Commission believes that fifty contracts is a reasonable size for use of a special execution mechanism like the BOM. First, the BOM is a mechanism by which EAMs must take the time to work an order on an order-by-order basis. Such effort should encourage EAMs to use this mechanism for larger orders they believe require special handling. Second, given that the average retail order is for less than ten contracts (thereby falling outside the definition of block), the BOM will not be available for most small retail orders.

Three commenters also criticize the ISE's limited dissemination of broadcast messages.[105] They assert that such a limitation inhibits opportunities for price improvement. The ISE responds that its limited broadcast is designed to involve those ISE members who express an active interest in trading the options series. The ISE also asserts that limiting the broadcast to market makers and members at the ISE BBO acts as an incentive to those members to provide additional liquidity at that price.[106] It appears that the ISE is attempting to emulate electronically the floor environment by limiting the persons to

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[92] The Commission intends to publish the proposal in the **Federal Register** for comment.

[93] The ISE's narrative response is included in Amendment No. 1. *See* Amendment No. 1, Exhibit 6.

[94] *See* ISE Rule 713(e).

[95] *See* CBOE Letter and Amex Letter.

[96] The Commission intends to publish the proposal in the **Federal Register** for comment.

[97] *See* ISE Rule 716. The ISE defines a block-size order as an order for fifty (50) contracts or more. *See* ISE Rule 716(a).

[98] Generally, on a traditional options exchange, a broker will represent a block-size order in the trading crowd (located on the trading floor) to discover what price and associated size is available to trade with the block order.

[99] *See* ISE Rule 716. Use of the BOM is not required for block-size orders. The fact that this feature is optional is similar to the other options exchanges where a broker has the option of representing a customer order at a trading post on a floor versus entering the order into an exchange's electronic order routing system.

[100] "Crowd Participants" is defined as market makers appointed to an options class under Rule 803, as well as other members with proprietary orders at the ISE BBO for a particular series. See ISE Rule 716(b).

[101] The functionality of the System allows the EAM to specify exactly what information will be disseminated to the market. The EAM using the BOM may determine the amount of information that will be disclosed in the broadcast to crowd participants. For example, the broadcast can disclose that there is a sell or a buy order, or it could ask for size on either side. The broadcast also may or may not display size or price or any conditions on the block-size order.

[102] The ISE's registration application did not contain the time period that crowd participants would have to respond to a block trade broadcast. The ISE will file a rule change prior to beginning trading to establish this time period.

[103] As noted above, the ISE will be required to file a rule change with the Commission proposing the Exchange's order allocation algorithm. *See supra* note 91.

[104] *See* CBOE Letter 1.

[105] *See* CBOE Letter 1, Amex Letter, and Sutherland, Asbill and Brennan Letter 2.

[106] *See* Amendment No. 1, Exhibit 6.

whom a block (or facilitation) broadcast message is sent. Currently, block and facilitated executions occur on the floors of the options exchanges without ever being exposed to anyone other than those persons standing in the trading crowd. The Commission believes that it may ultimately be desirable to expose block-size and facilitated orders more broadly than to a narrow, privileged audience in order to provide price improvement opportunities prior to their execution. Nonetheless, the floor-based exchanges do not currently operate in that manner. The Commission does not believe that an automated exchange like the ISE should be held to a higher display standard in this particular context by being required to expose these orders to participants that are not displaying interest in the option. To do so could favor non-automated markets. Because the ISE, as an all-electronic auction market for options, is the first of its kind in the options industry, the Commission believes it is appropriate to allow the ISE to limit its definition of "crowd participants" as described above. As electronic trading of options becomes more widespread, this issue of limited display may warrant reexamination.

Two commenters also expressed concerns that an order of as small as fifty contracts may be executed outside the NBBO, thereby failing to provide intermarket price protection for the person entering the block-size order.[107] The Commission notes that some block orders, by virtue of their larger size, may indeed need to be executed outside of the NBBO in order to be executed in full. Customers buying or selling large size orders are generally aware that the order may not be filled at the NBBO. This can often be the cost of getting a full execution. The ISE, however, will provide block protection to orders on the ISE book. In the event that there are better-priced quotes and orders on the ISE book at the time the block order is executed, those quotes and orders will have priority, and will receive price protection by being executed at the block price. They will not be executed at a worse price than the block price. It is true that the ISE will not provide intermarket price protection for persons entering block size orders, but, as noted above, this is often the cost of getting an execution in full. This is a cost that market participants entering block size orders generally are willing to pay so as to not grossly impact the market price while trying to have their order executed. Moreover, such orders are still subject to a broker's duty of best execution for its customer.

The Commission notes that it is currently considering several proposed options linkage plans,[108] all of which provide for intermarket price protection by containing a prohibition against trade-throughs.[109] Each of the plans provides that, in the event that a block trade trades through a better-priced market,[110] the better-priced market must be satisfied at the price of the transaction that caused the trade-through (*i.e.*, the block price). However, because the ISE's definition of "block" is for fifty contracts or more, block-size orders executed on the ISE that do not satisfy the plans' definition of "block trade" would be required to satisfy the price of the bid or offer that was traded through, rather than the block price.[111]

(iii) *Facilitation Mechanism*

The existing options markets have procedures governing the manner in which a member may facilitate a customer's order by trading with the order using its proprietary account.[112] This is referred to as a "firm facilitation." These procedures generally are tailored to exchanges with physical trading floors and traditional open outcry systems. Because the ISE will function as a fully automated auction market and will not have a trading floor, it has adapted a "firm facilitation" mechanism to an electronic context.

Specifically, ISE Rule 716(d) provides an EAM with the ability to use a special "facilitation mechanism" to enter a block size customer order (minimum of 50 contracts) and execute the order as principal. An EAM is not otherwise permitted to execute an agency order as principal unless the order is first permitted to interact with other interest on the ISE. When an order is entered into the facilitation mechanism, the ISE will send a facilitation broadcast to crowd participants.[113] The broadcast message is anonymous and informs crowd participants of the proposed transaction. The facilitation broadcast will contain information on the terms and conditions of the order, including the facilitation price. The identity of the EAM will not be disclosed. The recipients of the broadcast will have a designated amount of time, set by the Exchange, to respond.[114] The responses must be priced at the price of the order being facilitated and must not exceed the size of the order being facilitated. The responses will not be disseminated. If a crowd participant is willing to improve the price of a facilitation order, it may do so by entering its quote or order in the ISE order book at least ten seconds prior to the expiration of the facilitation broadcast, which provides the facilitating member the opportunity to consider whether it is willing to facilitate the customer order at that better price.

At the end of the set time period given, the facilitation order will be automatically executed in full. The facilitation order will be executed at the facilitation price unless there is sufficient interest on the ISE order book to execute the order in its entirety at a better price. If the order is executed at the facilitation price, any better-priced orders or quotes on the order book will receive price protection in the same manner as the BOM, and thus will be executed at the price of the facilitation order. The EAM entering the facilitation order will be allocated a minimum of forty percent of the original size of the facilitation order, but only after better-priced orders and quotes, as well as public customer orders at the facilitation price are executed.[115] Responses to the broadcast, quotes and non-customer orders at the facilitation price will participate in the execution of the facilitation order according to an

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[107] *See* CBOE Letter 1 and Amex Letter.

[108] The Commission recently ordered the current options markets to work jointly toward establishing a national market system plan providing for the linkage of all the options markets. *See* Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674 (October 26, 1999) ("Options Linkage Order"). Three plans were filed by CBOE/Amex, Phlx and PCX. Copies of these proposed plans are available in the Commission's Public Reference Room under File No. 4–429.

[109] A trade-thorough occurs where a customer's order is executed on one exchange at a price inferior to that available on another exchange. Currently, intermarket trade-throughs can occur in the options markets because there is no efficient means for accessing quotes across these markets.

[110] The proposed plans uniformly define a "block trade" as a trade that: (i) is of block size, defined as 500 contracts or more and a premium value of at least $150,000; (ii) is effected at a price outside of the NBBO; and (iii) involves either a cross (where a member of the exchange represents all or a portion of both sides of the trade) or any other transaction that is not the result of an execution at the current bid or offer on the exchange.

[111] The plans differ with respect to the appropriate size of satisfaction.

[112] *See, e.g.*, Amex Rule 950(d), Commentary .02, and CBOE Rule 6.74(b).

[113] *See* supra note 100 (defining crowd participants).

[114] The ISE's registration application did not contain the time period that crowd participants would have to respond to a facilitation broadcast. The ISE will file a rule proposal prior to beginning trading to establish this time period. The Commission understands that the ISE intends this time period to be thirty seconds. The Commission intends to publish the proposal in the **Federal Register** for comment.

[115] In Amendment No. 1, the ISE proposed to give the EAM a guaranteed minimum participation right of fifty percent of the original size of the facilitation order. The ISE has reduced this participation right to forty percent. *See* Amendment No. 2.

allocation algorithm that will be established in ISE Rule 713(e).[116]

The Commission notes that the ISE has adopted an interpretive amendment to Rule 716(d).[117] Under this interpretation, it would be a violation of a member's duty of best execution to its customer if it were to cancel a facilitation order to avoid execution of the order at the better price. Use of the facilitation mechanism does not modify a member's best execution duty to obtain the best price for its customer. Accordingly, while facilitation orders may be canceled during the facilitation timeframe, if a member were to cancel a facilitation order when there was a superior price available on the ISE and subsequently re-enter the facilitation order at the same facilitation price after the better price was no longer available without attempting to obtain that better price for its customer, there would be a presumption that the member did so to avoid execution of its customer order by other market participants. This would violate the member's duty of best execution.

The Commission believes that this interpretation is important to ensure that brokers proposing to facilitate orders as principal fulfill their best execution duties to their customers. In the Commission's view, withdrawing a facilitated order that may be price improved simply to avoid executing the order at the superior price is a violation of a broker's duty of best execution. The Commission expects the ISE to establish procedures to surveil for violations of this best execution obligation.[118]

Commenters expressed concern that the ISE's facilitation mechanism would permit an EAM to internalize a significant amount of order flow. As mentioned above, the Commission is concerned about locking up large portions of order flow from intramarket price competition by granting certain market participants extensive participation guarantees. To address the concerns of the Commission and the commenters, the ISE has amended Rule 716(d)(4)(ii) to reduce a facilitating EAM's minimum participation right to forty percent of the facilitated order. This will leave at least sixty percent of each facilitated order available for participation by other market participants.

It is difficult to assess the precise level at which guarantees may begin to erode competitive market maker participation and potential price competition within a given market. In the future, after the Commission has studied the impact of guarantees, the Commission may need to reassess the level of these guarantees. For the immediate term, the Commission believes that forty percent is not clearly inconsistent with the statutory standards of competition and free and open markets.

c. Trade-or-Fade

PMMs and CMMs will have the ability to set parameters regarding their willingness to trade generally with a broker-dealer's proprietary order. When the Exchange receives such an order, any CMM or PMM quotations in the System will be executable only up to the size of the PMM's or CMM's pre-set parameters. The matching rules discussed above otherwise would remain the same. Upon completion of the trade, if a PMM or CMM that has established parameters for trading against a proprietary order does not provide a complete fill of the order, the PMM or CMM cannot continue to quote at that price and must move its quotation to the next level.[119] Orders of market makers on other options exchanges will be handled on an order-by-order basis by the PMM and CMMs.

One commenter criticizes the ISE's "trade-or-fade" rule.[120] It argues that the ISE's "trade-or-fade" rule, which replicates an identical rule on the other options exchanges, should not be permitted. It suggests that a "trade-or-fade" rule results in phantom quoting by market makers, which, in its opinion, invites market manipulation. It further asserts that a "trade-or-fade" rule would be particularly problematic on the ISE, given that the ISE intends to tally and display to members the aggregate size of all orders and quotes entered into the system at the BBO. The commenter argues that, if market makers are permitted to retreat from their quotes when they receive a broker-dealer order, then the quoted market will be illusory to broker-dealers.[121]

Although the Commission agrees that the concept of "trade-or-fade" raises some concern, for purposes of registration it will not hold the ISE to a different standard than that to which all of the existing options markets are currently held. Requiring the ISE to maintain firm quotes for non-customer orders at this time would put it at a competitive disadvantage in relation to the other options markets. The proposed options linkage plans would limit "trade-or-fade" policies with respect to principal and customer orders from other markets up to a certain size.[122] The Commission expects the options markets, including the ISE, to reassess the relevance of their internal "trade-or-fade" provisions at the time the linkage is implemented.

3. Limitations on EAMs and Non-Customer Orders

The ISE's rules contain certain unique provisions restricting competition by EAMs and highly automated customers.[123] The ISE asserts that these provisions are needed in light of its business model and the electronic nature of the Exchange. The ISE business model depends on competition between one PMM and ten CMMs per options class. To encourage participation by these market makers, it limits the ability of non-CMMs/PMMs to compete as market makers on equal terms in its automated system. The Commission does not believe that, given the ISE's fully automated auction market, this balance between market makers and non-market makers is inconsistent with the Exchange Act's requirements. The Commission believes that this determination, however, may require review in light of subsequent rule changes or experience with the extent of competition that develops within the ISE's structure.

a. Limitations on Market and Marketable Limit Orders

ISE Rule 717(a) prohibits EAMs from entering into the System, as principal or agent, non-customer market orders or non-customer limit orders that cross the market and that cannot be executed within two minimum trading increments of the best bid or offer. These orders will be canceled by the System. The ISE has represented that this provision is designed to limit volatility. The ISE believes that, in an electronic market, non-customer market orders have the potential to create market volatility by trading at different price levels until executed in their entirety.

One commenter asserts that this is the type of limitation that the Commission generally has been unwilling to approve

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[116] *See supra* note 92 and accompanying text.

[117] *See* Amendment No. 2.

[118] The Commission realizes that ensuring that ISE members do not re-enter facilitated orders on markets other than the ISE may be difficult. Nevertheless, the Commission expects the ISE to work with the other options markets through the Intermarket Surveillance Group to develop methods and procedures to monitor their members trading on other markets for possible best execution violations in this context.

[119] This provision is akin to the "trade-or-fade" rules of the other options exchanges. *See, e.g.*, CBOE Rule 8.51(b).

[120] *See* Timber Hill Letter.

[121] *See* Timber Hill Letter.

[122] *See supra* note 108.

[123] *See* ISE Rule 717.

in the past.[124] However, the Commission believes that this provision may be more appropriate in a fully automated auction market. Without such a restriction, it would be possible for non-customers to use large-size orders to quickly take out the entire electronic order book. Ultimately, a non-customer order could walk through the entire ISE book without other market participants having an opportunity to react. Because the book is wholly accessible electronically, the ISE's displayed prices could be eliminated without an opportunity for market makers to respond. In contrast, customer orders are much less likely to have this effect given their typically smaller size. Furthermore, it would be extremely difficult for customer orders to quickly take out the book because these orders receive intermarket price protection. The Commission is concerned that this provision may excessively limit access to broker-dealers to trade with the ISE's published prices. Nonetheless, in view of the untested nature of the ISE's electronic market, the Commission has no reason to believe at this time that this provision is inconsistent with the statute. Once experience is gained in the ISE market, this provision may need to be reassessed.

b. Restrictions on EAMs Acting as Market Makers

ISE Rule 717(b) prohibits EAMs from entering into the System, as principal or agent, limit orders in the same options series, for the account or accounts of the same or related beneficial owners, in such a manner that the EAM or the beneficial owner(s) effectively is operating as a market maker by holding himself out as willing to buy and sell such options contracts on a regular or continuous basis.[125] Essentially, this provision prevents EAMs from using limit orders to effectively quote and make markets on the ISE.

One commenter criticizes this provision.[126] It asserts that the regulatory costs and benefits likely to result from an exchange's prohibition of "off-floor market making" must be analyzed on an exchange-by-exchange or crowd-by-crowd basis. It suggests that the European electronic exchange model, which encourages market makers by charging them lower transaction fees rather than giving them monopoly rights, would be more appropriate.[126]

The Commission believes that this provision is reasonable in an effort to prevent EAMs from reaping the benefits of market making activities without having any of the concomitant obligations. Specifically, PMMs and CMMs have affirmative market making obligations, including providing continuous quotations during all market conditions.[128] The Commission also believes that the provision is designed to prevent customers from acting as unregistered market makers, and obtaining an unfair advantage by their orders always appearing at the top of the book by virtue of their public customer status. Moreover, this prohibition is appropriate to prevent public customers from continually entering limit orders of fewer than ten contracts, triggering certain PMM obligations. A PMM has the responsibility to assure that each ISE BBO disseminated market quote in each series of options is for a minimum of ten contracts. When the ISE BBO represents one or more public customer orders for less than a total of ten contracts at that price, the PMM is obligated to buy or sell at that price the number of contracts needed to make the disseminated quote firm for ten contracts.[129] This responsibility arises when the ISE receives a public customer limit order for fewer than ten contracts that would improve the ISE BBO.[130] The Commission believes that, if EAMs or beneficial owners were permitted to enter multiple customer limit orders to such an extent that they were effectively acting as market makers, and, at the same time, jump ahead of all other orders on the book, they would have an inordinate advantage over other participants on the Exchange.

c. Restrictions on Order Size

ISE Rule 717(c) prohibits EAMs from entering into the System, as principal or agent, multiple orders for a single trading interest if one or more orders is for less than ten contracts. This rule is designed to prevent EAMs from abusing a PMM's responsibilities. As noted above, a PMM has the responsibility to assure that each ISE BBO is always firm for a minimum of ten contracts. When the ISE BBO represents one or more public customer orders for less than a total of ten contracts at that price, the PMM is obligated to buy or sell at that price the number of contracts needed to make the disseminated quote firm for ten contracts.[131] Absent this prohibition, an EAM feasibly could break up an order for a single trading interest into several different orders of less than ten contracts each and trigger the PMM's obligation either to trade with each order at the improved price or to make up the difference in the size of the disseminated quote. The Commission believes that, if EAMs, as principal or agent, were permitted to enter multiple orders of less than ten contracts for a single trading interest, this would give them the ability to take advantage of the PMMs.

This provision also provides that non-customer orders for less than ten contracts will be rejected or cancelled automatically if such orders would cause the size of the ISE's BBO to be fewer than ten contracts. The Commission believes that, absent this provision, non-customer orders for less than ten contracts could cause the ISE BBO to be firm for less than ten contracts, in conflict with the ISE's business model of continually displaying a minimum of ten contracts. PMMs are not obligated to trade with these orders or to make up the difference in the disseminated size of the ISE BBO. This provision does not mean that all non-customer orders must be for ten or more contracts. It simply means that if a non-customer wants to improve the ISE BBO, it must do so for at least ten contracts.

d. Limits on Internalization

(i) Restrictions on Principal Transactions

ISE Rule 717(d) limits an EAM's ability to execute as principal orders it represents as agent. Specifically, an EAM may only execute as principal an order it represents as agent if (i) the agency order is first exposed on the ISE for at least two minutes, (ii) the EAM has been bidding or offering on the ISE for at least two minutes prior to receiving an agency order that is executable against such bid or offer, or (iii) the EAM uses the facilitation mechanism.[132] This provision is an attempt to prohibit an EAM from executing, as principal, an order it represents as agent unless the order is

[124] *See* CBOE Letter 1.

[125] The provision provides several factors that the Exchange will consider, among other things, in determining whether an EAM or beneficial owner effectively is operating as a market maker. *See* ISE Rule 717(b).

[126] *See* Timber Hill Letter.

[127] *See* Timber Hill Letter.

[128] *See* ISE Rule 804(e)(1) and (2).

[129] *See* ISE Rule 803(c)(1).

[130] This responsibility arises only when the aggregate ISE BBO falls below ten contracts, not when the size of an individual quote or order falls below this level. Hence, multiple quotes or orders for less than ten contracts may be on the order book at the ISE BBO without creating the need for the PMM to step in, so long as the aggregate size of the ISE BBO is equal to or greater than ten contracts.

[131] *See* ISE Rule 803(c)(1).

[132] The Commission notes that the ISE intends to propose, through a Rule 19b–4 rule filing, that this timeframe be reduced to thirty seconds. The Commission intends to publish the proposal in the **Federal Register** for comment.

first given the opportunity to interact with other trading interest on the Exchange. It is designed to prevent an EAM from internalizing order flow and to provide added opportunity for price competition.

Several commenters express concern that the System would permit its members to internalize a significant amount of order flow.[133] They assert that the ISE's rules contain loopholes that would permit members to internalize order flow. The ISE, in order to preclude internalization of a significant amount of order flow, has rules that would prevent an EAM from entering nearly simultaneous customer and proprietary orders before there is an opportunity for the customer order to interact with other trading interest on the ISE.

The Commission believes that the restrictions on EAMs trading as principal with orders they represent as agent, the limitations on solicited orders, as well as the three interpretations (discussed below) that the ISE has adopted should adequately protect against the internalization of order flow by an EAM.[134]

(1) Prohibition on the Disclosure of Agency Orders

Commenters have said that under the ISE's rules, an EAM might be able to internalize orders indirectly through arrangements with third parties. In response, the ISE has adopted supplementary material to Rule 400 (Just and Equitable Principles of Trade) to address the concerns that a member might disclose certain information to a third party regarding agency orders.[135] Specifically, a member will be prohibited from disclosing to a third party [136] information regarding agency orders represented by the member prior to entering such orders into the ISE's System in order to allow the third party to attempt to execute against the member's agency orders. A member's disclosing information regarding agency orders prior to the execution of such orders on the ISE would provide an inappropriate informational advantage to the third party in violation of Rule 400.

The Commission believes that this interpretation should help to prevent an EAM from doing indirectly what it is prohibited from doing directly. The provision should prove beneficial in preventing members from "gaming" the System. Specifically, the interpretation is designed to ensure that members do not circumvent the intent to prohibit a firm from acting as both principal and agent unless the firm's agency orders have been exposed on the ISE for at least two minutes. An EAM generally must expose orders it represents as agent before it may execute them as principal. Absent the prohibition on the disclosure of this type of information, a member and a third party could potentially use the ISE to execute their orders with each other without exposing these orders to other trading interest. The Commission believes that this interpretation will do much to prevent a firm from trading as principal with orders it represents as agent with a third party with whom it shares a beneficial interest. In the Commission's view, this interpretation should prove helpful in curbing a firm's ability to internalize order flow.

(2) Prohibition on Trading Via Prearranged Transactions

The ISE represents that the intent of Rule 717(d) is to prevent an EAM from executing agency orders to increase its economic gain by trading against an order without first giving other trading interest on the ISE an opportunity to either trade with the agency order or to trade at the execution price when the EAM was already bidding or offering on the ISE book. Nevertheless, the ISE recognizes that it may be possible for an EAM to establish a relationship with a customer to realize similar economic benefits as it would achieve by executing agency orders as principal. To address this issue, the ISE has adopted supplementary material to provide that it will be a violation of Rule 717(d) for an EAM to be a party to any arrangement designed to circumvent Rule 717(d) by providing an opportunity for a customer to regularly execute against agency orders handled by the EAM immediately upon their entry into the System.[137] The Commission believes that this interpretation should be helpful in preventing an EAM from thwarting the restrictions on trading as principal. This interpretation is also a suitable prophylactic measure against possible gaming, mentioned above, of trading in the System.

e. Limits on Solicited Orders

ISE Rule 717(e) requires EAMs to expose orders they represent as agent on the ISE for at least two minutes before they may be executed in whole or in part by orders solicited from members and non-member broker-dealers to interact with such orders. This effectively requires an EAM to give agency orders an opportunity to interact with trading interest on the ISE before executing such orders against orders the EAM solicits from other broker-dealers. This provision does not limit an EAM's ability to cross an agency order with a solicited customer order.

One commenter questioned whether the ISE was attempting to distinguish between the solicitation of public customer orders from the solicitation of broker-dealer orders for the purposes of this rule.[138] The ISE represents that it distinguishes between public customer orders and broker-dealer orders in order to achieve a balance between the interests of EAMs and market makers.

The Commission notes that solicited public customer orders are currently treated differently on the CBOE and the Amex. The CBOE requires that orders solicited from a public customer be exposed to the trading crowd prior to an upstairs firm executing an order it represents as agent with that solicited order. In contrast, the Amex does not require an upstairs firm to present to the trading crowd an order solicited from a public customer prior to the upstairs firm crossing that order with an order it represents as agent.[139] The ISE has opted to follow the rule as it exists on Amex.

The ISE has adopted supplementary material to clarify that it will be a violation of ISE Rule 717(e) for an EAM to cause the execution of an order it represents as agent on the ISE by orders it solicited from members and non-member broker-dealers to transact with such orders, whether such solicited orders are entered into the System directly by the EAM or by the solicited party (either directly or through another member), if the member fails to expose those orders on the Exchange as required by ISE Rule 717(e).[140] The Commission believes that this interpretation is appropriate because it clarifies that solicited orders must be exposed on the System regardless of who enters such orders.

Overall, the Commission believes that requiring exposure on the ISE of orders solicited by an EAM should help to proscribe potential internalization of customer order flow by a firm representing an order as agent.

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[1] *See, e.g.*, Sutherland, Asbill, and Brennan Letters 2, and 3; CBOE Letter 1.

[134] *See* Amendment No. 2.

[135] *See* Amendment No. 2.

[136] For purposes of this provision, a third party includes any other person or entity, including affiliates of the member.

[137] *See* Amendment No. 2.

[138] *See* CBOE Letter 1.

[139] The Commission notes that in 1998 the Amex proposed to adopt a rule similar to the CBOE's regarding the treatment of solicited public customer orders. The filing was withdrawn by the Amex. *See* File No. SR–Amex–98–19.

[140] *See* Amendment No. 2.

f. Restrictions on the Electronic Generation of Orders

ISE Rule 717(f) prohibits members from entering, or permitting the entry of, orders created and communicated electronically without manual input unless such orders are non-marketable limit orders to buy (sell) that are priced higher (lower) than the best bid (offer) on the ISE (*i.e.*, limit orders that improve the best price available on the Exchange).[141] This provision is not designed, however, to prohibit EAMs from electronically communicating to the ISE orders manually entered by customer orders into front-end communications systems (*e.g.*, internet gateways, online networks).

Certain commenters criticize this provision by noting that the rule was likely created to prevent day traders with automated trading systems from sending orders to the ISE whenever they identify an arbitrage opportunity that could be capitalized by trading the option on the ISE and another related option on another exchange.[142] One commenter argues that because the Commission has rejected similar rule proposals in the past, the ISE should not be permitted to have such a rule.[143]

The Commission shares commenters' concerns that these provisions inhibit competition between automated customers and ISE market makers. In the equity markets, limit orders from active customers have been a valuable source of quote competition. Nonetheless, the Commission recognizes that the ISE's business model depends on market makers for competition and liquidity. Unlike flat open systems used elsewhere in the world, customer orders in ISE receive priority over market makers. Allowing electronic entry directly into a fully automated system could give automated customers a significant advantage over market makers. This could undercut the ISE business model. Moreover, the ISE's prohibition on electronically entered limit orders matching the best bid and offer still allows limit orders at improved prices. For these reasons, the Commission is unable to conclude that this limitation violates the statutory requirements. In the future, however, this limitation may need to be reviewed in light of experience with the ISE.

[141] *See* Amendment No. 2.

[142] *See, e.g.*, CBOE Letters 1 and 2.

[143] *See* CBOE Letters 1 and 2. The Commission notes that the proposals that the CBOE is referring to dealt primarily with the definition of a "public customer." See File Nos. SR–CBOE–93–20, SR–CBOE–95–23, and SR–CBOE–96–07.

F. Listing Procedures

The Commission notes that the ISE has filed its proposed listing procedures in Amendment No. 2. These procedures reflect those used by the existing exchanges trading standardized options and under which The Options Clearing Corporation ("OCC") operates. Although these procedures were not published in the **Federal Register** for notice and comment, the Commission notes that they have previously been approved for use by other exchanges after notice and comment.[144] Accordingly, the Commission believes that, in the interest of uniformity, it is appropriate to approve these procedures as part of the ISE's exchange registration.

G. Fees

The ISE has not included its proposed fee schedule in its registration application. Generally, changes to exchange fees are filed pursuant to Section 19(b)(3)(A) of the Exchange Act and are effective upon filing.[145] The ISE, however, will submit a rule filing regarding its fees pursuant to Section 19(b)(1)[146] and Rule 19b–4[147] thereunder prior to beginning trading. This will enable the fees to be published in the **Federal Register** for notice and comment, prior to Commission action. The Commission must find that the ISE's proposed fees are consistent with Section 6(b) of the Act,[148] in general, and further the objectives of Section 6(b)(4)[149] in particular, in that they will provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

H. Miscellaneous

Recognizing that the ISE is a new, fully electronic options exchange, the Commission believes it would be unwise and impracticable, at the outset, to cast the Exchange into a preconceived mold. The Commission believes that the ISE's governance provisions and trading rules are sufficiently clear for the purposes of granting it exchange registration. Requiring the ISE to provide a high degree of specificity with respect to certain of its rules before registration as an exchange is likely unfeasible because it will be difficult for the ISE to determine exactly who or what decisions may need to be made until the Exchange actually begins operating. As the ISE gains experience, the Commission expects that the Exchange will take appropriate steps to ensure, among other things, that its rules continue to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. However, as noted above, the ISE will be required to file certain rule changes with the Commission pursuant to Rule 19b–4 under the Exchange Act prior to beginning trading.[150]

The Commission also notes that the ISE will need to enter into several regulatory agreements and plans before it may begin trading. Specifically, the ISE must join the Plan for the Reporting of Consolidated Options Last Sale Reports and Quotation Information (known as the Options Price Reporting Authority), the OCC, the Intermarket Surveillance Group Agreement, the Joint-Exchange Options Plan, and the Options Sales Practice Agreement. In addition, as mentioned above the ISE intends to enter into a Rule 17d–2 agreement with NASD Regulation. This agreement must be filed with and approved by the Commission.

[144] *See* Exchange Act Release No. 29698 (September 17, 1991), 56 FR 48594 (September 25, 1991) (order approving the Joint-Exchange Options Plan).

[145] 15 U.S.C. 78s(b)(3)(A).

[146] 15 U.S.C. 78s(b)(1).

[147] 17 CFR 240.19b-4.

[148] 15 U.S.C. 78f(b).

[149] 15 U.S.C. 78f(b)(4).

IV. Conclusion

An appropriate order granting exchange registration will issue.

By the Commission (Chairman Levitt and Commissioners Johnson, Hunt, Carey and Unger).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4976 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–P

[150] *See* 17 CFR 240.19b-4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42455; File No. 10–127]

In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange; Order Granting Registration as a National Securities Exchange

February 24, 2000.

The International Securities Exchange LLC, having filed an application with the Commission for registration as a national securities exchange pursuant to Section 6 of the Securities Exchange Act of 1934 ("Exchange Act"); and

In reviewing the ISE's registration application, the Commission has weighed the particular rule provisions

against the regulatory objectives of the Exchange Act. Among other things, those objectives embody the concept that exchanges will deal fairly with the public; that exchanges will be organized in such a fashion as to ensure their continued viability in asserting self-regulatory oversight over their members; and that exchanges may, so far as is consistent with other regulatory objectives of the Act, maintain competitive viability with other exchanges. Applying these criteria, the Commission finds it in the public interest to declare effective the registration of the ISE on the basis of its present rules; and

It appearing to the Commission that the rules of the exchange provide for the expulsion, suspension or disciplining of a member for conduct or proceeding inconsistent with just and equitable principles of trade and declare that the willful violation of any provisions of the Exchange Act, or of any rule or regulation thereunder, shall be considered conduct or proceeding inconsistent with just and equitable principles of trade; and It further appearing that the exchange is so organized as to be able to comply with the provisions of the Exchange Act and the rules and regulations thereunder, and that the rules of the exchange are just and adequate to insure fair dealing and to protect investors; and

Finally, it appearing that the rules of the exchange do not impose any burden on competition that is not necessary or in furtherance of the purposes of the Exchange Act;

It is ordered that the application of the International Securities Exchange LLC for registration as a national securities exchange be, and hereby is, granted.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4977 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42456, File No. 4–429]

Joint Industry Plan; Notice of Filing of Proposed Option Market Linkage Plans by the American Stock Exchange, Chicago Board Options Exchange, Pacific Exchange, and Philadelphia Stock Exchange

February 24, 2000.

I. Introduction

On January 19, 2000, pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act")[1] and an order issued by the Securities and Exchange Commission ("SEC" or "Commission"),[2] the American Stock Exchange LLC ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), Pacific Exchange, Inc. ("PCX"), and Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission proposed plans for the purpose of creating and operating an inter-market option linkage ("plans").[3] As discussed below, Amex and CBOE filed identical plans (the "Amex/CBOE plan") and PCX and Phlx filed separate plans. Although the four exchanges achieved consensus on the majority of issues pertaining to a linkage, disagreement remains on several significant matters. Specifically, the exchanges failed to agree about whether the linkage should require routing of orders based on price/time priority,[4] who should have access to the linkage, and the appropriate remedy owed when one market trades at a price inferior to that displayed on another market (known as a "trade-through"). Pursuant to Rule 11Aa3–2(c)(1), the Commission is publishing this notice of, and soliciting comments on, the Amex/CBOE plan. The Commission is also publishing this notice of the PCX and Phlx plans, which differ from the Amex/CBOE plan with respect to certain elements which the Commission is considering including in a linkage plan[5] and as to which the Commission therefore also seeks comments.

II. Background

In 1975, Congress directed the Commission to oversee the development of a national market system.[6] At the time, the trading of standardized options was relatively new.[7] As a result, the Commission deferred applying to the options markets many of the national market system initiatives that applied to the equity markets to give options trading an opportunity to develop. Nevertheless, since the establishment of the options exchanges, the Commission has repeatedly called for market integration facilities for the options markets.[8] In 1991, in response

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[1] 17 CFR 240.11Aa3–2.

[2] On October 19, 1999, the Commission issued an Order directing the exchanges to file a national market system plan for linking the options markets within 90 days. Securities Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674 (October 26, 1999) ("October 19, 1999 Order").

[3] The Commission's October 19, 1999 Order also requested the International Securities Exchange ("ISE") to participate with the options exchanges in the development of an inter-market linkage plan. The ISE has filed an application with the Commission to register as a national securities exchange. *See* Securities Exchange Act Release No. 41439 (May 24, 1999) 64 FR 29367 (June 1, 1999). The ISE submitted a plan identical to that filed by Amex and CBOE. Because the Commission has not approved the ISE's application for registration as a national securities exchange, however, the ISE may not be a signatory to a linkage plan at this time.

[4] Both PCX and Phlx propose price/time priority as an element of the linkage. Price/time priority generally requires that if an exchange receives an order but it is not the first exchange to display the best price, that exchange must route the order to the exchange that was first at the best price. PCX and Phlx propose a number of textual distinctions from the Amex/CBOE plan to incorporate price/time priority. In the Phlx plan, many of the proposed modifications to the Amex/CBOE plan relate to an expanded role for the facilities manager. Although the term "facilities manager" is not defined in the plans, it is presumed by the plans to be an outside vendor who may be selected to build and operate a system linking the options exchanges' existing systems.

[5] Rule 11Aa3–2 specifically provides that the Commission may approve a proposed national market system plan "with such changes or subject to such conditions as the Commission may deem necessary or appropriate."

[6] Pub. L. No. 94–29 Stat. 97 (1975).

[7] The trading of standardized options on securities exchanges began in 1973, with the organization of CBOE as a national securities exchange. *See* Securities Exchange Act Release No. 9985 (February 1, 1973) 1 S.E.C. Doc.11 (February 13, 1973). Subsequently, the Commission approved options pilot programs at Amex, Phlx, PCX, and the Midwest Stock Exchange ("MSE"). The New York Stock Exchange ("NYSE") began trading options in 1985. *See* Securities Exchange Act Release No. 11144 (December 19, 1974) 40 FR 3258 (January 20, 1975); Securities Exchange Act Release No. 11423 (May 15, 1975) 6 S.E.C. Doc. 894 (May 28, 1975); Securities Exchange Act Release No. 12283 (March 30, 1976) 41 FR 14454 (April 5, 1976); Securities Exchange Act Release No. 13045 (December 8, 1976) 41 FR 54783 (December 15, 1976); and Securities Exchange Act Release No. 21759 (February 14, 1985) 50 FR 7250 (February 21, 1985). The MSE's options program was merged into the CBOE's program in 1979. The NYSE sold its options business to CBOE in 1997. Currently, Amex, CBOE, PCX, and Phlx are the only national securities exchanges that trade standardized options.

[8] *See* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978) (examining the major issues of market structure in standardized options markets, including multiple trading); Securities Exchange Act Release No. 16701 (March 26, 1980) 45 FR 21426 (April 1, 1980) (deferring expansion of multiple trading to afford the options exchanges an opportunity to consider the development of market integration facilities); Securities Exchange Act Release No. 22026 (May 8, 1985) 50 FR 20310 (May 15, 1985) (urging options market participants to consider the development of market integration facilities); Directorate of Economic and Policy Analysis, "The Effects of Multiple Trading on the Market for OTC Options" (November 1986); Office of the Chief Economist, "Potential Competition and Actual Competition in the Options Market" (November 1986); Securities Exchange Act Release No. 26871 (May 26, 1989) 54 FR 24058 (June 5, 1989) (requesting comment on three measures, including an inter-market linkage). In 1989, the Commission adopted Rule 19c-5, which generally prohibits any exchange from adopting rules limiting its ability to list any stock option class because that option class is listed on another exchange. *See* Securities Exchange Act Release No. 26870 (May 26, 1989) 54 FR 23963 (June 5, 1989). In proposing Rule 19c-5, the Commission acknowledged that market integration facilities were unlikely to be built voluntarily if they were a prerequisite to

to these calls, four of the five options exchanges submitted a proposal for the development of a linkage.[9] The plan was never adopted, in part, because a consensus among the exchanges could not be achieved regarding the feasibility of implementing a single linkage plan.

In February of 1999, Chairman Levitt wrote to the options exchanges expressing the need to develop system linkages and data processing facilities between the options markets.[10] On October 1, 1999, the Chairman again wrote to the options exchanges requesting their cooperation and consensus on an inter-market linkage plan.[11] On October 19, 1999, with no substantial progress having been made by the options markets to develop a linkage, the Commission ordered the markets to submit a linkage plan within 90 days.[12] The Commission required that, at a minimum, any plan submitted under the October 19, 1999 Order must include uniform trade-through rules and an expanded definition of public customer to include agency orders presented by competing exchanges.[13] On January 19, 2000, Amex and CBOE submitted the Amex/CBOE plan and PCX and Phlx filed separate plans. The plans diverge on several fundamental issues, the details of which are discussed below.

III. Description of the Plans

The three different plans submitted by the respective exchanges reflect numerous areas of agreement between the exchanges.[14] A brief summary of each section of the plans, highlighting their distinctions, is provided below. The full text of the separate plans submitted by the options exchanges is available on the Commission's website at *www.sec.gov*, at the principal offices of the options exchanges, and at the Commission.

A. Definitions

Section 2 of each of the plans defines specific terms for purposes of the plans.[15] With minor exceptions, the definitions proposed in each of the plans are generally consistent. For example, the plans define three types of "linkage orders": (1) "Principal acting as agent ("P/A") order," defined as an order for the principal account of a "market maker" authorized to represent customer orders reflecting the terms of a related unexecuted customer order for which the market maker is acting as agent; (2) "principal order," defined as an order for the principal account of an "eligible market maker" that is not a P/A order; and (3) "satisfaction order," defined as an order for the principal account of an exchange member who initiated a trade-through that is sent through the "linkage" to satisfy the trade-through liability.

As discussed below, the plans differ on the extent to which market makers should get access to the linkage with respect to proprietary business. The definition of "eligible market maker" is important because it delineates which market makers are eligible to participate in the linkage for their proprietary accounts. An "eligible market maker" is defined in the plans of Amex, CBOE, and PCX with respect to an "eligible options class," as a "market maker" that: (i) Is assigned to, and is providing two-sided quotations in, the eligible option class; (ii) is participating in its market's automatic execution system in such eligible option class; and (iii) is not prohibited from sending "principal orders" in such eligible option class through the linkage pursuant to the plan. These prohibitions are discussed below. Phlx would delete item (iii) of the definition to indicate its support for broader access to the linkage.

The term, "firm customer quote size," is defined in each of the plans. Under the plans submitted by Amex, CBOE, and Phlx, the exchange that receives a linkage order that is for a customer (*i.e.*, non-broker-dealer) account must guarantee automatic execution for at least ten contracts and up to the number of contracts guaranteed automatic execution for orders entered directly on the exchange. PCX's plan would require that a market be firm for at least 20 contracts for linkage orders for customer accounts up to the same maximum as the others. All of the plans define "firm principal quote size" as the number of contracts for principal orders that a receiving exchange will guarantee to execute. This number is 10 contracts under all of the plans.

B. New Parties to the Plan

Section 4 of each of the plans contains an identical, self-effecting provision for the admission of new participants, in which eligible exchanges[16] may become a party to the plan by: (1) Executing a copy of the plan, as then in effect; (2) effecting an amendment to the plan reflecting the addition of the new participant's name; and (3) paying the applicable fee, as discussed below.

C. Administration of the Plan

Each of the plans provides, in Section 5, for an Operating Committee, to be composed of one representative of each participating exchange, responsible for: (1) Overseeing the development and implementation of the linkage; (2) monitoring the exchanges' use of the linkage; and (3) advising the participant exchanges regarding the operation of the linkage. The plans also uniformly provide for the creation of a Member Advisory Committee, to be composed of between one and three members from each participating exchange, to advise the Operating Committee on linkage matters. Each participating exchange would have one vote on all matters considered by the Operating Committee and the Member Advisory Committee, respectively. Votes, except as otherwise specified in the plan, would be decided by a majority of a quorum of the Operating Committee.

The plans uniformly propose that amendments to the plan, other than with respect to the addition of new participants, as discussed above, may be effected only with the unanimous approval of the participating exchanges, and the approval of the Operating Committee and the Commission. The plans also provide a mechanism for dispute resolution, as discussed below.

D. Linkage Overview

Section 6 of each of the plans sets forth the responsibilities of each participating exchange for providing a linkage supervisory function to oversee

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multiple trading. *See* Securities Exchange Act Release No. 24613 (June 18, 1987) 52 FR 23849 (June 25, 1987). In 1990, then Chairman Breeden requested that the options exchanges develop an inter-market linkage plan. *See* Letter from Chairman Breeden to the Registered Options Exchanges dated January 9, 1990.

[9] *See* Securities Exchange Act Release No. 30187 (January 14, 1992) 57 FR 2612 (January 22, 1992) (soliciting comments on an inter-market linkage plan submitted by four out of five options exchanges).

[10] *See* Letters from Arthur Levitt, Chairman, SEC, to Richard F. Syron, Chairman and Chief Executive Officer, Amex; William J. Brodsky, Chairman and Chief Executive Officer, CBOE, Robert M. Greber, Chairman and Chief Executive Officer, PCX; and Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx; dated February 10, 1999.

[11] *See* Letters from Chairman Levitt, to Salvatore Sodano, Chairman and Chief Executive Officer, Amex; William J. Brodsky, Chairman and Chief Executive Officer, CBOE; Philip D. DeFeo, Chairman and Chief Executive Officer, PCX; and Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx; dated October 1, 1999.

[12] *See* note 2, *supra*.

[13] *Id.*

[14] As previously noted, Amex and CBOE filed identical plans and ISE has stated its intent to execute the Amex/CBOE plan as a signatory should the Commission grant the ISE's application for registration as a national securities exchange. *See* notes 3 and 4 and accompanying text, *supra*.

[15] Section 1 of the each plan contains a non-substantive preamble.

[16] The plans define an "eligible exchange" as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that is a participant in the Options Clearing Corporation ("OCC") and a party to the Options Price Reporting Authority ("OPRA") Plan.

the linkage and resolve inter-market trade problems. Administrative messages, either in free form or fixed format, could be sent through the linkage under all of the proposals. The Operating Committee would be authorized to determine how the linkage should be built and operated, including whether to select a facilities manager. The Operating Committee's decisions with respect to the selection of a facilities manager would require an affirmative vote of at least two-thirds of the members of the entire Operating Committee.

With respect to the implementation of the linkage, the Amex/CBOE plan and the Phlx plan would grant the Operating Committee the authority to phase in the implementation of the linkage. The PCX, however, specifically proposes a multiple phase implementation, as discussed further below. Under the PCX plan, the participating exchanges would conduct a study to assess the impact of the linkage during Phase I and, based on that study, develop an amendment to the plan for a second phase.

E. Linkage Operations

In Section 7 of the plans, the exchanges set forth the specific mechanics of the linkage. With respect to eligible option classes, each participating exchange would be required to furnish to OPRA the current bid-ask quotation emanating from its market. These quotations would be considered "firm" to the extent provided in the plans.[17]

1. Amex/CBOE Linkage Plan

The Amex/CBOE linkage plan proposes that the linkage be used for either customer orders, where the market maker chooses not to "step-up" to match a better price displayed on an away market, or principal orders.

(a) P/A Orders Eligible for Automatic Execution

The Amex/CBOE linkage plan would permit the transmission of a P/A order for execution in the automatic execution system of a participating exchange at the best price ("NBBO")[18] if the size of the P/A order is no larger than the firm customer quote size. The exchange receiving the P/A order through the linkage must execute it in its automatic execution system, if available, if its disseminated quotation is equal to or better than the limit price attached to the linkage order by the sending exchange ("reference price")[19] when the order arrives at the receiving exchange. The receiving exchange must immediately report the trade to OPRA. Except in limited circumstances, the proposal would not permit customer orders larger than the firm customer quote size to be broken up into multiple orders. Members would be prohibited from sending P/A orders eligible for automatic execution at a price inferior to the NBBO.

(b) P/A Orders not Eligible for Automatic Execution

With respect to P/A orders not eligible for automatic execution in the receiving market because the size of the order is larger than the firm customer quote size, the Amex/CBOE linkage plan provides two alternatives. First, a P/A order representing the entire customer order may be sent through the linkage. If the receiving exchange's disseminated quotation is equal to or better than the reference price of the incoming linkage order, the receiving exchange must execute that order for at least the firm customer quote size. Within 15 seconds of receipt of the order, the receiving exchange must inform the sending exchange of the amount of the order that was executed and the amount, if any, that was canceled. In the alternative, the sending exchange may send an initial P/A order for the firm customer quote size. If the receiving exchange executes that order and continues to disseminate the same quote at the NBBO 15 seconds after reporting the execution of the initial P/A order, the sending exchange may send a second P/A order. If it chooses to send the second order, that order must be for the lesser of 100 contracts or the entire remainder of the customer order the sending exchange is representing. Under either alternative, if the receiving exchange does not execute the entire P/A order, it must move its quote to a price inferior to the reference price of the P/A order.

(c) Handling of Principal Orders

For principal orders, the Amex/CBOE proposal would allow eligible market makers, as defined above, to send orders on behalf of their principal trading accounts as principal orders at the NBBO. If the principal order is not larger than the "firm principal quote size," the receiving exchange must execute the order in its automatic execution system, if available, if its disseminated quotation is equal to or better than the reference price when the order arrives at the receiving exchange. If the principal order is larger than the firm principal quote size, the receiving exchange must execute the order in its automatic execution system for at least the firm principal quote size and within 15 seconds of receipt of such order, inform the sending exchange of the amount of the order that was executed and the amount, if any, that was canceled. If the receiving exchange does not execute the entire principal order, it must move its quote to a price inferior to the reference price of the principal order. The sending exchange is not permitted to send a second principal order in the same eligible option class for at least 15 seconds after it sent the first principal order unless the receiving exchange changes its price and the price is at the NBBO. After the 15 second period, and until there is a change in the receiving exchange's disseminated quote, the exchange that initially sent the principal order for automatic execution may send only principal orders for greater than the firm principal quote size. The restriction on sending principal orders for automatic execution would expire one minute after the automatic execution of the first principal order.

(d) Obligations for Failure to Respond to Linkage Orders

A member that sends a P/A order or principal order through the linkage and who does not receive a reply within 30 seconds may reject any response received thereafter purporting to report a total or partial execution of that order. The member that sent the original order must inform the receiving exchange that it is rejecting the response within 15 seconds of receiving it. Upon receiving the rejection, the receiving exchange must report a cancellation to OPRA.

2. PCX Linkage Plan

The PCX proposal would incorporate a price/time priority feature into a phased implementation schedule for customer orders for 20 contracts or less.[20] Specifically, the PCX proposes

[17] The plans also uniformly propose procedures for the minimum information to be included in a linkage order, order validation, routing, responses, and partial executions.

[18] The plans uniformly define the term "NBBO" as the national best bid and offer in a series of an eligible option class calculated by a participating exchange.

[19] Except with respect to a "satisfaction order," defined above, the reference price is equal to the quotation disseminated by the receiving exchange at the time the linkage order is transmitted. With respect to a "satisfaction order," the reference price is the price to which the member in the sending exchange is entitled pursuant to the linkage plan.

[20] On November 10, 1999, Chairman Levitt requested the options exchanges and ISE to submit within thirty days a detailed statement of their views on whether incorporating price/time priority into an inter-market linkage plan would be beneficial to investors and the options markets. *See* Letters from Chairman Levitt, to Salvatore Sodano, Chairman and Chief Executive Officer, Amex; William J. Brodsky, Chairman and Chief Executive Officer, CBOE; Philip D. DeFeo, Chairman and

that during Phase I, customer orders for 20 contracts or less may be automatically executed by the exchange initially receiving the order only if that market is disseminating a quotation with price and time priority or, if the market is at the NBBO (although not first in time) and provides price improvement for that order.[21] If the exchange initially receiving the order is not at the NBBO when it receives the order, that exchange must automatically generate a P/A order and send it for execution to the away market that is disseminating a quotation with price and time priority, so long as the away market provides a firm customer quote size of at least 20 contracts in that particular eligible option class.

The PCX plan virtually mirrors the Amex/CBOE proposal with respect to the handling, during Phase I, of P/A orders not eligible for automatic execution in the receiving market (*i.e.*, orders for more than 20 contracts), principal orders, and other matters, such as restrictions on breaking up customer orders that are larger than the firm customer quote size. The PCX plan, however, differs from the other plans with respect to locked and crossed markets. The Amex/CBOE and Phlx plans propose language stating that the dissemination of locked and crossed markets must be avoided and that the participating exchanges will file with the Commission for approval uniform rules for unlocking and uncrossing markets. The PCX, conversely, would permit principal orders to be sent through the linkage for the purpose of unlocking or uncrossing markets.[22]

3. Phlx Linkage Plan

The Phlx proposal incorporates strict price/time priority, requiring each exchange to build a front-end system to route, as P/A orders, either directly through the linkage or to the facilities manager, all customer orders eligible for automatic execution where the exchange initially receiving the order was not the first to disseminate the best price. The Phlx proposal parallels the Amex/CBOE and PCX proposals with respect to other aspects of handling linkage orders for customer accounts, including the obligations on the exchange that receives a linkage order.

The Phlx plan tracks the Amex/CBOE and PCX plans with respect to the handling of principal orders, except that the Phlx proposal incorporates strict price/time priority and prohibits an eligible market maker from sending through the linkage principal orders not only at a price inferior to the NBBO, but also at a price equal to or inferior to the market quote disseminated on the eligible market maker's exchange.

4. ISE Alternative Proposal

In its transmittal letter, the ISE proposes an alternative plan for handling P/A orders. Under the terms of its proposal, member firms would be permitted to route orders to the exchange of their choice. If an exchange is quoting at the NBBO when it receives an order (regardless of whether it was the first market to quote at that price), that exchange would be permitted to execute the order and would owe no obligation to away markets. If, however, the exchange to which the order is initially routed by the member firm is not quoting at the NBBO when it receives the order, a market maker on that exchange may step up to match the best price and execute the order. If an away market that was quoting at the NBBO complains, however, the market that matched the NBBO would be required to provide "specified protection"[23] to those customer limit orders on the book of the complaining away market. If the exchange that receives the order from the member firm decides not to step up, it must route the order through the linkage based on price-time priority. The alternative proposal suggested by the ISE is here because it is not included in the plans submitted by the exchanges. Although the ISE's alternative proposal was not addressed specifically by any other exchanges, both Amex and CBOE's transmittal letters stated a commitment to further study the issue of customer limit order protection.

F. Implementation Obligations

1. Access to the Linkage

Section 8 of each of the plans sets forth, among other things, requirements relating to access to the linkage and order protection. With respect to P/A access, all of the plans agree that the linkage should not be used as an order delivery system in which all or a substantial portion of customer orders are routed through the linkage.

There are several significant differences between the plans with respect to appropriate limitations on principal access to the linkage. The Amex/CBOE plan proposes an "80/20 Test," which would be applied each calendar quarter and would limit principal access in the subsequent calendar quarter based on customer order volume executed on the principal's exchange.[24] Under this test, a market maker that effected 20 percent or more of its market maker volume by sending principal orders through the linkage in a calendar quarter would be prohibited from sending principal orders through the linkage for the next calendar quarter (*i.e.*, would not be an "eligible market maker" for that period). The PCX proposes to prohibit the transmission of principal orders, except to unlock or uncross markets or to satisfy trade-through liability. Under the Phlx plan, eligible market makers would be permitted to send principal orders through the linkage without limitation, so long as the market maker meets the Phlx's proposed definition of "eligible market maker."[25]

2. Order Protection

The exchanges all propose to prohibit trade-throughs (with certain exceptions discussed below), absent reasonable justification and during normal market conditions. The plans propose uniform exceptions to trade-through liability, including, among other things, systems malfunction, failure of the receiving market to respond to a P/A or principal order within 30 seconds, failure of the market traded through to complain within the specified time period, complex trades (to be defined by the Operating Committee), trading rotations, and non-firm quotations on the market that was traded through.

The plans propose identical language with respect to the responsibilities and rights of the participating exchanges following trade-through complaints and the proposed provisions relating to notice and mitigation of damages.

Chief Executive Officer, PCX; and Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx; dated November 10, 1999. The options exchanges and the ISE set forth their positions on this issue in their response letters, dated December 10, 1999. *See* Letters to Chairman Levitt, from Salvatore F. Sodano, Chairman and Chief Executive Officer, Amex; William J. Brodsky, Chairman and Chief Executive Officer, CBOE; Philip D. DeFeo, Chairman and Chief Executive Officer, PCX; and Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx; dated December 10, 1999.

[21] If the exchange receiving the order is at the NBBO but does not have time priority and is not willing to provide price improvement, it must send a P/A order to the away market that is at the NBBO with time priority.

[22] In fact, as discussed below, the PCX proposes to permit principal access to the linkage only to send orders to unlock or uncross markets or to satisfy trade-through liability.

[23] ISE did not define the term "specified protection" in its transmittal letter. The Commission seeks public comment on how, if at all, that term should be defined. *See* Section IV.

[24] Incoming P/A orders, but not outgoing P/A orders would be included in this calculation.

[25] As noted above, Phlx defines an "eligible market maker" as a "market maker" that is assigned to, and is providing two-sided quotations in, the eligible option class and is participating in its market's automatic execution system in such eligible option class.

With one exception, the exchanges agree on the appropriate satisfaction of trade-throughs, either by satisfying the complaining market, adjusting the price, or canceling the trade. If customer orders constituted either or both sides of the transaction involved in the trade-through, each customer order would receive the price of the trade that caused the trade-through, or the satisfaction price, if the trade-through was satisfied, or the adjusted price, if there was an adjustment, whichever price is most beneficial to the customer order. The member initiating the trade-through is responsible for any differences.

The plans uniformly propose rules regarding the price at which the bid or offer that was traded through must be satisfied, yet differ on the appropriate size of the satisfaction. The satisfaction price would equal the price of the bid or offer, unless the transaction that constituted the trade-through was a block trade,[26] in which case satisfaction would be the price of the transaction that caused the trade-through. With respect to the appropriate size of satisfaction, in the absence of disseminated size, the Amex/CBOE and PCX plans would limit the satisfaction of a trade-through to the verifiable number of customer contracts in the market of each exchange that was traded through that were included in the disseminated bid or offer of that exchange subject to certain limitations. In particular, if the number of contracts to be satisfied in one or more exchanges exceeds the size of the transaction that caused the trade-through, satisfaction will be limited to the size of the transaction that caused the trade-through. Moreover, if the transaction that caused the trade through was for a size larger than the firm customer quote size with respect to any of the exchanges traded through, the total number of contracts to be satisfied to all exchanges will not exceed the size of the transaction that caused the trade through and will be allocated *pro rata* based on the verifiable number of customer contracts traded through on each exchange. In the absence of disseminated size, the Phlx proposal would require that if the transaction was for a size larger than the firm customer quote size, the total number of contracts to be satisfied would not exceed the size of the transaction that caused the trade-through on each exchange that was traded through.

G. Trade Comparison; Error Resolution

The plans submitted to the Commission propose uniform procedures for trade comparison and error resolution, set forth in Section 9 of the plans.

H. Trading Halts and Suspensions, Non-Firm Quotations, and Hours of Operation

In Section 10 of the plans, the exchanges uniformly propose procedures for trading halts and suspensions and non-firm quotations. Specifically, each exchange reserves the right to halt or suspend trading or declare market conditions to be non-firm in its market. In addition, where a particular market is closed, has halted or suspended trading, has not yet opened for trading, or has disseminated notice to the other linkage plan participants that its quotations are not firm in a particular options class, linkage orders may be neither sent to that exchange nor accepted by it through the linkage. In a scenario in which the exchange sending the linkage order halts or suspends trading, or declares its quotations to be non-firm subsequent to the transmission of a linkage order, the linkage order must be accepted and handled by the receiving exchange pursuant to the provisions of the linkage plan, unless the receiving exchange also halts or suspends trading, or declares its quotations to be non-firm.

I. Financial Matters

The plans all propose, in Section 11, to divide the development and operating costs of the linkage equally among the participant exchanges, while each exchange proposes to be solely responsible for the costs of any modifications to its systems needed to accommodate the linkage. The exchanges propose that the Operating Committee will, at least once a year, establish a participation fee to be charged to any eligible exchange that seeks to become a party to the linkage plan. The participation fee, which is proposed to reflect a new participant's pro-rata share of the costs of developing, maintaining, and enhancing the linkage, will be distributed equally to the then-current participating exchanges.

J. Withdrawal From the Plan

Section 12 of the plans provides that any participating exchange may withdraw from the plan with at least 30 days prior written notice.

K. Implementation of the Plan

The participating exchanges stated that the plan would be implemented upon the Commission's approval of a plan and related rules and the participants' completion of the development of the systems necessary to effectuate the linkage approved by the Commission. The exchanges propose that the linkage will be operable at any time that two or more participating exchanges are open for trading between 9 a.m. and 5 p.m. Eastern time.

L. Development and Implementation Phases

The exchanges expect that there will be a development phase subsequent to Commission approval of a plan. During that time, the Operating Committee will determine the manner in which to build and operate the linkage and whether to select a facilities manager. If the Operating Committee determines to select a facilities manager, it will issue a request for proposals describing the required functionality of the linkage, including a specification that the linkage be developed to accommodate the routing of P/A orders on a price-time basis, should the Commission determine that price/time priority should be a component of the linkage. PCX has proposed a phased implementation schedule, as described above. None of the other plans provide for a phased implementation schedule.

M. Impact on Competition

The plans filed by the exchanges provide for the creation of an inter-market linkage between the options markets. In its October 19, 1999 Order, the Commission found that establishing a linkage among the options markets would benefit investors by increasing competition among markets (and market participants) to provide best execution of customer orders. Given the recent increases in the listing of options classes that are traded on more than one options exchange, the need for an inter-market linkage has become increasingly acute. Without a linkage, the possibility of inter-market trade-throughs, discussed above, becomes increasingly common, to the detriment of investors and other market participants. A linkage between the options exchanges should reduce the frequency of inter-market trade-throughs, and provide a mechanism for satisfying the markets that are traded through when a trade-through occurs.

N. Terms and Conditions of Access

As described above, Section 4 of each of the plans contains an identical, self-effecting provision for the admission of

[26] The plans uniformly define a "block trade" as a trade that: (i) Is of block size, defined as 500 or more contracts and a premium value of at least $150,000; (ii) is effected at a price outside of the NBBO; and (iii) involves either a cross (where a member of the exchange represents all or a portion of both sides of the trade) or any other transaction that is not the result of an execution at the current bid or offer on the exchange.

new participants, in which any national securities exchange may become a party to the plan by agreeing, in an amendment to the plan, to comply with the provisions of the plan, and paying the applicable fee.

O. Method of Determination of Imposition, and Amount of Fees and Charges

The plans do not provide for the imposition of any fees or charges associated with the use of the linkage. Section 11 of each of the plans uniformly proposes the allocation among the exchanges of costs associated with the development, implementation, and maintenance of the linkage. As described above, the exchanges propose that the Operating Committee will, at least once a year, establish a participation fee to be charged to any eligible exchange that seeks to become a party to the linkage plan. The participation fee, which is proposed to reflect a new participant's *pro-rata* share of the costs of developing, maintaining, and enhancing the linkage, will be distributed equally to the then-current participating exchanges.

P. Method and Frequency of Processor Evaluation

Under Section 6 of the plans, the Operating Committee may determine to select a facilities manager. The selection of a facilities manager would require the affirmative vote of at least two-thirds of the members of the entire Operating Committee. A decision to remove, or not to renew the contract of, a facilities manager would likewise require the affirmative vote of at least two-thirds of the members of the entire Operating Committee.

Q. Dispute Resolution

Section 5 of each of the plans provides for a mechanism for the resolution of disputes arising under the plan.[27] The proposals provide for a procedure by which a participating exchange may request an interpretive opinion of a rule made by another participant on the application of the plan. The dispute must pertain to a situation involving a minimum loss of $5,000, which must have been established pursuant to the plan, including the mitigation provisions of the plan. All routine internal exchange surveillance reviews relating to the disputed ruling must have been completed prior to the request. Periodic reports on the functioning of, and experience under, the dispute resolution process will be submitted to the Operating Committee for its information and review.

R. Written Understandings or Agreements Relating to Interpretation of, or Participation in, the Plan

Not applicable.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed plans are consistent with the Act. In particular, the Commission seeks comment on the following issues:

1. What are the benefits and detriments of requiring that orders be routed to competing exchanges based on strict price/time priority? Should the plan include price/time priority?

2. Would a linkage that allows a market maker to step up to match the NBBO, but permits an away market to receive an execution if it was displaying a customer limit order at the price of the execution on the exchange that stepped up, provide desirable protection to customer limit orders?

3. How would a linkage system as described in the above question work in practice? Should satisfaction of a "trade at" be automatic or on a complaint basis? If by complaint, how long should the market whose limit order was "traded at" have to complain?

4. In ISE's alternative proposal, the term "specified protection" is not defined. What would be an appropriate level of satisfaction for a "trade-at"?

5. What other requirements might be imposed on a linkage that could protect customer limit orders on away markets?

6. Because quote size is not disseminated, the plan establishes a firm quote size for customer orders and principal orders and establishes different size criteria for satisfying trade-throughs. What is the appropriate size for these purposes?

7. Should the linkage plan require the options markets to disseminate quotes with size? If so, what time frame is reasonable to implement this proposal? How should the requirement that quote size be disseminated be balanced against concerns about constraints on options systems capacity?

8. Who should have access to the linkage?

9. In what way, if any, should access to the linkage be restricted for orders involving principal accounts?

10. What is an appropriate level of discretion for the proposed Operating Committee? In particular, should it have discretion to define plan terms such as "complex trade" as an exception to trade-through liability?

11. In what way, if any, will a linkage plan between the options markets impact competition?

12. Is it useful to require a unanimous vote in order to amend the plan? Would a super-majority (or a simple majority vote) to amend the plan be more or less appropriate than a requirement of unanimity? Under what circumstances, including those included in the plan, should a super-majority be required? Would a simple majority be more appropriate in any of those instances?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of the participating exchanges. All submissions should refer to File No. 4–429 and should be submitted by April 3, 2000.

Dated: April 3, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4978 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–P

[27] The proposed dispute resolution process is essentially the same process adopted by the Intermarket Trading System Operating Committee and approved by the Commission. See Securities Exchange Act Release No. 29194 (May 15, 1991) 56 FR 23318 (May 21, 1991).

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Federal Register

Thursday,
March 2, 2000

Part IV

Department of Transportation

Coast Guard

33 CFR Part 175 et al.

46 CFR Part 2 et al.

Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (PVSA); Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 175, 177, 179, 181, and 183

46 CFR Parts 2, 10, 15, 24, 25, 26, 28, 30, 70, 90, 114, 169, 175, 188, and 199

[USCG–1999–5040]

RIN 2115–AF69

Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (PVSA)

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes regulations that implement safety measures for uninspected passenger vessels under the Passenger Vessel Safety Act of 1993 (PVSA). This Act authorizes the Coast Guard to amend operating and equipment guidelines for uninspected passenger vessels over 100 gross tons, carrying 12 or less passengers for hire. These regulations will implement this new class of uninspected passenger vessel, provide for the issuance of special permits to uninspected vessels, and develop specific manning, structural fire protection, operating, and equipment requirements for a limited fleet of PVSA exempted vessels.

DATES: Comments and related material pertaining to 46 CFR 26.03–8 of this rulemaking must reach the Docket Management Facility on or before April 3, 2000. Comments and materials pertaining to the remaining portion of this rulemaking must reach the Docket Management Facility on or before May 31, 2000. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before May 1, 2000.

ADDRESSES: To make sure your comments and related material are not entered in the docket more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1999–5040), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, call Lieutenant Commander Michael A. Jendrossek, Office of Operating and Environmental Standards (G–MSO–2), Coast Guard, telephone 202–267–0836. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–5040), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½-by-11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Bareboat charter agreements have traditionally been used in the marine industry as a mechanism to allow long-term charterers the ability to assume operational control of a vessel. Under these charter agreements, the charterer assumes the rights and liabilities of ownership of the vessel. The charterer is usually responsible for conducting a pre-and post-charter survey of the vessel, hiring and firing the crew, and establishing the operational schedule of the vessel. Before 1993, the regulatory definitions of "passenger," "guest," and "consideration" inadvertently allowed individuals to create short-term vessel charter agreements in order to carry a large number of passengers. Any number of individuals could co-own a boat, like any other personal property. Also, they could carry guests onboard when a vessel was operated for pleasure. These conditions created an environment where a large number of people could be carried aboard an uninspected vessel under the auspice of ownership or recreation.

The Passenger Vessel Safety Act of 1993 (PVSA) (Pub. L 103–206) resolved this situation by clearly defining the following terms: "consideration," "passenger," "passenger vessel," "small passenger vessel," "uninspected passenger vessel," "passenger-for-hire," plus three other terms that are not part of this rulemaking. This would subject some formerly chartered vessels to Coast Guard inspection.

The PVSA also made several changes to the laws for vessels that carry passengers. First, the PVSA required a vessel of less than 100 gross tons to be inspected as a small passenger vessel if it is—

- Carrying more than six passengers, including at least one passenger-for-hire;
- Chartered with crew provided or specified by the owner or owner's representative and carrying more than six passengers;
- Chartered with no crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers; or
- A submersible vessel carrying at least one passenger-for-hire.

Second, the PVSA provided exemption for certain vessels that were unable to meet inspection criteria. Sixteen vessels applied to the Coast Guard for and four were granted exemptions. The PVSA authorized the Coast Guard to develop specific operating and equipment requirements for these vessels.

Third, the PVSA broadened the definition of uninspected passenger vessel to include vessels of at least 100 gross tons carrying not more than 12 passengers, including at least one passenger-for-hire; or that are chartered with crew provided or specified by the owners or the owners' representatives and carrying not more than 12 passengers. These vessels are commonly referred to as 12-pack vessels.

Vessels of at least 100 gross tons that carry more than 12 passengers, at least one of which is for hire, must be inspected as passenger vessels under Title 46, Code of Federal Regulations (CFR) subchapter H.

Fourth, the PVSA directed the Coast Guard to develop regulations necessary to implement equipment, construction, and operating requirements for uninspected passenger vessels operating as 12-pack vessels.

Fifth, the PVSA authorized the Coast Guard to develop regulations to issue special permits to uninspected vessels, thus broadening authority from the now standard excursion permit for inspected vessels to include special permits for uninspected vessels. Special permits may be issued to an uninspected passenger vessel for charitable purposes up to a maximum of four times in a 12-month period. Special permits may also be issued to the owner or operator of a vessel that is a registered participant in an event that the Commandant, U.S. Coast Guard declares as a Marine Event of National Significance.

On September 30, 1994, the Coast Guard published Navigation and Vessel Inspection Circular (NVIC) No. 7–94 to provide compliance and enforcement guidance to Coast Guard members on implementing the provisions of the PVSA while detailed regulations were being developed. The NVIC addressed the statutory changes in detail, including one of the more significant changes requiring all chartered vessels carrying more than 12 passengers to be inspected by the Coast Guard. The PVSA allowed these vessels to apply for inspection with a phase-in period for compliance. The period for application expired on June 21, 1994, and the period for compliance expired on December 21, 1996. With widespread public notification, several hundred charter vessels applied for and met the conditions for certification with the requirements of the PVSA and policy guidance of the NVIC.

The NVIC also provided extensive guidance to Coast Guard Marine Safety field units on implementing the provisions of the new law. For those interested in viewing a copy of NVIC 7–94, it is available in this rulemaking docket as indicated under **ADDRESSES** and also on the Internet at *www.uscg.mil/hq/g-m/nvic/index90.htm*.

On April 1, 1999, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (64 FR 15709), notifying the public of the intent of this rulemaking and requesting comments in several areas. A complete discussion of the comments follows.

Discussion of Comments

The Coast Guard received nine letters on the ANPRM. One letter provided answers to the 17 questions in the ANPRM. Comments from the other eight letters are summarized below.

One comment states that a second set of regulations should not be creafed for 12-pack vessels. We agree. The proposed requirements are an addition to existing regulations for uninspected passenger vessels, not a separate set.

One comment contends that safety equipment requirements for uninspected passenger vessels that are less than 100 gross tons operating as 6-packs are entirely appropriate for 12-pack vessels. It further states that people use the lifesaving equipment, so the size of the vessel being abandoned is not relevant. We disagree. Currently, an uninspected passenger vessel operating as a 6-pack vessel is only required to provide a Type I Personal Flotation Device (PFD) for each passenger, one ring buoy (for a vessel 26 feet in length and longer), and comply with recreational boating safety standards. An uninspected passenger vessel operating as a 6-pack, which can travel up to 100 miles offshore, is currently exempt from having to carry a 406 MHz Emergency Position Indicating Radio Beacon (EPIRB) or a survival craft (e.g., liferaft, life float, or buoyant apparatus). We determined that passenger safety is vastly improved by additional lifesaving equipment such as survival craft and EPIRBs.

The sinking of the M/V COUGAR in the Pacific Ocean off the coast of Oregon in September 1988 is an example of the type of incident that an uninspected passenger vessel can encounter. The COUGAR was a Coast Guard inspected small passenger vessel limited to a voyage of not more than 20 miles from a harbor of safe refuge because the master elected to have onboard a VHF/FM radio instead of a Class A EPIRB. On the day of the sinking, the COUGAR was operating as an uninspected passenger vessel (a 6-pack vessel), so the master could take a fishing charter of six passengers 50 miles offshore. Survivor testimony indicates that the master had trouble with the vessel's bilge system throughout most of the trip, and at the conclusion of the day's fishing, the vessel began to handle sluggishly due to accelerated flooding.

As the vessel began to sink, the master attempted to radio for help. Shore-based, search-and-rescue personnel did not receive the call, and there were no reports of radio contact from any of the vessels in the vicinity. The call for help was not answered. As water began washing over the decks at approximately 5:00 p.m., the passengers and crew abandoned the COUGAR. The only survival craft on the vessel was one buoyant apparatus, which helped people to stay together and afloat while they waited for rescue; however, it provided them no protection from exposure to the cold water.

The COUGAR was reported overdue to the Coast Guard at 9:30 p.m. that evening, after which the search began. There was limited information about where the COUGAR was going to fish that day, so a large search area was required. The search continued all night until a Coast Guard helicopter located the five survivors at 10:48 a.m. the next morning. Four persons, including the master and deckhand, died from hypothermia-related drownings while waiting for rescue.

We reviewed several incidents like this one to determine appropriate requirements for safety equipment on 12-pack vessels. We determined that a liferaft would more than likely have prevented the deaths attributed to exposure to the cold water. An EPIRB would have given the Coast Guard an immediate indication of distress and a signal to "home in" on when determining the vessel's location. This would have significantly reduced the hours between the occurrence of the incident and the start of the search-and-rescue operations. Therefore, we propose that 12-pack vessels have survival craft and a 406 MHz EPIRB onboard.

One comment states that the industry could not supply information and responses specific to the questions in the ANPRM since prior to the PVSA, the 12-pack classification did not exist for the industry to assess, and since PVSA, the underlying merchant mariner laws requiring crew rotation every 12 hours,

has made it difficult for vessels to operate as 12-packs under the U.S. flag. The comment further contends that most vessels operating as 12-packs are doing so in foreign waters, under a foreign flag. In the commentator's opinion, there are no U.S.-flag vessels operating as 12-packs on a commercially crewed basis. We disagree. Participation in the 12-pack class is available to U.S.-flag vessels under NVIC 7–94. We determined that there are approximately 100 vessels operating in compliance with the NVIC. It is unlikely that a vessel owner or operator would opt to engage in an activity that holds no economic benefit.

One comment indicates that construction and structural standards for uninspected vessels, regardless of size, have been in place and have been used successfully by industry. The comment discourages imposing construction or structural requirements by regulation for 12-pack vessels and encourages adoption of some industry standard, at the discretion of the builder. At the present time, we do not propose construction standards or structural requirements for uninspected passenger vessels operating as 12-packs.

Two comments request that the Coast Guard provide the 12-pack fleet with relief from crew-rotation requirements currently required by 46 CFR 15.705, which requires vessels greater than 100 gross tons to have a three-watch system when at sea. We concur with these comments in part and have developed regulations to provide 12-pack vessels relief from security watches while a vessel is adequately moored, anchored, or otherwise secured in a harbor of safe refuge. An additional requirement is that a 12-pack vessel operating under these conditions may not exceed 12-hours underway time in any 24-hour period.

Two comments request that this new class of passenger vessel be exempted from load line requirements. We disagree. The purpose of a load line assignment is more than just establishing a "waterline" mark on the hull. Although this mark does impose a minimum freeboard that, in turn, establishes reserve buoyancy for the vessel, load line assignment also requires periodic surveys to verify the seaworthiness (*e.g.*, weathertight and watertight integrity) of the vessel. Congress clearly understood this important purpose when it established the applicability provisions of the U.S. load line statutes codified in 46 U.S.C. chapter 51.

Commercial vessels more than 24 meters (79 feet) long that are engaged on international voyages must have an international load line assignment in accordance with the International Convention on Load lines, 1966 (as amended). In addition to its applicability to most commercial vessels, this also applies to yachts on charter and for vessels on voyages to trust territories (such as between the U.S. mainland and Puerto Rico, the U.S. Virgin Islands, Guam, etc.).

U.S. passenger vessels that are more than 100 gross tons, more than 24 meters (79 feet) long, and that operate solely on domestic voyages that cross outside the Boundary Line, are subject to U.S. load line requirements in accordance with 46 U.S.C. chapter 51 and 46 CFR parts 41 to 47 (subchapter E). In the legislative history to 46 U.S.C. chapter 51, Congress directly exempted "small passenger vessels" (less than 100 gross tons) from load lines with the reasoning that an equivalent level of safety could be established by regulations and Coast Guard inspection. All other vessels are subject to load line requirements. In the past, some large passenger vessels subject to subchapter H were able to evade load line requirements by an exception in their chartering arrangements. However, these vessels are now properly subject to the load line regulations.

One comment indicates that some vessel owners object to the load line mark itself for aesthetic reasons. The marks must normally be black (on light-colored hulls) or white (on dark-colored hulls), which may visually mar the color scheme of an elegant yacht. While researching the nature of the aesthetic objection, a suggestion was made that a vessel could still obtain a proper load line assignment but not actually have to mark the hull. The Coast Guard does not concur with this suggestion. We consider the hull marking to be a clear visual indication to port authorities that the vessel is subject to load line regulations and should be treated as such. However, we are sympathetic to the aesthetic concerns of the 12-pack industry. We propose to accept alternate colors for the load line marks on 12-pack vessels, provided there is an adequate level of contrast to the hull.

One comment suggests different options for the issuance of special permits. The question presented in the ANPRM was directed to see if persons were interested in participating in special permits, as prescribed by the PVSA. We agree with this comment and have developed a process where vessel operators may apply for special permits when operating their vessels under certain circumstances.

One comment suggests that the licensing requirement for 12-pack operators permitted by the NVIC be continued. This required mariners to hold operator of uninspected passenger vessel (OUPV) licenses to operate vessels of not more than 200 gross tons. The comment further suggested, in great detail, that a new five-tier license structure be instituted since a "one license fits all" philosophy is doing disservice to the mariner who operates at the low end of the classification scale. The comment also claims licensed applicants are required to digest extraneous information in order to obtain their licenses. This suggested structure would extend from a low level of OUPV of less than 16 feet to a motorboat of not more than 300 gross tons, limited to near coastal, oceans, Great Lakes or inland, carrying a maximum of 12 passengers. This comment also indicates changes to Table 10.910–2, "Subjects for deck licenses" commensurate with the licenses suggested.

The Coast Guard, where possible, is committed to implementing a simpler license structure. We contend that the bare minimum of solid professional knowledge required for the present OUPV license is worth achieving when six—now increased to 12—lives are in an operator's hands. We propose no change to the requirement for an OUPV license on a 6-pack vessel. For 12-pack vessels, we propose that operators hold a master's license of the appropriate tonnage, route, and restrictions for the service in which they will engage. We propose no modifications to Table 10.910–1 in response to this comment.

One comment calls for the issuance of an OUPV license to non-U.S. citizens regardless of the tonnage limitation. The Coast Guard disagrees with the suggestion of allowing unrestricted tonnage licenses for non-U.S. citizens. Title 46 CFR 10.466(f) allows issuance of an OUPV license, limited on its face to undocumented vessels, to a person who is not a citizen of the United States. Only vessels under five-net tons may be undocumented (this roughly equates to a boat of less than 25 feet). Title 46 U.S.C. 12110(d) states that a documented vessel, other than a vessel with only a recreational endorsement, must be placed under the command of a citizen of the United States. When a vessel carries passengers-for-hire, it is no longer "recreational" but "commercial."

One comment recommends changes to the licensing structure for 12-pack vessels and reevaluation of the existing OUPV-license structure. Another suggests changes to the license examination subjects, license limitations, and vessels on which

service is allowed. These comments are outside the scope of this rulemaking. Therefore, we forwarded them to the appropriate office for consideration.

One comment points out that the Social Security Administration now issues "tax numbers" to non-citizens instead of social security numbers and suggests that the Coast Guard accepts these numbers as equivalent to social security numbers. This comment is outside the scope of this rulemaking. Therefore, we forwarded the suggestion to the appropriate division at the Coast Guard's National Maritime Center.

One comment advises the Coast Guard to revamp the uninspected vessel regulations for all affected gross tonnage vessels. This comment is outside the scope of this rulemaking. Therefore, we forwarded it to the appropriate office for consideration.

Four comments involve issues about commercial fishing requirements versus 6-pack vessels. Concerns included the distance from shore that a 6-pack is permitted to operate, the safety equipment on board, safety drills, and crewing. The general request was for the Coast Guard to implement more stringent safety requirements on the 6-pack fleet. These comments are outside the scope of this rulemaking. Therefore, we forwarded them to the appropriate office for consideration. Some of the descriptions supporting these four comments indicate that the writer(s) may have witnessed violations to regulations. The Coast Guard strongly advises anyone witnessing a violation to report it to the local Coast Guard unit or Marine Safety Office without delay. If an incident goes unreported, appropriate action cannot be taken.

Discussion of Proposed Rule

We propose regulations that would change or add definitions, establish a new class of uninspected passenger vessel (12-pack vessel), expand the use of special permits, and establish operational and equipment requirements for PVSA-exempt vessels and 12-pack vessels.

(a) Definitions

We propose incorporating applicable definitions from 46 U.S.C. 2101 into 33 and 46 CFR. In addition, we propose adding certain definitions that will assist in clarification of different operating and equipment requirements that were not specified in the PVSA.

The following definitions are organized alphabetically rather than by section:

Boat. We would revise the definition of "boat" in 33 CFR 175.3, 177.03, 179.03, 181.3, and 183.3. The proposed change would revise the definition to include all uninspected passenger vessels subject to the requirements of 46 CFR subchapter C. This revision includes the new 12-pack class wherever the term "boat" is used.

Consideration. We propose adding the term "consideration" to 46 CFR 24.10 and 70.10 to mean an economic benefit, inducement, right, or profit given in exchange for passage on a vessel.

Oceans. We propose adding the term "oceans" to 46 CFR 24.10 to mean the waters of any ocean or the Gulf of Mexico more than 20-nautical miles offshore. This definition would clarify 12-pack requirements where the term "ocean" is used.

Passenger. We propose revising the definition of "passenger" in 33 CFR 175.3 and 46 CFR 24.10 and 167.107, and adding the definition to 46 CFR 28.10. This will align the use of the term "passenger" as defined by the PVSA and eliminate any confusion by deleting all reference to the previously used term "guest."

Passenger-for-hire. We propose adding the term "passenger-for-hire" to 46 CFR 24.10 to mean a passenger who has provided consideration for passage on a vessel.

Passenger Vessel. We propose revising the definition of the term "passenger vessel" in 46 CFR 70.10 and adding it to 199.30. This revision would add to the list of affected vessels a submersible vessel that is carrying at least one passenger-for-hire.

Recreational Vessel. We propose amending the term "recreational vessel" in 33 CFR 175.3 to exclude all vessels carrying passengers-for-hire.

Small Passenger Vessel. We propose adding the term "small passenger vessel" to 46 CFR 199.30. As used in part 199, a "small passenger vessel" would be a vessel that is less than 100 gross tons. Therefore, a 12-pack vessel would not be considered a "small passenger vessel."

Submersible vessel. We propose adding the term "submersible vessel" to 46 CFR 70.10, 114.400, 175.400, and 199.30 to mean a vessel that operates below the surface of the water.

Survival craft. We propose adding the term "survival craft" to 46 CFR 24.10 to mean any lifeboat, rigid liferaft, inflatable liferaft, life float, inflatable buoyant apparatus, buoyant apparatus, or small boat.

Underway. We propose adding the term "underway" to 46 CFR 15.301(a) to mean a vessel that is not anchored, made fast to shore, or aground. See the discussion of the 12-pack requirements for further implications to vessel operations due to this definition.

Uninspected passenger vessel. We propose adding the term "uninspected passenger vessel" to 46 CFR 24.10 to incorporate both 6-pack vessels and 12-pack vessels.

(b) 12-pack Requirements

The PVSA made a number of changes to the existing laws that required the implementation of immediate guidance to Coast Guard members on enforcement. To remedy this need, the Coast Guard published NVIC 7–94. We propose regulations that closely conform to the provisions for 12-pack vessels found in NVIC 7–94. In addition, we propose requirements for the areas where guidance was deferred until the rulemaking process. The portions of the PVSA that deal with inspection requirements for vessels regulated by 46 CFR subchapter T were incorporated through a previous rulemaking (61 FR 863, January 10, 1996).

We propose revising the application tables in 46 CFR, 2.01–7(a), 24.05–1(a), 30.01–5(d), 70.05–1(a), 90.05–1(a), and 188.05–1(a), that prescribe the appropriate operating subchapter under which a vessel is regulated. The tables were modified to incorporate the new class of uninspected passenger vessel (12-pack vessel), combine passenger vessel descriptions into one column, update the definition of the term "passenger," and other minor editorial changes that add clarity to the tables without changing the technical requirements.

We propose revising 46 CFR 10.466 by requiring that the individual who operates a 12-pack vessel possesses a license appropriate for the tonnage, route, and restrictions for the service in which the vessel will engage. This requirement is different from the OUPV-license requirement under the NVIC. This upgrade to the license requirement will ensure that an operator of a 12-pack vessel possesses competency specific to the size of the vessel and the vessel's route. Since a 12-pack vessel must be a vessel of 100 gross tons or more, this license upgrade is necessary to provide adequate safety.

We are proposing to delete 46 CFR 26.03–5. Title 46 CFR Part 4 adequately deals with accident and casualty reporting and penalties. A single source for information will eliminate the confusion that had previously existed between regulation cites. We are also proposing to delete all references to foreign vessels contained in 46 CFR 169.103(a). This will bring the regulations into line with 46 USC 2101. Under 46 USC 2101 (30) and (36), foreign vessels are not included within

the statutory definition of "sailing school vessel."

We propose regulations that establish minimal equipment and operating requirements for 12-pack vessels. Because of the distance from shore that a 12-pack vessel can travel, we would require that all 12-pack vessels carry survival craft for all persons aboard the vessel, regardless of route, while the vessel is carrying at least one passenger-for-hire. We are also requesting additional comments on this requirement to ensure that the final regulation meets the needs of passenger safety while not being onerous to the industry.

We propose that all 12-pack vessels have on board a Category I 406 MHz Satellite EPIRB when operating three miles beyond the territorial sea baseline and beyond three miles from the coastline on the Great Lakes. The 406 MHz EPIRB is a distress-alerting device that provides information that there is a vessel emergency and the position of the vessel in distress. EPIRBs used in conjunction with survival craft greatly enhance the chances for survival if an emergency occurs.

We propose to expand 46 CFR 15.705 to include 12-pack vessels. This section provides relief from multiple-watch systems required by § 15.705 when a vessel is adequately moored, anchored, or otherwise secured in a harbor of safe refuge (reflected through the definition of the term "underway"). The Coast Guard proposes adding language to § 15.855, which requires cabin watchmen and fire patrolmen on vessels carrying passengers overnight. Uninspected passenger vessels of 100 gross tons or more but less than 300 gross tons operating as 12-packs may substitute the use of various alarms and detectors for security watches. Each alarm must have both an audible and visual indicator located at the normal operating station and, if the normal operating station is not continually manned when not underway, in an alternative location that provides the crew and passengers immediate warning. To comply with this section, the following conditions must be met:

(1) Fire detectors must be located in each space containing machinery or fuel tanks in accordance with 46 CFR 181.400(c).

(2) All grills, broilers, and deep-fat fryers must be fitted with a grease extraction hood in compliance with 46 CFR 181.425.

(3) Heat and/or smoke detectors must be located in each galley, public accommodation space, enclosed passageway, berthing space, and all crew spaces.

(4) High water alarms must be located in each space with a through hull fitting below the deepest load waterline, a machinery space bilge, bilge well, shaft alley bilge, or other space subject to flooding from sea water piping, or other space below the waterline with a non-watertight closure.

(5) The vessel must be navigating underway for no more than 12 hours in any 24-hour period, and the master of the vessel must have chosen to operate with less than a three-watch system in accordance with 46 CFR 15.705.

We do not propose construction standards for 12-pack vessels in this rulemaking. However, if we determine that construction standards for 12-pack vessels are necessary, we may incorporate them at a later date.

(c) Excursion Permits

We may permit an inspected passenger vessel to engage in a temporary excursion operation with a greater number of passengers or an extended route, or both, beyond that permitted by the vessel's Certificate of Inspection when the operation can be done safely. An excursion permit issued for a vessel normally requires the vessel to meet criteria for the additional persons as well as augment its lifesaving capacity and manning for the duration of the excursion. Current requirements for obtaining an excursion permit for an inspected passenger vessel are located in 46 CFR 71.10, 115.205, and 176.204.

The PVSA allows the Coast Guard to develop regulations for special permits for uninspected vessels in certain situations (as is currently done for inspected vessels) under the authority of 46 U.S.C. 2113. We propose implementing this allowance as stated in the PVSA. We propose the criteria for special permits for charitable purposes in 46 CFR 26.03–6 and Marine Events of National Significance in 46 CFR 26.03–8.

Title 46 CFR 26.03–6 would allow the owners or operators of uninspected passenger vessels to donate their vessels to charities for fundraising activities under the following conditions:

- The event must support a bona fide charity or non-profit organization qualified under section 501(c)(3) of the Internal Revenue Code of 1986.
- All donations received from the fundraising must go to the named charity.
- An owner or operator may not obtain more than four special permits for an individual vessel in each 12-month period.

If the owner or operator exceeds the number of passengers the vessel is permitted to carry, or if the vessel's activity would otherwise require it to be inspected, the owner or operator may apply for a special permit. Application must be made to the local Officer in Charge, Marine Inspection (OCMI) before the intended voyage. The administrative and inspection criteria contained in 46 CFR 176.204 would apply to the issuance of any special permit. The owner or operator must allow adequate time for processing and approval of the special permit, and the vessel must meet all applicable safety standards.

If the OCMI is satisfied with the level of safety for the excursion, with the number of passengers, the route requested, and if the vessel meets any additional requirements, a special permit may be issued. The special permit will indicate the conditions under which it is issued, the number of persons the vessel may carry, the crew required, any additional lifesaving or safety equipment required, and the route for which the permit is granted. Each special permit is valid for one voyage of a donated vessel used for a charitable event.

Title 46 CFR 26.03–8 would allow special permits to be issued to the owner, operator, or agent of any vessel operating as a registered participant in a Marine Event of National Significance. A Marine Event of National Significance is an event that has substantial political or public interest as well as economic impact within the United States. Examples of past Marine Events of National Significance are those that occurred in conjunction with the 1964 World's Fair, the Bicentennial Celebration in 1976, Liberty Weekend and the rededication of the Statue of Liberty in 1986, and the Christopher Columbus Quincentennial in 1992.

The Commandant, as operational commander of the U.S. Coast Guard, has the authority to designate marine events as nationally significant. Event sponsors must request this determination in writing from the Commandant (G–M)at least one year prior to the event.

Factors to be considered in the Commandant's evaluation may include, but are not limited to, the following:

- The number of port visits scheduled for the event.
- Whether there is a high degree of public interest.
- Whether there is the expressed political interest of a governing body.
- Whether there is an expressed international interest.
- Whether the event will promote maritime education, cultural exchange or international goodwill through the gathering of participating vessels.

• Whether the event is structured in a manner that provides enhanced safety for the registered participants.

If the evaluation results in a decision that a marine event is nationally significant, the owners, operators, or agents of a vessel registered as participants may apply for special permits to carry passengers for the duration of the event. The vessel's master, owner, or agent must apply to the Coast Guard Officer in Charge, Marine Inspection (OCMI), who has jurisdiction over the vessel's first port of call in the United States. The OCMI may issue a special permit if he or she determines that the vessel can safely participate in the event. The permit will state the conditions under which it is issued. These conditions may include—

• The number of passengers the vessel may carry;

• The lifesaving and safety equipment it must carry;

• The route for which the permit is granted;

• The dates for which the permit is valid; and

• Any other condition the OCMI deems necessary to ensure the safety of the vessel's passengers.

We propose revising 46 CFR 2.01–45 "Excursion Permit" to include these new provisions for uninspected passenger vessels and Marine Events of National Significance as well as to include reference to subchapters K and T vessels, which may also engage in excursions.

(d) OpSail 2000

On May 15, 2000 a Marine Event of National Significance, OpSail 2000, is scheduled to begin. In order to align our regulations to meet the requirements of this event, the Coast Guard intends to issue a final regulation for 46 CFR 26.03–8 prior to May 15. To meet this schedule, a 30-day comment period is being provided in accordance with section 553 of the Administrative Procedure Act. The public is encouraged to submit timely comments on this section under the procedures described at the beginning of this notice and to be aware that the Coast Guard intends to have an appropriate regulation in place for OpSail 2000. A 90-day comment period is provided for all the remaining provisions of this NPRM.

(e) Exempt Vessels

This part of the rulemaking contains proposed regulations for vessels that became subject to Coast Guard inspection for the first time as the result of the Passenger Vessel Safety Act of 1993. The PVSA contained an allowance for the exemption of certain passenger vessels that—

(1) Are at least 100 gross tons but less than 300 gross tons; or

(2) Are former public vessels of at least 100 gross tons but less than 500 gross tons; and

(3) Applied for an exemption before June 21, 1994 and complied with all exemption requirements by December 21, 1996.

This exemption was limited to existing vessels that were in charter operation before the enactment of the law. The majority of these vessels were constructed of materials, and are of such arrangement, that prohibit them from complying with passenger vessel regulations. Although the actual size and operation of these vessels are similar to small passenger vessels, and in most cases the inspection and manning regulations for small passenger vessels are more appropriate, these vessels have not taken advantage of tonnage reductions to bring their gross tonnages below 100.

The PVSA contains exemption criteria that authorized the Coast Guard to develop specific operating and equipment requirements for vessels that met these criteria. We propose regulations for PVSA-exempt vessels in 46 CFR 70.05–18 and 175.118. Vessel owners and operators must ensure that their vessels meet the requirements of either subchapter T or K, except where the provisions of subchapter H apply. These vessels must also meet any requirements the OCMI may deem applicable to the vessel.

These proposed regulations contain the stability requirements for the vessels. If a vessel does not meet these stability requirements, its operating route will be restricted, provided it has a history of safe operation on these waters. The OCMI may further restrict the vessel's route, if the vessel's service, condition, or other factors affect its seaworthiness and safety.

The proposed requirements state the number of passengers the vessel may carry. In addition, the vessel must be crewed in accordance with 46 CFR subchapter T. Vessel officers must be licensed for the appropriate vessel tonnage. Licensed engineers may be required if the vessel's tonnage is at least 200 gross tons. When carrying 50 or more passengers, additional documented merchant mariners would be required.

We propose requiring the vessel's owner or master to comply with the lifesaving requirements contained in 46 CFR part 180, except that inflatable liferafts are required for primary lifesaving. A rescue boat or suitable rescue arrangement must be provided to the satisfaction of the OCMI.

We propose requiring the vessel's owner or master to comply with the fire protection requirements of 46 CFR part 181, except where vessels must be fitted with portable extinguishers per the requirements of 46 CFR 76.50 and to the satisfaction of the OCMI. Vessels that fail to meet the fire protection and structural fire protection requirements of subchapter T or K must meet equivalent requirements to the satisfaction of the OCMI or the Coast Guard Marine Safety Center.

We propose requirements for at least two means of escape from spaces accessible to passengers or used by the crew on a regular basis, as provided for in 46 CFR 177.500 and 78.47–40.

Vessels meeting these requirements will receive a Certificate of Inspection that contains a PVSA exemption. The PVSA exemption is valid for the service life of the vessel, as long as the vessel remains certificated for passenger service. Currently there are four charter vessels greater than 100 gross tons that meet the exemption criteria and have the PVSA endorsement. If the Certificate of Inspection is surrendered or otherwise becomes invalid, the owner and operator must meet the appropriate inspection regulations to obtain a new Certificate of Inspection without the PVSA exemption.

We propose adding § 70.05–18 to subchapter H Passenger Vessels. This section will contain the applicability to vessels operating under an exemption afforded in the PVSA for passenger vessels over 100 gross tons.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

The Coast Guard proposes regulations that implement safety measures for uninspected passenger vessels under the Passenger Vessel Safety Act of 1993 (PVSA). These regulations will address the confusion regarding bareboat charters, implement a new class of uninspected passenger vessels of at least 100 gross tons, provide for the issuance of special permits to certain

uninspected passenger vessels, develop alternative requirements for a limited fleet of PVSA-exempted vessels, and provide for the issuance of special permits for vessels registered as participants in Marine Events of National Significance.

This rulemaking proposes that vessels of at least 100 gross tons that are currently operating as uninspected passenger vessels and carrying 12 or less passengers have (1) an Emergency Position Indicating Radio Beacon (EPIRB), (2) enough survival craft for all persons on board, and (3) an operator with the appropriate master-level license. These vessels will have to comply with these new requirements to continue operating. The Coast Guard estimates that vessels operating in this type of trade are already in compliance with the proposed survival craft and licensing requirements; however, they are not in compliance with the EPIRB requirement. The use of EPIRBs provides the Coast Guard quicker response time, quicker location of the casualty, and provides the Coast Guard more information prior to the rescue attempt. The 10-year, present value cost of complying with the EPIRB requirement is estimated to be $100,588.

This rulemaking creates a class of vessel (*e.g.*, 12 pack) not previously in existence. If no vessel owner decides to enter this new class of vessel, the cost of this component of the rulemaking would be $0, as it is not a requirement for any existing vessel to enter this class. However, the Coast Guard estimates the owners of 570 vessels will choose to enter this class of vessel. The 10-year, present value cost of this non-mandatory component is $12,642,812. The Coast Guard considers the cost to be non-mandatory because owners are not required to enter this new class of vessel. While we have estimated the projected fleet size for this class of vessel, it is difficult for us to estimate the dollar value of the benefit accruing to the vessel owner. However, the vessel owner will look at his or her individual situation and only enter this new class if he or she perceives an economic benefit from entering.

Additionally, this rule affects uninspected vessels participating in Marine Events of National Significance. The Coast Guard will inspect the vessels not possessing the appropriate certification and issue special permits that allow these vessels to carry passengers during the event. Vessel owners will have an information request burden, as they must apply for permits. The 10-year, present value cost of this information collection request is $2,064. As participation in these events is not a requirement of the rulemaking, these costs are considered to be non-mandatory. There will be additional cost to the government due to inspections and travel. The 10-year present value of the additional cost to the government is estimated to be $75,111. The intent of this requirement is to provide a safer environment at Marine Events of National Significance. While there have been no notable past problems at such events, the Coast Guard is acting proactively to reduce the risk of marine casualties.

In summary, this rulemaking creates a new class of vessel and allows vessels not possessing the appropriate certification to participate in a Marine Event of National Significance if they pass a Coast Guard inspection. These are not requirements, so the costs associated with these changes are not counted in the total cost of the rulemaking. This rulemaking also requires uninspected passenger vessels greater than 100 gross tons and carrying 12 or less passengers to have (1) an Emergency Position Indicating Radio Beacon (EPIRB), (2) enough survival craft for all persons on board, and (3) an operator with the appropriate master-level license. Thus, the total 10-year present value cost of the requirements contained in this proposed rulemaking equals $100,588.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The only type of small entity that will be affected by this rulemaking is small business. While the size standards for the relevant Standard Industrial Classification (SIC) codes[1] considers enterprises with 500 or less employees to be small businesses, making practically all owners in the 12-pack industry small entities, the only mandatory cost in this rulemaking is the cost of an EPIRB. We do not expect that owners of vessels of this size and type, whose cost ranges from about $100 thousand to about $5 million, will consider an additional cost of $1,000 for an EPIRB to be significant. In addition, since the useful life of an EPIRB is indefinite, the annualized cost for this item over the 10-year period of analysis is $110[2], which is even more likely to be insignificant. The Coast Guard is also allowing a 6-month phase-in period for vessels to comply with the requirement to carry an EPIRB on board.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander Michael A. Jendrossek, Office of Operating and Environmental Standards (G–MSO–2), telephone 202–267–1055.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman annually evaluates these actions and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, dial 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who

[1] The relevant industries are Deep Sea Transportation of Passengers (4481) and Water Transportation of Passengers, N.E.C. (4489).

[2] Current, or 2000 dollars.

must collect the information, and an estimate of the total annual burden follows. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Vessel Inspection Related Forms and Posting Requirements Under Title 46 U.S. Code

Summary of The Collection of Information: This collection of information will be included under the current approved Office of Management and Budget (OMB) collection numbered 2115–0133 entitled Vessel Inspection Related Forms and Posting Requirements Under Title 46 U.S. Code.

Need for Information: The owners, operators, or agents of uninspected vessels participating in a Marine Event of National Significance must submit an application for excursion permits.

Proposed Use of The Information: Applications will be used to initiate the inspection process to determine whether these vessels are properly equipped to be granted the excursion permit.

Description of Respondents: The respondents are owners or operators of uninspected vessels participating in a Marine Event of National Significance.

Number of Respondents: The Coast Guard estimates that owners of approximately 175 vessels will require and apply for permits at Marine Events of National Significance in 2000.

Frequency of Response: The permits are only valid for the duration of the event. We estimate that the vessels that require these permits will only attend one Marine Event of National Significance in 2000. We further estimate that these events occur approximately once every 10 years.

Burden of Response: The time burden of this response request in 2000 is 43 hours for industry and 1080 hours for the government. The total cost of these burdens is $2,064 for industry and $75,111 for the government.

Estimate of Total Annual Burden: Since we estimate that Marine Events of National Significance will occur approximately every 10 years, the total annual burden is the total burden reported above divided by 10. The annual time burden for industry is four hours and the annual time burden for government is 108 hours. The annual cost of these respective burdens is $206 for industry and $7,511 for the government.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under DATES.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism Summary Impact Statement

We have analyzed this proposed rule under Executive Order 13132, Federalism.

It is well settled that States are precluded from regulating in the categories of vessel design, construction, and equipment—categories that are reserved for regulation by the Coast Guard under 46 U.S.C. 3306 and 3703(a). See *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978), which clearly evidences Congressional intent to preempt State law, because the exercise of State authority would conflict with the exercise of Federal authority under Federal statute. Also see *International Association of Independent Tank Vessel Owners (Intertanko)* v. *Locke*, 148 F.3d 1053 (9th Cir. 1998). Further, it is the position of the United States that all of the categories covered in 46 U.S.C. 3306 and 3703(a), 7101, and 8101 (e.g., design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels) are within the field foreclosed from State regulation. See the Brief for the United States at 26, *United States* v. *Locke; Intertanko* v. *Locke* (Nos. 98–1701 and 98–1706) (cert. granted 120 S. Ct. 133), available in LEXIS, Genfed Library, Briefs file. This rule falls into the above mentioned categories, thereby precluding state regulation. For this reason, consultation under section 6 of the Executive Order would not be meaningful and, therefore, is unnecessary.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(c), (d), and (e) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This proposed rule will not result in any significant cumulative impact on the human environment; any substantial controversy or substantial change to existing environmental conditions; any impact, which is more than minimal, on properties protected under 4(f) of the DOT Act, as superseded by Public Law 97–449 and Section 106 of the National Historic Preservation Act; or any inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 175

Marine safety.

33 CFR Part 177

Marine safety.

33 CFR Part 179

Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 183

Marine safety.

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 10

Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

46 CFR Part 24

Marine safety.

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 26

Marine safety, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 114

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 199

Lifesaving appliances and arrangements Marine safety, and Passenger vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 175, 177, 179, 181, and 183 as well as 46 CFR Parts 2, 10, 15, 24, 25, 26, 28, 30, 70, 90, 114, 169, 175, 188, and 199 as follows:

33 CFR Chapter I

PART 175—EQUIPMENT REQUIREMENTS

1. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. In § 175.3, revise the definition of the following terms, in alphabetical order, to read as follows:

§ 175.3 Definitions.

* * * * *

Boat means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operating as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C.

* * * * *

Passenger means an individual carried on a vessel except—

(1) The owner or an individual representative of the owner or, in the case of a vessel chartered without crew, an individual charterer, or an individual representative of the charterer;

(2) The master or operator of a recreational vessel; or

(3) A member of the crew engaged in the business of the vessel, who has not contributed consideration for carriage, and who is paid for onboard services.

* * * * *

Recreational vessel means any vessel being manufactured or operated primarily for pleasure, or leased, rented, or chartered to another for the latter's pleasure. It does not include a vessel engaged in the carriage of passengers-for-hire as defined in 46 CFR chapter I, subchapter C or in other subchapters of this title.

* * * * *

3. Revise § 175.110(a) to read as follows:

§ 175.110 Visual distress signals required.

(a) No person may use a boat 16 feet or more in length, or any boat operating as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C, unless visual distress signals selected from the list in § 175.130 or the alternatives in § 175.135, in the number required are on board. Devices suitable for day use and devices suitable for night use, or devices suitable for both day and night use, must be carried.

* * * * *

PART 177—CORRECTION OF ESPECIALLY HAZARDOUS CONDITIONS

4. The authority citation for part 177 continues to read as follows:

Authority: 46 U.S.C. 4302, 4311; 49 CFR 1.45 and 1.46.

5. Revise § 177.03(b) to read as follows:

§ 177.03 Definitions.

* * * * *

(b) *Boat* means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operated as an uninspected passenger vessel subject to the requirements of 46 CFR Chapter I, subchapter C.

* * * * *

PART 179—DEFECT NOTIFICATION

6. The authority citation for part 179 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 4302, 4307, 4310, and 4311; 49 CFR 1.46.

7. In § 179.03, revise the definition of the term "Boat" to read as follows:

§ 179.03 Definitions.

* * * * *

Boat means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operated as an uninspected passenger vessel subject to the

requirements of 46 CFR chapter I, subchapter C.

* * * * *

PART 181—MANUFACTURER REQUIREMENTS

8. The authority citation for part 181 continues to read as follows:

Authority: 46 U.S.C. 4302 and 4310; 49 CFR 1.46.

9. In § 181.3, revise the definition of the term "Boat" to read as follows:

§ 181.3 Definitions.

* * * * *

Boat means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operated as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C.

* * * * *

PART 183—BOATS AND ASSOCIATED EQUIPMENT

10. The authority citation for part 183 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

11. In § 183.3, revise the definition of the term "Boat" to read as follows:

§ 183.3 Definitions.

* * * * *

Boat means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operated as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C.

* * * * *

46 CFR Chapter I

PART 2—VESSEL INSPECTIONS

12. The authority citation for part 2 continues to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3103, 3205, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. Note prec.1).

13. In § 2.01–7, redesignate table 2.01–7(A) as table 2.01–7(A) and revise it to read as follows:

§ 2.01–7 Classes of vessels (including motorboats) examined or inspected and certificated.

(a) * * *

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Table 2.01-7(a)

Method of propulsion, qualified by size or other limitation.[1]	Vessels inspected and certificated under–			Vessels subject to the provisions of–		
	Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1) Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iiii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, 6 And 7.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(2) Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 2.01-7(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under–			Vessels subject to the provisions of–		
		Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 6] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 2.01-7(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under–			Vessels subject to the provisions of–		
		Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels < 100 gross tons carrying more than 6 passengers or passengers-for-hire.[7] ii) All vessels ≥ 100 gross tons carrying more than 12 passengers or passengers-for-hire.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, 6 and 7.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iiii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), and N (Dangerous Cargoes) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in the Passenger Vessel Safety Act of 1993 (46 U.S.C. 2101(21)(21a)). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or linmology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

14. Revise § 2.01–45 to read as follows:

§ 2.01–45 Excursion Permit.

(a) Under 46 U.S.C. 2113, the Coast Guard may issue a permit to the owner, operator, or agent of a passenger vessel, allowing the vessel to engage in excursions that carry additional numbers of passengers, extend an existing route, or both. Details concerning the application process for excursion permits for inspected passenger vessels are contained in §§ 71.10, 115.204, or 176.204 of this chapter. Details concerning the application process for special permits for uninspected passenger vessels are contained in § 26.03–6 of this chapter.

(b) For Marine Events of National Significance, as determined by the Commandant, U.S. Coast Guard, a vessel may be permitted to engage in these events while carrying passengers-for-hire for the duration of the event. Event sponsors must request this determination in writing from the Commandant (G–M) at least one year prior to the event. Details concerning the application process for special permits for Marine Events of National Significance are contained in § 26.03–8 of this chapter.

(c) The application for an excursion permit is made by the master, owner, or agent of the vessel to the Officer in Charge, Marine Inspection, on Coast Guard Form CG–950, Application for Excursion Permit. If, after inspection, permission is granted, it is given on Coast Guard form CG–949, Permission to Carry Excursion Party. The permit describes the vessel, the route over which and the period during which the excursions may be made, and the safety equipment required for the additional persons indicated.

PART 10—LICENSING OF MARITIME PERSONNEL

15. The authority citation for part 10 continues to read as follows:

Authority: 31 U.S.C. 9701, 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; 49 CFR 1.45, 1.46; Sec. 10.107 also issued under the authority of 44 U.S.C. 3507.

16. Revise § 10.466(a) to read as follows:

§ 10.466 Licenses for operators of uninspected passenger vessels.

(a) This section applies to all applicants for a license to operate an uninspected passenger vessel, equipped with propulsion machinery of any type.

(1) Individuals operating an uninspected passenger vessel less than 100 gross tons must meet the qualifications for the operator of uninspected passenger vessel license listed in this section.

(2) Individuals operating an uninspected passenger vessel of at least 100 gross tons must meet the qualifications for the master's license appropriate for the vessel tonnage, route, and restrictions for the service in which they will engage.

(3) Individuals operating an uninspected vessel of at least 200 gross tons must meet the qualifications for the master or mate license appropriate for the tonnage, route, and restrictions for the service in which they will engage.

* * * * *

PART 15—MANNING REQUIREMENTS

17. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 9102; 49 CFR 1.45 and 1.46.

18. In § 15.301(a), add, in alphabetical order, the term "Underway" to the list of definitions, to read as follows:

§ 15.301 Definitions of terms used in this part.

(a) * * *

Underway means that a vessel is not at anchor, made fast to the shore, or aground.

* * * * *

19. Revise § 15.605 to read as follows:

§ 15.605 Licensed operators for uninspected passenger vessels.

Each self-propelled, uninspected passenger vessel must be under the direction and control of an individual licensed by the Coast Guard.

20. Add § 15.705(f) to read as follows:

§ 15.705 Watches.

* * * * *

(f) Properly manned uninspected passenger vessels of at least 100 gross tons—

(1) Which are underway for no more than 12 hours in any 24-hour period, and which are adequately moored, anchored, or otherwise secured in a harbor of safe refuge for the remainder of that 24-hour period may operate with one navigational watch;

(2) Which are underway greater than 12 hours in any 24-hour period must provide a minimum of a two-watch system;

(3) In no case may the crew of any watch work more than 12 hours in any 24-hour period, except in an emergency.

21. Add § 15.805(a)(6) to read as follows:

§ 15.805 Master.

(a) * * *

(6) Every uninspected passenger vessel of at least 100 gross tons.

* * * * *

22. Add § 15.855(c) to read as follows:

§ 15.855 Cabin watchmen and fire patrolmen.

* * * * *

(c) For the watchmen described in paragraph (a), the owner or operator of an uninspected passenger vessel of at least 100 gross tons but less than 300 gross tons may substitute the use of fire detectors, heat detectors, smoke detectors, and high-water alarms with audible- and visual-warning indicators, in addition to other required safety alarms, only when each of the following conditions are met:

(1) Fire detectors are located in each space containing machinery or fuel tanks in accordance with § 181.400(c) of this chapter.

(2) All grills, broilers, and deep-fat fryers are fitted with a grease extraction hood in compliance with § 181.425 of this chapter.

(3) Heat and/or smoke detectors are located in each galley, public accommodation space, enclosed passageway, berthing space, and all crew spaces.

(4) High water alarms are located in each space with a through hull fitting below the deepest load waterline, a machinery space bilge, bilge well, shaft alley bilge, or other space subject to flooding from sea water piping within the space, and a space below the waterline with non-watertight closure such as a space with a non-watertight hatch on the main deck.

(5) Each alarm has an audible- and visual-alarm indicator located at the normal operating station and, if the normal operating position is not continually manned when not navigating underway, in an alternate location that must provide the crew, and may at all times provide the passengers, immediate warning of a hazardous condition.

(6) The vessel is underway for no more than 12 hours in any 24-hour period, and the master of the vessel has chosen to operate with less than a three-watch system in accordance with § 15.705.

23. Revise § 15.905 to read as follows:

§ 15.905 Uninspected passenger vessels.

(a) An individual holding a license as master or pilot of an inspected, self-propelled vessel is authorized to serve as operator of an uninspected passenger vessel, within any restrictions on the individual's license.

(b) An individual holding a license as mate of inspected, self-propelled vessels, other than Great Lakes, inland, or river vessels of not more than 200 gross tons, is authorized to serve as operator of uninspected passenger vessels within any restrictions on the individual's license.

PART 24—GENERAL PROVISIONS

24. The authority citation for part 24 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

25. In § 24.05–1, revise table 24.05–1(a) to read as follows:

§ 24.05–1 Vessels subject to the requirements of this subchapter.

(a)* * *

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Table 30.01-5(d)

Method of propulsion, qualified by size or other limitation.[1]	Vessels inspected and certificated under–			Vessels subject to the provisions of–		
	Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 6] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 6]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1) Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply t–: A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(2) Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 24.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under–			Vessels subject to the provisions of–		
		Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	ii) All vessels that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

24.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under–			Vessels subject to the provisions of–		
		Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 6] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 6]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i.) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels < 100 gross tons carrying more than 6 passengers or passengers-for-hire.[7] ii) All vessels ≥ 100 gross tons carrying more than 12 passengers or passengers-for-hire.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or Part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), and N (Dangerous Cargoes) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in the Passenger Vessel Safety Act of 1993 (46 U.S.C. 2101(21)(21a)). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

26. Revise subpart 24.10 to read as follows:

Subpart 24.10—Definition of Terms Used In This Subchapter

Sec.
24.10–1 Definitions.

§ 24.10–1 Definitions.

Approved means approved by the Commandant, unless otherwise stated.

Barge means a non-self-propelled vessel.

Carrying freight for hire means the carriage of any goods, wares, or merchandise, or any other freight for a consideration, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person interested in the vessel.

Coast Guard District Commander means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within his or her district, which includes the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

Commandant means the Commandant of the United States Coast Guard.

Consideration means an economic benefit, inducement, right, or profit, including pecuniary payment accruing to an individual, person, or entity but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.

Headquarters means the Office of the Commandant, United States Coast Guard, Washington, DC.

International voyage means a voyage from a country to which the present convention applies to a port outside such country, or conversely.

Marine inspector or *inspector* means any person from the civilian or military branch of the Coast Guard assigned under the direction of an Officer in Charge, Marine Inspection, or any other person designated to perform duties related to the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

Motor vessel means any vessel more than 65 feet in length, which is propelled by machinery other than steam.

Motorboat means any vessel indicated in column five of Table 24.05–1(a) in § 24.05–1, 65 feet in length or less, which is equipped with propulsion machinery (including steam). The length must be measured from end-to-end over the deck, excluding sheer. This term includes a boat equipped with a detachable motor. For the purpose of this subchapter, motorboats are included under the term *vessel*, unless specifically noted otherwise.

(1) The various length categories of motorboats are as follows:

(i) Any motorboat less than 16 feet in length.

(ii) Any motorboat 16 feet or over and less than 26 feet in length.

(iii) Any motorboat 26 feet or over and less than 40 feet in length.

(iv) Any motorboat 40 feet or over and not more than 65 feet in length.

(2) The expression "length must be measured from end-to-end over the deck excluding sheer" means a straight-line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments, are not to be included in the measurement. Length must be stated in feet and inches.

Oceans means a route that goes beyond 20-nautical miles offshore on any of the following waters:

(1) Any ocean.

(2) The Gulf of Mexico.

(3) The Caribbean Sea.

(4) The Bering Sea.

(5) The Gulf of Alaska.

(6) Such other similar waters as may be designated by a Coast Guard District Commander.

Officer in Charge, Marine Inspection or *OCMI* means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of an inspection zone for performance of duties related to the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

Passenger means an individual carried on a vessel, except—

(1) The owner or an individual representative of the owner, or in the case of a vessel under charter, an individual charterer or individual representative of the charterer;

(2) The master; or

(3) A member of the crew engaged in the business of the vessel, who has not contributed consideration for carriage, and who is paid for onboard services.

Passenger-for-hire means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

Survival craft means a lifeboat, rigid liferaft, inflatable liferaft, life float, inflatable buoyant apparatus, buoyant apparatus, or small boat.

Vessel, as used in this subpart includes all vessels indicated in column five of Table 24.05–1(a) in § 24.05–1, unless otherwise noted in this subpart.

Uninspected passenger vessel means an uninspected vessel—

(1) Of at least 100 gross tons;

(i) Carrying not more than 12 passengers, including at least one passenger-for-hire; or

(ii) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 12 passengers; and

(2) Of less than 100 gross tons;

(ii) Carrying not more than six passengers, including at least one passenger-for-hire; or (2) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than six passengers.

PART 25—REQUIREMENTS

27. The authority citation for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4302; 49 CFR 1.46.

28. Revise § 25.25–5(d) to read as follows:

§ 25.25–5 Life Preservers and other lifesaving equipment required.

* * * * *

(d) In addition to the equipment required by paragraph (b) and (c) of this section, each vessel 26 feet in length or longer must have at least one approved ring life buoy, and each uninspected passenger vessel of at least 100 gross tons must have at least three ring life buoys. Ring life buoys must be constructed in accordance with subpart 160.050 of part 160 of this chapter. The exception is a ring life buoy that was approved prior to May 9, 1979, under former subpart 160.009 of part 160 this chapter (see 46 CFR Chapter I, revised as of October 1, 1979), which may be used as long as it is in good and serviceable condition.

* * * * *

29. Add § 25.25–17 to read as follows:

§ 25.25–17 Survival craft requirements for uninspected passenger vessels of at least 100 gross tons.

(a) Each uninspected passenger vessel of at least 100 gross tons must have adequate survival craft with enough capacity for all persons aboard, and must meet one of the following requirements:

(1) An inflatable liferaft must be approved under 46 CFR part 160, subpart 160.151 and be equipped with an applicable equipment pack or be approved by another standard specified by the Commandant.

(2) A life float must be approved under 46 CFR part 160, subpart 160.027 or other standard specified by the Commandant.

(3) An inflatable buoyant apparatus must be approved under 46 CFR part 160, subpart 160.010 or other standard specified by the Commandant.

(4) A buoyant apparatus must be approved under 46 CFR part 160, subpart 160.010 or other standard specified by the Commandant.

(b) If the vessel carries a small boat or boats, the capacity of the small boat or boat(s) may be counted toward the survival craft capacity required by this part. Such small boat or boat(s) must meet the requirements for safe loading and floatation in 33 CFR part 183.

30. Add § 25.25–19 to read as follows:

§ 25.25–19 Visual distress signals.

Each uninspected passenger vessel must meet the visual distress signal requirements of 33 CFR part 175 applicable to the vessel.

31. Revise § 25.26–10 to read as follows:

§ 25.26–10 EPIRB requirements for uninspected passenger vessels.

(a) Uninspected passenger vessels less than 100 gross tons are not required to carry an EPIRB.

(b) The owner, operator, or master of an uninspected passenger vessel of at least 100 gross tons must ensure that the vessel does not operate beyond three miles from shore as measured from the territorial sea baseline seaward or more than three miles from the coastline of the Great Lakes, unless it has on board a float-free, automatically activated Category 1 406 MHz EPIRB stowed in a manner so that it will floatfree if the vessel sinks.

32. In § 25.30–20, redesignate paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and add a new paragraph (b) to read as follows:

§ 25.30–20 Fire extinguishing equipment required.

* * * * *

(b) *Uninspected passenger vessels of at least 100 gross tons.* All uninspected passenger vessels of at least 100 gross tons must carry on board hand portable and semi-portable fire extinguishers in compliance with Table 76.50–10(A) in § 76.50–10 of this chapter.

* * * * *

PART 26—OPERATIONS

33. The authority citation for part 26 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

34. Revise § 26.03–1(a) introductory text to read as follows:

§ 26.03–1 Safety orientation.

(a) Before getting underway on any uninspected passenger vessel, the operator or master must ensure that suitable public announcements, instructive placards, or both, are provided in a manner that affords all passengers the opportunity to become acquainted with:

* * * * *

35. Revise § 26.03–2(a) to read as follows:

§ 26.03–2 Emergency instructions.

(a) The operator or master of each uninspected passenger vessel must ensure that an emergency check-off list is posted in a prominent and accessible place to notify the passengers and remind the crew of precautionary measures that may be necessary if an emergency situation occurs.

* * * * *

36. Add § 26.03–4 to read as follows:

§ 26.03–4 Charts and nautical publications.

(a) Each uninspected passenger vessel of at least 100 gross tons must carry adequate, up-to-date, and appropriate for their intended voyage—

(1) Charts of appropriate scale to make safe navigation possible;

(2) U.S. Coast Pilot or similar publication;

(3) Coast Guard Light List;

(4) Tide tables; and

(5) Current tables, or a river current publication issued by the U.S. Army Corps of Engineers, or a river authority.

(b) As an alternative, you may substitute extracts or copies from the publications in paragraph (a). This information must be applicable to the area transited.

37. Add § 26.03–6 to read as follows:

§ 26.03–6 Special permit.

(a) If the owner, operator, or agent donates the use of an uninspected passenger vessel to a charity for fundraising activities, and the vessel's activity would subject it to Coast Guard inspection, the OCMI may issue a special permit to the owner, operator, or agent for this purpose if, in the opinion of the OCMI, the vessel can be safely operated. Each excursion permit is valid for only one voyage of a donated vessel, which is used for a charitable purpose. Applications are considered and approved on a case-by-case basis.

(b) The criteria of § 176.204 of this chapter will apply to the issuance of a special permit. In addition, the owner, operator, or agent must meet each of these conditions—

(1) Any charity using a donated vessel must be a bona fide charity or a non-profit organization qualified under section 501(c)(3) of the Internal Revenue Code of 1986;

(2) All donations received from the fundraising must go to the named charity;

(3) The owner, operator, or agent may obtain a special permit for an individual vessel not more than four times in a 12-month period; and

(4) The owner, operator, or agent must apply to the local OCMI for a special permit prior to the intended voyage, allowing adequate time for processing and approval of the permit.

(c) Nothing in this part may be construed as limiting the OCMI from making such tests and inspections, both afloat and in dry-dock, that are reasonable and practicable to be assured of the vessel's seaworthiness and safety.

§ 26.03–5 [Removed]

38. Remove § 26.03–5.

39. Add § 26.03–8 to read as follows:

§ 26.03–8 Marine event of national significance special permits.

(a) For Marine Events of National Significance, as determined by the Commandant, U.S. Coast Guard, a vessel may be permitted to engage in these events while carrying passengers-for-hire for the duration of the event. Event sponsors must request this determination in writing from the Commandant (G-M) at least one year prior to the event.

(b) The owner, operator, or agent of a vessel that has registered as a participant in Marine Events of National Significance, may apply for a special permit to carry passengers for the duration of the event. The master owner, or agent of the vessel must apply to a Coast Guard OCMI who has jurisdiction over the vessel's first United States port of call. The OCMI may issue a Form CG–949 "Permit to Carry Excursion Party" if in the opinion of the OCMI the operation can be undertaken safely. The OCMI may require an inspection prior to issuance of a special permit.

(c) The permit will state the conditions under which it is issued. These conditions must include the number of passengers the vessel may carry, the crew required, the number

and type of lifesaving and safety equipment required, the route, and operating details for which the permit is issued, and the dates for which the permit will be valid.

(d) The permit must be displayed in a location visible to passengers.

40. Revise § 26.03–10 to read as follows:

§ 26.03–10 Voyage plans for uninspected passenger vessels of at least 100 gross tons.

(a) The master must prepare a voyage plan that includes a crew and passenger list before taking an uninspected passenger vessel of at least 100 gross tons on a Great Lake, an ocean, or an international voyage.

(b) Before departure, the master must communicate the voyage plan ashore, either verbally or in writing. The voyage plan must go to either the vessel's normal berthing location or a representative of the owner or managing operator of the vessel. The master, owner, or operator of the vessel must make the voyage plan available to the Coast Guard upon request.

41. Add § 26.03–12 to read as follows:

§ 26.03–12 Signaling light.

All vessels of over 150 gross tons, when on an international voyage, shall be equipped with an efficient daylight signaling lamp in accordance with the requirements of subchapter J (Electrical Engineering) of this chapter.

Subpart 26.20—Exhibition of Coast Guard License.

42–43. In subpart 26.20, revise the subpart heading to read as set forth above.

44. Revise § 26.20–1 to read as follows:

§ 26.20–1 Must be available.

If a person operates a vessel that carries one or more passengers-for-hire, he or she is required to have a valid Coast Guard license suitable for the vessel's route and service. He or she must have the license in his or her possession and must produce it immediately upon the request of a Coast Guard boarding officer.

PART 30—GENERAL PROVISIONS

45. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–05 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

46. In § 30.01–5(d), redesignate table 30.01–5(D) as table 30.01–5(d) and revise it to read as follows:

§ 30.01–5 Application of regulations—TB/ALL.

* * * * *

(d) * * *

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Table 30.01-5(d)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under–			Vessels subject to the provisions of–		
		Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 6]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1)	Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply t–: A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 30.01-5(d) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under–			Vessels subject to the provisions of–		
		Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 6] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 6]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 30.01-5(d) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 6]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels < 100 gross tons carrying more than 6 passengers or passengers-for-hire.[7] ii) All vessels ≥ 100 gross tons carrying more than 12 passengers or passengers-for-hire.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to: A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), and N (Dangerous Cargoes) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in the Passenger Vessel Safety Act of 1993 (46 U.S.C. 2101(21)(21a)). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

PART 70—GENERAL PROVISIONS

47. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

48. In § 70.05–1, redesignate table 70.05–1(A) as table 70.05–1(a) and revise it to read as follows:

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Table 70.05-1(a)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under–			Vessels subject to the provisions of–		
		Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 6]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1)	Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 70.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under–			Vessels subject to the provisions of–		
		Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] 3) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] 4) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 70.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under–			Vessels subject to the provisions of–		
		Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels < 100 gross tons carrying more than 6 passengers or passengers-for-hire.[7] ii) All vessels ≥ 100 gross tons carrying more than 12 passengers or passengers-for-hire.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels[5] < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to: A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), and N (Dangerous Cargoes) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or.combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in the Passenger Vessel Safety Act of 1993 (46 U.S.C. 2101(21)(21a)). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

49. Add § 70.05–18 to read as follows:

§ 70.05–18 Applicability to Vessels Operating Under an Exemption Afforded in the Passenger Vessel Safety Act of 1993 (PVSA).

(a) The Passenger Vessel Safety Act of 1993 (PVSA) contained an allowance for the exemption of certain passenger vessels that are—

(1) At least 100 gross tons but less than 300 gross tons; or (2) Former public vessels of at least 100 gross tons but less than 500 gross tons.

(b) The owner or operator of a vessel must have applied for an exemption under the PVSA by June 21, 1994, and then brought the vessel into compliance with the interim guidance in Navigation and Inspection Circular (NVIC) 7–94 not later than December 21, 1996. The PVSA exemption is valid for the service life of the vessel, as long as the vessel remains certified for passenger service. If the Certificate of Inspection (COI) is surrendered or otherwise becomes invalid (not including a term while the vessel is out of service but undergoing an inspection for recertification), the owner or operator must meet the appropriate inspection regulations to obtain a new COI without the PVSA exemption. See 46 CFR 175.118 for information about applicable regulations for vessels that operate under the PVSA exemption.

50. Revise subpart 70.10 to read as follows:

Subpart 70.10—Definition of Terms Used in This Subchapter.

Sec.
70.10–1 Definitions.

§ 70.10–1 Definitions.

Approved means approved by the Commandant, unless otherwise stated.

Barge means any non-self-propelled vessel.

Carrying freight for hire means the carriage of any goods, wares, or merchandise, or any other freight for a consideration whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person interested in the vessel.

Classed vessel means any vessel classed by the American Bureau of Shipping or other recognized classification society.

Coast Guard District Commander means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within his or her district, which include the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

Coastwise is a designation of service that includes all vessels normally navigating the waters of any ocean or the Gulf of Mexico 20-nautical miles or less offshore.

Commandant means the Commandant of the United States Coast Guard.

Consideration means an economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.

Ferry is a designation that includes those vessels, in other than ocean or coastwise service, having provisions only for deck passengers and/or vehicles, operating on a short run, on a frequent schedule between two points over the most direct water route, and offering a public service of a type normally attributed to a bridge or tunnel.

Great Lakes is a designation of service that includes all vessels navigating the Great Lakes.

Headquarters means the Office of the Commandant, United States Coast Guard, Washington, DC 20593.

Lakes, bays, and sounds is a designation of service that includes all vessels navigating the waters of the lakes, bays, or sounds other than the waters of the Great Lakes.

Marine inspector or *inspector* means any person from the civilian or military branch of the Coast Guard assigned under the direction of an Officer in Charge, Marine Inspection, or any other person designated to perform duties related to the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

Motor vessel means any vessel more than 65 feet in length, which is propelled by machinery other than steam.

Ocean is a designation of service that includes all vessels navigating the waters of any ocean or the Gulf of Mexico more than 20-nautical miles offshore.

Officer in Charge, Marine Inspection means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of an inspection zone for the performance of duties related to the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statues.

Passenger means—

(1) On an international voyage, every person other than—

(i) The master and the members of the crew or other persons employed or engaged in any capacity onboard a vessel on the business of that vessel; and

(ii) A child under the age of one.

(2) On other than an international voyage, an individual carried on the vessel, except—

(i) The owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer;

(ii) The master; or

(iii) A member of the crew engaged in the business of the vessel, who has not contributed consideration for carriage, and who is paid for onboard services.

Passenger-for-hire means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

Passenger vessel means

(1) On an international voyage, a vessel of at least 100 tons gross tonnage carrying more than 12 passengers; and

(2) On other than an international voyage, a vessel of at least 100 tons gross tonnage—

(i) Carrying more than 12 passengers, including at least one passenger-for-hire;

(ii) That is chartered and carrying more than 12 passengers; or

(iii) That is a submersible vessel and carrying at least one passenger-for-hire.

Pilot boarding equipment means a pilot ladder, accommodation ladder, pilot hoist, or combination of them, as required by this subchapter.

Point of access means the place on the deck of a vessel where a person steps onto or off pilot boarding equipment.

Recognized classification society means the American Bureau of Shipping or other classification society as recognized by the Commandant.

Rivers is a designation of service that includes all vessels whose navigation is restricted to rivers and/or canals, and to such other waters as may be designated by the Coast Guard District Commander.

Sailing vessel means a vessel with no mechanical means of propulsion, all propulsive power being provided by sails.

Short international voyage means an international voyage in the course of which a vessel is not more than 200 miles from a port or place in which the

passengers and crew could be placed in safety. Neither the distance between the last port of call in the country in which the voyage begins and the final port of destination, nor the return voyage, may exceed 600 miles. The final port of destination is the last port of call in the scheduled voyage at which the vessel commences its return voyage to the country in which the voyage began.

Specially suitable for vehicles is a designation used for a space that is designed for the carriage of automobiles or other self-propelled vehicles with batteries connected and fuel tanks containing gasoline on vessels on ocean or unlimited coastwise voyages. Requirements for the design and protection of spaces specially suitable for vehicles appear in subparts 72.15, 76.15, 77.05, 78.45, 78.47, and 78.83 of parts 72, 76, 77 and 78 of this subchapter. In addition, preparation of automobiles prior to carriage, with the exception of disconnecting battery cables, must be in accordance with the applicable provision of 49 CFR 176.905.

Submersible vessel means a vessel that is capable of operating below the surface of the water.

Vessel, as used in this subchapter, shall be considered to include all vessels indicated in column three of table 70.05–1(a) in § 70.05–1, which are greater than 65 feet in length (measured from end-to-end over the deck, excluding sheer) and carrying more than six passengers-for-hire, unless otherwise noted in this subpart.

PART 90—GENERAL PROVISIONS

51. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

52. In § 90.05–1(a), redesignate table 90.05–1(A) as table 90.05–1(a) and revise it to read as follows:

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Table 90.05-1(a)

Method of propulsion, qualified by size or other limitation.[1]	Vessels inspected and certificated under–			Vessels subject to the provisions of–		
	Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1) Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(2) Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 90.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under–			Vessels subject to the provisions of–		
		Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 6]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 90.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under–			Vessels subject to the provisions of–		
		Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 6]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[6]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or Part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[6]	i) All vessels < 100 gross tons carrying more than 6 passengers or passengers-for-hire.[7] ii) All vessels ≥ 100 gross tons carrying more than 12 passengers or passengers-for-hire.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[6]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels[7] < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), and N (Dangerous Cargoes) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in the Passenger Vessel Safety Act of 1993 (46 U.S.C. 2101(21)(21a)). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or linmology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

PART 114—GENERAL PROVISIONS

53. The authority citation for part 114 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Sec. 114.900 also issued under 44 U.S.C. 3507.

54. In § 114.400(b), add, in alphabetical order, the term "Submersible vessel" to the list of definitions, to read as follows:

§ 114.400 Definition of terms used in this subchapter.

* * * * *

Submersible vessel means a vessel that is capable of operating below the surface of the water.

* * * * *

PART 169—SAILING SCHOOL VESSELS

55. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

56. Revise § 169.103(a) and (b) to read as follows:

§ 169.103 Applicability.

(a) This subchapter applies to each domestic vessel operating as a sailing school vessel.

(b) This subchapter does not apply to—

(1) Any vessel operating exclusively on inland waters which are not navigable waters of the United States;

(2) Any vessel while laid up, dismantled, and out of service;

(3) Any vessel with title vested in the United States and which is used for public purposes except vessels of the U.S. Maritime Administration;

(4) Any vessel carrying one or more passengers;

(5) Any vessel operating under the authority of a current valid certificate of inspection issued in accordance with the requirements of 46 CFR chapter I, subchapter H or T, 46 CFR parts 70 through 78 and parts 175 through 187, respectively; or

(6) Any foreign vessel.

* * * * *

57. In § 169.107, remove paragraph (f) and redesignate paragraphs (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), and (y) as paragraphs (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), and (x), respectively; and revise the newly redesignated § 169.107(n) to read as follows:

§ 169.107 Definitions.

* * * * *

(n) *Passenger* on a sailing school vessel, means an individual carried on the vessel except—

(1) The owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer;

(2) The master;

(3) A member of the crew engaged in the business of the vessel, who has not contributed consideration for carriage, and who is paid for onboard services;

(4) An employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter;

(5) An employee of the demise charterer of the vessel engaged in the business of the demise charterer; or

(6) A sailing school instructor or sailing school student.

* * * * *

PART 175—GENERAL PROVISIONS

58. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; 175.900 also issued under authority of 44 U.S.C. 3507.

59. Add § 175.118 to read as follows:

§ 175.118 Vessels operating under an exemption afforded in the Passenger Vessel Safety Act of 1993 (PVSA).

(a) The Passenger Vessel Safety Act of 1993 (PVSA) contained an allowance for the exemption of certain passenger vessels that are—

(1) At least 100 gross tons but less than 300 gross tons; or

(2) Former public vessels of at least 100 gross tons but less than 500 gross tons.

(b) The owner or operator of a vessel must have applied for an exemption under PVSA by June 21, 1994, and then brought the vessel into compliance with the interim guidance in Navigation and Inspection Circular (NVIC) 7–94 not later than December 21, 1996. The PVSA exemption is valid for the service life of the vessel, as long as the vessel remains certified for passenger service. If the Certificate of Inspection (COI) is surrendered or otherwise becomes invalid (not including a term while the vessel is out of service but undergoing an inspection for recertification), the owner or operator must meet the appropriate inspection regulations to obtain a new COI without the PVSA exemption.

(c) Except where the provisions of 46 CFR chapter I, subchapter H apply, the owner or operator must ensure that the vessel meets the requirements of 46 CFR chapter I, subchapter T, meets any requirements the OCMI deems applicable, and meets any specific additions or exceptions as follows:

(1) If a vessel does not meet the intact stability requirements of 46 CFR chapter I, subchapter S, the vessel's route(s) will be limited to an area within 20-nautical miles from a harbor of safe refuge, provided the vessel has a history of safe operation on those waters. The OCMI may further restrict the vessel's routes if the vessel's service history, condition, or other factors affect its seaworthiness or safety.

(2) The vessel may not carry more than 150 passengers, and not more than 49 passengers in overnight accommodations.

(3) The owner or operator must crew the vessel under the requirements in 46 CFR chapter I, subchapter T. All officers must be licensed for the appropriate vessel tonnage. The OCMI may require a licensed engineer for those vessels of at least 200 gross tons. Vessels carrying more than 50 passengers must have an additional deckhand, and all deckhands on vessels carrying more than 50 passengers must be adequately trained. The crew members on a vessel of at least 200 gross tons, except those operated exclusively on lakes and rivers, are required to hold merchant mariner documents and 50 percent of the unlicensed deck crew must be rated as at least an able seaman.

(4) The vessel owner or operator must comply with the lifesaving arrangements located in 46 CFR part 180, except that inflatable liferafts are required for primary lifesaving. A rescue boat or suitable rescue arrangement must be provided to the satisfaction of the OCMI.

(5) The vessel owner or operator must comply with the fire protection requirements located in 46 CFR part 181. When a vessel fails to meet the fire protection and structural fire protection requirements of 46 CFR chapter I, subchapter T, the vessel owner or operator must meet equivalent requirements to the satisfaction of the cognizant OCMI or submit plans for approval from the Coast Guard Marine Safety Center.

(6) At a minimum, the owner or operator must outfit the vessel with portable fire extinguishers in compliance with 46 CFR 76.50. In addition, the vessel must meet any additional requirements of the OCMI, even if they exceed the requirements in 46 CFR 76.50.

(7) In addition to the means-of-escape requirements of 46 CFR 177.500, the

vessel owner or operator must also meet the requirements for means of escape found in 46 CFR 78.47–40.

(d) The OCMI conducts an inspection and may issue a COI if the vessel meets these requirements. The COI's condition of operation must contain the following endorsement: "This vessel is operating under an exemption afforded in The Passenger Vessel Safety Act of 1993 and as such is limited to domestic voyages and a maximum of ____ passengers and may be subject to additional regulations and restrictions as provided for in Sections 511 and 512 of the Act."

60. In § 175.400, add a new term to the list of definitions, in alphabetical order, to read as follows:

§ 175.400 Definition of terms used in this subchapter.

* * * * *

Submersible vessel means a vessel that is capable of operating below the surface of the water.

* * * * *

PART 188—GENERAL PROVISIONS

61. The authority citation for part 188 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

62. In § 188.05–1(a), redesignate table 188.05–1(A) as table 188.05–1(a) and revise it to read as follows:

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Table 188.05-1(a)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under–			Vessels subject to the provisions of–		
		Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1)	Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 188.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under–			Vessels subject to the provisions of–		
		Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 6]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	ii) All vessels that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 188.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under–			Vessels subject to the provisions of–		
		Subchapter D–Tank Vessels.[2]	Subchapter H–Passenger Vessels[2, 3, 4, and 6] or Subchapter K or T–Small Passenger Vessels.[2, 3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 6]	Subchapter C–Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U–Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels < 100 gross tons carrying more than 6 passengers or passengers-for-hire.[7] ii) All vessels ≥ 100 gross tons carrying more than 12 passengers or passengers-for-hire.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to--: A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), and N (Dangerous Cargoes) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in the Passenger Vessel Safety Act of 1993 (46 U.S.C. 2101(21)(21a)). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

63. The authority citation for part 199 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 46 CFR 1.46.

64. In § 199.30, revise the term "passenger vessel".

§ 199.30 Definitions.

* * * * *

Passenger vessel means—

(1) On an international voyage, a vessel of at least 100 tons gross tonnage carrying more than 12 passengers; and

(2) On other than an international voyage, a vessel of at least 100 tons gross tonnage—

(i) Carrying more than 12 passengers, including at least one passenger-for-hire; or

(ii) That is chartered and carrying more than 12 passengers; or

(iii) That is a submersible vessel carrying at least one passenger-for-hire.

* * * * *

Dated: March 24, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–4777 Filed 3–1–00; 8:45 am]

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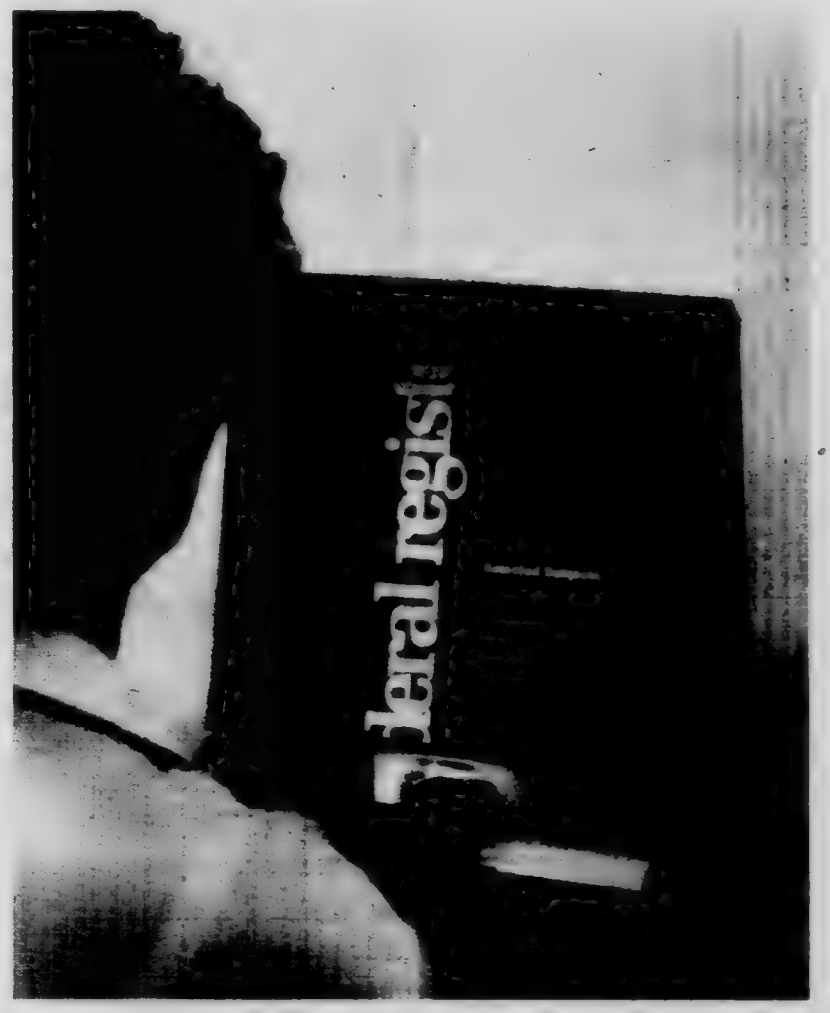

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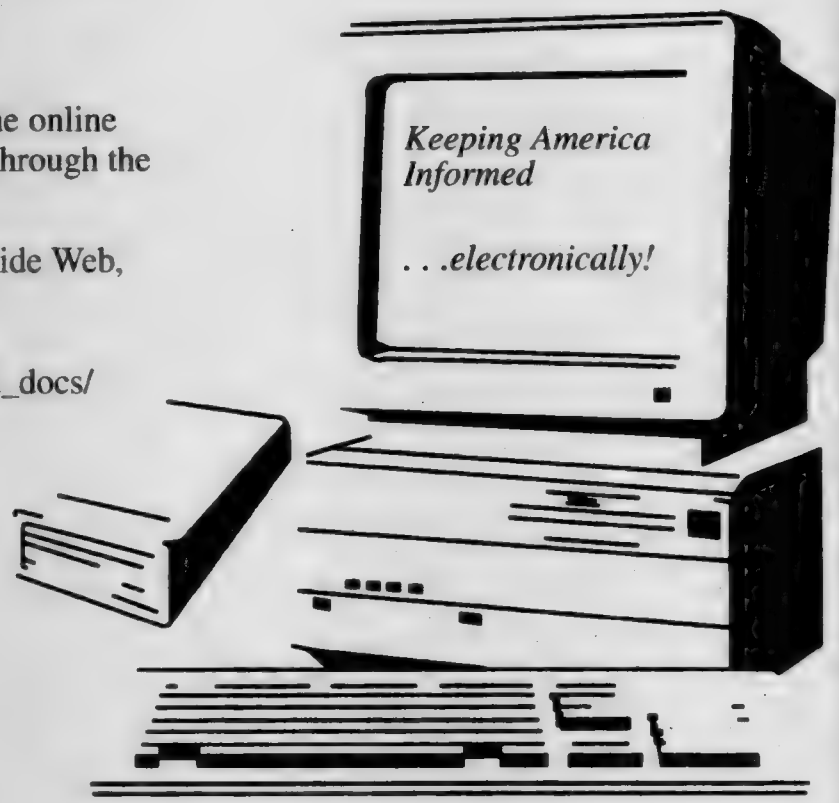

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Presidential Documents

Title 3—

The President

Proclamation 7278 of February 29, 2000

American Red Cross Month, 2000

By the President of the United States of America

A Proclamation

After the great San Francisco earthquake of 1906, President Theodore Roosevelt asked his fellow Americans to respond by contributing to the American Red Cross, "the only organization chartered and authorized by Congress to act at times of great national calamity." Almost a century later, the American Red Cross continues to serve our Nation and the world, providing compassionate assistance to people suffering in the aftermath of personal, local, national, or international disasters.

As one of our country's premier humanitarian organizations, the Red Cross provides disaster relief to millions of people both at home and abroad. In the past year alone, the American Red Cross rose to meet many challenges—from Hurricane Floyd on the eastern seaboard to the Kosovo relief effort to the terrible earthquakes and floods that struck countries around the globe. Following the tragic shootings at Columbine High School and in other schools and places of work and worship, the American Red Cross sent in crisis counselors to support grieving families and friends of the victims. In Taiwan and in Turkey, the American Red Cross worked with other Red Cross affiliates to provide solace and support to earthquake survivors; after the crash of EgyptAir Flight 990, Red Cross grief counselors brought comfort to victims' families. In total, the American Red Cross responded to nearly 64,000 disaster incidents last year alone and helped provide information to thousands of families separated from loved ones by war or disaster.

The services that the American Red Cross provides go beyond disaster relief. Its biomedical services program provides patients in more than 3,000 hospitals nationwide with the latest in high-quality, state-of-the-art blood and tissue services. Last year it provided more than 700,000 emergency and personal services for military personnel and their families, including relaying messages from their families to the three American servicemen held captive by Yugoslav forces. And in communities across the Nation, more than 12 million people received Red Cross instruction in lifesaving techniques last year, ranging from first aid and CPR to water safety and boat handling.

Forming the backbone of the American Red Cross is a vast network of nearly 4.5 million blood donors and 1.3 million dedicated volunteers who ensure that help will be there when and where it is needed. Virtually every community in the United States is served by an American Red Cross chapter, Blood Services region, or both; and as we have seen demonstrated so dramatically over time, no community is immune to the sudden and devastating disasters that require the services and stewardship of the American Red Cross. Each of us owes a lasting debt of gratitude to this extraordinary organization that has given so much to our people, our country, and our world.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2000 as American Red Cross Month.

I urge all the people of the United States to demonstrate support for their local Red Cross chapters and to become actively involved in furthering the humanitarian mission of the American Red Cross.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of February, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–5393
Filed 3–2–00; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 65, No. 43
Friday, March 3, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Forage Production and Forage Seeding Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulation which was published Tuesday, January 25, 2000 (65 FR 3782–3785). The regulation pertains to the insurance of Forage Production and Forage Seeding.

EFFECTIVE DATE: February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Brayton, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction was intended to provide policy changes to better meet the needs of the insured.

Need for Correction

As published, the final regulations contained errors which may prove misleading and are in need of clarification. This rule is necessary to correct the Forage Production Regulations as follows: (1) The definitions of fall planted and spring planted were deleted in the proposed and final rules due to recommendations that they were not necessary in the Forage Production Crop Provisions because the initial year the forage is planted it is insured under the Forage Seeding Crop Provisions. Although the above is true, it was later determined that the definitions were still necessary in the Forage Production Crop Provisions to clarify the year of establishment for both fall and spring planted forage because forage is not insurable under the Forage Production Crop Provisions until after the year of establishment; (2) The dates contained in the insurance period section are corrected to specify separate dates that insurance attaches for spring and fall planted acreage in specific states and counties. This allows forage acreage to be insured continuously with no lapse, or overlap, in coverage between the insurance period under the Forage Seeding and Forage Production Crop Provisions. It was also discovered that since the final rule only referred to the calendar year following the year of establishment, there could be confusion regarding the dates insurance attaches for calendar years subsequent to the calendar year following the date of establishment so these dates have also been included; and (3) The date insurance ends under the Forage Production Crop Insurance Provisions for Lassen, Modoc, Mono Shasta and Siskiyou counties, California was corrected to November 30 to provide continuous coverage.

The proposed and final rules for the Forage Seeding Crop Provisions listed cancellation and termination dates for certain named states, but omitted the cancellation and termination dates for all other states. This corrected rule adds the cancellation and termination dates of March 15 for all other states.

Correction of Publication

Accordingly, the publication on January 25, 2000, of the final regulation at 65 FR 3782–3785 is corrected as follows:

PART 457—[CORRECTED]

§ 457.117 [Corrected]

* * * * *

On page 3783, in the third column in § 457.117, in the crop provisions section 1, add definitions for "fall planted" and "spring planted" to read as follows:

Fall planted. A forage crop seeded after June 30.

Spring planted. A forage crop seeded before July 1.

* * * * *

On page 3784, in the first column in § 457.117, in the crop provisions sections 7(a) and (b)(6) are corrected to read as follows:

(a) Insurance attaches on acreage with an adequate stand on the following dates:

(1) For the calendar year following the year of seeding for:

(i) Spring planted forage in Lassen, Modoc, Mono, Shasta and Siskiyou Counties California, Colorado, Idaho, Nebraska, Nevada, Oregon, Utah and Washington—April 15;

(ii) Spring planted forage in Iowa, Minnesota, Montana, New Hampshire, New York, North Dakota, Pennsylvania, Wisconsin, Wyoming and all other states—May 22;

(iii) Fall planted forage in Lassen, Modoc, Mono, Shasta and Siskiyou Counties California, and all other states—October 16;

(iv) Fall planted forage in all California counties except Lassen, Modoc, Mono, Shasta, and Siskiyou—December 1.

(2) For the calendar year of seeding for spring planted acreage in all California counties except Lassen, Modoc, Mono, Shasta and Siskiyou—December 1.

(3) For calendar years subsequent to the calendar year following the year of seeding for:

(i) Lassen, Modoc, Mono, Shasta and Siskiyou California counties, and all other states—October 16;

(ii) All California counties except Lassen, Modoc, Mono, Shasta and Siskiyou—December 1.

(b) * * *

(6) The following dates of the crop year:

(i) For Lassen, Modoc, Mono, Shasta, and Siskiyou Counties California and all other states—October 15;

(ii) For all California counties except Lassen, Modoc, Mono, Shasta and Siskiyou—November 30.

* * * * *

§ 457.151 [Corrected]

On page 3785, the first column in § 457.151, section 5 is corrected to read as follows:

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation/termination dates
California, Nevada, New Hampshire, New York, Pennsylvania, and Vermont	July 31
All other states	March 15

Signed in Washington D.C. on February 28, 2000.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 00–5163 Filed 3–2–00; 8:45 am]

BILLING CODE 3410–08–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN (3150–AG17)

Correction to Comments on the Final Rule "List of Approved Spent Fuel Storage Casks: (HI–STAR 100) Addition"

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: The Nuclear Regulatory Commission (NRC) is supplementing the administrative record of the final rule "List of Approved Spent Fuel Storage Casks: (HI–STAR 100) Addition" (64 FR 48259; September 3, 1999) to ensure a complete and accurate administrative record. This document corrects several comment responses that were inconsistent with the corresponding language contained in the NRC staff's Safety Evaluation Report (SER) or the Certificate of Compliance (CoC), or that needed additional clarification; corrects two pages in the CoC due to typographical errors; and corrects the CoC expiration date listed in the rule text.

EFFECTIVE DATE: This correction is effective October 4, 1999.

FOR FURTHER INFORMATION CONTACT: Stan Turel, telephone (301) 415–6234, e-mail spt@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Discussion

The NRC issued a final rule amending 10 CFR 72.214 on September 3, 1999; (see 64 FR 48259), which approved the Holtec HI–STAR 100 spent fuel storage cask design. Subsequently, Holtec notified the NRC by letters dated September 28 and September 29, 1999, that several of the responses to public comments contained in the final rule required additional clarification. The NRC staff has reviewed Holtec's letters and agrees that some of the responses were not complete. Therefore, the staff is revising the responses to several public comments contained in the final rule. The changes are made to ensure a complete and accurate administrative record. Holtec also notified the NRC, in these letters, that the final CoC contained two typographical errors. Corrected CoC pages have been issued to Holtec and placed in the NRC Public Document Room. Additionally, the NRC staff identified that the CoC expiration date in § 72.214 of the final rule was incorrect (see 64 FR 48274). The Office of Federal Register subsequently published a correction notice in the **Federal Register** (64 FR 50872; September 20, 1999); however, the CoC expiration date in that notice was also in error. Therefore, this notice corrects the CoC expiration date in the rule text of § 72.214 to read as "October 4, 2019."

I. Correction of Response to Comments

Revised responses to Comment Nos. 23, 27, 30, 36, 54, and 70 are as follows:

Comment No. 23: One commenter asked how the pre-passivation or anodization of aluminum surfaces is checked? The commenter believes this activity should be checked and asked if there is criteria for this inspection.

Revised Response: A separate check or inspection of the pre-passivation of aluminum surfaces is not necessary. Aluminum is used in the MPC–24, MPC–68, and MPC–68F baskets for the Boral neutron absorbers and aluminum heat conduction elements that enhance heat transfer from the fuel basket to the MPC shell. When exposed to air or water, aluminum immediately forms a very thin, compact, and adherent film of aluminum oxide, which becomes thicker with increasing temperatures in the presence of water. [1] Holtec's fabrication procedures specify that both the Boral neutron absorbers and the heat conduction elements are immersed in water for a minimum of 72 hours before these components are installed in the MPC. During this fabrication step, the absence of any gas bubbles emanating from the water after 72 hours indicates that all exposed aluminum surfaces have been covered with aluminum oxide (*i.e.*, the aluminum surfaces have been passivated). These fabrication activities are accomplished under Holtec's approved Quality Assurance program. Therefore, a physical inspection of these aluminum components is not necessary to ensure that the surfaces have been properly passivated.

Comment No. 27: One commenter asked whether the design has been evaluated for a seismic event during loading and unloading.

Revised Response: The HI–STAR cask is designed to withstand seismic motions while in storage on the ISFSI pad without tipping over or sliding. The seismic accelerations used in the generic design basis for the HI–STAR 100 system are documented in the HI–STAR 100 CoC and TSAR. There are no cask seismic supports or restraints required during loading or unloading operations by the generic cask operating procedures in the TSAR. Seismic considerations are among the design bases that individual users must evaluate if using the HI–STAR 100 pursuant to the general licensing requirements of 10 CFR part 72. Each utility choosing to use the general license must perform an evaluation pursuant to 10 CFR 72.212 to determine whether its site-specific seismic accelerations at the locations where loading and unloading operations take place are bounded by the generic values in the CoC and TSAR. Based on this evaluation, users must determine whether any seismic support for the cask is required.

Comment No. 30: One commenter questioned the drain-down time and asked how frequently the water is checked. The commenter requested information on what happens if the MPC can't be vacuum dried successfully, and when the fuel needs to be put back in the pool.

Revised Response: The HI–STAR 100 cask design does not require any limitations on drain-down time (*i.e.*, how long it takes to drain water from the MPC during the vacuum drying process). Holtec's thermal analysis of the spent fuel's peak cladding temperature during the vacuum-drying process demonstrated that, regardless of the length of time necessary to complete the drain-down and vacuum drying, the peak cladding temperature would remain less than the 570 °C (1058 °F) "short-term condition" temperature limit. Therefore, a drain-down time limit is not necessary and is not specified in the Technical Specifications (TS). Because there is no limitation on drain-down time, there is also no requirement on how frequently the water draining from the cask should be checked. Furthermore, because a drain-down time limit is not contained

[1] Corrosion Resistance of Aluminum and Aluminum Alloys, Metals Handbook, Desk Edition, American Society for Metals, 1985.

in the TS, a corresponding time limit for corrective actions is also not required (*e.g.*, a requirement to unload a cask that cannot be successfully vacuum dried within a specified period of time). Limits on drain-down time and any corrective actions to be taken in response to exceeding these drain-down time limits may be voluntarily provided by the cask user as an operational aid in a site-specific vacuum-drying procedure. Separately, the NRC notes that the TS prohibit entry into the transport operation mode if LCO 2.1.1 is not met; and LCO 2.1.1 contains a vacuum drying pressure surveillance requirement.

Comment No. 36: One commenter asked whether shims are used and stated that shims or gaps were not acceptable.

Revised Response: The design and fabrication intent is that no shims be used in the closure weld of HI-STAR 100 casks. However, when the as-manufactured fit-up gap exceeds 1/16th inch between the lid and the shell, shims may be used, as shown on Design Drawing No. 1396, Sheet 1, for the MPC 24.

Comment No. 54: One commenter asked how lifting height should be verified and stated that the height should be recorded.

Revised Response: The maximum lifting height maintains the operating conditions of the Spent Fuel Storage Cask (SFSC) within the design and analysis basis. It is the general licensee's responsibility to limit the SFSC lifting height to allowable values. The lift height requirements are specified in TS LCO 2.1.3 for the vertical and horizontal orientations. Surveillance requirements require verification that SFSC lifting requirements are met after the SFSC is either suspended or secured in the transporter and prior to moving the SFSC within the ISFSI.

Comment No. 70: One commenter stated that the frequency of SR 2.1.3.1 should be revised because, as written, the frequency would apply only when a cask is being moved to or from the ISFSI and would not apply at other times, such as when moving casks within the ISFSI. However, the drop analysis applies any time the cask is suspended. The frequency should be revised similar to "Prior to movement of an SFSC."

Revised Response: The NRC agrees with the comment. The frequency of SR 2.1.3.1 has been revised.

II. Corrections to CoC No. 72–1008

The NRC is correcting CoC No. 72–1008 to address two typographical errors that occurred during final printing. First, on page 10 in Appendix B, item 2.c is corrected to refer to Table 1.1–3 instead of Table 2.1–3. Second, the definition of the term FUEL DEBRIS in Appendix A (p. 1.1–1) is corrected to match the definition of the same term contained in Appendix B (page 1).

The NRC considers these CoC changes to be administrative corrections, which remove confusion and do not change the substance of the CoC. No other changes to CoC No. 72–1008 are being made. Revised CoC pages have been sent to Holtec and placed in the NRC Public Document Room.

III. Correction of Rule Text

In the final rule published in the **Federal Register** on September 3, 1999 (see 64 FR 48274) first column, under § 72.214, the expiration date for CoC No. 1008 was listed as "(20 years after the final rule effective date)." This was incorrect. Instead of text, the CoC expiration date should have been listed as a date certain. The final rule was effective on October 4, 1999; therefore, the CoC expiration date should have been listed as October 4, 2019. To address this problem the Office of Federal Register published a correction notice on September 20, 1999, (64 FR 50872) second column, under § 72.214, which specified a date certain of September 20, 2019. However, this date was also in error. This notice corrects the expiration date for CoC No. 1008 to read as "October 4, 2019."

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. In § 72.214, Certificate of Compliance No. 1008, as published on September 3, 1999 on page 48274, first column, and corrected on September 20, 1999 on page 50872, second column, is further corrected to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1008

SAR Submitted by: Holtec International

SAR Title: HI-STAR 100 Cask System Topical Safety Analysis Report

Docket Number: 72–1008

Certification Expiration Date: October 4, 2019

Model Number: HI-STAR 100

* * * * *

Dated at Rockville, Maryland, this 9th day of February, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–5154 Filed 3–2–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–61–AD; Amendment 39–11610; AD 2000–05–01]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas MD–11 series airplanes. This action requires the deactivation of the forward and center cargo control units (CCU). This amendment is prompted by a report of failure of a CCU which produced overheating of the electrical pins inside the CCU; the subsequent release of hot gases and flames ignited an adjacent insulation blanket. The actions specified in this AD are intended to prevent such conditions, which could result in smoke and fire in the cargo compartment.

DATES: Effective March 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 2, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California

90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident that occurred on a McDonnell Douglas Model MD–11 series airplane. This incident was a failure of the cargo control unit (CCU) assembly due to damage of the printed circuit board (PCB) in the CCU, as a result of an external short to ground on one or more of the power output lines of the alternating current. This failure resulted in overheating of the electrical pins inside the CCU, and the subsequent release of hot gases and flames through the external cover, which ignited a metallized mylar insulation blanket adjacent to the CCU. Such conditions, if not corrected, could result in smoke and fire in the cargo compartment.

This incident is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This airworthiness directive (AD) is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas MD–11 series airplanes of the same type design, this AD is being issued to prevent overheating of the electrical pins inside the CCU and subsequent release of hot gases and flames, which could result in smoke and fire in the cargo compartment. This AD requires the deactivation of the forward and center CCU's.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring a modification of the CCU assembly would constitute terminating action for the requirements of this AD. However, the planned compliance time for the installation of the modification is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–61–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–01 McDonnell Douglas: Amendment 39–11610. Docket 2000–NM–61–AD.

Applicability: Model MD–11 series airplanes, certificated in any category, having the serial numbers listed below.

Group 1 Airplanes

48565	48566	48533	48549	48470	48406
48504	48602	48603	48571	48439	48605
48572	48471	48573	48600	48601	48633
48513	48574	48575	48542	48543	48576
48415	48631	48544	48632	48577	48545
48578	48546	48743	48744	48747	48748
48745	48746	48749	48579	48766	48768
48767	48679	48754	48623	48770	48753
48773	48774	48755	48758	48775-48779 inclusive	
48624	48756	48780	48532		

Group 2 Airplanes

48555	48556	48581	48630	48557	48539
48558	48559	48616	48560	48617	48618
48561	48629	48562	58563	48757	48540
48564	48634	48541	48798	48781-48792 inclusive	
48794	48799	48801	48800	48802-48806 inclusive	

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the electrical pins inside the cargo control units (CCU) and subsequent release of hot gases and flames, which could result in smoke and fire in the cargo compartment, accomplish the following:

Deactivation

(a) For Group 1 airplanes: Within 15 days after the effective date of this AD, deactivate the forward and center CCU's in accordance with the following procedures:

Remove the access panel to the forward cargo compartment CCU circuit breaker panel located at fuselage station 1009.300 (right side looking aft). Pull and collar the following circuit breakers:

B1–506	B1–489	B1–488	B1–487	B1–486
B1–485	B1–480	B1–481	B1–498	B1–482
B1–500	B1–495	B1–499	B1–490	

Remove the access panel to the center cargo compartment CCU circuit breaker panel located at fuselage station 1701.000 (right side looking aft). Pull and collar the following circuit breakers:

B1–552	B1–762	B1–761	B1–760	B1–759
B1–758	B1–518	B1–519	B1–751	B1–520
B1–753	B1–764	B1–752	B1–763	

(b) For Group 2 airplanes: Within 15 days after the effective date of this AD; deactivate the forward and center CCU in accordance with the following procedures:

Remove the access panel to the forward cargo compartment CCU circuit breaker panel located at fuselage station 1009.300 (right side looking aft). Pull and collar the following circuit breakers:

B1–506	B1–489	B1–488	B1–487	B1–486
B1–485	B1–480	B1–481	B1–498	B1–482
B1–500	B1–495	B1–499	B1–490	

Remove the access panel to the center cargo compartment CCU circuit breaker panel located at fuselage station 1701.000 (right side looking aft). Pull and collar the following circuit breakers:

B1–552	B1–762	B1–761	B1–760	B1–759
B1–758	B1–518	B1–519	B1–751	B1–520
B1–753	B1–764	B1–752		

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on March 20, 2000.

Issued in Renton, Washington, on February 28, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5133 Filed 3–2–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–48]

RIN 2120–AA66

Amendment to Jet Routes J–78 and J–112; Evansville, IN; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on December 20, 1999. The legal description of Jet Route 78 (J–78) contained an inadvertent error that omitted Tulsa, OK, between Will Rogers, OK, and Farmington, MO. This action corrects that error.

EFFECTIVE DATE: March 3, 2000.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On December 20, 1999 (64 FR 71014), Airspace Docket No. 99–AGL–48, FR Doc. 99–32885, was published amending the legal description of J–78 and J–112 between the Farmington, MO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Louisville, KY, VORTAC. This rule included a legal description of J–78, which inadvertently omitted Tulsa, OK, between Will Rogers, OK, and Farmington, MO. This action adds Tulsa, OK, to the legal description of J–78, thereby correcting this error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for J–78 as published in the **Federal Register** on December 20, 1999 (64 FR 71014); FR Doc. 99–32885, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 71015, in column 1, correct the legal description of J–78 to read as follows:

Paragraph 2004 Jet Routes

* * * * *

J–78 [Revised]

From Los Angeles, CA, via Seal Beach, CA; Thermal, CA; Parker, CA; Drake, AZ; Zuni, AZ; Albuquerque, NM; Tucumcari, NM; Panhandle, TX; Will Rogers, OK; **Tulsa, OK**; Farmington, MO; Pocket City, IN; Louisville, KY; Charleston, WV; Philipsburg, PA; to Milton, PA.

* * * * *

Issued in Washington, DC, on February 25, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–5057 Filed 3–2–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM98–9–002; Order No. 603–B]

Revision of Existing Regulations Under the Natural Gas Act

Issued February 28, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Order on rehearing.

SUMMARY: On rehearing, the Federal Energy Regulation Commission reaffirms its basic determinations in Order Nos. 603 and 603–A that its regulations only allow minor changes to storage field operations and that facilities constructed to interconnect transporters under the Natural Gas Act can be constructed under a pipeline's blanket certificate authorization.

DATES: The revision to the regulations in this order on rehearing become effective April 3, 2000.

ADDRESSES: Federal Energy Regulatory Commission 888 First Street, NE, Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:

Michael J. McGehee, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2257

Carolyn Van Der Jagt, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202)208–2246

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On April 29, 1999, the Commission issued a Final Rule in Order No. 603 amending its regulations governing the filing of applications for certificates of public convenience and necessity authorizing the construction and operation of facilities to provide service or to abandon facilities or services under 7 of the Natural Gas Act (NGA).[1] On September 29, 1999, the Commission issued Order No. 603–A in which it modified and clarified certain aspects of the Final Rule.[2] In this order, the Commission is clarifying that § 157.202(b)(2)(ii)(D) of its regulations allows only minor changes to storage field operations and that new injection and withdrawal wells cannot be drilled under the miscellaneous rearrangement provision of § 157.208. The Commission is also reiterating that facilities necessary to interconnect part 284 transporters can be constructed under the pipeline's blanket certificate.

II. Discussion

A. Miscellaneous Rearrangement of Storage Wells

In Order No. 603, the Commission modified § 157.202(b)(2)(ii)(D) to allow minor changes to storage field operations, but did not allow the drilling of storage injection/withdrawal wells as eligible facilities. In Order No. 603–A, the Commission clarified that § 157.202(b)(2)(ii)(D) only applies to the testing and developing of underground storage fields. It stated that drilling new injection/withdrawal wells in existing storage pools requires separate NGA 7(c) authority because such wells may inherently alter the daily and seasonal deliverability, volumetric capacity, or boundary of a storage field.

CNG Transmission Corporation (CNG) seeks further clarification of the Commission's interpretation of a company's ability to drill storage wells under its blanket certificate. Specifically, CNG contends that although new wells may not qualify as eligible facilities under § 157.202(b), under certain circumstances the drilling of such wells may qualify as a miscellaneous rearrangement of facilities under § 157.208(a). As an example, CNG states that the West Virginia Department of Transportation plans to build a highway through a portion of its storage field that would require that two active wells be capped and abandoned. It claims that in order to replace the deliverability of those wells it "must drill an undetermined number of new wells in the same storage field," [3] which cannot be drilled in the same footprint as the original wells. It argues that it should be able to drill the new wells under the miscellaneous rearrangement provision in § 157.208. It requests that the Commission clarify that new wells may be drilled in a certificated storage field under the miscellaneous rearrangement provision if the purpose of the wells is to replace a well that been abandoned, and if the new well(s) does not exceed the certificated deliverability of the storage field.

Commission Response

As stated in Order No. 603–A and Order No. 609,[4] the Commission does not believe that blanket certificate authorization provides adequate oversight of the construction of new injection/withdrawal wells. Such wells may inherently alter the daily or seasonal deliverability, volumetric capacity, or boundary of a storage reservoir. Accordingly, drilling new injection/withdrawal wells in existing storage pools requires separate 7(c) authorization. Such wells are not contemplated under any provision of the blanket certificate, including the miscellaneous rearrangement provisions of § 157.208. For clarification, we will revise § 157.202(b)(6) to specifically exclude underground storage injection/withdrawal wells from the definition of miscellaneous rearrangement.

B. Interconnecting Points

In Order No. 603, the Commission limited interconnecting points to the tap, metering, metering and regulating (M&R) facilities, and minor related piping. It found that any related

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[1] Revisions of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act, Order No. 603, 64 FR 26571 (May 14, 1999), FERC Stats. and Regs. ¶ 31,073 (Apr. 29, 1999).

[2] Revisions of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act, Order No. 603–A, 64 FR 54522 (Oct. 7, 1999), FERC Stats. and Regs. ¶ 31,081 (Sept. 29, 1999).

[3] CNG's request for clarification, at 2.

[4] Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements, Order No. 609, 64 FR 57374, (Oct. 25, 1999), FERC Stats. and Regs. ¶ 31,082 (Oct.13, 1999).

pipeline connecting two interstate pipeline would function as a mainline facility and would not qualify as an eligible facility. However, on rehearing in Order No. 603–A, upon reconsideration, it determined that interconnecting pipelines between Part 284 transporters should be covered under the blanket certificate because they display more characteristics in common with lateral lines than with mainlines and do not alter mainline capacity. The Commission found that since the length of these segments would be governed by the cost limits of the blanket certificate, these facilities would have a minimal impact on the certificate holder's system. It also found that this is consistent with the intent of the blanket certificate, which authorizes pipelines to construct routine facilities that have relatively little impact on ratepayers or pipeline operations.

In their request for rehearing, Indicated Shippers contend that in Order No. 603 the Commission:

> recognized that facilities interconnecting interstate pipeline could affect the mainline capacity and thereby affect the rates and services for the respective pipelines' shippers. For these reasons, the Commission excluded these activities from the blanket certificate regulations.[5]

They argue that despite finding in Order No. 603 that interconnecting pipelines would expand mainline capacity, the Commission, in Order No. 603–A, subsequently found "that such interconnects do not increase mainline capacity after all."[6] They contend that the Commission's finding is arbitrary, capricious, not supported by substantial evidence and is erroneous. Indicated Shippers assert that interconnecting pipelines do increase mainline capacity and, therefore, the Commission should retain its authority to review such facilities individually prior to granting authorization. They argued that the Commission erred by relinquishing its authority to review these facilities prior to construction.

They further assert that the footnote in Order No. 603–A that states that an interconnecting facility that will alter mainline capacity will not be covered by the blanket certificate is impracticable and unenforceable. They contend that the Commission has not "set forth any objective standards for ascertaining whether a pipeline interconnect could alter mainline capacity,"[7] and gives no indication of how it intends to enforce the limitation. They also argue that the regulatory text does not refer to the limitation.

Finally, Indicated Shippers state that the allowing pipelines to construct interconnecting pipeline under their blanket authority would enable pipelines to abuse their market power to control access to market. They argue that "an after-the-fact rate case remedy is unlikely to deter or mitigate such conduct."[8]

Commission Response

In Order No. 603, the Commission determined that interconnecting pipeline for new receipt and delivery points was not an eligible facility "because it is a mainline connecting two interstate pipelines, and not a supply or delivery lateral,"[9] and mainline facilities are not eligible facilities. The Commission did not specifically find that such pipelines would necessarily increase mainline capacity as Indicated Shippers incorrectly argues.

On rehearing of Order No. 603, several parties argued that an interconnecting pipeline between two transporters does not function differently than a lateral line. Specifically, they contended that both facilities are designed to receive and/or deliver gas supplies. They asserted that the only difference between a lateral and interconnecting pipeline is that a lateral generally connects a pipeline to a production field, gathering system or customer delivery point, whereas interconnecting pipeline connects a pipeline to another pipeline.

On rehearing, the Commission determined that interconnecting pipelines display more characteristics in common with lateral lines than with mainlines. Therefore, the Commission found that it was appropriate to allow pipelines to construct such facilities under their blanket authorization. However, as with all facilities constructed under a pipeline's blanket authorization, the interconnecting pipeline cannot alter or increase the capacity of the mainline. If it does, it is excluded from the definition of eligible facility.[10] Accordingly, pipelines can only construct interconnecting pipelines if they do not increase the capacity of their mainline system. If Indicated Shippers believes that a pipeline has used it blanket authorization to construct facilities that increase mainline capacity, it should file a complaint and the Commission will investigate. Indicated Shippers request for rehearing is denied.

C. Reporting Requirements

In Order No. 603, the Commission redefined § 157.211 to provide for automatic and prior notice authority for the construction of new delivery points. Section 157.211(c) requires that the pipeline identify facilities constructed under § 157.211 in their annual report. Consistent with the reporting requirements in § 157.208(e), § 157.211(c) should have included reporting requirements for both automatic and prior notice activities. However, the Commission inadvertently limited the reporting requirements to only facilities constructed under the automatic authorization.[11] Accordingly, we will modify § 157.211(c) to require that prior notice activities be included in the pipeline's annual report. However, we note that because the prior notice application fulfills the requirements of §§ 157.211(1), (2), and (4), the pipeline only needs to refer to the docket number of the prior notice filing and report the actual cost and completion date of the delivery in the annual report.

III. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.
—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.
—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981.

[5] Indicated Shippers' request for rehearing, at 4.
[6] *Id.*, at 5.
[7] *Id.*, at 8.
[8] *Id.*, at 9.
[9] Order No. 603, at 30,795.
[10] *See* 18 CFR § 157.202(b)(2)(ii)(C), eligible facility does not include a facility that alters the capacity of a mainline.
[11] We note that the Commission took into consideration both automatic and prior notice situations in its burden estimates listed in the Final Rule.

Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Part 157, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

1. The authority for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 157.202, the introductory text in paragraph (b)(6) is revised to read as follows:

§ 157.202 Definitions.

* * * * *

(b) * * *

(6) *Miscellaneous rearrangement* of any facility means any rearrangement of a facility, excluding underground storage injection/withdrawal wells, that does not result in any change of service rendered by means of the facilities involved, including changes in existing field operations or relocation of existing facilities:

* * * * *

§ 157.211 [Amended]

3. In § 157.211(c) the reference to "(a)(1)" is removed and a reference to "(a)" is added in its place.

[FR Doc. 00–5116 Filed 3–2–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 96P–0436]

Medical Devices; Anesthesiology Devices; Classification of Nitric Oxide Administration Apparatus, Nitric Oxide Analyzer, and Nitrogen Dioxide Analyzer

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the nitric oxide administration apparatus, nitric oxide analyzer, and nitrogen dioxide analyzer into class II (special controls). The special control that will apply to these devices is a guidance document. The agency is taking this action in response to a petition submitted under the Federal, Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997. The agency is classifying these devices into class II (special controls) in order to provide a reasonable assurance of the safety and effectiveness of the devices.

DATES: This rule is effective April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Joanna H. Weitershausen, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609, ext. 164.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or class II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

In accordance with section 513(f)(1) of the act, FDA issued an order on January 6, 2000, classifying the device in class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On January 7, 2000, Datex-Ohmeda submitted a petition requesting classification of the nitric oxide administration apparatus, nitric oxide analyzer, and nitrogen dioxide analyzer under section 513(f)(2) of the act. This petition incorporated by reference a reclassification petition that Datex-Ohmeda had submitted previously. The manufacturer recommended that the device be classified into class II.

After review of the information submitted in the original reclassification petition, the premarket notification submission (K974562), the panel recommendation of November 22, 1996, on the original reclassification petition, the automatic evaluation of class III designation petition, and the information developed by FDA to address concerns about delivery and monitoring of this drug, FDA determined that the INOvent Delivery System intended for use in administering nitric oxide, measuring nitric oxide, and measuring nitrogen dioxide can be classified in class II with

the establishment of special controls. FDA believes that class II special controls, in addition to the general controls, provide reasonable assurance of the safety and effectiveness of the device.

The delivery system consists of three devices to which FDA assigns the generic names "nitric oxide administration apparatus," "nitric oxide analyzer," and "nitrogen dioxide analyzer." The devices are identified as follows:

1. Nitric oxide administration apparatus is a device used to add nitric oxide to gases that are to be breathed by a patient. The nitric oxide administration apparatus is to be used in conjunction with a ventilator or other breathing gas administration system.

2. Nitric oxide analyzer is a device intended to measure the concentration of nitric oxide in respiratory gas mixtures during administration of nitric oxide.

3. Nitrogen dioxide analyzer is a device intended to measure the concentration of nitrogen dioxide in respiratory gas mixtures during administration of nitric oxide.

On January 11, 2000, FDA issued an order to the petitioner classifying the nitric oxide administration apparatus, nitric oxide analyzer, and nitrogen dioxide analyzer described previously into class II subject to the special controls described below. Additionally, FDA is codifying the classification of these devices by adding §§ 868.2380, 868.2385, and 868.5165. In addition to the general controls of the act, the special control developed by the agency is a guidance document entitled "Guidance Document for Premarket Notification Submissions for Nitric Oxide Administration Apparatus, Nitric Oxide Analyzer, and Nitrogen Dioxide Analyzer." This guidance document identifies the risks associated with these types of devices and contains information that will help manufacturers address those risks. This document is available on the Internet at http://www.fda.gov/cdrh/ode/1157.pdf.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 868

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 868 is amended as follows:

PART 868—ANESTHESIOLOGY DEVICES

1. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 868.2380 is added to subpart C to read as follows:

§ 868.2380 Nitric oxide analyzer.

(a) *Identification.* The nitric oxide analyzer is a device intended to measure the concentration of nitric oxide in respiratory gas mixtures during administration of nitric oxide.

(b) *Classification.* Class II. The special control for this device is FDA's "Guidance Document for Premarket Notification Submissions for Nitric Oxide Administration Apparatus, Nitric Oxide Analyzer, and Nitrogen Dioxide Analyzer."

3. Section 868.2385 is added to subpart C to read as follows:

§ 868.2385 Nitrogen dioxide analyzer.

(a) *Identification.* The nitrogen dioxide analyzer is a device intended to measure the concentration of nitrogen dioxide in respiratory gas mixtures during administration of nitric oxide.

(b) *Classification.* Class II. The special control for this device is FDA's "Guidance Document for Premarket Notification Submissions for Nitric Oxide Administration Apparatus, Nitric Oxide Analyzer, and Nitrogen Dioxide Analyzer."

4. Section 868.5165 is added to subpart F to read as follows:

§ 868.5165 Nitric oxide administration apparatus.

(a) *Identification.* The nitric oxide administration apparatus is a device used to add nitric oxide to gases that are to be breathed by a patient. The nitric oxide administration apparatus is to be used in conjunction with a ventilator or other breathing gas administration system.

(b) *Classification.* Class II. The special control for this device is FDA's "Guidance Document for Premarket Notification Submissions for Nitric Oxide Administration Apparatus, Nitric Oxide Analyzer, and Nitrogen Dioxide Analyzer."

Dated: February 24, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–5160 Filed 3–2–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. 99P–4064]

Medical Devices; Exemptions From Premarket Notification; Class II Devices; Vascular Tunnelers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing an order granting in part a petition requesting exemption from the premarket notification requirements for vascular tunnelers with certain limitations. This rule will exempt from premarket notification stainless steel vascular tunnelers of single unit construction. FDA is publishing this order in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: This rule is effective March 3, 2000.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Public Law 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to ensure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use that is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976, (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is "substantially equivalent" within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that 1 day after date of publication of the list under section 510(m)(1) of the act, FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff." That guidance can be obtained through the Internet on the CDRH home page at http://www.fda.gov/cdrh or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify "159" when prompted for the document shelf number.

III. Petition

On September 14, 1999, FDA received a petition requesting an exemption from premarket notification for the vascular tunneler. Vascular tunnelers are currently classified under 21 CFR 870.3460 as an accessory. In the **Federal Register** of November 17, 1999 (64 FR 62678), FDA published a notice announcing that this petition had been received and providing an opportunity for interested persons to submit comments on the petition by December 17, 1999. FDA has reviewed the petition and has determined that stainless steel vascular tunnelers of single unit construction to be used to place tunnels for vascular grafts meet the criteria for exemption from the notification requirements. This is the only type of vascular tunneler of which FDA presently has any knowledge. The exemption is limited to vascular tunnelers of the type described and is also subject to the general limitations on exemptions from premarket notification for cardiovascular devices as described in 21 CFR 870.9. For example, the exemption will not apply to devices of this type that present new indications, novel designs, or alternative materials.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule will relieve a burden and simplify the marketing of these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 870.3460 is amended by revising paragraph (b) to read as follows:

§ 870.3460 Vascular graft prosthesis of 6 millimeters and greater diameter.

* * * * *

(b) *Classification.* Class II. The stainless steel vascular tunneler of single unit construction to be used to place tunnels for vascular grafts, included as an accessory to the device described in paragraph (a) of this section, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9. All other devices classified in this section are subject to the premarket notification procedures.

Dated: February 24, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–5159 Filed 3–2–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8834]

RIN 1545–AU22 and 1545–AX30

Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Monday, August 9, 1999 (64 FR 43072), relating to the treatment of distributions to foreign persons under section 367(e)(1) and (2) as added to the Internal Revenue Code by the Tax Reform Act of 1986, which affects U.S. corporations.

DATES: This correction is effective August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Guy A. Bracuti, 202–622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 367(e)(1) and (2) of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8834) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8834), which was the subject of FR Doc. 99–20092, is corrected as follows:

§ 1.367(e)–1 [Corrected]

1. On page 43076, column 2, § 1.367(e)–1(b)(2), lines 19, 20 and 21 from the bottom of the column, the language "entity (disregarded entity) under § 1.7701–3(b)(1)(ii) or (b)(2)(i)(C) are" is corrected to read "entity separate from its owner (disregarded entity) under § 301.7701–3 of this chapter are".

2. On page 43076, column 3, § 1.367(e)–1(d)(1), lines 2 and 3 from the bottom of the column, the language "described in paragraph (b)(1) of this section are" is corrected to read "described in section 355 in which the distributing corporation is domestic and the controlled corporation is foreign are".

§ 1.367(e)–2 [Corrected]

3. On page 43078, column 1, § 1.367(e)–2(b)(1)(ii)(B)(*2*), lines 7, 8 and 9 from the bottom of the *Example*, the language "allocate $45 (60×.75) of the recognized capital loss to Asset B and will allocate the remaining $15 (60 × .25) of" is corrected to read "allocate $15 (60×.25) of the recognized capital loss to Asset B and will allocate the remaining $45 (60×.75) of".

4. On page 43078, column 1, § 1.367(e)–2(b)(1)(ii)(C), lines 16 and 17, the language "shall not offset loss" is corrected to read "shall not be offset by a loss".

5. On page 43081, column 1, § 1.367(e)–2(b)(2)(iii)(A)(*2*), line 2, the language "(directly)" is corrected to read "(directly and without regard to paragraph (b)(1)(iii) of this section)".

6. On page 43081, column 1, § 1.367(e)–2(b)(2)(iii)(A)(*3*), line 2, the language "(directly)" is corrected to read "(directly and without regard to paragraph (b)(1)(iii) of this section)".

7. On page 43081, column 1, § 1.367(e)–2(b)(2)(iii)(B), lines 7 through 11, the language "(or was a U.S. real property holding corporation with respect to the foreign distributee corporation during the five year period ending on the date of liquidation)" is corrected to read "(or is a former U.S. real property holding corporation the stock of which is treated as a U.S. real property interest for five years under section 897(c)(1)(A)(ii))".

8. On page 43081, column 1, § 1.367(e)–2(b)(2)(iii)(C)(*2*), line 8 from the bottom of the paragraph, the language "disposes of" is corrected to read "disposes of (whether in a recognition or nonrecognition transaction)".

9. On page 43081, column 1, § 1.367(e)–2(b)(2)(iii)(C)(*2*), the last three

lines of the paragraph, the language "that a principal purpose of the liquidation was not the avoidance of U.S. tax" is corrected to read "that the avoidance of U.S. tax was not a principal purpose of the liquidation".

10. On page 43081, column 2, § 1.367(e)–2(b)(2)(iii)(D), line 10 from the bottom of the paragraph, the language "to such stock" is corrected to read "to the distributed stock".

11. On page 43081, column 2, § 1.367(e)–2(b)(3)(i), the last sentence of the paragraph is removed.

12. On page 43081, column 3, § 1.367(e)–2(c)(2)(i)(A), line 7, the language "gain on the" is corrected to read "gain (or loss in accordance with principles contained in paragraph (b)(1)(ii) of this section) on the".

13. On page 43082, column 2, § 1.367(e)–2(c)(3)(i), the last sentence of the paragraph is removed.

14. On page 43082, column 2, § 1.367(e)–2(e), lines 2 and 3, the language "occurring 30 days after August 9, 1999 or" is corrected to read "occurring on or after September 7, 1999 or".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–3564 Filed 3–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

RIN 1010–AB57

Training Class on the New Indian Gas Valuation Regulations

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of training.

SUMMARY: The Minerals Management Service (MMS) is providing training on the new Indian Gas Valuation Regulations published in the **Federal Register** on August 10, 1999 (64 FR 43506). MMS is offering this class at no cost to oil and gas industry representatives and members of the public who have an interest in the valuation of gas produced from Indian lands.

DATES: The training class will be held on Wednesday, March 29, 2000, 8:30 a.m. to 4:00 p.m., Mountain Standard Time.

ADDRESSES: The training class will be held at the Sheraton Billings Hotel, 27 North 27th Street, Billings, Montana 59101, telephone number (406) 252–7400.

FOR FURTHER INFORMATION CONTACT: Theresa Walsh Bayani, Royalty Valuation Division, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3152, Denver, Colorado 80225–0165, telephone number (303) 275–7247 or fax number (303) 275–7227.

SUPPLEMENTARY INFORMATION: The revised regulations, which became effective on January 1, 2000, add alternative valuation methods to the March 1, 1988, regulations to ensure that Indian lessors receive maximum revenues from their mineral resources as required by the unique terms of Indian leases and MMS's trust responsibility to Indian lessors. The revised regulations will also improve the accuracy of royalty payments at the time those royalties are due.

If you produce gas from Indian lands, the new regulations affect you, and we strongly encourage you to attend this training class. Some of the topics include:

- How do you value gas in an index zone using the index-based formula?
- How do you value gas not in an index zone?
- How do you make a dual accounting election?
- What are the changes to transportation and processing allowances?

If you plan to attend this training class, please register by calling or sending a fax to Ms. Anna Hooker at telephone number (303) 275–7241, or fax number (303) 275–7227. Seating is limited and we need to know the number in your party. You must make your own travel and hotel reservations for the training. MMS will not reserve blocks of rooms.

Dated: February 25, 2000.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 00–5094 Filed 3–2–00; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–102–1–7440; FRL–6543–1]

Approval and Promulgation of Implementation Plans: Texas; Reasonably Available Control Technology for Major Stationary Sources of Nitrogen Oxides for the Houston/Galveston and Beaumont/Port Arthur Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is conditionally approving a revision to the Texas State Implementation Plan (SIP). The revisions concern Reasonably Available Control Technology (RACT) at stationary sources of nitrogen oxides (NO_X) in the Houston/Galveston (H/G), and the Beaumont/Port Arthur (B/PA) ozone nonattainment areas. The EPA is approving these revisions to regulate emissions of NO_X in accordance with the NO_X RACT requirements of the Federal Clean Air Act (the Act).

EFFECTIVE DATE: This rule is effective on April 3, 2000.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

- Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, TX 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, TX 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733; telephone (214) 665–6691.

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SUPPLEMENTARY INFORMATION:

Throughout this document "we," "us," or "our" means EPA.

1. What Are We Approving?

We are finalizing our conditional approval of revisions to the Texas Rule 30 TAC Chapter 117 for the control of air pollution from nitrogen compounds. These measures will reduce NO_X emissions in the H/G and B/PA ozone nonattainment areas. By this approval we are agreeing that the State of Texas will be implementing the RACT on sources listed in section 13 of this document. Specifically, we are finalizing our conditional approval of the revisions submitted on June 15, 1993; August 31, 1993; June 9, 1994; August 3, 1994; September 21, 1994; December 29, 1994; March 6, 1996; August 9, 1996; May 21, 1997; and May 20, 1998. For detailed listing of each one of these revisions, please refer to our document of proposed rulemaking (64 FR 58011), that we published on October 28, 1999. As proposed, our approval is conditioned on Texas revising Regulation 117.570 to remove the ability to add one standard deviation to the emissions baseline for trading purposes. Furthermore, the Texas Accelerated Vehicle Retirement (AVR) program is not a part of the approved SIP (see 62 FR 66576, December 19, 1997, and 63 FR 41756, August 5, 1998); consequently, if a source plans to rely upon any emission reduction credits generated or claimed through the AVR program, for interim compliance with Chapter 117, the State will have to submit a separate source specific SIP revision to us for approval.

Texas must submit the approvals of the alternative case-specific specifications under sections 117.121, 117.221, 117.321 and 117.426 to the EPA for approval as source-specific SIP revisions. Texas must also submit approvals of a petition for phased RACT under section 117.540 to the EPA for approval as source-specific SIP revision. Otherwise, a source operating under such a State approval is subject to Federal enforcement action for violation of the required specifications and/or compliance deadline.

2. Did EPA Receive Comments on the Proposed Conditional Approval Action?

No, we did not receive comments on our proposed conditional approval action. We proposed conditional approval of these SIP revisions on October 28, 1999. The public comment period for our action ended on November 28, 1999. As a result, we are finalizing our proposed conditional approval without changes. For more details on these submittals, please refer to the proposed rulemaking action.

3. What Are Nitrogen Oxides?

Nitrogen oxides belong to the group of criteria air pollutants. The NO_X are produced from burning fuels, including gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain.

4. What Is Reasonably Available Control Technology?

Reasonably Available Control Technology is defined as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761, September 17, 1979. This requirement is established by sections 182(b)(2) and 182(f) of the Act. These sections, taken together, establish the requirements for Texas to submit a NO_X RACT regulation for all major stationary sources of NO_X in ozone nonattainment areas classified as moderate and above. A State may choose to develop its own RACT requirements on a case by case basis, considering the economic and technical circumstances of an individual source.

5. What Are the Clean Air Act's RACT Requirements for NO_X Emissions?

Section 182(b)(2) requires States, with areas classified as moderate ozone nonattainment, to implement RACT with respect to all major sources of VOCs. Section 182(f) states that, "The plan provisions required under this subpart for major stationary sources of VOCs shall also apply to major stationary sources (as defined in section 302 and subsections (c), (d), and (e) of the section) of oxides of nitrogen." This NO_X RACT requirement also applies to all major sources in ozone nonattainment areas with higher than moderate nonattainment classifications.

On November 25, 1992 (57 FR 55620), we published a document of proposed rulemaking entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement). The NO_X Supplement describes and provides preliminary guidance on the requirements of section 182(f) of the Act. You should refer to the NO_X supplement for further information on the NO_X requirements. The EPA's mandatory Economic Incentive Program (EIP) rules for criteria pollutants appear in 40 CFR part 51, Subpart U (59 FR 16710). The EPA's discretionary EIP rules concerning emission trading appear in the 1994 EIP guidance document (59 FR 16690). In addition, other EPA guidance memoranda, such as those included in the "NO_X Policy Document for the Clean Air Act of 1990," (EPA–452/R96–005, March 1996), should also be referred to for more information about NO_X requirements.

On August 17, 1994, the Texas Natural Resource Conservation Commission (TNRCC) petitioned us under section 182(b) to temporarily exempt the B/PA and H/G ozone nonattainment areas from the NO_X requirements of the Act. The TNRCC asked for the exemption based on air quality modeling that indicated that the control of NO_X would not contribute to attainment of the National Ambient Air Quality Standards (NAAQS). We approved the petition on April 19, 1995.

The temporary exemption was to expire on December 31, 1996, with RACT compliance no later than May 31, 1997. On March 6, 1996, the TNRCC asked us to extend the temporary waiver. The TNRCC asked for an extension of the temporary waiver based on section 182(f) of the Act. Section 182(f) allows for a waiver of certain federally required NO_X control measures, if the State demonstrates that NO_X reductions do not contribute to ozone attainment in moderate or above areas. The State submitted modeling information with a petition predicting that the NO_X reductions would be counterproductive to ozone attainment in portions of H/G and B/PA areas. The EPA approved the petition and granted an extension until December 31, 1997, to allow time for carrying out further modeling. Based on this further modeling, TNRCC allowed the waiver to expire. We provided notice that the waiver had expired in the **Federal Register** on February 12, 1998 (63 FR 7071). The NO_X RACT compliance date was extended to no later than November 15, 1999.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions not

covered by either a pre or post-enactment control techniques guideline (CTG) document. There were no NO_X CTGs issued before enactment and we have not issued a CTG document for any NO_X sources since enactment of the Act. However, we published ACTs documents for several industrial categories. *See* section 7 of this document. States can use the information contained in the ACTs to develop their RACT rules. The Texas rules covering NO_X sources and submitted as SIP revisions require final installation of the actual NO_X controls as expeditiously as practicable, but no later than November 15, 1999.

6. What Are Definitions of Major Sources for NO_X?

Section 302 of the Act generally defines "major stationary source" as a facility or source of air pollution which emits, when uncontrolled, 100 tons per year (tpy) or more of air pollution. This general definition applies unless another specific provision of the Act explicitly defines major source differently. Therefore, for NO_X, a major source is one which emits, when uncontrolled, 100 tpy or more of NO_X in marginal and moderate areas. According to section 182(c) of the Act, a major source in a serious nonattainment area is a source that emits, when uncontrolled, 50 tpy or more of NO_X.

According to section 182(d) of the Act, a major source in a severe nonattainment area is a source that emits, when uncontrolled, 25 tpy or more of NO_X.

Houston is a severe ozone nonattainment area, so the major source size for Houston is 25 tpy or more, when uncontrolled. Beaumont is a moderate ozone nonattainment area, so the major source size for Beaumont is 100 tpy or more, when uncontrolled.

7. What Are Alternative Control Techniques (ACTs)?

Section 183(c) of the Act provides that we will issue technical documents which identify alternative controls for stationary sources of oxides of nitrogen which emit, when uncontrolled, 25 tpy or more of this pollutant. These ACT documents are to be subsequently revised and updated by us. The information in the ACT documents is generated from EPA papers, literature sources and contacts, control equipment vendors, engineering firms, and Federal, State, and local regulatory agencies. States can use information in the ACT to develop their RACT regulations. The following table contains a list of ACT documents for various source categories of NO_X with their corresponding EPA publication numbers.

TABLE I.—ACT DOCUMENTS FOR SOURCE CATEGORIES OF NO_X AND THEIR EPA PUBLICATION NUMBERS

Source category	EPA Publication No.
Nitric/Adipic Acid Plants.	EPA–450/3–91–026
Gas Turbines ...	EPA–453/R–93–007
Process Heaters.	EPA–453/R–93–034
Internal Combustion Engines.	EPA–453/R–93–032
Cement Plants	EPA–453/R–94–004
Non-Utility Boilers.	EPA–453/R–94–022
Utility Boilers	EPA–453/R–94–023
Glass Manufacturing.	EPA–453/R–94–037
Iron and Steel Manufacturing.	EPA–453/R–94–065

8. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

9. What Is the Federal Approval Process for a SIP?

When a State wants to incorporate its regulations into the federally enforceable SIP, the State must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a pubic hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State adopts a rule, regulation, or control strategy, the State may submit the adopted provisions to us and request that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If we receive adverse comments, we must address them prior to a final action.

Under section 110 of the Act, when we approve all State regulations and supporting information, those State regulations and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations that we approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

10. What Does Federal Approval of a SIP Mean to Me?

It is primarily the function of a State to enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations, if the State fails to do so.

11. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time. It has been estimated that 60 percent of Americans live in nonattainment areas. The H/G and B/PA are nonattainment areas for ozone.

12. What Counties in Texas Will This Rule Affect?

This rule affects the H/G and B/PA ozone nonattainment areas. The B/PA area is classified as moderate ozone nonattainment and includes the following counties: Hardin, Jefferson, and Orange. The H/G is classified as severe ozone nonattainment and includes the following counties: Brazoria, Chambers, Fort Bend, Harris, Galveston, Liberty, Montgomery, and Waller. If you are in one of these counties, you should refer to the rules to determine if and how this rule will affect you.

13. What Texas Rule Revisions Is EPA Approving?

The State of Texas submitted the NO_X RACT program Chapter 117, "Control of Air Pollution From Nitrogen Compounds," as a number of revisions to the SIP. This rulemaking will approve those ten revisions submitted to us dating from June 15, 1993, to May 20, 1998. For detailed address of these revisions, refer to our document of proposed rulemaking (64 FR 58014), dated October 28, 1999.

14. What Kind of Major Source Categories Will This Rule Affect?

This rule will affect NO_X emissions from the following existing source categories in Texas: (a) Utility boilers, steam generators, auxiliary steam boilers, and gas turbines used to generate electricity in H/G and B/PA ozone nonattainment areas (See section 117.101 of this rule); (b) commercial, institutional, or industrial boiler (non-utility boiler) and process heaters in H/G and B/PA with a maximum rated capacity of 40 million British thermal units (Btu) per hour or greater, stationary gas turbines in H/G and B/PA with a megawatt (mW) rating of 1.0 mW or higher; (c) stationery rich burn internal combustion engines of 150 horsepower (hp) or greater in the H/G ozone nonattainment area, and stationary internal combustion engines of 300 hp or greater in the B/PA ozone nonattainment area (See section 117.3210 of this rule); and (d) nitric acid manufacturing (See section 117.401 of this rule) and adipic acid manufacturing (See section 117.301 of this rule) plants in H/G and B/PA ozone nonattainment areas.

15. Are NO_X Emissions Specifications in Texas Rule Consistent With Federal Guidelines?

The emission specifications in the Texas rule are consistent with Federal guidelines. For detailed comparison of these emission specifications refer to 64 FR 58015, October 28, 1999. The following table contains a summary of the type of affected sources, their corresponding emission limit, and relevant applicability information for these sources in the H/G and B/PA nonattainment areas.

TABLE II.—SUMMARY OF THE TEXAS NO_X RACT RULE FOR SOURCES IN THE H/G AND B/PA NON-ATTAINMENT AREAS

Source	NO_X limit	Additional information
Utility Boilers	0.26 lb/MMBtu	Natural gas or a combination of natural gas and waste oil, 24-hour rolling average.
Utility Boilers	0.20 lb/MMBtu	Natural gas or a combination of natural gas and waste oil, 30-day rolling average.
Utility Boilers	0.38 lb/MMBtu	Coal, tangentially-fired, 24-hour rolling average.
Utility Boilers	0.43 lb/MMBtu	Coal, wall-fired, 24-hour rolling average.
Utility Boilers	0.30 lb/MMBtu	Fuel oil only, 24-hour rolling average.
Utility Boilers	[a(0.26)+b(0.30)]/(a+b)	Oil and gas mixture, 24-hour rolling average, where a = percent natural gas heat input b = percent fuel oil heat input.
Stationary Gas Turbines	42 parts per million volume dry (ppmvd) basis.	@ 15% 0_2, natural gas, ≥30 Mega Watt (mW) annual electric output ≥2500 hour × mW rating.
Stationary Gas Turbines	65 parts per million volume dry (ppmvd).	@ 15% 0_2, fuel oil.
Stationary Gas Turbines	0.20 lb/MMBtu	Natural gas, peaking units, annual electric output <2500 hour × mW rating.
Stationary Gas Turbines	0.30 lb/MMBtu	Fuel oil, peaking units, annual electric output <2500 hour × mW rating.
Non-utility Boilers	0.10 lb/MMBtu	Natural gas, low heat release and T < 200 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.15 lb/MMBtu	Natural gas, low heat release, preheated air 200 ≤T < 400 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boiler	0.20 lb/MMBtu	Natural gas, low heat release, preheated air T ≥ 400 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.20 lb/MMBtu	Natural gas, high heat release, without air or preheated air T < 250 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.24 lb/MMBtu	Natural gas, high heat release, preheated air 250 ≤T < 500 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.28 lb/MMBtu	Natural gas, high heat release, preheated air T ≥ 500 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.10 lb/MMBtu	Natural gas, preheated air T, < 200 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.13 lb/MMBtu	Natural gas, preheated air 200 ≤T < 400 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.18 lb/MMBtu	Natural gas, low heat release, preheated air T ≥ 400 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.10 lb/MMBtu	Natural gas, firebox T < 1400 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.125 lb/MMBtu	Natural gas, firebox 1400 ≤T <1800 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.15 lb/MMBtu	Natural gas, firebox T ≥ 1800 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters and Non-utility Boilers.	0.30 lb/MMBtu	Liquid fuel, capacity ≥100 MMBtu/hr.
Process Heaters and Non-utility Boilers.	0.30 lb/MMBtu	Wood fuel, capacity ≥100 MMBtu/hr.
Stationary Gas Turbines	42 parts per million volume dry (ppmvd) basis.	@ 15% 0_2, rating ≥10 mW.
Reciprocating Internal Combustion Engines.	2.0 gram/hp-hr	Natural gas, rich burn, stationary, capacity ≥150 hp in H/G, capacity ≥300 hp in B/PA.
Absorbers of Adipic Acid Production Units.	2.5 lb/ton of acid produced	24-hr rolling average.

TABLE II.—SUMMARY OF THE TEXAS NO_X RACT RULE FOR SOURCES IN THE H/G AND B/PA NON-ATTAINMENT AREAS—Continued

Source	NO_X limit	Additional information
Absorbers of Nitric Acid Production Units.	2.0 lb/ton of acid produced	24-hr rolling average.

16. Why Is This a Conditional Approval?

The allowable NO_X emission rates are calculated based on a rolling 30-day average method (see equation 117.223(b)(1) of this rule) and based on a maximum daily cap method (see equation 117.223(b)(2) of this rule). The definition of actual daily heat input in 117.570(b)(2), and the definition of actual historical average of the daily heat input in 117.223(b)(1) allow sources to add one standard deviation to their baseline heat input or emission rate to establish the baseline for generating emission credits. Adding one standard deviation to the baseline in equation 117.570(b)(2) could generate "paper credits."

We understood from Texas that this allowance was an inadvertent oversight and they committed in the July 19, 1999, letter to change the rule and submit it as a SIP revision to our office by November 15, 1999. We are conditionally approving the rule based on their commitment. *See* 64 FR 58011, October 28, 1999. We have received a SIP revision submitted to us on November 15, 1999, that modifies the NO_X RACT for the B/PA ozone nonattainment area. The November 15, 1999, submittal addresses the inadvertent oversight, in equation 117.570(b)(2), mentioned above, and should avoid generation of "paper credits" in the ozone nonattainment areas. In this document, we are not acting on the Texas November 15, 1999, SIP revision. In this document, we are only finalizing our conditional approval of the Texas NO_X RACT rules that appeared in the 64 FR 58011, October 28, 1999. We will address the correction in a future rulemaking action.

II. Final Action

Pursuant to sections 110 and 302 and Part D of the Act, we are finalizing the conditional approval of revisions to the Texas Rule 30 TAC Chapter 117 for the control of air pollution from nitrogen compounds. Please refer to section 16 of this document for the terms and description of this condition. These measures will reduce NO_X emissions in the H/G and B/PA ozone nonattainment areas. In this final action we are agreeing that the State of Texas will be implementing the RACT in the H/G and B/PA on sources listed in section 13 of this document.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled 'Regulatory Planning and Review."

B. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612, "Federalism," and Executive Order 12875, "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it approves a State program.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature

of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any new requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective April 3, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Nitrogen dioxide, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 15, 2000.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. In § 52.2270 the table in paragraph (c) is amended under Chapter 117 by:

a. Removing existing entries "Section 117. Rule 701" through "Section 117. Rule 703".

b. Adding new headings and entries 117.10 through 117.601 in numerical order.

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State submittal/approval date	EPA approval date	Explanation
*	*	*	*	*
	CHAPTER 117 (Reg 7)—CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS Subchapter A			
Section 117.10	Definitions	May 25, 1994	March 3, 2000 [Federal Register cite].	
	Subchapter B: Division 1—Utility Electric Generation			
Section 117.101	Applicability	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.103	Exemptions	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.105	Emission Specifications	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.107	Alternative System-Wide Emission Specifications.	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.109	Initial Control Plan Procedures	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.111	Initial Demonstration of Compliance	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.113	Continuous Demonstration of Compliance.	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.115	Final Control Plan Procedures	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.117	Revision of Final Control Plan	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.119	Notification, Recordkeeping, and Reporting Requirements.	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.121	Alternative Case Specific Specifications.	May 25, 1994	March 3, 2000 [Federal Register cite].	
	Division 2—Commercial, Institutional, and Industrial Sources			
Section 117.201	Applicability	May 11, 1993	March 3, 2000 [Federal Register cite].	
Section 117.203	Exemptions	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.205	Emission Specifications	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.207	Alternative Plant-Wide Emission Specifications.	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.208	Operating Requirements	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.209	Initial Control Plan Procedures	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.211	Initial Demonstration of Compliance	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.213	Continuous Demonstration of Compliance.	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.215	Final Control Plan Procedures	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.217	Revision of Final Control Plan	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.219	Notification, Recordkeeping, and Reporting Requirements.	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.221	Alternative Case Specific Specifications.	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.223	Source Cap	May 20, 1998	March 3, 2000 [Federal Register cite].	
	Subchapter C: Division 1—Adipic Acid Manufacturing			
Section 117.301	Applicability	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.309	Control Plan Procedures	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.311	Initial Demonstration of Compliance	May 25, 1994	March 3, 2000 [Federal Register cite].	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State submittal/approval date	EPA approval date	Explanation
Section 117.313	Continuous Demonstration of Compliance.	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.319	Notification, Recordkeeping, and Reporting Requirements.	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.321	Alternative Case Specific Specifications.	May 25, 1994	March 3, 2000 [Federal Register cite].	
Division 2—Nitric Acid Manufacturing—Ozone Nonattainment Areas				
Section 117.401	Applicability	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.409	Control Plan Procedures	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.411	Initial Demonstration of Compliance	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.413	Continuous Demonstration of Compliance.	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.421	Alternative Case Specific Specifications.	May 25, 1994	March 3, 2000 [Federal Register cite].	
Division 2—Nitric Acid Manufacturing—General				
Section 117.451	Applicability	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.458	Applicability of Federal New Source Performance Standards.	May 20, 1998	March 3, 2000 [Federal Register cite].	
Subchapter D Administrative Provisions				
Section 117.510	Compliance Schedule for Utility Electric Generation.	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.520	Compliance Schedule for Commercial, Institutional, and Industrial Combustion Sources.	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.530	Compliance Schedule for Nitric Acid and Adipic Acid Manufacturing Sources.	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.540	Phased Reasonably Available Control Technology.	May 20, 1998	March 3, 2000 [Federal Register cite].	
Section 117.560	Rescission	May 25, 1994	March 3, 2000 [Federal Register cite].	
Section 117.570	Trading	May 25, 1994	March 3, 2000 [Federal Register cite].	
Subchapter E Gas-Fired Steam Generation				
Section 117.601	Gas-Fired Steam Generation	May 20, 1998	March 3, 2000 [Federal Register cite].	

* * * * * * *

[FR Doc. 00–5039 Filed 3–2–00; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

43 CFR Part 3500

[WO–320–1330–PB–24 A]

RIN 1004–AC49

Leasing of Solid Minerals Other Than Coal and Oil Shale; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations for leasing of solid minerals other than coal and oil shale published in the **Federal Register** on October 1, 1999 (64 FR 53512).

DATES: Effective on November 1, 1999.

FOR FURTHER INFORMATION CONTACT: Philip Allard, (202) 452–5195, or Chris Fontecchio, (202) 452–5012.

SUPPLEMENTARY INFORMATION:

Need for Correction

The final regulations as published contained several errors which may

confuse or mislead the public. We need to correct these errors to clarify the regulations.

In paragraph (b) of § 3504.15, we have a table that has alphabetic identifiers. This results in citations such as § 3504.15(b)(b) which could be confusing. Therefore, we are changing the alphabetic identifiers in the table from (a), (b), (c), (d), (e), (f), and (g) to the identifiers (1), (2), (3), (4), (5), (6), and (7) respectively.

In the newly redesignated paragraph (b)(3) of § 3504.15 we are changing the word "Potash" to the word "Potassium" to be consistent with the use of the word "potassium" in other parts of the rule.

In § 3506.14(a) we used the word "form" instead of the word "from". Therefore we are changing the word "form" to the word 'from'.

In one case we have two sections of the rule that address the same issue but contradict each other. The second sentence of § 3504.12(a)(1) states that no filing fee is required with preference right lease applications; however, § 3507.16 states that one must include a $25 nonrefundable filing fee with a preference right lease application. This is clearly contradictory. We did not intend to create any new filing fees when we issued this rule. In our previous rule we did not require a filing fee with preference right lease applications. See for example §§ 3513.1–1, 3523.1–1, 3533.1–1, 3543.1–1, 3553.1–1, and 3563.1–1 of the previous rule. Therefore, we are correcting § 3507.16 to state that no filing fee is required when one applies for a preference right lease.

In § 3508.21 we have a subsection (b) but we have no subsection (a). We intended subsection (a) to begin at the first sentence. Therefore we are inserting the identifier "(a)" at the beginning of the first sentence of the section.

List of Subjects in 43 CFR Part 3500

Government contracts, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: February 25, 2000.

Carson W. Culp,

Assistant Director, Energy and Mineral Resources.

Accordingly, BLM makes the following correcting amendments to 43 CFR Part 3500:

PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

1. The authority citation for part 3500 continues to read as follows:

Authority: 5 U.S.C. 552; 30 U.S.C. 189 and 192c; 43 U.S.C. 1733 and 1740; and sec. 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. app.).

2. Correct paragraph (b) of § 3504.15 to read as follows:

§ 3504.15 How does BLM determine my rent?

* * * * *

(b) Annual rental rates for leases for each commodity are shown in the table below. The rate shown is for each acre or fraction of an acre in the lease.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6 to end
(1) Phosphate	$0.25	$0.50	$0.50	$1.00	$1.00	$1.00
(2) Sodium	0.25	0.50	0.50	0.50	0.50	1.00
(3) Potassium	0.25	0.50	0.50	0.50	0.50	1.00
(4) Sulphur	0.50	0.50	0.50	0.50	0.50	0.50
(5) Gilsonite	0.50	0.50	0.50	0.50	0.50	0.50
(6) Hardrock	1.00	1.00	1.00	1.00	1.00	1.00
(7) Asphalt	0.25	0.50	0.50	0.50	0.50	1.00

3. Correct § 3506.14(a) to read as follows:

§ 3506.14 May others participate in the exploration program?

(a) If any person wants to participate in the exploration program, you and BLM must receive written notice from that person within 30 days after the later of the final newspaper publication or the end of the BLM 30-day posting period.

* * * * *

4. Correct § 3507.16 to read as follows:

§ 3507.16 Is there a fee or payment required with my application?

Yes. You must submit the first year's rent with your application. Determine the first year's rent from the provisions in § 3504.15 of this part. There is no filing fee.

5. Correct the first sentence of § 3508.21 to read as follows:

§ 3508.21 What happens if I am the successful bidder?

(a) If you are the highest qualified bidder and we determine that your bid meets or exceeds fair market value, we will send you copies of the lease on the form attached to the detailed statement.

* * *

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[FR Doc. 00–5052 Filed 3–2–00; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–300; MM Docket No. 99–190; RM–9631; RM–9689]

Radio Broadcasting Services; Colony and Weatherford, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission dismisses the request of Suelou, Inc. to allot Channel 286A to Colony, OK, for: (1) Failure to file comments expressing a continuing interest in the allotment; and (2) provide the requested information to support a finding that it is a community for allotment purposes. *See* 64 FR 29977, June 4, 1999. The Commission grants the mutually exclusive proposal of Fred R. Morton, Jr. to allot Channel 286A to Weatherford, OK, as the community's second local commercial FM service. Channel 286A can be allotted to Weatherford in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.2 kilometers (2.0 miles) northwest, at coordinates 35–33–02 NL; 98–43–59 WL. A filing window for Channel 286A at Weatherford will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATE: Effective April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–190, adopted February 9, 2000, and released February 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 286A at Weatherford.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5098 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–304; MM Docket No. 99–159; RM–9616; MM Docket 99–160; RM–9617; MM Docket No. 99–161; RM–9565; MM Docket 99–162; RM–9566; MM Docket No. 99–192; RM–9633]

Radio Broadcasting Services; Paxton, Overton, Hershey, Sutherland and Ravenna, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain West Broadcasting, allots Channel 228C1 to Paxton, NE, Channel 257C2 to Overton, NE, Channel 297C1 to Hershey, NE, Channel 264C1 to Sutherland, NE, and 276C2 to Ravenna, NE, as each community's first local aural service. Each of the allotments can be made in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The allotment coordinates are: Paxton, NE, 41–06–48 NL; 101–21–12 WL; Overton, NE, 40–44–24 NL; 99–42–06 WL; Hershey, NE, 41–09–30 NL; 101–00–00 WL; Sutherland, NE, 41–09–30 NL; 101–07–36 WL; Ravenna, NE, 41–01–36 NL; 98–54–48 WL. *See* 64 FR 27132, May 25, 1999, 64 FR 28424, May 26, 1999, 64 FR 28425, May 26, 1999, and 64 FR 29978, June 4, 1999. A filing window for these channels will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

DATES: Effective April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket Nos. 99–159, 99–160, 99–161, 99–162, 99–192, adopted February 9, 2000, and released February 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Hershey, Channel 297C1; Overton, Channel 257C2; Paxton, Channel 228C1, Ravenna, Channel 276C2; and Sutherland, Channel 264C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5149 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–392; MM Docket No. 95–108; RM–8631]

Radio Broadcasting Services; Ankeny and West Des Moines, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Fuller-Jeffrey Broadcasting Corporation, reallots Channel 223C2 from Ankeny, Iowa and modifies Station KJJY–FM's license accordingly. *See* 60 FR 37042 (July 19, 1995). Channel 232C2 can be allotted to West Des Moines in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's authorized site. The coordinates for Channel 223C2 at West Des Moines are North Latitude 41–39–53 and West Longitude 93–45–24. With this action, this proceeding is terminated.

DATES: Effective April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 95–108, adopted February 16, 2000, and released February 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center (Room CY–A257) at its headquarters, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73 [AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa is amended by

removing Channel 223C2 from Ankeny and adding Channel 223C2 at West Des Moines.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5143 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–371; MM Docket No. 99–245; RM–9680]

Radio Broadcasting Services; Johnson City and Owego, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WEBO Radio, Inc., reallots Channel 269A from Owego to Johnson City, NY, as the community's first local aural service, and modifies the license of Station WLTB to specify Johnson City as its community of license. *See* 64 FR 37924, July 14, 1999. Channel 269A can be allotted to Johnson City in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.4 kilometers (4.0 miles) south, at coordinates 42–03–44 North Latitude and 75–56–37 West Longitude, to avoid a short-spacing to Station WXHC, Channel 268A, Homer, NY, and to accommodate petitioner's desired transmitter site. Canadian concurrence in the allotment has been obtained since Johnson City is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Effective April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–245, adopted February 16, 2000, and released February 24, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 269A at Owego, and adding Johnson City, Channel 269A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5136 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000223050–0050–01; I.D. 013100C]

RIN 0648–AN18

Fisheries of the Northeastern United States; Framework 12 to the Atlantic Sea Scallop Fishery Management Plan; Technical Amendment to the Monkfish Landing Restrictions and Application/Renewal Permit Restrictions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 12 to the Atlantic Sea Scallop Fishery Management Plan (FMP). The intent of Framework Adjustment 12 and these final regulations is to adjust the limited access scallop days-at-sea (DAS) allocations for the fishing year March 1, 2000, through February 28, 2001. This final rule also corrects and clarifies the final rule implementing the Monkfish FMP by providing clarification on how the 5–percent and 25–percent incidental catch criteria are to be calculated for the purpose of determining the allowable incidental catch level of monkfish and monkfish tails compared to the total weight of fish on board. In addition, this final rule clarifies the monkfish permit application/renewal deadlines.

DATES: This rule is effective March 1, 2000, except that amendments to § 648.4(a)(9)(i)(B) and § 648.94(b)(4)(i), (b)(4)(ii), (c)(1)(i), and (c)(3)(i) are effective March 3, 2000.

ADDRESSES: Copies of the supporting documents for Framework Adjustment 12 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978-281-9135, e-mail paul.h.jones@noaa.gov

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing Amendment 7 to the FMP (64 FR 14835, March 29, 1999) redefined overfishing; revised the existing fishing mortality (F) reduction schedule through fishing year 2008 to reduce the allowable DAS for Atlantic sea scallop vessels in order to rebuild the scallop stock within 10 years; and established an annual monitoring and review process to adjust management measures to meet the stock rebuilding objectives.

The New England Fishery Management Council (Council) developed Framework 12 to the Sea Scallop FMP to adjust the fishing year 2000 DAS allocations for limited access scallop vessels. This action increases the fishing year 2000 annual DAS allocations from the level specified in the FMP as follows: Full-time from 51 DAS to 120 DAS, Part-time from 20 to 48 DAS, and Occasional from 4 to 10 DAS. The adjustment is needed to make the DAS allocations for fishing year 2000 consistent with current resource conditions.

When the Council developed Amendment 7, survey data and stock assessment information were current through July 1997. The multispecies area closures had just recently been implemented on Georges Bank and in Southern New England, and the closure to protect scallops had not yet been implemented in the Mid-Atlantic. The effect of rebuilding stock in the closed areas could not be predicted very precisely. Therefore, Amendment 7 relied on large cuts in DAS allocations to achieve the F targets needed to stop overfishing and rebuild the stock. Amendment 7 recognized the large reduction in DAS would have significant economic and social effects on the industry, the economy, and small

communities that depend on the scallop fishery.

Based on an updated assessment from the 29th Northeast Regional Stock Assessment Workshop (September 1999) and the 1999 Stock Assessment and Fishery Evaluation (SAFE) Report, the Scallop Plan Development Team (PDT) determined that increasing the Amendment 7 DAS allocations for each of three permit categories to the same amounts as in the 1999 fishing year would meet the 2000 F target. This is contingent on scallops in the closed areas remaining protected or that access by scallop vessels to the closed areas is conservation neutral. The SAFE Report dated September 1, 1999, included new biological projections that indicate that scallop rebuilding is ahead of the schedule anticipated in the Amendment 7 analysis. The accelerated rebuilding has occurred primarily because of a strong year class of scallops in 1998 and because of rapidly accumulating biomass in the Georges Bank and Southern New England multispecies closed areas. More importantly, the Amendment 7 F targets are now expected to rebuild stock biomass to target levels for Georges Bank by 2005 and in the Mid-Atlantic by 2003. No recommendations were made by the Scallop PDT for subsequent years.

Abbreviated Rulemaking

The Council requested publication of the management measures as a final rule after considering the required factors stipulated in the regulations governing the Atlantic sea scallop fishery (§ 648.55(g)) and providing supporting analysis for each factor considered. The Administrator, Northeast Region, NMFS, concurred with the Council's recommendation and has determined that Framework Adjustment 12 should be published as a final rule.

NMFS is adjusting the scallop regulations following the procedure for framework adjustments established by Amendment 4 and codified in 50 CFR part 648, subpart D. The Council followed this procedure when making adjustments to the FMP by developing and analyzing the actions over the span of two Council meetings held on September 22, 1999, and November 17, 1999.

Public Comments Received and Response

The September 22, 1999, Council meeting was the first of two meetings that provided an opportunity for public comment on Framework Adjustment 12. A draft document containing the proposed management measures and their rationale was available to the public during the second week in November 1999 and notification of the initial and final Council meetings were mailed to people on the Council's extensive interested party mailing list and published in the **Federal Register**. The final public hearing was held on November 17, 1999. Testimony provided by industry members at the public meetings favored the increase in DAS allocation; there were no negative comments. NMFS agrees and approved Framework 12 on February 22, 2000.

Monkfish Technical Amendment

This final rule also implements a technical change to clarify the Council's intent concerning the 5-percent and 25-percent incidental catch criteria implemented in regulations under the Monkfish FMP. This final rule adds language that will clarify how the 5-percent and 25-percent incidental catch criteria will be calculated for the purpose of determining the allowable incidental catch of monkfish and monkfish tails. The monkfish regulations specify that any vessel issued a monkfish Category C or D permit that is fishing under a multispecies DAS and not under a monkfish DAS, may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 percent of the total weight of fish on board, whichever is less. As currently written in the regulations, in order to comply with the 25-percent incidental catch criterion, vessels that possess whole monkfish must retain more fish overall than vessels that retain monkfish tails. For example, if a vessel landed 250 lb (113.4 kg) of monkfish tails, its total fish landings must equal at least 830 lb (376.5 kg) to fulfill the 25-percent rule. Conversely, if a vessel landed the whole weight equivalent of the tails, i.e., 830 lb (376.5 kg), the vessel must land at least 3,320 lb (1505.9 kg) of total fish.

A similar rule also exists for any vessel issued a monkfish incidental catch permit and fishing with large mesh while not on a monkfish, multispecies, or scallop DAS. Vessels fishing under this scenario may land monkfish (whole or tails) only up to 5 percent of the total weight of fish on board. As stated earlier, in order to comply with the 5-percent criterion vessels that possess whole monkfish are required to retain more fish than vessels that retain monkfish tails.

To address this, the Council, at its November 17, 1999, meeting, clarified its intent and voted to recommend a technical change to the final rule implementing the Monkfish FMP. A review of the Monkfish FMP text and background material germane to the issue shows that a technical amendment is warranted by the record. Therefore, this final rule adds language to clarify this measure by specifying that for the purpose of determining compliance with the 5-percent and 25-percent incidental catch criteria, monkfish landed as whole weight will be converted to tail weight by dividing the amount of whole weight possessed or landed by 3.32. The converted tail weight will then be used to determine the appropriate 5-percent or 25-percent threshold.

In addition, this final rule clarifies the permit application/renewal requirements for the monkfish fishery. The current regulations (§ 648.4(a)(9)((i)(B)) indicate that the Regional Administrator must receive a completed application by the last day of the fishing year for which the permit is required (April 30, 2000). However, § 648.4(a)(9)(i)(M) indicates that vessel owners must apply for a limited access permit within 12 months of the effective date of the regulations implementing the Monkfish FMP, which became effective on November 8, 1999. This rule clarifies that applications for limited access monkfish permits must be received no later than November 7, 2000, rather than the end of the monkfish fishing year (April 30, 2000).

Classification

This final rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds that because public meetings held by the Council to discuss the management measure implemented by this rule provided adequate prior notice and opportunity for public comment, further notice and opportunity to comment on this rule is unnecessary. Also, because the technical amendments to the monkfish final rule merely clarify Council intent regarding conversions of weights and an application deadline without affecting a substantive change to the existing regulations, prior notice and opportunity for public comment are unnecessary. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds that good cause exists to waive prior notice and opportunity for comment.

Increasing DAS allocations for fishing year 2000 for scallop limited access vessels relieves restrictions. Accordingly, under 5 U.S.C. 553(d)(1), the 30-day delay in effectiveness is not required. Technical amendments to § 648.4(a)(9)(i)(B) and § 648.94(b)(4)(i), (b)(4)(ii), (c)(1)(i), and (c)(3)(i) merely clarifies the existing regulations. They do not make any substantive change to

the regulations. Thus, these amendments do not constitute a substantive rule subject to the requirement for a 30-day delay in effective date contained in 5 U.S.C. 553(d).

Because a general notice of proposed rulemaking is not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. While a regulatory flexibility analysis is not required and none has been prepared, the economic impacts on affected fishers and alternatives to the rule were considered by the Council and NMFS. Copies of the analysis for Framework 12 may be obtained from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 29, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4, paragraph (a)(9)(i)(B) is revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(9) * * *

(i) * * *

(B) *Application/renewal restrictions.* No one may apply for an initial limited access monkfish permit for a vessel after November 7, 2000.

* * * * *

3. In § 648.53, paragraph (b) is amended by revising the table to read as follows:

§ 648.53 DAS allocations.

* * * * *

(b) *DAS allocations.* * * *

DAS category	1999–2000	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008	2008+
Full-time	120	120	49	46	45	34	35	38	36	60
Part-time	48	48	19	18	18	14	14	15	17	24
Occasional	10	10	4	4	4	3	3	3	4	5

* * * * *

4. In § 648.94, paragraphs (b)(4)(i), (b)(4)(ii), (c)(1)(i), and (c)(3)(i) are revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(4) * * *

(i) *NFMA.* Any Category C or D vessel that is fishing under a multispecies DAS in the NFMA may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(ii) *SFMA.* If any portion of a trip is fished only under a multispecies DAS and not under a monkfish DAS in the SFMA, a vessel issued a Category C or D permit may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less, if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight if gear other than trawl gear is used during the trip. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

* * * * *

(c) * * *

(1) * * *

(i) *NFMA.* Vessels issued a monkfish incidental catch permit fishing under a multispecies DAS exclusively in the NFMA may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

* * * * *

(c) * * *

(3) * * *

(i) *Vessels fishing in the GOM/GB, SNE and MA Regulated Mesh Areas with large mesh.* A vessel issued a valid monkfish incidental catch permit and fishing in the GOM/GB or SNE RMAs with large mesh as defined in § 648.80(a)(2)(i) and (b)(2)(i), respectively, or fishing in the MA RMA with mesh no smaller than specified at § 648.104(a)(1), while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

* * * * *

[FR Doc. 00–5195 Filed 3–1–00; 9:50 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990430113–913–01; I.D. 022200E]

Fisheries Off West Coast and Western Pacific States; West Coast Salmon Fisheries; Adjustment in the Opening Date of the Recreational Seasons from Point Arena to the U.S.-Mexico Border

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS announces that recreational salmon fisheries will open on April 1, 2000, in the area from Pigeon Point, CA, to the U.S.-Mexico Border, and will open on April 15, 2000, in the area from Point Arena to Pigeon Point, CA. This action is consistent with the recommendations of the Pacific Fishery Management Council (Council) and actions taken by the California Fish

and Game Commission (Commission) to delay the recreational fisheries opening south of Point Arena by approximately 2 weeks from the opening dates identified in the 1999 ocean salmon fishery management measures. This action is intended to provide additional protection to Central Valley spring chinook and ensure congruency between state and Federal management measures.

DATES: Effective March 17, 2000, until the effective date of the 2000 management measures, which will be published in the **Federal Register** for the west coast salmon fisheries. Comments will be accepted through March 20, 2000.

ADDRESSES: Comments on this action must be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or faxed to 206–526–6736; or mailed to Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 808–973–2941. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this notice is available for public review during business hours at the offices of the Regional Administrators for the Northwest and Southwest Regions, NMFS.

FOR FURTHER INFORMATION CONTACT: William Robinson (NWR), 206–526–6140, or Svein Fougner (SWR), 562–980–4030.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 660.409(b)(1)(i) state that the Regional Director, in consultation with the Council Chairman and the appropriate State Directors, may, under the flexible inseason management provisions, modify quotas and/or fishing seasons. In adopting the 1999 annual management measures for the ocean salmon fishery (64 FR 24078, May 5, 1999), NMFS concurred with the Council's recommendation to open a recreational salmon fishery from Point Arena to Pigeon Point, CA on April 1, 2000, and a tentative recommendation, which was to be reviewed at the Council's November 1999 meeting, to open a recreational salmon fishery from Pigeon Point, CA to the U.S.-Mexico Border on March 18, 2000. On September 16, 1999 (64 FR 50394), NMFS listed Central Valley spring chinook salmon as threatened under the Endangered Species Act (ESA). In an October 15, 1999, letter to the Council Chairman, NMFS recommended that the existing ESA requirements for Sacramento River winter chinook be implemented as much as possible through a delay in the opening of recreational seasons south of Point Arena rather than through increases in the minimum size limits, in order to provide additional protection to Central Valley spring chinook. The Council, at its November meeting, reviewed the year 2000 opening dates for California recreational fisheries south of Point Arena and concurred that the openings could be delayed through inseason management action by NMFS prior to the March 2000 Council meeting if the Commission voted to delay the recreational season. The Commission, on February 4, 2000, took action to delay the scheduled opening of the recreational fisheries in state waters south of Point Arena by approximately 2 weeks in order to provide additional protection for Central Valley spring chinook, which are listed as threatened under the California ESA. The Commission's action effectively delays by 2 weeks the opening of recreational fisheries in Federal waters. The Federal action announced in this document will ensure consistency between state and Federal management measures.

Maturing spring chinook leave the ocean in March and April to spawn and are likely harvested at relatively high rates in fishing seasons occurring prior to May. The majority of recreational recoveries of tagged Feather River Hatchery adult spring chinook occur prior to May. Delaying the opening of the recreational season will provide additional protection to spring chinook by reducing the take of maturing adults.

The Regional Administrator consulted with representatives of the Council and the Commission regarding these adjustments on February 8, 2000. NMFS, by an inseason action issued under 50 CFR 660.411, is delaying the opening dates of the following recreational fisheries south of Point Arena, CA. The size limits and gear restrictions remain unchanged from the Council's recommendations for the 1999 management measures. The State of California will manage these recreational fisheries in state waters adjacent to these areas of the exclusive economic zone in accordance with this Federal action.

As provided by the inseason notification procedures at 50 CFR 660.411, actual notice to fishermen of these actions has been given by telephone hotline number 206–526–6667 or 800–662–9825 on February 8, 2000, and notice will be provided by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz on March 25 through April 15 for the area from Point Arena to Pigeon Point, California, and March 11 through April 1 for the area from Pigeon Point, California, to U.S.-Mexico Border.

This action is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, adjudicated Indian fishing rights, and the ocean allocation scheme in the Pacific Coast Salmon Plan.

NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action must be effective before the previously scheduled opening dates in order to protect Central Valley spring chinook and to be consistent with the State of California management measures. This document does not apply to other fisheries that may be operating in other areas.

Pigeon Point to U.S.-Mexico Border

The season will open April 1, 2000. All salmon except coho will be limited to two fish per day, with a minimum size limit of 24 in (61 cm). North of Point Conception, special gear restrictions C.3. (circle hooks when mooching) and C.2. (one rod per angler), specified in the 1999 management measures, continue to apply.

Point Arena to Pigeon Point

The season will open April 15, 2000. All salmon except coho will be limited to two fish per day, with a minimum size limit of 24 in (61 cm). Special gear restrictions C.3. (circle hooks when mooching) and C.2. (one rod per angler), specified in the 1999 management measures, continue to apply.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 29, 2000.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5196 Filed 3–1–00; 9:50 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 022800C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Catching Pollock for Processing by the Mothership Component in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the mothership component in the Steller sea lion conservation area (SCA) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the A season limit of pollock total allowable catch specified to the mothership component for harvest within the SCA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 28, 2000, until 1200 hrs, A.l.t., April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(5)(i)(D)(2)(iii), and the final 2000 TAC amounts for pollock in the Bering Sea Subarea (65 FR 8282, February 18, 2000) the A season limit of pollock total allowable catch specified to the mothership component for harvest within the Steller sea lion conservation area (SCA) is 14,607 metric tons.

In accordance with § 679.22(a)(11)(iv)(A)&(C) the Administrator, Alaska Region, NMFS, has determined that the A season limit of pollock total allowable catch specified to the mothership component for harvest within the SCA has been reached.

Consequently, in accordance with § 679.22(a)(11)(iv)(D) NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the mothership component within the SCA in the Bering Sea subarea of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the A season limit of pollock total allowable catch specified to the mothership component for harvest within the SCA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in jeopardizing the recovery of the endangered Steller sea lion. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 28, 2000.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5121 Filed 2–29–00; 9:56 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 43
Friday, March 3, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 20

RIN 0551–AA51

Export Sales Reporting Requirements

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Export Sales Reporting Requirements Regulation to add certain beef and pork to the list of commodities subject to this Regulation. Under this proposed rule, exporters would be required to report on a weekly basis information concerning the quantity, country of destination, and marketing period of shipment for their export sales. Information collected would be aggregated and included in the weekly "U.S. Export Sales" report published by the Foreign Agricultural Service (FAS).

DATE: Comments on the proposed rule should be received on or before May 2, 2000, to be assured of consideration.

ADDRESSES: Comments should be submitted in writing to the Export Sales Reporting Staff, Stop 1025, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–1025 or e-mailed to WilliamsDJ@fas.usda.gov. All comments received will be available for public inspection in room 5965-S during normal business hours.

FOR FURTHER INFORMATION CONTACT: David Williams, Import Policies and Programs Division, Stop 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, D.C. 20250–1021, or telephone at(202) 720–3273, or e-mail at WilliamsDJ@fas.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This program is not subject to the provision of Executive Order 12372, which requires intergovernmental consultation with State or local officials (See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988. The provisions of this proposed rule would not have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The proposed rule would not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been determined significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The proposed rule should not have a significant economic impact on a substantial number of small entities. Although numerous exporters of meat and meat products operate small businesses, the data required under the proposed rule are routinely maintained during the normal course of export sales contracting business activity. A copy of this proposed rule has been sent to the Chief Counsel, Office of Advocacy, U.S. Small Business Administration.

Paperwork Reduction Act

In accordance with provisions of the Paperwork Reduction Act of 1995, the Department revised the information collection approved by the Office of Management and Budget (OMB) to support this proposed rule. The expiration date for OMB approval of this information collection, under OMB control number 0551–0007, is September 30, 2001. The information collection requirements contained in 7 CFR part 20 (the Regulation) are necessary to implement the mandatory export sales reporting requirements of 602 of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 7512). The proposed rule would amend the Regulation to require weekly reporting of export sales contracts for muscle cuts of fresh, chilled, or frozen beef and pork. All data reported are aggregated and published in compilation form to protect business confidential information. It was estimated that the proposed rule would add an additional 125 exporting firms to the reporting requirements, increasing the total to 424 firms. The inclusion of certain meat products under the Regulation was estimated to increase the annual burden by 8,963 hours (from 21,723 hours to 30,686 hours) for collecting and submitting the weekly reports and recordkeeping activities. Copies of the current information collection may be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568 or e-mail at Chisley@fas.usda.gov. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information to those who are to respond, including through use of appropriate automated, electronic, mechanical or other technological collection techniques or other form of information technology. Comments on the information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503. Attention: Desk Officer for USDA/FAS. Comments on the issues covered by the Paperwork Reduction Act should be submitted no later than 60 days from the date of publication to be assured of consideration.

Section 913(b)(1) of Pub. L. 106–78 (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000) requires that the Secretary implement a streamlined electronic system for collecting export sales and shipments data, in the least intrusive manner possible, for fresh or frozen muscle cuts of meat food products, and develop a data-reporting program to disseminate summary information in a timely manner. The adoption of electronic collection techniques should

facilitate information collection and reduce the annual reporting burden. The Department is working on developing electronic reporting forms for submission of information on fresh, chilled, or frozen muscle cuts of beef and pork products covered by this proposed rule. Prior to implementing electronic reporting, the Department would request OMB approval of the electronic forms developed and issue a **Federal Register** notice soliciting public comments. All comments will be considered in developing the final rule, and will also become a matter of public record.

Background

Authority

Section 602 of the Agricultural Trade Act of 1978, as amended, requires the weekly reporting of information pertaining to the contract for export sale of certain specified agricultural commodities and other commodities that may be designated by the Secretary. Individual weekly reports submitted shall remain confidential in accordance with § 602, and shall be compiled and published in compilation form each week following the week of reporting. Any person who knowingly fails to make a report shall be fined not more than $25,000 or imprisoned for not more than 1 year, or both. Regulations at 7 CFR part 20 implement the weekly reporting requirements, and prescribe a system for reporting information pertaining to contracts for export sales. Appendix 1 to the Regulation lists all commodities that are subject to the export sales reporting requirements.

Proposed Export Sales Reporting Requirement for Meat

An Advance Notice of Proposed Rulemaking (ANPR) was published on November 14, 1996 (61 FR 58343–58345) requesting public comments on a proposal to amend 7 CFR part 20 to require weekly export sales reporting for meat and meat products. In response to the ANPR, public comments were received from 57 entities, including firms, trade associations, and individuals. The majority of the comments (36) were from the domestic poultry industry which, with the exception of one commentor, opposed reporting. The poultry industry's opposition was based on the high degree of vertical integration in the industry, the widespread use of grower contracts, and concerns about possible disclosure of sensitive proprietary business information related to market price and buyer identification. Comments received from beef and pork producers supported more timely reporting and release of export data. Export sales were viewed as an important indicator of future demand for cattle and hogs that meet beef and pork export specifications, and certain commentors favored reporting of contract sales prices. Other commentors recommended collection of information on aggregate export sales of selected categories of meat and meat products. One commentor recommended that monthly outstanding export sales for 6 months forward be updated weekly. Certain processors and packers commented that reporting of export sales data would not be as great a benefit to producers as collecting export data by country of destination from export inspection certificates on broad categories of meat. Most commentors opposed disclosure of information on sales contract prices because of market sensitivity.

Subsequent to the ANPR, 921 of Pub. L. 106–78 amended 602(a)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5712(a)(1)) by adding "beef" to the list of specified commodities for which all exporters shall report weekly export sales reporting information. The proposed rule would provide that beef reporting under 602 of the Agricultural Trade Act of 1978, as amended, be limited to fresh, chilled, or frozen muscle cuts of beef. This information would provide key market data to producers on meat cuts which constitute the bulk of U.S. exports and provide relevant foreign market demand information. Limiting reporting to muscle cuts would impose the least burdensome level of reporting on exporters while achieving the objectives of the export sales reporting requirements program.

As stated above, 913(b)(1) of Pub. L. 106–78 requires that the Secretary also implement a streamlined electronic system for collecting export sales and shipments data, in the least intrusive manner possible, for fresh or frozen muscle cuts of meat food products, and develop a data-reporting program to disseminate summary information in a timely manner. This proposed rule would include the reporting of fresh, chilled, and frozen muscle cuts of meat required by 913(b)(1) of Pub. L. 106–78 under 7 CFR part 20. Under this regulation, data related to the quantity, destination, and marketing year of shipments are collected and released on a weekly basis reflecting the "outstanding commitments" of the specified commodities for export. New outstanding quantities are established each week by adding the new export sales activity to the previous outstanding balances and subtracting the current week's shipments plus downward contract adjustments. Although this is not the official U.S. trade data, it is widely used as an early indicator of export activity and is available the week following the week of reporting. The addition of fresh, chilled, or frozen muscle cuts of beef and pork to the reporting program would provide the livestock sector with quality up-to-date information that should result in more accurate evaluations of changing market conditions. These timely reports would benefit the private sector as well as the Department in making economic decisions and forecasts on the flow of these U.S. agricultural commodities in domestic and export markets.

The proposed rule would not require reporting information for meats other than beef and pork. Reporting pertaining to pork, which together with the requirement pertaining to beef, would constitute the most valuable information regarding meat export sales activity.

Lists of Subjects in 7 CFR Part 20

Agricultural commodities, Exports, Reporting.

Proposed Rule

Accordingly, it is proposed to amend 7 CFR part 20, Export Sales Reporting Requirements as follows:

1. The authority citation for part 20 continues to read as follows:

Authority: 7 U.S.C. 5712.

2. Amend Appendix 1 to add the following lines, under the indicated column headings, after the line for "Cattle, calf, and kip, wet blues—splits, excluding grain splits.":

APPENDIX 1 TO PART 20.—COMMODITIES SUBJECT TO REPORTING, UNITS OF MEASURE TO BE USED IN REPORTING, AND BEGINNING AND ENDING DATES OF MARKETING YEARS

Commodity to be reported	Units of measure to be used in reporting	Beginning of marketing year	End of marketing year
* * * * * * *			
Beef, fresh, chilled or frozen: muscle cuts of beef	Metric tons	Jan. 1	Dec. 31.
Pork, fresh chilled or frozen: muscle cuts of pork	Metric tons	Jan. 1	Dec. 31.

Signed at Washington, D.C. on February 28, 2000.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.

[FR Doc. 00–5162 Filed 3–2–00; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 77, and 78

[Docket No. 99–090–1]

Livestock Identification; American Identification Numbering System

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: We are soliciting public comment on our intent to recognize the American Identification Numbering System as a means of providing unique identification for livestock on official eartags. The American Identification Numbering System is a universal numbering system. It can be used to identify an animal for many purposes, including interstate and international movements, food safety, genetic evaluation, and animal health purposes, thus reducing the need for multiple identification numbers and devices. Recognizing this system would allow producers to use it for interstate movement of livestock under our domestic regulations for disease control and eradication.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by May 2, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–090–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–090–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. John F. Wiemers, National Animal Identification Director, APHIS Animal Health Programs Staff, VS, APHIS, 2100 S. Lake Storey Road, Galesburg, IL 61401; (309) 344–1942.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) regulates the interstate movement of certain animals to prevent the spread of livestock and poultry diseases within the United States. The regulations are contained in 9 CFR chapter I, subchapter C. Among other things, the regulations contain requirements for the official identification of animals moved interstate. One means of official identification is an official eartag. As defined in the regulations, an official eartag is an APHIS-approved, tamper-resistant eartag that provides unique identification for each animal. To provide unique identification for each animal, the regulations specify that the eartag must either conform to the alpha-numeric National Uniform Eartagging System or bear a valid premises identification number that is used in conjunction with the producer's livestock production numbering system. We are soliciting comment through this advance notice of proposed rulemaking on our intent to adopt another eartag numbering system— the American Identification Numbering (AIN) System—as an alternative means of providing a unique identification for livestock.

The official eartag currently in use under 9 CFR chapter I, subchapter C, as well as other official means of identification such as official tattoos, have been vital to disease control and eradication programs, but they do not meet other identification needs. For example, many animals have separate identification numbers and devices for on-farm production purposes, animal data recording, genetic evaluation, and breed registration. Furthermore, as diseases such as tuberculosis, brucellosis, and pseudorabies are eradicated from the United States, fewer animals will be required to be officially identified under 9 CFR chapter I, subchapter C. As a result, our ability to trace diseased animals back to their herds of origin may be compromised in the future unless we provide producers with an identification system that will be useful for other purposes and easy to apply on the farm.

The AIN System is a universal livestock identification system that can provide identification for many purposes, including interstate and international trade, food safety, genetic evaluation, and animal health purposes, thus reducing the need for multiple identification numbers and devices. It is an alpha-numeric numbering system that uses 12 characters, in addition to a 3-character country code, to provide a unique identification number for individual livestock. In contrast to current official animal identification numbering systems, it does not have a State prefix, but that could be remedied by the establishment of a national database, where anyone could find an individual animal's State of origin from its identification number.

If we recognized the AIN System as an official method of providing identification on eartags, it would be administered by a designated nonprofit organization. The administering organization would allocate blocks of numbers to other groups or organizations, such as breed associations, industry groups, and States, which would, in turn, assign identification administrators to provide identification eartags to producers.

Identification administrators would request additional blocks of numbers from the designated nonprofit organization when their allocated blocks were all assigned. Identification numbers would be marked on eartags with easy to read numbers and, potentially, machine readable codes. It would be the identification administrators' responsibility to prevent duplication of numbers and to maintain records of animals that are identified. They would also cooperate with APHIS for disease control purposes.

Participation in using the AIN System would be voluntary. Producers who wished to continue using their current systems of identification could continue to do so. Many producers already use official eartags to identify their livestock. Although switching to the AIN system could result in a small increase in costs associated with the new eartags, those costs could be offset by a reduced need for multiple identification devices.

We recognize that the AIN System may be used to identify livestock on forms and devices other than eartags, such as registration papers. Our regulations do not preclude such uses. The only change to our regulations that we believe is necessary to allow use of the AIN System is to our definition of *official eartag*.

The AIN System is compatible with current U.S. methods of livestock identification and with universal identification systems in other countries, including Canada and the European Union. APHIS' regulatory records could be adapted to accept the AIN System for all recordkeeping related to the interstate and international movement of animals, semen, embryos, and related animal products.

The AIN System has been demonstrated in the United States under a dairy industry initiative called the National Farm Animal Identification and Records (F.A.I.R.) pilot project. Under the National F.A.I.R. pilot project, which began in the spring of 1998, 60,000 to 70,000 dairy cattle have been identified using the AIN system. The Council on Dairy Cattle Breeding (CDBC) administers the system.

We invite comments concerning the implementation and use of the AIN System on official eartags. In particular, we are soliciting comments from all livestock industries, including the beef, dairy, equine, sheep, swine, and goat industries, concerning the system's lack of a State prefix, the administration of the AIN System, and the concept of a universal identification system, in general, as opposed to multiple systems of identification.

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 28th day of February 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–5164 Filed 3–2–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 590

[Docket No. 99–012P]

RIN 0583–AC71

Fee Increase for Egg Products Inspection—Year 2000

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to increase the fees FSIS charges egg products plants for providing overtime and holiday inspection services. These proposed fee increases reflect the total cost of inspection, including the national and locality pay raise for Federal employees, applicable overhead costs, and other inspection costs. FSIS is proposing to make the fee increases effective thirty days after the final rule is published. The Agency is also proposing to delete the reference to regulations governing the voluntary grading of eggs.

DATES: Comments must be received by May 2, 2000.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket #99–012P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For information concerning policy issues, contact Daniel Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250, (202) 720–5627, fax number (202) 690–0486.

For information concerning fee development, contact Michael B. Zimmerer, Director, Financial Management Division, Office of Management, FSIS, U.S. Department of Agriculture, Room 2130–S, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–3552.

SUPPLEMENTARY INFORMATION:

Background

The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*), provides for the inspection of egg products by Federal inspectors at official plants. Federal inspection protects the health and welfare of consumers by assuring that egg products are wholesome, not adulterated, and properly labeled and packaged.

The Agricultural Marketing Service (AMS) was responsible for administering the EPIA from its enactment in 1970 until 1995. At that time, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354; 7 U.S.C. 6981) delegated food safety responsibilities to the Under Secretary of Agriculture for Food Safety. The Department subsequently revised its regulations to transfer egg product inspection functions under the EPIA to FSIS. AMS retained those functions related to the shell egg surveillance program. The regulations governing the inspection of eggs and egg products (9 CFR part 590) were transferred to Part 9 of the Code of Federal Regulations on December 31, 1998 (63 FR 72352).

The cost of mandatory inspection (excluding such services performed on holidays or on an overtime basis) is borne by FSIS. However, plants pay for inspection services performed on holidays or on an overtime basis. There has not been a change in overtime and holiday fees for egg products inspection services since the transfer of program functions from AMS to FSIS in May 1995. AMS established and implemented the current fees in November 1994. These fees reflect only the direct costs of inspection at that time and are insufficient to recover FSIS's current costs for delivery of inspection service.

In order to recover the full cost of inspection, FSIS is proposing overtime and holiday fees for egg products inspection services that are the same as overtime and holiday fees for meat and poultry inspection.

In its analysis of projected costs for January 1, 2000 to September 30, 2000, FSIS has identified increases in the

costs that it will incur in providing overtime and holiday inspection services. Based on its analysis, FSIS is proposing to amend § 590.126 of 9 CFR to increase the fee for providing overtime inspection services from $26.16 per hour per program employee to $39.76 per hour per program employee. For holiday services, FSIS proposes to amend § 590.128(a) to increase the fee from $17.44 per hour per program employee to $39.76 per hour per program employee. Although these proposed fee increases are large, they reflect the total cost of inspection, including national and locality pay raises for Federal employees, applicable overhead costs, and other inspection costs. The current fees and the proposed increases are reported in Table 1.

TABLE 1.—CURRENT AND PROPOSED FEES FOR OVERTIME AND HOLIDAY INSPECTION SERVICES

Service ($/hr.)	Current	Proposed
Overtime Inspection Services	26.16	39.76
Holiday Inspection Services	17.44	39.76

The proposed fees are based on the full Agency cost for meat, poultry and egg products inspection services (Table 2). These costs are then divided by the total hours of inspection to obtain the hourly rate. FSIS intends to charge egg products establishments requesting overtime and holiday inspection services the same rate charged meat and poultry establishments for these services. Table 2 shows salary, overhead, and other inspections costs for FY 98 and the added inflation and Federal pay increase used to obtain the total amount from which the proposed rates are derived. Overhead costs are the indirect costs for administration and management associated with providing inspection services. Other inspection costs include direct costs for travel and laboratory support costs associated with inspection services.

TABLE 2.—COMPONENTS OF PROPOSED FEE—AGENCY INSPECTION COSTS

Component	$Thousand	Percent
Direct Salaries	57,242	56.86
Inflation and Pay Increase	7,951	7.91
Overhead	22,197	22.05
Other Inspection Costs (Travel and Laboratory Support	13,282	13.17
Total	100,671	100

Beginning with the Federal fiscal year 2001, which starts October 1, 2000, FSIS intends to review annually its fees for overtime and holiday egg products inspection services to allow for necessary adjustments on a fiscal year basis. The fiscal year approach is an accepted accounting principle and will facilitate more consistent and timely proposals to adjust fees and assist the Agency and affected industry to plan for these fee adjustments.

The Agricultural Marketing Act of 1946, as amended, provides the authority for collection of fees approximately equal to the cost of voluntary egg grading programs. Therefore, AMS retains the responsibility of changing the fees set out in the regulations governing the grading of eggs (7 CFR Part 55). FSIS is proposing to amend 9 CFR 590.130 to delete the reference to regulations governing the collection of fees associated with the voluntary grading of eggs.

Executive Order 12866 and Regulatory Flexibility Act

Because this proposed rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under Executive Order 12866.

The Administrator, FSIS, has determined that this action will not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities. There are 73 egg products firms, and all but 5 would be classified as small on the basis of the Small Business Administration size definitions (having under 100 employees in a stand-alone establishment or under 500 employees in an in-line establishment).

FSIS believes that the small plants in the egg products industry would not be affected adversely by the fee increases provided for because they reflect only a small increase in the costs currently borne by those entities that elect to use overtime and holiday inspection services. These holiday and overtime inspection services are generally sought by plants with larger production volume, greater complexity and diversity in the products they produce, and the need for on time delivery of large volumes of product by their clients—generally large commercial or institutional establishments. Plants with smaller production are unlikely to use a significant amount of overtime and holiday inspection services. FSIS expects that plants seeking FSIS services are likely to have calculated that the incremental costs of overtime and holiday inspection services would be less than the incremental expected benefits of additional revenues they would realize from additional production.

Economic Effects

Under the proposed fees, the Agency expects to collect nearly $2.5 million in revenues for FY 2000, compared to the $1.5 million under current fees. The total volume of U.S. egg product production in 1998 was 3.2 billion pounds. The increase in cost per pound of product associated with the overtime and holiday fee increase is $0.0003. Even in a competitive industry like egg products, this amount of increase in annual production costs, if firms choose to use the service, would have an insignificant impact on profits and prices. The increase in costs per firm would be about $13,700. On average, this would not be a significant increase in annual production costs given the volume of production. Egg product

firms produce an average of 44.3 million pounds of product annually.

TABLE 3.—REVENUES FOR INSPECTION SERVICES

Current	Proposed
$Thousand	
1,482	2,460

The industry is also likely to pass through a significant portion of the fee increase to consumers because of the inelastic nature of the demand curve facing these firms. Research has shown that consumers are unlikely to significantly reduce demand for meat and poultry products, including egg products, when prices increase. Huang estimates that demand would fall by .36 percent for a one percent increase in price (Huang, Kao S., A Complete System of U.S. Demand for Food. USDA/ERS Technical Bulletin No. 1821, 1993, p.24). Because of this inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share due to an increase in inspection fees.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 590.320 through 590.370 must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the EPIA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. FSIS provides a weekly *FSIS Constituent Update* via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/ stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would be otherwise possible. For more information or to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects in 9 CFR Part 590

Eggs and egg products, Exports, Food labeling, Imports.

Accordingly, FSIS proposes to amend 9 CFR Part 590 as follows:

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

1. The authority citation for part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

2. Section 590.126 is revised to read as follows:

§ 590.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $39.76.

3. Section 590.128(a) is revised to read as follows:

§ 590.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $39.76.

* * * * *

§ 590.130 [Amended]

4. Section 590.130 is amended by removing the last sentence.

Done in Washington, DC on: February 28, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–5166 Filed 3–2–00; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 21, 50, 52, 54 and 100

RIN 3150–AG42

Risk-Informing Special Treatment Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering promulgating new regulations that would provide an alternative risk-informed approach for special treatment requirements in the current regulations. This action is a result of the Commission's continuing efforts to risk-inform its regulations. The NRC invites comments, advice, and recommendations from interested parties on the contemplated approach for this rulemaking.

DATES: Comment period expires May 17, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC's home page (*http://ruleforum.llnl.gov*). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail cag@nrc.gov.

Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas A. Bergman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–1021; e-mail: tab@nrc.gov.

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I. Background

On August 16, 1995 (60 FR 42622), the Commission published a policy statement entitled "Use of Probabilistic Risk Assessment (PRA) Methods in Nuclear Regulatory Activities." Since then, the Commission has issued guidance [1] on the use of risk information for reactor license amendments. This guidance is currently being used in processing license amendment applications that use risk information as part of their technical justification. However, fundamental reactor regulations remain largely deterministic. In addition, in meetings between the Commission and various stakeholders, a concern was expressed that the NRC is not placing enough emphasis on risk-informing its reactor requirements with the results of risk assessments. The Commission's current reactor regulatory framework (based largely upon design-basis events rather than on core-damage-accident scenarios) results in reasonable assurance of adequate protection to public health and safety but, in some cases, also results in unnecessary regulatory burden. In a staff requirements memorandum (SRM) dated September 14, 1998, the Commission requested the NRC staff to present a set of options to make the requirements in the Commission's regulations risk-informed. The Commission expects that making the regulations risk-informed would result in a reduction of unnecessary regulatory burden while maintaining safety because there will be a better focus of the NRC's and industry's resources on the more safety significant structures, systems, and components (SSCs) and, therefore, address the expressed concern.

In SECY–98–300, "Options for Risk-Informed Revisions to 10 CFR part 50—"Domestic Licensing of Production and Utilization Facilities,'" dated December 23, 1998, the NRC staff proposed three high-level options for making the NRC's regulations risk-informed. In an SRM dated June 8, 1999, the Commission approved the NRC staff's recommendations.

One of the options presented in SECY–98–300 was to make special treatment requirements (*e.g.*, quality assurance, environmental qualifications, technical specifications, reporting) risk-informed. Special treatment as used here may be defined as—

> Current requirements imposed on structures, systems, and components (SSCs) that go beyond industry-established requirements for equipment classified as "commercial grade" that provide additional confidence that the equipment is capable of meeting its functional requirements under design basis conditions. These additional special treatment requirements include additional design considerations, qualification, change control, documentation, reporting, maintenance, testing, surveillance, and quality assurance requirements.

This definition does not encompass functional design requirements; that is, an SSCs functional design requirement is *not* considered a special treatment requirement. This definition applies, hereafter, when the term "special treatment" is used.

This advance notice of proposed rulemaking presents the approaches that the Commission is contemplating to risk-inform special treatment requirements. Several public meetings have been held to obtain comments on the NRC's efforts related to this task. Comments and suggestions obtained from these meetings have been incorporated, to the extent possible, into these approaches.

II. Rulemaking Plan

A. Vision

Develop alternative regulations in 10 CFR part 50 (and other applicable parts) that would modify the requirements for special treatment to focus on those SSCs that have been identified as important to protect public health and safety by using a risk-informed approach.

B. Strategies

Increase the use of risk-informed approaches to modify the special treatment requirements imposed on SSCs under existing Part 50 requirements (and those of other applicable parts).

Maintain overall safety provided by the existing Part 50 while reducing unnecessary burden associated with these requirements for licensee operational and licensing activities and for NRC oversight and licensing activities.

Risk-inform the special treatment requirements imposed on SSCs under Part 50 (and other applicable parts) in a manner that encourages public participation and results in public confidence in the product and process.

C. Objectives

Establish the criteria for acceptable methods for determining the SSCs that require special treatment in the regulations of Part 50. These criteria should be sufficiently clear and robust such that if a licensee's program meets the criteria there is not a need for prior NRC review and approval of the plant-specific program.

Assign priorities to the rules to be modified, taking into consideration the maintenance of safety, the reduction of unnecessary burden for industry, the effect on NRC efficiency and effectiveness, public confidence, and the complexity of modifying each rule.

Ensure that the categorization process has been evaluated under a pilot program to verify that the requirements and their associated guidance can be implemented by industry, and that the results of licensee implementation provide reasonable assurance that public health and safety is maintained.

Issue a proposed rule for the initial set of rules to be modified within 1 year of the Commission's approval of the rulemaking plan, and a final rule within 1 year of the completion of the associated pilot program.

The proposed risk-informed regulatory alternatives should reduce unnecessary burden so that licensees with more than 10 years remaining on their license would find it beneficial to voluntarily implement the risk-informed alternative requirements.

D. Selection of Candidate Rules

The Commission believes that the set of rules to be considered in this effort must be identified early so that rule-specific issues can be identified and

[1] To date, this guidance includes Standard Review Plan (SRP) Chapter 19 and related Regulatory Guide (RG) 1.174 on risk-informed decision making; SRP Section 3.9.7 and related RG 1.175 on risk-informed inservice testing; SRP Section 16.1 and related RG 1.177 on risk-informed technical specifications; RG 1.176 on risk-informed graded quality assurance; and SRP Section 3.9.8 and related RG 1.178 on risk-informed inservice inspection.

addressed. Also, because implementation of any rules resulting from this effort is optional, the Commission does not intend to expend resources to modify rules that industry does not expect to implement, unless the modifications are necessary to maintain safety. However, the Commission notes that the set of rules included in this effort should be chosen such that implementation of the rules will require little or no exemptions. Therefore, rules that may require exemptions before a licensee can implement changes in other rules (*e.g.*, 10 CFR 50.59) should be considered in this rulemaking effort.

The NRC has developed and applied a systematic approach to identify the rules that should be included in this rulemaking effort. A scoping review of all the regulations in 10 CFR parts 21, 50, 52, 54, and 100 identified a set of potential candidate rules that could be included. Screening criteria and a logic for applying these criteria were then developed to identify the subset of rules to which risk-informed changes can be made consistent with the intent of this effort. The screening criteria were based on the following elements: Maintaining safety, improving NRC staff efficiency and effectiveness, reducing unnecessary regulatory burden, and increasing public confidence. In addition, and because this effort is focused solely on special treatment requirements, the NRC limited its selection to those rules that include special treatment requirements. Rules which would have to be modified in order to efficiently implement other rules included this effort were also included. The criteria and logic were then applied to the set of potential candidate rules identified by the scoping review. The screening process and results are illustrated in Figure 2. The results of the evaluations of the rules against each of the screening criteria are presented in the attached Table. As a result of this screening process, the NRC has identified the following candidate rules for inclusion in this effort:

10 CFR part 50—Sections 50.34, 50.36, 50.44, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.65, 50.71, 50.72, and 50.73

10 CFR part 50—Appendix A (GDCs 1, 2, 3, 4, 37, 40, 42, 43, 45, and 46), Appendix B, Appendix J, Appendix R, and Appendix S

10 CFR part 21, 52, 54, 100, and Appendix A to Part 100

E. Rulemaking Alternatives

The NRC has evaluated alternatives to rulemaking and has concluded that, if sufficient industry interest exists, rulemaking is the most effective tool for implementing the type of generic changes encompassed by this effort. If sufficient interest does not exist, review and approval of a limited number of exemptions under 10 CFR 50.12 would be more efficient. Assuming industry interest does exist as has been indicated in public meetings, the NRC has evaluated several rulemaking alternatives to accomplish this task. These alternatives are discussed below.

1. Define New Term

This alternative would entail the definition of a new term in 10 CFR 50.2 (*e.g.*, "safety-significant") that describes, for the purposes of special treatment requirements, which SSCs are safety-significant and, therefore, need to be within the scope of the special treatment requirements. This new term would then be incorporated into each rule that contains special treatment requirements to allow licensees to voluntarily revise the scope of SSCs that are subject to special treatment requirements. To determine which SSCs are safety significant, the Commission would issue a new Part 50 appendix that contains the requirements governing the categorization of SSCs consistent with the new term defined in § 50.2. Alternatively, the Commission could issue a regulatory guide that contains the SSC categorization guidance.

Regulatory treatment requirements in addition to the special treatment requirements currently in the regulations may be necessary as a result of the risk categorization processes. These additional requirements would have to be added to the regulations and, therefore, additional changes to each affected rule may be required to ensure that the new regulatory treatment requirements are appropriately captured in the regulations. Because this alternative would result in duplicate changes to multiple rules, the NRC did not choose this alternative.

2. Redefine Current Terms

This alternative would expand the definition of the term "safety-related" in 10 CFR 50.2, or as an alternative, define the term "important to safety" such that the redefined term would contain a portion that allows special treatment requirements to be risk-informed. Licensees could then elect to risk-inform the scope of SSCs that are subject to special treatment in all the applicable rules. This approach would expand the definitions of the current terms (which reside in the existing rules) so there is no need to add new terms to the governing regulations. However, a significant effort would be required to review all the regulations to ensure that the Commission has not unintentionally revised any non-special treatment rules and to make appropriate changes to preclude such occurrences. In a similar fashion to the "new term" approach, this approach would also need to be supplemented with either a new Part 50 appendix that contains the requirements governing the risk-informed categorization of SSCs, or a regulatory guide that contains the SSC categorization guidance.

This alternative would introduce unnecessary complications and confusion in the application of the terms at plants that choose to implement the new scope for a subset of the special treatment requirements covered in this effort, or for some systems and not others. Such a situation would result in the use of similar language with different meanings in the licensee's licensing basis documents and in the associated plant implementation documents. Furthermore, regulatory treatment requirements, in addition to those currently in the regulations, may be necessary as a result of the risk categorization processes. These requirements would have to be added to the regulations. Therefore, changes to other rules may still be required. The NRC did not choose this alternative.

3. Issue New Rule

This approach entails the development of a new rule that would be added to Part 50. The rule would "list" the provisions that contain special treatment requirements that may have their scope risk-informed in accordance with the methodology requirements contained in either a new appendix that would also be added to Part 50, or in guidance contained in a regulatory guide (similar to above two alternatives in this respect). In addition to identifying which rules can be risk-informed for special treatment, the new rule would address rule specific issues resulting from this effort and contain new requirements concerning the type of regulatory treatment that SSCs would receive.

The NRC believes that this alternative is the simplest and most efficient regulatory approach because it appears to not require defining new terms which in turn requires subsequent revisions to each affected rule. In addition, this alternative has the benefit of integrating all the affected special treatment requirements into one rule which would make it easier for licensees and the NRC to implement. Therefore, the NRC has decided to proceed with this alternative.

4. Comprehensive vs. Phased Rulemaking

The NRC considered whether it should proceed with a comprehensive rulemaking covering all special treatment requirements or a phased approach. The NRC's objective is to proceed with a comprehensive rulemaking. However, the NRC recognizes that this approach may prove problematic. Because of the uniqueness of the special treatment requirements, the potentially different effects that may result from modifying these requirements, and the inconsistencies that currently exist between the various special treatment requirements, the NRC notes that the comprehensive rulemaking approach would be a large and complex task. The comprehensive rulemaking approach appears to have a greater potential for delay because of the time required to review each of the affected requirements and the potential for issues to arise that can have impacts on the schedule. A comprehensive rulemaking must address all affected requirements and issues before the rulemaking may be completed. Consequently, this might delay implementation of some rules due to complications with others. If complications do arise, the NRC may elect to proceed with a phased approach that allows the NRC to issue some revised rules while continuing to address issues that arise on others.

F. Implementation

1. New Appendix vs. Regulatory Guide

Each of the alternatives discussed in Section E include either the development of a new Appendix to Part 50 or the issuance of a regulatory guide that would contain the requirements governing the categorization of SSCs. The NRC has considered these two alternatives (a new appendix vs. a regulatory guide) and concluded that a new appendix approach is preferred because it would provide a more stable and predictable regulatory framework. Such a framework should result in the least burden on NRC and industry resources both from the standpoint of any prior NRC review that is required and from the standpoint of the staff's inspection of this task. If an appendix can be constructed that when implemented by licensees yields consistent, objective, enforceable, and inspectable results, then this regulatory approach should allow for implementation of the resulting risk-informed special treatment requirements with little or no NRC review. On the other hand, putting categorization guidance into a regulatory guide would require that the staff review and approve licensee submittals prior to implementation because of the flexibility inherent in a regulatory guide. The NRC expects the pilot plant program to enable it to determine if development of an appendix in lieu of a regulatory guide is sufficient to support a no prior NRC review regulatory approach. If the pilot plant program reveals that development of the appendix does not minimize the need for NRC review, the NRC will reconsider whether an appendix remains the best approach.

2. Additional Guidance

In addition to either an appendix or a regulatory guide, the Nuclear Energy Institutes (NEI) has indicated that it will submit an implementing document for this effort. The NRC intends to review this implementing document. The objective of this review will be to reach agreement with NEI concerning the implementation of risk-informed special treatment, and to be able to endorse the NEI guidance in a regulatory guide. Consequently, the Commission does not currently plan to develop draft regulatory guidance to implement this rulemaking. Additional NRC efforts would be required to update current regulatory guides that address the current SSC categorization approach, as appropriate.

G. Pilot Plant Program

The Commission believes that the pilot plant program is an essential component of this rulemaking effort. The purpose of this program would be to demonstrate the viability of the requirements contained in the resulting rule and appendix before final rulemaking and the viability of the proposed NEI guidance for the implementation of the resulting rule and appendix. The program will also help the NRC identify the special treatment requirements that industry believes should be addressed.

The most important aspect of the pilot plant program will be to demonstrate the viability of risk categorization processes to establish alternative risk-informed special treatment requirements. These processes must be based on the requirements in the resulting rule and appendix in order to provide meaningful feedback on the rulemaking effort. In addition, the categorization processes must be evaluated against the set of special treatment requirements they are applied to so that critical attributes are appropriately evaluated. The categorization processes must also be applied to a variety of plant systems, including mechanical (active and passive), fluid, and electrical systems, and safety-related and nonsafety-related systems, so that technical aspects of the categorization processes and their implementation can be thoroughly exercised. The Commission may explicitly exclude any attributes that are not exercised by the pilot plant program from consideration in this effort.

The pilot plant program must be integrated with the rulemaking plan. It must agree on overall and plant-specific schedules and the rules to be piloted. Pilot plant program participants must commit to meet the resulting rulemaking requirements and proposed NEI guidance for categorization and implementation. In addition, pilot program submittals should address how design basis functions will be preserved when special treatment for safety-related SSCs is reduced as a result of the risk categorization processes. The discussion should address how these SSCs will be treated by the licensee's design control and corrective action programs. Similarly, licensees should discuss how critical attributes identified by the risk categorization processes will be identified and controlled. This applies to safety-related and non-safety-related SSCs that are found to be significant as a result of the risk categorization processes. The processes established should be capable of reflecting changes to the facility and categorizing new and modified equipment as these changes are made.

H. South Texas Exemption Request

In addition to the pilot plant program, the Commission notes that South Texas Project Nuclear Operating Company has submitted an extensive exemption request related to a number of special treatment requirements. This submittal was developed before initiation of this effort, and so was not coordinated with the development of the rulemaking plan. Presently, the NRC expects to complete review of this submittal before the proposed rulemaking stage of the effort would begin. The NRC believes that, if approved, the South Texas exemption request will serve as a proof-of-concept prototype which will provide useful information and experience when the rulemaking for this effort is developed.

I. Schedule

The NRC has developed a schedule covering the following activities which influence this rulemaking: (1) The South Texas exemption request, (2) development and issuance of this advanced notice of proposed rulemaking, (3) the pilot plant program,

(4) NRC review of the NEI implementation guidance, (5) development and issuance of the proposed rulemaking, and (6) development and issuance of the final rulemaking. The NRC estimates that a final rule can be issued by March of 2002. This rulemaking includes milestones that depend significantly on NEI to develop implementation guidance and pilot plant program participants to develop and implement categorization processes.

III. Specific Proposal

A. Approach

To effect the described changes, the Commission is considering an approach that consists of issuing a new rule (10 CFR 50.69) and a new appendix (Appendix T to 10 CFR part 50). The new rule and appendix would allow licensees, for purposes of special treatment requirements, to categorize SSCs with regard to their importance to plant safety. The result of such a rulemaking, when combined with the current deterministic design basis, would result in SSCs being classified in two different manners. One would be consistent with the safety-related/non-safety-related philosophy that exists today for the deterministic design basis. The other would be consistent with a risk-informed philosophy. A graphical depiction of the results of the contemplated changes is illustrated in Figure 1. The figure is only intended to provide a conceptual understanding of the new SSC categorization process. The NRC's thinking on this matter is continuing to evolve. The NRC will explore the idea of more than two levels of safety significance. The NRC is requesting stakeholder feedback on the safety significance categories in question C.3 of Section V of this notice. The figure depicts the current safety-related versus nonsafety-related SSC categorization scheme on the horizontal axis with an overlay of the new risk-informed categorization on the vertical axis. The risk-informed categorization would group SSCs into one of the four boxes.

Figure 1: Diagram of Categorization and Treatment

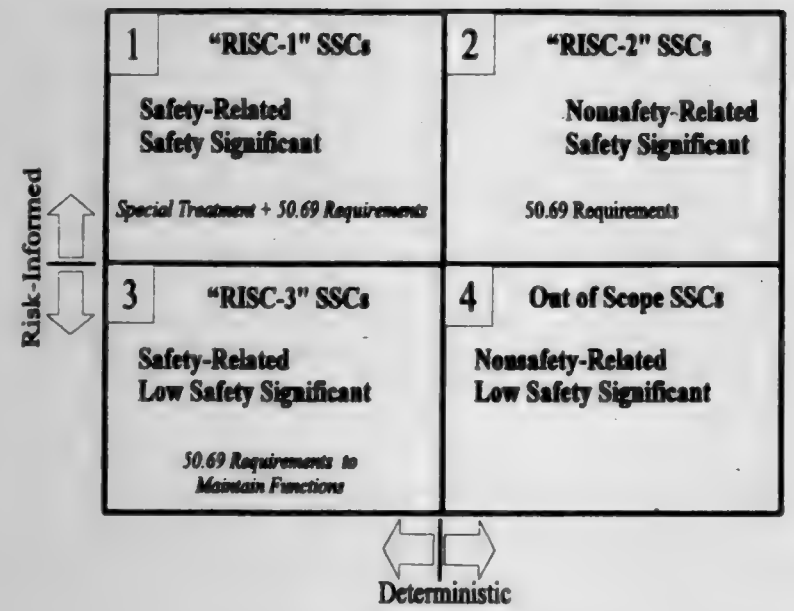

Box 1 of Figure 1 contains safety-related SSCs that a risk-informed categorization process concludes are significant contributors to plant safety. These SSCs are termed risk-informed safety class 1 (RISC–1) SSCs. SSCs in this box would continue to be subject to the current special treatment requirements. In addition, it is possible that some of these SSCs may have some additional requirements concerning reliability and availability if attributes that cause the SSC to be safety significant are not sufficiently controlled by current special treatment requirements. However, the NRC is not currently aware of any examples of this situation.

Box 2 of Figure 1 depicts the SSCs that are nonsafety-related, and that the risk-informed categorization concludes make a significant contribution to plant safety. These SSCs are termed RISC–2 SSCs. Examples of RISC–2 SSCs could include the station blackout emergency diesel generator, the startup feedwater pump for pressurized water reactors (PWRs), and SSCs used for "feed and bleed" operations at PWRs. For RISC–2 SSCs, there will probably need to be requirements to maintain the reliability and availability of the SSCs consistent with the PRA. It is currently envisioned that the new rule would contain the requirements regarding reliability and availability of RISC–1 and RISC–2 SSCs.

Box 3 of Figure 1 depicts the currently safety-related SSCs that a risk-informed categorization process determines are not significant contributors to plant safety. These SSCs are termed RISC–3 SSCs. The rulemaking effort would revise 10 CFR part 50 to contain alternative requirements such that RISC–3 SSCs would no longer be subject to the current special treatment requirements. For RISC–3 SSCs, it is not the intent of this rulemaking to allow such SSCs to be removed from the facility or to have their functional capability lost. Instead, the RISC–3 SSCs will need to receive sufficient regulatory treatment such that these SSCs are still expected to meet functional requirements, albeit at a reduced level of assurance. The NRC may determine that this level of assurance can be provided by licensees' commercial grade treatment programs. It is envisioned that the new rule would contain the regulatory treatments requirements for RISC–3 SSCs (*e.g.*, the new rule may require commercial treatment for RISC–3 SSCs).

Box 4 of Figure 1 depicts SSCs that are nonsafety-related and continue to be categorized as not being significant contributors to plant safety. These SSCs are out of scope of both the current special treatment regulations and of the new rule. The functional performance of these SSCs would be controlled under

the licensee's commercial grade program (no change from the current requirements).

B. New Rule for Part 50

The Commission expects that the new rule that would (1) identify the special treatment requirements in the current regulations whose scope could be modified consistent with the requirements resulting from this effort, (2) address rule-specific issues that arise as a result of the new scope by, for example, specifying, on a rule-by-rule basis, the applicability of the new scope, (3) specify all additional regulatory requirements that would result from this effort, and (4) reference the new appendix as providing the requirements governing the categorization of SSCs.

C. New Appendix to Part 50

The Commission expects that the new appendix would contain the elements discussed below. The discussion consists of NRC expectations of the SSC categorization process and is not presented as proposed rule language. When finalized, the appendix would establish minimum requirements for the process and decision criteria for use in the categorization of SSCs into two groups—those that have safety significance and those that have low safety significance. This is consistent with the process to categorize SSCs into RISC classes as discussed above in which the safety significant and low safety significant categorization in used in the vertical axis.

Appendix T to Part 50

Categorization of SSCs Into Risk-Informed Safety Classes

The principal activity required for the categorization of structures, systems and components (SSCs) into risk-informed safety classes is the categorization of the SSCs according to safety significance. Treatment requirements for SSCs will be dependent on this safety classification. This appendix establishes minimum requirements for the process and decision criteria for use in the categorization of SSCs.

Process for Categorization

The determination of safety significance of SSCs must be performed as part of an integrated decision-making process which uses both risk insights and traditional engineering insights. In categorizing SSCs, it must be demonstrated that the defense-in-depth philosophy is maintained, that sufficient safety margin is maintained, and that increases in risk (if any) are small.

To accomplish these objectives, the process to categorize SSCs should consist of the following elements:

(1) Identification of current treatment requirements for SSCs.

(2) Assessment of the capability of the plant-specific Probabilistic Risk Assessment (PRA) to support the categorization process.

(3) Use of the PRA to determine the relative importance of modeled SSCs to accident prevention and mitigation.

(4) Use of an integrated decision-making panel (IDP) to determine the safety significance of SSCs. The categorization of SSCs as either safety significant or low safety significant must include considerations of:

a. Results of the PRA importance evaluation.

b. Deterministic and other traditional engineering analyses.

c. Maintenance of the defense-in-depth philosophy.

d. Maintenance of safety margins.

(5) Evaluation of the change in risk resulting from reclassifying SSCs.

a. Determination of treatment requirements for SSCs based on their initial safety significance categorization.

b. Evaluation of the overall change in plant risk as a result of changes in treatment requirements, and readjustment (if necessary) of the categorization of SSCs based on this estimation of change in risk.

(6) Documentation of the process and the decision criteria used for the categorization of SSCs.

(7) Monitoring of the impact of the change in treatment requirements.

The remainder of this appendix discusses requirements and decision criteria for the above elements in more detail.

Requirements and Decision Criteria

Element (1): Identification of Current Treatment Requirements for SSCs

All safety-related as well as non-safety-related SSCs in the plant are within the scope of this categorization process. For each SSC where changes to the treatment requirements are considered, current requirements must be identified and documented so that the effect of the changes can be more easily understood.

Element (2): Assessment of the Capability of the PRA to Support the Categorization Process

PRA scope. At a minimum, a PRA modeling the internal initiating events at full power operations must be used for SSC importance analysis and determination of change in risk from the application. The PRA must be capable of quantifying core damage frequency (CDF) and large early release frequency (LERF). When categorizing SSCs, the licensee shall also consider external event initiators, as well as the shutdown and low-power modes of operation, either by PRA modeling or by the integrated decision-making process. Element (4)(b) discusses the requirements for cases when PRA modeling is not available.

PRA quality. The PRA should conform to the consensus ASME/ANS PRA Standard documents as endorsed by the NRC. In addition to the technical requirements, the PRA shall conform to the requirements in the areas of documentation, configuration control, quality assurance, and peer review. Where elements of the Standard are not met, justification of why these elements are not important to the results must be documented and available for NRC review.

PRA updates. The PRA must reflect the as-built and as-operated plant. When used for SSC categorization, and as long as regulatory requirements are being dictated by this categorization, the PRA must be updated on a periodic basis, that is, annually or within six months after each refueling outage provided the interval between successive updates does not exceed 24 months. These updates are mandatory before implementation of changes to plant design or procedures if these changes affect the categorization of SSCs. A PRA update is also required upon receipt of new PRA information which would invalidate the results of the categorization process. Upon the completion of the PRA update, the SSC categorization shall be revisited in accordance with Elements 3 through 5 of this process with a focus on the impact of the changes on SSC categorization.

Element (3): Determination of Relative Importance of SSCs Using the PRA

Relative importances of SSCs modeled in the PRA should be determined using PRA importance measures. The results of this process together with results of sensitivity studies will be used as inputs to the integrated decision-making process for the categorization of SSCs.

Risk metrics and importance measures. SSC importances must be determined based on both CDF and LERF. Importance measures should be chosen such that results can provide the IDP with information on the relative contribution of an SSC to total risk. Examples of importance measures that can accomplish this are the Fussell-Vesely (F–V) importance and the Risk Reduction Worth (RRW) importance. Importance measures should also be used to provide the IDP with information on the safety margin available should an SSC fail to function. The Risk Achievement Worth (RAW) importance and the Birnbaum importance are example measures that are suitable for this purpose.

Screening criteria. Importance measures do not directly relate to changes in the absolute value of risk. Therefore, the criteria for categorizing SSCs into the safety significant and the low safety significant categories shall be based on an assessment of the overall impact of SSC re-categorization and a comparison of this impact to the acceptance criteria for changes in CDF and LERF, see Element (5)(b). However, in the initial screening stages, an SSC with F–V <0.005 based on either CDF or LERF, and RAW <2 based on either CDF or LERF can be considered as potentially low safety significant. Elements 4 and 5 must be carried out to confirm the low safety significance of these SSCs.

Truncation limit. The truncation value used for PRA model quantification must be set to a value that is sufficiently low so that the resultant minimal cutsets contain the significant contributors to risk and that at least 95 percent of the CDF and LERF is captured in the final solution.

Sensitivity analyses. The sensitivity of SSC importances to uncertainties in the parameter values for component availability/reliability and human error probabilities should be

evaluated. Results of these sensitivity analyses should be provided to the IDP for deliberation.

Combining models for different initiating events and plant operating modes. The PRA models for external initiating events (*e.g.*, events initiated by fires or earthquakes), and for low power and shutdown plant operating modes may be conservative with respect to those for internal initiating events. Use of conservative models can influence the calculation of importance measures by moving more SSCs into the low safety significance category. Therefore, when PRA models for external event initiators and for the low power and shutdown modes of operation are available, the importance measures shall be evaluated for each analysis separately, as well as integrally. Results of the analyses should be provided to the IDP for deliberation.

Element (4): SSC Categorization by the Integrated Decision-Making Panel

An integrated decision-making panel, for example, an Expert Panel similar to the one used in implementing 10 CFR 50.65, must be used to determine the safety significance of SSCs. The categorization of SSCs as either safety significant or low safety significant must consider: results of the PRA importance analysis; deterministic and other traditional engineering analyses; maintenance of the defense-in-depth philosophy; and maintenance of safety margins. Elements (4)(a) through (4)(d) describe these requirements in more detail. Element (6) describes the requirements of the IDP process, and the documentation required of this process.

Element (4)(a): Use of PRA Insights

Results of the PRA importance analysis, including results from sensitivity studies, and results from the external initiating events and the low power and shutdown modes of operation when available, should form the initial inputs to the categorization process:

(i) For screening, an SSC with F-V < 0.005 based on either CDF or LERF, and RAW < 2 based on either CDF or LERF can be considered as potentially low safety significant.

(ii) Results of sensitivity analyses shall be used to show that SSC categorization will not change for the expected range of values of SSC reliability/availability and human error probabilities.

(iii) When PRA models are available, the importance measures for external event initiators and for the low power and shutdown mode of operation shall be evaluated for each analysis separately, as well as integrally, and only when an SSC is low safety significant for each of these analyses will it be assigned to the low safety significant category.

Application of the above guidelines will yield a list of SSCs that are determined to be safety significant by the PRA. These SSCs shall not be re-categorized as low safety significant by the IDP process.

Verification of Low Safety Significance for SSCs Implicitly Modeled in the PRA

For SSCs which have not been identified as safety significant by PRA importance measures, the IDP must verify that these SSCs are not implicitly depended upon in the PRA. The IDP must determine if:

(i) Failure of the SSC will significantly increase the frequency of an initiating event, including those initiating events originally screened out in the PRA.

(ii) Failure of the SSC will fail a safety function, including SSCs that are assumed to be inherently reliable in the PRA (*e.g.*, piping and tanks) and those that may not be explicitly modeled (*e.g.*, room cooling systems, and instrumentation and control systems).

(iii) The SSC supports operator actions credited in the PRA.

(iv) Failure of the SSC will result in failure of safety significant SSCs (*e.g.*, through spatial interactions).

If any of the above conditions are true, the IDP should use a qualitative evaluation process to determine the impact of relaxing requirements on SSC reliability and performance. This evaluation should include identifying those failure modes for which the failure rate may increase, and those for which detection could become more difficult. The IDP can justify low safety significance of the SSC by demonstrating one or more of the following:

- The reclassification is consistent with the defense-in-depth philosophy and sufficient safety margin is maintained.
- Relaxing the requirements will have minimal impact on the failure rate increase.
- Historical data show that these failure modes are unlikely to occur.
- Such failure modes can be detected in a timely fashion.

Element (4)(b): Use of Deterministic and Other Engineering Analyses

For SSCs identified in Element (4)(a) as low safety significant by the PRA as well as those SSCs outside the scope of the PRA, the IDP must verify low safety significance based on deterministic and other engineering analyses and insights, operational experience, and information from licensing basis documents and design basis accident analyses.

Initiating Events and Plant Operating Modes not Modeled in the PRA

When initiating events with frequencies of greater than 10^{-6} per year are not modeled in the PRA, or when the low power and shutdown plant operating modes are not modeled, the IDP shall demonstrate that the relaxation of regulatory requirements will not unacceptably degrade plant response capability and will not introduce risk vulnerabilities for the unmodeled initiating events or plant operating modes. For these unmodeled events, the IDP assessment must consider whether an SSC has an impact on the plant's capability to:

(i) Prevent or mitigate accident conditions;

(ii) Reach and/or maintain safe shutdown conditions;

(iii) Preserve the reactor coolant system pressure boundary integrity;

(iv) Maintain containment integrity; and

(v) Allow monitoring of post-accident conditions.

In determining the importance of SSCs for each of these functions, the following factors must be considered:

- Safety function being satisfied by SSC operation.
- Level of redundancy existing at the plant to fulfill the SSC's function.
- Ability to recover from a failure of the SSC.

sbull Performance history of the SSC.

- Use of the SSC in the Emergency Operating Procedures or Severe Accident Management Guidelines.
- Cumulative impacts of combinations of SSC unavailability which could impact an entire system or critical safety function.

Risk Indices Outside the Scope of the PRA

In addition to being safety significant in terms of CDF and LERF, SSCs can also be safety significant in terms of other risk metrics. Therefore, when an SSC is not identified as safety significant by the PRA, the IDP must verify low safety significance by determining if:

(i) The SSC is a part of a system that acts as a barrier to fission product release during severe accidents;

(ii) The SSC is depended upon in the Emergency Operating Procedures or the Severe Accident Management Guidelines; and

(iii) Failure of the SSC will result in unintentional releases of radioactive material even in the absence of severe accident conditions.

If any of the above conditions are true, the IDP should use a qualitative evaluation process to determine the impact of relaxing requirements on SSC reliability and performance. This evaluation should include identifying those failure modes for which the failure rate may increase, and those for which detection could become more difficult. The IDP can justify low safety significance of the SSC by demonstrating one or more of the following:

- The reclassification is consistent with the defense-in-depth philosophy and sufficient safety margin is maintained.
- Relaxing the requirements will have minimal impact on the failure rate increase.
- Historical data show that these failure modes are unlikely to occur.
- Such failure modes can be detected in a timely fashion.

Element (4)(c): Maintaining the Defense-in-Depth Philosophy

When categorizing SSCs as low safety significant, the IDP must demonstrate that the defense-in-depth philosophy is maintained. Defense-in-depth is considered adequate if the overall redundancy and diversity among the plant's systems and barriers is sufficient to ensure the risk acceptance guidelines provided in Element (5)(b) are met, and that:

- Reasonable balance is preserved among prevention of core damage, prevention of containment failure or bypass, and mitigation of consequences of an offsite release;
- System redundancy, independence, and diversity is preserved commensurate with the expected frequency of challenges, consequences of failure of the system, and

associated uncertainties in determining these parameters;

- There is no over-reliance on programmatic activities and operator actions to compensate for weaknesses in the plant design; and
- Potential for common cause failures is taken into account.

Element (4)(d): Maintenance of Safety Margins

When categorizing SSCs as low safety significant, the IDP shall demonstrate that there is sufficient safety margins to account for uncertainty in the engineering analysis and in the supporting data. Safety margin shall be incorporated when determining performance characteristics and parameters (e.g., component, system, and plant capability) or when defining mission success criteria (e.g., the number of system trains required to mitigate an initiating event or the ability of an SSC to perform in a certain environment). The amount of margin should depend on the uncertainty associated with the performance parameters in question, the availability of alternatives to compensate for adverse performance, and the consequences of failure to meet the performance goals. Demonstration of available safety margins shall be accomplished by use of data from plant operations or research studies, or by use of analyses using established engineering codes and standards or NRC-approved alternatives.

Element (5): Evaluation of the Change in Risk Resulting from Reclassifying SSCs

The change in risk from reclassifying SSCs shall be quantified. Elements (5)(a) and (5)(b) provide the requirements for this quantification.

Element (5)(a): Determination of Treatment Requirements Based on Safety Significance

Where regulatory requirements are to be relaxed for SSCs categorized as low safety significant or where regulatory requirements are increased for SSCs categorized as safety significant, the IDP must document the functional requirements for the SSCs and describe the process to assure that these requirements are preserved. Based on the revised requirements, the IDP must document and justify the target SSC reliability and availability.

Element (5)(b): Assessment of the Change in Risk

The potential impact of relaxing treatment requirements on SSCs must be evaluated in an integrated manner. Changes in CDF and LERF must be estimated by calculations where the failure likelihood of SSCs is changed to the level corresponding to the failure likelihood for the revised treatment requirements.

Changes to CDF and LERF must be small. Plants with total baseline CDFs of 10^{-4} per year or less will be permitted CDF increases of 10^{-5} per year, and plants with total baseline CDFs greater than 10^{-4} per year will be permitted CDF increases of 10^{-6} per year. Plants with total baseline LERFs of 10^{-5} per year or less will be permitted LERF increases of 10^{-6} per year, and plants with total baseline LERFs greater than 10^{-5} per year will be permitted LERF increases of 10^{-7} per year.

If a PRA model is not available to evaluate the change in risk from an external initiating event or plant operating mode, the IDP must provide justification, on the basis of bounding analyses or qualitative considerations, that the risk will not be significantly impacted.

Subsequent changes to the categorization of SSCs for the purpose of further modifying regulatory requirements must be performed in such a manner where plant performance and previous changes to the licensing basis are taken into account. There must not be a pattern of systematic increases in risk as a result of repeated applications of the SSC categorization process.

Element (6): Documentation of the Integrated Decision-Making Process and the Decision Criteria Used

Requirements of the Integrated Decision-Making Panel

Plant procedure: The IDP shall be described in a formal plant procedure which includes:

(i) The designated chairman, panel members, and panel alternates;
(ii) Required training and qualifications for the chairman, members and alternates;
(iii) Requirements for a quorum, attendance records, agendas, and meeting minutes;
(iv) The decision-making process;
(v) Documentation and resolution of differing opinions; and
(vi) Implementation of feedback/corrective actions.

Membership: There shall be at least five experts designated as members of the IDP. Expertise in the following fields shall be represented on the IDP: plant operations, design engineering, systems engineering, safety analysis engineering, quality assurance, plant licensing, and probabilistic risk assessment. Members may be experts in more than one field, however excessive reliance on any one member's judgement should be avoided.

Expertise: The licensee shall establish and document specific requirements for ensuing adequate expertise levels of IDP members, and shall ensure that expertise levels are maintained. There shall be at least three members of the IDP with a minimum of five years experience at the plant, and there shall be at least one member of the IDP who has worked on the modeling and updating of the plant-specific PRA for a minimum of five years.

Training: The IDP shall be trained in the specific technical aspects and requirements related to the categorization process. Training shall address, at a minimum—

(i) The purpose of the categorization;
(ii) Present treatment requirements for SSCs including requirements for design basis events;
(iii) PRA fundamentals;
(iv) Details of the plant-specific PRA including the modeling scope and assumptions;
(v) The role risk importance measures including the use of sensitivity studies;
(vi) The assessment of SSC failure modes and effects;
(vii) The role of and the use of risk thresholds; and
(viii) The defense-in-depth philosophy and requirements to maintain this philosophy. Each of these topics must be covered to the extent necessary to provide the IDP with a level of knowledge sufficient to evaluate and approve SSC categorization using both probabilistic and deterministic information.

Decision-making: IDP decision criteria for categorizing SSCs as safety significant or low safety significant shall be documented. Decisions of the IDP shall be arrived at by consensus. Differing opinions shall be documented and resolved, if possible. If a resolution cannot be achieved concerning the safety significance of an SSC, then the SSC shall be classified as safety significant.

Feedback and corrective actions: SSC categorization shall be revisited by the IDP when the PRA is updated or when the other criteria used by the IDP are affected by changes in plant operational data or changes in plant design or plant procedures.

Documentation of the IDP Process

The following shall be documented and available for NRC review:

- Results of the relative risk importance of SSCs modeled in the PRA including the results of sensitivity analyses. This should include separate SSC importances for the external events initiators and for low power and shutdown operations when these events are modeled in the PRA.
- Results of the final SSC categorization including a summary of IDP deliberations for each SSC classified as low safety significant and each non-safety-related SSC classified as safety significant. Decision criteria in terms of qualitative assessments, assessments for initiating events and plant operating modes not modeled in the PRA, defense-in-depth, and safety margins must be included. Technical basis documents used to support the categorization shall also be available.
- Functional requirements for each SSC receiving revised treatment, the original treatment requirements for these SSCs, the revised requirements for these SSCs, target values for SSC reliability and availability, and the process that will be used to assure these functional requirements and target values will be preserved/met.
- The overall change in plant risk as a result of changes in treatment requirements, including the baseline CDF and LERF and the change in this CDF and LERF. Changes to plant risk from all previous changes to treatment requirements shall also be included.
- Requirements for the IDP including, the plant procedure, expertise, membership, training, and decision-making guidelines. Meeting minutes should also be included.
- The PRA used and the supporting analyses, together with a description of conformance of this PRA to the PRA Standards documents.

Element (7): Monitoring of the Impact of the Change in Requirements

A performance monitoring and corrective action program must be implemented so that

early indication of SSC degradation can be obtained, and corrective actions can be implemented. This program shall include safety significant SSCs and safety-related SSCs classified as low safety-significant. A mechanism for changing SSC categorization based on operating experience must be included in the program. SSC performance must be consistent with the level of performance allocated in the risk analysis or credited in the integrated decision-making process. Monitoring of the safety-significant SSCs is expected to be addressed by the Maintenance Rule as described in 10 CFR 50.65.

Results of the monitoring program must be documented and available for NRC review. Results of the monitoring program must also be incorporated into the PRA update process described in Element (2).

IV. Issues

A. Selective Implementation

"Selective implementation" is defined as implementing the changes resulting from this effort for a subset of the affected special treatment requirements or implementing the changes for a subset of SSCs at a facility, or both. The NRC is considering the argument that selective implementation would tend only to reduce unnecessary regulatory burden and would not yield safety benefits where the risk importance of SSCs had not been recognized by the current regulatory framework. However, selective implementation may be possible and even necessary to some degree.

The South Texas Project experience with the Graded Quality Assurance program has demonstrated that implementation of the resulting changes for only 10 CFR part 50, Appendix B, is not beneficial from a burden reduction perspective without exemptions from other regulations. The South Texas Project experience has further shown that implementation for a minimum set of rules, in combination with 10 CFR part 50, Appendix B, must occur before sufficient benefits are realized. The NRC believes that this feedback applies to most of the current set of regulations. However, even with the experience that South Texas Project had with 10 CFR part 50, Appendix B, the licensee did not request exemption from the full set of regulations identified as candidates for this effort. In addition, none of the potential pilot plant program participants have expressed interest in implementing the full set of rules being considered. As a result, the NRC currently believes that a sufficient amount of burden reduction can be achieved with selective implementation.

The NRC intends to make rule changes so that exemptions will not be required for licensees wishing to implement the risk-informed regulatory regime that would result from this effort. Therefore, the NRC currently believes that it should not issue exemptions to allow for selective implementation after final rulemaking.

With regard to safety, the NRC believes that, if the exemption request submitted by South Texas Project can be found acceptable, the NRC would have, in effect, determined that an adequate level of safety could be preserved without having to adopt all changes resulting from this effort. Therefore, the NRC will depend, in part, on the results of the South Texas exemption effort to decide this issue.

Selective implementation of alternative regulatory treatment requirements would introduce additional complexity into the regulatory process and the NRC will need to assess the practicality of the approach. In addressing this issue, the NRC will need to establish an implementation approach which recognizes all of the NRC's outcome oriented goals, not just reducing unnecessary regulatory burden. The NRC is continuing to evaluate this issue and is seeking stakeholder feedback in Section V.F. of this advance notice of proposed rulemaking.

Another selective implementation issue is whether licensees should be allowed to implement the alternative for certain systems and not others. The NRC expects that licensees would look at a comprehensive set of systems and components as it applies any individual risk-informed regulation. If a comprehensive scope of equipment is not considered, the NRC does not believe that licensees can develop an appropriate risk-ranking process or identify risk-significant characteristics of equipment which may warrant additional control. For example, licensees would be expected to review systems and components outside current safety-related boundaries to identify the need for additional equipment qualification for risk-significant SSCs at the same time that it reviews the current equipment qualification scope for relaxation opportunities. The NRC does recognize, however, that implementation would take place through a phased approach by licensees.

The NRC recognizes that licensees may elect to exclude certain systems from the detailed risk-ranking process based on their prior understanding of the importance of those systems to overall safety. Some systems, such as the reactor protection system, can be shown to be very important without an extensive risk evaluation. Other systems may not be relevant to facility safety at all. Licensees may determine that there is little benefit from a detailed risk categorization process for such systems. However, to ensure that this effort is implemented correctly, such systems may still need evaluation to assess the risk-significant attributes from a risk-informed perspective.

The Commission is continuing to evaluate this issue and is seeking stakeholder feedback on this issue in Section V.F. of this advance notice of proposed rulemaking.

B. Impact on Other Regulations

The NRC has determined that implementation of risk-informed alternatives in Part 50 may affect implementation of other regulations. For example, the NRC has determined that changes to Part 54 may be required to accommodate license renewal for a facility that had implemented risk-informed changes encompassed by this effort. The scope of Part 54 is explicitly defined using the traditional deterministic approach. Therefore, Part 54 does not, without change, accommodate the alternative the risk-informed scope that would result from this effort. The goal of the license renewal program is to establish a stable, predictable, and efficient license renewal process. The NRC believes that a revision to Part 54 at this time would have a significant effect on the stability and consistency of the processes being established for preparation of license renewal applications and for NRC review. Allowing a voluntary alternate scoping criteria would necessitate the development of an alternate license renewal process. Guidance would need to be developed regarding format and content of a renewal application, NRC review criteria, and inspection guidance for conducting onsite scoping inspections.

In other cases, such as operator licensing (Part 55), rule changes may not be necessary. Nevertheless, licensees may need to make changes to programs implementing these regulations in order to ensure compliance.

The Commission would like to identify all such impacts early in this effort and is, therefore, seeking stakeholder input on this issue in Section V.G. of this advance notice of proposed rulemaking.

C. Need For Prior NRC Review

The preferred approach for this effort is to avoid the need for prior NRC review and approval of either the licensee's categorization process or the results of that process. The Commission intends on achieving this by issuing a

detailed and enforceable appendix which would yield consistent, objective, and inspectable results. This appendix is being developed, in part, from existing guidance such as RG 1.174 and from experience gained by review of the South Texas Graded Quality Assurance methodology. Several significant aspects of the proposed categorization technique rely upon subjective and qualitative judgement. For example, it is expected that an expert panel will consider defense-in-depth and margin of safety as part of the assessment of the significance of SSCs. However, these terms are often defined only in a qualitative, not quantitative, sense. These terms are difficult to translate into enforceable regulations yielding consistent, objective, and inspectable results. Therefore, use of these concepts within an appendix creates a significant challenge to the NRC. If the NRC cannot develop criteria which result in consistent, objective, and enforceable results, some level of NRC review and approval will be necessary.

No prior NRC review of a licensee's categorization process may affect the public participation process concerning the implementation. With no prior NRC review, public participation would be limited to the rulemaking process. For example, the public could participate by providing input on this advanced notice of proposed rulemaking, on the notice of proposed rulemaking, in public meetings, *etc.* However, public participation allowed by the licensing amendment process (*i.e.*, for implementation), including hearing rights on the licensing action, would not be part of the implementation of this effort because no licensing action would need to take place.

The Commission is seeking comment on this issue in Section V.H. of this advance notice of proposed rulemaking.

D. Identification and Control of Attributes Requiring Special Treatment

The NRC anticipates some SSCs that are not presently subject to special treatment requirements to be identified as significant to plant safety (*i.e*, RISC–2 SSCs). The NRC further anticipates to find that the existing special treatment requirements do not fully address some risk-significant characteristics of SSCs that are significant to plant safety (RISC–1 and RISC–2 SSCs). This is anticipated to occur because the risk-informed categorization processes will address some severe accident concerns that are not currently addressed by the special treatment requirements. The Commission expects to develop regulatory controls for RISC–1 and RISC–2 SSCs to ensure risk-significant characteristics of these SSCs are adequately preserved.

The Commission expects some SSCs that are presently subject to special treatment requirements to be identified as being of low significance to plant safety (*i.e*, RISC–3 SSCs). However, it is not the intent of this effort to redefine the design basis events that a plant must analyze to demonstrate compliance with the regulations. Therefore, this effort will not allow for elimination of these components from the plant. In addition, these components must remain functional to meet the design basis. Accordingly, the Commission expects to develop regulatory controls for RISC–3 to ensure that they would be maintained functional.

The Commission is considering how to identify the risk-significant attributes for RISC–1 and RISC–2 SSCs and what regulatory controls to establish for them to ensure that they are adequately preserved. The Commission is also considering what regulatory controls to establish for RISC–3 SSCs to ensure that they would be maintained functional. The Commission is seeking comment on this issue in Section V.E. of this advance notice of proposed rulemaking.

V. Specific Questions

Comments, advice, and recommendations on a proposed rule reflecting the features presented above and any other pertinent points are invited from all interested persons. Particularly, comments and supporting reasons are requested on the following questions arranged by topic:

A. Approach

A.1. If the NRC elects to pursue a phased rulemaking approach, how should the rules identified be prioritized/phased?

A.2. Proceeding with changes to special treatment requirements before establishing a risk-informed design basis (establishment of a risk-informed design basis is being addressed by a separate task) may create inconsistencies between the treatment of SSCs and the functions they serve for the deterministic design basis. Are there any detrimental effects (licensing or otherwise) associated with changing the special treatment requirements before changing the design basis? Please provide a discussion of the detrimental effects that you believe would result.

A.3. (a) What should the proposed rule state in order to clearly identify the scope of SSCs in each special treatment requirement for which the rule provides a regulatory alternative? (b) If the Commission should decide to impose alternative requirements to the special treatment requirements and/or if the Commission should decide to impose risk requirements on RISC–1, RISC–2, and/or RISC–3 SSCs, how should the proposed rule be constructed in order to clearly identify the scope of SSCs for which the alternative requirements apply?

A.4. If the Commission should decide to impose alternative requirements to the special treatment requirements and/or if the Commission should decide to impose risk requirements on RISC–1, RISC–2, and/or RISC–3 SSCs, how should the alternative requirements be expressed to ensure clarity (please provide examples of how the requirements should be phrased)? Should the alternative requirements be expressed prescriptively or in a performance-based approach? Should the alternative requirements be placed in each specific special treatment regulation for which an alternative is being provided, or should the alternative requirements be included in the proposed new rule?

A.5. Please provide an estimate of the expected costs and benefits of implementing risk-informed special treatment requirements.

A.6. Please comment on the benefits of risk-informing 10 CFR 50.36?

B. Screening

B.1. Are the screening criteria reasonable and have the rules that have been evaluated (see the attached Table) been screened correctly against the screening criteria? Please provide rule-specific comments on reduction of unnecessary burden and the need to modify a rule in order to maintain safety (Criterion III).

B.2. Are there any other rules, in addition to those that have been evaluated, that should be considered as part of this effort? Please provide specific comments identifying any rules that you belief should be considered and the reasons for recommending their inclusion.

B.3. Are there any rules that have been identified for inclusion that should not be included? Please provide specific comments identifying those rules and the reasons for recommending their exclusion.

C. Categorization Methodology

C.1. Are the elements identified for the appendix appropriate and adequate for establishing a risk-informed process to categorize SSCs with respect to their significance to safety?

C.2. Is the appendix written at a level sufficient to support a no prior NRC review approach? Are there specific

areas that warrant additional requirements?

C.3. The approach described in this ANPR would define two levels of safety significance. Would it be better to define more than two levels? For example, South Texas uses a four level approach where they categorize equipment as having high safety significance, medium safety significance, low safety significance, and no safety significance. (Note however, that South Texas is not proposing to apply four different types of treatment for the four levels of significance.) What are the benefits of using an approach where more than two levels of safety significance are defined? Would it be better to define more than two levels in this rulemaking?

C.4. Importance measures are strongly affected by the scope and quality of the PRA. For example, incomplete assessments of risk contributions from low-power and shutdown operations, fires, and human performance will distort the importance rankings. What should be the requirements for assuring PRA quality? What should the scope of the PRA be in terms of initiating events and plant operating modes? If modeled in a PRA, how should the contributions from external event initiators and low power and shutdown operating modes be factored into the results (taking into account that modeling for these events is usually not as complete as that for the internal events)?

C.5. Even with a full-scope, high quality PRA, the importance measures have limitations. How should these limitations be addressed in Appendix T? What is the role of sensitivity and uncertainty analyses? What is the role of delta risk measures and absolute risk measures?

C.6. It is essential that the implementation of 10 CFR 50.69 and Appendix T be scrutable and auditable. What requirements are needed to ensure that this is the case? What documents should be available for NRC inspection (*e.g.*, the risk assessment, technical bases documents, inputs to and deliberations of the expert panel)? Please provide a discussion to support your comments.

C.7 Does the proposal provide adequate guidance on the use of expert judgement in the form of the integrated decision-making panel to ensure consistent categorization of SSCs across the industry?

D. Pilot Plant Program

D.1. How should the pilot plant program be constructed and implemented in order to adequately pilot the elements in the appendix?

D.2. Please comment on the need or lack of need to pilot each of the rules affected by this effort.

E. Identification and Control of Special Treatment Attributes

E.1. How should the special treatment requirements for SSCs that are currently safety-related for one reason but found to be safety significant for a different reason be modified? Should special treatment of safety-related SSCs be modified to address risk-significant attributes that are identified as a result of a risk-informed categorization process? If so, how should treatment be identified and controlled?

E.2. What regulatory treatment should be applied to safety-significant SSCs which are not currently safety-related?

E.3. Explain whether the design control and procurement requirements in Appendices A and B of 10 CFR part 50 should apply to safety-significant SSCs which are not currently safety-related (*i.e.*, RISC–2 SSCs).

E.4. (a) Should 10 CFR part 21 requirements be imposed upon vendors who supplied safety-related components to licensees who subsequently select the new regulatory approach? If not, what regulatory basis would there be for not imposing such requirements on those vendors? Would the failure to impose Part 21 requirements on such vendors be inconsistent with the underlying statutory basis for Part 21, viz., Section 206 of the Energy Reorganization Act of 1974, as amended? What regulatory provisions are necessary to assure that the underlying purpose of Section 206 and 10 CFR part 21 are fulfilled under the alternative regulatory approach?

(b) If such requirements are imposed, what difficulties would such vendors experience in fulfilling their Part 21 responsibilities and how could these difficulties be addressed in this rulemaking? What specific rule provisions are necessary in order to fairly impose Part 21 vendors who supply basic components to licensees who at some point decide to adopt the alternative approach?

(c) Discuss whether the alternative regulatory approach, with respect to the new categories, is inconsistent with the definition of basic component in Section 223.b of the Atomic Energy Act (which imposes criminal liabilities for knowing and willful violations of NRC rules, regulations orders and license conditions that result, or if undetected could have resulted in significant impairment of a "basic component"). If there is an inconsistency, does it have any adverse effects on licensees? What rulemaking provisions could eliminate or minimize such adverse effects?

E.5. What regulatory treatment requirements are necessary to ensure the functional capabilities of SSCs that are safety-related because of the plant's deterministic licensing basis but found to be of low safety significance are maintained?

E.6. To what degree should severe accidents be incorporated into the licensing basis under the regulatory effort to risk-inform special treatment requirements?

F. Selective Implementation

F.1. What are the potential advantages and disadvantages of selective implementation with regard to selection of rules and selection of systems?

F.2. What bounds should be set on the scope of SSCs evaluated under a risk-informed regulatory framework? Should all systems be evaluated, or can some subset be considered?

F.3. What limits should be placed on the set of rules for implementation? Should licensees be required to implement all risk-informed rules? If not, what limitations are appropriate?

F.4. How can the NRC ensure that additional attention is given to risk significant components if selective implementation is allowed?

G. Impact on Other Regulations

G.1. What regulations may be affected by risk-informed changes to special treatment requirements in Part 50 and how are these regulations affected?

G.2. For those licensees implementing the new regulatory approach: (a) What, if any, GDC will require exemptions? (b) If exemptions would otherwise be necessary, is there a way and/a regulatory basis for the rulemaking to exempt, in whole or part, compliance with those GDCs for those licensees choosing the alternative regulatory approach?

G.3. Part 19 currently requires all licensees to post NRC Form 3. Would it be more or less confusing if all licensees posted a single, NRC-developed Form 3 that covered both licensees who remain with the existing regulatory regime as well as licensees that choose the alternative regulatory approach; or should an alternative Form 3 be developed, with the licensee required to post the applicable Form depending upon whether it chose to implement the alternative regulatory approach.

G.4. If a licensee were to adopt the alternative regulatory approach, would there be any inconsistency or discrepancy created between the term "operability" as currently used in technical specifications" limiting conditions for operations (LCOs) and the concept of "functionality" as

proposed for SSCs in RISC–3? Please describe any adverse effects in detail, and discuss the manner in which these adverse effects can be avoided or minimized.

G.5. What changes should be considered to provide consistency between affected regulations and risk-informed scope of special treatment?

G.6. Please comment on the need and appropriateness of applying a risk-informed scope to license renewal (*i.e.*, Part 54)?

H. Need for Prior NRC Review

H.1. Given that the means for public participation for this effort is through comment in response to this advanced notice for proposed rulemaking and in response to a proposed rulemaking, is there a need to have an NRC review process such that there will be additional public participation as part of the licensing amendment process?

H.2. What level of NRC review is appropriate for a facility making the transition to a risk-informed regulatory regime?

H.3. What regulatory controls need to be placed on licensees to implement risk-informed changes to special treatment without prior NRC approval?

H.4. Please comment on the need for revising 10 CFR 50.59 to facilitate the risk-informed approach?

The preliminary views expressed in this document may change in light of comments received. In any case, there will be another opportunity for additional public comment in connection with any proposed rule that may be developed by the Commission.

The authority citation for this document is: 42 U.S.C. 2201; 42 U.S.C. 5841.

Dated at Rockville, Maryland, this 25th day of February, 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

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Table - Rule Evaluation Matrix (Page 1 of 4)

RULE	TITLE	SCREENING CRITERIA					CANDIDATE RULES
		I	II	III	IV	V	(I and (II or III)) or IV or V
50.2	Definitions.						
50.4	Written communications.						
50.8	Information collection requirements: OMB approval.						
50.10	License required.						
50.34	Contents of applications; technical information.	x				x	x
50.35	Issuance of construction permits.						
50.36	Technical specifications.	x	x	x			x
50.44	Standards for combustible gas control system in light-water-cooled power reactors.	x	x	x	x		x
50.48	Fire protection.	x	x	x		x	x
50.49	Environmental qualification of electric equipment important to safety for nuclear power plants.	x	x	x	x	x	x
50.54	Conditions of licenses.		x	x	x	x	x
50.55	Conditions of construction permits.	x	x	x	x	x	x
50.55a	Codes and standards.	x	x	x		x	x
50.59	Changes, tests and experiments.	x	x	x	x	x	x
50.62	Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants.						
50.65	Requirements for monitoring the effectiveness of maintenance at nuclear power plants.	x	x	x			x
50.71	Maintenance of records, making of reports.	x				x	x
50.72	Immediate notification requirements for operating nuclear power reactors.	x	x	x			x
50.73	License event report system.	x	x	x			x

Table - Rule Evaluation Matrix (Page 2 of 4)

RULE	TITLE	SCREENING CRITERIA					CANDIDATE RULES
		I	II	III	IV	V	(I and (II or III)) or IV or V
App. A Intro.	General Design Criteria for Nuclear Power Plants				x		x
GDC 1	Quality Standards and Records.	x	x	x	x	x	x
GDC 2	Design Bases for Protection Against Natural Phenomena.	x	x	x	x		x
GDC 3	Fire Protection.	x	x	x	x		x
GDC 4	Environmental and Dynamic Effects Design Bases.	x	x	x	x		x
GDC 5	Sharing of Structures, Systems, and Components.						
GDC 14	Reactor Coolant Pressure Boundary.	x					
GDC 16	Containment Design.						
GDC 17	Electric Power Systems.	x 1					1
GDC 18	Inspection and Testing of Electric Power Systems.	1					1
GDC 20	Protection System Functions.						
GDC 21	Protection System Reliability and Testability.	1					1
GDC 22	Protection System Independence.	x					
GDC 30	Quality of Reactor Coolant Pressure Boundary.	x					
GDC 32	Inspection of Reactor Coolant Pressure Boundary.	x 1					1
GDC 36	Inspection of Containment Heat Removal System.	1					1
GDC 37	Testing of Emergency Core Cooling System.	x 1 2	x	x	x		x 1 2
GDC 39	Inspection of Containment Heat Removal System.	1					1

Table - Rule Evaluation Matrix (Page 3 of 4)

RULE	TITLE	SCREENING CRITERIA					CANDIDATE RULES
		I	II	III	IV	V	(I and (II or III)) or IV or V
GDC 40	Testing of Containment Heat Removal System.	x 1 2	x	x	x		x 1 2
GDC 42	Inspection of Containment Atmosphere Cleanup Systems.	x 1 2	x	x	x		x 1 2
GDC 43	Testing of Containment Atmosphere Cleanup Systems.	x 1 2	x	x	x		x 1 2
GDC 44	Cooling Water.						
GDC 45	Inspection of Cooling Water System.	x 1 2	x	x	x		x 1 2
GDC 46	Testing of Cooling Water System.	x 1 2	x	x	x		x 1 2
GDC 52	Capability for Containment Leakage Rate Testing.	1					1
GDC 53	Provisions for Containment Testing and Inspection.	1					1
GDC 54	Systems Penetrating Containment.	1					1
GDC 55	Reactor Coolant Pressure Boundary Penetrating Containment.	x					
GDC 61	Fuel Storage and Handling and Radioactivity Control.	1					1
App. B	Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants	x	x	x	x	x	x
App. E	Emergency Planning and Preparedness for Production and Utilization Facilities						
App. J	Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors	x	x	x			x

Table - Rule Evaluation Matrix (Page 4 of 4)

RULE	TITLE	SCREENING CRITERIA					CANDIDATE RULES
		I	II	III	IV	V	(I and (II or III)) or IV or V
App. M	Standardization of Design; Manufacture of Nuclear Power Reactors; Construction and Operation of Nuclear Power Reactors Manufactured Pursuant to Commission License						
App. N	Standardization of Nuclear Power Plant Designs: Licenses to Construct and Operate Nuclear Power Reactors of Duplicate Design at Multiple Sites						
App. R	Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979	x	x	x		x	x
App. S	Earthquake Engineering Criteria for Nuclear Power Plants	x	x	x	x		x
Part 21	REPORTING OF DEFECTS AND NONCOMPLIANCE	x	x	x	x		x
Part 52	EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS	x	x	x	x	x	x
Part 54	REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS	x	x	x	x	x	x
Part 100 & App. A	REACTOR SITE CRITERIA	x	x	x	x		x

NOTES:

A.9 Includes requirements that components be designed to permit inspection and/or testing

A.10 Includes requirements that components be designed to permit inspection and/or testing ***to assure*** the capability of the components. The staff has treated the words ***to assure*** as requiring actual periodic testing.

Figure 2. Screening Process and Results.

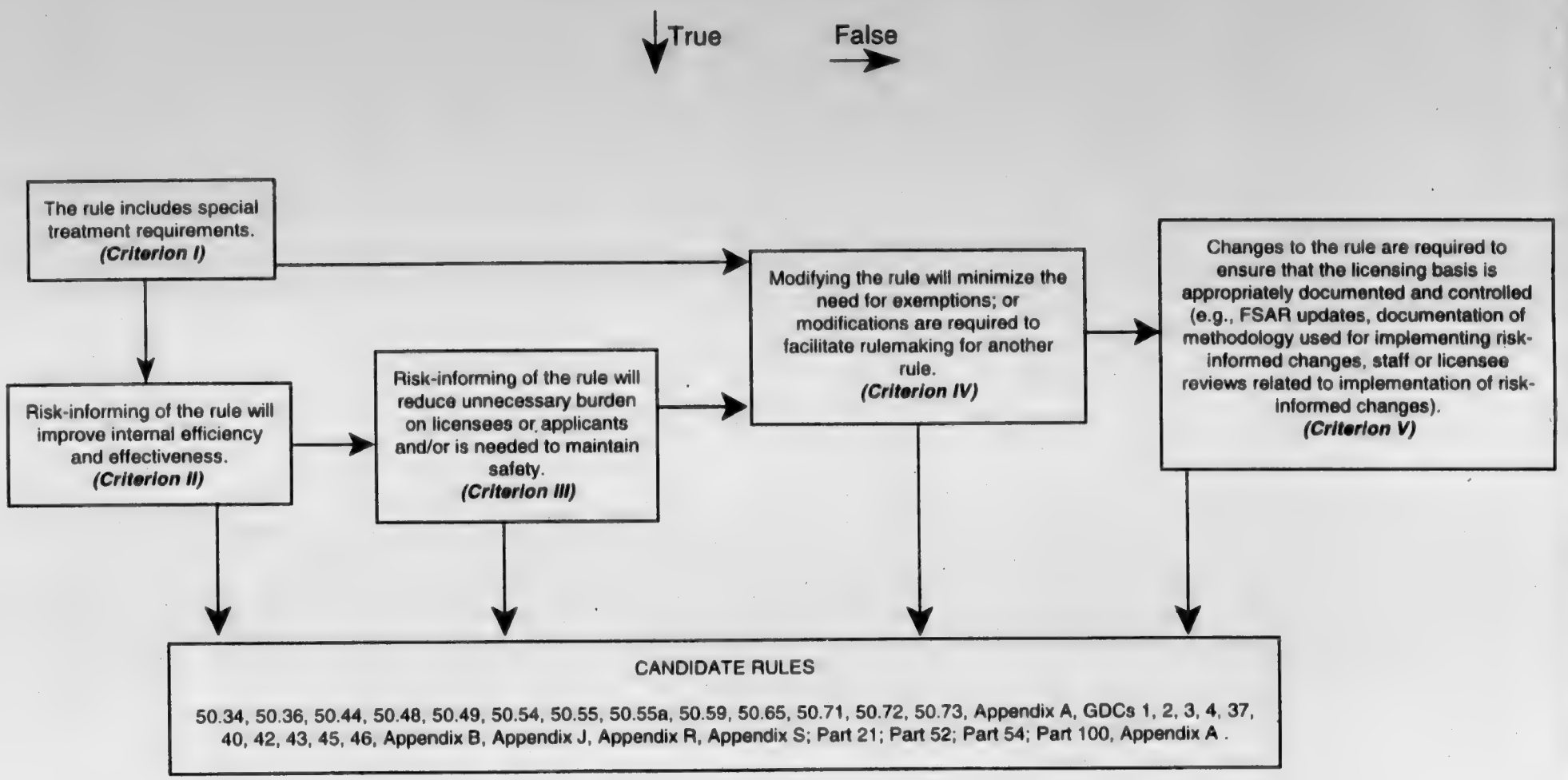

[FR Doc. 00–5016 Filed 3–2–00; 8:45 am]
BILLING CODE 7590–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–57–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. CFM56–3, –3B, and –3C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to CFM International, S.A. CFM56–3, –3B, and –3C series turbofan engines. This proposal would discontinue use of certain lubricants no longer on the manufacturer's approved list. In addition, this proposal would require a one-time fan disk dovetail wear measurement, and if wear exceeds certain limits, require an ultrasonic inspection for cracks in the fan disk, and, if necessary, require removal from service of fan disks and replacement with serviceable parts. This proposal is prompted by reports of fan disk heavy wear and cracks. The actions specified by the proposed AD are intended to prevent fan disk failure, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by April 3, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–57–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "9-ane-adcomment@faa.gov". Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from CFM International, S.A., Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone 513–552–2981, fax 513–552–2816. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7132, fax 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–57–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–57–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of fan disk heavy wear and cracks on CFM International, S.A. CFM56–3, –3B, and –3C series turbofan engines. In one case, an inflight engine shutdown resulted from fan blade failure at the root area just above the pressure face. In addition, one fan disk was found cracked during a routine fluorescent penetrant inspection (FPI) and exhibited heavy wear on the pressure face. Investigation revealed high stress around the dovetail pressure face resulting from the use of certain fan disk dovetail lubricants coupled with the presence of certain fan blade/damper configurations. This condition, if not corrected, could result in fan disk failure, which could result in an uncontained engine failure and damage to the aircraft.

Service Information

The FAA has reviewed and approved the technical contents of CFM International, S.A. CFM56–3/–3B/–3C Service Bulletin (SB) No. 72–854, Revision 2, dated November 29, 1999, that describes procedures for the one-time on-wing fan disk dovetail wear measurement and fan disk ultrasonic inspection. This AD allows the ultrasonic inspection to be done on-wing or in the shop.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would discontinue use of certain lubricants no longer on the manufacturer's approved list. In addition, this proposal would require a one-time fan disk dovetail wear measurement, and if wear exceeds certain limits, require an ultrasonic inspection for cracks in the fan disk, and, if necessary, require removal from service of fan disks and replacement with serviceable parts. The compliance times are based upon the fan blade/damper configuration and engine thrust rating. The actions would be required to be accomplished in accordance with the SB described previously.

Economic Analysis

There are approximately 600 engines of the affected design in the worldwide fleet. The FAA estimates that 510 engines installed on aircraft of US registry would be affected by this proposed AD, that it would take approximately 9 work hours per engine to accomplish the inspections and replacement of blades and dampers, and that the average labor rate is $60 per work hour. Required parts would cost approximately $10,700 per engine for the required fan blade/damper configuration. The manufacturer has informed the FAA that an estimated 140 engines may need fan disk replacement, at $56,799 per engine. In addition, the FAA estimates that 159 work hours would be required to remove the engine from the aircraft, replace the fan disk, and return the engine to service. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $15,019,860.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order No. 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

CFM International, S.A.: Docket No. 98–ANE–57–AD.

Applicability: CFM International, S.A (CFMI) CFM56–3, –3B, and –3C series turbofan engines, installed on but not limited to Boeing 737 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fan disk failure, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

Wear Measurement (Thrust Rating Category A Only)

(a) For CFM56–3, –3B, and –3C series engines operating at the category A thrust rating on the effective date of this AD, that have never previously operated at the category B or C thrust ratings, perform a one time fan disk dovetail wear measurement in accordance with section 2.B.(1) of CFMI CFM56–3/–3B/–3C Service Bulletin (SB) No. 72–854, Revision 2, dated November 29, 1999, using the intervals defined in section 1.D.(1)(a) of the SB, and the current fan disk time and cycles on the effective date of the AD.

Inspection

(1) Perform a local ultrasonic inspection for cracks in the fan disk in accordance with section 2.B.(2) of the SB, if required by the wear criteria described in section 1.D.(1)(b)*1* of the SB.

Removal

(i) Remove from service prior to further flight fan disks that do not meet the ultrasonic inspection criteria defined in paragraph 2.B.(2) (d) 8*b* of the SB, and replace with a serviceable part.

(ii) Remove from service within 50 cycles in service (CIS), fan disks that meet the ultrasonic inspection criteria defined in paragraph 2.B.(2) (d)8*b* of the SB, if the wear measurement is greater than or equal to 9 mils.

(2) Install dampers, as required, in accordance with the compliance times and criteria described in section 1.D.(1)(b)*1* of the SB.

Wear Measurement (Thrust Rating Category A, if the Engine Was Previously Operated at Thrust Rating Categories B or C)

(b) For CFM56–3, –3B, and –3C series engines operating at the category A thrust rating on the effective date of this AD, that have previously operated at the category B or category C thrust ratings, perform a one-time fan disk dovetail wear measurement in accordance with section 2.B.(1) of CFMI CFM56–3/–3B/–3C SB No. 72–854, Revision 2, dated November 29, 1999, using the intervals defined in section 1.D.(1)(a) of the SB, and the current fan disk time and cycles on the effective date of the AD.

Inspection

(1) Perform a local ultrasonic inspection for cracks in the fan disk in accordance with section 2.B.(2) of the SB, if required by the wear criteria described in section 1.D.(1)(b)*2* of the SB.

Removal

(i) Remove from service prior to further flight fan disks that do not meet the ultrasonic inspection criteria defined in paragraph 2.B.(2)(d)8*b* of the SB, and replace with a serviceable part.

(ii) Remove from service within 50 CIS, fan disks that meet the ultrasonic inspection criteria defined in paragraph 2.B.(2)(d)8*b* of the SB, if the wear measurement is greater than or equal to 9 mils.

(2) Install dampers, as required, in accordance with the compliance times and criteria described in section 1.D.(1)(b)*2* of the SB.

Wear Measurement (Thrust Rating Category B, Regardless of Whether the Engine Was Previously Operated at Thrust Rating Categories A or C)

(c) For CFM56–3B and –3C series engines operating at the category B thrust rating on the effective date of this AD, regardless of whether the engine was previously operated at thrust rating categories A or C, perform a one-time fan disk dovetail wear measurement in accordance with section 2.B.(1) of CFMI CFM56–3/–3B/–3C SB No. 72–854, Revision 2, dated November 29, 1999, using the intervals defined in section 1.D.(1)(a) of the SB, and the current fan disk time and cycles on the effective date of the AD.

Inspection

(1) Perform a local ultrasonic inspection for cracks in the fan disk in accordance with section 2.B.(2) of the SB, if required by the wear criteria described in section 1.D.(1)(c) of the SB.

Removal

(i) Remove from service prior to further flight fan disks that do not meet the ultrasonic inspection criteria defined in paragraph 2.B.(2)(d)8*b* of the SB, and replace with a serviceable part.

(ii) Remove from service within 50 CIS, fan disks that meet the ultrasonic inspection criteria defined in paragraph 2.B.(2)(d)8*b* of the SB, if the wear measurement is greater than or equal to 9 mils.

(2) Remove and replace fan blades and install dampers, as required, in accordance with the compliance times and criteria described in section 1.D.(1)(c) of the SB.

Wear Measurement (Thrust Rating Category C, Regardless of Whether the Engine Was Previously Operated at Thrust Rating Categories A or B)

(d) For CFM56–3C series engines operating at the category C thrust rating on the effective date of this AD, regardless of whether the engine was previously operated at category A or B thrust ratings, perform a one-time fan disk dovetail wear measurement in accordance with section 2.B.(1) of CFMI CFM56–3/–3B/–3C SB No. 72–854, Revision 2, dated November 29, 1999, using the intervals defined in section 1.D.(1)(a) of the SB, and the current fan disk time and cycles on the effective date of the AD.

Inspection

(1) Perform a local ultrasonic inspection for cracks in the fan disk in accordance with section 2.B.(2) of the SB, if required by the wear criteria described in section 1.D.(1)(d) of the SB.

Removal

(i) Remove from service prior to further flight fan disks that do not meet the ultrasonic inspection criteria defined in paragraph 2.B.(2)(d)8*b* of the SB, and replace with a serviceable part.

(ii) Remove from service within 50 CIS, fan disks that meet the ultrasonic inspection criteria defined in paragraph 2.B.(2)(d)8*b* of the SB, if the wear measurement is greater than or equal to 5 mils.

(2) [Reserved]

(e) If the fan disk is determined to be serviceable, clean and lubricate the fan disk and fan blade using the instructions in paragraph 2.B.(2)(d)8*d* of the SB.

Definitions

(f) The category A, B, and C thrust ratings listed in paragraphs (a) through (d) of this AD are defined in chapter 05 of the CFM56–3 model series Engine Shop Manual, CFMI–TP.SM.5.

Lubricants

(g) After the effective date of this AD, the following lubricants are no longer approved for use on the CFMI CFM56–3, –3B, and –3C series engines: Sandstrom 27A, ZIP D5460, Surf-kote A 1625, Tiolube 70 and Tiolube 75/75.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Ferry Flights

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on February 24, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–5012 Filed 3–2–00; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 232, 239, 240, 249, 250, 259, 260, 269, 270, and 274

[Release Nos. 33–7803; 34–42462; 35–27142; 39–2382; IC–24319 File No. S7–05–00]

RIN 3235–AH79

Rulemaking for EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are in the process of modernizing our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. On June 28, 1999, we began accepting filings submitted to EDGAR in HyperText Markup Language as well as documents submitted in the American Standard Code for Information Interchange format. As of that date, filers have had the option to accompany their required filings with unofficial copies in Portable Document Format. We anticipate that we will implement the next stage of modernization (EDGAR Release 7.0) in late May of this year. In this release, we are proposing amendments to our rules to reflect changes to filing requirements that will occur with EDGAR Release 7.0 as well as certain other changes to clarify or update the rules. We address in today's proposed amendments the following new features: inclusion of graphic and image files in HTML filings; expanded use of hyperlinks in HTML filings; and the addition of the Internet, and removal of diskettes, as a means of transmitting filings to the EDGAR system. We also propose to eliminate the requirement for filers to submit Financial Data Schedules.

DATES: We must receive your comments on or before April 3, 2000.

ADDRESSES: Please submit three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. You also may submit your comments electronically at the following e-mail address: rule-comments@sec.gov. Your comment letter should refer to File No. S7–05–00; include this file number in the subject line if you use e-mail. We will make comment letters available for your inspection and copying in our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. We also will post any electronically submitted comment letters on our Internet Web Site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: If you have questions about the proposed rules, please contact one of the following members of our staff: in the Division of Investment Management, Ruth Armfield Sanders, Senior Special Counsel, or Shaswat K. Das, Attorney, (202) 942–0978; and in the Division of Corporation Finance, Carol P. Newman Weiss, Accountant, (202) 942–2940. If you have questions about the development of the modernized EDGAR system, please contact Richard D. Heroux, EDGAR Program Manager, (202) 942–8885, in the Office of Information Technology.

SUPPLEMENTARY INFORMATION: Today we propose amendments to the following rules relating to electronic filing on the EDGAR system: Item 601 of Regulation S–B[1] under the Securities Act of 1933 (Securities Act);[2] Item 601 of Regulation S–K[3] under the Securities Act; Rules 110 and 483[4] under the Securities Act; Forms S–2, S–3, and S–8[5] under the Securities Act; Rules 11, 12, 103, 104, 105, 302, 303, 304, 311 and 501 of Regulation S–T[6] Rule 0–2[7] under the Exchange Act of 1934 (Exchange Act);[8] Rule 21[9] and Forms U5S, U–1, U–13–60 and U–3A–2[10] under the Public Utility Holding Company Act of 1935 (Public Utility Act);[11] Rule 0–5[12] under the Trust Indenture Act of 1939 (Trust Indenture Act);[13] Rules 8b–2, 8b–23, and 8b–32[14] and Form N–SAR[15] under the Investment Company Act of 1940 (Investment Company Act);[16] and Form ET[17] under the Securities Act, the Exchange Act, the Public Utility Act, the Trust Indenture Act, and the Investment Company Act. Today we also propose to remove the following rules from Regulation S–T: Rules 401 and 402.[18]

EDGAR Release 7.0 will include the following new features that we address in the amendments we propose today:

- The ability to include graphic and image files in HTML filings;

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[1] 17 CFR 228.601.

[2] 15 U.S.C. 77a *et seq.*

[3] 17 CFR 229.601.

[4] 17 CFR 230.110 and 230.483.

[5] 17 CFR 239.12, 239.13, and 239.16b.

[6] 17 CFR 232.11, 232.12, 232.103, 232.104, 232.105, 232.302, 232.303, 232.304, 232.311 and 232.501.

[7] 17 CFR 240.0–2.

[8] 15 U.S.C. 78a, *et seq.*

[9] 17 CFR 250.21.

[10] 17 CFR 259.5a, 259.101, 259.313 and 259.402.

[11] 15 U.S.C. 79a, *et seq.*

[12] 17 CFR 260.0–5.

[13] 15 U.S.C. 77sss, *et seq.*

[14] 17 CFR 270.8b–2, 270.8b–23 and 270.8b–32.

[15] 17 CFR 274.101.

[16] 15 U.S.C. 80a–1 *et seq.*

[17] 17 CFR 239.62, 249.445, 259.601, 269.6 and 274.401.

[18] 17 CFR 232.401 and 232.402.

- The ability to use hyperlinks in HTML filings, including links between documents within a submission and to previously filed documents on our public web site EDGAR database at www.sec.gov;
- The addition of the Internet, and removal of diskettes, as an available means of transmitting filings to the EDGAR system;
- The removal of the requirement to submit Financial Data Schedules.

We also request comment concerning future EDGAR rulemaking projects in connection with EDGAR modernization and bringing more of our filings into the EDGAR system on a mandatory basis.

I. Modernization of EDGAR

A. Background

In 1984, we initiated the EDGAR system to automate the receipt, processing, and dissemination of documents required to be filed with us under the Securities Act, the Exchange Act, the Public Utility Act, the Trust Indenture Act, and the Investment Company Act. Since 1996, we have required all domestic public companies to make their filings electronically through the EDGAR system, absent an exemption. EDGAR filings are disseminated electronically and displayed on our web site at http://www.sec.gov. The EDGAR system's broad and rapid dissemination benefits the public by allowing investors and others to obtain information rapidly in electronic format. Electronic format is easy to search and lends itself readily to financial analysis, using spreadsheets and other methods.

Recent technological advances, most notably the rapidly expanding use of the Internet, have led to unprecedented changes in the means available to corporations, government agencies, and the investing public to obtain and disseminate information. Today many companies, regardless of size, make information available to the public through Internet web sites. On those sites and through links from one web site to others, individuals may obtain a vast amount of information in a matter of seconds. Advanced data presentation methods using audio, video, and graphic and image material are now available through even the most inexpensive personal computers or laptops.

Last year, we adopted rules to begin the modernization of the EDGAR system to accommodate some of the changes in technology occurring since the system was developed. On March 10, 1999, we issued a release proposing amendments [19] and, on May 17, 1999, a release adopting amendments [20] to our rules to reflect initial changes to filing requirements resulting from EDGAR modernization, as well as certain other changes to clarify or update the rules. On June 28, 1999, we began allowing filers to submit documents to EDGAR in HyperText Markup Language (HTML) format [21] and to accompany their required filings with unofficial copies in Portable Document Format (PDF). Today we are proposing rule changes to implement the next stage of EDGAR modernization.

In response to our request for comments in the 1999 proposing release, we received a number of comment letters with suggestions concerning the evolving EDGAR system. Many of these comments addressed divergent concerns of filers, filing agents, disseminators, and public users of the EDGAR database. We appreciate the need to balance the competing interests of these parties in order to have a system that adequately addresses the fundamental needs of each. We have considered and will continue to consider these comments in connection with future planning for the system and rulemaking related to all stages of EDGAR modernization.[22]

B. HTML/PDF Environment

The purpose of our current EDGAR contract is to modernize EDGAR over the next two years to make the system easier for filers to use and the documents more attractive and readable for the users of public information. Since June 28, 1999, filers have been able to submit most filings to us in either HTML or ASCII format. We expect that HTML will eventually replace ASCII for most filings. Also, since June 28, 1999, filers have been able to submit unofficial copies of filings in PDF. In this release, we refer to the required filings that filers must submit only in either ASCII or HTML formats as "official filings." We refer to the PDF documents as "unofficial PDF copies" because filers may *not* use them instead of HTML or ASCII documents to meet filing requirements.

Our plan for the evolution of the EDGAR system is to continue the HTML/PDF environment. Unlike ASCII documents, HTML and PDF documents have the potential to include graphics, varied fonts, and other visual displays that filers use when they create Internet presentations or material for distribution to shareholders. Up to this point, the EDGAR system has had limited support for HTML documents. The system accepts HTML documents that contain only a limited set of tags (commands and identifying information).

In this release, we describe how the EDGAR system will change with EDGAR Release 7.0, and we propose corresponding rule changes. [23] We now propose to expand the EDGAR system so that it will be able to accept and display filings that use graphic and other visual presentations and provide links to previously filed documents appearing on our public web site EDGAR database.

We hope ultimately to enable filers to submit documents to the EDGAR system that can appear in substantially the same graphic format as those prepared by the filer for delivery to investors and the marketplace. These advances would greatly expand the amount and kinds of information that we can make available to investors and other members of the public through the EDGAR system. These advances also would ease the burden upon filers, by enabling the submission of documents to the EDGAR system in a format similar to that in which documents are presented to the public and to investors. However, as discussed below, these advances also pose significant issues concerning the rules governing documents filed with us under the EDGAR system, which we must address before these advances are implemented.

Currently, some filers use multi-media prospectuses, including videos, CD–ROMs, and streamed video or audio files that can be played over the Internet. The current EDGAR modernization contract will not accommodate these media, but we may

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[19] Rulemaking for EDGAR System, Release Nos. 33–7653; 34–41150; IC–23735 (Mar. 10, 1999) [64 FR 12908] (the 1999 proposing release).

[20] Rulemaking for EDGAR System, Release Nos. 33–7684; 34–41410; IC–23843 (May 17, 1999) [64 FR 27888] (the adopting release).

[21] We continue to allow filers to submit documents in the text-based American Standard Code for Information Interchange (ASCII) format.

[22] You may read and copy comment letters submitted in response to our 1999 proposing release in our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549 in File No. S7–9–99. You also may read the comment letters that were submitted electronically on our web site (http://www.sec.gov).

[23] Before Release 7.0 in May of this year, we will revise the EDGAR Filer Manual to reflect technical changes we will implement with that release. The EDGAR Filer Manual sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the EDGAR system. Filers must comply with the provisions of the Filer Manual to assure timely acceptance and processing of electronic filings. *See* Rule 301 of Regulation S–T [17 CFR 232.301].

consider whether to include some of these media in the future.[24]

C. Use of HTML

We have not and are not now proposing to require the use of HTML for filings. However, we expect to require HTML for most filings in the future,[25] so we encourage filers to use it and gain experience with this format if they do not have it already. We are providing technical support for filers to assist them in submitting and correcting HTML documents through our filer technical support function. We request comment on how soon filers will be able to submit most documents in HTML format and whether we should exclude any specific category of documents (such as exhibits) from the HTML format requirement.

Currently, if HTML is used, each EDGAR document may consist of no more than one HTML file. In the 1999 proposing release, we requested comment on whether to allow filers to submit EDGAR documents composed of multiple linked HTML files. Some commenters were concerned about printing and downloading documents consisting of large HTML files. However, due to concerns about the order in which documents appear and are printed, we are continuing the requirement that each HTML document consist of no more than one HTML file (with associated graphics files).

Currently, filers must use a set of permissible HTML 3.2 tags in their HTML documents. As discussed below, we propose to designate a new set of permissible HTML 3.2 tags for EDGAR Release 7.0, adding tags to allow graphics and more hypertext links. Filers will be able to take advantage of the expanded tagging for graphics and hypertext links only through the use of a modernized version of EDGARLink.[26] These permissible tags allow for most formatting capability while eliminating active content and certain classes of hypertext links. We plan to move to a set of permissible HTML 4.0 tags in a future EDGAR system release.

D. Use of PDF

In addition to allowing the use of HTML for filings, we permit filers to submit a single unofficial PDF copy of each document.[27] These copies are disseminated publicly. Unofficial PDF documents retain all the fonts, formatting, colors, images, and graphics contained in an original document. The unofficial PDF copy is optional, but the rules require that, if an unofficial PDF copy of a document is submitted, it must be substantively equivalent[28] to the document contained in the official filing of which it is a copy. Further, filers may not make a submission consisting solely of PDF documents; filers must include unofficial PDF copies only in submissions that contain official filings in HTML or ASCII format.

Some filers have offered to submit redlined unofficial PDF copies of their filings along with their correspondence submissions for the convenience of the staff in its review.[29] Currently, Rule 104[30] of Regulation S–T would prevent such submissions. We agree that allowing such submissions may facilitate staff review, and we propose to amend Rule 104 to provide that unofficial PDF copies in correspondence documents may differ from the contents of the associated ASCII or HTML correspondence document. This will allow filers to submit redlined copies of official filings in unofficial PDF copies of EDGAR correspondence documents without having to submit the entire official filing in the associated ASCII or HTML document. If a filer submits an unofficial PDF copy of a correspondence document that differs from the text of the ASCII or HTML document, the text of the ASCII or HTML correspondence document should describe the content of the unofficial PDF copy. For example, the ASCII or HTML correspondence document may consist of a cover letter stating that an unofficial PDF copy of the described filing is included in the submission.

In the 1999 proposing release, we requested comment on whether we should initially impose a size limitation for unofficial PDF documents. While some commenters expressed concern about overall sizes of EDGAR submission, we do not propose a PDF size limitation at this point. However, we will consider such a limitation at a later date if it is warranted.[31]

E. Graphic and Image Material

Currently, we do not accept graphic or image material in HTML documents.[32] The EDGAR system is programmed to suspend HTML submissions if they contain tags for graphic or image files. However, the optional, unofficial PDF copy of an EDGAR document may contain graphic and/or image material.

We propose to permit graphic and image material in HTML documents submitted using a modernized version of EDGARLink that we will make available with EDGAR Release 7.0.[33] However, we propose to preclude filers from using graphic or image material to submit information such as text or tables, so that users will be able to search and/or download this information into spreadsheet form.[34] Instead, we propose to require that filers submit such information as text in an ASCII document, or as text or an HTML table[35] in an HTML document.[36]

We currently prohibit any EDGAR submission containing animated graphics (e.g., files with moving

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[24] As noted in our release proposing rules on the regulation of securities offerings, we must consider factors such as security; development and maintenance costs; costs of database storage; how these materials should be disseminated to the public; whether investors would have as ready access to these materials as to the current electronic filings; how to meet the archival requirements for storage of these materials; wide divergence in industry standards for most multi-media formats; and how to assure that filed documents continue to be readable in the future, since applications that present these media may change or even disappear over time. *See* Section VII.B of "The Regulation of Securities Offerings," Securities Act Release No. 7606A (Nov. 13, 1998) [63 FR 67174].

[25] We plan to keep Form N–SAR and Form 13F as ASCII format submissions. Rule 105(a) [17 CFR 232.105(a)]. However, filers have the option of submitting exhibits to Form N–SAR as HTML documents.

[26] We discuss the modernized EDGARLink in Section I.I below.

[27] For example, if a filing consists of a registration statement plus five exhibits, there are six documents for EDGAR purposes. Generally, the filer may submit all of these as HTML documents, all as ASCII documents, or some as HTML and some as ASCII documents. The filer also has the option to accompany any or all of the six documents with an unofficial PDF copy. But the rules do not permit a filer to submit a single unofficial PDF copy including the registration statement and exhibits; each PDF document must reflect only one ASCII or HTML document.

[28] "Substantively equivalent" documents are the same in all respects except for the formatting and inclusion of graphics. This is because PDF documer.ts may include more graphics than in the corresponding HTML document. For documents to be substantively equivalent, the text of the two documents must be identical.

[29] Filers would not include a redlined unofficial PDF copy of the officially filed document, since EDGAR would disseminate the PDF document with the redline codes. However, unofficial PDF copies of EDGAR correspondence (CORRESP documents) are not disseminated.

[30] 17 CFR 232.104.

[31] The EDGAR Filer Manual that will accompany Release 7.0 will contain guidance on data compression, file creation, and transmission designed to limit file sizes for storage and downloading to members of the public.

[32] Filers must continue to provide a fair and accurate description of the differences between a version including graphic or image material and the filed version, as required by Rule 304 of Regulations S–T [17 CFR 232.304].

[33] We discuss the modernized EDGARLink in Section I.I below.

[34] For example, financial statements could not be presented as graphics, since this would impair their usefulness.

[35] The EDGAR Filer Manual will continue to prohibit filers from including "nested tables" in their HTML documents.

[36] The EDGAR Filer Manual will prohibit the use of graphics as background because their use may interfere with the legibility of documents. In addition, filers should be aware that EDGAR Release 7.0 may not support the inclusion of graphics in modules and segmented filings.

corporate logos or other animation), either in any official submission or any unofficial PDF copy. We imposed this requirement due to concerns with how to capture and represent the animated graphics, which we cannot print or search, in the official filing. Since filers have not expressed strong concerns about the exclusion of animated graphics, we propose to continue to prohibit them in EDGAR documents.

We have some concerns about the potential size of data files that filers may submit in connection with graphic and image material, not only because of our own database storage needs, but also because some Internet users may encounter difficulties in downloading or viewing documents that are very large.[37] While we are not now proposing to impose a size limit on graphic and image files, we request comment on the circumstances and manner in which we might limit file size and the type of graphic and image materials if the need arises. For example, should we propose a limitation on the allowed size of each file or group of files, including graphic and image files, and provide EDGAR Filer Manual instructions on ways to minimize file size? Should we limit the total number of files that include graphic and/or image material?

In the 1999 proposing release, we requested comment on whether we should require graphic and image material to be included in HTML documents. One commenter believed that it would not be burdensome to require graphic information when required by the form. Another commenter believed that if graphics are created for the printed copy, they should be consistent in the HTML document.

We have considered three approaches to graphics: making their use strictly optional, requiring graphics in HTML documents whenever our rules or forms require information to be in graphic form,[38] or requiring graphics in HTML documents wherever the documents distributed to security holders or potential investors contain graphics. The latter approach would have the benefit of making the filed document look like the document actually used by the filer. However, such a requirement could place a burden on filers who would like to use HTML but may not have the resources to put all graphic and image material into electronic format. This could discourage the use of HTML. Accordingly, we propose the middle ground—requiring graphics in HTML documents only in the limited instances where our rules require graphics.[39] We request comment on whether this approach would be burdensome and we should make graphics completely optional or, conversely, whether we should require graphics wherever presented in the distributed document.

Filers should not include non-public information in graphics files, even if the associated HTML or unofficial PDF document is non-public and will not be disseminated. This is because, due to the design of the system, EDGAR will disseminate all graphic files, whether their related document is public or non-public.[40] Of course, EDGAR will not disseminate the non-public document itself. Therefore, filers should not include graphics intended to remain non-public in their EDGAR submissions.

F. Limitation on Hypertext Links

Currently, the EDGAR system does not permit hypertext links from HTML documents to external web sites. Similarly, the system does not permit hypertext links from one HTML document to any other documents (including exhibits), regardless of whether the document is part of the same filing. Hypertext links to different sections within a single HTML document are allowed.[41] A document may include a textual reference to the filer's external sites or documents but it may not include a link to such external sites or documents.[42]

We propose to allow hypertext links to other documents within the same filing (*i.e.*, exhibits) with EDGAR Release 7.0. We also propose to permit hypertext links to documents contained in other official filings in the EDGAR database on our public web site at www.sec.gov. Filers would be able to include the expanded hyperlinking in documents submitted to EDGAR using a modernized version of EDGARLink that we will make available with EDGAR Release 7.0.[43] Under our proposal, filers could, for example, link from within a document to previously filed documents that are incorporated by reference.[44] We would continue to prohibit all links outside the EDGAR database, including links to web sites.[45] We request comment on our proposal to allow these limited hypertext links.

Currently, the rules provide that, if a filer includes impermissible hyperlinks in a filing, the linked material will not become part of the official filing for purposes of determining whether the disclosure requirements are satisfied.[46] The linked material will, however, be subject to the civil liability and antifraud provisions of the federal securities laws. We propose to amend Rule 105 of Regulation S–T so that this position applies whether or not the hyperlink is permitted by our rules.

We believe that filers should not be able to use hyperlinks to satisfy the disclosure requirements of the applicable rule or schedule because then the readers of the filing might be unable to understand the content of the filing without accessing numerous hyperlinks. In addition, they would not be able to print the filing as an integrated whole. Many of our forms and schedules permit incorporation by reference, but we do not believe it would be appropriate for a filer to use hyperlinks to effectively use incorporation by reference when that is not permitted. For example, in a Form S–1 registration statement, a filer might wish to use hyperlinks from the prospectus to the company's previous Exchange Act reports. This would be optional information for the convenience of the reader. The filer

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[37] As noted in footnote 31 above, the EDGAR Filer Manual will give guidance on voluntary methods to reduce the size of graphics.

[38] *See, e.g.*, the performance line graph required by Item 402(*l*) of Regulation S–K [17 CFR 229.402(*l*)] and the performance graph required for investment companies by Item 5 of Form N–1A [17 CFR 239.15A and 274.11A].

[39] Rule 304 of Regulation S–T [17 CFR 232.304] will continue to require the description of the differences between the filed version and other versions of the material. The filer would need to include the description only if the filer did not reproduce the graphics in the HTML document.

[40] For example, EDGAR "CORRESP" and "COVER" documents are non-public and are not disseminated. However, EDGAR will disseminate graphics files associated with these document types.

[41] For example, companies may include a prospectus table of contents containing links to the various sections of the prospectus.

[42] It is the staff's position that such a reference will not be deemed to incorporate the material by reference into the filing. *See* ITT Corp. (Dec. 6, 1996) and Baltimore Gas & Electric Co. (Jan. 6, 1997).

[43] We discuss the modernized EDGARLink in Section I.I below.

[44] *See* Rule 105 of Regulation S–T [17 CFR 232.105]. Of course, filers should use hyperlinks consistently with the requirements for plain English. They should not use linked material as a substitute for information that needs to be in the document to make it readable. In addition, filers should keep in mind that a person who prints out the filed document will not also receive the linked material. Similarly, a database search on the filed document will not necessarily yield any results covering the linked material.

[45] However, filers may continue to include (non-active) textual references to electronic addresses (URLs) in their documents.

[46] The rule provides that information contained in the linked material is not part of the official filing for reporting purposes in order to prevent a filing from being considered complete when the entire content of the filing is not available without reference to another document. This provision should not, however, be viewed as a statement that linked material is not considered to be part of the filed document for other purposes.

could not, however, delete the business and financial information from the body of the prospectus because it was also provided in a hyperlinked Exchange Act report.

In addition, we believe it is appropriate for filers to assume liability for hyperlinked material as if it is part of the filing. In other electronic contexts, there may be circumstances that call into question the intended purpose or reasonable interpretation of including a particular hyperlink in a document. In the context of an official filing made to the EDGAR system, however, we believe members of the public coming to the SEC's web site will reasonably understand the inclusion of a hyperlink to mean that the filer has adopted the linked material as its own. Rule 105 would reflect this position.

We do not believe this liability treatment should present any problems for filers. The use of hyperlinks in filed documents would remain voluntary, and a filer need not hyperlink to other documents if it does not wish to be understood as adopting the linked material as its own. In addition, the only hyperlinks that the rule would permit would be to exhibits to the same filing, or to previous filings in the EDGAR database on our web site. We would caution filers, however, not to include these hyperlinks unless they are prepared to accept this responsibility.

Although the liability treatment of hyperlinks under the proposed rule is similar to the legal effect of incorporation by reference, we emphasize that hyperlinks are not a substitute for incorporation by reference. As noted above, filers may not use hyperlinks to furnish information required in the filed document when incorporation by reference is not available. Conversely, when the form or rule makes incorporation by reference available, the filer must follow the form or rule requirements. A hyperlink alone will not satisfy those requirements.[47]

The proposed rule would not prevent a filer from including a hyperlink to a document filed by another issuer, which might include an affiliate or guarantor, subject to the same liability treatment. We request comment on whether filers would wish to include hyperlinks to filings of other companies, and under what circumstances. If filers would wish to do so, would the proposed treatment be appropriate? Should the rule permit hyperlinks to filings by the same company only, or by the same company and affiliated companies only?

We ask commenters to address the proposed treatment of hyperlinks and whether there is any need to modify either the disclosure or liability provisions. Please note that these proposals address the status of hyperlinks in EDGAR filings only, not in other contexts such as hyperlinks in documents on filers' own web sites. We are considering issuing separate guidance that may address some of these issues.

We solicit comment on two other aspects of the proposed treatment of hyperlinks. First, how should we treat hyperlinks within hyperlinks? For example, Company A's registration statement has a hyperlink to its Form 10–K, which in turn has a hyperlink to its proxy statement. We believe that Company A should be viewed as making all the hyperlinked material its own, including the proxy statement. Is there any reason to exclude material in second-level (and beyond) hyperlinks?

Second, we solicit comment on the treatment of amended or superseded material in hyperlinks.[48] If a hyperlinked document is corrected or updated by means of a new filing, the document containing the hyperlink also may have to be amended. Otherwise, the hyperlink will be to the wrong document. For example, suppose a registration statement contains a hyperlink to a Form 10–K that is later amended to reflect a material change. The registration statement would have to be amended to include a hyperlink to the amended Form 10–K.[49] This would be necessary whether the hyperlinked document is filed by the same issuer or another issuer. Should this be a pre-or post-effective amendment, or should this be permitted in a prospectus filing under Rule 424[50] or 497[51] if the hyperlink was contained in the prospectus.

Currently, we maintain filing information on the EDGAR database on our public web site dating from 1994. While we have no current plans to remove data from this database, we anticipate that, in the future, we will periodically need to archive portions of the data. Therefore, filers should be aware that we cannot assure the maintenance of the linked material, since we do not know how long we will be able to maintain all of the EDGAR data on our web site.

We recognize that use of hypertext links to external web sites may enhance filers' ability to present information as well as the public's ability to access information. As noted above, we do not propose to permit such external hypertext links. Links or references in an EDGAR filing to such external sites present significant issues concerning what constitutes an "official filing" submitted to and accepted by us. With paper filings, or even text-based ASCII filings, an "official filing" is encompassed entirely within the four corners of the text documents submitted to us by the filer, as well as specific documents incorporated by reference, and is thus easily identifiable. If we were to permit documents submitted to us in HTML format to include links to web sites or other documents that reside outside the EDGAR database on our public web site, the content of these web sites or documents could change on a regular basis, even after the "official filing" was received by us. As a result, someone trying to determine the content of the "official filing" at a later date would not necessarily be able to re-create the document as it was originally filed.

This also raises issues concerning the extent to which filers' use of such external links (if we were to permit such links) could lead to liability under the securities laws. We request comment on whether filers, investors or others believe the benefits of allowing external hypertext links to other documents or web sites would outweigh these concerns. We request comment on the impact of such links on the definition of an official filing for regulatory and liability purposes, as well as the impact on automated analysis systems used by the processors and disseminators of EDGAR data. We also request comment on what we should accept as an official filing and on possible methods of archiving the official filing if we were to permit such external links.

G. Prohibition Against Electronic Submissions Containing Executable Code

Our planning for the modernized EDGAR system is designed to minimize security risks. Accordingly, Rule 106[52] of Regulation S–T prohibits any EDGAR submission containing executable

[47] For example, the filing must contain a statement that the document is incorporated by reference, whether or not there is a hyperlink. As another example, Form 10–K may incorporate financial and other information from a company's annual report to security holders, so long as the information is filed as an exhibit to the Form 10–K. This exhibit is needed even if the information also is provided by hyperlink.

[48] *Cf.* Rule 412 [17 CFR 230.412], which addresses amended or superseded material incorporated by reference into a Securities Act registration statement or prospectus.

[49] Of course, this would be necessary only during the pendency of the offering.

[50] 17 CFR 230.424.

[51] 17 CFR 230.497.

[52] 17 CFR 232.106.

code,[53] either in any HTML or ASCII document or any unofficial PDF copy, at any time. "Executable code" includes, but is not limited to, disruptive code.[54] This requirement is necessary to protect the integrity of the EDGAR system and database, by reducing the possibility of unauthorized access to sensitive information, and to reduce the possibility of introducing viruses or other destructive applications into the EDGAR system (and to any disseminator receiving data from the EDGAR system). A number of commenters supported the continuation of this prohibition. We propose to continue to prohibit the submission of all executable code.

We propose to continue, in general, suspending any attempted submission that our staff determines contains executable code.[55] We have programmed the EDGAR system to detect and prohibit acceptance of such code during acceptance processing. If a submission is accepted, and our staff later determines that the accepted submission contains executable code, our staff may delete any document contained in the electronic submission from the EDGAR system and direct the electronic filer to resubmit electronically replacement documents for all or selected documents deleted from the submission. We are aware that suspending acceptance of a filing, or deleting it from the EDGAR database, could have significant consequences to the filer, such as causing a filing to miss its due date or preventing a time-sensitive filing from moving forward. Nevertheless, we need to continue to take whatever steps are necessary to address potential security problems.

[53] Executable code is defined as instructions to a computer to carry out operations that use features beyond the viewer's, reader's, or Internet browser's native ability to interpret and display HTML, PDF, and static graphic files. Such code may be in binary (machine language) or in script form. *See* Rule 11 of Regulation S–T [17 CFR 232.11]. Thus, scripting languages, such as JavaScript and similar scripting languages, fall into this class of executable code, as does Java, ActiveX, Postscript, and any other programming language.

[54] The term "disruptive code" means any active content or other executable code, or any program or set of electronic computer instructions inserted into a computer, operating system, or program that replicates itself or that actually or potentially modifies or in any way alters, damages, destroys or disrupts the file content or the operation of any computer, computer file, computer database, computer system, computer network or software, or as otherwise set forth in the EDGAR Filer Manual. A violation of this provision or the relevant provision of the EDGAR Filer Manual also may be a violation of the Computer Fraud and Abuse Act of 1986, as amended, and other statutes and laws.

[55] If the executable code is contained only in one or more PDF documents, we will accept the submission but not the PDF document(s).

H. Method of Electronic Transmission

Currently, electronic filers may make electronic submissions either as direct transmissions or on magnetic tape or diskette.[56] As discussed below, we are adding transmission via the Internet as a mode of electronic submission and changing the mode of acceptable transmission from "magnetic tape" to "magnetic cartridge." We also propose to remove diskettes as an allowed means of transmission.

Direct Transmission via Dial-Up Modem and Internet

Most filers currently make EDGAR submissions by using a dial-up modem process, with or without the use of EDGARLink,[57] directly to EDGAR or through the EDGAR electronic mail service to EDGAR. Modem technology continues to advance. The current transmission speeds that are predominantly in use for EDGAR are 14.4 kpbs and 56 kbps. In 1998, the EDGAR system discontinued support for 1200 bps modems. We are now considering discontinuing support for 9600 bps modems, either in connection with EDGAR Release 7.0 or at a later time. We request comment on the impact, if any, of this proposed change.

With EDGAR Release 7.0, filers also will be able to make EDGAR filings through Internet-based technology via an Internet Service Provider (ISP) of their choice. We are revising EDGARLink to support Internet-based filing. We will provide security by Secure Socket Layer (SSL, *i.e.*, encrypted transmissions) and certificates.[58]

In the 1999 proposing release, we requested comment on whether we should propose to allow or to require filers to acquire and present client side certificates from one for more vendors that we designate. We received several comments urging us not to require client side certificates; commenters believed that SSL would provide adequate security. One commenter stated that requiring client side certificates might lead to unanticipated difficulties when filers needed to make filings quickly. This commenter emphasized that security features should always be balanced against the impact the features will have on system users. We agree with the commenters; we will not require but will permit optional client side certificates. Filers may wish to use client side certificates for the additional security benefits they bring to filers and their transmissions (such as security of transmission to us and from us to disseminators and authentication of the document source).

Magnetic Tape

Currently, filers may submit their EDGAR filings by magnetic tape.[59] In keeping with changing technological standards, we are changing this method of transmission from the current 9 track magnetic tape format to the following formats: 4mm, 8mm, and .5 inch IBM-compatible 3480 magnetic tape cartridges.[60] We request comment on the impact, if any, of this proposed change.

Diskettes

Diskette filings often present formatting difficulties,[61] and the percentage of filers using diskettes is minimal, approximately one percent. As the EDGAR modernization effort continues, we believe we should discontinue acceptance of electronic submissions on diskettes. In the 1999 proposing release, we requested comment on whether diskettes remain useful for certain types of filings and whether we should continue to permit them. We received one comment in response to this request; that commenter believed there was no reason to continue accepting diskettes. We propose to eliminate diskettes as a transmission medium.[62] We request comment on whether there is any category of filers who would be unduly burdened if we eliminate filers' ability to file on diskette.

I. Modernized EDGARLink

We will provide filers a new, easier to use EDGARLink product for gathering and transmitting documents to the EDGAR system. We will continue to have the existing DOS-based EDGARLink available concurrently for approximately six months. We anticipate that the new EDGARLink will work more easily under Windows

[56] *See* Rules 12(b) and 12(c) of Regulation S–T [17 CFR 232.12(b) and 232.12(c)].

[57] EDGARLink is the filer assistance software we provide to filers filing on the EDGAR system. *See* Section I.I below for a discussion of modernized EDGARLink.

[58] The EDGAR Filer Manual will set forth the detailed specifications for and guidance on obtaining certificates.

[59] *See* Rule 12(b) of Regulation S–T [17 CFR 232.12(b)].

[60] *See* proposed related amendments to Securities Act Rule 110 [17 CFR 230.110], Rules 12 and 103 of Regulation S–T [17 CFR 232.12 and 232.103], Exchange Act Rule 0–2 [17b CFR 240.0–2], Public Utility Act Rule 21 [17 CFR 250.21], and Trust Indenture Act Rule 0–5 [17 CFR 260.0–5].

[61] The EDGAR system will not accept diskette filings with formatting errors. The process of notifying the filer of the errors and having the filer correct and resubmit the diskette may result in long delays before EDGAR accepts the filing.

[62] *Id.*

operating system environments. We request comment on the burden to filers, if any, of our discontinuing support for the existing DOS-based EDGARLink six months after we make available the new EDGARLink. Filers must use the new EDGARLink if they wish to include graphics and hyperlinks in their HTML documents (except for hyperlinks within the same document).

The new EDGARLink will allow filers to use predefined templates to fill in required submission "header" data. We will integrate the electronic templates with the two most popular Internet browsers in the market today, Internet Explorer and Netscape Navigator (versions 3 and higher). Filers may use these integrated browsers to transmit their filings to EDGAR using the Internet. The interface to the user will be the browser, so many of the functions in the browser interface that filers use currently to traverse the Internet will be familiar under the new EDGARLink.

We will not distribute the new EDGARLink by diskette. We will make it downloadable from the EDGAR web site. The filer will have the choice of downloading all of the submission header templates for all of our forms and filings or just the submission header template that they need for a particular filing. This should save time in downloading submission header templates and ensure that the filer is downloading the most recent template.

The new EDGARLink will perform the same function of assisting filers with building the header, attaching documents to the header, checking for errors, and transmitting the documents to us. The new EDGARLink will not use the current tagging structure for submission headers. Instead, it will have clear, plain English labels on fields. The filer will bring up the correct submission header template and begin filling in the fields similar to the way data input is performed on many web sites on the Internet. The new submission header templates will be able to validate some fields as soon as the information is entered, so filers will not have to wait until they validate their filing to see errors in the submission header. The submission header template will also allow filers to attach their documents directly to the template. Once the submission header template is complete and the documents are attached, filers may use the browser-like buttons at the top of the screen to validate the submission header template and the attached documents. Filers may then use another button at the top of the screen to transmit the submission header template and attached documents to us.

The filer will correct any errors detected in the submission header template during the validation phase through the new EDGARLink software. During the validation phase, filers will correct any errors they detect in the documents using their own word processing software package, which they may invoke easily from the submission header template. Filers should review their submissions carefully before transmission, since, once the submissions are accepted, EDGAR disseminates filings almost instantaneously.

J. HTML Standard; Tag Set

To maximize the likelihood of consistent document appearance across different browsers, we adopted HTML 3.2 as the required standard for HTML documents. In addition to using HTML 3.2 as the standard, we adopted a set of permissible HTML 3.2 tags for use in HTML documents. For EDGAR Release 7.0, we are changing the standard for use with the modernized version of EDGARLink [63] to a further modified version of HTML 3.2 that adds tags needed for graphics and more hypertext links. This should allow for most formatting capability while eliminating active content and certain classes of hypertext links.[64] The tentative list of these tags, which will be included in the EDGAR Filer Manual and updated from time to time, appears in Appendix A to this release.[65] The EDGAR system will continue to suspend filings if they contain tags that are not permitted. We request comment on the proposed tag set, including whether we should permit, require, or prohibit any particular tag.

K. Financial Data Schedules

Filers currently submit Financial Data Schedules (FDSs) as exhibits to many of our required forms. Filers extract the FDS information from financial statements and other sources in their filings. The primary purpose of this requirement is to provide tagged financial information that the staff can use for screening filings, ratio computation and other analysis. As part of the EDGAR modernization effort, we have explored alternative means of acquiring this financial information, such as through outside data sources. We propose to relieve filers of the requirement to prepare and submit FDSs and to remove the requirement for Financial Data Schedules from all rules and forms. We request comment, however, on whether FDS data is useful to the public and whether we should continue to require filers to submit FDSs with any filing.

With respect to investment companies, one commenter suggested that we incorporate certain information currently contained in the financial data schedule submitted with Form N–SAR into the Form N–SAR itself. We believe this data may be valuable in connection with the analysis of the other information collected in the Form N–SAR. Therefore, we request comment on whether we should retain the FDS requirement for Form N–SAR for the time being but, in future rulemaking, consider removing the FDS requirement and instead incorporating the FDS information into the Form N–SAR itself.

L. Possible Future Rulemaking Projects

As the use of electronic databases grows, it becomes increasingly important for members of the public to have electronic access to our filings. According, we are contemplating future rulemaking to bring more of our filings into the EDGAR system on a mandatory basis. For example, we anticipate that we will propose to make Forms 3, 4 and 5 [66] under Section 16 [67] of the Exchange Act and Form 144 [68] (notices of securities sales filed pursuant to Rule 144 [69]) mandated EDGAR filings. Also, we are considering proposing to require that foreign private issuers make their filings with us on the EDGAR system.[70] We request comment on these future projects as well as whether we should require other filings to be mandated EDGAR filings. For example, should we mandate, or at least permit, the electronic submission of filings relating to offerings exempt from registration under the Securities Act, including filings made pursuant to Regulation A,[71] Regulation D [72] and Regulation E [73]? Should we mandate that investment companies submit their exemptive applications electronically? We also are considering whether to allow or require securities exchanges to file on the EDGAR system. We request comment on whether we should allow or require these entities to file electronically their

[63] *See* Section I.1 above.

[64] The modified 3.2 tag set will not include proprietary extensions that are not supported by all browsers.

[65] The permitted tag set will continue to evolve over time to accommodate the industry standard and needs of filers.

[66] 17 CFR 249.103, 249.104, and 249.105.

[67] 15 U.S.C. 78p.

[68] 17 CFR 239.144.

[69] 17 CFR 230.144.

[70] Currently, filers may submit Forms 3, 4, 5 and 144 and most of the foreign private issuer forms on EDGAR on a voluntary basis.

[71] 17 CFR 230.251–230.263.

[72] 17 CFR 230.501–230.506.

[73] 17 CFR 230.601–230.610a.

certifications for listing and trading on the exchanges, and Form 25 under the Exchange Act,[74] electronically on the EDGAR system.

Also, we request comment on the following issues in connection with future rulemaking for modernization of the EDGAR system:

EDGAR Tags

Currently, EDGAR submissions include Standard Generalized Mark Up Language (SGML) tagging. In the 1999 proposing release, we requested comment on the use of eXtensible Markup Language (XML) for EDGAR tagging, particularly for EDGAR submission header tags. No commenter objected to the use of XML tagging, and commenters agreed that XML tagging would be useful and potentially a very powerful tool for tagging information within the body of an EDGAR document. We are moving toward XML tagging of submission header information in Release 7.0. EDGARLink users will not notice the XML tagging, since they will enter their submission header information using an input screen that does not contain tags. EDGARLink will create and transmit to EDGAR the XML tagged submission.

We again request comment on the use of XML tagging for marking certain information within the body of an EDGAR document, as discussed below. We request comment on the impact of our requiring, where applicable, that filers provide XML tagging of the following information within the body of EDGAR documents: fee-related data; for investment companies, identification of individual series (portfolios) and classes; and, for insurance products, identification of separate accounts.

Investment Companies and Insurance Products—Multiple "Primary" EDGAR Documents

Open-end management investment companies (mutual funds) and variable insurance products frequently make submissions with one "primary" EDGAR document that consists of many separate documents for distribution to shareholders. For example, the primary EDGAR document for an initial registration statement or amendment (*e.g.*, EDGAR document type 485APOS) may contain many separate prospectuses and statements of additional information. A single shareholder report EDGAR document (N–30D) may contain the shareholder reports for a number of different portfolios within the same mutual fund or insurance product registrant. We request comment on whether, for these registrants, requiring the current primary EDGAR document to continue to be comprised of no more than one HTML file would be cumbersome for filers to submit and for the public to use. We request comment on whether we should accommodate the special circumstances of mutual fund and insurance product filers by allowing or requiring these filers to include multiple primary EDGAR documents in certain EDGAR submission types (for example, N–1A, N–14AE, 485APOS, 497, or N–30D).

II. Rule Amendments in Connection with EDGAR Release 7.0

We propose to amend certain rules and regulations, which we discuss below, in connection with EDGAR Release 7.0. We request comment on our proposed amendments and on whether we should amend any other rules and regulations under the securities laws. Most of our proposed amendments are to the provisions of Regulation S–T, which governs the preparation and submission of electronic filings to us, as described below in connection with the expanded features for HTML documents.

Rule 11—*Definition of Terms used in Part 232.* Rule 11 contains definitions used in Regulation S–T. We propose to amend the definition of "official filing." Currently, the definition of the term "official filing" is any filing that is received and accepted by the Commission, regardless of filing medium.[75] The current definition resulted from amendments we made to reflect revised records retention practices.[76] Before those amendments, Rule 11 made clear that an "official filing" was a document filed with us exclusive of header information, tags and any other technical information required in an electronic filing.[77] We propose to revise the definition to restore this language.

We also propose to remove from Rule 11 the definition of "phase-in date," since we have completed phase-in to mandated electronic filing and the term is no longer used in the rules.

Rules 12 and 103—*Business hours of the Commission; Liability for transmission errors or omissions in documents filed via EDGAR.* Paragraph (b) of Rule 12 and Rule 103 refer to the submission of electronic filings on magnetic tape or diskette. We propose to revise paragraph (b) of Rule 12 to refer to transmission by magnetic cartridge rather than magnetic tape and to remove the references to diskettes, since we propose to discontinue accepting filings on them[78] and to revise the language of paragraph (c) of Rule 12 to allow for direct transmissions via Internet. We also propose to remove the reference to method of transmission from Rule 103, since the rule covers transmission by any acceptable method.

Rule 104—*Unofficial PDF Copies Included in an Electronic Submission.* Rule 104 provides that an electronic submission may include one unofficial PDF copy of each electronic document contained within an electronic submission.[79] Each unofficial PDF copy must be substantively equivalent to its associated ASCII or HTML document contained in the submission. Several commenters suggested that filers may wish to submit redlined courtesy copies of filings as unofficial PDF copies of correspondence documents. As discussed above in Part I.D, we propose to relax the substantively equivalent requirement in connection with non-public correspondence submissions consisting of redlined copies of filings. We solicit comment on whether we should remove this requirement for all unofficial PDF correspondence documents instead of only those consisting of a redlined copy of a filing.

Rule 104 currently makes it clear that an unofficial PDF copy may contain graphic and image material even though its ASCII or HTML counterpart may not contain such material.[80] We propose to revise the rule to reflect the fact that, with EDGAR Release 7.0, the HTML counterpart might also contain graphic material.

Rule 105—*Limitation on Use of HTML Documents and Unofficial PDF Copies; Use of Hypertext Links.* Rule 105 currently provides that filers may not submit Financial Data Schedules as HTML documents. We propose to remove this language, since we will no longer require filers to submit FDSs.

Rule 105 currently prohibits electronic filers from including in HTML documents hypertext links to sites or documents outside the HTML

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[74] 17 CFR 249.25.

[75] Rule 11 of Regulation S–T [17 CFR 232.11].

[76] *See* Release No. 33–7427; 34–38798; 39–2355; IC–22730 (July 1, 1997) [62 FR 36450] (removing the reference to microfiche to reflect new practice of allowing for storage of documents in a variety of media).

[77] *See* Release No. 33–6977 (Feb. 23, 1993) [58 FR 14628].

[78] We also propose to revise the following rules to change the reference from magnetic tape to magnetic cartridge and to remove the reference to diskettes: Securities Act Rule 110, Exchange Act Rule 0–2, Public Utility Act Rule 21, and Trust Indenture Act Rule 0–5.

[79] Rule 104(a) [17 CFR 232.104(a)]. This rule also permits the filer to submit an unofficial PDF copy of correspondence or a cover letter document.

[80] Rule 104(b) [17 CFR 323.104(b)].

document.[81] However, the rule allows electronic filers to include hypertext links to different sections within a single HTML document. We propose to amend the rule so that, with EDGAR Release 7.0, filers may link to other documents within the same submission as well as to other documents previously filed electronically that are on our public web site EDGAR database at www.sec.gov. The EDGAR system will suspend filings if they contain external links other than discussed above.

The proposed rule would not permit filers to link to an unofficial PDF copy of a filing, since the PDF copy is not an official filing. We request comment, however, on whether we should permit filers to link to unofficial PDF copies.

Currently, Rule 105 provides that, if an accepted filing includes external links in contravention of our rules, we will not consider information contained in the linked material to be part of the official filing for determining compliance with reporting obligations, but such information will be subject to the civil liability and anti-fraud provisions of the federal securities laws.[82] As discussed above in Part I.F, we propose to revise the rule so that it applies to all linked material, whether included in accordance with (or in contravention of) our rules.

Rule 302—*Signatures.* Rule 302 currently provides that required signatures to or within electronic documents must be in typed form. We propose to amend the rule to allow signatures that are not required to appear as script in HTML documents, since we propose to permit graphic and image material.[83] Some commenters believed that we also should accept required signatures as script in HTML documents. However, we propose to retain the rule that required signatures be typed to ensure legibility of these signatures.

Rule 303—*Incorporation by reference.* Paragraph (a)(4) of Rule 303 currently prohibits the incorporation by reference of Financial Data Schedules submitted under Rule 483. We are proposing to remove this provision, since we propose to no longer require FDSs.

Rule 304—*Graphic, Image, Audio and Video Material.* Currently, Rule 304 prohibits the inclusion of graphic, image, audio or video material in an EDGAR document. We propose to revise Rule 304 to lift the prohibition on graphic and image material (but not on audio or video material) in HTML documents with EDGAR Release 7.0.[84] As discussed above in Part I.E, we also propose to require the presentation of graphic material in an HTML graphic file in HTML documents if the information is required by Commission rule or form and to allow its inclusion where the graphics in the document are not required by our rules or forms. We also propose to amend the rule to prohibit animated graphics in any EDGAR document.

Rule 311—*Documents submitted in paper under cover of Form SE.* Rule 311 currently contains provisions concerning documents submitted in paper under Form SE. We propose to amend the rule to remove the reference to exhibits to Form N–SAR, since filers must now submit N–SAR exhibits electronically.

Rules 401 and 402—*Financial Data Schedule; Liability for Financial Data Schedule.* Rules 401 and 402 are the provisions governing the electronic submission of Financial Data Schedules. As discussed above in Part I.K, we propose to rescind the requirement for FDSs, and accordingly we propose to remove Rules 401 and 402 of Regulation S–T.[85]

Rule 501—*Modular Submissions and Segmented Filings.* Rule 501 currently states that an electronic filer that subscribes to the optional EDGAR electronic mail service may use the module and segment features. We propose to revise the rule to remove the reference to the optional electronic mail service, since filers who do not subscribe also may use these features.

III. General Request for Comment

You are invited to submit written comments relating to the rule proposals set forth in this release by submitting three copies to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. You also may submit your comments electronically at the following e-mail address: rule-comments@sec.gov. Your comment letter should refer to File No. S7–05–00; include this file number in the subject line if you use e-mail. We will make comment letters available for your inspection and copying in our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. We also will post any electronically submitted comment letters on our Internet Web Site (http://www.sec.gov).

We request comment not only on the specific issues we discuss in this release, but on any other approaches or issues that we should consider in connection with the EDGAR modernization that we envision. We seek comment from any interested persons, including those required to file information with us on the EDGAR system, as well as investors, disseminators of EDGAR data, EDGAR filing agents, and other members of the public who have access to and use information from the EDGAR system.

IV. Cost-Benefit Analysis

The rules we are proposing today reflect the next stage in our modernization of EDGAR. We expect that this continuing EDGAR modernization ultimately will result in considerable benefits to the securities markets, investors, and other members of the public, by expanding the types and accessibility of information that can be filed and made available for public review through the EDGAR system. We also expect that the changes will result in economic benefits to filers by easing their burden in filing required materials through the EDGAR system.

One of the goals of EDGAR modernization has been to benefit all EDGAR users by achieving consistency as much as possible with familiar and widely accepted industry standards. The rules proposed today are an important step in moving the EDGAR system toward these industry standards.

The transition to a broader HTML tag set and the use of more current technologies should provide significant benefits. Investors will benefit from EDGAR modernization because they will receive documents that communicate more effectively. Graphics can make documents easier to read. Hyperlinks should make documents easier to navigate and information easier to locate.

The ability to transmit filings over the Internet also should provide increased flexibility to filers. Moreover, since filers would be able to use their own Internet Service Providers and send filings to the EDGAR system at no charge, filers located outside of the immediate Washington, DC area may reduce their costs for long-distance telephone service. EDGARLink filers

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[81] Rule 105(b) [17 CFR 232.105(b)].

[82] Rule 105(c) [17 CFR 105(c)].

[83] Rule 302. We do not now, and do not propose to, require signatures in unofficial PDF copies.

[84] We also propose to add a Note to paragraph (a) of Rule 304 to make it clear that when omitted material contains data, filers must include that data in the filing. For example, if the omitted material consists of a pie chart showing the use of proceeds, the EDGAR filing should set forth the percentage of proceeds allocated to each use rather than merely stating "chart showing use of proceeds omitted."

[85] We also propose to amend the following rule and form provisions in connection with the discontinuance of FDSs: Items 601 of Regulation S–B and S–K; Securities Act Rule 483; Securities Act Forms S–2, S–3, and S–8; Public Utility Act Forms U5S, U–1, U–13–60 and U–3A–2; Investment Company Act Rules 8b–2, 8b–23 and Rule 8b–32; and Investment Company Act Form N–SAR.

also should benefit from being able to prepare and transmit their filings to the EDGAR system using more convenient and familiar browser-based software. The modernized EDGARLink, which will be a significant update from the older technology of the current EDGARLink product, should benefit filers by eliminating their dependence upon maintaining old equipment that is no longer supported in the computer industry.

Companies that make public filings also should benefit from having expanded features in their HTML documents because their documents will communicate more effectively with shareholders and be more attractive for marketing and other purposes. As investors find that they can more effectively obtain the information they seek from the EDGAR system, filers may get fewer requests for paper copies of filings. Some filers that prepare documents in HTML for purposes of offerings or of company web site postings may find it less burdensome to convert documents into the version of HTML provided for in Release 7.0 and the proposed rules than to convert them into ASCII.

At the same time, we recognize that the full transition to the modernized EDGAR system will impose some hardware, software, and staffing costs associated with the evolution of computer systems to industry standards. At this stage, issuers and other filers need not incur any immediate costs related to the proposed HTML enhancements, because filing in HTML remains voluntary. Filing agents who do not use our free EDGARLink software may incur some programming costs to make the transition to Release 7.0.

The changes in permissible methods of transmission of EDGAR submissions will likely lead to some immediate costs. We believe that the elimination of diskettes and the move from magnetic tape to magnetic cartridge would affect approximately one percent of filers. On the other hand, all filers using EDGARLink may need to make some adjustments to effect the transition to the modernized EDGARLink, which is browser-based. These costs should be minimal for most filers because the new software is not dependent upon any one operating system environment and most companies have already adopted an environment that will support it. The new EDGARLink also may be able to operate on some older DOS-based operating environments. The current DOS-based EDGARLink will remain available to filers for six months to facilitate filers' transition to the modernized EDGARLink.

Disseminators of EDGAR data may incur some transitional costs as they revise their software to accommodate the proposed HTML enhancements.[86] Disseminators that are not HTML-based may face some difficulties in integrating the new graphics data. In addition, graphics data may increase the size of documents received by the EDGAR system and transmitted to disseminators. As a result, disseminators may need to adjust their storage techniques or may incur additional costs for storage and processing.

The rules we propose today impose no costs related to substantive disclosure. The one proposed substantive change is the elimination of financial data schedules, which would reduce filers' preparation time. The remaining proposals would not substantively change the information and disclosure we currently require. Rather, the proposed rules would merely modify and supplement current rules to reflect the expanded HTML options that filers may use to submit information to us electronically.

We encourage commenters to identify any costs or benefits associated with the rule proposals and with EDGAR modernization in general. In particular, please identify any costs or benefits associated with the rule proposals relating to the increased use of graphics, the contents of an "official filing," impermissible types of code and content, hypertext links to documents or web sites, variations in the appearance of an "official filing" that is accessed through different browsers, and any impact that the rule proposals may have on the ease of locating and using EDGAR data. Please provide data to support your position.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, we request information regarding the potential impact of the proposed amendments on the economy on an annual basis. In particular, comments should address whether the proposed changes, if adopted, would have a $100,000,000 annual effect on the economy, cause a major increase in costs or prices, or have a significant adverse effect on competition, investment, or innovation. Commenters should provide empirical data to support their views.

[86] We continually attempt to reduce the costs of the EDGAR system and to pass those cost savings along when possible. For example, in November 1998, under the new EDGAR contract, we were able to effect a cost savings with the implementation of a new privatized dissemination system. This resulted in our passing along a cost savings of nearly $200,000 per year to disseminators when their yearly subscription cost was reduced from $278,000 to $79,686. And in December 1999, the subscription price dropped again from $79,686 to $44,571.

V. Analysis of Burdens on Competition, Capital Formation and Efficiency

Section 23(a)(2) of the Exchange Act requires us, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rules that we adopt thereunder. Furthermore, section 2(b) of the securities Act,[87] section 3(f) of the Exchange Act,[88] and section 2(c)[89] of the Investment Company Act require us, when engaging in rulemaking, and considering or determining whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In compliance with our responsibilities under these sections, we request comment on whether the proposals, if adopted, would promote efficiency, competition, and capital formation. We encourage commenters to provide empirical data or other facts to support their views.

In compliance with our responsibilities under the previously mentioned provisions, we considered whether the amendments would promote efficiency, competition and capital formation. Although filing agents and information disseminators may be disparately affected depending on their technical readiness and programming formats, we believe that the new rules and amendments would not impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the securities laws.

We believe that the new rules and amendments would not have any adverse effect on capital formation. We believe the amendments would promote efficiency by giving investors information in a more readable format and by more closely aligning our technical standards to the industry's. The new rules and amendments would apply equally to all entities currently required to file on EDGAR. Because the proposed rules and amendments are designed in part to permit filers to provide information in a format that will be more useful to investors, the amendments are appropriate in the public interest and for the protection of investors.

We request comment on any burden on efficiency, competition, or capital formation that might result from the adoption of these proposals.

[87] 15 U.S.C. 77b(b).

[88] 15 U.S.C. 78c(f).

[89] 15 U.S.C. 80a–2(c).

VI. Summary of Regulatory Flexibility Act Certification

Our Chairman has certified, under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the new rules and rule amendments we propose in this release (the Proposals) would not, if adopted, have a significant economic impact on a substantial number of small entities. The certification, discussing the factual basis therefor, is attached to this Release as Appendix B. We encourage written comments on the Certification. We ask commenters to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Paperwork Reduction Act

Our proposal to eliminate Financial Data Schedules (FDSs) affects several regulations and forms that contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [90] (the Act). We have submitted the proposal to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles of the affected information collections are as follows: Form S–1, Form S–4, Form S–11, Form SB–1, Form SB–2, Form 10–SB, Form 10–QSB, Form 10–KSB, Form 10, Form 10–Q, and Form 10–K; Investment Company Act Form N–SAR; and Public Utility Holding Company Act Forms U–1, U5S, U–13–60 and U–3A–2. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Form S–1 under the Securities Act (OMB Control Number 3235–0065) is used by issuers that are not eligible to use other forms to register offerings of securities. The form sets forth the transactional and company information required by the Commission in securities offerings. Form S–4 under the Securities Act (OMB Control Number 3235–0324) is used by issuers to register securities offerings in connection with business combinations and exchange offers. This form sets forth the transactional and company information required by the Commission in securities offerings. Form S–11 under the Securities Act (OMB Control Number 3235–0067) is used to register real estate investment trusts and securities issued by issuers whose business is primarily that of acquiring and holding investment interests in real estate. Form SB–1 under the Securities Act (OMB Control Number 3235–0423) is used by small business issuers, as defined in Rule 405 of the Securities Act, to register offerings of up to $10 million of securities in a 12-month period. The form sets forth the transactional and company information required by the Commission in securities offerings. It requires less detailed information about the issuer's business than Form S–1. Form SB–2 under the Securities Act (OMB Control Number 3235–0418) is used by small business issuers, as defined in Rule 405 of the Securities Act, to register securities offerings. The form sets forth the transactional and company information required by the Commission in securities offerings. It requires less detailed information about the issuer's business than Form S–1.

Form 10 under the Exchange Act (OMB Control Number 3235–0064) is used by registrants to register classes of securities for trading on a national exchange. It requires certain business and financial information about the issuer. Form 10–SB under the Exchange Act (OMB Control Number 3235–0419) is used by small business issuers, as defined in Rule 12b–2 of the Exchange Act, to register classes of securities. This form requires slightly less detailed information about the issuer's business than Form 10 requires. Form 10–K under the Exchange Act (OMB Control Number 3235–0063) is used by registrants to file annual reports. It provides a comprehensive overview of the registrant's business. Form 10–KSB under the Exchange Act (OMB Control Number 3235–0420) is used by small business registrants, as defined in Rule 12b–2 of the Exchange Act, to file annual reports. It provides a comprehensive overview of the registrant's business, although its requirements call for slightly less detailed information than required by Form 10–K. Form 10–Q under the Exchange Act (OMB Control Number 3235–0070) is used by registrants to file quarterly reports. It includes unaudited financial statements and provides a continuing view of the registrant's financial position during the year. The report must be filed for each of first three fiscal year quarters of the registrant's fiscal year. Form 10–QSB under the Exchange Act (OMB Control Number 3235–0416) is used by small business registrants, as defined in Rule 12b–2 of the Exchange Act, to file quarterly reports. It includes unaudited financial statements and provides a periodic view of the registrant's financial position during the year. The report must be filed for each of the first three fiscal quarters of the registrant's fiscal year. It provides a comprehensive overview of the registrant's business, although its requirements call for slightly less detailed information than required by Form 10–Q.

Form N–SAR (OMB Control No. 3235–0330) is used by registered investment companies for annual and semi-annual reports required to be filed with the Commission.

Form U–1 (OMB Control No. 3235–0125) must be used by any person filing or amending an application or declaration under sections 6(b), 7, 9(c)(3), 10, 12(b), (c), (d) or (f) of the Public Utility Act. This form must also be used for filings under other sections of the Public Utility Act for which a form is not prescribed. Form U5S (OMB Control No. 3235–0164) requires registered holding companies to file annual and other periodic and special reports as the Commission may prescribe to keep current information relevant to compliance with substantive provisions of the Public Utility Act. Form U–13–60 (OMB Control No. 3235–0153) implements section 13 of the Public Utility Act by requiring standardized accounting and recordkeeping for mutual and subsidiary service companies of registered holding companies and the filing of annual reports on Form U–13–60. Form U–3A–2 (OMB Control Number 3235–0161) permits a public utility holding company to claim exemption from the Public Utility Act by filing an annual statement.

We anticipate that the proposal to eliminate the requirement that filers submit FDSs as exhibits for certain forms referenced under Item 601(b) of Regulations S–K and S–B would reduce the existing information collection requirements that are currently imposed on registrants (respondents).[91] We estimate that approximately 3,617 Form S–1s are filed each year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 432 hours per filing. We anticipate that the total estimated aggregate annual burden for 3,617 respondents would be 1,562,544 hours (432 × 3,617).

We estimate that approximately 8,709 Form S–4s are filed each year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 990 hours per filing. We anticipate that the total estimated aggregate annual burden for 8,709

[90] 44 U.S.C. 3501 *et seq.*

[91] Regulations S–K and S–B do not impose reporting burdens directly on public companies.

respondents would be 8,621,910 hours (990 × 8,709).

We estimate that approximately 107 Form S–11s are filed each year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 473 hours per filing. We estimate that the total estimated aggregate annual burden for 107 respondents would be 50,611 hours (473 × 107).

We estimate that approximately 8 Form SB–1s are filed each year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 177 hours per filing. We anticipate that the total estimated aggregate annual burden for 8 respondents would be 1,416 hours (177 × 8).

We estimate that approximately 559 Form SB–2s are filed each year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 137 hours per filing. We anticipate that the total estimated aggregate annual burden for 559 respondents would be 76,583 hours (137 × 559).

We estimate that approximately 162 Form 10–SBs are filed each year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 22 hours per filing. We anticipate that the total estimated aggregate annual burden for 162 respondents would be 3,564 hours (22 × 162).

We estimate that approximately 10,671 Form 10–QSBs are filed each year. This number reflects the fact that a Form 10–QSB is required to be filed three times a year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 32 hours per filing. We anticipate that the total estimated aggregate annual burden for 3,557 respondents would be 341,472 hours (3 × 32 × 3,557).

We estimate that approximately 3,641 Form 10–KSBs are filed each year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 294 hours per filing. We anticipate that the total estimated aggregate annual burden for 3,641 respondents would be 1,070,454 hours (294 × 3,641).

We estimate that approximately 124 Form 10s are filed each year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 23 hours per filing. We anticipate that the total estimated aggregate annual burden for 124 respondents would be 2,852 hours (23 × 124).

We estimate that approximately 29,551 Form 10–Qs are filed each year. This number reflects the fact that Form 10–Q is required to be filed three times a year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 34 hours per filing. We anticipate that the total estimated aggregate annual burden for 9,850 respondents would be 1,004,700 hours (3 × 34 × 9,850).

We estimate that approximately 10,381 Form 10–Ks are filed each year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 430 hours per filing. We anticipate that the total estimated aggregate annual burden for 10,381 respondents would be 4,463,830 hours (10,381 × 430).

The proposal to eliminate FDSs within Investment Company Act Form N–SAR would reduce the total information collection burden imposed upon affected respondents. We estimate that approximately 7,333 Form N–SARs are filed each year. This number reflects the fact that each of approximately 3,300 management investment companies file the form twice a year. This number also includes the 733 unit investment trusts who file the form once a year, with a burden of 6 hours per filing, but who do not file FDSs with the form. We estimate that the elimination of FDSs would decrease the filing burden for each management investment company respondent by 1 hour for an average burden of 14.75 hours per filing. We anticipate that the total estimated aggregate annual burden for 4,033 respondents would be 101,748 hours ((2 × 3,300 × 14.75) + (733 × 6)).

The proposal to eliminate FDSs within Public Utility Act forms would reduce the total information burden imposed upon affected respondents. We estimate that approximately 121 Form U–1s are filed each year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 224 hours per filing. We anticipate that the total estimated aggregate annual burden for 15 respondents making a total of 121 submissions per year would be 27,104 hours (121 × 224).

We estimate that approximately 19 Form U5Ss are filed each year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 13.5 hours per filing. We anticipate that the total estimated aggregate annual burden for 19 respondents would be 256.5 hours (19 × 13.5).

We estimate that approximately 91 Form U–3A–2s are filed each year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 2.5 hours per filing. We anticipate that the total estimated aggregate annual burden for 91 respondents would be 227.5 hours (91 × 2.5).

We estimate that approximately 40 Form U–13–60s are filed each year. We estimate that the elimination of FDSs would decrease the filing burden for each respondent by 1 hour for an average burden of 13.5 hours per filing. We anticipate that the total estimated aggregate annual burden for 40 respondents would be 540 hours (40 × 13.5).

The above forms do not impose a retention period for any recordkeeping requirements. Compliance with the above forms is mandatory. Responses to the disclosure requirements of the above forms are not kept confidential unless granted confidential treatment.

We solicit comment to: (i) Evaluate whether the proposed change in the collections of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (ii) evaluate the accuracy of our estimate of the burden of the proposed changes to the collections of information; (iii) enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

If you would like to submit comments on the collection of information requirements, then you should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, with reference to File No. S7–05–00. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–05–00, and be submitted to the Securities and

Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Statutory Basis

We propose the rule amendments outlined above under sections 6, 7, 8, 10 and 19(a) of the Securities Act, sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act, sections 3, 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Public Utility Act, Section 319 of the Trust Indenture Act, and sections 8, 30, 31 and 38 of the Investment Company Act.

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229 and 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Advertising, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 250

Confidential business information, Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

17 CFR Part 259

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 260 and 269

Reporting and recordkeeping requirements, Securities, Trusts and trustees.

17 CFR Part 270

Confidential business information, Fraud, Investment companies, Life insurance, Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Electronic funds transfers, Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

§ 228.601 [Amended]

2. By amending § 228.601, by removing exhibits (27) and (28), and by reserving exhibits (27) through (98), and removing footnote * * * in the exhibit table in paragraph (a), by removing paragraph (b)(27) and reserving paragraphs (b)(27) through (b)(98), and by removing paragraph (c) and Appendices A through F.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

§ 229.601 [Amended]

4. By amending § 229.601, by removing exhibits (27) and (28), by reserving exhibits (27) through (98), and removing footnote 5 in the exhibit table in paragraph (a), by removing paragraph (b)(27) and reserving paragraphs (b)(27) through (b)(98), and by removing paragraph (c) and Appendices A through F.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

6. By amending § 230.110 by revising paragraph (b) to read as follows:

§ 230.110 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper or on magnetic cartridge.* Paper documents filed with or otherwise furnished to the Commission, as well as electronic filings and submissions on magnetic cartridge under cover of Form ET (§§ 239.62, 249.445, 259.601, 269.6 and 274.401 of this chapter), may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

7. By amending § 230.483 by removing paragraph (e) including the contents of the financial data schedule set forth in paragraph (e)(4) and by revising the section heading to read as follows:

§ 230.483 Exhibits for certain registration statements.

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

8. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

9. By amending § 232.11 by removing the definition of "Phase-in date" and by revising the definition of "Official filing" to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

Official filing. The term *official filing* means any filing that is received and accepted by the Commission, regardless of filing medium and exclusive of header information, tags and any other technical information required in an electronic filing.

* * * * *

10. By amending § 232.12 by revising paragraphs (b) and (c) to read as follows:

§ 232.12 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper or on magnetic cartridge.* Filers may submit paper documents filed with or otherwise furnished to the Commission, as well as electronic filings and submissions on magnetic cartridge under cover of Form ET (§§ 239.62, 249.445, 259.601, 269.6 and 274.401 of this chapter), to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect. Filers may file submissions on magnetic cartridge either at the address indicated in paragraph (a) of this section or at the Commission's Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

(c) *Submissions by direct transmission.* Electronic filings and other documents may be submitted by direct transmission, via dial-up modem or Internet, to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

11. By revising § 232.103 to read as follows:

§ 232.103 Liability for transmission errors or omissions in documents filed via EDGAR.

An electronic filer shall not be subject to the liability and anti-fraud provisions of the federal securities laws with respect to an error or omission in an electronic filing resulting solely from electronic transmission errors beyond the control of the filer, where the filer corrects the error or omission by the filing of an amendment in electronic format as soon as reasonably practicable after the electronic filer becomes aware of the error or omission.

12. By amending § 232.104 by revising paragraph (b) and adding paragraph (f) to read as follows:

§ 232.104 Unofficial PDF copies included in an electronic submission.

* * * * *

(b) Except as provided in paragraphs (c) and (f) of this section, each unofficial PDF copy must be substantively equivalent to its associated electronic document contained in the electronic submission. An unofficial PDF copy may contain graphic and image material (but not animated graphics, or audio or video material), notwithstanding the fact that its HTML or ASCII document counterpart may not contain such material but instead may contain a fair and accurate narrative description or tabular representation of any omitted graphic or image material.

* * * * *

(f) An unofficial PDF copy of a correspondence document contained in an electronic submission need not be substantively equivalent to that correspondence document if the unofficial PDF copy consists solely of a redlined copy of an official filing.

13. By revising § 232.105 to read as follows:

§ 232.105 Limitation on use of HTML documents and hypertext links.

(a) Electronic filers must submit the following documents in ASCII: Form N–SAR (§ 274.101 of this chapter) and Form 13F (§ 249.325 of this chapter). Notwithstanding the provisions of this section, electronic filers may submit exhibits to Form N–SAR in HTML.

(b) Electronic filers may not include in any HTML document hypertext links to sites, locations, or documents outside the HTML document, except to links to officially filed documents within the current submission and to documents previously filed electronically and located in the EDGAR database on the Commission's public web site (www.sec.gov). Electronic filers also may include within an HTML document hypertext links to different sections within that single HTML document.

(c) If a filer includes an external hypertext link within a filed document, the information contained in the linked material will not be considered part of the document for determining compliance with reporting obligations, but the inclusion of the link will cause the filer to be subject to the civil liability and antifraud provisions of the federal securities laws with reference to the information contained in the linked material.

14. By amending § 232.302 by revising paragraph (a) to read as follows:

§ 232.302 Signatures.

(a) Required signatures to or within any electronic submission must be in typed form rather than manual format. Signatures in an HTML document that are not required may, but are not required to, be presented in an HTML graphic or image file within the electronic filing, in compliance with the formatting requirements of the EDGAR Filer Manual. When used in connection with an electronic filing, the term "signature" means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters or characters comprising a name, executed, adopted or authorized as a signature. Signatures are not required in unofficial PDF copies submitted in accordance with § 232.104.

* * * * *

§ 232.303 [Amended]

15. By amending § 232.303 by removing paragraph (a)(4).

16. By amending § 232.304 by revising the first sentence of paragraph (a) and adding a note following paragraph (a), revising paragraph (d), and adding paragraphs (e) and (f) to read as follows:

§ 232.304 Graphic, image, audio and video material.

(a) If a filer includes graphic, image, audio or video material in a document delivered to investors and others that is not reproduced in an electronic filing, the electronically filed version of that document must include a fair and accurate narrative description, tabular representation or transcript of the omitted material. * * *

Note to paragraph (a): If the omitted graphic, image, audio or video material includes data, filers must include a tabular representation or other appropriate representation of that data in the electronically filed version of the document.

* * * * *

(d) For electronically filed ASCII documents, the performance graph that is to appear in registrant proxy and information statements relating to annual meetings of security holders (or special meetings or written consents in lieu of such meetings) at which directors will be elected, as required by Item 402(l) of Regulation S-K (§ 229.402(l) of this chapter), and the line graph that is to appear in registrant annual reports to security holders or prospectuses, as required by paragraph (b) of Item 5 of Form N–1A (§ 274.11A of this chapter), must be furnished to the Commission by presenting the data in tabular or chart form within the electronic ASCII document, in compliance with paragraph (a) of this section and the formatting requirements of the EDGAR Filer Manual.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, electronically filed HTML documents must present the following information in an HTML graphic or image file within the electronic submission in compliance with the formatting requirements of the EDGAR Filer Manual: the performance graph that is to appear in registrant proxy and information statements relating to annual meetings of security holders (or special meetings or written consents in

lieu of such meetings) at which directors will be elected, as required by Item 402(l) of Regulation S-K (§ 229.402(l) of this chapter); the line graph that is to appear in registrant annual reports to security holders or prospectuses, as required by paragraph (b) of Item 5 of Form N–1A (§ 274.11A of this chapter); and any other graphic material required by rule or form to be filed with the Commission. Filers may, but are not required to, submit any other graphic material in an HTML document by presenting the data in an HTML graphic or image file within the electronic filing, in compliance with the formatting requirements of the EDGAR Filer Manual. However, filers may not present in a graphic or image file information such as text or tables that users must be able to search and/or download into spreadsheet form (*e.g.*, financial statements); filers must present such material as text in an ASCII document or as text or an HTML table in an HTML document.

(f) Electronic filers may not include animated graphics in any EDGAR document.

§ 232.311 [Amended]

17. By amending § 232.311 by removing paragraph (c) and redesignating paragraphs (d), (e), (f), (g), (h) and (i) as paragraphs (c), (d), (e), (f), (g), and (h), respectively.

§§ 232.401 and 232.402 [Removed and Reserved]

18. By removing and reserving §§ 232.401 and 232.402 and removing the undesignated center heading preceding reserved § 232.401.

19. By amending § 232.501 by revising the introductory text to read as follows:

§ 232.501 Modular submissions and segmented filings.

An electronic filer may use the following procedures to submit information to the EDGAR system for subsequent inclusion in an electronic filing:

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

20. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u-5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

Note: The text of the following forms do not and the amendments will not appear in the Code of Federal Regulations.

21. By amending Form S–2 (referenced in § 239.12), General Instruction I, as follows:

a. in the introductory text of paragraph H, remove the colon;

b. in paragraph H(1), remove "(1)" and "; and," and add a period at the end of the sentence; and

c. remove paragraph H.(2).

22. By amending Form S–3 (referenced in § 239.13), General Instruction I, as follows:

a. in the introductory text of paragraph A.8.(1), remove the colon;

b. in paragraph A.8.(1), remove "(1)" and "; and," and add a period at the end of the sentence; and

c. remove paragraph A.8.(2).

23. By amending Form S–8 (referenced in § 239.16b), General Instruction A, as follows:

a. in the introductory text of paragraph 3, remove the colon;

b. in paragraph 3.(1), remove "(1)" and "; and," and add a period at the end of the sentence; and

c. remove paragraph 3.(2).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

24. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

25. By amending § 240.0–2 by revising paragraph (b) to read as follows:

§ 240.0–2 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper or on magnetic cartridge.* Paper documents filed with or otherwise furnished to the Commission, as well as electronic filings and submissions on magnetic cartridge under cover of Form ET (§§ 239.62, 249.445, 259.601, 269.6 and 274.401 of this chapter), may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

26. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

27. By amending § 250.21 by revising paragraph (b)(1) to read as follows:

§ 250.21 Filing of documents.

* * * * *

(b) *Electronic filings.* (1) All documents required to be filed with the Commission under the Act or the rules and regulations thereunder must be filed at the principal office in Washington, DC via EDGAR by delivery to the Commission of a magnetic cartridge or by direct transmission.

* * * * *

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

28. The authority citation for part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t.

Note: The text of the following forms do not and the amendments will not appear in the Code of Federal Regulations.

29. By amending Form U5S (referenced in § 259.5s) by removing General Instruction 8, removing Exhibit G to Item 10, and redesignating Exhibits H and I to Item 10 as Exhibits G and H.

30. By amending Form U–1 (referenced in § 259.101) by removing Instruction G to Instructions as to Exhibits.

31. By amending Form U–13–60 (referenced in § 259.313) by removing Schedule XIX.

32. By amending Form U–3A–2 (referenced in § 259.402) by removing Exhibit B and by redesignating Exhibit C as Exhibit B.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

33. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

34. By amending § 260.0–5 by revising paragraph (b) to read as follows:

§ 260.0–5 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper or on magnetic cartridge.* Paper documents filed with or otherwise furnished to the Commission, as well as electronic filings and submissions on magnetic cartridge under cover of Form ET (§§ 239.62, 249.445, 259.601, 269.6 and 274.401 of this chapter), may be submitted to the Commission each day, except Saturdays, Sundays and federal

holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

35. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

* * * * *

§ 270.8b–2 [Amended]

36. By amending § 270.8b–2 by removing the last sentence of the introductory text.

§ 270.8b–23 [Amended]

37. By amending § 270.8b–23 by removing the last sentence of paragraph (a).

§ 270.8b–32 [Amended]

38. By amending § 270.8b–32 by removing paragraph (c)(2) and by removing the paragraph designation (c)(1).

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

39. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

40. By amending Form N–SAR (referenced in § 274.101) by removing paragraph (1) of General Instruction F and redesignating paragraph (2) as General Instruction F and revising the last sentence to read as follows:

Note: The text of Form N–SAR does not and the amendments will not appear in the Code of Federal Regulations.

OMB Approval

—Number: 3235–xxxx
—Expires: xxxxxxxxxxxxxxxx
—Estimated average burden hours per response: xxxx

United States Securities and Exchange Commission

Washington, D.C.

Instructions and Form

FORM N–SAR

Semi-Annual Report For Registered Investment Companies

* * * * *

General Instructions

* * * * *

F. Filings on EDGAR.

* * * Filers may not submit the form on magnetic cartridge.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

41. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

42. The authority citation for Part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, 78*ll*(d), unless otherwise noted.

43. By revising Form ET (referenced in §§ 239.62, 249.445, 259.601, 269.6 and 274.401 of this chapter) to read as follows:

Note: The text of Form ET does not and the amendments will not appear in the Code of Federal Regulations.

OMB Approval

OMB Number: 3235–xxxx
Expires: xxxxxxxxxxxxxxxx
Estimated average burden hours per response: xxxx

United States Securities and Exchange Commission

Washington, D.C.

Form ET—Transmittal Form for Electronic Format Documents Under the Edgar System

PART I—SUBMISSION INFORMATION (Read the instructions before completing the following items.)

1. CIK of Sender of cartridge(s)

_____

2. Name of Sender of cartridge(s)

_____

3. Number of cartridge(s) in package

_____

4. Person to contact if there are problems with the cartridge(s).

a. Name: _____

b. Telephone number (including area code): _____ _____

PART II—MAGNETIC CARTRIDGE INFORMATION

1. Volume ID on internal label:

_____

2. Language: ____ ASCII ____ EBCDIC

3. Density: ____1600 bpi ____ 6250 bpi

Form ET—General Instructions

1. Rule as to Use of Form ET.

One copy of this form must accompany all magnetic cartridge submissions. Address magnetic cartridges, regardless of the manner of delivery, to Attn: Document Control—Edgar U.S. Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0104

2. Preparation of Magnetic Cartridge Submissions.

Please refer to the EDGAR Filer Manual which contains information and procedures for electronic filing.

A. You may include more than one submission on a magnetic cartridge. However, you must place each submission in a single, separate file. We will assume that each file and a magnetic cartridge contains a separate submission and will transfer all such files to the EDGAR system. Therefore, you should recheck all files prior to sending a magnetic cartridge to us to ensure that the cartridge contains only those files you intend to send.

B. If you use more than one magnetic cartridge, indicate their order of processing on the external label of each magnetic cartridge, *e.g.*, 1 of 3; 2 of 3, *etc.*

C. Please write the CIK of the Sender on the external label of each magnetic cartridge.

D. To expedite the processing of magnetic cartridges, please write the following in large, bold letters on the envelope or carton: EDGAR MAGNETIC CARTRIDGE.

3. Preparation of Form.

A. Complete this form carefully, since we will use the data on this form to transfer submissions from the magnetic cartridge(s) to the EDGAR system.

B. Make sure that the CIK and the Name of Sender requested in Part I is that of the filer or filing agent, whichever prepared and sent the magnetic cartridge(s) to us.

C. Make sure that the contact person you identify in Part I is a person who can respond to technical questions concerning the electronic preparation of the magnetic cartridge(s).

D. If you include more than one filer and/or more than one submission on the

magnetic cartridge(s), you do not need to complete a separate form for each filer or submission if the information contained in Parts I, II, and III is identical for all filers and all submissions.

4. Signatures.

There are no separate signature requirements for Form ET. However, each of the various electronic forms you wish to file on magnetic cartridge that accompany the Form ET contains certain signature requirements. These electronic forms should include typed signatures. *See* Rule 302 of Regulation S–T (§ 232.302 of this chapter).

5. Application of General Rules and Regulations.

Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. We direct your attention to the General Rules and Regulations under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the electronic filing rules and regulations under these Acts.

By the Commission.

Dated: February 25, 2000.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A and Appendix B to the preamble will not appear in the Code of Federal Regulations.

Appendix A.—Acceptable Tags for HTML Documents for Edar Release 7.0—for Use With Modernized Edgarlink

Acceptable HTML 3.2 Tags—Document Header

Non-Format Tags	Definition.
<HTML>	Identifies text as HTML document.
<!—> or <!DOCTYPE>	Comment—does not appear in browser, only in HTML source <!DOCTYPE> tag is used to identify which HTML standard is used by the HTML text. [NOTE: These tags may appear in-between the <TEXT> and <HTML> tags].
<A>	Anchor/Hyperlink [NOTE: For the attribute HREF, external references are not supported; however, Bookmark (internal) references will be supported].
<BODY>	Signifies the body of the HTML document. [NOTE: the BACKGROUND parameter may include a reference to a JPEG (*.jpg) or GIF (*.gif) graphic file].
<HEAD>	Signifies header information for HTML document.
<ISINDEX>	Signifies document is an index for a search engine.
<BASE>	Base URL to be used by all links in the document. [NOTE: For the attribute HREF, external references are not supported; however, Bookmark (internal) references will be supported].
<LINK>	Like a hyperlink, but only contained within header. [NOTE: For the attribute HREF, external references are not supported; however, Bookmark (internal) references will be supported].
<META>	Extended information to be included in document header [NOTE: The HTTP-EQUIV attribute is not supported for this tag].
<TITLE>	Title of document. It is displayed at the top of the browser.

Acceptable HTML 3.2 Tags—Within Document

Format Specific Tags (change the appearance of the text only)	Definition.
<–&lt>	Escape Sequences—Used to display characters normally reserved (such as "<") as plain text in the HTML document.
<A>	Anchor/Hyperlink. [NOTE: For the attribute HREF, external references are not supported, except for the following: (1) Where the reference is previously-filed submission that resides in the EDGAR filing repository on the www.sec.gov web site. (2) Where the reference is from a public document to another public document within the submission. (3) Where the reference is from a private document to a public document within the submission. Internal references (bookmarks) are also supported].
<ADDRESS>	Address—Usually italicized.
<B>	Bold.
<BLOCKQUOTE>	Block Quote—Usually indented.
 	Line Break.
<CITE>	Citation.
<CODE>	Code.
<DIR>	Directory List.
<DL>	Definition List—Used with <DT> and <DD>
<DT>	Definition Term.
<DD>	Definition.
<EM>	Emphasized—Like Bold.
<H1>	Heading 1—Largest.
<H2>	Heading 2.
<H3>	Heading 3.
<H4>	Heading 4.
<H5>	Heading 5.
<H6>	Heading 6—Smallest.
<HR>	Horizontal Rule—Displays a thin line across the page separating text.
<I>	Italic.
<IMG>	Embedded graphic file, used with SRC=parameter; Supported formats that may be attached to an HTML document are JPEG (*.jpg) and GIF (*.gif) files.

<KBD>	Keyboard—Preformatted text.
<LI>	List Item—Used by <DIR>, <MENU>, <OL>, and <UL>.
<LISTING>	Listing—Same as <PRE>.
<MENU>	Menu List.
<OL>	Ordered List—Includes numbers.
<P>	Paragraph.
<PLAINTEXT>	Plain Text.
<PRE>	Preformatted Text.
<SAMP>	Sample—Uses fixed width font—Like <PRE>.
<STRIKE>	Strikethrough.
<STRONG>	Strong—Similar to bold.
<TT>	Teletype—Uses fixed width font—Like <PRE>.
<U>	Underlined.
<UL>	Unordered List—Bullets only.
<VAR>	Variable—Uses fixed width font—Like <PRE>.
<XMP>	Example—Same as <PRE>.
<BIG>	Big Text—Increases font size.
<CAPTION>	Caption—Can only be used with tables.
<CENTER>	Centers elements between tags.
<DFN>	Definition—Like <I>.
<DIV>	Division—Helps separate a document into parts.
<FONT>	Allows alteration of font contained within tags.
<SMALL>	Small Text—Decreases font size.
<SUB>	Subscript.
<SUP>	Superscript.
<TABLE>	Table [NOTE: No HTML documents with nested <TABLE> tags are to be accepted or disseminated by EDGAR].
<TD>	Table Data or Cell.
<TH>	Table Header—Displayed in bold.
<TR>	Table Row.
	Acceptable Legacy SGML Tags—Within HTML Documents
Non-Standard Tags	Definition.
<PAGE>	SGML tag for page markers (browsers will ignore this tag if present).
<R>	[NOTE: The <R> tag can also be represented as &ltR&gt].
</R>	[Second NOTE: the <R> tag will not be publicly disseminated; it is for SEC use only.]
<SEGMENTS>	
</SEGMENTS>	
<MODULE>	
<NAME>	
<CIK>	
<CCC>	
</MODULE>	For incorporation of document text by the EDGAR system. [NOTE: These tags will not be publicly disseminated.] [Second NOTE: Module and segment references within HTML documents ("Type 1" references) are not supported.]

Appendix B—Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Item 601 of Regulation S-B [1] under the Securities Act of 1933 (Securities Act); [2]; Item 601 of Regulation S-K [3] under the Securities Act; Rules 110 and 483 [4] under the Securities Act; Forms S–2, S–3, and S–8 [5] under the Securities Act; Rules 11, 12, 103, 104, 105, 302, 303, 304, 311, and 501 of Regulation S-T; [6] Rule 0–2 [7] under the Exchange Act of 1934 (Exchange Act); [8] Rule 21 [9] and Forms U5S, U–1, U–13–60 and U–3A–2 [10] under the Public Utility Holding Company Act of 1935 (Public Utility Act); [11] Rule 0–5 [12] under the Trust Indenture Act of 1939 (Trust Indenture Act); [13] Rules 8b-2, 8b-23, and 8b-32, [14] and Form N-SAR, [15] under the Investment Company Act of 1940 (Investment Company Act); [16] and Form ET [17] under the Securities Act, the Exchange Act, the Public Utility Act, the Trust Indenture Act, and the Investment Company Act; and the removal of Rules 401 and 402 [18] under Regulation S-T, as set forth in Release Number 33–7803 (together, the Proposals), if adopted, would not have a significant economic impact on a substantial number of small entities.

The Proposals would not have a significant economic impact on a substantial number of small entities because they would only expand the features available for filers under one of their options for making their submissions on the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, which they may choose to use on a voluntary basis; remove the requirement for submission of financial data schedule exhibits; remove diskettes [19] and add Internet transmission as a means of submitting EDGAR filings; and make technical corrections to current rules. Therefore, the Proposals would not have a significant economic impact on a substantial number of small entities.

[1] 17 CFR 228.601.

[2] 15 U.S.C. 77a *et seq.*

[3] 17 CFR 229.601.

[4] 17 CFR 230.110 and 230.483.

[5] 17 CFR 239.12, 239.13, and 239.16b.

[6] 17 CFR 232.11, 232.11, 232.12, 232.103, 232.104, 232.105, 232.302, 232.303, 232.304, 232.311 and 232.501.

[7] 17 CFR 240.0–2.

[8] 15 U.S.C. 78a, *et seq.*

[9] 17 CFR 250.21.

[10] 17 CFR 259.5a, 259.101, 259.313 and 259.402.

[11] 15 U.S.C. 79a, *et seq.*

[12] 17 CFR 260.0–5.

[13] 15 U.S.C. 77sss, *et seq.*

[14] 17 CFR 270.8b-2, 270.8b-23 and 270.8b-32.

[15] 17 CFR 274.101.

[16] 15 U.S.C. 80a-1 *et seq.*

[17] 17 CFR 239.62, 249.445, 259.601, 269.6 and 274.401.

[18] 17 CFR 232.401 and 232.402.

[19] Approximately one percent of filers use this method of electronic transmission.

February 8, 2000.
Arthur Levitt

[FR Doc. 00–5045 Filed 3–2–00; 8:45 am]
BILLING CODE 8010–01–p

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–N–10]

Negotiated Rulemaking Committee on Operating Fund Allocation; Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Negotiated Rulemaking Committee Meetings.

SUMMARY: This document announces a meeting of the Negotiated Rulemaking Committee on Operating Fund Allocation. These meetings are sponsored by HUD for the purpose of discussing and negotiating a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs).

DATES: The committee meeting will be held on March 7 and March 8, 2000. On March 7, 2000, the meeting will begin at approximately 9:30 am and end at approximately 5:30 pm. On March 8, 2000, the meeting will begin at approximately 9 am and end at approximately 4 pm.

ADDRESSES: The committee meeting will take place at the Channel Inn, 650 Water Street, SW, Washington, DC 20024; telephone 1–800–368–5668.

FOR FURTHER INFORMATION CONTACT: Steve Sprague, Funding and Financial Management Division, Office of Public and Indian Housing, Room 4216, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of HUD has established the Negotiated Rulemaking Committee on Operating Fund Allocation to negotiate and develop a proposal that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs). The establishment of the committee is required by the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, approved October 21, 1998) (the "Public Housing Reform Act"). The Public Housing Reform Act makes extensive changes to HUD's public and assisted housing programs. These changes include the establishment of an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. The Public Housing Reform Act requires that the assistance to be made available from the new Operating Fund be determined using a formula developed through negotiated rulemaking procedures.

II. Negotiated Rulemaking Committee Meeting

This document announces a meeting of the Negotiated Rulemaking Committee on Operating Fund Allocation. The next committee meeting will take place as described in the **DATES** and **ADDRESSES** section of this document.

The agenda planned for the committee meeting includes the development and review of draft regulatory and preamble language; and the scheduling of future meetings, if necessary.

The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: February 29, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–5294 Filed 3–1–00; 11:30 am]
BILLING CODE 4210–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL164–1a; FRL–6546–7]

Approval and Promulgation of Air Quality Plans; Illinois; Post-1996 Rate of Progress Plan for the Chicago Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve, through parallel processing, a proposed Post-1996 Rate-Of-Progress (ROP) Plan submitted by the State of Illinois for the Chicago Ozone Nonattainment Area. Illinois originally submitted a Post-1996 ROP Plan on December 18, 1997, as a requested revision the State Implementation Plan (SIP) for ozone. A Post-1996 ROP Plan is required for the Chicago Ozone Nonattainment Area under the Clean Air Act (Act). The State submitted proposed amendments to the plan on December 17, 1999, January 14, 2000, and January 21, 2000, with a request for EPA to parallel process a rulemaking on the proposed plan as amended. The purpose of the Post-1996 ROP Plan is to reduce ground-level ozone (smog) pollution in the Chicago Metropolitan Area. The submitted proposed plan shows that Illinois reduced emissions of ozone-forming pollutants by 9% by November 15, 1999. These pollutants include emissions of Volatile Organic Compounds (VOC), and Oxides of Nitrogen (NO_X). The submittal also includes a demonstration that the Chicago Area has achieved a sufficient emission reduction needed to meet contingency measure requirements under the Act. In addition, EPA is proposing in this rulemaking to approve as a revision to the SIP certain Transportation Control Measures (TCM) included in the plan. EPA will take final rulemaking action once Illinois adopts and submits the final Post-1996 ROP Plan. If the final adopted plan is significantly different from the proposed plan, which is the basis of this parallel proposed rulemaking, EPA will repropose its rulemaking.

DATES: Written comments must be received on or before April 3, 2000.

ADDRESSES: You should address written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You can access copies of the SIP revision request and Technical Support Document (TSD) for this rulemaking action at the following address:

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office).

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" are used, we mean EPA.

The supplemental information is organized in the following order:

I. What is EPA proposing to approve in this action?
II. The Post-1996 ROP Plan.
  What is a Post-1996 ROP Plan?
  What is the contingency measure requirement?
  What environmental benefits does the Post-1996 ROP Plan provide?
  What counties are in the Chicago Ozone Nonattainment Area?
  Who is affected by the proposed Illinois Post-1996 ROP Plan?
  What public review opportunities were provided?
  What criteria must a Post-1996 ROP Plan meet to be approved?
  What are the special requirements for claiming NO_x reductions?
III. Illinois' Calculation of the Needed ROP Reduction.
  How does Illinois demonstrate that it meets the requirements for claiming NO_x reductions?
  How did Illinois calculate the needed ROP and contingency measure reduction?
  A. Proportion of VOC to NO_x Emission Reduction.
  B. Emission Baselines.
  C. 1999 Emission Target Level to Meet 9% Reduction.
  D. 1999 Projected Growth Level.
  E. Emission Reduction Needed for 9% Reduction Net-Of-Growth.
  F. Calculation of the Needed Contingency Measure Reduction.
IV. The proposed Illinois Post-1996 ROP Plan Control Strategies.
  What are the criteria for acceptable control strategies?
  What are the control strategies under the proposed Illinois Post-1996 ROP Plan?
  A. Point/Area Sources.
  1. Title IV Acid Rain Power Plant Controls.
  2. 1999 Cold Cleaning Degreasing.
  3. Stepan Batch Processes.
  4. Municipal Solid Waste Landfills.
  5. Coke Oven By-Product Plants.
  B. Mobile/Nonroad Sources.
  1. Enhanced I/M Program.
  2. Phase I Reformulated Gasoline.
  3. Post-1994 Tier 1 Vehicle Emission Rates.
  4. 1992 Vehicle I/M Program Amendments.
  5. Federal Gasoline Detergent Additive.
  6. Federal Non-Road Small Engine Standards.
  7. Federal Non-Road Heavy-Duty Engine Standards.
  8. Clean-Fuel Fleet Vehicle Program.
  9. Energy Policy Act.
  10.TCMs.
  What are the **Federal Register** citations for the federal approval or promulgation of the control measures?
  How were the emission reductions to be achieved through the control strategies calculated?
  What are the emission reductions to be achieved through the control strategies?
V. EPA's approval of the TCMs in the Post-1996 ROP Plan.
  What are TCMs?
  What are the TCMs submitted with the Illinois Post-1996 ROP Plan?
  How do TCMs become approvable as revisions to the SIP?
  Are the Chicago Area 1996–1999 TCMs approvable?
VI. EPA review of the proposed Illinois Post-1996 ROP Plan.
  Why is the proposed Illinois Post-1996 ROP Plan approvable?
  Why is the contingency measure portion of the plan approvable?
VII. Transportation Conformity Mobile Source Budget.
VIII. Proposed Rulemaking Action.
IX. Administrative Requirements.
  A. Executive Order 12866.
  B. Executive Order 13132.
  C. Executive Order 13045.
  D. Executive Order 13084.
  E. Regulatory Flexibility Act.
  F. Unfunded Mandates.
  G. Submission to Congress and the Comptroller General.
  H. National Technology Transfer and Advancement Act.

I. What is EPA Proposing to Approve in This Action?

We are proposing to approve the following:

1. The proposed Post-1996 ROP Plan for the Illinois portion of the Chicago Ozone Nonattainment Area;
2. The proposed contingency measure plan for this area; and,
3. TCMs implemented between 1996 and 1999 in the area.

On December 18, 1997, the State of Illinois submitted the Post-1996 ROP Plan for the Chicago Ozone Nonattainment Area as a requested SIP revision. The plan was submitted to meet the Act's requirement that the State demonstrate a 9% reduction of ozone producing emissions in the Chicago Ozone Nonattainment Area between 1996 and 1999. The State submitted proposed amendments to the plan on December 17, 1999, and January 14, 2000, with a request for EPA to parallel process, pursuant to the provisions of 40 CFR part 51, appendix V, its rulemaking on the proposed plan as amended. On January 21, 2000, Illinois EPA transmitted changes to the December 17, 1999, proposed plan in response to public comments received at the State's January 18, 2000, public hearing on the proposed plan. Our proposed rulemaking is based upon the Illinois proposed plan as amended January 21, 2000.

We are proposing to approve the proposed plan because it adequately demonstrates a 9% emission reduction has occurred in the Chicago Area. We will take final rulemaking action once Illinois adopts and submits the final Post-1996 ROP Plan. If the final adopted plan is significantly different from the proposed plan, we will repropose rulemaking on the plan.

The State also submitted with the proposed Post-1996 ROP Plan a proposed demonstration that the Chicago Area meets the contingency measure requirements of the Act. We are proposing approval of the proposed contingency measure demonstration because it adequately shows a 3% reduction in emissions beyond that which is necessary to meet the 9% ROP plan requirement. As we will do with the Post-1996 ROP plan, once we receive the final adopted demonstration that the State has met its contingency measure requirement for the Post-1996 ROP plan, we will take final rulemaking action, provided that the final demonstration is not significantly different from the proposed demonstration.

We are also proposing to approve certain TCMs submitted with the proposed Post-1996 ROP Plan as a revision to the SIP. The plan relies on these TCMs as part of the overall strategy to meet the 9% emission reduction requirement. To be creditable, the TCMs must be incorporated into the SIP.

II. The Post-1996 ROP Plan

What is a Post-1996 ROP Plan?

An ROP plan is a strategy to achieve timely periodic reductions of emissions that produce ground-level ozone (smog) in areas that are not attaining the ozone National Ambient Air Quality Standards (NAAQS). A Post-1996 ROP Plan demonstrates how ozone-forming emissions affecting an area will be reduced by 9% between 1996 and 1999.

ROP plans are a requirement of the Act under section 182. Section 182(c)(2)(B) requires State ozone nonattainment areas classified serious and above to adopt and implement plans to achieve periodic reductions in ozone precursors (VOC and NO_x) after 1996. The requirement is intended to ensure that an area makes progress

toward achieving attainment of the ozone NAAQS.

The Post-1996 ROP reductions are to occur at a rate of 9%, net of emission growth, averaged over a three-year period. The States must achieve the first three-year 9% milestone, called the "Post-1996 ROP Plan," by November 15, 1999. Because the Chicago Ozone Nonattainment Area is classified as severe, the area is subject to the Post-1996 ROP requirement.

The plan contains: (1) Documentation showing how the State calculated the emission reduction needed on a daily basis to achieve a 9% reduction; (2) a description of the control measures used to achieve the emission reduction; and (3) a description of how the State has determined the emission reduction from each control measure.

On December 18, 1997, we approved a 15% ROP plan for the Chicago Area which showed a 15% VOC emission reduction between 1990 and 1996, as required under section 182(b)(1) of the Act (see 62 FR 66279). This 15% reduction is a measure of progress toward achieving attainment. However, the Chicago nonattainment area has not yet reached attainment of the 1-hour ozone NAAQS through the 15% reduction alone. The Post-1996 ROP Plan will assure continued progress toward achieving attainment by the Act's mandated date of 2007.

What is the Contingency Measure Requirement?

In addition to the Post-1996 ROP Plan, the Illinois submittal also addresses contingency measures required under the Act.

Section 172(c)(9) of the Act requires States with ozone nonattainment areas classified as moderate and above to adopt contingency measures by November 15, 1993. Such measures must provide for the implementation of specific emission control measures if an ozone nonattainment area fails to achieve ROP or to attain the NAAQS within the time-frames specified under the Act.

Section 182(c)(9) of the Act requires that, in addition to the contingency measures required under section 172(c)(9), the contingency measure SIP revision for serious and above ozone nonattainment areas must also provide for the implementation of specific measures if the area fails to meet any applicable milestone in the Act.

As provided by these sections of the Act, the contingency measures must take effect without further action by the State or by the EPA Administrator upon failure by the State to: meet ROP emission reduction milestones; attainment of the NAAQS by the required deadline; or other applicable milestones of the Act.

Our policy, as provided in the April 16, 1992, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498), states that the contingency measures, in total, must generally be able to provide for 3% reduction of 1990 baseline emissions beyond the reduction required for a particular milestone year.

While all contingency measures must be fully adopted rules or measures, States can use the measures in two different ways. A State can choose to implement contingency measures before the milestone deadline. Alternatively, a State may decide not to implement a contingency measure until an area has actually failed to achieve a ROP or attainment milestone. In the latter situation, the contingency measure emission reduction must be achieved within one year following identification of a milestone failure.

In the December 18, 1997, rulemaking approving the 15% ROP Plan for the Chicago Area, we indicated that the 15% ROP Plan had enough emission reductions to provide a 3% reduction beyond the 15% reduction required for 1996. The General Preamble indicates that the 3% reduction "buffer" must be maintained through each ROP milestone. Therefore, Illinois must demonstrate that the Chicago Area has enough contingency measure reductions in addition to the reductions claimed for the Post-1996 ROP Plan. Because of this requirement, Illinois' proposed Post-1996 ROP Plan identifies, for contingency purposes, an emission reduction beyond the reduction required for ROP.

What Environmental Benefits Does the Post-1996 ROP Plan Provide?

The proposed Illinois Post-1996 ROP Plan shows reductions of both Volatile Organic Compound (VOC) and Oxides of Nitrogen (NO_X) emissions. VOC and NO_X) contribute to the formation of ground-level ozone in the atmosphere.

The reactivity of ozone causes health problems because it damages lung tissue, reduces lung function and sensitizes the lungs to other irritants. When inhaled, even at low levels, ozone can:

- Cause acute respiratory problems such as shortness of breath, chest pain, wheezing, and coughing;
- Aggravate asthma;
- Cause significant temporary decreases in lung capacity;
- Cause inflammation of lung tissue;
- Lead to hospital admissions and emergency room visits; and,
- Impair the body's immune system defenses, making people more susceptible to respiratory illness, including bronchitis and pneumonia.

Repeated exposure to ozone pollution for several months may cause permanent structural damage to the lungs.

Because ozone pollution usually forms in hot weather, anyone who spends time outdoors in the summer is at risk, particularly children, moderate exercisers, and outdoor workers. Children are at greatest risk from exposure to ozone because their respiratory systems are still developing and are more susceptible to environmental threats. Children also breathe more air per pound of body weight than adults, thus increasing their exposure.

People with existing lung disease, including asthma, chronic bronchitis, and emphysema, are at particular risk from high ozone levels. Since they already suffer from reduced ability to breathe, these individuals are often greatly affected by the increased impairment that can result from exposure to ozone.

Ozone also affects vegetation and ecosystems, leading to reductions in agricultural and commercial forest yields, reduced growth and survivability of tree seedlings, and increased plant susceptibility to disease, pests, and other environmental stresses (e.g., harsh weather). In long-lived species, these effects may become evident only after several years or even decades, thus having the potential for long-term effects on forest ecosystems. Ground-level ozone damage to the foliage of trees and other plants also can decrease the aesthetic value of ornamental species as well as the natural beauty of our national parks and recreation areas.

The overall 9% ROP reduction includes VOC emissions reductions from sources (industries, vehicles, etc.) within the Chicago Ozone Nonattainment Area, and NOx emission reductions from sources within the State boundaries, but outside the Chicago Ozone Nonattainment Area.

Although the proposed plan's NOx reductions come from outside the nonattainment area, the reductions are nonetheless creditable toward meeting the overall required ROP reduction. (See "What are the special requirements for claiming NOx reductions?," below). This is because downstate NOx emissions contribute to ozone formation in the Chicago Ozone Nonattainment Area, and reducing such emissions

helps the Chicago Area achieve attainment of the ozone NAAQS.

It should be noted that the Illinois ROP plan documentation refers to the term "Volatile Organic Material" (VOM) rather than VOC. The State's definition of VOM is equivalent to EPA's definition of VOC. The two terms are interchangeable when discussing volatile organic emissions. For consistency with the Act and EPA policy, we are using the term VOC in this rulemaking.

What Counties are in the Chicago Ozone Nonattainment Area?

The Illinois portion of the Chicago Ozone Nonattainment Area includes the counties of Cook, DuPage, Kane, Lake, McHenry, and Will, and the townships of Aux Sable and Goose Lake in Grundy County, and Oswego in Kendall County.

Who is Affected by the Proposed Illinois Post-1996 ROP Plan?

The proposed Post-1996 ROP Plan does not create any new control requirements. Rather, it is a demonstration that existing regulations and control programs will achieve a 9% emission reduction.

The proposed Post-1996 ROP Plan refers to various emission control regulations that have contributed to achieving the 9% emission reduction for the Chicago Area. These regulations, both federal and State, affect a variety of industries, businesses, and, through the vehicle inspection and maintenance program, motor vehicle owners. However, these regulations are already federally enforceable through SIP revision or EPA promulgation.

The TCMs submitted with the proposed Post-1996 ROP Plan are the only State ROP measures that are not already part of the federally approved SIP. We are proposing to approve these TCMs in this rulemaking action, and we discuss the TCM proposed approval in part V of this document.

What Public Review Opportunities Were Provided?

The Illinois Environmental Protection Agency (Illinois EPA) held a public hearing on October 24, 1997, in Chicago, Illinois, to receive public comment on the proposed plan. The State held an additional public hearing for amendments to the proposed plan on January 18, 2000, in Chicago, Illinois. The State's comment period closed on February 8, 2000. Illinois EPA will formally respond to the comments, and will submit a Responsiveness Summary to us when it submits its final Post-1996 ROP Plan.

What Criteria Must a Post-1996 ROP Plan Meet to be Approved?

Section 182(c)(2)(B) establishes certain elements a Post-1996 ROP Plan must satisfy for approval. These elements are: (1) Emission baseline; (2) emission target level; (3) accounting for growth projections; and (4) emission reduction estimates from plan control measures. Through these elements, the plan must show that the nonattainment area will achieve a 9% emission reduction by November 15, 1999.

We have issued several guidance documents for States to use in developing approvable Post-1996 ROP Plans. These documents address such topics as: (1) The relationship of ROP plans to other SIP elements required by the Act; (2) calculation of baseline and emission target level; (3) procedures for projecting emission growth; and (4) methodology for determining emission reduction estimates for various control measures, including federal emission control measures.

Our January 1994, guidance document, *Guidance on the Post-1996 Rate-Of-Progress Plan and the Attainment Demonstration*, provides States with the appropriate methods to calculate the emission reductions needed to meet the 9% ROP requirement. A complete list of ROP guidance documents is provided in the TSD for this rulemaking, which can be obtained from the Region 5 office at the address indicated above.

What are the Special Requirements for Claiming NO_X Reductions?

If a Post-1996 ROP Plan relies on NO_X reductions, it is subject to certain requirements. Under section 182(c)(2)(C) of the Act, a plan can substitute NO_X reductions for VOC if the resulting ozone reduction is at least equivalent to the ozone reduction that would occur under a plan that relies only on VOC reductions. As required by section 182(c)(2)(C), we issued guidance concerning the conditions for demonstrating equivalency. Our guidance provides that the NO_X substitution strategy must show that the sum of the creditable VOC and NO_X reductions equal a 9% reduction from 1990 baseline emissions. Moreover, the State must provide technical justification that the NO_X reductions will reduce ozone concentrations within the area.

On December 29, 1997, we issued a policy memorandum entitled, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS." The policy provides that States included in the core part of the Ozone Transport Assessment Group (OTAG) domain can claim credit for NO_X reductions that occur within the State's boundaries. (For more information on OTAG, see http://www.epa.gov/ttn/rto/otag). Illinois is within the core OTAG domain. Consequently, the State can claim NO_X reductions from outside the Chicago Ozone Nonattainment Area, but within the State's boundaries, for its Post-1996 ROP Plan, provided the State submits a technical analysis showing that NO_X reductions will reduce ozone concentrations in the nonattainment area.

The December 1997 policy also states that a nonattainment area which has been granted a NO_X waiver can still claim NO_X reductions from outside the nonattainment area, but within the State's boundaries, if such reductions will reduce ozone concentrations within the nonattainment area. We granted a NO_X waiver for the Chicago Ozone Nonattainment Area on January 26, 1996 (61 FR 2428). NO_X waivers are allowed under section 182(f) of the Act. A State can obtain a waiver to exempt an area from local NO_X control requirements if it can show that local NO_X reductions are not beneficial for attainment of the ozone NAAQS. Illinois made this demonstration for the Chicago Ozone Nonattainment Area, and a NO_X waiver was granted. However, OTAG modeling has shown that several NO_X waiver areas actually benefit from NO_X reductions downwind. Therefore, under the December 1997 policy, a State can credit NO_X reductions outside a NO_X waiver area, but within the State's boundaries, if the State provides a technical analysis showing the reductions will lower ozone concentrations within the nonattainment area.

III. Illinois' Calculation of the Needed ROP Reduction

How Does Illinois Demonstrate That It Meets the Requirements for Claiming NO_X Reductions?

To justify claiming attainment area NO_X reductions for ROP, Illinois submitted results of both the OTAG regional ozone modeling study, and ozone modeling done in January 1999 by the Lake Michigan Air Directors Consortium. The modeling results show that downstate NO_X reductions contribute to a reduction of ozone background concentrations in the Chicago Area. Illinois, therefore, satisfies the requirement set forth in the December 1997 policy that NO_X reductions outside the nonattainment area must reduce ozone concentrations

within the nonattainment area to be creditable as ROP reductions.

How Did Illinois Calculate the Needed ROP and Contingency Measure Reduction?

The following tables summarize the State's Post-1996 ROP calculations for determining the needed 9% ROP and 3% contingency measure emission reductions.

Required Emission Reduction by 1999 for the Chicago Area

ROP based on NO_X Substitution in the Ozone Attainment Area

NEEDED VOC REDUCTION BY 1999

	Tons VOC/day
Calculation of the VOC Target Level for 1999	
1990 Chicago Area Total VOC Emissions	1,363.40
1990 ROP VOC Emissions (Anthropogenic only)	1,216.56
1990–99 Noncreditable Reductions	179.57
1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions)	1,036.99
2% of Adjusted Base Year Emissions	20.74
1999 Fleet Turnover Correction Factor	28.46
1996 Target Level (From 15% ROP Plan)	857.02
1999 Target Level (1996 Target Level minus 2% Reductions minus Fleet Turnover Correction Factor)	807.82
Calculation of the Needed VOC Reduction Net-of-Growth	
1996 VOC Emissions with 15% ROP Plan Measures	835.81
1999 Projected VOC Emissions (1996 VOC Emissions Grown to 1999 plus Noncreditable Emission Reductions Only)	929.61
VOC Creditable Reduction Needs by 1999 Net-of-Growth (1999 Projected Emissions minus 1999 Target Level)	121.79
Contingency Measure Requirement (3% of Adjusted Base Year Emissions)	31.11
TOTAL VOC EMISSION REDUCTIONS REQUIRED	152.90

NEEDED NO_X REDUCTION BY 1999

	Tons NO_X/day
Calculation of the NO_X Target Level for 1999	
1990 Attainment Area Total NO_X Emissions	2085.80
1990 ROP NO_X Emissions (Anthropogenic only)	2085.80
1990–99 Noncreditable Reductions	128.26
1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions)	1957.54
7% of Adjusted Base Year Emissions	137.03
1999 Target Level (1990 Adjusted Base Year Emissions minus 7% Reductions)	1820.51
Calculation of the Needed NO_X Reduction Net-of-Growth	
1999 Projected NO_X Emissions (1996 NO_X Emissions Grown to 1999 plus Noncreditable Emission Reductions Only)	2063.03
Creditable Reduction Needs by 1999 Net-of-Growth (1999 Projected Emissions minus 1999 Target Level)	242.52
Contingency Measure Requirement (All Contingency Coming From VOC Portion of ROP Plan)	0
TOTAL NO_X EMISSION REDUCTION REQUIRED	242.52

Using EPA guidance, Illinois calculated the needed emissions reduction by taking the following steps:

A. Determine what proportion of the 9% reduction is VOC and what proportion is NO_X.

B. Establish the emission baselines for both VOC and NO_X.

C. Calculate the emission target levels to meet the overall 9% reduction by 1999.

D. Estimate the projected emission growth that would occur if no 9% emission reduction takes place.

E. Subtract the projected emission level from the emission target to determine the VOC and NO_X emission reduction needed, net of growth.

F. Calculate the needed contingency measure reduction.

The State obtained data for developing the plan from the Chicago Ozone Nonattainment Area 15% ROP Plan, EPA guidance documents, and information received from industry and public agencies.

A. Proportion of VOC to NO_X Emission Reduction

Illinois' proposed Post-1996 ROP Plan relies on both VOC and NO_X reductions to meet the 9% reduction in ozone precursors. Under Illinois' proposed plan, 2% of the required ROP reductions are VOC reductions in the Chicago Ozone Nonattainment Area, and 7% are NO_X reductions from within the State, but outside the ozone nonattainment area.

VOC = 2%; NO_X = 7%	

B. Emission Baselines

Under our Post-1996 policy, plans that rely on both VOC and NO_X reductions should have separate emission baselines for each pollutant. The Act requires baselines to represent 1990 anthropogenic emissions on a peak ozone season weekday basis. Peak ozone season weekday emissions represent the average daily emissions of weekdays

that occur during the peak 3-month ozone period of June through August.

Illinois used the Chicago Area's 1990 base year emission inventory as the basis for the VOC baseline. We approved the Chicago Area 1990 inventory as a SIP revision on March 14, 1995 (see 60 FR 13631). dddd

For the NO_X baseline, Illinois used the 1990 statewide NO_X emission inventory it submitted to EPA in response to the NO_X SIP Call (see **Federal Register** 63 FR 57356, October 27, 1998). The NO_X baseline consists of the 1990 emissions which occurred statewide, but excluding emissions from the Chicago and Metro-East St. Louis ozone nonattainment areas. The State excluded the nonattainment area emissions from the baseline because the State is relying on NO_X reductions only from the State's ozone attainment area, and because the State has an approved waiver from NO_X emission controls in the Chicago Ozone Nonattainment Area. Illinois EPA's technical analysis for supporting NO_X substitution shows that NO_X reductions which occur in the attainment area reduces ozone concentrations in the Chicago Ozone Nonattainment Area. Therefore, Illinois' NO_X baseline is consistent with the technical analysis Illinois submitted for justifying NO_X substitution in the Chicago Ozone Nonattainment Area.

The Act requires that the ROP baseline be "adjusted" to exclude emissions eliminated by the Federal Motor Vehicle Control Program (FMVCP) and Federal Reid Vapor Pressure (RVP) regulations promulgated before November 15, 1990. Because these regulations were promulgated before the 1990 amendments to the Act, the Act prohibits States from claiming ROP reductions from these regulations. To achieve an accurate ROP target, however, the State must subtract the noncreditable reductions from the baseline to reflect the impact of these reductions on 1999 emissions. The resulting inventory is called the "adjusted base year inventory."

The adjusted base year inventory under the proposed Illinois Post-1996 ROP Plan is different than the adjusted inventory used under the 15% ROP Plan. This is because the emission reduction associated with the FMVCP program change over time as fleet turnover occurs, *i.e.*, old vehicles in an area are replaced with new vehicles. Illinois EPA determined the emission reduction associated with the noncreditable FMVCP and RVP programs by using our MOBILE emission factors program.

C. 1999 Emission Target Level To Meet 9% Reduction

After the State establishes the adjusted base year emission inventories, the next step is to calculate the VOC and NO_X emission target levels for 1999. The January 1994 EPA policy document, *Guidance on the Post-1996 Rate-Of-Progress Plan and the Attainment Demonstration*, provides the method for calculating target levels. To calculate the VOC target, the State first identified the previous milestone target, which in this case is the 1996 target level under the 15% plan. From the 1996 target level, the State subtracted (1) the percent reduction required to meet the ROP requirement, and (2) the fleet turnover correction factor.

The State obtained the 1996 VOC target level from the 15% ROP Plan. The percent reduction used is 2% of the adjusted base year inventory. The fleet turnover correction factor represents the emission reduction that has occurred under the pre–1990 Act FMVCP and RVP regulations between consecutive milestone years, *i.e.*, 1996 to 1999. Since the 1996 target level and the 2% ROP reduction do not factor in these reductions, the fleet turnover correction factor is necessary to accurately calculate the emission level that must be achieved by 1999.

For NO_X, a 1996 target level from a 15% plan does not exist. Therefore, the State needs only to subtract the 7% adjusted emission inventory reductions, and the noncreditable NO_X reductions from the pre–1990 Act FMVCP program, from the 1990 adjusted base year emission inventory. No fleet correction factor is necessary when calculating the NO_X target this way.

D. 1999 Projected Growth Level

To account for source emission growth between 1990 and 1999, the State must develop a projected emission inventory for both VOC and NO_X. The projected emission inventory represents what emissions would be in 1999 if no control measure claimed for credit in the Post-1996 ROP Plan had occurred.

The State established the projected emission inventories for point, and nonroad source categories by taking the 1990 emission inventories and applying either EPA growth factors, or State justified growth factors. Projected vehicle emissions were established using the MOBILE model. The projected emission inventory for NO_X is consistent with the emission inventory data which the State submitted to us in response to the NO_X SIP call.

E. Emission Reduction Needed for 9% Reduction Net-Of-Growth

According to the State's calculations, a 152.90 TPD VOC emission reduction is needed in the Chicago Ozone Nonattainment Area, and a 242.52 TPD NO_X emission reduction is needed in the Illinois Ozone Attainment Area to meet the 9% ROP requirement.

F. Calculation of the Needed Contingency Measure Reduction

Consistent with guidance provided in the General Preamble, Illinois determined the needed contingency measure reduction by multiplying 3% of the 1990 adjusted base year emissions. Based on this calculation, the needed contingency measure reduction for the Chicago Area is 31.11 TPD of VOC.

IV. The Proposed Illinois Post-1996 ROP Plan Control Strategies

What Are the Criteria for Acceptable Control Strategies?

Under section 182(b)(1)(C) of the Act, emission reductions claimed for ROP must be creditable to the extent that the reductions have actually occurred before the applicable ROP milestone date, *i.e.*, November 15, 1999.

To meet this requirement, our policy provides that all credited emission reductions must be real, permanent, and enforceable. In addition, the plan's control measures must be adopted and implemented before November 15, 1999.

Post-1996 plans must also adequately document the methods used to calculate the emission reduction for each control measure. Our policy under the "General Preamble" (see 57 FR 13567) provides that, at a minimum, the methods should follow the following four principles: (1) Emission reductions from control measures must be quantifiable; (2) control measures must be enforceable; (3) interpretation of the control measures must be replicable; and (4) control measures must be accountable.

Section 182(b)(1)(D) of the Act places limits on what control measures States can include in ROP plans. All permanent and enforceable control measures occurring after 1990 are creditable with the following exceptions: (1) FMVCP requirements promulgated by January 1, 1990; (2) RVP regulations promulgated by November 15, 1990; (3) Reasonably Available Control Technology (RACT) "Fix-Up" regulations required under section 182(a)(2)(A) of the Act; and (4) Inspection and Maintenance (I/M) program "Fix-Ups" as required under section 182(a)(2)(B) of the Act.

What Are the Control Strategies Under the Proposed Illinois Post-1996 ROP Plan?

A. Point/Area Sources

1. Title IV Acid Rain Power Plant Controls

This federal regulation requires certain power plants to limit NO_X emissions to reduce acid rain. These NO_X reductions, in turn, benefit the Chicago Area in dealing with its ozone nonattainment problem.

Phase I of the acid rain regulation began on January 1, 1996, and Phase II began January 2000. Illinois is claiming credit for only those NO_X control measures that certain power plants have implemented to meet the Federal acid rain rules.

The power plants that Illinois is claiming NO_X reductions from are the following:

Plant name	Unit(s)	Control technology	Emission reduction NO_X TPD
Illinois Power	Baldwin 1	Selective Catalytic Reduction	50.00
Illinois Power	Baldwin 2	Selective Catalytic Reduction	44.85
Illinois Power	Baldwin 3	Low NO_X Burner	16.10
Illinois Power	Vermillion 1–2	Low NO_X Burner	5.48
Illinois Power	Hennepin 1–2	Boiler Tuning Modifications	3.78
Electric Energy	Joppa 1–6	Low NO_X Burner	51.85
Commonwealth Edison	Powerton 5–6	Change to Low-Sulfur Coal	14.30
Dominion Energy	Kincaid 1–2	Change to Low-Sulfur Coal	18.39
Cilco	Edwards 2–3	Low NO_X Burner	17.18

Baldwin 3, Vermillion 1–2, Hennepin 2, and Joppa 1–6 are subject to Phase I NO_X emission rates under the acid rain rule. Powerton 5–6 and Kincaid 1–2 were required to change to low-sulfur coal to meet sulfur dioxide limitations under the acid rain rules; low-sulfur coal has reduced NO_X emission rates at these plants.

Baldwin 1–2, and Edwards 2–3 are subject to the acid rain Phase II NO_X emission limitations, which take effect January 2000. NO_X reductions from these sources are creditable because the sources implemented control measures to meet the Phase II acid rain requirements prior to November 15, 1999. The State determined emission reductions using OTAG data, as well as data from Continuous Emission Monitors (CEM) at the plants.

2. 1999 Cold Cleaning Degreasing

This rule establishes vapor pressure standards for cold cleaning degreasing solvents sold or used in the Chicago Ozone Nonattainment Area. Cold cleaning degreasing takes place at auto repair shops, car dealerships, machine shops and other metal fabrication, and manufacturing businesses. Cold cleaning degreasers typically consist of a holding tank containing solvent, connecting hoses, and a small vat where components are sprayed and brushed clean. The rule regulates both the suppliers and users of cold cleaning degreasing solvents in the nonattainment area. Beginning March 15, 1999, the rule limits the vapor pressure of solvent to 2.0 millimeters of mercury (0.038 pounds per square inch) measured at 20 degrees Celsius (68 degrees Fahrenheit).

3. Stepan Batch Processes

On April 2, 1996, we approved Illinois' batch process RACT rule as a revision to the SIP. Under the rule, the process vents at batch operations must be controlled with a reduction efficiency of 90 percent (or down to a VOC concentration of no more than 20 parts per million volume). Illinois had claimed credit for the rule under the 15% plan. However, at the time of rulemaking on the 15% plan, we did not allow credit for controls at Stepan Company's Milldale facility, because of the uncertainty whether the controls were implemented before or after 1990. As part of the December 17, 1999, Post-1996 ROP amended submittal, Illinois submitted documentation showing that the controls were implemented after 1990. Therefore, we are proposing to approve credit for the emission reductions which occurred at Stepan Company.

4. Municipal Solid Waste Landfills

On November 23, 1998 (63 FR 64628), we approved Illinois' section 111(d)/129 State Plan for municipal solid waste landfills. The State Plan includes regulations requiring the control of Non-Methane Organic Compound (NMOC) emissions at existing landfills that have a design capacity threshold of equal to or above 2.5 million megagrams (Mg) measured in mass units and 2.5 million cubic meters (m3) measured in volume units, and have an annual emissions equal to or above 50 Mg/year of NMOC gases. The rule adopts our March 12, 1996, Emission Guidelines for this source category (see 61 FR 9905). Subject landfills must install a well-designed and well-operated collection and control system to reduce NMOC gases. A portion of NMOC is VOC, and therefore landfill controls are creditable toward the ROP plan. In the Chicago Ozone Nonattainment Area, there are twelve landfills which have installed and are operating the required gas collection and control systems pursuant to construction permits.

5. Coke Oven By-Product Plants

This Federal NESHAP applies to all furnace and foundry coke oven by-product recovery plants. The NESHAP requires that process vessels and tar storage tanks in furnace and foundry coke by-product recovery plants be enclosed and emissions ducted to an enclosed point in the by-product recovery process where they will be recovered or destroyed. This requirement is based on the use of a gas blanketing system. The same requirement also applies to storage tanks for benzene, benzene-toluene-xylene mixtures, and light-oil in furnace coke by-product recovery plants. The standard also calls for visual inspections and monitoring (leak detection and repair) as well as annual maintenance inspections.

It should be noted that Illinois originally claimed credit in the December 18, 1997, submitted Post-1996 ROP Plan for the Emission Reduction Marketing System (ERMS), a new State regulation establishing a VOC cap and trade requirement for Chicago Area stationary sources. However, the ERMS program has been delayed beyond November 15, 1999. Therefore, Illinois is not claiming credit in the proposed Post-1996 ROP Plan for ERMS.

However, Illinois EPA plans to rely on the ERMS program in future ROP plans.

B. Mobile/Nonroad Sources

1. Enhanced I/M Program

The Act requires Illinois to establish an enhanced vehicle I/M program in the Chicago Area to achieve a higher emission reduction than the State's original I/M program. Enhanced I/M covers more vehicles in operation in the fleet and employs more effective techniques for finding high emitting vehicles. The new program also has additional features to ensure that all vehicles are tested properly and are effectively repaired.

We approved the Illinois' enhanced I/M program for the Chicago Ozone Nonattainment Area on February 22, 1999 (64 FR 8517). The State began testing vehicles under the new program on February 1, 1999.

A single contractor, Envirotest, Inc., operates a test-only centralized network for inspections and re-inspection. The I/M contractor has constructed or retrofitted all the emission test sites required under the State I/M contract.

The Illinois I/M program requires coverage of all 1968 and newer gasoline-powered light-duty passenger cars and light-duty trucks up to 8,500 pounds Gross Vehicle Weight Rating (GVWR). The program requires all applicable 1981 and newer vehicles to meet an IM240 exhaust test (a test that simulates actual driving conditions using a dynamometer). These vehicles must also undergo a gas cap check to reduce evaporative emissions. All applicable 1968 through 1980 vehicles will be subject to a basic idle emission exhaust test. The frequency of the test is biennial, with the first four years of a new vehicle excluded.

Due to the delay in implementation of the enhanced I/M program, we requested Illinois EPA to revise its original estimate from 30.10 TPD to 15 TPD emission reduction, which represents only the level of emission reduction that occurred between February 1, 1999, and November 15, 1999. Since the 15 TPD reduction does not represent the Illinois' program full cutpoints, additional emission reduction credit will be available for use in future ROP plans.

2. Phase I Reformulated Gasoline

Beginning January 1, 1995, EPA regulations require only reformulated gasoline to be sold in the Chicago Ozone Nonattainment Area. Reformulated gasoline is specially designed to result in less VOC emissions occurring from motor vehicle operation and gasoline evaporation. Illinois ran our MOBILE model and determined that Phase I of the reformulated gasoline requirement achieved 65.5 TPD of reductions in the Chicago Area in 1999.

3. Post-1994 Tier 1 Vehicle Emission Rates

Pursuant to section 202 of the Act, we promulgated new standards that tighten emission control requirements for passenger cars and light-duty trucks, called "Tier I" standards. The standards, fully effective in 1996, are approximately twice as stringent as pre-1990 vehicle standards.

Tier I standards require both VOC and NO_X reduction. Illinois is claiming VOC reductions from Tier I that occur within the Chicago Ozone Nonattainment Area, and NO_X reductions that occur within the Illinois Ozone Attainment Area.

4. 1992 Vehicle I/M Program Amendments

In 1992, Illinois added improvements to its original I/M program as a result of an agreement resolving a lawsuit between Wisconsin and EPA. Illinois added a tamper check and two-speed idle test to the basic I/M program in the Chicago metropolitan area. The State also increased the coverage of the program over the Chicago metropolitan area. Illinois fully implemented these changes to the I/M program in 1992.

5. Federal Gasoline Detergent Additive

Beginning January 1, 1995, federal regulations require that gasoline sold nationwide must contain additives to prevent accumulation of deposits in engines and fuel systems. Preventing such deposits maintains the efficiency of engine systems and reduces VOC emissions resulting from engine efficiency degradation.

6. Federal Non-Road Small Engine Standards

Illinois is claiming emission reduction credit from two federal rules which affect gasoline nonroad engines, the 1995 federal emission standards for nonroad engines at 25 horsepower (hp) and below, and the 1996 marine gasoline engine standards.

The nonroad engine standards, beginning in model year 1997, primarily affects two stroke and four stroke lawn and garden equipment, and light commercial, construction, and logging equipment. The marine engine rule applies to marine spark-ignition engines for outboards, personal watercraft, and jet boats, beginning in model year 1998.

The State estimated the emission reduction for these standards through using our guidance document, "Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards," dated November 28, 1994.

The State also claimed an emission reduction for the impact the reformulated gasoline program has on nonroad engines. Our guidance document, "VOC Emission Benefits for Nonroad Equipment with the Use of Federal Phase I Reformulated Gasoline," dated August 18, 1993, provides the methodology for determining the emission reduction impact of reformulated gasoline on nonroad engines.

7. Federal Non-Road Heavy-Duty Engine Standards

In 1994, we promulgated national NO_X emission standards for large nonroad Compression Ignition (CI) engines at 50 hp and above. Such engines include farm tractors, bulldozers, and forklifts. This standard is the "Tier 1" standard for CI engines at or above 50 hp. Implementation of the standard began January 1, 1996. Illinois is claiming credit for the NO_X reductions this regulation achieves in the Illinois Ozone Attainment Area.

8. Clean-Fuel Fleet (CFF) Vehicle Program

The State has a CFF rule which requires certain vehicle fleets in the Chicago Ozone Nonattainment Area to purchase vehicles with tighter emission standards than conventional vehicles. The program affects fleets with ten or more vehicles which can be centrally fueled. Beginning with model year 1999, these fleets must ensure that a certain percentage of new vehicle acquisitions are certified to meet EPA's Low Emission Vehicle (LEV) emission standards. In model year 1999, 30% of new light-duty vehicle acquisitions, and 50% of heavy-duty vehicle acquisitions made by covered fleets must be certified LEVs.

9. Energy Policy Act

The National Energy Policy Act (EPAct) was enacted in October 1992. EPAct mandates implementation (use) of Alternative Fueled Vehicles (AFVs) in federal, State, and utility fleets. EPAct requires that 25% of new vehicle purchases by federal fleets, 10% of new vehicle purchases by State fleets, and 30% of new vehicle purchases by utility fleets must be AFVs beginning in 1996. Illinois EPA estimated that, by 1996, 2,000 AFVs were operating in the Chicago Area.

10. TCMs

See part V of this rulemaking action, "EPA's approval of the TCMs in the

Post-1996 ROP Plan," for a description of the TCMs for which Illinois is claiming credit to meet the 9% reduction requirement.

What Are the Federal Register Citations for the Federal Approval or Promulgation of the Control Measures?

FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES

Control measure	Date of EPA approval or promulgation
Title IV Acid Rain Power Plant Controls	Federal Regulation, 40 CFR 72–78, April 13, 1995 (60 FR 18761).
1999 Cold Cleaning Degreasing	November 26, 1997 (62 FR 6295).
Batch Process Rule	April 2, 1996 (61 FR 14484).
Municipal Solid Waste Landfills	November 23, 1998 (63 FR 64628).
Coke Oven By-Products Recovery NESHAP	Federal Regulation, 40 CFR 61 Subpart L, September 14, 1989 (54 FR 38047).
Enhanced Vehicle I/M Program	February 22, 1999 (64 FR 8517).
Reformulated Gasoline	Federal Regulation, 40 CFR 80, Subpart D, February 16, 1994 (59 FR 7716).
Post-1994 Tier 1 Vehicle Emission Rates	Federal Regulation, 40 CFR 86, June 5, 1991 (56 FR 25724).
1992 Vehicle I/M Program Amendments	April 9, 1996 (61 FR 15715).
Federal Gasoline Detergent Additive	Federal Regulation, 40 CFR 80, Subpart G, November 1, 1994 (59 FR 54706).
TCMs	EPA is proposing approval today. Final rulemaking action will occur on date of final rulemaking action on the Post-1996 ROP Plan.
1992 EPAct	Federal Regulation, 10 CFR 490, March 14, 1996 (61 FR 10621).
Federal Nonroad Small Gasoline Engine Standards.	Federal Regulation, 40 CFR 90, July 3, 1995 (60 FR 34582).
Federal Marine Spark-Ignition Engine Standard	Federal Regulation, 40 CFR 91, October 4, 1996 (61 FR 52087).
Federal Nonroad Large Diesel Engine Standards.	Federal Regulation, 40 CFR 89, June 17, 1994 (59 FR 31306).
CFF Vehicle Program	March 19, 1996 (61 FR 11139).

How Were the Emission Reductions To Be Achieved Through the Control Strategies Calculated?

We have issued several policy documents, listed in the TSD, which provide assumptions for States to use in quantifying emission reductions. We have also developed the MOBILE model for the States to calculate emission reductions from mobile sources.

The State appropriately used our policy documents and MOBILE model for calculating emission reductions. Illinois obtained the necessary data for quantifying the source baselines and emission reductions from its 1990 emission inventory, OTAG documentation submittal, CEM data (for acid rain reductions), permit information, and from surveying affected industries. Where Illinois had to develop its own assumptions regarding emission reductions, the assumptions were adequately justified based on existing data.

It should be noted that Illinois is claiming Post-1996 ROP credit for mobile and nonroad source measures that were part of the 15% ROP Plan, including Tier 1, I/M expansion, Phase I reformulated gasoline, nonroad small engine standards, federal detergent additive, and EPAct. However, no double-counting of emission reductions has occurred, because, unlike other 15% control measures, the State did not consider these measures when calculating the 1999 projected growth inventory. The State treated these reductions separately because the impact of these measures change over time due to fleet turnover.

As noted in part III of this **Federal Register** document, the State calculated the projected growth in emissions assuming no 9% ROP reductions in place, and subtracted the 1999 target from the projected emissions to find the needed reduction net-of-growth. The impact on the plan would be the same if Illinois factored in the above control measures in the 1999 projected growth inventory and had not treated these measures as creditable Post-1996 ROP reductions. Consequently, Illinois can claim reductions from these measures as legitimate Post-1996 ROP reductions.

What Are the Emission Reductions To Be Achieved Through the Control Strategies?

The following tables summarize the State's VOC and NOx reduction claims for the Post-1996 ROP control measures, and the amount of reductions we find acceptable.

Control measure	VOC reduction state claimed tons/day	VOC reduction credit accepted tons/day
Mobile Source Measures		
Post-1994 Tier 1 Vehicle Emission Rates	16.80	16.80
Phase I Reformulated Gasoline	65.50	65.50
Federal Detergent Additive Gasoline	2.20	2.20
1992 I/M Program Improvements	7.00	7.00
Enhanced I/M Program	30.10	15.00
Conventional TCMs	2.00	2.00
National Energy Policy Act of 1992	0.20	0.20
Federal Non-Road Small Engine Standards	23.43	23.43
National Low Emission Vehicle Program	(1)	(1)
Clean Fuel Fleet Vehicle Program	0.30	0.30
Subtotal	147.53	132.43
Industrial Source Measure		
ERMS	(1)	(1)

Control measure	VOC reduction state claimed tons/day	VOC reduction credit accepted tons/day
Stepan Batch Process Rule Credit	9.40	9.40
Municipal Solid Waste Landfill	1.06	1.06
Coke Oven By-Product NESHAP	2.65	2.65
Subtotal	13.11	13.11
Area Source Measures		
1999 Cold Cleaning Degreasing Limits	11.35	11.35
Total 1999 Creditable VOC Reductions	171.99	156.89

[1] Deferred.

Control measure	NO_X reduction state claimed tons/day	NO_X reduction credit accepted tons/day
Mobile Source Measures		
Post-1994 Tier 1 Vehicle Emission Rates	24.30	24.30
Federal Heavy-Duty Non-Road Engine Standards	15.75	15.75
Subtotal	40.05	40.05
Industrial Source Measures		
Title IV Acid Rain Controls	221.92	221.92
Total 1999 Creditable NO_X Reductions	261.97	261.97

V. EPA's Approval of the TCMs in the Post-1996 ROP Plan

What Are TCMs?

TCMs are programs that encompass elements of transportation system management and/or transportation demand management. Transportation system management strategies are typically low capital intensive transportation improvements that increase the efficiency of transportation facilities and services. Transportation demand management involves policies, programs, and actions directed toward increasing the use of high occupancy vehicles (transit, carpooling, and vanpooling), and the use of bicycling and walking.

The Chicago Area Transportation Study (CATS), a Metropolitan Planning Organization (MPO), implements TCMs in the Chicago Area. CATS implements a number of TCM projects to both reduce Vehicle Miles Traveled (VMT) and VOC emissions per VMT. The projects have been programmed and funded through the areas' Transportation Improvement Programs (TIP) under the federal Congestion Mitigation and Air Quality Improvement Program (CMAQ).

The proposed Post-1996 ROP Plan claims emission reduction credit for TCMs implemented between 1990 and 1996 which were not included in the 15% plan, and TCMs implemented between 1996 and 1999.

What Are the TCMs Submitted With the Illinois Post-1996 ROP Plan?

CATS has documented TCM implementation and estimated emission reductions in the following documents:

(1) "Transportation Control Measures Committal to the State Implementation Plan," November 5, 1992;

(2) "Transportation Control Measures Contribution to the 15% Rate of Progress State Implementation Plan," December 9, 1993;

(3) "Transportation Control Measures Contribution to the Control Strategy State Implementation Plan," March 9, 1995;

(4) "Transportation Control Measures Contribution to the Post-1996 Rate-Of-Progress State Implementation Plan," March 22, 1996;

(5) "Transportation Control Measures Contribution to the 9% Control Strategy State Implementation Plan," June 11, 1998; and,

(6) "1999 Transportation Control Measures Contribution to the 9% Rate of Progress Control Strategy State Implementation Plan," December 9, 1999.

The November 5, 1992, document provides a comprehensive discussion of the TCM planning and implementation process in the Chicago region. Illinois submitted the December 9, 1993, and March 9, 1995, documents with the Chicago Area VMT Offset SIP revision, and provided the basis for emission reductions claimed as part of the 15% ROP Plan.

On September 21, 1995, we incorporated into the SIP 127 TCMs when we approved the Illinois' Vehicle Miles Traveled (VMT) Offset SIP (60 FR 48896). As indicated in the September 21, 1995, rulemaking, the combined emission reduction from these TCMs is 2.78 TPD by 1996. Of this reduction, the State claimed 2 TPD in the 15% plan, which leaves 0.78 TPD for use in the 9% ROP plan.

The 1995, 1996, 1998, and 2000 TCM documents demonstrate an additional 1.22 TPD from TCMs which have been implemented by November 15, 1999. These TCMs include:

(1) Improved public transportation, such as fixed guideway transit and rail station infrastructure improvements;
(2) Traffic flow improvements, such as traffic signalization and intersection and road widening;
(3) Increased park and ride service, parking at major transit stations, and fringe parking to serve major highway facilities; and,
(4) Bicycle and pedestrian programs, including increased bicycle lanes and paths, racks and storage facilities, and sidewalks and walkways.

How Do TCMs Become Approvable as Revisions to the SIP?

States can take credit for TCMs that we have approved as revisions to the

SIP. Our requirements for TCMs are summarized in the June 1993, guidance document, "Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans," dated June 1993.

The required elements are:

(1) A complete description of the measure, and, if possible, its estimated emission reduction benefits;

(2) Evidence that the measure was properly adopted by a jurisdiction(s) with legal authority to execute the measure;

(3) Evidence that funding will be available to implement the measure;

(4) Evidence that all necessary approvals have been obtained from all appropriate government offices;

(5) Evidence that the implementing agencies have adopted a complete schedule to plan, implement, and enforce the measure; and

(6) A description of any monitoring program to evaluate the measure's effectiveness and to allow for necessary in-place corrections or alterations.

Are the Chicago Area 1996–1999 TCMs Approvable?

The TCM documents cited above provide the necessary documentation to incorporate into the SIP the TCMs implemented between 1996 and 1999 in the Chicago Ozone Nonattainment Area.

VI. EPA Review of the Proposed Illinois Post-1996 ROP Plan

Why Is the Proposed Illinois Post-1996 ROP Plan Approvable?

We reviewed the documentation submitted with the proposed Post-1996 ROP Plan. From this review, we find that the proposed plan is approvable.

The State provided sufficient justification that the attainment area NO_X reductions will reduce ozone concentrations in the Chicago Ozone Nonattainment Area. Illinois also correctly calculated, following our guidance documents, the emission reduction needed to meet the 9% ROP reduction requirement.

The proposed plan's control measures are creditable because the emissions reductions achieved are real, permanent, and enforceable. All claimed emission reductions from the plan's control measures occurred by November 15, 1999, the Act's deadline by which creditable reductions are to occur.

The State's emission reduction estimates for the control strategies follow our guidance documents, where applicable, and are adequately documented with acceptable emission control assumptions.

Finally, the proposed Post-1996 ROP Plan shows that it will achieve a 9% reduction of ozone precursor emissions affecting the Chicago Ozone Nonattainment Area.

COMPARISON OF NEEDED AND CREDITABLE EMISSION REDUCTIONS

VOC Reduction Needed to Meet 2% ROP.	121.79 TPD
VOC Reduction Needed to Meet 3% Contingency.	31.11 TPD
VOC Reduction Needed for ROP and Contingency.	152.90 TPD
Total Creditable VOC Reduction.	156.89 TPD
NO_X Reduction Needed to Meet 7% ROP.	242.52 TPD
Total Creditable NO_X Reduction.	261.97 TPD

For these reasons, we are proposing to approve Illinois' proposed Chicago Area Post-1996 ROP Plan, under our parallel processing regulations at 40 CFR part 51, appendix V. We will take final rulemaking action once the final adopted plan is submitted, provided that the final submitted plan is not significantly different from the proposed plan.

Why Is the Contingency Measure Portion of the Plan Approvable?

The proposed Post-1996 ROP Plan achieves, in addition to a 9% ozone precursor reduction, a 3% reduction in VOC through creditable control measures. For this reason, the contingency measure portion of the proposed Post-1996 ROP Plan satisfies the contingency measure requirements of the Act. We therefore propose to approve the contingency measure portion of the plan.

VII. Transportation Conformity Mobile Source Budget

In Illinois' December 17, 1999, supplemental submittal, the State clearly identified in the proposed Post-1996 ROP Plan the establishment of the 1999 motor vehicle emissions budget of 279.3 TPD of VOC. The 1999 budget in the supplemental submittal is a revision to the budget in the earlier ROP submission. The revisions in the credit granted for the control strategies resulted in a change to the 1999 on-road mobile source emissions total. This emissions level serves as the emissions budget for determining transportation conformity. This **Federal Register** approval will also approve the 1999 on-road mobile source budget of 279.3 TPD of VOC.

VIII. Proposed Rulemaking Action

In this rulemaking action, we are proposing to approve, through parallel processing, the proposed Illinois SIP revision, submitted on December 18, 1997, December 17, 1999, January 14, 2000, and January 21, 2000, establishing the proposed Post-1996 ROP Plan and contingency measures for the Chicago Ozone Nonattainment Area. We are also proposing to approve certain TCMs which were submitted with the Post-1996 ROP Plan and were implemented between 1996 and 1999. We are taking this action pursuant to parallel processing regulations under 40 CFR part 51, appendix V.

IX. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen Oxides, Ozone, Volatile Organic Compounds.

Dated: February 24, 2000.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 00–5203 Filed 3–2–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–298, MM Docket No. 00–27, RM–9820]

Radio Broadcasting Services; Valley Mills, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Valley Mills Radio proposing the allotment of Channel 237C2 at Valley Mills, Texas, as that community's first local service. The coordinates for Channel 237C2 at Valley Mills are 31–44–52 and 97–44–33. There is a site restriction 27.8 kilometers (17.3 miles) west of the community.

DATES: Comments must be filed on or before April 10, 2000, and reply comments on or before April 25, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–27, adopted February 9, 2000, and released February 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5101 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–297, MM Docket No. 00–28, RM–9796]

Radio Broadcasting Services; Christine, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Christine Radio Broadcasting Company proposing the allotment of Channel 245A at Christine, Texas, as that community's first local FM service. The coordinates for Channel 245A at Christine are 28–42–10 and 98–27–07. There is a site restriction 9.9 kilometers (6.2 miles) south of the community. Mexican concurrence will be requested for the allotment of Channel 245A at Christine.

DATES: Comments must be filed on or before April 10, 2000, and reply comments on or before April 25, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–28, adopted February 9, 2000, and released February 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5100 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–301; MM Docket No. 99–183; RM–9586]

Radio Broadcasting Services; Herlong, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting proposing the allotment of FM Channel 281C2 to Herlong, California, as a first local aural transmission service, for failure to establish that locality is a *bona fide* community for allotment purposes. See 64 FR 30296, June 7, 1999. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–183, adopted February 9, 2000, and released February 18, 2000. The full text of this

Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5099 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–303; MM Docket No. 99–202; RM–9620]

Radio Broadcasting Services; Mountainaire, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting proposing the allotment of FM Channel 293A to Mountainaire, Arizona, as a first local aural transmission service, for failure to establish that locality is a *bona fide* community for allotment purposes. See 64 FR 31174, June 10, 1999. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–202, adopted February 9, 2000, and released February 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5148 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–302; MM Docket No. 99–186; RM–9589]

Radio Broadcasting Services; Mettler, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting proposing the allotment of FM Channel 255A to Mettler, California, as a first local aural transmission service, for failure to establish that locality is a *bona fide* community for allotment purposes. See 64 FR 30294, June 7, 1999. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–186, adopted February 9, 2000, and released February 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5147 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–299, MM Docket No. 00–26, RM–9822]

Radio Broadcasting Services; Pearsall, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by The Pearsall Company proposing the allotment of Channel 277A at Pearsall, Texas, as that community's third local FM service. The coordinates for Channel 277A at Pearsall are 28–56–40 and 99–11–44. There is a site restriction 11.3 kilometers (7.01 miles) northwest of the community. Mexican concurrence will be requested for the allotment of Channel 277A at Pearsall as a specially negotiated short-spaced allotment.

DATES: Comments must be filed on or before April 10, 2000, and reply comments on or before April 25, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW, Suite 900, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–26, adopted February 9, 2000, and released February 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5146 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–372; MM Docket No. 99–335; RM–9771]

Radio Broadcasting Services; Lindale, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rulemaking; withdrawal.

SUMMARY: This document dismisses a petition for rule making filed by Café Broadcasting, Inc. requesting the allotment of Channel 239A at Lindale, Texas. *See* 64 FR 68664, December 8, 1999. Café Broadcasting withdrew its interest in the allotment of Channel 239A at Lindale, Texas. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–335, adopted February 16, 2000, and released February 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5145 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–370; MM Docket No. 99–211; RM–9630]

Radio Broadcasting Services; Winona, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting proposing the allotment of FM Channel 242C3 to Winona, Arizona, as a first local aural transmission service, for failure to establish that locality is a bona fide community for allotment purposes. See 64 FR 31173, June 10, 1999. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–211, adopted February 16, 2000, and released February 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5142 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–394; MM Docket No. 00–33; RM–9816]

Radio Broadcasting Services; Jenner, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Brian Costello, requesting the allotment of Channel 292A to Jenner, California, as that locality's first local aural transmission service. This proposal requires a site restriction 10.1 kilometers (6.3 miles) northwest of Jenner at coordinates are 38–30–55 NL; 123–11–45 WL.

DATES: Comments must be filed on or before April 17, 2000, and reply comments on or before May 2, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Brian Costello, 15275 Old Cazadero Road, Guerneville, CA 95446.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–33, adopted February 16, 2000, and released February 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5141 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–394; MM Docket No. 00–34; RM–9817]

Radio Broadcasting Services; Culver, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Larko Communications, Inc. requesting the allotment of Channel 252A to Culver, Indiana, as that community's first local aural transmission service. Coordinates used for this proposal are the city reference at 41–13–04 NL; 86–25–21 WL.

DATES: Comments must be filed on or before April 17, 2000, and reply comments on or before May 2, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: James R. Cooke, Esq., Harris, Beach and Wilcox, Suite 300, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–34, adopted February 16, 2000, and released February 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5140 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–395; MM Docket No. 99–208; RM–9627]

Radio Broadcasting Services; Melba, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting proposing the allotment of FM Channel 260C2 to Melba, Idaho, as that locality's first local aural transmission service. Petitioner failed to establish that its proposal would provide a 70 dBu signal over the entire boundaries of Melba, as required by Section 73.315 of the Commission's Rules. See 64 FR 31171, June 10, 1999. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–208, adopted February 16, 2000, and released February 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, D.C. 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5138 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–369; MM Docket No. 00–31; RM–9815]

Radio Broadcasting Services; Nogales and Vail, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Desert West Air Ranchers Corporation, licensee of Station KZNO(FM), Channel 252A, Nogales, Arizona, requesting the substitution on Channel 253A for Channel 252A, the reallotment of Channel 253A to Vail, Arizona, as that locality's first local aural transmission service, and modification of its authorization accordingly. Coordinates used for this proposal are 31–55–30 NL and 110–37–30 WL. As Vail is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the requested allotment of Channel 253A at that community is required.

DATES: Comments must be filed on or before April 17, 2000, and reply comments on or before May 2, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, Esq., Shook, Hardy & Bacon, 600 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–31, adopted February 16, 2000, and released February 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5137 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–296, MM Docket No. 00–29, RM–9821]

Radio Broadcasting Services; Big Pine Key, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Satellite Broadcasting Company, requesting the allotment of Channel 239A at Big Pine Key, Florida, as the community's second FM broadcast station. The coordinates for Channel 239A at Big Pine Key are 24–40–00 and 81–21–00.

DATES: Comments must be filed on or before April 10, 2000, and reply comments on or before April 25, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Michael L. Higgs, Schwaninger & Associates, P.C., 1835 K Street, NW, Suite 650, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–29, adopted February 9, 2000 and released February 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5135 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Chapter I

[Docket No. RSPA–00–5143; Notice No. 00–2]

Hazardous Materials Safety: Public Meeting Related to Customer Service and Regulatory Review

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: RSPA will hold a public meeting to seek information from the public on improving safety, reducing costs (especially to small businesses) and increasing customer service through RSPA's management of the national hazardous materials transportation safety program. This meeting is being held in conjunction with a Hazardous Materials Multimodal Training Seminar sponsored by RSPA on March 28 and 29, 2000.

DATES: The public meeting will be held on Wednesday, March 29, 2000, 1 p.m. to 5 p.m.; however, the meeting may end prior to 5 p.m., dependent upon public interest.

ADDRESSES: The public meeting will be held at the Radisson Suite Hotel Meadowland, 350 Route 3 West, Secaucus, NJ (201–863–8700). For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Michael Stevens at the address or phone number listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

FOR FURTHER INFORMATION CONTACT: Michael Stevens, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001. Phone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

Focus on Issues of Interest to Affected Parties

RSPA ("we" and "our") is interested in soliciting comments on the kind and quality of services our customers want and their level of satisfaction with the services we currently provide to promote understanding and compliance with the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). These services include the following:

(1) *Hazardous Materials Information Center (HMIC).* A staff of three persons is available Monday to Friday (except

Federal holidays) between 9 am and 5 pm (Eastern time) to address telephonic inquiries from shippers, carriers, packaging manufacturers and other persons concerning requirements in the HMR for the safe transportation of hazardous materials. In 1999, the HMIC handled more than 28,000 calls. The toll-free number is 1–800–HMR–4922.

(2) *Internet Access.* Our site on the worldwide web (http://hazmat.dot.gov) provides information concerning hazardous materials rulemakings, exemptions, letters of clarification, international activities, incident data, the *2000 Emergency Response Guidebook* and much more.

(3) *Fax on Demand.* For persons who do not have access to the internet, we operate an automated fax-back system that allows callers access to more than 600 pages of informational materials, including letters of clarification and recently published rulemakings, through their own fax machines. A facsimile copy of the catalog of available documents may be obtained by accessing the fax-on-demand feature through our HMIC number 1–800–HMR–4922.

(4) *Training.* To promote compliance with the HMR, we distribute brochures, charts, publications, training materials, videotapes, and other safety-related information to hazmat employers and hazmat employees in the private and government sectors, as well as to the general public. Hazardous materials training is provided to Federal, State and local enforcement agencies, industry, and emergency response personnel. In addition, we provide personal computer based self-study programs through a CD–ROM modular training series.

(5) *Government-Industry Partnerships.* To the extent permitted through our limited resources, we participate in meetings, conferences, training workshops, and the like sponsored by public sector, industry, and international organizations having an interest in the safe transportation of hazardous materials.

Regulations and Administrative Procedures

On December 20, 1999, we published a notice of regulatory review (Docket No. RSPA–99–5143, 64 FR 71098) requesting comments on the economic impact of the regulations on small entities. This year we are analyzing rules in 49 CFR part 106, Rulemaking Procedures, Part 107, Hazardous Materials Program Procedures, and Part 171, General Information, Regulations, and Definitions. Meeting participants are invited to take this opportunity to suggest whether specific rules in these parts should be revised or revoked to lessen the impact on small entities.

We are interested, also, in receiving comments on the quality of our processing of written requests for information, applications for exemption and approval, registration statements, and other administrative actions. Meeting participants are encouraged to provide suggestions on how we may improve our performance in processing these administrative actions.

We welcome all comments on ways to improve understanding and compliance with the HMR, including removal of obsolete requirements, revisions to conflicting or confusing requirements, and the use of plain language in regulations. We will address inquiries concerning new or proposed requirements recently published in rulemaking actions concerning RSPA's registration and fee assessment program (Docket No. RSPA–99–5137; 65 FR 7297, February 14, 2000); harmonization of requirements in the HMR pertaining to the transportation of radioactive materials with standards published by the International Atomic Energy Agency (Docket No. RSPA–99–6283; 64 FR 72633, December 28, 1999); and the permitted use, until October 1, 2001, of internationally recognized POISON and POISON GAS labels on packages intended for transportation in international commerce (Docket No. RSPA–99–6195, 64 FR 50260, September 16, 1999 and 64 FR 51719, September 24, 1999).

Representatives from the United States Coast Guard, Federal Aviation Administration, Federal Railroad Administration and Federal Motor Carrier Safety Administration will participate with RSPA in this public meeting and address modal-specific issues.

Conduct of the Meeting

This is an informal meeting intended to produce a dialogue between agency personnel and persons affected by the hazardous materials transportation safety program. The presiding official may find it necessary to limit the time available to each person to ensure that all participants have an opportunity to speak. Conversely, this meeting may conclude early if all persons wishing to participate have been heard. While there will be no transcript of the meeting, RSPA will prepare a written summary of the meeting and post it in this notice's docket (RSPA–99–5143). Persons interested in participating in this public meeting need not be registered for the Hazardous Materials Multimodal Training Seminar.

Issued in Washington, D.C. on February 25, 2000.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. 00–4995 Filed 3–2–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 000218048–0048–01; I.D. 013100A]

RIN 0648–AN59

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Naval Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; receipt of an application for a small take exemption; notice of public meetings and request for comment and information.

SUMMARY: NMFS has received a request from the U.S. Navy for a small take of marine mammals incidental to shock testing the USS WINSTON S. CHURCHILL (DDG–81) in the offshore waters of the Atlantic Ocean off either Mayport, FL, or Norfolk, VA or the offshore waters of the Gulf of Mexico off Pascagoula, MS. As a result of that request, NMFS is considering whether to propose regulations that would authorize the incidental taking of a small number of marine mammals. In order to issue regulations for this taking, NMFS must determine that this taking will have no more than a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the application and suggestions on the content of the regulati ns.

DATES: comments and information must be postmarked no later than April 3, 2000. Public meetings are scheduled as follows:

1. March 13, 2000, 7 PM, Norfolk, VA;
2. March 14, 2000, 7 PM, Pensacola, FL;
3. March 15, 2000, 7 PM, Neptune Beach, FL.

ADDRESSES: Comments should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-

West Highway, Silver Spring, MD 20910–3226. A copy of the application may be obtained by writing to this address, or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). A copy of the draft environmental impact statement (DEIS) may be obtained from Will Sloger, U.S. Navy, at (843) 820–5797.

The public meetings will be held at the following locations:

1. Norfolk—Granby High School Auditorium, 7101 Granby Street, Norfolk, VA;

2. Pensacola—Pensacola Junior College, Hagler Auditorium, 1000 College Blvd., Pensacola, FL;

3. Neptune Beach—Fletcher High School Auditorium, 700 Seagate Avenue, Neptune Beach, FL.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, (301) 713–2055, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*). (MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On January 12, 2000, NMFS received an application for an incidental, small take authorization under section 101(a)(5)(A) of the MMPA from the U.S. Navy to take marine mammals incidental to shock testing the WINSTON S. CHURCHILL in the offshore waters of the Atlantic Ocean off either Mayport, FL, or Norfolk, VA or the offshore waters of the Gulf of Mexico off Pascagoula, MS. A final decision on the location for the shock trial will be made by the Navy, based, in part, on findings and determinations made under the National Environmental Policy Act (NEPA).

Section 2366, Title 10, United States Code (10 U.S.C. 2366) requires realistic survivability testing of a covered weapon system to ensure the vulnerability of that system under combat conditions is known. (In this case, the covered weapon system is the WINSTON S. CHURCHILL.) Realistic survivability testing means testing for the vulnerability of the ship in combat by firing munitions likely to be encountered in combat with the ship configured for combat. This testing is commonly referred to as "Live Fire Test & Evaluation" (LFT&E). Realistic testing by firing live ammunition at the ship or detonating a real mine against the ship's hull, however, could result in the loss of a multi-million dollar Navy asset. Therefore, the Navy has established an approved LFT&E program to complete the vulnerability assessment of ships as required by 10 U.S.C. 2366. The LFT&E program includes three major areas that together provide for a complete and comprehensive evaluation of the survivability of ships in a near miss, underwater explosion environment. These areas are computer modeling and analysis, component testing, and an at-sea ship shock trial. While computer modeling and laboratory testing provide useful information, they cannot substitute for shock testing under realistic, offshore conditions as only the at-sea shock trial can provide the real-time data necessary to fully assess ship survivability.

A shock test is a series of underwater detonations that propagate a shock wave through a ship's hull under deliberate and controlled conditions. Shock tests simulate near misses from underwater explosions similar to those encountered in combat. Shock testing verifies the accuracy of design specifications for shock testing ships and systems, uncovers weaknesses in shock sensitive components that may compromise the performance of vital systems, and provides a basis for correcting deficiencies and upgrading ship and component design specifications. To minimize cost and risk to personnel, the first ship in each new class is shock tested and improvements are applied to later ships of the class.

The WINSTON S. CHURCHILL is the third ship in a new Flight of 23 ARLEIGH BURKE (DDG51) class guided missile destroyers being acquired by the Navy. (A Flight is a subset of a class of ships to which significant modifications/upgrades have been made.) These ships are referred to as the Flight IIA ships and they represent the largest single upgrade to the original DDG 51-class destroyer.

The USS JOHN PAUL JONES (DDG 53) was shock tested off the coast of California in June 1994 to assess the survivability of the original DDG 51 class destroyer. Flight IIA ships are significantly different from the original DDG 51-class destroyers in their design. Major structural changes include the addition of a helicopter hangar, Vertical Launch System foundation changes, and raising the aft radar arrays. Major equipment changes include the addition of a ship-wide Fiber Optic Data Multiplexing System, a Zonal Electrical Power Distribution System involving the addition of switchboards and load centers throughout the ship, and the widespread use of commercial equipment in various mission critical systems to reduce the cost of the ships. Typically the lead ship of a new class or major upgrade is shock tested. The WINSTON S. CHURCHILL was selected as the shock trial ship because it has additional design changes that will not be included in the first two Flight IIA ships, and therefore, it is more representative of the Flight.

The Navy's proposed action is to conduct a shock trial of the WINSTON S. CHURCHILL at an offshore, deep-water location. The ship would be subjected to a series of three-four 4,536 kg (10,000 lb) explosive charge detonations sometime between 1 May and 30 September, 2001. Three detonations are needed to collect adequate data on survivability. A fourth detonation would be conducted by the Navy only if one of the planned three detonations fails to provide technically acceptable data (e.g., due to equipment failure or some other technical problem).

The ship and the explosive charge would be brought closer together with each successive detonation to increase the severity of the shock. This gradation in severity would ensure that the survivability of the ship and its systems is fully assessed and the point at which failure modes begin is accurately determined. It would also reduce the chance of significant damage at the highest severity detonation. The shock trial would be conducted at a rate of one detonation per week to allow time to perform detailed inspections of the ship's systems prior to the ship experiencing the next level of shock intensity.

Marine Mammals

A summary of the marine mammal species found in each of the 3 areas which may be selected by the Navy for shock testing is presented here. For more detail on marine mammal abundance, density and the methods used to obtain this information, reviewers are requested to refer to either

the Navy application or the Navy DEIS (see **ADDRESSES**).

Mayport, FL

Up to 29 marine mammal species may be present in the waters off Mayport, FL, including 7 mysticetes and 22 odontocetes. Mysticetes are unlikely to occur at Mayport during the May through September time period. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, 4 species of beaked whales, and 15 species of dolphins and porpoises.

Norfolk, VA

Up to 35 marine mammal species may be present in the waters off Norfolk, VA, including 7 mysticetes, 27 odontocetes, and 1 pinniped. The fin whale is the mysticete most likely to occur in the test area. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, 6 species of beaked whales, and 18 species of dolphins and porpoises.

Pascagoula, MS

Up to 29 marine mammal species may occur in the waters off Pascagoula, MS, including 7 mysticetes, 21 odontocetes, and 1 exotic pinniped. With the exception of Bryde's whale, mysticetes are considered unlikely to occur at Pascagoula. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, 4 species of beaked whales, and 14 species of dolphins and porpoises.

Potential Impacts

Potential impacts on several marine mammal species known to occur in these areas from shock testing include both lethal and non-lethal injury, as well as harassment. Death or injury may occur as a result of the explosive blast, and injury may occur as a result of non-injurious physiological responses to the explosion-generated shockwave and its acoustic signature. The Navy believes it is very unlikely that injury will occur from exposure to the chemical by-products released into the surface waters, and no permanent alteration of marine mammal habitat would occur. While the Navy does not anticipate any lethal takes would result from these detonations, calculations indicate that the Mayport site has the potential to result in up to 4 mortalities, 6 non-serious injuries, and 2,885 takings by harassment. The Norfolk site has the potential to result in 7 mortalities, 12 non-serious injuries, and 14,640 takings by harassment. The Pascagoula site has the potential to result in up to 3 mortalities, 4 injuries, and 3,132 takings by harassment. Because of the potential impact to marine mammals, the Navy has requested a letter of authorization under section 101(a)(5)(A) of the MMPA that would authorize the incidental taking.

Mitigation

The Navy's proposed action includes mitigation that would minimize risk to marine mammals and sea turtles. The Navy would (1) through pre-detonation aerial surveys, select a test area within the chosen site location with the lowest possible number of marine mammals and sea turtles; (2) monitor the area visually (aerial and shipboard monitoring) and acoustically before each test and postpone detonation if any marine mammal or sea turtle is detected within a safety range of 3.7 kilometers (2 nautical miles); and (3) monitor the area after each test to find and treat any injured animals. If post-detonation monitoring shows that marine mammals or sea turtles were killed or injured as a result of the test, testing would be halted until procedures for subsequent detonations could be reviewed and changed as necessary.

NEPA

The Navy has released a DEIS under NEPA that is presently available for public review and comment (see **ADDRESSES**). NMFS is a cooperating agency, as defined by the Council on Environmental Quality (40 CFR 1501.6), in the preparation of this DEIS.

Endangered Species Act (ESA)

NMFS will be consulting with the U.S. Navy under section 7 of the ESA on this action. In that regard, the Navy has submitted to NMFS a Biological Assessment under the ESA. This consultation will be concluded prior to a determination on issuance of a final rule and exemption.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations to allow the taking. NMFS requests that commenters review the DEIS and/or the Navy application and not submit comments based solely on this document. NMFS will consider information submitted in developing proposed regulations to authorize the taking. If NMFS proposes regulations to allow this take, interested parties will be given ample time and opportunity to comment on the proposed rule.

Dated: February 28, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5219 Filed 3–2–00; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 65, No. 43
Friday, March 3, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on this information collection on or before March 31, 2000.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0552.
Form No.: N/A.
Title: Financial Status Report.
Type of Review: Renewal of Information Collection.
Purpose: USAID wants to require grant and cooperative agreement recipients who work in multiple countries to provide expenditure reports by country. USAID has stated in the "remarks" section of SF–269 and SF–269A, or other applicable approved financial report form that "For assistance programs which cover programs in more than one country, recipients shall specify by country the amount of the total Federal share which was expended for each country * * *" The USAID has sought a class deviation to the statute from the Office of Management and Budget in accordance with the 22 CFR 226.4. The information is being collected so that USAID may report to Congress, the Office of Management and Budget and other requesters per the requirements of the Government Performance and Results Act and the Government Management Reporting Act. Also, the reporting requirements are necessary to assure that USAID funds are expended in accordance with Statutory requirements and USAID policies.
Annual Reporting Burden:
Respondents: 80.
Total annual responses: 320.
Total annual hours requested: 800 hours.

Dated: February 22, 2000.

Joanne Paskar,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 00–5109 Filed 3–2–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number LS–99–22]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension of and revision to the currently approved collections of information for 7 CFR Part 54-Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards), which includes Form LS–313, "Application for Service" and Form LS–315, "Application for Commitment Grading or Certification Service."

DATES: Comments on this notice must be received by May 2, 2000 to be assured consideration.

ADDRESSES: Send written comments to Terry L. Lutz, Assistant to the Chief; USDA, AMS, LS, MGC; STOP 0248, Room 2628–S; 1400 Independence Avenue, SW.; Washington, DC 20250–0248. Comments may be faxed to (202) 690–4119, or E-mailed to Terry.Lutz@usda.gov.

State that your comments refer to Docket No. LS–99–22, and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except Holidays.

FOR FURTHER INFORMATION CONTACT: Terry L. Lutz, Assistant to the Chief, Meat Grading and Certification (MGC) Branch, 202–720–1246.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards)
OMB Number: 0581–0124
Expiration Date of Approval: November 30, 2000.
Type of Request: Extension and revision of a currently approved collection of information.
Abstract: The application for meat grading and certification services requests Department of Agriculture employees to perform such services in the requesting establishment. The information contained on the applications constitutes an agreement between USDA and the requesting establishment.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services that facilitate the marketing of meat and meat products. The Meat Grading and Certification (MGC) Branch provides these services pursuant to 7 CFR part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards).

Due to the voluntary nature of grading and certification services, 7 CFR part 54 contains provisions for the collection of

fees from users of MGC Branch services that as nearly as possible are equal to the cost of providing the requested services. Applicants (individual or businesses with financial interest in the product) may request MGC Branch services through either submission of Form LS–313 or Form LS–315.

Congress did not specifically authorize this collection of information, but completion and submission of Form LS–313 or Form LS–315 serves as an agreement by the requester to pay for services provided.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0169 hours per response.

Respondents: Livestock and meat industry or other for-profit businesses.

Estimated Number of Respondents: 888.

Estimated Number of Responses per Respondent: 27.

Estimated Total Annual Burden on Respondents: 406 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 15, 2000.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 00–5056 Filed 3–2–00; 8:45 am]

BILLING CODE 3410–02–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: April 3, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 22, November 5, and December 27, 1999 and January 7, 14, and 21, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 57031, 60407 and 72312, and 65 FR 2373, 2374, and 3416) of proposed additions to and deletions from the Procurement List:

Additions

The following comments pertain to Holder, Card, 7510–00–155–5174: Comments were received from the current contractor for the card holder. The contractor claimed that it had given up many items to the Committee's Procurement List and asked the Committee not to take this one as well. The contractor also claimed that the card holder would create little labor for people with severe disabilities and would cause the contractor to lose its investment in tooling for the project, as the contractor claimed there is little demand for the card holder in the commercial market.

As the contractor noted, it has a partnership with a nonprofit agency producing items now on the Procurement List which the contractor formerly produced for the Government. This partnership permits the contractor to supply materials for the items to the nonprofit agency, thus essentially negating the impact of that Procurement List addition on the contractor. The only other item being produced by the contractor for the Government which the Committee has added to the Procurement List in recent years, a tape dispenser, represented only a very small percentage of the contractor's total sales, as does the card holder now at issue. The contractor has not given the Committee information to indicate that loss of use of the card holder tooling would severely impact the company. Addition of the card holder to the Procurement List will generate nearly two work years of employment for blind workers, whose unemployment rate far exceeds that of workers without severe disabilities. Taking all these factors into account, the Committee has concluded that it is very unlikely that the contractor will suffer a severe adverse impact as a result of adding the card holder to the Procurement List.

The following comments pertain to Cutting and Assembly of FTESFB System for P–3 Aircraft, 1560–00–NSH–0001, Department of the Navy, Fleet and Industrial Supply Center, Jacksonville, Florida: Comments were received from the last contractor for this service telling the Committee it had to assess impact on the contractor. The contracting activity indicated its intent to procure this service through the Small Business Administration's 8(a) Program if the service is not added to the Procurement List. Because the commenting contractor has graduated from the 8(a) Program, it would not be eligible to receive a contract for this service. Consequently, addition of this service to the Procurement List will not be the cause of any impact this contractor may experience from not receiving a contract for this service.

The following material pertains to all of the items being added to the Procurement List: After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in

connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Holder, Card, 7510–00–155–5174.

Services

Base Supply Center, Detroit Arsenal, Warren, Michigan.

Commissary Shelf Stocking, Custodial and Warehousing, Hanscom Air Force Base, Massachusetts.

Cutting and Assembly of FTESFB System for P–3 Aircraft, 1560–00–NSH–0001, Department of the Navy, Fleet and Industrial Supply Center, Jacksonville, Florida.

Grounds Maintenance, U.S. Army Reserve Center, 682 Main Street, Keene, New Hampshire.

Grounds Maintenance at the following locations: U.S. Army Reserve Center, 70 Rochester Hill Road, Rochester, New Hampshire, U.S. Army Reserve Center, 125 Cottage Street, Portsmouth, New Hampshire.

Telephone Switchboard Operations, Department of Veterans Affairs Medical Center, 50 Irving Street, NW, Washington, DC.

Warehouse Operation, 2031 Idorek Street, Building 783 S and T, McClellan AFB, California.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Pen, Twist Action, Blue and Black Ink

M.R. 040 (Black Ink)
M.R. 041 (Blue Ink)

Bag, Tote, Canvas

M.R. 511
M.R. 512
M.R. 513

Sweatshirt and Sweatpants, Private Label

M.R. 630 (Sweatshirt)
M.R. 631 (Sweatpants)
M.R. 632 (Sweatshirt)
M.R. 633 (Sweatpants)

Sweatshirt and Sweatpants, Recruit, USMC

M.R. 640 (Sweatshirt)
M.R. 641 (Sweatshirt)
M.R. 642 (Sweatshirt)
M.R. 643 (Sweatshirt)
M.R. 644 (Sweatshirt)
M.R. 645 (Sweatpants)
M.R. 646 (Sweatpants)
M.R. 647 (Sweatpants)
M.R. 648 (Sweatpants)
M.R. 649 (Sweatpants)

Sweatsuit, Recruit, Marine Corps

M.R. 650 (Sweatshirt)
M.R. 651 (Sweatshirt)
M.R. 652 (Sweatshirt)
M.R. 653 (Sweatshirt)
M.R. 654 (Sweatshirt)
M.R. 655 (Sweatpants)
M.R. 656 (Sweatpants)
M.R. 657 (Sweatpants)
M.R. 658 (Sweatpants)
M.R. 659 (Sweatpants)

Desk, Lap

M.R. 750

Mitt, Barbecue

M.R. 891

Mop, Stick, Rayon Head, Wet

M.R. 927

Broom, Fiber

M.R. 952

Broom, Patio

M.R. 954

Filter, Air Conditioning

4130–00–951–1208

Aerosol Paint, Lacquer

8010–00–598–5455

Enamel, Lacquer

8010–00–133–5901
8010–00–702–1053
8010–00–181–7791
8010–00–664–1914
8010–00–851–5525

Aerosol Paint, Lacquer

8010–00–958–8150
8010–00–721–9750
8010–00–721–9753
8010–00–141–2951
8010–00–883–5329
8010–00–515–2487
8010–00–965–2391
8010–00–721–9749
8010–00–721–9754
8010–00–721–9748
8010–00–835–7215
8010–00–965–2390
8010–00–141–2958
8010–00–079–2756
8010–00–721–9746
8010–00–721–9745
8010–00–079–2754
8010–00–958–8151

Enamel

8010–01–060–6461
8010–00–935–7156
8010–01–332–3735
8010–01–336–5064
8010–01–332–3740
8010–01–331–6118
8010–01–336–5065
8010–01–333–1441
8010–01–336–3979
8010–01–336–5059
8010–01–336–3977
8010–01–336–5058
8010–01–336–5060
8010–01–332–3746
8010–01–332–3738
8010–01–332–3737
8010–01–332–3741
8010–01–332–3736
8010–01–363–3374
8010–01–363–3373

Enamel, Aerosol, Waterbase

8010–01–350–5259
8010–01–350–5256
8010–01–350–6258
8010–01–350–4757
8010–01–350–4749
8010–01–350–5261
8010–01–350–5253
8010–01–350–4750
8010–01–350–4751
8010–01–350–4756
8010–01–350–4758
8010–01–350–4764
8010–01–350–5246
8010–01–350–5250
8010–01–350–5252
8010–01–350–6257
8010–01–350–5260
8010–01–350–4763
8010–01–363–1631
8010–01–363–1633

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–5205 Filed 3–2–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments be received on or before April 3, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center

Key West Naval Air Station, Key West, Florida
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin

Customization and Distribution of Navy Recruiting Promotional Merchandise

Department of the Navy, FISC Norfolk, Detachment Washington DC, Washington, DC
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin

Grounds Maintenance

Veterans Affairs Medical Center, 800 Zorn Avenue, Louisville, Kentucky
NPA: C. G. M. Services, Inc., Louisville, Kentucky

Installation Support Services

Basewide, Fort Hood, Texas
NPA: Training, Rehabilitation & Development Institute, Inc., San Antonio, Texas

Landscape Maintenance

National Oceanic and Atmospheric Administration, Western Regional Center (WRC), 7600 Sand Point Way N.E., Seattle, Washington
NPA: AtWork!, Issaquah, Washington

Operation of HAZMART

Little Rock Air Force Base, Arkansas
NPA: Alphapointe Association for the Blind, Kansas City, Missouri

Switchboard Operation

Department of Veterans Affairs Medical Center, 510 East Stoner Avenue, Shreveport, Louisiana
NPA: North Louisiana Goodwill Industries & Rehabilitation Center, Inc., Shreveport, Louisiana

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–5206 Filed 3–2–00; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1075]

Designation of New Grantee for Foreign-Trade Zone 134, Chattanooga, TN; Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The Foreign-Trade Zones (FTZ) Board (the Board) has considered the application (filed 9/16/99) submitted by the Partners for Economic Progress, Inc. (PEP), grantee of FTZ 134, Chattanooga, Tennessee, requesting reissuance of the grant of authority for said zone to the Chattanooga Chamber Foundation (CCF), a Tennessee not-for-profit corporation, which has accepted such reissuance subject to approval of the FTZ Board. Upon review, the Board finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the request and recognizes CCF as the new grantee of Foreign-Trade Zone 134.

The FTZ Board approves the proposal subject to the FTZ Act and the FTZ Board's regulations, including section 400.28.

Signed at Washington, DC, this 22nd day of February 2000.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 00–5216 Filed 3–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1080]

Designation of New Grantee for Foreign-Trade Zone 36, Galveston, TX; Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The Foreign-Trade Zones (FTZ) Board (the Board) has considered the application (filed 11/9/99) submitted by the City of Galveston, Texas (the City), grantee of FTZ 36, Galveston, Texas, requesting reissuance of the grant of authority for said zone to the Board of Trustees of the Galveston Wharves (the Port), a municipal corporation, which has accepted such reissuance subject to approval of the FTZ Board. Upon review, the Board finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the request and recognizes the Board of Trustees of the Galveston Wharves as the new grantee of Foreign-Trade Zone 36.

The approval is subject to the FTZ Act and the FTZ Board's regulations, including section 400.28.

Signed at Washington, DC, this 22nd day of February 2000.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 00–5217 Filed 3–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 4–2000]

Foreign-Trade Zone 86; Tacoma, Washington Area, Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Port of Tacoma, grantee of FTZ 86, requesting authority to expand its zone in the Tacoma, Washington, area, adjacent to the Tacoma Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 17, 2000.

FTZ 86 was approved on July 20, 1983 (Board Order 216, 48 FR 34794, 8/1/83) and expanded on April 3, 1985 (Board Order 292, 50 FR 15206, 4/17/85) and on November 3, 1989 (Board Order 446, 54 FR 47247, 11/13/89). The zone project currently consists of 750 acres at the following sites: *Site 1* (668 acres)—within the Port of Tacoma complex, Tacoma; *Site 2* (20 acres)—Valley South Corporate Park, 3324 & 3520—142nd Ave. East, Sumner; and, *Site 3* (61 acres)—proposed warehouse site at 19315—38th Ave. E. and 4630—192nd Street East, Frederickson.

The applicant, in a major revision to its zone plan, now requests authority to expand the general-purpose zone to add 18 acres to Site 1, add 240 acres to Site 2, add 4 parcels (510 acres) to Site 3, and add 4 new sites (817 acres) in the Tacoma area: *Site 1*: Port of Tacoma—include an additional parcel (18 acres, owned by the Port of Tacoma)—within the Port of Tacoma complex, 3502 Lincoln Avenue, increasing the size of the zone from 668 acres to 686 acres; *Site 2*a: Valley South Corporate Park (owned by Tarragon L.L.C.)—add an additional 90 acres to existing FTZ site, 142nd Avenue East, Sumner, increasing the size from 20 acres to 110 acres; and, Proposed *Site 2*b: (new) Greenwater Corporate Park (150 acres, owned by Greenwater L.L.C.), East Valley Highway, Sumner; *Site 3*: Frederickson site—add 4 new parcels, including two Port parcels of 31 acres and 134 acres (owned by the Port of Tacoma) located at 192nd Street East, Frederickson; the Boeing Frederickson parcel (185 acres, owned by the Boeing Realty Corp.) located at 18001 Canyon Road East, Frederickson; and, J.R. & F. Randles parcel (160 acres—contiguous to the Boeing parcel—owned by J.R. & F. Randles) located at 19209 Canyon Road East, Frederickson; *Proposed Site 4a:* Fife Business Park (23 acres, owned by Team Fife LLC), Pacific Highway East, Fife; *Proposed Site 4b:* Rainier Corporate Park East (33 acres, owned by Riggs & Co.), 70th Avenue East, Fife; and, *Proposed Site 4c:* Trans-Pacific Industrial Park (89 acres, owned by Telephone Transpacific Corporation), 20th Street East, Fife; *Proposed Site 5:* Lakewood Industrial Park (170 acres, owned by Northwest Building LLC), 4700 100th Street Southwest, Lakewood; *Proposed Site 6:* Puyallup Industrial Park (79 acres, owned by Northwest Building LLC), intersection of State Roads 167, 512 and 161, Puyallup; and, *Proposed Site 7:* Cascadia Development Corp. Industrial Park (423 acres, owned by the Cascadia Development Corp.), State Road 410, South Prairie, Washington. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 17, 2000.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 950 Pacific Avenue, Suite 410, Tacoma WA 98402

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW, Washington, DC 20230

Dated: February 23, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–5215 Filed 3–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–815]

Gray Portland Cement and Cement Clinker from Japan; Final Results of Antidumping Duty Expedited Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Gray Portland Cement and Cement Clinker From Japan.

SUMMARY: On August 2, 1999, the Department of Commerce ("the Department") published the notice of initiation of sunset review of the antidumping duty order on gray portland cement and cement clinker from Japan (64 FR 41915), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). The merchandise covered by this order is gray cement, which is hydraulic cement and the primary component of concrete, and cement clinker, which is an intermediate material produced when manufacturing cement and has no use other than grinding into finished cement. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party, and inadequate response (in this case no response) from respondent interested parties, we determined to conduct an expedited sunset review. Based on our analysis of the comments received, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled *Final Results of the Review.*

EFFECTIVE DATE: March 3, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin*).

Background

On August 2, 1999, the Department published the notice of initiation of sunset review of the antidumping duty order on gray portland cement and cement clinker from Japan (64 FR 41915). We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party, and inadequate response (in this case no response) from respondent interested parties, we determined to conduct an expedited sunset review. The Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, on December 3, 1999, the Department determined that the sunset review of the antidumping duty order on gray portland cement and cement clinker from Japan is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than February 28, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The products covered by this order are gray portland cement and cement clinker ("portland cement") from Japan. Gray portland cement is a hydraulic cement and the primary component of concrete. Cement clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Microfine cement was specifically excluded from the antidumping duty order. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule ("HTS") item number 2523.29, and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under item number 2523.90 as *other hydraulic cements*. The Department made two scope rulings regarding the subject merchandise.[2]

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Joseph A. Spetrini Acting Assistant Secretary, dated February 28, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading *Japan*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Nihon	69.89
Onoda	70.52
All others	70.23

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5213 Filed 3–2–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 67847 (December 3, 1999).

[2] *See Scope Rulings*, 57 FR 19602 (May 7, 1992), classes G and H of *oil well cement* are within the scope of the order; and *Scope Rulings*, 58 FR 27542 (May 10, 1993), nittetsu super fine cements is not within the scope of the order.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings From the People's Republic of China; Final Results of Full Sunset Review:

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Review: Tapered Roller Bearings from the Peoples Republic of China.

SUMMARY: On October 22, 1999, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on tapered roller bearings ("TRBs") from the People's Republic of China (64 FR 57034) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties and held a public hearing. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

Effective Date: March 3, 2000.

Statute and Regulations:

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 *"Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On October 22, 1999, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on TRBs pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). In our preliminary results, we found that revocation of the order would be likely to lead to continuation or recurrence of dumping. In addition, we preliminarily determined the following margins likely to prevail if the order were revoked:

Producer/exporter	Margin (percent)
Zheijiang Changshan Changhe Bearing Co. ("ZCCBC")	0.00
China National Machinery Import & Export Corp. ("CMC")	0.03
Zheijiang Wanxiang Group	0.03
Zheijiang Machinery Import & Export Corp	0.11
Luoyang	3.20
Premier	5.43
Liaoning	9.72
Guizhou Machinery	21.79
Wafangdian	29.40
Jilin	29.40
China National Machinery Import & Export Corp. ("CMEC")	29.40
Guizhou Automotive	29.40
Tianshui Hailin	29.40
Xiangyiang	29.40
Xibei	29.40
All Others	29.40

On December 7, 1999, within the deadline specified in 19 CFR 351.209(c)(1)(i), we received a case brief on behalf of domestic interested parties, The Timken Company ("Timken") and The Torrington Company ("Torrington") (collectively "domestic interested parties"). We also received a case brief on behalf of Zheijiang Machinery Import & Export Corporation ("Zheijiang Machinery"); Liaoning Mec Group, Ltd. ("Liaoning"); Luoyang Bearing Corporation (Group) ("Luoyang"); Zheijiang Changshan Changhe Bearing Co., Ltd. ("ZCCBC"); Zheijiang Wanxiang Group ("Wanxiang"); China National Machinery Import & Export Corporation ("CMC");[1] Xibei Bearing Group Import & Export Co., Ltd. ("Xibei"); Xiangyiang Bearing Factory ("Xiangyiang"); and the China TRB Sunset Coalition ("China Coalition") (collectively "respondent interested parties"). On December 13, 1999, within the deadline specified in 19 CFR 351.309(d), the Department received rebuttal comments from domestic and respondent interested parties. On December 15, 1999, the Department held a public hearing.

Scope of Review

The merchandise covered by this antidumping duty order (52 FR 22667, June 15, 1987) includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. The subject merchandise was originally classified under item numbers 680.30, 680.39, 681.10, 692.32 of the Tariff Schedules of the United States Annotated ("TSUSA"); currently, according to the U.S. Customs Service, they are classifiable under item numbers 8482.20.00.10, 8482.20.00.20, 8482.20.00.30, 8482.20.00.40, 8482.20.00.50, 8482.20.00.60, 8482.20.00.70, 8482.20.00.80, 8482.91.00.50, 8482.99.15.00, 8482.99.15.40, 8482.99.15.80, 8483.20.40.80, 8483.20.80.80, 8483.30.80.20, 8708.99.80.15 and 8708.99.80.80 of the Harmonized Tariff Schedule of the United States ("HTSUS") (*see* June 8, 1999, Memorandum to File: HTSUS Numbers for Tapered Roller Bearings). Although the above HTSUS and TSUSA subheadings are provided for convenience and customs purposes, the written description remains dispositive.

In the ninth administrative review (62 FR 61276, 61289, November 17, 1997), the Department clarified the scope of the order when it added two additional HTSUS numbers (8708.99.90.15 and 8708.99.80.80) applicable to imports of the subject merchandise which previously had not been identified in the order. The above HTSUS numbers correspond to subject merchandise previously classified under TSUSA item number 692.32 in the original antidumping order. We note that scope rulings are made on an order-wide basis.

[1] CMC is a different and distinct company from CMEC.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. La Russa, Assistant Secretary for Import Administration, dated February 25, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce Building..

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "China." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on TRBs from China would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Producer/Exporter:	
Zheijiang Changshan Changhe Bearing Co. ("ZCCBC")	0.00
China National Machinery Import & Export Corp. ("CMC")	0.03
Zheijiang Wanxiang Group	0.03
Zheijiang Machinery Import & Export Corp.	0.11
Luoyang	3.20
Premier	5.43
Liaoning	9.72
China National Machinery Import & Export Corp. ("CMEC")	29.40
All Others	29.40

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: February 25, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–5211 Filed 3–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Hungary: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 3, 2000.

FOR FURTHER INFORMATION CONTACT: Elfi Blum at (202) 482–0197, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On July 29, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished, from Hungary, covering the period June 1, 1998 through May 31, 1999 (64 FR 41075). The preliminary results are currently due no later than February 29, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the preliminary results until no later than June 28, 2000. *See* Decision Memorandum from Edward C. Yang to Joseph A. Spetrini, dated February 25, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: February 25, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–5214 Filed 3–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–802]

Uranium From Ukraine; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Uranium from Ukraine.

SUMMARY: On August 2, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on uranium from Ukraine (64 FR 41915) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

EFFECTIVE DATE: March 3, 2000.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"), and in CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On August 2, 1999, the Department initiated a sunset review of the antidumping duty order on uranium from Ukraine (64 FR 41915), pursuant to section 751(c) of the Act. The Department received Notices of Intent to Participate on behalf of domestic interested parties, the Ad Hoc Committee of Domestic Uranium Producers ("the Ad Hoc Committee"), including Rio Algom Mining Corporation ("Rio Algom") and Uranium Resources Inc. ("URI"),[1] USEC, Inc. and its subsidiary, the United States Enrichment Corporation (collectively, "USEC"), and Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO ("PACE"), within the applicable deadline (August 17, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. On August 27, 1999, we received a notice of intent to participate on behalf of the Ad Hoc Utilities Group ("AHUG").[2] The Ad Hoc Committee claimed interested-party status under section 771(9)(C) of the Act, as the only

[1] The Ad Hoc Committee included Cotter corporation in its Notice of Intent to Participate; however, Cotter Corporation was not included in the Ad Hoc Committee's substantive response of September 1, 1999.

[2] AHUG consists of Ameren UE, Baltimore Gas and Electric Co., Carolina Power and Light Co., Commonwealth Edison Co., Consumers Energy, Duke Power Co., Entergy Services, Inc., FirstEnergy Nuclear Operating Co., Florida Power and Light Co., Northern States Power Co., PECO Energy Co., Southern Nuclear Operating Co., Texas Utilities Electric Co., and Virginia Power.

U.S. producers of a domestic like product; AHUG claimed interested-party status as industrial users of uranium; [3] PACE claimed interested-party status as a union representing workers of two domestic gaseous diffusion plants that produce uranium products.

The Ad Hoc Committee claims that it was the original petitioner in the underlying antidumping investigation (*see* September 1, 1999, Substantive Response of the Ad Hoc Committee at 1). AHUG did not submit a summary of its past participation in the proceeding.

On September 1, 1999, we received complete substantive responses from the above domestic interested parties and industrial users, with the exception of USEC and PACE,[4] within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). On September 2, 1999, we received a request for an extension to file rebuttal comments from AHUG.[5] Pursuant to 19 CFR 351.302(b)(1999), the Department extended the deadline for all participants eligible to file rebuttal comments until September 13, 1999.[6] Without a substantive response from respondent interested parties, the Department, pursuant to 19 CFR 351.218(e)(1)(ii)(C), determined to conduct an expedited, 120-day review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Accordingly, on December 3, 1999, the Department determined that the sunset review of this order is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than February 28, 2000, in accordance with section 751(c)(5)(B) of the Act.[7]

Scope of Review

The merchandise subject to this antidumping duty order includes Ukrainian natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U^{235} and its compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing uranium enriched in U^{235} or compounds or uranium enriched in U^{235}. Low enriched uranium ("LEU") is included within the scope of the order; highly enriched uranium ("HEU") is not. LEU is uranium enriched in U^{235} to a level of up to 20 percent, while HEU is uranium enriched in U^{235} to a level of 20 percent or more. The uranium subject to this order is provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50.00, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50 of the Harmonized Tariff Schedule of the United States ("HTSUS").[8] Although the above HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

The Department clarified, in the scope of the order, that: "milling" or "conversion" performed in a third country does not change the country of origin for the purposes of this order. Milling consists of processing uranium ore into uranium concentrate. Conversion consists of transforming uranium concentrate into natural uranium hexafluoride (UF_6). Since milling or conversion does not change the country of origin, uranium ore or concentrate of Ukrainian origin that is subsequently milled and/or converted in a third country will still be considered of Ukrainian origin and subject to antidumping duties (58 FR 45483, August 30, 1993).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. La Russa, Assistant Secretary for Import Administration, dated February 28, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "Ukraine." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on uranium from Ukraine would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margin:

Manufacturer/exporters	Margin (percent)
All Ukrainian manufacturers/exporters	129.29

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5210 Filed 3–2–00; 8:45 am]

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[3] The Department notes that, although industrial users are allowed to participate in sunset reviews, they are not considered "interested parties" as defined in the statute and regulations. *See* sections 771(9) and 777(h) of the Act, and 19 CFR 351.32.

[4] *See* September 9, 1999, Letter to the Secretary from Philip H. Potter withdrawing PACE from participation in the sunset reviews of uranium from Russia, Uzbekistan, and Ukraine.

[5] *See* September 2, 1999, *Request for an Extension to File Rebuttal Comments in the Sunset Reviews of Uranium from Russia, Uzbekistan, and Ukraine* from Nancy A. Fischer, Shaw Pittman, to Jeffrey A. May, Office of Policy.

[6] *See* September 3, 1999, Letter from Jeffrey A. May, Director, Office of Policy to Nancy A. Fischer, Shaw Pittman.

[7] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 67847 (December 3, 1999).

[8] *See Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determination of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380, 23381 (June 3, 1992).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–307–804]

Gray Portland Cement and Cement Clinker From Venezuela; Final Results of Expedited Sunset Review of Suspended Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: gray portland cement and cement clinker from Venezuela.

SUMMARY: On August 2, 1999, the Department of Commerce ("the Department") initiated a sunset review of the suspended countervailing duty investigation on gray portland cement and cement clinker from Venezuela (64 FR 41915) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review. As a result of this review, the Department finds that termination of the suspended countervailing duty investigation would be likely to lead to continuation or recurrence of a countervailable subsidy.

EFFECTIVE DATE: March 3, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On August 2, 1999, the Department initiated a sunset review of the suspended countervailing duty investigation on gray portland cement and cement clinker from Venezuela (64 FR 41915). We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review. The Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, a suspension of an investigation in effect on January 1, 1995). This review concerns a transition suspended investigation within the meaning of section 751(c)(6)(C)(i) of the Act. Therefore, on December 3, 1999, the Department determined that the sunset review of the suspended countervailing duty investigation on portland cement from Venezuela is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than February 28, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The products covered by this suspended investigation are gray portland cement and cement clinker ("portland cement") from Venezuela. Gray portland cement is a hydraulic cement and the primary component of concrete. Cement clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Oil well cement is also included within the scope. Microfine cement was specifically excluded from the scope. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule ("HTS") item number 2523.29, and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under item number 2523.90 as other hydraulic cements.

The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Joseph A. Spetrini Acting Assistant Secretary, dated February 28, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of countervailable subsidy and the magnitude of the net subsidy likely to prevail were the suspension agreement terminated. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading Venezuela. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that termination of the suspended countervailing duty investigation would be likely to lead to continuation or recurrence of countervailable subsidy. However, we have no information whether the program, which gave rise to the net countervailable subsidy in the investigation, has been altered to effectuate any change in the net countervailable subsidy since the subsidy agreement. Consequently, we cannot determine the net countervailable subsidy likely to prevail under the instant review.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance

[1] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 67847 (December 3, 1999).

with sections section 751(c), 752, and 777(i) of the Act.

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5212 Filed 3–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022900C]

Atlantic Sea Scallop Fishery Management Plan Framework Adjustment 13; Proposed Information Collection; Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed Collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 2, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to David M. Gouveia, NMFS, 1 Blackburn Drive, Gloucester, MA 01930, 978–281–9280.

SUPPLEMENTARY INFORMATION:

I. Abstract

The regulations implementing Framework Adjustment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP) established the Georges Bank Sea Scallop Exemption Program (SEP), which provided vessels permitted in the limited access scallop program short-term access to the groundfish closed area on Georges Bank. The Vessel Monitoring System (VMS) was considered to be one of the major tools for monitoring and enforcing the regulations pertaining to the SEP. Vessels participating in the SEP were required to use a VMS unit for the purposes of monitoring Days-At-Sea under the scallop regulations. This submission requests comments on similar collection-of-information requirements, as well as new requirements, for the proposed Framework Adjustment 13 to the Atlantic Sea Scallop FMP. The collection-of-information requirements are: (1) monthly reporting of intention to fish in the SEP through the VMS e-mail; (2) daily reporting of scallops kept, Fishing Vessel Trip Report log page, and, for observed trips, scallops kept and yellowtail flounder caught on observed tows through the VMS e-mail messaging system for vessels fishing in the SEP; (3) installation of a VMS unit on occasional and general category vessels; (4) notice requirements for observer deployment; (5) documentation of installation of a VMS unit; (6) declaration into the SEP through the VMS prior to leaving the dock; (7) an increase in the polling frequency of the VMS from once every hour to once every thirty minutes; (8) requirements for research proposals utilizing a research set-aside in the allocations; and (9) requirements for final reports from research conducted with the research set-aside.

II. Method of Collection

A combination of reporting methods will be involved, including forms, e-mail communications, phone calls, and automatic electronic transmissions.

III. Data

OMB Number: None

Form Number: None

Type of Review: Regular submission

Affected public: Business and other for-profit

Estimated Number of Respondents: 408

Estimated Time Per Response: 2 minutes for a monthly e-mail notifications of intent to fish in the SEP; 10 minutes for an e-mail messaging of catch; 1 hour for the installation of a VMS unit; 2 minutes for a notification for purposes of observer deployment, 5 minutes for submitting proof of VMS installation; 2 minutes for declaring into the SEP through the VMS prior to leaving the dock; 30 seconds for each additional automated VMS report; 56 hours for a research proposal; and 440 hours for a final report from research conducted with research set-asides.

Estimated Total Annual Burden Hours: 10,474

Estimated Total Annual Cost to Public: $593,422

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 25, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 00–5222 Filed 3–2–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022900B]

Southwest Region Logbook Family of Forms; Proposed Information Collection; Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 2, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Alvin Katekaru, Pacific Islands Area Office, Southwest Region, NMFS, 1601 Kapiolani Blvd., Honolulu HI 96814–4700; telephone 808–973–2935 ext. 207.

SUPPLEMENTARY INFORMATION:

I. Abstract

Federal reporting requirements are established for four fisheries (pelagics, crustaceans, bottomfish, and precious corals) in the western Pacific region managed under the Magnuson-Stevens Fishery Conservation and Management Act. This information collection covers the information that must be provided to NMFS to meet these reporting requirements, which include fishing logbooks, notifications of intended vessel departure and return times and other actions, experimental fishing permit reports, and transshipment and sales reports. These reports are necessary to provide information to evaluate the effects of fishing on the stocks and to assess the need for changes in management to ensure that overfishing will be prevented and the optimum yield from the fisheries will be obtained.

II. Method of Collection

Typically, the holder of a permit for the fisheries is provided with a copy of any logbook or other reporting forms and with instructions for making any required reports. In many cases, logbooks are collected from permit holders at the docks when the vessel returns from a trip. Other reports are collected by phone or are received through regular mail. The option of electronic reporting is provided in the Northwestern Hawaiian Islands Crustaceans Fishery and the potential for electronic reporting is being investigated for other fisheries.

III. Data

OMB Number: 0648–0214.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 174.
Estimated Time Per Response: 5 minutes for notifications; 5 minutes for sales reports, pre-offloading reports, and in-season catch reports in the crustacean fishery; 3 minutes per page for logbook entries in the crustacean fishery; 5 minutes per day for logbook entries in the precious coral and western Pacific pelagic fisheries; 5 minutes for protected species interaction reports in the western Pacific bottomfish fishery; 15 minutes for sales reports in the precious coral fishery; 1 hour for observer placement information in the longline fishery for western Pacific pelagics; 1 hour for requests for exemptions to area closures in the western Pacific pelagic fishery; 4 hours for claims for lost fishing time due to sick observers on longline vessels in the western Pacific pelagic fishery; and 4 hours for experimental fishing reports.
Estimated Total Annual Burden Hours: 1,130.
Estimated Total Annual Cost to Public: $5,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 25, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–5223 Filed 3–2–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022400A]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held on March 20–23, 2000.

ADDRESSES: These meetings will be held at the Adams Mark Riverwalk Hotel, 111 Pecan Street East, San Antonio, TX; telephone: 210–354–2800.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

March 22

8:30 a.m.—Convene.
8:45 a.m. - 12:00 noon—Receive a report of the Joint Reef Fish/Mackerel Committees.
1:30 p.m. - 2:00 p.m.–Receive a report of the Red Drum Management Committee.
2:00 p.m. - 4:00 p.m.–Receive a report of the Reef Fish Management Committee.
4:00 p.m. - 4:30 p.m.–Receive a report of the Administrative Policy Committee.
4:30 p.m. - 4:45 p.m.–Receive a report of the Habitat Protection Committee.
4:45 p.m. - 5:00 p.m.–Receive a report of the Stone Crab Management Committee.

March 23

8:30 a.m. - 9:30 a.m.—Receive a report of the Mackerel Management Committee.
9:30 a.m. - 9:45 a.m.—Receive a report of the Joint Marine Reserves/Reef Fish Management Committees.
9:45 a.m. - 10:00 a.m.—Receive a report of the Shrimp Management Committee.
10:00 a.m. - 10:15 a.m.—Receive the NMFS Billfish Advisory Panel (AP) Report.
10:15 a.m. - 10:30 a.m.—Receive the NMFS HMS AP and International Commission for the Conservation for Atlantic Tunas Advisory Committee Reports.
10:30 a.m. - 11:00 a.m.—Receive Enforcement Reports.
11:00 a.m. - 11:15 a.m.—Receive a report of the Coral Reef Task Force and South Atlantic Fishery Management Council Liaison.

11:15 a.m. - 11:30 a.m.—Receive a report of the NOAA Strategic Planning Meeting.

11:30 a.m. - 11:45 a.m.—Receive the NMFS Regional Administrator's Report.

11:45 a.m. - 12:15 p.m.—Receive Director's Reports.

12:15 p.m.- 12:30 p.m.—Other Business.

Committees

March 20

9:00 a.m. - 10:00 a.m.—Convene the Administrative Policy Committee to discuss the legal status of National Standard Guidelines.

10:00 a.m. - 11:30 a.m.–Convene the Habitat Protection Committee to hear a report on the effects of using oil dispersants on marine organisms in shallow water, and a report on the NMFS workshop on the effects of fishing gear on the habitat.

11:30 a.m. - 12:00 noon—Convene the Red Drum Management Committee to review recommendations of the Red Drum Stock Assessment Panel for a subsequent meeting to review a new stock assessment.

1:00 p.m. - 5:30 p.m.—Convene the Joint Reef Fish/Management Committees to review the proposal from the Ad Hoc Charter Vessel/Headboat Advisory Panel for a new Federal permitting system for recreational for-hire vessels. Such a system would require development of a fishery management plan amendment for consideration by the public at hearings later in the year. The full Council will discuss the proposal from 8:45 a.m. to 12:00 noon on Wednesday.

March 21

8:30 a.m. - 9:30 a.m.—Convene the Stone Crab Management Committee to hear a report on a trap certificate program for the stone crab fishery, that is under development by the state of Florida.

9:30 a.m. - 10:30 a.m.—Convene the Shrimp Management Committee to review the scoping workshop summaries on the Options Paper for Shrimp Amendment 10 which addresses reduction of trawl bycatch in the eastern Gulf. Based on that review, the Committee will recommend further action to the Council.

10:30 a.m. - 12:00 noon—Convene the Joint Marine Reserves/Reef Fish Management Committees to discuss an Options Paper for Tortugas 2000 Marine Reserves Amendment. Based on that discussion a draft amendment will be developed for Council consideration at the May, 2000 meeting.

1:00 p.m. - 2:30 p.m.—Convene the Mackerel Management Committee to review recommendations from an InterCouncil Committee meeting of the Gulf, South Atlantic, and Caribbean Fishery Management Councils regarding a potential Dolphin/Wahoo Fishery Management Plan and will develop recommendations regarding future actions, including scheduling of public hearings.

2:30 p.m. - 5:30 p.m.—Convene the Reef Fish Management Committee to review a Preliminary Amendment 18 Scoping Document. This document will eventually become a major amendment regulating primarily the grouper fishery. At this preliminary state the Committee and Council will be identifying management measures for which staff should develop analyses of the biological, economic, and social impacts. Development of the draft amendment will continue over the next several Council meetings, with public hearings likely being scheduled in the fall.

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

A copy of the Committee schedule and agenda can be obtained by calling (813) 228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 13, 2000.

Dated: February 28, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5224 Filed 3–2–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022200I]

Mid-Atlantic Fishery Management Council, Public Meetings; Corrections

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction of public meeting notice.

SUMMARY: The Mid-Atlantic Fishery Management Council (MAFMC) substitutes a meeting of the Joint MAFMC/New England Fishery Management Council (NEFMC) Spiny Dogfish Committee in place of its Spiny Dogfish Working Group meeting and adds an agenda item to consider the recommendations of this committee to its meeting agenda published in the **Federal Register** on February 29, 2000. The purpose of the meeting and additional agenda item is to come to an agreement with the NEFMC on how to manage the spiny dogfish fishery resource for the upcoming fishing year. The NEFMC, at a later date in March, will consider the recommendations of the Joint Spiny Dogfish Committee.

DATES: The Joint Spiny Dogfish Committee meeting will be on Tuesday, March 14, 2000, from 1:00 until 5:00 p.m. The MAFMC will consider the recommendations of that committee on Thursday, March 16, 2000. The NEFMC will consider the recommendations of the Joint Spiny Dogfish Committee at its March 21–23, 2000, meeting in Gloucester, MA.

ADDRESSES: The MAFMC meeting will be held at the Wyndham Garden Hotel, 173 Jennifer Road, Annapolis, MD, telephone 410–266–3131.

Council Addresses: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331; or New England Fishery Management Council, 50 Water Street, The Tannery - Mill 2, Newburyport, MA 019150, telephone 978–465–0492

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, telephone 302–674–2331, ext. 19; or Paul J. Howard, Executive Director, New England Fishery Management Council, telephone 978–465–0492.

SUPPLEMENTARY INFORMATION: The original notice of these meetings was published in the **Federal Register** on February 29, 2000 (65 FR 10771).

Revise the **SUMMARY** to read: "The Mid-Atlantic Fishery Management Council (Council) and its Monkfish Working Group, Comprehensive Management Committee, Surfclam and Ocean Quahog Committee and Industry Advisory Panel, Squid-Mackerel-Butterfish Committee, Information and Education Committee, and Executive Committee and the Joint Spiny Dogfish Committee of the Mid- Atlantic and New England Fishery Management Councils will hold public meetings.

Under **SUPPLEMENTARY INFORMATION** revise the Tuesday, March 14th, 1:00–3:00 p.m. entry to read:

From 1:00–5:00 p.m., the Joint Spiny Dogfish Committee will meet.

Revise the paragraph after "Agenda items for this meeting are:" and add another paragraph to read:

Discuss and recommend area adjustments through the amendment process to the Monkfish Fishery Management Plan; review the recommendations of the Joint Spiny Dogfish Committee regarding management of the Spiny dogfish resource for the upcoming year and make recommendations for its management; discuss the research set aside amendment and summer flounder workshop(s) postponement; receive assessment information on Atlantic mackerel and surfclams; discuss 5-year quotas and a new overfishing definition for surfclams; discuss mackerel limited entry, *Illex* real time management, an overfishing definition for *Loligo*, and area closures to protect *Loligo* egg masses; and consider distribution of the *Loligo* squid quota into time periods.

The purpose of consideration of the recommendations of the Joint Spiny Dogfish Committee is for the Mid-Atlantic and New England Fishery Management Councils to come to agreement on how to manage the spiny dogfish resource for the upcoming fishing year. According to the FMP, which was approved on September 29, 1999, the measures that may be considered for implementation in addition to a quota, include, but are not limited to, the following: Minimum or maximum fish sizes, seasons, mesh size restrictions, trip limits, or other gear restrictions."

Dated: February 29, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5252 Filed 3–2–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022900A]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Oversight Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on March 15, 2000, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Yokens Conference Center, Route 1, Portsmouth, NH 03801; telephone: (603) 433–3338.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will focus on the issues associated with the management objectives for Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). Amendment 13 will implement stock-rebuilding programs for overfished stocks in the Northeast multispecies fishery as mandated by the Sustainable Fisheries Act, and modify the FMP as the Council deems appropriate based on public comments and analysis of alternative management programs. This meeting will involve a review of current overfishing definitions and control rules for the purpose of specifying management goals for the amendment. The committee will forward its recommendations and any unresolved issues to the Council for consideration at the March 22–23 Council meeting.

Although non-emergency issues not contained in this agenda may come before this committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: February 29, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5220 Filed 3–2–00; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 16 March 2000 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, NW, Washington, DC, 20001. Items of discussion will include designs for projects affecting the appearance of Washington, DC., including buildings and parks.

Inquiries regarding the agenda and request to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address to all 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 24 February 2000

Charles H. Atherton,

Secretary.

[FR Doc. 00–5104 Filed 3–2–00; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Proposed new Collection; Comment Request

AGENCY: DoD, Office of the Assistant Secretary of Defense for Health Affairs/ TMA.

ACTION: Notice.

SUMMARY: In accordance with section 3506 (c)(2)(A) of the Paperwork

Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs/TMA announces proposed new public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed new collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 2, 2000.

ADDRESSES: Written comments and recommendations on the information collection should be sent to the Office of the Assistant Secretary of Defense (Health Affairs) TRICARE Management Activity, Skyline Five, suite 810, 5111 Leesburg Pike, Falls Church, Virginia 22041–3206. Attention: Captain Charles Hostettler.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call CAPT Charles Hostettler, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, (703) 681–1740.

Title; Associated Form; and OMB Number: TRICARE Pharmacy Redesign Pilot Program Enrollment Application Form X407.

Needs and Uses: The collection instrument serves as an application form for enrollment in the TRICARE Pharmacy Redesign Pilot Program. The information collected will be used to provide the Managed Care Support Contractors, contracted to supply administrative support, with the data to determine beneficiary eligibility, other health insurance liability, and premium payment.

Affected Public: Individuals or household.

Annual Burden Hours: 333.

Number of Respondents: 2,000.

Responses Per Respondent: 1.

Average Burden Per Response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

A. Background

In June 1998, the General Accounting Office (GAO) testified before the Subcommittee on Military Personnel, Committee on Armed Services, House of Representatives, that over the past several years, concern about the costs and quality of DoD's pharmacy benefit has surfaced. GAO recommended that DoD establish a more system-wide approach to managing its pharmacy benefit by establishing a uniform, incentive-based formulary across its pharmacy programs. Furthermore, GAO recommended that a system-wide pharmacy benefit be granted to Medicare-eligible retirees who are excluded from the contractor retail network and NMOP pharmacy systems.

In response to the June 1998 GAO report, the FY 1999 Strom Thurmond National Defense Authorization Act for fiscal Year 1999 for Fiscal year 1999 (P.L. 105–261) directed DoD to develop a system-wide pharmacy redesign plan and to implement the system-wide redesigned benefit at two sites for Medicare-eligible beneficiaries.

An eligible beneficiary for the pharmacy redesign demonstration is a member or former member of the uniformed services as described in section 1074(b) of title 10; a dependent of the member described in section 1076(a)(2)(B) or 1076(b) of title 10; or a dependent of a member of the uniformed services who died while on active duty for a period of more than 30 days, who meets the following requirements: (a) 65 years of age or older, (b) entitled to Medicare Part A, (c) enrolled in Medicare part B, and (d) resides in an implementation area.

The pharmacy redesign implantation will be evaluated by an independent entity outside the Department of Defense. The evaluation shall include: (a) An analysis of the cost of the pharmacy redesign implementation under TRICARE, and also to the eligible individuals who participate in the demonstration, (b) an assessment of the eligible beneficiaries' satisfaction with the redesigned pharmacy benefit, (c) an assessment of the effect, if any, on military medical readiness, (d) a description of the rate of participation, and (e) an evaluation of any other matters that the Department considers appropriate.

The DoD component responsible for the conduct of the project is the TRICARE Management Activity.

Dated: February 28, 2000.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–5090 Filed 3–2–00; 8:45am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Public Affairs, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Public Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 2, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to The Office of the Assistant Secretary of Defense for Public Affairs, ATTN: DPCR (Mr. Michael Byers), 1400 Defense, The Pentagon, Washington, DC 20301–1400.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Directorate for Programs and Community Relations. at (703) 695–6108.

Title, Associated Form; and OMB Number: "Request for Armed Forces Participation in Public Events (Non-Aviation)," DD Form 2536, and "Request for Military Aerial Support," DD Form 2535, OMB Number 0704–0290.

Needs and Uses: The information collection requirement is necessary to evaluate the eligibility of events to receive Armed Forces community relations support and to determine whether requested military assets are available.

Affected Public: Individuals or households; State or local governments;

Federal agencies or employees; non-profit institutions.

Annual Burden Hours: 5,547.

Number of Respondents: 43,000.

Responses per Respondent: 1.

Average Burden per Response: 8 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are individuals or representatives of Federal and non-Federal government agencies, community groups, non-profit organizations, and civic organizations requesting Armed Forces support for patriotic events conducted in the civilian domain. DD Forms 2535 and 2536 record the type of military support requested, event data, and sponsoring organization information. The completed forms provide the Armed Forces the minimum information necessary to determine whether an event is eligible for military participation and whether the desired support permissible and/or available. If the forms are not provided, the review process is greatly increased because the Armed Forces must take additional written and telephonic inquiries with the event sponsor. In addition, use of the forms reduces the event sponsor's preparation time because the forms provide a detailed outline of information required, eliminate the need for a detailed letter, and contain concise information necessary for determining appropriateness of military support. Use of forms is essential to reduce preparation and processing time, increase productivity, and maximize responsiveness to the public.

Dated: February 28, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–5091 Filed 3–2–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Contract Modifications—Defense Federal Acquisition Regulation Supplement (DFARS) Part 243 and Associated Clauses at 252.243; OMB Number 0704–0397.

Type of Request: Extension.

Number of Respondents: 440.

Responses per Respondent: 1.

Annual Responses: 440.

Average Burden Per Response: 4.8 hours.

Annual Burden Hours: 2,120.

Needs and Uses: The information collection required by the clause at DFARS 252.243–7002, Requests for Equitable Adjustment, implements 10 U.S.C. 2410(a). DoD contracting officers and auditors use this information to evaluate contractor requests for equitable adjustment to contract terms. The clause requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete. The clause also requires contractors to fully disclose all facts relevant to the requests for adjustment.

Affected Public: Business or Other For-Profit, Not-For-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD (Acquisition), Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 28, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–5092 Filed 3–2–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Preparation of a Supplement to the National Missile Defense Deployment Draft Environmental Impact Statement

AGENCY: Ballistic Missile Defense Organization.

ACTION: Notice of availability.

SUMMARY: The Ballistic Missile Defense Organization (BMDO) announces the availability of a supplement to the National Missile Defense (NMD) Deployment Draft Environmental Impact Statement (EIS). This supplement addresses the potential environmental impacts of proposed replacement of interior electronic hardware and computer software at early warning radar (EWR) facilities at Clear Air Station (AS), Alaska, Beale Air Force Base (AFB), California, and Cape Cod AS, Massachusetts as part of the NMD system. The proposed NMD modifications would not result in any change to peak or average radiated power levels at these facilities, and power density levels would remain well-within current safety standards.

The supplement has been prepared to support a Department of Defense recommendation, currently scheduled for Summer 2000, on whether to deploy the NMD system. The U.S. Air Force, which operates and has real property accountability over the PAVE PAWS EWR facilities, recently announced that it will be conducting an EIS that addresses maintenance and sustainment of its current EWR operations at Clear AS, Beale AFB, and Cape Cod AS. For this reason, if the proposed action in this supplement is selected, its implementation is contingent upon the outcome of the Air Force EIS. The BMDO would reassess its proposed usage of the EWR facilities in light of the results of the Air Force EIS prior to installation of the NMD modifications.

COMMENTS: To obtain a copy of the supplement to the NMD Deployment Draft EIS, please write: U.S. Army Space and Missile Defense Command, Attn: SMDC-EN-V, Post Office Box 1500, Huntsville, Alabama 35807. Individuals or organizations may provide comments on the supplement by sending written comments to: U.S. Army Space and Missile Defense Command, Attn: SMDC-EN-V, Post Office Box 1500, Huntsville, Alabama 35807.

DATES: Public comments are invited and must be postmarked by April 17, 2000.

Dated: February 25, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 00–4970 Filed 3–2–00; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary; Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 24 March 2000 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill BLVD, Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328, (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: February 28, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–5089 Filed 3–2–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for the Initial F–22 Operational Beddown

The United States Air Force (Air Force) is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of a proposal to beddown the initial F–22 Operational Wing. The F–22 air superiority fighter is being developed to replace the F–15 aircraft beginning in 2004. A total of 72 operational aircraft, grouped into three squadrons, are proposed for the beddown.

The Air Force will conduct scoping meetings at five alternative locations for the initial beddown, including Langley Air Force Base (AFB), VA; Elmendorf AFB, AK; Eglin AFB, FL; Tyndall AFB, FL; and Mountain Home AFB, ID. Langley AFB, VA is the preferred alternative, however each alternative, along with any other alternatives developed as part of the scoping process, will be screened to determine if it warrants detailed analysis in the EIS. Those alternatives meeting the criteria for the initial beddown will be analyzed along with the No Action Alternative.

The Air Force will conduct the first phase of scoping meetings in each of the potential locations with a second round of meetings in those locations identified for detailed analysis. Dates, times and locations for the meetings will be announced through press releases and other media sources accessible to the public and agencies. Comments will be accepted throughout the environmental impact analysis process, however to ensure sufficient time to consider public and agency comments inputs in the screening process and preparation of the Draft EIS, comments should be submitted to the address below by June 30, 2000.

HQ ACC/CEVP, Attn: Ms. Brenda Cook, 129 Andrews Street, Suite 102, Langley AFB, VA 23665–2769.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–5180 Filed 3–2–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Proposed Salinas Valley Water Project, Monterey County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), San Francisco District, has received an application for a Department of the Army authorization from the Monterey County Water Resources Agency (MCWRA) to construct a surface water diversion structure in the Salinas River near the City of Salinas, Monterey County, California, as part of the Salinas Valley Water Project (SVWP). In accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the USACE has determined that the proposed action may have a significant impact on the quality of the human environment and therefore requires the preparation of an Environmental Impact Statement (EIS). A combined Environmental Impact Report (EIR)/EIS will be prepared with USACE as the Federal lead agency and the MCWRA as the local lead agency (under the California Environmental Quality Act, of CEQA).

The purpose of the proposed action is to provide for the long-term management and protection of groundwater resources in the Salinas River Basin by meeting the following objectives: Stopping seawater intrusion; Providing adequate water supplies to meet current and future (year 2030) needs; and Hydrologically balancing the groundwater basin in the Salinas Valley. The proposed action would: (1) Provide a source of water to the Basin by changing the operational programs (rule curves) of the upstream Nacimiento and San Antonio reservoirs, and capturing water from April through November via a surface diversion structure (inflatable dam) to provide water for agriculture; and (2) maintain and increase present conservation release practices to recharge the groundwater basin.

DATES: A scoping meeting for this project will be held on April 5, 2000, 3:30 p.m. to 5:00 p.m.

ADDRESSES: The scoping meeting will be held at the Monterey County Water Resources Agency, 893 Blanco Circle, Salinas, California 93901–4455. Mail comments to: Robert F. Smith, U.S. Army Corps of Engineers, 333 Market Street, CESPN–OR–R, San Francisco, CA 94105–2197, or; Curtis Weeks, Interim General Manager, Monterey County Water Resources Agency, 893 Blanco Circle, Salinas, California 93901–4455.

FOR FURTHER INFORMATION CONTACT: Robert Smith, 415–977–8450, or electronic mail: rsmith@spd.usace.army.mil. Curtis Weeks, 831–755–4860.

SUPPLEMENTARY INFORMATION: Groundwater is the source for almost all of the water needs (agricultural and urban) in the Salinas Valley Groundwater Basin. In the northern coastal areas of the Basin, most groundwater extraction occurs from two groundwater supplies, the 180-Foot and 400-Foot Aquifers. An ongoing imbalance between the rate of groundwater withdrawal and recharge has resulted in overdraft conditions in the Salinas Valley Groundwater Basin that have allowed seawater from Monterey Bay to intrude inland into both of these aquifers in the northern Salinas Valley. By 1995 seawater was

estimated to affect as much as 19,788 acres overlaying the 180-Foot Aquifer and 9,797 acres overlaying the 400-Foot Aquifer. As a result, urban and agricultural supply wells have been abandoned or destroyed in some locations. To halt further groundwater degradation and prevent seawater from moving further inland, aquifer pumping and recharge rates would need to be brought into balance.

Water needs, both existing and future, were considered as an integral part of the development and design of the proposed action. Without the development of water supplies to augment existing groundwater supplies, both existing and future water needs (the year 2030 was used for the future planning horizon) would result in further Basin overdraft and seawater intrusion.

1. *Description of Proposed action:* The project area is located in Monterey County and northern San Luis Obispo County (Lake Nacimiento's location), California. The following specific project components are being proposed:

a. *Nacimiento Spillway Modification:* The proposed spillway modification would increase the flexibility of reservoir operations by altering the flood rule curve to maintain higher water levels during the winter and spring months. The additional storage gained at Nacimiento would be released for Basin recharge and diversion later in the year. The existing spillway would be modified by lowering the spillway crest by approximately 8 feet and installing an inflatable rubber dam or radial gates. In anticipation of a significant storm, the rubber dam/gates would be deflated/opened, increasing the capacity of the existing spillway to safely pass the event. Once the event has ended or at a point late in the winter season, the rubber dam/gates would be inflated/closed to restore reservoir water levels.

b. *Reoperation of Reservoirs:* The operation of the Nacimiento and San Antonio reservoirs serves two purposes: flood control and conservation (groundwater recharge through the Salinas River). The proposed spillway modification of Nacimiento would allow changes in the ways both reservoirs are operated (timing/quantity of water releases) in order to provide the source water for the action, while assuring the provision of adequate flood control capacity and at the same time maximizing conservation releases. Reoperation would involve changes to operational programs (rule curves) rather than physical improvements.

c. *Salinas River Recharge, Conveyance and Diversion:* The Salinas River would continue to provide for the recharge of the groundwater basin, and would serve as conveyance for a proposed downstream diversion facility. The diversion facility would include an inflatable dam that is proposed to operate from April to November. The proposed surface diversion facility would divert water in the Salinas River at Salachi Ranch Road into the existing Castroville Seawater Intrusion Project (CSIP) distribution pipeline for delivery to agricultural users for irrigation. The diversion facility would impound water an estimated 2 miles upstream when the dam is operational. The CSIP pipeline could potentially require expansion (*i.e.*, enlargement of the irrigation service area) to facilitate the use of all the water to be diverted by the diversion facility.

d. *Delivery Area Pumping Restrictions:* Pumping restrictions would be imposed within the project delivery areas to avoid unregulated pumping by those who receive direct water deliveries from the proposed action.

2. *Reasonable Alternatives:* In accordance with the requirements of section 15124 of the State CEQA Guidelines and 40 CFR 1502.14, reasonable alternatives to the proposed action will be evaluated in the Draft EIR/EIS as listed below:

a. *Proposed Action (Preferred Alternative):* This alternative is the proposed action and is described above.

b. *Subsurface Diversion:* This is the alternative generally evaluated in the 1998 Draft EIR. This alternative would include the following components: (1) Modification of the Nacimiento Spillway; (2) reoperation of the Nacimiento and San Antonio reservoirs; (3) subsurface diversion, storage and use of Salinas River water; (4) treatment and delivery (to agricultural and possibly urban uses); (5) storage of recycled water (produced during low irrigation demand periods by the Monterey County Water Recycling Projects) in either the groundwater basin or a surface reservoir and delivery to agricultural uses during the irrigation season; and (6) delivery area pumping restrictions. This alternative differs from what was addressed in the 1998 Draft EIR in that it does not include a nitrate management plan.

c. *Alternative Location:* This alternative would be the same as the proposed action, except that the in-stream surface diversion facility would be developed at a different location in the Salinas River. The location of the diversion facility under this alternative will be determined after initial evaluation of the environmental effects of the diversion facility under the Proposed Action, with attention given to an alternative site which could reduce any significant environmental effects of the diversion facility under the Proposed Action.

d. *No Action—No Action:* Under this alternative, the MCWRA would implement no actions to address seawater intrusion and hydrologic balance in the Basin, while future water needs would occur as project.

e. *No Action—Total Demand Management:* This alternative assumes that in the event that the proposed action would not proceed, the MCWRA would implement forced reductions in groundwater pumping to stop seawater intrusion and bring the Basin into hydrologic balance.

f. *No Action—State Adjudication:* Implementation of this alternative would result in judicial control over the water resources in the Basin to include possibly: (1) Some type of restriction on water use; (2) reservoir reoperation; (3) forced conservation; or (4) reclamation.

3. *Scoping Process:* Pursuant to CEQA and NEPA, the MCWRA and USACE must include a "scoping" process for the Draft EIR/EIS. Scoping primarily involves determining the scope of issues to be addressed in the Draft EIR/EIS and identifying the anticipated significant issues for in-depth analysis. The scoping process includes public participation to integrate public needs and concerns regarding the proposed action into the process.

a. *Public Involvement Program:* Vehicles for public comment on the proposed action will include: a public workshop to be conducted jointly by the MCWRA and USACE; the preparation of the Draft EIR/EIS and receipt of public comment in response to the Draft EIR/EIS; and public hearings.

b. *Significant Issues to be Analyzed in Depth in the Draft EIR/EIS:* The following significant environmental issues have already been identified and will be analyzed in depth in the Draft EIR/EIS:

(1) *Hydrology:* The effect of the proposed action on Basin groundwater balance, seawater intrusion, groundwater levels, stream flows, reservoir storage levels, surface water levels, downstream flooding potential, and sediment transport will be evaluated.

(2) *Public Health and Safety:* The water quality and flooding effects of the proposed action will be evaluated. The regulatory requirements/impacts of development of the proposed surface diversion facility in the Salinas River will be evaluated.

(3) *Fisheries.* The influence of the proposed action on existing fishery

resources in Nacimiento and San Antonio reservoirs, the Salinas River and its major tributaries, and the Salinas River Lagoon will be evaluated. In this evaluation, special attention will be given to sensitive and listed species such as steelhead, *Oncorhynchus mykiss.*

(4) *Terrestrial Biological Resources:* The potential for the proposed action to affect terrestrial biological resources at the Nacimeinto and San Antonio Reservoirs, the Salinas River and its tributaries, and the Salinas River Lagoon will be evaluated. Special attention will be given to sensitive and listed species such as least Bell's vireo (*Vireo bellii pusillus*), California red-legged frog (*Rana aurora draytonii*), and bald eagle (*Haliaeetus leucocephalus*).

c. *Environmental Review/ Consultation Requirements:*

- National Environmental Policy Act.
- Section 404 of Clean Water Act.
- Section 10 of Rivers & Harbors Act.
- Endangered Species Act.
- Magnuson-Stevens Act Provisions; Essential Fish Habitat.
- Clean Air Act.
- National Historic Preservation Act.
- Fish and Wildlife Coordination Act.
- Coastal Zone Management Act.
- Council on Environmental Quality Memorandum—Analysis of Impacts on Prime and Unique Agricultural Lands.

4. *Scoping Meeting/Availability of Draft EIR/EIS:* The MCWRA and the USACE will hold a scoping meeting to provide information on the project and receive oral comments on the scope of the document. The Draft EIR/EIS is expected to be available for public review in September 2000.

(Authority: 40 CFR part 1501.7)

Dated: February 18, 2000.

Calvin C. Fong,

Chief, Regulatory Branch.

[FR Doc. 00–5105 Filed 3–2–00; 8:45 am]

BILLING CODE 3710–19–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 2, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 28, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Financial Report for the Endowment Challenge Grant Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 300.

Burden Hours: 900.

Abstract: The financial report requires investment data from institutions for the purpose of assessing their progress in increasing their endowment fund resources. The data is also used to monitor compliance with regulatory provisions. The most recent grantees affected were awarded in 1995. This financial report is only due from existing grant winners.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5128 Filed 3–2–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 3, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public

participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 28, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application Package for the Jacob K. Javits Fellowship Program.
Frequency: Annually.
Affected Public: Individual or households.
Reporting and Recordkeeping Hour Burden:
Responses: 2,000.
Burden Hours: 10,000.
Abstract: These instructions and forms provide the U.S. Department of Education the information needed to select fellows for the Javits Program.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5127 Filed 3–2–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Sandia

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM–SSAB), Kirtland Area Office (Sandia)

DATES: Wednesday, March 15, 2000: 6:00 p.m.–9:00 p.m. (MST)

ADDRESSES: Barelas Senior Citizens Center 714 7th Street, SW Albuquerque, NM 87102

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6:00 p.m. Check-In/Agenda Approval/ Minutes
6:15 p.m. Updates: Contractor Mixed Waste Landfill (MWLF) and No Further Action (NFA) Items
6:30 p.m. Site Status—Road Map of Environmental Restoration Sites
6:45 p.m. Transition Plan
7:15 p.m. Public Comment
7:30 p.m. Break
7:45 p.m. Task Group Updates/ Comment on Sierra Club Presentation/ Stewardship Task Group/Idaho Chairs Conference/ Evaluation of Coordinating Council
8:15 p.m. Discussion of Concept and Terms
8:45 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on February 28, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–5167 Filed 3–2–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–939–000; ER00–1049–000 and ER00–1115–000 (Not consolidated)]

Lake Worth Generation L.L.C.; Calcasieu Power, LLC; Calpine Construction Finance Company, L.P., Issuance of Order

February 28, 2000.

Lake Worth Generation L.L.C., Calcasieu Power, LLC, Calpine Construction Finance Company, L.P. (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34

of all future issuances of securities and assumptions of liabilities by the Applicants. On February 23, 2000, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's February 23, 2000 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations, and liabilities as guarantor, indorsers, surety or otherwise in respect of any security of another person, provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 24, 2000.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. This issuance may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5118 Filed 3–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–150–000 and CP98–151–000]

Millennium Pipeline Company, LP; Columbia Gas Transmission Corporation; Site Visit

February 28, 2000.

On Tuesday, March 7, 2000, the Federal Energy Regulatory Commission staff will conduct a limited site visit of alternative routes near mileposts 88.0 and 93.8 of the proposed Millennium Pipeline Project.

We will meet at 9 am at the Cattaraugus County Center, 303 Court Street, Little Valley, New York 14755.

For further information, call Paul AmKee, Office of External Affairs, at (202) 208–1088.

David P. Boergers,

Secretary.

[FR Doc. 00–5119 Filed 3–2–23; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–188–000, ER00–213–000 and EL00–22–000]

PSI Energy, Inc.; Cincinnati Gas & Electric Company; Informal Settlement Conference

February 28, 2000.

Take notice that an informal settlement conference will be convened in this proceeding on March 13, 2000, at 1 p.m., in Room 3M–2B and on March 14, 2000, at 10:00 a.m., in Room 3M–3, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Joel Cockrell at (202) 208–1184 or Anja M. Clark at (202) 208–2034.

David P. Boergers,

Secretary.

[FR Doc. 00–5117 Filed 3–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–101–000, et al.]

Fulton Cogeneration Associates, L.P., et al.; Electric Rate and Corporate Regulation Filings

February 25, 2000.

Take notice that the following filings have been made with the Commission:

1. Fulton Cogeneration Associates, L.P.

[Docket No. EG00–101–000]

Take notice that on February 22, 2000, Fulton Cogeneration Associates, L.P. (Applicant), Nine Greenway Plaza, Houston, Texas filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant, a New York limited partnership owns the Manchief Power Station near Brush, Colorado. These facilities consist of a 250 MW single cycle peaking facility, and facilities necessary to interconnect with Public Service Company of Colorado.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Electric Energy, Inc.

[Docket No. ES00–18–000]

Take notice that on February 17, 2000, Electric Energy, Inc. submitted an application under Section 204 of the Federal Power Act seeking authorization to issue notes under the terms of certain unsecured revolving credit agreements or under terms substantially similar thereto in an amount not to exceed $45,000,000, from time to time, over a 24-month period.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Daniel L. Mineck

[Docket No. ID–3456–000]

Take notice that on February 18, 2000, Daniel L. Mineck filed an Application for Authority to Hold Interlocking Positions and requests that said authority be granted by the Federal Energy Regulatory Commission (the Commission) under Section 305(b) of the Federal Power Act.

Comment date: March 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Deseret Generation & Transmission Co-operative Inc.

[Docket No. ER00–1664–000]

Take notice that on February 22, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing an executed umbrella short-term firm point-to-point service agreement with Tri-State Generation and Transmission Association, Inc. (Tri-State) under its open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of February 22, 2000. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Tri-State has been provided a copy of this filing.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. SOWEGA Power LLC

[Docket No. ER00–1668–000]

Take notice that on February 22, 2000, SOWEGA Power LLC tendered for filing, pursuant to Section 205 of the Federal Power Act, an umbrella service agreement with Coral Power, L.L.C., under SOWEGA's market-based sales tariff, SOWEGA FERC Rate Schedule No. 1.

SOWEGA seeks a waiver of the Commission's 60 day prior notice and filing requirements and requests an effective date from the Commission as of July 3, 1999.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER00–1669–000]

Take notice that on February 22, 2000, Commonwealth Edison Company (ComEd), tendered for filing four Non-Firm Transmission Service Agreements with Florida Power & Light Company, (FPL), FPL Energy Power Marketing, Inc. (FPMI), British Columbia Power Exchange Corporation—Powerex (PE), and Allegheny Energy Supply Company, LLC, (AESC), and three Short-Term Firm Transmission Service Agreements with PE, AESC, and Engage Energy US L.P. (EE), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd also tendered for filing a revised Index of Customers reflecting name changes for current customers Citizens Power Sales to Citizens Power Sales, LLC (CPS), and El Paso Power Services Company and Sonat Power Marketing Company L.P., consolidated and renamed El Paso Merchant Energy, L.P. (EPME).

ComEd requests an effective date of February 21, 2000 for the service agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on FPL, FPMI, PE, AESC, EE, CPS, and EPME.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. New Century Services, Inc.

[Docket No. ER00–1661–000]

Take notice that on February 22, 2000, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and British Columbia Power Exchange Corporation (Powerex).

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER00–1662–000]

Take notice that on February 22, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Illinova Power Marketing, Inc. Under the Service Agreement, Virginia Power will provide services to Illinova Power Marketing, Inc., under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of January 28, 2000, the date service was first provided to Illinova Power Marketing, Inc.

Copies of the filing were served upon Illinova Power Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Deseret Generation & Transmission Co-operative

[Docket No. ER00–1665–000]

Take notice that on February 22, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing an executed umbrella non-firm point-to-point service agreement with Tri-State Generation and Transmission Association, Inc. (Tri-State) under its open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of February 22, 2000. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Tri-State has been provided a copy of this filing.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. North American Electric Reliability Council

[Docket No. ER00–1666–000]

Take notice that on February 22, 2000, the North American Electric Reliability Council filed a revised version of its Transmission Loading Relief procedures.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER00–1667–000]

Take notice that on February 21, 2000, Commonwealth Edison Company (ComEd), tendered for filing a service agreement establishing British Columbia Power Exchange Corporation-Powerex (PE), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of February 21, 2000, for the Service Agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on PE.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Western System Coordinating Council

[Docket No. ER00–1670–000]

Take notice that on February 22, 2000, the Western Systems Coordinating Council (WSCC), tendered for filing certain revision to its Unscheduled Flow Mitigation Plan (Plan). The WSCC states that these changes are intended to update and improve the terms of the Plan in light of operational experiences, changes in the industry and changes within the WSCC.

The WSCC requests an effective date of February 23, 2000, for these changes.

Copies of this filing were served on all members of the WSCC and all affected state commissions.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. New York State Reliability Council

[Docket No. ER00–1671–000]

Take notice that on February 22, 2000, the New York State Reliability Council (NYSRC), tendered for filing a new state-wide annual Installed Capacity Requirement for the New York Control Area for the Capability Year beginning on May 1, 2000 and ending April 30, 2001. The NYSRC respectfully requests Commission acceptance and approval of this filing on or before March 17, 2000, so that the revised Installed Capacity Requirement may be in place for the installed capacity auction to be conducted by the New York Independent System Operator on March 17, 2000.

A copy of this filing was served upon all persons on the Commission's official service list in Docket Nos. ER97–1523 *et al.*, and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–1673–000]

Take notice that on February 23, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing fully executed Netting Agreements between the Companies and FirstEnergy Corp.

Comment date: March 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Avista Corp.

[Docket No. ER00–1674–000]

Take notice that on February 23, 2000, Avista Corp. (AVA), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with PP&L Montana, LLC (PPLM) and TransCanada Power.

AVA requests the Service Agreements be given respective effective dates of November 4, 1999 and January 21, 2000.

Comment date: March 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Reliant Energy Desert Basin, LLC

[Docket No. ER00–1675–000]

Take notice that on February 23, 2000, Reliant Energy Desert Basin, LLC (Reliant Energy Desert Basin), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 authorizing Reliant Energy Desert Basin to make sales at market-based rates.

Reliant Energy Desert Basin intends to sell electric power at wholesale. In transactions where Reliant Energy Desert Basin sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Reliant Energy Desert Basin's Rate Schedule provides for the sale of energy and capacity at agreed prices.

Comment date: March 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Fulton Cogeneration Associates, L.P.

[Docket No. ER00–1676–000]

Take notice that on February 22, 2000, Fulton Cogeneration Associates, L.P. (Fulton), tendered for filing an application for an order accepting its FERC Electric Rate Schedule No. 1 which will permit Fulton to make wholesale sales of electric power to eligible customers at market-based rates. Fulton is the owner of a new generating plant located near Brush, Colorado that will be selling most of its output to Public Service Company of Colorado under a negotiated long-term purchase power agreement.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5115 Filed 3–2–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–163–000; CA Clearinghouse No. SCH99041103]

Questar Southern Trails Pipeline Company; Notice of Availability, Route Inspection, and Public Meetings on a Joint Draft Environmental Impact Statement/Environmental Impact Report for the Proposed Questar Southern Trails Pipeline Project

February 25, 2000.

The staffs of the Federal Energy Regulatory Commission (FERC) and the California State Lands Commission (CSLC) have prepared a joint Draft Environmental Impact Statement/ Environmental Impact Report (EIS/R) on natural gas pipeline facilities proposed by Questar Southern Trails Pipeline Company (QST) in the above-referenced docket.

The EIS/R was prepared as required by the National Environmental Policy Act and the California Environmental Policy Act. Its purpose is to inform the public and the permitting agencies about the potential adverse and beneficial environmental impacts of the proposed project and its alternatives, and recommend mitigation measures which would reduce any significant adverse impact to the maximum extent possible and, where feasible, to a less-than-significant level. The staffs conclude that approval of the proposed project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact.

Proposed Project

The Southern Trails Pipeline Project involves the conversion of an existing crude oil pipeline to natural gas service, and the construction of new pipeline, compressor station, and related facilities. The Draft EIS/R assesses the potential environmental effects of the conversion, construction, and operation of the following facilities in California, Arizona, Utah, and New Mexico:

- About 675 miles of existing pipeline to be converted from crude oil to natural gas service (592 miles of 16-inch, 80 miles of 12-inch, and 3 miles of 20-inch-diameter pipeline);

- Five new pipeline extensions totaling about 43.2 miles;
- Four reroutes/realignments of the existing pipeline totaling about 9.6 miles;
- 39 replacement segments of the existing pipeline totaling about 7.3 miles;
- 240 excavation sites along the existing pipeline totaling about 5.1 miles; and
- Seven new compressor stations (six of which would be located on existing oil pump stations sites—three sites in California; two sites in Arizona; one site in Utah; and one site in New Mexico).

The proposed project would transport 80 to 90 million cubic feet per day (MMcfd) of natural gas to customers east of California and 120 MMcfd to customers in southern California.

Comment Procedures and Public Meetings

Any persons wishing to comment on the Draft EIS/R may do so. To ensure consideration of your comments on the proposal in the Final EIS/R, it is important that we receive your comments before the date specified below. Please follow these instructions carefully to ensure that your comments are received in time and properly recorded:

- Send your comments to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, DC 20426;
- Reference Docket No. CP99–163–000;
- Send a copy of your comments to the following individuals:

Branch Chief, PR–11.1, Environmental Review & Compliance Branch, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Daniel Gorfain, Division of Environmental Planning & Management, California State Lands Commission, 100 Howe Avenue, Suite 100 South, Sacramento, CA 95825–8202.

- Mail your comments so that they will be received in Washington, DC on or before April 17, 2000.

In addition to written comments, the staffs will hold public meetings in the project area to receive comments on the Draft EIS/R. Meetings are scheduled for Banning, Fullerton, and Long Beach in southern California; Upper Moenkopi and Kayenta in Arizona; and Farmington, New Mexico during the period April 3–11, 2000. Specific meeting places and times are identified in table at the end of this notice. Interested groups and individuals are encouraged to attend and present oral comments on the Draft EIS/R. Priority will be given to commenters who represent groups. Transcripts of the meetings will be prepared.

After comments are reviewed, any significant new issues investigated, and modifications made to the Draft EIS/R, a Final EIS/R will be published and distributed. The Final EIS/R will contain the staffs responses to comments timely filed on the Draft EIS/R.

Comments will be considered by the FERC but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursaunt to Rule 214 of the FERC's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this Draft EIS/R. You must file your request to intervene as specified above. You do not need intervener status to have your comments considered.

The Draft EIS/R has been placed in the public files of the FERC and CSLC and is available for public inspection at:

Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 208–1371.

California State Lands Commission, 100 Howe Avenue, Suite 100–South, Sacramento, CA 95825–8202, (916) 574–1889.

Copies also are available for reading at the following libraries:

California

Canyon Hills, Library, 400 Scout Trail, Anaheim, 92807
Euclid Branch Library, 1340 S. Euclid Street, Anaheim, 92804
Banning Public Library, 21 W. Nicholet Street, Banning, 92220
Beaumont District Library, 125 East 8th Street, Beaumont, 92223
Cabazon Library, 50171 Ramona Avenue, Cabazon, 92230
Cocoran Library, 650 South Main, Corona, 91720
Cypress Library, 5331 Orange Avenue, Cypress, 90630
Joshua Tree Branch Library, 6465 Park Boulevard, Joshua Tree, 92252
Angelo M Iacaboni Library, 4990 Clark Avenue, Lakewood, 90712
George Nye, Jr. Library, 6600 Del Amo Boulevard, Lakewood, 90713
Dominguez Library, 2719 E. Carson Street, Long Beach, 90810
Taft Library, 740 E. Taft Avenue, Orange, 92665
Yucca Valley Branch Library, 57098 29 Palms Highway, Yucca Valley, 92284

Arizona

Mohave County Library, 3260 North Burbank. Kingman, 86401
Kayenta Unified School #27, Kayenta, 86033

Utah

San Juan County Library, 25 West 300 South, Blanding, 84511

New Mexico

Farmington Public Library, 100 West Broadway, Farmington, 87401
Bloomfield Public Library, 333 South First, Bloomfield, 87413

A limited number of copies are available from the FERC's Public Reference and Files Maintenance Branch identified above. In addition, the Draft EIS/R has been mailed to Federal, state, and local agencies; public interest groups; individuals who have requested the Draft EIS/R; libraries; newspapers; and parties to this proceeding.

Route Inspection

On April 4, 2000, the FERC staff will conduct a ground inspection of portions of the existing pipeline right-of-way in the area between Tuba City and the Tonalea Pump Station site in Coconino County, Arizona. Anyone interested in participating in the inspection activities may contact the FERC's Office of External Affairs (identified at the end of this notice) for more details and must provide their own transportation.

Additional Questions

Additional information about the proposed project is available from Paul McKee in the FERC's Office of External Affairs ((202) 208–1088)); Daniel Gorfain at the CSLC ((916) 574–1889)); or on the FERC Internet website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS help line can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the text of formal documents issued by the FERC, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS help line can be reached at (202) 208–2474.

Daniel Gorfain,

Project Manager, California State Lands Commission.

David Boergers,

Secretary, Federal Energy Regulatory Commission.

SCHEDULE FOR DRAFT EIS/EIR PUBLIC MEETINGS

[**Note:** All meetings will last for 1 hour, or until the submission of public comments is concluded (whichever occurs later).]

Date & time	Community	Location
Monday, April 3, 2000, 1:30 pm	Upper Moenkopi, AZ	Moenkopi Community Building.
Wednesday,* April 5, 2000, 5:00 pm	Kayenta, AZ	Kayenta Chapter House.
Thursday, April 6, 2000, 7:00 pm	Farmington, NM	Holiday Inn, 600 East Broadway, Animas Room.
	Fullerton, CA	Four Points Sheraton, 1500 South Raymond Avenue, Crown 1 Room.
Monday, April 10, 2000, 7:00 pm	Long Beach, CA	Los Cerritos Elementary School, 515 West San Antonio Drive, Auditorium.
Tuesday, April 11, 2000, 6:00 pm	Banning, CA	Banning Council Chambers, 99 East Ramsey Street.

*Date and time subject to final approval of the Kayenta Chapter. Local media and on-site announcements will advise residents of any changes to the Kayenta meeting schedule.

[FR Doc. 00–5027 Filed 3–2–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Rates for Central Valley and California-Oregon Transmission Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rates.

SUMMARY: Western Area Power Administration (Western) is proposing rates for Central Valley Project (CVP) commercial firm power, power scheduling, scheduling coordinator, CVP transmission, transmission of CVP power by others, network transmission, California-Oregon Transmission Project (COTP) transmission and ancillary services. Current rates expire September 30, 2002. The proposed rates will provide sufficient revenue to repay all annual costs, including interest expense, and repay required investment within the allowable period. Rate impacts are detailed in a rate brochure to be provided to all interested parties. Proposed rates are scheduled to go into effect on October 1, 2000, to correspond with the start of the Federal fiscal year (FY), and will remain in effect through December 31, 2004, which is the end of the current (1994) CVP Power Marketing Plan. This **Federal Register** notice initiates the formal process for the proposed rates.

DATES: The consultation and comment period will begin today and will end June 2, 2000. Western will present a detailed explanation of these proposed rates at a public information forum on March 14, 2000, at 1 p.m. PST, and will receive oral and written comments at a public comment forum on April 18, 2000, at 1 p.m., see the **ADDRESSES** section. Western must receive all comments by the end of the consultation and comment period to assure consideration of the comments.

ADDRESSES: Send written comments to Mr. Jerry W. Toenyes, Regional Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Dietz, Rates Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4453.

SUPPLEMENTARY INFORMATION: Proposed rates for CVP commercial firm power are designed to recover an annual revenue requirement that includes the investment repayment, interest, purchase power, transmission and operation and maintenance expense. A cost of service study allocates the projected annual revenue requirement for commercial firm power between capacity and energy. Capacity revenue requirement includes: (i) 100 percent of capacity purchase costs; (ii) 50 percent of the investment repayment; (iii) 50 percent of the interest expense; (iv) 50 percent of the power operation and maintenance expense allocated to power; and (v) 100 percent of CVP and COTP transmission expense. Projected CVP and COTP transmission revenue and 50 percent of projected CVP project use revenue reduce the annual costs that determine the capacity revenue requirement. The energy revenue requirement includes: (i) 100 percent of energy purchase costs; (ii) 50 percent of the investment repayment; (iii) 50 percent of the interest expense; and (iv) 50 percent of the power operation and maintenance expense allocated to power. Projected surplus power revenue, and 50 percent of projected CVP project use revenue reduce annual costs to determine the energy revenue requirement. The resulting capacity/energy revenue requirement split varies from 27 percent allocated to capacity from October 2003 through December 2004 to 38 percent allocated to capacity in FY 2001. The average capacity/energy revenue requirement split for the rate period is 32 percent to capacity and 68 percent to energy.

Western also developed proposed rates for CVP commercial firm power with the transmission revenue requirement removed from the commercial firm power revenue requirement. These rates would apply if Western joins the California Independent System Operator (CAISO) and if the CAISO uses the transmission revenue requirement to develop a regional transmission rate. Western has not made a decision on joining the CAISO. The decision to join the CAISO is not part of this rate adjustment public process. These proposed power rates with the transmission revenue requirement removed are designed to recover an annual revenue requirement that includes investment repayment, interest, purchase power and operation and maintenance expense. A cost of service study allocates projected annual revenue requirement for firm power between capacity and energy. Capacity revenue requirement includes: (i) 100 percent of capacity purchase costs; (ii) 50 percent of the investment repayment; (iii) 50 percent of the interest expense; and (iv) 50 percent of the power operation and maintenance expense allocated to power. Fifty percent of the projected CVP project use revenue reduces the annual cost to determine the capacity revenue requirement. Energy revenue requirement includes: (i) 100 percent of energy purchase costs; (ii) 50 percent of the investment repayment; (iii) 50 percent of the interest expense; and (iv) 50 percent of the power operation and maintenance expense allocated to power. Projected surplus power revenue, and 50 percent of the projected CVP project use revenue reduce the annual cost to determine the energy revenue requirement. The resulting capacity/energy revenue requirement split varies from 21 percent

allocated to capacity during October 2003 through December 2004 to 30 percent allocated to capacity in FY 2001. The average capacity/energy revenue requirement split for the rate period is 25 percent to capacity and 75 percent to energy.

Both sets of proposed rates, *i.e.*, the proposed rates for the CVP commercial firm power and the proposed rates for CVP commercial firm power with the transmission revenue requirement removed, include an Annual Energy Rate Alignment (AERA). Western will apply the AERA to firm energy purchased at or above an average annual load factor of 80 percent. The AERA is set to ensure that customers would pay at least the equivalent of the CVP composite rate for purchases from Western. The billing for the AERA will occur at the end of each FY.

Both sets of proposed rates also include a tier capacity rate. Western will apply the tier capacity rate to monthly capacity purchases at or above 90 percent of the customers' Contract Rate of Delivery (CRD). The tier capacity factor of 90 percent is an approximation based on the ratio of the sum of CVP Project Dependable Capacity, Northwest capacity credit and minimum monthly Pacific Gas and Electric Company capacity purchases to Western's system simultaneous load level.

Proposed rates for CVP commercial firm power, the applicable revenue requirement split between capacity and energy, tier capacity rate and AERA are in Table 1.

TABLE 1.—PROPOSED COMMERCIAL FIRM POWER RATES

Effective period	Total composite mills/kWh	Capacity $/kWmo	Energy mills/kWh	Capacity/energy split	Tier capacity $/kWmo	AERA mills/kWh
10/01/00 to 09/30/01	15.37	3.33	9.49	38/62	5.16	5.50
10/01/01 to 09/30/02	15.77	2.95	10.52	33/67	5.29	5.25
10/01/02 to 09/30/03	18.65	2.98	13.33	29/71	5.42	5.00
10/01/03 to 12/31/04	20.80	3.12	15.32	27/73	5.58	5.00

The proposed rates for CVP commercial firm power with the transmission revenue requirement removed, applicable revenue requirement split between capacity and energy, tier capacity rate and AERA are in Table 1A.

TABLE 1A.—PROPOSED COMMERCIAL FIRM POWER RATES WITH THE TRANSMISSION REVENUE REQUIREMENT REMOVED FROM THE COMMERCIAL FIRM POWER REVENUE REQUIREMENT

Effective period	Total composite mills/kWh	Capacity $/kWmo	Energy mills/kWh	Capacity/energy split	Tier capacity $/kWmo	AERA mills/kWh
10/01/00 to 09/30/01	13.55	2.23	9.49	30/70	5.16	5.50
10/01/01 to 09/30/02	14.22	2.00	10.52	26/74	5.29	5.25
10/01/02 to 09/30/03	17.12	2.05	13.33	22/78	5.42	5.00
10/01/03 to 12/31/04	19.20	2.14	15.32	21/79	5.58	5.00

The Deputy Secretary of the Department of Energy (DOE), approved the existing Rate Schedule CV–F9 for CVP commercial firm power on September 19, 1997 (Rate Order No. WAPA–77, 62 FR 50924, September 29, 1997). The Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedule on January 8, 1998, under FERC Docket No. EF97–5011–000 (82 FERC ¶ 62,006). The existing Rate Schedule CV–F9 became effective on October 1, 1997, for the period ending September 30, 2002. Under Rate Schedule CV–F9, the composite rate on October 1, 2000, is 18.56 mills per kilowatthour (mills/kWh), the base energy rate is 10.51 mills/kWh, the AERA energy rate is 4.09 mills/kWh and the capacity rate is $3.81 per kilowattmonth (kWmo). The proposed rates for CVP commercial firm power will result in an overall composite rate decrease of approximately 17 percent on October 1, 2000, when compared with the current CVP commercial firm power rates under Rate Schedule CV–F9. Table 2 provides a comparison of the current rates in Rate Schedule CV–F9 and the proposed rates along with the percentage change in the rates.

TABLE 2.—COMPARISON OF CURRENT AND PROPOSED RATES[1]

	Percentage change in commercial firm power rates							
Effective period	Total composite rate	Percent change	Base capacity $/kWmo	Percent change	Base energy mills/kWh	Percent change	AERA mills/kWh	Percent change
Current Rate Schedule								
Existing 10/01/00 to 09/30/01	18.56		3.81		10.51		4.09	
Proposed Rates								
10/01/00 to 09/30/01	15.37	−17	3.33	−13	9.49	−10	5.50	34
10/01/01 to	15.77	−15	2.95	−23	10.52		5.25	28
10/01/02 to 09/30/03	18.65		2.98	−22	−13.33	27	5.00	22
0/01/03 to 12/31/04	20.80	12	3.12	−18	15.32	46	5.00	22

[1] The percent changes do not include the impacts of the tier capacity rates.

The proposed rates for CVP commercial firm power with the transmission revenue requirement removed will result in an overall composite rate decrease of approximately 27 percent on October 1, 2000, when compared with the current CVP commercial firm power rates under Rate Schedule CV–F9. Table 2A provides a comparison of the current rates in Rate Schedule CV–F9 and the proposed rates along with the percentage change in the rates.

TABLE 2A.—COMPARISON OF CURRENT AND PROPOSED RATES WITH THE TRANSMISSION REVENUE REQUIREMENT REMOVED [2]

Effective period	Total composite rate	Percent change	Capacity $/kWmo	Percent change	Base energy mills/kWh	Percent change	AERA mills/kWh	Percent change
Percentage change in commercial firm power rates								
Current Rate Schedule								
Existing 10/01/00 to 09/30/01	18.56		3.81		10.51		4.09	
Proposed Rates with the transmission revenue requirement removed								
10/01/00 to 09/30/01	13.55	−27	2.23	−41	9.49	−10	5.50	34
10/01/01 to 09/30/02	14.22	−23	2.00	−48	10.52		5.25	28
10/01/02 to 09/30/03	17.12	−8	2.05	−46	13.33	27	5.00	22
10/01/03 to 12/31/04	19.20	3	2.14	−44	15.32	46	5.00	22

[2] The percent changes do not include the impacts of the tier capacity rates. These rates do not include the cost of transmission, therefore, the customer is required to buy transmission at an additional cost.

Adjustment Clauses Associated With the Proposed Rates for CVP Commercial Firm Power

Power Factor Adjustment

This provision in Rate Schedule CV–F9, will remain the same under the proposed rates for CVP commercial firm power.

Low Voltage Loss Adjustment

This provision in Rate Schedule CV–F9, will remain the same under the proposed rates for CVP commercial firm power.

Revenue Adjustment

The Revenue Adjustment Clause (RAC) provides for a comparison between the projected net revenues in the rate adjustment power repayment study to the actual net revenues. If the actual net revenue is more than the projected net revenue, CVP preference customers receive a credit. If actual net revenue is less than the projected net revenue, CVP preference customers may pay a surcharge, if needed, to make a minimum investment payment. The limit for the RAC credit or surcharge is $20 million, plus any purchase power contract adjustments during the FY for which the RAC is being calculated. The RAC is calculated annually and the associated distribution of the RAC credit or surcharge occurs during a 9-month period on power bills issued in January through September. For customers whose RAC credits cannot be fully credited through nine equal monthly amounts, Western has the option to increase the RAC credit during August and September.

Proposed Rate for Power Scheduling Service

The proposed rate for power scheduling service is $84.38 per hour and is based on costs incurred to provide the service. Power scheduling service provides for scheduling resources to meet load and reserve requirements.

Proposed Rate for Scheduling Coordinator Service

The proposed rate for scheduling coordinator service is $75.54 per hour and is based on costs incurred to provide the service. Scheduling coordinator service provides scheduling, real-time dispatching and financial settlements with the CAISO.

Proposed Formula Rate for CVP Transmission

The proposed formula rate for firm CVP transmission includes two components.

$$\text{Component 1: } \frac{\text{transmission revenue requirement}}{(\text{CVP capacity} + \text{total transmission capacity under long term contracts})}.$$

Component 1 is the ratio of Western's transmission revenue requirement to the sum of the maximum operating capacity of the Northern CVP power plants (CVP capacity) and the total transmission capacity under long-term contract between Western and other parties. Northern CVP power plants are J.F. Carr, Folsom, Keswick, Nimbus, Shasta, Spring Creek and Trinity.

Component 2: Pass through of any transmission-related costs incurred by Western due to electric industry restructuring or other changes in the industry. The costs in Component 2, as well as any changes to these costs, will be directly passed through to each appropriate transmission customer.

Western will revise the rate resulting from Component 1 of the proposed formula rate based on: (i) Updated data as of April 30 of each year; and (ii) a change in the numerator or denominator that results in a rate change of at least $.05 per kWmo. The rate resulting from the proposed formula rate for firm CVP transmission for FY 2001 is $0.73 per kWmo, a 43-percent increase from the existing rate of $0.51 per kWmo, under Rate Schedule CV–FT3. Based on a contract agreement to provide transmission service in the future, the

rate resulting from the proposed formula rate for firm CVP transmission for FY 2002 is $.58 per kWmo, a 14-percent increase from the existing rate of $.51 per kWmo.

The rate resulting from the proposed formula rate for nonfirm CVP transmission service for FY 2001 is 1.00 mill/kWh. The proposed formula rate for nonfirm CVP transmission is based on the same two components used in the proposed formula rate for firm CVP transmission. Firm or nonfirm transmission service for 1 year or less may be at rates lower than the rates resulting from the proposed formula rate if these cost-based rates are higher than the current rate for transmission sales.

The proposed formula rate for CVP transmission service is based on a revenue requirement that recovers: (i) The CVP transmission system costs for facilities associated with providing all transmission service; (ii) the nonfacilities costs allocated to transmission service; and (iii) any transmission-related costs incurred by Western due to electric industry restructuring or other changes in the industry. The proposed formula rate includes Western's cost for scheduling, system control and dispatch service and reactive supply and voltage control associated with the transmission service. The proposed formula rate is applicable to existing CVP firm transmission service and future point-to-point transmission service.

Proposed Rate for Transmission of CVP Power by Others

Western will directly pass through transmission service costs it incurs for delivering CVP power over a third party's transmission system to the requesting CVP customer. Rates under this schedule are proposed to be automatically adjusted as third party transmission costs are adjusted.

Proposed Formula Rate for Network Transmission

If Western offers network transmission service, its proposed formula rate is the product of the network customer's load ratio share times one-twelfth of the annual network transmission revenue requirement. The load ratio share is the network customer's hourly load coincident with Western's monthly CVP transmission system peak minus the coincident peak for all firm CVP (including reserved capacity) point-to-point transmission service. The proposed formula rate for network transmission service is based on a revenue requirement that recovers: (i) CVP transmission system costs for facilities associated with providing all transmission service; (ii) the nonfacilities costs allocated to transmission service; and (iii) any transmission-related costs incurred by Western due to electric industry restructuring or other changes in the industry. The proposed formula rate includes Western's cost for scheduling, system control and dispatch service and reactive supply and voltage control needed to provide the transmission service.

Proposed Formula Rate for COTP Transmission

The proposed formula rate for COTP transmission includes two components.

$$\text{Component 1: } \frac{\text{Transmission Revenue Requirement}}{\text{Western's share of COTP Seasonal Capacity}}$$

Component 1 is the ratio of the transmission revenue requirement to Western's share of COTP seasonal capacity. Western will update the rate resulting from Component 1 at least 15 days before the start of each California-Oregon Intertie (COI) rating season. Seasonal definitions for summer, winter and spring are June through October, November through March and April through May, respectively.

Component 2: Pass through of any transmission-related costs incurred by Western due to electric industry restructuring or other changes in the industry. The costs in Component 2, as well as any changes to these costs, will be directly passed through to each appropriate transmission customer.

The rates resulting from the proposed formula rate for firm COTP transmission service for FY 2001 are: summer—$1.47 per kWmo, winter—$1.66 per kWmo and spring—$1.53 per kWmo. These rates resulting from the proposed formula rate result in a 10-percent increase during the summer, a 24-percent increase during the winter and a 14-percent increase during the spring compared to the existing rate of $1.34 per kWmo.

The proposed formula rate for nonfirm COTP transmission is based on the same two components used in the proposed formula rate for firm COTP transmission. Rates resulting from the proposed formula rate for nonfirm transmission service for FY 2001 are: summer—2.01 mills/kWh, winter—2.28 mills/kWh and spring—2.10 mills/kWh. These rates for nonfirm COTP transmission service result in a 39-percent increase during the summer, a 57-percent increase during the winter and a 45-percent increase during the spring compared to the existing rate of 1.45 mills/kWh. Firm or nonfirm transmission service for 1 year or less may be at rates lower than the rates resulting from the proposed formula rate if these cost-based rates are higher than the current rate for transmission sales.

Rates resulting from the proposed formula rate for COTP transmission service are based on a revenue requirement that recovers: (i) Western's share of COTP transmission system costs for facilities associated with providing all transmission service; (ii) Western's share of the nonfacilities costs allocated to transmission service; and (iii) any transmission-related costs incurred by Western due to electric industry restructuring or other changes in the industry. The rates resulting from the proposed formula rate include Western's cost for scheduling, system control and dispatch service and reactive supply and voltage control associated with transmission service. The proposed formula rate would apply to existing COTP transmission service and future point-to-point transmission service.

Proposed Rates for Ancillary Services

Western will provide ancillary services, subject to availability, at the proposed rates in Table 3. Western designed these proposed rates to recover only the costs it incurs for providing the service(s). Sales of ancillary services of 1 year or less may be at rates lower than the proposed rates if these cost-based rates are higher than the current rate for ancillary service sales.

TABLE 3.—PROPOSED RATES FOR ANCILLARY SERVICES

Ancillary service type	Rate
Transmission Scheduling, System Control and Dispatch Service—required to schedule movement of power through, out of, within, or into a control area.	Appropriate transmission rates include Western's cost.
Reactive Supply and Voltage Control—reactive power support provided from generation facilities necessary to maintain transmission voltages within acceptable limits of the system.	Appropriate transmission rates include Western's cost.
Regulation and Frequency Response Service—provides generation to match resources and loads on a real-time continuous basis.	Monthly: $1.78 per kWmonth. Weekly: $0.42 per kWweek. Daily: $0.06 per kWday.
Energy Imbalance Service—provided when a difference occurs between the scheduled and actual delivery of energy to a load or from a generation resource within a control area over a single month.	*Within Limits of Deviation Band:* Accumulated deviations are to be corrected or eliminated within 30 days. Any net deviations that are accumulated at the end of the month (positive or negative) are to be exchanged with like hours of energy or charged at the composite rate for CVP commercial firm power then in effect.
Hourly Deviation (MW)—net scheduled amount of energy for the hour minus the hourly net metered (actual delivered) amount.	*Outside Limits of Deviation Band:* (i) Positive Deviations—The greater of no charge, or any additional cost incurred. (ii) Negative Deviations—during on-peak hours, the greater of 3 times the proposed rates for CVP commercial firm power or any additional cost incurred. During off-peak hours, the greater of the proposed rates for CVP commercial firm power or any additional cost incurred.
Spinning Reserve Service—provides capacity available the first 10 minutes to take load and is synchronized with the power system.	Monthly: $1.95 per kWmonth. Weekly: $0.42 per kWweek. Daily: $0.06 per kWday. Hourly: $0.0027 per kWh.
Supplemental Reserve Service—provides capacity not synchronized, but can be available to serve loads within 10 minutes.	Monthly: $1.77 per kWmonth. Weekly: $0.42 per kWweek. Daily: $0.06 per kWday. Hourly: $0.0024 per kWh.

Since the proposed rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, Western will hold both a public information forum and a public comment forum. After reviewing public comments, Western will recommend the Deputy Secretary of DOE approve the proposed rates (and as amended) on an interim basis.

Legal Authority

These proposed rates for CVP and COTP power, transmission and power-related services are being established pursuant to the DOE Organization Act, 42 U.S.C. 7101–7352; the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts that specifically apply to the projects involved.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator; and (2) the authority to confirm, approve and place into effect on a final basis, to remand, or to disapprove such rates to FERC. In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve and place such rates into effect on an interim basis to the Deputy Secretary. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memoranda, or other documents made or kept by Western for developing the proposed rates, are available for inspection and copying at the Sierra Nevada Regional Office, located at 114 Parkshore Drive, Folsom, California 95630–4710.

Regulatory Procedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a Regulatory Flexibility analysis since it applies to rates or services for public property.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*; Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: February 18, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–5168 Filed 3–2–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6546–9]

Access to Confidential Business Information by Booz-Allen, & Hamilton, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is authorizing Booz-Allen, & Hamilton, Inc. to participate in reviews of selected Superfund cost recovery documentation and records management. During the review, the contractor will have access to information which has been submitted to EPA under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Some of this information may be claimed or determined to be Confidential Business Information (CBI).

DATES: The contractor (Booz-Allen, & Hamilton, Inc.) will have access to this data five working days from the date of this notice.

ADDRESSES: Send or deliver, written comments to Veronica Kuczynski, U.S. Environmental Protection Agency, Office of the Comptroller (3PM30), 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Veronica Kuczynski, Office of the Comptroller, (3PM30), 1650 Arch Street, Philadelphia, Pennsylvania 19103, Telephone (215) 814–5169.

SUPPLEMENTARY INFORMATION: Under EPA Interagency Agreement with General Services Administration, Contract GSOOT96AHD0002, Task Order #19990712, Booz-Allen, & Hamilton, Inc. will be conducting an on-site review of the procedures and systems currently in place for compliance with Superfund cost recovery and record keeping requirements in the State of Maryland. This review involves conducting transaction testing to evaluate recipient conformance with applicable regulations and acceptable business practices and documenting findings. The contractor will examine transactions for the following:

(1) Expenditures Review: expenditure documentation such as expense reports, timesheets, and purchase requests from the point of origination to the point of payment to determine compliance with such requirements as site-specific accounting data, authorizing signature and reconciliation of timesheets to expense reports.

(2) Financial Reports: review financial drawdowns, Financial Status Reports, and internal status reports, to determine if information is consistent between these documents, if recipient is properly using information, and if the reports are submitted when required.

(3) Recordkeeping Procedures: review samples of Superfund documentation to determine the effectiveness of the recipient procedures to manage and reconcile this documentation (focusing on site-specific documentation, retention schedules, and the ability of the recipient to provide EPA with required financial documentation for cost recovery purposes in the specified time frame).

In providing this support, Booz-Allen, & Hamilton, Inc., employees may have access to recipient documents which potentially include financial documents submitted under section 104 of CERCLA, some of which may contain information claimed or determined to be CBI.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that Booz-Allen, & Hamilton, Inc., requires access to CBI to provide the support and services required under the Delivery Order. These regulations provide for five working days notice before contractors are given access to CBI.

Booz-Allen, & Hamilton, Inc. will be required by contract to protect confidential information. These documents are maintained in recipient office and file space.

Dated: February 24, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–5204 Filed 3–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6251–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 14, 2000 Through February 18, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 9, 1999 (63 FR 17856).

Draft EISs

ERP No. D–AFS–J65310–00 Rating EC2, Dakota Prairie Grasslands, Nebraska National Forest Units and Thunder Basin National Grassland, Land and Resource Management Plans 1999 Revisions, Implementation, MT, NB, WY, ND and SD.

Summary: EPA expressed concern that as the public dialogue takes place on roadless areas that an interim plan be in place that reserves current roadless areas until a plan is in place. EPA requested that a section be added to discuss the government-to-government consultation process with affected Indian Tribes and that stipulations on oil and gas leases require pits to be netted. EPA also suggested that portions of the Little Missouri River that course through the Grasslands be proposed for scenic and/or wild designation.

ERP No. D–AFS–K65224–AZ Rating EC2, Williams Ski Area Expansion on Bill Williams Mountain, Implementation, Special-Use-Permit, Kaibab National Forest, Williams Ranger District, Coconino County, AZ.

Summary: EPA expressed concerns with the potential for the proposed project to impact water and cultural resources. EPA requested that the FEIS more thoroughly address those issues and discuss the consultation process with affected tribes.

ERP No. D–BLM–K39058–CA Rating EO2, Cadiz Groundwater Storage and Dry-Year Supply Program, Construction and Operation, Amendment of the California Desert Conservation Area (CDCA) Plan, Issuance of Right-of-Way Grants and Permits, San Bernardino County, CA.

Summary: EPA objected to the project based on the potential significant impacts and the lack of an air conformity determination. The project would also adversely affect many ephemeral washes and other sensitive habitats, but mitigation measures do not appear sufficient to protect resources. EPA recommended that a draft conformity determination be issued prior to issuance of the FEIS.

ERP No. D–BOP–E80002–SC Rating EC2, South Carolina—Federal Correctional Institution, Construct and Operate, Possible Sites: Andrew, Bennettsville, Oliver and Salters, SC.

Summary: EPA expressed concern regarding potential wetland impacts and requested that additional information be included in the Final EIS.

ERP No. D–FAA–F51046–MN Rating EC2, Flying Cloud Airport Expansion, Extension of the Runways 9R/27L and 9L/27R, Long-Term Comprehensive Development, In the City of Eden Prairie, Hennepin County, MN.

Summary: EPA requested additional information on noise mitigation to assure that residents of Eden Prairie and the resources of the Minnesota Valley National Wildlife Refuge are adequately protected.

ERP No. D–SFW–K05056–CA Rating EC2, High Desert Power Project, Construction and Operation, A Combined-Cycle Natural Gas-Fueled Electrical Generation Power Planet, Approval of Incidental Taking Authorization under Sections 7 and 10 of the Federal ESA, San Bernardino County, CA.

Summary: EPA expressed concern with the High Desert Power Project (HDPP) due to the need to characterize the trichloroethane (TCE) groundwater plume under the power plant site prior to the plant's design and construction and potential UIC permit requirements. EPA urged selection of the power plant without the 32-mile natural gas pipeline, given the potential adverse effects of the pipeline on special status species and the expectation of sufficient natural gas from the 3.5 mile pipline.

Final EIS

ERP No. F–BIA–K61146–CA Programmatic—Cabazon Resource Recovery Park Section 6 General Plan, Implementation, Approval of Master Lease and NPDES Permit, Mecca, CA.

Summary: EPA had no major objections to the EIS but requested that BIA's Record of Decision reflect the commitments found in the FEIS, especially for mitigation measures.

Dated: February 29, 2000.

B. Katherine Biggs,

Associate Director.

[FR Doc. 00–5198 Filed 3–2–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6251–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa. Weekly receipt of Environmental Impact Statements. Filed February 21, 2000 through February 25, 2000. Pursuant to 40 CFR 1506.9.

EIS No. 000052, DRAFT EIS, AFS, MT, Spar and Lake Subunits Forest Health Project, improvements, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT. Due: April 17, 2000. Contact: Michael L. Balboni (406) 295–4693.

EIS No. 000053, FINAL EIS, AFS, ID, Coeur d'Alene River Ranger District Noxious Weed Control Project, treating 76 specific sites across district, Kootenai and Shoshone Counties, ID. Due: April 03, 2000. Contact; Val Goodnow (208) 664–2318.

EIS No. 000054, DRAFT EIS, AFS, CA, Pendola Fire Restoration Project, Implementation, Tahoe National Forest, Downieville Ranger District, Yuba County, CA. Due: April 17, 2000. Contact: Jeanne M. Masquelier (530) 288–3231.

EIS No. 000055, FINAL EIS, BLM, NV, South Pipeline Mine Project, Proposal to Extend Gold Mining Operations, Implementation, Lander County, NV. Due: April 03, 2000. Contact: Gary Foulkes (775) 635–4060.

EIS No. 000056, FINAL EIS, NPS, TX, Padre Island National Seashore Oil and Gas Management Plan, Implementation, Kleberg, Kenedy and Willacy Counties, TX. Due: April 03, 2000. Contact: Linda Dansby (505) 988–6095.

EIS No. 000057, REGULATORY DRAFT, AFS, OR, ID, OR, ID, Hells Canyon National Recreation Area (HCNRA), Comprehensive Management Plan, Revised and Updated Information on Five Alternatives, Implementation, Wallowa-Whitman National Forest, Nez Perce and Payette National Forests, Bake and Wallowa Counties, or and Nez Perce and Adam Counties, ID. Due: June 20, 2000. Contact: Elaine Kohrman (541) 523–1331.

EIS No. 000058, DRAFT EIS, FRC, CA, UT, AZ, NM, Southern Trails Pipeline Project (CP99–163–000), Conversion of an Existing Crude Oil Pipeline (known as the ARCO Four Corners Pipeline Line 90 System), Construction and Operation, CA, AZ, UT and NM. Due: April 17, 2000. Contact: Paul McKee (202) 208–1088.

EIS No. 000059, DRAFT EIS, DOE, TN, Treating Transuranic (TRU)/Alpha Low-Level Waste at the Oak Ridge National Laboratory, Construct, Operate, and Decontaminate/ Decommission of Waste Treatment Facility, Oak Ridge, TN. Due: April 17, 2000. Contact: Clayton Gist (865) 241–3498.

EIS No. 000060, FINAL EIS, USN, CA, Hunters Point (Former) Naval Shipyard Disposal and Reuse, Implementation, City of San Francisco, San Francisco County, CA. Due: April 03, 2000. Contact: Melanie Ault (619) 532–0954.

EIS No. 000061, DRAFT SUPPLEMENT, DOD, AK, ND, AS, National Missile Defense Deployment (NMD) System, Upgraded Early Warning Radar Supplement (UEWR), To Address Interior Replacement of Electronic Hardware and Computer Software, Affected Areas Clear Air Force Station (AFS), Denali Borough, AK; Beale Air Force Base (AFB), Yuba County, CA; and Cape Cod AFS, Barnstable County, MA. Due: April 17, 2000. Contact: David Hasley (256) 955–4170.

EIS No. 000062, FINAL EIS, OSM, TN, Fall Creek Falls Petition Evaluation Document, Implementation, Designate the Land as Unsuitable for Surface Coal Mining Operation, Van Buren and Bledsoe Counties, TN. Due: April 03, 2000. Contact: Sam K. Bae (202) 208–2633.

Amended Notices

EIS No. 000034, DRAFT EIS, FRA, Use of Locomotive Horns at Highway-Rail Grade Crossing, Proposal Rule, Nationwide. Due: May 26, 2000. Contact: Mark H. Tessler (202) 493–6038. Published—FR–02–18–00—This EIS was inadvertently published in the 02–18–2000 FR. The correct Notice of Availability was published in the date comments are due back to the preparing agency is May 26, 2000.

Dated: February 29, 2000.

B. Katherine Biggs,

Associate Director, Office of Federal Activities.

[FR Doc. 00–5199 Filed 3–2–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50866A; FRL–6495–8]

Experimental Use Permit; Cry1F Bt Corn Receipt of Amendment/Extension Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 68467–EUP–2 from Mycogen c/o Dow Agrosciences LLC requesting an experimental use permit (EUP) for the *Bacillus thuringiensis* Cry1F protein and the genetic material

necessary for its production (plasmid insert PHI6999) in corn plants. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket control number OPP–50866A, must be received on or before April 3, 2000.

ADDRESSES: Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50866A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8715; and e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons interested in plant-pesticides or who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–50866A. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50866A in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically* . You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–50866A. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

EPA has received an application from Mycogen c/o Dow Agrosciences LLC,

9330 Zionsville Road, Indianapolis, IN 46268–1054, for an extension/amendment of their EUP for *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (plasmid insert PHI8999) in corn plants (68467–EUP–2). Notice of the original issuance of this EUP was published in the **Federal Register** on May 5, 1999 (64 FR 24161) (FRL–6078–2). The new program extends testing to March 31, 2001 and adds 2,240 acres. Field testing is to take place in: Hawaii, Illinois, Indiana, Iowa, Minnesota, Nebraska, and Puerto Rico. Experimental trials are to involve agronomic observation and model validation for pollen shed phenology.

III. What Action is the Agency Taking?

Following the review of the Mycogen c/o Dow Agrosciences LLC application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: February 28, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–5375 Filed 3–1–00; 2:11 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 24, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 3, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-XXXX.
Title: Broadcast Statement of Compliance.
Form No.: FCC Form 397.
Type of Review: New collection.
Respondents: Business or other for-profit, not-for-profit institutions.
Number of Respondents: 4,500.
Estimated Time Per Response: 0.5 hours.
Frequency of Response: Recordkeeping requirement; Reporting requirement every second, fourth and sixth year of a station's license term.
Total Annual Burden: 2,250 hours.
Total Annual Cost: Not applicable.
Needs and Uses: The FCC Form 397 is required to be filed by all licensees of AM, FM, TV, international and LPTV broadcast stations. It is a data collection device filed every second, fourth, and sixth year of a station's license term. The FCC Form 397 will be used by FCC staff and interested parties to monitor a broadcaster's compliance with the Commission's EEO requirements throughout the license term.

OMB Control No.: 3060-XXXX.
Title: Election Statement.
Form No.: N/A.
Type of Review: New collection.
Respondents: Business or other for-profit, not-for-profit institutions.
Number of Respondents: 13,364.
Estimated Time Per Response: 3 hours.
Frequency of Response: Reporting requirement—on occasion and other: within 45 days of the effective date of the new rules.
Total Annual Burden: 40,082 hours.
Total Annual Cost: $5,345,600.
Needs and Uses: Broadcasters and cable entities can choose between supplemental recruitment measures or alternative recruitment program. Broadcasters and cable entities are required to file with the Commission and place in their public inspection files an election statement indicating which approach they choose to implement within 45 days of the effective date of the new EEO rules. This election statement will make the Commission and the public aware of the approach the broadcaster/cable entity intends to implement.

OMB Control No.: 3060–0212.
Title: Section 73.2080, Equal Employment Opportunity Program.
Form No.: N/A.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit, not-for-profit institutions.
Number of Respondents: 11,239.
Estimated Time Per Response: 42–52 hours.
Frequency of Response: Recordkeeping requirement; annual reporting requirement.
Total Annual Burden: 528,238 hours.
Total Annual Cost: Not applicable.
Needs and Uses: Section 73.2080 requires that each broadcast station shall establish, maintain and carry out a program to ensure equal employment opportunity in every aspect of a station's policy and practice. The data is used by a broadcast licensee in the preparation of the station's EEO program (FCC Form 396) submitted with the license renewal application, FCC Form 397, and the annual EEO public file report.

OMB Control No.: 3060–0349.
Title: Sections 76.73, 76.75, 76.79, and 76.1702, Cable EEO Requirements.
Form No.: N/A.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 5,600.
Estimated Time Per Response: 42–52 hours.
Frequency of Response: Recordkeeping requirement; annual reporting requirement.

Total Annual Burden: 127,680 hours.

Total Annual Cost: Not applicable.

Needs and Uses: Sections 76.73 and 76.75 require each cable/MVPD employment unit to establish, maintain and carry out a program to ensure equal employment opportunity in every aspect of a cable entity's policy and practice. Sections 76.79 and 76.1702 require every cable/MVPD employment unit to maintain, for public inspection, a file containing copies of all annual employment reports and related documents. The data is used by cable/MVPD units in the preparation of the Annual Employment Report (FCC Forms 395–A/395–M) and the EEO public file report.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5102 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 28, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 3, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0716.

Title: Blanketing Interference.

Form No.: Not applicable.

Type of Review: Extension to a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions.

Number of Respondents: 21,000.

Estimated Time Per Response: 1–hours.

Frequency of Response: Third party disclosure requirement.

Total Annual Burden: 41,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Under Sections 72.88 (AM), 73.318 (FM), AND 73.685(d) (TV), the licensee is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a licensee is only required to provide technical assistance in determining the cause of the interference.

The Commission has an outstanding Notice of Proposed Rulemaking (NPRM) in MM Docket No. 96–62, In the Matter of Amendment of Part 73 of the Commission's Rules to More Effectively Resolve Broadcast Blanketing Interference, Including Interference to Consumer Electronics and Other Communications Devices. This rulemaking proceeding proposed to provide detailed clarification of the AM, FM and TV licensee's responsibilities in resolving/eliminating blanketing interference cause by their individual stations. This NPRM proposed to consolidate all blanketing interference rules under a new section 73.1630, Blanketing Interference. This new rule was designed to facilitate the resolution of broadcast interference problems and set forth all responsibilities of the licensee/permittee of a broadcast station. To date, final rules have not been adopted.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5103 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–368]

Wireless Telecommunications Bureau Seeks Comment on Airadigm Communications Inc.'s Contingent Emergency Petition for Reinstatement or in the Alternative for Waiver

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Wireless Telecommunications Bureau (Bureau) seeks Comment on Airadigm Communications Inc.'s Contingent Emergency Petition for Reinstatement or in the Alternative for waiver of the automatic cancellation of its PCS C and F block licenses.

DATES: Comments are due March 17, 2000 and reply comments are due March 31, 2000.

ADDRESSES: Comments and replies should be filed with the Office of the Secretary, Federal Communications Commission, TW B204, 445 12th St. SW Washington, DC 20554. Copies of the comments and replies should also be provided to José M. Ochoa, Auctions and Industry Analysis Division, Rm. 4–B544, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th St. SW Washington, DC 20554. All comments should reference DA 00–368.

FOR FURTHER INFORMATION: José M. Ochoa of the Auctions and Industry Analysis Division at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released February 24, 2000 (Notice). The complete text of the Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20035, (202) 857–3800. It is also available on the Commission's web site at http://www.fcc.gov/wtb/auctions.

1. Airadigm Communications Inc. ("Airadigm") filed a "Contingent Emergency Petition for Reinstatement or in the Alternative for Waiver" (the

"Petition") of the automatic cancellation of its PCS C and F Block licenses. Airadigm argues that reinstating its licenses, or granting a waiver of cancellation of its licenses, would serve the public interest by permitting the continued delivery of wireless services.

2. Parties should not construe the Bureau's request for comment on Airadigm's petition to include the operation of the Commission's automatic cancellation rules or the effect of bankruptcy on the operation of those rules. We intend by this notice to limit comment to Airadigm's request for regulatory relief in the form of license reinstatement, or alternativately, a waiver of the automatic cancellation of the licenses under the Commission's rules.

3. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200(a), 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda describing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

4. The Airadigm petition is available for public inspection and copying in the Reference Center, Room CY A257, 445 12th St., SW, Washington, DC 20554. Copies of the petition are also available from ITS at 1231 20th St. NW, Washington, DC 20036, or by calling (202) 857–3800.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions & Industry Analysis Division.

[FR Doc. 00–5097 Filed 3–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal-State Joint Board on Universal Service To Convene an Open Meeting

AGENCY: Federal Communications Commission.

ACTION: Announcement of meeting.

SUMMARY: The Federal-State Joint Board on Universal Service will hold an open meeting to address issues related to high-cost universal service support.

DATES: The meeting will be held on Monday, March 6, 2000, from 4 p.m. to 5 p.m.

ADDRESSES: This meeting will be held in the Federal Communications Commission Building, Commission Meeting Room, located at 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gene Fullano, (202) 418–7400.

Dated: February 29, 2000.

Irene M. Flannery,

Chief, Accounting Policy Division.

[FR Doc. 00–5291 Filed 3–2–00; 10:35 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

PLACE: 800 North Capitol Street, NW, First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be open to the public and the remainder of the meeting will be closed.

MATTERS TO BE CONSIDERED:

The Open Portion of the Meeting

1. Docket No 99–10—Ocean Common Carriers Subject to the Shipping Act of 1984
2. Carrier Automated Tariff Systems: Tariff Accessibility Audit and Issues
3. Docket No. 99–23—In the Matter of a Single Individual Contemporaneously Acting as the Qualifying Individual for Both an Ocean Freight Forwarder and a Non-Vessel-Operating Common Carrier

The Closed Portion of the Meeting

1. Status Report and Update—Docket No. 98–14—Shipping Restrictions, Requirements and Practices of the People's Republic of China
2. Docket No. 99–21—South Carolina Maritime Service, Inc. v. South Carolina State Ports Authority

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary

[FR Doc. 00–5348 Filed 3–1–00; 12:25 pm]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

National Advisory Council for Healthcare Research and Quality: Request for Nominations for Public Members

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Request for nominations for public members.

SUMMARY: 42 U.S.C. 299c, section 921 of the Public Health Service (PHS Act), established a National Advisory Council for Healthcare Research and Quality (the Council). The Council is to advise the Secretary for HHS and the Director of the Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve the outcomes, and reduce the costs of health care services, as well as improve access to such services, through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

Eight current members' terms will expire in June 2000, and the Agency's recent reauthorization law added an additional four members. To fill these positions in accordance with the legislative mandate establishing the Council, we are seeking individuals who are distinguished in the conduct of research, demonstration projects, and evaluations with respect to health care; individuals distinguished in the fields of health care quality research or health care improvement; individuals distinguished in the practice of medicine; individuals distinguished in the other health professions; individuals either representing the private health care sector (including health plans, providers, and purchasers) or individuals distinguished as administrators of health care delivery systems; individuals distinguished in the fields of health care economics, information systems, law, ethics, business, or public policy; and individuals representing the interests of patients and consumers of health care. Individuals are particularly sought with experience and success in activities specified in the summary paragraph above, through which the Agency carries out its work.

DATE: Nominations should be received on or before April 14, 2000.

ADDRESSES: Nominations should be sent to Ms. Anne Lebbon, AHRQ, 2101 East

Jefferson Street, Suite 600, Rockville, Maryland, 20852. Nominations also may be faxed to (301) 443–0251.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Lebbon, AHRQ, at (301) 594–7216.

SUPPLEMENTARY INFORMATION: 42 U.S.C. 299c, section 921 of the PHS Act, provides that the National Advisory Council for Healthcare Research and Quality consist of 21 appropriately qualified representatives of the public appointed by the Secretary of Health and Human Services and eight ex officio representatives from Federal agencies conducting or supporting health care research. The Council meets in the Washington, DC, metropolitan area, generally in Rockville, Maryland, approximately three times a year to provide broad guidance to the Secretary and AHRQ's Director on the direction and programs for AHRQ.

Eight individuals will presently be selected by the Secretary to serve on the Council beginning with the meeting in the fall of 2000. Members generally serve 3-year terms. Appointments are staggered to permit an orderly rotation of membership.

Interested persons may nominee one or more qualified persons for membership on the Council. Nominations shall include a copy of the nominee's resume or curriculum vitae, and state that the nominee is willing to serve as a member of the Council. Potential candidates will be asked to provide detailed information concerning their financial interests, consultant positions, and research grants and contracts, to permit evaluation of possible sources of conflict of interest.

The Department is seeking a broad geographic representation and has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory bodies and, therefore, extends particular encouragement to nominations for approximately qualified female, minority, and/or physically handicapped candidates.

Dated: February 24, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–5125 Filed 3–2–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research Quality

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Friday, March 17, 2000, from 8:30 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at 6010 Executive Boulevard , Fourth Floor, Rockville, Maryland 20852.

FOR GENERAL INFORMATION CONTACT: Anne Lebbon, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852, (301) 594–7216. For press-related information, please contact Karen Migdail at 301/594–6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6662 no later than March 10, 2000.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Healthcare Research and Quality. In accordance with its statutory mandate, the Council is to advise the Secretary and the Director, Agency for Healthcare Research and quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve outcomes, reduce costs of health care services, improve access to such services through scientific research, the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members. Donald M. Berwick, M.D., the Council chairman, will preside.

II. Agenda

On Friday, March 17, 2000, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairman. The Director, AHRQ, will present the status of the Agency's current research, programs and initiatives. Tentative agenda items include health care markets: research directions, national quality measures, and patient safety. The official agenda will be available on AHCPR's website at *www.ahrq.gov* no later than March 10, 2000. The meeting will adjourn at 4:00 p.m.

Dated: February 25, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–5124 Filed 3–2–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Special Emphasis Panel meeting.

A Special Emphasis Panel (SEP) is a committee of a few experts selected to conduct scientific reviews of applications related to their areas of expertise. The committee members are drawn from a list of experts designated to serve for particular individual meetings rather than for extended fixed terms of services.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of SEP:* HIV/AIDS.

Date: March 24, 2000 (Open from 3:00 p.m. to 3:15 p.m. and closed for remainder of the meeting).

Place: AHRQ, 2101 E. Jefferson Street, suite 400W, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of the meeting should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: February 24, 2000.
John M. Eisenberg,
Director.
[FR Doc. 00–5130 Filed 3–2–00; 8:45 am]
BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–26]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. Information Collection Procedures for Requesting Public Health Assessments—(0923–0002)—EXTENSION—The Agency for Toxic Substances and Disease Registry (ATSDR) is announcing the request for extension of the OMB approval for the Information Collection Procedures for Requesting Public Health Assessments. ATSDR is authorized to accept and respond to petitions from the public that request public health assessments of sites where there is a threat of exposure to hazardous substances (42 U.S.C. 9604(i)(6)(B)). The Agency conducts public health assessments of releases or facilities for which individuals provide information that people have been exposed to a hazardous substance, and for which the source of such exposure is a release, as defined under CERCLA. The general administrative procedures for conducting public health assessments, including the information that must be submitted with each request, is described at 42 CFR 90.3, 90.4, and 90.5. Procedures for responding to petitions, decision criteria, and methodology for determining priorities may be found at 57 FR 37382–89. There is no cost to the respondents other than their time.

ATSDR anticipates approximately 36 requests will be received each year. This estimate is based on the number of requests received since the enabling legislation was enacted and the expressions of interest (via telephone, letter, etc.) from members of the public, attorneys, and industry representatives.

Respondents	Annual number of respondents	No. of responses/respondent	Avg. hourly burden/response	Total burden hours
General public	36	1	.50	18

2. National Survey of Family Growth, Cycle 6 Pretest (0920–0314)—Reinstatement—The National Center for Health Statistics (NCHS)—The National Survey of Family Growth (NSFG) has been conducted periodically by the National Center for Health Statistics (NCHS) since 1973—in 1973, 1976, 1982, 1988, and 1995. The purpose of the NSFG is to provide national statistics on "family formation, growth, and dissolution" (Section 306 of the Public Health Service Act). This includes data on factors affecting birth, pregnancy rates, and family formation—such as sexual activity, marriage, divorce, cohabitation, contraception, infertility, miscarriage, and wanted and unwanted births. The social, economic (*e.g.*, education, income, and work), and health factors (such as low birth weight and receipt of health care) associated with them are also collected. The target universe of the NSFG has always been women in the civilian non-institutional population of reproductive age (15–44). The population in this pretest includes an independent sample of men (15–49), in order to collect data related to male fertility, marriage and divorce, and parenting, as well as data to measure the risk of HIV (the virus that causes AIDS) and other sexually transmitted diseases.

NSFG data are used by NCHS, the National Institute for Child Health and Human Development (NICHD), the Office of Population Affairs, the CDC HIV Prevention program, the Office of the Assistant Secretary for Planning and Evaluation (OASPE/DHHS), and the Children's Bureau. Specific uses include the Healthy People 2000 and 2010 objectives, reporting to Congress required by the 1996 Personal Responsibility and Work Opportunity Act (Sections 905 and 906), the DHHS Fatherhood Initiative, and the National Campaign to Prevent Teen Pregnancy, among others. Data are published by NCHS, in professional journals, used by private academic and nonprofit researchers, and cited by journalists and others.

The NSFG Cycle 6 pretest will include interviews with about 600 males and 600 females and will test a variety of procedures to improve the quality and usefulness of the data. The interviews are conducted in person by trained female interviewers in respondents homes. Interviews average 60 minutes for males and 80 minutes for females. Remuneration is proposed, and will be the subject of an experiment in the pretest. The pretest is in preparation for a main study that will include interviews with 7,200 males and 11,800 females in 2001 or 2002. There is no cost to the respondent.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden per responses (in hrs.)	Response burden (in hrs.)
Screening	2000	1	5/60	167
Interviewing:				

Respondents	No. of respondents	No. of responses/respondent	Avg. burden per responses (in hrs.)	Response burden (in hrs.)
Males	600	1	1	600
Females	600	1	80/60	800
Verification	200	1	5/60	17
Cognitive	100	1	1	100
Pretest Total				1,684

3. National Nosocomial Infections Surveillance (NNIS) system—Renwal—National Center for Infectious Disease (NCID). The most recent renewal of the NNIS system (OMB No. 0920–0012) was in 1997. The NNIS system, which was instituted in 1970, is an ongoing surveillance system currently involving 315 hospitals that voluntarily report their nosocomial infections data to the Centers for Disease Control and Prevention (CDC), who aggregates the data into a national database. The data are collected using surveillance protocols developed by CDC for high risk patient groups (ICU, high-risk nursery, and surgical patients). Instructional manuals, training of surveillance personnel, and a computer surveillance software are among the support that CDC provides without cost to participating hospitals to ensure the reporting of accurate and uniform data.

The purpose of the NNIS system is to provide national data on the incidence of nosocomial infections and their risk factors, and on emerging antibiotic resistance. The data are used to determine the magnitude of various nosocomial infection problems and trends in infection rates among patients with similar risks. They are used to detect changes in the epidemiology of nosocomial infections resulting from new medical therapies and changing patient risks. New to the NNIS system is the monitoring of antibiotic resistance and antimicrobial use in groups of patients to describe the epidemiology of antibiotic resistance and to understand the role of antimicrobial therapy to this growing problem. The NNIS system can also serve as a sentinel system for the detection of nosocomial infection outbreaks in the event of national distribution of a contaminated medical product or device.

The respondent burden is not the same in each hospital since the hospitals can select from a wide variety of surveillance options. A typical hospital will monitor patients for infections in two ICUs and surgical site infections following 3 surgical operations. The respondent burden includes the time and cost to collect data on nosocomial infections in patients in these groups and the denominator data to characterize risk factors in the patients who are being monitored; to enter the data as well as a surveillance plan into the surveillance software; to send the data to CDC by electronic transmission; and complete a short annual survey and administrative forms. The respondent burden is expected to increase since an estimated 10 hospitals are expected to enroll into the NNIS system each year. There is no cost to the respondent.

Year	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
2000	315	1	950	290,260
2001	325	1	923	299,985
2002	335	1	967	309,979
Total				900,224

4. Audience-Derived Input Regarding the Usability of the Main Web Site for the Centers for Disease Control and Prevention—New—As the nations lead agency for health promotion and disease prevention, the Centers for Disease Control and Prevention (CDC) serves as a role model for incorporating health communication into an overall strategy of targeting audiences for intervention. In recent years, the Internet and other new technologies have opened up many new possibilities for communicating messages about health. Although these new technologies have yielded great opportunities for reaching diverse populations, they have also created new challenges. Increased options permit the general public greater freedom to be selective about the types and sources of information to which they give their attention; greater choice leads to increased expectations for greater sophistication. As the technology stakes are raised, the public's desire for information to be interactive, stimulating, accurate, up-to-date, and individually tailored to their needs will continue to grow.

The main web site (www.cdc.gov) maintained by the CDC has evolved rapidly since its inception in 1994. Although the CDC has sought to continually meet the information needs of its users, this task has become more difficult as these needs have increased or changed and new audiences have emerged. The CDC is currently seeking to evaluate the current site and assess its effectiveness in meeting the needs of its target audiences.

The goal of the CDC's Web Site Redesign & Continuous Improvement Project is to obtain input from both current and potential users. An on-line survey will be conducted with general public Internet users to explore how, when, and why users search the Web to obtain health information; the types of information sought; characteristics that are important to them in a health-related web site; and sites they have visited. Additionally, users exiting the CDC web site will have the opportunity to complete a survey, known as a bounceback form, that will ask them about their reactions to the site. Information on the estimated annual respondent burden is shown in the table below. The total cost to respondents is $0.00.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
General public responding to on-line survey	1000	1	.25	250
Users of www.cdc.gov responding to a bounce back form	10,000	1	.20	2,000
TOTAL				2,250

Dated: February 28, 2000.

Charles Gollmar,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–5131 Filed 3–2–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–25]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506 (c) (2) (A) of the Paperwork reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. Evaluation of ATSDR Activities Among Priority Populations—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Re-authorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment.

As the agency responsible for determining the nature and extent of health problems at Superfund sites, ATSDR staff conduct public health assessments, health consultations and studies that serve as the basis for intervention strategies. ATSDR staff develop and disseminate to the public scientific and technical reports on the health effects of hazardous substances. Additionally, ATSDR staff collaborate with other governmental agencies, external partners and organizations to create and implement health services, educational and preventive programs.

To date, however, ATSDR has not conducted agency-wide quantitative research to evaluate the effectiveness of its services, products and programs. ATSDR staff is seeking information from its priority populations to determine their awareness of, access to and utilization of ATSDR products, programs and services. ATSDR staff will also evaluate whether priority populations derived health benefits from interventions.

ATSDR's priority populations include individuals, health care providers, health department officials and members of community organizations who live within two miles of National Priority Sites. Randomly stratified samples of individuals in these priority populations will be selected and asked to answer a questionnaire on two separate occasions within the three-year project. The questionnaire will be designed to use Computer Assisted Telephone Interviews (CATI) so that respondent burden can be reduced.

ATSDR will use the data from this study to evaluate and improve the effectiveness of health promotion and intervention activities in communities. This will translate into more effective organizational decisions on resource utilization, improved performance, and assessment of the future direction of the agency. There is no cost to the respondents.

Respondents	No. of respondents per year	No. of responses per respondent	Avg. burden per response (in hrs.)	Total annual burden (in hrs.)
Individuals in priority populations	6,667	1	.33	2,200

2. Emergency Epidemic Investigations–(0920–0010)—Renewal—(Epidemiology Program Office, EPO)—One of the objectives of CDC's epidemic services is to provide for the prevention and control of epidemics and protect the population from public health crises such as man made or natural biological disasters and chemical emergencies. This is carried out, in part, by training investigators, maintaining laboratory capabilities for identifying potential problems, collecting and analyzing data, and recommending appropriate actions to protect the public's health. When state, local, or foreign health authorities request help in controlling an epidemic or solving other health problems, CDC dispatches skilled epidemiologists from the Epidemic Intelligence Service (EIS) to investigate and resolve the problem. Resolving public health problems rapidly ensures costs effective health care and enhances health promotion and disease prevention. Annually, the EIS Program coordinates 400 Epidemic Assistance Investigations (Epi-Aids) and state-based field investigations. Epidemics are prevented and controlled by mobilizing and deploying CDC staff, primarily EIS officers to respond rapidly to disease outbreaks and disaster situations. At the request of public

health officials—at the state, national, or international level–CDC provides assistance by participating in epidemiologic field investigations. The purpose of the Emergency Epidemic Investigation surveillance is to collect data on the conditions surrounding and preceding the onset of a problem. The data must be collected in a timely fashion so that information can be used to develop prevention and control techniques, to interrupt disease transmission and to help identify the cause of an outbreak. Since the events necessitating the collections of information are of an emergency nature, most data collection is done by direct interview or written questionnaire and are one-time efforts related to a specific outbreak or circumstance. If during the emergency investigation, the need for further study is recognized, a project is designed and separate OMB clearance is required. Interviews are conducted to be as unobtrusive as possible and only the minimal information necessary is collected. The Emergency Epidemic Investigations is the principal source of data on outbreaks of infectious and noninfectious diseases, injuries, nutrition, environmental health and occupational problems.

Each investigation does contribute to the general knowledge about a particular type of problem or emergency, so that data collections are designed taking into account similar situations in the past. Some questionnaire have been standardized, such as investigations of outbreaks aboard aircraft or cruise vessels.

The Emergency Epidemic Investigations provides a range of data on the characteristics of outbreaks and those affected by them. Data collected include demographic characteristics, exposure to the causative agent(s), transmission patterns and severity of the outbreak on the affected population. These data, together with trend data, may be used to monitor the effects of change in the health care system, planning of health services, improving the availability of medical services and assessing the health status of the population.

Users of the Emergency Epidemic Investigations data include, but are not limited to EIS Officers in investigating the patterns of disease or injury, investigating the level of risky behaviors, identifying the causative agent and identifying the transmission of the condition and the impact of interventions.

It is difficult to predict the number of epidemic investigations which might occur in any given year. The previous three years' experience shows an annualized burden of 2,304 hours and respondent total of 10,150. Therefore, the request is for an estimated annual burden of 3,000 hours. This represents an estimated 12,000 respondents annually at 15/60 hours per response. There are no costs to respondents other than time.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)	Total Burden (in hrs.)
Total Respondents	12,000	1	15/60	3,000

3. 2nd Injury Control and Risk Survey (ICARIS2)—New—The National Center for Injury Prevention and Control (NCIPC)—This project will use data from a telephone survey to measure injury-related risk factors and guide injury prevention and control priorities, including those identified as priorities in *Healthy People 2010* objectives for the nation. Injuries are a major cause of premature death and disability with associated economic costs over 150 billion dollars in lifetime costs for persons injured each year. *Healthy People 2010* objectives and the recent report from the Institute of Medicine, *Reducing the Burden of Injury,* call for reducing this toll. In addition to national efforts, NCIPC funds injury control programs at the state and local levels. These programs need data both to establish their prevention priorities and monitor their performance. The use of outcome data (*e.g.,* fatal injuries) for measuring program effectiveness is problematic because cause-specific events are relatively rare and because data on critical risk factors (*e.g.,* was a helmet worn in a fatal bike crash, was a smoke detector present at a fatal fire?) are often missing. Because these risk factors are early in the causal chain of injury, they are what injury control programs target to prevent injuries. Accordingly, monitoring the level of injury risk factors in a population can help programs set priorities and evaluate interventions.

The first Injury Control and Risk Survey (ICARIS), conducted in 1994, was a random digit dial telephone survey that collected injury risk factor and demographic data on 5,238 English- and Spanish-speaking adults (≥18 yrs-old) in the United States. Proxy data were collected on 3,541 children <15 years old. More than a dozen peer-reviewed scientific reports have been published from the ICARIS data, on subjects including dog bites, bicycle helmet use, residential smoke detector usage and fire escape practices, attitudes towards violence, suicidal ideation and behavior, and compliance with pediatric injury prevention counseling. Five years have elapsed since ICARIS, and a repeat survey is needed for monitoring the injury risk factor status of the nation at the start of the millennium. Further, by using data collected in ICARIS as a baseline, ICARIS2 can measure changes and gauge the impact of injury prevention policies. ICARIS2 may also serve as the only readily available source of data to measure several of the Healthy People 2010 injury prevention objectives. Total cost to respondent $0.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Adults ≥ 18 y/o	10,000	1	.50	5,000
Total				5,000

4. 2001 National Health Interview Survey, Basic Module (0920–0214)—Revision—The National Center for Health Statistics (NCHS)—The annual National Health Interview Survey (NHIS) is a basic source of general

statistics on the health of the U.S. population. Due to the integration of health surveys in the Department of Health and Human Services, the NHIS also has become the sampling frame and first stage of data collection for other major surveys, including the Medical Expenditure Panel Survey, the National Survey of Family Growth, and the National Health and Nutrition Examination Survey. By linking to the NHIS, the analysis potential of these surveys increases. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated "Health US" and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, "Healthy People 2000."

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a redesign of the data collection system from paper questionnaires to computer assisted personal interviews (CAPI). Those redesigned elements were partially implemented in 1996 and fully implemented in 1997 and are expected to be in the field until 2006. This clearance is for the fifth full year of data collection using the Basic Module on CAPI, and for implementation of the second "Periodic Module", which include additional detail questions on conditions, access to care, disabilities, and health care utilization. The "Periodic Module" will repeat a similar survey conducted in 1992, and will help track many of the Health People 2010 objectives. This data collection, planned for January-December 2001, will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. The total cost to respondents is estimated at $70,860 for the whole survey.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden per response	Total burden (in hrs.)
Family	42,000	1	0.35	14,700
Sample adult	42,000	1	0.70	29,400
Sample child	18,000	1	0.25	4,500
Total				48,600

Dated: February 28, 2000.

Charles Gollmar,

Acting Associate Director for Policy, Planning, and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–5132 Filed 3–2–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00F–0792]

The Procter & Gamble Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Procter & Gamble Co. (P&G) has filed a petition proposing that the food additive regulations regarding olestra be amended by removing the requirement for the label statement.

FOR FURTHER INFORMATION CONTACT: Mary D. Ditto, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3102.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (the act) (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0A4708) has been filed by P&G, Winton Hill Technical Center, 6071 Center Hill Ave., Cincinnati, OH 45224. The petition proposes to amend the food additive regulations in § 172.867 *Olestra* (21 CFR 172.867) by removing the requirement for the label statement prescribed in § 172.867(e).

Olestra is a food additive that is approved for use in place of fats and oils in prepackaged ready-to-eat savory snacks (§ 172.867). Olestra is not digested to any appreciable degree in the human gut and is not absorbed or metabolized by the body.

In the **Federal Register** of June 23, 1987 (52 FR 23606), FDA announced that P&G had filed a petition (FAP 7A3997) proposing that the food additive regulations be amended to provide for the safe use of olestra. FDA subsequently published a final rule approving olestra for use in savory snacks(61 FR 3118, January 30, 1996) after completing its evaluation of the relevant data and information. Prior to the issuance of the final rule, FDA convened a public meeting of its Food Advisory Committee (FAC) on November 14 through 17, 1995, to undertake a scientific discussion of the agency's evaluation of the safety data in the petition. As a result of the 4-day FAC meeting, a substantial portion of the relevant safety data on olestra was publicly discussed in detail by both proponents and opponents of olestra's approval, as well as by members of the FAC.

In issuing the olestra final rule, FDA carefully considered the proper labeling for foods containing the additive. This issue was also discussed in detail before the FAC. As noted, olestra is not absorbed, and it passes through the gastrointestinal (GI) tract intact. Data from clinical studies submitted by P&G in support of its original petition show that consumption of olestra with a meal can affect the absorption of certain fat-soluble vitamins and nutrients, which partition into the olestra. The petitioner and FDA agreed that these fat-soluble vitamins needed to be added to the snacks to compensate for any such effect, and that this addition of vitamins was not equivalent to fortification. These data also show that olestra has the potential to cause certain GI effects such as abdominal cramping and loose stools. FDA determined that consumers needed to know about any potential effects of olestra on the GI system.

In view of the record before the agency, FDA concluded that olestra-containing products would need to carry an information statement in order for such products to avoid being misbranded within the meaning of 21 U.S.C. 343(a)(1) and 321(n). Therefore, the final rule (§ 172.867(e)) required that foods containing olestra be labeled with the following statement in a boxed

format: "This Product Contains Olestra. Olestra may cause abdominal cramping and loose stools. Olestra inhibits the absorption of some vitamins and other nutrients. Vitamins A, D, E, and K have been added." This requirement was established under section 409(c)(3) of the act (61 FR 3118, 3160). As such, the requirement was immediately effective. Although immediately effective, FDA requested comments on the label from interested persons on such issues as the need for labeling, the adequacy of its content, and the agency's current word choices.

At the time of olestra's approval, P&G informed FDA that the company intended to conduct certain post-marketing studies, which included establishing a system for monitoring complaints associated with the ingestion of olestra-containing products (passive surveillance), a program of active surveillance, and consumer evaluation studies of the required label statement. Since the approval of olestra in January 1996, olestra-containing snacks have been introduced into the marketplace, and P&G has carried out the studies and surveillance it committed to do. The company also sponsored new clinical studies, which provide additional data and information on possible GI effects from consuming olestra-containing snacks in "real-life" situations. A substantial amount of additional data and information have been submitted to FDA since the January 1996 olestra approval. Specifically, the agency has received reports from four studies: An Acute Consumption Study (FAP 0A4708, exhibit 1, reference B), a 6-Week Consumption Facilitated *Ad Lib* Study (FAP 0A4708, exhibit 1, reference C); a Rechallenge Study (FAP 0A4708, exhibit 1, reference D), and a Stool Composition Study (FAP 0A4708, exhibit 1, reference E). P&G has also submitted reports and analysis of data collected through passive surveillance, consumer focus group and perception studies, literature reviews on carotenoids and disease, and an analysis of the first year of data collected in the ongoing active surveillance study. In addition, the Center for Science in the Public Interest (CSPI) has submitted new data and information regarding olestra to the agency.

Consistent with its responsibilities to monitor the safety of all food additives, and as set out in § 172.867(f), FDA presented the new data and information concerning olestra, and the agency's evaluation of such new information, to the FAC at a meeting held on June 15 through 17, 1998. At this open public meeting, FDA, P&G, CSPI, and other interested members of the public made presentations to the Committee. At the meeting, there was considerable discussion of the label required by § 172.867(e), with a range of views expressed. The complete set of transcripts of the June 1998 FAC meeting is publicly available through FDA's Internet site at http://www.fda.gov/ohrms/dockets/ac/cfsan98t.htm#Food Advisory Committee (choose June 15, 16, and 17).

Since the June 1998 FAC meeting, P&G as well as other interested parties have submitted additional information and analyses of the required label statement to FDA. The recent submissions include a report from a multi-disciplinary panel assembled by P&G and charged with examining the scientific evidence, as well as the legal and policy precedents, in regard to the label statement. The panel report also includes information from the ongoing passive surveillance, and additional consumer perception studies regarding the olestra label.

On December 2, 1999, P&G submitted the food additive petition that is the subject of this filing notice; the petition requests that the food additive regulations be amended to eliminate the requirement for the olestra label statement. P&G contends that the weight of the scientific evidence collected since the 1996 approval establishes that the label statement contains inaccurate information and is not understood by consumers. Accordingly, P&G claims that the olestra label misleads consumers and thus misbrands the products on which it appears. P&G also asserts that the label statement does not convey material information and, thus, is not authorized under sections 403(a)(1) and 201(n) of the act (21 U.S.C. 343(a)(1) and 321(n)) The material that P&G relies on to support its contentions has been incorporated into its petition, FAP 0A4708. Much of that material has been publicly available since the June 1998 FAC meeting.

In light of the substantial public interest in this matter and the previous public discussion and comment on the olestra label, FDA has determined that it is appropriate to make a copy of FAP 0A4708 available at the agency's Dockets Management Branch, Docket No. 00F–0792. Relevant information incorporated into FAP 0A4708 includes copies of various reports and published studies conducted or sponsored by the petitioner, as well as a report produced by the multi-disciplinary panel assembled by P&G to evaluate the label statement. Also referenced in the petition are consumer perception studies on the olestra label conducted by Frito-Lay, Inc., in 1996 and 1999, as well as a variety of other published scientific references, and various letters submitted to the agency regarding the labeling of olestra-containing snacks. The petition also discusses other information relevant to the olestra label which can be found in Docket No. 87F–0179. These include comments received in response to the agency's request for comments on the label statement in the olestra final rule (January 30, 1996), and reports submitted by CSPI.

FDA often receives comments on food additive petitions, especially those for which there is a high level of public interest. Although section 409 of the act establishes no comment period for food additive petitions, and the agency does not solicit comments in notices announcing the filing of a food additive petition, it is FDA's customary practice to consider any relevant comments submitted regarding such petitions. In the case of olestra, much of the material relevant to the label issue raised by the petition was submitted to the agency since the final rule published, and the bulk of that material was available and discussed at the June 1998 FAC meeting. Consistent with section 409 of the act, FDA will, as part of the review of P&G's petition, fairly evaluate all the evidence of record, including relevant comments received by the agency that become part of the record.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: February 15, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–5096 Filed 3–2–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0785]

Draft Guidance for Industry; Guidance on Medical Device Patient Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled

"Guidance on Medical Device Patient Labeling." This draft guidance is not final nor is it in effect at this time. This draft guidance describes how to make medical device patient labeling understandable to and usable by patients (or family members or other lay persons caring for patients). It is intended to assist manufacturers in their development and reviewers in their review and evaluation of medical device patient labeling. This draft guidance is designed to help assure safe and effective use of medical devices through medical device patient labeling that informs patients or their lay caregivers about proper use, risks, and benefits of the device in language they can understand.

DATES: Submit written comments on this draft guidance by June 2, 2000.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Guidance on Medical Device Patient Labeling" to the Division of Small Manufacturers Assistance (DSMA) (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Paula G. Silberberg, Center for Devices and Radiological Health (HFZ–230), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–1217.

SUPPLEMENTARY INFORMATION:

I. Background

The draft guidance provides information on the content, format, and organization of information that patients need to use medical devices safely and effectively. It also gives principles for writing and presenting patient information in a manner most understandable and usable to patients and their lay caregivers. With an increase in patient use of complex medical devices previously used primarily by skilled and knowledgeable health-care professionals, effective medical device patient labeling has become increasingly important in helping to assure the safe and effective use of devices.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on medical device patient labeling. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive "Guidance on Medical Device Patient Labeling" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1128) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Intenet. Updated on a regular basis, the CDRH home page includes the Medical Device Patient Labeling, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The document entitled "Guidance on Medical Device Patient Labeling" will be available at http://www.fda.gov/cdrh/HumanFactors.html.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance by June 2, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 28, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–5086 Filed 2–28–00; 4:36 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–197]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection.

Title of Information Collection: Maximizing the Effective Use of Telemedicine: A Study of the Effects, Cost Effectiveness and Utilization Patterns of Consultations via Telemedicine.

Form No.: HCFA–R–197 (OMB# 0938–0705).

Use: This study deals with several issues of importance to HCFA regarding the recent proliferation of Telemedicine programs. The primary goal of this study is to develop policy recommendations for Medicare concerning utilization review and

payment methods for Telemedicine services. The major objective is to evaluate the use of interactive video Telemedicine consultation. Recommendations will be based on analysis of the use of Telemedicine for such medical consultation.

Frequency: Other: periodically.

Affected Public: Individuals or households, Business or other for-profit, and Not-for-profit institutions.

Number of Respondents: 1,450.

Total Annual Responses: 84,235.

Total Annual Hours: 360.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 24, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5106 Filed 3–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0280]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection.

Title of Information Collection: Medigap Compare.

HCFA Form Number: HCFA–R–0280 (OMB approval #:0938–0767).

Use: HCFA collects plan-specific Medigap data, including but not limited to premiums charged and additional benefits offered, from each insurer offering Medigap plans. The data collection occurs electronically. The data are provided on www.medicare.gov to assist beneficiaries in obtaining accurate information on all their health care coverage options.

Frequency: Annually, and semi-annually if needed.

Affected Public: Business or other for-profit, Federal Government, State, Local, or Tribal Government, not-for-profit institutions.

Number of Respondents: 300.

Total Annual Responses: 450.

Total Annual Burden Hours: 75.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 17, 2000.

John P. Burke III,

Reports Clearance Officer, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5108 Filed 3–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–43]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Application for Health Insurance Benefits Under Medicare For Individuals With Chronic Renal Disease and Supporting Regulations in 42 CFR 406.13.

Form No.: HCFA–0043 (OMB #0938–0080).

Use: This form is used as a standard method of eliciting information necessary to determine entitlement to Medicare under the end stage renal disease provision of the law. This form was developed to satisfy the requirements of law and regulations and provide a form for eligible individuals to apply for Medicare entitlement.

Frequency: Other; one time only.

Affected Public: Individuals or households, Federal Government, and State, Local or Tribal Government.

Number of Respondents: 60,000.

Total Annual Responses: 60,000.
Total Annual Hours: 26,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 24, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5107 Filed 3–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2744]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: End Stage Renal Disease Medical Information System ESRD Facility Survey.

Form No.: HCFA–2744 (0938–0447);

Use: The ESRD Facility Survey form is completed annually by Medicare approved providers of dialysis and transplant services. The HCFA–2744 is designed to collect information concerning treatment trends, utilization of services and patterns of practice in treating ESRD patients.

Frequency: Annually.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Number of Respondents: 3,761.

Total Annual Responses: 3,761.

Total Annual Hours Requested: 30,088.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 24, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5197 Filed 3–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Healthcare Integrity and Protection Data Bank: Announcement of Opening Date for Querying and User Fees

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: In accordance with final regulations implementing the Healthcare Integrity and Protection Data Bank (HIPDB) published in the **Federal Register** on October 26, 1999 (64 FR 57740), the Office of Inspector General (OIG) is announcing that the data bank will become operational for purposes of requesting information (querying) on health care practitioners, providers or suppliers, on March 6, 2000. The HIPDB had become operational for purposes of reporting information and accepting self-queries, as set forth in a **Federal Register** notice published on November 22, 1999 (64 FR 58851). In addition, the Department now is exercising its authority to impose a $4 fee for queries submitted by authorized entities to query the HIPDB, and a $10 fee for use of the Interactive Search Capability of the data bank that is available to authorized law enforcement agencies. In accordance with § 61.13 of the HIPDB final regulations, the HIPDB will assess a fee on all requests for information, except requests from Federal agencies.

SUPPLEMENTARY INFORMATION:

1. Opening Date for Querying

The HIPDB will accept queries from authorized entities, including authorized law enforcement agencies, beginning March 6, 2000. To submit queries, registered entities must use the HIPDB website at www.npdb-hipdb.com. Specific guidelines for querying also can be found on this website.

2. User fee amount

Section 1128E(d)(2) of the Social Security Act (the Act), as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, specifically authorizes the establishment of fees for the costs of processing requests for disclosure and for providing such information, and the final regulations at 45 CFR part 61 set forth the criteria and procedures for information to be reported to and disclosed by the HIPDB. The Act requires that the Department recover the full costs of operating the HIPDB through user fees. In determining any changes in the amount of the user fee, the Department is employing the criteria set forth in § 61.13(b) of the HIPDB regulations.

Specifically, § 61.13(b) states that the amount of each fee will be determined based on the following criteria:

- Direct and indirect personnel costs;
- Physical overhead, consulting, and other indirect costs including rent and depreciation on land, buildings and equipment;
- Agency management and supervisory costs;
- Costs of enforcement, research and establishment of regulations and guidance;
- Use of electronic data processing equipment to collect and maintain information, *i.e.*, the actual cost of the

service, including computer search time, runs and printouts; and

• Any other direct or indirect costs related to the provision of services.

In conjunction with the opening of the HIPDB for reporting and as part of its obligations under the Privacy Act, the Department had previously announced a $10 fee for health care practitioners, providers or suppliers to self-query (64 FR 58851). Based on the above criteria, the Department is now establishing a $4 fee for queries submitted by authorized entities and a $10 dollar fee for use of the Interactive Search Capability (ISC) available to authorized law enforcement agencies. The ISC permits free-form queries that are expressly designed to conform to the investigative nature of the request, and that typically contain significantly less identifying information than the standard structured queries available to non-law enforcement entities. The ISC involves far more data processing and greater cost per request. This additional cost is the result of the need to use an iterative, interactive algorithm to narrow a result to one appropriate record from an initial return of up to 100 records.

When an authorized entity query is submitted for information on one or more health care practitioners, providers or suppliers, the appropriate total fee will be $4 multiplied by the number of individuals or organizations about whom information is being requested. When an authorized law enforcement agency uses the ISC to obtain information on an individual or entity, the cost will be $10 for each individual or entity that the authorized law enforcement agency enters into the ISC.

In order to minimize administrative costs, the Department will accept queries submitted by authorized entities and authorized law enforcement agencies by credit card or electronic funds transfer. This fee is effective beginning March 6, 2000. The Department will continue to accept payment for self-queries only by credit card. The HIPDB accepts Visa, MasterCard, and Discover. To submit queries, registered entities (including law enforcement agencies) must use the HIPDB website at www.npdb-hipdb.com.

The Department will continue to review the user fee periodically, and will revise it as necessary. Any changes in the fee and its effective date will be announced through notice in the **Federal Register**.

Dated: February 23, 2000.

June Gibbs Brown,

Inspector General.

[FR Doc. 00–5169 Filed 3–2–00; 8:45 am]

BILLING CODE 4152–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Funding Availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of Parts I and II of the Guidance for Applicants (GFA) before preparing an application. Part I is entitled *Cooperative Agreement for Centers for the Application of Prevention Technologies (CAPT).* Part II is entitled *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements.*

Activity	Application deadline	Estimated funds available, FY 2000	Estimated no. of awards	Project period
Centers for the Application of Prevention Technologies (CAPT).	4/26/00	$7.5 million *	five	3 years

* SAMHSA/CSAP is making $7.5 million available to support approximately five awards under this GFA in FY 2000. This amount may be increased slightly using SAMHSA/CSAP funds in each future year of the project period by up to $3 million. The average award in FY 2000 is expected to be $1.5 million in total (direct plus indirect costs), assuming the award is funded by SAMHSA/CSAP funds exclusively. Actual funding levels for each budget period may be significantly augmented on a discretionary basis if current exploratory talks with other federal agencies sharing SAMHSA/CSAP's interest in substance abuse prevention result in interagency agreements transferring funds to use for this program's use.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA has published additional notices of available funding opportunities for FY 2000 in past issues of the **Federal Register**.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information in desired. This is to ensure receipt of all necessary forms and information,

including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 4 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission

Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710*
(*Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines

The deadline for receipt of applications is April 26, 2000.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 4).

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 2000 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 2000 KD&A program will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and it is question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, and preparation of special materials will be used, in addition to normal communication means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

3.1 General Review Criteria

Review criteria that will be used by the peer review groups are specified in the application guidance material.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 2000 SAMHSA Activities

Cooperative Agreement for Centers for the Application of Prevention Technologies (short title: CAPT, SP00–005).

- *Application Deadline:* The receipt date is April 26, 2000.
- *Purpose:* The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) announced the availability of funds to continue the development and operation of the Centers for the Application of Prevention Technologies (CAPTs) in five regional sites. The CAPTs provide their clients with technical assistance and training in order to apply consistently the latest research-based knowledge about effective substance abuse prevention programs, practices, and policies. The CAPTs' primary clients are States receiving funds through CSAP's State Incentive Cooperative Agreements for Community-Based Action (SIGs) Program, other States, U.S. Jurisdictions, Tribes, and Territories. Other clients include communities, prevention organizations, and practitioners. The CAPT program is part of the DHHS Secretarial Initiative called the Youth Substance Abuse Prevention Initiative, and it is a major national resource supporting the dissemination and application of substance abuse preventive interventions that are scientifically sound and effective.
- *Eligible Applicants:* Applications are open to any organization with the expertise and capacity to operate one of the five regional CAPTs. Applications

may be submitted by domestic public and private non-profit and for profit entities, such as units of State or local government, community-based organizations, universities, colleges, and hospitals.

• *Amount:* SAMHSA/CSAP is making $7.5 million available to support approximately five awards under this GFA in FY 2000. This amount may be increased slightly using SAMHSA/CSAP funds in each future year of the project period by up to $3 million. The average award in FY 2000 is expected to be $1.5 million in total (direct plus indirect costs), assuming the award is funded by SAMHSA/CSAP funds exclusively. Actual funding levels for each budget period may be significantly augmented on a discretionary basis if current exploratory talks with other federal agencies sharing SAMHSA/CSAP's interest in substance abuse prevention result in interagency agreements transferring funds to use for this program's use.

Period of Support: Support may be requested for a period of up to 3 years.

• *Catalog of Federal Domestic Assistance Number:* 93.230.

• *Program Contact:* For questions concerning program issues, contact: Luisa del Carmen Pollard, M.A., Division of Prevention Application and Education, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 800, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6728

OR

Jon Rolf, Ph.D., Division of Prevention Application and Education, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 800, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0380

For questions regarding grants management issues, contact: Edna Frazier, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 640, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6816.

• *Application kits are available from:* National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847, Telephone: 1–800–729–6686, TDD: (800) 487–4889, Fax: (301) 468–6433.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 24, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–5095 Filed 3–2–00; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–06]

Notice of Proposed Information Collection: Budget-Based Rent Increase Process

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 3, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0324) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov;

telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Budget-based Rent Increase Process.

OMB Approval Number: 2502–0324.

Form Numbers: HUD–92547–A.

Description of the Need for the Information and Its Proposed Use: Owners of certain cooperative, subsidized, and 202 projects will be required to submit the Budget Worksheet when requesting a rent increase. HUD will use the information to evaluate owner expense estimates.

Respondents: Business or Other-for-Profit.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92547–A	12,500		1		1		12,500
Recordkeeping	12,500		1		.25		3,125

Total Estimated Burden Hours: 15,625.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 24, 2000.

Wayne Eddins,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–5190 Filed 3–2–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–07]

Notice of Proposed Information Collection: Final Regulations Implementing Housing for Older Persons Act of (FR–4094–F–02) 1995 (HOPA)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 3, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2529–0046) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information;

Title of Proposal: Final Regulations Implementing Housing for Older Persons Act of (FR–4094–F–02) 1995 (HOPA).

OMB Approval Number: 2529–0046.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This collection will afford an opportunity for housing providers to support a claim for an exemption to the familial status provision of the Fair Housing Act as amended by the HOPA.

Respondents: Business or Other-for-Profit, Non-for-Profit, Institutions, State, Local or Tribal Government.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Recordkeeping	12,000		1		.45		5,000

Total Estimated Burden Hours: 5,500.

Status: Extension of a currently approved collection.

Authority: Sect. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 24, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–5191 Filed 3–2–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–08]

Notice of Submission of Proposed Information Collection to OMB; Management Certifications and Management Entity Profile

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 3, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0305) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Management Certifications and Management Entity Profile.

OMB Approval Number: 2502–0305.

Form Numbers: HUD–9832, 9839A, 9839B, and 9839C.

Description of the Need for the Information and Its Proposed Use: Owners of multifamily housing projects with fully insured or HUD-held mortgages and subsidized, non-insured projects must provide data for review by the local HUD office for approval of management agents.

Respondents: Individuals or Households. Business or Other-For-Profit, Non-For-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Initial Profit	900		1		2		1,800
Update Profit	2,700		1		.50		1,350
Staff and Salaries	3,600		1		.17		600
Mgmt. Certification	3,600		1		.17		600

Total Estimated Burden Hours: 4,350.

Status: Reinstatement, without change.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 28, 2000.

Donna L. Eden,

Director, Office of Investment Strategies, Policy, and Management, Office of the Chief Information Officer.

[FR Doc. 00–5192 Filed 3–2–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–09]

Notice of Submission of Proposed Information Collection to OMB; Application for the Transfer of Physical Assets

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject of proposal.

DATES: *Comments Due Date:* April 3, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0275) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents

submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submission will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Application for the Transfer of Physical Assets.

OMB Approval Number: 2502–0275.

Form Numbers: HUD–92266.

Description of the Need for the Information and Its Proposed Use: Prospective purchasers of properties with mortgages either HUD-insured or HUD-held prior to conveyance of title submit to HUD an Application for the Transfer of Physical Assets.

Respondents: Business or Other-For-Profit, Non-for-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	350		1		92		32,200

Total Estimated Burden Hours: 32,200.

Status: Reinstatement, without change.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 28, 2000.

Donna L. Eden,

Director, Office of Investment Strategies, Policy, and Management, Office of the Chief Information Officer.

[FR Doc. 00–5193 Filed 3–2–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4463–N–03]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of changes in Debenture Interest Rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning January 1, 2000 is 7⅛ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2000, is 6½ percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Department of Housing and Urban Development, 451 7th Street SW, Room 6164, Washington, DC 20410. Telephone (202) 708–3944 extension 2612, or TDD (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time-to-time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury: (1) Has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 2000, is 6½ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 6½ percent for the 6-month period beginning January 1, 2000. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first 6 months of 2000.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.

Effective interest rate	On or after	Prior to
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" of interest in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning January 1, 2000, is 7⅛ percent.

HUD expects to publish its next notice of change in debenture interest rates in June 2000.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

(Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: February 15, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 00–5189 Filed 3–2–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meeting of Advisory Committee to the Interagency Task Force to Improve Hydroelectric Licensing Processes

AGENCY: U.S. Department of the Interior—Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Advisory Committee to the Interagency Task Force to Improve Hydroelectric Licensing Processes will meet on March 16, 2000 at the U.S. Department of Agriculture. The purpose of the meeting is to:

(1) Update Committee members on the current activities of the Interagency Task Force (ITF);

(2) Review and discuss the ITF Working Groups' draft products on: (i) State Mandates (*i.e.*; CWA Section 410 water quality certification and CZMA certification); and (ii) Economics.

DATE: March 16, 2000; 9:30 am–3 pm.

ADDRESS: United States Department of Agriculture, Whitten Building, Williamsburg Room, Suite 104A, 1400 Independence Ave. NW Washington, DC 20025.

You should inform Security at the building entrance on Jefferson Drive that you are attending a meeting hosted by NRE, (202) 720–7173. After calling NRE, Security will issue you a visitor's pass and direct you to the Williamsburg Room, Suite 104A.

FOR FURTHER INFORMATION CONTACT: George Schunk, Special Assistant to the Chief of the Forest Service, (202) 720–7173

SUPPLEMENTARY INFORMATION: The Secretary of the Interior and the Chairman, Federal Energy Regulatory Commission, with the concurrence of ITF members, established the Advisory Committee to provide a forum for non-Federal entities to review and provide comments on the deliberations of the ITF. Interested parties are invited to attend the meeting and will be given an opportunity to provide comments.

Alex Matthiessen,

Special Assistant to the Designated Federal Officer.

[FR Doc. 00–5254 Filed 3–2–00; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–021886

Applicant: Timothy Micale, Falls Creek, PA

The applicant requests a permit to import the one female African dwarf crocodile (*Osteolaemus tetraspis tetraspis*) from Mr. Rene Hedegaard, Eskiidstruo, Denmark, for the purpose of enhancement of the survival of the species through propagation.

PRT–023231

Applicant: Richard Olsen, Santa Cruz, CA

The applicant requests a permit to import six viable eggs of the Chinese monal pheasant (*Lophophorus lhuysii*) from the Sichuan Forestry Department, Baoxing, China under a cooperative agreement to study the hatching for the purpose of captive propagation for the enhancement of the survival of the species.

PRT–023461

Applicant: Zoological Society of San Diego, San Diego, CA

The applicant requests a permit to export one male and one female captive-hatched Andean condors (*Vultur gryphus*) to the Ministry of the Environment of Colombia for release in the Colombian Andes for enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to

the following office within 30 days of the date of publication of this notice:

U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 20, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–5126 Filed 3–2–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission to OMB for Approval of Tribal Self-Governance Program Information Collection

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs is submitting a request for an extension of an information collection from potential Self-Governance Tribes, as required by the Paperwork Reduction Act. The information collected under OMB Clearance Number 1076–0143 will be used to establish requirements for entry into the pool of qualified applicants for self-governance, to provide information for awarding planning and negotiation grants, and to meet reporting requirements of the Self-Governance Act. The **Federal Register** notice of proposed information collection activities was published in the **Federal Register** on December 7, 1999 (64 FR 68371–68372).

DATES: Submit comments on or before April 3, 2000.

ADDRESSES: Written comments can be sent to: The Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503. A copy should be sent to William Sinclair, Office of Self-Governance, 1849 C Street, NW, Mail Stop 2548 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the information collection request submission and the **Federal Register** notice by contacting William Sinclair, (202) 219–0244.

SUPPLEMENTARY INFORMATION: You are advised that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that does not display a valid OMB clearance number. For example, the collection listed by OMB as 1076–0017, and it expires 06/30/2002. For the Self-Governance collection of information, the response is voluntary, to obtain or retain a benefit, depending upon the parts of the program being addressed. The Department received three letters from self-governance tribes on the proposed extension of the information collection from current and potential self-governance tribes. These comments were similar in nature and are summarized below.

Three comments indicated that the phrase "certain information" being required by tribes to support their admission into Self-Governance was unclear and that the Tribal Self-Governance Act of 1994 (Pub.L. 103–413) is clear as to what information is required. The information being requested of new tribes in this extension is no more than what is required by Public Law 103–413. To make this clearer, the words "as required by Pub.L. 103–413" have been inserted following the words "certain information" in this **Federal Register** notice.

There were three comments stating that the reference to "grants" in the summary section is unclear. To address this, the words "planning and negotiation" have been inserted before the word "grants" in this **Federal Register** notice.

There were three comments that addressed the words "must submit certain information" and contended that Self-Governance tribes are not required to submit any information but are willing to do so on a voluntary basis. Further, the words "certain information" is vague. In response to this comment, a change was made in this **Federal Register** notice to replace the word "must" with the words "will be requested to" and following the word "information" the following words were inserted "as described in the draft negotiated rules as published for public comment in the **Federal Register**, February 12, 1998. This information will be used to* * *."

There were three comments that took exception with the sentence "Information is also required to ensure that the trust responsibilities of the Secretary of the Interior are safeguarded and that imminent jeopardy to trust assets is avoided (See section 403(d) of the Act.)." The three comments point out that Pub L. 103–413 requires trust evaluations to be performed and does not require tribes to submit information for the purposes of safeguarding the Secretary's trust responsibilities. In response to this comment the sentence "Information is also required of tribes to ensure that the trust responsibilities of the Secretary of the Interior are safeguarded and that imminent jeopardy to trust assets is avoided (section 403(d) of the Act.)" has been deleted in this **Federal Register** notice. The information required of tribes in conjunction with the annual trust evaluations has been included in a separate information collection request.

One comment suggested that the BIA should "cease any further activity and allow the negotiated rulemaking committee to complete its work * * *" However, the process requires that an information collection request extension be made at this time. All the information contained in this information collection request is consistent with the agreed to portions of the negotiated rules and is required by the Act itself. No change was made in response to this comment. The revised text from the proposed information collection follows:

The Self-Governance program was authorized by the Tribal Self-Governance Act of 1994, Public Law 103–413, as amended. Tribal Self-Governance is a voluntary program that is currently active and operating without promulgated regulations [see section 407(d) of the Act which says that lack of promulgated regulations shall not limit the effect of this title]. Previously, an information collection request was cleared by the Office of Information and Regulatory Affairs, Office of Management and Budget, of the Act. That clearance expires on February 29, 2000. Tribes interested in entering into Self-Governance must submit certain information as required by Public Law 103–413, as amended, to support their admission into Self-Governance. In addition, those tribes and tribal consortia who have entered into self-governance compacts will be requested to submit certain information as described in the draft negotiated rules published for public comment in the **Federal Register**, February 12, 1998 (63 FR 7202–7251). This information will be used to justify a budget request submission on their behalf and to comport with section 405 of the Act that calls for the Secretary to submit an annual report to the Congress.

You may submit comments about the collection to evaluate the following:

(a) The accuracy of the burden hours, including the validity of the methodology used and assumptions made;

(b) The necessity of the information for proper performance of the bureau functions, including its practical utility;

(c) The quality, utility, and clarity of the information to be collected; and,

(d) Suggestions to reduce the burden including use of automated, electronic, mechanical, or other forms of information technology.

Please submit your comments to the persons listed in the **ADDRESSES** section. Please note that comments, names and addresses of commentators, will be available for public review during regular business hours. If you wish your name and address withheld, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowable by law.

Type of review: Renewal.

Title: Tribal Self-Governance Program.

Affected Entities: Tribes and tribal consortiums wishing to enter into a self-governance compact.

Size of Respondent Pool: 85.

Number of Annual Responses: 257.

Hours Per Response: 42 hours.

Bureau Information Collection Clearance Officer: Ruth Bajema, 202–208–2574.

Dated: February 28, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–5227 Filed 3–2–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–3809]

Notice of Availability; Environmental Impact Statement; South Pipeline Project; Proposed Expansion of Existing Gold Mining/Processing Operations; Lander County, NV

AGENCY: Bureau of Land Management (BLM).

COOPERATING AGENCIES: Nevada Division of Wildlife, U.S. Army Corps of Engineers

ACTION: Notice of availability of the Final Environmental Impact Statement (FEIS) for the South Pipeline Project, Lander County, Nevada.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and 40 Code of Federal Regulations 1500–1508 Council on Environmental Quality Regulations, notice is hereby given of the availability of the FEIS, prepared by the Battle Mountain BLM, which analyzes the environmental effects of the South Pipeline Project (Proposed Action), the No Action Alternative, and the Pipeline Backfill Alternative.

DATES: Written comments must be postmarked or otherwise delivered by 4:30 p.m. on April 3, 2000. Copies of the FEIS may be obtained at the Battle Mountain BLM Field Office.

ADDRESS: Written comments should be addressed to the Bureau of Land Management, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820. Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours (7:30 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published in the EIS. Individual respondents may request confidentiality. If you wish to withold your name or street address from public review or from disclosure under Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Gary Foulkes (775) 635–4060.

SUPPLEMENTARY INFORMATION: Cortez Gold Mines, Inc. proposes to extend gold mining operations at the Pipeline Mine within the Gold Acres Mining District in Lander County, approximately 30 miles southeast of Battle Mountain, Nevada. The South Pipeline Project (Proposed Action) would include an expansion of the existing open pit and waste rock disposal sites, and the development of heap leach and ancillary facilities. The Proposed Action would require surface disturbance of 4,450 acres, all of which is public land administered by the BLM. Operations are expected to occur seven-days-a-week, 24-hours-a-day, for an additional 10 years (total life of 18 years).

Dated: February 22, 2000.

M. Lee Douthit,

Associate Field Manager, Battle Mountain Field Office.

[FR Doc. 00–4565 Filed 3–2–00; 8:45 am]

BILLING CODE 4310–HC–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N–66131)

Realty Action: Lease/Purchase for Recreation and Public Purposes in Lincoln County, NV.

AGENCY: Bureau of Land Management.

ACTION: Notice of Realty Action

SUMMARY: The following described public land in Lincoln County, Nevada has been identified and examined and will be classified under Section 7 of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. 315f), as suitable for lease/purchase under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). The described lands are hereby classified as suitable for lease/purchase under the authority of Section 212 of the Act of October 21, 1976; 43 U.S.C. 1761.

DATES: On or before March 20, 2000, interested parties may submit comments regarding the proposed Conveyance for classification of the lands to the Assistant Field, Nonrenewable Resources.

ADDRESSES: Written Comments should be addressed to: Bureau of Land Management, Gene L. Drais Assistant Field Manager, Nonrenewable Resources, HC 33 Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Kevin Finn, Realty Specialist, at the above address or telephone (775) 289–1849.

SUPPLEMENTARY INFORMATION: The following described parcel of land, situated in Lincoln County is being offered for lease/purchase under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). Mount Diablo Meridian, Nevada T. 1 N., R. 67 E. sec. 22, NW¼ NE¼ NW¼ Containing 10 acres, more or less.

The lands are hereby classified for public purpose use as school sites and/or other school facilities, 43 CFR 2410, 2430.4(a) and (c). The Lincoln County School District intends to use the land to construct and operate a kindergarten through sixth grade school for residents in Pioche and surrounding areas. A right-of-way would also be acquired to access the proposed site. The lease and/or patent, when finalized, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

2. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

The land is not required for any federal purpose. The classification for lease/purchase is consistent with the Bureau's planning for this area. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Ely Field Office, HC 33 Box 33500, Ely, Nevada 89301.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land law except for Recreation and Public Purposes.

Dated: February 8, 2000.

Eric K. Luse,

Associate Field Manager, Ely, NV.

[FR Doc. 00–4615 Filed 3–2–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM050–1430ES]

Notice of Intent To Prepare a Resource Management Plan Amendment (RMPA) and Environmental Assessment (EA) for Public Land in Socorro County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to prepare an RMPA/EA and intent to amend the Socorro Resource Management Plan dated August 1989, and invitation to participate in identification of issues and planning criteria.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, Council on Environmental Quality (CEQ) regulations (40 CFR 1500–1508), and the Federal Land Policy and Management Act (FLPMA) of 1976, the BLM, Socorro Field Office, in cooperation with the State of New Mexico, State Monuments Division (State), will prepare an RMPA/EA. The RMPA/EA will address whether approximately 126 acres of federal land between the towns of Socorro and Truth Or Consequences, New Mexico off of Federal Highway I–25 can be classified for disposal, and transferred to the New Mexico State Monuments Division under the Recreation and Public Purposes Act of 1926 as amended (R&PP). The purpose of the proposed transfer is to jointly construct (BLM and State) the proposed El Camino Real de Tierra Adentro International Heritage Center (Center). The RMPA/EA will also analyze various alternatives for special management prescriptions for public land surrounding the proposed Center that are needed to protect the scenic, cultural, watershed, air quality, soils, visual resource management, social and economic, and other values of the location identified in the site selection process. The RMPA/EA preferred alternative could result in an amendment to the Socorro Resource Management Plan approved in 1989 before the Center was considered a potential foreseeable development. Alternative management prescriptions could include, but are not limited to, limitations and/or special conditions for future permits or rights-of-way for such proposals as landfills, electrical transmission lines, communications towers, or multi-story buildings, in certain locations on federal land surrounding the Center.

The RMPA/EA will seek to identify whether impacts are likely to result from the proposed actions of classifying the selected land for disposal, transferring the land, construction of the proposed Center, and any possible management prescriptions of surrounding federal public land. If potential impacts are identified, the RMPA/EA will analyze and consider a range of mitigation measures and alternative to ensure that impacts are not significant. The BLM and State will conduct two public meetings to present the public with a description of the proposed action and to receive comments and questions from the public. The public will have the opportunity to identify any issues regarding the proposed action during the meetings, and written comments will be accepted through May 6, 2000.

DATES AND LOCATIONS: Dates and locations of the public meetings are listed below.

April 5, 2000—6 PM
Holiday Inn Express, Conference Center, 1100 N. California St., Socorro, NM

April 6, 2000—6 P.M.
Civic Center, 400 West Fourth St., Truth Or Consequences, NM

ADDRESSES: Comments should be sent to Charles Carroll, BLM, 198 Neel Street, Socorro, NM 87801

FOR FURTHER INFORMATION CONTACT: Charles Carroll, Team Leader, at 505–835–0412.

SUPPLEMENTARY INFORMATION: The proposed action is the transfer of approximately 126 acres of public land administered by the BLM Socorro Field Office to the State Monuments Division and the Museum of the State of New Mexico for the purpose of constructing a new, jointly funded New Mexico Monument and BLM Interpretive Center. This project is a result of a culmination of years of cooperative effort between the BLM, State of New Mexico, and the towns and cities of the lower Rio Grande in New Mexico. The location of the proposed Center was selected through a detailed study conducted by Architectural Research Consultants, Inc. (ARC), funded by the BLM, State of New Mexico, and the towns of Los Lunas, Belen, Socorro, Truth Or Consequences, and Las Cruces. The site selection process is documented in the report entitled: "El Viaje: A Planning Study For The Camino Real Interpretive Center," 1994 ARC.

The location for the Center was selected from among six candidate sites along the Camino Real, in part, due to its relatively pristine surroundings and excellent panoramic views to natural landmarks which are of historical significance to the historic trail. An observation deck on the proposed Center museum, and trails to locations on the proposed 126-acre compound, will provide visitors with views and interpretation of the surrounding landscape. No changes in ranching or grazing activities are contemplated, except to fence the proposed 126-acre compound to separate cattle from visitors and buildings. This proposed enclosure would not affect the existing grazing permit. The RMPA/EA will review potential impacts to the land and natural resources on and surrounding the site and will consider a wide range of alternatives for other types of future actions on surrounding public land. Types of potential actions will be categorized as compatible or incompatible with the future operation of the Center. For example, the permitting of a lighted microwave tower in direct line of site between the observation deck and a historic natural landmark, might be found to be incompatible. If this were true, then management prescriptions might be defined to allow selective siting of high-visibility actions in certain defined areas of surrounding public land, to mitigate adverse effects upon the values of the Center. Conversely, it might be

found that locating a gravel pit in a location hidden from view of key locations of the Center, may have no potential adverse effect, and might be authorized with only routine stipulations. Therefore, a range of alternatives for both the geographic area and the types of potential future actions which could affect the Center will be considered. A full range of other resource considerations will be addressed, including threatened and endangered species, wildlife, lands and access, minerals, soils, air quality, water resources, Visual Resource Management, social and economics and so forth, which the public is welcomed to comment upon and help identify issues or concerns.

Dated: February 23, 2000.

Kate Padilla,

Office Manager.

[FR Doc. 00–5110 Filed 3–2–00; 8:45 am]

BILLING CODE 4130–MW–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0137).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below. We intend to submit this collection of information to the Office of Management and Budget (OMB) for approval. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by May 2, 2000.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost. For information on results of workshops held to discuss the Historical Well Data Cleanup Project, contact Warren Frederick, Gulf of Mexico Region, telephone (504) 736–2562

SUPPLEMENTARY INFORMATION:

Title: Historical Well Data Cleanup (HWDC) Project—Notice to Lessees.

OMB Control Number: 1010–0137.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS, consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; preserve and maintain free enterprise competition; and ensure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time. The OCSLA at 43 U.S.C. 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

On February 4, 2000, the OMB approved our request under emergency processing procedures to issue Addendum 2 to NTL No. 98–29. Emergency processing permits the collection of information for 180 days. As the project is expected to last for several years, this Notice announces our intention to request a 3-year extension for this information collection.

The information we collect under NTL 98–29, Addendum 2, is missing data for wellbores that MMS has not assigned API numbers and other well data discovered as missing while completing the well database clean up project. We are not able to accurately manage and utilize data from drilling operations without the information for the missing wells. We will use the information to identify other well data (e.g., logs, surveys, tests) missing from our records, geologically map existing MMS data to the correct wellbore/location, and correctly exchange information with the operators and industry. Our geoscientists can use the information to evaluate resources for lease sales for fair market value. With respect to safety concerns, we believe that there may be anywhere from 3,000 to 5,000 unidentified completed and abandoned wellbores (bypasses and sidetracks), some of which may contain stuck drill pipe or other materials. In approving permits and other operations in an area, it is important for us to know what may be adjacent to or near the vicinity of the activity we are approving to minimize the risk of blowouts, loss of well control, and endangerment to life, health, and the environment. This is particularly important as, over the years, the number of wells drilled constantly increases, thereby increasing the risk to adjacent activities if they are not aware of what might be in the area.

As announced in a "Special Information" release on February 2, 2000, we held two half-day workshops to share HWDC contract goals with the Gulf of Mexico OCS oil and gas industry and their services company vendors and contractors. The workshops were held from 9 a.m. till noon in Houston and New Orleans on February 17 and 23, 2000. For further information on the results of these workshops, you may contact Warren Frederick at (504) 736–2562.

We will protect information respondents submit that is considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and 30 CFR 250.196, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

Frequency: The frequency of reporting is on occasion.

Estimated Number and Description of Respondents: Approximately 130

Federal OCS oil, gas, and sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 90,000 reporting hours for approximately 40,000 wells, based on:

(1) ¼ hour to locate and copy a summary of drilling operations (e.g. scout tickets) for each well.

(2) 2 hours to retrieve and analyze each well file and retrieve other missing data. There are no recordkeeping requirements.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Comments: We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments and consultations with a sample of respondents, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, we assumed that respondents perform many of the requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

(1) We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744).

Dated: February 23, 2000.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–5111 Filed 3–2–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: To comply with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), we are notifying you that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before April 3, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0130), 725 17th Street, NW, Washington, DC 20503. Copies of these comments should also be sent to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, CO 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, CO 80225; and the email address is *RMP.comments@mms.gov*. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For questions concerning this collection of information, please contact Anne Ewell, RIK Study Team, telephone (703) 787–1584, FAX (703) 787–1093, email Anne.Ewell@MMS.gov. You may also obtain copies of this collection of information at no cost by contacting Jo Ann Lauterbach, MMS's Information Collection Clearance Officer, at (202) 208–7744.

SUPPLEMENTARY INFORMATION:

Title: Directed Communications Between Operators of Federal Royalty in Kind (RIK) Leases and Deliverers of Equivalent Crude Oil Production to the Strategic Petroleum Reserve (SPR).

OMB Control Number: 1010–0130.

Abstract: The Secretary of the Interior, under the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for the management of royalty revenues on minerals produced from leased Federal offshore lands. MMS carries out these responsibilities for the Secretary. Most royalties are now paid in value—when a company or individual enters into a contract to develop, produce, and dispose of minerals from Federal lands, that company or individual agrees to pay the United States a share (royalty) of the value received for the minerals taken from leased lands.

On February 11, 1999, the Department of the Interior announced that it would assist in an Administration initiative to collect royalty in the form of crude oil production (RIK) from Federal lessees in the Gulf of Mexico and transfer the royalty oil (or equivalent oil) to the Department of Energy (DOE). DOE will use 28 million barrels of RIK oil to refill the Strategic Petroleum Reserve (SPR). DOE published a Request for Offers

(RFO) in April 1999 for the exchange of Federal RIK crude oil for crude oil to be delivered to the SPR. This initiative is separate from MMS's RIK program for eligible refiners of crude oil. It is also separate from MMS's RIK pilot projects and investigation of direct Federal consumption which are being conducted to examine the feasibility and efficacy of RIK for the Federal Government.

Communication between the operators of an MMS lease and DOE's contractor is necessary to assure that both have information necessary to arrange to timely pick up the correct volumes and qualities of MMS's share of royalty oil from that lease and make any needed adjustments. On June 25, 1999, OMB granted emergency approval for MMS to instruct lessees (or their operators), through a "Dear Operator" letter which contains reporting and recordkeeping requirements, to conduct those communications with DOE's contractors.

The three kinds of directed communication between operators and exchange contractors of RIK are: (1) 8 to 10 days before the beginning of a month, report any changes in the delivery schedule, volumes, and qualities of the RIK crude oil to be made available for that month; (2) information on changes during the month, at the end of a month, and the end of the contract term to correct (balance) any errors discovered in prior months' deliveries; and (3) occasionally, information about transportation of the RIK. Experience with the SPR initiative and MMS's RIK Pilots demonstrates that the directed communication requirements differ according to the needs of each situation. For example, when RIK is delivered to MMS or its designee (*e.g.*, DOE's contractor) at the lease, the direction to make arrangements to transport production away from the lease is not necessary in letters issued to those lease operators. Therefore, we are not requesting approval of a specific "Dear Operator" letter to operators delivering to SPR, but, instead, approval for the three kinds of reporting requirements concerning communications between operators and MMS's designated taker of its RIK—DOE's exchange contractor. By obtaining approval for these three kinds of reporting requirements, MMS will be able to select only the types of directed communications and other unique matters needed for each situation and include only those in a letter appropriate to the operation of that lease or property.

The types of communication and supporting data MMS will require operators to use in setting up the monthly delivery of RIK to the exchange contractor are standard business practices in the oil and gas industry. The information in the directed communication is essential to the delivery and acceptance of verifiable quantities and qualities of oil and is exchanged as a normal part of the conduct of those business activities, even when operators are not directed to do so. Failure of lessees/operators to timely communicate with DOE's contractor designated by MMS concerning the volumetric, delivery, and transportation information concerning MMS's RIK volumes will result in storage costs being incurred due to DOE's contractor not knowing the production is available for pick up. Monetary penalties could also accrue to MMS's designee (the DOE contractor) if the contractor cannot meet delivery due dates when exchanging MMS's oil for oil closer to the SPR delivery point. Additionally, failure to communicate data from balancing accounts would severely impair MMS's ability to verify that its designee is receiving the full and accurate volume of MMS's royalty share of production. Operators will not be required to communicate with more than one exchange contractor per property.

No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is mandatory.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. A 60-day **Federal Register** Notice soliciting comments on this collection of information was published on August 13, 1999 (64 FR 44236). No comments were received. However, MMS increased the estimated hour burden based on comments received on a related collection, OMB Control No. 1010–0126, and feedback from MMS operators of leases delivering RIK to exchange contractors under the SPR initiative.

Estimated Number and Type of Respondents/Affected Entities: Approximately 30 lessees or operators of Federal leases participating in delivery of Federal RIK oil production to DOE's contractor for refilling of the SPR.

Frequency of Response: Monthly cycle, with intra-month communications, on monthly nominations, scheduling, transportation and balancing; on occasion, (about once-yearly) communications on end-of-contract balancing.

Burden Statement and Estimated Annual Reporting and Recordkeeping "Hour" Burden: We estimate the respondent burden for intra-month communications during FY 2000 to average 10 minutes per property per month and the burden for communications on end-of-contract balancing for short-term contracts terminating during FY 2000 to be 15 minutes per property. The total annual burden hour estimate for this collection is about 201 hours annually, including recordkeeping.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no paperwork cost burdens for this collection over those included in hour burden.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by April 3, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: February 28, 2000.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 00–5179 Filed 3–2–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

60 Day Notice of Intention To Request for Clearance of Information Collection, Special Park Use Application Forms, Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–14, 44 U.S.C. 3507) and 5 CFR, part 1320 Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comment on a request for approval for the information collection requirements. These information collections are associated with permits implementing provisions of the agency regulations pertaining to the use of public lands. The uses considered under these information collection applications generally include those which regulate or limit those activities not available to the public at large, such as special events, commercial filming, and grazing in parks where such activity is authorized by law. The OMB control number 1024–0026 has been temporarily assigned to the three draft application forms included in this request for comments. These forms are intended to act in the capacity of gathering sufficient information to enable park managers to be able to approve or deny the requested uses of public lands and, if approved, to provide sufficient conditions to protect park lands from impairment or derogation of the resources, values or purposes for which the park was created.

DATES: Public comments will be accepted on or before May 2, 2000.

ADDRESSES: Send comments to: Dick Young, C/O Colonial National Historic Park P.O. Box 210 Yorktown, VA 23690. All responses to this notice will be summarized and included in the request for OMB final approval. All comments will become a matter of public record. Copies of the above mentioned draft forms may be obtained from the Internet at *http://www.nps.gov/refdesk/DOrders/index.htm* under "draft guidance documents."

FOR FURTHER INFORMATION CONTACT: Dick Young at (757) 898–7846.

SUPPLEMENTARY INFORMATION: Specific Comments Sought: NPS seeks comments, in particular, on the necessity for this information collection, the accuracy of our burden estimates, the clarity of the information to be collected and alternative methods of collection to minimize burden and improve service to the public.

Dennis Burnett,

Acting Chief, Ranger Activities Division.

[FR Doc. 00–5083 Filed 3–2–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 19, 2000.

Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by March 20, 2000.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Miller County

Texarkana US Post Office and Courthouse, Fifth St. and State Line Ave., Texarkana, 00000245

COLORADO

Saguache County

Indian Grove, Address Restricted, Mosca, 00000237

FLORIDA

Palm Beach County

Comeau, Alfred J., House, 701 Flamingo Dr., West Palm Beach, 00000238

MICHIGAN

Washtenaw County

Tuomy Hills Service Station, 2460 Washtenaw Ave., Ann Arbor, 00000240

NEW YORK

Westchester County

Church of St. Barnabas, 15 N Broadway, Irvington, 00000241

OKLAHOMA

Comanche County

Federal Building and US Courthouse, Jct. of SW 5th St. and SW "E" Ave., Lawton, 00000243

Muskogee County

United States Post Office and Courthouse, 111 N. Fifth, Muskogee, 00000246

Pittsburg County

Federal Building and US Courthouse, Jct. of 3rd and Carl Albert Parkway, McAlester, 00000242

Tulsa County

United States Post Office and Courthouse, 224 S. Boulder Ave., Tulsa, 00000244

TEXAS

Tarrant County

Old Town Historic District, (Arlington MRA) Roughly bounded by Sanford, Elm, North, Prairie and Oak Sts., Arlington, 00000247

WEST VIRGINIA

Cabell County

Huntington High School, 900 Eighth St., Huntington, 00000248

Jefferson County

Woodlawn, Address Restricted, Kearneysville, 00000254

Kanawha County

Charleston Baptist Temple, 209 Morris St., Charleston, 00000252

Mason County

Maplewood, 1951 US 35, Pliny, 00000251

Pendleton County

Priest Mill, Off US 220, near Low-Water Bridge, Franklin, 00000250

Pocahontas County

IOOF Lodge Building, Jct. of 8th St. and Second Ave., Marlinton, 00000249
Marlinton Opera House, Third Ave., Marlinton, 00000253

WISCONSIN

Brown County

Fox Theatre, 117 S. Washington St., Green Bay, 00000256

Milwaukee County

North Point North Historic District, Roughly bounded by N. Downer Ave., E. Park Pl., and N. Wahl Ave., Milwaukee, 00000255

Sauk County

Lachmund Family House, 717 Water St., Sauk City, 00000257

A request for REMOVAL has been made for the following resources:

ARKANSAS

Benton County

Siloam Springs Train Station (Benton County MRA), E. Jefferson Siloam Springs, 87002413
Spavinaw Creek Bridge (Benton County MRA), 4 mi. N of Decatur on CR 29 Decatur Cicinity, 87002414
Sunset Hotel (Benton County MRA), W of US 71, Bella Vista, 92000986

Columbia County

Louisiana and Northwest Railroad Depot—Magnolia (Historic Railroad Depots in Arkansas MPS) N side of Main St., bet. Clay and Walnut Sts. Magnolia, 92000614

Conway County

Sims Hotel, Center of Plummerville, Plummerville, 75000379

Howard County

DeQueen and Eastern Railroad Depot—Dierks (Historic Railroad Depots in Arkansas MPS), E of Herman Ave., Diers, 92000607

Izard County

Melbourne Home Economics Building (public Schools in Ozark MPS), School Dr. Melborne 92001201

Pope County

Galla Creek Bridge (Historic Bridges of Arkansas MPS), Old AR 64 over Galla Cr. Pottsvillle, 93000090

Pulaski County

Back House (Thompson, Charles L., Design Collection TR), 1523 Cumberland St. Little Rock, 82000875

Van Buren County

Stobaugh House, AR 9, 0.5 mi. SW of Choctaw, Choctaw, 76000471

White County

Herring Building (White County MPS), Jct of E. First and Smith Sts. McRae, 91001348
Pemberton House (White County MPS), 601 N. Cypress St., Beebe, 91001255
Westbrooke, Lipsy, House (White County MPS), 809 W. Center St., Beebe, 91001260

[FR Doc. 00–4823 Filed 3–2–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Availability of Final Petition Evaluation Document/Environmental Impact Statement on Fall Creek Falls, TN

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of the final Petition Evaluation Document/ Environmental Impact Statement (PED/ EIS) for Fall Creek Falls Lands Unsuitable for Mining Petition.

SUMMARY: The Office of Surface Mining (OSM) of the United States Department of the Interior is making available a final PED/EIS for a petition to designate Fall Creek Falls State Park and Natural Area and certain lands in the watershed and viewshed of Fall Creek Falls State Park and Natural Area, Van Buren and Bledsoe Counties, Tennessee, as unsuitable for all surface coal mining operations. The PED/EIS has been prepared to assist the Secretary of the Interior in making a decision on the petition to designate the Fall Creek Falls State Park and Natural Area and certain lands in the watershed and viewshed of Fall Creek Falls State Park and Natural Area as unsuitable for surface coal mining operations.

ADDRESSES: Copies of the final PED/EIS may be obtained by contacting Beverly Brock at the address and telephone number listed under **FOR FURTHER INFORMATION CONTACT**. A copy of the final PED/EIS is available for inspection at that address, and also at the Bledsoe and Van Buren County Clerk's offices.

FOR FURTHER INFORMATION CONTACT: Beverly Brock, Supervisor, Technical Group, Office of Surface Mining, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902. Telephone: (865) 545–4103, ext. 146; e-mail: bbrock@osmre.gov.

SUPPLEMENTARY INFORMATION: OSM has been petitioned by Save Our Cumberland Mountains, Tennessee Citizens for Wilderness Planning, and 49 citizens to designate the watershed and viewshed of Fall Creek Falls State Park and Natural Area, Tennessee, as unsuitable for all types of surface coal mining operations. OSM began to process the petition on October 5, 1995, and on May 1, 1998, OSM made available the draft PED/EIS for a 90-day public review and comment period. Two subsequent comment periods were opened from August 21, 1998, to September 16, 1998, and from January 29, 1999, to April 29, 1999.

The final PED/EIS was prepared by OSM in accordance with Section 522(d) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA). OSM has analyzed the petitioners' proposed action of designating the entire petition area as unsuitable for surface coal mining operations and four alternative actions ranging from denying the petition in whole to designating certain portions of the petition area as unsuitable for mining.

In preparing the final PED/EIS, OSM has revised the draft PED/EIS in response to comments received during the public comment periods. These comments and OSM's responses to them are included in the final PED/EIS.

No decision will be made on the petition by the Secretary of the Interior until at least 30 days from the date the final PED/EIS is made available to the public. Notice of such decision by the Secretary of the Interior will be made available to the public at that time.

Dated: February 8, 2000.

Allen D. Klein,

Director, Appalachian Regional Coordinating Center.

[FR Doc. 00–5030 Filed 3–2–00; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–414]

Certain Semiconductor Memory Devices and Products Containing Same; Notice of Commission Determination to Extend the Target Date for Completion of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the target date for completion of the above-captioned investigation by 45 days, or until May 11, 2000.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on September 18, 1998, based on a complaint filed on behalf of Micron Technology, Inc., 8000 South Federal Way, Boise, Idaho 83707–0006 ("complainant").

The notice of investigation was published in the **Federal Register** on September 25, 1998. 63 FR 51372 (1998).

The presiding administrative law judge (ALJ) issued his final initial determination (ID) on November 29, 1999, concluding that there was no violation of section 337. He found that: (a) Complainant failed to establish the requisite domestic industry showing for any of the three patents at issue; (b) all asserted claims of the patents are invalid; (c) none of the asserted claims of the patents are infringed; and (d) all of the patents are unenforceable for inequitable conduct. On February 1, 2000, the Commission determined to review the final ID in its entirety, and

also determined to review two procedural issues. The notice of the Commission decision to review the final ID was published in the **Federal Register** on February 7, 2000. 65 FR 5890 (2000).

The previous target date for completion of this investigation was March 27, 2000. The Commission determined that the target date should be extended until May 11, 2000, due to the number and complexity of the issues under review.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.51(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.51(a)).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000.

Issued: February 28, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–5226 Filed 3–2–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
- CT000001 (Feb. 11, 2000)
- CT000004 (Feb. 11, 2000)
- CT000005 (Feb. 11, 2000)

Massachusetts
- MA000001 (Feb. 11, 2000)
- MA000002 (Feb. 11, 2000)
- MA000003 (Feb. 11, 2000)
- MA000005 (Feb. 11, 2000)
- MA000006 (Feb. 11, 2000)
- MA000007 (Feb. 11, 2000)
- MA000008 (Feb. 11, 2000)
- MA000009 (Feb. 11, 2000)
- MA000010 (Feb. 11, 2000)
- MA000012 (Feb. 11, 2000)
- MA000013 (Feb. 11, 2000)
- MA000015 (Feb. 11, 2000)
- MA000017 (Feb. 11, 2000)
- MA000018 (Feb. 11, 2000)
- MA000019 (Feb. 11, 2000)
- MA000020 (Feb. 11, 2000)
- MA000021 (Feb. 11, 2000)

Maine
- ME000005 (Feb. 11, 2000)
- ME000010 (Feb. 11, 2000)
- ME000022 (Feb. 11, 2000)
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- ME000037 (Feb. 11, 2000)

New York
- NY000002 (Feb. 11, 2000)
- NY000003 (Feb. 11, 2000)
- NY000004 (Feb. 11, 2000)
- NY000005 (Feb. 11, 2000)
- NY000007 (Feb. 11, 2000)
- NY000008 (Feb. 11, 2000)
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NY000077 (Feb. 11, 2000)

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MD000030 (Feb. 11, 2000)
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Virginia
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GA000073 (Feb. 11, 2000)
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IN000047 (Feb. 11, 2000)

Volume V

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IA000070 (Feb. 11, 2000)
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Volume VII

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CA000009 (Feb. 11, 2000)
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CA000030 (Feb. 11, 2000)
Hawaii
HI000001 (Feb. 11, 2000)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington. DC this 24th day of February, 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–4864 Filed 3–2–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. The agencies identified in this notice have submitted schedules pursuant to NARA Bulletin 99–04 to obtain separate disposition authority for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before April 17, 2000. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see **SUPPLEMENTARY INFORMATION** section of this notice). To facilitate review of such disposition

requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Governmentwide.

On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued NARA Bulletin 2000–02, which suspended Bulletin 99–04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal.

On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99–04 should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99–04 that are submitted after December 27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organi-zational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. National Aeronautics and Space Administration, Agency-wide (N9–255–00–4, 8 items, 8 temporary items). Electronic copies of records created using electronic mail and word processing that pertain to the functional areas of Property and Supply, Industrial Relations and Procurement, Transportation, and Program Formulation. Electronic copies are associated with such record series as loan agreements, plant clearance files, unique procurement files, contractor monthly management and operations reports, traffic management feasibility studies, highway movement permits, research and development planning files, research and development specifications, project approval documents, and aircraft files. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job Nos. N1–255–89–4, N1–255–90–7, N1–255–91–4, N1–255–94–2, and N1–255–94–3.

2. National Aeronautics and Space Administration, Agency-wide (N9–255–00–5, 4 items, 4 temporary items). Electronic copies of records created using electronic mail and word processing that pertain to the functional areas of Program Management, Financial Management, and Inspector General matters. Electronic copies are associated with such record series as configuration control board files, summary progress reports, asbestos-related files, environmental records, reimbursable agreements, and policy and procedure files. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job Nos. N1–255–88–1, N1–255–89–3, N1–255–90–1, N1–255–90–4, N1–255–91–6, N1–255–91–14, N1–255–92–3, N1–255–94–2, and N1–255–94–3.

Dated: February 25, 2000.

Geraldine Phillips,

Acting Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–5178 Filed 3–2–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office; National Industrial Security Program Policy Advisory Committee; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and implementing regulation 41 CFR 101.6, announcement is made for a meeting of the National Industrial Security Program Policy Advisory Committee (NISPPAC).

DATES: April 6, 2000, from 10 a.m. to 12 p.m.

ADDRESSES: National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room 105, Washington, DC 20408.

PURPOSE: To discuss National Industrial Security Program policy matters.

This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than March 23, 2000. ISOO will provide additional instructions for gaining access to the location of the meeting.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, NW, Room 100, Washington, DC 20408, telephone (202) 219–5250.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 00–5177 Filed 3–2–00; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 40, "Domestic Licensing of Source Material"; NRC Form 244, "Registration Certificate—Use of Depleted Uranium under General License"; and NRC Form 484, "Domestic Monitoring Data Report."

2. *Current OMB approval number:* 3150–0031

3. *How often the collection is required:* Reports required under 10 CFR part 40 are collected and evaluated on a continuing basis as events occur. There is a one-time submittal of information to receive a license. Renewal applications need to be submitted every 5 to 10 years. Information in previous applications may be referenced without being resubmitted. In addition, recordkeeping must be performed on an on-going basis. NRC Form 244 is submitted when depleted uranium is received or transferred under general license. NRC Form 484 is submitted biannually to report groundwater data necessary to implement EPA groundwater standards.

4. *Who is required or asked to report:*

10 CFR Part 40: Applicants for and holders of NRC licenses authorizing the receipt, possession, use, or transfer of radioactive source and byproduct material.

NRC Form 244: Persons receiving, possessing, using, or transferring depleted uranium under the general license established in 10 CFR 40.25(a).

NRC Form 484: Uranium recovery facility licensees reporting groundwater monitoring data pursuant to 10 CFR 40.65.

5. *The number of annual respondents:*

10 CFR part 40: 156 for NRC licensees and 172 for Agreement State licensees.

NRC Form 244: 20 for NRC licensees and 40 for Agreement State licensees.

NRC Form 484: Included in 10 CFR part 40, above.

6. *The number of hours needed annually to complete the requirement or request:*

10 CFR part 40: 26,049 hours for reporting requirements and 9,019 hours for recordkeeping requirements, or a total of 35,068 hours for NRC licensees; 28,083 hours for reporting requirements and 9,398 hours for recordkeeping requirements, or a total of 37,481 hours for Agreement State licensees.

NRC Form 244: 20 hours for NRC licensees and 40 hours for Agreement State licensees for reporting requirements.

NRC Form 484: Included in 10 CFR part 40, above.

7. *Abstract:* 10 CFR part 40 establishes requirements for licenses for the receipt, possession, use, and transfer of radioactive source and byproduct material. NRC Form 244 is used to report receipt and transfer of depleted uranium under general license, as required by 10 CFR part 40. NRC Form 484 is used to report certain groundwater monitoring data required by 10 CFR Part 40 for uranium recovery licensees. The application, reporting, and recordkeeping requirements are necessary to permit the NRC to make a determination on whether the possession, use, and transfer of source and byproduct material is in conformance with the Commission's regulations for protection of public health and safety.

Submit, by May 2, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 28th day of February, 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–5151 Filed 3–2–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Application/Permit for Use of the Two White Flint (TWFN) Auditorium.

2. *Current OMB approval number:* 3150–0181.

3. *How often the collection is required:* Each time public use of the NRC auditorium is requested.

4. *Who is required or asked to report:* Members of the public requesting use of the NRC Auditorium.

5. *The number of annual respondents:* 5.

6. *The number of hours needed annually to complete the requirement or request:* 1.25 hours (15 minutes per request).

7. *Abstract:* In accordance with the Public Buildings Act of 1959, an agreement was reached between the Maryland-National Capital Park and Planning Commission (MPPC), the General Services Administration (GSA) and the NRC, that the NRC auditorium will be made available for public use. Public users of the auditorium will be required to complete NRC Form 590 (Application/Permit for Use of Two White Flint North (TWFN) Auditorium). The information is needed to allow for administrative and security review, scheduling, and to make a determination that there are no anticipated problems with the requester prior to utilization of the facility is used.

Submit, by May 2, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 28th day of February 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–5152 Filed 3–2–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

AmerGen Energy Company, LLC; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of AmerGen Energy Company, LLC (the licensee), to withdraw a portion of its June 4, 1999, application for proposed amendment to Facility Operating License No. DPR–50 for the Three Mile Island Nuclear Station, Unit 1, located in Dauphin County, Pennsylvania.

The portion of the proposed amendment being withdrawn would have revised the Technical Specification (TS) Bases on page 3–26c of the TSs to clarify that the decay heat generation "was" rather than "is" calculated in accordance with ANSI 5.1–1979. Also deleted was the phrase "to determine when this situation exists."

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 30, 1999 (64 FR 35207). However, by letter dated December 13, 1999, the licensee withdrew the above described portion of the proposed change.

For further details with respect to this action, see the application for amendment dated June 4, 1999, and the licensee's letter dated December 13, 1999, which withdrew a portion of the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 28th day of February 2000.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5156 Filed 3–2–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313]

Entergy Operations, Inc., Arkansas Nuclear One, Unit 1; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for a Hearing Regarding Renewal of License No. DPR–51 for an Additional Twenty-Year Period

The U.S. Nuclear Regulatory Commission (the Commission) is considering an application for the renewal of Operating License No. DPR–51, which authorizes Entergy Operations, Inc. (Entergy) to operate Arkansas Nuclear One, Unit 1 (ANO–1), at 2,568 megawatts thermal. The renewed license would authorize the applicant to operate ANO–1 for an additional 20 years beyond the period specified in the current license. The current operating license for ANO–1 expires on May 20, 2014.

Entergy submitted an application to renew the operating license for ANO–1 by letter dated January 31, 2000. A Notice of Receipt of Application, "Entergy Operations, Inc., Arkansas Nuclear One, Unit 1, Notice of Receipt of Application for Renewal of Facility Operating License No. DPR–51, for an Additional Twenty-Year Period," was published in the **Federal Register** on February 11, 2000 (65 FR 7074).

The Commission's staff has determined that Entergy has submitted

information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is complete and acceptable for docketing. The current Docket No. 50–313 for Operating License No. DPR–51, will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of the requested license renewal, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. In accordance with 10 CFR 54.29, the NRC will issue a renewed license on the basis of its review and findings that actions have been identified and have been or will be taken with respect to (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB) and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," (May 1996). Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice. The Commission also intends to hold public meetings to discuss the license renewal process and the schedule for conducting the review. The Commission will provide prior notice of these meetings. As discussed further herein, in the event that a hearing is held, issues that may be litigated will be confined to those pertinent to the foregoing.

By April 3, 2000, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the license renewal in accordance with the provisions of 10 CFR 2.714. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20037. If a request for a hearing or a petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request(s) and/or petition(s), and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or a petition for leave to intervene is filed by the above date, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 54 and 51, renew the license without further notice.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 54 and 51. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the board up to 15 days before the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days before the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Requests for a hearing and petitions for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington DC 20037, by the above date. A copy of the request for a hearing and the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Craig G. Anderson, Vice President, Operations, Arkansas Nuclear One, Entergy Operations, Inc., 1448 SR 333, Russellville, Arkansas 72801.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

Detailed information about the license renewal process can be found under the nuclear reactors' icon of the NRC's Web page <http://www.nrc.gov>.

A copy of the application to renew the ANO–1 Unit 1 license is available for public inspection at the Commission's Public Document Room, the Gelman

Building, 2120 L Street, NW, Washington, DC 20037.

Dated at Rockville, Maryland, this the 28th day of February, 2000.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Chief, License Renewal and Standardization Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5158 Filed 3–2–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388]

PP&L, Inc., Susquehanna Steam Electric Station, Units 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. NPF–14 and NPF–22 for the Susquehanna Steam Electric Station, Units 1 and 2 (SSES, Units 1 and 2), to the extent currently held by PP&L, Inc. (PP&L), as a co-owner and the licensed operator of SSES Units 1 and 2. The transfer would be to PPL Susquehanna, LLC, which will be created as a new, indirect subsidiary of PPL Resources, Inc., the holding company for PP&L. PP&L currently owns 90 percent of each SSES unit. The proposed transfers do not involve any change with respect to the non-operating ten percent ownership interests in SSES Units 1 and 2 held by Allegheny Electric Cooperative, Inc. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by PP&L, PPL Susquehanna, LLC, would become the owner of PP&L's interest in both units of the facility following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of SSES Units 1 and 2. No physical changes to the SSES facility or operational changes are being proposed in the application.

The proposed amendments would replace references to PP&L in the licenses with references to PPL Susquehanna, LLC, and make other administrative changes, to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 23, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon John E. Matthews, counsel for PP&L, Inc., at Morgan, Lewis & Bockius LLP, 1800 M Street, NW, Washington, DC 20036–5869 (tel: 202–467–7524; fax: 877–432–9652; e-mail: jematthews@mlb.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 3, 2000 persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 15, 1999, and supplement dated February 7, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Website (http://www.nrc.gov).

Dated at Rockville, Maryland, this 28th day of February, 2000.

For the Nuclear Regulatory Commission.

Robert G. Schaaf,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5155 Filed 3–2–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353]

Peco Energy Company, Limerick Generating Station, Unit 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–39 and NPF–85, issued to PECO Energy Company (the licensee), for operation of the Limerick Generating Station (LGS), Units 1 and 2, located in Montgomery County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would clarify several administrative requirements, delete redundant administrative requirements, and correct typographical errors in the LGS, Units 1 and 2, Technical Specifications (TSs) in accordance with the licensee's application for amendment dated September 27, 1999.

The Need for the Proposed Action

The proposed action would provide clarity and administrative correctness to the TSs.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the changes to the TSs are administrative in nature.

The proposed action will not significantly increase the probability or consequence of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there is no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Limerick Generating Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its state policy, on October 8, 1999, the staff consulted with the Pennsylvania State official, Mr. David Ney of the Pennsylvania Department of Environmental Protection, regarding the environmental impact of the proposed action. The state official had no comment.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 27, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the electronic reading room).

Dated at Rockville, Maryland, this 28th day of February, 2000.

For Nuclear Regulatory Commission.

Bartholomew C. Buckley,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5157 Filed 3–2–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Letter of Agreement Between the U.S. Department of Interior Minerals Managements Service, Gulf of Mexico, OCS Region and the U.S. Nuclear Regulatory Commission, Concerning the Radiation Safety Inspections of Nuclear Regulatory Commission Licensed Activities on Offshore Facilities and Laybarges in Federal Jurisdiction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Letter of Agreement (LOA) between the U.S. Department of Interior Minerals Management Service (MMS) and the U.S. Nuclear Regulatory Commission (NRC). The purpose of the LOA is to describe the cooperative agreement between MMS and NRC in ensuring the protection of the public health and safety and the environment from the hazards of radioactive materials that may be used on offshore facilities and laybarges in offshore waters under Federal jurisdiction. The LOA provides for air transportation arrangements of NRC inspectors to offshore facilities by MMS-contracted helicopters at no charge or exchange of services to NRC. The LOA also provides for licensed material orientation and radiation safety program training to MMS staff by NRC.

EFFECTIVE DATE: January 7, 2000.

ADDRESSES: Copies of all NRC documents are available for public inspection, and copying for a fee, in the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday (except Federal holidays). Telephone service is provided from 8:30 a.m. to 4:15 p.m. at 202–634–3273 or toll-free at 1–800–397–4209.

FOR FURTHER INFORMATION CONTACT: Roberto J. Torres, NMSS, Mail Stop T8–F5, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–8112; Fax: (301) 415–5369; e-mail: rjt@nrc.gov.

Dated at Rockville, Maryland, this 28 day of February, 2000.

For the Nuclear Regulatory Commission.

Josephine M. Piccone,

Deputy Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

Letter of Agreement Between the Department of the Interior Minerals Management Service Gulf of Mexico, OCS Region and the U.S. Nuclear Regulatory Commission Concerning the Radiation Safety Inspections of Nuclear Regulatory Commission Licensed Activities on Offshore Facilities and Laybarges in Federal Jurisdiction

I. Introduction

This Letter of Agreement (LOA) describes the cooperative agreement between the U.S. Department of the Interior Minerals Management Service (MMS) and the U.S. Nuclear Regulatory Commission (NRC) in ensuring the protection of the public health and safety and the environment from the hazards of radioactive materials that may be used on offshore facilities and laybarges in offshore waters under Federal jurisdiction.

II. Purpose and Scope

The purpose of this LOA is to identify the areas of cooperation between MMS and the NRC to facilitate NRC inspection of the safe use of radioactive materials on offshore facilities and laybarges. Mutual interests involve the inspection of such sites in order to verify that NRC-licensed activities are conducted safely and in compliance with NRC requirements, and ensure the safety of facility and laybarge personnel during the use of NRC-licensed radioactive material. Radioactive materials within the scope of this LOA mean byproduct, source, and special nuclear materials as defined in Sections 11e., 11z., and 11aa. of the Atomic Energy Act of 1954 (AEA), as amended, and the NRC's regulations thereunder. Offshore facilities and laybarges include those that are in offshore waters under Federal jurisdiction. The term "offshore waters" means that area of land and water, beyond Agreement States' Submerged Lands Act jurisdiction, on or above the U.S. Outer Continental Shelf.

III. Authority and Regulatory Program

A. MMS

The MMS is responsible for managing the mineral resources on the Outer Continental Shelf (OCS) of the United States in an environmentally sound and safe manner. In addition, MMS is both the resource manager and fiscal manager for collecting and accounting for OCS revenues and leasing OCS lands, regulating development activities to protect the coastal and marine environment, and ensuring that when operations are completed, the site is properly abandoned.

B. NRC

Under the AEA, as amended, the NRC is responsible for regulating the use of byproduct, source, and special nuclear material within the United States and its territories, consistent with its mission to ensure adequate protection of the public health and safety, to promote the common defense and security, and to protect the environment.

IV. Agency Responsibilities

The following are the offices responsible for this agreement:

For the Minerals Management Service:
Regional Director U.S. Department of the Interior Minerals Management Service Gulf of Mexico OCS Region 1201 Elmwood Park Blvd. New Orleans, Louisiana 70123

For the Nuclear Regulatory Commission:
Regional Administrator Region IV U.S. Nuclear Regulatory Commission 611 Ryan Plaza Drive, Suite 400 Arlington, Texas 76011

Each agency shall designate the agency organizational unit responsible for the coordination and management of activities covered by this LOA. Each agency shall designate the individual(s) who will serve as the respective coordination officer(s) or point(s) of contact (POC). The coordination officers or POCs will coordinate and facilitate actions required by their respective agencies.

NRC will notify known lease and pipeline operators working offshore that NRC, in cooperation with MMS, will be conducting unannounced inspections of NRC licensees performing licensed activities on offshore facilities and laybarges. NRC will comply with the personal safety and site access requirements mandated by each facility or laybarge operator.

NRC will provide MMS staff with licensed material orientation and radiation safety program training as MMS staff and NRC staff schedules will allow. The purpose of this orientation and training is to enable MMS to notify NRC in case MMS recognizes irregularities in licensees' activities. NRC will also provide MMS copies of inspection reports and event reports involving licensees working in offshore Federal waters.

MMS will arrange for transportation to offshore facilities or laybarges on MMS contracted helicopters for NRC inspectors based on availability and advance schedule coordination by NRC. MMS will provide this service at no financial charge or exchange of services to the NRC.

V. Elements of Coordination

Both agencies agree to exchange information with respect to relevant programs and lessons learned, resources permitting. The purpose of these exchanges is to provide expert technical assistance to both agencies. NRC will coordinate with the MMS Gulf of Mexico OCS Regional office for the scheduled inspection of licensees conducting licensed activities in offshore Federal waters. Additionally, NRC will coordinate the scheduling of offshore inspections with MMS based on guidance provided by MMS relative to seat availability on MMS contracted helicopters.

VI. Other Laws and Matters

Nothing in this LOA shall be deemed to restrict, modify, or otherwise limit the application or enforcement of any laws of the United States with respect to matters specified herein, nor shall anything in the LOA be construed as modifying the existing authority of either agency.

VII. Effective Date, Modification, and Termination of LOA

This LOA will take effect when it has been signed and dated by the authorized representatives of the MMS and the NRC. It may be modified by mutual written consent, or terminated by either agency upon 60 days advance written notice to the other agency.

Approved and Accepted for the Minerals Management Service

Chris Oynes,

Regional Director, U.S. Department of the Interior, Minerals Management Service, Gulf of Mexico OCS Region.

January 7, 2000.

Approved and Accepted for the Nuclear Regulatory Commission

Ellis W. Merschoff,

Regional Administrator, U.S. Nuclear Regulatory Commission.

December 23, 1999.

[FR Doc. 00–5150 Filed 3–2–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft FY 2000–2005 Strategic Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is seeking public

comment on its draft FY 2000–2005 Strategic Plan which provides a blueprint for the NRC to plan, implement, and monitor work needed to achieve its goals. The Commission will consider public comments in approving the final FY 2000–2005 Strategic Plan.

DATE: Submit comments on the draft strategic plan by April 7, 2000.

ADDRESSES: Submit written comments to David L. Meyer, Chief, Rules and Directives Branch, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

The draft Strategic Plan, as well as the ability to provide comments electronically, are available on the NRC web site at *http://www.nrc.gov/NRC/planning.html.*

FOR FURTHER INFORMATION CONTACT: Daryl Kade, Mail Stop: T9D24, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 415–7326; FAX: (301) 415–5386; Internet: *DWK@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

Background

The NRC issued its first Strategic Plan in September 1997, and is required to update it every three years. The NRC's draft FY 2000–2005 Strategic Plan, which has not yet been approved by the Commission, describes the agency's strategic goals, performance goals, and strategies for achieving NRC's mission. It is organized into four strategic arenas: (1) Nuclear Reactor Safety; (2) Nuclear Materials Safety; (3) Nuclear Waste Safety; and (4) International Nuclear Safety Support. To help accomplish agency goals, the NRC has established overarching corporate management strategies which are also described in the draft plan. A summary is provided in Part 1 with more details, as required by the Government Performance and Results Act, provided in Part 2.

Embodied in the plan is the NRC's understanding that decisions must be based first and foremost on their contributions to public health and safety. In addition, the NRC must also consider the effect of its decisions on the public it protects, on the industries it regulates, and on the effectiveness and efficiency of internal NRC operations.

The current plan is based more on performance and the outcomes the NRC intends to achieve. It addresses concerns and comments raised in Congressional hearings, as well as in meetings with members of the public and stakeholders who would be most affected by NRC decisions. Also, the plan captures recent regulatory reform and their outcomes in the long term.

Stakeholder Input to the Strategic Plan

NRC recognizes that work on the Strategic Plan is unfinished and that stakeholder input will further improve the draft plan. Stakeholder input is requested on the draft plan, particularly on the following areas:

- Do goals address appropriate areas?
- Are the strategies to achieve the goals adequate?
- Will performance measures indicate whether we are achieving our goals? In particular, we are seeking comment on those measures where specific metrics have yet to be proposed.
- Do goals and strategies reflect NRC's commitment to institutionalize change?
- Do external factors identify those conditions or circumstances which significantly affect the achievement of our goals?
- Is the strategic plan too lengthy? Is the level of detail sufficient?

Dated at Rockville, Maryland, this 28th day of February, 2000.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

[FR Doc. 00–5153 Filed 3–2–00; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget an emergency request to approve the use of the Peace Corps/Crisis Corps Volunteer Application Form (0420–0533) by May 2, 2000. Additionally, the Peace Corps will be seeking three year OMB approval using the standard review procedures. A copy of the information collection may be obtained from Joan Timoney, Director of the Crisis Corps, Peace Corps, 1111 20th Street, NW., Washington, DC 20526. Ms. Timoney may be contacted by telephone at 202–692–2250. The Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments on these forms should be addressed to Desk Officer for the Peace Corps, Office of Management and Budget, NEOB, Washington, DC 20503.

Dated: February 15, 2000.

Michael J. Kole,

Director of Administrative Services.

[FR Doc. 00–4546 Filed 3–2–00; 8:45 am]

BILLING CODE 0051–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Voluntary Customer Surveys in Accordance with Executive Order 12862, OMB 3220–0192. In accordance with Executive Order 12862, the Railroad Retirement Board (RRB) conducts a number of customer surveys designed to determine the kinds and quality of services our beneficiaries, claimants, employers and members of the public want and expect, as well as their satisfaction with existing RRB services. The information collected is used by RRB management to monitor customer satisfaction by determining to what extent services are satisfactory and

where and to what extent services can be improved. The surveys are limited to data collections that solicit strictly voluntary opinions, and do not collect information which is required or regulated.

The information collection, which was first approved by the Office Management and Budget (OMB) in 1997, provides the RRB with a generic clearance authority. This generic authority allows the RRB to submit a variety of new or revised customer survey instruments (needed to timely implement customer monitoring activities) to the Office of Management and Budget (OMR) for expedited review and approval.

The average burden per response for current customer satisfaction activities is estimated to range from 2 minutes for a web-site questionnaire to 2 hours for participation in a focus group. The RRB estimates current annual burden of 2,050 annual respondents totaling 727 hours or annual burden for the generic customer survey clearance.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Office at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–5114 Filed 3–2–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27141]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 25, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 21, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 21, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc., et al. (70–8779)

American Electric Power Company, Inc. ("AEP"), a registered holding company, American Electric Power Service Corporation, a wholly owned nonutility subsidiary of AEP, both of 1 Riverside Plaza, Columbus, Ohio 43215, and AEP's seven wholly owned electric utility subsidiary companies, Appalachian Power Company, 40 Franklin Road, Roanoake, Virginia 24022, Columbus Southern Power Company, 215 North Front Street, Columbus, Ohio 43215, Indiana Michigan Power Company, One Summit Square, Fort Wayne Indiana 46801, Kentucky Power Company, 1701 Central Avenue, Ashland, Kentucky 41101, Kingsport Power Company, 422 Broad Street, Kingsport, Tennessee 37660, Ohio Power Company, 339 Cleveland Avenue, SW., Canton, Ohio 44702, and Wheeling Power Company, 51 Sixteenth St., Wheeling, West Virginia 26003, have filed a post-effective amendment under sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act, as amended ("Act"), and rules 45 and 54 under the Act, to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), and 13 of the Act and rules 45, 90, and 91 under the Act.

By orders dated September 13, 1996 (HCAR No. 26572), September 27, 1996 (HCAR No. 26583), May 2, 1997 (HCAR No. 26713) ("May Order"), November 30, 1998 (HCAR No. 26947), and April 7 1999 (HCAR No. 26998), AEP was authorized to form direct and indirect nonutility subsidiaries ("New Subsidiaries") to broker and market electric power, natural and manufactured gas, emission allowances, coal, oil, refined petroleum products and natural gas liquids. The Commission also authorized AEP to guarantee through December 31, 2002 up to $200 million of debt and up to $200 million of other obligations of such subsidiaries ("Guarantee Authority"). In the May Order, the Guarantee Authority was expanded to permit AEP to guarantee the debt and other obligations of any subsidiary acquired or established under Rule 58.

Applicants now propose to extend the period of the Guarantee Authority through June 30, 2004. Applicants also propose to increase the Guarantee Authority up to $600 million of debt and up to $600 million of other obligations under the terms and conditions stated in the Prior Orders. Applicants state that this increase in its Guarantee Authority is necessary because AEP is active in the development and expansion of its energy-related non-utility businesses.

Metropolitan Edison Company, et al. (70–593)

Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec") ("Subsidiaries"), both public utility subsidiaries of GPU, Inc. ("GPU"), a registered holding company, and both located at 2800 Pottsville Pike, Reading, Pennsylvania 19640, have filed a declaration under Section 12(c) of the Act and rules 46 and 54 under the Act.

As part of electric utility restructuring in Pennsylvania, the Subsidiaries have sold substantially all of its fossil and hydroelectric generating assets ("Generation Assets") and now wish to return to GPU the equity capital supporting those assets. The Subsidiaries state, however, that they have paid out essentially all of their retained earnings in the form of dividends to GPU and so have not built up any significant surplus of retained earnings to pay dividends in special circumstances. The Subsidiaries also note that, while the sale of the Generation Assets yielded after-tax gains of approximately $195 million and $520 million for Met-Ed and Penelec, respectively, those gains cannot be used to facilitate dividend payments out of retained earnings, but must instead be used to offset stranded costs incurred by the Subsidiaries.

Accordingly, Met-Ed and Penelec propose, subject to certain limitations, to declare and pay dividends out of capital and unearned surplus. Specifically, Met-Ed and Penelec propose to pay dividends from time to time through December 31, 2001, in respective amounts aggregating up to $145 million and $155 million. The Subsidiaries state that neither Met-Ed

and Penelec would not pay Dividends if the payment would cause either its common equity ratio or GPU's consolidated common equity ratio as of the end of the fiscal quarter during which the Dividend is made is expected to be less than 30%, without further Commission authorization.

The Subsidiaries note that under existing first mortgage bond indentures ("Indentures"), Met-Ed and Penelec are required to maintain retained earnings of not less than $3.4 million and $10.1 million. The Subsidiaries state that Met-Ed and Penelec would not make the proposed dividends out of unearned or capital surplus until they had first paid dividends out of retained earnings down to the amounts permitted by the Indentures.

For the Commission by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5183 Filed 3–2–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24317, 812–11984]

Safeguard Scientifics, Inc.; Notice of Application

February 25, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application pursuant to section 2(a)(9) of the Investment Company Act of 1940 (the "Act").

APPLICANT: Safeguard Scientifics, Inc. ("Safeguard").

SUMMARY OF APPLICATION: Applicant requests an order declaring that it controls Internet Capital Group, Inc. ("ICG") within the meaning of the Act notwithstanding that it owns less than 25% of the voting securities of ICG.

FILING DATE: The application was filed on February 25, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 2000 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Safeguard, 435 Devon Park Drive, Building 800, Wayne, Pennsylvania 19087.

FOR FURTHER INFORMATION CONTACT: Ann Dubey, Senior Counsel, at (202) 942–0687, or Nadya Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Safeguard, a Pennsylvania corportaion, states that it is actively engaged in the internet infrastructure business through a core group of companies. Safeguard was relying on rule 3a–1 under the Act. Rule 3a–1 provides an exemption from the definition of investment company if, among other things, no more than 45% of a company's total assets consist of, and no more than 45% of its net income over the last four quarters is derived from, securities other than shares of majority-owned subsidiaries and companies primarily controlled by it. Since August, 1999, Safeguard has been relying on rule 3a–2 under the Act, which provides a one-year exemption from the definition of investment company for certain transient investment companies.

2. Safeguard previously owned more than 25% of the voting securities of ICG. Safeguard states that ICG is an internet company actively engaged in business-to-business electronic commerce through a network of partner companies. ICG and Safeguard have had a historic relationship. ICG was formed by two Safeguard executives in 1996. Safeguard originally owned 33% of ICG's voting securities, an ownership position that began to decline as ICG needed additional financing. Safeguard states that its interest in ICG has been diluted since August, 1999 due to the exercise of options, and ICG's additional private and public offerings. Safeguard also sold approximately 4.8% of its shares in ICG to Safeguard's shareholders through a subscription program. Safeguard states that currently it owns approximately 14% of ICG's common stock. Safeguard states that its interest in ICG constitutes a substantial portion of Safeguard's total assets.

Applicant's Legal Analysis

1. Safeguard requests an order under section 2(a)(9) of the Act declaring that it controls ICG.[1] Section 2(a)(9) defines "control" as the power to exercise a controlling influence over the management or policies of a company. Section 2(a)(9) also provides that a person who does not own more than 25% of a company's voting securities is presumed not to control the company. Section 2(a)(9) further provides that this presumption may be rebutted by evidence but continues until a determination to the contrary is made by the Commission.

2. Safeguard states that currently it owns 13.93% of ICG's outstanding voting securities. Safeguard has been since ICG's inception, and continues to be, ICG's largest single shareholder.[2] Safeguard also states that its officers are directors occupy three out of eight seats on ICG's board of directors. These directors include a Vice President of Safeguard and the Vice Chairman of the Board of Safeguard (who serves as the Chairman of ICG's board of directors). The Safeguard director on the ICG Board serves as President and Chief Executive Officer of ICG.

3. Safeguard also states that it has a team of its employees assigned to actively assist ICG in its management, operations and finances. Safeguard states that it also assists ICG, among other things, in structuring and negotiating business alliances, forming general corporate and marketing strategies, conducting financial accounting, locating and evaluating financing vehicles, recruiting board members and structuring employee option plans.

4. Safeguard asserts that, as a result of its status as the largest single shareholder of ICG and its significant representation on ICG's board of directors, Safeguard is able to exercise, and exercises, a controlling influence over the management and operations of ICG within the meaning of section 2(a)(9) of the Act. Thus, Safeguard states that it has made a showing sufficient for

[1] Safeguard states that it does not seek an order or request the Commission to determine whether Safeguard primarily controls ICG for purposes of section 3(a) of the Act or rule 3a-1 under the Act, or otherwise determine whether Safeguard is an investment company under the Act.

[2] Safeguard states that the only other known shareholder owning more then 5% of ICG's voting stock is Comcast ICG, Inc., which owns approximately 9.3%.

a finding under section 2(a)(9) of the Act that it controls ICG.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5181 Filed 3–2–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24318]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

February 25, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of February 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 21, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

Putnam High Quality Bond Fund [File No. 811–4617]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 12, 1999, applicant transferred its assets to Putnam American Government Income Fund based on net asset value. Legal and accounting expenses of $70,000 incurred in connection with the reorganization were paid by applicant and the acquiring fund in proportion to their net assets. In addition, proxy expenses of $145,000 were paid by applicant.

Filing Date: The application was filed on January 19, 2000.

Applicant's Address: One Post Office Square, Boston, Massachusetts 02109.

Kemper Europe Fund [File No. 811–7479]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 3, 1999, applicant transferred its assets to Kemper New Europe Fund, Inc., based on net asset value. Expenses of $815,000 were incurred in connection with the reorganization, of which applicant paid $138,398 and the acquiring fund paid $676,602.

Filing Dates: The application was filed on January 12, 2000, and amended on January 28, 2000.

Applicant's Address: 222 South Riverside Plaza, Chicago, Illinois 60606.

Bay Funds [File No. 811–6296]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By December 9, 1996, Applicant had transferred its assets to 1784 Funds, based on net asset value. Expenses incurred in connection with the reorganization were paid by BayBank, N.A. and BayBank Investment Management, Inc. (now known as The First National Bank of Boston), applicant's investment adviser and its affiliates.

Filing Dates: The application was filed on June 5, 1997, and amended on January 26,2000.

Applicant's Address: 1001 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3779.

Dreyfus Premier Insured Municipal Bond Fund [File No. 811–7682]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 16, 1998, applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of approximately $1,362 incurred in connection with the liquidation were paid by The Dreyfus Corporation applicants's investment adviser.

Filing Date: The application was filed on February 2, 2000.

Applicant's Address: 200 Park Avenue, New York, New York 10166.

Carillon Investment Trust [File No. 811–5293]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 29, 1999, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant states that any expenses incurred in connection with the liquidation would be paid by applicants's investment adviser.

Filing Date: The application was filed on February 11, 2000.

Applicant's Address: 1876 Waycross Road, Cincinnati, Ohio 45240.

The Griffin Funds, Inc. [File No. 811–7948]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 5, 1999, applicant transferred its assets to corresponding series of WM Trust I and WM Trust II based on net asset value. Expenses of approximately $1,760,000 incurred in connection with the reorganization ware paid by WM Advisors, Inc., investment adviser to WM Trust I and WM Trust II.

Filing Dates: The application was filed on December 10, 1999 and amended on February 11, 2000.

Applicant's Address: c/o John T. West, WM Advisors Inc., 1201 Third Avenue, 22nd Floor, Seattle, Washington 98101.

Colorado Double Tax-Exempt Bond Fund, Inc. [File No. 811–8023]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. All shareholders of applicant have redeemed their shares at net asset value. Expenses of approximately $1,410 incurred in connection with the liquidation were paid by Isaak Bond Investments, Inc., applicant's principal underwriter.

Filing Dates: The application was filed on November 12, 1999, and amended on January 18, 2000.

Applicant's Address: 600 Seventeenth Street, Suite 2610, South Tower, Denver, Colorado 80202.

Pegasus Funds [File No. 811–5148]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 29, 1999, applicant completed the transfer of its assets to The One Group®, based on net asset value. Expenses of approximately $1,862,760 were incurred in connection with the reorganization. Applicant and The One Group® were each responsible for their own expenses in connection with the reorganization. Banc One Investment Advisors Corporation, investment adviser to The One Group®, assumed the costs of proxy solicitations.

Filing Date: The application was filed on November 10, 1999, and amended on February 11, 2000.

Applicant's Address: P.O. Box 5142, Westborough, Massachusetts 01581.

Liquid Capital Income Trust [File No. 811–2528]; Carnegie Government Securities Trust [File No. 811–3037]; Carnegie Tax Free Income Trust [File No. 811–3446]; Carnegie Tax Exempt Income Trust [File No. 811–4538]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By November 19, 1999, each applicant had made a liquidating distribution to its shareholders based on net asset value. Expenses of $49,300; $14,300; $14,300; and $14,700, respectively, incurred in connection with the liquidations were paid by each applicant.

Filing Date: Each application was filed on February 4, 2000.

Applicant's Address: 1100 The Halle Building, 1228 Euclid Avenue, Cleveland, Ohio 44115.

The Chancellor Targeted Health Care Fund, Inc. [File No. 811–6633]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made a public offering of its securities and does not propose to make any public offering or engage in business of any kind.

Filing Dates: The application was filed on February 10, 2000.

Applicant's Address: c/o INVESCO, Inc., 1166 Avenue of the Americas, New York, New York 10036.

Marketvest Funds (formerly Court Street Funds) [File No. 811–7383]; Marketvest Funds, Inc. (formerly Court Street Funds, Inc.) [File No. 811–7385]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By March 27, 1998, each series of each applicant transferred its assets and liabilities to corresponding series of ARK Funds, based on net asset value. Expenses of $344,300, incurred in connection with the reoganizations were paid by First Maryland Bancorp, the corporate parent of applicants' investment adviser.

Filing Date: Each application was filed on January 26, 2000.

Applicant's Address: c/o Allfirst Trust Company, N.A., 25 South Charles Street, Mail Stop: 101–621, Legal and Compliance, Baltimore, Maryland 21201.

Farm Bureau Life Variable III [File No. 811–8969]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities and is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Dates: The application was filed on December 20, 1999, and amended on February 15, 2000.

Applicant's Address: 5400 University Avenue, West Des Moines, Iowa 50266.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5182 Filed 3–2–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42460; File No. SR–Amex–00–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Eliminate the Exchange's Off-Board Trading Rules

February 25, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2000, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Exchange's proposed rule change raises issues similar to those raised by the New York Stock Exchange's ("NYSE") proposal to repeal NYSE rule 390, which rule generally prohibits NYSE members and their affiliates from effecting transactions in certain NYSE-listed securities away from a national securities exchange. The Commission recently issued the notice of filing for the NYSE's proposal ("NYSE Notice") and solicited comment on a number of important issues that have broad implications for the structure of the U.S. securities markets.[3] Specifically, the Commission requested comment on market fragmentation—the trading of orders in multiple locations without interaction among those orders—and on several options for addressing market fragmentation. To promote a comprehensive discussion of off-board trading restrictions and related market fragmentation issues, the Commission requests that persons interested in the Exchange's proposal refer to the NYSE Notice and submit comments that respond to the questions presented in the NYSE Notice.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate its off-board trading rules, Exchange rule 5, "Over-the-Counter Execution of Equity Securities Transactions," and Exchange Rule 6, "Execution of Transactions in Bonds on Exchange Required—Exceptions." The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 5 regulates off-board trading by Amex members in listed equity securities, and Exchange Rule 6 regulates off-board trading by a Amex members in listed bonds. Together, Exchange Rules 5 and 6 prohibit members from trading listed equity securities and bonds as principal off the exchange (*i.e.*, in the over-the-counter market) subject to enumerated exceptions. In 1980, the Commission adopted rule 19c–3, which prohibits all national securities exchanges from

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42450 (Feb. 23, 2000) (File No. SR–NYSE–99–48). The Commission notes that similar proposals have been filed by the Chicago Stock Exchange and the Philadelphia Stock Exchange. *See* Securities Exchange Act Release Nos. 42459 (Feb. 25, 2000) (File No. SR–CHX–99–28) and 42458 (Feb. 25, 2000) (File No. SR–Phlx–00–12).

[4] The Commission notes that the NYSE Notice is available on the Commission's website at: <http://www.sec.gov/rules/sros/ny9948n.htm>.

applying off-board trading restrictions to equity securities listed after April 26, 1979.[5]

The Exchange's off-board trading rules originally were intended to centralize buying and selling interest in listed securities to ensure the execution of orders at the best possible prices. Over time, however, these off-board trading restrictions came to be viewed by many as anti-competitive. In this regard, the Exchange notes that SEC Chairman Arthur Levitt recently called for the elimination of off-board trading rules.[6]

The Amex believes that Exchange Rule 5 is largely irrelevant to the trading of Amex-listed equity securities because it applies only to equity securities listed before April 26, 1979, and the great majority of Amex-listed stocks were listed for trading after that date. In addition, Exchange Rule 5 applies only to Amex members. Therefore, non-member firms may trade Amex-listed equity securities off-board—and in fact, non-member firms do so. The Exchange's off-board trading rule for bonds, similarly, is of little practical consequence due to the exceptions in Exchange Rule 6 that permit the great bulk of listed bond transactions to occur over-the-counter.

In light of the limited practical impact of the Exchange's off-board trading rules and the changing view on their propriety, the Exchange proposes to repeal Exchange Rules 5 and 6, and eliminate cross references to these Rules found elsewhere in the Exchange's rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

[5] *See* 17 CFR 240.19c–3.

[6] Remarks of SEC Chairman Arthur Levitt, "Dynamic Markets, Timeless Principles" September 23, 1999.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission also invites interested persons to submit written data, views, and arguments on the market fragmentation issues presented in the NYSE Notice.[9] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–00–05 and should be submitted by March 24, 2000. Comments responding to the Commission's request for comment on market fragmentation issues should refer to File No. SR–NYSE–99–48 and should be submitted by April 28, 2000.

[9] *See supra* notes 3 and 4.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5186 Filed 3–2–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42459; File No. SR–CHX–99–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Delete Certain Exchange Provisions That Prohibit Off-Floor Transactions by Exchange Members

February 25, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 1999, the Chicago Stock Exchange, Incorporated ("Exchange" or "CHX") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Exchange's proposed rule change raises issues similar to those raised by the New York Stock Exchange's ("NYSE") proposal to repeal NYSE Rule 390, which rule generally prohibits NYSE members and their affiliates from effecting transactions in certain NYSE-listed securities away from a national securities exchange. The Commission recently issued the notice of filing for the NYSE's proposal ("NYSE Notice") and solicited comment on a number of important issues that have broad implications for the structure of the U.S. securities markets. [3] Specifically, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42450 (Feb. 23, 2000) (File No. SR–NYSE–99–48). The Commission notes that similar proposals have been filed by the American Stock Exchange and the Philadelphia Stock Exchange. *See* Securities

Continued

Commission requested comment on market fragmentation—the trading of orders in multiple locations without interaction among those orders—and on several options for addressing market fragmentation. To promote a comprehensive discussion of off-board trading restrictions and related market fragmentation issues, the Commission requests that persons interested in the Exchange's proposal refer to the NYSE Notice and submit comments that respond to the questions presented in the NYSE Notice.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to delete provisions in Article VIII, Exchange rule 9, "Transactions Off the Floor," that restrict off-floor transactions by Exchange members. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Reuglatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commisison, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In December 1999, the NYSE proposed to repeal NYSE Rule 390, which restricts NYSE members from effecting certain off-floor transactions in specific securities ("19c–3 securities"). Furthermore, on December 9, 1999, the Commission adopted amendments to the Intermarket Trading System Plan ("ITS Plan") to expand the ITS linkage with the NASD's Computer Assisted Execution System to all listed securities, including 19c–3 securities.[5] The ITS Plan amendment became effective on February 14, 2000. To confirm the Exchange's commitment to the competitive ideals on which those actions are based, the Exchange believes it is appropriate to delete portions of Article VIII, Exchange Rule 9 to remove any restrictions that might potentially limit a member's ability to engage in certain off-floor transactions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (i) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission also invites interested persons to submit written data, views, and arguments on the market fragmentation issues presented in the NYSE Notice.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–99–28 and should be submitted by March 24, 2000. Comments responding to the Commission's request for comment on market fragmentation issues should refer to File No. SR–NYSE–99–48 and should be submitted by April 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5184 Filed 3–2–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42453; File Nos. SR–NYSE–97–28; SR–CBOE–97–58; SR–Phlx–97–56; SR–PCX–97–49; SR–CHX–98–12; SR–Amex–99–26]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, Philadelphia Stock Exchange, Inc., Pacific Exchange, Inc., Chicago Stock Exchange, Incorporated and American Stock Exchange LLC; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendment to the Proposed Rule Changes That Adopt Capital and Equity Requirements for Joint Back Office Arrangements

February 24, 2000.

1. Introduction

On October 2, 1997, the New York Stock Exchange, Inc. ("NYSE"), October 27, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE"), November 7, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx"), December 18, 1997, the Pacific

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Exchange Act Release Nos. 42460 (Feb. 25, 2000) (File No. SR–Amex–00–05) and 42458 (Feb. 25, 2000) (File No. SR–Phlx–00–12).

[4] The Commission notes that the NYSE Notice is available on the Commission's website at: (http://www.sec.gov/rules/sros/ny9948n.htm).

[5] *See* Securities Exchange Act Release No. 42212 (Dec. 9, 1999), 64 FR 70297 (Dec. 16, 1999).

[6] 15 U.S.C. 78f(b)(5).

[7] *See supra* notes 3 and 4.

[8] 17 CFR 200.20–3(a)(12).

Exchange, Inc. ("PCX"), May 28, 1998, the Chicago Stock Exchange, Incorporated ("CHX"), and July 16, 1999, the American Stock Exchange LLC ("Amex") (collectively the "SROs") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] proposed rule changes to adopt capital and equity requirements for joint back office ("JBO") arrangements. The NYSE, PCX and Amex also filed proposed rule changes to their maintenance margin requirements for specialist, market-maker and broker-dealer accounts. In addition, the NYSE proposed to amend its margin provisions relating to the concentration of control and restricted securities.

The proposed rule change filed by the NYSE was published for comment on January 7, 1998.[3] On May 21, 1998, and September 28, 1998, the NYSE filed with the Commission Amendments Nos. 1 and 2 to the proposed rule change. Amendments Nos. 1 and 2 were published for comment on December 4, 1998.[4] On July 19, 1999, the NYSE filed with the Commission Amendments Nos. 3 and 4 to the proposed rule change.

The proposed rule change filed by the CBOE was published for comment on December 17, 1997.[5] On July 27, 1998, the CBOE filed Amendment No. 1 to the proposed rule change. Amendment No. 1 was published for comment on December 4, 1998.[6]

The Phlx filed Amendment No. 1 to the proposed rule change on November 24, 1997. The proposed rule change and Amendment No. 1 were published for comment on December 17, 1997.[7] On February 22, 1999, the Phlx filed Amendment No. 2 to the proposed rule change.

The proposed rule change filed by the PCX was published for comment on February 25, 1998.[8] On October 8, 1998, the PCX filed Amendment No. 1 to the proposed rule change. Amendment No. 1 was published for comment on December 4, 1998.[9] On March 15, 1999, the PCX filed Amendment No. 2 to the proposed rule change.

CHX filed Amendment No. 1 to the proposed rule change on July 16, 1998. The proposed rule change and CHX Amendment No. 1 were published for comment on September 9, 1998.[10] On November 17, 1998, the CHX filed Amendment No. 2 to the proposed rule change. On January 28, 1999, and September 16, 1999, the CHX filed Amendments Nos. 3 and 4 to the proposed rule change.

The proposed rule change filed by the Amex was published for comment on November 22, 1999.[11]

The Commission received seven comment letters on the Self Regulatory Organization ("SRO") proposed rule changes. All of the comment letters concerned the JBO rule changes and specifically related to the CBOE's proposal. This Order approves each of the SRO proposed rule changes, as amended. In addition, the Commission is publishing notice to solicit comments and is simultaneously approving, on an accelerated basis, NYSE Amendments Nos. 3 and 4, Phlx Amendment No. 2, PCX Amendment No. 2 and CHX Amendments Nos. 2, 3, and 4.

II. Description of the Proposals

A. Background

Section 220.7(c) of Regulation T,[12] which is promulgated by the Board of Governors of the Federal Reserve ("Federal Reserve Board"),[13] allows special margin treatment for broker-dealers without clearing operations, known as "JBO participants," who invest in a "clearing and servicing"[14] broker-dealer, known as a "JBO broker." Under Regulation T, the JBO participants are not treated as "customers"[15] of the JBO broker.

As part of a periodic review of its regulations, in 1995 the Federal Reserve Board proposed an amendment to Regulation T relating to JBO arrangements.[16] The Federal Reserve Board stated that the proposed amendment was prompted by the concerns of several stock exchanges that JBO brokers were extending credit to JBO participants far in excess of their ownership interests in the JBO broker.[17] Under the proposed amendment, the favorable margin treatment for a JBO arrangement would have been conditioned on the JBO participants' ownership interest in the JBO broker being related to the amount of business transacted through the JBO arrangement.

After Congress enacted the National Securities Market Improvement Act of 1996 (NSMIA),[18] the Federal Reserve Board stated that it decided not to adopt its proposed amendment to Regulation T relating to JBO arrangements.[19] Instead, the Federal Reserve Board stated that it "believes it is appropriate to rely on the authority of the JBO's examining authority to ensure the reasonableness of JBO arrangements under its supervision."[20]

In April 1996, the SROs established committees to review and recommend changes to the SRO margin rules. These committees established subcommittees,[21] which included experienced industry representatives on margin and credit matters, in order to review specific margin provisions. Based on the recommendations by the committees and the review by the SRO's staff, the SROs proposed the following amendments.

B. JBO Proposals

1. NYSE JBO Proposal

(a) Original Filing

The NYSE proposed to amend NYSE Rule 431[22] to include proposed subparagraph (e)(6)(B). Under proposed subparagraph (e)(6)(B), broker-dealers would be permitted to establish a JBO arrangement subject to specific requirements for JBO brokers and JBO participants. A JBO broker would be required to: (1) Provide written notification to the NYSE prior to establishing a JBO arrangement; (2)

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 39497 (Dec. 29, 1997), 63 FR 899 ("NYSE Original Filing").

[4] *See* Exchange Act Release No. 40709 (Nov. 25, 1998), 63 FR 67161 ("NYSE Amendments Nos. 1 and 2").

[5] *See* Exchange Act Release No. 39418 (Dec. 10, 1997), 62 FR 66154 ("CBOE Original Filing").

[6] *See* Exchange Act Release No. 40708 (Nov. 25, 1998), 63 FR 67155.

[7] *See* Exchange Act Release No. 39419 (Dec. 10, 1997), 62 FR 66169.

[8] *See* Exchange Act Release No. 39680 (Feb. 18, 1998), 63 FR 9622.

[9] *See* Exchange Act Release No. 40710 (Nov. 25, 1998), 63 FR 67164.

[10] *See* Exchange Act Release No. 40384 (Aug. 31, 1998), 63 FR 48286.

[11] *See* Exchange Act Release No. 42129 (Nov. 10, 1999), 64 FR 63834.

[12] 12 CFR 220.7(c).

[13] The Federal Reserve Board promulgated Regulation T pursuant to Section 7(a) of the Exchange Act, which authorizes it to prescribe regulations relating to credit extensions on securities. *See* 15 U.S.C. 78g(a).

[14] Regulation T does not define the term "clearing and servicing." However, the Regulation describes a JBO broker as a clearing and servicing firm.

[15] The term customer is defined in section 220.2 of Regulation T.

[16] Board of Governors of the Federal Reserve System Docket No. R–0772 (June 21, 1995), 60 FR 33763 (June 29, 1995).

[17] *Id.*

[18] National Securities Markets Improvement Act of 1996, Pub. L. 104–290, 110 Stat. 3416 (Oct. 11, 1996).

[19] Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 24, 1996), 61 FR 20386 (May 6, 1996).

[20] *Id.*

[21] The subcommittees that were formed were entitled the "Control Stock," "Joint Back Office," "Good Faith Securities," "Options" and "Other" subcommittees. NYSE Original Filing, *supra* note 3.

[22] NYSE Constitution and Rules, ¶2431, NYSE Rule 431.

maintain a minimum of $25 million of "tentative net capital" [23] as computed under Exchange Act Rule 15c3–1 [24] or maintain a minimum of $10 million in "net capital" [25] if the JBO broker is engaged in the primary business of clearing options market-maker accounts, [26] (3) maintain a written risk analysis methodology for assessing the amount of credit extended to each JBO participant; (4) deduct from its net capital each JBO participant's "haircut" [27] requirment under Exchange Act Rule 15c3–1 in excess of the equity maintained in the JBO participant's account. In addition, a JBO broker would be permitted to establish a JBO arrangement if it either cleared and carried or carried customer accounts.[28]

Under proposed subparagraph (e)(8)(B), a JBO participant would be required to be a registered broker-dealer subject to exchange Act Rule 15c3–1 and would be required to maintain an ownership interest in its JBO broker in accordance with Regulation T. Further, a JBO participant would be required to maintain in the JBO arrangement a minimum of $1 million in liquidating equity. This $1 million requirement would be exclusive of the JBO participant's required ownership interest in the JBO broker under Regulation T. If a JBO participant's liquidating equity would fall below $1 million, the firm would be required to deposit the deficiency within five business days or would become subject to the other margin requirements under NYSE Rule 431.

(b) NYSE Amendment No. 1

NYSE Amendment No. 1 proposed to incorporate a related NYSE rule change ("Related Filing") [29] into proposed subparagraphs (e)(5)(A), (e)(5)(B), (e)(6)(A), and (e)(6)(B)(i)(3) of NYSE Rule 431. Under the Related Filing, a broker-dealer's maintenance margin requirement would be reduced below the haircut requirement under Exchange Act Rule 15c3–1 for certain non-equity securities held in an "exempt account." [30] Under NYSE Amendment No. 1, a JBO broker would be permitted to alternatively deduct from its net capital the difference between a JBO participant's account equity and the maintenance margin requirement under the Related Filing,[31] as opposed to the haircut requirement under Exchange Act Rule 15c3–1 originally proposed. The NYSE stated that this amendment would establish consistency by incorporating the most recent maintenance margin requirements of the Related Filing into the JBO filing.[32]

NYSE Amendment No. 1 also clarified that if the amount of equity in a JBO participant's account would fall below the $1 million minimum, it would lose its JBO participant status unless the deficiency is cured within five business days. In addition, unless the JBO participant would be an "exempted borrower," [33] it would be subject to the margin account requirements under Regulation T and the other maintenance margin requirements under NYSE Rule 431.

(c) NYSE Amendment No. 2

NYSE Amendment No. 2 proposed to lower the minimum net capital requirement for a JBO broker whose primary business is clearing options market-maker accounts to $7 million, instead of the $10 million originally proposed. The NYSE stated that this change was in response to the comments from CBOE members concerning the CBOE's original JBO proposal, which required a minimum of $10 million. [34] In addition, the NYSE stated that it believes that the proposed $7 million minimum net capital requirement would be sufficient to satisfy the safety and soundness concerns related to JBO arrangements. [35]

NYSE Amendment No. 2 proposed to also require: (1) prompt written notification to the NYSE when a JBO broker's tentative net capital or net capital, whichever applies, would fall below the prescribed requirement; and (2) any net capital deficiency by a JBO broker be resolved within three business days. In addition, if a JBO broker would fail to correct a net capital deficiency within the required three business days, it would not be permitted to accept new transactions through the JBO arrangement. The NYSE stated that these requirements are consistent with the Exchange Act Rule 15c3–1 provisions dealing with net capital deficiencies. [36]

(d) NYSE Amendments Nos. 3 and 4

NYSE Amendment No. 3 proposed to permit a six month phase-in of the NYSE's rule changes relating to JBO

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[23] The term "tentative net capital" generally refers to net capital before haircuts and undue concentration charges on proprietary securities and options positions. *See* NYSE Interpretation Handbook, Rule 15c3–1(c)(2)(vi)(M)/04.

[24] 17 CFR 240.15c3–1. This rule is referred to as the "Net Capital Rule."

[25] The term "net capital" is defined under Exchange Act Rule 15c3–1 and is generally calculated by deducting illiquid assets from a firm's "net worth," as determined under Generally Accepted Accounting Principles (GAAP), adding to that amount properly subordinated debt under Appendix D of the Rule and further deducting haircuts from securities held in the firm's proprietary accounts.

[26] Under the proposed amendments, the clearance of option market-maker accounts would be deemed a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in its ratio of gross options market-maker deductions to net capital (including gross deductions for JBO participant accounts) are options market-maker deductions. Subparagraph (c)(2)(x) of Exchange Act Rule 15c3–1 limits the amount of specialist and market-maker options positions a firm may guarantee, endorse or carry to a ratio of 10 to 1 of options market-maker and specialist deductions to net capital. In addition, subparagraph (a)(6) of the Rule exempts an options market-maker and specialist from the haircut provisions of the Rule provided that, among other things, the firm maintains an account liquidating equity equal to the percentage described in subparagraph (a)(6)(iii)(A) of the Rule.

[27] Exchange Act Rule 15c3–1 requires a broker-dealer to reduce its net worth by certain percentages, or "haircuts," of the market value of its proprietary securities.

[28] *See* Letter from Scott Holz, Counsel, Federal Reserve Board, to Raymond J. Hennessy, Vice President, NYSE, dated April 16, 1999 (stating that a carrying firm may be considered a clearing and servicing firm within the meaning of the JBO provisions of Regulation T).

[29] Exchange Act Release No. 40278 (July 29, 1998), 63 FR 41882 (Aug. 5, 1998). To date, the Commission has not taken action on the Related Filing. Accordingly, this Order does not approve the Related Filing or its application to the margin amendments contained in this filing. However, upon Commission approval of the Related Filing, this Order would permit the Related filing's application as described in the Related Filing, as amended.

[30] The Related Filing proposed to adopt subparagraph (a)(13) to NYSE Rule 431 that would define an "exempt account" as a: (1) Member organization; (2) non-member broker-dealer; (3) "designated account;" or (4) person with at least a $40 million net worth. In addition, the Related Filing proposed to revise subparagraph (a)(3) of NYSE Rule 431 to define a "designated account" as the account of: (1) A bank; (2) a savings association; (3) an insurance company; (4) an investment company; (5) a state or political subdivision thereof; or (6) a pension or profit sharing plan.

[31] The alternative deduction under NYSE Amendment No. 1 would apply to securities covered by the Related Filing's proposed subparagraphs (e)(2)(F) and (e)(2)(G) to NYSE Rule 431. These securities include: exempted securities, mortgage related securities, major foreign sovereign debt securities, highly rated foreign sovereign debt securities, and investment grade debt securities. Generally, the maintenance margin requirement for these securities under the Related Filing would be less than the current maintenance margin requirement under NYSE Rule 431 and the haircut requirements under Exchange Act Rule 15c3–1.

[32] NYSE Amendments Nos. 1 and 2, *supra* note 4.

[33] The term "exempted borrower" is defined in section 220.2 of Regulation T. Subparagraph (a)(2) of NYSE Rule 431 specifically excludes an exempted borrower from its definition of "customer."

[34] NYSE Amendments Nos. 1 and 2, *supra* note 4. *See infra* text and accompanying notes 69 to 77 for a discussion of the comments relating to the additional net capital requirements for options market-maker clearing firms under the SRO JBO proposals.

[35] *Id.*

[36] NYSE Amendments Nos. 1 and 2, *supra* note 4. Subparagraph (c)(2)(x) of Exchange Act Rule 15c3–1 requires an options market-maker carrying firm's ratio of gross options market-maker deductions to net capital to not exceed a ratio of 10 to 1 for a period of more than three consecutive business days.

arrangements. The NYSE stated that a six month phase-in would allow sufficient time for firms to comply with the capital and risk analysis requirements for JBO arrangements and for firms to implement new or make changes to their existing systems.

NYSE Amendment No. 4 clarified the current citation to the provisions of Regulation T relating to JBO arrangements. [37]

(e) Impact of the NYSE JBO Filing on Other SROs

Generally, the other SRO JBO filings were similar to the NYSE's filing. However, some of the SRO filings contained different requirements. For example, the other SRO filings did not incorporate the alternative deduction for certain non-equity securities covered by the NYSE's Related Filing. If a firm is a dual member of the NYSE and another SRO, however, the firm may nevertheless be permitted to elect to be bound by the NYSE's margin rules. [38] By making this election, the firm would be permitted to take advantage of the NYSE's proposed alternative deduction.

2. PCX JBO Filing

The PCX and the NYSE JBO filings are substantially similar, as amended. However, unlike the NYSE's filing, the PCX filing would require a JBO broker to provide immediate telegraphic or facsimile notice to the PCX if its tentative net capital or net capital, whichever applies, would fall below the prescribed minimum levels. The PCX filing would also subject a JBO broker to the equity capital withdrawal restrictions of paragraph (e) of Exchange Act Rule 15c3–1 and the prohibitions against the reduction, prepayment, and repayment of subordination debt of paragraph (b) of Appendix D of Exchange Act Rule 15c3–1, as if the firm's net capital would be below the minimum standards specified by those sections. In addition, the PCX filing would prohibit a JBO broker that was only a carrying firm. [39]

3. CBOE, Phlx, CHX and Amex JBO Filings

The CBOE, Phlx, CHX, and Amex all had similar JBO filings as the NYSE's filing, as amended. However, unlike the NYSE filing, these SROs would require a JBO broker to comply with the PCX's additional requirements and also establish and maintain written ownership standards for JBO accounts. In addition, a JBO participant would be required to employ or have access to a qualified Series 27 principal and would not be eligible to operate under subparagraph (b)(1) of Exchange Act Rule 15c3–1. [40] Lastly, the Phlx JBO proposal would permit foreign currency options participants to be JBO participants.

C. Reduced Margin Proposal for Specialist, Market-Maker and Broker-Dealer Accounts

1. NYSE Proposal

(a) Original Filing

The NYSE proposed to amend subparagraphs (e)(5) and (e)(6) of NYSE Rule 431. Subparagraphs (e)(5) and (e)(6) require a carrying broker-dealer to deduct from its net capital the difference between the equity maintained in the account of a specialist, market-maker and broker-dealer and the required maintenance margin under NYSE Rule 431. Under the proposed amendments, a broker-dealer would instead deduct from its net capital the difference between the equity maintained in the account of a specialist, market-maker and broker-dealer and the required haircut in accordance with Exchange Act Rule 15c3–1. [41] The NYSE stated that this rule change would provide "equitable treatment" for the maintenance margin requirements of broker-dealer accounts with the proposed treatment for JBO participants. [42]

(b) NYSE Amendment No. 1

NYSE Amendment No. 1 proposed to incorporate the Related Filing into the amendments to subparagraphs (e)(5) and (e)(6) of NYSE Rule 431 that were proposed in the NYSE's original filing. Under NYSE Amendment No. 1, for certain non-equity securities covered by the Related Filing, a carrying broker-dealer would be permitted to alternative deduct from its net capital the difference between the equity maintained in the account of a specialist, market-maker and broker-dealer and the maintenance margin requirement under the Related Filing, as opposed to the haircut requirement under Exchange Act Rule 15c3–1 as originally proposed. [43]

2. PCX and Amex Proposals

The PCX and Amex included provisions to permit a clearing firm to carry the proprietary account of another registered broker-dealer on a mutually satisfactory margin basis, provided that the firms comply with Regulation T and do not maintain the account in an equity deficit. The PCX and Amex did not include a provision incorporating the alternative deduction for certain non-equity securities covered by the NYSE's Related Filing.

D. NYSE's Concentration Reduction Proposal for Control and Restricted Securities

The NYSE proposed to amend subparagraph (e)(8)(C)(iv) of NYSE Rule 431. [44] Subparagraph (e)(8)(C)(iv) sets forth the conditions that determine if a customer's account contains a concentration of control and restricted securities for purposes of computing a broker-dealer's net capital deduction under NYSE Rule 325 [45] for a customer margin deficiency under subparagraph (e)(8)(B)(i). [46] Specifically, subparagraph (e)(8)(c)(iv) currently provides that a concentration exists whenever a customer's aggregate position of control

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[37] Prior to the filing of NYSE Amendment No. 4, the NYSE's JBO proposal contained the Regulation T citation for JBO arrangements of section 220.11. Subsequently, the Federal Reserve Board changed the citation to section 220.7(c). *See* Board of Governors of the Federal Reserve System Docket Nos. R–0905, R–0923 and R–0944 (Jan. 8, 1998), 63 FR 2806 (Jan. 16, 1998).

[38] For example, CBOE Rule 12.11 specifies that in lieu of meeting the CBOE's margin requirements, a firm may elect to be bound by the initial and maintenance margin requirements of the NYSE. CBOE Constitution and Rules, ¶ 2381, Rule 12.11.

[39] The PCX's original proposal was similar to the NYSE's, which permits a JBO broker to clear and carry or carry customer accounts.

[40] Subparagraph (b)(1) of Exchange Act Rule 15c3–1 exempts certain broker-dealers, satisfying enumerated conditions, from the requirements of the Rule.

[41] For example, in the case of a long position in an equity security the proposed amendments would require a JBO broker to compute its net capital deduction for deficient specialist, market-maker and broker-dealer accounts based on the 15% haircut requirement of Exchange Act Rule 15c3–1(c)(2)(vi)(J), rather than the 25% maintenance margin requirement of NYSE Rule 431(c)(1).

[42] NYSE Amendments Nos. 1 and 2, *supra* note 4.

[43] *See supra* text and accompanying notes 29 to 32 for a discussion of the application of the NYSE's Related Filing to its JBO filing.

[44] The NYSE proposed this amendment in its original filing with the Commission, along with its broader proposal relating to JBO arrangements. Subsequently, in Amendment No. 1 the NYSE requested that these amendments be subject to separate Commission review. The NYSE stated that by bifurcating the proposed rule changes the proposals would become effective more expeditiously than if they were considered by the Commission together. However, the Commission decided not to bifurcate the NYSE's proposals and is issuing this Order to cover each of the proposed amendments in the NYSE's original filing. NYSE Amendments Nos. 1 and 2, *supra* note 4.

[45] NYSE Constitution and Rules, ¶ 2325, Rule 325. NYSE Rule 325 requires a firm to comply with additional net capital requirements than those imposed by Exchange Act Rule 15c3–1.

[46] Subparagraph (e)(8)(B)(i) of NYSE Rule 431 provides that a broker-dealer must, in computing net capital under NYSE Rule 325, deduct "any margin deficiencies in customers' accounts based upon a margin requirement as specified in subparagraph (e)(8)(C)(iv)" for control and restricted securities.

and restricted securities in one security exceeds either: (1) 10% of the security's outstanding shares; or (2) 100% of the security's average weekly volume during the preceding three months.

Under the proposed amendments to subparagraph (e)(8)(C)(iv), in determining if a concentration exists, a broker-dealer would deduct from its customer's aggregate position of control and restricted securities "excess securities," which would be defined as the amount of securities by which the aggregate position in control and restricted securities of any one issue exceeds the aggregate amount of securities that would be required to support the aggregate credit extended on those securities, assuming a 50% margin requirement. The NYSE stated that this proposal would correct an anomaly of subparagraph (e)(8)(C)(iv), which effectively imposes stricter requirements on accounts that have more control and restricted securities than necessary to collateralize a credit extension.[47] By limiting the determination of whether a concentration of control and restricted securities exists to two times the credit extension, the proposed amendments would subject these securities to a greater margin requirement based only on financed control and restricted securities.

The NYSE further proposed to amend subparagraph (e)(8)(D) of NYSE Rule 431, which exempts from the requirements of subparagraph (e)(8) control and restricted securities satisfying the following conditions: (1) The securities are considered "then saleable[48] under Securities Act Rule 144(k),[49] Securities Act Rule 145(d)(2)[50] or Securities Act rule 145(d)(3):[51] and (2) the issuer is current in its filings pursuant to the continuous disclosure system under the Exchange Act;[52] and (3) the securities are owned by a "non-affiliate"[53] of the issuer. Under the proposed amendments, the exemption of subparagraph (e)(8)(D) would also include control and restricted securities held by an affiliate, provided that the securities otherwise satisfy the other requirements for the exemption. The NYSE stated that it believes that the maintenance margin requirements under NYSE rule 431 for an affiliate that satisfied the time conditions of Securities Act Rule 144(k) for control and restricted securities should be the same as a non-affiliate because the Commission's interpretations under Securities Act Rule 144(k) permit a broker-dealer to sell control and restricted securities of an affiliate in default without regard to the volume and other restrictions imposed on affiliates.[54] In addition, subparagraph (d)(3)(iv) of Securities Act Rule 144 permits a broker-dealer to "tack" the ownership period of an affiliate in default to its own for purposes of determining if the time conditions of SEC Rule 144(k) are met.[55]

The NYSE further proposed to amend subparagraph (e)(8)(C)(ii) of NYSE Rule 431. Subparagraph (e)(8)(C)(ii) requires a broker-dealer to incur a net capital charge by the amount of aggregate credit it agrees to extend to its customers on control and restricted securities that exceeds 10% of its "excess net capital"[56] for purposes of determining its status under NYSE Rule 326.[57] Under the proposed amendments to subparagraph (e)(8)(C)(ii), a broker-dealer would be required to have a written agreement to extend credit to a customer for control and restricted securities. In addition, a firm would incur a net capital charge under subparagraph (e)(8)(C)(ii) of NYSE Rule 431 based on the greater of the aggregate credit agreed to in writing and the credit actually extended.[58]

E. Comment Summary

The Commission received seven comment letters on the SRO proposed rule changes. All of the comments concerned the JBO proposed rule changes and specifically related to the CBOE's proposal. The following is a summary of the comments.

1. Comments Concerning the $7 Million Net Capital Requirement for Options Specialists and Market-Maker Clearing Firms

The original JBO proposals would have required options market-maker clearing firms to maintain $10 million in net capital. At the time the proposals were filed with the Commission, some of these firms did not need to maintain $10 million of net capital to finance their business.[59] However, the Committees established to review and recommend changes to the SRO margin rules believed that these firms would eventually need this amount by the time the Commission would approve the JBO proposals.[60] Accordingly, the SROs originally proposed a $10 million net capital requirement for options market-maker clearing firms.

Although the capital needs for options market-maker clearing firms have in fact increased,[61] several comment letters expressed opposition to the $10 million net capital requirement originally proposed.[62] Since receiving these

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[47] NYSE Amendments Nos. 1 and 2, *supra* note 4. Currently, the NYSE interpretations to subparagraph (e)(8)(B) encourages a firm to require its customers to deposit with it all their control and restricted securities on which the firm extends credit. *See* NYSE Interpretation Handbook, Rule 431(e)(8)(B)/01.

[48] The term "then saleable" refers to where all the conditions under Securities Act Rule 144 have been satisfied and, the securities are thus immediately saleable within the parameters of SEC Rules 144 and 145(d) under the Securities Act. *See* NYSE Interpretation Handbook, Rule 431(e)(8)(C)(iv)/02. Generally, Securities Act Rule 144 provides a safe harbor for the resale of restricted securities, which includes volume limitations, manner of sale and notice requirements.

[47] NYSE Amendments Nos. 1 and 2, *supra* note 4. Currently, the NYSE interpretations to subparagraph (e)(8)(B) encourages a firm to require its customers to deposit with it all their control and restricted securities on which the firm extends credit. *See* NYSE Interpretation Handbook, Rule 431(e)(8)(B)/01.

[48] The term "then saleable" refers to where all the conditions under Securities Act Rule 144 have been satisfied and, the securities are thus immediately saleable within the parameters of SEC Rules 144 and 145(d) under the Securities Act. *See* NYSE Interpretation Handbook, Rule 431(e)(8)(C)(iv)/02. Generally, Securities Act Rule 144 Provides a safe harbor for the resale of restricted securities, which includes volume limitations, manner of sale and notice requirements.

[49] 17 CFR 230.144(k).

[50] 17 CFR 230.145(d)(2).

[51] 17 CFR 230.145(d)(3).

[52] *See* 15 U.S.C. 78m and 78o(d).

[53] An affiliate of an issuer is "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with" the issuer. 17 CFR 230.144(a).

[54] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, dated May 28, 1999.

[55] *See* Securities Act Release No. 6862 (Apr. 23, 1990), 55 FR 17933 (Apr. 30, 1990).

[56] The term "excess net capital" generally refers to a firm's net capital in excess of its prescribed requirements under Exchange Act Rule 15c3–1.

[57] NYSE Constitution and Rules, ¶ 2326(a)–(d), Rule 326. NYSE Rule 326 generally limits the activities of a broker-dealer if the firm's net capital falls below certain prescribed percentages.

[58] Currently, a broker-dealer is required to comply with this requirement under the NYSE's interpretation of NYSE Rule 431. *See* NYSE Interpretation Handbook, NYSE Rule 431(e)(8)(C)(ii)/01.

[59] CBOE Original Filing, *supra* note 5.

[60] *Id.*

[61] *Id.*

[62] *See* Letter from William M. Cousins, President, AB Financial LLC, to Jonathan G. Katz, Secretary, Commission, dated January 6, 1998 ("AB Financial Letter"); Letter from William C. Floersch, President and CEO, O'Connor & Company LLC, to Jonathan G. Katz, Secretary, Commission, dated January 7, 1998 ("O'Connor Letter"); Letter from Ray Woods to Jonathan Katz, Secretary, Commission, dated January 6, 1998 ("Woods Letter"); Letter from Lee E. Tenzer, Chairman, Lee E. Tenzer Trading Company, to Jonathan G. Katz, Secretary, Commission, dated January 6, 1998 ("LETCO Letter"); Letter from Phyllis M. Wyse, Senior Vice President, Sage-Clearing, to Jonathan Katz, Secretary, Commission, dated January 6, 1998 ("Sage Letter"); Letter from Timothy Mullen, Chairman and CEO, LIT Clearing Services, Inc., to Jonathan G. Katz, Secretary, Commission, dated

comments, the SROs have amended their JBO proposals to reduce the requirement to $7 million.

Four of the seven commenters believed that $10 million in net capital was excessive.[63] These commenters noted that the minimum dollar net capital requirement under Exchange Act Rule 15c3–1 for clearing firms is $250,000,[64] which is far below the $10 million net capital requirement originally proposed. Indeed, one commenter pointed out that a $10 million net capital requirement equals 40 times the minimum amount required under Exchange Act Rule 15c3–1 and 10 times the $1 million minimum required by the Options Clearing Corporation ("OCC").[65]

These four commenters stated that a $10 million requirement is arbitrary and without basis under Exchange Act Rule 15c3–1. These commenters noted that Exchange Act Rule 15c3–1's minimum dollar net capital requirements are nominal and that a firm's overall minimum net capital requirement increases based on the size of its business.[66] By the JBO proposals requiring a minimum of $10 million in net capital, one of these commenters argued that the requirement would "represent an entirely new and unprecedented type of capital test."[67]

In addition, two of these four commenters argued that the risk management practices currently in place[68] reduce the need for additional net capital requirements.[69] One of the two commenters stated "setting capital requirements without regard to the size or risk of the business engaged in essentially ignores all risk management techniques established over the past ten years."[70]

These four commenters stated that a $10 million requirement would be "anti-competitive" and lead to a concentration of JBO business in fewer firms. As a result, these commenters cautioned that systemic risk would increase in the financial markets. One of these commenters elaborated that, as a result of the increased costs of maintaining additional net capital,[71] smaller firms would have to decide whether to raise the required net capital or exit the JBO clearing business.[72] If these firms would opt to abandon the JBO business, the commenter predicted "larger firms will be clearing more of the JBO business and thereby concentrating this type of account among fewer firms."[73]

Two of these four commenters criticized the JBO proposals' distinction between options market-maker clearing firms, which under the original JBO filings would have been required to maintain $10 million in net capital, and other JBO brokers, which are required under the JBO proposals to maintain $25 million in tentative net capital.[74] One of the two commenters stated that a JBO broker that is required to maintain $25 million in tentative net capital would not be required to consider its haircuts on proprietary positions, even though "it is conceivable that a broker-dealer could have tentative net capital in excess of $25 million but net capital less than $10 million."[75] Further, the JBO broker would not be subject to the 10:1 ratio of gross options market-maker deductions to net capital, which effectively imposes minimum net capital requirements on a firm based on the amount of business it conducts.

In addition, the same commenter noted that maintenance margin requirements for broker-dealer accounts are permitted to be the same as JBO participant accounts. As a result, the commenter argued that a minimum dollar requirement on a JBO broker would present "an uneven playing field."[76]

The same commenter proposed that the JBO net capital requirements should include the 10:1 ratio requirement for all JBO brokers, and that the proposals should eliminate any minimum dollar net capital requirements. The commenter also suggested that a JBO broker should be able to satisfy its net capital requirements through undrawn and available subordinated debt.[77]

2. Comments Concerning the $1 Million Equity Requirement for JBO Participants

The JBO filings require a JBO participant to maintain account equity of $1 million, which is exclusive of its ownership interest in the JBO broker required under Regulation T.

Two commenters stated that it is unreasonable to require a JBO participant to maintain $1 million account equity, and thereby be subject to margin calls for a deficiency.[78] The two commenters stated that due to temporary market fluctuations, JBO participants would be subject to frequent calls on the $1 million equity requirement. Accordingly, the two commenters proposed to require an initial minimum equity amount, and a call amount of 50% to 60% of the initial minimum.

The two commenters also stated that the proposed requirement that a JBO broker deduct from its net capital each JBO participant's haircut requirement under Exchange Act Rule 15c3–1 in excess of the equity maintained in the JBO participant's account, is inconsistent with current margin rules that apply to broker-dealer accounts. In addition, the two commenters noted that it is unclear from the JBO proposals that the $1 million equity requirement would also be subject to a net capital charge. Accordingly, the two commenters proposed to instead require a JBO broker's net capital charge to be the lesser of: (1) The sum of each JBO participant's haircut charges and any deficiency of the $1 million account equity requirement; and (2) the maintenance margin requirement of the JBO participant.

The two commenters also stated that the term "equity" is vague. The two commenters noted that under Exchange Act Rule 15c3–1, the term equity includes each account of a JBO participant. However, for margin

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[63] AB Financial Letter, O'Connor Letter, LETCO Letter and Sage Letter, *supra* note 62.

[64] Exchange Act Rule 15c3–1 imposes minimum dollar net capital requirements based on the type of business a firm conducts.

[65] O'Connor Letter, *supra* note 62.

[66] In addition to the minimum dollar requirements, Exchange Act Rule 15c3–1 requires a firm's overall minimum net capital requirement to increase based on either a percentage of its liabilities, or alternatively, a percentage of its customer debits. Further, subparagraph (c)(2)(x) of the Rule requires an options market-maker carrying firm's ratio of gross options market-maker deductions to net capital to not exceed a ratio of 10:1.

[67] *Id.*

[68] For instance, CBOE Rule 15.8 requires options market-maker clearing firms to establish and maintain written procedures for assessing and monitoring the potential risks of market-maker positions to a firm's capital. CBOE Constitution and Rules, ¶ 2448, Rule 15.9.

[69] O'Connor Letter and Sage Letter, *supra* note 62.

[70] O'Connor Letter, *supra* note 62.

[71] A clearing firm's net capital may fluctuate due to the changes of the daily net deductions for its customers. In order to cover these fluctuations, many clearing firms maintain revolving subordinated loan arrangements. According to the CBOE, there is a one time charge to establish a facility of approximately $10,000 per $1 million (1%). The cost to maintain such a facility, undrawn, approximates $10,000 per year per $1 million (1%), or $28 per day. The cost to draw down such a facility approximates $95,000 per year per $1 million of drawn funds (at 1% over an 8½% prime), or $264 per day. However, the CBOE stated that it believes these costs are not excessively burdensome. CBOE Original Filing, *supra* note 5.

[72] AB Financial Letter, *supra* note 62.

[73] *Id.*

[74] AB Financial Letter and Sage Letter, *supra* note 62.

[75] AB Financial Letter, *supra* note 62.

[76] *Id.*

[77] Paragraph (b) of Appendix D of Exchange Act Rule 15c3–1 sets forth the minimum requirements for debt under a subordination agreement to be considered net capital. Under paragraph (b), generally a subordination agreement must have a minimum term of one year, except for certain temporary subordination agreements under subparagraph (c)(5) of Appendix D.

[78] Woods Letter and LETCO Letter, *supra* note 62.

purposes the term equity refers to each individual account. Accordingly, the two commenters believes that more clarification is needed in defining the term equity.

In regard to the definition of equity under the JBO proposals, several commenters proposed to define equity as all cash and other assets (including the amount paid by the JBO participant for its share of the JBO and the value of the CBOE memberships owned by the JBO participant, if applicable) plus all positions minus all short positions. Two commenters stated that it is appropriate to include in the $1 million account equity requirement a JBO participant's ownership interest in the JBO broker because "it is often a significant amount of money and adds to the financial stability of the JBO as a whole." [79]

B. Comments Concerning the Written Risk Analysis Requirement

Under the JBO proposals, a JBO broker must maintain a written risk analysis methodology for assessing the amount of credit extended to each JBO participant. One commenter criticized this requirement as not being "entirely clear." [80]

C. Comments Concerning the Written Ownership Requirement

Some of the JBO filings would require a JBO broker to establish and maintain written ownership standards for JBO accounts. One commenter criticized this requirement as not having provided guidance regarding the minimum standards.[81] In addition, the commenter stated that under the CBOE filing, the CBOE would have discretion to determine what is an appropriate ownership standard. As a result, the commenter argued that JBO brokers, would have an incentive to "establish overly restrictive ownership standards." [82]

5. Comments Concerning the Series 27 Principal Requirements

Some of the JBO filings would require JBO participants to employ, or have access to, a Series 27 principal. One commenter criticized this requirement and stated that some broker-dealers who limit their activities to proprietary trading and do not transact business with non-broker-dealers are not currently required to employ a Series 27 principal.[83] In addition, the commenter believed that the requirement was vague and not relevant.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule changes are consistent with the Exchange Act and the rules and regulations under the Exchange Act applicable to a national securities exchange. In particular, the Commission believes that the proposed rule changes are consistent with Section 6(b)(5) of the Exchange Act,[84] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.[85]

A. Approval of JBO Provisions

The Commission believes that each of the SROs has proposed reasonable capital and equity requirements for JBO brokers and JBO participants. The Commission also believes that the SRO requirements fulfill the Federal Reserve Board's mandate for the SROs to provide rules that "ensure the reasonableness of JBO arrangements." [86]

With respect to JBO brokers, the Commission believes that it is reasonable for SROs to require a JBO broker to: (1) Provide written notification to its designated examining authority ("DEA") prior to establishing a JBO arrangement; (2) maintain a minimum of $25 million in tentative net capital or $7 million in net capital if the JBO broker's primary business is clearing options market-maker accounts and, for these firms, the Commission also believes that it is reasonable to deem a broker-dealer's primary business to be the clearance of options market-maker accounts if a minimum of 60% of its aggregate deductions in its ratio of gross options market-maker deductions to net capital (including gross deductions for JBO participant accounts) are options market-maker deductions; (3) provide prompt written notification to the SROs if its tentative net capital or net capital, whichever applies, would fall below the prescribed requirements; (4) resolve any net capital deficiency within three business days or not be permitted to accept additional transactions through the JBO arrangement; (5) maintain a written risk analysis methodology for assessing the amount of credit extended to each JBO participant; and (6) deduct from its net capital each JBO participant's haircut requirement in excess of the equity maintained in the JBO participant's account.[87]

The Commission believes that the $7 million net capital requirement for JBO brokers is a reasonable response to the need for a capital cushion for the fluctuations in net capital resulting from the daily changes in JBO participant accounts and would avoid unnecessary and inadvertent violations of the net capital requirements at the times when a firm's capital needs are more volatile, such as the week that options expire or during severe market stresses.

In addition, for those SROs that would so require, the Commission believes that it is reasonable to require a JBO broker to establish and maintain written ownership standards for JBO accounts and to require a JBO broker to provide immediate telegraphic or facsimile notice to the SRO if its tentative net capital or net capital, whichever applies, would fall below the prescribed minimum levels. The Commission also believes that it is reasonable for a JBO broker to be subject to the equity capital withdrawal restrictions of paragraph (e) of Exchange Act Rule 15c3–1 and the prohibitions against the reduction, prepayment, and repayment of subordination debt of paragraph (b) of Appendix D of Exchange Act Rule 15c3–1, as if the firm's net capital would be below the minimum standards specified by those sections.

The Commission believes that it is reasonable for the SROs to require a JBO broker to be either a clearing and carrying, clearing, or carrying firm in accordance with the requirements under Regulation T and the Federal Reserve Board's applicable interpretations.

With respect to JBO participants, the Commission believes that it is

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[79] LIT Letter and First Options Letter, *supra* note 62.

[80] Woods Letter, *supra* note 62.

[81] *Id.*

[82] *Id.*

[83] LETCO Letter, *supra* note 62.

[84] 15 U.S.C. 78f(b)(5).

[85] In approving these proposed rule changes, the Commission considered the proposals' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[86] Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 24, 1996), 61 FR 20386 (May 6, 1996).

[87] To date, the Commission has not taken action on the NYSE's Related Filing. Accordingly, this Order does not approve the Related Filing or its application to the margin amendments contained in this filing. However, upon Commission approval of the Related Filing, this Order would, for certain non-equity securities, permit a JBO broker to deduct from its net capital the difference between the equity maintained in the account of a JBO participant and the maintenance margin requirement specified in the Related Filing, as amended.

Although the SROs, except for the NYSE, have not proposed a similar alternative deduction, the Commission recognizes that some SRO rules permit dual NYSE registered firms to elect to be bound by the NYSE's maintenance margin requirements. By making this election, these firms would be permitted to take advantage of this alternative deduction.

reasonable for the SROs to require a JBO participant to: (1) Be a registered broker-dealer subject to Exchange Act Rule 15c3–1; (2) maintain an ownership interest in the JBO broker in accordance with Regulation T; and (3) maintain a minimum liquidating equity of $1 million in an account with the JBO broker. The Commission also believes that it is reasonable to require a JBO participant, whose liquidating equity would fall below the required $1 million, to deposit the deficiency within 5 business days or lose its JBO participant status and become subject to the customer margin account requirements under Regulation T and the other SRO maintenance margin requirements.

The Commission believes that the requirement of $1 million equity in the account is not unreasonable, considering the lack of regular maintenance margin requirements and the substantial leverage that would be obtained by the JBO participant.

In addition, for those SROs that would so require, the Commission believes that this is reasonable to require a JBO participant to employ or have access to a qualified Series 27 principal and to prohibit a JBO participant from operating under paragraph (b)(1) of Exchange Act Rule 15c3–1. The Commission also believes that it is reasonable to permit a foreign currency option participant to be a JBO participant.

The Commission believes that it is important for the SROs and the firms to be adequately prepared to implement and monitor the revised rules. Therefore, the Commission believes that it is appropriate to permit firms to allow a six-month phase-in of these new rules relating to JBO arrangements.

B. Approval of Reduced Margin for Specialist, Market-Maker and Broker-Dealer Accounts

The Commission believes that it is reasonable to require a broker-dealer to deduct from its net capital the difference between the equity maintained in the account of a specialist, market-maker and broker-dealer and the required haircut in accordance with Exchange Act Rule 15c3–1. The Commission believes that it is appropriate and equitable for SROs to require the same maintenance margin requirements for specialist, market-maker and broker-dealer accounts as JBO participant accounts.

In addition, the Commission believes that it is reasonable to permit SROs, which have not previously adopted these provisions, to allow a clearing firm to carry the proprietary account of another registered broker-dealer on a mutually satisfactory margin basis, provided that the firms comply with Regulation T and do not maintain the account in an equity deficit.

C. Approval of the Proposed Changes to the Concentration Provisions for Control and Restricted Securities

The Commission believes that it is reasonable for the NYSE to permit a firm to deduct the amount of its customers' excess control and restricted securities in determining if a concentration of control and restricted securities exists for purposes of deducting from its net capital any margin deficiencies in a customer's account under of subparagraph (e)(8)(c)(i) of NYSE Rule 431. Excess securities includes securities by which a customer's aggregate position in control and restricted securities of any one issue exceeds the aggregate amount of securities that would be required to support the aggregate credit extended on those securities, assuming a 50% margin requirement.

The Commission notes that the current concentration provisions for control and restricted securities appear to be inappropriate because they impose stricter requirements on accounts that have more control and restricted securities than necessary to collateralize a credit extension. By limiting the determination of whether a concentration of control and restricted securities exists to two times the credit extension, the proposal would subject these securities to a greater margin requirement based only on financed control and restricted securities. The Commission believes that this is a reasonable and appropriate margin requirement.

The Commission believes that it is reasonable for the NYSE and other SROs to exempt affiliate securities from the margin provisions relating to control and restricted securities provided that the securities otherwise meet the requirements of subparagraph (e)(8)(D), including that: (1) The securities are considered then saleable under Securities Act Rule 144(k), Securities Act Rule 145(d)(2) or Securities Act Rule 145(d)(3); and (2) the issuer is current in its filings pursuant to the continuous disclosure system under the Exchange Act.

The Commission notes that its interpretations under Securities Act Rule 144(k) may, under certain circumstances, permit a broker-dealer to sell control and restricted securities of an affiliate in default without regard to the volume and other restrictions imposed on affiliates. In addition, subparagraph (d)(3)(iv) of Securities Act Rule 144 permits a broker-dealer to "tack" the ownership period of an affiliate in default to its own for purposes of determining if the time conditions of Securities Act Rule 144(k) are met. Accordingly, the Commission believes that it is appropriate for affiliate securities, which otherwise meet the requirements of subparagraph (c)(8)(D), to be exempt from the maintenance margin rules for control and restricted securities.

The Commission believes that it is reasonable for the NYSE to require a broker-dealer to incur a net capital charge by the amount of aggregate credit it agrees to extend to its customers on control and restricted securities that exceed 10% of its excess net capital for purposes of determining its status under NYSE Rule 326. The Commission believes that it is reasonable for the NYSE to require a broker-dealer to have a written agreement to extend credit to a customer for control and restricted securities and require a firm to incur a net capital charge based on the greater of the aggregate credit agreed to in writing and the credit actually extended. The Commission notes that this rule change is currently required under the NYSE's interpretation of NYSE Rule 431.

D. Accelerated Approvals

The Commission finds good cause for approving NYSE Amendments Nos. 3 and 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. NYSE Amendment No. 3 proposed to permit a six-month phase-in of the NYSE's rule changes relating to JBO arrangements. NYSE Amendment No. 4 clarified the current citation to the provisions of Regulation T relating to JBO arrangements. The Commission believes that NYSE Amendment No. 3 is necessary because it is important for the NYSE and its members to be adequately prepared to implement and monitor the new rules relating to JBO arrangements. The Commission believes that NYSE Amendment No. 4 is necessary to reflect the current citation of Regulation T. Accordingly, the Commission finds it is consistent with Section 19(b) of the Exchange Act to approve NYSE Amendments Nos. 3 and 4 on an accelerated basis.

The Commission finds good cause for approving Phlx Amendment No. 2 and CHX Amendments Nos. 2, 3 and 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. These amendments generally proposed to: (1) Lower the minimum net capital

requirement for a JBO broker whose primary business is clearing options market-maker accounts to $7 million, instead of the $10 million originally proposed; (2) require a JBO broker to provide immediate telegraphic or facsimile notice to the SRO if its tentative net capital or net capital, whichever applies, would fall below the prescribed minimum levels; and (3) subject a JBO broker to the equity capital withdrawal restrictions of paragraph (e) of Exchange Act Rule 15c3–1 and the prohibitions against the reduction, prepayment, and repayment of subordination debt of paragraph (b) of Appendix D of Exchange Act Rule 15c3–1, as if the firm's net capital would be below the minimum standards specified by those sections. These amendments also clarified the requirement that if a JBO participant's liquidating equity would fall below the required $1 million it must deposit the deficiency within 5 business days or lose its JBO participant status and become subject to the margin account requirements under Regulation T and the other SRO maintenance margin requirements.

Furthermore, these amendments clarified the current citation to the relevant provisions of Regulation T, and proposed to prohibit a JBO broker to be only a carrying firm. The Commission believes that these amendments are reasonable and are consistent with some of the other SROs' JBO requirements. Accordingly, the Commission finds it is consistent with Section 19(b) of the Exchange Act to approve Phlx Amendment No. 2 and CHX Amendments Nos. 2, 3, and 4 on an accelerated basis.

The Commission finds good cause for approving PCX Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. PCX Amendment No. 2 would prohibit a JBO broker to be only a carrying firm. The PCX's original filing would have permitted a JBO broker to carry and clear or carry customer accounts. The Commission believes that PCX Amendment No. 2 is reasonable and is consistent with some of the other SROs' JBO requirements. Accordingly, the Commission finds it is consistent with Section 19(b) of the Exchange Act to approve PCX Amendment No. 2 on a accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing SRO amendments not previously published in the **Federal Register**, including whether the proposed rule changes, as modified by the amendments, are consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary. Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of the SROs. All submissions should appropriately refer to SR–NYSE–97–28; SR–CBOE–97–58; SR–Phlx–97–56; SR–PCX–97–49; SR–CHX–98–12 and should be submitted by March 24, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[88] that the proposed rule changes (SR–NYSE–97–28; SR–CBOE–97–58; SR–Phlx–97–49; SR–CHX–98–12; SR–Amex–99–26), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[89]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5188 Filed 3–2–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 42458; File No. SR–Phlx–00–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Rescind Exchange Rule 132, "Dealings Outside of Exchange in Securities Dealt in on the Exchange"

February 25, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2000, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Exchange's proposed rule change raises issues similar to those raised by the New York Stock Exchange's ("NYSE") proposal to repeal NYSE Rule 390, which rule generally prohibits NYSE members and their affiliates from effecting transactions in certain NYSE-listed securities away from a national securities exchange. The Commission recently issued the notice of filing for the NYSE's proposal ("NYSE Notice") and solicited comment on a number of important issues that have broad implications for the structure of the U.S. securities markets.[3] Specifically, the Commission requested comment on market fragmentation—the trading of orders in multiple locations without interaction among those orders—and on several options for addressing market fragmentation. To promote a comprehensive discussion of off-board trading restrictions and related market fragmentation issues, the Commission requests that persons interested in the Exchange's proposal refer to the NYSE Notice and submit comments that respond to the questions presented in the NYSE Notice.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to rescind Exchange Rule 132, "Dealings Outside of Exchange in Securities Dealt on the Exchange." The text of the proposed rule change is available at the Exchange and at the Commission.

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[88] 15 U.S.C. 78s(b)(2).

[89] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42450 (Feb. 23, 2000) (File No. SR–NYSE–99–48). The Commission notes that similar proposals have been filed by the American Stock Exchange and the Chicago Stock Exchange. *See* Securities Exchange Act Release Nos. 42460 (Feb. 25, 2000) (File No. SR–Amex–00–05) and 42459 (Feb. 25, 2000) (File No. SR–CHX–00–12).

[4] The Commission notes that the NYSE Notice is available on the Commission's website at: (http://www.sec.gov/rules/sros/ny9948n.htm).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to rescind Exchange Rule 132, which currently places restrictions on off-board trading by Exchange members and member organizations. With certain exceptions, and Exchange member, member organization, or affiliated person may not effect any transaction in any "listed security," as defined in Exchange Rule 132, in the over-the-counter market, either as principal or agent.

The staff of the Commission recently asked the Exchange to review its off-board trading restrictions and consider measures to repeal such restrictions.[5] In proposing the rescission of Exchange Rule 132, the Exchange intends to broaden the free market trading activities of Exchange members and the investors they represent by removing restrictions on over-the-counter trading in listed securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section of the Act,[6] in general, and with Section 6(b)(5),[7] in particular, in that it is designed to promote just and equitable principles of trade, and protect investors and the public interest by broadening the free market trading activities of Exchange members and the investors that they represent by removing restrictions on over-the-counter trading in listed securities.

[5] *See* Letter from Annette L. Nazareth, Director, Division of Market Regulation, Commission, to Meyer S. Frucher, Chairman and Chief Executive Officer, Exchange, dated December 22, 1999.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rules Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission also invites interested persons to submit written data, views, and arguments on the market fragmentation issues presented in the NYSE Notice.[8] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–12 and should be submitted by March 24, 2000. Comments responding to the Commission's request for comment on market fragmentation issues should refer to File No. SR–NYSE–99–48 and should be submitted by April 28, 2000.

[8] *See supra* notes 3 and 4.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5185 Filed 3–2–00; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42457; File No. SR–Phlx–99–61]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Monthly Billing of Membership Dues, Foreign Currency User Fees, Foreign Currency Participation Fees, Trading Post/Booth Space Fees and the Technology Fee

February 25, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the Exchange. On February 16, 2000, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to bill membership dues, foreign currency user fees, foreign currency participation

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Murray L. Ross, Vice President and Secretary, Phlx, to Kelly A. McCormick-Riley, Division of Market Regulation, SEC, dated February 3, 2000 ("Amendment No. 1"). Amendment No. 1 included a corrected Exhibit B to the proposed rule change regarding the fees impacted by the proposed billing schedule, corrected the date of effectiveness and corrected the file number listed in the Solicitation of Comment section.

fees, trading post/booth space fees and the technology fee on a monthly basis rather than the semi-annual or quarterly basis currently utilized. The amounts of the charges of fees will remain unchanged; only the frequency of billing for such dues, fees or charges will change to a monthly basis. The proposed effective date of this amendment is at the opening of business, January 3, 2000. The text of the proposed change to the Phlx fee schedule is available for inspection at the places specified in Item IV below.

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Exchange, the purpose of this proposed rule change is to amend its fee schedule to change the frequency that members, foreign currency options participants and member and participant organizations are billed for membership dues, foreign currency user fees, foreign currency participation fees, trading post/booth space and the technology fee.

This change is being instituted on the recommendation of the Exchange's Finance Committee and is designed to enhance operational efficiency by billing monthly for such dues, fees and charges. The change in frequency of billing for such items will allow the Exchange's Accounting Department to operate more effectively, while allowing members and participants to more accurately gauge their operating expenses on a monthly basis and to reduce operational cash flow burdens which may result from the current payment schedule. The Phlx believes that the proposed amendments to the billing cycles for membership dues, foreign currency user fees, foreign currency participation fees, trading post/booth space and the technology fee are reasonable and equitable because they only change the frequency of billing not the amount billed.

2. Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act,[4] in general, and in particular, with section 6(b)(4),[5] because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or charged imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder. The Exchange intends to implement the fee changes on January 3, 2000. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rate change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–61 and should be submitted by March 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5187 Filed 3–2–00; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed after this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. *Report to United States Social Security Administration by Person Receiving Benefits for a Child or Adult Unable to Handle Funds–0960–0049.* The information on Forms SSA–7161–OCR–SM and 7162–OCR–SM is used by the Social Security Administration (SSA) to determine continuing entitlement and proper benefit amounts for Social Security beneficiaries who live outside the United States (U.S.). The respondents are persons living outside the U.S. who are entitled to

benefits or who are representative payees for beneficiaries.

	SSA–7161–OCR–SM	SSA–7162–OCR–SM
Number of Respondents	30,000	200,000
Frequency of Response	1	1
Average Burden Per Response (minutes)	15	5
Estimated Annual Burden (hours)	7,500	16,667

2. *State Agency Schedule for Equipment Purchases for SSA Disability Programs–0960–0406.* SSA uses the information collected on Form SSA–871 to budget and account for expenditures of funds for equipment purchases by the State Disability Determination Services (DDS) that administer the disability determination program. The respondents are State governments that make disability determinations.

Number of Respondents: 54.

Frequency of Response: 4.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 216 hours.

3. *Physical Residual Functional Capacity Assessment; Mental Residual Functional Capacity Assessment–0960–0431.* The information collected on forms SSA–4734–BK and SSA–4734–BK–SUP is needed by SSA to assist in the adjudication of disability claims involving physical and/or mental impairments. The forms assist the State DDS to evaluate impairment(s) by providing a standardized data collection format to present findings in a clear, concise and consistent manner. The respondents are State DDSs administering title II and title XVI disability programs.

Number of Responses: 1,130,772.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 376,924 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

(OMB Address)

Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503.

Dated: February 28, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–5161 Filed 3–2–00; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Second Amendment to Delegation of Authority 221]

Delegation of Authority 221–2

Section 1. Functions Delegated

By virtue of the authority vested in me by the Secretary of State in Delegation of Authority 148–1, dated September 9, 1981, and Delegation of Authority 198, dated September 16, 1992, I hereby delegate to the Director General of the Foreign Service and Director of Personnel the authority vested in me:

(a) To prescribe regulations arising under the Foreign Service Act of 1980, the Civil Service Reform Act, and any other laws administered by or relating to the Bureau of Personnel and the Office of Medical Services;

(b) To exercise the functions of the Secretary under:

(1) § 308 of the Foreign Service Act of 1980, as amended (relating to the recall and reemployment of retired career members of the Service).

(2) § 401(b) of the Foreign Service Act of 1980, as amended (relating to the continuation of the official services of the chief of mission for up to 50 days after relinquishment of charge of the mission).

(3) § 413 of the Foreign Service Act of 1980, as amended (relating to payment of a death gratuity to surviving dependents of any Foreign Service employee who dies as a result of injuries sustained in the performance of duty abroad);

(4) § 605(b) of the Foreign Service Act of 1980, as amended (relating to removing names from rank order lists or delaying promotions);

(5) § 607(b) of the Foreign Service Act of 1980, as amended (relating to limited career extensions);

(6) § 609(b)(1) of the Foreign Service Act of 1980, as amended (relating to accelerating or combining installments);

(7) § 808 of the Foreign Service Act of 1980, as amended (relating to disability retirement and related determinations);

(8) § 901(6) of the Foreign Service Act of 1980, as amended (relating to rest and recuperation travel, including extraordinary rest and recuperation travel);

(9) § 901(8) of the Foreign Service Act of 1980, as amended (relating to designation of posts as imminent danger areas from which family visitation travel is permitted);

(10) 5 U.S.C. § 5753 and § 5754 (relating to recruitment and relocation bonuses and retention allowances).

Section 2. Delegations Revoked

Delegation of Authority No. 224, dated September 2, 1998, Delegation of Authority No. 132, dated July 8, 1975, 40 Federal Register 28646, and Delegation of Authority 221–1 dated October 1, 1999 are hereby revoked.

Section 3. General Provisions

(a) As used in this delegation of authority, the word "function" includes any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity.

(b) The parenthetical descriptions used in this delegation of authority shall not be construed as words of limitation.

(c) This authority may only be re-delegated to a Deputy Assistant Secretary of State for Personnel to the extent consistent with the law.

(d) Notwithstanding any provisions of this delegation of authority, the Secretary, the Deputy Secretary, and the Under Secretary of State for Management may at any time exercise the functions herein delegated.

(e) The exercise by the Director General, or any person acting on behalf of the Director General, of the functions prescribed herein, prior to the effective date of this Delegation of Authority is hereby confirmed and ratified.

(f) An act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation or

procedure as amended from time to time.

(g) This Delegation of Authority supersedes any prior delegation on this subject to the extent such delegation may be inconsistent herewith.

Dated: February 23, 2000.

Bonnie R. Cohen,

Under Secretary of State for Management, U.S. Department of State.

[FR Doc. 00–5218 Filed 3–2–00; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 23–16, Powerplant Guide for Certification of Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance and availability.

SUMMARY: Advisory Circular (AC) 23–16, Powerplant Guide for Certification of Part 23 Airplanes provides information and guidance concerning acceptable means, but not the only means of compliance with Title 14 of the Code of Federal Regulations (14 CFR) Part 23, Subpart F, applicable to the powerplant installation in normal, utility, acrobatic, and commuter category airplanes. The AC consolidates existing policy documents, and certain AC's that cover specific paragraphs of the regulations, into a single document. Material in the AC is neither mandatory nor regulatory in nature and does not constitute a regulation.

DATE: AC 23–16 was issued by the Small Airplane Directorate, Aircraft Certification Service, on September 21, 1999.

How to Order: A copy of AC 23–16 may be purchased from the Superintendent of Documents, Post Office Box 371954, Pittsburgh, PA 15250–7954, or from any of the Government Printing Offices located in major cities throughout the United States. Identify the publication as AC 23–16, Powerplant Guide for Certification of Part 23 Airplanes, Stock Number 050–007–01285–3. The cost is $14.00 per copy for orders mailed within the U.S. and $17.50 for orders mailed outside of the U.S. Send a check or money order, made payable to Superintendent of Documents, with your request. No c.o.d. orders are accepted. Also, the AC should be available within a few days on the internet at http://www.faa.gov/avr/air/airhome.htm.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Nininger, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone (816) 329–4129, fax (816) 329–4090.

Issued in Kansas City, Missouri on February 18, 2000.

Marv Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5228 Filed 3–2–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–08]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 27, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C., on February 29, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 25483.

Petitioner: Air Transport Association of America.

Section of the FAR Affected: 14 CFR paragraph (d) of appendix B to part 43, 45.11(a) and (d), 91.203(c), and 91.417(d).

Description of Relief Sought/Disposition: To allow all aircraft operating under 14 CFR part 121 and all aircraft operating in commuter air carrier operations (as defined in 14 CFR 119.3) under an FAA-approved CAMP to be operated without complying with the requirements pertaining to (1) the location of the aircraft identification plates and (2) the carriage of FAA Form 337 as evidence of installation approval for fuel tank installation in the passenger compartment or a baggage compartment.

Grant, 02/22/00, Exemption No. 4902G

[FR Doc. 00–5229 Filed 3–2–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33851]

Texas Pacifico Transportation, Ltd.—Acquisition and Operation Exemption—South Orient Railroad Company, Ltd.

Texas Pacifico Transportation, Ltd. (Pacifico), a noncarrier State of Texas limited partnership, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the South Orient Railroad Company, Ltd. (SORC) and operate approximately 381.9 miles of rail line in Brewster, Coleman, Crane, Crockett, Irion, Pecos, Presidio, Reagan, Runnels, Tom Green, and Upton Counties, TX. Grupo Mexico, S.A. de C.V., a Mexican Sociedad Anomina de Capital Variable, and the ultimate

parent of Pacifico, has entered into a conditional agreement with SORC, whereby Pacifico proposes to acquire the following: (1) SORC's permanent, exclusive easement to conduct rail freight transportation; (2) SORC's lease of the rail line extending between milepost 1029.1 on the International Bridge, near Presidio, and milepost 956.7, at Paisano Junction, and between milepost 945.3, at Alpine Junction, and milepost 0 + 330 feet, near San Angelo Junction on the east, and Lampasas Subdivision milepost 373 + 4362 feet, near San Angelo Junction on the west; and (3) the assignment of SORC's trackage rights over a line of the Union Pacific Railroad Company extending between milepost 956.7, at Paisano Junction, and milepost 945.3 at Alpine Junction.

The transaction is scheduled to be consummated on or after February 25, 2000.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33851, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., 1100 New York Avenue, N.W., Suite 750 West, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: February 24, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–4923 Filed 3–2–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Federal Reserve System Federal Deposit Insurance Corporation

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Submission for OMB Review; Joint Comment Request.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (collectively, the "agencies") hereby give notice that they plan to submit to the Office of Management and Budget (OMB) requests for review of the information collection systems described below. The Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

On September 3, 1999, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on the extension, without revision, of the currently approved information collections: the Country Exposure Report (FFIEC 009) and the Country Exposure Information Report (FFIEC 009a). However, minor clarifications were proposed to the FFIEC 009 instructions.

DATES: Comments must be submitted on or before April 3, 2000.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments should refer to the OMB control number(s) and will be shared among the agencies.

OCC: Written comments should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Third Floor, Attention: 1557–0100 (FFIEC 009 and 009a), Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. Comments will be available for inspection and photocopying at the OCC's Public Reference Room, 250 E Street, SW, Washington, DC 20219 between 9 a.m. and 5 p.m. on business days. Appointments for inspection of comments may be made by calling (202) 874–5043.

Board: Written comments should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m., except as provided in section 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a).

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov]. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of an agency's submission may be obtained by contacting:

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Mary M. West, Chief, Financial Reports Section, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal To Extend for Three Years With Minor Instructional Clarifications the Following Currently Approved Collections of Information

Report Title: Country Exposure Report/Country Exposure Information Report.

Form Number: FFIEC 009 and FFIEC 009a.
Frequency of Response: Quarterly.
Affected Public: Business or other for profit.
For OCC:
OMB Number: 1557–0100.
Estimated Number of Respondents: 50 (FFIEC 009); 50 (FFIEC 009a).
Estimated Average Time per Response: 30 burden hours (FFIEC 009); 5.25 burden hours (FFIEC 009a).
Estimated Total Annual Burden: 6,000 burden hours (FFIEC 009); 1,050 burden hours (FFIEC 009a).
For Board:
OMB Number: 7100–0035.
Estimated Number of Respondents: 39 (FFIEC 009); 16 (FFIEC 009a).
Estimated Average Time per Response: 30 burden hours (FFIEC 009); 5.25 burden hours (FFIEC 009a).
Total Annual Burden: 4,680 burden hours (FFIEC 009); 336 burden hours (FFIEC 009a).
For FDIC:
OMB Number: 3064–0017.
Estimated Number of Respondents: 35 (FFIEC 009); 35 (FFIEC 009a).
Estimated Average Time per Response: 30 burden hours (FFIEC 009); 5.25 burden hours (FFIEC 009a).
Estimated Total Annual Burden: 4,200 burden hours (FFIEC 009); 735 burden hours (FFIEC 009a).

General Description of Reports

This information collection (FFIEC 009 and FFIEC 009a) is mandatory: 12 U.S.C. 161 and 1817 (for national banks); 12 U.S.C. 248(a), 1844(c), and 3906 (for state member banks and bank holding companies); and 12 U.S.C. 1817 and 1820 (for insured state nonmember commercial and savings banks). The FFIEC 009 information collection is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(8)). The FFIEC 009a information collection is not given confidential treatment. Small businesses (*i.e.*, small banks) are not affected.

Abstract

The Country Exposure Report (FFIEC 009) is filed quarterly with the agencies and provides information on international claims of U.S. banks and bank holding companies that is used for supervisory and analytical purposes. The information is used to monitor country exposure of banks to determine the degree of risk in their portfolios and the possible impact on U.S. banks of adverse developments in particular countries. The Country Exposure Information Report (FFIEC 009a) is a supplement to the FFIEC 009 and provides publicly available information on material foreign country exposures (all exposures to a country in excess of one percent of total assets or 20 percent of capital, whichever is less) of U.S. banks and bank holding companies that file the FFIEC 009 report. Reporting institutions must also furnish a list of countries in which they have lending exposures above 0.75 percent of total assets or 15 percent of total capital, whichever is less. No changes are proposed to the FFIEC 009 reporting forms or the FFIEC 009a reporting forms and instructions. However, minor clarifications are proposed to the FFIEC 009 instructions.

Current actions: The agencies received one comment letter in response to the notice published in the **Federal Register** on September 3, 1999 (64 FR 48453) requesting public comment on the extension without revision, with minor clarification to the FFIEC 009 instructions for the treatment of credit derivatives. The commenter supported an instructional clarification for the treatment of credit derivatives and recommended specific language. In addition, the commenter recommended the agencies clarify the treatment for securities reverse repurchase agreements (resale agreements) in these information collections.

After consideration of the comment letter, the agencies decided to clarify the treatment of credit derivatives in the instructions effective as of the June 30, 2000, report date. However, the agencies determined that further study of the impact of alternative treatments for resale agreements on these information collections is warranted. The agencies will reconsider the need for a clarification on the treatment of resale agreements after the issue has been studied further.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: February 23, 2000.

Mark J Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, February 28, 2000.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 16th day of February, 2000.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 00–5129 Filed 3–2–00; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–27–83; LR–54–85]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing temporary regulations, LR–27–83 (TD 7882), Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks (Section 145.4051–1) and LR–54–85 (TD 8050), Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements (Section 145.4052–1).

DATES: Written comments should be received on or before May 2, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: (LR–27–83) Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks, and (LR–54–85) Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements.

OMB Number: 1545–0745

Regulation Project Number: LR–27–83; LR–54–85

Abstract: LR–27–83 requires sellers of trucks, trailers and semitrailers, and tractors to maintain records of the gross vehicle weights of articles sold to verify taxability. LR–54–85 requires that if the sale is to be treated as exempt, the seller and the purchaser musts be registered and the purchaser must give the seller a resale certificate.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4,100.

Estimated Time Per Respondent: 1 hour, 1 minute.

Estimated Total Annual Burden Hours: 4,140

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 24, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5087 Filed 3–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5472

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

DATES: Written comments should be received on or before May 2, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

OMB Number: 1545–0805.

Form Number: 5472.

Abstract: Form 5472 is used to report information about transactions between a U.S. corporation that is 25% foreign owned or a foreign corporation that is engaged in a U.S. trade or business and related foreign parties. The IRS uses Form 5472 to determine if inventory or other costs deducted by the U.S. or foreign corporation are correct.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 75,000.

Estimated Time Per Response: 23 hrs., 47 min.

Estimated Total Annual Burden Hours: 1,784,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 24, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5088 Filed 3–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8594

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8594, Asset Acquisition Statement.

DATES: Written comments should be received on or before May 2, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Asset Acquisition Statement.

OMB Number: 1545–1021.

Form Number: 8594.

Abstract: Internal Revenue Code section 1060 requires reporting to the IRS by the buyer and seller of the total consideration paid for assets in an applicable asset acquisition. The information required to be reported includes the amount allocated to goodwill or going concern value. Form 8594 is used to report this information.

Current Actions: There are no changes being made to Form 8594 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 12 hr., 15 min.

Estimated Total Annual Burden Hours: 245,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 28, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5230 Filed 3–2–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–107644–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–107644–97 (TD 8769), Permitted Elimination of Preretirement Optional Forms of Benefit (§ 1.411(d)–4).

DATES: Written comments should be received on or before May 2, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Permitted Elimination of Preretirement Optional Forms of Benefit.

OMB Number: 1545–1545.

Regulation Project Number: REG–107644–97.

Abstract: This regulation permits an amendment of a qualified plan or other employee pension benefit plan that eliminates plan provisions for benefit distributions before retirement age but after age 70½. The regulation affects employers that maintain qualified plans and other employee pension benefit plans, plan administrators of these plans and participants in these plans.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 135,000.

Estimated Average Time Per Respondent: 22 min.

Estimated Total Annual Burden Hours: 48,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 28, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5231 Filed 3–2–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–5–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–5–91 (TD 8437), Limitations on Percentage Depletion in the Case of Oil and Gas Wells (Section 1.613A–3(e)).

DATES: Written comments should be received on or before May 2, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

OMB Number: 1545–1251

Regulation Project Number: PS–5–91

Abstract: This regulation concerns oil and gas property held by partnerships. Because the depletion allowance with respect to production from domestic oil and gas properties is computed by the partners and not by the partnership, section 1.613A–3(e)(6)(i) of the regulation requires each partner to separately keep records of the partner's share of the adjusted basis in each oil and gas property of the partnership.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,500,000.

Estimated Time Per Respondent: 2 minutes.

Estimated Total Annual Burden Hours: 49,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 29, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5232 Filed 3–2–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8810

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8810, Corporate Passive Activity Loss and Credit Limitations.

DATES: Written comments should be received on or before May 2, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Corporate Passive Activity Loss and Credit Limitations.

OMB Number: 1545–1091.

Form Number: 8810.

Abstract: Under Internal Revenue Code section 469, losses and credits from passive activities, to the extent they exceed passive income (or, in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the

amount of loss and credit to be reported on their tax return.

Current Actions: There are no changes being made to Form 8810 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 100,000.

Estimated Time Per Response: 35 hr., 26 min.

Estimated Total Annual Burden Hours: 3,543,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 29, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5233 Filed 3–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8725

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8725, Excise Tax on Greenmail.

DATES: Written comments should be received on or before May 2, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax on Greenmail.

OMB Number: 1545–1086.

Form Number: 8725.

Abstract: Form 8725 is used by persons who receive "greenmail" to compute and pay the excise tax on greenmail imposed under Internal Revenue Code section 5881. IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There are no changes being made to Form 8725 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 12.

Estimated Time Per Respondent: 7 hours.

Estimated Total Annual Burden Hours: 84.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 29, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5234 Filed 3–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Tuesday March 21, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Tuesday March 21, 2000, 6 p.m. to 9 p.m. at the Internal Revenue Service

Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9 p.m. on Tuesday March 21, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated:February 24, 2000.

John J. Mannion,

Program Manager, TAS.

[FR Doc. 00–5249 Filed 3–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Pacific-Northwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Pacific-Northwest Citizen Advocacy Panel will be held in Portland, Oregon.

DATES: The meeting will be held Friday March 24, 2000 and Saturday March 25, 2000

FOR FURTHER INFORMATION CONTACT: Lori M. Dupuis at 1–888–912–1227 or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday March 24, 2000, 9:00 a.m. to 4:30 p.m. at the Internal Revenue Service Portland Headquarters Building located at 1220 SW Third Avenue, Room 611, Portland, OR 97204 and Saturday March 25, 2000, 9:00 a.m. to Noon at the Portland Conference Center, Boardroom, 300 NE Multnomah Street, Portland, OR 97232. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write Lori M. Dupuis, CAP Office, 915 2nd Avenue, Room 442, Seattle, WA 98174. Due to limited conference space, notification of intent to attend the meeting must be made with Lori M. Dupuis. Ms. Dupuis can be reached at 1–888–912–1227 or 206–220–6096.

The Agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 24, 2000.

John J. Mannion,

Program Manager, TAS.

[FR Doc. 00–5250 Filed 3–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Midwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Midwest Citizen Advocacy Panel will be held in Dubuque, IA.

DATES: The meeting will be held Thursday, March 23, 2000 and Friday, March 24, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel (CAP) will be held Thursday, March 23, 2000, from 1:00 p.m. to 4:00 p.m. and Friday, March 24, 2000, from 9:00 a.m. to 12:00 p.m. at Holiday Inn Dubuque Five Flags, Goodtime Meeting Room, 450 Main Street, Dubuque, IA 52001. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. The public is invited to make oral comments at the CAP town hall meeting on Thursday March 23, 7:00 p.m. to 9:00 p.m. at Loras College, Marie Graber Ballroom, Alumni Campus Center, 1450 Alta Vista, Dubuque, IA 52004. Written comments will be read into the record. Individual comments will be limited to five minutes and an additional five minutes allotted for questions and answers. If you would like to have the CAP consider a written statement or pre-register to make an oral comment, please call the CAP office at 1–888–912–1227 or 414–297–1604, FAX (414) 297–1623, or mail to Citizen Advocacy Panel, Mail Stop 1006-MIL, 310 West Wisconsin Ave, Milwaukee, Wisconsin 53203–2221. If you would like to pre-register for the meeting, the only information needed by the CAP office is number of attendees and zip code.

The Agenda will include the following: Presentation of performance measures, reports by the CAP sub-groups, presentation of taxpayer issues by individual members, CAP office report, and discussion of issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 25, 2000.

John J. Mannion,

Program Manager, TAS.

[FR Doc. 00–5251 Filed 3–2–00; 8:45 am]

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Federal Register

Friday,
March 3, 2000

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–09]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area—MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; DOT: Mr. Rugene Spruill, Principal, Space Management, SVC–140, Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–4246; VA: Mr. Anatolij Kushnir, Director, Asset & Enterprise Development Service, 181B, Department of Veterans Affairs, 811 Vermont Avenue, NW, Room 419, Lafayette Bldg., Washington, DC 20420; (202) 565–5941; (these are not toll-free numbers).

Dated: February 24, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 3/3/00

Suitable/Available Properties

Buildings (by State)

California

Bldg. 604
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010237
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing

Bldg. 605
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010238
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing

Bldg. 612
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010239
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing

Bldg. 611
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010240
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing

Bldg. 613
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010241
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing

Bldg. 614
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010242
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing

Bldg. 615
Point Arena Air Force Station
Co: Mendorino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010243
Status: Unutilized

Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing

Bldg. 616
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010244
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing

Bldg. 617
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010245
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing

Bldg. 618
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010246
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing; needs rehab.

3 Bachelor Enlisted Quarters
U.S. Coast Guard Station
Humboldt Bay
Samoa CA 95564–9999
Landholding Agency: DOT
Property Number: 87199810001
Status: Unutilized
Comment: 2550 sq. ft. each, 2-story, wood, most recent use—residential, needs rehab, off-site use only

Colorado

Bldg. 964
Former Lowry AFB
Denver Co: CO 80220–
Landholding Agency: Air Force
Property Number: 18199930016
Status: Unutilized
Comment: 14,495 sq. ft., local land use controls, most recent use—child care/ kitchen facility

Idaho

Bldg. 516
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 86348–
Landholding Agency: Air Force
Property Number: 18199520004
Status: Excess
Comment: 4928 sq. ft., 1 story wood frame, presence of lead paint and asbestos, most recent use—offices

Bldg. 2201
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199520005
Status: Unutilized
Comment: 6804 sq. ft., 1 story wood frame, most recent us—temporary garage for base fire dept. vehicles, presence of lead paint and asbestos shingles

Indiana

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230006
Status: Excess
Comment: 310 sq. ft., 1 story stone structure, no sanitary or heating facilities, Natl Register of Historic Places

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230007
Status: Excess
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house

Bldg. 7
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810001
Status: Underutilized
Comment: 16,864 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 10
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810002
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 11
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810003
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 18
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810004
Status: Underutilized
Comment: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 25
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810005
Status: Underutilized
Comment: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Massachusetts

Bldg. 001
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Landholding Agency: Air Force
Property Number: 18199940001
Status: Excess
Comment: 37,557 sq. ft., most recent use—shops/vehicle maintenance

Bldg. 002
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Landholding Agency: Air Force
Property Number: 18199940001
Status: Excess
Comment: 5,580 sq. ft., most recent use—office/shops

Bldg. 003
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Landholding Agency: Air Force
Property Number: 18199940003
Status: Excess
Comment: 3,840 sq. ft., most recent use—warehouse

Bldg. 004
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Landholding Agency: Air Force
Property Number: 18199940004
Status: Excess
Comment: 225 sq. ft., most recent use—shop

Bldg. 005
Air Natl Guard Station
50 Skyline Drive
Worcester Co: MA 01605–2898
Landholding Agency: Air Force
Property Number: 18199940005
Status; Excess
Comment: 8000 sq. ft., most recent use—warehouse

Nebraska

Bldg. 20
Offutt Communications Annex 4
Silver Creek Co: Nance NE 68663–
Landholding Agency: Air Force
Property Number: 18199610004
Status: Unutilized
Comment: 4714 sq. ft., most recent use—dormitory needs major repair

New York

Bldg. 1452 & 297 acres
AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Landholding Agency: Air Force
Property Number: 18199920030
Status: Unutilized
Comment: 11,000 sq. ft., on 297 acres (67 acres of wetland), most recent use—electronic research testing, presence of asbestos/lead paint

Bldg. 1453
AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Landholding Agency: Air Force
Property Number: 18199920031
Status: Unutilized
Comment: 266 sq. ft., most recent use—generator bldg., presence of asbestos

Bldg. 1454
AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Landholding Agency: Air Force
Property Number: 18199920032
Status: Unutilized
Comment: 53 sq. ft., most recent use—switch station, presence of asbestos

Pennsylvania

Bldg. 25—VA Medical Center
Delafield Road
Pittsburgh Co: Allegheny PA 15215–

Landholding Agency: VA
Property Number: 97199210001
Status: Unutilized
Comment: 133 sq. ft., one story brick guard house, needs rehab

Bldg. 3, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 97199230012
Status: Underutilized
Comment: portion of bldg. (3850 and 4360 sq. ft.), most recent use—storage, second floor—lacks elevator access

South Dakota

West Communications Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199340051
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage

Wisconsin

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: WI 54660–
Landholding Agency: VA
Property Number: 97199010056
Status: Underutilized
Comment: 2200 sq. ft., story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped

California

Land
4150 Clement Street
San Francisco Co: San Francisco CA 94121–
Landholding Agency: VA
Property Number: 97199240001
Status: Underutilized
Comment: 4 acres, landslide area

Iowa

40.66 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Landholding Agency: VA
Property Number: 97199740002
Status: Unutilized
Comment: golf course, easement requirements

Maine

Irish Ridge NEXRAD Site
Loring AFB
Fort Fairfield Co: Aroostook ME 04742–
Landholding Agency: Air Force
Property Number: 18199640017
Status: Unutilized
Comment: 3.491 acres in fee simple

Maryland

VA Medical Center
9500 North Point Road
Fort Howard Co: Baltimore MD 21052–
Landholding Agency: VA
Property Number: 97199010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves

Massachusetts

.07 acre
Westover Air Reserve Base
Off Rte 33
Chicopee Co: Hampden MA 01022–
Landholding Agency: Air Force
Property Number: 18199840007
Status: Excess
Comment: land, no utilities

Nebraska

Hastings Radar Bomb Scoring
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199810027
Status: Unutilized
Comment: 11 acres

Texas

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 97199010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: Va
Property Number: 97199010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities

Suitable/Unavailable Properties

Buildings (by State)

Alaska

Bldgs. 001A&B
Spruce Cape Loran Station
Kodiak Co: Kodiak Is. Bor. AK 99615–
Landholding Agency: DOT
Property Number: 87199720001
Status: Excess
Comment: 12492 sq. ft. steel frame, most recent use—barracks and shops, needs extensive repairs, in Tsunami evacuation area

Colorado

Bldg. 9023
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 18199730010
Status: Underutilized
Comment: 4112 sq. ft., most recent use—preschool

Bldg. 9027
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 18199730011
Status: Underutilized
Comment: 4112 sq. ft., most recent use—child care center

Idaho

Bldg. 224
Mountain Home Air Force
Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199840008
Status: Unutilized
Comment: 1890 sq. ft., no plumbing facilities, possible asbestos/lead paint; more recent use—office

Indiana

Bldg. 24, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230005
Status: Underutilized
Comment: 4135 sq. ft., 2-story wood structure, needs minor rehab, no sanitary or heating facilities, presence of asbestos, Natl Register of Historic Places

Bldg. 122
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810006
Status: Unutilized
Comment: 37,135 sq. ft., presence of asbestos, most recent use—former dietetics bldg., National Register of Historic Places

Iowa

Bldg. 00627
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 18199310001
Status: Unutilized
Comment: 1932 sq. ft., 1-story concrete block bldg., most recent use—storage, pigeon infested, contamination investigation in progress

Bldg. 00669
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 18199310002
Status: Unutilized
Comment: 1113 sq. ft., 1-story concrete block bldg., contamination clean-up in progress

Maine

Mount Desert Rock Light
U.S. Coast Guard
Southwest Harbor Co: Hancock ME 04679–
Landholding Agency: DOT
Property Number: 87199240023
Status: Unutilized
Comment: 1600 sq. ft., 2-story wood frame dwelling, needs rehab, limited utilities, limited access, property is subject to severe storms

Little River Light
U.S. Coast Guard
Cutler Co: Washington ME

Landholding Agency: DOT
Property Number: 87199240026
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, well is contaminated, limited utilities

Burnt Island Light
U.S. Coast Guard
Southport Co: Lincoln ME 04576–
Landholding Agency: DOT
Property Number: 87199240027
Status: Unutilized
Comment: 750 sq. ft., 2-story wood frame dwelling

Massachusetts

Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Landholding Agency: DOT
Property Number: 87199240027
Status: Unutilized
Comment: 1000 sq. ft., 2-story brick dwelling, large wave action with severe ocean storms

Assistant Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Landholding Agency: DOT
Property Number: 87199240025
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, large wave action with severe ocean storms

Plymouth Light
Plymouth Co: Plymouth MA
Landholding Agency: DOT
Property Number: 87199420003
Status: Unutilized
Comment: 250 sq. ft., tower, and 2096 sq. ft. dwelling, wood frame, most recent use—aid to navigation/housing

Michigan

Bldg. 50
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010790
Status: Excess
Comment: 6171 sq. ft., 1 story; concrete block; potential utilities; possible asbestos; most recent use—Fire Department vehicle parking building

Bldg. 14
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010833
Status: Excess
Comment: 6751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—gymnasium

Bldg. 16
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010834
Status: Excess
Comment: 3000 sq. ft.; 1 floor concrete block; most recent use—commissary facility

Bldg. 15
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010864
Status: Excess
Comment: 538 sq. ft.; 1 floor; concrete/wood structure; potential utilities; most recent use—gymnasium facility

Nebraska

Bldg. 64
Offutt AFB
Silver Creek Co: Nance NE 68113–
Landholding Agency: Air Force
Property Number: 18199720040
Status: Unutilized
Comment: 4000 sq. ft., most recent use—admin., needs major rehab, possible asbestos/lead base paint

New Hampshire

Bldg. 127
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 18199320057
Status: Excess
Comment: 698 sq. ft.; 1-story, concrete and metal frame, possible asbestos, access restrictions, most recent use—storage

New Mexico

16 Bldgs., Type A
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Location: #2160–2162, 2157, 2155, 2148, 2139, 2137, 2130, 2129, 2117, 2113, 2109, 2107, 2102, 2100
Landholding Agency: Air Force
Property Number: 18199910013
Status: Unutilized
Comment: 2733 sq. ft.; presence of lead, most recent use—residential, off-site use only

12 Bldgs., Type B
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Location: #2158, 2149, 2147, 2136, 2132, 2125–2128, 2121, 2115, 2103
Landholding Agency: Air Force
Property Number: 18199910014
Status: Unutilized
Comment: 2735 sq. ft.; presence of lead, most recent use—residential, off-site use only

15 Bldgs., Type C
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Location: #2164, 2159, 2156, 2150, 2142, 2143, 2140, 2135, 2122–2124, 2120, 2110, 2108, 2104
Landholding Agency: Air Force
Property Number: 18199910015
Status: Unutilized
Comment: 2790 sq. ft.; presence of lead, most recent use—residential, off-site use only

6 Bldgs., Type D
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Location: #2165, 2163, 2144, 2131, 2106, 2105
Landholding Agency: Air Force
Property Number: 18199910016
Status: Unutilized
Comment: 2936 sq. ft.; presence of lead, most recent use—residential, off-site use only

9 Bldgs., Type E
Kirtland AFB
Single Units
Kirtland AFB Co: Bernalillo NM 87117–5000
Location: #2153, 2151, 2134, 2141, 2133, 2119, 2112, 2111, 2101
Landholding Agency: Air Force
Property Number: 18199910017
Status: Unutilized
Comment: 1482 sq. ft.; presence of lead, most recent use—residential, off-site use only

12 Bldgs.
Kirtland AFB
#862–867, 869, 870, 873–876
Kirtland AFB Co: Bernalillo NM 87117–5000
Landholding Agency: Air Force
Property Number: 18199940006
Status: Unutilized
Comment: 678 sq. ft.; presence of lead, most recent use—residential, off-site use only

Bldgs. 871, 872
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5000
Landholding Agency: Air Force
Property Number: 18199940007
Status: Unutilized
Comment: 1363 sq. ft.; presence of lead, most recent use—residential, off-site use only

Wisconsin

Bldg. 2
VA Medical Center
5000 West National Ave.
Milwaukee WI 53295–
Landholding Agency: VA
Property Number: 97199830002
Status: Underutilized
Comment: 133,730 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage

Land (by State)

Georgia

Land—St. Simons Boathouse
St. Simons Island Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 87199540003
Status: Unutilized
Comment: .08 acres, most recent use—pier and dockage for Coast Guard boats

Iowa

38 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Landholding Agency: VA
Property Number: 97199740001
Status: Unutilized
Comment: golf course

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek, Co: Calhoun MI 49016–
Landholding Agency: VA
Property Number: 97199010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities

Nebraska

Land/Offutt Comm. Annex No. 4
Silver Creek Co: Nance NE 68663–
Landholding Agency: Air Force
Property Number: 18199720041
Status: Unutilized
Comment: 354 acres, most recent use—radio transmitter site, wetlands, isolated area

New York

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 97199010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased

Pennsylvania

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 97199010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities

Land No. 645
VA. Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets
Landholding Agency: VA
Property Number: 97199010080
Status: Unutilized
Comment: 90.3 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls

Land—34.16 acres
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320–
Landholding Agency: VA
Property Number: 97199340001
Status: Underutilized
Comment: 34.16 acres, open field, most recent use—recreation/buffer

Tennessee

44 acres
VA Medical Center
3400 Lebanon Rd/
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: VA
Property Number: 97199740003
Status: Underutilized
Comment: intermittent use, partially landlocked, flooding

Suitable/To Be Excessed

Buildings (by State)

Massachusetts

Cuttyhunk Boathouse
South Shore of Cuttyhunk Pond
Gosnold Co: Dukes MA 02713–
Landholding Agency: DOT
Property Number: 87199310001
Status: Unutilized
Comment: 2700 sq. ft., wood frame, one story, needs rehad, limited utilities, off-site use only

Nauset Beach Light
Nauset Beach Co: Barnstable MA
Landholding Agency: DOT
Property Number: 87199420001
Status: Unutilized
Comment: 48 foot tower, cylindrical cast iron, most recent use—aid to navigation

Light Tower, Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430005
Status: Excess
Comment: 66 ft. tower, 14'9" diameter, brick structure, scheduled to be vacated 9/94

Keepers Dwelling
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430006
Status: Excess
Comment: 1160 sq. ft., 2-story wood frame, attached to light tower, scheduled to be vacated 9/94

Duplex Housing Unit
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430007
Status: Excess
Comment: 2 living units, 930 sq. ft. each, 1-story each, located on eroding ocean bluff, scheduled to be vacated 9/94

Nahant Towers
Nahant Co: Essex MA
Landholding Agency: DOT
Property Number: 87199530001
Status: Unutilized
Comment: 196 sq. ft., 8-story observation tower

New York

Bldg. 1
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530048
Status: Excess
Comment: 4955 sq. ft., 2 story concrete block, needs rehab, most recent use—administration

Bldg. 2
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number 18199530049
Status: Excess
Comment: 1476 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop

Bldg. 6
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530050
Status: Excess
Comment: 2466 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop

Bldg. 11
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530051
Status: Excess
Comment: 1750 sq. ft., 1 story wood frame, needs rehab, most recent use—storage

Bldg. 8
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530052
Status: Excess
Comment: 1812 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop communications

Bldg. 14
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530053
Status: Excess
Comment: 156 sq. ft., 1 story wood frame, most recent use—vehicle fuel station

Bldg. 30
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530054
Status: Excess
Comment: 3649 sq. ft., 1 story, needs rehab, most recent use—assembly hall

Bldg. 31
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530055
Status: Excess
Comment: 8252 sq. ft., 1 story concrete block, most recent use—storage

Bldg. 32
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530056
Status: Excess
Comment: 1627 sq. ft., 1 story concrete block, most recent use—storage

South Carolina

5 Bldgs.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 101 Vector Ave., 112, 114, 116, 118 Intercept Ave.
Landholding Agency: Air Force
property Number: 18199830035
Status: Unutilized
Comment: 1433 sq. ft. + 345 sq. ft. carport, lead base paint/exterior most recent use—residential

1 Bldg.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 102 Vector Ave.
Landholding Agency: Air Force
property Number: 18199830036
Status: Unutilized
Comment: 1545 sq. ft. + 345 sq. ft. carport, lead base paint/exterior most recent use—residential

1 Bldg.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 101 Vector Ave.
Landholding Agency: Air Force
property Number: 18199830037
Status: Unutilized
Comment: 1445 sq. ft. + 346 sq. ft. carport, lead base paint/exterior most recent use—residential

18 Bldg.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 104–107 Vector Ave., 108–111, 113, 115, 117, 119 Intercept Ave., 120–122 Radar Ave.
Landholding Agency: Air Force
Property Number: 18199830038
Status: Unutilized

Comment: 1265 sq. ft. + 353 sq. ft. carport, lead base paint/exterior most recent use—residential

Land (by State)

Alaska

Gibson Cove Tract
Kodiak Co: AK 99619–
Landholding Agency: DOT
Property Number: 87199920001
Status: Unutilized
Comment: 37.55 acres, undeveloped land

New York

14.90 Acres
Hancock Field
Syracuse Co: Onandaga Ny 13211–
Property Number: 18199530057
Status: Excess
Comment: Fenced in compound, most recent use—Air Natl. Guard Communication & Electronics Group

Unsuitable Properties

Buildings (by State)

Alabama

Dwelling A
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120001
Status: Excess
Reason: Floodway

Dwelling B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120002
Status: Excess
Reason: Floodway

Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120003
Status: Excess
Reason: Floodway

Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120004
Status: Excess
Reason: Floodway

Shop Building
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120005
Status: Excess
Reason: Floodway

Bldg. 7
VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199730001
Status: Underutilized
Reason: Secured Area

Bldg. 8
VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199730002
Status: Underutilized
Reason: Secured Area

Alaska

Bldg. 203
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010296
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 165
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010298
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 150
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010299
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 130
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010300
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010301
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 11–230
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010303
Status: Unutilized
Reasons: Contamination, Secured Area

Bldg. 63–320
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010307
Status: Unutilized
Reasons: Contamination, Secured Area

Bldg. 103
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010309
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 110
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010310
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 112
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010311
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 113
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010312
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 114
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010313
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 115
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010314
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 118
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010315
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 1018
Ft. Yukon Air Force Station
21 CSG/DEER

Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010317
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 1025
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010318
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010319
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 107
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010320
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 115
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010321
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 113
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010322
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 150
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 88506–5000
Landholding Agency: Air Force
Property Number: 18199010323
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 152
Cape Lisburne Air Force Stationtation
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010324
Status: Unutilized*
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 301
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010325
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 1001
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010326
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 1003
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010327
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 1055
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010328
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010329
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 103
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010330
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 104
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010331
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 105
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010332
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 110
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010333
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 114
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010334
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 202
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010335
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 204
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010336
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 205
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010337
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 1001
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010338
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010339
Status: Unutilized

Reasons: Isolated area, Not accessible by road, Contamination, Secured Area

Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010433
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Isolated and remote; Arctic environment.

Bldg. 1548, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199420001
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 1568, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199420002
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 1570, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199420003
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 1700, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199420004
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 1832, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199420005
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 1842, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199420006
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 1844, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199420007
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 1853, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199440011
Status: Unutilized
Reasons: Floodway, Secured Area

Bldg. 142
Tin City Long Range
Radar Site
Wales Co: Nome AK
Landholding Agency: Air Force
Property Number: 18199520013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 110
Tin City Long Range Radar Site
Wales Co: Nome AK
Landholding Agency: Air Force
Property Number: 18199520014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 646
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 18199520015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2541
Galena Airport
Galena Co: Yukon AK
Landholding Agency: Air Force
Property Number: 18199520016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1770
Galena Airport
Galena Co: Yukon AK
Landholding Agency: Air Force
Property Number: 18199520017
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 18199520024
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 2
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 18199520025
Status: Unutilized
Reasons: Not accessible by road, Extensive deterioration

Bldg. 12
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 18199520026
Status: Unutilized
Reasons: Not accessible by road, Extensive deterioration

Bldg. 1
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 18199520027
Status: Unutilized
Reasons: Not accessible by road, Extensive deterioration

Bldg. 2
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 18199520028
Status: Unutilized
Reasons: Not accessible by road, Extensive deterioration

Bldg. 3
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 18199520029
Status: Unutilized
Reasons: Not accessible by road, Extensive deterioration

Bldg. 3045
Tatalina Long Range Radar
Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 18
Lonely Dewline Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 23
Lonely Dewline Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1015
Kotzebue Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1
Flaxman Island DEW Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3
Flaxman Island DEW Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530008
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 4100
Cape Romanzof Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 200
Cape Newenham Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2166

Cape Newenham Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530011
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5500
Cape Newenham Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 8
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 75
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 86
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3060
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 11–330
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199530017
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration

Bldg. 31–342
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199530022
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 32–126
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199530023
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration

Bldg. 21–737
Elmendorf Air Force Base
Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199540001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 52–651
Elmendorf AFB
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199740004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 132
Tin City Long Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199810003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 1001, 211
Murphy Dome AF Station
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199810004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1551
Galena Airport
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199810030
Status: Unutilized
Reasons: Within airport runway clear zone

Bldg. 1771
Galena Airport
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199820001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 34–570
Elmendorf AFB
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199830008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 3
Oliktok Long Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199840010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 8
Oliktok Long Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199840011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 19
Lonely Short Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199840012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 20
Lonely Short Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199840013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 338
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 18199840014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 560
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 18199840015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 612
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 18199840016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 618
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 18199840017
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 643
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 18199840018
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 649
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 18199840019
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 114
Indian Mountain Long Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199840020
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 34–636
Elmendorf AFB
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199840021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Extensive deterioration

Bldg. 34–638
Elmendorf AFB
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199840022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Extensive deterioration

Bldg. 140
Cape Lisburne Long Range Radar Site
Elmendorf AFB AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199840023
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 145
Cape Lisburne Long Range Radar Site
Elmendorf AFB AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199840024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 310
Cape Lisburne Long Range Radar Site
Elmendorf AFB AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199840025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 27
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 30
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840027
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 42
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840028
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 212
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840029
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 213
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840030
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 223
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840031
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 452
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840032
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 502
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840033
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 503
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840034
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 522
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840035
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 587
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840036
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 588
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840037
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 598
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840038
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 605
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840039
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 613
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840040
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 614
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 615
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840042
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 616
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840043
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 617
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840044
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 624
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840045
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 700
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840046
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 718
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840047
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 727
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840048
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 731
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force

Property Number: 18199840049
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 751
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840050
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 753
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840051
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1001
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840052
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1005
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840053
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1010
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840054
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1025
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840055
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1030
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840056
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3016
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840057
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3062
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840058
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3063
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840059
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 32–189
Elmendorf Air Force Base
Anchorage Co: AK 99506–3230
Landholding Agency: Air Force
Property Number: 18199920001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 4893
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18199930001
Status: Unutilized
Reason: Within airport runway clear zone

Bldg. 4905
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18199930002
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 4913
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18199930003
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 5887
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18199930004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area

Bldg. 10449
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18199930005
Status: Unutilized
Reason: Secured Area

Bldg. 12759
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18199930006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 7227
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200010001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 28
USCG Support Center
Kodiak Co: Kodial Island AK 99619–5000
Landholding Agency: DOT
Property Number: 87199210126
Status: Excess
Reasons: Within airport runway clear zone, Secured Area

Bldg. 19
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 87199210128
Status: Excess
Reasons: Within airport runway clear zone, Extensive deterioration, Secured Area.

Bldg. 18
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 87199210132
Status: Excess
Reasons: Within airport runway clear zone, Secured Area.
GSA Number: U–ALAS–655a

Bldg. A512
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 87199210133
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area.

Bldg. R1, Holiday Beach
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 87199310014
Status: Unutilized
Reason: Secured Area

Bldg. S–3
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 87199310015
Status: Unutilized
Reason: Secured Area

Bldg. S–16
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 87199310016
Status: Unutilized
Reason: Secured Area

Bldg. 624
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 87199310021
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Bldg. 456
Coast Guard—ISC Kodiak
Kodiak Co: Kodiak Borough AK 99615–
Landholding Agency: DOT
Property Number: 87199710002
Status: Excess
Reason: Within airport runway clear zone, Secured Area, Extensive deterioration

Bldg. 524A
USCG ISC Kodiak
Kodiak Co: Kodiak Is. Bor. AK 99619–

Landholding Agency: DOT
Property Number: 87199710004
Status: Excess
Reason: Floodway, Secured Area

Bldg. R13, USCG ISC Kodiak
Holiday Beach
Kodiak Co: Kodiak Is. Bor. AK 99619–
Landholding Agency: DOT
Property Number: 87199720003
Status: Excess
Reason: Secured Area

Bldg. 172, USCG ISC Kodiak
Nyman's Peninsula
Kodiak Co: Kodiak Is. Bor. AK 99619–
Landholding Agency: DOT
Property Number: 87199720004
Status: Excess
Reason: Secured Area

Bldg. 160, USCG ISC Kodiak
Comsta/Buskin Lake
Kodiak Co: Kodiak Is. Bor. AK 99619–
Landholding Agency: DOT
Property Number: 87199720005
Status: Excess
Reason: Secured Area

Bldg. 16
Airstation Kodiak
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200010001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area

Arizona

Facility 90002
Holbrook Radar Site
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 18199340049
Status: Unutilized
Reason: Within airport runway clear zone

California

Bldg. 707 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 18199010193
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 18199010195
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 502 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 18199010196
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 523 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 18199010197
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 100
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010233
Status: Unutilized
Reasons: Secured Area

Bldg. 101
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010234
Status: Underutilized
Reason: Secured Area

Bldg. 116
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010235
Status: Unutilized
Reason: Secured Area

Bldg. 202
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010236
Status: Unutilized
Reason: Secured Area

Bldg. 201
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 18199010546
Status: Unutilized
Reason: Secured Area

Bldg. 202
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 18199010547
Status: Unutilized
Reason: Secured Area

Bldg. 203
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 18199010548
Status: Unutilized
Reason: Secured Area

Bldg. 204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 18199010549
Status: Unutilized
Reason: Secured Area

Bldg. 1823
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 18199130360
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 10312
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199210026
Status: Unutilized
Reason: Secured Area

Bldg. 16104, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn
Landholding Agency: Air Force
Property Number: 18199230020
Status: Underutilized
Reason: Secured Area

Bldg. 5428, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199310015
Status: Unutilized
Reason: Secured Area

Bldg. 7304, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199310030
Status: Unutilized
Reason: Secured Area

Bldg. 8215
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199330016
Status: Unutilized
Reason: Secured Area

Bldg. 1988
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199340003
Status: Unutilized
Reasons: Electrical Power Generator Bldg., Secured Area

Bldg. 1324
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199340006
Status: Unutilized
Reason: Secured Area

Bldg. 1341
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199340007
Status: Unutilized

Reason: Secured Area
Bldg. 1955
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199340008
Status: Unutilized
Reason: Secured Area
Bldg. 6443
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199340020
Status: Unutilized
Reason: Secured Area
Bldg. 7306
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199340022
Status: Unutilized
Reason: Secured Area
Bldg. 16164
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199340028
Status: Unutilized
Reason: Secured Area
Bldg. 422
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530029
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 431
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530030
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 470
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530031
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 480
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530032
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 6606
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530037
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 7307
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530039
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 10717
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 10722
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530043
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 893
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199620028
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 9350
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199620030
Status: Unutilized
Reasons: Secured Areas, Extensive deterioration
Bldg. 13003
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199620031
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 13222
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199620032
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 815
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630040
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 1850
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 1853
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630042
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 1856
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630043
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 1865
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630044
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 1874
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630045
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 1875
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630046
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 1877
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630047
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 1879
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630048
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1885
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630049
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1898
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630050
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 06445
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630052
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 21160
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630055
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 06437
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199710014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 10715
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199710016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 00879
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 01630
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 01797
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 01830
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 01852
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 10252
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720017
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 11345
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720019
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 14019
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720022
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 14026
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720023
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 16162
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 22300
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199730002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 08412
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199740006
Status: Unutilized
Reason: Secured Area.

Bldg. 11153
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199740007
Status: Unutilized
Reason: Secured Area.

Bldg. 11154
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199740008
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2–11 20–21
Edwards AFB
P–Area Housing AFB Co: Edwards Kern CA 93524–
Landholding Agency: Air Force
Property Number: 18199810029
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1681
Vandenberg AFB
Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199820003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 01839
Vandenberg AFB
Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199820004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 06519
Vandenberg AFB
Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199820005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 06526
Vandenberg AFB
Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199820006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 11167
Vandenberg AFB
Co: Santa Barbara CA 93437–
Landholding Agency: Air Force

Property Number: 18199820007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 11168
Vandenberg AFB
Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199820008
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 827
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200010002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 16153 & 16154
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200010003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

10 Bldg.
USCG Station Humboldt Bay
Samoa Co: Humboldt CA 95564–9999
Landholding Agency: DOT
Property Number: 87199440027
Status: Excess
Reason: Extensive deterioration
Comment: Land to be relinquished to BLM (Public Domain Land)

Bldg. T102
USCG Training Center
Petaluma Co: Sonoma CA 94952–
Landholding Agency: DOT
Property Number: 87199830001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Colorado

Bldg. 00910
"Blue Barn"—Falcon Air Force Base
Falcon Co: El Paso CO 80912–
Landholding Agency: Air Force
Property Number: 18199530046
Status: Underutilized
Reason: Secured Area

Bldg. 1007
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 18199730003
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 1008
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 18199730004
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 9214
U.S. Air Force Academy
Colorado Springs Co: El Paso Co 80814–2400
Landholding Agency: Air Force
Property Number: 18199730012
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 7067
USAF Academy
Co: El Paso CO 80840–
Landholding Agency: Air Force
Property Number: 18199810005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8222
USAF Academy
Co: El Paso CO 80840–
Landholding Agency: Air Force
Property Number: 18199810006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9200
USAF Academy
Co: El Paso CO 80840–
Landholding Agency: Air Force
Property Number: 18199810007
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 9022
USAF Academy
El Paso Co: CO 80840–2400
Landholding Agency: Air Force
Property Number: 18200010004
Status: Unutilized
Reason: Extensive deterioration

Alameda Facility
350 S. Santa Fe Drive
Denver CO: Denver CO 80223–
Landholding Agency: DOT
Property Number: 87199010014
Status: Unutilized
Reason: Other environmental
Comment: contamination

Connecticut

Bldg. 13
Bradley International Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 18199640002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 10
Bradley International Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 18199640003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 5
Bradley International Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 18199640004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 4
Bradley International Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 18199640005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Falkner Island Light
U.S. Coast Guard
Guilford Co: New Haven CT 06512
Landholding Agency: DOT
Property Number: 87199240031
Status: Unutilized
Reason: Floodway

Florida

Bldg. 1179
Patrick Air Force Base
1179 School Avenue
Co: Brevard FL 32935–
Landholding Agency: Air Force
Property Number: 18199240030
Status: Unutilized
Reasons: Extensive Deterioration, Secured Area

Bldg. 575
Patrick Air Force Base
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199320004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Extensive Deterioration, Secured Area

Bldg. 921
Patrick Air Force Base
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199430002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

23 Family Housing
MacDill Auxiliary Airfield
No. 1
Avon Park Co: Polk FL 33825–
Location: Include Bldgs: 448, 451 thru 470, 472 and 474
Landholding Agency: Air Force
Property Number: 18199520006
Status: Excess
Reason: Within airport runway clear zone

Bldg. 240
MacDill Auxiliary Airfield
No. 1
Avon Park Co: Polk FL 33825–
Landholding Agency: Air Force
Property Number: 18199520007
Status: Excess
Reason: Extensive deterioration

Bldg. 307
Patrick Air Force
Patrick AFB Co: Brevard FK
Landholding Agency: Air Force
Property Number: 18199710022
Status: Unutilized
Reason: Secured Area

Bldg. 315
Patrick Air Force Base
Patrick AFB Co: Brevard FL
Landholding Agency: Air Force
Property Number: 18199710023
Status: Unutilized
Reason: Secured Area

Bldg. 317
Patrick Air Force Base
Patrick AFB Co: Brevard FL
Landholding Agency: Air Force

Property Number: 18199710024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 318
Patrick Air Force Base
Patrick AFB Co: Brevard FL
Landholding Agency: Air Force
Property Number: 18199710025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Facility No. 1114
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710027
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Facility No. 10831
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710033
Status: Unutilized
Reason: Secured Area

Facility No. 15500
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710034
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Facility No. 39764
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710035
Status: Unutilized
Reason: Secured Area

Facility No. 70662
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710037
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Facility No. 72920
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710038
Status: Unutilized
Reason: Secured Area

Bldg. 895, Eglin AFB
Eglin AFB Co: Okaloosa FL 32542-5133
Landholding Agency: Air Force
Property Number: 18199710045
Status: Unutilized
Reason: Extensive deterioration

Fac. No. 09010
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number 18199810008
Status: Unutilized
Reason: Secured Area

Bldg. 744
Eglin AFB
Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199820009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3008
Eglin AFB
Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199820010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3010
Eglin AFB
Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199820011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 12709
Eglin AFB
Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199820012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 08807
Cape Canaveral Air Station
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199820013
Status: Unutilized
Reason: Secured Area

Bldg. 08809
Cape Canaveral Air Station
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199820014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 21911
Cape Canaveral Air Station
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199820015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 21914
Cape Canaveral Air Station
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199820016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 32349
Cape Canaveral Air Station
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199820017
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Facility 44608
Cape Canaveral Air Station
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199830006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 12577
Elgin AFB
Santa Rosa Island
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910001
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 12576
Elgin AFB
Santa Rosa Island
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910002
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 12534
Elgin AFB
Santa Rosa Island
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910003
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 12533
Elgin AFB
Santa Rosa Island
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910004
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 12528
Elgin AFB
Santa Rosa Island
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910005
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 9281
Elgin AFB
Santa Rosa Island
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910006
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 9280
Elgin AFB
Santa Rosa Island
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910007
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 609
Elgin AFB
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910008
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 01103
Cape Canaveral Air Station
Brevard Co: FL 32925–

Landholding Agency: Air Force
Property Number: 18199910009
Status: Unutilized
Reason: Secured Area

Bldg. 55152
Cape Canaveral Air Station
Brevard Co: FL 32925–
Landholding Agency: Air Force
Property Number: 18199910010
Status: Unutilized
Reason: Secured Area

Facility 1737
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18199920002
Status: Underutilized
Reason: Secured Area

Facility 5200
Cape Canaveral Air Station
Cape Canaveral Co: Brevard Co FL 32925–
Landholding Agency: Air Force
Property Number: 18199920003
Status: Underutilized
Reason: Secured Area

Facility 49950
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18199920004
Status: Underutilized
Reason: Secured Area

Bldg. 1704
Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–
Landholding Agency: Air Force
Property Number: 18199930007
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration

Bldg. 01390
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18199930008
Status: Unutilized
Reason: Secured Area

Facility 90330
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18199940008
Status: Unutilized
Reason: Secured Area

Bldg. #3, Recreation Cottage
USCG Station
Marathon Co: Monroe FL 33050–
Landholding Agency: DOT
Property Number: 87199210008
Status: Unutilized
Reasons: Floodway, Secured Area

Bldg. 103, Trumbo Point
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 87199230001
Status: Unutilized
Reasons: Floodway, Secured Area

Exchange Building
St. Petersburg Co: Pinellas FL 33701–
Landholding Agency: DOT
Property Number: 87199410004
Status: Unutilized
Reason: Floodway

9988 Keepers Quarters A
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440009
Status: Underutilized
Reasons: Floodway, Secured Area

9989 Keepers Quarters B
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440010
Status: Underutilized
Reasons: Floodway, Secured Area

9990 Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440011
Status: Underutilized
Reasons: Floodway, Secured Area

9991 Plant Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440012
Status: Underutilized
Reasons: Floodway, Secured Area

9992 Shop Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440013
Status: Underutilized
Reasons: Floodway, Secured Area

9993 Admin. Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440014
Status: Underutilized
Reasons: Floodway, Secured Area

9994 Water Pump Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440015
Status: Underutilized
Reasons: Floodway, Secured Area

Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440016
Status: Underutilized
Reasons: Floodway, Secured Area

9999 Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440017
Status: Underutilized
Reasons: Floodway, Secured Area

3 Bldgs. and Land
Peanut Island Station
Riveria Beach Co: Palm Beach FL 33419–0909
Landholding Agency: DOT
Property Number: 87199510009
Status: Underutilized
Reason: Floodway, Secured Area

Cape St. George Lighthouse
Co: Franklin FL 32328–
Landholding Agency: DOT
Property Number: 87199640002
Status: Unutilized
Reason: Extensive deterioration

Georgia

Bldgs. 1180–1185
Robins AFB
Warner Robins Co: GA 31098–2207
Landholding Agency: Air Force
Property Number: 18200010005
Status: Unutilized
Reason: Extensive deterioration

Coast Guard Station
St. Simons Island
Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 87199540002
Status: Unutilized
Reason: Extensive deterioration

Guam

Andersen South
Andersen Admin. Annex
360 housing units & a commercial structure
Mangilao GU 96923–
Landholding Agency: Air Force
Property Number: 18199840009
Status: Underutilized
Reason: Secured Area

Hawaii

Bldg. 1740
U.S. Coast Guard Air Station
Barbers Point
Honolulu Co: HI 96862–5800
Landholding Agency: DOT
Property Number: 87199910002
Status: Unutilized
Reason: Secured Area

Idaho

Bldg 1012
Mountain Home Air Force Base
7th Avenue
(See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199030004
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 923
Mountain Home Air Force Base
7th Avenue
(See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199030005
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 604
Mountain Home Air Force Base
Pine Street
(See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199030006
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 229
Mt. Home Air Force Base
1st Avenue and A Street
Mt. Home AFB Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199040857
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Bldg. 4403
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 83647–
Landholding Agency: Air Force
Property Number: 18199520008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 101
Mountain Home Air Force
Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199840001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 105
Mountain Home Air Force
Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199840002
Status: Unutilized
Reason: Extensive deterioration

Illinois

Calumet Harbor Station
U.S. Coast Guard
Chicago Co: Cook IL
Landholding Agency: DOT
Property Number: 87199310005
Status: Excess
Reason: Secured Area

Indiana

Bldg. 21, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230001
Status: Excess
Reason: Extensive deterioration

Bldg. 22, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230002
Status: Excess
Reason: Extensive deterioration

Bldg. 62, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230003
Status: Excess
Reason: Extensive deterioration

Iowa

Bldg. 00671
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 18199310009
Status: Unutilized
Reason: Fuel pump station

Bldg. 00736
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 18199310010
Status: Unutilized
Reason: Pump station

Kansas

Bldg. 2703
Forbes Field
Topeka KS
Landholding Agency: Air Force
Property Number: 18199820018
Status: Unutilized
Reason: Extensive deterioration

Louisiana

Bldg. 3477
Barksdale Air Force Base
Davis Avenue
Barksdale AFB Co: Bossier LA 71110–5000
Landholding Agency: Air Force
Property Number: 18199140015
Status: Unutilized
Reason: Secured Area

Maine

Supply Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240005
Status: Unutilized
Reason: Floodway

Base Exchange, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240006
Status: Unutilized
Reason: Floodway

Engineering Shop, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240007
Status: Unutilized
Reason: Floodway

Storage Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240008
Status: Unutilized
Reason: Floodway

Squirrel Point Light
U.S. Coast Guard
Phippsburg Co: Sayadahoc ME 04530–
Landholding Agency: DOT
Property Number: 87199240032
Status: Unutilized
Reason: Floodway

Keepers Dwelling
Heron Neck Light, U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 87199240035
Status: Unutilized
Reason: Extensive deterioration

Fort Popham Light
Phippsburg Co: Sagadahoc ME 04562–
Landholding Agency: DOT
Property Number: 87199320024
Status: Unutilized
Reason: Extensive deterioration

Nash Island Light
U.S. Coast Guard
Addison Co: Washington ME 04606–
Landholding Agency: DOT
Property Number: 87199420005
Status: Unutilized
Reason: Inaccessible

Bldg.—South Portland Base
U.S. Coast Guard
S. Portland Co: Cumberland ME 04106–
Landholding Agency: DOT
Property Number: 87199420006
Status: Unutilized
Reason: Secured Area

Garage—Boothbay Harbor Stat.
Boothbay Harbor Co: Lincoln ME 04538–
Landholding Agency: DOT
Property Number: 87199430001
Status: Unutilized
Reason: Secured Area

Maryland

Bldg. 3542
Andrews AFB
Andrews AFB MD 20652–25177
Landholding Agency: Air Force
Property Number: 18199810010
Status: Unutilized
Reason: Secured Area

Bldg. 3543
Andrews AFB
Andrews AFB MD 20652–25177
Landholding Agency: Air Force
Property Number: 18199810011
Status: Unutilized
Reason: Secured Area

7 Bldgs.
Davidsonville Family Housing Annex
300, 301, 303, 305, 308, 309, 311
Landholding Agency: Air Force
Property Number: 18199910011
Status: Unutilized
Reason: Extensive deterioration

8 Bldgs.
Davidsonville Co: Anne Arundel MD 20755–
Landholding Agency: Air Force
Property Number: 18199810012
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 38–39, 41, 43–46, 56
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87199540005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 53
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87199540006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 6
U.S. Coast Guard Yard, 2401
Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 87199620001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 59
U.S. Coast Guard Yard, 2401
Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 87199620002
Status: Excess

Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Massachusetts

Bldg. 110
Otis Air National Guard
Otis Co: MA 02542–5028
Landholding Agency: Air Force
Property Number: 18199940009
Status: Unutilized
Reason: Secured Area

Bldg. 4, USCG Support Center
Commercial Street
Boston Co: Suffolk MA 02203–
Landholding Agency: DOT
Property Number: 87199240001
Status: Underutilized
Reason: Secured Area

Eastern Point Light
U.S. Coast Guard
Gloucester Co: Essex MA 01930–
Landholding Agency: DOT
Property Number: 87199240029
Status: Unutilized
Reasons: Floodway, Secured Area

Storage Shed
Highland Light
N. Truro Co: Barnstable MA 02652–
Location: DeSota Johnson KS 66018–
Landholding Agency: DOT
Property Number: 87199430004
Status: Unutilized
Reasons: Extensive deterioration

Westview Street Wells
Lexington Co: MA 02173–
Landholding Agency: VA
Property Number: 97199920001
Status: Unutilized
Reason: Extensive deterioration

Michigan

Bldg. 71
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010810
Status: Excess
Reason: Sewage treatment and disposal facility

Bldg. 99 (Water Well)
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010831
Status: Excess
Reason: Water well

Bldg. 100 (Water Well)
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010832
Status: Excess
Reason: Water well

Bldg. 118
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010875
Status: Excess
Reason: Gasoline Station

Bldg. 120
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010876
Status: Excess
Reason: Gasoline Station

Bldg. 166
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010877
Status: Excess
Reason: Pump lift station

Bldg. 168
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010878
Status: Excess
Reason: Gasoline station

Bldg. 69
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010889
Status: Excess
Reason: Sewer pump facility.

Bldg. 2
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010890
Status: Excess
Reason: Water pump station

Facility 20
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 21
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 30
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 98
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 103
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 116
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 129
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 152
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 156
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 181
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 509
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 562
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 573
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630013
Status: Unutilized
Reason: Secured Area

Facility 801
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 827
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 832
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 833
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 1005
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630018
Status: Unutilized
Reason: Secured Area

Facility 1012
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630019
Status: Unutilized
Reason: Secured Area

Facility 1017
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630020
Status: Unutilized
Reason: Secured Area

Facility 1025
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630021
Status: Unutilized
Reason: Secured Area

Facility 1031
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630022
Status: Unutilized
Reason: Secured Area

Facility 1041
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 1445
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 1514
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630025
Status: Unutilized
Reason: Secured Area

Facility 1575
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630026
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 1576
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630027
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 1578
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630028
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 1580
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630029
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 1582
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630030
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 1583
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630031
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 1584
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630032
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 1585
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630033
Status: Unutilized
Reason: Secured Area

Facilities 246, 248, 252–254
Selfridge Air National Guard
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199710039
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

7 Facilities
Selfridge Air National Guard
#240, 242, 244, 245, 247, 250, 251
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199710040
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facilities 237, 238
Selfridge Air National Guard
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199710041
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Facilities
Selfridge Air National Guard 228, 230, 232, 234, 236
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199710042
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 114
Selfridge Air National Guard
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199710043
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 114
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18199930009
Status: Unutilized
Reason: Secured Area

Bldg. 318
Alpena CFTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18199930010
Status: Unutilized
Reason: Secured Area

Quarters B
U.S. Coast Guard
Marquette MI 49855–
Landholding Agency: DOT
Property Number: 87199740001
Status: Unutilized
Reason: Secured Area

Mississippi

Natchez Moorings
82 L.E. Berry Road
Natchez Co: Adams MS 39121–
Landholding Agency: DOT
Property Number: 87199340002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6, Boiler Plant
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410001
Status: Unutilized
Reason: Floodway

Bldg. 67
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410008
Status: Unutilized

Reason: Floodway

Bldg. 68
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410009
Status: Unutilized
Reason: Floodway

Montana

Bldg. 1189, Malstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199540013
Status: Underutilized
Reason: Secured Area

Bldg. 23
Great Falls ANG Station
Great Falls Co: Cascade MT 59404–
Landholding Agency: Air Force
Property Number: 18199720030
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 24
Great Falls ANG Station
Great Falls Co: Cascade MT 59404–
Landholding Agency: Air Force
Property Number: 18199720031
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 35
Great Falls ANG Station
Great Falls Co: Cascade MT 59404–
Landholding Agency: Air Force
Property Number: 18199720033
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 230, Malstrom AFB
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199910012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 22
Great Falls IAP
Great Falls Co: Cascade MT 59404–5570
Landholding Agency: Air Force
Property Number: 18199820019
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 803
Malmstrom AFB
Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199840003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1846
Malmstrom AFB
Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199840005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. 1218, 1220
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199920005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. 1210, 1212, 1214, 1216
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199920006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. 920, 1242
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 1820001006
Status: Unutilized
Reason: Secured Area

Nebraska

Offutt Communciations Annex–#3
Offutt Air Force Base
Scribner Co: Dodge NE 68031–
Landholding Agency: Air Force
Property Number: 18199210006
Status: Unutilized
Reason: former sewage lagoon

Bldg. 637
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524–
Landholding Agency: Air Force
Property Number: 18199230021
Status: Unutilized
Reason: Extensive deterioration

Bldg. 639
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524–
Landholding Agency: Air Force
Property Number: 18199230022
Status: Unutilized
Reason: Extensive deterioration

Bldg. 31
Offutt Air Force Base
Sac Boulevard
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 18199240007
Status: Unutilized
Reason: Secured Area

Bldg. 311
Offutt Air Force Base
Nelson Drive
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 18199240008
Status: Unutilized
Reason: Secured Area

Bldg. 401
Offutt Air Force Base
Custer Drive
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 18199240009
Status: Unutilized
Reason: Secured Area

Bldg. 416
Offutt Air Force Base
Sherman Turnpike
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 18199240010
Status: Unutilized
Reason: Secured Area

Bldg. 417
Offut Air Force Base
Sherman Turnpike
Offut Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 18199240011
Status: Unutilized
Reason: Secured Area

Bldg. 545
Offut Air Force Base
Offut Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 18199240012
Status: Unutilized
Reason: Secured Area

Bldg. 21
Hastings Radar Bomb Scoring Site
Hasting Co: Adams NE 68901—
Landholding Agency: Air Force
Property Number: 18199320058
Status: Excess
Reason: Generator

Bldg. 4, Hastings Family Hsg.
Hastings Radar Bomb Scoring Site
Hasting Co: Adams NE 68901—
Landholding Agency: Air Force
Property Number: 18199320059
Status: Excess
Reason: Contamination

Bldg. 500
Hasting Family Housing
Hastings Radar Bomb Scoring Site
Hasting Co: Adams NE 68901—
Landholding Agency: Air Force
Property Number: 18199320060
Status: Excess
Reason: Contamination

Bldg. 502
Hasting Family Housing
Hastings Radar Bomb Scoring Site
Hasting Co: Adams NE 68901—
Landholding Agency: Air Force
Property Number: 18199320061
Status: Excess
Reason: Contamination

Bldg. 504
Hasting Family Housing
Hastings Radar Bomb Scoring Site
Hasting Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320062
Status: Excess
Reason: Contamination

Bldg. 506
Hasting Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320063
Status: Excess
Reason: Contamination

Bldg. 507
Hasting Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320064
Status: Excess
Reason: Contamination

Bldg. 509
Hasting Family Housing

Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320065
Status: Excess
Reason: Contamination

Bldg. 511
Hasting Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320066
Status: Excess
Reason: Contamination

Bldg. 512
Hasting Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320067
Status: Excess
Reason: Contamination

Bldg. 515
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number 18199320068
Status: Excess
Reason: Contamination

Bldg. 517
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number 18199320069
Status: Excess
Reason: Contamination

Bldg. 519
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number 18199320070
Status: Excess
Reason: Contamination

Bldg. 521
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number 18199320071
Status: Excess
Reason: Contamination

Bldg. 523
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number 18199320072
Status: Excess
Reason: Contamination

Bldg. 525
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number 18199320073
Status: Excess
Reason: Contamination

Bldg. 526
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number 18199320074
Status: Excess
Reason: Contamination

Bldg. 529
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number 18199320075
Status: Excess
Reason: Contamination

Bldg. 531
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number 18199320076
Status: Excess
Reason: Contamination

Bldg. 533
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number 18199320077
Status: Excess
Reason: Contamination

Bldg. 534
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number 18199320078
Status: Excess
Reason: Contamination

Bldg. 536
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number 18199320079
Status: Excess
Reason: Contamination

Bldg. 538
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320080
Status: Excess
Reason: Contamination

Bldg. 541
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320081
Status: Excess
Reason: Contamination

Bldg. 542
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320082
Status: Excess
Reason: Contamination

Bldg. 544
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320083
Status: Excess
Reason: Contamination

Bldg. 546
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320084
Status: Excess
Reason: Contamination

Bldg. 549
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320085
Status: Excess
Reason: Contamination

Bldg. 550
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320086
Status: Excess
Reason: Contamination

Bldg. 552
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320087
Status: Excess
Reason: Contamination

Bldg. 553
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320088
Status: Excess
Reason: Contamination

Bldg. 555
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320089
Status: Excess
Reason: Contamination

Bldg. 557
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320090
Status: Excess
Reason: Contamination

Bldg. 558
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320091
Status: Excess
Reason: Contamination

Bldg. 560
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320092
Status: Excess
Reason: Contamination

27 Detached Garages
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320093
Status: Excess
Reason: Contamination

Bldg. 17
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320094
Status: Excess
Reason: Contamination

Bldg. 16
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320095
Status: Excess
Reason: Contamination

Bldg. 18
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320096
Status: Excess
Reason: Contamination

Bldg. 6
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320097
Status: Excess
Reason: Contamination

Bldg. 547
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320098
Status: Excess
Reason: Contamination

Bldg. 604
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320099
Status: Excess
Reason: Contamination

Bldg. 686
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 18199510021
Status: Unutilized
Reason: Secured Area

Bldg. 439
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 18199510022
Status: Unutilized
Reason: Secured Area

Bldg. 606
NE Air National Guard
Lincoln Co: Lancaster NE 68524–1888
Landholding Agency: Air Force
Property Number: 18199720028
Status: Underutilized
Reasons: Floodway, Secured Area

Bldg. 675
NE Air National Guard
Lincoln Co: Lancaster NE 68524–1888
Landholding Agency: Air Force
Property Number: 18199720029
Status: Unutilized
Reasons: Floodway, Secured Area

New Hampshire

Bldg. 117
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 18199920008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 129
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 18199920009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 5210
Newington POL DFS
Newington Co: Rockingham NH 03801–
Landholding Agency: Air Force
Property Number: 18199920010
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 155
Pease Air National Guard
Newington Co: Rockingham NH 03803–
Landholding Agency: Air Force
Property Number: 18199930011
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

New Jersey

Piers and Wharf
Station Sandy Hook
Highlands Co: Monmouth NJ 07732–5000
Landholding Agency: DOT
Property Number: 87199240009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Chapel Hill Front Range
Light Tower
Middletown Co: Monmouth NJ 07748–
Landholding Agency: DOT
Property Number: 87199440002
Status: Unutilized
Reason: Skeletal tower

Bldg. 103
U.S. Coast Guard Station
Sandy Hook
Middleton Co: Monmouth NJ 07737–
Landholding Agency: DOT
Property Number: 87199610002
Status: Unutilized
Reason: Secured Area

New Mexico

Bldg. 831
833 CSG/DEER
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199130333
Status: Unutilized
Reason: Secured Area

Bldg. 21
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240032
Status: Unutilized
Reason: Secured Area

Bldg. 80
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240033
Status: Unutilized
Reason: Secured Area

Bldg. 98
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240034
Status: Unutilized
Reason: Secured Area

Bldg. 324
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240035
Status: Unutilized
Reason: Secured Area

Bldg. 598
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number 18199240036
Status: Unutilized
Reasons: Secured Area

Bldg. 801
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number 18199240037
Status: Unutilized
Reasons: Secured Area

Bldg. 802
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number 18199240038
Status: Unutilized
Reasons: Secured Area

Bldg. 1095
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number 18199240039
Status: Unutilized
Reasons: Secured Area

Bldg. 1096
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number 18199240040
Status: Unutilized
Reasons: Secured Area

Facility 321
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number 18199240041
Status: Unutilized
Reasons: Secured Area

Facility 75115
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number 18199240042

Status: Unutilized
Reasons: Secured Area

Bldg. 874
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number 18199320041
Status: Unutilized
Reasons: Extensive Deterioration, Secured Area

Bldg. 1258
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number 18199320042
Status: Unutilized
Reasons: Extensive Deterioration, Secured Area

Bldg. 134
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number 18199430014
Status: Unutilized
Reasons: Secured Area

Bldg. 640
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number 18199430015
Status: Unutilized
Reasons: Secured Area

Bldg. 703
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number 18199430016
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 813
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430017
Status: Unutilized
Reason: Secured Area

Bldg. 821
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430018
Status: Unutilized
Reason: Secured Area

Bldg. 829
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430019
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 867
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430020
Status: Unutilized
Reason: Secured Area

Bldg. 884
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430021
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 886
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430022
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 908
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430023
Status: Unutilized
Reason: Secured Area

Bldg. 599
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199510001
Status: Unutilized
Reason: Secured Area

Bldg. 600
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199510002
Status: Unutilized
Reason: Secured Area

Bldg. 599
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199610007
Status: Unutilized
Reason: Secured Area

Bldg. 600
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199610008
Status: Unutilized
Reason: Secured Area

Bldg. 995
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199610009
Status: Unutilized
Reason: Secured Area

Bldg. 1257
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199740012
Status: Unutilized
Reason: Secured Area.

Bldg. 332
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199740013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area,

Bldg. 205
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199740014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 1089
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199830009
Status: Unutilized
Reason: Secured Area.

Bldg. 2149
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199830010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 2151
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199830011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 2176
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199830012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 2178
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199830013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

New York

Bldg. 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14303–5000
Landholding Agency: Air Force
Property Number: 18199010075
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

New York

Bldg. 272
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18199140022
Status: Excess
Reason; Secured Area.

Bldg. 888
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18199140023
Status: Excess
Reason; Secured Area.

Facility 814, Griffiss AFB
NE of Weapons Storage Area
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18199230001
Status: Excess
Reasons: Within airport runway clear zone, Secured Area.

Facility 808, Griffiss AFB
Perimeter Road
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18199230002
Status: Excess
Reasons: Within airport runway clear zone, Secured Area.

Facility 807, Griffiss AFB
Perimeter Road
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18199230003
Status: Excess
Reasons: Within airport runway clear zone, Secured Area.

Facility 126
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 1344–4520
Landholding Agency: Air Force
Property Number: 18199240020
Status: Unutilized
Reason: Secured Area.

Facility 127
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240021
Status: Unutilized
Reason: Secured Area.

Facility 135
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240022
Status: Unutilized
Reason: Secured Area.

Facility 137
Griffiss Air Force Base
Otis Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240023
Status: Unutilized
Reason: Secured Area.

Facility 138
Griffiss Air Force Base
Otis Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240024
Status: Unutilized
Reason: Secured Area.

Facility 173
Griffiss Air Force Base
Selfridge Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240025
Status: Unutilized
Reason: Secured Area.

Facility 261
Griffiss Air Force Base
McDill Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240026
Status: Unutilized
Reason: Secured Area.

Facility 308
Griffiss Air Force Base
205 Chanute Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240027
Status: Unutilized
Reason: Secured Area.

Facility 1200
Griffiss Air Force Base
Donaldson Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240028
Status: Unutilized
Reason: Secured Area.

Facility 841
Griffiss Air Force Base
Rome Co: Oneida NY 1344–4520
Landholding Agency: Air Force
Property Number: 18199330097
Status: Unutilized
Reason: Secured Area.

Bldg. 740
Niagara Falls Air Force Reserve
Niagara Falls Co: Niagara NY 14304–5001
Landholding Agency: Air Force
Property Number: 18199720026
Status: Unutilized
Reasons: Within airport runway clear zone Floodway, Secured Area.

Bldg. 629
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199730006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 604
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199810016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 606
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199810017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 615
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199810018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 629
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199810019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 630
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199810020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 635
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199810021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 640
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199810022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 733
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199810023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 514
Niagara Falls ARS
Niagara Falls Co: Niagara NY 14304–5001
Landholding Agency: Air Force
Property Number: 18199810024
Status: Unutilized
Reasons: Floodway Secured Area, Extensive deterioration.

Bldg. 614
Niagara Falls AFR
Niagara Falls Co: Niagara NY 14305–5001
Landholding Agency: Air Force
Property Number: 18199830014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 722
Niagara Falls AFR
Niagara Falls Co: Niagara NY 14305–5001
Landholding Agency: Air Force
Property Number: 18199830015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 750
Niagara Falls AFR
Niagara Falls Co: Niagara NY 14305–5001
Landholding Agency: Air Force
Property Number: 18199830016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 751
Niagara Falls AFR
Niagara Falls Co: Niagara NY 14305–5001
Landholding Agency: Air Force
Property Number: 18199830017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Facility 1200
Verona Test Annex
Town of Verona Co: Oneida NY 13478–

Landholding Agency: Air Force
Property Number: 18199920011
Status: Unutilized
Reason: No public access

Facility 1202
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920012
Status: Unutilized
Reason: No public access

Facility 1203
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920013
Status: Unutilized
Reason: No public access

Facility 1204
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920014
Status: Unutilized
Reason: No public access

Facility 1205
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920015
Status: Unutilized
Reason: No public access

Facility 1206
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920016
Status: Unutilized
Reason: No public access

Facility 1207
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920017
Status: Unutilized
Reason: No public access

Facility 1208
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920018
Status: Unutilized
Reason: No public access

Facility 1209
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920019
Status: Unutilized
Reason: No public access

Facility 1210
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920020
Status: Unutilized
Reason: no public access

Facility 1259
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920021
Status: Unutilized
Reason: no public access

Facility 1260
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920022
Status: Unutilized
Reason: no public access

2 Buildings
Ant Saugerties
Saugerties Co: Ulster NY 12477–
Landholding Agency: DOT
Property Number: 87199230005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 606, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240020
Status: Unutilized
Reason: Secured Area

Bldg. 607, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240021
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 605, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240022
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Eatons Neck Station
U.S. Coast Guard
Huntington Co: Suffolk NY 11743–
Landholding Agency: DOT
Property Number: 87199310003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 517, USCG Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199320025
Status: Unutilized
Reason: Secured Area

Bldg. 138
U.S. Coast Guard Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199410003
Status: Unutilized
Reason: Secured Area

Bldg. 830
U.S. Coast Guard
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199420004
Status: Unutilized
Reason: Secured Area

Bldg. 8
Rosebank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199530009
Status: Unutilized
Reason: Secured Area

Bldg. 7
Rosebank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199530010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 222
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620003
Status: Unutilized
Reason: Secured Area

Bldg. 223
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620004
Status: Unutilized
Reason: Secured Area

Bldg. 205
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620005
Status: Unutilized
Reason: Secured Area

Bldg. [redacted]
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630027
Status: Excess
Reason: Secured Area

Bldg. 10
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630028
Status: Excess
Reason: Secured Area

Bldg. 206, Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630029
Status: Excess
Reason: Secured Area

Cottage
Coast Guard Station
Wellesley Island Co: Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87199940001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

North Carolina

Bldg. 4230—Youth Center
Cannon Ave.
Goldsboro Co: Wayne NC 27531–5005
Landholding Agency: Air Force
Property Number: 18199120233
Status: Underutilized
Reason: Secured Area

Bldg. 607, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 18199330041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 910, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 18199420022
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 912, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 18199420023
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 914, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 18199420024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 633, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–
Landholding Agency: Air Force
Property Number: 18199540019
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Group Cape Hatteras
Boiler Plant
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199240018
Status: Unutilized
Reason: Secured Area

Group Cape Hatteras
Bowling Alley
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199240019
Status: Unutilized
Reason: Secured Area

Bldg. 54
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340004
Status: Unutilized
Reason: Secured Area

Bldg. 83
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340005
Status: Unutilized
Reason: Secured Area

Water Tanks
Groups Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340006
Status: Unutilized
Reason: Secured Area

USCG Gentian (WLB 290)
Fort Macon State Park
Atlantic Beach Co: Carteret NC 27601–
Landholding Agency: DOT
Property Number: 87199420007
Status: Excess
Reason: Secured Area

Unit #71
Buxton Annex, Cape Kendrick Circle
Landholding Agency: DOT
Property Number: 878199530011
Status: Unutilized
Reason: Floodway

Unit #72
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530012
Status: Unutilized
Reason: Floodway

Unit #73
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530013
Status: Unutilized
Reason: Floodway

Unit #74
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530014
Status: Unutilized
Reason: Floodway

Unit #75
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530015
Status: Unutilized
Reason: Floodway

Unit #63
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530016
Status: Unutilized
Reason: Floodway

Unit #64
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530017
Status: Unutilized
Reason: Floodway

Unit #76
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530018
Status: Unutilized
Reason: Floodway

Unit #68
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530019
Status: Unutilized
Reason: Floodway

Unit #69
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530020
Status: Unutilized
Reason: Floodway

Unit #70
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530021
Status: Unutilized
Reason: Floodway

Unit #77
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530022
Status: Unutilized
Reason: Floodway

Unit #78
Buxton Annex, Old Lighthouse Road
Buxtom Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530023
Status: Unutilized
Reason: Floodway

Bldg. 45
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 87199630020
Status: Unutilized
Reason: Secured Area

Bldg. 47
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 87199630021
Status: Unutilized
Reason: Secured Area

Bldg. 53
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 87199630022
Status: Unutilized
Reason: Secured Area

Bldg. 57
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 87199630023
Status: Unutilized
Reason: Secured Area

Quarters 1
USCG Station
Hobucken Co: Pamlico NC 28537–
Landholding Agency: DOT
Property Number: 87199940003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville Co: Buncombe NC 28805–
Landholding Agency: VA
Property Number: 97199010008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 422
Minot Air Force Base
Minot Co: Ward ND 58705–
Landholding Agency: Air Force
Property Number: 18199010724
Status: Underutilized
Reason: Secured Area

Bldg. 50
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 18199310107
Status: Excess
Reason: garbage incinerator

Bldg. 119
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 18199320034

Status: Unutilized
Reason: Secured Area

Bldg. 526
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 18199320038
Status: Unutilized
Reason: Secured Area

Bldg. 895
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 18199320039
Status: Unutilized
Reason: Secured Area

Ohio

14 Bldgs.
Area B, Wright-Patterson AFB
Co: Montgomery OH 45433–
Location:
6036, 38, 42, 44, 45, 49, 54, 64, 65, 69, 75
Landholding Agency: Air Force
Property Number: 18199820030
Status: Unutilized
Reason: Within airport runway clear zone

Bldgs. 6104, 08, 09
Area B, Wright-Patterson AFB
Co: Montgomery OH 45433–
Landholding Agency: Air Force
Property Number: 18199820044
Status: Unutilized
Reason: Within airport runway clear zone

Bldg. 522
Youngstown Air Reserve
Vienna Co: Trumbull OH 44473–0910
Landholding Agency: Air Force
Property Number: 18200010007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 116
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number 97199920002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 217
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 402
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 105
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 010
Tulsa IAP Base
Tulsa OK 74115–1699
Landholding Agency: Air Force
Property Number: 18199820031
Status: Unutilized
Reasons: Within 2000 ft. of flammable on explosive material, Secured Area

Bldg. 305
Tulsa IAP Base
Tulsa OK 74115–1699
Landholding Agency: Air Force
Property Number: 18199820032
Status: Unutilized
Reasons: Within 2000 ft. of flammable on explosive material, Secured Area

Oregon

Bldg. 8
USCG Tongue Point Moorings
Astoria Co: OR 97103–2099
Landholding Agency: DOT
Property Number: 87199910001
Status: Unutilized
Reason: Extensive deterioration

Duplex
Cape Blanco
Sixes Co: Curry OR 97465–
Landholding Agency: DOT
Property Number: 87199940002
Status: Unutilized
Reason: Extensive deterioration

Puerto Rico

NAFA Warehouse
U.S. Coast Guard Air Station
Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 87199310011
Status: Unutilized
Reason: Secured Area

Storage Equipment Bldg.
U.S. Coast Guard Air Station
Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 87199330001
Status: Unutilized
Reason: Secured Area

Bldg. 115
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510001
Status: Unutilized
Reason: Secured Area

Bldg. 117
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510002
Status: Unutilized
Reason: Secured Area

Bldg. 118
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510003
Status: Unutilized
Reason: Secured Area

Bldg. 119
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510004
Status: Unutilized
Reason: Secured Area

Bldg. 120
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510005
Status: Unutilized
Reason: Secured Area

Bldg. 122
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510006
Status: Unutilized
Reason: Secured Area

Bldg. 128
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510007
Status: Unutilized
Reason: Secured Area

Bldg. 129
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510008
Status: Unutilized
Reason: Secured Area

Rhode Island

Station Point Judith Pier
Narranganset Co: Washington RI 02882–
Landholding Agency: DOT
Property Number: 87199310002
Status: Unutilized
Reason: Extensive deterioration

South Dakota

Bldg. 200, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199320048
Status: Unutilized
Reason: Extensive deterioration

Bldg. 201, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199320049
Status: Unutilized
Reason: Extensive deterioration

Bldg. 203, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199320050
Status: Unutilized
Reason: Extensive deterioration

Bldg. 204, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199320051
Status: Unutilized
Reason: Extensive deterioration

Bldg. 205, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199320052
Status: Unutilized
Reason: Extensive deterioration

Bldg. 206, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–

Landholding Agency: Air Force
Property Number: 18199320053
Status: Unutilized
Reason: Extensive deterioration

Bldg. 88470
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199340033
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 7506
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199340037
Status: Unutilized
Reason: Secured Area

Bldg. 111
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199730007
Status: Unutilized
Reason: Secured Area

Bldg. 7530
Ellsworth AFB
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199810025
Status: Unutilized
Reason: Secured Area

Bldg. 7504
Ellsworth AFB
Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199820034
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material Within airport runway clear zone, Secured Area

Bldg. 4001
Ellsworth AFB
Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199820035
Status: Unutilized
Reason: Secured Area

Bldg. 7239
Ellsworth AFB
Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199820036
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area

Bldg. 1102
Ellsworth AFB
Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199820037
Status: Unutilized
Reason: Secured Area

Bldg. 88307
Ellsworth AFB
Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199820038
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 88320
Ellsworth AFB
Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199820039
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 608
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199920023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area

Bldg. 3501
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199920024
Status: Unutilized
Reason: Secured Area

5 Bldgs.
Ellsworth Air Force Base 6926, 6928, 6929, 6930, 6931
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199920025
Status: Unutilized
Reason: Secured Area

Bldg. 8001
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199920026
Status: Unutilized
Reason: Secured Area

Bldg. 609
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199930012
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 7911
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199930013
Status: Unutilized
Reason: Secured Area

Texas

Old Exchange Bldg.
U.S. Coast Guard
Galveston CO: Galveston TX 77553–3001
Landholding Agency: DOT
Property Number: 87199310012
Status: Unutilized
Reason: Secured Area

WPB Building
Station Port Isabel
Coast Guard Station
South Padre Island CO: Cameron TX 78597–6497
Landholding Agency: DOT
Property Number: 87199530002
Status: Unutilized
Reason: Floodway

Aton Shops Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

WPB Storage Shed
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Flammable Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Battery Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Boat House
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Small Boat Pier
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 108
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 87199630008
Status: Unutilized
Reason: Extensive deterioration

Utah

Bldg. 789
Hill Air Force Base
(See County) Co: Davis UT 84056–
Landholding Agency: Air Force
Property Number: 18199040859
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area

Vermont

Facility 100
Burlington IAP
Burlington Co: Chittenden VT 05403–5872
Landholding Agency: Air Force
Property Number: 18199730008
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

Depot Street
Downtown at the Waterfront
Burlington Co: Chittenden VT 05401–5226
Landholding Agency: DOT

Property Number: 87199220003
Status: Excess
Reason: Floodway

Virginia

Bldg. 417
Camp Pendleton
Virginia Beach VA 23451–
Landholding Agency: Air Force
Property Number: 18199710003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 418
Camp Pendleton
Virginia Beach VA 23451–
Landholding Agency: Air Force
Property Number: 18199710004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 052 & Tennis Court
USCG Reserve Training Center
Yorktown Co: York VA 23690–
Landholding Agency: DOT
Property Number: 87199230004
Status: Excess
Reason: Secured Area

Admin. Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 87199240014
Status: Unutilized
Reason: Secured Area

Little Creek Station
Navamphib Base, West Annex,
U.S. Coast Guard
Norfolk Co: Princess Anne VA 23520–
Landholding Agency: DOT
Property Number: 87199310004
Status: Unutilized
Reason: Secured Area

Operations Bldg.
U.S. Coast Guard Group
Hampton Roads
Portsmouth VA 23703–
Landholding Agency: DOT
Property Number: 87199710003
Status: Unutilized
Reason: Secured Area

Washington

Bldg. 100, Geiger Heights
Grove and Hallet Streets
Fairchild AFB Co: Spokane WA 99204–
Landholding Agency: Air Force
Property Number: 18199210004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2000
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 18199310058
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility 2450
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number; 18199310065
Status: Unutilized
Reasons: Within 200 ft. of flammable or explosive material, Secured Area

Bldg. 1, Waste Annex
West of Craig Road
Co: Spokane WA 99022–
Landholding Agency: Air Force
Property Number; 18199320043
Status: Unutilized
Reason: Secured Area

Pistol Range Bldg.
USCG Port Angeles
Port Angeles Co: Clallam WA 98362–0159
Landholding Agency: DOT
Property Number; 87199630030
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration

Floating Boathouse
Bellingham Co: Whatcom WA 98225–
Landholding Agency: DOT
Property Number; 87199820001
Status: Excess
Reason: Inaccessible

Quarters 8, 10, 12, 14
USCG Station Cape
Disappointment
Ilwaco Co: Pacific WA 98624–
Landholding Agency: DOT
Property Number: 87199930001
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

Rawley Point Light
Two Rivers Co: Manitowoc WI
Landholding Agency: DOT
Property Number; 87199540004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Wyoming

Bldg 31
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number; 18199010198
Status: Unutilized
Reason: Secured Area

Bldg 284
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number; 18199010201
Status: Unutilized
Reason: Secured Area

Bldg 385
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number; 18199010202
Status: Unutilized
Reason: Secured Area

Bldg 2565–2571
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number; 18199720001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg 2564, 2572
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number; 18199720002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
F.E. Warren AFB
2982–2986, 2989, 2991, 2994–2995
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number; 18199720003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

6 Bldgs.
F.E. Warren AFB
2768, 2772, 2773, 2993, 2980, 2988
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number 18199720004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

8 Bldgs.
F.E. Warren AFB
2784, 2762–2764, 2769, 2775, 2777, 2981
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number 18199720005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

8 Bldgs.
F.E. Warren AFB
2785–2786, 2770–2771, 2774, 2776, 2990, 2992
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number 18199720006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 2460–2468
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number 18199830016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2469, 2470, 2508–2511, 2520, 2523, 2528
Landholding Agency: Air Force
Property Number 18199830019
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2471–2472, 2502, 2504–2507, 2544
Landholding Agency: Air Force
Property Number 18199830020
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

8 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2473, 2500, 2503, 2547, 2557, 2601, 2613, 2625
Landholding Agency: Air Force
Property Number 18199830021
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.

F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2512, 2514–2517, 2418, 2519, 2524, 2525
Landholding Agency: Air Force
Property Number 18199830022
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2513, 2530. 2537, 2606, 2626, 2700, 2707, 2720, 2750
Landholding Agency: Air Force
Property Number 18199830023
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2526, 2527, 2532–2534, 2439, 2608, 2610, 2612
Landholding Agency: Air Force
Property Number 18199830024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2529, 2531, 2535–2536, 2538, 2540–2543
Landholding Agency: Air Force
Property Number 18199830025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2545, 2546, 2548–2554
Landholding Agency: Air Force
Property Number 18199830026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2555, 2556, 2559, 2603, 2605, 2607, 2609, 2611
Landholding Agency: Air Force
Property Number: 18199830027
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2560, 2561, 2600, 2602, 2604, 2701, 2702, 2704, 2705
Landholding Agency: Air Force
Property Number: 18199830028
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2614, 2616, 2618, 2620, 2622, 2624, 2714, 2722
Landholding Agency: Air Force
Property Number: 18199830029
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

6 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2615, 2617, 2619, 2621, 2623, 2627
Landholding Agency: Air Force
Property Number: 18199830030
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2706, 2708–2713, 2715, 2716
Landholding Agency: Air Force
Property Number: 18199830031
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2717, 2719, 2721, 2727, 2728, 2751, 2753, 2757, 2759
Landholding Agency: Air Force
Property Number: 18199830032
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

10 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2723–2726, 2752, 2754–2756, 2758, 2703
Landholding Agency: Air Force
Property Number: 18199830033
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

4 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2739, 2740, 2760, 2761
Landholding Agency: Air Force
Property Number: 18199830034
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 919
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 18199930015
Status: Unutilized
Reason: Secured Area

Bldg. 95
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199110004
Status: Unutilized
Reason: Sewage digester for disposal plant

Bldg. 96
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199110005
Status: Unutilized
Reason: Pump house for sewage disposal plant

Structure 99
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199110006
Status: Unutilized
Reason: Mechanical screen for sewage disposal pl

Structure 100
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199110007
Status: Unutilized
Reason: Dosing tank for sewage disposal plant.

Structure 101
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199110008
Status: Unutilized
Reason: Chlorination chamber for sewage disposal

Bldg. 97, Medical Center
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199410011
Status: Unutilized
Reason: Sewage disposal plant

Structure 98, Medical Center
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199410012
Status: Unutilized
Reason: Sludge bed/sewage disposal plant

Bldg. 80
Medical Center
Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199840001
Status: Unutilized
Reasons: Floodway Extensive deterioration

Land (by State)

Alaska

Campion Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010430
Status: Unutilized
Reasons: Isolated aréa, Not accessible by road, Isolated and remote area; Arctic environ

Lake Louise Recreation
21 CSG–DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 18199010431
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Isolated and remote area; Arctic coast.

Nikolski Radio Relay Site
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force

Property Number: 18199010432
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Isolated and remote area; Arctic coast.

Russian Creek Aggregate Site
USCG Support Center Kodiak
Kodiak Co: Kodiak AK 99619–
Landholding Agency: DOT
Property Number: 87199440025
Status: Excess
Reason: Floodway

Sargent Creek Aggregate Site
USCG Support Center Kodiak
Kodiak Co: Kodiak AK 99619–
Landholding Agency: DOT
Property Number: 87199440026
Status: Excess
Reason: Floodway

Land—Sanak Island
106+ acres
Sanak Island Co: Sanak Harbor AK
Landholding Agency: DOT
Property Number: 87199640003
Status: Unutilized
Reason: Inaccessible

Arizona

58 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 97190630001
Status: Unutilized
Reason: Floodway

20 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 97190630002
Status: Underutilized
Reason: Floodway

Florida

Land
MacDill Air Force Base
6601 S. Manhattan Avenue
Tampa Co: Hillsborough FL 33608–
Landholding Agency: Air Force
Property Number: 18199030003
Status: Excess
Reason: Floodway

Land—approx. 220 acres
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440018
Status: Underutilized
Reasons: Floodway, Secured Area

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 97199230004
Status: Underutilized
Reason: Inaccessible

Maryland

Land
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB CO; Prince Georges MD 20613–
Landholding Agency: Air Force Base
Property Number: 18199010263
Status: Underutilized
Reason: Secured Area

Michigan

Middle Marker Facility
Yipsilanti Co: Washtenaw MI 48198–
Location: 549 Ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 87199120006
Status: Unutilized
Reason: Within airport runway clear zone

Minnesota

VAMC
VA Medical Center
4801 8th Street No.
St. Cloud Co: Sterns MN 56303–
Landholding Agency: VA
Property Number: 97199010049
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

3.85 acres (Area #2)
VA Medical Center
4801 8th Street No.
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 97199740004
Status: Unutilized
Reason: Landlocked

7.48 acres (Area #1)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 97199740005
Status: Underutilized
Reason: Secured Area

New Mexico

Facility 75100
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240043
Status: Unutilized
Reason: Secured Area

New York

Tract 1
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010011
Status: Unutilized
Reason: Secured Area

Tract 2
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010012
Status: Underutilized
Reason: Secured Area

Tract 3
VA Medical Center
Bath Co: Steuben NY
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010013
Status: Underutilized
Reason: Secured Area

Tract 4
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010014
Status: Unutilized
Reason: Secured Area

North Dakota

0.23 acres
Minot Middle Market Annex
Co: Ward ND 58705–
Landholding Agency: Air Force
Property Number: 18199810001
Status: Unutilized
Reason: Within airport runway clear zone

South Dakota

Badlands Bomb Range
60 miles southeast of Rapid City, SD
1½ miles south of Highway 44
Co: Shannon SD
Landholding Agency: Air Force
Property Number: 18199210003
Status: Unutilized
Reason: Secured Area

Utah

10.24 acres
Southern Utah Communication Site
Salt Lake UT
Landholding Agency: Air Force
Property Number: 18199810002
Status: Unutilized
Reason: Inaccessible

Washington

Fairchild AFB
SE corner of base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 18199010137
Status: Unutilized
Reason: Secured Area

Fairchild AFB
Fairchild AFB Co: Spokane WA 99011–
Location: NW corner of base
Landholding Agency: Air Force
Property Number: 18199010138
Status: Unutilized
Reason: Secured Area

Tract B–201
Geiger Heights Lagoon
Spokane Co: WA 99210–
Landholding Agency: Air Force
Property Number: 18199930014
Status: Excess
Reason: No public access.

[FR Doc. 00–4837 Filed 3–2–00; 8:45 am]

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Federal Register

Friday,
March 3, 2000

Part III

Department of Agriculture

Forest Service
36 CFR Parts 212, 261, and 295
National Forest System Road Management and Transportation System; Proposed Rule and Notices

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB67

National Forest System Road Management

AGENCY: Forest Service, USDA.

ACTION: Notice; overview of proposals.

SUMMARY: The Forest Service has concluded that it must thoroughly review its forest road system policy. This action is necessary to ensure that the road system, which is one of four emphasis areas in the agency's Natural Resource Agenda, meets current and future management objectives for National Forest System lands; provides for safe public use; allows for economical and efficient management within likely budget levels; and, to the extent practicable, causes minimum adverse environmental impacts. Accordingly, the Forest Service gives notice of proposed revisions to its transportation system rules at 36 CFR part 212 and of proposed corollary revisions to Forest Service administrative directives. Both notices are published separately in this part of today's **Federal Register**.

The Forest Service invites written comments on these documents and will consider those comments in development of the final rule and final administrative policy that the agency will publish in the **Federal Register**.

DATES: Comments must be received in writing by May 2, 2000.

ADDRESSES: Send written comments to USFS CAET, Attention: Roads, P.O. Box 221090, Salt Lake City, UT 84122 or to roads/wo__caet-slc@fs.fed.us.

All comments received, including names and addresses when provided, are placed in the record and are available for public inspection and copying at Forest Service headquarters, 201 14th Street SW, Washington, D.C. 20250. Persons wishing to inspect the comments are encouraged to call 202–205–1400 to facilitate building entrance.

FOR FURTHER INFORMATION CONTACT: Heidi Valetkevitch, Office of Communication, 202–205–0914.

SUPPLEMENTARY INFORMATION:

Background

Few natural resource issues in recent years have attracted as much public scrutiny as the management of the Forest Service road system. Forest roads can have adverse impacts on watersheds, especially if poorly maintained. Few marks on the land are more lasting than roads. Yet, forest roads are essential for forest use and often serve as the backbone of rural transportation networks.

The estimated 380,000 miles of classified Forest Service roads on National Forest System lands are extensive and diverse. Most of the existing road system was built over the last 50 years for timber harvest and log removal. In the decades after World War II, logging traffic tripled, peaking in 1990. But when timber harvests on the national forests declined in the 1990's, logging traffic fell to 1950 levels. By contrast, recreation forest road use has grown to 13 times its 1950 rate. Driving for pleasure is the single largest recreational use of Forest Service managed lands, constituting 35.8 percent of all recreation in 1996. In summer, recreation drivers on the national forests account for 13.6 million vehicle-miles per day. The outlook is for recreational road use to grow by an additional 64 percent by the year 2045.

Managers today must wrestle with many complicated forest road issues.

Environmental damage. The negative effects on the landscape of constructing new roads, deferring maintenance, and decommissioning old roads are well documented. Unwanted or non-native plant species can be transported on vehicles and clothing by users of roads, ultimately displacing native species. Roads may fragment and degrade habitat for wildlife species and eliminate travel corridors of other species. Poorly designed or maintained roads promote erosion and landslides, degrading riparian and wetland habitat through sedimentation and changes in streamflow and water temperature, with associated reductions in fish habitat and productivity. Also, roads allow people to travel into previously difficult or impossible to access areas, resulting in indirect impacts such as ground and habitat disturbance, increased pressure on wildlife species, increased litter, sanitation needs and vandalism, and increased frequency of human-caused fires.

Substandard roads. Many roads on the national forests do not meet current standards for safety and environmental protection. Many of these are classified roads that have not been properly maintained for a variety of reasons. Some were crudely pioneered by early settlers. Others were planned for temporary access but never closed. Still others evolved from tracks made by off-road vehicles. Due to their haphazard nature, unclassified roads have far more adverse impacts on the environment than do permanent, properly planned forest roads that are well engineered and maintained. While the agency estimates more than 60,000 miles of unauthorized, unplanned, and temporary roads exist on National Forest System lands, a complete inventory of unclassified roads is needed to identify roads which should be decommissioned.

Roadless areas. The National Forest System has more than 50 million acres of inventoried roadless areas. These areas were inventoried through a national roadless area review in the 1970's (RARE II) or through subsequent regional and local forest planning activities. A further refinement of roadless area acres may occur through the agency's roadless initiative begun October 19, 1999. Because building a road in a roadless area often has an irreversible impact, the public debate over road building and other uses of these roadless areas has persisted. Through public participation in forest planning and project-level proposals, through appeals and litigation, as well as through public forums over the last decade, the Forest Service has witnessed the increasingly strong public sentiment that new roads should not be built in the remaining roadless areas. Nevertheless, many others believe that these areas should be available for a wide variety of uses, including road construction.

Additional facts related to the nature and scope of the Forest Service road system, public demand, funding, and the environmental impacts of roads are in Appendix A at the end of this notice.

The shift in public use of national forests and changes in user expectations require new approaches to deciding the appropriate extent, use, and standards of the Forest Service road system. Current funding is inadequate to maintain all Forest Service roads to their intended safety, service, and environmental standards. Therefore, to continue to effectively manage the Forest Service road system, the agency must carefully consider the extent of the system and applicable safety, service, and environmental standards, as well as explore new funding sources.

On January 28, 1998, in an Advance Notice of Proposed Rulemaking (63 FR 4350), the Forest Service announced its intent to revise regulations concerning management of the national forest transportation system. Simultaneously, the Forest Service published a proposed interim rule (63 FR 4351) to temporarily suspend permanent and temporary road construction and reconstruction in certain unroaded areas of National Forest System lands. The purpose of the interim rule was to take a "timeout" for 18-months while the Forest Service developed a revised road management policy and analytical tools to provide a

more ecological approach to existing and future road needs.

A final interim rule, issued on February 12, 1999 (64 FR 7289), temporarily suspended permanent and temporary road construction and reconstruction in certain unroaded areas of National Forest System lands. The temporary suspension is in effect until development of a revised Forest Service road system policy, or 18 months from the effective date of the interim final rule, whichever is sooner.

In spring 1999, the Forest Service conducted focus group meetings for input from various segments of the public and Forest Service employees to gather detailed ideas about the development of the agency's revised road policy. Led by a facilitator from outside the agency, the focus groups contributed the views of specific interested groups, including employees, regarding roads and transportation on public lands. These ideas were considered along with the wide range of public comments received in response to the Advanced Notice and the proposed interim rule (over 164,000) in developing the proposed long-term road management rule and policy published in this part.

A summary of the information the Forest Service received from the focus group sessions is available at *www.fs.fed.us/news/roads.* A complete summary of the analysis of public comments on the Advanced Notice of Proposed Rulemaking is found in "Proposed Rulemaking on Administration of the Forest Development Transportation System—Analysis of Public Comments: Final Scoping Report," dated August 20, 1998. This report is available upon request from the Director, Ecosystem Management Coordination, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 and at *www.fs.fed.us/news/roads.*

Proposed Road Management Strategy

The agency has identified three primary actions to help find an appropriate balance between safe and efficient access for all forest road users and protection of healthy ecosystems:

1. Develop new analytical tools to decide when—and if—both new and existing roads are needed to meet resource management objectives.

2. Aggressively decommission nonbeneficial or unauthorized roads that are determined through forest planning and NEPA and other analyses to be damaging to the environment or to be no longer necessary for achieving resource managing objectives.

3. Maintain and improve those important roads needed for recreation, rural access, and the sustainable flow of goods and services which do not compromise healthy lands and waters.

To achieve these objectives, the Forest Service is proposing revisions to the road system rules at 36 CFR part 212 and to Forest Service administrative directives governing transportation analysis and management.

Proposed Rule. The rules at 36 CFR part 212 govern administration of the forest transportation system. The rules address development of transportation programs, construction, maintenance, and management; ingress and egress; access procurement; and road-use restrictions.

To improve its road management, the Forest Service proposes to revise 36 CFR Part 212 to shift the emphasis from transportation development to managing environmentally sound access. This shift requires clarification of terminology associated with managing the transportation system. The proposed revision reflects changes in public opinion, demand, and use of National Forest resources and increased understanding and knowledge about the adverse environmental impacts of road construction, reconstruction, and the lack of maintenance. The proposed revision of Part 212 shifts the focus of road management from development and construction of new roads to restoring and maintaining those roads needed to meet resource objectives, as identified through land and resource management planning, and decommissioning unneeded roads. The proposed rule also includes a requirement to use a science-based transportation analysis to identify the minimum Forest Service road system needed for administration, utilization, and protection of National Forest System lands and resources, while providing safe and efficient travel and minimizing adverse environmental effects. This analysis is necessary to identify and objectively consider the environmental, social, and economic impacts of proposed road construction, reconstruction, and decommissioning at multiple scales in the context of realistic funding expectations. The information derived from this analysis will also help National Forest System managers to more strategically address priority transportation issues.

The notice of proposed rulemaking is published separately in this part of today's **Federal Register**.

Proposed Revisions to Forest Service Manual. In addition to the proposed rule changes, the Forest Service has identified several areas that require revision to its administrative direction on roads in Forest Service Manual (FSM) Title 7700—Transportation system and Chapter 1920—Land and Resource Planning. These changes would clarify terminology and direction to provide the minimum forest transportation system for administration, protection, and use within a context of minimizing adverse environmental impacts and restoring healthy ecosystems. These proposed changes would require a comprehensive transportation system inventory and incorporate a science-based, multiple-scale transportation analysis into the forest planning process. The inventory and analysis will allow more careful consideration of decisions to construct new roads or decommission old ones. The proposed changes emphasize maintenance of needed roads and decommissioning of unneeded roads. The policy also provides for additional consideration and protection of unroaded area values in the land and resource planning management process.

The notice of the proposed revisions to FSM 7700 and 1920 are published separately elsewhere in this part of today's **Federal Register**.

New Analysis Process

The Forest Service must balance the need for agency and public access against the environmental costs associated with road construction and reconstruction. To accomplish this, Forest Service researchers and resource specialists have developed an integrated, science-based roads analysis process that allows objective evaluation of the environmental, social, and economic impacts of proposed road construction, reconstruction, maintenance, and decommissioning.

A science-based road analysis process recently developed and tested by the Forest Service is entitled *Roads Analysis: Informing Decisions About Managing the National Forest Transportation System* (USDA Forest Service, 1999, Misc. Rep. FS–643).

This road analysis processs comprises six steps aimed at producing needed information and maps. The steps are as follows:

- Step 1—Setting up the analysis.
- Step 2—Describing the Situation, *i.e.*, the existing road system in relation to current forest plan direction.
- Step 3—Identifying issues.
- Step 4—Assessing benefits, problems, and risks.
- Step 5—Describing management opportunities, establishing priorities, and formulating technical recommendations that respond to issues and effects.

• Step 6—Reporting, which includes maps and supporting information important for making decisions about future characteristics of the road system and changes to forest plans.

The road analysis neither makes decisions nor allocates lands for specific purposes. Rather, the new science-based road analysis identifies and addresses a set of possible issues and applicable analysis questions that, when answered, produce information for forest line officer consideration about possible road construction, reconstruction, and decommissioning needs and opportunities. The road analysis process examines issues at various scales, is flexible, and is driven by road issues important to the public and to managers.

This report is available from Publications Distribution, Rocky Mountain Research Station, 3825 E. Mulberry Street, Fort Collins, CO 80524–8597; *rschneider/rmrs@fs.fed.us* or *www.fs.fed.us/news/roads/roadsanalysis.htm*. Other National Forest transportation system research efforts are also available at *www.fs.fed.us/news/roads*.

Conclusion

Implementing this proposed road management strategy would improve service to users, protect environmental values, enhance public safety, mitigate environmental impacts, promote viable local communities, and boost credibility of our natural resource management. Reviewers are asked to review the proposed rule and proposed policy which follow and to provide the agency with comments. A table follows as Appendix B which may help reviewers understand the overall strategy and how the proposed rule and proposed policy relate.

Dated: February 25, 2000.

Mike Dombeck,

Chief.

Appendix A—Forest Service Road System Facts

1. The forest transportation system is extensive and diverse; it includes an estimated 380,000 miles of Forest Service roads. Public roads, such as State and county roads, and private roads maintained by others on National Forest System lands, also exist.

a. Approximately one-fourth (22 percent) of all Forest Service roads serve passenger car use.

b. Over one-half (55 percent) of all Forest Service roads are maintained for high-clearance vehicle use.

c. Approximately one-fourth (23 percent) of all Forest Service roads are closed to highway use by the public. Closed roads may be used for a variety of recreation uses, and for forest administration and protection.

d. Currently, Forest Service inventories have identified at least 60,000 miles of unclassified roads including temporary roads and roads that were never planned, built, or maintained to safety, service, and environmental standards. It is anticipated that future inventories will verify the existence of substantially more miles of unclassified roads.

e. More than 7,000 bridges on Forest Service roads exist; three-fourths of these are on the roads serving passenger car use.

f. In 1998, new construction of Forest Service roads was 215 miles or .06 percent of the total Forest Service road system. New construction has trended downward annually from 2,310 miles in 1988.

2. While a significant portion of the 192 million acres of the National Forest System is roaded, a significant and ecologically critical portion remains unroaded.

a. Some 34.7 million acres are currently designated as wilderness; approximately 6 million acres were proposed for wilderness designation in forest plans.

b. The National Forest System has an estimated 50 million acres of roadless Areas are inventoried through national roadless area review in the 1970's (RARE II) or through subsequent regional and local forest planning activities.

3. Current funding is inadequate to maintain all the existing roads to intended safety, service, and environmental standards to permit efficient and safe use, while mitigating adverse environmental impacts.

a. The Forest Service has available only about 20 percent of funds necessary to fully maintain Forest Service roads to intended safety, service, and environmental standards. As a result, roads not fully maintained become restricted to use by high clearance vehicles or are gated.

b. The backlog of deferred road maintenance and reconstruction needs on Forest Service roads is $8.4 billion. This backlog is due to the age of the arterial and collector roads (three-fourths are over 50-years old), heavy use, and the lack of regular maintenance.

c. From 1991 to 1997, the Forest Service decommissioned an average of 2,700 miles of roads per year.

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Appendix B

	Maintenance of Existing Roads	Decommissioning Existing Roads	Reconstructing Existing Roads	Constructing New Roads
Inventoried Roadless Area	**Long Term** •Science-based analysis* not required for routine & emergency maintenance **Transition** •Same as above **Is maintenance allowed?**	**Long Term** •If no longer needed •Priority given to decommissioning roads that are causing excessive damage •Decision based on science-based road analysis* **Transition** •Same as above **Is decommissioning allowed?**	**Long Term** •Decision based on science-based road analysis* **Transition** •During transition, must demonstrate compelling need and typically would require an EIS and Regional Forester decision **Is reconstruction allowed?**	**Long Term** •Decision based on science-based road analysis* **Transition** •During transition, must demonstrate compelling need and typically would require an EIS and Regional Forester decision **Is construction allowed?**
Classified Roads	Yes	Yes	Yes	Yes
Unclassified Roads	No[1]	Yes	No[2]	No[3]
Unroaded Areas	**Long Term** •Science-based analysis* not required for routine & emergency maintenance **Transition** •Same as above **Is maintenance allowed?**	**Long Term** •Priority given to decommissioning roads that are causing excessive damage •Decision based on science-based road analysis* **Transition** •Same as above **Is decommissioning allowed?**	**Long Term** •Decision based on science-based road analysis* **Transition** •During transition, must demonstrate compelling need and typically would require an EIS and Regional Forester decision **Is reconstruction allowed?**	**Long Term and Transfer** •Decision based on science-based road analysis* **Transition** •During transition, must demonstrate compelling need and typically would require an EIS and Regional Forester decision **Is construction allowed?**
Classified Roads	Yes	Yes	Yes	Yes
Unclassified Roads	No[1]	Yes	No[2]	No[3]
Roaded Areas	**Long Term** •Science-based analysis* not required for routine & emergency maintenance **Transition** •Same as above **Is maintenance allowed?**	**Long Term** •Priority given to decommissioning roads that are causing excessive damage •Decision based on science-based road analysis* **Transition** •Same as above **Is decommissioning allowed?**	**Long Term** •As identified through science-based road analysis* and as funding allows **Transition** •During transition, road analysis as appropriate, pending projects exempt **Is reconstruction allowed?**	**Long Term and Transfer** •Decision based on NFS resource management objectives and use of science-based road analysis* **Transition** •During transition, road analysis as appropriate, pending projects exempt **Is construction allowed?**
Classified Roads	Yes	Yes	Yes	Yes
Unclassified Roads	No[1]	Yes	No[2]	No[3]

***Note:** Road Analysis Process does not make decisions! It does collect or identify sets of options that are available to land managers for issues related to roads and access that will be needed to meet resource objectives.

a. Sets of actions already part of site-specific NEPA
b. Sets of actions that may be undertaken if so concluded by site-specific NEPA
c. Sets of actions which are inconsistent with Forest plans and would require Forest Plan amendment or revision **and** site-specific NEPA.

Road Maintenance is the perpetuation of existing roads and protection of the surrounding resources from the effects of roads. It is independent of road analysis. However, road analysis may inform decisions about which roads should be classified and therefore, maintained, and will help establish maintenance priorities.

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[1] Unclassified roads will not be maintained, except under emergency resource protection circumstances

[2] Through road analysis, it could be determined that some unclassified roads are necessary to support resource objectives and would be classified.

[FR Doc. 00-5002 Filed 3-2-00; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 212, 261, and 295

RIN 0596–AB67

Administration of the Forest Development Transportation System; Prohibitions; Use of Motor Vehicles Off Forest Service Roads

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: This proposed rule would revise regulations concerning the development, use, maintenance, and management of the national forest transportation system. This action is needed to reflect changes in public demand and use of National Forest resources; to better consider scientific information about the adverse environmental impacts of road construction; and to efficiently meet present and future management objectives in balance with available funding. In concert with the proposed revision of Forest Service road system administrative direction published elsewhere in this part of today's **Federal Register**, this rule will help ensure that additions to the Forest Service road system are those deemed essential for National Forest System resource management and use; that, to the extent practicable, construction, reconstruction, and maintenance of roads will minimize adverse environmental impact; and, finally, that unneeded roads are decommissioned and, where indicated, ecological processes are restored. The substantive changes are proposed to part 212, which addresses the forest transportaiton system. Proposed revisions to parts 261 and 295 are solely to conform terminology to that proposed to part 212. The Forest Service invites written comments and will analyze and consider those comments in development of the final rule.

DATES: Comments must be received in writing by May 2, 2000.

ADDRESSES: Send written comments to USFS CAET, Attention: Roads, P.O. Box 221090, Salt Lake City, UT 84122.

Send comments electronically to *roads/wo_caet-slc@fs.fed.us*. All comments received, including names and addresses when provided, are placed in the record and are available for public inspection and copying at Forest Service, 201 14th Street SW, Washington, D.C. 20250. Persons wishing to inspect the comments are encouraged to call 202–205–1400 to facilitate building entrance.

FOR FURTHER INFORMATION CONTACT: Heidi Valetkevitch, Office of Communication, 202–205–0914.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1998, in an Advance Notice of Proposed Rulemaking (ANPR) (63 FR 4350), the Forest Service announced its intent to revise regulations concerning management of the national forest transportation system. Simultaneously, the Forest Service published a proposed interim rule (63 FR 4351) to temporarily suspend permanent and temporary road construction and reconstruction in certain unroaded areas of National Forest System lands. The purpose of the interim rule was to take a "timeout" for 18 months while the Forest Service developed a new long-term road management policy and new analytical tools to provide a more ecological approach to analyzing existing and future road needs.

A final interim rule, issued on February 12, 1999, (64 FR 7289), temporarily suspended permanent and temporary road construction and reconstruction in certain unroaded areas of National Forest System lands. The temporary suspension is effective pending development of a revised forest transportation system policy, or 18 months from the effective date of the interim final rule, whichever is sooner.

Section-by-Section Explanation of Proposed Revisions to 36 CFR Part 212

The Forest Service proposes to revise 36 CFR part 212 to shift the emphasis from transportation development to managing access within the capability of the land. The proposed revision reflects changes in public opinion, demand, and use of National Forest resources and considers not only possible economic and social benefits associated with road construction and use but also scientific information about the adverse environmental impacts of road construction. In the proposed revision, emphasis is placed on providing administrative and public access and safety within a context of maintaining and restoring healthy ecosystems. The proposal shifts the focus of road management from development and construction of new roads to maintaining needed roads and decommissioning unneeded roads.

Proposed Change in Nomenclature. Consistent with the intent to shift emphasis from road development to environmentally sound access, the term "forest development transportation" is revised throughout Part 212 to remove the word "development."

Proposed § 212.1 Definitions. The term "forest transportation plan" is revised to refer to "forest transportation atlas" to more clearly reflect the nature and intent of this document. Also, definitions are added for "road, unclassified road, and classified road." These terms are necessary to understand and implement the requirements of proposed § 212.5 regarding the minimum Forest Service road system. The proposed definition of a road is a "A motor vehicle travelway over 50 inches, unless classified and managed as a trail. A road may be classified or unclassified." The 50-inch dimension was derived to generally distinguish between the largest of the motorized trail vehicles and the smallest of the highway vehicles. This definition would permit some trails to be over 50 inches wide as long as they are classified and managed as a trail. The terms "classified" and "unclassified" as used in the context of Forest Service roads are somewhat new. The term "unclassified" was first used in the September 1998 draft report, "The National Forest Road System and Its Use," which was posted on the Worldwide Web *www.fs.us/new/roads*. Its intent was to identify for management and analysis purposes the existence of those roads that were not intended to be a part of the permanent transportation system. The term "classified road" was used in the Temporary Suspension of Road Construction and Reconstruction in Unroaded Areas Interim Rule, 36 CFR part 212 (64 FR 7289; Feb. 12, 1999) to describe those roads that were constructed or maintained for long-term highway use. These definitions were also used in the Road Analysis Report (August 1999). Finally, the definitions for the terms classified, unclassified, and road as used in this proposal have been modified slightly for clarity and to reflect comments received. The proposed new road terms and their definitions are not intended to have an effect on the disposition of particular roads, only on how they are characterized for the purposes of analysis and for documentation in the forest transportation atlas.

Proposed § 212.2 Forest Transportation Program. The proposed rule would revise this section to update and clarify the required information to be collected and displayed in the forest transportation atlas (formerly called the transportation plan). Additionally, the section would require the use of a science-based analysis to identify

needed transportation facilities. The proposed rule also would remove paragraph (c), which addresses allocation of funds, because the statute on which this paragraph was based has been repealed.

Proposed § 212.5 Road System Management. This section of the proposed rule would direct agency officials to identify the minimum transportation system needed to administer and protect National Forest System lands using a science-based transportation analysis and recognizing likely, realistic funding estimates. Previously, forest transportation policy focused on road development and maintenance, and only limited attention has been paid to "decommissioning" roads. Given the shift in the focus of road management, new direction is needed to ensure that agency officials identify and decommission unneeded roads. This proposed revision to § 212.5 would require that if roads are determined to be unneeded, priority should be given to decommissioning those roads that pose the greatest risk of environmental damage.

The proposed rule does not establish any specific science-based analysis as the standard to be used; rather, it preserves Forest Service flexibility to further describe science-based transportation analysis in conjunction with other ecosystem analyses and to adjust the process in response to new scientific knowledge of road and resource management interactions. Science-based road analysis is discussed further in the proposed administrative direction published elsewhere in this part of today's **Federal Register**.

Proposed Conforming Amendments to 36 CFR Parts 261 and 295

The rules at 36 CFR part 261 give notice of prohibited acts on National Forest System lands. There are numerous references in these prohibitions to "forest transportation development roads." This proposed rule would remove the term "development" from various sections to conform the terminology to that proposed in part 212. Also, the rules at 36 CFR part 295 govern use of motor vehicles off forest development roads. This proposed rule would remove the term "development" from the heading and sections of Part 295 to conform the terminology to that proposed in Part 212. No substantive revisions are proposed to these parts.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a significant rule as defined by E.O. 12866 because of the importance of the Forest Service road system and the level of public interest expressed in the promulgation of the interim rule. Accordingly, OMB has reviewed this proposed rule. A cost-benefit analysis has been prepared as part of the environmental assessment on this proposal.

The basic approach is to issue new regulations consistent with emerging road management policy which encourages investing limited road management funds in a transportation system that best serves the current and anticipated management objectives and public uses of National Forest System lands. This new policy emphasizes investing in the process of decommissioning unneeded roads and reconstructing and maintaining the most heavily used roads. New road construction must be supported by rigorous analysis. Agency road management costs are not expected to change. Although this rule requires that the Agency use a new science-based roads analysis when making decisions about road construction, the Agency currently conducts some transportation analysis in the context of NEPA requirements or other forest planning assessments. Thus, the Agency does not expect an incremental increase of administrative costs due to new administrative requirements under this proposal. Most of the economic effects have not been quantified. They have been discussed and evaluated on a qualitative basis. Timber harvesting is an exception where quantitative data was reasonably available. A summary of the economic effects of the proposed change in road management strategy are as follows:

Roaded Areas: The differences between the no action alternative and the proposed action alternative tend to be minor. No significant difference in economic benefits or costs is expected for ease of access, public safety, law enforcement, timber management, and wilderness or heritage resources. Potential positive economic effects are expected for fire management, insect and disease management, noxious weed control, water and air quality, wildlife and fish values, and passive use values. These positive effects result from road decommissioning. Different types of recreation use are affected in different ways—some positive and some negative.

Roadless Areas (inventoried roadless and other unroaded areas): The differences between the no-action alternative and the proposed action alternative would be greatest during the transition phase. No differences are expected for access, public safety, and law enforcement. The only negative effects expected during the transition period would be from reduced timber harvest and mineral exploration and extraction. If all road construction were delayed during the transition in all of the roadless areas, the maximum potential total reduction in timber harvest would be 351 million board feet of timber per year. The cost associated with this reduced timber harvest would be $42 million annually. Also lost, as a result of decreased timber production, would be approximately 3,700 jobs and $10 million in payments-to-states each year. This loss in payments-to-states would be partially offset by Payments in Lieu of Taxes. Positive effects are expected for fire prevention, insect and disease management, noxious weeds, watershed and air quality, wildlife and fish, wilderness, and passive use values. These positive effects result from lack of new road development. The effects on recreation and heritage resources are complex and ambiguous and depend upon the type of activity—some are positive and some are negative. Less access reduces the level of participation. However, the quality of wilderness type recreation use is protected and vandalism of heritage sites is lessened.

In summary, the proposed regulations will permit a reallocation of funds to management activities that are consistent with present resource management direction. While the agency could not quantify or monetize many of the impacts of this proposed rule, the agency thoroughly considered both the potential quantified and qualitatively-discussed costs and benefits. Pursuant to requirements of Executive Order 12866, the agency carefully assessed alternative regulatory approaches and is proposing this rule only upon making a reasoned determination that the benefits justify the costs. See the "Environmental Impact" section which follows for availability of the full cost-benefit analysis.

This proposed rule has been considered in light of the Regulatory Flexibility Act (5 USC 601 et seq. This proposed rule primarily involves agency terminology and broad principles to guide the planning and management of the Forest Service road system and has no direct or indirect financial or other impact on small businesses. Therefore, it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by the Act.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this proposed rule on State, local, and tribal governments, and on the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local, or tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The Forest Service's assessment is that this proposed rule falls within this category of exclusion. Nevertheless, to further the intent of the National Environmental Policy Act, the agency has elected to prepare an environmental assessment. This document may be obtained from the internet at *www.fs.fed.us/news/roads/ea2.htm* or by writing to the Director of Ecosystem Management Coordination, P.O. Box 96090, Washington, DC 20090. Comments on the environmental assessment should be submitted with any comments on the proposed rule.

No Takings Implications

This proposed rule has been reviewed for its impact on private property rights under Executive Order 12630. It has been determined that this proposed rule does not pose a risk of taking Constitutionally-protected private property; in fact, the proposed rule honors access to private property pursuant to statute and to outstanding or reserved rights.

Civil Justice Reform Act

This proposed rule revision has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed revision would (1) Preempt all State and local laws and regulations that are found to be in conflict with or that would impede its full implementation; (2) would not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of National Forest System lands; and (3) does not require administrative proceedings before parties may file suit in court challenging these provisions.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Federalism

The agency has considered this proposed rule under the requirements of Executive Order 12612 and has made a preliminary assessment that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment on federalism implications is necessary at this time. In addition, the agency has reviewed the consultation requirements under Executive Order 13132, effective November 2, 1999. This new Order calls for enhanced consultation with State and local governmental officials and emphasizes increased sensitivity to their concerns.

In the spirit of these new requirements, the agency has already carefully considered in the development of this proposed rule the comments received from States, tribes, and local governments in response to the Advanced Notice of Proposed Rulemaking published January 28, 1998 (63 FR 4350). In proposed section 212.1, the definition of "forest transportation atlas" recognizes the need to consider forest resources upon which communities depend. Section 212.5 of the proposed rule would require agency officials to use a science-based road analysis process and involve the public in identifying the Forest Service road system. Also, the proposed rule at section 212.5(b)(1) calls for consultation with affected State, tribal, and local governments in identifying transportation needs. In addition to public comments on this Notice, the agency will meet with State, tribal, and local government officials to clarify understanding of the proposed rule and to understand their concerns. Prior to adopting a final rule, the agency will consider the extent to which additional consultation is appropriate under Executive Order 13132.

Conclusion

The Forest Service proposes to revise its regulations concerning the national forest transportation system to shift emphasis from transportation development to managing access within the capability of the land. The proposed revisions to 36 CFR parts 212, 261, and 295, in conjunction with proposed administrative direction published elsewhere in this part today, will provide the framework for achieving this new emphasis. The Forest Service invites written comments and will consider those comments in developing the final rule that will be published in the **Federal Register**. Additionally, Forest Supervisors may hold meetings to provide an opportunity for local comment and clarification of this proposed rulemaking.

List of Subjects

36 CFR Part 212

Highways and roads, National forests, Public lands—rights-of-way, and Transportation.

36 CFR Part 261

Law enforcement, Investigations, National forests, and Seizures and forfeitures.

36 CFR Part 295

National forests and Traffic regulations.

For the reasons set forth in the preamble, the Forest Service proposes to amend Chapter II of Title 36 of the Code of Federal Regulations as follows:

PART 212—ADMINISTRATION OF THE FOREST TRANSPORTATION SYSTEM

1. The authority citation for Part 212 continues to read as follows:

Authority: 16 U.S.C. 551. 23 U.S.C. 205.

2. Revise the heading for Part 212 as set out above.

3. Remove the words "forest development" and, in their place, add the word "forest" in the following places:

a. § 212.1(e) heading;
b. § 212.1(h) text;
c. § 212.1(i) text;
d. § 212.1(j) text;
e. § 212.1(k) text;
f. § 212.2 heading;
g. § 212.2(b) text;
h. § 212.4(a) text; and
i. § 212.4(b) text.

4. Amend § 212.1 as follows:

a. Remove the paragraph designations and arrange the terms in alphabetical order.

b. Remove the definitions for "forest development transportation plan" and

"forest development transportation facility," and add definitions, in alphabetical order, for "forest transportation atlas," "forest transportation facility" and "road" to read as follows:

§ 212.1 Definitions.

* * * * *

Forest transportation atlas. An inventory, description, and display of roads, trails, and airfields that are important to the management and use of National Forest System lands or to the development and use of resources upon which communities within or adjacent to the National Forests depend and associated information.

Forest transportation facility. A classified road, trail, airfield, bridge, culvert, parking lot, log transfer facility, road safety and other appurtenances in a national forest or grassland transportation network and under Forest Service jurisdiction that is all or partly within or adjacent to National Forest System lands.

* * * * *

Road. A motor vehicle travelway over 50 inches wide, unless classified and managed as a trail. A road may be classified or unclassified.

(1) *Classified road.* Roads within National Forest System lands planned or managed for motor vehicle access including state roads, county roads, private roads, permitted roads, and Forest Service roads.

(2) *Unclassified roads.* Roads not intended to be part of, and not managed as part of, the forest transportation system, such as temporary roads, unplanned roads, off-road vehicle tracks, and abandoned travelways.

* * * * *

5. Amend § 212.2 by removing paragraph (c) and revising paragraph (a) to read as follows:

§ 212.2 Forest transportation program.

(a) For each national forest, grassland, and experimental forest and any other unit of the National Forest System, the Forest Supervisor or other responsible official must prepare and keep current a forest transportation atlas. The purpose of the atlas is to display the system of roads, trails, and airfields of the unit. The identification of transportation facilities needed for management and public access must be based upon a science-based analysis, as cited in the agency directive system (36 CFR 200.4). In order to be used to identify National Forest System transportation facilities, a science-based analysis must provide for consideration of environmental, social, and economic effects and also provide for consideration, at various ecological scales, of transportation facilities needed to meet resource management objectives.

* * * * *

§§ 212.5, 212.6, 212.7, 212.10 [Amended]

6. Remove the words "forest development roads" and, in their place, add the words "Forest Service road" in the following places:

a. § 212.5(a) text;
b. § 212.6(b) text;
c. § 212.6(c) text;
d. § 212.7(a) text; and
e. § 212.10 heading and text.

7. Amend § 212.5 by adding paragraph (b) to read as follows:

§ 212.5 Road system management.

* * * * *

(b) *Forest Service road system.*

(1) *Identification of system.* In planning for the management of the Forest Service road system for each national forest and grassland, agency officials shall identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands. The road system for each unit of the National Forest System must be commensurate with the resource objectives adopted in the land and resource management plan, reflect likely funding expectations, and, to the extent practicable, minimize the adverse environmental impacts associated with road construction, reconstruction, and maintenance. To provide essential information about road management opportunities within a national forest or grassland and to help identify the road system that best meets applicable statutory and regulatory requirements, Forest Service officials shall conduct a science-based analysis at appropriate scales which includes opportunities for public involvement and consultation with state, local, and tribal governments.

(2) *Identification of unneeded roads.* In identifying the forest road system, forest officers also shall identify those roads under Forest Service jurisdiction that are not needed to meet forest resource management objectives and that, therefore, should be decommissioned. Decommissioning roads involves restoring them to a more natural state through activities such as reestablishing former drainage patterns, stabilizing slopes, and restoring vegetation. In scheduling the decommissioning of roads, forest officials shall give priority to decommissioning those roads that pose the greatest risk to public safety or to environmental quality. Other unneeded roads should be scheduled for decommissioning commensurate with their potential risk and available funding.

* * * * *

8. Amend § 212.20 by revising the heading and paragraph (a) to read as follows:

§ 212.20 National Forest trail system operation.

(a) *Forest Service trails.* Forest Service trails shall be identified on a map available to the public at the offices of the Forest Supervisors and District Rangers and shall be marked on the ground by appropriate signs which reasonably bring their location to the attention of the public.

* * * * *

PART 261—PROHIBITIONS

9. The authority citation for Part 261 continues to read as follows:

Authority: 16 U.S.C. 551, 16 U.S.C. 472.

10. In the following places, remove the words "forest development road" or "forest development roads" and, in their respective places, add the words "Forest Service road" or "Forest Service roads":

a. § 261.1(a)(1) text;
b. § 261.1 (a)(3) text;
c. § 261.2 text;
d. § 261.10(d)(2) text;
e. § 261.12 heading;
f. § 261.50(b) text;
g. § 261.50(f) text; and
h. § 261.56 heading and text.

PART 295—USE OF MOTOR VEHICLES OFF FOREST SERVICE ROADS

11. Revise the heading for Part 295 as set out above.

12. The authority citation for Part 295 continues to read as follows:

Authority: 30 Stat. 35, as amended (16 U.S.C. 551): 50 Stat. 525, as amended (7 U.S.C. 1011) E.O. 11644, 11989 (42 FR 26959).

13. In § 295.1, remove the words "National Forest development roads" and, in their place, add the words "Forest Service roads."

14. Remove the words "forest development roads" and, in their place, add "Forest Service roads" in the following places:

(a) § 295.2 heading, and
(b) § 295.5 heading.

Dated: February 25, 2000.

Mike Dombeck,

Chief.

[FR Doc. 00–5001 Filed 3–2–00; 8:45 am]

BILLING CODE 3410–11–U

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB67

Forest Transportation System

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed administrative policy; request for comment.

SUMMARY: In conjunction with a proposed rule published elsewhere in this part of today's **Federal Register**, the Forest Service proposes to revise its administrative direction governing forest transportation planning and management. This action is necessary to ensure that the forest transportation system meets current and future land and resource management objectives and provides for attendant public uses of National Forest System lands; provides for safe public access and travel; allows for economical and efficient management; and, to the extent practicable, minimizes and begins to reverse adverse ecological impacts. The intended effects of this action are to ensure that decisions to construct new roads will be made only upon completion of a science-based road analysis; that emphasis will be given to decommissioning unnecessary classified and unclassified roads and to reconstructing and maintaining classified roads rather than constructing new roads, where supported by analyses; and that the availability of road maintenance funding will be considered when assessing new road construction. Public comment is invited and will be considered in adoption and issuance of the final directives.

DATES: Comments must be received in writing by May 2, 2000.

ADDRESSES: Send written comments to USFS CAET, Attention: Roads, P.O. Box 221090, Salt Lake City, UT 84122. Send comments electronically to *roads/wo_caet-slc@fs.fed.us*. All comments received, including names and addresses when provided, are placed in the record and are available for public inspection and copying at Forest Service headquarters, 201 14th Street SW, Washington, DC 20250. Persons wishing to inspect the comments are encouraged to call 202–205–1400 to facilitate building entrance.

FOR FURTHER INFORMATION CONTACT: Heidi Valetkevitch, Office of Communication, 202–205–0914.

SUPPLEMENTARY INFORMATION:

Background

Forest Service roads are constructed and maintained to provide public and administrative access and to allow for delivery of goods and services. However, few land impacts are more lasting than those associated with road construction. Forest Service land managers face complex transportation-related issues including funding limitations, environmental and social impacts, substandard roads, and maintaining unroaded area values.

In the past, Forest Service transportation policy focused on development of roads into and across National Forest System lands. Over the years, this emphasis on road development has led to heightened concern about water quality, recreation opportunities, and restoration and maintenance of sustainable ecosystems. Today, the Forest Service considers the National Forest road system, at approximately 380,000 miles of road, to be largely complete. As a result, the previous emphasis on road development has evolved into the present focus on managing access within the capability of the land.

Administrative direction to guide forest officers in planning and managing the transportation system is issued in Forest Service Manual (FSM) Title 7700—National Forest Transportation System, FSM Chapter 1920—Land and Resource Management Planning, and in associated handbooks. Numerous changes in these directives are necessary to address the new emphasis on sustaining access within the capability of the land.

One of the significant changes is the direction to utilize a science-based road analysis, at appropriate scales and in coordination with other ecosystem assessments, to inform decisions about road construction, reconstruction, maintenance, and decommissioning. The directives specifically direct forest officers to use an analysis process such as that described in the report *Roads Analysis: Informing Decisions About Managing the National Forest Transportation System* (USDA Forest Service, 1999, Misc. Rep. FS–643) in order to gain improved information on which to identify road management opportunities and to assess priorities among various transportation facilities.

Developed by a team of Forest Service research scientists, engineers, and resource professionals and field tested on six national forests across the country, the process is designed to help forest officers move methodically through a science-based analysis to identify environmental issues and concerns about road management and also to identify potential solutions and management opportunities. The proposed directives would further require that, before decisions about road construction, reconstruction, and decommissioning are initiated, a science-based road analysis is used. A science-based road analysis will provide an additional avenue for public comment and participation about road management options and will provide land managers with access alternatives. In addition, decisionmakers will have improved information on which to plan and design a feasible Forest Service road system within the constraints of current and anticipated future funding levels.

Summary of Proposed Changes

To implement a long-term road management strategy and implement the proposed rule changes (published elsewhere in this part of today's **Federal Register**), the Forest Service proposes to revise Forest Service Manual (FSM) Chapter 1920—Land and Resource Management Planning and Title 7700—Forest Transportation System. For those who are not familiar with the Forest Service administrative directive system, a brief description is at 36 CFR 200.4. Issuances contained in the directive system and information about the system are also available on the internet on the directives homepage at *http://www.fs.fed.us*.

Proposed Amendments to FSM Chapter 1920—Land and Resource Management Planning. This chapter provides definitions and implementing policy for the Forest Service land and resource management planning process. Implementation of the proposed road management strategy will occur chiefly within the forest plan amendment or revision processes. Therefore, direction is needed on how forest planning teams are to integrate consideration of the forest transportation system into the planning process. Specifically, a new paragraph 20 is proposed to be added to section 1922.15 of the Forest Service Manual. This new paragraph would require planners to identify the access requirements and travel management options available to meet resource management objectives for each management area prescription and to identify road management opportunities to be considered.

In addition to addressing how transportation needs should be integrated into forest planning, the proposed policy would also require that management prescriptions protect values associated with unroaded conditions. Proposed paragraph 28 gives examples of those values, such as serving as barriers to invasive species and providing biological diversity. This proposed direction would fill an important gap in current planning

guidelines. To help implement this paragraph, the proposed revision to Section 1920.5 defines "roadless areas" and "unroaded areas," and the revision to Section 1922.15 provides direction for protection of unroaded area values under the current forest planning process. On October 5, 1999, the agency published proposed new rules for forest planning (64 FR 54073). Upon adoption of a final planning rule, the direction on consideration of unroad values would be integrated with revised agency directives implementing the new planning rule. The proposed definitions here are essentially the same as those included in the proposed planning rule at proposed § 219.36.

Proposed Amendments to FSM Title 7700—Chapter Zero Code. This chapter establishes the overarching authorities, objectives, policy, responsibilities, and definitions for planning, improving, operating, and maintaining the forest transportation system. Throughout this chapter, references to "development" would be removed to reflect a shift in policy from "road development" to "managing access within the capability of the land." A brief description of other revisions proposed in this chapter follows.

Section 7702. This section is for identifying the broad objectives of transportation system management—that is the general outcomes the agency wishes to achieve. The proposed revision would refine the management objectives to emphasize environmental protection and to recognize ecosystem values in forest transportation system management.

Section 7703. This section sets out the broad policies that govern transportation planning, design and administration. The proposed revision to this section would establish a policy of providing the minimum forest transportation system that best serves the current and anticipated land management objectives and public uses considering current and likely future funding levels. By "minimum system," the agency does not mean there will not be new roads or other new transportation facilities. Rather, this terminology reflects the agency's conclusion that, particularly with respect to roads, there is little justification for continuing to plan transportation facilities and systems at the high levels of the past 40 years. The agency considers the forest road system to be essentially complete because of previous levels of road construction. Moreover, the agency lacks sufficient funding to maintain all of the system now. Also, land managers recognize that the economic benefits normally associated with roads now rarely balance or outweigh the adverse environmental impacts associated with road construction or reconstruction. Thus, prudent management now requires that the Forest Service focus on evaluating the road system already in place in light of likely future funding, resource management prescriptions, and environmental effects.

This proposed section would include a new policy requiring a rigorous environmental analysis to carefully consider proposals for adding and constructing new roads and to help identify priorities for decommissioning unneeded roads and reconstructing and maintaining needed roads.

Section 7705. The proposed changes to this section would add new definitions and update and revise existing definitions to remove the emphasis on "development" and to clarify intent. Definitions of "roads," "classified roads," and "unclassified roads," as proposed at 36 CFR 212.1 would be repeated for user convenience. In addition, the definition of "public road" from 23 U.S.C. 101(a) would be added, as well as a definition of "decommissioning." A cross reference to FSM 1920.5 for the definition of "unroaded areas" also would be provided.

In the last year, the Forest Service has adopted new common terms and definitions for maintenance and construction based on standards developed by the Federal Accounting Standards Advisory Board. These generic terms are now being applied in inventorying, budgeting, and accounting for all fixed assets under Forest Service jurisdiction, including the national forest transportation system. The terms and definitions used in FSM 7705, though slightly different, are not inconsistent with the new common financial management terms and their definitions. The agency is assessing its transportation directives to determine what changes in the Forest Service Manual and Handbook terminology are needed. However, this effort exceeds the scope of this proposed revision to road management directives. Persons interested in viewing the new maintenance and construction terms may obtain them on line at www.fs.fed.us/news/roads or by writing or calling the names or units listed earlier in this notice under **ADDRESSES** and **FOR FURTHER INTEREST CONTACT**.

In addition to the changes in broad policy in FSM 7700—Zero Code, changes are proposed to Chapter 7710, the name of which would be revised from "Transportation Planning" to "Transportation Atlas, Records, and Analysis."

Section 7710.2. This section articulates the management results to be achieved through transportation analysis. Proposed paragraphs 1 and 4 are new. Consistent with the shift from development to managing the road system within the capability of the land, paragraph 1 would call for forest officers to establish the minimum forest transportation system that will best provide for management access and public uses as identified in forest plans. Paragraph 4 would add consultation with State, local, and tribal governments, as well as public involvement.

Section 7710.3. This section establishes the overall requirements for transportation system planning, analysis, and decision documentation. Proposed section 7710.31 sets out the general direction for transportation analysis, which would apply to transportation analysis conducted as part of the forest plan amendment and revision process as well as to proposed site-specific projects. First, the analysis should be rigorous and focused on the need for access and the transportation infrastructure required to provide that access. This section would also include the requirement to use the best available science in considering effects of transportation facility construction, reconstruction, maintenance, and decommissioning. This proposed section would also direct forest officers to integrate road analysis with other ecosystem assessments and analyses and to incorporate findings of such analyses into forest plan amendments or revisions or site-specific projects. This section would also require forest officers to ensure that any roads to be added to the transportation system, or new road construction, serve a documented need and are supported by a road analysis.

Proposed section 7710.32 provides more specific direction to guide road analysis. Proposed paragraph 1 (Long-term Application) makes clear that the Forest Supervisor does not have to stop all road management until a road analysis is done, but, rather, recognizes that road analyses will be conducted in the course of business as the need arises. The proposed paragraph cites the report *Roads Analysis: Informing Decisions About Managing the National Forest Transportation System (USDA Forest Service, 1999, Misc. Rep. FS–643)* as a good example of a science-based road analysis procedure. The Road Analysis Process was refined as a result of pilot testing on six National Forests (M-) located across the county—the Boise NF (Idaho), the Black Hills NF

(South Dakota), the Mark Twain NF (Missouri), the Tongass NF (Alaska), the Ocala NF (Florida), and the Willamette NF (Oregon). The new science-based road analysis identifies and addresses a set of possible issues and applicable analysis questions that, when answered, produce information for line officer consideration about possible road construction, reconstruction, and decommissioning needs and opportunities. The road analysis examines issues at various scales, is flexible, and is driven by road issues important to the public, to state, local and tribal governments, and to managers. The directive does not adopt this report as a compulsory analytical tool, but it does establish the report as the standard for comparison when requesting Deputy Chief for National Forest System approval of an alternate science-based analysis process.

Proposed paragraph 2.a. addresses how the agency should handle road construction in sensitive roadless and unroaded areas until forest plan revision is completed. This transitional direction is necessary because the interim suspension on road construction in roadless areas (64 FR 7289; February 12, 1999), expires in September 2000, and it will be several years before all forest plan revisions are completed and sometime before the agency's final roadless rule is adopted. Without some transitional procedures, the special values associated with roadless areas could be subject to an incremental, project-by-project risk of degradation.

The proposed policy would ensure that these roadless areas are given careful consideration through the forest planning process by requiring the following:

1. First, proposals for new road construction or reconstruction in defined roadless and unroaded areas would have to meet a compelling need. Examples of compelling needs include public safety, critical resource restoration, and access required by statute, treaty, or pursuant to reserved or outstanding rights. As indicated by the examples given, the agency envisions "compelling need" to primarily include restorative actions. However, the Tongass National Forest may constitute a special situation. Consistent with the April 1999 Record of Decision for the Tongass National Forest Land and Resource Management Plan, the Regional Forester has authority to determine that a compelling need exists in seeking to meet market demand for timber, to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources, pursuant to the Tongass Timber Reform Act (1990) and all other applicable laws.

2. Second, the proposal would require an Environmental Impact Statement to authorize road construction or reconstruction in the defined roadless and unroaded areas.

3. The Regional Forester, rather than the Forest Supervisor, would be the responsible official, for any road construction proposal in roadless and unroaded areas.

The proposed policy would find environmental mitigation and restoration in roadless and unroaded areas to be appropriate but makes clear that maintenance of unclassified roads in roadless and unroaded areas would be inappropriate, because such activity would lead to defacto road development.

The proposed paragraph also describes the roadless and unroaded areas to which the protections of the transition period would apply. These are the same areas as identified in the interim rule suspending road construction in roadless areas which took effect March 1, 1999.

Proposed paragraph 2.b. exempts projects in roaded areas which are currently underway or listed in the schedule of proposed actions published pursuant to 36 CFR part 215. This exemption is necessary to avoid costly disruption of projects underway or planned at the time the policy is adopted. However, the proposal does not exempt forests that have recently revised forest plans from the transitional procedures, because the science-based road analysis process has not been incorporated into the revision processes on those forests. Also, it should be noted that it is not unusual for forests to prepare EIS's on proposed road construction in unroaded areas. Therefore, for many forests, these transitional requirements do not represent a significant changes from present practice.

Proposed section 7710.32, paragraph 3, sets out the duration of the transitional procedures that apply to roadless areas. For forests that have not yet revised their forest plans, the transitional procedures would remain in effect until forest plans are revised. For forests that have revised their forest plans since January 1, 1996, the transitional procedures could be lifted on roadless areas once the roads analysis process is applied to units of the forest and the Regional Forester makes a written determination concluding that there is no need to revise or amend the forest plan as a result of the analysis or an amendment or revision adopts the findings into the forest plan.

Section 7711. Consistent with the proposed rule, this section proposes to rename the transportation "plan" as the transportation "atlas" and requires that each forest transportation system facility be identified and described in the transportation atlas. Specific instructions are given for the road atlas portion of the transportation atlas.

Section 7712. This section discusses the scope and levels of transportation analysis and further describes the analysis processes, including reference to the report, *Roads Analysis: Informing Decisions About Managing the National Forest Transportation System (USDA Forest Service, 1999, Misc. Rep. FS–643).* This section also requires documentation of road management objectives.

Regulatory Impact

These proposed administrative policy revisions have been reviewed under USDA procedures and Executive Order (E.O.) 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that they, in concert with a proposed rule published separately in today's **Federal Register**, are a significant action as defined by E.O. 12866 because of the importance of the Forest Service road system and the strong public interest expressed. Accordingly, OMB has reviewed these proposed directive revisions. A cost-benefit analysis has been prepared as part of the environmental assessment on this proposal. A summary of the cost-benefit analysis follows.

The basic approach is to issue new regulations consistent with emerging road management policy which encourages investing limited road management funds in a transportation system that best serves the current and anticipated management objectives and public uses of National Forest System lands. This new policy emphasizes investing in the process of decommissioning unneeded roads and reconstructing and maintaining the most heavily used roads. New road construction must be supported by rigorous analysis. Agency road management costs are not expected to change. Although this rule requires that the Agency use a new science-based roads analysis when making decisions about road construction, the Agency currently conducts some transportation analysis in the context of NEPA requirements or other forest planning assessments. Thus the Agency does not expect a significant increase of administrative costs due to new administrative requirements under this proposal. Most of the economic effects have not been quantified. They have been discussed and evaluated on a qualitative basis. Timber harvesting is an exception where quantitative data was reasonably available. A summary of

the economic effects of the proposed change in the road management strategy are as follows:

Roaded Areas: The differences between the no action alternative and the proposed action alternative tend to be minor. No significant difference in economic benefits or costs is expected for ease of access, public safety, law enforcement, timber management, and wilderness or heritage resources. Potential positive economic effects are expected for fire management, insect and disease management, noxious weed control, water and air quality, wildlife and fish values, and passive use values. These positive effects result from road decommissioning. Different types of recreation use are affected in different ways—some positive and some negative.

Roadless Areas (inventoried roadless and other unroaded areas): The differences between the no-action alternative and the proposed action alternative would be greatest during the transition phase. No differences are expected for access, public safety, and law enforcement. The only negative affects expected during the transition period would be from reduced timber harvest and mineral exploration and extraction. If all road construction were delayed during the transition in all of the roadless areas, the maximum potential total reduction in timber harvest would be 351 million board feet of timber per year. The maximum cost associated with this reduced timber harvest would be $42 million annually. Also lost, as a result of decreased timber production, would be approximately 3,700 jobs and $10 million in payments-to-states each year. This loss in payments-to-states will be partially offset by Payments in Lieu of Taxes. Positive effects are expected for fire prevention, insect and disease management, noxious weeds, watershed and air quality, wildlife and fish, wilderness, and passive use values. These positive effects result from lack of new road development. The effects on recreation and heritage resources are complex and ambiguous and depend upon the type of activity—some are positive and some are negative. Less access reduces the level of participation. However, the quality of wilderness type recreation use is protected and vandalism of heritage sites is lessened.

In summary, the proposed regulations will permit a reallocation of funds to management activities that are consistent with present resource management direction. While the agency could not quantify or monetize many of the impacts of this proposed rule, the agency thoroughly considered both the potential quantified and qualitatively-discussed costs and benefits. Pursuant to the requirements of Executive Order 12866, the agency carefully assessed alternative regulatory approaches and is proposing this rule only upon making a reasoned determination that the benefits justify the costs.

The complete cost-benefit analysis is contained in the Environmental Assessment. See the "Environmental Impact" section which follows for availability. These proposed revisions of administrative directives have been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These proposed revisions provide service-wide direction to forest and regional personnel about planning and managing the Forest transportation system. No direct or indirect financial or access impact on small businesses has been identified. Therefore, it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of these proposed administrative policy revisions on State, local, and tribal governments, and on the private sector. These proposed administrative policy revisions do not compel the expenditure of $100 million or more by any State, local, or tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Environmental Impact

Section 31.1(b) of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions." The Forest Service's assessment is that these proposed administrative policy revisions fall within this category of exclusion. Nevertheless, to further the intent of the National Environmental Policy Act, the agency has elected to prepare an environmental analysis. This document may be obtained from the internet at *www.fs.fed.us/news/roads/ea2.htm* or by writing to the Director of Ecosystem Management Coordination, P.O. Box 96090, Washington, DC 20090. Comments on the environmental assessment should be submitted with any comments on the proposed rule.

No Takings Implications

These proposed administrative policy revisions were reviewed for their impact on private property rights under Executive Order 12630. It has been determined that they do not pose a risk of taking of Constitutionally-protected private property because the proposed administrative policy revisions honor access to private property pursuant to statute or to outstanding or reserved rights.

Civil Justice Reform Act

These proposed administrative policy revisions were reviewed under Executive Order 12988, Civil Justice Reform. They would (1) Preempt all State and local laws and regulations that are in conflict or which would impede its full implementation; (2) Do not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of the National Forest System lands; and (3) Do not require administrative proceedings before parties may file suit in court challenging these provisions.

Controlling Paperwork Burdens on the Public

These proposed administrative policy revisions do not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, impose no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 USC 3501, *et seq.*) and implementing regulations at 5 CFR Part 1320 do not apply.

Comments Invited

Public comment is invited. The proposed administrative policy and procedures would revise existing administrative policy and procedures in FSM 1920 and FSM 7700. Manual texts containing the proposed administrative policy revisions are at the end of this notice. The Forest Service invites written comments and will analyze and consider those comments in development of the final notice of administrative policy that will be published in the **Federal Register**. Additionally, Forest Supervisors may hold meetings to provide an opportunity for local comment and clarification of these proposed directives.

Dated: February 25, 2000.

Mike Dombeck,

Chief.

Proposed Forest Service Manual Revision

(*Note:* The Forest Service organizes its directive system by alphanumeric codes and subject headings. Only those sections of the FSM that are the subject of this notice are set out here. Those who wish to see the entire documents into which the proposed changes would be incorporated may do so via the internet at *http://fsweb.wo.fs.fed.us/directives/index.html*. Forest Service employees charged with decisionmaking responsibilities concerning the National Forest transportation system are the intended audience of these proposed administrative policy revisions.)

Chapter 1920—Land and Resource Management Planning

1920.5—Definitions. (*Note:* These proposed definitions are essentially the same as those included in the proposed forest planning rule (64 FR 54073) at proposed § 219.36.)

Inventoried Roadless areas. For purposes of forest planning, undeveloped areas typically exceeding 5,000 acres that met the minimum criteria for wilderness consideration under the Wilderness Act and that were inventoried during the Forest Service's Roadless Area Review and Evaluation (RARE II) process, or subsequent forest planning. Criteria for inventorying roadless areas in the eastern United States are in Forest Service Handbook 1909.12, Chapter 7. An area is either a roadless area or an unroaded area, but not both.

Unroaded areas. Any area without the presence of a classified road (proposed 36 CFR 212.1). The size of the area must be sufficient and in a manageable configuration to protect the inherent values associated with the unroaded condition. Unroaded areas do not overlap with designated roadless areas.

1922.15—Resource Integration Requirements. Requirements for integrating individual forest resources, including wilderness and other special areas, into the forest planning process are in 36 CFR 219.14 through 219.27. Refer to the Forest Service Handbook 1909.12 for details on how to incorporate resources into the planning process. In addition, the forest planning process must:

* * * * *

20. Identify the specific access requirements and travel management options available to meet the objectives for each management prescription. Describe how access will be provided and how travel will be managed. Include the Forest Service road system, off-road travel, and air and water access. Integrate considerations of biological, physical, social, and economic factors and environmental design criteria. Link access and travel requirements and opportunities to the full spectrum of resource objectives for each management area and alternative.

* * * * *

28. Ensure that management prescriptions protect values associated with unroaded conditions such as unique or important habitat for wildlife, fish and plant species, sources of drinking water, cultural or historic areas, sources of dispersed recreation, barriers to invasive species, high or unique biological diversity, or research.

FSM 7700—Forest Transportation System Chapter—Zero Code

This title prescribes the authority, objectives, policy, responsibility, and definitions for planning, reconstruction, improvement, operation, and maintenance of forest transportation system facilities.

7701—Authority.

7701.1—Coordination with Forest Planning.

1. *Title 36, Code of Federal Regulations, section 219.27 (36 CFR 219.27).* These rules require transportation access to be addressed in the land management planning process.

7701.2—Revegetation.

1. *Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601, Pub. L. 93–378) as amended by the National Forest Management Act of 1976 (16 U.S.C. 1608, Pub. L. 94–588).* Directs that roads be designed to standards appropriate for intended uses and prescribes the revegetation of unnecessary roads.

7701.3—Transportation System Management.

1. *National Forest Roads and Trails Act of October 13, 1964 as amended (16 U.S.C. 532–538, Pub. L. 88–657).* Authorizes road and trail systems for the National Forests. Authorizes the granting of easements across Forest Service administered lands, the construction of maximum economy roads (FSM 7705) and methods for financing them, and the imposing of requirements on road users for maintaining and reconstructing roads, including cooperative deposits for such work.

2. *Highway Safety Act of 1966 (23 U.S.C. 402, Pub. L. 89–564).* Directs States and participating Agencies to identify and survey accident locations; to design, construct, and maintain roads in accordance with safety standards; to apply sound traffic control principles and standards; and to promote pedestrian safety.

3. *National Trails System Act of October 2, 1968 (16 U.S.C. 1241–1249, Pub. L. 90–543).* Establishes the National Trail System, including planning, right-of-way acquisition, and construction of trails designated by Congress or the Secretary of Agriculture.

4. *Title 36, Code of Federal Regulations, Part 212 (36 CFR Part 212).* These rules establish requirements for the administration of the forest transportation system, including roads, trails and airfields, and provisions for acquisition of rights-of-way.

5. *Title 36, Code of Federal Regulations, sections 261.12 and 261.54 (36 CFR 261.12 and 261.54).* These rules establish prohibitions on Forest Service roads that are enforceable by the Forest Service.

* * * * *

7702—Objectives. The results to be achieved by developing and managing the forest transportation system are as follows:

1. To provide sustainable access to National Forest System lands for administration, protection, and utilization of these lands and resources.

2. To manage a forest transportation system within the capabilities of the land.

3. To manage forest transportation system facilities to provide user safety, convenience, and efficiency of operations while minimizing adverse environmental impacts and, where appropriate, restoring ecosystems within the limits of current and likely funding levels.

4. To coordinate access to National Forest System lands with National, state-wide and local transportation needs.

7703—Policy. Determine and provide the minimum forest transportation system to best serve the current and anticipated management objectives and public uses of National Forests lands as identified in the relevant land and resource management plans (FSM 1920). In providing access, forest officers should minimize investment and maintenance costs and should not compromise land health or water quality.

7703.1—Road Management. In managing the Forest Service road system, assess the access benefits and the costs of road-associated ecological effects. Give priority to decommissioning unneeded roads and to reconstructing and maintaining needed roads. Add new roads to the transportation system only where supported by rigorous analysis (FSM

7712). Management opportunities for meeting access needs may include roads managed for safe passenger car use, utilization of forest resources, roads managed for high-clearance highway vehicles, roads closed to highway vehicles but available for other uses (such as hiking and administrative access), or trails managed for a variety of uses (such as hiking, horseback riding, and snowmobiling).

1. *Maintaining and reconstructing needed roads.* Emphasize maintenance and reconstruction of roads needed to meet road management objectives (FSM 7712.3). Give priority to upgrading the most heavily used roads to provide safe and efficient travel and to reduce, to the extent practicable, adverse environmental impacts.

2. *Decommissioning unneeded roads.* Many unplanned, unauthorized, unclassified travelways exist within the National Forests and Grasslands. Also, some roads have been classified as part of the forest transportation system based on previously anticipated management needs that may have changed over time. Establish priorities, schedule decommissioning and terminate motor vehicle use of roads no longer needed. Reestablish vegetation (FSM 7701.2) and restore ecological processes interrupted or impacted by the unneeded roads. Decommissioning includes various levels of treatments to stabilize and rehabilitate unneeded roads, such as blocking the entrance, revegetating and water barring; removing fills and culverts, reestablishing drainage-ways and removing unstable road shoulders; or full obliteration by recontouring and restoring natural slopes.

3. *Adding new roads.* Carefully consider proposals to build new roads or to add roads to the Forest Service road inventory that is included in the atlas. Add new roads only where long-term funding obligations have been carefully considered, and, where the resource management objectives and benefits have been documented, such as for natural resource management, including utilization, protection, public health and safety, or private rights. Make road construction and reconstruction decisions locally, with public involvement and based on thorough analysis considering the latest scientific information on the adverse effects of roads on ecosystems.

* * * * *

7705—Definitions. Exhibit 1, Road Terminology Relationships, illustrates the relationships among various road terms.

* * * * *

Forest Roads. As defined in Title 23, Section 101 of the United States Code (23 U.S.C. 101), a road wholly or partly within, or adjacent to, and serving the National Forest System and which is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

Forest Service Road. A forest road under the jurisdiction of the Forest Service. The term "Forest Service roads" is synonymous with the term "forest development roads" as used in 23 U.S.C. 205.

Forest Service Trail. (see FSM 2350.5).

Forest Transportation System. Those facilities, including Forest Service roads, bridges, culverts, trails, parking lots, log transfer facilities, road safety and other appurtenances, and airfields, in the transportation network and under Forest Service jurisdiction.

Forest Transportation System Management. The planning, inventory, analysis, classification, records, scheduling, construction, reconstruction, improvement, maintenance, decommissioning, and other operations to achieve environmentally sound, safe, cost effective, and integrated access for use, protection, and management of National Forest System lands.

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Road. A motor vehicle travelway over 50 inches wide, unless classified and managed as a trail. A road may be classified or unclassified (36 CFR 212.1).

a. *Classified Roads.* Roads within National Forest System lands planned or managed for motor vehicle access including state roads, county roads, private roads, permitted roads, and Forest Service roads (36 CFR 212.1).

b. *Unclassified Roads.* Roads not intended to be part of, and not managed as part of, the forest transportation system, such as temporary roads, and unplanned roads, off-road vehicle tracks, and abandoned travelways.

c. *Public Roads.* Any road or street under the jurisdiction of and maintained by a public authority and open to public travel (23 U.S.C. 101(a)).

Road Investment Terms. The following terms have specific meanings as used in the Forest Service:

a. *New Road Construction.* * * *

b. *Road Reconstruction.* The investment in construction activity that results in improvement, restoration, or realignment of a road as defined below:

(1) *Realignment.* Investment in construction activity that results in the new location of an existing road or portions thereof. The investment may include decommissioning the abandoned sections of roadway.

(2) *Improvement.* Investment in construction activity that raises the traffic service level of a road or improves its safety or operating efficiency.

(3) *Rebuilding.* Investment in construction activity required to restore a road to its approved traffic service level.

c. *Road Maintenance.* Expenditures in the ongoing minor restoration and upkeep of a road necessary to retain the road's approved traffic service level.

Roads Subject to the Highway Safety Act. Forest Service roads that are open to use by the public for standard passenger cars. This includes roads with access restricted on a seasonal basis, and roads closed during extreme weather conditions or for emergencies, but which are otherwise open for general public use.

Temporary Facilities. Transportation facilities authorized by contract, permit, lease or emergency operation, not intended to be a part of the forest transportation system and not necessary for long-term resource management.

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Transportation Facility Decommissioning. Various treatments leading to stabilization and restoration of transportation facilities that are no longer needed.

Transportation Facility Jurisdiction. The legal right to control or regulate use of a transportation facility. Jurisdiction requires authority, but not necessarily ownership. The authority to construct or maintain a road may be derived from fee title, an easement, an agreement, or some other similar method.

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7709—Handbooks.

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7709.56—Road Preconstruction Handbook. This Handbook establishes procedures and guides for the location, survey, design, and preparation of cost estimates for Forest Service roads.

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FSM 7705 – Exhibit 1
Road Terminology Relationships

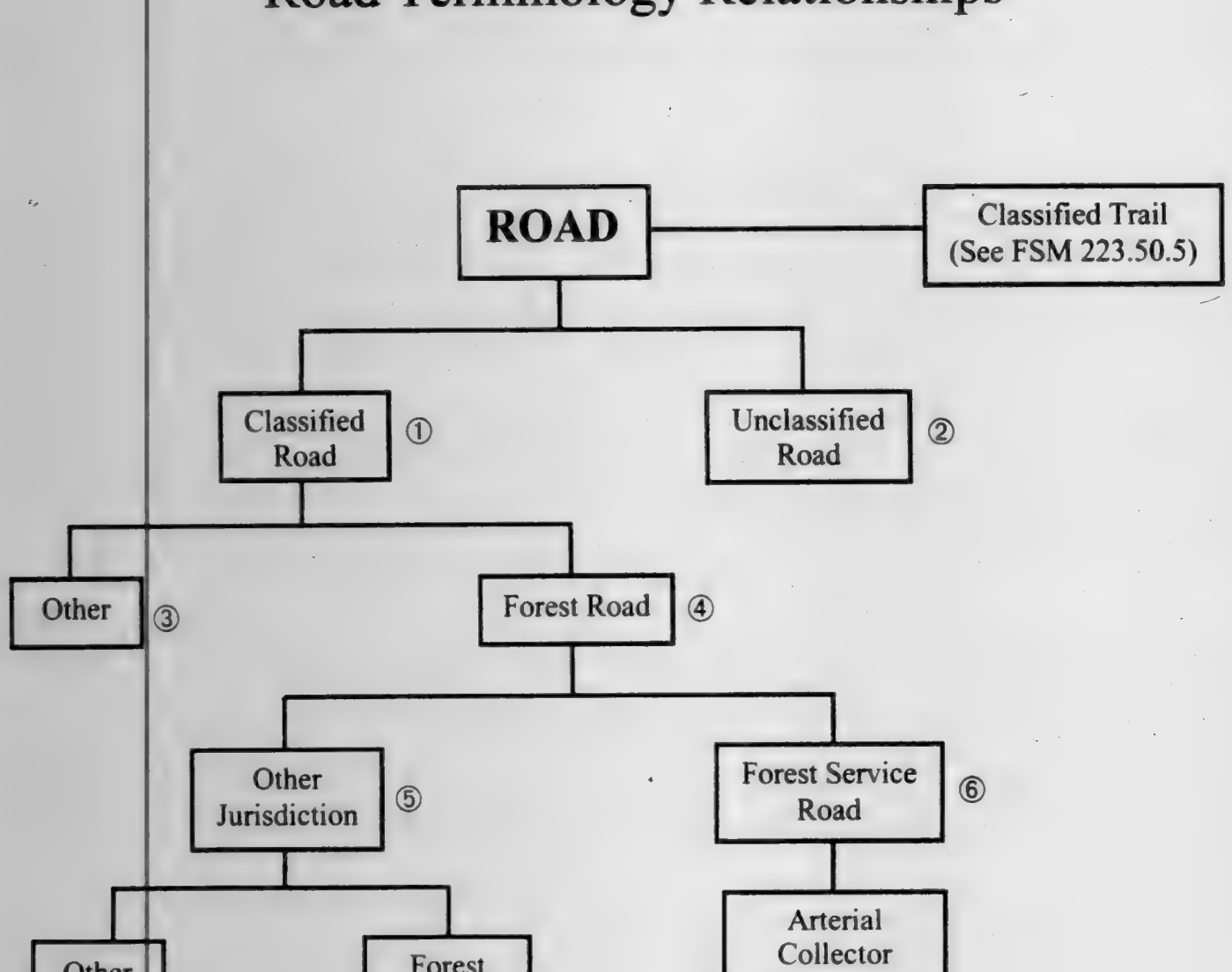

① Federal, state, county, local, private

② Not intended as part of the transportation system

③ Not important to Forest Service administration

④ Important to Forest Service administration, Protection, utilization, access, and management

⑤ State, county, local, private

⑥ Under Forest Service jurisdiction

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Chapter 7710—Transportation Atlas, Records, and Analysis

This chapter contains objectives, policies, responsibilities, and requirements for analyzing transportation needs and issues and documenting the transportation system. Direction for forest trails is in FSM 2350 and FSH 2309.18, Trails Management Handbook.

7710.2—Objectives. The objectives of transportation analysis are:

1. To determine the minimum transportation facilities needed to achieve agency and forest land and resource management goals and safeguard ecosystem health within the context of current and likely funding levels.

2. To incorporate the transportation system needs and direction into the forest land and resource management planning process.

3. To direct the orderly improvement and management of the transportation system and to ensure the documentation of decisions affecting the system.

4. To interact with and involve the public, and State, local, and tribal governments in transportation analysis.

7710.3—Policy.

7710.31—General Transportation Analysis Requirements. Conduct transportation analysis based on rigorous analysis of the need for access to National Forest System lands and of the infrastructure required to provide that access. Use the best available science at appropriate scales to consider effects of transportation facility construction, reconstruction, maintenance, and decommissioning on ecosystems.

Integrate transportation analysis into other ecosystem assessments and analyses as appropriate. Ensure that environmental analysis identifies and displays at least one alternative that is based on current budget levels and realistic projections of future funding. Incorporate the findings of such analyses into forest plan amendments or revision or site-specific project planning, as applicable.

Ensure that road reconstruction, improvement, operation, and maintenance are guided by road management objectives (FSM 7712.3) and are undertaken within the constraints of current and likely future funding levels.

7710.32—Road Analysis.

1. *Long-term Application.* In the course of business, the responsible official shall incorporate a science-based road analysis into multi-forest, forest-wide and watershed-scale analyses and assessments to inform planners and decisionmakers of transportation system opportunities that support land and resource management objectives. Unless an alternative process is approved by the Deputy Chief, National Forest System, units are to use the science-based road analysis process described in the report, *Roads Analysis: Informing Decisions About Managing the National Forest Transportation System (USDA Forest Service, 1999, Misc. Rep. FS–643).*

a. *New road construction.* Consistent with the direction at section 7703.1, ensure that the addition of new roads, including new road construction, serves a documented need and that the decision is informed by a science-based road analysis.

b. *Maintenance, reconstruction, and decommissioning.* Use the science-based analysis process described in paragraph 1 of this section to evaluate opportunities and priorities for maintenance, reconstruction, and decommissioning of roads. Conduct the analysis at a scale and intensity commensurate with the scope of the action. However, implementation of a routine or emergency maintenance activity does not require a road analysis before proceeding.

2. *Transition.* Until a comprehensive road inventory and road analysis have been conducted and integrated into the applicable Forest Plan, the following direction shall apply:

a. *Road construction/reconstruction in roadless and unroaded areas.*

There must be a compelling need to propose construction/reconstruction of roads in the following roadless and unroaded areas:

(1) Unroaded portions of the RARE II (Roadless Area Review and Evaluation conducted by the Forest Service in 1979) inventoried roadless areas within the National Forest System.

(2) Unroaded portions of roadless areas identified in existing land and resource management plans that lie one-quarter mile or more beyond any existing classified road, and

(3) Unroaded areas of more than 1,000 acres that are contiguous to remaining unroaded portions of RARE II inventoried roadless areas or contiguous to areas inventoried in land and resource management plans, contiguous to congressionally designated wilderness areas or Federally-administered components of National Wild and Scenic River System classified as Wild, or contiguous to unroaded areas of 5,000 acres or more on other Federal lands. These areas of 1,000 acres or more must have a common boundary of considerable length, at least one-quarter mile width, and provide important corridors for wildlife movement or extend a unique ecological value of the established inventoried area.

Compelling needs include, but are not limited to, critical resource restoration and protection; public safety; and access to carry out a statute or treaty or pursuant to reserved or outstanding rights.

Road construction in roadless and unroaded areas and generally reconstruction in those areas will constitute a significant environmental effect as defined in the Council on Environmental Quality regulations (40 CFR part 1508) and the Forest Service Environmental Procedures Handbook (FSH 1909.15, section 05) and will require the preparation of an environmental impact statement (FSH 1909.15, section 20.6). This National Environmental Policy Act analysis will provide the basis for a Regional Forester decision.

Environmental mitigation and environmental restoration necessitated by unclassified roads are appropriate in roadless and unroaded areas and must follow normal National Environmental Policy Act decisionmaking processes. However, maintenance of unclassified roads in roadless and unroaded areas is inappropriate as such activity would lead to defacto road development.

b. *Road construction/reconstruction in roaded areas.* A road analysis should be completed as appropriate for any road construction or reconstruction project proposal in roaded areas. However, any road construction or reconstruction underway or listed in the schedule of proposed actions published pursuant to 36 CFR Part 215 prior to the effective date of this amendment does not require a road analysis.

3. *Duration of Transition Procedures.* For those forests that have not adopted a revised forest plan prior to the effective date of this amendment, the transitional procedures in FSM 7710.32, paragraph 2, remain in effect until the roads analysis process has been integrated into the forest plan revision process.

For those forests that have revised their forest plans after January 1, 1996, the transitional procedures in section 7710.32, paragraph 2, remain in effect until the road analysis process is implemented and either (1) The Regional Forester makes a written determination that the forest plan does not require amendment or revision to reflect the findings of the analysis or (2) Until the Forest Supervisor undertakes and adopts a forest plan amendment or revision to integrate the results into the forest plan.

7710.4—Responsibility.

7710.41—Deputy Chief, National Forest System. It is the responsibility of the Deputy Chief to approve an alternative road analysis process.

7710.42—Regional Forester. It is the responsibility of the Regional Forester to:

1. Ensure that science-based road analysis is a component of sub-basin, multi-Forest and sub-regional scale assessments.

2. Ensure that science-based road analysis is incorporated in forest plan revisions.

3. Serve as responsible official on any environmental impact statement on road construction or reconstruction in roadless and unroaded areas prepared under FSM 7710.32, paragraph 2.

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7710.43—Forest Supervisor. It is the responsibility of the Forest Supervisor to:

1. Accomplish road analysis at the appropriate scales in conjunction with other assessments, and integrate transportation management issues and opportunities with land and resource management planning.

2. Develop and maintain a forest transportation atlas in compliance with FSM 7711.

3. Ensure that engineering, hydrology, biology, and other appropriate skills needed in transportation analysis, are available.

4. Ensure that project development and operation are consistent with the road management objectives documented in the forest transportation atlas.

5. Identify and prioritize areas (FSM 1922.52) where detailed transportation analysis is essential for achieving land and resource management direction and resource project implementation schedules.

6. Recommend to the Regional Forester annual and multi-year schedules of proposed transportation decommissioning, reconstruction, and construction projects (FSM 1922.51).

7. Involve Federal, State, local, and tribal transportation agencies in land and resource management planning to ensure coordination.

8. Document inventory and transportation analysis results.

7710.44—District Rangers. It is the responsibility of the District Ranger to approve road management objectives.

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7710.5—Definitions.

Unroaded areas. (see FSM 1920.5).

7711—Forest Transportation Atlas & Records. Prepare and keep current a forest transportation atlas for National Forest System lands as defined at section 212.1 of Title 36 of the Code of Federal Regulations (36 CFR 212.1). The atlas consists of the geospatial and tabular data showing the location of each transportation facility and additional information as necessary for Forest Service management of roads, trails, and airfields.

7711.1—Road Atlas. A critical component of the transportation atlas is the forest road atlas, which includes classified and unclassified roads on National Forest System lands. The forest road atlas serves as the official record of the Forest Development Road system referred to in the National Forest Management Act (16 U.S.C. 1608 (b)). The road atlas includes, at a minimum, the location and jurisdiction of classified roads not under Forest Service jurisdiction, the location and road management objectives for Forest Service roads and bridges, and the location of and management decisions on unclassified roads. To the extent practicable and appropriate, cite in the atlas the science-based analyses used to support decisions on roads recorded in the atlas.

Use INFRA Service-wide, the Forest Service integrated infrastructure tabular and spatial data management system, for the storage and analysis of information in the road atlas. The transportation inventory must be capable of spatial representation or mapping as appropriate at the various analysis and forest planning scales. This information also supports other resource analyses, such as water quality and habitat assessments.

7711.2—Transportation Atlas Maintenance. Maintain a current record of forest transportation facilities in the atlas as part of the ongoing real property and condition survey updates (FSM 6446). Add proposed facilities to the atlas only after a decision to construct the facility or to convert an unclassified road to a classified facility has been made by the responsible official in accordance with the National Environmental Policy Act process, including facilities covered by categorical exclusions (FSM 1952 and FSM 1922.52, No. 4). Remove existing facilities from the atlas only after anticipated decommissioning results have been achieved and verified through monitoring.

7712—Transportation Analysis and Results. Use a science-based transportation analysis process, at appropriate scales, that considers transportation facility needs and concerns. Coordinate the analysis with other ecosystem assessments and analyses.

7712.02—Objectives. Conduct transportation analysis to achieve the following:

1. Identification of opportunities,

2. Assessment of needs, funding, and associated ecosystem effects, including effects on unroaded values,

3. Achievement of management direction, and

4. Documentation of recommendations that can become part of a NEPA disclosure and line decision.

7712.03—Policy. Forest Service regulations implementing the Forest and Rangeland Renewable Resources Planning Act, as amended by the National Forest Management Act, require integration of transportation planning into an interdisciplinary effort that produces Regional guides, forest and site-specific project plans. Use the forest transportation atlas as a record of transportation facility decisions.

1. Assess economic costs and benefits along with physical and biological factors when identifying project alternatives.

2. Consider the needs of all parties when developing transportation system opportunities in areas of intermingled ownership.

3. Consider long- and short-term uses, including possible mechanized, non-mechanized, and off-highway vehicle uses, when analyzing transportation facilities.

4. Involve the public in transportation analysis.

5. Identify all classified and unclassified facilities in the forest transportation atlas.

6. Document road management objectives and project priorities.

7712.1—Scope and Levels of Transportation Analysis. Line officers must choose the appropriate geographic scale for transportation analysis and the degree of detail that is appropriate and practicable. Selecting the appropriate scale for assessing road opportunities depends on the issues being analyzed. Line officers should recognize that starting with the broader scale analysis is particularly helpful in identifying interactions between resources and roads that may only be detected at the broader level, in supporting better informed and integrated decisions across administrative boundaries, and in avoiding collection of unnecessary information.

7712.11—Multi-Forest and Ecoregion Scale Transportation Analysis. Road analysis is an integral part of an ecoregion (or sub-region) assessment. At this level, consider the following:

1. Broad scale issues, such as habitat connectivity, strongholds for aquatic and terrestrial species, sources of

drinking water, cumulative effects, and other unroaded values.

2. Integration of State, county, and local transportation systems, and multi-year transportation plans with the Forest transportation system.

3. Potential program direction for new or revised forest highways, public lands highways, and public roads under Forest Service jurisdiction.

4. Current and likely funding levels available to support transportation facility construction, reconstruction, maintenance and decommissioning.

7712.12—Forest Plan Level Transportation Analysis. Transportation analysis at the forest plan level tiers to broader scale analyses and requires close coordination with other ecosystem assessments. Consider:

1. Environmental effects, including socio-economic impacts. Consider costs and benefits of protection of unroaded values.

2. An overview of the transportation rights-of-way acquisition needs.

3. State, county and local transportation facility effects on land and forest resource management plans and resource management programs.

4. Forest Service transportation investments necessary for carrying out the planned resource program.

7712.13—Watershed and Project Level Transportation Analysis. Watershed and project level road analyses tier to broader scale analyses, where available, and include comprehensive inventory and science-based analyses of all classified and unclassified forest transportation facilities within the analysis area. Integrate watershed scale transportation analyses with other watershed scale assessments.

7712.2—Analysis Processes.

7712.21—Transportation Analysis. Perform transportation analysis at the appropriate scales to identify an environmentally sound, cost efficient (FSH 1909.17) transportation network. Tier the analysis to the Forest plan and to available ecosystem assessments. The analysis must follow a process that considers the latest science-based information on environmental benefits and effects, particularly unroaded values, such as described in the report, *Roads Analysis: Informing Decisions About Managing the National Forest Transportation System* (USDA Forest Service, 1999, Misc. Rep. FS–643). The transportation analysis shall be guided by management direction, have interdisciplinary participation, and be approved in writing by the responsible official.

In timber harvest areas, the analysis should be a joint effort of sale planners, logging engineers, biologists, and transportation planners, as well as representatives of other disciplines. Ensure that timber sale planning is coordinated with analysis of transportation needs (FSM 2431.2).

Document the transportation analysis in conjunction with policies and procedures of FSM 1950 and FSH 1909.15. Revise the forest transportation atlas (FSM 7711.2) if the formal decision necessitates any changes.

7712.22—Network Analysis. Perform a network analysis as part of transportation analysis to determine alternate route effectiveness for the management direction.

The network analysis shall establish four important types of transportation cost data:

1. Environmental effects and possible ecosystem restoration opportunities.

2. Reconstruction and improvement costs on a road system to a specified area.

3. Variable user and travel-related costs over a road system for a resource activity on a unit or output basis.

4. Cost of operating and maintaining the network.

Re-analyze networks and cost estimates as outputs, schedules, and management area locations change for different management practices.

7712.23—Economic Analysis.

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7712.3—Road Management Objectives. Establish road management objectives for all Forest Service roads consistent with forest plan direction. Road management objectives include design criteria (FSM 7720) and operation and maintenance criteria (FSM 7730.3). The road management objectives require line officer approval and are included in the transportation atlas.

7712.4—Scheduling Projects. Develop 3-to 5-year schedules listing all proposed projects. Schedule decommissioning, reconstruction and improvement project activities in coordination with other resource and support activities in a timely manner.

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Federal Register

Friday,
March 3, 2000

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Special Research Grants Program, Potato Research; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Special Research Grants Program, Potato Research

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of request for proposals and request for input.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) announces the availability of grant funds and requests proposals for the Special Research Grants Program, Potato Research for fiscal year (FY) 2000. Subject to the availability of funds, the anticipated amount available for support of this program in FY 2000 is $1,300,000.

This notice sets out the objectives for these projects, the eligibility criteria for projects and applicants, the application procedures, and the set of instructions needed to apply for a Potato Research Project grant.

CSREES also is soliciting comments regarding this request for proposals from any interested party. These comments will be considered in the development of the next request for proposals for this program. Such comments will be used in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, (AREERA).

DATES: All proposals must be received at USDA on or before April 3, 2000. Proposals not received on or before this date will not be considered for funding.

User comments are requested within six months from the issuance of the request for proposals (RFP). Comments received after that date will be considered to the extent practicable (see Part VII. G.).

ADDRESSES: Proposals should be submitted to the following mailing address: Special Research Grants Program, Potato Research; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Ave., SW; Washington DC 20250–2245.

The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Special Research Grants Program, Potato Research; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, SW; Washington DC 20024. Telephone: (202) 401–5048.

Written user comments should be submitted by mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA-CSREES; STOP 2299; 1400 Independence Avenue, SW; Washington, DC 20250–2299; or via e-mail to: RFP-OEP@reeusda.gov. (This e-mail address is intended only for receiving stakeholder input comments regarding this RFP, and not for requesting information or forms.)

FOR FURTHER INFORMATION CONTACT: Dr. James Parochetti; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2220; 1400 Independence Avenue, SW; Washington, DC 20250–2220; telephone: (202) 401–4354; Internet: jparochetti@reeusda.gov.

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G. Stakeholder Input

Part I—General Information

A. Legislative Authority

The authority for this program is contained in section (c)(1)(B) of the Competitive, Special, and Facilities Research Grant Act, in section 2 of Pub. L. No. 89–106, as amended (7 U.S.C. 450i(c)(1)(B)). Only section 3400.1, Applicability of regulations, Subpart C, Peer and Merit Review Arranged by Grantees, and Subpart D, Annual Reports of the administrative regulations at 7 CFR part 3400 for Special Grants Programs awarded under the authority of section 2(c) of this Act (7 U.S.C. 450i(c)) apply to grants solicited and awarded under subsection 2(c)(1)(B).

In accordance with the statutory authority, grants awarded under this program will be for the purpose of facilitating or expanding ongoing State-Federal food and agricultural research programs that—(i) promote excellence in research on a regional and national level; (ii) promote the development of regional research centers; (iii) promote the research partnership between the Department of Agriculture, colleges and universities, research foundations, and State agricultural experiment stations for regional research efforts; and (iv) facilitate coordination and cooperation of research among States through regional research grants.

B. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable:

(1) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved is delegated.

(2) *Authorized departmental officer (ADO)* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) *Authorized organizational representative (AOR)* means the

president, director, or chief executive officer or other designated official of the applicant organization who has the authority to commit the resources of the organization.

(4) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) *Department* or *USDA* means the United States Department of Agriculture.

(6) *Grantee* means the entity designated in the grant award document as the responsible legal entity to which a grant is awarded.

(7) *Peer review panel* means an assembled group of experts or consultants qualified by training and experience in particular scientific or technical fields to give expert advice on the scientific and technical merit of grant applications in those fields.

(8) *Principal Investigator/Project Director* means the single individual designated in the grant application and approved by the Secretary who is responsible for the direction and management of the project. Note that a proposal may have multiple secondary co-principal investigators/project directors but only one principal investigator/project director.

(9) *Prior approval* means written approval evidencing prior consent by an ADO as defined in (2) above.

(10) *Project* means the particular activity within the scope of the program supported by a grant award.

(11) *Project period* means the total length of time that is approved by the Administrator for conducting the research project, as stated in the award document, during which Federal sponsorship begins and ends.

(12) *Scientific peer review* means an evaluation of a proposed project for technical quality and relevance to regional or national goals performed by experts with the scientific knowledge and technical skills to conduct the proposed research work. Peer reviewers may be selected from an applicant organization or from outside the organization, but shall not include principals, collaborators or others involved in the preparation of the application under review.

(13) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved is delegated.

C. Eligibility

Proposals may be submitted by State agricultural experiment stations, land-grant colleges and universities, research foundations established by land-grant colleges and universities, colleges and universities receiving funds under the Act of October 10, 1962, as amended (16 U.S.C. 582a *et seq.*), and accredited schools or colleges of veterinary medicine. The proposals must be directly related to potato varietal development/testing. Although an applicant may be eligible based on its status as one of these entities, other factors may exclude an applicant from receiving Federal assistance under this program (*e.g.*, debarment or suspension, a determination of non-responsibility based on submitted organizational management information, etc.).

Part II—Program Description

A. Purpose of the Program

Proposals are invited for competitive grant awards under the Special Research Grants Program, Potato Research for FY 2000. The purpose of this grant program is to support potato research that focuses on varietal development/testing. As used herein, varietal development/testing is research using traditional and biotechnological genetics to develop improved potato variety(ies). Aspects of evaluation, screening and testing must support or complement the development of improved varieties. This program is administered by CSREES of USDA.

B. Available Funds and Award Limitations

Funds will be awarded on a competitive basis to support regional research projects that are composed of potato research that focuses on varietal development/testing. For purposes of this program, regional research means research having application beyond the immediate State in which the awardee resides and performs the project. The anticipated amount of funds available in FY 2000 for support of this program is approximately $1,300,000. Each proposal submitted in FY 2000 shall request funding for a period not to exceed one year. Funding for additional years will depend upon the availability of funds and progress toward objectives. FY 2000 awardees would need to recompete in future years for additional funding.

Under this program, the Secretary may extend grant awards for the support of research projects for up to three years to further the program.

C. Applicant Peer Review Requirements

Subsection (c)(5) of the Competitive, Special, and Facilities Research Grant Act, as amended (7 U.S.C. 450i(c)(5)) requires applicants to conduct a scientific peer review of a proposed research project in accordance with regulations promulgated by the Secretary prior to the Secretary making a grant award under this authority. Regulations implementing this requirement are set forth in 7 CFR 3400.20. The regulations impose the following requirements for scientific peer review by applicants of proposed research projects:

1. Credible and independent. Review arranged by the grantee must provide for a credible and independent assessment of the proposed project. A credible review is one that provides an appraisal of technical quality and relevance sufficient for an organizational representative to make an informed judgment as to whether the proposal is appropriate for submission for Federal support. To provide for an independent review, such review may include USDA employees, but should not be conducted solely by USDA employees.

2. Notice of completion and retention of records. A notice of completion of the review shall be conveyed in writing to CSREES either as part of the submitted proposal or prior to the issuance of an award, at the option of CSREES (see Part III. Q.). The written notice constitutes certification by the applicant that a review in compliance with these regulations has occurred. Applicants are not required to submit results of the review to CSREES; however, proper documentation of the review process and results should be retained by the applicant.

3. Renewal and supplemental grants. Review by the grantee is not automatically required for renewal or supplemental grants as defined in 7 CFR 3400.6. A subsequent grant award will require a new review if, according to CSREES, either the funded project has changed significantly, other scientific discoveries have affected the project, or the need for the project has changed. Note that a new review is necessary when applying for another standard or continuation grant after expiration of the grant term.

Part III—Content of a Proposal

All proposals must contain the following forms and narrative information to assist CSREES personnel during the review and award processes:

A. Application for Funding (Form CSREES–661)

Each copy of each grant proposal must contain an Application for Funding, (Form CSREES–661). One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing principal investigator(s)/project director(s) and the AOR who possesses the necessary

authority to commit the organization's time and other relevant resources to the project. Any proposed principal investigator or co-principal investigator whose signature does not appear on Form CSREES–661 will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the Application for Funding form.

Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately. The following items are highlighted as having a high potential for errors or misinterpretations:

1. Title of Project (Block 6). The title of the project must be brief (80-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as "investigation of" or "research on" should not be used.

2. Program to Which You Are Applying (Block 7). "Special Research Grants Program, Potato Research" should be inserted in this block. You may ignore the reference to a **Federal Register** announcement.

3. Program Area and Number (Block 8). The name of the program area, "Potato Research," should be inserted in this block. You should ignore references to the program number and the **Federal Register** announcement.

4. Type of Request (Block 13). If the project being proposed is a renewal of a grant that has been supported under the same program at any time during the previous five fiscal years, it is important that you show the latest grant number assigned to the project by CSREES.

5. Principal Investigator(s)/Project Director(s) (Block 15). The designation of excessive numbers of co-principal investigators creates problems during final review and award processes. Listing multiple co-principal investigators, beyond those required for genuine collaboration, is therefore discouraged.

6. Type of Performing Organization (Block 18). A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 Land-Grant institution but the work will be performed in a department, laboratory, or other organizational unit of an agricultural experiment station, box "03" should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI/PD #1 in Block 15.a.

7. Other Possible Sponsors (Block 22). List the names or acronyms of all other public or private sponsors including other agencies within USDA and other programs funded by CSREES to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program manager as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided.

B. Table of Contents

For consistency and ease of locating information, each proposal submitted should contain a Table of Contents.

C. Objectives

Clear, concise, complete, and logically arranged statement(s) of the specific aims of the proposed effort must be included in all proposals. For renewal applications, a restatement of the objectives outlined in the active grant also should be provided.

D. Progress Report

If the proposal is a renewal of an existing project supported under the same program, include a clearly identified summary progress report describing the results to date. The progress report should contain the following information:

1. A comparison of actual accomplishments with the goals established for the active grant;

2. The reasons for slippage if established goals were not met; and

3. Other pertinent information, including, when appropriate, cost analysis and explanation of cost overruns or unexpectedly high unit costs.

E. Procedures

The procedures or methodology to be applied to the proposed effort should be explicitly stated. This section should include but not necessarily be limited to:

1. A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;

2. Techniques to be employed, including their feasibility;

3. Kinds of results expected;

4. Means by which data will be analyzed or interpreted;

5. Pitfalls which might be encountered; and

6. Limitations to proposed procedures.

F. Justification

This section should include in-depth information on the following, when applicable:

1. Estimates of the magnitude of the problem and its relevance to ongoing State-Federal food and agricultural research programs;

2. Importance of starting the work during the current fiscal year; and

3. Reasons for having the work performed by the proposing institution.

G. Cooperation and Institutional Units Involved

Cooperative and multi-state applications are encouraged. Identify each institutional unit contributing to the project. Identify each State in a multiple-state proposal and designate the lead State. When appropriate, the project should be coordinated with the efforts of other State and/or national programs. Clearly define the roles and responsibilities of each institutional unit of the project team, if applicable.

H. Literature Review

A summary of pertinent publications with emphasis on their relationship to the effort being proposed should be provided and should include all important and recent publications from other institutions, as well as those from the applicant institution. The citations themselves should be accurate, complete, and written in an acceptable journal format.

I. Current Work

Current unpublished institutional activities to date in the program area under which the proposal is being submitted should be described.

J. Facilities and Equipment

All facilities which are available for use or assignment to the project during the requested period of support should be reported and described briefly. Any potentially hazardous materials, procedures, situations, or activities, whether or not directly related to a particular phase of the effort, must be explained fully, along with an outline of precautions to be exercised. Examples include work with toxic chemicals and experiments that may put human subjects or animals at risk.

All items of major instrumentation available for use or assignment to the proposed project also should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the project to a successful conclusion should be listed,

including dollar amounts and, if funds are requested for their acquisition, justified.

K. Project Timetable

The proposal should outline all important phases as a function of time, year by year, for the entire project, including periods beyond the grant funding period.

L. Personnel Support

All senior personnel who are expected to be involved in the effort must be clearly identified. For each person, the following should be included:

1. An estimate of the time commitment involved;

2. Vitae of the principal investigator(s), senior associate(s), and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. Each vita should be limited to two (2) pages each in length, excluding publications listings; and

3. A chronological listing of the most representative publications during the past five years. This listing must be provided for each professional project member for whom a vita appears. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

M. Collaborative and/or Subcontractual Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with other individuals or organizations, such arrangements should be fully explained and justified. For purposes of proposal development, informal day-to-day contacts between key project personnel and outside experts are not considered to be collaborative arrangements and thus do not need to be detailed.

All anticipated subcontractual arrangements should be explained and justified in this section. A proposed statement of work, a budget, and a budget narrative for each arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (*e.g.*, requests for outside laboratory analyses) are excluded from this requirement.

If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR part 3019, USDA Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR part 3015.205, USDA Uniform Federal Assistance Regulations, flow down to subrecipients. In addition, required clauses from 7 CFR part 3019 Sections 40–48 (Procurement Standards) and Appendix A (Contract Provisions) should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension. This latter requirement is explained further under subsection Q. of these guidelines.

N. Budget (Form CSREES–55)

Each proposal must contain a detailed budget (Form CSREES–55) for up to 12 months of support. Funds may be requested under any of the categories listed on the budget form, provided that the item or service for which support is sought is allowable under the enabling legislation and the applicable Federal cost principles and can be identified as necessary and reasonable for the successful conduct of the project.

The following guidelines should be used in developing your proposal budget:

1. Salaries and Wages. Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution and with OMB Circular No. A–21, Cost Principles for Educational Institutions. Administrative and Clerical salaries are normally classified as indirect costs. (See Item 9. below.) However, if requested under A.2.e., they must be fully justified.

Note: In accordance with Section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3319, tuition remission is not an allowable cost under Section 2(c)(1)(B) projects, and no funds will be approved for this purpose.

2. Fringe Benefits. Funds may be requested for fringe benefit costs if the usual accounting practices of your institution provide that institutional contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project. See OMB Circular No. A–21, Cost Principles for Educational Institutions, for further guidance in this area.

3. Nonexpendable Equipment. Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost. This applies to revised budgets as well, as the equipment item(s) and amount(s) may change.

Note: For projects awarded under the authority of Sec. 2(c)(1)(B), no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

4. Materials and Supplies. The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs.

5. Travel. The type and extent of travel and its relationship to project objectives should be specified. Funds may be requested for field work or for travel to professional meetings. In the budget narrative, for both domestic and foreign travel, provide the purpose, the destination, method of travel, number of persons traveling, number of days, and estimated cost for each trip. If details of each trip are not known at the time of proposal submission, provide the basis for determining the amount requested.

Travel and subsistence should be in accordance with organizational policy. Irrespective of the organizational policy, allowances for airfare will not normally exceed round trip jet economy air accommodations. Please note that 7 CFR Part 3015.205 is applicable to air travel.

6. Publication Costs/Page Charges. Anticipated costs of preparing and publishing results of the research being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints)

may be estimated and charged against the grant.

7. Computer (ADPE) Costs. Reimbursement for the costs of using specialized facilities (such as a university- or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

8. All Other Direct Costs. Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified on a separate sheet of paper attached to Form CSREES–55. This applies to revised budgets as well, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, charges for consulting services, telephone, facsimile, e-mail, shipping costs, and fees for necessary laboratory analyses. You are encouraged to consult the "Instructions for Completing Form CSREES–55, Budget," of the Application Kit for detailed guidance relating to this budget category.

9. Indirect Costs. Pursuant to Section 1473 of the National Agriculture Research, Extension, and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3319, indirect costs are not allowable costs under Section 2(c)(1)(B) projects, and no funds will be approved for this purpose. Further, costs that are a part of an institution's indirect cost pool (*e.g.*, administrative or clerical salaries) may not be reclassified as direct costs for the purpose of making them allowable.

10. Cost-sharing. Cost-sharing is encouraged; however, cost-sharing is not required nor will it be a direct factor in the awarding of any grant.

O. Budget Narrative

All budget categories for which support is requested, must be individually listed (with costs) and justified on a separate sheet of paper and placed immediately behind the Budget Form.

P. Current and Pending Support (Form CSREES–663)

All proposals must contain Form CSREES–663 listing this proposal and any other current or pending support to which key project personnel have committed or are expected to commit portions of their time, whether or not salary support for the person(s) involved is included in the budget for each project. This proposal should be identified in the pending section of this form.

Q. Assurance Statement(s) (Form CSREES–662)

A number of situations encountered in the conduct of projects require special assurance, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will include the following:

1. Recombinant DNA or RNA Research. As stated in 7 CFR Part 3015.205(b)(3), all key personnel identified in the proposal and all signatory officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. If your project proposes to use recombinant DNA or RNA techniques, the application must so indicate by checking the "yes" box in Block 19 of Form CSREES–661 (Application for Funding) and by completing Section A of Form CSREES–662 (Assurance Statement(s)). For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

2. Animal Care. Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel and all signatory officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1, 2, 3 and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals or activities, you must check the "yes" box in Block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

3. Protection of Human Subjects. Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations established by the Department under 7 CFR part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the "yes" box in Block 21 of Form CSREES–661 and complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

R. Peer Review Certification

By signing the Application for Funding form, the AOR of the applicant institution is providing the required certification that the full proposal has received a credible and independent peer review arranged by the institution (see Part II. C.).

S. Other Certifications

Note that by signing the Application for Funding form the applicant is providing the required certifications set forth in 7 CFR Part 3017, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in this application package for informational purposes only. These forms should not be submitted with your proposal since by signing the Form CSREES–661 your organization is providing the required certifications.

If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a Form AD–1048 to the grantee organization for retention in their records. This form should not be submitted to USDA.

T. Compliance With the National Environmental Policy Act

As outlined in 7 CFR part 3407 (CSREES's implementing regulations of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*)), environmental data or documentation for the proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. These responsibilities include determining whether the project requires an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) or whether it can be excluded from this requirement on the basis of several categorical exclusions listed in 7 CFR 3407.6. To assist CSREES in this determination, the applicant should review the categories defined for exclusion to ascertain whether the

proposed project may fall within one of the exclusions.

Form CSREES–1234, NEPA Exclusions Form (copy in Application Kit), indicating the applicant's opinion of whether or not the project falls within one or more categorical exclusions, along with supporting documentation, must be included in the proposal. The information submitted in association with NEPA compliance should be identified in the Table of Contents as "NEPA Considerations" and Form CSREES–1234 and supporting documentation should be placed after the Form CSREES–661, Application for Funding, in the proposal.

Even though the applicant considers that a proposed project may fall within a categorical exclusion, CSREES may determine that an EA or an EIS is necessary for an activity if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

U. Additions to Project Description

Each project description is expected to be complete in itself. However, in those instances in which the inclusion of additional information is necessary, the number of copies submitted should match the number of copies of the application requested in Part V.A. below. Each set of such materials must be identified with the title of the project and the name(s) of the principal investigator(s)/project director(s) as they appear on the "Application for Funding." Examples of additional materials include photographs that do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the body of the proposal.

Part IV—How To Obtain Application Materials

Copies of this request for proposals and the Application Kit may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Unit, Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Ave., SW; Washington DC 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the Special Research Grants Program, Potato Research.

These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov which states that you want a copy of the application materials for the FY 2000 Special Research Grants Program, Potato Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Part V—Submission of a Proposal

A. What To Submit

An original and 18 copies of each grant proposal must be submitted. Proposals should contain all requested information when submitted. Each proposal should be typed on 8 1/2" x 11" white paper, single-spaced, and on one side of the page only. Please note that the text of the proposal should be prepared using no type smaller than 12 point font size and one-inch margins. It would be helpful if the name of the submitting institution were typed at the top of each page for easy identification in the event the proposal becomes disassembled while being reviewed. Staple each copy of the proposal in the upper left-hand corner. Please do not bind copies of the proposal.

B. Where and When To Submit

Proposals must be received on or before April 3, 2000, and submitted to the following mailing address: Special Research Grants Program, Potato Research; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Ave., SW; Washington, DC 20250–2245; Telephone: (202) 401–5048.

Note: Hand-delivered proposals or those delivered by overnight express service should be brought to the following address: Special Research Grants Program, Potato Research; c/o Proposal Services Unit, Office of Extramural Programs; CSREES/USDA; Room 303, Aerospace Center; 901 D Street, SW; Washington, DC 20024. The telephone number is (202) 401–5048.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing or via the Internet (e-mail). Therefore, it is important to include your e-mail address on Form CSREES–712 when applicable. This acknowledgment will contain a proposal identification number. Once your proposal has been assigned a proposal number, please cite that number in future correspondence.

Part VI—CSREES Selection Process and Evaluation Criteria

A. Selection Process

Applicants should submit fully developed proposals that meet all the requirements set forth in this request for proposals.

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure that it meets the requirements as set forth in this request for proposals. Second, proposals that meet these requirements will be technically evaluated by a scientific peer review panel.

The individual panel members will be selected from among those persons recognized as specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of the proposals being reviewed. The individual views of the panel members will be used to determine which proposals should be recommended to the Administrator (or his designee) for final funding decisions.

There is no commitment by CSREES to fund any particular proposal or to make a specific number of awards. Care will be taken to avoid actual and potential conflicts of interest among reviewers. Evaluations will be confidential to CSREES staff members, peer reviewers, and the proposed principal investigator(s), to the extent permitted by law.

B. Evaluation Criteria

1. Overall scientific and technical quality of the proposal—10 points.

2. Scientific and technical quality of the approach—10 points.

3. Relevance and importance of proposed research to solution of specific areas of inquiry, and application of expected results for States beyond the State in which the grantee resides and will perform the work—30 points.

4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment; the cooperation and involvement of multiple institutions or states—50 points.

Part VII—Supplementary Information

A. Access to CSREES Scientific Peer Review Information

After final decisions have been announced, CSREES will, upon request, inform the principal investigator of the reasons for its decision on a proposal.

B. Grant Awards

1. General: Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program area and procedures set forth in this request for proposals. The date specified

by the Administrator as the effective date of the grant shall be no later than September 30. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds granted by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (Parts 3015 and 3019, of 7 CFR).

2. Organizational Management Information: Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant if such information has not been provided previously under this or another program for which the sponsoring agency, CSREES, is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by CSREES as part of the pre-award process.

3. Grant Award Document: The grant award document shall include at a minimum the following:

a. Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under this program;

b. Title of Project;

c. Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

d. Grant identification number assigned by the Department;

e. Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

f. Total amount of Departmental financial assistance approved by the Administrator during the project period;

g. Legal authority(ies) under which the grant is awarded;

h. Approved budget plan for categorizing project funds to accomplish the stated purpose of the grant award; and

i. Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

4. Notice of Grant Award: The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

5. CSREES will award standard grants to carry out this program. A standard grant is a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without any guarantee of additional support at a future date.

c. Use of Funds; Changes

Unless otherwise stipulated in the terms and conditions of the grant award, the following provisions apply:

1. Delegation of Fiscal Responsibility: The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

2. Changes in Project Plans:

a. The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the ADO for a final determination.

b. Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

c. Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

D. Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR 1.1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, Circular Nos. A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Nonprofit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794, section 504 of the Rehabilitation Act of 1973, and 7 CFR Part 15d (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of CSREES's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal.

The original copy of a proposal that does not result in a grant will be retained by CSREES for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to

the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

G. Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. In your comments, please include the name of the program and the fiscal year of the request for proposals to which you are responding. These comments will be considered in the development of the next request for proposals for the program. Such comments will be used in meeting the requirements of section 103(c)(2) of AREERA, 7 U.S.C. 7613(c). Comments should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this Notice.

Done at Washington, D.C., this 28th day of February, 2000.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 00–5123 Filed 3–2–00; 8:45 am]

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Federal Register

Friday,
March 3, 2000

Part V

Department of Agriculture

Agricultural Research Service
Cooperative State Research, Education, and Extension Service
Biology Risk Assessment Research Grants Program for Fiscal Year 2000; Proposals and Input Request; Notice

DEPARTMENT OF AGRICULTURE

Agricultural Research Service
Cooperative State Research, Education, and Extension Service

Biotechnology Risk Assessment Research Grants Program for Fiscal Year 2000; Request for Proposals and Request for Input

AGENCY: Agricultural Research Service; Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of request for proposals and request for input.

SUMMARY: The Agricultural Research Service (ARS) and the Cooperative State Research, Education, and Extension Service (CSREES) are announcing the Biotechnology Risk Assessment Research Grants Program (the "Program") for fiscal year (FY) 2000. Proposals are hereby requested from eligible institutions as identified herein for competitive consideration of Biotechnology Risk Assessment Grant awards. The authority for the Program is contained in section 1668 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5921). The Program is administered by CSREES and ARS of the U.S. Department of Agriculture.

CSREES also is soliciting comments regarding this request for proposals from any interested party. These comments will be considered in the development of the next request for proposals for this program. Such comments will be used in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA).

DATES: All proposals must be received at USDA on or before April 10, 2000. Proposals not received on or before this date will not be considered for funding.

User comments are requested within six months from the issuance of the request for proposals. Comments received after that date will be considered to the extent practicable (see Part VII.C.).

ADDRESSES: Proposals must be submitted to the following mailing address: Biotechnology Risk Assessment Research Grants; Proposal Services Unit, Office of Extramural Programs, c/o Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Ave., SW, Washington, DC 20250–2245.

The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Biotechnology Risk Assessment Research Grants, c/o Proposal Services Unit, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street, SW, Washington, DC 20024, telephone: (202) 401–5048.

Written user comments should be submitted by mail to: Policy and Program Liaison Staff, Office of Extramural Programs, USDA–CSREES, STOP 2299, 1400 Independence Avenue, SW, Washington, DC 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. (This e-mail address is intended only for receiving stakeholder input comments regarding this RFP, and not for requesting information or forms.)

FOR FURTHER INFORMATION CONTACT:

Dr. Deborah Sheely, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Stop 2241, 1400 Independence Avenue, SW, Washington, DC 20250–2241; telephone: (202) 401–1924, e-mail: dsheely@reeusda.gov; or

Dr. Robert M. Faust, Agricultural Research Service, U.S. Department of Agriculture, Room 338, Building 005, BARC–West, Beltsville, MD 20705; telephone: (301) 504–6918, e-mail: rmf@ars.usda.gov.

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Part I. General Information

A. Legislative Authority

The authority for the Program is contained in section 1668 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5921). The administrative regulations for this program are found at 7 CFR part 3415.

B. Applicant Eligibility

Proposals may be submitted by any United States public or private research or educational institution or organization.

Part II. Program Description

CSREES and ARS will competitively award research grants to support science-based biotechnology regulation, thereby helping to address concerns about the effects of introducing genetically modified organisms into the environment and helping regulators to develop policies regarding such introduction.

The Program's emphasis is on risk assessment, which is defined as the science-based evaluation and interpretation of factual information in which a given hazard, if any, is identified, and the consequences associated with the hazard are explored. Research funded through this program will be relevant to risk assessment and the regulatory process. When evaluating transgenic organisms, regulators must answer the following four general questions: (1) Is there a hazard (potential hazard identification)? (2) How likely is the hazard to occur (quantifying the probability of occurrence)? (3) What is the severity and extent of the hazard if it occurs (quantifying the effects)? and (4) Is there an effect above and beyond what might occur with an organism, with similar traits, developed using other technologies?

Although investigators are not required to perform actual risk assessments in the research they propose, they should design studies that will provide information useful to regulators for making science-based decisions in their assessments of genetically-modified organisms. Accordingly, program applicants are encouraged to address the following questions in their proposals: (1) What is the relevance of this research to the evaluation of transgenic organisms? (2) What information will be provided by this research to help regulators adequately assess transgenic organisms? and (3) How does this research model appropriate studies necessary to identify and/or characterize hazards associated with introducing genetically-modified organisms into the environment?

The Program does not support risk management research, which is defined to include either: (1) Research aimed primarily at reducing effects of specific biotechnology-derived agents; or (2) a policy and decision-making process that uses risk assessment data in deciding how to avoid or mitigate the consequences identified in a risk assessment. Proposals must be relevant to risk assessment to be eligible for this Program.

In addition to addressing the questions posed above, proposals must include a statement describing the relevance of the proposed project to one or more of the research topics requested in this request for proposals. In addition, proposals should include detailed descriptions of the experimental design and appropriate statistical analyses to be done.

Awards will not be made for clinical trials, commercial product development, product marketing strategies, or other research deemed not appropriate to risk assessment.

A. Purpose of the Program

The purpose of the Program is to assist Federal regulatory agencies in making science-based decisions about the effects of introducing into the environment genetically modified organisms, including plants, microorganisms (including fungi, bacteria, and viruses), arthropods, fish, birds, mammals and other animals excluding humans. Investigations of effects on both managed and natural environments are relevant. The Program accomplishes this purpose by providing scientific information derived from the risk assessment research that it funds. Research proposals submitted to the Program must be applicable to the purpose of the Program to be considered.

B. Available Funding

Subject to the availability of funds, the anticipated amount available for support of the Program in FY 2000 is $1.5 million. The agency intends to award these funds for project proposals in the targeted areas with no more than two awards for conference proposals.

CSREES is prohibited from paying indirect costs exceeding 19 percent of the total Federal funds provided under each award on competitively awarded research grants (7 U.S.C. 3310; Pub. L. No. 106–78, sec. 711).

C. Areas of Research To Be Supported

Proposals addressing the following topics are requested:

1. Research relevant to assessing the effects of the introduction into the environment of genetically engineered organisms. Potential subject areas include but are not limited to:

(a) Research on the potential for recombination between plant viruses and plant-encoded viral transgenes;

(b) Research on the potential for non-target effects of introduced foreign gene products expressed in genetically modified plant-associated microorganisms (*e.g.*, compounds in phyllosphere or rhizosphere-inhabiting bacteria) or in plants (*e.g., Bacillus thuringiensis* delta-endotoxin), especially in regard to persistence of the organisms and material in the environment, including their impact on beneficial or soil organisms;

(c) Changes in ecosystem or agro-ecosystem function and composition;

(d) Research on gene flow from transgenic crops to related plants and exploration of factors influencing gene transfer rates. Gene flow experiments on crops with a high potential for gene introgression into wild or weedy relatives (*e.g.*, those with high rates of outcrossing and with overlapping habitats are of particular interest);

(e) Research on the role that insects and/or pathogens play in limiting populations of crops and weeds as this relates to acquisition of transgenic pest protection by crops and/or weeds; and

(f) Research on how transgenic plants, especially grasses, that are resistant or tolerant to environmental stresses (such as drought or salt) affect land use practices (new habitats or tillage), water use (irrigation) patterns, and species displacement.

The data collected may include: survival; reproductive fitness; genetic stability (*e.g.*, transgene retained during backcrossing); genetic recombination; horizontal gene transfer; loss of genetic diversity; or enhanced competitiveness. As long as the data gathered are relevant to the assessment of the effects of genetically modified organisms, the experiments need not utilize transgenic organisms. When feasible, measures of risk should include estimates of expected frequency and impact, and address the availability of effective mitigation measures to reduce or avoid impacts.

2. Research on large-scale deployment of genetically engineered organisms, especially commercial uses of such organisms, with special reference to considerations that may not be revealed through small-scale evaluations and tests and may address cumulative effect concerns. Studies should attempt to project impacts over as large a spatial and temporal scale as feasible. Potential focus areas include but are not limited to:

(a) Studies of insects and viruses that have developed resistance to plants possessing transgenic protection from them. This may be done by monitoring locations where such plants are grown on a commercial scale or in large scale production. The analysis of resistant viral strains should include analyzing whether the strain arose via recombination between viral transgenes and the viral genome and an analysis of how the resistance was effected (*e.g.*, changed coat protein with increased seed or insect vector transmissibility). The potential for transcapsidation in transgenic plants to alter seed transmission can be evaluated by comparing the levels of infected seed from transgenic plants inoculated with a virus, that could be transcapsidated, with seed from nontransgenic plants inoculated in a similar manner. Analysis should include the presence of satellite RNA (satRNA) which may replicate with the help of a suitable helper virus. Such projects should survey the production sites for two to three years.

(b) Studies to assess the impact of transgenic plants, especially insect resistant or herbicide tolerant plants, on biodiversity of agro-ecosystems. This could include changes in population dynamics and species diversity of nontarget arthropods (particularly beneficial predators, parasites, and pollinators), plants, mammals, avian or microbial species (including both pathogenic or beneficial fungi or bacteria associated with the crop plant). These studies should be conducted in such a way as to compare the impacts of transgenic plants to nontransgenic cultivars with otherwise similar phenotypes using the commonly recommended or adopted practices for tillage, irrigation, and control of pests or weeds. Also, effects of these plants on soil erosion or water quality could be included. Extensive documentation of agricultural practices will be a necessary component.

(c) Monitoring for the occurrence of individual or stacked resistance traits in wild/weedy relatives of commercialized transgenic crops, and subsequently, any effects of such genes on fitness, competitiveness, and weediness.

3. Research to assess the effects of transgenes in wild relatives of crop species. This research could evaluate the potential for unexpected fitness effects by comparing fitness characteristics in hybrids or introgressants between a transgenic line and the wild relative to hybrids or introgressants between the nontransgenic line and the wild relatives, or could evaluate fitness effects of the introduced trait by evaluating survival or reproductive success under natural conditions, or through planned competition experiments. Crop species could include those with compatible wild relatives in the U.S. which have been deregulated (*e.g.*, rice, rapeseed, melon, and squash) or are being developed (*e.g.*, sunflower, turfgrasses, strawberry). Introduced traits could include those

that have potential effects on fitness (*e.g.*, pest or disease resistance), or that have potential physiological or metabolic effects.

4. Research to assess the effects of genetically engineered plants with "stacked" resistance genes or genes that confer broad resistance to insects or diseases. These genes may give recipient plants a greater selective advantage and lead to less predictable ecological consequences. Possible areas of research include, but are not limited to: (a) The impact of gene stacking on non-target species; (b) the effects of stacked genes on pest populations; (c) transmission and establishment of multiple resistance genes into weedy relatives; (d) influence of genetic factors such as linkage on the transmission and establishment of multiple genes; and (e) ecological importance in weedy hosts of pest complexes sufficiently variable as to require broad resistance or stacked genes for their control.

5. Research to develop statistical methodology and quantitative measures of risks associated with field testing of genetically modified organisms.

6. The Program will, subject to resource availability, provide partial funding to organize a conference that brings together scientists, regulators, and others to review the science-based data relevant to risk assessment of genetically modified organisms released into the environment. The steering committee for the conference should include representatives from a variety of relevant scientific disciplines, such as ecology, population biology, pathology, production and resource management science, as well as educators, extension specialists and others, as appropriate. The goals of such a conference may include sharing of scientific information and identification of gaps in knowledge, and/or public education and outreach, among others. Publication of the proceedings will be required. The Program will fund a maximum of two conference proposals.

Part III. Content of a Proposal

The format guidelines for full research proposals, found in the administrative provisions for the Program at 7 CFR 3415.4(d), should be followed for the preparation of proposals under the Program in FY 2000. In addition, please note the following items: (1) The Department elects not to solicit preproposals in FY 2000; (2) a proposal's project summary may not exceed one single- or double-spaced page. Include on this page the proposal title, as well as names and institutions of each investigator; and (3) a separate conflict of interest list must be submitted with the proposal for each investigator for whom a curriculum vita (C.V.) is required. This list is necessary to assist program staff in excluding from proposal review those individuals who have conflicts of interest with the project personnel in the grant proposal.

For each investigator (as described in the proposal project description), list alphabetically the full names of only the individuals in the following categories. It is not necessary to list individuals in each category separately; rather, a single alphabetized list for each investigator is preferred. Additional pages may be used as necessary. A conflict of interest list must be submitted before a proposal is considered complete. Inclusion of a C.V. or publication list in lieu of a conflict of interest list is not sufficient. Other investigators working in the applicant's specific research area are not in conflict of interest with the applicant unless those investigators fall within one of the categories listed below:

(A) All collaborators on research projects within the past four years, including current and planned collaborations;

(B) All co-authors on publications within the past four years, including pending publications and submissions;

(C) All persons in your field with whom you have had a consulting or financial arrangement within the past four years; and

(D) All thesis or postdoctoral advisees/advisors within the past four years.

Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 and 7 CFR part 520 (the CSREES and ARS regulations implementing the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*)), environmental data or documentation for the proposed project is to be provided to CSREES and ARS in order to assist CSREES and ARS in carrying out their responsibilities under NEPA. These responsibilities include determining whether the project requires an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) or whether it can be excluded from this requirement on the basis of the categorical exclusions listed in 7 CFR 3407.6. To assist CSREES and ARS in this determination, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one of the exclusions.

Form CSREES–1234, NEPA Exclusions Form (copy in Application Kit), indicating the applicant's opinion of whether or not the project falls within one or more categorical exclusions, along with supporting documentation, must be included in the proposal. The information submitted in association with NEPA compliance should be identified in the Table of Contents as "NEPA Considerations" and Form CSREES–1234 and supporting documentation should be placed after the Form CSREES–661, Application for Funding, in the proposal.

Even though the applicant considers that a proposed project may fall within a categorical exclusion, CSREES and ARS may determine that an EA or an EIS is necessary for an activity if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

Part IV. How To Obtain Application Materials

Copies of this request for proposals, the administrative provisions for the Program (7 CFR part 3415), and the Application Kit, which contains required forms, certifications, and instructions for preparing and submitting applications for funding, may be obtained by contacting: Proposal Services Unit, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, SW, Washington, DC 20250–2245; telephone Number: (202) 401–5048.

Application materials also may be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov which states that you wish to receive a copy of the application materials for the FY 2000 Biotechnology Risk Assessment Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

This request for proposals and other application information and materials also are available at the Program's website (http://www.reeusda.gov/crgam/biotechrisk/biotech.htm).

Part V. Submission of a Proposal

A. What to Submit

An original and 14 copies of a proposal must be submitted. Proposals should be typed on 8½″ x 11″ white paper, single- or double-spaced, and one side of the page only. The text of the proposal should be prepared using no type smaller than 12 point font size and one-inch margins. Each copy of each

proposal must be stapled securely in the upper lefthand corner. (DO NOT BIND.) All copies of the proposal must be submitted in one package.

B. Where and When To Submit

Hand-delivered proposals (brought in person by the applicant or through a courier service) must be received on or before April 10, 2000, at the following address: Biotechnology Risk Assessment Research Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture, Room 303, Aerospace Center; 901 D Street, SW; Washington, DC 20024. The telephone number is (202) 401–5048. Proposals transmitted via a facsimile (fax) machine will not be accepted.

Proposals submitted through the U.S. mail must be received on or before April 10, 2000. Proposals submitted through the U.S. mail should be sent to the following address: Biotechnology Risk Assessment Research Grants Program; Proposal Services Unit; Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing or via the Internet (e-mail). Therefore, it is important to include your e-mail address on Form CSREES–661 when applicable. This acknowledgment will contain a proposal identification number. Once your proposal has been assigned a proposal number, please cite that number in future correspondence.

Part VI. Proposal Evaluation

Proposals will be evaluated by the Administrators of ARS and CSREES assisted by a peer panel of scientists for scientific merit, qualifications of project personnel, adequacy of facilities, and relevance to both risk assessment research and regulation of agricultural biotechnology. Proposals for funding a scientific research conference grant will be evaluated on the following criteria: choice of topics and selection of speakers; general format of the conference, especially with regard to its appropriateness for fostering scientific exchange and/or public understanding; provisions for wide participation from the scientific and regulatory community and others as appropriate; qualifications of the organizing committee and appropriateness of invited speakers to the topic areas being covered; and appropriateness of the budget requested and qualifications of the project personnel. All proposals are considered together in making award decisions. However, no more than two conference grants will be awarded.

Part VII. Supplementary Information

A. Applicable Regulations

This Program is subject to the administrative provisions found in 7 CFR part 3415, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. Several other Federal statutes and regulations apply to grant proposals considered for review or to grants awarded under this Program. These include but are not limited to: 7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations.

B. Programmatic Contact

For additional information on the Program, please contact:

Dr. Deborah Sheely, Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Stop 2241; 1400 Independence Avenue, SW; Washington, DC 20250–2241; Telephone: (202) 401–1924; e-mail: dsheely@reeusda.gov; or

Dr. Robert M. Faust; Agricultural Research Service; U.S. Department of Agriculture; Room 338, Building 005, BARC–West; Beltsville, MD 20705; telephone: (301) 504–6918, e-mail: rmf@ars.usda.gov.

C. Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. In your comments, please include the name of the program and the fiscal year of the request for proposals to which you are responding. These comments will be considered in the development of the next request for proposals for the program. Such comments will be used in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(c)(2)). Comments should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this notice.

D. Additional Information

The Biotechnology Risk Assessment Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.219. For reasons set forth in the final rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, on this 28th day of February, 2000.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

Edward B. Knipling,

Acting Administrator, Agricultural Research Service.

[FR Doc. 00–5174 Filed 3–2–00; 8:45 am]

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Federal Register

Friday,
March 3, 2000

Part VI

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Special Research Grants Program—Pest Management Alternatives Research: Special Program Addressing Food Quality Protection Act Issues for Fiscal Year 2000; Request for Proposals; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Special Research Grants Program—Pest Management Alternatives Research: Special Program Addressing Food Quality Protection Act Issues for Fiscal Year 2000; Request for Proposals

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of request for proposals and request for input.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) requests proposals for competitive grant awards under the Special Research Grants Program titled "Pest Management Alternatives Program: Addressing Food Quality Protection Act Issues for Fiscal Year 2000." This program addresses anticipated changes in pest management on food, feed, livestock, and ornamental commodities resulting from implementation of the Food Quality Protection Act of 1996 (FQPA) and related regulatory actions.

The goals of this program are to develop, test, and implement pest management alternatives and possible mitigation strategies to ensure that crop producers have reliable methods of managing pests considered a high priority under the Food Quality Protection Act (FQPA) and related regulatory actions.

By this notice, CSREES additionally solicits stakeholder input from any interested party. These comments will be considered in the development of the next request for proposals for this program. Such comments will be used in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998.

DATES: Proposals must be received on or before April 17, 2000.

User comments are requested within six months from the issuance of the request for proposals. Comments received after that date will be considered to the extent practicable (see Section VII. C.).

ADDRESSES: Proposals submitted through the U.S. mail should be sent to the following address: Special Research Grants Program—Pest Management Alternatives Research; + Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245.

Hand-delivered proposals (brought in person by the applicant or through a courier service) must be delivered to the following address: Special Research Grants Program—Pest Management Alternatives Research; " Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, SW; Washington, DC 20024. The telephone number is (202) 401–5048. Proposals transmitted via a facsimile (fax) machine will not be accepted.

Written user comments should be submitted by mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA-CSREES; STOP 2299; 1400 Independence Avenue, SW; Washington, DC 20250–2299; or via e-mail to: RFP-OEP@reeusda.gov. (This e-mail address is intended only for receiving stakeholder comments regarding this RFP, and not for requesting information or forms.)

FOR FURTHER INFORMATION CONTACT: Steve Yaninek, Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2220; 1400 Independence Avenue, SW; Washington, DC 20250–2220. Telephone: (202) 401–6702; fax number: (202) 401–6869; e-mail address: syaninek@reeusda.gov.

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Part I. General Information

A. Legislative Authority

This program is administered by CSREES, United States Department of Agriculture (USDA). The authority is contained in section (c)(1)(A) of the Competitive, Special, and Facilities Research Grant Act, in section 2 of Pub. L. No. 89–106, as amended (7 U.S.C. 450i(c)(1)(A)). Under this authority, subject to the availability of funds, the Secretary may make grants, for periods not to exceed three years, to State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals for the purpose of conducting research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States.

B. Eligibility

Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals.

Proposals from scientists affiliated with non-United States organizations are not eligible for funding nor are scientists who are directly or indirectly engaged in the development of pest management tactics for profit; however, their collaboration with funded projects is encouraged.

C. Applicant Peer Review Requirements

Subsection (c)(5) of the Competitive, Special, and Facilities Research Grant Act, as amended (7 U.S.C. 450i(c)(5)), requires applicants to conduct a scientific peer review of a proposed research project in accordance with regulations promulgated by the Secretary prior to the Secretary making a grant award under this authority. Regulations implementing this requirement are set forth in 7 CFR 3400.20. The regulations impose the following requirements for scientific

peer review by applicants of proposed research projects:

1. Credible and independent. Review arranged by the grantee must provide for a credible and independent assessment of the proposed project. A credible review is one that provides an appraisal of technical quality and relevance sufficient for an organizational representative to make an informed judgment as to whether the proposal is appropriate for submission for Federal support. To provide for an independent review, such review may include USDA employees, but should not be conducted solely by USDA employees.

2. Notice of completion and retention of records. A notice of completion of the review shall be conveyed in writing to CSREES either as part of the submitted proposal or prior to the issuance of an award, at the option of CSREES. The written notice constitutes certification by the applicant that a review in compliance with these regulations has occurred. Applicants are not required to submit results of the review to CSREES; however, proper documentation of the review process and results should be retained by the applicant.

3. Renewal and supplemental grants. Review by the grantee is not automatically required for renewal or supplemental grants as defined in 7 CFR 3400.6. A subsequent grant award will require a new review if, according to CSREES, either the funded project has changed significantly, other scientific discoveries have affected the project, or the need for the project has changed. Note that a new review is necessary when applying for another standard or continuation grant after expiration of the grant term.

Part II. Program Description

A. Purpose of the Program

The Pest Management Alternatives Program (PMAP) was established to support the development and implementation of pest management alternatives when regulatory action by the Environmental Protection Agency (EPA) or voluntary cancellation by the registrant results in the unavailability of certain agricultural pesticides or pesticide uses. These activities pertain to pesticides identified for possible regulatory action under section 210 of the FQPA, Pub. L. No. 104–170, which amended the Federal Insecticide, Fungicide, and Rodenticide Act, or through EPA's pesticide re-registration program. The program has been developed pursuant to the Memorandum of Understanding (MOU) between USDA and EPA signed August 15, 1994, and amended April 18, 1996, which establishes a coordinated framework for these two agencies to support programs that make alternative pest management materials available to agricultural producers. In this MOU, USDA and EPA agreed to cooperate in conducting the research, technology transfer, and registration activities necessary to address pest management alternatives needed in agriculture.

B. Available Funding

The amount available for support of this program in fiscal year (FY) 2000 is approximately $1,500,000. It is anticipated that EPA will also provide support to the program. Section 711 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for fiscal year 2000, Pub. L. No. 106–78, prohibits CSREES from paying indirect costs on competitively awarded agricultural research, education, or extension grants that exceed 19 percent of total Federal funds provided for each award.

C. Program Description

This competitive grants program supports efforts to modify existing pest management approaches or develop new methods that address needs created by the implementation of FQPA and related regulatory actions. In FY 2000, CSREES will provide funding for projects that: (1) Identify and develop replacement or mitigation technologies for pesticides with uses that may change or be eliminated through FQPA implementation or related regulatory action, (2) Demonstrate promising alternative pest management strategies in the field in close collaboration with interested growers and grower groups, and (3) Support outreach activities that promote the implementation of pest management alternatives through education and extension. Proposals that include combinations of the three objectives will also be considered.

The EPA priorities for FQPA tolerance reassessment and reregistration review should be considered in determining needed alternative pest control chemistries and practices. The EPA priorities are given in a November 18, 1999, **Federal Register** notice "Pesticide Reregistration Performance Measures and Goals" (64 FR 63036, Nov. 18, 1 999) available on EPA web site at: http://www.epa.gov/fedrgstr/EPAFR–CONTENTS/1999/November/Day-18/contents.htm. This notice provides the schedule for completion of regulatory review for high priority chemicals. The overall priorities for FQPA review are given on the EPA web site at: http://www.epa.gov/oppfead1/fqpa/toleran.htm.

Activities funded by the PMAP could address work needed to facilitate grower knowledge and adoption of reduced risk pesticides that are newly-registered or are candidates for registration. Recently-registered chemical pesticides are identified in annual reports on the web site of the EPA Office of Pesticide Programs at: http://www.epa.gov/pesticides. Chemical pesticides that are candidates for registration in fiscal year 2000 are named in the interim work plan of the EPA Registration Division. The interim work plan is available on the web site at: http://www.epa.gov/opprd001/workplan. Twenty-five new chemicals are included in the work plan in addition to many new uses for 64 already-registered chemicals. The work plan provides the trade name, crops, and company for each chemical and identifies those chemicals that qualified for the EPA reduced-risk status. Biopesticides that are recently-registered and those under consideration for registration are identified on the web site at: http://www.epa.gov/pesticides/biopesticides.

Updates to EPA pesticide priority review and registration lists are available at: http://www.epa.gov/pesticides. EPA also issues an electronic newsletter that will announce updates. Sign-up information for the electronic newsletter is available at: http://www.epa.gov/pesticides.

Proposals should show substantial evidence that producers, commodity groups, and other affected user groups are actively involved in some or all of the following activities: (a) Needs assessment, (b) Priority setting, (c) Project design; and that they will be supportive of the project if it is funded. Public-private partnerships and matching resources from non-Federal sources, including producer or commodity groups, are encouraged. All proposals must include an outreach component. The amount of outreach activities increases from Objective I to Objective III below. Proposals should show potential for commercialization (including product registration if necessary) of any new technologies that are developed.

The three project objectives in FY 2000 are as follows:

I. *Replacement or Mitigation Technologies:* The focus should be on modification of existing approaches or introduction of new methods, especially biologically based methods, that can be rapidly brought to bear on pest management challenges resulting from implementation of FQPA and related regulatory actions. Durability and

practicality of the proposed pest management option(s) or mitigation procedure(s), and compatibility with integrated pest management systems, are critical. Both technological and economic feasibility should be considered. Pest management alternatives or risk mitigation options identified should address various risk concerns including dietary, occupational and non-occupational exposure, ground and surface water, and other ecological risks. Applicants must document that a crop profile has been or is being developed for the crop targeted in the proposal, or provide compelling evidence otherwise as to the importance of their proposed research.

II. *Demonstration Projects:* The focus should be on technologies or mitigation strategies that have been developed and show promise, but require field demonstration.

III. *Outreach Activities:* A new objective of the program in FY 2000 is to promote the exchange of pest management information related to FQPA implementation and related regulatory actions between researchers, extension agents, growers, and any other affected parties by offering one time support for publications, website development, regional workshops or other relevant activities during the FY 2000 funding cycle. The total available funding for proposals addressing only outreach activities will be no more than 10% of the total program budget.

Note: In FY 2000, PMAP is complemented by two new FQPA-related pest management competitive grant programs administered by CSREES under the Integrated Research, Education, and Extension Competitive Grants Program, under section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7626). These programs are the Crops at Risk (CAR) from FQPA Implementation program and the FQPA Risk Mitigation for Major Food Crop Systems program (RAMP). Both programs extend the horizon for successful development of alternatives from generally less than 2 years in the case of PMAP to between 2 to 4 years for CAR, and up to 5 years for RAMP. CAR will support intermediate-term research and implementation that provides a transition for the most vulnerable crops or cropping systems at risk because of FQPA, while RAMP will support multi-state, long-term, biointensive research to enhance stability and sustainability of pest management systems of major food crop systems also at risk because of FQPA. Also note that the development of replacements for methyl bromide is supported by the Methyl Bromide Transitions Program, another new program under the Integrated Research, Education, and Extension Competitive Grants Program. That program is designed to support the discovery and implementation of practical pest management alternatives for commodities affected by the methyl bromide phase-out. PMAP will not consider proposals that are better suited for one of these new programs. Contact Steve Yaninek (telephone: (202) 401–6702; fax: (202) 401–6869; e-mail address: syaninek@reeusda.gov) if you have questions about which program is most appropriate for your proposal.

Part III. Proposal Format

Each project description shall be complete in itself. The administrative provisions governing the Special Research Grants Program, 7 CFR Part 3400, set forth instructions for the preparation of grant proposals. The following requirements deviate from those contained in section 3400.4(c). The following provisions of this solicitation shall apply. Proposals should adhere to the format requirements for the specific objective addressed by the proposal format below. Sections A. through F. should be no more than 12 pages in length, numbered, and single-spaced with text on one side of the page using a 12 point (10 cpi) type font size and one-inch margins.

A. Application for Funding (Form CSREES–661)

All proposals must contain an Application for Funding (Form CSREES–661), which must be signed by the proposed principal investigator(s) and by the cognizant Authorized Organizational Representative (AOR) who possesses the necessary authority to commit the applicant's time and other relevant resources. Principal investigators who do not sign the proposal cover sheet will not be listed on the grant document in the event an award is made. The title of the proposal must be brief (80-character maximum), yet represent the major emphasis of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" or "research on" should not be used.

B. Table of Contents

For ease in locating information, each proposal must contain a detailed table of contents just after the proposal cover page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

C. Executive Summary

Describe the project in terms that can be understood by a diverse audience of university personnel, producers, various public and private groups, budget staff, and the general public. This should be on a separate page, no more than one page in length and have the following format: Name(s) of principal investigator(s) and institutional affiliation, project title, key words, and project summary.

D. Problem Statement

Identify the pest management problem addressed, its significance, and options for solution. Identify the commodity(ies) and the pesticides that will be addressed by the proposed project. EPA has published in the **Federal Register** several lists of pesticides they consider priorities (see Part II.C. for details). Proposals that address pesticides on these lists will have priority (see Part VI.A.). Describe the production area addressed (including acreage), frequency and severity of losses to pests controlled with priority pesticides, and the potential applicability to other production regions. As appropriate, proposals should address issues as they relate to current integrated pest management and crop production practices, technologic and economic feasibility of potential new practices, and their potential durability.

E. Objectives

Provide clear, concise, complete, and logically arranged statements of the specific aims of the proposed effort.

F. Research, Education, and Technology Transfer Plan

This section is needed only if the proposed project includes development of replacement or mitigation technologies (Objective I.). Proposals should provide a credible detailed plan for the research, education, and technology transfer required for implementation within the next two to four years of the alternative solution in the field, and should identify milestones.

G. Literature Cited

A concise list of key references cited in the proposal should be included in this section.

H. User Involvement

Describe the role of producers, commodity groups, and other end-users in identifying the need for the work being proposed, and their anticipated involvement in the project if funded. Competitive proposals will demonstrate involvement of affected user groups in project design, implementation, and funding.

I. Facilities and Equipment

All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment not currently accessible and necessary to conduct and successfully complete the proposed project should be listed with the amount and justification for each item.

J. Collaborative Arrangements

If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Funding contributions by collaborators that will be used to accomplish the stated objectives should be identified. Evidence (*i.e.*, letters of intent) should be provided to assure peer reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

K. Personnel Support

To assist peer reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be clearly identified. For each principal investigator involved, and for all senior associates and other professional personnel who are expected to work on the project, whether or not funds are sought for their support, the following should be included:

(i) An estimate of the time commitments necessary.

(ii) Curriculum vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, or commodity production knowledge or experience with that commodity (*e.g.*, educational, employment and professional history, and honors and awards). Unless pertinent to the project, to personal status, or to the status of the organization, meetings attended, seminars given, or personal data such as birth date, marital status, or community activities should not be included. Each vita shall be no more than two pages in length, excluding the publication lists.

(iii) Publication list(s). A chronological list of all publications in refereed journals during the past four years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

L. Budget

A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose (Form CSREES–55), along with instructions for completion, is included in the Application Kit and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute. However, the recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 19 percent of total Federal funds awarded. This limitation also applies to the recovery of indirect costs by any sub-awardee or subcontractor, and should be reflected in the sub-recipient budget. Successful PIs, or their designated representative, and an end-user/beneficiary of the proposed activities will be required to participate in one regional outreach activity, *i.e.* workshop, field day, or growers meeting, approved by the CSREES program manager during the course of the project. Participation in regional workshops supported by this program should be given priority when planning outreach commitments. Travel support for two individuals per project to meet this requirement should be included in the budget. Proposals that request more than 10% of the total program budget (*see* Part II.B.) are required to provide additional justification and will be strictly scrutinized during the review process.

Note: For projects awarded under the authority of Sec. 2(c)(1)(A), no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

M. Additions to Project Description

The Administrator of CSREES, the members of peer review groups, and the relevant program staff expect each project description to be complete given the page limit established in this section (Proposal Format). However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are deemed to be unsuitable for inclusion in the text of the proposal), then 20 copies of the materials should be submitted. Each set of such materials must be identified with the name of the submitting organization, and the name(s) of the principal investigator(s). Information may not be appended to a proposal to circumvent page limitations prescribed for the project description. Extraneous materials will not be used during the peer review process.

Note: Specific organizational management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant for this program if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. If necessary, USDA will contact an applicant to request organizational management information once a proposal has been recommended for funding.

N. Current and Pending Support

All proposals must contain Form CSREES–663 listing this proposal and any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for the person(s) involved is included in the budget for each project. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the Administrator of CSREES for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program.

O. Assurance Statement(s)

If it is anticipated that the research project will involve recombinant DNA or RNA research, experimental vertebrate animals, or human subjects, an Assurance Statement, Form CSREES–662, must be completed and included in the proposal. Please note that grant funds will not be released until CSREES receives and approves documentation

indicating approval by the appropriate institutional committee(s) regarding DNA or RNA research, animal care, or the protection of human subjects, as applicable.

P. Peer Review Certification

By signing the Application for Funding form, the AOR of the applicant institution is providing the required certification that the full proposal has received a credible and independent peer review arranged by the institution (see Part I.C.).

Q. Other Certifications

Note that by signing the Application for Funding form the applicant is providing the required certifications set forth in 7 CFR Part 3017, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in this application package for informational purposes only. These forms should not be submitted with your proposal since by signing the Form CSREES–661 your organization is providing the required certifications.

If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a Form AD–1048 to the grantee organization for retention in their records. This form should not be submitted to USDA.

R. Compliance With the National Environmental Policy Act

As outlined in 7 CFR part 3407 (CSREES's implementing regulations of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*)), environmental data or documentation for the proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. These responsibilities include determining whether the project requires an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) or whether it can be excluded from this requirement on the basis of one or more of the categorical exclusions listed in 7 CFR 3407.6. To assist CSREES in this determination, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one of the exclusions.

Form CSREES–1234, NEPA Exclusions Form (copy in Application Kit), indicating the applicant's opinion of whether or not the project falls within one or more categorical exclusions, along with supporting documentation, must be included in the proposal. The information submitted in association with NEPA compliance should be identified in the Table of Contents as "NEPA Considerations" and Form CSREES–1234 and supporting documentation should be placed after the Form CSREES–661, Application for Funding, in the proposal.

Even though the applicant considers that a proposed project may fall within a categorical exclusion, CSREES may determine that an EA or an EIS is necessary for an activity if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

Part IV. How To Obtain Application Materials

Copies of this solicitation, the administrative provisions for the Program (7 CFR part 3400), and the Application Kit, which contains required forms, certifications, and instructions for preparing and submitting applications for funding, may be obtained by contacting: Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245; telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the Special Research Grants Program—Pest Management Alternatives Research: Special Program Addressing Food Quality Protection Act Issues.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 2000 Special Research Grants Program—Pest Management Alternatives Research: Special Program Addressing Food Quality Protection Act Issues. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Part V. Submission of a Proposal

A. What To Submit

An original and 20 copies of a proposal must be submitted. Each copy must be stapled securely in the upper left-hand corner (DO NOT BIND). All copies of the proposal must be submitted in one package.

B. Where and When To Submit

Proposals must be received on or before April 17, 2000. Proposals submitted by mail must be sent to the following address: Special Research Grants—Pest Management Alternatives Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Mail STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245; telephone: (202) 401–5048.

Proposals to be delivered by Express mail, courier service, or by hand must be sent to the following address: Special Research Grants—Pest Management Alternatives; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303; 901 D Street, SW; Washington, DC 20024; telephone: (202) 401–5048.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing or by e-mail, therefore applicants are encouraged to provide e-mail addresses, where designated, on the Form CSREES–661. The acknowledgment will contain an identifying proposal number. Once your proposal has been assigned a proposal number, please cite that number in future correspondence.

Part VI. Selection Process and Evaluation Criteria

A. Selection Process

Priority will be given to proposals that address pesticides currently under regulatory review or being evaluated by EPA (*see* Part II.C.). Proposals will be evaluated for relevancy (Criterion 1, 30 points) by representatives from USDA, EPA, farm and commodity organizations, environmental groups, and consumer groups. Methodology and scientific rigor (Criteria 2–6, 70 points) will be evaluated by a panel with appropriate expertise. Panel members will include representatives with appropriate scientific backgrounds from land-grant universities (including IPM, IR–4, and NAPIAP), USDA, EPA, and other organizations as needed. Funding determinations will be based on, subject to the availability of funds, the proposals receiving the highest combined relevancy and scientific merit scores.

B. Evaluation Criteria

1. Relevance to Program Objectives (30 points). Factors that will be considered include: importance of the crop/pest combination (particularly agronomic and economic considerations), number of crops and

pesticides addressed, user involvement in planning and implementation, potential for rapid integration (within 3 years) into production practices, and demonstration of consideration of existing IPM programs.

2. Importance of the Problem (Problem Statement)(particularly ecological and agronomic considerations)(10 points)

3. Appropriateness of Methods in Meeting Objectives (15 points)

4. Potential to Reduce Reliance (15 points)

5. Level of User Involvement (10 points)

6. Appropriateness of the Budget (10 points)

Part VII. Supplementary Information

A. Confidentiality

CSREES receives grant proposals in confidence and will protect the confidentiality of their contents to the maximum extent permitted by law. Information contained in unfunded proposals will remain the property of the applicant. However, CSREES will retain one copy of all proposals received for a one year period; extra copies will be destroyed.

When a proposal results in a grant, it becomes a part of the public record, available to the public upon specific request under the Freedom of Information Act (FOIA). Information that the Secretary of Agriculture determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked by the applicant with the term "confidential proprietary information."

B. Other Federal Statutes and Regulations That Apply

This program is subject to the administrative provisions for the Special Research Grants Program found in 7 CFR part 3400, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the processes regarding the awarding of grants, and regulations relating to the post-award administration of such grants. However, where there are differences between this RFP and the administrative provisions, this RFP shall take precedence to the extent that the administrative provisions authorize such deviations. Other Federal statutes and regulations apply to grant proposals considered for review or to grants awarded under this program. These include, but are not limited to:

7 CFR part 3019—USDA Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and

7 CFR part 3052—Audits of States, Local Governments, and Non-Profit Organizations.

C. Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. In your comments, please include the name of the program and the fiscal year request for proposals to which you are responding. These comments will be considered in the development of the next request for proposals for the program. Such comments will be used in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C. 7613(c). Comments should be submitted as provided for in the "Addresses" and "Dates" portions of this Notice.

D. Additional Information

For reasons set forth in the final rule-related Notice to 7 CFR part 3015, Subpart V, (48 FR 29115, June 24, 1983) this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., this 28th day of February, 2000.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 00–5175 Filed 3–2–00; 8:45 am]

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Federal Register

Friday,
March 3, 2000

Part VII

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Special Research Grants Program, Citrus Tristeza Research; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Special Research Grants Program, Citrus Tristeza Research

AGENCY: Cooperative State Research, Education, and Extension Service, Department of Agriculture.

ACTION: Notice of request for proposals and request for input.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) announces the availability of grant funds and requests proposals for the Special Research Grants Program, Citrus Tristeza Research for fiscal year (FY) 2000. The purpose of the program is to support research that focuses on problems caused by Citrus Tristeza Virus (CTV) and the Brown Citrus Aphid. This request for proposals (RFP) sets forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and regulations relating to the post-award administration of such grants.

CSREES also is soliciting comments regarding this RFP from any interested party. These comments will be considered in the development of the next RFP for this program. Such comments will be used in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998.

DATES: All proposals must be received at USDA on or by April 17, 2000. Proposals not received on or by this date will not be considered for funding.

User comments are requested within six months from the issuance of the RFP. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Proposals should be submitted to the following mailing address: Special Research Grants Program, Citrus Tristeza Research; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245.

The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Special Research Grants Program, Citrus Tristeza Research; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, SW; Washington, DC 20024. Telephone: (202) 401–5048.

Written user comments should be submitted by mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, SW; Washington, DC 20250–2299; or via e-mail to: RFP-OEP@reeusda.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Robin Huettel; Manager, Citrus Tristeza Research Program; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2220; 1400 Independence Avenue, SW; Washington, DC 20250–2220; telephone (202) 401–5804; fax (202) 401–6869; internet: rhuettel@reeusda.gov.

SUPPLEMENTARY INFORMATION:

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Part I—General Information

A. Legislative Authority

The authority for this program is contained in section (c)(1)(A) of the Competitive, Special, and Facilities Research Grant Act, section 2 of Pub. L. 89–106, as amended (7 U.S.C. 450i(c)(1)(A)). This program is subject to the administrative regulations found in 7 CFR Part 3400.

In accordance with the statutory authority, the Secretary may make grants for the purpose of conducting research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States.

B. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable:

(1) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service and any other officer or employee of the Department to whom the authority involved may be delegated.

(2) *Authorized departmental officer* or *awarding official* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) *Authorized organizational representative* means the president, director, chief executive officer, or other designated official of the applicant organization who has the authority to commit the resources of the organization.

(4) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) *Department* or *USDA* means the United States Department of Agriculture.

(6) *Grantee* means the organization or entity designated in the grant award document as the responsible legal entity to which a grant is awarded.

(7) *Peer review panel* or *group* means an assembled group of experts or consultants qualified by training and experience in particular scientific or technical fields to give expert advice on the scientific and technical merit of grant applications in those fields. The panel members will evaluate eligible proposals submitted to this program in their personal and professional area(s) of expertise.

(8) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (2) above.

(9) *Project* means the particular activity within the scope of the program supported by a grant award.

(10) *Principal Investigator* means the single individual designated by the grantee in the grant application and approved by the Administrator who is responsible for the scientific and technical direction of the project.

(11) *Project period* means the total length of time that is approved by the Administrator for conducting the research project as outlined in an approved grant application.

(12) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

C. Eligibility

Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Although an applicant may be eligible based on its status as one of these entities, other factors may exclude an applicant from receiving Federal assistance under this program (*e.g.*, debarment or suspension, a determination of non-responsibility based on submitted organizational management information).

Part II—Program Description

A. Purpose and Scope of the Program

Proposals are invited for competitive grant awards under the Special Research Grants Program, Citrus Tristeza Research for fiscal year (FY) 2000. The purpose of this grant program is to support research that focuses on problems caused by CTV and the Brown Citrus Aphid. This research should aim to facilitate promising breakthroughs in this important area of the food and agricultural sciences.

CTV is a pathogen of citrus vectored by several aphid species. This disease has been found in all the citrus producing regions of the United States and is of world-wide importance. The virus strain complex can cause a variety of symptoms, from mild to severe, depending upon the host and its environment. Recently, in Florida, a new aphid vector, the Brown Citrus Aphid was introduced. This vector is capable of transmitting a severe stem-pitting form of the virus. The Brown Citrus Aphid also occurs in Central America and the Caribbean Basin and thus poses a threat to citrus in other citrus producing areas in the United States (*e.g.*, Louisiana, Texas, Arizona, and California).

The research priority areas that have been identified are (1) Characterization and detection of CTV strains; (2) biology and control of the Brown Citrus Aphid; (3) host plant resistance; (4) epidemiology and crop loss assessment; and (5) development of cross-protecting CTV strains.

B. Available Funds and Award Limitations

Funds will be awarded on a competitive basis to support research projects that focus on solving problems caused by the CTV and Brown Citrus Aphid. The total amount of funds available in FY 2000 for support of this program is approximately $595,000. Each proposal submitted in FY 2000 shall request funding for a period not to exceed two years. FY 2000 awardees would need to recompete in future years for additional funding.

C. Applicant Peer Review Requirements

Subsection (c)(5) of the Competitive, Special, and Facilities Research Grant Act, as amended (7 U.S.C. 450i(c)(5)), requires applicants to conduct a scientific peer review of a proposed research project in accordance with regulations promulgated by the Secretary prior to the Secretary making a grant award under this authority. Regulations implementing this requirement are set forth in 7 CFR 3400.20. The regulations impose the following requirements for scientific peer review by applicants of proposed research projects:

1. Credible and independent. Review arranged by the grantee must provide for a credible and independent assessment of the proposed project. A credible review is one that provides an appraisal of technical quality and relevance sufficient for an organizational representative to make an informed judgment as to whether the proposal is appropriate for submission for Federal support. To provide for an independent review, such review may include USDA employees, but should not be conducted solely by USDA employees.

2. Notice of completion and retention of records. For FY 2000, CSREES requires that a notice of completion of the review be conveyed in writing to CSREES as part of the submitted proposal. The written notice constitutes certification by the applicant that a review in compliance with these regulations has occurred. Applicants are not required to submit results of the review to CSREES; however, proper documentation of the review process and results should be retained by the applicant.

3. Renewal and supplemental grants. Review by the grantee is not automatically required for renewal or supplemental grants as defined in 7 CFR 3400.6. A subsequent grant award will require a new review if, according to CSREES, either the funded project has changed significantly, other scientific discoveries have affected the project, or the need for the project has changed. Note that a new review is necessary when applying for another standard or continuation grant after expiration of the grant term.

Part III—Preparation of a Proposal

A. Program Application Materials

Program application materials will be made available to interested entities upon request. These materials include information about the purpose of the program, how the program will be conducted, and the required contents of a proposal, as well as the forms needed to prepare and submit grant applications under the program. Program application materials can be downloaded from the Internet at the following website: *http://www.reeusda.gov/ipm/funding.htm* or may be obtained by writing or calling the following office: Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting application materials for the FY 2000 Special Research Grants Program, Citrus Tristeza Research. Application materials also may be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 2000 Special Research Grants Program, Citrus Tristeza Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

B. Content of a Proposal

(1) General

The proposal should follow these guidelines, enabling reviewers to more easily evaluate the merits of each proposal in a systematic, consistent fashion:

(a) The proposal should be prepared on only one side of the page using standard size (8½″ x 11″) white paper, one inch margins, typed or word processed using no type smaller than 12 point font regardless of whether it is single or double spaced. Use an easily readable font face (*e.g.*, Geneva, Helvetica, CG Times). Once accepted for review, your proposal will be read by at least three expert reviewers. Thus it is to your advantage to ensure that your proposal is not difficult to read.

(b) Each page of the proposal, including the Project Summary, budget pages, required forms, and appendices, should be numbered sequentially in the upper right-hand corner.

(c) The proposal should be stapled in the upper left-hand corner. Do not bind. An original and 9 copies (10 total) must be submitted in one package, along with 20 copies of the Project Summary as a separate attachment.

(2) Cover Page

Complete Form CSREES–661, Application for Funding, in its entirety. This form is to be utilized as the Cover Page. Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately.

(a) In Block 6, complete the title of the project. The project title must be brief (80-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as "investigation of" or "research on" should not be used.

(b) Blocks 7 and 8 should be completed to read "Special Research Grants Program, Citrus Tristeza Research."

(c) In Block 13, the Type of Award Request is "new."

(d) In Block 14., note the total amount of Federal dollars being requested.

(e) In Block 15, designate Principal Investigator(s)/Project Directors(s) (PI/PD). Listing multiple co-PIs beyond those required for genuine collaboration is discouraged. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(f) Type of Performing Organization (Block 18). A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 Land-Grant institution but the work will be performed in a department, laboratory, or other organizational unit of an agricultural experiment station, box "03" should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI/PD #1 in Block 15.a.

(g) In Block 22 list the names or acronyms of all other public or private sponsors including other agencies within USDA and other programs funded by CSREES to whom your application has been or will be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program manager as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided.

(h) The original copy of the Application for Funding form must contain the pen-and-ink signatures of the PI/PD(s) and authorized organizational representative for the applicant organization.

(i) Note that by signing the Application for Funding form, the applicant is providing the required certifications set forth in 7 CFR Part 3017, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The three certification forms are included in this application package for informational purposes only. It is not necessary to sign and submit the forms to USDA as part of the proposal.

(3) Table of Contents

For consistency and ease in locating information, each proposal must contain a detailed Table of Contents just after the Cover Page. The Table of Contents should include page numbers for each component of the proposal. Page numbers, shown in the upper right-hand corner, should begin with the first page of the Project Summary.

(4) Project Summary

The proposal must contain a Project Summary of 250 words or less on a separate page. The summary must be self-contained and describe the overall goals and relevance of the project. The summary should also contain a listing of the major organizations participating in the project. The Project Summary should immediately follow the Table of Contents. In addition to the summary, this page must include the title of the project, the name of the applicant organization, the authorized organizational representative, and the PI(s), followed by the summary.

(5) Project Narrative

Note: The Project Narrative shall not exceed 10 pages. To ensure fair and equitable competition, reviewers are instructed that they need to read only the first 10 pages of the Project Narrative and to ignore information on additional pages. The Project Narrative should contain the following items:

(a) Objectives—Clear, concise, complete, and logically arranged statement(s) of the specific aims of the proposed effort must be included in all proposals.

(b) Procedures—The procedures or methodology to be applied to the proposed effort should be explicitly stated. This section should include but not necessarily be limited to a description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out; techniques to be employed, including their feasibility; kinds of results expected; means by which data will be analyzed or interpreted; pitfalls which might be encountered; and limitations to proposed procedures.

(c) Justification—This section should include in-depth information on the magnitude of the problem and its relevance to ongoing food and agricultural research programs; the importance of starting the work during the current fiscal year, and reasons for having the work performed by the proposing institution.

(d) Cooperation and Institutional Units Involved— Cooperative and multi-State applications are encouraged. Identify each institutional unit contributing to the project. Identify each State in a multiple-State proposal and designate the lead State. When appropriate, the project should be coordinated with the efforts of other State and/or national programs. Clearly define the roles and responsibilities of each institutional unit of the project team, if applicable.

If it will be necessary to enter into formal consulting or collaborative arrangements with other individuals or organizations, such arrangements should be fully explained and justified. For purposes of proposal development, informal day-to-day contacts between key project personnel and outside experts are not considered to be collaborative arrangements and thus do not need to be detailed.

All anticipated subcontractual arrangements also should be explained and justified in this section. A proposed statement of work, budget, and budget narrative for each arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (*e.g.*, requests for outside laboratory analyses) are excluded from this requirement. If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR part 3019, USDA Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR 3015.205, USDA Uniform Federal Assistance Regulations, flow down to subcontractors. In addition, when applicable, required clauses from 7 CFR 3019.40 through 3019.48 ("Procurement Standards") and Appendix A ("Contract Provisions") should be included in final contractual documents, and it is necessary for the subcontractor to make a certification relating to debarment/suspension.

(e) Literature Review—A summary of pertinent publications with emphasis on their relationship to the effort being proposed should be provided and should include all important and recent publications from other institutions, as well as those from the applicant institution. The citations themselves should be accurate, complete, and written in an acceptable journal format.

(f) Current Work—Current unpublished institutional activities to date in the program area under which the proposal is being submitted should be described.

(g) Facilities and Equipment—All facilities which are available for use or assignment to

the project during the requested period of support should be reported and described briefly. Any potentially hazardous materials, procedures, situations, or activities, whether or not directly related to a particular phase of the effort, must be explained fully, along with an outline of precautions to be exercised. Examples include work with toxic chemicals and experiments that may put human subjects or animals at risk.

All items of major instrumentation available for use or assignment to the proposed project should be itemized. In addition, items of nonexpendable equipment not currently accessible and needed to conduct and bring the project to a successful conclusion should be listed, including dollar amounts and, if funds are requested for their acquisition, justified.

(h) Project Timetable—The proposal should outline all important phases as a function of time, year by year, for the entire project, including periods beyond the grant funding period.

(6) Key Personnel

All senior personnel who are expected to be involved in the effort must be clearly identified. For each person, the following should be included:

(a) An estimate of the time commitment involved; and

(b) Vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. Each vitae should be limited to two (2) pages in length, excluding publications listings. A chronological list of the most representative publications during the past five (5) years must be provided for each professional project member for whom a vitae appears. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

(7) Conflict-of-Interest List

A separate Conflict-of Interest List form (Form CSREES–1233) must be submitted for each investigator for whom a curriculum vitae is required. This form is necessary to assist program staff in excluding from proposal review those individuals who have conflicts-of-interest with the project personnel in the grant proposal. The Program Manager must be informed of additional conflicts-of-interest that arise after the proposal has been submitted.

(8) Budget

A detailed budget for each year of requested support must be submitted. In addition, a cumulative budget is required detailing requested support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants must also include a budget narrative to explain and justify their budgets. The following guidelines should be used in developing the proposal budget(s):

(a) Salaries and Wages—Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution and with the applicable OMB Cost Principles. Administrative and clerical salaries are normally classified as indirect costs. (See Item i. below.) However, if requested under A.2.e., they must be fully justified.

(b) Fringe Benefits—Funds may be requested for fringe benefit costs if the usual accounting practices of your institution provide that institutional contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project. See, *e.g.*, OMB Circular No. A–21, Cost Principles for Educational Institutions, for further guidance in this area.

(c) Nonexpendable Equipment—Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. (However, institutions may establish lower limits.) As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost in the budget narrative. This applies to revised budgets as well, as the equipment item(s) and amount(s) may change.

Note: For projects awarded under the authority of subsection (c)(1)(A) of the Competitive, Special, and Facilities Research Grant Act, no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

(d) Materials and Supplies—The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs in the budget narrative.

(e) Travel—The type and extent of travel and its relationship to project objectives should be described briefly and justified. If travel is proposed, provide the purpose, the destination, method of travel, number of persons traveling, number of days, and estimated cost for each trip. If details of a trip are not known at the time of proposal submission, provide a basis for determining the amount requested. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR 3015.205(b)(4) for further guidance.

(f) Publication Costs/Page Charges—Anticipated costs of preparing and publishing results of the research being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the grant.

(g) Computer (ADPE) Costs—Reimbursement for the costs of using specialized facilities (such as a university or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

(h) All Other Direct Costs—Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified in the budget narrative. This applies to revised budgets as well, as the item(s) and dollar amount(s) may change. Examples include space rental at remote locations, subcontractual costs, charges for consulting services, telephone, facsimile, e-mail, shipping costs, and fees for necessary laboratory analyses. You are encouraged to consult the "Instructions for Completing Form CSREES–55, Budget," of the Application Kit for detailed guidance relating to this budget category.

(i) Indirect Costs—The recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 19 percent of total Federal funds awarded. This limitation also applies to any subcontractor, and should be reflected in the subcontractor's budget.

(j) Cost-sharing—Cost-sharing is encouraged; however, cost-sharing is not required.

(9) Budget Narrative

All budget categories for which support is requested, must be individually listed (with costs) and justified on a separate sheet of paper and placed immediately behind the Budget Form.

(10) Current and Pending Support

All proposals must list any other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget for each project. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The application material includes Form CSREES–663, Current and Pending Support, which should be used for listing current and pending support. Note that the project being proposed should be included in the pending section of the form.

(11) Assurance Statement(s) (Form CSREES–662)

A number of situations encountered in the conduct of projects require special assurance, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will include the following:

(a) Recombinant DNA or RNA Research. As stated in 7 CFR 3015.205(b)(3), all key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. If your project proposes to use recombinant DNA or RNA techniques, the application must so indicate by checking the "yes" box in Block 19 of Form CSREES–661 and by completing Section A of Form CSREES–662. For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

(b) Animal Care. Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary in 9 CFR parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals or activities, you must check the "yes" box in Block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

(c) Protection of Human Subjects. Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. 93-348, as amended, and implementing regulations established by the Department under 7 CFR part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the "yes" box in Block 21 of Form CSREES–661 and complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

(12) Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In most cases, based on previously funded projects, the preparation of environmental data is not usually required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, NEPA Exclusions Form, must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be the last page of the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity. This will be the case if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect. However, this rarely occurs.

Part IV—Submission of a Proposal

A. What To Submit

An original and nine copies of the complete proposal must be submitted. Each copy of the proposal must be stapled in the upper left-hand corner. DO NOT BIND. In addition, submit 20 copies of the proposal's Project Summary. All copies of the proposal and Project Summary must be submitted in one package.

B. Where and When To Submit

Proposals must be received on or before April 17, 2000. Proposals that are hand-delivered, delivered by courier, or sent via overnight delivery services must be sent or delivered to: Special Research Grants Program, Citrus Tristeza Research; c/o Proposal Services Unit; Office of Extramural Programs; USDA/CSREES; Room 303, Aerospace Center; 901 D Street, SW; Washington, DC 20024; Telephone: (202)401–5048.

Note: Applicants are strongly encouraged to submit their completed proposals via overnight mail or delivery services to ensure timely receipt by the USDA.

Proposals sent via the U.S. Postal Service must be sent to the following address: Special Research Grants Program, Citrus Tristeza Research; c/o Proposal Services Unit; Office of

Extramural Programs; USDA/CSREES; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245; Telephone: (202) 401–5048.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing or by e-mail, therefore applicants are encouraged to provide e-mail addresses, where designated, on the Form CSREES–661. The acknowledgment will contain an identifying proposal number. Once your proposal has been assigned a proposal number, please cite that number in future correspondence.

Part V—Selection Process and Evaluation Criteria

A. Selection Process

Applicants should submit fully developed proposals that meet all the requirements set forth in this RFP.

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure it meets the requirements as set forth in this RFP. Proposals not meeting the requirements as set forth in this RFP will not be considered for funding. However, USDA retains the right to conduct discussions with applicants to resolve technical and/or budget issues as it deems necessary. Second, each proposal that meets the requirements will be technically evaluated by a peer review panel.

The individual peer panel members will be selected from among those recognized as specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of proposals being reviewed. The individual reviews of the panel members will be used to determine which proposals should be recommended to the Administrator (or his designee) for final funding decisions.

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Care will be taken to avoid actual, potential, and/or the appearance of conflicts of interest among reviewers. Evaluations will be confidential to USDA staff members, peer reviewers, and the principal investigator(s), to the extent permitted by law.

The specificity of these organisms and their host limits the areas in which relevant research can be carried out. The brown citrus aphid has recently been introduced into the citrus growing areas of Florida. Research on both the virus/aphid and on field biology of the aphid is largely conducted in the areas of Florida and Puerto Rico where it is established. CSREES anticipates that the expertise necessary to review proposals will be found at organizations in these geographic areas. Therefore, conflict-of-interest rules will be amended to allow reviewers to evaluate submitted proposals from their own university as long as the applicant and reviewer do not work on the same campus. Thus, for this program, the scientists from the University of Florida but from other campuses (*i.e.*, Research and Education Centers) are not considered to be in conflict.

B. Evaluation Criteria

The evaluation of proposals will be based on the following criteria, weighted relative to each other as noted in the parentheses following each criterion listed.

(1) Overall scientific and technical quality of the proposal (15 points);

(2) Scientific and technical quality of the approach (10 points);

(3) Relevance and importance of proposed research to solution of specific areas of inquiry, and application of expected results for States in which the grantee resides and will perform the work (30 points);

(4) Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment (40 points);

(5) The appropriateness of the level of funding requested (5 points).

Part VI—Supplementary Information

A. Access To Review Information

Copies of summary reviews will be sent to the applicant principle investigator automatically, as soon as possible after the review process has been completed. The identity of the individual peer reviewers will not be provided.

B. Grant Awards

(1) General

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in this RFP. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this RFP shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015, 3016, and 3019 of 7 CFR).

(2) Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the sponsoring agency as part of the preaward process.

(3) Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

(a) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for proposals;

(b) Title of project;

(c) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(d) Identifying grant number assigned by the Department;

(e) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(f) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(g) Legal authority(ies) under which the grant is awarded;

(h) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(i) Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

CSREES will award standard grants to carry out this program. A standard grant

is a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without additional support at a future date.

C. Use of Funds; Changes

(1) Delegation of Fiscal Responsibility

Unless the terms and conditions of the grant state otherwise, the grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(2) Changes in Project Plans

(a) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the CSREES Authorized Departmental Officer (ADO) for a final determination.

(b) Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the CSREES ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

D. Applicable Federal Statutes and Regulations

This program is subject to the administrative provisions for the Special Research Grants Program found in 7 CFR part 3400, which set forth procedures to be followed when submitting grant proposals, the processes regarding the awarding of grants, and regulations relating to the post-award administration of such grants. However, where there are differences between this RFP and the administrative provisions, this RFP shall take precedence to the extent that the administrative provisions authorize such deviations.

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

G. Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. In your comments, please include the name of the program and the fiscal year of the RFP to which you are responding. These comments will be considered in the development of the next RFP for the program. Such comments will be used in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(c)(2)). Comments should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this Notice.

Done at Washington, D.C., this 28th day of February 2000.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 00–5176 Filed 3–2–00; 8:45 am]

BILLING CODE 3410–22–P

Federal Register

Friday,
March 3, 2000

Part VIII

Department of Education

Office of Educational Research and Improvement, Eisenhower Regional Mathematics and Science Education Consortia Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

DEPARTMENT OF EDUCATION

[CFDA No.: 84.319A]

Office of Educational Research and Improvement, Eisenhower Regional Mathematics and Science Education Consortia Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of the Program: The Eisenhower Regional Mathematics and Science Education Consortia Program provides a regional and national technical assistance and dissemination system that focuses on mathematics and science education to help build the capacity of States and schools to implement school reform programs; coordinate Federal, State, and local education plans and activities; and adopt, adapt, and implement promising and proven practices for improving teaching and learning. This competition supports 10 regional consortia projects that will provide these services in their respective multi-state regions.

Eligible Applicants: Eligible applicants are a private nonprofit organization of demonstrated effectiveness; an institution of higher education; an elementary or secondary school; a state or local education agency; a regional educational laboratory in consortium with the research and development center established under section 931(c)(1)(B)(i) of the Educational Research, Development, Dissemination, and Improvement Act of 1994; or any combination of these entities.

Applications Available: March 3, 2000.

Deadline for Transmitting Applications: April 17, 2000.

Deadline for Intergovernmental Review: June 16, 2000.

Estimated Available Funds: Up to $14,750,000.

Estimated Maximum Award: $1,470,000 for the first budget year and $1,475,000 for each of years 2–5.

Estimated Average Size of Awards: $1,470,000 for the first budget year and $1,475,000 for each of years 2–5.

Maximum Award: We will reject any application that proposes funding in excess of the estimated maximum award in a given year.

Estimated Number of Awards: 10.

Budget Period: 12 Months.

Project Period: 60 Months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Priorities: This competition focuses on projects designed to meet priorities we have chosen from allowable activities specified in the program statute (*see* 34 CFR 75.105(b)(2)(v) and section 13302 of the Improving America's Schools Act of 1994 (20 U.S.C. 8672)).

Absolute Priority 1. Projects must propose activities that assist, train, and provide technical assistance to classroom teachers, administrators, and other educators to identify, implement, assess, or adapt mathematics and science education instructional materials, teaching methods, and assessment tools.

Absolute Priority 2. Projects must propose activities that implement programs and activities designed to meet the needs of groups that are underrepresented in, and underserved by, mathematics and science education.

Under 34 CFR 75.105(c)(3) we consider only applications that meet all of the priorities.

For Applications Contact: Judy Collins, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502, Washington, DC, 20208–5645. Telephone: (202) 219–2116. Email: judy__collins@ed.gov. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

FOR FURTHER INFORMATION CONTACT: Jill Edwards Staton, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502b, Washington, DC 20208–5645. Telephone: (202) 219–1669. Email: jill__edwards@ed.gov. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.** Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Application Procedures

Note: Some of the procedures in this notice for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

The U.S. Department of Education (we) are conducting a limited pilot project of electronic submission of discretionary grant applications for selected programs. Eisenhower Regional Mathematics and Science Education Consortia Program (CFDA No. 84.319A) is one of the programs included in the pilot project. If you are an applicant under Eisenhower Regional Mathematics and Science Education Consortia Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in the e-GAPS pilot project. By participating, you will have an opportunity to have input into the overall design and approach of e-GAPS. At the conclusion of the pilot project, we will evaluate its success and solicit suggestions for improvements.

If you participate as a grant applicant in an e-GAPS pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information-Non-Construction Programs (ED Form No. 524), and all necessary assurances and certifications. We may request that you give us original signatures on forms at a later date.

You may access the electronic grant application for Eisenhower Regional Mathematics and Science Education Consortia Program at: http://e-grants.ed.gov.

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You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

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of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

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Program Authority: 20 U.S.C. 8671–8678.

Dated: February 29, 2000.

C. Kent McGuire,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 00–5253 Filed 3–2–00; 8:45 am]

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Federal Register

Friday,
March 3, 2000

Part IX

The President

Proclamation 7279—Irish-American Heritage Month, 2000

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Federal Register
Vol. 65, No. 43
Friday, March 3, 2000

Presidential Documents

Title 3—

The President

Proclamation 7279 of March 1, 2000

Irish-American Heritage Month, 2000

By the President of the United States of America

A Proclamation

More than two centuries ago, our founders envisioned a new Nation, a land free from tyranny and filled with opportunity, prosperity, and liberty for all. Many Irish people, faced with severe hardship in their homeland, embraced the dream of a more promising future and left behind Ireland's shores, their families, and their friends for a new beginning in America. Each year during the month of March, we celebrate these courageous men and women of Ireland and remember with pride their many contributions to our Nation.

With strength, courage, wit, and creativity, Irish Americans have flourished in our diverse Nation of immigrants. Writers such as Flannery O'Connor and Eugene O'Neill have transformed our literature; entrepreneurs like Henry Ford helped revolutionize American industry; performers such as Gregory Peck and Helen Hayes have enriched the arts; patriots such as Audie Murphy, our most decorated soldier of World War II, redefined the meaning of courage; and social reformers such as suffragist Leonora Barry and labor organizer Mary Kenney O'Sullivan fought for the rights of others. Generations of Irish Americans have worked alongside their fellow Americans to build a more perfect Union, and America is a stronger Nation because of them.

During his visit to Ireland in 1963, President Kennedy reminded us that "our two nations, divided by distance, have been united by history." Today, people on both sides of the Atlantic are united not only by history, but also once again by a dream of a better way of life. In the spring of 1998, the people of Ireland and Northern Ireland sought to make that dream a reality at home when they voted overwhelmingly in support of the Good Friday Accord. America remains committed to the Irish people as they continue working to forge a brighter future in their own land. The road ahead is long, but the promise of peace is still within reach, and its rewards are great. This month, as we celebrate Saint Patrick's Day and our shared heritage with Ireland, we remember as well our common love of liberty, commitment to progress, and quest for lasting peace, and we look toward a future as proud as our past.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2000 as Irish-American Heritage Month. I call upon all the people of the United States to observe this month with appropriate ceremonies, programs, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–5456
Filed 3–2–00; 11:01 am]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1451/P.L. 106–173

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Last List February 23, 2000

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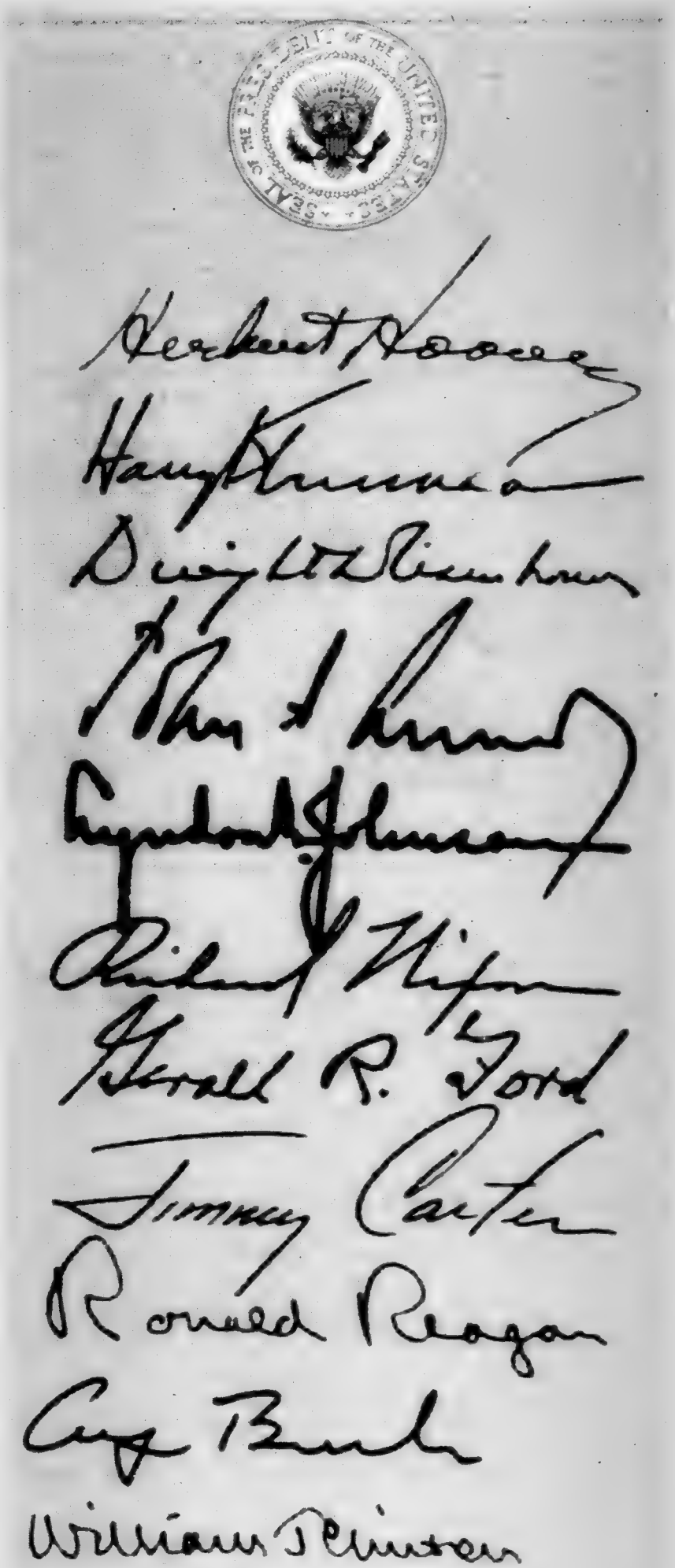

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Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

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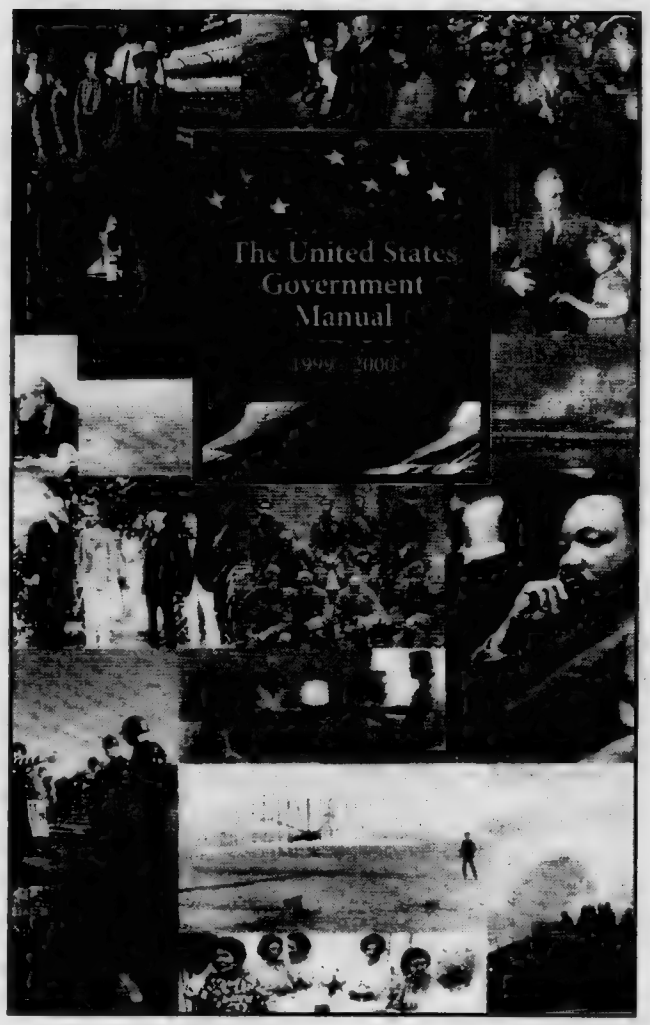

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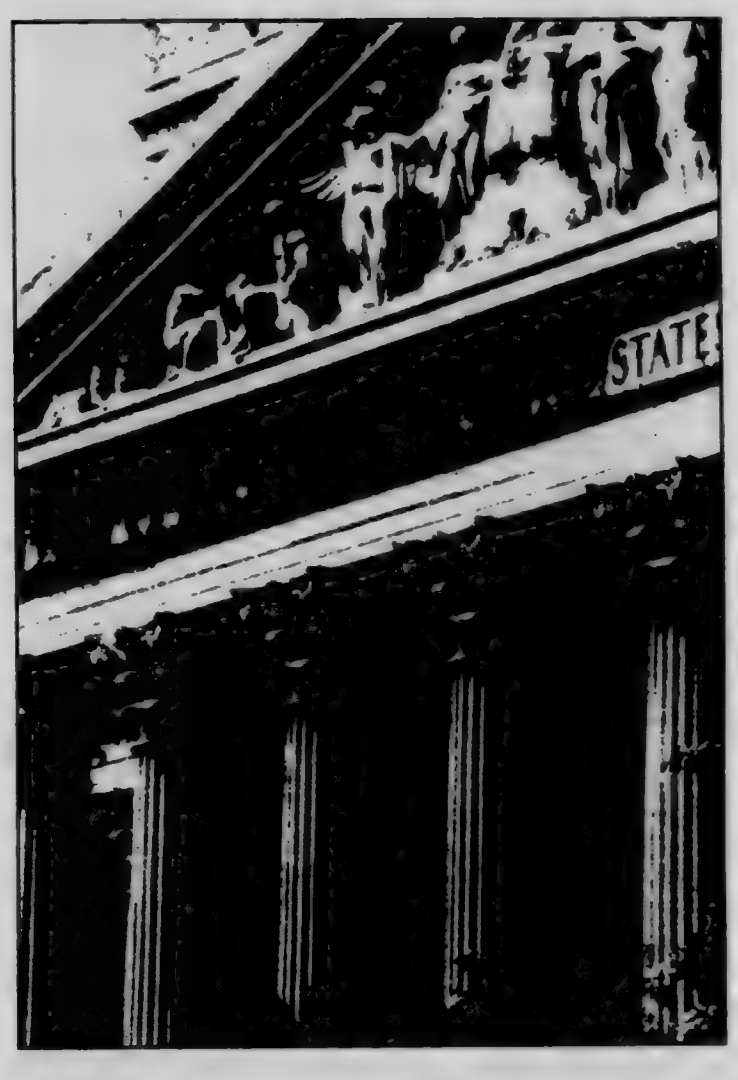

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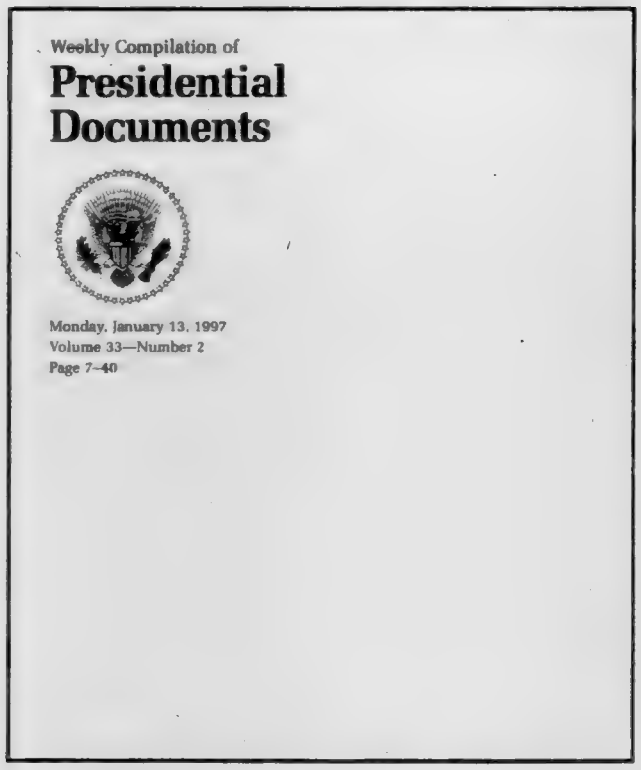

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Federal Register

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 00–2]

Acquisition of Library Materials by Non-Purchase Means and Disposition of Surplus Library Materials

AGENCY: Library of Congress.

ACTION: Final regulation.

SUMMARY: The Library of Congress issues this final regulation to reflect the revision of Library of Congress Regulations 317–1, 317–2, and 515. This revision of the above mentioned regulation clarifies the responsibilities and policies by which the Library of Congress conducts acquisition of materials by non-purchase means and disposes of surplus library materials.

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Pugh, General Counsel, Office of the General Counsel, Library of Congress, Washington, DC 20540–1050. Telephone No. (202) 707–6316.

SUPPLEMENTARY INFORMATION: The purpose of this regulation (36 CFR 701.33) is to identify who at the Library of Congress or outside entities (1) may request and/or approve gifts, deposits, exchanges or transfers of library materials; (2) may receive surplus library materials.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignia.

In consideration of the foregoing the Library of Congress amends 36 CFR part 701 as follows:

PART 701—PROCEDURES AND SERVICES

1. The authority citation for part 701 continues to read as follows:

Authority: 2 U.S.C. 136; 18 U.S.C. 1017.

2. Section 701.33 is revised to read as follows:

§ 701.33 Acquisition of library materials by non-purchase means and disposition of surplus library materials.

(a) *Gifts.* It is the policy of the Library of Congress to foster the enrichment of its collections through gifts of materials within the terms of the Library's acquisitions policies. In implementing this policy, division chiefs and other authorized officers of the Library may undertake, as representatives of the Library, preliminary negotiations for gifts to the Library. However, responsibility for formal acceptance of gifts of material and for approval of conditions of such gifts rests with The Librarian of Congress or his designee. The Chief, African/Asian Acquisitions and Overseas Operations Division, Chief, Anglo-American Acquisitions Division, and Chief, European and Latin American Acquisitions Division are responsible for routine gifts in the geographic areas covered by their divisions.

(b) *Deposits.* (1) The Anglo-American Acquisitions Division is the only division in the Library authorized to make technical arrangements, formally negotiate for the transportation of materials and conditions of use at the Library, and prepare written Agreements of Deposit to formalize these negotiations. The term "deposit" is used to mean materials which are placed in the custody of the Library for general use on its premises, but which remain the property of their owners during the time of deposit and until such time as title in them may pass to the Library of Congress. A deposit becomes the permanent property of the Library when title to it is conveyed by gift or bequest. A deposit may be withdrawn by the owner rather than conveyed to the Library. A deposit shall be accompanied by a signed Agreement of Deposit.

(2) It is the policy of the Library of Congress to accept certain individual items or special collections as deposits when: permanent acquisition of such materials cannot be effected immediately; the depositors give reasonable assurance of their intention to donate the materials deposited to the United States of America for the benefit of the Library of Congress; the Library of Congress determines that such ultimate transfer of title will enrich its collections; and the depositors agree that the materials so deposited may be available for unrestricted use or use in the Library under reasonable restrictions.

(c) *Methods of disposition of surplus and/or duplicate materials*—(1) *Exchange.* All libraries may make selections on an exchange basis from the materials available in the "Exchange/Transfer" category. The policy governing these selections is that exchange be made only when materials of approximately equal value are expected to be furnished in return within a reasonable period. Dealers also may negotiate exchanges of this type for items selected from available exchange materials, but surplus copyright deposit copies of works published after 1977 shall not knowingly be exchanged with dealers. Offers of exchange submitted by libraries shall be submitted to the Chief of the African/Asian Acquisitions and Overseas Operations Division, Anglo-American Acquisitions Division, or European/Latin American Acquisitions Division, or their designees, as appropriate, who shall establish the value of the material concerned. Offers from dealers shall be referred to the Chief of the Anglo-American Acquisitions Division. Exchange offers involving materials valued at $1,000 or more must be approved by the Acquisitions Division Chief; offers of $10,000 or more must be approved by the Director for Acquisitions and Support Services; and offers of $50,000 or more must be approved by the Associate Librarian for Library Services. The Library also explicitly reserves the right to suspend, for any period of time it deems appropriate, the selection privileges of any book dealer who fails to comply fully with any rules prescribed for the disposal of library materials under this section or any other pertinent regulations or statutes.

(2) *Transfer of materials to Government Agencies.* Library materials no longer needed by the Library of Congress, including the exchange use mentioned above, shall be available for transfer to Federal agency libraries or to the District of Columbia Public Library, upon the request of appropriate officers of such entities, and may be selected from both the "Exchange/Transfer" and "Donation" categories. Existing arrangements for the transfer of materials, such as the automatic transfer of certain classes of books, etc., to specified Government libraries, shall be

continued unless modified by the Library.

(3) *Donations of Library materials to educational institutions, public bodies, and nonprofit tax-exempt organizations in the United States.* It is the Library's policy, in keeping with the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 471 *et seq.*, which does not cover the Library of Congress, to use materials no longer needed for any of the purposes mentioned above to strengthen the educational resources of the Nation by enriching the book collections of educational institutions (full-time, tax-supported or nonprofit schools, school systems, colleges, universities, museums, and public libraries), public bodies (agencies of local, state, or Federal Government), and nonprofit tax-exempt organizations (section 501 of the Internal Revenue Code of 1954, 26 U.S.C. 501, (see 41 CFR 101–44.207 (a)(17)) by authorizing the Anglo-American Acquisitions Division to donate to such groups in the United States any materials selected by their representatives. Eligibility to participate in the donation program shall be limited as defined by procedures established by the Anglo-American Acquisitions Division.

(4) *Disposition of residue.* Library materials not needed for the collections of the Library, for its exchange and transfer programs, for sale, or for donation, and which, in the opinion of the Chief, Anglo-American Acquisitions Division, have no commercial value, may be turned over to the General Services Administration (GSA) to be disposed of in accordance with standard Government practice.

Dated: February 25, 2000.
Approved by:
James H. Billington,
The Librarian of Congress.
[FR Doc. 00–5113 Filed 3–3–00; 8:45 am]
BILLING CODE 1410–04–P

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 00–1]

Information About the Library

AGENCY: Library of Congress.
ACTION: Final regulation.

SUMMARY: The Library of Congress issues this final regulation to revise Library of Congress Regulation 1210 on information about the Library. The revised regulation will now refer interested parties to the Public Affairs Office instead of the Information Office. This revision also clarifies the procedures with regard to relations with representatives of the press, radio, television, and other public-information media.

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Pugh, General Counsel, Office of the General Counsel, Library of Congress, Washington, DC 20540–1050. Telephone No. (202) 707–6316.

SUPPLEMENTARY INFORMATION: The purpose of this regulation (36 CFR 701.4) is to identify who at the Library of Congress (1) is the principal contact for representatives of the media; (2) gives advice to Library officers and staff members on public-relations and public-information matters; keeps the Librarian and other officers informed of developments in this field; and (4) promotes the resources and activities of the Library.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignia.

In consideration of the foregoing the Library of Congress amends 36 CFR part 701 as follows:

PART 701—PROCEDURES AND SERVICES

1. The authority citation for part 701 continues to read as follows:

Authority: 2 U.S.C. 136; 18 U.S.C. 1017.

2. Section 701.4 is revised to read as follows:

§ 701.4 Information about the Library.

(a) *Information about the Library.* It is the Library's policy to furnish freely information about the Library to the media. All requests from the media, for other than generally published information and Library records, should be referred to the Public Affairs Office.

(b) *Public Affairs Office.* The Public Affairs Office shall have the principal responsibility for responding to requests for information about the Library from representatives of the media; giving advice to Library officers and staff members on public-relations and public-information matters; keeping the Librarian and other officers informed of important developments in this field; and promoting the resources and activities of the Library.

(1) During regular office hours (8:30 a.m. to 5 p.m.) telephone operators shall refer requests for information, from the media only, about the Library to the Public Affairs Office. All other requests for information shall be referred to the National Reference Service or other appropriate offices of the Library.

(2) All other Library offices and staff members who receive inquiries directly from representatives of the media for information about the Library, other than generally published information, shall refer such inquiries to the Public Affairs Office.

(3) The Public Affairs Office shall respond directly to inquiries concerning the Library, calling upon other offices to supply information to it as necessary, or shall arrange for other offices or staff members, as appropriate, to supply such information directly and report back to Public Affairs after the contact has been made. Requests for Library of Congress records, however, shall be made in accordance with 36 CFR Part 703.

(4) When the Public Affairs Office is closed (evenings, Saturdays, Sundays, and holidays), requests from the media for information about the Library shall be referred to the Public Affairs Officer at his/her home. In the event that person is not available, inquiries shall be referred to the Acting Public Affairs Officer, or, in turn, a designated public affairs specialist.

(c) Other Library Units and Staff Members. All Other Library Units and Staff Members shall be responsible for keeping the Public Affairs Office fully and promptly informed of contacts with the press, except in those instances of routine reference inquiries; supplying the Public Affairs Office with any data it requires in order to respond to inquiries from representatives of the media; and reporting promptly to the Public Affairs Office substantive contacts with media representatives about the Library and its policies or activities.

Dated: February 25, 2000.
Approved by:
James H. Billington,
The Librarian of Congress.
[FR Doc. 00–5112 Filed 3–3–00; 8:45 am]
BILLING CODE 1410–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300942; FRL–6389–8]

RIN 2070–AB78

Polyvinyl Acetate, Carboxyl Modified Sodium Salt; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of polyvinyl acetate, copolymer with maleic

anhydride, partially hydrolyzed, sodium salt when used as an inert ingredient (component of water soluble films) in or on growing crops when applied to raw agricultural commodities or after harvest. Kuraray America, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of polyvinyl acetate, copolymer with maleic anhydride, partially hydrolyzed, sodium salt.

DATES: This regulation is effective March 6, 2000. Objections and requests for hearings, identified by docket control number OPP–300942, must be received by EPA on or before May 5, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300942 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–8377 and e-mail address: acierto.amelia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300942. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of January 20, 1999 (64 FR 3096) (FRL–6038–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition (PP 8E4944) by Kuraray America, Inc., 200 Park Avenue, New York, NY 10166–3098. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(c) be amended by establishing an exemption from the requirement of a tolerance for residues of polyvinyl acetate, copolymer with maleic anhydride, partially hydrolyzed, sodium salt.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue..." and specifies factors EPA is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, polyvinyl acetate, carboxyl modified sodium salt, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is not manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, polyvinyl acetate, carboxyl modified sodium salt, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's minimum number average MW of 53,000 is greater than 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, polyvinyl acetate, carboxyl modified sodium salt meets all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to polyvinyl acetate, carboxyl modified sodium salt.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that polyvinyl acetate, carboxyl modified sodium salt could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The minimum number average MW of polyvinyl acetate, carboxyl modified sodium salt is 53,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since polyvinyl acetate, carboxyl modified sodium salt conforms to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. Since the Agency has determined that there is a reasonable certainty that no harm will result from aggregate exposure to polyvinyl acetate, carboxyl modified sodium salt, a tolerance is not necessary.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." The Agency has not made any conclusions as to whether or not polyvinyl acetate, carboxyl modified sodium salt share a common mechanism of toxicity with any other chemicals. However, polyvinyl acetate, carboxyl modified sodium salt conforms to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of polyvinyl acetate, carboxyl modified sodium salt.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin safety will be safe for infants and children. Due to the expected low toxicity of polyvinyl acetate, carboxyl modified sodium salt, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that polyvinyl acetate, carboxyl modified sodium salt is an endocrine disruptor.

B. Existing Exemptions from a Tolerance

There are no known exemptions from a tolerance for polyvinyl acetate, carboxyl modified sodium salt.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for polyvinyl acetate, carboxyl modified sodium salt nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting polyvinyl acetate, copolymer with maleic anhydride, partially hydrolyzed, sodium salt from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300942 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 5, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Avenue NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300942, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Avenue, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require

Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

XIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 22, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.1001 the table in paragraph (c) is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Polyvinyl acetate, copolymer with maleic anhydride, partially hydrolyzed, sodium salt, minimum number average MW (in amu), 53,000.		Component of water soluble films
* * * * * * *		

* * * * *

[FR Doc. 00–5390 Filed 3–3–00; 8:45 am]

BILLING CODE 6560–50–F

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 612 and 613

RIN 3145–AA31 and –AA32

Revision of Freedom of Information Act and Privacy Act Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: This document sets forth revisions of the Foundation's regulations under the Freedom of Information Act (FOIA) and Privacy Act. The new FOIA provisions implement the Electronic Freedom of Information Act Amendments of 1996, including revised time limit on response, negotiating with the requester, and expedited processing procedures. They make no changes in the figures currently used for calculating and charging fees under the FOIA. The Privacy Act regulations have been restructured for ease of use and outdated information eliminated.

EFFECTIVE DATE: April 5, 2000.

FOR FURTHER INFORMATION CONTACT: D. Matthew Powell (703) 306–1060.

SUPPLEMENTARY INFORMATION: On November 24, 1999 the National Science Foundation published a proposed rule that revised its existing regulations under the FOIA and Privacy Act and added new provisions implementing the Electronic FOIA Amendments (published at 64 FR 66146). Interested persons were invited to submit written comments on the proposed rule. The Foundation received one set of comments on the proposed FOIA regulations, and none on the Privacy Act regulations. After due consideration of the comments, NSF has adopted several of the modifications to the FOIA regulations suggested by the commenter and has made other minor revisions to its proposed rule for clarity.

The commenter objected to the referral procedures proposed by the Foundation, primarily because of the potential for delay in responding to requests. These procedures are in accordance with the guidance and the regulations of the Department of Justice, and thus are retained as appropriate and in keeping with the FOIA.

The commenter also objected to the statement in the proposed regulation

that "the Foundation will make reasonable effort to act on a request within 20 days." The commenter suggested this may be read to create an additional basis for extending response time, inconsistent with the "unusual circumstances" provisions for extending time limits. This colloquial language was not so intended. To avoid any such confusion, the Foundation has reverted to the language used in its previously published regulation.

The commenter questioned the absence of the proposed rule of a verbatim restatement of the definition of "unusual circumstances." Such restatements of statutory language are not necessary to the regulation. However, the phrase "as defined in the FOIA," has been added for clarity.

The commenter raised a concern regarding the statutory requirement to provide certification to support expedited requests, stating that requesters may not be sufficiently familiar with the Act to know that such certification is necessary and that the need to provide such certification may prove burdensome and time-consuming. The implementation of the statutory requirement for certification is identical to that of other agencies, and the Foundation does not anticipate that this requirement will materially delay processing of requests. It is retained as proposed.

Comments were also made on several examples given in § 612.7, Exemptions. Changes have been made where appropriate.

Regulatory Flexibility Act, Unfunded Mandates Reform Act, Executive Order 12866, and Paperwork Reduction Act

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601), the rule will not have a significant economic effect on a substantial number of small entities; the rule addresses the procedures to be followed when submitting or responding to requests for information under the Freedom of Information Act and Privacy Act. For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) the rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. For purposes of Executive Order 12866, the rule is not a significant regulatory action requiring review by the Office of Management and Budget. For the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 35) it has been determined that this rulemaking does not impose any reporting or recordkeeping requirement on the public.

List of Subjects

45 CFR Part 612

Administrative practice and procedure; Freedom of information.

45 CFR Part 613

Administrative practice and procedure; Privacy.

For the reasons stated in the preamble, the National Science Foundation amends 45 CFR Chapter VI, as follows:

1. By revising parts 612 and 613 to read as follows:

PART 612—AVAILABILITY OF RECORDS AND INFORMATION

Sec.

612.1 General provisions.
612.2 Public reading room.
612.3 Requirements for making requests.
612.4 Processing requests.
612.5 Timing of responses to requests.
612.6 Responses to requests.
612.7 Exemptions.
612.8 Business information.
612.9 Appeals.
612.10 Fees.
612.11 Other rights and services.

Authority: 5 U.S.C. 552, as amended.

§ 612.1 General provisions.

This part contains the rules that the National Science Foundation follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Information routinely made available to the public as part of a regular Foundation activity (for example, program announcements and solicitations, summary of awarded proposals, statistical reports on U.S. science, news releases) may be provided to the public without reliance on this part. As a matter of policy, the Foundation also makes discretionary disclosures of records or information otherwise exempt under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. This policy, however, does not create any right enforceable in court. When individuals seek records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, NSF processes those requests under both NSF's Privacy regulations at part 613 of this chapter, and this part.

§ 612.2 Public reading room.

(a) The Foundation maintains a public reading room located in the NSF Library at 4201 Wilson Boulevard, Suite 225, Arlington, Virginia, open during regular working hours Monday through Friday. It contains the records that the FOIA requires to be made regularly available for public inspection and copying and has computers and printers available for public use in accessing records. Also available for public inspection and copying are current subject matter indexes of reading room records.

(b) Information about FOIA and Privacy at NSF and copies of frequently requested FOIA releases are available online at <www.nsf.gov/pubinfo/foia.html>. Most NSF policy documents, staff instructions, manuals, and other publications that affect a member of the public, are available in electronic form through the "Documents" option on the tool bar on NSF's Home Page on the World Wide Web at <www.nsf.gov>.

§ 612.3 Requirements for making requests.

(a) *Where to send a request.* You may make a FOIA request for records of the National Science Foundation by writing directly to the FOIA Officer, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230. For records maintained by the NSF Office of the Inspector General (OIG), you may write directly to the Office of Inspector General, National Science Foundation, 4201 Wilson Boulevard, Suite 1135, Arlington, VA 22230. The FOIA Officer will also forward requests for OIG records to that Office. Requests may also be sent by facsimile to (703) 306–0149 or by e-mail to foia@nsf.gov.

(b) *Form of request.* A FOIA request need not be in any particular format, but it must be in writing, include the requester's name and mailing address, and be clearly identified both on the envelope and in the letter, or in a facsimile or electronic mail message as a Freedom of Information Act or "FOIA" request. It must describe the records sought with sufficient specificity to permit identification, and include agreement to pay applicable fees as described in § 612.10. NSF is not obligated to act upon a request until it meets these procedural requirements.

(c)(1) If you are making a request for records about yourself and the records are not contained in a Privacy Act system of records, your request will be processed only under the FOIA, since the Privacy Act does not apply. If the records about you are contained in a Privacy Act system of records, NSF will respond with information on how to make a Privacy Act request (see NSF Privacy Act regulations at 45 CFR 613.2).

(2) If you are making a request for personal information about another individual, either a written authorization signed by that individual in accordance with § 613.2(f) of this

chapter permitting disclosure of those records to you, or proof that that individual is deceased (for example, a copy of a death certificate or a published obituary) will help the agency process your request.

(d) *Description of records sought.* Your request must describe the records that you seek in enough detail to enable NSF personnel to locate them with a reasonable amount of effort. A record must have been created or obtained by NSF and under the control of NSF at the time of the request to be subject to the FOIA. NSF has no obligation under the FOIA to create, compile or obtain a record to satisfy a FOIA request. Whenever possible, your request should include specific descriptive information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Foundation will be able to locate those records in response to your request, and the more likely fees will be reduced or eliminated. If NSF determines that your request does not reasonably describe records, you will be advised what additional information is needed to perfect your request or why your request is otherwise insufficient.

(e) *Agreement to pay fees.* Your request must state that you will promptly pay the total fees chargeable under this regulation or set a maximum amount you are willing to pay. NSF does not charge if fees total less than $25.00. If you seek a waiver of fees, please see § 612.10(k) for a discussion of the factors you must address. If you place an inadequate limit on the amount you will pay, or have failed to make payments for previous requests, NSF may require advance payment (see § 612.10(i)).

(f) *Receipt date.* A request that meets the requirements of this section will be considered received on the date it is received by the Office of the General Counsel or the Office of the Inspector General. In determining which records are responsive to a FOIA request, the Foundation will include only records in its possession as of the close of business (5:00pm) on the date of receipt.

(g) *Publications excluded.* For the purpose of public requests for records the term "record" does not include publications which are available to the public in the **Federal Register**, or by sale or free distribution. Such publications may be obtained from the Government Printing Office, the National Technical Information Service, the NSF Publications Clearinghouse PO Box 218, Jessup, MD 20794–0218, or through NSF's Home Page on the World Wide Web at <www.nsf.gov> "Documents." Requests for such publications will be referred to or the requester informed of the appropriate source.

§ 612.4 Processing requests.

(a) *Monitoring of requests.* The NSF Office of the General Counsel (OGC), or such other office as may be designated by the Director, will serve as the central office for administering these regulations. For records maintained by the Office of Inspector General, that Office will control incoming requests made directly or referred to it, dispatch response letters, and maintain administrative records. For all other records maintained by NSF, OGC (or such other office as may be designated by the Director) will control incoming requests, assign them to appropriate action offices, monitor compliance, consult with action offices on disclosure, approve necessary extensions, dispatch denial and other letters, and maintain administrative records.

(b) *Consultations and referrals.* When the Foundation receives a request for a record in its possession that originated with another agency or in which another agency has a substantial interest, it may decide that the other agency of the Federal Government is better able to determine whether the record should or should not be released under the FOIA.

(1) If the Foundation determines that it is the agency best able to process the record in response to the request, then it will do so, after consultation with the other interested agencies where appropriate.

(2) If it determines that it is not the agency best able to process the record, then it will refer the request regarding that record (or portion of the record) to the agency that originated or has a substantial interest in the record in question (but only if that agency is subject to the FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(3) Where the Foundation reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

(c) *Notice of referral.* Whenever the Foundation refers all or any part of the responsibility for responding to a request to another agency, it ordinarily will notify the requester of the referral and inform the requester of the name of each agency to which the request has been referred and of the part of the request that has been referred, unless such notification would disclose information otherwise exempt.

§ 612.5 Timing of responses to requests.

(a) *In general.* NSF ordinarily will initiate processing of requests according to their order of receipt.

(b) *Time for response.* The Foundation will seek to take appropriate agency action within 20 days of when a request is received or is perfected (excluding the date of receipt, weekends, and legal holidays), whichever is later. A request which otherwise meets the requirements of § 612.3 is perfected when you have reasonably described the records sought under § 612.3(d), and agreed to pay fees under § 612.3(c), or otherwise met the fee requirements under § 612.10.

(c) *Unusual circumstances.* (1) Where the time limits for processing a request cannot be met because of unusual circumstances, as defined in the FOIA, the FOIA Officer will notify the requester as soon as practicable in writing of the unusual circumstances and may extend the response period for up to ten working days.

(2) Where the extension is for more than ten working days, the FOIA Officer will provide the requester with an opportunity either to modify the request so that it may be processed within the ten day extension period or to arrange an agreed upon alternative time period with the FOIA Officer for processing the request or a modified request.

(d) *Expedited processing.* (1) If you want to receive expedited processing you must submit a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for requesting expedited processing.

(2)(i) Requests and appeals will be given expedited treatment whenever it is determined that a requester has demonstrated compelling need by presenting:

(A) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(B) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information.

(ii) For example, a requester who is not a full-time member of the news media must establish that he or she is

a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. Such requester also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally, and that the information sought has particular value that would be lost if not disseminated quickly.

(3) Within ten calendar days of receipt of a request for expedited processing, the FOIA Officer or OIG will decide whether to grant it, and will notify the requester of the decision orally or in writing. If a request for expedited treatment is granted, the request will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 612.6 Responses to requests.

(a) *Acknowledgment of requests.* The FOIA Officer will ordinarily send an acknowledgment of a FOIA request only if it is anticipated that a determination on release will not be possible within 20 working days.

(b) *Grants of requests.* Once the Foundation makes a determination to grant a request in whole or in part, it will notify the requester in writing. The Foundation will inform the requester in the notice of any applicable fee and will disclose records to the requester promptly on payment of applicable fees. Records disclosed in part will be marked or annotated to show both the amount and the location of the information deleted where practicable.

(c) *Denials of requests.* (1) Denials of FOIA requests will be made by the Office of the General Counsel, the Office of the Inspector General, or such other office as may be designated by the Director. The response letter will briefly set forth the reasons for the denial, including any FOIA exemption(s) applied by the Foundation in denying the request. It will also provide the name and title or position of the person responsible for the denial, will inform the requester of the right to appeal, and will, where appropriate, include an estimate of the volume of any requested materials withheld. An estimate need not be provided when the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

(2) Requesters can appeal an agency determination to withhold all or part of any requested record; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Act; a disapproval of a fee category claim by a requester; denial of a fee waiver or reduction; or a denial of a request for expedited treatment (see § 612.9).

§ 612.7 Exemptions.

(a) *Exemptions from disclosure.* The following types of records or information may be withholdable as exempt in full or in part from mandatory public disclosure:

(1) *Exemption 1—5 U.S.C. 552(b)(1).* Records specifically authorized and properly classified pursuant to Executive Order to be kept secret in the interest of national defense or foreign policy. NSF does not have classifying authority and normally does not deal with classified materials.

(2) *Exemption 2—5 U.S.C. 552(b)(2).* Records related solely to the internal personnel rules and practices of NSF. This exemption primarily protects information that if released would allow the recipient to circumvent a statute or agency regulation. Administrative information such as rules relating to the work hours, leave, and working conditions of NSF personnel, or similar matters, can be disclosed to the extent that no harm would be caused to the functions to which the information pertains. Examples of records normally exempt from disclosure include, but are not limited to:

(i) Operating rules, guidelines, manuals on internal procedure, schedules and methods utilized by NSF investigators, inspectors, auditors and examiners.

(ii) Negotiating positions or limits at least until the execution of a contract (including a grant or cooperative agreement) or the completion of the action to which the negotiating positions were applicable. They may also be exempt pursuant to other provisions of this section.

(iii) Information relating to position management and manpower utilization, such as internal staffing plans, authorizations or controls, or involved in determination of the qualifications of candidates for employment, advancement, or promotion including examination questions and answers.

(iv) Computer software, the release of which would allow circumvention of a statute or NSF rules, regulations, orders, manuals, directives, instructions, or procedures; or the integrity and security of data systems.

(3) *Exemption 3—5 U.S.C. 552(b)(3).* Records specifically exempted from disclosure by another statute that either requires that the information be withheld in a such way that the agency has no discretion in the matter; or establishes particular criteria for withholding or refers to particular types of information to be withheld. Examples of records exempt from disclosure include, but are not limited to:

(i) Records that disclose any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license), 35 U.S.C. 205;

(ii) Contractor proposals not specifically set forth or incorporated by reference into a contract, 41 U.S.C. 253b(m);

(iii) Information protected by the Procurement Integrity Act, 41 U.S.C. 423.

(4) *Exemption 4—5 U.S.C. 552(b)(4).* Trade secrets and commercial or financial information obtained from a person, and privileged or confidential. Information subject to this exemption is that customarily held in confidence by the originator(s), including nonprofit organizations and their employees. Release of such information is likely to cause substantial harm to the competitive position of the originator or submitter, or impair the Foundation's ability to obtain such information in the future. NSF will process information potentially exempted from disclosure by Exemption 4 under § 612.8. Examples of records or information normally exempt from disclosure include, but are not limited to:

(i) Information received in confidence, such as grant applications, fellowship applications, and research proposals prior to award;

(ii) Confidential scientific and manufacturing processes or developments, and technical, scientific, statistical data or other information developed by a grantee.

(iii) Technical, scientific, or statistical data, and commercial or financial information privileged or received in confidence from an existing or potential contractor or subcontractor, in connection with bids, proposals, or contracts, concerning contract performance, income, profits, losses, and expenditures, as well as trade secrets, inventions, discoveries, or other proprietary data. When the provisions of 41 U.S.C. 253b(m) or 41 U.S.C. 423 are met, certain proprietary and source selection information may also be withheld under Exemption 3.

(iv) Confidential proprietary information submitted on a voluntary basis.

(v) Statements or information collected in the course of inspections, investigations, or audits, when such statements are received in confidence

from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(5) *Exemption 5—5 U.S.C. 552(b)(5).* Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NSF. Factual material contained in such records will be considered for release if it can be reasonably segregated and is not otherwise exempt. Examples of records exempt from disclosure include, but are not limited to:

(i) Those portions of reports, memoranda, correspondence, workpapers, minutes of meetings, and staff papers, containing evaluations, advice, opinions, suggestions, or other deliberative material that are prepared for use within NSF or within the Executive Branch of the Government by agency personnel and others acting in a consultant or advisory capacity;

(ii) Advance information on proposed NSF plans to procure, lease, or otherwise acquire, or dispose of materials, real estate, facilities, services or functions, when such information would provide undue or unfair competitive advantage to private interests or impede legitimate government functions;

(iii) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest;

(iv) Records prepared for use in proceedings before any Federal or State court or administrative body;

(v) Evaluations of and comments on specific grant applications, research projects or proposals, or potential contractors and their products, whether made by NSF personnel or by external reviewers acting either individually or in panels, committees or similar groups;

(vi) Preliminary, draft or unapproved documents, such as opinions, recommendations, evaluations, decisions, or studies conducted or supported by NSF;

(vii) Proposed budget requests, and supporting projections used or arising in the preparation and/or execution of a budget; proposed annual and multi-year policy, priorities, program and financial plan and supporting papers;

(viii) Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of NSF, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(6) *Exemption 6—5 U.S.C. 552(b)(6).* Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The exemption may apply to protect the privacy of living persons and of living close survivors of a deceased person identified in a record. Information in such files which is not otherwise exempt from disclosure pursuant to other provisions of this section will be released to the subject or to his designated legal representative, and may be disclosed to others with the subject's written consent. Examples of records exempt from disclosure include, but are not limited to:

(i) Reports, records, and other materials pertaining to individual cases in which disciplinary or other administrative action has been or may be taken. Opinions and orders resulting from those administrative or disciplinary proceedings shall be disclosed without identifying details if used, cited, or relied upon as precedent.

(ii) Records compiled to evaluate or adjudicate the suitability of candidates for employment, and the eligibility of individuals (civilian or contractor employees) for security clearances, or for access to classified information.

(iii) Reports and evaluations which reflect upon the qualifications or competence of individuals.

(iv) Personal information such as home addresses and telephone and facsimiles numbers, private e-mail addresses, social security numbers, dates of birth, marital status and the like.

(iv) The exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest.

(7) *Exemption 7—5 U.S.C. 552(b)(7).* Records or information compiled for civil or criminal law enforcement purposes, including the implementation of Executive Orders or regulations issued pursuant to law. This exemption may exempt from mandatory disclosure records not originally created, but later gathered, for law enforcement purposes.

(i) This exemption applies only to the extent that the production of such law enforcement records or information:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Would deprive a person of the right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, or living close survivors of a deceased person identified in a record;

(D) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Federal Government, or a State, local, or foreign agency or authority, or any private institution, that furnished information on a confidential basis; and information furnished by a confidential source and obtained by a criminal law enforcement authority in a criminal investigation;

(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(F) Could reasonably be expected to endanger the life or physical safety of any individual.

(ii) Examples of records normally exempt from disclosure include, but are not limited to:

(A) The identity and statements of complainants or witnesses, or other material developed during the course of an investigation and all materials prepared in connection with related government litigation or adjudicative proceedings;

(B) The identity of firms or individuals investigated for alleged irregularities involving NSF grants, contracts or other matters when no indictment has been obtained, no civil action has been filed against them by the United States, or no government-wide public suspension or debarment has occurred.

(C) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by the NSF Officer of the Inspector General.

(iii) The exclusions contained in 5 U.S.C. 552(c)(1) and (2) may also apply to these records.

(8) *Exemption 8—5 U.S.C. 552(b)(8).* Records contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) *Exemption 9—5 U.S.C. 552(b)(9).* Records containing geological and geophysical information and data, including maps, concerning wells.

(b) *Deletion of exempt portions and identifying details.* Any reasonably segregable portion of a record will be provided to requesters after deletion of the portions which are exempt. Whenever any final opinion, order, or

other materials required to be made available relates to a private party or parties and the release of the name(s) or other identifying details will constitute a clearly unwarranted invasion of personal privacy, the record shall be published or made available with such identifying details left blank, or shall be published or made available with obviously fictitious substitutes and with a notification such as the following: Names of parties and certain other identifying details have been removed (and fictitious names substituted) in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

§ 612.8 Business Information

(a) *In general.* Business information obtained by the Foundation from a submitter of that information will be disclosed under the FOIA only under this section's procedures.

(b) *Definitions.* For purposes of this section:

(1) *Business Information* means commercial or financial information obtained by the Foundation from a submitter that may be protected from disclosure under Exemption 4 of the FOIA and § 612.7(a)(4).

(2) *Submitter* means any person or entity from whom the Foundation obtains business information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information must use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The Foundation will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information.

(e) *Where notice is required.* Notice will be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The Foundation has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* NSF will allow a submitter a reasonable time, consistent with statutory requirements, to respond to the notice described in paragraph (d) of this section. If a submitter has any objection to disclosure, it must submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, must show why the information is a trade secret, or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be a record subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The Foundation will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever it decides to disclose business information over the objection of a submitter, the Foundation will give the submitter written notice, which will include:

(1) A statement of the reason(s) why the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which will be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section will not apply if:

(1) The Foundation determines that the information should not be disclosed (the Foundation protects from disclosure to third parties information about specific unfunded applications, including pending, withdrawn, or declined proposals);

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, in which case the Foundation will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the Foundation will promptly notify the submitter(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the Foundation will notify the requester(s).

§ 612.9 Appeals.

(a) *Appeals of denials.* You may appeal a denial of your request to the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230. You must make your appeal in writing and it must be received by the Office of the General Counsel within ten days of the receipt of the denial (weekends, legal holidays, and the date of receipt excluded). Clearly mark your appeal letter and the envelope "Freedom of Information Act Appeal." Your appeal letter must include a copy of your written request and the denial together with any written argument you wish to submit.

(b) *Responses to appeals.* A written decision on your appeal will be made by the General Counsel. A decision affirming an adverse determination in whole or in part will contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any denial, you must first appeal it under this section.

§ 612.10 Fees

(a) *In general.* NSF will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section. If fees are applicable, NSF will itemize the amounts charged. NSF may collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by

check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because NSF has reasonable cause to doubt a requester's stated use, NSF will provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses that an agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk) among others. NSF will honor a requester's specified preference of form or format of disclosure if the record is readily reproducible by NSF, with reasonable effort, in the requested form or format.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(5) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and made under the auspices of a qualifying institution and that the records are not sought for a commercial use or to promote any particular product or industry, but are sought to further scientific research.

(6) *Representative of the news media or news media requester* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but NSF will also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news dissemination function of the requester will not be considered to be for a commercial use.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure, for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter under § 612.8, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page by page or line by line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. NSF will ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, NSF will not search line by line where duplicating an entire document would be quicker and less expensive.

(c) *Fees.* In responding to FOIA requests, NSF will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section:

(1) *Search.* (i) Search fees will be charged for all requests-other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media-subject to the limitations of paragraph (d) of this section. NSF may charge for time spent searching even if responsive records are not located or are withheld entirely as exempt from disclosure.

(ii) *Manual searches for records.* Whenever feasible, NSF will charge at the salary rate(s) (*i.e.,* basic pay plus 16 percent) of the employee(s) conducting the search. Where a homogeneous class of personnel is used exclusively (*e.g.,* all administrative/clerical or all professional/executive), NSF has established an average rate for the range of grades typically involved. Routine search for records by clerical personnel are charged at $2.50 for each quarter hour. When a non-routine, non-clerical search by professional personnel is conducted (for example, where the task of determining which records fall within a request requires professional time) the charge is $7.50 for each quarter hour.

(iii) *Computer searches of records.* NSF will charge at the actual direct cost of conducting the search. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary (*i.e.,* basic pay plus 16 percent) apportionable to the search. When NSF can establish a reasonable agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches, the Foundation will do so and charge accordingly.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee will be 25 cents per page. For copies produced by computer, such as tapes or printouts, NSF will charge the direct costs, including operator time, of producing the copy. For other forms of duplication, NSF will charge the direct costs of that duplication.

(3) *Review.* Review fees will be charged to requesters who make a commercial use request. Review fees

will be charged only for the initial record review-in other words, the review done when NSF determines whether an exemption applies to a particular record or record portion at the initial request level. NSF may charge for review even if a record ultimately is not disclosed. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable where it is made necessary by a change of circumstances. Review fees will be charged at the salary rate (basic pay plus 16%) of the employee(s) performing the review.

(d) *Limitations on charging fees.* (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) Except for requesters seeking records for a commercial use, NSF will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(3) Whenever a total fee calculated under paragraph (c) of this section is $25.00 or less for any request, no fee will be charged.

(4) The provisions of paragraphs (d) (2) and (3) of this section work together. This means that noncommercial requesters will be charged no fees unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $25.00. Commercial requesters will not be charged unless the costs of search, review, and duplication total more than $25.00.

(e) *Notice of anticipated fees in excess of $25.00.* When NSF determines or estimates that the fees to be charged under this section will exceed $25.00, it will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, NSF will advise the requester that the estimated fee may be only a portion of the total fee. In cases in which a requester has been notified that actual or estimated fees exceed $25.00, the request will not be considered perfected and further work will not be done until the requester agrees to pay the anticipated total fee. Any such agreement should be memorialized in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with Foundation personnel in order to reformulate the request to meet the requester's needs at a lower cost, if possible. If a requester fails to respond within 60 days of notice of actual or estimated fees with an agreement to pay those fees, NSF may administratively close the request.

(f) *Charges for other services.* Apart from the other provisions of this section, when NSF chooses as a matter of administrative discretion to provide a requested special service-such as certifying that records are true copies or sending them by other than ordinary mail-the direct costs of providing the service will be charged to the requester.

(g) *Charging interest.* NSF may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by NSF. NSF will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* Where NSF reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the agency may aggregate those requests and charge accordingly. NSF may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, NSF will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i) (2) and (3) of this section, NSF will not require the requester to make an advance payment-in other words, a payment made before work is begun or continued on a request. Payment owed for work already completed (*i.e.*, a prepayment before copies are sent to a requester) is not an advance payment.

(2) Where NSF determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged fee to any agency within 30 days of the date of billing, NSF may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before NSF begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which NSF requires advance payment or payment due under paragraph (i)(2) or (3) of this section, the request will not be considered perfected and further work will not be done on it until the required payment is received.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. Where records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, NSF will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(k) *Waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where NSF determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, NSF will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. Disclosure of

information already in the public domain, in either duplicative or substantially identical form, is unlikely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. A representative of the news media as defined in paragraph (b)(6) of this section will normally be presumed satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent as compared to the level of public understanding existing prior to the disclosure. NSF will make no value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.

(3) To determine whether the second fee waiver requirement is met, NSF will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. NSF will consider any commercial interest of the requester (with reference to the definition of "commercial use" in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. NSF ordinarily will presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(4) Where only some of the requested records satisfy the requirements for a waiver of fees, a waiver will be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k) (2) and (3) of this section, insofar as they apply to each request.

§ 612.11 Other rights and services.

Nothing in this part will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

PART 613—PRIVACY ACT REGULATIONS

Sec.

613.1 General provisions.
613.2 Requesting access to records.
613.3 Responding to requests for access to records.
613.4 Amendment of records.
613.5 Exemptions.
613.6 Other rights and services.

Authority: 5 U.S.C. 552a.

§ 613.1 General Provisions

This part sets forth the National Science Foundation procedures under the Privacy Act of 1974. The rules in this part apply to all records in systems of records maintained by NSF that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves and request amendment or correction of those records. All Privacy Act requests for access to records are also processed under the Freedom of Information Act, 5 U.S.C. 552 (as provided in part 612 of this chapter), which gives requesters the benefit of both statutes. Notice of systems of records maintained by the National Science Foundation are published in the **Federal Register**.

§ 613.2 Requesting access to records.

(a) *Where to make a request.* You may make a request for access to NSF records about yourself by appearing in person at the National Science Foundation or by making a written request. If you choose to visit the Foundation, you must contact the NSF Security Desk and ask to speak with the Foundation's Privacy Act Officer in the Office of the General Counsel. Written requests should be sent to the NSF Privacy Act Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230. Written requests are recommended, since in many cases it may take several days to determine whether a record exists, and additional time may be required for record(s) retrieval and processing.

(b) *Description of requested records.* You must describe the records that you seek in enough detail to enable NSF personnel to locate the system of records containing them with a reasonable amount of effort. Providing information about the purpose for which the information was collected, applicable time periods, and name or identifying number of each system of records in which you think records about you may be kept, will help speed the processing of your request. NSF publishes notices in the **Federal Register** that describe the systems of records maintained by the Foundation. The Office of the **Federal Register** publishes a biennial "Privacy Act Compilation" that includes NSF system notices. This compilation is available in many large reference and university libraries, and can be accessed electronically at the Government Printing Office's web site at <www.access.gpo.gov/su_docs/ aces/ PrivacyAct.shtml>.

(c) *Verification of identity.* When requesting access to records about yourself, NSF requires that you verify your identity in an appropriate fashion. Individuals appearing in person should be prepared to show reasonable picture identification such as driver's license, government or other employment identification card, or passport. Written requests must state your full name and current address. You must sign your request and your signature must either be notarized, or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain information about these required elements for requests from the NSF Privacy Act Officer, Suite 1265, 4201 Wilson Blvd, Arlington, VA 22230, or from the NSF Home Page under "Public & Media Information—FOIA and Privacy Act" at <http://www.nsf.gov/home/pubinfo/foia.htm>. In order to help agency personnel in locating and identifying requested records, you may also, at your option,

include your social security number, and/or date and place of birth. An individual reviewing his or her record(s) in person may be accompanied by an individual of his or her choice after signing a written statement authorizing that individual's presence. Individuals requesting or authorizing the disclosure of records to a third party must verify their identity and specifically name the third party and identify the information to be disclosed.

(d) *Verification of guardianship.* When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court of competent jurisdiction to be incompetent, for access to records about that individual, you must establish:

(1) The identity of the record subject, by stating individual's name and current address and, at your option, the social security number and/or date and place of birth of the individual;

(2) Your own identity, as required in paragraph (c) of this section;

(3) That you are the parent or guardian of that individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or by providing a court order establishing your guardianship; and

(4) That you are acting on behalf of that individual in making the request.

(e) *Application of procedures.* The procedures of paragraphs (a) through (d) of this section shall apply to requests made pursuant to 5 U.S.C. 552a(c)(3) and (d)(1).

§ 613.3 Responding to requests for access to records.

(a) *Timing of responses to requests.* The Foundation will make reasonable effort to act on a request for access to records within 20 days of its receipt by the Privacy Act Officer (excluding date of receipt, weekends, and legal holidays) or from the time any required identification is received by the Privacy Act Officer, whichever is later. In determining which records are responsive to a request, the Foundation will include only records in its possession as of the date of receipt. When the agency cannot complete processing of a request within 20 working days, the Foundation will send a letter explaining the delay and notifying the requester of the date by which processing is expected to be completed.

(b) *Authority to grant or deny requests.* The Privacy Act Officer, or his or her designee in the office with responsibility for the requested records, is authorized to grant or deny access to a Foundation record.

(c) *Granting access to records.* When a determination is made to grant a request for access in whole or part, the requester will be notified as soon as possible of the Foundation's decision. Where a requester has previously failed to pay a properly charged fee to any agency within 30 days of the date of billing, NSF may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before NSF begins to process a new request or continues to process a pending request from that requester.

(1) *Requests made in person.* When a request is made in person, if the records can be found, and reviewed for access without unreasonable disruption of agency operations, the Foundation may disclose the records to the requester directly upon payment of any applicable fee. A written record should be made documenting the granting of the request. If a requester is accompanied by another person, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

(2) *Requests made in writing.* The Foundation will send the records to the requester promptly upon payment of any applicable fee.

(d) *Denying access to records.* The requester will be notified in writing of any determination to deny a request for access to records. The notification letter will be signed by the Privacy Act Officer, or his or her designee, as the individual responsible for the denial and will include a brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied in denying the request.

(e) *Fees.* The Foundation will charge for duplication of records requested under the Privacy Act in the same way it charges for duplication under the Freedom of Information Act (see 45 C.F.R. 612.10). No search or review fee may be charged for the record unless the record has been exempted from access under Exemptions (j)(2) or (k)(2) of the Privacy Act.

§ 613.4 Amendment of records.

(a) *Where to make a request.* An individual may request amendment of records pertaining to him or her that are maintained in an NSF Privacy Act system of records, except that certain records described in subparagraph (h) of this section are exempt from amendment. Request for amendment of records must be made in writing to the NSF Privacy Act Officer, National Science Foundation, Suite 1265, 4201 Wilson Boulevard, Arlington, VA 22230.

(b) *How to make a request.* Your request should identify each particular record in question, state the amendment you want to take place, and specify why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful. Providing an edited copy of the record(s) showing the desired change will assist the agency in making a determination about your request. If you believe that the same information is maintained in more than one NSF system of records you should include that information in your request. You must sign your request and provide verification of your identity as specified in § 613.2(c).

(c) *Timing of responses to requests.* The Privacy Act Officer, or his or her designee, will acknowledge receipt of request for amendment within 10 working days of receipt. Upon receipt of a proper request the Privacy Act Officer will promptly confer with the NSF Directorate or Office with responsibility for the record to determine if the request should be granted in whole or part.

(d) *Granting request for amendment.* When a determination is made to grant a request for amendment in whole or part, notification to the requester will be made as soon as possible, normally within 30 working days of the Privacy Act Officer receiving the request, describing the amendment made and including a copy of the amended record, in disclosable form.

(e) *Denying request for amendment.* When a determination is made that amendment, in whole or part, is unwarranted, the matter shall be brought to the attention of the Inspector General, if it pertains to records maintained by the Office of the Inspector General, or to the attention of the General Counsel, if it pertains to other NSF records. If the General Counsel or Inspector General or their designee agrees with the determination that amendment is not warranted, the Privacy Act Officer will notify the requester in writing, normally within 30 working days of the Privacy Act Officer receiving the request. The notification letter will be signed by the Privacy Act Officer or his or her designee, and will include a statement of the reason(s) for the denial and how to appeal the decision.

(f) *Appealing a denial.* You may appeal a denial of a request to amend records to the General Counsel, National Science Foundation, 4201 Wilson Blvd, Suite 1265, Arlington, VA 22230. You must make your appeal in writing and it must be received by the Office of the General Counsel within ten days of the

receipt of the denial (weekends, legal holidays, and the date of receipt excluded). Clearly mark your appeal letter and envelope "Privacy Act Appeal." Your appeal letter must include a copy of your original request for amendment and the denial letter, along with any additional documentation or argument you wish to submit in favor of amending the records. It must be signed by you or your officially designated representative.

(g) *Responses to appeals.* The General Counsel, or his or her designee, will normally render a decision on the appeal within thirty working days after proper receipt of the written appeal by the General Counsel. If additional time to make a determination is necessary you will be advised in writing of the need for an extension.

(1) *Amendment appeal granted.* If on appeal the General Counsel, or his or her designee, determines that amendment of the record should take place, you will be notified as soon as possible of the Foundation's decision. The notification will describe the amendment made and include a copy of the amended record, in disclosable form.

(2) *Amendment appeal denied—Statement of disagreement.* If on appeal the General Counsel, or his or her designee, upholds a denial of a request for amendment of records, you will be notified in writing of the reasons why the appeal was denied and advised of your right to seek judicial review of the decision. The letter will also notify you of your right to file with the Foundation a concise statement setting forth the reasons for your disagreement with the refusal of the Foundation to amend the record. The statement should be sent to the Privacy Act Officer, who will ensure that a copy of the statement is placed with the disputed record. A copy of the statement will be included with any subsequent disclosure of the record.

(h) *Records not subject to amendment.* The following records are not subject to amendment:

(1) Transcripts of testimony given under oath or written statements made under oath;

(2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings;

(3) Pre-sentence records that originated with the courts; and

(4) Records in systems of records that have been exempted from amendment under Privacy Act, 5 U.S.C. 552a(j) or (k) by notice published in the **Federal Register**.

§ 613.5 Exemptions.

(a) *Fellowships and other support.* Pursuant to 5 U.S.C. 552a(k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(c)(3) and (d) any materials which would reveal the identity of references of fellowship or other award applicants or nominees, or reviewers of applicants for Federal contracts (including grants and cooperative agreements) contained in any of the following systems of records:

(1) "Fellowships and Other Awards,"

(2) "Principal Investigator/Proposal File and Associated Records,"

(3) "Reviewer/ Proposal File and Associated Records," and

(4) "Reviewer/Fellowship and Other Awards File and Associated Records."

(b) *OIG Files Compiled for the Purpose of a Criminal Investigation and for Related Purposes.* Pursuant to 5 U.S.C. 552a(j)(2), the Foundation hereby exempts the system of records entitled "Office of Inspector General Investigative Files," insofar as it consists of information compiled for the purpose of a criminal investigation or for other purposes within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a, except for subsections (b), (c)(1) and (2), (e)(4) (A) through (F), (e)(6), (7), (9), (10) and (11), and (i).

(c) *OIG and ACA Files Compiled for Other Law Enforcement Purposes.* Pursuant to 5 U.S.C. 552a(k)(2), the Foundation hereby exempts the systems of records entitled "Office of Inspector General Investigative Files" and "Antarctic Conservation Act Files" insofar as they consist of information compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(d) *Investigations of Scientific Misconduct.* Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(c)(3) and (d) any materials which would reveal the identity of confidential sources of information contained in the following system of records: "Debarment/Scientific Misconduct Files."

(e) *Personnel Security Clearances.* Pursuant to 5 U.S.C. 552a(k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(c)(3) and (d) any materials which would reveal the identity of confidential sources of information contained in the following system of records: "Personnel Security."

(f) *Applicants for Employment.* Records on applicants for employment at NSF are covered by the Office of Personnel Management (OPM) government-wide system notice "Recruiting, Examining and Placement Records." These records are exempted as claimed in 5 CFR 297.501(b)(7).

(g) *Other records.* The Foundation may also assert exemptions for records received from another agency that could properly be claimed by that agency in responding to a request.

§ 613.6 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Lawrence Rudolph,

General Counsel.

[FR Doc. 00–5268 Filed 3–3–00; 8:45 am]

BILLING CODE 7555–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–373, MM Docket No. 99–36; RM–9372]

Radio Broadcasting Services; Kaukauna and Denmark, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 285C3 for Channel 285A at Kaukauna, Wisconsin, reallots Channel 285C3 to Denmark, Wisconsin, and modifies the license for Station WPCK to specify operation on Channel 285C3 at Denmark in response to a petition filed by Midwest Dimensions, Inc. *See* 64 FR 7843. February 17, 1999. The coordinates for Channel 285C3 at Denmark are 44–24–38 and 87–34–20. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–36, adopted February 16, 2000, and released February 29, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 285A at Kaukauna and adding Denmark, Channel 285C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5144 Filed 3–3–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2000–6994]

RIN 2127–AH84

Federal Motor Vehicle Safety Standards; School Bus Body Joint Strength

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; technical amendment; response to petition to delay effective date.

SUMMARY: On November 5, 1998, NHTSA published a final rule that amended Federal Motor Vehicle Safety Standard No. 221, *School Bus Body Joint Strength* (49 CFR 571.221), and announced an effective date of May 5, 2000 for those amendments. This document delays the effective date of that final rule until May 5, 2001. This document also makes a technical amendment by correcting a technical error in that final rule.

DATES: This rule is effective April 5, 2000. Any petitions for reconsideration of this final rule must be received by NHTSA no later than April 20, 2000. The effective day of May 5, 2000 for the final rule published at 63 FR 59732, Nov. 5, 1998 amending § 571.221 is delayed until May 5, 2001.

ADDRESSES: Petitions for reconsideration should refer to the docket number for this action and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues you may call: Mr. Charles Hott, Office of Crashworthiness Standards, at (202) 366–0247. Mr. Hott's FAX number is: (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel, at (202) 366–2992. Her FAX number is: (202) 366–3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The purpose of Federal Motor Vehicle Safety Standard No. 221, *School Bus Body Joint Strength*, (49 CFR 571.221) (Standard No. 221), is to reduce deaths and injuries resulting from the structural collapse of school bus bodies during crashes. Standard No. 221 establishes requirements for the strength of the "body panel joints" in school bus bodies.

Final Rule of November 5, 1998

In a final rule published on November 5, 1998 (63 FR 59732), NHTSA enhanced the applicability of Standard No. 221 and made a number of other changes. At present, Standard No. 221 applies only to school buses with a gross vehicle weight rating (GVWR) more than 4536 kg (10,000 pounds). The standard also specifies strength requirements for each "body panel joint," currently defined as the area of contact or close proximity between the edges of a body panel and another body component, excluding spaces designed for ventilation or another functional purpose, and excluding doors, windows, and maintenance access panels (MAPs).

The November 5, 1998 final rule extended the applicability of Standard No. 221 to school buses with a GVWR of 4536 kg (10,000 pounds) or less [1] and narrowed the exclusion of MAPs from the joint strength requirements. Except as noted below, the final rule also required panels to be attached at least at every 203 millimeters (8 inches) and required body panel joints to withstand a tensile strength of 60 percent of the tensile strength of the weakest joined body panel. The final rule excluded two groups of MAPs from these requirements: MAPs outside of the passenger area; and MAPs smaller than a specified size inside the passenger area. The final rule also excluded certain joints from the standard's tensile strength requirements, *i.e.*, joints from which a test sample cannot be obtained because of the joint's size or the curvature of the panels comprising the joint.

The final rule also simplified the definition of "maintenance access panel" and adopted a definition of "passenger compartment" based on the definition in Standard No. 217, *Bus Emergency Exits and Window Retention and Release* (49 CFR 571.217). In determining minimum allowable joint strength, the final rule (reversing a 1978 interpretation letter) included a new S6.2(c) specifying that the cross-sectional area of material removed to facilitate the installation of fasteners shall be considered in determining the tensile strength of the weakest joined body panel.

NHTSA specified that the final rule would take effect 18 months after **Federal Register** publication. The agency had proposed the 18 month lead time in the notice of proposed rulemaking (NPRM). No commenter addressed the lead time issue. In the final rule, NHTSA explained why 18 months was believed to provide sufficient lead time for manufacturers to accomplish any necessary redesign, retooling, testing, and marketing strategy to meet the requirements established in the final rule. NHTSA noted many manufacturers of small school buses already offer their customers the option of buying those buses with body panel joints that meet Standard No. 221. NHTSA stated its belief that at least some of the tooling needed to meet the changes mandated by the final rule were already in place but that some additional tooling may be required for all small school buses to be produced in compliance with Standard No. 221. The agency also stated that maintenance access panels in both large and small school buses might need to be redesigned and tested (that could be accomplished in 18 months) in order to meet the new requirements.

Petitions for Reconsideration

NHTSA received petitions for reconsideration of the final rule from AmTran Corporation, Blue Bird Body Company, and Thomas Built Buses. The petitioners asked for reconsideration of decisions regarding issues such as whether the standard would apply to joints from which a test sample cannot be made; the number of fasteners for curved and complex joints; whether the term "automotive" type joints should be defined; whether the term "bus body" should exclude structures forward of the

[1] Referred to below as small school buses.

passenger compartment; and the degrees of tolerance that should be permitted in a test machine's grip.

The manufacturers stated the greatest cost effect would result from the final rule's rescinding a November 28, 1978 interpretation letter that addressed the issue of how to compute the area of a sample of a body panel when testing for Standard No. 221 compliance. In the letter, NHTSA stated that in its compliance testing, it would determine the net cross-sectional area of a body panel sample by multiplying the width of the sample by its thickness and then subtracting the area of each "discreet fastener hole." Rescinding the letter means that when testing for compliance with Standard No. 221, NHTSA would no longer subtract the area of each discreet fastener hole when determining the net cross-sectional area of the sample. The practical effect of that change is that school bus manufacturers would have to use more fasteners in order to meet the standard. The final rule included a new provision, S6.2(c), making it clear that the cross-sectional area of material removed to facilitate the installation of fasteners shall be considered in determining the tensile strength of the weakest joined body panel.

All three petitioners asked that S6.2(c) be removed, and the November 28, 1978 interpretation letter be reinstated. Blue Bird stated that the interpretation letter has been the basis for determining minimum allowable tensile strength for FMVSS certification and NHTSA compliance purposes since it was issued. Blue Bird informed the agency that approximately half of the joint designs used in manufacturing Blue Bird school buses use discrete fasteners, the majority of which will require redesign and retesting. Other school bus manufacturers may use non-discrete fasteners such as welds and adhesives, which may also have to be redesigned and retested. If the November 28, 1978 interpretation letter is not reinstated and if S6.2(c) takes effect, Blue Bird estimated that there will be an increase of 12 to 25 percent in the number of required fasteners. Blue Bird indicated that the new method of calculating joint strength would result in hard tooling (*i.e.*, dies, which are tools for manufacturing materials) with long lead times, and increased material and labor costs. Blue Bird did not provide dollar estimates of the increased costs.

Thomas Built stated that most of its cost increases would be incurred when providing the extra fasteners needed when the change in the joint strength calculation procedure (in S6.2(c)) becomes effective. Thomas estimated that the increase in costs for a school bus to meet the final rule's maintenance access panel changes only, (including labor, fasteners, tooling and fixtures), would be $157. The cost per school bus of meeting maintenance access panel changes and S6.2(c) would be $352. Thomas also estimated that the total cost to modify its plant (which would be necessary to meet the new final rule) would be $313,000 if the maintenance access panel changes only take effect and $1,388,000 if the maintenance access panel changes and S6.2(c) take effect.

Petition for Extension of Effective Date

In a letter dated September 28, 1999, Blue Bird asked that NHTSA extend the effective date of its November 5, 1998, final rule to "a minimum of 18 months following publication of an amended final rule, or to May 5, 2002, whichever is later." Blue Bird cited the expense involved in pursuing redesign, testing, tooling and manufacturing changes that would result when the final rule takes effect. Blue Bird noted that these retooling and other changes would not be necessary if the changes requested by the petitioners are made to the November 5, 1998 final rule. Blue Bird asked that if granted, the petition for extension of the effective date be issued as soon as possible. Blue Bird said that it and other school bus manufacturers already have had to make preparations with tooling and die manufacturers to produce machining that would enable the production (in May 2000) of school buses that meet the November 5, 1998 final rule.

Agency Decision To Grant Petition for Extension

We are carefully reviewing the petitions for reconsideration of the November 1998 final rule. One possible outcome of that review would be a decision to grant the petitioners' request to remove S6.2(c) and reinstate the November 28, 1978, interpretation letter permitting subtraction of holes in calculating joint strength. If we were to remove S6.2(c) and reinstate the letter, the expensive die and tooling changes cited by school bus manufacturers in their petitions for reconsideration would be unnecessary. Therefore, while we are deciding whether to grant the petitions for reconsideration, we are preserving the status quo by extending the effective date for the November 1998 final rule until May 5, 2001. We expect to issue a new document addressing the issues raised in the petitions for reconsideration well before May 5, 2001. If additional time is needed, we will issue an additional extension.

Technical Amendment

This document also corrects an error in S5.2.1(a) of the November 5, 1998 final rule. The preamble of the final rule stated that the rule excluded certain maintenance access panels (MAPs) from the joint tensile strength requirements. Excluded were MAPs with openings of less than 305 mm. Specifically, we stated in the preamble:

> To be excluded, the MAP must either: (1) * * * ; or (2) be located within the passenger seating area but have an opening that does not exceed 305 mm (12 inches) when measured across any two points diametrically on opposite sides of the opening.

(See 63 FR 59732 at 59735)

The language quoted above makes explicit NHTSA's intent to exclude MAPs with openings of less than 305 mm from joint tensile strength requirements. However, as drafted, S5.2.1(a) of the final rule states that MAPs which *exceed* 305 mm are excluded. So that the regulatory language meets NHTSA's intent, we amend S5.2.1(a) to exclude from the joint tensile strength requirements any MAP with an opening that does not exceed 305 mm (12 inches) when measured across any two points diametrically on opposite sides of the opening.

A. Executive Order 12866, Regulatory Planning and Review, and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735; October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Further, we have determined that this action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures (44 FR 11034, February 26, 1979).

In its Final Regulatory Evaluation for the November 5, 1998 final rule, NHTSA estimated that the total cost for implementing the final rule would be approximately $8,500,000 per year. This rule delays the effective date of that final rule for one year, *i.e.*, to May 5, 2001. Thus, it delays the incurring of those costs. During that one-year period, manufacturers will continue to meet the same requirements (and incur the same costs) resulting from the existing rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) provides that whenever an agency is required to publish a notice of rulemaking for any proposed or final rule it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

In the November 5, 1998 final rule, the agency certified that that rule would not have a significant economic impact on a substantial number of small entities. Accordingly, I certify that this final rule, which delays the implementation of that earlier final rule, will not have a significant economic impact on a substantial number of small entities.

As noted in the November 5, 1998 final rule, the SBA defines a motor vehicle retailer with less than $11,500,000 in annual receipts as a small business. There are approximately 465 school bus dealers and distributors in the United States. The average sales of school buses from 1995 to 1999 was about 40,000 per year, representing an average of less than 100 buses per dealer. In order to reach the threshold of $11,500,000 in annual sales receipts, the average dealer would have to sell a much larger number (270) of large school buses annually, assuming a cost of $45,280 per unit. Thus, most school bus dealers are probably small businesses. Because of the negligible cost impact on manufacturers, the agency also anticipates little measurable impact on retailers' revenue levels, profitability, or employment.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), we note that there are no collection of information requirements associated with this final rule.

D. National Environmental Policy Act

We have analyzed this final rule for the purposes of the National Environmental Policy Act. We have determined that implementation of this action will not have any significant impact on the quality of the human environment.

E. Executive Order 13132, Federalism

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this final rule applies to manufacturers of school buses and to school buses, and not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard. However, the United States Government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

G. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an altern .tive other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This final rule will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

H. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental, health or safety effects of the rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. It does not involve decisions based on health risks that disproportionately affect children.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, 49 CFR 571.221 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50.

2. Section 571.221 is amended by revising S5.2.1(a) to read as follows:

§ 571.221 Standard No. 221, School Bus Body Joint Strength.

* * * * *

S5.2.1 The requirements of S5.1.1 and S5.1.2 do not apply to—

(a) Any interior maintenance access panel which lies forward of the passenger compartment, or which is less than 305 mm when measured across any two points diametrically on opposite sides of the opening.

* * * * *

Issued on: February 29, 2000.

Rosalyn Millman,

Acting Administrator.

[FR Doc. 00–5354 Filed 3–3–00; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 65, No. 44
Monday, March 6, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Parts 960 and 963

[Docket No. RW–RM–99–963]

RIN 1901–AA72

Office of Civilian Radioactive Waste Management; General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories; Yucca Mountain Site Suitability Guidelines; Correction

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy (DOE).

ACTION: Supplemental notice of proposed rulemaking; Correction.

SUMMARY: On November 30, 1999, DOE published a supplemental notice of proposed rulemaking to amend the policies under the Nuclear Waste Policy Act of 1982 for evaluating the suitability of Yucca Mountain, Nevada, as a site for development of a nuclear waste repository. The deadline for submission of comments, originally set for February 14, 2000, was extended to February 28, 2000 in a notice published on January 14, 2000. In the November 30, 1999 supplemental notice of proposed rulemaking, DOE inadvertently included a mistaken post office box number in the address for submission of comments. Although DOE arranged with the U.S. Postal Service for forwarding of the comments upon receipt, the Postal Service mistakenly returned some of them to the original senders. To remedy this problem, DOE is posting a list of those persons, from whom comments have been received, on the web site given below, and announces that DOE will accept comments that were returned by the U.S. Postal Service as long as they are postmarked and sent to the address stated in the **ADDRESSES** section no later than 14 days from the date of this notice. This document corrects the address given for sending comments. For a list of persons who have already provided comments to DOE on the proposed rulemaking, visit the following world wide web location: *http://www.ymp.gov.*

DATES: Written comments must be postmarked by March 20, 2000. DOE requests one copy of the written comments.

ADDRESSES: See the "Correction" section of this document.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Boyle or Dr. Jane Summerson, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, Nevada 89036–0307, (800) 967–3477.

Correction

In the **Federal Register** of November 30, 1999, in proposed rule FR Doc. 99-30668, on page 67054, in the first column, correct the **ADDRESSES** caption to read as follows:

ADDRESSES: Written comments should be addressed to Dr. WIlliam J. Boyle, U.S. Department of Energy, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, Nevada 89036–0307, or provided by electronic mail to *10CFR963@notes.ymp.gov.*

Issued in Washington, D.C. on March 2, 2000.

Ivan Itkin,

Director, Office of Civilian Radioactive Waste Management

[FR Doc. 00–5478 Filed 3–3–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 438

[FRL–6547–2]

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Metal Products and Machinery Point Source Category; Announcement of Meeting.

AGENCY: . Environmental Protection Agency (EPA).

ACTION: Announcement of Meeting.

SUMMARY: EPA will conduct a second public meeting on the upcoming Metal Products and Machinery proposed rulemaking on April 10, 2000, from 9:30 a.m. to 12:30 p.m. in Chicago, IL.

The Office of Science and Technology within EPA's Office of Water is holding a second public meeting in order to inform all interested parties of the current status of the Metal Products and Machinery (MP&M) effluent guideline. EPA intends to propose effluent limitations guidelines and standards for the MP&M industrial category in October 2000. The public meeting in Chicago will provide the same information as the March 3, 2000 public meeting in Washington, DC (see 65 FR 6950; February 11, 2000). The meeting is intended to be a forum in which EPA can report on the status of the rulemaking and interested parties can provide information and ideas to the Agency on key technical, economic, and implementation issues.

The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. For information on the location and directions, see the **ADDRESSES** section below.

DATES: EPA will conduct its second public meeting on the upcoming Metal Products and Machinery proposed rulemaking on April 10, 2000, from 9:30 a.m. to 12:30 p.m.

ADDRESSES: The Metal Products and Machinery public meeting will be held at the EPA Region 5 building, 77 West Jackson Blvd., Lake Michigan Room, 12th Floor, Chicago, IL (312) 353–2000.

FOR FURTHER INFORMATION CONTACT: Shari Barash, Office of Water (4303), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 260–7130; email: barash.shari@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is developing proposed effluent limitations guidelines and standards for the MP&M Point Source Category under authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The MP&M effluent limitations guidelines and standards proposal will apply to facilities that manufacture, rebuild, or maintain finished metal parts, products, or machines. The 18 industrial sectors which are being examined for the MP&M regulation include the following: Aerospace; Aircraft; Bus & Truck; Electronic Equipment; Hardware; Household Equipment; Instruments; Metal Finishing and Electroplating Job Shops; Mobile Industrial Equipment; Motor Vehicles; Office Machines; Ordnance; Precious and Non-precious Metals; Railroad; Ships & Boats;

Stationary Industrial Equipment; Printed Circuit Boards; and Other Metal Products. The meeting will provide the same information as the March 3, 2000 public meeting (*i.e.*, an update on the development of the proposed rule). EPA will provide an overview of the development of the regulation including a discussion of the data collection efforts, the potential treatment technology options, the potential subcategorization of industry segments, and the schedule for the MP&M rulemaking. The meeting will not be recorded by a reporter or transcribed for inclusion in the record for the MP&M rulemaking.

Documents related to the topics mentioned above and a more detailed agenda will be available at the meeting. For those unable to attend the meeting, a document summary will be available following the meeting and can be obtained by an e-mail or telephone request to Shari Barash at the previously mentioned address.

Dated: February 28, 2000.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 00–5389 Filed 3–3–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

Injurious Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service is evaluating the ecological and economic impact of non-indigenous fish and wildlife for possible addition to the lists of injurious fish and wildlife contained in the Code of Federal Regulations. Adding any animals to these lists would prohibit their importation except in limited situations. By this advance notice, we are requesting comments on such non-native animals that you believe should be prohibited entry into the United States, its possessions, or territories. When submitting your suggestions, please include background and available documentation to support your contention that said animals should be determined to be "injurious." However, if you do not submit comments by the date established in the **DATES** Section below, we will still accept future petitions and supporting documentation from you for injurious listings as new concerns and threats arise.

DATES: Please submit your comments to us so that we receive them by June 7, 2000.

ADDRESSES: You may submit comments in response to this advance notice in any of the following ways: (1) by mail to Jeff Horwath, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, 1749 C Street, NW, ARLSQ-Room 840, Washington, DC 20240; (2) by FAX to 703/358–2044 (Att'n: Jeff Horwath); (3) by electronic mail to <jeffrey__horwath@fws.gov>; or (4) in person to 4401 N. Fairfax Drive, Room 840, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jeff Horwath, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 840, Arlington, VA 22203, Telephone: 703/358–1718.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service is responsible for implementing the "injurious" provisions of the Lacey Act (18 U.S.C. 42). Section 42 of this Act and our companion implementing regulations in 50 CFR Part 16 restrict importation into, or the transportation of live wildlife or eggs thereof between, the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States of any non-indigenous species of fish and wildlife determined to be injurious to certain interests including those of agriculture, horticulture, forestry, the health and welfare of human beings, and the welfare and survival of wildlife or wildlife resources of the United States. However, injurious fish and wildlife may be imported by permit for zoological, educational, medical, or scientific purposes, or without a permit by Federal agencies solely for their own use. Our implementing regulations include lists of fish and wildlife determined to be injurious to the interests of the United States as described above. We also implement Executive Order 13112 on invasive species.

To assist us in identifying non-indigenous fish and wildlife that warrant our consideration as injurious, we ask for your comments on non-native fish and wildlife that you believe should be added to the appropriate lists of animals in 50 CFR Part 16. In addition to identifying these animals, we ask that you also submit comments to support your assertion that such animals are, or would be, injurious to U.S. interests and should be added to our regulations.

We will accept and consider petitions after June 7, 2000 requesting that we list non-indigenous fish or wildlife that you believe to be injurious to U.S. interests, even if you are not presently aware of any such animals and you do not submit any comments in response to this Notice.

Dated: December 2, 1999.

Jamie Rappaport-Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–5293 Filed 3–3–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991207325–9325–01; I.D. 100699A]

RIN 0648–AJ52

Fisheries of the Exclusive Economic Zone Off Alaska; A Cost Recovery Program for the Individual Fishing Quota Program; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA) Commerce.

ACTION: Correction.

SUMMARY: NMFS is correcting the proposed rule for A Cost Recovery Program for the Individual Fishing Quota Program published December 27, 1999.

DATES: Effective December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: Section 304(d) of the Magnuson-Stevens Fishery Conservation and Management Act requires the Secretary of Commerce to collect fees to recover actual costs incurred for Federal management of the Individual Fishing Quota Program for fixed gear Pacific halibut and sablefish fisheries in waters in and off of Alaska. NMFS proposed a cost recovery program to collect such fees.

In the proposed rule, published December 27, 1999 (64 FR 72302), make the following corrections:

1. On page 72307, in the 2nd column, § 679.4(d)(7), in the 6th line of that paragraph, remove "679.(e)(7)(ii)" and add "679.(l)(7)(ii)" in its place.

2. On page 72308, in the 3rd column, at § 679.45(a)(2), in the 20th line of that

paragraph, remove "§ 675.5(1)(7)(ii)", and add "§ 675.5(l)(7(ii)" in its place.

3. On page 72309, in the 2nd column, at § 679.45(d), in the first line of that paragraph, remove the paragraph designation "(i)" and add the paragraph designation "(1)" in its place.

4. On page 72309, in the 3rd column, at § 679.45(d)(3), in the first line of that paragraph, remove the paragraph designation "(1)", and add in its place the paragraph designation (i).

Dated: February 28, 2000.

Andrew A. Rosenberg,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5221 Filed 3–3–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 44
Monday, March 6. 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–00–02]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: March 21, 2000, from 9 a.m. to 5 p.m. and March 22, 2000, from 9 a.m. to 5 p.m. (Pacific Standard Time each day).

PLACE: Embassy Suites Hotel, 7762 Beach Boulevard, Buena Park, California 90620, Phone (714) 739–5600.

FOR FURTHER INFORMATION CONTACT: Keith Jones, Program Manager, Room 2945 South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing, National Organic Program, P.O. Box 96456, Washington, D.C. 20090–6456, Phone (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA. The NOSB met for the first time in Washington, D.C., in March 1992 and currently has six committees working on various aspects of the program. The committees are: Crops Standards; Processing; Labeling and Packaging; Livestock Standards; Accreditation; Materials; and, International Issues.

In August 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture. Since that time, the NOSB has submitted 30 addenda to its recommendations and reviewed more than 170 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held on October 25–29, 1999, in Washington, D.C.

The U. S. Department of Agriculture (USDA) published its NOP proposed rule in the **Federal Register** on December 16, 1997 (62 FR 65849). A notice extending the comment period on the proposed rule was published in the **Federal Register** on February 9, 1998 (63 FR 6498–6499). The comment period was extended until April 30, 1998. On October 28, 1998, three issue papers for which public comment was requested by USDA were published in the **Federal Register** (63 FR 57624–57626). These papers addressed certain issues raised during the comment period. The issue papers were: Issue Paper 1—Livestock Confinement in Organic Production Systems; Issue Paper 2—The Use of Antibiotics and Parasiticides in Organic Livestock Production; and, Issue Paper 3—Termination of Certification by Private Certifiers. The comment period for the issue papers closed December 14, 1998.

Purpose and Agenda

The principal purposes of this meeting are to provide an opportunity for the NOSB to receive committee reports from its standing and ad hoc committees to review ethylene for possible inclusion on the National List for use to induce flowering in pineapples, and to receive briefings on the recently published re-proposed NOP regulation. Copies of the NOSB final meeting agenda can be requested from Mrs. Toni Strother, Room 2510 South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing, NOP, P.O. Box 96456, Washington, D.C. 20090–6456, by phone at (202) 720–3252 or by accessing the NOP website at http://www.ams.usda.gov/nop after March 8, 2000.

Type of Meeting

All meetings will be open to the public. The NOSB has scheduled time for public input on Wednesday, March 22, 2000, from 1 p.m. until 5 p.m. at the Embassy Suites Hotel, 7762 Beach Boulevard, Buena Park, California 90620. Individuals and organizations wishing to make an oral presentation at the meeting should forward the request to Mrs. Strother at the above address or by FAX to (202) 205–7808 by close of business March 17, 2000. While persons wishing to make a presentation may sign up at the door, advance registration will ensure an opportunity to speak during the allotted time period and will help the NOSB to better manage the meeting and accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing, if possible. Written submissions may supplement the oral presentation with additional material. Attendees who do not wish to make an oral presentation are invited to submit written comments to the NOSB at the meeting or to Mrs. Strother after the meeting at the above address. All persons submitting written comments should provide 25 copies.

Dated: February 28, 2000.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 00–5273 Filed 3–3–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–036–1]

Monsanto Co.; Availability of Environmental Assessment for Extension of Determination of Nonregulated Status for Potato Genetically Engineered for Insect and Virus Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment has been prepared for a proposed decision to extend to one additional potato line

our determination that certain potato lines developed by Monsanto Company, which have been genetically engineered for insect and virus resistance, are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive by April 5, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–036–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–036–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnology Assessments Section, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5940. To obtain a copy of the extension request or the environmental assessment, contact Ms. Kay Peterson at (301) 734–4885; e-mail: kay.peterson@usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Further, the regulations in § 340.6(e)(2) provide that a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request must include information to establish the similarity of the antecedent organism and the regulated article in question.

Background

On June 22, 1999, APHIS received a request for an extension of a determination of nonregulated status (APHIS No. 99–173–01p) from Monsanto Company (Monsanto) of St. Louis, MO, for a Russet Burbank potato line designated as NewLeaf® Plus Russet Burbank line RBMT22–82 (RBMT22–82), which has been genetically engineered for resistance to the Colorado potato beetle (CPB) and potato leaf roll virus (PLRV). The Monsanto request seeks an extension of a determination of nonregulated status issued for NewLeaf® Plus Russet Burbank potato lines RBMT21–129 and RBMT21–350 in response to APHIS petition number 97–204–01p (63 FR 69610–69611, December 17, 1998, Docket No. 97–094–2). Based on the similarity of RBMT22–82 to RBMT21–129, the antecedent organism, Monsanto requests a determination that CPB and PLRV resistant potato line RBMT22–82 does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

Analysis

Like the antecedent organism, RBMT22–82 contains the *cry3A* gene derived from *Bacillus thuringiensis* subsp. *tenebrionis* (*Btt*) and the *orf1/orf2* gene derived from PLRV. The *cry3A* gene encodes an insecticidal protein that is effective against CPB and the *orf1/orf2* gene imparts resistance to PLRV. Potato line RBMT22–82 also contains the *CP4 EPSPS* selectable marker gene, while the antecedent organism contained the *nptII* selectable marker gene. The subject potato line and the antecedent organism were developed through use of the *Agrobacterium tumefaciens* transformation system, and expression of the added genes in RBMT22–82 and the antecedent organism is controlled in part by gene sequences derived from the plant pathogens figwort mosaic virus and *A. tumefaciens*.

Potato line RBMT22–82 and the antecedent organism were genetically engineered using the same transformation method and with the same genes that make the plants insect and virus resistant. Accordingly, we have determined that potato line RBMT22–82 is similar to the antecedent organism RBMT21–129 in APHIS petition number 97–204–01p, and we are proposing that this line should no longer be regulated under the regulations in 7 CFR part 340.

The subject potato line has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogens. However, evaluation of field data reports from field tests of RBMT22–82 conducted under APHIS permits and notifications since 1994 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of its environmental release.

Should APHIS approve Monsanto's request for an extension of a determination of nonregulated status, potato line RBMT22–82 would no longer be considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations would no longer apply to the field testing, importation, or interstate movement of the subject potato line or its progeny.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine any potential environmental impacts associated with this proposed extension of a determination of nonregulated status. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Copies of Monsanto's extension request and the EA are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 29th day of February 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–5353 Filed 3–3–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

TE 36 Thin-Mat Floating Marsh Enhancement Demonstration Project Terrebonne Parish, Louisiana

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of Finding of No Significant Impact

SUMMARY: Pursuant to Section 102 (2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Thin-Mat Floating Marsh Demonstration Project, Terrebonne Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

The demonstration project will test the potential of restoring thin-mat floating marsh to thick-mat maidencane (Panicum hemitomon) floating marsh using three methods and all possible combinations thereof: (1) Transplanting maidencane into the thin-mat marsh, (2) inducing growth through fertilization, and (3) inducing growth through reduction of mammalian grazing. The project directly impacts less than 4 acres of fresh marsh within the northwestern part of the Penchant Basin in Terrebonne Parish. The potential benefits of developing management tools to restore a large area of existing thin-mat marsh exceed the risk of negatively impacting less than 4 acres.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Donald W. Gohmert,

State Conservationist.

[FR Doc. 00–5269 Filed 3–3–00; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue a revised conservation practice standard in Section IV of the FOTG. The revised standard is Filter Strip (Code 393). This practice may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received on or before April 15, 2000.

ADDRESSES: Address all requests and comments to John C. Tippie, Acting State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to joe.gasperi@in.usda.gov

FOR FURTHER INFORMATION CONTACT: John C. Tippie, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: February 22, 2000.

John C. Tippie,

Acting State Conservationist, Indianapolis, Indiana.

[FR Doc. 00–5362 Filed 3–3–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces RBS' intention to request an extension of a currently approved information collection in support of the Intermediary Relending Program (IRP).

DATES: Comments on this notice must be received by May 5, 2000.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, Washington, DC 20250, Telephone: (202) 720–6819.

SUPPLEMENTARY INFORMATION:

Title: RBS/Intermediary Relending Program.

OMB Number: 0570–0021.

Expiration Date of Approval: April 30, 2000.

Type of Request: Revision of a currently approved information collection.

Abstract: The objective of the Intermediary Relending Program (IRP) is to improve community facilities and employment opportunities and increase economic activity in rural areas by financing business facilities and community development. This purpose is achieved through loans made by the Rural Business-Cooperative Service (RBS) to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community development. The regulations contain various requirements for information from the intermediaries and some requirements may cause the intermediary to seek information from ultimate recipients. The information requested is necessary for RBS to be able to process applications in a responsible manner, make prudent credit and program decisions, and effectively monitor the

intermediaries' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. It includes information to identify the intermediary, describe the intermediary's experience and expertise, describe how the intermediary will operate its revolving loan fund, provide for debt instruments, loan agreements, and security, and other material necessary for prudent credit decisions and reasonable program monitoring.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.72 hours per response.

Respondents: Non-profit corporations, public agencies, and cooperatives.

Estimated number of Respondents: 160.

Estimated number of responses per respondent: 30.35.

Estimated total annual burden on respondents: 16,930 hours.

Copies of this information collection can be obtained from Cheryl Thompson, at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: February 25, 2000.

Dayton J. Watkins.

Administrator, Rural Business-Cooperative Service.

[FR Doc. 00–5272 Filed 3–3–00; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet March 21, 2000, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Update on pending regulatory revisions.
4. Update on BXA policies under review.
5. Discussion of electronic submission of license applications and supporting documentation.
6. Discussion of BXA compliance initiatives.
7. Discussion of encryption regulations.

Closed Session

8. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are neither required nor accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to the following address: Ms. Lee Ann Carpenter, BXA—MS: 3876, 14th St. & Constitution Ave., NW, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 12, 1999, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and 10(a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: February 29, 2000.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 00–5366 Filed 3–3–00; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

Extension of Time Limit for Final Results of Expedited Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of expedited five-year ("Sunset") reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of eight expedited sunset reviews initiated on November 2, 1999 (64 FR 59160) covering various antidumping duty orders. Based on adequate responses from domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting expedited sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation of recurrence of dumping. As a result of these extensions, the Department intends to issue its final results not later than May 30, 2000.

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Mark D. Young or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington,

DC 20230; telephone: (202) 482–6397, or (202) 482–1560 respectively.

Extension of Final Results

In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The reviews at issue concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. The Department has determined that the sunset reviews of the following antidumping duty orders are extraordinarily complicated:

A–570–806 Silicon Metal from the People's of China ("PRC")
A–351–806 Silicon Metal from Brazil
A–357–804 Silicon Metal from Argentina
A–351–824 Silicomanganese from Brazil
A–570–828 Silicomanganese from the PRC
A–588–823 Electric Cutting Tools from Japan
A–583–820 Helical Spring Lock Washers from Taiwan
A–570–822 Helical Spring Lock Washers from the PRC

Therefore, the Department is extending the time limit for completion of the final results of these reviews until not later than May 30, 2000, in accordance with section 751(c)(5)(B) of the Act.

Dated: February 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5372 Filed 3–3–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–808; A–583–810]

Chrome-Plated Lug Nuts From the People's Republic of China and Taiwan; Final Results of Antidumping Duty Sunset Reviews:

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty sunset reviews: chrome-plated lug nuts from the People's Republic of China and Taiwan.

SUMMARY: On August 2, 1999, the Department of Commerce ("the Department") published the notice of initiation of sunset reviews of the antidumping duty orders on chrome-plated lug nuts ("lug nuts") from the People's Republic of China ("China") and Taiwan. The merchandise covered by these orders are one-piece and two-piece chrome-plated and nickel-plated lug nuts. On the basis of notices of intent to participate and adequate substantive comments filed on behalf of a domestic interested party and inadequate response (in these cases, no response) from respondent interested parties, we determined to conduct expedited reviews. Based on our analysis of the comments received, we find that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Reviews."

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Mark D. Young, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–6397.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"). The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On August 2, 1999, the Department published the notice of initiation of sunset reviews of the antidumping duty orders on lug nuts from China and Taiwan (64 FR 41915). The Department received Notices of Intent to Participate on behalf of Consolidated International Automotive, Inc. ("Consolidated") on August 17, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Consolidated claimed interested party status under section 771(9)(C) of the Act, as U.S. manufacturers of lug nuts. We received a complete substantive response, in both the Chinese and Taiwanese reviews, from Consolidated on September 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). In its substantive responses, Consolidated stated that it was the petitioner in the original investigations of lug nuts from China and Taiwan. Furthermore, Consolidated stated that it had participated in all phases of the investigation and administrative reviews and in the scope proceedings of lug nuts from China and Taiwan. We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day, reviews of these orders.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The reviews at issue concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, the Department determined that the sunset reviews of the antidumping duty orders on lug nuts from China and Taiwan are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than February 28, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The products covered by these reviews are one-piece and two-piece chrome-plated and nickel-plated lug nuts from China and Taiwan. The subject merchandise includes chrome-plated and nickel-plated lug nuts, finished or unfinished, which are more than 11/16 inches (17.45 millimeters) in height and which have a hexagonal size of at least 3/4 inches (19.05 millimeters) but not over one inch (25.4 millimeters), plus or minus 1/16 of an inch (1.59 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Excluded from the orders are zinc-plated lug nuts, finished or unfinished, stainless steel capped lug nuts, and chrome-plated lock nuts. The merchandise under review is currently classifiable under item 7318.16.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the

[1] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 62167 (November 16, 1999).

written description of the subject merchandise remains dispositive.

The Department has made several scope rulings on the subject merchandise from China and Taiwan. The following products were determined to be within the scope of the order:

Product within scope	Importer	Citation
Certain hex size nuts	Consolidated International	59 FR 54888.
Certain nickel-plated lug nuts	Consolidated International Automotive, Inc	62 FR 9176.
Imported zinc-plated lug nuts which are chrome-plated in the United States.	Wheel Plus, Inc	63 FR 59544.

These reviews cover all imports from all manufacturers and exporters of lug nuts from China and Taiwan.

Analysis of Comments Received

All issues raised in these cases by parties to these sunset reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated February 28, 2000 which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the orders revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "China PRC" and "Taiwan." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on lug nuts from China and Taiwan would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

	Margin (percent)
Chinese Manufacturers/Exporters:	
China National Machinery and Equipment Import and Export Corporation, Jiangsu Company Ltd	42.42
All Others	42.42
Taiwanese Manufacturers/Exporters:	
Gourmet Equipment (Taiwan) Corp	6.47
San Shing Hardware Works Co., Ltd	10.67
All Others	6.93

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i)(1) of the Act.

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5368 Filed 3–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–803]

Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan; Corrected Final Results of Expedited Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of correction to final results of expedited sunset review: light-walled welded rectangular carbon steel tubing from Taiwan.

SUMMARY: On December 3, 1999, the Department of Commerce ("the Department") published in the **Federal Register** the final results of the sunset review of the antidumping duty order on light-walled welded rectangular carbon steel tubing from Taiwan.[1] Subsequent to the publication of the final results, we identified an inadvertent error in the "Scope" section of the notice. Therefore, we are correcting and clarifying this inadvertent error.

The error lies in the first sentence of the scope section: "The merchandise subject to this antidumping duty order is Taiwanese light-walled welded carbon steel tubing of rectangular (including square) cross-section, having a wall thickness of not less than 0.065 inches, and 0.375 inches or more, but not over 4.5 inches in outside diameter." This sentence should be replaced with: "The merchandise covered by the antidumping duty order on Taiwan includes shipments of light-walled welded carbon steel pipes and tubes of rectangular (including square) cross-section having a wall thickness of less than 0.156 inch."[2]

EFFECTIVE DATE: December 3, 1999.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230: telephone (202) 482–1930 and (202) 482–1560, respectively.

This correction is issued and published in accordance with sections 751(h) and 777(i) of the Act.

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5371 Filed 3–3–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Final Results of Expedited Sunset Review: Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan*, 64 FR 67871 (December 3, 1999).

[2] *See Light-Walled Rectangular Carbon Steel Tubing from Taiwan; Final Results of Antidumping Duty Administrative Review*, 57 FR 24464 (June 9, 1992).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–810]

Mechanical Transfer Presses From Japan: Preliminary Results and Recission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Preliminary Results and Recission in Part of Antidumping Duty Administrative Review: Mechanical Transfer Presses from Japan.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan in response to a request by petitioner, Verson Division of Allied Products Corp. This review covers shipments of this merchandise to the United States during the period of February 1, 1998 through January 31, 1999.

We have preliminarily determined that sales have not been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to liquidate entries without regard to antidumping duties.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Strollo or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–5255 or (202) 482–3020, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (1999).

Background

The Department published in the **Federal Register** an antidumping duty order on MTPs from Japan on February 16, 1990 (55 FR 5642). On February 26, 1999, the Department received a timely request from petitioner to conduct an administrative review pursuant to section 351.213(b) of the Department's regulations. We initiated an administrative review covering three exporters: Hitachi Zosen Corporation (Hitachi Zosen), Ishikawajima-Harima Heavy Industries, Ltd. (IHI), and Komatsu, Ltd (Komatsu). We published a notice of initiation of this antidumping duty administrative review on MTPs on March 29, 1999 (64 FR 14860).

Due to extraordinarily complicated issues in this case, the Department extended the deadline for completion of this antidumping duty administrative review on October 11, 1999. *See Mechanical Transfer Presses from Japan: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 57862 (October 27, 1999).

Preliminary Recission in Part of Antidumping Administrative Review

On April 12, 1999, we received a letter from Hitachi Zosen indicating that there were no entries of subject merchandise during the period of review (POR). On June 28, 1999, the petitioner withdrew its request for an administrative review with respect to IHI. On August 25, 1999, we requested that the U.S. Customs Service (Customs) contact us if they were suspending liquidation of entries of the subject merchandise from Hitachi Zosen. We have received no such response. Therefore, we conclude that there have been no entries of subject merchandise made by Hitachi Zosen, and thus, are preliminarily rescinding the review with respect to Hitachi Zosen and IHI.

Scope of Review

Imports covered by this review include MTPs currently classfiable under Harmonized Tariff Schedule (HTS) item numbers 8462.99.0035 and 8466.94.5040. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

The term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. This review does not cover certain parts and accessories, which were determined to be outside the scope of the order. (*See* "Final Scope Ruling on Spare and Replacement Parts," U.S. Department of Commerce, March 20, 1992; and "Final Scope Ruling on the Antidumping Duty Order on Mechanical Transfer Presses (MTPs) from Japan: Request by Komatsu, Ltd.," U.S. Department of Commerce, October 3, 1996.)

This review covers one manufacturer of MTPs, and the period February 1, 1998 through January 31, 1999.

Verification

As provided in section 782(i) of the Act, we verified information provided by Komatsu using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public version of the verification reports.

Normal Value Comparisons

To determine whether respondent's sales of the subject merchandise to the United States were made at less than NV, we compared its United States price to NV, as described in the "United States Price" and "Normal Value" sections of this notice.

United States Price

For United States price, we calculated an export price (EP) in accordance with section 772(a) of the Act. However, because the subject merchandise was sold by Komatsu directly to unaffiliated purchasers in Japan prior to importation into the United States by Komatsu's wholly-owned subsidiary, we have used the price paid by the unaffiliated purchaser in Japan. Constructed export price was not otherwise warranted by facts on the record.

We calculated EP for Komatsu based on packed, prepaid or delivered prices to customers in the United States. We made deductions from the starting price for foreign inland freight and inland insurance, and, where appropriate, brokerage and handling, international freight, installation, supervision, and U.S. Customs duties in accordance with section 772(c)(2) of the Act.

Normal Value

We preliminarily determine that the use of constructed value (CV) is warranted to calculate NV for Komatsu, in accordance with section 773(a)(4) of the Act. While the home market is viable, sales made to the United States do not permit proper price-to-price comparisons with sales made in the home market.

Komatsu asserts that home, third country, and U.S. market products are distinguished by the many differences in specifications between the various presses, and that no merchandise sold in the home market or to a third country is identical or similar to the merchandise sold to the United States.

Petitioner argues that presses may be sufficiently similar to allow for price-to-price comparisons because they are all automotive metal-forming machine tools with multiple die stations.

On July 1, 1999, the Department requested additional cost information from Komatsu. In response to this request, Komatsu placed additional information on the record with respect to its variable cost of manufacturing (VCOM) for its home market sales. Based on the information provided in this response, we asked Komatsu to answer section B of the Department's questionnaire so that we might determine if any home market sales were within the 20 percent difference in merchandise (DIFMER) threshold that we use to determine whether sales might be compared.

Based on the information provided in Komatsu's section B and the revisions of Komatsu's variable cost of manufacturing presented to us at verification, we have concluded that a price-to-price comparison is not feasible. MTPs are made to each customer's specifications, resulting in significant differences among machines. In addition, for all the sales we found to be contemporaneous matches, we found the DIFMER's to be greater than the 20% allowable under *Policy Bulletin 92.2. See Memorandum from Mike Strollo to Edward Yang through Maureen Flannery: Decision Memorandum Regarding the Use of a Price-to-Price Comparison vs. Constructed Value in the 1998–1999 Administrative Review of Mechanical Transfer Presses (Decision Memorandum),* dated February 28, 2000. Therefore, we have resorted to the use of CV.

We note that, in past proceedings involving large, custom-built capital equipment, including prior reviews of this order, we have normally resorted to CV. (*See*, e.g., *Large Power Transformers from France: Final Result of Antidumping Administrative Review*, 61 FR 40403, dated August 2, 1996; *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 61 FR 38139, dated July 23, 1996; and *Mechanical Transfer Presses from Japan: Final Results of Antidumping Duty Administrative Review*, 63 FR 37331, dated July 10, 1998.)

CV consists of the costs of design and engineering, the cost of materials, direct labor cost, variable overhead, fixed overhead, direct selling expenses, indirect selling expenses, general and administrative expenses, including interest expense, and profit. We used packing costs for merchandise exported to the United States. We made a circumstance of sale adjustment by deducting from CV home market direct selling expenses (*i.e.*, warranties and credit) and adding to CV U.S. direct selling expenses (*i.e.*, warranties, credit, and commissions). In addition, we made a circumstance-of-sale adjustment by offsetting commission expense incurred on sales to the United States to the extent of indirect selling expenses incurred in the home market.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/ exporter	Time period	Margin (percent)
Komatsu, Ltd	02/01/98–01/31/99	0.00

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, not later than 120 days after the date of publication of this notice.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rate will be effective upon publication of the final results of this administrative review for all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for Komatsu, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the rate established in the LTFV investigation, which is 14.51 percent. *See Notice of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Mechanical Transfer Presses from Japan*, dated September 15, 1997.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C 1677f(i)(1)).

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5369 Filed 3–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-weld Pipe Fittings from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Doreen Chen or Robert Bolling, Office IX, DAS Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0408 and (202) 482–3434, respectively.

POSTPONEMENT OF PRELIMINARY DETERMINATION: The Department of Commerce (the Department) is postponing the preliminary results in the antidumping administrative review of Certain Stainless Steel Butt-weld Pipe Fittings (SSBWPF) from Taiwan. The deadline for issuing the preliminary results in this administrative review is now June 28, 2000.

On July 29, 1999, the Department initiated this administrative review, setting February 29, 1999 as the date for issuing the preliminary results of the review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 64 FR 41075 (July 29, 1999). On January 31, 2000 the Department issued a supplemental questionnaire to the respondent, Ta Chen Stainless Steel Pipe, Ltd. (Ta Chen). On February 2, 2000, Ta Chen requested an extension of time to respond to the Department's supplemental questionnaire from February 14, 2000 to March 15, 2000. On February 11, 2000, we granted Ta Chen an extension until March 3, 2000 to respond to our supplemental questionnaire. Further, for the reasons stated in the February 24, 2000 memorandum from Edward Yang to Joseph Spetrini: *Extension of Time Limit for the Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan*, we determine that it is not practicable to complete the review within the normal time frame and are therefore extending the time limit for the preliminary results of the administrative review of SSBWPF from Taiwan by 120 days, in accordance with section 751(a)(3) of the Tariff Act of 1930, as amended.

The date for issuing the preliminary results is moved from February 29, 2000 to June 28, 2000.

Dated: February 23, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–5370 Filed 3–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–702, A–580–813, and A–583–816]

Continuation of Antidumping Duty Orders: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan, South Korea, and Taiwan.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty orders: certain stainless steel butt-weld pipe and tube fittings from Japan, South Korea, and Taiwan.

SUMMARY: On February 4, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on certain stainless steel butt-weld pipe and tube fittings ("pipe and tube fittings") from Japan, South Korea ("Korea"), and Taiwan is likely to lead to continuation or recurrence of dumping (65 FR 5604). On February 24, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on pipe and tube fittings from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 9298). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty orders on pipe and tube fittings from Japan, Korea, and Taiwan.

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Mark D. Young or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1999, the Department initiated, and the Commission instituted, sunset reviews of the antidumping duty orders on pipe and tube fittings from Japan, Korea, and Taiwan pursuant to section 751(c) of the Act (64 FR 35588 and 64 FR 35691, respectively). As a result of its reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders to be revoked (See Final Results of Expedited Sunset Reviews: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan, South Korea, and Taiwan, 65 FR 5604 (February 4, 2000).

On February 24, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on pipe and tube fittings from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (See Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan, South Korea, and Taiwan, 65 FR 9298 (February 24, 2000) and USITC Pub. 3263, Investigations Nos. 731–TA–376, 563, and 564 (Review) (February 2000).

Scope

The products covered by these orders include certain stainless steel butt-weld pipe and tube fittings. These fittings are used in piping systems for chemical plants, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment applications, nuclear power plants and other areas. The subject merchandise are currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") item number 7307.23.00.00. The HTSUS item number is provided for convenience and customs purposes. The written description remains dispositive.

With respect to the order on subject imports from Japan and Taiwan, the Department has made several scope rulings. The following products were determined to be within the scope of the orders:

Product within scope	Importer	Citation
Superclean or ultraclean pipe fittings from Japan	Benkan Corporation	56 FR 1801 (January 17, 1991).
A774 type stainless steel pipe fittings from Taiwan	Tachia Yung Ho	58 FR 28556 (May 14, 1993).
Cast butt-weld pipe fittings from Taiwan	Eckstrom Industries	*Eckstrom Ind.* v. *United States*, Court No. 97–10–01913, Slip. Op,. 99–99 (Ct. Int'l Trade Sept. 20, 1999).[1]

[1] The Court of International Trade affirmed Commerce decision that cast butt-weld pipe fittings are within the scope of the order. We note, however, that on November 18, 1999, Eckstrom appealed this decision to the Court of Appeals for the Federal Circuit, Case no. 00–1117. That appeal is currently pending.

The following products were determined to be outside the scope of the orders:

Product outside scope	Importer	Citation
Certain gasket raised face seal sleeves and certain stainless steel "fine-fit" tube fittings imported from Japan.	Fujikin of America, Inc	60 FR 54213 (October 20, 1995).
Stainless steel tube fittings with non-welded end connection, and other products from Taiwan.	Top Line Process Equipment Corporation.	60 FR 54213 (October 20, 1995).
Primet joint metal seal fittings and primet joint weld fittings from Japan.	Daido	61 FR 5533 (February 13, 1996).
Sleeves of clean vacuum couplings and super-clean microfittings from Japan.	Benkan	61 FR 5533 (February 13, 1996).
Superclean fittings from Japan	Benkan UCT Corporation	61 FR 40194 (August 1, 1996).

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on pipe and tube fittings from Japan, Korea, and Taiwan. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than February 2005.

Dated: February 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5373 Filed 3–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054, A–588–604]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On October 1, 1999, the Department of Commerce (the Department) published the preliminary results of the 1997–98 administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A–588–604), and the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A–588–054) (*see Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Revoke in Part*, 64 FR 53323 (*Preliminary Results*). The review of the A–588–054 finding covers two manufacturers/exporters and one reseller/exporter of the subject merchandise to the United States and the period October 1, 1997, through September 30, 1998. The review of the A–588–604 order covers three manufacturers/exporters and the period October 1, 1997, through September 30, 1998. Based upon our analysis of the comments received, we have made changes in the margin calculations. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Reviews."

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Stephanie Arthur (Koyo), Charles Ranado (NSK), Deborah Scott (NTN and Fuji), or Robert James, Office of AD/CVD Enforcement III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–6312, (202) 482–3518, or (202) 482–2657, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are in reference to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations

to the Department's regulations refer to 19 CFR part 351 (April 1, 1998).

Background

On October 1, 1999, we published in the **Federal Register** the preliminary results of the 1997–98 administrative reviews of the antidumping duty order and finding on TRBs from Japan (*see Preliminary Results* at 53323). We gave interested parties an opportunity to comment on the *Preliminary Results*. At the request of certain interested parties, we held a public hearing on November 16, 1999. The Department has now completed these reviews in accordance with section 751 of the Act.

Scope of the Reviews

Imports covered by the A–588–054 finding are sales or entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.15.

Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 finding are not included within the scope of this order, except those manufactured by NTN. This merchandise is currently classifiable under HTS item numbers 8482.20.00, 8482.91.00, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.80. The HTS item numbers listed above for both the A–588–054 finding and the A–588–604 order are provided for convenience and Customs purposes. The written description remains dispositive.

The period for each 1997–98 review is October 1, 1997, through September 30, 1998. The review of the A–588–054 case covers TRB sales by two manufacturers/exporters (Koyo and NSK) and one reseller/exporter (Fuji). The review of the A–588–604 case covers TRBs sales by three manufacturers/exporters (Koyo, NTN, and NSK).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated February 28, 2000, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the Main Department building (B–099).

In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Duty Absorption

We have determined that duty absorption has occurred with respect to the following firms and with respect to the following percentages of sales which these firms made through their U.S. affiliated parties:

	Percentage of U.S. affiliates' sales with dumping margins
For the A–588–054 case:	
Koyo	16.31
NSK	19.55
For the A–588–604 case:	
Koyo	98.08
NSK	24.86
NTN	29.77

For a discussion of our determination with respect to this matter, *see* the "Duty Absorption" section of the Decision Memorandum, accessible in B–099 and on the Web at www.ita.doc.gov/import_admin/records/frn/.

Use of Facts Available

For a discussion of comments on our application of facts available, see the "Facts Available" section of the Decision Memorandum, which is on file in B–099 and available on the Web at www.ita.doc.gov/import_admin/records/frn/. *See also Preliminary Results* at 53325.

Revocation

On October 1, 1999, we published in the *Preliminary Results* our notice of intent to revoke the A–588–054 antidumping finding in part with respect to Fuji. We gave interested parties an opportunity to comment on our intent to revoke in part. Fuji submitted comments with respect to revocation.

On October 30, 1998, Fuji submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the finding covering TRBs from Japan with respect to its sales of this merchandise. In accordance with 19 CFR 351.222(e), this request was accompanied by certification from Fuji that it had sold the subject merchandise to the United States in commercial quantities at not less than normal value (NV) for a three-year period including the current review period,[1] and would not sell subject merchandise at less than NV in the future. Fuji also agreed to its immediate reinstatement in the relevant antidumping finding, as long as any firm is subject to the finding, if the Department concludes that, subsequent to revocation, it sold the subject merchandise at less than NV.

On the basis of Fuji's three consecutive years of exports to the United States of subject merchandise in commercial quantities with zero or *de minimis* margins and the lack of any indication that Fuji will sell TRBs at less than NV in the future, we have determined that Fuji is not likely to sell subject merchandise at less than NV in the future. Accordingly, we are revoking the A–588–054 finding on TRBs from Japan with respect to Fuji. *See also* Fuji's discussion of this issue and the Department's response under "Revocation" in the "Discussion of the Issues" section of the Decision Memorandum, accessible in B–099 and on the Web at www.ita.doc.gov/import_admin/records/frn/.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the Decision Memorandum, accessible in B–099 and on the Web at www.ita.doc.gov/import_admin/records/frn/.

[1] In addition, on March 22, 1999 Fuji provided information to the Department supporting its claim that it sold TRBs to the United States in commercial quantities during this three-year period. That submission included sales information for the 1996–97 POR, during which the Department did not conduct a review of Fuji (*see* footnote 2). The information provided therein is consistent with the information from both the 1995–96 and current POR, and there is no evidence on the record calling into question Fuji's 1996–97 estimated sales information. Additionally, no party has raised this issue during the current review.

Final Results of Reviews

We determine that the following percentage weighted-average margins exist for the period October 1, 1997 through September 30, 1998:

Manufacturer/exporter	Margin (percent)
For the A–588–054 case:	
Fuji	0.05
Koyo Seiko	10.50
NSK	4.07
For the A–588–604 case:	
Fuji[2]	
Koyo Seiko	23.36
NSK	1.80
NTN	17.58

[2] No review requested.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to both export price and constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant proceeding during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of TRBs from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and, therefore, *de minimis*, the Department shall require no deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be 18.07 percent for the A–588–054 case, and 36.52 percent for the A–588–604 case (*see Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*, 58 FR 64720 (December 9, 1993).

The cash deposit rate has been determined on the basis of the selling price to the first unaffiliated U.S. customer. For appraisement purposes, where information is available, the Department will use the entered value of the merchandise to determine the assessment rate. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act and 19 CFR 351.213.

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix 1—Issues in Decision Memorandum

Comments and Responses

1. Duty Absorption
2. Facts Available/Further Manufacturing
3. Revocation
4. Adjustments to Normal Value
5. Adjustments to United States Price
6. Cost of Production and Constructed Value
7. Level of Trade
8. Arm's-length Test
9. Sample Sales/High Profit Sales
10. Model Match
11. Ministerial Errors

[FR Doc. 00–5367 Filed 3–3–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Extension of Time Period to Apply for Membership on the U.S.-Korea Committee on Business Cooperation

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On January 10, 2000, the Department of Commerce published a notice in the **Federal Register** (Vol. 65, No. 6, Monday, January 10, 2000, page 1357) seeking applications for membership on the U.S. side of the U.S.-Korea Committee on Business Cooperation (CBC). The purpose of the CBC is to make recommendations to the governments of the United States and South Korea on ways to facilitate stronger commercial ties between the U.S. and South Korea. This is accomplished by undertaking work programs, reporting on the results, and presenting written recommendations to the two governments. The CBC is co-chaired by the U.S. Secretary of Commerce and the South Korean Minister of Commerce, Industry and Energy. Its activities are undertaken by an equal number of private sector representatives from the United States and South Korea. This notice extends the time to apply for membership on the U.S. private sector side of the CBC until March 31, 2000.

Membership Opportunity: The CBC will expire January 1, 2001, but may be renewed upon the mutual agreement of the U.S. and Korea. Applications are now being sought for U.S. private sector members to serve beginning immediately and until January 1, 2001. Private sector members will serve at the discretion of the Secretary of Commerce. They are expected to participate fully in defining and implementing CBC work programs, reporting on the results, and presenting written recommendations to the two governments. It is expected that private sector individuals chosen for the CBC will attend at least 75% of CBC meetings, which are held alternately in the U.S. and South Korea. It is expected that the next meeting will take place in Washington, D.C.

It is further expected that the U.S. private sector members will provide a

secretariat to support the activities of the U.S. side of the CBC. The tasks of the Secretariat shall include, but not be limited to, the following:

A. Maintain the membership list;

B. Perform organizational matters in connection with the meetings of the CBC and its working groups, if such are formed, including but not limited to, logistics, agendas and reports;

C. Perform other administrative duties that might arise between meetings; and

D. Prepare the written report to the Co-Chairs making recommendations on ways to enhance bilateral commercial relations.

Private sector members are fully responsible for travel, living and personal expenses associated with their participation in the CBC, and may be responsible for a pro rata share of administrative and communications costs relating to the CBC, including, as appropriate, the costs of a secretariat to manage administrative and logistical matters relating to the operation of the CBC. The private sector members will serve in a representative capacity presenting the views and interests of the particular business sector in which they operate, not those of their individual firms. Private sector members are not special government employees.

Objectives: The objectives of the CBC are as follows:

A. Identifying commercial opportunities, impediments, and issues of concern to the business communities in the U.S. and Korea;

B. Improving the dissemination of appropriate commercial information on both markets; and

C. Adopting sectoral approaches to addressing specific problems, and making recommendations to decision-makers.

Membership Criteria: An applicant must be:

- A U.S. citizen residing in the United States; and
- Not a registered foreign agent under the Foreign Agents Registration Act of 1938 (FARA).

In reviewing eligible applicants, the Department of Commerce will consider:

- Experience in doing business in South Korea;
- Readiness to initiate and be responsible for activities in which the CBC will be active; and
- Contribution to CBC diversity (i.e. company size, type, location, demographics and/or traditional under-representation in business).

The Department of Commerce will also give preference to primary companies involved in manufacturing and services.

To be considered for membership, please provide the following: (1) Name and title of the individual requesting consideration; (2) name and address of the company or organization sponsoring each individual; (3) company's product or service line; (4) size of the company; (5) export experience and major markets; (6) a brief statement of why each candidate should be considered for membership on the CBC; (7) the particular segment of the business community each candidate would represent; (8) a personal resume; and (9) a statement signed by the applicant that he or she is a U.S. citizen residing in the United States and not a registered foreign agent under FARA. Up to two applicants from the same organization can be considered.

DEADLINE: The earlier notice provided that requests needed to be received by the Department of Commerce not later than February 18, 2000. This notice extends the period for the receipt of applications until March 31, 2000.

ADDRESSES: Please send your requests for consideration to Philip R. Agress, Director, Office of Korea and Southeast Asia, U.S. Department of Commerce, Room 2036, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, fax (202) 482–4760.

FOR FURTHER INFORMATION CONTACT: Linda Droker, Director, Korea and Taiwan Affairs, U.S. Department of Commerce, Room 2323, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, telephone (202) 482–3876, fax (202) 482–3316.

Authority: 15 U.S.C. 1512.

Dated: February 28, 2000.

Franklin J. Vargo,

Deputy Assistant Secretary for Asia and the Pacific.

[FR Doc. 00–5335 Filed 3–3–00; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030100A]

Southwest Region Family of Permit Forms; Proposed Information Collection; Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 5, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Alvin Katekaru, NMFS Pacific Islands Area Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, telephone 808–973–2937; or Jim Morgan, Long Beach Office, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 908022, (562) 980–4036.

SUPPLEMENTARY INFORMATION:

I. Abstract

Federal permits are required for four fisheries (pelagics, crustaceans, bottomfish, and precious corals) in the western Pacific region and for the coastal pelagics species fisheries off the West Coast. All these fisheries are managed under the Magnuson-Stevens Fishery Conservation and Management Act. This information collection covers the information that must be provided to NMFS to obtain or renew a permit for any of those fisheries. Three types of permits are issued: open access, limited access, and experimental fishing. There are four limited entry fisheries: Northwestern Hawaiian Islands (NWHI) bottomfish (Hoomalu Zone and Mau Zone), NWHI crustaceans, and Hawaii longline. The open access fisheries for which NMFS permits are required are western Pacific longline other than Hawaii; crustacean fisheries off the main Hawaiian Islands, American Samoa, and Guam; and western Pacific precious corals fisheries. Experimental fishing permits may be issued in any fishery to allow the harvest of managed species that would otherwise be prohibited by Federal regulations.

The information from this collection generally serves to identify actual or potential participants in the fisheries, determine eligibility for limited access permits, and help measure the impacts of management controls on the participants in the fisheries.

II. Method of Collection

Typically, in the western Pacific, a permit applicant files an OMB-approved application form and, if applicable, a supplemental information sheet that collects basic information on the owner of the fishing vessel, the operator, and the vessel itself. Expiration of the permits is not uniform. Some permits expire annually, others are on a two-year cycle, and still others expire every 5 years. The crustacean limited entry permits have no expiration date and become invalid when they are transferred to another owner through established permit procedures.

The coastal pelagics fishery permit is a new requirement implemented in January 2000. Permits are valid indefinitely until either the holder transfers the permit or surrenders it.

III. Data

OMB Number: 0648–0204.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 230.

Estimated Time Per Response: In the coastal pelagic fishery, 30 minutes for a permit or permit transfer application, 1 hour for additional information that may be required to support a permit request, and 2 hours for an appeal of a permit denial; in the bottomfish fishery, 45 minutes for a Mau Zone limited access permit application, 2 hours for a Ho'omalu Zone limited access permit application, 1 hour for a Ho'omalu Zone limited access permit renewal application, 2 hours for an appeal of a permit denial, and 1 hour for a Mau Zone exemption request; in the longline fishery, 30 minutes for general permit applications or limited entry permit transfer requests, 2 hours for an appeal of a permit action, and 2 hours for a closed area exemption request; in the crustacean fishery, 30 minutes for any limited entry permit action; in the precious coral fishery, 30 minutes for a permit application; and 2 hours for any experimental fishing permit application.

Estimated Total Annual Burden Hours: 119.

Estimated Total Annual Cost to Public: $1,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 29, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–5363 Filed 3–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030100B]

Submission for OMB Review; Proposed Information Collection; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Designation of Fishery Management Council Members and Application for Reinstatement of State Authority.

Agency Form Number(s): n/a

OMB Approval Number: 0648–0314

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Burden Hours: 4,695

Number of Respondents: 54

Avg. Hours Per Response: Ranges between 1 hour and 120 hours depending on the requirement.

Needs and Uses: The Magnuson-Stevens Fishery Conservation and Management Act, as amended in 1996, provides for the nomination for members of Fishery Management Councils by state governors and Indian treaty tribes, for the designation of a principle state fishery official for the purposes of the Act, and for a request by a state for reinstatement of state authority over a managed fishery. The information submitted with these actions will be used to ensure that the requirements of the Act are being met.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated February 28, 2000.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–5364 Filed 3–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board's Task Force on the Department of Energy's Nonproliferation Programs in the Former Soviet Union. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation. The purpose of the meeting is to discuss the Task Force's review of the Department of Energy's programs in and with the Former Soviet Union (FSU).

NAME: Secretary of Energy Advisory Board—Task Force on the Department of Energy's Nonproliferation Programs in the Former Soviet Union.

DATES: Monday, March 13, 2000, 9:00 am–3:15 pm, Eastern Standard Time.

ADDRESSES: U.S. Department of Energy, Program Review Center (Room 8E–089), Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Note: Members of the public are requested to contact the Office of the Secretary of Energy Advisory Board at (202) 586–7092 in advance of the meeting (if possible), to expedite their entry to the Forrestal Building

on the day of the meeting. Public participation is welcomed.

FOR FURTHER INFORMATION CONTACT: Betsy Mullins, Executive Director, or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Task Force on the Department of Energy's Nonproliferation Programs in the Former Soviet Union is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on the policy priorities established by the Department of Energy to pursue nonproliferation and nuclear safety programs in the Former Soviet Union. Special emphasis will be placed on program areas that may not have been addressed in the past. The Task Force will focus on assessing the performance of DOE's programs in achieving national security and nonproliferation missions, as well as providing policy recommendations on how the Department can be most effective in supporting U.S. national security interests. The Task Force will investigate, but will not be limited to, the following programs: (1) Initiatives for Nonproliferation, (2) Nuclear Cities Initiative, (3) Material Protection Control and Accounting Program, (4) Second Line of Defense Program, (5) Highly Enriched Uranium (HEU) Purchase Agreement, (6) Plutonium Disposition Program, and (7) International Nuclear Safety Program.

Tentative Agenda

Monday, March 13, 2000

9:00 a.m.–9:45 a.m.—Opening Remarks, Introductions & Objectives
9:45 a.m.–10:15 a.m.—Overview of DOE programs with Russia and the Former Soviet Union
10:15 a.m.–10:30 a.m.—Break
10:30 p.m.–11:00 a.m.—Overview of DOE's Office of Nuclear Nonproliferation (NN) Programs
11:00 a.m.–12:00 p.m.—Briefings on Specific Issues—Initiatives for Proliferation Prevention, Nuclear Cities Initiative, Second Line of Defense
12:00 p.m.–1:00 p.m.—Lunch Break
1:15 p.m.–2:15 p.m.—Briefings on Specific Issues—Material Protection Control and Accounting, Plutonium Disposition
2:15 p.m.–3:00 p.m.—Briefings on Specific Issues—HEU Purchase Agreement, International Nuclear Safety
3:00 p.m.–3:15 p.m.—Public Comment Period

This tentative agenda is subject to change.

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the Task Force on the Department of Energy's Nonproliferation Programs in the Former Soviet Union and submit written comments or comment during the scheduled public comment period. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its open meeting, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

A copy of the minutes and a transcript of the open meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on February 29, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–5351 Filed 3–3–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–982–000, ER99–4534–000, ER99–238–000, ER97–1326–000, EL00–44–000, ER00–604–000 and ER00–26–000]

Central Maine Power Company; Notice of Initiation of Proceeding and Refund Effective Date

February 29, 2000.

Take notice that on February 28, 2000, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL00–44–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL00–44–000 will be 60 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Secretary.

[FR Doc. 00–5259 Filed 3–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–15–002]

CNG Transmission Corporation; Notice of Proposed Changes In FERC Gas Tariff

February 29, 2000.

Take notice that on February 23, 2000, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with an effective date of February 1, 2000:

Substitute Second Revised Sheet No. 350A

CNG states that the purpose of this filing is to respond to the concerns of certain parties by clarifying the transportation cost tracking mechanism of CNG's tariff consistent with the "Stipulation and Agreement Amending Rate Case Settlement" filed October 5, 1999, approved by the Commission in this proceeding on December 21, 1999, 89 FERC ¶ 61,304.

CNG states that copies of its letter of transmittal and enclosures are being served upon parties to the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of

the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not served to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5264 Filed 3–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–19–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

February 29, 2000.

Take notice that on February 25, 2000 Kinder Morgan Interstate Gas Transmission LLC (KMIGT), formerly KN Interstate Gas Transmission Co. (KNI) filed a complete copy of its proposed FERC Gas Tariff, Fourth Revised Volume Nos. 1–A and 1–B and Second Revised Volume Nos. 1–C and 1–D.

KMIGT states that the proposed tariff is revised only to reflect a change in name from KNI to KMIGT. No changes to the applicable Rate Schedules or General Terms and Conditions in the tariff are being made in this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers

Secretary.

[FR Doc. 00–5261 Filed 3–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–91–000]

National Fuel Gas Supply Corporation; Notice of Application

February 29, 2000.

Take notice that on February 22, 2000, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP00–91–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations (18 CFR 157) for a certificate of public convenience and necessity authorizing the replacement of an existing pipeline and permission and approval to abandon facilities, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

National Fuel requests authorization to replace certain facilities in order to maintain service under existing agreements and to provide additional firm transportation service to National Fuel Gas Distribution Corporation (Distribution). Specifically, National Fuel requests authorization to: (1) Replace 12.9 miles of 8-inch diameter pipeline, known as Lines S–1 and AM–60 in Warren, McKean and Elk Counties, Pennsylvania, with 20-inch diameter pipeline; (2) abandon in place 18.9 miles of 8-inch and 10-inch pipeline, known as Line L in Warren, McKean and Elk Counties, Pennsylvania; (3) relocate, modify or abandon certain appurtenant stations in Warren, McKean and Elk Counties, Pennsylvania; and (4) add approximately 360 horsepower (hp) of compression at the Roystone Compression Station in Warren County, Pennsylvania by modifying the existing units. It is indicated that there will be no abandonment or decrease in service to any of National Fuel's customers as a result of he proposed abandonment of Line L and appurtenant stations.

National Fuel proposes to abandon the Russell City receipt point located on Line L. It is indicated that Russell City is designated as a receipt point together with several other interconnections between National Fuel and Tennessee Gas Pipeline Company under ten firm transportation agreements pursuant to its EFT Rate Schedule. National Fuel states that it would be able to meet the firm transportation requirements of these customers without the use of Russell City. It is indicated that National Fuel is in the process of seeking consent from the affected EFT Shippers.

National Fuel also proposes to abandon the Allegheny National Forest receipt point located at the interconnection between Line L and the facilities of CNG Transmission Corporation. National Fuel states that this receipt point is designated under two EFT Service Agreements but gas has not been received at this point since December 1984. As a result, the abandonment of the Allegheny National Forest receipt point will not impact any of National Fuel's shippers. It is further indicated that National Fuel is in the process of seeking consent from the two affected EFT Shippers.

National Fuel estimates that cost of the project to be $11.4 million. National Fuel states that the facilities will be financed with internally-generated funds and/or interim short-term bank loans.

National Fuel requests that the Commission grant a determination of rolled-in rate treatment with respect to the costs associated with this project. National Fuel states that the project would result in system benefits, improving the reliability and flexibility of service on its system.

In its application, National Fuel requests a waiver of Section 1.5 of its FT Rate Schedule so that it can provide service to Distribution without having to equip the delivery points and primary receipt points with real time measurement, communication and control capability. National Fuel asserts that because the FT service to Distribution would be fed by, and would feed into, a no-notice EFT service that does not require measurement information on a real time basis, installation of facilities to measure gas flowing into Line AM–60 at Lamont and out of Line AM–60 at Roystone would not be operationally necessary.

National Fuel also requests waivers of Section 2.3(a) and 2.3(d) of its EFT Rate Schedule which limits its obligations to deliver gas at any combination of delivery points to the Contract Maximum Daily Quantity (MDTQ), and limits National Fuel's aggregate receipt

obligation to the sum of the MDTQ and the applicable fuel and loss allowance. National Fuel states that in connection with the implementation of the Distribution FT service, Lamont will be added as a delivery point under the Distribution EFT service and Roystone will be added as a receipt point. National Fuel asserts that it is not intended that receipts of gas from and deliveries of gas into the new Lamont to Roystone facilities will reduce Distribution's aggregate entitlements to deliver and receive gas at its pre-existing points.

Any questions regarding this application should be directed to David W. Reitz, Assistant General Counsel for National Fuel, 10 Lafayette Square, Buffalo, New York 14203 at (716) 857–7949.

· Any person desiring to be heard or to make a protest with reference to said application should on or before March 14, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant a party to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed construction and abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedures herein provided for, unless otherwise advise, it will be unnecessary for National Fuel to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–5260 Filed 3–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99 176 012]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

February 29, 2000.

Take notice that on February 23, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet No. 26D, to be effective April 1, 2000.

Natural states that the purpose of this filing is to implement a Negotiated Rate transaction with Nicor Gas Company (Nicor Gas) under Rate Schedules FTS, DSS and NSS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural concurrently tenders by a separate filing in this docket with the Federal Energy Regulatory Commission (Commission) a copy of the executed negotiated rate agreement between Natural and Nicor Gas, together with a copy of the current Exhibits A and B, the primary receipt and delivery points, respectively, for each of the associated service agreements.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit Original Sheet No. 26D to become effective April 1, 2000.

Natural states that the negotiated rate agreement may deviate in certain respects from the applicable form of service agreement in Natural's Tariff. Specifically, the following categories of provisions may constitute such deviations: MDQ reduction rights, with attendant audit rights, limited contract extension and MDQ reduction rights, shipper limited waiver of Section 5 rights, LN option rights, and certain limited restoration rights upon a change in rate design and service terms.

Natural states that these items do not change the character or nature of the service provided, or the operational conditions of the service. These items were critical to the Agreement by both parties to the resulting negotiated rates. Natural asks the Commission to accept the Agreement to become effective April 1, 2000.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5263 Filed 3–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–162–002]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

February 29, 2000.

Take notice that on February 24, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, those pro forma tariff sheets listed on Appendix A attached to the filing.

Panhandle states that the purpose of this filing is to comply with Ordering Paragraph (B) of the Commission's Order, 90 FERC ¶61,119 (February 9, 2000) (Order) in the above-referenced proceeding.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5265 Filed 3–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–99–000]

Riverside Generating Company, L.L.C.; Notice of Filing

February 22, 2000.

Take notice that on February 16, 2000, Riverside Generating Company, L.L.C., 1000 Louisiana, Suite 5800, Houston, Texas, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Riverside Generating Company, L.L.C., is a limited liability company, organized under the laws of the State of Delaware, and engaged directly and exclusively in owning and operating the Riverside Generating Company, L.L.C. electric generating facility (the Facility) to be located in Lawrence County, Kentucky and selling electric energy at wholesale. The Facility will consist of three gas turbine generators with a total nominal power output of approximately 500 MW, a metering station, and associated transmission interconnection components.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before March 14, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5267 Filed 3–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–185–000]

Viking Gas Transmission Company; Notice of Proposed Change in FERC Gas Tariff

February 29, 2000.

Take notice that on February 25, 2000, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-First Revised Sheet No. 6; Fourteenth Revised Sheet No. 6A; and Third Revised Sheet No. 6B, to become effective April 1, 2000.

Viking states that the purpose of this filing is to make Viking's annual adjustment to its Fuel and Loss Retention Percentages in accordance with Section 154.403 of the Commission's Rules and Regulations, 18 CFR 154.403 (1998) and Section 26 of the General Terms and Conditions of Viking's FERC Gas Tariff. Application of Section 26 of Viking's tariff results in the following new Fuel and Loss Retention Percentages for Rate Schedules FT–A, FT–B, FT–C, FT–D, IT and AOT respectively: 2.00 percent for Zone 1–1, 2.42 percent for Zone 1–2, and .43 percent for Zone 2–2. Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5266 Filed 3–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–73–000, et al.]

Duke Energy Hidalgo, L.P., et al.; Electric Rate and Corporate Regulation Filings

February 28, 2000.

Take notice that the following filings have been made with the Commission:

1. Duke Energy Hidalgo, L.P.

[Docket No. EG00–73–000]

Take notice that on February 25, 2000, Duke Energy Hidalgo, L.P. filed an amendment to their December 30, 1999 application for Commission determination of exempt wholesale generator status.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket Nos. ER99–1050–000, ER00–1068–000, ER00–1069–000, ER00–1070–000, ER00–1071–000, ER00–1072–000, ER00–1073–000, and ER00–1074–000]

Take notice that on February 23, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing a letter clarifying the charges in paragraph 8.4 of several Firm Point-to-Point Transmission Service Agreements filed on January 5, 2000.

Comment date: March 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Atlantic City Electric Company

[Docket No. ER99–1618–002]

Take notice that on February 24, 2000, Atlantic City Electric Company (Atlantic or the Company) filed its refund report in compliance with the Commission's order dated January 31, 2000 in the above-captioned docket.

Atlantic has served this filing on its affected wholesale customer, Vineland Municipal Electric Utility (Vineland), and the New Jersey Board of Public Utilities.

Comment date: March 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC

[Docket No. ER00–1493–000]

Take notice that on February 23, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed Amendment No. 1 to Supplement No. 23 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy requests a waiver of notice requirements to make service available as of January 7, 2000, to Aquila Energy Marketing Corporation

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1677–000]

Take notice that on February 23, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed Amendment No. 1 to Supplement No. 8 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy requests a waiver of notice requirements to make service available as of November 22, 1999, to Statoil Energy Services, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER00–1678–000]

Take notice that on February 24, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Short-Term Firm Point-to-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Sempra Energy Trading Corp.

Entergy requests that the Transmission Service Agreement be made effective February 15, 2000.

Comment date: March 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER00–1679–000]

Take notice that on February 24, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transmission Service Agreement, both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Allegheny Energy Supply Company, LLC.

Entergy Services requests that the Transmission Service Agreements be made effective February 15, 2000.

Comment date: March 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Bay State GPE, Inc. and Canadian Niagara Power Company, Limited

[Docket Nos. ER00–1680–000 and ER00–1684–000]

Take notice that on February 23, 2000, the above-mentioned affiliated power producers and/or public utilities filed quarterly reports.

Comment date: March 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1681–000]

Take notice that on February 23, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Supplement No. 25 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of January 26, 2000 to Tennessee Valley Authority.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1682–000]

Take notice that on February 23, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed an Amendment to their Standard Transmission Service Rate Schedule in order to incorporate therein the penalty provision contained in their Open Access Transmission Tariff.

Allegheny Power has requested an effective date for the Amendment of February 24, 2000 or a date determined by the Commission.

Copies of the filing have been provided to the public utility's jurisdictional customers, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. PSI Energy, Inc.

[Docket No. ER00–1683–000]

Take notice that on February 24, 2000, PSI Energy, Inc. (PSI) tendered for filing the Transmission and Local Facilities (T&LF) Agreement Calendar Year 1997 Reconciliation between PSI and Wabash Valley Power Association, Inc. (WVPA), and between PSI and Indiana Municipal Power Agency (MPA). The T&LF Agreement has been designated as PSI's Rate Schedule FERC No. 253.

Copies of the filing were served on Wabash Valley Power Association, Inc., the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: March 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Deseret Generation & Transmission Co-operative

[Docket No. ER00–1688–000]

Take notice that on February 23, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing an executed umbrella short-term firm point-to-point service agreement with the Western Area Power Administration—Colorado River Storage Project Management Center (WAPA) under its open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of January 24, 2000.

WAPA has been provided a copy of this filing.

Comment date: March 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. RS Cogen, L.L.C.

[Docket No. QF00–32–000]

Take notice that on February 23, 2000, RS Cogen, L.L.C. (RS Cogen) located at 1300 PPG Drive, Westlake, Louisiana 70669, filed an application pursuant to Section 292.207(b) of the Commission's regulations for a determination by the Commission that RS Cogen's cogeneration facility is a qualifying facility under the Public Utility Regulatory Policies Act of 1978 and the Commission's regulations thereunder.

RS Cogen proposes to construct, own and operate an approximately 425 MW combined-cycle cogeneration facility fueled by natural gas that will produce electricity and provide steam to nearby chemical manufacturing facilities. The facility proposes to interconnect with Entergy Gulf States, Inc. PPG Industries, Inc. and Entergy R.S. Corporation each own 50 percent of the equity of RS Cogen.

The Applicant anticipates the facility will commence commercial operations in the summer of 2002.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5344 Filed 3–3–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7108–001]

Virginia Hydro, Inc.; Notice of Availability of Draft Environmental Assessment

February 29, 2000.

A draft environmental assessment (DEA) is available for public review. The DEA is for an application to surrender the exemption for the Grove Mill Project. The DEA finds that approval of the proposed amendment would not constitute a major federal action significantly affecting the quality of the human environment. The Grove Mill Project is located on the Middle River, in Augusta County, Virginia.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The DEA may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Please submit any comments on the DEA within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation. Comments should be addressed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please affix Project No. 7108–001 to all comments.

David P. Boergers,

Secretary.

[FR Doc. 00–5262 Filed 3–3–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140283; FRL–6495–1]

Access to Confidential Business Information by Syracuse Research Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Syracuse Research Corporation (SRC), of Syracuse, New York, access to information which has been submitted to EPA under sections 4, 5, 6, 8, and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA occurred as a result of an approved waiver dated January 27, 2000, which requested granting SRC immediate access to TSCA CBI. This waiver was necessary to allow SRC to assist the Risk Assessment Division by providing expertise in the Health and Environmental Sciences, including Biotechnology and Biostatistics; performing hazard and exposure assessments at the screening level; performing hazard assessments, risk assessments and characterization of new and existing chemicals; performing expert analysis of science issues and questions, to organize review panels/workgroups/workshop/symposia; assisting in developing test guidelines/standards; and providing automatic data processing and information management support and literature and translation support.

FOR FURTHER INFORMATION CONTACT: Joseph S. Carra, Acting Director,

Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Rm. E–545, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to "those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA)." Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

III. What Action is the Agency Taking?

Under contract number 68–W–00–069, contractor SRC of Merrill Lane, Syracuse, NY, will assist the Office of Pollution Prevention and Toxics (OPPT) by providing expertise in the Health and Environmental Sciences, including Biotechnology and Biostatistics performing hazard and exposure assessments at the screening level performing hazard assessments, risk assessments and characterization of new and existing chemicals performing expert analysis of science issues and questions, to organize review panels/workgroups/workshop/symposia assisting in developing test guidelines/standards and providing automatic data processing and information management support and literature and translation support.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W–00–069, SRC will require access to CBI submitted to EPA under sections 4, 5, 6, 8, and 21 of TSCA to perform successfully the duties specified under the contract.

SRC personnel will be given access to information submitted to EPA under sections 4, 5, 6, 8, and 21 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, and 21 of TSCA that EPA may provide SRC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and SRC's Syracuse, NY and Arlington, VA facilities.

SRC will be authorized access to TSCA CBI at their facilities under the EPA *TSCA Confidential Business Information Security Manual.* Before access to TSCA CBI is authorized at SRC's sites, EPA will perform the required inspection of its facilities and ensure that the facilities are in compliance with the Manual.

Upon completing review of the CBI materials, SRC will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until December 31, 2004.

SRC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Acess to confidential business information.

Dated: February 23, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Pollution Prevention and Toxics.

[FR Doc. 00–5391 Filed 3–3–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Federal-State Joint Conference on Advanced Services Field Hearing Schedule

AGENCY: Federal Communications Commission.

ACTION: Announcement of meetings.

SUMMARY: The Federal-State Joint Conference on Advanced Telecommunications Services (Joint Conference) was convened by the FCC on October 8, 1999 to further the vision of Section 706 of the Telecommunications Act of 1996. Patterned on a resolution by the National Association of Regulatory Utility Commissioners (NARUC), the Joint Conference joins federal and state forces to encourage the deployment of advanced telecommunications services to all Americans. Part of the joint Conference's mission is to gather information on the deployment of advanced services. To this end, the Joint Conference will hold six field hearings in coming months to gather information on the status of deployment of advanced telecommunications capability to all Americans.

DATES: See **SUPPLEMENTARY INFORMATION** section for hearing dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for hearing addresses.

FOR FURTHER INFORMATION CONTACT: Emily Hoffnar (202) 418–0940 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: These field hearings will focus on two goals in particular. First, the Joint Conference will seek information on what extent data is available at the state level on the status of deployment of advanced services. Second, the Joint Conference will seek examples of "best practices" of successful deployment in communities. Some communities have found creative ways to bring high speed Internet access to areas that were previously underserved. For example, a community may speed deployment by bringing many potential users of advanced services together, thereby aggregating demand to increase their buying power. A compilation of creative efforts, or best practices, will provide guidance to communities in other states to speed deployment of advanced services.

Transcripts of each field hearing will be made available to the public as soon as possible after each field hearing.

Meeting of Joint Conference and Initial Hearing

- Washington, DC, March 8, 2000, time to be determined.
- Joint Conference Hosts: FCC Chairman William Kennard and Chair of the Regulatory Commission of Alaska, Nanette Thompson.
- All FCC and State Commissioners will attend the first field hearing in Washington, DC, as their schedules permit.
- Special focus on broadband deployment in inner cities.

Western Regional Field Hearing

- Anchorage, Alaska, April 17, 2000, time to be determined.
- Joint Conference Hosts: FCC Commissioner Susan Ness and Chair of the Regulatory Commission of Alaska, Nanette Thompson.

• Special focus on the relationship between advanced services deployment and economic development, satellite deployment.

Midwestern Regional Field Hearing

• South Sioux City, Nebraska, April 19, 2000, time to be determined.
• Joint Conference Hosts: FCC Chairman William Kennard and Chair of the North Carolina Utilities Commission, Jo Anne Sanford.
• Special focus on cable and fixed wireless deployment and deployment in rural areas.

Northeastern Regional Field Hearing

• Lowell, Massachusetts, May 22, 2000, time to be determined.
• Joint Conference Hosts: FCC Commissioner Michael Powell and Public Utility Commission of Texas Commissioner Brett Perlman.
• Special focus on public/private partnerships, deployment in remote areas, and data gathering initiatives.

Gulf States and Southeast Regional Field Hearing

• Miami, Florida, June 9, 2000, time to be determined.
• Joint Conference Hosts: FCC Commissioner Gloria Tristani, Louisiana Public Service Commission, Chair Irma Muse Dixon, North Carolina Utilities Commission Chair, Jo Anne Sanford, and Public Utility Commission of Texas Commissioner, Brett Perlman.
• Special focus on deployment to rural and urban multicultural communities, fixed wireless deployment, and public/private partnerships.

Mountain West Regional Field Hearing

• Cheyenne, Wyoming, June 23, 2000, time to be determined.
• Joint Conference Hosts: FCC Commissioner Harold Furchtgott-Roth and Wyoming Public Service Commission Deputy Chair Steven Furtney.
• Special focus on speeding deployment via community demand aggregation, deployment in rural areas and Indian Territory, data gathering initiatives.

Further information about the Joint Conference can be found on its web site: www.fcc.gov/jointconference.

Dated: March 2, 2000.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5451 Filed 3–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2000–N–2]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice of prices for Federal Home Loan Bank Services.

SUMMARY: The Federal Housing Finance Board (Board) is publishing the prices charged by the Federal Home Loan Banks (Banks) for processing and settlement of items (negotiable order of withdrawal or NOW), and demand deposit accounting (DDA) and other services offered to members and other eligible institutions.

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Gwen R. Grogan, Associate Director, Office of Supervision (202) 408–2892; or Edwin J. Avila, Financial Analyst, (202) 408–2871; Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1431(e)) authorizes the Banks: (1) to accept demand deposits from member institutions; (2) to be drawees of payment instruments; (3) to engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions; and (4) to engage in such incidental activities as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Banks to make charges for services authorized in that section, which charges are to be determined and regulated by the Board.

Section 975.6(c) of the Board's regulations (12 C.F.R. 975.6(c)) provides for the annual publication in the **Federal Register** of all prices for Bank services. The following fee schedules are for the Banks which offer item processing services to their members and other qualified financial institutions. Most of the remaining Banks provide other Correspondence Services which may include securities safekeeping, disbursements, coin and currency, settlement, electronic funds transfer, etc. However, these Banks do not provide services related to processing of items drawn against or deposited into third party accounts held by their members or other qualified financial institutions.

District 1.—Federal Home Loan Bank of Boston (2000 NOW/DDA Services)

(Services not provided)

District 2.—Federal Home Loan Bank of New York (2000 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 3.—Federal Home Loan Bank of Pittsburgh (2000 NOW/DDA Services)

Deposit Processing Service (DPS)

Effective 1/1/2000

DPS Deposit Tickets $0.6500 per deposit

Printing of Deposit Tickets Pass-through

DEPOSIT ITEMS PROCESSED

[Pricing varies—tiered by monthly volume]

For volumes of	Per item (transit)
1–25,000	$0.0407
25,001–58,500	0.0402
58,501–91,500	0.0397
91,501–125,000	0.0392
125,001–158,500	0.0377
158,501–191,500	0.0357
191,501 and over	0.0327

DEPOSIT ITEMS ENCODED (WEST)

[Pricing varies—tiered by monthly volume]

For volumes of	Per item
1–25,000	$0.0398
25,001–58,500	0.0394
58,501–91,500	0.0390
91,501–125,000	0.0386
125,001–158,500	0.0373
158,501–191,500	0.0368
191,501 and over	0.0363

DEPOSIT ITEMS ENCODED (EAST)

[Pricing varies—tiered by monthly volume]

For volumes of	Per item
1–25,000	$0.0352
25,001–58,500	0.0347
58,501–91,500	0.0342
91,501–125,000	0.0337
125,001–158,500	0.0322
158,501–191,500	0.0312
191,501 and over	0.0306

Deposit Items Returned	$18.0000	per item
Deposit Items Photocopied	3.9500	per photocopy
DPS Photocopies—Subpoena	21.0000	per hour of processing time,

plus	0.3000	per photocopy
Deposit Items Rejected (applicable to pre-encoded deposits only).	0.2300	per rejected item
Canadian Item Processing	5.2500	per item
All Foreign Collection Charges (Includes Foreign Collection Fees, Bought Foreign Collection Fees, Foreign Bank Processing Charges, and Foreign Check Courier Charges).		pass-through
Adjustments on DPS Deposits (applicable to pre-encoded deposits only).	3.00	per adjustment
Foreign Return Check Fee	35.0000	per item
DPS Transportation (West)	9.9500	per pickup
DPS Transportation (East)	9.9500	per pickup
Return Check Courier Service	145.0000	per month

Depository Account Services

On—US Returns Deposited:		
Qualified Returns	$1.2000	per item
Raw Returns	4.5000	per item
Mail Deposits	5.7500	per deposit
Bond Collection:		
Bearer	40.0000	per bond
Registered	50.0000	per bond
Bond Coupon Collection	8.2500	per envelope
Bond Coupon Returns	32.0000	per coupon
Deposit Transfer Vouchers	5.7500	per item

Electronic Funds Transfers

Incoming Wire Transfers	$6.2500	per transfer
Outgoing Wire Transfers (LINK)	7.0000	per transfer
Outgoing Wire Transfers (Manual)	10.7500	per transfer
Fax of Wire Transfer Advice	3.7500	per transfer
Internal Book Transfers (LINK)		No Charge
Internal Book Transfers (Manual)	1.1500	per transfer
Foreign Wire Surcharge	33.0000	*
Foreign Wire Tracers		pass-through
Mortgage Participation Service Fee	3.2000	per transfer
Expected Wires Not Received		penalty assessed **

*This surcharge will be added to the amount of the outgoing funds transfer to produce a single total debit to be charged to the customer's account on the date of transfer.

**Standard penalty is equivalent to the amount of the wire(s) times the daily IOD rate, divided by 360. If the wire not received causes the Bank to suffer any penalty, deficiency, or monetary loss, any and all related costs will also be assessed.

Automated Clearing House

ACH Transaction Settlement (CR/DR)	$0.3000	per transaction
ACH Cleared Through FHLB (CR/DR)	0.4000	per transaction
ACH Origination Items (CR/DR)	0.2200	per item
ACH Origination Record Set-Up	1.7500	per record
ACH Origination Items Returned	6.0000	per returned item
ACH Returns/NOCs—Facsimile	2.5000	per transaction
ACH Returns/NOCs—Telephone	4.0000	per transaction
ACH/FRB Priced Service Charges	0.3000	per transaction

Federal Reserve Settlement

FRB Statement Transaction (CR/DR)	$0.6000	per transaction
Reserve Requirement Pass-Thru	32.5000	per month (active)
Correspondent Transaction (DR)	0.6000	per transaction
Direct Send Settlement	152.5000	per month
FRB Inclearing Settlement	152.5000	per month
FRB Coin & Currency Settlement	50.0000	per month

Demand Deposit Services

Clearing Items Processed	$0.1600	per item
Clearing Items Fine Sorted (for return with Bank statements)	0.0800	per item
Reconcilement Copies—Manual	0.1100	per copy
Reconcilement Copies—MagTape	0.0540	per copy

Reconcilement MagTape Processing	.....	Pass-through
Reconcilement Copies—Voided	0.0450	per copy
Check Photocopies—Mail	4.0000	per photocopy
Check Photocopies—Telephone/Fax	4.8500	per photocopy
Check Photocopies—Subpoena	0.7200	per photocopy
Stop Payment Orders	18.0000	per item
Stop Payment Cancellations	9.0000	per cancelled item
FRB Return Items Processed	0.4500	per item
FRB Return Items Qualified	0.2700	per item
FRB Return Items Over $2,500	6.0000	per item
Collections & Forgeries	18.0000	per item
Check Imprinting	.....	Pass-through
Request for Fax / Photocopy	5.0000	per document/page

Check Processing (Inclearing)

CHECKS PROCESSED

[Pricing varies—tiered by monthly volume]

For volumes of	Per item
1–25,000	$0.0469
25,001–58,500	0.0444
58,501–91,500	0.0417
91,501–125,000	0.0391
125,001–158,500	0.0362
158,501–191,500	0.0336
191,501–350,000	0.0298
350,001–500,000	0.0272
500,001 and over	0.0247

Full Backroom Service

(Item Processing Charges)

NON-TRUNCATED CHECKS

[Pricing varies—tiered by monthly volume]

For volumes of	Per item
1–25,000	$0.0610
25,001–58,500	0.0600
58,501–91,500	0.0580
91,501–125,000	0.0565
125,001–158,500	0.0550
158,501–191,500	0.0535
191,501–350,000	0.0515
350,001–500,000	0.0475
500,001 and over	0.0445

TRUNCATED CHECKS

[Pricing varies—tiered by monthly volume]

For volumes of	Per item
1–25,000	$0.0510
25,001–58,500	0.0500
58,501–91,500	0.0480
91,501–125,000	0.0465
125,001–158,500	0.0450
158,501–191,500	0.0435
191,501–350,000	0.0415
350,001–500,000	0.0375
500,001 and over	0.0345

Modified Backroom Service

(Item Processing Charges)

NON-TRUNCATED CHECKS

[Pricing varies—tiered by monthly volume]

For volumes of:	Per item
1–25,000	$0.0510
25,001–58,500	0.0500
58,501–91,500	0.0480
91,501–125,000	0.0465
125,001–158,500	0.0450
158,501–191,500	0.0435
191,501–350,000	0.0415
350,001–500,000	0.0375
500,001 and over	0.0345

TRUNCATED CHECKS

[Pricing varies—tiered by monthly volume]

For volumes of	Per item
1–25,000	$0.0410
25,001–58,500	0.0400
58,501–91,500	0.0380
91,501–125,000	0.0365
125,001–158,500	0.0350
158,501–191,500	0.0335
191,501–350,000	0.0315
350,001–500,000	0.0275
500,001 and over	0.0245

Image Services

Proof of Deposit (POD) Service

Pricing for each of these premium services is customer-specific, based upon individual service requirements; please call your Relationship Officer at (800) 288 3400 for further information.

Check Processing (Associated Services)

Unidentified Items Processed	$2.0000	per item.
Over-The-Counter Items	0.1950	per item.
OTC Item Transportation	10.2500	per month.
Special Cycle Sorting	0.0240	per item.
Mid-Cycle Statement (Purged)	0.5700	per item *(Min $2.85)*.
Mid-Cycle Stmt. (Non-Purged)	2.8500	per statement.
Statement Printing	0.0300	per page.
Statement Processing:		
Statements using Generic Envelopes	0.0650	per envelope.
Statements using Custom Envelopes	0.1100	per envelope.
Statements using Large Envelopes	0.6650	per envelope.
Envelope Destruction Fee	0.0300	per envelope.
Additional Stuffer Processing	0.0285	per stuffer (one stuffer per statement free—applicable to all additional stuffers).
Selective Stuffer Processing	0.1100	per statement.
Daily Report Postage		Pass-through.
Statement Postage		Pass-through.
Standard Return Calls	1.5000	per item.
Automated Return Calls	0.2950	per item.
Return Calls via Link	0.7900	per item.
Late Return Calls	5.2500	per item.
FRB Return Items Processed	0.4500	per item.
FRB Return Items Qualified	0.2700	per item.

FRB Return Items Over $2,500	6.0000	per item.
Suspect Item Processing	5.2500	per suspect item.
Check Photocopies—Mail	4.0000	per photocopy.
Check Photocopies—Telephone/Fax	4.8500	per photocopy.
Check Photocopies—Subpoena	0.7200	per photocopy.
Signature Verification Copies	0.8500	per copy.
Check Retrieval	1.8000	per item.
MICRSort Option (Fixed Fee)	28.2500	per month.
MICRSort Option (per item)	0.0330	per item.
Collections & Forgeries	18.0000	per item.
MCPJ Microfiche Service	0.00225	per item.
(Min. $20.00, Max. $125.00)		Pass-through
Transportation		

Coin and Currency Service

Western Service Area

Cash Orders	$2.5000	per order, plus:
Currency Orders	0.3450	per $1,000*.
Coin Orders	2.8000	per box.
Currency Deposits	1.4000	per $1,000*.
Coin Deposits	2.0000	per standard bag.
Coin Deposits (Non-Standard)	3.0000	per non-standard bag.
Coin Deposits (Unsorted)	9.0000	per mixed bag.
Food Stamp Deposits	2.0000	per $1,000*.
Late Order Surcharge	10.0000	per order.
Coin Shipment Surcharge	0.2800	per excess bag**.
C&C Transportation (Zone W1)	18.5000	per stop.
C&C Transportation (Zone W2)	30.5000	per stop.
C&C Transportation (Zone W3)	42.5000	per stop.
C&C Transportation (Zone W4)		Negotiable***.

*Charges will be applied to each $1,000 ordered or deposited, and to any portion of a shipment not divisible by that standard unit.
**A surcharge will apply to each container (box/bag) of coin in an order/delivery after the first 20 containers.
***Reserved for remote locations: delivery charges will be negotiated with the courier service on an individual basis.

Coin and Currency Service

Eastern Service Area

Cash Orders	$2.5000	per order, plus.
Currency Orders	0.3450	per $1,000*.
Coin Orders	3.0500	per box.
Currency Deposits	1.4000	per $1,000*.
Coin Deposits	2.0000	per standard bag.
Coin Deposits (Non-Standard)	3.0000	per non-standard bag.
Coin Deposits (Unsorted)	9.0000	per mixed bag.
Food Stamp Deposits	2.0000	per $1,000*.
Late Order Surcharge	10.0000	per order.
Coin Shipment Surcharge	0.2800	per excess bag**.
C&C Transportation (Zone E1)	27.4000	per stop.
C&C Transportation (Zone E2)	38.2000	per stop.
C&C Transportation (Zone E3)	55.0000	per stop.
C&C Transportation (Zone E4)		Negotiable***.

Account Maintenance

Demand Deposit Accounts	$22.5000	per month, per account.
Cut-off Statements	12.5000	per statement.
Telephone Inquiry	2.3000	per telephone call.
Paper Advice of Transactions (DTS)	32.5000	per account, per month.
Daily Transaction Data via LINK		No Charge.

Monthly Minimum Charges

The Bank reserves the right to impose a monthly minimum charge for its services. The standard minimum will be $2,000 per month, applied against Check Processing, Deposit Processing, and/or Proof of Deposit Services. Pass-through items, such as postage and transportation, do not apply.

Account Overdraft Penalty

Greater of $75.00 per day and the daily interest on the amount of the overdraft.

(Rate used for calculation equal to the highest posted advance rate plus 3.0%.)

Requests for Programming Changes

Programming support for new services, enhancements to existing service levels, or servicer conversions

requiring at least one hour of programmer time and/or equivalent FHLB expenses will be charged at a rate of $100.00 per hour, plus expenses.

Attention: Customers Receiving Transportation Charges Under Any Service

Rates and charges relative to transportation vary depending on the location of the office(s) serviced. Details regarding the pricing for the transportation to/from specific institutions or individual locations will be provided upon their subscription to that service.

Surcharges may be applicable and will be applied to the customer as effective and without prior notice.

District 4.—Federal Home Loan Bank of Atlanta (2000 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 5.—Federal Home Loan Bank of Cincinnati (2000 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 6.—Federal Home Loan Bank of Indianapolis (2000 NOW/DDA Services)

Fee Schedules

Checking Account Processing

I. CHECKING ACCOUNT SERVICE TRANSACTION CHARGES

[Effective February 1, 2000]

Monthly volume	Safekeeping (per item)	Turnaround (daily or cycled) (per item)	Complete (per item)	Full service image*		Limited service image*	
				per item	per statement	per item	per statement
0–5,000	$.054	$.0675	$.0875	$.06	$.40	$.02	$.40
5–10,000	.046	.0625	.0855	.06	.40	.02	.40
10–15,000	.045	.0585	.0835	.06	.40	.02	.40
15–25,000	.040	.0515	.0825	.06	.40	.02	.40
25–50,000	.039	.0475	.0805	.06	.40	.02	.40
50–75,000	.035	.0445	.0765	.06	.40	.02	.40
75–100,000	.032	.0415	.0755	.06	.40	.02	.40
100 and up	.030	.0385	.0745	.06	.40	.02	.40

Minimum processing fee of $40.00 per month will apply for total NOW services. Also included in the above fees—at *no* additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

*Image Monthly Maintenance Fee of $4500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

II. ANCILLARY SERVICE FEES

Large Dollar Signature Verification	$0.75
Over-the-counters and Microfilm	0.045
Return Items	2.40
Photocopies* and Facsimiles	2.50
Certified Checks	1.00
Invalid Accounts	0.65
Late Returns	0.50
Invalid Returns	0.50
No MICR/OTC	0.50
Settlement Only (per month)	100.00
+Journal Entries (each)	3.00
Encoding Errors	2.75
Fine Sort Numeric Sequence	0.02

II. ANCILLARY SERVICE FEES—Continued

Access to Infoline (per month)	50.00
High Dollar Return Notification	N/C
Debit Entries	N/C
Credit Entries	N/C
Standard Stmt. Stuffers (up to 2)**	N/C
Statement Stuffing Savings (Non DDA Accounts)	0.20

Minimum processing fee of $40.00 per month will apply for total NOW services. Also included in the above fees—at no additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

*Photocopy request of 50 or more are charged at an hourly rate of $15.00.

**Each additional (over 2) will be charged at $.02 per statement.

b. Demand Deposits Accounts/ACH

ITEM PROCESSING SERVICE FEES

Demand deposit clearings will have the following service charges:

CASH MANAGEMENT SERVICE

Stop payments	6.00	per stop.
Photocopies	2.50	per copy.
Collection/Return/Exception	5.00	
Daily Statement	2.00	
Maintenance	30.00	per month.
Debit Entries	N/C	
Credit Entries	N/C	
ACH Fees:		
Tape transmission or originations	$8.50	per tape.
NACHA, MPX	.....	Actual Federal Reserve charges.
ACH entries clearing through our R&T number	.25	per item.
Settlement only	65.00	per month.
ACH returns/NOC	2.50	per item.

Collected balances will earn interest at CMS daily-posted rate.
Prices effective April 1, 1993.

c. Deposit Services

FEDERAL HOME LOAN BANK OF INDIANAPOLIS

Pre-encoded Items:		
City	$0.045	per item.
RCPC	.055	per item.
Other Districts	.09	per item.
Unencoded	.15	per item.
Food Stamp	.14	per item.
Photocopies	2.50	per copy.
Adjustments on pre-encoded work	2.75	per error.
E Z Clear	.14	per item.
Coupons	8.25	per envelope.
Collections	6.00	per item.
Cash Letter	2.00	per cash letter.
Deposit Adjustments	2.00	per adjustment.
Debit Entries	.....	N/C.
Credit Entries	.....	N/C.
Microfilming	.....	N/C.
Mortgage Remittance (Basic Service)	.35	
Settlement only	100.00	per month.
+ Journal Entries	3.00	each.
Courier:		
Indianapolis (city)	8.25	per location, per day, per pickup.
Outside Indianapolis		prices vary per location

N/C No Charge.

District 7.—Federal Home Loan Bank of Chicago (2000 NOW/DDA Services) (Does not provide item processing services for third party accounts)
District 8.—Federal Home Loan Bank of Des Moines (2000 NOW/DDA Services) (Does not provide item processing services for third party accounts)
District 9.—Federal Home Loan Bank of Dallas (2000 NOW/DDA Services) (Does not provide item processing services for third party accounts)
District 10.—Federal Home Loan Bank of Topeka (2000 NOW/DDA Services) (Does not provide item processing services for third party accounts)
District 11.—Federal Home Loan Bank of San Francisco (2000 NOW/DDA services) (Does not provide item processing services for third party accounts)
District 12.—Federal Home Loan Bank of Seattle (2000 NOW/DDA Services) (Does not provide item processing services for third party accounts)

By the Federal Housing Finance Board.

William W. Ginsberg,

Managing Director.

[FR Doc. 00–5274 Filed 3–3–00; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841*et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 2000.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Greater Bay Bancorp, Palo Alto, California; to merge with Coast Bancorp, Santa Cruz, California, and thereby indirectly acquire Coast Commercial Bank, Santa Cruz, California.

Board of Governors of the Federal Reserve System, February 29, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5271 Filed 3–3–00; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

President's Commission on the Celebration of Women in American History

AGENCY: General Services Administration.

ACTION: Meeting notice.

SUMMARY: Notice is hereby given that the President's Commission on the Celebration of Women in American History will hold a open meeting from 1:00 p.m. to 5:00 p.m. on Tuesday, March 21, 2000, and from 9 a.m. to 12:00 p.m. on Wednesday, March 22, 2000 at the White House Conference Center, 726 Jackson Place, N.W. Washington, DC.

PURPOSE: To hear testimony about the Year 2000 Celebration plans for Women's History Month and review current related activities. Guest speakers will address how to celebrate

achievements of American Women and review the status of the Commissions' recommendations for action for the year 2000. Participants may wish to make a statement covering personal interests in the history of women in America or share thoughts on appropriate commemorative events.

FOR FURTHER INFORMATION CONTACT: Martha Davis (202) 501–0705, Assistant to the Associate Administrator for Communications, General Services Administration. Also, inquiries may be sent to *martha.davis@gsa.gov*.

Dated: February 28, 2000.

Beth Newburger,

Associate Administrator for Communications.

[FR Doc. 00–5276 Filed 3–3–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biological Response Modifiers Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Biological Response Modifiers Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 20, 2000, 9 a.m. to 5:30 p.m. and on March 21, 2000, 8 a.m. to 4 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Gail Dapolito or Rosanna Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12389. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 20 and 21, 2000, the committee will discuss: (1) Issues related to the use of human pancreatic islets for the treatment of diabetes, including product development issues relating to the procurement, processing and characterization of islets, preclinical animal models for islets and a brief clinical perspective; (2) the report of the January 13, 2000, meeting of the Xenotransplantation Subcommittee; and (3) an update of research programs in the Division of Cellular and Gene Therapies and the Division of Therapeutic Proteins.

Procedure: On March 20, 2000, from 9 a.m. to 5:30 p.m. and on March 21, 2000, from 8 a.m. to 8:45 a.m. and from 9:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 10, 2000. Oral presentations from the public will be scheduled between approximately 1:45 p.m. and 2:15 p.m. on March 20, 2000, and between 11:30 a.m. and 12 noon on March 21, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 10, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On March 21, 2000, from 8:45 a.m. to 9:30 a.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of the review of individual research programs in the Division of Cellular and Gene Therapies and the Division of Therapeutic Proteins, Center for Biologics Evaluation and Research.

FDA regrets that it was unable to publish this notice 15 days prior to the March 20 and 21, 2000, Biological Response Modifiers Advisory Committee meeting. Because the agency believes there is some urgency to bring these issue to public discussion and qualified members of the Biological Response Modifiers Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 28, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–5395 Filed 3–1–00; 4:26 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 16, 2000, from 8 a.m. to 6 p.m. and on March 17, 2000, from 8 a.m. to 3:30 p.m.

Location: Holiday Inn, 8777 Georgia Ave., Kennedy Grand Ballroom, Silver Spring, MD 20910.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 16, 2000, the following committee updates are tentatively scheduled: (1) Summaries of recent workshops on bacterial contamination of platelets, (2) criteria for safety and efficacy evaluation of oxygen therapeutics as red cell substitutes, (3) implementation of universal leukoreduction, and (4) the National Institutes of Health Workshop on Parvovirus B19. In the morning, the committee will hear presentations, and discuss and make recommendations on a submitted proposal to revise the interpretation of indeterminate human immunodeficiency virus-1 Western Blots with only nonviral bands. In the afternoon, the committee will hear presentations, and discuss and make recommendations on the topics of a history of hepatitis in blood and plasma

donors and hepatitis B virus nucleic acid testing. On March 17, the committee will hear updates on the following topics: (1) Summary of the January 2000 Public Health Service Advisory Committee Meeting on Blood Safety and Availability, (2) Creutzfeld-Jacob Disease policy, (3) hepatitis C virus lookback guidance, (4) postdonation information algorithm, and (5) immune globulin intravenous clinical endpoints. In the morning, the committee will hear an informational presentation on the blood action plan and supply issues, and discuss and make recommendations on donor deferral issues related to xenotransplantation. In the afternoon, the committee will be briefed on research programs in the Laboratory of Plasma Derivatives, Division of Hematology, Center for Biologics Evaluation and Research (CBER).

Procedure: On March 16, 2000, from 8 a.m. to 6 p.m. and on March 17, 2000, from 8 a.m. to 3 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 7, 2000. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m., 2:30 p.m. and 3 p.m., and 4:30 p.m. and 5 p.m. on March 16, 2000; and between approximately 9:30 a.m. and 10 a.m., and 11:30 a.m. and 12 noon on March 17, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 7, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On March 17, 2000, from 3 p.m. to 3:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of the review of individual research programs in the Division of Hematology, CBER.

FDA regrets that it was unable to publish this notice 15 days prior to the March 16 and 17, 2000, Blood Products Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Blood Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 28, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–5394 Filed 3–1–00; 4:26 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Utah State Children's Health Insurance Program (SCHIP) State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on March 17, 2000; 10 a.m.; Seventh Floor (Suite 700); Keystone Room; 1600 Broadway; Denver, Colorado 80202 to reconsider our decision to disapprove Utah SCHIP SPA.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by March 21, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, HCFA, C1–09–13, 7500 Security Boulevard, Baltimore, Maryland 21244, Telephone: (410)–786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Utah State Children's Health Insurance Program (SCHIP) State Plan amendment (SPA).

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 that provide a State with an opportunity for an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. Section 2107 (e)(2)(B) of the Act makes these provisions applicable under Title XXI to SCHIP State Plans and State Plan amendments. Under these provisions, the Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State that informs the State of the time and place of the hearing and the issues to be considered. If we subsequently notify the State of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76 (b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76 (c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Utah announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Rod L. Betit, Executive Director, Utah Department of Health, 288 North 1460 West, Salt Lake City, Utah 84114

Dear Mr. Betit:

I am responding to your request for reconsideration of the decision to disapprove the Utah State Children's Health Insurance Program State Plan Amendment submitted on January 28, 1999.

HCFA disapproved Utah's SCHIP State Plan Amendment because it requested approval, retroactive to August 3, 1998, for the State to impose cost-sharing amounts higher than permitted under Medicaid on SCHIP beneficiaries with family incomes at or below 100 percent of the Federal poverty level (FPL). Section 2103 (e)(3)(A)(ii) of the Social Security Act limits SCHIP cost-sharing amounts for children in families with incomes below 150 percent of FPL to the amounts permitted under Medicaid, "with such appropriate adjustment for inflation or such other reasons as the Secretary determines to be reasonable." The Secretary has determined that it would not be reasonable to adjust the Medicaid maximum cost-sharing amounts for SCHIP beneficiaries at or below 100 percent of FPL.

I am scheduling a hearing on your request for reconsideration to be held on March 17, 2000; 10 a.m.; Seventh Floor (Suite 700); Keystone Room; 1600 Broadway; Denver, Colorado 80202.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

The issue to be considered at the hearing is whether the Secretary acted within her discretionary authority under Section 2103(e)(3)(A)(ii) of the Social Security Act in determining that it would not be reasonable to adjust the Medicaid maximium cost-sharing amounts under 42 CFR 447.54 for SCHIP beneficiaries at or below 100 percent of FPL.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the

individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Nancy-Ann Min DeParle,

Administrator.

Authority: Section 1116 of the Social Security Act (42 U.S.C. section 1316); (42 CFR section 430.18).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: February 25, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–5270 Filed 3–3–00; 8:45 am]

BILLING CODE 4120–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Pilot Study of African American Women on Health Care Attitudes and Behaviors—NEW

The Office of Minority and Women's Health (OMWH) in the Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA) awarded funding for a pilot study which will develop information about the design of a sample appropriate to determine the health status, behaviors, and health service perceptions of African American women who are: (1) College educated, and (2) low income, non-college educated. The pilot study will be used to evaluate the interview instrument and to discover the practical issues and feasibility of sampling low income African American women from the databases of community health centers in three test locations. The goal is to assess the instrument, the sample sources, the procedures, and the response rates and to determine the extent to which data can be collected in a systematic and comprehensive manner. The pilot study is the first step in a much larger nationwide effort to build a significant data set containing detailed information on health status, health indicators, and health behaviors of African American women.

The burden estimate for the pilot study is as follows:

Respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
College educated	60	1	60	30 minutes	30
Non-college educated	180	1	180	30 minutes	90
Total	240		240		120

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 28, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–5255 Filed 3–3–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Request for Generic Clearance To Collect Customer Survey Data Pertaining to NIH Internet Sites

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Request for Generic Clearance to Collect Customer Survey Data Pertaining to NIH Internet Sites. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* Executive Order 12862 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. With this submission, the NIH, Office of Communications and Public Liaison, seeks to obtain OMB's generic approval to conduct customer satisfaction surveys. Since the late 1980's, the NIH has seized the opportunity to disseminate information and materials via the Internet. Today, raid technological changes of the WWW warrant on-going constituent and resource analysis. With survey information, the NIH is enabled to serve, and respond to, the ever-changing demand by the public. The "public" includes individuals (such as patients, educators, students, etc.) and interested communities (such as national or local organizations/institutions) and business. Survey information will augment current Web content, delivery, and design research which is used to understand the Web user, and more specifically, the NIH user community. Primary objectives are to (1) classify

NIH Internet users; (2) summarize and better understand customer needs; and (3) quantify the effectiveness/efficiency of current tools and delivery. Overall, the Institutes, Centers, and Offices of the NIH will use the survey results to identify strengths and weaknesses in current Internet strategies. Findings will help to (1) understand user community and how to better serve Internet users; (2) discover areas requiring improvement in either content or delivery; (3) realize how to align Web offerings with identified user need(s); and (4) explore methods to offer and deliver information with efficacy and equity. *Frequency of Response:* Annual [As needed on an on-going and, possibly, concurrent basis (by Institute, Center, or Office)]. *Affected Public:* Users of the Internet. Primarily, this is an individual at their place(s) of access including, but not limited to, home or/ and work environments. *Type of Respondents:* Public users of the NIH Internet site, *www.nih.gov,* which may include organizations, medical researchers, physicians and other health care providers, librarians, students, as well as individuals of the general public. *Estimated Number of Respondents:* 104,000. *Number of Respondents Per Respondent:* 1. *Average Burden Hours Per Response:* 0.084. *Burden Hours Requested:* 8,684. Total annualized cost to respondents is estimated at $116,105. There are also no capital costs, operating costs and/or maintenance costs to report.

SURVEY TITLE: WEB CUSTOMER SATISFACTION SURVEY—ANNUAL REPORTING BURDEN*

[Web-based; Required for Federal Register requests under PRA, Paperwork Reduction Act.]

Survey area	Number of respondents	Frequency of response	Avg. Burden per response (hours)	Burden hours
NIH Organization-wide (1 entity)	4000			334
Overall customer satisfaction	2000	1	0.1002	200
Specific indicator: Top-level/Entry pages	1000	1	0.0668	67
Specific indicator: Tools and initiatives	1000	1	0.0668	67
Individual Institute/Office (25 entities)	100000			8350
Overall customer satifaction	50000	1	0.1002	5010
Specific indicator: Top-level/Entry pages	25000	1	0.0668	1670
Spedific indicator: Tools and initiatives	25000	1	0.0668	1670
Total	104000		0.084	8684

*Survey research firm, MediaMetrics, indicated 1,264,000 unique visitors to NIH sites in Dec, 1999. If fully implemented, an average month would survey 8,600 users (less than 0.007 of total average unique visitors to NIH sites).

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request additional information on the proposed collection of information contact: Dennis Rodrigues, NIH Office of Communications and Public Liaison, 9000 Rockville Pike, Bldg. 31, Rm. 2B03, Bethesda, Maryland 20892–2094, or call non toll-free at (301) 435–2932. You may also e-mail your request to dr3p@nih.gov.

. *Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received on or before May 5, 2000.

Dated: February 23, 2000.

Anne Thomas,

Assoc. Director, Office of Communications and Public Liaison National Institutes of Health.

[FR Doc. 00–5279 Filed 3–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, Research Centers In Minority Institutions Review Committee.

Date: June 12–13, 2000.

Open: June 12, 2000, 8 AM to 10 AM.

Agenda: To discuss program planning and program accomplishments.

Place: Gaithersburg Marriott, Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Closed: June 12, 2000, 10:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott, Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: C. William Angus, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0812.

Name of Committee: National Center for Research Resources Initial Review Group, General Clinical Research Centers Review Committee.

Date: June 14–15, 2000.

Open: June 14, 2000, 8:00 AM to 9:30 AM.

Agenda: To discuss program planning and program accomplishments.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Closed: June 14, 2000, 9:30 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John L. Meyer, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0806. (Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: February 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5278 Filed 3–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary & Alternative Medicine Special Emphasis Panel.

Date: March 24, 2000.

Time: 3 PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Bldg. 31, Room 5B50 Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eugene G. Hayunga, Scientific Review Administrator, National Institutes of Health, NCCAM, Building 31, Room 5B50, 9000 Rockville Pike, Bethesda, MD 20892, 301–594–2014, hayungae@od.nih.gov.

Dated: February 25, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5288 Filed 3–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: April 10, 2000.

Time: 8:30 AM to 4:30 PM.

Agenda: To discuss sleep research and education priorities and programs.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Michael J. Twery, Acting Director, National Center on Sleep Disorders Research, Two Rockledge Center, Suite 10038, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0199.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 25, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5287 Filed 3–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Drug Supply Services Support".

Date: February 29, 2000.

Time: 9:30 AM to 11:30 AM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientists Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training,; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5277 Filed 3–3–00; 8:45 a.m.]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy And Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: March 23, 2000.

Time: 1 PM to 4 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 6700B Rockledge Drive, Room 2217, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Allen C. Stoolmiller, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–2500.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 28, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5281 Filed 3–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, MIDRAC conflicts.

Date: March 8, 2000.

Time: 12:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, Somerset Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerald L. McLaughlin, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–2550, gm145a@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 28, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5282 Filed 3–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: March 29, 2000.

Time: 1 PM to 4 PM.

Agenda: To review and evaluate contract proposals.

Place: 6700–B Rockledge, Room 2217, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Allen C. Stoolmiller, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 28, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5283 Filed 3–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Hepatitis C Cooperative Research Center.

Date: March 15–17, 2000.

Time: 8:30 AM to 5:30 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Georgetown, Mirage II Room, 2101 Wisconsin Ave., NW, Washington, DC 20007.

Contact Person: Lucia I. Gonzalez, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7616, 301–496–8424, lg122e@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 28, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5284 Filed 3–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Review a Project Application P01.
Date: March 7–8, 2000.
Time: 7 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: Countryside Inn Suites, 325 S. Bristol, Coasta Mesa, CA 92626.
Contact Person: Louise L. Hsu, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892 (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel to Review Grant Applications.
Date: March 20, 2000.
Time: 12 PM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Bethesdsa, MD 20892, (Telephone Conference Call).
Contact Person: Ramesh Vemuri, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel to Review Grant Applications.
Date: March 28, 2000.
Time: 12 PM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ramesh Vermuri, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel to Review the Mentored Research Scientist Development Award in Aging.
Date: April 19, 2000.
Time: 2 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Paul Lenz, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 28, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5285 Filed 3–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 52b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–5 (M4)M.
Date: March 7, 2000.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Francisco O. Calvo, Deputy Chief, Review Branch, DEA, NIDDK, National Institutes of Health, Room 6AS37D. Bldg. 45, Bethesda, MD 20892, 301–594–8897.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–D (M2)M.
Date: March 14, 2000.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ann A. Hagan, Chief, Review Branch, National Institute of Diabetes, Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Rm. 6AS37, Bldg. 45, Bethesda, MD 20892, 301–594–8886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–4 (M1)P.
Date: March 16–17, 2000.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 1300 Concourse Drive, Linthicum, MD 21090.
Contact Person: William E. Elzinga, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health. Bethesda, MD 20892–6600, 301–594–8895.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 28, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5286 Filed 3–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of closed meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: March 10, 2000.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave., NW, Washington, DC 20007.

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: May 19, 2000.

Time: 8 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Ronald Suddendorf, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 25, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5289 Filed 3–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: March 10, 2000.

Time: 10 AM to 11 AM.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Program; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 25, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5290 Filed 3–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Biomedical Research Review Subcommittee.

Date: March 2–3, 2000.

Time: March 2, 2000, 6:00 PM to 10:00 PM.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Time: March 3, 2000, 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jules R. Selden, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9737, jselden@niaaa.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 25, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5292 Filed 3–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 64 FR 66925, November 30, 1999, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below: Within the Office of Program Coordination (1) Revise the functional statement and (2) Assign standard administrative codes to its two subcomponents, the Executive

Secretariat and the Office of Federal Advisory Committee Policy.

Section N–B, Organization and Functions, is amended by replacing the current section NAN (formerly HNAN) with the following:

Office of Program Coordination (NAN, formerly HNAN). In support of the Director, NIH, (1) Coordinates the Director's program and administrative decision-making process; (2) Facilitates communication among the Director, the NIH Deputy and Associate Directors, other senior Office of the Director (OD) staff, and Institute and Center (IC) Directors to bring their expertise to bear on substantive issues; (3) Advises the Director, NIH, on the status and implications of activities NIH-wide; (4) Brings to the attention of the Director and recommends actions to resolve trans-NIH issues, consulting with the NIH Deputy Directors as appropriate; follows up and ensures implementation of decisions by the Director, NIH; (5) Directs the Executive Secretariat and the Office of Federal Advisory Committee Policy; and (6) Directs the operations of the immediate staff of the Director.

Executive Secretariat (NAN2). In support of the Director's decision-making process, the Executive Secretariat (1) Controls the communications flow by communicating the actions taken and policies set by the Director on documents and at meetings, including revisions needed and follow-up actions; (2) Manages the flow of decision documents and correspondence for action by the Director of NIH; (3) Tracks incoming documents and makes action and review assignments to appropriate staff in the ICs and the Office of the Director; (4) Edits, reviews, clears, and submits to the Office of the Secretary all congressional reports except those required by Appropriations Committees; (5) Sets editorial standards and processing policies for documents acted on by the Director; (6) Maintains all official records relating to the decisions and official actions of the Director, NIH, and his or her immediate staff; (7) Ensures that the Director has the views of ICs and OD staff offices before making program or management decisions; (8) Anticipates potential problems and plans for processing future decisions and issue analyses; (9) Facilitates the resolution of conflicts among recommendations to the Director and makes an independent recommendation when resolution cannot be achieved; (10) Applies sophisticated information technology to the management of the workflow NIH-wide and supports HHS-wide efforts to improve the processing of decision documents; (11) Represents NIH in relations with the Executive Secretary of the Department, other HHS executive secretariats, and with outside document management organizations; and (12) Carries out special projects assigned by the Director or Assistant Director for Program Coordination.

Office of Federal Advisory Committee Policy (NAN3). To assist the Director in carrying out NIH's responsibilities under the Federal Advisory Committee Act, the Office of Federal Advisory Committee Policy (1) Plans and directs Federal advisory committee activities at NIH; (2) Ensures that laws, regulations and policies affecting advisory committees are understood and adhered to in the establishment and renewal of committees, the nomination and appointment of committee members, and the preparation of reports for the Office of Management and Budget, the General Services Administration, Congress, and the President; (3) Sets policy for all NIH Advisory Committees, Councils, and Boards; (4) Ensures appropriate management and internal controls are in place; (5) Formulates documentation on Federal advisory committee activities; (6) Serves as the liaison with the committee management and other key staff in the Office of the Secretary and other Federal agencies; (7) Provides technical guidance and information to assist managers of advisory bodies and the public; and (8) Provides or facilitates advisory committee training for all NIH staff involved in the management of Federal advisory committees.

Dated: February 15, 2000.

Ruth L. Kirschstein,

Acting Director, NIH.

[FR Doc. 00–5280 Filed 3–3–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center; Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services; Program Support Center (PSC) will periodically publish summaries of proposed information collection projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the PSC Reports Clearance Officer on (301) 443–1494.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

1. PHS Commissioned Corps Application Forms (PHS–50 and PHS–1813)—Revision

The PHS–50 is being revised to reflect a reorganization and clarification of the questions to permit a more logical entry of data by both the applicant and the processing personnel office. No changes are being proposed for the PHS–1813.

The PHS–50, Application for Appointment as a Commissioned Officer in the United States Public Health Service, is used to determine if an applicant is qualified for appointment in the Commissioned Corps of the Public Health Service (PHS). In addition, the information contained in PHS–50 establishes the basis for future assignments and benefits as a commissioned officer.

Respondents: individual applicants seeking appointment as an officer in the Commissioned Corps of the PHS; *Total number of Respondents:* 1,565 per calendar year; *Frequency of Response:* once per applicant; *Average Burden per Response:* 1 hour; *Estimated Annual Burden:* 1,565 hours.

The PHS 1813, Reference Request for Applicants to the U.S. Public Health Service Commissioned Corps, is used to obtain reference information concerning applicants for appointment in the Commissioned Corps of the PHS. Each applicant is required to provide four references.

Respondents: Persons designated by applicant; *Total Number of Respondents:* 6,260; *Frequency of Response:* once per reference source; *Average Burden per Response:* .25 hour; *Estimated Annual Burden:* 1,565 hours. *Total Burden:* 3,130 hours to respondents.

Send comments to Irene West, PSC Reports Clearance Officer, Room 17–A18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

February 25, 2000.

Lynnda M. Regan,

Director, Progam Support Center.

[FR Doc. 00–5336 Filed 3–3–00; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is available on the internet at the following website: *http://wmcare.samhsa.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (Formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL. P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Integrated Regional Laboratories, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–777–0018, 800–522–0232, (Formerly: Cedars Medical Center, Department of Pathology)

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans

Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250
NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–268–2431/800–322–3361, (Formerly: NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110, (Formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800, (Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (Formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947 (Formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–920–7733/800–574–2474 (Formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 314–991–1311/800–288–7293 (Formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories)
San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 254–771–8379/800–749–3788
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–492–0800 (Formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851

The following laboratory is voluntarily withdrawing from the NLCP program, effective March 9, 2000:

Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 309–671–5199/800–752–1835 (Formerly: Methodist Medical Center Toxicology Laboratory)

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–5457 Filed 3–3–00; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services(CMHS) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activity; potential applicants must obtain a copy of Parts I and II of the Guidance for Applicants (GFA) before preparing an application. Part I is entitled Cooperative Agreements for

Comprehensive Community Actions to Promote Youth Violence Prevention, Suicide Prevention and Resilience Enhancement (short title: Youth Violence Prevention Cooperative Agreements). Part II is entitled General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements.

Activity	Application deadline	Estimated funds available, FY 2000	Estimated number of awards	Project period
Youth Violence Prevention Cooperative Agreements	5/23/00	$4.10 million*	27–40	2 years.

*Of the $4.10 million, four grants totaling up to $600,000 will be awarded to organizations proposing programs on the prevention of youth suicide.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800). SAMHSA has published additional notices of available funding opportunities for FY 2000 in past issues of the **Federal Register**.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 4 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710 Bethesda, MD 20892–7710 *

(* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines: The deadline for receipt of applications is May 23, 2000.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 4).

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 2000 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 2000 KD&A program will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and it is question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that

it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, and preparation of special materials will be used, in addition to normal communication means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

3.1 General Review Criteria

Review criteria that will be used by the peer review groups are specified in the application guidance material.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 2000 SAMHSA Activities

Cooperative Agreements for Comprehensive Community Actions to Promote Youth Violence Prevention, Suicide Prevention and Resilience Enhancement (short title: Youth Violence Prevention Cooperative Agreements, SM00–005)

- *Application Deadline:* The receipt date is May 23, 2000.
- *Purpose:* The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of funds for community organizations to promote prevention of youth violence and suicide and to enhance healthy youth development. The goals of this cooperative agreement are (1) to build community-wide understanding of youth violence/suicide, (2) to build real and sustainable community-wide, intensive collaborations to address this public health crisis, and (3) to implement and sustain evidence-based youth and family service programs. There will be two Phases in this 2-year program: Phase 1 Community Collaboration Phase, and Phase 2, Pilot Implementation Phase. In Phase 1, grantees will develop intensive community wide collaboration to address youth violence prevention/ suicide proactively. In Phase 2, grantees will pilot the chosen evidence-based youth violence/suicide prevention programs. This GFA is a revision of the prior CMHS No. SM99–009, School Action Grants.
- *Eligible Applicants:* Applications may be submitted by domestic non-governmental non-profit and for profit entities; public or private educational systems, institutions, and agencies; Tribal government units and organizations; and community-based organizations such as advocacy organizations, community-based health, mental health and social service organizations, parents and teachers associations, consumer and family groups, and minority serving organizations.

This program is related to the Community Prevention Grants (GFA SM00–004) in that similar activities could be supported under that grant or this cooperative agreement; however, the Community Prevention Grants offer support exclusively to State, Tribes, and their political subdivisions. State and local governmental units are not eligible for this cooperative agreement program with the following exceptions: educational units are eligible to apply for both youth violence and suicide prevention projects and governmental community mental health organizations can serve as applicant organizations for suicide prevention, but not youth violence prevention projects.

- *Amount:* It is expected that $4.10 million will be available in FY2000. Of this $4.10 million, four grants totaling up to $600,000 will be awarded to organizations proposing programs on the prevention of youth suicide.
- *Period of Support:* Support may be requested for a period of up to 2 years.
- *Catalog of Federal Domestic Assistance Number:* 93.230.
- *Program Contact:* For questions concerning program issues, contact:

Tiffany Ho, Division of Program Development, Special Populations and Projects, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Room 17C–26, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2892.

or

Malcolm Gordon, Special Programs Development Branch, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Room 17C–05, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2957.

For questions regarding grants management issues, contact: Steve Hudak, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Room 15C–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4456.

- *Application kits are available from:* National Mental Health Services, Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015, Telephone: 1–800–789–2647, TTY: (301) 443–9006, Fax: (301) 984–8796.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity

is subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 29, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–5396 Filed 3–1–00; 4:26 pm]

BILLING CODE 4162–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4568–N–01]

Notice of Proposed Information Collection: Comment Request Affirmative Fair Housing Marketing Plan

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 5, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Steven Tursky, Reports Liaison Officer, Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5222, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Steven Tursky, Department of Housing and Urban Development, 451 7th Street SW, Room 5222, (202) 708–2288 (this is not a toll-free number) for copies of the proposed forms and other available documents. Hearing or speech-impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Affirmative Fair Housing Marketing Plan. OMB Control Number: 2529–0013.

Description of the need for the information and proposed use: HUD uses this information to assess the adequacy of the applicant's proposed actions to carry out the Affirmative Fair Housing Marketing requirements of 24 CFR 200.600 and review compliance with these requirements under 24 CFR Part 108, the AFHM Compliance Regulations.

Agency form numbers, if applicable: HUD 935.2.

Members of affected public: Applicants for mortgage insurance under the Department's insured single family and multifamily programs.

Estimation of the total numbers of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response: On an annual basis, 2,500 respondents, 1 response per respondent, 2,500 total responses, 1,875 total burden hours.

Status of the proposed information collection: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 25, 2000.

Pamela Walsh,

Director, Program Standards Division.

[FR Doc. 00–5275 Filed 3–3–00; 8:45 am]

BILLING CODE 4210–08–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

Permit No. TE–022517.

Applicant: Andrea Beach, Ramona,

California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

Permit No. TE–008031.

Applicant: David Flietner, Riverside, California.

The applicant requests an amendment to take (survey by pursuit) the Delhi Sands Flower-loving fly (*Raphiomidas terminatus abdominalis*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

Permit No. TE–018909.

Applicant: Kelly Rio, Brea, California.

The applicant requests an amendment to take (survey by pursuit) the El Segundo blue butterfly (*Euphilotes battoides allyni*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

Permit No. TE–838743.

Applicant: David Faulkner, San Diego, California.

The applicant requests an amendment to take (survey by pursuit) the Delhi Sands Flower-loving fly (*Raphiomidas terminatus abdominalis*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

Permit No. TE–817397.

Applicant: John Storrer, Santa Barbara, California.

The applicant requests an amendment to take (capture and handle) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence or absence surveys throughout its range in Santa Barbara County, California, for the purpose of enhancing its survival.

Permit No. TE–022558.

Applicant: Megan Sue Enright, Encinitas, California.

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys throughout each species range in California for the purpose of enhancing their survival.

Permit No. TE–835549.

Applicant: Charles H. Black, San Diego, California.

The applicant requests a permit amendment to take (collect cysts; sacrifice cultured individuals) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys throughout each species range for the purpose of enhancing their survival.

Permit No. TE–022651.

Applicant: Michael A. Bias, Roseville, California.

The applicant requests a permit to take (capture, mark) the salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with population studies and monitoring throughout the species range in California for the purpose of enhancing its survival.

Permit No. TE–022649.

Applicant: Joseph E. Messin, Moreno Valley, California.

The applicant requests a permit to take (capture, mark) the Stephens' kangaroo rat (*Dipodomys stephensi*) in conjunction with population studies and monitoring in Riverside County, California for the purpose of enhancing its survival.

Permit No. TE–820306.

Applicant: KEA Environmental, Inc. San Diego, California.

The applicant requests a permit amendment to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys throughout each species range in California for the purpose of enhancing their survival.

Permit No. TE–702631.

Applicant: Assistant Regional Director-Ecological Services, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

The applicant requests a permit amendment to remove and reduce to possession specimens of the following plant species: *Sidalcea keckii* (Keck's checker-mallow) and *Thlaspi californicum* (Kneeland Prairie penny-cress). Authorization is also requested to take the following wildlife species: the riparian brush rabbit (*Sylvilagus bachmani riparius*) and the riparian or San Joaquin Valley woodrat (*Neotoma fuscipes riparia*). Collection and take activities will be conducted throughout each species range in conjunction with recovery efforts for the purpose of enhancing their propagation and survival.

Permit No. TE–023242.

Applicant: Geoffrey T. Gray, Clovis, California.

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys throughout each species range in California for the purpose of enhancing their survival.

Permit No. TE–023240.

Applicant: William M. Stolp, Fresno, California.

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys throughout each species range in California for the purpose of enhancing their survival.

Permit No. TE–776608.

Applicant: Monk & Associates, Walnut Creek, California.

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys throughout each species range in California for the purpose of enhancing their survival.

Permit No. TE–023496.

Applicant: Endangered Species Recovery Program, Fresno, California.

The applicant requests a permit to take (capture, mark, hold in captivity) the blunt-nosed leopard lizard (*Gambelia silus*); take (capture, mark, collect biological samples) the Fresno kangaroo rat (*Dipodomys nitratoides exilis*), giant kangaroo rat (*Dipodomys ingens*), and the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*); take (capture, mark, radio-collar, collect blood and tissue samples) the San Joaquin kit fox (*Vulpes macrotis mutica*); take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole

shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*); and take (capture, mark, radio-tag, translocate, collect biological samples, captively propagate) the riparian brush rabbit (*Sylvilagus bachmani riparius*) and the riparian or San Joaquin Valley woodrat (*Neotoma fuscipes riparia*) in conjunction with surveys, population monitoring, ecological research, and population augmentation throughout each species range for the purpose of enhancing their survival. All activities for the blunt-nosed leopard lizard, Fresno kangaroo rat, giant kangaroo rat, Tipton kangaroo rat, and the San Joaquin kit fox were previously authorized under subpermit Willdf-15.

Permit No. TE–028467.

Applicant: David Mayer, La Jolla, California.

The applicant request a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*); take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas edithra quino*), and take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys and population monitoring throughout each species range for the purpose of enhancing their survival.

Permit No. TE–023492.

Applicant: Alan Wilkins, Middleton, Massachusetts.

The applicant requests a permit to purchase, in interstate commerce, one female and four male captive bred Hawaiian (=nene) geese (*Nesochen* [=*Branta*] *sandvicensis*) for the purpose of enhancing the species propagation and survival.

Permit No. TE–014497.

Applicant: Haleakala National Park, Makawao, Hawaii.

The applicant requests a permit to remove and reduce to possession the seeds, inflorescence, and leaves of *Clermontia samuelii* (oha wai), *Cyanea copelandii* ssp. *haleakalaensis* (haha), *Cyanea glabra* (haha), and *Cyanea hamatiflora* ssp. *hamatiflora* (haha) in conjunction with viability and propagation research, and herbarium and taxonomic identification, at Haleakala National Park, Hawaii for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received on or by April 5, 2000.

ADDRESSES: Written data or comments should be submitted to the Chief—Endangered Species, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: February 28, 2000.

Don Weathers

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–5295 Filed 3–3–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO640 1020 XQ 24 1E]

Call for Nominations for Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Resource Advisory Council Call for Nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for each of the Bureau of Land Management (BLM) Resource Advisory Councils (RACs) that have member terms expiring this year. The RACs provide advice and recommendations to BLM on land use planning and management of the public lands within their geographic areas. Public nominations will be considered for 45 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM.

Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, RAC members appointed to the RAC must be balanced and representative of the various interests concerned with the management of the public lands. These include three categories:

Category One—Holders of federal grazing permits and representatives of energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic interests, dispersed recreation, and wild horse and burro groups;

Category Three—Holders of State, county or local elected office, employees of a State agency responsible for management of natural resources, academicians involved in natural sciences, representatives of Indian tribes, and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State or States in which the RAC has jurisdiction. Nominees will be evaluated based on their education, training, and experience and their knowledge of the geographical area of the RAC. Nominees should have demonstrated a commitment to collaborative resource decisionmaking. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the State. Nominations for RACs should be sent to the appropriate BLM offices listed below.

Arizona

Arizona RAC
Deborah Stevens, Arizona State Office, BLM, 222 N. Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215

California

Central California RAC

Larry Mercer, Bakersfield Field Office, BLM, 3801 Pegasus Avenue, Bakersfield, California 93308, (661) 391–6000

Northeastern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 257–0456

Northwestern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 257–0456

Colorado

Front Range RAC; Southwest RAC; Northwest RAC

Sheri Bell, Colorado State Office, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215, (303) 239–3671

Idaho

Upper Columbia RAC; Upper Snake RAC; Lower Snake RAC

Kim Buxton, Idaho State Office, BLM, 1387 Vinnell Way, Boise, Idaho 83709, (208) 373–4015

Montana and Dakotas

Eastern Montana RAC; Central Montana RAC; Western Montana RAC; Dakotas RAC

Jodi Weil, Montana State Office, BLM, 5001 Southgate Drive, Billings, Montana 59101, (406) 896–5258

Nevada

Mojave-Southern RAC; Northeastern Great Basin RAC; Sierra Front Northwestern RAC

Bob Stewart, Nevada State Office, BLM, 1340 Financial Boulevard, Reno, Nevada 89502–7147, (775) 861–6586

New Mexico

New Mexico RAC

Kathleen Mulkey, New Mexico State Office, BLM, P.O. Box 27115 Sante Fe, New Mexico 87502–0115, (505) 438–7514

Oregon/Washington

Eastern Washington RAC; John Day/ Snake RAC; Southeast Oregon RAC

Pam Robbins, Roseburg District Office, BLM, 777 N.W. Garden Valley Blvd., Roseburg, Oregon 97470, (541) 440–4931, ext. 460

Utah

Utah RAC

Sherry Foot, Utah State Office, BLM, 324 South State Street, Suite 301, P.O. Box 45155, Salt Lake City, Utah 84145–0155 (801) 539–4195

DATES: All nominations should be received by the appropriate BLM State Office by April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, U.S. Department of the Interior, Bureau of Land Management, Intergovernmental Affairs, MS–LS–406, Washington, D.C., 20240; 202–452–0377.

Dated: February 25, 2000.

Tom Fry,

Acting Director, Bureau of Land Management.

[FR Doc. 00–5377 Filed 3–3–00; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 20, 2000, B.I. Chemical, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for product development.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 5, 2000.

Dated: February 25, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–5256 Filed 3–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 14, 2000, Chattem Chemicals, Inc., 3708 St. Elmo Avenue, Chattanooga, Tennessee 34709, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of amphetamine (1100), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture amphetamine for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 5, 2000.

Dated: February 25, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–5257 Filed 3–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 8, 1999, and published in the **Federal Register** on October 18, 1999, (64 FR 56227), Nycomed, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Meperidine (9230)	II

The firm plans to manufacture meperidine as bulk product for

distribution to its customers and to manufacture methylphenidate for qualification and distribution to a customer.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Nycomed, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Nycomed, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security system, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacture of the basic classes of controlled substances listed above is granted.

Dated: February 25, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–5258 Filed 3–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

February 28, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 99 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by e-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by e-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS; Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Reviews: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration.

Title: Benzene (29 CFR 1910.1028).

OMB Number: 1218–0129.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 13,498.

Estimated Time per Respondent: Time per response ranges from approximately 5 minutes for employers to maintain employee exposure monitoring and medical records to 4 hours to complete a referral medical examination.

Total Burden Hours: 125,195 hours.

Total Annualized Capital/Startup: $0.

Total Annual Cost (operating/maintaining systems or purchasing services): $8,179,933.

Description: The Benzene Standard, and its information collection requirements, is designed to provide protection for employees from the adverse health effects associated with occupational exposure to benzene. The Benzene Standard requires employers to monitor employee exposure to benzene, to monitor employee health, and to provide employees with information about their exposures and the health effects of exposure to benzene.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration.

Title: Roof Control Plan.

OMB Number: 1219–0004.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1,030.

Estimated Time per Respondent: 1.7 hours.

Total Burden Hours: 5,967.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $5,585.

Description: Requires that a roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine be approved by MSHA before implementation by the mine operator. Also requires the mine operator to plot on a mine map each unplanned roof or rib fall and coal or rock burst that occurs in the active workings when certain criteria are met.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration.

Title: Notification of commencement of Operations and closing of Mines.

OMB Number: 1219–0092.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 2,300.

Estimated Time per Respondent: 0.125 hours.

Total Burden Hours: 259 hours.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,442.

Description: Under 30 C.F.R. 56.1000 and 57.1000, operators of metal and nonmetal mines must notify the Mine Safety and Health Administration (MSHA) when the operation of a mine will commence or when a mine is closed. Openings and closings of mines are dictated by the economic strength of the commodity mined, and by weather conditions which prevail at the mine site during various seasons.

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration.

Title: Trade Adjustment Assistance/NAFTA (Financial Status/Requests for Funds Report).

OMB Number: 1205–0275.

Form Number: ETA–9023.

Affected Public: State, Local, or Tribal Government.

Report activity	Number of respondents	Frequency	Total number of responses	Average time per response (hours)	Total burden (hours)
TAA	50	5	250	2	500
NAFTA	50	5	250	2	500
Totals	50	10	500	2	1000

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $26,000.

Description: The Department of Labor requires financial data for the Trade Adjustment Assistance (TAA) program administered by States which are not available from the Standard Form 269. The required data are necessary in order to meet statutory requirements prescribed in Public Law 100–418, the Omnibus Trade and Competitiveness Act of 1988 and the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) in accordance with section 250 (a) Subchapter D, Chapter 2, Title II of the Trade Act of 1974.

Karin G. Kurz,

Acting Departmental Clearance Officer.

[FR Doc. 00–5341 Filed 3–3–00; 8:45 am]

BILLING CODE 4510–22–M

DEPARTMENT OF LABOR

Employment and Training Administration

Office of Workforce Security; Proposed Collection; Comment Request

AGENCY: Employment and Training Admininstration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the ETA 191, Statement of Expenditures and Financial Adjustments of Federal Funds for Unemployment Compensation for Federal Employees and Ex-Service members. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before May 5, 2000.

ADDRESSES: Sharon L. Jones, U.S. Department of Labor, Employment And Training Administration, Office Of Workforce Security, Room S4231, 200 Constitution Ave, NW, Washington, DC, 20210; telephone number (202) 219–5312 ext. 373 (this is not a toll—free number); fax (202) 219–8506.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 97–362, Miscellaneous Revenue Act of 1982 amended the Unemployment Compensation for Ex-Service members (UCX) law (5 USC 8509) and Public Law 96–499, Omnibus Reconciliation Act amended the Unemployment Compensation for Federal Employees (UCFE) law (5 USC 8501, *et. seq.*) requiring each Federal employing agency to pay the costs of regular and extended UCFE/UCX benefits paid to its employees by the State employment security agencies (SESAs). The ETA 191 report submitted quarterly by each SESA show the amount of benefits that should be charged to each Federal employing agency. The Employment and Training Administration uses this information to aggregate the SESA quarterly charges and submit one official bill to each Federal agency being charged. Federal agencies then reimburse the Federal Employees Compensation (FEC) Account, maintained by the U.S. Treasury.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This collection continues to be needed to assure that the provisions of law are met regarding the requirement for each Federal agency to meet its obligations for paying for its unemployment compensation costs and to assure that SESAs are reimbursed properly for their expenditures of UCFE and UCX benefit on behalf of the Federal agencies.

Type of Review: Extension (without change).

Agency: Employment and Training Administration.

Title: ETA 191, Statement of Expenditures and Adjustments of Federal Funds for Unemployment Compensation for Federal Employees and Ex-Service members (UCFE/UCX).

OMB Number: 1205–0162.

Agency Number: ETA 191.

Affected Public: State Government.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 1.

Estimated Total Burden Hours: 212.

Total Burden Cost (operating/maintaining): $5,300. Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 23, 2000.

Grace A. Kilbane,

Administrator, Office Of Workforce Security.

[FR Doc. 00–5340 Filed 3–3–00; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–93]

Wyle Laboratories, Inc.; Application for Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Wyle Laboratories, Inc. (Wyle), for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties must be received no later than May 5, 2000.

ADDRESSES: Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program at the above address, or phone (202) 693–2110.

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Wyle Laboratories, Inc. (Wyle), has applied for renewal of its current recognition as a Nationally Recognized Test Laboratory (NRTL). Wyle requests renewal for its existing scope of recognition.

OSHA recognition of an NRTL signifies that the organization has meet the legal requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgement that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products "properly certified" by the NRTL. OSHA processes applications related to an NRTL's recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish this public notice of the preliminary finding on an application.

The most recent notices published by OSHA for Wyle's recognition covered an expansion of recognition for additional test standards and programs, which OSHA announced on July 12, 1996 (61 FR 36764) and granted on November 20, 1996 (61 FR 59115). The only other notices that OSHA has published for Wyle covered its initial recognition, which OSHA announced on January 6, 1994 (59 FR 783) and granted on July 22, 1994 (59 FR 37509). The renewal would incorporate all recognitions granted to Wyle through the date of publication of this preliminary finding.

The current address of the Wyle facility recognized by OSHA is: Wyle Laboratories, 7800 Highway 20 West, P.O. Box 077777, Huntsville, Alabama 35807.

General Background on the Applicant and the Application

Wyle has submitted a request, dated August 19, 1998 (see Exhibit 15), to renew its recognition as an NRTL. The letter requested renewal for its existing scope of recognition, which includes the facility listed above, and 122 test standards and 8 supplemental programs. However,some of the test standards for which Wyle is currently recognized have been withdrawn by the standards developing organization. As appropriate, OSHA has eliminated or replace these test standards in the list shown below.

Wyle was first recognized as an NRTL in 1994 and, at the time, it was part of Wyle Laboratories, a publicly-held corporation first established in 1949. In 1995, Wyle informed OSHA (see Exhibit 13) that it had become a "privately held company incorporated in the State of Delaware." The "new" company name was also "Wyle Laboratories." In 1997, the NRTL informed OSHA of the sale of its "Electronic Enclosures Division," and requested that OSHA remove a condition that the Agency had imposed in the notice of Wyle's recognition. This condition excluded from the recognition any testing and certification of an "enclosure cabinet manufactured or distributed by Wyle." OSHA granted this request on January 16, 1998 (63 FR 2700).

Test Standards

Wyle seeks renewal of its recognition for testing and certification of products to demonstrate compliance to the following one hundred thirty nine (139 test standards, all of which OSHA has determined are appropriate, as prescribed by 29 CFR 1910.7(c). As mentioned, some of these standards are substitutes for the test standard that OSHA originally recognized for Wyle. As is the case for any NRTL, Wyle's recognition for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third party testing and certification before use in the workplace. As a result, OSHA's recognition of an NRTL for a test standard excludes any product(s), falling within the scope of the test standard, for which OSHA has no such requirements.

ANSI/UL 8 Foam Fire Extinguishers
ANSI/UL 20 General-Use Snap Switches
ANSI/UL 22 Amusement and Gaming Machines
ANSI/UL 44 Rubber-Insulated Wires and Cables
ANSI/UL 45 Portable Electric Tools
ANSI/UL 48 Electric Signs
ANSI/UL 62 Flexible Cord and Fixture Wire
ANSI/UL 65 Wired Cabinets
ANSI/UL 67 Panelboards
ANSI/UL 73 Motor-Operated Appliances
ANSI/UL 83 Thermoplastic-Insulated Wires and Cables
ANSI/UL 92 Fire Extinguisher and Booster Hose
ANSI/UL 98 Enclosed and Dead-Front Switches
ANSI/UL 153 Portable Electric Lamps
ANSI/UL 154 Carbon-Dioxide Fire Extinguishers
ANSI/UL 187 X-Ray Equipment
ANSI/UL 198B Class H Fuses
ANSI/UL 199C High-Interrupting-Capacity Fuses, Current-Limiting Types
ANSI/UL 198D Class K Fuses
ANSI/UL 198E Class R Fuses
ANSI/UL 198F Plug Fuses
ANSI/UL 198G Fuse for Supplementary Overcurrent Protection
ANSI/UL 198H Class T Fuses
ANSI/UL 198L DC Fuses for Industrial Use
ANSI/UL 244A Solid-State Controls for Appliances
ANSI/UL 299 Dry Chemical Fire Extinguishers
ANSI/UL 363 Knife Switches
ANSI/UL 393 Indicating Pressure Gauges for Fire-Protection Service
ANSI/UL 429 Electrically Operated Values
UL 444 Communications Cables
ANSI/UL 466 Electric Scales
ANSI/UL 467 Grounding and Bonding Equipment

ANSI/UL 484 Room Air Conditioners
ANSI/UL 486B Wire Connectors for Use With Aluminum Conductors
ANSI/UL 486C Splicing Wire Connectors
ANSI/UL 486D Insulated Wire Connectors for Use with Underground Conductors
ANSI/UL 489 Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 497A Secondary Protectors for Communication Circuits
ANSI/UL 498 Attachment Plugs and Receptacles
ANSI/UL 499 Electric Heating Appliances
ANSI/UL 506 Specialty Transformers
ANSI/UL 507 Electric Fans
ANSI/UL 508 Industrial Control Equipment
ANSI/UL 510 Insulating Tape
ANSI/UL 512 Fuseholders
ANSI/UL 539 Single and Multiple Station Heat Detectors
ANSI/UL 541 Refrigerated Vending Machines
UL 544 Electric Medical and Dental Equipment
ANSI/UL 626 2½Gallon Stored-Pressure Water-Type Fire Extinguishers
ANSI/UL 698 Industrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 711 Rating and Fire Testing of Fire Extinguishers
ANSI/UL 745–1 Portable Electric Tools
ANSI/UL 745–2 Particular Requirements of Drills
ANSI/UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
ANSI/UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
ANSI/UL 745–2–4 Particular Requirements for Sanders
ANSI/UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
ANSI/UL 745–2–6 Particular Requirements for Hammers
ANSI/UL 745–2–8 Particular Requirements for Shears and Nibblers
ANSI/UL 745–2–9 Particular Requirements for Tappers
ANSI/UL 745–2–11 Particular Requirements for Reciprocating Saws
ANSI/UL 745–2–12 Particular Requirements for Concrete Vibrators
ANSI/UL 745–2–14 Particular Requirements for Planers
ANSI/UL 745–2–17 Particular Requirements for Routers and Trimmers
ANSI/UL 745–2–30 Particular Requirements for Staplers
ANSI/UL 745–2–31 Particular Requirements for Diamond Core Drills
ANSI/UL 745–2–32 Particular Requirements for Magnetic Drill Presses
ANSI/UL 745–2–33 Particular Requirements for Portable Bandsaws
ANSI/UL 745–2–34 Particular Requirements for Strapping Tools
ANSI/UL 745–2–35 Particular Requirements for Drain Cleaners
ANSI/UL 745–2–36 Particular Requirements for Hand Motor Tools
ANSI/UL 745–2–37 Particular Requirements for Plate Jointer
ANSI/UL 796 Printed-Wiring Boards
ANSI/UL 813 Commercial Audio Equipment
ANSI/UL 817 Cord Sets and Power-Supply Cords
ANSI/UL 845 Motor Control Centers
ANSI/UL 854 Service-Entrance Cables
ANSI/UL 863 Time-Indicating and -Recording Appliances
ANSI/UL 877 Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 894 Switches for Use Hazardous (Classified) Locations
ANSI/UL 916 Energy Management Equipment
ANSI/UL 917 Clock-Operated Switches
ANSI/UL 924 Emergency Lighting and Power Equipment
ANSI/UL 943 Ground-Fault Circuit-Interrupters
ANSI/UL 961 Electric Hobby and Sports Equipment
ANSI/UL 977 Fused Power-Circuit Devices
ANSI/UL 998 Humidifiers
ANSI/UL 1004 Electric Motors
ANSI/UL 1008 Automatic Transfer Switches
ANSI/UL 1012 Power Supplies
ANSI/UL 1018 Electric Aquarium Equipment
UL 1022 Line Isolation Monitors
ANSI/UL 1028 Hair Clipping and Shaving Appliances
ANSI/UL 1047 Isolated Power Systems Equipment
ANSI/UL 1053 Ground-Fault Sensing and Relaying Equipment
ANSI/UL 1054 Special-Use Switches
ANSI/UL 1058 Halogenated Agent Extinguishing System Units
UL 1059 Terminal Blocks
ANSI/UL 1066 Low-Voltage AC and DC Power Circuit Breakers Used in Enclosures
ANSI/UL 1069 Hospital Signaling and Nurse-Call Equipment
ANSI/UL 1077 Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1087 Molded-Case Switches
UL 1091 Butterfly Valves for Fire-Protection Service
ANSI/UL 1093 Halogenated Agent Fire Extinguishers
ANSI/UL 1097 Double Insulation Systems for Use in Electrical Equipment
ANSI/UL 1236 Battery Chargers
UL 1244 Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1254 Pre-Engineered Dry Chemical Extinguishing Systems Units
ANSI/UL 1262 Laboratory Equipment
ANSI/UL 1283 Electromagnetic Interference Filters
ANSI/UL 1310 Class 2 Power Units
ANSI/UL 1411 Transformers and Motor Transformer for Use in Audio-Radio-, and Television-Type Appliances
ANSI/UL 1412 Fusing Resistors and Temperature-Limited Resistors for Radio- and Television-Type Appliances
ANSI/UL 1416 Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
ANSI/UL 1424 Cables for Power-Limited Fire-Alarm Circuits
ANSI/UL 1429 Pullout Switches
UL 1437 Electrical Analog Instruments—Panel Board Types
UL 1449 Transient Voltage Surge Suppressors
ANSI/UL 1459 Telephone Equipment
ANSI/UL 1474 Adjustable Drop Nipples for Sprinkler Systems
ANSI/UL 1481 Power Supplies for Fire-Protective Signaling Systems
ANSI/UL 1486 Quick Opening Devices for Dry Pipe Valves for Fire-Protection Service
ANSI/UL 1557 Electrically Isolated Semiconductor Devices
ANSI/UL 1564 Industrial Battery Chargers
ANSI/UL 1570 Fluorescent Lighting Fixtures
ANSI/UL 1571 Incandescent Lighting Fixtures
ANSI/UL 1577 Optical Isolaters
ANSI/UL 1585 Class 2 and Class 3 Transformers
UL 1604 Electrical Equipment for Use in Class I and II, Division 2, and Class III Hazardous (Classified) Locations
ANSI/UL 1664 Immersion-Detection Circuit-Interrupters
ANSI/UL 1673 Electric Space Heating Cables
ANSI/UL 1682 Plugs, Receptacles, and Cable Connectors, of the Pin and Sleeve Type
ANSI/UL 1778 Uninterruptible Power Supply Equipment
UL 1863 Communication Circuit Accessories
ANSI/UL 1876 Isolating Signal and Feedback Transformers for Use in Electronic Equipment

ANSI/UL 1950 Information Technology Equipment, Including Electrical Business Equipment
ANSI/UL 1995 Heating and Cooling Equipment
ANSI/UL 2006 Halon 1211 Recovery/Recharge Equipment
UL 2111 Overheating Protection for Motors

The designations and titles of the above test standards were current at the time of the preparation of this notice.

Programs and Procedures

In its renewal, Wyle also seeks continued use of the supplemental programs listed below, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which (called supplemental programs) an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA previously granted Wyle recognition to use these programs, which are listed in OSHA's informational web page on the Wyle recognition.

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 5: Acceptance of testing data from non-independent organizations.

Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).

Program 7: Acceptance of continued certification following minor modifications by the client.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed the program descriptions to limit how an NRTL may perform certain aspects of its work and to accept the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, OSHA does treat these programs as one of the three elements that defines an NRTL's scope of recognition.

Preliminary Finding on the Application

Wyle has submitted an acceptable request for renewal of its recognition as an NRTL. In connection with the request, OSHA performed an on-site assessment (review) of Wyle's facility in Huntsville, Alabama, on August 3–5, 1999. Discrepancies noted by the assessor during the on-site review were addressed by Wyle following the on-site evaluation and are factored into the recommendation in the non-site review report (see Exhibit 16).

Following a review of the application file, the on-site review report, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant to Wyle the renewal of its recognition as an NRTL to use the facility, test standards, and programs, listed above, with any limitations to be applied as noted. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Wyle Laboratories, Inc., can meet the requirements, as prescribed by 29 CFR 1910.7, for renewal of its recognition, subject to any limitations described above. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether Wyle has met the requirements of 29 CFR 1910.7 for renewal of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider a comment, OSHA must receive it at the address provided above (see **ADDRESS**), no later than the last date for comments (see **DATES** above). You may obtain or review copies of Wyle's request, the on-site review report, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–1–93, the permanent record of public information on the Wyle recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant Wyle's application for renewal of recognition. The Assistant Secretary will make the final decision on granting the renewal and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this 18th day of February, 2000.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 00–5342 Filed 3–3–00; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–024]

NASA Advisory Council, Aero-Space Technology Advisory Committee, Aviation Safety Reporting System Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aero-Space Technology Advisory Committee, Aviation Safety Reporting System Subcommittee meeting.

DATES: Tuesday, March 28, 2000, 9:00 a.m. to 5:00 p.m. and Wednesday, March 29, 2000, 9:00 a.m. to 2:00 p.m.

ADDRESSES: Airline Pilots Association International, 535 Herndon Parkway, Conference Room 3, Herndon, VA 20170.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Connell, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/969–8340.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Report on Aviation Safety Reporting System
—Report on Aviation Performance Measuring System Program
—Report on NASA Aviation Safety Program Elements Related to Aviation Safety Reporting System/Aircraft Performance Monitoring System

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: March 1, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–5350 Filed 3–3–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before April 20, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Justice, United States Attorneys Offices (N1–118–99–1, 12 items, 12 temporary items). Automated case management and collections systems records. Systems are used to track and maintain information on pending workloads and generate reports and correspondence. Included are such records as input documents, master files, outputs, systems documentation, and electronic copies of documents created using electronic mail and word processing. Annual compilations of case data accumulated by the Executive Office for United States Attorneys are proposed for permanent retention in Disposition Job N1–60–99–1 (see below).

2. Department of Justice, Executive Office for United States Attorneys (N1–60–99–1, 17 items, 14 temporary items). Automated case management and collections systems records. Systems are used for statistical analysis and to generate reports and correspondence. Included are such records as input data forwarded from United States Attorneys Offices, master files, monthly and quarterly reports, systems documentation, and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are such records as a subset, in electronic form, of annual national aggregate case data, with related systems documentation, and annual statistical reports.

3. Department of Commerce, Bureau of the Census (N1–29–00–2, 62 items, 44 temporary items). Comprehensive schedule pertaining to all textual and electronic records of the 2000 Decennial Census, except the paper questionnaire forms and Individual Census Record File which are proposed for disposition in Disposition Job No. N1–29–00–1. The schedule covers six major processes of the decennial census: Address list development, data collection, data capture, data processing, accuracy and coverage evaluations, and final Decennial Census data products. Also included are related program and administrative records such as publications and reports, Census pre-test and Dress Rehearsal questionnaires and related records, and contracts and related records. Records proposed for disposal include address lists and map update records, block canvassing, special place and group quarters

inventories, local updates to census address lists, new construction lists, updates or revisions to census maps in electronic format, update/leave questionnaires, urban update/leave questionnaires, list enumeration and address registers, updates and revisions to the Master Address File, questionnaires, maps, and address registers created for special enumerations, respondent data collected by telephone assistance and through the Internet response program, operations and control records, electronic images of scanned paper questionnaires and forms, unprocessed electronic source files of information captured from the electronic images, the Decennial Response File, the Census Unedited File, the Census Unedited File Sample, the Census Edited File, the Census Edited File Sample, the Accuracy and Coverage Evaluation (ACE) address lists, ACE telephone interview records, personal interview records and maps, dual system estimates, ACE support and management records, Census 2000 contracts and related records, census pretest and Dress Rehearsal records, and records created using electronic mail and word processing applications. Records proposed for permanent retention include the final Census 2000 electronic map files, the final electronic Decennial Master Address File and documentation, the Census 2000 Detail File, the Hundred Percent Estimated Detail File, the Sample Estimated Detail File, the State Populations Totals File, the Redistricting Data File, the Block-Level Data File, the statistically corrected and uncorrected Hundred Percent Data Summary Files, the Sample Data Summary File, the Public Use Microdata Sample Files, the statistically corrected and uncorrected Congressional District Data Summary Files, all other final data products created for island areas or other special demographic or geographic enumerations, Decennial Census publications and reports, and Dress Rehearsal publications and reports.

Dated: March 2, 2000.

Geraldine Phillips,

Acting Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–5450 Filed 3–3–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend an Information Collection

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 65 FR 1182 (January 7, 2000), and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

COMMENTS: Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques for other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW, Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to splimpto@nsf.gov.

DATES: Comments regarding these information collections are best assured of having their full effect if received on or before April 5, 2000. Copies of the submission(s) may be obtained at 703–306–1125 X 2017.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 306–1125 X 2017 or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Earned Doctorates.

OMB Approval Number: 3145–0019.

Proposed Project: The Survey of Earned Doctorates has been conducted continuously since 1958 and is jointly sponsored by five Federal agencies in order to avoid duplication. It is an accurate, timely source of information on our Nation's most precious resource—highly educated individuals. Data is obtained from each person earning a research doctorate on their field of speciality, educational background, sources of support in graduate school, postgraduation plans for employment, and demographic characteristics. The information is used extensively by the Federal government, universities, and others. The National Science Foundation, as the lead agency, publishes statistics from the survey in many reports, but primarily in the manual publication series "Science and Engineering Doctorates" (available in print and electronically on the World Wide Web). The National Opinion Research Corporation, U. of Chicago, also disseminates a free report entitled "Doctorate Recipients from U.S. Universities: Summary Report 1998."

A total response rate of 92% of the total 42,683 persons who earned a research doctorate was obtained in fiscal year 1998.

Estimate of Burden

The Foundation estimates that, on average, 20 minutes per respondent will be required to complete the survey, for a total of 14,228 hours for all respondents.

Respondents: Individuals.

Estimated Number of Responses: 42,683 (FY 1998 number)

Estimated Total Annual Burden on Respondents: 14,228 hours total (FY 1998 number).

March 1, 2000.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 00–5347 Filed 3–3–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Generic Customer Satisfaction Survey.
2. *Current OMB approval number:* None.
3. *How often the collection is required:* Occasionally.
4. *Who is required or asked to report:* Voluntary reporting by the public and NRC licensees.
5. *The number of annual respondents:* 1225.
6. *The number of hours needed annually to complete the requirement or request:* 306.
7. *Abstract:* Voluntary customer satisfaction surveys will be used to contact users of NRC services and products to determine their needs, and how the Commission can improve its services and products to better meet those needs. In addition, focus groups will be contacted to discuss questions concerning those services and products. Results from the surveys will give insight into how NRC can make its services and products cost effective, efficient, and responsive to its customer needs. Each survey will be submitted to OMB for its review.

Submit, by May 5, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 28th day of February 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Office, Office of the Chief Information Officer

[FR Doc. 00–5339 Filed 3–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–374]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–18 issued to Commonwealth Edison Company (ComEd, the licensee) for operation of LaSalle County Station Unit 2, located in LaSalle County, Illinois.

The proposed amendment would change the Technical Specifications (TSs) to defer the required examination of weld RH–2005–29 until the next scheduled refueling outage or December 31, 2000, whichever is earlier.

TS Section 3.4.8, "Structural Integrity," requires the structural integrity of American Society of Mechanical Engineers (ASME) Class 1 components to be maintained in accordance with the surveillance requirements of TS Section 4.4.8, "Structural Integrity." TS Section 4.4.8 invokes the surveillance requirements (SR) of TS SR 4.0.5. TS SR 4.0.5.f requires that piping susceptible to intergranular stress corrosion cracking (IGSCC) be examined in accordance with the NRC staff positions on schedule, methods, personnel and sample expansion included in NRC Generic Letter (GL) 88–01, "NRC Position on IGSCC in BWR Austenitic Stainless Steel Piping."

At 1527 hours Central Standard Time (CST) on February 17, 2000, the licensee entered TS SR 4.0.3 due to a missed TS surveillance requirement to examine weld RH–2005–29. TS SR 4.0.3 allows 24 hours to perform the surveillance or pursue enforcement discretion. Without enforcement discretion, LaSalle County Station Unit 2 would have been required to be in at least STARTUP within the next 7 hours, HOT SHUTDOWN within the following 6 hours, and COLD SHUTDOWN within the subsequent 24 hours, since the action statement of TS Section 3.4.8 could not be complied with due to current plant conditions in accordance with TS Section 3.0.3. The licensee requested enforcement discretion from the requirements of TS 3.4.8 on February 18, 2000. The NRC verbally granted enforcement discretion at approximately 1130 hours CST on February 18, 2000, to be effective until a TS change is approved that would allow the examination of weld RH–2005–29 to be deferred until the next refueling outage. The written Notice of Enforcement Discretion (NOED) was issued by the NRC on February 23, 2000. The licensee requested that this proposed TS change be processed on an exigent basis consistent with the guidance provided in NRC Administrative Letter 95–05, "Revisions to Staff Guidance for Implementing NRC Policy on Notices of Enforcement Discretion, Revision 1." The licensee stated that the circumstances surrounding this request for exigent review were unavoidable and not created by a failure to make a timely application for a license amendment.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change represents a minimal increase in the probability of a pipe break resulting in a Loss-of-Coolant Accident (LOCA). The proposed change will not impact the source term used in the derivation of the LOCA dose consequences. Therefore, the consequences will remain unchanged since the resulting LOCA is bounded by the current analysis.

Therefore, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not involve a physical modification to the plant. The proposed change does not introduce a new failure mode.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

Since the LOCA analysis remains unchanged, the fuel integrity margin, as expressed as Peak Cladding Temperature, is not affected. The change does not impact the Reactor Coolant Pressure Boundary Overpressure Analysis; therefore, the margin of safety for the Reactor Coolant Pressure Boundary is not affected. The blowdown energy, resulting from a LOCA and the ability of the suppression chamber to maintain the margin of safety of the containment barrier are not affected.

Therefore, the changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 5, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest maybe affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *(http://www.nrc.gov)*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become partners to the proceeding, subject to any limitations in the order granting leave to intervene, and have the

opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. Pamela B. Stroebel, P.O. Box 767, Chicago, Illinois 60690–0767, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 21, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*)

Dated at Rockville, Maryland, this 29th day of February 2000.

For the Nuclear Regulatory Commission.

Donna M. Skay,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5337 Filed 3–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Omaha Public Power District (the licensee) to withdraw its January 30, 1998, application for proposed amendment to Facility Operating License No. DPR–40 for the Fort Calhoun Station, Unit 1, located in Washington County, Nebraska.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 8, 1998 (63 FR 17226). However, by letter dated January 24, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 30, 1998, and the licensee's letter dated January 24, 2000, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 29th day of February 2000.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Section 2, Project Directorate IV and Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5338 Filed 3–3–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24321; International Series Release No. 1216; 812–10724]

ASA Limited; Notice of Application

February 29, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application under the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: The order would permit applicant, ASA Limited ("ASA"), a South African closed-end management investment company registered under section 7(d) of the Act, to maintain its assets with a central securities depository in South Africa. The requested order would amend a prior order.

FILING DATES: The application was filed on July 18, 1997, and amended on December 21, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 24, 2000, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, 36 Wierda Road West, Sandton 2196, South Africa.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Attorney, at (202) 942–0572 or Christine Y. Greenless, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. ASA is a closed-end management investment company organized in 1958

in South Africa. ASA registered under the Act in 1958 pursuant to a Commission order issued under section 7(d) of the Act (the "Original Order").[1] ASA's investment objective is to invest primarily in South African gold mining companies. As of August 31, 1999, 90.2% of ASA's net assets consisted of equity securities issued by South African companies that trade primarily on the Johannesburg Stock Exchange ("JSE"). ASA is internally managed, and its shares trade on the New York Stock Exchange ("NYSE").

2. ASA has received several Commission orders that address, among other things, ASA's custodial arrangements (collectively, and together with the Original Order, the "Prior Orders").[2] Under the Prior Orders, ASA, with certain exceptions, is required to keep its assets in the U.S. in the custody of a bank. Thus, ASA currently maintains in the custody of Chase Manhattan Bank ("Chase") all of the share certificates issued by ASA's South African portfolio companies.

3. The Prior Orders permit ASA to keep up to 33% of its assets abroad—up to 5% of its assets in each of Great Britain, Japan, Canada, Australia, and Switzerland, under certain circumstances, up to 5% of its assets in rand-denominated interest bearing accounts in South Africa, and up to 3% of its assets in South Africa in short term rand-denominated investments issued or guaranteed by the Republic of South Africa.[3] In addition, ASA may maintain $200,000 in cash to cover administrative expenses in a checking account with a South African bank.[4] At present, all of ASA's assets in South Africa are maintained with its subcustodian, Standard Bank of South Africa Limited ("Standard Bank"), except for $200,000 which is kept in a checking account with another South African bank.

4. Until recently, South African equity securities existed and traded only in paper form. In a transition that has begun and will continue through next year, paper certificates will be replaced with an electronic book-entry securities will be maintained electronically with a central securities depository ("CSD System"). Under the CSD System, ownership records of equity securities will be maintained electronically with a central securities depository ("CSD"). Security holders will not directly interact with the CSD but with a "CSD Participant." Once the process of converting to the CSD System is complete, paper certificates will no longer be an acceptable form of ownership to clear and settle securities transactions on the JSE.

5. Currently, JSE owns 50% of the CSD and the CSD Participants, including Standard Bank, own the remaining 50%. CSD Participants are not required to own shares of the CSD and parties other than the CSD Participants may own shares of the CSD in the future. The CSD is regulated by the Financial Services Board ("FSB"), which is an agency of the South African government that supervises the activities of South African financial services institutions.

6. To become a CSD Participant, an entity must meet the CSD's criteria, which include the maintenance of a minimum level of capitalization, the ability to provide certain specialized services to shareholders, and other requirements relating to technology, human resources, internal controls, corporate governance, and risk management. CSD Participants are regulated by either the FSB or the Register of Banks in South Africa. ASA plans to retain Standard Bank, which meets the CSD's criteria for CSD Participants and is a CSD Participant, to be its CSD Participant.

7. Once the CSD System becomes fully operational, in order for JSE listed shares owned by ASA to be tradable on the JSE, the share certificates must be voided and ASA's ownership interests must be recorded electronically in book entry form in the CSD system. This would be prohibited under the terms of the Prior Orders because ASA's assets would not be physically maintained in the U.S. but in the South African CSD System. The requested order would permit ASA to maintain its portfolio securities that trade on the JSE and are eligible for the CSD System ("CSD-Eligible Securities") in electronic book-entry form with the CSD System in South Africa, rather than in the U.S. in paper share certificates.

Applicant's Legal Analysis

1. Section 7(d) of the Act prohibits a foreign investment company from making a public offering of its securities in the U.S. but authorizes the Commission to permit a foreign investment company to register under the Act and make a public offering of its securities if the Commission finds that "by reasons of special circumstances or arrangements, it is both legally and practically feasible to enforce the provisions of [the Act] against such company and that the issuance of such order is otherwise consistent with the public interest and protection of investors." Rule 7d–1 under the Act sets forth the conditions that a Canadian investment company must satisfy in order to receive an order under section 7(d) Under the Original Order, ASA met the requirements of rule 7d–1.

2. ASA requests an order under section 7(d) to amend the Prior Orders to permit it to maintain its CSD-Eligible Securities in the CSD. ASA states that it s custodian arrangement with the CSD meets the requirements of rule 17f–5 under the Act, which governs foreign custody arrangements of U.S. investment companies, and that the requested relief is consistent with the standards of section 7(d).

3. Rule 17f–5 under the Act permits a U.S. investment company ("fund") to maintain its assets overseas with an "Eligible Foreign Custodian." Under the rule, an Eligible Foreign Custodian includes "a securities depository that acts as a system for the central handling of securities or equivalent book-entries in the country that is regulated by a foreign financial regulatory authority, as defined under section 2(a)(50) of the Act." ASA states that the CSD meets this definition of an Eligible Foreign Custodian.

4. Under the 17f–5, a fund's board of directors, its investment adviser, or custodian bank ("Foreign Custody Manager") must determine that the fund's assets in the custody of an Eligible Foreign Custody will be subject to reasonable care, based upon the standards applicable to custodians in the relevant market after considering certain factors. Under rule 17f–5, the custody arrangement also must be governed by a written contract and/or rules, practices and procedures of the securities depository ("governing documents") that the Foreign Custody Manager determines will provide reasonable care for fund assets. Finally, the Foreign Custody Manager must

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[1] Investment Company Act Release Nos. 2739 (July 3, 1958) (notice) and 2756 (Aug. 13, 1958 (order).

[2] Investment Company Act Release Nos. 21161 (June 23, 1995) (notice) and 21220 (July 20, 1995) (order) (permits ASA to appoint Chase Manhattan Bank, N.A. as its custodian and to authorize Chase Manhattan Bank to appoint Standard Bank of South Africa Limited as ASA's sub-custodian); Investment Company Act Release Nos. 17904 (Dec. 17, 1990) (notice) and 17945 (Jan. 15, 1991) (order) ("1991 Order"); Investment Company Act Release Nos. 14826 (Dec. 4, 1985) (notice) and 14878 (Dec. 31, 1985) (order) ("1985 Order"); Investment Company Act Release Nos. 11669 (Mar. 6, 1981) (notice) and 11722 (Apr. 7. 1981) (order); Investment Company Act Release Nos. 8278 (Mar. 20, 1974) (notice) and 8312 (Apr. 17, 1974) (order); Investment Company Act Release Nos. 7860 (June 12, 1973) (notice) and 7894 (July 10, 1973) (order); Investment Company Act Release Nos. 2944 (Dec. 14, 1959) (notice) and 2957 (Dec. 29, 1959) (order); Investment Company Act Release Nos. 2883 (May 22, 1959) (notice) and 2886 (June 9, 1959 (order); and Investment Company Act Release Nos. 2817 (Jan. 5, 1959) (notice) and 2821 (Jan. 20, 1959) (order).

[3] 1985 and 1991 Orders.

[4] 1991 Order.

establish a system to monitor the appropriateness of maintaining the fund's assets with the Eligible Foreign Custodian. ASA states that its board of directors ("Board"), as the Foreign Custody Manager, has approved the maintenance of ASA's assets with the CSD System in accordance with rule 17f–5. The Board concluded that ASA's assets will be subject to reasonable care if maintained with the CSD System in accordance with the governing documents. The Board also concluded that ASA will receive periodic reports concerning material developments affecting the CSD System, which will provide an adequate system for the Board to monitor the appropriateness of maintaining ASA's assets with the CSD under the standards of rule 17f–5.

5. ASA notes that the Commission recently proposed rule 17f–7 under the Act that would govern the custody of fund assets with foreign securities depositories.[5] ASA states that, if proposed rule 17f–7 is adopted, ASA's custodial arrangements with the CSD will be brought into compliance with rule 17f–7 in the same time frame as the Commission would afford U.S. funds.

6. ASA further states that the conditions of the Prior Orders will contine to apply to ASA. ASA states that these conditions are designed, among other things, to address any jurisdictional concerns and otherwise assure the protection of investors. ASA also states that, as a condition to the requested order, it will keep at least 5% of its assets in the U.S. in the custody of a U.S. bank.

Applicant's Conditions

ASA agrees that the Original Order, as amended by any subsequent order, including any order of the SEC granting the requested relief (collectively, the "ASA Orders"), will be subject to the following conditions:

1. Chase will serve as ASA's custodian and will continue to meet the qualifications of a custodian under section 17(f) of the Act and Standard Bank will serve as Chase's subcustodian in South Africa. As long as Standard Bank holds ASA's assets, Standard Bank will designate Chase as its agent for service of process in the U.S. ASA will comply with rule 17f–5 under the Act, as it may be amended, as if it were a registered management investment company organized or incorporated in the United States with respect to any of its assets held by eligible foreign custodians (including Standard Bank and the CSD) or overseas branches of qualified U.S. banks (including Chase) outside the United States.

2. The Board will serve as foreign custody manager and will not delegate such functions to its custodian or any other person.

3. ASA will seek an order of the Commission prior to any amendment of its custodian agreement with its custodian.

4. ASA will cause each present and future officer, director, investment adviser, principal underwriter, and custodian of ASA to enter into an agreement ("Agreement") (to be filed by ASA with the Commission when that person assumes office), which will provide that each person agrees: (a) to comply with ASA's Memorandum of Association ("Charter") and Articles of Association ("Bylaws"), the Act and the rules of the Commission under the Act, and the terms and conditions of the ASA Orders as applicable to each person and as each may be amended from time to time, as applicable to each person; (b) to do nothing inconsistent with the terms and conditions of the ASA Orders, the provisions of the Act, or the rules under the Act; (c) that the undertakings described in (a) and (b) above constitute representations and inducements to the Commission to issue the ASA Orders, and (d) each Agreement constitutes a contract between the person and ASA and the shareholders of ASA with the intent that ASA's shareholders will be beneficiaries of and will have the status of parties to the Agreement so as to enable them to maintain actions at law or in equity within the United States or South Africa. In addition, each Agreement of each officer and director of ASA will contain provisions similar to those contained in condition 21 below.[6]

5. So long as ASA is registered under the Act, ASA's Charter and Bylaws, together, will contain in substance the provisions required by rule 7d–1(b)(8), and neither the Charter nor the Bylaws will be changed or amended in any manner inconsistent with rule 7d–1(b)(8) of the Act and the rules and regulations under the Act, unless authorized by the Commission.

6. No person will qualify to serve as a director or officer of ASA until he or she has transmitted to ASA a list of his or her affiliated persons, as that term is defined in section 2(a)(3) of the Act. ASA will: (a) Require each of its directors, officers, and investment advisers to transmit to ASA quarterly a list of affiliated persons or a statement that there has been no change since the last list so transmitted to ASA; (b) transmit each list to its custodian promptly after receipt by ASA; and (c) transmit to its custodian quarterly a list of its affiliated persons or a statement that there has been no change since the last list was transmitted. The contract between ASA and its custodian will provide that the custodian will not consummate any transaction on behalf of ASA with any person who, on the basis of the lists transmitted to the custodian, is an affiliated person of ASA or an affiliated person of any director, officer, or investment adviser of ASA, unless the transaction is of a type permitted by the Act or any regulation under the Act or specifically permitted by order of exemption issued under the Act.

7. ASA will furnish to the Commission, concurrently with the filing of periodic reports required to be filed under the Act, any changes to its list previously submitted to the Commission of persons affiliated with ASA and with ASA's investment adviser and principal underwriter.

8. The chief executive officer of ASA, a majority of the directors of ASA, and a majority of the officers of ASA will be both citizens and residents of the U.S.

9. ASA will hold all of its shareholder meetings in the U.S.

10. ASA will maintain in the U.S. a transfer agent for transfer of its shares, and a registrar for the registration of its shares.

11. ASA will file, and will cause each of its present or future directors, officers, or investment advisers who is not a resident of the U.S. to file with the Commission irrevocable designation of ASA's custodian as an agent in the U.S. to accept service of process in any suit, action, or proceeding before the Commission or any appropriate court to enforce the provisions of the laws administrated by the Commission, or to enforce any right or liability based upon ASA's Charter or Bylaws, contracts, or the respective undertakings and agreements of any of these persons required by the terms and conditions of the ASA Orders, or which alleges a liability on the part of any of these persons arising out of their services, acts, or transactions relating to ASA.

[5] Investment Company Act Release No. 23815 (April 29, 1999) (proposing amendments to rule 17f–5 and proposing new rule 17f–7).

[6] ASA acknowledges that: (a) Every agreement and undertaking of ASA, its officers, directors, investment adviser, principal underwriters, and custodian which are required by the conditions contained in the ASA Orders constitute (i) inducements to the Commission for the issuance and continuance in effect of the ASA Orders, and (ii) a contract among ASA, the Commission, and ASA's shareholders with the same intent as set forth in condition 4 above; and (b) the failure by ASA or any of the persons listed above to comply with any of the agreements or undertakings, unless permitted by the Commission, will constitute a violation of the ASA Orders.

12. As an exhibit to the application, ASA will file with the Commission an amendment to the subcustodian agreement that irrevocably designates ASA's custodian as an agent in the U.S. to accept service of process in any suit, action, or proceeding (collectively, "Proceeding") before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission in connection with the subcustodian agreement, or to enforce any right or liability ("Liability") based on the subcustodian agreement or which alleges a liability on the part of Standard Bank arising out of its services, acts, or transactions under the subcustodian agreement relating to ASA's assets. This designation will automatically terminate upon Standard Bank ceasing to hold ASA's assets, except as to a Proceeding or a Liability based on an action or inaction of Standard Bank prior to Standard Bank having ceased holding ASA's assets.

13. ASA will perform every action and thing necessary to cause and assist the custodian of its assets to distribute the same, or the proceeds, if the Commission or a court of competent jurisdiction,[7] will have so directed by final order.

14. ASA will take all steps necessary to insure that it will continue to be listed on the NYSE, including the publishing of financial statements and other information required by the NYSE for the benefit of holders of the shares listed on the NYSE and the performance of all the covenants contained in its listing agreement.

15. The Commission, in its discretion, may revoke its order permitting registration of ASA and the public offering of its securities if the Commission finds, after notice and opportunity for hearing, that there has been a violation of the ASA Orders or the Act and may determine whether distribution of ASA's assets is necessary or appropriate in the interests of investors and may so direct.

16. Neither ASA's Charter nor Bylaws will be changed in any manner inconsistent with the Act, nor will the terms and conditions of the application be changed without approval by the Commission or its staff.

17. ASA waives any counsel fees to which it may be entitled and waives security for costs in any action brought against it in South Africa by any shareholder based on its Charter or Bylaws or any of the terms and conditions of the ASA Orders. ASA will cause each of its present or future directors who is a non-resident of the U.S. to make similar waivers.

18. ASA will promptly notify the Commission in the event that there is any change in South African law that will be contrary to any provision of the Act or detrimental to or inconsistent with the protection afforded by the conditions of the ASA Orders.

19. If proposed rule 17f–7 under the Act is adopted by the Commission, ASA's use of the CSD will comply with the rule and any amendments to the rule as if ASA were a registered management investment company organized or incorporated in the U.S.

20. Any shareholder of ASA or the Commission on its own motion or on request of any ASA's shareholders will have the right to initiate a proceeding: (a) before the Commission for the revocation of the order permitting registration of ASA; or (b) before a court of competent jurisdiction for the liquidation of ASA and a distribution of its assets to its shareholders and creditors. The court may enter the order in the event that it finds, after notice and opportunity for hearing, that ASA, its officers, directors, investment adviser, principal underwriter, or custodian has violated any provision of the Act or the ASA Orders.

21. Any shareholder of ASA will have the right to bring suit at law or equity, in any court of the U.S. or South Africa having jurisdiction over ASA, its assets or any of its officers or directors to enforce compliance by ASA, its officers and directors with any provision of ASA's Charter or Bylaws, the Act, the rules under the Act, or the terms and conditions of the ASA Orders, in so far as applicable to these persons. The court may appoint a trustee or receiver of ASA with all powers necessary to implement the purposes of the suit, including the administration of the estate, the collection of corporate property including chooses-in action, and distribution of ASA's assets to its creditors and shareholders. ASA and its officers and directors waive any objection they may be entitled to raise and any right they may have to object to the power and right of any shareholder of ASA to bring such suit, reserving, however, their right to maintain that they have complied with these provisions, undertakings, and agreements, and otherwise to dispute the suit on its merits. ASA, its officers, and directors also agree that any final judgment or decree of any U.S. court may be granted full faith and credit by a court of competent jurisdiction of South Africa and consent that the South African court may enter judgment or decree on ASA at the request of any shareholder, receiver, or trustee of ASA.

22. ASA will settle its purchases and sales of portfolio securities in the U.S. by use of the mails or means of interstate commerce, except for: (a) Purchases and sales on an "established securities exchange" (defined as a national securities exchange as defined in section 2(a)(26) of the Act, the JSE, the London Stock Exchange, the Tokyo Stock Exchange, the Toronto Stock Exchange, the Stock Exchange of Melbourne, Ltd., and the Effektenborsenverein Zurich Exchange (collectively the "Established Exchanges")) and (b) purchases and sales, through ASA's custodian or custodian's agent, in South Africa of South African Treasury Bills from or to the South African Treasury, South African Reserve Bank securities, or CSD-Eligible Securities. Assets purchased on an Established Exchange will be maintained in the U.S. with Chase, unless prohibited by law or regulation or financially impracticable as provided in condition 25 below.

23. Contracts of ASA, other than those executed on an Established Exchange which do not involve affiliated persons, will provide that: (a) the contracts, irrespective of the place of their execution or performance, will be performed in accordance with the requirements of the Act, the Securities Act of 1933, and the Securities Exchange Act of 1934, as amended, if the subject matter of the contracts is within the purview of these acts; and (b) in effecting the purchase or sale of assets, the parties to the contracts will utilize the U.S. mails or means of interstate commerce.

24. ASA will keep at least 5% of its assets in the U.S. in the custody of a U.S. bank ("5% Requirement"). ASA's remaining assets (which may include U.S. dollars invested in time deposits and bank certificates of deposit) will be kept in the custody of a U.S. custodian, except:

(a) Subject to the 5% Requirement, up to 100% of its CSD-Eligible Securities may be kept in the CSD through its custodian and subcustodian;

(b) $200,000 may be kept in cash to cover administrative expenses, to be kept in a checking account with a South African bank;

(c) Up to 3% of its assets may be kept in South Africa in short-term rand-denominated investments issued or guaranteed by the Republic of South Africa; and

(d) Up to 5% of its assets may be kept in rand-denominated interest bearing bank accounts with "eligible foreign custodians" or "overseas branches of

[7] A court of competent jurisdiction means any U.S. federal court that has jurisdiction to issue such an order.

qualified United States banks," as those terms are defined in rule 17f–5 under the Act (as it may be amended).

25. If removal of securities purchased on the Established Exchanges becomes either prohibited by law or regulation or financially impracticable, up to 5% of ASA's assets may be held by an eligible foreign custodian or overseas branch of Chase in each of London, Japan, Australia, Switzerland, and Canada.

26. If an "eligible foreign custodian" or an overseas branch of the custodian is to be appointed as subcustodian, ASA will comply with the requirements of rule 17f–5, as it may be amended, prior to the purchase of securities on an Established Exchange.

27. ASA will withdraw its assets from the care of a subcustodian as soon as practicable, and in any event within 180 days of the date when a majority of the Board makes the determination that a particular subcustodian may no longer be considered eligible under rule 17f–5 of the Act, as it may be amended, or may no longer be considered an overseas branch of the custodian, or that continuance of the subcustodian arrangement would not be consistent with the best interests of ASA asnd its shareholders.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5385 Filed 3–3–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24320; 812–11872]

STI Classic Funds, et al.; Notice of Application

February 28, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of a registered open-end management investment company to acquire all of the assets and certain stated liabilities of the series of another registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: STI Classic Funds ("STI Funds"), ESC Strategic Funds, Inc. ("ESC Funds") and SunTrust Banks, Inc. ("SunTrust").

FILING DATES: The application was filed on December 3, 1999. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 23, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o W. John McGuire, Esq., Morgan, Lewis & Bockius LLP, 1800 M Street, N.W. Washington, D.C. 20036–5869.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. STI Funds, a Massachusetts business trust, is registered under the Act as an open-end management investment company and offers thirty-seven series, including the STI Classic Growth and Income Fund ("Growth and Income fund"), STI Small Cap Growth Stock Fund ("Small Cap Growth Fund") and STI Classic International Equity Fund ("International Equity Fund") (together, the "Existing Acquiring Funds") and a newly established series, STI Classic High Income Fund ("High Income fund") (together with the Existing Acquiring Funds, the Acquiring Funds"). ESC Funds, a Maryland corporation, is registered under the Act as an open-end management investment company and offers five series, ESC Strategic Small Cap Fund, ESC Strategic Small Cap II Fund, ESC Strategic International Equity Fund, ESC Strategic Appreciation Fund, and ESC Strategic Income Fund (together the "Acquired Funds") (the Acquired Funds and the Acquiring Funds, the "Funds").

2. SunTrust, a Georgia corporation, is a bank holding company and the parent of Trusco Capital Management, Inc. ("Trusco") and STI Capital Management, N.A. ("STI Capital"). Trusco is registered under the Investment Advisers Act of 1940 (the "Advisers Act") and is the investment adviser to the Growth and Income Fund, High Income Fund and Small Cap Growth Fund. STI Capital, a bank, is exempt from registration under the Advisers Act and is the investment adviser to the International Equity Fund. SunTrust Equitable Securities ("STES"), a wholly-owned subsidiary of SunTrust, and an investment adviser registered under the Advisers Act, is the investment adviser to each of the Acquired Funds. Currently, bank subsidiaries of SunTrust own in the aggregate, in a fiduciary capacity, 25% or more of the outstanding voting securities of each of the Existing Acquiring Funds and 5% or more of the outstanding voting securities of three of the acquired Funds.

3. On January 15, 2000 and February 15, 2000, the board of trustees of the Acquired Funds and the board of directors of the Existing Acquiring Funds (together, the "Boards"), respectively, including all the trustees and directors who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors"), approved a plan of reorganization between the Funds (the "Plan"). Under the Plan, on the date of exchange ("Closing Date"), each Acquiring Fund will acquire all the assets and certain stated liabilities of the corresponding Acquired Fund or Funds in exchange for shares of the Acquiring Fund (the "Reorganization").[1] The shares of each Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the Acquired Fund's shares determined as of the close of business on the business day immediately before the Closing Date. The net asset value of the assets received by the Acquired Fund will be

[1] Under the Plan, the Acquired Fund will merge into the Existing Acquiring Funds as follows: On March 27, 2000, the ESC Strategic Small Cap Fund and Small Cap Fund II will merge into the Small Cap Growth Fund, the ESC Strategic International Equity Fund will merge into the International Equity Fund, and the ESC Strategic Appreciation Fund will merge into the Growth and Income Fund. On March 28, 2000, the ESC Strategic Income Fund will merge into the High Income Fund.

determined in the manner set forth in the Funds' current prospectus and statement of additional information. As soon as reasonably practical after the applicable Closing Date, each Acquired Fund will liquidate and distribute *pro rata* the shares of the Acquiring Fund to the shareholders of the Acquired Fund.

4. Applicants state that the investment objectives, policies and restrictions of each Acquired Fund are substantially similar to those of its corresponding Acquiring Fund. The Acquired Funds each offer Class A shares and Class D shares. Both Class A and Class D shares have a front-end sales load and are subject to a distribution fee adopted under rule 12b–1 under the Act. The Acquiring Funds each offer: (a) Investor shares, which are subject to a front-end sales charge and rule 12b–1 distribution fee, and (b) Flex Shares, which are subject to a rule 12b–1 distribution fee and a contingent deferred sales charge ("CDSC").[2] Shareholders of Class A and Class D shares of the Acquired Funds will receive Investor and Flex Shares, respectively, of the corresponding Acquiring Fund.[3] The CDSC for the Flex Shares of each Acquiring Fund will be waived for shares issued to shareholders of the Acquired Funds as a result of the Reorganization. No sales charges will be imposed in connection with the Reorganization. The Acquired Funds will pay a portion of the Reorganization expenses as determined by their Board, including all of the Independent Directors, and all remaining expenses will be paid by STEI S and/or SunTrust.

5. The Boards, including all of the Independent Directors, determined that the Reorganization is in the best interests of the shareholders of each Fund, and that the interests of the existing shareholders of each Fund would not be diluted as a result of the Reorganization. In assessing the Reorganization, the Boards considered various factors, including: (a) The compatibility of the investment objectives, policies and limitations of the Acquired and corresponding Acquiring Funds; (b) the expense ratios of the Acquired and Acquiring Funds; (c) the terms and conditions of the Reorganization; (d) the tax-free nature of the Reorganization; and (e) the potential economies of scale to be gained from the Reorganization.

6. The Reorganization is subject to a number of conditions precedent, including that: (a) The shareholders of each Acquired Fund will have approved the Plan; (b) the Funds will have received opinions of counsel that the Reorganization will be tax-free for the Funds and their shareholders; and (c) applicants will receive from the Commission an exemption from section 17(a) of the Act for the Reorganization. The Plan may be terminated and the Reorganization abandoned at any time prior to either Closing Date by either Board if it is determined that circumstances have changed to make the Reorganization inadvisable. Applicants agree not to make any material changes to the Plan without prior Commission approval.

7. Definitive proxy materials have been filed with the Commission and were mailed to shareholders of the Acquired Funds on or about January 31, 2000. A special meeting of shareholders of the Acquired Funds is scheduled for March 22, 2000.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants believe that rule 17a–8 may not be available in connection with the Reorganization because the Funds may be deemed to be affiliated by reasons other than having a common investment adviser, common directors, and/or common officers. Applicants state that subsidiary banks of SunTrust own in the aggregate, as a fiduciary, 25% or more of the outstanding voting securities of each of the Existing Acquiring Funds and that subsidiary banks of SunTrust, as a fiduciary, also own 5% or more of the outstanding voting securities of three of the Acquired Funds. Applicants state the SunTrust therefore may be deemed to be an affiliated person of those Funds, resulting in the Acquiring Funds being affiliated persons of an affiliated person of the Acquired Funds.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the previous of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the terms of the Reorganization are reasonable and fair and do not involve overreaching. Applicants state that the investment objectives and policies of each Acquired Fund are substantially similar to those of its corresponding Acquiring Fund. Applicants also state that the Boards, including all of the Independent Directors, have made the requisite determinations that the participation of the Acquired and Acquiring Funds in the Reorganization is in the best interests of each Fund and that such participation will not dilute the interests of the existing shareholders of each Fund. In addition, applicants state that the Reorganization will be on the basis of relative net asset value.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5384 Filed 3–3–00; 8:45 am]

BILLING CODE 8010–01–M

[2] The High Income Fund which will not offer Investors Shares initially.

[3] Shareholders of Class A and Class D shares of the ESC Strategic Income Fund will receive Flex Shares of the High Income Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42463; File No. SR–CHX–00–02)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated to Extend the Effective Dates of its Extended Trading Hours Session

February 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 23, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposal

On October 13, 1999, the Commission approved, on a pilot basis through March 1, 2000, a new Article XXA and amendments to existing CHX rules that allowed the CHX to implement a new extended hours trading session (the "E-Session").[6] The CHX is submitting this proposal solely to ask the Commission to extend the operation of the E-Session through October 1, 2000.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposal

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–CHX–99–16, the Exchange proposed new CHX Article XXA and several related rule changes to implement the E-Session. The E-Session was designed to meet the needs of market participants and CHX members who had demanded that the Exchange begin trading in hours that extent beyond the then-current trading day. The Exchange continues to believe that investors are best served if registered securities exchanges are participants in the burgeoning after-hours trading market, and submits this proposal to extend the operation of its E-Session. The Exchange does not propose to make any other changes to its E-Session at this time; this proposal seeks only to extend the E-Session's operation through October 1, 2000.

The Operation of the E-Session. The E-Session began on October 29, 1999, and operates from 3:30 p.m. Central Time (immediately following the close of the CHX's post primary trading session) to 5:30 p.m. Central Time, Monday through Friday.[8]

Trading during the E-Session is conducted, in some respects, as it is during the CHX's primary trading session; however, new features more fully automate the transmission of orders and provide additional protections to investors who trade during the session. Only unconditional limit orders are eligible for execution in the E-Session, and each limit order must be appropriately designated for trading in the E-Session. Any orders remaining unexecuted at the end of the session are automatically canceled, and do not carry over to any other trading session. Specialist firms continue to make two-sided, continuous markets in E-Session eligible stocks, generally the more active stocks assigned to them during the existing trading sessions, at their posts on the floor of the CHX (unless a specialist firm has transferred its assignment, for the E-Session only, to another specialist firm with the approval of the Committee on Specialist Assignment and Evaluation).

During the E-Session, in most cases (subject to an exception described below), limit orders must be electronically and directly transmitted, via the Midwest Automated Execution System ("MAX") electronic order routing system, to the specialist's limit order book. Floor brokers may route limit orders to the specialist's limit order book via MAX or may transmit the orders to another market. In addition, a floor broker may route orders to buy and sell equivalent quantities of the same security eligible to be executed at the same price through MAX to the specialist's limit order book or may execute those orders as a crossing transaction at the specialist's post in accordance with existing Exchange rules.

Except as described in Article XXA or in other E-Session rule amendments, execution, reporting, clearance and settlement of transactions that occur during the E-Session follow the procedures currently in place for those activities in the Exchange's primary trading session.[9] Among other things, this general principle means that the National Securities Clearing Corporation clears the transactions that take place during this session and the Securities Industry Automation Corporation and Nasdaq, Inc. disseminate CHX quotations and trade data. Three exceptions to this general rule arise from either the Exchange's desire to more fully automate the E-Session or from the fact that no primary market of the kind that characterizes trading during normal hours is available during the E-Session.[10]

Securities Eligible for Trading During the E-Session. The CHX's Committee on Floor Procedure identifies, from time to time, the securities eligible for trading during the e-Session. In general, the securities listed on the Standard & Poor's 100 Stock Index (OEX) and on the Nadsaq-100 Index (NDX), as well as other securities that rank among the 100 most active listed and 100 most active

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange provided the Commission with written notice of its intent to file the proposal on February 15, 2000, pursuant to Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 42004 (October 13, 1999), 64 FR 56548 (October 20, 1999) (SR–CHX–99–16).

[7] The CHX authorized Commission staff to make minor technical changes to the proposal, to clarify that the proposal's sole purpose is to extend the operation of the E-Session through October 1, 2000. Telephone conversation between Ellen J. Neely, Vice President and General Counsel, CHX, and Joseph P. Morra, Attorney, Division of Market Regulations, SEC, February 25, 2000.

[8] The amendments to CHX Article IX, Rule 10(b) (Business Days and Hours of Trading) and CHX Article XX, Rule 2 (Hours of Floor Dealing) confirm the existence of this new trading session.

[9] The amendments to CHX Article XX, Rule 1 (Application [of Article]) and CHX Article XXI, Rule 1 (Reporting of Transaction) confirm that these rules encompass transactions that occur during the E-Session.

[10] The amendments to CHX Article XX, Rule 37 (conforming that the Best System and the automatic execution features of MAX do not operate during the E-Session), CHX Article XXXI, Rules 6 and ■ (confirming that odd-lot order execution occurs differently than during the primary trading session) and CHX Article XXXIV (confirming that market makers do not participate in the E-Session) reflect these exceptions.

Nasdaq/NM securities at the end of each quarter trade during the e-Session. Currently, 311 securities are eligible for trading during the E-Session.

Members Eligible to Participate in the E-Session. All CHX members have access to the E-Session, in accordance with applicable CHX rules.

Mandatory Disclosures To Non-Members. Because the E-Session operates in a manner, and at a time, that is different from the CHX's primary trading session, members must provide specific disclosures to non-members before accepting orders for execution in the E-Session. These disclosures are designed to ensure that participants in the after-hours market understand the potential risks of that participation.

Surveillance and Oversight. The Exchange surveils E-Session trading using many of the same surveillance programs it uses to monitor trading during the primary trading session. E-Session order delivery, quoting and matching is almost entirely controlled by the CHX's electronic systems. These systems reduce the possibility for intentional or inadvertent mishandling of orders and enhance the effectiveness of the surveillance programs. According to the CHX, E-Session surveillance has operated effectively during the first six months of after-hours trading.

Procedures for Reviewing Capacity, Security and Contingency Planning. The CHX uses many of the same review procedures for systems security, capacity management, and recovery and contingency planning that is employs for the systems that support the primary trading session.

2. Statutory Basis

The proposed extension of the operation of the E-Session is consistent with Section 6(b)(5) of the Act [11] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed extension of the effective dates of the E-Session. Indeed, the Exchange believes this new session has fostered competition in the after-hours trading arena by permitting investors to trade on a registered securities exchange, rather than through an electronic communications network or alternative trading system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if its appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date. The Commission finds that it is appropriate to designate the proposal to become operative today because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the CHX to operate its E-Session without interruption through October 1, 2000, and to continue providing investors who wish to trade after-hours with the option of trading on a registered securities exchange. For these reasons, the Commission good cause to designate that the proposal become operative today.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–00–02 and should be submitted by March 27, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5382 Filed 3–3–00; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30b–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42473; File No. SR–ISE–00–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Relating to its Fee Schedule

February 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 25, 2000, the International Securities Exchange LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to adopt fees to be imposed on members of the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that proposed rule changes relating to fees usually are filed pursuant to Section 19(b)(3)(A) and subparagraph (f) of Rule 19b–4 thereunder. Because the ISE is a new exchange, however, the Commission has determined that publishing the proposed rule change for notice and comment is appropriate.

The text of the proposal is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to establish its fee schedule for the services it will offer to its members and others. This schedule includes membership fees, trading fees, and fees for a variety of other services, including the installation and maintenance of certain equipment. With these fees, ISE intends to recover its costs of operating a trading market and building a reserve for future needs. ISE does not intend to use these fees to generate an operating profit to distribute to its members. As the ISE gains experience in the operation of its market, it will adjust its fees to maintain the appropriate balance between costs and expenses.

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,[4] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the ISE consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–00–02 and should be submitted by March 27, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,
Secretary.

EXHIBIT A.—TEXT OF THE PROPOSED RULE CHANGE

ISE Schedule of fees	Amount	Billable unit	Frequency	Notes
Electronic Market Place:				
Execution Fees:				
• Customer	$0.05	contract/side	Transaction	Fee waived for 6 months.
• Facilitation	0.15	contract/side	Transaction.	
• Market Maker & Firm Proprietary:				
A.D.V. Less than 300,000.	0.21	contract/side	Transaction	Based on Exchange A.D.V.
A.D.V. Less than 300,001 to 500,000.	0.17	contract/side	Transaction	Based on Exchange A.D.V.
A.D.V. Less than 500,001 to 700,000.	$0.14	contract/side	Transaction	Based on Exchange A.D.V.
A.D.V. Over 700,000.	$0.12	contract/side	Transaction	Based on Exchange A.D.V.
Comparison Fee	0.03	contract/side	Transaction	Fee waived for Customer Trades for 6 months.
Trading Application Software:				
Installation:				
• Non-standard Services.	350.00	Hourly	One Time	Time & Material.

[4] 15 U.S.C. 78f(b)(4).

[5] 17 CFR 200.30–3(a)(12).

EXHIBIT A.—TEXT OF THE PROPOSED RULE CHANGE

ISE Schedule of fees	Amount	Billable unit	Frequency	Notes
Software License & Maintenance:				
• Torque:				
First	1250.00	Terminal	Monthly.	
Second through Fourth.	$750.00	Terminal	Monthly.	
Fifth and Over	250.00	Terminal	Monthly.	
• Click	500.00	Terminal	Monthly.	
Session/API Fee:				
• Market Makers	1,000.00	API	Monthly	Minimum of Two.
• EAM	250.00	API	Monthly.	
• Ordering Routing Service Connection Fee.	250.00	API	Monthly.	
Access Services				
Access Fees:				
• EAM	500.00	Member Firm	Monthly..	
• Market Maker.				
• Primary	4,000.00	Member Firm	Monthly.	
• Competitive	2,000.00	Member Firm	Monthly.	
Network Fees:.				
• Dedicated Line connection.	250.00	Line	Monthly.	
• Order Routing Service.	100.00	Line	Monthly.	
Gateway:.				
• Installation	5,000.00	Gateway	One Time.	
Legal & Regulatory:				
Application:				
• Primary Market Maker.	7,500.00	Member Firm	One Time.	
• Competitive Market Maker.	5,500.00	Member Firm	One Time.	
• Electronic Access Member.	3,500.00	Member Firm	One Time.	
• Lessor	1,000.00	Applicant	One Time.	
Administrative:				
• DTR Approval	500.00	Trader	One Time.	
• U4 Initial Registration.	25.00	Registered Person	One Time.	
• Pg 2—U4 for Non-Registered Persons.	100.00	Individual	One Time.	
Regulatory Fee:	3,500.00	Member Firm	Annual.	
Other Services:				
Training	500.00	Daily per Trainee	As Incurred.	
Testing	100.00	Per candidate	Per Exam.	
Third Party Developers:				
• Set-Up	1,000.00	Developer	One Time.	
• Usage	1,000.00	Monthly	Monthly.	
Disaster Recovery Testing & Relocation Services.	3,000.00	½ Day	As Incurred.	

[FR Doc. 00–5378 Filed 3–3–00; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42475; File No. SR–ISE–00–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Relating to the Exposure of Orders on the Exchange

February 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 25, 2000, the International Securities Exchange LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b-4.

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its crossing rules to reduce from two minutes to thirty seconds the amount of time that Electronic Access Members are required to expose orders on the Exchange before executing them as principal or executing them against solicited order. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 717 Limitations on Orders

(a) Principal Transactions.

Electronic Access Members may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least [two (2) minutes] *thirty (30) seconds,* (ii) the Electronic Access Member has been bidding or offering on the Exchange for at least [two (2) minutes] *thirty (30) seconds* prior to receiving an agency order that is executable against such bid or offer, or (ii) the Member utilizes the Facilitation Mechanism pursuant to Rule 716(d).

(b) Solicitation Orders.

Electronic Access Members must expose orders they represent as agent on the Exchange for at least [two (2) minutes] *Thirty (30) seconds* before such orders may be executed in whole or in part by orders solicited from Members and non-member broker-dealers to transact with such orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IIV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to reduce from two minutes to 30 seconds the order exposure time required in paragraphs (d) and (e) of ISE Rule 717. The purpose of the order exposure requirements is to assure that agency orders have an opportunity to interact on the Exchange before they are executed, either by the broker representing the order, or by another order solicited by the broker. However, market participants have indicated to the exchange that two minutes is too long to delay the execution of an order when there is a party willing to execute against the order.

The Exchange has taken this view into consideration and weighed the need to assure that orders interact in the Exchange's electronic auction market system against the competing customer interest of receiving a speedy execution. In this respect, the Exchange recognizes the benefits of order interaction, as well as the risk that an order left unexecuted might "miss the market." Upon reconsideration of the two minute exposure time, the Exchange believes that the objective of the exposure rule can be satisfied by a shorter time period, which will benefit limit orders by providing them an opportunity for a more rapid execution. The Exchange believes that exposing an order for 30 seconds will provide sufficient opportunity for orders to interact with other trading interest on the Exchange, and thereby preserve the benefits of the ISE's electronic auction market.[3]

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[4] which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the ISE consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–00–04 and should be submitted by March 27, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5379 Filed 3–3–00; 8:45 am]

BILLING CODE 8010–01–M

[3] The ISE concurrently is proposing to establish 30 seconds as the time given for market participants to respond to broadcasts requesting trading interest with respect to block-size orders. *See* SR–ISE–00–03. The Exchange believes that 30 seconds is sufficient for members to participate in the execution of these large-size orders, and that there is no reason to require a longer exposure time for smaller orders.

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42474; File No. SR–ISE–00–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Relating to Block and Facilitation Trades

:

February 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 25, 2000, the International Securities Exchange LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items #I, II, and III below, which items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing commentary to ISE Rules 716(c) and (d) with respect to the Block Order Mechanism and the Facilitation Mechanism, which states that participants will be given 30 seconds to respond to a broadcast message. The ISE is also proposing to amend Rule 716(d)(4) to provide that only public customer bids (offers) on the Exchange at the time a facilitation order is executed that is priced higher (lower) than the facilitation price will be executed at the facilitation price unless there is sufficient size to execute a facilitation order entirely at a better price. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 716 Block Trades

* * * * *

(d) Facilitation Mechanism. The Facilitation Mechanism is a process by which an Electronic Access Member can facilitate block-size Public Customer orders.

* * * * *

(4) At the end of the period given for the entry of Indications, the facilitation order will be automatically executed in full.

(i) Unless there is sufficient size to execute the entire facilitation order at a better price, Public Customer [B] *bids (offers)* on the Exchange at the time the facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at the facilitation price. *Non-Customer bids (offers) on the Exchange at the time the facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at their stated price, thereby providing the order being facilitated a better price of the number contracts associated with such higher bids (lower offers).*

* * * * *

Supplementary Material to Rule 716

.01 It will be a violation of a member's duty of best execution to its customer it it were to cancel a facilitation order to avoid execution of the order at a better price. The availability of the Facilitation Mechanism does not alter a member's best execution duty to get the best price for its customer. Accordingly, while facilitation orders can be canceled during the thirty seconds given for the entry of Indications, if a member were to cancel a facilitation order when there was a superior price available on the Exchange and subsequently re-enter the facilitation order at the same facilitation price after the better price was no longer available without attempting to obtain that better price for its customer, there would be a presumption that the member did so to avoid execution of its customer order [by other market participants] *in whole or in part by other brokers at the better price.*

.02 The time given to Crowd Participants to enter Responses under paragraph (c)(1) and Indications under paragraph (d)(1) shall be thirty (30) seconds.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE Rule 716(c) establishes a "block mechanism" through which ISE members can obtain liquidity for the execution of block-size orders[3] from market makers and other ISE members with orders at the ISE inside bid or offer (the "Crowd Participants"). Similarly, ISE Rule 716(d) establishes a "facilitation mechanism" through which members can seek to facilitate block-size public customer orders. Upon the entry of an order into the block or facilitation mechanisms, a broadcast message is sent to the Crowd Participants. Under ISE Rules 716(c)(1) and (d)(1), the Crowd Participants are given an opportunity to respond to the broadcast message without specifying how much time they will be given.

The proposed rule change specifies that Crowd Participants will be given 30 seconds to respond to a broadcast message from either the block or facilitation mechanism.[4] The Exchange believes that 30 seconds is sufficient time to allow the Crowd Participants to respond to a broadcast message.

The ISE also is proposing to amend ISE Rule 716(d)(4)(i) to provide that only public customer bids (offers) on the Exchange at the time a facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at the facilitation price, unless there is sufficient size to execute a facilitation order entirely at a better price. Higher bids and lower offers from non-customer orders and quotes will be executed at their stated price. Currently, under the Rule, such non-customer orders and quotes are given the benefit of the facilitation or "block clean-up" price.

The Exchange believes that in the case where there are non-customer orders or quotes that can provide the order being facilitated a better price, the order being facilitated should receive the better price for the number of contracts available. The proposed change creates the opportunity for a facilitation order to receive partial execution at an improved price, while continuing to protect public customer orders on the book by giving them the benefit of a better block execution price.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Block-size orders are orders for fifty contracts or more. ISE Rule 716(a).

[4] Crowd Participants may indicate a willingness to facilitate an order at an improved price by entering orders or changing their quotes, as applicable, but must do so at least ten seconds prior to the request for indications. ISE Rule 716(d)(3).

For example, under current ISE Rule 716(d)(4)(i), assume that a Member proposes to facilitate an order to sell 500 contracts at the ISE's best bid price of $4. During the exposure period, further assume that a non-customer order to buy 100 contracts at $4⅛ and a public customer order to buy 20 contracts at $4⅛ are entered. In this scenario, the facilitation order would have been executed at $4 in its entirety (*i.e.*, both the customer and non-customer orders buy at $4). Under the proposed rule change, the customer order at $4⅛ would be executed at $4, but the non-customer order would be executed at its stated price of $4⅛. Accordingly, the order being facilitated would sell 100 contracts at $4⅛ (an improved price) and 400 contracts at $4. [5]

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act, [6] which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the ISE consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–00–03 and should be submitted by March 27, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5380 Filed 3–3–00; 8:45 am]

BILLING CODE 8010–01–M

[5] In this example, if public customer and/or non-customer orders totaling 500 contracts at $4⅛ had been entered during the exposure time, the entire facilitation order would have been executed at $4⅛.

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42472; File No. SR–ISE–00–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Relating to Market Maker Allocations

February 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on February 25, 2000 the International Securities Exchange LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing commentary to ISE Rule 713(e) regarding precedence of non-customer orders and market maker quotes to define its trading algorithm. Proposed new language is in italics.

* * * * *

Rule 713 Priority of Quotes and Orders

No change to text of Rule

Supplementary Material To Rule 713

.01 Rule 713(e) (Priority of Quotes and Orders) states that Public Customer Orders have priority on the Exchange. That rule further provides that the Exchange will determine a procedure for allocating executions among Non-Customer Orders and market maker quotes in cases where all Public Customer Orders have been executed and there are two or more Non-Customer Orders or market maker quotes at the best price. This procedure is as follows:

(a) Subject to the two limitations below, Non-Customer Orders and market maker quotes at the best price receive allocations based upon the percentage of the total number of contracts available at the best price that is represented by the size of the Non-Customer Order or quote;

(c) *If the Primary market Maker is quoting at the best price, it has participation rights equal to the greater of (i) the proportion of the total size at the best price represented by the size of its quote, or (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Non-Customer Order or market market quotation at the best price, forty percent (40%) if there are two (2) other Non-Customer Orders and/or market maker quotes at the best price, and thirty percent (30%) if there are more than two (2) other Non-Customer Order and/or market maker quotes at the best price; and*

(c) *Orders for five (5) contracts or fewer will be executed first by the Primary Market Maker; provided however, that on a semi-annual basis the Exchange will evaluate what percentage of the volume executed on*

the Exchange is comprised of orders for five (5) contracts or fewer executed by Primary Market Makers, and will reduce the size of the orders included in this provision if such percentage is over forty percent (40%).

This procedure only applies to the allocation of executions among Non-Customer Orders and market maker quotes existing in the Exchange's central order book at the time the order is received by the Exchange. No market participant is allocated any portion of an execution unless it has an existing interest at the execution price. Moreover, no market participant can execute a greater number of contracts than is associated with the price of its existing interest. Accordingly, the Primary Market Maker participation rights and the small order preference contained in this allocation procedure are not guarantees; the Primary Market Maker (i) must be quoting at the execution price to receive an allocation of any size, and (ii) cannot execute a greater number of contracts than the size that is associated with its quote.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE Rule 713(d) provides that customer orders at a given price have priority based on the time priority of such orders. ISE Rule 713(e) provides that, if there are two or more noncustomer orders or market maker quotations at the Exchange's inside market, after filling all customer orders at that price, executions will be allocated between the non-customer orders and market maker quotations "pursuant to an allocation procedure to be determined by the Exchange from time to time * * *." ISE Rule 713(e) also states that, if the Primary Market Maker ("PMM") is quoting at the Exchange's inside market, it will have precedence over non-customer orders and Competitive Market Maker ("CMM") quotes for execution of orders that are up to a specified number of contracts. The purpose of the proposed rule change is to establish the ISE's allocation procedure for non-customer orders and market maker quotations, and to define the size of orders for which the PMM has priority.

The allocation procedure is a trading algorithm programmed in the ISE's electronic auction market system (the "System") that determines how to split the execution of incoming orders among professional trading interests at the same price. All public customer orders at a given price are always executed fully before the trading algorithm is applied. Moreover, because the algorithm is applied automatically by the System upon the receipt of an executable order, only those non-customer orders and market maker quotes that are in the System participate in the algorithm. Thus, there is no opportunity for a market participant to receive an allocation unless it had an order or quote in the System at the execution price at the time the System received the incoming order.

Subject to the PMM's participation rights discussed below, the allocation of executions to non-customer orders and market marker quotes is based on the size associated with the order or quote relative to the total size available at the execution price. For example, assume there is a public customer order for 10 contracts, a non-customer order for 60 contracts and a CMM quotation for 40 contacts in the System at the best bid price, so that there is a total of 110 contracts available at the best bid. If a market order to sell 30 contracts is received, the customer order to buy 10 contracts will be executed first. The trading algorithm is then applied to allocate the remaining 20 contracts to sell between the non-customer order and CMM quote. The non-customer order is 60 percent of the available size at the best bid (60 out of 100) and the CMM quote is 40 percent of the size available at the best bid (40 out of 100). Therefore, twelve contracts will be allocated to the non-customer order (60 percent of 20 is 12) and eight contracts will be allocated to the CMM (40 percent of 20 is 8). The size associated with the non-customer order and CMM quote are then reduced by twelve and eight respectively, so that there is a total of 80 contracts available at the best bid following the execution of the market order. This entire process will be completed by the System in a fraction of a second.

The Exchange believes that priority for non-customer orders and market maker quotes based on size at the execution price, rather than on strict time priority, is beneficial because size priority encourages market participants to provide deeper, more liquid markets.[3] Participants with larger size receive a proportionately larger share of the execution, and participants that have small trading interests are not "sized-out" because all participants share in the executions. In contrast, the Exchange believes that time priority creates a race to enter trading interest first and does not give all participants an opportunity to trade. This is especially problematic in an electronic market, where entering an order or quote one micro-second (1/100 of a second) ahead of another order or quote is possible and would provide absolute priority for the first order that arrives. It also is problematic in a derivative market, where the price of a quote or order is based, in large part, on the price of the underlying instrument. In the Exchange's view, a time priority system would disadvantage less technologically advanced market participants and encourage competition based upon the speed of auto-quoting mechanisms. The Exchange does not believe that this type of competition would encourage participants to provide accessible and liquid markets.

Because PMMs have unique obligations to ISE's market,[4] they are provided with certain participation rights. If the PMM is one of the participants with a quote at the best price, it has participation rights equal to the greater of (1) the proportion of the total size at the best price represented by the size of its quote, or (2) 60 percent of the contracts to be allocated if there is only one other non-customer order or market maker quotation at the best price, 40 percent if there are two other non-customer orders and/or market maker quotes at the best price, and 30 percent if there are more than two other non-customer orders and/or market maker quotes at the best price. In addition, the PMM has precedence to execute orders of five contracts or fewer. This means that such "odd-lot" orders will be executed first by the PMM if it is quoting at the best price.

These participation rights are programmed into the trading algorithm,

[3] Orders at the same price with the same size receive allocations in time priority.

[4] For example, PMMs are responsible for: ensuring that all ISE disseminated quotations are for at least 10 contracts; addressing customer orders that cannot be automatically executed when another market is disseminating a better quotation; and opening the market. *See* ISE Rule 803(c).

so that they are applied automatically by the System when splitting executions among non-customer orders and market maker quotes after public customer orders at the same price are fully executed as described above. Consequently, like any other market participant, the PMM cannot receive any portion of an allocation, regardless of its participation rights, unless it is quoting at the best price at the time the System receives the executable order. Moreover, the size associated with the PMM's quote must be sufficient to fill the portion of the order that would be allocated to it according to the participation rights. For example, if a PMM would be allocated 30 contracts according to its participation rights, but the size of its quote is only 20 contracts, the PMM would receive an allocation of only 20 contracts. If the size associated with a PMM's quote is only three contracts when an executable order for five contracts is received (assuming there are no public customer orders), the PMM would execute only three contracts.

According to the participation rights, a PMM quoting at the inside market generally is allocated the plurality of an order. For example, if both a PMM and CMM are quoting at the inside market for 50 contracts each, an incoming order for 10 contracts will be allocated between the two for six and four contracts respectively (a 60% allocation to the PMM). If the PMM is quoting for 50 contracts and there are two CMMs each quoting for 50 contracts, the PMM is allocated four contracts and the two CMMs are allocated three each (40 percent for the PMM, and the remaining 60 percent split equally between the CMMs because they are quoting an equal size). At a minimum, a PMM will be allocated 30 percent of an order, regardless of the number of other quotes or orders at that price.[5]

PMMs quoting at the ISE's inside market will trade against all incoming orders of five contracts or less first. The size of an ISE "odd lot" is roughly equivalent to the similar concept in the equity markets. Specifically, the average options contract premium is approximately $542.[6] Thus, the premium for the average options five-lot is approximately $2,710. This is equivalent to the purchase price of an odd-lot of 63 shares of stock traded on the New York Stock Exchange ("NYSE")[7] or 49 shares of the 600 securities that likely will underlie options traded on the ISE.[8] The Exchange believes that this participation right will not necessarily result in a significant portion of the Exchange's volume being executed by a PMM. As stated above, a PMM only will execute against such orders if it is quoting at the best price, and only for the number of contracts associated with its quotation. Nevertheless, on a semi-annual basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for five contracts or fewer executed by PMMs, and will reduce the size of the orders included in this provision if such percentage is over 40 percent.

The proposed participation rights for PMMs described above is part of the ISE's balancing of the rewards and obligations that pertain to each of the Exchange's classes of memberships. This balancing is part of the overall market structure that is designed to encourage vigorous price competition between market makers on the Exchange, as well as maximize the benefits of price competition resulting from the entry of customers and non-customer orders, while encouraging participants to provide market depth.[9]

The ISE is the first exchange in the United States to attempt to combine all of the elements of an auction market in an electronic environment. The Exchange believes the proposed trading algorithm, which includes participation rights for PMMs only when they are quoting at the best price, strikes the appropriate balance within its market and will maximize the benefits of an electronic auction market for all participants.

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[10] which requires that an exchange have rules that are designated to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the ISE consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No.

[5] The size associated with the PMM's quote, however, must be sufficient to fill the 30 percent allocation. Under no circumstsances may the PMM execute more than the size associated with its displayed quote.

[6] *See* Options News Network Internet web site (http://onn.theocc.com).

[7] The average price of a share of stock traded on the NYSE in 1998 was $43.10. NYSE 1998 Fact Book at 11.

[8] The average price of a share of these 600 stocks was $55.41 as of January 2000.

[9] The other options exchanges also have participation rights for their specialists, designated primary market makers and lead market makers. *See* Amex Rule 950(d) and 126(e); CBOE Rule 8.80(c)(7); PCX Rule 6.82(d)(2); PHLX Rule 1014(g).

[10] 15 U.S.C. 78f(b)(5).

SR–ISE–00–01 and should be submitted by March 27, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5381 Filed 3–3–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42464; File No. SR–Phlx–99–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Amendment to the By-Laws and Corresponding Changes to the Rules of the Philadelphia Stock Exchange, Inc., Relating to Various Committees

February 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Phlx filed an amendment to the proposed by-law change on October 4, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed by-law change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed By-Law Change

The Phlx proposes to amend its By-laws as follows: (i) By-Law Article III, § 3–5, 3–6, 3–7, 3–8, 3–9, 3–12, Article IV, § 4–7, Article V, § 5–5, Article X, § 10–1, 10–4 and 10–11, combining the Nominating and Elections Committees; (ii) By-Law Article X, § 10–8 and 10–14 eliminating the Arbitration Committee and transferring its functions to the Executive Committee; and (iii) By-Law Article XI, § 11–1, to create a single Quality of Markets Committee. The Phlx also proposes to make technical changes to certain of its rules to reflect the changes to the by-laws.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has proposed By-law amendments to provide for streamlining the committee process as follows: (i) Dissolving the Arbitration Committee, whose limited remaining functions would be transferred to the Executive Committee, who will oversee ongoing arbitrations filed before the transfer of arbitration responsibilities to the National Association of Securities Dealers, Inc. ("NASD") in October, 1998;[5] (ii) dissolving the Elections Committee whose functions would be transferred to the Nominating Committee; and (iii) consolidating the three Quality of Markets Committees into a single Quality of Markets Committee with responsibilities for all three Phlx trading floors.

First, the Exchange proposes to dissolve the Arbitration Committee and transfer its duties to the Executive Committee. Specifically, the Exchange proposes to rescind By-Law Article X, § 10–8, entitled Arbitration Committee, and move its remaining powers to the Executive Committee by By-Law Article X, § 10–14(d). Additiionally, the Exchange proposes to delete reference to the Arbitration Committee in By-Law Article XI, § 11–1(a). These changes are intended to eliminate a standing committee, while transferring its respoinsibilities to the Executive Committee whose powers are broadly provided for in By-Law Article X, § 10–14.

By way of background, the Exchange ceased accepting arbitration cases on October 1, 1998. Jurisdiction for Phlx arbitration cases now resides with the NASD. Currently, the exchange is processing and closing the cases that were filed prior to October 1, 1998. Following the cessation of these cases, the arbitration function at the Exchange will cease, as will the need for any committee oversight of these matters. In addition, based on the experience since October 1, 1998 to the present, the Exchange believes that any remaining questions requiring committee oversight will be minimal.

Second, the Exchange proposes several changes to the Nominating Committee and the Elections Committee, essentially collapsing them into a single committee. The Exchange proposes to rescind By-Law Article X, § 10–13, entitled Elections Committee, and moves its powers to the Nominating Committee in By-Law Article III, § 3–5(e). The Exchange proposes changing the name of the Nominating Committee to the Nominating and Elections Committee in By-Law Article II, § 3–5, 3–6, 3–7, 3–8, 3–9 and 3–12, Article IV, § 4–7, Article VI § 5–5, Article X, § 10–1 and 10–4 and Article XI, § 11–1. These changes are intended to streamline the functions of these two committees, as described more fully below.

The Elections Committee performs the limited, yet important function of administering membership elections. The Nominating Committee submits nominations for industry Governors who stand for election by the members. It also submits nominations for non-industry Governors. Because these two Committees perform functions related to the election and appointment of Governors of the Exchange, the Exchange believes that the merging of the Elections Committee with the Nominating Committee will not impair the functioning of any of their tasks.[6] In fact, merging these responsibilities should improve efficiency as well as coordination, as the same group of committee members will oversee the complete election-related process.

Finally, the Exchange proposes to reduce the number of Quality of Markets Committees from three to one, also to improve efficiency. Specifically, the

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Michael Walinskas, Associate Director, Division of Market Regulation, Commission, from John Dayton, Counsel, Phlx, dated October 1, 1999 ("Amendment No. 1"). Amendment No. 1 proposes certain technical changes. Specifically, it amends Phlx Rule 930 to reflect the fact that the Arbitration Committee is being eliminated from the by-laws. Amendment No. 1 also proposes changes to Phlx Rule 950, §§ 1 and 2, to reflect the elimination of the Arbitration Committee.

[4] *See* Amendment No. 1.

[5] *See* Securities Exchange Act Release No. 40517 (October 1, 1998), 63 FR 54177 (October 8, 1998) (SR–Phlx–98–28).

[6] The Commission notes that the Exchange currently has a policy of engaging an independent auditing firm to administer elections. This practice will continue following the merger of the Nominations Committee and the Elections Committee. Phone call between John Dayton, Phlx, and Christine Richardson, Division of Market Regulation, Commission, February 23, 2000.

Exchange proposes to amend By-Law Article X, § 10–20 to reduce the number of these Committees from three (one respecting each of the three trading floors) to one, as well as to ensure that the Committee will contain at least as many non-industry as industry members. The current language requires that the present Committees are "equally balanced". The proposed language gives the Exchange more flexibility to constitute the proposed Committee while retaining the appropriate non-industry representation.[7] The exchange proposes to amend By-Law Article X, § 10–16, 10–17 and 10–19 to conform the language contained therein to the existence of only one Quality of Markets Committee. The Exchange believes that these changes should also improve the input of the Quality of Markets Committee on the overall committee process by taking advantage of the overlap in issues emanating from each of the three trading floors, as well as providing for more singular input. In summary, these proposed amendments are designed to create a more efficient committee process and save the Exchange certain costs related to convening committees.

Given the composition requirements of the Committees and the scheduling problems associated with convening meetings in Philadelphia for a significant number of public, non-industry as well as industry Governors not associated with Philadelphia-based member organizations, the proposed amendments are designed to make the Committee process more efficient, while lowering costs. The Exchange believes that this consolidation of committee functions will be beneficial to the functioning of the committee process by decreasing the number of committee assignments for some public, non-industry and industry Governors, allowing them to concentrate more of their energies to their remaining assignments. The Exchange believes the quality of information received from the committees by the Board of Governors will not be affected by the consolidation.

2. Basis

The Exchange believes that the proposal is consistent with Section 6 and, specifically with Section 6(b)(3) of the Act, in that it continues to assure Phlx members fair representation in the administration of the Exchange's affairs by providing a committee structure that is more efficient and accessible in achieving the goals of the Exchange and the membership.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of this Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to File No. SR–Phlx–99–26 and should be submitted by March 27, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5383 Filed 3–3–00; 8:45 am]

BILLING CODE 8010–01–M

[7] The proposed language provides that "[t]he [Quality of Markets] Committee will have broad representation that shall include at least as many non-industry as industry Committee members" *See* Proposed Phlx By-Law Art. X, § 10.20.

[8] 17 CFR 200.30–3(a)(12)

DEPARTMENT OF STATE

[Public Notice No. 3230]

Renewal of Defense Trade Advisory Group Charter

The Charter of the Defense Trade Advisory Group (DTAG) is being renewed for a two-year period. The membership of this advisory committee consists of private sector defense trade specialists appointed by the Assistant Secretary of State for Political-Military Affairs who advise the Department on policies, regulations, and technical issues affecting defense trade.

FOR FURTHER INFORMATION CONTACT: Mike Slack, DTAG Secretariat, U.S. Department of State, Office of Regional Security and Arms Transfer Policy (PM/RSAT), Room 7424 Main State, Washington, D.C. 20520–2422. Phone: (202) 647–2882, Fax: (202) 647–9779.

Dated: February 28, 2000.

Gregory M. Suchan,

Executive Secretary, Defense Trade Advisory Group, Department of State.

[FR Doc. 00–5352 Filed 3–3–00; 8:45 am]

BILLING CODE 4710–25–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Draft Environmental Impact Statement for Implementation of Air Traffic Noise Abatement Procedures at T.F. Green Airport, Warwick, RI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a Draft Environmental Impact Statement.

SUMMARY: In accordance with Council on Environmental Quality's Regulations (Authority: 40 CFR 1500–1508) and FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, the Federal Aviation Administration (FAA) is making available the Draft

Environmental Impact Statement (DEIS) for implementation of the proposed air traffic noise abatement procedures contained in the update of the Noise Compatibility Program for T.F. Green Airport in Warwick, RI.

DATES: Written comments will be accepted prior to April 26, 2000. A public hearing will be held on Wednesday, April 12, 2000, 7 p.m. to 9 p.m., Warwick, RI.

ADDRESSES: Address all written comments to Ms. Terry Flieger, Environmental Specialist, FAA, Air Traffic Division, 12 New England Executive Park, Burlington, MA 01803. Oral or written comments may also be given at the public hearing that will be held at the Veterans Memorial High School Auditorium/Cafeteria, 2401 West Shore Road, Warwick, RI.

FOR FURTHER INFORMATION CONTACT: Ms. Terry Flieger, 781–238–7524.

SUPPLEMENTARY INFORMATION: The FAA is making available the Draft Environmental Impact Statement (DEIS) for the following proposed action: the implementation of seven noise abatement departure procedures and one noise abatement arrival procedure including other associated noise compatibility program mitigation measures that were recommended in the T.F. Green Noise Compatibility Program Update. A Draft Environmental Impact Statement (DEIS) has been prepared and will be available for public review and comment. This document will be available 30 days prior to the April 12, 2000, hearing during normal business hours at the following locations:

T.F. Green Airport, 2000 Post Road, Warwick, RI 02886–1533
Warwick Town Hall, Clerk's Office, 3275 Post Road, Warwick, RI 02886
Cranston Town Hall, 869 Park Avenue, Cranston, RI 02910
Central Warwick Public Library, 600 Sandy Lane, Warwick, RI 02886
Apponaug Public Library, 3267 Post Road, Warwick, RI 02886
Cranston Public Library, 140 Socknest Cross Road, Cranston, RI 02920
Norwood Public Library, 328 Pawtuxet Avenue, Warwick, RI 02888
Conimicut Public Library, 55 Beach Avenue, Warwick, RI 02889

The purpose of the hearing is to consider the social, economic, and environmental effects of the proposed actions. During the hearing the public will be given an opportunity to present oral and/or written comments for the public record. This hearing is being held pursuant to the requirements of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and other laws as applicable.

Dated: February 25, 2000.

William C. Yuknewicz,

Acting Manager, Air Traffic Division, FAA, New England Region.

[FR Doc. 00–5355 Filed 3–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government/Industry Certification Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for RTCA Government/Industry Certification Steering Committee meeting to be held March 17, 2000, from 10:00 a.m. to 12:00 p.m. The meeting will be held at Federal Aviation Administration (FAA), 800 Independence Avenue, SW, Washington, DC 20591, in the Bessie Coleman Conference Center, Room 2AB (second floor).

Formation of the Certification Steering Committee is a follow-on initiative recommended in RTCA's Report of Task Force 4, Certification. The concept of the Certification Steering Committee is supported by the FAA and will provide a public advisory forum for developing consensus-based recommendations for implementing the opportunities identified by Task Force 4. The Task Force completed its work in 1999 and published its findings in the "Final Report of RTCA TASK FORCE 4, Certification." This report serves as a starting point for the Certification Steering Committee.

The Certification Steering Committee is Co-Chaired by Mr. Tom McSweeny, FAA Associate Administrator for Regulation and Certification and Mr. Clay Jones, President, Rockwell Collins. The Certification Steering Committee will function as a Federal Advisory Committee with all meetings open to the public.

The agenda will include: (1) Welcome and Introductory Remarks: (a) RTCA Certification Activity Structure and Procedures; (b) Review Steering Committee Charter; (2) Background: (c) Task Force Four (TF4) Recommendations; (3) Certification Select Committee: (d) Membership; (e) Terms of Reference and Proposal for Implementing TF4 Recommendations; (f) Working Group Organization and Work Plans; (g) Near Term Certification Improvement Goals; (h) Deliverables and Milestones; (4) Other Business; (5) Date and Location of Next Meeting; (6) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 28, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–5356 Filed 3–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No: MARAD–2000–6998]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel Ursa Major.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 5, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–6998. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001.

You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested: *Ursa Major*, owner: V. Joyce Gauthier

(2) Size, capacity and tonnage of vessel: 65 feet in length, 109 gross tons, 87 tons net. Tonnage calculated for full displacement deep V trawler hull at time of initial documentation in 1982.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Vessel will be used for six to twelve passenger charters for individuals interested in touring the areas of the Puget Sound and Alaska near coastal areas."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction 1972, place of original construction: hull in Norway, upper structures and interior in Malahide, County of Dublin, Ireland. Added information from the applicant: "Reconstruction and major refits: Vessel has remained under U.S. citizenship ownership since construction and has had extensive refitting, repowering, hull work, and interior work done at various northeast shipyards (1972 to 1978), Merrill Stevens Shipyard in Florida (1978 to 1992), Seaview East in Seattle (1999–2000 and future) and currently Brower Boat Inc. in Seattle (1999–2000 and future). Work in US shipyards since launch in 1972 exceeds a minimum of 5 times its original cost and fair market value (average 1978 to 1992 was > $100,000 per year per prior owner and shipyard; 1994 to 2000 > $300,000)."

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The Ursa Major will be joining her sistership, the Explorer, in providing custom yacht cruises in Pacific Northwest and Alaskan waters to promote the preservation of these classic full displacement wooden hulled North Sea Trawlers. Similar vessels, including sistership EXPLORER and Norwegian ROMSDAHL VIKING FJORD, have received congressional waivers of the coastwise trade laws for the purposes of doing charter cruises in Puget Sound and Southeast Alaska. These boats have provided access to the public to maritime environments for interested individual tour groups and offered quality maritime training to individuals seeking to gain skills of seamanship.

The URSA MAJOR will be commanded by Captain Mike Fleming, formerly of the VIKING FJORD. Captain Fleming has a degree in oceanography from the University of Washington. He is a retired career officer of the National Oceanographic and Atmospheric Administration (NOAA) of the Department of Commerce and is responsible for charting much of Southeast Alaska and Prince William Sound waters. He is a former Commander of NOAA coast and geodetic vessels. He is very sensitive to the cultural and biologic aspects of the areas in which we will be touring. He embodies the approach to trade and activity that the URSA MAJOR will project as a commercial operation. We will work with environmental groups and special needs groups to provide access to unique environments as customized cruises and promote the safe and responsible use of our marine environment. Studies have indicated the growth rate of cruise ship passengers booking to Alaska to increase at the rate of 20% per year over the last decade. This growth in Alaskan tourism leaves room for the entrance of additional small vessel operators without having measurable impact on existing operators. Due to the small size of these vessels and their low environmental impact they are often welcomed into areas and communities not accessible to larger ships. The small and highly individualized nature of this operation and the increasing public interest in these types of low environmental impact nature tours makes it unlikely that this will have significant negative impact on any major cruise programs or other commercial operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The URSA MAJOR has remained under private U.S. ownership as a recreational vessel throughout her life but is a perfect candidate for the near coastal trade waiver to allow her to support her own maintenance. As such, she will be available for enjoyment by the maximum number of individuals.

As noted in Item 4 on reconstruction and major refits, the URSA MAJOR has had over five times her original cost reinvested in her renovation at U.S. shipyards to date. At this point in time no commercial U.S. shipyard is involved in construction of 65-foot wooden yachts. Therefore, granting this exemption to URSA MAJOR will have no impact on new vessel construction while providing commercial viability for this boat will assure continued marine repair work. It would not be economically feasible to construct a vessel of this type due to the lack of many of the woods and skills needed to replace her. Appropriate repair skills exist for wooden boats of this type in the Puget Sound region. This vessel remains a fine example of wooden boat building skills of the world and would allow many interested shipwrights, both professional and amateur, the opportunity to learn from her construction, her history, and sense the pride in being involved in her repair and maintenance. Her commercial viability will assure quality maintenance of this vessel for decades to come. The URSA MAJOR is currently completing a refit lasting over the last six years. This has been done exclusively at commercial Seattle shipyards amounting to over her fair market value."

Dated: February 29, 2000.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–5345 Filed 3–3–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No: MARAD–2000–6999]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel Victory of Burnham.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with P.L. 105–383 and MARAD's regulations at 46 CFR 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 5, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–6999. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested: *Victory of Burnham*, Owner: Mr. Jay Scott.

(2) Size, capacity and tonnage of vessel: 44′ foot sailboat of 15 gross tons, 13 net tons, displacing 22,280 pounds measured by the United States Sailing Association. She will carry six passengers.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The intended use of this vessel is to provide sail racing and team building charters in Northeastern Florida, and Southeastern Georgia, specifically Amelia Island, Fl."

(4) Date and place of construction and (if applicable) rebuilding. The sailboat was built in Penryn, Cornwall, United Kingdom in 1981.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "I believe by granting this waiver it will have no impact on other charter boats in the area. The majority are fishing vessels and the few 6 passenger cruising/sightseeing vessels in the area do not offer racing or team building. Tourism has grown to such an extent on Amelia Island that there were not enough charter sailboats to keep up with the demand last year and some people had to be turned away."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "In reference to United States shipyards, the only impact would be positive, because of the following facts: I purchased *Victory of Burnham* in 1991 for $56,000. Since that time I have spent $45,000 on U.S. built spars, rigging, and sails, $21,000 at U.S. yards for rebuilding the hull, $2,000 for rebuilding the keel and $13,000 on U.S. made electronics."

Additional information supplied by the applicant: "*Victory of Burnham* has spent 19 of her 20 years in the United States. She served the United States Navy at the Naval Academy, for many years training Midshipmen. I would like to continue her tradition of team-building."

Dated: February 29, 2000.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–5346 Filed 3–3–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 27, 1999 (64 FR 57924–57925).

DATES: Comments must be submitted on or before April 5, 2000.

FOR FURTHER INFORMATION CONTACT: Gary R. Toth at the National Highway Traffic Safety Administration, Office of Research and Development (NRD–32), 202–366–5378. 400 Seventh Street, SW, Room 6213, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: National Automotive Sampling System (NASS) Crashworthiness Data Systems (CDS).

OMB Number: 2127–0021.

Type of Request: Extension of a currently approved collection.

Abstract: The National Highway Traffic Safety Administration (NHTSA), under the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89–563, Title 1, Sec. 106, 108, and 112). National Automotive Sampling System

(NASS) Crashworthiness Data Systems (CDS), NASS investigates high severity crashes. These descriptions and analyses in turn will help to describe the magnitude of vehicle damage and injury severity as related to traffic safety problems. It will give motor vehicle researchers an opportunity to specify areas in which improvements may be possible, design countermeasure program, and evaluate the effects of existing and proposed safety measures.

Affected Public: Motor vehicle researchers from state, local or tribal governments.

Estimated Total Annual Burden: 5,807

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on March 1, 2000.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–5357 Filed 3–3–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–6975; Notice 1]

Forest River, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Forest River, Inc., a recreational vehicle manufacturer in Goshen, Indiana, has estimated that shades furnished in 511 of their model year 2000 motorhomes [1] fail to comply with 49 CFR 571.302, Federal Motor Vehicle Safety Standard (FMVSS) No. 302, "Flammability of Interior Materials," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Forest River has also petitioned to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of a petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

The agency has assigned a Recall Campaign No. 99V–353 for this noncompliance case. FMVSS No. 302's paragraph S4.1 specifies shades, among others, as a component of vehicle occupant compartments, and that shades, therefore, shall meet the requirements of S4.3. Paragraph S4.3 specifies that when a component material is tested in accordance with paragraph S5, it shall not burn, nor transmit a flame across its surface, at a rate of more than 102 mm (4 inches) per minute. FMVSS No. 302's burn rate testing requires a 102 mm (4-inch) wide by 356 mm (14-inch) long sample, wherever possible (S5.2).

On January 12, 2000, Forest River voluntarily submitted a Part 573 Noncompliance Report and acknowledged that shades used in the affected vehicles do not comply with FMVSS No. 302. The conclusion was based on a one-sample test conducted on November 9, 1999. The test showed a 199 mm (7.84 inches) per minute burn rate which is a noncompliance with FMVSS No. 302. Forest River stated that it immediately corrected their production designs and that the new shades comply with FMVSS No. 302 as demonstrated by a new test conducted on November 24, 1999, showing a 0 mm (0 inch) per minute burn rate.

Forest River supports its application for inconsequential noncompliance with the following:

"1. The shades are not used in the driver/passenger area. They are used in the living portion only, which is behind the driver/passenger compartment.

2. FMVSS No. 302 does not apply to Traveltrailers, Fithwheels (sic) and Truck Campers with similar living areas. Some states do allow people to travel in them as well.

3. The total area of the shades represents a minimal area compared to the total interior surface area.

4. There has been no reports of problems or fires involving these shades. "

Based on above stated reasons, Forest River requested NHTSA to grant the inconsequentiality petition since the noncompliance represents a minimal potential for occupant injury due to interior fire. It also stated that because there have been no reports of fires involving the noncompliance shades, the noncompliance presents no reasonably anticipated risk to motor vehicle safety.

Interested persons are invited to submit written data, views, and arguments on the application of Forest River described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 5, 2000.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: February 29, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–5358 Filed 3–3–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on International Child Labor Enforcement

AGENCY: Department Offices, Treasury.

ACTION: Renewal of the Treasury Advisory Committee on International Child Labor Enforcement ("the Committee") and solicitation of applications for membership.

SUMMARY: The Treasury Department has determined that it is in the public interest to renew the Advisory Committee on International Child Labor Enforcement. The Department proposes to file a charter for an additional two-

[1] Affected vehicles include River Forest manufactured motorhomes (1) Sunseeker—models 230, 235S, 260, 280, 305S, 310; (2) Georgetown—models 265, 303, 306S, 320, 325S, 346S; (3) Windsong—models 325S, 326DS, 349S, 340S; and (4) Reflection—models 327S, 350S.

year term for the Advisory Committee by the expiration date of the current charter (June 22, 2000.) This notice establishes criteria and procedures for the selection of members for the next two-year term.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs ((202) 622–0220), or Mary Dinh, Research Assistant, Office of Tariff and Trade Affairs ((202) 622–9062), Office of the Under Secretary (Enforcement). Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. I (1962), the Under Secretary (Enforcement) renews the following advisory committee.

Title: The Treasury Advisory Committee on International Child Labor Enforcement.

Purpose: The purpose of the Committee is to present advice and recommendations to the Secretary of the Treasury regarding the enforcement of restrictions on the importation of merchandise manufactured in foreign countries using forced or indentured child labor.

Statement of Public Interest: It is in the public to renew, under the provisions of the Federal Advisory Committee Act, the Advisory Committee on International Child Labor Enforcement for an additional two-year term. The Committee provides a critical forum for distinguished representatives of non-governmental organizations, private businesses, trade associations, academia, and the public to present their views on enforcement of the import restrictions on merchandise manufactured overseas with forced or indentured child labor. These views are offered directly to senior Treasury and Customs officials on a regular basis in a candid atmosphere. There exists no other single body that could serve a comparable function.

SUPPLEMENTARY INFORMATION:

Background

Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) prohibits the importation of "goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions * * *." The prohibition is enforced by the United States Customs Service in accordance with the Customs Regulations, 19 CFR 12.42–12.48. A general provision in the Fiscal Year 1998 Treasury Appropriations Act made explicit that merchandise manufactured with "forced or indentured child labor" falls within the prohibition of Section 307, and also mandated that Customs not use any of the appropriation to permit the importation into the United States of such merchandise. The provision has been renewed annually.

In the last three State of the Union addresses, President Clinton pledged to fight abusive child labor. The Advisory Committee constitutes a partnership between Executive agencies, labor and human rights advocacy groups, industry representatives, and the public to promote effective enforcement of the law and to further the President's commitment to combat abusive child labor.

Objective, Scope and Description of the Committee

The Committee advises the U.S. Treasury Department, the U.S. Customs Service, and other Executive agencies, on measures to enhance the effectiveness of enforcement of the import prohibition on merchandise manufactured in foreign countries with forced or indentured child labor. Among other matters, the Committee assists in identifying specific information resources regarding, and avenues of productive inquiry into, prohibited child labor operations overseas. A major objective of the Committee is to share the expertise of private sector, specialists regarding methods of operation employed, and international trade channels used, by manufacturers and distributors of merchandise produced with forced or indentured child labor. The ultimate purpose of this combined effort is to support a vigorous laws enforcement initiative to stop illegal shipments of products of forced or indentured child labor and to punish violators.

Among other things, the Committee makes recommendations in the following areas. The Committee may consider additional governmental and non-governmental measures to prevent child labor imports. The Committee may recommend measures and furnish information that will assist the Executive agencies in establishing a vigorous outreach and educational program calling upon industries and individuals in the private sector to promote voluntary compliance with the child labor prohibition. During its first term, the Committee established a Subcommittee on Business Outreach for this purpose. The Committee may explore avenues for encouraging the cooperation of both foreign governments and foreign non-governmental organizations in nations where child labor is widely perceived to be a serious problem in order to enlarge the reach and effectiveness of U.S. enforcement efforts and resources.

Private sector members will be selected by the Secretary of the Treasury from persons with expertise in the subject of the use of child labor in foreign countries, particularly in the production of merchandise for international trade and/or who have commercial interests that may be affected by governmental enforcement measures. Members will be drawn from such organizations as labor rights, human rights, and child welfare groups; labor unions; affected private firms and trade associations; academic experts and others who possess relevant expertise and/or who represent affected constituencies. Appointments will be made with the objective of creating a diverse and balanced body with a variety of interests, backgrounds, and viewpoints represented. In general, there will be at least twelves private sector members and not more than twenty. The Committee has seventeen private sector members during its first term. Members currently serving on the Committee are eligible to apply for appointment. The Committee also will continue to include ex officio members from relevant government agencies and entities.

The Committee will be chaired by the Assistant Secretary of the Treasury for Enforcement who may designate another official to serve in his or her absence as Acting Chairperson for purposes of presiding over a meeting of the Committee or performing any other duty of the Chairperson. The Committee will function for a two-year period before renewal or termination. It will meet periodically, but generally not more than four times per year, at the Treasury Department in Washington. The Committee may elect to hold a meeting(s) at another location if there is a consensus that this would further the objectives of the Committee.

The meetings are open to public observers, including the press, unless special procedures have been followed to close a meeting. However, participation in the meetings is limited to members unless the Committee elects to hold a hearing or to hear presentations from nonmembers.

No person who is required to register under the Foreign Agents Registration Act as an agent or representative of a foreign principal may serve on an advisory committee. Members shall not be paid compensation nor shall they be considered Federal Government employees for any purpose. No per diem, transportation, or other expenses are reimbursed for the cost of attending Committee meetings at any location.

Membership on the Committee is personal to the appointee. Regular attendance is essential to the effective operation of the Committee. However, in the event of an unavoidable absence, a member may designate an alternate to represent him or her at a meeting.

Application for Advisory Committee Appointment

Any interested person wishing to serve on the Treasury Advisory Committee on International Child Labor Enforcement must provide the following:

—Statement of interest and reasons for application;
—Complete professional biography or resume.

In addition, applicants must state in their applications that they agree to submit to pre-appointment security and tax checks. There is no prescribed format for the application. Applicants may send a cover letter describing their interest and qualifications and enclosed a resume.

The application period for interested candidates will extend to April 7, 2000. Applications should be submitted in sufficient time to be received by the close of business on the closing date and be addressed to Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, Attention: CHILD 2000.

Dated: February 29, 2000.

John P. Simpson,

Deputy Assistant Secretary (Regional, Tariff and Trade Enforcement).

[FR Doc. 00–5361 Filed 3–3–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed IRS system of records, Disclosure Authorizations for U.S. Residency Certification Letters—Treasury/IRS 22.028.

DATES: Comments must be received no later than April 5, 2000. The proposed system of records will be effective April 17, 2000 unless comments are received that result in a contrary determination.

ADDRESSES: Comments should be sent to the IRS Freedom of Information Reading Room, 1621, at 1111 Constitution Avenue, Washington, DC 20224. Comments will be made available for inspection and copying. An appointment for inspecting the comments can be made by contacting the IRS Reading Room at (202) 622–5164 (this is not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Beth Ann Leshinski, Chief, International and Domestic Program Support at 215–516–7544.

SUPPLEMENTARY INFORMATION: The IRS is establishing the Disclosure Authorizations for U.S. Residency Certification system of records to maintain the taxpayer's authorization granting the IRS permission to send the U.S. residency certification or rejection letter to their designated third party (generally a financial institution authorized by the taxpayer). Since parts of this system are retrieved by individual identifier, the Privacy Act of 1974, as amended, requires a general notice of the existence of this system of records to the public.

This system will incorporate stringent controls to ensure full protection of the taxpayer's rights. The establishment of this system will save time, promote efficiencies within the IRS, and provide greater service to the public since it will reduce the flow of paper between the IRS, the financial community, and the taxpayer.

The IRS will maintain these authorizations to allow them to be used for up to 3 years instead of being discarded each time they are used. This would greatly reduce the number of "specific purpose" authorizations by the taxpayer as they pertain to the residency certification letters. Currently, the authorizations must be received within 60 days of the taxpayer's signature. The taxpayer can designate authorization up to 3 years on the form, but the IRS does not have any means to maintain this information. Since there is no established system of records that enables the IRS to maintain "specific purpose" authorizations, we are restricted in our ability to process the third-party requests without receiving a newly signed authorization yearly.

The proposed IRS system of records, "Disclosure Authorizations for U.S. Residency Certification Letters—Treasury/IRS 22.028," is published in its entirety below.

Dated: February 28, 2000,

Shelia Y. McCann,

Deputy Assistant Secretary, (Administration).

Treasury/IRS 22.028

SYSTEM NAME

Disclosure Authorizations for U.S. Residency Certification Letters.

SYSTEM LOCATION

Internal Revenue Service, Northeast Region, Philadelphia Service Center, 11601 Roosevelt Boulevard, Philadelphia, PA 19154.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Individuals and third parties who are subjects of correspondence and who initiate correspondence for disclosure authorizations for U.S. Residency Certification Letters. The correspondence may include any form of communications, including telephone calls, and e-mail.

CATEGORIES OF RECORDS IN THE SYSTEM

Records relating to the entity requesting certification, including taxpayer identification number, name and address, countries for which certification has been requested, and when applicable, business activity code; records relating to the designated entity authorized to receive tax information specific to the U.S. Residency Certification Letters, name, address, and number of years authorization has been granted.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

5 U.S.C. 301; 26 U.S.C. 7801 & 7802.

PURPOSE(S)

The records will enable the IRS to determine if there is a valid disclosure authorization to provide a third party with the Residency Certification Letter (Form 6166, Form 2297 or Form 2298) or related taxpayer information.

ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

Disclosure of returns and return information may only be made as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE

Electronic media, and/or hard copy media (paper).

RETRIEVABILITY

Records may be retrieved by the taxpayer's name, authorized individual or company name, and by the Taxpayer Identification Number (TIN).

SAFEGUARDS

Protection and control of the records are in accordance with the requirements of IRM 2(10), the Automated Security System Security Handbook, and IRM 1(16)12.

RETENTION AND DISPOSAL

Records are maintained in accordance with Records Control Schedule 206 for Service Centers, IRM 1(15)59.26. Records will be maintained up to 3 years. Hard copy and microfilm media will be disposed by shredding or incineration. Electronic media will be erased electronically.

SYSTEM MANAGER(S) AND ADDRESSES

Director, Philadelphia Service Center, Internal Revenue Service, Northeast Region, Philadelphia Service Center, 11601 Roosevelt Boulevard, Philadelphia, PA 19154.

NOTIFICATION PROCEDURE

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B.

RECORD ACCESS PROCEDURES

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Philadelphia Service Center Director. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES

See record access procedures above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES

Information supplied by the initiators of the correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM

None.

[FR Doc. 00–5365 Filed 3–3–00; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

Agency: United States Institute of Peace.

Date/Time: Thursday, March 16, 2000, 9:00 a.m.–5:30 p.m.

Location: 1200 17th Street, NW, Suite 200, Washington, DC 20036.

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public law 98–525.

Agenda: March 2000 Board Meeting; Approval of Minutes of the Ninety-Third Meeting (January 20, 2000) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Consideration of fellowship applications and individual Grants; Other General Issues.

Contact: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: March 1, 2000.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 00–5421 Filed 3–1–00; 4:04 pm]

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Corrections

Federal Register

Vol. 65, No. 44

Monday, March 6. 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–507–000]

Amoco Energy Trading Corporation, Amoco Production Company, and Burlington Resources Oil & Gas Company v. El Paso Natural Gas Company; Notice of Technical Conference

Correction

In notice document 00–4445, appearing on page 10067, in the issue of Friday, February 25, 2000, the docket line should appear as set forth above.

[FR Doc. C0–4445 Filed 3–3–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 309–Pennsylvania]

Pennsylvania Electric Co./GPU Genco; Notice of Meeting

Correction

In notice document 00–3762 appearing on page 8129 in the issue of Thursday, February 17, 2000, the docket number should read as set forth above.

[FR Doc. C0–3762 Filed 3–3–00; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Northern States Power Company; Monticello Nuclear Generating Plant; Notice of Consideration of Approval of Transfer of Operating Authority Under Facility Operating License and Conforming Amendment, and Opportunity for a Hearing

Correction

In notice document 00–3517 beginning on page 7574 in the issue of Tuesday, February 15, 2000, make the following correction:

On page 7574, in the third column, the second full paragraph, the third line, "March 18, 2000" should read "March 16, 2000".

[FR Doc. C0–3517 Filed 3–3–00; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306; Docket No. 72–10]

Northern States Power Company; Prairie Island Nuclear Generating Plant, Units 1 and 2, and Prairie Island Independent Spent Fuel Storage Installation; Notice of Consideration of Approval of Transfer of Operating Authority Under Facility Operating Licenses and Materials License and Conforming Amendments, and Opportunity for a Hearing

Correction

In notice document 00–3518 beginning on page 7574 in the issue of Tuesday, February 15, 2000, make the following correction:

On page 7575, in the third column, the second full paragraph, the third line, "March 18, 2000" should read "March 16, 2000".

[FR Doc. C0–3518 Filed 3–3–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42403; File No. SR–CHX–99–08]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Access to an After-Hours Trading Session

February 7, 2000.

Correction

In notice document 00–3436 beginning on page 7581, in the issue of Tuesday, February 15, 2000, make the following correction:

On page 7581, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C0–3436 Filed 3-3-00; 8:45 am]

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Federal Register

Monday,
March 6, 2000

Part II

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Initiative for Future Agriculture and Food Systems, FY 2000; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Initiative for Future Agriculture and Food Systems, FY 2000

AGENCY: Cooperative State Research, Education and Extension Service

ACTION: Notice of Request for Proposals and Request for Input

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) announces the availability of grant funds and requests proposals for the Initiative for Future Agriculture and Food Systems Program (IFAFS) for fiscal year (FY) 2000 to support competitively awarded research, extension and education grants addressing key issues of national and regional importance to agriculture, forestry, and related topics. The amount available for support of this program in FY 2000 is approximately $113,400,000.

This notice sets out the objectives for these projects, the eligibility criteria for projects and applicants, the application procedures, and the set of instructions needed to apply for an IFAFS grant under this authority.

By this notice, CSREES additionally solicits stakeholder input from any interested party regarding the FY 2000 IFAFS for use in development of any future requests for proposals for this program.

DATES: Proposals must be transmitted by May 8, 2000, as indicated by postmark or date on courier bill of lading. Proposals transmitted after this date will not be considered for funding. Comments regarding this request for proposals are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

ADDRESSES: The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Initiative for Future Agriculture and Food Systems; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024.

Proposals sent via the U.S. Postal Service must be sent to the following address: Initiative for Future Agriculture and Food Systems; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245.

Written user comments should be submitted by first-class mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299; or via e-mail to: RFP-OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year of the RFP to which you are responding.

FOR FURTHER INFORMATION: Applicants and other interested parties are encouraged to contact the Program Director listed in the program areas found in the Program Area Description section below; or Dr. Rodney Foil, Director IFAFS, Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2242; 1400 Independence Avenue, S.W. Washington, D.C. 20250–2242; telephone: (202) 401–5022; email: rfoil@reeusda.gov; or Dr. Cynthia Huebner, Assistant Director IFAFS, at the same address; telephone: (202) 401–4114; email: chuebner@reeusda.gov.

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Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of any future RFP for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(c)(2). This section requires the Secretary to solicit and consider input on a current RFP from persons who conduct or use agricultural research, education and extension for use in formulating future RFPs for competitive programs. Comments should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this Notice.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under 10.302, Initiative for Future Agriculture and Food Systems.

Part I—General Information

A. Legislative Authority and Background

Section 401 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7621) established in the Treasury of the United States an IFAFS account and authorized the Secretary of Agriculture to establish a research, extension, and education competitive grants program to address critical emerging agricultural issues related to (1) future food production, (2) environmental quality and natural resource management, or (3) farm income. Grants are to be awarded that shall address priority mission areas related (a) Agricultural genome, (b) Food safety, food technology and human nutrition, (c) New and alternative uses and production of agricultural commodities and products, (d) Agricultural biotechnology, (e) Natural resource management, including precision agriculture, and (f) Farm efficiency and profitability, including the viability and competitiveness of small- and medium-sized dairy, livestock, crop, and other commodity operations. Priority is to be given to projects that are multistate, multi-institutional, or multidisciplinary or projects that integrate agricultural research, extension and education.

Subject to the availability of funds to carry out this program, the Secretary may award grants to Federal research agencies, national laboratories, colleges and universities or research foundations maintained by a college or university, or a private research organization with an established and demonstrated capacity to perform research or technology transfer. Grants also may be awarded to ensure that faculty of small and mid-sized institutions that have not

previously been successful in obtaining competitive grants under subsection (b) of the Competitive, Special, and Facilities Research Grant Act (7 U.S.C. 450i(b)) (*i.e.*, the CSREES National Research Initiative Competitive Grants Program) receive a portion of the IFAFS grants. Grants are to be awarded to address priorities in United States agriculture that involve research, extension, and education activities as determined by the Secretary in consultation with the National Agricultural Research, Extension, Education, and Economics Advisory Board; and stakeholders through a public meeting held in July of 1998.

B. Purpose, Priorities and Fund Availability

The purpose of the IFAFS is to support research, education and extension grants that address critical emerging agricultural issues related to (1) future food production, (2) environmental quality and natural resource management, or (3) farm income.

In awarding IFAFS grants, priority will be given to projects that are multistate, multi-institutional, or multidisciplinary or projects that integrate agricultural research, extension and education. Integrated projects hold the greatest potential to produce and transfer knowledge directly to end users, while providing for educational opportunities to assure agricultural expertise in future generations. The IFAFS also holds great opportunity to bring the agricultural knowledge system to bear on issues impacting small and mid-sized producers and land managers, thus enabling improvements in quality of life and community. In support of the agency's goal to enhance the competitiveness of U.S. agriculture, consideration will also be given to projects (with U.S. institutions as the lead) that incorporate an international dimension with demonstrable domestic benefits.

IFAFS is distinct from other CSREES programs because of its priority on integration of research, extension, and education; its consideration of the concerns of small and mid-sized operations; its emphasis of agricultural production issues; and its goal to support relatively large projects that provide more intensive support to the research, extension, and education system.

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Approximately $113,400,000 is available in FY 2000 for programs within the IFAFS for the following priority areas: Agriculture Genome and Agricultural Biotechnology ($32,800,000); Food Safety, Food Technology, and Human Nutrition ($23,600,000); New and Alternative Uses and Production of Agricultural Commodities and Products ($9,400,000); Natural Resource Management, including Precision Agriculture ($28,400,000); and Farm Efficiency and Profitability, Including the Viability and Competitiveness of Small-and Medium-sized Dairy, Livestock, Crop, and Other Commodity Operations ($18,900,000). Funds available for each priority area are targets. The number and quality of applications, as well as the need to reach programmatic goals, may necessitate the movement of funds between priority areas.

Funds will be made available to small or mid-sized academic institutions that have not been previously successful in obtaining competitive grants under the National Research Initiative Competitive Grants Research Program.

The program areas described herein were developed within the context of the authorized purposes of both USDA research, extension, and education (7 U.S.C. 3101) and IFAFS (7 U.S.C. 401), within the framework of the CSREES Strategic Plan (Available at www.usda.gov/ocfo/strat/ree.pdf) and based on stakeholder input.

C. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable:

(1) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved may be delegated.

(2) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) *Authorized organizational representative* means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(4) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) *Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(6) *Department* or *USDA* means the United States Department of Agriculture.

(7) *Education activity* means an act or process that imparts knowledge or skills through formal or informal schooling.

(8) *Extension activity* means an act or process that delivers research-based knowledge and educational programs to people, enabling them to make practical decisions.

(9) *Grant* means the award by the Secretary of funds to an eligible organization or individual to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in these guidelines.

(10) *Grantee* means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

(11) *Integrated* means to bring together the three components of the agricultural knowledge system (research, education and extension) together around a problem area or activity.

(12) *Matching* means that portion of allowable project costs not borne by the Federal Government, including the value of in-kind contributions.

(13) *National laboratories* include Federal laboratories that are government-owned contractor-operated or government-owned government-operated.

(14) *Peer review* is an evaluation of a proposed project for scientific or technical quality and relevance performed by experts with the scientific knowledge and technical skills to conduct the proposed work or to give expert advice on the merits of a proposal.

(15) *Principal Investigator/Project director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

(16) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (2) above.

(17) *Private research organization with an established and demonstrated capacity to perform research or technology transfer* means any non-governmental corporation, partnership, proprietorship, trust, or other organization that (1) conducts any systematic study directed toward new or fuller knowledge and understanding of the subject studied, or (2) systematically relates or applies the findings of

research or scientific experimentation to the application of new approaches to problem solving, technologies, or management practices; and (3) has facilities, qualified personnel, independent funding, and prior projects and accomplishments in research or technology transfer.

(18) *Project* means the particular activity within the scope of the program supported by a grant award.

(19) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(20) *Research activity* means a scientific investigation or inquiry that results in the generation of knowledge.

(21) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

(22) *Small and Mid-Sized Institutions* means academic institutions having an enrollment of 15,000 or fewer (including part-time students), and that are no higher than the 50th percentile of academic institutions funded by the National Research Initiative Competitive Grants Program in the past three years and are not within the top 100 Federally funded institutions. (See Appendix A.)

(23) *Third party in-kind contributions* means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefitting and specifically identifiable to a funded project or program.

D. Eligibility

Proposals may be submitted by Federal research agencies, national laboratories, colleges or universities or research foundations maintained by a college or university, or private research organization with an established and demonstrated capacity to perform research or technology transfer. Eligible applicants may subcontract to organizations not eligible under these requirements.

E. Matching Requirements

If a grant provides for applied research that is commodity specific and not of national scope, the grant recipient is required to provide funds or in-kind support to match the amount of Federal grant funds provided.

F. Restrictions on Use of Funds

1. Funds for Buildings and Facilities

IFAFS funds may not be used for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

2. Funds for Human Cloning

In accordance with the President's Memorandum of March 4, 1997, regarding the use of Federal funds for the cloning of human beings (33 Weekly Comp. Pres. Doc. 278), IFAFS funds shall not be used to support, fund, or undertake any cloning activity that could lead to the creation of a new human being with genetic material identical to that of another human being, including research related directly thereto. The prohibition on use of grant funds to "support" human cloning activity includes using, or making available for use, grant-funded equipment for use in connection with human cloning. This ban does not restrict research into the cloning of plants, animals, or individual human cells that cannot develop into a new human being.

Part II—Program Description

A. Types of Projects to be Supported

1. Consortia

Dependent on the merits of proposals received, no less than thirty percent of the total available IFAFS funds will be used for support of consortia. Consortia are entities that may involve multiple states and/or institutions that conduct research; synthesize previous, ongoing and future research; develop curricula and build educational and research capacity; and transfer information to producers, end users, and the public. All IFAFS consortia will be expected to address the needs of agricultural research, extension and education that cannot be addressed through the funding of separate efforts. It is the intent of CSREES to promote collaboration, open communication, exchange of information and resources, and integration of activities among individuals, institutions, states or regions. Consortia should minimize isolation and over-competitiveness, reduce duplication of efforts, and provide an accessible source of expert information, technology, and education upon which the public can draw.

Consortia may be organized around a particular topic or they can be geographically based. Geographically-defined consortia applicants must address the interaction of the problems most relevant to a particular region using a systems-oriented, landscape-scale approach. In contrast, topic-based consortia should focus on a single issue (e.g., minority land ownership or functional foods) that may be of nationwide or regional interest. For either consortium type, an explanation also must be provided for why such an entity has more potential for success than several smaller grants. Requested funds for individual consortia proposals can range between $1–5 million for the total duration of four years. CSREES expects that relatively few grants will be supported at the higher end of this range. The amount requested must be commensurate with the activities proposed.

A designated lead institution of each consortium will administer funds and be responsible for overall management of activities. The proposal must include how the administration of the grant within the consortium will be achieved and monitored. Plans for how each consortium will be maintained and monitored for progress during and beyond the duration of the grant should also be included in the proposal. Consortia proposals will be evaluated on both administrative and monitoring procedures as well as on the merit and likelihood of success of the overall project.

2. Standard

Dependent on the merits of proposals received, no less than thirty percent of the total available funds will be used for standard grants. Standard projects are expected to address research, extension and education in a focused project. Requested funds for individual standard proposals cannot exceed a total request of $1 million for a duration of four years. The amount requested must be commensurate with the activities proposed; support for very large requests of funds will be highly competitive. Standard projects will be encouraged to coordinate with IFAFS-funded consortia pertinent to their project focus.

Dependent on the merits of proposals received, CSREES will ensure that a portion of either consortia or standard grants will be awarded to proposals in which the lead institution (recipient of the Federal funds) is a small- or mid-sized institution (as defined in Part I., C. Definitions). Other institutions or organizations involved in small- and mid-sized institution eligible projects need not meet the criteria described in the definition of a small and mid-sized institution.

B. Program Area Description

1. Agricultural Genomics (Program Area 10.0)

The IFAFS seeks to sponsor integrated research, education and extension programs in plant, animal and microbe genomics and the development of bioinformatic tools with specific applications to agricultural challenges.

A more complete understanding of the entire complement of genes in agriculturally relevant plants, animals and microbes is imperative. More knowledge in this area will have a major impact on the ability of the United States to produce nutritious and safe food, while preserving the environment and sustaining the economic stability of the agricultural enterprise. Greater efforts aimed at identifying, mapping and understanding the function and control of genes responsible for economically important traits in agriculturally important species of plants, animals and microbes are needed. Such efforts will lead to the development of new genetic technologies for improvements in yield, pest and pathogen resistance, and the composition, quality, and safety of U.S. agricultural products.

New bioinformatic and computational biology tools are needed to analyze, interpret and utilize the vast amounts of data that will be generated by genomic research in agriculturally important species. CSREES expects that bioinformatics will be an integral component of any project funded under this Agricultural Genomics program. CSREES is also interested in funding integrated projects primarily dedicated to the research and development of bioinformatics tools and education programs, hence a separate sub-area in bioinformatics. Prospective applicants who are primarily interested in working on a particular plant, animal or microbial system should address their projects to the relevant section. Those primarily interested in developing bioinformatics tools, software, and training programs should address their proposal to the sub-area on Bioinformatics.

All agricultural genomics grant recipients are strongly encouraged to attend or present at an annual grantee workshop that will occur at a date and time to be determined.

Investigators are expected to explain clearly how the ownership of information and research materials and their public release will be handled. Rapid and unrestricted sharing of genomic sequence data is essential for advancing research on agriculturally important species. Early release of unfinished sequence has already proven useful in accelerating the pace of experimental discovery in non-agricultural fields, such as human health, energy production and bioremediation. At the same time, CSREES recognizes that it also is necessary to allow investigators time to verify the accuracy of their data and to accomplish the goals proposed in their application, which often includes the assembly and annotation of the sequence data.

In addition to the general data release procedures above, applications for support of genome sequencing projects must include a detailed description of the data release plan. Timely release is strongly encouraged in recognition of the benefits to the broader research community. Release should be accompanied by appropriate information on the reliability of the data (e.g., level of coverage and extent of assembly, extent of contamination with vector and other sequences, statistical measures of accuracy). At a minimum, it is anticipated that sequence data will be released within one month after 3X coverage of the genome (or chromosome for eukaryotic organisms) is achieved. The released data should be provided as assemblies of equal to, or greater than, one kilobase contigs. Subsequent releases of assembled sequences should be provided at least on a monthly basis.

In the view of some, raw genomic sequences, in the absence of additional demonstrated biological information, lack demonstrated utility and therefore are inappropriate for patent filing. Patent applications on large blocks of primary genomic sequence could stifle future research and the development of future inventions of useful products. However, according to the Bayh-Dole Act, the grantees have the right to elect to retain title to subject inventions and are free to choose to apply for patents should additional biological experiments reveal convincing evidence of utility. CSREES grantees are reminded that the grantee institution is required to disclose each subject invention to CSREES within two months after the inventor discloses it in writing to grantee institution personnel responsible for patent matters.

10.1 Plant Genome. (For clarification on this sub-area, contact the Program Director, Liang-Shiou Lin, at 202–401–5042, e-mail: llin@reeusda.gov or Gail Mclean, at 202–401–6060, e-mail: gmclean@reeusda.gov.)

Research in plant genomics has advanced rapidly in the past few years, and the entire genomic sequences of Arabidopsis and rice will be determined and annotated in the near future. Knowledge of these sequences will provide basic information on the genes in a flowering plant species. While genomic tools and resources are currently available for plant research, they will need to be improved and expanded. Additionally, genomic resources will need to be developed for other economically important plant species. Furthermore, if genomic information is to be applied to plant improvement, more research is needed to determine the function of gene sequences.

The IFAFS Plant Genome Program sub-area will support projects that advance our knowledge of the structure, organization and function of agriculturally important plant genomes. The investment in plant genomics will expand the efforts of the National Plant Genome Initiative (NPGI) coordinated under the National Science and Technology Committee (NSTC) Plant Genome Program. Participating research agencies of the NSTC effort include USDA, the Department of Energy (DOE), the National Institutes of Health (NIH), and the National Science Foundation (NSF).

Examples of education and extension components pertinent to this sub-area include training of graduate and undergraduate students, postdoctoral associates, and/or colleagues (through classes, seminars, workshops, sabbaticals) in the use of genomic resources or outreach to the community through informational seminars and classes on the benefits and methods of genomic research. Wherever appropriate, investigators are encouraged to develop national and international collaborations with research groups already working on the species of interest to maximize the use of structural and functional genomic resources. Collaborations with private industry that have made a significant investment in the species are also encouraged to avoid unnecessary duplication of effort.

Proposals must address one of the two specific topic areas below:

(a) *Development of genomic tools and resources for plant species important to agriculture or forestry.* Collaborative large-scale structural genomics projects are now underway for plants of national and international interest including barley, canola, corn, cotton, lettuce, loblolly pine, peach, potato, poplar, rice, sorghum, soybean, sunflower, tomato, and wheat. Some of these projects have already provided or will soon provide the agricultural research community with genetic and physical maps, ESTs, libraries, and mutant populations. In contrast, genomic tools

and resources for most horticultural crops and forest tree species have not been developed to a comparable extent. Thus, high throughput genomic approaches to understand genome structure and organization of economically important horticultural, (including fruit and vegetable crop species and ornamental plants relevant to U.S. agriculture), and forest plants, will be given high priority, particularly those plants that have not been the focus of major study. However, proposals that extend or complement ongoing research on agricultural plants already under study will be considered; potential research areas include characterization of gene-rich regions of complex cereal genomes, synteny of cereal genomes with rice, and mapping and sequencing under-methylated regions in combination with EST sequencing.

(b) *Functional analysis of the rice genome.* The US is a participant in the international project to sequence the genome of rice. The rice sequence will provide an understanding of genes important to plant growth and productivity, such as those coding for disease and stress resistance, seed development, grain-quality traits, carbon allocation, flowering time, biomass production, and synthesis of compounds valuable for production of fuels and other useful chemicals. Rice is a model system to study because it has a relatively small genome (est 430 Mb), is diploid, is readily transformable and has tractable genetics that include diverse germplasm. These studies in rice will also provide a set of molecular tools to leverage sequence in syntenic species such as maize, wheat, barley, oats, sorghum, and sugarcane. These attributes, in addition to its role as a major food source for the majority of the worlds population, makes rice a model for cereal crop genomics.

To build on the sequencing effort now underway, this program area will support rice functional genomic studies that seek to uncover the function of all genes by relating a mutant phenotype with sequence information. Examples of approaches include gene tagging, proteomics, microarrays, and development of knockout lines. Projects are encouraged to be multi-institutional and multi-disciplinary and include collaborations with researchers who can recognize gene mutations affecting the plant life cycle, such as molecular biologists, bioinformaticians, geneticists, pathologists, and physiologists. Collaborations with international programs is appropriate but the lead institution must be from the US. In addition, this program will also support projects in rice to produce and make publicly available, informative strains and sequences of rice to the international research community; and to develop a public database to consolidate information on mutagenized populations and phenotypic information about mutants characterized.

10.2 Animal Genome. (For clarification on this sub-area, please contact the Program Director, Peter Brayton, at 202–401–5044, e-mail: pbrayton@reeusda.gov.)

There have been substantial efforts in gene mapping of agriculturally important animal species during the past few years. This effort, coupled with recent advances in gene discovery, defining molecular sites on the chromosomes (such as microsatellites), and the development of more sophisticated bioinformatics, has resulted in gene maps with varying density for animal species. Generally, the gene maps have advanced sufficiently that they can begin to be used for marker-assisted selection of progeny and to begin the process of defining genes that control complex traits of economic importance, such as milk production, growth, litter size and disease resistance; however, map densities for some species are far below what is considered optimal for practical application.

This program will emphasize: defining and mapping functional genes through analysis of ESTs, the development of high density comparative gene maps across animal species, identification and mapping of genes affecting traits of economic importance, and development of strategies to effectively use genomic information to enhance genetic improvement of agriculturally important animal species. A considerable degree of linearity in gene order and chromosomal synteny occurs across species. Consequently, the soon-to-be-completed sequencing of the human and mouse genomes will allow reasonable predictions about gene location and relative order without sequencing entire genomes of agricultural animal species. By emphasizing the functional genomics of agriculturally important traits, this program will use information already obtained from other genomic efforts to advance U.S. agriculture in the most cost-effective and expedient manner. Education programs are also needed, not only to apply genomic information effectively, but also to promote understanding of the genomic technologies to all sections of the population, including producers and agricultural professionals.

Proposals are solicited that address one or more of the following areas in animal genomics: (a) develop high density comparative gene maps, which include human and mouse, across agricultural animal species (cattle, sheep, swine, horses, poultry species and aquaculture species); (b) develop high throughput methods for monitoring gene expression in response to environmental stimuli; (c) conduct quantitative trait loci (QTL) analysis and marker assisted selection on large populations of agricultural animals, which may include detailed mapping and sequencing of those loci controlling or having a major effect on economically important traits; (d) develop bioinformatic software to facilitate comparative gene mapping; and (e) develop education programs on new developments in agricultural animal genome research for outreach to producers and students.

10.3 Microbe Genomics. (For clarification of this sub-area, contact the Program Director, Ann Lichens-Park, at (202)–401–6466; e-mail: apark@reeusda.gov.)

Microorganisms dominate the planet in terms of total mass, species diversity, and metabolic range. They include not only pathogens, but also microbes that are beneficial to higher organisms. Many are of enormous present and future economic value. Although genomic information in itself is only a sequence of bases, it provides a framework for understanding how the organism functions and lives. This knowledge can be used to understand why an organism may be pathogenic or beneficial to a plant or animal, or how its properties might be exploited in metabolic engineering, bioremediation, development of sensitive and specific diagnostic tools, improved treatments and preventatives, or more effective vaccines. Knowledge of the genomes of microorganisms is expected to be the driving force for research in the life sciences, including agriculture, forestry, and food safety, over the next quarter century.

This program is designed primarily to encourage competitive research grant applications in support of high-throughput sequencing of genomes of microorganisms (including bacteria, fungi, mollicutes, and protozoa) that are important to the productivity and sustainability of agriculture and forestry, and to the safety and quality of the nation's food supply. This integrated program will provide whole genome sequence data and mapping information on microorganisms that have an impact on agriculture, and extension and education programs to apply this

knowledge to agricultural challenges. Sequencing proposals also should incorporate an education or extension component within the scope of the project to provide a more holistic approach to the problem. Education or extension components may focus on genomics technology or on computational biology and informatics.

It is recognized that complete genome coverage with no gaps is the most desirable end-point for whole genome sequencing. However, agriculturally relevant microbes encompass a sizable number of microorganisms relevant to animals, plants, and natural resources. To date, very few agricultural microbes have been, or are in the process of being, sequenced. Consequently, agriculture lags far behind other fields, such as human health and energy production, with respect to microbial genomics. For this reason, this program encourages investigators to attempt lower level (*e.g.*, 3X—5X) coverage to provide data on multiple organisms. In this manner, the amount of information will be maximized, the program jump-started, and the funds spread across several areas relevant to agriculture. A larger community of agricultural researchers will be able to benefit quickly from the data that are produced.

As a longer term goal, the program will likely request full genome coverage of several (or all) of these organisms. Therefore, to the extent consistent with the Bayh-Dole Act, investigators must plan to make available to the scientific community, upon request, the strains or isolates used, high quality genomic DNA from the organism, and an appropriate set of verified clones developed during the course of the sequencing project. Either a cost-recovery system or use of a commercial repository is permissible, provided that the plan is outlined in the proposal, with an appropriate budget. These reagents should be made available for a minimum of five years.

Note, however, that for smaller genomes, or genomes that may already be sequenced with low coverage, it is acceptable to propose sequencing with high level coverage (*e.g.* 10X) as long as the total budget is within the limits outlined in the awards subsection.

Choices of organism will be open to those whose sequences are not already being made publicly available. Examples might include high priority pathogens of animals (*e.g.*, Mycobacterium paratuberculosis, Pasteurella haemolytica, Lawsonia intracellularis, Eimeria spp.), plants (*e.g.*, Pseudomonas syringae, Erwinia spp., Clavibacter spp., Aspergillus spp.), or of food-borne origin (*e.g.*, Yersinia enterocolitica). Choices might also include beneficial/useful organisms such as ones from soil (*e.g.*, Rhizobium spp., Methylobacterium extorquens, Pseudomonas spp.) or rumen (*e.g.*, Fibrobacter succinogenes, Ruminococcus albus). Microorganisms relevant to aquaculture species and horses are included, along with microorganisms of animals raised for food and fiber. By the time this solicitation is released, it is possible that the sequencing of one or more of these example organisms may already be funded for the public domain; inclusion here does not automatically guarantee a high priority for sequencing.

Clearly, a large number of microorganisms fit this broad criterion of relevance, and in this solicitation it is not the intention of CSREES to dictate which organisms should be sequenced. Rather, the choice of organism(s) will be left to the applicant(s) who must justify selection(s) and address all of the following criteria:

(a) Economic importance and relevance to U.S. agriculture;

(b) Avoidance of organism strains whose sequences are already being targeted by others, unless this information will not be in the public domain. To help assess the current sequencing status for particular microorganisms, applicants are strongly encouraged to visit websites that summarize completed and on-going sequencing projects. For example, the following URL sites may prove useful: http://www.tigr.org/tdb/mdb/mdb.html; http://www.doe.gov/production/ober/EPER/mig_cont.html; http://www.niaid.nih.gov/dmid/genomes/default.htm; http://www.sanger.ac.uk/Projects/; http://www.genome.wisc.edu; http://www.genome.wustl.edu/gsc/index.shtml;

(c) Unique biological or environmental features;

(d) Broad interest to a significantly sized community of scientists or agriculturalists;

(e) Genetic tractability, *i.e.* the ease with which genetic studies, such as crosses, genome modifications etc. can be performed;

Two additional criteria (position in the taxonomic tree and evolutionary significance) might also be addressed if these are considered relevant to the choice of organism. Also, it is realized that some organisms may be of profound agricultural importance but not easily cultured or subjected to genetic analysis, and therefore are strong candidates for sequencing.

Protozoa, fungi and some bacteria have relatively large genomes, not easily completed under the support of a single grant. Therefore, requests for partial funding of a genome are allowable as long as future plans for completing the work are outlined. In these instances, investigators are encouraged to seek partners, in either the form of consortia or support from other sources, so that the sequence can be completed in a reasonable time-frame. As long as the goals and limits of the individual projects are clearly addressed and relevant to agriculture, such cooperative projects are encouraged, as are international collaborations. The expected outcome of the project will be a high quality sequence, much or all of it contiguous, with annotation of open reading frames and deposit in a publicly accessible data base. Additionally, for eukaryotic organisms, applications may propose large-scale EST projects. For these larger genomes, applicants should indicate the status of efforts supported by other funding agencies and how these efforts would be coordinated with a USDA-funded activity.

Investigators are to provide detailed information on the organism(s) chosen, the method of library preparation and all other pertinent methodological information. Mechanisms to assess validity and accuracy of the data must be described in the proposal. All cloning and sequencing technologies/strategies, particularly ones that are novel, should be described and must be applicable to future efforts to expand coverage. In judging the merits of a proposal, the speed, level of accuracy, and cost effectiveness of the proposed work will be important issues and considered one of the evaluation criteria under this program. The number of bases to be sequenced per unit time and an estimate of the dollars required to produce a specific amount of base sequence must be calculated. The latter value should include the costs of generating clones, assembly of sequence and annotation, as well as true sequencing costs.

10.4 Bioinformatics. (For clarification of this topic area, contact the Program Director, Gail Mclean, at 202–401–6060, e-mail: gmclean@reeusda.gov.)

The vast amounts of data being generated by genomic research only will be of use to plant, animal and microbial improvement and protection if technologies are developed to efficiently utilize genomic sequence, gene maps and gene function information. In addition, new cadres of scientists must be trained in the use of these technologies. The science of bioinformatics and computational biology, which includes the methods by which genomic data can be sorted,

categorized, and used most effectively, must be improved. Because of the interdisciplinary nature of genomic science, bioinformatic research provides an ideal opportunity for a range of scientists, including engineers, computer scientists, chemists, and biologists, to work together in a collaborative environment. This program seeks to support proposals to develop new bioinformatics technologies, to apply existing technology from the human genome and other genomic projects to agricultural genomics, and to provide training for the enhancement of future human capital with expertise in bioinformatics and computational biology.

This sub-area will help to develop new bioinformatic tools with specific application to agricultural systems and to train scientists in the theory, computational implementation and biological application of the information sciences (including computer science, statistics and mathematics) for the improvement of animal, plant and microbial species of agricultural importance.

Successful applicants to this program will develop an interdisciplinary program which combines research and education or extension activities. Projects may involve experts in computer science, software engineering, genomics, genetics, plant, animal, or microbial improvement, or related sciences as well as individuals with an interest in the development of education and training programs in bioinformatics and computational biology.

Applicants to this program should address technological and knowledge gaps in the development of bioinformatics tools specifically related to plant, animal or microbial genomic data. Research should include but is not limited to the development of: (a) software, algorithms, and database management techniques for the rapid cataloging and access of genomic data, including improved content and utility, improved communication among databases and greater linkages between genomic and phenotypic data; (b) analytical computation tools for the analysis of genomic sequence data for predicted gene function, modeling of biochemical pathways in plant and animal systems, map generation, and statistical techniques for the identification of genes of traits needed to improve the productivity of agriculturally important plant and animal species; and (c) computational applications for capturing, displaying and analyzing information about sequence variation, which will allow for greater accessibility of plant, animal and microbial genomic data for improvement and protection.

Successful proposals will also include a strong focus on bioinformatics training. Training programs should address the current gap in the availability of professionals trained in both plant, animal, and microbe improvement and bioinformatics. Evidence of infrastructure which encourages or enables the interaction of biologists and computational scientists must be evident in the proposal. Approaches to training may include, but are not limited to: (a) the development of courses at the undergraduate and graduate level in bioinformatics/computational biology; (b) programs which include summer institutes, short courses, sabbaticals or training centers designed to educate and train faculty and or graduate students in bioinformatics; (c) development of training modules for agricultural professionals, such as certified crop advisors, farm managers, etc., in the use of genomic data in plant and animal improvement; or (d) development of secondary education science teaching modules to introduce young students to the bioinformatic/computational biological sciences.

2. Agricultural Biotechnology (Program Area 11.0)

The application of biotechnology to agriculture has great potential for supplying the world with food and fiber in a sustainable manner. This technology is expected to increase productivity of existing farmlands while reducing the negative environmental effects of traditional production methods by reducing the need for antibiotics, fertilizers, herbicides, hormones, and pesticides. Biotechnology may also facilitate development of products with improved nutritional and economic benefits, or products with novel food, agricultural, or industrial uses.

Successful application of this technology to food and agriculture requires a sufficient level of consumer acceptance of biotechnology-derived products to provide economic incentive to product developers. Consumer acceptance is currently affected by doubts about biotechnology in food and agriculture. Research and education focusing on reducing present and predicted risks associated with agricultural biotechnology will aid in alleviating public concerns. Mechanisms for increasing public awareness of the benefits, as well as the risks, of biotechnology-derived products are needed to provide consumers and policymakers with the facts they need to make informed decisions about production and trade of biotechnology-derived foods and products.

This program area will support research, extension, and education activities that address public questions and concerns about agricultural biotechnology. High priority will be given to projects that integrate these three activities. Supported activities will advance this goal by assessing and reducing present and anticipated risks associated with products derived through biotechnology, and by maximizing knowledge and understanding of both risks and benefits accrued to the public by these products.

11.1 Effects Agricultural Biotechnology on Human, Animal and Plant Health. (For clarification of this program area, contact the Program Directors, Dan Jones at (202) 401–6854; email: ddjones@reeusda.gov; or Deborah Sheely at (202) 401–1924, e-mail: dsheely@reeusda.gov.)

Research, extension, and education activities regarding the effects of genetically modified (GM) food on human, animal, and plant health, include but are not limited to: (a) approaches for anticipating, detecting, and managing allergenicity in new GM products; (b) the role of GM products in the development of antibiotic resistance; (c) secondary metabolite formation and how this may affect food and feed; (d) changes in bioavailability of essential nutrients; (e) development of new and enhanced testing and evaluation methods of biologically modified products that ensure human and animal safety; (f) techniques to minimize movement of transgenes to non-target organisms or to prevent expression of transgenes in non-target organisms; (g) management systems to slow the evolution of resistance to transgenic protection against pests and diseases; (h) development of experiential learning opportunities for students, academics, and agricultural professionals to study the effects of GM food and feed on humans and animals; (i) development of outreach programs to explain the risks and benefits of GM food and feed on human and animal health.

Proposals involving genetically modified functional foods should direct their proposals to section 12.2 (Nutritional Impact of Functional Foods).

11.2 Social and Economic Aspects of Agricultural Biotechnology. (For clarification of this program area, contact the Program Directors, Dan Jones at (202) 401–6854; email: ddjones@reeusda.gov; or Deborah Sheely at (202) 401–1924, e-mail: dsheely@reeusda.gov.)

Agricultural biotechnology has sparked debate on a variety of topics, including: food safety; the environment; trade, business, and economics; industry structure and consolidation; regulatory sufficiency; product labeling; and diverse value systems. Proposals should draw on these debates.

Projects/programs that address the objective and perceived benefits and risks associated with biotechnology faced by producers, distributors, consumers, and the general public are encouraged. Possible topics include, but are not limited to: (a) effects of biotechnology on market structure and concentration; (b) social and economic consequences of limited germplasm access; (c) consumer acceptance of biologically modified food and feed; and (d) family, community and other contextual effects on biotechnology-related practices of producers, distributors, and consumers.

Proposals in these areas may include research, extension, and education efforts for producers, consumers, opinion leaders, and others on the full range of challenges and opportunities associated with modern agricultural biotechnology. Such efforts should be designed and conducted through collaboration with partners such as government, industry, universities, public interest and consumer groups. In addition, proposals appropriate to this section may include education programs for students on the history and development of biotechnology in agriculture, including crop breeding to modern gene insertion techniques. These programs should include curricula that cover the ethics(social and environmental) behind biotechnology as well as the potential benefits and costs of genetically modified organisms and any social and institutional safeguards that exist or are needed to protect the public interest.

3. Food Safety and the Role of Nutrition in Health (Program Area 12.0)

This program area concentrates resources on two critical areas in nutrition: factors affecting food and nutrition behavior of consumers; and the nutritional impact of functional and designer foods. A third program area will fund research, extension and education programs to help producers implement good agricultural practices for reducing microbial contamination on raw agricultural commodities. A key anticipated benefit of this initiative will be to strengthen campus-based educational programs and to promote the internationalization of research, teaching, and extension/outreach activities related to nutrition and food safety.

12.1 Factors Affecting Food and Nutrition Behavior of Consumers. (For clarification of this sub-area, contact the Program Director, Etta Saltos, at (202) 401–5178; e-mail: esaltos@reeusda.gov.)

The most fundamental knowledge gap in nutrition research is in understanding why people choose what they choose to eat. Although USDA has issued dietary guidance for consumers for over a century and, together with the Department of Health and Human Services, has formulated Federal nutrition policy in the form of the Dietary Guidelines for Americans for 20 years, we know that many consumers are not following this guidance. According to the Department's 1996 Healthy Eating Index, a measure of how Americans' diets fare in meeting the recommendations of the Dietary Guidelines, only 12 percent of Americans have diets that can be classified as "good;" 71 percent have diets that are considered to "need improvement" and 17 percent are classified as having "poor" diets. Additionally, the prevalence of obesity in the United States increased from 12 percent in 1991 to 18 percent in 1998. USDA researchers have found that in children the risk of becoming obese increases as family income decreases. Community-based research on food systems has demonstrated limited food choices in low-income communities as insufficient resources limit grocery retail establishments in economically deprived areas. Food intake of low-income individuals is dramatically affected by environmental availability of food, especially fruits and vegetables. Food stamp recipients sometimes have difficulty stretching food dollars through the month, creating an atmosphere of food insecurity late in the month, affecting food choices.

Food choice behavior is influenced by a variety of factors ranging from available income to physiologic need to societal standards. Knowledge of how these factors interact to affect food choices is limited. Nutrition experts agree that for nutrition interventions to be successful, they should be behaviorally-based, but the gaps in knowledge of consumer dietary behavior limits development of such interventions. When behaviorally-based nutrition interventions have been implemented, evaluation of the outcomes of such interventions has been limited, primarily due to lack of funds.

The goal of this program is to fund projects that produce models of food and nutrition behavior, especially in at-risk populations such as older adults, low income individuals and overweight individuals, and to use such models to produce behaviorally-based nutrition intervention programs.

This program invites innovative projects on consumer food and nutrition behavior, including: (a) Research on factors influencing dietary behaviors of at-risk populations, including children and adolescents (at home, in school, and in child care and after-school settings), ethnic minorities, low-income individuals, overweight individuals, and older adults; (b) research on behavioral factors that may contribute to the development of obesity; (c) exploration and analysis of the impact of insecure food systems in low-income communities and prevalence of obesity, unhealthy food choices, and related food behaviors; (d) longitudinal studies and studies that use non-self-report methods to measure changes in dietary behavior; (e) multi-disciplinary studies to examine current theory-based models of behavior change; (f) development of intervention(s) at either the individual or community level based on one or a combination of these models; (g) use of a social marketing approach to target nutrition and health messages that lead to behavior changes; and (h) development of innovative cross-training programs in nutrition and the social sciences.

Proposals dealing with health or consumer acceptance of genetically modified organisms/biotechnology should be directed to Program Area 11.1 (Effects of Agricultural Biotechnology on Human, Animal and Plant Health) or 11.2 (Social and Economic Aspects of Agricultural Biotechnology); proposals dealing with the health aspects of functional foods should be directed to Program Area 12.2 (Nutritional Impact of Functional Foods); proposals dealing with consumer food handling behaviors should be directed to existing CSREES programs.

12.2 Nutritional Impact of Functional Foods. (For clarification of this sub-area, please contact the Program Directors, Ram Rao at (202) 401–4929 or Melvin Mathias at (202) 720–4124; e-mail: mmathias@reeusda.gov.)

Functional foods are fresh or processed foods containing significant levels of biologically active components that might provide health benefits or desirable physiological effects beyond basic nutrition. Functional food markets are growing markedly, reaching the billions of dollars level and consumers are increasingly willing to include functional foods in their diets. Considerable scientific information demonstrates that some food components have the potential health

benefits to prevent disease. Additional research is necessary to substantiate the claims of health benefits of the food components and functional foods. Advances in food technology through both traditional processing methodologies, and genetic engineering of foods, have provided the consumer with ever increasing food choices that claim to offer increased health benefits due to selection in favor of certain components.

The goal of this program is to foster research and outreach to improve functional foods from agriculturally important materials. Collaborative international activities, which may lead to the discovery and development of new functional foods, or which improve the prospects for such foods through enhanced production or commercialization, thus improving the prospects for U.S. agricultural products, are encouraged. Activities that fully integrate and encompass the design of commercially feasible functional foods, characterization of bioactive components, measurement of health benefits, and consumer outreach programs will be given priority. Integration should include a holistic approach to developing functional foods, including an analysis of impact on the food system and on health. Applicants are strongly encouraged to seek industry collaboration.

Examples of potential research, extension and education activities include, but are not limited to: (a) creation of foods that have increased amounts of the beneficial components found in fruits, vegetables, grains and animal products; (b) interactive effects of the bioactive components as consumed in the food; (c) improved processes to enhance stability and bioavailability of bioactive components; (d) the design of foods with acceptable sensory attributes; (e) the development of methods to monitor the effectiveness of functional foods on improving health and preventing diseases; (f) analysis to support the issuance of regulatory guidelines to ensure the safety and efficacy of functional food products; and (g) provide information usable by and readily available to health professionals and consumers.

Proposals dealing with genetically modified foods that do not fit under the definition of functional foods described in this section should be directed to Program Area 11.1 (Effects of Agricultural Biotechnology on Human, Animal and Plant Health) or 11.2 (Social and Economic Aspects of Agricultural Biotechnology); proposals dealing with consumer choices of functional foods for health should be directed to Program Area 12.1 (Factors Affecting Food and Nutrition Behavior of Consumers).

12.3 Reduction of Microbial Hazards on Raw Agricultural Commodities. (For clarification of this sub-area, contact the Program Director, Robin Huettel, at (202)401–5804; e-mail: rhuettel@reeusda.gov.)

Under the President's "Initiative to Ensure the Safety of Imported and Domestic Foods," October 1997, guidelines were developed to aid in the reduction of microbial food safety hazards through good agricultural practices, including growing, harvesting, washing, sorting, packing, and transporting of fruit and vegetables that are generally consumed raw. A "Guide to Minimize Microbial Food Safety Hazards for Fresh Fruit and Vegetables" was issued by the U.S. Department of Health and Human Services, Food and Drug Administration, October 1998. In order to help the growers and producers implement these good agriculture practices, specific areas for research, education and extension programs are needed for on-farm food safety for reducing microbial contamination of raw agricultural commodities.

The goal of this program is to support projects that address minimizing microbial hazards during all aspects of pre-harvest production. Activities that integrate research, extension, and education activities that will eventually aid the grower/producer by providing management strategies for microbial hazards in raw or minimally processed fruits and vegetables will be given priority. The research needs are necessary for the development of education programs, materials, and resources for education and outreach to growers and producers of raw or minimally processed fruits and vegetables. Information and practical skills related to the appropriate management strategies must be transferred to growers and producers through effective food safety education and outreach for the implementation of good agricultural practices.

Examples of potential research, extension, and education activities include but are not limited to: (a) Research on the macro and micro environments that microbes inhabit, such as biofilm formation and pathogen attachment; (b) breeding of resistant cultivars that would reduce the likelihood of contamination by pathogens by changing surface conditions; (c) understanding the competitiveness, antagonistic, and symbiotic interactions between pathogens and natural flora on produce; (d) investigation of efficacy of rinse and wash procedures to reduce pathogens in surface treatments; (e) determination of bacterial stress responses to stimuli, such as cold, heat, pH and disinfectants; (f) reduction or elimination of pathogens from compost, prevention of re-contamination of properly treated compost; (g) defining physiological or genetic mechanisms that microbes utilize to become resistant to traditional food safety barriers, including development, amplification, and maintenance of resistance; (h) understanding mechanisms to reduce or prevent pathogen contamination during transport such as the use of controlled atmospheres and temperature control; (i) development of a higher education program that would provide the knowledge needed by crop consultants and other professionals in recognizing potential microbial hazards in grower/production fields, developing mitigation strategies for reduction of microbial hazards in field and processing, and designing handling and processing technologies to prevent contaminants in raw or minimally processed agriculture commodities; (j) educational research focusing on the development of education methodologies that promote on-farm adoption and use of safe management strategies for minimizing microbial hazards associated with raw or minimally processed agricultural commodities; (k) educational research focusing on the development and implementation of education and outreach programs incorporating safe management strategies for domestic and international growers and producers of raw or minimally processed agricultural commodities.

Proposals on the pathogens associated with animal manure and transport of contaminants associated with animal manure should be directed to Program Area 14.3 (Animal Manure Management).

4. New Uses for Agricultural Products (Program Area 13.0)

(For clarification of this program area, contact the Program Director, Carmella Bailey, at (202)–401–6443; e-mail: cbailey@reeusda.gov.)

The goal of this program area is to provide for research, extension, and education activities that enhance the competitive value, find new uses for, or establish entirely new non-food agricultural and forestry products, primarily biomass fuel sources and biobased industrial products that can replace petroleum-based fuels and products. Renewable carbon from plants to replace limited fossil-based carbon from petroleum has the potential to

provide additional farm income for producers, and enhance conservation benefits on marginal land. This program area is intended to support Executive Order 13134, Promoting Biobased Products and Bioenergy, which calls for expanded public investment in research and development for biomass production and conversion for energy and chemicals, and Executive Order 13101, Federal Acquisition, Recycling, and Waste Prevention, which creates a market pull for bioenergy and biobased products. Further, these efforts address the issues of resource depletion and environmental degradation, while building new markets for agriculture.

A systems-based approach is required to accomplish the goals of this program area, which encompasses: (a) the development of crop varieties for biomass fuel uses and for raw materials for industrial products; (b) management techniques for incorporating industrial crops into existing cropping systems; (c) processing biomass; (d) product development; (e) test and evaluation; (f) demonstration of final product(s); (g) life cycle cost evaluation of final product(s); and (h) establishing marketing networks. Accordingly, integration of these activities to the maximum extent practicable, are strongly encouraged. A systems-based approach is expected to accelerate research and development and to result in measurable outcomes, i.e. increased production and use of biofuels and biobased products.

In addition, this initiative strongly encourages research, extension and education activities that explicitly recognize, account for, and enhance the interaction among growers, processors, manufacturers, markets and the community. To increase profitability at the farm gate, applicants are encouraged to develop proposals which include post-harvest processing and manufacturing activities at the local level. To facilitate technology transfer and marketing of products, the product demonstration phase should be of sufficient size to generate data for the proposer to conduct a life cycle cost evaluation that includes product performance data, environmental attributes, as described in EPA's Guidelines for Environmentally Preferable Purchasing, and social impacts as appropriate (*e.g.* impact on economic development in the community).

To the extent possible, proposers are encouraged to incorporate instruction or other classroom-associated activities which strengthen students' knowledge and skill in the discovery, production and/or commercialization phases of new and alternative use systems. Similarly, proposers are encouraged to incorporate collaborative international activities which may lead to the discovery of new or alternative uses, or which improve the prospects for those uses through enhanced production or commercialization, thus improving the prospects for U.S. farmers in the global market.

5. Natural Resource Management, Including Precision Agriculture (Program Area 14.0)

Successful management of natural resources in an agricultural landscape should address environmental integrity, quality of life, and economic viability. Unfortunately, the interaction of these three conflicting concepts often does not result in an overall sustainable system. The purpose of this program area is to address how best to integrate the needs of production agriculture, the environment, and society, such that an acceptable sustainable system results.

This program area will focus on key environmental problems that are best addressed using a holistic systems approach. Priority will be given to proposals that explicitly address the interaction among production, the environment, and the well-being of producers and the general public. Preference will also be given to multi-state, multi-institutional, and multi-disciplinary projects. The emerging agricultural and natural resource issues to be addressed include: system-wide management of natural resources, particulary involving small and mid-sized tracts of privately owned land within a defined geographic area (watershed or eco-region); encroachment and subsequent environmental impact of invasive native and non-native species (all taxa); conservation of biodiversity; animal waste management; and development and evaluation of precision technologies for efficient and sustainable production and harvesting of agricultural and natural resources.

14.1 Alternative Natural Resource Management Practices for Private Lands. (For further information concerning this program sub-area, contact the Program Director, Larry Biles, at (202) 401–4926; e-mail: lbiles@reeusda.gov.)

As the world's population increases, the demands for delivery of natural resource goods and services will also increase. In addition, there is an increasing demand for diversity in the commodities being produced and an increased recognition that such production changes must be accomplished without adversely impacting our capacity to ensure the delivery of goods, services and a healthy environment to future generations.

This program will support integrated projects on the development of natural resource management systems (including forest, range, aquatic and wildlife) that improve our capacity to support natural resources. Proposals should present a scientific framework that qualitatively and quantitatively links production practices, societal preferences, demographics, and economic needs to the impacts on natural resources. Preference will be given to proposals that demonstrate the active participation of the user community that is expected to benefit. Proposals should include a plan for coordination among scientists, state and federal agencies, commodity organizations, environmental groups, and producers to deal with the integrated ecological, technological, economic, social and environmental issues in a specified geographic region.

This sub-area of the initiative is intended to provide the research, extension and education information needed to support the management needs of the small and mid-sized aquatic, range, wildlife, and forest systems owners and managers. Projects should address management practices and technologies that will increase the opportunities for the small to mid-sized manager to operate profitable enterprises that respond to the demands for: (a) Alternative natural resources production, (b) sustainable forestry certification, (c) agroforestry, (d) invasive species management across multiple ownerships, (e) wildlife control and management, (f) nutrient management, (g) maintaining or enhancing biodiversity and ecosystem integrity, including restoration of species and ecosystems, (h) coping with the demands imposed by environmental and regulatory requirements within the increasingly mixed distribution of urban, rural, and wildlands management systems, (i) development and enhancement of decision support tools linking regional databases with remote sensing technologies (with suitable resolution for use by the targeted user communities) and management options; and (j) training programs to enhance success and adoption of regionally-appropriate practices.

Proposals submitted to this sub-area will enhance our capacity to integrate regionally appropriate data and information to increase long-term, site-specific, and whole system efficiencies and profitability while both minimizing unintended impacts on natural

resources and enhancing environmental integrity. Proposals are encouraged that use a whole systems approach (economic, environmental, social and community development) to evaluate the practices most conducive to sustaining small and mid-sized land management systems in the U.S. Partnerships with existing regional and/or long-term projects (including those associated with public lands) also are strongly encouraged.

Proposals should contain a clear plan for technology transfer and adoption. Proposals should clearly describe the type (size and distribution) of the system being evaluated and should include provisions that demonstrate an interdisciplinary problem-solving approach to maintain natural resources sustainability and profitability.

Proposals focusing on the financial security and quality of life of small to mid-sized family-owned pastures should be submitted to Program Area 15.0 (Farm Efficiency and Profitability).

14.2 Invasive Species. (For clarification on this sub-area, contact the Program Director, John Obrycki, at (202) 401–4201; e-mail: jobrycki@reeusda.gov.)

The spread of invasive non-native pest species is one of the greatest threats to the long-term health and biological diversity of rural and urban areas. For this program, invasive species are defined as alien species whose introduction does or is likely to cause economic or environmental harm. The invasion of plant, animal, and microbial pests is an issue of critical importance to the nation's land and water resources. No land or water regime is immune and the nation is both losing income and incurring expenses to address these problems. Invasive species have reached the level of national concern because of adverse economic impacts and long-term threats to ecosystem sustainability. In addition, invasive species threaten the effectiveness of established pest management systems.

The invasive species sub-area is in part a response to the President's Executive Order (EO 13 112) on Invasive Species of February 3, 1999. The goal of the Executive Order is to increase coordination of Federal agencies to prevent introductions, provide for control, monitoring and study, and to restore native species and habitats in areas degraded by invasive species. A goal of this program is to coordinate and integrate research, education, and outreach aspects of invasive species problems.

This sub-area will emphasize application of fundamental knowledge to reduce societal losses due to invasive species. It is critical that proposals take a problem-solving approach to management of invasive species. This program will consider projects that address aspects of invasive species from discovery of novel means to detect, monitor, and manage invasive species to outreach and education activities that promote public awareness of invasive species. Proposals may address the prevention of introductions, as well as, the detection, monitoring, or management of existing invasive species. Proposals that develop mitigation plans to restore the biodiversity of native species and habitats negatively affected by invasive species are also encouraged. A high priority will be placed on proposals that include (a) multiple states, multiple disciplines and multiple institutions, (b) research, extension, or education components, or (c) both. Proposals will be considered that include partnerships with state and local organizations to address extension and educational needs for regional invasive species problems. One of the key elements of the proposal should consider how the approaches taken address the problem of a specific invasive species or group of species.

Taxa of invasive species that are considered in this program include animal, plant, and microbial species that affect the biodiversity of terrestrial and aquatic ecosystems, in agricultural, urban, or forest systems. Proposals submitted to this program could include, but are not limited to, projects that: (a) develop planning and communication strategies to encourage action on invasive species (these activities could be at several levels ranging from local to national scales); (b) evaluate and communicate the risks associated with invasive species introductions; (c) formulate strategies to prevent the introduction of invasive species; (d) develop and implement management systems to facilitate the early detection, monitoring, eradication, containment, or control of invasive species (particularly those cropping systems impacted by implementation of the Food Quality and Protection Act); or (e) provide and implement strategies to restore biodiversity of native species and habitat condition.

Proposals addressing restoration of specific habitats, communities, and ecosystems associated with privately-owned small-midsized forests, grasslands, wetlands, or riparian areas should submit to Program Area 14.1 (Alternative Natural Resource Management Practices for Private Lands).

14.3 Animal Manure Management. (For further information on this program sub-area, contact the Program Director, Richard Hegg at (202) 401-6550; e-mail: rhegg@reeusda.gov.)

There is a great deal of public pressure to prevent the degradation of air, soil, and water resources by food animal production systems and to protect the ecological integrity of forest, rangeland, cropland, aquatic, estuarine, and marine systems. Proper management of manure resulting from these production systems is one of the most critical issues facing the food animal industry. Animal feeding operations vary by region, species, size and management system, so that each operation is site-specific and must be managed accordingly. Physical, chemical and/or biological treatment techniques may be used to reduce the pollution potential of animal manure. Regulation of animal feeding operations at the local, state and federal level is undergoing rapid change.

Proposals for this section will support integrated research, education and extension on regional systems that will ultimately reduce adverse environmental and human health impacts of animal manure. Proposals will be considered that develop and evaluate manure management practices using soils, wetlands, riparian zones, and treatment systems for the protection of natural resources. Proposals taking a watershed, landscape-scale approach are encouraged and could include the transport and fate of nutrients and/or pathogens from animal manure through air, water and soil. The incorporation of comprehensive nutrient management planning in educational programs is encouraged, as is the development of partnerships with already established waste management centers (e.g., the National Center for Manure and Animal Waste Management).

Topic areas that this program sub-area will consider include: (a) Development of rates and methods of land application of manure that are most suitable for a given watershed; (b) determination of the effects of animal nutrition on manure content and quality, and extension of this knowledge to producers who may in turn modify their feed; (c) determination and prediction of odor, gas and particulate matter impacts on the atmosphere and society, and development of management strategies to alleviate such impacts; (d) understanding and predicting source, delivery and fate of pathogens as well as transferring this information to the general public to address concerns or inform them of potential health hazards; (e) resolving community and regulatory

concerns about siting, health and economic issues; (f) determination of water quality impacts of nutrients, pathogens, and other waste products, and the development of strategies to reduce such impacts, and the development of programs to educate the public on such water quality issues; (g) development and implementation of alternative waste treatment technologies; (h) development and marketing of value-added products from animal waste; (i) determination of the transport of antibiotics and/or endocrine disruptors (hormones) in the environment and their potential effects on the environment; and (j) development of alternative animal production systems.

Proposals should address one or more of the following animal groups: swine, dairy, beef, poultry or aquaculture.

14.4 Application of Precision Technologies. (For further information on this Program Area, contact the Program Directors, Preston Jones at (202) 401–1990; e-mail: jpjones@reeusda.gov; or Maurice Horton at (202) 401–4504; e-mail: mhorton@reeusda.gov).

Precision technologies can be valuable tools if their applicability to agriculture and natural resource management can be demonstrated and then adopted. Precision technologies range from defining simple field management zones to complex integration of multiple datasets with the goal of making production and harvesting more efficient and sustainable. Field-scale management using precision technologies is needed to address spatial and temporal variability that limits the efficient use of inputs. Farmers, ranchers, and natural resource managers need tools like decision support systems and sensors in their work places that quantify complex interactions between profitability and the natural resource base. Multidisciplinary partnerships with industry, producers, and the research/education community are encouraged because of the lack of understanding in the decision-making process and the high cost of doing field-scale research. Partnerships with other Federal agencies, such as NASA, and partnerships addressing the needs of small and medium-sized farms, are encouraged.

Proposals submitted to this section will enhance the Nation's capacity to integrate site-specific and whole system efficiency and profitability while minimizing deleterious impacts on natural resources and the environment. Proposals are solicited from, but not limited to, the following areas: (a) Site-specific yield prediction and resource management based on an improved understanding of how soils, water, nutrients, climate, landscapes, crops and other natural resources interact to influence productivity; (b) decision support systems for complex soil, crop, pest, landscape, irrigation and natural resource management interactions that integrate spatial and temporal variability; (c) Assessment of user needs and development of scientific capabilities, economic and environmental cost-benefit analysis, and documentation of adoption of precision technologies by the user community; (d) sensing of natural resource properties, using both ground-based and remote technologies, and other precision technology applications based on user needs; and (e) training of competent and skilled professionals to transfer precision technology to the user community.

Each proposal should clearly indicate the scope of the management system for which applications are being developed and evaluated. Decision support proposals should include a clear plan for evaluating the suitability (feasibility, efficacy, profitability, required infrastructure, and adoption strategies) of technologies proposed for operations of specified scope. Proposals should include a plan for the propagation of the databases developed or for the maintenance and training necessary for sensor and decision support tool use.

5. Farm Efficiency and Profitability (Program Area 15.0)

(For clarification of this program area, contact the Program Director, Don West, at (202) 720–5633; e-mail: dwest@reeusda.gov; or Denis Ebodaghe, at (202) 401–4385; e-mail: debodaghe@reeusda.gov.)

Dramatic changes in the global agricultural environment and in domestic farm programs have created new challenges for U.S. farmers as they strive to maintain the efficiency and profitability of their operations and the financial viability of their families and communities. This program emphasizes the use of existing data and emerging information to synthesize and deliver knowledge that improves profitability for families operating small and medium-sized farms. Proposals that address the concerns of family-owned farms with limited financial resources will be given priority. Proposals should indicate how target audiences will benefit from the proposed programs/projects.

All proposals submitted to this program area will undergo a peer review in which the efficiency and profitability of small and medium-sized farms is the most important criterion. New partnerships and new administrative mechanisms that involve universities, industry, profit/non-profit organizations and/or community colleges are also important criteria. Consideration will be given to system approaches useful in meeting the production, marketing, capital and human resource needs associated with dairy, livestock, crop and other commodity operations. This priority area recognizes linkages with natural resources and environmental issues and the importance of strengthening the financial viability of farm operations, families, and communities. Such proposals should provide information on the connections between the sustainability of small and medium-sized farms and the viability of their communities as well as linkages with natural resources and environmental issues.

Projects that utilize a systems approach and are national or regional in scope are encouraged as are those that incorporate research, extension, and educational functions. Proposals that incorporate farmer input in problem identification and have high scientific merit in project design, methodology and analytical procedures will be given priority. Appropriate innovative methodologies are encouraged, including those that make use of electronic technology in delivery of extension and formal education programs. Applicants with a strong track record of working with owners and managers of small and medium-sized farms are encouraged to apply.

Applicants are encouraged to submit research, extension, or education proposals that address one or more of the following areas: (a) development of management (e.g., pest, crop, animal, nutrient, economic) and marketing systems that improve efficiency and profitability, including the reduction of capital and input costs or the diversification of crop and livestock enterprises; (b) development of effective marketing programs, including the use of farmers' markets, community-supported agriculture, marketing to restaurants and schools, cooperative approaches to use of inputs and marketing, organic production and marketing, Internet marketing, global markets, and agritourism; (c) development of farm-based value-added processing and new high-return production and marketing niches; (d) development of improved methods of managing risks faced by farmers and ranchers, including production risks (enterprise diversification, crop insurance, contract production,

cropping systems at risk from implementation of the Food Quality and Protection Act, and new management systems), marketing risks (marketing plans and tools), financial risk (financial and investment analysis, family living costs and financial security), legal issues (contracts and environmental liability), and human resource issues (labor availability, occupational health and safety, managing people, and estate planning); (e) development of programs/projects that improve access to knowledge and decision-making tools. Examples include production decision tools, formal and informal education in entrepreneurship, business planning and marketing for new or modified enterprises, and farm and family financial planning and management. Access should allow producers to increase options for farm efficiency and profitability in regional and local economies, including planning and building community support; (f) development of programs/projects that improve access to and management of financial resources, including physical and production capital, financial services, innovative investment capital strategies, human capital (including availability and effective management of labor), and infrastructure and social capital (community resources and institutions); and (g) development of programs/projects that improve access to and management of environmental resources, including maintenance of environmental quality and conservation issues.

Part III—Preparation of a Proposal

A. Program Application Materials

Program application materials are available at our website (www.reeusda.gov/IFAFS). If you do not have access to our web page or have trouble downloading material, you may contact the Proposal Services Unit, Office of Extramural Programs, USDA/CSREES at (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting forms for IFAFS. These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov. State that you want a copy of the Program Description and application materials (orange book) for the Fiscal Year 2000 Initiative on Future Agriculture and Food Systems (IFAFS).

B. Content of Proposals

1. General

The proposal should follow these guidelines, enabling reviewers to more easily evaluate the merits of each proposal in a systematic, consistent fashion:

(a) The proposal should be prepared on only one side of the page using standard size (8½″ x 11″) white paper, one inch margins, typed or word processed using no type smaller than 12 point font, and single or double spaced. Use an easily readable font face (e.g., Geneva, Helvetica, Times Roman).

(b) Each page of the proposal, including the Project Summary, budget pages, required forms, and any appendices, should be numbered sequentially.

(c) The proposal should be stapled in the upper left-hand corner. Do not bind. An original and 14 copies (15 total) must be submitted in one package, along with 10 copies of the "Project Summary" as a separate attachment.

(d) If applicable, proposals should include original illustrations (photographs, color prints, etc.) in all copies of the proposal to prevent loss of meaning through poor quality reproduction.

Small or mid-sized institutions: An academic institution is eligible as small or mid-sized if the institution is under 15,000 in total enrollment (including part-time students) and is not listed in Appendix A (Most successful Universities and Colleges for Receiving Federal and/or National Research Initiative Funds.)

2. Cover Page

Each copy of each grant proposal must contain an "Application for Funding", Form CSREES–661. One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing principal investigator(s)/project director(s)(PI/PD) and the authorized organizational representative who possesses the necessary authority to commit the organization's time and other relevant resources to the project. Any proposed PI/PD or co-PI/PD whose signature does not appear on Form CSREES–661 will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the "Application for Funding" form.

Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately. The following items are highlighted as having a high potential for errors or misinterpretations:

(a) Title of Project (Block 6). The title of the project must be brief (80-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as "investigation of," "research on," "education for," or "outreach that" should not be used.

(b) Program to Which You Are Applying (Block 7). "IFAFS".

(c) Program Area and Number (Block 8). The name of the program component, *e.g.* Plant Genome, 10.1 or Behavior of Food Choice, 12.1. should be inserted in this block.

(d) Type of Award Request (Block 13). Check the block for "new."

(e) Principal Investigator(s)/Project Director(s) (PI/PD) (Block 15). The designation of excessive numbers of co-PI/PD's creates problems during final review and award processing. Listing multiple co-PI/PDs, beyond those required for genuine collaboration, is therefore discouraged. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(f) Type of Performing Organization (Block 18). A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 Land-Grant institution but the work will be performed in a department, laboratory, or other organizational unit of an agricultural experiment station, box "03" should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI/PD #1 in Block 15.a.

(g) Other Possible Sponsors (Block 22). List the names or acronyms of all other public or private sponsors including other agencies within USDA and other programs funded by CSREES to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES Program Director as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided. Complete the "Application for Funding," Form CSREES–661, in its entirety.

(h) One copy of the "Application for Funding" form must contain the signatures (in ink) of the PI/PDs and authorized organizational representative for the applicant organization.

3. Table of Contents

For consistency and ease in locating information, each proposal must contain a detailed Table of Contents just after the cover page. The Table of Contents should contain page numbers for each component of the proposal. Page numbers should begin with the first page of the Project Description.

4. Project Summary

The proposal must contain a Project Summary of 250 words or less on a separate page which should be placed immediately after the Table of Contents and should not be numbered. The names and institutions of all PI/PDs and co-PI/PDs should be listed on this form, in addition to the title of the project. The summary should be a self-contained, specific description of the activity to be undertaken and should focus on: overall project goal(s) and supporting objectives; plans to accomplish the project goal(s); and relevance of the project to IFAFS goals and to U.S. agriculture. The importance of a concise, informative Project Summary cannot be overemphasized. If the lead institution is eligible as a small or mid-sized institution as defined in Part I C., Definitions, of this document, include a separate sentence on the Project Summary page indicating that the institution is "eligible for small and mid-sized consideration."

5. Project Description

The written text may not exceed 15 single- or double spaced pages of written text for standard proposals and 20 single- or double-spaced pages for Consortia proposals including figures and tables, but excluding citations.

Standard Proposals. Each standard proposal's Project Description should contain the following:

a. Introduction—A clear statement of the long-term goal(s) and supporting objectives of the proposed activities should be included. Summarize the body of knowledge which substantiates the need for the proposed project. Describe ongoing or recently completed significant activities related to the proposed project including the work of key project personnel. Preliminary data/information pertinent to the proposed project should be included;

b. Relevance and significance—The objectives' specific relationship to the goals of the IFAFS and to the particular program area should be stated. Include a description of the significance of the activity and its value in improving agriculture through research, education and extension. Clearly describe the potential impact of the project.

c. Approach—The activities proposed or problems being addressed must be clearly stated and the approaches being applied clearly described. The following should be included: (1) A description of the activities proposed; (2) methods to be used in carrying out the project, including the feasibility of the methods; (3) expected outcomes; (4) means by which results will be analyzed, assessed, or interpreted; and (5) how results or products will be used.

d. Time Table—Provide an expected time line for completing the project in the requested duration.

e. Evaluation and Monitoring—Provide a plan for assessing and evaluating the accomplishments of the stated proposal objectives during the project and describe ways to determine the effectiveness of the end results during and upon termination of the project.

f. Collaborative Arrangements—Identify collaborations and provide a full explanation of the nature of the collaborations.

Consortia Proposals. Each Consortia Proposal should include all the above items required for a Standard Proposal, but should also include the following:

a. Substantiate the need for a Consortium as opposed to a single project approach including how the consortia will add value over funding of separate efforts.

b. Management Plan—It is expected that Consortia projects will require more extensive and complicated coordination and collaboration than is typically proposed for Standard Projects. Therefore, explain how the Consortia will be managed to ensure efficient administration of the grant and how activities will be integrated most effectively. Place this description after the Project Description.

c. *Evaluation and Monitoring of Project Administration.*—In addition to the evaluation and monitoring of accomplishments associated with the Consortium, evaluation and monitoring of the administration of the Consortium must also be included. This description should include how funds and resources will be allocated so that collaborative participation of all parties throughout the duration of the project is ensured. This description should be placed after the Evaluation and Monitoring Section described above under Standard Proposals.

6. Appendices to Project Description

Appendices to the Project Description are allowed if they are directly germane to the proposed project and are limited to a total of two of the following: reprints (papers that have been published in peer reviewed journals) and preprints (manuscripts in press for a peer reviewed journal; these must be accompanied by a letter of acceptance from the publishing journal).

7. Key Personnel

All senior personnel who are expected to be involved in the effort should be clearly identified. For each person the following should be included:

a. The roles and responsibilities of each PI/PD should be described;

b. An estimate of time commitment for each PI/PD; and

c. Vitae of each PI/PD, senior associate and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. The vitae should be limited to two (2) pages in length, excluding publication lists. A chronological list of all publications in refereed journals during the past four (4) years, including those in press, must be provided for each project member for which a curriculum vitae is provided. Also list those non-refereed technical publications which have relevance to the proposed project. All authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

8. Conflict-of-Interest List

A Conflict-of-Interest List must be provided for all individuals involved in the project (identified as key personnel). Each list should be on a separate page and include alphabetically the full names of the individuals in the following categories: (a) All collaborators on projects within the past four years, including current and planned collaborations; (b) all co-authors on publications within the past four years, including pending publications and submissions; (c) all persons in your field with whom you have had a consulting or financial arrangement within the past four years who stand to gain by seeing the project funded; and (d) all thesis or postdoctoral advisees/advisors within the past four years (some may wish to call these life-time conflicts). This form is necessary to assist program staff in excluding from proposal review those individuals who have conflicts-of-interest with the personnel in the grant proposal. The Program Director, under the specific area or sub-area, must be informed of any additional conflicts-of-interest that arise after the proposal is submitted.

9. Collaborative and/or Subcontractual Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with others, such arrangements should be fully explained and justified. In addition, evidence should be provided that the collaborators involved have agreed to render these services. If the need for consultant services is anticipated, the proposal narrative should provide a justification for the use of such services, a statement of work to be performed, and a resume or curriculum vita for each consultant. For purposes of proposal development, informal day-to-day contacts between key project personnel and outside experts are not considered to be collaborative arrangements and thus do not need to be detailed.

All anticipated subcontractual arrangements also should be explained and justified in this section. A proposed statement of work and a budget for each arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (e.g., requests for outside laboratory analyses) are excluded from this requirement.

If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR Part 3019, USDA Uniform Administrative Requirements for Grant and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR Part 3015.205, USDA Uniform Federal Assistance Regulations, flow down to subrecipients. In addition, required clauses from Sections 40—48 ("Procurement Standards") and Appendix A ("Contract Provisions") to 7 CFR Part 3019 should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension.

10. Budget

a. Budget Form—Prepare the budget, Form CSREES–55, in accordance with instructions provided. A budget form is required for each year of requested support. In addition, a cumulative budget is required detailing the requested total support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants must also include a Budget Narrative to justify their budgets (see section 11 below.)

The following guidelines should be used in developing your proposal budget(s):

1. Salaries and Wages. Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES-Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution.

2. Fringe Benefits. Funds may be requested for fringe benefit costs if the usual accounting practices of your organization provide that organizational contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project.

3. Nonexpendable Equipment. Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 (or lower, depending on institutional policy) or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost in the Budget Narrative. This applies to revised budgets as well, as the equipment item(s) and amount(s) may change.

4. Materials and Supplies. The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs in the Budget Narrative.

5. Travel. The type and extent of travel and its relationship to project objectives should be described briefly and justified. If foreign travel is proposed, the country to be visited, the specific purpose of the travel, a brief itinerary, inclusive dates of travel, and estimated cost must be provided for each trip. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR Part 3015.205(b)(4) for further guidance.

6. Publication Costs/Page Charges. Include anticipated costs associated with publications in a journal (preparing and publishing results including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) and audio-visual materials that will be produced. Photocopying and printing brochure, etc., should be shown in Section I., "All Other Direct Costs" of Form CSREES–55.

7. Computer (ADPE) Costs. Reimbursement for the costs of using specialized facilities (such as a university- or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

8. All Other Direct Costs. Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified in the Budget Narrative. This also applies to revised budgets, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, and charges for consulting services, telephone, facsimile, shipping costs, and fees necessary for laboratory analyses. You are encouraged to consult the "Instructions for Completing Form CSREES–55, Budget," of the Application Kit for detailed guidance relating to this budget category. Form AD–1048 must be completed by each subcontractor or consultant and retained by the grantee.

9. Indirect Costs—Section 1462 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3310) limits indirect costs for this program to 19 percent of total Federal funds provided under each award. Therefore, the recovery of indirect costs under this program may not exceed the lesser of the institution's official negotiated indirect cost rate or the equivalent of 19 percent of total Federal funds awarded. If no rate has been negotiated, a reasonable dollar amount (equivalent to less than 19 percent of total Federal funds requested) in lieu of indirect costs may be requested, subject to approval by USDA.

b. Budget Narrative—All budget categories, with the exception of Indirect Costs for which support is

requested, must be individually listed (with costs) and justified on a separate sheet of paper and placed immediately behind the Budget Form. Explanations of matching funds or lack thereof on commodity-specific projects also are to be included in this section.

c. Matching Funds—If an applicant concludes that matching funds are not required as specified in Part I (e), a justification should be included in the Budget Narrative. CSREES will consider this justification when ascertaining final matching requirements. CSREES retains the right to make final determinations regarding matching requirements.

For those grants requiring matching funds as specified in Part I (e), proposals should include written verification of commitments of matching support (including both cash and in-kind contributions) from third parties. Written verification means:

(a) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) the dollar amount of the cash donation; and (5) a statement that the donor will pay the cash contribution during the grant period; and

(b) For any third party in-kind contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) a good faith estimate of the current fair market value of the third party in-kind contribution; and (5) a statement that the donor will make the contribution during the grant period.

The sources and amount of all matching support from outside the applicant institution should be summarized on a separate page and placed in the proposal immediately following the Budget Narrative. All pledge agreements must be placed in the proposal immediately following the summary of matching support.

The value of applicant contributions to the project shall be established in accordance with applicable cost principles. Applicants should refer to OMB Circulars A–21, Cost Principles for Educational Institutions, A–87, Cost Principles for State, Local, and Tribal Governments, A–122, Cost Principles for Non-Profit Organizations, and for for-profit organizations, the cost principles in the Federal Acquisition Regulation at 48 CFR Subpart 31.2 (see 7 CFR 3015.194).

11. Current and Pending Support

All proposals must contain Form CSREES–663 listing other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA Programs or agencies. Concurrent submission of identical or similar proposals to the possible sponsors will not prejudice proposal review or evaluation by the CSREES for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. Note that the project being proposed should be included in the pending section of the form.

12. Assurance Statement(s), (Form CSREES–662)

A number of situations encountered in the conduct of projects require special assurances, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will involve the following:

a. Recombinant DNA or RNA Research

As stated in 7 CFR Part 3015.205 (b)(3), all key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. If your project proposes to use recombinant DNA or RNA techniques, you must so indicate by checking the "yes" box in Block 19 of Form CSREES–661 (the Cover Page) and by completing Section A of Form CSREES–662. For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

b. Animal Care. Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel identified in a proposal and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 et seq.) and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1,2, 3, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals, you should check "yes" on block 20 of CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

c. Protection of Human Subjects—Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations promulgated by the Department under 7 CFR Part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the "yes" box in Block 21 of Form CSREES–661 and complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

13. Certifications

Note that by signing Form CSREES–661 the applicant is providing certifications required by 7 CFR Part 3017, as amended, regarding Debarment and Suspension and Drug Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. These forms should not be submitted with the proposal since by signing form CSREES–661 your organization is providing the required certifications. If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a form AD–1048 to the grantee

organization for retention in their records. This form should not be submitted to USDA.

14. Compliance with the National Environmental Policy Act (NEPA) Form CSREES–1234

As outlined in 7 CFR Part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, "NEPA Exclusions Form," must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefore. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be included as the last page of this proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

D. Submission of Proposals

1. When to Submit (Deadline Date)

Proposals must be transmitted by May 8, 2000, as indicated by postmark or date of courier bill of lading. Proposals transmitted after this date will not be considered for funding.

2. What to Submit

An original and 14 copies must be submitted. In addition submit 10 copies of the proposal's Project Summary. All copies of the proposals and the Project Summaries must be submitted in one package.

3. Where to Submit

Applicants are strongly encouraged to submit completed proposals via overnight mail or delivery service to ensure timely receipt by the USDA. The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Initiative for Future Agriculture and Food Systems; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024.

Proposals sent via the U.S. Postal Service must be sent to the following address: Initiative for Future Agriculture and Food Systems; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245.

C. Acknowledgment of Proposals

The receipt of proposals will be acknowledged by e-mail. Therefore, applicants are encouraged to provide e-mail addresses, where designated, on the Form CSREES–661. If the applicant's e-mail address is not indicated, CSREES will acknowledge receipt of the proposal by letter.

Once the proposal has been assigned an identification number, please cite that number on all future correspondence. If the applicant does not receive an acknowledgment within 60 days of the submission deadline, please contact the Program Director.

Part IV—Review Process

A. General

All proposals, including standard and consortia projects (as well as small and mid-sized designated projects), will be reviewed together by a panel in the pertinent program area. Prior to technical examination, a preliminary review will be made for responsiveness to the program area. Proposals that do not fall within the guidelines as stated in the Program Area Description will be eliminated from program competition and will be returned to the applicant.

Individual written comments and in-depth discussions will be provided by a peer review panel prior to recommending applications for funding. Peer review panel members will be selected based upon their training and experience in relevant scientific, extension, or education fields taking into account the following factors: (a) The level of formal scientific, technical education, and extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education or extension activities; (b) the need to include as peer reviewers experts from various areas of specialization within relevant scientific, education, and extension fields; (c) the need to include as reviewers other experts (producers, range or forest managers/operators, consumers, etc.) who can assess relevance of the proposals to targeted audiences and to program needs; (d) the need to include as peer reviewers experts from a variety of organizational types (e.g., colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations), and geographic locations; (e) the need to maintain a balanced composition of peer review groups with regard to minority and female representation and an equitable age distribution; and (f) the need to include members that can judge the effective usefulness to producers and the general public of each proposal.

B. Evaluation Factors

Priority will be given to projects that are multistate, multi-institutional, or multidisciplinary or projects that integrate agricultural research, education and extension.

The following evaluation factors apply to all proposals.

1. Relevance

All proposals will be judged as to their relevance to critical emerging agricultural issues related to future food production; environmental quality, and natural resource management; or farm income. Further factors include:

(a) Documentation that the research, extension and education activities are directed towards current or likely future problems or problems identified in this document;

(b) Evident linkage of research, extension and education functions.

(c) Evidence of involvement of stakeholders and/or communities of interest.

2. Merit

All proposals will be judged on their scientific, extension, or education merit including:

(a) Novelty, innovation, uniqueness, and originality;

(b) Conceptual adequacy of the research, extension and education components;

(c) Clarity and delineation of objectives;

(d) Adequacy of the description of the undertaking and suitability and feasibility of methodology;

(e) Demonstration of feasibility;
(f) Probability of success of the project;

3. Quality

All proposals will be judged on their quality including:
(a) Selection of most appropriate and qualified individuals to address the problem;
(b) Training and demonstrated awareness of previous and alternative approaches to the problem identified in the proposal, and performance record or potential for future accomplishments;
(c) Time allocated for systematic attainment of objectives;
(d) Institutional experience and competence in subject area;
(e) Adequacy of available or obtainable support personnel, facilities, and instrumentation;
(f) Adequacy of plans for reporting, assessing and monitoring of results of the project over its duration.

Consortia: In addition to the evaluation factors listed above the consortia proposals will be judged on the adequacy of: The planned administration of the consortium and its maintenance, partnerships, collaborative efforts, evaluation and monitoring efforts, and the planned dissemination of information over the duration of the project.

C. Conflicts-of-Interest and Confidentiality

During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts-of-interest that may impact review or evaluation. For the purpose of determining conflicts-of-interest, the academic and administrative autonomy of an institution shall be determined by reference to the January 1998 issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation for the National Science Foundation.

Names of submitting institutions and individuals, as well as proposal content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of reviewers will not be released to applicants. At the end of the fiscal year, names of panelists will be made available in such a way that the panelists cannot be identified with the review of any particular proposal.

Part V—Additional Information

A. Access To Review Information

Copies of summary reviews, not including the identify of reviewers, will be sent to the applicant PI/PD after the review process has been completed.

B. Grant Awards

(1) General

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in this RFP. The date specified by the Administrator as the effective date of the grant shall be no later than September 30. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this RFP shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015, 3016, and 3019 of 7 CFR).

(2) Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this RFP, if such information has not been provided previously under this or another CSREES program. CSREES will provide copies of forms recommended for use in fulfilling these requirements as part of the preaward process.

(3) Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:
(a) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for proposals;
(b) Title of project;
(c) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;
(d) Identifying grant number assigned by the Department;
(e) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;
(f) Total amount of Departmental financial assistance approved by the Administrator during the project period;
(g) Legal authority(ies) under which the grant is awarded;
(h) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and
(i) Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

All grants awarded under this program will be awarded using a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without additional support at a future date.

C. Use of Funds; Changes

(1) Delegation of Fiscal Responsibility

Unless the terms and conditions of the grant state otherwise, the grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(2) Changes in Project Plans

(a) The permissible changes by the grantee, PI/PD(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the PI/PD(s) are uncertain as to whether a change complies with this provision, the question must be referred to the CSREES Authorized Departmental Officer (ADO) for a final determination.
(b) Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the CSREES ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.
(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.
(d) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for

payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

(e) Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant, but in no case shall a grant period of performance exceed 5 years.

(f) Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Applicable Federal Statutes and Regulations

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include, but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15d (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of CSREES transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the proposal. The original copy of a proposal that does not result in a grant will be retained by the CSREES for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., this 1st day of March 2000.

Charles W. Laughlin,

Administrator Cooperative State Research, Education, and Extension Service.

APPENDIX A—Most Successful Universities and Colleges for Receiving Federal and/or National Research Initiative Funds [1]

Baylor College of Medicine
Boston University
Brown University
California Institute of Technology
Carnegie-Mellon University
Case Western Reserve University
Colorado State University
Columbia University
Cornell University
CUNY Mount Sinai School of Medicine
Dartmouth College
Duke University
Emory University
Florida State University
Georgetown University
Georgia Institute of Technology
Harvard University
Indiana University
Iowa State University of Science and Technology
Johns Hopkins University
*Kansas State University
Massachusetts Institute of Technology
Medical College of Wisconsin
Michigan State University
New York University
North Carolina State University
Northwestern University
Ohio State University

[1] Based on data from the table Federal obligations for science and engineering research and development to the 100 universities and colleges receiving the largest amounts, ranked by total amount received: in fiscal year 1997 of Federal Science and Engineering Support to Universities, Colleges, and Nonprofit Institutions (National Science Foundation, accessible through the Internet at www.nsf.gov/sbe/srs/nsf99331/).

*Annotated institutions are not in the list for the most successful Federally funded, but were among the top 50th percentile of those funded by the National Research Initiative (Competitive, Special, and Facilities Research Grant Act (7 U.S.C. 450i(b)) over the past three years (1997–1999).

[1] Based on data from the table Federal obligations for science and engineering research and development to the 100 universities and colleges receiving the largest amounts, ranked by total amount received: in fiscal year 1997 of Federal Science and Engineering Support to Universities, Colleges, and Nonprofit Institutions (National Science Foundation, accessible through the Internet at www.nsf.gov/sbe/srs/nsf99331/).

*Annotated institutions are not in the list for the most successful Federally funded, but were among the top 50th percentile of those funded by the National Research Initiative (Competitive, Special, and Facilities Research Grant Act (7 U.S.C. 450i(b)) over the past three years (1997–1999).

Oregon Health Sciences University
Oregon State University
Pennsylvania State University
Princeton University
Purdue University
Rockefeller University
Rutgers, The State University of New Jersey
Scripps Research Institute
Stanford University
State University of New York at Stony Brook
State University of New York at Buffalo
Texas A&M University, College Park
Thomas Jefferson University
Tufts University
Tulane University
University of Alabama Birmingham
University of Arizona
University of California Berkeley
University of California Davis
University of California Irvine
University of California Los Angeles
*University of California Riverside
University of California San Francisco
University of California Santa Barbara
University of Chicago
University of Cincinnati
University of Colorado
University of Florida
University of Georgia
University of Illinois Urbana-Champaign
University of Illinois Chicago
University of Iowa
University of Kansas
University of Maryland Baltimore Prof Sch
University of Maryland College Park
University of Massachusetts Amherst
University of Massachusetts Medical School Worcester
University of Medicine and Dentistry of New Jersey
University of Miami
University of Michigan Ann Arbor
University of Minnesota Twin Cities
University of Missouri Columbia
*University of Nebraska—Lincoln
University of New Mexico
University of North Carolina Chapel Hill
University of Pennsylvania
University of Pittsburgh
University of Rochester
University of South Carolina
University of Southern California
University of Texas at Austin
University of Texas Health Science Center Houston
University of Texas Health Sci. Center San Antonio
University of Texas MD Anderson Cancer Center
University of Texas Medical Branch Galveston
University of Texas SW Medical Center Dallas
University of Utah
University of Virginia
University of Washington
University of Wisconsin Madison
*Utah State University
Vanderbilt University
Virginia Commonwealth University
Wake Forest University
Washington University
*Washington State University
Wayne State University
Woods Hole Oceanographic Institute
Yale University
Yeshiva University, New York

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[1] Based on data from the table Federal obligations for science and engineering research and development to the 100 universities and colleges receiving the largest amounts, ranked by total amount received: in fiscal year 1997 of Federal Science and Engineering Support to Universities, Colleges, and Nonprofit Institutions (National Science Foundation, accessible through the Internet at www.nsf.gov/sbe/srs/nsf99331/).

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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Abraham Lincoln Bicentennial Commission Act (Feb. 25, 2000; 114 Stat. 14)

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Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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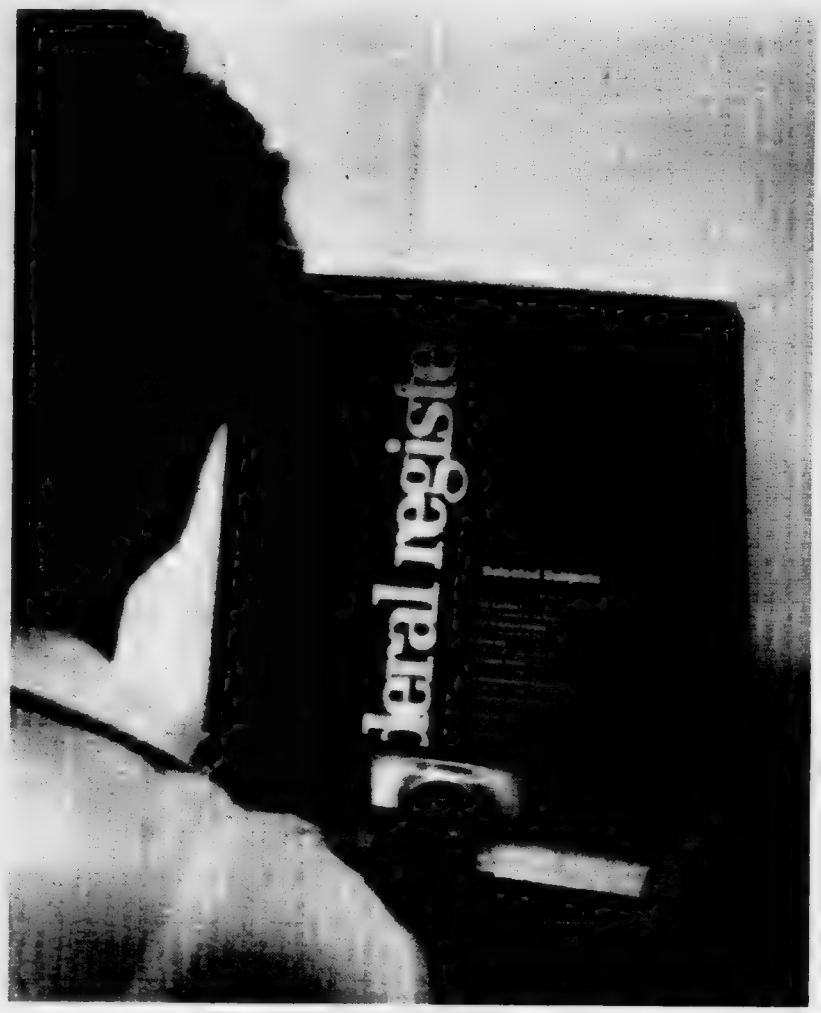

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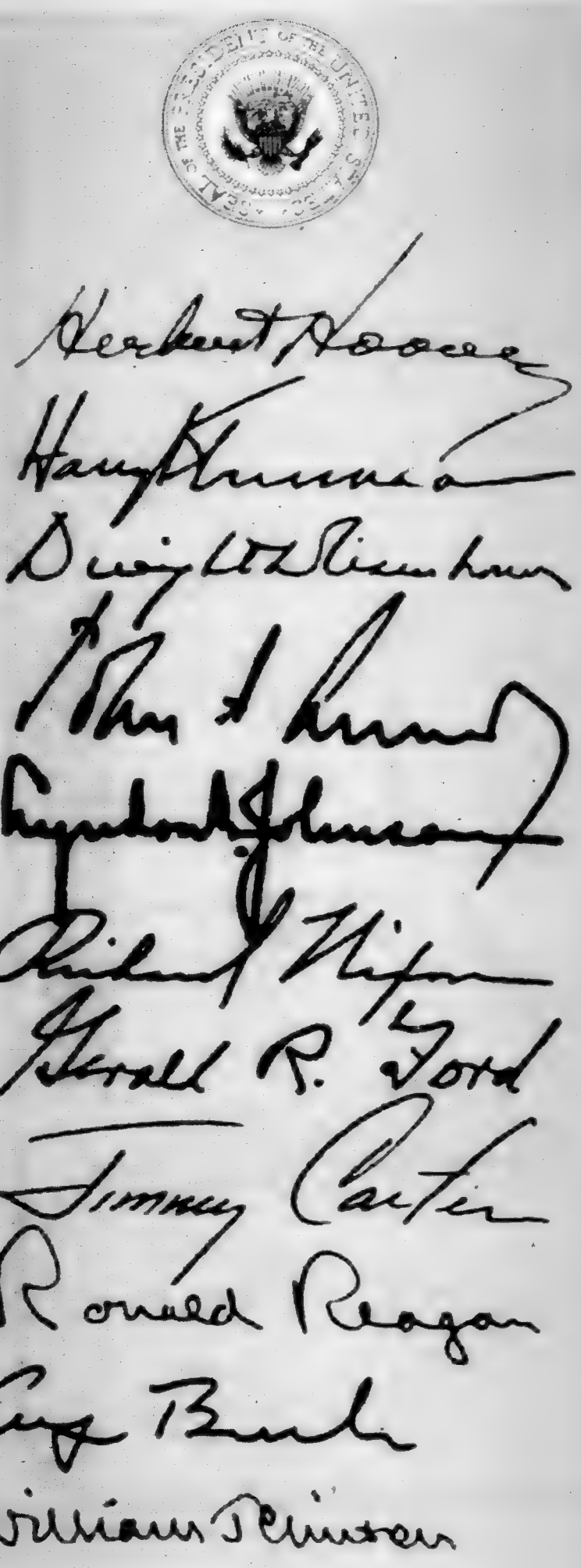

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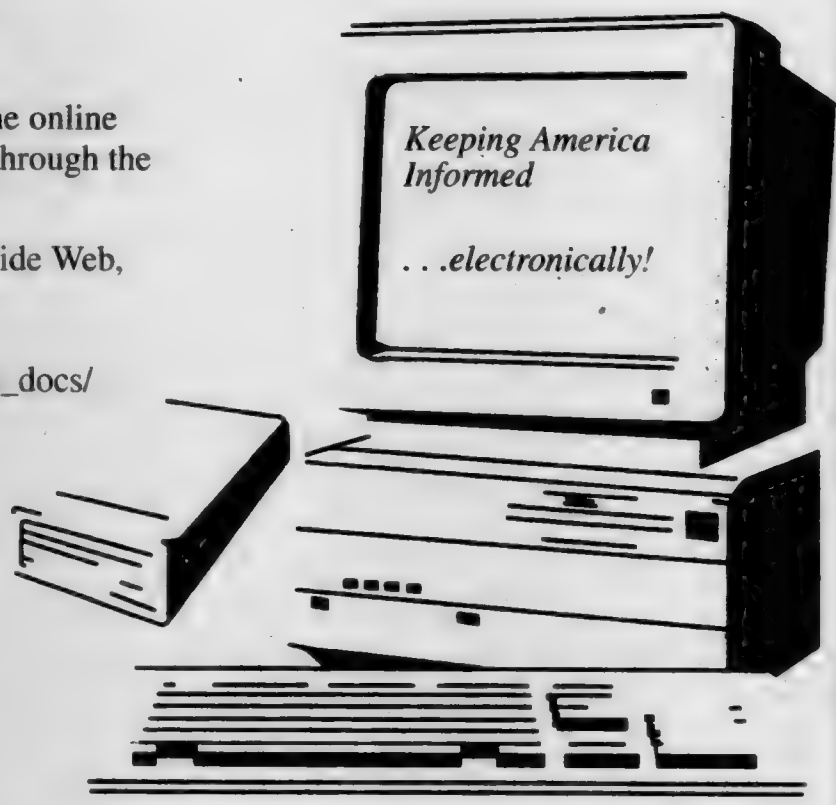

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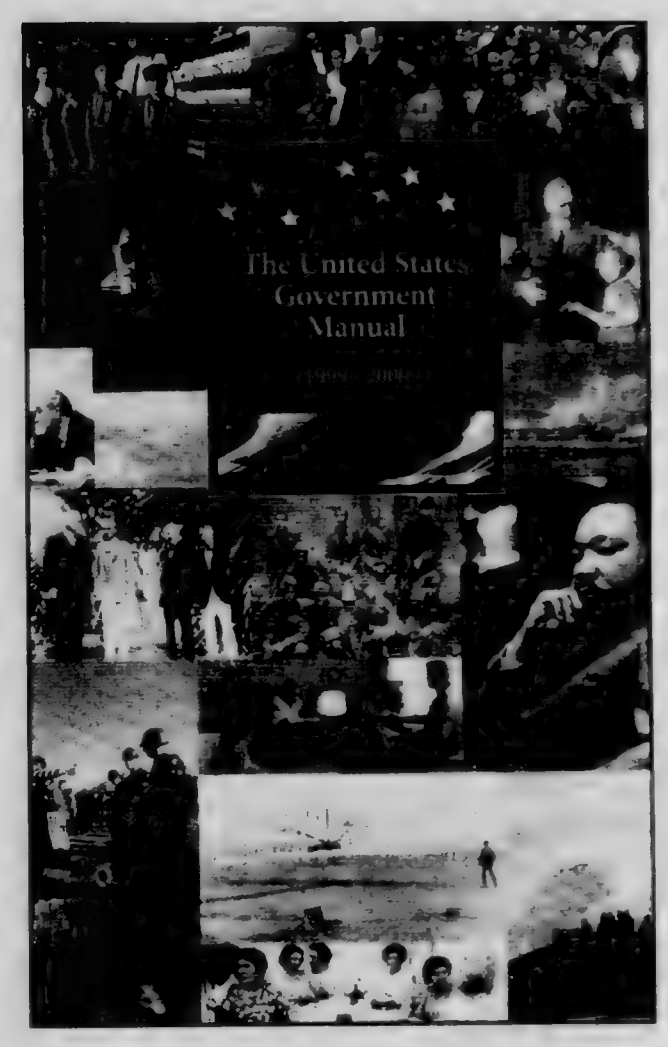

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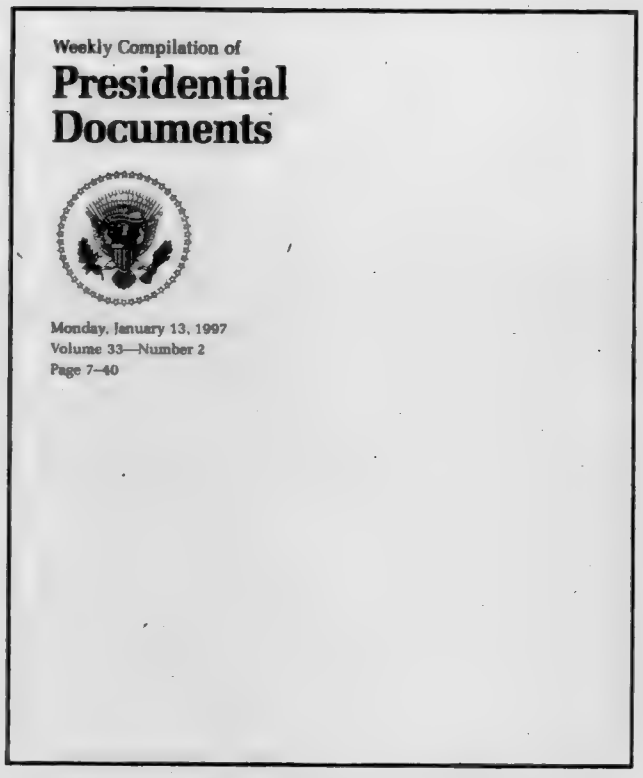

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–59–AD; Amendment 39–11606; AD 2000–04–23]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 and –300 series airplanes. This action requires repetitive inspections to detect cracking of the trailing edge of the rudder spring tab, and follow-on actions, if necessary. For certain airplanes, this action provides for optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent cracking of the rudder spring tab, which could result in reduced flutter margin and consequent loss of control of the airplane.

DATES: Effective March 22, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 22, 2000.

Comments for inclusion in the Rules Docket must be received on or before April 6, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–59–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 and –300 series airplanes. The LBA advises that it has received a report of 14 cracked rudder spring tabs found during production. Investigation conducted by the manufacturer revealed that the source of the cracks was the shape of the spring tab mold. When the mold was closed during production, layers of the spring tab at the trailing edge were partially exposed and subsequently improperly ground off in the paint shop, destroying one or more layers of the trailing edge. Further investigation by the manufacturer indicated that a spring tab having a crack longer than 750 millimeters would have so little stiffness that the spring tab could flutter. This condition, if not corrected, could result in loss of control of the airplane.

Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletins ASB–328–55–028 (for Model 328–100 series airplanes) and ASB–328J–55–002 (for Model 328–300 series airplanes), both dated October 29, 1999. These alert service bulletins describe procedures for an initial detailed visual inspection to detect cracking of a 2-inch length of the trailing edge of the rudder spring tab. Follow-on actions for a crack-free spring tab include the installation of high-speed tape on the trailing edge, repetitive visual checks of the tape to detect discrepancies (improper seat and damage), and replacement of discrepant tape with new tape. Corrective actions for a cracked spring tab include replacement with a new spring tab. These alert service bulletins further describe procedures for subsequent, more extensive, repetitive detailed visual inspections to detect cracking of the trailing edge of the rudder spring tab, and replacement of any cracked spring tab with a new spring tab.

The LBA classified these service bulletins as mandatory and issued German airworthiness directives 2000–002 (for Model 328–100 series airplanes) and 2000–001 (for Model 328–300 series airplanes), both dated January 13, 2000, in order to ensure the continued airworthiness of these airplanes in Germany.

Dornier has also issued Service Bulletin SB–328–55–307, dated December 1, 1999, which describes procedures for a one-time pressure test inspection, and permanent repair of any cracked spring tab. Accomplishment of these actions would eliminate the need for the repetitive inspections specified by Dornier Alert Service Bulletin ASB–328–55–028.

FAA's Conclusions

These airplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent cracking of the rudder spring tab, which could result in reduced flutter margin and consequent reduced structural integrity and loss of control of the airplane. This AD requires accomplishment of the actions specified in the alert service bulletins described

previously, except as discussed below. For Model 328–100 series airplanes, this AD also provides for an optional repair, which, if accomplished, would terminate the repetitive inspection requirement.

Differences Between the Rule and Relevant Service Information

Operators should note that, unlike the procedures described in the alert service bulletins, this AD does not permit further flight if any cracking is detected in the spring tab. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject spring tab that is found to be cracked must be replaced prior to further flight.

Whereas this AD provides for optional terminating action for Model 328–100 series airplanes, German airworthiness directive 2000–002 offers no such provision. However, the FAA has since been advised by the LBA and Dornier that terminating action is available for Model 328–100 series airplanes. Therefore, the FAA has determined that, for these airplanes, accomplishment of the pressure test inspection, and permanent repair of any cracked spring tab, as specified by Dornier Service Bulletin SB–328–55–307, dated December 1, 1999, is acceptable for terminating action for the repetitive inspections specified by Alert Service Bulletin ASB–328–55–028.

The alert service bulletins recommend that the tape checks be repeated at every line check and that the repetitive detailed visual inspection be repeated at every A-check; however, the repetitive intervals required by this AD are specified in terms of flight hours or days, which generally correspond to operators' line check and A-check schedules. The FAA has determined that the required repetitive intervals represent the maximum interval of time allowable for the affected airplanes to continue to operate, prior to accomplishing the required inspections, without compromising safety. Because maintenance schedules may vary from operator to operator, there would be no assurance that inspections accomplished according to a particular operator's line check or A-check schedule would be accomplished during the maximum allowable intervals.

Interim Action

This is considered to be interim action for Model 328–300 series airplanes. The manufacturer has advised that it currently is developing procedures that will positively address the unsafe condition addressed by this AD for these airplanes. Once these procedures are developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–59–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–04–23 Dornier Luftfahrt GMBH: Amendment 39–11606. Docket 2000–NM–59–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3119 inclusive; and Model 328–300 series airplanes, serial numbers 3108 through 3123 inclusive, and 3125 through 3128 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by

this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the rudder spring tab, which could result in reduced flutter margin and consequent loss of control of the airplane, accomplish the following:

Initial Inspection

(a) Within 14 days after the effective date of this AD, perform a detailed visual inspection to detect cracking of the trailing edge of the rudder spring tab, in accordance with Figure 1 of Dornier Alert Service Bulletin ASB–328–55–028 (for Model 328–100 series airplanes) or ASB–328J–55–002 (for Model 328–300 series airplanes), both dated October 29, 1999; as applicable.

(1) If no crack is detected, accomplish the actions specified by paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to further flight, install high-speed tape on the trailing edge, in accordance with the applicable alert service bulletin.

(ii) Within 60 flight hours or 15 days after installation of the tape, whichever occurs first, perform a general visual inspection to detect discrepancies of the tape (including improper seat and damage), in accordance with the applicable alert service bulletin.

(A) If no discrepancy is found, repeat the general visual inspection of the tape thereafter at intervals not to exceed 60 flight hours or 15 days, whichever occurs first, until the requirements of paragraph (b) of this AD have been accomplished.

(B) If any discrepancy is found, prior to further flight, replace the tape with new tape, and repeat the general visual inspection of the tape thereafter at intervals not to exceed 60 flight hours or 15 days, whichever occurs first, until the requirements of paragraph (b) of this AD have been accomplished.

(2) If any crack is detected, prior to further flight, replace the spring tab with a new spring tab, in accordance with the applicable alert service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Repetitive Inspection

(b) Within 400 flight hours after the effective date of this AD; or within 400 flight hours after tab replacement in accordance with paragraph (a)(2) of this AD, if required; whichever occurs later: Perform a detailed visual inspection to detect cracking of the trailing edge of the rudder spring tab, in accordance with Figure 2 of Dornier Alert Service Bulletin ASB–328–55–028 (for Model 328–100 series airplanes) or ASB–328J–55–002 (for Model 328–300 series airplanes), both dated October 29, 1999; as applicable. Accomplishment of the requirements of this paragraph within the compliance time required for paragraph (a) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD.

(1) If no crack is detected, repeat the detailed visual inspection required by paragraph (b) of this AD at intervals not to exceed 400 flight hours.

(2) If any crack is detected, prior to further flight, replace the spring tab with a new spring tab, in accordance with the applicable alert service bulletin. Thereafter, repeat the detailed visual inspection required by paragraph (b) of this AD at intervals not to exceed 400 flight hours.

Optional Terminating Action

(c) For Model 328–100 series airplanes: Accomplishment of the pressure test inspection of the spring tab, and applicable corrective actions, in accordance with Dornier Service Bulletin SB–328–55–307, dated December 1, 1999, constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD.

Spares

(d) As of the effective date of this AD, no person shall install on any airplane a spring tab, part number (P/N) 001A554A1706–000 (for Model 328–100 series airplanes) or P/N 001A554A1706–000 (for Model 328–300 series airplanes), unless that spring tab has been inspected in accordance with the requirements of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with Dornier Alert Service Bulletin ASB–328–55–028 (for Model 328–100 series airplanes), dated October 29, 1999; or Dornier Alert Service Bulletin ASB–328J–55–002 (for Model 328–300 series airplanes), dated October 29, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in German airworthiness directives 2000–002 (for Model 328–100 series airplanes) and 2000–001 (for Model 328–300 series airplanes), both dated January 13, 2000.

(h) This amendment becomes effective on March 22, 2000.

Issued in Renton, Washington, on February 24, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–4930 Filed 3–6–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–67–AD; Amendment 39–11618; AD 2000–05–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200PF, and –200CB Series Airplanes Powered by Rolls-Royce RB211–535C/E4/E4B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757–200, –200PF, and –200CB series airplanes, that currently requires repetitive inspections of the engine thrust control cable system to detect discrepancies of the wire rope, fittings, and pulleys; and replacement, if necessary. That AD also requires a one-time inspection to determine the part number of certain pulleys, and replacement of existing pulleys with new pulleys, if necessary; and modification of the engine thrust control

cable installation. This new action corrects a certain part number. This AD is prompted by reports of failure of certain engine thrust control cables. The actions specified by this AD are intended to prevent failure of certain engine thrust control cables, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane.

DATES: Effective March 22, 2000.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of February 7, 2000 (65 FR 1, January 3, 2000).

Comments for inclusion in the Rules Docket must be received on or before May 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1547; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On December 22, 1999, the FAA issued AD 99–27–06, amendment 39–11487 (65 FR 1, January 3, 2000), applicable to certain Boeing Model 757–200, –200PF, and –200CB series airplanes, to require repetitive inspections of the engine thrust control cable system to detect discrepancies of the wire rope, fittings, and pulleys; and replacement, if necessary. That AD also requires a one-time inspection to determine the part number of certain pulleys and replacement of existing pulleys with new pulleys, if necessary; and modification of the engine thrust control cable installation. That action was prompted by reports of failure of certain engine thrust control cables. The actions required by that AD are intended to prevent failure of certain engine thrust control cables, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has determined that a typographical error in paragraph (b) of AD 99–27–06 identified part number (P/N) BAC30M4 as a part number for the thrust control cable pulleys. However, as referenced in the preamble of the final rule, BACP30M4 is the correct P/N for the pulleys, as P/N BAC30M4 does not exist. In all other respects, the original document is correct.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 99–27–06 to continue to require repetitive inspections of the engine thrust control cable system to detect discrepancies of the wire rope, fittings, and pulleys; and replacement, if necessary. This AD also continues to require a one-time inspection to determine the part number of certain pulleys, and replacement of existing pulleys with new pulleys, if necessary; and modification of the engine thrust control cable installation.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–67–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11487 (65 FR 1, January 3, 2000) and by adding a new airworthiness directive (AD), amendment 39–11618, to read as follows:

2000–05–09 Boeing: Amendment 39–11618. Docket 2000–NM–67–AD. Supersedes AD 99–27–06, Amendment 39–11487.

Applicability: Model 757–200, –200PF, and –200CB series airplanes powered by Rolls-Royce RB211–535C/E4/E4B turbofan engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine thrust control cable failure, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane, accomplish the following:

Inspections and Corrective Actions

(a) Within 24 months or 6,000 flight hours after February 7, 2000 (the effective date of AD 99–27–06, amendment 39–11487), whichever occurs first: Accomplish the "Thrust Control Cable Inspection Procedure" specified in Appendix 1. (including Figure 1) of this AD to verify the integrity of the thrust control cables. Prior to further flight, repair any discrepancy found in accordance with the procedures described in the Boeing 757 Maintenance Manual. Repeat the inspection thereafter at intervals not to exceed 24 months or 6,000 flight hours, whichever occurs first.

(b) For airplanes having line numbers 1 through 636 inclusive: Within 24 months or 6,000 flight hours after February 7, 2000, whichever occurs first, perform a one-time inspection of the 8 engine thrust control cable pulleys in the struts (4 in each strut) to determine the part number (P/N) of each pulley. If any pulley having P/N 65B80977–1 or BACP30M4 is installed, prior to further flight, replace it with a pulley having P/N 255T1232–7, in accordance with the procedures described in the Boeing 757 Airplane Maintenance Manual.

Note 2: The location of the pulleys to be inspected in accordance with paragraph (b) of this AD is specified in Chapters 53–11–53–04, 76–11–52–01, and 76–11–52–02 of the Boeing 757 Illustrated Parts Catalog.

Modifications

(c) For airplanes identified in Boeing Service Bulletin 757–76–1, dated May 18, 1984: Within 24 months or 6,000 flight hours after February 7, 2000, whichever occurs first, remove the guide bracket of the engine thrust control cable located on the front spar of the right wing, in accordance with the service bulletin.

(d) For airplanes identified in Boeing Service Bulletin 757–76–0005, dated May 5, 1988: Within 24 months or 6,000 flight hours after February 7, 2000, whichever occurs first, remove the engine thrust control cable breakaway stop assemblies, and replace sections of the engine thrust control cables with smaller diameter cables in accordance with the service bulletin.

(e) For airplanes identified in Boeing Service Bulletin 757–30A0018, Revision 2, dated September 9, 1999: Within 60 days after February 7, 2000, install a support bracket assembly between the window heat wire bundle and the engine thrust control cable; and adjust the wire bundle clearance, as necessary, to parallel the minimum clearance specified in Boeing Alert Service Bulletin 757–30A0018, Revision 1, dated September 17, 1998; or Boeing Service Bulletin 757–30A0018, Revision 2, dated September 9, 1999.

Alternative Method of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraphs (a) and (b) of this AD, the modifications shall be done in accordance with Boeing Service Bulletin 757–76–1, dated May 18, 1984; Boeing Service Bulletin 757–76–0005, dated May 5, 1988; Boeing Alert Service Bulletin 757–30A0018, Revision 1, dated September 17, 1998; and Boeing Service Bulletin 757–30A0018, Revision 2, dated September 9, 1999. This incorporation by reference was approved previously by the Director of the Federal Register as of February 7, 2000 (65 FR 1, January 3, 2000). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on March 22, 2000.

Appendix 1.—Thrust Control Cable Inspection Procedure

1. General

A. Clean the cables, if necessary, for the inspection, in accordance with Boeing 757 Maintenance Manual 12–21–31.

B. Use these procedures to verify the integrity of the thrust control cable system. The procedures must be performed along the entire cable run for each engine. To ensure verification of the portions of the cables which are in contact with pulleys and quadrants, the thrust control must be moved by operation of the thrust and/or the reverse thrust levers to expose those portions of the cables.

C. The first task is an inspection of the control cable wire rope. The second task is an inspection of the control cable fittings. The third task is an inspection of the pulleys.

Note: These three tasks may be performed concurrently at one location of the cable system on the airplane, if desired, for convenience.

2. Inspection of the Control Cable Wire Rope

A. Perform a detailed visual inspection to ensure that the cable does not contact parts other than pulleys, quadrants, cable seals, or grommets installed to control the cable routing. Look for evidence of contact with other parts. Correct the condition if evidence of contact is found.

Note: For the purposes of this procedure, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

B. Perform a detailed visual inspection of the cable runs to detect incorrect routing, kinks in the wire rope, or other damage. Replace the cable assembly if:

(1) One cable strand had worn wires where one wire cross section is decreased by more than 40 percent (see Figure 1),

(2) A kink is found, or

(3) Corrosion is found.

C. Perform a detailed visual inspection of the cable: To check for broken wires, rub a cloth along the length of the cable. The cloth catches on broken wires.

(1) Replace the 7x7 cable assembly if there are two or more broken wires in 12 continuous inches of cable or there are three or more broken wires anywhere in the total cable assembly.

(2) Replace the 7x19 cable assembly if there are four or more broken wires in 12 continuous inches of cable or there are six or more broken wires anywhere in the total cable assembly.

3. Inspection of the Control Cable Fittings

A. Perform a detailed visual inspection to ensure that the means of locking the joints are intact (wire locking, cotter pins, turnbuckle clips, etc.). Install any missing parts.

B. Perform a detailed visual inspection of the swaged portions of swaged end fittings to detect surface cracks or corrosion. Replace the cable assembly if cracks or corrosion are found.

C. Perform a detailed visual inspection of the unswaged portion of the end fitting. Replace the cable assembly if a crack is visible, if corrosion is present, or if the end fitting is bent more than 2 degrees.

D. Perform a detailed visual inspection of the turnbuckle. Replace the turnbuckle if a crack is visible or if corrosion is present.

4. Inspection of Pulleys

A. Perform a detailed visual inspection to ensure that pulleys are free to rotate. Replace pulleys which are not free to rotate.

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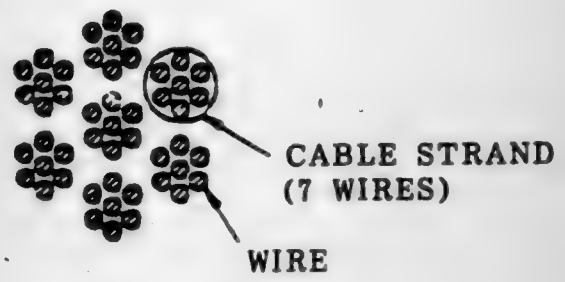

7x7 CABLE

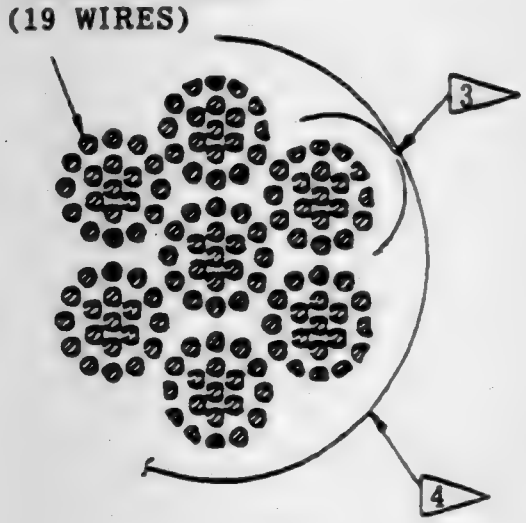

7x19 CABLE

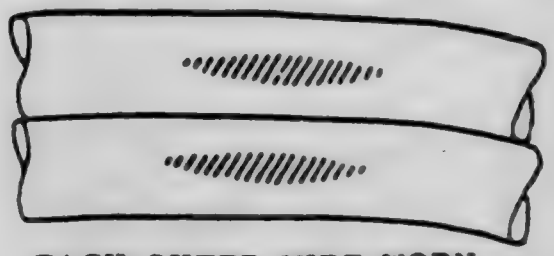

EACH OUTER WIRE WORN
LESS THAN 50%
(WORN AREAS NOT BLENDED)

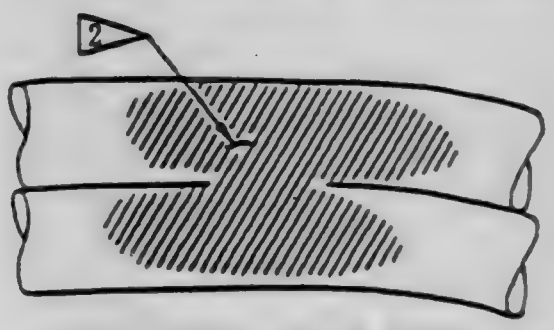

EACH OUTER WIRE WORN 40-50%
(WORN AREAS ARE BLENDED)

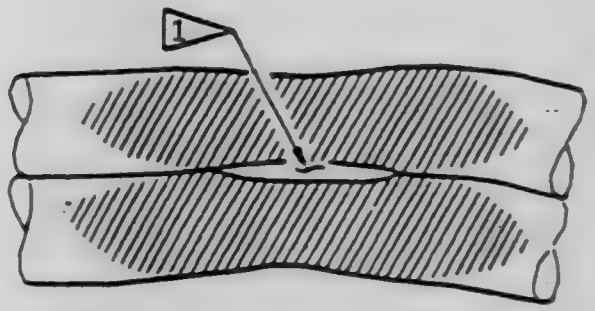

EACH WIRE IS WORN
MORE THAN 50%

1 SPACE BETWEEN WIRES

2 WEAR CONDITION THAT CAUSES BLENDED SURFACES BETWEEN WIRES

3 OUTER WIRE WEAR AREA ON CABLE STRAND. SPACE BETWEEN WIRES 1 OR FULLY BLENDED SURFACE 2 OVER APPROXIMATELY SIX WIRES IS AN INDICATION OF 50 PERCENT WIRE WEAR

4 CABLE WEAR CAN OCCUR ON ONE SIDE ONLY OR ON FULL CIRCUMFERENCE. CABLE WEAR CAN EXTEND ALONG THE CABLE FOR A DISTANCE EQUAL TO THE USUAL CABLE TRAVEL

FIGURE 1

Issued in Renton, Washington, on March 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5459 Filed 3–6–00; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–26]

Establishment of Class E Airspace; Big Bear City, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes an Class E airspace area at Big Bear City, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 26 at Big Bear City Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 26 SIAP to Big Bear City Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Big Bear City Airport, Big Bear City, CA.

EFFECTIVE DATE: 0901 UTC April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On December 29, 1999, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area at Big Bear City, CA (64 FR 72969). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 26 SIAP at Big Bear City Airport. This action will provide adequate controlled airspace for aircraft executing the GPS RWY 26 SIAP at Big Bear City Airport, Big Bear City, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes a Class E airspace area at Big Bear City, CA. The development of a GPS RWY 26 SIAP has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 26 SIAP at Big Bear City Airport, Big Bear City, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS.

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Big Bear City, CA [New]

Big Bear City, CA
(Lat. 34°15′49″ N, long. 116°51′16″ W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Big Bear City Airport.

* * * * *

Dated: Issued in Los Angeles, California, on February 23, 2000.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 00–5490 Filed 3–6–00; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AE56

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Evaluating Opinion Evidence

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising the Social Security and Supplemental Security Income (SSI) regulations concerning the evaluation of medical opinions to clarify how administrative law judges and the Appeals Council are to consider opinion evidence from State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult in claims for disability benefits under titles II and XVI of the Social Security Act (the Act). We are also defining and clarifying several terms used in our regulations and deleting other terms.

EFFECTIVE DATE: These rules are effective April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Acting Regulations Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, 1–410–965–3632, or TTY 1–800–966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: The Act provides, in title II, for the payment of

disability benefits to persons insured under the Act. Title II also provides, under certain circumstances, for the payment of child's insurance benefits based on disability and widow's and widower's insurance benefits for disabled widows, widowers, and surviving divorced spouses of insured persons. In addition, the Act provides, in title XVI, for SSI payments to persons who are aged, blind, or disabled and who have limited income and resources.

For adults under both the title II and title XVI programs (including persons claiming child's insurance benefits based on disability under title II), "disability" means the inability to engage in any substantial gainful activity. For an individual under age 18 claiming SSI benefits based on disability, "disability" means that an impairment(s) causes "marked and severe functional limitations." (Our regulations explain at § 416.902 that "Marked and severe functional limitations, when used as a phrase, * * * is a level of severity that meets or medically or functionally equals the severity of a listing in the Listing of Impairments in appendix 1 of subpart P of part 404 * * *.") Under both title II and title XVI, disability must be the result of a medically determinable physical or mental impairment(s) that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.

Explanation of Revisions

Simplification and Clarification of Terms

These final regulations define and clarify several terms that have been used in our regulations, and delete other terms. Our prior regulations used several terms to refer to sources of medical evidence. Regulations §§ 404.1502 and 416.902, "General definitions and terms for this subpart," defined the terms "source of record," "medical sources" (which included "consultative examiners"), and "treating source." These terms were used in various sections of the regulations in subpart P of part 404 and subpart I of part 416, chiefly §§ 404.1527 and 416.927, "Evaluating medical opinions about your impairment(s) or disability." In addition, §§ 404.1519 and 416.919 used the phrase "a treating physician or psychologist, another source of record, or an independent source." Regulations §§ 404.1527 and 416.927 also employed the terms "nontreating source" and "nonexamining source."

In paragraph (a) of §§ 404.1513 and 416.913 of our regulations, we say that we need reports about the individual's impairments from "acceptable medical sources" and we identify the sources that are acceptable medical sources. We need various terms for types of acceptable medical sources in only three, specific instances: (1) When we explain the preference we give to obtaining evidence from treating sources; (2) when we explain the preference we give to treating sources to perform consultative examinations; and (3) in our rules for weighing opinions from acceptable medical sources. In the first two cases, the only definition that is needed is the definition of a "treating source." In the last case, relevant distinctions are needed between treating sources, nontreating sources (*i.e.*, acceptable medical sources, such as some consultative examiners, who have examined an individual but not provided treatment), and nonexamining sources (*i.e.*, acceptable medical sources who have provided evidence but who have not treated or examined the individual).

Therefore, while the term "medical source" includes the term "acceptable medical source," we are simplifying and clarifying the specific terms we use to describe various acceptable medical sources of evidence, including medical opinion evidence (*i.e.*, opinions on the nature and severity of an individual's impairment(s)—see §§ 404.1527(a)(2) and 416.927(a)(2)) and other opinions (*e.g.*, opinions on issues reserved to the Commissioner of Social Security (the Commissioner)—see §§ 404.1527(e) and 416.927(e))—by using only four terms: "Treating source," "nontreating source," "nonexamining source," and an overall term, "acceptable medical source," which includes all three types of sources. These clarifications do not change our current policy, but are only intended to clarify our intent.

To do this, we now define the term "acceptable medical source" in §§ 404.1502 and 416.902. This is a term we have used for many years in §§ 404.1513(a) and 416.913(a). We are also redefining the term "medical sources" to mean acceptable medical sources or other health care providers who are not "acceptable medical sources," to clarify our intent in certain regulations sections. For instance, under the rules in §§ 404.1519, 404.1519g, 416.919, and 416.919g, we may select a qualified medical source who is not an "acceptable medical source" to perform a consultative examination; *e.g.*, an audiologist. We are deleting speech and language pathologist from this example, which appeared in the Notice of Proposed Rulemaking (NPRM), published in the **Federal Register** on September 25, 1997 (62 FR 50271), because an NPRM published October 9, 1998 (63 FR 54417) proposes to add qualified speech and language pathologists as acceptable medical sources.

In addition, a distinction between "medical source" and "acceptable medical source" is necessary because "an acceptable medical source" is required to establish the existence of a medically determinable impairment. See §§ 404.1513(a) and 416.913(a). Also, only an "acceptable medical source" can be considered to be a "treating source" for purposes of giving controlling weight to treating source medical opinion. See § 404.1527(d)(2) and 416.927(d)(2). The distinction between "acceptable medical source" and "medical source" is simply to facilitate application of the two longstanding rules noted above and is in no way intended to imply anything derogatory about medical sources that are not "acceptable medical sources."

We are also adding definitions for the terms "nonexamining source" and "nontreating source," which have been used in §§ 404.1527 and 416.927, but which previously were not defined in our regulations. We are clarifying the definition of "treating source" to include the other acceptable medical sources identified in §§ 404.1513(a) and 416.913(a) in addition to licensed physicians and licensed or certified psychologists, and, consistent with the use of the word "evaluation" in the first sentence of the definition in §§ 404.1502 and 416.902, to clarify that a source who only examines and evaluates an individual on an ongoing basis, but who does not provide any treatment, may also be a "treating source."

We are deleting the term "source of record" because sources previously included in the definition of that term are now included in the definition of the terms "acceptable medical source" or "medical sources," and the term "source of record" is not needed.

Clarification of §§ 404.1527 and 416.927

Consistent with our original intent, we are clarifying paragraph (f) of §§ 404.1527 and 416.927. As we explained in the preamble to the rules published in the **Federal Register** on August 1, 1991 (56 FR 36932, 36937), the purpose of paragraph (f) is to: (1) Explain how we consider evidence from various kinds of nonexamining sources (*e.g.*, State agency medical and psychological consultants, other program physicians and psychologists, and medical advisors—now called "medical experts"—at the administrative law judge and Appeals

Council levels of administrative review); (2) clarify the role of the State agency medical and psychological consultant at the various levels of the administrative review process; and (3) codify in regulations our longstanding policy that, because State agency medical and psychological consultants are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation, administrative law judges will consider their findings with regard to the nature and severity of an individual's impairment as opinions of nonexamining physicians and psychologists.

Sections 404.1527(f) and 416.927(f) of the regulations have stated since 1991 that administrative law judges and the Appeals Council are required to consider State agency medical and psychological consultant findings about the existence and severity of an individual's impairment(s), the existence and severity of an individual's symptoms, whether an individual's impairment(s) meets or equals the requirements for any impairment listed in appendix 1 to subpart P of part 404, and an individual's residual functional capacity. We restated and clarified these provisions of the regulations in Social Security Ruling 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence." (61 FR 34466, July 2, 1996.)

Consistent with our statements in the preamble to the regulations published in 1991 and in Social Security Ruling 96–6p, we are making the following revisions to paragraph (f) of §§ 404.1527 and 416.927. We are also making conforming revisions to paragraphs (d)(6) and (e). None of these revisions changes our current policies.

Because paragraph (f) refers to the rules in paragraphs (a) through (e) of §§ 404.1527 and 416.927, which collectively address both medical opinions (as described in paragraph (a)(2) of §§ 404.1527 and 416.927) and opinions on issues reserved to the Commissioner, it is inaccurate to refer in paragraph (f) solely to opinions on the "nature and severity of a person's impairment(s)." Therefore, we are deleting the phrase "on the nature and severity of your impairments" from the introductory text of paragraph (f). We are also revising paragraph (f)(2) to provide more detail on how administrative law judges are to consider the opinions of State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult. We have divided paragraph (f)(2) into an introductory paragraph and new paragraphs (f)(2)(i) through (f)(2)(iii), which provide a more detailed explanation of how opinions from these sources are to be evaluated. The introductory text of paragraph (f)(2) and, when appropriate, paragraphs (f)(2)(i) through (f)(2)(iii), now include reference to "other program physicians and psychologists" and the term "medical expert" for consistency with the language in paragraph (b)(6) of §§ 404.1512 and 416.912.

We are clarifying in new paragraph (f)(2)(i) of §§ 404.1527 and 416.927 that, because State agency medical and psychological consultants and other program physicians and psychologists are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation, administrative law judges must consider findings of these experts, except for the ultimate determination of disability, when administrative law judges make their decisions. We now state in new paragraph (f)(2)(ii) that when administrative law judges evaluate the findings of these experts, they will use the relevant factors set forth in paragraphs (a) through (e) of §§ 404.1527 and 416.927.

In paragraph (f)(2)(ii) of §§ 404.1527 and 416.927 we are also providing examples of the kinds of factors that an administrative law judge must consider when evaluating the findings of State agency medical and psychological consultants or other program physicians and psychologists. We are also clarifying that administrative law judges are required to explain in their decisions the weight given to any opinion of a State agency medical or psychological consultant or other program physician or psychologist, as they must do for any opinions from treating sources, nontreating sources, and nonexamining sources who do not work for us. We have added language that did not appear in the NPRM (see 62 FR 50272, September 25, 1997) to clarify that when treating source opinion is given controlling weight, it is not necessary for the administrative law judge to provide an explanation of the weight given to the opinion of a State agency medical or psychological consultant. For purposes of clarity, we have also made a revision to the first sentence of paragraph (f)(2)(ii) to refer to administrative law judges in the singular, rather than the plural.

In new paragraph (f)(2)(iii) of §§ 404.1527 and 416.927, we are substituting the term "medical expert" for "medical advisor" for the reason explained below in the discussion of §§ 404.1512 and 416.912. We are also making it clear in new paragraph (f)(2)(iii) of §§ 404.1527 and 416.927 that, when administrative law judges consider opinions from medical experts they consult, they will use the rules in paragraphs (a) through (e) of §§ 404.1527 and 416.927.

We are also amending paragraph (d)(6) of §§ 404.1527 and 416.927 by adding two examples of other factors that can affect the weight we give to a medical opinion. One example of a relevant factor that we proposed in the proposed rules to add to §§ 404.1527(d)(6) and 416.927(d)(6) was the amount of Social Security disability program expertise an acceptable medical source has. However, as a result of public comments received on this proposed example, we are revising the example to give consideration to the amount of understanding that an acceptable medical source has of our disability programs and their evidentiary requirements, regardless of the source of that understanding, as a relevant factor that is consistent with the examples in final paragraph (f)(2)(ii). This includes acceptable medical sources that are current or former State agency medical or psychological consultants and other program physicians and psychologists. This also includes those acceptable medical sources that have gained their understanding of our disability programs and their evidentiary requirements in other ways (*e.g.*, through continuing medical education or experience in conducting consultative examinations for us).

Another example of a relevant factor that we proposed to add was whether an acceptable medical source reviewed the individual's entire case record. However, based on the public comments received on this proposed example, we are revising the example to provide that the extent to which an acceptable medical source is familiar with the other information in the individual's case record is a relevant factor. Both of these are examples of relevant factors that we will consider in deciding the weight to give to a medical opinion from any acceptable medical source.

We are also amending paragraph (e) of §§ 404.1527 and 416.927 by adding an introductory paragraph to distinguish opinions on issues reserved to the Commissioner from medical opinions, and by designating the last sentence of paragraph (e)(2) as new final paragraph (e)(3) to make it clear that the rule in new final paragraph (e)(3) applies to an

opinion about disability described in paragraph (e)(1) as well as to an opinion on any issue reserved to the Commissioner described in paragraph (e)(2).

Other Changes

Sections 404.1502 and 416.902 General Definitions and Terms for This Subpart

In §§ 404.1502 and 416.902, we are clarifying, consistent with §§ 404.602 and 416.302, the definition of the term "you" to more accurately indicate that the definition includes the person for whom an application is filed, because the person who files an application may be filing it on behalf of another person.

We are deleting reference to the "Secretary" from § 416.902 to reflect § 702(a)(5) of the Social Security Act as amended by § 102 of the Social Security Independence and Program Improvements Act of 1994, Public Law 103–296, enacted on August 15, 1994, which transferred from the Secretary of Health and Human Services to the Commissioner of Social Security the authority to issue regulations. We are revising the language from how it appeared in the NPRM (62 FR 50272, September 25, 1997) to clarify the change in authority from the Secretary of Health and Human Services to the Commissioner.

Sections 404.1512 and 416.912 Evidence of Your Impairment

We are amending §§ 404.1512 and 416.912 by revising paragraph (b)(6) to delete the word "certain" to clarify that every finding made by State agency medical or psychological consultants and other program physicians or psychologists and the opinions of medical experts, other than the ultimate determination of whether an individual is disabled, is evidence that an administrative law judge and the Appeals Council must consider at the administrative law judge and Appeals Council levels of review. We are also changing the term "medical advisor" to "medical expert" because the latter is the term we currently use to describe these nonexamining sources we consult at the administrative law judge and Appeals Council levels.

Sections 404.1513 and 416.913 Medical Evidence of Your Impairment

We are revising paragraph (c) of §§ 404.1513 and 416.913 to codify our policy interpretation that, at the administrative law judge and Appeals Council levels of review, "statements about what you can still do," which we also call "medical source statements," include residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists. This is because they become opinion evidence of nonexamining physicians and psychologists at the hearings and appeals levels. (See Social Security Ruling 96–6p, 61 FR 34466, 34468.)

The regulations describe two distinct kinds of assessments of what an individual can do despite the presence of a severe impairment(s). The first is described in §§ 404.1513(b) and (c) as a "statement about what you can still do despite your impairment(s)" made by an individual's medical source and based on that source's own medical findings. This "medical source statement" is an opinion submitted by a medical source as part of a medical report. The second category of assessments is the residual functional capacity assessment described in §§ 404.1545, 404.1546, 416.945, and 416.946 which is the adjudicator's ultimate finding of "what you can still do despite your limitations." Even though the adjudicator's residual functional capacity assessment may adopt the opinions in a medical source statement, they are not the same thing. A medical source statement is evidence that is submitted to the Social Security Administration (SSA) by an individual medical source reflecting the source's opinion based on his or her own knowledge, while a residual functional capacity assessment is the adjudicator's ultimate finding based on a consideration of this opinion and all the other evidence in the case record about what an individual can do despite his or her impairment(s). (See Social Security Ruling SSR 96–5p).

Because paragraphs (b) and (c) relate to the reports about an individual's impairment(s) needed from acceptable medical sources described in paragraph (a), we are clarifying paragraphs (b)(6), (c)(1) and (c)(2) of § 404.1513 and paragraphs (b)(6), (c)(1), (c)(2), and (c)(3) of § 416.913 to refer to findings and opinions of the "acceptable medical source," rather than findings and opinions of the "medical source." We are also clarifying paragraphs (c)(1) and (c)(2) of § 416.913 by indicating that they pertain only to adults, to make the construction of these paragraphs parallel to that of paragraph (c)(3), which pertains only to children.

Sections 404.1519 and 416.919 The Consultative Examination

For the reasons explained above about the definition of the term "treating source," we are revising the first sentence of §§ 404.1519 and 416.919 to substitute the terms "treating source" and "medical source" for the terms "treating physician or psychologist," "source of record," and "independent source."

Sections 404.1519g and 416.919g Who We Will Select To Perform a Consultative Examination

We are revising paragraph (a) of these sections to refer in the last sentence to §§ 404.1513 and 416.913, rather than §§ 404.1513(a) and 416.913(a), for the reasons explained above about the revised definition of "medical source" in §§ 404.1502 and 416.902. For the same reason, we are also changing the phrase "physician or psychologist" in the first sentence of paragraph (c) to "medical source."

Sections 404.1519h and 416.919h Your Treating Source

We are revising the heading and text of these sections to substitute the term "treating source" for the term "treating physician or psychologist."

Sections 404.1519i and 416.919i Other Sources for Consultative Examinations

We are revising the heading and text of these sections to substitute the term "medical source" for the term "source" and the term "treating source" for the term "treating physician or psychologist."

Sections 404.1519j and 416.919j Objections to the Medical Source Designated To Perform the Consultative Examination.

We are revising the heading and text of these sections to use the term "medical source," rather than the phrase "physician or psychologist," for the reasons explained above.

Sections 404.1519k and 416.919k Purchase of Medical Examinations, Laboratory Tests, and Other Services.

We are revising the introductory paragraph of these sections to use the term "medical source," rather than the phrase "licensed physician or psychologist, hospital or clinic" for the reasons explained above.

Sections 404.1519m and 416.919m Diagnostic Tests or Procedures

We are revising the first sentence of these sections to substitute the term "treating source" for the term "treating physician or psychologist." We are also revising the last sentence to use the term "medical source designated to perform the consultative examination," rather than the phrase "consultative examining

physician or psychologist," for the reasons explained above.

Sections 404.1519n and 416.919n Informing the Medical Source of Examination Scheduling, Report Content, and Signature Requirements

We are revising the heading, introductory paragraph, and paragraphs (a), (b), (c), and (e) of these sections to use the term "medical source," rather than the phrase "physician or psychologist," for the reasons explained above. We are deleting the word "examining" from the previous regulations and NPRM because sources that examine or have examined a claimant are included in the new definition of the term "medical source." We are also adding a heading to paragraph (a) for consistency with the other paragraphs in this section. In addition, we are revising paragraph (c)(6) to insert language that we originally intended to include in the 1991 regulations "Standard for Consultative Examinations and Existing Medical Evidence", as explained in our statements in the preamble to those regulations (56 FR 36932, 36934, August 1, 1991), but inadvertently omitted, to ensure that although medical source statements about what an individual can still do despite his or her impairment(s) should ordinarily be requested as part of the consultative examination process, the absence of such a statement in a consultative examination report does not make the report incomplete.

Sections 404.1519o and 416.919o When a Properly Signed Consultative Examination Report Has Not Been Received

We are revising paragraphs (a) and (b) of these sections to use the term "medical source," rather than the phrase "physician or psychologist," for the reasons explained above.

Sections 404.1519p and 416.919p Reviewing Reports of Consultative Examinations

We are revising paragraph (b) of these sections to use the term "medical source," rather than the phrase "physician or psychologist," for the reasons explained above. We are revising paragraph (c) to correct the grammar in the first sentence by substituting the word "when" for the word "where." We are also substituting the term "treating source" for the term "treating physician or psychologist."

Sections 404.1519s and 416.919s Authorizing and Monitoring the Consultative Examination

We are revising paragraph (e)(2) of these sections to refer to a consultative examination provider's "practice," rather than to a "practice of medicine, osteopathy, or psychology," for the reasons explained above about the definition of "medical source." For the same reasons, we now use the term "medical sources" in paragraph (f)(6), rather than the phrase "physicians and psychologists."

Sections 404.1527 and 416.927 Evaluating Opinion Evidence

We are changing the heading of §§ 404.1527 and 416.927 from "Evaluating medical opinions about your impairment(s) or disability" to "Evaluating opinion evidence" to more accurately identify the content of these sections. Under §§ 404.1527(a)(2) and 416.927(a)(2), the term "medical opinion" means statements from acceptable medical sources that reflect judgments about the nature and severity of an individual's impairments, but §§ 404.1527 and 416.927 address other types of opinions too.

We are revising the third sentence of paragraph (d)(2) of §§ 404.1527 and 416.927 to clarify that the "other factors" referenced in paragraph (d)(6) will be considered along with the factors in paragraphs (d)(2)(i) and (ii) and paragraphs (d)(3) through (d)(5) of this section when we do not give a treating source's medical opinion controlling weight. As indicated by the introductory text to §§ 404.1527(d) and 416.927(d), exclusion of reference to paragraph (d)(6) was an inadvertent omission when the rule was published. (56 FR 36932, August 1, 1991.)

We are changing the heading of paragraph (e) in §§ 404.1527 and 416.927 to reflect that the Commissioner, not the Secretary of Health and Human Services, has the authority on these issues pursuant to section 702(a)(5) of the Act as amended by section 102 of the Social Security Independence and Program Improvements Act of 1994, Public Law 103–296, enacted on August 15, 1994. We are also changing the second sentence of paragraph (e)(2) to substitute the term "medical sources" for the phrase "treating and examining sources" to be consistent with the use of the term "medical sources" in the first sentence of paragraph (e)(2) and to clarify that we consider opinions from all medical sources on the issues described in the second sentence.

We are also shortening the heading of paragraph (f) of §§ 404.1527 and 416.927 to "Opinions of nonexamining sources," consistent with the definitions in §§ 404.1502 and 416.902. For the same reason, we are substituting the term "nonexamining sources" for "nonexamining physicians and psychologists" in the first sentence of paragraph (f).

Public Comments

We published these regulatory provisions in the **Federal Register** as an NPRM on September 25, 1997 (62 FR 50270), and we provided the public with a 60-day comment period. The comment period closed on November 24, 1997. We received comments in response to this notice from 126 individuals and organizations. The commenters included Government agencies whose interests and responsibilities require them to have some expertise in the evaluation of medical evidence used in making disability determinations under titles II and XVI of the Act. They also included individuals with disabilities, support groups for individuals with disabilities, attorneys and non-attorney representatives, and legal services organizations that represent the interests of individuals with disabilities. In addition, we received comments from one medical association, physicians, and other medical professionals.

Because many of the comments were detailed, we condensed, summarized, or paraphrased them. We have tried to summarize the commenters' views accurately and to respond to all of the significant issues raised by the commenters that are within the scope of these rules.

Comment: One commenter recommended that the deadline for submission of comments on the proposed rules be extended, noting that the evaluation of opinion evidence is central to the determination of disability, and that the length and complexity of the proposed rules made comments on the proposed changes extremely difficult.

Response: The NPRM provided the 60-day period that is generally provided for public comments on a proposed rule. We considered the recommendation to extend this period; however, we decided that this was not necessary in view of the number of comments received within the 60-day period displaying in-depth review and consideration of the proposed rules. Moreover, we did not propose any revisions that would change our policies on the evaluation of opinion evidence, and most of the revisions in the

proposed rules merely improved the consistency of our terminology throughout the regulations.

Comment: Many of the comments concerned the quality of consultative examinations we purchase, including the qualifications of consultative examiners and support staff, their equipment, treatment of claimants, and the time spent in conducting some consultative examinations.

Response: Although these comments were outside the scope of the proposed rules, the quality of the consultative examinations we purchase is important to us, and we will consider the comments as we work with the State agencies to ensure quality examinations. We take very seriously our responsibility to do so, as outlined in §§ 404.1519 ff. and 416.919 ff. However, as we explain above, we are revising the paragraphs in §§ 404.1519 ff. and 416.919 ff. only to substitute the term "medical source" for the phrase "physician or psychologist" and to make minor technical revisions. We are not making substantive changes to the rules stated in §§ 404.1519 ff. and 416.919 ff. concerning the purchase of consultative examinations and the review of consultative examination reports to ensure the quality and appropriateness of the examinations.

Comment: Many commenters questioned our statement in §§ 404.1527(f)(2) and 416.927(f)(2) of the proposed rules that State agency medical and psychological consultants are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation, contending that this was an effort to introduce a new criterion to give more weight to the opinions of the State agency medical and psychological consultants. A number of other commenters observed that the statement of findings by the State agency physicians and psychologists are part of the disability determination at the initial and reconsideration levels of administrative review, and they questioned how findings made at one level by an agency adjudicator become expert opinion evidence at another level on the same case. One commenter also indicated that the use of the findings by an adjudicator at one level of administrative review as expert witness evidence at another level represents a conflict of interest.

Response: The statement in §§ 404.1527(f)(2) and 416.927(f)(2) of the proposed rules was taken from the preamble to the original publication of these rules in 1991. ("Standard for Consultative Examinations and Existing Medical Evidence" (56 FR 36937, August 1, 1991)). Therefore, it is not a new criterion, only a clarification in the regulations of our original intent. As noted in the 1991 preamble, "* * * State agency medical and psychological consultants are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation. Therefore, it has been our longstanding policy that administrative law judges will consider the findings of State agency medical and psychological consultants with regard to the nature and severity of a claimant's impairment as opinions of nonexamining physicians and psychologists." (56 FR 36937, August 1, 1991). We restated and clarified this policy in Social Security Ruling 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence." (61 FR 34466, July 2, 1996.) However, and as is discussed in more detail later in this preamble, when an administrative law judge or the Appeals Council considers the opinion of a State agency medical or psychological consultant, the weight that will be given to the opinion will depend on the degree to which the medical or psychological consultant provides a supporting explanation for the opinion.

These revisions do not represent a change in policy. It has been our longstanding policy that findings made by State agency medical and psychological consultants are considered opinion evidence at the hearing and Appeals Council levels. Since 1991, §§ 404.1527(f) and 416.927(f) have required administrative law judges and the Appeals Council to consider those findings of fact about the nature and severity of an individual's impairment(s) as opinion evidence of nonexamining physicians and psychologists. These requirements are based on the medical or psychological consultants' experience as health care professionals who are also experts in the evaluation of the medical issues in disability claims under the Act and recognize that we weigh medical opinions included in case records.

In response to the last commenter, the consideration of findings made by a State agency medical or psychological consultant at the initial or reconsideration level of administrative review as opinion evidence at the hearing level does not represent a conflict of interest. At the hearing level, administrative law judges consider the issues before them de novo. Therefore, when administrative law judges consider issues of disability, they are not bound by any findings made at the State agency in connection with the initial and reconsidered determinations.

Comment: Many of the commenters expressed a concern that the intent of the proposed rules was to negate or moderate the rules for weighing opinion evidence from treating sources that recognize the special intrinsic value of a treating source's relationship with the individual. In particular, concern was expressed about the revision to §§ 404.1527(d)(6) and 416.927(d)(6) that added two examples of other factors that can affect the weight we give to a medical opinion from an acceptable medical source. The two factors noted were the amount of Social Security disability programs expertise the acceptable medical source has, and whether the acceptable medical source reviewed the individual's entire case record before providing a medical opinion.

Response: It was not and is not our intent to negate or moderate the rules for weighing opinions from treating sources. We continue to provide in §§ 404.1527(d) and 416.927(d) that "Generally we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations." We also continue to provide that we will give treating source medical opinions on the nature and severity of an impairment "controlling weight" if we find that the opinion is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. As we explain above, the two examples being added to paragraph (d)(6) of §§ 404.1527 and 416.927 are simply examples of factors that can affect the weight we give a medical opinion. We believe that they are valid considerations along with all of the other factors (including treatment relationship) we consider when we weigh medical opinions. In response to public comments, however, we are revising the two examples that appeared in the NPRM. We are revising the first example to give consideration to the amount of understanding that an acceptable medical source has of our

disability programs and their evidentiary requirements, regardless of the source of that understanding. We are revising the second example to provide that the extent to which an acceptable medical source is familiar with the other information in the individual's case record is a relevant factor that we will consider.

Comment: Many commenters questioned why we proposed to add a rule to §§ 404.1527(d) and 416.927(d) to consider the amount of Social Security disability programs expertise an acceptable medical source has. They expressed the opinion that, with few exceptions, State agency medical and psychological consultants will be the only medical sources with experience working with the disability program. Another commenter argued that medical experts should be treated as experts because of their knowledge of medicine, not their knowledge of the law. One commenter asked what "disability program expertise" is and how it would be measured. Another commenter stated that a medical source's expertise on the subject of a particular individual's impairments or limitations should be evaluated based on his or her knowledge of the individual and the type of medical impairment experienced by the individual, not by his or her knowledge of the Social Security law and regulations.

Response: As we indicated in the preamble to the proposed rules on September 25, 1997 (62 FR 50272), we proposed to list an acceptable medical source's "Social Security disability programs expertise" as an example of the "other factors" referenced in §§ 404.1527(d)(6) and 416.927(d)(6) that we will consider in weighing an acceptable medical source's medical opinion. As indicated in the preamble, exclusion of the reference to paragraph (d)(6) was an inadvertent omission when the rules on consideration of medical evidence were published in 1991. However, we did not intend that an employment or contractual relationship with SSA or a State agency as a medical or psychological consultant would be the sole means to obtain "Social Security disability programs expertise." We agree that there will be acceptable medical sources that have never been in such a relationship with SSA who will have developed expertise in Social Security disability programs. For example, some medical sources will have obtained such expertise through continuing medical education, or as a result of conducting consultative examinations for us. (See §§ 404.1519n and 416.919n, which state that the "medical sources who perform consultative examinations will have a good understanding of our disability programs and their evidentiary requirements.") Therefore, we are revising §§ 404.1527(d)(6) and 416.927(d)(6) further to delete "Social Security disability programs expertise" as an example of the "other factors" reference in §§ 404.1527(d)(6) and 416.927(d)(6), and to add the amount an acceptable medical source's "understanding of our disability programs and their evidentiary requirements" as an example of one of the factors we will consider in weighing the acceptable medical source's medical opinion, regardless of the source of that understanding.

Comment: A number of commenters expressed a concern that nonexamining State agency medical and psychological consultants may not have an understanding of "emerging illnesses," such as Chronic Fatigue Syndrome, fibromyalgia, multiple chemical sensitivities, or lupus erythematosus. Several of these commenters indicated, as well, that many regular treating sources do not have the understanding of these illnesses that private researchers and specialists do, and that more weight should be given to the opinions of those specialists who are treating an individual for these illnesses.

Response: We believe that the regulations take this concern into account. The regulations provide for a variety of factors to be applied in evaluating medical opinions, depending on the facts of the individual case. For example, §§ 404.1527(d)(5) and 416.927(d)(5) state that "We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist." Therefore, when we do not give the treating source's opinion controlling weight (for example if a specialist submits evidence that is inconsistent with the treating source's opinion), we can give more weight in an appropriate case to the opinion of a specialist on the individual's particular medical impairment. As we have already noted, the weight to which a medical or psychological consultant's opinion will be entitled depends on these same factors.

Comment: One commenter noted that giving weight to Social Security program expertise and review of the entire case file and requiring administrative law judges to explain in the decision the weight given to the opinions of a State agency medical or psychological consultant reinforces the basic tenets of Process Unification. Another commenter elaborated on this point, noting that the revision to §§ 404.1527 and 416.927 clarifying our longstanding policy that administrative law judges must consider State agency medical and psychological consultant findings as opinion evidence is an important step in Social Security's efforts to unify the disability process and to restore the program's credibility with the public. The commenter noted that two different processes are perceived now, the initial/reconsideration process in the State agency and the administrative law judge hearing.

Response: As the commenters have observed, these revisions are part of our current Process Unification initiative, which is intended to achieve similar and correct results on similar cases at all stages of the administrative review process for claims for disability benefits under the Act, by ensuring that decisionmakers at each stage are following consistent policies in deciding these claims. This is expected to result in the allowance of claims that should be allowed at the earliest possible level of administrative review, potentially providing favorable decisions at an earlier point for disabled claimants, as well as reducing both the rate of appeal and the rate of allowance on appeal for these claims.

Comment: A number of commenters believed that expertise in Social Security's rules is not something that can be presumed; the expertise of the individual nonexamining doctor would need to be proven in every case in which this factor is an issue. These comments noted that, at the very least, claimants and their representatives must be provided with documentation of the qualifications, training, and expertise of the State agency medical sources.

Response: The Act and regulations recognize State agency medical and psychological consultants as experts in Social Security disability programs. The rules in §§ 404.1527(f) and 416.927(f) require administrative law judges and the Appeals Council to consider the State agency consultants' findings of fact about the nature and severity of an individual's impairment(s) as opinions of nonexamining physicians and psychologists. When an administrative law judge admits a medical opinion into the case record as an exhibit for consideration, including a medical opinion from a State agency medical or psychological consultant that was considered a finding at any earlier level in the administrative review process, the administrative law judge will also admit into the record a statement of the medical source's professional

qualifications as required by our operating instructions.

Comment: A number of commenters questioned why we proposed to add an example to §§ 404.1527(d) and 416.927(d) indicating that whether an acceptable medical source reviewed the entire case before providing a medical opinion is a relevant factor to be considered in evaluating the source's medical opinion. They also questioned whether medical sources other than State agency medical and psychological consultants will have an opportunity to review the individual's entire case record before they provide a medical opinion.

One State agency commenter fully supported the value of a complete file review when assigning weight to medical opinions, noting that medical opinions are too often given adjudicative weight that may be countered by objective evidence or other expert opinion evidence elsewhere in the file.

Response: As with the example of an acceptable medical source's "understanding of our disability programs and their evidentiary requirements," we are revising this proposed example and listing whether the acceptable medical source is familiar with the other information in the individual's case record as another example of the "other factors" referenced in §§ 404.1527(d)(6) and 416.927(d)(6) that we will consider in weighing an acceptable medical source's medical opinion. We believe that it is appropriate for the adjudicator to consider whether an acceptable medical source is familiar with the other information in the individual's case record because this is a relevant factor that can properly affect the weight we give to a medical opinion. An individual and his or her representative have a right to review and obtain copies of the materials in the individual's case record, *e.g.*, for review by the individual's treating or other medical source, if this should be desired.

Comment: One commenter noted that it is the practice for administrative law judges to require "fresh" evidence, and thus current evidence will be submitted just weeks prior to the hearing. The commenter noted that whatever evidence was available to the State agency medical or psychological consultant would not be current and that the administrative law judge would consider the additional evidence.

Response: We agree that the record before the administrative law judge will often include additional evidence beyond what the State agency medical or psychological consultant considered in his or her medical opinion. As the example in paragraph (d)(6) of §§ 404.1527 and 416.927 indicates, concerning whether an acceptable medical source is familiar with the other information in the individual's case record, this factor will be considered when the administrative law judge or Appeals Council weighs medical opinions from a State agency medical or psychological consultant or other acceptable medical source. This may limit the weight that can be given to a medical opinion from a State agency medical or psychological consultant and the period to which the opinion applies.

Comment: A number of commenters indicated their concern with the manner in which a State agency medical or psychological consultant's medical opinion may be provided in the record. Some of the commenters noted that these opinions frequently are expressed as boxes checked on a form, with little or no rationale, or as a statement of medical findings from records in the file with no other explanation for why the residual functional capacity assessment provided would flow from these findings, or why these opinions from State agency medical or psychological consultants are in conflict with the opinions of treating or examining physicians. They noted that there is no reasonable basis for giving further weight to such a cursory report lacking a substantive rationale.

Response: The revisions we are making do not represent a change in our longstanding policy that the adjudicator should give little weight to an opinion from any source, including a State agency medical or psychological consultant, that is poorly explained and not supported by the evidence in the record. Sections 404.1527(d)(3) and 416.927(d)(3) have stated and continue to state: "The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we give their opinions will depend on the degree to which they provide supporting explanations for their opinions." We will evaluate the degree to which these opinions consider all of the pertinent evidence in your claim, including opinions of treating and other medical sources.

Comment: A number of commenters believed that the claimant has a right to cross-examine the State agency medical or psychological consultant when his or her opinions become evidence to be considered by an administrative law judge. Some of the commenters noted that administrative law judges have been reluctant to issue subpoenas for State agency medical or psychological consultants to testify, presumably because this would interfere with the State agency's ability to process disability claims in a timely and efficient manner. Some of the attorneys and other claimants' representatives who commented stated their belief that they would have to increase their requests for subpoenas if administrative law judges consider State agency medical and psychological consultant opinions in their decisions.

Response: The revisions we are making do not represent a change in policy. Sections 404.1527(f) and 416.927(f) of the regulations have stated since 1991 that medical opinions from State agency medical and psychological consultants are considered by administrative law judges and the Appeals Council, and we restated and clarified these provisions of the regulations in Social Security Ruling 96–6p in 1996. We do not anticipate that these final rules will increase the instances in which a claimant would wish to compel a State agency medical or psychological consultant to appear and testify (or to amplify his or her opinion through a voluntary appearance or responses to interrogatories.) These final rules also do not change the standards in our regulations under which administrative law judges determine whether to issue subpoenas. Paragraph (d)(1) of §§ 404.950 and 416.1450 states that administrative law judges may issue subpoenas in those situations "[w]hen it is reasonably necessary for the full presentation of a case." Paragraph (d)(2) provides that parties to a hearing may request a subpoena to compel testimony or documents, providing they file a written request with the administrative law judge at least 5 days before the hearing date. This request must justify the need for a subpoena by stating the "important facts that the witness or document is expected to prove" and by indicating "why these facts could not be proven without issuing a subpoena."

Comment: Two commenters expressed concern regarding our clarification in §§ 404.1502 and 416.902 of the term "medical source" and the concept of a "qualified medical source," when these terms are used in §§ 404.1519g and 416.919g in discussing the purchase of consultative examinations. They agreed that in many situations an audiologist may be the appropriate source to perform a consultative examination, but questioned whether the proposed rules are clear on whether other sources such as chiropractors or social workers are

also appropriate sources to perform these examinations.

Response: As we explain above, and as we explained in the preamble to the NPRM in discussing the amendments to §§ 404.1502 and 416.902 (62 FR 50270), under the rules in §§ 404.1519, 404.1519g, 416.919, and 416.919g, we may select a qualified medical source who is not an "acceptable medical source" to perform a consultative examination; *e.g.*, an audiologist. As §§ 404.1519g(b) and 416.919g(b) provide, by "qualified" we mean that the medical source must be currently licensed in the State and have the training and experience to perform the type of examination or test we will request; the medical source must not be barred from participation in our program under the provisions of §§ 404.1503a and 416.903a; and the medical source must also have the equipment required to provide an adequate assessment and record of the existence and level of severity of the claimant's alleged impairments. Any medical source, which can include a chiropractor or social worker, that meets the requirements for being "qualified" under §§ 404.1519g and 416.919g may be an appropriate source to conduct a consultative examination.

Comment: One commenter questioned our inclusion of psychologists as "acceptable medical sources." The commenter noted that psychologists do not have medical training, they are not licensed to practice medicine, and they do not provide medical treatment. The commenter proposed that we use the term "medical and psychological sources" whenever we refer to physicians and psychologists under the same heading, as we use the phrase "medical and psychological consultants" in these regulations. The commenter also questioned our use of the term "medical expert" to include physicians and psychologists, and proposed that we substitute the terminology "medical experts or psychologists" for all references to "medical experts."

Response: "Licensed or certified psychologists" have been included in the list of "acceptable medical sources" in §§ 404.1513(a) and 416.913(a) since 1980, and their continuing inclusion does not represent a change in policy. (45 FR 55567, 55587, 55623, August 20, 1980.) In addition, the Act [42 U.S.C. 421], as well as §§ 404.1503(e) and 416.903(e) of the regulations, require that in initial determinations that the claimant is not disabled, and there is evidence that indicates the existence of a mental impairment, every reasonable effort should be made to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment. Also, as we explain above, we are now changing the term "medical advisor" to "medical expert" in §§ 404.1512(b)(6) and 416.912(b)(6) and elsewhere, because the latter is the term we currently use to describe these nonexamining sources we consult at the administrative law judge and Appeals Council levels. We previously used the term "medical advisor" for many years in §§ 404.1512(b)(6) and 416.912(b)(6). This change in terminology does not represent a change in policy.

Comment: A number of commenters expressed concern that the proposed clarification in the definition of "medical source" in §§ 404.1502 and 416.902 to include "acceptable medical sources or other health care providers who are not acceptable medical sources," would prejudice the weighing of evidence from medical sources who are not "acceptable medical sources." These commenters note that many claimants do not, or cannot, receive their primary treatment from "acceptable medical sources," and the nature and frequency of their treatment or evaluation is more a function of staff or time availability, rather than the need for treatment. For example, many claimants receive their primary mental health treatment from therapists or social workers with only monthly visits with a physician for medication control. They note that the existing and the proposed rules exclude such sources from consideration as "treating sources."

Response: As the commenters note, we have now provided a definition of the term "acceptable medical source" in §§ 404.1502 and 416.902 by reference to §§ 404.1513(a) and 416.913(a), where the sources who are "acceptable medical sources" have been identified for many years. These sources have the training and experience necessary to provide the medical evidence that is required by the Act and these regulations to establish the existence of a medically determinable impairment or impairments. We recognize, however, that some individuals receive treatment from other sources, and our longstanding policy stated in §§ 404.1513(e) and 416.913(e) is to use information from these other sources, such as social welfare agencies, to help us to understand how an individual's impairment may affect his or her ability to work, once the existence of a medically determinable impairment has been established.

Comment: One commenter agreed with the clarification in §§ 404.1502 and 416.902 that a source that only examines and evaluates an individual on an ongoing basis, but who does not provide any treatment, may also be a "treating source." The commenter noted that many of the individuals making a claim for disability benefits do not have private insurance or resources to pay for medical care and must rely on the local public health care system, and many times the only "treatment" the public health care services provide for people with chronic physical or mental ailments are periodic examinations and evaluations.

Response: As the commenter has noted, we are clarifying the definition of "treating source" in §§ 404.1502 and 416.903 to be consistent with our longstanding use of the word "evaluation" in the definition of a "treating source" as a source "who has provided you with medical treatment or evaluation * * *."

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Therefore, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations impose no additional reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors, and Disability

Insurance, Reporting and recordkeeping requirements, Social security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: February 14, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart P of part 404 and subpart I of part 416 of 20 CFR chapter III are amended as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Section 404.1502 is amended by republishing the introductory text, removing the terms "Source of record" and "you," revising the definitions of "Medical sources" and "Treating source," and adding definitions in the appropriate alphabetical order for the terms "Acceptable medical source," "Nonexamining source," "Nontreating source," and "you or your" to read as follows:

§ 404.1502 General definitions and terms for this subpart.

As used in the subpart—

Acceptable medical source refers to one of the sources described in § 404.1513(a) who provides evidence about your impairments. It includes treating sources, nontreating sources, and nonexamining sources.

* * * * *

Medical sources refers to acceptable medical sources, or other health care providers who are not acceptable medical sources.

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult. See § 404.1527.

Nontreating source means a physician, psychologist, or other acceptable medical source who has examined you but does not have, or did not have, an ongoing treatment relationship with you. The term includes an acceptable medical source who is a consultative examiner for us, when the consultative examiner is not your treating source. See § 404.1527.

* * * * *

Treating source means your own physician, psychologist, or other acceptable medical source who provides you, or has provided you, with medical treatment or evaluation and who has, or has had, an ongoing treatment relationship with you. Generally, we will consider that you have an ongoing treatment relationship with an acceptable medical source when the medical evidence establishes that you see, or have seen, the source with a frequency consistent with accepted medical practice for the type of treatment and/or evaluation required for your medical condition(s). We may consider an acceptable medical source who has treated or evaluated you only a few times or only after long intervals (*e.g.*, twice a year) to be your treating source if the nature and frequency of the treatment or evaluation is typical for your condition(s). We will not consider an acceptable medical source to be your treating source if your relationship with the source is not based on your medical need for treatment or evaluation, but solely on your need to obtain a report in support of your claim for disability. In such a case, we will consider the acceptable medical source to be a nontreating source.

* * * * *

You or *your* means, as appropriate, the person who applies for benefits or for a period of disability, the person for whom an application is filed, or the person who is receiving benefits based on disability or blindness.

3. Section 404.1512 is amended by revising paragraph (b)(6) to read as follows:

§ 404.1512 Evidence of your impairment.

* * * * *

(b) * * *

* * * * *

(6) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical experts we consult based on their review of the evidence in your case record. See §§ 404.1527(f)(2) and (f)(3).

* * * * *

4. Section 404.1513 is amended by revising the first sentence of paragraph (b)(6) and paragraph (c) to read as follows:

§ 404.1513 Medical evidence of your impairment.

* * * * *

(b) * * *

* * * * *

(6) A statement about what you can still do despite your impairment(s) based on the acceptable medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section (except in statutory blindness claims). * * *

(c) *Statements about what you can still do.* At the administrative law judge and Appeals Council levels, we will consider residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists to be "statements about what you can still do" made by nonexamining physicians and psychologists based on their review of the evidence in the case record. Statements about what you can still do (based on the acceptable medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section) should describe, but are not limited to, the kinds of physical and mental capabilities listed as follows (See §§ 404.1527 and 404.1545(c)):

(1) The acceptable medical source's opinion about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment(s), the acceptable medical source's opinion about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and work pressures in a work setting.

* * * * *

5. Section 404.1519 is amended by revising the first sentence to read as follows:

§ 404.1519 The consultative examination.

A consultative examination is a physical or mental examination or test purchased for you at our request and expense from a treating source or another medical source, including a pediatrician when appropriate. * * *

6. Section 404.1519g is amended by revising the last sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 404.1519g Who we will select to perform a consultative examination.

(a) * * * For a more complete list of medical sources, see § 404.1513.

* * * * *

(c) The medical source we choose may use support staff to help perform the consultative examination. * * *

7. Section 404.1519h is revised to read as follows:

§ 404.1519h Your treating source.

When in our judgment your treating source is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and generally furnishes complete and timely reports, your treating source will be the preferred source to do the purchased examination. Even if only a supplemental test is required, your treating source is ordinarily the preferred source.

8. Section 404.1519i is revised to read as follows:

§ 404.1519i Other sources for consultative examinations.

We will use a medical source other than your treating source for a purchased examination or test in situations including, but not limited to, the following situations:

(a) Your treating source prefers not to perform such an examination or does not have the equipment to provide the specific data needed;

(b) There are conflicts or inconsistencies in your file that cannot be resolved by going back to your treating source;

(c) You prefer a source other than your treating source and have a good reason for your preference;

(d) We know from prior experience that your treating source may not be a productive source, *e.g.*, he or she has consistently failed to provide complete or timely reports.

9. Section 404.1519j is revised to read as follows:

§ 404.1519j Objections to the medical source designated to perform the consultative examination.

You or your representative may object to your being examined by a medical source we have designated to perform a consultative examination. If there is a good reason for the objection, we will schedule the examination with another medical source. A good reason may be that the medical source we designated had previously represented an interest adverse to you. For example, the medical source may have represented your employer in a workers' compensation case or may have been involved in an insurance claim or legal action adverse to you. Other things we will consider include: The presence of a language barrier, the medical source's office location (*e.g.*, 2nd floor, no elevator), travel restrictions, and whether the medical source had examined you in connection with a previous disability determination or decision that was unfavorable to you. If your objection is that a medical source allegedly "lacks objectivity" in general, but not in relation to you personally, we will review the allegations. See § 404.1519s. To avoid a delay in processing your claim, the consultative examination in your case will be changed to another medical source while a review is being conducted. We will handle any objection to use of the substitute medical source in the same manner. However, if we had previously conducted such a review and found that the reports of the medical source in question conformed to our guidelines, we will not change your examination.

10. Section 404.1519k is amended by revising the introductory text to read as follows:

§ 404.1519k Purchase of medical examinations, laboratory tests, and other services.

We may purchase medical examinations, including psychiatric and psychological examinations, X-rays and laboratory tests (including specialized tests, such as pulmonary function studies, electrocardiograms, and stress tests) from a medical source.

* * * * *

11. Section 404.1519m is amended by revising the first and last sentences to read as follows:

§ 404.1519m Diagnostic tests or procedures.

We will request the results of any diagnostic tests or procedures that have been performed as part of a workup by your treating source or other medical source and will use the results to help us evaluate impairment severity or prognosis. * * * The responsibility for deciding whether to perform the examination rests with the medical source designated to perform the consultative examination.

12. Section 404.1519n is amended by revising the section heading and the first and last sentences of the introductory text, adding a heading to paragraph (a), revising the first sentence of paragraph (a) introductory text, revising the last two sentences of paragraph (b), revising the second sentence of and adding two sentences at the end of paragraph (c)(6), and revising paragraphs (c)(7) and (e) to read as follows:

§ 404.1519n Informing the medical source of examination scheduling, report content, and signature requirements.

The medical sources who perform consultative examinations will have a good understanding of our disability programs and their evidentiary requirements. * * * We will fully inform medical sources who perform consultative examinations at the time we first contact them, and at subsequent appropriate intervals, of the following obligations:

(a) *Scheduling.* In scheduling full consultative examinations, sufficient time should be allowed to permit the medical source to take a case history and perform the examination, including any needed tests. * * *

* * * * *

(b) *Report content.* * * * The report should reflect your statement of your symptoms, not simply the medical source's statements or conclusions. The medical source's report of the consultative examination should include the objective medical facts as well as observations and opinions.

(c) * * *

* * * * *

(6) * * * This statement should describe the opinion of the medical source about your ability, despite your impairment(s), to do work-related activities, such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the opinion of the medical source about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers and work pressures in a work setting. Although we will ordinarily request, as part of the consultative examination process, a medical source statement about what you can still do despite your impairment(s), the absence of such a statement in a consultative examination report will not make the report incomplete. See § 404.1527; and

(7) In addition, the medical source will consider, and provide some explanation or comment on, your major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the medical source who signs the report.

* * * * *

(e) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the medical source who actually performed the examination. This attests to the fact that the medical source doing the examination or testing is solely responsible for the report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of laboratory test results. The signature of the medical source on a report annotated "not proofed" or "dictated but not read" is not acceptable. A rubber stamp signature of a medical source or the medical source's signature entered by any other person is not acceptable.

13. Section 404.1519o is amended by revising the last sentence of paragraph (a) introductory text and the last sentence of paragraph (b) introductory text to read as follows:

§ 404.1519o When a properly signed consultative examination report has not been received.

* * * * *

(a) *When we will make determinations and decisions without a properly signed report.* * * * After we have made the determination or decision, we will obtain a properly signed report and include it in the file unless the medical source who performed the original consultative examination has died:

* * * * *

(b) *When we will not make determinations and decisions without a properly signed report.* * * * If the signature of the medical source who performed the original examination cannot be obtained because the medical source is out of the country for an extended period of time, or on an extended vacation, seriously ill, deceased, or for any other reason, the consultative examination will be rescheduled with another medical source:

* * * * *

14. Section 404.1519p is amended by revising paragraphs (b) and (c) to read as follows:

§ 404.1519p Reviewing reports of consultative examinations.

* * * * *

(b) If the report is inadequate or incomplete, we will contact the medical source who performed the consultative examination, give an explanation of our evidentiary needs, and ask that the medical source furnish the missing information or prepare a revised report.

(c) With your permission, or when the examination discloses new diagnostic information or test results that reveal a potentially life-threatening situation, we will refer the consultative examination report to your treating source. When we refer the consultative examination report to your treating source without your permission, we will notify you that we have done so.

* * * * *

15. Section 404.1519s is amended by revising paragraph (e)(2) and the first sentence of paragraph (f)(6) to read as follows:

§ 404.1519s Authorizing and monitoring the consultative examination.

* * * * *

(e) * * *

(2) Any consultative examination provider with a practice directed primarily towards evaluation examinations rather than the treatment of patients; or

* * * * *

(f) * * *

(6) Procedures for providing medical or supervisory approval for the authorization or purchase of consultative examinations and for additional tests or studies requested by consulting medical sources. * * *

* * * * *

16. Section 404.1527 is amended by revising the section heading, the third sentence of paragraph (d)(2), the heading of paragraph (e), paragraph (e)(2), the heading and introductory text of paragraph (f), and paragraph (f)(2), by adding a sentence to the end of paragraph (d)(6), by adding introductory text to paragraph (e), and by adding paragraph (e)(3) to read as follows:

§ 404.1527 Evaluating opinion evidence.

* * * * *

(d) * * *

(2) *Treatment relationship.* * * * When we do not give the treating source's opinion controlling weight, we apply the factors listed in paragraphs (d)(2)(i) and (d)(2)(ii) of this section, as well as the factors in paragraphs (d)(3) through (d)(6) of this section in determining the weight to give the opinion. * * *

* * * * *

(6) *Other factors.* * * * For example, the amount of understanding of our disability programs and their evidentiary requirements that an acceptable medical source has, regardless of the source of that understanding, and the extent to which an acceptable medical source is familiar with the other information in your case record are relevant factors that we will consider in deciding the weight to give to a medical opinion.

(e) *Medical source opinions on issues reserved to the Commissioner.* Opinions on some issues, such as the examples that follow, are not medical opinions, as described in paragraph (a)(2) of this section, but are, instead, opinions on issues reserved to the Commissioner because they are administrative findings that are dispositive of a case; *i.e.*, that would direct the determination or decision of disability.

* * * * *

(2) *Other opinions on issues reserved to the Commissioner.* We use medical sources, including your treating source, to provide evidence, including opinions, on the nature and severity of your impairment(s). Although we consider opinions from medical sources on issues such as whether your impairment(s) meets or equals the requirements of any impairment(s) in the Listing of Impairments in appendix 1 to this subpart, your residual functional capacity (see §§ 404.1545 and 404.1546), or the application of vocational factors, the final responsibility for deciding these issues is reserved to the Commissioner.

(3) We will not give any special significance to the source of an opinion on issues reserved to the Commissioner described in paragraphs (e)(1) and (e)(2) of this section.

(f) *Opinions of nonexamining sources.* We consider all evidence from nonexamining sources to be opinion evidence. When we consider the opinions of nonexamining sources, we apply the rules in paragraphs (a) through (e) of this section. In addition, the following rules apply to State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult in connection with administrative law judge hearings and Appeals Council review:

* * * * *

(2) Administrative law judges are responsible for reviewing the evidence and making findings of fact and conclusions of law. They will consider opinions of State agency medical or psychological consultants, other program physicians and psychologists, and medical experts as follows:

(i) Administrative law judges are not bound by any findings made by State agency medical or psychological consultants, or other program physicians or psychologists. However, State agency medical and psychological consultants and other program physicians and psychologists are highly qualified physicians and psychologists

who are also experts in Social Security disability evaluation. Therefore, administrative law judges must consider findings of State agency medical and psychological consultants or other program physicians or psychologists as opinion evidence, except for the ultimate determination about whether you are disabled. See § 404.1512(b)(6).

(ii) When an administrative law judge considers findings of a State agency medical or psychological consultant or other program physician or psychologist, the administrative law judge will evaluate the findings using relevant factors in paragraphs (a) through (e) of this section, such as the physician's or psychologist's medical specialty and expertise in our rules, the supporting evidence in the case record, supporting explanations provided by the physician or psychologist, and any other factors relevant to the weighing of the opinions. Unless the treating source's opinion is given controlling weight, the administrative law judge must explain in the decision the weight given to the opinions of a State agency medical or psychological consultant or other program physician or psychologist, as the administrative law judge must do for any opinions from treating sources, nontreating sources, and other nonexamining sources who do not work for us.

(iii) Administrative law judges may also ask for and consider opinions from medical experts on the nature and severity of your impairment(s) and on whether your impairment(s) equals the requirements of any impairment listed in appendix 1 to this subpart. When administrative law judges consider these opinions, they will evaluate them using the rules in paragraphs (a) through (e) of this section.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

17. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

18. Section 416.902 is amended by republishing the introductory text, removing the terms "Secretary," "Source of record," and "You," revising the definitions of "Medical sources" and "Treating source," and adding definitions in the appropriate alphabetical order for the terms "Acceptable medical source," "Nonexamining source," "Nontreating source," and "You or your" to read as follows:

§ 416.902 General definitions and terms for this subpart.

As used in the subpart—

Acceptable medical source refers to one of the sources described in § 416.913(a) who provides evidence about your impairments. It includes treating sources, nontreating sources, and nonexamining sources.

* * * * *

Medical sources refers to acceptable medical sources, or other health care providers who are not acceptable medical sources.

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult. See § 416.927.

Nontreating source means a physician, psychologist, or other acceptable medical source who has examined you but does not have, or did not have, an ongoing treatment relationship with you. The term includes an acceptable medical source who is a consultative examiner for us, when the consultative examiner is not your treating source. See § 416.927.

* * * * *

Treating source means your own physician, psychologist, or other acceptable medical source who provides you, or has provided you, with medical treatment or evaluation and who has, or has had, an ongoing treatment relationship with you. Generally, we will consider that you have an ongoing treatment relationship with an acceptable medical source when the medical evidence establishes that you see, or have seen, the source with a frequency consistent with accepted medical practice for the type of treatment and/or evaluation required for your medical condition(s). We may consider an acceptable medical source who has treated or evaluated you only a few times or only after long intervals (*e.g.*, twice a year) to be your treating source if the nature and frequency of the treatment or evaluation is typical for your condition(s). We will not consider an acceptable medical source to be your treating source if your relationship with the source is not based on your medical need for treatment or evaluation, but solely on your need to obtain a report in support of your claim for disability. In such a case, we will consider the acceptable medical source to be a nontreating source.

* * * * *

You or *your* means, as appropriate, the person who applies for benefits, the person for whom an application is filed, or the person who is receiving benefits based on disability or blindness.

19. Section 416.912 is amended by revising paragraph (b)(6) to read as follows:

§ 416.912 Evidence of your impairment.

* * * * *

(b) * * *

(6) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical experts we consult based on their review of the evidence in your case record. See §§ 416.927(f)(2) and (f)(3).

* * * * *

20. Section 416.913 is amended by revising the first sentence of paragraph (b)(6) and paragraph (c) to read as follows:

§ 416.913 Medical evidence of your impairment.

* * * * *

(b) * * *

(6) A statement about what you can still do despite your impairment(s) based on the acceptable medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section (except in statutory blindness claims). * * *

(c) *Statements about what you can still do.* At the administrative law judge and Appeals Council levels, we will consider residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists to be "statements about what you can still do" made by nonexamining physicians and psychologists based on their review of the evidence in the case record. Statements about what you can still do (based on the acceptable medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this

section) should describe, but are not limited to, the kinds of physical and mental capabilities listed as follows (See §§ 416.927 and 416.945(c)):

(1) If you are an adult, the acceptable medical source's opinion about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling;

(2) If you are an adult, in cases of mental impairment(s), the acceptable medical source's opinion about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and work pressures in a work setting; and

(3) If you are a child, the acceptable medical source's opinion about your functional limitations in learning, motor functioning, performing self-care activities, communicating, socializing, and completing tasks (and, if you are a newborn or young infant from birth to age 1, responsiveness to stimuli).

* * * * *

21. Section 416.919 is amended by revising the first sentence to read as follows:

§ 416.919 The consultative examination.

A consultative examination is a physical or mental examination or test purchased for you at our request and expense from a treating source or another medical source, including a pediatrician when appropriate. * * *

22. Section 416.919g is amended by revising the last sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 416.919g Who we will select to perform a consultative examination.

(a) * * * For a more complete list of medical sources, see § 416.913.

* * * * *

(c) The medical source we choose may use support staff to help perform the consultative examination. * * *

23. Section 416.919h is revised to read as follows:

§ 416.919h Your treating source.

When in our judgment your treating source is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and generally furnishes complete and timely reports, your treating source will be the preferred source to do the purchased examination. Even if only a supplemental test is required, your treating source is ordinarily the preferred source.

24. Section 416.919i is revised to read as follows:

§ 416.919i Other sources for consultative examinations.

We will use a medical source other than your treating source for a purchased examination or test in situations including, but not limited to, the following situations:

(a) Your treating source prefers not to perform such an examination or does not have the equipment to provide the specific data needed;

(b) There are conflicts or inconsistencies in your file that cannot be resolved by going back to your treating source;

(c) You prefer a source other than your treating source and have a good reason for your preference;

(d) We know from prior experience that your treating source may not be a productive source, *e.g.*, he or she has consistently failed to provide complete or timely reports.

25. Section 416.919j is revised to read as follows:

§ 416.919j Objections to the medical source designated to perform the consultative examination.

You or your representative may object to your being examined by a medical source we have designated to perform a consultative examination. If there is a good reason for the objection, we will schedule the examination with another medical source. A good reason may be that the medical source we designated had previously represented an interest adverse to you. For example, the medical source may have represented your employer in a workers' compensation case or may have been involved in an insurance claim or legal action adverse to you. Other things we will consider include: The presence of a language barrier, the medical source's office location (*e.g.*, 2nd floor, no elevator), travel restrictions, and whether the medical source had examined you in connection with a previous disability determination or decision that was unfavorable to you. If your objection is that a medical source allegedly "lacks objectivity" in general, but not in relation to you personally, we will review the allegations. See § 416.919s. To avoid a delay in processing your claim, the consultative examination in your case will be changed to another medical source while a review is being conducted. We will handle any objection to use of the substitute medical source in the same manner. However, if we had previously conducted such a review and found that the reports of the medical source in question conformed to our guidelines, we will not change your examination.

26. Section 416.919k is amended by revising the introductory text to read as follows:

§ 416.919k Purchase of medical examinations, laboratory tests, and other services.

We may purchase medical examinations, including psychiatric and psychological examinations, X-rays and laboratory tests (including specialized tests, such as pulmonary function studies, electrocardiograms, and stress tests) from a medical source.

* * * * *

27. Section 416.919m is amended by revising the first and last sentences to read as follows:

§ 416.919m Diagnostic tests or procedures.

We will request the results of any diagnostic tests or procedures that have been performed as part of a workup by your treating source or other medical source and will use the results to help us evaluate impairment severity or prognosis. * * * The responsibility for deciding whether to perform the examination rests with the medical source designated to perform the consultative examination.

28. Section 416.919n is amended by revising the section heading and the first and last sentences of the introductory text, adding a heading to paragraph (a), revising the first sentence of paragraph (a) introductory text, revising the last two sentences of paragraph (b), revising the second and third sentences of and adding two sentences at the end of paragraph (c)(6), and revising paragraphs (c)(7) and (e) to read as follows:

§ 416.919n Informing the medical source of examination scheduling, report content, and signature requirements.

The medical sources who perform consultative examinations will have a good understanding of our disability programs and their evidentiary requirements. * * * We will fully inform medical sources who perform consultative examinations at the time we first contact them, and at subsequent appropriate intervals, of the following obligations:

(a) *Scheduling.* In scheduling full consultative examinations, sufficient time should be allowed to permit the medical source to take a case history and perform the examination, including any needed tests. * * *

* * * * *

(b) *Report content.* * * * The report should reflect your statement of your symptoms, not simply the medical source's statements or conclusions. The

medical source's report of the consultative examination should include the objective medical facts as well as observations and opinions.

(c) * * *

(6) * * * If you are an adult, this statement should describe the opinion of the medical source about your ability, despite your impairment(s), to do work-related activities, such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the opinion of the medical source about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers and work pressures in a work setting. If you are a child, this statement should describe the opinion of the medical source about your functional limitations in learning, motor functioning, performing self-care activities, communicating, socializing, and completing tasks (and, if you are a newborn or young infant from birth to age 1, responsiveness to stimuli). Although we will ordinarily request, as part of the consultative examination process, a medical source statement about what you can still do despite your impairment(s), the absence of such a statement in a consultative examination report will not make the report incomplete. See § 416.927; and

(7) In addition, the medical source will consider, and provide some explanation or comment on, your major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the medical source who signs the report.

* * * * *

(e) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the medical source who actually performed the examination. This attests to the fact that the medical source doing the examination or testing is solely responsible for the report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of laboratory test results. The signature of the medical source on a report annotated "not proofed" or "dictated but not read" is not acceptable. A rubber stamp signature of a medical source or the medical source's signature entered by any other person is not acceptable.

29. Section 416.919o is amended by revising the last sentence of paragraph (a) introductory text and the last sentence of paragraph (b) introductory text to read as follows:

§ 416.919o When a properly signed consultative examination report has not been received.

* * * * *

(a) *When we will make determinations and decisions without a properly signed report.* * * * After we have made the determination or decision, we will obtain a properly signed report and include it in the file unless the medical source who performed the original consultative examination has died:

* * * * *

(b) *When we will not make determinations and decisions without a properly signed report.* * * * If the signature of the medical source who performed the original examination cannot be obtained because the medical source is out of the country for an extended period of time, or on an extended vacation, seriously ill, deceased, or for any other reason, the consultative examination will be rescheduled with another medical source:

* * * * *

30. Section 416.919p is amended by revising paragraphs (b) and (c) to read as follows:

§ 416.919p Reviewing reports of consultative examinations.

* * * * *

(b) If the report is inadequate or incomplete, we will contact the medical source who performed the consultative examination, give an explanation of our evidentiary needs, and ask that the medical source furnish the missing information or prepare a revised report.

(c) With your permission, or when the examination discloses new diagnostic information or test results that reveal a potentially life-threatening situation, we will refer the consultative examination report to your treating source. When we refer the consultative examination report to your treating source without your permission, we will notify you that we have done so.

* * * * *

31. Section 416.919s is amended by revising paragraph (e)(2) and the first sentence of paragraph (f)(6) to read as follows:

§ 416.919s Authorizing and monitoring the consultative examination.

* * * * *

(e) * * *

(2) Any consultative examination provider with a practice directed primarily towards evaluation examinations rather than the treatment of patients; or

* * * * *

(f) * * *

(6) Procedures for providing medical or supervisory approval for the authorization or purchase of consultative examinations and for additional tests or studies requested by consulting medical sources. * * *

* * * * *

32. Section 416.927 is amended by revising the section heading, the third sentence of paragraph (d)(2), the heading of paragraph (e), paragraph (e)(2), the heading and introductory text of paragraph (f), and paragraph (f)(2), by adding a sentence to the end of paragraph (d)(6), by adding introductory text to paragraph (e), and by adding paragraph (e)(3) to read as follows:

§ 416.927 Evaluating opinion evidence.

* * * * *

(d) * * *

(2) *Treatment relationship.* * * * When we do not give the treating source's opinion controlling weight, we apply the factors listed in paragraphs (d)(2)(i) and (d)(2)(ii) of this section, as well as the factors in paragraphs (d)(3) through (d)(6) of this section in determining the weight to give the opinion. * * *

* * * * *

(6) *Other factors.* * * * For example, the amount of understanding of our disability programs and their evidentiary requirements that an acceptable medical source has, regardless of the source of that understanding, and the extent to which an acceptable medical source is familiar with the other information in your case record are relevant factors that we will consider in deciding the weight to give to a medical opinion.

(e) *Medical source opinions on issues reserved to the Commissioner.* Opinions on some issues, such as the examples that follow, are not medical opinions, as described in paragraph (a)(2) of this section, but are, instead, opinions on issues reserved to the Commissioner because they are administrative findings that are dispositive of a case; *i.e.*, that would direct the determination or decision of disability.

* * * * *

(2) *Other opinions on issues reserved to the Commissioner.* We use medical sources, including your treating source,

to provide evidence, including opinions, on the nature and severity of your impairment(s). Although we consider opinions from medical sources on issues such as whether your impairment(s) meets or equals the requirements of any impairment(s) in the Listing of Impairments in appendix 1 to subpart P of part 404 of this chapter, your residual functional capacity (see §§ 416.945 and 416.946), or the application of vocational factors, the final responsibility for deciding these issues is reserved to the Commissioner.

(3) We will not give any special significance to the source of an opinion on issues reserved to the Commissioner described in paragraphs (e)(1) and (e)(2) of this section.

(f) *Opinions of nonexamining sources.* We consider all evidence from nonexamining sources to be opinion evidence. When we consider the opinions of nonexamining sources, we apply the rules in paragraphs (a) through (e) of this section. In addition, the following rules apply to State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult in connection with administrative law judge hearings and Appeals Council review:

* * * * *

(2) Administrative law judges are responsible for reviewing the evidence and making findings of fact and conclusions of law. They will consider opinions of State agency medical or psychological consultants, other program physicians and psychologists, and medical experts as follows:

(i) Administrative law judges are not bound by any findings made by State agency medical or psychological consultants, or other program physicians or psychologists. However, State agency medical and psychological consultants and other program physicians and psychologists are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation. Therefore, administrative law judges must consider findings of State agency medical and psychological consultants or other program physicians or psychologists as opinion evidence, except for the ultimate determination about whether you are disabled. See § 416.912(b)(6).

(ii) When an administrative law judge considers findings of a State agency medical or psychological consultant or other program physician or psychologist, the administrative law judge will evaluate the findings using relevant factors in paragraphs (a) through (e) of this section, such as the physician's or psychologist's medical specialty and expertise in our rules, the supporting evidence in the case record, supporting explanations provided by the physician or psychologist, and any other factors relevant to the weighing of the opinions. Unless the treating source's opinion is given controlling weight, the administrative law judge must explain in the decision the weight given to the opinions of a State agency medical or psychological consultant or other program physician or psychologist, as the administrative law judge must do for any opinions from treating sources, nontreating sources, and other nonexamining sources who do not work for us.

(iii) Administrative law judges may also ask for and consider opinions from medical experts on the nature and severity of your impairment(s) and on whether your impairment(s) equals the requirements of any impairment listed in appendix 1 to subpart P of part 404 of this chapter. When administrative law judges consider these opinions, they will evaluate them using the rules in paragraphs (a) through (e) of this section.

* * * * *

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 98N–0518]

Public Information; Communications With State and Foreign Government Officials

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing final regulations governing communications with State and foreign government officials. The rule states that FDA may disclose confidential commercial information to international organizations having responsibility to facilitate global or regional harmonization of standards and requirements. These disclosures will, in almost all instances, occur only with the consent of the person who submitted the confidential commercial information to FDA. The rule also streamlines the process for FDA officials to disclose certain nonpublic, predecisional documents (such as draft rules and guidance documents) to State and foreign government officials. The rule does not alter current procedures for sharing documents that contain confidential commercial information. These changes are intended to facilitate information exchanges with State and foreign governments and certain international organizations.

DATES: This rule becomes effective on May 22, 2000.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Legislation (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of July 27, 1998 (63 FR 40069), FDA published a proposed rule that would facilitate its communications with foreign governments. Current FDA regulations at § 20.89 (21 CFR 20.89) permit FDA to disclose confidential commercial information and nonpublic, predecisional documents to foreign governments. Nonpublic, predecisional documents are disclosed under § 20.89(d) only if they do not contain unredacted confidential commercial information (such as draft FDA guidance documents or regulations). These disclosures are subject to certain safeguards. These safeguards include obtaining a written statement from the foreign government agency establishing that agency's authority to protect the confidential commercial information from public disclosure, and a written commitment not to disclose such information without written permission from the person who created or submitted the confidential commercial information (the "sponsor") or written confirmation from FDA that the information is no longer confidential. Similar safeguards exist regarding exchanges of nonpublic, predecisional information.

A similar regulation for communications with State government officials exists at § 20.88 (21 CFR 20.88).

FDA published the proposed rule to accomplish several goals. First, the proposed rule would amend §§ 20.88(e)(1)(i) and 20.89(d)(1)(i) to eliminate the requirement for the written statement and written commitment for exchanges involving solely nonpublic, predecisional information. As explained in the preamble to the proposed rule, it appears that requiring written

statements from the receiving foreign government agencies is contrary to customary international practice, in which drafts of such documents are routinely shared with trusted individuals in foreign government counterpart agencies as part of a well—understood and well—established practice that provides that those individuals and their agencies will not disclose the documents or make them public (63 FR 40069 at 40071). FDA's experience with § 20.89 also indicates that officials in some foreign agencies have been reluctant to execute these written statements for various reasons, including uncertainty as to who in their respective government agencies possesses the requisite authority to sign such a statement, or concerns that the written statements might, under their government's policies or laws, be considered an international agreement that might require new national legislation or legislative consent. FDA further noted in the preamble to the proposed rule that, because the information exchanges in question involve nonpublic, predecisional documents that do not contain confidential commercial information, the written statements add little value to protecting the information exchange process because only FDA's deliberative interests would be directly affected by a premature public disclosure.

Second, the proposal would revise § 20.89 to permit FDA to disclose to international organizations both confidential commercial information and nonpublic, predecisional information. Disclosures of confidential commercial information to an international organization would be subject to the same safeguards that apply to disclosures of such information to foreign government agencies, including a written statement, a written commitment, and, in most cases, the sponsor's consent. The preamble to the proposed rule described an instance in which the Pan American Health Organization (PAHO) requested certain manufacturing and product quality information from FDA after a product contamination incident, and FDA was unable to disclose the information to PAHO until non-FDA sources had publicly disclosed the information (63 FR 40069 at 40071). Thus, the proposal would address situations in which an international organization seeks to obtain confidential commercial information from FDA by moving the language regarding an "official of a foreign government agency" from § 20.89(d)(3)—where it applies only to disclosures of nonpublic, predecisional documents—to a new § 20.89(e), so that it would apply to all disclosures under § 20.89. The proposal would also revise the reference to international organizations to refer to international organizations that facilitate "global or regional" harmonization of standards and requirements. The reference to "regional" harmonization efforts would reflect the fact that some international organizations operate primarily on a regional, rather than global, scale.

Finally, the proposed rule would clarify that the term "official of a foreign government" in proposed § 20.89(e) includes, but is not limited to, permanent and temporary employees of, and agents contracted by, a foreign government. This clarification was needed because the existing rule expressly mentioned agents, but not employees of the foreign government (63 FR 40069 at 40071).

II. Discussion of Comments on the Proposed Rule

FDA received four comments on the proposed rule, including one comment from a foreign government. Three comments, submitted by pharmaceutical companies and a trade association, opposed the rule. The fourth comment, submitted by a foreign government agency, supported the rule.

A. Sections 20.88(e)(1) and 20.89(d)(1)—Eliminating the Requirement of a Written Statement and a Written Commitment From State and Foreign Governments for Exchanges of Nonpublic, Predecisional Documents

As stated earlier, the proposal would revise §§ 20.88(e)(1) and 20.89(d)(1) to eliminate the requirement whereby a U.S. State or foreign government agency official must provide a written statement concerning that agency's ability to protect nonpublic, predecisional documents from public disclosure and a written commitment not to disclose any nonpublic, predecisional documents without FDA's written confirmation that the document no longer has nonpublic status.

1. One comment from a foreign government agency stated that it "welcome[s] FDA's recognition that the previous requirement for a written undertaking has been contrary to customary international practice" and that it, too, was aware that "in some countries legal difficulties have arisen over providing FDA with such undertakings." The comment stated that the rule would help simplify communications between the two countries.

In contrast, one comment from a pharmaceutical trade association opposed giving nonpublic, predecisional documents to State and foreign governments, stating that FDA's rationale was "difficult to follow," that the written statements are not "overly burdensome," and that FDA would be "putting the competitive interests of United States companies at risk." The comment added that "the concerns expressed by foreign governments are not applicable to United States government agencies" and that "the exemptions from [the Freedom of Information Act] for pre-decisional documents and confidential commercial information should not be undermined by allowing this information to be available at the state level by virtue of differing state laws."

The final rule eliminates the need for a written statement and a written commitment from State and foreign government agencies when exchanges of nonpublic, predecisional documents are involved. FDA reiterates that these are documents that FDA creates; examples include draft regulations and draft guidance documents. Nonpublic, predecisional documents prepared by FDA normally do not contain confidential commercial information. If FDA prepared a document that contained confidential commercial information, that material would be considered, for purposes of §§ 20.88 and 20.89, to be confidential commercial information, rather than a nonpublic, predecisional document. Therefore, the provisions of §§ 20.88 and 20.89 pertaining to confidential commercial information would apply. Alternatively, FDA could redact the confidential commercial information before providing the nonpublic, predecisional document to the State or foreign government agency. Because the nonpublic, predecisional documents that FDA would provide to State and foreign governments would not contain confidential commercial information, their exchange would not place U.S. companies at a competitive disadvantage internationally or domestically.

The written statement and written commitment requirement for nonpublic, predecisional documents that published in the **Federal Register** of December 8, 1995 (60 FR 63372) (hereinafter referred to as the 1995 final rule), was more formal than customary international practice and presented legal or legislative challenges to some foreign governments. The comment from the foreign government clearly and unequivocally supports FDA's rationale. While the comment opposing the proposal states that U.S. government agencies do not have to remedy issues

or problems faced by a foreign government, FDA cannot ignore the fact that the written statement and written commitment requirement departed from customary international practice and impeded the very exchange of information that the 1995 final rule was intended to promote.

To illustrate the problem, FDA has received requests for draft documents from certain foreign government officials in order to harmonize international regulatory efforts on a particular subject. The written statement and written commitment requirement, on occasion, has presented an obstacle to the information exchange because the foreign government agency was uncertain as to whether such a statement, under the foreign country's law, would be considered to be a treaty or international agreement or because the foreign government agency was uncertain as to which official had the authority to sign a written statement and written commitment of this sort and provide it to another country. These uncertainties frustrated the intent behind § 20.89 because, without the written statement and written commitment from the foreign government, FDA could not provide the draft to the foreign government, and the opportunity for international collaboration on the draft was lost. Thus, contrary to the opposing comment's belief, a foreign government's "problems" with the written statement and written commitment requirement can affect FDA as well as the foreign government agency.

FDA also does not accept the suggestion that nonpublic, predecisional information should not be available to State governments. FDA's regulations have provided for exchanges of nonpublic, predecisional information with certain State officials (those who have been commissioned under section 702 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372) and those under contract with FDA) and with State governments since the 1995 final rule, and the 1998 proposal did not contain any amendments or revisions (aside from the removal of the written statement and written commitment requirement) that would affect the availability of nonpublic, predecisional information to State government agencies. FDA further notes that it would be an odd result if FDA could provide nonpublic, predecisional information to a foreign government, but could not provide the same information to a State government in the United States. Similarly, it would be an odd result if FDA required State government agencies to provide greater assurance, compared to foreign governments, that they would protect nonpublic, predecisional documents from disclosure, especially when, in both cases, it is only governmental interests, not individual companies' interests, that would be adversely affected by an unauthorized disclosure.

B. Section 20.89(e)—Amending the Term "Official of a Foreign Government Agency"

1. The Inclusion of Temporary and Permanent Employees and Agents

As stated earlier, proposed § 20.89(e) would clarify that the term "official of a foreign government" includes both temporary and permanent foreign government employees and agents. FDA proposed this change because the existing language, at § 20.89(d)(3), expressly mentions agents, but not employees, of a foreign government. The proposal also would construe the term "official of a foreign government" as including temporary as well as permanent employees and agents. The inclusion of temporary employees and agents is meant to cover those situations where a foreign government employee is temporarily assigned to an international organization.

2. One comment noted that the proposal did not expressly state whether foreign consultants are subject to any restrictions on the disclosure of information that FDA provides to a foreign government or to an international organization. The comment further noted that proposed § 20.89(e) would require written statements from an international organization and individuals in the international organization, but that proposed § 20.89(d)(1)(i) would eliminate the written statements.

The reference to employees and agents in proposed § 20.89(e) was not intended to exclude consultants to a foreign government agency. FDA considers consultants to be "agents" within proposed § 20.89(e) and expects that such persons will adhere to the foreign government's written statement and written commitment regarding confidential commercial information and adhere to the foreign government agency's customary practice of not disclosing nonpublic, predecisional information supplied by a different government. In the event of an unauthorized disclosure, FDA will hold both the responsible individual and the foreign government agency accountable, and will take appropriate action.

As for the comment's statement that proposed §§ 20.89(d)(1)(i) and 20.89(e) conflict on the need for a written statement and written commitment, FDA agrees and has modified § 20.89(e) to clarify that written statements and written commitments are required on behalf of both the international organization and the individual involved when confidential commercial information is being disclosed.

2. Providing Confidential Commercial Information to International Organizations

Several comments strongly opposed the language in proposed § 20.89(e) which would enable FDA to provide confidential commercial information to international organizations.

3. Three comments challenged the agency's basis for the proposal. Two comments argued that an international organization such as PAHO has no role in matters that would require it to receive confidential commercial information, has no enforcement authority, and might not even be considered to have a role in harmonizing standards or requirements. Alternatively, one comment stated that, even if an international organization is responsible for global or regional harmonization of standards, it is unclear why such international organizations need confidential commercial information, especially in situations where there is no public health concern.

The preamble to the proposed rule described an incident in Haiti where PAHO assisted Haiti's Ministry of Health in investigating a kidney failure epidemic in which nearly 90 children died. The problems were traced to a contaminated liquid acetaminophen product manufactured in Haiti, and FDA assisted the Haitian government by examining the pharmaceutical company, obtaining samples, and conducting laboratory tests. FDA prepared an inspection report that contained some confidential commercial information. Consequently, when PAHO requested the report, FDA was unable to provide the information because the existing FDA regulation did not provide for disclosing confidential commercial information to an international organization. FDA provided the information to PAHO only after FDA learned that non-FDA sources had publicly disclosed the information.

This example illustrates that an international organization may, indeed, have a need for confidential commercial information from FDA. FDA also disagrees with the comment that suggested that no public health concerns existed in the PAHO example because, at the time of the investigation, the number of children who had died or

had become ill due to the contaminated product was rising, and officials were not certain about the source of the contamination or whether other drug products had been contaminated.

However, FDA acknowledges that, in the PAHO example, the international organization was working to promote and coordinate public health efforts rather than taking an enforcement role or harmonizing standards or requirements. Therefore, FDA has clarified the definition of "international organization" to extend to international organizations whose responsibilities include promoting and coordinating public health efforts, consistent with the Haiti example described in the preamble to the proposed rule.

FDA also points out that the World Health Organization (WHO), as well as PAHO (the WHO's regional body), does have a responsibility for harmonization and product standards.

4. Three comments also sought specifics as to which international organizations might be able to receive confidential commercial information from FDA under the rule. One comment suggested that FDA establish standards and procedures to determine which international organizations should receive confidential commercial information; the comment would have FDA identify such organizations through notice and comment rulemaking and require international organizations to give FDA a summary of their charters, purposes, membership, and internal rules for protecting confidential commercial information from public disclosure. One comment would permit FDA to disclose confidential commercial information only to international organizations whose regulatory responsibilities are established by law, treaties, or other acts of government, and would exclude private or nongovernmental organizations. Another comment would exclude nongovernmental organizations. The comment stated that employees of nongovernmental organizations may not be subject to any laws preventing unauthorized disclosures and might not be "legally or morally bound" to protect confidential commercial information provided by FDA.

Although FDA believes that many of the comments' suggestions would encumber the agency with excessive procedures and requirements, the agency agrees that the reference to international organizations should be more specific. The proposal was not intended to extend disclosures of confidential commercial information to private or nongovernmental organizations. Consequently, FDA has revised proposed § 20.89(e) so that the term "international organization" refers only to international organizations that are established by law, treaty, or other governmental action and that have the responsibility to facilitate global or regional harmonization of standards and requirements in FDA's area of responsibility or to promote and coordinate public health efforts. Thus, the international organizations subject to revised proposed § 20.89(e), therefore, are those that (unlike private or nongovernmental organizations) generally have statutes, regulations, or other obligations to protect confidential commercial information from public disclosure. Additionally, FDA will continue to require international organizations to provide written statements establishing their authority to protect confidential commercial information from public disclosure and written commitments not to disclose such information without the sponsor's written permission or written confirmation from FDA that the information is no longer confidential.

The agency declines, however, to amend the rule to establish notice and comment rulemaking procedures to determine which international organizations may be eligible to receive confidential commercial information from FDA. The agency reiterates that, in almost all cases, exchanges of confidential commercial information involve a sponsor's consent. Thus, the burdens on the agency associated with notice and comment rulemaking procedures for determining an international organization's "eligibility" to receive information outweigh any benefits from such procedures in this instance.

FDA also declines to amend the rule to create an explicit "application" to be submitted by international organizations. Currently, for all disclosures to State and foreign governments (including international organizations), FDA carefully examines the reasons why the requesting body needs confidential commercial information, the statutory and regulatory mechanisms for protecting information supplied by FDA, and the identities of persons who will receive the information. Requiring a summary of the international organization's charter, purpose, and membership could be done on a case-by-case basis, if necessary, but often would be unnecessary. The United States is a member of the international organizations that would generally be the recipients of information under the rule and, therefore, FDA already possesses information on their charters, purposes, and memberships. (For example, the United States is a member of the PAHO and the WHO, and information on their charters and memberships is readily available.) If an international organization requests confidential commercial information under § 20.89, and the United States is not a member of that organization, FDA will carefully review the request and will seek whatever documents it feels are necessary to evaluate the request.

5. One comment stated that developing countries that lack sophisticated health systems would be the countries most likely to rely on international organizations in a public health crisis. However, the comment explained, developing countries often lack intellectual property protections within their legal systems. The comment added that if confidential commercial information were "routinely" released to international organizations, there would be a corresponding increased risk of "routine" abuse of intellectual property protections worldwide, without any benefit to U.S. manufacturers or to the public health of the United States. The comment claimed that the rule would benefit only foreign organizations and foreign competitors to U.S. manufacturers.

The comment misinterprets the rule. Under § 20.89(c)(1)(i), a foreign government agency seeking confidential commercial information from FDA must provide both a written statement establishing its authority to protect confidential commercial information from public disclosure and a written commitment not to disclose such confidential commercial information "*without the written permission of the sponsor* or written confirmation by the Food and Drug Administration that the information no longer has confidential status" (emphasis added). Additionally, under § 20.89(c)(1)(ii)(A), FDA must determine that the sponsor of the product application has provided written authorization for the disclosure, or, under § 20.89(c)(1)(ii)(B), that disclosure would be in the interest of public health by reason of the foreign government's possessing information concerning the safety, efficacy, or quality of a product or information concerning an investigation. Under the final rule, these safeguards also would apply to disclosures of confidential commercial information to an international organization. FDA is not proposing, and has never proposed, to disclose confidential commercial information to a foreign government or to an international organization on a routine basis.

The agency notes that, under existing FDA regulations, an international organization that provides the necessary written statement and written commitment in order to obtain confidential commercial information from FDA cannot redisclose that confidential commercial information to a foreign government (or to any other party) without the sponsor's written permission or written confirmation from FDA that the information no longer has nonpublic status (see 21 CFR 20.89(c)(1)(i)). Thus, international organizations receiving confidential commercial information under this rule will not be conduits for disclosures of confidential commercial information to foreign governments without permission from the sponsor or from FDA. If an international organization intends to request confidential commercial information from FDA and then provide that information to a foreign government, both the international organization and the foreign government must provide the necessary written statements and commitments to FDA to ensure that the information is protected.

Moreover, as stated in the preamble to the proposed rule, in almost every case, disclosures of confidential commercial information to foreign governments have occurred with the sponsor's consent, and only after the foreign government has provided the necessary written statements (see 63 FR 40069 at 40070). Contrary to the comment's inference about the benefits that would flow to developing countries, the exchanges to date have been mostly to other developed countries. The disclosures have generally benefitted the sponsors of the confidential commercial information by facilitating approval or marketing decisions for the sponsor's product.

FDA further notes that it is conscious of intellectual property concerns, particularly for pharmaceuticals, and is quite aware of its obligation under Article 39.3 of the Agreement on Trade-related Aspects of Intellectual Property Rights to protect undisclosed test or other data against unfair commercial use. Article 39.3 requires governments to protect such data against public disclosure "except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use." The requirement in § 20.89(c)(1) for written statements and the general requirement for sponsor consent are intended to help protect confidential commercial information from unauthorized public disclosure.

6. Two comments stated that FDA should require or reaffirm that it will obtain a sponsor's consent before providing confidential commercial information to a foreign government or to an international organization. One comment would amend § 20.89(d)(1)(ii) to require written confidentiality agreements from international organizations and individuals in the organization who are to receive confidential commercial information and to require consent from sponsors.

FDA reiterates that neither the proposed rule nor this final rule changes the requirements for written statements, written commitments, and sponsor consent for exchanges involving confidential commercial information. The requirements for disclosures of confidential commercial information are found at § 20.89(c). The elimination of the written statement and written commitment requirement applies solely to exchanges involving nonpublic, predecisional documents under § 20.89(d). As stated earlier, nonpublic, predecisional documents are prepared by FDA and normally do not contain any confidential commercial information.

Thus, FDA declines to amend § 20.89(d)(1)(i) as suggested by the comment because that paragraph pertains to exchanges of nonpublic, predecisional information.

7. One comment would amend the rule to require a sponsor's consent for all disclosures of confidential commercial information to international organizations. The comment stated that FDA has no obligation to balance the public interest against a sponsor's interest in maintaining the confidentiality of information. The comment added that if FDA engages in such balancing of interests, it should provide written notice to the sponsor describing the confidential commercial information that has been provided to an international organization and, furthermore, that only the Commissioner of Food and Drugs (the Commissioner) should be authorized to make such disclosures to an international organization.

Similarly, another comment stated that if FDA discloses confidential commercial information to an international organization, without a sponsor's consent, under the "public interest" at § 20.89(c)(1)(ii), the agency should specify the public health circumstances justifying the disclosure.

When FDA first issued the final rule codifying § 20.89(c)(1)(ii) in 1993, it explained that there are situations in which it might be inappropriate to seek a sponsor's consent to a disclosure of confidential commercial information. The preamble to the 1993 final rule gave examples of possible situations in which a sponsor may have engaged in deliberate fraud or misrepresentation, or situations in which FDA might wish to share confidential commercial information obtained through an FDA investigation for a foreign government's use in its own regulatory efforts (see 58 FR 61598 at 61601 (November 19, 1993)). FDA stated that these types of disclosures to foreign government counterparts "may facilitate efforts to keep unapproved, adulterated, counterfeit, or misbranded products off world markets as well as American markets." This rationale still applies, and, therefore, FDA declines to amend the rule to require a sponsor's consent in all disclosures of confidential commercial information.

As for the comments asking FDA to provide written notice to a manufacturer or to explain the public interest reasons behind a disclosure, FDA responded to similar comments in 1995 when it issued a final rule amending §§ 20.88 and 20.89. Those comments in 1995 suggested that FDA provide summaries of the information disclosed to foreign governments. In the preamble to the 1995 final rule, FDA stated that such summaries would be inappropriate or unnecessary (see 60 FR 63372 at 66379). FDA explained that if a foreign government were considering whether to take action against a particular product, requiring FDA to provide a summary to the product's manufacturer would alert the manufacturer to a potential enforcement action and would, therefore, be inappropriate. If FDA were helping a foreign government identify fraudulent goods and provided confidential commercial information to help distinguish legitimate products from fraudulent ones, providing a summary to the manufacturer would be unnecessary because the manufacturer would already know the information that was the basis of the summary.

FDA's rationale for not providing summaries also applies to the written notice and identification of the public health interests sought by the comments. If FDA were providing confidential commercial information to a foreign government to assist that government in a decision whether to take action against a particular product, providing a written notice to the product's manufacturer would alert the manufacturer to a potential enforcement action and might undermine or compromise the enforcement action. Similarly, stating that the public health interest involved an enforcement action would alert the product's manufacturer and might undermine or compromise any enforcement action. Thus, FDA

declines to revise the rule to require the agency to provide a written notice to a sponsor or to specify the public health interest reasons behind a disclosure.

As for the comment asking that the Commissioner be the only person authorized to disclose confidential commercial information to an international organization, FDA declines to amend the rule to impose such a limitation. The authority to disclose confidential commercial information under § 20.89 was delegated to the Associate Commissioner for Regulatory Affairs and various office and center officials (such as center directors and deputy directors) in 1994. Similar authority for disclosures of confidential commercial information under § 20.88, was delegated in 1997. These delegations of authority have made exchanges of confidential commercial information with State and foreign government officials more efficient. Given the agency's experience with these previous delegations of authority, the agency sees no reason to limit or otherwise restrict the authority to disclose such information to international organizations.

8. One comment asked FDA to "set out the means by which it can and will enforce any confidentiality agreement with an international organization." The comment said this information would be relevant to a sponsor's willingness to consent to releasing confidential commercial information to an international organization.

In previous rulemakings, FDA has stated that it would discontinue cooperative ventures with any State or foreign government that failed to honor its written commitment to protect the confidential commercial information provided by FDA (see 60 FR 63372 at 63377). The agency will extend this policy to cover international organizations receiving information from FDA.

The agency also notes that international organizations might cease to enjoy immunity and might face serious consequences if a person in the international organization made an unauthorized disclosure of confidential commercial information or if the international organization violated its written commitment. Under U.S. law, the President may, by Executive Order, designate certain international organizations as being entitled to the privileges, exemptions, and immunities that are normally afforded to foreign governments (see 22 U.S.C. 288). These privileges, exemptions, and immunities are significant, and include treatment comparable to that enjoyed by foreign governments as regards, for example, immunity from suit and judicial process (22 U.S.C. 288a), customs duties and taxes relating to importation (id.), and property taxes imposed by Congress (22 U.S.C. 288c). The President may revoke the designation of an international organization "if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities provided * * *" (id.) Thus, an international organization that failed to protect confidential commercial information would risk losing some or all of these significant privileges, exemptions, and immunities.

One should note that several international organizations that might conceivably request confidential commercial information from FDA are designated as international organizations under 22 U.S.C. 288. These include the Food and Agriculture Organization, PAHO (or PAHO/PASB (Pan American Sanitary Bureau)), and WHO.

Additionally, for officers and employees of international organizations, the immunity extends only to "acts performed by them in their official capacity and falling within their functions * * * except insofar as such immunity may be waived by the foreign Government or international organization concerned" (see 22 U.S.C. 288d(b)). An international organization official or employee who deliberately violates the organization's written commitment to FDA to protect confidential commercial information might not be considered to be acting within his or her "official capacity" or within his or her functions and, as a result, would not enjoy immunity from suit. For example, in *United States* v. *Enger*, 472 F. Supp. 490, 502 (D. N.J. 1978), a Federal district court rejected several defendants' claim that they could not be prosecuted for espionage because they were United Nations employees. The court stated, "Espionage, the crime with which the defendants are charged, is, of course, not one of the functions performed in the defendants' official capacities with the United Nations" (id.) (see also *Rendall-Speranza* v. *Nassim*, 107 F.3d 913, 920 (D.C. Cir. 1997) (plaintiff's failure to question a court's acceptance of the defendant organization's admission that its employee's act of battery was within the scope of his employment meant that the employee was immune from suit for battery under 22 U.S.C. 288d(b))).

International organizations that are not designated by an Executive Order do not enjoy the privileges, exemptions, and immunities as provided in 22 U.S.C. 288 through 288d. As a result, they, their officials, and their employees might not be immune from suit. In the event of an unauthorized disclosure of confidential commercial information, a sponsor would be able to pursue legal action against the undesignated international organization.

9. One comment stated that if an international organization requested confidential commercial information on an alleged health hazard, but the relevant foreign government had not asked for such information, FDA should consult the sponsor and allow the sponsor to handle any disclosure issues directly with the international organization. The comment added that if FDA were dissatisfied with the outcome between the sponsor and the international organization, FDA could release the data if it determined that a health hazard exists. The comment also stated that FDA should first determine that the international organization has responsibilities that require it to have the type of confidential commercial information requested.

FDA reiterates that, for almost all disclosures involving confidential commercial information to a State government, foreign government, or international organization, the sponsor's consent to disclosure will be obtained. However, the agency does not object to a sponsor's making individual disclosure arrangements with an international organization and agrees with the comment that, in some cases, the comment's approach would be practical.

Furthermore, disclosures under § 20.89 have been made on a case-by-case basis, and FDA will consider the foreign government's or international organization's need for the requested information when deciding whether to disclose information. The regulation is intended to facilitate communication with foreign governments and international organizations; it does not compel the agency to disclose confidential commercial information to a foreign government or to an international organization. Thus, if an international organization requests confidential commercial information without any apparent reason, FDA may decline to grant the request.

3. Editorial Changes

Proposed § 20.89(e) stated, in part, that for exchanges of confidential commercial information with an official of an international organization, the written statement and commitment "shall be provided by both the

organization and the individual." FDA, on its own initiative, is replacing the words "provided by" with "provided on behalf of" to make the sentence more accurate because, in a literal sense, a document cannot be "provided by" an inanimate body such as an international organization. Instead, persons provide the required statements and commitments "on behalf of" the organization.

Additionally, §§ 20.88(e) and 20.89(d) authorize the Deputy Commissioner for Policy to authorize the disclosure of nonpublic, predecisional documents to State and foreign government officials. Because FDA has reorganized its offices, the functions that were handled by the then-Deputy Commissioner for Policy are now assigned to the Senior Associate Commissioner for Policy, Planning, and Legislation, and international policy functions that were in the then-Office of Policy are now assigned to the Office of International and Constituent Relations. Consequently, FDA is revising §§ 20.88(e) and 20.89(d) to refer to the Senior Associate Commissioner for Policy, Planning, and Legislation and to the Deputy Commissioner for International and Constituent Relations.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a Federalism summary impact statement is not required.

V. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize new benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes this final rule is consistent with the regulatory philosophy and the principles identified in the Executive Order. In addition, this final rule is not an economically significant regulatory action as defined in the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The final rule will have no significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act because it regulates only conduct of FDA, State and foreign governments, and international organizations, and not small entities under the Regulatory Flexibility Act. The final rule provides for FDA disclosure of confidential commercial information to international organizations subject to the same safeguards against public disclosure of that information that apply in the case of disclosures to foreign government agencies. These disclosures would likely facilitate marketing review and approval of various FDA-regulated products in foreign countries, and disclosures would almost always occur only with the consent of the business that generated the confidential commercial information. The final rule also provides for FDA disclosure of nonpublic, predecisional documents and other nonpublic information created by FDA to State governments, foreign governments, and international organizations without the need to obtain written assurances. These beneficial effects outweigh any possible adverse impact. Thus, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities, and, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation). This rule does not impose any mandates on State, local, or tribal governments, nor is it a significant regulatory action under the Unfunded Mandates Reform Act.

VI. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 20 is amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

2. Section 20.88 is amended by revising paragraph (e)(1) to read as follows:

§ 20.88 Communications with State and local government officials.

* * * * *

(e)(1) The Senior Associate Commissioner for Policy, Planning, and Legislation, or the Deputy Commissioner for International and Constituent Relations, or any other officer or employee of the Food and Drug Administration whom the Senior Associate Commissioner for Policy, Planning, and Legislation or the Deputy Commissioner for International and Constituent Relations may designate to act on their behalf for the purpose, may authorize the disclosure to, or receipt from, an official of a State government agency of nonpublic, predecisional documents concerning the Food and Drug Administration's or the other government agency's regulations or other regulatory requirements, or other nonpublic information relevant to either agency's activities, as part of efforts to improve Federal-State uniformity, cooperative regulatory activities, or implementation of Federal-State agreements, provided that:

(i) The State government agency has the authority to protect such nonpublic documents from public disclosure and will not disclose any such documents provided without the written confirmation by the Food and Drug Administration that the documents no longer have nonpublic status; and

(ii) The Senior Associate Commissioner for Policy, Planning, and Legislation or the Deputy Commissioner for International and Constituent Relations or their designee makes the determination that the exchange is reasonably necessary to improve Federal-State uniformity, cooperative

regulatory activities, or implementation of Federal-State agreements.

* * * * *

3. Section 20.89 is amended by revising paragraph (d)(1); by removing paragraph (d)(3); and by adding paragraph (e) to read as follows:

§ 20.89 Communications with foreign government officials.

* * * * *

(d)(1) The Senior Associate Commissioner for Policy, Planning, and Legislation, or the Deputy Commissioner for International and Constituent Relations, or any other officer or employee of the Food and Drug Administration whom the Senior Associate Commissioner for Policy, Planning, and Legislation or the Deputy Commissioner for International and Constituent Relations may designate to act on their behalf for the purpose, may authorize the disclosure to, or receipt from, an official of a foreign government agency of nonpublic, predecisional documents concerning the Food and Drug Administration's or the other government agency's regulations or other regulatory requirements, or other nonpublic information relevant to either agency's activities, as part of cooperative efforts to facilitate global harmonization of regulatory requirements, cooperative regulatory activities, or implementation of international agreements, provided that:

(i) The foreign government agency has the authority to protect such nonpublic documents from public disclosure and will not disclose any such documents provided without the written confirmation by the Food and Drug Administration that the documents no longer have nonpublic status; and

(ii) The Senior Associate Commissioner for Policy, Planning, and Legislation or the Deputy Commissioner for International and Constituent Relations or their designee makes the determination that the exchange is reasonably necessary to facilitate global harmonization of regulatory requirements, cooperative regulatory activities, or implementation of international agreements.

* * * * *

(e) For purposes of this section, the term "official of a foreign government agency" includes, but is not limited to, employees (whether temporary or permanent) of and agents contracted by the foreign government, or by an international organization established by law, treaty, or other governmental action and having responsibility to facilitate global or regional harmonization of standards and requirements in FDA's areas of responsibility or to promote and coordinate public health efforts. For such officials, the statement and commitment required by paragraph (c)(1)(i) of this section shall be provided on behalf of both the organization and the individual.

Dated: December 3, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–5417 Filed 3–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Nicarbazin and Bacitracin Zinc

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Koffolk, Inc. The NADA provides for using approved nicarbazin and bacitracin zinc Type A medicated articles to make combination Type C medicated broiler chicken feeds used for prevention of coccidiosis and for increased rate of weight gain and improved feed efficiency.

DATES: This regulation is effective March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Koffolk, Inc., P.O. Box 675935, 14735 Las Quintas, Rancho Santa Fe, CA 92067, filed NADA 141–146 that provides for combining approved Nicarb® (113.5 grams per pound (g/lb) nicarbazin) manufactured by Koffolk, Inc., and Baciferm® (50 g/lb bacitracin as bacitracin zinc) manufactured by Roche Vitamins, Inc., Type A medicated articles to make Type C medicated broiler chicken feeds. The Type C broiler feeds contain 113.5 g/ton (t) nicarbazin and 4 to 50 g/t bacitracin. The Type C broiler chicken feeds are used as an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency.

The NADA is approved as of February 2, 2000, and the regulations are amended by adding 21 CFR 558.78(d)(3)(xxi) and by amending the table in 21 CFR 558.366(c) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

This approval is for use of Type A medicated articles to make combination drug Type C medicated feeds. Nicarbazin is a category II drug as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved Form FDA 1900 is required to make a Type C medicated feed from a category II drug. Under 21 U.S.C. 360b(m), as amended by the Animal Drug Availability Act of 1996 (Public Law 104–250), medicated feed applications have been replaced by a requirement for feedmill licenses. Therefore, use of Type A medicated articles to make Type C medicated feeds as provided in NADA 141–146 is limited to manufacture in a licensed feedmill.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.78 is amended by adding paragraph (d)(3)(xxi) to read as follows:

§ 558.78 Bacitracin zinc.

* * * * *

(d) * * *

(3) * * *

(xxi) Nicarbazin as in § 558.366.

3. Section 558.366 is amended in the table in paragraph (c) under the entry for "113.5 (0.0125 pct)" by alphabetically adding an entry for "Bacitracin zinc 4 to 50" to read as follows:

§ 558.366 Nicarbazin.

* * * * *

(c) * * *

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
113.5 (0.0125 pct)	* * *	* * *	* * *	* * *
*	*	*	*	*
	Bacitracin zinc 4 to 50.	Broiler chickens; aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency.	For broiler chickens only. Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard. Discontinue medication 4 days before marketing the birds for human consumption to allow for elimination of the drug from edible tissue. Do not feed to laying hens in production. Nicarbazin as provided by 063271, bacitracin zinc by 063238.	063271
*	*	*	*	*

Dated: February 25, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–5415 Filed 3–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 7 and 16

[T.D. ATF–425]

RIN 1512–AB98

Delegation of Authority (99R–247P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury Decision, Final rule.

SUMMARY: Authority delegation. This final rule places most ATF authorities contained in parts 4, 5, and 7, title 27 Code of Federal Regulations (CFR), with the "appropriate ATF officer" and requires that persons file documents required by parts 4, 5, and 7, title 27 CFR, with the "appropriate ATF officer" or in accordance with the instructions on the ATF form. Also, this final rule removes the definitions of, and references to, specific officers subordinate to the Director. Concurrently with this Treasury Decision, ATF Order 1130.2A is being published. Through this order, the Director has delegated most of the authorities in 27 CFR parts 4, 5 and 7 to the appropriate ATF officers and specified the ATF officers with whom applications, notices and other reports that are not ATF forms are filed. Finally, this final rule removes the definition of, and a reference to, the Director in part 16, title 27 CFR.

DATES: Effective March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Treasury Order 120–01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), the authority to enforce, among other laws, the provisions of the Federal Alcohol Administration (FAA) Act. The Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by regulation, ATF delegation orders, regional directives, or similar delegation documents. As a result, to ascertain what particular officer is authorized to perform a particular function under the FAA Act, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all authorities of the Director in parts 4, 5, and 7 that were previously delegated and places those authorities with the "appropriate ATF officer." Most of the authorities of the Director that were not previously delegated are also placed with the "appropriate ATF officer." Along with this final rule, ATF is publishing ATF Order 1130.2A, Delegation Order—Delegation of the Director's Authorities in 27 CFR parts 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages, which delegates certain of these authorities to the appropriate organizational level. The effect of these changes is to consolidate all delegations of authority in parts 4, 5 and 7 into one delegation instrument. This action both

simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the future. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

To conform to these changes, this final rule removes the definition of "Director" and the one reference to the Director in part 16. The reference to the Director is found in 27 CFR 16.30. This section states that certificates of label/bottle approval or exemption from label approval are issued pursuant to parts 4, 5, and 7.

In addition, this final rule also eliminates all references in the regulations that identify the ATF officer with whom an ATF form is filed. This is because ATF forms will indicate the officer with whom they must be filed. Similarly, this final rule also amends parts 4, 5 and 7 to provide that the submission of documents other than ATF forms (such as letterhead applications, notices and reports) must be filed with the "appropriate ATF officer" identified in ATF Order 1130.2A. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed.

This final rule also makes various technical amendments to subparts A of 27 CFR parts 4, 5 and 7. First, new sections are added in each part to recognize the authority of the Director to delegate regulatory authorities and to identify ATF Order 1130.2A as the instrument reflecting such delegations. Second, various sections are amended in each part to provide that the instructions for an ATF form identify the ATF officer with whom it must be filed.

ATF has begun to make similar changes in delegations to other parts of Title 27 of the Code of Federal Regulations through separate rulemakings. By amending the regulations part by part, rather than in one large rulemaking document and ATF Order, ATF minimizes the time expended in notifying interested parties of current delegations of authority.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Authority delegations, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and Containers, Reporting and recordkeeping requirements, Wine.

27 CFR Part 5

Advertising, Authority delegations, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and Containers, Reporting and recordkeeping requirements.

27 CFR Part 7

Advertising, Authority delegations, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and Containers, Reporting and recordkeeping requirements.

27 CFR Part 16

Alcohol and alcoholic beverages, Consumer protection, Customs duties and inspection, Health, Imports.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted. §§ 4.3, 4.21, 4.23, 4.24, 4.33, 4.37, 4.38, 4.39, 4.40, 4.50, 4.52, and 4.64 [Amended]

Par. 2. In part 4 remove the word "Director" each place it appears and add, in substitution, the words "appropriate ATF officer" in the following places:

(a) Section 4.3(a);
(b) Section 4.21(b)(3)(iii);
(c) Section 4.23(c)(2);
(d) Section 4.24(a)(1) and (c)(1);
(e) Section 4.33(b);
(f) Section 4.37(c);
(g) Section 4.38(h);
(h) Section 4.39(a)(4) and (5), (d), (g), (i)(2)(iii) and (3), and (j);
(i) Section 4.40(c);
(j) Section 4.50(b);
(k) Section 4.52; and
(l) Section 4.64(a)(4) and (5).

Par. 3. Section 4.3 is amended by adding a sentence at the end of paragraph (a) and revising paragraph (b) to read as follows:

§ 4.3 Forms prescribed.

(a) * * * The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22153–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

* * * * *

Par. 4. A new § 4.4 is added to Subpart A to read as follows:

§ 4.4 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this Part 4 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.2A, Delegation Order—Delegation of the Director's Authorities in 27 CFR parts 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages. ATF delegation orders, such as ATF Order 1130.2A, are available to any interested person by mailing a request to the ATF Distribution Center, PO Box 5950,

Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

Par. 5. Section 4.10 is amended by removing the definition "Regional director (compliance)", and by adding a new definition of "Appropriate ATF officer" to read as follows:

§ 4.10 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.2A, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages.

* * * * *

Par. 6. The first and last sentences of paragraph (b)(1) of § 4.24 are amended to remove the words "Director" and "Director's", respectively, and by adding, in substitution, the phrases "appropriate ATF officer" and "appropriate ATF officer's".

Par. 7. Paragraph (b)(1) of § 4.30 is amended to remove the words "Regional director (compliance)" and adding, in substitution, the words "appropriate ATF officer".

Par. 8. Paragraph (a) of § 4.50 is amended by removing the words "application is made to the Director and" and adding to the end of the sentence the phrase "by the appropriate ATF officer".

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 9. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205. §§ 5.3, 5.22, 5.23, 5.26, 5.28, 5.34, 5.35, 5.36, 5.38, 5.42, 5.46, 5.51, 5.55 and 5.65 [Amended]

Par. 10. In part 5 remove the word "Director" each place it appears and add, in substitution, the words "appropriate ATF officer" in the following places:

(a) Section 5.3(a);
(b) Section 5.22(k)(1) and (2), and (l)(2);
(c) Section 5.26(b);
(d) Section 5.28, introductory text;
(e) Section 5.34(a);
(f) Section 5.35(a);
(g) Section 5.36(d);
(h) Section 5.38(c);
(i) Section 5.42(a)(4) and (5), and (b)(7);
(j) Section 5.46(d)(1);
(k) Section 5.51(c);
(l) Section 5.55(a), (b) and (c); and
(m) Section 5.65(a)(4) and (5), and (g).

Par. 11. Section 5.3 is amended by adding a sentence at the end of paragraph (a) and revising paragraph (b) to read as follows:

§ 5.3 Forms prescribed.

(a) * * * The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22153–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

* * * * *

Par. 12. A new § 5.4 is added to Subpart A to read as follows:

§ 5.4 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this part 5 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.2A, Delegation Order—Delegation of the Director's Authorities in 27 CFR parts 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages. ATF delegation orders, such as ATF Order 1130.2A, are available to any interested person by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

Par. 13. Section 5.11 is amended by removing the definition "Area supervisor", and by adding a new definition of "Appropriate ATF officer" to read as follows:

§ 5.11 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.2A, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages.

* * * * *

Par. 14. The first sentence of paragraph (a) of § 5.26 is amended by removing the phrase "with the Director".

Par. 15. Paragraph (c) of § 5.32 is amended by removing the phrase "by the Director".

Par. 16. Paragraph (g) of § 5.33 is amended by removing the words "Director or regional director (compliance)" and adding, in substitution, the words "appropriate ATF officer".

Par. 17. Paragraph (f) of § 5.36 is revised as follows:

§ 5.36 Name and address.

* * * * *

(f) Trade names. The trade name of any permittee appearing on any label must be identical to the trade name listed on the permittee's basic permit.

* * * * *

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 18. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205. §§ 7.3, 7.23, 7.24, 7.25, 7.29, 7.31, 7.54 [Amended]

Par. 19. In part 7 remove the word "Director" each place it appears and add, in substitution, the words "appropriate ATF officer" in the following places:

(a) Section 7.3(a);
(b) Section 7.23(b);
(c) Section 7.24(g);
(d) Section 7.25(a);
(e) Section 7.29(a)
(4) and (5), and (d);
(f) Section 7.31(c); and
(g) Section 7.54(a)(4) and (5).

Par. 20. Section 7.3 is amended by adding a sentence at the end of paragraph (a) and revising paragraph (b) to read as follows:

§ 7.3 Forms prescribed.

(a) * * * The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

* * * * *

Par. 21. A new § 7.5 is added to subpart A to read as follows:

§ 7.5 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this Part 7 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.2A, Delegation Order—Delegation of the Director's Authorities in 27 CFR parts 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages. ATF delegation orders, such as ATF Order 1130.2A, are available to any interested person by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

Par. 22. Section 7.10 is amended by removing the definition "Regional director (compliance)", and by adding a

new definition of "Appropriate ATF officer" to read as follows:

§ 7.10 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.2A, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages.

* * * * *

Par. 23. The second sentence of paragraph (c)(1) of § 7.20 is amended by removing the words "regional director (compliance)" and adding, in substitution, the words "appropriate ATF officer".

Par. 24. The first sentence of paragraph (f) of § 7.24 is amended by removing the phrase "by the Director".

Par. 25. Paragraph (a) of § 7.41 is revised to read as follows:

§ 7.41 Certificates of label approval.

(a) *Requirement.* No person may bottle or pack malt beverages, or remove malt beverages from the plant where bottled or packed unless an approved certificate of label approval, ATF Form 5100.31, is issued.

* * * * *

PART 16—ALCOHOLIC BEVERAGE HEALTH WARNING STATEMENT

Par. 26. The authority citation for Part 16 continues to read as follows:

Authority: 27 U.S.C. 205, 215, 218; 28 U.S.C. 2461 note.

Par. 27. Section 16.10 is amended by removing the definition of "Director."

Par. 28. Section 16.30 is amended by removing the phrase "by the Director".

Signed: August 12, 1999.

John W. Magaw,

Director.

Approved: January 3, 2000.

Dennis M. O'Connell,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 00–5360 Filed 3–6–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD09 99–081]

RIN 2115–AA98

Special Anchorage Area; Henderson Harbor, New York

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is enlarging the existing special anchorage area in Henderson Harbor, NY. Henderson Harbor is used as a temporary anchorage area for recreational vessels to anchor without the requirement of showing anchorage lights as required by navigation rules. Enlarging this special anchorage area will replace anchorage space lost as a result of declining water levels in Lake Ontario and improve safety to vessels anchoring within this highly trafficked area.

DATES: This regulation becomes effective on April 28, 2000.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09 99–081] and are available for inspection or copying at the Ninth Coast Guard District, Room 2069, 1240 E. Ninth Street, Cleveland, OH, between 8 a.m. and 4 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Lynn Goldhammer, Ninth Coast Guard District, Marine Safety Division, at (216) 902–6050.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We published a notice of proposed rulemaking concerning this regulation in the **Federal Register** on November 5, 1999 (64 FR 60399). Five comments were received during the comment period.

Background and Purpose

This rule is in response to a request from the City of Henderson, New York to enlarge the existing special anchorage area in Henderson Harbor. The intended effect of the regulation is to reduce the risk of vessel collisions by providing notice to mariners of the establishment of a special anchorage area in which vessels not more than 65 feet in length are not required to exhibit anchor lights as required by the Navigation Rules.

Discussion of Comments and Changes

Five letters were received in support of enlarging the special anchorage in Henderson Harbor. No objections were received. Two letters recommended extending the position of Buoy "C" in anchorage area A to create a more rectangular shape to anchorage area A. The Coast Guard considered these comments and has decided to make this change to the proposed rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this rule under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because using the anchorage area is voluntary.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or who otherwise determine compliance with Federal regulations, to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, please call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the federal government having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this proposed rule and determined under Figure 2–1, paragraph 34(f) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 110

Special anchorage areas.

Final Regulation

In consideration of the foregoing, the Coast Guard amends Part 110 of Title 33, Code of Federal Regulations, as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236; 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05—1(g).

2. Section 110.87 is revised to read as follows:

§ 110.87 Henderson Harbor, N.Y.

(a) *Area A.* The area in the southern portion of Henderson Harbor west of the Henderson Harbor Yacht Club bounded by a line beginning at latitude 43°51′08.8″ N, longitude 76°12′08.9″ W, thence to latitude 43°51′09.0″ N, longitude 76°12′19.0″ W, thence to latitude 43°51′33.4″ N, longitude 76°12′19.0″ W, thence to latitude 43°51′33.4″ N, longitude 76°12′09.6″ W, thence to the point of beginning. All nautical positions are based on North American Datum of 1983.

(b) *Area B.* The area in the southern portion of Henderson Harbor north of Graham Creek Entrance Light bounded by a line beginning at latitude 43°51′21.8″ N, longitude 76°11′58.2″ W, thence to latitude 43°51′21.7″ N, longitude 76°12′05.5″ W, thence to latitude 43°51′33.4″ N, longitude 76°12′06.2″ W, thence to latitude 43°51′33.6″ N, longitude 76°12′00.8″ W, thence to the point of beginning. All nautical positions are based on North American Datum of 1983.

Note: Permission must be obtained from the Town of Henderson Harbormaster before any vessel is moored or anchored in this special anchorage area.

Dated: February 28, 2000.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 00–5487 Filed 3–6–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–008]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the regulations governing the operation of the State Road 706, Indiantown Road drawbridge, mile 1006.2, at Jupiter, Palm Beach County, Florida. This drawbridge has been removed and the regulations governing the operation of the drawbridge are no longer necessary.

DATES: This rule is effective March 7, 2000.

ADDRESSES: The Commander(oan), Seventh Coast Guard District, maintains the public docket for this rulemaking. The docket will be available for inspection or copying at 909 SE 1st Avenue, room 406, Miami, FL 33131 between 8 a.m. and 4 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Evelyn Smart, Project Manager, Bridge Section, at (305) 536–6546.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This final rule removes a bridge regulation for a drawbridge that was removed in September 1997.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This final rule removes a bridge regulation for a drawbridge that was removed in 1997. Therefore, publishing a notice of proposed rulemaking or delaying the effective date of the final rule is unnecessary and the Coast Guard is proceeding to final rule, effective upon publication in the **Federal Register**.

Background and Purpose

The bridge regulations for the old State Road 706 drawbridge, locally known as the Indiantown Road Bridge, were published in the **Federal Register** on July 27, 1990 [55 FR 30689]. The regulation established draw times for

the opening of the drawbridge. This drawbridge was replaced with a higher bascule bridge and the old drawbridge has been removed from the waterway. The regulations governing the operation of the old drawbridge are no longer needed and the Coast Guard is removing 33 CFR 117.261(q).

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policy and procedures of DOT is unnecessary. We conclude this because the drawbridge has been removed.

Small Entities

Under the Regulatory Flexibility Act (5 USC 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities because the drawbridge has been replaced with a newer, higher bascule bridge and the drawbridge regulation is no longer necessary.

Assistance for Small Entities

This rule calls for no assistance for small entities under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 32(e), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

For the reasons set out in the preamble, the Coast Guard amends part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 USC 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.261 [Amended]

2. In § 117.261, remove and reserve paragraph (q).

Dated: February 16, 2000.

T.W. Allen,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 00–5489 Filed 3–6–00; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL INSTITUTE FOR LITERACY

34 CFR Part 1100

Literacy Leader Fellowship Program

AGENCY: National Institute for Literacy.

ACTION: Final regulations.

SUMMARY: The Director amends the regulations governing the Literacy Leader Fellowship Program. Under this program, the Director may award fellowships to individuals to enable them to engage in research, education, training, technical assistance, or other activities that advance the field of adult education or literacy. These amendments make changes that improve the administration of the program.

DATES: These regulations take effect March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Jennifer Cromley, Telephone No.: 202/233–2053, email jcromley@nifl.gov. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 am and 8 pm, Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Director has made minor technical changes to the regulations, as well as minor changes in § 1100.5 (definition of literacy worker) to more clearly specify that only literacy workers with five or more years experience are eligible to apply for the Literacy Leader Fellowship Program. The Director has also amended the regulations to clarify that applicants proposing to conduct family literacy projects involving the adult components of family literacy are eligible to apply. These changes are reflected in §§ 1100.1, 1100.2, 1100.3, and 1100.5. Section 1100.5 includes a new definition of family literacy that incorporates the adult components of family literacy from the statute governing the Even Start Family Literacy Program. Sections 1100.1–1100.3 also clarify that all fellowship

proposals must be related to adult or family literacy. The Director has increased the maximum size of the stipend available for the program (in § 1100.22) and instituted a requirement that fellows devote at least 60 percent of effort to the project (which may be waived at the Director's discretion) in § 1100.32. The Director has changed the residency requirements for the program, so that Fellows are encouraged, but no longer required, to spend a significant portion of their time at the Institute (§ 1100.30, with technical changes to § 1100.21(c)(2)), although Fellows are still required to make four visits to the Institute to attend quarterly meetings. In addition, the Director has added references to two applicable regulations (34 CFR 74.61 and 34 CFR 75.61) which were inadvertently omitted from the 1997 revisions.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected sections of the regulations.

List of Subjects in 34 CFR Part 1100

Adult education; Grant programs—education; Reporting and recordkeeping requirements.

The Director amends Title 34 of the Code of Federal Regulations by revising Part 1100 to read as follows:

PART 1100—NATIONAL INSTITUTE FOR LITERACY: LITERACY LEADER FELLOWSHIP PROGRAM

Subpart A—General

Sec.

1100.1 What is the Literacy Leader Fellows Program?
1100.2 Who is eligible for a fellowship?
1100.3 What types of projects may a fellow conduct under this program?
1100.4 What regulations apply?
1100.5 What definitions apply?
1100.6 What priorities may the Director establish?

Subpart B—How Does an Individual Apply for a Fellowship?

1100.10 What categories of fellowships does the Institute award?
1100.11 How does an individual apply for a fellowship?
1100.12 What applications are not evaluated for funding?

Subpart C—How Does the Director Award a Fellowship?

1100.20 How is a fellow selected?
1100.21 What selection criteria does the Director use to rate an applicant?
1100.22 How does the Director determine the amount of a fellowship?
1100.23 What payment methods may the Director use?
1100.24 What are the procedures for payment of a fellowship award directly to the fellow?
1100.25 What are the procedures for payment of a fellowship award through the fellow's employer?

Subpart D—What Conditions Must Be Met by a Fellow?

1100.30 Where may the fellowship project be conducted?
1100.31 Who is responsible for oversight of fellowship activities?
1100.32 What is the duration of a fellowship?
1100.33 What reports are required?

Authority: 20 U.S.C. 1213c(e).

Subpart A—General

§ 1100.1 What is the Literacy Leader Fellowship Program?

(a) Under the Literacy Leader Fellowship Program, the Director of the National Institute for Literacy provides financial assistance to outstanding individuals who are pursuing careers in adult education, adult literacy or the adult components of family literacy, as defined in sections 1202(e)(3) (A), (B), and (C) of the Elementary and Secondary Education Act of 1965, as amended (20 USC 6362(e)(3) (A), (B), and (C)).

(b) Fellowships are awarded to these individuals for the purpose of carrying out short-term, innovative projects that contribute to the knowledge base of the adult education or adult or family literacy field.

(c) Fellowships are intended to benefit the fellow, the Institute, and the national literacy field by providing the fellow with the opportunity to interact with national leaders in the field and make contributions to federal policy initiatives that promote a fully literate adult population.

§ 1100.2 Who is eligible for a fellowship?

(a) Only individuals are eligible to be recipients of fellowships.

(b) To be eligible for a fellowship under this program, an individual must be—

(1) A citizen or national of the United States, or a permanent resident of the United States, or an individual who is in the United States for other than temporary purposes and intends to become a permanent resident;

(2) Eligible for Federal assistance under the terms of 34 CFR 75.60 and 75.61; and

(3) Either an adult or family literacy worker or an adult learner as defined in § 1105.5.

(c) An individual who has received a fellowship award in a prior year is not eligible for another award.

(d) Several individuals may apply jointly for one award, if each individual will contribute significantly to the proposed project and if the proposed project will develop leadership for each individual.

§ 1100.3 What type of project may a fellow conduct under this program?

(a) Under the auspices of the Institute, and in accordance with the Fellowship Agreement, a Literacy Leader Fellow may use a fellowship awarded under this part to engage in research, education, training, technical assistance, or other activities that advance the field of adult education, adult or family literacy, including the training of volunteer literacy providers at the national, State, or local level.

(b) a Literacy Leader Fellow may not use a fellowship awarded under this part for any of the following:

(1) Tuition and fees for continuing the education of the applicant where this is the sole or primary purpose of the project.

(2) Planning and implementing fundraisers

(3) General program operations and administration.

(4) Activities that otherwise do not meet the purposes of the Literacy Leader Fellowship program, as described in paragraph (a) of this section.

§ 1100.4 What regulations apply?

This program is governed by the regulations in this part and the following additional regulations:

34 CFR 74.36, Intangible property;

34 CFR 74.61, Termination

34 CFR 75.60, Individuals ineligible to receive assistance

34 CFR 75.61, Certification of eligibility

34 CFR part 85, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

§ 1100.5 What definitions apply?

(a) The definitions in 34 CFR 77.1, except that the definitions of "Applicant"; "Application", "Award", and "Project" do not apply to this part.

(b) Other definitions. The following definitions also apply to this part:

Adult learner means an individual over 16 years old who is pursuing or has completed some form of literacy or basic skills training, including preparation for the G.E.D.

Applicant means an individual (or more than one individual, if applying

jointly) requesting a fellowship under this program.

Application means a written request for a fellowship under this program.

Award means an amount of funds provided for fellowship activities.

Board means the National Institute for Literacy's Advisory Board established pursuant to section 242(e) of the Workforce Investment Act of 1998 (20 U.S.C. 9252(e)).

Director means the Director of the National Institute for Literacy.

Family literacy, for purposes of the Literacy Leader Fellowship Program, means any of the adult components of family literacy, as defined in sections 1202(e)(3)(A), (B), and (C) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6362(e)(3)(A), (B), and (C)), including interactive literacy activities between parents and their children, training for parents regarding how to be the primary teacher for their children and full partners in the education of their children, or parent literacy training that leads to economic self-sufficiency.

Fellow means a recipient of a fellowship.

Fellowship means an award of financial assistance made by the Institute to an individual pursuant to section 242(d) of the Workforce Investment Act of 1998 (20 U.S.C. 9252(d)) to enable that individual to conduct research or other authorized literacy activities under the auspices of the Institute.

Fellowship Agreement means a written agreement entered into between the Institute and a fellow, which, when executed, has the legal effect of obligating the fellowship award, and which states the rights and obligations of the parties.

Institute means the National Institute for Literacy.

Literacy worker means an individual who is pursuing a career in adult literacy or family literacy (as defined above) or a related field and who has a minimum of five years of relevant academic, volunteer or professional experience in the adult literacy, family literacy, adult education, or related field. Relevant experience includes teaching, policymaking, administration, or research.

Project means the work to be engaged in by the fellow during the period of the fellowship.

Research means one or more of the following activities in literacy or education or education related fields: basic and applied research, planning, surveys, assessments, evaluations, investigations, experiments, development and demonstrations.

§ 1100.6 What priorities may the Director establish?

The Director may, through a notice published in the **Federal Register**, select annually one or more priorities for funding. These priorities may be chosen from the areas of greatest immediate concern to the Institute and may include, but are not limited to, the following areas:

(a) *Developing leadership in adult learners.* Because adult learners are the true experts on literacy, they are an important resource for the field. Their firsthand experience as "customers" of the literacy system can be invaluable in assisting the field in moving forward, particularly in terms of raising public awareness and understanding about literacy.

(b) *Expanding the use of technology in literacy programs.* One of the Institute's major projects is the Literacy Information aNd Communication System (LINCS), an Internet-based information system that provides timely information and abundant resources to the literacy community. Keeping the literacy community up to date in the Information Age is vital.

(c) *Improving accountability for literacy programs.* Literacy programs must develop accountability systems that demonstrate their effectiveness in helping adult learners contribute more fully in the workplace, family and community. There is growing interest in results-oriented literacy practice, especially as related to the Equipped for the Future (EFF) framework.

(d) *Raising public awareness about literacy.* The Institute is leading a national effort to raise public awareness that literacy is part of the solution to many social concerns, including health, welfare, the economy, and the well-being of children. Projects that enhance this effort will be given priority consideration.

Subpart B—How Does an Individual Apply for a Fellowship?

§ 1100.10 What categories of fellowships does the Institute award?

The Institute awards two categories of Literacy Leadership Fellowships:

(a) Literacy Worker Fellowships; and

(b) Adult Learner Fellowships.

§ 1100.11 How does an individual apply for a fellowship?

An individual shall apply to the Director for a fellowship award in response to an application notice published by the Director in the **Federal Register**. The application must describe a plan for one or more of the activities stated in § 1100.3 that the applicant proposes to conduct under the fellowship. The application must indicate which category of fellowship, as described in § 1100.10, most accurately describes the applicant. Applicants must also submit for letters for recommendation and certain forms, assurances and certifications, including the certification required under 34 CFR 75.61. For applicants who propose to conduct the fellowship project on a part-time basis while undertaking other paid employment, one of the four required letters of recommendation must be from the applicant's employer, and must include a statement that the applicant's workload will not exceed 100 percent of time. (Approved by the Office of Management and Budget under OMB Control Number 3430–0003, Expiration Date 6/30/2000.)

§ 1100.12 What applications are not evaluated for funding?

The Director does not evaluate an application if—

(a) The applicant is not eligible under § 1100.2;

(b) The applicant does not comply with all of the procedural rules that govern the submission of applications for Literacy Leader Fellowship funds;

(c) The application does not contain the information required by the Institute;

(d) The application proposes a project for which a fellow may not use the fellowship funds, as described in § 1100.3(b).

(e) The application is not submitted by the deadline stated in the application notice.

Subpart C—How Does the Director Award a Fellowship?

§ 1100.20 How is a fellow selected?

(a) The Director selects applications for fellowships on the basis of the selection criteria in § 1100.21 and any priorities that have been published in the **Federal Register** and are applicable to the selection of applications.

(b)(1) The Director may use experts from the literacy field to rank applications according to the selection criteria in § 1100.21, and then provide the top-ranked applications to the Institute's Advisory Board.

(2) The Institute's Advisory Board evaluates these applications based on the selection criteria in § 1100.21 and makes funding recommendations to the Director.

(3) The Director then determines the number of awards to be made in each fellowship category and the order in which applications will be selected for fellowships, based on the initial rank

order, recommendations by the board, and any other information relevant to any of the selection criteria, applicable priorities, or the purposes of the Literacy Leader Fellowship Program, including whether the selection of an application would increase the diversity of fellowship projects under this program.

§ 1100.21 What selection criteria does the Director use to rate an applicant?

The Director uses the following criteria in evaluating each applicant for a fellowship:

(a) *Quality of plan.* (45 points) The Director uses the following criteria to evaluate the quality of the proposed project:

(1) The proposed project deals with an issue of major concern to the literacy field.

(2) The design of the project is strong and feasible.

(3) The project addresses critical issues in an innovative way.

(4) The plan demonstrates a knowledge of similar programs and an intention, where appropriate, to coordinate with them.

(5) The applicant describes adequate support and resources for the project.

(6) The plan includes evaluation methods to determine the effectiveness of the project.

(7) The project results are likely to contribute to the knowledge base in literacy or adult education, and to federal policy initiatives in these or related areas.

(8) The project will enhance literacy or adult education practice.

(9) The project builds research capacity or improves practice within the field.

(b) *Qualifications of applicant.* (25 points) The Director uses the following criteria to evaluate the qualifications of the applicant:

(1) The applicant has a strong background in the adult or family literacy field. (Include all relevant experience, which many include experience as a volunteer or an adult learner.)

(2) The applicant has expertise in the proposed area of the project.

(3) The applicant has demonstrated the ability to complete a quality project or has shown leadership in this area.

(4) The applicant provides letters of recommendation that show strong knowledge by others in the literacy field of the applicant's background and past work.

(c) *Relevance to the Institute.* (10 points) The Director uses the following criteria to evaluate the relevance of the applicant's proposal to the Institute:

(1) The project significantly relates to the purposes and work of the Institute.

(2) The applicant proposes a minimum of four visits to the Institute for quarterly meetings (this may be adjusted according to the number of months to be served in the fellowship) and, if necessary, depending on the nature and scope of the proposed project, to spend an additional portion of the project time at the Institute.

(d) *Dissemination plan.* (10 points) the Director uses the following criteria to evaluate the quality of the dissemination plan;

(1) The applicant clearly specifies what information will be made available to the field and how this information will further the efforts of the field.

(2) The applicant describes how this information will be shared with the field (e.g., print, on-line, presentations, video, etc.).

(e) *Budget.* (10 points) The Director uses the following criteria to evaluate the budget:

(1) The budget will adequately support the project.

(2) The costs are clearly related to the objectives of the project.

(3) The budget is cost effective.

(4) The budget narrative clearly describes the budget and how costs are calculated.

§ 1100.22 How does the Director determine the amount of a fellowship?

The amount of the fellowship will not exceed $70,000, and shall consist of—

(a) A stipend, calculated on the basis of either—

(1) The fellow's current annual salary, prorated for the length of the fellowship salary reimbursement; or

(2) If a fellow has no current salary, the fellow's education and experience; and

(b) A subsistence allowance, materials allowance (covering costs of materials and supplies directly related to the completion of the project), and travel expenses (including expenses to attend quarterly meetings in Washington, DC) related to the fellowship and necessary to complete the scope of work outlined in the proposal, consistent with Title 5 U.S.C. chapter 57.

§ 1100.23 What payment methods may the Director use?

(a) Director will pay a fellowship award directly to the fellow or through the fellow's employer. The application should specify if the fellow wishes to be paid directly or through the fellow's employer.

(b) The Director considers the preferences of the fellow in determining whether to pay a fellowship award directly to the fellow or through the fellow's employer; however, the Director pays a fellowship award through the fellow's employer only if the employer enters into an agreement with the Director to comply the provisions of § 1100.25.

§ 1100.24 What are the procedures for payment of a fellowship award directly to the fellow?

(a) If the Director pays fellowship award directly to the fellow after the Director determines the amount of a fellowship award, the fellowship recipient shall submit a payment schedule to the Director for approval. The Director advises the recipient of the approved schedule.

(b) If a fellow does not complete the fellowship, or if the Institute terminates the fellowship, the fellow shall return to the Director a prorated portion of the stipend and any unused subsistence and materials allowance and travel funds at the time and in the manner required by the Director.

§ 1100.25 What are the procedures for payment of a fellowship award through the fellow's employer?

(a) If the Director pays a fellowship award through the fellow's employer, the employer shall submit a payment schedule to the Director for approval.

(b) The employer shall pay the fellow the stipend, subsistence and materials allowance, and travel funds according to the payment schedule approved by the Director. If the fellow does not complete the fellowship, the fellow shall return to the employer a prorated portion of the stipend and any unused subsistence and materials allowance and travel funds. The employer shall return the funds to the Director at the time and in the manner required by the Director. The employer shall also return to the Director any portion of the stipend, subsistence and materials allowance and travel funds not yet paid by the employer to the fellow.

Subpart D—What Conditions Must Be Met by a Fellow?

§ 1100.30 Where may the fellowship project be conducted?

(a) A fellow is encouraged to carry out all, or a portion of, the fellowship project at the Institute. At a minimum, a fellow is required to attend quarterly meetings at the National Institute for Literacy in Washington, D.C. (this may be adjusted according to the number of months served in the fellowship).

(b) Office space and logistics will be provided by the Institute when fellows are in residence at the Institute.

(c) the fellow may also be required to participate in meetings, conferences and other activities at the Departments of Education, Labor, or Health and Human Services, in Washington D.C., or in site visits to other locations, if deemed appropriate for the project being conducted.

§ 1100.31 Who is responsible for oversight of fellowship activities?

(a) All fellowship activities are conducted under the direct or general oversight of the Institute. The Institute may arrange through written agreement for another Federal agency, or another public or private nonprofit agency or organization that is substantially involved in literacy research or services, to assume direct supervision of the fellowship activities.

(b) Fellows may be assigned a peer mentor to orient them to the Federal System and Institute procedures.

§ 1100.32 What is the duration of a fellowship?

(a) The Institute awards fellowships for a period of at least three and not more than 12 months of full-time or part-time activity. Applicants proposing part-time projects must devote at least 60 percent of time to the project. The 60 percent requirement may be waived at the Director's discretion. An award may not exceed 12 months in duration. The actual period of the fellowship will be determined at the time of award based on proposed activities.

(b) In order to continue the fellowship to completion, the fellow must be making satisfactory progress as determined periodically by the Director.

(c) A fellowship may be terminated under the terms of 34 CFR 74.61.

§ 1100.33 What reports are required?

(a) A fellow shall submit fellowship results to the Institute in formats suitable for wide dissemination to policymakers and the public. These formats should include, as appropriate to the topic of the fellowship and the intended audience, articles for academic journals, newspapers, and magazines.

(b) Each fellowship agreement will contain specific provisions for how, when, and in what format the fellow will report on results, and how and to whom the results will be disseminated.

(c) A fellow shall submit a final performance report to the Director no later than 90 days after the completion of the fellowship. The report must contain a description of the activities conducted by the fellow and a thorough analysis of the extent to which, in the opinion of the fellow, the objectives of the project have been achieved. In addition, the report must include a detailed discussion of how the activities performed and results achieved could be used to enhance literacy practice in the United States. (Approved by the Office of Management and Budget under OMB Control Number 3430–0003, Expiration Date 6/30/2000.)

Dated: March 2, 2000.

Carolyn Staley,

Deputy Director, NIFL.

[FR Doc. 00–5521 Filed 3–6–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–6545–7]

Optional Certification Streamlining Procedures for Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines for Original Equipment Manufacturers and for Aftermarket Conversion Manufacturers; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is adopting a fee waiver provision for vehicles certified with "closed" fuel systems and for vehicles certified to the Clean-Fuel vehicle (CFV) standards. EPA is also adopting a provision for calculating eligibility for a partial fee waiver for vehicles converted to operate on a gaseous fuel. EPA proposed this provision in a Notice of Proposed Rulemaking (NPRM) published on July 20, 1998, at 63 FR 38767, to provide incentives for the manufacturer of CFVs by easing the burden of certification for manufacturers of these vehicles. EPA is not adopting certain other provisions proposed in that document.

The fee waivers adopted today will be effective for the 2000 Model Year (MY) and will continue through MY 2003. This action will reduce the cost of certification for manufacturers certifying a small-volume engine family to CFV standards. In addition, it is anticipated this action will provide a financial incentive for automobile and engine manufacturers to increase the number of offerings of alternatively fueled vehicles to private owners and fleet owners. Manufacturers who qualify for the fee waivers and who have already paid their fees for 2000 MY vehicles will be eligible for a complete refund. EPA estimates that overall manufacturers will save about $100,000 during each of the next four model years due to this provision.

EFFECTIVE DATE: This rule is effective April 6, 2000.

ADDRESSES: Materials relevant to this final rule are contained in Docket No. A–97–27, located at the Air Docket, 401 M Street SW, Washington, DC 20460, and may be reviewed in Room M–1500 from 8 a.m. until 5:30 p.m. on business days. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. As provided in 40 CFR Part 2, EPA may charge a reasonable fee for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Clifford Tyree, Senior Project Manager, U.S. EPA, National Vehicle and Fuel Emission Laboratory, Vehicle Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105–2425. Telephone: (734) 214–4310; FAX 734–214–4053. E-Mail, tyree.clifford@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are Original Equipment Manufacturers (OEMs) of Light-Duty Vehicles, Light-Duty Trucks (LDTs), and Heavy-Duty Engine (HDEs) manufacturers. In addition, aftermarket converters of LDVs, LDTs, and HDEs will also be regulated. Entities include:

Category	Examples of regulated entities
Auto industry of light-duty vehicles, light-duty trucks, and heavy-duty engines.	Original Equipment Manufacturers (OEMs) and Aftermarket Converters.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your

product is regulated by this action, you should carefully examine the applicability criteria in § 86.094–1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory and other related documents are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost you already incur for Internet connectivity. The electronic **Federal Register** version is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on a secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA–AIR/(either select desired date or use Search feature.)

2. http://www.epa.gov/OMSWWW/cff.htm

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

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I. Introduction

The goal of the proposed amendments was to ease the burden of certification for manufacturers of vehicles and engines certified with closed fuel systems and for manufacturers of Clean-Fuel vehicles (CFV), to increase the supply of such vehicles. This overall increase in the supply of such vehicles will also result in a broader selection of vehicles certified to CFV standards for fleet operators subject to the purchasing requirements of state Clean-Fuel Fleet Programs (CFFP) under section 246 of the Clean Air Act. EPA proposed to (1) Revise the definition for dedicated vehicle (or engine) in 40 CFR 86.092–90 to include CFVs with limited ability to operate on a conventional fuel, (2) amend the current regulations to allow manufacturers of CFVs to group certain engine families together for certification purposes, and (3) exempt certain manufacturers for MY 1999, 2000, and 2001, from certification fees for vehicles with closed fuel systems and for CFVs.

II. Content of the Final Rule

A. Definition of Dedicated Vehicle (or Engine)

EPA is not adopting the proposed changes to the definition of a dedicated vehicle (or engine) for the reasons described below. EPA received four comments expressing support for this provision, but also expressing concern that the proposed definition would add complexity and confusion for the consumer.

EPA proposed to revise the current definition of dedicated vehicle (or engine) to encompass vehicles with limited ability to operate on a second fuel. The emergency fuel supply of the second fuel would be limited to a fuel capacity that would only allow a 50-mile range or, operation for one hour in three hours of driving. Some commenters felt strongly that the operators would find a way to circumvent the limitations on the use of the second fuel. For example, the electronic limit of one hour of operation in three could easily be tampered with. They also felt that some operators would choose to operate on the gasoline in non-emergency situations, even if the total capacity would only allow a 50-mile range.

EPA received several comments arguing that any vehicle called "dedicated" should only be capable of operating on one fuel. They stated that the option of an emergency fuel supply within the definition of "dedicated" would erode consumer knowledge and understanding of the work they have accomplished in producing vehicles which would not have the emergency fuel supply.

EPA has considered the comments received and concludes that it is best to keep the current definition of dedicated vehicle (or engine) intact and, therefore, the proposed change is not being adopted today. EPA believes that at this time it cannot ensure that amending the definition of dedicated vehicle as proposed will not result in consumer confusion about alternative fueled vehicles. Therefore, vehicles with a limited ability to operate on a second fuel will continue to be considered dual-fueled vehicles.

B. Engine Family Criteria and Assigned Deterioration Factors

In light of recently adopted amendments to EPA's certification regulations EPA has decided not to adopt the proposed engine family criteria and assigned deterioration factors (DFs) proposed in the NPRM. [1] The flexibility that would have been provided by the proposed definition of "Engine Family Class" is for the most part encompassed in the "Durability group determination" and the "Test group determination" provisions of the CAP 2000 amendments.[2,3] Because the CAP 2000 amendments provide the majority of relief proposed for light-duty vehicles, it is unnecessary to adopt the proposed provisions.

The CAP 2000 rules do not apply to heavy-duty engines and the proposed durability requirements would have required specific durability data submissions for heavy-duty engines. Some commenters stated that the proposed changes were more restrictive than current regulations, therefore the heavy-duty manufacturers would not likely exercise the options that would be provided by the proposed provisions. Since the changes would have been optional and because it appears unlikely the heavy-duty engine manufacturers would use the options that would have been provided by the proposed provisions, EPA has decided not to adopt the proposed changes for heavy-duty engines.

Several commenters noted that a 1995 EPA guidance document (CD–95–14), would expire with the 2000 MY. This Agency guidance document provided assigned deterioration factors for gaseous-fueled vehicles and engines for small-volume manufacturers as provided in 40 CFR 86.094–14(a)(2) and 86.094–14(c)(7)(i)(C). The commenters noted that the Agency has previously indicated its intent to extend the

[1] 40 CFR Part 9 *et al.*; Control of Air Pollution From New Motor Vehicles; Compliance programs for New Light-Duty Vehicles and Light-Duty Trucks; Final Rule, 65 FR 23905, May 4, 1999 (the "CAP 2000" regulations).

[2] 40 CFR 86.1820–01 "Durability group Determination"

[3] 40 CFR 86.1827–01 "Test group Determination"

applicability of the assigned deterioration factors to reflect both the new sales-volume limit for small-volume manufacturers as provided in the CAP 2000 provisions and to include assigned deterioration factors for heavy-duty engines qualified to use additive deterioration factors. EPA did not indicate in the NPRM any intent to revise this guidance. This issue is outside the scope of today's action, and EPA intends to address this issue in a separate context.

C. Fees

EPA is finalizing the proposed fee waiver provisions, for the reasons described below and in the NPRM. Every commenter addressing the fees issue supported this proposed amendment.

Several commenters who supported EPA's proposal recommended expanding the scope of the fee waiver. One fleet operator recommended the fee waiver be extended indefinitely. One commenter wanted the fee waiver to be retroactive to the date of the Notice of Proposed Rulemaking, July 20, 1998. One commenter wanted all of the 1999 model year fees to be refunded for all alternative fueled vehicles. For the reasons described below, EPA is finalizing the proposed fee waiver for MY 2000 vehicles and engines meeting LEV or better emissions standards, and for MY 2000 dedicated gaseous fuel vehicles and engines. In addition, EPA is adopting a provision through which manufacturers who have certified such vehicles for MY 2000 can seek a refund of certification fees. Finally, EPA is extending the fee waiver through MY 2003, two years beyond the proposed waiver.

EPA disagrees with the commenter who recommends the fee waiver be extended indefinitely. The purpose of the fee waiver is to encourage manufacturers to produce and certify clean fuel vehicles, and gaseous fueled vehicles, as described in the NPRM. EPA does not believe that it is necessary or appropriate to provide a fee waiver beyond a specific, short-term time period as an incentive to manufacturers. Once clean fuel vehicles and gaseous fueled vehicles are certified and in use, it is reasonable to expect that consumers, including fleets, will continue to provide a market for such vehicles. Therefore, an indefinite or significantly longer term fee waiver is not needed.

EPA also does not believe it is appropriate to make the fee waiver and refunds retroactive to MY vehicles before MY2000. While EPA believes it is appropriate to provide a short-term fee waiver for certain vehicles for the reasons described in the NPRM, to the extent manufacturers certified clean fuel vehicles and gaseous fueled vehicles in prior model years, they clearly believed it was a wise business decision to do so even without the incentive provided by a fee waiver or refund. Since the purpose of the waiver is to encourage certification of such vehicles, that purpose is not served by refunding or waiving fees from prior model years.[4]

EPA received comments requesting the fee waiver extend at least through MY 2004. One commenter indicated that original equipment manufacturers (OEMs) plan for model year introduction 3 and 4 years in advance, and therefore it is appropriate for EPA to waive certification fees for those vehicles and engines which manufacturers are currently beginning to develop. Commenters also noted that EPA's emission standards are expected to be revised beginning with MY 2004, making a fee waiver through this period a convenient bridge to the new standards.

EPA is adopting a fee waiver provision for clean fuel vehicles and dedicated alternative fuel vehicles that applies through MY 2003. EPA is aware that certain fleets continue to experience difficulty in obtaining appropriate clean fuel vehicles to meet fleet program purchase requirements. Moreover, further development of the alternative fuel refueling infrastructure would help enable such fleets to have a broader choice of qualifying vehicles from which to choose. For these reasons, EPA proposed a fee waiver to extend for three model years (MY 1999–2001). Based on the effective date of today's action, a three-model-year fee waiver provision adopted today would apply through MY 2002. EPA believes that it is appropriate to extend the waiver provision for an additional model year, to encourage manufacturers to begin development of clean fuel vehicles and dedicated alternative fuel vehicles for introduction into commerce in the future. Those manufacturers who do need four years to plan for vehicle introduction are thus assured of a fee waiver for MY 2003.

[4] As described below, EPA is providing an opportunity for certain manufacturers to request a refund of fees for MY 2000. This is to provide equity for all manufacturers of similar vehicles for a particular model year, and therefore the reasoning for this limited refund provision does not support extending the refund to prior model years. In addition, EPA's calculation of fees that could be refunded for MY 2000 under the provision adopted today shows that the total possible amount that could be refunded is relatively small (less than $75,000).

EPA disagrees with commenters who recommended the fee waiver extend at least through MY 2004, to provide a bridge to implementation of EPA's Tier 2 standards. As described in this notice and in the NPRM, the fee waiver is primarily intended to encourage manufacturers to certify and produce vehicles and engines to meet the purchase requirements of fleet operators subject to clean fuel fleet program purchase requirements. It was not proposed as a means to facilitate implementation of new emissions standards. For this reason, and because EPA believes a four-model-year period is sufficient to provide an initial encouragement for the production of clean fuel vehicles and dedicated alternative fuel vehicles, EPA is not extending the fee waiver beyond MY 2003.

Several commenters wanted the fee waiver to apply to flexible- and dual-fuel vehicles. EPA is finalizing the proposal to waive fees for dedicated Tier 1 gaseous fueled vehicles, for the reasons described in the NPRM. EPA is not including Tier 1 flexible- and dual-fuel vehicles in the full fee waiver because EPA cannot ensure the vehicles will be operated using the alternative fuel. However, as described below, EPA believes it is appropriate to provide a more limited incentive for manufacturers to certify such vehicles.

One commenter claimed the need to include flexible- and dual-fuel vehicles is consistent with the Congressional intent under Energy Policy Act (EPAct) to reduce dependency on foreign oil. This fee waiver is not intended to further the purposes of EPAct, which is a statute administered by the Department of Energy (DOE). Also, for the reason already stated in the NPRM and above, the fee waiver will apply only to dedicated fuel systems.

EPA's fee waiver proposal was issued in July 1998, and, at that time, EPA expected the fee waiver would begin to apply no later than MY 2000, based on the expected date of promulgation of the final rule. However, due to the delay in taking final action on the proposed provisions, some manufacturers have already certified vehicles to the Low-Emissions Vehicles (LEV), Inherently-LEV (ILEV), Ultra LEV (ULEV), or Zero-Emissions Vehicles (ZEV) emissions standards for MY 2000. EPA is adopting a provision to refund the certification fees paid for such vehicles, as well as any dedicated gaseous fueled Tier 1 vehicles, to provide equity in charging of fees in MY 2000. EPA does not want to penalize those manufacturers who certified these cleaner vehicles early in the model year, prior to promulgation of

these regulations. Therefore, manufacturers of such vehicles can request a refund of certification fees from EPA. This refund provision, in combination with the fee waiver provision, results in an appropriate, equitable, and nondiscriminatory fee schedule, for the reasons described in the NPRM, and because it avoids penalizing manufacturers who have already certified such vehicles for MY 2000.

Several commenters noted a discrepancy between the preamble and the proposed rule. In the preamble, EPA clearly identified vehicles and engines with "closed" fuel systems certified to Tier 1 standards as eligible for a fee waiver.[5] The proposed amendments to the regulatory language did not reflect this provision. This oversight is corrected in today's action and any vehicle or engine with a dedicated "closed" fuel system is eligible. A vehicle or engine with a dual-fuel system or flexible-fuel system would not be eligible for a fee waiver. Vehicles certified only to California emissions standards would also not be eligible for a fee waiver.

One of the existing fee waiver provisions, found at 40 CFR 86.908–93(a), provides a waiver from the full fee if the projected sales are anticipated to be such that a full fee would exceed 1% of the retail value. For example, if the retail sales price—based on the National Automobile Dealer's Association appraisal—is $25,000.00, then the manufacturer would pay 1% of this value or $250.00 for each vehicle until the maximum applicable fee is reached. Several commenters recommended EPA change the way the 1% value was determined. These commenters argued that the value added during the conversion process is the value that should be the basis of the 1% fee waiver calculations. EPA agrees that the calculation method for the one percent waiver in the current regulations often results in manufacturers paying the full certification fee for conversions where production volume exceeds approximately one hundred vehicles or engines. Under the regulations adopted today, conversions to clean fuel vehicles or to dedicated gaseous fueled Tier 1 vehicles would be eligible for a full fee waiver. However, conversions to dual- and flexible-fueled Tier 1 vehicles would not. EPA believes it is appropriate to provide an incentive for certification of such vehicles, since they are likely to operate on a cleaner fuel (*e.g.*, gaseous fuel, with lower evaporative and refueling emissions) at least some of the time. While EPA cannot ensure that such vehicles operate on the cleaner fuel all of the time, the Agency believes that consumers who purchase dual-and flexible-fueled vehicles do so because they intend to operate on the cleaner fuel to the extent practicable, but wish to have the ability to operate on gasoline or diesel in the event refueling facilities for the cleaner fuel are not readily available at a particular time. Encouraging the certification, production, and market penetration of these vehicles will also support a broader refueling infrastructure for gaseous fuels, which benefits the clean fuel fleet program (since a number of clean fuel fleet vehicles are expected to be gaseous fueled vehicles). In addition, to the extent such vehicles are operated on gaseous fuels, environmental benefits are achieved through lower evaporative and refueling emissions. For these reasons, EPA is revising its current regulations for converted vehicles that can operate on gaseous fuels to provide for calculation of the one percent fee waiver based on the value added to the retail value of the vehicle, or engine, by the conversion. This calculation method will apply through MY 2003 (the same time period as the full fee waiver for clean fuel vehicles and Tier 1 dedicated gaseous fuel systems). While EPA believes this incentive in the form of a different calculation method for the one percent waiver is an appropriate incentive for encouraging the production of such vehicles, the Agency does not believe a full fee waiver is appropriate, since we cannot ensure that the vehicles will be operated on the cleaner fuel.

[5] *See* 63 FR 38771.

III. Projected Impacts

A. Environmental Impact

Today's action will have no adverse effects on air quality, since all current emissions standards and requirements continue to apply to vehicles and engines affected by today's action. EPA believes that this action encourages manufacturers to develop and market vehicles and engines with innovative, new emissions control technology, ultimately resulting in broader market penetration of CFVs and clean alternative fuels.

B. Economic Impact

By waiving certification fees for qualifying vehicles, this action reduces the regulatory burden on industry without adversely affecting air quality. EPA anticipates that the new provisions should result in environmental benefits through encouraging increased production and use of low emission vehicles and engines.

IV. Public Participation

The Agency provided the opportunity for a Public Hearing for the proposed rule, if requested. No public hearing was requested. An extension of the comment period was requested and, in a **Federal Register** notice on September 11, 1998, the comment period was extended from August 19, 1998 to October 13, 1998. This Notice also informed interested parties that no public hearing had been requested.

A total of twenty-eight comments were received. A summary of these comments and EPA's analysis and responses to those comments are contained in a separate Response To Comments document located in the Docket A–97–27.

V. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of the Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612 generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant

economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because EPA is not imposing any new requirements, and any impact will be to reduce costs.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, requires agencies to submit for OMB review and approval, federal requirements and activities that result in the collection of information from ten or more persons. Information collection requirements may include reporting, labeling, and Recordkeeping requirements. Federal agencies may not impose penalties on persons who fail to comply with collections of information that does not display a currently valid OMB control number.

Today's action does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0104 (EPA ICR No. 0783).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instruction; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirement; train personnel to be able to respond to a collection of information; search for data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the ICR document(s) may be obtained from Sandy Farmer, OPPE Regulatory Information Division; EPA; 401 M St., SW (mail code 2137); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR and/or OMB number in any correspondence.

D. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (signed into law on March 22, 1995) requires that EPA prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 of the Unfunded Mandates Reform Act requires EPA to establish a plan for obtaining input from and informing, educating and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this rule is expected to result in the expenditure by state, local and tribal governments or private sectors of less than $100 million in any one year, EPA has not prepared a budgetary impact statement or specifically addressed selection of the least costly, most cost-effective or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments.

E. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve consideration of any new technical standards.

G. Protection of Children

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe environmental health or safety risks addressed by this action present a disproportionate risk to children. To the extent this action encourages the certification and use of CFVs, as expected, any resulting effect on children's health will be positive through reduced emissions of certain pollutants, such as VOC's, NOX, and PM.

H. Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written

communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. This rule will be implemented at the federal level and imposes compliance obligations only on private industry. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule will be implemented at the federal level and imposes compliance obligations only on private industry. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Executive Order 13132, Federalism Policies

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, [64 FR 43255 (August 10, 1999)] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987)] on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612.

Today's rule does not create a mandate on State or local. The rule does not impose any enforceable duties on these entities. This rule will be implemented at the federal level and imposes compliance obligations only on private industry. Accordingly, the requirements of Executive Order 13132 do not apply to this rule.

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule contains provisions for waivers of certification fees for certain manufacturers of new motor vehicles and engines. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. In addition, EPA provided state and local officials an opportunity to comment on the proposed regulations. A summary of concerns raised by commenters, including state and local commenters, and EPA's response to those concerns, is found in the Response to Comments document for this rulemaking.

Although this rule was proposed before the November 2, 1999 effective date of Executive Order 13132, EPA provided State and local officials notice and an opportunity for appropriate participation when it published the proposed rule, as described above. Thus, EPA has complied with the requirements of section 4 of the Executive Order.

VI. Statutory Authority

Authority for the actions set forth in this notice of proposed rulemaking is granted to the EPA by sections 217, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7552 and 7601(a))

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 24, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I, title 40 of the Code

of Federal Regulations is amended as follows:

PART 86—[AMENDED]

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 86.908–93 is amended by adding paragraphs (a)(1)(iii) and (d) to read as follows:

§ 86.908–93 Waivers, and refunds.

(a) * * *

(1) * * *

(iii) For converted vehicles that are dual- or flexible-fuel vehicles and can operate on a gaseous fuel, the full fee for a certification request for a MY exceeds 1% of the value added to the vehicle by the conversion, for MY 2000 through 2003.

* * * * *

(d)(1) For model years 2000 through 2003, the required fees under this subpart shall be waived for any light-duty vehicle, light-duty truck, or heavy-duty engine family that meets the small volume sales requirements of § 86.1838–01 and:

(i) Is a dedicated gaseous-fueled vehicle or engine OR;

(ii) Receives a certificate of conformity with the LEV, ILEV, ULEV, or ZEV emissions standards in 40 CFR part 88.

(2) If the manufacturer does not receive a certificate of conformity with the LEV, ILEV, ULEV, or ZEV emissions standards in 40 CFR part 88 as required in paragraph (d)(1)(iii) of this section, the fee requirements of this section will apply. Before any certificate can be issued, the applicable fee must be paid.

(3) Manufacturers that have paid certification fees for model year 2000 vehicle and engine families that meet the criteria in paragraph (d)(1) of this section may request a refund of such fees. EPA shall refund such fees if it determines that the vehicle or engine family meets the criteria of paragraph (d)(1) of this section.

[FR Doc. 00–5388 Filed 3–6–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 91, 115, 132, 133, 134, 189, and 199

[USCG–1999–4976]

RIN 2115–AF73

Frequency of Inspection

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard published a final rule in the **Federal Register** of February 9, 2000, concerning vessel inspection regulations (65 FR 6494). The rule established a 5-year Certificate of Inspection cycle in accordance with the Coast Guard Authorization Act of 1996 to harmonize our inspections with most internationally required certificates. This document corrects errors in that final rule.

DATES: Effective on March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Don Darcy, Office of Standards Evaluation and Development (G–MSR–2), Coast Guard, telephone 202–267–1200.

SUPPLEMENTARY INFORMATION:

Background

The Frequency of Inspection final rule established a 5-year Certificate of Inspection cycle to harmonize our inspections with internationally required certificates. We published the final rule to establish frequency of inspection requirements to meet the International Convention for the Safety of Life at Sea, 1974, and the International Convention on Load Line compliance date of February 3, 2000. Adopting a 5-year COI, with interval annual inspections, and a periodic inspection provides vessel owners and operators with more flexibility to schedule required inspections and reduce paperwork associated with these inspections, while continuing to ensure that U.S. vessels meet international standards and comply with international law.

Need for Correction

As published, the final rule contains typographical errors that may mislead the reader and need to be corrected.

Correction of Publication

Accordingly, the publication on February 9, 2000, of the final rule [USCG–1999–4976], which was the subject of FR Doc. 00–2812, is corrected as follows:

§§ 91.25–20(A) and 91.27–13 [Amended]

1. On page 6501, in § 91.25–20(a) introductory text, remove the number "§ 91.15–60" and add, in its place, the number "§ 97.15–60"

2. On page 6502, in § 91.27–13—

a. In paragraph (c), capitalize the first letter of the word "officer";

b. In paragraph (d)(3), in the second sentence, capitalize the first letters of the words "certificate" and "inspection" in the phrase "certificate of inspection"; and

c. In paragraphs (d)(5)(iii), immediately following the words "noted during the", remove the words "during the".

§ 115.404 [Amended]

3. On page 6504, in § 115.404(b), immediately following the words "expiration date of", remove the word "the".

PART 132—[AMENDED]

4. On page 6507, in the authority citation for part 132, remove the number "449" and add, in its place, the number "49".

PART 133—[AMENDED]

5. On page 6507, in the authority citation for part 133, remove the number "449" and add, in its place, the number "49".

PART 134—[AMENDED]

6. On page 6507, in the authority citation for part 134, remove the number "449" and add, in its place, the number "49".

§ 189.25–47 [Amended]

7. On page 6509, in the amendatory instruction for § 189.25–47, remove the periods within quotation marks that immediately follow the words "inspection for certification" and "and periodic inspection".

PART 199— [AMENDED]

8. On page 6510, in the authority citation for part 199, remove the words "46 CFR" and add, in their place, the words "49 CFR".

Dated: February 28, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–5488 Filed 3–6–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA–6789 (Formerly FHWA 97–2252)]

RIN 2126–AA43

Safety Fitness Procedures; Safety Fitness Rating Methodology

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the Safety Fitness Rating Methodology (SFRM) in appendix B to 49 CFR part 385 by updating the list of acute and critical regulations to conform to several regulatory removals and substantive

amendments. As a result of earlier rulemaking, several of the citations in the list must be changed to reflect the amendments and revisions to the Federal Motor Carrier Safety Regulations (FMCSRs). The SFRM is used to measure the safety fitness of motor carriers against the safety fitness standard in 49 CFR part 385.

EFFECTIVE DATE: March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Hill, Regulatory Development Division, Office of Policy and Program Development, FMCSA, (202) 366–4009, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration (FHWA), 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

In October 1999, the Secretary of Transportation rescinded the authority previously delegated to the Federal Highway Administrator to perform motor carrier functions and operations. That authority was redelegated to the Director of the Office of Motor Carrier Safety (OMCS), a new office within the Department of Transportation (DOT) (64 FR 56270, October 19, 1999 and 64 FR 58356, October 29, 1999). Shortly thereafter, however, the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748, December 9, 1999) created the Federal Motor Carrier Safety Administration (FMCSA) as a new operating administration of the DOT, effective January 1, 2000. The Secretary therefore rescinded the authority so recently delegated to the Director of the OMCS and redelegated that authority to the Administrator of the FMCSA (65 FR 220, January 4, 2000). This explains the docket transfer.

The new FMCSA assumes the motor carrier functions previously exercised by the OMCS and, before that, by the FHWA's Office of Motor Carriers. Ongoing rulemaking, enforcement, and other activities initiated by the OMCS or the FHWA will be continued by the FMCSA. The motor carrier functions performed by the FHWA's Division (i.e., State) offices and Resource Centers have been assumed by the FMCSA Division offices and FMCSA Resource Centers. All phone numbers remain unchanged for the time being.

On November 6, 1997, the FHWA published a final rule incorporating the agency's SFRM as an appendix to 49 CFR part 385, Safety Fitness Procedures (62 FR 60035). The SFRM is used to measure the safety fitness of motor carriers against the standard contained in 49 CFR part 385. On November 10, 1998 (63 FR 62957) the FHWA published amendments to the rule which corrected several minor errors. Other changes are also necessary, however.

The FHWA published a final rule on June 18, 1998 (63 FR 33254) which removed, amended, and redesignated certain provisions of the FMCSRs. Furthermore, a technical amendment was published on July 11, 1997 (62 FR 37150) which removed subpart H (Controlled Substances Testing) of 49 CFR part 391; the alcohol and controlled substances regulations are now codified at 49 CFR part 382. Another technical amendment was published on December 12, 1994 (59 FR 63921) which revised existing hazardous material classifications and descriptions to conform with the United Nations' Recommendations on the Transportation of Dangerous Goods.

As a result of these rulemakings, several of the citations in the list of acute and critical regulations must be changed to reflect the appropriate sections of the FMCSRs. This document amends the List of Acute and Critical Regulations to conform to these regulatory removals and substantive amendments. The List of Acute and Critical Regulations in appendix B to part 385, Section VII, is being reprinted in its entirety for ease of reference.

List of Acute and Critical Regulations

The following section is being removed from the List of Acute and Critical Regulations, as indicated by the table printed below: § 391.11(a)/391.95 Using an unqualified driver, a driver who has tested positive for controlled substances, or refused to be tested as required (acute). This removal is necessary to conform to the above July 11, 1997 technical amendment (62 FR 37150), which also removed subpart H (Controlled Substances Testing) of 49 CFR part 391; the alcohol and controlled substances regulations are now codified at 49 CFR part 382. The following sections are also being removed: § 391.51(c)(1) Failing to maintain medical examiner's certificate in driver's qualification file (critical); and § 391.51(d)(1) Failing to maintain medical examiner's certificate in driver's qualification file (critical). These removals are necessary to conform to a final rule published on June 18, 1998 (63 FR 33254), which removed, amended, and redesignated certain regulations which the FHWA considered obsolete, redundant, unnecessary, ineffective, burdensome, or that could better be addressed by State or local authorities or company policy.

The following sections are being redesignated: § 391.11(b)(6) Using a physically unqualified driver (acute); § 391.51(b)(1) Failing to maintain medical examiner's certificate in driver's qualification file (critical); and § 391.51(c)(3) Failing to maintain inquiries into driver's driving record in driver's qualification file (critical). Sections 395.1(i)(1)(i), 395.1(i)(1)(ii), 395.1(i)(1)(iii), and 395.1(i)(1)(iv), are redesignated as §§ 395.1(h)(1)(i), 395.1(h)(1)(ii), 395.(h)(1)(iii), and 395.1(h)(1)(iv) (critical) regulations, respectively. These redesignations are necessary to conform the final rule published on June 18, 1998 (63 FR 33254). Section 382.115(c) Failing to implement an alcohol and/or controlled substance testing program (acute) is being redesignated as § 382.115(a). This redesignation is necessary to correct an error introduced by technical amendments published on July 11, 1997 (62 FR 37150) which redesignated § 382.115(c) to specify the starting dates for testing programs for small foreign employers. However, § 382.115(c), as originally adopted in 1994, applied only to U.S. domestic carriers, which are now referred to in § 382.115(a); the reference to paragraph (c) is therefore being replaced with paragraph (a). Section 395.3(b) Requiring or permitting driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical) and § 395.3(b) Requiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical), are being redesignated as § 395.3(b)(1) and § 395.3(b)(2), respectively, to more accurately reflect the paragraphs in § 395.3(b). The table below shows the new section numbers.

The sections listed here are revised to read as follows: § 382.213(b) Using a driver known to have used a controlled substance (acute); § 382.215 Using a driver known to have tested positive for a controlled substance (acute); § 382.305(b)(1) Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical); § 382.305(b)(2) Failing to conduct random controlled

substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical); § 382.503 Allowing a driver to perform safety sensitive function, after engaging in conduct prohibited by subpart B, without being evaluated by substance abuse professional, as required by § 382.605 (critical); § 383.37(a) Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle (acute); § 383.37(b) Knowingly allowing, requiring, permitting, or authorizing an employee with more than one commercial driver's license to operate a commercial motor vehicle (acute); § 391.45(b) Using a driver not medically examined and certified during the preceding 24 months (critical); and § 392.5(b)(2) Requiring or permitting a driver who shows evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle (acute). These revisions are necessary to make it clear that the testing rates for alcohol and controlled substances are dependent on the violation rates for the industry, or to have the revised descriptions more closely match the regulatory language in each section.

The following revisions are necessary to conform to the December 12, 1994, technical amendments which revised existing hazardous materials classifications and descriptions: Section 397.5(a) Failing to ensure a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material is attended at all times by its driver or a qualified representative (acute); § 397.7(a)(1) Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical); § 397.7(b) Parking a motor vehicle containing hazardous material(s) other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical); § 397.13(a) Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2 (critical); and § 397.19(a) Failing to furnish driver of motor vehicle transporting Division 1.1, 1.2, or 1.3 (explosive) materials with a copy of the rules of part 397 and/or emergency response instructions (critical); and § 397.67(d) Requiring or permitting the operation of a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, or 1.3 that is not accompanied by a written route plan (critical).

The following sections are revised to more closely match the regulatory language: Section 382.201 Using a driver known to have an alcohol concentration of 0.04 or greater (acute); § 382.605(c)(2)(ii) Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and/or controlled substances tests in the first 12 months following the driver's return to duty (critical); § 383.51(a) Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle (acute); § 387.31(d) Failing to maintain at principal place of business required proof of financial responsibility for passenger carrying vehicles (critical); § 396.11(c) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute); and § 177.841(e) Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals unless an exception in § 177.841(e)(i) or (ii) is met (acute).

For ease of reference the following distribution table is provided. Acute or critical regulations not listed in the left-hand column have not been changed.

Current acute or critical regulation	Corrected acute or critical regulation
382.115(c)	382.115(a).
382.201	Revised.
382.213(b)	Revised.
382.215	Revised.
382.305(b)(1)	Revised.
382.305(b)(2)	Revised.
382.503	Revised.
382.605(c)(2)(ii)	Revised.
383.37(a)	Revised.
383.37(b)	Revised.
383.51(a)	Revised.
387.31(d)	Revised.
391.11(a)/391.95	Removed.
391.11(b)(6)	391.11(b)(4).
391.45(b)	391.45(b)(1).
391.51(b)(1)	391.51(b)(7).
391.51(c)(1)	Removed.
391.51(c)(3)	391.51(b)(2).
391.51(d)(1)	Removed.
392.5(b)(2)	Revised.
395.3(b)	395.3(b)(1).
395.3(b)	395.3(b)(2).
395.51(i)(1)(i)	395.51(h)(1)(i).
395.51(i)(1)(ii)	395.51(h)(1)(ii).
395.51(i)(1)(iii)	395.51(h)(1)(iii).
395.51(i)(1)(iv)	395.51(h)(1)(iv).
396.11(c)	Revised.
397.5(a)	Revised.
397.7(a)(1)	Revised.
397.7(b)	Revised.
397.13(a)	Revised.
397.19(a)	Revised.
397.67(d)	Revised.
177.841(e)	Revised.

Rulemaking Analyses and Notices

This final rule makes corrections to the List of Acute and Critical Regulations under section VII of appendix B to part 385. Because these amendments simply update the rule to conform to several regulatory removals or substantive amendments adopted in other notices and entail no further substantive revisions, the FMCSA finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to promulgate this final rule without notice and comment and to make it effective on the date of publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(3).

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866. The agency has also determined that this action is not a significant regulatory action under the DOT's regulatory policies and procedures. This final rule is clerical in nature and does not include substantive changes to 49 CFR part 385, appendix B.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has evaluated the effects of this rule on small entities and has determined that it will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 385

Highway safety, Motor carriers, and Safety fitness procedures.

Issued on: February 22, 2000.

Julie Anna Cirillo,

Acting Deputy Administrator.

In consideration of the foregoing, Title 49, Code of Federal Regulations, Chapter III, part 385 is amended as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. Revise the authority citation for part 385 to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 31136, 31144, 31502; and 49 CFR 1.73.

2. Revise Section VII, List of Acute and Critical Regulations, of appendix B to part 385 to read as follows:

Appendix B to Part 385 Explanation of Safety Rating Process

* * * * *

VII. List of Acute and Critical Regulations.

§ 382.115(a)
Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier) (acute).

§ 382.201
Using a driver known to have an alcohol concentration of 0.04 or greater (acute).

§ 382.211
Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382 (acute).

§ 382.213(b)
Using a driver known to have used a controlled substance (acute).

§ 382.215
Using a driver known to have tested positive for a controlled substance (acute).

§ 382.301(a)
Using a driver before the motor carrier has received a negative pre-employment controlled substance test result (critical).

§ 382.303(a)
Failing to conduct post accident testing on driver for alcohol and/or controlled substances (critical).

§ 382.305
Failing to implement a random controlled substances and/or an alcohol testing program (acute).

§ 382.305(b)(1)
Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical).

§ 382.305(b)(2)
Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical).

§ 382.309(a)
Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 (acute).

§ 382.309(b)
Using a driver who has not undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances (acute).

§ 382.503
Allowing a driver to perform safety sensitive function, after engaging in conduct prohibited by subpart B, without being evaluated by substance abuse professional, as required by § 382.605 (critical).

§ 382.505(a)
Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04 (acute).

§ 382.605(c)(1)
Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02 or with verified negative test result, after engaging in conduct prohibited by part 382 subpart B (acute).

§ 382.605(c)(2)(ii)
Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and/or controlled substance tests in the first 12 months following the driver's return to duty (critical).

§ 383.23(a)
Operating a commercial motor vehicle without a valid commercial driver's license (critical).

§ 383.37(a)
Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle (acute).

§ 383.37(b)
Knowingly allowing, requiring, permitting, or authorizing an employee with more than one commercial driver's license to operate a commercial motor vehicle (acute).

§ 383.51(a)
Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle (acute).

§ 387.7(a)
Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage (acute).

§ 387.7(d)
Failing to maintain at principal place of business required proof of financial responsibility (critical).

§ 387.31(a)
Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility (acute).

§ 387.31(d)
Failing to maintain at principal place of business required proof of financial responsibility for passenger carrying vehicles (critical).

§ 390.15(b)(2)
Failing to maintain copies of all accident reports required by State or other governmental entities or insurers (critical).
§ 390.35
Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records (acute).
§ 391.11(b)(4)
Using a physically unqualified driver (acute).
§ 391.15(a)
Using a disqualified driver (acute).
§ 391.45(a)
Using a driver not medically examined and certified (critical).
§ 391.45(b)(1)
Using a driver not medically examined and certified during the preceding 24 months (critical).
§ 391.51(a)
Failing to maintain driver qualification file on each driver employed (critical).
§ 391.51(b)(2)
Failing to maintain inquiries into driver's driving record in driver's qualification file (critical).
§ 391.51(b)(7)
Failing to maintain medical examiner's certificate in driver's qualification file (critical).
§ 392.2
Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated (critical).
§ 392.4(b)
Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle (acute).
§ 392.5(b)(1)
Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage (acute).
§ 392.5(b)(2)
Requiring or permitting a driver who shows evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle (acute).
§ 392.6
Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed (critical).
§ 392.9(a)(1)
Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured (critical).
§ 395.1(h)(1)(i)
Requiring or permitting a driver to drive more than 15 hours (Driving in Alaska) (critical).
§ 395.1(h)(1)(ii)
Requiring or permitting a driver to drive after having been on duty 20 hours (Driving in Alaska) (critical).
§ 395.1(h)(1)(iii)
Requiring or permitting driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (critical).
§ 395.1(h)(1)(iv)
Requiring or permitting driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (critical).
§ 395.3(a)(1)
Requiring or permitting driver to drive more than 10 hours (critical).
§ 395.3(a)(2)
Requiring or permitting driver to drive after having been on duty 15 hours (critical).
§ 395.3(b)(1)
Requiring or permitting driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical).
§ 395.3(b)(2)
Requiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical).
§ 395.8(a)
Failing to require driver to make a record of duty status (critical).
§ 395.8(e)
False reports of records of duty status (critical).
§ 395.8(i)
Failing to require driver to forward within 13 days of completion, the original of the record of duty status (critical).
§ 395.8(k)(1)
Failing to preserve driver's record of duty status for 6 months (critical).
§ 395.8(k)(1)
Failing to preserve driver's records of duty status supporting documents for 6 months (critical).
§ 396.3(b)
Failing to keep minimum records of inspection and vehicle maintenance (critical).
§ 396.9(c)(2)
Requiring or permitting the operation of a motor vehicle declared "out-of-service" before repairs were made (acute).
§ 396.11(a)
Failing to require driver to prepare driver vehicle inspection report (critical).
§ 396.11(c)
Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute).
§ 396.17(a)
Using a commercial motor vehicle not periodically inspected (critical).
§ 396.17(g)
Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards (acute).
§ 397.5(a)
Failing to ensure a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material is attended at all times by its driver or a qualified representative (acute).
§ 397.7(a)(1)
Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).
§ 397.7(b)
Parking a motor vehicle containing hazardous material(s) other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).
§ 397.13(a)
Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2 (critical).
§ 397.19(a)
Failing to furnish driver of motor vehicle transporting Division 1.1, 1.2, or 1.3 (explosive) materials with a copy of the rules of part 397 and/or emergency response instructions (critical).
§ 397.67(d)
Requiring or permitting the operation of a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, or 1.3 that is not accompanied by a written route plan (critical).
§ 171.15
Carrier failing to give immediate telephone notice of an incident involving hazardous materials (critical).
§ 171.16
Carrier failing to make a written report of an incident involving hazardous materials (critical).
§ 177.800(c)
Failing to instruct a category of employees in hazardous materials regulations (critical).
§ 177.817(a)
Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper (critical).
§ 177.817(e)
Failing to maintain proper accessibility of shipping papers (critical).
§ 177.823(a)
Moving a transport vehicle containing hazardous material that is not properly marked or placarded (critical).
§ 177.841(e)
Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals unless an exception in § 177.841(e)(i) or (ii) is met (acute).
§ 180.407(a)
Transporting a shipment of hazardous material in cargo tank that has not been inspected or retested in accordance with § 180.407 (critical).
§ 180.407(c)
Failing to periodically test and inspect a cargo tank (critical).
§ 180.415
Failing to mark a cargo tank which passed an inspection or test required by § 180.407 (critical).
§ 180.417(a)(1)
Failing to retain cargo tank manufacturer's data report certificate and related papers, as required (critical).
§ 180.417(a)(2)
Failing to retain copies of cargo tank manufacturer's certificate and related

papers (or alternative report) as required (critical).

[FR Doc. 00–5471 Filed 3–6–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990422103–9209–02; 031099B]

RIN 0648–AL75

Fisheries of the Northeastern United States; Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Extension of an Interim Rule

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of expiration date.

SUMMARY: NMFS issues this notification to inform the public that the interim rule published on September 9, 1999, to implement conservation equivalencies for the summer flounder fishery is extended through September 5, 2000. Without this extension, the interim rule would expire on March 9, 2000. The extension allows states to continue to implement measures for the summer flounder recreational fishery that are alternatives to the annual Federal measures, yet achieve a reduction in fishing mortality equivalent to that achieved by the annual Federal measures.

DATES: The rule, effective September 2, 1999, through March 9, 2000, extends its expiration date from March 9, 2000, to September 5, 2000.

ADDRESSES: Copies of the Environmental Assessment (EA) and Regulatory Impact Review (RIR) prepared for the initial action are available from: Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION:

Background

An interim rule implementing conservation equivalencies for the summer flounder recreational fishery was published on September 9, 1999 (64 FR 48965), and will expire on March 9, 2000. The interim rule allows states to select a combination of minimum fish sizes, possession limits, and closed seasons to meet a target reduction in the recreational harvest limit for summer flounder. A combination of these measures must accomplish the same reduction as those implemented for the recreational fishery in the Exclusive Economic Zone (EEZ). Under the interim rule, states that wish to implement equivalent measures must submit proposed management options to the Atlantic States Marine Fisheries Commission (Commission) for approval. Once the Commission approves a state equivalency proposal, the Commission is required to recommend to NMFS that notification be published in the **Federal Register** to waive the default measures implemented for the EEZ and notify the public of equivalent measures.

The interim rule allowed for the implementation and publication of conservation equivalencies for the 1999 fishery. To provide the same mechanism for the 2000 fishery, the effectiveness of this rule must be extended. The Mid-Atlantic Fishery Management Council (Council) has included conservation equivalency as part of its recommended management measures for 2000. In addition, the Council is preparing an amendment to the Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass to implement conservation equivalency on a permanent basis; however, the amendment is not yet complete. Because the interim rule will expire on March 9, 2000, NMFS finds it necessary to extend the interim rule to allow the establishment of conservation equivalencies for the 2000 fishery. This extension is effective through September 5, 2000.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 1, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*.

2. In § 648.107(a), the first sentence is revised to read as follows:

§ 648.107 Conservation equivalent measures for the recreational summer flounder fishery.

(a) Through September 5, 2000, states may implement on an annual basis conservation equivalent measures that reduce the recreational catch to the same extent as the annual Federal summer flounder measures specified under § 648.100(c) to achieve the recreational harvest limit in any year.* * *

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[FR Doc. 00–5517 Filed 3–6–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 111899A]

Fisheries of the Exclusive Economic Zone Off Alaska; Final 2000 Harvest Specifications for Groundfish; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 2000 harvest specifications; correction.

SUMMARY: NMFS published final 2000 harvest specifications for the groundfish fishery of the Gulf of Alaska (GOA) on February 18, 2000. These final 2000 harvest specifications for the GOA inadvertently omitted changes made by previous rulemaking. Therefore, NMFS is correcting the published final 2000 total allowable catch amounts (TACs) specified for pollock in the Western and Central Regulatory Areas of the Gulf of Alaska (W/C GOA).

DATES: Effective February 15, 2000, through 2400 hrs A.l.t. December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

On January 3, 2000, NMFS published interim 2000 pollock TACs (65 FR 65).

For pollock, the interim TAC consists of the entire A season allocation. These interim pollock TACs were not further apportioned by time and area. On January 25, 2000, NMFS published an emergency rule implementing Steller sea lion protection measures (65 FR 3892). The emergency rule amended the original interim TACs for pollock in the W/C GOA by revising the TAC levels to account for the best available scientific information and apportioned the TACs by area for the A season.

On January 27, 2000, NMFS issued an inseason adjustment amending the time and area apportionments of the W/C GOA interim pollock TACs (65 FR 4892, February 2, 2000). The amended interim TAC apportionments reflected a revised procedure for more accurately allocating pollock as authorized under the emergency rule.

NMFS published the final 2000 harvest specifications for the GOA groundfish fishery on February 18, 2000 (65 FR 8298). Inadvertently, the changes to the A season TACs and apportionments made by the emergency rule and the inseason adjustment to the emergency rule for the W/C GOA pollock TACs were omitted from the final 2000 harvest specifications for the GOA groundfish fishery.

Correction

In the rule to implement the Final 2000 Harvest Specifications for Groundfish of the Gulf of Alaska, published on February 18, 2000 (65 FR 8298), FR Doc. 00–3910, the following corrections are made to the TAC amounts specified for pollock in the W/C GOA.

1. On page 8301, in Table 1, the entire entry "Pollock" and footnote 2 are correctly revised to read as follows:

TABLE 1. 2000 ABCs, TACs, INITIAL TACs (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), SHELIKOF STRAIT, EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA.

[Values are in metric tons]

Species	Area[1]	ABC	TAC	Initial TAC Overfishing
Pollock[2]				
Shumagin	(610)	32,340	32,340	
Chirikof	(620)	13,372	13,372	
Kodiak	(630)	24,501	24,501	
Shelikof	.....	20,987	20,987	
WYK	(640)	2,340	2,340	
Subtotal	W/C/WYK	93,540	93,540	130,760
SEO	(650)	6,460	6,460	8,610
Total		100,000	100,000	139,370
* * * *	*	*		*

[2] Under the emergency interim rule (65 FR 3892, January 25, 2000) pollock is apportioned in the Western/Central Regulatory areas to the Shelikof Strait conservation area (defined at § 679.22(b)(3)(iii)(B)) in the A and B seasons only. In accordance with § 679.22(b)(3)(iii)(C) the pollock TAC in the Shelikof Strait is determined by calculating a ratio equal to the most recent estimate of pollock biomass in the Shelikof Strait divided by the total pollock biomass in the GOA. This ratio is multiplied by the amount of the combined Western and Central GOA TAC available in the A and B seasons. The remainder of the combined Western and Central GOA TAC in the A and B seasons is then apportioned to areas 610, 620, 630 outside the Shelikof Strait based on the distribution of pollock outside the Shelikof Strait, which is 56 percent, 4 percent, and 40 percent respectively. During the C and D seasons pollock is apportioned based on the relative distribution of pollock biomass at 42 percent, 25 percent, and 33 percent in Regulatory Areas 610, 620, and 630 respectively. These seasonal apportionments are shown in Tables 3 and 4. In the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

* * * * *

2. On page 8304, Table 3 is correctly revised to read as follows:

TABLE 3. DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND SEASONAL ALLOWANCES OF ANNUAL TAC FOR THE A AND B SEASONS IN 2000.

Statistical area	Biomass percent	2000 Annual TAC	Seasonal Allowances of Annual TAC	
			A	B
			(30%)	(15%)
Shelikof	51.1	20,987	13,991	6,996
Shumagin 610)	27.4	32,340	7,498	3,749
Chirik of[1](620)	2.0	13,372	546	273
Kodiak[1] (630)	19.5	24,501	5,325	2,662
TOTAL	100.0	91,200	27,360	13,680

[1] A and B seasonal allowances in the Chirikof and Kodiak Districts are outside the Shelikof Strait defined at § 679.20(b)(2)(iii)(B).

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 25, 2000.

Andrew A. Rosenberg,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5225 Filed 3–6–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 45
Tuesday, March 7, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 99–038–1]

Tuberculosis in Cattle, Bison, Goats, and Captive Cervids; State and Zone Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the bovine tuberculosis requirements to establish several new levels of tuberculosis risk classifications to be applied to States and zones within States. Additionally, we are proposing to classify States and zones according to their tuberculosis risk with regard to captive cervids. We are also proposing to amend the regulations to specify that the regulations apply to goats as well as to cattle, bison, and captive cervids and to increase the amount of testing that must be done before certain cattle, bison, and goats may be moved interstate. We believe these changes are necessary to help prevent the spread of tuberculosis and to further the progress of the domestic tuberculosis eradication program.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by April 21, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–038–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–038–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, VS, APHIS, USDA, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal.

At the beginning of this century, bovine tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine tuberculosis in livestock.

Federal regulations implementing this program are contained in 9 CFR part 77, "Tuberculosis" (referred to below as the regulations), and in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (UMR), January 22, 1999, edition, which is incorporated into the regulations by reference. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of bovine tuberculosis.

Tuberculosis Risk Level Status

Until the Animal and Plant Health Inspection Service (APHIS) made a recent regulatory change to allow zones within a State to be assigned different risk classifications (discussed in the following paragraph), restrictions on the interstate movement of cattle and bison not known to be affected with or exposed to tuberculosis were based on whether the entire State was classified as either accredited-free, accredited-free (suspended), modified accredited, or nonmodified accredited. In determining the tuberculosis status of a State, APHIS based its classification on the State's freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in the UMR.

In an interim rule published in the **Federal Register** on November 1, 1999 [64 FR 58769–58780, Docket No. 99–008–1), we amended the regulations to allow a State to be divided into two zones for the purpose of assigning risk classifications with regard to tuberculosis in cattle and bison. As a result of this change, the conditions required by the regulations for the interstate movement of cattle and bison might be different for cattle and bison from the same State, depending on the tuberculosis classification of the zone each animal is moved from.

State and Zone Status System for Captive Cervids

In our interim rule, we applied the provisions for allowing for risk zones within a State only to cattle and bison and not to captive cervids. This is because the regulations did not and still do not provide for State classifications for tuberculosis based on the tuberculosis status of captive cervids; nor is the tuberculosis status of captive cervids taken into account when determining the risk classification with regard to cattle and bison. The regulations in 9 CFR part 77 are divided into subpart A for cattle and bison and subpart B for captive cervids and are applied independently of each other.

While the requirements in subpart A for the interstate movement of cattle and bison are based largely on the risk classification of the State or zone the animals move from, the requirements in subpart B for the interstate movement of captive cervids are based on the tuberculosis status of individual herds of cervids, not on the State status. Because there was no State classification system with regard to captive cervids at the time our interim rule was published, there was no reason to allow for zones with separate risk classifications for captive cervids within a State.

In this document, however, we are proposing to make a system of State and zone risk classifications applicable to captive cervids. We have several reasons for making such a proposal. First, although the current system of basing movement requirements for captive cervids on the status of individual herds has been effective in preventing tuberculosis transmission, it is a system that relies on making each herd owner responsible for having the necessary testing done for that herd. We believe that at least the same level of biosecurity can be attained, at reduced cost to individual owners, by linking interstate movement requirements to a State or zone classification that would be dependent on surveillance conducted by the State.

Second, by allowing for a system of State or zone classifications with regard to captive cervids, we would likely accelerate the eradication of tuberculosis among captive cervids. The current system of basing interstate movement requirements on individual captive cervid herd status is effective in preventing the interstate spread of tuberculosis. However, it does not contain an incentive for owners to have their herds tested if they do not intend to move those cervids interstate. As with the current State or zone classification system for cattle and bison, a State or zone classification system for captive cervids would encourage States to aggressively conduct surveillance among all captive cervid herds in that State, whether or not any particular herd is intended for interstate movement.

We are not, however, proposing to eliminate the option of basing the eligibility of captive cervids to move interstate on individual herd status. For example, an accredited herd may be located in a State or zone that is classified as modified accredited because of the presence of several affected herds in herd in the State or zone. If the accredited herd has undergone adequate surveillance under the current regulations to ensure that individual animals moved from that herd present a negligible risk of being infected with tuberculosis, we do not believe it is necessary to subject animals from that herd to movement restrictions that would otherwise apply to the entire State or zone. Many owners have invested significant resources in conducting the monitoring and surveillance required to achieve a particular herd status. We believe it is warranted and appropriate to allow such owners to continue to move their cervids under the current regulations governing such movement if those movement requirements would be less restrictive than the proposed requirements based on the risk classification of the State or zone in which the herd is located.

Conversely, we believe it would be appropriate to allow captive cervids to move interstate under the proposed requirements based on the risk classification of the State or zone in which the animals are located if such conditions would be less restrictive than those in the current regulations based on individual herd status. For all State or zone risk classifications under this proposed rule except for nonaccredited, the required compliance with the UMR means that a sufficient number of herds of captive cervids in the State or zone must be tested to ensure that tuberculosis infection at a prevalence level of 2 percent or more will be detected with a confidence level of 95 percent. If the State or zone achieves that level of certainty in the State or zone overall, we believe that an individual herd in the State or zone that is not known to be affected with tuberculosis can be moved under the interstate movement requirements established for that entire State or zone with negligible risk of spreading tuberculosis.

(It should be noted that, under the provisions of the UMR, a herd that is known to be affected with tuberculosis that is located in a State or zone that otherwise presents a low tuberculosis risk is subject to quarantine and would not be eligible for interstate movement, regardless of the State or zone's risk classification.)

Therefore, we are proposing to add language to the current captive cervid regulations to indicate that captive cervids may move interstate under the proposed movement requirements applicable to an entire State or zone if those requirements are less restrictive than those for movement based on individual herd status. This language would be added at §§ 77.32(a), 77.35(b), 77.36(b), and 77.37(b) of this proposed rule, which include the provisions set forth in §§ 77.9(a), 77.12(b), 77.13(b), and 77.14(b), respectively, of the current regulations.

Change in Risk Classifications

We are also proposing in this document to revamp and expand the categories of tuberculosis risk classifications that apply to cattle and bison (discussed below) and to use this new classification system when determining the risk classifications of States or zones with regard to captive cervids. However, although we would use the same type of tuberculosis risk classification system for both captive cervids and cattle and bison, the specific risk classification we would apply to a State or zone with regard to cattle and bison would not necessarily be the same as that assigned to the State or zone with regard to captive cervids. Although our goal by the year 2010 is to have each State or zone have one tuberculosis classification that applies to all regulated animals in the State or zone, at this time we are keeping State and zone classifications for cattle and bison independent of the classifications for captive cervids. Our rationale for keeping these classifications separate is explained below under the heading "Captive Cervids."

Goats

Additionally, we are proposing to make the tuberculosis provisions that apply to cattle and bison also apply to goats. The current regulations, except for limited usage as part of the term "livestock," do not refer to goats, although the UMR does. The production of goats, however, is a rapidly growing industry, particularly with regard to dairy goats, and it has been demonstrated by incidences of tuberculosis among goats held for exhibition that goats can harbor and transmit the disease. In order to protect the goat industry in this country, and to protect other susceptible livestock from goats that might become infected with tuberculosis, we are including goats in this proposed rule in provisions that refer to cattle and bison, as appropriate. It should be noted that, although no cases of tuberculosis have been found to date in goats used as livestock in the United States, regulating the movement of goats is consistent with the regulations of the U.S. Food and Drug Administration (FDA) regarding the potential transmission of tuberculosis to humans through goat's milk. (See, for example, 21 CFR 1210.13, which requires tuberculin testing of animals whose raw milk is intended for importation into the United States, and also the FDA Pasteurized Milk Ordinance, Section 7(C), which provides that goat milk for pasteurization must be from a herd that has passed an annual tuberculin herd test.)

Each of the proposed changes noted above, and our reasons for proposing them, are discussed at greater length below.

Scope of this Proposed Rule

In addition to the proposed substantive additions and revisions to the current regulations that we discuss in this supplementary information, we

are proposing to make nonsubstantive changes to the current regulations to make them easier to read. The primary nonsubstantive change we are proposing is the reformatting of the regulations, discussed below under the heading "Reformatting of Part 77."

In order to make it easier to follow our proposed reformatting changes, we set out all of part 77 in this proposal, including those provisions of the current regulations to which we are proposing no amendments, except to change section designations. Because we are proposing no changes to large parts of the current regulations, we are not soliciting public comment on those unchanged provisions. In certain other sections, we are proposing very limited changes, and are soliciting public comment only on the limited portion of the section that would be amended.

The regulatory sections addressing captive cervids that are set out in this proposed rule only for readability with no substantive changes, or with very limited changes, are §§ 77.9 through 77.18 of the current regulations (designated as proposed §§ 77.32 through 77.41). The several places we are proposing limited changes to those sections are identified and discussed in this supplementary information, below. With regard to cattle and bison, we are proposing no substantive changes to §§ 77.5 through 77.7 of the current regulations (designated as proposed §§ 77.17 through 77.19) except to apply those provisions to goats as well as to cattle and bison where applicable.

Reformatting of Part 77

As noted above, under this proposed rule, the provisions for tuberculosis risk classification and for recognition of zones within a State would be expanded to apply to captive cervids and goats as well as to cattle and bison. Because the status classifications for captive cervids may not coincide with those for cattle, bison, and goats, we would continue to set forth most of the provisions relevant to captive cervids in a separate subpart from those relevant to cattle, bison, and goats.

In contrast, the provisions for applying for recognition of risk zones within a State will apply in the same way to captive cervids as to cattle, bison, and goats. Whatever zones are recognized will be used for captive cervids, as well as for cattle, bison, and goats, although the status of a zone may be different for captive cervids than it is for cattle, bison, and goats.

Therefore, to avoid redundancy in the regulations, we are proposing to include all provisions regarding application for recognition of zones in one subpart, rather than duplicate the information in the subparts specific to cattle, bison, and goats and specific to captive cervids. In addition, we are proposing to include in that "general" subpart the definitions that apply to all of the regulations in part 77. This "general" subpart would be subpart A. The regulations specific to cattle, bison, and goats would be set forth in subpart B, and the regulations specific to captive cervids would be set forth in subpart C. All of the current sections in part 77 would be renumbered to accommodate this reformatting.

In subpart A of this proposed rule, we are including one substantive change from the current provisions regarding application for recognition of zones. Currently, a State may have no more than two zones. In our November 1, 1999, interim rule, we explained that we were limiting the number of zones in a State to two because of the amount of monitoring and movement controls necessary for the State to adequately administer different status zones. We now believe that it is not necessary to limit a State to two zones, if the State can adequately demonstrate that each of its proposed zones meets the criteria in the current regulations for recognition of a zone.

Under these criteria, a zone must be a defined geographic land area indentifiable by geological, political, manmade, or surveyed boundaries, with mechanisms of disease spread, epidemiological characteristics, and the ability to control the movement of animals across the boundaries of the zone taken into account. Additionally, the State in question must have sufficient resources to implement and enforce a tuberculosis eradication program, and means of ensuring that State and Federal animal health authorities are notified of tuberculosis cases in domestic livestock or outbreaks in wildlife. Further, the State must maintain, in each intended zone, surveillance that allows detection of tuberculosis in the overall population of livestock at a 2 percent prevalence rate with 95 percent confidence.

We believe that if a State can meet each of the above requirements for each of the proposed zones, it is not necessary to limit the State's request to two zones. Therefore, we are not including in this proposed rule a provision limiting a State to no more than two zones.

Current Risk Classification System

The possible risk classifications of States and zones with regard to cattle and bison under the current regulations are *accredited-free, accredited-free (suspended), modified accredited, and nonmodified accredited.* Some of the current provisions governing each classification appear in the definitions in § 77.1, while the remainder of the provisions for each classification appear in other sections of part 77. We discuss below the provisions governing each of the current classifications.

Accredited-Free State or Zone

Criteria for being classified as an accredited-free State or zone. An accredited-free State or zone is defined as a State or zone that complies with the UMR, has zero percent prevalence of affected cattle and bison herds, and has had no findings of tuberculosis in any cattle or bison in the State or zone for the previous 5 years, except that the requirement of freedom from tuberculosis is 2 years from the depopulation of the last affected herd in States or zones that were previously accredited-free and in which all herds affected with tuberculosis were depopulated. Compliance with the UMR includes meeting the requirement that the State demonstrates annually that an adequate amount of testing and slaughter surveillance is done in that State to discover any bovine tuberculosis that might be present.

If tuberculosis is detected in any one herd of cattle or bison in an accredited-free State or zone, the accredited-free status of the State or zone is suspended. In such a case, the State or zone may qualify for redesignation of accredited-free status after the herd in which the tuberculosis is detected has been quarantined, an epidemiological investigation has confirmed that the disease has not spread from the herd, and all reactor cattle and bison have been destroyed.

If any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must test those other livestock in the same way as cattle and bison when conducting a herd test according to the UMR, or else be reclassified as either a modified accredited State or zone or a nonmodified accredited State or zone.

If two or more affected herds are detected in an accredited-free State or zone within a 48-month period, the State or zone will also be reclassified.

If tuberculosis is diagnosed in an accredited-free State or zone in an animal not specifically covered by the regulations and a risk assessment conducted by APHIS determines the outbreak poses a tuberculosis risk to livestock in the State or zone, the State or zone must adopt, within 6 months of

diagnosis, a tuberculosis management plan, approved jointly by the State animal health official and the APHIS Administrator, or else be reclassified.

Accredited-free State or zone status must be renewed annually.

Interstate movement from an accredited-free State or zone. Cattle and bison that originate in an accredited-free State or zone and that are not known to be infected with or exposed to tuberculosis may be moved interstate without restriction.

Accredited-Free (Suspended) State or Zone

Criterion for being classified as an accredited-free (suspended) State or zone. An accredited-free (suspended) State or zone is defined as an accredited-free State or zone in which tuberculosis has been detected in cattle or bison.

Interstate movement from an accredited-free (suspended) State or zone. Cattle and bison that originate in an accredited-free (suspended) State or zone and that are not known to be infected with or exposed to tuberculosis may be moved interstate without restriction.

Modified Accredited State or Zone

Criteria for being classified as a modified accredited State or zone. A modified accredited State or zone is defined as a State or zone that complies with the UMR and in which tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle and bison in the State or zone for the most recent 2 years. However, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone, the Administrator may, upon review, allow modified accredited status in a State or zone that has fewer than 30,000 herds and that has had up to 3 affected herds for each of the most recent 2 years.

The same requirements apply to modified accredited States or zones as those discussed above for accredited-free States or zones regarding the testing of livestock other than cattle or bison included in a newly assembled herd on a premises where a tuberculous herd has been depopulated.

Likewise, the same requirements apply to modified accredited States or zones as those discussed above for accredited-free States or zones regarding the need to adopt a tuberculosis management plan if tuberculosis is diagnosed in the State or zone in an animal not specifically covered by the regulations and a risk assessment conducted by APHIS determines the outbreak poses a tuberculosis risk to livestock in the State or zone.

Modified accredited State or zone status must be renewed annually.

Interstate movement from a modified accredited State or zone. Cattle and bison that originate in a modified accredited State or zone and that are not known to be infected with or exposed to tuberculosis may be moved interstate without restriction.

Nonmodified Accredited State or Zone

Criterion for being classified as a nonmodified accredited State or zone. A nonmodified accredited State is defined as a State or zone that has not received accredited-free status or modified accredited status.

Conditions for interstate movement from a nonmodified accredited State or zone. Cattle and bison that originate in a nonmodified accredited State or zone and that are not known to be infected with or exposed to tuberculosis may be moved interstate only if they meet one of the following conditions:

1. The cattle or bison are moved directly to slaughter to an establishment operating under the provisions of the Federal Meat Inspection Act or to a State-inspected slaughtering establishment that has State inspection at the time of slaughter.

2. The cattle or bison are steers or spayed heifers, or are officially identified sexually intact heifers that are moved to an approved feedlot, and are accompanied by a certificate stating that they have tested negative to an official tuberculin test conducted within 30 days prior to the date of movement. If the cattle or bison moved under this condition are not individually identified by a registration name and number, they must be individually identified by an APHIS-approved metal eartag or tattoo.

3. The cattle or bison are breeding animals from an accredited herd and are accompanied by a certificate showing they are from such a herd.

4. The cattle or bison are breeding animals that are not from an accredited herd but that are accompanied by a certificate stating that they have tested negative to two official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 30 days prior to the date of movement. If the cattle or bison moved under this condition are not individually identified by a registration name and number, they must be officially identified.

Reasons for Proposing a Revised Classification System

Although it has undergone some refinement through the years, including the clarifications we made in our November 1, 1999, interim rule, a tuberculosis risk classification system that includes accredited free, modified accredited, and nonmodified accredited classifications has been in effect since the 1940's. It has been an integral part of the tuberculosis eradication program that has virtually eliminated the disease in U.S. livestock. Currently, all but three States are classified as accredited free in their entirety for cattle and bison, which means they contain no herds affected with tuberculosis. Two States (New Mexico and Texas) are nearing accredited-free status, and one State (Michigan) is accredited free except for a single zone in the State. Today, the national percentage of herds of cattle and bison affected with tuberculosis stands at approximately 0.0002 percent.

Although the current system of risk level classifications has been effective in helping reduce the incidence of tuberculosis in the United States to a very low level, it has not yet eliminated the disease in this country. The danger still exists that tuberculosis could spread among livestock, and we do not believe the current regulations best recognize the different levels of risk that can exist with regard to tuberculosis.

As discussed above, one of the criteria for being classified as a modified accredited State or zone is that, with certain exceptions, the State or zone is one in which tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle and bison in the State or zone for the most recent 2 years. The current regulations do not specifically address levels of prevalence greater than or equal to 0.01 percent of the herds in the State or zone, other than to provide that all States or zones that do not qualify for accredited-free or modified accredited will be classified as nonmodified accredited.

Although we consider the current interstate requirements for animals from nonmodified accredited States or zones to adequately address States or zones that have prevalence levels of tuberculosis close to 0.01 percent, we believe those interstate requirements are not adequate to address any States or zones that develop prevalence levels well in excess of 0.01 percent. In this proposal, we are proposing to address such higher prevalence levels by expanding the possible levels of risk classification, as discussed below.

Additionally, we believe two other factors make it necessary to change the current classification system. The first involves the captive cervid industry; the second involves international trade.

Captive Cervids

Although we believe it is necessary to begin classifying States or zones according to their tuberculosis risk with regard to captive cervids, as noted above we are proposing to keep classifications with regard to cattle, bison, and goats independent of classifications for captive cervids. We are proposing to keep these classifications separate because, in general, programs for surveillance for tuberculosis in captive cervids are not as advanced as those for cattle and bison. Although all but three States are considered accredited free with regard to cattle and bison, based on the information available to us, we believe only 24 States would qualify for accredited-free status in their entirety for captive cervids. However, we do not consider it appropriate to downgrade the status of a State or zone with regard to cattle and bison because that State or zone has a higher risk status for captive cervids. Captive cervids usually represent only a minor percentage of the livestock industry in most States, and those captive cervids that are held or transported in a State are generally raised and marketed in channels separate from cattle, bison, and goats, so there is less risk that a captive cervid that is infected with tuberculosis will transmit the disease to cattle, bison, or goats.

Tuberculosis and International Trade

Another reason we believe it is necessary to refine and expand the tuberculosis risk classification system involves growing international trade. Although the majority of States are grouped at the accredited-free level and would not be affected by the changes in the risk classification system set forth in this proposal, there is a broad spectrum of risk levels among other countries. With growing international trade, we find it increasingly necessary to be able to explain to our trading partners in a transparent fashion why we consider them to be at a particular risk level for tuberculosis and why we believe particular mitigation measures are necessary to allow their animals to be imported into the United States. The risk classification system we are proposing in this document represents the same criteria we would use to assess the risk in another country and the measures necessary to mitigate any risk to a negligible level. We are in the process of developing rulemaking that will specifically address tuberculosis risk levels in foreign countries and other foreign regions.

Proposed New Tuberculosis Risk Classification System

In the following paragraphs we explain how the new classification system would work. We are proposing to provide for five risk classifications, as follows:

1. Accredited Free.
2. Modified Accredited Advanced.
3. Modified Accredited.
4. Accreditation Preparatory.
5. Nonaccredited.

It is important to keep in mind that when we refer in our discussion below to "specifically regulated animals," we are talking exclusively about cattle, bison, and goats for subpart A and exclusively about captive cervids for subpart B. For instance, although cattle, bison, goats, and captive cervids would all be "specifically regulated" in some way under part 77, in subpart B the prevalence level of affected herds of captive cervids alone would be considered in determining the classification of States or zones and would not influence the classification of the State or zone for cattle, bison, and goats in subpart A.

Accredited-Free States or Zones

We are proposing to retain the provisions in the current regulations governing accredited-free status, described above under the heading "Accredited-Free State or Zone," with two additions and one revision.

The additions involve the waiting period without findings of tuberculosis that a State or zone must meet before achieving accredited-free status. To achieve accredited-free status under the current regulations, a State or zone must have had no findings of tuberculosis for the previous 5 years, except that the requirement of freedom from tuberculosis is 2 years from the depopulation of the last affected herd in States or zones that were previously accredited free and in which all herds affected with tuberculosis have been depopulated.

In the definition of *accredited-free State or zone* in both § 77.5 for cattle, bison, and goats and § 77.20 for captive cervids, we are proposing to add two additional ways to achieve accredited-free status. First, the waiting period would be 3 years in States or zones that were not previously accredited free but that have depopulated all affected herds. We believe this shortened waiting period is appropriate in States or zones where such depopulation has been carried out because depopulation is an effective method of ensuring that infected animals are removed from a State or zone.

Alternatively, the waiting period would be 3 years in States or zones that have conducted surveillance that demonstrates that wildlife and livestock herds other than the animals specifically regulated under the subpart in question (cattle, bison, and goats in subpart A; captive cervids in subpart B) are not at risk of being infected with tuberculosis, as determined by the Administrator based on a risk assessment conducted by APHIS. We believe that including such an option in the regulations provides States and zones with an incentive to conduct increased surveillance for tuberculosis in all susceptible animals in the area of an affected herd and thus to accelerate eradication of the disease in that State or zone.

We believe it is necessary to allow the Administrator the discretion to assess the adequacy of the surveillance because there are a number of valid methods of surveying for tuberculosis, and we expect that each State will implement a surveillance program suitable to the livestock and wildlife of that State. Among the different methods of surveillance a State might implement are testing of animals at slaughter, testing for tuberculosis of any animals tested for another reason, target area testing, or epidemiological sampling of herds in a particular area.

The provision we are proposing to revise involves how we will address States or zones in which an affected herd is detected. Under § 77.3(c) of the current regulations, such a State or zone is reclassified as accredited free (suspended). However, the current regulations do not specify how long the suspension of accredited-free status can last before the State or zone is downgraded in status, nor do they specify what the State or zone must do to regain accredited-free status. To address these two areas, § 77.7(c) of this proposed rule provides for cattle, bison, and goats that if an affected herd is detected in a State or zone classified as accredited free, and the herd is depopulated and an epidemiologic investigation is completed within 90 days of the detection of the affected herd with no evidence of the spread of tuberculosis, the State or zone may retain its accredited-free status. Proposed § 77.22 includes a similar provision for States and zones classified accredited free for captive cervids, with the one difference that, in such States and zones, the depopulation and epidemiologic investigation must be completed within 120 days of the detection of the affected herd.

Based on our experience enforcing the regulations, we believe that for cattle,

bison, and goats, 90 days is enough time to investigate the incidence of tuberculosis and trace the movement of animals from an affected herd. Ninety days will allow time for herd owners who have tested their livestock once with negative results to wait at least an additional 60 days before retesting to ensure valid results from the retesting. However, we believe it is warranted to allow 120 days for completion of depopulation and investigation for captive cervids, due to the longer waiting period necessary between tests of cervids than those of cattle, bison, and goats. In animals that have been tested for tuberculosis, the immune system is depressed following the test and will not respond definitively to a second test unless some time is allowed for the animal's immune system to "reset" following the first test. In cattle, bison, and goats, a valid second test can be done 60 days following the first test. For captive cervids, it is necessary to wait 90 days following the first test.

To clarify our intent with regard to what constitutes an epidemiologic investigation, we are including a definition of that term in proposed § 77.2. We would define an epidemiologic investigation as one that is conducted by the State in conjunction with APHIS representatives, in which an official test for tuberculosis is conducted on all livestock in any tuberculosis-affected herd in a State or zone, as well as on all livestock in any herd into which livestock from the affected herd have been moved.

As in the current regulations for cattle and bison, we would allow specifically regulated animals that are not known to be infected with or exposed to tuberculosis to be moved interstate without restriction from accredited-free States or zones.

Modified Accredited Advanced States or Zones

Prior to our November 1, 1999, interim rule, a modified accredited State was defined as one that complied with all of the provisions of the UMR regarding modified accredited States. Because it was not always clear what standards a State needed to meet to achieve modified accredited status, in our interim rule we clarified our intent with regard to the standards that needed to be met. These standards are described above under the heading "Modified Accredited State or Zone."

Because tuberculosis has been virtually eradicated in cattle and bison in this country, and because two of the three States not classified as accredited free in their entirety are classified as modified accredited, the standards currently set forth in subpart A of the regulations for modified accredited States are relatively stringent. We consider those standards necessary to ensure that all States maintain an aggressive program to become or stay accredited free with regard to cattle, bison, and goats.

However, because tuberculosis surveillance programs for captive cervids have not yet progressed as far as those for cattle, bison, and goats, and because not all foreign regions are as close to the eradication of tuberculosis as the United States, we believe it is necessary to provide for risk classifications that accommodate a greater disease risk than the modified accredited status of the current regulations, but at the same time give more recognition for progress toward eradication than the current nonmodified accredited classification. We believe that providing for such classifications will further the eradication of tuberculosis in this country and establish standards that we can apply in equivalent fashion to foreign regions in future rulemaking. The classifications we are proposing to add are titled modified accredited (with different standards than the modified accredited classification under the current regulations) and accreditation preparatory. Both of these classifications are discussed below under their respective headings.

With the addition of these two classifications, we believe it is necessary to make clear that the classification currently known as modified accredited describes a State or zone that is close to the eradication of tuberculosis in the animals in question. Therefore, we are proposing to rename the current modified accredited classification as modified accredited advanced. The requirements for achieving and maintaining modified accredited advanced status would be the same as those in the current regulations for achieving and maintaining modified accredited status (described above under the heading "Modified Accredited State or Zone").

The requirements for the interstate movement of animals from a modified accredited advanced State or zone (proposed § 77.10 for cattle, bison, and goats; proposed § 77.25 for captive cervids) would differ from the current provisions for movement from a modified accredited State or zone in one significant respect. Under the current regulations, cattle and bison that originate in a modified accredited State or zone and that are not known to be infected with or exposed to tuberculosis may be moved interstate without restriction. However, because any State or zone other than an accredited-free State or zone includes at least one herd affected with tuberculosis, we consider it necessary to test animals moved from States or zones that are other than accredited free, unless certain other conditions exist that mitigate the tuberculosis risk to a negligible level. Therefore, in this document, we are proposing that specifically regulated animals may not be moved interstate from a modified accredited advanced State or zone without testing negative for tuberculosis unless they meet one of the following conditions:

1. The animals are accompanied by a certificate stating that they originated in an accredited herd that has completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement.

2. The animals are moved directly for slaughter to an approved slaughtering establishment. (Currently, subpart A with regard to cattle and bison refers to movement to a slaughtering "establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State-inspected slaughtering establishment that has inspection by a State inspector at the time of slaughter." Such an establishment is defined in current subpart B as an *approved slaughtering establishment.* In this proposed rule, wherever we refer in the regulations to such an establishment, we use the term "approved slaughtering establishment").

3. The animals are cattle or bison that are steers or spayed heifers, or are officially identified sexually intact heifers that are moved to an approved feedlot. All cattle and bison so moved that are not individually identified by a registration name and number must be officially identified.

If the animals meet none of the above conditions, they may not be moved interstate unless they are accompanied by a certificate stating that they have been classified negative to an official tuberculin test that was conducted within 60 days prior to the date of movement for cattle, bison, and goats, and within 90 days prior to the date of movement for captive cervids.

The proposed requirement that the testing required for cattle and bison be done within 60 days prior to the date of movement differs from testing requirements in the current regulations (for nonmodified accredited States and zones), which require that the testing be done within 30 days prior to the date of movement. We are proposing to allow testing to be done within 60 days prior to movement in order to minimize

disruption to standard livestock marketing practices. Under the current regulations, for example, cattle and bison tested 31 days prior to an intended date of movement could not be moved interstate. Because, as discussed above, an interval of at least 60 days is necessary between tuberculin tests for cattle, bison, and goats, under the current regulations cattle or bison tested 31 days prior to the intended date of movement would have to wait 29 days beyond the intended date of movement before being retested. We believe that this delay in movement, which can significantly impact the ability of owners to market their animals, is not warranted from an animal health perspective, because we believe the risk is negligible that an infected animal will not be detected because a test was done 60 days prior to movement rather than 30 days.

With regard to captive cervids, allowing a required test to be conducted within 90 days prior to movement would be consistent with the current provisions regarding the testing required for interstate movement from individual herds. Ninety days would be allowed for the testing of captive cervids for the same reason that 60 days would be allowed for cattle, bison, and goats—*i.e.*, to minimize disruption of standard livestock practices. We would allow the additional time for captive cervids, compared to cattle, bison, and goats, because of the longer waiting period that is necessary between tuberculosis tests of captive cervids.

We believe it is necessary to establish the above requirements for animals moved from modified accredited advanced States or zones to provide assurance that the tuberculosis risk from animals moving from a modified accredited advanced State or zone is no more than that from animals already in an accredited-free State or zone.

Modified Accredited States or Zones

The new tuberculosis risk classification titled modified accredited would apply to States and zones whose animals represent a greater disease risk than those from States and zones classified as modified accredited advanced.

In proposed § 77.5 for cattle, bison, and goats and proposed § 77.20 for captive cervids, a modified accredited State or zone would be defined as a State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the UMR and in which tuberculosis has been prevalent in less than 0.1 percent of the total number of specifically regulated animals in the State or zone for the most recent year. However, the regulations would also provide that the Administrator, upon his or her review, may allow a State or zone with fewer than 10,000 herds of the animals in question to have up to 10 affected herds for the most recent year, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

The provision that would allow the Administrator to give the proposed modified accredited classification to a State or zone with fewer than 10,000 herds that has up to 10 affected herds is similar to a provision in the current regulations for modified accredited States, retained in this proposed rule under the standards for achieving and maintaining modified accredited advanced status. Under the current regulations, the prevalence level of tuberculosis for modified accredited status must be less than 0.01 percent of the total number of herds, except that in States or zones with fewer than 30,000 herds, the Administrator may, upon his or her review, allow the State or zone to have up to 3 affected herds.

Although we consider a disease prevalence of less than 0.1 percent of the herds to be appropriate for the proposed modified accredited classification in most cases, we recognize that there are situations where the circumstances in a State or zone might warrant some deviation from that standard. For instance, the requirement for less than 0.1 percent prevalence means that, for every 10,000 herds in the State or zone, fewer than 10 herds may be affected. In a State or zone with fewer than 10,000 herds, the presence of fewer than 10 affected herds could cause the prevalence rate to exceed the allowable maximum. We do not necessarily consider this number of affected herds to represent a disease risk significant enough to disqualify a State or zone from the proposed modified accredited classification.

The factors the Administrator will consider in determining whether a prevalence level of 0.1 percent or more is acceptable include: (1) How effectively the veterinary infrastructure in the State or zone could detect and respond to the presence of an affected herd and (2) the risk of transmission of the disease from an affected herd to other herds, based on factors such as the density of the livestock population and the patterns of herd distribution.

As with accredited-free and modified accredited advanced States and zones, we are proposing to require for modified accredited States and zones (proposed § 77.11 for cattle, bison, and goats; proposed § 77.26 for captive cervids) that if any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must test those other livestock in the same way as cattle and bison when conducting a herd test according to the UMR, or else have its classification downgraded, in this case to accreditation preparatory.

Additionally, as with accredited-free and modified accredited advanced States and zones, we are proposing to require that if tuberculosis is diagnosed in a modified accredited State or zone in an animal not specifically covered by the regulations, and a risk assessment conducted by APHIS determines the outbreak poses a tuberculosis risk to livestock in the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the APHIS Administrator, within 6 months of the diagnosis, or have its classification downgraded, in this case to accreditation preparatory. It should be noted that our use of the word "implement" differs from the wording of the current regulations, which use the word "adopt." We would use the word "implement" to make clear that a tuberculosis management plan must actually be in operation to meet the requirements of the regulations.

Modified accredited State or zone status would have to be renewed annually.

Interstate movement from proposed modified accredited States or zones: In this document, we are proposing (proposed § 77.12 for cattle, bison, and goats; proposed § 77.27 for captive cervids) that specifically regulated animals may not move interstate from a modified accredited State or zone without having to be tested for tuberculosis, unless they meet one of the following conditions:

1. The animals are accompanied by a certificate stating that they originated in an accredited herd that has completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement.

2. The animals are moved directly to slaughter to an approved slaughtering establishment.

If the animals meet neither of the above conditions, they may not be moved interstate unless they meet one of the following conditions:

1. The animals are cattle or bison that are steers or spayed heifers, or are officially identified sexually intact heifers that are moved to an approved feedlot, and are accompanied by a certificate stating that they have been

classified negative to an official tuberculin test conducted within 60 days prior to movement. All cattle and bison so moved that are not individually identified by a registration name and number must be officially identified.

2. If the animals are cattle, bison, or goats, they must be accompanied by a certificate stating that they have been classified negative to two official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 60 days prior to the date of movement. If the animals are captive cervids, they must be accompanied by a certificate stating that they have been classified negative to two official tuberculin tests conducted at least 90 days apart and no more than 6 months apart, with the second test conducted within 90 days prior to the date of movement. All animals that are so moved that are not individually identified by a registration name and number must be officially identified.

The proposed interstate movement requirements from modified accredited States and zones differ from those for modified accredited advanced States and zones in two ways. First, steers, spayed heifers, and officially identified sexually intact heifers moved to an approved feedlot from a modified accredited State or zone would have to test negative to one official tuberculin test (proposed § 77.12(b)). This requirement would not exist for movement from modified accredited advanced States and zones. Second, breeding animals not from an accredited herd would have to test negative to two official tuberculin tests (proposed § 77.12(d) for cattle, bison, and goats; proposed § 77.27(c) for captive cervids), rather than just one test as for movement from modified accredited advanced States and zones. We believe these additional safeguards are necessary for animals moved from modified accredited States or zones to provide assurance that the tuberculosis risk from animals moving from a modified accredited State or zone is no more than that from animals already in an accredited-free State or zone or a modified accredited advanced State or zone.

Accreditation Preparatory States and Zones

The tuberculosis risk classification titled accreditation preparatory would apply to States and zones that represent a greater disease risk than those classified as modified accredited.

In proposed § 77.5 for cattle, bison, and goats and proposed § 77.20 for captive cervids, an accreditation preparatory State or zone would be defined as a State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the UMR and in which tuberculosis is prevalent in less than 0.5 percent of the total number of herds of specifically regulated animals in the State or zone.

As with the classifications discussed above, we are proposing to require for accreditation preparatory States and zones that if any livestock other than cattle, bison, or goats are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must test those other livestock in the same way as cattle, bison, and goats when conducting a herd test according to the UMR, or else have its classification downgraded, in this case to nonaccredited (proposed § 77.13 for cattle, bison, and goats; proposed § 77.28 for captive cervids).

Additionally, as with the classifications discussed above, we are proposing to require that if tuberculosis is diagnosed in an accreditation preparatory State or zone in an animal not specifically covered by the regulations, and a risk assessment conducted by APHIS determines the outbreak poses a tuberculosis risk to livestock in the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the APHIS Administrator, within 6 months of the diagnosis, or else have its classification downgraded, in this case to nonaccredited.

Accreditation preparatory State or zone status would have to be renewed annually.

Interstate movement from accreditation preparatory States or zones: In this document, we are proposing (proposed § 77.14 for cattle, bison, and goats; proposed § 77.29 for captive cervids) that specifically regulated animals may not be moved interstate from an accreditation preparatory State or zone unless they meet one of the following conditions:

1. The animals are accompanied by a certificate stating that they originated in an accredited herd that has completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement, and that the animals to be moved have been classified negative to an official tuberculin test conducted within 60 days prior to the date of movement for cattle, bison, and goats, and within 90 days prior to the date of movement for captive cervids. All animals that are so moved that are not individually identified by a registration name and number must be officially identified.

2. The animals are moved directly to slaughter to an approved slaughtering establishment.

3. The animals are cattle or bison that are steers or spayed heifers, or are officially identified sexually intact heifers that are moved to an approved feedlot, and are accompanied by a certificate stating that they have been classified negative to two official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 60 days prior to movement. All cattle and bison so moved that are not individually identified by a registration name and number must be officially identified.

4. The animals are accompanied by a certificate stating that they originated in a herd that has undergone a tuberculosis herd test with negative results conducted within 1 year prior to movement. Additionally, for cattle, bison, and goats, the certificate must state that the animals have been classified negative to two additional official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 60 days prior to the date of movement. For captive cervids, the certificate must state that the cervids have been classified negative to two additional official tuberculin tests conducted at least 90 days apart and no more than 6 months apart, with the second test conducted within 90 days prior to the date of movement. All animals that are so moved that are not individually identified by a registration name and number must be officially identified.

The proposed interstate movement requirements from accreditation preparatory States and zones differ from those for modified accredited States and zones in three ways. First, steers, spayed heifers, and officially identified sexually intact heifers moved to an approved feedlot from an accredited preparatory State or zone would have to test negative to two official tuberculin tests, rather than just one as for modified accredited States and zones. Second, in addition to testing negative to two additional official tuberculin tests, breeding animals not from an accredited herd would have to originate in a herd that has undergone a tuberculosis herd test with negative results. Third, animals from an accredited herd would have to originate in a herd that has completed the necessary testing for accredited status within 1 year prior to the date of movement, and test negative to an official tuberculin test within 60

days prior to movement for cattle, bison, and goats, and within 90 days prior to movement for captive cervids. We believe the additional safeguards are necessary for animals from an accreditation preparatory State or zone to provide assurance that the tuberculosis risk from animals moving from an accreditation preparatory State or zone is no more than that from animals already in an accredited-free State or zone, a modified accredited advanced State or zone, or a modified accredited State or zone.

Nonaccredited States and Zones

In the current regulations, there is a tuberculosis State and zone classification called "nonmodified accredited." The nonmodified accredited classification is a default category for all States or zones that do not qualify for accredited free, accredited free (suspended), or modified accredited. Currently, except for nonmodified accredited, modified accredited represents the highest tuberculosis risk. Therefore, any State or zone not meeting the minimum standards for modified accredited is classified as nonmodified accredited. The current criteria for modified accredited status are that the State or zone comply with the UMR and have had less than a 0.01 percent prevalence of tuberculosis among all herds in the State or zone for the most recent 2 years (with up to 3 affected herds allowed under certain conditions in States or zones with fewer than 30,000 herds). Currently, the only area that is classified as nonmodified accredited is a zone in the State of Michigan.

Under this proposal (proposed § 77.5 for cattle, bison, and goats; proposed § 77.20 for captive cervids), the nonaccredited classification would not cover as wide a risk range as the nonmodified accredited classification under the current regulations. Instead of applying to all States and zones that do not comply with the UMR or that have more than a 0.01 tuberculosis herd prevalence, as does the current nonmodified accredited, it would apply to all States and zones that do not comply with the UMR or that have a tuberculosis herd prevalence rate equal to or in excess of 0.5 percent, since 0.5 percent is the level at which a State or zone would cease to qualify for accreditation preparatory status.

Because any State or zone classified as nonaccredited would represent a relatively high tuberculosis risk, we believe it is necessary to impose stringent restrictions on interstate movement from such States or zones. Therefore, we are proposing (proposed § 77.16 for cattle, bison, and goats; proposed § 77.31 for captive cervids) that no regulated animals may be moved interstate from a nonaccredited State or zone unless they are not known to be infected with or exposed to tuberculosis and they meet one of the following conditions:

1. The animals are accompanied by a certificate stating that they originated in an accredited herd that has completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement, and that they have been classified negative to an official tuberculin test conducted within 60 days prior to the date of movement for cattle, bison, and goats, and within 90 days prior to movement for captive cervids.

2. The animals are accompanied by VS Form 1–27 and are moved interstate in an officially sealed means of conveyance directly to slaughter to an approved slaughtering establishment.

Classification of States and Zones With Regard to Cattle, Bison, and Goats

Under § 77.7 of this proposed rule for cattle, bison, and goats, all States and zones currently designated as accredited free would retain that classification. In addition, the State of New Mexico, currently designated as modified accredited, would be classified as accredited free because New Mexico is a State that has had no affected herds of cattle, bison, or goats for the most recent 3 years and the Administrator has determined that New Mexico has conducted surveillance that demonstrates that wildlife and livestock herds other than cattle, bison, and goats are not infected with tuberculosis.

Under § 77.9 of this proposed rule for cattle, bison, and goats, the State of Texas, currently designated as modified accredited, would be classified as modified accredited advanced. Texas would qualify as modified accredited advanced because it complies with the UMR and, with a prevalence rate of affected herds of approximately .0002 percent, has had a tuberculous herd prevalence rate of less than 0.01 for the most recent 2 years.

The smaller zone in the State of Michigan, currently designated as nonmodified accredited, would be classified as modified accredited. (This zone, described in § 77.11(b) of this proposal with regard to cattle, bison, and goats, is the same zone as that delineated below with regard to captive cervids.) The State of Michigan complies with the UMR and, with a total of four affected herds in the past year, the zone is eligible for consideration by the Administrator for modified accredited status. Because we believe the veterinary infrastructure in the State could effectively detect and respond to the presence of an affected herd in the zone, and because of the limited number of herds in the zone (fewer than 600), it appears that modified accredited status for the smaller zone is warranted.

Classification of States and Zones With Regard to Captive Cervids

Under this proposed rule, we are classifying States and zones according to their tuberculosis risk with regard to captive cervids. We based the classifications we are proposing on preliminary information made available to us by State officials. This preliminary information enabled us to estimate the prevalence of tuberculosis among captive cervid herds in the States, and to determine whether the State has the authority to enforce and complies with the UMR. However, in general, the information we have received from States to date has not enabled us to document that a sufficient number of herds of captive cervids in the State or zone have been tested to ensure that tuberculosis infection at a prevalence level of 2 percent or more will be detected with a confidence level of 95 percent. This level of confidence is required by the regulations through its inclusion in the UMR.

Therefore, although we are proposing to classify States and zones according to tuberculosis risk in captive cervids as listed below, we wish to emphasize that, following the public comment period on this proposal, we will make final each proposed classification only if we have not received information demonstrating that the proposed classification should be other than that proposed, and if the State in question has provided us with the information necessary to document that surveillance in the State or zone meets the required standards. In order for each State to know exactly what information it will be required to provide under the final rule, we will allow a "grace" period for submission of the necessary information following publication of the final rule. We will not make final any State or zone classifications with regard to captive cervids until each State has had 90 days after publication of the final rule on the general requirements for State risk classification to submit the required information.

We are proposing that States and zones be classified for tuberculosis risk in captive cervids as follows:

Accredited-free States and zones. In proposed §.77.20, an accredited-free State or zone for captive cervids is

defined, with certain exceptions, as a State or zone that is or is part of a State that has the authority to enforce and complies with the UMR, has zero percent prevalence of affected captive cervid herds, and has had no findings of tuberculosis in any captive cervids in the State or zone for the previous 5 years.

Based on the information available to us, we believe the following States and zones meet the conditions in the preceding paragraph and, therefore, we are proposing to classify them as accredited free: Alaska, Colorado, Hawaii, Idaho, Indiana, Louisiana, Maine, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New York, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, Wyoming, and that part of Michigan other than the zone described under "Modified accredited States and zones," below.

Modified accredited advanced States and zones. In proposed § 77.20, a modified accredited advanced State or zone for captive cervids is defined, with one exception, as a State or zone that is or is part of a State that has the authority to enforce and complies with the UMR, and in which tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of captive cervids in the State or zone for the most recent 2 years.

Based on the information available to us, we believe the following States meet the conditions in the preceding paragraph and, therefore, we are proposing to classify them as modified accredited advanced: Arizona, California, Florida, Georgia, Kansas, Kentucky, Mississippi, Missouri, New Jersey, North Carolina, Pennsylvania, Tennessee, and Wisconsin.

Modified accredited States and zones. In proposed § 77.20, a modified accredited State or zone for captive cervids is defined, with one exception, as a State or zone that is or is part of a State that has the authority to enforce and complies with the UMR, and in which tuberculosis has been prevalent in less than 0.1 percent of the total number of herds of captive cervids in the State or zone for the most recent year.

Based on the information available to us, we believe the following zone meets the conditions in the preceding paragraph and, therefore, we are proposing to classify it as modified accredited: A zone in Michigan delineated by starting at the juncture of State Route 55 and Interstate 75, then heading northwest and north along Interstate 75 to the Straits of Mackinac, then southeast and south along the shoreline of Michigan to the eastern terminus of State Route 55, then west along State Route 55 to Interstate 75.

Accreditation preparatory States and zones. In proposed § 77.20, an accreditation preparatory State or zone for captive cervids is defined as a State or zone that is or is part of a State that has the authority to enforce and complies with the UMR, and in which tuberculosis is prevalent in less than 0.5 percent of the total number of herds of captive cervids in the State or zone.

Based on the information available to us, we believe the following States meet the conditions in the preceding paragraph and, therefore, we are proposing to classify them as accreditation preparatory: Alabama, Arkansas, Connecticut, Delaware, Illinois, Iowa, Maryland, Massachusetts, New Mexico, Ohio, Puerto Rico, Rhode Island, the Virgin Islands of the United States, and West Virginia.

Nonaccredited States and zones. In proposed § 77.20, a nonaccredited State or zone for captive cervids is defined as a State or zone that is or is part of a State that does not meet the standards of the UMR or in which tuberculosis is prevalent in 0.5 percent or more of the total number of herds of captive cervids in the State or zone.

Based on the information available to us, we do not believe that any States or zones meet the criteria for nonaccredited status.

Captive Cervids From Unclassified Herds

Under the current regulations, the interstate movement requirements for captive cervids are based on the status of the herds the animals are part of. The four categories of herds for captive cervids under the current regulations are accredited, qualified, monitored, and unclassified. As noted above, we are proposing to allow captive cervids to be moved interstate according to the applicable State or zone movement requirements or the applicable individual herd requirements, whichever are less restrictive.

We are proposing however, to make a change to the provisions governing the movement from unclassified herds. Under the current regulations, cervids that are not known to be infected with or exposed to tuberculosis and that are from unclassified herds may be moved interstate if the cervids have tested negative to two official tuberculosis tests conducted no less than 90 days apart, provided the second test was conducted within 90 days prior to the date of movement.

Although we believe that the two tests currently required for unclassified herds are adequate to address the tuberculosis risk in certain States, that testing requirement would not adequately address the risk posed by animals moving from States or zones of relatively higher risk—*e.g.*, those States or zones that would be classified as accreditation preparatory or nonaccredited with regard to captive cervids.

Therefore, we are proposing to amend the conditions for interstate movement from unclassified herds (set forth in § 77.15 of the current regulations and § 77.38 of this proposed rule) to remove the provision that captive cervids from unclassified herds may move interstate following two negative tests 90 days apart. By removing this provision, we would make cervids from an unclassified herd subject to the movement requirements for the State or zone in which the herd is located.

Captive Cervids Moved for Exhibition

We are also proposing to amend the interstate movement requirements for captive cervids from a qualified herd in order to address the movement of cervids solely for exhibition. Under the regulations, to be eligible for qualified herd status, all captive cervids in the herd eligible for testing must have tested negative to an official tuberculosis test. Additionally, a captive cervid moved interstate from a qualified herd must be accompanied by a certificate that states that the cervid has tested negative to an official tuberculosis test conducted within 90 days prior to the date of movement.

Certain cervids, however, are moved interstate only for a limited period of time for exhibition and do not necessarily come into contact with other livestock. If the cervids are from a qualified herd, which means that they have already been tested negative once, and are kept isolated from other livestock after they leave the premises of origin, we believe they can be moved interstate for a limited period of time for exhibition with minimal risk of transmitting tuberculosis.

Therefore, we are proposing in § 77.36(b)(4) that captive cervids from a qualified herd moved interstate for the purpose of exhibition only may be moved without testing, provided they are returned to the premises of origin no more than 90 days after leaving the premises, have no contact with other livestock during movement and exhibition, and are accompanied by a certificate that includes a statement that the captive cervid is from a qualified

herd and will meet the requirements of this paragraph.

Changes to Definitions

We are proposing to revise certain of the definitions currently used in the regulations in order to clarify our intent regarding those definitions and to make those that would be used regarding cattle, bison, and goats consistent with those that would be used regarding captive cervids.

Certificate: Throughout the current regulations for both cattle and bison and captive cervids, the term "certificate" is used a number of times. Our intent is to apply the same definition to that term wherever it is used in part 77.

Currently, there is a definition of *certificate* in § 77.1 regarding cattle and bison. Although there is currently no definition of *certificate* in § 77.8 regarding captive cervids, there is a description in § 77.9(c) of the information that must be included on a certificate. Certain of the information included under the definition in § 77.1 is not included in the description in § 77.9(c). Our intent, however, is to require that the basic information supplied on a certificate regarding captive cervids be the same as that supplied regarding cattle, bison, and goats. Therefore, we are moving the definition of *certificate* from the current cattle and bison definitions to revised § 77.2, which would include definitions applicable to all of part 77. We would define *certificate* to mean an official document issued by an APHIS representative, a State representative, or an accredited veterinarian at the point of origin of a shipment of livestock to be moved under this part, which shows the identification tag, tattoo, or registration number or similar identification of each animal to be moved; the number, breed, sex, and approximate age of the animals covered by the document; the purpose for which the animals are to be moved; the date and place of issuance; the points of origin and destination; the consignor and the consignee; and which states that the animal or animals identified on the certificate meet the requirements of part 77.

Official seal. Both the current and proposed regulations refer to means of conveyance that are "officially sealed." There is no definition of *officially sealed* in current § 77.8 regarding captive cervids. The definition in current § 77.1 regarding cattle and bison reads "a seal issued by a State or APHIS representative." In 9 CFR part 78, which contains the regulations dealing with brucellosis in domestic livestock, there is a definition of "official seal" that more precisely clarifies our intent regarding that term. Therefore, we are proposing to use that definition in proposed § 77.2 to apply to all of part 77. "Official seal" as used in part 77 would mean a seal issued by a State or APHIS representative, consisting of a serially numbered, metal or plastic strip, with a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and that cannot be reused if opened, or a serially numbered, self-locking button that can be used for this purpose.

We are also proposing to revise the definition of *officially identified.* That term is currently used in the regulations regarding cattle and bison and also in this proposed rule regarding cattle, bison, goats, and captive cervids. Under the current regulations, an animal that is officially identified is identified by means of an official eartag, individual tattoo, or individual hot brand. Our intent with regard to such animals is that they be identified so as to provide unique identification of each animal, to allow for traceback of an animal to its source in the event of disease detection. We are proposing to revise the definition of *officially identified* to make that intent clear.

Additionally, we are proposing to revise the definition of *captive cervid.* In summary, the current definition includes all cervids raised or maintained in captivity for the production of meat and other agricultural products, for sport, or for exhibition. The current definition does not cover wild cervids that are not raised or maintained in captivity but that are moved interstate, such as those that are moved from one location to another in order to establish or expand a wild population in the destination location. We believe that not applying the regulations to the movement of such cervids creates an unacceptable risk of infected animals being transported interstate. Therefore, we are proposing to revise the definition of *captive cervid* to include all cervids, including wild cervids, that are moved interstate.

The current regulations with regard to captive cervids include definitions of official tuberculin tests. In these definitions, reference is made to "PPD" tuberculin. The acronym "PPD" stands for "purified protein derivative." To make clear to the reader what we mean by PPD, we are adding a definition of purified protein derivative (PPD) to mean protein extract from an *M. bovis* culture that is resuspended in solution at a standard concentration of 1 mg protein per 1 ml of solution.

Additionally, certain other terms are used currently in both the provisions regarding cattle and bison, and those regarding captive cervids, but are defined in only one of the two current subparts in part 77. For consistency, we are adding those definitions to the new § 77.2 to apply to all of part 77. Those definitions that are applicable only to cattle, bison, and goats, or to captive cervids would be set forth in the subpart that deals specifically with the animals in question.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Bovine tuberculosis is a communicable disease of cattle, bison, cervids and other species, including humans, and results in losses in meat and milk production and sterility among infected animals. The Cooperative State-Federal Tuberculosis Eradication program has virtually eliminated bovine tuberculosis from the Nation's livestock population. However, we believe changes to the tuberculosis regulations are needed to further the efforts toward complete eradication.

Currently, the tuberculosis regulations define State risk status levels for cattle and bison. However, the status levels provide only for three broadly drawn classifications of risk, and two of the classifications carry no restrictions on the interstate movement of cattle and bison not known to be infected with tuberculosis. The regulations do not provide status levels for captive cervids; nor do they apply to goats. This proposed rule would increase the number of risk classifications, establish risk classifications for States and zones with regard to captive cervids, and apply the regulations to goats. The classification of a State or zone with regard to cattle, bison, and goats would not necessarily be the same as its classification with regard to captive cervids. Under this proposed rule, the five possible risk classifications would be accredited free, modified accredited advanced, modified accredited, accreditation preparatory, and nonaccredited.

Cattle, Bison, and Goats

In 1998, the total number of cattle and bison in the United States was approximately 99.5 million, valued at approximately $58.6 billion. That year, there were 1,115,650 U.S. operations with cattle and bison. Over 98.5 percent of these operations had a gross cash

value of less than $500,000. There were 63,806 goat producers in the United States, who raised about 1.99 million animals valued at approximately $74 million. These goat holdings vary in size and degree of commercialization, with many producers relying on other sources of income. Most, if not all, goat operations are relatively small and earn less than $500,000.

The U.S. cattle industry plays a very significant role in international trade. In 1998, the total earnings from exports of live cattle, beef and veal were approximately $ 2.6 billion. The U.S. competitiveness in international markets depends to a great degree upon its reputation for producing high quality animals, a reputation that would be enhanced if bovine tuberculosis were eradicated in this country. The product, as well as purchasers' perceptions of quality, contributes to continued world market acceptance. Thus, efforts to maintain an effective tuberculosis program, to clarify the regulations, and to secure the health of the cattle industry will continue to serve the best economic interests of the Nation.

Currently, with regard to tuberculosis State or zone classification for cattle, bison, and goats, there are 47 accredited-free States, plus Puerto Rico and the Virgin Islands of the United States. As a result of this rule change, one modified accredited State (New Mexico) would become accredited free, bringing the total to 48 States that are entirely accredited free. A currently modified accredited State (Texas) would be classified as modified accredited advanced. One State (Michigan) is accredited free except for a single zone, which is nonmodified accredited. The zone in Michigan currently classified as accredited free would retain that status, and the zone in Michigan currently classified as nonmodified accredited would be classified as modified accredited.

The primary difference among the restrictions on interstate movement from the different proposed classifications is how many, if any, tuberculin tests with negative results the animal to be moved must undergo. The same test is used for cattle, bison, goats, and cervids and the cost of tuberculin testing for an average-sized herd is $380. The approximate per animal testing cost is $4.30, compared to an average value of approximately $600 for a head of cattle, $1,500 for a bison, and $40 for a goat.

Under this proposed rule, even though the status of a zone in Michigan would change, the testing requirements for cattle and bison moved interstate from that zone would be the same as under the current regulations. For Texas, the only change in testing requirements for cattle and bison moved interstate would be the addition of one test for breeding animals. Additionally, goats not from an accredited herd that are to be moved interstate would have to be tested once with negative results.

The cost of the required testing would depend on the number of animals to be moved interstate. Although we do not know how many cattle, bison, and goats are currently moved interstate from Texas from herds that are not accredited, the cost of a test per animal under this proposed rule would be less than 1 percent of the value of an average head of cattle and an even smaller percentage of the value of a bison. Although the cost of a test for a goat would constitute a greater percentage of its value, the test requirement would apply only to the fraction of animals moved interstate, and of that number, only to those animals not part of an accredited herd.

Captive Cervids

We are also proposing to establish five risk classifications for States and zones with regard to captive cervids: Accredited free, modified accredited advanced, modified accredited, accreditation preparatory, and nonaccredited. According to the new classification system, there would be 24 accredited-free States, 13 modified accredited advanced States, 12 accreditation preparatory States (and Puerto Rico and the Virgin Islands of the United States), and one State that has a modified accredited advanced zone and an accredited-free zone. There are 4,239 known herds of captive cervids in the United States, totaling about 165,200 cervids. The average market values of deer and elk, which together constitute virtually the entire population of captive cervids, are $600 and $3,500 respectively.

The proposed accredited-free States would account for approximately 77 percent of the known captive cervid population, modified accredited advanced for 11 percent, and accreditation preparatory for less than .3 percent. The State with split status would account for 12 percent. Fewer than 10 percent of captive cervids are moved interstate. Those not moved interstate would not be subject to this proposed rule. Under this proposed rule, owners of captive cervids to be moved interstate could move their animals according to the less restrictive of either the animals' herd status under the current regulations or the State or zone status under this proposed rule. Therefore, this proposed rule should have no negative economic effects on the owners of captive cervids. Owners of herds that are not accredited but that are located in accredited-free States or zones could save the cost of one or two tests per animal. The most that would be saved per animal would be less than 2 percent of the value of each deer and less than 1 percent of the value of each elk.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be prohibited; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 99–038–1. Please send a copy of your comments to: (1) Docket No. 99–038–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would establish several new levels of tuberculosis risk classifications to be applied to States and zones within States, and would classify States and zones according to

their tuberculosis risk with regard to captive cervids. Additionally, it would specify that the regulations apply to goats as well as to cattle, bison, and captive cervids and increase the amount of testing that must be done before certain cattle, bison, and goats may be moved interstate.

In order to qualify for and retain a particular risk classification, a State or zone would be required to file a report with APHIS. Additionally, for movement from any State or zone other than accredited-free, certain animals to be moved would have to be tested and, in some cases, accompanied by a certificate. If tuberculosis is diagnosed in an animal not covered by the regulations within any State or zone other than one that is classified as nonaccredited, and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must adopt a tuberculosis management plan approved jointly by the State animal health official and the APHIS Administrator.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic,. mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .30608 hours per response.

Respondents: State animal health authorities, including State veterinarians and designated State tuberculosis epidemiologists.

Estimated annual number of respondents: 250.

Estimated annual number of responses per respondent: 8.416.

Estimated annual number of responses: 2,104.

Estimated total annual burden on respondents: 644 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Incorporation by reference, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we propose to revise 9 CFR part 77 to read as follows:

PART 77—TUBERCULOSIS

Subpart A—General Provisions

Sec.
77.1 Material incorporated by reference.
77.2 Definitions.
77.3 Tuberculosis classifications of States and zones.
77.4 Application for and retention of zones.

Subpart B—Cattle, Bison, and Goats

77.5 Definitions.
77.6 Applicability of this subpart.
77.7 Accredited-free States or zones.
77.8 Interstate movement from accredited-free States and zones.
77.9 Modified accredited advanced States or zones.
77.10 Interstate movement from modified accredited advanced States and zones.
77.11 Modified accredited States or zones.
77.12 Interstate movement from modified accredited States and zones.
77.13 Accreditation preparatory States or zones.
77.14 Interstate movement from accreditation preparatory States and zones.
77.15 Nonaccredited States or zones.
77.16 Interstate movement from nonaccredited States and zones.
77.17 Interstate movement of cattle, bison, and goats that are exposed, reactors, or suspects, or from herds containing suspects.
77.18 Other movements.
77.19 Cleaning and disinfection of premises, conveyances, and materials.

Subpart C—Captive Cervids

77.20 Definitions.
77.21 Applicability of this subpart.
77.22 Accredited-free States or zones.
77.23 Interstate movement from accredited-free States and zones.
77.24 Modified accredited advanced States or zones.
77.25 Interstate movement from modified accredited advanced States and zones.
77.26 Modified accredited States or zones.
77.27 Interstate movement from modified accredited States and zones.
77.28 Accreditation preparatory States or zones.
77.29 Interstate movement from accreditation preparatory States and zones.
77.30 Nonaccredited States or zones.
77.31 Interstate movement from nonaccredited States and zones.
77.32 General restrictions.
77.33 Testing procedures for tuberculosis in captive cervids.
77.34 Official tuberculosis tests.
77.35 Interstate movement from accredited herds.
77.36 Interstate movement from qualified herds.
77.37 Interstate movement from monitored herds.
77.38 Interstate movement from herds that are not accredited, qualified, or monitored.
77.39 Other interstate movements.
77.40 Procedures for and interstate movement to necropsy and slaughter.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Subpart A—General Provisions

§ 77.1 Material incorporated by reference.

Uniform Methods and Rules—Bovine Tuberculosis Eradication. The Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999, edition has been approved for incorporation by reference into the Code of Federal Regulations by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(a) The procedures specified in the Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999, edition must be followed for the interstate movement of certain animals regulated under this part.

(b) Copies of the Uniform Methods and Rules—Bovine Tuberculosis Eradication:

(1) Are available for inspection at the Office of the Federal Register Library, 800 North Capitol Street NW., Suite 700, Washington, DC;

(2) Are available for inspection at the APHIS reading room, room 1141, USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC; or

(3) May be obtained from the National Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231.

§ 77.2 Definitions.

As used in this part, the following terms shall have the meanings set forth in this section except as otherwise specified.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of subchapter J to perform functions specified in subchapters B, C, and D of this chapter.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal. All species of animals except man, birds, or reptiles.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

Certificate. An official document issued by an APHIS representative, a State representative, or an accredited veterinarian at the point of origin of a shipment of livestock to be moved under this part, which shows the identification tag, tattoo, or registration number or similar identification of each animal to be moved; the number, breed, sex, and approximate age of the animals covered by the document; the purpose for which the animals are to be moved; the date and place of issuance; the points of origin and destination; the consignor and the consignee; and which states that the animal or animals identified on the certificate meet the requirements of this part.

Cooperating State and Federal animal health officials. The State and Federal animal health officials responsible for overseeing and implementing the National Cooperative State/Federal Bovine Tuberculosis Eradication Program.

Depopulate. To destroy all livestock in a herd by slaughter or by death otherwise.

Designated tuberculosis epidemiologist (DTE). A State or Federal epidemiologist designated by the Administrator to make decisions concerning the use and interpretation of diagnostic tests for tuberculosis and the management of tuberculosis affected herds.

Epidemiologic investigation. An investigation that is conducted by a State in conjunction with APHIS representatives, in which an official test for tuberculosis is conducted on all livestock in any tuberculosis-affected herd in a State or zone, as well as on all livestock in any herd into which livestock from the affected herd have been moved.

Herd. Any group of livestock maintained on common ground for any purpose, or two or more groups of livestock under common ownership or supervision, geographically separated but that have an interchange or movement of livestock without regard to health status, as determined by the Administrator. (A group means one or more animals.)

Interstate. From one State into or through any other State.

Livestock. Cattle, bison, cervids, swine, goats, and other hoofed animals (such as llamas, alpacas, and antelope) raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition, as well as previously free-ranging cervids that are captured, identified, and moved interstate.

Moved. Shipped, transported, or otherwise moved, or delivered or received for movement.

Moved directly. Moved without stopping or unloading at livestock assembly points of any type. Livestock being moved directly may be unloaded from the means of conveyance while en route only if the animals are isolated so that they cannot mingle with any livestock other than those with which they are being shipped.

Official eartag. An eartag approved by the Administrator as providing unique identification for each individual animal by conforming to the alpha-numeric National Uniform Eartagging System.

Official seal. A seal issued by a State or APHIS representative, consisting of a serially numbered, metal or plastic strip, with a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and that cannot be reused if opened, or a serially numbered, self-locking button that can be used for this purpose.

Officially identified. Identified by means of an official eartag or by means of an individual tattoo or hot brand that provides unique identification for each animal.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

State. Any State, territory, the District of Columbia, or Puerto Rico.

State animal health official. The State official responsible for livestock and poultry disease control and eradication programs.

State representative. A veterinarian or other person employed in livestock sanitary work of a State or a political subdivision of a State and who is authorized by such State or political subdivision of a State to perform the function involved under a memorandum of understanding with APHIS.

Transportation document. Any document accompanying the interstate movement of livestock, such as an owner's statement, manifest, switch order, or vehicle record, on which is stated the point from which the animals are moved interstate, the destination of the animals, the number of animals covered by the document, and the name and address of the owner or shipper.

Tuberculosis. The contagious, infectious, and communicable disease caused by *Mycobacterium bovis.* (Also referred to as bovine tuberculosis.)

Zone. A defined geographic land area identifiable by geological, political, manmade, or surveyed boundaries, with mechanisms of disease spread, epidemiological characteristics, and the ability to control the movement of animals across the boundaries of the zone taken into account.

§ 77.3 Tuberculosis classifications of States and zones.

The Administrator shall classify each State for tuberculosis in accordance with this part. A zone composed of less than an entire State will be given a particular classification upon request of the State only if the Administrator determines that:

(a) The State meets the requirements of this part for establishment of zones;

(b) The State has adopted and is enforcing regulations that impose restrictions on the intrastate movement of cattle, bison, goats, and captive cervids that are substantially the same as those in place under this part for the interstate movement of cattle, bison, goats, and captive cervids; and

(c) The designation of part of a State as a zone will otherwise be adequate to prevent the interstate spread of tuberculosis.

§ 77.4 Application for and retention of zones.

(a) A State animal health official may request at any time that the Administrator designate part of a State as having a different tuberculosis classification under this part than the rest of the State. The requested zones must be delineated by the State animal health authorities, subject to approval by the Administrator. The request from the State must demonstrate that the State complies with the following requirements:

(1) The State must have the legal and financial resources to implement and enforce a tuberculosis eradication program and must have in place an infrastructure, laws, and regulations that require and ensure that State and Federal animal health authorities are notified of tuberculosis cases in domestic livestock or outbreaks in wildlife;

(2) The State in which the intended zones are located must maintain, in each intended zone, clinical and epidemiological surveillance of animal species at risk of tuberculosis at a rate that allows detection of tuberculosis in the overall population of livestock at a 2 percent prevalence rate with 95

percent confidence. The designated tuberculosis epidemiologist must review reports of all testing for each zone within the State within 30 days of the testing; and

(3) The State must enter into a memorandum of understanding with APHIS in which the State agrees to adhere to any conditions for zone recognition particular to that request.

(b) Retention of APHIS recognition of a zone is subject to annual review by the Administrator. To retain recognition of a zone, a State must continue to comply with the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this section and must retain for 2 years all certificates required under this part for the movement of cattle, bison, goats, and captive cervids.

Subpart B—Cattle, Bison, and Goats

§ 77.5 Definitions.

As used in this subpart B, the following terms shall have the meanings set forth in this section except as otherwise specified.

Accreditation preparatory State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and in which tuberculosis is prevalent in less than 0.5 percent of the total number of herds of cattle, bison, and goats in the State or zone.

Accredited-free State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," has zero percent prevalence of affected cattle, bison, and goat herds, and has had no findings of tuberculosis in any cattle, bison, or goats in the State or zone for the previous 5 years. *Except that:* The requirement of freedom from tuberculosis is 2 years from the depopulation of the last affected herd in States or zones that were previously accredited free and in which all herds affected with tuberculosis were depopulated, 3 years in all other States or zones that have depopulated all affected herds, and 3 years in States or zones that have conducted surveillance that demonstrates that other livestock herds and wildlife are not at risk of being infected with tuberculosis, as determined by the Administrator based on a risk assessment conducted by APHIS.

Accredited herd. To establish or maintain accredited herd status, the herd owner must comply with all of the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited herds. All cattle, bison, and goats in a herd must be free from tuberculosis.

Affected herd. A herd in which tuberculosis has been disclosed in any cattle, bison, or goats by an official tuberculin test or by postmortem examination.

Approved feedlot. A confined area approved jointly by the State animal health official and the Administrator for feeding cattle and bison for slaughter, with no provisions for pasturing or grazing.

Approved slaughtering establishment. A slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State-inspected slaughtering establishment that has inspection by a State inspector at the time of slaughter.

Cattle, bison, and goats not known to be affected. All cattle, bison, and goats except those originating from tuberculosis affected herds or from herds containing tuberculosis suspect cattle, bison, or goats.

Department. The U.S. Department of Agriculture (USDA).

Exposed cattle, bison, and goats. Cattle, bison, and goats, except reactor cattle, bison, and goats, that are part of an affected herd.

Modified accredited State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and in which tuberculosis has been prevalent in less than 0.1 percent of the total number of herds of cattle, bison, and goats in the State or zone for the most recent year. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 10,000 herds to have up to 10 affected herds for the most recent year, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

Modified accredited advanced State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and in which tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle, bison, and goats in the State or zone for each of the most recent 2 years. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 30,000 herds to have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

Negative cattle, bison, and goats. Cattle, bison, and goats that are classified negative for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," based on the results of an official tuberculin test.

Nonaccredited State or zone. A State or zone that is or is part of a State that does not meet the standards of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" or in which tuberculosis is prevalent in 0.5 percent or more of the total number of herds of cattle, bison, and goats in the State or zone.

Official tuberculin test. Any test for tuberculosis conducted on cattle, bison, or goats in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication."

Permit. An official document issued for movement of cattle, bison, or goats under this part by an APHIS representative, State representative, or an accredited veterinarian at the point of origin of a shipment of cattle, bison, or goats to be moved directly to slaughter, that shows the tuberculosis status of each animal (reactor, suspect, or exposed), the eartag number of each animal and the name of the owner of such animal, the establishment to which the animals are to be moved, the purpose for which the animals are to be moved, and that they are eligible for such movement under the applicable provisions of §§ 77.17 and 77.18.

Reactor cattle, bison, and goats. Cattle, bison, and goats that are classified as reactors for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication."

Suspect cattle, bison, and goats. Cattle, bison, and goats that are classified as suspects for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication."

Uniform Methods and Rules—Bovine Tuberculosis Eradication. Uniform methods and rules for eradicating bovine tuberculosis in the United States, approved by APHIS on January 22, 1999, which is incorporated by reference at § 77.1.

Zero percent prevalence. No finding of tuberculosis in any cattle, bison, or goat herd in a State or zone.

§ 77.6 Applicability of this subpart.

All references in this subpart to the tuberculosis status of States and zones

pertain to such status for cattle, bison, and goats only.

§ 77.7 Accredited-free States or zones.

(a) The following are accredited-free States: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, the Virgin Islands of the United States, Washington, West Virginia, Wisconsin, and Wyoming.

(b) The following are accredited-free zones: A zone in Michigan consisting of that part of the State outside the zone in Michigan described in § 77.11(b).

(c) If an affected herd is detected in a State or zone classified as accredited-free, and the herd is depopulated and an epidemiologic investigation is completed within 90 days of the detection of the affected herd with no evidence of the spread of tuberculosis, the State or zone may retain its accredited-free status. If two or more affected herds are detected in an accredited-free State or zone within a 48-month period, the State or zone will be removed from the list of accredited-free States or zones and will be reclassified as either modified accredited advanced, modified accredited, accreditation preparatory, or nonaccredited.

(d) If any livestock other than cattle, bison, or goats are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999, edition," which is incorporated by reference at § 77.1, to those other livestock in the same manner as to cattle, bison, and goats. Failure to do so will result in reclassification of the State or zone as modified accredited advanced.

(e) If tuberculosis is diagnosed within an accredited-free State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in livestock, wildlife and animals held for exhibition, the prevention of the spread of the disease to other livestock, wildlife and animals held for exhibition, increased surveillance of tuberculosis in wildlife and animals held for exhibition, eradication of tuberculosis from individual herds, a timeline for tuberculosis eradication, and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will lose its accredited-free status and will be reclassified as modified accredited advanced.

(f) Accredited-free State or zone status must be renewed annually. To qualify for renewal of accredited-free State or zone status, a State must submit an annual report to APHIS certifying that the State or zone within the State complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The report must be submitted to APHIS each year between October 1 and November 30.

§ 77.8 Interstate movement from accredited-free States and zones.

Cattle, bison, or goats that originate in an accredited-free State or zone may be moved interstate without restriction.

§ 77.9 Modified accredited advanced States or zones.

(a) The following are modified accredited advanced States: Texas.

(b) The following are modified accredited zones: None.

(c) If any livestock other than cattle, bison, or goats are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999, edition," which is incorporated by reference at § 77.1, for such newly assembled herds to those other livestock in the same manner as to cattle, bison, and goats. Failure to do so will result in the removal of the State or zone from the list of modified accredited advanced States or zones and its being reclassified as modified accredited.

(d) If tuberculosis is diagnosed within a modified accredited advanced State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in livestock, wildlife and animals held for exhibition, the prevention of the spread of the disease to other livestock, wildlife and animals held for exhibition, increased surveillance of tuberculosis in wildlife and animals held or exhibition, eradication of tuberculosis from individual herds, a timeline for tuberculosis eradication, and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will be reclassified as modified accredited.

(e) Modified accredited advanced State or zone status must be renewed annually. To qualify for renewal of a modified accredited advanced State or zone status, a State must submit an annual report to APHIS certifying that the State or zone complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The report must be submitted to APHIS each year between October 1 and November 30.

(f) To qualify for accredited-free status, a modified accredited advanced State or zone must demonstrate to the Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," has zero percent prevalence of affected cattle and bison herds, and has had no findings of tuberculosis in any cattle, bison, or goats in the State or zone for the previous 5 years. *Except that:* The requirement of freedom from tuberculosis is 2 years from the depopulation of the last affected herd in States or zones that were previously accredited free and in which all herds affected with tuberculosis were depopulated, 3 years in all other States or zones that have depopulated all affected herds, and 3 years in States or zones that have conducted surveillance that demonstrates that other livestock herds and wildlife are not at risk of being infected with tuberculosis, as determined by the Administrator based on a risk assessment conducted by APHIS.

§ 77.10 Interstate movement from modified accredited advanced States and zones.

Cattle, bison, or goats that originate in a modified accredited advanced State or

zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

(a) The cattle, bison, or goats are moved interstate directly to slaughter to an approved slaughtering establishment.

(b) If the cattle or bison are steers or spayed heifers, or are officially identified sexually intact heifers moved to an approved feedlot, they may be moved interstate without restriction.

(c) Cattle, bison, or goats that are from an accredited herd may be moved interstate if they are accompanied by a certificate stating that the accredited herd has completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement.

(d) If the cattle, bison, or goats are breeding animals that are not from an accredited herd, they must be accompanied by a certificate stating that they have been classified negative to an official tuberculin test conducted within 60 days prior to the date of movement. All cattle, bison, and goats so moved that are not individually identified by a registration name and number must be officially identified.

§ 77.11 Modified accredited States or zones.

(a) The following are modified accredited States: None.

(b) The following are modified accredited zones: A zone in Michigan delineated by starting at the juncture of State Route 55 and Interstate 75, then heading northwest and north along Interstate 75 to the Straits of Mackinac, then southeast and south along the shoreline of Michigan to the eastern terminus of State Route 55, then west along State Route 55 to Interstate 75.

(c) If any livestock other than cattle, bison, or goats are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999, edition," which is incorporated by reference at § 77.1, for such newly assembled herds to those other livestock in the same manner as to cattle and bison. Failure to do so will result in the removal of the State or zone from the list of modified accredited States or zones and its being reclassified as accreditation preparatory.

(d) If tuberculosis is diagnosed within a modified accredited State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in livestock, wildlife and animals held for exhibition, the prevention of the spread of the disease to other livestock, wildlife and animals held for exhibition, increased surveillance of tuberculosis in wildlife and animals held for exhibition, eradication of tuberculosis from individual herds, a timeline for tuberculosis eradication, and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will be reclassified as accreditation preparatory.

(e) Modified accredited State or zone status must be renewed annually. To qualify for renewal of a modified accredited State or zone status, a State must submit an annual report to APHIS certifying that the State or zone complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The report must be submitted to APHIS each year between October 1 and November 30.

(f) To qualify for modified accredited advanced status, a modified accredited State or zone must demonstrate to the Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and that tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle, bison, and goats in the State or zone for the most recent 2 years. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 30,000 herds to have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

§ 77.12 Interstate movement from modified accredited States and zones.

Cattle, bison, or goats that originate in a modified accredited State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

(a) The cattle, bison, or goats are moved interstate directly to slaughter to an approved slaughtering establishment.

(b) If the cattle or bison are steers or spayed heifers, or are officially identified sexually intact heifers moved to an approved feedlot, they must be accompanied by a certificate stating that they have been classified negative to an official tuberculin test conducted within 60 days prior to the date of movement. All cattle and bison so moved that are not individually identified by a registration name and number must be officially identified.

(c) Cattle, bison, or goats that are from an accredited herd may be moved interstate if they are accompanied by a certificate stating that the accredited herd has completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement.

(d) If the cattle, bison, or goats are breeding animals that are not from an accredited herd, they must be accompanied by a certificate stating that they have been classified negative to two official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 60 days prior to the date of movement. All cattle, bison, and goats so moved that are not individually identified by a registration name and number must be officially identified.

§ 77.13 Accreditation preparatory States or zones.

(a) The following are accreditation preparatory States: None.

(b) The following are accreditation preparatory zones: None.

(c) If any livestock other than cattle, bison, or goats are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999, edition," which is incorporated by reference at § 77.1, for such newly assembled herds to those other livestock in the same manner as to cattle and bison. Failure to do so will result in the removal of the State or zone from the list of accreditation preparatory States or zones and its being reclassified as nonaccredited.

(d) If tuberculosis is diagnosed within an accreditation preparatory State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the

diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in livestock, wildlife and animals held for exhibition, the prevention of the spread of the disease to other livestock, wildlife and animals held for exhibition, increased surveillance of tuberculosis in wildlife and animals held for exhibition, eradication of tuberculosis from individual herds, a timeline for tuberculosis eradication, and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will be reclassified as nonaccredited.

(e) Accreditation preparatory State or zone status must be renewed annually. To qualify for renewal of accreditation preparatory State or zone status, a State must submit an annual report to APHIS certifying that the State or zone complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The report must be submitted to APHIS each year between October 1 and November 30.

(f) To qualify for modified accredited status, an accreditation preparatory State or zone must demonstrate to the Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and that tuberculosis has been prevalent in less than 0.1 percent of the total number of herds of cattle, bison, and goats in the State or zone for the most recent year. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 10,000 herds to have up to 10 affected herds for the most recent year, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

§ 77.14 Interstate movement from accreditation preparatory States and zones.

Cattle, bison, or goats that originate in an accreditation preparatory State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

(a) The cattle, bison, or goats are moved interstate for slaughter directly to an approved slaughtering establishment.

(b) If the cattle or bison are steers or spayed heifers, or are officially identified sexually intact heifers moved to an approved feedlot, they must be accompanied by a certificate stating that they have been classified negative to two official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 60 days prior to the date of movement. All cattle and bison so moved that are not individually identified by a registration name and number must be officially identified.

(c) Cattle, bison, or goats that are from an accredited herd may be moved interstate if they are accompanied by a certificate stating that the accredited herd has completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement, and that the animals to be moved have been classified negative to an official tuberculin test conducted within 60 days prior to the date of movement. All cattle, bison, and goats that are so moved that are not individually identified by a registration name and number must be officially identified.

(d) If the cattle, bison, or goats are breeding animals that are not from an accredited herd, they must be accompanied by a certificate stating that they originated in a herd that has undergone a tuberculosis herd test with negative results conducted within 1 year prior to the date of movement and that the animals to be moved have been classified negative to two additional official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 60 days prior to the date of movement. All cattle and bison so moved that are not individually identified by a registration name and number must be officially identified.

§ 77.15 Nonaccredited States or zones.

(a) The following are nonaccredited States: None.

(b) The following are nonaccredited zones: None.

(c) To qualify for accreditation preparatory status, a nonaccredited State or zone must demonstrate to the Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and that tuberculosis is prevalent in less than 0.5 percent of the total number of herds of cattle, bison, and goats in the State or zone.

§ 77.16 Interstate movement from nonaccredited States and zones.

Cattle, bison, or goats that originate in a nonaccredited State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

(a) The cattle, bison, or goats are accompanied by VS Form 1–27 and are moved interstate for slaughter in an officially sealed means of conveyance directly to an approved slaughtering establishment.

(b) The cattle, bison, or goats are from an accredited herd and are accompanied by a certificate stating that the accredited herd has completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement, and that the cattle, bison, and goats have been classified negative to an official tuberculin test conducted within 60 days prior to the date of movement.

§ 77.17 Interstate movement of cattle, bison, and goats that are exposed, reactors, or suspects, or from herds containing suspects.

(a) *Reactor cattle, bison, and goats.* Cattle, bison, or goats that have been classified as reactor cattle, bison, or goats may be moved interstate only if they are moved directly to slaughter at an approved slaughtering establishment and only in accordance with the following conditions:

(1) Reactor cattle, bison, and goats must be individually identified by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor", or a similar State reactor tag, and must be:

(i) Branded with the letter "T," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead; or

(ii) Permanently identified with the letters "TB" tattooed legibly in the left ear and sprayed with yellow paint on the left ear and either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(2) The reactor cattle, bison, or goats must be accompanied by a permit; and

(3) The reactor cattle, bison, or goats may not be moved interstate in a means of conveyance containing any animals susceptible to tuberculosis unless all of the animals are being moved directly to slaughter; and

(4) Any person who moves reactor cattle, bison, or goats interstate under this paragraph must plainly write or stamp upon the face of the transportation document the words "Tuberculin Reactor" and the following statement: "This conveyance must be cleaned and disinfected in accordance with 9 CFR 77.17(a)(5)."; and

(5) Each means of conveyance in which reactor cattle, bison, or goats

have been transported interstate under this paragraph must be cleaned and disinfected by the carrier, in accordance with the provisions of §§ 71.6, 71.7, and 71.10 of this subchapter, under the supervision of an APHIS representative or State representative or an accredited veterinarian or other person designated by the Administrator. If, at the point where the cattle, bison, or goats are unloaded, such supervision or proper cleaning and disinfecting facilities are not available, and permission is obtained from an APHIS representative or State representative, the empty means of conveyance may be moved to a location where such supervision and facilities are available for cleaning and disinfecting. Permission will be granted if such movement does not present a risk of disseminating tuberculosis.

(b) *Exposed cattle, bison, and goats.* Except for the movement of exposed cattle to a quarantined feedlot in accordance with § 50.16 of this chapter, exposed cattle, bison, or goats may be moved interstate only if they are moved directly to slaughter to an approved slaughtering establishment and only in accordance with the following conditions:

(1) Exposed cattle, bison, and goats must be individually identified by attaching to either ear an approved metal eartag bearing a serial number and must be:

(i) Branded with the letter "S," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead; or

(ii) Accompanied directly to slaughter by an APHIS or State representative; or

(iii) Moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(2) The exposed cattle, bison, and goats must be moved in accordance with paragraphs (a)(2), (a)(3), and (a)(5) of this section.

(c) *Suspect cattle, bison, and goats.* Suspect cattle, bison, or goats from herds in which no reactor cattle, bison, or goats have been disclosed on an official tuberculin test, as well as negative cattle, bison or goats from such herds, may be moved interstate only if they are moved directly to slaughter to an approved slaughtering establishment.

(Approved by the Office of Management and Budget under control number 0579–0051)

§ 77.18 Other movements.

The Administrator may, with the concurrence of the livestock sanitary official of the State of destination, upon request in specific cases, allow the interstate movement of cattle, bison, or goats not otherwise provided for in this part that have not been classified as reactor cattle, bison, or goats and are not otherwise known to be affected with tuberculosis, under such conditions as the Administrator may prescribe in each specific case to prevent the spread of tuberculosis. The Administrator shall promptly notify the appropriate livestock sanitary official of the State of destination of any such action.

§ 77.19 Cleaning and disinfection of premises, conveyances, and materials.

All conveyances and associated equipment, premises, and structures that are used for receiving, holding, shipping, loading, unloading, and delivering cattle, bison, or goats in connection with their interstate movement and that are determined by cooperating State and Federal animal health officials to be contaminated because of occupation or use by tuberculous or reactor livestock must be cleaned and disinfected under the supervision of the cooperating State or Federal animal health officials. Such cleaning and disinfecting must be done in accordance with procedures approved by the cooperating State or Federal animal health officials. Cleaning and disinfection must be completed before the premises, conveyances, or materials may again be used to convey, hold, or in any way come in contact with any livestock.

Subpart C—Captive Cervids

§ 77.20 Definitions.

As used in subpart C, the following terms shall have the meanings set forth in this section except as otherwise specified.

Accreditation preparatory State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and in which tuberculosis is prevalent in less than 0.5 percent of the total number of herds of captive cervids in the State or zone.

Accredited-free State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," has zero percent prevalence of affected captive cervid herds, and has had no findings of tuberculosis in any captive cervids in the State or zone for the previous 5 years. *Except that:* The requirement of freedom from tuberculosis is 2 years from the depopulation of the last affected herd in States or zones that were previously accredited free and in which all herds affected with tuberculosis were depopulated, 3 years in all other States or zones that have depopulated all affected herds, and 3 years in States or zones that have conducted surveillance that demonstrates that other livestock herds and wildlife are not at risk of being infected with tuberculosis, as determined by the Administrator based on a risk assessment conducted by APHIS.

Accredited herd. A herd of captive cervids that has tested negative to at least three consecutive official tuberculosis tests of all eligible captive cervids in accordance with § 77.33(f) and that meets the standards set forth in § 77.35. The tests must be conducted at 9–15 month intervals.

Affected herd. A herd of captive cervids that contains or that has contained one or more captive cervids infected with *Mycobacterium bovis* (determined by bacterial isolation of *M. bovis*) and that has not tested negative to the three whole herd tests as prescribed in § 77.39(d).

Blood tuberculosis (BTB) test. A supplemental test for tuberculosis in cervids.

Captive cervid. All species of deer, elk, moose, and all other members of the family Cervidae raised or maintained in captivity for the production of meat and other agricultural products, for sport, or for exhibition, or any cervid (either wild or raised or maintained in captivity) that is moved interstate. A captive cervid that escapes will continue to be considered a captive cervid as long as it bears an official eartag or other identification approved by the Administrator as unique and traceable with which to trace the animal back to its herd of origin.

Comparative cervical tuberculin (CCT) test. The intradermal injection of biologically balanced USDA bovine PPD tuberculin and avian PPD tuberculin at separate sites in the mid-cervical area to determine the probable presence of bovine tuberculosis (*M. bovis*) by comparing the response of the two tuberculins at 72 hours (plus or minus 6 hours) following injection.

Designated accredited veterinarian. An accredited veterinarian who is trained and approved by cooperating State and Federal animal health officials to conduct the single cervical tuberculin (SCT) test on captive cervids.

Exposed captive cervid. Any captive cervid that has been exposed to tuberculosis by reason of associating with captive cervids, cattle, bison, or other livestock from which *M. bovis* has been isolated.

Modified accredited State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and in which tuberculosis has been prevalent in less than 0.1 percent of the total number of herds of captive cervids in the State or zone for the most recent year. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 10,000 herds to have up to 10 affected herds for the most recent year, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

Modified accredited advanced State or zone. A State or zone that is or is part of a State that has the authority to enforce and complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and in which tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of captive cervids in the State or zone for the most recent 2 years. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 30,000 herds to have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

Monitored herd. A herd on which identification records are maintained on captive cervids inspected for tuberculosis at an approved slaughtering establishment or an approved diagnostic laboratory and on captive cervids tested for tuberculosis in accordance with interstate movement requirements, and which meets the standards set forth in § 77.37.

Negative. Showing no response to the SCT test or the CCT test, classified by the testing laboratory as "avian" or "negative" on the BTB test, or classified negative for tuberculosis by the testing veterinarian based upon history, supplemental tests, examination of the carcass, and histopathology and culture of selected tissues.

No gross lesions (NGL). Having no visible lesions indicative of bovine tuberculosis detected upon necropsy or slaughter inspection.

Nonaccredited State or zone. A State or zone that is or is part of a State or zone that does not meet the standards of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" or in which tuberculosis is prevalent in 0.5 percent or more of the total number of herds of captive cervids in the State or zone.

Official tuberculosis test. Any of the following tests for bovine tuberculosis in captive cervids, applied and reported in accordance with this part:

(1) The single cervical tuberculin (SCT) test;

(2) The comparative cervical tuberculin (CCT) test; and

(3) The blood tuberculosis (BTB) test.

Permit. An official document issued by a representative of APHIS, a State representative, or an accredited veterinarian that must accompany any reactor, suspect, or exposed captive cervid moved interstate.

Purified protein derivative (PPD). Protein extract from an *M. bovis* culture that is resuspended in solution at a standard concentration of 1 mg protein per 1 ml of solution.

Qualified herd. A herd of captive cervids that has tested negative to at least one official tuberculosis test of all eligible captive cervids (see § 77.33(f)) within the past 12 months and that is not classified as an accredited herd.

Quarantine. Prohibition from interstate movement, except for slaughter or necropsy.

Reactor. Any captive cervid that shows a response to the SCT test or the CCT test, or is classified by the testing laboratory as "*M. bovis* positive" on the BTB test, and is classified a reactor by the testing veterinarian; or any suspect captive cervid that is classified a reactor upon slaughter inspection or necropsy after histopathology and/or culture of selected tissues by the USDA or State veterinarian performing or supervising the slaughter inspection or necropsy.

Regular-kill slaughter animal. An animal that is slaughtered for food or any reason other than because of a disease regulated under 9 CFR chapter I (such as tuberculosis, brucellosis, or any other livestock disease for which movement of animals is restricted under 9 CFR chapter I).

Single cervical tuberculin (SCT) test. The intradermal injection of 0.1 ml (5,000 tuberculin units) of USDA PPD bovis tuberculin in the mid-cervical area with a reading by visual observation and palpation at 72 hours (plus or minus 6 hours) following injection.

Suspect. Any captive cervid that is not negative to the SCT test or the CCT test, or that is classified by the testing laboratory as equivocal on the BTB test, and that is not classified as a reactor by the testing veterinarian.

Tuberculin. A product that is approved by and produced under USDA license for injection into cervids and other animals for the purpose of detecting bovine tuberculosis.

Tuberculous. Having lesions indicative of tuberculosis, infected with tuberculosis based on isolation of *M. bovis*, or being from a herd in which *M. bovis* has been isolated.

USDA. The United States Department of Agriculture.

Whole herd test. An official tuberculosis test of all test eligible animals in the herd.

Zero percent prevalence. No finding of tuberculosis in any herd of captive cervids in a State or zone.

§ 77.21 Applicability of this subpart.

All references in this subpart to the tuberculosis status of States and zones pertain to such status for captive cervids.

§ 77.22 Accredited-free States or zones.

(a) The following are accredited-free States: None.

(b) The following are accredited-free zones: None.

(c) If an affected herd is detected in a State or zone classified as accredited-free, and the herd is depopulated and a complete epidemiologic investigation is completed within 120 days of the detection of the affected herd with no evidence of the spread of tuberculosis, the State or zone may retain its accredited-free status. If two or more affected herds are detected in an accredited-free State or zone within a 48-month period, the State or zone will be removed from the list of accredited-free States or zones and will be reclassified as modified accredited advanced.

(d) If any livestock other than captive cervids are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999 edition," which is incorporated by reference at § 77.1, to those other livestock in the same manner as to captive cervids. Failure to do so will result in reclassification of the State or zone as modified accredited advanced.

(e) If tuberculosis is diagnosed within an accredited-free State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by

the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in livestock, wildlife and animals held for exhibition, the prevention of the spread of the disease to other livestock, wildlife and animals held for exhibition, increased surveillance of tuberculosis in wildlife and animals held for exhibition, eradication of tuberculosis from individual herds, a timeline for tuberculosis eradication, and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will lose its accredited-free status and will be reclassified as modified accredited advanced.

(f) Accredited-free State or zone status must be renewed annually. To qualify for renewal of accredited-free State or zone status, a State must submit an annual report to APHIS certifying that the State or zone within the State complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The report must be submitted to APHIS each year between October 1 and November 30.

§ 77.23 Interstate movement from accredited-free States and zones.

Notwithstanding any other provisions of this part, captive cervids that originate in an accredited-free State or zone may be moved interstate without restriction.

§ 77.24 Modified accredited advanced States or zones.

(a) The following are modified accredited advanced States: None.

(b) The following are modified accredited advanced zones: None.

(c) If any livestock other than captive cervids are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999 edition," which is incorporated by reference at § 77.1, for such newly assembled herds to those other livestock in the same manner as to captive cervids. Failure to do so will result in the removal of the State or zone from the list of modified accredited advanced States or zones and its being reclassified as modified accredited.

(d) If tuberculosis is diagnosed within a modified accredited advanced State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in livestock, wildlife and animals held for exhibition, the prevention of the spread of the disease to other livestock, wildlife and animals held for exhibition, increased surveillance of tuberculosis in wildlife and animals held for exhibition, eradication of tuberculosis from individual herds, a timeline for tuberculosis eradication, and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will be reclassified as modified accredited.

(e) Modified accredited advanced State or zone status must be renewed annually. To qualify for renewal of a modified accredited advanced State or zone status, a State must submit an annual report to APHIS certifying that the State or zone complies with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding modified accredited advanced States. The report must be submitted to APHIS each year between October 1 and November 30.

(f) To qualify for accredited-free status, a modified accredited advanced State or zone must demonstrate to the Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," has zero percent prevalence of affected captive cervid herds, and has had no findings of tuberculosis in any captive cervids in the State or zone for the previous 5 years. *Except that:* The requirement of freedom from tuberculosis is 2 years from the depopulation of the last affected herd in States or zones that were previously accredited-free and in which all herds affected with tuberculosis were depopulated, 3 years in all other States or zones that have depopulated all affected herds, and 3 years in States or zones that have conducted surveillance that demonstrates that other livestock herds and wildlife are not at risk of being infected with tuberculosis, as determined by the Administrator based on a risk assessment conducted by APHIS.

§ 77.25 Interstate movement from modified accredited advanced States and zones.

Captive cervids that originate in a modified accredited advanced State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

(a) The captive cervids are moved interstate directly to slaughter to an approved slaughtering establishment.

(b) Captive cervids that are from an accredited herd may be moved interstate if they are accompanied by a certificate stating that the accredited herd has completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement.

(c) If the captive cervids are breeding animals that are not from an accredited herd, they must be accompanied by a certificate stating that they have been classified negative to an official tuberculin test conducted within 90 days prior to the date of movement. All captive cervids so moved that are not individually identified by a registration name and number must be officially identified.

§ 77.26 Modified accredited States or zones.

(a) The following are modified accredited States: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, the Virgin Islands of the United States, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

(b) The following are modified accredited zones: A zone in Michigan delineated by starting at the juncture of State Route 55 and Interstate 75, then heading northwest and north along Interstate 75 to the Straits of Mackinac, then southeast and south along the shoreline of Michigan to the eastern terminus of State Route 55, then west along State Route 55 to Interstate 75; and a zone consisting of the remainder of Michigan.

(c) If any livestock other than captive cervids are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd

test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999, edition," which is incorporated by reference at § 77.1, for such newly assembled herds to those other livestock in the same manner as to captive cervids. Failure to do so will result in the removal of the State or zone from the list of modified accredited States or zones and its being reclassified as accreditation preparatory.

(d) If tuberculosis is diagnosed within a modified accredited State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in livestock, wildlife and animals held for exhibition, the prevention of the spread of the disease to other livestock, wildlife and animals held for exhibition, increased surveillance of tuberculosis in wildlife and animals held for exhibition, eradication of tuberculosis from individual herds, a timeline for tuberculosis eradication, and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will be reclassified as accreditation preparatory.

(e) Modified accredited State or zone status must be renewed annually. To qualify for renewal of a modified accredited State or zone status, a State must submit an annual report to APHIS certifying that the State or zone complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The report must be submitted to APHIS each year between October 1 and November 30.

(f) To qualify for modified accredited advanced status, a modified accredited State or zone must demonstrate to the Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and that tuberculosis has been prevalent in less than 0.01 percent of the total number of captive cervids in the State or zone for the most recent 2 years. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 30,000 herds to have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

§ 77.27 Interstate movement from modified accredited States and zones.

Except for captive cervids from a qualified herd or monitored herd, as provided in §§ 77.36 and 77.37, respectively, captive cervids that originate in a modified accredited State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

(a) The captive cervids are moved interstate directly to slaughter to an approved slaughtering establishment.

(b) Captive cervids that are from an accredited herd may be moved interstate if they are accompanied by a certificate stating that the accredited herd has completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement.

(c) If the captive cervids are breeding animals that are not from an accredited herd, they must be accompanied by a certificate stating that they have been classified negative to two official tuberculin tests conducted at least 90 days apart and no more than 6 months apart, with the second test conducted within 90 days prior to the date of movement. All captive cervids so moved that are not individually identified by a registration name and number must be officially identified.

§ 77.28 Accreditation preparatory States or zones.

(a) The following are accreditation preparatory States: None. Alabama, Arkansas, Connecticut, Delaware, Illinois, Iowa, Maryland, Massachusetts, New Mexico, Ohio, Puerto Rico, Rhode Island, the Virgin Islands of the United States, and West Virginia.

(b) The following are accreditation preparatory zones: None.

(c) If any livestock other than captive cervids are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State or zone must apply the herd test requirements contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication, January 22, 1999, edition" which is incorporated by reference at § 77.1, for such newly assembled herds to those other livestock in the same manner as to captive cervids. Failure to do so will result in the removal of the State or zone from the list of accreditation preparatory States or zones and its being reclassified as nonaccredited.

(d) If tuberculosis is diagnosed within an accreditation preparatory State or zone in an animal not specifically regulated by this part and a risk assessment conducted by APHIS determines that the outbreak poses a tuberculosis risk to livestock within the State or zone, the State or zone must implement a tuberculosis management plan, approved jointly by the State animal health official and the Administrator, within 6 months of the diagnosis. The management plan must include provisions for immediate investigation of tuberculosis in livestock, wildlife and animals held for exhibition, the prevention of the spread of the disease to other livestock, wildlife and animals held for exhibition, increased surveillance of tuberculosis in wildlife and animals held for exhibition, eradication of tuberculosis from individual herds, a timeline for tuberculosis eradication, and performance standards by which to measure yearly progress toward eradication. If a State or zone does not implement such a plan within the required 6 months, the State or zone will be reclassified as nonaccredited.

(e) Accreditation preparatory State or zone status must be renewed annually. To qualify for renewal of accreditation preparatory State or zone status, a State must submit an annual report to APHIS certifying that the State or zone complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication." The report must be submitted to APHIS each year between October 1 and November 30.

(f) To qualify for modified accredited status, an accreditation preparatory State or zone must demonstrate to the Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and that tuberculosis has been prevalent in less than 0.1 percent of the total number of herds of captive cervids in the State or zone for the most recent year. *Except that:* The Administrator, upon his or her review, may allow a State or zone with fewer than 10,000 herds to have up to 10 affected herds for the most recent year, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

§ 77.29 Interstate movement from accreditation preparatory States and zones.

Except for captive cervids from a qualified herd or monitored herd, as provided in §§ 77.36 and 77.37, respectively, captive cervids that

originate in an accreditation preparatory State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

(a) The captive cervids are moved interstate directly to slaughter to an approved slaughtering establishment.

(b) Captive cervids that are from an accredited herd may be moved interstate if they are accompanied by a certificate stating that the accredited herd has completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement, and that the animals to be moved have been classified negative to an official tuberculin test conducted within 90 days prior to the date of movement. All captive cervids that are so moved that are not individually identified by a registration name and number must be officially identified.

(c) If the captive cervids are breeding animals that are not from an accredited herd, they must be accompanied by a certificate stating that they originated in a herd that has undergone a tuberculosis herd test with negative results conducted within 1 year prior to the date of movement, and that the animals to be moved have been classified negative to two additional official tuberculin tests conducted at least 90 days apart and no more than 6 months apart, with the second test conducted within 90 days prior to the date of movement. All captive cervids so moved that are not individually identified by a registration name and number must be officially identified.

§ 77.30 Nonaccredited States or zones.

(a) The following are nonaccredited States: None.

(b) The following are nonaccredited zones: None.

(c) To qualify for accreditation preparatory status, a nonaccredited State or zone must demonstrate to the Administrator that it complies with the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" and that tuberculosis is prevalent in less than 0.5 percent of the total number of herds of captive cervids in the State or zone.

§ 77.31 Interstate movement from nonaccredited States and zones.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, captive cervids that originate in a nonaccredited State or zone and that are not known to be infected with or exposed to tuberculosis may not be moved interstate.

(b) If the captive cervids are from an accredited herd, they may be moved interstate if they are moved in an officially sealed means of conveyance accompanied by a certificate showing that the captive cervids are from an accredited herd that has completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement, and that they have been classified negative to an official tuberculin test conducted within 90 days prior to the date of movement.

(c) If the captive cervids are from a qualified herd or a monitored herd, they may be moved interstate if they meet the conditions of § 77.36 for qualified herds or § 77.37 for monitored herds.

(d) Captive cervids may be moved interstate if they are accompanied by VS Form 1–27 and are moved interstate in an officially sealed means of conveyance directly to slaughter to an approved slaughtering establishment.

§ 77.32 General restrictions.

(a) Except for movement from accredited States and zones in accordance with § 77.23, movement from accredited herds in accordance with § 77.35, and movement to slaughter in accordance with §§ 77.25(a), 77.27(a), 77.29(a), and 77.31(d), no captive cervid may be moved interstate unless it has been tested using an official tuberculosis test, and it is moved in compliance with this part.

(b) No captive cervid with a response to any official tuberculosis test is eligible for interstate movement unless the captive cervid subsequently tests negative to a supplemental official tuberculosis test or is moved interstate directly to slaughter or necropsy in accordance with § 77.40.

(c) Except for captive cervids moving interstate under permit directly to slaughter or necropsy under § 77.40, each captive cervid or shipment of captive cervids to be moved interstate must be accompanied by a certificate issued within 30 days of the movement by a State or Federal animal health official or an accredited veterinarian.

(d) Captive cervids in zoological parks that have been accredited by the American Zoo and Aquarium Association (AZA) are exempt from the regulations in this part when the captive cervids are moved directly interstate between AZA member facilities. Any captive cervids moved interstate that are not moved directly from an AZA member facility to another AZA member facility must be moved in accordance with the regulations in this subpart.

§ 77.33 Testing procedures for tuberculosis in captive cervids.

(a) *Approved testers.* Except as explained in paragraphs (a)(1) and (a)(2) of this section, official tuberculosis tests may only be given by a veterinarian employed by the State in which the test is administered or by a veterinarian employed by USDA.

(1) A designated accredited veterinarian may conduct the SCT test, except as provided in § 77.34(a)(2) and § 77.39(e) and (f).

(2) Any accredited veterinarian may conduct the BTB test.

(b) *Approved diagnostic laboratories.*

(1) With one exception, histopathology and culture results for all tuberculosis diagnoses will be accepted only from the National Veterinary Services Laboratories (NVSL) in Ames, Iowa. The exception is that results will be accepted from a laboratory of the Food Safety and Inspection Service, USDA, for tissue examination of regular-kill slaughter animals in those cases where no submission is made to NVSL.

(2) The following laboratory is approved to perform the BTB test: Texas Veterinary Medical Center laboratory at Texas A&M University in College Station, Texas.

(c) Identification. Any captive cervid tested with an official tuberculosis test must bear official identification in the form of an official eartag, or another identification device or method approved by the Administrator as unique and traceable, at the time of the official tuberculosis test. Use of any identification device or method other than an official eartag must first be approved by the Administrator as unique and traceable. Written requests for approval must be sent to National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231.

(d) *Reporting of tests.*

(1) *SCT and CCT tests.* For the SCT and CCT tests, the testing veterinarian must submit a report to cooperating State and Federal animal health officials of the State in which the captive cervid is tested. The report must include the following information for all SCT and CCT tests administered: The number of the individual eartag or other identification approved by the Administrator; the age, sex, and breed of each captive cervid tested; a record of all responses; the size of each response for the CCT test; and the test interpretation.

(2) *BTB test.* Copies of the BTB test results must be submitted by the testing laboratory to the person, firm, or corporation responsible for the

management of the herd, cooperating State and Federal animal health officials of the State in which the captive cervid is tested, and the testing veterinarian. The report must include the following information for all BTB tests administered: The number of the individual eartag or other identification approved by the Administrator; the age, sex, and breed of each captive cervid tested; the test interpretation, and a summary of supporting data. Full supporting data must be submitted by the testing laboratory on a case-by-case basis at the request of cooperating State and Federal animal health officials.

(e) *Test interpretation.*

(1) Interpretation of an SCT test will be based upon the judgment of the testing veterinarian after observation and palpation of the injection site, in accordance with the classification requirements described in § 77.34(a).

(2) Interpretation of a CCT test will be in accordance with the classification requirements described in § 77.34(b).

(3) Interpretation of a BTB test will be in accordance with the patented standards for the BTB test [1] and the classification requirements described in § 77.34(c).

(f) *Captive cervids eligible for testing.* Except as provided in § 77.35(a)(1) and § 77.36(a)(1), testing of herds for individual herd classification must include all captive cervids 1 year of age or over and any captive cervids other than natural additions (captive cervids born into the herd) under 1 year of age.

§ 77.34 Official tuberculosis tests.

(a) *Single cervical tuberculin (SCT) test.*

(1) The SCT test is the primary test to be used in individual captive cervids and in herds of unknown tuberculous status. Each captive cervid that responds to the SCT test must be classified as a suspect until it is retested with either the CCT test or the BTB test and is either found negative for tuberculosis or is classified as a reactor; unless, with the exception of a designated accredited veterinarian, the testing veterinarian determines that the captive cervid should be classified as a reactor based on its response to the SCT test. A designated accredited veterinarian must classify a responding captive cervid as a suspect, unless the DTE determines, based on epidemiological evidence, that the captive cervid should be classified as a reactor.

(2) The SCT test is the primary test to be used in affected herds and in herds that have received captive cervids from an affected herd. When used with affected herds or in herds that have received captive cervids from an affected herd, the SCT test may only be administered by a veterinarian employed by the State in which the test is administered or employed by USDA. In affected herds or herds that have received captive cervids from an affected herd, each captive cervid that responds to the SCT test must be classified as a reactor, unless the DTE determines that the captive cervid should be classified as a suspect because of possible exposure to a tuberculous animal.

(b) *Comparative cervical tuberculin (CCT) test.*

(1) The CCT test is a supplemental test that may only be used for retesting captive cervids classified as suspects. The CCT test may be used in affected herds only after the herd has tested negative to at least two whole herd SCT tests and only with the prior written consent of the DTE. The CCT test may not be used as a primary test for herds of unknown tuberculous status.

(2) A captive cervid tested with the CCT test must be classified as negative if it has a response to the bovine PPD tuberculin that is less than 1 mm.

(3) Unless the testing veterinarian determines that the captive cervid should be classified as a reactor because of possible exposure to a tuberculous animal, a captive cervid tested with the CCT test must be classified as a suspect if:

(i) It has a response to the bovine PPD tuberculin that is greater than 2 mm and that is equal to the response to the avian PPD tuberculin; or

(ii) It has a response to the bovine PPD tuberculin that is equal to or greater than 1 mm and equal to or less than 2 mm and that is equal to or greater than the response to the avian PPD tuberculin.

(4) A captive cervid tested with the CCT test must be classified as a reactor if:

(i) It has a response to the bovine PPD tuberculin that is greater than 2 mm and that is at least 0.5 mm greater than the response to the avian PPD tuberculin; or

(ii) It has been classified as a suspect on two successive CCT tests.

(iii) Any exceptions to reactor classification under the conditions in paragraphs (b)(4)(i) and (b)(4)(ii) of this section must be justified by the testing veterinarian in writing and have the concurrence of the DTE.

(c) *Blood tuberculosis (BTB) test.*

(1) The BTB test is a supplemental test that may be used in place of the CCT test for retesting captive cervids classified as suspects.

(2) Except as provided in § 77.39(e), any captive cervid classified by the testing laboratory as "equivocal" will be classified as a suspect.

(3) Any captive cervid classified by the testing laboratory as "*M.* bovis positive" will be classified as a reactor.

(4) Any captive cervid classified by the testing laboratory as "avian" or "negative" will be considered negative for tuberculosis.

(5) The owner of the captive cervid tested is responsible for the cost of the BTB test.

§ 77.35 Interstate movement from accredited herds.

(a) *Qualifications.* To be recognized as an accredited herd:

(1) All captive cervids in the herd eligible for testing in accordance with § 77.33(f) must have tested negative to at least three consecutive official tuberculosis tests, conducted at 9–15 month intervals. However, captive cervids under 1 year of age that are not natural additions to the herd do not have to be tested if they were born in and originate from an accredited herd.

(2) The owner of the herd must have a document issued by cooperating State or Federal animal health officials stating that the herd has met the requirements in paragraph (a)(1) of this section and is classified as an accredited herd.

(b) *Movement allowed.* Except as provided in § 77.23 with regard to captive cervids that originate in an accredited-free State or zone, a captive cervid from an accredited herd may be moved interstate without further tuberculosis testing only if it is accompanied by a certificate, as provided in § 77.32(c), that includes a statement that the captive cervid is from an accredited herd. If a group of captive cervids from an accredited herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one certificate.

(c) *Herd additions allowed.* No captive cervid may be added to an accredited herd except in accordance with paragraphs (c)(4) and (c)(5), and either paragraph (c)(1), (c)(2), or (c)(3) of this section, as follows:

(1) The captive cervid to be added must be moved directly from an accredited herd;

(2) The captive cervid to be added must be moved directly from a qualified or monitored herd and must have tested negative to an official tuberculosis test

[1] The patented standards for the BTB test may be obtained from the Texas Veterinary Medial Center, College of Veterinary Medicine, Texas A&M University, College Sation, TX, or from the Deer Research Laboratory, Department of Microbiology, University of Otago, P.O. Box 56, Dunedin, New Zealand.

conducted within 90 days prior to movement to the premises of the accredited herd. Any captive cervid moved from a qualified or monitored herd must also be isolated from all members of the accredited herd until it tests negative to an official tuberculosis test conducted at least 90 days following the date of arrival at the premises of the accredited herd. If a group of captive cervids is being moved together, the entire group must be isolated from all other livestock during the testing period, but captive cervids in the group need not be isolated from each other during that period. Such herd additions will not receive status as members of the accredited herd for purposes of interstate movement until they have tested negative to an official tuberculosis test and have been released from isolation; or

(3) If the captive cervid to be added is not being moved directly from a classified herd, the captive cervid must be isolated from all other members of the herd of origin and must test negative to two official tuberculosis tests. The isolation must begin at the time of the first official tuberculosis test. The tests must be conducted at least 90 days apart, and the second test must be conducted within 90 days prior to movement to the premises of the accredited herd. The captive cervid must also be isolated from all members of the accredited herd until it tests negative to an official tuberculosis test conducted at least 90 days following the date of arrival at the premises of the accredited herd. If a group of captive cervids is being moved together, the entire group must be isolated from all other animals during the testing period, but captive cervids in the group need not be isolated from each other during that period. Such herd additions will not receive status as members of the accredited herd for purposes of interstate movement until they have tested negative to an official tuberculosis test and have been released from isolation.

(4) A captive cervid to be added must not have been exposed during the 90 days prior to its movement to either:

(i) A captive cervid from a herd with a lower classification status than its own; or

(ii) Any tuberculous livestock.

(d) *Maintenance of accredited herd status.* To maintain status as an accredited herd, the herd must test negative to an official tuberculosis test within 21–27 months from the anniversary date of the third consecutive test with no evidence of tuberculosis disclosed (that is, the test on which the herd was recognized as accredited or the accrediting test). Each time the herd is tested for reaccreditation, it must be tested 21–27 months from the anniversary date of the accrediting test, not from the last date of reaccreditation (for example, if a herd is accredited on January 1 of a given year, the anniversary date will be January 1 of every second year). Accredited herd status is valid for 24 months (730 days) from the anniversary date of the accrediting test. If the herd is tested between 24 and 27 months after the anniversary date, its accredited herd status will be suspended for the interim between the anniversary date and the reaccreditation test. During the suspension period, the herd will be considered "unclassified" and captive cervids may be moved interstate from the herd only in accordance the movement requirements for the State or zone in which the herd is located.

§ 77.36 Interstate movement from qualified herds.

(a) *Qualifications.* To be recognized as a qualified herd:

(1) All captive cervids in the herd eligible for testing in accordance with § 77.33(f) must have tested negative to one official tuberculosis test that was administered to the herd within a 7-month period. However, captive cervids under 1 year of age that are not natural additions do not have to be tested if they were born in and originate from an accredited, qualified, or monitored herd.

(2) The owner of the herd must have a document issued by cooperating State and Federal animal health officials stating that the herd has met the requirement in paragraph (a)(1) of this section and is classified as a qualified herd.

(b) *Movement allowed.* Except as provided in § 77.23 with regard to captive cervids that originate in an accredited-free State or zone, a captive cervid from a qualified herd may be moved interstate only if:

(1) The captive cervid is not known to be infected with or exposed to tuberculosis; and

(2) The captive cervid is accompanied by a certificate, as provided in § 77.32(c), that includes a statement that the captive cervid is from a qualified herd. Except as provided in paragraphs (b)(3) and (b)(4) of this section, the certificate must also state that the captive cervid has tested negative to an official tuberculosis test conducted within 90 days prior to the date of movement. If a group of captive cervids from a qualified herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one certificate.

(3) Captive cervids under 1 year of age that are natural additions to the qualified herd or that were born in and originate from a classified herd may move without testing, provided that the certificate accompanying them states that the captive cervids are natural additions to the qualified herd or were born in and originated from a classified herd and have not been exposed to captive cervids from an unclassified herd.

(4) Captive cervids being moved interstate for the purpose of exhibition only may be moved without testing, provided they are returned to the premises of origin no more than 90 days after leaving the premises, have no contact with other livestock during movement and exhibition, and are accompanied by a certificate that includes a statement that the captive cervid is from a qualified herd and will otherwise meet the requirements of this paragraph.

(c) *Herd additions allowed.* No captive cervid may be added to a qualified herd except in accordance with paragraph (c)(4) and either paragraph (c)(1), (c)(2), or (c)(3) of this section, as follows:

(1) The captive cervid to be added must be moved directly from an accredited herd;

(2) The captive cervid to be added must be moved directly from a qualified or monitored herd and must have tested negative to an official tuberculosis test conducted within 90 days prior to movement to the premises of the accredited herd;

(3) If the captive cervid to be added is not being moved directly from a classified herd, the captive cervid must be isolated from all other animals in its herd of origin and must test negative to two official tuberculosis tests prior to movement. The isolation must begin at the time of the first official tuberculosis test. The tests must be conducted at least 90 days apart, and the second test must be conducted within 90 days prior to movement to the premises of the qualified herd. The captive cervid must then be kept in insolation from all animals until it tests negative to an official tuberculosis test conducted at least 90 days following the date of arrival at the premises of the qualified herd. If a group of captive cervids is being moved together, the entire group must be isolated from all other livestock during the testing period, but captive cervids in the group need not be isolated from each other during that period. Such herd additions will not receive status as members of the

qualified herd for purposes of interstate movement until they have tested negative to an official tuberculosis test and been released from isolation.

(4) A captive cervid to be added must not have been exposed during the 90 days prior to its movement to either:

(i) A captive cervid from a herd with a lower classification status than its own; or

(ii) Any tuberculous livestock.

(d) *Maintenance of qualified herd status.* To maintain status as a qualified herd, the herd must test negative to an official tuberculosis test within 9–15 months from the anniversary date of the first test with no evidence of tuberculosis disclosed (this is the qualifying test). Each time the herd is retested for qualified status, it must be tested 9–15 months from the anniversary date of the qualifying test, not from the last date of requalification (for example, if a herd is qualified on January 1 of a given year, the anniversary date will be January 1 of each consecutive year). Qualified herd status remains in effect for 12 months (365 days) following the anniversary date of the qualifying test. Qualified herd status will be suspended between the anniversary date and the requalifying test, if the herd is not tested within 12 months. During the suspension period, the herd will be considered "unclassified" and captive cervids may be moved interstate from the herd only in accordance with the movement requirements for the State or zone in which the herd is located.

§ 77.37 Interstate movement from monitored herds.

(a) *Qualifications.* To be recognized as a monitored herd:

(1) Identification records must be maintained by the person, firm, or corporation responsible for the management of the herd for as long as status as a monitored herd is desired. Such records must be maintained on all captive cervids in the herd that are slaughtered, inspected, and found negative for tuberculosis at an approved slaughtering establishment or necropsied at an approved diagnostic laboratory. Identification records may also include captive cervids from the herd that tested negative for tuberculosis in accordance with requirements for interstate movement. No less than one half of the captive cervids on which records are kept must be slaughter inspected; and

(2) A sufficient number of captive cervids in the herd must be slaughter inspected or tested for interstate movement to ensure that tuberculosis infection at a prevalence level of 2 percent or more will be detected with a confidence level of 95 percent.[2] A maximum number of 178 captive cervids must be slaughter inspected or tested for interstate movement over a 3-year period to meet this requirement.

(b) *Movement allowed.* Except as provided in § 77.23 with regard to captive cervids that originate in an accredited-free State or zone, a captive cervid from a monitored herd may be moved interstate only if:

(1) The captive cervid is not known to be infected with or exposed to tuberculosis; and

(2) The captive cervid is accompanied by a certificate, as provided in § 77.32(c), that includes a statement that the captive cervid is from a monitored herd. Except as provided in paragraph (b)(3) of this section, the certificate must also state that the captive cervid has tested negative to an official tuberculosis test conducted within 90 days prior to the date of movement. If a group of captive cervids from a monitored herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one certificate.

(3) Captive cervids under 1 year of age that are natural additions to the monitored herd or that were born in and originate from a classified herd may move without testing, provided that the certificate accompanying them states that the captive cervids are natural additions to the monitored herd or were born in and originated from a classified herd and have not been exposed to captive cervids from an unclassified herd.

(c) *Herd additions allowed.* No captive cervid may be added to a monitored herd except in accordance with paragraph (c)(4) and either paragraph (c)(1), (c)(2), or (c)(3) of this section, as follows:

(1) The captive cervid to be added must be moved directly from an accredited herd;

(2) The captive cervid to be added must be moved directly from a qualified or monitored herd and must have tested negative to an official tuberculosis test conducted within 90 days prior to movement to the premises of the monitored herd; or

(3) If the captive cervid to be added is not being moved directly from a classified herd, the captive cervid must be isolated from all other animals and must test negative to two official tuberculosis tests. The isolation must begin at the time of the first official tuberculosis test. The tests must be conducted at least 90 days apart, and the second test must be conducted within 90 days prior to movement to the premises of the monitored herd. The captive cervid must then be kept in isolation from all animals until it tests negative to an official tuberculosis test conducted at least 90 days following the date it arrives at the premises of the monitored herd. If a group of captive cervids is being moved together, the entire group must be isolated from all other animals during the testing period, but captive cervids in the group need not be isolated from each other during that period. Such herd additions will not receive status as members of the monitored herd for purposes of interstate movement until they have tested negative to an official tuberculosis test and been released from isolation.

(4) A captive cervid to be added must not have been exposed during the 90 days prior to its movement to either:

(i) A captive cervid from a herd with a lower classification status than its own; or

(ii) Any tuberculous livestock.

(d) *Maintenance of monitored herd status.* The person, firm, or corporation responsible for the management of the herd must submit an annual report to cooperating State or Federal animal health officials prior to the anniversary date of classification. This report must give the number of captive cervids currently in the herd; the number of captive cervids from the herd 1 year of age and older identified, slaughtered, and inspected at an approved slaughtering establishment or necropsied at an approved diagnostic laboratory during the preceding year; and the number of captive cervids that have tested negative for tuberculosis in accordance with interstate movement requirements. The number of slaughter inspections or negative testing captive cervids reported in any given year must be at least 25 percent of the total number required over a 3-year period to qualify a herd for monitored herd status. During each consecutive 3-year period, 100 percent of the qualifying total must be reported.

§ 77.38 Interstate movement from herds that are not accredited, qualified, or monitored.

The Administrator may, with the concurrence of the cooperating State animal health officials of the State of destination, and upon request in

[2] A chart showing the number of captive cervids that must be slaughter inspected or tested for interstate movement, depending on the size of a heard, to meet this requirement may be obtained from the National Animal Health Program staff, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231.

specific cases, permit the movement of captive cervids not otherwise provided for in this part which have not been classified as reactors and are not otherwise known to be affected with tuberculosis, under such conditions as the Administrator may prescribe in each specific case to prevent the spread of tuberculosis. The Administrator shall promptly notify the appropriate cooperating State animal health officials of the State of destination of any such action.

§ 77.39 Other interstate movements.

(a) *Herds containing a suspect*

(1) *The suspect.*

(i) A captive cervid classified as a suspect on the SCT test must be quarantined until it is slaughtered or retested by the CCT test or the BTB test and found negative for tuberculosis. Retesting must be as follows:

(A) The first CCT test must be administered within the first 10 days following the SCT test or, if not, must be administered at least 90 days after the SCT test. If the CCT test is administered within 10 days of the SCT test, the injection must be on the side of the neck opposite the injection for the SCT test.

(B) The sample for the first BTB test may not be taken until at least 12 days after the injection for the SCT test. It is recommended that the sample be taken within 30 days following the injection for the SCT test.

(ii) A captive cervid classified as a suspect on the first CCT test or the first BTB test must be quarantined until the following has occurred:

(A) A suspect on the first CCT test is tested with a second CCT test at least 90 days after the first CCT test and is found negative for tuberculosis; or

(B) A suspect on the first BTB test is tested with a second BTB test and is found negative for tuberculosis. It is recommended that the captive cervid be tested with the second BTB test within 60 days following the injection for the SCT test.

(2) *The remainder of the herd.* Any herd containing a suspect to an official tuberculosis test must be quarantined until the suspect is retested by the CCT test or the BTB test and found negative for tuberculosis, or the suspect is inspected at slaughter or necropsied and found negative for tuberculosis after histopathology and culture of selected tissues. If the suspect is found negative for tuberculosis upon testing, or after slaughter inspection or necropsy and histopathology and culture of selected tissues, the herd may be released from quarantine and will return to the herd classification status in effect before the herd was quarantined. If the suspect is classified as a reactor upon testing, or after slaughter inspection or necropsy and histopathology and/or culture of selected tissues, the herd may be released from quarantine only in accordance with paragraph (b) of this section for herds containing a reactor.

(b) *Herds containing a reactor.* The following requirements apply to herds containing a reactor, except for herds that have received captive cervids from an affected herd. Herds that have received captive cervids from an affected herd must be quarantined and tested in accordance with paragraph (e) of this section.

(1) *The reactor.* Captive cervids classified as reactors must be quarantined.

(2) *The remainder of the herd.* Any herd containing reactors must be quarantined until the reactors are slaughtered or necropsied in accordance with § 77.40 and:

(i) If upon slaughter inspection or necropsy any reactors exhibit lesions compatible with or suggestive of tuberculosis, found by histopathology, without the isolation of *M. bovis*, the remainder of the herd may be released from quarantine in accordance with the provisions of paragraph (c) of this section.

(ii) If *M. bovis* is isolated from any reactors, the remainder of the herd will be considered an affected herd, and will be subject to the provisions for affected herds in paragraph (d) of this section.

(iii) If upon slaughter inspection or necropsy all reactors exhibit no gross lesions (NGL) of tuberculosis and no evidence of tuberculosis infection is found by histopathology and culture of *M. bovis* on specimens taken from the NGL animals, the remainder of the herd may be released from quarantine, and captive cervids from the herd may be moved interstate in accordance with the herd classification status in effect before the herd was quarantined if one of the following conditions is met:

(A) The remainder of the herd is given a whole herd test and is found negative for tuberculosis.

(B) The remainder of the herd is given a whole herd test, and all reactors to the whole herd test exhibit no gross lesions (NGL) of tuberculosis upon slaughter inspection or necropsy and no evidence of tuberculosis infection is found by histopathology or culture of *M. bovis* on specimens taken from the NGL animals.

(iv) If no evidence of tuberculosis is found in any reactor upon slaughter inspection or necropsy, but it is not possible to conduct a whole herd test on the remainder of the herd, the herd will be evaluated, based on criteria such as the testing history of the herd and the State history of tuberculosis infection, by the DTE to determine whether the herd may be released from quarantine.

(c) *Herds found to have only lesions of tuberculosis.* A herd in which captive cervids with lesions compatible with or suggestive of tuberculosis are found by histopathology without the isolation of *M. bovis* may be released from quarantine and return to the herd classification status in effect before the herd was quarantined, with the concurrence of the DTE, if the herd tests negative to tuberculosis on a whole herd test conducted 90 days following the removal of the lesioned captive cervid, provided the herd has not been exposed to *M. bovis* during the 90 days. To maintain its herd classification status, the herd must test negative to two annual whole herd tests beginning 10–12 months after the herd is released from quarantine. If any captive cervids in the herd respond to one of the tests, the herd will be subject to the provisions of paragraph (a) or (b) of this section. If the herd is not given the two annual whole herd tests, it will become an unclassified herd.

(d) *Affected herds.* A herd determined to be an affected herd must be quarantined until the herd has tested negative to three whole herd tests in succession, with the first test given 90 days or more after the last test yielding a reactor and the last two tests given at intervals of not less than 180 days. If the herd tests negative to the three whole herd tests, it will be released from quarantine, but will be considered an unclassified herd, and captive cervids may only be moved interstate from the herd in accordance with the movement requirements for the State or zone in which the herd is located. In addition, the herd must be given five consecutive annual whole herd tests after release from quarantine. (These five tests will count toward qualifying the herd for herd classification.) As an alternative to testing, the herd may be depopulated.

(e) *Herds that have received captive cervids from an affected herd.* If a herd has received captive cervids from an affected herd, the captive cervids from the affected herd of origin will be considered exposed to tuberculosis. The exposed captive cervids and the receiving herd must be quarantined. The exposed captive cervids must be slaughtered, necropsied, or tested with the SCT test by a veterinarian employed by the State in which the test is administered or employed by USDA. The BTB test may be used simultaneously with the SCT test as an additional diagnostic test. Any exposed captive cervid that responds to the SCT

test or tests "*M. bovis* positive" or "equivocal" on the BTB test must be classified as a reactor and must be slaughter inspected or necropsied. Any exposed captive cervid that tests negative to the SCT test or tests "avian" or "negative" on the BTB test will be considered as part of the affected herd of origin for purposes of testing, quarantine, and the five annual whole herd tests required for affected herds in paragraph (d) of this section.

(1) If bovine tuberculosis is confirmed in any of the exposed captive cervids by bacterial isolation of *M. bovis*, the receiving herd will be classified as an affected herd and will be subject to the provisions for affected herds in paragraph (d) of this section.

(2) If any of the exposed captive cervids are found to exhibit lesions compatible with or suggestive of tuberculosis, found by histopathology, without the isolation of *M. bovis*, the receiving herd will be subject to appropriate testing as determined by the DTE.

(3) If all the exposed captive cervids test negative for tuberculosis, the receiving herd will be released from quarantine if it is given a whole herd test and is found negative for tuberculosis and will return to the herd classification in effect before the herd was quarantined. In addition, the receiving herd must be retested with the SCT test 1 year after release from quarantine in order for captive cervids from the herd to continue to be moved interstate. Supplemental diagnostic tests may be used if any captive cervids in the herd show a response to the SCT test.

(f) *Source herds.* A herd suspected of being the source of tuberculous captive cervids based on a slaughter traceback investigation must be quarantined upon notification (by the person conducting the investigation) to the USDA Area Veterinarian in Charge for the State in which the herd resides, and a herd test must be scheduled. If the herd is suspected of being the source of slaughter captive cervids having lesions of tuberculosis, the herd test must be done by a veterinarian employed by the State in which the test is administered or employed by USDA.

(1) If the herd is identified as the source of captive cervids having lesions of tuberculosis and *M. bovis* has been confirmed by bacterial isolation from the slaughter animal, all captive cervids in the herd that respond to the SCT test must be classified as reactors. If none respond to the SCT test, the herd may be released from quarantine and will return to the herd classification status in effect before the herd was quarantined, unless the DTE judges that additional testing is appropriate to ensure the herd's freedom from tuberculosis.

(2) If the herd is identified as the source of captive cervids that exhibit lesions compatible with or suggestive of tuberculosis, found by histopathology, without the isolation of *M. bovis*, all captive cervids in the herd that respond to the SCT test must be classified as suspects, and supplemental tests must be applied.

(3) If the herd is not identified as the source herd, the herd will be released from quarantine if the herd is given a whole herd test and is found negative for tuberculosis. The herd will then return to the herd classification status in effect before the herd was quarantined.

(g) *Newly assembled herds.*

(1) A newly assembled herd will be classified as having the herd status of the herd from which the captive cervids originated. If the herd is assembled from captive cervids from more than one herd, it will be classified as having the herd status of the originating herd with the lowest status. A newly assembled herd will also assume the testing schedule of the herd status it is given. Captive cervids in the herd must have no exposure to captive cervids from a herd of lesser status than the herd of origin determining the status of the newly assembled herd or to any tuberculous livestock.

(2) A herd newly assembled on premises where a tuberculous herd has been depopulated must be given two consecutive annual whole herd tests. The first test must be administered at least 6 months after the assembly of the new herd. If the whole herd tests are not conducted within the indicated time frame, the herd will be quarantined. If the herd tests negative to the two whole herd tests, there are no further requirements. If any captive cervid in the herd responds on one of the whole herd tests, the herd will be subject to the provisions of paragraph (a) or (b) of this section. If the premises has been vacant for more than 1 year preceding the assembly of the new herd on the premises, these requirements may be waived if the risk of tuberculosis transmission to the newly assembled herd is deemed negligible by cooperating State and Federal animal health officials.

§ 77.40 Procedures for and interstate movement to necropsy and slaughter.

(a) *Procedures for necropsy and slaughter.*

(1) A necropsy must be performed by or under the supervision of a veterinarian who is employed by USDA or employed by the State in which the captive cervid was classified, and who is trained in tuberculosis necropsy procedures.

(2) If, upon necropsy, a captive cervid is found without evidence of *M. bovis* infection by histopathology and culture, the captive cervid will be considered negative for tuberculosis.

(3) Reactors, suspects, and exposed captive cervids may be slaughtered only at an approved slaughtering establishment, as defined in § 77.20.

(b) *Interstate movement to necropsy or slaughter.*

(1) *Permit.* Any reactor, suspect, or exposed captive cervid to be moved interstate to necropsy or slaughter must be accompanied by a permit issued by a representative of APHIS, a State representative, or an accredited veterinarian. The captive cervid must remain on the premises where it was identified as a reactor, suspect, or exposed captive cervid until a permit for its movement is obtained. No stopover or diversion from the destination listed on the permit is allowed. If a change in destination becomes necessary, a new permit must be obtained from a cooperating State or Federal animal health official or an accredited veterinarian before the interstate movement begins. The permit must list:

(i) The classification of the captive cervid (reactor, suspect, or exposed);

(ii) The reactor eartag number or, for suspects and exposed captive cervids, the official eartag or other approved identification number;

(iii) The owner's name and address;

(iv) The origin and destination of the captive cervids;

(v) The number of captive cervids covered by the permit; and

(vi) The purpose of the movement.

(2) *Identification of reactors.* Reactors must be tagged with an official eartag attached to the left ear and bearing a serial number and the inscription "U.S. Reactor," and either:

(i) Branded with the letter "T" high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size; or

(ii) Permanently identified by the letters "TB" tattooed legibly in the left ear, sprayed on the left ear with yellow paint, and either accompanied directly to necropsy or slaughter by an APHIS or State representative or moved directly to necropsy or slaughter in a vehicle closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(3) *Identification of exposed captive cervids.* Exposed captive cervids must be identified by an official eartag or other approved identification and either:

(i) Branded with the letter "S" high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size; or

(ii) Either accompanied directly to necropsy or slaughter by an APHIS or State representative or moved directly to necropsy or slaughter in a vehicle closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

§ 77.41 Cleaning and disinfection of premises, conveyances, and materials.

All conveyances and associated equipment, premises, and structures that are used for receiving, holding, shipping, loading, unloading, and delivering captive cervids in connection with their interstate movement and that are determined by cooperating State and Federal animal health officials to be contaminated because of occupation or use by tuberculous or reactor livestock must be cleaned and disinfected under the supervision of the cooperating State or Federal animal health officials. Such cleaning and disinfecting must be done in accordance with the procedures approved by the cooperating State or Federal animal health officials. Cleaning and disinfection must be completed before the premises, conveyances, or materials may again be used to convey, hold, or in any way come in contact with any livestock.

Done in Washington, DC, this 28th day of February 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–5165 Filed 3–6–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–ANE–56–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney JT9D series turbofan engines. This proposal would require initial and repetitive detailed eddy current inspections for cracks in 1st stage high pressure turbine (HPT) disks, and, if necessary, replacement with serviceable parts. This proposal is prompted by the finding of a crack in the web of one cooling air hole on a 1st stage HPT disk. The actions specified by the proposed AD are intended to prevent 1st stage HPT disk cracking, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by May 8, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-ANE–56-AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 0610; telephone 860–565–8770, fax 860–565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7134, fax 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–ANE–56–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–ANE–56–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received a report of a cracked 1st stage high pressure turbine (HPT) disk installed on a Pratt & Whitney (PW) Model JT9D–7R4E turbofan engine. The crack was found during a routine maintenance inspection. The investigation revealed a 4-inch radial crack on the HPT 1st stage disk progressing through the web of one cooling air hole. The subject disk was returned to PW for investigation. Eddy current inspection (ECI) and fluorescent penetrant inspection (FPI) of the disk revealed axial indications on the surface of one 0.313–0.323 inch diameter cooling air hole surface that progressed completely through the web. Further examination revealed a severely worked layer extending to a maximum depth of 0.006 inch from the surface of the hole. No other cooling air hole exhibited cracks. This condition, if not corrected, could result in 1st stage HPT disk cracking, which could result in an uncontained engine failure and damage to the aircraft.

Service Information

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) JT9D–7R4–A72–563, and ASB JT9D A6367, both dated July 28, 1999, that describe procedures for detailed ECI of 1st stage HPT disks for cracks.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial and repetitive detailed ECI for cracks in 1st stage HPT disks, and, if necessary, replacement with serviceable parts. The actions would be required to be accomplished in accordance with the ASB described previously.

Economic Analysis

There are approximately 330 engines of the affected design in the worldwide fleet. The FAA estimates that 220 engines installed on aircraft of US registry would be affected by this proposed AD, that it would take approximately 4.5 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $165,000 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $36,359,400.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order No. 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order No. 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 99–ANE–56–AD.

Applicability: Pratt & Whitney (PW) JT9D–7R4D, –7R4D1, –7R4E, –7R4E1 (AI–500), –7, –7A, –7AH, –7H, –7F, and –20 series turbofan engines, installed on but not limited to Boeing 747 and 767 series, McDonnell Douglas DC–10 series, and Airbus Industrie A300 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent 1st stage high pressure turbine (HPT) disk cracking, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

JT9D Series

(a) For PW JT9D–7, –7A, –7AH, –7H, –7F, and –20 series turbofan engines, with 1st stage HPT disks, part numbers (P/Ns) 761401, 811401, 823401, 825601, 826001, and 826301:

Initial Inspection

(1) Perform the initial detailed eddy current inspection (ECI) for cracks in accordance with the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. JT9D A6367, dated July 28, 1999.

(2) Inspect at the following compliance times, depending on whether parts have had prior fluorescent penetrant inspections (FPI) or not.

Initial Compliance Times

No Prior FPI

(3) The following are the initial compliance times for parts that have had no prior FPI:

(i) For disks with more than 8,000 total part cycles-since-new (CSN) on the effective date of this AD, inspect within 250 cycles-in-service (CIS) after the effective date of this AD.

(ii) For disks with at least 6,000 CSN though no more than 8,000 total part CSN on the effective date of this AD, inspect within 1,000 CIS after the effective date of this AD.

(iii) For disks with at least 4,000 CSN though no more than 5,999 total part CSN on the effective date of this AD, inspect within 2,000 CIS after the effective date of this AD.

(iv) For disks with less than 4,000 total part CSN on the effective date of this AD, inspect prior to accumulating 6,000 total part CSN.

Prior FPI Accomplished

(4) The following are the initial compliance times for parts that have had a previous FPI:

(i) For disks with more than 8,000 CIS since last FPI on the effective date of this AD, inspect within 250 CIS after the effective date of this AD.

(ii) For disks with at least 6,000 CSN though no more than 8,000 CIS since last FPI on the effective date of this AD, inspect within 1,000 CIS after the effective date of this AD.

(iii) For disks with at least 4,000 CSN though no more than 5,999 CIS since last FPI on the effective date of this AD, inspect within 2,000 CIS after the effective date of this AD.

(iv) For disks with less than 4,000 CIS since last FPI on the effective date of this AD, inspect prior to accumulating 6,000 CIS since last FPI on the effective date of this AD.

Repetitive Inspections

(5) Thereafter, perform detailed ECI for cracks:

(i) At intervals not to exceed 6,000 CIS since last ECI.

(ii) Inspect in accordance with the Accomplishment Instructions of PW ASB No. JT9D A6367, dated July 28, 1999.

Cracked Disks

(6) Prior to further flight, replace cracked disks with serviceable parts.

JT9D–7R4 Series

(b) For PW JT9D–7R4D, –7R4D1, –7R4E, and –7R4E1 (AI–500) series turbofan engines, with 1st stage HPT disks, P/N 825601:

Initial Inspection

(1) Perform the initial detailed ECI for cracks in accordance with the Accomplishment Instructions of PW ASB No. JT9D–7R4–A72–563, dated July 28, 1999.

(2) Inspect at the following compliance times, depending on whether parts have had prior FPI or not.

Initial Compliance Times

No Prior FPI

(3) The following are the initial compliance times for parts that have had no prior FPI:

(i) For disks with more than 10,000 total part CSN on the effective date of this AD, inspect within 250 CIS after the effective date of this AD.

(ii) For disks with at least 8,000 CSN though no more than 10,000 total part CSN on the effective date of this AD, inspect within 1,000 CIS after the effective date of this AD.

(iii) For disks with at least 6,000 CSN though no more than 7,999 total part CSN on the effective date of this AD, inspect within 2,000 CIS after the effective date of this AD.

(iv) For disks with less than 6,000 total part CSN on the effective date of this AD, inspect prior to accumulating 8,000 total part CSN.

Prior FPI Accomplished

(4) The following are the initial compliance times for parts that have had a previous FPI:

(i) For disks with more than 10,000 CIS since last FPI on the effective date of this AD, inspect within 250 CIS after the effective date of this AD.

(ii) For disks with at least 8,000 CSN though no more than 10,000 CIS since last FPI on the effective date of this AD, inspect within 1,000 CIS after the effective date of this AD.

(iii) For disks with at least 6,000 CSN though no more than 7,999 CIS since last FPI on the effective date of this AD, inspect within 2,000 CIS after the effective date of this AD.

(iv) For disks with less than 6,000 CIS since last FPI on the effective date of this AD, inspect prior to accumulating 8,000 CIS since last FPI on the effective date of this AD.

Repetitive Inspections

(5) Thereafter, perform detailed ECI for cracks:

(i) At intervals not to exceed 8,000 CIS since last ECI.

(ii) Inspect in accordance with the Accomplishment Instructions of PW ASB No. JT9D–7R4-A72–563, dated July 28, 1999.

Cracked Disks

(6) Prior to further flight, replace cracked disks with serviceable parts.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on February 23, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 00–5011 Filed 3–6–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–ANE–10–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. TFE731–2, –3, –4, and –5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to Honeywell International, Inc.(formerly AlliedSignal Inc. and Garret Turbine Engine Company) high pressure compressor (HPC) impellers installed on TFE731–2, –3, –4, and –5 series turbofan engines. That proposal would have required replacing the HPC impeller with a serviceable impeller that has been eddy-current inspected or with a serviceable impeller of certain part numbers as a terminating action. That proposal was prompted by an incident of an uncontained impeller failure due to cracking in the seal relief area of the HPC impeller. This action revises the proposed rule by eliminating the terminating action and adding those impeller PN's to the suspect impeller population. This action would also clarify certain portions of the proposed AD based on comments that were received from the public. The actions specified by this proposed AD are intended to prevent HPC impeller failure due to fatigue cracking.

DATES: Comments must be received by May 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–ANE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov." Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Honeywell Engines and Systems (formerly AlliedSignal) Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; telephone (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial), fax (602) 365–5577 (General Aviation), (602) 365–2832 (Commercial). This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone 562–627–5246, fax 562–627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–ANE–10–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–ANE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR

part 39) to add an airworthiness directive (AD), applicable to Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Company) high pressure compressor (HPC) impellers installed on TFE731–2, –3, –4, and –5 series turbofan engines, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 28, 1999 (64 FR 40789). That NPRM would have required replacing the HPC impeller with a serviceable impeller, which has been eddy-current inspected, at the next core zone inspection (CZI) or at the next access to the HPC module, and repetitive inspections at each subsequent CZI or each subsequent access to the HPC impeller for cause if the impeller has more than 1,000 cycles since the last eddy current inspection (ECI). That NPRM was prompted by a Federal Aviation Administration (FAA) determination that on May 10, 1998, a high pressure compressor (HPC) impeller, part number (P/N) 3073394–1, separated and exited from a TFE731–3R–1D turbofan engine. This impeller had accumulated 9,080 engine cycles since new (CSN) and 5,829 engine cycles since rework of the seal relief area in November, 1982, performed in accordance with Garrett Turbine Engine Company Service Bulletin (SB) TFE731–72–3239 RWK. Fracture analysis revealed a subsurface primary origin in the area of the seal relief and that the crack propagated through the bore for about 1.0 inch. No melt or forging related discrepancies were found at the fatigue origin; however, localized alpha grain colonies with an unfavorable fracture plane orientation were present. Recent low-temperature fatigue testing with a sustained peak hold time (dwell) at higher than engine-operating stresses indicate that normal cyclic fatigue lives may be influenced by dwell times and an unfavorable titanium macrostructure. The FAA has determined that low-cycle fatigue (LCF) cracking in high stressed areas of the HPC impeller may lead to an uncontained impeller separation. That condition, if not corrected, could result in an HPC impeller failure due to fatigue cracking.

Changes to This NPRM

Since that NPRM was published in the **Federal Register**, the FAA has received a number of comments that change the requirements of the original NPRM and the population of applicable HPC impellers was increased. The nature and extent of those changes were such that FAA has determined that a supplemental NPRM (SNPRM) should be issued.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Alert Service Bulletin (ASB) TFE731–A72–3641, dated November 24, 1998, that describes procedures for removing, inspecting, and, if necessary, replacing HPC impellers, P/N's 3073393–1, 3073394–1, 3073433–1, 3073434–1 with serviceable impellers. The FAA has subsequently reviewed and approved ASB TFE731–A72–3641, Revision 1, dated October 20, 1999, that adds P/N's 3073398–All (where All denotes all dash numbers), 3073435–All, and 3075171–All.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent failure of the HPC impeller due to fatigue cracks. This AD requires removing and inspecting the HPC impeller, and if necessary, replacing the HPC impeller with a serviceable impeller. The removal and inspection will be conducted at the next CZI or at the next access to the HPC module, and repetitive inspections at each subsequent CZI or each subsequent access to the HPC module if the impeller has more than 1,000 cycles since the last ECI. These removals, inspections, and replacements must be done in accordance with the ASB described previously.

Comments About the Original NPRM

Since the issuance of that NPRM, the FAA has received the following four comments:

Request To Eliminate the Terminating Action Paragraph

The manufacturer comments that paragraph (d) of the proposal should be deleted and recommends adding those HPC impellers identified as constituting terminating action to the applicability of the AD. During further investigation, all HPC impeller designs were found to be at risk of fatigue cracking from the same cause, and, therefore, warrant the proposed ECI. The FAA agrees. Paragraph (d) has been deleted from this supplemental NPRM (SNPRM) and HPC impellers P/N's 3073398–All, 3073435–All, and 3075171–All have been added to the applicability of the AD. At present, therefore, the proposal does not offer any terminating action to the required inspections. The FAA may undertake further rulemaking to terminate the ECI requirement.

Replace vs. Inspect

The manufacturer also requests that proposed paragraphs (a) and (b) be reworded to state that operators must inspect the HPC impellers rather than replace the HPC impellers. The manufacturer believes that the use of the word replace may imply that operators must replace the HPC impeller with a new impeller at each time an inspection is required. The FAA agrees in part. As stated in the NPRM, only Honeywell International or persons trained by Honeywell International are properly equipped and qualified to perform this specialized ECI. The Service Bulletin directs operators to remove the HPC impeller and ship the impeller to a facility that can perform the inspection.

Using the words remove and inspect more accurately describe the actions the FAA is requiring of operators. The FAA has added a provision to both paragraphs (a) and (b), however, that operators must remove and inspect, and if necessary replace, applicable HPC impellers with "serviceable" impellers, and added a new paragraph (d) that defines "serviceable" as an impeller which complies with all applicable visual, dimensional, and fluorescent penetrant inspections requirements for the level of maintenance being accomplished, as contained in the Heavy Maintenance Manual and is either an impeller with fewer than 1000 engine operation cycles since new or an impeller with less than 1000 engine operation cycles since last ECI.

Request To Change Note 2 of the NPRM

The manufacturer suggests that the words "Introduction of" should be deleted from proposed Note 2 following proposed paragraph (d). The FAA has already deleted paragraph (d) in response to the manufacturer's earlier comment, and therefore Note 2 has also been deleted in its entirety.

Request To Change the Unsafe Condition Statement

The manufacturer believes that the unsafe condition statements in the preamble and text of the NPRM that describes the intent of the AD should be changed. The commenter states that the AD does not prevent fatigue cracking of the HPC impeller, but rather is intended to detect fatigue cracking of the impeller. The FAA agrees in part. The unsafe condition identified as the underlying justification for this AD is failure of the HPC impeller due to fatigue cracking. The actions required by the AD are not intended to prevent the HPC from cracking, but to prevent the HPC impeller from failing, which

could result in an uncontained engine failure, and damage to the airplane. Therefore, the preamble and text of this SNPRM has been changed to read that the AD is issued to prevent HPC impeller failure due to fatigue cracking.

Since these changes expand the scope and cost of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 7510 engines of the affected design in the worldwide fleet. The FAA estimates that 5482 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The FAA also estimates that some of the impellers will be replaced, and that the impeller will cost about $45,000. Based on these figures, the FAA estimates the total cost impact of the proposed AD on U.S. operators for the next four years to be $2,201,760.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (EO) 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Honeywell International Inc. TFE731–2, –3, –4, and –5 Series Turbofan Engines: Docket No. 99–ANE–10–AD.

Applicability: Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Company) TFE731–2, –3, –4, and –5 series turbofan engines with high pressure compressor (HPC) impeller part numbers (P/N's) 3073393–1, 3073394–1, 3073433–1, 3073434–1, 3073398–All (where All denotes all dash numbers), 3073435–All, and 3075171–All, installed on, but not limited to, Avions Marcel Dassault—Breguet Aviation (AMD/BA) Falcon 10, Dassault Aviation Mystere—Falcon 50, and 900 series airplanes; Dassault Aviation Mystere—Falcon 20 series airplanes, Learjet Inc. Models 31, 35, 36, and 55 series airplanes; Lockheed-Georgia Corporation 1329–23 and –25 series airplanes; Israel Aircraft Industries Ltd. 1124 series and 1125 Westwind series airplanes; Cessna Aircraft Co. Model 650 Citation III, VI, and VII series airplanes; Raytheon Aircraft Co. HS–125 series airplanes; and Sabreliner Corporation NA–265–65 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the high pressure compressor impeller due to fatigue cracking, accomplish the following:

(a) Remove and inspect the applicable HPC impeller in accordance with Section 2.A. of the Accomplishment Instructions of AlliedSignal Inc. Alert Service Bulletin (ASB) TFE731–A72–3641, Revision 1, dated October 20, 1999, or ASB TFE731–A72–3641 dated November 24, 1998, and if necessary, replace the impeller with a serviceable impeller, at the earlier of the following:

(1) At the next core zone inspection (CZI) after the effective date of this AD, or

(2) At the next access to the HPC module after the effective date of this AD.

(b) Thereafter, remove and inspect the applicable HPC impeller in accordance with Section 2.A. of the Accomplishment Instructions of ASB TFE731—A72–3641 dated November 24, 1998, or ASB TFE731–A72–3641, Revision 1, dated October 20, 1999, and if necessary, replace the impeller with a serviceable impeller, whenever either of the following conditions are met:

(1) At every CZI, or

(2) At access to the HPC module if the impeller has accumulated more than 1,000 cycles since the last Eddy Current Inspection (ECI).

(c) This AD defines access to the HPC module as whenever the low pressure compressor case is removed from the compressor interstage diffuser.

(d) For the purposes of this AD, a serviceable impeller is defined as an impeller which complies with all applicable visual, dimensional, and fluorescent penetrant inspections requirements for the level of maintenance being accomplished, as contained in the Heavy Maintenance Manual and is either an impeller with fewer than 1000 engine operation cycles since new or an impeller with less than 1000 engine operation cycles since last ECI.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on March 1, 2000.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–5460 Filed 3–6–00; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 307

Request for Comments Concerning Regulations Implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is

requesting public comment on its regulations ("smokeless tobacco regulations" or "the regulations") implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act"). The regulations set forth the manner in which smokeless tobacco manufacturers, importers, and packagers must display and rotate the three health warnings mandated by the Smokeless Tobacco Act. As part of its systematic review of all current Commission regulations and guides, the Commission is requesting comments about the overall costs and benefits of the regulations and their overall regulatory and economic impact. The Commission is also requesting comment on whether the regulations adequately implement the format and display requirements of the Smokeless Tobacco Act and for comment on several other issues relating to specific provisions of the regulations. All interested parties are hereby given notice of the opportunity to submit written data, views and arguments concerning the rule.

DATES: Comments must be submitted on or before April 24, 2000.

ADDRESSES: Written comments should be identified as "16 CFR Part 307" and sent to the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, N.W., Washington DC 20680. The Commission requests that the original comment be filed with five copies, if feasible. The Commission also requests, if possible, that the comments be submitted in electronic form on a computer disc. (Programs based on DOS or Windows are preferred. Files from other operating system should be submitted in ASCII test format.) The disc label should identify the commenter's name and the name and version of the word processing program used to create the document.

Alternatively, the Commission will accept comments submitted to the following E–Mail address: "SMOKELESS@ftc.gov".

All comments will be placed on the public record and will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. § 552, and the Commission's Rules of Practice, 16 CFR 4.11, during normal business days from 8:30 a.m. to 5:00 p.m., at the Public Reference Room, Room H–130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington DC 20580. In addition, comment will be placed on the Internet at the FTC web site: http://www.ftc.gov.

FOR FURTHER INFORMATION CONTACT: Rosemary Rosso (202) 326–3076, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, E–Mail (for questions or information only): rrosso@ftc.gov.

SUPPLEMENTARY INFORMATION: The current request for comments on the smokeless tobacco regulations is part of the Commission's regulatory review program, which has been implemented to review regulations and guides periodically. The regulatory review program seeks information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or rescission.

Simultaneous with the regulatory review, the Commission is also seeking public comments on whether the regulations adequately implement the format and display requirements of the Smokeless Tobacco Act and for comment on several other issues relating to specific provisions of the regulations.

A. Background Information

The Smokeless Tobacco Act was promulgated by Congress on February 27, 1986. The Act requires manufacturers, importers and packagers of smokeless tobacco products to display on a rotating basis one of the following healthy warning labels on product packages and in most advertisements:

WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER

WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS

WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES

For packaging, the Act directs that these health warnings appear in a conspicuous and prominent place on the package and in a conspicuous format that is in conspicuous and legible type in contrast with all other printed material. For advertising, the Act directs that the warnings be displayed in a circle-and-arrow format in a conspicuous and prominent place and in conspicuous, legible type in contrast to all other printed materials.

The Act also directs the Commission to issue implementing regulations governing the format and display of the statutory health warnings on packaging and in most advertising for smokeless tobacco products.

On November 4, 1986, the Commission promulgated regulations specifying requirements as to the size, color, typeface, placement and rotation of those warnings, 51 FR 40015. For the most part, these provisions are set out as safe harbor provisions that state formats or displays that will be deemed to be in conformance with the Smokeless Tobacco Act rather than in terms of displays or formats that are required to conform. The Commission's regulations require manufacturers, importers and packagers to submit to the Commission for approval their plans for complying with the requirements for the display and periodic rotation of the three warnings.

The Commission amended its smokeless tobacco regulations on March 20, 1991, 56 FR 11662.[1] The 1991 amendments added a requirement for display of the warnings on "utilitarian items," that is items other than smokeless tobacco that are sold or given to consumers for their personal use that display the name, logo, or selling message of any smokeless tobacco product.[2]

B. Issues for Comment

The Commission is currently conducting a periodic review of the smokeless tobacco regulations as part of its periodic review of all current Commission rules and guides. Accordingly, the Commission is requesting comments about the overall costs and benefits of the regulations and their overall regulatory and economic impact.

In addition, the Commission is seeking public comment on the adequacy of the smokeless tobacco regulations in implementing the format and display provisions of the Smokeless Tobacco Act.

1. Effectiveness of the Warning Requirements

For labels, the regulations currently require that the warnings be displayed in a conspicuous and prominent place on the label and provide examples of

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[1] The sections of the regulations that deal with technical requirements for rotation of the warnings also were amended several times, including on January 15, 1993, 58 FR 4874, and on August 30, 1996, 61 FR 45886.

In addition, the Commission currently has pending a rulemaking to determine whether it should amend its regulations to require rotational health warnings on sponsored racing vehicles and other event-related objects that display the brand name, logo or selling message of smokeless tobacco products. That rulemaking is on hold while Commission staff evaluate regulatory and industry changes that have taken place since this proceeding commenced.

[2] The regulations as originally promulgated by the Commission contained an exemption for utilitarian items. Subsequent litigation required the Commission to delete the exemption. *Public Citizen v. FTC*, 688 F. Supp. 667 (D.D.C. 1988), aff'd, 869 F.2d (D.C. Cir. 1989).

places on the label of different types of smokeless tobacco packages that will be deemed to be conspicuous and prominent. For advertising, the regulations currently require that the statutorily mandated circle-and-arrow warnings be in conspicuous and legible type in contrast with all other printed material and must appear in all capital letters in a circle-and-arrow format. The regulations provide examples of display formats that will be deemed to conform to these requirements.

The Commission is interested in public comment on the effectiveness of the existing regulations in meeting the statutory format and display requirements. In particular, the Commission would like to receive comment on any consumer research, studies or other data bearing on the effectiveness of the warning requirements.

2. Enforceability of the Warning Requirements

Many of the substantive provisions of the regulations are stated in terms of safe harbors, or displays that will be deemed to be in conformance with the Smokeless Tobacco Act, rather than as specific mandatory requirements. The Commission is seeking public comment on whether this safe harbor approach is sufficiently enforceable. In particular, the Commission is interested in public comment as to whether the safe harbor approach should be abandoned and if so, the costs and benefits of changing to an alternative approach.

3. Smokeless Tobacco Dispensers

Under the regulations as currently drafted, rectangular dispensers of individual packages of smokeless tobacco can display the label warning on any side of its packaging, provided that the dispenser can be sold in its entirety and the warning is the only printed or graphic matter on the side of the package where it appears. 16 CFR 307.6(a). It has recently come to the Commission's attention that this provision is being used to justify placement of the label warning on the back of dispensers commonly used as displays for the retail sale of individual packages of smokeless tobacco products. In this location, the warnings are not visible to the viewing public.

Accordingly, the Commission is seeking comment as to whether this provision of the Regulations should be revised to provide that any dispenser of individual smokeless tobacco packages that can be used as a retail display carry the label warning on its principal display panel.

4. Can Rolls

Section 307.6(b) of the regulations currently provides that can rolls wrapped for sale as a single unit display a warning in 12-point type if the warnings on the individual cans in the roll are not completely visible. The warnings on the individual cans typically would be in 7½ point type under the current regulations. One manufacturer has taken the position that the larger 12-point type requirement does not apply to can rolls consisting of only two cans. The Commission is interested in public comment on whether this provision should be amended to make it clear that the provision for a larger warning applies to any can roll consisting of two or more cans that are wrapped for sale as one unit if the warnings on the individual cans are not completely visible.

C. Request for Comments

At this time, the Commission is seeking comment on various aspects of the smokeless tobacco regulations in conjunction with its regulatory review. Without limiting the scope of issues it is seeking comment on, the Commission is particularly interested in receiving comments on the questions that follow. Where commenters advocate changes to the regulations, please be specific in describing suggested changes. With respect to suggested changes to the regulations, please describe any potential costs and benefits such changes might have on industry and consumers. The Commission would also be interested in commenters providing any consumer research, studies or data that exist on issues raised in the questions.

1. Is there a continuing need for the regulations as currently promulgated?

(a) Since the regulations were issued, have changes in technology, industry structure or economic conditions affected the need for or effectiveness of the regulations?

(b) Do the regulations include provisions that are unnecessary?

(c) What are the aggregate costs or benefits of the regulations?

(d) Have the costs or benefits of the regulations dissipated over time?

2. What effect, if any, have the regulations had on smokeless tobacco purchasers, potential purchasers or the general public?

(a) What benefits have the regulations provided to smokeless tobacco purchasers, potential purchasers or the general public?

(b) What economic or other costs have the regulations imposed on smokeless tobacco purchasers, potential purchasers or the general public?

(c) What changes, if any, should be made to the regulations to increase the benefits to smokeless tobacco purchasers, potential purchasers or the general public?

(d) How would these changes affect the compliance costs the regulations impose on industry?

3. What impact, if any, have the regulations had on firms that must comply with it?

(a) What economic or other costs have the regulations imposed on industry or individual firms?

(b) What benefits have the regulations provided to the industry or to individual firms?

(c) What changes, if any, should be made to the regulations to minimize any burden or cost imposed on industry or individual firms?

(d) How would the changes affect the benefits provided by the regulations to smokeless tobacco purchasers, potential purchasers, the general public or industry?

4. Do the regulations overlap or conflict with any federal, state or local laws or regulations?

5. What significant burdens or costs, including costs of compliance, have the regulations imposed on small firms subject to their requirements?

(a) How do these burdens or costs differ from those imposed on larger firms subject to the regulations' requirements?

(b) What changes, if any, should be made to the regulations to reduce the burdens or costs imposed on small firms?

(c) How would these changes affect the benefits of the regulations?

(d) Would such changes adversely affect the competitive position of larger firms?

Section 307.6 Requirements for Disclosure on the Label

6. If the regulations are retained, are the size, color, typeface, or placement requirements sufficiently conspicuous and prominent within the meaning of section 3(b)(1) of the Smokeless Tobacco Act, 15 USC 4402(b)(1)? What evidence is there to show that the existing label disclosure requirements are or are not conspicuous or prominent or otherwise effective or ineffective?

Sections 307.7, 307.8 and 307.9 Requirements for Disclosure in Advertising

7. If the regulations are retained, are the size, color, typeface, or placement requirements sufficiently conspicuous and prominent within the meaning of section 3(b)(2) of the Smokeless Tobacco Act, 15 USC 4402(b)(2)? What evidence

is there to show that the existing advertising disclosure requirements are or are not conspicuous or prominent or otherwise effective or ineffective?

Enforceability of the Regulations

8. Many of the substantive provisions of the regulations are stated in terms of safe harbors, or displays that will be deemed to be in conformance with the Smokeless Tobacco Act, rather than as specific mandatory requirements. Are the regulations in this form sufficiently enforceable? Does this make it more difficult to prove that displays that do not conform to the safe harbors are not sufficiently conspicuous to conform to the requirements of the Smokeless Tobacco Act? Should the safe harbor approach be abandoned?

Smokeless Tobacco Dispensers

9. Should the regulations be revised to provide that any dispenser of individual smokeless tobacco packages that can be used as a retail display carry the advertising warning on its principal display panel?

Can Rolls

10. Should the regulations be amended to provide that a can roll of individual smokeless tobacco packages can consist of as few as two cans?

11. Are there any other provisions of the regulations that need to be amended? If so, which provisions require change and how should they be changed?

12. What is the likely effect of any changes in the regulations suggested in response to questions 6 through 11 on costs, profitability, competitiveness, or employment in small business entities?

13. The Smokeless Tobacco Act requires that smokeless tobacco companies submit plans to the Commission specifying the method they will use to rotate, display, and distribute the required health warnings on their packaging and advertising. Making changes suggested in the regulations in response to questions 6 through 11 may require the smokeless tobacco companies to amend their plans for the display and rotation of the warning statements. What paperwork or other burdens would be imposed by any changes suggested in response to questions 6 through 11?

List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade practices.

Authority: 15 U.S.C. 1401–1410.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–5506 Filed 3–6–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 312

Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of Proposed "Safe Harbor" Guidelines and Request for Public Comment.

SUMMARY: The Federal Trade Commission publishes this notice and request for public comment concerning proposed self-regulatory guidelines under the safe harbor provision of the Children's Online Privacy Protection Rule, 16 CFR 312.10(a).

DATES: Written comments must be submitted on or before April 6, 2000. Comments will be posted on the Commission's website: *http://www.ftc.gov.*

ADDRESSES: Written comments should be submitted to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission requests that commenters submit the original plus five copies, if feasible. To enable prompt review and public access, comments also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a disk label stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.) Alternatively, the Commission will accept comments submitted to the following e-mail address, *safeharbor@ftc.gov*. Individual members of the public filing comments need not submit multiple copies or comments in electronic form. All submissions should be captioned: "PrivacyBot.com Safe Harbor Proposal—Comment, P004504."

FOR FURTHER INFORMATION CONTACT: Loren G. Thompson, (202) 326–2049, Abbe Goldstein, (202) 326–3423, or Elizabeth Delaney, (202) 326–2903, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 601 Pennsylvania Ave., NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

On October 20, 1999, the Commission issued its final Rule pursuant to the Children's Online Privacy Protection Act, 15 U.S.C. 6501 et seq.[1] The Rule requires certain website operators to post privacy policies, provide notice, and obtain parental consent prior to collecting certain personal information from children. The Rule contains a "safe harbor" provision enabling industry groups or others to submit self-regulatory guidelines that would implement the protections of the Rule to the Commission for approval.[2]

Pursuant to § 312.10 of the Rule, PrivacyBot.com has submitted proposed self-regulatory guidelines to the Commission for approval. The full text of the proposed guidelines is available on the Commission's website, *www.ftc.gov.*

Section B. Questions on the Proposed Guidelines

The Commission is seeking comment on various aspects of the proposed guidelines, and is particularly interested in receiving comment on the questions that follow. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. Responses to these questions should cite the numbers and subsection of the questions being answered. For all comments submitted, please provide any relevant data, statistics, or any other evidence, upon which those comments are based.

1. Please provide comment on any or all of the provisions in the proposed guidelines. For each provision commented on please describe (a) the impact of the provision(s) (including any benefits and costs), if any, and (b) what alternatives, if any, PrivacyBot.com should consider, as well as the costs and benefits of those alternatives.

2. Do the provisions of the proposed guidelines governing operators' information practices provide "the same or greater protection for children" as those contained in §§ 312.2–312.8 of the Children's Online Privacy Protection Rule? Where possible, please cite the relevant sections of both the Rule and the proposed guidelines.

3. Are the mechanisms used to assess operators' compliance with the guidelines effective? *See* Rule § 312.10(b)(2).[3] If not, please describe (a) how the proposed guidelines could be

[1] 64 FR 59888 (Nov. 3, 1999).

[2] *See* 16 CFR 312.10; 64 FR at 59906–59908; 59915.

[3] 64 FR at 59915.

modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

4. Are the incentives for operators' compliance with the guidelines effective? *See* Rule § 312.10(b)(3).[4] If not, please describe (a) how the proposed guidelines could be modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

5. Do the guidelines provide adequate means for resolving consumer complaints? If not, please describe (a) how the proposed guidelines could be modified to resolve consumer complaints adequately, and (b) the costs and benefits of those modifications.

6. Please comment on the effectiveness of automation in the proposed guidelines and describe other means or mechanisms, if any, PrivacyBot.com should consider for its safe harbor program.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–5505 Filed 3–6–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–777]

RIN 1218–AB36

Ergonomics Program

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed rule; procedures for informal public hearing; rescheduling of informal public hearing; additional information and clarifications.

SUMMARY: OSHA is setting hearing and post-hearing procedures for its proposed Ergonomics Program standard published in the **Federal Register** on November 23, 1999. These procedures, which are provided as an alternative to the procedures the Agency usually uses, address: the hearing schedule, the nature of the hearing, availability of hearing testimony, the conduct of the rulemaking hearing, and post-hearing submissions. OSHA is issuing these procedures to ensure that the hearings proceed in a fair, orderly, and timely manner even though a very large number of parties have filed notices of intent to appear at them. This document will enable the hearing participants to plan their activities in advance. This document also specifies the dates and locations of the hearings.

DATES: The hearing will begin on Monday, March 13, 2000, in Washington, D.C. The hearing in Washington will run for 4 weeks through April 7. The hearing will resume on April 11, in Chicago, Illinois, and will continue there until April 21. The hearing will then resume in Portland, Oregon on April 24 and run until May 3. The final week of the hearing will be May 8 through 12 at a location to be determined in Washington, D.C. The hearing will begin at 9:30 a.m. on March 13; on subsequent days, the starting time will be 8:30 a.m. The hearing will ordinarily conclude by 6:00 p.m. each day; however, in order to assure orderly development of the record on any particular day, the Administrative Law Judge may extend the hearing that day. All questioning of public participants will be completed on the day the participants testify.

ADDRESSES: The March 13 through April 7 hearing in Washington will be in the Frances Perkins Building Auditorium in the U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. The hearing in Chicago will be held at the State of Illinois Building, James R. Thompson Center (Assembly Hall), 100 W. Randolph Street, in Chicago, Illinois. The hearing in Portland will be held at the Mark Hatfield Federal Court House, Courtroom #16, 1000 Southwest 3rd Avenue, in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: OSHA's Ergonomics Team at (202) 693–2116, or visit the OSHA Homepage at www.osha.gov.

SUPPLEMENTARY INFORMATION: The procedures for the hearings on the Ergonomics Program Standard follow:

Hearing and Post-Hearing Procedures

I. General Information

1. *Authority.* The following procedures will be utilized in the public hearing on OSHA's proposed Ergonomics Program Standard (64 FR 65768; 65 FR 4795). OSHA rulemaking hearings are conducted in accord with Section 6(b)(3) of the OSH Act, 29 U.S.C. 655(b)(3), and the Secretary of Labor's procedural regulations in 29 CFR Part 1911. As noted in the Proposal, 64 FR 66065–66066, § 1911.4 allows the Assistant Secretary, upon reasonable notice, to specify additional or alternative procedures for good cause.

This document provides notice that the Assistant Secretary is exercising that authority in this case. In light of the very large number of parties who have filed notices of intent to appear at the hearings, the Assistant Secretary finds that good cause exists to establish additional procedures in advance to assure that the hearing proceeds in a fair, orderly, and timely manner.

2. *Hearing Dates.* As stated in the **Federal Register** document of February 1, 2000 (65 FR 4795), the hearing will begin on Monday, March 13, 2000 in the Frances Perkins Building Auditorium in the U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC. The hearing in Washington will run for 4 weeks through April 7. The hearing will resume on April 11 at the State of Illinois Building, James R. Thompson Center (Assembly Hall), 100 W. Randolph Street, in Chicago, Illinois, and will continue there until April 21. The hearing will then resume at the Mark Hatfield Federal Court House, Courtroom #16, 1000 Southwest 3rd Avenue, in Portland, Oregon on April 24 and run until May 3. The final week of the hearing will be May 8 through 12 at a location to be determined in Washington, DC. The hearing will begin at 9:30 a.m. on March 13; on subsequent days, the starting time will be 8:30 a.m. The hearing will ordinarily conclude by 6:00 p.m. each day; however, in order to assure orderly development of the record on any particular day, the Administrative Law Judge may extend the hearing that day. All questioning of public participants will be completed on the day the participants testify.

3. *Nature of Hearing.* This OSHA rulemaking hearing is a legislative-type hearing, not an adjudicative one. It is an informal administrative proceeding, intended for information gathering and clarification. This informal hearing is an adjunct to the written comment period, and is intended to provide interested persons with an additional opportunity to address the Agency and provide testimony and evidence for the rulemaking record. These procedural rules governing the hearing are intended to facilitate the development of a clear, accurate and complete record, while assuring fairness and due process. The rules of evidence and other procedural rules governing adjudications do not apply. Participants who have filed Notices of Intention to Appear may testify and question witnesses in accordance with these procedures (see Section II), but may not issue subpoenas or call to testify any person other than the persons who have agreed to testify for them. Motions to strike evidence will not be considered. The intent is to provide an opportunity for effective oral presentation by interested persons, and

[4] *Id.*

to avoid procedures which might unduly impede or protract the rulemaking process. 29 CFR 1911.15(c)(3).

4. Availability of Hearing Testimony. The February 1, 2000, **Federal Register** document provided that participants submitting documentary evidence or requesting more than 10 minutes for their presentations must submit their evidence and the full text of their written testimony to the docket postmarked no later than March 2, 2000 (65 FR 4795). The materials submitted have been or will be entered into the rulemaking docket (S–777) in the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, where they are available for inspection and copying. This affords all participants an opportunity to review the evidence and to formulate in advance questions they may wish to ask at the hearing.

II. Conduct of the Rulemaking Hearing

1. Schedule for Testimony. The Assistant Secretary has established a schedule showing the location and date each participant will testify and be available for questions. A copy of the schedule has been provided to all participants who have filed a notice of intent to appear and is posted on OSHA's Web site (www.osha.gov). Each witness should plan to be present at the start of the day he or she is scheduled to testify. No individual witness will be allowed to present testimony in more than one location, although individuals appearing in a representative capacity may represent participants appearing at different locations. The schedule prescribes the amount of time for each participant to testify, and also allows time for other participants and OSHA representatives to question the witness. The Administrative Law Judge shall assure that the hearing proceeds in a fair and orderly manner so as to facilitate development of the record. Consistent adherence to the schedule will also allow advance planning by participants, many of whom are traveling from a considerable distance to testify.

2. OSHA Witnesses. The first witnesses at the Washington hearing on Monday March 13 will be a panel of OSHA representatives. Following the panel's presentation, participants who have filed notices of intent to appear and who wish to question the panel will be given the opportunity to do so. Initially each questioner will be given a 10 minute question period. The judge may adjust this, however, so long as the questioning is completed by March 14. The judge may allow participants additional question periods if there is time remaining after all participants have had an initial opportunity to question the panel members. The OSHA panel will testify only in Washington, and will be available for questioning only on March 13 and 14.

OSHA's expert witnesses and a panel of witnesses from NIOSH will testify and be questioned March 15 through March 21. Following each panel, participants will be allowed a period of time, as noted in the schedule, to question panel members. The Administrative Law Judge may allow additional questioning so long as the testimony and questioning of each panel is completed on the day it is scheduled.

3. Public Witnesses. Participants who have filed timely notices of intention to appear in Washington, DC, are scheduled to make their presentations and be questioned beginning March 21.

4. General. Written hearing testimony that is submitted before the hearing is already part of the rulemaking record, and participants who have submitted written testimony in advance will not be permitted to read that testimony at the hearing. Instead, they should use their oral presentation to summarize and clarify their written submissions. Participants may provide additional copies of their testimony for the convenience of other hearing participants.

Participants who have filed Notices of Intention to Appear but have not substantially complied with the requirements for the submission of written testimony and documentary evidence will be allowed a maximum time of 10 minutes for their presentations at the hearing and will be expected to respond to questions following their presentations. If time permits, the Administrative Law Judge may allow persons who have not filed Notices of Intention to Appear an opportunity to testify at the close of the day.

5. Questioning of Public Witnesses. Participants who have filed Notices of Intention to Appear may ask questions on relevant issues following a presentation. Representatives of OSHA may also question witnesses. The Administrative Law Judge shall allocate the time allowed in the schedule among questioners. The judge may adjust this time so long as the testimony and questioning of all witnesses scheduled for each day is completed that day.

Questions must be as brief as possible and must be designed to clarify a presentation or elicit information that is within the competence or expertise of the witness. Participants may not ask questions that are outside the scope of the matters addressed by this rulemaking.

The Administrative Law Judge shall not permit duplicative, argumentative, or irrelevant questions. Questioners will not be permitted to use the question periods to present their own testimony and views on issues.

Participants having similar interests are encouraged to designate one representative who can conduct the questioning on their behalf. When an organization is represented by more than one person, only one person from that organization may question each witness or panel.

After all questioners have had an opportunity to question a witness or panel, if a questioner still has important relevant questions that have not been asked, the questioner may request permission from the Administrative Law Judge to ask additional questions. Permission may be granted based on the time available and the witness schedule.

III. Post-Hearing Submissions

At the close of the hearing, those participants who have filed Notices of Intention to appear will have the opportunity to file additional evidence and data relevant to the proceeding, and to file final written briefs. Additional information and data relevant to the proceeding must be postmarked within 45 days of the close of the hearing; briefs must be postmarked 90 days after the close of the hearing. No reply briefs are to be filed.

At the close of the post-hearing comment period, the hearing record will be closed and certified by the Administrative Law Judge to the Assistant Secretary of Labor for Occupational Safety and Health.

Authority: This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U. S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. It is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 1st day of March, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 00–5422 Filed 3–6–00; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–149–FOR]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana submitted revised procedural rules for adjudicatory proceedings. Indiana intends to revise its program to be consistent with the corresponding Federal regulations. This document gives the times and locations that the Indiana program and amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., e.s.t., April 6, 2000. If requested, we will hold a public hearing on the amendment on April 3, 2000. We will accept requests to speak at the hearing until 4 p.m., e.s.t. on March 22, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Indiana program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6700.

Indiana Department of Natural Resources, Bureau of Mine Reclamation, 402 West Washington Street, Room W–295, Indianapolis, Indiana 46204, Telephone: (317) 232–1291.

Indiana Department of Natural Resources, Division of Reclamation, R.R. 2, Box 129, Jasonville, Indiana 47438–9517, Telephone: (812) 665–2207.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, and 914.16.

II. Description of the Proposed Amendment

On February 4, 2000, the Indiana Department of Natural Resources (department), Division of Reclamation (DoR), sent us a copy of revised procedural rules for adjudicatory proceedings (Administrative Record No. IND–1685). These rules are codified in the Indiana Administrative Code (IAC) at 312 IAC 3–1 and provide procedures for administrative review proceedings held before the Natural Resources Commission (commission) and its administrative law judges. We previously approved Indiana's procedural rules at 310 IAC 0.6–1 for adjudicatory proceedings under its program. In 1996, Indiana repealed the procedural rules at 310 IAC 0.6–1 and revised and recodified their substantive requirements at 312 IAC 3–1. The DoR submitted the revised procedural rules in response to a required program amendment that we codified at 30 CFR 914.16(ff) on October 20, 1994 (59 FR 52906). Below is a discussion of that portion of the revised rules that pertain to administrative review under the Indiana program.

1. 312 IAC 3–1–1 Administration

Subsection (a) specifies that 312 IAC 3–1 controls proceedings governed by Indiana Code (IC) 4–21.5, Administrative Orders and Procedures, for which the commission, or an administrative law judge for the commission, is the ultimate authority.

Subsection (b) allows an affected person to apply for administrative review under IC 4–21.5 and 312 IAC 3–1 if he or she is aggrieved by a determination of the director or a delegate of the director.

Subsection (c) defines "division director" as the director of the division of hearings of the commission.

2. 312 IAC 3–1–2 Ultimate Authority

Subsection (a) designates the commission as the ultimate authority for the department except as provided in subsection (b).

Subsection (b) designates an administrative law judge as the ultimate authority for an administrative review under: (1) An order under Indiana's Surface Coal Mining and Reclamation Act at IC 14–34, except for a proceeding concerning the approval or disapproval of a permit application or permit renewal under IC 14–34–4–13 or for suspension or revocation of a permit under IC 14–34–15–7; (2) An order granting or denying temporary relief under IC 14–34 or an order voiding, terminating, modifying, staying, or continuing an emergency or temporary order under IC 4–21.5–4; and (3) An order designated as a final order in 312 IAC 3–1–9.

3. 312 IAC 3–1–3 Initiation of a Proceeding for Administrative Review

Subsection (a) provides that a proceeding before the commission under IC 4–21.5 is initiated when one of the following is filed with the Division of Hearings: (1) a petition for review under IC 4–21.5–3–7; (2) a complaint under IC 4–21.5–3–8; (3) a request for temporary relief under IC 14–34; (4) a request to issue or for review of an issued emergency or other temporary order under IC 4–21.5–4; (5) an answer to an order to show cause under 312 IAC 3–1–5; or (6) a referral by the director of a petition for and challenge to litigation expenses under 312 IAC 3–1–13(g).

Subsection (b) requires the division director to appoint an administrative law judge to conduct the proceeding as soon as practicable after the initiation of administrative review under subsection (a).

4. 312 IAC 3–1–4 Answers and Affirmative Defenses

Subsection (a) specifies that except as provided in subsection (b) and in 312 IAC 3–1–5 and 13, the matters contained in a pleading described in 312 IAC 3–1–3(a) are considered automatically denied by any other party.

Subsection (b) provides that a party wishing to assert an affirmative defense,

counterclaim, or cross-claim must do so, in writing, and have the document filed and served no later than the initial prehearing conference, unless otherwise ordered by the administrative law judge.

5. 312 IAC 3–1–5 Pleadings for and Disposing of a Show Cause Order Issued Under the Indiana Surface Mining Control and Reclamation Act

Subsection (a) provides that 312 IAC 3–1–5 governs the suspension or revocation of a permit under IC 14–34–15–7.

Subsection (b) requires the director (or a delegate of the director) to issue, to the permittee, an order of permit suspension or revocation under IC 14–34–15–7 if the director determines that a permit issued under to IC 13–4.1, IC 14–34, or 310 IAC 12 should be suspended or revoked. The order of permit suspension or revocation must state that: (1) a pattern of violations of IC 13–4.1, IC 14–34, 310 IAC 12, or any permit condition required by IC 13–4.1, IC 14–34, or 310 IAC 12 exists; and (2) the violations are either willfully caused by the permittee, or caused by the permittee's unwarranted failure to comply with IC 13–4.1, IC 14–34, 310 IAC 12, or any permit condition required by IC 13–4.1, IC 14–34, or 310 IAC 12. Subsection (b) further provides that, for the purposes of this subsection, the unwarranted failure of the permittee to pay any fee required under IC 13–4.1, IC 14–34, or 310 IAC 12 constitutes a pattern of violations and requires the issuance of an order of permit suspension or revocation.

Subsection (c) requires the director to serve by certified mail or personal delivery an order of permit suspension or revocation. Subsection (c) also clarifies that an order of permit suspension or revocation is governed by IC 4–21.5–3–6.

Subsection (d) requires a permittee, who wants to contest an order of permit suspension or revocation, to file a petition for review under IC 4–21.5–3–7 within thirty (30) days of his or her receipt of the order of permit suspension or revocation. Subsection (d) also specifies the kind of information that must be included in a petition for review, including whether the permittee wants a hearing on the order of permit suspension or revocation.

Subsection (e) provides that if a petition for review is not filed by the permittee under subsection (d), the order of permit suspension or revocation will become an effective and final order of the commission without a proceeding under IC 14–34–15–7(c).

Subsection (f) provides that if a petition for review is filed by the permittee under subsection (d) and a hearing on the order is sought by the permittee, the matter will be assigned to an administrative law judge for a proceeding under IC 4–21.5–3. Subsection (f) also sets out the burden of proof standards for the hearing. The director has the burden of going forward with evidence demonstrating that the permit in question should be suspended or revoked. The director satisfies the burden by establishing a prima facie case that a pattern of violations exists or has existed and the violations were willfully caused by the permittee or caused by the unwarranted failure of the permittee to comply with any requirements of IC 13–4.1, IC 14–34, 310 IAC 12, or any permit conditions required under IC 13–4.1, IC 14–34, or 310 IAC 12. If the director demonstrates that the permit should be suspended or revoked, the permittee has the ultimate burden of persuasion to show cause why the permit should not be suspended or revoked. A permittee may not challenge the fact of any violation that is the subject of a final order of the director.

Subsection (g) provides that the administrative law judge will issue a nonfinal order if he or she determines that a pattern of violations exists or has existed. In this nonfinal order, the administrative law judge must consider the factors contained in 310 IAC 12–6–6.5. The administrative law judge must find that sufficient violations occurred to establish a pattern. The nonfinal order must comply with the requirements of IC 4–21.5–3–27(a) through IC 4–21.5–3–27(d) and IC 4–21.5–3–27(g). The administrative law judge may, at any time before the conclusion of the hearing, allow the parties to submit briefs and proposed findings.

Subsection (h) requires the administrative law judge to submit the nonfinal order to the commission within ten days following the date that the hearing is closed or within ten days of the receipt of the permittee's petition for review submitted under subsection (d) if no hearing is requested by any party and it is determined that no hearing is necessary.

Subsection (i) provides that a party must object to the findings and nonfinal order in writing in order to preserve for judicial review an objection to the nonfinal order of an administrative law judge. In its written objection, a party must identify the bases of the objection. The objection must be filed with the commission within 15 days after the findings and nonfinal order are served on the party.

Subsection (j) requires the commission to enter a final order affirming, modifying, or vacating the administrative law judge's order of permit suspension or revocation. The final order of the commission must be entered within 45 days following the issuance of the nonfinal order. The final order of the commission must be issued 60 days following the date that the hearing record is closed by the administrative law judge or 60 days following the administrative law judge's receipt of the permittee's petition for review filed under subsection (d) if no hearing was requested by any party and the administrative law judge determined that no hearing was necessary.

Subsection (k) provides that the minimum suspension period is 3 working days unless the commission finds that imposition of the minimum suspension period would result in manifest injustice and would not further the purposes of IC 13–4.1, IC 14–34, 310 IAC 12, or any permit condition required by IC 13–4.1, IC 14–34, or 310 IAC 12. The commission may impose preconditions that the permittee must satisfy before the suspension is lifted.

Subsection (l) requires the commission to serve the parties with a copy of the final order. A party may then apply for judicial review under IC 4–21.5.

6. 312 IAC 3–1–6 Amendment of Pleadings

Subsection (a) provides for the amendment of petitions for administrative review filed under IC 4–21.5–3–7. The various types of petitions that may to be amended are described in 312 IAC 3–1–3(a). A pleading may be amended once as a matter of course before a response is filed, but not later than the initial prehearing conference or 15 days before a hearing, unless otherwise allowed by the administrative law judge.

Subsection (b) specifies the circumstances under which amendments in a pleading relate back to the date of the original pleading.

7. 312 IAC 3–1–7 Filing and Service of Documents

Subsection (a) requires documents to be filed with the administrative law judge and served on all other parties.

Subsection (b) allows the filing of a document to be performed by personal delivery, first class mail, certified mail, interoffice mail, fax, or electronic mail.

Subsection (c) requires service of a document to be made upon the attorney or other authorized representative when a party is represented by an attorney or another authorized representative. If a

party is not represented by others, service must be made upon the individual.

Subsection (d) provides that filing or service by properly addressed, prepaid first class or certified mail is complete upon deposit in the United States mail. Filing or service by another method is complete upon receipt.

Subsection (e) specifies that 312 IAC 3–1–7 does not modify the time in which a party may file objections under IC 4–21.5–3–29 or a petition for judicial review under IC 4–21.5–5.

8. 312 IAC 3–1–8 Administrative Law Judge; Automatic Change

Subsection (a) provides that an automatic change of administrative law judge may be obtained under 312 IAC 3–1–8.

Subsection (b) provides that a party may file a written motion for change of the administrative law judge without specifically stating the ground for the request. A party must file the motion within ten days after the appointment of an administrative law judge.

Subsection (c) requires the administrative law judge to grant the motion filed under subsection (b) and to notify the division director. The division director must inform the parties of the names of two other individuals from whom a substitute administrative law judge may be selected. A party who is opposed to the party who filed the motion under subsection (b) may, within five days, select one of the individuals named by the division director to serve as the substitute administrative law judge. The division director must select a new administrative law judge if the opposing party does not make a timely selection.

Subsection (d) specifies under what circumstances an automatic change of administrative law judges under this section does not apply. This section does not apply where a previous change of administrative law judge has been requested under this section. It does not apply to a proceeding under IC 4–21.5–4 or to temporary relief under IC 13–4.1. It does not apply if an administrative law judge has issued a stay or entered an order for disposition of all or a portion of the proceeding. Finally it does not apply if the commission orders a suspension of the section because of inadequate staffing.

9. 312 IAC 3–1–9 Defaults, Dismissals, and Agreed Orders

Subsection (a) allows an administrative law judge to enter a final order of dismissal if the party who initiated administrative review requests the proceeding be dismissed.

Subsection (b) allows an administrative law judge, on the motion of the administrative law judge or the motion of a party, to enter a proposed order of default or proposed order of dismissal under IC 4–21.5–3–24, if at least one of the following applies: (1) A party fails to attend or participate in a prehearing conference, hearing, or other stage of the proceeding; (2) The party responsible for taking action does not take action on a matter for a period of at least 60 days; (3) The person seeking administrative review does not qualify for review under IC 4–21.5–3–7; or (4) A default or dismissal could be entered in a civil action.

Subsection (c) allows a party to file a written motion requesting the order not be imposed. The party must file the motion within seven days after service of a proposed order of default or dismissal, or within a longer period allowed by the proposed order. The administrative law judge may adjourn the proceedings or conduct them without participation of the party against whom a proposed default order was issued within the same time period. The administrative law judge must consider the interest of justice and the orderly and prompt conduct of the proceeding before taking either action.

Subsection (d) requires the administrative law judge to issue an order of default or dismissal if the party fails to file a written motion under subsection (c). If the party has filed a written motion under subsection (c), the administrative law judge may either enter or refuse to enter an order of default or dismissal.

Subsection (e) requires the administrative law judge, after issuing an order of default, but before issuing a final order or disposition, to conduct any action necessary to complete the proceeding without the participation of the party in default and determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings under IC 4–21.5–3–23 to resolve any issue of fact.

Subsection (f) requires an administrative law judge to approve an agreed order entered into by the parties if it is clear and concise and lawful.

Subsection (g) allows the secretary of the commission to affirm the entry of an agreed order approved by the administrative law judge under subsection (f).

Subsection (h) provides that a final order entered under this section is made with prejudice unless otherwise specified in the order. A person may seek judicial review of the order under IC 4–21.5–5.

10. 312 IAC 3–1–10 Applicability of Rules of Trial Procedure and Rules of Evidence

Section 10 allows the administrative law judge to apply the Indiana Rules of Trial Procedure or the Indiana Rules of Evidence as long as they are not inconsistent with IC 4–21.5 or 312 IAC 3–1.

11. 312 IAC 3–1–11 Conduct of Hearing; Separation of Witnesses

Subsection (a) requires an administrative law judge to govern the conduct of a hearing and the order of proof.

Subsection (b) requires the administrative law judge to provide for a separation of witnesses on a motion by a party before the commencement of testimony.

12. 312 IAC 3–1–12 Nonfinal Order of the Administrative Law Judge; Oral Argument Before the Commission; Participation by Nonparties (Amicus Curiae); Disposition by the Secretary of State If No Objection Filed

Subsection (a) provides that 312 IAC 3–1–12 governs the disposition of objections under IC 4–21.5–3–29.

Subsection (b) requires a party who wishes to contest whether objections provide reasonable particularity, to move, in writing, for a more definite statement. The administrative law judge may rule upon a motion filed under this subsection, and any other motion filed subsequent to the entry of the nonfinal order, and enter an appropriate order (including removal of an item from the commission agenda).

Subsection (c) requires that parties schedule objections for argument before the commission simultaneously with the presentation by the administrative law judge of findings, conclusions, and a nonfinal order. Unless otherwise ordered by the commission, argument must not exceed 10 minutes for each party and 20 minutes for each side.

Subsection (d) allows a nonparty to file a brief with the commission ten days before oral argument is scheduled on objections filed under subsection (c). A copy of the brief must be served upon each party. The brief must not be more than five pages long and cannot include evidentiary matters outside the record. Unless otherwise ordered by the commission, a nonparty may also present oral argument for not more than five minutes in support of the brief. If more than one nonparty files a brief, the administrative law judge must order the consolidation of briefs if reasonably necessary to avoid injustice to a party. A nonparty who has not filed a brief at

least ten days before oral argument is first scheduled on objections may participate in the argument upon the stipulation of the parties.

Subsection (e) requires the commission to provide the services of a stenographer or court reporter to record the argument upon the written request of a party. This request must be filed at least 48 hours before an oral argument to consider objections.

Subsection (f) allows the secretary of the commission, as its designee under IC 4–21.5–3–28(b), to affirm the findings and nonfinal order. The secretary has exclusive jurisdiction to affirm, remand, or submit to the commission for final action, any findings and nonfinal order subject to this subsection. No oral argument will be conducted under this subsection unless ordered by the secretary.

Subsection (g) allows a party to move to strike all or any part of objections, a brief by a nonparty, or another pleading under 312 IAC 3–1–12. The administrative law judge must act upon a motion filed under this subsection by providing relief which is consistent with IC 4–21.5 and 312 IAC 3–1.

13. 312 IAC 3–1–13 Awards of Litigation Expenses for Specified Proceedings

Subsection (a) provides that 312 IAC 3–1–13 governs an award of costs and expenses reasonably incurred, including attorney fees, under IC 14–34–15–10.

Subsections (b) and (c) do not pertain to the Indiana program.

Subsection (d) provides that appropriate costs and expenses, including attorney fees, may be awarded under IC 14–34–15–10 in five instances. First, litigation expenses may be awarded to any person from the permittee. However, the person must initiate or participate in an administrative proceeding reviewing enforcement and a finding must be made by the administrative law judge or commission that a violation of IC 14–34, a rule adopted under IC 14–34, or a permit issued under IC 14–34 has occurred or that an imminent hazard existed and the person made a substantial contribution to the full and fair determination of the issues. However, a contribution of a person who did not initiate a proceeding must be separate and distinct from the contribution made by a person initiating the proceeding. Second, litigation expenses may be awarded to a person from the department, other than to a permittee or the permittee's authorized representative, who initiates or participates in a proceeding. The person must prevail in whole or in part, achieving at least some degree of success on the merits. A finding must also be made indicating that the person made a substantial contribution to a full and fair determination of the issues. Third, litigation expenses may be awarded to a permittee from the department if the permittee demonstrates that the department issued a cessation order, a notice of violation, or an order to show cause why a permit should not be suspended or revoked in bad faith and for the purpose of harassing or embarrassing the permittee. Fourth, litigation expenses may be awarded to a permittee from a person, where the permittee demonstrates that the person initiated a proceeding under IC 14–34–15 or participated in the proceeding in bad faith for the purpose of harassing or embarrassing the permittee. Finally, litigation expenses may be awarded to the department from a person, where the department demonstrates that the person sought administrative review or participated in a proceeding in bad faith and for the purpose of harassing or embarrassing the department.

Subsection (e) allows the commission to order a person requesting a hearing to pay the cost of the court reporter if the person requesting the hearing fails, after proper notice, to appear at the hearing.

Subsection (f) specifies the factors that the commission must consider in determining what is a reasonable amount of attorney fees. The factors include: (1) The nature and difficulty of the proceeding; (2) The time, skill, and effort involved; (3) The fee customarily charged for similar legal services; (4) The amount involved in the proceeding; and (5) The time limitations imposed by the circumstances. For a party whose attorney is a full-time, salaried employee of the party, consideration also must be given to the prorated cost of the salary of the attorney and of the clerical or paralegal employees of the party who assisted the attorney. The employees' benefits attributable to the time devoted to representation must also be considered.

Subsection (g) requires a party who wishes to seek litigation expenses to petition the director within 30 days after the party receives notice of the final agency action. A party wishing to challenge the petition for an award must deliver a written response to the director within 15 days of service of the petition for an award. If a petition for seeking litigation expenses and challenge of the petition for award are delivered to the director under this subsection, the director must refer the matter to the division of hearings of the commission for the conduct of a proceeding under IC 4–21.5.

14. 312 IAC 3–1–14 Court reporter; Transcripts

Subsection (a) requires the commission to employ and engage the services of a stenographer or court reporter, either on a full-time or a part-time basis, to record evidence taken during a hearing.

Subsection (b) allows a party to obtain a transcript of the evidence by submitting a written request to the administrative law judge.

Subsection (c) requires the party who requests a transcript under subsection (b) to pay the cost of the transcript.

Subsection (d) provides that, upon a written request by a party filed at least 48 hours before a hearing, a court reporter who is not an employee of the commission will be engaged to record a hearing.

15. 312 IAC 3–1–15 Quasi-Declaratory Judgments

Subsection (a) allows a person to request the department to interpret a statute or rule administered by the department as applicable to a specific factual circumstance. The request must be in writing and must describe with reasonable particularity all relevant facts. The request must cite with specificity the statutory or rule sections in issue. The request must identify any other person who may be affected by a determination of the request. Finally the request must describe the relief sought.

Subsection (b) allows the director or the director's delegate to provide a written response to the request. The written response must be provided within 45 days of the request. The response may include an interpretation based upon the information provided in the request or may specify additional information needed to respond to the request. If the department needs additional information, it has an additional 45 days in which to respond.

Subsection (c) provides that if the department does not respond within the periods described in subsection (b), a general denial of the request is deemed to have resulted.

Subsection (d) allows the person who is seeking the request under subsection (a) to file a petition for administrative review under IC 4–21.5–3 if he or she is aggrieved by the response of the department under subsection (b) or a general denial under subsection (c). The department's response constitutes a determination of status under IC 4–21.5–3–5(a)(5).

Subsection (e) provides that 312 IAC 3–1–15 does not excuse a person from

a requirement to exhaust another administrative remedy provided by statute or rule. A person may not void or modify a final order entered by the department in another proceeding. A request does not extend any time limitation imposed on the availability of another administrative remedy. A final order of the department under this section, which follows a contested proceeding under IC 4–21.5–3, provides the same precedent as a final order following any other contested proceeding under IC 4–21.5–3.

16. 312 IAC 3–1–16 Continuances

Subsection (a) provides that upon the motion of a party, a hearing may be continued by the administrative law judge and shall be continued upon a showing of good cause.

Subsection (b) requires a motion to continue a hearing because of the absence of evidence to be made by affidavit. The affidavit must show the materiality of the evidence expected to be obtained; that due diligence has been used to obtain the evidence; and where the evidence may be. If the motion is based on the absence of a witness, the party's affidavit must show: the name and residence of the witness, if known; the probability of procuring the testimony in a reasonable time; that absence of the witness was not procured by the party nor by others at the request, knowledge, or consent of the party; what facts the party believes to be true; and that the party is unable to prove the facts by another witness whose testimony can be readily procured.

Subsection (c) provides that if, upon the receipt of a continuance motion under subsection (b), the adverse party stipulates to the truth of the facts which the party seeking the continuance indicated could not be presented, the hearing shall not be continued.

17. 312 IAC 3–1–17 Record of Proceedings; Adjudicative Hearings Generally; Record of the Director for Surface Coal Mining Permits

Subsection (a) provides that the record required to be kept by an administrative law judge under IC 4–21.5–3–14 commences when a proceeding is initiated under 312 IAC 3–1–3(a) and includes the items described in IC 4–21.5–3–33.

Subsection (b) provides that in addition to subsection (a), this subsection applies to a proceeding concerning the approval or disapproval of a permit application, permit revision application, or permit renewal under IC 14–34–4–13. However, nothing in this subsection precludes the admission of testimony or exhibits that are limited to the explanation or analysis of materials included in the record before the director. Neither does it preclude the manner in which the materials were applied, used, or relied upon in evaluating the application. Upon a timely objection made before or during a hearing, the administrative law judge shall exclude testimony or exhibits that are offered but that identify or otherwise address matters that are not part of the record before the director under IC 14–34–4–13. The record before the director includes: the permit; the permit application as defined at 310 IAC 12–0.5–10; documentation tendered or referenced, in writing, by the applicant or an interested person for the purposes of evaluating, or documentation used by the department to evaluate, the application; the analyses of the department in considering the application, including the expertise of the department's employees and references used to evaluate the application; documentation received under IC 14–34–4, including the conduct and results of any informal conference or public hearing under IC 14–34–4–6; and correspondence received or generated by the department relative to the application, including letters of notification, proofs of filing newspaper advertisements, and timely written comments from an interested person.

18. 312 IAC 3–1–18 Petitions for Judicial Review

Subsection (a) requires a person, who wishes to take judicial review of a final agency action entered under 312 IAC 3–1, to serve copies of a petition for judicial review upon the persons described in IC 4–21.5–5–8.

Subsections (b), (c), and (d) list the names and addresses that a copy of the petition required under IC 4–21.5–5–8 must be served.

Subsection (e) provides that the commission and its administrative law judge provide the forum for administrative review under this rule. Neither the commission nor the administrative law judge is a party.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Indiana program.

Written Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. IN–149–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Indianapolis Field Office at (317) 226–6700.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on March 22, 2000. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

To assist the transcriber and ensure an accurate record, we request that you provide us with a written copy of your testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and

persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 29, 2000.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 00–5494 Filed 3–6–00; 8:45 am]

BILLING CODE 4310–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–394; MM Docket No. 00–35; RM–9818]

Radio Broadcasting Services; Lake Isabella, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Dana J. Puopolo requesting the allotment of Channel 239A to Lake Isabella, California, as that community's second local aural transmission service. Coordinates used for this proposal are the city reference at 35–35–11 NL; 118–26–34 WL.

DATES: Comments must be filed on or before April 17, 2000, and reply comments on or before May 2, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dana J. Puopolo, 2134 Oak St., Unit C, Santa Monica, CA 90405.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–35, adopted February 16, 2000, and released February 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5412 Filed 3–6–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 000105004–0004–01; I.D. 063099A]

RIN 0648–AI78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Atlantic Herring Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Atlantic Herring Fishery Management Plan (FMP). This proposed rule would: Establish target total allowable catch (TAC) levels for each of three management areas, one of which is divided into inshore and offshore sub-areas; establish a procedure for the development and revision of annual specifications; establish initial specifications for the 2000 fishing year; establish incidental harvest limits when a management area is closed to directed fishing for Atlantic herring; establish a vessel monitoring system (VMS) requirement; establish vessel size limits; establish a framework adjustment process; establish permitting and reporting requirements; impose restrictions on transfers at sea; and implement other measures for administration and enforcement. The purpose of this proposed action is to manage the Atlantic herring (*Clupea harengus*) fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP and to prevent overfishing of the Atlantic herring resource.

DATES: Comments must be received at the appropriate address or fax number, (See **ADDRESSES**), on or before 5:00 p.m., local time, on April 21, 2000.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Atlantic Herring FMP." Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

Copies of the FMP, its Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA) and the Supplement to the IRFA, and the Final Environmental Impact Statement (FEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed by the New England Fishery Management Council (Council) in response to concerns that the continued development and increased landings in the Atlantic herring fishery required implementation of management measures to prevent overfishing and to allow for the orderly development of the fishery. Development of the FMP was coordinated closely with the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission (Commission) to ensure that complementary management measures in both state and Federal waters were developed.

Atlantic herring were first managed by a Council fishery management plan approved by the Secretary of Commerce (Secretary) and implemented on December 28, 1978. This fishery management plan used a quota system to control catches in the fishery. The quota system, however, proved ineffective at controlling harvests because of unresolved ambiguities over catches in state waters. On September 28, 1982, the Secretary withdrew approval of that fishery management plan. Management of the resource then relied upon efforts by the States of Maine, New Hampshire, Massachusetts, and Rhode Island to adopt complementary regulations through interstate fishery management plans. In 1995, NMFS adopted a Preliminary Management Plan for the Atlantic Herring of the Northwestern Atlantic (PMP) to regulate foreign joint venture activities for Atlantic herring in the exclusive economic zone (EEZ) (60 FR 37848, July 24, 1995). In 1996, the Council and the Commission resumed the development of additional management measures. Rather than develop a joint FMP, the Council and the Commission began the process of closely coordinating separate FMPs for state and Federal waters.

The Council announced its intent to prepare an Environmental Impact Statement (EIS) for adoption, approval, and implementation of the FMP (62 FR 4384, August 2, 1997) and scoping hearings were held in Maine, Massachusetts, Rhode Island, and New Jersey in the fall of 1997. Preliminary discussions on the management measures began soon after. The Council published a draft EIS (DEIS)(63 FR 34871, June 26, 1998) and held public hearings in Maine, Massachusetts, Rhode Island, New Jersey, and Virginia in June and July 1998. These public hearings resulted in further refinements to the proposed management measures, which are presented in this proposed rule.

The Council formally submitted the FMP for Secretarial review and NMFS published a notice of availability (NOA) in the **Federal Register** on July 27, 1999 (64 FR 40542) requesting public comments. The public comment period for the FMP ended September 27, 1999. All comments received through September 27, 1999, were considered in the approval/disapproval decision on the FMP and will be addressed in the final rule. On October 27, 1999, NMFS, on behalf of the Secretary, approved all but four of the management measures contained in the FMP and informed the Council of its decision. The disapproved management measures were: (1) Effort limits through mandatory days out of the fishery; (2) spawning area closures; (3) adjustment of the TAC for Management Area 1A; and (4) a prohibition on specifying a total allowable level of foreign fishing (TALFF). The proposed scheme to restrict fishing to specific days based on the proportion of the TAC that is caught in a management area was disapproved because fishers could easily work around the days-out restrictions and undermine the conservation intent of National Standard 1 of the Magnuson-Stevens Act. Some fishers may fish on bad weather days to work around the days-out restrictions, raising a safety issue under National Standard 10 of the Magnuson-Stevens Act. The costs of imposing days out of the fishery outweigh the uncertain benefits. NMFS disapproved the spawning area closures because it was not demonstrated that the benefits of imposing the closures outweigh the costs. The spawning area closures would not apply to mobile, bottom-tending vessels which may

disturb spawning herring, but only to purse seiners and mid-water trawlers participating in the directed fishery for Atlantic herring. The conservation benefits of this measure are uncertain. Further, the NMFS Northeast Region Office of Law Enforcement stated that spawning area closures that allow the possession of herring on board pose enforcement problems. NMFS also disapproved the in-season adjustment of the TAC for Management Area 1A because there is no real-time mechanism by which the Administrator, Northeast Regional Office, NMFS (Regional Administrator) can monitor the Canadian catch or that catch information would be provided in a timely fashion in future years. This measure is not consistent with section 303(a)(1)(A) of the Magnuson-Stevens Act as it is not a necessary and appropriate conservation and management measure because it may not work. It is also inconsistent with National Standard 7 of the Magnuson-Stevens Act because it will only impose costs to NMFS without assured benefits. Lastly, NMFS disapproved the prohibition on specifying a TALFF because this prohibition would be inconsistent with sections 201(d) and (303)(a)(4)(B) of the Magnuson-Stevens Act which require that any fishery management plan prepared by a Fishery Management Council, or by the Secretary, assess and specify the portion of optimum yield (OY) which, on an annual basis, will not be harvested by domestic fishing vessels and can be made available for foreign fishing. NMFS informed the Council that the proposed rule would provide for the annual specification of a TALFF, even if, in any given year, it is determined that the amount should be zero. Consequently, a TALFF is specified, albeit at zero, for the proposed initial specifications for the 2000 fishing year.

Herring landings have steadily increased in the last 10 years, with an increasing proportion taken in the EEZ, rather than in state waters. About 70 percent of the landings is now taken in the inshore Gulf of Maine (GOM). As recently as the late 1970s the stop seine and weir fishery accounted for the majority of the landings. Now the fishery is prosecuted primarily by purse seine and mid-water trawl vessels and the proportion of the landings taken by fixed gear in state waters is insignificant. The two major markets for herring are the bait market and sardine canneries. The lobster fishery has grown to depend almost entirely on herring for bait in the absence of an alternative, and it is estimated that 60 to 70 percent of the herring caught is used for bait in the lobster or tuna fisheries; about 30 percent is used by the sardine canneries; and some is processed into meal, frozen for use as bait in other fisheries, or used for animal feed.

The robust status of the herring resource, coupled with increasing regulation in other fisheries, has generated interest by fishermen to exploit the stock. The resource, serving as an alternative to the groundfish fishery for some fishermen, can support additional landings if spread throughout the range, but protection needs to be provided to individual spawning components. Scientists caution that the landings in the GOM inshore area should not increase; instead, any increase in landings of Atlantic herring should come from other areas.

Therefore, the FMP contains an approved measure that has target TACs, assigned by management areas, that would help prevent overfishing of components of the stock complex.

Atlantic herring is a key prey species in the North Atlantic Ocean and a food source for a wide variety of other fish species, marine mammals, and birds. If herring landings were to increase without any controls in place to prevent overfishing, there could be broad impacts on the entire ecosystem. For this reason, the Council has been cautious in setting the proposed specifications and target TACs for the fishery.

The biological, economic, and social impacts of these measures and the cumulative impacts associated with other FMPs and regulations are discussed in the FMP and FEIS.

Status of the Stocks

In 1998, the 27th Northeast Regional Stock Assessment Workshop (SAW 27) was convened to examine the status of several species, including the coastal stock complex of Atlantic herring. SAW 27 reported that the abundance of herring in continental shelf waters between Cape Hatteras and the GOM has been increasing steadily since the mid-1980s, and the Georges Bank (GB)/ Nantucket Shoals component has fully recovered from over-exploitation brought about by heavy foreign fishing in the 1960s and 1970s. As indicated in its June 1998 plenary report, SAW 27 estimated the current biomass of Atlantic herring as 2.9 million metric tons (mt), and spawning stock biomass as 1.8 million mt. Fishing mortality rate (F) of the entire stock complex is very low while recruitment in recent years appears to be very large. However, SAW 27 cautioned that there is considerable uncertainty over the current stock size estimate, so that any increase in landings should be allowed gradually.

SAW 27 estimated the maximum sustainable yield (MSY) as 317,000 mt, based on a conditioned run of a surplus production model. The Stock Assessment Review Committee (SARC), in reviewing this MSY estimate, expressed concern that it may be unrealistic. The SARC suggested that a yield-per-recruit model be used to estimate MSY. This model produced MSY estimates ranging from 108,000 to 290,000 mt. The SARC advised it would not be prudent to consider MSY to be above 200,000 mt until the size of recent year classes could be better estimated.

SAW 27 also considered the status of various stock components. The NMFS Northeast Fisheries Science Center fall trawl survey data were examined in order to determine the relative abundance of herring in three different areas during spawning season. SAW 27 concluded that, during spawning season, 25 percent of the stock complex occupies the GOM area, 65 percent is in the Nantucket Shoals area, and 10 percent is on GB. Analysis of this data shows that the proportion on GB appears to be increasing. While the overall complex is underutilized, SAW 27 concluded that the GOM component, which provides most of the commercial harvest, is fully utilized. The SARC recommended that any increases in Atlantic herring catches should not come from the GOM stock component.

Overfishing Definition

This FMP establishes an overfishing definition for Atlantic herring in accordance with the national standards of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act of October 1996. Under the revised standards, overfishing definitions must be composed of two reference points, one for F and one for stock biomass. "Overfishing" occurs whenever a stock or stock complex is subjected to an F value that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis. "Overfished" describes a stock or stock complex with a sufficiently low biomass to require a change in management practices to achieve the appropriate level or rate of stock rebuilding to the biomass target. Comments on the overfishing definition for this FMP were solicited in the NOA, because, although not codified in the regulatory text of the proposed rule, the overfishing definition is part of the FMP. The overfishing definition was approved by NMFS on October 27, 1997.

Annual Specifications

The proposed rule would establish a procedure for establishing OY that is based on the allowable biological catch (ABC). ABC would be determined by multiplying the estimate of current stock size by the target F. OY could not exceed ABC, adjusted by the Canadian GB and New Brunswick fixed gear catches, which could not exceed 20,000 mt for the Canadian New Brunswick fixed gear harvest and 10,000 mt for the Canadian GB harvest. The proposed rule would limit the amount of Canadian catch that would be considered when setting OY. OY also would not exceed MSY, unless an OY that exceeds MSY in a specific year is consistent with a control rule that ensures the achievement of MSY and OY on a continuing basis. However, OY would not exceed MSY prior to the 2001 fishing year. Because of some uncertainty in the current stock size estimates, the Council recommended, for purposes of setting the initial ABC, that the current stock size be assumed to equal B_{MSY} (the biomass level that produces maximum sustainable yield), rather than basing it on actual estimates of current stock size, which exceed B_{MSY}. This precautionary approach would limit catches until the estimates can be improved. The resulting ABC and OY, however, are still more than twice the amount of current landings.

The proposed rule would establish four additional specifications: Total amount allocated to processing by foreign ships (JVPt), either in state waters (IWP) or in the EEZ (JVP); amount of the domestic annual processing (DAP) allocated for at-sea processing by domestic vessels that exceed the vessel size limits established in the FMP (USAP); total amount of herring that can be taken in U.S. waters and transferred to Canadian herring carriers for transshipment to Canada (BT) as authorized by the Sustainable Fisheries Act (Pub. L. 104–297, section 105(e)); and, TALFF, if any, from that portion of OY that would not be harvested by domestic vessels. The Council and the Commission would consult annually to determine the allocation of JVPt to IWP and JVP.

Initial Specifications

This proposed rule would establish initial specifications for the 2000 fishing year. The FMP established specifications for the 1999 fishing year that would remain in effect for the 2000 fishing year, unless revised through the specification process. Because the 1999 fishing year has passed (the fishing year coincides with the calendar year), this proposed rule would establish the initial specifications for the 2000 fishing year at the levels specified in the FMP for the 1999 fishing year.

The proposed specifications include an ABC equal to 300,000 mt and an OY equal to 224,000 mt. Because the Council determined that the domestic annual harvest (DAH) is equal to the OY, TALFF would be specified at zero for the 2000 fishing year. Estimates of DAP are based on recent processing estimates and allow for possible errors in estimates of the bait market and increased development of processing capacity. No herring would be allocated to USAP for the 2000 fishing year, which would prohibit at-sea processing by domestic vessels exceeding the proposed size limits. Table 1 contains the proposed initial specifications for the 2000 Atlantic herring fishery.

TABLE 1—PROPOSED ANNUAL SPECIFICATIONS[1] (MT) FOR THE ATLANTIC HERRING FISHERY, JANUARY 1 THROUGH DECEMBER 31, 2000

Specification	Atlantic Herring
ABC	300,000
OY	224,000
DAH	224,000
DAP	180,000
USAP	0
BT	4,000
JVPt	
JVP - Management Area 2	10,000
JVP - Management Area 3	5,000
JVP - Subtotal	15,000
IWP	25,000
JVPt - Total	40,000
TALFF	0
Reserve	0

[1] See Table 2 for Area TACs for Fishing Year 2000.

Management Areas

The proposed rule would establish three management areas based on the existing areas established by the PMP and the Commission's FMP. However, Management Area 1 would be divided into an inshore (Area 1A) and an offshore (Area 1B) area. The Council would use the management areas as the basis for recommending the distribution of the TAC to different spawning components for the distribution of JVP allocations and could use the management areas as the basis for implementation of other management measures in the future.

Total Allowable Catch

The proposed rule would establish a target TAC for the 2000 fishing year. The FMP established a target TAC for the 1999 fishing year that would remain in effect for the 2000 fishing year, unless revised through the specification process. Because the 1999 fishing year has passed, this proposed rule would establish the target TAC for the 2000 fishing year at the level specified in the FMP for the 1999 fishing year. The TAC would be re-specified for each new fishing year. The TAC for a given year would be distributed to the management areas based on existing knowledge of fishing patterns, herring stock structure, and herring migration. For the 2000 fishing year the proposed percentage allocations for the various areas are: Area 1A - 20 percent; Area 1B - 11 percent; Area 2 - 22 percent; Area 3 - 22 percent; Reserve Area 2 - 24 percent. (See Table 2 for resultant management area target TACs.) Each year the Council's Herring Plan Development Team would examine available data and recommend a TAC and its distribution to the Council. The Council would then consult with the Commission before it recommends a TAC to NMFS. NMFS would review the Council's recommendations and set the TAC, publish the proposed TAC in the **Federal Register** for public comment, make a final determination, and publish the final TAC and responses to public comments in the **Federal Register**. All harvests of Atlantic herring, from both state and Federal waters, would be applied against the TAC.

The directed fishery for herring would be closed in a management area after the date on which 95 percent of the area TAC would be caught, as projected by NMFS. Closure of the directed fishery with 5 percent remaining for an area TAC would allow the incidental harvest of herring in other fisheries to continue, while minimizing the likelihood the area TAC would be exceeded. This percentage is based on estimates of the incidental harvest of herring in other fisheries. If the percentage allocated to the incidental harvest overestimates the amount caught (incidental harvests after a closure are less than 5 percent), the 5 percent remainder for a given area TAC could be reduced by NMFS during the annual specification process the following year. If the percentage allocated to the incidental harvest underestimates the amount caught (incidental harvests after a closure are more than 5 percent), the 5 percent remainder for a given area TAC could be increased the following year through a framework adjustment. After an area is closed, vessels would be allowed to possess, transfer, or land only 2,000 lb (907.2 kg) of herring, in or from, the closed area. Vessels that harvest herring in an open area would be allowed to

transit the closed area, provided all gear is stowed.

The industry would be notified of the closure of the directed fishery for herring in a management area through notification published in the **Federal Register** and a variety of other methods, including news releases, and through state agencies.

Area TACs for Fishing Year 2000

Table 2 lists the proposed area TACs for the 2000 fishing year.

TABLE 2—PROPOSED AREA TACS FOR FISHING YEAR JANUARY 1, 2000, THROUGH DECEMBER 31, 2000

Management Area	TAC (mt)
Area 1A	45,000
Area 1B	25,000
Area 2	50,000
Area 3	50,000
TAC Reserve - Area 2	54,000
TAC Total	224,000

Transfers at Sea

There would be no specific restrictions on transfers of herring at sea, unless a management area is closed to directed fishing for Atlantic herring and/or other restrictions in the regulations apply. When a management area is closed to directed fishing for Atlantic herring, transfers would be limited to no more than 2,000 lb (907.2 kg) of herring per day, in or from, an area subject to the closure. A vessel could not transfer more than 2,000 lb (907.2 kg) of herring taken from a closed area, nor transfer or sell any herring taken from a closed area to a joint venture vessel.

U.S. vessels could not transfer herring to Canadian herring carriers that transship U.S.-caught herring, if authorized pursuant to the Sustainable Fisheries Act (Pub. L. 104–297, section 105(e)), after the amount of herring transshipped equals the amount of the BT specification. Canadian herring carriers could not receive U.S.-caught herring after the amount transshipped equals the amount of the BT specification.

Vessel Size Limits

Domestic vessels ≥ 165 feet (50.3 m) in length overall (LOA), or > 750 gross registered tons (GRT)/(680.4 mt), or > 3,000 horsepower would not be permitted to catch, take, or harvest herring in or from the EEZ. Domestic vessels > 165 feet (50.3 m) LOA, or > 750 GRT (680.4 mt) would be allowed, however, to process or receive herring in the EEZ, but would be limited to the allocated amount specified pursuant to the specification process for USAP.

NMFS notes discrepancies in the size, capacity, and/or horsepower restrictions between the Atlantic Herring and Atlantic Mackerel FMPs. However, NMFS in its October 27, 1999, letter to the Council indicated that it intends to work with the New England and Mid-Atlantic Councils to resolve inconsistencies in vessel size measures between their Atlantic Herring and Atlantic Mackerel FMPs.

Roe Fishery

The harvest of Atlantic herring for roe would be allowed, provided the carcasses are not discarded. The Council would monitor the development of a roe fishery and could, in the future, recommend a limit on the amount of herring that may be harvested for roe.

In the NOA for the FMP, NMFS identified the specification of the amount of herring to be used for roe as a measure of concern because of an erroneous interpretation of the Council's intent with respect to the manner in which limitations on the amount of herring harvested for roe would be implemented. Any restriction would be implemented through the framework adjustment process in accordance with 50 CFR § 648.206 rather than through notice action.

Foreign Fishing Vessel Restrictions

Foreign fishing vessel permitting and reporting requirements are established by 50 CFR 600, Subpart F, which include regulations on harvesting by foreign fishing vessels and joint ventures and internal waters processing and support. The Council would be allowed to recommend joint ventures and TALFF in all management areas, subject to an annual review. The Council could choose to determine joint venture specifications and TALFF by management area. If joint venture allocations and TALFF are specified by area, all herring supplied to the joint venture and/or TALFF would have to come from that management area.

Vessel Monitoring Systems

The proposed rule would require the installation and use of a VMS unit on vessels in the directed herring fishery that caught > 500 mt in the previous year, or vessels whose owner intends to harvest > 500 mt in the current year. A VMS would help facilitate the monitoring of area-specific TACs and would assist with the enforcement of closures of management areas to directed fishing for Atlantic herring, as well as facilitate the enforcement of closures imposed under regulations implementing other FMPs. If a vessel owner does not declare the intention to harvest > 500 mt at the start of the year, and does not install a VMS unit on the vessel, the vessel may not harvest > 500 mt in that fishing year. The VMS unit must be installed prior to the beginning of the fishing year in order to land > 500 mt in that fishing year. Because in this application VMS is intended primarily to monitor areas fished as opposed to days-at-sea effort, a VMS unit would have to be operating any time an Atlantic herring vessel is underway, but would not have to be operating when a vessel is moored or maneuvering in a harbor. This would minimize communication costs to vessel operators and remove the necessity to provide power to a moored vessel with a VMS unit.

Permitting Requirements

All commercial vessels meeting certain eligibility requirements fishing for, possessing, or landing herring in or from the EEZ would be required to obtain a Federal Atlantic herring permit. Domestic vessels ≥ 165 feet (50.3 m) LOA, or > than 750 GRT (680.4 mt), or > 3,000 horsepower would not be eligible to be issued a permit to harvest or take herring. However, domestic vessels > 165 feet (50.3 m) LOA, or > 750 GRT (680.4 mt), regardless of horsepower, would be eligible to obtain a processing permit to process or receive herring in the EEZ, limited to the amount allocated for USAP pursuant to the specification process. Other than this restriction on vessel size, there would be no restrictions or qualification criteria necessary for a domestic vessel to receive a permit. A vessel with a Federal Atlantic herring fishing permit would have to be marked in accordance with 50 CFR 648.8.

An Atlantic herring carrier vessel would be required to obtain, in addition to a Federal Atlantic herring permit, a letter of authorization from the Regional Administrator that would allow such vessel to transport herring caught by another fishing vessel.

Operators of vessels issued an Atlantic herring fishing or processing permit would be required to obtain an operator permit. There would be no qualification or test for this permit. Dealers of Atlantic herring would be required to obtain a dealer permit and to comply with reporting requirements. To limit the number of entities that would have to comply with dealer permitting and reporting requirements, given the nature of herring fishing and processing, this rule narrowly defines Atlantic herring dealers as persons owning or operating a shore-based

pump that offloads herring from vessels with a Federal Atlantic herring permit, persons that purchase herring that is offloaded directly from vessels with a Federal Atlantic herring permit other than for their own use as bait, and persons owning or operating a processing vessel that receive Atlantic herring from vessels with a Federal Atlantic herring permit. The purpose of narrowly defining who is a dealer is to minimize the burden of dealer reporting requirements. Many persons purchase the herring that is offloaded through a shore-based pump from one vessel. Under these circumstances, this definition would require only the pump operator to obtain a dealer permit and to file dealer reports, rather than all the persons who receive herring from the pump operator.

This proposed rule would require Atlantic herring processors to obtain a processing permit and to comply with reporting requirements. Atlantic herring processors are defined as persons who receive or obtain unprocessed Atlantic herring for the purposes of rendering it suitable for human consumption, bait, commercial uses, industrial uses, or long-term storage. These requirements could result in a person needing both a dealer and a processor permit. For example, a person who purchases herring directly from a vessel and then sells it as bait would need both permits.

Reporting Requirements

This proposed rule would extend the existing Vessel Trip Report (VTR) system to vessels with Atlantic herring permits. This would require the owner/operator to submit monthly reports on fishing effort, landings, and discards on forms supplied by the Regional Administrator. In addition, in order to improve real-time monitoring of the harvest, an Interactive Voice Response (IVR) system would be required to be used. The FMP uses area-specific TACs to control fishing mortality. To be effective, harvests need to be closely monitored to ensure that the TAC is not exceeded. Since only vessel operators can identify where they harvest herring, the area specific TACs could not be monitored effectively through only the dealer reporting system. The VTR system relies on monthly reports, on paper, that are entered into a database. Accurate harvest statistics from this system are typically not available until 30 to 45 days after fish are landed. Given the high harvest rates in the herring fishery at certain times of the year, this would make it difficult to accurately project landings in a timely way. In order to improve the timely collection of harvest information, this proposed rule would require that an owner/operator of a vessel required to be equipped with a VMS unit report its harvest (landings and discards), by area, on a weekly basis. These reports would be called in (using a toll free number) to an automated response system. An owner/operator of a vessel with a VMS unit would have to call in a report for each week of the year, even if still at sea, including weeks they do not harvest herring. In addition, an owner/operator of a vessel that harvests ≥ 2,000 lb (907.2 kg) of herring on a trip would also call in a report by Tuesday of the following week, even if the herring had not yet been landed. This system would improve the timeliness of information on harvests of herring, which would facilitate more accurate predictions about when the TAC will be attained.

Atlantic herring dealers would be required to submit weekly dealer reports by mail. Although dealers are required to submit a weekly report to an IVR system for other Northeast Region quota managed species, Atlantic herring dealers would not be required to submit a weekly report to an IVR system unless the Regional Administrator determines that there is a need for such reports.

Atlantic herring processors would be required to submit annually the Fishery Products Report, U.S. Processors, Annual Survey, (NOAA Form 88–13). This report, collecting information on the uses of herring, would facilitate the management of the fishery to achieve OY.

Essential Fish Habitat

The Council submitted an omnibus essential fish habitat (EFH) amendment to address EFH provisions for several FMPs for Northeastern fisheries. The omnibus EFH amendment document also included the EFH components of the proposed FMP, which was then still under development by the Council. Although the Atlantic herring EFH components were included in the omnibus EFH amendment, they were not considered during Secretarial review of the omnibus EFH amendment. For Atlantic herring, the NOA for the omnibus EFH amendment (63 FR 66110, December 1, 1998) stated that "the omnibus amendment includes the EFH components of the FMP that is being developed by the [NEFMC Council]. The EFH information for Atlantic Herring will be incorporated by reference into the FMP when that FMP is submitted for Secretarial approval." The NOA for the FMP invited comment on the approvability of the herring EFH provisions in the Council's omnibus EFH amendment. Under the proposed framework adjustment process for Atlantic herring, measures could be added or adjusted to describe, identify, and protect EFH and designate habitat areas of particular concern within EFH.

Annual Monitoring and Framework Adjustment Measures

The FMP will be monitored on an annual basis. The status of the resource and the fishery will be reviewed by the Council's Atlantic Herring Oversight Committee in consultation with the Commission's Atlantic Herring Section. Recommendations on specifications will be developed, as well as any suggested changes to the management measures. These will be forwarded by the Herring Oversight Committee to the Council, which will take appropriate action. Specifications will be recommended to NMFS, and changes to management measures could be adopted through a framework adjustment or FMP amendment, as appropriate. This process will begin in July of each year so that changes could be implemented by January 1 of the following fishing year. The Commission will be expected to implement any corresponding changes in state waters.

The framework adjustment process adopted in the FMP is identical to that used in other Northeast Region fisheries. This process allows changes to be made to the regulations in a timely manner without going through the plan amendment process, as appropriate. It provides a formal opportunity for public comment that substitutes for the customary public comment period provided by publishing a proposed rule. If changes to the management measures were contemplated in the FMP and if sufficient opportunity for public comment on the framework action existed, NMFS could bypass the proposed rule stage and publish a final rule in the **Federal Register**. The management measures that could be implemented and adjusted through the framework process include the following: (1) Management area boundaries; (2) size, timing, or location of spawning area closures; (3) closed areas other than a spawning closures; (4) restrictions in the amount of fishing time; (5) a days-at-sea system; (6) adjustments to specifications; (7) adjustments to the Canadian catch deducted when determining specifications; (8) distribution of the TAC; (9) gear restrictions (such as mesh size) or requirements (such as bycatch-reduction devices); (10) vessel size or horsepower restrictions; (11) closed seasons; (12) minimum fish size; (13) trip limits; (14) seasonal, area, or industry sector quotas; (15) measures to describe EFH, fishing gear management

measures to protect EFH, and designation of habitat areas of particular concern within EFH; (16) measures to facilitate aquaculture, such as minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones, and any other measures included in the FMP; (17) changes to the overfishing definition; (18) vessel monitoring system requirements; (19) limits or restrictions on the harvest of herring for specific uses; (20) quota monitoring tools, such as vessel, operator, or dealer reporting requirements; (21) permit and vessel upgrading restrictions; (22) implementation of measures to reduce gear conflicts, such as mandatory monitoring of a radio channel by fishing vessels, gear location reporting by fixed gear fishermen, mandatory plotting of gear by mobile fishermen, standards of operation when conflict occurs, fixed gear marking or setting practices; gear restrictions for certain areas, vessel monitoring systems, restrictions on the maximum number of fishing vessels, and special permitting conditions; (23) limited entry or controlled access system; (24) specification of the amount of herring to be used for roe; and (25) any other measure currently included in the FMP.

Clarification of Initial "Fishing-up" Period

The Council, in its discussion of specifications for the Herring FMP, referred to an initial "fishing-up" period in which OY would not exceed MSY. A complete discussion is contained in section 3.2 of Volume I of the FMP.

NMFS interprets the initial "fishing-up" period to mean the 2000 fishing year.

Preliminary Management Plan for the Atlantic Herring Fishery of the Northwestern Atlantic

On July 24, 1995 (60 FR 37848), NMFS announced approval of the PMP to regulate foreign joint venture activities for Atlantic herring in the EEZ. The PMP, which set the initial specification for Atlantic herring, provided joint venture opportunities in the exclusive economic zone by allocating a portion of the allowable biological catch for joint venture processing. The PMP also established permit conditions and restrictions for foreign vessels that participate in joint ventures. Because the FMP addresses issues related to Atlantic herring foreign joint venture activities, NMFS proposes to withdraw approval of the PMP and to remove existing regulations related to Atlantic herring (50 CFR 600.525) at the time the final rule implementing the FMP becomes effective.

Classification

The Regional Administrator determined that the FMP is necessary for the conservation and management of the Atlantic herring fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This action has been determined to be significant for the purposes of E.O. 12866.

The Council prepared an FEIS for the FMP; a notice of availability was published on September 24, 1999 (64 FR 51753). A copy of the FEIS may be obtained from the Council (see **ADDRESSES**).

In compliance with the Regulatory Flexibility Act, the Council has prepared an IRFA that describes the economic impacts of the proposed measures on a substantial number of small entities. Reasons why the action is considered, as well as the objectives and legal basis of the rule, are described in the preamble to this rule and are not repeated here. The impacts on small entities attributable to the preferred management measures for approved measures and alternative management measures to the approved measures are discussed below. The IRFA and Supplement to the IRFA also contain information on the impacts on small entities of the measures disapproved by NMFS.

Small Entities Affected by an Open Access Fishery

The identification of the number of small entities affected by this rule is complicated in two ways. First, vessels fishing for herring are not currently required to possess Federal herring permits. Second, while many vessels currently landing herring possess other Federal permits or letters of authorization, there are some vessels that fish for herring only in state waters that do not possess such permits or authorizations. Only those vessels that have another Federal permit are required to submit vessel trip reports and can be readily identified in the permit, vessel trip report, and dealer weighout databases.

Because some vessels may target herring for a small number of trips each year, vessels were identified as participating in a "directed" fishery for herring if they landed at least one trip of one metric ton (2,205 lb) or more of herring during 1997. There were only 61 vessels, which landed 97,300 mt, amounting to 99 percent of all herring landings in the Northeast, while 140 vessels landing herring during 1997 accounted for less than 71 mt. Expressed in terms of revenues, the 61 vessels derived about $10.7 million from herring fishing while the remaining vessels' *total* herring revenues did not exceed $8,000. Therefore, for IRFA purposes, the set of affected vessels is limited to these 61 vessels in the directed herring fishery.

Of the 61 vessels, 17 of them derived, on average, less than $1,000 in herring revenues in 1997. The remaining 44 vessels were divided into two groups. The first group of 25 vessels derived, on average, $5,534 from herring revenues in 1997. The remaining group of 19 vessels earned, on average, $524,000 from herring revenues in 1997. The 44 vessels constitute 22 percent of the 201 vessels that landed some herring in 1997 and 72 percent of the 61 vessels in the directed herring fishery. The regulations would mostly affect the group of 19 vessels that, on average, earned $524,000 from herring revenues in 1997. These vessels alone represent 31 percent of all business entities in the directed herring fishery. Whether the affected set of vessels is defined to include only 61 vessels or all of the 201 vessels that landed herring in 1997, the regulations would affect a substantial number, i.e., more than 20 percent, of the small entities in the fishery.

The Council also considered adopting a limited entry or controlled access system alternative. The Council considered a comprehensive system that could be adopted for either the entire management unit or for specific management areas. This alternative included the possibility of using limited entry in the GOM where there is a desire to restrict harvests, but not in the offshore areas where there is a desire to increase fishing effort. The Council did not choose this approach, because it felt that it would limit the ability of some smaller vessels in rebuilding fisheries to shift into the herring fishery.

The Council did not perform a detailed analysis of the impact of a limited entry or controlled access system on small businesses because this alternative was not pursued. The impacts of a controlled access or limited entry system on small businesses in the herring fishery depends on the qualification criteria used to limit the number of participants. It also depends on whether the limited entry system applied to all management areas or only particular management areas. The Council decided not to pursue the controlled access alternative because it conflicted with FMP goals and the full details of the proposal were not defined.

The Council did provide the public an opportunity to comment on a wide variety of possible qualification criteria, and illustrated how those criteria would limit participants in the fishery. These criteria and their impacts illustrate the number of small businesses that would be affected by a limited entry program. At one extreme, the fishery would have been limited to 15 vessels that fished in Management Area 1 in 1996 or 1997 and possessed a letter of authorization to use small mesh nets in the GOM. If this qualification criteria were adopted for all management areas, 46 vessels that participated in the directed herring fishery in 1997 would be eliminated from the fishery. If only applied to Management Area 1A, it would eliminate 3–5 vessels that fished in this area but did not obtain a letter of authorization. It would also prevent vessels in other fisheries from participating in the herring fishery. At the other extreme, a proposed criteria would have issued a limited entry permit to any vessel that possessed a squid, mackerel, or butterfish permit. This would have qualified over 2,800 vessels for the fishery. The impacts of a large number of participants in the fishery on small businesses would be little different than the impacts from the open access alternative proposed by the Council.

Impacts of the Management Areas and Sub-areas

The management areas adopted by the FMP are based on knowledge of the various spawning components. This allows the development of management measures that specifically target a particular spawning component. The management areas further provide the basis for TAC distribution and have been established to avoid the over-exploitation of individual spawning components that are included within the stock complex. The designation of management areas is not expected to have any direct economic impacts. The establishment of the areas would not impose any additional requirements on vessel operators, would not directly limit participation in the fishery, and would not restrict catches. The areas are, however, used to guide the distribution of the TACs, which would have economic impacts on vessels that are discussed in the following section.

Impacts of TAC Distribution

Under the existing management scheme, there are no limits on the domestic harvest of herring. While overall revenues could increase under the FMP, there would be changes in which management areas supply those revenues. Historically, most domestic herring landings have come from the inshore GOM, defined now as Management Area 1A. The proposed management measures are not intended to reduce herring landings overall, but rather to reduce herring landings from Management Area 1A only. However, other TAC options considered by the Council also reduce the expected landings from Management Area 1A from current levels. The proposed TAC exceeds overall landings, and the proposed TAC by management area for Areas 1B, 2, and 3 exceed current landings from each of those management areas. Since specification of TACs in Areas 1B, 2 and 3 that are greater than current landing levels would not constrain fishing activity, reduce revenues, or impact small businesses, the Council focused on analyzing the economic impacts of the TAC t in Management Area 1A.

The range of options considered by the Council provided different levels of protection to individual spawning components. When considering the TAC distribution options, the Council did not just consider different TAC levels for the various management areas.

Each option also identified a different process for distributing the TACs. While some of the options have less economic impact on Management Area 1A revenues than the proposed action (based on catches in 1997 and 1998), the rejected options included methods of distributing the TAC that were determined not to meet the conservation goals and objectives of the FMP.

Option 1 proposed assigning a TAC to each of Management Areas 1A, 1B, 2A and 2B/3. (The proposed Area 2A - the northern part of Area 2 - is not adopted by this FMP.) The seasonal (winter) TAC assigned to Area 2A would have explicitly considered the mixing of GOM and GB/Nova Scotia fish in this area. By limiting the catch in this area, some control would have been exercised over the amount of GOM herring caught during the winter months. If the catch in this area during this time period was unlimited, it is possible that the GOM spawning component could be rapidly depleted without notice. Similarly, the TAC in Area 1A protects the GOM herring in this area during the remainder of the year. TACs for the other areas insure that the overall catch does not exceed the OY. This option was rejected because of uncertainty over the migration of GOM herring into the proposed Management Area 2. While the migration patterns can be estimated based on the location of herring in this area during the winter months when the GB stock had collapsed, the exact location of herring in this area is unknown.

Option 2 proposed assigning a TAC to each of Management Areas 1A and 3. A TAC was also to be assigned to Management Areas 1B and 2 combined (the TAC could be taken from these two areas regardless of catch location). TACs are assigned based on knowledge of stock structure and migration of herring. By limiting the catch in Management Area 1A, protection is provided to the GOM spawning component. Using a TAC to limit catches in Management Area 3 provides some protection to GB/Nantucket Shoals spawning component fish. The combined TAC in Management Areas 1B and 2 would simplify the administration of the TAC system. This option was rejected because the combined TAC for Management Areas 1B and 2 increases the risk of overfishing those herring in Management Area 1B in the summer months. Herring in this area are believed to come from both the GOM and GB/Nantucket Shoals spawning components. Large catches (in theory, at least, of up to the total TAC for these two areas) would unacceptably risk damaging these spawning components. While catches of this magnitude may be unlikely given recent landings in Area 1B, the strong market demand during the summer months when herring are in this area could result in an unacceptably high catch. By combining the TAC for this area with the TAC for Area 2, there is little protection provided to herring in Management Area 1B.

Option 3 proposed assigning TACs to all four areas for each of three seasons. It makes explicit use of knowledge of stock structure and relative stock sizes to control catch in each area and time period so that individual spawning components are not damaged. In theory, this option provided the greatest protection to individual spawning components of herring. This option was rejected however because, in practice, it relied on a level of detail on stock structure that is lacking. The complexity of the scheme also made it less likely that it could be accurately monitored and implemented, reducing its effectiveness.

Option 4 proposed assigning TACs to the three major management areas based on an estimate of the amount of fish that is present in these areas on an annual basis. It does not have as close a relationship to current knowledge on stock structure. It does provide some measure of protection to the individual spawning components, primarily through the use of conservative TACs. Because this method places less emphasis on seasonal migrations of

herring, any amount of herring assigned to Management Area 1B reduces the amount of herring available for Management Area 1A. TACs must be set at conservative levels to prevent overfishing of specific spawning components. This option was rejected because of its reliance on historic fishing patterns that may change.

Option 5 proposed assigning one overall TAC to the entire coastal stock complex based on the ABC and OY. This option was rejected because it ignores any information on stock structure, and assumed that the entire coastal stock complex is one homogenous stock. For this reason, it provides no protection whatsoever to individual spawning components. In theory, the entire OY could be taken from the GOM in the summer months. Harvests at this level far exceed historical catches from this area and could not be supported. This approach could decimate herring stocks if all fishing effort is concentrated in one management area.

The proposed TAC alternative would result in a greater decline in landings from 1996–97 levels in the in-shore GOM than the non-selected alternatives. (The potential changes in revenue under the various TAC options in Management Area 1A may be seen in Table E.58 of the FMP.) These rejected alternatives would increase the risk of overfishing the inshore herring resource. In general, the rejected options did not provide sufficient protection to specific spawning components of herring - specifically, the GOM spawning component of herring. (*Note*: The proposed options were developed prior to issuance of the report of the 27th SAW, which evaluated GOM herring as fully exploited.) The 27th SAW noted that current levels of F in the GOM may not be sustainable. The Council considered this report in selecting and determining its TAC distribution method and initial TACs.

Sixty-one vessels participated in the directed herring fishery in 1997. The negative impacts of the reduction in Area 1A TAC would not be uniform for all vessels or all sectors on the 61 vessels. It would most heavily impact those vessels that fished only in this area. Because almost 70 percent of the landings and 67 percent of the revenues from the entire herring fishery came from Area 1A in 1997, vessels that fish for herring exclusively or primarily within Area 1A are expected to experience the greatest negative impacts of the TACs established under the FMP. Of the 61 vessels in the entire directed fishery in 1997, 39 fished at least a portion of the year in Area 1A. Of these, 9 had annual herring revenues of less than $1,000 per vessel, 13 had annual herring revenues of between $1,000–$29,000 per vessel; and 17 had annual herring revenues of more than $30,000 per vessel. Based on the 1997 fishery (the most recent year landings data were available at the time the analysis was prepared), the imposition of the Area 1A TAC established under the FMP could reduce herring landings from this area by as much as 36.5 percent. Therefore, assuming proportional impacts of the TACs across all vessels fishing in Area 1A, 9 vessels could experience reductions in revenue of up to $365 per vessel, 13 could experience reductions of up to $10,843 per vessel, and 17 could experience reductions of more than $11,000 per vessel. Since about 67 percent of revenues from the entire herring fishery in 1997 came from Area 1A, the TAC could result in a decline in total revenues to the fishery of as much as 25 percent.

Actual impacts of the TAC are expected to be less than described above. The FMP establishes a TAC for the entire herring fishery at a level that would allow total landings to double over 1997 levels. Given that there is at least some flexibility for a portion of the 39 vessels that fished in Area 1A in 1997 to fish outside Area 1A for some or all of the fishing year, those vessels could harvest herring in other management areas and thereby replace some or all of the revenues lost to them due to Area 1A harvest restrictions. The extent of this revenue replacement depends on the willingness and ability of vessel owners to change ports or to travel farther to locate herring in other management areas, their ability to market their catch, and any ex-vessel price changes that might result. Furthermore, of the 39 vessels that fished in Area 1A in 1997, only 3 or 4 (purse seiners) fished exclusively within Area 1A. Although it is not possible to quantify the extent to which the other 35 or 36 vessels fished outside Area 1A, their dependence on Area 1A, and the precise impacts of Area 1A TAC restrictions on their revenues are likely less than those described above.

In addition, the Council's analysis was based on the best available landings-related information for 1997. While the proposed TAC would reduce landings from the 1997 high levels, 1998 landings information available for Area 1A indicate that only 43,000 mt were landed. This amount is 2,000 mt less than the proposed 45,000 mt TAC for this area. However, because of wide variations in Atlantic herring landings over the past 20 years, it cannot be determined that the decrease in the 1998 landings reflects a trend in the fishery. It is possible that other exogenous factors could have factored in the reduced 1998 landings.

Impacts of Permitting and Reporting Requirements

Vessels, dealers, and processors would be required to obtain permits and comply with reporting requirements. Some participants in the fishery already have a federal permit and comply with reporting requirements for another fishery. The compliance costs are primarily due to the time required to complete and submit the necessary forms. The annual costs to comply with these requirements are estimated at $7.80 for vessel permits, $25.32 for operator permits, $27.00 for vessel trip reports, and $52.00 (maximum) for interactive voice reports. Total annual compliance costs per vessel are thus $112 per vessel for these measures. The total annual cost for dealers is estimated to be $1.58 for permits and $78.70 for weekly landing reports, for an annual total of about $80 per dealer. The annual compliance costs for processors is also estimated to be $1.58 for permits and $7.83 for an annual report, or a total of $9.41 per processor. These costs are considered insignificant.

The Council's rationale for requiring permits, as opposed to taking no action in this regard, is to identify participants in the fishery. Currently, no comprehensive reporting requirements for vessels fishing for herring exist. When permitted, participants in the fishery would be identified and landings and purchases of herring would be reported. With the level of detailed reporting required, catches would be better monitored, enabling managers to more accurately calculate estimates of F and resource status.

Impacts of VMS Requirements

Vessels that intend to harvest > 500 mt of herring, or that harvested > 500 mt of herring in the previous year, would be required to operate a VMS unit. The annual cost per vessel to purchase, install, and operate a VMS unit is estimated to be $2,700. Additional costs would be incurred due to burden-hour estimates of the requirements associated with VMS, estimated at an additional $111 per vessel per year. At the > 500 mt threshold, this would be approximately 4 percent of annual revenues from herring. When compared to the average herring revenues of the 19 vessels that landed most of the herring in 1997 and who would be required to have a VMS based on 1997 landings, this cost is equal to approximately 0.5

percent of the average revenues for this group.

The Council considered requiring all vessels in the herring fishery to have a VMS. This alternative was rejected, as there seemed to be little justification to require a VMS on those vessels that land only a small amount of herring. The costs of installing and operating a VMS would exceed herring revenues for many of the vessels that landed only a small amount of herring, particularly those that did not participate in the directed fishery. The Council also considered not requiring a VMS on any herring fishing vessels. This alternative would have eased the burden on the small businesses in the herring fishery because they would not have had to pay for the installation and maintenance of the equipment. This option was rejected by the Council because it determined that it was crucial to require a VMS for administration and enforcement of the FMP. The FMP uses area-specific TACs to control F in the fishery. In order for there to be confidence in reported catch locations, there is a need for an independent method to verify fishing vessel location. The U.S. Coast Guard surveillance flights and aircraft could provide this verification, but are limited in number and could not cover the entire fishing area due to limited assets. A VMS system, on the other hand, would provide the ability to monitor vessel location whenever the vessel is underway. The VMS system would generate a record of each trip that could be compared to reported catch locations to make sure that catches were reported in the correct management areas. VMS would also make it easy for patrolling cutters and aircraft to locate herring fishing vessels and verify their activity. In addition, VMS would provide an additional capability to verify that vessels were not fishing in a management area when the area is closed because the TAC was exceeded. The Council determined that the benefits of a VMS requirement would exceed the costs imposed on small businesses.

With a no action alternative, the entire area closure would require surveillance. The > 500 mt threshold requirement to use a VMS unit insures that the majority of herring landings would be monitored, while minimizing costs to the industry by only requiring a VMS unit for a small number of specific vessels.

The compliance costs for the FMP would not result in an increase in the total costs of production by more than 5 percent.

Impacts of Vessel Size Limits

The FMP establishes a size limit on domestic harvesting vessels in the herring fishery. The Council recommended a size limit < 165 feet LOA, and no more than 750 GRT. Such vessels also must have no more than 3,000 shaft horsepower. The Commission first adopted such restrictions in a Commission emergency action in 1997 (reacting to the interest of large factory trawler owners to exploit the herring resource) and the Council voted at that time to support the Commission's action. Congress further addressed the issue in the NMFS appropriations bill for fiscal year 1998, and again in 1999, restricting NMFS from using any of its funds to issue permits or other authorization letters to vessels exceeding like size restrictions. The size limit restrictions, established by the Commission and later in several congressional bills, are larger than any of the vessels that landed herring in 1996 or 1997. No vessels larger than the restrictions have participated in the herring fishery in the past. (For vessels identified as having caught herring in 1997, the maximum LOA was 126 ft., the maximum horsepower was 2,100, and the maximum GRTs was 246.) The size limits will maintain the existing industry structure. This restriction would not have a negative impact on the small businesses in the herring fishery.

Because the herring resource is underutilized, there would be some room for growth in harvesting and processing capacity. The Council feels that a number of large vessels would rapidly reach the proposed limits on the TAC. The resultant rapid attainment of the TAC would reduce the supply of fresh herring to the bait and cannery markets. There is also the possibility that large catcher/processors would monopolize the resource.

The Council is also limiting processing by large, domestic vessels to an amount specified on an annual basis. These two restrictions comprise the preferred alternative of the Council and are intended to provide some control over the development of excess fishing capacity in the region, and to take into account the concerns of fishing communities and historic herring fishery participants.

One of the objectives of the FMP is to provide controlled opportunities for fishers in other fisheries in New England and the mid-Atlantic regions. Many fishers are facing additional restrictions in the groundfish, scallop, monkfish, dogfish, and whiting fisheries due to poor resource conditions. The ability to enter the herring fishery would provide an opportunity for them to shift their effort onto a robust resource until rebuilding plans in these fisheries can be accomplished. The number of vessels that can enter this fishery is dependent on each vessel's share of the resource. The limits on vessel size would encourage more small vessels to enter the fishery and harvest a share of the available TAC, ameliorating the impacts of restrictions in other fisheries.

For the first year of the FMP, the recommended specification for large at-sea domestic processors is 0 mt. This is a precautionary approach that would give the Council time to evaluate the impacts of the management program before introducing large domestic processors into the fishery. The proposed specification would minimize impacts on the small businesses in the fishery. Existing small businesses would compete within the existing industry structure, with established markets clearly identified. One possible negative impact of the proposed specification on small businesses is that it would limit the market available to existing markets, depriving small vessels of an additional venue (the large vessel) to sell their catch. This measure explicitly considers the concerns of those communities and small entities in the northeast region that are dependent on the herring fishing industry and the possible impacts that may result from the uncontrolled entry of large domestic processors. The "no action" alternative would allow large domestic vessels to enter the fishery unfettered. The most likely role would be as processing vessels. While the impacts of allowing such large domestic processors into the fishery are not clearly understood, they could result in displacement of shoreside processors that depend on herring and may limit the development of additional shoreside processing capacity.

One possible benefit of the "no action" alternative, however, is if large domestic processing vessels enter the fishery and hire local catcher vessels to supply them herring. The increased revenues from this activity could benefit small entities and communities suffering from reduced revenues caused by resource shortfalls and increasing regulation of the fishing industry. Some are concerned, however, that the companies that own these vessels may bring their own catcher vessels into the region. As a result, the benefits would then accrue to the regions that are less dependent on the fishing industry.

Impacts of Joint Venture Specifications and Restrictions

The FMP specifies zero TALFF, which would preclude directed foreign fishing and result in benefits from the fishery accruing to domestic fishers. The expansion of the herring fishery would require domestic fishers to develop markets and invest in the vessels and processing capability to enter those markets.

However, the FMP provides for foreign participation in the fishery in the EEZ through joint venture processing (just as the states provide for such participation through internal waters processing). In the EEZ, these vessels are permitted into the fishery only when it suits the needs of the U.S., and such vessels are limited to processing fish in excess of the capacity needed for domestic processors. The total allocations (DAP, JVPt, BT and the Reserve) in any one management area or subarea would not exceed the TAC set for that area or subarea during the fishing year. A figure of 40,000 mt is recommended for JVPt after reviewing recent foreign processing performance. While this level is lower than the 80,000 mt allocated by the Commission for the 1998/1999 IWP season, it is over three times higher than the highest actual combined JVP and IWP performance in the last 10 years and allows for substantial temporary participation by foreign vessels in the U.S. fishery. This would allow foreign vessels to purchase herring from U.S. harvesting vessels, providing an additional market for them. Not only would this benefit the small entities currently in the fishery, it could provide additional opportunities for some vessels to target herring rather than species that may be overfished. It would also allow those fishers that participate in mackerel joint ventures to sell herring when it is caught along with mackerel.

In the event of a closure to a directed herring fishery in any one area or subarea, BT, JVP and IWP (the Council and the Commission agree on the recommended allocation of JVPt to JVP and IWP) operations would cease to receive any herring caught from a closed area or subarea. A key element in the review of JV activities is the impact on domestic processing activity - specifically, on the east coast, shoreside processors (since there have not been any large domestic at-sea processors in east coast fisheries).

In recent years there has been little interest by foreign vessels to participate in herring joint ventures and the actual performance of herring JVs has been insignificant, occurring only in connection with mackerel JVs. (Confidentiality restrictions prevent listing actual JV herring catches in 1997.) The demand for herring JVs is directly linked to world herring prices, most notably herring prices from the North Sea herring fishery.

Impacts of Initial and Annual Specifications

The domestic Atlantic herring fishery has not been subject to limits on catch by a Federal FMP since 1982. Because of the lack of current permitting and reporting systems, there is some uncertainty in the current levels of fishing effort and the actual harvest of Atlantic herring. There is also uncertainty in the ability of U.S. fishers to develop new markets for the increased catch levels that are possible, and for U.S. processors to process increased catches of herring that may occur under this FMP.

These uncertainties make it difficult to predict exactly how the fishery would develop. The Council has adopted a precautionary approach to many elements of the management program in order to account for these uncertainties.

DAP is based on existing processing capacity with the addition of nearly 80,000 mt to account for the introduction of new capacity, possible misreporting in the bait fishery, and increases in processing by existing processors.

The amount allocated to BT is about 10 percent larger than the highest amount reported transferred to Canadian canneries in any of the last 10 years. These transfers are part of a traditional cross-border trade in raw herring that helps U.S. sardine canneries obtain herring during periods of low resource abundance in U.S. waters.

The zero amount specified for USAP would prevent large domestic processing vessels from entering the fishery in 1999. Concern has been expressed that this results in unfair treatment to such vessels, which could not participate in at-sea processing while large foreign vessels could (through JVs). The Council's initial recommendation to specify USAP at zero was because of a desire to maintain the status quo in the industry until the effectiveness of the FMP could be evaluated. By contrast to JVs, large domestic processing vessels would have a great deal of flexibility once allowed into the fishery. They could compete in the same markets as other processors without restraints. Once allowed into a fishery, there is a perception that they would have earned permanent "rights" to participate. The possible impacts of large at-sea processors in the Atlantic herring fishery are not clearly understood, arguing for a cautious approach to their introduction into the fishery. While the specification for USAP may be set at a level other than zero mt in the future, the Council's recommendation to allocate zero mt initially is within the Council's discretion.

Impacts of Transfers at Sea

Allowing a vessel to transfer herring at sea during a closure complicates the enforcement of the 2,000–lb (907.2–kg) trip/possession limit. A complete prohibition on all transfers, however, would unnecessarily restrict the lobster and tuna fisheries. Vessels in these fisheries frequently obtain fresh bait through transfers (sales) at-sea. Allowing these transfers thus benefits the small businesses that sell the herring and those small businesses who purchase it for bait (i.e., lobster and tuna fishers). Enabling these small entities to obtain fresh bait at sea minimizes their costs since they wouldn't have to travel into port for it. It also benefits them by assuring that the bait is of higher quality in that it is more likely to be fresh.

This measure would place some controls on transfers at-sea to prevent wide scale violations of the trip limit.

Disapproved Measures

On October 27, 1999, NMFS disapproved the proposed spawning area closures and the proposed scheme to restrict fishing to specific days based on the proportion of the TAC caught in a management area (mandatory days out provision). The reason for the disapproval of these measures is described elsewhere in this preamble. These measures are contained in the IRFA and supplement to the IRFA and, therefore, are also discussed in this classification section.

Impacts of Spawning Closures

At the time the Council prepared the IRFA, the Council determined that the proposed spawning closures were expected to have an impact on herring landings and revenues, subject to the ability of fishers to locate herring in other areas or at other times. The total impacts of these closures were estimated to be a reduction of 10,332 mt in herring landings and $1.1 million in revenues. The actual decline in landings and reduction in revenues due to the spawning closures was likely to be less, however. The displacement of effort to other areas, opening of a large area south of 42°30'N. latitude to fishing by the proposed action, and the interaction of the spawning closures with the

Management Area 1A TAC would have reduced the negative impacts on landings and revenues. Further, spawning closures were not established in Management Areas 2 and 3 because the Council wanted to promote interest in developing the offshore fishery.

The Council considered other spawning area closure alternatives. It originally considered four areas that, through complementary Commission action, may have extended to the shore. These proposed restrictions would not have allowed any directed fishing subject to the limitation on catch of spawning fish and would have created an offshore boundary, providing a limited opportunity for fishers to move into offshore areas. Small herring vessels in Maine ports would have been disadvantaged by this. Such vessels would have been at risk of losing their market, and may not have been able to regain it when the closed areas reopened. The expected result of the original Council proposal would have been the potential loss of all herring landed during the Commission's existing closures, which would have been mitigated by the opportunity of fishers to fish seaward of the closure boundaries. Also, fishers may have been able to harvest the herring after the closure - a delay in the catch, rather than a complete loss.

The preferred alternative differed from the above option significantly. All closure areas would have applied only to Federal waters. The closure area off Massachusetts and New Hampshire had been significantly reduced in size. The impact of this change would have significantly reduced the negative economic impacts of the spawning closures. By reducing the area covered by the closures, the impact of the closures on landings was expected to have been reduced. The action also proposed to open an area that had previously been limited to an incidental catch limit. While the amount of catch in this area cannot be predicted due to a lack of information on harvest rates and effort in this area, this should have resulted in higher catches of herring further reducing the economic impact of the closures. This would have significantly reduced the negative economic impacts of the spawning closures. In a qualitative sense, the proposed alternative should have also reduced impacts on smaller vessels, as it would have provided options to fish seaward of the boundary, in state waters, or in areas of Federal waters that remained opened, and would have reduced the necessity for any vessel to fish seaward of the closure boundaries.

The Council also considered a number of variations for determining the starting dates of the closures. These variations were predicated on the biological condition of spawning herring. While the economic impacts would not likely have differed significantly from the preferred alternative, this approach would have introduced uncertainty into the timing of the closures. The fixed date selected by the Council in the preferred alternative would have allowed vessels and dealers to plan fishing operations around known closure dates and was initially preferred by many in the industry. It also would have avoided the administrative costs necessary to operate a sampling program that would have been a required part of determining the closure dates.

Finally, the Council also considered the option of not establishing any spawning restrictions in Management Areas 1A or 1B. In the short term, landings and revenues would increase if this option were selected. Over a longer period, the practice of fishing on spawning aggregations in this intensely fished area would be expected to have a negative impact on the biological condition of the resource. Failure to provide protection during the spawning periods could result in the elimination of individual spawning components, even while remaining within overall mortality goals set by the TAC. This would result in either lower TACs to reduce effort on spawning fish, or, in the extreme, could damage the resource sufficiently so that fishing would have to be prohibited in the area. Either result would reduce revenues from this area. As vessels moved into other areas to find herring, operating costs would be expected to increase with the additional transit time offshore.

Impacts of Mandatory Days out of the Fishery

The Council determined that fishing effort would have been reduced as the TAC was approached by requiring vessels to take mandatory days out of the fishery. The number of days taken out of the fishery would have been determined by how close the catch was to approaching the TAC. This measure would have been expected to reduce catch rates as the TAC is approached. This would have helped prevent the TAC from being exceeded before the fishing year was over.

This measure also would have redistributed fishing effort to other areas. As the number of days out of the fishery increased, some vessels may have chosen to relocate to areas that remain open. The Council selected this measure over other alternatives because it would have minimized impacts on the industry while extending the season. It would have allowed fishing activity to continue unfettered in management areas where landings were at a lower level and were not approaching the TAC. This would have encouraged a shift in effort from areas with restrictions into other open areas, particularly when three or four days were closed to the directed fishery. Shifting effort would not have been without cost however. As fishing days were restricted, vessels would have incurred higher operating costs if they chose to fish in other areas further from their home port.

The major reason for this measure was to provide a supply of herring to the market for a longer period of time than if there were no controls put into place until the overall TAC was reached and the fishery was closed. For this reason, the Council rejected the no controls approach.

The Council also considered trip limits as an alternative, but rejected the idea because of concerns over discards, enforcement difficulties, and difficulty in creating an equitable system.

The Council also considered apportioning the TAC over a shorter time period - rather than an annual basis. *See Option 3 under 'Impacts of TAC Distribution', above.* It rejected this alternative because it would have resulted in unacceptable administrative costs to monitor the TAC.

Conclusion

The proposed regulations would allow increased landings of herring, the extent of which may depend more on market conditions than on the regulations. The FMP could, however, change fishing patterns, particularly in the GOM. The restrictive TAC in the inshore GOM could force fishing effort into other areas where harvest rates may not be as high, possibly increasing operating costs.

A copy of the IRFA and the Supplement to the IRFA are available from the Council (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection-of-information displays a currently valid OMB control number.

This proposed rule references foreign fishing vessel activity reports, which is a collection-of-information requirement subject to the PRA that was previously approved by OMB under control

number 0648–0075. These reports are estimated at 6 minutes/response.

This proposed rule also contains 12 new collection-of-information requirements subject to the PRA, which have been submitted to OMB for approval. The public reporting burden for each collection of information per response is indicated in parentheses in the following list of new requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding these reporting burden estimates or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The new requirements are:

Open access Atlantic herring permits (30 minutes/response).

Operator permits (60 minutes/response).

Dealer permits (5 minutes/response(trip)).

Processor permits (5 minutes/response).

Vessel trip reports (5 minutes/response).

Interactive voice response system reports (4 minutes/response).

Dealer logbooks reports (2 minutes/response).

Annual processor reports (30 minutes/response).

Vessel monitoring system verification requirement (2 minutes/response).

Vessel monitoring system reports (5 seconds/response).

Vessel monitoring system installation (60 minutes/response).

Herring carrier exemption from VMS requirements authorization letter (2 minutes/response).

List of Subjects in 50 CFR Parts 600 and 648

Fisheries, Fishing, Foreign Vessels, Reporting and recordkeeping requirements.

Dated: February 23, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 600 and 648 are proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

§ 600.525 [Removed]

2. Remove § 600.525.

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.1, the first sentence of paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the spiny dogfish fishery (Spiny Dogfish FMP); and the Atlantic herring fishery (Atlantic Herring FMP). * * *

* * * * *

3. In § 648.2, the definitions for "Council" and "Vessel Monitoring System" are revised and the definitions for "Atlantic herring", "Atlantic herring carrier", "Atlantic herring dealer", "Atlantic herring processor", "Border transfer", "Horsepower", "IVR System", "JVPt", "Processing", and "U.S. at-sea-processing" are added alphabetically to read as follows:

§ 648.2 Definitions.

* * * * *

Atlantic herring means *Clupea harengus.*

Atlantic herring carrier means a vessel with an Atlantic herring permit that does not have any gear on board capable of catching or processing herring and that has on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel.

Atlantic herring dealer means:

(1) A person owning or operating a shore-based pump that uses such pump to offload any Atlantic herring from a vessel with a Federal Atlantic herring permit; or

(2) A person who purchases any herring directly from a vessel with a Federal Atlantic herring permit that is offloaded from the vessel other than with a shore-based pump for purposes other than for the purchaser's own use as bait; or

(3) A person owning or operating a processing vessel that receives any Atlantic herring from a vessel with a Federal Atlantic herring permit whether at sea or in port.

Atlantic herring processor means a person who receives unprocessed Atlantic herring from a fishing vessel with a Federal Atlantic herring permit or an Atlantic herring dealer for the purposes of processing; or the owner or operator of a vessel that processes Atlantic herring; or an Atlantic herring dealer who purchases Atlantic herring for resale as bait.

* * * * *

Border transfer (BT) means the amount of herring specified pursuant to § 648.200 that may be transferred to a Canadian transport vessel that is permitted under the provisions of Pub. L. 104–297, section 105(e).

* * * * *

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, and the NE multispecies fisheries, and the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; the Atlantic surf clam and ocean quahog; the summer flounder, scup, and black sea bass fisheries; and the Atlantic bluefish fishery.

* * * * *

Horsepower, with respect to the Atlantic herring fishery, means the total maximum continuous shaft horsepower of all a vessel's main propulsion machinery.

* * * * *

IVR System means the Interactive Voice Response reporting system established by the Regional Administrator for the purpose of monitoring harvest levels for certain species.

* * * * *

JVPt, with respect to the Atlantic herring fishery, means the specification of the total amount of herring available

for joint venture processing by foreign vessels in the EEZ and state waters.

* * * * *

Processing, or to process, in the Atlantic herring fishery, means the preparation, other than icing, bleeding, heading or gutting, of Atlantic herring to render it suitable for human consumption, bait, commercial uses, industrial uses, or long-term storage, including but not limited to cooking, canning, roe extraction, smoking, salting, drying, freezing, or rendering into meal or oil.

* * * * *

U.S. at-sea processing (USAP), with respect to the Atlantic herring fishery, means the specification, pursuant to § 648.200, of the amount of herring that can be received from, or processed by, U.S. vessels issued an Atlantic herring processing permit as described in § 648.4(a)(10)(ii).

* * * * *

Vessel Monitoring System (VMS) means a vessel monitoring system or VMS unit as set forth in § 648.9 and approved by NMFS for use on Atlantic sea scallop, NE multispecies, monkfish, and Atlantic herring vessels, as required by this part.

* * * * *

4. In § 648.4, paragraphs (a)(10) and (c)(2)(vi) are added to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(10) *Atlantic herring vessels.* (i) *Atlantic herring permit.* (A) Except as provided herein, any vessel of the United States must have been issued and have on board a valid Atlantic herring permit to fish for, catch, possess, land, or process Atlantic herring in or from the EEZ. This requirement does not apply to the following:

(*1*) A vessel that possesses herring solely for its own use as bait providing the vessel does not have purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board; or

(*2*) A skiff or other similar craft used exclusively to deploy the net in a purse seine operation during a fishing trip of a vessel that is duly permitted under this part.

(B) *Eligibility.* A vessel of the United States is eligible for and may be issued an Atlantic herring permit to fish for, catch, take, harvest, and possess Atlantic herring in or from the EEZ unless the vessel is ≥ 165 feet (50.3 m) in length overall (LOA), or > 750 GRT (680.4 mt), or the vessel engine is > 3,000 horsepower.

(ii) *Atlantic herring processing permit.* A vessel of the United States that is > 165 feet (50.3 m) LOA, or > 750 GRT (680.4 mt) is eligible to obtain an Atlantic herring processing permit to receive and process Atlantic herring subject to the U.S. at-sea processing (USAP) allocation published by the Regional Administrator pursuant to § 648.200. Such vessel may not receive or process Atlantic herring unless the vessel has been issued and has on board an Atlantic herring processing permit.

(iii) *Atlantic herring carrier vessels - letter of authorization.* An Atlantic herring carrier vessel permitted under paragraph (a)(10)(i)(A) of this section must have been issued and have on board the vessel a letter of authorization to transport Atlantic herring caught by another permitted fishing vessel. The letter of authorization exempts such vessel from the VMS and IVR reporting requirements as specified in subpart K, except as otherwise required by this part. An Atlantic herring carrier vessel may request and obtain a letter of authorization from the Regional Administrator.

(iv) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

* * * * *

(c) * * *

(2) * * *

(vi) An application for an Atlantic herring permit must also contain the following information:

(A) If the vessel operator caught > 500 mt of Atlantic herring in the previous fishing year, a statement so stating;

(B) If the vessel operator intends to catch > 500 mt of Atlantic herring in the current fishing year, a statement so stating;

(C) If the vessel operator either caught > 500 mt of Atlantic herring in the previous fishing year, or intends to catch > 500 mt of Atlantic herring in the current fishing year, a copy of a vendor installation receipt from a NMFS-approved VMS vendor, as described in § 648.9.

* * * * *

5. In § 648.5, the first sentence of paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic mackerel, squid, butterfish, scup, or black sea bass, harvested in or from the EEZ, or issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. * * *

* * * * *

6. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, monkfish, Atlantic herring, Atlantic sea scallop, spiny dogfish, summer flounder, surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, and black sea bass dealers, surf clam and ocean quahog processors, and Atlantic herring processors or purchasers as described in § 648.2, must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species fishery regulations may need to obtain both a dealer and a processor permit, consistent with the requirements of that particular species fishery regulations.

* * * * *

7. In § 648.7, the heading of paragraph (b)(1)(i) is removed and the first sentence is revised, and the first sentence of paragraphs (a)(1)(i), (a)(2)(i), (a)(3)(i), and paragraph (f)(3) are revised and new paragraphs (a)(3)(iii) and are added, to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(i) All dealers issued a dealer permit under this part, with the exception of those utilizing the surf clam or ocean quahog dealer permit, must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. * * *

* * * * *

(2) * * *

(i) Federally permitted dealers, other than Atlantic herring dealers, purchasing quota-managed species not deferred from coverage by the Regional Administrator pursuant to paragraph (a)(2)(ii) of this section must submit, within the time period specified in paragraph (f) of this section, the following information, and any other

information required by the Regional Administrator, to the Regional Administrator or to an official designee, via the IVR system established by the Regional Administrator: Dealer permit number; dealer code; pounds purchased, by species, other than Atlantic herring; reporting week in which species were purchased; and state of landing for each species purchased. * * *

* * * * *

(3) * * *

(i) All dealers issued a dealer permit under this part, with the exception of those processing only surf clams or ocean quahogs, must complete the "Employment Data" section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. * * *

* * * * *

(iii) Atlantic herring processors including processing vessels must complete and submit all sections of the Annual Processed Products Report.

(b) * * *

(1) * * *

(i) The owner or operator of any vessel issued a permit under this part must maintain on board the vessel and submit an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. * * *

* * * * *

(iii) The owner or operator of a vessel described here must report catches (retained and discarded) of herring each week to an IVR system. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, reporting week in which species are caught, pounds retained, pounds discarded, management area fished, and pounds of herring caught in each management area for the previous week. Weekly IVR system reports must be submitted via the IVR system by midnight, Eastern time, each Tuesday for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

(A) The owner or operator of any vessel issued a permit for Atlantic herring that is required by § 648.205 to have a VMS unit on board must submit an IVR report each week (including weeks when no herring is caught) unless exempted from this requirement by the Regional Administrator.

(B) An owner or operator of any vessel issued a permit for Atlantic herring that is not required by § 648.205 to have a VMS unit on board, or any vessel that catches herring in or from the EEZ, but catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an IVR report for that week as required by the Regional Administrator.

(C) IVR reports are not required from Atlantic herring carrier vessels.

* * * * *

(f) * * *

(3) *At-sea purchasers, receivers, or processors.* All persons, except persons on Atlantic herring carrier vessels, purchasing, receiving, or processing any Atlantic herring, summer flounder, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraphs (a)(1) or (a)(2) of this section, as applicable, and provide those reports to the Regional Administrator or designee on the same frequency basis.

* * * * *

8. In § 648.9, paragraphs (c)(1), (c)(2)(i) and (f) are revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(c) * * *

(1) Except as provided in paragraph (c)(2) of this section, all required VMS units must transmit a signal indicating the vessel's accurate position every hour, 24 hours a day, throughout the year.

(2) *Power-down exemption.* (i) Any vessel that is required to have on board a fully operational VMS unit at all times, as specified in paragraph (b)(2) of this section, is exempt from this requirement provided:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours; and

(B) A valid letter of exemption obtained pursuant to paragraph (c)(2)(ii) of this section has been issued to the vessel and is on board the vessel, and the vessel is in compliance with all conditions and requirements of said letter.

(C) Any VMS-equipped vessel with an Atlantic herring permit, unless required by other regulations to have on board a fully operational VMS unit at all times, need not transmit a signal when the vessel is in port.

* * * * *

(f) *Access.* As a condition to obtaining a limited access scallop or multispecies permit, or an Atlantic herring permit, all vessel owners must allow NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS, if applicable, and location data obtained from its VMS unit, if required, at the time of or after its transmission to the vendor or receiver, as the case may be.

* * * * *

9. In § 648.11, the first sentence of paragraph (a) is revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding any of the following permits to carry a NMFS-approved sea sampler/observer: Atlantic sea scallop, Atlantic herring, NE multispecies, monkfish, Atlantic mackerel, spiny dogfish, squid, or butterfish, scup, black sea bass, or a moratorium permit for summer flounder. * * *

* * * * *

10. In § 648.12, the first sentence of the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General Provisions), B (Atlantic Mackerel, Squid, and Butterfish Fisheries), D (Atlantic Sea Scallop Fishery), E (Atlantic Surf Clam and Ocean Quahog Fisheries), F (NE Multispecies and Monkfish Fisheries), G (Summer Flounder Fishery), H (Scup Fishery), I (Black Sea Bass Fishery), J (Atlantic Bluefish Fishery), K (Atlantic Herring Fishery), or L (Spiny Dogfish Fishery) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. * * *

* * * * *

11. In § 648.13, paragraph (e) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(e) *Atlantic herring.* Any person or vessel is prohibited from transferring, or receiving, or attempting to transfer or receive any Atlantic herring taken from the EEZ, and any vessel issued an Atlantic herring permit is prohibited from transferring, receiving, or attempting to transfer or receive, Atlantic herring unless the person or vessel complies with the following:

(1) The transferring and receiving vessel has been issued a valid Atlantic herring permit and/or other applicable authorization, such as a letter of authorization from the Regional Administrator, to transfer or receive herring.

(2) The vessel does not transfer to a U.S. vessel, and a U.S. vessel does not receive, > 2,000 lb (907.2 kg) of herring per day in or from a management area closed to directing fishing for Atlantic herring.

(3) The vessel does not transfer to an IWP or Joint Venture vessel herring in or from an area closed to directed fishing for Atlantic herring.

(4) The vessel does not transfer Atlantic herring to a Canadian transshipment vessel that is permitted in accordance with Pub. L. 104–297 after the amount of herring transshipped equals the amount of the BT specified pursuant to § 648.200.

12. In § 648.14, paragraph (a)(103) is revised, and paragraphs (x)(9) and (bb) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(103) Sell, barter, trade, or transfer, or attempt to sell, barter, trade, or transfer, other than solely for transport, any Atlantic herring, multispecies, or monkfish, unless the dealer or transferee has a dealer permit issued under § 648.6.

* * * * *

(x) * * *

(9) *Atlantic herring.* All Atlantic herring retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such Atlantic herring were harvested by a vessel fishing exclusively in state waters.

* * * * *

(bb) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person to do any of the following:

(1) Fish for, possess, retain or land Atlantic herring, unless:

(i) The Atlantic herring are being fished for or were harvested in or from the EEZ by a vessel holding a valid Atlantic herring permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel; or

(ii) The Atlantic herring were harvested by a vessel not issued an Atlantic herring permit that was fishing exclusively in state waters; or

(iii) The Atlantic herring were harvested in or from the EEZ by a vessel engaged in recreational fishing; or

(iv) Unless otherwise specified in accordance with § 648.17.

(2) Operate, or act as an operator of, a vessel with an Atlantic herring permit, or a vessel fishing for or possessing Atlantic herring in or from the EEZ, unless the operator has been issued, and is in possession of, a valid operator permit.

(3) Purchase, possess, receive, or attempt to purchase, possess, or receive, as a dealer, or in the capacity of a dealer, Atlantic herring that were harvested in or from the EEZ, without having been issued, and in possession of, a valid Atlantic herring dealer permit.

(4) Purchase, possess, receive, or attempt to purchase, possess, or receive, as a processor, or in the capacity of a processor, Atlantic herring from a fishing vessel with an Atlantic herring permit or from a dealer with an Atlantic herring dealer permit, without having been issued, and in possession of, a valid Atlantic herring processor permit.

(5) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, any Atlantic herring, unless the vessel has been issued an Atlantic herring permit, or unless the Atlantic herring were harvested by a vessel without an Atlantic herring permit that fished exclusively in state waters.

(6) Purchase, possess, or receive, for a commercial purpose, or attempt to purchase or receive, for a commercial purpose, Atlantic herring caught by a vessel without an Atlantic herring permit unless the Atlantic herring were harvested by a vessel without an Atlantic herring permit that fished exclusively in state waters.

(7) Possess, transfer, receive, or sell, or attempt to transfer, receive, or sell > 2,000 lb (907.2 kg) of Atlantic herring per trip, or land, or attempt to land > 2,000 lb (907.2 kg) of Atlantic herring per day in or from an area of the EEZ subject to restrictions pursuant to § 648.202(a).

(8) Possess, transfer, receive, or sell, or attempt to transfer, receive, or sell > 2,000 lb (907.2 kg) of Atlantic herring per trip, or land, or attempt to land > 2,000 lb (907.2 kg) of Atlantic herring per day in or from state waters subject to restrictions pursuant to § 648.202(a), if the vessel has been issued an Atlantic herring permit.

(9) Transfer or attempt to transfer Atlantic herring to a Canadian transshipment vessel that is permitted in accordance with Pub. L. 104–297 after the amount of herring transshipped equals the amount of the BT specified pursuant to § 648.200.

(10) Transit an area of the EEZ that is subject to a closure to directed fishing for Atlantic herring or restrictions pursuant to § 648.202(a) with > 2,000 lb (907.2 kg) of herring on board unless all fishing gear is stowed as specified by § 648.23(b).

(11) Catch, take, or harvest Atlantic herring with a U.S. vessel that exceeds the size limits specified in § 648.203.

(12) Process Atlantic herring in excess of the specification of USAP with a U.S. vessel that exceeds the size limits specified in § 648.203(b).

(13) Discard herring carcasses at sea after removing the roe.

(14) Catch, take, or harvest Atlantic herring for roe in excess of any allowed limit that may be established pursuant to § 648.204(b).

(15) Catch, take, or harvest Atlantic herring unless equipped with an operable VMS unit if a vessel caught > 500 mt of Atlantic herring in the previous fishing year, or intends to catch > 500 mt of Atlantic herring in the current fishing year, as required by § 648.205(a).

(16) Catch, take, or harvest > 500 mt Atlantic herring during the fishing year unless equipped with an operable VMS unit as required by § 648.205(a).

(17) Receive Atlantic herring in or from the EEZ solely for transport unless issued a letter of authorization from the Regional Administrator.

(18) Fail to comply with any of the requirements of a letter of authorization from the Regional Administrator.

13. Subpart K is added to read as follows:

Subpart K—Management Measures for the Atlantic Herring Fishery

Sec.

648.200 Specifications.
648.201 Management areas.
648.202 Total allowable catch (TAC) controls.
648.203 Vessel size/horsepower limits.
648.204 Herring roe restrictions.
648.205 VMS requirements.
648.206 Framework specifications.

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least annually with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The PDT and PRT shall also recommend the total

allowable catch (TAC) for each management area and sub-area. Recommended specifications shall be presented to the New England Fishery Management Council (Council) at its July meeting.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality, and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) OY must be equal to or less than the allowable biological catch (ABC) minus an estimate of the expected Canadian New Brunswick (NB) fixed gear and Georges Bank (GB) herring catch, which shall not exceed 20,000 mt for the NB fixed gear harvest and 10,000 mt for the Canadian GB harvest.

(2) OY shall not exceed maximum sustainable yield (MSY), unless an OY that exceeds MSY in a specific year is consistent with a control rule that ensures the achievement of MSY and OY on a continuing basis; however, OY shall not exceed MSY prior to the 2001 fishing year.

(3) Factors to be considered in assigning an amount, if any, to the reserve shall include:

(i) Uncertainty and variability in the estimates of stock size and ABC;

(ii) Uncertainty in the estimates of Canadian harvest from the coastal stock complex;

(iii) The requirement to insure the availability of herring to provide controlled opportunities for vessels in other fisheries in the mid-Atlantic and New England;

(iv) Excess U.S. harvesting capacity available to enter the herring fishery;

(v) Total world export potential by herring producer countries;

(vi) Total world import demand by herring consuming countries;

(vii) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers;

(viii) Increased/decreased revenues to U.S. harvesters (with/without joint ventures);

(ix) Increased/decreased revenues to U.S. processors and exporters;

(x) Increased/decreased U.S. processing productivity

(4) Adjustments to TALFF, if any, will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) The Atlantic Herring Oversight Committee shall review the recommendations of the PDT and shall consult with the Commission's Herring Section. Based on these recommendations and any public comment received, the Herring Oversight Committee shall recommend to the Council appropriate specifications. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate specifications to NMFS. NMFS shall review the recommendations, consider any comments received from the Commission and, on or about September 15, shall publish notification in the **Federal Register** proposing specifications and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in this section.

(d) On or about November 1 of each year, NMFS shall make a final determination concerning the specifications for Atlantic herring. Notification of the final specifications and responses to public comments shall be published in the **Federal Register**. If the final specification amounts differ from those recommended by the Council, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section. The previous year's specifications shall remain effective unless revised through the specification process. NMFS shall issue notification in the **Federal Register** if the previous year's specifications will not be changed.

(e) *In-season adjustments.* The specifications and TACs established pursuant to this section may be adjusted by NMFS, after consulting with the Council, during the fishing year by publishing notification in the **Federal Register** stating the reasons for such action and providing an opportunity for prior public comment. Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(f) If a total allowable catch reserve (TAC reserve) is specified for an area, NMFS may make any or all of that TAC reserve available to fishers after consulting with the Council. NMFS shall propose any release of the TAC reserve in the **Federal Register** and provide an opportunity for public comment. After considering any comments received, any release of the TAC reserve shall be announced through notification in the **Federal Register**.

§ 648.201 Management areas.

(a) Three management areas, which may have different management measures, are established for the Atlantic herring fishery. Management Area 1 shall be subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

(1) *Management Area 1 (GOM)*: All U.S. waters of the GOM north of a line extending from the eastern shore of Monomoy Island at 41° 35' N. lat. eastward to a point at 41° 35' N. lat., 69° 00' W. long., thence northeasterly to a point along the Hague Line at 42° 53'14" N. lat., 67° 44'35" W. long., thence northerly along the Hague Line to the U.S.-Canadian border, to include state and Federal waters adjacent to the States of Maine, New Hampshire, and Massachusetts. Management Area 1 is divided into Area 1A (inshore) and Area 1B (offshore). This line identifies inshore fishing grounds that have supported most of the catch to date. The line dividing these areas is described by the following coordinates:

Point N. Latitude	W. Longitude
.....	70° 00' at Cape Cod shoreline.
42° 38.4'	70° 00'.
42° 53'	69° 40'.
43° 12'	69° 00'.
43° 40'	68° 00'.

	Point N. Latitude	W. Longitude
43° 58'		67° 22'.
	(the U.S.-Canada maritime Boundary)[1]	

[1] Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(2) *Management Area 2 (South Coastal Area)*: All waters west of 69°00' W. long. and south of 41°35' N. lat., to include state and Federal waters adjacent to the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina.

(3) *Management Area 3 (Georges Bank)*: All U.S. waters east of 69°00' W. long. and southeast of the line that runs from a point at 69°00' W. long. and 41°35' N. lat., northeasterly to the Hague Line at 67°44'35" W. long. and 42°53'14" N. lat.

(b) [Reserved]

§ 648.202 Total allowable catch (TAC) controls.

(a) If NMFS determines that catch will reach or exceed 95 percent of the TAC in a management area before the end of the fishing year, NMFS shall prohibit a vessel, beginning the date the catch is projected to reach 95 percent of the TAC, from fishing for, possessing, catching, transferring, or landing > 2,000 lb (907.2 kg) of Atlantic herring per trip and/or > 2,000 lb (907.2 kg) of Atlantic herring per day in such area pursuant to paragraph (d) of this section, except as provided in paragraph (c) of this section. These limits shall be enforced based on a calendar day.

(b) NMFS may raise the percent of the TAC that triggers imposition of the 2,000 lb (907.2 kg) limit specified in paragraph (a) of this section through the annual specification process described in § 648.200. Any lowering of the percent of the TAC that triggers the 2,000 lb (907.2 kg) limit specified in paragraph (a) of this section must be accomplished through the framework adjustment or amendment processes.

(c) A vessel may transit an area that is limited to the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section with > 2,000 lb (907.2 kg) of herring on board providing all fishing gear is stowed and not available for immediate use as required by § 648.23(b).

(d) NMFS shall implement fishing restrictions as specified in paragraph (a) of this section by publication of a notification in the **Federal Register**, without further opportunity for public comment.

§ 648.203 Vessel size/horsepower limits.

(a) A U.S. vessel issued an Atlantic herring permit must not exceed the specifications contained in § 48.4(a)(10)(i)(B) to catch, take, or harvest Atlantic herring. If any such vessel exceeds such specifications, its permit automatically becomes invalid and the vessel may not catch, take, or harvest Atlantic herring, as applicable, in or from the EEZ.

(b) A U.S. vessel issued an Atlantic herring processor permit may receive and process herring providing such vessel is ≥ 165 feet (50.3 m) in length overall, and ≥ 750 GRT (680.4 mt). A U.S. vessel that is > 165 feet (50.3 m) in length overall, or > 750 GRT (680.4 mt), may only receive and process herring provided that the vessel is issued an "Atlantic herring processor permit" described in § 648.4(a)(10)(ii) and that the total amount of herring received or processed by such vessel does not exceed the SAP established in accordance with § 648.200.

§ 648.204 Herring roe restrictions.

(a) *Retention of herring roe.* Herring may be processed for roe provided that the carcasses of the herring are not discarded.

(b) *Limits on the harvest of herring for roe.* The Council may recommend to NMFS a limit on the amount of herring that may be harvested for roe to be implemented by framework adjustment in accordance with § 648.206.

§ 648.205 VMS requirements.

(a) Except for Atlantic herring carrier vessels, the owner or operator of any vessel issued an Atlantic herring permit that caught or landed > 500 mt of Atlantic herring in the previous fishing year, or intends to catch or land, or catches or lands > 500 mt of Atlantic herring in the current fishing year, must have an operable VMS unit installed on board that meets the requirements of § 648.9.

(b) A vessel owner or operator, except an owner or operator of an Atlantic herring carrier vessel, who intends to catch and land > 500 mt of Atlantic herring must declare such intention to the Regional Administrator prior to obtaining an Atlantic herring fishing permit for the fishing year. The VMS unit must be certified, installed on board, and operable before the vessel may begin fishing.

(c) Except for Atlantic herring carrier vessels, the owner or operator of a vessel cannot land > 500 mt of Atlantic herring during a fishing year unless it has complied with § 648.205(b).

§ 648.206 Framework specifications.

(a) *Annual review.* The Herring PDT, in consultation with the Commission's PRT, shall review the status of the stock and the fishery. The PDT shall review available data pertaining to commercial and recreational catches, current estimates of fishing mortality, stock status, estimates of recruitment, virtual population analysis, and other estimates of stock size, sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys, the impact of other fisheries on herring mortality, and any other relevant information. Based on this review, the PDT shall report to the Council's Herring Oversight Committee no later than July, any necessary adjustments to the management measures and recommendations for the Atlantic herring annual specifications. The PDT, in consultation with the PRT, shall recommend the specifications, as well as an estimated TAC, as required by § 648.200, for the following fishing year.

(b) Based on these recommendations, the Herring Oversight Committee shall further recommend to the Council any measures necessary to insure that the annual specifications shall not be exceeded. The Council shall review these recommendations and any public comment received and, after consulting with the Commission, shall recommend appropriate specifications to NMFS, as described in § 648.200. Any suggested revisions to management measures may be implemented through the framework process or through an amendment to the FMP.

(c) *Framework adjustment process.* In response to the annual review or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Atlantic herring FMP, or to address gear conflicts

as defined under § 600.10 of this chapter.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council may delegate authority to the Herring Oversight Committee to conduct an initial review of the options being considered. The oversight committee shall review the options and relevant information, consider public comment, and make a recommendation to the Council.

(2) After the first framework meeting, the Council may refer the issue back to the Herring Oversight Committee for further consideration, make adjustments to the measures that were proposed, or approve of the measures and begin developing the necessary documents to support the framework adjustments. If the Council approves the proposed framework adjustments, the Council shall identify, at this meeting, a preferred alternative and/or identify the possible alternatives.

(3) A framework document shall be prepared that discusses and shows the impacts of the alternatives. It shall be available to the public prior to the second or final framework meeting.

(4) After developing management actions and receiving public testimony, the Council shall make a recommendation to NMFS. The Council's recommendation must include supporting rationale and, if changes to the management measures are recommended, an analysis of impacts and a recommendation to NMFS on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(5) *Action by NMFS.* If the Council's recommendation to NMFS includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information NMFS may:

(i) Concur with the Council's recommended management measures and determine that the recommended management measures should be published as a final rule in the **Federal Register** based on the factors specified in paragraphs (c)(4)(i), (ii), (iii) and (iv) of this section.

(ii) Concur with the Council's recommendation and determine that the recommended management measures should be first published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council's recommendation, the measures shall be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Council shall be notified in writing of the reasons for the non-concurrence.

(d) *Possible framework adjustment measures.* Measures that may be changed or implemented through framework action include:

(1) Management area boundaries or additional management areas;

(2) Size, timing, or location of new or existing spawning area closures;

(3) Closed areas other than a spawning closures;

(4) Restrictions in the amount of fishing time;

(5) A days-at-sea system;

(6) Adjustments to specifications;

(7) Adjustments to the Canadian catch deducted when determining specifications;

(8) Distribution of the TAC;

(9) Gear restrictions (such as mesh size, etc.) or requirements (such as bycatch-reduction devices, etc.);

(10) Vessel size or horsepower restrictions;

(11) Closed seasons;

(12) Minimum fish size;

(13) Trip limits;

(14) Seasonal, area, or industry sector quotas;

(15) Measures to describe and identify essential fish habitat (EFH), fishing gear management measures to protect EFH, and designation of habitat areas of particular concern within EFH;

(16) Measures to facilitate aquaculture, such as minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones, and any other measures included in the FMP;

(17) Changes to the overfishing definition;

(18) Vessel monitoring system requirements;

(19) Limits or restrictions on the harvest of herring for specific uses;

(20) Quota monitoring tools, such as vessel, operator, or dealer reporting requirements;

(21) Permit and vessel upgrading restrictions;

(22) Implementation of measures to reduce gear conflicts, such as mandatory monitoring of a radio channel by fishing vessels, gear location reporting by fixed gear fishermen, mandatory plotting of gear by mobile fishermen, standards of operation when conflict occurs, fixed gear marking or setting practices; gear restrictions for certain areas, vessel monitoring systems, restrictions on the maximum number of fishing vessels, and special permitting conditions;

(23) Limited entry or controlled access system;

(24) Specification of the amount of herring to be used for roe; and

(25) Any other measure currently included in the FMP.

(e) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[FR Doc. 00–4913 Filed 3–6–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 022500C]

RIN 0648–AM29

Fisheries of the Exclusive Economic Zone Off Alaska; Rebuilding Overfished Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted for Secretarial review Amendment 11 to the Fishery Management Plan for the Bering Sea/ Aleutian Islands King and Tanner Crabs

(FMP). This amendment is necessary to implement a rebuilding plan to rebuild the overfished stock of Bering Sea Tanner crab. This action is intended to ensure that conservation and management measures continue to be based upon the best scientific information available and is intended to advance the Council's ability to achieve, on a continuing basis, the optimum yield from fisheries under its authority.

DATES: Comments on the amendment must be submitted on or before May 8, 2000.

ADDRESSES: Comments may be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

Copies of Amendment 11 to the FMP, and the Environmental Assessment prepared for the amendment are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907-586-7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS declared the Bering Sea stock of Tanner (*Chionoecetes bairdi*) crab overfished on March 3, 1999, because the spawning stock biomass was below the minimum stock size threshold defined in Amendment 7 to the FMP (64 FR 11390). Amendment 7 specified objective and measurable criteria for identifying when all of the crab fisheries covered by the FMP are overfished or when overfishing is occurring. NMFS notified the Council once NMFS determined that the stock was overfished (64 FR 15308, March 31, 1999). The Council then took action to develop a rebuilding plan within 1 year. Amendment 11, the rebuilding plan, is an FMP amendment designed to accomplish the purposes outlined in the national standard guidelines to rebuild the overfished stock. Furthermore, Amendment 11 specifies a time period for rebuilding the stock intended to satisfy the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The rebuilding plan approved by the Council in October 1999 contains the following three components to improve the status of this stock: A harvest strategy, bycatch control measures, and habitat protection measures. The rebuilding plan is estimated to allow the Bering Sea Tanner crab stock to rebuild, with a 50 percent probability, in 10 years. The stock will be considered "0rebuilt" when the stock reaches the maximum sustainable yield stock size level in 2 consecutive years. The revised harvest strategy should result in more spawning biomass, because more larger male crab would be conserved and fewer juveniles and females would die due to discarding. This higher spawning biomass would be expected to produce good year-classes when environmental conditions are favorable. Protection of habitat and reduction of bycatch will reduce mortality on juvenile crabs, thus allowing a higher percentage of each year-class to contribute to spawning (and future landings).

The Council prepared an Environmental Assessment (EA) for Amendment 11 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and the socio-economic impacts of the alternatives. A copy of the EA can be obtained from the Council (see **ADDRESSES**).

The Magnuson-Stevens Act requires that each regional fishery management council submit each FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or FMP amendment, immediately publish a notification in the **Federal Register** that the amendment is available for public review and comment. This action constitutes such notice for FMP Amendment 11. NMFS will consider the public comments received during the comment period in determining whether to approve this FMP amendment. To be considered, a comment must be received by close of business on the last day of the comment period (see DATES), regardless of the comment's postmark or transmission date.

Dated: March 1, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5518 Filed 3–6–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 45
Tuesday, March 7, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–015–1]

Plant-Derived Biologics for Human and Veterinary Applications; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is to notify producers and users of human and veterinary vaccines, therapeutics, and diagnostics, as well as other interested persons, that a public meeting will be held to provide a forum for discussion on the regulatory and policy issues related to the manufacture, distribution, and use of biological products derived from plants. The meeting is being organized by the Food and Drug Administration and the Animal and Plant Health Inspection Service and is sponsored by the Institute for International Cooperation in Animal Biologics.

DATES: The meeting will be held on Thursday, April 6, 2000, from 1 p.m. to 5 p.m.

ADDRESSES: The public meeting will be held in the Scheman Building at the Iowa State Center, Ames, IA.

FOR FURTHER INFORMATION CONTACT: For information about the meeting, contact Dr. Bruce Carter, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010; phone (515) 232–5785, fax (515) 232–7120, or e-mail: Bruce.A.Carter@usda.gov.

For registration information, contact Ms. Dawne Buhrow, Institute for International Cooperation in Animal Biologics, 2160 College of Veterinary Medicine, Iowa State University, Ames, IA 50011; phone (515) 294–7632, fax (515) 294–8259, or e-mail: iicab@iastate.edu.

In addition, information regarding the meeting and registration is available on the Internet at http://www.vetmed.iastate.edu/iicab/transpl.htm.

SUPPLEMENTARY INFORMATION: Under its regulations in title 9 of the Code of Federal Regulations (CFR), issued under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) regulates, among other things, the production of veterinary biological products. Although none have been licensed to date, APHIS' Center for Veterinary Biologics anticipates receiving applications for licenses authorizing the production of veterinary biological products derived from plants. In addition, under its regulations in title 7 of the CFR (7 CFR part 340), issued under the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) and the Plant Quarantine Act (7 U.S.C. 151 *et seq.*), APHIS also regulates, among other things, the field testing of transgenic plants that may be plant pests. Since 1991, APHIS' Plant Protection and Quarantine program has issued 25 permits for the field testing of transgenic plants containing genes whose products are intended for use in the development of human and veterinary biologics. Finally, under its regulations in title 21 of the CFR issued under the Public Health Service Act (42 U.S.C. 300aa *et seq.*), the Food and Drug Administration (FDA) regulates, among other things, the production of biological products intended for use in humans. The FDA's Center for Biologics Evaluation and Research has received applications for plant-derived products intended for use in humans.

In order to provide a forum for the discussion of regulatory and policy issues related to the manufacture, distribution, and use of biological products derived from plants, APHIS and FDA are organizing a public meeting. This public meeting, which is sponsored by the Institute for International Cooperation in Animal Biologics, is scheduled for April 6, 2000, and will provide an opportunity for the exchange of information between APHIS and FDA representatives, producers and users of biological products derived from plants, and other interested persons on issues of common concern. The public meeting will begin at 1 p.m. and is scheduled to end at 5 p.m. Information regarding the meeting and registration instructions may be obtained from the persons listed under **FOR FURTHER INFORMATION CONTACT.**

Persons interested in making an oral presentation at the meeting should submit a brief written statement of the general views they wish to present, the name and address of each person who will participate in the presentation, and an estimate of the approximate length of time needed to make the presentation. This information should be e-mailed by March 20, 2000, to: APHIS__FDA__Plants__oral@iastate.edu. The number of oral presentations and the time allocated for each may be limited, depending upon the number of requests. Oral presentations will be recorded in the proceedings of the meeting. Persons interested in submitting written comments for inclusion in the proceedings may do so by e-mailing them, by March 20, 2000, to: APHIS__FDA__Plants__written @iastate.edu. Written comments and the requested information regarding oral presentations may also be mailed or faxed to Dr. Bruce Carter; his address and fax number are provided under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 1st day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–5429 Filed 3–6–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Rural Business-Cooperative Service (RBS) to request an extension of a currently approved information collection in support of the Cooperative

Development Division (CDD), Cooperative Services Program.

DATES: Comments on this notice must be received on or before May 8, 2000, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: John Wells, Director, CDD, Rural Business-Cooperative Service, USDA, Cooperative Development Division, STOP 3254, 1400 Independence Avenue SW, Washington, DC 20250–3254. Telephone: (202) 720–3350.

SUPPLEMENTARY INFORMATION:

Title: Cooperative Services Questionnaire: Market Potential for New Cooperatives Buyer Survey for New Cooperative Activity.

OMB Number: 0570–0009.

Expiration Date of Approval: May 31, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Business-Cooperative Service (RBS) USDA, conducts feasibility studies to assist in the development of new cooperatives. The Cooperative Development Division specializes in technical assistance to agricultural and rural producer groups interested in organizing a cooperative, and to emerging or developing co-ops, so they can: (a) Use sensible economic judgment, (b) determine co-op feasibility, (c) meet an economic need, (d) successfully operate on sound business principles and, (e) increase member income. In order to carry out the Agency's mission, RBS needs to collect information from the cooperative community.

The authority to carry out RBS mission is defined in the Cooperative Marketing Act of 1926 (44 Stat. 802–1926).

Authority and Duties of Division (7 U.S.C. 453)

(a) The division shall render service to associations of producers of agricultural products, and federations and subsidiaries thereof, engaged in the cooperative marketing of agricultural products, including processing, warehousing, manufacturing, storage, the cooperative purchasing of farm supplies, credit, financing, insurance, and other cooperative activities.

(b) The division is authorized:

(1) To acquire, analyze and disseminate economic, statistical, and historical information regarding the progress, organization, and business methods of cooperative associations in the United States and foreign countries.

(2) To conduct studies of the economic, legal, financial, social, and other phases of cooperation, and publish the results thereof. Such studies shall include the analyses of the organization, operation, financial and merchandising problems of cooperative associations.

(3) To make surveys and analyses if deemed advisable of the accounts and business practices of representative cooperative associations upon their request; to report to the association so surveyed to results thereof, and with the consent of the association so surveyed to publish summaries of the results of such surveys, together with similar facts, for the guidance of cooperative associations and for the purpose of assisting cooperative associations in developing methods of business and market analysis.

(4) To confer and advise with committees or groups of producers, if deemed advisable, that may be desirous of forming a cooperative association and to make an economic survey and analysis of the facts surrounding the production and marketing of the agricultural product or products which the association, if formed, would handle or market.

(5) To acquire from all available sources information concerning crop prospects, supply, demand, current receipts, exports, imports, and prices of the agricultural products handled or marketed by cooperative associations, and to employ qualified commodity marketing specialists to summarize and analyze this information and disseminate the same among cooperative associations, and others.

(6) To promote the knowledge of cooperative principles and practices and to cooperate, in promoting such knowledge, with educational and marketing agencies, cooperative associations, and others.

(7) To make such special studies, in the United States and foreign countries, and to acquire and disseminate such information and findings as may be useful in the development and practice of cooperation.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Mainly buyers of agricultural products in domestic market areas proposed cooperatives would be expected to market their member's products.

Estimated number of respondents: 90.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 45 hours per year.

The Cooperative Development Division specializes in technical assistance to agricultural and rural producer groups interested in organizing a cooperative, and to emerging or developing co-ops, so they can (a) use sensible economic judgment, (b) determine co-op feasibility, (c) meet an economic need, (d) successfully operate on sound business principles and, (e) increase member income.

Copies of this information collection can be obtained from Jean Mosley, Regulations and Paperwork Management Division, at (202) 692–0041.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jean Mosley, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Avenue SW, Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: February 25, 2000.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 00–5426 Filed 3–6–00; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this new information collection for which RUS intends to

request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by May 8, 2000.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies a new information collection that RUS is submitting to OMB for approval.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Customer Service for Rural Utilities Service Borrowers.

Type of Request: New collection approval.

Abstract: The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric and telecommunications systems to provide and improve electric and telecommunications service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). In order to comply with E.O. 12862, "Setting Customer Service Standards," RUS intends to survey its electric and telecommunications borrowers to determine the kind and quality of services customers want and the level of satisfaction with existing services. The Agency will use the information obtained from the survey to improve service where needed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response. Respondents: Not-for-profit institutions; Business or other for-profit.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 48 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 28, 2000.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 00–5427 Filed 3–6–00; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this new information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by May 8, 2000.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies a new information collection that RUS is submitting to OMB for approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Water and Waste Loans and Grants.

Type of Request: New Information Collection.

Abstract: The Rural Utilities Service is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes to fund water and waste disposal projects serving the most financially needy rural communities through the Water and Waste loan and grant program. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users. The program is limited to rural areas and small towns with a population of 10,000 or less. The Water and Waste loan and grant program is administered through 7 CFR Part 1780. This program is currently cleared under OMB Control Number 0575–0015 and included with the Rural Housing Service's Community Facilities loan and grant program. At this time, RUS is requesting approval from OMB for a separate collection for its Water and Waste loan and grant program.

Estimate of Burden: Public reporting for this collection of information is estimated to average 2.65 hours per response.

Respondents: Not-for-profit institutions; State, Local, or Tribal Government.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 51.

Estimated Total Annual Burden on Respondents: 134,240 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–4120

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 29, 2000.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 00–5428 Filed 3–6–00; 8:45 am]

BILLING CODE 3410–15–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

Date and Time: March 14, 2000; 9:30 a.m.–4 p.m.

Place: Radio Free Asia (RFA), 2025 M Street, NW, 2nd Fl. Conference Room, Washington, DC.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b(c)(2) and (6)).

Contact Person for More Information: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: March 3, 2000.

John A. Lindburg,

Legal Counsel and Acting Executive Director.

[FR Doc. 00–5607 Filed 3–3–00; 1:32 pm]

BILLING CODE 8230–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on March 23, 2000, at the Sweetbrier Inn, Garden Room, 7125 SW Nyberg Road, Tualatin, Oregon 97062. The purpose of the meeting is to develop a plan for constructing a nonthreatening generic complaint process for law enforcement agencies.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 28, 2000.

Carol-Lee Hurley.

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–5423 Filed 3–6–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 3 of the 2000 Panel

ACTION: Proposed collection; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 8, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3379, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of 1 to 4 years. Respondents are interviewed once every four months in monthly rotations. Approximately 11,500 households are in the 2000 panel.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as obtaining information on taxes, the ownership and contributions made to the Individual Retirement Account, Keogh and 401K plans, examining patterns in respondent work schedules, and child care arrangements. These supplemental questions are included

with the core and are referred to as "topical modules."

The topical modules for the 2000 Panel Wave 3 collect information about:

- Medical Expenses and Utilization of Health Care
- Work Related Expenses and Child Support Paid
- Assets, Liabilities, and Eligibility

Wave 3 interviews will be conducted from October 2000 through January 2001.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2000 panel, respondents are interviewed at least three times (3 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0865.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 24,150.

Estimated Time Per Response: 30 minutes per person.

Estimated Total Annual Burden Hours: 37,658.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: March 1, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–5452 Filed 3–6–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–817]

Electroluminescent Flat Panel Displays and Display Glass Therefor From Japan; Final Results of Antidumping Duty Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty sunset review.

SUMMARY: On August 2, 1999, the Department of Commerce ("the Department") published the notice of initiation of sunset review of the antidumping duty order on electroluminescent ("EL") high information content flat panel displays ("FPD") and display glass therefor from Japan. The merchandise covered by this order is EL FPDs. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party, and inadequate response (in this case no response) from respondent interested parties, we determined to conduct an expedited sunset review. Based on our analysis of the comments received, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"). The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"), and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin*).

Background

On August 2, 1999, the Department published the notice of initiation of sunset review of the antidumping duty order on EL FPDs (64 FR 41915). We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party, and inadequate response (in this case no response) from respondent interested parties, we determined to conduct an expedited sunset review. The Department has conducted this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review covers a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, on December 3, 1999, the Department determined that the sunset review of the antidumping duty order on EL FPDs from Japan is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than February 28, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The merchandise covered by this order is EL FPDs. EL FPDs are large area, matrix addressed displays, no greater than four inches in depth, with a pixel count of 120,000 or greater, whether complete or incomplete, assembled or unassembled. EL FPDs

[1] *Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 67847 (December 3, 1999).

incorporate a matrix of electrodes that, when activated, apply an electrical current to a solid compound of electroluminescent material (*e.g.*, zinc sulfide) causing it to emit light. Included are monochromatic, limited color, and full color displays used to display text, graphics, and video. EL FPD glass, whether or not integrated with additional components, exclusively dedicated to and designed for use in EL FPDs, is defined as processed glass substrates that incorporate patterned row, column, or both types of electrodes, and also typically incorporate a material that reacts to a change in voltage (*e.g.*, phosphor) and contact pads for interconnecting drive electronics. All types of FPDs described above are currently classifiable under subheadings 8543, 8803, 9013, 9014, 9017.90.00, 9018, 9022, 9026, 9027, 9030, 9031, 8471.92.30, 8471.92.40, 8473.10.00, 8473.21.00, 8473.30.40, 8442,40.00, 8466, 8517.90.00, 8528.10.80, 8529.90.00, 8531.20.00, 8531.90.00, and 8541 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Since the issuance of the order on EL FPDs from Japan, the Department clarified that certain that certain EL FPDs used in Graphic Control Panels models GP–410 and GP–430 are within the scope of the order (*see Notice of Scope Rulings*, 59 FR 8910 (February 24, 1994)).

Although domestic interested parties suggested that other scope rulings on FPDs, particularly those involving Sharp, may be related to this order, our review of those scope rulings reveal they were not.

Analysis of Comments Received

All issues raised in the substantive response by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated February 28, 2000 which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "Japan". The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Sharp Corporation	7.02
All Others	7.02

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5508 Filed 3–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–047]

Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of elemental sulphur from Canada.

SUMMARY: On September 7, 1999, the Department of Commerce ("the Department") published the preliminary results and partial rescission of its administrative review of the antidumping duty order on elemental sulphur from Canada (64 FR 48587). This review covers Husky Oil, Ltd. ("Husky"), a manufacturer and exporter, and Petrosul International, Ltd. ("Petrosul"), a reseller, of the subject merchandise to the United States. The period of review is December 1, 1997, through November 30, 1998.

Based on our analysis of the comments received, we have modified our determination for the final results with respect to Petrosul. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0182 or (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1998).

Background

On September 7, 1999, the Department published in the **Federal Register** (64 FR 48587) the preliminary results and partial rescission of its administrative review of the antidumping duty order on elemental sulphur from Canada ("*Preliminary Results*"). This review covers Husky Oil, Ltd. ("Husky"), a manufacturer and exporter, and Petrosul International, Ltd. ("Petrosul"), a reseller, of the subject merchandise to the United States. The period of review ("POR") is December 1, 1997, through November 30, 1998. We invited parties to comment on our preliminary results of review.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On December 22, 1999, the Department extended the time limit for the final results in this review to January 21, 2000. *See Elemental Sulphur From Canada: Extension of Time Limit for Final Results of the Antidumping Duty*

Administrative Review, 65 FR 280, (January 4, 2000). Also, on January 21, 2000, the Department extended the time limit for the final results in this review to February 29, 2000. *See Elemental Sulphur From Canada: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review*, 65 FR 4804, (February 1, 2000).

On January 24, 2000, we issued a supplemental questionnaire to Petrosul for the purpose of gathering additional information regarding the sales for which Petrosul had knowledge that the merchandise was ultimately destined for the United States. On February 4, 2000, we received a letter from Petrosul indicating that it would not respond to this supplemental questionnaire.

We have now completed the administrative review in accordance with section 751 of the Act.

Scope of the Review

The product covered by this review is elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule ("HTS") subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the written description of the scope of this finding remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("Decision Memorandum") from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated February 29, 2000, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at www.ita.doc.gov/import—admin/records/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Use of Facts Available

For a discussion of our application of facts available, see the "Facts Available" section of the Decision Memorandum, which is on file in the Central Records Unit, room B–099 of the main Department building and available on the Web at www.ita.doc.gov/import—admin/records/frn.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have assigned an adverse facts available margin to Petrosul for its failure to cooperate to the best of its ability based on its decision to not respond to our request for information.

Final Results of Review

We determine that the following percentage margins exist for the period December 1, 1997, through November 30, 1998:

Manufacturer/exporter/reseller	Margin (percent)
Husky Oil, Ltd	40.38
Petrosul International, Ltd	40.38

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Cash Deposit

Because the antidumping duty order on elemental sulphur from Canada has been revoked, effective January 1, 2000, no cash deposits are required for entries of elemental sulphur from Canada for entries on or after January 1, 2000. *See Revocation of Antidumping Finding: Elemental Sulphur From Canada*, 64 FR 40553 (July 27, 1999).

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: February 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix 1— Issues in Decision Memorandum

Comments and Responses

1. Adverse Facts Available
2. Facts Available Corroboration
3. Facts Available Determination

[FR Doc. 00–5512 Filed 2–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty sunset review.

SUMMARY: On August 2, 1999, the Department of Commerce published the notice of initiation of sunset review of the antidumping duty order on extruded rubber thread from Malaysia (64 FR 41915). The merchandise covered by this order is extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party, and inadequate response (in this case no response) from respondent interested parties, we determined to conduct an expedited sunset review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or

recurrence of dumping at the levels listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"). The Department's procedures for the conduct of sunset reviews set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On August 2, 1999, the Department initiated the sunset review of the antidumping duty order on extruded rubber thread from Malaysia (64 FR 41915). We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party, and inadequate response (in this case no response) from respondent interested parties, we determined to conduct an expedited sunset review. The Department has conducted this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, on December 3, 1999 the Department determined that the sunset review of the antidumping duty order on extruded rubber thread from Malaysia is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than February 28, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The product covered by this review is extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

The antidumping duty order of the subject merchandise remains in effect for all producers and exporters of extruded rubber thread from Malaysia.

Analysis of Comments Received

All issues raised in the case by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated February 28, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "Malaysia". The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Heveafil/Filmax Schn. Bhd	108.62
Rubberflex Sdn. Bhd	20.36
Filati Lastex Elastofibre (Malaysia)	105.78
Rubfil Sdn. Bhd	108.62
All Others	15.16

In addition, in the 1995–1996 administrative review, the Department found that the four companies identified above absorbed duties on the following percentage of their U.S. sales: Heaveafil—100 percent, Rubberflex—57.35 percent, Filati—100 percent, and Rubfil—100 percent.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5507 Filed 3–6–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 67847 (December 3, 1999).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet and Strip From the Republic of Korea, Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant initiation of a changed circumstances administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea (56 FR 25669 (June 5, 1991)). On July 5, 1996, the order was

revoked, in part, with respect to Cheil Synthetics, Inc. (Cheil) based on three consecutive years of no dumping. (See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part, 61 FR 35177 (July 5, 1996).) On January 26, 1998, the Department determined that Saehan Industries, Inc. (Saehan) was the successor-in-interest to Cheil, and that the Department's partial revocation with respect to Cheil applied to Saehan (63 FR 3703). On January 5, 2000, Toray Saehan Inc. (TSI) requested that the Department determine that TSI is the successor to Saehan, based upon TSI assuming Saehan's PET film business. Based on the information provided in TSI's January 5, 2000, letter and supplemental documentation provided on February 14, 2000, we preliminarily determine that TSI is the successor firm to Saehan. If these preliminary results are confirmed in the final results of review, the Department's application of the July 5, 1996, partial revocation of the order with respect to Saehan, as the successor-in-interest to Cheil, will apply to TSI.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney at (202) 482–4475 or Robert James at (202) 482–0649, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2000, TSI requested that the Department conduct a changed circumstances administrative review pursuant to section 751(b) of the Act to determine whether TSI should properly be considered the successor firm to Saehan and if, as such, the revocation that is applicable to Saehan should apply to TSI. TSI also requested the Department to publish the preliminary results concurrently with this notice of initiation, pursuant to 19 CFR 351.221(c)(3)(ii). In its request, TSI notified the Department that it was established on October 15, 1999, and commenced operations on December 1, 1999. TSI is a joint venture between Saehan and Toray Industries, Inc. of Japan. TSI indicated that the management, production facilities, supplier relationships, and customers base of TSI are virtually identical to those of Saehan, the company which the Department has determined to be the successor to Cheil. On February 4, 2000, the Department requested that TSI provide documentary evidence supporting its successor-in-interest claim. On February 14, 2000, TSI submitted documentary evidence demonstrating that TSI maintained essentially the same management, production facilities, suppliers, and customer relationships as TSI. (See TSI February 14, 2000, Response to the Department's Request for Additional Information.) Citing the Department's determinations in *Industrial Phosphoric Acid from Israel; Preliminary Results of Antidumping Duty Changed Circumstances Review*, 58 FR 59010 (Nov. 5, 1993), *Certain Hot Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 64 FR 53994, 53955 (Oct. 5, 1999) and *Brass Sheet and Strip from Canada*, 57 FR 5128, 5129 (February 12, 1992), TSI claimed that the Department should determine that it is the successor-in-interest to Saehan, and that the revocation applicable to Saehan should apply to TSI. On January 20, 2000, we received a letter from E.I. DuPont de Nemours & Company and Mitsubishi Polyester Films, L.L.C., the petitioners in this case. Petitioners took no position concerning TSI's contention that it is the successor company to Saehan. Petitioners contend, however, that if the Department determines that TSI is the successor to Saehan, it should require TSI to fully comply with the conditions of the partial revocation applicable to Saehan.

Scope of the Review

The merchandise subject to this antidumping duty order are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextrued. The films excluded from this antidumping duty order are metallized films, and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule of the United States subheading 3920.62.00.00. The HTS subheading is provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

This changed circumstances administrative review covers TSI.

Initiation and Preliminary Results of Changed Circmstances Antidumping Duty Administrative Review

In accordance with section 751(b) of the Act, the Department is initiating a changed circumstances administrative review to determine whether TSI is the successor company to Saehan. In making such a determination, the Department examines several factors including, but not limited to, changes in (1) management, (2) production facilities, (3) supplier relationships, and (4) customers base. See e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, 57 FR 20460 (May 13, 1992). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of the predecessor. See e.g., Industrial Phosphoric Acid from Israel, Final Results of Changed Circumstances Review, 59 FR 6944, 6945 (February 14, 1994). Thus, if evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same entity as the former company, the Department will treat the successor company the same as the predecessor for purposes of antidumping liability, *e.g.*, assign the same cash deposit rate, revocation, etc. (*See id.*)

We examined the information provided by TSI in its January 5, and February 14, 2000, letters and have determined that TSI has established a *prima facie* case that it is the successor-in-interest to Saehan, which the Department has determined to be the successor-in-interest to Cheil. A majority of the senior managers involved in the day-to-day production and sales operation of TSI are the same as those that managed Saehan. Therefore, the management and organizational structure of Saehan has remained intact under TSI. In addition, there have been no changes in the production facilities, inputs and

supplier relationships, or customer base. Because we find that TSI has maintained the same management, production facilities, supplier relationships, and customer bases as Saehan, we preliminarily determine that TSI operates as essentially the same business entity as Saehan with respect to the production and sale of the subject merchandise. Based upon the foregoing, we preliminary determine that the July 5, 1996, partial revocation issued with respect to Cheil, and applied to Saehan, Cheil's successor company, applies to TSI as Saehan's successor-in-interest.

Because TSI has presented evidence to establish a *prima facie* case of its successorship status, we find it appropriate to issue the preliminary results in combination with the notice of initiation in accordance with 19 CFR 351.221(c)(3)(ii). We agree with petitioners that TSI must fully comply with the terms of the revocation applicable to Saehan; therefore, we have requested and received written confirmation from TSI that it will adhere to the terms of the revocation applicable to Cheil, and applied to Saehan, Cheil's successor-in-interest. (See TSI February 14, 2000, Response to the Department's Request for Additional Information, at Appendix F).

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for case briefs. The Department will publish the final results of this changed circumstances review, which will include the results of its analysis to issues raised in any such written comments, no later than four months following the date of publication of this notice. This initiation of review and notice are in accordance with section 751(b) of the Act, as amended (19 U.S.C. 1675(b)), and 19 CFR 351.216.

Dated: March 1, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5515 Filed 3–6–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Continuation of Antidumping Duty Order: Polyethylene Terephthalate (PET) Film From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Duty Order: Polyethylene Terephthalate (PET) Film from Korea.

SUMMARY: On February 4, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on polyethylene terephthalate ("PET") film from Korea is likely to lead to continuation or recurrence of dumping (65 FR 5592). On February 24, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on PET film from Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 9298). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on PET film from Korea.

EFFECTIVE DATE: March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1999, the Department initiated, and the Commission instituted, a sunset review (64 FR 35588 and 64 FR 35685, respectively) of the antidumping duty order on PET film from Korea, pursuant to section 751(c) of the Act. As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Polyethylene Terephthalate Film From Korea*, February 4, 2000 (65 FR 5592).

On February 24, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on PET film from Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Polyethylene Terephthalate (PET) Film from Korea*, 65 FR 9298 (February 24, 2000) and USITC Pub. 3278, Investigation No. 731–TA–459 (Review) (February 2000)).

Scope

The merchandise covered by this antidumping duty order includes all gauges of raw pre-treated, or primed polythylene terephthalate film, sheet, and strip, whether extruded or co-extruded. The films excluded from this antidumping duty order are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order. PET film is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 3920.62.00.00. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on PET film from Korea. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than February 2005.

Dated: March 1, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5510 Filed 3–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–804]

Antidumping Duty Administrative Review of Sparklers From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Nithya Nagarajan, Group II, Office IV, AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0651, or (202) 482–5253, respectively.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On July 29, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on Sparklers from the People's Republic of China, covering the period June 1, 1998, through May 31, 1999 (64 FR 41075). The preliminary results are currently due no later than February 29, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than March 31, 2000. *See* Decision Memorandum from Thomas Futtner to Holly A. Kuga, dated February 29, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: February 29, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 00–5513 Filed 3–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–805; A–428–807; A–570–805]

Continuation of Antidumping Duty Orders: Sulfur Chemicals (Sodium Thiosulfate) From the United Kingdom, Germany, and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Duty Orders: Sodium Thiosulfate from the United Kingdom, Germany, and the People's Republic of China.

SUMMARY: On December 30, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on sodium thiosulfate from the United Kingdom, Germany, and the People's Republic of China ("PRC") is likely to lead to continuation or recurrence of dumping (64 FR 73515, December 30, 1999). On February 24, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on sodium thiosulfate from the United Kingdom, Germany, and the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 9298, February 24, 2000). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty orders on sodium thiosulfate from the United Kingdom, Germany, and the PRC.

EFFECTIVE DATE: March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION

Background

On July 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 35588 and 64 FR 35687, respectively) of the antidumping duty orders on sodium thiosulfate from the United Kingdom, Germany, and the PRC, pursuant to section 751(c) of the Act. As a result of its reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders to be revoked (*see Final Results of Expedited Sunset Reviews: Sulfur Chemicals (Sodium Thiosulfate) from the United Kingdom, Germany, and the People's Republic of China*, 64 FR 73515 (December 30, 1999)).

On February 24, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on sodium thiosulfate from the United Kingdom, Germany, and the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Sodium Thiosulfate from the United Kingdom, Germany, and the People's Republic of China*, 65 FR 9298 (February 24, 2000) and USITC Publication 3279 (February 2000), Investigation Nos. 731–TA–465, 466, 468 (Review).

Scope

The merchandise covered by the antidumping duty orders includes all grades of sodium thiosulfate, in dry or liquid form, used primarily to dechlorinate industrial waste water, from the United Kingdom, Germany, and the PRC. The chemical composition of sodium thiosulfate is Na2S203. Currently, subject merchandise is

classifiable under item number 2832.30.1000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The above HTSUS subheading is provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on sodium thiosulfate from the United Kingdom, Germany, and the PRC. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751 (c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than February 2005.

Dated: March 1, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5509 Filed 3–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 00–002. Applicant: The Regents of the University of Michigan, 417 Space Research, Ann Arbor, MI 48109–2143. Instrument: Analytical Electron Microscope, Model JEM–2010F. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for investigations of microstructure and microchemistry of metals, ceramics, semi-conductors, polymers and biomaterials to relate the micro-and chemical properties of materials and compare with macroscopic properties. In addition, the instrument will be used for educational purposes in the courses MSE 562 Electron Microscopy I, MSE 220 Introduction to Materials and Manufacturing, and MSE 250 Principles of Engineering Materials. Application accepted by Commissioner of Customs: January 31, 2000.

Docket Number: 00–003. Applicant: University of North Dakota, Physics Department, Cornell Street, Witmer Hall, Room 213, Grand Forks, ND 58202–7129. Instrument: Scanning Tunneling Microscope, Model STM 25. Manufacturer: Omicron Associates, Germany. Intended Use: The instrument is intended to be used for investigating the structural, electronic and superconducting properties of advanced materials of technological interest (both conducting and insulating materials). During these studies the instrument will be used to image individual atoms on the surface of materials and characterize important structural features. In addition, the instrument will be used for educational purposes in the courses: PHYS428: Modern Physics Laboratory, PHYS437: Introductory Solid State, PHYS499: Senior Honors, PHYS536: Solid State Physics II and PHYS590: Research. In these courses students will have the opportunity to do state-of-the-art experiments in a wide range of research fields. Application accepted by Commissioner of Customs: February 10, 2000.

Docket Number: 00–004. Applicant: Michigan Technological University, Department of Civil and Environmental Engineering, 1400 Townsend Drive, Houghton, MI 49931. Instrument: Automatic Thin Section Machine. Manufacturer: Dansk Beton Teknik A/S, Denmark. Intended Use: The instrument is intended to be used to prepare thin sections of portland cement concrete and clinker, asphalt concrete, aggregate or other materials by precisely grinding the material to a desired thickness with little to no damage. The prepared specimens are then examined in an optical petrographic microscope and/or scanning electron microscope. The analysis of thin sections allows for the optical properties of the material to be assessed thus determining the crystallography and mineralogy. The objectives of these investigations will primarily focus on the evaluation of these civil engineering materials for the purpose of characterization, identifying deterioration mechanisms and improving performance. Application accepted by Commissioner of Customs: February 18, 2000.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–5514 Filed 3–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.022800E]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (NPFMC) Halibut Charter Individual Fishing Quota (IFQ) Committee will meet in Anchorage, AK.

DATES: The meeting will be held on March 22–23, 2000.

ADDRESSES: The meeting will be held at the Clarion Suites, 325 W. 8th Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, NPFMC, 907–271–2809.

SUPPLEMENTARY INFORMATION: The meeting will begin at 1:00 p.m. on Wednesday, March 22, and continue through Thursday, March 23. This will be the first meeting of the newly-appointed committee. The committee's charge is to begin development of preliminary elements and options for a potential IFQ program for Alaskan halibut charter fisheries. The committee will report its progress to the NPFMC in April.

Although non-emergency issues not contained in this agenda may come before this committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject

of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the committee's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: February 29, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5519 Filed 3–6–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 00302058–0058–01]

Notice of Conference on State Sovereign Immunity and Intellectual Property Rights

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of meeting.

SUMMARY: The U.S. Patent and Trademark Office (USPTO) is announcing that it will hold a one-day conference on issues related to recent Supreme Court decisions concerning the sovereign immunity of States and Federal intellectual property rights. The conference will bring together a number of constitutional law and intellectual property scholars as well as individuals who can offer the perspective of state governments on these issues.

DATES: The conference will be held on Friday, March 31, 2000, beginning at 9:30 a.m. Requests to participate in the conference must be made no later than March 27, 2000. Written comments may be submitted by no later than April 14, 2000.

ADDRESSES: The conference will be held at the Department of Commerce, Fourteenth Street and Constitution Avenue, N.W., Washington, DC 20230. Conference attendees should enter the Commerce Department Building at its main entrance on 14th Street. Directions to the conference location within the building will be available in the main lobby off 14th Street.

Requests to attend in the conference should be made to Justin Hughes by electronic mail to *justin.hughes@uspto.gov*, by facsimile transmission marked to his attention at (703) 305–8885, or by mail marked to his attention and addressed to the Office of Legislative and International Affairs, U.S. Patent and Trademark Office, Box 4, Department of Commerce, Washington, DC 20231. Conference attendees will be accepted as their requests are received. Should space considerations cause a need to limit attendees, requests will be honored on a first-come, first-serve basis according to the time and date of each request.

Arrangements for conference panelists will be made separately from conference attendees. Conference attendees will be provided with audience-style seating to watch and listen to panel discussions. Attendees may be given the opportunity to participate in question and answer periods attendant to certain conference panel sessions and may provide written comments to the address listed above.

FOR FURTHER INFORMATION CONTACT: Justin Hughes, by telephone at (703) 305–9300, by electronic mail to *justin.hughes@uspto.gov*, by facsimile transmission marked to his attention at (703) 305–8885, or by mail marked to his attention and addressed to the Office of Legislative and International Affairs, U.S. Patent and Trademark Office, Box 4, Department of Commerce, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: In 1999, the U.S. Supreme Court issued a series of opinions addressing the right of States to assert sovereign immunity under the Eleventh Amendment of the U.S. Constitution. Two of these cases directly concerned Federal intellectual property statutes. In *Florida Prepaid Postsecondary Education Expense Board* v. *College Savings Bank*, 119 S. Ct. 2199 (1999), a 5–4 majority of the Court held that States could assert Eleventh Amendment sovereign immunity to shield themselves from suits under the Patent Act. In *Florida Prepaid*, a private bank alleged that a Florida state agency was infringing the bank's patent on a savings method tailored for college tuition expenses. The state agency claimed sovereign immunity from suit under the Eleventh Amendment. While recognizing that Congress has the power to abrogate Eleventh Amendment sovereign immunity under section 5 of the Fourteenth Amendment, the Court reasoned that Congress' passage of the Patent and Plant Variety Protection Remedy Clarification Act in 1992 did not validly abrogate state sovereign immunity because Congress had failed to tailor its legislative abrogation of Eleventh Amendment immunity to remedy or prevent the conduct at issue.

In a companion case, *College Savings Bank* v. *Florida Prepaid Postsecondary Education Expense Board*, 119 S. Ct. 2219 (1999), the Court considered whether states can be sued under § 43(a) of the Lanham Act (15 U.S.C. 1125(a)) where the Trademark Remedy Clarification Act (TRCA) had (1) Amended § 43(a) by defining "any person" to include state and state instrumentalities, and (2) Expressly abrogated state sovereign immunity for § 43(a) suits. In *College Savings*, a Florida state agency had raised an Eleventh Amendment sovereign immunity defense against a § 43(a) claim that the state agency had made misstatements about its tuition savings plan in brochures and annual reports. Applying an analysis similar to *Florida Prepaid*, the same 5–4 majority of the Court held that TRCA had not validly abrogated the state sovereign immunity under the Eleventh Amendment. The Court also concluded that Florida had not voluntarily waived its sovereign immunity through its activities in interstate commerce which gave rise to the lawsuit. Although the *College Savings* case did not directly address infringement of a federally registered trademark, the holding of the case is widely viewed as ensuring that states may properly raise Eleventh Amendment sovereign immunity in trademark infringement actions brought against them under the Lanham Act.

The *Florida Prepaid* and *College Savings* cases (the *Florida Prepaid* decisions) followed the Supreme Court's ruling in *Seminole Tribe* v. *Florida*, 517 U.S. 44 (1996), which established that Congress may authorize suits against states in Federal court only pursuant to its authority under section 5 of the Fourteenth Amendment and not pursuant to any Article I power. The *Florida Prepaid* decisions are viewed as further clarifying and restricting the conditions under which states can be made amenable to suit in Federal court, i.e., either through their own waiver of sovereign immunity or through Congressional abrogation of that immunity.

One lower court of appeals has concluded that the *Florida Prepaid* analysis applies equally to copyright suits. In *Chavez* v. *Arte Publico Press*, a copyright owner sued the University of Houston Press for copyright and trademark violations. After a Fifth Circuit panel initially concluded that the University of Houston had impliedly waived its sovereign immunity, *Chavez*

v. *Arte Publico Press*, 59 F.3d 539, 548 (5th Cir. 1995), the University of Houston petitioned for certiorari. The Supreme Court remanded the case for reconsideration in light of its decision in *Seminole Tribe*. See *University of Houston* v. *Chavez*, 517 U.S. 1184 (1996). On remand, the Circuit panel majority concluded that Congress could not condition a state's activities that are regulable by Federal law upon their "implied consent" to be sued in Federal court, 157 F.3d 282, 287 (5th Cir. 1998), and that Congress could not use the Fourteenth Amendment to enforce the copyright and trademark laws, 157 F.3d at 287, 290. The *Florida Prepaid* decisions prompted the Circuit to return the case once again to the original panel for further consideration. Last month, that court decided that the University of Houston enjoyed sovereign immunity against suit in Federal court for copyright violations. *Chavez* v. *Arte Publico Press*, No. 93–2881, 2000 U.S. App. LEXIS 2490 (5th Cir. Feb. 18, 2000).

The final disposition of the *Chavez* case was in keeping with another Fifth Circuit panel's earlier conclusion that the State of Texas could raise sovereign immunity against a claim of copyright infringement by an artist who believes his work was infringed by the design of a Texas license plate, *Rodriguez* v. *Texas Commission on the Arts*, 53 U.S.P.Q.2d 1383 (5th Cir. 2000). In *Rodriguez*, the Circuit panel concluded that the rationale of *Florida Prepaid* applied squarely to copyright law and that the Copyright Clarification Act of 1994 (17 U.S.C. § 511) did not validly abrogate Texas' sovereign immunity against suits for copyright infringement. 53 U.S.P.Q.2d at 1384. Together, all of these cases create uncertainty for the uniformity and consistency of the United States intellectual property system and could raise substantial concerns for our international obligations in the field of intellectual property.

To address the issues raised by these cases, the USPTO has asked several Constitutional and intellectual property scholars to serve as panelists for a March 31 conference. The conference will also include state officials. Panelists for the March 31 conference will likely include the following individuals: Preeta Bansal (Solicitor-General of New York), Erwin Chemerinsky (University of Southern California Law School), Dan Farber (University of Minnesota Law School), Jane Ginsburg (Columbia Law School), Marci Hamilton (Cardozo Law School), John Jeffries (University of Virginia Law School), Mark Lemley (Boalt Law School, Berkeley), Daniel Meltzer (Harvard Law School), Daniel Schweitzer (National Association of Attorneys-General), Eugene Volokh (UCLA Law School), and Ernie Young (University of Texas Law School). (Institutions and affiliations are listed for identification purposes only.) Other panelists are also being considered at this time.

The March 31 conference is intended to allow the panelists to engage in a broad discussion of all the issues raised by the *Florida Prepaid* cases. Conference attendees may provide their individual views, observations, proposals, and reports, both during and for a two week period after the conference. All such materials received by PTO will be made available to the public. PTO anticipates integrating the work of individual panelists into a final report from the conference, which will also be made available to the public.

The USPTO anticipates that there will be several morning and afternoon sessions, each devoted to specific issues, including, but not limited to: (1) The *Ex parte Young* doctrine as it applies to intellectual property cases; (2) Possible legislative approaches to abrogate Eleventh Amendment state sovereign immunity in intellectual property cases; (3) Possible systems for state waiver of Eleventh Amendment immunity, including those which couple waiver to participation in the Federal intellectual property system and/or full participation in specified spending programs of the Federal Government; (4) The adequacy of remedies in state courts for private intellectual property owners; and (5) The possible effects of the *Florida Prepaid* decisions on the United States' international obligations in the field of intellectual property. Some of these sessions may provide an opportunity for questions and answers with conference panelists.

Dated: February 24, 2000.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 00–5511 Filed 3–6–00; 8:45 am]

BILLING CODE 3510–16–U

COMMODITY FUTURES TRADING COMMISSION

Notice of Meeting

Agency Holding the Meeting: Commodity Futures Trading Commission.

Time and Date: 11:30 a.m., Friday, March 10, 2000.

Place: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

Status: Closed.

Matters to be Considered: Rule Enforcement Review.

Contact Person for More Information: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–5590 Filed 3–3–00; 11:36 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Notice of Meeting

Agency Holding the Meeting: Commodity Futures Trading Commission.

Time and Date: 10 a.m., Wednesday, March 29, 2000.

Place: 1155 21st St., N.W., Washington, D.C., Lobby Level Hearing Room.

Status: Open.

Matters to be Considered: Public Hearing on the Proposed Revision of the Commission's Procedure for the Review of Contract Market Rules.

Contact Person for More Information: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commisson.

[FR Doc. 00–5591 Filed 3–3–00; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995. On February 28, 2000 an emergency notice was published incorrectly. Comments should have been solicited for the information collection, "Criteria for Distribution of the $134 million FY2000 Appropriation for School Improvement" instead of the "Guidance to SEAs on Procedures for Adjusting ED-Determined Title I Allocations to Local Educational Agencies (LEAs)." In addition, the notice should have stated that a regular collection was being processed as well. Therefore, this notice acts as the regular notice.

DATES: Interested persons are invited to submit comments on or before May 8, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) Will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) How might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 2, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title: Criteria for Distribution of the $134 million FY2000 Appropriation for School Improvement.
Frequency: Annually.
Affected Public: State, local or Tribal Government, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 52.
Burden Hours: 1,248.

Abstract: To receive funds provided for school improvement in the FY2000 appropriation, a State must amend its State Title I plan to include (1) criteria showing which of the LEAs will receive funds; (2) criteria for determining how much each LEA will receive; and (3) measures to assure that recipients of funds implement public school choice consistent with the statute.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_XIMG_XIssues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 (fax). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5497 Filed 3–6–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans (Commission). Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act in order to notify the public of their opportunity to attend. The public is not receiving a 15 day notice of the meeting because of delays in finalizing meeting logistics.

DATES AND TIMES: Thursday, March 9, from 1–5 pm; Friday, March 10, from 9–4 pm.

ADDRESSES: U.S. Department of Labor, 200 Constitution Ave, NW, Washington, DC.

FOR MORE INFORMATION CONTACT: Richard Toscano, Special Assistant for Interagency Affairs, at 202–401–1411 (telephone), 202–401–8377 (FAX), richard_toscano@ed.gov (e-mail) or mail: U.S. Department of Education, 400 Maryland S.W., room 5E110; Washington, D.C. 20202–3601.

SUMMARY INFORMATION: The Commission was established under Executive Order 12900 (February 22, 1994) to provide the President and the Secretary of Education with advice on (1) the progress of Hispanic Americans toward achievement of the National Goals and other standards of educational accomplishment; (2) the development, monitoring, and education for Hispanic Americans; (3) ways to increase, State, county, private sector and community involvement in improving education; and (4) ways to expand and complement Federal education initiatives.

At the March meeting, the Commission will discuss current and future activities. Specifically, the Commission will focus on ways to institutionalize its work, including ongoing efforts to bring more awareness about federal programs and activities that are assisting Latinos. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive, listening devices, materials in alternative format) should notify Richard Toscano, at (202) 401–2147, by no later than March 7. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

The Commission's Sub-Committee on Higher Education will also hold a press briefing on the issue of Latinos in Higher Education on March 9 from 10:00am–12:00pm at the National Press Club.

Records of all Commission proceedings are available for public inspection at the White House Initiative, U.S. Department of Education, 400 Maryland Ave., S.W., Room 5E110, Washington, D.C. 20202 from 9 a.m. to 5 p.m. (est).

Dated: February 29, 2000.

G. Mario Moreno,

Assistant Secretary, Office of Intergovernmental and Interagency Affairs.

[FR Doc. 00–5437 Filed 3–6–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education (OPE) Agenda Project

AGENCY: Department of Education.

ACTION: Notice of regional meetings and request for written submissions to obtain advice and comments from the public for use in developing a national postsecondary education agenda for the U.S. Department of Education.

SUMMARY: The Assistant Secretary for Postsecondary Education will conduct four regional meetings in Boston, Atlanta, Dallas and San Francisco to solicit advice for use in setting priorities and refining the U.S. Department of Education role in postsecondary education.

FOR FURTHER INFORMATION CONTACT: Terri Douglas, U.S. Department of Education, 1990 K Street, NW, Room 7134, Washington, DC 20006. Telephone: (202) 502–7750. E-mail: OPE__Agenda@ed.gov. Information about the project also is available at the Department of Education Web site at www.ed.gov/OPEAgenda. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g. Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Education's Office of Postsecondary Education has long served postsecondary students and institutions through a wide range of programs aimed at promoting access to, and quality in, postsecondary education and at strengthening international education. More recently, we have taken on new challenges in promoting distance education, improving teacher education, and further expanding opportunity by better preparing K–12 students for postsecondary education opportunities at an earlier age and by promoting access to graduate education.

Today, America's postsecondary institutions must prepare students for success in a changing world. OPE's mission—"to mobilize national resources to promote opportunity and success for all Americans, in a global environment, through quality postsecondary education"—is even more important in this context. The Assistant Secretary for Postsecondary Education created the Agenda Project to solicit advice from all those who have a stake in postsecondary education. As part of this project, the Assistant Secretary is conducting regional meetings and soliciting written advice from the public. This advice will be used to develop a national postsecondary education agenda—one that will enable our country to meet the needs of students, institutions, the business community and the entire nation in this changing environment.

For more information about the Agenda Project, please visit our Web site at www.ed.gov/OPEAgenda or contact Ms. Terri Douglas at 202–502–7654.

Regional Meetings

Interested parties are invited to attend four regional meetings in order to contribute ideas and advice on OPE's agenda. The regional meetings will begin with a brief description of OPE and the Assistant Secretary's Agenda Project. Participants then will have an opportunity to contribute their ideas and advice, framed around the following three questions:

1. What are the most significant opportunities and challenges facing American postsecondary education in the next five years?
2. What are the appropriate roles for the U.S. Department of Education in postsecondary education?
3. How can the U.S. Department of Education best maintain a continuing dialogue with all those who have a stake in postsecondary education?

The Department of Education has reserved a limited number of hotel rooms at each of the following hotels at a special government per diem room rate. To reserve these rates, be sure to inform the hotel that you are attending the regional meetings with the Department of Education.

Dates, Times and Locations of Regional Meetings

1. *Boston:* April 5, 2000, 10 a.m. to 12 p.m. and 1 p.m. to 3 p.m., The Colonnade Boston, 120 Huntington Avenue, Boston, MA 02116. Call 617–424–7000 or fax 617–424–1717 for hotel reservations. Sleeping room rate: $192 plus taxes. Last day to reserve at the federal rate: March 12

2. *Dallas:* April 26, 2000, 10 a.m. to 12 p.m. and 1 p.m. to 3 p.m, Wyndham Dallas Market Center, 2015 Market Center Blvd., Dallas, TX 75207. Call 214–741–7481 or fax 214–747–6191 for hotel reservations. Sleeping room rate: $89. Last day to reserve at the federal rate: March 27

3. *San Francisco:* May 2, 2000, 10 a.m. to 12 p.m. and 1 p.m. to 3 p.m., Hyatt Fisherman's Wharf, 555 North Point Street, San Francisco, CA 94133. Call 415–563–1234 or fax 415–563–2218 for hotel reservations. Sleeping room rate: $175. Last day to reserve at the federal rate: April 11

4. *Atlanta:* May 10, 2000, 10 a.m. to 12 p.m. and 1 p.m. to 3 p.m., Wyndham Atlanta Hotel, 160 Spring Street, Atlanta, GA 30303. Call 404–688–8600 or fax 404–524–5543 for room reservations. Sleeping room rate: $93. Last day to reserve at the federal rate: April 9

The hearing sites are accessible to individuals with disabilities.

Assistance to Individuals With Disabilities at the Regional Meetings

The Department will provide a sign language interpreter at each of the scheduled hearings. An individual with a disability who will need an auxiliary aid or service other than an interpreter to participate in the meeting (for example, assistive listening device or materials in an alternative format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Invitation To Comment

We invite you to submit written comments and suggestions addressing the questions outlined in the Regional Meetings section. Comments should be addressed to Dr. A. Lee Fritschler, Assistant Secretary for Postsecondary Education, and mailed or e-mailed to the address given in the **FOR FURTHER INFORMATION CONTACT** section.

Comments will be available for public inspection, during and after the comment period, in room 7122, 1990 K Street, NW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal Holidays.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the

U.S. Government Printing Office (GPO) toll free at 1–888–293–6498 or in the Washington, DC, area, at (202) 572–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html.

Dated: March 2, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–5495 Filed 3–6–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–92–000]

CNG Transmission Corporation; Notice of Application

March 1, 2000.

Take notice that on February 22, 2000, CNG Transmission Corporation (CNG), 445 Main Street, Clarksburg, West Virginia 26301, tendered for filing in Docket No. CP00–92–000 an application, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations seeking permission and approval to abandon Well 9081 and associated facilities and to drill up to five new replacement wells (13059, 13060, 13061, 13062, and 13063) all within the Bridgeport Storage Pool located in Harrison and Taylor Counties, West Virginia, all as fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

CNG states that this authorization is necessitated by the proposed construction of the Bridgeport Bypass Project by the West Virginia Department of Transportation, Division of Highways. CNG also states that it will construct and abandon storage gathering lines pursuant to blanket certificate authority granted in Docket No. CP82–537–000 (21 FERC ¶ 62,172 (1982)).

Any questions regarding the application should be directed to Sean R. Sleigh, Manager, Certificates, CNG Transmission Corporation, 445 West Main Street, Clarksburg, WV 26301 (304) 623–8462 (voice) and (304) 623–8305 (fax).

Any person desiring to be heard or to make any protest with reference to said application should on or before March 22, 2000, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the proposal is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provide for, unless otherwise advised, it will be unnecessary for CNG to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–5440 Filed 3–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–64–001]

CNG Transmission Corporation; Notice of Amendment

March 1, 2000.

Take notice that on February 17, 2000 CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP00–64–001 an amendment to the pending application filed on December 29, 1999, in Docket No. CP00–64–000, pursuant to Sections 7(c) and 7(b) of the Natural Gas Act for a certificate of public convenience and necessity to construct and operate certain pipeline and compression facilities located in Pennsylvania and New York and approval to abandon a segment of a pipeline located in Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

By the pending application in Docket No. CP00–64–000, CNG proposes to construct and operate facilities in order to substitute its own transportation capacity for market area service entitlements that CNG currently holds on Tennessee Gas Pipeline Company pursuant to Contract No. 3919. Specifically, CNG proposes to: (1) Construct 13 miles of 30-inch pipeline, known as TL 474x2, to loop CNG's existing pipeline in Armstrong County, Pennsylvania; (2) install 4,450 horsepower (hp) of additional

compression at Punxsutawney Station in Jefferson County, Pennsylvania; (3) install 2,400 hp of additional compression at Ardell Station in Elk County, Pennsylvania; (4) install 6,400 hp of compression at a new station, Little Greenlick Relay Station, in Potter County, Pennsylvania; (5) install 7,000 hp of compression at a new station site, Brookman Corners Station, in Montgomery County, New York; and (6) construct 800 feet of 30-inch pipeline, known as the Connector Line (TL–510), between TL–474x2 and LN–26 and LN–380 in Armstrong County, Pennsylvania. In addition, CNG proposes to abandon in place 12.9 miles of 12-inch pipeline in Armstrong County, Pennsylvania known as LN–9 and physically remove 700 feet of that line.

In the subject amendment, CNG seeks to modify its original request. CNG states that it now seeks approval to abandon by removal 9,600 feet of LN–9 instead of 700 feet as originally proposed.

Any questions regarding the application should be directed to Sean R. Sleigh, Manager of Certificates at (304) 623–8462, CNG Transmission Corporation, 445 West Main Street, Clarksburg, West Virginia 26301.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before March 22, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

David P. Boergers,

Secretary.

[FR Doc. 00–5441 Filed 3–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–97–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

March 1, 2000.

Take notice that on February 23, 2000, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978–1492, filed in Docket No. CP00–97–000 a request pursuant to Sections 157.205 and 157.16(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.208(b)) for authorization to uprate the Maximum Allowable Operating Pressure (MAOP) of the Ramsey Plant Line (Line 3152),[1] originating in Eddy County, New Mexico, and terminating in Reeves County, Texas, and to thereafter operate Line 3152 at the higher MAOP under the blankete certificate issued in Docket No. CP82–435–000, pursaunt to Section 7(b) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

El Paso states it received a request from Huntington Energy, L.L.C. (Huntington) to deliver gas from high pressure gas sources to El Paso's California Mainline System and that the requested uprate will permit it to receive up to 30 MMcf/d of gas for transportation for Huntington. El Paso states that Line No. 3152 currently has a certificated operating limit of 650 psig. El Paso seeks authorization to uprate the MAOP to 960 psig. El Paso states that estimated cost to uprate Line No. 3152 with the installation of pressure regulators is $88,900, which Huntington will reimburse El Paso for all costs associated with the uprating. El Paso plans an in-service date for the operation of Line No. 3152 at the higher MAOP of 960 psig of no later than May 1, 2000.

El Paso states that Line No. 3152 was originally used to deliver gas from the former Continental Ramsey Oil Plant Receipt Point (Continental) into its 16" Jal-El Paso "A" Line. In 1993, Continental was converted to a delivery point and became the Conoco Ramsey Plant Delivery Point (Concoc) and El Paso reversed the flow of gas in Line No. 3152. In 1997, the Orla Petco Delivery Point (Orla) was installed adjacent to Conoco. According to El Paso, the reversal of the flow on Line No. 3152 will not adversely affect deliveries to Conoco and Orla, since they will be served by natural gas supplies from the Huntington Receipt Point.

Any questions regarding this application should be directed to Robert T. Tomlinson, Director, Tariff and Certificate Department for El Paso, 100 North Stanton, El Paso, Texas 79901 at (915) 496–5959, or Michael D. Moore, Director, Federal Agency Relations for El Paso, 601 13th Street, NW., Suite 850 South, Washington, DC 20005 at (202) 662–4310.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursaunt to Section 7 of the Natural Gas Act.

David P. Boegers,

Secretary.

[FR Doc. 00–5442 Filed 3–2–00; 8;45 am]

BILLING CODE 6717–01–M

[1] Line No. 3152 is a 6⅝" O.D. lateral line approximately 8.7 miles long, which was originally constructed as a gas supply lateral and was designed to operate at an MAOP of 650 psig in order to receive up to approximately 10 MMcf/d of natural gas under budget-type authority in Docket No. G–17256 (21 FPC 474).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–163–002]

Kern River Gas Transmission Company; Notice of Compliance Filing

March 1, 2000.

Take notice that on February 25, 2000, Kern River Gas Transmission Company (Kern River), in compliance with the order issued by the Federal Energy Regulatory Commission (Commission) on February 10, 2000, in Docket Nos. RP00–163–000 and 001, tendered its responses to concerns raised by intervening parties related to its imbalance netting and trading proposal.

Kern River states that it has served a copy of its response upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5445 Filed 3–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–187–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 1, 2000.

Take notice that on February 28, 2000, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Second Revised Sheet No. 407, with a proposed effective date of March 30, 2000.

National Fuel states that the purpose of the instant filing is to revise GT&C Section 17 of its tariff to expressly permit National Fuel and its shippers to vary the payment obligations and crediting mechanisms for capacity release transactions when entering into negotiated rate agreements. National Fuel further states that consistent with the Commission's policy, the proposed provision includes language clarifying that its tariff does not authorize the negotiation of terms and conditions of service.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5449 Filed 3–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–002]

Pacific Gas & Electric Company; Notice of Meeting

March 1, 2000.

Take notice there will be a meeting of the Recreation subgroup of the Mokelumne Relicensing Collaborative on March 7, 2000, from 9 a.m. to 4 p.m. at the PG&E offices, 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696.

For further information, please contact Diana Shannon at (202) 208–7774.

David P. Boergers.

Secretary.

[FR Doc. 00–5443 Filed 3–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–186–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 1, 2000.

Take notice that on February 25, 2000 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Twenty Fourth Revised Sheet No. 50. The attached tariff sheet is proposed to be effective March 1, 2000.

Transco states that the purpose of the instant filing is to track rate changes attributable to transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. The filing is being made pursuant to tracking provisions under Section 4 of Transco's Rate Schedule FT–NT.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5446 Filed 3–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–102–000, et al.]

Panda Perkiomen Power, L.P., et al.; Electric Rate and Corporate Regulation Filings

March 1, 2000.

Take notice that the following filings have been made with the Commission:

1. Panda Perkiomen Power, L.P.

[Docket No. EG00–102–000]

Take notice that on February 25, 2000, Panda Perkiomen Power, L.P. (Panda), with its principal offices at 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, tendered for filing with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's Regulations.

Panda is a Delaware limited partnership, which will construct, own and operate a 1000 MW natural gas-fired generating facility within the region governed by the PMJ Interconnection, L.L.C. (PJM) and sell electricity at wholesale.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Energy Unlimited, Inc.

[Docket No. ER98–1622–007]

Take notice that on February 25, 2000, Energy Unlimited, Inc. filed their quarterly report for information only.

3. Sierra Pacific Power Company

[Docket Nos. ER99–28–003; EL99–38–002; ER99–945–002]

Take notice that on February 25, 2000, Sierra Pacific Power Company filed a Notice of Depositions pursuant to Rules 403 and 404 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 CFR 385.403 and 385.404).

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. NRG Northeast Power Marketing LLC

[Docket No. ER00–1690–000]

Take notice that on February 25, 2000, NRG Northeast Power Marketing LLC (NEPM), a marketer of electric power, has filed a notice of cancellation of its Rate Schedule FERC No. 1, pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d (1994), and Section 35.15 of the Commission's regulations, 18 CFR 35.15.

NEPM proposes for its cancellation to be effective on April 25, 2000.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Alliant Energy Corporate Services, Inc.

[Docket No.ER00–1691–000]

Take notice that on February 24, 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Interstate Power Company (IPC) tendered for filing for a Negotiated Capacity Transaction (Agreement) between IPC and WPL for the period June 1, 2000 through August 31, 2000. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light and Alliant Energy.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER00–1692–000]

Take notice that on February 25, 2000, Virginia Electric and Power Company (Virginia Power) amended its filing in this proceeding by tendering an executed version of the Service Agreement between Virginia Electric and Power Company and Allegheny Energy Supply Company, LLC. Under the Service Agreement, Virginia Power will provide services to Allegheny Energy Supply Company, LLC under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of November 17, 1999, the date service was first provided.

Copies of the filing were served upon Allegheny Energy Supply Company, LLC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. The Montana Power Company and PP&L Montana, LLC

[Docket No. ER00–1693–000]

Take notice that, on February 25, 2000, The Montana Power Company (Montana Power) and PP&L Montana, LLC (PPLM) (together, the Applicants) jointly tendered for filing: (1) rate schedules and supplements thereto for PPLM and Montana Power; (2) Notices of Cancellation of Montana Power rate schedules; and (3) requests for waivers as set forth in more detail therein, all in connection with the assignment of Montana Power's interest in the 1964 Pacific Northwest Coordination Agreement and the 1997 Pacific Northwest Coordination Agreement (together, the PNCAs) to PPLM. Montana Power and PPLM recently completed the sale of Montana Power's generation assets to PPLM, and the assignment of the PNCAs is an additional aspect of that transaction.

Applicants state that copies of this filing have been served upon all parties to the PNCAs.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Gas and Electric Company

[Docket No. ER00–1694–000]

Take notice that on February 25, 2000, Pacific Gas and Electric Company (PG&E) tendered for filing the following changes to the Interconnection Agreement Between Pacific Gas And Electric And The City Of Santa Clara (IA), Initially filed under FERC Docket No. ER84–6–000: (1) revisions to Appendix A; (2) deletion of the Agreement Between City Of Santa Clara, California and Pacific Gas And Electric Company To Implement The Performance-Based Rate Settlement For Diablo Canyon Nuclear Power Plant Approved and Adopted By The Public Utilities Commission Of the State Of California (Implementation Agreement); and (3) a revised Exhibit A–4 to Appendix A to the IA.

PG&E's filing regarding Appendix A to the IA proposes rate changes other than rate increases. PG&E's filing regarding Exhibit A–4 to Appendix A proposes revisions to Exhibit A–4 with respect to Firm Transmission Service between Points of Receipt and Points of Delivery.

Copies of this filing were served upon Santa Clara and the Public Utilities Commission of the State of California.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Union Electric Company, d/b/a AmerenUE

[Docket No. ER00–1695–000]

Take notice that on February 25, 2000, Union Electric Company, d/b/a AmerenUE tendered for filing a proposal for providing a sharing credit to its Wholesale Electric Service customers—the Cities of California, Centralia, Farmington, Fredericktown, Hannibal, Kahoka, Kirkwood, Linneus, Marceline, Owensville, Perry, Rolla, and St. James, Missouri; Citizens Electric Corporation; and City of Jackson, Missouri.

Said credit follows a credit to the Company's Missouri retail customers and is being applied to the Company's wholesale customers following Section 2 of said Wholesale Electric Service Agreements (and Item 3 for the City of Jackson).

Copies of the filing were served upon the public utility's jurisdictional customers and the Missouri Public Service Commission.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. MidAmerican Energy Company

[Docket No. ER00–1696–000]

Take notice that on February 25, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Dynegy Power Marketing, Inc. (Dynegy), dated February 2, 2000, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of February 2, 2000, for the Agreement with Dynegy, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Dynegy, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–1697–000]

Take notice that on February 25, 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Wisconsin Power & Light (WPL) tendered for filing a Unit Participation Capacity Transaction (Agreement) between WPL and IPC for the period June 1, 2000 through August 31, 2000. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light and Alliant Energy.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Company

[Docket No. ER00–1698–000]

Take notice that on February 25, 2000, New England Power Company (NEP) tendered for filing Amendment No. 3 to the Wholesale Sales Agreement (the Agreement) between NEP and USGen New England, Inc. (USGenNE), formerly USGen Acquisition Corporation, for service under NEP's Wholesale Market Tariff, FERC Electric Tariff, Original Volume No. 10 (Tariff No. 10), FERC Rate Schedule No. 489 (redesignated as Service Agreement No. 2 under Tariff No. 10). The proposed Amendment No. 3 provides for the assignment by USGenNE to Constellation Power Source, Inc. (CPS) of USGenNE's rights and obligations under the Agreement to purchase NEP's share of the wholesale nuclear entitlements from its nuclear units.

Copies of the filing were served upon USGenNE, CPS and the Department of Public Utilities of the Commonwealth of Massachusetts.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–1699–000]

Take notice that on February 25, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company (doing business and collectively referred to as GPU Energy) submitted for filing amendments to the Wheeling and Supplemental Power Agreement Between Pennsylvania Electric Company and Allegheny Electric Cooperative, Inc. (AEC). The materials in the amendments consist of new Appendix B–4 (which replaces existing Appendix B–3), revised Exhibit A, and revised Exhibit C–1 of the agreement.

Copies of the filing were served upon AEC and regulators in the Commonwealth of Pennsylvania and the State of New Jersey.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Cleco Utility Group Inc.

[Docket No. ER00–1700–000]

Take notice that on February 25, 2000, Cleco Utility Group Inc. (Cleco), tendered for filing proposed changes in its Rate Schedule FERC No. 13, which would amend the existing Electric System Interconnection Agreement with Cajun Electric Power Cooperative, Inc.

The proposed rate changes effects an assignment, and consent to the assignment, of Cajun Electric Power Cooperative's rights, interests, and obligations under the Electric System Interconnection Agreement to Louisiana Generating LLC.

Copies of the filing were served upon the Ralph R. Mabey, as Chapter 11 Trustee for Cajun Electric Power Cooperative, Inc., Louisiana Generating LLC, and the Louisiana Public Service Commission.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Consumers Energy Company

[Docket No. ER00–1701–000]

Take notice that on February 25, 2000 Consumers Energy Company (Consumers) tendered for filing a Facilities Agreement Between Consumers and Alpena Power Generation, LLC, (Facilities Agreement), dated January 20, 2000. Under the Facilities Agreement, Consumers is to construct, operate and maintain various interconnection facilities.

Copies of the filing were served upon Alpena Power Generation and upon the Michigan Public Service Commission.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER00–1702–000]

Take notice that on February 25, 2000, PECO Energy Company (PECO) filed under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated February 22, 2000 with Griffin Energy Marketing, L.L.C. (GEM) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of February 22, 2000, for the Agreement.

PECO states that copies of this filing have been supplied to Griffin Energy Marketing, L.L.C. and to the Pennsylvania Public Utility Commission.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. PPL Energyplus, LLC,

[Docket No. ER00–1703–000]

Take notice that on February 25, 2000, PPL EnergyPlus, LLC filed a Notice of Change in Corporate Name to notify the Federal Energy Regulatory Commission that the corporate name of PP&L EnergyPlus Co., LLC has been changed to PPL EnergyPlus, LLC, effective February 14, 2000.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. PPL Montana, LLC

[Docket No. ER00–1704–000]

Take notice that on February 25, 2000, PPL Montana, LLC filed a Notice of Change in Corporate Name to notify the Federal Energy Regulatory Commission that the corporate name of PP&L Montana, LLC has been changed to PPL Montana, LLC, effective February 14, 2000.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5485 Filed 3–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–58–000, et al.]

The United Illuminating Company, et al.; Electric Rate and Corporate Regulation Filings

February 29, 2000.

Take notice that the following filings have been made with the Commission:

1. The United Illuminating Company

[Docket No. EC00–58–000]

Take notice that on February 24, 2000, The United Illuminating Company (UI) tendered for filing an application pursuant to Section 203 of the Federal Power Act for authorization to implement a corporate reorganization involving the creation of a new holding company, to be known as UIL Holdings Corporation, that will hold the common stock of UI.

Comment date: March 27, 2000, in accordance with Standard paragraph E at the end of this notice.

2. Southwestern Electric Power Company

[Docket No. EC00–1685–000]

Take notice that on February 24, 2000, Southwestern Electric Power Company (SWEPCO) submitted for filing Amendment No. 1 and First Revised Exhibit A to the ERCOT Power Supply Agreement between SWEPCO and Tex-La Electric Cooperative of Texas, Inc. (Tex-La). Amendment No. 1 modifies Tex-La's minimum purchase obligations under the ERCOT PSA.

SWEPCO seeks an effective date of January 1, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on Tex-La and on the Public Utility Commission of Texas.

Comment date: March 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. EC00–1686–000]

Take notice that on February 24, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Reliant Energy Services, Inc. (RELIANT), dated August 10, 1999. This Service Agreement specifies that RELIANT has agreed to the rates, terms and conditions of GPU Energy's Market-based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and RELIANT to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of August 10, 1999 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Minnesota Power, Inc.

[Docket No. EC00–1687–000]

Take notice that on February 24, 2000, Minnesota Power, Inc. tendered for filing signed Non-Firm and Short-term Firm Point-to-Point Transmission Service Agreements with CMMPA/UP under its Short-Term Firm and Non-Firm Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: March 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Geysers Power Company, LLC

[Docket No. EC00–1689–000]

Take notice that on February 24, 2000, Geysers Power Company, LLC (Geysers Power) filed its revised rate sheet amending the terms of the Reliability Must-Run (RMR) Agreements with the California Independent System Operator Corporation (ISO) applicable to the Geysers Main Units. The revised rate sheet is submitted in compliance with the letter order dated February 9, 2000, requiring Geyser Power to file rate schedules to delete MNDC revision values, Geysers Power Company, LLC, 90 FERC ¶ 61,113 (2000).

Comment date: March 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5439 Filed 3–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2320–016, New York]

Orion Power New York; Notice of Availability of Environmental Assessment

March 1, 2000.

An environmental assessment (EA) is available for public review. The EA analyzes the environmental effects of proposed changes to the project boundary for the Middle Raquette River project located in the Town of Colton in St. Lawrence County, New York. The proposed boundary changes would result in the removal of about 24 acres of land from two areas of the project's Higley Development.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Based on the environmental analyses presented in the EA, the Commission's staff finds that the proposed project boundary changes would not constitute a major federal action significantly affecting the quality of the human environment.

The EA has been attached to and made a part of an Order Amending License, issued March 1, 2000, for the Middle Raquette River project (FERC No. 2320–016). The EA is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington, DC 20426. Copies of the EA also may be obtained by calling (202) 208–1371, or by email at *Public.ReferenceRoom@ferc.fed.us*. The EA also may be viewed on the Commission's web site at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5448 Filed 3–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

March 1, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 184–065.

c. *Date filed:* February 22, 2000.

d. *Applicant:* El Dorado Irrigation District.

e. *Name of Project:* El Dorado Project.

f. *Location:* Located on the South Fork of the American River and its tributaries in the counties of El Dorado, Alpine, and Amador, California, partially within the boundaries of the Eldorado National Forest. The project also diverts about 1,900 acre-feet of water from lower Echo Lake in the upper Truckee River Basin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* William T. Hetland, General Manager, El Dorado Irrigation District, 2890 Mosquito Road, Placerville, California 95667. Telephone (530) 622–4513.

i. *Commission Contact:* Any questions on this notice should be addressed to Nan Allen, e-mail address nan.allen@ferc.fed.us, or telephone 202–219–2938.

j. *Deadline for filing additional study requests:* April 24, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary; Federal Energy Regulatory Commission; 888 First Street, NE; Washington, DC 20426. Please include the project number (Project No. 184–065) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 113-foot-long, 20-foot-high rubble and masonry main dam with a crest elevation of 8,210 feet mean sea level (msl) and 11 auxiliary dams, impounding Lake Aloha, a 5,179 acre-foot reservoir; (2) a 320-foot-long, 14-foot-high roller-compacted concrete dam with a crest elevation of 7,413 feet msl, impounding lower Echo Lake, a 1,900 acre-foot reservoir; (3) a 6,125-foot-long conduit from lower Echo Lake to the South Fork of the American River; (4) a 1,200-foot-long, 84.5-feet-high gunite-core earthfill main dam with a crest elevation of 7,959.5 feet msl and one auxilliary dam, impounding Caples Lake, a 22,490 acre-foot reservoir; (5) a 280-foot-long, 30-foot-high rock and earthfill dam with a crest elevation of 7,261 feet msl, impounding Silver Lake, a 13,280 acre-foot reservoir; (6) a 271-foot-long, 20-foot-high rickfill timber crib diversion dam with a crest elevation of 3,910.5 feet msl, impounding 200 acre-feet of the South Fork of the American River; (7) a 22.3-mile-long conveyance from the diversion dam to the forebay; (8) a 70-foot-long, 9.5-foot-high concrete diversion dam with a crest elevation of 4,007 feet msl on Alder Creek; (9) six small creeks that divert into the conveyance—Mill Creek, Bull Creek, Carpenter Creek, Ogilby Creek, Esmeralda Creek and an unnamed creek; (10) a 836-foot-long, 91-foot-high earthfill foregay dam with a crest elevation of 3,804 feet msl, impounding a 356-acre-foot reservoir; (11) a 2.8-mile combination pipeline and penstock conveyance, with surge tank, from the forebay to the powerhouse; (12) a 110-foot-long by 40-foot-wide steel frame powerhouse with reinforced concrete walls and an installed capacity of 21,000 kilowatts, producing about 106 gigawatthours annually when operational; and (13) other appurtenances. No transmission lines are included with the project. The project is not currently operational.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for

inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

David P. Boergers,

Secretary.

[FR Doc. 00–5444 Filed 3–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2077–016]

USGen New England Inc.; Notice Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

March 1, 2000.

On July 14, 1998, the Federal Energy Regulatory Commission (Commission) issued a notice for the Fifteen Mile Falls Project (FERC No. 2077–016) proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement for managing properties included in or eligible for inclusion in the National Register of Historic Places. The Fifteen Mile Falls Project is located on the Connecticut River, in Grafton County, New Hampshire, and Caledonia County, Vermont. USGen New England, Inc. is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The following two additions are made to the restricted service list notice issued on July 14, 1998, for Project No. 2077–016:

Nat Tripp, Connecticut River Joint Commissions, P.O. Box 1182, Charlestown, NH 03603

Brian Fitzgerald, VT DEC, Water Quality Division, 103 South Main Street, Building 10 North, Waterbury, VT 05671–0408

David P. Boergers,

Secretary.

[FR Doc. 00–5447 Filed 3–6–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR 385.2010

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100155; FRL–6493–1]

American Management Systems and Technology Group; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to American Management Systems and Technology Group in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). American Management Systems and Technology Group has been awarded multiple contracts to perform work for OPP, and access to this information will enable American Management Systems and Technology Group to fulfill the obligations of the contract.

DATES: American Management Systems and Technology Group will be given access to this information on or before March 13, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under Contract No. GS–35F–4979H, the contractor will perform the following: American Management Systems and Technology Group will be working on the OPPTS server located in OPP to install and support a financial management system, the Integrated Resource Management System (IRMS). Because it may be necessary for American Management Systems and Technology Group to access data on the OPP server for testing and data management purposes, it is possible that American Management Systems and Technology Group could be exposed to sensitive FIFRA CBI information housed on the same server.

This contract involves no subcontractors.

OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with American Management Systems and Technology Group, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In

addition, American Management Systems and Technology Group is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to American Management Systems and Technology Group until the requirements in this document have been fully satisfied. Records of information provided to American Management Systems and Technology Group will be maintained by EPA Project Officers for these contracts. All information supplied to American Management Systems and Technology Group by EPA for use in connection with these contracts will be returned to EPA when American Management Systems and Technology Group has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: February 22, 2000.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–5504 Filed 3–6–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6546–1]

Final NPDES Permits for Log Transfer Facilities Operating in Alaska Prior to October 22, 1985 and Possessing a Section 404 Permit but Not a Section 402 Permit (AK–G70–0000) and All Other Log Transfer Facilities Operating in Alaska (AK–G70–1000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final NPDES General Permits.

SUMMARY: The Director of the Office of Water, EPA Region 10, is publishing notice of the availability of two National Pollutant Discharge Elimination System (NPDES) general permits (numbers AK–G70–0000 and AK–G70–1000) for coverage of log transfer facilities (LTFs) operating in Alaska, pursuant to the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.* General permit AK–G70–0000 ("pre-1985 permit") includes section 402 modifications to section 404 permits issued to LTFs prior to October 22, 1985, in accordance with section 407 of the Water Quality Act of 1987 (Public Law 100–4). All other LTFs can apply to be authorized to discharge under general permit number AK–G70–1000 ("post-1985 permit").

Because general permit AK–G70–0000 contains modifications of the existing permits originally issued under section 404 of the Clean Water Act for LTFs operating prior to October 22, 1985, the permit conditions apply to discharges of bark and wood debris upon the effective date of the permit. Although notification is required from these facilities written confirmation is not required from EPA for automatic coverage. General permit AK–G70–1000 authorizes discharges from LTFs not possessing pre-1985, section 404 permits to marine waters of Alaska (extending from the Alexander Archipelago west through central Gulf of Alaska and Prince William Sound to Kodiak Island). These facilities are authorized to discharge under the permit after a Notice Of Intent application for coverage is sent to EPA and the Alaska Department of Environmental Conservation (ADEC) and/or a notification of permit coverage is received from the EPA. The EPA also has the option to automatically cover these facilities, under general permit AK–G70–1000, without receiving the notice of intent application.

Except for those LTFs operating in areas excluded from general permit coverage under the post-1985 permit, the general permits authorize the discharge of bark and wood debris, under specified terms of the general permits, into both near-shore and offshore marine waters in Alaska. The incidental discharge of petroleum products and sediment are also addressed in the general permits. The LTFs authorized by the general permits are required to develop and implement pollution prevention plans and to restrict their discharges to inside the perimeter of the project area (the zone of dilution). The permits also contain annual underwater bark monitoring for those facilities where bark accumulation is likely to occur. If the bark monitoring shows that one acre of continuous coverage and a thickness of 10 cm at any point is exceeded, additional practices must be implemented to minimize additional bark accumulation. The conditions of the general permits are largely based on the Alaska Timber Task Force Guidelines.

EFFECTIVE DATE: The general NPDES permits shall become effective on March 21, 2000. The post-1985 general permit and the authorization to discharge shall expire at midnight on March 21, 2005.

FOR FURTHER INFORMATION CONTACT: The complete administrative record for the general NPDES permit is available for public review by contacting EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 553–0523 or (206) 553–1643, or via EMAIL to the following address: washington.audrey@epa.gov. For those with impaired hearing or speech, please contact EPA's telecommunication device for the deaf (TDD) at 206/553–1698. Copies of the general NPDES permits, supporting fact sheet for the draft general NPDES permit, response to public comments, and today's publication are available from the EPA Alaska Operations Office at 222 West 7th Avenue, #19, Anchorage, Alaska 99513–7588, 907/271–6561 or the Alaska Department of Environmental Conservation at 410 Willoughby Avenue, Suite 105, Juneau, Alaska 99801. These documents can also be found by visiting the Region 10 web site at www.epa.gov/r10earth/water/htm.

SUPPLEMENTARY INFORMATION:

Public Comment

Pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1342, EPA proposed and solicited comments on the draft general permit in the **Federal Register** at 61 FR 5111–5112 (September 30, 1996), Anchorage Daily News, Ketchikan Daily News, The Seward Phoenix Log, The Valdez Vanguard, and The Cordova Times. The public comment period was extended by 21 days, notice of which was published in the **Federal Register** at 61 FR 57425 (November 6, 1996) and the Valdez Vanguard, Daily Sitka Sentinel, The Cordova Times, and The Seward Phoenix Log on November 7, 1996. Additionally, copies of the draft permit were sent to all known log transfer facilities operating under a section 404 permit issued prior to October 22, 1985. EPA also convened a two-day meeting with all commenters on March 11 and 12, 1997, in order to clarify comments received and allow commenters to hear each other's concerns.

Changes have been made from the draft permit to the final permits in response to comments received from facility representatives, tribal representatives, concerned citizens, environmental groups, the U.S. Forest Service, U.S. Fish and Wildlife Service, and the State of Alaska. All comments, along with EPA's responses, are summarized in the Response to Comments documents, which may be obtained at the above addresses, or viewed on the Region 10 web site listed above. The changes address the zone of deposit, the bark accumulation threshold for requiring additional

Pollution Prevention practices, methodology for bark monitoring surveys, the areas excluded from permit coverage, and administrative corrections. In response to comments, the section 402 modifications to section 404 permits issued prior to October 22, 1985 are being issued in a separate general permit (AK–G70–0000).

Legal Requirements

Coastal Zone Management Act

The State of Alaska, Office of Management and Budget, Division of Governmental Coordination found this action to be consistent with the approved Alaska Coastal Zone Management Program.

Endangered Species Act and Essential Fish Habitat

Consultation under the Endangered Species Act was conducted with the U.S. Fish and Wildlife Service and National Marine Fisheries Service. The EPA determined that the actions are not likely to adversely affect any threatened or listed species. EPA has also made a determination that the actions have no adverse effects on Essential Fish Habitat.

State Water Quality Standards and State Certification

The State of Alaska, Department of Environmental Conservation, has certified under section 401 of the Clean Water Act, that the subject discharges under both general permits comply with the Alaska State Water Quality Standards and sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act.

Executive Order 12866

EPA has determined that this general permit is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permit issued today, however, is not a "rule" subject to the requirements of 5 U.S.C. 553(b) and is therefore not subject to the RFA.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" (defined to be the same as "rules" subject to the RFA) on tribal, state, and local governments and the private sector. The permit issued today, however, is not a "rule" subject to the RFA and is therefore not subject to the requirements of UMRA.

Appeal of Permit

Any interested person may appeal the Log Transfer Facility General NPDES permits in the Federal Court of Appeals in accordance with section 509(b)(1) of the Clean Water Act. This appeal must be filed within 120 days of the permit effective date. The permit effective date is defined at 40 CFR 23.2 to be at 1:00 p.m. eastern time, two weeks after the date of publication in the **Federal Register**. Persons affected by a general NPDES permit may not challenge the conditions of the permit as a right of further EPA proceedings. Instead, they may either challenge the permit in court or apply for an individual NPDES permit and then request a formal hearing on the issuance or denial of an individual NPDES permit.

Dated: February 23, 2000.

Randall F. Smith,

Director, Office of Water, Region 10.

[FR Doc. 00–5501 Filed 3–6–00; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Advisory Committee was established by Public Law 98–09181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

TIME AND PLACE: Monday, March 27, 2000, at 9:00 a.m. to 1:00 p.m.. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

AGENDA: This meeting will include a discussion of the future role of Ex-Im Bank in light of the evolving changes in the export credit agency, exporting and financial communities.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to March 21, 2000, Teri Stumpf, Room 1203, Vermont Avenue, NW, Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

FURTHER INFORMATION: For information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3502.

John M. Niehuss,

General Counsel.

[FR Doc. 00–5520 Filed 3–6–00; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 29, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 8, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station.

Form No.: FCC 301.

Type of Review: Revision.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 3,370.

Estimated Hours Per Response: 37–121 hours (time varies between contracting time and respondent burden dependent on the type of application submitted).

Frequency of Response: On occasion.

Cost to Respondents: $35,485,300.

Estimated Total Annual Burden Hours: 7,427.

Needs and Uses: FCC 301 is used to apply for authority to construct a new commercial AM, FM or TV broadcast station, or to make changes in the existing facilities of such a station. In addition, FM licensees or permittees may request, by application on FCC 301, upgrades on adjacent and co-channels, modifications to adjacent channels of the same class and downgrades to adjacent channels without first submitting a petition for rulemaking. All applicants using this one-step process must demonstrate that a suitable site exists which would comply with allotment standards with respect to minimum distance separation and city-grade coverage and which would be suitable for tower construction.

To receive authorization for commencement of Digital Television ("DTV") operation, commercial broadcast licensees must file FCC 301 for a construction permit. This application may be filed anytime after receiving the initial DTV allotment but must be filed before the mid-point in a particular applicant's required construction period. The Commission will consider these applications as minor changes in facilities. Applicants will not have to supply full legal or financial qualification information.

This collection also includes the third party disclosure requirement of Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for new or major changes in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application.

On January 20, 2000, the Commission adopted a Report and Order in MM Docket Nos. 98–204 and 96–16 in the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding. This Report and Order modified the Commission's broadcast and cable EEO rules and policies consistent with the D.C. Circuit's decision in Lutheran Church. The new EEO rules ensure equal employment opportunity in the broadcast industry through vigorous outreach and prevention of discrimination. With the adoption of this Report and Order, the Commission reinstates the requirement that broadcast permittees file the FCC Form 396–A at the time they file an application for a new construction permit. The Commission has revised the FCC 301 to add a question to advise respondents that they are required to submit a 396–A at the time that they apply for a new construction permit.

The data is used by FCC staff to determine whether an applicant meets basic statutory requirements to become a Commission licensee and to ensure that the public interest would be served by grant of the application.

OMB Approval No.: 3060–0032.

Title: Application for Consent to Transfer Control of Entity Holding Broadcast Station License Construction Permit or License.

Form No.: FCC 315.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 1,591.

Estimated Hours Per Response: 12—48 hours (the burden hour time and contracting time varies depending on the type of application filed).

Frequency of Response: On occasion.

Cost to Respondents: $12,236,878.

Estimated Total Annual Burden: 2,546.

Needs and Uses: FCC Form 315 and applicable exhibits/explanations are required to be filed when applying for transfer of control of a corporation holding an AM, FM or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated.

This collection also includes the third party disclosure requirement of Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for transfer of control of license/permit. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. Additionally, an applicant for transfer of control of license must broadcast the same notice over the station at least once daily on four days in the second week immediately following the tendering for filing of the application.

On January 20, 2000, the Commission adopted a Report and Order in MM Docket Nos. 98–204 and 96–16 in the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding. This Report and Order modified the Commission's broadcast and cable EEO rules and policies consistent with the D.C. Circuit's decision in Lutheran Church. The new EEO rules ensure equal employment opportunity in the broadcast industry through vigorous outreach and prevention of discrimination. With the adoption of this Report and Order, the Commission reinstates the requirement that broadcast permittees and licensees file the FCC Form 396–A at the time they file a transfer application. The Commission has revised the FCC 315 to add a question to advise respondents that they are required to submit a 396–A at the time that they apply for a transfer of a construction permit or license.

The data is used by FCC staff to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest would be served by grant of the application.

OMB Approval No.: 3060–0031.

Title: Application for Consent to Assignment of Broadcast License Construction Permit or License.

Form No.: FCC 314.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 1,591.

Estimated Hours Per Response: 12–48 hours (the burden hour time and contracting time varies depending on the type of application filed).

Frequency of Response: On occasion.

Cost to Respondents: $12,236,878.

Estimated Total Annual Burden: 2,546.

Needs and Uses: FCC Form 314 and applicable exhibits/explanations are required to be filed when applying for consent for assignment of an AM, FM or TV broadcast station construction permit or license, along with applicable exhibits and explanations. In addition, the applicant must notify the Commission when an approved assignment of a broadcast station construction permit or license has been consummated.

This collection also includes the third party disclosure requirement of Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for assignment of license/permit. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. Additionally, an applicant for assignment of license must broadcast the same notice over the station at least once daily on four days in the second week immediately following the tendering for filing of the application.

On January 20, 2000, the Commission adopted a Report and Order in MM Docket Nos. 98–204 and 96–16 in the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding. This Report and Order modified the Commission's broadcast and cable EEO rules and policies consistent with the D.C. Circuit's decision in Lutheran Church. The new EEO rules ensure equal employment opportunity in the broadcast industry through vigorous outreach and prevention of discrimination. With the adoption of this Report and Order, the Commission reinstates the requirement that broadcast permittees and licensees file the FCC Form 396–A at the time they file an assignment application. The Commission has revised the FCC 314 to add a question to advise respondents that they are required to submit a 396–A at the time that they apply for an assignment of a construction permit or license.

The data is used by FCC staff to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest would be served by grant of the application.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5411 Filed 3–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

FCC Renews and Amends Charter of Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of renewal and amendment of charter.

SUMMARY: The Federal Communications Commission has renewed and amended the charter of its advisory committee, the "Network Reliability and Interoperability Council" (the "Committee"). Under the amended charter, the objectives of the Committee are as follows.

The Committee will continue its work relating to the year 2000 date rollover (Y2K) on telecommunications networks, including a review of the effectiveness of the work done prior to the date change as well as an analysis of the impact of the date change on those networks. The Committee will make recommendations on any future actions that should be taken. The Committee will evaluate, and report on, the reliability of public telecommunications network services in the United States, including the reliability of packet switched networks.

During the charter of the previous Committee, interested participants developed guidelines that were intended to improve the quality of outage reporting for those carriers currently required to report outages. The Committee will evaluate those guidelines and data provided in accordance with those guidelines and, if appropriate, recommend further refinements to those guidelines.

During the charter of the previous Committee, interested participants recommended that the FCC adopt a voluntary reporting program, administered by the National Communications System, to gather outage data for those telecommunications and information service providers not currently required to report outages. The Committee will monitor this process, analyze the data obtained from the voluntary trial and report on the efficacy of that process, as well as the on-going reliability of such services.

The Committee will evaluate existing network outage reporting requirements and make recommendations for improving, or where appropriate initiating, reporting requirements for: (i) Telecommunications carriers currently required to report outages; and (ii) telecommunications carriers not presently required to report service outages.

Building on the work of the previous Committee, as appropriate, the Committee will continue to develop best practices recommendations and refine or modify, as appropriate, best practices recommendations developed by previous Committees.

The Committee will continue to evaluate and report on the extent to which telecommunications common carriers are using best practices recommendations and applicable American National Standards Institute Committee T–1 standards, and identify ways to increase the use of best practices and relevant Committee T–1 standards by telecommunications service providers.

The Committee will make recommendations concerning technical standards to ensure spectral compatibility in wireline networks and facilitate the deployment of xDSL and associated technologies.

The Committee will make recommendations concerning the development of spectrum management processes within the wireline network that facilitate competition among CLECs and ILECs using different technologies while still maintaining network integrity. The Committee will make recommendations with respect to such additional topics as the Commission may specify. These topics may include requests for recommendations and technical advice on interoperability issues that may arise from convergence and digital packet networks, and how the Commission may best fulfill its responsibilities, particularly with respect to national defense and safety of life and property (including law enforcement) under the Communications Act.

The Committee will assemble data and other information, perform analyses, and provide recommendations and advice to the Federal Communications Commission and the

telecommunications industry concerning the foregoing.

Building on the accomplishments of this advisory Committee, and in view of the purposes of the Committee under the amended charter, the Commission has selected members of the Committee on the basis of their technical knowledge, the impact of their activities on network reliability, and the impact of network availability on the constituencies the members represent. Any new members will be chosen so that the largest possible diversity of interests, given the functions to be performed and the need for practical considerations of administrative efficiency, will be represented.

The continuation of the Committee is necessary and in the public interest to prepare recommendations for the FCC and the communications industry, and to help coordinate industry and government efforts to ensure continued reliability as the number, and types, of networks connected with public telecommunications networks continue to increase. Continuation is also necessary to prepare recommendations to the industry and to the FCC to forestall, and minimize the impact of, future network outages. In addition, continuation of the Committee is necessary so that the Commission, and the telecommunications industry, can effectively monitor outages and help assure availability of crucial communications services.

The Committee was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from consumer and other organizations to develop and recommend measures that will assure optimal reliability, interoperability, accessibility and interconnectivity to public telecommunications networks.

DATES: Renewal effective January 6, 2000.

FOR FURTHER INFORMATION CONTACT: Kent Nilsson at 202–418–0845 or TTY 202–418–2989.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5408 Filed 3–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council; Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the first meeting of the Network Reliability and Interoperability Council (Council) under its charter renewed as of January 6, 2000. The meeting will be held at the Federal Communications Commission in Washington, D.C.

DATES: Monday, March 20, 2000 at 10:00 a.m. to 12:30 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St. S.W. Room TW–C305, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Kent Nilsson at 202–418–0845 or TTY 202–418–2989.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommend measures that would enhance network reliability.

The Council will consider a report on the success of its efforts to ameliorate the possible effects of the year 2000 date change on communications networks, and will also consider reports from the network reliability working groups. In addition, the Council will discuss the modifications that have been made to the Council's charter and how those modifications should be addressed, and any additional issues that may come before it.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Kent Nilsson, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by email (*KNILSSON@FCC.GOV*) or U.S. mail (7–B452, 445 12th St. SW, Washington, D.C. 20554). Real Audio and streaming video Access to the meeting will be available at http://www.fcc.gov/.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5409 Filed 3–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 00–500]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On March 3, 2000, the Commission released a public notice announcing the March 21 and 22, 2000, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, SW, Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: March 3, 2000.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, March 21, 2000, from 8:30 a.m., until 5:00 p.m., and on Wednesday, March 22, 2000, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW, Room TW–C305, Washington, DC 20554.

This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT** stated above.

Proposed Agenda

Tuesday, March 21, 2000

1. Approval of February 22–23, meeting minutes.

2. North American Numbering Plan Administration (NANPA) Report. Central Office (CO) Code assignment activity update.

3. North American Numbering Plan Administration (NANPA) Oversight Working Group Report. Status update on 1999 NANPA performance review. Review of NANPA intellectual and physical property rights issues and recommendation by the Legal Expertise Working Group.

4. Numbering Resource Optimization (NRO) Working Group Report. Update on State number pooling trials, and development of the Central Office Code Utilization Survey (COCUS) Hybrid requirements.

5. Local Number Portability Administration (LNPA) Working Group Report. Updates on Wireless Wireline Integration; Problem Identification Management (PIM); NPAC/SMS release status, and Slow Horse.

6. Cost Recovery Working Group Report.

7. Industry Numbering Committee (INC) Report.

8. Assumptions Issue Management Group Update.

9. Limited Liability Corporations (LLCs) and Number Portability Administration Centers (NPAC) activity update.

10. North American Numbering Plan Administration Billing and Collection Agent (NBANC) Report.

Wednesday, March 22, 2000

11. Steering Group Report.

12. Number Pooling Issue Management Group (IMG) Report. Pooling administrator status.

13. Discussion regarding possible creation of new Issue Management Groups to address Unified Messaging, and Rate Center Consolidation in the context of geographic splits.

14. Other Business.

15. Action Items and Decisions Reached.

Federal Communications Commission.

Gregory M. Cooke,

Assistant Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 00–5603 Filed 3–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2390]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

February 28, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking Proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by March 22, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Deployment of Wireline Services Advanced Telecommunications Capability (CC Docket No. 98–147) and Implementation of the Local Competition Provision of the Telecommunications Act of 1996 (CC Docket No. 96–98).

Number of Petitions Filed: 4.

Subject: Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147).

Number of Petitions Filed: 1.

Subject: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96–98).

Number of Petitions Filed: 16.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5407 Filed 3–6–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2391]

Petitions for Reconsideration of Action in Rulemaking Proceeding

March 1, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full test of these documents are available for viewing and copying in Room CY–09A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–093800. Oppositions to these petitions must be filed by March 22, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5480 Filed 3–6–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Thursday, March 9, 2000, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final amendment to part 340—Restrictions on the Purchase of Assets from the Federal Deposit Insurance Corporation.

Discussion Agenda

Memorandum re: General Counsel's Opinion No. 12—Engaged in the Business of Receiving Deposits Other Than Trust Funds

Memorandum re: 1999 Program Performance Report.

Memorandum and resolution re: Amendments to Part 362—Activities of Insured State Banks and Insured Savings Associations; Part 337—Unsafe and Unsound Banking Practices; and Part 303—Filing

Procedures and Delegations of Authority.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements. Request for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary for the Corporation, at (202) 898–6757.

Dated: March 2, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Exective Secretary.

[FR Doc. 00–5579 Filed 3–3–00; 10:44 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1317–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1317–DR), dated February 18, 2000, and related determinations.

EFFECTIVE DATE: February 18, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 18, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from a severe winter storm on January 22–29, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F) under Public Assistance in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. If Hazard Mitigation is determined to be warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Theodore A. Monette, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

DeKalb, Cherokee, and Jackson Counties for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F) under Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–5400 Filed 3–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1317–DR]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama (FEMA–1317–DR), dated February 18, 2000, and related determinations.

EFFECTIVE DATE: February 23, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama is hereby amended to include Hazard Mitigation for the State of Alabama determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 18, 2000:

All counties in the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–5401 Filed 3–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1316–DR]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1316–DR), dated February 17, 2000, and related determinations.

EFFECTIVE DATE: February 17, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 17, 2000, the President declared a major disaster under the authority of the Robert T. Stafford

Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from severe winter storms and avalanches beginning on December 21, 1999, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William Lokey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

Municipality of Anchorage, Kenai Peninsula Borough, Matanuska-Susitna Borough, and the Valdez-Cordova Census Area for Public Assistance.

All areas within the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–5398 Filed 3–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1316–DR]

Alaska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–1316–DR), dated February 17, 2000, and related determinations.

EFFECTIVE DATE: February 23, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 23, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–5399 Filed 3–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1315–DR]

Georgia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1315-DR), dated February 15, 2000, and related determinations.

EFFECTIVE DATE: February 22, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 15, 2000:

Decatur County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–5397 Filed 3–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1311–DR]

Georgia; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–1311–DR), dated January 28, 2000, and related determinations.

EFFECTIVE DATE: February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 28, 2000:

The counties of Catoosa, Greene, Jones, and Oglethorpe for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F), under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis

Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–5403 Filed 3–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fire Defense Deployment Analysis Project

AGENCY: Federal Emergency Management Agency (FEMA)/ United States Fire Administration (USFA).

ACTION: Notice of funds availability for cooperative agreement.

SUMMARY: FEMA gives notice of the availability of funds for research and develop to update a methodology on "Fire Defense Deployment Analysis", first developed by the Rand Corporation in 1968. We (FEMA) propose to enter a cooperative agreement to conduct research and to develop an updated/ current methodology.

DATES: Cooperative Agreement funds are immediately available. Requests for copies of the "Assistance Application Package" must be received by close of business, March 28, 2000.

ADDRESSES: Eligible/interested parties wishing to obtain a copy of the "Assistance Application Package" should contact: Gregory S. Blair, National Emergency Training Center, Building E, room 115, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1455, (telefax) (301) 447–1092, or (email) *greg.blair@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Gregory S. Blair, National Emergency Training Center, Building E, room 115, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1455, (telefax) (301) 447–1092, or (email) *greg.blair@fema.gov.*

SUPPLEMENTARY INFORMATION: The methodology concerned, "Fire Defense Deployment Analysis", was initially developed by the Rand Corporation in 1968, on behalf of the City of New York. The Department of Housing & Urban Development (HUD) funded and continued research on this methodology through the mid-1970's before discontinuing it. The current methodology has not been researched or updated since the mid-1970's, and is now over twenty-five years old. Therefore, FEMA, acting through the USFA, asks for help to conduct research and development on an updated/current methodology.

Qualifications: Interested sources wishing to support the National Emergency Training Center (NETC), U.S. Fire Administration (USFA), should be an "Institution of Higher Learning" (IHL) with the ability and knowledge resource base to conduct the review of the validity of public fire defense deployment methodologies that are currently referred to when identifying average public fire defense apparatus speed, point-to-point time/ distance and unit availability models. Interested sources should have extensive experience and demonstrated abilities to conduct detailed analytical public policy research efforts, and should have a professional staff with a wide variety of qualifications and demonstrated understanding and knowledge of the specified subject area. Specific qualifications include:

(1) Advanced degrees that include a wide variety of related fields such as: fire protection engineering, public policy or public administration, urban studies or urban planning and operations research;

(2) Knowledge and authority of fire defense deployment analysis models demonstrated through a variety of combined venues such as: published studies and reports, lectures, instruction at the university level and consultation, particularly as to the characteristics of local land-use patterns and other features of the physical environment as well as vehicular traffic densities and pertinent cultural or demographic issues that may impact public fire defenses;

(3) Knowledge and authority in operations research demonstrated through a variety of documented venues such as published studies and reports, lectures, instruction at the university level and consultation;

(4) Experience in the development and implementation of long-range fire defense planning and fire station location models.

Dated: February 29, 2000.

Carrye B. Brown,

U.S. Fire Administrator.

[FR Doc. 00–5402 Filed 3–6–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Date of Meeting: March 13–14, 2000.

Place: National Geodetic Survey, 1315 East-West Highway, Silver Spring, MD 20910–3282.

Times: 8:00 a.m. to 5:00 p.m., both days.

Proposed Agenda

1. Call to Order and Announcements.
2. Action on Minutes of Previous Meetings.
3. Map Modernization Updates:
   (a) Funding Issues.
   (b) Map Service Center.
   (c) Coastal and Riverine Erosion Study.
   (d) Improving the Scoping Process.
4. Council Plans for Year 2000.
5. Council Discussion of Unmapped Areas.
6. Presentations by NGS:
   (a) Recent MGS Experience with 3–D Mapping.
   (b) Use of GPS to Establish Base Flood Elevations.
   (c) Topo/Bathy Project.
7. New Business.
8. Adjournment.

Status: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646–2756 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: This meeting is open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact Ms. Sally P. Magee, Federal Emergency Management Agency, 500 C Street SW., room 442, Washington, DC 20472, telephone (202) 646–8242 or by facsimile at (202) 646–4596 on or before March 6, 2000.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting.

Dated: March 1, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–5453 Filed 3–6–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1314–DR]

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana, (FEMA–1314–DR), dated February 15, 2000, and related determinations.

EFFECTIVE DATE: February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 15, 2000: Richland Parish for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Patricia K. Stahlschmidt,

Division Director, Infrastructure Division, Response and Recovery Directorate.

[FR Doc. 00–5404 Filed 3–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 00–04]

Al Kogan d/b/a Galaway International v. World Express Shipping, Transportation and Forwarding Services, Inc. D/B/A W.E.S.T. Forwarding Services (FMC Lic. #3118–R); Notice of Filing of Complaint and Assignment

Notice is given that a complaint was filed by Al Kogan d/b/a Galaway International ("Complainant"), against World Express Shipping, Transportation and Forwarding Services, Inc. d/b/a W.E.S.T. Forwarding Services (FMC Lic. #3118–R) ("Respondent"). Complainant alleges that Respondent, engaged in the freight forwarding and shipping business as both an ocean freight forwarder and a non-vessel operating carrier, violated sections 10(b)(1), 10(b)(5), 10(b)(6)(E), 10(b)(12) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1709(b)(1), 1709(b)(5), 1709(b)(6)(E), 1709(b)(12) and 1709(d)(1), ("1984 Act") in connection with a shipment of a container of auto parts from Chicago, Illinois, to Moscow, Russia. Complainant alleges that these violations were caused by Respondent failing to follow Complainant's instructions to route the container through Kotka, Finland, thereby forcing Complainant to pay more than the original amount quoted by Respondent; by discriminating against Complainant in delaying the shipment to Kotka, causing Complainant to lose his customer and in refusing to release the container in Kotka, causing Complainant to incur demmurrage charges and damages and costs related to the eventual delivery of the goods; subjecting Complainant to unfair and discriminatory practices in connection with the adjustment and settlement of the claims involved with the container; subjecting Complainant to an unreasonable refusal to deal and undue and unreasonable prejudice by holding the container hostage in Kotka; and by improperly billing Complainant and refusing to cooperate with Complainant and thereby failing to establish, observe, and enforce just and reasonable practices relating to or connected with receiving, handling, storing or delivery property.

Additionally, Complainant alleges that Respondent violated the following Commission rules under 46 CFR Part 510 (1998): §§ 510.21(f)(1998), by placing false information on the involved shipping documents; 510.22(b)(1998), by withholding information concerning the shipment; 510.22(c)(1998), by failing to exercise due diligence concerning the shipment; 510.22(d)(1998), by preparing erroneous documents in connection with the shipment; 510.22(g)(1998), by failing to substantiate its invoice charges or to provide true copies of its underlying documents for its invoices when requested by the Complainant; 510.22(j)(1998), by failing to account for the overpayments, adjustments of charges, reductions in rates, insurance refunds and other sums due Complainant; 510.23(a)(1998), by failing to fully disclose Complainant's identity in Respondent's dealings with another carrier; 510.23(f)(1998), by causing duplicative compensation for services; and 510.23(h), by receiving compensation in connection with a shipment in which it has a beneficial interest.

Complainant requests that the Commission order Respondent to cease and desist from the aforesaid violations of the Act; to establish and put into force such practices as the Commission determines to be lawful and reasonable; to pay Complainant reparations in the sum of $250,000 with interest and attorney's fees and costs or such other sum as the Commission may determine to be proper as an award of reparation.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, deposition, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate road. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by March 2, 2001, and the final decision of the Commission shall be issued by July 2, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–5406 Filed 3–6–00; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and

§ 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 21, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Dennis A. Lind, Eden Prairie, Minnesota, individually and as trustee for four trusts; to acquire additional voting shares of Parkers Prairie Bancshares, Inc., Parkers Prairie, Minnesota, and thereby indirectly acquire additional voting shares of Midwest Bank, NA, Parkers Prairie, Minnesota, and Midwest Bank, Detroit Lakes, Minnesota.

Board of Governors of the Federal Reserve System, March 1, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5462 Filed 3–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 31, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. First Sterling Banks, Inc., Kennesaw, Georgia; to merge with Main Street Banks, Incorporated, Covington, Georgia, and thereby indirectly acquire Main Street Bank, Covington, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Home Bancshares, Inc., Conway, Arkansas, and its subsidiary, North Little Rock Bancshares, Inc., Conway, Arkansas; to acquire 100 percent of the voting shares of First Western Bank and Trust Company, Rogers, Arkansas. North Little Rock Bancshares, Inc., also has applied to become a bank holding company.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Oswego Community Bank Employee Stock Ownership Plan, Oswego, Illinois; to become a bank holding company by retaining shares and acquiring up to 30 percent of the voting shares of Oswego Bancshares, Inc., Oswego, Illinois, and thereby indirectly acquire additional voting shares of Oswego Community Bank, Oswego, Illinois.

Board of Governors of the Federal Reserve System, March 1, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5463 Filed 3–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 31, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Advantage Bankshares, Inc., Village of North Palm Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Advantage Bank (in organization), Village of North Palm Beach, Florida.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Klein Financial, Inc., Chaska, Minnesota; to acquire 100 percent of the voting shares of Preferred Bancshares, Inc., Big Lake, Minnesota, and thereby indirectly acquire Preferred Bank, Big Lake, Minnesota.

In connection with this application, Applicant also has applied to acquire Preferred Lenders, LLC, Big Lake, Minnesota, and thereby engage in mortgage banking activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, March 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5499 Filed 3–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM.

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Friday, March 10, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: *Summary Agenda:* Because of their routine nature, no discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) to implement the provisions of the Gramm-Leach-Bliley Act relating to financial activities permissible for financial holding companies and procedures for financial holding companies to engage in those activities.

2. Proposed amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) concerning application of section 20 operating standards to financial holding companies.

3. Any items carried forward from a previously announced meeting.

Discussion Agenda: None. No Discussion Items are Scheduled for This Meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: March 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5605 Filed 3–3–00; 1:32 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM.

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 11:10 a.m., Friday, March 10, 2000, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 3, 2000

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5606 Filed 3–3–00; 1:32 pm]

BILLING CODE 6210–01–P

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Sunday, April 9, 2000, through Wednesday, April 12, 2000, in Newport, Rhode Island. The sessions will take place from 8 p.m. until 10 p.m. on Sunday, 8:30 a.m. until 5 p.m. on Monday and Tuesday and from 8:30 a.m. until 3:30 p.m. on Wednesday. The meeting will be held at the Doubletree Islander Hotel, Goat Island, Newport, Rhode Island. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public.

A limited number of hotel rooms have been reserved at the Doubletree Islander Hotel for anyone needing hotel accommodations. Telephone the hotel directly at (401) 849–2600. Please specify the U.S. Government Printing Office when you contact the hotel. Room cost per night is $86.24, single/double through March 18, 2000.

Michael F. DiMario,

Public Printer.

[FR Doc. 00–5434 Filed 3–6–00; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Advisory Committee to the Director, Centers for Disease Control and Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee to the Director, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period beginning February 1, 2000, through February 1, 2002.

For further information, contact Kathy Cahill, Executive Secretary, Advisory Committee to the Director, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, m/s D–23, Atlanta, Georgia 30333. Telephone 404/639–7060, fax 404/639–7171, e-mail kac1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 1, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–5455 Filed 3–6–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control: Family and Intimate Violence Prevention Subcommittee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: ACIPC Family and Intimate Violence Prevention Subcommittee (FIVP).

Time and Date: 12:30 p.m.–5 p.m., March 21, 2000.

Place: Radisson Hotel Atlanta-Northlake, 4156 LaVista Road, Atlanta, Georgia 30084.

Status: Open to the public, limited only by the space available.

Purpose: To provide and make recommendations to ACIPC and the Director, National Center for Injury Prevention and Control, regarding feasible goals for prevention and control of family and intimate violence and sexual assault. The Subcommittee will make recommendations regarding policies, strategies, objectives and priorities.

Matters To Be Discussed: The Subcommittee will review, discuss, and approve the Family and Intimate Violence Prevention Team's (FIVPT) FY 2001 budget priorities and the Team's proposed FY 2002 budget priorities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ileana Arias, Ph.D., Team Leader, FIVPT, Division of Violence Prevention, NCIPC, CDC, 4770 Buford Highway, NE, M/S K60, Atlanta, Georgia 30341–3724, telephone 770/488–4410.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 1, 2000.

Carolyn J. Russell,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–5454 Filed 3–6–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0726]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Licensing Provisions: Changes to an Approved Application, Labeling, and Revocation and Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirement relating to the general licensing provisions regarding changes to an approved application, labeling, and revocation and suspension.

DATES: Submit written comments on the collection of information by May 8, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

General Licensing Provisions: Changes to an Approved Application, Labeling, and Revocation and Suspension (OMB Control Number 0910–0315)—Extension

Under Section 351 of the Public Health Services Act (PHS Act) (42 U.S.C. 262), manufacturers of biological products must submit a license application for FDA review and approval prior to marketing a biological product in interstate commerce. Licenses may be issued only upon showing that the establishment and the products for which a license is desired meets standards prescribed in regulations designed to insure the continued safety, purity, and potency of such products. All such licenses are issued, suspended, and revoked as prescribed by regulations.

In part 601 (21 CFR part 601), § 601.2(a) requires a manufacturer of a biological product to submit an application with accompanying information, including labeling information, to FDA for approval to market a product in interstate commerce. Section 601.12(b), (c), and (d) requires applicants to follow specific procedures in informing FDA of each change, established in an approved license application, in the product, production process, quality controls, equipment, facilities, or responsible personnel depending on the potential for the change to have a substantial, moderate, minimal or no adverse effect on the safety or effectiveness of the product. Section 601.12(e) requires

applicants to submit a protocol, or change to a protocol, as a supplement requiring FDA approval prior to distributing the product. Section 601.12(f)(1), (f)(2), and (f)(3) requires applicants to follow specific procedures in reporting labeling changes to FDA. Section 601.12(f)(4) requires advertising and promotional labeling and any changes to be reported to FDA. Section 601.45 requires applicants to submit to the agency for consideration, during the preapproval review period, copies of all promotional materials, including promotional labeling as well as advertisements. In addition to §§ 601.2 and 601.12, there are other regulations that relate to certain information submitted in a license application or supplement as follows: Part 640 (21 CFR part 640), specifically §§ 640.6, 640.17, 640.21(c), 640.22(c), 640.25(c), 640.56(c), 640.64(c), 640.74(a), and (b)(2); 21 CFR 660.51(a)(4) and 680.1(b)(2)(iii) and (c). The burden associated with the information collection requirements in these regulations is included in the burden estimate for § 601.2, reported under OMB Control No. 0910–0427, and § 601.12 in table 1 of this document. Sections 600.15(b) and 610.53(d) require the submission of a request for an exemption or modification regarding the temperature requirements during shipment and from dating periods, respectively, for certain biological products. Section 601.25(b) requests interested persons to submit, for review and evaluation by an advisory review panel, published and unpublished data and information pertinent to a designated category of biological products that have been licensed prior to July 1, 1972. Section 601.26(f) requests that licensees submit to FDA a written statement intended to show that studies adequate and appropriate to resolve questions raised about a biological product have been undertaken for a product if designated as requiring further study under the reclassification procedures. Section 601.5(a) requires a licensee to give notice of its intention to discontinue manufacture of a product or all products. Section 601.6(a) requires the licensee to notify selling agents and distributors upon suspension of its license, and provide FDA with records of such notification.

Form FDA 2567 is used by manufacturers of licensed biological products to submit labeling (*e.g.*, circulars, package labels, container labels, etc.) and labeling changes for FDA review and approval. The labeling information is submitted with the form for license applications, supplements, or as part of an annual report. Form FDA 2567 is also used for the transmission of advertisements and promotional labeling. Form FDA 2567 serves as an easy guide to assure that the manufacturer has provided the information required for expeditious handling of their labeling by the Center for Biologics Evaluation and Research (CBER). For advertisements and promotional labeling, manufacturers of licensed biological products may submit to CBER either Form FDA 2567 or 2253. Form FDA 2253 was previously used only by drug manufacturers regulated by the Center for Drugs Evaluation and Research. In August of 1998, FDA revised and harmonized Form FDA 2253 to enable the form to be used to transmit specimens of promotional labeling and advertisements for biological products as well as for prescription drugs and antibiotics. The revised, harmonized form updates the information about the types of promotional materials and the codes that are used to clarify the type of advertisement or labeling submitted; clarifies the intended audience for the advertisements or promotional labeling (*e.g.*, consumers, professionals, news services); and helps ensure that the submission is complete.

The number of respondents is based on the estimated annual number of manufacturers that submitted the required information to FDA. There are an estimated 350 licensed biologics manufacturers. However, not all manufacturers will have any submissions in a given year and some may have multiple submissions. The total annual responses is based on the estimated number of submissions (*i.e.*, license applications, labeling and other supplements, protocols, advertising and promotional labeling, notifications) received annually by FDA. The rate of submissions are not expected to change significantly in the next few years. The hours per response are based on past FDA experience with the various submissions or notifications. Additional information regarding these estimates is provided below as necessary.

Under § 601.2(a), the total annual responses is based on the numbers of applications submitted to FDA for approval to market a biological product. The estimated burden hours include the time required to fill out the form and collate the documentation. The estimated burden hours to prepare the labeling information submitted with a license application are included in the burden hours to submit a license application which are reported under OMB Control No. 0910–0427.

Under § 601.12(f)(1), (f)(2), and (f)(3), the estimated burden hours include the time to prepare the supplement, fill out the form, and collate the documentation.

Under §§ 601.12(f)(4) and 601.45, manufacturers of biological products may use either Form FDA 2567 or Form FDA 2253 to submit advertising and promotional labeling. In fiscal year 1999, CBER received 3,784 submissions of advertising and promotional labeling from 114 manufacturers. FDA estimates that approximately 55 percent of those submissions were received with Form FDA 2567 resulting in an estimated 2,081 submissions by 63 manufacturers. The estimated burden hours include the time to prepare the submission, fill out the form, and collate the documentation. The burden hours for the remaining submissions received using Form FDA 2253 are reported under OMB Control No. 0910–0376.

Under §§ 601.12(b) through (d), and 601.12(e), the estimated burden hours include the time to prepare the appropriate supplement or protocol, respectively, and collate the documentation.

Under §§ 600.15(b) (21 CFR 600.15(b)) and 610.53(d), FDA receives very few requests for an exemption or modification to the requirements, therefore, FDA has estimated one respondent per year in table 1 of this document to account for the rare instance in which a request may be made. The estimated burden hours include the time to prepare the request for modification or exemption.

Under § 601.25(b)(3), FDA estimates no burden for this regulation because all requested data and information had been submitted by 1974. Under § 601.26(f), FDA estimates no burden for this regulation because there are no products designated to require further study and none are predicted in the future. However, based on the possible reclassification of a product, the labeling for the product may need to be revised, or a manufacturer, on its own initiative, may believe further study is necessary. As a result, any changes to product labeling would be reported under § 601.12. The information collection requirements for § 601.12 are reported under OMB control number 0910–0315.

Under § 601.5(a), the total annual responses are based on the estimated annual number of notifications received by FDA to discontinue either an establishment and/or product license(s). The estimated burden hours include the time to prepare and submit a letter of discontinuance.

Under § 601.6(a), the number of respondents (21) is based on FDA estimates that establishments would need to notify an average of 20 selling agents and distributors of such suspension and provide FDA with the records of such notification. The number of respondents is based on the estimated annual number of suspensions by FDA of an establishment or product license(s). The estimated burden hours includes the time to prepare a notification letter and submit record of such notification to FDA.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Form FDA No.	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total Hours
601.2(a)	2567 and 356h [2]	17	3.71	63	2	126
601.12(f)(1)	2567	12	1	12	40	480
601.12(f)(2)	2567	10	1	10	20	200
601.12(f)(3)	2567	70	1.43	100	10	1,000
601.12(f)(4) and 601.45	2567	63	33.03	2,081	10	20,810
601.12(b)(1) and (b)(3)	356 h [2]	190	4.75	903	80	72,240
601.12(c)(1) and (c)(3)	356h [2]	98	2.60	255	50	12,750
601.12(c)(5)	356h [2]	34	1.21	41	50	2,050
601.12(d)	356h [2]	166	1.37	227	10	2,270
601.12(e)	356h [2]	14	1.43	20	20	400
600.15(b)	356h [2]	1	1	1	8	8
610.53(d)	356h [2]	1	1	1	8	8
601.25(b)(3)	NA	0	0	0	0	0
601.26(f)	NA	0	0	0	0	0
601.5(a)	NA	33	1	33	.33	11
601.6(a)	NA	2	10.50	21	.33	7
Total						112,360

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The burden hours for the use of Form FDA 356h are reported under OMB Control No. 0910–0427.

Dated: February 29, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–5416 Filed 3–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0725]

Agency Information Collection Activities; Proposed Collection; Comment Request; Interstate Shellfish Dealers Certificate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Form 3038, "Interstate Shellfish Dealer's Certificate."

DATES: Submit written comments on the collection of information by May 8, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Interstate Shellfish Dealers Certificate—(OMB Control Number 0910–0021)—Extension

Under 42 U.S.C. 243, FDA is required to cooperate with and aid State and local authorities in the enforcement of their health regulations and is authorized to assist States in the prevention and suppression of

communicable diseases. Under this authority, FDA participates with State regulatory agencies, some foreign nations, and the molluscan shellfish industry in the National Shellfish Sanitation Program (NSSP). The NSSP is a voluntary, cooperative program to promote the safety of molluscan shellfish by providing for the classification and patrol of shellfish growing waters and for the inspection and certification of shellfish processors. Each participating State and foreign nation monitors its molluscan shellfish processors and issues certificates for those that meet the State or foreign shellfish control authority's criteria. Each participating State and nation provides a certificate of its certified shellfish processors to FDA on Form FDA 3038, "Interstate Shellfish Dealer's Certificate." FDA uses this information to publish the "Interstate Certified Shellfish Shippers List," a monthly comprehensive listing of all molluscan shellfish processors certified under the cooperative program. If FDA did not collect the information necessary to compile this list, participating States would not be able to identify and keep out shellfish processed by uncertified processors in other States and foreign nations. Consequently, the NSSP would not be able to control the distribution of uncertified and possibly unsafe shellfish in interstate commerce, and its effectiveness would be nullified.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

	Form No.	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
FDA 3038		35	58	2,036	.10	204

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the numbers of certificates received in 1999.

Dated: February 29, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–5469 Filed 3–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2553]

Agency Information Collection Activities; Announcement of OMB Approval; Citizen Petition—21 CFR 10.30

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Citizen Petition—21 CFR 10.30" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 10, 1999 (64 FR 69271), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0183. The approval expires on February 28, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: February 29, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–5418 Filed 3–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2875]

Agency Information Collection Activities; Announcement of OMB Approval; Blood Establishment Registration and Product Listing—Form FDA 2830

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Blood Establishment Registration and Product Listing—Form FDA 2830" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 20, 1999 (64 FR 71144), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0052. The approval expires on February 28, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: February 29, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–5466 Filed 3–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00F–0812]

Bayer Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing

that Bayer Co. has filed a petition proposing that the food additive regulations be amended both to provide for the safe use of dimethyl dicarbonate (DMDC) in noncarbonated juice beverages containing up to and including 100 percent juice and to also provide for a more descriptive term, in place of "inhibitor of yeast", for the safe use of DMDC.

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3077.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0A4718) has been filed by Bayer Co., c/o McKenna & Cuneo LLP, 1900 K St., NW., Washington, DC 20006–1108. The petition proposes to amend the food additive regulations in § 172.133 *Dimethyl dicarbonate* (21 CFR 172.133) both to provide for the safe use of DMDC in noncarbonated juice beverages containing up to and including 100 percent juice and also to provide for a more descriptive term, in place of "inhibitor of yeast", for the safe use of DMDC.

The agency has determined under 21 CFR 25.32(k) and 21 CFR 25.30(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: February 22, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–5468 Filed 3–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00F–0813]

Tritex Co., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Tritex Co., Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium xylene sulfonated as a component of paper and paperboard intended to contact food.

FOR FURTHER INFORMATION CONTACT: Mark Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0B4719) has been filed by Tritex Co., Inc., 1001 Boul. Industriel, Saint-Eustache (Quebec), CANADA J7H 6C3. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of sodium xylene sulfonated as a component of paper and paperboard intended to contact food.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: February 22, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–5419 Filed 3–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0018]

Orthopedic Devices; Reclassification of the Knee Joint Patellofemorotibial Metal/Polymer Porous-Coated Uncemented Prosthesis and the Knee Joint Femorotibial (Uni-compartmental) Metal/Polymer Porous-Coated Uncemented Prosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of panel recommendation.

SUMMARY: The Food and Drug Administration (FDA) is announcing for public comment two recommendations of the Orthopedic and Rehabilitation Devices Panel (the Panel) to reclassify the knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis and the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis from class III into class II. The Panel made these recommendations after reviewing the reclassification petition submitted by the Orthopedic Surgical Manufacturers Association (OSMA) and other publicly available information. FDA is also announcing for public comment its tentative findings on the Panel's recommendations. After considering any public comments on the Panel's recommendations and FDA's tentative findings, FDA will approve or deny the reclassification petition by order in the form of a letter to the petitioner. FDA's decision on the reclassification petition will be announced in the **Federal Register**.

DATES: Submit written comments by June 7, 2000.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Peter G. Allen, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (the FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most

preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified postamendments devices is governed by section 513(f)(2) of the act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the Secretary of Health and Human Services (the Secretary) for the issuance of an order classifying the device in class I or class II. FDA's regulations in § 860.134 (21 CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Under section 513(f)(2)(B)(i) of the act, the Secretary may, for good cause shown, refer a petition to a device classification panel. The Panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the petition was filed.

II. Regulatory History of the Devices

The knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis and the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis intended to be implanted to replace the knee joint or part of the knee joint, respectively, are postamendments devices classified into class III under section 513(f)(2) of the act. Therefore, the devices cannot be placed in commercial distribution for implantation to replace the knee joint or part of the knee joint, respectively, unless they are reclassified under section 513(f)(2), or subject to an approved premarket approval application (PMA) under section 515 of the act.

This action is taken in accordance with section 513(f)(2) of the act and § 860.134, based on information submitted in a petition for reclassification by the OSMA received on July 28, 1997, requesting reclassification of the knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis and the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis from class III into class II (Ref. 1). Consistent with the act and the regulation, FDA referred the petition to the Panel for its recommendation on the requested changes in classification.

III. Device Descriptions

The following device descriptions are based on the Panel's recommendation and the agency's review.

A. Knee Joint Patellofemorotibial Metal/polymer Porous-Coated Uncemented Prosthesis

A knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis is a device intended to be implanted to replace a knee joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that have a femoral component made of a cobalt-chromium-molybdenum (Co-Cr-Mo) alloy or a surface hardened titanium-aluminum-vanadium (Ti-6A1-4V) alloy, a tibial component made of an ultra-high molecular weight polyethylene (UHMWPe) articulating bearing surface fixed to a metal base made of Co-Cr-Mo or Ti-6A1-4V alloy, and a patellar resurfacing component made of an UHMWPe component fixed to a metal base made of a Co-Cr-Mo- or a Ti-6A1-4V alloy. The femoral component, tibial base, and patellar base have a substrate porous coating made of, in the case of Co-Cr-Mo components, beads of the same alloy or commercially pure titanium powder; and in the case of Ti-6Al-4V components, beads or fibers of commercially pure titanium or Ti-6A1-4V alloy, or commercially pure titanium powder. The porous coating has a volume porosity between 30 to 70 percent, an average pore size between 100 to 1,000 microns, interconnecting porosity, and a porous coating thickness of 600 to 1,500 microns. This generic type of device is designed to achieve biological fixation to bone without the use of bone cement. This device description does not include mobile bearing knee prostheses.

B. Knee Joint Femorotibial (Uni-compartmental) Metal/polymer Porous-Coated Uncemented Prosthesis

A knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prothesis is a device intended to be implanted to replace part of a knee joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surface. It has no linkage across the joint. This generic type of device includes prostheses that have a femoral component made of a cobalt-chromium-molybdenum (Co-Cr-Mo) alloy or a surface hardened titanium-aluminum-vanadium (Ti-6A1-4V) alloy and tibial component composed of an ultra-high molecular weight polyethylene fixed to a metal base made of a Co-Cr-Mo or a surface hardened Ti-6A1-4V alloy. The femoral component and tibial base have a substrate porous coating made of, in the case of Co-Cr-Mo components, beads of the same alloy or commercially pure titanium powder, and in the case of Ti-6A1-4V components, beads or fibers of commercially pure titanium or Ti-6A1-4V alloy, or commercially pure titanium powder. The porous coating has volume porosity between 30 to 70 percent, an average pore size between 100 to 1,000 microns, interconnecting porosity, and a porous coating thickness of 600 to 1,500 microns. This generic type of device is designed to achieve biological fixation to bone without the use of bone cement. This device description does not include mobile bearing knee prostheses.

IV. Recommendations of the Panel

At a public meeting on January 12 and 13, 1998, the Panel recommended unanimously that the knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis and recommended (five to three) that

the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis be reclassified from class III to class II (Ref. 2). The Panel believed that class II with the special controls (FDA recognized consensus standards and FDA guidance documents for both devices, and postmarket surveillance for only the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis) would provide reasonable assurance of the safety and effectiveness of the devices.

V. Risks to Health

After considering the information in the petition, the Panel's deliberations, the published literature, and the Medical Device Reports, FDA has evaluated the risks to health associated with the use of the knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis and the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis. FDA now believes that the following are risks to health associated with use of the devices: infection, adverse tissue reaction, pain and/or loss of function, and revision. FDA notes that these risks to health are also associated with the use of the cemented versions of total and partial knee joint prostheses.

A. Infection

Infection is a potential risk to health associated with all surgical procedures and implanted devices, and it occurs equally in patients implanted with cemented and uncemented knee joint prostheses (Ref. 1). The best defenses against infection are preventative measures, including selection of patients without known local and/or systemic infection, administration of perioperative antibiotics, implantation of a sterilized device, and strict adherence to sterile surgical technique.

B. Adverse Tissue Reaction

Adverse tissue reaction is a potential risk to health associated with all implanted devices (Ref. 1). If the materials used in the manufacture of knee prostheses are not biocompatible, the patient could have an adverse tissue reaction. Knee prostheses are made of implant materials with an established long history of safe use. In addition, the biocompatibility of porous-coated implant materials has been shown to be comparable to those of the "as cast" noncoated material.

C. Pain and/or Loss of Function

Pain and loss of knee function can occur with any knee arthroplasty. Some of the same kinds of device-related complications causing pain and/or loss of function are associated with the implantation of both cemented and uncemented knee prostheses. These complications include early loosening due to inappropriate patient and/or device selection, inappropriate surgical technique and/or poor bone quality; some forms of metal and/or polyethylene wear which may cause osteolysis (dissolution of bone); and component disassembly, fracture, and/or failure. Dislocation and instability of a knee prosthesis may be due to either inappropriate surgical technique and/or component design or failure. However, other device-related complications resulting in pain and/or loss of function are directly or uniquely related to the porous coating(s) of uncemented knee prosthesis components. These complications include incomplete and/or slow biological ingrowth of the porous coating, resulting in pain and dislocation/instability of the joint, and delamination of porous coating from the prosthesis components. Also, inadequate design and/or testing of the metal backing of the patellar component of uncemented knee prostheses may cause dislocation and instability, which may result in pain and/or loss of function.

D. Revision

The incidence of revision for uncemented knee prostheses is comparable to the revision rates of cemented total knee arthroplasty (Ref. 1). The major causes for revision of uncemented knee prostheses are failure of the metal-backed patellar component or incomplete tibial fixation.

VI. Summary of the Reasons for the Recommendations

After considering the data and information contained in the petition and provided by FDA, the open discussions during the Panel meeting, and the Panel members' personal knowledge of and clinical experience with the devices, the Panel gave the following reasons in support of its recommendations to reclassify the two generic type devices, the knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis and the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis intended to replace a knee joint or part of a knee joint, respectively, from class III into class II. The Panel believed that both of these devices should be reclassified into class II because special controls, in addition to general controls, provide reasonable assurance of the safety and effectiveness of the devices, and there is sufficient information to establish special controls to provide such assurance.

VII. Summary of Data Upon Which the Panel Recommendations Are Based

In addition to the potential risks to health of the knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis and the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis, described in Section V., there is reasonable knowledge of the benefits of the devices. Both cemented and uncemented knee prostheses provide a decrease in pain or cessation of pain and increased mobility and function, post-operatively resulting in an overall improved quality of patient life. Specific benefits of uncemented knee prostheses are the absence of risks associated with the use of bone cement (e.g., embolism and bone cement breakdown) and easier revision, if revision should become indicated due to loosening.

VIII. Special Controls

FDA believes that the special controls identified below, in addition to general controls, are adequate to control the identified risks to health described for the knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis and the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis. FDA agrees with the Panel that FDA recognized consensus standards and the FDA guidances are appropriate special controls to reasonably assure the safety and effectiveness of both devices. However, FDA disagrees with the Panel that postmarket surveillance is an appropriate special control to reasonably assure the safety and effectiveness of the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis

In their deliberations, the panel stated that it was important that adverse device outcomes be reported to FDA. The panel thought that adverse device outcomes should be tracked through postmarket surveillance. FDA agrees with the Panel that adverse device outcomes should be reported to FDA. However, FDA believes that another postmarket mechanism better addresses the Panel's concern that adverse device outcomes should be reported to FDA. FDA believes that the existing mandatory medical device reporting (MDR) system is the appropriate mechanism to report such adverse

events. Therefore, postmarket surveillance is unnecessary to address the Panel's concerns and to reasonably assure the safety and effectiveness of the device.

Based on the available information, FDA identified the following 11 FDA recognized American Society for Testing and Materials (ASTM) consensus standards and 4 FDA guidance documents as special controls to reasonably assure the safety and effectiveness of both devices:

A. ASTM Consensus Standards

1. "ASTM F 67–95, Standard Specifications for Unalloyed Titanium for Surgical Implants Applications";
2. "ASTM F 75–98, Standard Specification for Cast Cobalt-28 Chromium-6 Molybdenum Alloy for Surgical Implant Applications";
3. "ASTM F 136–96, Standard Specification for Wrought Titanium-6 Aluminum-4 Vanadium ELI (Extra Low Interstitial) Alloy (R56401) for Surgical Implant Application";
4. "ASTM F 648–98, Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants";
5. "ASTM F 1044–95, Standard Test Method for Shear Testing of Porous Metal Coatings";
6. "ASTM F 1147–95, Standard Test Method for Tension Testing of Porous Metal Coatings";
7. "ASTM F 1160–91, Standard Test Method for Constant Stress Amplitude Fatigue Testing of Porous Metal-Coated Metallic Materials";
8. "ASTM F 1377–98, Standard Specification for Cobalt-28 Chromium-6 Vanadium Powder for Coating of Orthopedic Implants";
9. "ASTM F 1580–98, Standard Specification for Titanium and Titanium-6% Aluminum-4% Vanadium Alloy Powders for Coatings of Surgical Implants";
10. "ASTM F 1672–95, Standard Specification for Resurfacing Patellar Prosthesis"; and
11. "ASTM F 1800–97, Standard Test Method for Cyclic Fatigue Testing of Metal Tibial Tray Components of Total Knee Joint Replacements."

The ASTM standards define material specifications and testing methods for the knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis and the knee joint femorotibial (uni-compartment) metal/polymer porous-coated uncemented prosthesis. Adherence to these standards and comparison of the results from these standard test methods can control the risks to health of adverse tissue reaction, pain and/or loss of function, and revision, by having the manufacturer use surgical implant quality materials and assuring that the device has acceptable performance through mechanical testing.

ASTM standards may be obtained from ASTM Customer Services, 100 Barr Harbor Dr., West Conshohocken, PA 19428, telephone 610–832–9585. ASTM has a site on the Internet at the address http://www.astm.org.

B. Guidance Documents

1. "Guidance for the Preparation of Premarket Notifications (510(k)s) for Cemented, Semi-Constrained Total Knee Prostheses." (Facts-on-Demand #830);
2. "Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement." (Facts-on-Demand #827);
3. "Guidance Document for Testing Non-articulating, Mechanically Locked' Modular Implant Components." (Facts-on-Demand #916); and
4. "Preparation of Premarket Notification (510(k)) Applications for Orthopedic Devices." (Facts-on-Demand #832).

The FDA guidance documents provide guidance on how to meet general orthopedic device premarket notification (510(k)) requirements, including biocompatibility testing, sterility testing, mechanical performance testing, and physician and patient labeling for the knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis and the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis. Use of the pre-clinical section of the FDA guidance documents can control the risks to health of adverse tissue reaction, infection, pain and/or loss of function, and revision by having manufacturers use surgical quality implant materials, adequately test and sterilize their devices, and provide adequate directions for use and patient information.

To receive a guidance via fax machine, telephone CDRH's Facts-on-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt, press 1 to access DSMA Facts; at the second voice prompt, press 2, and then enter the document number (in parentheses in the list above) followed by the pound sign (#). Then follow the remaining voice prompts to compete your request.

Persons interested in obtaining a copy of these guidances may also do so using the Internet. The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

IX. FDA's Tentative Findings

FDA believes that the knee joint patellofemorotibial metal/polymer porous-coated uncemented prosthesis and the knee joint femorotibial (uni-compartmental) metal/polymer porous-coated uncemented prosthesis should be reclassified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the devices, and there is sufficient information to establish special controls to provide such assurance.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m.

1. Petition for reclassification of the Patello-Femoro-Tibial Metal/Polymer/Metal Biologically Fixed Prosthesis submitted by the Orthopedic Surgical Manufacturers Association, July 28, 1997.
2. Transcript of the Orthopedic and Rehabilitation Devices Panel Meeting, January 12 and 13, 1998, Vol. II, pp. 1 to 227.

XI. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that these reclassification actions do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XII. Analysis of Impacts

FDA has examined the impacts of the notice under Executive Order 12866 and the Regulatory Flexibility Act (Public Law 96–354) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages; distributive impacts; and equity). The agency believes that these reclassification actions are consistent

with the regulatory philosophy and principles identified in the Executive Order. In addition, the reclassification actions are not significant regulatory actions as defined by the Executive Order and so are not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the devices from class III to class II will relieve manufacturers of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that these reclassification actions, if finalized, will not have a significant economic impact on a substantial number of small entities. In addition, this reclassification action will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis pursuant to section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

XIII. Request for Comments

Interested persons may, on or before June 7, 2000, submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

Dated: February 14, 2000.

Linda S. Kahan,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 00–5467 Filed 3–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0297]

Guidance for Industry on Formal Dispute Resolution: Appeals Above the Division Level; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Formal Dispute Resolution: Appeals Above the Division Level." This guidance is intended to provide guidance for industry on procedures that will be adopted by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) for resolving scientific and procedural disputes that cannot be resolved at the division level.

DATES: Submit written comments on agency guidances at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm. Submit written requests for single copies of the guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Patricia L. DeSantis, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400, or

Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0373.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance entitled "Formal Dispute Resolution: Appeals Above the Division Level." The guidance is intended to provide guidance for industry on procedures that will be adopted by CDER and CBER for resolving scientific and procedural disputes that cannot be resolved at the division level. The guidance describes procedures for formally appealing such disputes to the office or center level and for submitting information to assist agency officials in resolving the issue(s) presented.

In the **Federal Register** of March 19, 1999 (64 FR 13587), FDA announced the availability of a draft guidance for industry entitled "Formal Dispute Resolution: Appeals Above the Division Level." The agency has finalized this guidance after considering comments received on the draft version. Few comments were received, and minor changes were made to the draft version in response to the comments in an effort to make the document more clear.

FDA regulations 21 CFR 10.75 provide a mechanism for any interested person to obtain formal review of any agency decision by raising the matter with the supervisor of the employee who made the decision. If the issue is not resolved at the primary supervisory level, the interested person may request that the matter be reviewed at the next higher supervisory level. This process may continue through the agency's entire supervisory chain of command, through the centers to the Commissioner of Food and Drugs. CDER and CBER regulations for dispute resolution during the investigational new drug process (21 CFR 312.48) and the new drug application/abbreviated new drug application process (21 CFR 314.103) establish similar procedures for the resolution of scientific and procedural matters at the division level and subsequent formal review of decisions through center management.

On November 21, 1997, President Clinton signed into law the Food and Drug Administration Modernization Act of 1997 (the Modernization Act) (Public Law 105–115). Section 404 of the Modernization Act creates new section 562 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bbb–1). Section 562 of the act provides that if, regarding an obligation concerning drugs or devices under the act or section 351 of the Public Health Service Act (42 U.S.C. 262), there is a scientific dispute between the agency and a sponsor, applicant, or manufacturer and no specific provision of the act or regulation provides a right of review of the matter in controversy, FDA shall, by regulation, establish a procedure under which such sponsor, applicant, or manufacturer may request a review of the controversy, including

review by an advisory committee. Section 562 of the act further provides that such review of the controversy shall take place in a timely manner. In the **Federal Register** of November 18, 1998 (63 FR 63978), FDA amended 21 CFR 10.75 to explicitly state that a sponsor, applicant, or manufacturer of a drug or device may request review of a scientific controversy by an appropriate advisory committee. In the preamble to the final rule, FDA stated that implementation of this provision would be undertaken by the individual FDA centers and would be described in guidance documents.

The Prescription Drug User Fee Act of 1992 (Public Law 102–571) (PDUFA) was reauthorized in November 1997 (PDUFA 2) as part of the Modernization Act. In conjunction with PDUFA 2, FDA agreed to specific performance goals (PDUFA goals) for activities associated with the development and review of products in human drug applications as defined in section 735(1) of the act (21 U.S.C. 379g(1)) (PDUFA products). The PDUFA goals are summarized in "PDUFA Reauthorization Performance Goals and Procedures," an enclosure to a letter dated November 12, 1997, from the Secretary of Health and Human Services, Donna E. Shalala, to Senator James M. Jeffords. The PDUFA goals for major dispute resolution describe specific timeframes for CDER and CBER response to formally appealed decisions regarding scientific or procedural matters concerning PDUFA products.

The policies and procedures described in this guidance document will implement agency regulations, section 562 of the act, and the PDUFA goals for dispute resolution. Unless stated otherwise in the guidance, the document applies to PDUFA products and non-PDUFA products (e.g., generic drugs).

In the notice announcing the availability of the draft version of this guidance, FDA published notice of the proposed collection of information related to the guidance. The **Federal Register** notice also requested comments on the burden estimates for the guidance document. In the **Federal Register** of August 15, 1999 (64 FR 46397), the agency announced that it was submitting the collection of information to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. The information collection provisions related to this guidance document have been approved under OMB control number 0910–0430. This approval expires December 31, 2002. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This Level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The guidance represents the agency's current thinking on formal dispute resolution in CDER and CBER. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 29, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–5465 Filed 3–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0296]

Guidance for Industry on Formal Meetings With Sponsors and Applicants for PDUFA Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Formal Meetings with Sponsors and Applicants for PDUFA Products." This guidance is intended to provide guidance to industry on procedures that will be adopted by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) for formal meetings between the agency and sponsors or applicants concerning certain drug products.

DATES: Submit written comments on agency guidances at any time.

ADDRESSES: Copies of the guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm. Submit written requests for single copies of this guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400, or

Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), 1401 Rockville Pike, Rockville, MD 20852–448, 301–827–0373.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled "Formal Meetings with Sponsors and Applicants for PDUFA Products."This guidance is intended to provide guidance to industry on procedures that will be adopted by CDER and CBER for formal meetings between the agency and sponsors or applicants concerning certain drug products.

In the **Federal Register** of March 19, 1999 (64 FR 13591), FDA announced the availability of a draft version of this guidance. The agency has finalized that draft guidance after considering comments received on the draft version. Few comments were received, and only minor changes were made to the draft version in response to the comments in an effort to make the document clearer.

CDER and CBER participate in many meetings each year with sponsors of investigations and applicants for marketing who seek guidance relating to the development and review (including the initial launch) of products in human drug applications as defined in section 735(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379g(1)) (PDUFA products). These meetings often represent critical points in the regulatory process. It is essential that FDA maintain procedures for the

timely and effective conduct of such meetings.

Section 119(a) of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act) (Public Law 105–115) amends section 505(b) of the act (21 U.S.C. 355(b)) and directs FDA to meet with sponsors and applicants, provided certain conditions are met, for the purpose of reaching agreement on the design and size of clinical trials intended to form the primary basis of an effectiveness claim in a new drug application submitted under section 505(b) of the act or in a biologics license application submitted under section 351 of the Public Health Service Act (21 U.S.C. 355(b)(4)(B)). Moreover, in conjunction with the reauthorization of the Prescription Drug User Fee Act of 1992 (PDUFA) in November 1997, FDA agreed to specific performance goals for the management of meetings with sponsors and applicants for PDUFA products. The performance goals are summarized in an enclosure to a letter dated November 12, 1997, from the Secretary of Health and Human Services, Donna E. Shalala, to Senator James M. Jeffords.

The procedures and policies described in this guidance are designed to promote efficient, well-managed meetings between sponsors, applicants, and CDER or CBER. These procedures will implement section 119(a) of the Modernization Act and are consistent with the timeframes described in the performance goals.

In the notice announcing the availability of the draft version of this guidance (64 FR 13591), FDA published notice of the proposed collection of information related to the draft guidance. The **Federal Register** notice also requested comments on the burden estimates for the guidance. In the **Federal Register** of August 26, 1999 (64 FR 46684), the agency announced that it was submitting the collection of information to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. The information collection provisions related to this guidance have been approved under OMB control number 0910–0429. This approval expires December 31, 2002. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This Level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The guidance represents the agency's current thinking on formal meetings with sponsors and applicants for PDUFA products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 20, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–5464 Filed 3–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Graduate Medical Education Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 2000.

Name: Council on Graduate Medical Education (COGME).

Date and Time: April 5, 2000; 8:30 a.m.—5:30 p.m.; April 6, 2000; 8:30 a.m.—12 p.m.

Place: The Latham Hotel, Georgetown-Presidential Ballroom, 3000 M Street, N.W., Washington, D.C. 20007.

The meeting is open to the public.

Agenda: The agenda will include: Welcome and opening comments from the Administrator, Health Resources and Services Administration, the Associate Administrator for Health Professions, and the Acting Executive Secretary of COGME; a presentation on the Minimum Requirements for Physicians Enrolled in US Post-Graduate Training Programs; a panel of speakers discussing the Role of Labor in Graduate Medical Education; a legislative update on Graduate Medical Education; a presentation on the History of COGME's 110:50/50 Ratio; and a discussion of COGME Resource Papers. The Council will hear the reports of its work groups on GME Financing, and Physician Workforce.

Anyone requiring information regarding the subject should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Executive Secretary, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6326.

Agenda items are subject to change as priorities dictate.

Dated: February 29, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–5420 Filed 3–6–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60) FR 56605 as amended November 6, 1995, as last amended at 65 FR 8375–6 dated February 18, 2000).

This notice reflects the organizational and functional changes in the Bureau of Health Professions (RP).

Make the following changes:

A. Delete the opening functional statement for the Bureau of Health Professions in its entirety and replace with the following:

Bureau of Health Professions (RP)

Provides national leadership in coordinating, evaluating, and supporting the development and utilization of the Nation's health personnel. Specifically: (1) Assess the Nation's health personnel supply and requirements and forecasts supply and requirements for future time periods under a variety of health resources utilization assumptions; (2) collects and analyzes data and disseminates information on the characteristics and capacities of the Nation's health personnel production systems; (3) proposes new or modifications of existing Departmental legislation, policies, and programs related to health personnel development and utilization; (4) develops, tests and demonstrates new and improved approaches to the development and utilization of health personnel within various patterns of health care delivery and financing systems; (5) provides financial support to institutions and individuals for health professions education programs; (6) administers Federal programs for

targeted health personnel development and utilization; (7) provides leadership for promoting equity and diversity in access to health services and health careers for under-represented minority groups; (8) provides technical assistance, consultation, and special financial assistance to national, State, and local agencies, organizations, and institutions for the development, production, utilization, and evaluation of health personnel; (9) provides linkage between Bureau headquarters and HRSA Field Office activities related to health professions education and utilization by providing training, technical assistance, and consultation to Field Office staff; (10) coordinates with the programs of other agencies within the Department, and in other Federal Departments and agencies concerned with health personnel development and health care services; (11) provides liaison and coordinates with non-Federal organizations and agencies concerned with health personnel development and utilization; (12) in coordination with the Office of the Administrator, Health Resources and Services Administration, serves as a focus for technical assistance activities in the international aspects of health personnel development, including the conduct of special international projects relevant to domestic health personnel problems; (13) administers the National Vaccine Injury Compensation Program; and (14) administers the National Practitioner Data Bank Program.

B. Delete the functional statement for the Office of the Bureau Director in its entirety and replace with the following:

Office of the Bureau Director (RP)

The Office of the Director, BHPr, provides national leadership in coordinating, evaluating, and supporting the development and utilization of the Nation's health personnel. Specifically: (1) Directs the national health professions education, student assistance and development programs and activities; (2) provides policy guidance and staff direction to the Bureau; (3) maintains liaison with other Federal and non-Federal organizations and agencies with health personnel development interests and responsibilities; (4) provides guidance and direction for technical assistance activities in the international aspects of health personnel development; (5) provides guidance and assistance to the Field Director or field staff as appropriate; and (6) directs and coordinates Bureau programs in support of Equal Employment Opportunity.

C. Delete the functional statement for the Office of Research and Planning and replace with the following:

Office of Planning and Project Development

Serves as the Bureau focal point for program planning, evaluation, and legislation. Maintains liaison with governmental, professional, voluntary, and other public and private organizations, institutions, and groups for the purpose of providing information exchange. Specifically (1) stimulates, guides, and coordinates program planning, reporting, and evaluation activities of the Divisions and staff offices; (2) provides staff services to the Bureau Director for program and strategic planning and its relation to the budgetary, legislative and regulatory processes, the development of issue papers, congressional reports, and coordination of OMB information clearance requests for forms and regulations; (3) coordinates the development and implementation of the Bureau's evaluation program; (4) provides staff services and coordinates activities pertaining to legislative policy development, interpretation, and implementation, including the development of legislative proposals, the analysis of existing and pending legislation with other agencies, and distribution of legislative materials; (5) reviews and interprets program award policies and authorities for incorporation into the development and implementation of the Bureau's program and award procedures; (6) coordinates the development, clearance, and dissemination of legislative implementation plans, regulations, **Federal Register** notices, application guidelines and operating procedures; (7) identifies issues and coordinates the resolution of program award policy and procedural questions that arise; and (8) coordinates public relations and media communications in conjunction with the Agency and Department.

D. Delete the functional statement for the Division of Associated, Dental and Public Health Professions and replace with the following:

Division of Public Health and Allied Health

The Division of Public Health and Allied Health serves as the principal Federal focus for the development and improvement of basic professional education and continuing professional development of public health, including preventive medicine and school health educators; environmental health, including undergraduate preparation for entry level positions; health administration, including hospitals, ambulatory primary care settings, such as health maintenance organizations, community/migrant health centers, and community based organizations; the associated health professions, including veterinary medicine, optometry, and pharmacy; allied health professions, including physical therapy, occupational therapy, medical technology, dental hygiene, respiratory therapy, radiography, radiation therapy, emergency medical technicians, and a long list of similar professionals; chiropractic health care; social workers, especially in medical settings; clinical psychology; mental health workers; and other new and developing health disciplines. Specifically, the Division: (1) Provides professional direction and leadership for planning, evaluating and supporting the development and utilization of the health professionals in these fields; (2) provides leadership in maintaining contact with the employers of health professionals in these fields to monitor educational relevance to current and future needs in the work place; (3) develops contractual and staff studies concerning the future education needs of the health professions in these fields and supports the development of specialized curricula to encourage progress in basic and continuing professional development; (4) provides leadership to the grant programs administered by the Division to meet the legislated intent of the authorizations; (5) provides professional technical assistance to educational institutions and other potential applicants concerning the grant programs managed by the Division; (6) monitors awarded grants and provides professional technical assistance to assist grantees in the accomplishment of their project objectives within the context of national strategies for the health professionals in these fields; (7) monitors and assists in the credentialing process for the health professionals in these fields, including accreditation, certification by professional organizations, and licensure; (8) maintains liaison with professional associations concerned with the quality of education for the health professionals in these areas; (9) coordinates activities with other Bureau, HRSA, Department, and Federal educational activities for the health professionals in these fields to encourage cooperation and accomplish national health objectives; (10) conducts special initiatives including the development of management information systems; and (11) monitors data collection activities in the Bureau and professional

associations to assure timely and accurate information is available concerning the supply and quality of education of the health professionals in these areas and information is available concerning the grant programs and training activities of the Division.

E. Delete the functional statement for the Division of Medicine and replace with the following:

Division of Medicine and Dentistry

Serves as the principal focus with regard to education, practice, and research of medical personnel; with special emphasis on allopathic and osteopathic physicians, podiatrists, dentists and physician assistants. Specifically: (1) Provides professional expertise in the direction and leadership required by the Bureau for planning, coordinating, evaluating, and supporting development and utilization of the Nation's health personnel for these professions; (2) supports and conducts programs with respect to the need for and the development, use, credentialing, and distribution of such personnel; (3) engages with other Bureau programs in cooperative efforts of research, development, and demonstration on the interrelationships between the members of the health care team, their tasks, education requirements, and training modalities, credentialing and practice; (4) conducts and supports studies and evaluations of physician, dentist, physician assistant, and podiatric personnel requirements, distribution and availability, and cooperates with other components of the Bureau and Agency in such studies; (5) analyzes and interprets physician, dental, physician assistant, and podiatric programmatic data collected from a variety of sources; (6) conducts, supports, or obtains analytical studies to determine the present and future supply and requirements of physicians, dentists, physician assistants, and podiatrists by specialty and geographic location, including the linkages between their training and practice characteristics; (7) conducts and supports studies to determine potential national goals for the training and distribution of physicians in graduate medical education programs and develops alternative strategies to accomplish these goals; (8) supports and conducts programs with respect to activities, associated with the international migration, domestic training, and utilization of foreign medical graduates and U.S. citizens studying abroad; (9) maintains liaison with relevant health professional groups and others, including consumers, having common interest in the Nation's capacity to deliver health services; (10) provides consultation and technical assistance to public and private organizations, agencies, and institutions, including Field Offices, other agencies of the Federal Government, and international agencies and foreign governments, on all aspects of the Division's functions; (11) provides administrative and staff support for the Advisory Committee on Training and Primary Care Medicine and Dentistry, and for the Council on Graduate Medical Education; and (12) represents the Bureau, Agency and Federal Government, as designated, on national committees and as the Accreditation Council on Graduate Medical Education (ACGME) and the Accreditation Council for Continuing Medical Education (ACCME).

F. Delete the functional statement for the Division of Student Assistance in its entirety and replace with the following:

Division of Student Assistance (RP6)

Serves as the focal point for the Health Professions and Nursing Student Loan and Scholarship Programs, the Exceptional Financial Need Scholarship Program, the Federal Assistance to Disadvantaged Health Professions Scholarship Program, the Health Educational Assistance Loan Program, the Health Professions and Nursing Educational Loan Repayment and Loan Cancellation Programs. Specifically: (1) Directs and administers these student assistance, training and support programs, including the awarding of loan and scholarship funds; (2) develops and implements program plans and policies and operating and evaluation plans and procedures in coordination with the Office of Program Development; (3) monitors and assesses educational and financial institutions with respect to capabilities and management of Federal support for students; (4) develops and conducts training activities for staff of educational and financial institutions; (5) maintains liaison with and provides assistance to program-related public and private professional organizations and institutions; (6) maintains liaison with the Office of the General Counsel, and the Office of the Inspector General, DHHS, components of the Department of Education and the Department of Defense, and State agencies concerning student assistance; (7) in coordination with the Office of Program Development, develops legislative proposals and related administrative and management information and control documents; (8) coordinates financial aspects of programs with educational institutions; and (9) develops program data needs, formats, and reporting requirements, including collection, collation, analysis and dissemination of data.

G. Delete the functional statement for the Division of Disadvantage Assistance in its entirety and replace with the following:

Division of Health Professions Diversity

Provides the Bureau focal point and leadership for assuring equity in access to health resources and health careers for diverse and disadvantaged populations. Specifically: (1) Provides technical assistance to groups that represent and seek to improve the health status of diverse and disadvantaged populations, and facilitates the access of such groups to Bureau and other Federal programs and resources; (2) provides leadership and direction for the development and implementation of Bureau objectives as they relate to diverse and disadvantaged populations; (3) develops and recommends health resources and health career opportunities for diverse and disadvantaged populations; (4) initiates, stimulates, supports, coordinates, and evaluates Bureau programs for improving the availability and accessibility of health careers for diverse and disadvantaged populations; (5) initiates, stimulates, supports, coordinates, and evaluates in conjunction with other Bureau units, comprehensive data systems and analyses on requirements, resources, accessibility, and accountability of the health delivery system for diverse and disadvantaged populations; (6) conducts special studies and collects baseline data to identify specific factors contributing to the health and health-related problems of diverse and disadvantaged populations, and to develop strategies for improving health services and career opportunities for diverse and disadvantaged populations; (7) conducts extramural programs, including the use of grants and contracts, specifically designed to promote equity in access to health careers; (8) assures contract compliance and implementation of the Policy Statement on Civil Rights in the Bureau; (9) in coordination with the Bureau's divisions and in collaboration with other HRSA entities, provides leadership for and assures implementation of Presidential, Departmental, and other special initiatives addressing the needs of diverse and disadvantaged populations; (10) conducts and coordinates Bureau programs in health careers for women; (11) provides leadership to develop and coordinate Bureau program support to

student health organizations; and (12) provides advice and consultation on policy and other matters related to assuring equity in access to health resources and health careers for diverse and disadvantaged populations.

H. Delete the functional statement for the Division of Quality Assurance in its entirety and replace with the following:

Division of Quality Assurance (RPA)

Serves as the focal point within DHHS/HRSA for medical, dental, nursing and other health professions quality assurance efforts. Specifically in coordination with the Department and other Federal entities, State licensing boards, and national, State and local professional organizations: (1) administers the National Practitioner Data Bank (NPDB) as authorized under Title IV of the Health Care Quality Improvement Act of 1986 and Section 5 of the Medicare and Medicaid Patient and Program Protection Act of 1987; (2) on behalf of the Inspector General, DHHS, administers the Healthcare Integrity and Protection Data Bank (HIPDB) under Title II Subsection C of the Health Insurance Portability and Accountability Act of 1996; (3) conducts and supports research based on NPDB and HIPDB information; (4) maintains active consultative relations with professional organizations, societies, and Federal and state agencies involved in the NPDB and HIPDB; (5) proposes and monitors guidelines for (a) credentials assessment, granting of privileges, and monitoring and evaluating programs for physicians, dentists, and other health care professionals; (b) professional review of specified medical liability and malpractice; (7) works with the Secretary's office to provide technical assistance to States undertaking malpractice reform; (8) provides staff to and coordinates the activities of the PHS interagency Advisory Council on Quality Assurance and Risk Management; and (9) undertakes other quality assurance and risk management development efforts.

I. Establish the Division of Interdisciplinary and Community Based Programs (RPA)

Division of Interdisciplinary and Community Based Programs

Serves as the principal focal point for specialized DHHS interagency projects, HRSA initiatives and Bureau of Health Professions interdivisional activities. Specifically: (1) promotes, designs, supports and administers activities relating to the planning and development of nationally integrated health professions education programs; (2) administers special projects of the Office of the Secretary, such as the primary Care Policy Fellowship Program and the Secretary's Award Program for Innovations in Health Promotion and Disease Prevention; (3) promotes, plans and develops collaborative, interdisciplinary activities in the specialty areas of behavioral/mental health, rural health and geriatrics; (4) promotes quality improvement in health professions education through collaboration and partnerships with national and international institutes and centers for quality improvement; (5) promotes and supports academic-community partnerships whose goal is the development of interdisciplinary, community-based programs designed to improve access to health care through improving the quality of health professions education and training; (6) collaborates with relevant offices of the Bureau, HRSA and the Department; and (7) maintains liaison with related professional groups, foundations, and other private and government organizations as needed.

Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date herof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective upon date of signature.

Dated: February 18, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–5470 Filed 3–6–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Colorado River Irrigation Project—Irrigation Division, Arizona, Irrigation Rate Adjustment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final Notice of Rate Adjustment.

SUMMARY: The Bureau of Indian Affairs (BIA) is adjusting irrigation rates for customers of Colorado River Irrigation Project, Irrigation Division for the 2000 irrigation season. The Notice of Proposed Rate Adjustment was published in the **Federal Register** on July 26, 1999, 64 FR 40387. The public and interested parties were provided an opportunity to submit written comments during the 60-day period subsequent to July 26, 1999. No comments were received.

EFFECTIVE DATE: The new rates are effective for the 2000 irrigation season.

FOR FURTHER INFORMATION CONTACT: Regional Director, Bureau of Indian Affairs, Western Region, P.O. Box 10, Phoenix, Arizona 85001, Telephone (602) 379–6956.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary-Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices. The new rates are specified in the following schedule.

Irrigation Rate Per Assessable Acre—2000 Irrigation Season

1. When does this schedule apply to me?

This schedule applies to you if you irrigate lands within the CRIP/ID for the 2000 irrigation season.

2. What will BIA charge for the 2000 irrigation season?

The following table shows how we will bill you.

For . . .	We will bill you . . .
(1) Zero to 5 acre-feet/acre.	$38.50 per assessable acre.
(2) Excess Water above 5 acre-feet.	$17.00 per acre foot.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that this rate adjustment meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This rate adjustment is not a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is "a rule of particular applicability relating to rates." 5 U.S.C. 601(2).

Executive Order 12630

The Department has determined that this rate adjustment does not have significant "takings" implications.

Executive Order 12612

The Department has determined that this rate adjustment does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

NEPA Compliance

The Department has determined that this rate adjustment does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act of 1995

This rate adjustment does not contain collections of information requiring approval under the Paperwork Reduction Act of 1995.

Unfunded Mandates Act of 1995

This rate adjustment imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Dated: February 28, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–5424 Filed 3–6–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

San Carlos Irrigation Project—Power Division, Arizona, Power Rate Adjustment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final Notice of Rate Adjustment.

SUMMARY: The Bureau of Indian Affairs (BIA) is adjusting the electric power rates for customers of San Carlos Irrigation Project, Power Division (SCIP/PD) that are subject to Rate Schedule No. 2-General Rate. The Notice of Proposed Rate Adjustment was published in the **Federal Register** on May 4, 1999, 64 FR 23853. The public and interested parties were provided an opportunity to submit written comments during the 30-day period subsequent to May 4, 1999. No comments were received.

EFFECTIVE DATE: The new rates will become effective on March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Regional Director, Bureau of Indian Affairs, Western Region, P.O. Box 10, Phoenix, Arizona 85001, Telephone (602) 379–6600.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, Section 3 (60 Stat. 895; 25 U.S.C. 385c). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices. The new rates are specified in the following schedule.

Rate Schedule No. 2—General Rate

1. *When does this schedule apply to me?*

This schedule applies to you if you:

(a) Receive single and three phase electric service;

(b) Are not a residential user; and

(c) Are not a small non-commercial user.

2. *Are there restrictions on my use of power?*

(a) You must use any power that we supply you only on your property.

(b) You may not resell any power that we supply to you.

3. *How does BIA bill me if I have more than one meter?*

If you have more than one meter, we will calculate a separate bill for each meter.

4. *What monthly rates will BIA charge?*

(a) The following table shows how we will bill you for the power that you use.

For . . .	We will bill you. . .
(1) Any usage up to 50 kilowatt-hours	$ 12.00
(2) Each kilowatt-hour between 50 and 350	0.15
(3) Each kilowatt-hour between 351 and 600	0.09
(4) Each kilowatt-hour between 601 and 9,000	0.06
(5) Each kilowatt-hour over 9,000	0.0460

(b) We will add a purchased power adjustment to the rates described in paragraph (a). This adjustment will be the amount (rounded to the nearest $0.0001) that the project pays to its power suppliers.

(c) In every month where your usage is over 200 times your billing demand, we will apply a credit to all of your usage over 9,050 kilowatt-hours. The credit will be $0.007 per kilowatt-hour.

5. *What will my minimum monthly bill be?*

(a) In all cases, your minimum monthly bill will be at least the greater of:

(1) $12.00, or

(2) $2.14 per kilowatt of billing demand.

(b) If you use power on a recurring seasonal basis, we will calculate the maximum amount of your minimum monthly bill as follows:

(1) We will multiply by 12 your highest monthly minimum computed bill over the preceding 12 months;

(2) We will add up all of your bills for the preceding 12 months;

(3) We will subtract the result of (b)(2) from (b)(1); and

(4) Your minimum monthly bill will be equal to the result we obtain in (b)(3).

6. *What terms do I need to know?*

(a) "Contract demand" means the number of kilowatts that a customer expects to use. Each contract for 15 kilowatts or more must state the contract demand.

(b) "Actual demand" means one of the following:

(1) The average amount of power used during the 15 consecutive minutes when that average is the greatest for the month, as determined by a suitable meter(s); or

(2) If no suitable meter is available, the connected load or the part of the connected load that we determine appropriate based on use of connected lights, appliances, and equipment.

(c) "Billing demand" means the contract demand or the actual demand, whichever is greater, for a given month.

7. *Are any of the other power rates affected?*

No other power rates for the project are affected at this time.

Executive Order 12988: The Department has certified to the Office of Management and Budget (OMB) that this rate adjustment meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866: This rate adjustment is not a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act: This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is "a rule of particular applicability relating to rates." 5 U.S.C. 601(2).

Executive Order 12630: The Department has determined that this rate adjustment does not have significant "takings" implications.

Executive Order 12612: The Department has determined that this rate adjustment does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

NEPA Compliance: The Department has determined that this rate adjustment does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act of 1995: This rate adjustment does not contain collections of information requiring approval under the Paperwork Reduction Act of 1995.

Unfunded Mandates Act of 1995: This rate adjustment imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Dated: February 28, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–5425 Filed 3–6–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Request for Projects Using the $18.3 Million Fiscal Year 2000 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Request for applications and scope of work.

SUMMARY: The Department of Transportation Appropriations Act for FY 2000 provided an additional $18.3 million for the Indian Reservation Roads (IRR) Program. Based on input from the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Committee, we are requesting applications and scopes of work for IRR projects for the distribution of these additional funds. We will distribute the funds to federally-recognized Indian Tribes and Alaskan Native Villages based on a timely receipt of applications and scopes of work who have not completed adequate transportation planning within the last 5 years or that have deficient IRR bridges.

DATES: Applications and scopes of work supporting request for funding for projects must be postmarked by April 6, 2000.

ADDRESSES: You may submit applications including the scope of work to: LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW, MS–4058–MIB, Washington, DC 20240. Mr. Gishi may also be reached at 202–208–4359 (phone), 202–208–4696 (fax), or leroygishi@bia.gov (electronic mail).

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, 202–208–4359.

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation Appropriations Act for FY 2000, Public Law 106–96, provided $18.3 million for the IRR program. These IRR program funds are in addition to those provided in the Transportation Equity Act for the 21st Century (TEA–21) and are only provided for this fiscal year.

There is an immediate and critical need to use these additional funds in support of transportation planning and infrastructure for Indian Tribes and Alaskan Native Villages. IRR are typically among the most poorly maintained roads in the nation, in great need of development and repair. This creates great difficulty in meeting everyday needs, such as getting students to school and access to medical and emergency treatment, as well as economic and community development.

In consultation with the TEA–21 Negotiated Rulemaking Committee, we have developed the procedures for distribution of these IRR funds this fiscal year.

What Comments on Funds Distribution Did You Receive?

In a January 26, 2000 letter from the Tribal Co-Chairs of the TEA–21 Negotiated Rulemaking Committee, we received comments on consensus reached by 25 tribal delegates and alternates. This letter delineated, from a tribal perspective, how the $18.3 million should be distributed to Indian Tribes and Alaskan Native Villages in support of the IRR program.

What Is the Purpose of This Action?

The purpose of this action is to prescribe the policies and procedures for making applications and distributing these additional IRR program funds for FY 2000.

What Is the IRR Program?

The IRR program is jointly administered by the Bureau of Indian Affairs (BIA) and the Federal Lands Highway (FLH) of the Federal Highway Administration (FHWA). The IRR program governs the planning, design, construction and general administrative responsibility for IRR. The duties of each agency under the IRR program are set forth in a Memorandum of Agreement and the IRR Program Stewardship Plan between the two agencies. In general, BIA works with Indian tribal governments and tribal organizations to develop Transportation Improvement Programs which are submitted to FLH for review and approval. Each fiscal year FLH determines the amount of funds available for the IRR program. Then, FLH and BIA develop an IRR program funding plan for the fiscal year. Funds are allocated from FLH to BIA and distributed by the Secretary of the Interior (Secretary) for IRR projects on or near Indian reservations.

What Are the Additional FY 2000 IRR Funds?

These additional IRR program funds are provided as part of the Department of Transportation and Related Agencies Appropriations Act for FY 2000, Public Law 106–69. These funds are not part of other funding as authorized in 23 U.S.C. 204 or as distributed under 25 CFR 170.4b (65 FR 7431, Feb. 15, 2000).

How Long Will These Funds Be Available?

These funds are available for this fiscal year only. Any unobligated funds will expire at the end of the fiscal year.

What Are the Restrictions on These Funds?

The Secretary is asking for proposals from all federally-recognized Indian Tribes and Alaska Native Villages for transportation planning and bridge design projects. Priority consideration will be given to those Indian Tribes and Alaska Native Villages which have not completed an adequate transportation plan within the last 5 years or that have deficient IRR bridges.

Who May Apply for the Additional FY 2000 IRR Funds?

You may apply for the additional FY 2000 IRR funds if you meet any of the following criteria:

(1) You are a federally-recognized Indian Tribe or Alaska Native Village;

(2) You have not developed an adequate transportation plan in the last 5 years;

(3) You have a deficient IRR bridge which needs to be designed for either rehabilitation or replacement; or

(4) You are a BIA Regional office that has a direct service tribe within your region that meets the criteria in (1), (2) or (3) above.

What Is Transportation Planning?

Transportation planning is the development of strategies for the design, construction, operation, and maintenance of transportation facilities for moving people and goods in a village, town, pueblo, rancheria, city, borough, county, township, parish, metropolitan area, Indian reservation, State, multi-State region, or country. The transportation planning process is a continuing and comprehensive analysis to the degree appropriate and is based on the complexity of the transportation needs. Transportation planning considers both the physical and financial needs to develop an adequate transportation system, the identification and inventory of the existing and proposed transportation system, and the identification of the transportation system's owners and users.

How Do I Determine if I Have Not Had Adequate Transportation Planning in the Last 5 Years?

Your transportation planning has been inadequate if you have not developed an approved tribal Transportation Improvement Program (TIP) which is a multi-year list of IRR transportation projects, or your TIP is obsolete and does not reflect your current transportation project needs.

What Are the Criteria for Bridge Eligibility?

To be eligible to receive funding, a bridge must:

(1) have an opening of 20 feet or more;

(2) be on an IRR road;

(3) be unsafe because of structural deficiencies, physical deterioration or functional obsolescence; and

(4) be recorded in the National Bridge Inventory (NBI) maintained by the FHWA.

Bridges that were constructed, rehabilitated or replaced in the last 10 years are eligible for seismic retrofit or installation of scour countermeasures.

How Do I Apply for the Additional FY 2000 IRR Funds?

Applicants must submit all of the following to be considered for these funds:

(1) A letter of application.

(2) A scope of work for the transportation planning activity in accordance with the current IRR Transportation Planning Procedures and Guidelines. The complete document can be found on the World Wide Web (www.fhwa.dot.gov/flh/reports/indian/intro.htm).

(3) A scope of work for the engineering design of the eligible deficient bridge (a list of the eligible deficient bridges is available at the BIA Regional office). If more than one deficient IRR bridge exists, the scope of work for more than one bridge will be considered.

What Are the Funding Limits for Either Transportation Planning or Bridge Design Activity?

The cost associated with transportation planning or bridge design activity cannot exceed $50,000 per project per tribe.

When Must Applications Be Submitted?

Each eligible applicant must submit an application and scope of work to the address in the **ADDRESSES** section in this notice by April 6, 2000 identifying each transportation planning or bridge design activity to be completed and its cost.

What Will Happen to Funds Not Distributed as Part of the Application Process and Requests for Funds Above?

The Secretary will distribute the remaining funds not distributed or not obligated as described above in the same manner as the FY2000 IRR funding, by the Relative Need Formula, as described at 65 FR 7431 (Feb. 15, 2000).

Dated: March 1, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–5405 Filed 3–6–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–00–1310 PB 24 1A]

Extension of Currently Approved Information Collection; OMB Approval No. 1004–0074

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Paperwork Reduction Act requires federal agencies to announce their intention to request extension of approval for collecting information from individuals. The Bureau of Land Management (BLM) announces its intention to request extension of approval for collecting certain information that will be used to determine the highest qualified bonus bid submitted for competitive oil and gas or geothermal lease (Form 3000–2) and enable the BLM to complete environmental reviews in compliance with the National Environmental Policy Act of 1969 (Form 3200–9). The information supplied allows BLM to determine whether a bidder is qualified to hold a lease and to conduct geothermal resource operations under the terms of the Mineral Leasing Act of 1920 and the Geothermal Steam Act of 1969.

DATES: Comments on the proposed information collection must be received by May 8, 2000.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group (WO–630), Bureau of Land Management, 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240. Comments may be sent via the Internet to: *WOComment@blm.gov*. Please include "Attn.: 1004–0074" and your name and address in your Internet address.

FOR FURTHER INFORMATION CONTACT: Barbara Gamble, Fluid Minerals Group, (202) 452–0338.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), BLM is required to provide a 60-day notice in the **Federal Register** concerning a collection of information contained in published current rules and other collection instruments to solicit comments on: (a) Whether the proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through these of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), gives the Secretary of the Interior responsibility for oil and gas leasing on approximately 600 million acres of public lands and national forests, and private lands where mineral rights have been retained by the federal government. The Federal Onshore Oil and Gas Leasing Reform Act of 1987 was passed by Congress to require that all public lands that are available for oil and gas leasing be first offered by competitive oral bidding. The Department of the Interior Appropriations Act of 1981 (43 U.S.C. 6508) provides for the competitive leasing of the lands in the National Petroleum Reserve-Alaska. The Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025) authorizes the Secretary of the Interior to issue leases

for geothermal development. The lands available for exploration and leasing include public, withdrawn, reserved and acquired lands administered by the BLM.

The regulations within 43 Group 3100 outline procedures for obtaining a lease to explore for, develop, and produce oil and gas resources located on federal lands. The regulations within 43 CFR Group 3200 provide for issuing geothermal leases and the exploration, development and utilization of federally owned geothermal resources. BLM needs the information requested on the two forms to process bids for oil and gas and geothermal lands and to complete environmental reviews required by NEPA.

For Form 3000–2, "Competitive Oil and Gas or Geothermal Resources Lease Bid," the information will be used to determine the highest qualified bonus bid submitted for a competitive oil and gas or geothermal resources parcel. For Form 3200–9, "Notice of Intent to Conduct Geothermal Resources Exploration Operations," the information will be used to enable the BLM to complete environmental reviews in compliance with NEPA. BLM needs the information requested to determine the eligibility of an applicant to hold, explore for, develop and produce oil and gas and geothermal resources on federal lands.

The forms are submitted in person or by mail to the proper BLM office. On Form 3000–2, the name and address of the bidder is needed to identify the bidder and to allow the authorized officer to ensure that the bidder meets the requirements of the regulations. The total bid and payment submitted with the bid is necessary to determine the specific bid and that the bid is accompanied by one-fifth of the amount of the bid, as required by the regulations for a geothermal bid, or the minimum acceptable bid, first year's rental, and administrative fee, as required by the regulations for an oil and gas bid.

On Form 3200–9, names and addresses are needed to identify entities who will be conducting operations on the land. The land description is necessary to determine the area to be entered or disturbed by the proposed exploration operation. Dates of commencement and completion are used to determine how long the applicant/operator/contractor intends to conduct operations on the land.

BLM developed the forms in 1990 and 1996, respectively, and the information required from the public remains the same.

Based on its experience in conducting oil and gas and geothermal lease sales and administering geothermal exploration operations, BLM estimates that the public reporting burden is 2 hours for completing the Competitive Oil and Gas or Geothermal Resources Lease Bid (Form 3000–2) and 2 hours for completing the Notice of Intent to Conduct Geothermal Resources Exploration Operations (Form 3200–9). The bidder/lessee/operator/contractor has access to records, plats, and maps necessary for providing land descriptions. These estimates include the time spent on research, gathering and assembling information, reviewing instructions, and completing and reviewing the respective forms.

BLM estimates that approximately 393 lease bids and 50 notices of intent will be filed annually, with a total annual burden of 886 reporting hours. Respondents vary from individuals and small businesses to large corporations.

Any interested member of the public may request and obtain, without charge, a copy of Form 3000–2 or 3200–9 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated: March 2, 2000.

Carole J. Smith,

Information Clearance Officer.

[FR Doc. 00–5481 Filed 3–6–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Notice of Extension for the Spruce Creek Access Proposal, Final Environmental Impact Statement

SUMMARY: The National Park Service (NPS) is preparing a final environmental impact statement (EIS) to evaluate an application for access to a private inholding on Spruce Creek in the Kantishna Hills of Denali National Park and Preserve. The Notice of Intent to prepare the EIS was published Thursday, March 19, 1998 (**Federal Register**/Vol. 63, No. 53). The owners of the inholding submitted an application for the right-of-way pursuant to the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), title XI, Section 1110(b) and the implementing regulations at 43 CFR Part 36. The application states that the right-of-way would provide access in the form of a road and airstrip for the owners to construct and operate a remote backcountry lodge. On January 7, 1998, the NPS accepted an application for access to a 20-acre parcel on Spruce Creek. The applicants amended the request for access on January 26, 1998, to request a revised location of an airstrip.

The NPS provided notice on Tuesday, October 6, 1998 (**Federal Register**/Vol. 63, No. 193) and Monday, February 8, 1999 (**Federal Register**/Vol. 64, No. 25) stating additional time was needed to complete the draft EIS because the applicants continued to modify and clarify the project proposal. The NPS needed additional time to analyze those modifications and clarifications and extended the dates of publication and distribution of the draft EIS until July 1999. Notices of Availability of the draft EIS were published on August 2 and August 6, 1999 (**Federal Register**/Vol. 64, No. 147, and Vol. 54, No. 151.) The public comment period ended October 6, 1999. Due to extensive agency and public comment on the draft EIS and the need to conduct an economic feasibility study of the access alternatives, the NPS is giving notice to extend the time period to complete the final EIS beyond the time specified in 43 CFR 36.6.

DATES: The final EIS will be available on or about May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Stephen P. Martin, Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, Alaska 99755. Telephone (907) 683–2294.

Judith C. Gottlieb,

Acting Regional Director.

[FR Doc. 00–5430 Filed 3–6–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 26, 2000. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written

comments should be submitted by March 22, 2000.

Patrick W. Andrus,

Acting Keeper of the National Register.

ALASKA

North Slope Borough-Census Area

Prudhoe Bay Oil Field Discovery Well Site, 200 mi. SE of Barrow, Barrow, 00000264

FLORIDA

Highlands County

Pinecrest Hotel, Old, 1609 S. Lake Lotela Dr., Avon Park, 00000266

Polk County

Lake of the Hills Community Club,

41 E. Starr Ave., Lake Wales, 00000265

HAWAII

Honolulu County

Cooke, Charles Montague, Jr. House and Kuka'O'O Heiau (Boundary Increase), Address Restricted, Honolulu, 00000267

KANSAS

Lincoln County

Cummins Block Building, 161 East Lincoln, Lincoln, 00000268

KENTUCKY

Boone County

Bedinger Site, Address Restricted, Walton, 00000276

Big Bone Lick Archeological District, Along Big Bone Creek, Union, 00000284

Maplewood, Address Restricted, Walton, 00000275

Bourbon County

Hillside Farm, 1165 N. Middletown Rd., Paris, 00000277

Carroll County

Richlawn Farm, 1705 Highland Ave., Carrollton, 00000274

Estill County

Ravenna Motor Vehicle Service Building, (Kentucky's National Guard Facilities MPS) 512 Main St., Ravenna, 00000278

Jefferson County

Fincastle, (Louisville and Jefferson County MPS) 7501 Wolf Pen Branch Rd., Prospect, 00000272

Russell Historic District (Boundary Increase), Jct. of Muhammad Ali Blvd. and S. 17th St., Louisville, 00000273

Logan County

Russellville Armory, (Kentucky's National Guard Facilities MPS) 190 S. Winter St., Russellville, 00000279

Madison County

Richmond Armory, (Kentucky's National Guard Facilities MPS) Jct. of 2nd St. and Moberly Ave., Richmond, 00000282

Marion County

Lebanon Junior High School and Lebanon High School, Jct. of N. Spalding and Hood Aves., Lebanon, 00000270

Mercer County

Harrodsburg Armory, (Kentucky's National Guard Facilities MPS) 130 N. College St., Harrodsburg, 00000281

Metcalfe County

Metcalfe County Kentucky Courthouse, Public Square, Edmonton, 00000271

Nelson County

McClaskey, Newell B., House, 1795 KY 1066, Bloomfield, 00000269

Nicholas County

Carlisle Armory, (Kentucky's National Guard Facilities MPS) 378 Main St., Carlisle, 00000280

Washington County

Springfield Armory, (Kentucky's National Guard Facilities MPS) 126 Armory Hill Rd., Springfield, 00000283

MARYLAND

Calvert County

Linden, 70 Church St., Prince Frederick, 00000285

MICHIGAN

Marquette County

Gwinn Model Town Historic District, Including most of the original plat of Gwinn and surrounding greenbelt, Forsyth, 00000286

NORTH CAROLINA

Pitt County

Kittrell—Dail House, Jct. of NC 1117 amd NC 1114, Renston, 00000287

OREGON

Jackson County

Rich Gulch Diggings, 0.75 mi SW of Jacksonville, Jacksonville, 00000288

SOUTH CAROLINA

Clarendon County

Senn's Grist Mill—Blacksmith Shop—Orange Crush Bottling Plant, 3 Cantey St., Summerton, 00000290

Oconee County

Ram Cat Alley Historic District, Ram Cat Alley and North Townville St., Seneca, 00000289

TEXAS

Harris County

City National Bank Building, 1001 McKinney Ave., Houston, 00000291

WEST VIRGINIA

Boone County

Town of Nellis, Off Cty Rte. 1, Nellis, 00000292

A request for REMOVAL has been made for the following resource:

MINNESOTA

Becker County

St. Benedict's Mission School Co. Hwy. 133 Ogema, 82002931

[FR Doc. 00–5432 Filed 3–6–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Oil and Gas Management Plan, Final Environmental Impact Statement, Padre Island National Seashore, Texas

ACTION: Availability of Final Environmental Impact Statement and Oil and Gas Management Plan for Padre Island National Seashore, Kenedy, Kleberg and Willacy Counties, Texas.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service, announces the availability of a Final Environmental Impact Statement and Oil and Gas Management Plan (FEIS/O&GMP) for Padre Island National Seashore, Texas.

DATES: A 30-day no-action period will follow the U.S. Environmental Protection Agency's notice of availability of the FEIS/O&GMP.

ADDRESSES: Public reading copies of the FEIS/O&GMP will be available for review at the following locations:

Office of the Superintendent, Padre Island National Seashore, 20301 Park Road 22, Corpus Christi, Texas 78418, Telephone: (361) 949–8173

Minerals/Oil and Gas Program Office, Intermountain Support Office-Santa Fe, National Park Service, 1100 Old Santa Fe Trail, Santa Fe, New Mexico 87501, Telephone: (505) 988–6095

Planning and Environmental Quality Program Office, Intermountain Support Office-Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, Colorado 80228, Telephone: (303) 969–2851

Office of Public Affairs, National Park Service, 18th and C Streets, NW, Washington, D.C. 20240, Telephone: (202) 208–6843

SUPPLEMENTARY INFORMATION: The FEIS/O&GMP analyzes three (3) alternatives to manage oil and gas operations in a manner that provides for hydrocarbon development, while protecting natural and cultural resources, visitor use values, and human health and safety. The plan will serve as a guide over the next 15–20 years for directing access for

geophysical exploration, exploratory drilling, production, and transportation of nonfederal oil and gas resources in the park. It will also provide a greater degree of certainty to operators, since it provides up-front information on the location of Sensitive Resource Areas and suggests needed mitigation. Current legal and policy requirements would be a basis component of any alternative selected. Current legal and policy requirements means the application of all pertinent federal and state laws, regulations, policies, and direction governing oil and gas operations conducted in the park. These include NPS regulations at 36 CFR 9B, which require operators to use technology and methods least damaging to park resources while ensuring the protection of human health and safety.

Alternative A, Proposed Action, is the agency's Preferred Alternative. Under Alternative A, Sensitive Resource Areas (SRAs) would be formally designated comprising 68,731 acres or 53 percent of the park, in which no surface occupancy or specific restricted access for oil and gas operations would be applied. SRAs are areas that are particularly sensitive to adverse impacts from oil and gas activities. Generally, geophysical (seismic) exploration could be allowed in SRAs under current legal and policy requirements. In all other areas of the park, oil and gas activities would be permitted under current legal and policy requirements. Alternative B, No Action/Current Management, describes the current management strategy, and provides a baseline to compare Alternatives A and C. Under Alternative B, nonfederal oil and gas operations could be permitted in all areas (100 percent) of the park by applying current legal and policy requirements. Under Alternative B, areas that are particularly susceptible to adverse impacts from oil and gas operations would be identified on a case-by-case basis during development and review of plans of operations, during which mitigation measures would be implemented as needed. Under Alternative C, Sensitive Resource Areas would be formally designated (similar to Alternative A), comprising 68,731 acres or 53 percent of the park, and maximum resource protection would be provided these areas by applying a "no surface access" stipulation within all SRAs. In all other areas of the park, oil and gas activities would be permitted by applying current legal and policy requirements. Under both Alternatives A and C, where surface access is restricted in SRAs, directional drilling technology to reach a bottomhole target underneath an SRA from a surface location outside an SRA, or to place a pipeline under an SRA to avoid surface impacts, would also be permitted.

The FEIS/O&GMP evaluates the environmental consequences of the proposed action and the other alternatives on oil and gas exploration and development, air quality, soils and water resources, floodplains, vegetation, wetlands, fish and wildlife, threatened and endangered species, cultural resources, and visitor experience.

FOR FURTHER INFORMATION CONTACT: Superintendent, Padre Island National Seashore, at the above address and telephone number.

Dated: February 28, 2000.

John A. King,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 00–5431 Filed 3–6–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Upper Rio Grande Basin Water Operations Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) for upper Rio Grande basin water operations.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) with and on behalf of other joint-lead agencies [U.S. Army Corps of Engineers (Corps), Department of Defense; and the New Mexico Interstate Stream Commission (Commission), State of New Mexico] intends to prepare an EIS on water operations in the Rio Grande Basin above Fort Quitman, Texas. The preparation of the EIS will be integral to the Upper Rio Grande Basin Water Operations Review (Review). It is anticipated that a plan for water operations at existing Reclamation and Corps facilities will be developed.

DATES: Public scoping meetings will be scheduled at locations throughout the upper Rio Grande basin between June 1 and September 30, 2000. Specific information regarding location and times of these meetings will be published in the **Federal Register** at least 15 days in advance of the meetings.

The estimated date that the EIS will be completed and released for public review is February 2004.

ADDRESSES: Questions or comments regarding the Review and EIS may be directed to Mr. Chris Gorbach, Bureau of Reclamation, 505 Marquette, NW, Albuquerque, NM 87102–2162. Email: cgorbach@uc.usbr.gov.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Gorbach, Bureau of Reclamation, telephone (505) 248–5379. Email: cgorbach@uc.usbr.gov.

SUPPLEMENTARY INFORMATION: Under various existing legal authorities, and subject to allocation of supplies and priority of water rights under State law, Reclamation and the Corps operate dams, reservoirs, and other facilities in the upper Rio Grande basin to:

(1) Store and deliver water for agricultural, domestic, municipal, industrial, and environmental uses;

(2) Assist the Commission in meeting downstream water delivery obligations mandated by the Rio Grande Compact;

(3) Provide flood protection and sediment control; and

(4) Comply with existing law, contract obligations, and international treaty.

The Review will be the basis of, and integral to, preparation of the EIS. The purpose of the Review and EIS is to:

(1) Identify flexibilities in operation of Federal reservoirs and facilities in the upper Rio Grande basin that are within existing authorities of Reclamation, the Corps, and the Commission, and in compliance with State and Federal law;

(2) Develop a better understanding of how these facilities could be operated more efficiently and effectively as an integrated system;

(3) Formulate a plan for future water operations at these facilities that is within the existing authorities of Reclamation, the Corps, and the Commission; complies with State, Federal, and other applicable laws and regulations; and assures continued safe dam operations;

(4) Improve processes for making decisions about water operations through better interagency communications and coordination, and facilitation of public review and input; and

(5) Support compliance of the Corps, Reclamation, and the Commission with applicable law and regulations, including, but not limited to, the National Environmental Policy Act and the Endangered Species Act.

The EIS will address water operations at the following facilities with the noted exceptions and limitations.

- Flood control operations at Platoro Reservoir (the Review and EIS will include only flood control operations at Platoro that are under Corps authority. Water supply operations at Platoro are under local control.)
- Closed Basin Division—San Luis Valley Project.
- Heron Dam and Reservoir.
- Abiquiu Dam and Reservoir.
- Cochiti Dam and Reservoir.
- Jemez Canyon Dam and Reservoir.
- Low Flow Conveyance Channel.
- Flood control operations at Elephant Butte Dam and Reservoir (because of current litigation, water supply operations at Elephant Butte will not be included in the Review or EIS).
- Flood control operations at Caballo Dam and Reservoir (because of current litigation, water supply operations at Caballo will not be included in the Review or EIS).

The EIS will present alternatives for exercise of discretionary authority of Reclamation, the Corps, and the Commission with respect to water operations at these facilities and evaluate the environmental, economic, and social effects of these alternatives. Some of the issues to be considered include changing channel capacity criteria at Albuquerque, maintenance or non-maintenance of a sediment pool at Jemez Canyon Dam, storage or non-storage of Rio Grande water in authorized San Juan-Chama space in Abiquiu Reservoir, and operation of the low flow conveyance channel.

Coordination is ongoing with both public and private entities having jurisdiction or an interest in water operations in the upper Rio Grande basin. Fact sheets and briefings were presented at several public forums prior to this Notice. In July 1999 pueblos and tribes, State, Federal, and local agencies were invited to participate in the Review and preparation of the EIS. The Corps, Reclamation, and the Commission, as lead agencies, signed in January 2000 a Memorandum of Agreement to define the scope of the Review and EIS and to establish their roles and responsibilities relating to completing the Review and EIS in accordance with NEPA, the Endangered Species Act, and other laws and regulations. To date, the Pueblo of San Juan, Middle Rio Grande Conservancy District, New Mexico Department of Game and Fish, Colorado State Engineer (as Rio Grande Compact Commissioner), New Mexico Environment Department, and New Mexico Department of Agriculture have responded in writing that they will participate as cooperating agencies. Many others have indicated their interest in participating through the public involvement process or by participating on technical analysis teams. The joint lead agencies will seek and encourage public involvement throughout the project. The responsibilities of Reclamation, the Corps, and Commission include conducting public scoping meetings throughout the basin, EIS comment hearings, and other outreach activities.

The environmental evaluation will assess the potential effects that the proposed water operations alternatives may have on Indian Trust Assets, and minority and low income populations.

Dated: February 22, 2000.

Charles A. Calhoun,

Regional Director, Upper Colorado Region.

[FR Doc. 00–5458 Filed 3–6–00; 8:45 am]

BILLING CODE 4310–94–U

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** notice on this information collection request on December 28, 1999, in 64 FR 72677, at which time a 60-calendar day comment period was announced. The comment period ended February 29, 2000. No comments were received in response to this notice.

The information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before April 6, 2000.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8563.

OMB Reviewer

David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th St., N.W., Washington, D.C. 20503, 202/395–3897.

Summary of Form Under Review

Type of Request: Extension of currently approved form.

Title: Application for Political Risk Investment Insurance.

Form Number: OPIC–52.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institutions (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 6 hours per project.

Number of Responses: 160 per year.

Federal Cost: $3,200 per year.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: March 1, 2000.

Ralph A. Kaiser,

Senior Counsel for Administration, Department of Legal Affairs.

[FR Doc. 00–5438 Filed 3–6–00; 8:45 am]

BILLING CODE 3210–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before April 21, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Animal and Plant Health Inspection Service (N1–463–98–3, 3 items, 3 temporary items). Applications and related records pertaining to obtaining agency recognition as an approved stockyard for swine and cattle, including electronic copies of documents created using electronic mail and word processing.

2. Department of the Army, Agency-wide (N1–AU–00–5, 3 items, 3 temporary items). Records relating to Army law library services and the continuing legal education of Judge Advocate officers. Library records include publication account inventories, surveys, and purchase orders. Continuing legal education files include correspondence, surveys, and recertification documentation. Also included are electronic copies of documents created using electronic mail and word processing.

3. Department of the Army, Agency-wide (N1–AU–98–7, 2 items, 2 temporary items). Reports and other records pertaining to the inspection and testing of grounding systems at ammunition and explosives facilities to protect against lightening strikes and power surges. Included are electronic copies of documents created using electronic mail and word processing.

4. Department of Defense, Office of the Secretary of Defense (N1–330–00–1, 1 item, 1 temporary item). Elementary school student record files pertaining to pupils in Defense Department schools. Files contain documents on enrollment, registration, achievement test results, and grades. This schedule reduces the retention period for these records, which were previously approved for disposal.

5. Department of Defense, Defense Contract Audit Agency (N1–372–00–1, 4 items, 4 temporary items). Quality assurance records relating to audit management activities implemented to ensure that appropriate audit standards, policies, and procedures have been adopted and followed. Included are electronic copies of records created using electronic mail and word processing. This schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Defense, Defense Contract Audit Agency (N1–372–00–2, 5 items, 4 temporary items). Agency corres-pondence with individual

members of Congress concerning letters from their constituents and other inquiries not relating to congressional committees. Included are electronic copies of records created using electronic mail and word processing. This schedule also authorizes the agency to apply the disposition instructions proposed for temporary records to any recordkeeping medium. Also proposed are minor changes in the disposition instructions for correspondence with congressional committees, which was previously approved for permanent retention.

7. Department of Defense, National Imagery and Mapping Agency (N1–537–00–1, 149 items, 149 temporary items). Records relating to security matters. Records pertain to such subjects as the protection of classified information and facilities, security violations, security surveys and inspections, release of security classified information, security policy, communications security, the issuance of identification cards and badges, vehicle registration, counterintelligence, and personnel security. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of Justice, Federal Bureau of Prisons (N1–129–00–5, 5 items, 5 temporary items). Records relating to the maintenance and inspection of agency facilities. Included are such records as inspection reports, log books, work orders, and electronic copies of documents created using electronic mail and word processing.

9. Department of Justice, Justice Management Division (N1–60–00–6, 5 items, 1 temporary item). Photographs of routine events, such as employee award ceremonies and retirement parties, and photographic portraits of agency personnel other than top-level officials. Proposed for permanent retention are photographs relating to the Attorney General and to significant events and activities as well as a commemorative photo album relating to Attorney General Robert F. Kennedy.

10. Department of Justice, Immigration and Naturalization Service (N1–85–00–1, 2 items, 2 temporary items). Fingerprint tracking system database records and computer tapes used for the inter-agency transfer of fingerprint information. Data in the system includes name, date and place of birth, and other information concerning aliens who are required to submit fingerprints as well as such information as date fingerprints were submitted to the Federal Bureau of Investigation and type of response provided by the FBI.

11. Department of Health and Human Services, Administration for Children and Families (N1–292–99–1, 2 items, 2 temporary items). Administrative files of the Preschool Education Program, dating from 1969–1970, that consist of travel orders, requests for information, trip reports, hotel reservations, conference schedules, and related correspondence. Also included are statistical printouts of the Refugee Resettlement Program, dating from 1987–1989, that contain incomplete demographic data. These printouts were created from a database that is already in the National Archives.

12. Department of Health and Human Services, Health Resources and Services Administration (N1–512–00–1, 10 items, 7 temporary items). Older records accumulated by the Health Resources and Services Administration, 1964–1976. Included are such records as questionnaires, requests for information, thank-you letters, personal health surveys, teeth charts, x-ray files, grant proposals, follow-up reports, evaluations of technical proposals, financial data, personnel folders, and administrative planning files. Records proposed for permanent retention include subject files of the director of the Office of Family Benefits Planning, subject files of the director of the National Center for Health Services Research, and files relating to activities of the U.S. National Committee on Vital and National Health Statistics.

13. Department of Labor, Office of Inspector General (N1–174–00–2, 10 items, 10 temporary items). Formal case files and a related case file tracking system, notations and logs of telephone calls received on the Inspector General's Fraud, Waste and Abuse Hotline, correspondence containing anonymous or vague allegations, and electronic copies of records created using electronic mail and word processing. Summaries of important cases and information concerning other significant activities are included in the Inspector General's Semiannual Report to the Congress, which was previously approved for permanent retention.

14. Department of the Treasury, Internal Revenue Service (N1–58–00–2, 2 items, 2 temporary items). Paper copies of the quarterly report submitted to Congress concerning century date change activities. Reports include information on project status, conversion strategies, and the cost in funds and staff time. Also included are electronic copies of records created using electronic mail and word processing.

15. Federal Energy Regulatory Commission, Office of General Counsel (N1–138–98–15, 3 items, 3 temporary items). Reports and related records documenting deviations from established standards of conduct by transmission providers occurring during an emergency. Included are electronic copies of documents created using electronic mail and word processing.

16. Federal Energy Regulatory Commission, Office of Chief Accountant (N1–138–98–17, 6 items, 6 temporary items). Requests for approval by the Chief Accountant for variations in accounting procedures and records retention (AC dockets) and requests for Commission approval of changes in depreciation rates (DR dockets). AC dockets include requests for accounting/journal entries for losses and related taxes, extensions of time for filing submissions, and files documenting records retention and disposal actions. DR dockets include petitions requesting changes in depreciation rates retained for accounting purposes only. Also included are electronic copies of documents created using electronic mail and word processing that relate to both AC and DR dockets.

17. Federal Energy Regulatory Commission, Office of Electric Power Regulation (N1–138–98–6, 10 items, 10 temporary items). Docket case files related to transmission service, stranded cost recovery, declaration of non-jurisdictional status, and applications for exempt wholesale generator status. Case files include complaints, statements of positions, motions to intervene, requests and petitions, briefs, testimony and exhibits, and related documents. Docket sheets and agency compilations of formal documents were previously approved for permanent retention.

18. Kahoolawe Island Conveyance Commission, Agency-wide (N1–220–00–2, 16 items, 8 temporary items). Paper copies of agendas and minutes, reports, public hearing summaries, testimony, public hearing transcripts, legislative files, correspondence, and publications are proposed for disposal as is a duplicate video recording. The original copy of this video recording and microfilm copies of paper files are proposed for permanent retention in the National Archives. Records proposed for disposal will be transferred to the archives of the State of Hawaii.

19. National Archives and Records Administration, Information Security Oversight Office (N1–64–00–3, 6 items, 3 temporary items). Working papers compiled during the drafting of the office's Annual Report to the President. Also included are electronic copies of documents created using electronic mail and word processing that relate to annual reports and the office's oversight of government-wide information

security programs. Proposed for permanent retention are recordkeeping copies of Annual Reports to the President and files relating to executive branch information security programs.

20. Nuclear Regulatory Commission, Office of Human Resources (N1–431–00–15, 43 items, 31 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Human Resources, including electronic copies of records created using office automation tools and of records used to create ADAMS portable document format files. The electronic recordkeeping copies of case files that document the resolution of differing professional views are proposed for disposal along with paper copies of these records that pre-date ADAMS. Also proposed for disposal are electronic recordkeeping copies of such records as committee and conference files that pertain to committees and conferences for which NRC is not the sponsor, subject files accumulated below the office director level, routine correspondence files, and training aids acquired from private institutions or other agencies. Paper copies of these records were previously approved for disposal. Paper copies of awards files, excluding those filed in official personnel folders, are also proposed for disposal. Series proposed for permanent retention include electronic recordkeeping copies of awards files accumulated at the Commission level, records of committees and conferences for which NRC is the sponsor, differing professional opinion files, subject files accumulated at the office director level, and training aids developed by the Commission. This schedule also proposes minor changes in the disposition instructions for paper copies of committee and conference records, which were previously scheduled.

21. Nuclear Regulatory Commission, Atomic Safety and Licensing Board Panel (N1–431–00–16, 44 items, 34 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Atomic Safety and Licensing Board Panel (ASLBP), including electronic copies of records created using office automation tools and of records used to create ADAMS portable document format files. Proposed for disposal are electronic recordkeeping copies of such records as advisory screening committee consultant personnel files, records of committees and conferences for which NRC is not the sponsor, subject files accumulated below the office director level, routine correspondence files, monthly status reports to Commissioners, power reactor license docket files, and transcripts of ASLBP hearings. Paper copies of these records were previously approved for disposal. Series proposed for permanent retention include electronic recordkeeping copies of records related to committees and conferences for which NRC is the sponsor, subject files accumulated at the office director level, memoranda to panel board members, technical memos, and regulatory history files for proposed and final rulemaking.

22. Nuclear Regulatory Commission, Office of the Chief Information Officer (N1–431–00–17, 67 items, 51 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Chief Information Officer, including electronic copies of records created using office automation tools and of records used to create ADAMS portable document format files. Record materials associated with ADAMS legacy libraries in all media are proposed for disposal as are duplicate reference files of the Public Document Room, ADAMS Publicly Available Records System (PARS) Library records, and records associated with the Nuclear Documents System (NUDOCS). Electronic recordkeeping copies of annual reports to the Attorney General on the Freedom of Information Act are proposed for disposal as are paper copies of these records that pre-date ADAMS. Other files proposed for disposal include records of committees and conferences for which NRC is not the sponsor, working papers and background materials associated with forms files, subject files accumulated below the office director level, routine correspondence files, the electronic final copies of graphic art products, half-tone negatives and camera-ready copy, and publication working papers. Paper copies of these records were previously approved for disposal. Series proposed for permanent retention include electronic recordkeeping copies of records related to committees and conferences for which NRC is the sponsor, subject files accumulated at the office director level, posters distributed agency-wide or to the public, copies of all publications, and regulatory history files. This schedule also proposes minor changes in the disposition instructions for paper copies of committee and conference records, which were previously scheduled.

23. Nuclear Regulatory Commission, Office of General Counsel (N1–431–00–18, 71 items, 59 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the General Counsel, including electronic copies of records created using office automation tools and of records used to create ADAMS portable document format files. Records proposed for disposal include electronic recordkeeping copies of records related to committees and conferences for which NRC is not the sponsor, subject files accumulated below the office director level, routine correspondence files, licensing docket formal hearing files, and patent and technical data files. Paper copies of these records were previously approved for disposal. Paper copies of conflict of interest files and personal opinion files are also proposed for disposal. Series proposed for permanent retention include electronic recordkeeping copies of Commission memorandum files, records of committees and conferences for which NRC is the sponsor, subject files accumulated at the office director level, legislative files, litigation case files, and regulatory history files.

24. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research (N1–431–00–19, 99 items, 67 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Nuclear Regulatory and Research, including electronic copies of records created using office automation tools and of records used to create ADAMS portable document format files. Records proposed for disposal include electronic recordkeeping copies of records related to committees and conferences for which NRC is not the sponsor, subject files accumulated below the office director level, routine correspondence files, grants case files, unsuccessful grant applications, grant administrative files, nuclear safety standards program files accumulated in connection with the development of standards and guides, personnel monitoring reports and overexposure reports that have been entered into the Radiation Exposure Information System (REIRS), rejected research project proposals, research program files at and below the division level, and all other research project case files not identified as permanent. Paper copies of these records were previously approved for disposal. Series proposed for permanent retention include electronic recordkeeping copies of records related to abnormal occurrence case files, case study report files, formal arrangement and agreement files, program correspondence files

accumulated at the office director level, final products related to grants files, nuclear safety standards and guides, personnel monitoring reports and overexposure reports not placed on REIRS, REIRS system programming and documentation, regulatory history files for proposed and final rulemaking, research program files accumulated at the office director level, scientific and technical reports, and research project case files deemed by NRC or NARA to have exceptional value.

25. Tennessee Valley Authority, Engineering Services (N1–142–98–2, 10 items, 6 temporary items). Correspondence files documenting routine administrative functions such as budget and finance, equipment and supplies, training and staff development, and warehousing. Included are electronic copies of documents created using electronic mail and word processing. Correspondence files documenting substantive program policy and planning matters are proposed for permanent retention. These include files on organization and management and systems engineering.

26. Tennessee Valley Authority, Fossil and Hydro Power (N1–142–98–8, 2 items, 2 temporary items). General procedures for plant operations, including maintenance, safety, environmental, and administrative requirements, and similar procedures specific to individual agency sites. This schedule provides for the disposal of both paper copies of these records as well as electronic copies maintained in an agency-wide document management system.

27. Tennessee Valley Authority, Water Management (N1–142–97–16, 17 items, 17 temporary items). Environmental chemistry laboratory procedures and analysis records relating to the testing of water samples. Included are files on standardized procedures, laboratory notebooks, raw data analyses, reports to clients, and electronic systems and related files used to record the results of tests and monitor instruments and equipment.

Dated: March 1, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–5484 Filed 3–6–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts, Leadership Initiatives Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel (International Section) to the National Council on the Arts will be held on March 13, 2000. The panel will meet from 9 to 9:30 a.m. in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: March 2, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–5569 Filed 3–6–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL INSTITUTE FOR LITERACY

Proposed Agency Information Collection Activities; Comment Request

AGENCY: National Institute for Literacy.

ACTION: Notice of information collection.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), this notice announces an Information Collection Request (ICR) by the NIFL. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 6, 2000.

ADDRESSES: Submit written comments to: National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006, Attention: William B. Hawk. Copies of the complete ICR and accompanying appendixes may be obtained from the above address or by contacting William B. Hawk at (202) 233–2042. Comments may also be submitted electronically by sending electronic mail (e-mail) to: whawk@nifl.gov.

All written comments will be available for public inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

SUPPLEMENTARY INFORMATION:

Title: Application for Literacy Information and Communication System (LINCS) Special Collection Development Partners Awards to organizations to support the creation and maintenance of subject specific sets of literacy-related information on LINCS.

Abstract: The National Institute For Literacy (NIFL) was created by the National Literacy Act of 1991 and amended by the Workforce Investment Act of 1998 to provide a national focal point for literacy activities and to facilitate the pooling of ideas and expertise across a fragmented field. The Act authorizes the NIFL to conduct basic and applied research and demonstrations on literacy; collect and disseminate information to Federal, State, and local entities with respect to literacy; and improve and expand the system for delivery of literacy services. The NIFL will provide funding to organizations for the creation of in-depth literacy-related collections of subject specific information on LINCS. Evaluations to determine successful applications will be made by a panel of literacy experts and information specialists using the published criteria. The NIFL will use this information to make up to 10 cooperative agreement awards for a period of up to three years.

Burden Statement: The burden for this collection of information is estimated at 40 hours per response for the first year. This estimate includes the time needed to review instructions, complete the form, and review the collection of information. No more than 10 applicants will be awarded a three-year cooperative agreement grant. Each awardee will have an annual update of the application requiring an average of 30 hours per response for each continuation year.

Respondents: Public and private non-profit organizations.

Estimated Number of Respondents: 25.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 52 hours.

Frequency of Collection: One time. Send comments regarding the burden

estimate or any other aspect of the information collection, including suggestions for reducing the burden to: National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006, Attention: William B. Hawk. Comments may also be submitted electronically by sending electronic mail (e-mail) to *whawk@nifl.gov*.

Request for Comments

NIFL solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. (ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information. (iii) Enhance the quality, utility, and clarity of the information to be collected. (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies of other forms of information technology, e.g., permitting electronic submission of responses.

Dated: March 2, 2000.

Jaleh Behroozi Soroui,

LINCS Project Director, NIFL.

[FR Doc. 00–5482 Filed 3–6–00; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL INSTITUTE FOR LITERACY

Proposed Agency Information Collection Activities; Comment Request

AGENCY: National Institute for Literacy.

ACTION: Notice of information collection.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), this notice announces an Information Collection Request (ICR) by the NIFL. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 6, 2000.

ADDRESSES: Submit written comments to: National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006, Attention: Jaleh Behroozi Soroui. Copies of the complete ICR and accompanying appendixes may be obtained from the above address or by contacting Jaleh Behroozi Soroui at (202) 233–2039. Comments may also be submitted electronically by sending electronic mail (e-mail) to: jbehroozi@nifl.gov.

All written comments will be available for public inspection from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

SUPPLEMENTARY INFORMATION:

Title: Application for Literacy Information and Communication System (LINCS) Regional Technology Centers Awards to organizations to support the creation of regional technology coordinating centers to expand and coordinate LINCS services at the regional and state level.

Abstract: The National Institute For Literacy (NIFL) was created by the National Literacy Act of 1991 and amended by the Workforce Investment Act of 1998 to provide a national focal point for literacy activities and to facilitate the pooling of ideas and expertise across a fragmented field. The Act authorizes the NIFL to conduct basic and applied research and demonstrations on literacy; collect and disseminate information to Federal, State and local entities with respect to literacy; and improve and expand the system for delivery of literacy services. The NIFL will provide funding to organizations for the creation of regional technology centers that will represent and promote LINCS within their region; work with the NIFL and other regional technology centers to improve and expand LINCS; provide literacy-related resources through LINCS; and train organizations and individuals in the use of LINCS and technology, and carryout such other tasks as called for in the information collection request. Evaluations to determine successful applications will be made by a panel of literacy experts and information specialist using the published criteria. The NIFL will use this information to make up to 5 cooperative agreement awards for a period of up to three years.

Burden Statement: The burden for this collection of information is estimated at 55 hours per response for the first year. This estimate includes the time needed to review instructions, complete the form, and review the collection of information. No more than five applicants will be awarded a three-year cooperative agreement grant. Each awardee will have an annual update of the application requiring an average of 40 hours per response for each continuation year.

Respondents: Public and private non-profit organizations.

Estimated Number of Respondents: 15.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 79 hours.

Frequency of Collection: One time. Send comments regarding the burden estimate or any other aspects of the information collection, including suggestions for reducing the burden to: National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006, Attention: Jaleh Behroozi Soroui. Comment also can be sent by email to the following address: jbehroozi.nilf.gov.

Request for Comments

NIFL solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. (ii) Evaluate the accuracy of the agency's estimates of the burden of the propose collection of information. (iii) Enhance the quality, utility, and clarity of the information to be collected. (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies of other forms of information technology, *e.g,* permitting electronic submission of responses.

Dated: March 2, 2000.

Jaleh Behroozi Soroui,

LINCS Project Director, NIFL.

[FR Doc. 00–5483 Filed 3–6–00; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL INSTITUTE FOR LITERACY

[CFDA No. 84.2571]

Literacy Leadership Fellowship Program

AGENCY: National Institute for Literacy.

ACTION: Notice Inviting Applications for the Literacy Leader Fellowship Program.

Purpose of Program: The Literacy Program is designed to provide Federal financial assistance to adult learners and to individuals pursuing careers in adult education or literacy in the areas of instruction, research, or innovation. Under the program, literacy workers and adult learners are applicants for fellowships.

Deadline for Transmittal of Applications: Applications must be received at the National Institute for Literacy no later than 5:00 p.m. May 8, 2000.

Available Funds: $125,000.

Estimated Range of Awards: $40,000–09$70,000.

Estimated Average Size of Awards: $60,000.

Estimated Number of Awards: 2–3.

Note: The National Institute for Literacy is not bound by any estimates in this notice.

Project Period: Projects will be not less than three and no more than 12 months of full or part-time activity. Projects will begin no earlier than September 2000, and end no later than September 2001.

Applicable Regulations: The regulations governing the National Institute for Literacy's Literacy Fellowship Program as published in the March 7, 2000 issue of the **Federal Register**. The regulations are also available on-line at http://www.nifl.gov/activities/fllwhome.htm.

While the Institute is administered by an Interagency agreement with the U.S. Departments of Education, Labor, and Health and Human Services, the specific policies and procedures of these agencies regarding rulemaking and administration of grants are not adopted by the Institute except as expressly stated in this Notice and in the regulations.

Transmittal of Applications: An original and seven (7) copies of applications for award must be received by the Institute on or before the deadline date by May 8, 2000.

Applications delivered by mail: Applications sent by mail must be addressed to National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006–2417, Attention: (CFDA#84.257I).

An applicant is encouraged to use registered, certified, or first-mail.

Late applicants will be notified that their applications will not be considered, and their applications will be returned.

Applications delivered by Hand: Applications that are hand-delivered must be taken to the National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006–2417.

The Institute will accept hand-delivered applications between 8:30 a.m. and 5:00 p.m. (Washington, DC time) daily, except Saturdays, Sundays and Federal holidays. Applications that are hand-delivered will not be accepted by the Institute after 5:00 p.m. on the due date:

Acknowledgement of Applications: The Institute will mail an Applicant Receipt Acknowledgment to each applicant within 15 days from the due date. If an applicant fails to receive the application acknowledgment, call the National Institute for Literacy at (202) 233–2055.

The applicant must indicate on the outside of the envelope the CFDA number of the competition under which the application is being submitted.

Application Forms: Applicants are required to submit the following forms, assurances and certifications:

(a) Application Information and Budget Summary (NIFL Form No. 001)

(b) Assurances—Non-Construction Programs (Standard Form 424B).

(c) Certification Regarding Lobbying: Debarment, Suspension, and other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

(d) Disclosure of Lobbying Activities (Standard Form LLL) (if applicable); and

(e) Certification of Eligibility for Federal Assistance in Certain Programs (ED 80–0016).

The NIFL form, assurances, and certifications must each have an original signature. No award can be made unless these forms are submitted.

Prescribed Format: (a) Applicants will also be required to submit a proposal narrative. The narrative should be no more than 8 pages in length.

(b) The narrative format should meet the following criteria:

(i) The application should be double spaced

(ii) The application should use 12 point font

(iii) The application should have one inch margins on all four sides.

(c) Applicants should also submit a resume, budget narrative, and four letters of recommendation.

Note: For applicants who propose to conduct the fellowship project on a part-time basis while undertaking other paid employment, one of the four required letter of recommendation must be from the applicant's employer, and must include a statement that the applicant's workload will not exceed 100% of time.

Prescribed Order: Applicants should arrange their application submission in the following order:

i. NIFL Form 001
ii. Budget Narrative
iii. Application Narrative
iv. Resume
v. Letters of Recommendation
vi. Standard Form 424B
vii. ED 80–0013
viii. Standard Form LLL (if applicable)
ix. ED 80–0016

Priorities: (a) The Director invites applications for Literacy Leader Fellowships that meet one of the following priorities for 2000.

(b) The priorities for 2000 are major areas of concern in the literacy field that are currently being addressed in the Institute's work.

(c) An application may be awarded up to 5 bonus points for addressing a priority, depending on how well the application meets the priority.

(d) The publication of these priorities does not bind the Institute to fund only applications addressing a priority. The Director is especially interested in fellowship applications that address one of the priorities, but not to the exclusion of other significant issues that may be proposed by applicants.

(e) The priorities selected from the regulations for 2000 are as follows:

(1) *Developing Leadership in Adult Learners.* Because Adult learners are the true experts on literacy, they are an important resource for the field. Their firsthand experience as "customers" of the literacy system can be invaluable in assisting the field in moving forward, particularly in terms of raising public awareness and understanding about literacy. Projects that enhance best practices or the adult learner network will be given priority consideration.

(2) *Expanding the Use of Technology in Literacy Programs.* One of the NIFL'S major projects is the Literacy Information and Communication System (LINCS), an Internet based information system that provides timely information and abundant resources to the literacy community. Keeping the literacy community up to date in the information age is vital. Projects that improve or increase use of technology will be given priority consideration.

(3) *Improving Accountability for Literacy Programs.* Legislation that has passed both houses of the U.S. Congress emphasizes that literacy programs must develop accountability systems that demonstrate their effectiveness in helping adult learners contribute more fully in the workplace, family and community. Projects that focus on results-oriented literacy practice, especially as related to the Equipped for the Future (EFF) framework, are a priority.

(4) *Raising Public Awareness about Literacy.* The NIFL is leading a national effort to raise public awareness that literacy is part of the solution to many social concerns, including the well-being of children, health, welfare and the economy. Projects that enhance this effort will be given priority consideration.

SUPPLEMENTARY INFORMATION: National Educational Goal 6, which is included in the Goals 2000: Educate America Act, puts forward an ambitious agenda for adult literacy and lifelong learning in America. To further this goal, the Congress passed Public Law 105–220, the National Literacy Act of 1991, which was the first piece of national legislation to focus exclusively on literacy [the act has since been superseded by the Public Law 105–220, the Workforce Investment Act of 1998]. The overall intent of the National Literacy Act, as stated, is:

To enhance the literacy and basic skills of adults, to ensure that all adults in the United States acquire the basic skills necessary to

function effectively and achieve the greatest possible opportunity in their work and in their lives and to strengthen and coordinate adult literacy programs.

In designing the National Literacy Act, among the primary concerns shared by the Congress and literacy stakeholders was the fragmentation and lack of coordination among the many efforts in the field. To address these concerns, the National Literacy Act created the National Institute for Literacy to:

(A) provide a national focal point for research, technical assistance, and research dissemination, policy analysis and program evaluation in the area of literacy; and

(B) facilitate a pooling of ideas and expertise across fragmented programs and research efforts.

Among the Institute's authorized activities is the awarding of fellowships to outstanding individuals who are pursuing careers in adult education or literacy in the areas of instruction, management, research, or innovation. These fellowships are to be awarded for activities that advance the field of adult education and literacy.

FOR FURTHER INFORMATION CONTACT: To receive an application package, contact EDPubs, P.O. Box 1398, Jessup, MD 20794, 1–800–228–8813, TTY/TTD 1–877–576–7734, email: edpubs@inet.ed.gov. Substantive questions regarding proposal content can be obtained from: Jennifer Cromley, National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006–2417. Telephone: 202/233–2053, Fax: 202/233–2051. E-mail: jcromley@nifl.gov. The entire application package and information about the Literacy Leader Fellowship program is also available on-line (including all of the required forms) at http://www.nifl.gov/activities/fllwhome.htm.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 3430–0003, Expiration Date 6/30/2000. The time required to complete this information collection is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and disseminating the data needed, and completing and reviewing the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: the National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006–2417.

Program Authority: 20 U.S.C. 1213c.

Dated: March 2, 2000.

Carolyn Staley,

Deputy Director, NIFL.

[FR Doc. 00–5522 Filed 3–6–00; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting

AGENCY: National Skill Standards Board.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the National Skill Standards Act, Title V, Public Law 103–227. The 23-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a voluntary national system of skill standards and certification through voluntary partnerships which have the full and balanced participation of business, labor, education, civil rights organizations and other key groups.

TIME AND PLACE: The meeting will be held from 8:30 a.m. to approximately 12 p.m. on Wednesday, March 22, 2000, at the Isle of Capri Crowne Plaza Resort, 151 Beach Boulevard, Biloxi, Mississippi 39530, (228 435–5400).

AGENDA: The agenda for the Board Meeting will include: an update from the Board's committees; presentation from representatives of the Sales & Service Voluntary Partnership (SSVP), Education and Training (E&T) and Manufacturing Skill Standards Council (MSSC).

PUBLIC PARTICIPATION: The meeting, from 8:30 a.m. to 12 p.m., is open to the public. Seating is limited and will be available, on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact Leslie Donaldson at (202) 254–8628, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Dave Wilcox, Executive Deputy Director at (202) 254–8628.

Dated: Signed at Washington, D.C. 29th day of February, 2000.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 00–5498 Filed 3–6–00; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–317]

Baltimore Gas and Electric Company; Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Condideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–53 issued to Baltimore Gas and Electric Company (BGE or the licensee) for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 1 located in Calvert County, Maryland.

The proposed amendment would approve an issue involving the Societie Alsacienne Construction Mechaniques Del Melhouse (SACM) diesel generator (DG) that constitutes an unreviewed safety question. Specifically, a new failure mode has been identified for DG 1A (SACM) that is not adequately described in the Updated Final Safety Analysis Report. The manufacturer has indicated that operating the engine in a light load condition may degrade engine performance and ultimately result in engine failure.

Baltimore Gas and Electric Company has determined that acceptance of the new failure mode constitutes an unreviewed safety question. BGE requests approval through an amendment to their operating license that concludes that the new failure mode is acceptable on the basis that BGE will assure on every shift that safety-related loads are sufficiently available to DG 1A to ensure that minimum load requirement is met. Otherwise, DG 1A will be declared inoperable.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR

50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The DGs are the standby, onsite source of power for the safety-related systems necessary to safely shut down the units following a design basis accident and/or a loss-of-offsite power. The proposed change would revise the operating license to conclude that the new failure mode for DG 1A is acceptable.

Diesel generators are not initiators in any previously evaluated accidents. Therefore, the proposed change does not involve an increase in the probability of an accident previously evaluated. For DG 1A to be considered operable, the required minimum load must be available to DG 1A from safety-related sources.

The proposed change accepts operation with the new failure mode of DG 1A because the required minimum load required will be met by having safety-related loads available to DG 1A. Having the safety-related loads available will ensure DG 1A will be capable of performing its safety function. Therefore, accepting the unreviewed safety question for DG 1A does not involve a significant increase in the consequences of an accident previously evaluated.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new different type of accident from any accident previously evaluated.

The proposed change does not involve a significant change in the operation of the plant and no new or different accident initiation mechanism is created by accepting the new failure mode. Diesel Generator 1A is not being modified by the proposed change nor will an unusual operator action be required. The DG 1A will continue to operate in the same manner. Therefore, the proposed change does not support the possibility of a new different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The margin of safety of the DGs is to provide a reliable standby, onsite source of power for the safety-related systems necessary to safely shut down the units following a design basis accident and/or a loss-of-offsite power. The proposed change accepts the new failure mode for the DG because the required minimum load requirement will be met by having the safety-related loads available to DG 1A. Therefore, accepting the DG as-is does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below. By April 6, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert

opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment. A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW. Washington, 20037 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 18, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 1st day of March 2000.

For The Nuclear Regulatory Commission.

Alexander Dromerick,

Project Manager, Section I, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5475 Filed 3–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–22]

CBS Corporation, Test Reactor at Waltz Mill, PA; Notice of Consideration of Approval of Transfer of Facility License and Conforming Amendment and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on February 29, 2000 (65 FR 10841), in which the Commission is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility License No. TR–2 currently held by CBS Corporation as the owner and responsible licensee. This action is necessary to correct two erroneous dates.

FOR FURTHER INFORMATION CONTACT: Theodore S. Michaels, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, telephone 301–415–1102, e-mail: tsm1@nrc.gov.

SUPPLEMENTARY INFORMATION:

1. On page 10841, in the second column, in the third complete paragraph, "March 30, 2000," is corrected to read "March 20, 2000."

2. On page 10841 in the third column, in the second complete paragraph, line three, "April 10, 2000," is corrected to read "March 30, 2000."

Dated at Rockville, Maryland, this 2nd day of March 2000.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 00–5474 Filed 3–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–30 & 50–185]

Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action To Decommission National Aeronautics and Space Administration (NASA Plum Brook Reactor Facility

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received an application from the National Aeronautics and Space Administration (NASA) dated December 20, 1999, for a license amendment approving its proposed decommissioning plan for the NASA Plum Brook Reactor (Facility License Nos. TR–3 and R–93) located at Plum Brook Station in Sandusky, Ohio.

In accordance with 10 CFR 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to 10 CFR 20.1405, which provides for publication in the **Federal Register** and in a forum such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site. Comments should be provided within 90 days of the date of this notice to Ledyard B. Marsh, Chief, Events Assessment, Generic Communications, and Non-Power Reactors Branch, Mail Stop O12–D1, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Further, in accordance with 10 CFR 50.82(b)(5), notice is also provided of the Commission's intent to approve the plan by amendment, subject to such conditions and limitations as it deems appropriate and necessary, if the plan demonstrates that decommissioning will be performed in accordance with the

regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public.

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, at 2120 L Street NW., Washington, DC 20037. It is also available through http://www.nrc.gov/OPA/reports under "What's New on This Page," "Decommissioning," or "Other Documents."

Dated at Rockville, Maryland, this 28th day of February 2000.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Chief, Events Assessment, Generic Communications, and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5476 Filed 3–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Revised

The ACRS Subcommittee meeting on Thermal-Hydraulic Phenomena scheduled for March 14–15, 2000, has been changed to a one-day meeting on March 15, 2000, 8:30 a.m., Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. During this session, the Subcommittee will: (1) Begin review of the thermal-hydraulic issues associated with the pressurized thermal shock (PTS) Screening Criterion Reevaluation Project being conducted by NRC Office of Nuclear Regulatory Research (RES); (2) discuss the NRC staff acceptance review of the Siemens S–RELAP5 and GE Nuclear Energy TRACG codes; and (3) discuss the status of the NRC staff's review of the EPRI RETRAN–3D code. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Notice of this meeting was published in the **Federal Register** on Friday, February 18, 2000 (65 FR 10122). All other items pertaining to this meeting remain the same as previously published.

For further information contact: Mr. Paul A. Boehnert, cognizant ACRS staff engineer, (telephone 301/415–8065) between 7:30 a.m. and 4:45 p.m. (EST).

Dated: March 1, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–5472 Filed 3–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of March 6, 13, 20, 27, April 3 and 10, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 6

Tuesday, March 7

12:55 p.m.
Affirmation Session (Public Meeting) (if needed).

1:00 p.m.
Briefing on Improvements in the Reactor Oversight Process (Public Meeting) (Contact: Bill Dean, 301–415–1257)

Week of March 13—Tentative

There are no meetings scheduled for the Week of March 13.

Week of March 20—Tentative

Wednesday, March 22

9:25 a.m.
Affirmation Session (Public Meeting) (if needed)

Friday, March 24

9:30 a.m.
Briefing on Evaluation of the Requirement for Licensee to Update Their Inservice Inspection and Inservice Testing Program Every 120 Months (Public Meeting) (Contact: Tom Scarbrough, 301–415–2794)

Week of March 27—Tentative

Thursday, March 30

8:55 a.m.
Affirmation/Discussion and Vote (Public Meeting) (If needed)

9:00 a.m.
Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Friday, March 31

9:25 a.m.
Affirmation Session (Public Meeting) (if needed)

9:30 a.m.
Briefing on Risk-informed Regulation Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790)

Week of April 3—Tentative

There are no meetings scheduled for the Week of April 3.

Week of April 10—Tentative

There are no meetings scheduled for the Week of April 10.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 5–0 on March 1, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Intragovernmental Issues" (Closed-Ex. 9) be held on March 1, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: March 3, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–5616 Filed 3–3–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences, Fiscal Year 1999; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974 (Public Law 93–438) identifies an abnormal occurrence (AO) as an unscheduled incident or event that the U.S. Nuclear Regulatory Commission (NRC) determines is significant from the standpoint of public health or safety.

The Federal Reports Elimination and Sunset Act of 1995 (Public Law 104–66) requires that AOs be reported to Congress annually. During fiscal year 1999, 13 events that occurred at facilities licensed or otherwise regulated by the NRC and/or the Agreement States were determined to be AOs. These events are discussed below. As required by Section 208, the discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. Each event is also being described in NUREG–0090, Vol. 22, "Report to Congress on Abnormal Occurrences, Fiscal Year 1999." This report will be available electronically at the NRC Public Electronic Reading Room link <*http://www.nrc.gov/NRC/ADAMS/index.html*> at the NRC Homepage.

Nuclear Power Plants

None of the events that occurred at U.S. nuclear power plants during fiscal year 1999 was determined to be significant enough to be reported as an abnormal occurrence (AO) to Congress.

Fuel Cycle Facilities (Other Than Nuclear Power Plants)

The following event that occurred at a fuel cycle facility during fiscal year 1999, was determined to be significant enough to be reported as an AO to Congress.

99–1 Fire Breaches Containment and Requires Shutdown of a Portion of the Cascade at the Portsmouth Gaseous Diffusion Plant in Piketon, Ohio

Date and Place—December 9, 1998; Portsmouth Gaseous Diffusion Plant, a uranium enrichment plant, operated by Lockheed Martin Utility Services for the United States Enrichment Corporation, located about 3.2 kilometers (2 miles) east of Piketon, Ohio.

Nature and Probable Consequences—On December 9, 1998, the certificate holder's operations staff observed a series of abnormal conditions associated with the side purge cascade, Cell 25–7–2. The staff's immediate response to the abnormal conditions was not successful in restoring normal operations and an exothermic reaction was either started or propagated within the cascade. The exothermic reaction continued until sufficient heat was generated to cause a failure of the Cell 25–7–2 cooling system, initiating a second exothermic reaction. Subsequent heat and pressure increases within the side purge cascade resulted in: (1) The creation of holes within the process gas cascade boundary of Cell 25–7–2; (2) an automatic shutdown of the side purge cascade caused by the motor load overcurrent protection system that provides "Defense in Depth;" (3) the activation of a portion of the Building X–326 automatic fire suppression sprinkler system; (4) an emergency response and approximately 2 hours of firefighting activities by the onsite fire department; and (5) challenges to the continued operation of the remainder of the process gas cascade.

There were no measurable radiological consequences or chemical consequences to the plant staff or the general public from the release of radioactivity during this event. The holes created in the side purge cascade equipment and piping created a credible pathway for water to accumulate in unsafe geometry sections of the cascade. This led to the need to revise the criticality safety basis for this portion of the side purge cascade.

Cause or Causes—The extensive fire damage experienced by Cell 25–7–2 equipment has made it difficult to determine the root cause. Much of the equipment has been damaged to such an extent that evidence needed to determine the root cause was destroyed. The investigation by the certificate holder identified two possible initiating events: a physical failure of the compressor impeller or a chemical deposit caused by wet air leakage into the equipment. In either event, mechanical friction within the process gas cascade equipment generated a sufficient amount of sustained heat to begin an exothermic reaction between the aluminum compressor components and the process gas (uranium hexafluoride). On the basis of a review of some of the Cell 25–7–2 components removed since the fire, the exothermic reaction was believed to have been initiated in the Stage 2 compressor and propagated through the cell equipment to the Stage 4 compressor. In the Stage 4 compressor, the reaction was thought to have been intensified by the input gases, received from the remainder of the cascade, resulting in increasing internal process gas cascade temperatures until there was a failure in the freon coolant system boundary. Elevated pressure, caused by the introduction of freon from the coolant system and a second exothermic reaction between the hot metal and freon, was thought to be the final event that occurred before the holes were burned in the process gas cascade boundary.

Actions Taken To Prevent Recurrence

Certificate Holder—Initial compensatory and corrective measures implemented by the plant staff as a result of the fire included: (1) administrative controls to preclude a restart of the side purge cascade and some other plant operations pending the completion of a root cause evaluation for the fire; (2) immediate manual vibration monitoring of other centrifugal compressors to search for other unstable equipment; (3) covering of openings created in the process gas piping and equipment of Cell 25–7–2 as a result of the fire; (4) development of a revised nuclear criticality safety basis for Cell 25–7–2; (5) interim training of cascade operators and managers on the lessons learned about operations from the event; and (6) interim training of firefighters and management on the safety risks of and the proper fire fighting techniques for a fire concurrent with holes in process gas cascade equipment. The long-term corrective actions include the following "Defense in Depth" features and administrative actions: (1) adding process gas temperature monitoring to detect high temperature reactions in a timely manner; (2) adding alarm and automatic shutdown systems on the side purge compressors for compressor high-process gas temperature to protect against the propagation of high-temperature accidents by detecting hot spots in a timely manner; (3) improving the process for evaluating and responding to cascade component vibrations to improve the identification of precursors to a hot metal reaction; and (4) completing procedures for improving operator response to other precursors to hot metal reactions. These corrective actions will be instituted prior to re-introducing process gas into the side purge cascade.

NRC—An augmented inspection team was sent to the site on December 9, 1998. The team documented its findings in an inspection report issued on February 19, 1999. A follow-up inspection was conducted in March 1999 to evaluate the effectiveness of the certificate holder's corrective actions. Although the follow-up inspection team found the certificate holder's corrective actions adequate, several procedural and reporting violations were identified during the follow-up inspections. One violation was that the event met the criteria for an "Alert" declaration and that the certificate holder failed to identify and declare the Alert. Since many credible accidents postulated for the Portsmouth Gaseous Diffusion Plant can occur suddenly and last a short duration, it is important for the certificate holder to make proper and timely emergency declarations that would lead to timely notifications to the

appropriate regulatory agencies. Therefore, even though, in this case, there were no significant radiological releases to the environment, the NRC staff considered the certificate holder's failure to declare an Alert, which is the lowest level emergency category, a serious violation (Level III) that carried a $55,000 civil penalty. The certificate holder acknowledged the violation and paid the civil penalty.

This event is closed for the purpose of this report.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, etc.)

The following three events that occurred at institutions licensed or otherwise regulated by NRC during fiscal year 1999, were determined to be significant enough to be reported as abnormal occurrences (AOs) to Congress.

99–2 Medical Event Involving the Administration of Iodine-131 to a Pregnant Patient at St. Joseph Health Center in Kansas City, Missouri

Date and Place—October 6, 1998; St. Joseph Health Center; Kansas City, Missouri.

Nature and Probable Consequences—After a patient was administered a 5.75 gigabecquerel (155.2 millicurie) dosage of iodine-131 (I-131) for ablation of residual thyroid tissue and for the treatment of metastatic thyroid cancer, the patient was determined to be pregnant.

Preceding the administration of the I-131 therapy dosage, the licensee's nuclear medicine technologist and the authorized user, following internal policies and procedures to determine the pregnancy status of a patient, repeatedly questioned the patient regarding the possibility of a pregnancy and whether she was breast-feeding. The patient stated that she was not breast-feeding and there was no possibility of pregnancy. Approximately 3½ hours after the I-131 administration, the licensee received the positive results of a pregnancy test previously ordered by the patient's referring physician. The licensee had not been aware that the referring physician had ordered the pregnancy test.

Upon notification of the pregnancy, the licensee told the patient she was pregnant and attempted to minimize the potential exposure to the fetus by having the patient increase fluid intake in order to flush the free iodine from her system. The licensee also notified the patient's referring physician of the event. Ultrasound performed following identification of the pregnancy confirmed that the patient had been approximately 13½ weeks pregnant with twins at the time of the procedure.

The licensee does not expect the patient to experience any ill effects. The dose equivalent to each fetus was estimated to be about 0.38 sievert (Sv) (38 rem) and the dose equivalent to each fetal thyroid was estimated to be in excess of 2,000 Sv (200,000 rem). The licensee expected that such a dose would result in the following likely effects to the fetuses: (1) Thyroid ablation; (2) a 30 percent increase in the likelihood of microcephaly (small head size); (3) a 20 to 50 percent increase in the probability of childhood cancer; and (4) an increased probability for mental retardation. On the basis of this information, the patient elected to terminate the pregnancy.

Cause or Causes—This medical event appears to have been caused by the licensee's reliance on the patient's statements preceding the administration of I-131 that she was not pregnant. The patient's referring physician had ordered a pregnancy test for the patient preceding the administration of I-131; however, neither the patient nor the referring physician had informed the licensee. The referring physician believed that the pregnancy test was standard practice preceding all radiopharmaceutical therapy treatments.

Actions Taken To Prevent Recurrence

Licensee—The licensee modified its internal procedures for the administration of therapeutic radiopharmaceuticals, including diagnostic quantities of I-131 in excess of 7.4 megabecquerel (MBq) (200 microcurie [vvvCi]). All such procedures will include a statement that female patients between the ages of 10 and 55 years, without exception, prescribed to receive I-131 dosages equal to or greater than 7.4 MBq (200 vvvCi) shall obtain a "beta serum pregnancy test" within 24 hours preceding administration.

NRC—The NRC staff reviewed the licensee's revised procedures and determined that they were adequate to address the cause of this medical event and to preclude similar events. Because the licensee made a reasonable effort to obtain a confirmation from the patient that she was not pregnant before the I-131 administration, no NRC requirements were violated.

The corrective actions taken by the licensee were voluntary and were not required by NRC regulations.

This event is closed for the purpose of this report.

99–3 Medical Event Involving the Administration of Iodine-131 to a Pregnant Patient at Camden-Clark Memorial Hospital in Parkersburg, West Virginia

Date and Place—September 1, 1998; Camden-Clark Memorial Hospital; Parkersburg, West Virginia. The investigation on this event was completed in Fiscal Year 1999.

Nature and Probable Consequences—A patient was administered 340 megabecquerel (MBq) (9.2 millicurie [mCi]) of sodium iodide-131 (I-131) in accordance with licensee procedures for the treatment of hyperthyroidism. However, after the procedure was performed, the licensee learned that the patient was pregnant.

On July 15, 1998, the patient was scheduled for a thyroid uptake and scan involving the administration of 7.62 MBq (0.206 mCi) of iodine-123 (I-123). Before performing the procedure, the licensee's nuclear medicine technologist asked the patient if she was pregnant. The patient indicated that she was not pregnant and the technologist administered the dosage of I-123. On August 4, 1998, the patient was examined by one of the licensee's authorized users. As part of the examination, the patient was asked about her pregnancy status and she again stated that she was not pregnant. The licensee confirmed with the patient's referring physician a negative pregnancy test, performed on May 5, 1998. The authorized user determined that the patient was a good candidate for I-131 therapy based on the results of the thyroid scan and other tests and prepared a written directive for the administration of 333 MBq (9 mCi) of I-131. The authorized user informed the patient about the effects of I-131 to the fetus if it is administered to a pregnant patient. The patient signed a form acknowledging the risks associated with the procedure, as explained by the authorized user, and stated that she would not become pregnant for 1 year after the I-131 procedure.

The patient returned to the licensee's facility on September 1, 1998, and was administered 340 MBq (9.2 mCi) of I-131 in accordance with the written directive and other licensee procedures regarding the administration of radiopharmaceuticals. On October 5, 1998, the patient informed the licensee about recent information she received indicating that she was about 5 months pregnant. Subsequently, it was determined that the patient had been 14 weeks pregnant at the time of the administration.

The licensee personnel contacted a pediatric endocrinologist for assistance

in calculating the thyroid and the whole-body doses to the fetus. Using the information supplied by the licensee, the dose equivalent to the fetus was estimated to be about 0.023 sievert (Sv) (2.3 rem) and the dose equivalent to the fetal thyroid to be about 88 Sv (8,800 rem). The fetus received intra-amniotic thyroid hormone therapy from high-risk pregnancy specialists at a major university hospital.

On October 8, 1998, the licensee notified the patient's referring physician of the event and potential consequences. On October 20, 1998, the licensee notified the NRC of the event. The NRC staff engaged a medical consultant to evaluate the incident. The consultant concluded that: (1) the hypothyroidism developed in the fetal thyroid is expected to be permanent; (2) there is no increase in the risk of thyroid carcinoma; (3) a radiation-induced severe mental retardation is unlikely; and (4) the risk of leukemia and other childhood cancers is slightly higher than normal. At the time of the evaluation of this event the patient had decided to continue the pregnancy.

Cause or Causes—The cause of the event was the licensee's assumption that the patient was not pregnant at the time the radiopharmaceutical was administered based on the verbal and written statements made by the patient to the licensee staff.

Actions Taken To Prevent Recurrence

Licensee—The licensee is considering professional standards such as the 1996 American College of Radiology's "Standard for the Performance of Therapy with Unsealed Radioactive Sources," which specifies acceptable methods for ruling out pregnancy preceding the administration of therapeutic doses of radiopharmaceuticals. These include a pregnancy test obtained within 48 hours preceding administration of the radiopharmaceutical; or documented hysterectomy or tubal ligation; or post-menopausal condition.

NRC—An inspection was conducted to review the circumstances of the event. Because the licensee made a reasonable effort to obtain a confirmation from the patient that she was not pregnant before the I-131 administration, no NRC requirements were violated.

The corrective actions taken by the licensee were voluntary and were not required by NRC regulations.

This event is closed for the purpose of this report.

99–4 Sodium Iodide Radiopharmaceutical Misadministration at Holy Redeemer Hospital and Medical Center in Meadowbrook, Pennsylvania

Date and Place—September 14, 1999; Holy Redeemer Hospital and Medical Center; Meadowbrook, Pennsylvania.

Nature and Probable Consequences—A patient's referring physician intended for the patient to receive a thyroid uptake and scan. The licensee routinely performed this procedure using iodine-123 (I-123). However, because of an error, the patient was administered iodine-131 (I-131).

The authorized user intended to administer 11.1 megabecquerel (MBq) (0.300 millicurie [mCi]) of I-123 to a patient for the evaluation of hyperthyroidism. However, no one prepared a written directive to indicate the type of thyroid procedure to administer. The patient was mistakenly listed on the licensee's schedule for a whole-body imaging as part of an evaluation for thyroid cancer therapy. The licensee routinely performs this type of procedure using I-131. Therefore, the licensee's technologist administered a 196.1 MBq (5.3 mCi) dosage of I-131 without obtaining a written directive. As a result of this error, the licensee's medical physicist determined that the patient's thyroid received an unintended dose of about 41.9 gray (4,190 rad) based on a 65 percent uptake.

The NRC's consultant stated that the impact of the misadministration on the status of the patient's health should be negligible, with no expected long-term disability. The licensee believes that no harm was done to the patient because the patient's condition required additional thyroid treatment using I-131. The patient was notified of the misadministration on September 16, 1999, and a written report was prepared. The patient's referring physician was also notified.

Cause or Causes—The technologist performed a thyroid procedure using I-131 without a written directive from an authorized user. The licensee's authorized user was not involved in the process of administration of I-131 to clarify what type of thyroid evaluation was needed for the patient.

Actions Taken to Prevent Recurrence

Licensee—The licensee counseled the technologist on the importance of implementing the NRC regulations.

NRC—The NRC staff conducted a special safety inspection on September 17, 1999, and is evaluating enforcement options.

This event is closed for the purpose of this report.

Agreement State Licensees

The following nine events, which occurred at Agreement State licensees during fiscal year 1999, were determined to be significant enough for reporting as AOs to Congress.

AS 99–1 Medical Event Involving the Administration of Iodine-131 to a Pregnant Patient at Via Christi Regional Medical Center in Wichita, Kansas

Date and Place—May 7, 1999; Via Christi Regional Medical Center; Wichita, Kansas.

Nature and Possible Consequences—A pregnant patient was administered a 436.6 megabecquerel (MBq) (11.8 millicurie [mCi]) dosage of I-131 for a thyroid treatment.

Before the treatment, the technologist and the authorized user interviewed the patient regarding her pregnancy status and the patient certified that she was not pregnant and signed a consent form for the treatment. The patient then was administered the dosage of 436.6 MBq (11.8 mCi) of I-131. Approximately one week after the I-131 administration during a routine gynecological exam the patient learned that she was between 18 and 20 weeks pregnant.

A telephone report was made to the State of Kansas Radiation Control Program on May 12, 1999, and the State staff conducted an on-site investigation on May 13, 1999. They contacted the Department of Energy's Radiation Emergency Assistance Center/Training Site (REACTS) in Oak Ridge, Tennessee for assistance. REACTS provided initial medical guidance and dosimetry calculations and agreed to act as consultant to the attending physician.

The dose equivalent to the fetus was estimated to be about 0.03 sievert (Sv) (3 rem) and the dose equivalent to the fetal thyroid was about 253 Sv (25,300 rem). The fetal thyroid dose was considered to be ablative. The authorized user notified the patient and her husband about the fetal exposure and the possible consequences. The patient continued her pregnancy to full term.

Causes or Causes—The cause of the event was the licensee's assumption that the patient was not pregnant at the time the radiopharmaceutical was administered based on the verbal and written statements made by the patient to the licensee staff.

Actions Taken To Prevent Recurrence

Licensee—The licensee's radiation safety officer conducted an investigation and determined that the licensee's procedures and policies had been followed and that a reasonable effort

had been made to determine the pregnancy status of the patient preceding the administration of I-131. The licensee indicated a revision of its policy to require that all females of child-bearing age be tested for pregnancy preceding administration of therapeutic doses of radioactive material.

State Agency—The State staff conducted an investigation and agreed with the licensee's findings and believes that the licensee's proposal is adequate to prevent recurrence.

The corrective actions taken by the licensee were voluntary and were not required by the State Agency.

This event is closed for the purpose of this report.

AS 99–2 Industrial Radiography Occupational Overexposure at Global X-ray and Testing Corporation in Aransas Pass, Texas

Date and Place—December 31, 1998; Global X-ray and Testing Corporation; Aransas Pass, Texas.

Nature and Probable Consequences—A radiography trainee failed to retract a 4.6 terabecquerel (123 curie) source of iridium-192 into the shielded position after taking a radiograph (exposure). As a result, the trainee received an estimated TEDE of about 100 mSv (10 rem) and an extremity annual shallow-dose equivalent of about 30,000 to 50,000 mSv (3,000 to 5,000 rem).

On December 31, 1998, a radiographer and a radiography trainee were working at a job site. At about 6 p.m., the radiography trainee thought that the radiography work was completed and removed a tool belt with a dosimeter and an alarming ratemeter and placed it in the truck. However, the radiographer asked the trainee for assistance to obtain additional radiographs. The trainee tried to take an additional radiograph but the source would not crank and the trainee realized that the source was not retracted into the shielded position after the previous exposure. During this process, the trainee stood at the end of the guide tube for approximately 4 minutes at a distance of about 61 centimeters (2 feet) and touched the end of the guide tube where the source was located three or four times for about 2 or 3 seconds each time.

On January 10, 1999, signs of a radiation injury, including redness, dry skin, and slight swelling accompanied by aching pain, appeared in the index finger of the trainee's right hand. On January 27, 1999, the finger developed a callous. On follow-up of the symptoms, it was indicated that the trainee received an extremity annual shallow-dose equivalent of about 30,000 to 50,000 mSv (3,000 rem to 5,000 rem).

Cause or Causes—The company's president told the office manager that the radiographer could act as a trainer because the paperwork requesting to name the individual radiographer as a trainer had been mailed to the State's Bureau of Radiation Control. Therefore, the radiographer was sent with the trainee to the job site. However, the radiation safety officer later told the office manager and the president of the company that Global X-ray and Testing Corporation had not yet received a license amendment naming the radiographer as a trainer.

The radiographer had been a trainer for several other radiography companies and was familiar with the requirements for a trainer working with a trainee. However, the radiographer was new with the company, was not familiar with this trainee, and was not aware that the trainee was not a radiographer. Therefore, the trainee was not appropriately supervised.

The trainee thought that the work for the day was completed and took the belt off and put it in the truck. The dosimeter and alarming rate meter were on the tool belt and were not used during the additional exposures. An operating survey meter was available, but the trainee did not use it during the radiographs.

Actions Taken To Prevent Recurrence

Licensee—The licensee met with all the radiography personnel to discuss the incident and make a presentation on radiation safety. Trainees were told to verify they were assigned to work with a trainer before leaving for a job site and radiographers were told to verify whether or not they were assigned to work with trainees. A memorandum stating these requirements was added to the licensee's safety training program. The office manager was given a written reprimand, which stated that another violation of any radiation regulation or safety policy would result in immediate termination of employment. The radiographer and the radiographer trainee had their employment terminated.

State Agency—The licensee was cited for violations of the radiation safety program and an escalated enforcement conference was conducted. As a result, inspection of the licensee's program and the radiographers' audit frequency was increased. A "Preliminary Report for Assessment of Administrative Penalties" was compiled and the licensee requested a settlement conference with the State agency.

This event is closed for the purpose of this report.

AS 99–3 Industrial Radiography Overexposure to a Member of the Public at Professional Service Industries, Inc. in Seattle, Washington

Date and Place—December 16, 1998; Professional Service Industries, Inc.; Seattle, Washington.

Nature and Probable Consequences—The Washington State Department of Health was notified by Professional Service Industries, Inc. (PSI), that on December 16, 1998, a contractor's employee (member of the public) had accidentally handled a source guide tube containing a 2.22 terabecquerel (60 curie) iridium-192 radiography source at a temporary job site in Seattle, Washington.

A radiographer and a radiographer's assistant working for PSI were performing radiography at a large parking garage of an office building. The building entrances and the place where radiographs (exposures) were taken were properly posted. Two of the contractor's employees were allowed inside the parking garage along with the radiographer in order to mark locations for future radiographs. The radiographer was talking with the contractor's employees while a radiograph was in process. One of the contractor's employees needed a ladder and approached the ladder in the garage that was being used to support the radiography source collimator. The radiography source collimator was positioned on the top of the ladder. The contract employee's actions dislodged the collimator from the source guide tube. The radiographer's assistant, who was monitoring the floor above the parking garage, came back to the garage and saw the contractor's employee trying to reassemble the collimator and the guide tube. The radiographer's assistant immediately shouted a warning and the radiographer, being alerted, ran to crank in the source to a safe position.

PSI's radiation safety officer (RSO) at the Seattle office and the corporate RSO were notified and PSI began an immediate investigation, including a re-enactment. Preliminary shallow-dose equivalent estimates for the extremities ranged from 6 to 17 sievert (Sv) (600 to 1700 rem). The Washington State Department of Health's Radiation Control Program was notified approximately 4 hours after the incident occurred and an investigation team was dispatched the next morning. The Washington Radiation Control Program estimated that the individual received a shallow-dose equivalent of: (1) 6.8 Sv (680 rem) to the right thumb; (2) 1 Sv

(100 rem) to the right index finger; and (3) 1.7 Sv (170 rem) to the palm of the left hand. The TEDE was estimated to be less than 0.05 Sv (5 rem). A cytogenetic study by the Department of Energy's Radiation Emergency Assistance Center/Training Site in Oak Ridge, Tennessee, determined that the TEDE was in the range of 0.01 to 0.15 Sv (1 to 15 rem).

No physical signs of radiation damage to the contract employee's hands were observed by the primary physician during the weeks following the incident. The exposed individual and his physician were kept informed of the findings of the investigation.

Cause or Causes—The cause of the incident was attributed primarily to the radiographer's failure to: (1) maintain direct surveillance of a radiography operation; and (2) warn individuals in the area that an exposure was underway.

Actions Taken To Prevent Recurrence

Licensee—PSI has complied with the corrective actions recommended by the State by: (1) completing a 2-day training for the Seattle PSI radiography personnel based on the incident; (2) accelerating the schedule of field audits of the PSI Seattle radiography personnel; and (3) performing a cytogenetic study for the contractor's employee.

State Agency—PSI was cited for violations that resulted in the overexposure of a member of the public and for failure to maintain direct surveillance of the radiography operation by allowing a member of the public to enter a high-radiation area.

This event is closed for the purpose of this report.

AS 99–4 Gamma Stereotactic Radiosurgery (Gamma Knife) Misadministration at University of Maryland Medical Systems in Baltimore, Maryland

Date and Place—December 16, 1997; University of Maryland Medical Systems; Baltimore, Maryland. The State agency was notified of this misadministration on December 17, 1997, and performed an investigation of the event. The investigation was completed on October 23, 1998.

Nature and Probable Consequences—A patient was prescribed a radiation therapy treatment using a gamma knife device for a brain metastasis involving three lesions. The patient was prescribed 1,600 centigray (cGy) (1,600 rad) to the first lesion. However, because of an error in the treatment plan, the first lesion received 2,600 cGy (2,600 rad).

The neurosurgeon prepared the treatment plan for the first lesion. While treating the first lesion, the neurosurgeon prepared the treatment plans for the second and third lesions. However, the treatment plan for the second lesion unintentionally included the settings for a treatment of a focal point of the first lesion. The neurosurgeon and the oncologist reviewed the treatment plans but failed to identify any deviation from the prescribed dose. After the three lesions had been treated, the medical physicist who reviewed the dose calculations determined that an error occurred that resulted in an overdose to the first lesion. The licensee's oncologist determined that the administered overdose was within the range of acceptable prescribed dose for intracranial lesions. It was not anticipated that any complications would occur in addition to those normally seen with this type of therapy treatment.

The neurosurgeon notified the patient and the referring physician of the event on December 17, 1997. A letter confirming the discussion of the event was also sent to the patient on January 8, 1998. The patient died on January 20, 1998, of lung cancer.

Cause or Causes—This misadministration was caused by human error in preparing the treatment plans. The neurosurgeon and the oncologist did not follow procedures describing the team approach in treatment planning. Furthermore, the treatment planning procedure did not accurately reflect the role and responsibilities of each type of authorized user. Finally, the neurosurgeon and the oncologist reviewed and signed the treatment plan without identifying the unintended dose.

Actions Taken To Prevent Recurrence

Licensee—The licensee immediately implemented measures to ensure that treatment will only be carried out after planning for all treatment sites is completed. The medical physicist will participate in the entire treatment planning process and will review the treatment plan before the plan is executed. The neurosurgeon and the oncologist will collaborate at critical points in the process, such as dose selection, approval of the written plan, and initiation of treatment.

State Agency—The licensee was cited for violations that included training deficiencies, failure of the radiation safety committee and the radiation safety officer to assume their duties and responsibilities, failure to apply for and receive license amendments before changing procedures, and failure to comply with notification requirements. Enforcement action is pending.

This event is closed for the purpose of this report.

AS 99–5 Gamma Stereotactic Radiosurgery (Gamma Knife) Misadministration at Good Samaritan Hospital in Los Angeles, California

Date and Place—October 15, 1998; Good Samaritan Hospital; Los Angeles, California.

Nature and Probable Consequences—A patient was prescribed treatment of 9,000 centigray (cGy) (9,000 rad) to the left trigeminal nerve. However, the treatment was administered to the patient's right trigeminal nerve.

The licensee's medical physicist prepared a treatment plan for the wrong treatment site (right trigeminal nerve). The radiation oncologist, who was an authorized user on the license, signed the treatment plan without verifying the neurosurgeon's request, which listed the correct treatment site (left trigeminal nerve). Because the head restraint was positioned correctly on the patient, the medical physicist experienced difficulty positioning the patient in the gamma knife for the incorrect treatment site. In response to questions from the medical physicist, both the patient and the nurse informed him that the correct treatment site was the left trigeminal nerve. Inexplicably, this did not lead the medical physicist to recognize that he was about to treat the wrong trigeminal nerve. The error was discovered after the procedure was completed. As a result, the patient received a dose of 9000 cGy (9000 rad) to the wrong treatment site. During this procedure, the medical physicist was training another medical physicist on how to use the facility's gamma knife equipment. The patient's neurosurgeon was not present during this procedure because of a scheduling conflict, even though it was the licensee's standard practice for the neurosurgeon to be present.

Treatment of the intended left trigeminal nerve was postponed pending evaluation of the medical outcome of the treatment of the wrong trigeminal nerve. The patient's physician stated that the patient might experience increasing numbness on the affected area of the face within 1 to 18 months. If the numbness occurs, it may affect the plan for treating the prescribed left site.

Cause or Causes—The misadministration occurred because: (1) the medical physicist prepared a treatment plan for the wrong treatment site; (2) the radiation oncologist signed the treatment plan without properly

verifying it; and (3) the neurosurgeon was not present during the procedure, which differed from standard licensee practice. The radiation oncologist had not conferred with the patient before the treatment, which may have contributed to the incorrect site treatment. Although it is possible that his training of the other medical physicist distracted the medical physicist, this could not be determined as a contributing cause.

Action Taken To Prevent Recurrence

Licensee—The licensee revised the gamma knife treatment procedure to require that: (1) the treatment plan be verified before each procedure by the neurosurgeon, the radiation oncologist, and the medical physicist; (2) two of the three individuals (the neurosurgeon, the radiation oncologist, and the medical physicist) verify that the treatment program coordinates are correctly set; (3) either the neurosurgeon or the radiation oncologist verify the prescribed treatment site after the patient is positioned; and (4) the neurosurgeon and either the radiation physicist or the radiation oncologist be physically present during the treatment. Also, the radiation oncologist shall examine the patient before the treatment and verify the treatment site.

State Agency—The State cited the licensee for failure to report the therapeutic misadministration within 24 hours as required. The licensee was also cited for failure of the authorized user to verify the dosimetry plan and treatment programming.

This event is closed for the purpose of this report.

AS 99–6 Therapeutic Radiopharmaceutical Misadministration of Iodine-131 to the Wrong Individual at Hermann Hospital in Houston, Texas

Date and Place—August 4, 1999; Hermann Hospital; Houston, Texas.

Nature and Possible Consequences—A patient was scheduled to receive a 1010 megabecquerel (MBq) (27.3 millicurie [mCi]) dosage of iodine-131 (I-131) for a thyroid treatment. However, because of an identification error, the wrong individual was administered the I-131.

Two middle-aged female Asian patients were at the licensee's nuclear medicine department for different procedures. The patient who was scheduled to receive the I-131 dosage left the waiting room. The licensee's technologist approached the other patient to verify her name and date of birth by stating the name and date of birth of the patient who was to receive the I-131 treatment. The patient responded with "yes," although she did not understand the questions. She also indicated she understood the instructions previously given to her about the I-131 treatment. Therefore, she was administered the dosage of I-131. Later it was found that the I-131 was administered to the wrong individual. The licensee ordered another dosage of I-131, which was administered to the correct patient as prescribed.

The licensee estimated that: (1) The dose to the patient's thyroid as a result of the misadministration was about 220 gray (22,000 rad); (2) the patient has about an 85 percent chance of losing thyroid function; and (3) replacement thyroid hormone will be required indefinitely. The patient's attending physician was contacted and remedial action was taken.

Causes or Causes—The patient who received the misadministration spoke English as a second language. She was asked identification questions that could be answered "yes" or "no" without her actually understanding the meaning of the questions. No further verification of the patient's identification was performed.

Actions Taken To Prevent Recurrence

Licensee—The licensee has changed procedures for all outpatient therapy treatments that involve radioactive materials. The format of questions for patient identification will be revised to read "What is your name?" and "What is your date of birth?" instead of "Is your name * * *?" or "Is your date of birth * * *?" Outpatients will also be asked to show a picture form of identification. In the case of pediatric patients, the child's parent or guardian must confirm the patient's identification.

State Agency—The licensee was cited for administering a therapeutic dosage of I-131 to the wrong individual, who had a normally functioning thyroid, and for the authorizing physician user not being physically present when therapy procedures were being performed. Enforcement action is pending.

This event is closed for the purpose of this report.

AS 99–7 Therapeutic Radiopharmaceutical Misadministration of Iodine-131 to the Wrong Individual at Milton Hospital in Milton, Massachusetts

Date and Place—July 31, 1998; Milton Hospital; Milton, Massachusetts. The information on this event was sent to the NRC staff in March 1999.

Nature and Possible Consequences—A patient was prescribed a diagnostic dosage of 270.1 megabecquerel (MBq) (7.3 millicurie [mCi]) of technetium-99m (Tc-99m) for a thyroid scan. However, the patient was erroneously administered a therapeutic dosage of 318.2 MBq (8.6 mCi) of iodine-131.

The licensee's technologist administered the patient the diagnostic dosage of 270.1 MBq (7.3 mCi) of Tc-99m. After this procedure was finished, the patient was asked to remain in the waiting room while the thyroid scan was processed. Because of an identification error, the patient was taken again into the treatment area by the authorized user and was administered the therapeutic dosage of I-131. This dosage was intended for another patient who was still in the waiting room. The patient was informed of the error.

The licensee believes that no harm was done because the patient's condition required additional thyroid treatment using I-131.

Causes or Causes—The authorized user, who also was the primary care physician for both patients, was aware that both patients were to have I-131 treatment. However, on the day of the incident, the patient should have received only the Tc-99m dosage. Since the authorized user failed to follow the established Quality Management Program (QMP) procedures requiring verification of the patient's identity by more than one method before administering radioactive material, the wrong individual was administered the I-131.

Actions Taken To Prevent Recurrence

Licensee—The licensee modified its procedures as follows: (1) The authorized user will review the chart for each therapy patient; (2) each chart will contain a photograph of the patient; (3) each patient will be identified by checking the photograph in the chart; (4) preceding the administration of radiopharmaceuticals, a band will be placed on the wrist of the identified therapy patient; and (5) the authorized user and the technologist will be present during the radiopharmaceutical administration. The written directive form for iodine therapy dosages was modified to include the changes made in the procedures.

State Agency—The State investigated this event on September 10 and 11, 1998, and the licensee was issued a Notice of Violation on September 14, 1998, for not following its submitted procedures for radiopharmaceutical therapy as outlined in the QMP. The State acknowledged the action taken by the licensee to prevent recurrence of this incident.

This event is closed for the purpose of this report.

AS 99–8 Therapeutic Radiopharmaceutical Misadministration of Samarium-153 at Merle West Medical Center in Klamath Falls, Oregon

Date and Place—March 10, 1999; Merle West Medical Center; Klamath Falls, Oregon.

Nature and Probable Consequences—A patient with metastatic prostate cancer was prescribed a dosage of 2,294 megabecquerel (MBq) (62 millicurie [mCi]) of samarium-153 (Sm-153) to palliate bone pain. However, because of an error, the patient was administered a dosage of 3,589 MBq (97 mCi) of Sm-153. The recommended dosage for the Sm-153 procedure is "1 mCi per kg of body weight" (37 MBq per kilogram [kg]) (1 mCi per 2.2 pounds [lb]).

The misadministration resulted in an additional dose of 200 centigray (cGy) (200 rad) to the bone marrow. The patient's other organs received additional doses that were below 1,000 cGy (1,000 rad). The hospital checked with the manufacturer, DuPont Merck Pharmaceutical Company, concerning possible side effects of the misadministration. The pharmaceutical company indicated that other studies have been done using 74 to 92.5 MBq per kg (2.0 to 2.5 mCi per 2.2 lb) of Sm-153 with no significant side effects.

Both the attending physician and the patient's family were notified of the misadministration.

Cause or Causes—This event was caused by a human error. The licensee indicated that the dosage was calculated using the patient's weight in pounds instead of kilograms.

Actions Taken To Prevent Recurrence

Licensee—The incident was discussed with the Radiation Safety Committee (RSC). The licensee revised its Quality Management Program (QMP) for the use of Sm-153 and strontium-89 therapy to require the prescribing physician to calculate and personally order the dosage. The RSC approved the changes to the QMP. The technologist involved in the procedure was counseled concerning therapy procedures, dosage administrations, and the importance of rechecking calculations.

State Agency—The State cited the licensee for failure to report the misadministration within the required time.

This event is closed for the purpose of this report.

AS 99–9 Sodium Iodide Radiopharmaceutical Misadministration at St. Edward Mercy Medical Center in Fort Smith, Arkansas

Date and Place—December 7, 1998; St. Edward Mercy Medical Center; Fort Smith, Arkansas.

Nature and Probable Consequences—A patient was prescribed a thyroid scan using 222 megabecquerel (MBq) (6 millicurie [mCi]) dosage of technetium-99m (Tc-99m) pertechnetate. However, the patient was administered about a 148 MBq (4 mCi) dosage of iodine-131 (I-131).

The medical center routinely received unit dosages from a nuclear pharmacy packaged in appropriately sized syringes ready for injection to patients. However, in this case, instead of being in a syringe, the dosage was in a glass vial within a large lead container. The shipping package also contained two dispensing straws. The shipping container, the lead "pig," and the vial were labeled by the nuclear pharmacy as 222 MBq (6 mCi) of Tc-99m. The licensee's staff surveyed the incoming package but saw nothing unusual. The licensee's staff attributed the change in the appearance of the package (a glass vial instead of a syringe and the presence of the dispensing straws) to a mistake made by the nuclear pharmacy. Therefore, the oral solution of the I-131 dosage, mislabeled as Tc-99m, was drawn into a syringe and was injected into the patient.

The licensee's medical physicist determined that the dose to the patient's thyroid based on the radiopharmaceutical manufacturer's package insert was about 48 gray (4,800 rad). The patient was notified of the misadministration by the licensee's radiation safety officer (RSO). The patient's attending physician was also notified of the circumstances and possible complications. The RSO advised the patient to continue long-term follow-up with the primary care physician.

Cause or Causes—This event was caused by the nuclear pharmacy mislabeling a radiopharmaceutical dosage. Also, it appears that the medical center's nuclear medicine staff did not question or address the unusual package upon receipt.

Actions Taken To Prevent Recurrence

Licensee—The licensee reported this event to the Arkansas Department of Health on December 7, 1998, and submitted a written report on December 8, 1998. The center's management revised the policy and procedure for the receipt of radiopharmaceuticals from the nuclear pharmacy. The revision states that only I-131 radioactive dosages will be accepted in glass vials. Any suspect or other labeled isotope received in glass vials will be questioned or returned to the pharmacy for isotope verification. The nuclear pharmacy indicated that policies and procedures for dispensing radiopharmaceutical therapy products have been revised to prevent recurrence of similar incidents.

State Agency—The State staff performed an on-site investigation at the medical center and the nuclear pharmacy on December 8, 1998.

The investigation discovered violations associated with license conditions and regulations for activities conducted at the nuclear pharmacy.

This event is closed for the purpose of this report.

Dated at Rockville, Maryland, this 1st day of March, 2000.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Secretary of the Commission.

[FR Doc. 00–5473 Filed 3–6–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for Office and Management Budget Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 15g–4, SEC File No. 270–347, OMB Control No. 3235–0393; Rule 15g–5, SEC File No. 270–348, OMB Control No. 3235–0394; Rule 17a–8, SEC File No. 270–53, OMB Control No. 3235–0092; Rule 17Ac2–1 and Form TA–1, SEC File No. 270–95, OMB Control No. 3235–0084; Rule 19d–2, SEC File No. 270–204, OMB Control No. 3235–0205.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commmission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 15g–4 requires brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. It is estimated that approximately 270 respondents incur an average of 100 hours annually to comply with the rule.

Rule 15g–5 requires brokers and dealers to disclose to customers the amount of compensation to be received by their sales agents in connection penny stock transactions. It is estimated that approximately 270 respondents incur an average of 100 hours annually to comply with the rule.

Rule 17a–8 requires brokers and dealers to make and keep certain reports and records concerning their currency and monetary instrument transactions. The requirements allow the Commission to ensure that brokers and dealers are in compliance with the Currency and Foreign Transactions Reporting Act of 1970 ("Bank Secrecy Act") and with the Department of the Treasury regulations under that Act. The reports and records required under this rule initially are required under Department of the Treasury regulations. Additional burden hours and costs are not imposed by this rule.

Rule 17Ac2–1 requires transfer agents to register with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, and to amend their registration. It is estimated that on an annual basis, the Commission will receive approximately 250 applications for registration on Form TA–1 from transfer agents required to register as such with the Commission. Included in this figure are amendments made to Form TA–1 as required by Rule 17Ac2–1(c). Based upon past submissions, the staff estimates that the average number of hours necessary to comply with the requirements of Rule 17Ac2–1 is one and one-half hours, with a total burden of 375 hours.

Rule 19d–2 prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations ("SRO") for which the Commission is the appropriate regulatory agency. It is estimated that approximately 30 respondents will utilize this application procedure annually, with a total burden of 90 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–2 is 3 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 2, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5433 Filed 3–6–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–6974]

National Preparedness for Response Exercise Program (PREP)

AGENCY: Coast Guard, DOT.

ACTION: Request for comments on PREP triennial exercise schedule for 2000, 2001 and 2002.

SUMMARY: The Coast Guard, the Environmental Protection Agency (EPA), the Research and Special Programs Administration (RSPA) and the Minerals Management Service (MMS), in concert with the states, the oil industry and concerned citizens, developed the Preparedness for Response Exercise Program (PREP). This notice announces the PREP triennial cycle, 2000–2002, requests comments from the public, and requests industry participants to volunteer for scheduled PREP Area exercises.

DATES: Comments and related material must reach the Docket Management Facility on or before May 8, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following methods:

(1) By mail to the Docket Management Facility, (USCG–2000–6974), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and documents, as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice and general information regarding the PREP program and the schedule, contact Mr. Robert Pond, Office of Response, Plans and Preparedness Division (G–MOR–2), U.S. Coast Guard Headquarters, 2100 2nd St. SW., Washington, DC 20593–0001, telephone 202–267–6603, fax 202–267–4065 or e-mail rpond@comdt.uscg.mil. For questions on viewing, or submitting material to, the docket, contact Ms. Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION: The PREP Area exercise schedule and exercise design manuals are available on the Internet at http://www.uscg.mil/hq/g-m/gmhome.htm (see index, then oil response). To obtain a hard copy of the exercise design manual, contact Ms. Melanie Barber at the Research and Special Programs Administration, Office of Pipeline Safety, at 202–366–4560. The 1994 PREP Guidelines booklet is available at no cost by writing or faxing the TASC Dept Warehouse, 3341 Q 75th Avenue, Landover, MD 20785, fax: 301–386–5394. The stock number of the manual is USCG–X0191. Please indicate the quantity when ordering. Quantities are limited to 10 per order.

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number [USCG–2000–6974], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½

by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Background and Purpose

The Coast Guard, EPA, RSPA and MMS developed the National Preparedness for Response Exercise Program (PREP) to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the plan holder's organization. External exercises extend beyond the plan holder's organization to involve other members of the response community. External exercises are separated into two categories: (1) Area exercises, and (2) Government-initiated unannounced exercises. These exercises are designed to evaluate the entire response mechanism in a given area to ensure adequate pollution response preparedness.

Since 1994, the USCG, EPA, MMS, and Office of Pipeline Safety (OPS) have published a triennial schedule of Area exercises. In short, the Area exercises involve the entire response community (Federal, State, local, and industry participants) and therefore, require more extensive planning than other oil spill response exercises. The PREP Guidelines describe all of these exercises in more detail. This notice announces the next triennial schedule of Area exercises.

If a company wants to volunteer for an Area exercise, a company representative may call either the Coast Guard or EPA On-Scene Coordinator (OSC) where the exercise is scheduled. Alternatively, if a company is interested in participating in an exercise where Coast Guard is the OSC, a representative may call Mr. Robert Pond at 202–267–6603, and he can facilitate scheduling the volunteer. Although either method will provide the same result, contact at the local level, with the OSC, is preferred.

The following is the revised PREP schedule for calendar years 2000, 2001, and 2002.

PREP SCHEDULE—GOVERNMENT-LED AREA EXERCISES

Area	Agency	Date/qtr [1]	Participant
Calendar Year 2000			
Florida Panhandle Area (MSO Mobile OSC)	CG	4/10–14	
EPA Region IX (EPA OSC)	EPA	7/10–14	
Northwest Area (MSO Portland OSC)	CG	8/14–18	
Western Lake Erie Area (tentative) (MSO Toledo OSC)	CG	9/18–22	Sun Oil.
Detroit Area (tentative) (MSO Detroit OSC)	CG	9/18–22	Detroit Edison.
North Coast Area (MSO San Francisco OSC)	CG	12/4–8	
Calendar Year 2001			
SW Louisana/SE Texas Area (MSO Port Arthur OSC)	CG	1	
New York, NY Area (Activities NY OSC)	CG	2	
Saulte Ste. Marie, MI Area (COTP Saulte Ste. Marie OSC)	CG	2	
EPA Region I Area (EPA OSC)	EPA	3	
Chicago Area (MSO Chicago OSC)	CG	3	
Maryland Coastal Area (Activities Baltimore OSC)	CG	4	
Calendar Year 2002			
Alabama/Mississippi Area (MSO Mobile OSC)	CG	1	
South Florida Area (MSO Miami OSC)	CG	2	
Boston Area (MSO Boston OSC)	CG	2	
Hawaii/Samoa Area (MSO Honolulu OSC)	CG	3	
Central CA Coast Area (MSO San Francisco OSC)	CG	3	
EPA Region VIII Area (EPA OSC)	EPA	4	

PREP SCHEDULE—INDUSTRY-LED EXERCISES

Area	IND [2]	Date/qtr	Lead
Caribbean Area (MSO San Juan OSC)	v		
EPA Region III Area (EPA OSC)	f (nonmtr)		
Cleveland, OH Area (MSO Cleveland OSC)	f (mtr)		
Jacksonville Area (MSO Jacksonville OSC)	v		
New Orleans Area (MSO New Orleans OSC)	p		
Commonwealth of N. Marianas Islands Area (MSO Guam OSC)	v		
EPA Alaska Area (EPA OSC)	f (nonmtr)		
EPA Region IV Area (EPA OSC)	f (nonmtr)		
Southeast Alaska Area (MSO Juneau OSC)	v		
Philadelphia Area (MSO Philadelphia OSC)	f (mtr)		
Charleston Area (MSO Charleston OSC)	f (mtr)		
EPA Region II (EPA OSC)	f (nonmtr)		

PREP SCHEDULE—INDUSTRY-LED EXERCISES

Area	IND [2]	Date/qtr	Lead
Calendar Year 2001			
Guam Area (MSO Guam OSC)	v		
San Diego, CA Area (MSO San Diego OSC)	f		
Morgan City Area (MSO Morgan City OSC)	v		
EPA Region VII Area (EPA OSC)	f (nonmtr)		
Long Island Sound Area (COTP Long Island Sound)	f		
Savannah Area (MSO Savannah)	p		
Southern Coastal NC Area (MSO Wilmington OSC)	v		
San Francisco Bay & Delta Region Area (MSO San Francisco OSC)	f (mtr)		
Duluth-Superior Area (MSO Duluth OSC)	f		
EPA Region V Area (EPA OSC)	f		
South Texas Coastal Zone Area (MSO Corpus Christi OSC)	v		
LA/LB North Area (MSO LA/LB OSC)	v		
Prince William Sound (MSO Valdez OSC)	p		
Calendar Year 2002			
Eastern Wisconsin Area (MSO Milwaukee OSC)	v		
EPA Oceania Area (EPA OSC)	f (non-mtr)		
Eastern Great Lakes Area (MSO Buffalo OSC)	f (mtr)		
EPA Region II (EPA OSC)	p		
Tampa Area (MSO Tampa OSC)	v		
Northwest Area (MSO Puget Sound OSC)	v		
Southern LA/LB Area (MSO LA/LB OSC)	f (mtr)		
Virginia Coastal Area (MSO Hampton Rds OSC)	f (mtr)		
Maine/New Hampshire Area (MSO Portland OSC)	v		
EPA Region VI Area (EPA OSC)	f (non-mtr)		
Providence Area (MSO Providence OSC)	v		
Houston/Galveston Area (MSO Houston/Galveston OSC)	p		

[1] *Quarters:* 1 (Jan–March); 2 (April–June); 3 (July–Sept); 4 (Oct–Dec). Note also that calendar year 2000 exercise areas and dates are fixed. For 2001 and 2002 government-led area exercises, the designated areas are fixed, the actual quarter in which a listed area will be exercised is subject to change based on workload projections in each of those areas as the exercise year approaches.

[2] *Industry:* v—vessel; f (mtr)—marine transportation-related facility; f (nonmtr)—nonmarine transportation-related facility; p—pipeline.

Dated: February 25, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–5486 Filed 3–6–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on October 7, 1999, [FR 64, pages 54720–54721].

DATES: Comments must be submitted on or before April 5, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

1. Title: Certification of Repair Stations—FAR Part 145.

Type of Request: Extension of currently approved collection.

Control Number: 2120–0010.

Form(s): FAA Form 8310–3.

Affected Public: An estimated 1100 applicants who wish repair station certification.

Abstract: Information is collected from applicants who wish repair station certification. Applicants submit FAA Form 8310–3 to the appropriate FAA district office for review. If the application is satisfactory, an onsite inspection is conducted. When all the requirements have been met, an air agency certificate and repair station operations specifications with appropriate ratings and limitations are issued.

Estimated Annual Burden Hours: 304,647 burden hours annually.

2. Title: Operating Requirements: Commuter and On-Demand Operation.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0039.

Form(s): FAA Form 8070–1.

Affected Public: An estimated 2765 air carrier and commercial operators.

Abstract: Each operator who seeks to obtain, or is in possession of, an air carrier or FAA operating certificate must comply with the requirements of 14 CFR Part 135 in order to maintain data which is used to determine if the carrier is operating in accordance with minimum safety standards.

Estimated Annual Burden Hours: 1,128,904 burden hours annually.

3. Title: Recording of Aircraft Conveyance and Security Documents.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0043.

Form(s): AC Form 8050–41.

Affected Public: 55,406 respondents.

Abstract: Approval is needed for security conveyances, such as mortgages, submitted by the public for recording against aircraft, engines, propellers, and spare parts locations.

Estimated Annual Burden Hours: 55,406 burden hours annually.

4. Title: Fleet and Operations Reporting: Grand Canyon National Park.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0606.

Form(s): N/A.

Affected Public: 24 operators.

Abstract: Each operator conducting air tours in the Grand Canyon National Park must comply with the collection requirements for that airspace. The FAA will use the information it collects and reviews to monitor compliance with the regulations and, if necessary, take enforcement action against violators of the regulations.

Estimated Annual Burden Hours: 48 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 2, 2000.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 00–5491 Filed 3–6–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Cleveland for Cleveland Hopkins International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Cleveland Hopkins International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before August 23, 2000.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is February 25, 2000. The public comment period ends April 25, 2000.

FOR FURTHER INFORMATION CONTACT: Lawrence King, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 734–487–7293. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Cleveland Hopkins International Airport are in compliance with applicable requirements of part 150, effective February 25, 2000. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 23, 2000. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are bound by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The City of Cleveland submitted to the FAA on February 23, 2000 noise exposure maps, descriptions and other documentation which were produced during a noise compatibility planning study conducted from January 1998 through February 2000. It was requested that the FAA review this material as the noise exposure maps, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed it review of the noise exposure maps and related descriptions submitted by the city of Cleveland. The specific maps under consideration are the current Noise Exposure Map depicted as Exhibit 1–1 and the 2006 Noise Exposure Map depicted as Exhibit 1–3 in the submission. The FAA has determined that these maps for Cleveland Hopkins International Airport are in compliance with applicable requirements. This determination is effective on February 25, 2000. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the map were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which

consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Cleveland Hopkins International Airport, also effective on February 25, 2000. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 23, 2000.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following:

Federal Aviation Administration, 800 Independence Avenue, SW, Room 617, Washington, DC 20591

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111

City of Cleveland, Department of Port Control, 5300 Riverside Drive, Cleveland, Ohio 44135–3193

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, on February 25, 2000.

James M. Opatrny,

Acting Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 00–5492 Filed 3–6–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. RSPA–99–5611; Notice 18]

Pipeline Safety: Northwest Pipeline Corporation Approved for Pipeline Risk Management Demonstration Program

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice of risk demonstration project approval and finding of no significant impact.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) has issued a Risk Management Demonstration Project Order authorizing Northwest Pipeline Corporation (a part of Williams Gas Pipeline) to participate in the Pipeline Risk Management Demonstration Program. OPS has also made a finding that Northwest's demonstration project will have no significant impacts on the environment.

ADDRESSES: Comments on this or any other demonstration project will be accepted in the Docket throughout the 4-year demonstration period. Comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, or you can E-Mail your comments to ops.comments@rspa.dot.gov. Comments should identify the docket number RSPA–99–5611. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this document. Contact the Dockets Unit, (202) 366–5046, for docket material. Comments may also be reviewed on line at the DOT Docket Management System web site at http://dms.dot.gov/.

SUPPLEMENTARY INFORMATION:

Project Authorization

On January 11, 2000, OPS, pursuant to 49 U.S.C. 60126, issued Northwest Pipeline Corporation a Risk Management Demonstration Project Order authorizing Northwest to conduct a risk management project on its interstate natural gas transmission pipeline system that extends from Sumas, Washington to the San Juan Basin in Colorado. OPS has determined, after a comprehensive review of Northwest's demonstration project, that the project is expected to provide superior safety.

More detailed descriptions of all aspects of the Northwest demonstration project, including the OPS rationale for approving the project, are available in the following documents:

(1) 64 FR 67602, "Pipeline Safety: Intent to Approve Project and Environmental Assessment for the Northwest Pipeline Corporation Pipeline Risk Management Demonstration Project," December 2, 1999.

(2) "Demonstration Project Prospectus: Northwest Pipeline Corporation," available by contacting Elizabeth M. Callsen at 202–366–4572. Includes maps of the demonstration segments.

(3) "Northwest Pipeline Corporation—Application for DOT–OPS Risk Management Demonstration Program," March 18, 1999, available via the Pipeline Risk Management Information System (PRIMIS), on the OPS Home Page at http://ops.dot.gov.

(4) Northwest Pipeline Corporation Final Work Plan, December 17, 1999, available via the Pipeline Risk Management Information System (PRIMIS), on the OPS Home Page at http://ops.dot.gov.

(5) "Risk Management Demonstration Project Order" for Northwest Pipeline Corporation, January 11, 2000.

Finding of No Significant Impact (FONSI)

OPS has reviewed Northwest's project for conformity with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality implementing regulations (40 CFR 1500–1508), and Department of Transportation Order 5610.1c, Procedures for Considering Environmental Impacts. OPS conducted an Environmental Assessment of Northwest's project (64 FR 67602, "Pipeline Safety: Intent to Approve Project and Environmental Assessment for the Northwest Pipeline Corporation Pipeline Risk Management Demonstration Project," December 2, 1999).

OPS received no public comment on the Environmental Assessment. Based on the analysis and conclusions reached in the Environmental Assessment and the analyses conducted in the above-listed documents, OPS has determined

that there are no significant impacts on the environment associated with this action. The Environmental Assessment and the other above-listed documents are incorporated by reference into this FONSI.

To summarize, OPS believes that the risk control activities Northwest is proposing for the Demonstration Project will provide superior protection for people living near the Northwest pipeline system when compared to current regulatory requirements. Although the project is expected to provide environmental benefits, due to the minimal environmental impact associated with gas pipeline failures, these beneficial impacts are not expected to be significant. The additional environmental protection comes primarily from reducing the likelihood that pipeline failures will occur. If the number of failures is reduced, the cumulative environmental damage from these failures will also be reduced. The reduction in the likelihood of future pipeline failures is expected to be realized system-wide through several activities and programs that exceed regulatory requirements, including:

- An expanded and enhanced geological hazards program. Northwest should improve its ability to anticipate when land movement near its pipeline might occur, and take appropriate action to prevent failure.
- The stress corrosion cracking coupon monitoring program. Northwest should be able to better understand when this condition might occur, and thus take appropriate remedial action.

In addition, Northwest is proposing specific activities to reduce the risk from increased population at the specific sites identified in the Environmental Assessment. These activities include:

- Enhanced third party damage prevention activities should reduce the likelihood that excavators will damage the line.
- Internal inspection and repair of anomalies will produce additional protection from corrosion, construction defects, and prior outside force damage.
- Installation of remote operators on block valves near areas of relatively high land movement potential. These remotely operated valves will allow the gas control center to rapidly isolate a section of the line if a failure occurs, thereby minimizing the duration of any fire that might occur.
- Improved training and exercises with emergency personnel on how to respond effectively to pipeline failures.

More detailed information on these risk control activities and their expected impacts is available in the Environmental Assessment referenced previously.

Issued in Washington, DC on March 1, 2000.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–5493 Filed 3–6–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 4, 5, and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages

1. *Purpose.* This order delegates certain authorities of the Director to subordinate ATF officers and prescribes the subordinate ATF officers with whom persons file documents which are not ATF forms.

2. *Cancellation.* ATF O 1130.2, Delegation Order—Delegation to Bureau Headquarters Personnel of Authorities of the Director in 27 CFR Parts 4, 5, and 7, Federal Alcohol Administration Act, dated 5/29/96, is canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to labeling and advertising of wine, distilled spirits and malt beverages. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–1 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR Parts 4, 5, and 7 to subordinate officers. Also, this ATF order prescribes the subordinate officers with whom applications, notices, and reports required by 27 CFR Part 4, 5, and 7, which are not ATF forms, are filed. The attached table identifies the regulatory sections, documents and authorized ATF officers. The authorities in the table may not be redelegated. An ATF organization chart showing the directorates involved in this delegation order has been attached.

Bradley A. Buckles,

Director.

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED ATF OFFICIALS

Regulatory section	Officer(s) authorized to act or receive document
§ 4.3(a)	Chief, Product Compliance Branch.
§ 4.21(b)(3)(iii)	Chief, Product Compliance Branch.
§ 4.23(c)(2)	Chief, Product Compliance Branch.
§ 4.24(a)(1), (b)(1) and (c)(1)	Chief, Product Compliance Branch.
§ 4.30(b)(1)	Area Supervisor or Chief, Puerto Rico Operations.
§ 4.33(b)	Specialist, Product Compliance Branch.
§ 4.37(c)	Specialist, Product Compliance Branch.
§ 4.38(h)	Area Supervisor, Chief, Puerto Rico Operations, Specialist, Product Compliance Branch, or Chief, Alcohol Import/ Export Branch.
§ 4.39(a) (4) and (5)	Specialist, Product Compliance Branch.
§ 4.39(d)	Specialist, Product Compliance Branch.
§ 4.39(g)	Specialist, Product Compliance Branch.
§ 4.39(i)(2)(iii)	Specialist, Product Compliance Branch.
§ 4.39(i)(3)	Specialist, Product Compliance Branch.
§ 4.39(j)	Specialist, Product Compliance Branch.
§ 4.40(c)	Specialist, Product Compliance Branch.
§ 4.50 (a) and (b)	Specialist, Product Compliance Branch.
§ 4.52	Specialist or Clerk, Product Compliance Branch.
§ 4.64(a) (4) and (5)	Specialist, Market Compliance Branch.
§ 5.3(a)	Chief, Product Compliance Branch.

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED ATF OFFICIALS—Continued

Regulatory section	Officer(s) authorized to act or receive document
§ 5.22(k) (1) and (2), and (1)(2).	Chief, Product Compliance Branch.
§ 5.26(b)	Specialist, Product Compliance Branch.
§ 5.28	Specialist, Product Compliance Branch.
§ 5.33(g)	Area Supervisor, Chief, Puerto Rico Operations, Specialist, Product Compliance Branch, or Chief, Alcohol Import/ Export Branch.
§ 5.34(a)	Specialist, Product Compliance Branch.
§ 5.35(a)	Specialist, Product Compliance Branch.
§ 5.36(d)	Specialist, Product Compliance Branch.
§ 5.38(c)	Specialist, Product Compliance Branch.
§ 5.42(a) (4) and (5) and (b)(7).	Specialist, Product Compliance Branch.
§ 5.46(d)	Specialist, Product Compliance Branch.
§ 5.51(c)	Specialist, Product Compliance Branch.
§ 5.55 (a) and (b)	Specialist, Product Compliance Branch.
§ 5.55(c)	Specialist or Clerk, Product Compliance Branch.
§ 5.65(a) (4) and (5) and (g)	Specialist, Market Compliance Branch.
§ 7.3(a)	Chief, Product Compliance Branch.
§ 7.20(c)(1)	Area Supervisor or Chief, Puerto Rico Operations.
§ 7.23(b)	Specialist, Product Compliance Branch.
§ 7.24(g)	Specialist, Product Compliance Branch.
§ 7.25(a)	Specialist, Product Compliance Branch.
§ 7.29(a)(4) and (a)(5) and (d).	Specialist, Product Compliance Branch.
§ 7.31(c)	Specialist, Product Compliance Branch.
§ 7.41	Specialist, Product Compliance Branch.
§ 7.54(a) (4) and (5)	Chief, Market Compliance Branch.

ATF Organization (Not a complete organizational chart.)

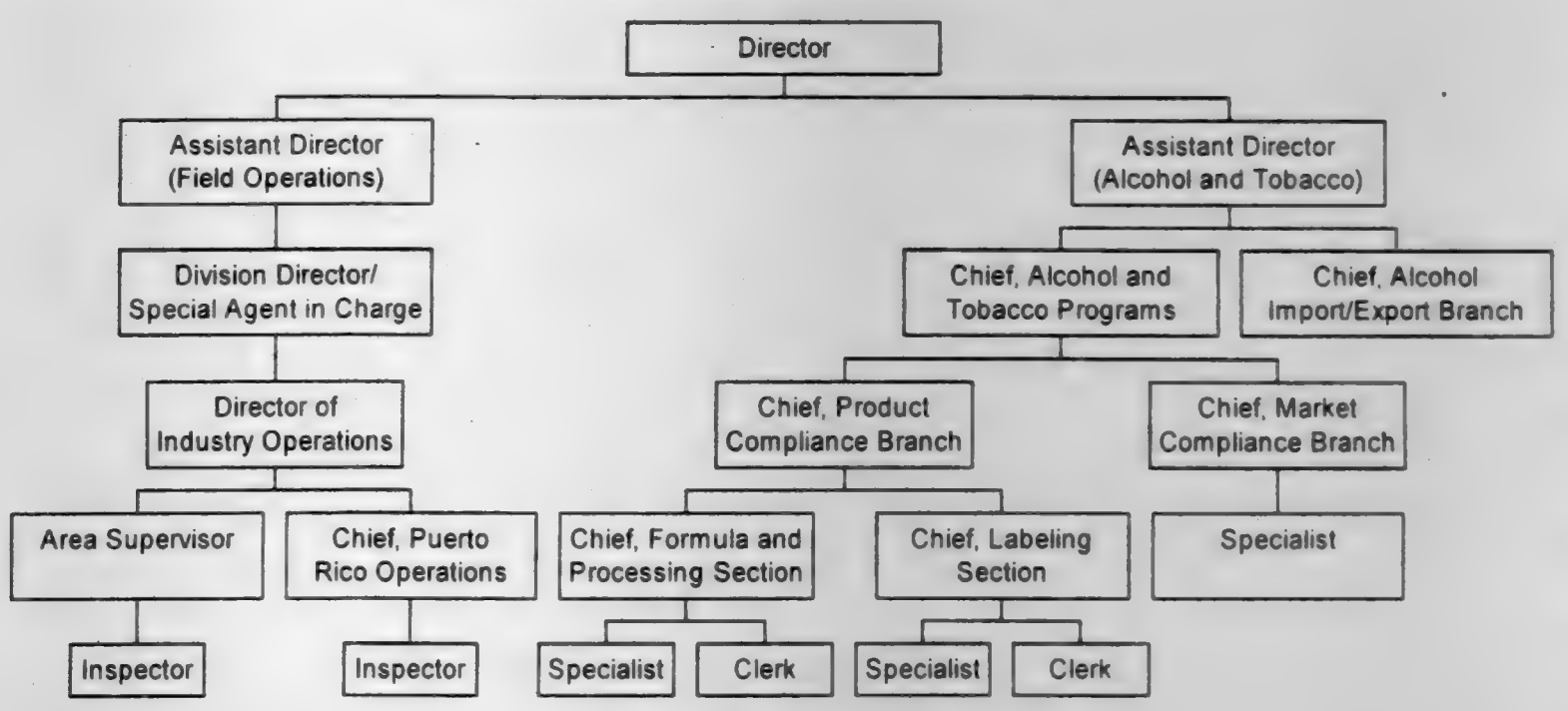

[FR Doc. 00–5359 Filed 3–6–00; 8:45 am]
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Federal Register

Tuesday,
March 7, 2000

Part II

Department of Education

Indian Education Professional Development Grant Program; Notice

DEPARTMENT OF EDUCATION

Indian Education Professional Development Grant Program

AGENCY: Office of Indian Education, Department of Education.

ACTION: Notice of proposed priorities for fiscal year (FY) 2000 and subsequent fiscal years.

SUMMARY: The Secretary announces proposed funding priorities under the Indian Education Professional Development Grant program. The Secretary may use these priorities for competitions in FY 2000 and in subsequent fiscal years. The Secretary takes this action to support training opportunities to increase the number of Indian teachers, education administrators and personnel in other fields.

DATES: We must receive your comments on or before April 6, 2000.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW, FOB–6 Room 3W111, Washington, D.C. 20202–6335. Comments may be sent through the Internet: _Cathie—Martin@ed.gov. You must include the term "Professional Development Program" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Cathie Martin. Telephone: (202) 260–1683. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

This notice does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of final priorities.

Invitation To Comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priority, in Room 3W115, 400 Maryland Avenue, SW, Washington, DC between the hours of 9 a.m. and 5:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or printer magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8330.

SUPPLEMENTARY INFORMATION:

General

The Secretary has authority to establish priorities, including absolute preferences, under section 75.105(c)(3) of the Education Department General Administrative Regulations (EDGAR). This notice contains proposed absolute priorities for the Professional Development program authorized by Section 9122 of Subpart 2 of Part A, Title IX of the Elementary and Secondary Education Act (ESEA) of 1965; 20 U.S.C. 7832.

The Professional Development program is a competitive grant program that supports activities to increase the number of qualified Indian individuals in professions that serve Indian people. Individuals who receive training under the Professional Development program are required to perform work related to the training received and that benefits Indian people, or are required to repay all or a prorated part of the assistance received. The requirements for the payback provision (required by Section 9122(h) of ESEA; 20 U.S.C. 7832(h)) are governed by 34 CFR 263. For the purposes of this program, the term "Indian" includes both American Indians and Alaska Natives as defined in 34 CFR 263.3(b) and Sec. 9161(4) of ESEA (20 U.S.C. 7881(4)).

One component of the Professional Development program supports training for qualified Indian individuals to: (1) Become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and (2) improve the skills of Indian individuals serving in these capacities. The second component of the program supports training of qualified Indian individuals in fields other than education that result in a degree at the graduate level. The proposed priorities support these training efforts by focusing all or a portion of available funds for new awards on projects that train Indians to become teachers and administrators, to improve the skills of individuals serving in those capacities, and to train personnel in fields other than education.

The Secretary also proposes procedures for implementation of the statutory requirement to give a preference for awards under the Professional Development program to: (1) programs that provide training to Indian individuals (Section 9122(e)(2); 20 U.S.C. 7832(e)(2)) and (2) eligible Indian tribes, Indian organizations and Indian institutions of higher education (Section 9153 of ESEA; 20 U.S.C. 7873).

The Secretary will announce the final priorities for this program in a notice in the **Federal Register**. The final priorities will be determined on the basis of responses to this notice and other considerations by the Department. On an annual basis the Secretary may select, from the final priorities, the absolute priorities that will apply for that fiscal year and the amount of available program funds. Funding of a particular project depends on the availability of funds, the requirements of the final priorities selected, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only one or more of these priorities, subject to meeting applicable rulemaking requirements.

Eligible Applicants

(1) Institutions of higher education, including Indian institutions of higher education;

(2) State or local educational agencies in consortium with institutions of higher education; and

(3) Indian tribes or Indian organizations in consortium with institutions of higher education.

Applications submitted by a consortium under categories (2) and (3) must meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR in order to be an eligible applicant.

Absolute Priority

Under section 34 CFR 75.105 of EDGAR, the Secretary proposes to give an absolute preference to applications that meet one of the priorities selected

for that fiscal year. The Secretary proposes to reserve all or a portion of the funds available for new awards under the Professional Development program to fund only those applications that meet one of these absolute priorities:

(1) Pre-Service Training for Teachers—

(a) Provide support and training to a minimum of 25 Indian individuals to complete a pre-service education program leading to a bachelor degree in education that allows participants to meet the requirements for State certification or licensure as a teacher within a two-year period; and

(b) Provide graduates of the program with one-year of induction services while they are working in schools with predominately Indian student populations.

(2) In-Service Training for Teachers—

(a) Provide professional development activities to retrain a minimum of 25 existing teachers of Indian students that allow participants to meet State certification or licensure requirements to increase the number of teachers certified or licensed in:

(i) Subject area(s) being taught;

(ii) High-need areas where a shortage of qualified teachers exist;

(iii) Subject content area specializations such as reading or math; or

(iv) specializations in teaching culturally and linguistically unique Indian student populations; and

(b) Provide graduates of the program with one-year of induction services while they are working in schools with predominately Indian student populations.

(3) Pre-Service and In-Service Training for Teachers—

(a) Provide support and training to a minimum of 25 Indian individuals to complete a pre-service education program leading to a bachelor degree in education that allows participants to meet the requirements for State certification or licensure as a teacher within a two-year period;

(b) Provide professional development activities to retrain a minimum of 25 existing teachers of Indian students that allow participants to meet State certification or licensure requirements to increase the number of teachers certified or licensed in:

(i) Subject area or areas being taught;

(ii) High-need areas where a shortage of qualified teachers exist;

(iii) Subject content area specializations such as reading or math; or

(iv) Specializations in teaching culturally and linguistically unique Indian student populations; and

(c) Provide graduates of the program with one-year of induction services while they are working in schools with predominately Indian student populations.

(4) Pre-Service Administrator Training—

(a) Provide support and training to a minimum of 25 Indian individuals to complete a master degree in education administration that allows participants to meet the requirements for State certification or licensure as an education administrator within a two-year period, and

(b) Provide graduates of the program with one-year of induction services while they are working in schools with predominately Indian student populations.

(5) In-Service Administrator Training—

(a) Provide professional development activities to a minimum of 25 existing administrators that enhance their skills and knowledge in more than one of the following areas;

(i) Standards and assessments;

(ii) Integrating reliable, research-based teaching methods and technology into the curriculum;

(iii) Mentoring, coaching and evaluating the performance of teachers;

(iv) Site-based management;

(v) Reform efforts to improve teacher quality; and

(b) Provide graduates of the program with one-year of induction services while they are working in schools with predominately Indian student populations.

(6) Pre-Service and In-Service Training for Administrators—

(a) Provide support and training to a minimum of 25 Indian individuals to complete a master degree in education administration that allows participants to meet State certification or licensure as an education administrator within a two-year period;

(b) Provide professional development activities to a minimum of 25 existing education administrators that enhance their skills and knowledge in more than one of the following areas—

(i) Standards and assessments;

(ii) Integrating reliable, research-based teaching methods and technology into the curriculum;

(iii) Mentoring, coaching and evaluating the performance of teachers;

(iv) Site-based management;

(v) Reform efforts to improve teacher quality; and

(c) Provide graduates of the program one-year of induction services while they are working in schools with predominately Indian student populations.

(7) Training in Fields Other Than Education—

(a) Provide support and training to a minimum of 25 Indian individuals to complete a master or doctoral degree in a field other than education, or a related field, within a two-year period, and

(b) Provide graduates of the program with one-year of induction services while they are employed in positions relating to the training received and that benefits Indians.

Applications meeting one of the absolute priorities may offer professional development activities that include, but are not limited to, continuing programs, symposia, workshops, conferences, and direct financial support.

Induction services to be provided must include the following activities, at a minimum:

(1) Mentoring, coaching and consultation services for the participant;

(2) Participant access to research materials and information on teaching and learning or, for non-education fields of study, subject matter related to the participant's field of study;

(3) Periodic assessment of and feedback sessions on participant performance in coordination with the participant's supervisor; and

(4) Periodic meetings or seminars for participants to enhance collaboration, feedback and peer networking and support.

Applications submitted by a consortium must meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR in order to be an eligible applicant. The specific requirements for the group agreement are found in 34 CFR 75.128(b).

The Secretary may select more than one absolute priority for this program in any given fiscal year.

Competitive Preference

The Secretary also proposes procedures for implementing the statutory requirement to give a preference to eligible Indian tribes, Indian organizations and Indian institutions of higher education for grants awarded under the Professional Development program (Section 9153 of ESEA; 20 U.S.C. 7873).

Under 34 CFR 75.105(c)(2)(i) of EDGAR and Sections 9122 and 9153 of ESEA (20 U.S.C. 7832 and 7873), the Secretary gives preference to applications that meet the following competitive priorities. The total number of points the Secretary proposes to

award to an application that meets a competitive priority is indicated in parentheses next to the title of the priority. These points are in addition to any points the application earns under the selection criteria for the program.

Competitive Priority 1—Preference for Training Indian Individuals (5 Points)

Background

Grants under this program may be used to provide support and training for Indian individuals to increase the number of qualified Indian individuals in professions that serve Indian people. Activities may include, but are not limited to, continuing programs, symposia, workshops, conferences, and direct financial support.

Grants for training educational personnel may be for pre-service or in-service training. For individuals who are being trained to enter any field other than education, the training received must be in a program resulting in a graduate degree. In awarding grants under this program, the Secretary is required to give preference to applications describing programs that train Indian individuals.

Priority

The Secretary would award 5 points to applications submitted under the Professional Development program that include only Indian individuals as training participants.

Authority: Section 9122(e)(2) of ESEA; 20 U.S.C. 7832(e)(2).

Competitive Priority 2—Preference for Indian Applicants (10 Points)

Background

An eligible entity for this program includes an institution of higher education, including an Indian institution of higher education; a State or local educational agency, in consortium with an institution of higher education; an Indian tribe or organization, in consortium with an institution of higher education. In making grants under this program, the Secretary gives preference to applications submitted by Indian tribes, Indian organizations, and Indian institutions of higher education, including a consortium of any of these entities with other eligible entities.

Priority

The Secretary would award 10 points to applications submitted by Indian tribes, Indian organizations, and Indian institutions of higher education that are eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127–.129 of EDGAR and includes an Indian tribe, Indian organization or Indian institution of higher education would be considered eligible to receive the 10 priority points.

Authority: Section 9153 of ESEA; 20 U.S.C. 7873.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. However, Part 79 does not apply to assistance to federally recognized Indian tribes. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3W115, 400 Maryland Avenue, SW, Washington, DC, between the hours of 9 a.m. and 5:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Program Authority: Section 9122 of ESEA; U.S.C. 7832.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
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(Catalog of Federal Domestic Assistance Number: 84.299 Indian Education—Special Programs)

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–5496 Filed 3–6–00; 8:45 am]

BILLING CODE 4000–01–P

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Tuesday, March 7, 2000

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H.R. 1451/P.L. 106–173

Abraham Lincoln Bicentennial Commission Act (Feb. 25, 2000; 114 Stat. 14)

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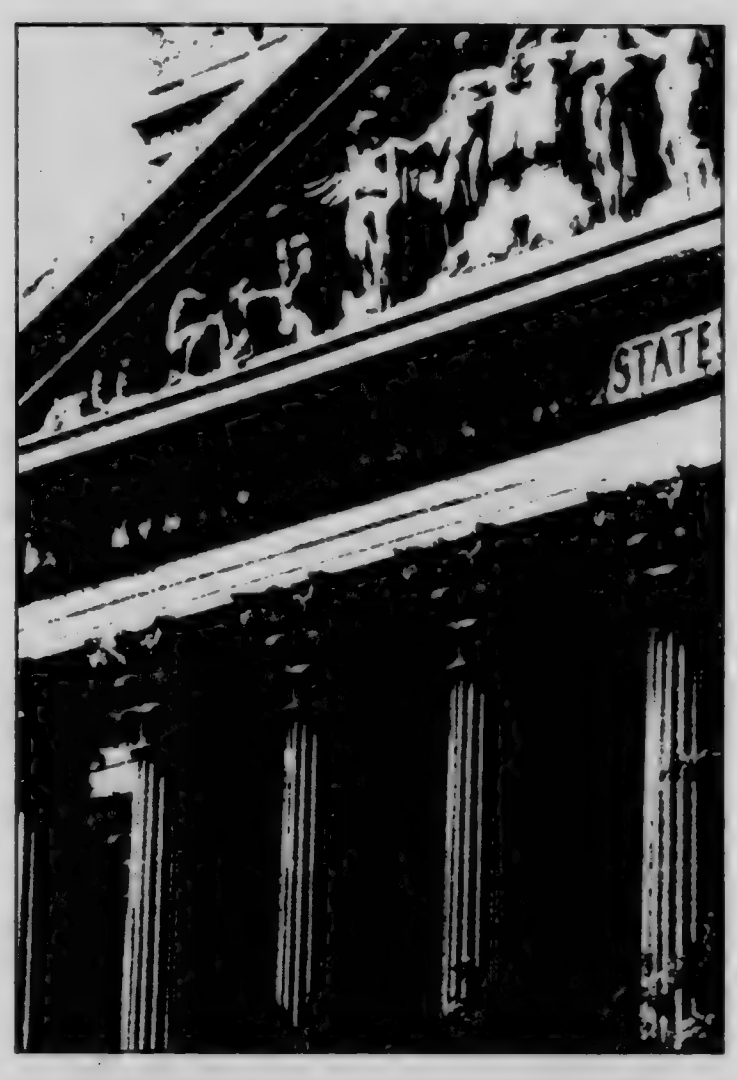

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Federal Register
Vol. 65, No. 46
Wednesday, March 8, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV00–993–1 FIR]

Dried Prunes Produced in California; Changes in Producer District Boundaries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule realigning the boundaries of seven districts established for independent producer representation on the Prune Marketing Committee (Committee) under Marketing Order No. 993. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes grown in California. This rule continues in effect the realignment of the boundaries of the seven independent producer districts. Due to shifts in the production areas, the former production districts for independent producer representation on the Committee were out of balance. The realignment provides for more equitable independent producer representation on the Committee, consistent with current industry demographics.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, CA 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended [7 CFR Part 993], regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect modifications to language in the order's administrative rules and regulations to realign the boundaries of seven districts established for independent producer representation on the Committee. The realignment provides for more equitable independent producer representation on the Committee, consistent with current industry demographics.

Paragraph (a) of § 993.128 of the order's administrative rules and regulations lists and describes the boundaries of each of the seven independent grower districts. This rule continues in effect the provisions of an interim final rule that realigned those boundaries on December 30, 1999 (64 FR 72909, December 29, 1999). To be consistent with current industry demographics, this realignment ensures that, insofar as practicable, each district represents an equal number of independent producers and an equal volume of prunes grown by such producers.

Section 993.24 of the order provides that the Committee shall consist of 22 members, of which 14 represent producers, 7 represent handlers, and 1 represents the public. The 14 producer member positions are apportioned between cooperative producers and independent producers. The apportionment, insofar as is practicable, is the same as the percentage of the total prune tonnage handled by the cooperative and independent handlers during the year preceding the year in which nominations are made is to the total handled by all handlers. In recent years and currently, cooperative producers and independent producers each have been eligible to nominate seven members.

Section 993.28(a) of the order provides that, for independent producers, the Committee shall, with the approval of the Secretary of Agriculture, divide the production area into districts giving, insofar as practicable, equal representation throughout the production area by numbers of independent producers and production of prune tonnage by such producers. When revisions are required, the Committee must make its recommendations to the Secretary of Agriculture to change the district boundaries prior to January 31 of any year in which nominations are to be made. Nominations are made in all even-numbered years.

In recent years, the number of producers and volume of production in most districts has changed, causing imbalances among some districts. Prune orchards were planted to replace other crops which expanded the acreage base to new geographic areas and intensified the prune plantings in other districts. Thus, redistricting was needed to bring the districts in line with order requirements and current California prune industry demographics.

This rule continues in effect the establishment of new district alignments as shown below:

District	Counties in prior district alignment	Counties in new district alignment
1	Colusa, Glenn	Colusa, Glenn, Solano, Yolo.
2	Sutter (Central)	Sutter (North) [1].
3	Sutter (South), Yolo.	Sutter (South) [1].
4	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity..	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.
5	Butte, Sutter (North).	Butte.
6	Yuba	Yuba.
7	Fresno, Kings, Merced, San Benito, San Joaquin, Santa Clara, Solano, Tulare all other counties not included in Districts 1, 2, 3, 4, 5, 6.	Fresno, Kern, Kings, Madera, Merced, San Benito, San Joaquin, Santa Clara, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, 6.

[1] The north/south boundary of Sutter County will be changed to Franklin Road.

The Committee calculated the percentage of total independent prune growers and the percentage of total independent grower prune tonnage for each new district. The two percentages were averaged for each district to determine a representation factor for each district. The optimal representation factor for each district is 14.29 percent (100 percent divided by 7 districts).

The representation factors for the old and new districts are shown below, based on the 1998–99 crop year (August 1–July 31) data.

District	Representation Factor	
	Old Districts (percent)	New Districts (percent)
1	9.75	15.62
2	11.94	16.87
3	12.5	16.37
4	10.33	10.33
5	23.97	12.35
6	14.43	14.43
7	17.02	13.97

The redistricting allows each district to approximate the optimal representation factor while maintaining a continuous geographic boundary for each district.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, 13 of the 20 handlers (65%) shipped under $5,000,000 of dried prunes and could be considered small handlers. An estimated 1,141 producers (91 percent) of the 1,250 producers could be considered small growers with annual income less than $500,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California dried prunes may be classified as small entities.

This rule continues in effect a realignment of the boundaries of the seven districts established for independent producer representation on the Committee. To be consistent with current industry demographics, this realignment ensures that, insofar as practicable, each district represents an equal number of independent producers and an equal volume of prunes grown by such producers.

Shifts in the prune production area over time have lead to greater differences among the districts than is desirable for equitable independent producer representation. As shown below, prior to the most recent realignment, District 1 represented less than 10% of California's independent prune producers/production while District 5 represented nearly 24% as previously defined. The realignment has provided for more equitable representation.

The representation factors for the old and new districts are shown below, based on the 1998–99 crop year (August 1–July 31) data.

District	Representation Factor [1]	
	Old Districts (percent)	New Districts (percent)
1	9.75	15.62
2	11.94	16.87
3	12.5	16.37
4	10.33	10.33
5	23.97	12.35
6	14.43	14.43
7	17.02	13.97

[1] The optimal representation factor for each district is 14.29 percent (100 percent divided by 7 districts).

The economic vagaries of prune production are responsible for the imbalance among production districts. When the average grower return per ton reached $1,121 in 1993, prune tree sales by nurseries jumped to 1.5 million trees from a normal maintenance and replacement level of about 300,000 trees. Prune orchards were planted to replace other crops which expanded the acreage base to new geographic areas and intensified the prune plantings in others. Non-bearing acreage increased from 8,000 acres in 1993 to 26,000 acres in 1998.

More recently, grower prices have steadily declined from 1993's peak of $1,121 per ton to $763 in 1998. This lead to the removal of over 5,000 acres in 1998 alone. The overall result is a shift in prune production which lead to

an imbalance in the composition of independent producer districts.

The realignment of district boundaries yields more equitable representation. The representation factors for the districts ranged from 9.75% to 23.97%. The revised alignment narrows this range to 10.33% to 16.87%. The California prune industry considered other district alignments; however, none would have improved the balance among districts as much as the realignment implemented. Since the weather-reduced 1998–99 prune crop (102,000 tons) was the smallest since 1986, the Committee also analyzed the representation factor on the more typical 1997–98 crop (205,000 tons) to ensure that the short crop year did not produce atypical results. The results were consistent as far as each district's percent of the total. Another alternative considered was to do nothing. However, this would not have done anything to correct the representation factor imbalance, and this was not acceptable.

The Committee unanimously recommended this change at its November 30, 1999, meeting. Since the redistricting in 1994, the number of producers and volume of production in most districts changed causing imbalances among some districts. Thus, redistricting was needed to bring the districts in line with order requirements and current California prune industry demographics.

This rule continues in effect new district alignments as shown below:

District	Counties in prior district alignment	Counties in new district alignment
1	Colusa, Glenn	Colusa, Glenn, Solano, Yolo
2	Sutter (Central)	Sutter (North) [1]
3	Sutter (South), Yolo.	Sutter (South) [1]
4	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity
5	Butte, Sutter (North).	Butte
6	Yuba	Yuba
7	Fresno, Kings, Merced, San Benito, San Joaquin, Santa Clara, Solano, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, & 6.	Fresno, Kern, Kings, Madera, Merced, San Benito, San Joaquin, Santa Clara, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, & 6

[1] The north/south boundary of Sutter County will be changed to Franklin Road.

At the November 30, 1999, meeting, the Committee discussed the financial impact of this change on handlers and producers. All independent producers regardless of size will continue to have representation and the overall representation will be more equitable as previously explained. There will be no additional costs generated by this rule. Since this rule affects only independent producers, there is no expected impact on handlers.

This rule continues in effect the realignment of the boundaries of seven independent grower districts. This realignment allows each district to approximate the optimal representation factor, while maintaining a continuous geographic boundary for each district.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large entities. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 22 members, of which 7 are handlers, 14 are producers and 1 is a public representative, the majority of whom are small entities.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Ad-Hoc Redistricting Subcommittee met on November 2, 1999, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on December 29, 1999. Copies of the rule were mailed by the Committee's staff to all Committee members and alternates and prune handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 30-day comment period which ended January 28, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's unanimous recommendation and other information, it is found that finalizing the interim final rule, without change, as hereinafter set forth and published in the **Federal Register** (64 FR 72909, December 29, 1999), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and Recordkeeping requirements.

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 993 which was published at 64 FR 72909 on December 29, 1999, is adopted as a final rule without change.

Dated: March 3, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–5610 Filed 3–7–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 97–108–2]

Brucellosis in Cattle; State and Area Classifications; Arkansas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Arkansas from Class A to Class Free. We have determined that Arkansas meets the standards for Class Free status. The interim rule relieved certain restrictions on the interstate movement of cattle from Arkansas.

EFFECTIVE DATE: The interim rule became effective on December 3, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. R. T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1237; (301) 734–7709.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective December 3, 1997, and published in the **Federal Register** on December 4, 1997 (62 FR 64134–64135, Docket No. 97–108–1), we amended the brucellosis regulations concerning the interstate movement of cattle, contained in § 78.41, by changing the classification of Arkansas from Class A to Class Free. The interim rule relieved certain restrictions on the interstate movement of cattle from Arkansas.

Comments on the interim rule were required to be received on or before February 2, 1998. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 62 FR 64134–64135 on December 4, 1997.

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 2nd day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–5597 Filed 3–7–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

12 CFR Part 1510

RIN 1505–AA79

Resolution Funding Corporation Operations

AGENCY: Department of the Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Secretary of the Treasury (Secretary) is revising the Treasury Department's regulation governing the operations of the Resolution Funding Corporation (Funding Corporation). The Funding Corporation is a mixed-ownership government corporation under the supervision of the Secretary. The operations regulation currently governs matters such as how the Funding Corporation raises capital, issues and services its debt, and pays its administrative expenses. The revisions in the interim final rule implement recent statutory changes affecting these activities. In addition, the revisions eliminate certain provisions in the operations regulation relating to activities the Funding Corporation no longer performs and streamline the remaining provisions.

DATES: The interim final rule is effective on March 8, 2000. Written comments on the interim final rule may be submitted to the Treasury Department on or before April 7, 2000.

ADDRESSES: Mail comments to: Office of the Assistant General Counsel (Banking and Finance), Attention: Comment Record, Room 2026, Department of the Treasury, 1500 Pennsylvania Ave., NW 20220. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make an appointment, call (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Brandon B. Straus, Attorney-Advisor, Office of the Assistant General Counsel (Banking and Finance), (202) 622–1964, or Matthew Green, Financial Analyst, Office of Financial Institutions Policy, Department of the Treasury, (202) 622–2157.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. Statutory Requirements

In 1989, Congress enacted the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). *See* Public Law 101–73, 103 Stat. 183 (1989). One of the purposes of FIRREA was to resolve a large number of insolvent savings associations. In furtherance of this purpose, FIRREA added a new section 21A to the Federal Home Loan Bank Act (Act) creating the Resolution Trust Corporation (RTC), a mixed ownership government corporation charged with containing, managing, and resolving failed savings associations. In order to fund the RTC's activities, FIRREA added a new section 21B to the Act creating the Funding Corporation.

Section 21B(f) of the Act authorizes the Funding Corporation to issue up to $30 billion of debt obligations and to transfer the net proceeds of the debt issuance to the RTC through the purchase of RTC capital certificates. Prior to issuing any obligations, the Funding Corporation is required to establish a Principal Fund to defease the principal amount of the obligations. The Act requires the Federal Home Loan Banks (Banks) and depository institutions whose deposits are insured by the Savings Association Insurance Fund (SAIF members) to capitalize the Principal Fund through the purchase of nonvoting stock of the Funding Corporation. The Principal Fund is to be invested in noninterest bearing direct obligations of the United States having equal maturity value with the principal amount of the Funding Corporation's obligations. Upon the maturity of the Funding Corporation's obligations, the securities in the Principal Fund are to be liquidated to repay the obligations.

Section 21B(f) of the Act directs the Funding Corporation to pay interest on its obligations with funds obtained from up to five sources, which are specified in the statute. The Funding Corporation is to obtain funds from these sources in succession, to the extent that funds from

the previous source or sources are insufficient to cover the entire amount of the interest payment due. As further discussed below, these sources are: (1) Earnings on Funding Corporation assets not invested in the Principal Fund; (2) certain funds of the RTC; (3) a portion of the net earnings of the Banks; (4) funds from the Federal Savings and Loan Insurance Corporation Resolution Fund (FSLIC Resolution Fund) and (5) the Secretary.

The Act also governs matters such as the Funding Corporation's investments, administrative expenses, and management. The Funding Corporation is managed by a three-member Directorate, consisting of the Director of the Office of Finance of the Federal Home Loan Bank System (Office of Finance) and two of the 12 Bank presidents, who serve on a rotating basis. Day-to-day operations of the Funding Corporation are carried out by employees of the Office of Finance.

From 1989 to 1998, the Funding Corporation operated under the supervision of the Thrift Depositor Protection Oversight Board (Board). Congress abolished the Board in 1998 and transferred its oversight authority for the Funding Corporation to the Secretary. *See* Public Law 105–216, section 14, 112 Stat. 909 (1998).

B. Regulatory Requirements

The Board initially issued the operations regulation in 1989 to implement the statutory provisions discussed above. *See* 54 FR 41950 (Oct. 13, 1989) (codified at 12 CFR part 1510). After the Board was abolished in 1998, the Secretary transferred the operations regulation to the Treasury Department. *See* 63 FR 57236 (Oct. 27, 1998). The Secretary did not at that time, however, revise the operations regulation to delete references to the Board or make other changes to update the regulation.

As discussed in detail below in the Analysis of the Interim Final Rule section, this interim final rule revises the operations regulation to reflect the transfer of oversight authority to the Secretary. The interim final rule also updates the regulation to take into account developments affecting the funding of interest payments on Funding Corporation obligations, such as the termination of the RTC in 1995 and changes made by the Gramm-Leach-Bliley Act of 1999 (GLBA), Public Law 106–102 (1999). In the course of making these changes, the Secretary is streamlining the regulation by eliminating provisions that no longer need to be embodied in regulation. The interim final rule also revises the language and the overall structure of the operations regulation to comply with the President's Memorandum of June 1, 1998 requiring the use of plain language in agency regulations.

II. Analysis of the Interim Final Rule

The operations regulation currently contains provisions implementing each of the Funding Corporation's three main statutory functions discussed above: (1) Raising capital for the Principal Fund; (2) issuing debt obligations; and (3) paying interest on the obligations. The operations regulation also implements certain administrative functions such as the payment of the Funding Corporation's administrative expenses and the investment of its surplus funds. As further discussed below, it is no longer necessary to implement the first two statutory functions—capitalization and debt issuance—by regulation. Consequently, the interim final rule eliminates existing provisions of the operations regulation related to these functions. The interim final rule also retains, streamlines, and updates the provisions of the operations regulation that implement the Funding Corporation's third main function—paying interest on its debt—as well as its administrative functions.

A. Elimination of Existing Provisions on Debt Issuance

From 1989 to 1991, the Funding Corporation undertook a series of debt issuances totaling $29,995,180,000, in the form of noncallable bonds with 30- and 40-year maturities. Consequently, of the Funding Corporation's $30 billion debt issuance authority, only $4.82 million remains unused.

The statutory requirements regarding the use of the Funding Corporation's debt issuance proceeds make it highly unlikely that the Funding Corporation will ever use its remaining $4.82 million of issuance authority. Specifically, section 21B(f)(4) of the Act provides that the Funding Corporation must use the proceeds of any debt issuance for one of two purposes: (1) To purchase RTC capital certificates; or (2) to refund previously issued Funding Corporation obligations.

The RTC terminated on December 31, 1995, pursuant to section 21A(m) of the Act. Therefore, the Funding Corporation can no longer transfer funds to the RTC through the purchase of RTC capital certificates. Accordingly, any new debt issuance could not fulfill the first statutory purpose cited above. Furthermore, since the Funding Corporation's outstanding obligations are noncallable, the Funding Corporation is contractually bound not to repay them prior to maturity. Therefore, the Funding Corporation would not issue new obligations for the second statutory purpose.

In sum, the primary purpose of the Funding Corporation's debt issuance function—to raise funds to finance the resolution activities of the RTC—was fulfilled by 1991, and the circumstances under which a new debt issuance would be warranted are remote. Consequently, provisions in the operations regulation at existing § 1510.4, entitled "Authority to issue obligations", and existing § 1510.8, entitled "Issuance expenses", are no longer necessary and may be removed. The elimination of these regulatory provisions, however, does not affect the Funding Corporation's underlying statutory authority to issue obligations or the Secretary's authority to regulate their issuance. These authorities remain in effect under the Act.

B. Elimination of Existing Provisions on Capitalization of the Principal Fund

The Principal Fund is a segregated custodial account held by the Funding Corporation's fiscal agent, the Federal Reserve Bank of New York. The sole purpose of the Principal Fund is to defease the aggregate principal amount of the debt obligations issued by the Funding Corporation. Under the Act, the Funding Corporation may not issue any new obligations unless there are amounts in the Principal Fund sufficient to defease the principal amount of the new obligations. The Principal Fund currently contains non-marketable zero-coupon Treasury bonds with total face amounts sufficient to defease fully the aggregate principal amount of outstanding Funding Corporation obligations.

As discussed above, the Funding Corporation used all but $4.82 million of its debt issuance authority by 1991. Therefore, since 1991, the Funding Corporation has needed no new capital for the Principal Fund. Furthermore, since it is unlikely that the Funding Corporation will issue any additional obligations, the Secretary is removing provisions in the operations regulation relating to capitalization of the Funding Corporation. These provisions currently appear in § 1510.9, entitled "Capitalization of Funding Corporation" and § 1510.10, entitled "Funding Corporation Principal Fund Reserve Account".

Existing § 1510.9 generally requires the Funding Corporation to make quarterly projections of the amount of funds necessary to capitalize the Principal Fund and pay interest on outstanding Funding Corporation obligations, as well as projections on

how it will raise those funds from the Banks. Section 1510.9 also contains a procedure for the collection of capital payments from the Banks, SAIF members, and the FSLIC Resolution Fund.

Existing § 1510.10 implements statutory provisions governing the situation where one or more "deficient" Banks are unable to provide the Funding Corporation with the amounts required to capitalize the Principal Fund. The Act and the regulation require that the "remaining" Banks provide funds on behalf of the "deficient" Banks and later receive reimbursement.

The interim final rule removes the provisions in existing § 1510.9 requiring the Funding Corporation to project amounts required to capitalize the Principal Fund and to raise those funds. The interim final rule retains and transfers to a new section the provisions in § 1510.9 requiring the Funding Corporation to make quarterly projections of amounts available to cover interest payments on Funding Corporation obligations. The interim final rule removes in its entirety § 1510.10, regarding the Principal Fund Reserve Account.

As in the case of the Funding Corporation's debt issuance authority, the elimination of regulatory provisions governing capitalization of the Funding Corporation does not affect the Funding Corporation's underlying statutory authority to raise capital or the Secretary's authority to regulate this activity. Moreover, much of existing §§ 1510.9 and 1510.10 merely repeat or cross reference provisions of the Act. Consequently, removal of these regulatory provisions will not deprive the Funding Corporation, the Banks, or the public of interpretive guidance that elaborates on the provisions of the Act.

C. Section-by-Section Analysis of the Interim Final Rule

1. Section 1510.1—Authority, Purpose, and Scope

Section 1510.1 of the interim final rule cites the statutory authority under which the Secretary may issue the operations regulation and explains the purpose and scope of the regulation. Interim § 1510.1(b) makes clear that the operations regulation does not implement all aspects of the Funding Corporation's statutory authority. It states that the purpose of Part 1510 is to provide direction to the Funding Corporation in carrying out its statutory mandate to make interest payments on its obligations and to provide guidance to the Funding Corporation in paying its administrative expenses. Interim § 1510.1 also makes clear that the Secretary may provide any necessary direction to the Funding Corporation in carrying out any of its other statutory authorities.

Interim § 1510.1(c) carries forward the substance of existing § 1510.2, entitled "General authority". Existing § 1510.2 generally provides that the Funding Corporation may exercise the authority granted under the Act and its bylaws, whether or not that authority is implemented by regulation, subject to the direction of the Board. Interim § 1510.1(c) similarly makes clear that the absence of specific regulations implementing the Funding Corporation's statutory authority does not diminish the Funding Corporation's ability to exercise that authority in accordance with its bylaws, subject to the oversight of the Secretary.

2. Section 1510.2—Definitions

Section 1510.2 of the interim final rule largely carries forward the definitions in existing § 1510.1 of the operations regulation, with some exceptions. The interim final rule eliminates the definition referring to the now abolished Thrift Deposit Protection Oversight Board. It also eliminates definitions related to the capitalization of the Funding Corporation and the issuance of Funding Corporation obligations, including: "Deficient bank", "Excess amount", "Remaining bank", "Financing Corporation", and "Issuance costs". Although the term "Issuance costs" is defined in the Act to include the ongoing expenses associated with servicing Funding Corporation obligations, the Funding Corporation has prepaid its fiscal agent for these expenses. Therefore, the Funding Corporation currently has no issuance costs and will not incur issuance costs absent a new debt issuance.

The interim final rule revises the definition of "Administrative expenses" by deleting a reference to issuance costs, which are no longer incurred, as well as a reference to redemption premiums, which would be incurred only through a refunding of existing obligations.

The interim final rule also revises the definition of the "Net earnings" of a Bank by deleting the reference to payments made for the purchase of Funding Corporation capital stock. In addition, the interim final rule deletes the reference to purchases of Financing Corporation stock because the Banks no longer undertake such purchases. The interim final rule adds language regarding deductions for operating expenses and expenses related to the Banks' Affordable Housing Programs, pursuant to section 607 of the GLBA, which clarifies the definition of "net earnings" for purposes of determining the amount of each Bank's payment to cover the interest on Funding Corporation obligations.

Interim § 1510.2 adds a definition referring to the Secretary of the Treasury, consistent with transfer of the oversight authority for the Funding Corporation to the Secretary. The interim final rule also adds a definition referring to the Federal Housing Finance Board, which, as discussed further below, now has a statutory role in determining the availability of funds from the Banks for payment of interest on Funding Corporation obligations. In order to simplify the language of the regulation, the interim final rule adds definitions of two new terms: "obligations", which refers to Funding Corporation obligations, and "interest payment due date", which refers to the date on which the next quarterly interest payments on such obligations are due.

3. Section 1510.3—How Does the Funding Corporation Pay Administrative Expenses?

Section 1510.3 of the interim final rule requires the Funding Corporation to develop an annual budget for its administrative expenses, submit the budget by November 15 to the Secretary for approval, and collect funds from the Banks in order to pay the administrative expenses. Interim § 1510.3 largely carries forward and streamlines the requirements of existing § 1510.6, entitled "Budget and expenses", and § 1510.7, entitled "Billing of administrative expenses".

The dollar amount of the Funding Corporation's administrative budget has changed little or not at all from year to year. In order to streamline the budget approval process, interim § 1510.3(b) provides that the administrative budget submitted to the Secretary by the Funding Corporation is deemed to be approved by the Secretary unless the Secretary disapproves it within 45 days of the date submitted.

Interim § 1510.3(d) carries forward requirements in existing § 1510.7 that provide for each Bank to pay a portion of the Funding Corporation's administrative expenses, calculated according to the formula set forth in section 21B(c)(7)(B) of the Act. For purposes of increased clarity, the interim final rule replaces the reference to the Act with a description of the formula. It provides that the amount of each Bank's payment must be pro rated according to the percentage of the total

outstanding Funding Corporation capital stock owned by the Bank.

4. Section 1510.4—Who May Act as the Depositary and Fiscal Agent for the Funding Corporation?

Section 1510.4 of the interim final rule carries forward and consolidates the provisions in existing § 1510.5 of the operations regulation, entitled "Federal Reserve banks to be depositaries and fiscal agents". Interim § 1510.4(b) adds new language clarifying that the Funding Corporation may use a demand deposit account at a federally insured depository institution only as a means of managing funds used to pay administrative expenses. This change conforms the operations regulation to the Funding Corporation's current practice, as approved by the former Board.

5. Section 1510.5—How Does the Funding Corporation Make Interest Payments on Its Obligations?

The payment of interest on outstanding Funding Corporation obligations is now the Funding Corporation's primary activity. Under section 21B(f) of the Act, the Funding Corporation is to make interest payments with funds obtained from the following sources: (1) Earnings on Funding Corporation assets not invested in the Principal Fund; (2) certain funds of the RTC; (3) a portion of the net earnings of the Banks; (4) any net proceeds from the sale of assets received from the RTC by the FSLIC Resolution Fund; and (5) the Secretary. The Funding Corporation is to tap these sources in succession, to the extent that funds from the previous source or sources are insufficient to cover the entire amount of the interest payment due.

Interest on the Funding Corporation's obligations comes due quarterly. Consequently, the operations regulation sets forth a procedure under which the Funding Corporation makes quarterly projections of the funds available from these sources and then collects the funds on a quarterly basis.

Section 1510.5 of the interim final rule carries forward provisions relating to funding projections in existing § 1510.9(a), entitled "Capitalization of Funding Corporation"; provisions relating to the payment of interest in existing § 1510.11, entitled "Interest payments and interest reserve account"; and provisions in existing § 1510.12, entitled "Request for funds for interest payments". In addition, interim § 1510.5 adds new provisions to reflect statutory and other changes discussed below.

Section 1510.5(a) of the interim final rule carries forward existing provisions that direct the Funding Corporation to obtain funds for interest payments from sources designated in section 21B(f)(2) of the Act. Interim § 1510.5(a) also reflects two changes from the existing operations regulation.

First, interim § 1510.5(a) removes reference to certain funds of the RTC as a funding source for interest payments (although, as explained below, proceeds from assets once held by the RTC remain available for interest payments). Section 21B(f)(2)(B) of the Act designates the RTC as the second of the five funding sources for interest payments on Funding Corporation obligations. The Act provides that to the extent that amounts from the first funding source—earnings on assets of the Funding Corporation not invested in the Principal Fund—are insufficient to cover interest payments due, the RTC must pay to the Funding Corporation: (i) The liquidating dividends and payments made on claims received by the RTC from receiverships to the extent such proceeds are determined by the Board to be in excess of funds presently necessary for resolution costs; and (ii) any proceeds from warrants and participations acquired by the RTC.

Pursuant to section 21A(m)(2) of the Act, the RTC ceased to exist on December 31, 1995. Upon its termination, all the RTC's assets and liabilities were transferred to the FSLIC Resolution Fund, including the RTC's claims on receiverships as well as any warrants and participations it held. Furthermore, after the RTC terminated, the Board's authority with respect to the RTC terminated. The Board no longer had the authority described in section 21B(f)(2)(B) of the Act to direct the RTC—defunct after 1995—to transfer to the Funding Corporation any liquidating dividends and payments made on receivership claims. Nor did the Board have any authority to direct the FSLIC Resolution Fund to make payments to the Funding Corporation, including payments from assets of the former RTC. Finally, the Board was abolished in 1998, and the Secretary succeeded to the Board's remaining programmatic function: oversight of the Funding Corporation.

In sum, the funds described in section 21B(f)(2)(B) of the Act are no longer held by the RTC and both the RTC and the regulatory agency that would direct RTC to make payments to the Funding Corporation have ceased to exist. For these reasons, section 21B(f)(2)(B) is no longer operative. Therefore, interim § 1510.5(a), which lists the funding sources for interest payments on Funding Corporation obligations, does not make reference to the RTC funds described in section 21B(f)(2)(B).

Nonetheless, the former RTC's assets remain available to fund interest payments on the Funding Corporation's obligations. Section 21B(f)(2)(D) of the Act designates the net proceeds from the sale of these assets—now held by the FSLIC Resolution Fund—as the fourth designated funding source for the Funding Corporation's interest payments. Interim § 1510.5(a)(3) makes reference to this funding source.

Second, interim § 1510.5(a)(2) revises the language describing the amount of the payments the Funding Corporation must obtain from the Banks. Prior to the enactment of the GLBA, the Act required the Banks as a group to pay an aggregate amount of $300,000,000 per year to fund interest on Funding Corporation obligations. This aggregate amount was allocated among the Banks pursuant to a requirement that each Bank pay an equal percentage of its annual net earnings up to 20 percent. If the Banks were required to pay more than 20 percent in a given year to reach the aggregate $300,000,000 payment, the amounts over 20 percent were allocated among the Banks according to a statutory formula.

Section 607 of the GLBA amended the Act by eliminating the $300,000,000 cap on the Banks' annual payment and requiring each Bank to pay the Funding Corporation a fixed 20 percent of its annual net earnings after deducting expenses related to the Banks' Affordable Housing Programs and operating expenses. Section 607 also added a new provision requiring the Banks' regulator, the Finance Board, to extend or shorten the period during which the Banks must continue to make payments to the Funding Corporation, based on a method described in section 607. Interim § 1510.5(a)(2) reflects these statutory changes.

Section 1510.5(b) of the interim final rule requires the Funding Corporation on a quarterly basis to obtain information on the Banks' net earnings as well as projections from the FSLIC Resolution Fund in order to determine amounts that the Funding Corporation can expect to obtain from those entities to fund the next four quarterly interest payments.

Section 1510.5(c) of the interim final rule requires the Funding Corporation to submit to the Secretary for approval a report showing the amounts of the next four quarterly interest payments due and the amounts projected to be available to make those payments from earnings on Funding Corporation assets not invested in the Principal Fund,

payments from the Banks, and amounts transferred from the FSLIC Resolution Fund.

Section 1510.5(d) of the interim final rule carries forward provisions in existing § 1510.11 and § 1510.12 of the operations regulation regarding the coordination of payments from the Banks, the FSLIC Resolution Fund, and the Secretary to the Funding Corporation to cover interest on its obligations.

Interim § 1510.5(d) also adds new provisions dealing with funds transferred from the FSLIC Resolution Fund. The existing regulation does not specifically address the procedure under which the Funding Corporation is to obtain funds from the FSLIC Resolution Fund. In the past, specific procedures were not necessary because the FSLIC Resolution Fund had no funds to transfer. Now that the FSLIC Resolution Fund has received the assets and liabilities from the former RTC, there may be net proceeds from the sale of those assets available to fund interest payments on Funding Corporation obligations. Consequently, the Funding Corporation must have a procedure in place under which it requests any funds available from the FSLIC Resolution Fund after requesting funds from the Banks but before requesting funds from the Secretary.

Under an existing arrangement with the Secretary, the Funding Corporation must request funds from the Secretary at least five business days before the Funding Corporation's quarterly interest payments are due. As part of its request, the Funding Corporation must certify as to the amounts available from the prior funding sources. Consequently, the Funding Corporation must have a process in place that allows it to meet the timing requirements of its arrangement with the Secretary while having a relatively high degree of certainty as to the amounts available from the other funding sources. Interim § 1510.5(d) establishes a procedure for this process.

Amounts available from the first statutorily designated funding source—earnings on Funding Corporation assets not invested in the Principal Fund—are under the direct control of the Funding Corporation. Therefore, interim § 1510.5(d) does not provide a procedure for obtaining funds from this source.

As to the second funding source—the Banks—interim § 1510.5(d)(1) provides that as soon as practicable after the end of each quarter, the Funding Corporation must obtain from each Bank a report of its actual net earnings for that quarter. Not less than six business days prior to the interest payment due date, the Funding Corporation must notify each Bank in writing of the interest payment due date and the amount of the payment due from the Bank.

Interim § 1510.5(d)(2) provides that on the day the Funding Corporation notifies the Banks of the payments due from them, the Funding Corporation must notify the FSLIC Resolution Fund of: (1) The interest payment due date; (2) the aggregate amount of the quarterly interest payment due on that date; and (3) the amount of the quarterly interest payment that will be funded by the two prior funding sources. In addition, the Funding Corporation must request that the FSLIC Resolution Fund transfer available funds to the Funding Corporation by noon on the fifth business day prior to the interest payment due date.

Section 1510.5(d)(3) of the interim final rule provides that no less than five business days prior to the interest payment due date, the Funding Corporation must request any payment that may be necessary from the Secretary by providing a certification, in a form satisfactory to the Secretary, stating the total amounts of the quarterly interest payment to be paid by the Funding Corporation from sources other than the Secretary and the amounts necessary to make up the deficiency. Consistent with section 21B(f)(2)(E) of the Act, the interim final rule provides that any amount paid by the Secretary becomes a liability of the Funding Corporation to be repaid to the Secretary upon the dissolution of the Funding Corporation, to the extent of its remaining assets.

6. Section 1510.6—What Must the Funding Corporation Do With Surplus Funds?

Section 1510.6 of the interim final rule streamlines and carries forward without substantive change the provisions in existing § 1510.3 of the operations regulation, entitled "Authorization of establishment of investment policies and procedures".

7. Section 1510.7—What Are the Funding Corporation's Reporting Requirements?

Section 1510.7 of the interim final rule consolidates provisions in existing § 1510.13, entitled "Reports to Board", and § 1510.14, entitled "Reports to Congress". Existing § 1510.13 requires the Funding Corporation to provide a quarterly report to the Board of specific items of information dealing with the capitalization of the Principal Fund and the issuance of Funding Corporation obligations. Most of the items required to be in the report are no longer relevant to the ongoing oversight of the Funding Corporation. Therefore, the interim final rule removes the quarterly reporting requirement in existing § 1510.13, but adds a new provision in interim § 1510.7 under which the Funding Corporation must provide the Secretary such reports as the Secretary may require.

8. Section 1510.8—What Are the Audit Requirements for the Funding Corporation?

Existing § 1510.15 of the operations regulation provides that an office designated by the Board shall review the books and records of the Funding Corporation at least annually to determine whether the Funding Corporation is performing its functions in accordance with the provisions of section 21B of the Act and the operations regulation. The Funding Corporation currently complies with this provision by obtaining an annual audit by an independent external auditor. In addition, the Funding Corporation is audited annually as part of the internal audit of the Office of Finance. Under section 21B(h)(3) of the Act and section 105 of the Government Corporation Control Act, *see* 31 U.S.C. 9105, the Comptroller General reviews the workpapers associated with the annual external audit. Interim § 1510.8 carries forward and streamlines existing § 1510.15 and conforms its provisions to reflect the Funding Corporation's current practice of obtaining an annual external audit.

The Secretary requests comment on all aspects of the interim final rule.

III. Administrative Procedure Act

This rule makes technical amendments to the regulation governing the operations of the Funding Corporation that conform the regulation to changes in the law and that do not affect the general public. For this reason, it has been determined that publishing this rule with notice and an opportunity for public comment is unnecessary pursuant to 5 U.S.C. 553(b). The Treasury Department, however, will consider any public comments on the interim final rule received on or before April 7, 2000. For the same reasons, pursuant to 5 U.S.C. 553(d), it is determined that there is good cause for the interim final rule to become effective immediately upon publication.

IV. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

V. Executive Order 12866

This interim final rule is not a "significant regulatory action" for purposes of Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects

12 CFR Part 1510

Federal home loan banks, Federal Reserve System, Resolution Funding Corporation, Securities.

Authority and Issuance

For the reasons set out in the preamble 12 CFR part 1510 is revised to read as follows:

PART 1510—RESOLUTION FUNDING CORPORATION OPERATIONS

Sec.

§ 1510.1 Authority, purpose, and scope.
§ 1510.2 Definitions.
§ 1510.3 How does the Funding Corporation pay administrative expenses?
§ 1510.4 Who may act as the depositary and fiscal agent for the Funding Corporation?
§ 1510.5 How does the Funding Corporation make interest payments on its obligations?
§ 1510.6 What must the Funding Corporation do with surplus funds?
§ 1510.7 What are the Funding Corporation's reporting requirements?
§ 1510.8 What are the audit requirements for the Funding Corporation?

Authority: 12 U.S.C. 1441b; Sec. 14(d), Pub. L. 105–216, 112 Stat. 910.

§ 1510.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the authority of section 14(d) of the Homeowners Protection Act of 1998 (Public Law 105–216, 112 Stat. 910) and section 21B(l) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(l)).

(b) *Purpose and scope.* The purpose of this part is to provide direction to the Funding Corporation in carrying out its statutory mandate to make interest payments on its outstanding debt obligations. This part also provides direction to the Funding Corporation regarding funding the administrative costs of its operations. This part does not provide direction to the Funding Corporation, however, on activities that the Funding Corporation is authorized to carry out under the Act, but that it previously has completed or is not likely to undertake in the future, such as raising capital and issuing obligations. Although the Funding Corporation continues to have statutory authority to undertake these activities, the circumstances under which it would do so are limited. If such circumstances were to arise, the Secretary has the authority to provide any necessary direction to the Funding Corporation.

(c) *Authority of the Funding Corporation.* The Funding Corporation may exercise all authority granted to it by the Act in accordance with its bylaws, whether or not specifically implemented by regulation, subject to the requirements of this part and such other regulations, orders and directions as the Secretary may prescribe.

§ 1510.2 Definitions.

The following definitions apply to terms used in this part unless the context requires otherwise:

Act means the Federal Home Loan Bank Act (12 U.S.C. 1421 *et seq.*).

Administrative expenses means costs incurred as necessary to carry out the functions of the Funding Corporation, including custodian fees, but does not include any interest on obligations.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Custodian fee means any fee incurred by the Funding Corporation in connection with the transfer of any security to, or the maintenance of any security in, the Funding Corporation Principal Fund and any other expense incurred in connection with the establishment or maintenance of the Funding Corporation Principal Fund.

Directorate means the Directorate of the Funding Corporation established pursuant to section 21B(c) of the Act (12 U.S.C. 1421b(c)).

FDIC means the Federal Deposit Insurance Corporation established pursuant to section 1 of the Federal Deposit Insurance Act (12 U.S.C. 1811, *et seq.*).

Finance Board means the Federal Housing Finance Board established pursuant to section 2A(a)(1) of the Act.

FSLIC Resolution Fund means the Federal Savings and Loan Insurance Corporation Resolution Fund established pursuant to section 11A(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1811, *et seq.*).

Funding Corporation means the Resolution Funding Corporation established pursuant to section 21B(b) of the Act.

Funding Corporation Principal Fund means the separate account established under section 21B(g)(2) of the Act.

Interest payment due date means the date on which the next quarterly interest payments on obligations are due.

Net earnings means net earnings after deducting expenses relating to section 10(j) of the Act (Affordable Housing Program) and operating expenses, but without reduction for chargeoffs and payments to fund interest payments on obligations.

Obligations means bonds issued by the Funding Corporation under section 21B(f) of the Act.

RTC means the Resolution Trust Corporation established pursuant to section 21A(b)(1)(A) of the Act and which terminated on December 31, 1995, pursuant to section 21A(m) of the Act.

Secretary means the Secretary of the Treasury or the designee of the Secretary of the Treasury.

§ 1510.3 How does the Funding Corporation pay administrative expenses?

(a) *The Directorate proposes a budget.* By November 15 of each year, the Directorate must approve and submit to the Secretary a proposed budget for the administrative expenses of the Funding Corporation for the following year.

(b) *The Secretary approves the budget.* The Funding Corporation's budget is subject to the Secretary's prior approval. The proposed budget submitted by the Directorate shall be deemed to be approved by the Secretary unless the Secretary disapproves it within 45 days of the date submitted. The Funding Corporation must transmit a copy of the approved budget to each Bank.

(c) *Budget changes must be approved by the Secretary.* If the Funding Corporation projects or anticipates incurring expenses exceeding its approved budget, the Directorate must submit an amended budget to the Secretary for approval.

(d) *The Funding Corporation collects funds from the Banks to pay its administrative expenses.* At least semiannually, the Funding Corporation must request that each Bank submit within 10 business days of the request payment for a portion of the administrative expenses in the Funding Corporation's budget for the current calendar year. The amount of each Bank's payment must be pro rated according to the percentage of the total outstanding Funding Corporation capital stock owned by the Bank. The Funding Corporation must adjust the amount of each Bank's payment as necessary to reflect differences between aggregate projected and actual administrative expenses incurred during the calendar year and to reflect any changes in estimated aggregate administrative expenses for the coming period. The Funding Corporation must not request payments from the Banks that, in the aggregate, exceed the administrative expenses in the Funding Corporation's approved budget.

§ 1510.4 Who may act as the depositary and fiscal agent for the Funding Corporation?

(a) *In general, the Federal Reserve Banks.* The Funding Corporation must use one or more Federal Reserve Banks as depositaries for or fiscal agents or custodians of the Funding Corporation.

(b) *For administrative accounts, insured depository institutions.* Subject to approval by the Secretary, the Funding Corporation may establish demand deposit accounts at one or more federally insured depository institutions for the management of funds used to pay administrative expenses.

§ 1510.5 How does the Funding Corporation make interest payments on its obligations?

(a) *The Funding Corporation must obtain funds from up to four sources.* The Funding Corporation must pay the interest due on its obligations with funds it obtains from the following sources and in the following order:

(1) Earnings on assets of the Funding Corporation not invested in the Funding Corporation Principal Fund.

(2) To the extent funds identified in paragraph (a)(1) of this section are insufficient, the Funding Corporation must obtain from each Bank in each calendar year payments totaling 20 percent of the net earnings of the Bank. The Funding Corporation must not obtain funds from a Bank under this paragraph after the date upon which the term of the Bank's payment obligation has ended, as determined by the Finance Board pursuant to section 21B(f)(2)(C)(iii) of the Act.

(3) To the extent funds identified in paragraphs (a)(1) and (2) of this section are insufficient, the Funding Corporation must obtain from the FSLIC Resolution Fund amounts available from any net proceeds from the sale of assets received from the RTC by the FSLIC Resolution Fund.

(4) To the extent that funds from the sources identified in paragraphs (a)(1) through (3) of this section are insufficient, the Funding Corporation must obtain from the Secretary the additional amount due.

(b) *The Funding Corporation must obtain projections of funds availability from the Banks and the FSLIC Resolution Fund.* Not later than March 15, June 15, September 15, and December 15 of each year:

(1) The Funding Corporation must obtain from each Bank a statement signed by an officer of such Bank containing sufficient information on the Banks net earnings to enable the Funding Corporation to make quarterly projections of funds available from the Bank for the current quarter and the next three quarters; and

(2) The Funding Corporation must obtain from an authorized representative of the FSLIC Resolution Fund projections of the amount of funds available in the current quarter and the next three quarters from the net proceeds from the sale of received from the RTC.

(c) *The Funding Corporation must report funding projections to the Secretary.* Not later than March 20, June 20, September 20, and December 20 of each year, the Funding Corporation must submit to the Secretary for approval a report containing:

(1) The aggregate amounts of each of the next four quarterly interest payments due on obligations; and

(2) The amounts projected to be available to fund such payments from:

(i) Earnings on assets of the Funding Corporation not invested in the Funding Corporation Principal Fund;

(ii) Payments from the Banks; and

(iii) Funds transferred from the FSLIC Resolution Fund.

(d) *The Funding Corporation must request funds from the Banks, the FSLIC Resolution Fund, and the Secretary*—(1) *Requests to the Banks.* As soon as practicable after the end of each quarter, the Funding Corporation must obtain from each Bank a report of its actual net earnings for that quarter. Not less than six business days prior to the interest payment due date, the Funding Corporation must notify each Bank in writing of the interest payment due date and the amount of the payment due from the Bank. To the extent funds identified in paragraph (a)(1) of this section are insufficient to pay the interest due, the amount of each Bank's payment must be 20 percent of the Bank's actual quarterly net earnings, taking into account any adjustment to the Bank's earnings for any previous quarters. The Funding Corporation must request the Bank to provide payment through wiring immediately available and finally collected funds to the Funding Corporation no later than the interest payment due date.

(2) *Request to the FSLIC Resolution Fund.* On the day the Funding Corporation notifies the Banks of the payments due from them under paragraph (d)(1) of this section, the Funding Corporation must:

(i) Notify the FSLIC Resolution Fund in writing of:

(A) The interest payment due date;

(B) The aggregate amount of the quarterly interest payment due on that date; and

(C) The amount of the quarterly interest payment that will be funded by earnings on assets of the Funding Corporation not invested in the Funding Corporation Principal Fund and payments due from the Banks; and

(ii) Request that the FSLIC Resolution Fund transfer to the Funding Corporation by noon on the fifth business day prior to the interest payment due date any funds available from the net proceeds from the sale of assets received from the RTC, to the extent funds identified in paragraphs (a)(1) and (2) of this section are insufficient to pay the interest due.

(3) *Request to the Secretary.* No less than five business days prior to the interest payment due date, the Funding Corporation must request payment from the Secretary by providing a certification, in a form satisfactory to the Secretary, stating the total amounts of the quarterly interest payment to be paid by the Funding Corporation from sources other than the Secretary and the amounts necessary to make up the deficiency. Any amount paid by the Secretary becomes a liability of the Funding Corporation to be repaid to the Secretary upon the dissolution of the Funding Corporation, to the extent of its remaining assets.

§ 1510.6 What must the Funding Corporation do with surplus funds?

If the Funding Corporation has funds that are not needed for current interest payments on obligations, it must invest the funds in obligations of the United States issued by the Secretary, in accordance with an investment policy approved by the Secretary.

§ 1510.7 What are the Funding Corporation's reporting requirements?

In addition to the budget submission required by § 1510.3 and the funding projection reports required by § 1510.5, the Funding Corporation must prepare such reports as the Secretary may require, including reports necessary to assist the Secretary in making the annual report to Congress and the President on the Funding Corporation under section 21B(i) of the Act.

§ 1510.8 What are the audit requirements for the Funding Corporation?

The Funding Corporation must obtain an audit of its books and records by an independent external auditor at least annually.

Dated: February 11, 2000.

Gary Gensler,

Under Secretary of the Treasury.

[FR Doc. 00–5435 Filed 3–7–00; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–70–AD; Amendment 39–11608; AD 2000–04–25]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to BHTC Model 407 helicopters, that requires modifying the door latch assemblies on all four crew and passenger doors. This amendment is prompted by an incident that occurred during a manufacturer's flight test, in which a door latch assembly broke, preventing occupants in the helicopter from opening the door. The actions specified by this AD are intended to prevent a door latch rod assembly from disengaging from the door handle and preventing helicopter occupants from opening the door.

DATES: Effective April 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to BHTC Model 407 helicopters was published in the **Federal Register** on December 16, 1999 (64 FR 70201). That action proposed to require modifying the door latch assemblies on all four crew and passenger doors.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 146 helicopters of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per helicopter to accomplish the modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $210. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $83,220.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–04–25 Bell Helicopter Textron Canada: Amendment 39–11068. Docket No. 98–SW–70–AD.

Applicability: Model 407 helicopters, serial numbers 53000 through 53228, with door latch assemblies, part number (P/N) 20898–401, –402, –405, and –406, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 100 hours time-in-service, unless accomplished previously.

To prevent a door latch rod assembly from disengaging from the door handle and preventing helicopter occupants from opening the door, accomplish the following:

(a) Modify each door latch assembly, P/N 20898–401, –402, –405, and –406, in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 407–98–18, dated May 27, 1998.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Bell Helicopter Textron Alert Service Bulletin No. 407–98–18, dated May 27, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada; 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel,

Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 12, 2000.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–98–19, dated July 28, 1998.

Issued in Fort Worth, Texas, on February 24, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–5008 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–70–AD; Amendment 39–11609; AD 2000–04–26]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher GmbH & Co. Model ASW–27 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Alexander Schleicher GmbH & Co. (Alexander Schleicher) Model ASW–27 sailplanes. This AD requires inspecting the elevator control circuit clearance inside the fuselage tail boom to the fin intersection to assure a clearance of at least 2.5 millimeters (mm) (1/10-inch wide), and adjusting any clearance that does not meet the criteria. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to detect interference in the elevator control circuit, which, if not corrected, could result in the elevator control jamming with possible loss of control of the sailplane.

DATES: Effective April 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 25, 2000.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36163 Poppenhausen, Federal Republic of Germany; telephone: ++ 49 6658 89–0; facsimile: ++ 49 6658 89–40. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–70–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Alexander Schleicher Model ASW–27 sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 28, 1999 (64 FR 72584). The NPRM proposed to require inspecting the elevator control circuit clearance inside the fuselage tail boom to the fin intersection to assure a clearance of at least 2.5 mm (1/10-inch wide), and adjusting any clearance that does not meet the criteria. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Alexander Schleicher Technical Note No. 5, dated July 16, 1999.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry will be affected by the inspection, that it will take approximately 1 workhour per sailplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $1,800, or $60 per sailplane.

The FAA estimates that it will take approximately 2 workhours per sailplane to accomplish the adjustment, if necessary, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the adjustment on U.S. operators is estimated to be $3,600, or $120 per sailplane.

Compliance Time of This AD

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). When proper clearance is not provided inside the fuselage tail boom to the fin intersection, the 90-degree lever of the elevator controls rubs against the cut-out of the lower fin rib. Although the consequential jamming of the elevator controls is a result of sailplane operation, improper clearance will be prevalent at the time of manufacture. Sailplane operation varies among operators. For example, one operator may utilize the sailplane 50 hours TIS in 3 months while it may take another 12 months or more to accumulate 50 hours TIS. In order to assure that improper clearance is detected and corrected in a timely manner, the compliance time is required "within the next 90 calendar days after the effective date of this AD."

Regulatory Impact

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the

Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–04–26 Alexander Schleicher GMBH & CO. Segelflugzeugbau: Amendment 39–11609; Docket No. 99–CE–70–AD.

Applicability: Model ASW–27 sailplanes, serial numbers 27002 through 27104, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect interference in the elevator control circuit, which, if not corrected, could result in the elevator control jamming with possible loss of control of the sailplane, accomplish the following:

(a) Within the next 90 calendar days after the effective date of this AD, inspect the elevator control circuit clearance inside the fuselage tail boom to the fin intersection to assure a clearance of at least 2.5 millimeters (mm) (1/10-inch wide). Prior to further flight, adjust any clearance that does not meet the criteria. Accomplish these actions in accordance with the Action section of Alexander Schleicher Technical Note No. 5, dated July 16, 1999.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 901 Locust, Room 301, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Alexander Schleicher Technical Note No. 5, dated July 16, 1999, should be directed to Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36163 Poppenhausen, Federal Republic of Germany; telephone: ++ 49.6658.89–0; facsimile: ++ 49.6658.89–40. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(e) The inspection and modification required by this AD shall be done in accordance with Alexander Schleicher Technical Note No. 5, dated July 16, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36163 Poppenhausen, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 1999–283, Effective Date: September 9, 1999.

(f) This amendment becomes effective on April 25, 2000.

Issued in Kansas City, Missouri, on February 25, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5134 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–186–AD; Amendment 39–11611; AD 2000–05–02]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050, 200, 500, and 600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 050, 200, 500, and 600 series airplanes, that requires installation of certain components, and revisions of the Airplane Flight Manual. This action is necessary to prevent undetected failures of the horizontal and vertical stabilizer de-icing system, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective April 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 Mark 050, 200, 500, and 600 series airplanes was published in the **Federal Register** on January 4, 2000 (65 FR 251). That action proposed to require installation of certain components, and revisions of the Airplane Flight Manual (AFM).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 37 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required. AFM revision for operation of the airplane in the event of a failure of the de-icing system, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required AFM revision on U.S. operators is estimated to be $2,220, or $60 per airplane.

It will take approximately 125 work hours per airplane to accomplish the required installations, at an average labor rate of $60 per work hour. Required parts will cost approximately $11,000 per airplane. Based on these figures, the cost impact of the required installations on U.S. operators is estimated to be $684,500, or $18,500 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

None of the Model F27 Mark 050 series airplanes affected by this action are on the U.S. Register. Should an affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 1 work hour per airplane to accomplish the required AFM revision for checks of the de-icing system, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required AFM revision on U.S. operators is estimated to be $60 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–02 Fokker Services B.V: Amendment 39–11611. Docket 98–NM–186–AD.

Applicability: Model F27 Mark 050 series airplanes as listed in Fokker Service Bulletin SBF50–30–025, Revision 2, dated October 21, 1998; and Model F27 Mark 200, 500, and 600 series airplanes, serial numbers 10603 through 10692 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected failures of the horizontal and vertical stabilizer de-icing system, which could result in reduced controllability of the airplane, accomplish the following:

AFM Revision (Mark 050 Airplanes)

(a) For Model F27 Mark 050 series airplanes on which a de-icing distributor valve heating system has not been installed (Reference Fokker Service Bulletin SBF50–30–024): Within 10 days after the effective date of this AD, revise the Limitations and Normal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include the following information. This may be accomplished by inserting a copy of this AD into the AFM.

"PRE-FLIGHT INSPECTION PROCEDURE FOR FLIGHTS INTO KNOWN OR FORECAST ICING CONDITIONS'

- Cycle the airframe de-icing system twice through the Manual 1 and 2 position during ground operation.
- Visually check the tailplane leading edge de-icing boots for inflation.

Installations and AFM Revision (Mark 050 Airplanes)

(b) For Model F27 Mark 050 series airplanes: Within 18 months after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD.

(1) Install a monitoring system for the horizontal and vertical stabilizer de-icing system in accordance with Fokker Service Bulletin SBF50–30–025, Revision 2, dated October 21, 1998. Prior to further flight thereafter, revise the FAA-approved AFM to incorporate the flight manual changes described in Fokker Manual Change Notification (MCNO) F50–001, dated October 23, 1997. Following accomplishment of the installation, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(2) Install a modified pressure switch in the monitoring system in accordance with Fokker Service Bulletin SBF50–30–026, dated August 11, 1999.

Installations and AFM Revision (Mark 200, 500, 600 Airplanes)

(c) For Model F27 Mark 200, 500, and 600 series airplanes: Within 18 months after the effective date of this AD, accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD.

(1) Install a monitoring system for the horizontal and vertical stabilizer de-icing system in accordance with Fokker

Service Bulletin F27/30–44, dated February 20, 1998. Prior to further flight thereafter, revise the FAA-approved AFM to incorporate the flight manual changes described in Fokker MCNO F27–004, dated February 10, 1998.

(2) Install a modified pressure switch in the monitoring system in accordance with Fokker Service Bulletin F27/30–45, dated August 11, 1999.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with the following Fokker service bulletins, including Fokker manual change notifications, as applicable, which contain the following specified effective pages:

Document referenced and date	Page No.	Revision level shown on page	Date shown on page
SBF50–30–025, Revision 2, Oct. 21, 1998	1–3, 14, 15, 17–19	2	Oct. 21, 1998.
	4–13, 16, 22–25, 27–41, 43–45.	Original	Oct. 31, 1997.
	20, 21, 26, 42	1	June 10, 1998.
Manual Change Notification MCNO F50–001			
SBF27/30–44, February 20, 1998	1	Original	Oct. 23, 1997.
	1–31	Original	Feb. 20, 1998.
Manual Change Notification MCNM F27–003			
	1–5	Original	Dec. 10, 1997.
Manual Change Notification MCNO F27–004			
SBF50–30–026, Aug. 11, 1999	1–2	Original	Feb. 10, 1998.
F27/30–45, August 11, 1999	1–10	Original	Aug. 11, 1999.
	1–12	Original	Aug. 11, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directives 1998–019/2, and 1997–113/3, both dated June 18, 1999.

(g) This amendment becomes effective on April 12, 2000.

Issued in Renton, Washington, on February 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00-5334 Filed 3-7-00; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–241–AD; Amendment 39–11613; AD 2000–05–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that requires repetitive inspections to detect cracking of the fuselage skin in the area of the VHF2 antenna, and repair, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct such cracking, which could result in cabin depressurization of the airplane.

DATES: Effective April 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on December 30, 1999 (64 FR 73441). That action proposed to require repetitive inspections to detect cracking of the fuselage skin in the area of the VHF2 antenna, and repair, if necessary. That action also proposed to provide for optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 6 work hours to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD will be $360 per airplane, per inspection cycle.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it will take approximately 112 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this optional terminating action is estimated to be $6,720 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects

14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–04 Airbus: Amendment 39–11613. Docket 99–NM–241–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category; except those on which Airbus production modification 46025 is installed or on which Airbus Service Bulletin A330–53–3097, Revision 01, dated May 21, 1999 (for Model A330 series airplanes), or Service Bulletin A340–53–4108, Revision 01, dated May 21, 1999 (for Model A340 series airplanes), has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the fuselage skin in the area of the VHF2 antenna, which could result in cabin depressurization of the airplane, accomplish the following:

Detailed Visual Inspection

(a) At the latest of the times specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD, as applicable: Perform a detailed visual inspection (without removal of the VHF2 antenna) of the fuselage skin aft of frame 54, between the airplane centerline and stringer 56R in the area of the VHF2 antenna to detect cracks, in accordance with Airbus Service Bulletin A330–53–3094, Revision 02, dated May 28, 1998 (for Model A330 series airplanes), or Service Bulletin A340–53–4105, Revision 02, dated May 25, 1998 (for Model A340 series airplanes) (hereinafter referred to as the applicable service bulletin). Thereafter, if no cracks are detected, repeat the detailed visual inspection every 36 flight hours until accomplishment of the high frequency eddy current (HFEC) inspection required by paragraph (b) of this AD.

(1) Prior to the accumulation of 900 total flight hours.

(2) Within 1,250 flight hours since accomplishment of the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin, if the interim repair has been accomplished prior to the effective date of this AD.

(3) Within 300 flight hours since the most recent HFEC inspection accomplished in accordance with the applicable service bulletin, if the most recent HFEC inspection has been accomplished prior to the effective date of this AD.

(4) Within 36 flight hours after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

High Frequency Eddy Current Inspection

(b) Perform a high frequency eddy current (HFEC) inspection to detect cracks of the fuselage skin aft of frame 54, between the

airplane centerline and stringer 56R in the area of the VHF2 antenna, in accordance with the applicable service bulletin, at the applicable time specified by paragraph (b)(1) or (b)(2) of this AD. Accomplishment of this inspection terminates the requirements of paragraph (a) of this AD.

(1) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has not been accomplished: Prior to the accumulation of 900 total flight hours on the airplane, or within 500 flight hours after the effective date of this AD, whichever occurs later. Thereafter, accomplish the follow-on actions of paragraph (c) or (d) of this AD, as applicable.

(2) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has been accomplished: Within 1,250 flight hours after accomplishment of the interim repair, or within 500 flight hours after the effective date of this AD, whichever occurs later.

Repetitive Inspections

(c) If no crack is detected during the HFEC inspection required by paragraph (b) of this AD, accomplish the repetitive inspections required by paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has not been accomplished, accomplish the actions specified by paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Repeat the HFEC inspection specified by paragraph (b) at intervals not to exceed 500 flight hours.

(ii) Within 300 flight hours after each HFEC inspection required by this AD: Perform a detailed visual inspection (without removal of the VHF2 antenna) of the fuselage skin aft of frame 54, between the airplane centerline and stringer 56R in the area of the VHF2 antenna to detect cracks, in accordance with the applicable service bulletin. Thereafter, if no cracks are detected, repeat the detailed visual inspection every 36 flight hours until accomplishment of the next HFEC inspection required by paragraph (c)(1)(i) of this AD.

(2) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has been accomplished, repeat the HFEC inspection specified by paragraph (b) of this AD at intervals not to exceed 1,250 flight hours.

Corrective Actions

(d) If any crack is detected during any inspection required by paragraph (a), (b), or (c) of this AD, and the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has not been accomplished: Prior to further flight, accomplish the actions specified by paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) If only one crack is detected and that crack is 9.45 inches or less, and is within the limits specified by the applicable service bulletin: Install the interim repair specified in paragraph 2.C.(4) of the applicable service bulletin. Thereafter, repeat the HFEC inspection specified by paragraph (b) of this AD at intervals not to exceed 1,250 flight hours.

Note 3: The interim repair referenced by this AD consists of cutting out the cracked portion of the fuselage skin, and installing a filler plate in the skin cutout, two doublers, and shims, as described in paragraph 2.C.(4) of the applicable service bulletin.

Note 4: Accomplishment of the interim repair in accordance with paragraph 4.3 of Airbus Industrie All Operator Telex (AOT) 53–10, dated September 24, 1997, is acceptable for compliance with the requirements of paragraph (d)(1) of this AD.

(2) If any crack is detected that is longer than 9.45 inches, or is outside the limits specified by the service bulletin, or if more than one crack is detected: Repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(e) If any crack is detected during any inspection required by paragraph (a), (b), or (c) of this AD and the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has been accomplished: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(f) Accomplishment of the modification as described in Airbus Service Bulletin A330–53–3097, Revision 01, dated May 21, 1999 (for Model A330 series airplanes), or Service Bulletin A340–53–4108, Revision 01, dated May 21, 1999 (for Model A340 series airplanes), terminates the repetitive inspections required by paragraphs (a), (b), and (c) of this AD.

Note 5: Accomplishment of Airbus production modification 46025, or the modification as described in Airbus Service Bulletin A330–53–3097, dated July 29, 1998 (for Model A330 series airplanes), or Service Bulletin A340–53–4108, dated July 31, 1998 (for Model A340 series airplanes), also constitutes terminating action for the repetitive inspections required by paragraphs (a), (b), and (c) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Except as provided by paragraphs (d)(2) and (e) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A330–53–3094, Revision 02, dated May 28, 1998; or Airbus Service Bulletin A340–53–4105, Revision 02, dated May 25, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 7: The subject of this AD is addressed in French airworthiness directives 1998–192–071(B)R1 (for Model A330 series airplanes) and 1998–193–089(B)R1 (for Model A340 series airplanes), both dated March 24, 1999.

(j) This amendment becomes effective on April 12, 2000.

Issued in Renton, Washington, on February 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5332 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–337–AD; Amendment 39–11616; AD 2000–05–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300 and A300–600 series airplanes, that currently requires repetitive inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. That AD also

requires modification of Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. This amendment expands the current inspection area for certain airplanes. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

DATES: Effective April 12, 2000.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of April 12, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 20, 1999 (64 FR 49966, September 15, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–19–26, amendment 39–11313 (64 FR 49966, September 15, 1999), which is applicable to certain Airbus Model A300 and A300–600 series airplanes, was published in the **Federal Register** on December 30, 1999 (64 FR 73439). The action proposed to continue to require repetitive inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary; and modification of Gear Rib 5 of the MLG attachment fittings, which would constitute terminating action for the repetitive inspections. That action also proposed to expand the current inspection area for certain airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 164 airplanes of U.S. registry that will be affected by this AD.

The modification that is currently required by AD 99–19–26, and retained in this AD, takes approximately 62 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $10,270 per airplane. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $2,294,360, or $13,990 per airplane.

The new expanded inspections that are required in this AD action will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $59,040, or $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11313 (64 FR 49966, September 15, 1999), and by adding a new airworthiness directive (AD), amendment 39–11616, to read as follows:

2000–05–07 Airbus Industrie: Amendment 39–11616. Docket 99–NM–337–AD. Supersedes AD 99–19–26, Amendment 39–11313.

Applicability: Model A300 series airplanes, as listed in Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998; and Model A300–600 series airplanes, as listed in Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998; except airplanes on which Airbus Modification 11912 has been installed in production, or on which Airbus Modification 11932 has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the main landing gear (MLG) attachment fittings, which could result in reduced structural integrity of the airplane, accomplish the following:

Repetitive Inspections

(a) Perform a detailed visual and a high frequency eddy current (HFEC) inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998 (for Model A300–600 series airplanes); or A300–57–0234, Revision 01, dated March 11, 1998 (for Model A300 series airplanes); as applicable; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. After the effective date of this AD, only Airbus Service Bulletin A300–57A0234, Revision 02, dated June 24, 1999, or Revision 03, including Appendix 01, dated September 2, 1999 (for Model A300 series airplanes); or A300–57A6087, Revision 02, including Appendix 01, dated June 24, 1999 (for Model A300–600 series airplanes); as applicable; shall be used. Repeat the inspections thereafter at intervals not to exceed 1,500 flight cycles.

Detailed Visual Inspection

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of March 9, 1998: Inspect within 500 flight cycles after March 9, 1998.

(2) For airplanes that have accumulated less than 20,000 total flight cycles as of March 9, 1998: Inspect prior to the accumulation of 18,000 total flight cycles, or within 1,500 flight cycles after March 9, 1998, whichever occurs later.

Note 3: Accomplishment of the initial detailed visual and HFEC inspections in accordance with Airbus Service Bulletin A300–57A0234 or A300–57A6057, both dated August 1, 1997, as applicable, is considered acceptable for compliance with the initial inspections required by paragraph (a) of this AD.

Repair

(b) If any crack is detected during any inspection required by this AD, prior to further flight, accomplish the requirements of paragraphs (b)(1) or (b)(2) of this AD, as applicable.

(1) If a crack is detected at one hole only, and the crack does not extend out of the spotface of the hole, repair in accordance with Airbus Service Bulletin A300-57A0234, Revision 02, dated June 24, 1999, or Revision 03, including Appendix 01, dated September 2, 1999 (for Model A300 series airplanes); or A300–57A6087, Revision 02, including Appendix 01, dated June 24, 1999 (for Model A300–600 series airplanes); as applicable.

(2) If a crack is detected at more than one hole, or if any crack at any hole extends out of the spotface of the hole, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (or its delegated agent).

Terminating Modification

(c) Prior to the accumulation of 21,000 total flight cycles, or within 2 years after October 20, 1999 (the effective date of AD 99–19–26, amendment 39–11313), whichever occurs later: Modify Gear Rib 5 of the MLG attachment fittings at the lower flange in accordance with Airbus Service Bulletin A300–57–6088, Revision 01, including Appendix 01 (for Model A300–600 series airplanes), or A300–57–0235, Revision 01, including Appendix 01 (for Model A300 series airplanes), all dated February 1, 1999, as applicable. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

Note 4: Accomplishment of the modification required by paragraph (d) of this AD prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–57–6088 or A300–57–0235, both dated August 1, 1998; as applicable; is acceptable for compliance with the requirements of that paragraph.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–19–26, amendment 39–11313, are approved as alternative methods of compliance with this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (b)(2) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998; Airbus Service Bulletin A300–57A6087, Revision 02, including Appendix 01, dated June 24, 1999; Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998; Airbus Service Bulletin A300–57A0234, Revision 02, dated June 24, 1999; Airbus Service Bulletin A300–57A0234, Revision 03, including Appendix 01, dated September 2, 1999; Airbus Service Bulletin A300–57–6088, Revision 01, including Appendix 01, dated February 1, 1999; and Airbus Service Bulletin A300–57–0235, Revision 01, including Appendix 01, dated February 1, 1999; as applicable.

(1) The incorporation by reference of Airbus Service Bulletin A300–57A6087, Revision 02, including Appendix 01, dated June 24, 1999; Airbus Service Bulletin A300–57A0234, Revision 02, dated June 24, 1999; and Airbus Service Bulletin A300–57A0234, Revision 03, including Appendix 01, dated September 2, 1999; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998; Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998; Airbus Service Bulletin A300–57–6088, Revision 01, including Appendix 01, dated February 1, 1999; and Airbus Service Bulletin A300–57–0235, Revision 01, including Appendix 01, dated February 1, 1999; was approved previously by the Director of the Federal Register as of October 20, 1999 (64 FR 49966, September 15, 1999).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 6: The subject of this AD is addressed in French airworthiness directive 1998–151–247(B), dated June 16, 1999.

(g) This amendment becomes effective on April 12, 2000.

Issued in Renton, Washington, on February 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5331 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–353–AD; Amendment 39–11617; AD 2000–05–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319 and A321 series airplanes, that requires replacement of the actuator of the ram air turbine (RAT) with a new actuator. This amendment also requires modification of the actuator wiring. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the RAT to deploy in an emergency situation, and consequent loss of electrical and hydraulic systems.

DATES: Effective April 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319 and A321 series airplanes was published in the **Federal Register** on December 30, 1999 (64 FR 73438). That action proposed to require replacement of the actuator of the ram air turbine (RAT) with a new actuator. That action also proposed to require modification of the actuator wiring.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the parts manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,320, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–08 Airbus Industrie: Amendment 39–11617. Docket 99–NM–353–AD.

Applicability: Model A319 and A321 series airplanes, certificated in any category; except those on which Airbus Modification 27015 or Airbus Service Bulletin A320–29–1088, dated February 23, 1999, has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the ram air turbine (RAT) to deploy in an emergency situation, and consequent loss of electrical and hydraulic systems, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD: Replace the RAT actuator with an improved actuator, and modify the wiring of the RAT actuator; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1088, dated February 23, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement and modification shall be done in accordance with Airbus Service Bulletin A320–29–1088, dated February 23, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–412–141(B), dated October 20, 1999.

(e) This amendment becomes effective on April 12, 2000.

Issued in Renton, Washington, on February 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5330 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–261–AD; Amendment 39–11614; AD 2000–05–05]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235–100 and CN–235–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all CASA Model CN–235–100 and CN–235–200 series airplanes, that requires replacement of existing anti-icing distributor valves with new, improved valves. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent ice accumulation on the wings or tail of the airplane, which could result in reduced controllability of the airplane.

DATES: Effective April 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all CASA Model CN–235–100 and CN–235–200 series airplanes was published in the **Federal Register** on January 5, 2000 (65 FR 399). That action proposed to require replacement of existing anti-icing distributor valves with new, improved valves.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $4,671 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,942, or $6,471 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–05 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–11614. Docket 99–NM–261–AD.

Applicability: All Model CN–235–100 and CN–235–200 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice accumulation on the wings or tail of the airplane, which could result in reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 4 months after the effective date of this AD, replace the existing anti-icing distributor valves, having part number (P/N) AC960013, in the wing and tail areas of the airplane, with new, improved valves, having P/N AC911016, in accordance with CASA Service Bulletin SB–235–30–14, dated August 13, 1999.

(b) As of the effective date of this AD, no person shall install a distributor valve having P/N AC960013 on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with CASA Service Bulletin SB–235–30–14, dated August 13, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 04/99, dated July 30, 1999.

(f) This amendment becomes effective on April 12, 2000.

Issued in Renton, Washington, on February 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5329 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–334–AD; Amendment 39–11615; AD 2000–05–06]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model 400A and 400T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon (Beech) Model 400A and 400T series airplanes, that requires a one-time inspection to detect incorrect wiring of the engine fire extinguisher bottle squibs, and corrective action, if necessary. It also requires a modification to the wiring and the addition of wire harness and bottle labeling for future reference. This amendment is prompted by reports of incorrect wiring of the engine fire extinguisher bottle squibs. The actions specified by this AD are intended to prevent failure of the engine fire extinguisher bottle to discharge, or discharge of the wrong engine fire extinguisher bottle.

DATES: Effective April 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Beechjet/Premier Technical Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Dixon, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4152; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon (Beech) Model 400A and 400T series airplanes was published in the **Federal Register** on December 6, 1999 (64 FR 68060). That action proposed to require a one-time inspection to detect incorrect wiring of the engine fire extinguisher bottle squibs, and corrective action, if necessary. It also proposed to require a modification to the wiring and the addition of wire harness and bottle labeling for future reference.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 350 airplanes of the affected design in the worldwide fleet. The FAA estimates that 310 airplanes of U.S. registry will be affected by this AD.

It is estimated that it will take approximately 1 work hour per airplane to accomplish the required inspection,

at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection portion of the AD on U.S. operators is estimated to be $18,600, or $60 per airplane.

It is estimated that it will take approximately 2 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification portion of the required AD on U.S. operators is estimated to be $37,200, or $120 per airplane.

Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $55,800, or $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–06 Raytheon Aircraft Company (Formerly Beech): Amendment 39–11615. Docket 99–NM–334–AD.

Applicability: Model 400A series airplanes, serial numbers RK–45 and RK–49 through RK–209 inclusive; Model 400T series airplanes (T–1A), serial numbers TT–01 through TT–180 inclusive; and Model 400T series airplanes (TX), serial numbers TX–01 through TX–09 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine fire extinguisher bottle to discharge, or discharge of the wrong engine fire extinguisher bottle, accomplish the following:

Inspection and Corrective Action

(a) Within 50 flight hours after the effective date of this AD: Perform a one-time general visual inspection of the left and right engine fire extinguisher bottle squibs to detect wiring that is incorrect as specified by Raytheon Aircraft Service Bulletin SB 26–3250, Revision 1, dated July 1999. Perform the inspection in accordance with the service bulletin. If any incorrect wiring is detected, prior to further flight, repair it in accordance with the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Modification

(b) Within 200 flight hours after the effective date of this AD: Modify and re-label the wiring of the left and right engine fire extinguisher bottle squibs, in accordance with Raytheon Aircraft Service Bulletin SB 26–3250, Revision 1, dated July 1999.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Raytheon Aircraft Service Bulletin SB 26–3250, Revision 1, dated July 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Beechjet/Premier Technical Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 12, 2000.

Issued in Renton, Washington, on February 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5328 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–59–AD; Amendment 39–11605; AD 2000–04–22]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc 524 Series and Trent 768–60 and 772–60 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce plc (RR) RB211–524G2–T–19; RB211–524G3–T–19; RB211–524H2–T–19; RB211 Trent 768-60; and RB211 Trent 772–60 turbofan engines. This AD requires the replacement of the joint bolt assemblies that secure the high-pressure compressor (HPC) to the high-pressure turbine (HPT) of the RB211–524 series and Trent 768 and 772 series turbofan engines. This amendment is prompted by six incidents of bolt failure, one of which resulted in a damaged stage 6 HPC disk following an impact with a separated bolt head. The actions specified in this AD are intended to prevent failure of the HPC-to-HPT joint bolt assemblies, which could result in a cracked stage 6 HPC disk, possible uncontained engine failure, and damage to the airplane.

DATES: Effective April 7, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–59–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov." Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax: International Access Code 011, Country Code 44, 1332–249223. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7176, fax 781–238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce plc (RR) RB211–524G2–T–19; RB211–524G3–T–19; RB211–524H2–T–19; and RB211 Trent 768–60 and 772–60 turbofan engines. The CAA advises that it has received six reports of failures of high-pressure compressor (HPC)-to-high-pressure turbine (HPT) joint bolt assemblies, part number (P/N) BLT5543. In one case, a bolt head separated from the rest of the bolt and was propelled toward the HPC stage 6 disk where it caused impact damage to the stage 6 disk. A crack could initiate from the damage and propagate to disk failure. The investigation by the CAA has revealed that material selection, INCO 909, contributed to the failure of the HPC-to-HPT joint bolt assemblies, P/N BLT5543. This condition, if not corrected, could result in failure of the HPC-to-HPT joint bolt assemblies, which could result in a cracked stage 6 HPC disk, possible uncontained engine failure, and damage to the airplane.

Manufacturer's Service Information

RR has issued mandatory service bulletin (SB) RB.211–72–C491, Revision 1, dated October 8, 1999, that specifies procedures for replacement of the INCO 909 HPC-to-HPT joint bolt assemblies, P/N BLT5543, with INCO 718 HPC-to-HPT joint bolt assemblies, P/N BLT5541, during the next normal overhaul when the module is sufficiently disassembled to allow access to the bolts, but no later than June 30, 2000. The CAA classified this service bulletin as mandatory and issued AD 004–10–99, dated October 8, 1999, in order to assure the airworthiness of these RR engines in the UK.

Bilateral Airworthiness Agreement

These engine models are manufactured in the UK and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, this AD requires replacement of the INCO 909 HPC-to-HPT joint bolt assemblies, P/N BLT5543, with INCO 718 HPC-to-HPT joint bolt assemblies, P/N BLT5541, before further flight. The actions would be required to be accomplished in accordance with the SB described previously.

Difference of Compliance Times Between the Manufacturer's Service Bulletin and This AD

RR SB No. RB.211–72–C491, Revision 1, dated October 8, 1999, requires that the joint bolts be replaced before June 30, 2000. The FAA has determined that since none of these engines are currently in use in the United States, the AD may require that the joint bolts be replaced before further flight.

Immediate Adoption

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are impracticable. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that

supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–59–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is a nonsignificant regulation that may be issued immediately to correct an unsafe condition in engines, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves a nonsignificant regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–04–22 Rolls-Royce plc: Amendment 39–11605. Docket 99-NE–59-AD.

Applicability: RB211–524G2-T–19; RB211–524G3-T–19; RB211–524H2-T–19; and RB211 Trent 768–60 and 772–60 turbofan engines installed on, but not limited to Airbus Industrie A330 series and The Boeing Co. 747 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the HPC-to-HPT joint bolt assemblies, which could result in a cracked stage 6 HPC disk, possible uncontained engine failure, and damage to the airplane accomplish the following:

Replacement of HPC-to-HPT Joint Bolt Assemblies

(a) Replace INCO 909 HPC-to-HPT joint bolt assemblies, part number BLT5543, with INCO 718 HPC-to-HPT joint bolt assemblies, P/N BLT5541, before further flight, in accordance with the section 3.A., Accomplishment Instructions, of Rolls-Royce Mandatory service bulletin (SB) RB.211–72–C491, Revision 1, dated October 8, 1999.

Alternate Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Perform the actions required by this AD in accordance with Rolls-Royce Mandatory SB RB.211–72-C491, Revision 1, dated October 8, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax: International Access Code 011, Country Code 44, 1332–249223. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on April 7, 2000.

Issued in Burlington, Massachusetts, on February 21, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–4929 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–34–AD; Amendment 39–11607; AD 2000–04–24]

RIN 2120–AA64

Airworthiness Directives; Honeywell International (formerly AlliedSignal Inc.) 36–300(A), 36–280(B), and 36–280(D) Series Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Honeywell International (formerly AlliedSignal Inc.) 36–300(A), 36–280(B), and 36–280(D) series Auxiliary Power Units (APUs). This amendment requires installation of an external load compressor containment shield, or installation of a load compressor impeller with lower stress concentrations. This amendment is prompted by reports of load compressor impeller failures. The actions specified by this AD are intended to prevent an

uncontained APU failure and damage to the airplane.

DATES: Effective May 8, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Honeywell International, Inc., Attn: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003; telephone 602–365–2493, fax 602–365–5577. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone 562–627–5251, fax 562–627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Honeywell International (formerly AlliedSignal Inc.) 36–300(A), 36–280(B), and 36–280(D) series Auxiliary Power Units (APUs) was published in the **Federal Register** on September 8, 1999 (64 FR 48723). That action proposed to require installation of an external load compressor containment shield at the next shop visit, or 6 months after the effective date of this AD, whichever occurs first. An additional compliance option would be installation of a load compressor impeller, part number (P/N) 3822270–5, to extend cyclic service life to 26,000 cycles-since-new (CSN) before mandatory installation of the containment shield. Operators cannot operate with a load compressor installed, P/N 3822270–5, past 26,000 CSN unless they have installed an external containment shield. That action was prompted by three incidents where the load compressor impellers separated, resulting in uncontained APU failures and debris entering the APU compartment. That condition, if not corrected, could result in an uncontained APU failure and damage to the airplane.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Expand the Applicability

One commenter requests to add load compressor impeller, P/Ns 3822270–1 and 3822270–3, to the applicability in addition to P/Ns 3822270–4 and 3822270–5. Both load compressor impellers, P/Ns 3822270–1 and 3822270–3, are affected by the same damper ring groove condition as the impellers already affected by the proposal. The FAA does not concur. While impellers, P/Ns 3822270–1 and 3822270–3, are subject to the same failure mode as P/N 3822270–4 load compressor impellers affected by this AD, all load compressor impellers, P/Ns 3822270–1 and 3822270–3, were required to be reworked to the P/N 3822270–4 configuration by AD 92–21–05. The FAA has added a note referring to the requirement of AD 92–21–05 to remind operators that the old load compressor impeller designs shall no longer be used in service.

Clarification of Cyclic Determination

One commenter requests clarification in how to determine the number of cycles on load compressor impellers in service. The commenter wishes to use its existing system for determining the number of cycles on the load compressor impellers instead of the method described by the manufacturer in its applicable service bulletin (SB). The FAA concurs. Since the AD does not require the use of the SB's cycle counting methodology, operators may use their own approved system to calculate cycles. A note has been added following paragraph (b) to address acceptable methods of determining part cycles.

Subsequent Serial Number (S/N) Parts

The same commenter notes that the AlliedSignal Inc. SB does not list all P/N 3822270–5 impellers in service. The FAA concurs. When the SB was written all subsequent S/N parts that would be produced could not have been anticipated. Since all S/Ns are affected, the applicability paragraph in this final rule has been rewritten to clarify that this AD applies to APUs with P/N 3822270–4 or –5 impellers installed. The applicability paragraph of the AD takes precedence over the AlliedSignal Inc. SB's list of S/Ns. For parts not listed specifically in the SB, the SB provides a procedure to obtain the required information.

Clarification of Compliance Times

The same commenter requests clarification on the compliance times for load compressor impellers, P/N 3822270–5. The commenter notes there appears to be contradictory requirements between paragraphs (b) and (c) of the proposal. Paragraph (b) of the proposal allows operating impellers, P/N 3822270–5, above 26,000 CSN, for six months after the effective date of the AD. Paragraph (c) requires that an external containment shield be in place before operating the APU past 26,000 CSN. The FAA concurs. Paragraph (c) of this final rule has been modified to clarify that the calendar time requirement applies along with the cycle time limit.

Can an Operator Remove the Containment Shield With a Lower Time Impeller Installed?

The same commenter requests clarification on the possibility of removal of the external load compressor containment shield when a lower time impeller is installed. The same commenter also asks why APUs containing P/N 3822270–5 load compressor impellers are not managed to a 26,000 CSN life limit. The commenter states that the proposal does not specifically prohibit removing the external containment shield when P/N 3822270–5 load compressor impellers with less than 26,000 CSN are installed. Operating to a 26,000 CSN limit would be preferred to incorporation of an external load compressor containment shield because it would avoid the potential for APU damage in the event that an impeller does fail. The FAA concurs in part. The commenter may choose, within the requirements of this final rule, to operate with low time P/N 3822270–5 impellers installed without external load compressor containment shields, or with P/N 3822270–5 impellers with more than 26,000 CSN and external load compressor containment shields installed.

Extend Calendar End-Date

One commenter requests an extension from six months to two years for the calendar end-date for APUs containing P/N 3822270–5 load compressor impellers. The commenter believes that there is inadequate information available to accurately determine the actual number of cycles on load compressor impellers. The commenter therefore believes that the only practical means of complying with the AD is the calendar method. Extension from six months to two years would allow for orderly scheduling of the installation of the containment shield with scheduled maintenance intervals. The FAA concurs in part. Although detailed load

compressor impeller cycle times are not known for all APUs, the AlliedSignal SB procedure provides a method for assigning cyclic times which are reasonable based upon review of APU operating history. The FAA has determined that for impellers, P/N 3822270–5, an extension of the calendar end-date from six months to one year would be reasonable to allow incorporation of the containment shield with scheduled maintenance intervals while maintaining an adequate safety level.

APU Model Numbers

The APUs affected by this AD are sometimes referred to as GTCP36–300(A), GTCP36–280(B) and GTCP36–280(D) series APUs. The presence or absence of the letters "GTCP" preceding the model number does not affect the applicability of this AD on those APUs. The FAA has added a note to clarify that the AD applies to the specified APU series whether or not the letters "GTCP" appear on the dataplate.

New Company Name

Since publication of the proposal, AlliedSignal has adopted the Honeywell International, Inc. name. This final rule has been altered accordingly to refer to the new company name with AlliedSignal Inc. listed as the former company name.

Concur With Proposal

One commenter concurs with the rule as proposed.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 1,044 APUs of the affected design in the worldwide fleet. The FAA estimates that 465 APUs installed on airplanes of US registry will be affected by this AD, that it will take approximately 6 work hours per Model 36–300(A) APU (85 units) to accomplish the proposed actions, and 8 work hours per Model 36–280(D) APU (380 units), and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,103 per APU. Fifteen installations on domestic Boeing 737 aircraft (Model 36–280(B)) will require a tube assembly kit, which would cost approximately $1,042. The manufacturer has informed the FAA that it may offset some of these costs thereby lowering the total cost to operators. Based on these figures, the total cost impact of the AD on US operators is estimated to be $1,725,270.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–04–24 Honeywell International (formerly Allied Signal Inc.): Amendment 39–11607. Docket 99–NE–34–AD.

Applicability: Honeywell International (formerly AlliedSignal Inc.) 36–300(A), 36–280(B), and 36–280(D) series Auxiliary Power Units (APUs), with load compressor impellers, part numbers (P/Ns) 3822270–4, or 3822270–5, installed. These APUs are installed on but not limited to Airbus Industrie A319, A320, and A321 series; Boeing 737–300, –400, –500 series; and McDonnell Douglas MD–80 series airplanes.

Note 1: This airworthiness directive (AD) applies to each APU identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For APUs that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: The presence or absence of the letters "GTCP" preceding the model series does not affect the applicability of this AD to the specified model APUs.

Note 3: AD 92–21–05 requires that all APUs with load compressor impellers, P/Ns 3822270–1 or 3822270–3, be reworked to the –4 configuration.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained APU failure and damage to the airplane, accomplish the following:

Load Compressor Impellers, P/N 3822270–4

(a) For APUs with load compressor impellers, P/N 3822270–4, at the next shop visit, or within 6 months after the effective date of this AD, whichever occurs first, accomplish either of the following:

(1) Install an external load compressor containment shield in accordance with AlliedSignal Inc. Service Bulletins (SBs) No. GTCP36–49–7471, dated April 20, 1999, GTCP36–49–7472, dated March 31, 1999, or GTCP36–49–7473, dated March 31, 1999, as applicable; or

(2) Install load compressor impeller, P/N 3822270–5.

Load Compressor Impellers, P/N 3822270–5

(b) For APUs with load compressor impellers, P/N 3822270–5, install an external load compressor containment shield within one year after the effective date of this AD, or prior to the impeller exceeding 26,000 cycles-since-new (CSN), whichever occurs later, in accordance with AlliedSignal Inc. SBs No. GTCP36–49–7471, dated April 20, 1999, GTCP36–49–7472, dated March 31, 1999, or GTCP36–49-7473, dated March 31, 1999, as applicable.

Note 4: Operators may use their own FAA-approved tracking system for determining load compressor impeller cyclic count in lieu of the procedure described in the AlliedSignal Inc. SBs referenced in this AD.

Cyclic Limit without External Containment Shield

(c) Following one year after the effective date of this AD, operators cannot operate with a load compressor, P/N 3822270–5, installed, past 26,000 cycles unless they have installed an external load compressor containment shield.

Definition

(d) For the purpose of this AD, a shop visit is defined as when the APU is inducted into a shop for any reason.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 5: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

Ferry Flights

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions required by this AD shall be done in accordance with the following AlliedSignal Inc. SBs: GTCP36–49–7471, dated April 20, 1999, GTCP36–49–7472, dated March 31, 1999, and GTCP36–49–7473, dated March 31, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell International, Inc., Attn: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003; telephone 602–365–2493, fax 602–365–5577. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) This amendment becomes effective on May 8, 2000.

Issued in Burlington, Massachusetts, on February 25, 2000.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–5009 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM99–2–001; Order No. 2000–A]

Regional Transmission Organizations

Issued February 25, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) reaffirms its basic determinations in Order No. 2000 and clarifies certain terms. Order No. 2000 requires that each public utility that owns, operates, or controls facilities for the transmission of electric energy in interstate commerce make certain filings with respect to forming and participating in an Regional Transmission Organization (RTO). Order No. 2000 also codifies minimum characteristics and functions that a transmission entity must satisfy in order to be considered an RTO. The Commission's goal is to promote efficiency in wholesale electricity markets and to ensure that electricity consumers pay the lowest price possible for reliable service.

EFFECTIVE DATE: Changes to Order No. 2000 made in this order on rehearing will become effective on April 7, 2000.

FOR FURTHER INFORMATION CONTACT:

Alan Haymes (Technical Information), Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–2919

Brian R. Gish (Legal Information), Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0996

James Apperson (Collaborative Process), Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–2962

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I. Introduction

On December 20, 1999, the Commission issued a Final Rule (Order No. 2000) to advance the formation of Regional Transmission Organizations (RTOs).[1] Our objective in promulgating Order No. 2000 was to have all transmission-owning entities in the Nation, including non-public utility entities, place their transmission facilities under the control of appropriate RTOs in a timely manner.

In Order No. 2000, the Commission concluded that regional institutions could address the operational and reliability issues confronting the industry, and eliminate undue discrimination in transmission services that can occur when the operation of the transmission system remains in the control of a vertically integrated utility.

[1] Regional Transmission Organizations, Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (2000).

Furthermore, we found that appropriate regional transmission institutions could: (1) improve efficiencies in transmission grid management; (2) improve grid reliability; (3) remove remaining opportunities for discriminatory transmission practices; (4) improve market performance; and (5) facilitate lighter handed regulation. We stated our belief that appropriate RTOs can successfully address the existing impediments to efficient grid operation and competition and can consequently benefit consumers through lower electricity rates and a wider choice of services and service providers. In addition, substantial cost savings are likely to result from the formation of RTOs.

Order No. 2000 established minimum characteristics and functions that an RTO must satisfy in the following areas:

Minimum Characteristics:

1. Independence
2. Scope and Regional Configuration
3. Operational Authority
4. Short-term Reliability

Minimum Functions:

1. Tariff Administration and Design
2. Congestion Management
3. Parallel Path Flow
4. Ancillary Services
5. OASIS and Total Transmission Capability (TTC) and Available Transmission Capability (ATC)
6. Market Monitoring
7. Planning and Expansion
8. Interregional Coordination

In the Final Rule, we noted that the characteristics and functions could be satisfied by different organizational forms, such as ISOs, transcos, combinations of the two, or even new organizational forms not yet discussed in the industry or proposed to the Commission. Likewise, the Commission did not propose a "cookie cutter" organizational format for regional transmission institutions or the establishment of fixed or specific regional boundaries under section 202(a) of the Federal Power Act (FPA).

We also established an "open architecture" policy regarding RTOs, whereby all RTO proposals must allow the RTO and its members the flexibility to improve their organizations in the future in terms of structure, operations, market support and geographic scope to meet market needs.

In addition, the Commission provided guidance on flexible transmission ratemaking that may be proposed by RTOs, including ratemaking treatments that address congestion pricing and performance-based regulation. The Commission stated that it would consider, on a case-by-case basis, innovative rates that may be appropriate for transmission facilities under RTO control.

Furthermore, to facilitate RTO formation in all regions of the Nation, the Final Rule outlined a collaborative process to take place in the Spring of 2000. Under this process, we expect that public utilities and non-public utilities, in coordination with state officials, Commission staff, and all affected interest groups, will actively work toward the voluntary development of RTOs.

Lastly, under Order No. 2000, all public utilities that own, operate or control interstate transmission facilities must file with the Commission by October 15, 2000 (or January 15, 2001 [2]) a proposal to participate in an RTO with the minimum characteristics and functions to be operational by December 15, 2001, or, alternatively, a description of efforts to participate in an RTO, any existing obstacles to RTO participation, and any plans to work toward RTO participation. That filing must explain the extent to which the transmission entity in which it proposes to participate meets the minimum characteristics and functions for an RTO, and either propose to modify the existing institution to the extent necessary to become an RTO, or explain the efforts, obstacles and plans with respect to conforming to these characteristics and functions.

II. Summary

Thirty-eight petitioners filed requests for rehearing and/or clarification of Order No. 2000.[3] These entities raise a variety of issues, including legal, policy and technical arguments. We respond herein to the arguments made to us in the requests for rehearing and clarification. To the extent not specifically addressed herein, the requests are denied.

Many of the parties requesting rehearing or clarification of Order No. 2000 express their agreement with the majority of the rule. Indeed, most petitions are relatively short in length and focus on only a few discrete issues, indicating that most parties are generally comfortable with the remaining substance of the Final Rule. We attribute this to the unprecedented outreach effort that the Commission undertook before and during the rulemaking process. Because we expect similar significant results from the post-rule collaborative process which we are initiating with our first regional workshop in Cincinnati on March 1, 2000, the Commission concluded that it was important to issue this order on rehearing before that date. Our order on rehearing focuses on the discrete issues that were raised on rehearing. However, the extensive background for this rulemaking and a comprehensive discussion of our goals and principles can be found in Order No. 2000.

On rehearing, we reaffirm the core elements and basic framework of Order No. 2000. However, we have provided clarification with respect to a number of issues, including concerns raised about our requirement that the RTO must have exclusive and independent authority under section 205 of the FPA to propose rates, terms and conditions of transmission service provided over the facilities it operates. While we have maintained the requirement without modification, we have carefully and comprehensively addressed the concerns that were raised and provided further clarification.

We have amended the regulatory text in three areas. First, we have revised the definition of market participant in section 35.34(b)(2) to remove specific references to entities that provide transmission service to an RTO. Second, we have added section 35.34(j)(1)(iv) to codify the requirement for audits with respect to the independence characteristic. Third, we have revised section 35.34(d)(4) to require RTO proposals to include an explanation of efforts made to include cooperatively-owned entities, in addition to public power entities, in the proposed RTO.

III. Discussion

A. Commission's Approach to RTO Formation

1. Voluntary Approach

In the Final Rule, the Commission adopted as a matter of policy a voluntary approach to RTO formation. In other words, Order No. 2000 does not mandate RTO participation. We concluded that a voluntary approach, with guidance and encouragement from the Commission, was the most appropriate to achieving RTO formation at this time.[4]

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[2] A public utility that is a member of an existing transmission entity that has been approved by the Commission as in conformance with the eleven ISO principles set forth in Order No. 888 must make a filing no later than January 15, 2001.

[3] The requesters and abbreviations for them as used herein, are listed in an appendix to this order. PECO's request was filed one day beyond the thirty days allowed for rehearing requests, so we will consider its request to be for clarification. We note that TransConnect, Inc. filed a motion to intervene on January 27, 2000 raising no issues that warrant discussion herein.

[4] FERC Stats. & Regs. ¶ 31,089 at 31,033–34.

Rehearing Requests

The Pennsylvania Commission argues that RTO membership must be mandatory for all participants in the wholesale market and should be a condition of participating in the competitive market. It claims that failing to mandate participation undercuts the coordination of generation additions. It states that the Commission clearly perceived the problems, but stopped short of the solution.

TDU Systems asserts that the Commission did not give adequate consideration to the advantages of mandatory RTO participation and the disadvantages of the voluntary approach. It cites the potential costs associated with the innovative rates discussed in the Final Rule, and asserts that the Commission should perform a fuller evaluation of the potential costs and benefits associated with each approach.

TAPS argues that the Commission erred by relying on voluntary action for RTO formation rather than exercising its statutory authority to mandate RTOs. It states that the Commission violated its statutory obligations to remedy undue discrimination. It believes that past experience and common sense demonstrate that voluntary action, coupled with incentives, does not work.

CFA argues that the resistance of the vertically integrated incumbent network owners will be so vigorous that the voluntary approach will fail to solve the problem, and urges the Commission to mandate participation in RTOs.

In addition to the arguments in favor of a direct mandate, TDU Systems, TAPS, CFA, and Industrial Consumers argue that the Commission must generically condition the granting of all market-based rate authorizations and merger authorizations on participation in an RTO. CFA states, for example, that without participation in an RTO, allowing mergers or market-based rates is not in the public interest.

Commission Conclusion

We deny rehearing with respect to our adoption of a voluntary approach to RTO formation. We agree with those advocating a mandatory approach that the objective is to have all transmission-owning entities place their transmission facilities under the control of RTOs in a timely manner, and we stated this in the Final Rule.[5] There are, however, different possible means of attaining that objective. The Commission has made a judgment that the most efficient and effective means is one that involves establishing clear standards, removing obstacles, and fostering cooperation and creativity, rather than one that imposes strict mandates that could polarize parties and generate resistance. That we have not chosen to mandate RTO participation does not mean that we have avoided our obligations to address the impediments to competition that we identified; it merely means that we have chosen a method to address those impediments that we believe will efficiently achieve the result we desire.

We explained in the Final Rule that the voluntary approach as we structured it will allow the industry the opportunity and the flexibility to develop mutually agreeable regional arrangements, and will permit the industry to focus its efforts on the potential benefits of RTO formation rather than on a non-productive challenge to our legal authority to mandate RTO participation.[6] We also stated a number of reasons why we believe this voluntary approach will be successful: the pace of restructuring is accelerating, industry participants are recognizing the strategic benefits of focusing on one segment of the utility business, the Final Rule provides clear guidance on what is necessary to form RTOs, the Commission is facilitating a collaborative process, and certain favorable ratemaking treatments are offered to at least eliminate economic disincentives to RTO formation.[7]

Contrary to TDU Systems' assertion, the Commission gave careful consideration to the advantages and disadvantages of the voluntary and mandatory approaches. Specifically, TDU Systems faults the Commission for not quantifying the impact of the favorable ratemaking treatments that are offered, which, allegedly, would not be required under a mandatory approach. We do not believe it is appropriate to think of the innovative ratemaking treatments discussed in the Final Rule as a cost of the voluntary approach. As discussed in the Final Rule, the innovative ratemaking treatments are intended, among other things, to eliminate disincentives to the efficient use and expansion of regional transmission grids, and to allow transmission-owning utilities to capture some of the benefits of more efficient system operation.[8] We are requiring as a part of any proposal for innovative ratemaking treatments that the applicant demonstrate how the proposal would help achieve the goals of RTOs, to submit a cost-benefit analysis including rate impacts, and to demonstrate that the rate is just, reasonable and non-discriminatory.[9]

In response to those who argue that the Commission should state generically that all market-based rates and mergers must be conditioned on RTO participation, we continue to believe that this is best addressed on a case-by-case basis. We see no need to decide at this time that no merger or market-based rate proposal could satisfy our applicable standards without RTO participation. There will be sufficient opportunity to consider this in the context of individual cases.

2. Legal Authority

The Commission discussed in the Final Rule its legal authority with respect to RTO formation. We concluded that we possessed both general and specific authorities to advance voluntary RTO formation, and concluded that we possessed the authority to order RTO participation on a case-by-case basis if necessary to remedy undue discrimination or anticompetitive effects where supported by the record.[10] We discussed our authority and responsibility under sections 202(a), 203, 205, and 206 of the FPA.[11]

Rehearing Requests

TAPS argues that the Commission violated its statutory obligation to remedy undue discrimination by relying upon a voluntary, as opposed to mandatory, approach to RTO participation. CCEM argues that the Commission committed legal error by not adopting CCEM's proposal—operational unbundling of vertically integrated utilities that places all uses of the transmission system under the same tariff—as a remedy for undue discrimination. CCEM asserts that the Commission must provide a reasoned explanation why simply encouraging jurisdictional transmission owners to join RTOs is an effective remedy for undue discrimination.

Duke argues that the Commission should not make findings that it possesses the legal authority to mandate RTO participation on a case-by-case basis, and asks for rehearing of this conclusion, or, alternatively, requests clarification that no party will be deemed to have waived its right to challenge this conclusion in an individual proceeding. Similarly, EEI and Puget Sound ask for clarification that a public utility retains the right to

[5] *See id.* at 31,033.

[6] *Id.*

[7] *Id.* at 31,034.

[8] *Id.* at 31,171–73, 31,191–92.

[9] FERC Stats. & Regs. ¶ 31,089 at 31,196.

[10] *Id.* at 31,043.

[11] *See id.* at 31,043–46.

challenge the Commission's legal authority should the Commission seek to impose a requirement for RTO participation in the future. If the Commission does not so clarify, they seek rehearing.

ISO Participants argue that the Commission erred in finding that the formation of an RTO that involves transfer of operational control without a transfer of ownership is a transaction that requires approval under section 203 of the FPA. They assert that the assignment of operational responsibilities to an ISO, by itself, is not a disposition of facilities within the meaning of section 203.

Commission Conclusion

We found in the Final Rule that continuing opportunities for undue discrimination exist in the electric transmission industry and that they may not be remedied adequately by functional unbundling.[12] TAPS and CCEM believe that this finding requires a remedy different from the voluntary approach to RTO formation adopted in the Final Rule. TAPS asserts the remedy must be an RTO mandate, and CCEM asserts the remedy must be a total unbundling of transmission, including, apparently, retail unbundling. We do not agree that either of these remedies is required by law. While it is true that the Commission has a legal obligation to remedy undue discrimination it finds,[13] the Commission retains discretion as to what remedy to pursue.

As we said in the Final Rule, we believe that the use of RTOs throughout the country, with the required independence from market participants, can reduce opportunities for unduly discriminatory conduct.[14] The Commission has taken a large step in Order No. 2000 to encourage and advance the formation of RTOs. As discussed above with respect to the Commission's voluntary approach, the fact that the approach is not mandatory does not undermine the ultimate objective of widespread RTO formation. We believe that the approach we have taken is a measured and appropriate response at this time to the lingering discrimination concerns that have been raised.[15]

In response to those asking clarification of our conclusion in the Final Rule that the Commission possesses the authority to order RTO participation on a case-by-case basis to remedy undue discrimination or anticompetitive effects where supported by the record,[16] we note that this is a statement of our remedial authorities. It is well established that the Commission's discretion is at its zenith when fashioning remedies for undue discrimination.[17] The Commission is given substantial deference with respect to such remedies as long as they are reasonably tailored to meet the Commission's goals.[18] It is our view that, pursuant to sections 206 and 309 of the FPA, the Commission could order a public utility to participate in an RTO upon finding that the public utility was engaging in unjust, unreasonable, unduly discriminatory or anticompetitive practices, and that participation in an RTO was a reasonable remedy for that unlawful behavior. If we were to impose such a remedy in a particular case, any aggrieved party would have the right to challenge the lawfulness and reasonableness of that remedy to the extent permitted by law.

ISO Participants' argument that the Commission erred in its discussion of section 203 of the FPA is misplaced. Although they do not specify the particular language in the order that they object to, they apparently refer to our statement that "public utilities" transfers of control of jurisdictional transmission facilities to entities such as RTOs would require section 203 approval."[19] ISO Participants argue that a public utility's assignment of limited operating responsibilities to an ISO, while retaining physical control and ownership, is not a disposition within the meaning of section 203. The language in Order No. 2000 was a general summary statement of how the Commission has interpreted section 203 in its case precedent. Indeed, the Commission has invoked its section 203 authority over the transfers of control of transmission facilities for all five of the ISOs that have been approved thus far. Thus, our statement in Order No. 2000 was not intended as a new, changed, or amplified interpretation. Those questioning whether specific fact situations invoke our jurisdiction have appropriate avenues, such as requests for declaratory order, to have those questions resolved.

B. Minimum Characteristics of an RTO

1. Independence

In the Final Rule, we discussed how to ensure that an RTO would be able to operate independently from market participants. We defined who was a market participant.[20] We also discussed the extent to which ownership of a transmission company by market participants would be permitted. We stated that a truly passive form of ownership would be acceptable,[21] but that active ownership by market participants would be limited.[22] Another aspect of independence discussed in Order No. 2000 was how to ensure that the RTO could have independence with respect to its tariff. In response to comments on the NOPR, we clarified that the transmission owners retained rights to make section 205 filings to establish their revenue requirements for payments from the RTO, but that otherwise the RTO must have the authority to file any changes to its transmission tariff.[23]

a. Definition of Market Participant

We discuss below several distinct categories of rehearing requests with respect to our definition of market participant.

Rehearing Requests

Several requests for rehearing argue against our inclusion in the definition of market participant entities that provide transmission or ancillary services to the RTO. With respect to the inclusion of entities that provide transmission services, EEI, Independent Companies, Southern Company, United Illuminating and Conectiv are concerned that this could preclude the development of transcos and other for-profit RTOs. For example, Conectiv argues that the definition is circular when applied to RTOs that both own transmission facilities and provide transmission service. Conectiv requests the Commission clarify that the definition of market participant does not include transcos and other for-profit RTOs. Southern Company states that in the situation where an independent transmission company is an RTO, some might argue that the transmission company is providing transmission services to the RTO and would thus be a market participant. Southern Company also argues that an

[12] *Id.* at 31,015, 31,043.

[13] *See, e.g.*, Southern California Edison Company, 40 FERC ¶ 61,371 at 62,151–52 (1987), *order on reh'g*, 50 FERC ¶ 61,275 at 61,873 (1990), *modified sub nom.*, Cities of Anaheim v. FERC, 941 F.2d 1234 (D.C. Cir. 1991); Delmarva Power and Light Company, 24 FERC ¶ 61,199 at 61,466, *order on reh'g*, 24 FERC ¶ 61,380 (1983).

[14] FERC Stats. & Regs. ¶ 31,089 at 31,024.

[15] *See id.* at 31,028.

[16] *Id.* at 31,043.

[17] *See* Order 888, FERC Stats. & Regs. ¶ 31,036 at 31,676 (1996); Niagara Mohawk Power Corp. v. FPC, 379 F.2d 153, 159 (D.C. Cir. 1967); Tapoco, Inc., *et al.*, 39 FERC ¶ 61,363 at 62,169 (1987).

[18] Tenneco Gas Co. v. FERC, 969 F.2d 1187, 1198, 1201 (D.C. Cir. 1992).

[19] FERC Stats. & Regs. ¶ 31,089 at 31,045.

[20] FERC Stats. & Regs. ¶ 31,089 at 31,061–63.

[21] *Id.* at 31,064–68.

[22] *Id.* at 31,068–73.

[23] *Id.* at 31,075–76.

independent transmission company should not be a market participant where it participates in a larger RTO with other transmission owners and might be considered to be providing transmission services to the RTO.

EEI requests that the Commission clarify that an RTO is not a market participant with respect to transmission services it provides within the RTO's boundaries, and that an independent transco should not be deemed a market participant where it joins with others to form a larger RTO. Independent Companies ask the Commission to clarify that the market participant definition was not intended to include a transmission owner that is making its transmission facilities available through an RTO in which it holds active ownership and is not otherwise engaged in electric generation or marketing activities.

United Illuminating asserts that pure transmission owners do not have the incentive or ability to favor their power marketing activities, and they do not participate in the energy or ancillary services markets. United Illuminating also states that there appears to be no reason to include in the definition of market participant a transmission owner that provides transmission service to an RTO, because that service would be provided according to the protections of a regulated tariff. United Illuminating also claims that the part of the market participant definition that includes any entity whose economic or commercial interests that would be significantly affected by the RTO's actions or decisions would automatically preclude a transco as an RTO. United Illuminating asks that we confirm that pure transmission owners are not market participants.

Commission Conclusion

We will grant rehearing in part, and clarification, with respect to the definition of market participant. As noted in the Final Rule, we use the definition of market participant as a reference point for establishing limits on ownership (*i.e.*, an RTO's ownership of market participants and market participants' ownership of an RTO) and standards for independent decisionmaking or governance, when governance arrangements are being relied upon to ensure independence. With respect to the inclusion in the definition of any entity that "provides transmission * * * services to the Regional Transmission Organization," [24] there is some confusion in what we intended. We did not intend that a "pure transmission company" [25] that qualified to *be* an RTO would be thought to be providing transmission services *to* the RTO within our definition of market participant. Additional issues may arise as to the fairness of an RTO's governance, however, where a pure transmission company is only one of several entities providing transmission services to or making transmission facilities available to the RTO. We now realize that our attempt to address these additional issues through the definition of market participant has caused unnecessary confusion. Accordingly, we will revise the definition of market participant at § 35.34(b)(2)(i) to delete specific references to entities that provide transmission services to the RTO.

While we are revising section 35.34(b)(2)(i) to drop specific references to entities that provide transmission services to the RTO in the definition of market participant, the involvement of a pure transmission company in RTO decisionmaking processes may be relevant to our independence criterion, and we cannot conclude that such involvement would never be problematic. For example, in the ISO context, we have set out the general principle that decisionmaking processes should be independent of any market participant or class of participants. The fact that a pure transmission company is no longer included in the definition of market participant does not mean that the governance of an ISO would be unaffected by the voting rights attributed to pure transmission companies (or, indeed, pure distribution companies who are also not included in the definition of market participants). Accordingly, we emphasize that our revision to the definition of market participant is not intended to prejudge the issues or considerations that may be raised with respect to governance arrangements involving, in part, pure transmission companies.

We note that pursuant to section 35.34(b)(2)(ii), the Commission can find on a case-by-case basis that an entity that has economic or commercial interests that would be significantly affected by the RTO is a market participant. As we stated in the Final Rule with respect to power buyers and with respect to pure distribution entities, there may be circumstances where a transmission entity that obtained a controlling interest in an RTO could manipulate access and curtailment decisions, or planning and expansion decisions, in a way that would advantage itself and disadvantage other users.[26] We can and will deal with those potential situations on a case-by-case basis.

United Illuminating makes the point that a pure transmission company that either is an RTO, or is part of an RTO, would likely have economic or commercial interests that would be significantly affected by the RTO's actions or decisions, thus making it fall within the definition of market participant under section 35.34(b)(2)(ii). We clarify that pure transmission companies will not be within the scope of section 35.34(b)(2)(ii) solely because of their ownership of transmission facilities.

Rehearing Requests

Several requests for rehearing also ask for clarification and/or rehearing with respect to the inclusion in the definition of market participant of entities that provide ancillary services to the RTO. EEI argues that there is a conflict between requiring the RTO to be the provider of last resort of ancillary services and including ancillary service providers in the definition of market participant. EEI states that this is a problem not only with RTOs that are transcos, but also where an ISO requires a transmission-owning member to provide ancillary services. EEI also asserts that the definition will interfere with an RTO's ability to run or administer an energy market. Independent Companies assert that the definition of market participant appropriately includes those entities providing generation-related ancillary services to the RTO, but should not be interpreted to include a transmission owner's provision of scheduling and dispatch services to the RTO.

Southern Company argues that an independent transmission company may find it beneficial to own limited amounts of generation to operate an effective and efficient transmission system, and that it should be allowed to own such "non-competitive" generation without being considered a market participant.

Commission Conclusion

With respect to the part of the market participant definition that encompasses an entity that provides ancillary services to the RTO, we offer a clarification. Order No. 2000 requires under Function 4 that an RTO serve as a provider of last resort of all ancillary services required by Order No. 888 and subsequent

[24] Section 35.34(b)(2)(i).

[25] We use the term "pure transmission company" to refer to a transmission company that owns transmission facilities but has no interests in or affiliation with sellers or brokers of electric energy.

[26] FERC Stats. & Regs. ¶ 31,089 at 31,062–63.

orders. As the provider of last resort for ancillary services, the RTO must ensure that adequate arrangements are in place for the provision of ancillary services to transmission customers. We recognize that there are many different ways that ancillary services can be made available, *e.g.* through contractual arrangements and market mechanisms. We did not intend that an RTO that was fulfilling its obligation to be a provider of last resort of ancillary services would be considered to be providing ancillary services to the RTO. Rather, that obligation is to provide ancillary services to the transmission customers. Accordingly, we clarify that an RTO that provides ancillary services within its region pursuant to its obligation under Function 4 will not itself be considered to be within the definition of market participant because of its performance of that function.

In addition, we clarify that our concern with the provision of ancillary services to the RTO is focused on generation-related ancillary services. Our concern, as we stated it in Order No. 2000, is that the RTO will likely have considerable discretion in defining the types and quantities of ancillary services needed and how they will be procured, and we did not want the suppliers of ancillary services to be able to influence the RTO's decisions on these issues.[27] We continue to believe this is a valid concern and will not delete this component of the market participant definition with respect to any generation-related ancillary service. However, we clarify that a pure transmission company that performs the "Scheduling, System Control and Dispatch Service" as described in Order No. 888 will not be considered to be within the section 35.34(b)(2)(i) definition of market participant because it performs that service.

In response to Southern Company's request that we allow independent transcos to own "non-competitive" generation that "essentially" provides a transmission function, we note that the definition of market participant is not framed in terms of generation ownership, but includes entities that sell or broker electric energy, or that provide ancillary services to the RTO. Any entity that sells or brokers electric energy, directly or through an affiliate, is a market participant. Also, as just discussed, any entity that provides generation-related ancillary services to the RTO or its customers is also a market participant.

[27] *Id.* at 31,062–63.

Rehearing Requests

TDU Systems objects to the Commission's statement in Order No. 2000 that retail suppliers of last resort may request to be excluded from the definition of market participant. TDU Systems argues that this should not be encouraged, because suppliers of last resort can retain substantial market share for a substantial period of time even if it does not overtly compete for retail sales business, and the pendency of waiver petitions at this time could be a source of disruption and confusion.

Commission Conclusion

We did not intend to encourage such requests for waivers, but at the same time, we feel compelled to recognize the possible situation where a distribution company may desire to exit the sales business and become a pure distribution company, but cannot due to an obligation to be the supplier of last resort under a state retail access program. We concluded that these entities would be within the definition of market participant, unless they could show us special factors as to why they should not (*e.g.* its sole electric sales are to satisfy a state requirement and it does not compete for retail load).[28] Certainly, any seller of electric energy will carry a substantial burden to prove to us that it should not be considered to be a market participant. We expect that this will apply to a relatively narrow class, and we should not be overwhelmed by waiver requests. Accordingly, we will not accept TDU Systems' request that we withdraw our statements in the Final Rule.

b. Ownership Issues

In the Final Rule, we discussed at some length the requirements we believed were necessary to ensure that ownership interests in RTOs would not jeopardize the independence of RTOs from market participants.[29] We concluded: that truly passive ownership interests by market participants would not be restricted; that active ownership by market participants would have to cease after five years (with an extension possible in certain circumstances); that during the time active ownership is permitted, up to five percent ownership by a single market participant was deemed a safe harbor and 15 percent ownership by a class of market participants was a benchmark; and that there would have to be periodic independent audits conducted to ensure independence.

[28] *Id.* at 31,063.

[29] FERC Stats. & Regs. ¶ 31,089 at 31,064–73.

We discuss below the requests for rehearing and clarification that we received on the issues of our limits on ownership generally, passive ownership, active ownership, and auditing requirements.

Rehearing Requests

Duke objects generally to the Commission's focus on ownership, asserting that the Commission's approach is overly rigid and that the Commission has not examined whether there are less restrictive means to meet the independence criterion. Duke first asks the Commission to reconsider the structure allowed for the natural gas industry, where affiliated production and marketing companies are permitted. Duke does not challenge the Commission's observation that the electric industry evidences a much higher level of vertical integration, but argues that there is no reason to require separation of control of transmission and merchant activities to a greater extent than is permitted in the gas industry. Duke also suggests that the Commission could allow affiliated transcos subject to a requirement that they retain an independent auditor to review the activities and decisions of the affiliated transco from the standpoint of potential discrimination and compliance with codes of conduct and file regular reports of its findings.

Conectiv asks that the Commission clarify that the ownership requirements do not apply to the non-profit ISO form of RTO, but would only apply to transcos and other for-profit entities with voting securities. It asserts that the record does not support ownership restrictions for non-profit RTOs.

Commission Conclusion

We do not agree that the structure currently in place for the gas industry would adequately support independent RTOs. As Duke itself notes, it would allow the senior management of an entity that operates in both the transmission and generation arenas to participate in decisions involving the transmission business. These decisions would, as a matter of course, have a significant effect on that same entity's generation business. We also disagree that independent auditing alone can substitute for the independence requirement. As we noted in the Final Rule, we have found that in the electric industry, it is difficult to monitor compliance with codes of conduct. Moreover, it is a very intrusive form of regulation and ultimately requires us to be "chasing after conduct." As we noted in the Final Rule, this is not the light-

handed regulation that is essential to support emerging competitive markets.

Conectiv's concern, which focuses at times on the distinction between for-profit and not-for-profit entities and at other times on the distinction between the transco and ISO form of RTO, is not entirely clear. We clarify that our concerns about ownership and control of an RTO are not a function of the for-profit or not-for-profit approach. The limits on ownership by market participants apply whenever the RTO intends to own and operate the transmission assets itself, either directly or indirectly through other entities. The fact that a market participant owner of an RTO operated on a non-profit basis would not, for example, preclude the possibility that the RTO could operate to benefit its generation business. Accordingly, ownership restrictions are appropriate in that case.

Rehearing Requests

With respect to passive ownership, NRECA, TDU Systems, and Dairyland argue that passive ownership should be disallowed completely after five years, except in extraordinary circumstances. NRECA, for example, recognizes the desirability of a transition period to phase out passive ownership, but asserts that the maintenance of a passive ownership threatens RTO independence and imposes heavy regulatory burdens on the Commission to police. TDU Systems argue also that passive ownership should be subject to the same benchmark individual and class limits that apply to active ownership.

New Orleans also challenges the allowance of passive ownership by market participants. New Orleans argues that the sale/leaseback cases and the Securities and Exchange Commission Rule cited in Order No. 2000 in support of allowing passive ownership are in fact much narrower than what the Commission is allowing, in that the passive owners there were not primarily in the business of selling electric power. By permitting passive ownership by market participants, New Orleans asserts, the Commission has not provided the safeguards that exist in other passive ownership situations. New Orleans claims that the Commission erred by not limiting passive the same way it limited active ownership. Finally, New Orleans asks that the Commission clarify that where there is clear evidence that an RTO proposal would not be *perceived* as independent by a majority of potentially affected entities, the proposal will be rejected.

Duke argues that if passive ownership restrictions are retained, the definition of passive ownership should not be so narrow as to leave the board and management of the passive owner without the capability to ensure that the transmission assets will be operated responsibly and in accordance with legitimate business objectives. Duke states that if it places its transmission into an affiliated transco, Duke's management should be able to participate in decisions that significantly affect the value of the transmission business, such as mergers, asset divestitures and acquisitions, and the choice of individuals to manage the transmission business.

EEI asks that the Commission clarify what types of passive ownership would be acceptable. Specifically, EEI requests that the Commission clarify that: (1) a fiduciary duty to maximize the value of the RTO's transmission assets will not defeat independence; and (2) passive owners may reserve certain rights to protect themselves against abuse by the holders of voting rights. EEI argues that a fiduciary duty to maximize transmission service revenues is similar to what the Commission has approved in the ISO context, and that there is no duty owed under corporate law that would require an RTO to maximize a passive owner's outside interests. EEI states that a duty to maximize the value of transmission assets will not create a bias toward transmission-only solutions, because of the RTO's obligations with respect to market mechanisms under the planning and congestion management functions. EEI argues further that passive owners should be able to reserve rights to participate in certain limited but major decisions that affect their ownership status, such as mergers and bankruptcy filings.

Commission Conclusion

We deny rehearing of the requests to phase-out or limit passive ownership beyond what we stated in the Final Rule. NRECA is correct that a phase-out of passive ownership, or limits on the percentage interests of passive ownership, would reduce the regulatory burdens of ensuring that the passive ownership arrangement does not threaten the RTO's independence. However, as we noted in the Final Rule, passive ownership arrangements can help resolve some significant impediments to the transition to the type of RTO that would both own and operate the transmission assets.[30] Permitting flexibility on these arrangements could enhance significantly our goal of accelerated formation of RTOs. Limits on passive ownership interests or required phase-outs would not further this goal. We are not convinced that the careful balance we reached on this issue in the Final Rule is in error.

New Orleans' concern that we should guard against passive ownership arrangements where there is clear evidence that an RTO proposal would not be perceived as independent echoes the concerns we expressed in the Final Rule.[31] We explained in the Final Rule that this requires assurances to all market participants that any passive ownership arrangement is truly passive and will not interfere with the independent operation and decisionmaking of the RTO. It is also one of the reasons we said that it was important to require a system of independent compliance auditing to ensure that passive ownership arrangements remain passive over time and to provide assurances to other market participants that the RTO is truly independent. We appreciate New Orleans' concerns that there are differences in the passive ownership arrangements that may be submitted as compared to those we may have evaluated before in the context of sale/leasebacks or those permitted under the SEC rule we referenced in the Final Rule. However, we referenced these only to make the point that there are different ways of structuring passive ownership arrangements and it may be possible to structure them in such a way to demonstrate that they are truly financial arrangements.

Duke's and EEI's concerns about the need of passive owners to protect the value of their assets and investments are valid. However, the Commission must balance these concerns against the need for an independent RTO. We expect that proponents of passive ownership arrangements will explore methods for protecting the value of their assets and investments while also maintaining the true independence of RTO decisionmaking. We recognize that this may require some creativity and innovation to meld the regulatory needs with those of the markets, but it is necessary if we are to ensure independent RTOs and accommodate passive ownership arrangements.[32]

In response to EEI's concerns, we do not expect that a fiduciary responsibility of the RTO to its passive owners to maximize the value of the RTO's

[30] FERC Stats. & Regs. ¶ 31,089 at 31,064.

[31] *Id.* at 31,065.

[32] *See, e.g.*, the statement of investment analyst Steven Fetter, who said, "The wide spectrum of permissible outcomes should be welcomed by Wall Street. What investment bankers do best is create innovative structures to meet legal and market requirements." *FERC's RTO Rule Should Cheer Investors*, www.fitchibca.com (January 13, 2000).

transmission assets would, by itself, be problematic with respect to the RTO's independence.

Rehearing Requests

On the issue of active ownership, Conectiv, CTA, EEI, Southern Company, and Alliance all argue that the Commission was wrong to sunset all active ownership after five years. EEI, representative of the others challenging the sunset requirement, states that it is aware of no other context where a complete ban on active ownership has been imposed to prevent control; that the sunset requirement conflicts with the Commission's finding that five percent active or lower does not raise control concerns; that five years is an arbitrary and capricious transition period; that limits on active ownership would reduce the numbers of bidders for a transco's stock and would limit investment opportunities for market participants; that a complete ban on active would be difficult to monitor since there is no existing requirement to disclose ownership less than five percent; and that the Commission does not have the legal authority to order divestiture of ownership by electric utilities. CTA adds that a five-percent active ownership should be indefinite, because other holders of active interests would prevent a five-percent minority holder from acting in its own interests. CTA states further that the five-year transition is too short and should be extended so as to avoid a "fire sale" in the event of an economic slowdown.

TDU Systems argue that the five-percent safe harbor for individual active ownership should be an absolute ceiling, and that the Commission should refuse to permit a market participant to propose a higher level. TDU Systems and NRECA both contend that intervenors should be allowed to challenge whether even a five-percent active ownership is too high. CTA asserts that passive ownership interests held by market participants should not be a factor in whether a market participant would be allowed to hold more than five-percent active ownership. It states that if the Commission is vigilant to assure that passive ownership cannot exercise control, there is no reason why passive ownership should be a factor in determining appropriate active ownership.

With respect to the 15 percent benchmark established in Order No. 2000 for a class of market participants, Conectiv, CTA, Alliance, and EEI argue that there should be no such benchmark. They assert that it is unlikely that class members would collude with their competitors, that there are existing laws to prohibit collusion, and that keeping track of the classes would be administratively difficult. EEI states further that such aggregation of interests is not a factor in any other regulatory context. Contrary to these parties' arguments, TDU Systems argues that a 15 percent benchmark for classes of active owners is too high, and that class ownership should be limited to 10 percent.

Commission Conclusion

We deny rehearing on the active ownership issues and reaffirm our decision that active ownership by market participants will have to cease after five years (with an extension possible in certain circumstances), and that during the time active ownership is permitted, up to five percent ownership by a single market participant will be deemed a safe harbor and 15 percent ownership by a class of market participants will be a benchmark. We carefully considered all of the extensive arguments made in the comments on the NOPR on the active ownership issue, and reached a solution in the Final Rule that we continue to believe appropriately balances the interests of all parties and our policy objective.

Many commenters argue that our willingness to allow active ownership for five years undermines our policy against active ownership after a five-year period. We disagree. Our decision reflects our belief that over the long term independence may be adequately assured only if there are no active ownership interests, but that a transition period during which active ownership in limited amounts may be proposed, together with auditing requirements, is a reasonable interim measure to assist RTO formation. With respect to the 15 percent benchmark for classes of active ownership, we explained fully in the Final Rule what are concerns are,[33] and we are not persuaded that our concerns are invalid. Moreover, we have permitted sufficient flexibility for parties to argue on a case-by-case basis that the 15 percent class benchmark is too high or too low.

Rehearing Requests

With respect to the independence audits required by Order No. 2000, Dynegy argues that the audits should commence immediately at RTO start-up, not be delayed for two years, and should be ongoing. Dynegy states that it has concerns about whether an audit performed two years after start-up is sufficient to guard against ownership abuses. Dynegy asks additionally that the Commission either place the audit and ownership requirements in the regulation or provide clarification as to why they do not appear in the regulations. TAPS expressly endorses the audit requirements as essential.

Commission Conclusion

No party has objected to having independent audit requirements for passive interests, active interests, and ISO governance, and we continue to believe they are essential. In response to Dynegy, it is of course a judgment as to how often to have them and how soon to start them. We note that the Final Rule provides for the first audit two years after our *approval* of the RTO, not after RTO start-up. We believe we have struck an appropriate balance among the goals of having a sufficient check on independence, allowing time for some initial operational shake-out, and not imposing overly burdensome procedures. We agree with Dynegy that it would be useful to state the auditing requirements in the text of the regulations, and we have therefore added a new sub-paragraph (iv) to section 35.34(j)(1) for this purpose. The new regulatory text we added reads as follows:

(iv)(A) The Regional Transmission Organization must provide:

(*1*) With respect to any Regional Transmission Organization in which market participants have an ownership interest, a compliance audit of the independence of the Regional Transmission Organization's decision making process under paragraph (j)(1)(ii) of this section, to be performed two years after approval of the Regional Transmission Organization, and every three years thereafter, unless otherwise provided by the Commission.

(*2*) With respect to any Regional Transmission Organization in which market participants have a role in the Regional Transmission Organization's decision making process but do not have an ownership interest, a compliance audit of the independence of the Regional Transmission Organization's decision making process under paragraph (j)(1)(ii) of this section, to be performed two years after its approval as a Regional Transmission Organization.

(B) The compliance audits under paragraph (j)(1)(iv)(A) of this section must be performed by auditors who are not affiliated with the Regional Transmission Organization or transmission facility owners that are members of the Regional Transmission Organization.

We also note that we stated in Order No. 2000 that applicants have a continuing obligation to inform the

[33] FERC Stats. & Regs. ¶ 31,089 at 31,072.

Commission of any changed circumstances regarding ownership.[34]

c. Section 205 Filing Rights

In the Final Rule, we attempted to balance our desire to ensure that the RTO have exclusive and independent authority over changes to its transmission tariff with the FPA section 205 rights of public utility transmission owners to seek rate changes.[35] We affirmed that RTOs, in order to ensure their independence from market participants, must have the independent and exclusive right to make section 205 filings that apply to the rates, terms, and conditions of transmission services over the facilities operated by the RTO. However, we also clarified that the transmission-owning public utilities whose facilities are used by the RTO have the right to make section 205 filings to establish their revenue requirement and the level of payments for use of their facilities. We also stated that we would also entertain other approaches as long as they ensured the independent authority of the RTO and the ability of transmission owners to protect the level of the revenue needed to recover the costs of their facilities.

Rehearing Requests

A number of parties requested rehearing or clarification challenging our division of section 205 filing rights between the RTO and transmission-owning members of the RTO.[36] For example, EEI reflects most of the rehearing requests on this issue in arguing that the division violates the transmission owners' section 205 rights. EEI claims that it will jeopardize cost recovery for the transmission owners because it breaks the link between establishing the revenue requirement and establishing rate design, and it further breaks the link between the party responsible for establishing the revenue requirement and the party responsible for recovering it. EEI argues that the RTO might not have the same incentive to design rates to recover costs as the transmission owner would, and that the division is inconsistent with court and Commission precedent. EEI states that this division will discourage the voluntary participation in RTOs, and is in fact inconsistent with at least some of the ISOs approved to date.

Alliance contends that the Commission erred in determining that the RTO must have exclusive authority to propose changes in rates. In addition to similar arguments that EEI made about this unlawfully depriving public utilities of section 205 rights and increasing the risks for transmission owners, Alliance argues that it is a false premise that the RTO needs exclusive authority over rates. It states that Commission oversight of rates will provide a complete check on the ability of transmission owners to implement rate changes that would place them at a competitive advantage *vis-a-vis* other market participants.

Conectiv argues that the division of filing rights is inconsistent with the law (and could result in an unconstitutional taking of property), that the Commission has provided insufficient factual basis in the record to support its assertion that RTOs must have the authority to file rate changes in order to ensure independence from market participants, and that it does not provide sound economic and transmission policy. Conectiv states that a disinterested RTO might not make decisions based on the revenue recovery needs of the transmission owner, and that non-profit RTOs do not have incentives to file innovative rate design proposals to protect and encourage transmission investment. ISO Participants also assert that the division of authority is inconsistent with the Commission's endorsement of innovative rates.

Midwest ISO Participants ask the Commission to clarify that it need not modify its Commission-approved ISO documents on the issue of section 205 filing rights in order to qualify as an RTO. They state that the Midwest ISO Agreement carefully delineated the rights of the ISO and transmission owners, with the owners controlling the pricing structure and revenue distribution methodology. They assert that this was a critical element of the ISO Agreement, and the Commission explicitly stated in its order that it would honor the transmission owner's rights during the six-year transition period after start-up. Midwest ISO Participants contend that Order No. 2000's requirement that the RTO make section 205 filings to recover costs from transmission customers is at odds with the Midwest ISO owners' rights to control filings to change the ISO's rates. They claim further that Order No. 2000's division of authority makes no sense in the context of the Midwest ISO's tariff, which contains a rate formula. They request that the Commission make clear that the owners can continue to control the rate formula.

PECO asks for clarification of how the proposed division of filing authority would apply to situations like the PJM tariff, which is a combined ISO and transmission owner tariff. They claim that Order No. 2000 would effectively bar the PJM transmission owners from making changes to the tariff sheets that contain their individual revenue requirements. They ask the Commission to clarify that in such a case the transmission owners can still make section 205 filings to propose a change to the tariff pages that cover their revenue requirements. PECO also asks the Commission to clarify that any section 205 filing by an ISO type of RTO would be subject to the established ISO governance process.

SRP asks the Commission to clarify that its discussion of section 205 filing rights was not intended to broaden the applicability of section 205 to non-jurisdictional public power entities, and to clarify the ability of such non-jurisdictional entities to set the level of their revenue requirements. SRP wants the Commission to clarify that it intends to allow flexibility for non-jurisdictional entities to be able to set their revenue requirements through means other than making section 205 filings, which would mean in SRP's case, that its independent board could continue to set its revenue requirement.

Commission Conclusion

The Commission will deny rehearing of its decision that an RTO, in order to ensure its independence, must have the independent and exclusive right to make section 205 filings with respect to the transmission services the RTO provides to third parties. As discussed below, we reject arguments that this decision is inconsistent with law and precedent. However, in light of the concerns and misunderstandings raised, we also will further clarify our requirement.

As noted in Order No. 2000, and as evidenced by the comments of the parties seeking rehearing, unique issues arise with respect to tariff filing rights in the situation where the RTO operates and provides transmission service over transmission facilities owned by another entity, *e.g.*, in the context of an ISO. There are two legitimate concerns here that need to be balanced. One is the concern that for the RTO to provide transmission service independent from market participants, it must have independent control over its tariff, and not have a tariff that is subject to the control of particular participants in the RTO. The other concern is that of transmission owners who will turn the operation of their transmission facilities over to the RTO and need some assurance that they will continue to receive a fair return on their transmission investments. We

[34] *Id.* at 31,067, 31,072.

[35] *See id.* at 31,075–76.

[36] Conectiv, Duke, Southern Company, EEI, ISO Participants, United Illuminating, Transmission Owners of NY, AEP, PECO and Alliance.

reconciled those concerns in the Final Rule by stating that in the ISO type of situation, the RTO had to have the independent and exclusive right to make section 205 filings that apply to the rates, terms, and conditions of transmission services over the facilities operated by the RTO, but that transmission owners have the right to make section 205 filings to determine the appropriate payments for the RTO's use of their facilities.

As an initial matter, some parties question whether, to ensure independence, it is necessary for the RTO to have exclusive and independent authority with respect to filing changes to its tariff. We find the need to be clear. The tariff establishes the rates, terms, and conditions under which the RTO will provide transmission service to transmission customers. If the RTO does not have the independent right to seek appropriate changes to its tariff, it is difficult to see how that RTO could be viewed as providing a transmission service that is independent from market participants.

All of the objections to the division of authority we adopted in the Final Rule are based on the false premise that we are restricting the rights of transmission owners to protect their transmission investments and therefore jeopardizing their asserted right to recover their legitimate costs. This is not the case. Under our formulation, transmission owners may make section 205 filings at any time to establish their revenue requirements and the just and reasonable payments they may charge the RTO for use of their facilities. This gives them the full opportunity to recover their cost of service.

Those requesting rehearing, however, insist that transmission owners will be at risk for not recovering their allowed payments from the RTO, because the RTO either will not have an appropriate rate design or will not have the incentive to collect revenues from transmission customers sufficient to cover the payments to transmission owners. These arguments have no merit. There is nothing in the Final Rule that precludes transmission owners from seeking to assure recovery of their allowed payments from the RTO through appropriate mechanisms in the agreement establishing the RTO. For example, they may provide for a contractually enforceable obligation for the RTO to pay the owners their full revenue requirement as determined by the Commission, and they may even provide for some sort of true-up mechanism if an RTO fails to recover the costs it owes to the owners in a particular period.

In addition, nothing in the Final Rule precludes the transmission owners from participating in the RTO's designing of rates to transmission customers, as long as they are not given veto authority over, or otherwise control, what the RTO ultimately seeks to file under section 205. The Commission did not intend to preclude transmission owners from being involved in rate design proposals prior to the RTO filing them. If, in designing rules to establish a new RTO (or to justify rules of an existing ISO for which an RTO determination is sought), parties can establish an approach or process for involving the transmission owners in advance in the determination of the rate design proposals that the RTO will file, and can demonstrate that the approach or process does not compromise the independence of the RTO, the Commission will be open to such proposals.[37]

In addition, when the RTO proposes a rate design to recover the costs the RTO owes to the transmission owners as well as other costs that the RTO may incur, the Commission will exercise its responsibilities to approve a rate that is designed to recover all RTO costs, including the cost of payments that the RTO must make to the transmission owners. Transmission owners will be able to participate in that proceeding and to make whatever arguments they wish regarding appropriate rate design and the effect on their recovery of costs.

Most of the parties asserting legal challenges on this issue, including EEI, spend considerable effort reciting the basic rate changing mechanisms of section 205 of the FPA, and claim an inalienable right of a transmission owner to make rate changes even in the situation in which they no longer control the transmission facilities and are no longer the parties providing service over the facilities. They claim they are owed a "guarantee" of recovering the costs of the facilities which have been turned over to the RTO.

We reject the legal arguments made by those on rehearing. The Commission's holding in Order No. 2000 did nothing contrary to the fundamental tenets of section 205 of the FPA and nothing inconsistent with the rights of utilities to have the opportunity (as opposed to a "guarantee") to recover costs associated with facilities used to provide jurisdictional service. What the rehearing petitioners ignore, and what the Commission pointed out in Order No. 2000, is that in the context of an ISO, both the transmission owners and the RTO are public utilities under the FPA with respect to the same facilities. Further, it is the RTO, and *not* the transmission owners, that in this context is the provider (seller) of jurisdictional service. Because the RTO is providing the jurisdictional service, it is clearly within the parameters of section 205 for the RTO to have on file a rate schedule for the services it provides, and that it have the exclusive authority to propose changes to that rate schedule.[38]

Given that it deprives no public utility of the opportunity to recover its costs and earn a fair return on its investments, the section 205 filing procedure adopted in Order No. 2000 is well within the Commission's authority. The Supreme Court has stated that the Commission "must be free, within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and conflicting interests." [39] That is what we have done here.

Several existing ISOs seek in their rehearings to have the Commission make specific findings with respect to their current division of section 205 filing rights. We do not believe it is appropriate to make such findings in this generic proceeding and instead will do so when those entities make their filings under this rule. We note that we stated in the Final Rule that we would entertain other approaches to the division of filing authority "as long as they ensure the independent authority of the RTO to seek changes in rates, terms or conditions of transmission service and the ability of transmission owners to protect the level of the revenue needed to recover the costs of their transmission facilities." [40]

In response to SRP's request for clarification of the applicability of our finding to non-public utilities, we clarify that our discussion of filing rights pertained to public utilities under section 205 of the FPA and that it was not intended to broaden the applicability of section 205 to non-public utilities.

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[37] In this situation, parties may also consider providing for mutually agreeable rules regarding the timing of the revenue requirement and rate design filings.

[38] This is analogous to the situation in which there is a sale and leaseback of public utility property for financing purposes. In such a case, it is the lessee operator, not the owner, that files tariffs.

[39] Permian Basin Area Rate Cases, 390 U.S. 747, 767 (1967). The Supreme Court in this case also rejected the notion that there is an unrestricted right to file rate changes under section 4(d) of the Natural Gas Act, which is parallel to section 205(d) of the FPA. *Id.* at 779–80.

[40] FERC Stats. & Regs. ¶ 31,089 at 31,076.

In response to arguments that the Commission's decision will discourage the voluntary formation of RTOs or will result in favoring transcos over ISOs, the intent of this rule is to be neutral as to corporate form. As we stated above, we have left sufficient flexibility for transmission owners to protect their revenues, obligations to shareholders, and ability to attract capital whether they form an ISO, transco, or other form of institution.

Some parties have argued that our decision undermines the incentive to use performance based rates in the ISO context because it takes the development of such mechanisms out of the hands of the transmission owners. We do not think this is a necessary result. As we noted in the Final Rule, when activities that contribute to performance are shared between the RTO and the transmission owners, the RTO design may ensure that the rewards and penalties associated with activities performed by transmission owners flow through to the owners to achieve the desired result.[41]

2. Scope and Regional Configuration

Order No. 2000 set forth as the second minimum characteristic of an RTO that the RTO must serve a region of sufficient scope and configuration to permit it to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.

Rehearing Requests

The Pennsylvania Commission asks that the Commission ensure that RTOs are large enough to support an open and transparent market in reactive power and other ancillary services. It states that RTO applicants should be able to demonstrate that the geographic area and diversity of ownership of generation and transmission facilities is sufficient to support such a market.

Commission Conclusion

We agree with the Pennsylvania Commission that one of the considerations in evaluating scope and regional configuration is whether the RTO can support open and transparent markets, including ancillary service markets.

3. Short-Term Reliability

The Final Rule required as the fourth minimum characteristic of an RTO that the RTO have exclusive authority for maintaining the short-term reliability of the grid. As part of this characteristic, the Commission stated that the RTO must have exclusive authority for receiving, confirming, and implementing interchange schedules; must have the right to order redispatch of generation for reliability purposes; must have authority to approve transmission maintenance schedules; and must report to us if any reliability standards it operates under hinder it from providing reliable, non-discriminatory and efficiently priced transmission service. We did not require that the RTO have authority over generation maintenance schedules or that the RTO be required to establish transmission facility ratings. We also stated that on the issue of the extent of RTO liability relating to its reliability activities, we would address that on a case-by-case basis.[42]

Rehearing Requests

Dynegy and TAPS are concerned with the information received by control area operators who are market participants when they are directed to implement interchange schedules by the RTO. Dynegy agrees with the protections provided in the rule for separation of reliability personnel and wholesale merchant personnel, but asks the Commission to clarify that it will actively monitor compliance and enforce appropriate penalties for violations. TAPS objects to limiting the shield from sensitive interchange information to the control operator's wholesale merchant personnel. It states that this would allow for a market participant control area operator to share with its retail merchant function to take improper advantage of the commercially sensitive information. It asks that the Commission make clear that such information must be kept from all personnel involved with making purchases on the wholesale market, whether on behalf of wholesale or bundled retail customers.

Dynegy asks that the Commission clarify that to the extent a generator is redispatched by an RTO, it will be fully compensated for the redispatch order, which may include lost opportunity costs. Metropolitan asks that the Commission clarify that if an RTO reschedules or cancels planned transmission maintenance, the compensation will be limited to direct costs, and will not include indirect costs such as opportunity costs, because they are too speculative.

TAPS argues that certain functions that Order No. 2000 does not require the RTO to have for reliability purposes in fact should be required. TAPS contends that the RTO should be required to have a greater voice in transmission facility ratings in order to have control over ATC and TTC calculations. TAPS also contends that the RTO should have, at least for reliability reasons, control over generation maintenance schedules.

Duke calls the Commission's decision to decide liability responsibility on a case-by-case basis arbitrary and capricious. It states that transmission owners cannot be expected to transfer control of their facilities to what could be a non-profit RTO with limited assets without resolving the issue of the RTO's liability for its errors. Duke asks that the Commission clarify that it will not permit RTO operations to begin without a final resolution of liability issues, and that the RTO would not be given unilateral authority to alter the liability provisions of its tariff.

Commission Conclusion

We agree with Dynegy that it may be necessary to monitor and enforce compliance with the requirement for separation of reliability and merchant personnel. We expect that any RTO proposal would address this issue and propose appropriate and specific procedures concerning monitoring and enforcing compliance with all RTO rules, including these.

We share TAPS concerns that, when the retail merchant function is purchasing wholesale power, it is participating in the wholesale market and should not be privy to commercially sensitive information that would give it a competitive advantage over other purchasers of wholesale power. We expect that any RTO proposal will reflect these concerns to the extent it involves a control area operator affiliated with a market participant who could obtain access to commercially sensitive information.

We agree with Dynegy that generators that are redispatched by an RTO should be fully compensated and that the compensation would consider, among other things, lost opportunity costs. We also agree with Metropolitan that, when the RTO reschedules or cancels planned transmission maintenance, compensation to the transmission owners would be limited to the actual, verifiable out-of-pocket transmission-related costs incurred (*e.g.*, additional labor costs caused by the rescheduling).

In the Final Rule, we explained why we believe it is appropriate not to require, as an initial matter, that the RTO have authority over equipment ratings and generation maintenance schedules. While we expect that some RTO proposals may initially exceed our requirements or may evolve over time to place greater responsibility with the

[41] *Id.* at 31,184.

[42] FERC Stats. & Regs. ¶ 31,089 at 31,103–05.

RTO, we will not impose the additional requirements proposed by TAPS.

We continue to believe that liability issues should be addressed on a case-by-case basis. We agree with Duke that it is important that issues concerning liability and how liability provisions can or cannot be changed over time should be addressed during the collaboration process and resolved before the RTO begins operation. In this regard, a public utility can seek a declaratory order or make an RTO filing and have the liability issues resolved before the commencement of operations.

C. Minimum Functions of an RTO

1. Tariff Administration and Design

In the Final Rule, we adopted the requirement that the RTO must be the sole provider of transmission services and the sole administrator of its open access tariff.[43] Included in this function is the requirement that the RTO have the sole authority for the evaluation and approval of all requests for transmission service including requests for new interconnections.

Rehearing Requests

Duke and EEI request clarification that the requirement that the RTO be the sole provider of all transmission service is not intended to require unbundling of non-jurisdictional transmission service. Duke argues that given the Commission's lack of jurisdiction over bundled retail transmission, the Commission has no power to indirectly require the unbundling of retail energy sales through a rulemaking. Duke proposes the following change to section 35.34(k)(1)(i): "The Regional Transmission Organization must have the sole authority to receive, evaluate, and approve or deny all requests for *wholesale* transmission service."

Dynegy also seeks clarification from the Commission as to the requirement that the RTO be the provider of transmission service. Dynegy requests guidance as to the level of flexibility contemplated by the Commission for this requirement in situations where an umbrella RTO-transco structure is adopted. Dynegy envisions a paradigm where an interconnection-wide entity determines and/or arbitrates questions of system capacity and acts a scheduler, but the RTO actually owns and maintains the facilities and performs the dispatch. Under this scenario, Dynegy points out that depending on the perspective, either entity can be the provider of transmission service. In addition, SoCal Edison requests clarification that a two-tariff model (*e.g.*, RTO/ISO tariff and transmission owner tariff), whereby transmission owners continue to sell transmission service that is provided by an RTO, is an acceptable option for RTOs.

In addition, a number of entities requested rehearing or clarification on an RTO's authority over interconnections to the grid. For example, Metropolitan and SoCal Edison request that the Commission modify Order No. 2000 to clarify that an RTO has no interconnection authority over transmission facilities it does not own or have operational control of. Metropolitan is concerned that some systems within an RTO region that are not under the operational control of the RTO are already subject to arrangements with adjoining control areas and transmission owners. In addition, Metropolitan notes that public power systems may not be able to resolve legal or tax concerns in order to permit their facilities to be controlled by an RTO.

SoCal Edison also argues that the Commission erred to the extent it provided RTOs sole authority to approve requests for interconnections. SoCal Edison notes that FERC, not RTOs, has the authority to approve and evaluate interconnections, pursuant to sections 202(a) and 210 of the FPA. SoCal Edison asserts that transmission owners must remain an integral part of the interconnection process. According to SoCal Edison, the text of the Final Rule should be amended as follows: "The Regional Transmission Organization must have the authority to *establish interconnection policies and to coordinate the interconnection process* for new interconnections."

EPSA asserts that the Commission failed to expound upon the role of RTOs *vis-a-vis* other transmission owners in facilitating new interconnections. According to EPSA, in order to ensure non-discriminatory interconnection processes for all generators, the Commission should establish the RTO as the lead agency for new interconnections, with individual transmission owners' roles limited to performing studies on behalf of the RTO. EPSA contends that the RTO must be capable, within a reasonable time frame, of performing the necessary transmission studies and analyses that are required with respect to requests for new interconnections. EPSA also argues that new generators should not be required to commit to a particular level or type of transmission service in order to obtain interconnection service. In addition, EPSA proposes the development of a standardized interconnection agreement that would hasten the development of new generation and streamline the interconnection process. EPSA argues that this application process for evaluating interconnection requests and for processing the requests must be applied in a consistent and non-discriminatory manner.

Dynegy supports the positions set forth by EPSA in its request for rehearing on this issue. Dynegy urges the Commission to require, at a minimum, that any RTO proposal clearly address the nature and scope of the RTO's responsibility for the interconnection of new generators to the transmission grid, and clarify that new generators will not be required to negotiate separately with both the RTO and individual transmission owners.

Finally, EEI requests that the Commission clarify that any RTO authority over new interconnections does not interfere with the right to recovery of costs of new interconnections under section 205 of the FPA.

Commission Conclusion

We will not revise section 35.34(k)(1)(i) as proposed by Duke to limit it to wholesale transmission service. The proposed revision would disable the RTO from performing those retail transmission services that are already included in our *pro forma* tariff, *i.e.*, unbundled retail transmission that may occur, voluntarily or as the result of state action, on the system of the historical bundled retail supplier, or unbundled retail transmission service provided by other transmission providers that constitute more remote segments of a multi-system transmission transaction.

However, we clarify that the Final Rule is not intended to require the unbundling of non-jurisdictional transmission service (*i.e.*, the transmission component of bundled retail sales of energy). That is, the requirement does not interfere in any way with whether retail open access and retail choice are provided, or with the pricing of retail bundled power sales which is a decision for appropriate state authorities. However, the requirement *is* intended to require that the RTO control all transmission facilities in the region. This is consistent with what the Commission has done with respect to ISOs in the past. As Duke notes, the Commission has addressed in the context of existing ISOs, issues surrounding the fact that a transmission owner's assets continue to be used to provide bundled retail power sales. For example, in *PJM*, the Commission noted that, when transmission owners engaged

[43] *See* FERC Stats. & Regs. ¶ 31,089 at 31,108.

in transactions under the PJM Tariff to meet retail load, they would be, at the same time, using their transmission system to make bundled retail sales and using the transmission system of the other transmission owners, *e.g.*, to import power to their system for the purpose of making bundled retail sales.[44] We note that, to date, according to one analysis,[45] approximately 40 percent of the nation's electricity sales to ultimate customers utilize transmission systems that are participating or have agreed to participate in Commission-approved ISOs without implicating the continuing jurisdiction of state commissions over bundled retail power sales. In short, we have accommodated ISOs that provide service at wholesale as well as at retail, and in states that have retail choice as well as states that do not have retail choice, and we have done so without a conflict between state and Federal authority.

In response to Dynegy's concerns, we do not see any inconsistency in our requirement that the RTO be the provider of transmission service and our flexibility to allow various RTO structures. We believe that some of this concern arises from the meaning of the term "provider of transmission service." When we use the term provider of transmission service in this context, we are referring to the entity (*i.e.*, the RTO) that has the primary obligation to ensure that transmission service is provided, not the entity that may be operating the switches at the direction of the RTO.

In response to SoCal Edison's request for a clarification on the "two-tariff" model, it would be inappropriate to consider in the Final Rule the specifics of whether a particular aspect of an existing ISO arrangement would satisfy the RTO requirements. We emphasize, however, that we have created a Final Rule that provides clear guidance as to the RTO requirements and extensive flexibility in how to satisfy those requirements.

The concerns raised by Metropolitan and SoCal Edison with respect to an RTO's authority over interconnections to the grid have two facets. First, some facilities may not be under the control of the RTO because they are owned by an entity that has not placed any facilities under the control of the RTO, *e.g.*, a public power entity. We agree that the RTO would not have authority over interconnections to that portion of the grid. Second, some facilities may not be under the control of the RTO even though they are owned by an entity that has placed other facilities under the control of the RTO. For example, in the NEPOOL region, only Pool Transmission Facilities (PTF) were placed under the control of ISO–NE. However, ISO–NE nonetheless has authority over interconnections to non-PTF transmission facilities. We would expect similar arrangements to be part of any RTO proposal.

We disagree with SoCal Edison's point that RTOs can exercise no authority over interconnections because that authority resides only with the Commission under sections 202 and 210 of the FPA. An interconnection obligation is an element of transmission service and is already required to be provided under our *pro forma* tariff that will be administered by the RTO.[46] As EPSA notes, this is true, whether the interconnection request is tendered concurrently with a request for transmission service or in advance of a request for a specific transmission service.[47] It is therefore appropriate for the RTO to be the entity that reviews and approves interconnection requests. However, we agree with SoCal Edison that transmission owners must remain an integral part of the interconnection process. We also agree with Dynegy that new generators should not have to negotiate separately with the RTO and individual transmission owners. We expect one-stop shopping under any RTO.[48] Finally, we agree with EEI that the RTO's authority over new interconnections does not suggest that entities incurring costs to provide those interconnections will not be compensated.

2. Congestion Management

In the Final Rule, the Commission concluded that an RTO must ensure the development and operation of market mechanisms to manage congestion.[49] The market mechanisms must provide transmission customers with efficient price signals regarding the consequences of transmission use decisions. We asserted that these pricing proposals should ensure that (1) the generators dispatched in the presence of transmission constraints are those that can serve system loads at least cost and (2) limited transmission capacity is used by market participants that value that use most highly. The Final Rule did not prescribe a specific congestion pricing mechanism; instead, RTOs have considerable flexibility to propose a congestion pricing method that is best suited to their circumstances.

Rehearing Requests

Dynegy argues that because congestion management is a "hot" topic, the Commission should hold a technical conference on issues surrounding congestion management and RTOs.

TDU Systems requests clarification that the Commission has not mandated or approved the auction of limited transmission capacity to the highest bidder in all circumstances. TDU Systems asks whether the market participant who can pay the most for the capacity is necessarily the one who will maximize the overall societal benefits of obtaining it and whether the entity that can afford to pay the most on that day is the supplier who can pay the going rate specifically because it has decided to avoid serving loads of poorer residential consumers. TDU Systems state that, while they do not expect the Commission to have immediate answers to these questions, they urge the Commission to make clear that the subject remains open for discussion. TDU Systems contends that, otherwise, unfettered reliance on market mechanisms in transmission pricing may become a recipe for new forms of undue discrimination.

Commission Conclusion

We deny Dynegy's request, as part of this rehearing order, to direct a technical conference on congestion management issues. We agree that congestion management issues may be significant and controversial and expect that parties will use the collaboration process to tackle these issues.

As requested by TDU Systems, we confirm that Order No. 2000 does not mandate or pre-approve any particular form of market mechanism for congestion management. Furthermore, we agree that congestion pricing must satisfy the same standards as any other rate, term or condition of service, *i.e.*, just, reasonable, and not unduly discriminatory or preferential. We encourage that parties use the collaborative process to identify their concerns about congestion pricing.

3. Ancillary Services

In the Final Rule, the Commission concluded that an RTO must serve as the provider of last resort of all ancillary services required by Order No. 888 and

[44] Pennsylvania-New Jersey-Maryland Interconnection, L.L.C., 81 FERC ¶ 61,257 at 62,281–82 (1997).

[45] *See* Initial Comments of Edison Electric Institute on the RTO NOPR, at Appendix B.

[46] PJM Interconnection, L.L.C., 87 FERC ¶ 61,299 (1999), *reh'g denied*, 89 FERC ¶ 61,186 (1999).

[47] *See* Ameren Operating Companies, 89 FERC ¶ 61,041 (1999), *order on reh'g*, 89 FERC ¶ 61,208 (1999); Central Hudson Gas & Electric Corporation, *et al.*, 88 FERC ¶ 61,138 (1999).

[48] *See id.*; New England Power Pool, *et al.*, 87 FERC ¶ 61,043 (1999).

[49] FERC Stats. & Regs. ¶ 31,089 at 31,126.

subsequent orders.[50] The Commission also allowed RTOs to propose other ancillary services in recognition of local or regional conditions. Moreover, the Commission concluded that real-time balancing markets are essential for the development of competitive power markets and an RTO must ensure that its transmission customers have access to a real-time balancing market that is developed and operated by either the RTO itself or another entity that is not affiliated with any market participant.

Rehearing Requests

Steel Dynamics requests rehearing of the Commission's decision not to establish standard definitions for energy imbalance services, and requests a determination that an hourly assessment of such imbalances is the proper standard for FERC-approved ancillary services. In the alternative, Steel Dynamics requests that the Commission establish a generic proceeding to provide guidance on the development of real-time energy imbalance markets and energy imbalance services.

On rehearing, TDU Systems argues that backup and hour-to-hour load following service should be added to the mandatory ancillary services menu. In the alternative, TDU Systems requests that the Commission: (1) Clarify that proposals to augment the Order No. 888 menu of ancillary services offerings are appropriate subjects for negotiation during the collaborative process; (2) clarify that the Commission will entertain proposals by market participants as well as RTOs to augment the menu of RTO ancillary services, whatever the outcome of the regional process; and (3) clarify that additional ancillary services may be proposed on bases other than local or regional conditions.

Duke seeks clarification that in the discussion of balancing the Commission was not referring to inadvertent interchange. Duke notes that inadvertent interchange is the integration of all of the mismatches within a control area over a time period, typically a single hour, while energy and generation imbalances are the integration of a particular transmission customer's load mismatches for any particular scheduled transmission.

EEI requests that the Commission provide congruence in the deadlines for the deployment of both congestion management and real-time balancing markets, a year after an RTO commences initial operation. EEI argues that real-time information is needed to operate a real-time balancing market and this information requires investment and installation of metering equipment. In addition, EEI notes that operating a real-time balancing market encompasses full coordination across interconnections.

Commission Conclusion

We deny the request to establish a generic proceeding to provide guidance on the development of real-time energy imbalance markets and energy imbalance services. We agree with Steel Dynamics that these issues may be significant and controversial and expect parties to use the collaboration process to address these issues.

We also decline to mandate additional ancillary services as part of this Final Rule, but we clarify that proposals for the RTO to offer additional services is an appropriate topic for discussion during the collaborative process. We expect that one of the benefits of RTOs is that they will be responsive to the needs of transmission users and consider additional services beyond those mandated in Order No. 888 for service on an individual system basis. While market participants are free to propose revisions to RTO proposals that are ultimately filed with the Commission, it is preferable that these issues be thoroughly raised and considered during the collaborative process.

We clarify that the RTO's responsibility for operating a balancing market is intended to address the energy and generation imbalances that are associated with customers' transactions. However, we did express our concern that transmission users had unequal access to balancing options depending on whether they also operate a control area. We recognize that inadvertent interchange among control areas is intended to address different operational matters, but there is some concern among industry participants that control area operators have the ability to use inadvertent interchange as a low cost source of energy imbalance service.[51]

We are not persuaded by EEI that we should extend the deadline for real-time balancing markets. We understand that such markets may require technological support and investment in metering equipment, but we believe that these issues can be resolved within the current deadline.

4. OASIS and Total Transmission Capability (TTC) and Available Transmission Capability (ATC)

The Final Rule provides that the RTO must independently calculate ATC and TTC values based on data developed partially or totally by the RTO. When data are supplied by others, the Final Rule stated that the RTO must create a system of checks and tests to ensure unbiased data and coordination. Also, the Commission concluded that issues relating to capacity benefit margin (CBM) were outside the scope of this proceeding and we noted that CBM issues can be addressed in Docket No. EL99–46–000.

Rehearing Requests

Conectiv requests clarification that a non-profit ISO, which is an RTO, shall accept equipment ratings and other verifiable transmission data from member transmission owners to be used in the calculation of ATC and TTC values. Conectiv is concerned that an RTO may deny the use of verifiable data such as equipment ratings and impose its own different standard. According to Conectiv, the non-use of transmission owners' verifiable data, such as equipment ratings by an RTO, may influence transmission investment and levels of reliability on the transmission owners' systems.

TAPS argues that the Commission should clarify that RTOs have the authority to independently review, verify and modify CBM in setting ATC and TTC with the RTO's CBM values controlling pending ADR. TAPS asserts that CBM is a key component that goes into the computation of ATC and failure to include CBM within RTO authority will make RTO authority over ATC meaningless.

Commission Conclusion

In the Final Rule, we concluded that the RTO should calculate ATC/TTC values based on data developed partially or totally by the RTO. In addition, the Commission required that RTOs independently verify data supplied by transmission owners for the calculation of ATC/TTC. Accordingly, we agree with Conectiv that an RTO can rely on data provided by the transmission owner provided that the data is verifiable by the RTO.

In response to TAPS, we recognize that CBM is an important component in calculating ATC. However, as noted in the Final Rule, issues relating to CBM are too detailed to be addressed at this time and should be addressed when RTO proposals are filed. We agree that these issues need to be resolved because

[50] *See* FERC Stats. & Regs. ¶ 31,089 at 31,140.

[51] We note that NERC is currently evaluating issues related to inadvertent interchange practices and the economic incentives of operating a control area as a source of low cost balancing options. *See* Report to Board of Trustees (Feb. 7–8, 2000).

the RTO cannot accurately compute ATC without also resolving CBM issues.

5. Market Monitoring

In the Final Rule, the Commission concluded that market monitoring is an important tool for ensuring that markets within RTOs do not result in transactions or operations that are unduly discriminatory or preferential or provide opportunity for the exercise of market power. In section 35.34(k)(6) of the regulatory text, we outlined the minimum standards that RTOs' market monitoring plans must satisfy. We also provided latitude to the RTO and market participants to design a market monitoring plan that best fits the circumstances of the RTO and the structure and design of its power markets. In addition, the Final Rule requires than an RTO propose an objective market monitoring plan to assess whether the RTO's involvement in markets favors its own economic interest.[52]

Rehearing Requests

PSE&G reiterates the concerns it raised in its NOPR comments about the need for and extent of a market-monitoring function for RTOs, and asks that it be eliminated as one of the RTO's functions. PSE&G also notes that, while the Final Rule declined to sunset the market monitoring function as PSE&G had proposed, it noted that as bulk power markets evolve and become more competitive, we may revisit the need for the type of monitoring the Rule requires. Pointing to this observation, PSE&G proposes that the Commission at least amend the regulation to allow the market participants the flexibility to evolve to a more competitive state where the intrusion of a market monitor is no longer necessary. To this end, PSE&G proposes the following language to section 35.34(k)(6): "(iv) The market monitoring plan may provide for its automatic expiration within a fixed period of time, provided that the Commission finds that the markets administered by the RTO are operating competitively without regulatory supervision."

Conectiv argues that the Commission erred in giving the authority to remedy market power abuses to RTOs. Instead, Conectiv asserts that RTOs should be limited to investigating and reporting market power abuses. Conectiv is concerned that if an RTO is permitted to take an enforcement role in punishing market power abuses, the RTO might create anticompetitive effects in the market by discriminating in punishments. Duke expresses the same concerns as Conectiv and argues that the monitoring arm of RTOs should not be provided policing authority over market participants. Duke contends that an RTO should only be permitted to administer penalties and sanctions to which parties have voluntarily agreed by contract with the RTO.

Dynegy continues to be concerned that RTOs are market participants and therefore, Dynegy requests that the Commission clarify that the market monitoring plans proposed by RTOs must include a plan to assess whether the RTO is able to favor its own interests over those of its customers or members via its involvement in markets in which it participates. Furthermore, Dynegy requests clarification that an objective market monitoring plan to assess an RTO's own involvement must be performed by an independent auditor.

PP&L requests rehearing of the Commission's decision to expand the role of RTO market monitoring to the investigation and determination of individual market participant behavior. PP&L argues that the Commission's responsibility to identify and address the existence and exercise of market power and other anticompetitive activity may not be delegated to private parties such as RTOs. PP&L asserts that the FPA contains no authority for the Commission to delegate to private parties the enforcement of Commission's obligations to prevent discrimination and to regulate the public interest, and furthermore, the delegation of investigatory and regulatory authority to private parties is disfavored under Federal law.

EEI requests that the Commission require that market monitoring plans evolve as market structures evolve and mature. EEI recommends that the Commission reconsider the need for a process through which each RTO and its market participants can regularly assess the scope of market monitoring, the responsibilities of the monitoring unit and the types of data and information that are necessary to effectively monitor.

Commission Conclusion

For the reasons given in the Final Rule, we reject PSE&G's request to eliminate the market monitoring function completely. We also reject PSE&G's proposed modification to the market monitoring requirement. While we agree with PSE&G that the market monitoring function may change over time, it would be premature to assume, as PSE&G proposes, that parties can now predict that, by a date certain, all market monitoring functions should terminate. The Commission will periodically assess the need and degree of market monitoring that should be done by the RTOs. Accordingly, we agree with EEI that an important element of any market monitoring plan may be a process that provides for the periodic evaluation of the plan's design and effectiveness. We believe that this is an issue that should be raised during the collaborative process.

We believe that Conectiv's, Duke's, and PP&L's concerns about enforcement are premature and should be addressed when specific RTO proposals are developed and filed with the Commission.[53] We are not delegating our statutory authority and responsibility; however, we believe RTOs can help us understand and identify market problems. RTOs will be permitted to take actions only within specified parameters that are contained in a Commission-approved tariff.

We provide the clarification requested by Dynegy that the requirement referenced in the Final Rule[54] concerning a monitoring plan to assess the RTO's involvement in markets would be proposed at the same time as the market monitoring plan related to the markets the RTO operates and administers.

6. Planning and Expansion

The Commission concluded that the RTO must have ultimate responsibility for planning, and for directing or arranging, necessary transmission expansions, additions and upgrades within its region that will enable the RTO to provide efficient, reliable and non-discriminatory service. The Final Rule recognized the statutory authority of the states to regulate siting of transmission facilities and we concluded that the RTO's planning and expansion process must be designed to be consistent with state and local responsibilities. In addition, the Commission encouraged the development of multi-state agreements or compacts to review and approve new transmission facilities. Moreover, the Commission recognized that the planning and expansion function may require coordination among multiple parties and regulatory jurisdictions and established a three year deadline for satisfying this function.

Rehearing Requests

TDU Systems agree that transmission planning and expansion is a vital

[52] FERC Stats. & Regs. ¶ 31,089 at 31,064 and 31,156.

[53] *See* New York Independent System Operator, Inc., *et al.*, 89 FERC ¶ 61,196 (1999); New England Power Pool, 85 FERC ¶ 61,379 (1998).

[54] FERC Stats. & Regs. ¶ 31,089 at 31,156.

function for RTOs to perform, and on rehearing, TDU Systems argue that RTOs should be required to be capable of performing its planning and expansion responsibilities on the first day of RTO operation.

NY Transmission Owners seek three clarifications on planning and expansion issues: (1) Clarify that Order No. 2000 does not displace the legal rights of owners of the transmission assets, including the right to propose and build expansions to transmission systems to meet obligations under state law; (2) clarify that the Commission intends to require RTOs to adhere to the statutory requirements under FPA sections 210, 211 and 212 concerning any mandated interconnections or expansions, including statutory provisions respecting cost recovery; and (3) clarify that, if an RTO directs the construction of potentially uneconomic facilities, the transmission owners will not be required to bear the risk of any such facilities.

Duke notes that there may be situations where, regardless of the planning process used, and despite the best efforts of the RTO, transmission expansion cannot be effectuated. For example, Duke states that a state commission could choose not to participate in the multi-state process, or decide not to grant permission to construct. In these situations, Duke asserts that neither the Commission nor the RTO have legal or regulatory authority to compel the state commission to act in a different manner. Therefore, on rehearing, Duke asks that the Commission provide that in a situation in which, despite good-faith efforts by the RTO, certain transmission facilities cannot be built, the RTO consequently is relieved of the responsibility placed on it for directing or arranging necessary transmission additions and upgrades. Likewise, EEI asks that the Commission clarify that any obligation to upgrade or expand transmission is subject to good faith efforts to obtain the necessary approvals under federal, state or local law.

Commission Conclusion

We agree with TDU Systems that transmission planning and expansion are vital functions, but disagree that we can expect RTOs to be capable of performing these functions on the first day of RTO operation.

As we understand it, NY Transmission Owners are concerned on the one hand that they might not be compensated for any expansion that they undertake at the direction of the RTO, and on the other hand, that they might be precluded from expanding their systems on their own initiative without a directive by the RTO. We agree that a transmission owner is entitled to compensation for construction undertaken at the directive of an RTO, and we expect that these issues will be resolved systematically by the RTO. We also clarify that our Final Rule does not preclude a transmission owner from expanding its system on its own initiative; however, it would be prudent for the transmission owner in that case to resolve compensation issues in advance with the RTO.

In response to Duke, we clarify that the transmission expansion obligations are no greater than we established in the *pro forma* tariff.[55] States, of course, retain siting authority. However, among the benefits of an RTO is that expansion will reflect the result of a regional process that can involve regional regulatory authorities, and since the transmission system will be operated regionally, there may be more than one expansion alternative that could resolve the situation. We expect utilities to make good faith efforts to achieve the RTO's desired transmission expansion.

7. Interregional Coordination

In the Final Rule, the Commission added a general interregional coordination requirement as one of the minimum RTO functions.[56] Under this requirement, the RTO must ensure the integration of reliability practices within an interconnection and market interface practices among regions. The Final Rule envisioned some level of standardization and practices, including coordination and sharing of reliability data and data for TTC and ATC calculation, transmission reservation practices and congestion management.

Rehearing Requests

Dynegy requests expedited implementation of the interregional coordination function and proposes the creation of an interregional transmission system coordinator (ITSC) to accomplish the following functions:

(1) Resolving "physics" issues over broad geographic regions using flow-based modeling, thereby "internalizing" loop flow. This can be accomplished by:

- Expanding use of NERC's interchange distribution calculator (IDC) to determine and verify ATC calculations of existing transmission providers, whether they are individual utilities, ISOs or transcos and to determine and verify transfer capabilities at interfaces.

(2) Serving as a grid operations manager (similar to an air traffic controller).

The interregional transmission system coordinator could:

- Monitor and oversee the grid;
- Act as a seams coordinator;
- Serve as the Security Coordinator;
- Coordinate consistency of operating rules, *e.g.*, schedule deadline for submitting nominations;
- Oversee low-level market monitoring; and
- Enforce ATC and reliability rules

(3) Performing regional reliability functions on behalf of a Self-Regulatory Organization.[57]

Dynegy points out that the ITSC would not impinge on the majority of functions the Commission has assigned RTOs. Instead, Dynegy argues that the ITSC would complement RTOs by ensuring that ATC is calculated in a consistent manner or by ensuring tariffs and protocols do not conflict or cause unwanted market or reliability impacts.

Commission Conclusion

We will deny Dynegy's request for expedited implementation of the interregional coordination function. However, we continue to believe that the coordination of activities among regions is an important element in maintaining a reliable and efficient transmission system. We expect that the parties will use the collaborative process to discuss issues relating to interregional coordination and Dynegy's suggestions.

D. Open Architecture

In the Final Rule, we adopted the principle of open architecture in order that the RTO and its members have the flexibility to improve their organizations in the future. The Commission stated that an RTO must have the flexibility to unilaterally propose changes to its enabling agreements to meet changing market organization and policy needs.[58] We noted, however, that open architecture should not be interpreted to mean the unfettered ability for an RTO to modify its structure or processes. Under the Final Rule, proposed changes to the RTO's jurisdictional rate schedules and contracts will be subject to Commission review and approval under the FPA on a case-by-case basis.

Rehearing Requests

EEI states that transmission owners should have fundamental rights, such as

[55] *See, e.g., pro forma* tariff provisions at sections 15.4, 19.6, 20, and 28.2.

[56] FERC Stats. & Regs. ¶31,089 at 31,166–68.

[57] *See* Dynegy Request for Clarification and Rehearing at 13.

[58] *See* FERC Stats. & Regs.] 31,089 at 31,170.

the right to terminate their participation in the RTO, the right to switch to another RTO, the right to merge RTOs, the right to recover their costs and a return on investment, and the right to protect their assets and employees from damages and injuries. EEI asks the Commission to clarify that these existing rights and obligations are recognizable and enforceable, and that the RTO should not be able to unilaterally abrogate these rights. NY Transmission Owners also request clarification that transmission owners' fundamental rights cannot be altered under the Final Rule's open architecture requirements. NY Transmission Owners are concerned that an RTO may be allowed to change the essential terms of the RTOs enabling agreements under the Final Rule's open architecture policy.

Commission Conclusion

On rehearing, some transmission owners restate their concern that open architecture places them at risk for being bound to an arrangement that is fundamentally different from the one they agreed to join. We believe that this is a legitimate concern that must be addressed in any RTO proposal. In addition, in the Final Rule we agreed that "the flexibility implied by open architecture should not be interpreted to mean unfettered ability on the part of the RTO to modify its structures or processes." [59] Accordingly, any RTO proposals or changes to existing agreements, which will be changes to the RTO's jurisdictional rate schedule(s) and contracts, will be subject to Commission review and approval under the FPA. All changes to an approved RTO will be examined on a case-by-case basis with interested parties having an opportunity to comment on any proposal. Open architecture is aimed at removing barriers to ongoing market improvements and is not intended to allow unilateral changes without a full airing of issues by all affected parties and review by the Commission.

E. Transmission Ratemaking

1. Pancaked Rates

The Final Rule noted that the elimination of pancaked rates within a region is a central goal of our RTO policy.[60] While it is acceptable to assess an access charge to recover capital costs, we stated that transmission customers should not be required to pay multiple access charges for crossing corporate utility boundaries in an RTO region.

Rehearing Requests

EEI contends that the Final Rule provides no analysis of the impact of the elimination of rate pancaking on wheeling rates and revenue. It argues that the policy ignores the impact of loop flows on transmission owners' property rights and infringes on state authority over service territory boundary setting. EEI goes on to suggest that the policy against pancaked rates be modified to allow an RTO to justify that its pancaked rates are just and reasonable.

Commission Conclusion

We deny rehearing of the Final Rule's policy prohibiting pancaked rates. Non-pancaked rates are a central attribute of RTO formation. We have found that pancaking of access charges acts as a major detriment to competition in the bulk power market. We believe that the allowance of transitional use of license plate rates and certain innovative rate provisions of the Final Rule will serve to protect transmission owners' property rights.

2. Uniform Access Charges

The Final Rule recognized that the pancaked rate prohibition can present problems for RTOs whose participants have divergent transmission cost structures.[61] An immediate move to a uniform access charge across the entire RTO could cause disruptive cost shifting among owners. We decided to apply flexibility in the use of license plate rates, echoing our approach in the ISO approvals to date. The Final Rule allowed RTO applicants to propose license plate rates for a fixed term of the applicant's choosing. Under Order No. 2000, license plate rates could be extended beyond the initial period if supported by the facts at that time.

Rehearing Requests

PSE&G complains that the Final Rule's policy on license plate rates is unfair to members of existing ISOs who will have to face uniform rates at a date certain established in the orders approving those ISOs. In light of the Final Rule's policy on license plate rates, PSE&G argues that PJM should be relieved of the requirement to file uniform access rates by July 1, 2002.[62]

TAPS contends that the policy on license plate rates should be amended to include an explicit requirement that all transmission owners be compensated for the use of their facilities.

Commission Conclusion

We deny rehearing of our policy on license plate rates. We shall not address in this rehearing order PSE&G's request that PJM be relieved of its obligation to file a uniform access charge by 2002. PJM's RTO compliance filing will be tendered well before that date and the Commission will consider any proposal to continue license plate rates proposed by the RTO as a whole in the context of the overall RTO proposal.

As to TAPS' request that we modify the Final Rule's license plate policy, we agree with TAPS that all transmission owners should be compensated for the use of their facilities, although we cannot conclude in this rehearing order what types of compensation methods should be used in a particular circumstance. As we stated in the Final Rule, a certain level of detail in ratemaking matters is beyond the Final Rule's scope, including issues such as TAPS' concern, and we will decide these issues on a case-by-case basis.[63]

3. Service to Transmission-Owning Utilities That Do Not Participate in an RTO

In the Final Rule, we stated that where a transmission customer of an RTO or the customer's affiliate owns, controls or operates transmission in the RTO's region, and is not participating in that particular RTO, we intend to permit that RTO to propose rates, terms, and conditions of transmission service that recognize the participatory status of the customer.[64] The Commission concluded that each proposal will be examined on a case-by-case basis. In addition, we noted that some transmission owners may face legal obstacles to RTO participation that need to be taken into account in the proposals.

Rehearing Requests

NRECA argues that the Commission should not unjustly reward RTOs by allowing them to charge higher rates to non-participants where such non-participation results from the RTOs' failure to reasonably accommodate the needs of non-participation during the RTO formation process. NRECA requests that the Commission clarify that proposals to charge individual system rates to a transmission customer who is a non-participant of the RTO may not be made unconditionally and must account for the reasons underlying non-participation. Dairyland also asserts that the Commission must make clear that non-public utilities will not be penalized through the imposition of

[59] FERC Stats. & Regs. ¶31,089 at 31,170.
[60] FERC Stats. & Regs. ¶ 31,089 at 31,174.
[61] *Id.* at 31,177.
[62] *See* Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶61,257 (1997).
[63] FERC Stats. & Regs. ¶31,089 at 31,177.
[64] *See id.* at 31,180.

disadvantageous pricing, terms and conditions for transmission service from an RTO if solutions to the barriers non-public utilities face in joining RTOs cannot be developed through the collaborative process.

Metropolitan, EEI, SMUD and NY Transmission Owners argue that the Commission erred in permitting RTOs to charge individual rates to a transmission customer who is a non-participating transmission owner in the RTO region and that this provision should be deleted. These entities assert that this aspect of the Final Rule violates prohibitions against undue discrimination embodied in the Commission's comparability pricing principles requiring that differences in rates be based on differences in costs incurred to provide service. In addition, EEI asserts that this provision contravenes the Commission's determination to pursue a voluntary approach for RTO formation. South Carolina Authority and TANC/MID also argue that the Commission should grant rehearing and amend the Final Rule to prohibit discriminatory rates for utilities that do not join RTOs. South Carolina Authority asserts that because the Commission lacks the authority to require RTO participation directly, subjecting parties who do not participate in an RTO to less favorable rates, terms and conditions of service would be unlawfully discriminatory. TANC/MID contends that the Commission failed to adequately explain its decision to permit RTOs to propose rates that penalize non-participants.

Commission Conclusion

As we noted in the Final Rule, proposals to charge different rates to non-RTO participants must be demonstrated to be just and reasonable. We agree that such demonstration must account for the reasons underlying non-participation including, among other things, impediments to participation that could not be overcome through the collaborative process. We do not agree with the premise of some of the petitioners who conclude that rate differences of any type constitute undue discrimination. Finally, we disagree that the fact that we will entertain such proposals is inconsistent with our voluntary approach to RTO formation. The Final Rule neither requires nor pre-approves this type of rate treatment. Rather, we simply declined to prohibit these types of rate proposals entirely.

4. Performance-Based Rate Regulation

The Final Rule invited RTO applicants to file voluntary performance-based regulation (PBR) proposals.[65] We provided guidance as to what constitutes a good PBR design in the RTO context. Under Order No. 2000, PBR plans can be filed subsequent to the filing or approval of the RTO proposal. The Commission concluded that proposals for PBR should be fully documented with the necessary information to evaluate costs and benefits.

Rehearing Requests

Industrial Consumers argue that the Commission does not have sufficient basis to abandon traditional cost-of-service principles in favor of PBR. They contend that the Commission may not have met legal requirements to enact such a policy shift. Further, Industrial Consumers complain that the Commission has not inquired sufficiently into the impact of PBR on customers of transmission service.

Commission Conclusion

As we noted in the Final Rule, we are not abandoning the fundamental underpinnings of our traditional transmission pricing policies, *i.e.*, that transmission prices must reflect costs of transmission service.[66] The fact that performance-based pricing mechanisms rely, in part, on benchmarks other than the transmission provider's own costs (*e.g.*, industry performance indices or normative goals) does not constitute a departure from cost-of-service principles. Moreover, we have not in the Final Rule approved any specific PBR. Any entity proposing a PBR mechanism would have to include in its request, as required by section 35.34(e)(1), explanations of how the rate would help achieve the goals of RTOs, including efficient use of and investment in the transmission system and reliability benefits to consumers; a cost-benefit analysis including rate impacts, and why the rate treatment is appropriate for the RTO. The Final Rule also discussed a number of principles relating to PBR design.[67] We will analyze the merits of specific PBR mechanisms when they are proposed.

5. Other RTO Transmission Ratemaking Reforms

a. Levelized Rates

One of the innovative rate options we discussed in the Final Rule is flexibility in the use of levelized rates to recover the cost of transmission assets. Commission policy does not normally allow changes from non-levelized to levelized rates when customer rates are impacted. The Final Rule allowed more flexibility in the use of levelized rates in RTO tariffs.[68] We believed that this flexibility is reasonable because the rates will be offered in a restructured market and will represent a new service in many ways.

Rehearing Requests

Metropolitan, TANC/MID, NRECA and Dairyland argue that the Commission's policy on levelized rates for RTOs will double charge existing transmission customers who have been paying depreciation charges in existing rates. These entities take issue with Order No. 2000's determination that an RTO's transmission tariff would be for a new service to new customers. They claim that many existing customers would be forced to pay twice for the same facility.

EPSA suggests that the double charging of existing customers may be largely avoided by allowing levelized rates only on the net, depreciated plant costs.

TDU Systems argues that the policy in Order No. 2000 on levelized rates is arbitrary and capricious because the need for flexibility does not justify a policy change that would require existing customers to pay twice for the same investment. TDU Systems says that the Commission's policy in *Kentucky Utilities*[69] should be applied to RTO transmission rates.

Commission Conclusion

We deny rehearing of our use of increased flexibility in considering rates based on levelized recovery of capital costs. We disagree that our decision on levelized rates reflects a policy change. Our prior cases dealt with rates charged by a single utility for service over its system. The customers did not change and the service did not change materially over time. Under an RTO, customers will receive service over multiple systems at a single, non-pancaked rate. Different customers will be served by the multiple systems and different services will be provided. This is a material change that warrants appropriate transmission ratemaking reform.

Finally, we do not agree that allowing levelized rates constitutes the payment for the same facilities twice. We reaffirm the explanation for considering levelized rates set out in Order No. 2000.[70] Customers do not buy facilities; they buy service. Moreover, the notion

[65] FERC Stats. & Regs. ¶31,089 at 31,183.
[66] *Id.* at 31,173.
[67] *Id.* at 31,185.
[68] *See id.* at 31,193–94.
[69] 85 FERC ¶61,274 (1998).
[70] FERC Stats. & Regs. ¶31,089 at 31,193–94.

that any RTO customer who paid rates for past services based on the cost of facilities that now comprise a portion of the RTO grid is somehow entitled to RTO rates based on the same ratemaking treatments is not only unjustified, but also unworkable.

Going forward, customers will be paying rates for expanded and more flexible services at rates that, in total, are significantly lower than the rates offered under individual tariffs. Moreover, going forward, levelized rates have the beneficial effect of charging customers the same rates for use of the same system regardless of when they take service. The sweeping reorganization of the transmission grid that will occur as the result of the Commission's RTO initiative and the industry's own movement towards unbundling of the assets themselves is the best time to consider what type of rate treatments, going forward, will best serve the needs of competitive energy markets.

b. Return on Equity

Several of the innovative rate options in the Final Rule involve adjustments to the return on equity allowed in the calculation of transmission rates.[71] These options include: formulary rates, risk adjustments and rates of return that do not vary with changes in the capital structure. We offered these options because they remove some of the disincentives that may accompany joining an RTO, they recognize changes in risk involved in restructuring and they take some account of the changes in the industry that have an impact on owners' risk.

Rehearing Requests

NRECA and TDU Systems ask that the Commission clarify its position on the increased risk that RTOs will be expected to experience. They are concerned that the Commission may have prejudged the issue and determined that RTOs will experience greater risk entitling them to a higher rate of return. They ask the Commission to clarify that the Commission will assess the risk of each RTO based on evidence brought to bear on a case-by-case basis.

Industrial Consumers argue that the Commission cannot assume that participation in an RTO increases risks for transmission owners. On the contrary, they argue that evidence shows that risks involved in RTO participation and divested transmission operation will actually be lower. Industrial Consumers point to findings of the California Public Utilities Commission and commentaries of utility investment analysts to support its proposition. They state further that risks are lower for RTO participants because of the statutory requirement that regulators allow a reasonable rate of return, unbundling will shield transmission owners from prudence reviews on the generation side, and more competitive generation will reduce bypass opportunities.

Commission Conclusion

The Final Rule draws no conclusions about the risks of a transmission-only business. It simply observes that the uncertainty created during the restructuring transition may increase risk. We have not prejudged the risk issue, and that issue will be determined case-by-case.

c. Accelerated Depreciation and Incremental Pricing for New Transmission Investments

The Final Rule recognized that new transmission investment may need innovative rate treatment to make necessary enhancements viable in the RTO context. For that reason, we stated that we would consider proposals to allow accelerated depreciation of new transmission assets and proposals to charge incremental rates for new investment while charging embedded rates for existing investment.[72]

Rehearing Requests

TANC/MID claims that the Commission's willingness to consider accelerated depreciation and incremental pricing for new investment is arbitrary and capricious and is not supported by substantial evidence. It claims that transmission projects are impeded more by siting and environmental concerns than by inadequate financing. TANC/MID also argues that incremental pricing for new investment while applying average pricing for existing facilities violates the Commission's policy against "and" pricing.

TDU Systems disagrees with the Commission that accelerated depreciation and incremental pricing are needed for new transmission investment. It finds them unwarranted deviations from established pricing policy. If the Commission adopts such rate policies for RTOs, it should require that any affected new facilities be put out for competitive bid.

Commission Conclusion

With respect to accelerated depreciation for new transmission investment, as with the other innovative rate treatments discussed in the Final Rule, we did not guarantee that it would be allowed in every situation. Rather, we stated that we were willing to provide the flexibility to permit RTOs to propose non-traditional depreciation schedules. All such proposals will be required to be supported by the explanations and analyses set forth in section 35.34(e)(1). We do not believe that our willingness to consider such proposals is arbitrary and capricious.

We disagree that we have departed from our policy against "and" pricing. The form of "and" pricing that the Commission has prohibited is described in the Transmission Pricing Policy Statement.[73] There we addressed "and" pricing at the corporate level, *i.e.*, proposals by individual transmission providers to assess certain customers both an embedded cost rate and an incremental cost rate, while assessing only an embedded cost rate to their own uses of the transmission system. While the pricing proposals we will entertain for RTOs may combine elements of embedded cost rates and incremental cost rates, they do not constitute corporate "and" pricing. Indeed, we have already approved these rate forms for most existing ISOs, noting for example, that it is acceptable to charge both a non-pancaked access fee based on embedded costs and an incremental charge reflecting opportunity costs or expansion costs. Significantly, unlike the corporate "and" pricing prohibited under our Transmission Pricing Policy Statement, the objective of this pricing proposal is not to make the cost faced by one group of transmission users (*i.e.*, the wholesale customer) higher than another's (*i.e.*, native load). Rather, this type of pricing is intended to (1) reduce the cost of transmission over multiple utility systems in both constrained and unconstrained situations and (2) rely on congestion charges to provide a uniform price signal to all users in constrained situations.

We shall not dictate that an RTO put transmission projects out for competitive bid. As we noted in the Final Rule, the Commission will not mandate any specific approach in how an RTO satisfies the function of planning and expansion.[74]

[71] *Id.* at 31,192–93.

[72] *Id.* at 31,194.

[73] Inquiry Concerning the Commission's Pricing Policy for Transmission Services Public Utilities Under the Federal Power Act, Policy Statement, FERC Stats. & Regs. ¶ 31,005 (1994), *clarified*, 71 FERC ¶ 61,195 (1995).

[74] FERC Stats. & Regs. ¶ 31,089 at 31,165.

d. Other Innovative Rate Issues

Rehearing petitions were filed on other innovative rate issues as described below.

Rehearing Requests

NRECA is concerned that some of the innovative rate proposals discussed in Order No. 2000 may produce rates significantly higher than the rates that would be approved under existing cost-of-service principles. NRECA asks that the Commission clarify that the reasonableness of innovative rates offered by an RTO must be measured against established cost of service principles.

EEI suggests that the innovative ratemaking treatments be extended to all transmission-owning public utilities, even to non-RTOs. TAPS contends that the Commission should require RTOs seeking rate incentives to make them available to entities, other than existing transmission owners, who are willing to invest in transmission.

SoCal Edison requests that the Commission clarify that transmission owners who participate in an ISO type of RTO may file for innovative rate treatments. SoCal Edison states that the language in the Final Rule seems to imply that only an RTO can seek innovative rate treatment. It contends that there is no rationale for precluding transmission owners from seeking innovative rates if the desired rate treatment otherwise comports with Order No. 2000's requirements. Further, it states that the ROE-based innovative rate treatments are more appropriate for the revenue requirement filing that can be made by transmission owners. Therefore, SoCal Edison asks the Commission to clarify that transmission owners as well as RTOs can seek innovative rate treatment.

Commission Conclusion

In response to NRECA, we reaffirm our statement in the Final Rule that the innovative rate treatments we have offered do not depart from cost of service principles, *i.e.*, that transmission prices must reflect the costs of providing the service.[75]

We reject EEI's request to extend the innovative rate treatments to public utilities that do not participate in RTOs. The Final Rule addresses RTOs; the innovative rate treatments discussed in the Final Rule must be justified in terms of how the proposed rate treatment would help achieve RTO goals.[76] It is outside the scope of this rulemaking to address the extent to which such innovative rate treatments could be justified in the absence of RTO benefits.

We agree with SoCal Edison that some of the ROE-based innovative rate treatments relate most directly to the revenue requirement and, in the ISO context, the transmission owner may be responsible for filing the revenue requirement under section 205 of the FPA. A proposed innovative ROE treatment for a transmission owner's revenue requirement can best be evaluated in the context of any other innovative rate treatments proposed for the RTO. In addition, the justification required by section 35.34(e) involves an evaluation of factors related to the RTO as a whole, not only the revenue requirement of an individual owner. The collaborative process provides an important opportunity for the parties to consider the procedures that will apply to the filing of innovative rate treatments.

6. Additional Ratemaking Issues

There were several ratemaking issues not discussed above that were introduced in the Final Rule and addressed in petitions for rehearing. In the Final Rule, we determined that these issues, while important, were at a level of detail that they were better considered in individual RTO proposals.[77]

Rehearing Requests

Duke asks for clarification as to how RTO development and operating costs will be recovered. Duke asserts that such costs can be quite high, and even though the Commission is apparently committed to allowing such reasonable costs in transmission rates, Duke is concerned about what happens if state regulators do not authorize charging such costs to bundled retail transmission customers. Duke seeks clarification that if certain non-jurisdictional customers cannot be charged, the Commission will allow wholesale and unbundled retail customers to bear all the costs.

TAPS suggests that the Commission should require RTOs seeking rate incentives to make them available to other market participants.

SoCal Cities requests that the Commission clarify our description of its position on time-differentiated rates[78] to state: "Metropolitan and Cal DWR favor the use of time-of-use pricing or off-peak rates for transmission; SoCal Cities oppose any generalized requirement for time-differentiated transmission rates."

Commission Conclusion

We decline to make any generic rulings, in the abstract, on the recovery of RTO development and operating costs. We do not agree that the benefits of RTOs flow only to wholesale markets. For example, retail suppliers will benefit by access to regional markets at non-pancaked rates under an RTO. However, we are cognizant that there may be limitations on the ability of transmission providers to provide for recovery of these costs from all retail ratepayers in the near-term. We encourage parties to raise these issues during the collaboration process and to involve state regulators and representatives of retail consumers in these discussions. We expect that any RTO proposal will address these matters.

In response to TAPS, there is nothing in our Final Rule that precludes an RTO from involving entities other than existing transmission owners in transmission expansion. Indeed, we expect that the innovative rate treatments we have adopted will provide greater flexibility to RTOs in ensuring timely and efficient expansion.

We accept SoCal Cities' clarification of its position.

7. Filing Procedures for Innovative Rate Proposals

As articulated in the Final Rule, the Commission will evaluate all RTO proposals including any innovative rate treatment based on the applicant's demonstration of how the proposed rate treatment would help achieve the goals of regional transmission organizations, including efficient use of and investment in the transmission system and reliability benefits.[79] We also required that applicants provide a cost-benefit analysis, including rate impacts, and demonstrate that the proposed rate treatment is appropriate for the proposed RTO and that the rate proposal is just, reasonable, and not unduly discriminatory. In addition, the Final Rule stated that pricing proposals involving moratoriums and returns on equity that do not vary according to capital structure may not be included in RTO rates after January 1, 2005.

Rehearing Requests

EEI and SoCal Edison argue that the Commission should eliminate the requirement of a cost-benefit analysis in order to receive innovative rates. These entities note that cost-benefit analyses

[75] *Id.* at 31,173.

[76] *Id.* at 31,172. *See also* section 35.34(e)(1)(i).

[77] FERC Stats. & Regs. ¶ 31,089 at 31,196.

[78] *Id.* at 31,195.

[79] *Id.* at 31,196.

are difficult to perform, speculative in nature, and are likely to result in expensive and time-consuming litigation of competing hypotheticals and models.

Alliance Companies contend that the choice of January 1, 2005 is arbitrary and capricious, and unlikely to accomplish the Commission's goal of encouraging voluntary formation of RTOs. Alliance Companies requests that the Commission eliminate the sunset provision, and permit transmission owner participants in an RTO to address these issues in their RTO applications. Likewise, EEI is concerned with the sunset provision of January 1, 2005. EEI asserts that the Commission should not sunset innovative rate methods, but review them on a case-by-case basis instead.

Commission Conclusion

We shall not eliminate the cost-benefit analysis requirement. Those urging us to consider the transmission rate reforms we adopted in the Final Rule argued that innovative rate treatments would create tangible benefits for electric markets. Moreover, we expect that an evaluation of the impacts of any proposed rate treatment on electric markets would be an integral part of the process that filing parties would undertake before selecting and filing a specific innovative rate treatment.

We disagree that our selection of the sunset date is arbitrary and capricious. As we noted in the Final Rule, the innovative rate treatments which are available for a limited time are appropriate during a transitional period only. The transition period we selected reflects a reasonable balance of the benefits to RTO formation provided by mechanisms such as a rate moratorium and the inability to rely on these mechanisms for an extended period of time.

F. Other Issues

1. Public Power and Cooperatives

The Final Rule concluded that a properly formed RTO should include all transmission owners in a specific region, including municipals, cooperatives, Federal Power Marketing Agencies, Tennessee Valley Authority and other state and local entities.[80] Section 35.34(d)(4) of the regulatory text required that an RTO proposal filed with the Commission include a description of "efforts made to include public power entities in the proposed Regional Transmission Organization."

[80] FERC Stats. & Regs. ¶ 31,089 at 31,200–02.

Rehearing Requests

NRECA and Dairyland seek clarification and revision of section 35.34(d)(4) of the regulatory text. These entities assert that the Commission inadvertently failed to include the term "cooperatives" in the regulatory text, while the corresponding text of the preamble repeatedly referred to public power entities and cooperatives separately.

East Texas Cooperatives assert that although the Final Rule directs RTOs to include public power and cooperatives in the planning process, it does not require RTOs to allow small transmission owners to place their facilities under the RTO tariff and recover a portion of their annual transmission revenue requirements through the RTO tariff. East Texas Cooperatives argue that it does little good to require RTOs to include cooperatives in the development process if the RTO may refuse to allow the cooperative to place its facilities under the RTO tariff and receive an allocation of revenue.

Commission Conclusion

As requested by NRECA and Dairyland, we clarify that section 35.34(d)(4) should include cooperatives consistent with the text of the preamble. In fact, our intent was for those proposing RTOs to consult with all non-public utility transmission owners in its region. We will revise section 35.34(d)(4) to read as follows, with the addition to the text underlined: "Any proposal filed under this paragraph (d) must include an explanation of efforts made to include public power entities *and electric power cooperatives* in the proposed Regional Transmission Organization."

In response to East Texas Cooperatives, the Commission explained in the Final Rule that participation by public power entities and cooperatives is vital to ensure that each RTO is appropriate in size and scope. We continue to expect public power entities and cooperatives to join RTOs and to participate fully in RTO formation and operation.[81] Furthermore, we agree that all transmission owners should be compensated for the use of their facilities, although we cannot conclude in this rehearing order what types of compensation methods should be used in a particular circumstance.

[81] While the filing requirements of section 35.34(c) apply only to public utilities, we will permit submittals by non-public utilities if they wish to inform the Commission of their views.

2. Existing Transmission Contracts

In the Final Rule, the Commission concluded it is not appropriate to order generic abrogation of existing transmission contracts at this time.[82] We adopted the measured approach of addressing the issue of existing transmission contracts on an RTO-by-RTO basis and we stated that each RTO can propose whatever contract reform is necessary. The Commission stated that its goal in review of existing transmission contracts is to balance the desire to honor existing contractual arrangements with the need for a uniform approach for transmission pricing and the elimination of pancaked rates.

Rehearing Requests

Metropolitan, PSE&G and TANC/MID request rehearing on this issue. Metropolitan and TANC/MID argue that the Commission failed to provide a reasonable explanation for encouraging RTOs to propose piecemeal abrogation of existing contracts and that this policy is a departure from Order No. 888. PSE&G asserts that the Commission erred in refusing to address treatment of existing contracts on a generic basis and that the Commission should allow existing contracts to remain in effect following the formation of an RTO.

Commission Conclusion

We clarify that Order No. 2000 did not order abrogation of existing transmission contracts. We continue to recognize that existing contracts represent negotiated agreements. However, this issue has arisen in every ISO filing tendered to date, and we intend to address the issue of existing transmission contracts on an RTO-by-RTO basis when it arises again. RTOs may propose whatever contract reform they conclude is necessary to convert from existing contracts to RTO service. The circumstances faced by each region may differ significantly and the likelihood that parties can reach agreement on how to resolve this issue is enhanced if they have the flexibility to design region-specific solutions. As we stated in the Final Rule: "[O]ur goal in reviewing existing transmission contracts and contract transition plans is to balance the desire to honor existing contractual arrangements with the need for a uniform approach for transmission pricing and the elimination of pancaked rates." [83]

[82] FERC Stats. & Reg. ¶ 31,089 at 31,205.

[83] *Id.*

3. Lighter Handed Regulation

In the Final Rule, the Commission concluded that a properly structured RTO would reduce the need for Commission oversight and scrutiny, which would benefit both the industry and the Commission.[84] We stated that some degree of deference could be granted on certain issues to independent RTOs that have appropriate procedural mechanisms in place to ensure adequate representation of all viewpoints. In the Final Rule, the Commission noted that we cannot delineate the appropriate degree of deference, or on what issues. We believe, however, to the extent an issue can be resolved fairly within a region without Commission involvement, benefits accrue to all parties.

Rehearing Requests

Dynegy argues that the Commission's deference standard has the potential to confer broad unilateral powers on RTOs. Dynegy requests that the Commission: (1) clarify that if a party challenges the bona fides of an alleged consensus, the Commission will independently examine the facts and circumstances to determine if there was a true consensus; and (2) clarify that if an RTO seeks deference on the adoption of a particular rule, the Commission will ensure that the rule is promulgated in advance pursuant to appropriate internal procedures and subject to Commission review.

Commission Conclusion

At the outset, we note that we will continue to apply the level of regulation and scrutiny that is necessary to ensure that public utilities comply with the FPA and our regulations. We confirm that our purpose is not to rely solely on consensus as the basis for accepting RTO provisions. However, we intend to give considerable weight to those aspects of an RTO proposal that result from good faith efforts and an inclusive collaboration process. We encourage all parties to participate in the collaborative process and to consider the diverse interests and needs of the other participants. In this rehearing order, we will not dictate the procedures that RTOs must follow in adopting and promulgating rules. We expect, however, that these procedures will be clearly defined in any RTO proposal that is filed with the Commission.

[84] *Id.* at 31,027.

G. Implementation Issues

1. Filing Requirements

In the Final Rule, the Commission required that all public utilities that own, operate or control interstate transmission facilities (except those already participating in an approved regional transmission entity) file by October 15, 2000, either a proposal to participate in an RTO or an alternative filing describing efforts and plans to participate in an RTO.[85]

Rehearing Requests

NRECA notes that some entities (small utilities as defined by the Small Business Association and entities with only limited and discrete transmission facilities that do not form an integrated transmission grid) have been granted waivers of some of the requirements of Order Nos. 888 and 889. NRECA requests that the Commission clarify that utilities with such waivers also be granted waivers from the filings mandated by section 35.34(c). NRECA argues that the transmission facilities owned by a utility holding waivers from Order Nos. 888 and 889 are not critical to an RTO and that the costs associated with making the section 35.34(c) filing will exceed the benefits.

Commission Conclusion

We deny NRECA's request to waive the filing requirements of section 35.34(c) to entities that have been granted waivers from some of the requirements of Order Nos. 888 and 889. We note that the Final Rule only requires that each public utility that owns, operates or controls transmission facilities participate in one-time filings proposing an RTO or make a filing explaining why they are not participating in an RTO proposal. In any filing explaining why they are not participating in an RTO, we will allow entities that previously have been granted waiver from some or all of the requirements of Order Nos. 888 and 889 to make an abbreviated filing.[86] However, we expect that all utilities, including those transmission-owning utilities that received waivers, will participate in the collaborative process. Moreover, during the collaborative process, we expect those utilities to consider their involvement in an RTO, *e.g.*, to ensure that formation of an RTO is not impaired by the exclusion of their limited transmission facilities.

[85] *See id.* at 31,226.

[86] We also clarify that we are not precluding such entities from participating in joint filings with other public utilities or having other public utilities file on their behalf.

2. Deadline for RTO Operation

In the Final Rule, the Commission retained the originally proposed startup and other functional implementation deadlines (RTO startup by December 15, 2001, implementation of congestion management by December 15, 2002, and implementation of the parallel path flow coordination and transmission planning and expansion functions by 2004).[87]

Rehearing Requests

Duke is concerned that it will not be able to comply with the time schedule set forth in Order No. 2000 for formation of an RTO without infringing on state jurisdiction over retail electric service. Duke requests clarification that the timetables set forth in Order No. 2000 are merely benchmarks and that Commission will permit public utilities to transition to RTO membership in a manner that is coordinated with state retail service restructuring and unbundling. In addition, EEI argues that the time schedules for RTO implementation are unreasonable and unrealistic given the record of RTO formation to date. EEI requests that the Commission modify the time schedules consistent with the flexibility shown throughout the Final Rule and to reflect a reasonable timetable for the development and implementation of an RTO.

Commission Conclusion

We will deny EEI's request to modify the time schedules adopted in the Final Rule. We will also reject Duke's clarification that the RTO operational deadlines in the Final Rule are merely benchmarks. We continue to believe that the timetable for RTO formation and implementation established in the Final Rule is feasible and realistic. First, we note that all industry participants and the Commission have learned a great deal during the formation of the five ISOs under Commission jurisdiction and this knowledge should facilitate RTO formation. Second, the Final Rule provided flexibility that enables an RTO to satisfy the minimum characteristics and functions in a cost efficient manner. Moreover, we adopted a longer phase-in period for functions that may be difficult to establish, such as congestion management, parallel path flow measures, and transmission planning and expansion. In response to Duke, we stated in the Final Rule that "an acceptable RTO structure need not be a monolithic organization that requires an extended period of time to become fully set up so that it can

[87] *See* FERC Stats. & Regs. ¶31,089 at 31,229.

directly 'push all of the buttons.' "[88] In sum, we continue to think that the phased startup and other implementation deadlines are reasonable.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act requires rulemakings to either contain a description and analysis of the effect that a proposed or Final Rule will have on small entities or to contain a certification that the rule will not have a significant economic impact on a substantial number of small entities. In Order No. 2000, the Commission certified that the Final Rule would not impose a significant economic impact on a substantial number of small entities. No rehearing requests of Order No. 2000 were filed on this issue and the Commission finds no reason to alter its previous findings on this issue.

V. Public Reporting Burden and Information Collection Statement

Order No. 2000 contained an information collection statement that the Commission submitted to the Office of Management and Budget (OMB).[89] Given that this order on rehearing makes only minor revisions to Order No. 2000, OMB approval for this order will not be necessary. However, the Commission will send a copy of this order to OMB for informational purposes.

The information reporting requirements under this order are unchanged from those contained in Order No. 2000. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, E-mail: mike.miller@ferc.fed.us] or send your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285].

VI. Effective Date and Congressional Notification

Changes to Order No. 2000 made in this order on rehearing will become effective on April 7, 2000.

[88] *See id.* at 31,229.

[89] The OMB control numbers for this collection of information are 1902–0096 and 1902–0082.

VII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

- CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994. CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.
- RIMS contains images of documents submitted to and issues by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (e-mail to *WebMaster@ferc.fed.us*) of the Public Reference Room at (202) 208–1371 (e-mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Part 35, Chapter I, Title 18 of the *Code of Federal Regulations*, as follows:

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Part 35 is amended by revising § 35.34 to read as follows:

Subpart F—Procedures and Requirements Regarding Regional Transmission Organizations

§ 35.34 Regional Transmission Organizations.

(a) *Purpose.* This section establishes required characteristics and functions for Regional Transmission Organizations for the purpose of promoting efficiency and reliability in the operation and planning of the electric transmission grid and ensuring non-discrimination in the provision of electric transmission services. This section further directs each public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce to make certain filings with respect to forming and participating in a Regional Transmission Organization.

(b) *Definitions.*

(1) *Regional Transmission Organization* means an entity that satisfies the minimum characteristics set forth in paragraph (j) of this section, performs the functions set forth in paragraph (k) of this section, and accommodates the open architecture condition set forth in paragraph (l) of this section.

(2) *Market participant* means:

(i) Any entity that, either directly or through an affiliate, sells or brokers electric energy, or provides ancillary services to the Regional Transmission Organization, unless the Commission finds that the entity does not have economic or commercial interests that would be significantly affected by the Regional Transmission Organization's actions or decisions; and

(ii) Any other entity that the Commission finds has economic or commercial interests that would be significantly affected by the Regional Transmission Organization's actions or decisions.

(3) *Affiliate* means the definition given in section 2(a)(11) of the Public Utility Holding Company Act (15 U.S.C. 79b(a)(11)).

(4) *Class of market participants* means two or more market participants with common economic or commercial interests.

(c) *General rule.* Except for those public utilities subject to the

requirements of paragraph (h) of this section, every public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce as of March 6, 2000 must file with the Commission, no later than October 15, 2000, one of the following:

(1) A proposal to participate in a Regional Transmission Organization consisting of one of the types of submittals set forth in paragraph (d) of this section; or

(2) An alternative filing consistent with paragraph (g) of this section.

(d) *Proposal to participate in a Regional Transmission Organization.* For purposes of this section, a proposal to participate in a Regional Transmission Organization means:

(1) Such filings, made individually or jointly with other entities, pursuant to sections 203, 205 and 206 of the Federal Power Act (16 U.S.C. 824b, 824d, and 824e), as are necessary to create a new Regional Transmission Organization;

(2) Such filings, made individually or jointly with other entities, pursuant to sections 203, 205 and 206 of the Federal Power Act (16 U.S.C. 824b, 824d, and 824e), as are necessary to join a Regional Transmission Organization approved by the Commission on or before the date of the filing; or

(3) A petition for declaratory order, filed individually or jointly with other entities, asking whether a proposed transmission entity would qualify as a Regional Transmission Organization and containing at least the following:

(i) A detailed description of the proposed transmission entity, including a description of the organizational and operational structure and the intended participants;

(ii) A discussion of how the transmission entity would satisfy each of the characteristics and functions of a Regional Transmission Organization specified in paragraphs (j), (k)and (l) of this section;

(iii) A detailed description of the Federal Power Act section 205 rates that will be filed for the Regional Transmission Organization; and

(iv) A commitment to make filings pursuant to sections 203, 205 and 206 of the Federal Power Act (16 U.S.C. 824b, 824d, and 824e), as necessary, promptly after the Commission issues an order in response to the petition.

(4) Any proposal filed under this paragraph (d) must include an explanation of efforts made to include public power entities and electric power cooperatives in the proposed Regional Transmission Organization.

(e) *Innovative transmission rate treatments for Regional Transmission Organizations.*

(1) The Commission will consider authorizing any innovative transmission rate treatment, as discussed in this paragraph (e), for an approved Regional Transmission Organization. An applicant's request must include:

(i) A detailed explanation of how any proposed rate treatment would help achieve the goals of Regional Transmission Organizations, including efficient use of and investment in the transmission system and reliability benefits to consumers;

(ii) A cost-benefit analysis, including rate impacts; and

(iii) A detailed explanation of why the proposed rate treatment is appropriate for the Regional Transmission Organization.

The applicant must support any rate proposal under this paragraph (e) as just, reasonable, and not unduly discriminatory or preferential.

(2) For purposes of this paragraph (e), innovative transmission rate treatment means any of the following:

(i) A transmission rate moratorium, which may include proposals based on formerly bundled retail transmission rates;

(ii) Rates of return that:

(A) Are formulary;

(B) Consider risk premiums and account for demonstrated adjustments in risk; or

(C) Do not vary with capital structure;

(iii) Non-traditional depreciation schedules for new transmission investment;

(iv) Transmission rates based on levelized recovery of capital costs;

(v) Transmission rates that combine elements of incremental cost pricing for new transmission facilities with an embedded-cost access fee for existing transmission facilities; or

(vi) Performance-based transmission rates.

(3) A request for performance-based transmission rates under this paragraph (e) may include factors such as:

(i) A method for calculating initial transmission rates (including price caps and any provisions for discounting);

(ii) A mechanism for adjusting initial rates, which may be derived from or based upon external factors or indices or a specific performance measure;

(iii) Time periods for redetermining initial rates; and

(iv) Costs to be excluded from performance-based rates.

(4) An innovative transmission rate treatment or any other rate proposal made for an approved Regional Transmission Organization may be requested as part of any filing that is made under paragraph (d) of this section or in any subsequent rate change proposal under section 205 of the Federal Power Act (16 U.S.C. 824d). Unless otherwise ordered by the Commission, an approved Regional Transmission Organization may not include in rates any innovative transmission rate treatment under paragraphs (e)(2)(i) and (e)(2)(ii)(C) of this section after January 1, 2005.

(f) *Transfer of operational control.* Any public utility's proposal to participate in a Regional Transmission Organization filed pursuant to paragraph (c)(1) of this section must propose that operational control of that public utility's transmission facilities will be transferred to the Regional Transmission Organization on a schedule that will allow the Regional Transmission Organization to commence operating the facilities no later than December 15, 2001.

Note to paragraph (f): The requirement in paragraph (f) of this section may be satisfied by proposing to transfer to the Regional Transmission Organization ownership of the facilities in addition to operational control.

(g) *Alternative filing.* Any filing made pursuant to paragraph (c)(2) of this section must contain:

(1) A description of any efforts made by that public utility to participate in a Regional Transmission Organization;

(2) A detailed explanation of the economic, operational, commercial, regulatory, or other reasons the public utility has not made a filing to participate in a Regional Transmission Organization, including identification of any existing obstacles to participation in a Regional Transmission Organization; and

(3) The specific plans, if any, the public utility has for further work toward participation in a Regional Transmission Organization, a proposed timetable for such activity, an explanation of efforts made to include public power entities in the proposed Regional Transmission Organization, and any factors (including any law, rule or regulation) that may affect the public utility's ability or decision to participate in a Regional Transmission Organization.

(h) *Public utilities participating in approved transmission entities.* Every public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce as of March 6, 2000, and that has filed with the Commission on or before March 6, 2000 to transfer operational control of its facilities to a transmission entity that

has been approved or conditionally approved by the Commission on or before March 6, 2000 as being in conformance with the eleven ISO principles set forth in Order No. 888, FERC Statutes and Regulations, Regulations Preamble January 1991–June 1996 ¶31,036 (Final Rule on Open Access and Stranded Costs; see 61 FR 21540, May 10, 1996), must, individually or jointly with other entities, file with the Commission, no later than January 15, 2001:

(1) A statement that it is participating in a transmission entity that has been so approved;

(2) A detailed explanation of the extent to which the transmission entity in which it participates has the characteristics and performs the functions of a Regional Transmission Organization specified in paragraphs (j) and (k) of this section and accommodates the open architecture conditions in paragraph (l) of this section; and

(3) To the extent the transmission entity in which the public utility participates does not meet all the requirements of a Regional Transmission Organization specified in paragraphs (j), (k), and (l) of this section,

(i) A proposal to participate in a Regional Transmission Organization that meets such requirements in accordance with paragraph (d) of this section,

(ii) A proposal to modify the existing transmission entity so that it conforms to the requirements of a Regional Transmission Organization, or

(iii) A filing containing the information specified in paragraph (g) of this section addressing any efforts, obstacles, and plans with respect to conformance with those requirements.

(i) *Entities that become public utilities with transmission facilities.* An entity that is not a public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce as of March 6, 2000, but later becomes such a public utility, must file a proposal to participate in a Regional Transmission Organization in accordance with paragraph (d) of this section, or an alternative filing in accordance with paragraph (g) of this section, by October 15, 2000 or 60 days prior to the date on which the public utility engages in any transmission of electric energy in interstate commerce, whichever comes later. If a proposal to participate in accordance with paragraph (d) of this section is filed, it must propose that operational control of the applicant's transmission system will be transferred to the Regional Transmission Organization within six months of filing the proposal.

(j) *Required characteristics for a Regional Transmission Organization.* A Regional Transmission Organization must satisfy the following characteristics when it commences operation:

(1) *Independence.* The Regional Transmission Organization must be independent of any market participant. The Regional Transmission Organization must include, as part of its demonstration of independence, a demonstration that it meets the following:

(i) The Regional Transmission Organization, its employees, and any non-stakeholder directors must not have financial interests in any market participant.

(ii) The Regional Transmission Organization must have a decision making process that is independent of control by any market participant or class of participants.

(iii) The Regional Transmission Organization must have exclusive and independent authority under section 205 of the Federal Power Act (16 U.S.C. 824d), to propose rates, terms and conditions of transmission service provided over the facilities it operates.

Note to paragraph (j)(1)(iii): Transmission owners retain authority under section 205 of the Federal Power Act (16 U.S.C. 824d) to seek recovery from the Regional Transmission Organization of the revenue requirements associated with the transmission facilities that they own.

(iv)(A) The Regional Transmission Organization must provide:

(*1*) With respect to any Regional Transmission Organization in which market participants have an ownership interest, a compliance audit of the independence of the Regional Transmission Organization's decision making process under paragraph (j)(1)(ii) of this section, to be performed two years after approval of the Regional Transmission Organization, and every three years thereafter, unless otherwise provided by the Commission.

(*2*) With respect to any Regional Transmission Organization in which market participants have a role in the Regional Transmission Organization's decision making process but do not have an ownership interest, a compliance audit of the independence of the Regional Transmission Organization's decision making process under paragraph (j)(1)(ii) of this section, to be performed two years after its approval as a Regional Transmission Organization.

(B) The compliance audits under paragraph (j)(1)(iv)(A) of this section must be performed by auditors who are not affiliated with the Regional Transmission Organization or transmission facility owners that are members of the Regional Transmission Organization.

(2) *Scope and regional configuration.* The Regional Transmission Organization must serve an appropriate region. The region must be of sufficient scope and configuration to permit the Regional Transmission Organization to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.

(3) *Operational authority.* The Regional Transmission Organization must have operational authority for all transmission facilities under its control. The Regional Transmission Organization must include, as part of its demonstration of operational authority, a demonstration that it meets the following:

(i) If any operational functions are delegated to, or shared with, entities other than the Regional Transmission Organization, the Regional Transmission Organization must ensure that this sharing of operational authority will not adversely affect reliability or provide any market participant with an unfair competitive advantage. Within two years after initial operation as a Regional Transmission Organization, the Regional Transmission Organization must prepare a public report that assesses whether any division of operational authority hinders the Regional Transmission Organization in providing reliable, non-discriminatory and efficiently priced transmission service.

(ii) The Regional Transmission Organization must be the security coordinator for the facilities that it controls.

(4) *Short-term reliability.* The Regional Transmission Organization must have exclusive authority for maintaining the short-term reliability of the grid that it operates. The Regional Transmission Organization must include, as part of its demonstration with respect to reliability, a demonstration that it meets the following:

(i) The Regional Transmission Organization must have exclusive authority for receiving, confirming and implementing all interchange schedules.

(ii) The Regional Transmission Organization must have the right to order redispatch of any generator connected to transmission facilities it operates if necessary for the reliable operation of these facilities.

(iii) When the Regional Transmission Organization operates transmission facilities owned by other entities, the Regional Transmission Organization must have authority to approve or disapprove all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards.

(iv) If the Regional Transmission Organization operates under reliability standards established by another entity (*e.g.*, a regional reliability council), the Regional Transmission Organization must report to the Commission if these standards hinder it from providing reliable, non-discriminatory and efficiently priced transmission service.

(k) *Required functions of a Regional Transmission Organization.* The Regional Transmission Organization must perform the following functions. Unless otherwise noted, the Regional Transmission Organization must satisfy these obligations when it commences operations.

(1) *Tariff administration and design.* The Regional Transmission Organization must administer its own transmission tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities. As part of its demonstration with respect to tariff administration and design, the Regional Transmission Organization must satisfy the standards listed in paragraphs (k)(1)(i) and (ii) of this section, or demonstrate that an alternative proposal is consistent with or superior to satisfying such standards.

(i) The Regional Transmission Organization must be the only provider of transmission service over the facilities under its control, and must be the sole administrator of its own Commission-approved open access transmission tariff. The Regional Transmission Organization must have the sole authority to receive, evaluate, and approve or deny all requests for transmission service. The Regional Transmission Organization must have the authority to review and approve requests for new interconnections.

(ii) Customers under the Regional Transmission Organization tariff must not be charged multiple access fees for the recovery of capital costs for transmission service over facilities that the Regional Transmission Organization controls.

(2) *Congestion management.* The Regional Transmission Organization must ensure the development and operation of market mechanisms to manage transmission congestion. As part of its demonstration with respect to congestion management, the Regional Transmission Organization must satisfy the standards listed in paragraph (k)(2)(i) of this section, or demonstrate that an alternative proposal is consistent with or superior to satisfying such standards.

(i) The market mechanisms must accommodate broad participation by all market participants, and must provide all transmission customers with efficient price signals that show the consequences of their transmission usage decisions. The Regional Transmission Organization must either operate such markets itself or ensure that the task is performed by another entity that is not affiliated with any market participant.

(ii) The Regional Transmission Organization must satisfy the market mechanism requirement no later than one year after it commences initial operation. However, it must have in place at the time of initial operation an effective protocol for managing congestion.

(3) *Parallel path flow.* The Regional Transmission Organization must develop and implement procedures to address parallel path flow issues within its region and with other regions. The Regional Transmission Organization must satisfy this requirement with respect to coordination with other regions no later than three years after it commences initial operation.

(4) *Ancillary services.* The Regional Transmission Organization must serve as a provider of last resort of all ancillary services required by Order No. 888, FERC Statutes and Regulations, Regulations Preamble January 1991–June 1996 ¶ 31,036 (Final Rule on Open Access and Stranded Costs; see 61 FR 21540, May 10, 1996), and subsequent orders. As part of its demonstration with respect to ancillary services, the Regional Transmission Organization must satisfy the standards listed in paragraphs (k)(4)(i) through (iii) of this section, or demonstrate that an alternative proposal is consistent with or superior to satisfying such standards.

(i) All market participants must have the option of self-supplying or acquiring ancillary services from third parties subject to any restrictions imposed by the Commission in Order No. 888, FERC Statutes and Regulations, Regulations Preamble January 1991–June 1996 ¶ 31,036 (Final Rule on Open Access and Stranded Costs), and subsequent orders.

(ii) The Regional Transmission Organization must have the authority to decide the minimum required amounts of each ancillary service and, if necessary, the locations at which these services must be provided. All ancillary service providers must be subject to direct or indirect operational control by the Regional Transmission Organization. The Regional Transmission Organization must promote the development of competitive markets for ancillary services whenever feasible.

(iii) The Regional Transmission Organization must ensure that its transmission customers have access to a real-time balancing market. The Regional Transmission Organization must either develop and operate this market itself or ensure that this task is performed by another entity that is not affiliated with any market participant.

(5) *OASIS and Total Transmission Capability (TTC) and Available Transmission Capability (ATC).* The Regional Transmission Organization must be the single OASIS site administrator for all transmission facilities under its control and independently calculate TTC and ATC.

(6) *Market monitoring.* To ensure that the Regional Transmission Organization provides reliable, efficient and not unduly discriminatory transmission service, the Regional Transmission Organization must provide for objective monitoring of markets it operates or administers to identify market design flaws, market power abuses and opportunities for efficiency improvements, and propose appropriate actions. As part of its demonstration with respect to market monitoring, the Regional Transmission Organization must satisfy the standards listed in paragraphs (k)(6)(i) through (k)(6)(iii) of this section, or demonstrate that an alternative proposal is consistent with or superior to satisfying such standards.

(i) Market monitoring must include monitoring the behavior of market participants in the region, including transmission owners other than the Regional Transmission Organization, if any, to determine if their actions hinder the Regional Transmission Organization in providing reliable, efficient and not unduly discriminatory transmission service.

(ii) With respect to markets the Regional Transmission Organization operates or administers, there must be a periodic assessment of how behavior in markets operated by others (*e.g.*, bilateral power sales markets and power markets operated by unaffiliated power exchanges) affects Regional Transmission Organization operations and how Regional Transmission Organization operations affect the efficiency of power markets operated by others.

(iii) Reports on opportunities for efficiency improvement, market power

abuses and market design flaws must be filed with the Commission and affected regulatory authorities.

(7) *Planning and expansion.* The Regional Transmission Organization must be responsible for planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities. As part of its demonstration with respect to planning and expansion, the Regional Transmission Organization must satisfy the standards listed in paragraphs (k)(7)(i) and (ii) of this section, or demonstrate that an alternative proposal is consistent with or superior to satisfying such standards.

(i) The Regional Transmission Organization planning and expansion process must encourage market-driven operating and investment actions for preventing and relieving congestion.

(ii) The Regional Transmission Organization's planning and expansion process must accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities. The Regional Transmission Organization's planning and expansion process must be coordinated with programs of existing Regional Transmission Groups (See § 2.21 of this chapter) where appropriate.

(iii) If the Regional Transmission Organization is unable to satisfy this requirement when it commences operation, it must file with the Commission a plan with specified milestones that will ensure that it meets this requirement no later than three years after initial operation.

(8) *Interregional coordination.* The Regional Transmission Organization must ensure the integration of reliability practices within an interconnection and market interface practices among regions.

(l) *Open architecture.*

(1) Any proposal to participate in a Regional Transmission Organization must not contain any provision that would limit the capability of the Regional Transmission Organization to evolve in ways that would improve its efficiency, consistent with the requirements in paragraphs (j) and (k) of this section.

(2) Nothing in this regulation precludes an approved Regional Transmission Organization from seeking to evolve with respect to its organizational design, market design, geographic scope, ownership arrangements, or methods of operational control, or in other appropriate ways if the change is consistent with the requirements of this section. Any future filing seeking approval of such changes must demonstrate that the proposed changes will meet the requirements of paragraphs (j), (k) and (l) of this section.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Preamble—List of Petitioners

Abbreviation—Petitioner

1. AEP—American Electric Power System
2. Alliance Companies—American Electric Power Service Corporation, Consumers Energy Company, Detroit Edison Company, FirstEnergy Corp. and Virginia Electric and Power Company
3. CCEM—Coalition for a Competitive Electricity Market
4. CFA—Consumer Federation of America
5. Conectiv—Conectiv
6. CTA—Competitive Transmission Association, Inc.
7. Dairyland—Dairyland Power Cooperative
8. Duke—Duke Energy Corporation
9. Dynegy—Dynegy Inc.
10. East Texas Cooperatives—East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc.
11. EEI—Edison Electric Institute
12. Entergy—Entergy Services, Inc.
13. EPSA—Electric Power Supply Association
14. Independent Companies—New England Power Company, Montaup Electric Company, National Grid Group, plc, Jersey Central Power and Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Vermont Electric Power Company and NSTAR Services Company
15. Industrial Consumers—Electricity Consumers Resource Council, American Iron & Steel Institute and Chemical Manufactures Association
16. ISO Participants—Baltimore Gas and Electric Company, Conectiv, Consolidated Edison Company of New York, Inc., Northeast Utilities Service Company, PP&L,Inc., Potomac Electric Power Company, Public Service Electric and Gas Company
17. Metropolitan—Metropolitan Water District of Southern California
18. Midwest ISO Participants—Alliant Utilities, Ameren, Central Illinois Light Company, Cinergy Corp., Commonwealth Edison Company, Hoosier Energy Rural Electric Cooperative, Inc., Illinois Power Company, Kentucky Utilities Company, Louisville Gas & Electric Company, Northern States Power Company, Southern Indiana Gas & Electric Company, Southern Illinois Power Cooperative, Wabash Valley Power Association, Inc. and Wisconsin Electric Power Company
19. New Orleans—Council of the City of New Orleans
20. NRECA—National Rural Electric Cooperative Association
21. PECO—PECO Energy Company
22. Pennsylvania Commission—Pennsylvania Public Utility Commission
23. PP&L Companies—PP&L, Inc., PP&L EnergyPlus Co., LLC and PP&L Montana, LLC
24. PSE&G—Public Service Electric and Gas Company
25. Puget Sound—Puget Sound Energy, Inc.
26. SMUD—Sacramento Municipal Utility District
27. Snohomish—Public Utility District No. 1 of Snohomish County, Washington
28. SoCal Cities—Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California
29. SoCal Edison—Southern California Edison Company
30. South Carolina Authority—South Carolina Public Service Authority
31. Southern Company—Southern Company Services, Inc. acting as agent for Alabama Power Company, Georgia Power Company, GulfPower Company, Mississippi Power Company and Savannah Electric and Power Company
32. SRP—Salt River Project Agricultural Improvement and Power District
33. Steel Dynamics—Steel Dynamics, Inc.
34. TANC/MID—Transmission Agency of Northern California/Modesto Irrigation District
35. TAPS—Transmission Access Policy Study Group
36. TDU Systems—Alabama Electric Cooperative, Inc., Arkansas Electric Cooperative Corporation, Golden Spread Electric Cooperative, Kansas Electric Power Cooperative, Inc., North Carolina Electric Membership Corporation, Old Dominion Electric Cooperative, Seminole Electric Cooperative, Inc. and South Mississippi Electric Power Association
37. Transmission Owners of NY—Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York

State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas & Electric Corporation, Power Authority of the State of New York

38. United Illuminating—United Illuminating Company

[FR Doc. 00–5021 Filed 3–7–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19–000]

Natural Gas Pipelines; Project Cost and Annual Limits

Issued February 7, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.308(x)(1), the Director of the Office of Energy Projects (OEP) computes and publishes the project cost and annual limits for natural gas pipelines blanket construction certificates for each calendar year.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Michael J. McGehee, Division of Pipeline Certificates, (202) 208–2257.

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GDP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.308(x)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Energy Projects. The cost limits for calendar year 1998, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

Daniel M. Adamson,

Director, Office of Energy Projects.

Accordingly, 18 CFR Part 157 is amended as follows:

PART 157—[AMENDED]

1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. Table I in § 157.208(d) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, and miscellaneous rearrangement of facilities.

* * * * *

(d) * * *

Year	Limit	
	Auto proj. cost limit (Col. 1)	Prior notice proj. cost limit (Col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	6,000,000	16,700,000
1992	6,200,000	17,300,000
1993	6,400,000	17,700,000
1994	6,600,000	18,100,000
1995	6,700,000	18,400,000
1996	6,900,000	18,800,000
1997	7,000,000	19,200,000
1998	7,100,000	19,600,000
1999	7,200,000	19,800,000
2000	7,300,000	20,200,000

* * * * *

3. Table II in § 157.215(a)(5) is revised to read as follows:

§ 157.215 Underground storage testing and development.

(a) * * *

(5) * * *

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000

TABLE II—Continued

Year	Limit
1989	3,500,000
1990	3,600,000
1991	3,800,000
1992	3,900,000
1993	4,000,000

TABLE II—Continued

Year	Limit
1994	4,100,000
1995	4,200,000
1996	4,300,000
1997	4,400,000
1998	4,500,000
1999	4,550,000
2000	4,650,000

* * * * *

[FR Doc. 00–5343 Filed 3–7–00; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ54

Child; Educational Institution

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning the definition of a child for purposes of establishing entitlement to additional monetary benefits for a dependent. The amendments are necessary to clarify the definition of a child for VA purposes and to bring the regulations into conformance with the governing statutes as interpreted by VA's General Counsel. This document also makes non-substantive changes for purposes of clarity.

DATES: Effective Date: March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Warren M. Jones, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7167.

SUPPLEMENTARY INFORMATION: A veteran who is entitled to compensation under the provisions of 38 U.S.C. 1114 or 1134 is also entitled, under certain circumstances, to additional compensation for dependents, including a child. A veteran who is entitled to pension under the provisions of 38 U.S.C. 1521 is entitled to a higher annual rate of pension because of dependents, including a child. Dependency and indemnity compensation and death pension are also monetary benefits affected by the number of the surviving spouse's dependent children, who, under certain circumstances, may be entitled to these benefits in their own right.

A "child" is defined in 38 U.S.C. 101(4)(A)(iii) to include a person who is unmarried, and after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years) is pursuing a course of instruction at an approved educational institution. The implementing regulation is at 38 CFR 3.57(a)(1)(iii).

Section 104(a) of title 38, United States Code, provides that for the purpose of determining whether or not benefits are payable (except those under chapter 35, title 38, United States Code) for a child over the age of eighteen and under the age of twenty-three years who is attending a school, college, academy, seminary, technical institute, university, or other educational institution, the Secretary may approve or disapprove such educational institutions.

In a precedent opinion dated March 19, 1998 (VAOPGCPREC 3–98), VA's General Counsel held that the term "educational institution" should be interpreted as including only institutions which are similar in type to the institutions specifically enumerated in 38 U.S.C. 104(a). According to the General Counsel, a home-school program differs from those institutions because the home-school program is not offered to a number of students, but rather is created to serve the needs of a particular student. Also, a home-school is not a permanent organization but rather disbands at completion of the student's program or withdrawal of the student. The General Counsel concluded, therefore, that a person who is receiving instruction in a home-school program is not pursuing a course of instruction at an educational institution and therefore does not qualify as a child within the meaning of 38 U.S.C. 101(4)(A)(iii). This document amends 38 CFR 3.57(a)(1)(iii) accordingly. This document also amends 38 CFR 3.667 to use statutory terminology and to make clarifying changes.

This final rule interprets statutory provisions and makes non-substantive changes. Accordingly, there is a basis under 5 U.S.C. 553 to dispense with prior notice and comment and a delayed effective date.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: February 29, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.57, paragraph (a)(1)(iii) is revised to read as follows:

§ 3.57 Child.

(a) * * *

(1) * * *

(iii) Who, after reaching the age of 18 years and until completion of education or training (but not after reaching the age of 23 years) is pursuing a course of instruction at an approved educational institution. For the purposes of this section and § 3.667, the term "educational institution" means a permanent organization that offers courses of instruction to a group of students who meet its enrollment criteria. The term includes schools, colleges, academies, seminaries, technical institutes, and universities, but does not include home-school programs.

(Authority: 38 U.S.C. 101(4)(A), 104(a))

* * * * *

§ 3.667 [Amended]

3. Section 3.667 is amended by removing "approved school" and "approved course of instruction" wherever they appear and adding, in their place, "approved educational institution".

4. Section 3.667 is further amended as follows:

a. Paragraphs (a)(2) and (a)(4) are amended by removing "based upon a course which" and adding, in its place, "based upon a course of instruction at an approved educational institution which";

b. The first sentence of paragraph (b) is amended by removing "attending

school" and adding, in its place, "attending an approved educational institution"; and

c. The last sentence of paragraph (a)(5) and paragraph (d) are revised to read as follows:

§ 3.667 School attendance.

(a) * * *

(5) * * * Where the child was receiving dependency and indemnity compensation in its own right prior to age 18 and was not attending an approved educational institution on the 18th birthday but commences attendance at an approved educational institution after the 18th birthday, payments may be resumed from the commencing date of the course if evidence of such school attendance is filed within 1 year from that date.

* * * * *

(d) *Transfers to other schools.* When benefits have been authorized based upon school attendance and it is shown that during a part or all of that period the child was pursuing a different course in the same approved educational institution or a course in a different approved educational institution, payments previously made will not be disturbed.

* * * * *

[FR Doc. 00–5571 Filed 3–7–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR PART 21

RIN 2900–AI76

Criteria for Approving Flight Courses for Educational Assistance Programs

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, an interim final rule amending the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). The interim final rule revised the criteria to be used in approving flight courses for the education benefits programs VA administers. In large part, those amendments brought the approval criteria into agreement with various provisions of the Veterans' Benefits Improvement Act of 1996 and with the revised regulations of the Federal Aviation Administration. Without the changes made by the interim final rule, VA would not be able to provide educational assistance for veterans to attend affected flight courses. This document makes changes to the interim final rule to clarify certain provisions and to reflect new statutory changes.

DATES: *Effective Date:* This final rule is effective March 8, 2000.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service (225C), Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on June 23, 1998 (63 FR 34127), VA published an interim final rule amending subparts D and K of 38 CFR part 21, regarding criteria for flight training courses as stated in the **SUMMARY** portion of this document.

Interested persons were given 60 days to submit comments. VA received no comments. Based on the rationale set forth in the interim final rule and in this document, we are adopting the provisions of the interim final rule as a final rule, except as stated below.

The provisions of section 204(a) of Public Law 105–368 amended 38 U.S.C. 3034 to change the requirement that an individual enrolling in a flight course needs to have a qualifying medical certificate. Formerly, the individual needed to show evidence of having the certificate throughout the training period. Now, for flight courses beginning on or after October 1, 1998, the individual only needs to have the certificate at the time the course begins. The provisions of 38 CFR 21.4235(a)(2) and (3) in this final rule reflect this statutory change.

In addition, this final rule makes changes in § 21.4235(c) for purposes of clarification. In particular, this final rule clarifies the meaning of the interim final rule provisions in § 21.4235(c) when an individual already has a commercial pilot certificate or instrument rating, or both, for one category and wants a commercial pilot certificate or instrument rating, or both, for an additional category. The interim final rule provided, with certain exceptions, that if an individual "wants to obtain a commercial pilot certification course in an airplane or powered lift category and does not already have an instrument rating, he or she must also enroll in an instrument rating course simultaneously." We intended § 21.4235(c) to mean that if you want to enroll in a commercial pilot certification course for a particular category (airplane, helicopter, or powered lift) and do not have an instrument rating for that category, or if you want to enroll in an instrument rating course for a particular category (airplane, helicopter, or powered lift) and do not have a commercial pilot certificate for the same category, you must enroll in the commercial pilot certification course for the particular category and instrument rating course for that category at the same time. This document makes amendments to clarify this concept.

This document also makes other nonsubstantive changes for purposes of clarification.

Administrative Procedure Act

This document makes changes that are restatements of statutory provisions and nonsubstantive changes for purposes of clarification. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Regulatory Flexibility Act

We affirm the information in the interim final rule document concerning the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance numbers for programs affected by this rule are 64.120 and 64.124. This rule also affects the Montgomery GI Bill—Selected Reserve program, which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Educational institutions, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 22, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the interim final rule amending 38 CFR part 21 (subparts D and K), which was published at 63 FR 34127 on June 23, 1998, is adopted as a final rule with the following changes:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. In § 21.4235, paragraphs (a)(2), (a)(3), and (c) are revised to read as follows:

§ 21.4235 Programs of education that include flight training.

(a) * * *

(2) If enrolled in a course other than an Airline Transport Pilot (ATP) course, hold a second-class medical certificate on the first day of training and, if that course began before October 1, 1998, hold that certificate continuously during training; and

(3) If enrolled in an ATP certification course, hold a first-class medical certificate on the first day of training and, if that course began before October 1, 1998, hold that certificate continuously during training.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b))

(c) *Pursuit of flight courses.* (1) VA will pay educational assistance to an eligible individual for an enrollment in a commercial pilot certification course leading to Federal Aviation Administration certification for a particular category even if the individual has a commercial pilot certificate issued by the Federal Aviation Administration for a different category, since each category represents a different vocational objective.

(2) VA will pay educational assistance to an eligible individual for an enrollment in an instrument rating course only if the individual simultaneously enrolls in a course required for a commercial pilot certificate for the category for which the instrument rating course is pursued or if, at the time of enrollment in the instrument rating course, the individual has a commercial pilot certificate issued by the Federal Aviation Administration for such category. The enrollment in an instrument rating course alone does not establish that the individual is pursuing a vocational objective, as required for VA purposes, since that rating equally may be applied to an individual's private pilot certificate, only evidencing an intent to pursue a non-vocational objective.

(3) VA will pay educational assistance to an eligible individual for an enrollment in a flight course other than an instrument rating course or a ground instructor course, including courses leading to an aircraft type rating, only if the individual has a commercial pilot certificate issued by the Federal Aviation Administration for the category to which the particular course applies.

(4) VA will pay educational assistance to an eligible individual for an enrollment in a ground instructor certificate course, even though the individual does not have any other flight certificate issued by the Federal Aviation Administration, since the Federal Aviation Administration does not require a flight certificate as a prerequisite to ground instructor certification and ground instructor is a recognized vocational objective.

(5) VA will not pay an eligible individual for simultaneous enrollment in more than one flight course, except as provided in paragraph (c)(2) of this section.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a), 3202(2)(A), 3241(a), 3241(b), 3452(b), 3680A(a)(3))

[FR Doc. 00–5572 Filed 3–7–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179–0178; FRL–6546–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on September 23, 1999. This final action will incorporate several San Joaquin rules into the federally approved SIP. The intended effect of finalizing this action is to regulate particulate matter (PM–10) emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control PM–10 emissions from fugitive dust sources. EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval, the emission offset sanction will automatically apply unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval and the highway funding sanction will automatically apply 6 months later. (59 FR 39832, August 4, 1994.) Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on April 7, 2000.

ADDRESSES: Copies of the rules and EPA's Technical Support Document are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg Ave., Fresno, CA 93726

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1903.

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 1999 in 64 FR 51489, EPA proposed granting limited approval and limited disapproval of the following rules into the California SIP: San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 8010, Fugitive Dust Administrative Requirements for Control of Fine Particulate Matter (PM–10); SJVUAPCD Rule 8020, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM–10) from Construction, Demolition, Excavation, Extraction Activities; SJVUAPCD Rule 8030, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM–10) from Handling and Storage of Bulk Materials; SJVUAPCD Rule 8040, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM–10) from Landfill Disposal Sites; SJVUAPCD Rule 8060, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM–10) from Paved and Unpaved Roads and; SJVUAPCD Rule 8070, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM–10) from Vehicle and/or Equipment Parking, Shipping,

Receiving, Transfer, Fueling, and Service Areas. These rules were adopted by SJVUAPCD on April 25, 1996 and submitted by the California Air Resources Board to EPA on July 23, 1996. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the proposed rule (PR) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PR. EPA is finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval because of the remaining deficiencies. Rule deficiencies include lack of appropriate standards and/or test methods that would ensure a level of control consistent with RACM or BACM, unsupported source exemptions, clauses containing inappropriate Executive Officer discretion or language that does not establish a firm threshold upon which to base compliance with rule requirements, and lack of recordkeeping. A detailed discussion of the rule provisions and evaluations has been provided in the PR and in the Technical Support Document (TSD) for the PR, which is available at EPA's Region IX office (TSD dated August 31, 1999).

II. Response to Public Comments

A 45-day public comment period was provided in 64 FR 51498, September 23, 1999, which was extended an additional 30 days in 64 FR 61051, November 9, 1999. EPA received four comment letters [1] on the PR from the California Cotton Ginners and Growers Association (CCGGA), the Nisei Farmers League (NFL), the Western States Petroleum Association (WSPA), and SJVUAPCD. The comments have been evaluated by EPA and a summary of the major comments and EPA's responses are set forth below. EPA has responded to all comments in a TSD associated with this final rulemaking.

Introduction to EPA's Responses to Comments

The commenters [2] generally express a concern with the implementation of control measures for fugitive dust sources, in the belief that the state of scientific research concerning PM–10 sources in the San Joaquin Valley is not advanced enough to support such measures. This concern suggests that the commenters do not support the current requirements imposed by the Regulation VIII fugitive dust rules, nor the District's consideration of adopting additional rules for fugitive dust sources until they are satisfied with the state of scientific research. In their letters to EPA, the commenters also incorporate concepts that are typically evaluated in the context of a Serious PM–10 Nonattainment Area State Implementation Plan, such as consideration of which control measures are needed to reach attainment of federal ambient air quality standards, and which may not be needed.

While EPA addresses the commenters' concerns in terms of how they relate specifically to this final rulemaking, EPA does not address here the broader questions raised by the commenters due to the limited nature of this rulemaking. The Regulation VIII rules are already imposed by the SJVUAPCD. With this action, EPA is simply carrying out its responsibility under section 110(k) of the CAA concerning State submittals. The State of California submitted to EPA the Regulation VIII fugitive dust rules that the SJVUAPCD adopted to address PM–10 emissions in the San Joaquin Valley. Once the State submits such rules, EPA must evaluate them and determine if they can be approved into the California PM–10 SIP. In conducting its evaluation, EPA must apply the applicable provisions of the CAA and its regulations and guidance to the rules submitted by the State.

Comment: CCGGA, NFL, WSPA and KCFB comment that many of EPA's comments (in the proposed rule) center on the comparison to EPA's BACM Guidance Document [3]. The commenters believe this may be inappropriate because EPA's guidance document is primarily based on wind erosion derived emission factors. They contend that wind erosion is not an issue in the San Joaquin Valley with respect to exceedences of the federal ambient air quality standard for PM–10.

Response: The rule deficiencies identified by EPA predominantly address PM–10 emissions from mechanical operations such as earthmoving at construction sites and driving on paved and unpaved surfaces. EPA's BACM Guidance Document does include information and emission factors for such sources. EPA also identified a few deficiencies with the rules' windblown dust requirements. However, SJVUAPCD has not demonstrated that inactive surfaces and storage piles subject to Regulation VIII are insignificant sources.

Comment: CCGGA, NFL, WSPA and KCFB comment that EPA is focussed on primary particulate matter and that preliminary studies in the San Joaquin Valley indicate that this may be inaccurate. Actual ambient measurements of PM/NO_X ratios indicate that the current emission inventory PM/NO_X ratios are two to three times higher than the measured ambient PM/NO_X ratios, scientifically verifying that an overestimating of primary PM exists. Additionally, other studies have indicated that secondary aerosols, such as ammonium nitrate and ammonium sulfate may contribute as much as 35 percent of the total ambient PM–10 on an annual average basis in the San Joaquin Valley. This is dramatically increased during the winter months.

Response: EPA believes it is important to consider the contribution of both secondary and primary particulates to the PM–10 levels in the San Joaquin Valley. EPA's action on these fugitive dust rules does not preclude additional control measures in the San Joaquin Valley that focus on secondary aerosols. However, the information presented by the commenters does not support the elimination of RACM/BACM requirements for primary particulate sources. Primary particulates are a significant portion of the emissions inventory (according to the commenters' information, as much as 65% on an annual average basis). The RACM/BACM requirements of the Act apply unless a PM–10 source is demonstrated to be de minimis.

Comment: CCGGA, NFL, WSPA and KCFB comment that control measures must not be implemented until such time as they can be demonstrated with sound scientific research. CCGGA, NFL and WSPA comment that the California Regional Particulate Matter Air Quality Study is the most sophisticated, comprehensive PM–10 study in the world.

Response: Current research efforts are improving the available information on PM–10 emissions in San Joaquin Valley. However, scientific studies already confirm that PM–10 is generated from the types of sources targeted by Regulation VIII, such as unpaved roads, paved roads and earthmoving

[1] EPA also received comments from the Kings County Farm Bureau (KCFB) following expiration of the public comment period. Nevertheless, EPA has considered and responded to KCFB's comments along with the comments received within the allowed timeframe.

[2] EPA's use of "commenters" here does not refer to SJVUAPCD.

[3] "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures", U.S. EPA, September 1992.

activities.[4] EPA's BACM Guidance document [5] and numerous other reports set forth basic and practical controls that effectively reduce PM–10 from fugitive dust sources, such as applying water and paving, that are being effectively implemented on fugitive dust sources in PM–10 nonattainment areas. The exemption of relevant agricultural sources from the Regulation VIII requirements has not been justified under BACM criteria.

Comment: CCGGA, NFL, WSPA and KCFB comment that EPA must also consider the time of year when the San Joaquin Valley is subject to exceedances of the PM–10 standard, and then reassess their comments in light of that information.

Response: EPA's action on these rules does not preclude seasonal control measures. If seasonal control measures are developed by San Joaquin, EPA will evaluate them in light of CAA requirements and EPA policy.

Comment: CCGGA, NFL, WSPA and KCFB comment that recent development of the concept of a voluntary plan for reducing emissions at agricultural operations should be considered by EPA when discussing unpaved roads, mud and dirt track-out, and equipment yards at farming operations. KCFB comments that the agricultural industry has successfully regulated themselves in many environmental arenas using incentives and voluntary strategies. SJVUAPCD requests EPA to delay the final rulemaking for Regulation VIII until the completion of the U.S. Department of Agriculture/EPA Agriculture Air Quality Task Force Voluntary Compliance Policy. SJVUAPCD states that this delay would allow District staff sufficient time to incorporate appropriate strategies during the development of Rule 8080 [6] before the expiration of the 18-month sanction deadline. SJVUAPCD also asks that EPA revise the Technical Support Document for the Regulation VIII rulemaking to reflect the final Voluntary Compliance Policy.

Response: The exemptions for agricultural sources that EPA has listed as deficiencies in this final rulemaking are based on the fact that: (1) The District has not demonstrated that the exempt sources are de minimis and therefore not subject to BACM and; (2) BACM is not being implemented through some alternative means to Regulation VIII. While EPA is actively participating on the referenced Agricultural Air Quality Task Force, only draft principles have been developed thus far. The Agency has not published a Voluntary Compliance Policy and it is unclear when, if ever, such a policy would be finalized. EPA has exceeded the statutory deadline for action on these rules.[7] When EPA takes action on SIP submittals, the Agency must apply EPA guidance that exists at the time. If the SJVUAPCD develops and the State submits voluntary measures to address the BACM requirements for agricultural sources associated with this final rulemaking, EPA will evaluate the submittal under the CAA 189(b)(1) BACM and other applicable CAA requirements and Agency policy.

[4] See J. Watson, J. Chow, J. Gillies et al, "Effectiveness Demonstration of Fugitive Dust Control Methods for Public Unpaved Roads and Unpaved Shoulders on Paved Roads", Desert Research Institute, December 31, 1996, and "Improvement of Specific Emission Factors (BACM Project No. 1)", Midwest Research Institute, March 29, 1996.

[5] Op. Cit.

[6] SJVUAPCD indicates that Rule 8080 is potentially a new rule that would affect agricultural activities on non-cultivated land.

III. EPA Action

None of the comments received provided sufficient basis for EPA to alter its proposed action. Therefore, EPA is finalizing a limited approval and a limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. These deficiencies were discussed in the PR. As stated in the PR, upon the effective date of this final rule, the 18 month clock for sanctions and the 24 month FIP clock will begin pursuant to Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the effective date of the final rule, the emission offset sanction will automatically apply at the 18 month mark and the highway funding sanction will automatically apply 6 months later. (59 FR 39832, August 4, 1994.) It should be noted that the rules covered by this FR have been adopted by the SJVUAPCD and are currently in effect in the SJVUAPCD. EPA's limited disapproval action will not prevent the SJVUAPCD or EPA from enforcing these rules.

[7] The statutory deadline expired 18 months following EPA's receipt of the rules' submittal.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 17, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(239)(i)(F) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(F) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rules 8010, 8020, 8030, 8040, 8060, and 8070 adopted on April 25, 1996.

* * * * *

[FR Doc. 00–5502 Filed 3–7–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300978–FRL–6492–7]

RIN 2070–AB78

Bentazon; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of bentazon (3-isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide) and its 6- and 8-hydroxy metabolites in or on succulent peas. In addition the tolerance expression for animal commodities (meat, milk, poultry, and eggs) established in 40 CFR 180.355(a) is being corrected to that of the combined residues of bentazon and its metabolite 2-amino-*N*-isopropyl benzamine (AIBA). BASF Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective March 8, 2000. Objections and requests for hearings, identified by docket control number OPP–3000978, must be received by EPA on or before May 8, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300978 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone number: (703) 305–6224; and e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300978. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 17, 1998 (63 FR 43937) (FRL–6018–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) 6F4640 and 3F4270 for a tolerance by BASF Corporation. This notice included a summary of the petition prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.355(a) be amended by establishing a tolerance for combined residues of the herbicide, bentazon and its 6- and 8-hydroxy metabolites, in or on succulent peas at 3.0 part per million (ppm). Tolerances have been established under 40 CFR 180.355(a) for combined residues of bentazon and its 6- and 8-hydroxy metabolites in/on succulent peas at 0.5 ppm and pea forage at 3 ppm to support a 2 × 1 lb ai/A (pounds active ingredient per acre), 30–day preharvest interval (PHI) use pattern. The new tolerance is proposed to support a 2 × 1 lb ai/A, 10–day PHI use pattern.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical

residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *"

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of bentazon and its 6- and 8-hydroxy metabolites in/on succulent peas at 3.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by bentazon are discussed in this unit.

1. Acute toxicity data for bentazon show that this chemical is not acutely toxic by the oral, inhalation, or dermal routes of exposure (Toxicity Categories III and IV). It is moderately irritating to the eye (Toxicity Category II) and slightly irritating to the skin (Toxicity Category IV). Bentazon is also a dermal sensitizer.

2. A 21–day dermal toxicity study in rabbits was conducted at doses of 0, 250, 500, or 1,000 mg/kg/day. The no observed adverse effect level (NOAEL) is 1,000 mg/kg/day, HDT (highest dose tested). The lowest observed adverse effect level (LOAEL) is greater than 1,000 mg/kg/day.

3. A 13–week feeding study in rats was conducted at doses of 0, 400, 1,200, or 3,600 ppm; equivalent to 0, 25.3, 77.8, or 243.3 mg/kg/day for males and 0, 28.9, 86.1, or 258.3 mg/kg/day for females. The NOAEL is 77.8 mg/kg/day. The LOAEL is 243.3 mg/kg/day for males and 258.3 mg/kg/day for females based on depressed mean body weights in females, a slight increase in food consumption in males, increased thromboplastin and prothrombin times (males only), and increased kidney and liver weights.

4. A chronic feeding study in dogs was conducted at doses of 0, 100, 400, or 1,600 ppm; equivalent to 0, 3.2, 13.1, or 52.3 mg/kg/day. The NOAEL is 3.2 mg/kg/day. The LOAEL is 13.1 mg/kg/day based on a dose-dependent presence of feces with red areas in dogs at 13.1 mg/kg/day (400 ppm) and 52.3 mg/kg/day (1600 ppm) and slight to severe anemia at the high dose.

5. A chronic feeding/carcinogenicity study in rats was conducted at doses of 0, 200, 800, or 4,000 ppm; equivalent to 0, 9, 35, or 180 mg/kg/day in males and 0, 11, 45, or 244 mg/kg/day in females. The NOAEL is 9/11 mg/kg/day, in males/females. The LOAEL is 35/45 mg/kg/day, in males/females, based on increased water consumption, changes in urinalysis and hematology/coagulation parameters, and decreased absolute and relative thyroid weight. No evidence of carcinogenicity was observed.

6. A oncogenicity study in mice was conducted at doses of 0, 100, 400, or 2000 ppm; equivalent to 0, 12, 47, or 242 mg/kg/day in males and 0, 12, 48, or 275 mg/kg/day in females. The NOAEL is 12 mg/kg/day. The LOAEL is 47/48 mg/kg/day in males/females, based on increased prothrombin time, increased liver and kidney weights, calcification of the *tunica albuginea*, and islet cell hyperplasia of the pancreas. No evidence of carcinogenicity was observed.

7. A developmental study in rats was conducted at doses of 0, 40, 100, or 250 mg/kg/day. The maternal NOAEL is 250 mg/kg/day (HDT). The maternal LOAEL is greater than 250 mg/kg/day. The developmental NOAEL is 100 mg/kg/day. The developmental LOAEL is 250 mg/kg/day, based on increased postimplantation loss, skeletal variations (incomplete or absent ossification in the phalangeal nucleii of the extremities, the sternebrae and cervical vertebrae), and reduced body weights or fetuses surviving to day 21.

8. A developmental study in rabbits was conducted at doses of 0, 75, 150, or 375 mg/kg/day. The maternal/developmental NOAEL is 150 mg/kg/day. The maternal/developmental LOAEL is 375 mg/kg/day (HDT), based on doe with partial abortion, embryonic resorptions, and no living fetuses.

9. A 2-generation reproduction toxicity study in rats was conducted at doses of 0, 200, 800, or 3,200 ppm; equivalent to 0, 15, 62, or 249 mg/kg/day. The parental systemic NOAEL is 62 mg/kg/day. The parental systemic LOAEL is 249 mg/kg/day, based on increased incidences of kidney mineralization and liver microgranuloma. The reproductive NOAEL is 15 mg/kg/day. The reproductive LOAEL is 62 mg/kg/day, based on reduced pup growth (body weight gain) during lactation.

10. There is no concern for mutagenic activity in several studies, including: Salmonella spp., *in vitro* mammalian cell gene mutation assays, in vivo mouse bone marrow micronucleus assay, and an unscheduled DNA synthesis assay.

11. A rat metabolism study with oral dosing showed that parent bentazon was the major metabolite found in urine, amounting to 77.37–91.02% of the dose. Another metabolism study demonstrated that the absorption and excretion of bentazon or its sodium salt in male rats after oral administration is rapid and essentially equivalent. No sex differences in the absorption, metabolism or excretion of sodium bentazon are apparent based or equivalent excretion half-lives (4 hours), pattern of excretion (greater than 90% in urine) or urinary metabolite identification (greater than 80% as free acid).

12. A dermal penetration study in rats was conducted at doses of 0.12, 1.2, 12, or 120 mg/kg. Single topical application of radioactive sodium bentazon did not appear to significantly penetrate the skin since a maximum of only 1–2% of the radioactivity was recovered (primarily in the urine) at 72 hours. Negligible amounts of dermally applied radioactivity were retained in the liver, kidneys, G.I. tract and carcass. For risk assessment purposes, dermal penetration is estimated to be 1–2%.

B. Toxicological Endpoints

1. *Acute toxicity.* An acute reference dose (aRfD) of 1 mg/kg/day was established for the subpopulation group, females 13–50 years old only, based on a no-observed-adverse-effect level (NOAEL) of 100 mg/kg/day from a developmental toxicity study in the rat. The effects observed at the next higher dose level of 250 mg/kg/day (the highest dose tested) were an increase in postimplantation loss, skeletal variations, and reduced weight of fetuses. These effects are presumed to occur after a single exposure *in utero* and, therefore, are considered to be appropriate. A 10x FQPA safety factor is applied to females 13–50 years old, because there was evidence of increased susceptibility in the developmental toxicity study in rats and in the two-generation reproduction toxicity study in rats. An uncertainty factor of 100 is used to account for inter-species differences and intra-species variability. Therefore, the aPAD (acute population adjusted dose) is 0.1 mg/kg/day for females 13–50 years old. An acute dose and endpoint were not selected for the general U.S. population (including infants and children) because there were no effects observed in oral toxicology studies, including maternal toxicity in the developmental toxicity studies in rats and rabbits, that are attributable to a single exposure (dose).

2. *Short- and intermediate-term toxicity.* A short-term dermal dose/endpoint was not identified since no dermal or systemic toxicity was seen at the limit dose of 1,000 mg/kg/day in a 21-day dermal toxicity study in rabbits. An intermediate-term dermal endpoint was chosen from a one-year feeding study in dogs. A NOAEL of 13.1 mg/kg/day was chosen based on the presence of feces with red areas seen in dogs at weeks 4, 6, and 12 at a LOAEL of 52.3 mg/kg/day. A long-term dermal endpoint was chosen from a one-year feeding study in dogs. A NOAEL of 3.2 mg/kg/day was selected based on a dose-dependent presence of feces with red areas in dogs at the LOAEL of 13.1 mg/kg/day (400 ppm). EPA determined that since oral NOAELs were selected, a dermal absorption (DA) factor of 2%, obtained from a dermal penetration study, should be used for the risk assessment.

No appropriate inhalation studies were available for endpoint selection; therefore, EPA selected oral NOAELs for inhalation exposure risk assessment. For margin of exposure (MOE) calculations, the short-term inhalation exposure NOAEL is 100 mg/kg/day (from a developmental toxicity study in rats, therefore, use 100% inhalation absorption). Dermal exposure can not be combined with inhalation, because a dose/endpoint (hazard) was not identified for short-term dermal exposure risk assessment. The intermediate- and long-term inhalation exposure NOAELs are 13.1 mg/kg/day and 3.2 mg/kg/day, respectively, from a chronic dog study. For intermediate- and long-term inhalation exposure risk assessments, the dermal and inhalation exposures can be combined (using 100% absorption for inhalation and 2% absorption for dermal) because the doses selected are oral equivalent doses and the same toxic effect was observed (feces with red areas).

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for at 0.03 milligrams/kilograms/day (mg/kg/day). This is RfD based on the NOAEL of 3.2 mg/kg/day in the one year dog feeding study and an uncertainty factor of 100 (10X for inter-species differences and 10X for intra-species variability). The LOAEL in the study was based on dose-dependent presence of feces with red areas in dogs at 13.1 mg/kg/day (seen at week 33) and at 52.3 mg/kg/day (HDT), and slight to severe anemia at the high dose. Using the 10x FQPA safety factor, the chronic population adjusted dose (cPAD) for bentazon is 0.003 mg/kg/day.

4. *Carcinogenicity.* Bentazon has been classified as a Group "E" chemical (evidence of non-carcinogenicity for humans) based upon a lack of evidence of carcinogenicity in two adequate studies (rats and mice).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.355(a)) for the combined residues of bentazon (3-isopropyl-1H-2,1,3-benzothiadiazin-4(3H)-one-2,2-dioxide) and its 6- and 8-hydroxy metabolites, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from as follows:

A refined chronic dietary exposure analysis (Tier 3) was performed using anticipated residues (ARs) for succulent peas and tolerance level residues for all other commodities for the general U.S. population and all population subgroups. For the chronic analysis, percent crop treated (%CT) information was used for several commodities.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used percent crop treated (PCT) information as follows.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to

underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which bentazon may be applied in a particular area.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The acute dietary analysis for females 13–50 years old (the subpopulation of concern) assumed published and proposed tolerance levels and 100% crop treated information for all commodities (Tier I). For all the females 13–50 years old subgroups, 5% or less of the aPAD is occupied by dietary exposure from food. Results of the acute analysis indicate that the acute dietary risk residues in food associated with existing and proposed uses of bentazon do not exceed EPA's level of concern.

ii. *Chronic exposure and risk.* A refined chronic dietary exposure analysis (Tier 3) was performed using anticipated residues for succulent peas and tolerance level residues for all other commodities for the general U.S. population and all population subgroups. For the chronic analysis, percent crop treated information was used for several commodities. The percent chronic population adjusted dose (% cPADs) for all subgroups were less than 100%, with the highest being 28% for the children 1–6 years subgroup. Results of the chronic analysis indicate that the chronic dietary risk from from residues in food associated with the existing and proposed uses of bentazon do not exceed EPA's level of concern.

2. *From drinking water.* SCI-GROW (Screening Concentration in Ground Water) modeling indicates that bentazon residue (bentazon + AIBA) concentrations in groundwater used as drinking water are not likely to exceed 4.25 ppb. The other regulated bentazon metabolites (6-hydroxy and 8-hydroxy bentazon) have not been found in environmental fate studies. Limited monitoring data indicated a range of bentazon concentrations (excluding degradation products) in groundwater of 20 to 120 ppb. Because monitoring data indicate a higher concentration than the SCI-GROW screening model, EPA used the 20 ppb as the environmental exposure concentration (EEC) for both acute and chronic scenarios. The EEC for surface water (from EPA's Pesticide Root Zone Model-EXAMS modeling) is 41 ppb for the peak (acute) and 8 ppb for the 36-year annual mean (chronic). The surface and ground water estimates were used to compare against back-calculated drinking water levels of comparison (DWLOCs) for aggregate risk assessments.

i. *Acute exposure and risk.* For the acute scenario, the DWLOC is 2800 ppb for females (13+/nursing).

ii. *Chronic exposure and risk.* For the chronic scenario, the DWLOCs are 95, 82, 22, 94, and 95 ppb for the US population, females (13+/nursing), children (1–6 years), Hispanics and males (13–19 years), respectively.

3. *From non-dietary exposure.* Because bentazon is registered for consumer use on turf and ornamentals, there is potential for residential exposure to adult applicators and adults and children entering recreational and residential areas treated with bentazon.

Short- and intermediate-term exposure and risk. The handler exposure is expected to be short-term while the post-application exposure is expected for both the short- and intermediate-term. However, since there is no short-term dermal endpoint, the residential post-application exposure cannot be aggregated with the handler exposure. Short-term, non-dietary ingestion exposure for toddlers is not a concern because EPA determined that there is no acute dietary or oral endpoint applicable to infants and children. However, intermediate-term, non-dietary ingestion exposure to toddlers playing on treated turf is possible and was assessed using the intermediate-term endpoint identified from the one-year dog feeding study. Intermediate-term exposure is not expected for the ornamental use. The level of concern for residential exposures to bentazon is for MOE's less than 1,000.

There are no chemical-specific or site-specific data available to determine the potential risks associated with residential exposures from handling bentazon. Therefore, the exposure estimates are based on assumptions and generic data as specified by the December 18, 1997 Draft HED Standard Operating Procedures (SOPs) for Residential Exposure Assessments. Because bentazon is applied no more than twice per year, only short-term exposure is expected for the residential handler. Because a dermal endpoint of concern for the short-term duration was not identified, only inhalation exposure estimates are relevant. Assuming that a homeowner treats his lawn and ornamental plants on the same day, the aggregate inhalation short-term MOE is 500,000 for the residential handler. This estimate indicates that the potential handler risks from residential uses of bentazon do not exceed EPA's level of concern.

Environmental fate data indicate that bentazon is moderately resistant to degradation ($t_{1/2}$ = 24–65 days). Due to the length of time bentazon is expected to remain in the environment, both short- and intermediate-term residential post-application exposures are expected. For toddlers playing on treated turf, the oral intermediate-term endpoint was used to assess toddler incidental ingestion exposures. Based on the residential use pattern, no long-term post-application residential exposure is expected. Short-term, non-dietary oral exposures to the toddler were not assessed because the subgroup of concern was identified as females 13–50 years old. This endpoint is not applicable to the infant and children population subgroups. Intermediate-term, post-application exposure is not expected from the ornamental use of bentazon.

Changes to the Residential SOPs have been proposed that alter the residential post-application scenario assumptions. The proposed assumptions are expected to better represent residential exposure and are still considered to be high-end, screening level assumptions. Therefore, EPA has deviated from the current Residential SOP assumptions and uses the proposed assumptions to calculate exposure estimates.

The dermal post-application exposure from the turfgrass use for the adult results in an MOE of 9,100. The MOEs for post-application exposures for the toddler are calculated as 6,400 and 3,500 for dermal and hand-to-mouth exposures, respectively. The aggregate intermediate MOE for post-application residential exposure to toddlers is 2,200. Therefore, all residential post-application exposure estimates are well below EPA's level of concern. Because these estimates were calculated using

screening-level assumptions, EPA believes that the actual risks will be lower. For the intermediate-term, typical lawn maintenance practices such as mowing and watering are expected to expedite the dissipation of bentazon on turfgrass. Therefore, with less residue available, potential incidental hand-to-mouth exposures are expected to be substantially lower.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether bentazon has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, bentazon does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that bentazon has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Acute risk estimates from aggregate exposure to bentazon in food and water are below EPA's level of concern. For Tier 1 acute dietary exposure analysis, EPA assumed that 100% of the crops treated with bentazon and that residues equaled the tolerance level. For all females 13–50 years old subgroups, less than or equal to 5% of the aPAD is occupied by dietary exposure from food. The acute dietary risk from food associated with the existing and proposed uses of bentazon is below EPA's level of concern. The estimated average concentrations of bentazon in surface and ground water are less than EPA's levels of comparison for bentazon in drinking water as a contribution to acute aggregate exposure.

2. *Chronic risk.* Chronic (Non-Cancer) Aggregate Risk estimates are below EPA's level of concern. The chronic dietary exposure analysis for residues in food incorporated anticipated residues for succulent peas and assumed tolerance level residues for all other commodities. Percent CT information was used for several commodities. The %cPADs for all subgroups were less than 100%, with the highest being 28% for the children (1–6 years old) subgroup. Thus, the chronic dietary risk estimates from food associated with existing and proposed uses of bentazon do not exceed EPA's level of concern. For ground and surface water, the estimated average concentrations of bentazon are less than EPA's levels of comparison for bentazon in drinking water as a contribution to chronic aggregate exposure.

3. *Short- and intermediate-term risk.* Aggregate short-term risk estimates are below EPA's level of concern. In aggregating short-term risk, EPA considered background chronic dietary exposure (food + drinking water) and short term inhalation exposures from residential uses. Because a dermal endpoint of concern for the short-term duration was not identified, only inhalation exposure estimates are relevant for the adult handler. Short-term inhalation exposure may occur for a homeowner treating turf and ornamentals on the same day. The total short-term food and residential aggregate MOE value is 220,000. As this MOE is greater than 1,000, the short-term food and residential aggregate risk estimate is below EPA's level of concern. For surface and ground water, the estimated average concentrations of bentazon are less than EPA's levels of comparison for bentazon in drinking water as a contribution to short-term aggregate exposure.

Aggregate intermediate-term risk estimates are below EPA's level of concern for adults. In aggregating intermediate-term risk, EPA considered background chronic dietary exposure (food + drinking water) and intermediate-term dermal exposures from residential uses. For adults, dermal post-application exposures may result from dermal contact with treated turf. For adults, the total food and residential intermediate-term aggregate MOE is 7,600. As this value is greater than 1,000, the intermediate-term aggregate risk estimate is below EPA's level of concern. For surface and ground water, the estimated average concentrations of bentazon are less than EPA's levels of comparison for bentazon in drinking water as a contribution to intermediate-term aggregate exposure.

4. *Aggregate cancer risk for U.S. population.* A cancer risk assessment was not done. Bentazon is classified as a Group E chemical (evidence of non-carcincinogenicity for humans) based upon lack of evidence of carcinogenicity in rats and mice.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to bentazon residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of bentazon, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* Two studies were described in Toxicology Profile (see Unit III.A. Tox profile).

iii. *Reproductive toxicity study.* A reproductive toxicity study was described in the Toxicology Profile (see Unit III.A. Tox profile).

iv. *Prenatal and postnatal sensitivity.* The toxicological data base for evaluating prenatal and postnatal toxicity of bentazon is complete with respect to current data requirements.

There was evidence of increased susceptibility following *in utero* exposure to bentazon in the prenatal developmental toxicity study in rats and there was quantitative evidence of increased susceptibility following pre-/postnatal exposure to bentazon in the 2-generation reproduction study in rats.

v. *Conclusion.* There is a complete toxicity data base for bentazon and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA Safety Factor for protection of infants and children will be retained at 10x for bentazon due to the increased pre-/postnatal susceptibility. The FQPA Safety Factor for bentazon is applicable to females 13–50 years old only for acute dietary and residential exposure assessments because increased susceptibility was demonstrated in the developmental study in rats which is designed to evaluate chemical effects on the mother and fetus from the time of implantation of the fertilized egg in the uterus through the end of gestation. The safety factor is also applicable to all population subgroups for chronic dietary and residential exposure assessments because increased susceptibility was demonstrated in the 2-generation reproduction study (which is designed to assess the effects of the pesticide on male and female reproductive processes, from egg and sperm production and mating through pregnancy, birth, nursing, growth and development, and maturation).

2. *Acute risk.* An acute endpoint was not identified and this risk assessment was not required.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to bentazon from food will utilize 28% of the chronic PAD for children (1–6 years old). EPA generally has no concern for exposures below 100% of the chronic PAD because the chronic PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to bentazon in drinking water and from non- dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the chronic PAD.

4. *Short- or intermediate-term risk.* Although bentazon a registered herbicide for use on turf and ornamentals, short-term non-dietary ingestion exposure for toddlers is not assessed because EPA determined that there is no acute dietary or oral endpoint applicable to infants and children.

Aggregate intermediate-term risk estimates are below EPA's level of concern for infants and children. In aggregating intermediate-term risk, EPA considered background chronic dietary exposure (food + drinking water) and intermediate-term, non-dietary oral and dermal exposures from residential uses. For toddlers, dermal and non-dietary oral postapplication exposures may result from dermal contact with treated turf as well as hand-to-mouth transfer of residues from turfgrass. For infants and children, the total food and residential intermediate-term aggregate MOE is 2,000. As this value is greater than 1,000, the intermediate-term aggregate risk estimate is below EPA's level of concern. For surface and ground water, the estimated average concentrations of bentazon are less than EPA's levels of comparison for bentazon in drinking water as a contribution to intermediate-term aggregate exposure.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure bentazon to residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The qualitative nature of the residue in plants is considered to be adequately understood. Radiolabelled studies conducted at rates of up to 2.5 lb ai/A on beans, corn, soybeans, rice and wheat indicate that bentazon is readily absorbed from foliage, roots and seeds, and translocates in some plant types. Bentazon is rapidly metabolized, conjugated and incorporated into natural plant constituents. Metabolism involves the hydroxylation of bentazon at the 6- and 8-positions. The terminal residues of regulatory concern are bentazon, 6-hydroxy bentazon, and 8-hydroxy bentazon. As there are no livestock feed items associated with succulent peas, issues pertaining to the nature of the residue in animals are not germane to this regulation.

B. Analytical Enforcement Methodology

Adequate enforcement methods are available for the determination of residues of bentazon and its 6- and 8-hydroxy metabolites in/on plant commodities. The Pesticide Analytical Manual (PAM) Vol. II lists Method II, a gas liquid chromatography (GLC) method with flame photometric detection for the determination of bentazon and its hydroxy metabolites in/on corn, rice, and soybeans; the limit of detection for each compound is 0.05 ppm. Method III, modified from Method II, is available for the determination of bentazon and its hydroxy metabolites in/on peanuts and seed and pod vegetables with a limit of detection of 0.05 ppm for each compound.

C. Magnitude of Residues

Ten field residue trials were conducted in seven different states with a distribution which corresponds well with the suggested growing region for succulent garden peas. The data indicated that combined residues of bentazon and its 6- and 8-hydroxy metabolites will not exceed the proposed tolerance. BASF provided data only on green peas. The raw agricultural commodity (RAC) analyzed in these trials was the succulent seeds with the pods. At the time these trials were conducted in 1993, succulent seeds with pods was the appropriate RAC. In 1995, the guidelines were revised and the RAC was redefined as edible-podded peas and succulent shelled peas. Thus, the submitted field trials do not fulfill current guidelines. BASF is required to perform three (3) edible-podded pea trials. The additional studies will satisfy the new guidelines and provide EPA with confirmatory data. EPA is proceeding with this tolerance while the additional trials are conducted because the available data are adequate to make a safety determination.

D. International Residue Limits

There is a Codex Maximum Residue Limit (MRL) of 0.2 ppm for bentazon and its metabolites established in/on garden peas (young pods), a Canadian MRL for parent only of 0.1 ppm (negligible) established in/on peas, and a Mexican limit for parent (presumed) of 0.05 ppm established in/on green peas. Therefore, a compatibility issue is relevant to the proposed tolerance. Harmonization of the 3.0 ppm U.S. tolerance will not be possible as the use pattern proposed on the Basagran Herbicide label will result in residues which greatly exceed the Codex MRL. EPA thus suggests that BASF submit the residue data and Good Agricultural Practice (GAP) to Codex once the U.S. registration and tolerance are approved.

E. Rotational Crop Restrictions

Currently, there are no plantback restrictions on the Basagran Herbicide label. Confined rotational crop data indicate that bentazon residues may be taken up by rotational crops (39 to 102 day plantback intervals), and that field rotational crop studies are needed for the purposes of reregistration in order to determine if plantback restrictions for bentazon end-use products are needed.

If plantback restrictions are needed based upon these studies then the Herbicide label will be revised.

V. Conclusion

Therefore, the tolerance is established for combined residues of bentazon and its 6- and 8-hydroxy metabolites in pea, succulent at 3.0 ppm. In addition, the tolerance expression for animal commodities in 40 CFR 180.355(a) is corrected as the combined residues of bentazon and its metabolite 2-amino-*N*-isopropyl benzamide (AIBA).

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300978 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 8, 2000.

1. Filing the request. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C-400 , Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

Pursuant to FFDCA section 408(m)(1), EPA is authorized to waive any fee requirement "when in the judgment of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. N.W., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300978, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and*

Safety Risks (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Because tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.355 is amended in paragraph (a) by revising the introductory text and redesignating it as paragaph (a)(1), by revising the entry for "pea, succulent" in the table in newly designated paragraph (a)(1), by removing from the table in newly designated paragraph (a)(1) the entries for cattle, fat; cattle, meat byproducts; cattle, meat; egg; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; milk; poultry, fat; poultry, meat byproducts; poultry, meat; sheep, fat; sheep, mbyp; and sheep, meat, and by adding new paragraph (a)(2). The additions and revision read as follows:

§ 180.355 Bentazon; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the herbicide bentazon (3-isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide) and its 6- and 8-hydroxy metabolites in or on the following food commodity:

Commodity	Parts per million
* * * * *	
Pea, succulent	3.0
* * * * * *	

(2) Tolerances are established for the combined residues of the herbicide bentazon (3-isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide) and its metabolite 2-amino-*N*-isopropyl benzamide (AIBA) in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Eggs	0.05
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Milk	0.02
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05

* * * * * *

[FR Doc. 00–5634 Filed 3–7–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300977; FRL–6492–3]

RIN 2070–AB78

Diclosulam; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of diclosulam, *N*-(2,6-dichlorophenyl)-5-ethoxy-7-fluoro[1,2,4]triazolo[1,5-*c*]pyrimidine-2-sulfonamide], in or on soybean seed and peanut nutmeat. Dow AgroSciences requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective March 8, 2000. Objections and requests for hearings, identified by docket control number OPP–300977, must be received by EPA on or before May 8, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300977 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703)

305–5697; and e-mail address: Tompkins.Jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–300977. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 20, 1998 (63 FR 64484) (FRL–6030–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for a tolerance by Dow AgroSciences. This notice included a summary of the petition prepared by Dow AgroSciences, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the herbicide diclosulam, in or on soybean and peanut at 0.02 part per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *"

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of diclosulam on soybean seed and peanut nutmeat at 0.020 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by diclosulam are discussed in this unit.

In general, the toxicology studies conducted on diclosulam demonstrate that it has few or no biologically significant toxic effects at relatively low-dose levels in many animal studies. Diclosulam generally has low acute toxicity (Toxicity Category III) and is not a dermal sensitizer. The BF-564 (84.3% active ingredient (a.i.)) appeared to be slightly more irritating to the skin and eye than XDE-564 (97.6% a.i.). No significant treatment-related effects were noted in 21-day dermal studies in rabbits. Based on oral feeding studies, the primary target organs are the liver and kidney. In a subchronic rat feeding study, the primary target organ is the liver including increased relative organ weight, hepatocellular hypertrophy, and slight multifocal necrosis. Decreased body weight and kidney lesions were also noted. Liver effects were also noted in a subchronic dog study and included increased relative liver weight, centrilobular hepatocellular changes, and hepatocellular necrosis accompanied by elevated ALP, AST, and ALT. Other effects were decreased body weight, decreased food consumption, and renal changes in addition to hematological and clinical chemistry effects that were considered

secondary to the debilitated condition of the animals. In a chronic toxicity/oncogenicity study in the rat, the kidney is identified as a target organ. Changes in clinical chemistry and urinalysis parameters (indicative of altered renal tubule function) included increased creatinine, decreased urine specific gravity, increased urine volume, and decreased urinary protein concentration; also, microscopic renal tubular pathology was noted. The kidney was also a target organ in a mouse carcinogenicity study. Among the observed kidney effects were reduced vacuolization in the tubular epithelium, lower absolute and relative kidney weights, and focal dilatation with hyperplasia of the epithelial lining in the cortical tubules. Diclosulam was classified as a "not likely human carcinogen" based on the lack of evidence of carcinogenicity in rats or mice fed diclosulam, and the lack of evidence of mutagenic activity. Based on the results of several subchronic, chronic, and developmental reproductive toxicity studies, there was no evidence of neurotoxicity. Diclosulam is not a developmental or reproductive toxicant and there was no evidence for increased susceptibility of rat or rabbit fetuses to *in utero* exposure or rat pups to postnatal exposure to diclosulam.

B. Toxicological Endpoints

1. *Acute toxicity.* In acute toxicology studies (rat acute neurotoxicity, rat developmental toxicity, and rabbit developmental toxicity) there were no acute effects observed due to a single dose. Therefore, no acute reference dose (RfD) was selected and an acute dietary risk assessment is not required.

2. *Short- and intermediate-term toxicity.* The toxicological endpoint for short- and intermediate-term inhalation risk assessments is a maternal/developmental no observable adverse effect level (NOAEL) of 10 milligrams/kilograms/day (mg/kg/day) based on the dose-dependent increased abortions, and decreased maternal body weight gain, food consumption, and fecal output in the rabbit oral developmental study. Because this study is an oral dosing study, route-to-route extrapolation is required. A margin of exposure (MOE) of 100 or greater is adequate for occupational exposure risk assessments. A short- and intermediate-term dermal risk assessment is not required, and no short- or intermediate-term dermal toxicity endpoints were established. In a short- and intermediate-term dermal toxicology study (21-day rabbit dermal toxicity study), there was no systemic toxicity at the limit dose of 1,000 mg/kg/day.

3. *Chronic toxicity.* EPA has established a chronic RfD of 0.05 mg/kg/day NOAEL equals 5 mg/kg/day; Uncertainty Factor (UF) = 100) for use in assessing chronic dietary risk. This chronic RfD is based on the 2-year combined chronic feeding/carcinogenicity study in rats, in which the following effects were observed at the lowest observable adverse effect level (LOAEL) of 100 mg/kg/day in both sexes: statistically significant decreases in body weight gain, changes in renal tubule and kidney function parameters, and increased incidence of male kidney pelvic epithelium hyperplasia.

4. *Carcinogenicity.* In accordance with the 1996 Cancer Risk Assessment Guidelines, the Agency classified diclosulam as a "not likely human carcinogen" based on the lack of evidence of carcinogenicity in mice or rats. Therefore, diclosulam is not expected to pose a cancer risk.

C. Exposures and Risks

1. *From food and feed uses.* Risk assessments were conducted by EPA to assess dietary exposures from as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. In acute toxicology studies (rat acute neurotoxicity, rat developmental toxicity, and rabbit developmental toxicity) there were no acute effects observed due to a single dose. Therefore, no acute risk is expected, and an acute risk assessment is inappropriate.

ii. *Chronic exposure and risk.* The Agency used the Dietary Exposure Evaluation Model (DEEM) software for conducting a chronic (non-cancer) dietary (food) risk analysis for residues in food. The chronic dietary risk analysis was based on the assumptions of tolerance level residues (0.020 ppm for peanut nutmeat and soybean seed), 100 percent of crop treated, and the chronic population-adjusted dose (PAD) of 0.05 mg/kg/day. The resulting dietary food exposures occupy <1% of the chronic PAD for all population subgroups. These results should be viewed as conservative (health protective) risk estimates. Refinements such as use of percent crop-treated information and/or anticipated residue values would yield even lower estimates of chronic dietary exposure from residues in food. In accordance with the 1996 Cancer Risk Assessment Guidelines, EPA classified diclosulam as a "not likely human carcinogen" based on the lack of evidence of carcinogenicity in mice or rats. Thus, diclosulam is not expected to pose a cancer risk.

2. *From drinking water*—i. *Acute exposure and risk.* As explained above, diclosulam is not expected to pose an acute risk.

ii. *Chronic exposure and risk.* Drinking Water Levels of Comparison (DWLOCs) range from 490 to 1,700 µg/L for all population subgroups. DWLOCs were calculated based on the chronic PAD (0.05 mg/kg/day) and the chronic dietary (food only) exposure for each population subgroup. The estimated environmental concentrations (EECs) for assessing chronic aggregate dietary risk are 0.035 parts per billion (ppb) in ground water and 1.28 ppb in surface water. The chronic EECs are less than the Agency's level of comparison (the DWLOC value for each population subgroup) for diclosulam residues in drinking water as a contribution to chronic aggregate exposure.

3. *From non-dietary exposure.* There are no residential uses associated with diclosulam. Therefore, no non-dietary exposure due to residential use is expected.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether diclosulam has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, diclosulam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that diclosulam has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* As explained above, diclosulam is not expected to pose an acute risk.

2. *Chronic risk.* Using the theoretical maximum residue contribution (TMRC) exposure assumptions described in this unit, EPA has concluded that aggregate exposure to diclosulam from food will utilize <1% of the PAD RfD for the U.S. population and all identified subpopulations. EPA generally has no concern for exposures below 100% of the PAD because the PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for dietary exposure to diclosulam in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. However, there are not residential uses for diclosulam and risks from dietary exposures from residues in food and water are addressed by the acute and chronic risk assessments.

4. *Aggregate cancer risk for U.S. population.* As explained above, diclosulam is not expected to pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to diclosulam residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children* —i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of diclosulam, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* See Unit III.A. of this notice.

iii. *Reproductive toxicity study.* See Unit III.A. of this notice.

iv. *Prenatal and postnatal sensitivity.* Based on the available data, there is no indication of increased susceptibility of rats or rabbits to *in utero* and/or to postnatal exposure to diclosulam. In the prenatal developmental toxicity studies, there was no apparent developmental toxicity in rats or rabbits at or below the maternal toxicity NOAEL values (vide supra). In the prenatal rabbit developmental toxicity study, there were dose-dependent increased late (gestational date 21–27) abortions at or above 65 mg/kg/day. The Agency considers the dose-related increased abortions as an adverse fetal effect despite the fact that the abortions were probably related to maternal toxicity, the aborted fetuses were viable, and there was no increase in intra-uterine deaths (early or late resorptions). Both the maternal and developmental NOAEL/LOAEL were considered to be 10/65 mg/kg/day based on the dose-related increased abortions. There were other maternal effects, including decreased maternal body weight gain, food consumption, and fecal output; however, there were no other treatment-related fetal or developmental effects, including gravid uterine or fetal body weights, and gross, visceral, or skeletal changes. On the other hand, in the 2–generation rat reproduction study, the parental and developmental/ offspring systemic toxicity NOAEL/LOAEL were at or above the limit dose of 1,000 mg/kg/day.

v. *Conclusion.* The toxicological data base for diclosulam is adequate to support registration and tolerances. The Ames mutagenicity test is considered to be unacceptable because the highest dose tested was not high enough. However, EPA has sufficient information concerning mutagenicity and has concluded that diclosulam is not a mutagen based on the Mouse Micronucleus Assay, CHO/HGPRT Forward Gene Mutation, Chromosomal Aberration Assay—Rat Lymphocytes tests. Also, both the acute neurotoxicity study (guideline) and the 1-year neurotoxicity study (non-guideline) are classified unacceptable pending the submission of additional information; however, these studies are not required to assess these tolerances or for registration of these uses. Exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Given the completeness of the toxicity and exposure data bases, and the lack of prenatal and postnatal sensitivity, EPA concluded that an additional safety factor to protect infants and children was not necessary and that a risk assessment using only the traditional safety factors would protect the safety of infants and children.

2. *Acute risk.* As explained above, diclosulam is not expected to pose an acute risk.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to diclosulam from food will utilize <1% of the chronic PAD for infants and children. EPA generally has no concern for exposures below 100% of the chronic PAD because the PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to diclosulam in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the PAD.

4. *Short- or intermediate-term risk.* As explained above, there are no residential uses for diclosulam and thus any short-term or intermediate term risks are adequately addressed by the chronic and acute assessments.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The nature (metabolism) of diclosulam residues in plants and livestock is adequately understood for the purposes of these tolerances. In all the plant and animal metabolism studies submitted, the residues of

concern were parent diclosulam only. The tolerances for soybean and peanut commodities are expressed in terms of diclosulam.

B. Analytical Enforcement Methodology

The petitioner has proposed Capillary Gas Chromatography/Mass Selective Detection Methods GRM 96.01, GRM 94.19, and GRM 94.19.S1 for the enforcement of tolerances in peanut and soybean. Method validation recoveries indicate that these methods adequately recover residues of diclosulam from peanut, soybean, and their processed commodities. The validated limit of quantitation (LOQ) is 0.01 ppm for all commodities and the limit of detection (LOD) was estimated to be 0.003 ppm for all matrices. Adequate independent method validation data have been submitted for this method.

C. Magnitude of Residues

The submitted soybean and peanut field trial data are adequate. The available residue data support the proposed tolerance at 0.020 ppm for residues of diclosulam in/on soybean seed. Residues were nondetectable (<0.003 ppm) in/on all 81 samples of soybeans treated at 1–1.5x. Diclosulam residues were also nondetectable (<0.003 ppm) in/on seed harvested from applications at exaggerated rates (5 3 and 8x). The processing data indicate that residues of diclosulam do not concentrate in soybean processed commodities. The proposed label includes a restriction against grazing treated areas or harvesting forage and hay from treated areas; therefore, tolerances for residues in/on soybean forage and hay are not required at this time.

In peanuts, the available residue data support the proposed tolerance at 0.020 ppm for residues of diclosulam in/on peanut nutmeats. Residues were nondetectable (<0.003 ppm) in/on all 22 samples of nutmeats treated at 1.4x. Diclosulam residues were also nondetectable (<0.003 ppm) in/on nut meats harvested from applications at exaggerated rates (5 3 and 8x). The proposed label includes a restriction against grazing treated areas or harvesting forage and hay from treated areas. As all peanut nutmeat samples from the RAC field trials and exaggerated rate trials showed residues of diclosulam <0.003 ppm (<LOD), no tolerances for residues of diclosulam in peanut processed commodities are required. No tolerance for residues in/on peanut hay is needed since the proposed label includes a restriction against grazing treated areas or harvesting forage and hay from treated areas.

D. International Residue Limits

There are no established or proposed Codex, Canadian or Mexican limits for residues of diclosulam in/on plant or animal commodities.

E. Rotational Crop Restrictions

The petitioner has proposed the following plantback restrictions for rotated crops: 4 months for wheat and barley; 6 months for oat and rye; 9 months for cotton, soybeans, and peanuts; 18 months for corn, rice, tobacco, and sorghum; and 30 months for all other crops due to phytotoxicity. EPA has determined that these plantback restrictions are adequate.

V. Conclusion

Therefore, the tolerance is established for residues of diclosulam in soybean seed and peanut nutmeat at 0.020 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300977 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 8, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300977, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.543 is added to read as follows:

§ 180.543 Diclosulam; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide diclosulam [*N*-(2,6-dichlorophenyl)-5-ethoxy-7-fluoro[1,2,4] triazolo[1,5-*c*]pyrimidine-2-sulfonamide] in or on the following raw agricultural commodities as follows:

Commodity	Parts per million
Peanut nutmeat	0.020
Soybean seed	0.020

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 00–5635 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45 and 97–21; FCC 00–65]

Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service amends a procedural rule regarding the time period during which the Commission must issue a written decision in response to a request for review of a decision issued by the Schools and Libraries Division of the Universal Service Administrative Company.

DATES: Effective March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Linda Chang, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission's Order in CC Docket Nos. 96–45 and 97–21 released on March 1, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW, Washington, DC, 20554.

1. In this Order, we amend a procedural rule regarding the time period during which the Commission must issue a written decision in response to a request for review of a decision issued by the Schools and Libraries Division of the Universal Service Administrative Company (USAC or Administrator). Section 54.724 of the Commission's rules provides that, when a request for review is properly before the Common Carrier Bureau (Bureau) or the Commission, a written decision must be issued within ninety days unless the time period for taking action on the request for review is extended. In this Order, we amend that rule to make clear that the Bureau may extend, for up to ninety days, the time period for taking action on a request for review of an Administrator's decision that is pending before the Bureau or the Commission pursuant to § 54.724 of the Commission's rules. We also clarify that the Commission may extend the time period for taking action on a pending request for review of an Administrator's decision that is before either the Bureau or the Commission, but the Commission is not limited to a maximum 90-day extension period. We believe this procedural amendment will facilitate our administrative processes. Accordingly, as set forth, we amend § 54.724 of the Commission's rules to clarify that the Bureau may extend, for up to ninety days, the time period for taking action on requests for review of the Administrator's decisions that are before either the Bureau or the Commission.

Ordering Clauses

2. The authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, this Order is adopted.

3. The authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, is revised as set forth.

4. This action is exempt from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. section 553, because it affects only rules of agency procedure or practice.

5. Because this action involves an internal procedural matter not affecting the substantive rights of any entity, the rule change set forth is effective immediately upon publication in the **Federal Register**.

List of Subjects 47 CFR Part 54

Universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Section 54.724 is revised to read as follows:

§ 54.724 Time periods for Commission approval of Administrator decisions.

(a) If the Common Carrier Bureau does not take action within ninety (90) days upon appeals that are properly before it, a decision issued by the Administrator shall be deemed approved. The Commission may extend the time period for taking action on a request for review of an Administrator decision. The Common Carrier Bureau also may extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days.

(b) The Commission shall issue a written decision in response to a request for review of an Administrator decision that involves novel questions of fact, law or policy within ninety (90) days. The Commission may extend the time period for taking action on the request for review of an Administrator decision. The Common Carrier Bureau also may extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days.

[FR Doc. 00–5479 Filed 3–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–264; FCC 00–12]

Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992; Horizontal Ownership Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration of stay.

SUMMARY: This document announces that, on its own motion, the Commission reconsiders the conditions under which it will lift its voluntarily-imposed stay of the horizontal ownership rules, 47 CFR 76.503, adopted on October 8, 1999.

DATES: 47 CFR 76.503 (a) through (f) as revised and stayed at 64 FR 67198 (Dec. 1, 1999) continue to be stayed until the U.S. Court of Appeals for the District of Columbia Circuit issues a decision upholding the constitutionality of Section 613(f)(1)(A) of the Federal Communications Act, as amended. The FCC will publish a document in the **Federal Register** announcing the action of the Court and the date affected parties must comply with the regulations.

FOR FURTHER INFORMATION CONTACT: Darryl Cooper at (202) 418–7200 or via Internet at *dacooper@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Commission's Order on Reconsideration* (Order) in MM Docket No. 92–264; FCC 00–12, adopted January 12, 2000, and released January 19, 2000. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554, or

may be purchased from the Commission's copy contractor, International Transcription Service ("ITS"), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via Internet at *http://www.fcc.gov/csb/*. For copies in alternative formats such as Braille, audio cassette or large print, please contact Sheila Ray at ITS.

Synopsis of Order on Reconsideration

1. On its own motion, the Commission reconsiders the conditions under which it will lift its voluntarily-imposed stay of the horizontal ownership rules, 47 CFR 76.503. These rules were adopted and stayed in part on October 8, 1999 at 64 FR 67198 (Dec. 1, 1999).

2. In the *Second Order on Reconsideration* in this proceeding, the Commission continued its stay of the effective date of the horizontal ownership rules pending a decision by the U.S. Court of Appeals for the District of Columbia Circuit on challenges to the horizontal ownership rules and Section 613(f)(1)(A) of the Communications Act, as amended, 47 U.S.C. 533(f)(1)(A). The Commission decided that parties exceeding the horizontal limit must come into compliance with the rules within 60 days of a judicial decision upholding the rules and the statute.

3. The statute was challenged in the U.S. District Court, and the rules were challenged in the U.S. Court of Appeals for the District of Columbia Circuit. In 1993, the district court held the statute unconstitutional. The district court also decided that, because "there is substantial ground for difference of opinion" as to the constitutionality of the underlying statute, it would stay its proceedings and the issuance of any relief to the plaintiffs pending appeal. In August 1996, the D.C. Circuit Court consolidated the appeal of the district court decision and the D.C. Circuit Court challenge. The D.C. Circuit Court held the consolidated proceedings in abeyance pending the Commission's decision on the petitions for reconsideration of the rules. Once the Commission issued the *Second Order on Reconsideration*, the D.C. Circuit Court lifted its stay on its consideration of the consolidated proceedings. The appeal is currently pending.

4. In the *Third Report and Order* in this proceeding, the Commission again declined to lift its stay of the horizontal ownership rules. In fact, the Commission, on its own motion, held that the horizontal ownership rules will become effective immediately upon the issuance of a decision upholding the rules and the statute, and that affected parties must come into compliance within 180 days after the court issues its mandate. The Commission reasoned that 180 days, rather than 60 days, was a more reasonable amount of time for affected parties to dispose of property necessary to come into compliance with the rules.

5. On November 2, 1999, the D.C. Circuit issued an order deconsolidating the challenge to the rules and the statute. The court allowed the challenge to the statute to proceed, but held the challenge to the rules in abeyance.

6. The Commission originally stayed its rules in deference to the district court's decision and to give the D.C. Circuit Court an opportunity to review that decision. Now that the challenge to the rules has been separated from the challenge to statute, it is no longer necessary to maintain the stay while the challenge to the rules remains in abeyance or otherwise under consideration by the court. Instead, the Commission holds that the horizontal ownership rules will become effective upon the issuance of a decision upholding the statute. Affected parties must come into compliance with the rules within 180 days following the issuance of that decision.

7. The Commission has decided to use the date on which the court decision issues, not the date on which the mandate issues, as the triggering event for affected parties to come into compliance with the rules. Thus, affected parties are expected to come into compliance with these rules within 180 days after the issuance of a court decision upholding the statute. The Commission finds that requiring affected parties to come into compliance with its rules within 180 after the issuance of a court decision provides more certainty to the public and affected parties. There is potentially a wide variance between the date a decision issues and the date the mandate issues. The Commission finds that the issuance date of the court decision is a superior benchmark for lifting the stay and requiring parties to come into compliance with the rules.

8. *Accordingly, it is Ordered* that the Commission's horizontal ownership rules are stayed until the U.S. Court of Appeals for the D.C. Circuit issues a decision upholding the constitutionality of Section 613(f)(1)(A) of the Act, as amended, 47 U.S.C. 533(f)(1)(A). Parties not in compliance with the rules on the date the U.S. Court of Appeals for the D.C. Circuit issues such a decision must come into compliance within 180 days.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5410 Filed 3–7–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235–7235–01; I.D. 030300A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial hook-and-line fishery for king mackerel in the exclusive economic zone (EEZ) in the Florida west coast subzone. This closure is necessary to protect the overfished Gulf group king mackerel resource.

DATES: Effective 12:01 a.m., local time, March 6, 2000, through June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on February 19, 1998 (63 FR 8353), NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the Florida west coast subzone of 1.17 million lb (0.53 million kg). That quota was further divided into two equal quotas of 585,000 lb (265,352 kg) for

vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*)).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined that the commercial quota of 585,000 lb (265,352 kg) for Gulf group king mackerel for vessels using hook-and-line gear in the Florida west coast subzone was reached on March 5, 2000. Accordingly, the commercial fishery for king mackerel for such vessels in the Florida west coast subzone is closed effective 12:01 a.m., local time, March 6, 2000, through June 30, 2000, the end of the fishing year.

The Florida west coast subzone extends from 87°31'06" W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4' N. lat. (due east of the Miami-Dade/Monroe County, FL, boundary) through March 31, 2000; and (2) 25°48' N. lat. (due west the Monroe/Collier County, FL, boundary) from April 1, 2000, through October 31, 2000.

NMFS previously determined that the commercial quota for king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on August 25, 1999 (64 FR 46596, August 26, 1999). Subsequently, NMFS determined that the commercial quota of king mackerel for vessels using run-around gillnets in the Florida west coast subzone of the eastern zone of the Gulf of Mexico was reached and closed that segment of the fishery on February 15, 2000 (65 FR 8067; February 17, 2000). Thus, with this closure, all commercial fisheries for Gulf group king mackerel in the EEZ are closed from the U.S./Mexico border through the Florida west coast subzone through June 30, 2000.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. Note, however, that the bag limit for an operator or crew member of a charter vessel or headboat is zero. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The closure must be implemented immediately to prevent an overrun of the commercial quota (50 CFR 622.42(c)(1)) of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Overruns could potentially lead to further overfishing and unnecessary delays in rebuilding this overfished resource. Any delay in implementing this action would be impractical and contrary to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5618 Filed 3–3–00; 4:47 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 030100D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the amount of the Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 4, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area was established as 24,538 metric tons (mt), by the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 24,238 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the 2000 harvest specifications for groundfish in the GOA. It must be implemented immediately to prevent overharvesting the amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 2, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5592 Filed 3–3–00; 1:15 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 030200B]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock sole/Flathead sole/"Other flatfish" Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal apportionment of the 2000 Pacific halibut bycatch allowance of halibut specified for the trawl rock sole/flathead sole/"other flatfish" fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 4, 2000, until 1200 hrs, A.l.t., April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The halibut bycatch mortality first seasonal apportionment specified for the BSAI trawl rock sole/flathead sole/"other flatfish" fishery category, which is defined at § 679.21(e)(3)(iv)(B)(*2*), was established as 488 metric tons by the Final 2000 Harvest Specifications of Groundfish (65 FR 8282, February 18, 2000).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal apportionment of the 2000 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the first seasonal apportionment of the 2000 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to the public interest. The fleet will soon take the apportionment. Further delay would only result in the first seasonal apportionment of the 2000 halibut bycatch allowance being exceeded. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5620 Filed 3–3–00; 4:47 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 030200A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the amount of the Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 4, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the Pacific cod TAC apportioned to

vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area was established as 14,850 metric tons (mt), by the Final 2000 Harvest Specifications of Groundfish for the GOA (8298 FR 65, February 18, 2000).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 14,350 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the final 2000 harvest specifications for groundfish in the GOA. It must be implemented immediately to prevent overharvesting the amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5619 Filed 3–3–00; 4:47 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 46
Wednesday, March 8, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–99–003]

RIN 0581–AB57

Revision of User Fees for 2000 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to maintain user fees for cotton producers for 2000 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 1999. This is in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1999 user fee for this classification service was $1.35 per bale. This proposal would maintain the fee for the 2000 crop at $1.35 per bale. The proposed fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

DATES: Comments must be received by April 7, 2000.

ADDRESSES: Comments and inquiries should be addressed to: Cotton Programs, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Rm. 2641–South Building, 14th & Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, Cotton Program, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, DC 20090–6456. 202–720–2145.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and it has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Continuing the user fee at the 1999 crop level will not significantly affect small businesses as defined under the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services (the 1999 user fee for classification services was $1.35 per bale; the fee for the 2000 crop would be maintained at $1.35 per bale; the 2000 crop is estimated at 17,945,000 bales);

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 1999 crop, 16,409,650 bales were produced, and virtually all of them were submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 1998 crop of 65.3 cents per pound, 500 pound bales of cotton are worth an average of $326.50 each. The proposed user fee for classification services, $1.35 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 2000, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.35 per bale during the 1999 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision.

This proposed rule establishes the user fee charged to producers for HVI classification at $1.35 per bale during the 2000 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1999. Therefore, the 2000 producer's user fee for classification service is based on the 1999 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 1999 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.14 per bale. An increase of one and thirty-nine hundredths percent, or three cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.14 would result in a 2000 base fee of $2.17 per bale. The formula in the Act

provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2000 crop is estimated at 17,855,275 bales. The 2000 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 33 cents per bale reduction and was subtracted from the 2000 base fee of $2.17 per bale, resulting in a fee of $1.84 per bale.

With a fee of $1.84 per bale, the projected operating reserve would be 49.77 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.84 must be reduced by 49 cents per bale, to $1.35 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 2000 season fee at $1.35 per bale.

Accordingly, § 28.909, paragraph (b) would reflect the continuation of the HVI classification fee at $1.35 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents requesting classification data provided on computer punched cards will continue to be charged the fee of 10 cents per card in § 28.910(a) to reflect the costs of providing this service. Requests for punch card classification data represented less than 1.0 percent of the total bales classed from the 1999 crop, down from 2.6 percent in 1997. Growers or their designated agents receiving classification data by methods other than computer punched cards would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at five cents per bale, and it would be applicable even if the same method was requested. However, if computer punched cards were requested, a fee of ten cents per card would be charged. The fee in § 28.910(b) for an owner receiving classification data from the central database would remain at five cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 would be maintained at $1.35 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

A thirty-day comment period is provided for public comments. This period is appropriate because it is anticipated that the proposed changes, if adopted, would be made effective July 1, 2000, as provided by the Cotton Statistics and Estimates Act.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is proposed to be amended as follows:

PART 28—[Amended]

1. The authority citation for 7 CFR Part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 471—476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.35 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.35 per bale.

* * * * *

Dated: March 6, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–5752 Filed 3–7–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–00–002]

2000 Proposed Amendment to Cotton Board Rules and Regulations Adjusting Supplemental Assessment on Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to amend the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. This adjustment is required by this regulation on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton.

DATES: Comments must be received on or before April 7, 2000.

ADDRESSES: Comments may be mailed to USDA, AMS, Cotton Program, STOP 0224, 1400 Independence Avenue, SW, Washington, DC 20250–0224. All comments received will be available for public inspection at this address during the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, (202) 720–2259.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be "not significant" for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the

order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

There are an estimated 10,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This proposed rule would affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This proposed rule would lower the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment would be lowered, the decrease is small and will not significantly affect small businesses.

The current assessment on imported cotton is $0.011397 per kilogram of imported cotton. The proposed assessment is $0.009833, a decrease of $0.001564 or a 13.72 percent decrease from the current assessment. From January through December 1999 approximately $23 million was collected at the $0.011397 per kilogram rate. Should the volume of cotton products imported into the U.S. remain at the same level in 2000, one could expect the decreased assessment to generate approximately $19.8 million or a 13.72 percent decrease from 1999.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) the assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991 and the amended Order was published in the **Federal Register** on December 10, 1991, (56 FR 64470). Proposed rules implementing the amended Order were published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This proposed rule would decrease the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510 (b)(2)). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are the second part of a two-part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms of cotton.

Supplemental assessments are levied at a rate of five-tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency has adopted the practice of assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is done so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products remain similar. The source for the average price statistic is "Agricultural Prices", a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton in the prior calendar year.

The current value of imported cotton as published in the **Federal Register** (64 FR 30236) on June 7, 1999, for the purpose of calculating supplemental assessments on imported cotton is $1.3977 per kilogram. This number was calculated using the annual weighted average price received by farmers for Upland cotton during the calendar year 1998 which was $0.634 per pound and multiplying by the conversion factor 2.2046. Using the Average Weighted Price Received by U.S. farmers for Upland cotton for the calendar year 1999, which is $0.492 per pound, the new value of imported cotton is $1.0847 per kilogram. The proposed value is $0.313 per kilogram less than the previous value.

An example of the complete assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One Dollar Per Bale Assessment Converted to Kilograms

A 500 pound bale equals 226.8 kg. (500×.453597).

$1 per bale assessment equals $0.002000 per pound (1÷500) or $0.004409 per kg. (1÷226.8)

Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms.

The 1999 calendar year weighted average price received by producers for Upland cotton is $0.492 per pound or $1.0847 per kg. (0.492 x 2.2046) = 1.0847.

Five tenths of one percent of the average price in kg. equals $0.005424 per kg. (1.0847 x .005).

Total Assessment

The total assessment per kilogram of raw cotton in obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.005424 per kg. which equals $0.009833 per kg.

The current assessment on imported cotton is $0.011397 per kilogram of imported cotton. The proposed assessment is $0.009833, a decrease of $0.001564 per kilogram. This decrease reflects the decrease in the Average Weighted Price of Upland Cotton Received by U.S. Farmers during the period January through December 1999.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the

right hand column of the Import Assessment Table 1205.510 (b)(3) are a result of such a calculation, the figures in this table have been revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

A thirty day comment period is provided to comment on the changes to the Cotton Board Rules and Regulations proposed herein. This period is deemed appropriate because this proposal would lower the assessments paid by importers under the Cotton Research and Promotion Order. Accordingly, the change proposed in this rule, if adopted, should be implemented as soon as possible.

List of Subjects 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1205 be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $0.9833 per kilogram.

(3) * * *

(ii) * * *

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5201000500	0	0.9833
5201001200	0	0.9833
5201001400	0	0.9833
5201001800	0	0.9833
5201002200	0	0.9833
5201002400	0	0.9833
5201002800	0	0.9833
5201003400	0	0.9833
5201003800	0	0.9833
5204110000	1.1111	1.0925
5204200000	1.1111	1.0925
5205111000	1.1111	1.0925
5205112000	1.1111	1.0925
5205121000	1.1111	1.0925
5205122000	1.1111	1.0925
5205131000	1.1111	1.0925
5205132000	1.1111	1.0925
5205141000	1.1111	1.0925
5205210020	1.1111	1.0925
5205210090	1.1111	1.0925
5205220020	1.1111	1.0925
5205220090	1.1111	1.0925
5205230020	1.1111	1.0925
5205230090	1.1111	1.0925
5205240020	1.1111	1.0925
5205240090	1.1111	1.0925
5205310000	1.1111	1.0925
5205320000	1.1111	1.0925
5205330000	1.1111	1.0925
5205340000	1.1111	1.0925
5205410020	1.1111	1.0925
5205410090	1.1111	1.0925
5205420020	1.1111	1.0925
5205420090	1.1111	1.0925
5205440020	1.1111	1.0925
5205440090	1.1111	1.0925
5206120000	0.5556	0.5463
5206130000	0.5556	0.5463
5206140000	0.5556	0.5463
5206220000	0.5556	0.5463
5206230000	0.5556	0.5463
5206240000	0.5556	0.5463
5206310000	0.5556	0.5463
5207100000	1.1111	1.0925
5207900000	0.5556	0.5463
5208112020	1.1455	1.1264
5208112040	1.1455	1.1264
5208112090	1.1455	1.1264
5208114020	1.1455	1.1264
5208114060	1.1455	1.1264
5208114090	1.1455	1.1264
5208118090	1.1455	1.1264
5208124020	1.1455	1.1264
5208124040	1.1455	1.1264
5208124090	1.1455	1.1264
5208126020	1.1455	1.1264
5208126040	1.1455	1.1264
5208126060	1.1455	1.1264
5208126090	1.1455	1.1264
5208128020	1.1455	1.1264
5208128090	1.1455	1.1264
5208130000	1.1455	1.1264
5208192020	1.1455	1.1264
5208192090	1.1455	1.1264
5208194020	1.1455	1.1264
5208194090	1.1455	1.1264
5208196020	1.1455	1.1264
5208196090	1.1455	1.1264
5208224040	1.1455	1.1264
5208224090	1.1455	1.1264
5208226020	1.1455	1.1264
5208226060	1.1455	1.1264
5208228020	1.1455	1.1264
5208230000	1.1455	1.1264
5208292020	1.1455	1.1264
5208292090	1.1455	1.1264
5208294090	1.1455	1.1264
5208296090	1.1455	1.1264
5208298020	1.1455	1.1264
5208312000	1.1455	1.1264
5208321000	1.1455	1.1264
5208323020	1.1455	1.1264
5208323040	1.1455	1.1264
5208323090	1.1455	1.1264
5208324020	1.1455	1.1264
5208324040	1.1455	1.1264
5208325020	1.1455	1.1264
5208330000	1.1455	1.1264
5208392020	1.1455	1.1264
5208392090	1.1455	1.1264
5208394090	1.1455	1.1264
5208396090	1.1455	1.1264
5208398020	1.1455	1.1264
5208412000	1.1455	1.1264
5208416000	1.1455	1.1264
5208418000	1.1455	1.1264
5208421000	1.1455	1.1264
5208423000	1.1455	1.1264
5208424000	1.1455	1.1264
5208425000	1.1455	1.1264
5208430000	1.1455	1.1264
5208492000	1.1455	1.1264
5208494020	1.1455	1.1264
5208494090	1.1455	1.1264
5208496010	1.1455	1.1264
5208496090	1.1455	1.1264
5208498090	1.1455	1.1264
5208512000	1.1455	1.1264
5208516060	1.1455	1.1264
5208518090	1.1455	1.1264
5208523020	1.1455	1.1264
5208523045	1.1455	1.1264
5208523090	1.1455	1.1264
5208524020	1.1455	1.1264
5208524045	1.1455	1.1264
5208524065	1.1455	1.1264
5208525020	1.1455	1.1264
5208530000	1.1455	1.1264
5208592025	1.1455	1.1264
5208592095	1.1455	1.1264
5208594090	1.1455	1.1264
5208596090	1.1455	1.1264
5209110020	1.1455	1.1264
5209110035	1.1455	1.1264
5209110090	1.1455	1.1264
5209120020	1.1455	1.1264
5209120040	1.1455	1.1264
5209190020	1.1455	1.1264
5209190040	1.1455	1.1264
5209190060	1.1455	1.1264
5209190090	1.1455	1.1264
5209210090	1.1455	1.1264
5209220020	1.1455	1.1264
5209220040	1.1455	1.1264
5209290040	1.1455	1.1264
5209290090	1.1455	1.1264
5209313000	1.1455	1.1264
5209316020	1.1455	1.1264
5209316035	1.1455	1.1264
5209316050	1.1455	1.1264
5209316090	1.1455	1.1264
5209320020	1.1455	1.1264
5209320040	1.1455	1.1264
5209390020	1.1455	1.1264
5209390040	1.1455	1.1264
5209390060	1.1455	1.1264

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5209390080	1.1455	1.1264
5209390090	1.1455	1.1264
5209413000	1.1455	1.1264
5209416020	1.1455	1.1264
5209416040	1.1455	1.1264
5209420020	1.0309	1.0137
5209420040	1.0309	1.0137
5209430030	1.1455	1.1264
5209430050	1.1455	1.1264
5209490020	1.1455	1.1264
5209490090	1.1455	1.1264
5209516035	1.1455	1.1264
5209516050	1.1455	1.1264
5209520020	1.1455	1.1264
5209590025	1.1455	1.1264
5209590040	1.1455	1.1264
5209590090	1.1455	1.1264
5210114020	0.6873	0.6758
5210114040	0.6873	0.6758
5210116020	0.6873	0.6758
5210116040	0.6873	0.6758
5210116060	0.6873	0.6758
5210118020	0.6873	0.6758
5210120000	0.6873	0.6758
5210192090	0.6873	0.6758
5210214040	0.6873	0.6758
5210216020	0.6873	0.6758
5210216060	0.6873	0.6758
5210218020	0.6873	0.6758
5210314020	0.6873	0.6758
5210314040	0.6873	0.6758
5210316020	0.6873	0.6758
5210318020	0.6873	0.6758
5210414000	0.6873	0.6758
5210416000	0.6873	0.6758
5210418000	0.6873	0.6758
5210498090	0.6873	0.6758
5210514040	0.6873	0.6758
5210516020	0.6873	0.6758
5210516040	0.6873	0.6758
5210516060	0.6873	0.6758
5211110090	0.6873	0.6758
5211120020	0.6873	0.6758
5211190020	0.6873	0.6758
5211190060	0.6873	0.6758
5211210025	0.6873	0.6758
5211210035	0.4165	0.4095
5211210050	0.6873	0.6758
5211290090	0.6873	0.6758
5211320020	0.6873	0.6758
5211390040	0.6873	0.6758
5211390060	0.6873	0.6758
5211490020	0.6873	0.6758
5211490090	0.6873	0.6758
5211590025	0.6873	0.6758
5212146090	0.9164	0.9011
5212156020	0.9164	0.9011
5212216090	0.9164	0.9011
5509530030	0.5556	0.5463
5509530060	0.5556	0.5463
5513110020	0.4009	0.3942
5513110040	0.4009	0.3942
5513110060	0.4009	0.3942
5513110090	0.4009	0.3942
5513120000	0.4009	0.3942
5513130020	0.4009	0.3942
5513210020	0.4009	0.3942
5513310000	0.4009	0.3942
5514120020	0.4009	0.3942

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5516420060	0.4009	0.3942
5516910060	0.4009	0.3942
5516930090	0.4009	0.3942
5601210010	1.1455	1.1264
5601210090	1.1455	1.1264
5601300000	1.1455	1.1264
5602109090	0.5727	0.5631
5602290000	1.1455	1.1264
5602906000	0.526	0.5172
5604900000	0.5556	0.5463
5607902000	0.8889	0.8741
5608901000	1.1111	1.0925
5608902300	1.1111	1.0925
5609001000	1.1111	1.0925
5609004000	0.5556	0.5463
5701104000	0.0556	0.055
5701109000	0.1111	0.1092
5701901010	1.0444	1.027
5702109020	1.1	1.0816
5702312000	0.0778	0.077
5702411000	0.0722	0.071
5702412000	0.0778	0.077
5702421000	0.0778	0.077
5702913000	0.0889	0.087
5702991010	1.1111	1.0925
5702991090	1.1111	1.0925
5703900000	0.4489	0.4414
5801210000	1.1455	1.1264
5801230000	1.1455	1.1264
5801250010	1.1455	1.1264
5801250020	1.1455	1.1264
5801260020	1.1455	1.1264
5802190000	1.1455	1.1264
5802300030	0.5727	0.5631
5804291000	1.1455	1.1264
5806200010	0.3534	0.3475
5806200090	0.3534	0.3475
5806310000	1.1455	1.1264
5806400000	0.4296	0.4224
5808107000	0.5727	0.5631
5808900010	0.5727	0.5631
5811002000	1.1455	1.1264
6001106000	1.1455	1.1264
6001210000	0.8591	0.8448
6001220000	0.2864	0.2816
6001910010	0.8591	0.8448
6001910020	0.8591	0.8448
6001920020	0.2864	0.2816
6001920030	0.2864	0.2816
6001920040	0.2864	0.2816
6002203000	0.8681	0.8536
6002206000	0.2894	0.2846
6002420000	0.8681	0.8536
6002430010	0.2894	0.2846
6002430080	0.2894	0.2846
6002921000	1.1574	1.1381
6002930040	0.1157	0.1138
6002930080	0.1157	0.1138
6101200010	1.0094	0.9925
6101200020	1.0094	0.9925
6102200010	1.0094	0.9925
6102200020	1.0094	0.9925
6103421020	0.8806	0.8659
6103421040	0.8806	0.8659
6103421050	0.8806	0.8659
6103421070	0.8806	0.8659
6103431520	0.2516	0.2474
6103431540	0.2516	0.2474
6103431550	0.2516	0.2474

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6103431570	0.2516	0.2474
6104220040	0.9002	0.8852
6104220060	0.9002	0.8852
6104320000	0.9207	0.9053
6104420010	0.9002	0.8852
6104420020	0.9002	0.8852
6104520010	0.9312	0.9156
6104520020	0.9312	0.9156
6104622006	0.8806	0.8659
6104622011	0.8806	0.8659
6104622016	0.8806	0.8659
6104622021	0.8806	0.8659
6104622026	0.8806	0.8659
6104622028	0.8806	0.8659
6104622030	0.8806	0.8659
6104622060	0.8806	0.8659
6104632006	0.3774	0.3711
6104632011	0.3774	0.3711
6104632026	0.3774	0.3711
6104632028	0.3774	0.3711
6104632030	0.3774	0.3711
6104632060	0.3774	0.3711
6104692030	0.3858	0.3794
6105100010	0.985	0.9686
6105100020	0.985	0.9686
6105100030	0.985	0.9686
6105202010	0.3078	0.3027
6105202030	0.3078	0.3027
6106100010	0.985	0.9686
6106100020	0.985	0.9686
6106100030	0.985	0.9686
6106202010	0.3078	0.3027
6106202030	0.3078	0.3027
6107110010	1.1322	1.1133
6107110020	1.1322	1.1133
6107120010	0.5032	0.4948
6107210010	0.8806	0.8659
6107220015	0.3774	0.3711
6107220025	0.3774	0.3711
6107910040	1.2581	1.2371
6108210010	1.2445	1.2237
6108210020	1.2445	1.2237
6108310010	1.1201	1.1014
6108310020	1.1201	1.1014
6108320010	0.2489	0.2447
6108320015	0.2489	0.2447
6108320025	0.2489	0.2447
6108910005	1.2445	1.2237
6108910015	1.2445	1.2237
6108910025	1.2445	1.2237
6108910030	1.2445	1.2237
6108920030	0.2489	0.2447
6109100005	0.9956	0.979
6109100007	0.9956	0.979
6109100009	0.9956	0.979
6109100012	0.9956	0.979
6109100014	0.9956	0.979
6109100018	0.9956	0.979
6109100023	0.9956	0.979
6109100027	0.9956	0.979
6109100037	0.9956	0.979
6109100040	0.9956	0.979
6109100045	0.9956	0.979
6109100060	0.9956	0.979
6109100065	0.9956	0.979
6109100070	0.9956	0.979
6109901007	0.3111	0.3059
6109901009	0.3111	0.3059
6109901049	0.3111	0.3059

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6109901050	0.3111	0.3059
6109901060	0.3111	0.3059
6109901065	0.3111	0.3059
6109901090	0.3111	0.3059
6110202005	1.1837	1.1639
6110202010	1.1837	1.1639
6110202015	1.1837	1.1639
6110202020	1.1837	1.1639
6110202025	1.1837	1.1639
6110202030	1.1837	1.1639
6110202035	1.1837	1.1639
6110202040	1.1574	1.1381
6110202045	1.1574	1.1381
6110202065	1.1574	1.1381
6110202075	1.1574	1.1381
6110909022	0.263	0.2586
6110909024	0.263	0.2586
6110909030	0.3946	0.388
6110909040	0.263	0.2586
6110909042	0.263	0.2586
6111201000	1.2581	1.2371
6111202000	1.2581	1.2371
6111203000	1.0064	0.9896
6111205000	1.0064	0.9896
6111206010	1.0064	0.9896
6111206020	1.0064	0.9896
6111206030	1.0064	0.9896
6111206040	1.0064	0.9896
6111305020	0.2516	0.2474
6111305040	0.2516	0.2474
6112110050	0.7548	0.7422
6112120010	0.2516	0.2474
6112120030	0.2516	0.2474
6112120040	0.2516	0.2474
6112120050	0.2516	0.2474
6112120060	0.2516	0.2474
6112390010	1.1322	1.1133
6112490010	0.9435	0.9277
6114200005	0.9002	0.8852
6114200010	0.9002	0.8852
6114200015	0.9002	0.8852
6114200020	1.286	1.2645
6114200040	0.9002	0.8852
6114200046	0.9002	0.8852
6114200052	0.9002	0.8852
6114200060	0.9002	0.8852
6114301010	0.2572	0.2529
6114301020	0.2572	0.2529
6114303030	0.2572	0.2529
6115198010	1.0417	1.0243
6115929000	1.0417	1.0243
6115936020	0.2315	0.2276
6116101300	0.3655	0.3594
6116101720	0.8528	0.8386
6116926420	1.0965	1.0782
6116926430	1.2183	1.198
6116926440	1.0965	1.0782
6116928800	1.0965	1.0782
6117809510	0.9747	0.9584
6117809540	0.3655	0.3594
6201121000	0.948	0.9322
6201122010	0.8953	0.8803
6201122050	0.6847	0.6733
6201122060	0.6847	0.6733
6201134030	0.2633	0.2589
6201921000	0.9267	0.9112
6201921500	1.1583	1.139
6201922010	1.0296	1.0124
6201922021	1.2871	1.2656

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6201922031	1.2871	1.2656
6201922041	1.2871	1.2656
6201922051	1.0296	1.0124
6201922061	1.0296	1.0124
6201931000	0.3089	0.3037
6201933511	0.2574	0.2531
6201933521	0.2574	0.2531
6201999060	0.2574	0.2531
6202121000	0.9372	0.9215
6202122010	1.1064	1.0879
6202122025	1.3017	1.28
6202122050	0.8461	0.832
6202122060	0.8461	0.832
6202134005	0.2664	0.262
6202134020	0.333	0.3274
6202921000	1.0413	1.0239
6202921500	1.0413	1.0239
6202922026	1.3017	1.28
6202922061	1.0413	1.0239
6202922071	1.0413	1.0239
6202931000	0.3124	0.3072
6202935011	0.2603	0.256
6202935021	0.2603	0.256
6203122010	0.1302	0.128
6203221000	1.3017	1.28
6203322010	1.2366	1.2159
6203322040	1.2366	1.2159
6203332010	0.1302	0.128
6203392010	1.1715	1.1519
6203399060	0.2603	0.256
6203422010	0.9961	0.9795
6203422025	0.9961	0.9795
6203422050	0.9961	0.9795
6203422090	0.9961	0.9795
6203424005	1.2451	1.2243
6203424010	1.2451	1.2243
6203424015	0.9961	0.9795
6203424020	1.2451	1.2243
6203424025	1.2451	1.2243
6203424030	1.2451	1.2243
6203424035	1.2451	1.2243
6203424040	0.9961	0.9795
6203424045	0.9961	0.9795
6203424050	0.9238	0.9084
6203424055	0.9238	0.9084
6203424060	0.9238	0.9084
6203431500	0.1245	0.1224
6203434010	0.1232	0.1211
6203434020	0.1232	0.1211
6203434030	0.1232	0.1211
6203434040	0.1232	0.1211
6203498045	0.249	0.2448
6204132010	0.1302	0.128
6204192000	0.1302	0.128
6204198090	0.2603	0.256
6204221000	1.3017	1.28
6204223030	1.0413	1.0239
6204223040	1.0413	1.0239
6204223050	1.0413	1.0239
6204223060	1.0413	1.0239
6204223065	1.0413	1.0239
6204292040	0.3254	0.32
6204322010	1.2366	1.2159
6204322030	1.0413	1.0239
6204322040	1.0413	1.0239
6204423010	1.2728	1.2515
6204423030	0.9546	0.9387
6204423040	0.9546	0.9387
6204423050	0.9546	0.9387

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6204423060	0.9546	0.9387
6204522010	1.2654	1.2443
6204522030	1.2654	1.2443
6204522040	1.2654	1.2443
6204522070	1.0656	1.0478
6204522080	1.0656	1.0478
6204533010	0.2664	0.262
6204594060	0.2664	0.262
6204622010	0.9961	0.9795
6204622025	0.9961	0.9795
6204622050	0.9961	0.9795
6204624005	1.2451	1.2243
6204624010	1.2451	1.2243
6204624020	0.9961	0.9795
6204624025	1.2451	1.2243
6204624030	1.2451	1.2243
6204624035	1.2451	1.2243
6204624040	1.2451	1.2243
6204624045	0.9961	0.9795
6204624050	0.9961	0.9795
6204624055	0.9854	0.9689
6204624060	0.9854	0.9689
6204624065	0.9854	0.9689
6204633510	0.2546	0.2503
6204633530	0.2546	0.2503
6204633532	0.2437	0.2396
6204633540	0.2437	0.2396
6204692510	0.249	0.2448
6204692540	0.2437	0.2396
6204699044	0.249	0.2448
6204699046	0.249	0.2448
6204699050	0.249	0.2448
6205202015	0.9961	0.9795
6205202020	0.9961	0.9795
6205202025	0.9961	0.9795
6205202030	0.9961	0.9795
6205202035	1.1206	1.1019
6205202046	0.9961	0.9795
6205202050	0.9961	0.9795
6205202060	0.9961	0.9795
6205202065	0.9961	0.9795
6205202070	0.9961	0.9795
6205202075	0.9961	0.9795
6205302010	0.3113	0.3061
6205302030	0.3113	0.3061
6205302040	0.3113	0.3061
6205302050	0.3113	0.3061
6205302070	0.3113	0.3061
6205302080	0.3113	0.3061
6206100040	0.1245	0.1224
6206303010	0.9961	0.9795
6206303020	0.9961	0.9795
6206303030	0.9961	0.9795
6206303040	0.9961	0.9795
6206303050	0.9961	0.9795
6206303060	0.9961	0.9795
6206403010	0.3113	0.3061
6206403030	0.3113	0.3061
6206900040	0.249	0.2448
6207110000	1.0852	1.0671
6207199010	0.3617	0.3557
6207210010	1.1085	1.09
6207210030	1.1085	1.09
6207220000	0.3695	0.3633
6207911000	1.1455	1.1264
6207913010	1.1455	1.1264
6207913020	1.1455	1.1264
6208210010	1.0583	1.0406
6208210020	1.0583	1.0406

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6208220000	0.1245	0.1224
6208911010	1.1455	1.1264
6208911020	1.1455	1.1264
6208913010	1.1455	1.1264
6209201000	1.1577	1.1384
6209203000	0.9749	0.9586
6209205030	0.9749	0.9586
6209205035	0.9749	0.9586
6209205040	1.2186	1.1982
6209205045	0.9749	0.9586
6209205050	0.9749	0.9586
6209303020	0.2463	0.2422
6209303040	0.2463	0.2422
6210109010	0.2291	0.2253
6210403000	0.0391	0.038
6210405020	0.4556	0.448
6211111010	0.1273	0.1252
6211111020	0.1273	0.1252
6211118010	1.1455	1.1264
6211118020	1.1455	1.1264
6211320007	0.8461	0.832
6211320010	1.0413	1.0239
6211320015	1.0413	1.0239
6211320030	0.9763	0.96
6211320060	0.9763	0.96
6211320070	0.9763	0.96
6211330010	0.3254	0.032
6211330030	0.3905	0.384
6211330035	0.3905	0.384
6211330040	0.3905	0.384
6211420010	1.0413	1.0239
6211420020	1.0413	1.0239
6211420025	1.1715	1.1519
6211420060	1.0413	1.0239
6211420070	1.1715	1.1519
6211430010	0.2603	0.256
6211430030	0.2603	0.256
6211430040	0.2603	0.256
6211430050	0.2603	0.256
6211430060	0.2603	0.256
6211430066	0.2603	0.256
6212105020	0.2412	0.2372
6212109010	0.9646	0.9485
6212109020	0.2412	0.2372
6212200020	0.3014	0.2964
6212900030	0.1929	0.1897
6213201000	1.1809	1.1612
6213202000	1.0628	1.0451
6213901000	0.4724	0.4645
6214900010	0.9043	0.8892
6216000800	0.2351	0.2312
6216001720	0.6752	0.6639
6216003800	1.2058	1.1857
6216004100	1.2058	1.1857
6217109510	1.0182	1.0012
6217109530	0.2546	0.2503
6301300010	0.8766	0.862
6301300020	0.8766	0.862
6302100005	1.1689	1.1494
6302100008	1.1689	1.1494
6302100015	1.1689	1.1494
6302215010	0.8182	0.8045
6302215020	0.8182	0.8045
6302217010	1.1689	1.1494
6302217020	1.1689	1.1494
6302217050	1.1689	1.1494
6302219010	0.8182	0.8045
6302219020	0.8182	0.8045
6302219050	0.8182	0.8045

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6302222010	0.4091	0.4023
6302222020	0.4091	0.4023
6302313010	0.8182	0.8045
6302313050	1.1689	1.1494
6302315050	0.8182	0.8045
6302317010	1.1689	1.1494
6302317020	1.1689	1.1494
6302317040	1.1689	1.1494
6302317050	1.1689	1.1494
6302319010	0.8182	0.8045
6302319040	0.8182	0.8045
6302319050	0.8182	0.8045
6302322020	0.4091	0.4023
6302322040	0.4091	0.4023
6302402010	0.9935	0.9769
6302511000	0.5844	0.5746
6302512000	0.8766	0.862
6302513000	0.5844	0.5746
6302514000	0.8182	0.8045
6302600010	1.1689	1.1494
6302600020	1.052	1.0344
6302600030	1.052	1.0344
6302910005	1.052	1.0344
6302910015	1.1689	1.1494
6302910025	1.052	1.0344
6302910035	1.052	1.0344
6302910045	1.052	1.0344
6302910050	1.052	1.0344
6302910060	1.052	1.0344
6303110000	0.9448	0.929
6303910000	0.6429	0.6322
6304111000	1.0629	1.0451
6304190500	1.052	1.0344
6304191000	1.1689	1.1494
6304191500	0.4091	0.4023
6304192000	0.4091	0.4023
6304910020	0.9351	0.9195
6304920000	0.9351	0.9195
6505901540	0.181	0.178
6505902060	0.9935	0.9769
6505902545	0.5844	0.5746

* * * * *

Dated: March 3, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–5611 Filed 3–7–00; 8:45 am]

BILLING CODE 3410–02–P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1306, 1307 and 1309

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Proposed rule; notice of hearing.

SUMMARY: The Northeast Dairy Compact Commission proposes to amend the over-order price regulation to establish a supply management program. The proposed program is an assessment/refund plan under which the Commission would withhold $.05 cents from the producer price from each Compact monthly pool. At the end of the Commission's fiscal (calendar) year, the Commission would refund the withheld funds to compact eligible producers who had increased production at a rate of one percent or less, as compared to the prior calendar year's production. One-half of the assessed funds would be distributed to all eligible producers at a flat rate refund amount and one-half would be distributed based on the total volume of milk produced for the year, up to a maximum per hundredweight refund of $12,000.

DATES: A public hearing will be held on April 5, 2000 to commence at 1:00 p.m. Sworn and notarized written testimony, comments and exhibits may be submitted until 5:00 p.m. on April 19, 2000.

ADDRESSES: The public hearing will be held at the Wayfarer Inn, 121 S. River Road, U.S. Route 3, Bedford, New Hampshire. Mail, or deliver, sworn and notarized testimony, comments and exhibits to: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission ("Commission") was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact. Congressional consent to the Compact was extended in Pub. L. 106–113, 115 Stat. 1501, November 29, 1999.

Pursuant to its rulemaking authority under Article V, Section 11 of the

Compact, the Commission concluded an informal rulemaking process and voted to adopt a compact over-order price regulation on May 30, 1997.[1] The Commission subsequently amended and extended the compact over-order price regulation.[2] In 1998, the Commission further amended specific provisions of the over-order price regulation.[3] The current compact over-order price regulation is codified at 7 CFR Chapter XIII.

On November 27, 1998, the Commission issued a notice of proposed rulemaking proceedings on several subjects and issues, including whether additional supply management policies and provisions should be incorporated into the over-order price regulation.[4] The Commission held a public hearing to receive testimony on December 11, 1998 in Boxborough, Massachusetts and comments were received until 5:00 p.m. on December 31, 1998. The Commission issued a notice of proposed rulemaking on April 19, 1999[5], in which a specific assessment and refund program was proposed. The Commission held a public hearing on May 5, 1999 in Concord, New Hampshire and received comments until May 19, 1999. The Commission subsequently reopened the rulemaking and proposed a base/excess plan, in addition to an assessment/refund plan. Notice of the supplemental proposed rulemaking proceedings was issued on June 21, 1999.[6] The Commission held public hearings on July 7, 1999 in West Springfield, Massachusetts and August 4, 1999 in White River Junction, Vermont. The Commission received written comments through August 18, 1999.

At its deliberative meeting on February 2, 2000, the Commission decided to conclude those proceedings. At that meeting, the Commission referred the supply management issue to its Committee on Regulations and Rulemaking for further study. The Committee was asked to report back to the full Commission no later than the March 1, 2000 meeting with recommendations for addressing supply management and the requirement in Article IV, Section 9(f) of the Compact. That provision requires the Commission, when establishing a compact over-order price, to "take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk."

Since promulgation of the Compact Over-order Price Regulation in 1997, the Commission has closely monitored milk production levels in New England. One of the main goals in initially promulgating the Over-order Price Regulation was to at least stabilize the dairy industry supplying the New England consumer milk markets and to increase the local supply of milk.[7]

Based on the oral testimony and written comments and exhibits received in the December 1998 subjects and issues rulemaking proceeding, and the May, July and August 1999 public hearings and proposed rulemaking proceedings, the Commission proposes to implement a supply management program through an assessment and refund payment to producers who maintain their milk production within one percent of the prior year's production level. The proposed program is described in detail below.

II. Proposed Supply Management Program

The proposed supply management program is designed to meet the Commission's responsibilities under Article IV, Section 9(f) of the Compact. That provision provides that "[w]hen establishing a compact over-order price, the commission shall take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk." The proposed supply management program is relatively straightforward to administer and implement and therefore would be a feasible method of addressing supply management. The proposed supply management program is necessary to ensure that the compact over-order price does not create an incentive for producers to increase milk production, as required by section 9(f) of the Compact.

Table 1 shows the total volume of milk in the Compact pool between July 1997 and December 1999. The volume of milk includes milk produced outside of New England, and distributed within New England, and does not include milk excluded pursuant to the Compact limitations on qualification of diverted and transferred milk.

TABLE 1.—VOLUME OF MILK IN THE COMPACT POOL JULY 1997 THROUGH DECEMBER 1999

[In millions of pounds]

Month	1997	1998	1999
Jan	.....	544.2	568.3
Feb	.....	508.1	528.3
Mar	.....	561.2	563.0
Apr	.....	541.8	568.5
May	.....	580.8	599.0
June	.....	552.1	569.2
July	531.0	567.9	564.3
Aug	532.2	551.3	559.8
Sept	503.9	529.5	530.4
Oct	517.3	544.3	545.9
Nov	498.0	527.3	525.3
Dec	535.1	566.0	560.7
Average	519.6	547.9	556.9

Table 2 shows the volume of milk that has been depooled, or excluded from qualification for Compact payments, pursuant to the Compact limitations on diverted and transferred milk.[8] The limitations on diverted and transferred milk became effective in January 1999 and applied to the first Compact pool in April 1999. The applicable regulations are codified at 7 CFR 1301.23(d) and 1304.2(c).

TABLE 2.—VOLUME OF DEPOOLED MILK JANUARY 1999 THROUGH DECEMBER 1999

[In millions of pounds]

Month	Depooled milk
Jan.	
Feb.	
Mar.	
Apr	4.3
May	1.2
June	.9
July	1.5
Aug	4.8
Sept	4.7
Oct	2.0
Nov	2.2
Dec	1.4
Total	23.0

[1] 62 FR 29626 (May 30, 1997).
[2] 62 FR 62810 (Nov. 25, 1997).
[3] 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and 63 FR 65517 (Nov. 27, 1998).
[4] 63 FR 65563 (Nov. 27, 1998).
[5] 64 FR 19084 (Apr. 19, 1999).
[6] 64 FR 33027 (June 21, 1999).
[7] 62 FR 23039–40 (April 28, 1997); 62 FR 29635 (May 30, 1997); 62 FR 62814 (Nov. 25, 1997).
[8] 63 FR 65517 (Nov. 27, 1998).

Table 3 shows the total volume of milk qualified for Compact payments, after exclusions pursuant to the diverted and transferred milk limitations, by quarter. Table 3 also shows the percent increase in milk volume over the same quarter in the prior year.

TABLE 3.—COMPACT PRODUCER MILK BY QUARTER, JULY 1997 THROUGH DECEMBER 1999

Quarter	1997 (million pounds)	1998 (million pounds)	1999 (million pounds)	1997/1998 (percent)	1998/1999 (percent)
Jan-Mar	.....	1,613.5	1,659.6	.....	2.9
Apr-June	.....	1,674.7	1,736.7	.....	3.7
Jul-Sep	1,567.1	1,648.7	1,654.5	5.2	0.4
Oct-Dec	1,550.4	1,637.6	1,631.9	5.6	−0.4
Average	1,558.75	1,643.6	1,670.7	5.4	1.6

Table 4 shows the federal blend price, the Compact producer price and the percent of total producer price attributed to Compact payments.

TABLE 4.—TOTAL PRODUCER PRICE AND PERCENT ATTRIBUTED TO COMPACT PAYMENTS

Month	Federal blend price (zone 21)	Compact producer price	Total producer price	Percent of total due to compact
July 1997	$11.97	$1.28	$13.25	9.66
August	12.26	1.31	13.57	9.65
September	12.54	1.36	13.90	9.78
October	13.60	0.81	14.41	5.62
November	14.10	0.44	14.54	3.03
December	14.06	0.40	14.46	2.77
January 1998	14.02	0.34	14.36	2.37
February	14.30	0.04	14.34	0.28
March	14.10	0.16	14.26	1.12
April	13.96	0.14	14.10	1.00
May	13.38	0.33	13.71	2.41
June	13.68	0.71	14.39	2.41
July	13.14	1.02	14.16	7.20
August	15.00	0.24	15.24	1.57
September	16.47	0.00	16.47	0
October	16.76	0.00	16.76	0
November	16.67	0.00	16.67	0
December	17.18	0.00	17.18	0
January 1999	17.29	0.00	17.29	0
February	15.82	0.00	15.82	0
March	15.69	0.00	15.69	0
April	11.76	1.43	13.19	10.8
May	12.42	0.82	13.24	6.2
June	12.79	0.73	13.52	5.4
July	12.97	1.01	13.98	7.22
August	13.64	0.70	14.34	4.88
September	15.34	0.21	15.55	1.35
October	15.47	0.00	15.47	0
November	15.41	0.00	15.41	0
December	12.15	1.00	13.15	7.60
Average	14.26	0.49	14.75	3.32

The Commission has considered the data shown in Tables 1 through 4 above to design a feasible supply management program that ensures that the over-order price does not create an incentive for producers to generate additional supplies of milk, and that is also consistent with its primary responsibility of assuring the viability of dairy farming in the northeast, and to assure consumers of an adequate, local supply of pure and wholesome milk. Compact Sections 1 and 9(f)

The proposed program would assess $0.5 per hundredweight from the producer price in each monthly Compact pool. By taking an equal rate from each producer pool, the impact on the monthly producer pay price would be minimized, and predictable, thereby continuing to ensure a sufficient and stable pay price to producers to cover their costs of production. These funds would be accumulated in a separate account throughout the calendar year in a supply management-settlement fund.

At the conclusion of the calendar year, producers would have 45 days to submit an application to the Commission for a refund from the supply management-settlement fund. Producers would be eligible for the refund if they maintained their milk production volume at a rate of increase of 1%, or less, compared to the prior year's production. All eligible producers would receive a refund based on a flat rate per producer. One-half of the supply management-settlement fund would be distributed to eligible producers on a per producer basis. The amount of the flat rate refund would be determined by dividing the total number of eligible producers into one-half the value of the supply management-settlement fund.

In addition, eligible producers would receive a refund amount based on a price per hundredweight of their total volume of milk produced in the calendar year, up to a maximum of $12,000. The other half of the supply management-settlement fund would be distributed on the per hundredweight

basis. The amount of this half of the refund would be determined by dividing the total volume of milk produced by eligible producers into one-half the value of the supply management-settlement fund to determine the rate per hundredweight each eligible producer would receive.

The assessment/refund program would provide a reward to those producers who stabilize their milk production and would create an incentive for all producers to maintain a stable, local supply of milk for the New England milk market.

All producers would share equally in the burden of funding this program through a reduction in the producer pay price. Only those producers who reduce or maintain their production level at 1% or less would be eligible for a refund. However, the program would not otherwise restrict the milk production of those producers who, for business reasons unrelated to the compact payments, choose to increase their milk production at a rate greater than 1% per year.

It is the intention and judgment of the Commission that the combination of the proposed supply management assessment/refund program and the rules limiting compact payments on diverted and transferred milk will operate in coordination to regulate the supply of milk in New England relative to the consumer demand and to ensure that the compact payments do not create an incentive to generate supplies of milk in excess of the tolerance levels prescribed for diverted and transferred milk.

The Commission offers the following examples to assist interested persons in evaluating the proposed supply management program. Tables 5 and 6 show the estimated impact of the assessment/refund program on different size farms. The tables are based on the following assumptions. The monthly average production in the Compact pool in 1999 was approximately 556,900,000 pounds, with a yearly production of 6,682,800,000. Using an assessment figure of $.05 per hundredweight, the total assessment/refund pool would be $3,341,400 annually. Assuming there are 4,000 Compact eligible producers, the average cost of the assessment per producer would be $835. The per hundredweight refund amount would be paid on the producers total annual production. The Commission estimates that 60–70% of producers could be eligible for the refund under the proposed program. Table 5 assumes that 60% (2,400) producers would be eligible for a refund and the per producer payment would be $696 for all eligible producers and the per hundredweight refund rate would be $.041. Table 6 assumes that 70% (2,800) of producers would be eligible for the refund and the per producer payment would be $595 and the per hundredweight refund rate would be $.035. Refund payments on a per hundredweight basis would not exceed $12,000.

TABLE 5.—60% ELIGIBLE PRODUCERS

No. of cows	Pounds	Cost	$/farm	$/cwt	$ Total	Net refund
40	700,000	$350	$696	$287	$983	$633
57	1,000,000	500	696	410	1,106	606
86	1,500,000	750	696	615	1,311	561
286	5,000,000	2,500	696	2,050	2,746	246
1,144	20,000,000	10,000	696	8,200	8,896	−1,104

TABLE 6.—70% ELIGIBLE PRODUCERS

No. of cows	Pounds	Cost	$/farm	$/cwt	$ Total	Net refund
40	700,000	$350	$596	$245	$841	$491
57	1,000,000	500	596	350	946	446
86	1,500,000	750	596	525	1,121	371
286	5,000,000	2,500	596	1,750	2,346	−154
1,144	20,000,000	10,000	596	7,000	7,596	−2,404

III. Proposed Technical Amendments to the Over-Order Price Regulation

The Commission proposes to amend section 1306.3 and to add a new Part 1309 to provide the necessary regulations to implement the proposed supply management assessment/refund program. The Commission also proposes to make corresponding technical changes required by the specific amendments and additions to the current regulations.

The Commission proposes to amend section 1306.3, by first redesignating existing paragraphs (e) through (g) as paragraphs (f) through (h) and adding a new paragraph (e). The new paragraph will allow the Commission to withhold $.05 from each monthly producer pool to fund the supply management-settlement fund.

A new Part 1309 is proposed to provide the regulations to implement the supply management program. Section 1309.1 defines producer qualifications for the refund program. Section 1309.2 defines the procedure for computing the refund prices to be paid to qualified producers. Section 1309.3 would provide the authority for the establishment of a supply management-settlement fund. Finally, section 1309.4 would describe the procedure for issuing payments to producers eligible for a refund under the supply management program.

Official Notice of Technical, Scientific or Other Matters

Pursuant to the Commission regulations, 7 CFR 1361.5(g)(5), the Commission hereby gives public notice that it may take official notice, at the public hearing April 5, or afterward, of relevant facts, statistics, data, conclusions, and other information provided by or through the United States Department of Agriculture, including, but not limited to, matters reported by the National Agricultural Statistics Service, the Market Administrators, the Economic Research Service, the Agricultural Marketing Service and information, data and statistics developed and maintained by the Departments of Agriculture of the States or Commonwealth within the Compact regulated area and the November 1999 study conducted by the University of Vermont entitled "Impacts of the Northeast Interstate Dairy Compact on the New England Milk Supply."

The Commission will also receive into the record of this rulemaking proceeding the entire record, including the public hearing transcript and written comments and submissions, of the December 1998 subjects and issues rulemaking proceeding regarding whether additional supply management policies and provisions should be incorporated into the Over-order Price Regulation and the proposed rulemaking noticed on April 19, 1999 at 64 FR 19084 and the supplemental proposed rulemaking proceeding noticed on June 21, 1999 at 64 FR 33027.

Public Participation in Rulemaking Proceedings

The Commission seeks and encourages oral and written testimony and comments from all interested persons regarding these proposed rules. The Commission continues to benefit from the valuable insights and active participation of all segments of the affected community including consumers, processors and producers in the development and administration of the Over-order Price Regulation.

Date, Time and Location of the Public Hearing

The Northeast Dairy Compact Commission will hold a public hearing to commence at 1:00 p.m. on April 5, 2000 at the Wayfarer Inn, 121 S. River Road, U.S. Route 3, Bedford, New Hampshire.

Written Comments and Exhibits

Pursuant to the Commission rules, 7 CFR 1361.4, any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments or exhibits to the Commission. Comments and exhibits may be submitted at any time before 5:00 p.m. on April 19, 2000.

Please note: Comments and exhibits will be made part of the record of the rulemaking proceeding only if they identify the author's name, address and occupation, and if they include a sworn and notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 p.m. deadline, but the original must then be sent by ordinary mail.

List of Subjects in 7 CFR Parts 1306, 1307 and 1309

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission proposes to amend 7 CFR parts 1306 and 1307 and to add a new part 1309 as follows:

PART 1306—COMPACT OVER-ORDER PRODUCER PRICE

1. The authority citation for part 1306 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. In § 1306.3 redesignate paragraphs (e) through (g) as paragraphs (f) through (h) and add a new paragraph (e) to read as follows:

§ 1306.3 Computation of basic over-order producer price.

* * * * *

(e) Subtract 5 cents per hundredweight from the basic over-order producer price computed pursuant to this section and deposit that amount in the supply management-settlement fund.

* * * * *

PART 1307—PAYMENTS FOR MILK

3. The authority citation for part 1307 continues to read as follows:

Authority: 7 U.S.C. 7256.

4. Section 1307.1 is amended in paragraphs (a), (b) and (c) by removing "1306.3(f)" and adding "1306.3(g)" in its place.

5. A new part 1309 is added to read as follows:

PART 1309—SUPPLY MANAGEMENT REFUND PROGRAM

Sec.

1309.1 Producer qualification for supply management refund program.
1309.2 Computation of supply management refund prices.
1309.3 Supply management-settlement fund.
1309.4 Payment to producers of supply management refund.

Authority: 7 U.S.C. 7256.

§ 1309.1 Producer qualification for supply management refund program.

A dairy farmer who is a qualified producer pursuant to § 1301.11 of this chapter for the entire refund year and the dairy farmer's milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding calendar year.

§ 1309.2 Computation of supply management refund prices.

The compact commission shall compute the supply management refund prices applicable to all qualified milk as follows:

(a) Combine into one total the values, including all interest earned, deducted pursuant to § 1306.3(e) of this chapter for the refund year;

(b) Subtract 50% from the total value computed pursuant to paragraph (a) of this section to be used for the per farm payments to producers who submitted documentation pursuant to § 1309.4(a);

(c) Divide the resulting amount by the sum of all milk production reported by producers qualified pursuant to § 1309.1 and who submitted documentation pursuant to § 1309.4(a).

§ 1309.3 Supply management-settlement fund.

(a) The compact commission shall establish and maintain a separate fund known as the supply management-settlement fund. It shall deposit into the fund all amounts deducted pursuant to § 1306.3(e) of this chapter. It shall pay from the fund all amounts due producers pursuant to § 1309.4;

(b) All amounts subtracted under § 1309.2(c), including interest earned thereon, shall remain in the supply management-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1309.4;

(c) The compact commission shall place all monies subtracted under § 1306.3(e) of this chapter in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities;

(d) If, after payments to producers of supply management refund pursuant to § 1309.4 there is a surplus in the fund, it is to be returned to the producer-settlement fund.

§ 1309.4 Payment to producers of supply management refund.

(a) All producers who are qualified pursuant to § 1309.1 shall become eligible to receive payment of the supply management refund computed pursuant to § 1309.2 by submitting to the compact commission documentation that the producer milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding calendar year. Such documentation shall be filed with the commission not later than 45 days after the end of the calendar year.

(b) The commission will make payment to all producers qualified pursuant to § 1309.1 and eligible pursuant to paragraph (a) of this section in the following manner:

(1) A per farm payment computed by dividing the amount subtracted pursuant to § 1309.2(b) by the total eligible producers; and

(2) The value determined by multiplying the supply management

refund price computed pursuant to § 1309.2(e) by the producer's milk pounds, not to exceed $12,000.

Dated: March 2, 2000.

Kenneth M. Becker,

Executive Director.

[FR Doc. 00–5585 Filed 3–7–00; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 95–066–1]

Viruses, Serums, Toxins, and Analogous Products; Autogenous Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Virus-Serum-Toxin Act regulations for autogenous biologics. The number of test summaries that autogenous biologics manufacturers must submit to the Animal and Plant Health Inspection Service would be reduced. In addition, we are proposing to amend the requirement concerning the submission to the Animal and Plant Health Inspection Service of containers selected from each serial of autogenous biologic that exceeds 50 containers. Manufacturers would be required to hold these containers and submission would not be required unless requested by the Animal and Plant Health Inspection Service. These actions would result in savings in time and resources for autogenous biologics manufacturers and the Animal and Plant Health Inspection Service without a significant reduction in regulatory oversight.

DATES: We will consider all comments that we receive by May 8, 2000.

ADDRESSES: Please send your comment and three copies to:

Docket No. 95–066–1, Regulatory Analysis and Development, PPD, APHIS Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 95–066–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in title 9, Code of Federal Regulations (9 CFR), part 113 contain standard requirements for the preparation of veterinary biological products. Section 113.113 of the regulations sets forth the requirements for autogenous biologics. Autogenous biologics are prepared from cultures of microorganisms that are isolated from sick or dead animals of a particular flock or herd. The cultures are used to produce an autogenous veterinary biological product that is administered to other animals of the originating flock or herd to prevent them from being affected by the same disease. Autogenous biologics may also be used in adjacent and nonadjacent herds under certain conditions, if approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS).

Autogenous biologics are intended for use in isolated cases of diseases of animals when licensed products are not available or such products are unable to protect the vaccinated animals (*e.g.*, the strain of microorganism in the licensed product differs from the strain associated with the disease outbreak). Autogenous biologics can also be used to respond to emergency outbreaks of diseases of animals when the immediate need for the product is such that it precludes the usual route of vaccine development.

Given the special circumstances pertaining to the preparation and use of autogenous biologics, including the need for a rapid response to emergencies, special testing and serial release reporting requirements have been applied. In § 113.113, paragraph (c)(1)(ii) allows first serials or subserials of an autogenous biologic that are satisfactory after the third day of observation of purity test cultures and safety test animals to be released for shipment to the customer while the purity and safety tests are continued through the required period. Paragraph(c)(1)(iii) of § 113.113 provides that such serials must be immediately recalled if evidence of contamination occurs in the purity test cultures or if any of the test animals used to demonstrate product safety get sick or die during the observation period. However, because autogenous biologic products can be shipped prior to completion of testing, the products, in most cases, have been used in animals prior to the completion of testing. In addition, § 113.113(c)(1)(iv) requires autogenous biologics manufacturers to submit to APHIS the test summaries of the first serial or subserial within 4 days of the completion of the purity and safety tests. The test summaries must be submitted to APHIS in accordance with § 116.7 of 9 CFR part 116, "Records and Reports." (Section 116.7, in short, provides the requirements for maintenance of detailed records of all tests conducted on each serial and subserial and the preparation and submission of summaries of such tests using APHIS Form 2008 or an equivalent prior to release of the serial or subserial.)

In 1993, the last year for which full data are available, veterinary biologics manufacturers submitted approximately 11,400 autogenous biologics first serial test summaries to APHIS for processing, and the number of reports has increased in succeeding years. However, we believe that the requirement to submit test summaries from the first serial or subserial of an autogenous biologic within 4 days of completion of purity and safety tests for serials that may have already been used in animals is unnecessary. We believe that these reports can be submitted on a quarterly basis without reducing our regulatory oversight. Therefore, we are proposing to revise § 113.113(c)(iv) to provide that test summaries must be submitted on a quarterly basis as summary reports by the 21st day of January, April, July, and October, or more often as required by the Administrator.

Because we would allow the submission of test summaries on a quarterly basis, we would no longer refer to § 116.7.

Reserve Samples

Manufacturers of autogenous biologics are required by § 113.3 to submit to APHIS samples from each serial or subserial of an autogenous biologic for confirmatory purity and safety testing. In § 113.3, paragraph (b)(8) states that, in the case of

autogenous biologics, 10 samples for submission to APHIS must be selected from each serial that exceeds 50 containers. Samples from serials containing 50 or fewer containers are required to be held and need not be submitted unless requested. Because purity testing can be conducted on any serial of comparable product, we do not believe that 10 samples from serials of autogenous biologics that exceed 50 containers need to be submitted to APHIS to maintain our current regulatory oversight. We believe that autogenous biologics manufacturers should maintain samples of the first serial or subserial in reserve and, if requested, submit them to APHIS when testing is necessary. However, samples of second serials and subsequent serials that exceed 50 containers will still be required to be submitted.

Therefore, we are proposing to revise § 113.3(b)(8) to provide that, with the exception of the first serial or subserial, 10 samples must be selected for submission to APHIS from each serial or subserial of autogenous biologic that exceeds 50 containers. For first serials or subserials with more than 50 containers, 10 samples would need to be selected and held in reserve for submission to APHIS upon request. For all serials or subserials with 50 or fewer containers, reserve samples would be handled as prescribed in § 113.3(e) of the regulations.

Miscellaneous

We are also proposing minor nonsubstantive and editorial changes to the regulations, as set out in the rule portion of this document. The main change would be in the APHIS address appearing in § 113.113(a)(2).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the Virus-Serum-Toxin Act regulations for autogenous biologics. We are proposing to reduce the number of test summaries that autogenous biologics manufacturers must submit to APHIS. In addition, we are proposing to amend the requirement for the submission of samples of any autogenous biologic that exceeds 50 containers by requiring autogenous biologics manufacturers to hold samples of the first serial or subserial of the autogenous biologic in reserve. These actions would result in savings in time and resources for autogenous biologics manufacturers and APHIS without a significant reduction in regulatory oversight.

This proposed rule would affect all licensed veterinary biologics establishments that produce autogenous biologics. Currently, there are approximately 150 veterinary biologics establishments, and approximately 35 of these establishments produce autogenous biologics. According to the standards of the Small Business Administration, most veterinary biologics establishments would be classified as small entities.

By creating a system that allows the quarterly reporting of test results for first serials and subserials of autogenous biologics, APHIS would reduce paperwork submissions from autogenous biologics manufacturers by approximately 25 percent or more. This would reduce the industry's annual reporting burden by approximately 6,018 hours.

In addition, this proposed rule would allow autogenous biologics manufacturers to hold in reserve 10 samples from the first serial or subserial of any serial or subserial of an autogenous biologic with more than 50 containers. These manufacturers would no longer need to submit samples of the first serial or subserial to APHIS unless requested to do so. Allowing autogenous biologics manufacturers to hold these samples in reserve would save them the time and resources previously invested in shipping samples to APHIS.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This action would, in fact, reduce paperwork submissions from autogenous biologics manufacturers by approximately 25 percent or more. This would reduce the industry's annual reporting burden by approximately 6,018 hours.

List of Subjects 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 113 as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 113.3, paragraph (b)(8) would be revised to read as follows:

§ 113.3 Sampling of biological products.

* * * * *

(b) * * *

(8) *Autogenous biologics.* With the exception of the first serial or subserial, 10 samples must be selected from each serial or subserial of an autogenous biologic that consists of more than 50 containers. For first serials or subserials with more than 50 containers, 10 samples from each serial or subserial must be selected and held in reserve for submission to the Animal and Plant Health Inspection Service upon request in accordance with paragraph (e)(4) of this section. For all serials or subserials with 50 or fewer containers, reserve samples must be selected and held as prescribed in paragraph (e) of this section.

* * * * *

3. In § 113.113, paragraphs (a)(2) introductory text and (c)(1)(iv) would be revised to read as follows:

§ 113.113 Autogenous biologics.

(a) * * *

(2) Under normal circumstances, microorganisms from one herd must not be used to prepare an autogenous biologic for another herd. The Administrator, however, may authorize preparation of an autogenous biologic for use in herds adjacent to the herd of origin, when adjacent herds are considered to be at risk. To request authorization to prepare a product for use in herds adjacent to the herd of origin, the establishment seeking

authorization must submit to the Administrator (in c/o the Director, Center for Veterinary Biologics, Inspection and Compliance, 510 South 17th Street, Suite 104, Ames, IA 50010–8197) the following information. (If any of the data are unavailable, the applicant for authorization should indicate that such data are unavailable and why.)

* * * * *

(c) * * *

(1) * * *

(iv) Test summaries must be submitted to the Administrator (in c/o the Director, Center for Veterinary Biologics, Inspection and Compliance, 510 South 17th Street, Suite 104, Ames, IA 50010–8197) on a quarterly basis by the 21st day of January, April, July, and October, or more often as required by the Administrator.

* * * * *

Done in Washington, DC, this 1st day of March, 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–5596 Filed 3–7–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–33]

Proposed Realignment of Jet Route; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to realign Jet Route 25 (J–25) in the vicinity of San Antonio, TX. This proposal would realign the affected jet route between the Corpus Christi Very High Frequency Omnidirectional Range/ Tactical Air Navigation (VORTAC) and the San Antonio VORTAC. The FAA is proposing this action to enhance the management of air traffic operations and allow for better utilization of navigable airspace in the San Antonio, TX, area.

DATES: Comments must be received on or before April 25, 2000.

ADDRESSES: Send comments on this proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 99–ASW–33, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ASW–33." The postcard will be date/ time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Superintendent of Documents's webpage at http://www.access.gpo.gov/ nara for access to recently published rulemaking documents.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

As a result of a recent airspace review, the FAA has determined that a segment of J–25, between the Corpus Christi VORTAC and the San Antonio VORTAC, requires realignment to allow for better utilization of the navigable airspace in the San Antonio, TX, area.

The Proposal

The FAA is proposing an amendment to part 71 of Title 14 Code of Federal Regulations to realign J–25 in the vicinity of San Antonio, TX. This proposal would realign the affected jet route between the Corpus Christi VORTAC and the San Antonio VORTAC. The FAA is proposing this action to enhance the management of air traffic operations and allow for better utilization of navigable airspace in the San Antonio, TX, area.

Jet routes are published in paragraph 2004 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document would be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory

Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–25 [Revised]

From Matamoras, Mexico, via Brownsville, TX; INT of the Brownsville 358° and the Corpus Christi, TX, 178° radials; Corpus Christi; INT of the Corpus Christi 311° (302°M) and the San Antonio, TX, 174°(266°M) radials; San Antonio; Centex, TX; Waco, TX; Ranger, TX; Tulsa, OK; Kansas City, MO; Des Moines, IA; Mason City, IA; Gopher, MN; Brainerd, MN; to Winnipeg, MB, Canada. The airspace within Canada is excluded. The airspace within Mexico is excluded.

* * * * *

Issued in Washington, DC, on March 2, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–5598 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 97P–0044]

New Drugs for Human Use; Clarification of Requirements for Patent Holder Notification; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of its proposed rule published in the **Federal Register** on March 6, 1998 (63 FR 11174). The document proposed to amend FDA's regulations on notice of certification of invalidity or noninfringement of a patent to provide additional methods for new drug and abbreviated new drug applicants to provide notice to patent owners and new drug application (NDA) holders, without removing the existing means. FDA is withdrawing this proposal based on comments regarding the inability of large corporations to track receipt of deliveries by means other than certified mail, return receipt requested.

DATES: The proposed rule is withdrawn March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 6, 1998 (63 FR 11174), FDA proposed to permit new drug and abbreviated new drug applicants to provide notice of certification of invalidity or noninfringement of a patent to patent owners and NDA holders by overnight delivery service, facsimile, and electronic mail, in addition to U.S. Postal Service (USPS) registered or certified mail, return receipt requested, or another method approved in advance by the agency. Sections 314.52(c) and 314.95(c) (21 CFR 314.52(c) and 314.95(c)) set forth the content requirements of the notice of certification. Under §§ 314.52(e) and 314.95(e), applicants must amend their applications to document receipt of the notice of certification by each person provided the notice. Applicants must include a copy of the return receipt or other similar evidence of the date the notification was received. FDA accepts as adequate documentation of the date of receipt a return receipt or a letter acknowledging receipt by the person provided the notice. Under §§ 314.52(e) and 314.95(e), applicants may rely on another form of documentation only if FDA has agreed to such documentation in advance. FDA reminds those providing notice of certification to application holders that if an application holder does not reside or maintain a place of business within the United States, notice must be sent to the application holder's U.S. attorney, agent, or other authorized official (§§ 314.52(a)(2) and 314.95(a)(2)). FDA also notes that the term "registered or certified mail" as used in §§ 314.52(a) and 314.95(a) means USPS registered or certified mail, and not equivalent delivery via foreign mail. Since the actual form of international registered or certified mail and receipt may vary from country to country, use of international mail could put a substantial burden on innovator companies to be alert to multiple forms of notice. Therefore, applicants must use USPS mail. Delivery by USPS mail should not be burdensome since applicants are required to have a U.S. agent.

II. Comments on the Proposed Rule

FDA received three comments on the proposed rule. The comments were from two large pharmaceutical companies and from the Pharmaceutical Research and Manufacturers Association. All of the comments stated that electronic methods of delivery, including facsimile and electronic mail, are too unreliable at this stage to be used to deliver notification.

One of the comments supported use of overnight and messenger delivery services. One comment stated that overnight delivery service would be acceptable only if the person receiving the notice signed a form verifying receipt of the notice. The other comment stated that overnight delivery services are not acceptable because deliveries are made in bulk, accompanied by a manifest that does not guarantee that each item listed is in fact in the bulk package and that individual items are not signed for.

All of the comments stated that the present system is workable.

III. Withdrawal of the Proposed Rule

After careful consideration of these comments, FDA has concluded that the current system, which requires only that an applicant send notice by USPS registered or certified mail, return receipt requested, is not overly

burdensome. This requirement is intended to provide maximum assurance that the notice will be received by the patent holder and the NDA holder, and that such receipt will be documented adequately. In addition, FDA has concluded that adding new methods of notification presents complications in ensuring that notification is received by sponsors. Accordingly, FDA is withdrawing its proposed rule to permit new drug and abbreviated new drug applicants to provide notice of certification of invalidity or noninfringement of a patent to patent owners and NDA holders by overnight delivery service, facsimile, and electronic mail, in addition to USPS registered or certified mail, return receipt requested, or another method approved in advance by the agency.

Dated: February 29, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–5527 Filed 3–7–00; 8:45 am]

BILLING CODE 4160–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–168; MM Docket No. 00–15, RM–9804; MM Docket No. 00–16, RM–9805]

Radio Broadcasting Services; Susquehanna, PA; and Burke, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes two new allotments at Susquehanna, Pennsylvania, and Burke, South Dakota. The Commission requests comments on a petition filed by Tammy M. Celenza proposing the allotment of Channel 227A at Susquehanna, Pennsylvania, as the community's second local FM transmission service. Channel 227A can be allotted to Susquehanna in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.3 kilometers (3.9 miles) east to avoid short-spacings to the licensed sites of Station WBZD–FM, Channel 227B1, Muncy, Pennsylvania, and Station WKXZ(FM), Channel 230B, Norwich, New York. The coordinates for Channel 227A at Susquehanna are 41–55–44 North Latitude and 75–31–50 West Longitude. Since Susquehanna is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been requested.

DATES: Comments must be filed on or before March 20, 2000, and reply comments on or before April 4, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Michael Celenza, Celenza Communications, 41 Kathleen Crescent, Coram, New York 11727 (Consultant for Tammy M. Celenza); and Heather Drischel, General Partner, NationWide Radio Stations, 496 Country Road 308, Big Creek, Mississippi 38914 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–15; and MM Docket No. 00–16, adopted January 19, 2000, and released February 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

The Commission also requests comments on a petition filed by NationWide Radio Stations proposing the allotment of Channel 264A at Burke, South Dakota, as the community's first local aural transmission service. Channel 264A can be allotted to Burke in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.5 kilometers (2.2 miles) east to avoid a short-spacing to the vacant allotment site for Channel 264A at Mission, South Dakota. The coordinates for Channel 264A at Burke are 43–11–06 North Latitude and 99–15–02 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5545 Filed 3–7–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF98

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Alameda Whipsnake (Masticophis lateralis euryxanthus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the Alameda whipsnake (*Masticophis lateralis euryxanthus*). A total of approximately 164,663 hectares (406,708 acres) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Contra Costa, Alameda, San Joaquin, and Santa Clara counties, California. If this proposal is made final, section 7 of the Act, which prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency, would apply to the designated critical habitat for the Alameda whipsnake. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation and our approaches for handling habitat conservation plans (HCPs). We may revise this proposal to incorporate or address new information received during the comment period.

DATES: Comments from all interested parties must be received by May 8, 2000. Public hearing requests must be received by April 24, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825; or

2. You may hand-deliver written comments to our Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825; or

3. You may send comments by electronic mail (e-mail) to aws_critical_habitat@fws.gov. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: RIN 1018–AF98" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone 916/414–6600.

FOR FURTHER INFORMATION CONTACT: Jason Davis or Heather Bell, at the above address (telephone 916/414–6600).

SUPPLEMENTARY INFORMATION:

Background

The Alameda whipsnake is a member of the genus *Masticophis*. The Alameda whipsnake is a slender, fast-moving, diurnal snake with a broad head, large eyes, and slender neck. Alameda whipsnakes range from 91 to 122 centimeters (3 to 4 feet) in length. The dorsal surface is sooty black in color with a distinct yellow-orange stripe down each side. The anterior portion of the ventral surface is orange-rufous colored, the midsection is cream colored, and the posterior and tail are pinkish. The adult Alameda whipsnake virtually lacks black spotting on the ventral surface of the head and neck. Juveniles may show very sparse or weak black spots. Another common name for the Alameda whipsnake is the "Alameda striped racer" (Riemer 1954, Jennings 1983, Stebbins 1985).

The Alameda whipsnake is one of two subspecies of the California whipsnake (*Masticophis lateralis*). The chaparral whipsnake (*Masticophis lateralis lateralis*) is distributed from northern California, west of the Sierran crest and desert, to central Baja California. The Alameda whipsnake is restricted to a small portion of this range, primarily the inner Coast Range in western and central Contra Costa and Alameda Counties.

The distribution in California, of both subspecies, coincides closely with chaparral (Jennings 1983, Stebbins 1985). Recent telemetry data indicate that, although home ranges of Alameda whipsnakes are centered on shrub communities, whipsnakes frequently venture into adjacent habitats, including grassland, oak savanna, and occasionally oak-bay woodland. Most telemetry locations are within 50 meters (m) (170 feet (ft)) of scrub habitat, but distances of greater than 150 m (500 ft) occur (Swaim 1994). Initial data indicate that adjacent habitats may play a crucial role in certain life history and physiological needs of the Alameda whipsnake, but the full extent has yet to be determined. Telemetry data indicate that whipsnakes remain in grasslands for periods ranging from a few hours to several weeks at a time. Grassland habitats are used by male whipsnakes most extensively during the mating season in spring. Female whipsnakes use grassland areas most extensively after mating, possibly in their search for suitable egg-laying sites (Swaim 1994).

Rock outcrops are an important feature of Alameda whipsnake habitat because they provide retreat opportunities for whipsnakes and promote lizard populations. Lizards, especially the western fence lizard (*Sceloporus occidentalis*), appear to be the most important prey item of whipsnakes (Stebbins 1985; Swaim 1994; Harry Green, Museum of Vertebrate Zoology, U.C. Berkeley, pers. comm. 1998), although other prey items are taken, including skinks, frogs, snakes, and birds (Stebbins 1985, Swaim 1994). Most radio telemetry locations for whipsnakes were within the distribution of major rock outcroppings and talus (Swaim 1994).

Alameda whipsnakes have been found in association with a variety of shrub communities including diablan sage scrub, coyote bush scrub, and chamise chaparral (Swaim 1994), also classified as coastal scrub, mixed chaparral, and chamise-redshank chaparral (Mayer and Laudenslayer 1988). However, the type of vegetation may have less to do with preference by the whipsnake than the extent of the canopy, slope exposure, the availability of retreats such as rock outcrops and rodent burrows, and prey species composition and abundance (Swaim 1994; K. Swaim, Swaim Biological Consulting, pers. comm. 1999). Alameda whipsnakes have been sighted or found dead a significant distance from the nearest shrub community (K. Swaim, pers. comm. 1999). The reasons for such movements are unknown.

Initial studies indicated that Alameda whipsnakes occurred where the canopy was open (less than 75 percent of the total area within the scrub or chaparral community was covered by shrub crown) or partially open (between 75 and 90 percent of the total area was covered with shrub crown), and only seldom did whipsnakes occur in closed canopy (greater than 90 percent of the area was covered by shrub crown). However, trapping efforts may have been biased due to the difficulty of setting traps in dense scrub (Swaim 1994; K. Swaim, pers. comm. 1999).

Core areas (areas of concentrated use) of the Alameda whipsnake most commonly occur on east, south, southeast, and southwest facing slopes (Swaim 1994). However, recent information indicates that whipsnakes do make use of north facing slopes in more open stands of scrub habitat (K. Swaim, pers. comm. 1999).

Adult snakes appear to have a bimodal seasonal activity pattern with peaks during the spring mating season and a smaller peak during late summer and early fall. Although short above-ground movements may occur during the winter, Alameda whipsnakes generally retreat in November into a hibernaculum (shelter used during the snake's dormancy period) and emerge in March. Courtship and mating occur from late-March through mid-June. During this time, males move around throughout their home ranges, while females appear to remain at or near their hibernaculum, where mating occurs. Suspected egg-laying sites for two females were located in grassland with scattered shrub habitat. Male home ranges of 1.9 to 8.7 hectares (ha) (4.7 to 21.5 acres (ac)) (mean of 5.5 ha or 13.6 ac) were recorded, and showed a high degree of spatial overlap. Several individual snakes monitored for nearly an entire activity season appeared to maintain a stable home range. Movements of these individuals were multi-directional, and individual snakes returned to specific areas and retreat sites after long intervals of non-use. Snakes had one or more core areas within their home range, while large areas of the home range received little use (Swaim 1994).

Previous Federal Action

The September 18, 1985, Notice of Review (50 FR 37958) included the Alameda whipsnake as a category 2 candidate species for possible future listing as endangered or threatened. Category 2 candidates were those taxa for which listing as threatened or endangered might be warranted, but for which adequate data on biological

vulnerability and threats were not available to support issuance of listing proposals. The January 6, 1989, Notice of Review (54 FR 554) solicited information on its status as a category 2 candidate species. The Alameda whipsnake was moved to category 1 in the November 21, 1991, Notice of Review (56 FR 58804) on the basis of significant increases in habitat loss and threats occurring throughout its range. Category 1 candidates were defined as taxa for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On February 4, 1994, we published a proposed rule in the **Federal Register** (59 FR 5377) to list the Alameda whipsnake as an endangered species. On December 5, 1997, we published a final rule listing the Alameda whipsnake as threatened (62 FR 64306).

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior (Secretary), for failure to designate critical habitat for seven species: the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the Zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helminthoglypta walkeriana*), the Arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (Somateria fischeri), and the Steller's eider (*Polysticta stelleri*) (*Southwest Center for Biological Diversity* v. *U.S. Fish and Wildlife*, CIV 99–1003 MMC).

On November 5, 1999, William Alsup, U.S. District Judge, dismissed the plaintiffs' lawsuit pursuant to a settlement agreement entered into by the parties. Publication of this proposed rule is consistent with that settlement agreement.

Absent the settlement agreement, the processing of this proposed rule does not conform with our current Listing Priority Guidance for fiscal year 2000 published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. We are processing this proposed rule in compliance with the above-mentioned settlement agreement.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. "Jeopardize the continued existence" (of a species) is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species.

"Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical (50 CFR 402.02). When multiple units of critical habitat are designated, each unit may serve as the basis of a jeopardy analysis if protection of different facets of the species' life cycle or its distribution are essential to the species as a whole for both its survival and recovery.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create or mandate a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultation.

Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection. Areas that do not currently contain the habitat components necessary for the primary biological needs of a species but are likely to develop them in the future may be essential to the conservation of the species and may be designated as critical habitat.

We did not propose to designate critical habitat for the Alameda whipsnake within the proposed or final listing rulemaking because, at the time of listing, we knew of no Federal lands within the five whipsnake populations. We also believed that the possibility of Federal agency involvement on private and public, non-Federal lands was

remote. Based on information available at the time of listing, we believed that only 20 percent of known whipsnake habitat occurred on private lands, and anticipated that urban development on private lands would occur only along the periphery of whipsnake populations. In addition, we believed that the need for active fire management programs at this urban-wildland interface would preclude those private lands from being considered habitat essential to the conservation of the species. We found that critical habitat designation was not prudent due to lack of any significant benefit beyond that conferred by listing.

Since the Alameda whipsnake was listed, we have found that there are a greater number of Federal actions that could trigger the need for an interagency consultation than was believed at the time the Alameda whipsnake was listed. We are now aware of federally owned lands that occur within the range of the Alameda whipsnake, including several Bureau of Land Management parcels in the Mount Diablo-Black Hills population area. In addition, an Alameda whipsnake was recently captured on land owned by the U.S. Department of Energy at their Site 300 facility, a Federal site previously unknown to be inhabited by Alameda whipsnakes. We are also aware of a number of activities with a Federal nexus on private lands within whipsnake populations, including activities associated with the issuance of Clean Water Act section 404 permits and Federal Emergency Management Agency fire protection projects.

We now believe that private lands play a more important role in whipsnake conservation than was originally believed. An increasing amount of private land has been found to be occupied by the Alameda whipsnake, comprising more than 20 percent of land within the five whipsnake populations. Large amounts of occupied, high-value Alameda whipsnake habitat occur on private lands that are evenly distributed throughout all five whipsnake population areas. We now believe that areas that are essential to the conservation of the species include private lands.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The areas we are proposing to designate as critical habitat provide some or all of those habitat components essential for the primary biological needs of the Alameda whipsnake, also called primary constituent elements.

The primary constituent elements for the Alameda whipsnake are those habitat components that are essential for the primary biological needs of foraging, sheltering, breeding, maturation, and dispersal. The primary constituent elements are found, or could develop, in areas that support or have the potential to support scrub communities, including mixed chaparral, chamise-redshank chaparral, coastal scrub, and annual grassland and oak woodlands that lie adjacent to scrub habitats. In addition, the primary constituent elements for the Alameda whipsnake may be found in grasslands and various oak woodlands that are linked to scrub habitats by substantial rock outcrops or riparian corridors. Other habitat features that provide a source of cover for the whipsnake during dispersal or are near scrub habitats and contain habitat features (*e.g.*, rock outcrops) that support adequate prey populations may also contain primary constituent elements for the Alameda whipsnake. Within these communities, Alameda whipsnakes require plant canopy covers that supply a suitable range of temperatures for the species' normal behavioral and physiological requirements (including but not limited to foraging, breeding, and maturation). Openings in the plant canopy or scrub/grassland edge provide sunning and foraging areas. Corridors of plant cover and retreats (including rock outcrops) sufficient to provide for dispersal between areas of habitat, and plant community patches of sufficient size to prevent the deleterious effects of isolation (such as inbreeding or the loss of a subpopulation due to a catastrophic event) are also essential. Within these plant communities, specific habitat features needed by whipsnakes include, but are not limited to, small mammal burrows, rock outcrops, talus, and other forms of cover to provide temperature regulation, shelter from predators, egg laying sites, and winter hibernaculum. Many of these same elements are important in maintaining prey species. Adequate insect populations are necessary to sustain prey populations.

Criteria Used To Identify Critical Habitat

We considered several qualitative criteria in the selection and proposal of specific areas or units for Alameda whipsnake critical habitat. Such criteria focused on designating units (1) throughout the geographic and elevation range of the species; (2) within various occupied plant communities, such as diablan sage scrub, coyote bush scrub, and chamise chaparral; (3) in areas of large, contiguous blocks of occupied habitat; and (4) in areas that link contiguous blocks of occupied habitat (*i.e.*, linkage areas).

Methods

In developing critical habitat for the Alameda whipsnake, we used data on known Alameda whipsnake locations to initially identify important areas. Through the use of 1998 and 1999 1:12,000 aerial photos and 1994 digital orthophotos, we examined the extent of suitable habitat that was in the vicinity of known whipsnake locations. Critical habitat includes both suitable habitat and areas that link suitable habitat, as these links facilitate movement of individuals between habitat areas and are important for dispersal and gene flow (Beier and Noss 1998). We have determined seven separate units of critical habitat, five of which represent primary breeding, feeding, and sheltering areas, while the other two represent corridors (See attached figures). The range of these critical habitat units extends in the south from Wauhab Ridge, Del Valle area to Cedar Mountain Ridge, in Santa Clara County; north to the northernmost extent of suitable habitat in Contra Costa County; west to the westernmost extent of the inner Coastal Range; and in the east, to the easternmost extent of suitable habitat. We could not depend solely on federally owned lands for critical habitat designation as they are limited in geographic location, size, and habitat quality. In addition to federally owned lands, we propose to designate critical habitat on non-Federal public lands and privately owned lands, including California Department of Parks and Recreation lands, regional and local park lands, and water district lands.

Areas proposed for designation as critical habitat meet the definition of critical habitat under section 3 of the Act in that they are within the geographical areas occupied by the species, are essential to conservation of the species, and are in need of special management considerations or protection.

In selecting areas of proposed critical habitat, we attempted to avoid developed areas such as towns, intensive agricultural areas such as vineyards, and other lands unlikely to contribute to Alameda whipsnake conservation. Given the short period of time in which we were required to complete this proposed rule, we were unable to map critical habitat in sufficient detail to exclude all such areas. However, within the delineated proposed critical habitat boundaries, only lands containing or lands likely to develop those habitat components essential for the primary biological needs of the Alameda whipsnake are considered critical habitat. Existing features and structures within the critical habitat boundary, such as buildings, roads, canals, railroads, large water bodies, and other features not currently containing or likely to develop these habitat components, are not considered critical habitat. Two areas, the north and south corridor (unit 6 connecting units 1 and 2; and unit 7 connecting units 3 and 5), contain some urban development. These two corridors are extremely narrow, and, therefore, maintaining as much area within these corridors as possible to ensure the long-term connectivity between whipsnake populations is important. As stated above, urban structures that occur within these two units are not considered critical habitat for the Alameda whipsnake. These two units may not provide sufficient habitat necessary to allow for breeding, and offer limited opportunities of foraging and sheltering. However, these areas should be considered critical habitat as they provide for the vital function of dispersal.

We considered the existing status of lands in designating areas as critical habitat. Section 10(a) of the Act authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Currently, no approved HCPs cover the Alameda whipsnake or its habitat. However, we expect critical habitat may be used as a tool to help identify areas within the range of the Alameda whipsnake that are most critical for the conservation of the species. We will encourage development of HCPs for such areas on non-Federal lands because we consider HCPs to be one of the most important methods through which non-Federal landowners can resolve endangered species conflicts. We provide technical assistance and work closely with applicants throughout development of HCPs to help identify special management considerations for the Alameda whipsnake. We intend for HCPs to provide a package of protection and management measures sufficient to address the conservation needs of the species.

We are currently drafting a recovery plan for the Alameda whipsnake. Recovery actions proposed within this draft recovery plan will include a more thorough analysis of recovery needs of the Alameda whipsnake. Therefore, we may amend critical habitat at a later date based on information gained through the recovery planning process.

In summary, the proposed critical habitat areas described below constitute our best assessment of areas needed for the species' conservation.

Proposed Critical Habitat Designation

The approximate area of proposed critical habitat by county and land ownership is shown in Table 1. Proposed critical habitat includes Alameda whipsnake habitat throughout the species' range in the United States (i.e., Contra Costa, Alameda, San Joaquin, and Santa Clara Counties, California). Lands proposed are under private, State, and Federal ownership, with Federal lands including lands managed by the Bureau of Land Management and the U.S.Department of Energy. Lands proposed as critical habitat have been divided into seven Critical Habitat Units. In determining areas that are essential for the survival and recovery of the species, we used the best scientific information available. This information included habitat suitability and site-specific species information. To date, only initial research has been done to identify and define specific habitat needs of Alameda whipsnakes, and no comprehensive surveys have been conducted to quantify their distribution or abundance. Only limited and preliminary habitat assessment and whipsnake presence work has begun on the Department of Energy's Lawrence Livermore National Laboratory Site 300, East Bay Regional Park District's Tilden Park, San Francisco Water District's San Antonio Reservoir, Contra Costa Water District's Los Vaqueros Reservoir, East Bay Municipal Utility District's San Leandro Watershed and Siesta Valley, Pleasanton Ridge Conservation Bank, and Signature Properties' Bailey Ranch. Some small parcels have also been surveyed; however, these surveys were in conjunction with development and, in most cases, that habitat has been destroyed.

We emphasized areas containing most of the verified Alameda whipsnake occurrences, especially recently identified locations. To maintain genetic and demographic interchange that will help maintain the viability of a regional metapopulation, we included corridor areas that allow movement between areas supporting Alameda whipsnakes. These corridors or connecting areas, while supporting some habitat suitable for foraging, shelter, breeding, and maturation, were primarily included to facilitate dispersal.

TABLE 1

[Approximate area encompassing proposed critical habitat in hectares (ha) (acres (ac)) by county and land ownership. Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within.]

County	Federal land*	Local/State land	Private land	Total
Alameda	202 ha (500 ac)	26,440 ha (65,492 ac)	56,166 ha (139,124 ac)	82,808 ha (205,116 ac)
Contra Costa	32 ha (80 ac)	31,970 ha (79,189 ac)	35,276 ha (87,378 ac)	67,278 ha (166,647 ac)
San Joaquin	495 ha (1,225 ac)	525 ha (1,300 ac)	4,945 ha (12,250 ac)	5,965 ha (14,775 ac)

TABLE 1—Continued

[Approximate area encompassing proposed critical habitat in hectares (ha) (acres (ac)) by county and land ownership. Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within.]

County	Federal land*	Local/State land	Private land	Total
Santa Clara	NA	4,037 ha (10,000 ac)	4,106 ha (10,170 ac)	8,143 ha (20,170 ac)
Total	729 ha (1,805 ac)	62,972 ha (155,981 ac)	100,493 ha (248,922 ac)	164,194 ha (406,708 ac)

* Includes the Bureau of Land Management and Department of Energy land.

A brief description of each critical habitat unit and our reasons for proposing those areas as critical habitat for the Alameda whipsnake are given below:

Unit 1: Tilden-Briones Unit

Unit 1 encompasses approximately 16,113 ha (39, 815 ac) within the Tilden-Briones unit and is the most northwestern unit of the five Alameda whipsnake metapopulations and represents primary breeding, feeding, and sheltering habitat for the whipsnake. Most of this unit occurs in Contra Costa County, except for the southwestern tip which occurs in Alameda County. This unit is bordered to the north by State Highway 4 and the cities of Pinole, Hercules, and Martinez; to the south by State Highway 24 and the City of Orinda Village; to the west by Interstate 80 and the cities of Berkeley, El Cerrito, and Richmond; and to the east by Interstate 680 and the City of Pleasant Hill. A substantial amount of public land exists within this unit, including East Bay Regional Park District's Tilden, Wildcat, and Briones Regional Parks and East Bay Municipal Utilities District watershed lands.

Unit 2: Oakland-Las Trampas Unit

Unit 2 encompasses approximately 21,922 ha (54,170 ac) within the Oakland-Las Trampas unit and occurs south of the Tilden-Briones unit and north of the Hayward-Pleasanton Ridge unit and represents primary breeding, feeding, and sheltering habitat for the Alameda whipsnake. This unit is split evenly between Alameda and Contra Costa Counties. This unit is surrounded to the north by State Highway 24 and the cities of Orinda, Moraga, and Lafayette; to the south by Interstate Highway 580 and the City of Castro Valley; to the West by State Highway 13 and Interstate Highway 580 and the cities of Oakland and San Leandro; and to the east by Interstate Highway 680 and the cities of Danville, San Ramon, and Dublin. The Oakland-Las Trampas unit also contains substantial amounts of public land including East Bay Regional Park District's Redwood and Anthony Chabot Regional Parks, Las Trampas Regional Wilderness, and additional East Bay Municipal Utilities District watershed lands.

Unit 3: Hayward-Pleasanton Ridge Unit

Unit 3 encompasses approximately 12,955 ha (32,011 ac) within the Hayward-Pleasanton Ridge unit and occurs south of the Oakland-Las Trampas unit and northwest of the Sunol-Cedar Mountain unit and represents primary breeding, feeding, and sheltering habitat for the Alameda whipsnake. This unit occurs solely in Alameda County. This unit is surrounded by Interstate Highway 580 to the north; Niles Canyon Road (State Highway 84) to the south; the cities of Hayward and Union City to the west and Interstate Highway 680 and the City of Pleasanton to the east. This unit is bisected by Palomares Canyon Road, which runs from Interstate Highway 580 to Niles Canyon Road. Greater than 30 percent of this unit occurs within public ownership including Garin, Dry Creek, and Pleasanton Ridge Regional Parks and other East Bay Regional Park District holdings. The privately owned Pleasanton Ridge Conservation Bank also occurs in the northeastern section of this unit.

Unit 4: Mount Diablo-Black Hills Unit

Unit 4 encompasses approximately 40,386 ha (99,794 ac) within the Mount Diablo-Black Hills unit and completely encompasses Mount Diablo State Park and surrounding lands and represents primary Alameda whipsnake breeding, feeding, and sheltering habitat. A majority of this unit occurs in Contra Costa County, however the southern tip of this unit dips into Alameda County. This unit is surrounded by State Highway 4 and the cities of Clayton, Pittsburg and Antioch to the north; open grassland within Tassajara Valley just below the Alameda/Contra Costa County line to the south; the cities of Concord, Walnut Creek, and Danville to the west; and, to the east, by large expanses of grassland occurring west of State Highway 4, near the cities of Oakley and Brentwood. This unit contains large expanses of public lands including two small Bureau of Land Management parcels; Mount Diablo State Park; Contra Costa Water District's Los Vaqueros Reservoir watershed; and Contra Loma, Black Diamond Mines, Morgan Territory, and Round Valley Regional Parks, and other East Bay Regional Park District holdings. Other public lands include lands owned by the Save Mount Diablo Foundation and the City of Walnut Creek. Two large, privately owned gravel quarries occur within this unit.

Unit 5: Sunol-Cedar Mountain Unit

Unit 5 encompasses approximately 69,335 ha (171,328 ac) within the Sunol-Cedar Mountain unit and is the largest and the southernmost of the seven critical habitat units and represents primary breeding, feeding, and sheltering habitat for the Alameda whipsnake. A majority of this unit occurs in Alameda County, however it does overlap with western San Joaquin and northern Santa Clara Counties. The northern boundary of this unit runs parallel to State Highway 84 and Corral Hollow Road, south of the cities of Pleasanton and Livermore and Tesla Road. The southern boundary lies below Calaveras Reservoir and captures all of Wauhab and Cedar Ridges in Santa Clara County and stretches to the east, north of the Alameda-San Joaquin-Santa Clara-Stanislaus County intersection. The western boundary lies east of Interstate Highway 680 and the greater San Jose urban areas. The eastern boundary lies within San Joaquin County a few miles east of the Alameda County line. This unit includes East Bay Regional Park District's Sunol, Mission Peak, Ohlone, Camp Ohlone, and Del Valle complex, and San Francisco Water District's Del Valle (San Antonio Reservoir) watershed. In addition, the Department of Energy's Site 300 and California Department of Parks and Recreation's Carnegie Recreation Area occur within the unit.

Unit 6: Caldecott Tunnel Unit

Unit 6 encompasses approximately 2,203 ha (5,445 ac) within the Caldecott Tunnel unit and occurs between units 1 and 2 where State Highway 24 tunnels under the Berkeley Hills for approximately 1.2 kilometers (4,000 feet) and represents a connector between units 1 and 2. This unit occurs solely in Contra Costa County. All suitable Alameda whipsnake habitat that occurs in this unit is privately owned.

Unit 7: Niles Canyon/Sunol Unit

Unit 7 encompasses approximately 1,677 ha (4,145 ac) within the Niles Canyon/Sunol unit and occurs between units 3 and 5 and lies south of State Highway 84 (Niles Canyon Road); north and west of Interstate 680; and east of the City of Fremont and represents a connector between units 3 and 5. This unit occurs solely in Alameda County. This unit includes East Bay Regional Park District's Vargus Plateau and San Francisco Water District watershed lands. Impediments to whipsnake movement between units 3 and 7 include Alameda Creek, a 0.3–0.6-meter (12–24-inch) high concrete barrier that lies south of Niles Canyon Road and north of Alameda Creek, railroad tracks that run along both sides of Alameda Creek, and heavy vehicular traffic along Niles Canyon Road.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the Alameda whipsnake or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Army Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.*, Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the Alameda whipsnake is appreciably diminished. We note that such activities may also jeopardize the continued existence of the species. Such activities may include, but are not limited to:

(1) Removing, thinning, or destroying vegetation, whether by burning or mechanical, chemical, or other means (*e.g.*, fuels management, bulldozing, herbicide application, grazing, etc.) that have not been approved by the Service, exclusive of routine clearing of fuel breaks around urban boundaries that were constructed before the listing of the whipsnake on December 5, 1997;

(2) Water transfers, diversion, or impoundment, groundwater pumping, irrigation, or other activity that causes barriers or deterrents to dispersal, inundates habitat, or significantly converts habitat (*e.g.*, conversion to urban development, vineyards, landscaping);

(3) Recreational activities that significantly deter the use of suitable

habitat areas by Alameda whipsnakes or alter habitat through associated maintenance activities (*e.g.*, off-road vehicle parks, golf courses, and hiking, mountain biking, and horseback riding trails);

(4) Sale, exchange, or lease of Federal land containing suitable habitat that is likely to result in the habitat being destroyed or appreciably degraded; and

(5) Construction activities that destroy or appreciably degrade suitable habitat (*e.g.*, urban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying, and associated reclamation activities).

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, if occupied habitat becomes unoccupied in the future, there is a potential benefit to critical habitat in such areas.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Designation of critical habitat could affect Federal agency activities including, but not limited to:

(1) Sale, exchange, or lease of lands owned by the Bureau of Land Management or the Department of Energy;

(2) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(3) Regulation of water flows, water delivery, damming, diversion, and channelization by the Bureau of Reclamation and the Army Corps of Engineers;

(4) Regulation of grazing, recreation, or mining by the Bureau of Land Management;

(5) Funding and implementation of disaster relief projects by the Federal Emergency Management Agency, including vegetation clearing to reduce the risk of a catastrophic wildfire event;

(6) Funding and regulation of new road construction by the Federal Highways Administration;

(7) Funding of low-interest loans to facilitate the construction of low income housing by the Department of Housing and Urban Development;

(8) Clearing of vegetation by the Department of Energy;

(9) Promulgation of air and water quality standards under the Clean Air Act and the Clean Water Act and the cleanup of toxic waste and superfund sites under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) by the U.S. Environmental Protection Agency; and

(10) Issuance of Endangered Species Act section 10(a)(1)(B) permits by the Fish and Wildlife Service for Habitat Conservation Plans.

Relationship to Incidental Take Permits Issued Under Section 10

As stated earlier, there are no approved HCPs within the proposed critical habitat designation. However, future HCPs are probable.

In the event that future HCPs covering the Alameda whipsnake are developed within the proposed critical habitat, we will work with applicants to ensure the HCPs provide for protection and management of habitat areas essential for the conservation of the Alameda whipsnake, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the Alameda whipsnake. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (*e.g.*, counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat.

We will provide technical assistance and work closely with applicants throughout the development of HCPs to identify appropriate conservation management and lands essential for the long-term conservation of the Alameda whipsnake. Preliminary HCPs exist for listed and non-listed species within the range of the Alameda whipsnake in areas proposed herein as critical habitat. By definition, these HCPs, coupled with appropriate adaptive management, should provide for the conservation of the species. We are soliciting comments on whether future approval of HCPs, and issuance of section 10(a)(1)(B) permits for the Alameda whipsnake, should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. Although we could not identify any incremental effects of this proposed critical habitat designation above those impacts of listing, we will conduct an economic analysis to further evaluate this finding. We will conduct the economic analysis for this proposal prior to a final determination. When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will reopen the comment period for 30 days at that time to accept comments on the economic analysis or further comment on the proposed rule.

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat for the Alameda whipsnake as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of Alameda whipsnakes and their habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(5) Economic and other values associated with designating critical habitat for the Alameda whipsnake such as those derived from non-consumptive uses *e.g.*, hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

Additionally, we are seeking comments on critical habitat designation relative to future HCPs, similar to our request in the coastal California gnatcatcher proposed rule (65 FR 5945). Future conservation planning efforts are possible within the range of the Alameda whipsnake in areas we are proposing as critical habitat. In these areas, we propose to designate critical habitat for areas that we believe are essential to the conservation of the species and need special management or protection. We invite comments on the appropriateness of this approach and other approaches for critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the Alameda whipsnake:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the Alameda whipsnake, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of HCPs when the plans are approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. All comments, including written and e-mail, must be received in our Sacramento Fish and Wildlife Office by May 8, 2000.

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Should a public hearing be requested, then we will announce the date, time, and place for the hearing in the **Federal Register** and local newspapers at least 15 days prior to the hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice

contain technical language or jargon that interferes with the clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the "Supplementary Information" section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Alameda whipsnake was listed as an endangered species in 1997. No formal section 7 consultations with other Federal agencies have been conducted. In addition, no HCPs for areas in which the Alameda whipsnake occurs have been done.

The areas proposed for critical habitat are currently occupied by the Alameda whipsnake. Under the Endangered Species Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; the Act does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Alameda whipsnake since the listing in 1997. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist because all proposed critical habitat is occupied. Because of the potential for impacts on other Federal agencies activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition (from critical habitat designation) will have any incremental effects.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 2.—IMPACTS OF ALAMEDA WHIPSNAKE LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3].	Activities such as removing, thinning, or destroying Alameda whipsnake habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (*e.g.*, fuels management, bulldozing, herbicide application, grazing, etc.); water transfers, diversion, or impoundment, groundwater pumping, irrigation, or other activity that causes barriers or deterrents to dispersal, inundates habitat, or significantly converts habitat (*e.g.*, conversion to urban development, vineyards, landscaping); recreational activities that significantly deter the use of suitable habitat areas by Alameda whipsnakes or alter habitat through associated maintenance activities (*e.g.*, off-road vehicle parks, golf courses, and hiking, mountain biking, and horseback riding trails); sale, exchange, or lease of Federal land that contains suitable habitat that is likely to result in the habitat being destroyed or appreciably degraded; and construction activities that destroy or appreciably degrade suitable habitat (*e.g.*, urban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying and associated reclamation activities) that the Federal Government carries out.	None.

TABLE 2.—IMPACTS OF ALAMEDA WHIPSNAKE LISTING AND CRITICAL HABITAT DESIGNATION—Continued

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Private and other non-Federal Activities Potentially Affected [4].	Activities such as removing, thinning, or destroying Alameda whipsnake habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (*e.g.*, fuels management, bulldozing, herbicide application, grazing, etc.); water transfers, diversion, or impoundment, groundwater pumping, irrigation, or other activity that causes barriers or deterrents to dispersal, inundates habitat, or significantly converts habitat (*e.g.*, conversion to urban development, vineyards, landscaping, etc.); recreational activities that significantly deter the use of suitable habitat areas by Alameda whipsnakes or alter habitat through associated maintenance activities (*e.g.*, off-road vehicle parks, golf courses, and hiking, mountain biking, and horseback riding trails); and construction activities that destroy or appreciably degrade suitable habitat (*e.g.*, urban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying and associated reclamation activities) that require a Federal action (permit, authorization, or funding).	None.

[1] This column represents the activities potentially affected by listing the Alameda whipsnake as a threatened species (December 5, 1997; 62 FR 64306) under the Endangered Species Act.
[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we designated property owned by Federal, State, and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Sale, exchange, or lease of lands owned by the Bureau of Land Management or the Department of Energy;

(2) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(3) Regulation of water flows, water delivery, damming, diversion, and channelization by the Bureau of Reclamation and the Army Corps of Engineers;

(4) Regulation of grazing, recreation, or mining by the Bureau of Land Management;

(5) Funding and implementation of disaster relief projects by the Federal Emergency Management Agency, including vegetation clearing to reduce the risk of a catastrophic wildfire event;

(6) Funding and regulation of new road construction by the Federal Highways Administration;

(7) Funding of low-interest loans to facilitate the construction of low-income housing by the Department of Housing and Urban Development;

(8) Clearing of vegetation by the Department of Energy;

(9) Promulgation of air and water quality standards under the Clean Air Act and the Clean Water Act and the cleanup of toxic waste and superfund sites under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act by the U.S. Environmental Protection Agency; and

(10) Issuance of Endangered Species Act section 10(a)(1)(B) permits by the Fish and Wildlife Service.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects beyond those resulting from listing the species.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a

"significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Alameda whipsnake. Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California, as well as during the listing process. We will continue to coordinate any future designation of critical habitat for the Alameda whipsnake with the appropriate State agencies. The designation of critical habitat the Alameda whipsnake imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act, and plan public meetings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Alameda whipsnake.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and the Department of the Interior's requirement at 512 DM 2 we understand that recognized Federal Tribes must be related to on a Government-to-Government basis. The 1997 Secretarial Order on Native Americans and the Endangered Species Act clearly states that Tribal lands should not be designated unless absolutely necessary for the conservation of the species. According to the Secretarial Order, "Critical habitat shall not be designated in an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands." The proposed designation of critical habitat for the Alameda whipsnake does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Jason Davis and Heather Bell, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In 17.11(h) revise the entry for "Whipsnake, Alameda" under "REPTILES" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
*	*	*	*	*	*	*	*
Whipsnake, Alameda (=striped racer).	*Masticophis lateralis euryxanthus.*	U.S.A. (CA)	Entire	T	628	17.95(c)	NA
*	*	*	*	*	*	*	*

3. Amend 17.95(c) by adding critical habitat for the Alameda whipsnake (*Masticophis lateralis euryxanthus*) in the same alphabetical order as this species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) Reptiles.

* * * * *

ALAMEDA WHIPSNAKE (*Masticophis lateralis euryxanthus*)

1. Critical habitat units are depicted for Alameda, Contra Costa, San Joaquin and Santa Clara Counties, California, on the maps below.

2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of foraging, sheltering, breeding, maturation, and dispersal. The primary constituent elements are found, or could develop, in areas that support or have the potential to support scrub communities including mixed chaparral, chamise-redshank chaparral, and coastal scrub; and annual grassland and various oak woodlands that lie adjacent to scrub habitats. In addition, the primary constituent elements for the Alameda whipsnake may be found in grasslands and various oak woodlands that are linked to scrub habitats by substantial rock outcrops or riparian corridors. Other habitat features that provide a source of cover for the whipsnake during dispersal or lie in reasonable proximity to scrub habitats and contain habitat features (*e.g.*, rock outcrops) that support adequate prey populations may also contain primary constituent elements for the Alameda whipsnake.

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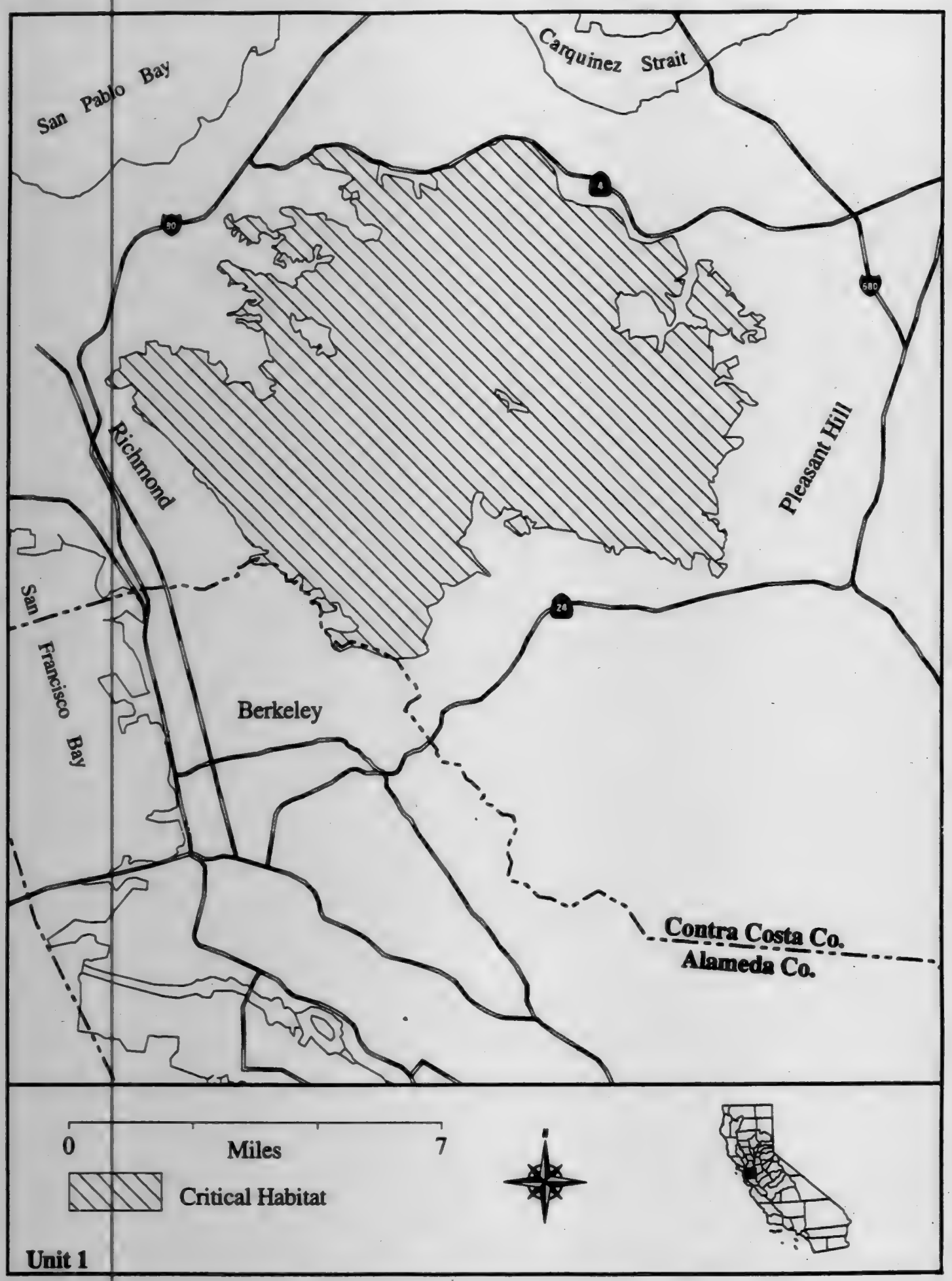

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Map Unit 1: Alameda and Contra Costa counties, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T.2 N., R.4 W., S½

sec. 13, SE¼ sec. 23, N½ SE¼ sec. 24, sec. 25, N½ SE¼ sec. 26, E½ sec. 27, E½ sec. 34 secs. 35–36; T.2 N., R.3 W., S½ sec. 15, S½ sec. 16, SW¼ sec. 18, secs. 19–22, S½ NW¼ sec. 23, SW¼ sec. 24, secs. 25–36; T.2 N., R.2 W., S½ sec. 30, sec. 31, SW¼ sec 32; T.1 N., R.4 W., secs. 1–2, S½ sec. 3, sec. 4, SE¼ sec. 5, N½ SE¼ sec. 8, secs. 9–15, N½ sec. 16, N½ SE¼ sec. 21, secs. 22–26, NE¼ sec. 27, N½ SE¼ sec. 36; T.1 N., R.3 W., secs. 1–24, N½ sec. 25, N½ sec. 26, N½ sec. 27, S½ NW¼ sec. 28, secs. 29–32; T.1. N., R.2 W., secs. 5–7, S½ NW¼ sec. 8, W½ sec. 17, secs. 18–19, W½ sec. 29, sec. 30; T.1 S., R.3 W., N½ sec. 5, N½ sec. 6.

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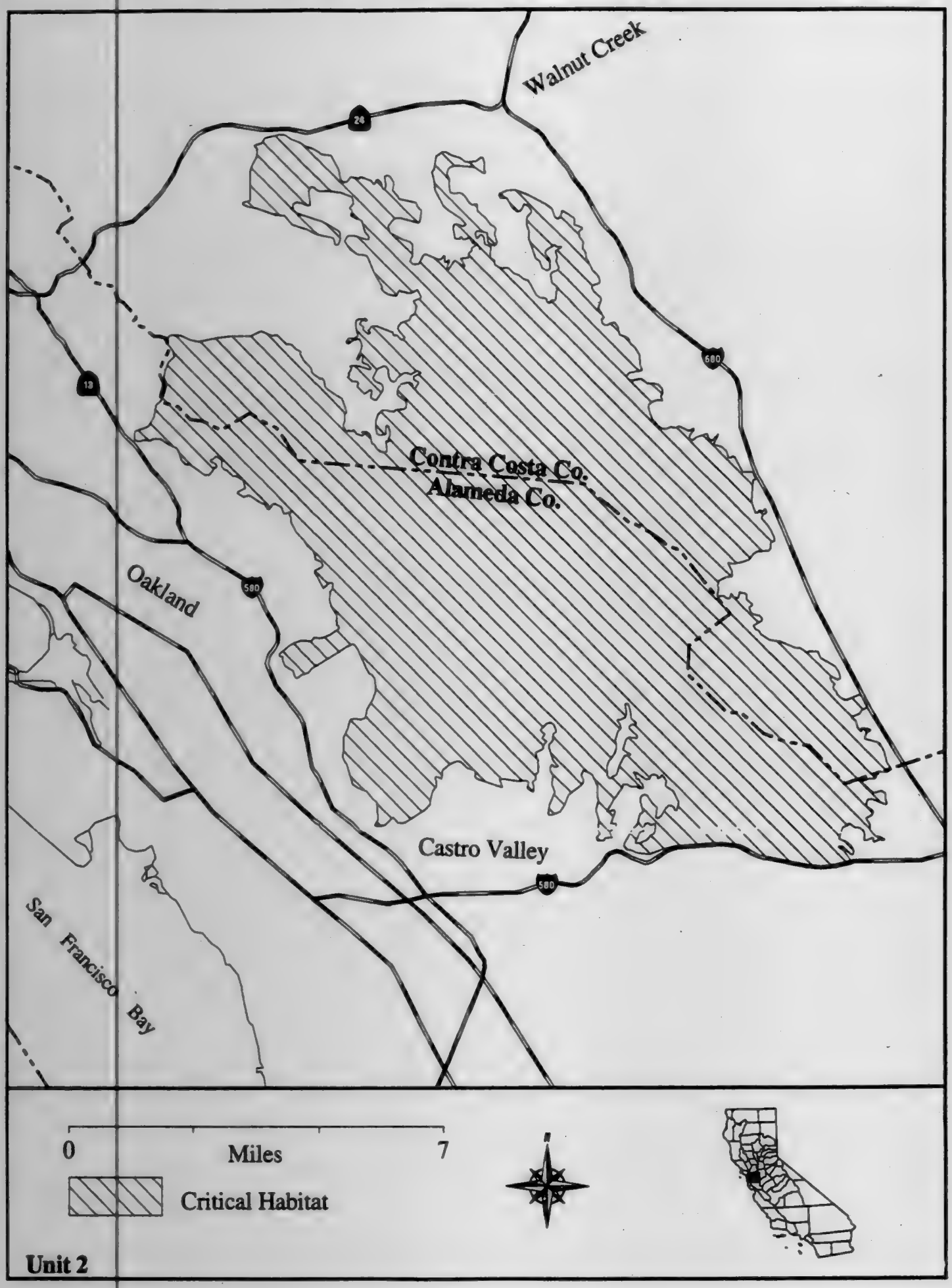

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Map Unit 2: Alameda and Contra Costa Counties, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T. 1 N., R. 3 W.,

SE¼ sec. 35, S½ NW¼ sec. 36; T. 1. N., R. 2 W., SW¼ sec. 31, S½ sec. 33, SW¼ sec. 34; T. 1 S., R. 3 W., sec. 1, E½ sec. 2, NE¼ sec. 12, SW½ sec. 13, S½ sec. 14, S½ sec. 15, secs. 22–27, SE¼ sec. 28, NE¼ sec. 34, N½ SE¼ sec. 35, sec. 36; T. 1 S., R. 2 W., S½ sec. 2, secs. 3–6, N½ SE¼ sec. 7, secs. 8–11, SW¼ sec. 12, S½ NW sec. 13, secs. 14–17, SE¼ sec. 18, S½ NE¼ sec. 19, secs, 20–36; T.1 S., R. 1 W., SW¼ sec. 19, SW¼ sec. 29, S½ NW¼ sec. 30, secs. 31–32; T. 2 S., R. 3 W., N½ SE¼ sec. 1, NE¼ sec. 12, S½ sec. 13, N½ sec. 24; T. 2 S., R. 2 .W., secs. 1–18, E½ sec. 19, secs. 20–30, N½ SE ¼ sec. 31, sec. 32, N½ sec. 33, N½ sec. 34, N½ SW¼ sec. 35, sec. 36; T. 2 S., R. 1 W., W¼ sec. 4, secs. 5–6, S½ sec. 16, secs. 17–21, S½ NW¼ sec. 22, W½ sec. 26, secs. 27–34, W½ sec. 35; T. 3 S., R. 1 W., NW¼ sec. 2, secs. 3–4, N½ SE¼ sec. 5, N½ sec. 6; T. 3 S., R. 2 W., N½ sec. 1.

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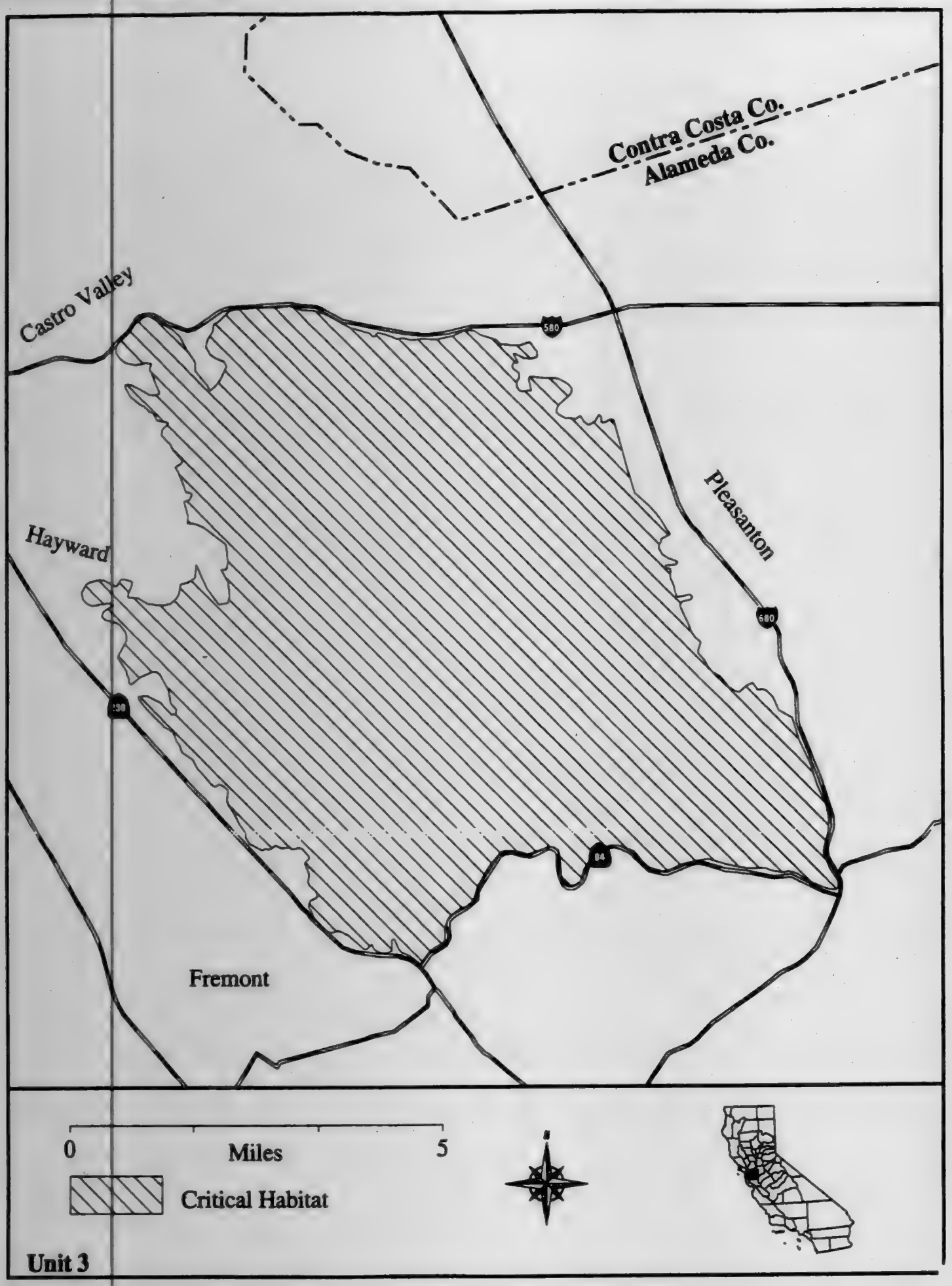

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Map Unit 3: Alameda County, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T. 3 S., R. 2 W., sec. 1, sec.

12, E½ sec. 13, SW¼ sec. 24, sec. 25, NE¼ sec. 26, secs. 35–36; T. 3 S., R. 1 W., SW¼ sec. 2, S½ sec. 3, S½ sec. 4, S½ NW¼ sec. 5, S½ NE¼ sec. 6, secs. 7–11, SW¼ sec. 12, secs. 13–36; T. 3 S., R. 1 E., W½ sec. 19, S½ NW¼ sec. 30, sec. 31, S½ sec. 32; T. 4 S., R. 2 W., NE¼ sec. 1; T. 4 S., R. 1 W., secs. 1–6, NE¼ sec. 7, secs. 8–12, NE¼ sec. 14, N½ SW¼ sec. 15, sec. 16, N½ SE¼ sec. 17, NE¼ sec. 21; T. 4 S., R. 1 E., W½ sec. 4, secs. 5–8, W½ sec. 9, NW¼ sec. 16.

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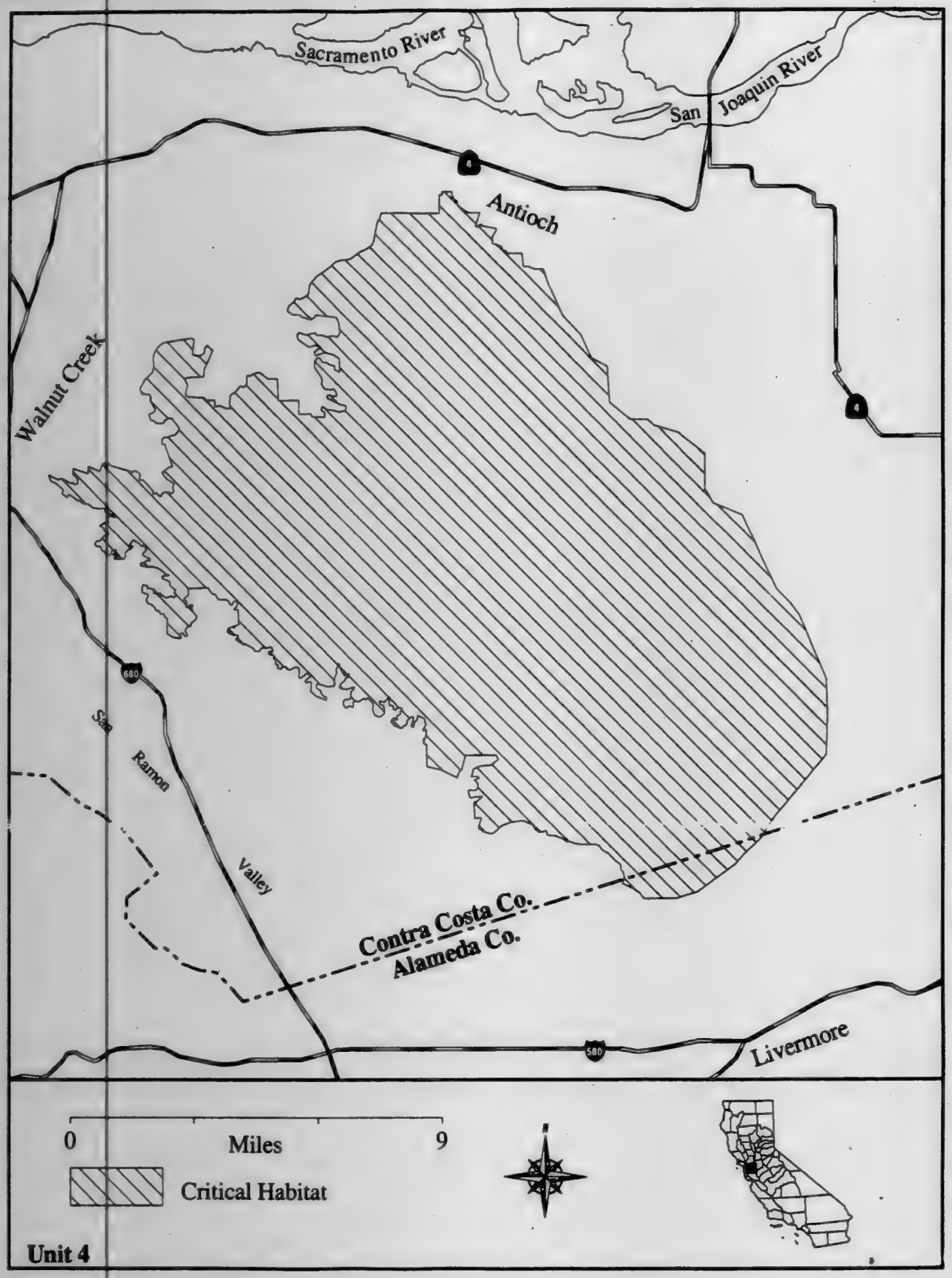

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Map Unit 4: Alameda and Contra Costa Counties, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T. 2 N., R. 1 W.,

SE¼ sec. 36; T. 2 N., R. 1 E., S½ NW¼ sec. 27, S½ NE¼ sec. 28, S½ sec. 29, SE¼ sec. 30, S½ NE¼ sec. 31, secs. 32–34, S½ sec. 35; T. 1 N., R 2 W., S½ sec. 25, SE¼ sec. 26, N½ sec. 36; T. 1 N., R. 1 W., sec. 1, SE¼ sec. 2, SE¼ sec. 8, S½ sec. 9, sec. 12, N½ SE¼ sec.13, W½ sec. 14, S½ NE¼ sec. 15, sec. 17, N½ SE¼ sec. 20, secs. 21–28, E½ SW¼ sec. 29, S½ sec. 30, sec. 31, secs. 32–36; T. 1 N., R. 1. E., W½ sec. 1, secs. 2–11, sec. 12, secs. 13–36; T. 1 N., R. 2 E., SW¼ sec. 7, W½ sec. 18, sec. 19, S½ sec. 20, SW¼ sec. 21, secs. 28–33, S½ sec. 34; T.1 S., R. 1 W., secs. 1–5, N½ SE¼ sec. 6, sec. 8, N½ SW¼ sec. 9, secs. 10–15, NW¼ sec. 16, NE¼ sec. 17, N½ SE¼ sec. 23, sec. 24, N½ sec. 25; T. 1 S., R. 1 E., secs. 1–29, N½sec. 30, NE¼ sec. 32, sec. 33–36; T. 1 S., R. 2 E., SW¼ sec. 2, secs. 3–10, S½ NW¼ sec. 11, W½ sec. 13, secs. 14–36; T. 2 S., R. 1 E., secs. 1–3, N½ sec. 10, N½ sec. 11, sec. 12; T. 2 S., R. 2 E., NW¼ sec. 1, secs. 2–10, W½ sec. 11, N½ sec. 15, sec. 16–17, E½ sec. 18.

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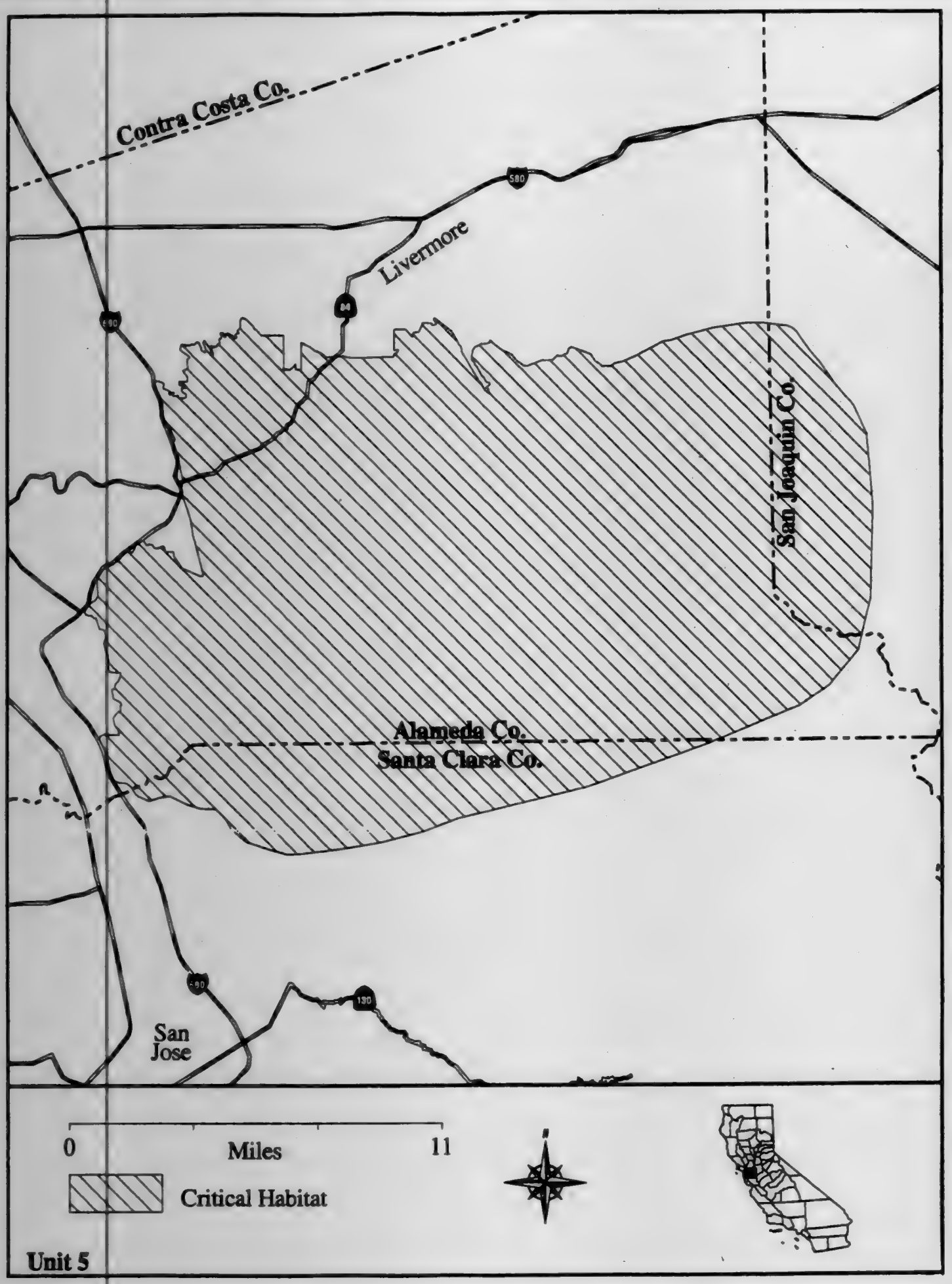

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Map Unit 5: Alameda, Contra Costa, San Joaquin, and Santa Clara Counties, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian,

California: T.3 N., R.1 E., SE¼ sec. 21, S½ sec. 22, S½ NW¼ sec. 23, SW¼ sec. 24, S½ NW¼ sec. 25, secs. 26–27, E½ sec. 28, SE¼ sec. 29, NE¼ sec. 32, secs. 33–36; T.3 S., R. 2 E., SW¼ sec. 19, SE¼ sec. 21, S½ NE¼ sec. 22, S½ NW¼ sec. 23, SE¼ sec. 24, secs. 25–36; T.3 S., R.3 E., S½ sec. 24, secs. 25–26, S½ NE¼ sec. 27, S½ NW¼ sec. 28, S½ NE¼ sec. 29, S½ NW¼ sec. 30, secs. 31–36; T.3 S., R.4 E., S½ sec. 19, S½ sec. 20, S½ sec. 21, SW¼ sec. 27, secs. 28–33, S½ NW¼ sec. 34; T.4 S., R.1 W., E½ sec. 25, E½ sec. 36; T.4 S, R.1 E., secs. 1–4, E½ sec. 9, secs. 10–15, E½ sec. 16, SE¼ sec. 19, S½ sec. 20, S½ NE¼ sec. 21, secs. 22–36; T.4 S., R.2 E., secs. 1–36; T.4 S., R.3 E., secs. 1–36; T.4 S., R.4 E., W½ sec. 2, secs. 3–10, W½ sec. 11, W½ sec. 11, W½ sec. 14, secs. 15–22,W½ sec. 23, W½ sec. 26, secs. 27–34, W½ sec. 35; T.5 S., R.1 E., secs. 1-29, N½ SE¼ sec. 30, N½ sec. 33, N½ SE¼ sec. 34, secs. 35–36; T.5 S., R.2 E., secs. 1–35, N½ SW¼ sec. 36; T.5 S., R.3 E., secs. 1–24, N½ sec. 26, N½ SW¼ sec. 27, secs. 28–30, N½ sec. 31, N½ sec. 32; T.5. S., R.4 E., W½ sec. 2, secs. 3–9, N½ SW¼ sec. 10, N½ SW¼ sec. 16, secs. 17–18, N½ sec. 19; T.6 S., R.1 E., sec. 1, N½ sec. 2; T.6 S., R.2 E., N½ sec. 3, N½ sec. 4, N½ sec. 5, N½ sec.6.

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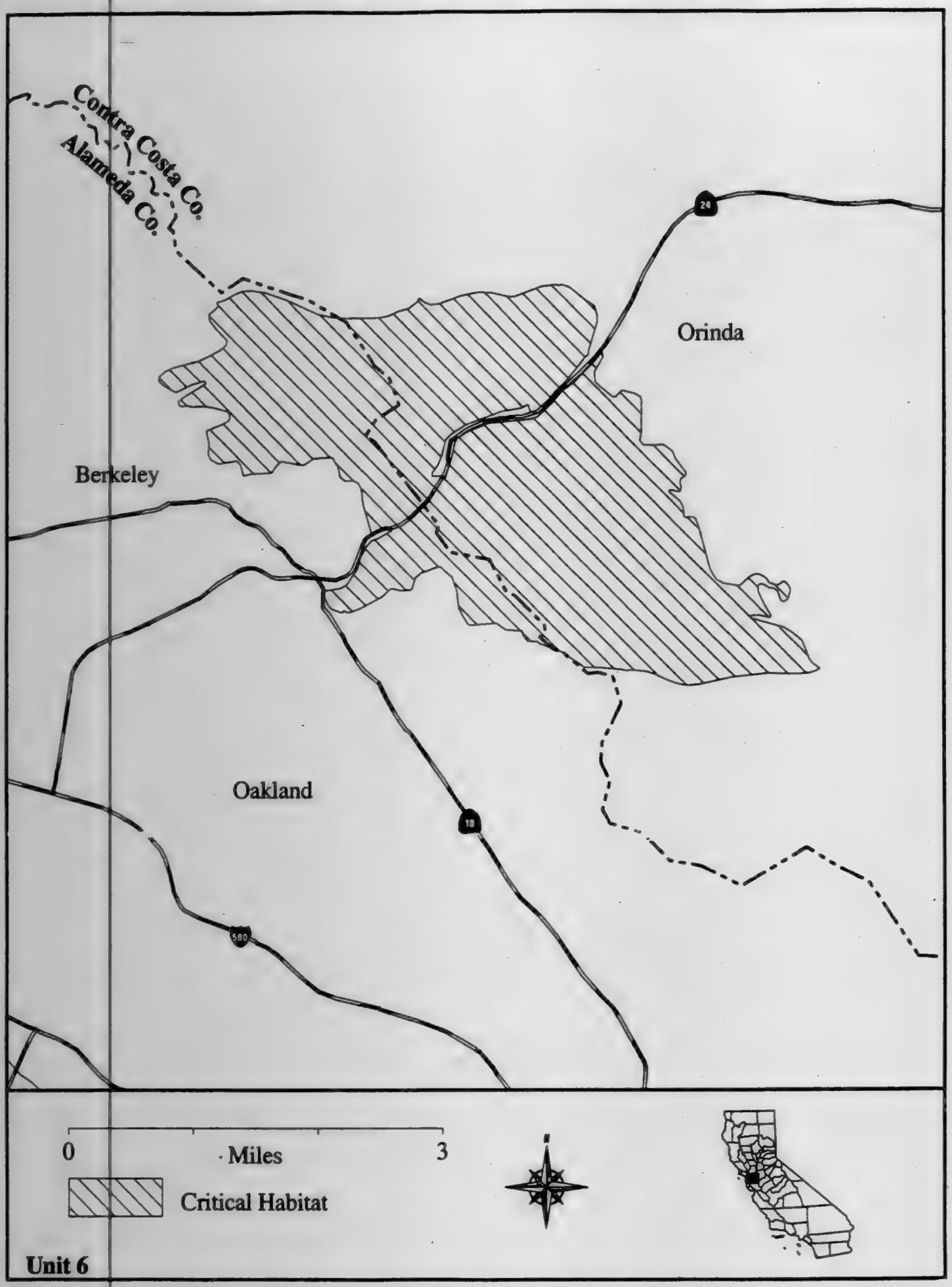

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Map Unit 6: Contra Costa County, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T.1 N., R.4 W., SE¼ sec. 36;

T.1 N., R.3 W., SW¼ sec. 31, S½ sec. 33; T.1 S., R.4 W., S½ NE ¼ sec. 1, NE¼ sec. 12; T.1 S., R.3 W., W½ sec. 3, secs. 4–6, N½ SE¼ sec. 7, secs. 8–10, secs. 14–15, N½ SE¼ sec. 16, N½ sec. 17, NE¼ sec. 18.

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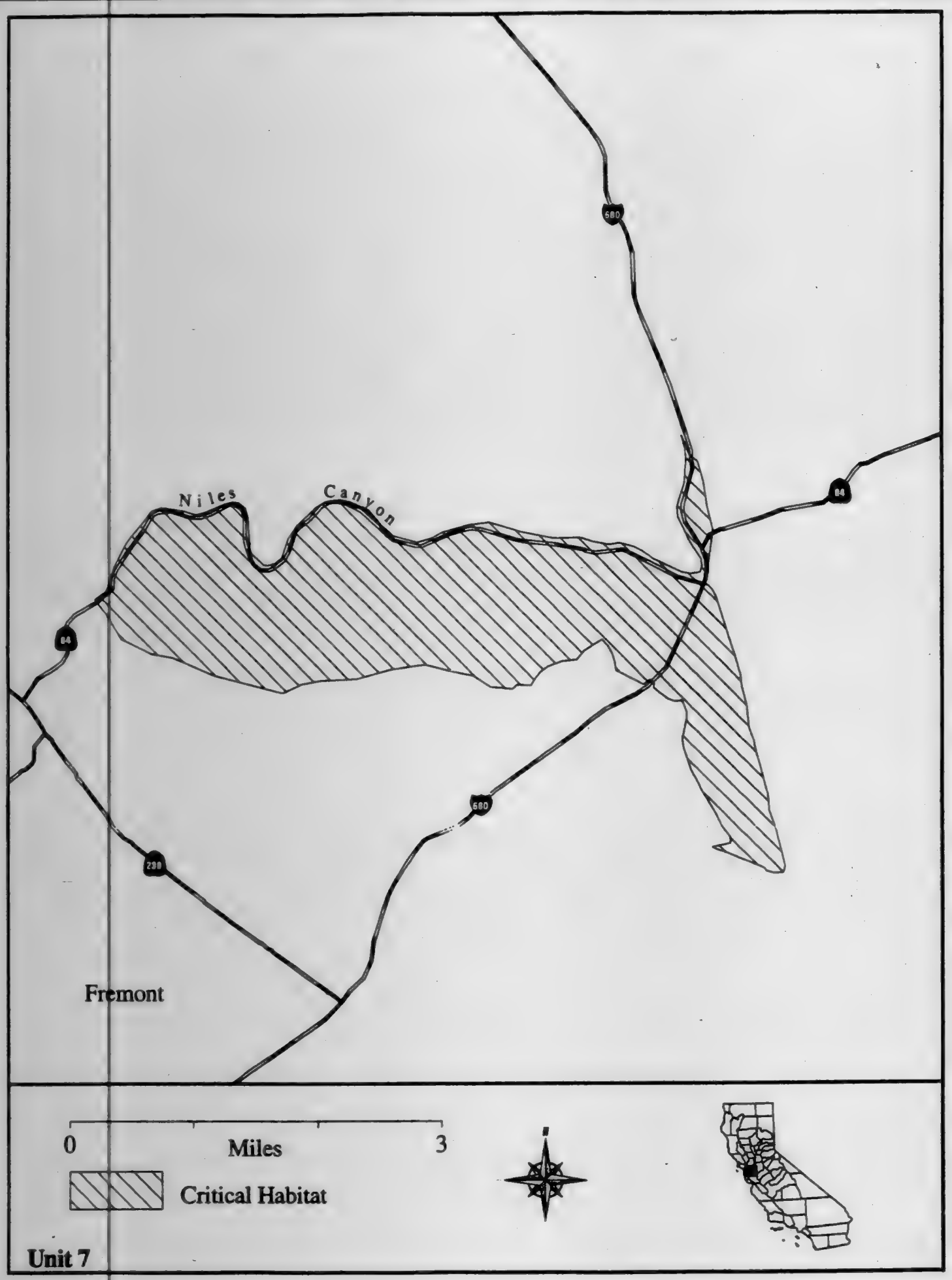

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Map Unit 7: Alameda County, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T.4 S., R.1 W., SE¼ sec. 10,

S½ sec. 11, S½ sec. 12, secs. 13–14, E½ sec. 15, NE¼ sec. 23, NW¼ sec. 24; T.4 S., R.1 E., S½ sec. 7, S½ sec. 8, sec. 9, secs. 16–18, NE¼ sec. 19, NE¼ sec. 20, sec. 21, W½ sec. 27, N½ sec. 28.

Dated: February 29, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–5414 Filed 3–7–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF97

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the San Diego Fairy Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the San Diego fairy shrimp (*Branchinecta sandiegonensis*), pursuant to the Endangered Species Act of 1973, as amended (Act). We propose designation of critical habitat within an approximately 14,771-hectare (36,501-acre) area for the San Diego fairy shrimp in San Diego and Orange Counties.

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and may require special management considerations or protection. The primary elements for the San Diego fairy shrimp are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal.

If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments from all interested parties until May 8, 2000. Public hearing requests must be received by April 24, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

2. You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California.

3. You may send comments by electronic mail (e-mail) to fw1sdfs@fws.gov. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: [RIN number]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760/431–9440.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office at the above address; (telephone 760/431–9440; facsimile 760/431–5902).

SUPPLEMENTARY INFORMATION:

Background

The San Diego fairy shrimp (*Branchinecta sandiegonensis*) is a small aquatic crustacean (Order: Anostraca), restricted to vernal pools (pools that have water in them for only a portion of any given year) in coastal southern California and south to northwestern Baja California, Mexico. It is a habitat specialist found in small, shallow vernal pools and ephemeral (lasting a short time) basins that range in depth from approximately 5 to 30 centimeters (2 to 12) inches (Simovich and Fugate 1992; Hathaway and Simovich 1996). Water chemistry is also an important factor in determining fairy shrimp distribution (Belk 1977; Branchiopod Research Group 1996; Gonzales *et al.* 1996), hence, no individuals have been found in riverine or marine waters. All known localities are below 701 meters (2,300 feet) and are within 64 kilometers (km) (40 miles (mi)) of the Pacific Ocean.

San Diego fairy shrimp is one of the six groups of fairy shrimp known as branchinectids that occur in southern California (Simovich and Fugate 1992). The only other species of *Branchinecta* in southern California are the non-listed Lindahl's fairy shrimp (*B. lindahli*) and the federally threatened vernal pool fairy shrimp (*B. lynchi*). Male San Diego fairy shrimp are distinguished from males of other species of *Branchinecta* by differences found at the distal (located far from the point of attachment) tip of the second antennae. Females are distinguishable from females of other species of *Branchinecta* by the shape and length of the brood sac, and by the presence of paired dorsolateral (located on the sides, toward the back) spines on five of the abdominal segments (Fugate 1993).

Mature individuals lack a carapace (hard outer covering of the head and thorax) and have a delicate elongate body, large stalked compound eyes, and 11 pairs of swimming legs. They swim or glide gracefully upside down by means of complex wave-like beating movements of the legs that pass from front to back. Adult male San Diego fairy shrimp range in size from 9 to 16 millimeters (mm) (0.35 to 0.63 inches (in.)); adult females are 8 to 14 mm (0.31 to 0.55 in.) long. The second pair of antennae in males are greatly enlarged and specialized for clasping the females during copulation, while the second pair of antennae in the females are cylindrical and elongate. The females carry their eggs in an oval or elongate ventral brood sac (Eriksen and Belk 1999). Nearly all species of fairy shrimp feed on algae, bacteria, protozoa, rotifers, and bits of organic matter (Pennak 1989; Eng *et al.* 1990).

Adult San Diego fairy shrimp are usually observed from January to March; however, in years with early or late rainfall, the hatching period may be extended. The species hatches and matures within 7 days to 2 weeks depending on water temperature (Hathaway and Simovich 1996; Simovich and Hathaway 1997). The San Diego fairy shrimp disappear after about a month, but animals will continue to hatch if subsequent rains result in additional water or refilling of the vernal pools (Branchiopod Research Group 1996). The eggs are either dropped to the pool bottom or remain in the brood sac until the female dies and sinks. The "resting" or "summer" eggs are capable of withstanding temperature extremes and prolonged drying. When the pools refill in the same or subsequent rainy seasons, some but not

all of the eggs may hatch. Fairy shrimp egg banks in the soil may be composed of the eggs from several years of breeding (Donald 1983; Simovich and Hathaway 1997). Simovich and Hathaway (1997) found that vernal pools and ephemeral wetlands that support anostracans (*i.e.*, San Diego fairy shrimp), and occur in areas with variable weather conditions or filling periods (such as southern California), may hatch only a fraction of the total cyst (organisms in a resting stage) bank in any given year. Thus, reproductive success is spread over several seasons.

Vernal pools have a discontinuous occurrence in several regions of California (Keeler-Wolf *et al.* 1995), from as far north as the Modoc Plateau in Modoc County, south to the international border in San Diego County. Vernal pools form in regions with Mediterranean climates, where shallow depressions fill with water during fall and winter rains and then evaporate in the spring (Collie and Lathrop 1976; Holland 1976, 1988; Holland and Jain 1977, 1988; Thorne 1984; Zedler 1987; Simovich and Hathaway 1997). In years of high precipitation, overbank flooding from intermittent streams may augment the amount of water in some vernal pools (Hanes *et al.* 1990). Vernal pool studies conducted in the Sacramento Valley indicate that the contribution of subsurface or overland flows is significant only in years of high precipitation when pools are already saturated (Hanes and Stromberg 1996). Downward percolation of water in vernal pool basins is prevented by the presence of an impervious subsurface layer, such as a claypan, hardpan, or volcanic stratum (Holland 1976, 1988).

Researchers have found that vernal pools located in San Diego County are associated with five soil series types, Huerheuero, Olivenhain, Placentia, Redding, and Stockpen (Bauder and McMillan 1998). These soil types have a nearly impermeable surface or subsurface soil layer with a flat or gently sloping topography (Service 1998). Due to local topography and geology, the pools are usually clustered into pool complexes (Bauder 1986; Holland and Jain 1988). Pools within a complex are typically separated by distances on the order of meters, and may form dense, interconnected mosaics of small pools or a more sparse scattering of larger pools.

Vernal pool systems are often characterized by different landscape features including mima mound (miniature mounds) micro-topography, varied pool basin size and depth, and vernal swales (low tract of marshy land). Vernal pool complexes that support one too many distinct vernal pools are often interconnected by a shared watershed. This habitat heterogeneity (consisting of dissimilar elements or parts) generally ensures that some between-pool water flow continues.

San Diego County supports the largest number of remaining vernal pools occupied by the San Diego fairy shrimp. Scientists estimated that, historically, vernal pool soils covered approximately 208 hectares (ha) (520 acres (ac)) of San Diego County (Bauder and McMillan 1998). Based on available information at the time of listing, we estimate that fewer than 82 ha (202 ac) of occupied vernal pool habitat remain in the county, of which an estimated 70 percent occurs on military lands (Weir and Bauder 1991). Keeler-Wolf *et al.* (1995) concluded that the greatest recent losses of vernal pool habitat in San Diego County have occurred in Mira Mesa, Rancho Penasquitos, and Kearny Mesa, which accounted for 73 percent of all the pools destroyed in the region during the 7-year period between 1979 and 1986. Other substantial losses have occurred in the Otay Mesa area, where over 40 percent of the vernal pools were destroyed between 1979 to 1990. Similar to San Diego County, vernal pool habitat was once extensive on the coastal plain of Los Angeles and Orange Counties (R. Mattoni and T. Longcore, 1998). Unfortunately, there has been a near-total loss of vernal pool habitat in these areas (Ferren and Pritchett 1988; Keeler-Wolf *et al.* 1995).

Urban and water development, flood control, highway and utility projects, as well as conversion of wildlands to agricultural use, have eliminated vernal pools and/or their watersheds in southern California (Jones and Stokes Associates 1987). Changes in hydrologic pattern, overgrazing, and off-road vehicle use also imperil this aquatic habitat and the San Diego fairy shrimp. The flora and fauna in vernal pools or swales can change if the hydrologic regime is altered (Bauder 1986, 1987). Anthropogenic (of human origin) activities that reduce the extent of the watershed or that alter runoff patterns (*i.e.*, amounts and seasonal distribution of water) may eliminate the San Diego fairy shrimp, reduce their population sizes or reproductive success, or shift the location of sites inhabited by this species. The California Department of Fish and Game's Natural Diversity Data Base ranks the vernal pool habitat type in priority class G1-S1, which denotes communities in the State of California that occur over fewer than 809 ha (2,000 ac) globally.

Previous Federal Action

David Hogan, formerly of the San Diego Biodiversity Project in Julian, California; Dr. Denton Belk of Our Lady of the Lake University in San Antonio, Texas; and the Biodiversity Legal Foundation petitioned us to list the San Diego fairy shrimp as an endangered species, in a letter dated March 16, 1992. We received the petition on March 24, 1992. On August 4, 1994, we published a proposed rule in the **Federal Register** (59 FR 39874) to list the San Diego fairy shrimp as an endangered species. The proposed rule was the first Federal action on the San Diego fairy shrimp, and also constituted the 12-month petition finding, as required by section 4(b)(3)(B) of the Act. On February 3, 1997, we published a final rule determining the San Diego fairy shrimp to be an endangered species (62 FR 4925).

At the time of listing, we concluded that designation of critical habitat for the San Diego fairy shrimp was not prudent because such designation would not benefit the species. We were also concerned that critical habitat designation would likely increase the degree of threat from vandalism or other human-induced impacts. We were aware of several instances of apparently intentional habitat destruction that had occurred during the listing process. However, we have determined that the threats to this species, and its habitat, from specific instances of habitat destruction do not outweigh the broader educational and any potential regulatory and other possible benefits that designation of critical habitat would provide for this species. A designation of critical habitat will provide educational benefits by formally identifying those areas essential to the conservation of the species, and the areas likely to be the focus of our recovery efforts for the San Diego fairy shrimp. Therefore, we conclude that the benefits of designating critical habitat on lands essential for the conservation of the San Diego fairy shrimp will not increase incidences of vandalism above current levels for this species.

On October 14, 1998, the Southwest Center for Biological Diversity filed a lawsuit in Federal District Court for the Southern District of California for our failure to designate critical habitat for the San Diego fairy shrimp. On September 16, 1999, the Court ordered that "On or before February 29, 2000, the Service shall submit for publication in the **Federal Register**, a proposal to withdraw the existing not prudent critical habitat determination together with a new proposed critical habitat

determination for the San Diego fairy shrimp" (*Southwest Center for Biodiversity* v. *United States Department of the Interior et al.*, CV 98–1866) (S.D. Cal.).

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary. Proposed critical habitat for the San Diego fairy shrimp includes areas that currently support the species, and areas that contain recovery habitat essential for the conservation of the species.

We reconsidered our evaluation in the prudency determination of the threats posed by vandalism and determined that instances of vandalism have not increased since the listing of the San Diego fairy shrimp. Therefore, we find that designating critical habitat for the San Diego fairy shrimp is prudent.

Critical habitat receives protection under the Act through the prohibition against destruction or adverse modification of critical habitat as set forth under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal action, critical habitat designation would not afford any protection under the Act against such activities.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans, and through section 7 consultation and section 10 permits.

Critical habitat identifies specific units that are essential to the conservation of a listed species and that may require special management considerations or protection. All of the proposed critical habitat areas are considered essential to the conservation of the San Diego fairy shrimp as described in the Recovery Plan for Vernal Pools of Southern California (Recovery Plan) (Service 1998). The proposed critical habitat units include a mosaic of vernal pools currently supporting San Diego fairy shrimp, as well as areas that historically supported vernal pools and are still capable of supporting this species. All of these areas may not currently contain all of the primary constituent elements, but could develop them in the future.

Methods

In determining areas that are essential to conserve the San Diego fairy shrimp, we used the best scientific and commercial data available. This included data from research and survey observations published in peer-reviewed articles, recovery criteria outlined in the Recovery Plan, regional Geographic Information System (GIS) vegetation and species coverages (including vegetation layers for Orange and San Diego Counties), data collected on the U.S. Marine Corps Air Station Miramar (Miramar) and U.S. Marine Corps Station Camp Pendleton (Camp Pendleton), and data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act, and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available. We consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding and reproduction; and habitats that are protected from disturbance or are representative of the historic and ecological distributions of a species.

The primary constituent elements for the San Diego fairy shrimp are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal; or the capacity to develop those habitat components. The primary constituent elements are found in those areas that support or have the potential to support vernal pools or other ephemeral depressional wetlands. Primary constituent elements include the vernal pool basins and associated watersheds, and include, but are not limited to: Small to large vernal pools with shallow to moderate depths that hold water for at least 5 days but not necessarily every year; entire watershed(s) and hydrology for vernal pool basins and their related vernal pool complexes; ephemeral depressional wetlands, flat or gently sloping topography, and any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat. Primary constituent elements or components thereof are found in all the areas proposed for critical habitat.

Criteria Used To Identify Critical Habitat

In an effort to map areas essential to the conservation of the species, we used data on known San Diego fairy shrimp locations, and those vernal pools and vernal pool complexes that were identified in the Recovery Plan as essential for the stabilization and reclassification of the species. We then evaluated those areas based on the hydrology, watershed and topographic features. Based on this evaluation, a 1-km (.62 mi) Universal Transverse Mercator (UTM) grid was overlaid on top of those vernal pool complexes and their associated watersheds. This 1-km (.62 mi) UTM grid provides a buffer area around either individual vernal pool basins or vernal pool complexes, and provides additional assurances that watersheds and hydrology are captured and maintained for this species. In those cases where occupied vernal pools were not identified in the Recovery Plan, we relied on recent scientific data to update the map coverage.

We did not map critical habitat in sufficient detail to exclude all developed areas such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for San Diego fairy shrimp conservation. Within the delineated critical habitat unit boundaries, only lands containing or that could develop the primary constituent elements described above are proposed for critical

habitat. Within this area proposed as critical habitat, only an estimated 18 ha (45 ac) is of unknown occupancy. The remaining areas of vernal pools within the total designated critical habitat area are occupied by San Diego fairy shrimp.

We also considered the existing status of lands in designating areas as critical habitat. Section 10(a) of the Act authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by a Habitat Conservation Plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. NonFederal lands that are covered by an existing operative HCP and executed implementation agreement for San Diego fairy shrimp under Section 10(a)(1)(B) of the Act receive special management and protection under the terms of the HCP/IA and are therefore not being proposed for inclusion in critical habitat.

We expect that critical habitat may be used as a tool to help identify areas within the range of the San Diego fairy shrimp that are most critical for the conservation of the species. We encourage the development of HCPs for such areas on non-Federal lands. We consider HCPs to be one of the most important methods through which non-Federal landowners can resolve endangered species conflicts. We provide technical assistance and work closely with applicants throughout development of HCPs to help identify special management considerations for listed species. We intend that HCPs provide a package of protection and management measures sufficient to address the conservation needs of the species.

Proposed Critical Habitat Designation

The approximate area encompassing proposed critical habitat by county and land ownership is shown in Table 1. Proposed critical habitat includes San Diego fairy shrimp habitat throughout the species' range in the United States (*i.e.*, Orange and San Diego Counties, California). Lands proposed are under private, State, and Federal ownership, with Federal lands including lands managed by the U.S. Department of Defense (DOD) and the Service. Lands proposed as critical habitat have been divided into six Critical Habitat Units. A brief description of each unit, and reasons for proposing it as critical habitat, are presented below. The units are generally based on geographical location of the vernal pools, soil types, and local variation of topographic position (*i.e.*, coastal mesas, inland valley).

TABLE 1.—APPROXIMATE AREA ENCOMPASSING PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP.

[Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within]

County	Federal land*	Local/State land	Private land	Total**
Orange	N/A	100 ha (247 ac)	N/A	100 ha (247 ac)
San Diego	9,234 ha (22,817 ac)	267 ha (660 ac)	5,171 ha (12,778 ac)	14,671 ha (36,254 ac)
Total	9,234 ha (22,817 ac)	367 ha (907 ac)	5,171 ha (12,778 ac)	14,771 ha (36,501 ac)

*Includes Department of Defense and Fish and Wildlife Service lands.
**Includes an estimated 18 ha (45 ac) of unknown occupancy. The remaining areas of vernal pools within the total designated critical habitat area are known to be occupied by San Diego fairy shrimp.

Unit 1: Orange County (Fairview Regional Park) Critical Habitat Unit

Unit 1 encompasses approximately 100 ha (247 ac) within the Los Angeles Basin-Orange Management Area as outlined in the Recovery Plan. The Fairview Regional Park vernal pool complex is proposed as critical habitat. This unit provides the northern extent of this species' distribution and represents the historic distribution of coastal terrace vernal pools in this area. Proposed critical habitat units are based on UTM coordinates.

Unit 2: San Diego: North Coastal Mesa Critical Habitat Unit

Unit 2 encompasses approximately 5,572 ha (13,768 ac) within the San Diego: North Coastal Mesa Management Area as outlined in the Recovery Plan on Camp Pendleton and within the City of Carlsbad. Areas proposed on Camp Pendleton include (1) five training areas, (2) habitat found elsewhere on the base, and (3) lands leased by the California State Department of Parks and Recreation and private interests from Camp Pendleton. Camp Pendleton has several substantial vernal pool complexes that support the San Diego fairy shrimp. Within the jurisdiction of the City of Carlsbad, one vernal pool complex located in the vicinity of Palomar Airport and one complex at Poinsettia Lane train station are being proposed as critical habitat.

These vernal pool complexes represent vernal pool habitat associated with coastal terraces found north of the San Dieguito River. Proposed critical habitat units are based on UTM coordinates.

Unit 3: San Diego: Inland Valley Critical Habitat Unit

Unit 3 encompasses 2,600 ha (6,425 ac) within the San Diego: Inland Valley Management Area as outlined in the Recovery Plan. Lands proposed contain vernal pool complexes within the jurisdiction of the City of San Marcos and the community of Ramona. In the community of Ramona, one of the complexes is within the County's Ramona Airport boundaries. These vernal pool complexes are generally isolated to a degree from maritime influence (greater than 10 km (6 mi) from the coast) and are representative of vernal pools associated with alluvial or volcanic type soils. Proposed critical habitat units are based on UTM coordinates.

Unit 4: San Diego: Central Coastal Mesa Critical Habitat Unit

Unit 4 encompasses 7,500 ha (18,531 ac) within the San Diego: Central Coastal Mesa Management Area as outlined in the Recovery Plan. Lands proposed contain vernal pool complexes within the jurisdiction of the City of San Diego, Miramar, U.S. Department of Defense, State of California, Service, and private interests. These vernal pool complexes are associated with coastal terraces and mesas found south of the

San Dieguito River to the San Diego Bay. Proposed critical habitat units are based on UTM coordinates.

Unit 5: San Diego: Southern Coastal Mesa Critical Habitat Unit

Unit 5 encompasses 2,967 ha (7,332 ac) within the San Diego: Southern Coastal Mesa Management Area as outlined in the Recovery Plan. Lands proposed include vernal pool complexes within the jurisdiction of the Service, City of San Diego, City of Chula Vista, County of San Diego, U.S. Immigration and Naturalization Service (INS), and private interests. These vernal pool complexes are associated with coastal mesas from the Sweetwater River south to the International Border. Proposed critical habitat units are based on UTM coordinates.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the San Diego fairy shrimp or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.*, Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the San Diego fairy shrimp is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Any activity that results in discharge of dredged or fill material, excavation, or mechanized land clearing of ephemeral and/or vernal pool basins;

(2) Any activity that alters the watershed, water quality or quantity to an extent that water quality becomes unsuitable to support San Diego fairy shrimp, or any activity that significantly affects the natural hydrologic function of the vernal pool system; and

(3) Activities that could lead to the introduction of exotic species into occupied or potentially occupied San Diego fairy shrimp habitat.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the

value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. Designation of critical habitat in areas occupied by the San Diego fairy shrimp is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. Designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden since the Corps requires review of projects requiring permits in all vernal pools, whether it is known that San Diego fairy shrimp are present or not. If occupied habitat becomes unoccupied in the future, there is a potential benefit to critical habitat in such cases.

Designation of critical habitat could affect Federal agency activities. Federal agencies already consult with the Service on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(3) Regulation of airport improvement activities by the Federal Aviation Administration;

(4) Military training and maneuvers on Camp Pendleton and Miramar, and other applicable DOD lands;

(5) Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the INS;

(6) Licensing of construction of communication sites by the Federal Communications Commission, and;

(7) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

Relationship To Habitat Conservation Plans

A number of habitat planning efforts have been completed within the range of the San Diego fairy shrimp. Principal among these is the NCCP effort in San Diego County. The MSCP, and its subarea plans, provide conservation measures for the San Diego fairy shrimp even though take authorization, should any be needed, is designed to come from a subsequent permitting process (typically through a Section 7 consultation with the Corps of Engineers). The MSCP will result in the total avoidance the great majority of all fairy shrimp habitat within the MHPA planning area. The MSCP provides that the remaining fairy shrimp habitat should be completely avoided to the maximum extent practicable. Unavoidable impacts to this remaining area of habitat is to be minimized and mitigated to achieve no net loss of wetland function and value and to provide additional protective measures, including adaptive management, contained in the MSCP. Because the fairy shrimp habitat preserved in the MHPA planning area is managed for the benefit of the fairy shrimp under the terms of the MSCP, there are no "additional management considerations or protections" required for those lands. Therefore, we have determined that non-Federal lands within approved HCP planning areas for the San Diego fairy shrimp do not meet the definition of critical habitat in the Act, and we are not proposing designation of such lands as critical habitat.

The NCCP/HCP effort in Orange County Central/Coastal is designed to provide the same level of protection for San Diego fairy shrimp as the San Diego MSCP. However, unlike the San Diego MSCP, the vernal pool complex within Orange County occurs within a city which is not a participating jurisdiction under the plan. We have therefore determined that this vernal pool complex (Fairview Regional Park complex) is not receiving special management consideration or protection and that it meets the definition of critical habitat and should be designated as such.

Habitat conservation plans currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the San Diego fairy shrimp, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the fairy shrimp. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (*e.g.*, counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat.

We provide technical assistance and work closely with applicants throughout the development of HCPs to identify appropriate conservation management and lands essential for the long-term conservation of the San Diego fairy shrimp. Several HCP efforts are now under way for listed and non-listed species in areas within the range of the San Diego fairy shrimp in areas we propose as critical habitat. These HCPs, coupled with appropriate adaptive management, should provide for the conservation of the species. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the San Diego fairy shrimp should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

Relationship to Mexico

We are not aware of any existing regulatory mechanism in Mexico that would protect the San Diego fairy shrimp or its habitat. Although Mexico has laws that could provide protection for rare species, they are not easily enforced. At this time, Mexico enforces no specific protections for this species, or the vernal pools on which it depends. If specific protections were available and enforceable in Mexico, the portion of the range in Mexico alone, in isolation, would not be adequate to ensure the long-term conservation of this species.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave., Portland, OR 97232

(telephone 503/231–2063; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period at that time.

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of San Diego fairy shrimp habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and,

(5) Economic and other values associated with designating critical habitat for the San Diego fairy shrimp, such as those derived from non-consumptive uses (*e.g.*, hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

In this proposed rule, we do not propose to designate critical habitat on nonFederal lands within the boundaries of an existing approved HCP and subarea plan with an executed IA for San Diego fairy shrimp approved under section 10(a)(1)(B) of the Act because the existing HCP provides for long-term commitments to conserve the species and areas essential to the conservation of the gnatcatcher. Therefore, we believe that such areas do not meet the definition of critical habitat because they do not need special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach and on the following or other alternative approaches for critical habitat designation in areas covered by existing approved HCPs:

(1) Designate critical habitat without regard to existing HCP boundaries and allow the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorized will not destroy or adversely modify critical habitat;

(2) Designate reserves, preserves, and other conservation lands identified by approved HCPs, on the premise that they encompass areas that are essential to conservation of the species within the HCP area and that will continue to require special management protection in the future. Under this approach, all other lands covered by existing approved HCPs where incidental take for the San Diego fairy shrimp is authorized under a legally operative permit pursuant to section 10(a)(1)(B) of the Act would be excluded from critical habitat.

The amount of critical habitat we designate for the San Diego fairy shrimp in a final rule may either increase or decrease, depending upon which approach we adopt for dealing with designation in areas of existing approved HCPs.

Additionally, we are also seeking comments on critical habitat designation relative to future HCPs. Several conservation planning efforts are now under way within the range of the San Diego fairy shrimp, and other listed and nonlisted species, in areas we are proposing as critical habitat. For areas where HCPs are currently under development, we are proposing to designate critical habitat for areas that we believe are essential to the conservation of the species and need special management or protection. We invite comments on the appropriateness of this approach.

In addition, we invite comments on the following or other approaches for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the San Diego fairy shrimp:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the San Diego fairy shrimp, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the

species, and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The San Diego fairy shrimp was listed as an endangered species in 1997. In fiscal years 1997 through 1999, we conducted 27 formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the fairy shrimp.

Approximately 18 ha (45 ac) of the areas encompassing proposed critical habitat for the San Diego fairy shrimp are currently of unknown occupancy. The remaining areas of vernal pools within the total designated critical habitat area are occupied by San Diego fairy shrimp. Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species). Designation of unoccupied areas as critical habitat may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding, but since the potentially unoccupied area (area of unknown occupancy) is only 18 ha (45 ac), we expect little, if any, additional impact from designating this area as critical habitat. Additionally, designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden since the Corps requires review of projects requiring permits in all vernal pools, whether it is known that San Diego fairy shrimp are present or not. We will evaluate this impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule).

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the San Diego fairy shrimp since the listing in 1997. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in occupied areas of proposed critical habitat. Additional restrictions may be imposed in the area of unknown occupancy proposed as critical habitat; we will evaluate this possibility through our economic analysis under section 4 of the Act. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification

prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat. We expect little additional effect for the potentially unoccupied area of proposed critical habitat, since this area (area of unknown occupancy) is only 18 ha (45 ac). Additionally, designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden since the Corps requires review of projects requiring permits in all vernal pools, whether it is known that San Diego fairy shrimp are present or not. We will review the effects of this proposed action on Federal agencies or non-Federal persons that receive Federal authorization or funding in the area of unknown occupancy critical habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 2.—IMPACTS OF SAN DIEGO FAIRY SHRIMP LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected[3].	Activities such as those affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act; road construction and maintenance, right-of-way designation, and regulation of agricultural activities; regulation of airport improvement activities under Federal Aviation Administration jurisdiction; military training and maneuvers on Marine Corps Base Camp Pendleton and Marine Corps Air Station, Miramar and other applicable DOD lands; construction of roads and fences along the international border with Mexico and associated immigration enforcement activities by the Immigration and Naturalization Service; construction of communication sites licensed by the Federal Communications Commission, and; activities funded by any Federal agency.	None.
Private or other non-Federal Activities Potentially Affected[4].	Activities such as removing or destroying San Diego fairy shrimp habitat (as defined in the primary constituent elements discussion), whether by mechanical, chemical, or other means (*e.g.*, grading, overgrazing, construction, road building, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (*e.g.*, edge effects, invasion of exotic plants or animals, or fragmentation that require a Federal action (permit, authorization, or funding)).	None.

[1] This column represents the activities potentially affected by listing the San Diego fairy shrimp as an endangered species (February 3, 1997; 62 FR 4925) under the Endangered Species Act.
[2] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of occupied critical habitat. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we designated property owned by Federal, State, and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of grazing, mining, and recreation by the Bureau of Land Management or U.S. Forest Service;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Military training and maneuvers on Camp Pendleton, Miramar, and other applicable DOD lands;

(7) Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the INS;

(8) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(9) Construction of communication sites licensed by the Federal Communications Commission; and

(10) Activities funded by the U.S. Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities in areas of critical habitat occupied by the species. We expect little additional effect for the potentially unoccupied area of proposed critical habitat, since this area (area of unknown occupancy) is only 18 ha (45 ac). Additionally, designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden since the Corps requires review of projects requiring permits in all vernal pools, whether it is known that San Diego fairy shrimp are present or not. We will evaluate whether designation of critical habitat in the unknown occupancy area will have an effect on activities carried out by small entities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of

the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat occupied by the species. We expect little additional effect for the potentially unoccupied area of proposed critical habitat, since this area (area of unknown occupancy) is only 18 ha (45 ac). Additionally, designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden since the Corps requires review of projects requiring permits in all vernal pools, whether it is known that San Diego fairy shrimp are present or not.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated in areas of occupied proposed critical habitat. We expect little additional effect for the potentially unoccupied area of proposed critical habitat, since this area (area of unknown occupancy) is only 18 ha (45 ac). Additionally, designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden since the Corps requires review of projects requiring permits in all vernal pools, whether it is known that San Diego fairy shrimp are present or not.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the San Diego fairy shrimp. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions in areas of occupied critical habitat, we do not anticipate that property values will be affected by the critical habitat designation. We expect little additional effect for the potentially unoccupied area of proposed critical habitat, since this area (area of unknown occupancy) is only 18 ha (45 ac). Additionally, designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden since the Corps requires review of projects requiring permits in all vernal pools, whether it is known that San Diego fairy shrimp are present or not. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the San Diego fairy shrimp.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California, as well as during the listing process. We will continue to coordinate any future designation of critical habitat for the San Diego fairy shrimp with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the San Diego fairy shrimp imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act, and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the San Diego fairy shrimp.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal

Governments" (59 FR 22951) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis. The 1997 Secretarial Order on Native Americans and the Act clearly states that Tribal lands should not be designated unless absolutely necessary for the conservation of the species. According to the Secretarial Order, "Critical habitat shall not be designated in an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands."

We determined that there are no Tribal lands essential for the conservation of the San Diego fairy shrimp because they do not support populations or suitable habitat. Therefore, we are not proposing to designate critical habitat for the San Diego fairy shrimp on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary authors of this notice are the Carlsbad Fish and Wildlife Office staff (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "Fairy shrimp, San Diego" under "CRUSTACEANS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
CRUSTACEANS							
*	*	*	*	*	*		*
Fairy shrimp, San Diego.	*Branchinecta sandiegonensis.*	U.S.A. (CA)	NA	E	608	17.95(h)	NA
*	*	*	*	*	*		*

3. In § 17.95 add critical habitat for the San Diego fairy shrimp (*Branchinecta sandiegonensis*) under paragraph (h) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

Sec. 17.95 Critical habitat—fish and wildlife.

* * * * *

(h) Crustaceans

* * * * *

San Diego fairy shrimp (*Branchinecta sandiegonensis*)

1. Critical habitat units are depicted for Orange and San Diego Counties, California, on the maps below.

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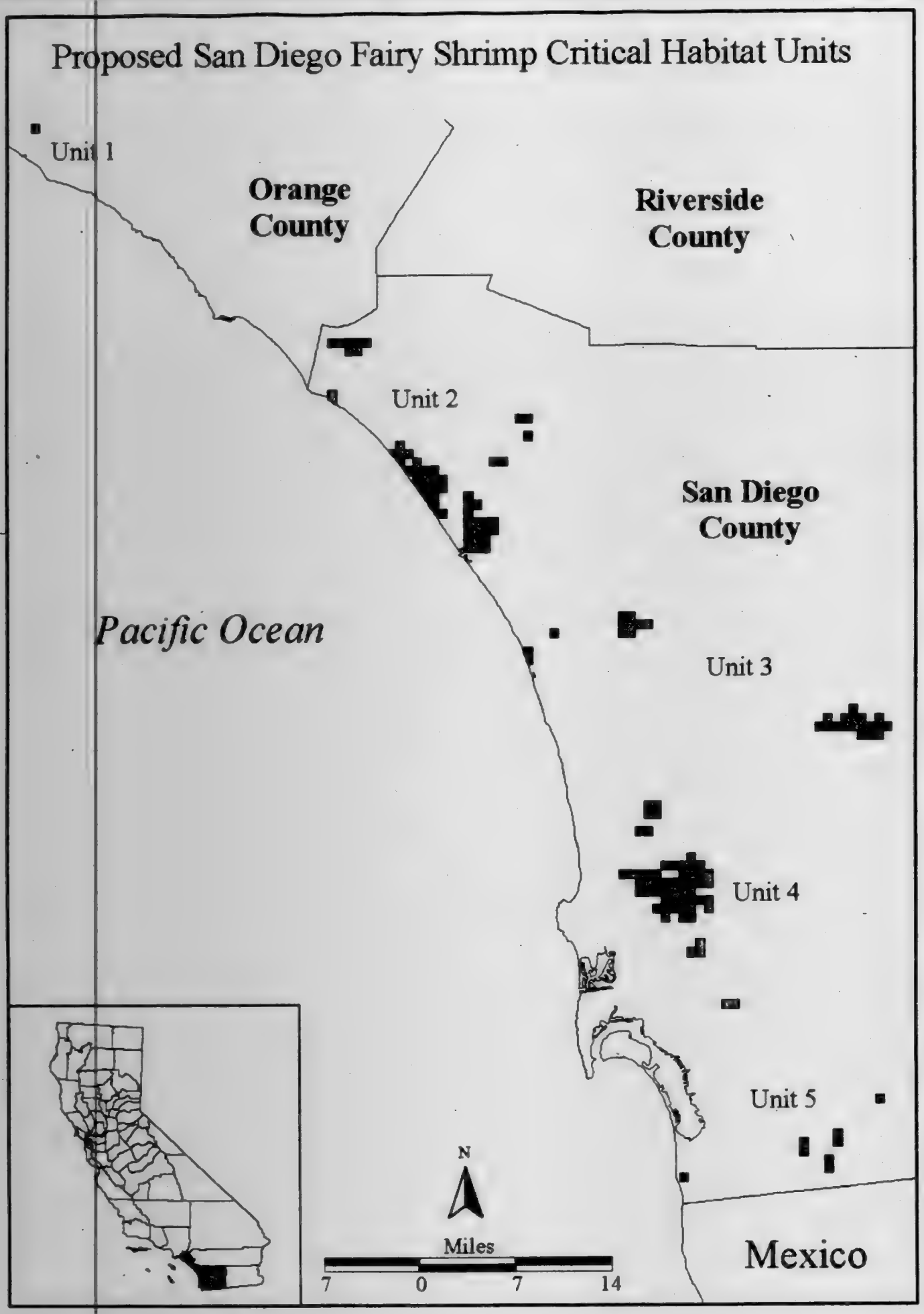

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2. Critical habitat includes vernal pool basins and vernal pool complexes indicated on the maps below and their associated watersheds and hydrologic regime.

3. Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The primary constituent elements are found in those areas that support or have the potential to support vernal pools or other ephemeral depressional wetlands. Within these seasonal wetlands, specific associations that are essential to the primary biological needs of the San Diego fairy shrimp include, but are not limited to, the following: small to large vernal pools with shallow to moderate depths that hold water for at least 5 days but not necessarily every year; entire watershed(s) and hydrology for vernal pool basins and their associated vernal pool complexes, ephemeral depressional wetlands, flat or gently sloping topography, and any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat.

4. Critical habitat does not include nonFederal lands covered by a Habitat Conservation Plan or Subarea Plan, with an executed implementation agreement, approved for the San Diego fairy shrimp under section 10(a)(1)(B) of the Act on or before March 8, 2000.

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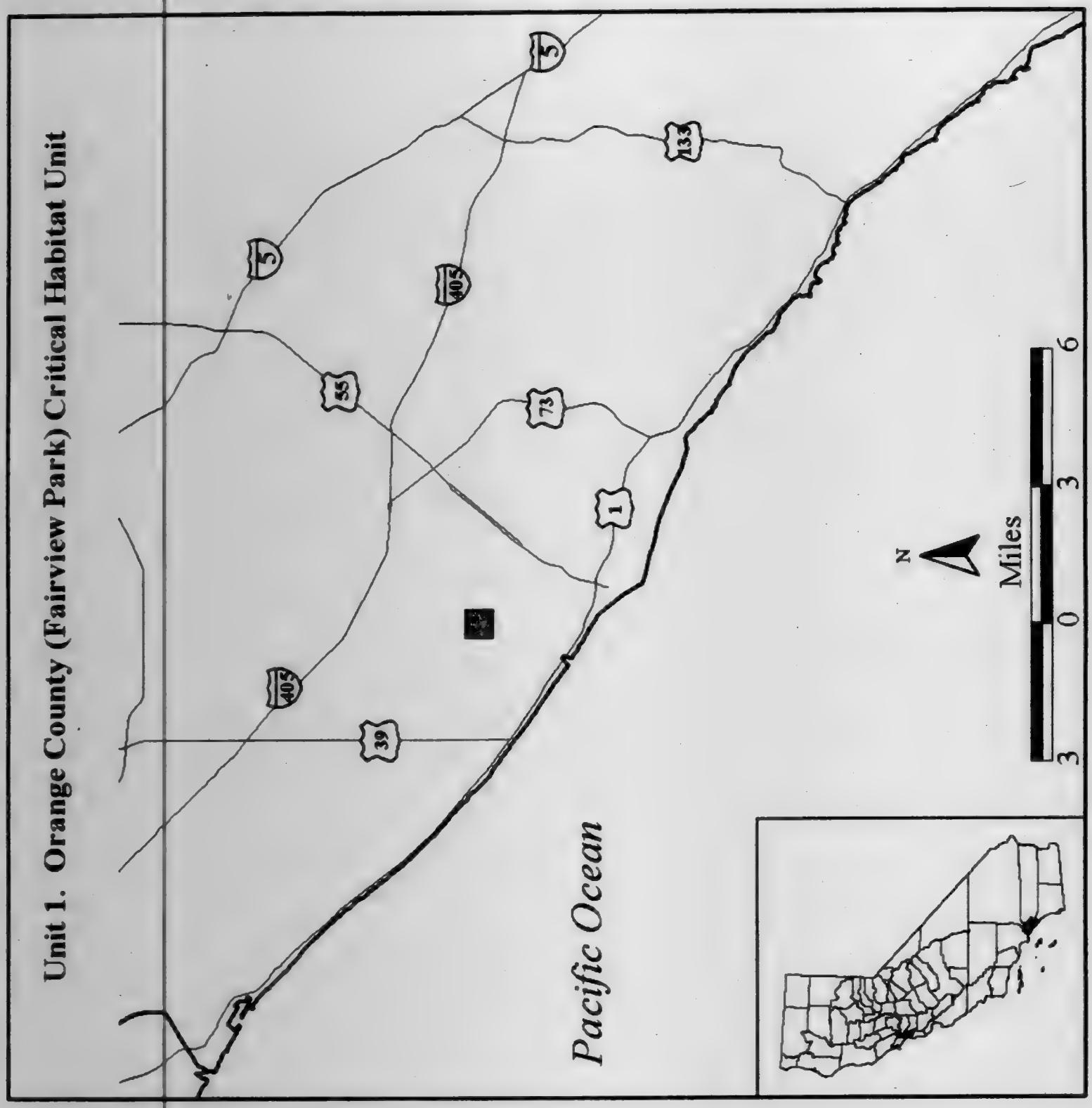

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Map Unit 1; Orange County, California. From USGS 1:24,000 quadrangle map Newport Beach, California (1981). The following lands located in Fairview Regional Park within the City of Costa Mesa are being proposed for critical habitat; starting from UTM coordinate 413000 E, 3725000 N to 413000 E, 3724000 N to 412000 E, 3724000 N to 412000 E, 3725000 N to 413000 E, 3725000 N.

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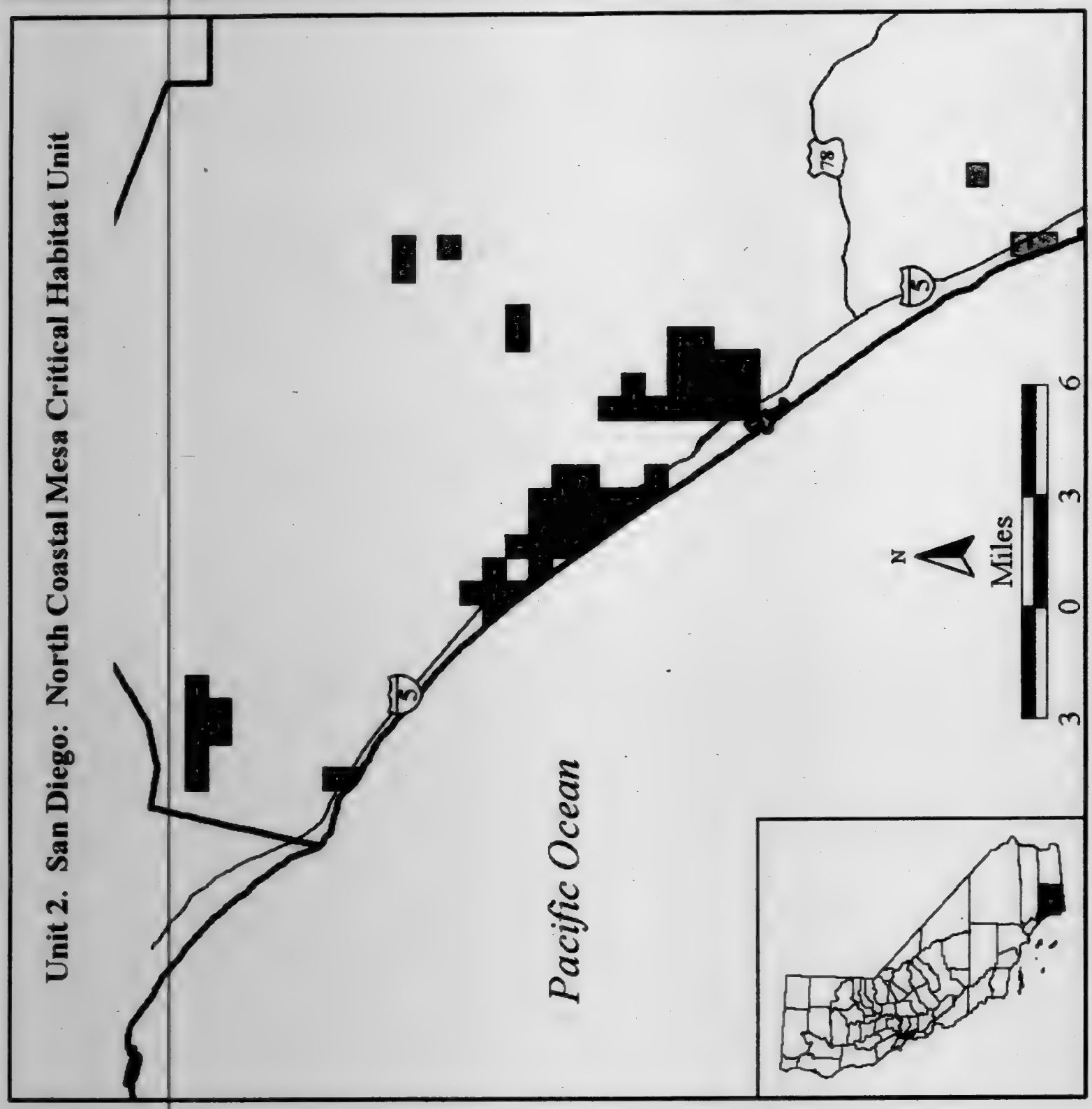

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Map Unit 2; San Diego County, California. From USGS 1:24,000 quadrangle maps Oceanside, California (1975), San Onofre Bluffs, California (1975), Las Pulgas Canyon, California (1968), Morro Hills, California, (1968), San Luis Rey, California (1975), Encinitas, California (1975): The following lands within San Clemente, California (1975) quadrangle map starting at UTM coordinate 452000 E, 3700000 N to 452000 E, 3699000 N to 452000 E, 3700000 N to 451000 E, 3698000 N to 449000 E, 3698000 N to 449000 E, 3699000 N to 447000 E, 3699000 N to 447000 E, 3700000 N to 452000 E, 3700000 N. The following lands within San Clemente, California (1975) quadrangle map starting at UTM coordinate 447000 E, 3694000 N to 448000 E, 3694000 N to 448000 E, 3692000 N within San Onofre Bluffs, California (1975) to 447000 E, 3692000 N to 448000 E, 3694000 N to 447000 E, 3694000 N within San Clemente, California (1975) quadrangle map to the Pacific Ocean but not including the Pacific Ocean. The following lands within Morro Hills, California (1968) quadrangle map starting at UTM coordinate 468000 E, 3686000 N to 468000 E, 3685000 N to 466000 E, 3685000 N to 466000 E, 3686000 N to 468000 E, 3686000 N. The following lands within Morro Hills, California (1968) quadrangle map starting at UTM coordinate 471000 E, 3691000 N, to 471000 E, 3690000 N, to 469000 E, 3690000 N, to 469000 E, 3691000 N, to 471000 E, 3691000. The following lands within Morro Hills, California (1968) quadrangle map starting at UTM coordinate 471000 E, 3689000 N, to 471000 E, 3688000 N, to 470000 E, 3688000 N, to 470000 E, 3689000 N, to 471000 E, 3689000. The following lands within Las Pulgas Canyon, California (1968) quadrangle map starting at UTM coordinate 456000 E, 3688000 N, to 456000 E, 3687000 N, to 457000 E, 3687000 N, to 457000 E, 3686000 N, to 458000 E, 3686000 N, to 458000 E, 3685000 N, to 460000 E, 3685000 N, to 460000 E, 3684000 N, to 461000 E, 3684000 N, to 461000 E, 3682000 N, to 460000 E, 3682000 N, to 460000 E, 3680000 N, to 461000 E, 3680000 N, to 461000 E, 3679000 N, to 459000 E, 3679000 N, to 459000 E, 3680000 N, to 458000 E, 3680000 N, to 458000 E, 3681000 N, to 457000 E, 3681000 N, to 457000 E, 3684000 N, to 455000 E, 3684000 N, to 455000 E, 3686000 N, to 454000 E, 3686000 N, to 454000 E, 3687000 N, to 455000 E, 3687000 N, to 455000 E, 3688000 N, to 456000 E, 3688000. Excluding the following: the Las Pulgas Canyon, California (1968) quadrangle map starting at UTM coordinate 456000 E, 3686000 N, to 457000 E, 3686000 N, to 457000 E, 3685000 N, to 456000 E, to 3685000 N, to 456000 E, 3686000 N. The following lands within Las Pulgas Canyon, California (1968) quadrangle map starting at UTM coordinate 464000 E, 3682000 N, to 464000 E, 3681000 N, to 465000 E, 3681000 N, to 465000 E, 3680000 N, to 464000 E, 3680000 N, to 464000 E, 3679000 N, to 467000 E, 3679000 N within the Morro Hills, California (1968) quadrangle map to 467000 E, 3677000 N within the San Luis Rey, California (1975) quadrangle map to 466000 E, 3677000 N, to 466000 E, 3675000 N, to 463000 E, 3675000 N within the Oceanside, California (1975) quadrangle map, to 463000 E, 3682000 N within the Las Pulgas Canyon, California (1968) quadrangle map to 464000 E, 3682000 N. The following lands within San Luis Rey, California (1975) quadrangle map starting at UTM coordinate 473000 E, 3666000 N to 474000 E, 3666000 N to 474000 E, 3665000 N to 473000 E, 3665000 N to 473000 E, 3666000 N. The following lands within Encinitas, California (1975) quadrangle map starting at UTM coordinate 471000 E, 3664000 N to 471000 E, 3662000 N to 470000 E, 3662000 N to 470000 E, 3664000 N to 471000 E, 3664000 N.

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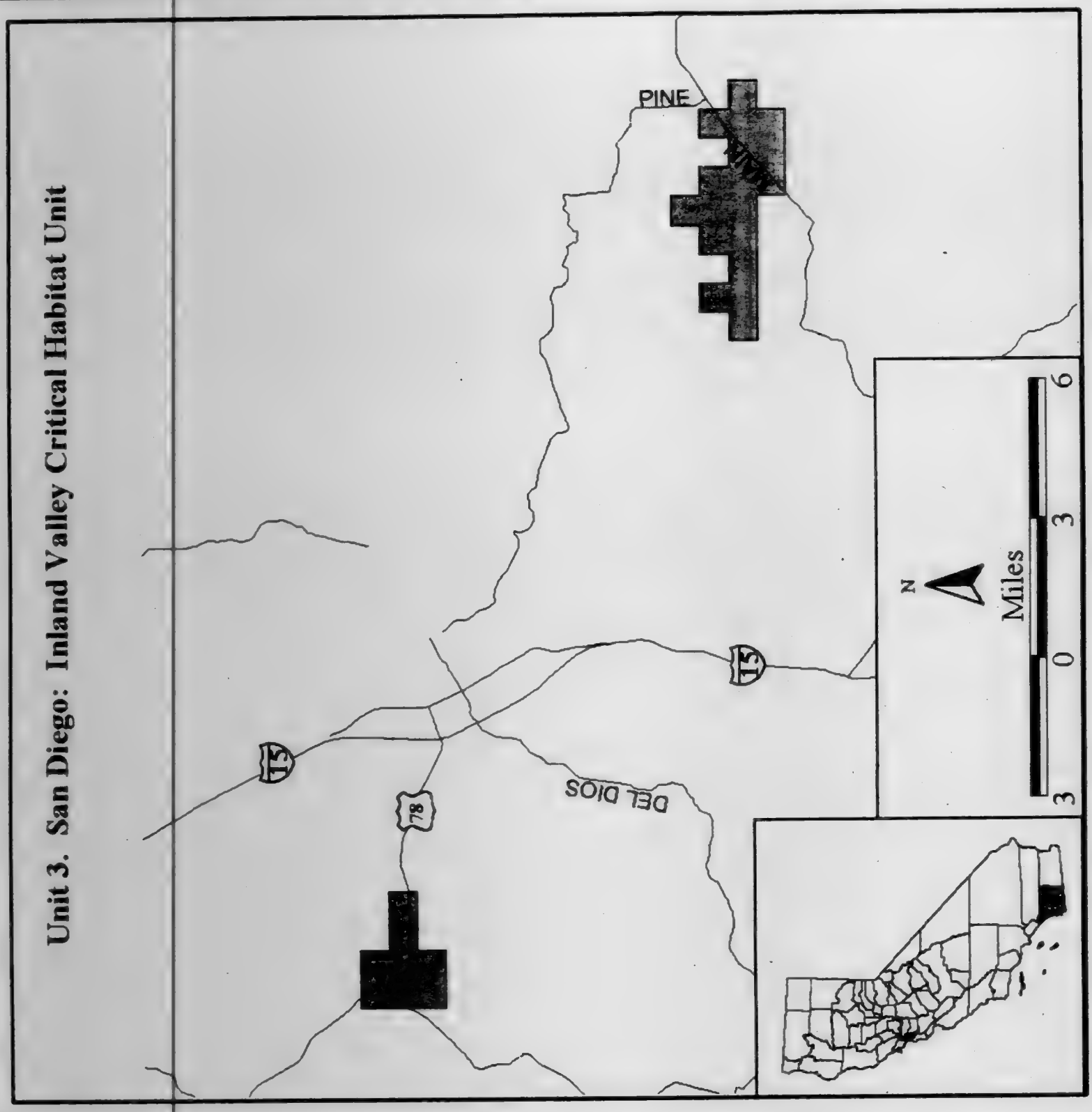

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Map Unit 3; San Diego County, California. From USGS 1:24,000 quadrangle map San Marcos, California (1968), Ramona, California (1975), San Pasqual, California (1971): The following lands within San Marcos, California (1968) quadrangle map starting at UTM coordinate 483000 E, 3668000 N to 483000 E, 3667000 N to 485000 E, 3667000 N to 485000 E, 3666000 N to 483000 E, 3666000 N to 483000 E, 3665000 N to 481000 E, 3665000 N to 481000 E, 3668000 N to 483000 E, 3668000 N. The following lands within San Pasqual, California (1971) quadrangle map starting at UTM coordinate 509000 E, 3657000 N to 509000 E, 3656000 N to 510000 E, 3656000 N to 510000 E, 3655000 N to 511000 E, 3655000 N to 511000 E, 3656000 N to 512000 E, 3656000 N within Ramona, California (1975) quadrangle map to 512000 E, 3655000 N to 513000 E, 3655000 N to 513000 E, 3654000 N to 512000 E, 3654000 N to 512000 E, 3653000 N to 509000 E, 3653000 N within San Pasqual, California (1971) quadrangle map to 509000 E, 3654000 N to 504000 E, 3654000 N to 504000 E, 3655000 N to 505000 E, 3655000 N to 505000 E, 3656000 N to 506000 E, 3656000 N to 506000 E, 3655000 N to 507000 E, 3655000 N to 507000 E, 3656000 N to 508000 E, 3656000 N to 508000 E, 3657000 N to 509000 E, 3657000 N.

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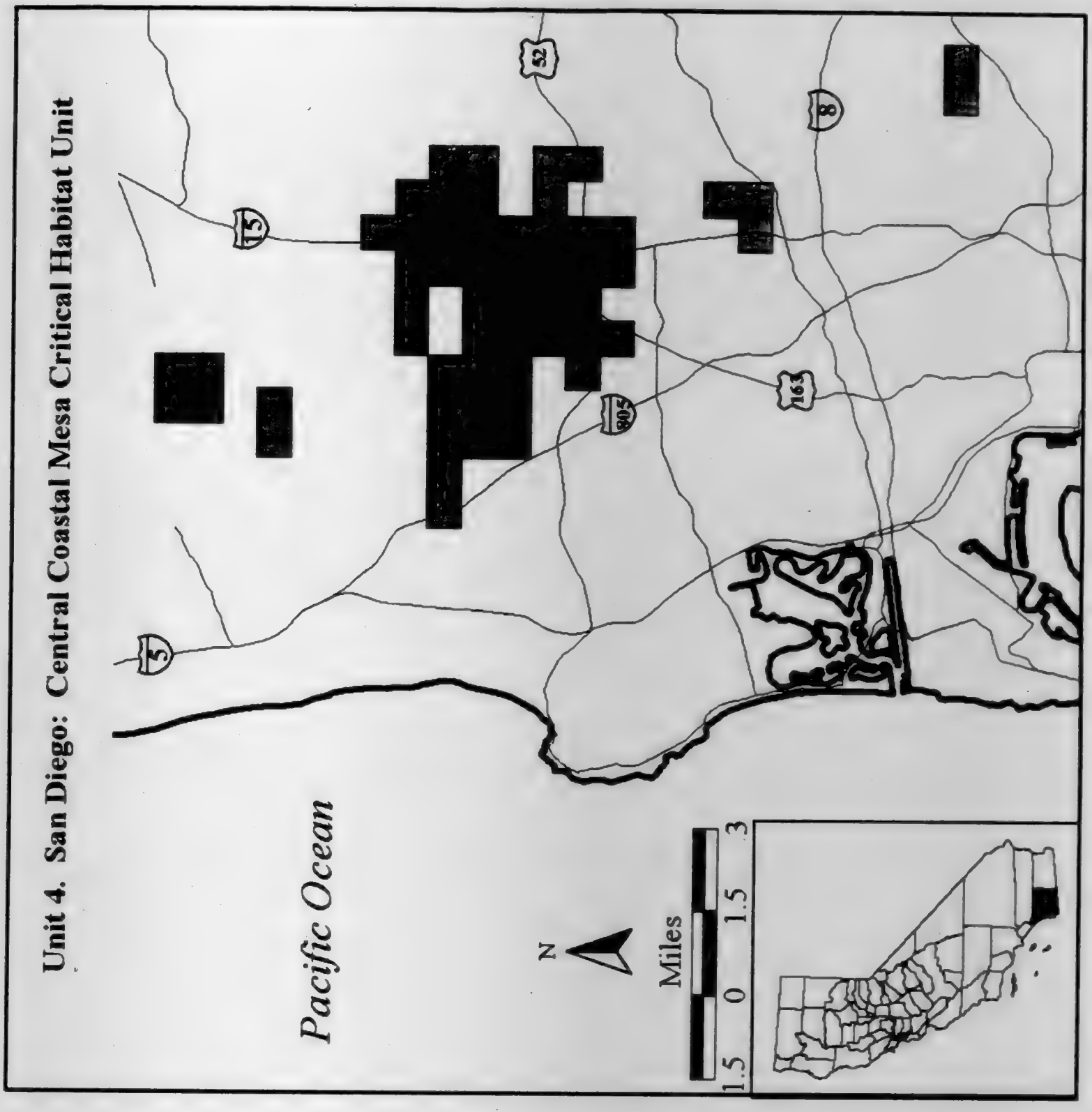

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Map Unit 4; San Diego County, California. From USGS 1:24,000 quadrangle maps Del Mar, California (1975), La Mesa, California (1975), La Jolla, California (1975), Poway, California (1975), National City, California (1975). The following federal and state lands within Del Mar, California (1975) quadrangle map starting at UTM coordinate 484000 E, 3646000 N, to 486000 E, 3646000 N, to 486000 E, 3644000 N, to 484000 E, 3644000 N to 484000 E, 3646000 N. Excluding all lands within the jurisdiction of the City of San Diego and the County of San Diego MSCP. The following federal and state lands within Del Mar, California (1975) quadrangle map starting at UTM coordinate 483000 E, 3643000 N, to 485000 E, 3643000 N, to 485000 E, 3642000 N, to 483000 E, 3642000 N, to 483000 E, 3643000 N. Excluding all lands within the jurisdiction of the City of San Diego and the County of San Diego MSCP. The following federal and state lands within Del Mar, California (1975) quadrangle map starting at UTM coordinate 486000 E, 3638000 N to 486000 E, 3639000 N to 489000 E, 3639000 N within the Poway, California (1975) quadrangle map to 489000 E, 3640000 N to 490000 E, 3640000 N to 490000 E, 3639000 N to 491000 E, 3639000 N to 491000 E, 3638000 N to 492000 E, 3638000 N to 492000 E, 3636000 N within the La Mesa, California (1975) quadrangle map to 490000 E, 3636000 N to 490000 E, 3635000 N to 492000 E, 3635000 N to 492000 E, 3633000 N to 491000 E, 3633000 N to 491000 E, 3634000 N to 490000 E, 3634000 N to 490000 E, 3632000 N to 488000 E, 3632000 N within the La Jolla, California (1975) quadrangle map to 488000 E, 3633000 N to 487000 E, 3633000 N to 487000 E, 3632000 N to 486000 E, 3632000 N to 486000 E, 3633000 N to 485000 E, 3633000 N to 485000 E, 3634000 N to 486000 E, 3634000 N to 486000 E, 3635000 N to 483000 E, 3635000 N to 483000 E, 3637000 N to 481000 E, 3637000 N to 481000 E, 3638000 N within the Del Mar, California (1975) quadrangle map to 486000

E, 3638000 N to 486000 E, 3639000 N to 486000 E, 3637000 N to 488000 E, 3637000 N to 488000 E, 3638000 N to 486000 E, 3638000 N. Excluding the following: the Del Mar, California (1975) quadrangle map starting at 486000 E, 3638000 N to 488000 E, 3638000 N to 488000 E, 3637000 N within the La Jolla, California (1975) quadrangle map to 486000 E, 3637000 N to 486000 E, 3638000 N Del Mar, California (1975) quadrangle map and excluding all lands within the jurisdiction of the City of San Diego and the County of San Diego MSCP. The following federal and state lands within La Mesa, California (1975) quadrangle map starting at UTM coordinate 491000 E, 3630000 N to 491000 E, 3628000 N to 489000 E, 3628000 N to 489000 E, 3629000 N to 490000 E, 3629000 N to 490000 E, 3630000 N to 491000 E, 3630000 N. The following federal and state lands within National City, California (1975) quadrangle map starting at UTM coordinate 495000 E, 3623000 N to 495000 E, 3622000 N to 493000 E, 3622000 N to 493000 E, 3623000 N to 495000 E, 3623000 N.

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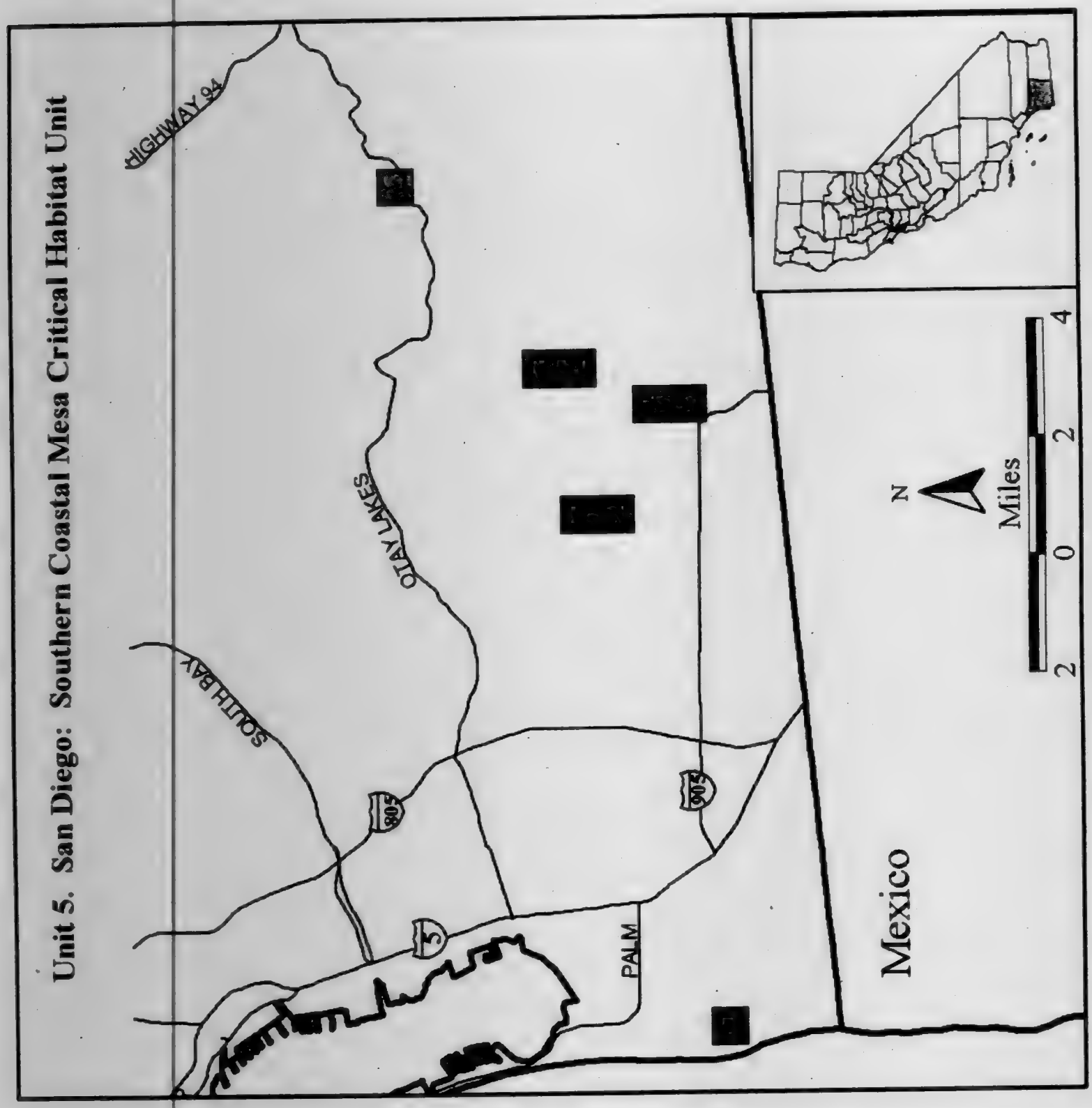

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Map Unit 5; San Diego County, California. From USGS 1:24,000 quadrangle map National City, California (1975), Jamul Mountains, California (1971), Dulzura, California (1988), Otay Mesa, California (1975), Imperial Beach, California (1975): The following federal and state lands within Jamul Mountains, California (1971) quadrangle map starting at UTM coordinate 511000 E, 3612000 N, to 512000 E, 3612000 N within the Dulzura, California (1988) quadrangle map to 512000 E, 3611000 N to 511000 E, 3611000 N within the Jamul

Mountains, California (1971) quadrangle map to 511000 E, 3612000 N. The following federal and state lands within Otay Mesa, California (1975) quadrangle map starting at UTM coordinate 506000 E, 3608000 N to 507000 E, 3608000 N to 507000 E, 3606000 N to 506000 E, 3606000 N to 506000 E, 3608000 N. The following federal and state lands within Otay Mesa, California (1975) quadrangle map starting at UTM coordinate 505000 E, 3605000 N to 506000 E, 3605000 N to 506000 E, 3603000 N to 505000 E, 3603000 N to 505000 E, 3605000 N. The following federal and state lands within Otay Mesa, California (1975) quadrangle map starting at UTM coordinate 502000 E, 3607000 N to 503000 E, 3607000 N to 503000 E, 3605000 N to 502000 E, 3605000 N to 502000 E, 3607000 N. The following federal and state lands within Imperial Beach, California (1975) quadrangle map starting at UTM coordinate 489000 E, 3603000 N to 489000 E, 3602000 N to 488000 E, 3602000 N to 488000 E, 3603000 N to 489000 E, 3603000 N.

Dated: February 29, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–5413 Filed 3–7–00; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 65, No. 46
Wednesday, March 8, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region; Authorization of Livestock Grazing Activities on the Sacramento Grazing Allotment, Sacramento Ranger District, Lincoln National Forest, Otero County, NM

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to authorize livestock grazing activities on the Sacramento Grazing Allotment. The project area encompasses over 111,000 acres of National Forest lands on the Sacramento Ranger District of the Lincoln National Forest. The Sacramento Grazing Allotment comprises approximately 25% of the range district. The project has generated controversy on three main points; effects to threatened and endangered animal and plant species, concern for degraded riparian areas, and forage competition between wildlife and livestock.

The Notice of Intent to prepare an Environmental Impact Statement was first published in the **Federal Register** on Friday, May 5, 1999 (Volume 64, Number 86, pages 24132–24134). The Notice announced that a draft environmental impact statement would be available for review in July 1999, and a final environmental impact statement would be for review in September 1999. The draft environmental impact statement is now expected to be in July 2000 and a final environmental impact statement should be by October 2000.

FOR FURTHER INFORMATION CONTACT: Rick Newmon or Mark Cadwallader, Lincoln National Forest, Sacramento Ranger District, P.O. Box 288, Cloudcroft, New Mexico, 88317, (505) 682–2551.

Dated: February 4, 2000.

Jose M. Martinez,

Forest Supervisor, Lincoln National Forest.

[FR Doc. 00–5532 Filed 3–7–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Preliminary Results and Partial Recission of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial recission of antidumping duty administrative reviews of heavy forged hand tools, finished or unfinished, with or without handles, from the People's Republic of China.

SUMMARY: The Department of Commerce ("the Department") has preliminarily determined that sales by the respondents in these reviews covering the period February 1, 1998 through January 31, 1999, have been made below normal value ("NV"). If these preliminary results are adopted in our final results of reviews, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or Paul Stolz, Antidumping/Countervailing Duty Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3601 or (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all references to the Department's regulations are to 19 CFR Part 351 (April 1999).

Period of Review

The period of review ("POR") is February 1, 1998 through January 31, 1999.

Background

On February 19, 1991, the Department published in the **Federal Register** (56 FR 6622) the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles ("certain heavy forged hand tools" or "HFHTs"), from the People's Republic of China ("PRC"). On February 11, 1999, the Department published in the **Federal Register** (64 FR 6878) a notice of opportunity to request administrative reviews of these antidumping duty orders. On February 25, 1999, four exporters of the subject merchandise requested that the Department conduct administrative reviews of their exports of the subject merchandise. Specifically, Fujian Machinery & Equipment Import & Export Corporation ("FMEC") requested that the Department conduct administrative reviews of its exports of HFHTs within the following classes or kinds or merchandise identified in the scope: Axes/adzes; hammers/sledges; and picks/mattocks. Shandong Huarong General Group Corporation ("Shandong Huarong") requested that the Department conduct an administrative review of its exports of HFHTs within the bars/wedges class or kind of merchandise. Liaoning Machinery Import & Export Corporation ("LMC") requested that the Department conduct administrative reviews of its exports of HFHTs within the bars/wedges, hammers/sledges, and picks/mattocks classes or kinds of merchandise. Shandong Machinery Import & Export Corporation ("SMC") requested that the Department conduct administrative reviews of its exports of HFHTs within the axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks classes or kinds or merchandise.

In addition, on March 1, 1999, the petitioner, O. Ames Co., requested that the Department conduct administrative reviews of exports within all four classes of subject merchandise by Tianjin Machinery Import & Export Corporation ("TMC"), FMEC, Shandong

Huarong, LMC, and SMC. The Department initiated these reviews on March 19, 1999 (64 FR 14860 (March 29, 1999)).

On October 28, 1999, the Department extended the time limits for completing the preliminary results in these proceedings until February 28, 2000 (*see* 64 FR 58034 (October 28, 1999)). The Department is conducting these administrative reviews in accordance with section 751 of the Act.

Partial Rescission

In its May 28, 1999, Section A questionnaire response, Shandong Huarong stated that during the POR, it sold only subject merchandise within the bars/wedges and axes/adzes classes or kinds of merchandise. Moreover, Shandong Huarong stated that it produced only bars and did not have access to the information necessary for it to participate in the review of its sales of HFHTs within the axes/adzes class or kind of merchandise. Furthermore, Shandong Huarong requested that it be excluded from the review of the hammers/sledges and picks/mattocks classes or kinds of merchandise. Based on our review of U.S. import data obtained from the U.S. Customs Service ("Customs Service"), we are preliminarily rescinding our review of Shandong Huarong with respect to sales within the hammers/sledges and picks/mattocks classes or kinds of merchandise. As noted below, we have relied upon adverse facts available in determining the preliminary margin for Shandong Huarong's sales of HFHTs within the axes/adzes class or kind of merchandise. For details regarding our decision to resort to adverse facts available see the *Adverse Facts Available* section of this notice below.

In its May 28, 1999, Section A questionnaire response, LMC noted that it sold only HFHTs within the bars/wedges class or kind of merchandise. Based upon our review of U.S. import data obtained from the Customs Service, we are preliminarily rescinding our review of LMC with respect to sales within the axes/adzes, hammers/sledges and picks/mattocks classes or kinds of merchandise.

Scope of Reviews

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these orders is dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the information provided by the trading companies SMC and TMC, as well as the information provided by their suppliers (the manufacturers of the subject merchandise). We used standard verification procedures including; on-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the memoranda dated February 28, 2000, the public versions of which are on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU-Public File).

Adverse Facts Available

In accordance with section 776(a)(2) of the Act, the Department has determined that the use of adverse facts available is appropriate for purposes of determining the preliminary antidumping duty margins for one or more classes or kinds of subject merchandise sold by SMC, FMEC and Shandong Huarong. Section 776(a)(2) of the Act provides that;

> If an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Moreover, section 776(b) of the Act provides that;

> If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.

In the instant review, SMC, FMEC and Shandong Huarong failed to provide certain information that was requested by the Department. In addition, the information that SMC provided regarding its sales of hammers/sledges could not be verified. For the reasons set forth in the following sections, we have determined that these failures warrant the use of adverse facts available..

SMC

Failure To Provide Requested Information

Pursuant to requests for review by SMC and the petitioner, the Department requested that SMC provide sales and factors of production information regarding its sales of axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks. In its section A questionnaire response, SMC reported quantity and value information for hammers/sledges, axes/adzes, and bars/wedges while making no mention of picks/mattocks. However, in its section C questionnaire response, SMC reported only sales of hammers/sledges. Moreover, in its December 13, 1999 supplemental questionnaire response, SMC stated that it was not supplying financial statements for one of its suppliers because that supplier produced bars, but SMC was "only participating in the review on hammers." On December 28, 1999, SMC submitted additional information which included a chart identifying the quantity and value of its U.S. sales of bars/wedges and axes/adzes. The company did not provide any explanation as to why it included sales of these classes or kinds of merchandise in the chart. At the

verification of SMC, the Department's verifiers found that, during the POR, SMC had, in fact, sold HFHTs to the United States within the axes/adzes, bars/wedges, and picks/mattocks classes or kinds of merchandise, but failed to report these sales to the Department. Company officials told the verifiers that they were aware that these sales had not been reported and that the Department would resort to facts available in determining the margin for such sales. *See* the memorandum to The File, *Verification of Shandong Machinery Import & Export Corporation's Sales Questionnaire Responses*, dated February 28, 2000 ("*SMC Sales Verification Report*").

We issued to SMC a supplemental questionnaire notifying SMC of the deficiencies in its submissions and providing it with an opportunity to remedy these deficiencies. *See* the letter to SMC dated November 19, 1999, transmitting the supplemental questionnaire. SMC failed to correct these deficiencies. After reviewing the record in this review, we have determined that the information submitted by SMC regarding axes/adzes and bars/wedges is so incomplete as to be unusable for calculating a margin. Accordingly, notwithstanding section 782(e) of the Act, as described below, pursuant to 776(a) of the Act, we are using the facts available to determine SMC's margins with respect to axes/adzes and bars/wedges. Furthermore, SMC's failure to report its sales of picks/mattocks warrants the use of facts available.

Verification Failure

On January 17, 18, 19, and 22, 2000, the Department conducted a verification of SMC's questionnaire response at the company's headquarters in Qingdao, China. At the verification, the Department's verifiers required SMC to reconcile the total reported quantity and value of its U.S. sales to its financial records and to demonstrate the completeness of its reported U.S. sales. The Department notified SMC of these requirements in its verification agenda dated January 7, 2000. In that agenda, the Department requested that SMC prepare specific worksheets and have available certain records which the verifiers intended to use in order to ensure that SMC properly reported all of its U.S. sales of subject merchandise. *See* the Department's letter to TMC and SMC, dated January 7, 2000, transmitting the verification outline. However, prior to the start of the verification, SMC failed to prepare any of the material requested by the Department. Moreover, other than providing source documents, such as invoices, prior to the commencement of the verification, company officials had not prepared any other supporting documentation to demonstrate how the total reported quantity and value of sales reconciled to the company's records. Nevertheless, during the verification, the verifiers afforded SMC officials an opportunity to prepare worksheets reconciling the total reported quantity and value of the company's U.S. sales of hammers/sledges to its financial records [1]. However, the verifiers' efforts to work with company officials were seriously impaired for the following reasons: (1) They discovered that company accountants made unorthodox accounting entries that made it difficult to tie sales invoices to the monthly sales journal (for a detailed discussion of this topic, *see* the proprietary version of the *SMC Sales Verification Report*); (2) they found that for some U.S. sales, SMC had misreported the date of sale; and (3) at the verification, SMC failed to provide certain documentation requested by the verifiers. The verifiers' efforts to work with company officials and the difficulties that they encountered are detailed below.

After discussions with company officials, the verifiers requested that the officials create three charts in order to reconcile total quantity and value: (1) a chart reconciling the sales revenue shown on the financial statements to the cumulative sales revenue listed for all of SMC's departments; (2) a chart listing the total sales revenue, by product, for the Hardware and Tools Department No. 2 ("HTD2"); and (3) a chart listing sales of both subject and non-subject hammers by HTD2 (the third chart was based on information from SMC's sales journal). However, the charts that company officials provided in response to this request failed to reconcile the total reported quantity and value of SMC's U.S. sales to its records. Company officials explained that the accountants routinely made certain monthly adjustments (the nature of which is proprietary) to the sales records of HTD2 which rendered the verifiers' attempts to reconcile total reported quantity and value unworkable (for a detailed discussion of this topic, *see* the proprietary version of the *SMC Sales Verification Report*). Furthermore, because some of these adjustments pertained to extended periods, it was not possible to isolate the portion of the adjustments that pertained solely to the POR; nor could the verifiers tie adjusted sales figures to SMC's questionnaire response. After it became apparent that SMC could not use the prepared charts to reconcile the total reported quantity and value to its financial statements, the verifiers attempted additional procedures to test the completeness and accuracy of SMC's reported U.S. sales using the books and records that were available.

Specifically, the verifiers requested that company officials prepare a chart, similar to the third chart described above, except that it was to be based on SMC's inventory journal for HTD2. After affording company officials with ample time to respond to this request, officials provided a new quantity and value chart and attempted to demonstrate how it could be tied to SMC's reported sales by making certain adjustments. Officials offered no explanation as to why they did not provide the specific chart that the verifiers requested. The attempt to reconcile total reported quantity and value using the new chart was unsuccessful.

Additionally, the attempts to reconcile total reported quantity and value were complicated by the fact that SMC inaccurately reported its date of sale methodology. In its questionnaire responses, SMC reported that it used the invoice date as the date of sale. However, at the verification, the verifiers found that SMC had, in fact, used both the invoice and, in some cases, a projected U.S. customs entry date, as the date of sale for reporting purposes.

As a result of the difficulties outlined above, SMC was unable to demonstrate that it properly reported all of its U.S. sales of hammers/sledges. The Department's antidumping analysis is based fundamentally on an evaluation of a respondent's U.S. selling practices. Thus, a complete and accurate reporting of U.S. sales is central to determining accurate dumping margins. Because SMC could not establish the completeness of its reported U.S. sales, we consider SMC to have failed verification.

Use of Adverse Facts Available

As noted above, the record in this review demonstrates that SMC failed to report sales and factors of production information regarding its sales of axes/adzes, bars/wedges, and picks/mattocks and that it provided information regarding its sales of hammers/sledges that could not be verified. Therefore, pursuant to section 776(a)(2)(A) & (D) of the Act, we have relied upon facts available in reaching our preliminary results for SMC. Moreover, the fact that SMC was aware of its sales of HFHTs

[1] SMC reported only U.S. sales of HFHTs within the hammers/sledges class or kind of merchandise.

within the axes/adzes, bars/wedges, and picks/mattocks classes or kinds of subject merchandise and that the Department readily obtained general information regarding the existence of such sales at the verification, supports our determination that SMC did not act to the best of its ability to report sales and factors of production information for such transactions. Furthermore, SMC failed to act to the best of its ability during the course of these reviews by failing to demonstrate the accuracy of its reported U.S. sales of hammers/sledges at the verification. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting facts available margins for SMC. Specifically, we have based SMC's preliminary margin on the highest margin from this or any prior segment of this proceeding. *See Ferro Union* v. *United States* 44 F. Supp. 2 1310 (CIT 1999) (*Ferro Union*).

FMEC

Failure to Provide Requested Information

Pursuant to requests for review by FMEC and the petitioner, the Department requested that FMEC provide sales and factors of production information regarding its sales of axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks. FMEC submitted its responses to section A and to sections C and D of the Department's questionnaire on May 28, 1999, and June 21, 1999, respectively. In order for the Department to adequately analyze FMEC's selling practices and accurately calculate margins for the company, we requested additional information from FMEC in a supplemental questionnaire dated November 19, 1999. FMEC did not submit a response to the Department's supplemental questionnaire. On December 15, 1999, FMEC informed the Department that it would not participate further in these administrative reviews.

After reviewing the record in this review, we have determined that the information submitted by FMEC regarding axes/adzes, bars/wedges, hammers/sledges and picks/mattocks is so incomplete as to be unusable for calculating a margin. Accordingly, notwithstanding section 782(e) of the Act, as described below, pursuant to 776(a) of the Act, we are using the facts available to determine FMEC's margins with respect to all four classes or kinds or merchandise.

Use of Adverse Facts Available

In accordance with section 776(a)(2)(A) of the Act, we have determined that FMEC's failure to respond to the Department's supplemental questionnaire warrants the use of facts available. Moreover, FMEC's failure to make any attempt to respond to the Department's supplemental questionnaire and its intentional withdrawal from this review, supports our determination that FMEC did not act to the best of its ability to comply with requests for information. Therefore, pursuant to section 776(b) of the Act, we preliminarily determine that FMEC is not entitled to a separate rate and will be subject to the PRC country-wide rates, which are based on adverse facts available. For further details, see the *Separate Rates Determination*, and the *Adverse Facts Available and the Country-Wide Rates* sections of this notice below.

Shandong Huarong

Failure to Provide Requested Information

Pursuant to requests for review by Shandong Huarong and the petitioner, the Department requested that Shandong Huarong provide sales and factors of production information regarding its sales of axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks. In its section A questionnaire response, Shandong Huarong stated that although it sold axes within the scope of the antidumping duty order, it "does not have access to the required information to participate in the review on axes." Shandong Huarong never provided the Department with any sales or factors of production information with respect to its sales of axes. Moreover, Shandong Huarong never explained why it did not have access to information regarding axes.

We issued to Shandong Huarong a supplemental questionnaire notifying Shandong Huarong of the deficiencies in its submissions and providing it with an opportunity to remedy these deficiencies. *See* the letter to Shandong Huarong, dated November 19, 1999, transmitting the supplemental questionnaire. Shandong Huarong failed to correct these deficiencies. After reviewing the record in this review, we have determined that the information submitted by Shandong Huarong regarding axes/adzes is so incomplete as to be unusable for calculating a margin. Accordingly, notwithstanding section 782(e) of the Act, as described below, pursuant to 776(a) of the Act, we are using the facts available to determine Shandong Huarong's margins with respect to axes/adzes.

Use of Adverse Facts Available

As noted above, the record in this review shows that Shandong Huarong did not provide sales and factors of production information regarding its sales of axes/adzes. Although Shandong Huarong stated that it did not have access to this information, it never explained why this was the case. Therefore, pursuant to section 776(a)(2)(A) of the Act, we have relied upon facts available in reaching our preliminary results with respect to Shandong Huarong's sales of axes. Moreover, the fact that Shandong Huarong provided no evidence that it ever attempted to obtain from its suppliers any factors of production information regarding axes/adzes, supports our determination that Shandong Huarong did not act to the best of its ability to report information regarding axes/adzes. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting a facts available margin with respect to HFHT sales by Shandong Huarong within the axes/adzes class of kind of merchandise. Specifically, we have based Shandong Huarong's preliminary margin for axes/adzes on the highest margin from this or any prior segment of this proceeding. *See Ferro Union.*

Corroboration

Section 776(c) of the Act provides that when the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA) (H.R. Doc. 103–316 (2nd Sess. 1994) states that "corroborate" means to determine that the information used has probative value. *See* SAA at *870*. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See Grain-Oriented Electrical Steel From Italy; Preliminary Results of*

Antidumping Duty Administrative Review, 61 FR 36551, 36552 (July 11, 1996). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated); *see also Borden Inc.* v. *United States*, 4 F Supp 2d 1221, 1246–48 (CIT 1998) (the Department may not use an uncorroborated petition margin that is high when compared to calculated margins for the period of review). None of these unusual circumstances are present here. Accordingly, for each class or kind of HFHTs for which we have resorted to adverse facts available, we have used the highest margin from this or any prior segment of the proceeding as the margin for these preliminary results because there is no evidence on the record indicating that such margins are not appropriate as adverse facts available.

Separate Rates Determination

To establish whether a company operating in a non-market economy ("NME") is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under this test, NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. De facto absence of government control over exports is based on four factors: (1) whether each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. *See, Silicon Carbide*, 59 FR at 22587 and *Sparklers*, 56 FR at 20589.

In the final results of the 1997–1998 reviews of HFHTs, the Department granted separate rates to Shandong Huarong, LMC, and TMC. *See Heavy Forged Hand Tools From the People's Republic of China; Final Results and Partial Recission of Antidumping Duty Administrative Reviews*, 64 FR 43659 (August 11, 1999) ("*Hand Tools*"). While these three companies received separate rates in several previous segments of these proceedings, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of any separate rate the respondent received in the past. *See Manganese Metal From the People's Republic of China, Final Results and Partial Recission of Antidumping Duty Administrative Review*, 63 FR 12441 (March 13, 1998). In the instant reviews, these companies submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted in these reviews by Shandong Huarong, LMC, and TMC included government laws and regulations on corporate ownership, business licences, and narrative information regarding the companies' operations and selection of management. This evidence is consistent with the Department's findings in previous reviews and supports a finding that control of companies in the PRC has been decentralized and that the respondent companies' operations are, in fact, autonomous from the PRC government. We therefore preliminarily determine that these companies continue to be entitled to separate rates.

With respect to FMEC, since it terminated its participation in this review and we were not able to verify the information the company submitted, we preliminarily determine that FMEC did not establish its entitlement to a separate rate.

SMC failed verification in the 1997–1998 administrative review and did not establish its entitlement to a separate rate in that review. *See Hand Tools* at 64 FR 43659. Although, as noted above, we were unable to verify SMC's U.S. sales information, in this review we were able to verify SMC's separate rates information. At the verification of SMC, we examined SMC's complete separate rates questionnaire response including provincial government documents regarding SMC's relationship with the PRC government, SMC's export licence, and records regarding SMC's owners, management selection process, price setting practices, disposition of corporate profits, and use of foreign currency receipts. We found no evidence of de facto government control. *See SMC Sales Verification Report*. Thus, based on this finding and record evidence of no de jure government control of export activities, we preliminarily determine that SMC is entitled to a separate rate.

Adverse Facts Available and the Country-Wide Rates

The Department has determined that the use of facts available is appropriate for purposes of establishing the country-wide rate for these preliminary results of reviews, pursuant to section 776(a)(2)(B) of the Act. The Act provides that the administering authority shall use facts otherwise available when an interested party "fails to provide such information by the deadlines for the submission of the information or in the form and manner requested." On April 19, 1999, the Department sent a questionnaire to the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") in order to collect information relevant to the calculation of the PRC-wide rate. MOFTEC did not respond to our questionnaire.

Section 776(b) of the Act authorizes the Department to use adverse facts available whenever it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Because MOFTEC did not respond to our questionnaire or direct us to send the questionnaire to any other party, and because FMEC

terminated its participation in this review, we determine that the PRC-wide entity did not cooperate to the best of its ability with our requests for information. Because of the failure of MOFTEC to respond to our questionnaire and FMEC's failure to respond fully to our questionnaire, we lack data necessary to calculate a PRC-wide rate. Therefore, pursuant to section 776(b) of the Act, we are relying on adverse facts available to determine the margin for the PRC-wide entity, which includes FMEC. As outlined in section 776(b) of the Act, adverse facts available may include reliance on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review under section 751 of the Act or determination under section 753 of the Act; or (4) any other information placed on the record. When applicable, for each segment of these proceedings we have used as adverse facts available for the PRC-wide rate the highest rate from the current or previous segments of these proceedings. The PRC-wide rates from the most recently completed review are the highest rates from any segment of these proceedings for bars/wedges (47.88 percent) and hammers/sledges (27.71 percent). The calculated rates from these current reviews are the highest rates from any segment of these proceedings for axes/adzes (51.52 percent) and picks/mattocks (138.78 percent). As noted under the *Corroboration* section above, we have determined that these margins are appropriate to use as adverse facts available.

Export Price

In accordance with section 772(a) of the Act, the Department calculated an export price ("EP") for sales to the United States because the first sale was made before the date of importation and the use of constructed export price was not otherwise warranted. When appropriate, we made deductions from the selling price to unaffiliated parties for ocean freight, marine insurance, foreign brokerage and handling, and foreign inland freight. Each of these services, with one exception, was either provided by a NME vendor or paid for using a NME currency. Thus, we based the deduction for these movement charges on surrogate values (see the discussion regarding companies located in NME countries and the Department's selection of a surrogate country in the *Normal Value* section of this notice). The one exception referred to above concerns TMC and LMC, which reported that a market economy vendor provided ocean freight for a small portion of their U.S. sales and that they paid for this service using a market economy currency. Therefore, for these sales, we used the reported market economy ocean freight expense in calculating EP.

For TMC's and LMC's other sales, and for the other respondents, we valued ocean freight using the official tariff rates published for hand tools by the Federal Maritime Commission. When possible, we used the rates for 20 and 40 foot container shipments between the ports reported in the respondents' Bills of Lading. If port-specific rates were not available, we used the regional rates calculated in the *Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 FR 9160 (February 28, 1997) ("*Brake Drums and Brake Rotors*"). In order to use these rates in our calculations, it was necessary to convert the per-container rates into per-metric ton rates by dividing the container rate by 18 metric tons. This conversion factor was used in the two most recently completed reviews of HFHTs. We valued marine insurance using the rate in effect in India which was reported in the public version of the questionnaire response placed on the record in *Stainless Steel Wire Rod From India; Final Results of Administrative Review*, 63 FR 48184 (September 9, 1998) ("*India Wire Rod*"). We valued foreign brokerage and handling using the rate reported in the questionnaire response in *India Wire Rod*. The sources used to value foreign inland freight are identified below in the *Normal Value* section of this notice.

To account for inflation or deflation between the time period that the freight, brokerage, and insurance rates were in effect and the POR, we adjusted the rates using the wholesale price indices ("WPI") for India as published in the International Monetary Fund's ("IMF") publication, *International Financial Statistics*. For further discussion of the surrogate values used in these reviews, see *Memorandum From the Team Regarding Surrogate Values Used for the Preliminary Results of the Eighth Administrative Reviews of Certain Heavy Forged Hand Tools From the People's Republic of China*, (February 28, 2000), ("*Surrogate Value Memorandum*"), which is on file in the CRU–Public File.

Normal Value

For exports from NMEs, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production methodology if (1) the subject merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value. Section 351.408 of the Department's regulations sets forth the Department's methodology for calculating the NV of merchandise from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as an NME. Since none of the parties to these proceedings contested such treatment in these reviews, we calculated NV in accordance with section 773(c) of the Act and section 351.408 of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the factors of production ("FOP") utilized in producing HFHTs [2] include, but are not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOP, to the extent possible, using the costs of the FOP in a market economy that is (A) at a level of economic development comparable to the PRC, and (B) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product, the growth rate in per capita income, and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. For further discussion of the Department's selection of India as the surrogate country, *see* the *Memorandum From Jeff May, Director, Office of Policy, to Thomas Futtner, Acting Office Director, AD/CVD Enforcement Group II*, dated December 8, 1999, which is on file in the CRU–Public File.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, when possible, we valued FOP using surrogate values that were in effect during the POR. Surrogate values that were in effect during periods other than the POR were adjusted, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices for India that were reported in the IMF's publication, *International Financial Statistics*. We valued the FOP as follows:

(1) We valued direct materials used to produce HFHTs (i.e., steel, steel scrap, paint, and anti-rust oil) and the steel scrap generated from the production of

[2] We adjusted the reported factors based on verification findings. *see* Calculation Memo.

HFHTs using the rupee per metric ton or rupee per kilogram value of imports that entered India during the period February through August 1998 as published in the *Monthly Statistics of the Foreign Trade of India*, Volume II—Imports ("Indian Import Statistics").

(2) We valued labor using a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3). This rate is identified on the Import Administration's web site (*See* www.ita.doc.gov/import_admin/records/).

(3) We derived ratios for factory overhead, selling, general and administrative ("SG&A") expenses, and profit using information reported for 1992–1993 in the January 1997 *Reserve Bank of India Bulletin*. From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

(4) We valued packing materials, including cartons, pallets, iron straps, anti-damp paper, anti-rust paper, plastic strips, iron knots, plastic bags, iron wire, and metal clips, using the rupee per metric ton or rupee per kilogram value of imports that entered India during the period February through August 1998 as published in *Indian Import Statistics*. We valued hessian cloth (a packing material) using the rupee per kilogram value of imports that entered India during the period April through July 1998 as published in *Indian Import Statistics*.

(5) We valued coal using the price of steam coal in India in 1996 as reported in the International Energy Agency's publication, *Energy Prices and Taxes*, Second Quarter 1999 ("*EPT*").

(6) We valued electricity using the 1997 Indian electricity prices for industrial use as reported in *EPT*.

(7) We used the following sources to value truck and rail freight services incurred to transport direct materials, packing materials, and coal from the suppliers of the inputs to the factories producing HFHTs:

Truck Freight: If a respondent used its own trucks to transport material or subject merchandise, we valued freight services using the average cost of operating a truck, which we calculated from information published in *The Times of India* on April 24, 1994. If a respondent did not use its own trucks or the respondent did not state that it used its own trucks, we valued freight services using the rates reported in an August 1993 cable from the U.S. Embassy in India to the Department. *See Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China*, 58 FR 48833 (September 20, 1993).

Rail Freight: We valued rail freight services using the April, 1995 rates published by the Indian Railway Conference Association. These rates were used in *Brake Drums and Brake Rotors*. For further discussion of the surrogate values used in these reviews, *see Surrogate Value Memorandum*, dated February 28, 2000, which is on file in the CRU-Public File.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine that the following margins exist for the period February 1, 1998 through January 31, 1999:

Manufacturer/exporter	Margin (percent)
Shandong Huarong General Group Corporation:	
Axes/Adzes	51.52
Bars/Wedges	27.29
Liaoning Machinery Import & Export Corporation: Bars/Wedges	20.23
Tianjin Machinery Import & Export Corporation:	
Axes/Adzes	51.52
Bars/Wedges	43.99
Hammers/Sledges	26.38
Picks/Mattocks	138.78
Shandong Machinery Import & Export Corporation:	
Axes/Adzes	51.52
Bars/Wedges	47.88
Hammers/Sledges	27.71
Picks/Mattocks	138.78
PRC-wide rates:	
Axes/Adzes	51.52
Bars/Wedges	47.88
Hammers/Sledges	27.71
Picks/Mattocks	138.78

Parties to the proceeding may request disclosure within 10 days of the date of announcement of these preliminary results, in accordance with 19 CFR 351.224. Any interested party may request a hearing within 30 days of publication of this notice, in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the publication of this notice, or the first workday thereafter. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice, in accordance with 19 CFR 351.309(c)(1)(ii). Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will publish a notice of the final results of these administrative reviews, which will include the results of its analysis of issues raised by the parties, within 120 days of publication of these preliminary results.

The final results of these reviews shall be the basis for the assessment of antidumping duties on entries of merchandise covered by these reviews and for future deposits of estimated duties.

Duty Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we have calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. For those respondents or classes or kinds of merchandise with margins based on facts available, we based the importer-specific assessment rates on the facts available margin percentages. These importer-specific rates will be assessed uniformly on all entries of each importer that were made during the POR. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is de minimis, i.e., less than 0.5 percent. The Department will issue appraisement instructions directly to the Customs Service.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above which have separate rates (Shandong Huarong, LMC, SMC and TMC) will be the rates for those firms established in the final results of these administrative reviews for the classes or kinds of merchandise listed above; (2) for any previously reviewed PRC or non-PRC exporter with a separate rate, the cash deposit rates will be the company-specific rates established for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the

final results of these reviews; and (4) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 1998–1999 administrative review and new shipper review and partial rescission of administrative review of stainless steel bar from India.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India with respect to the following companies: Chandan Steel Ltd., Ferro Alloys Corporation Limited, Isibars Limited, Panchmahal Steel Limited, Sindia Steels Limited, Venus Wire Industries Limited, and Viraj Impoexpo Ltd. In response to a request from Meltroll Engineering Pvt., Ltd., the Department of Commerce is conducting a new shipper review of the antidumping duty order on stainless steel bar from India. These reviews cover sales of stainless steel bar to the United States during the period February 1, 1998, through January 31, 1999.

We have preliminarily determined that, during the period of review, Ferro Alloys Corporation Limited, Isibars Limited, Panchmahal Steel Limited, Sindia Steels Limited, and Viraj Impoexpo Ltd. made sales below normal value and that Chandan Steel Ltd., and Meltroll Engineering Pvt., Ltd., and Venus Wire Industries Limited did not make sales below normal value. If these preliminary results are adopted in our final results of administrative review and new shipper review, we will instruct the Customs Service to assess antidumping duties equal to the difference between the export price and the normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are also requested to submit (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Zak Smith, James Breeden, or Melani Miller, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0189, (202) 482–1174, and (202) 482–0116, respectively.

SUPPLEMENTAL INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR Part 351 (April 1998).

Background

On February 21, 1995, the Department published in the **Federal Register** (60 FR 9661) the antidumping duty order on stainless steel bar from India. The Department notified interested parties of the opportunity to request an administrative review of this order on February 11, 1999 (64 FR 6878). On February 26, 1999, the Department received requests from the petitioners [1] and five respondents to conduct an administrative review. Thus, in accordance with 19 CFR 351.221(b)(1), we published (64 FR 14860) a notice of initiation of this antidumping duty administrative review on March 29, 1999, with respect to Bhansali Bright Bars Pvt. Ltd. ("Bhansali"), Chandan Steel Ltd. ("Chandan"), Ferro Alloys Corporation Limited ("Facor"), Isibars Limited ("Isibars"), Jyoti Steel Industries ("Jyoti"), Madhya Pradesh Iron & Steel Company ("Madhya Pradesh"), Panchmahal Steel Limited ("Panchmahal"), Parekh Bright Bars Pvt. Ltd. ("Parekh"), Shah Alloys Ltd. ("Shah"), Sindia Steel Limited ("Sindia"), Venus Wire Industries Ltd. ("Venus"), and Viraj Impoexpo Ltd. ("Viraj"). The review covers the period February 1, 1998, through January 31, 1999.

On February 26, 1999, Meltroll Engineering Pvt. Ltd. ("Meltroll") requested that we conduct a new shipper review. We published the notice of initiation for this new shipper review on April 15, 1999 (64 FR 18601). This new shipper review covers the same period as the administrative review and, pursuant to section 751(a) of the Act and 19 CFR 351.214(j)(3), is being conducted concurrently with the administrative review.

During May and June, 1999, Bhansali, Jyoti, and Shah reported no shipments of the subject merchandise to the United States during the period of review ("POR") that were not already covered by a previous segment of this proceeding. We independently confirmed with the Customs Service that there were no entries from these companies. Therefore, in accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding the review with respect to these companies. Furthermore, on June 7, 1999, Madhya Pradesh withdrew its request for review. Madhya Pradesh's request was timely and no other interested party requested a review of the company. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the review of Madhya Pradesh.

On August 17, 1999, the Department initiated sales below cost investigations of Isibars and Panchmahal. On January 18, 2000, the Department initiated a sales below cost investigation of Venus. On February 14, 2000, the Department initiated a sales below cost investigation of Sindia. Sales below cost analyses of

[1] Al Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Slater Steels Corp., and Talley Metals Technology, Inc.

Sindia and Venus are not included in this notice because, in the case of Sindia, the investigation was initiated shortly before issuance of these preliminary results and, in the case of Venus, we intend to ask the company to provide further information and clarification with respect to its cost reporting.

Scope of Reviews

Imports covered by these reviews are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these reviews is dispositive.

Use of Facts Otherwise Available

Section 776(a) provided that the Department shall apply "facts otherwise available" if, *inter alia*, a respondent:

(1) Withholds information that has been requested;

(2) Fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of Section 782;

(3) Significantly impedes a proceeding; or

(4) Provides information that cannot be verified.

Section 782(e) of the Act provides further that the Department shall not decline to consider information that is submitted by an interested party and that is necessary to the determination but does not meet all the applicable requirements established by the Department if-

(1) The information is submitted by the deadline established for its submission;

(2) The information can be verified;

(3) The information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination;

(4) The interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and

(5) The information can be used without undue difficulties.

We have preliminarily determined that the use of facts available in certain circumstances is necessary. The discussion below details the particular circumstances of each company for which we are applying facts available.

Viraj

In its June 3, 1999, submission, Viraj reported that it had no home market sales of the merchandise under review. On August 17, 1999, we sent Viraj a supplemental questionnaire asking it to confirm that it had reported the total value and volume of sales of all merchandise described in Appendix III of the questionnaire in its home market, and to its three largest third country markets during the POR. In its September 23, 1999, submission, Viraj confirmed that it properly reported all sales of the merchandise under review to the United States, the home market, and third country markets. In a January 18, 2000, supplemental questionnaire, we again asked Viraj to clarify whether it was reporting all sales of stainless steel bars in any form in the home market. We also instructed Viraj to update its database and entire response in the event that it did have home market sales.

On February 9, 2000, Viraj responded by submitting a database of previously unreported home market sales made during the POR. On February 14, 2000, Viraj submitted a narrative response corresponding to the February 9th submission. Because the deadline for submitting factual information had passed, we rejected Viraj's February 14th submission on February 17, 2000 (see the Letter to Viraj "Rejection of Submission," which is available in the public records of the Department's Central Records Unit, Room B–099).

Because the home market sales information provided by Viraj through February 9 was incomplete, we have preliminarily determined that Viraj failed to provide information in the manner requested by the Department within our deadline. In particular, lacking a narrative description of the home market sales reported on February 9, we do not believe that the information submitted by Viraj serves as a reliable basis for calculating normal value ("NV"). Therefore, pursuant to section 776(a) of the Act, we must use facts otherwise available.

In determining the appropriate facts available to apply to Viraj, we have preliminarily determined that an adverse inference is warranted because Viraj failed to cooperate by not acting to the best of its ability in complying with a request for information (*see* section 776(b) of the Act). Specifically, as described above, Viraj was requested by the Department to report its home market sales on three separate occasions. Only on the third occasion did Viraj admit to having sales of the foreign like product in the home market, and in making this admission, Viraj failed to provide a comprehensive response for these sales. Viraj has argued that it did not intentionally omit its home market sales because it did not realize that the merchandise in question had to be reported, we note that the original questionnaire includes as Appendix III a full description of the scope of these reviews. Furthermore, we note that if Viraj had any questions as to what merchandise should be reported, our questionnaires are clear in stating that interested parties should contact the Department with such queries. This is not the first review in which Viraj has been involved. Therefore, we preliminarily determine that by not providing necessary information specifically requested by the Department, Viraj failed to cooperate to the best of its ability (for a further discussion see the Memorandum to Richard Moreland dated February 28, 2000, "Facts Otherwise Available for Viraj Impoexpo Ltd.," which is available in the public records of the Department's Central Records Unit, Room B–099). Consequently, we have preliminarily determined that an adverse inference is warranted in selecting facts available.

As adverse facts available, we have assigned a margin of 21.02 percent to Viraj. This margin was calculated for

sales by Mukand Limited during the original less-than-fair-value ("LTFV") investigation and represents the highest weighted-average margin determined for any firm during any segment of this proceeding. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action ("SAA") provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 103–316, Vol. 1, 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)). In this review, there are no circumstances indicating that this margin is inappropriate as facts available. Therefore, we find that the 21.02 percent rate is corroborated.

Panchmahal

While Panchmahal did respond to our original questionnaire and supplemental questionnaires, it refused our request to revise its variable cost of manufacture data ("VCOM") or total cost of manufacture data ("TCOM") relevant to the POR. This information is necessary to calculate the appropriate margins in all instances becausé Panchmahal does not have comparison market sales of merchandise which is identical to the merchandise it sells in the United States. Furthermore, Panchmahal did not make the revisions we requested with respect to its reporting of constructed value ("CV"). The CV information is necessary to calculate the appropriate margins in those instances where Panchmahal's home market data cannot be used to calculate a dumping margin. Thus, in accordance with section 776(a) of the Act and 19 CFR 351.308(a), we are using facts otherwise available because Panchmahal did not submit information in the manner or form requested by the Department. Moreover, pursuant to section 782(e)(3) of the Act, we find the information on the record so incomplete that it cannot serve as a reliable basis for reaching an appropriate dumping margin for these preliminary results.

In determining the appropriate facts available to apply to Panchmahal, we have preliminarily determined that Panchmahal failed to cooperate by not acting to the best of its ability to comply with a request for information under section 776(b) of the Act. Specifically, on December 13, 1999, we issued a supplemental questionnaire to Panchmahal which instructed the company to recalculate its VCOM and TCOM figures to reflect the differences in labor and overhead costs incurred to produce stainless steel bar of different finish and size. We made the same instruction with respect to Panchamahal's CV information. In its supplemental questionnaire response, Panchmahal demonstrated that it is able to calculate different costs for different size-ranges. However, it elected not to revise its VCOM or TCOM data and, instead, continued to rely on average cost figures for purposes of calculating VCOM and TCOM. With respect to its reporting of CV, Panchmahal did not demonstrate that it incorporated size-specific costs. Therefore, in selecting facts available, we have preliminarily determined that an adverse inference is warranted. As adverse facts available, we have assigned a margin of 21.02 percent to Panchmahal.

As noted above, this margin was calculated for sales by Mukand Limited during the original LTFV investigation and represents the highest weighted-average margin determined for any firm during any segment of this proceeding. It is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as facts available. Therefore, we find that the 21.02 percent rate is corroborated.

Parekh

Parekh did not respond to our May 6, 1999, questionnaire, nor did it indicate that it was experiencing difficulties responding to the questionnaire or meeting the deadline for submission. Therefore, in accordance with section 776(a) of the Act, we must use facts otherwise available because Parekh withheld information requested by the Department.

In determining the appropriate facts available to apply to Parekh, we have preliminarily determined that Parekh failed to cooperate by not acting to the best of its ability to comply with a request for information under section 776(b) of the Act. Specifically, Parekh's failed to communicate in any way with the Department. Therefore, in selecting facts availabie, we have preliminarily determined that an adverse inference is warranted. As adverse facts available we have assigned a margin of 21.02 percent to Parekh. As noted above, this margin was calculated for sales by Mukand Limited during the original LTFV investigation and represents the highest weighted-average margin determined for any firm during any segment of this proceeding. It is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as facts available. Therefore, we find that the 21.02 percent rate is corroborated.

Chandan

Chandan submitted CV information for those U.S. sales that did not have any contemporaneous home market sales for matching purposes. After reviewing the information that was timely provided by Chandan, we find that the information is incomplete and will require further revisions and clarifications. Specifically, we will be seeking clarification from Chandan with respect to reported further manufacturing and conversion by an unaffiliated party. While we have asked Chandan to provide further information and clarification on this issue, we did not request the information in time for its use in the preliminary results. Moreover, pursuant to section 782(e)(3) of the Act, we find the information on the record so incomplete that it cannot serve as a reliable basis for reaching an appropriate dumping margin for these preliminary results. Therefore, in accordance with section 776(a) of the Act, we are using facts otherwise available.

In determining the appropriate facts available to apply to Chandan, we have preliminarily assigned a margin of 0.00 percent to Chandan's sales of the subject merchandise that do not have a contemporaneous home market sale for matching purposes. This margin is the rate calculated for Chandan's sales that do have contemporaneous matches.

We note that Chandan submitted additional CV information on February 14, 2000. Because we did not request the additional information provided and the deadline for submitting factual information had passed, we rejected Chandan's February 14th submission on February 17, 2000 (see the Letter to Chandan "Rejection of Submission," which is available in the public records of the Department's Central Records Unit, Room B–099).

Normal Value Comparisons

To determine whether sales of stainless steel bar from India to the United States were made at less than NV, we compared export price ("EP") to the NV, as described in the "*Export Price*" and "*Normal Value*" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated EPs for comparison to weighted-average NVs.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in these reviews, we reviewed information from each respondent regarding the marketing stage involved in the reported home market or third country and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution. Pursuant to section 773(a)(1)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales, we considered the selling functions reflected in the starting prices before any adjustments. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

Based on an analysis of the selling functions, class of customers, and level of selling expenses, we found that the marketing processes in both the home market/third country and the United States were not substantially dissimilar for Chandan, Facor, Isibars, Meltroll, Sindia, or Venus. Therefore, we have preliminarily found that sales in both markets for each respondent are at the same LOT and consequently, no LOT adjustment is warranted.

Export Price

In calculating the price to the United States, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation into the United States and use of constructed export price was not otherwise indicated.

We calculated EP based on either the CIF, C&F, or CFR price to the United States. In accordance with section 772(c)(2) of the Act, we made deductions, as appropriate, for rebates, foreign inland freight, international freight, marine insurance, brokerage and handling, clearing and forwarding, and customs duty. Furthermore, we made additions, as appropriate, for interest revenue.

Many respondents claimed an upward adjustment to EP for a "duty drawback" program. We determine whether an adjustment to U.S. price for a respondent's claimed duty drawback is appropriate when the respondent can demonstrate that it meets both parts of our two-part test. There must be: (1) A sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product (*see Certain Welded Carbon Standard Steel Pipes and Tubes from India*, 62 FR 47632, 47635 (September 10, 1997)). Because the respondents did not demonstrate a sufficient link between the import duty and the rebate, we have not made an adjustment to EP. Specifically, the respondents did not demonstrate that the rebate received upon exportation directly related to specific import duties paid on materials used in the production of the subject merchandise.

Normal Value

1. Comparison Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. When home market sales were determined to be insufficient in quantity to permit a proper comparison with sales to the United States, we compared the respondent's volume of sales of the foreign like product to individual third country markets to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

For Chandan, Facor, Isibars, and Sindia, we determined that the home market provides a viable basis for calculating NV because the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV for these companies on the prices at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.

For Meltroll and Venus, we determined that the home market was not appropriate for calculating NV because the aggregate volume of home market sales of the foreign like product was not greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we examined these companies' sales to third country markets. Both Meltroll and Venus had more than one third country market that satisfied the criteria of section 773(a)(1)(B)(ii) of the Act. To select among these markets, we considered the criteria outlined in 19 CFR 351.404(e): The similarity of the foreign like product exported to each third country versus subject merchandise exported to the United States; the volume of sales to the third countries; and other factors that we considered appropriate. For Meltroll, we selected Venezuela as the third country market. Although it was not the largest

third country market, the merchandise sold to Venezuela was more similar to the merchandise sold to the United States, the Venezuelan sales were contemporaneous with U.S. sales, while sales to the largest third country were not, and the volumes of the individual sales in Venezuela and the United States were comparable. For Venus, we chose Mexico as the third country market. Although it was not the largest third country market, the merchandise sold to Mexico was more similar to the merchandise sold by Venus to the United States. Both Meltroll's aggregate sales of the foreign like product to Venezuela and Venus' aggregate sales of the foreign like product to Mexico were greater than five percent of their sales, by volume, of the subject merchandise to the United States (see the Memoranda to Richard Moreland dated August 25, 1999, for Venus and August 26, 1999, for Meltroll, "Selection of Third Country Comparison Market," which are available in the public records of the Department's Central Records Unit, Room B–099).

2. Cost of Production Analysis

As noted above, based on cost allegations made by the petitioners, the Department found reasonable grounds to believe or suspect that sales by Isibars in the comparison market were made at prices below its respective costs of production ("COP"). As a result, we have conducted an investigation to determine whether this company made comparison market sales during the POR at prices below its respective COP, within the meaning of section 773(b) of the Act. We also conducted a cost investigation for Facor, because we disregarded sales pursuant to the cost test for this company in the most recently completed previous review (*see Stainless Steel Bar from India: Final Results of New Shipper Antidumping Duty Administrative Review*, 63 FR 19712 (April 21, 1998).

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP, by model, based on the sum of the cost of materials, fabrication, general and administrative expenses, and packing costs. We relied on the COP data submitted by the companies.

B. Test of Comparison Market Prices

We compared the weighted-average COP for the respective companies to comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard comparison market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to comparison market prices, less movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product are made at prices below the COP, we do not disregard any below-cost sales of that product because the below-cost sales were not made in "substantial quantities." However, where 20 percent or more of a respondent's sales of a given product were at prices less than the COP, we determined that such sales have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that Facor and Isibars made home market sales at below COP prices within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. Therefore, we excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

3. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV for Facor and Isibars based on the sum of the respective respondent's cost of materials, labor, overhead, G&A, selling, profit, and U.S. packing costs. (As discussed in the "*Use of Facts Otherwise Available*" section above, we did not calculate CV for Chandan because its CV information was incomplete.)

Price-to-Price Comparisons

For comparisons to those products for which there were comparison market sales at prices at or above the COP, we based NV on prices to comparison market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We also made additions and deductions, where appropriate, for interest revenue, rebates, inland freight, international freight, marine insurance, and brokerage and handling. In addition, we made circumstance-of-sale adjustments for credit and bank charges, where appropriate. Finally, in accordance with section 773(a)(6) of the Act, we deducted comparison market packing costs and added U.S. packing costs.

We note that, with respect to the calculation of Isibars' circumstance-of-sale adjustment, we have asked Isibars to clarify and provide further information on those sales for which it has not yet reported a payment date. In the event that Isibars is unable to comply with our request for information, we may resort to the use of facts available, which may, if appropriate, be adverse to the interests of the company.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

Preliminary Results of the Reviews

As a result of our comparison of EP and NV, we preliminarily determine the following weighted-average dumping margins:

Manufacturer/ Exporter	Period	Margin (percent)
Chandan	2/1/98–1/31/99	0.00
Facor	2/1/98–1/31/99	12.13
Isibars	2/1/98–1/31/99	0.42
Panchmahal	2/1/98–1/31/99	21.02
Parekh	2/1/98–1/31/99	21.02

Manufacturer/ Exporter	Period	Margin (percent)
Sindia	2/1/98–1/31/99	0.01
Venus	2/1/98–1/31/99	0.00
Viraj	2/1/98–1/31/99	21.02
Meltroll	2/1/98–1/31/99	0.00

In accordance with section 351.224(b) of our regulations, we will disclose to the relevant parties the calculations performed for these preliminary results. Any interested party may request a hearing within 30 days of publication. A hearing, if requested, will be held 37 days after the publication of this notice, or the first business day thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will issue the final results of these administrative and new shipper reviews, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon completion of these administrative and new shipper reviews, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the same sales. In order to estimate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value. This rate will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

The following deposit requirements will be effective upon publication of the final results of these administrative and new shipper reviews for all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of these reviews; (2) if the exporter is not a firm covered in these reviews, but was covered in a previous review or the original LTFV investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 12.45 percent, the "all others" rate established in the LTFV investigation (59 FR 66915, December 28, 1994).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review, new shipper review, and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5649 Filed 3–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Static Random Access Memory Semiconductors From Taiwan; Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On October 12, 1999, the Department of Commerce published the preliminary results of the new shipper review of the antidumping duty order on static random access memory semiconductors from Taiwan. The products covered by this order are synchronous, asynchronous, and specialty static random access memory semiconductors from Taiwan, whether assembled or unassembled. The review covers one manufacturer/exporter. The period of review is October 1, 1997, through September 30, 1998.

We requested and received revised cost of production and constructed value databases from the respondent. We have used these databases, and we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–1776.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Background

The review covers one manufacturer/exporter, Giga Semiconductor, Inc. (GSI Technology). The period of review (POR) is October 1, 1997, through September 30, 1998.

On October 12, 1999, the Department published in the **Federal Register** the preliminary results of the new shipper review of the antidumping duty order on static random access memory semiconductors (SRAMs) from Taiwan (64 FR 55251). Also in October 1999, GSI Technology submitted revised cost of production and constructed value databases at the Department's request.

We invited parties to comment on our preliminary results of review and on the revised cost databases. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope.

The scope of this review includes modules containing SRAMs. Such modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board. The scope of this review does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.*, SRAMs soldered onto motherboards).

The SRAMs within the scope of this review are currently classifiable under the subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, and 8542.13.8005 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties to this new shipper review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 2, 2000, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on the use of the revised cost data, we have made certain changes in the margin calculations. For a discussion of our these changes, see the "Margin Calculations" section of the Decision Memo, which is on file in room B–099 at the Department and available on the Web at www.ita.doc.gov/import_admin/records/frn.

Final Results of Review

We determine that the following weighted-average margin percentage exists for the period October 1, 1997, through September 30, 1998:

	MARGIN
Manufacturer/exporter	(Percent)
GSI Technology	7.38

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the new shipper review for all shipments of SRAMs from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for GSI Technology will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 41.75. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the first administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2) and 777(i) of the Act.

Dated: March 3, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Facts Available
2. Rejection of Post-Verification Cost Data
3. Constructed Export Price Offset

[FR Doc. 00–5650 Filed 3–7–00; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0006]

Platt Electric Supply, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1115.20(b)(4). Published below is a provisionally-accepted Settlement Agreement with Platt Electric Supply, Inc., containing monetary payments totaling between $1,000,000.00 and $1,500,000.00.

DATES: Any interested person may ask the Commission not to accept this Agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by March 23, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to "Comment 00–C0006", Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Howard N. Tarnoff, Trial Attorney, Office of Compliance, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, ext. 1382.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Orders appears below.

Dated: March 3, 2000.

Sadye E. Dunn,

Secretary.

Consent Agreement

This Consent Agreement is made by and between the staff of the Consumer Product Safety Commission (under authority delegated to the staff by the Commission) and Platt Electric Supply, Inc. ("Platt"), a domestic corporation, to settle allegations that Platt distributed in commerce certain allegedly defective in-wall electric heaters manufactured by Cadet Manufacturing Company ("Cadet"), a domestic corporation, with its principal place of business located at 2500 West Fourth Plain Boulevard, Vancouver, Washington 98660.

Parties

1. The "staff" is the staff of the Consumer Product Safety Commission ("the CPSC" or "the Commission"), an independent regulatory agency of the United States of America, established by Congress pursuant to Section 4 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2053, as amended.

2. Respondent Platt is a domestic corporation organized and existing under the laws of the State of Oregon, with its principal place of business located at 10605 SW Allen Boulevard, Beaverton, OR 97005. Platt is a distributor of electrical materials and products.

Subject Matter

3. Since approximately 1978, Cadet has allegedly manufactured, sold and/or distributed in commerce in-wall electric heaters for use in homes and residences under the brand names "Cadet" and "Encore." These include all models and variants within each model of the series FW (including models FW–051, FW–101, FW–122, FW–202, and FW–751), manufactured between 1978 and 1987; series FX (including models FX–051, FX–052, FX–071, FX–072, FX–101, FX–102, FX–122, FX–151, FX–152, FX–202, and FX–242), manufactured between 1985 and 1994; series LX (including models LX–242, LX–302, LX–402, and LX–482), manufactured between 1985 and 1994; series TK (including models TK–051, TK–071, TK–072, TK–101, TK–102, TK–151, and TK–152), manufactured between 1984 and 1998; series ZA (including models ZA–051, ZA–052, ZA–071, ZA–072, ZA–101, ZA–102, ZA–122, ZA–151, ZA–152, ZA–202, and ZA–242), manufactured between 1985 and 1994; series Z (including models Z–072, Z–101, Z–102, Z–151, Z–152, Z–202, and Z–208), manufactured between 1993 and 1999; and all series and models of the same of functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX (including models RX–072, RX–101, RX–102, RX–151, RX–152, RX–202, and RX–242), manufactured between 1985 and 1994; series RLX (including models RLX– (including models RLX–302, RLX–402, and RLX–482) manufactured between 1985 and 1994; series RK (including RK–101 and RK–102), manufactured between 1984 and 1998; series RA (including models RA–101, RA–102, RA–151, RA–152, and RA–202), manufactured between 1985 and 1994; and series ZC (including models ZC–072, ZC–101, ZC–102, ZC–151, ZC–152, ZC–202, and ZC–208), manufactured between 1993 and 1999. For each of these heaters, the variants signified by the suffix T (with thermostat), W (white color), and TW (with thermostat and white color) found after the model number are included. All the heaters and variants referred to in this paragraph shall hereinafter be collectively referred to as "the Heaters." The Heaters were sold and/or distributed to consumers principally in the States of California, Idaho, Montana, Oregon, and Washington. Since approximately 1985, Platt has allegedly sold and/or distributed certain of the Heaters in commerce.

4. On January 14, 1999, the staff filed an Administrative Complaint ("Complaint") against Cadet, seeking a determination that certain of the Heaters present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), and public notice and a recall of certain of the Heaters pursuant to Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d). The Complaint alleged that certain of the Heaters are defective and present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), because their design and/or manufacture causes them to overheat, fail, and catch fire; and/or allows lint, dirt, or debris to build up within the heaters and catch fire. The Complaint also alleged that the design of certain of the Heaters can cause the Heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence, or energize the Heaters creating a risk of electric shock. CPSC has made no findings of fact or conclusions of law regarding these allegations. On July 30, 1999, the CPSC approved a Consent Agreement and Order ("the Cadet Order") between the Staff and Cadet which, *inter alia*, required Cadet to undertake a remediation program for notification to consumers and for the replacement of the Heaters ("the Cadet Corrective Action Plan" or "the Plan"), upon final approval of the Plan by the United States Bankruptcy Court for the Western District of Washington at Tacoma (the date of final approval being referred to herein as the "Effective Date" of the Cadet Order).

Agreement of the Parties

5. It is the express purpose of the parties entering this Consent Agreement to protect the public safety by assisting Cadet's recall and replacement of the Heaters.

6. Fulfillment of the terms of this Consent Agreement and the attached Order (hereinafter "Order" or "the Order"), which is hereby incorporated by reference, shall resolve all potential obligations of Platt (and each of Platt's predecessors, successors, assigns, parents, subsidiaries, affiliated entities,

agents, representatives, attorneys, employees, officers, directors, stockholders, and principals) (collectively "the Platt Releasees") under Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d), to give public notice of any alleged hazard presented by the Heaters, and to repair, replace, or refund the purchase price of the heaters. Fulfillment of the terms of this Consent Agreement and Order shall also resolve all potential obligations and liabilities of the Platt Releasees to the Commission for all other claims and causes of action relating to alleged defects in the Heaters, as described in paragraph 4 above. However, Platt is not released from any claims or causes of action based upon information knowingly withheld from or misrepresented to the CPSC staff by Platt. Nothing in this Paragraph 6 is intended to limit the CPSC's rights under Paragraph 21 of this Consent Agreement.

7. The staff believes that this Consent Agreement and Order is an equitable resolution of consumer claims against Platt for replacement heaters. The staff has concluded that the Cadet Corrective Action Plan, and Platt's participation in that Plan, will provide an effective, fair, reasonable and adequate remedy for consumers throughout the United States who own or are otherwise exposed to the Heaters by notifying consumers of the alleged hazard and providing replacement heaters to them, and that this Agreement is, therefore, in the best interests of the public.

8. This Consent Agreement and Order shall not be deemed or construed as an admission by Platt or as evidence: (a) Of any violation of law or regulation by Platt; (b) of other wrongdoing by Platt; (c) that the Heaters are defective, create a substantial product hazard, or are unreasonably dangerous; or (d) of the truth of any claims or other matters alleged or otherwise stated by the CPSC or any other person either against Platt or with respect to the Heaters or the Cadet Corrective Action Plan. Platt does not admit the factual allegations or other statements, or any conclusions of law, as alleged or otherwise stated in the Complaint or this Consent Agreement and Order which relate to the heaters.

9. Platt agrees not to contest in connection with this Consent Agreement and Order the staff's allegation that the Heaters are "consumer products" within the meaning of Section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

10. Platt agrees not to contest in connection with this Consent Agreement and Order the staff's allegation that Platt is a "distributor" of "consumer product[s]," which are "distributed in commerce," as those terms are defined in Sections 3(a)(1), (5), and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (5), and (11).

11. Platt agrees not to contest in connection with this Consent Agreement and Order the staff's allegation that the CPSC has jurisdiction over Platt and the Heaters under Section 3(a)(1), (5), and (11) and Section 15 of the CPSA, 15 U.S.C. 2052(a)(1), (5), and (11) and § 2064.

12. For purposes of this settlement only, Platt agrees not to contest the staff's allegation that the Heaters contain a "defect which creates a substantial product hazard," as those terms are defined in Section 15(a) of the CPSA, 15 U.S.C. 2064(a).

13. Upon final acceptance by the CPSC of this Consent Agreement and Order, Platt and CPSC knowingly, voluntarily, and completely waive and relinquish any past, present, and/or future right or rights in this matter: (a) To the issuance of a proposed complaint in accordance with 16 CFR § 1115.20(b); to an administrative or judicial hearing, and to all further procedural steps—including findings of fact and conclusions of law—to determine whether the Heaters contain a defect which creates a substantial product hazard within the meaning of Section 15 of the CPSA; (c) to seek judicial review or otherwise challenge or contest the validity of this Consent Agreement and Order as issued and entered; (d) to seek judicial review of this or any past orders, findings, and/or determinations of the CPSC in this matter, except as set forth in Paragraphs 21, 22 and 25 of this Consent Agreement; and (e) to file any claim or to seek any remedy under the Equal Access to Justice Act.

14. The Order is issued under Sections 15 (c) and (d) of the CPSA, 15 U.S.C. 2064 (c) and (d), and a violation of this Consent Agreement and Order is a prohibited act within the meaning of Section 19(a)(5) of the CPSA, 15 U.S.C. 2068(a)(5), and may subject Platt to civil and/or criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. 2069 and 2070.

15. The parties agree to fulfill all requirements of this Consent Agreement and Order.

16. For all purposes, this Consent Agreement and Order shall constitute an enforceable judgment obtained in an action or proceeding by a governmental unit to enforce its police and regulatory power.

17. Platt acknowledges that any interested person may bring an action pursuant to Section 24 of the CPSA, 15 U.S.C. 2073, in any United States District Court in which Platt is found or transacts business, to enforce the Order and to obtain appropriate injunctive relief.

18. For the length of its term, this Consent Agreement and Order shall be binding upon and inure to the benefit of the parties hereto and their successors, assigns, and any operating bankruptcy trustees or receivers. If, prior to the termination of this Consent Agreement and Order, Platt merges with any other business entity or sells, assigns, or otherwise transfers substantially all of its assets, Platt shall provide reasonable prior notice to the surviving corporation or to the purchaser, assignee, or transferee of substantially all of Platt's assets, of this Consent Agreement and Order, and of its binding effect upon said surviving corporation, purchaser, assignee, or transferee. The existence of this Consent Agreement and Order and its binding effect shall be noted in any agreement between Platt and such surviving corporation, purchaser, assignee, or transferee. It shall be a condition of any such merger, sale, assignment, or transfer that the surviving corporation or the purchaser, assignee, or transferee shall execute a document agreeing to be bound by the provisions of this Consent Agreement and Order and shall submit to the jurisdiction of the CPSC for purposes of enforcement of this Consent Agreement and Order. In the event of any merger, sale, assignment, or transfer of substantially all of Platt's assets, Platt shall provide written notice to the staff at least sixty (60) days prior to any such merger, asset sale, assignment, or transfer.

19. The CPSC, the staff, and/or Platt may disclose terms of this Consent Agreement and Order to the public.

20. The staff is entering into this Consent Agreement and Order upon reliance that Platt and Cadet have executed a settlement agreement dated January 31, 2000 that resolves issues surrounding the June 22, 1999 DIP Loan and Security Agreement between Cadet, Platt, and Consolidated Electrical Distributors, Inc. ("DIP Loan and Security Agreement").

21. The CPSC, upon reasonable notice to the staff and Platt, may void, suspend, or rescind all, or any part, of this Consent Agreement and Order if it reasonably concludes that: (a) Platt has made knowing and material misrepresentations regarding its financial condition as of the date of this Consent Agreement and Order; (b) in Platt's submission to the staff dated March 19, 1999, Platt knowingly and materially misrepresented the quantity of Heaters it sold; or (c) Platt and Cadet

have not executed the Platt/Cadet settlement agreement referred to in Paragraph 20 of this Consent Agreement. The CPSC may exercise its rights under this Paragraph 21 within, and not later than, 30 months from the Effective Date of the Cadet Order or the termination of this Consent Agreement and Order pursuant to paragraph 33, whichever occurs first. Any CPSC determination under this paragraph shall be subject to the dispute resolution procedures set forth in Paragraph 25.

22. If any provision of this Consent Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Consent Agreement and Order, such provision shall be fully severable. In such event, there shall be added as part of this Consent Agreement and Order a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. The effective date of the added provision shall be the date upon which the prior provision was held to be invalid, illegal, or unenforceable. The rest of the Consent Agreement and Order shall remain in full effect, unless the CPSC reasonably determines, after providing Platt with notice and a reasonable opportunity to comment, that severing the provision materially impacts the Cadet Corrective Action Plan. The CPSC determination shall constitute the final agency decision and shall be subject to judicial review, such review to be based upon the record of any such CPSC proceeding and according to law.

23. This Consent Agreement and Order have been negotiated by the parties. Platt is not relying on the advice of the staff, nor anyone associated with the staff, except as otherwise set forth in this Consent Agreement and Order or in the letter from CPSC staff to Andrew S. Krulwich, Esq. dated February 8, 2000.

24. The provisions of this Consent Agreement and Order shall not be interpreted or construed against any person or entity because that person or any of its attorneys or representatives drafted or participated in drafting this Consent Agreement and Order.

25. The provisions of this Consent Agreement and Order shall be interpreted in a reasonable manner to effect its purpose to remedy the alleged hazard that the Heaters pose and to resolve alleged claims by the CPSC against Platt with respect to the Heaters. In the event of a dispute between the parties arising under this Consent Agreement and Order, the parties agree to submit the dispute to non-binding arbitration by a panel of three arbitrators, according to the rules of the American Arbitration Association then in effect. The CPSC and Platt shall each have the right to select one arbitrator, and shall jointly select the third arbitrator. If the CPSC and Platt are unable to agree on the selection of the third arbitrator, that arbitrator shall be selected by the American Arbitration Association. Either party may institute an action, following the non-binding decision rendered by the arbitration panel, in the United States District Court for the District of Columbia. Notwithstanding the foregoing, neither the arbitrators nor the CPSC shall have the authority to resolve disputes arising under the Platt/Cadet Settlement Agreement, nor may any rights or obligations arising out of the Platt/Cadet Settlement Agreement be enforced through this Consent Agreement and Order.

26. The existence of a dispute between the staff and Platt over any provision of this Consent Agreement and Order shall not excuse, toll, or suspend any obligation or deadline imposed upon Platt under this Consent Agreement and Order, other than the specific provision in dispute.

27. This Consent Agreement and Order shall not be waived, changed, amended, modified or otherwise altered, except in writing executed by the parties and approved by the CPSC.

28. This Consent Agreement and Order contain the entire agreement, understanding, representation, and interpretation of the parties herein, and nothing else may be used to vary or contradict its terms.

29. Platt makes the monetary payments described in Paragraphs 4 and 5 of the Order solely to fund the Cadet Corrective Action Plan and thereby to settle claims arising out of its alleged distribution of the Heaters. No payment made pursuant to or referred to in this Consent Agreement and Order is a fine or other penalty paid with respect to any violation of any law or regulation. Payment hereunder does not constitute, nor shall it be construed or treated as, payment in lieu of a fine or other penalty, punitive recovery, or forfeiture.

30. Platt and the staff consent to the entry of the Order attached hereto.

31. Upon provisional acceptance of this Consent Agreement and Order by the CPSC, this Consent Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR § 1115.20(b)(4). If the CPSC does not receive any written request not to accept this Consent Agreement and Order within fifteen (15) calendar days, this Consent Agreement and Order shall be deemed finally accepted on the twentieth (20th) calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR § 1115.20(b)(5).

32. Upon final acceptance by the CPSC of this Consent Agreement and Order, the CPSC shall issue the incorporated Order. This Consent Agreement and Order shall become effective upon service of the signed Order upon Platt.

33. Platt's Obligations under this Consent Agreement and Order shall terminate when Platt makes the final payment required under Paragraphs 4 and 5 of the Order.

34. The parties have executed two (2) identical copies of this Consent Agreement and the two copies shall be treated as one and the same executed Consent Agreement.

Dated: February 9, 2000.

Howard N. Tarnoff,
Trial Attorney.
Margaret H. Plank,
Trial Attorney.
Eric L. Stone,
Director, Legal Division.
Alan H. Schoem,
Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; Telephone: (301) 504–0626, Facsimile: (301) 504–0359.
Harvey J. Platt,
Chairman & CEO, Platt Electric Supply, Inc., 10605 SW Allen Boulevard, Beaverton, OR 97005–4896; Telephone: (503) 526–2332, Facsimile: (503) 350–5579.

Order

Upon consideration of the Consent Agreement entered into between Respondent Platt Electric Supply, Inc. ("Platt") and the staff of the Consumer Product Safety Commission ("the staff") (collectively "the parties"); and

The Consumer Product Safety Commission ("the CPSC" or "the Commission") having jurisdiction over the subject matter and Platt;

It is hereby ordered that:

1. The Consent Agreement between Platt and the staff is incorporated herein by reference and accepted, and Platt shall comply with all obligations of the Consent Agreement and this Order.

2. Based on the Consent Agreement, the CPSC finds that the Consent Agreement and this Order are necessary to protect the public from the alleged hazard presented by Cadet Manufacturing Company's ("Cadet's") series FW, FX, LX, TK, ZA and Z in-wall electric heaters, and the functionally identical heaters manufactured and distributed by Cadet

under the Encore brand name, including series RX, RLX, RK, RA, and ZC. These heaters shall hereinafter be collectively referred to as "the Heaters."

3. Platt shall immediately cease and despite offering for sale and/or distributing in commerce any of the Heaters, whether by itself or through its subsidiaries, affiliates, Platt-owned distribution centers, or any other persons or entities over whom Platt has control.

4. Platt shall pay into an escrow account (Chase Manhattan Trust Company, National Association, Account #76609060682) established by the staff and Cadet for the purpose of remediating the Heaters ("the Escrow Account"), the sum of ONE MILLION DOLLARS ($1,000,000) upon the CPSC's final acceptance of this Order.

5. Platt shall pay into the Escrow Account contingent contributions of an additional TWO-DOLLARS AND FIFTY CENTS ($2.50) for every heater in excess of two hundred and fifty thousand (250,000) heaters ordered by consumers under the Cadet Consent Agreement and Order, which was approved by the CPSC on July 30, 1999 ("the Cadet Order"); provided that the sum total of Platt's contingent contributions shall be capped at FIVE HUNDRED THOUSAND DOLLARS ($500,000). Platt shall pay contingent contributions within thirty (30) days of Platt's receipt of quarterly written notice from the staff specifying the number of replacement heaters in excess of 250,000 ordered by consumers within twenty-four (24) months after the Effective Date of the Cadet Order issued by CPSC on July 30, 1999.

6. The CPSC may authorize the distribution of the monetary payments referred to in Paragraphs 4 and 5 above to offset any expenses directly related to Cadet's CPSC-approved Corrective Action Plan. Should Cadet fail in its obligations under the Corrective Action Plan, CPSC may authorize the distribution of the monetary payments in paragraphs 4 and 5 above to otherwise remedy the alleged hazard posed by the Heaters; however, no such failure on the part of Cadet shall change the amount or schedule of payments due under this Order or change the rights and duties of Platt under the Consent Agreement.

7. In addition to any penalty it may incur pursuant to Paragraph 14 of the Consent Agreement, if Platt fails to make timely contributions to the Escrow Account, as required by Paragraphs 4 and 5 of this Order, Platt shall be liable for additional contributions to the Escrow Account consisting of the following:

a. Interest at the percentage rate established by the Department of the Treasury pursuant to 31 U.S.C. 3717, for any period after the due date; and

b. A five percent (5%) per month penalty charge if the contribution is not made within thirty (30) days after the due date.

Provisionally accepted and Provisional Order issued on the 3rd day of March, 2000.

By Order of the Commission:

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–5671 Filed 3–7–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0076]

Proposed Collection; Comment Request Entitled Novation/Change of Name Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0076).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Novation/Change of Name Requirements. This OMB clearance expires on May 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before May 8, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA, (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts, or (2) a name change, it must submit certain documentation to the Government.

B. Annual Reporting Burden

Respondents: 1,000.
Responses per respondent: 1.
Total responses: 1,000.
Preparation hours per response: .458.
Total burden hours: 458.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

Dated: March 3, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–5612 Filed 3–7–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0147]

Proposed Collection; Comment Request Entitled Pollution Prevention and Right-To-Know Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0147).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44

U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Pollution Prevention and Right-to-Know Information. This OMB clearance expires on May 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before May 8, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA, 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

Executive Order 12856 of August 3, 1993, "Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements," requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 and the Emergency Planning Community Right-to-Know Act of 1986. The Executive Order requires that contracts to be performed on a Federal facility provide for the contractor to supply to the Federal agency all information the Federal agency deems necessary to comply with these reporting requirements.

B. Annual Reporting Burden

Number of Respondents: 2,550.
Responses Per Respondent: 7.6.
Total Responses: 19,380.
Average Burden Per Response: 45 minutes.
Total Burden Hours: 14,535.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0147, Pollution Prevention and Right-to-Know Information in all correspondence.

Dated: March 3, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–5613 Filed 3–7–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATE: Interested persons are invited to submit comments on or before May 8, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 2, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: The Program for North American Mobility in Higher Education.

Frequency: Annually.

Affected Public:

Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 20.

Burden Hours: 400.

Abstract: The Program for North American Mobility In Higher Education is a competition grant program which supports institutional cooperation and student exchange among the countries of the U.S., Mexico, and Canada. Funding supports the participation of U.S. institutions and students in trilateral consortia of institutions of higher education. Funding will be multi-year, with projects lasting up to four years.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708-9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5575 Filed 3–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 8, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 2, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.
Title: Annual Performance Reporting for the Gaining Early Awareness for Undergraduate Programs (GEAR UP) Grantees.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 185.
Burden Hours: 6,475.
Abstract: The purpose of this information collection is accountability for program implementation and student outcomes for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP). The information collected enables the U.S. Department of Education to demonstrate its progress in meeting the GEAR UP performance objectives as reflected in the indicators.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5576 Filed 3–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 7, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 2, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Type of Review: Reinstatement.
Title: Indian Education Formula Grant Program Application.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 1,270.
Burden Hours: 22,766.
Abstract: Application for funding under the Indian Education Formula Grant Program to Local Educational Agencies used to determine applicant eligibility and amount of award for projects funded.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 202–708–9346 (fax). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5577 Filed 3–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 7, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 2, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Migrant Education Even Start Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 2,700.

Abstract: The Migrant Education Even Start Program (MEES) is designed to help break the cycle of poverty and improve literacy by integrating early childhood education, adult literacy or adult basic education, and parenting into a unified literacy program for migrant families.

Requests for copies of the proposed information collection request may be accessed from http://edicsweb.ed.gov, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 202–708–9346 (fax). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5578 Filed 3–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice; Computer matching between the Department of Education and the Department of Justice.

SUMMARY: Section 5301(a)(1) of the Anti-Drug Abuse Act of 1988 (now designated as section 421(a)(1) of the Controlled Substances Act (21 U.S.C. 862(a)(1)) includes provisions regarding the judicial denial of Federal benefits. Section 5301 authorizes Federal and State judges to deny certain Federal benefits (including student financial assistance under Title IV of the Higher Education Act of 1965, as amended) to individuals convicted of drug trafficking or possession.

In order to ensure that Title IV student financial assistance is not awarded to individuals subject to denial of benefits under court orders issued pursuant to section 5301, the Department of Justice and the Department of Education implemented a computer matching program. The current computer matching agreement expires on March 3, 2000. The Department of Education must continue to obtain from the Department of Justice identifying information regarding individuals who are the subject of section 5301 denial of benefits court orders. The purpose of this notice is to announce the continued operation of the computer-matching program and to provide certain required information concerning the computer-matching program.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (see 54 FR 25818, June 19, 1989), and OMB Circular A–130, the following information is provided:

1. Names of Participating Agencies

The Department of Education (ED) (recipient agency) and the Department of Justice (source agency) (DOJ).

2. Purpose of the Match

This matching program is designed to assist ED in enforcing the sanctions imposed under section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690).

3. Authority for Conducting the Matching Program

Under section 5301 of the Anti-Drug Abuse Act of 1988, as amended (21 U.S.C. 862), ED must deny Federal benefits to any individual upon whom a Federal or State court order has imposed a penalty denying eligibility for those benefits. Student financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA) is a Federal benefit under section 5301 and ED must, in order to meet its obligations under the HEA, have access to information about individuals who have been declared ineligible under section 5301.

Section 5301 and the Procedures for Implementation of section 5301 (Pub. L. 100–690), transmitted to the Congress on August 30, 1989, direct DOJ to act as an information clearinghouse for Federal agencies. While DOJ provides information about section 5301 individuals who are ineligible for Federal benefits to the General Services Administration (GSA) for inclusion in GSA's List of Parties Excluded from Federal Procurements and Nonprocurement Programs, DOJ and ED have determined that matching against the DOJ data base is more efficient and effective than access to the GSA List. The DOJ data base has specific information about the Title IV, HEA programs for which individuals are ineligible and has more complete identifying information about those individuals than does the GSA List. Both these elements are essential for a successful match.

4. Categories of Records and Individuals Covered by the Match

ED will submit for verification records from its Central Processing System files (Federal Student Aid Application File (18–11–01)) the social security number (SSN) and other identifying information for each applicant for Title IV student financial assistance. ED will use the SSN and the first two letters of an applicant's last name for the match.

The DOJ Denial of Federal Benefits Clearing System (DEBAR)(OJP–0013) contains the names, social security numbers, dates of birth, and other identifying information regarding individuals convicted of Federal or State offenses involving drug trafficking or possession of a controlled substance who have been denied Federal benefits by Federal or State courts. This system of records also contains information concerning the specific program or programs for which benefits have been denied. DOJ will make available for the matching program the records of only those individuals who have been denied Federal benefits under one or more of the Title IV, HEA programs.

5. Effective Dates of the Matching Program

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and OMB (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C.552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program or obtain additional information about the program including a copy of the computer matching agreement between ED and DOJ should contact Ms. Edith Bell, Program Specialist, U.S. Department of Education, Room, 3053, ROB–3, 400 Maryland Avenue, SW, Washington, D.C. 20202–5400. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

You may inspect all public comments about this matching program at Regional Office Building 3, 7th and D Streets, SW, Room 3045, Washington, DC, between the hours of 8:30 am and 4 pm, Eastern time, Monday through Friday of each week except Federal holidays.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html
http://ifap.ed.gov

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO). toll free at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**.

Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

Dated: February 28, 2000.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 00–5602 Filed 3–7–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Golden Field Office; Supplemental Announcement to the Broad Based Solicitation for Financial Assistance Applications Involving Research, Development and Demonstration for the Office of Energy Efficiency and Renewable Energy; University Research for the Advancement of the Solar Dish/Converter Technology

AGENCY: U.S. Department of Energy.

ACTION: Supplemental Announcement 06 to the Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration DE–PS36–00GO10482

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications from accredited colleges or universities for the advancement of solar dish/converter technology. The financial assistance awards issued as a result of this Supplemental Announcement will be cooperative agreements.

DATES: DOE expects to issue the Supplemental Announcement in March 2000.

ADDRESSES: Copies of the Supplemental Announcement, once issued, can be obtained from the Golden Field Office Home page at http://www.eren.doe.gov/golden/solicitations.html. It is DOE's intention not to issue hard copies of the Solicitation.

SUPPLEMENTARY INFORMATION: Under this Supplemental Announcement, DOE is soliciting Applications from accredited colleges or universities for fundamental research that advances solar dish/converter technology. Innovative subsystem, component, or system concepts are sought for ultimate integration into a technically and economically viable dish/converter system in the 1 to 5 kW_e range. The

development of alternate or advanced power conversion devices, advancements of dish concentrator components, and the integration of these conversion devices and concentrator concepts are of specific interest.

A goal of DOE's Concentrating Solar Power (CSP) Program is the development of clean, competitive, and reliable power options using concentrated sunlight. To achieve this goal, the Department of Energy is interested in fundamental research that will advance existing solar dish/converter technology through improved performance, increased reliability, and reduced cost. The DOE is also interested in supporting research of new and innovative system concepts which have the potential for efficiently converting concentrated solar energy to electricity in the 1 to 5 kW_e range. To improve the economic viability, small-scale (5–10 m^2) concentrators can be combined with potentially reliable, low-cost 1–5 kW_e converter options such as concentrating PV or small free-piston Stirling engines.

Applicants are requested to conduct fundamental research that either advances the performance of dish/converter technologies or the development of new system concepts and to demonstrate system or component performance through test, modeling, or analysis. Research should be directed towards the design and development of subsystems, components, or system designs through the enhancement or adaptation of existing technology or through the development of advanced technologies.

System or component concepts with the potential to improve dish/converter technology performance, operability, and economics will be major factors in selecting Applications for award. Successful Applicants will develop designs that can lower system cost (i.e., capital, installation, operation, or maintenance), improve performance, and increase system reliability and maintainability. As part of the research, design concepts or component performance must be verified through test, modeling, or analysis. Submittal and acceptance of an interim report, along with a design review, will be required prior to proceeding with prototype development or concept verification. Eligibility for continued funding will be based on the quality of the interim report, results of the design review, viability of the design, and the availability of DOE funding.

Applications under this Supplemental Announcement must demonstrate the capabilities, commitment, and resources necessary to conduct the research and the potential to either enhance or adapt existing technology or advance the state of solar dish/converter technology. Technical support and assistance may be provided by the Department of Energy, through the National Laboratories. Any specific support through a Federally Funded Research and Development Center (FFRDC), which includes all DOE National Laboratories, should be included as a separate task in the Statement of Work and the related costs separately identified. These costs should not be included in the proposed budget.

Only accredited colleges or universities are eligible to apply for Financial Assistance under this Supplemental Announcement. Awards under this Supplemental Announcement will be Cooperative Agreements with terms of up to three years. Subject to funding availability, a total of $2,000,000 in DOE funding is anticipated over a three year period for all awards under this Supplemental Announcement. The DOE anticipates selecting three to five applications for award under this Supplemental Announcement. However, upon funding availability, DOE reserves the right to fund portions of additional applications. As fundamental research is solicited through this Supplemental Announcement, no cost share is required in order to be considered for award under this solicitation. However, cost share will be considered in selecting applications for award.

Solicitation Number DE–PS36–00GO10482, in conjunction with Supplemental Announcement 06, will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting projects for funding. Responses to the Supplemental Announcement will be due approximately 90 days following issuance of the Supplemental Announcement. Questions should be submitted in writing to: Ruth E. Adams, DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393; transmitted via facsimile to Ruth E. Adams at (303) 275–4788; or electronically to ruth__adams@nrel.gov.

FOR FURTHER INFORMATION CONTACT: Ruth E. Adams, Contracting Officer, at 303–275–4722, e-mail ruth__adams@nrel.gov.

Issued in Golden, Colorado, on February 29, 2000.

Jerry L. Zimmer,

Procurement Director, GO.

[FR Doc. 00–5656 Filed 3–7–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–188–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

March 2, 2000.

Take notice that on February 29, 2000, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered as part of its FERC Gas Tariff, Original Volume No. 2, Seventeenth Revised Sheet No. 245 and Thirty-Second Revised Sheet No. 1000, proposed to be effective March 31, 2000.

Great Lakes states that the above-named tariff sheet is being filed to reflect the addition of an evergreen clause to Rate Schedule T–10 between Great Lakes and ANR Pipeline Company (ANR).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5594 Filed 3–7–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00642; FRL–6491–5]

Pesticide Product Registration Maintenance Fee; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): "Pesticide Product Registration Maintenance Fee" (OMB Control Number 2070–0100; EPA No. 1214.05). This is a request to renew an existing ICR that is currently approved and due to expire September 30, 2000. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00642, must be received on or before May 8, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00642 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cameo Smoot, Field and External Affairs Division (Mail code 7506C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5454; fax number: (703) 305–5884; e-mail address: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide registrant with a product registered under section 3 and section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Potentially affected categories and entities may include, but are not limited to:

Category	NAICS code	SIC codes	Examples of potentially affected entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide registrants

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes and the Standard Industrial Classification (SIC) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 6079 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPP–00642. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00642 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: "opp-

docket@epa.gov," or you can submit a computer disk as described in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00642. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Pesticide Product Registration Maintenance Fee.

ICR numbers: EPA ICR No. 1214.05, OMB No. 2070–0100.

ICR status: This a renewal of an existing ICR that is currently approved by OMB and is due to expire September 30, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to the approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: This information collection program provides a practical means of communication between the registrants and the Agency to collect the pesticide product registration maintenance fees as required by section 4(i)(5) of FIFRA as amended. Each affected firm is required to complete a filing form and submit their fee payment by January 15 of each year. Respondents complete and submit EPA Form 8570–30 indicating the respondent's liability for the registration maintenance fee. The Agency provides registrants a list of the registered products currently registered with the Agency. Registrants are provided the opportunity to review the list, determine its accuracy, and remit payment of the maintenance fee. The list of products has space identified for marking those products to be supported and those products that are to be canceled. The registrants are also instructed to identify any products on the list which they believe to be transferred to another company, and to add to the list any products which the company believes to be registered that are not on the Agency list. The failure to pay the required fee for a product will result in cancellation of that product. Since 1994, the number of registrants to which these forms are sent has remained fairly stable at around 2,000. No changes in the substance or in the method of collection is proposed in this ICR renewal request.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden is estimated at 0.94 per collection. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants.

Estimated total number of potential respondents: 1,977.

Frequency of response: Annually, by January 15.

Estimated total/average number of responses for each respondent: Dependent upon number of registrations held.

Estimated total annual burden hours: 1,858 hours.

Estimated total annual burden costs: $177, 870.69.

VI. Are There Changes in the Estimates from the Last Approval?

Few changes have occurred since the last approval. Most firms have filed the form in the past 6 years and are familiar with the annual requirement, and with the form itself. Most of the companies hold 10 or fewer products, and find that it takes only a few minutes to complete the form. The Agency believes that access and use of a toll free help line has paid great dividends in assisting respondents with questions. Therefore, the burden has remained relatively unchanged from the most recent renewal.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 18, 2000.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–5048 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00643; FRL–6493–9]

Submission of Unreasonable Adverse Effects Information Under FIFRA Section 6(a)(2); Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that the EPA is seeking public comment on the following Information Collection Request (ICR): "Submission of Unreasonable Adverse Effects Information Under FIFRA Section 6(a)(2)" (EPA ICR No. 1204.08, OMB No. 2070–0039). This ICR involves a collection activity that is currently approved and due to expire on September 30, 2000. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00643, must be received on or before May 8, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00643 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cameo Smoot, Field and External Affairs Division, (7506C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5454; fax number: (703) 305–5884; e-mail address: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide registrant. Under section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide registrants are required to submit any factual information regarding adverse effects associated with their pesticidal products, and it is up to the Agency to determine whether or not that factual information constitutes an unreasonable adverse effect. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS code	SIC codes	Examples of potentially affected entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide registrants

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes and the Standard Industrial Classification (SIC) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 6080 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPP–00643. The official record consists of the documents specifically referenced in this action,

any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00643 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00643. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Submission of Unreasonable Adverse Effects Information Under FIFRA Section 6(a)(2).

ICR numbers: EPA ICR No. 1204.08, OMB No. 2070–0039.

ICR status: Currently approved and due to expire on September 30, 2000.

Abstract: This information collection renewal proposal covers the burden estimates related to section 6(a)(2) of FIFRA requirements for pesticide registrants to submit information to the Agency which may be relevant to the balancing of the risks and benefits of a pesticide product. In *CSMA and NACA v. EPA* 484 F. Supp. 513 (1980), the District Court of the District of Columbia agreed with EPA that FIFRA section 6(a)(2) covers all information relevant to EPA's determination of whether a pesticide may cause unreasonable adverse effects. The Court agreed that submissible information includes the same type of information as that provided by a registrant as part of an application for registration. The Court specifically rejected the argument that the responsibility for determining what constitutes an unreasonable adverse effect shifts to industry once EPA has granted a registration. In order to limit the amount of less meaningful information that might be submitted to the Agency, the EPA has limited the scope of factual information that the registrant must submit. On September 19, 1997 the Agency published final regulations in the **Federal Register** (62 FR 49370) (FRL–5739–1) that provided a detailed description of the reporting obligations of registrants under FIFRA section 6(a)(2). The regulations became effective on the deferred date of August

17, 1998 (63 FR 41192) (FRL–6016–2). There are no forms associated with this collection.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden is estimated at 166,266 burden hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 1,890.

Estimated total number of potential respondents: 260.

Frequency of response: As necessary, when applicable information is available to respondent.

Estimated total annual burden hours: 166,266.

Estimated total annual burden costs: $13,870,860.

VI. Are There Changes in the Estimates from the Last Approval?

In the previous ICR, OMB approved 120,762 burden hours for submission of information from pesticide registrants under FIFRA section 6(a)(2) with an estimated cost of $11 million. This ICR renewal request reflects an increase of approximately 45,000 burden hours to an annual respondent burden of 166,266 hours at a cost of nearly $14 million. The change in burden reflects a number of adjustments over the prior ICR. First, for the renewal ICR, there are fewer registrants of active products (1,890 versus 2,100) and fewer employees to be trained (18,900 versus 21,000) than reflected in the prior ICR. In addition, the prior ICR's efforts associated with learning the new regulatory program, establishing processes and systems to implement the new program, and training all employees on the new requirements are eliminated in the renewal. Burden estimates related to the amount of studies the respondents might submit on an annual bases have been reduced from the previous projection of 600 studies to 350 studies. The ICR renewal request anticipates submission of many more incident reports than estimated in the prior ICR (46,000 versus 15,540). EPA proposes to seek approval for 166,266 annual burden hours for this renewal ICR.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 25, 2000.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–5392 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6548–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Off-Site Waste and Recovery Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: National Emission Standards For Hazardous Air Pollutants (NESHAP) For Off-Site Waste And Recovery Operations OMB Control Number 2060–0313, expiration date May 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 7, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1717.03. For technical questions about the ICR contact Walter De Rieux at (202) 564–7067.

SUPPLEMENTARY INFORMATION:

Title: National Emission Standards For Hazardous Air Pollutants (NESHAP) For Off-Site Waste And Recovery Operations, OMB Control Number 2060–0313, EPA ICR Number 1717.03, expiration date 5/31/2000. This is a request for extension of a currently approved collection.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP), were proposed on October 13, 1994 and promulgated on July 1, 1996. These standards provide for control of hazardous air pollutants (HAP) emissions from selected facilities involved in waste management and recovery operations that are not subject to federal air standards under other subparts in 40 CFR part 63 commencing construction, modification or reconstruction after the date of proposal if the facility is a "major source" of HAP emissions. Major source is defined in the general provisions to 40 CFR part 63 or the facility potential to emit is more than 10 tons per year for a single HAP or more than 25 tons per year for multiple HAP. In addition, subpart DD cross-references control requirements to be applied to specific types of affected sources: tanks-level 1, containers, surface impoundments, individual drain systems, oil-water separators and organic water separators, loading, transfer, and storage systems. This information is being collected to assure compliance with 40 CFR part 63, subpart DD. Organic HAP emissions are the pollutants regulated under this subpart.

Owners or operators of the affected facilities described must make one-time-only notifications. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports of excess emissions (or reports certifying that no exceedances have

occurred) are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NESHAP.

These standards rely on the control of organic HAP emissions by control technology. The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, leaks are being detected and repaired and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 1999 (64 FR 58396); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 162 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Off-Site Waste and Recovery Operations.

Estimated Number of Respondents: 250

Frequency of Response: On occasion and Semi-annually

Estimated Total Annual Hour Burden: 162,050

Estimated Total Annualized Capital, O&M Cost Burden: 0. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1717.03 and OMB Control No. 2060–0313 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania, Ave., NW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 1, 2000.

Oscar Morales,

Director Collection Strategies Division.

[FR Doc. 00–5624 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6547–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Health Effects of Particulate Matter and Co-Pollutant Exposures Near the El Paso/Juarez Border Crossings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Health Effects of Particulate Matter and Co-pollutant Exposures Near the El Paso/Juarez Border Crossings; EPA ICR Number: 1940.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 7, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1940.01. For technical information about the collection contact Dr. Melissa Gonzales, (919) 966–7549, FAX: (919) 966-7584, E-mail: gonzales.melissa@epa.gov, or by mailing a request to Dr. Melissa Gonzales, US EPA (MD 58–A), Research Triangle Park, NC, 27711.

SUPPLEMENTARY INFORMATION: *Title:* Health Effects of Particulate Matter and Co-pollutant Exposures Near the El Paso/Juarez Border Crossings (EPA ICR No. 1940.01). This is a new collection.

Abstract: The proposed study will be conducted by the Epidemiology and Biomarkers Branch, Human Studies Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development, US EPA. The purpose of this study is to examine the respiratory health effects in school children due to motor vehicle-related air pollutants. Further knowledge regarding the respiratory health effects of airborne particulate matter is required to reduce scientific uncertainties in the development of an Air Quality Criteria for Particulate Matter under the Clean Air Act (42 U.S.C. 7403(d)).

The El Paso, Texas metropolitan area was selected for study because of high traffic volume and meteorological conditions. Heavily traveled interstate freeways run through the city, and over 18 million vehicles annually cross the international border between El Paso and Ciudad Juarez, Mexico. Wintertime temperature inversions routinely trap vehicle emissions close to the ground leading to violations of the National Ambient Air Quality Standards.

The parents of all children enrolled in the third and fourth grades of the El Paso Independent School District will receive an eight-page respiratory health questionnaire in both English and Spanish along with a written request for permission for their children to participate in a lung function examination at their school. Study participation is entirely voluntary. The questionnaire conforms to the American Thoracic Society standards and consists of questions specific to the child such as general demographic information, childhood respiratory illness, history of asthma, and current respiratory health conditions. There also are questions regarding household characteristics and family history of smoking, asthma, and respiratory illnesses. Each parent will be asked to complete the questionnaire, seal the completed form in the envelope provided, and send the envelope back to the teacher with the child.

In the subsequent school year, ambient air pollutants will be measured

at twenty-two elementary schools in El Paso selected to represent areas close to and far away from the city center, and the border crossings as well as those areas in between. At these schools, those children who received parental permission on a returned questionnaire will attempt to perform a lung function examination. The examination, conducted according to American Thoracic Society guidelines, consists of blowing three to eight times into a tube connected to a spirometer and is no more stressful than blowing out a candle. A new, sterile, disposable mouthpiece will be used for each child. A field technician will record each child's height and weight, and coach the child to perform the breathing test. The examinations will be conducted in the child's elementary school during normal school hours with a school nurse on site.

The information collected in this study will be used by scientists within EPA's Office of Research and Development. The data will be used to: (i) provide a better understanding of the association between exposures to particulate matter and co-pollutants and respiratory illness in children; (ii) assess the classification of children's exposure using data from the study questionnaire, direct air pollutant measurements and exposure models for refining exposure estimation methods in air pollution health studies; (iii) identify key exposure factors for school age children to air pollutants; (iv) assess the prevalences of pulmonary illness, including reduced lung function, in school children living in a metropolitan area along the US-Mexico border. The information will appear in the form of EPA reports, journal articles, and will also be made publicly available.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 13, 1999 (64 FR 69528); no comments were received.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 0.40 hours for each questionnaire response and 0.35 hours for each lung function examination. There are no direct respondent costs for this data collection. There is no annual recordkeeping burden for this ICR. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: School officials, parents and children in the El Paso Independent School District.

Estimated Number of Respondents: 13,400.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 5,145 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1940.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 2, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–5625 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6547–7]

Pesticides; Application for Experimental Use Permit (EUP) To Ship and Use a Pesticide for Experimental Purposes Only; Submission of EPA ICR No. 0276.09 to OMB for Review and Approval; Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only, (EPA ICR No. 0276.09, OMB No. 2070–0040) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which was scheduled to expire on November 31, 1999, and has been extended until May 31, 2000. A **Federal Register** notice announcing the Agency's intent to seek OMB approval for this ICR and a 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on September 15; 1999 (64 FR 50081). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before April 7, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Sandy Farmer by phone at (202) 260–2740, or via e-mail at "farmer.sandy@epa.gov", or using the address indicated below. Please refer to EPA ICR No. 0276.09 and OMB Control No. 2070–0040. For technical questions about the ICR contact Angela Hofmann at (202) 260–2922.

ADDRESSES: Send comments to:

Ms Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to:

Office of Information and Regulatory Affairs, Office of Management and

Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: *Review Requested:* This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

Title: Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only.

Abstract: This information collection program provides the EPA with the data necessary to determine whether to issue an experimental use permit under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. FIFRA requires that before a pesticide product may be distributed or sold in the U.S. it must be registered by EPA. However, section 5 authorizes EPA to issue experimental use permits which allow pesticide companies to temporarily ship pesticide products for experimental use for the purpose of gathering data necessary to support the application for registration of a pesticide product. In general, EUP's are either issued for a pesticide not registered with the Agency or for a registered pesticide for a use not registered with the Agency.

The information collected and reported under an EUP is a summary of that which is routinely submitted in connection with registration. The EUP allows for large scale field testing, if necessary, in order to collect sufficient data to support registration. An EUP is not required if the person conducting the tests does not expect to receive benefits in pest control.

EPA Form 8570–17, *Application For An Experimental Use Permit To Ship And Use A Pesticide For Experimental Purposes Only*, is filed by the prospective registrant for a permit to generate information or data necessary to register a pesticide under section 3 of FIFRA. This information from the applicant is necessary in order to grant and effectively monitor the EUP. Beyond the information as supplied on EPA Form 8570–17, is a final report on the results of the experimental program which includes information such as: amount of the product applied; the crops or sites treated; any observed adverse effects; any adverse weather conditions which may have inhibited the program; the goals achieved; and the disposition of containers, unused pesticide material, and affected food/feed commodities.

If the food/feed treated under the terms of an experimental use permitted are to be shipped in commerce, the applicant must also submit a petition for temporary tolerance pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA). This program is more fully described in ICR No. 2070–0024, "Maximum Residue Limit (MRL) Petitions for Pesticides on Food/Feed and New Inert Ingredients, EPA No. and not covered under this ICR. In addition, the activities related to pesticide registration, e.g., labeling and recordkeeping, are covered by a separate ICR (EPA ICR No. 0277; OMB Control No. 2070–0060).

Burden Statement: The annual "respondent" burden for the Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only regulation is estimated to average 10.10 hours per application. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: EUP applicants.

Estimated Number of Respondents: 75.

Frequency of Response: Only when an application is made.

Estimated total/average number of responses for each respondent: 1.

Estimated Total Annual Burden: 757.

Estimated Total Annualized Labor Costs: $61,297.

Changes in Burden Estimates: The change in respondent burden hours, from 1,303 to 757 hours per year is a result of the estimated reduction in the number of annual respondents, from 110 to 75. The change in annual respondent labor cost is a result of the estimated increase in hourly rates. —

Dated: March 2, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–5626 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6548–4]

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Science Applications International Corporation and its Subcontractors

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for comment.

SUMMARY: The U. S. Environmental Protection Agency ("EPA") hereby complies with the requirements of 40 CFR 2.310(h) for authorization to disclose to the Science Applications International Corporation ("SAIC"), of San Francisco, California, and its subcontractors, Superfund confidential business information ("CBI") submitted to EPA Region 9.

DATES: Comments may be submitted by March 22, 2000.

ADDRESSES: Comments should be sent to: Environmental Protection Agency, Region 9, Katherine Meltzer (PMD–8), 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Katherine Meltzer, Policy & Management Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1609.

Notice of Required Determinations, Contract Provisions and Opportunity to Comment: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, (commonly known as "Superfund") requires completion of enforcement activities at Superfund sites in concert with other site events. EPA has entered into a contract, No. 68-S9–00–01, with SAIC for Superfund enforcement support services. These services will be provided to EPA by SAIC and its subcontractors Cotton & Co. of Alexandria, VA; Indus Corporation of Vienna, VA; Jonas & Associates, Inc. of Walnut Creek, CA; Petroleum Properties of Dixon CA; KPMG LLP of San Francisco, CA; McDonald & Associates of Capay, CA; Orswell & Kasman of Pasadena, CA; Power Partners, Inc. of San Francisco, CA; and ReVision, Inc. of Denver, CO. EPA has determined that disclosure of CBI to SAIC employees, and its subcontractors' employees, is necessary in order that SAIC may carry out the work required by that contract with EPA. The information EPA intends

to disclose includes submissions made by Potentially Responsible Parties to EPA in accordance with EPA's enforcement activities at Superfund sites. The information would be disclosed to the contractor and its subcontractor for any of the following reasons: to assist with document handling, inventory, and indexing; to assist with document review and analysis; to verify completeness; and to provide technical review of submittals. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii), incorporated by reference into 40 CFR 2.310(h)(2). EPA Region 9 will require that each SAIC employee and subcontractor employee sign a written agreement that he or she: (1) Will use the information only for the purpose of carrying out the work required by the contract, (2) shall refrain from disclosing the information to anyone other than EPA without prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by SAIC and its subcontractors for performance of the work required by the contract or upon completion of the contract or subcontract.

Dated: February 28, 2000.

Michael Feeley,

Acting Director Superfund Division, Region 9.

[FR Doc. 00–5628 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6548–5]

Great Lakes International Coastal Wetlands Monitoring

AGENCY: Environmental Protection Agency.

ACTION: Notice of funding availability.

SUMMARY: EPA's Great Lakes National Program Office (GLNPO) is now requesting the submission of full proposals for GLNPO funding. The purposes of this request for proposals are (1) To design, and validate, indicators to assess the ecological integrity of Great Lakes coastal wetlands, (2) To design an implementable, long-term program to monitor Great Lakes coastal wetlands, and (3) To create, and populate, a binational database accessible to all scientists, decision makers and the public. GLNPO is requesting proposals from institutions or organizations which have the capacity and experience to serve as the manager and fiscal agent representing a binational, multi-disciplinary, broad-based consortium of Great Lakes wetland scientists and wetland resource managers. The successful applicant will enter into a Cooperative Agreement with GLNPO to accomplish the three purposes stated above. GLNPO will provide $400,000 of funding during Fiscal Year 2000 to be supplemented by at least $200,000 from the consortium submitting the successful proposal for a one year funding and project period. If the GLNPO budget remains consistent and the successful cooperative agreement applicant (applicant) makes adequate progress toward meeting the expectations discussed below, it is anticipated that the applicant will be able to apply annually for an additional $400,000 from GLNPO ecological protection and restoration funds for two subsequent one year funding and project periods during Fiscal Years 2001 and 2002. This anticipated future funding by GLNPO will also require the applicant to provide at least $200,000 annually in supplemental funds.

DATES: The deadline for the submission of full proposals is April 28, 2000.

ADDRESSES: *Document Availability:* The *Request for Full Proposals: Great Lakes International Coastal Wetlands Monitoring* is now available by contacting Dr. John Schneider at 312–886–0880 or by mail at the following address: U.S. Environmental Protection Agency, Great Lakes National Program Office (G–17J), Attn: Dr. John Schneider, 77 West Jackson Blvd., Chicago, IL 60604–3590

FOR FURTHER INFORMATION CONTACT: Dr. John Schneider, U.S. Environmental Protection Agency, Great Lakes National Program Office (G–17J), 77 West Jackson Blvd., Chicago, IL 60604–3590 or at 312–886–0880.

Dated: March 1, 2000.

Gary V. Gulezian,

Director, Great Lakes National Program Office.

[FR Doc. 00–5621 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[SW–FRL–6548–7]

Notice of Proposed Decision on Request by FMC Corporation for an Extension of the Land Disposal Restrictions Effective Date for Five Waste Streams Generated at the Pocatello, Idaho Facility

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed decision.

SUMMARY: EPA ("the Agency" or "we" in this notice) is proposing to approve the request submitted by FMC Corporation (FMC) for a one-year Case-by-Case (CBC) extension of the May 26, 2000, effective date of the RCRA land disposal restrictions (LDRs). FMC requested the CBC extension due to the lack of available treatment capacity for five waste streams and the need for additional time to design, construct, and begin operation of an on-site treatment plant. For this CBC extension to be approved, FMC must make each of the seven demonstrations required in the procedures for CBC extensions to an effective date. These provisions establish that an applicant who satisfies the conditions for a CBC extension will be granted one. If this proposed action is finalized, FMC will be allowed to continue to treat, store, or dispose of these five waste streams, as currently managed in on-site surface impoundments, until May 26, 2001, without being subject to the LDRs applicable to these wastes.

DATES: To make sure we consider your comments in developing a final decision on FMC's request for a CBC extension of the LDR effective date for the subject waste streams, you must submit your comments on or before March 29, 2000.

ADDRESSES: You must send an original and two copies of your comments, referencing docket number F–2000–FMCP–FFFFF, to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, or (2) If using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should

also be identified by the docket number F–2000–FMCP–FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

You may claim information that you submit in response to this notice as confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR part 2. Commenters should not submit any CBI electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, c/o Regina Magbie, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. If you submit CBI by courier/overnight express, an original and two copies of the CBI must be sent to: RCRA CBI Document Control Officer, c/o Regina Magbie, Office of Solid Waste (5305W), U.S. EPA, 2800 Crystal Drive, 7th Floor, Arlington, VA 22202. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the "Supplementary Information" section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information about this proposal, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of this proposal, contact William Kline, Office of Solid Waste, 5302W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460–0002, (703) 308–8440, [e-mail address: kline.bill@epamail.epa.gov].

SUPPLEMENTARY INFORMATION: The index of supporting materials evaluated by EPA in reaching our determination to propose approval of the requested CBC extension is available on the Internet. You will find this index at <http://www.epa.gov/epaoswer/hazwaste/ldr/index.htm>.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the location noted in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the Federal Register or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

The information in this section is organized as follows:

I. Background and Purpose of This Notice of Proposed Decision

A. Summary
B. What is RCRA?
C. What is the Congressional Mandate Behind the Land Disposal Restrictions (LDRs) and Extensions of the LDR Effective Date?
D. What Regulatory and Other Actions Have Led up to the CBC Extension Requested by FMC?
E. What Other Actions Are Underway at FMC?
F. What Demonstrations Must Be Evaluated by EPA In Reviewing a Request for a CBC Extension of the LDR Effective Date?

II. Overview of FMC's Case-by-Case Extension Request

A. What is FMC's Basis for Requesting a CBC Extension ?
B. How Does FMC's Consent Decree Impact and Correlate with the Requested CBC Extension?
C. Summary of the FMC CBC Application

III. EPA's Evaluation of the Seven Demonstrations Made by FMC To Support the Requested CBC Extension

A. Section 268.5 (a)(1) demonstration of the lack of available treatment capacity.
B. Section 268.5 (a)(2) demonstration of a binding contractual commitment to construct the required treatment capacity.
C. Section 268.5 (a)(3) demonstration of circumstances beyond FMC's control to obtain necessary treatment capacity by the LDR effective date.
D. Section 268.5 (a)(4) demonstration of sufficient treatment capacity being constructed to treat the five waste streams to meet BDAT standards.
E. Section 268.5 (a)(5) demonstration of a detailed schedule for obtaining permits required to construct and operate proposed LDR Treatment Plant.
F. Section 268.5 (a)(6) demonstration of adequate capacity to manage the five waste streams during the approved extension period.
G. Section 268.5 (a)(7) demonstration that surface impoundments used to manage the waste streams during the extension period are designed to meet minimum technology requirements.

IV. Consultation with Affected State and Indian Tribes

V. What is EPA's Proposed Action?

VI. How Can I Influence EPA's Thinking on this Rule?

VII. What Happens After We Receive Your Comments?

VIII. Administrative Requirements

A. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
B. Executive Order 13132 (Federalism)

I. Background and Purpose of This Notice of Proposed Decision

A. Summary

FMC Corporation (FMC) has requested a one-year CBC extension of the May 26, 2000, effective date of the RCRA land disposal restrictions (LDRs) applicable to five waste streams generated at its facility (EPA Identification Number: IDD070929518) in Pocatello, Idaho— located adjacent to and largely on Shoshone-Bannock Tribes' lands, referred to as the Fort Hall Indian Reservation. These five waste streams, which are generated in the production of elemental phosphorous, are: (1) NOSAP Slurry, (2) Medusa Scrubber Blowdown, (3) Furnace Building Washdown, (4) Precipitator Slurry, and (5) Phossy Water. FMC requested the CBC extension due to the lack of available treatment capacity for these five waste streams and the need for additional time to design, construct, and begin operation of an on-site LDR Treatment Plant.

A RCRA Consent Decree (U.S. v. FMC Corporation) was entered in July 1999, to address past mishandling of these wastes and to avoid future environmental contamination. The Consent Decree requires closure of certain on-site ponds, tank system upgrades to comply with RCRA standards, implementation of SEPs to address air quality, and for FMC to design, construct, and commence operation of an LDR Treatment System by May 2002. The Tribes recently have appealed the Consent Decree, citing, among other reasons, their opposition to the continued generation and on-site disposal of these hazardous wastes.

The EPA is proposing to approve FMC's application for a one-year CBC extension of the May 26, 2000, effective date of the RCRA land disposal restrictions (LDRs). For this CBC extension to be approved, FMC must make each of the seven demonstrations required under 268.5(a), including that there is insufficient capacity to treat these wastes, that a binding contractual commitment has been made to construct the necessary treatment capacity, and that such treatment capacity, due to circumstances beyond FMC's control, cannot reasonably be made available by the effective date. If this proposed action is finalized, FMC will be allowed to continue to treat, store, or dispose of these five waste streams, as currently managed in on-site surface impoundments, until May 26, 2001, without being subject to the land disposal restrictions applicable to these wastes. FMC also may request a renewal, for up to one year, of an approved CBC extension. If warranted, EPA may grant a renewal of this extension, which, if requested and approved, would extend the effective date of the LDRs for these five waste streams to, at a maximum, May 26, 2002.

B. What Is RCRA?

The Resource Conservation and Recovery Act (RCRA) establishes a program for controlling hazardous waste from the time it is generated, through its treatment and storage, until its ultimate disposal. RCRA also establishes a program for controlling nonhazardous industrial solid waste and municipal solid waste by encouraging states to develop comprehensive plans to manage these wastes, by setting criteria for municipal solid waste landfills and other solid waste disposal facilities, and by prohibiting the open dumping of solid waste. RCRA is implemented by EPA and the states.

EPA's regulations implementing RCRA are listed in Title 40 of the Code of Federal Regulations (CFR). Within Title 40, the hazardous waste regulations are listed in parts 260 through 279. The solid waste regulations also are listed in Title 40, but in parts 240 through 258.

The specific requirements for obtaining a CBC extension of a LDR effective date, the subject of this notice of proposed decision, are found in Part 268–Land Disposal Restrictions, § 268.5(a).

C. What is the Congressional Mandate Behind the Land Disposal Restrictions (LDRs) and Extensions of the LDR Effective Date?

Congress enacted the Hazardous and Solid Waste Amendments (HSWA) of 1984 to amend the Resource Conservation and Recovery Act (RCRA). These amendments imposed additional responsibilities on persons managing hazardous wastes. Among other things, HSWA required EPA to develop regulations that prohibit the land disposal of certain hazardous wastes by specified dates in order to protect human health and the environment. EPA also was required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized."

Congress recognized that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment may not always be available by the applicable statutory effective dates. As such, EPA is authorized to grant a national capacity variance from the effective date which would otherwise apply to specific hazardous wastes, based on the earliest dates that such capacity will be available but not to exceed two years. In addition, EPA is authorized to grant an additional extension of the applicable LDR deadline, on a case-by-case basis, for up to one year. Such an extension is renewable once for up to one additional year.

D. What Regulatory and Other Actions Have Led Up to the CBC Extension Requested by FMC?

On January 25, 1996 (61 FR. 2338), EPA published a supplemental proposed rule that addressed land disposal restrictions applicable, among others, to characteristic mineral processing wastes. On behalf of its elemental phosphorous plant located in Pocatello, Idaho (FMC Pocatello), FMC submitted a petition to request a two-year national capacity variance from the Phase IV LDR requirements, citing the lack of available treatment capacity in the U.S.

On June 27, 1996, EPA agreed to a motion for amendment of a 1994 consent agreement (Environmental Defense Fund, Inc. v. Browner, No. 89–0598 (D.D.C.)) that allowed EPA to establish a later date for promulgating the final Phase IV Supplemental Rule. FMC submitted supplemental comments to its petition for a national capacity variance, informing EPA that it could not design a treatment unit for its wastes until the applicable treatment standards and the wastes subject to treatment were defined.

On May 12, 1997 (62 FR 26041), EPA proposed to grant a two-year national capacity variance for three waste streams (Medusa Scrubber Blowdown, Anderson Filter Media Rinsate, and Furnace Building Washdown) generated at the Pocatello, Idaho facility. FMC submitted comments, noting that the Anderson Filter Media Rinsate now had been eliminated, using pollution prevention. However, FMC identified three additional waste streams (Precipitator Slurry, NOSAP Slurry, and Phossy Water) generated in the same elemental phosphorous production process for which treatment capacity was not available and likewise needed to be granted the proposed two-year national capacity variance.

On May 26, 1998 (63 FR 28556), EPA promulgated the Final LDR Phase IV rule and granted a two-year national capacity variance for newly identified characteristic wastes from elemental phosphorous processing, including the five waste streams generated at FMC's facility in Pocatello, Idaho. This national capacity variance extended the LDR effective date to May 26, 2000.

The United States also undertook enforcement action against FMC, an action not directly connected to the national capacity extension (or for that matter, any case-by-case extension). These actions somewhat overlapped in time the national capacity variance referred to above. In February 1997, attorneys for the United States met with and informed the Tribal governing body, the Fort Hall Business Council (representing the Shoshone-Bannock Tribes (Tribes)), on whose lands the FMC Pocatello facility is located, that the United States intended to file an action against FMC for certain violations of the RCRA statute, i.e., FMC's past mishandling of hazardous wastes. This action and subsequent negotiations led to the eventual entry of a proposed Consent Decree in October 1998, as described below. In September 1998, the United States agreed to delay the lodging of the Consent Decree so that options for penalty sharing with the Tribes could be further explored. The Tribes subsequently were offered the opportunity to become a formal party to the Consent Decree but on October 9, 1998, the Fort Hall Business Council declined to sign the Consent Decree and passed a Resolution opposing it.

On October 16, 1998, the United States lodged the proposed Consent Decree in U.S. District Court for the District of Idaho and held a public comment period on the proposed Consent Decree until December 18, 1998.

On March 29, 1999, the United States filed a Motion for Entry of the Proposed Consent Decree (United States v. FMC, Civ. No. 98–0406–E–BLW), requiring that FMC design and construct a treatment system, referred to as the LDR Treatment System, that will treat the FMC Pocatello facility's production wastes to the LDR treatment standards. Under this RCRA Consent Decree, FMC must begin operating the LDR Treatment System by May 2002. The Tribes filed a Motion to Intervene on April 23, 1999 and the District Court granted this motion on May 18, 1999. A Memorandum of Opposition for Entry of the Proposed Consent Decree subsequently was filed by the Tribes. The United States submitted a Memorandum in Support of Motion of the United States for Entry of Proposed Consent Decree, dated May 27, 1999. This reply Memorandum addressed the Tribes' concerns and expressed regret that the Tribes apparently believe their interests are not being fully protected in this matter. It is noted in the "Reply Memorandum in Further Support of Motion of the United States for Entry of Proposed RCRA Consent Decree", dated May 27, 1999, that FMC would need to obtain Case-by-Case extensions of the LDR effective date, per the requirements of 40 CFR 268.5, in order to allow the continued discharge of wastes to the facility's on-site surface impoundments, beyond the May 26, 2000 expiration date of the national capacity variance.

On July 13, 1999, after reviewing a Memorandum of Opposition for Entry of the Proposed Consent Decree, filed by the Tribes, and memoranda filed by the United States and FMC in response to the Tribes' Memorandum, the District Court granted the United States' motion for leave to enter as final the Consent Decree.

The Shoshone-Bannock Tribes filed Notice of Appeal on August 11, 1999 and on November 29, 1999, filed an appeal of the final RCRA Consent Decree (Appeal No. 99–35821) in the United States Court of Appeals for the Ninth Circuit.

E. What Other Actions Are Underway at FMC?

The Consent Decree is only one of several actions underway to address the environmental impact of operations at the FMC facility. Groundwater and soil contamination from FMC's old ponds are being addressed under a CERCLA Record of Decision (ROD), issued on June 8, 1998. The United States is negotiating a separate Consent Decree with FMC and the owner of another nearby facility to commit to perform the Remedial Action selected in the ROD. FMC's particulate air emissions are being addressed in the proposed Federal Implementation Plan, issued pursuant to the Clean Air Act on February 12, 1999 and scheduled to become effective by July 2000. Once finalized, there will be federally enforceable limits/control requirements applicable to FMC's particulate emissions.

F. What Demonstrations Must Be Evaluated by EPA in Reviewing a Request for a CBC Extension of the LDR Effective Date?

In order to receive approval for a CBC extension, EPA must evaluate the extent to which the FMC Pocatello has addressed the following seven demonstrations, as specified in 40 CFR 268.5:

1. Made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage the waste streams (40 CFR 268.5(a)(1).
2. Entered into a binding contractual commitment to construct or otherwise provide alternative capacity (40 CFR 268.5(a)(2).
3. Showed that due to circumstances beyond the applicant's (FMC's) control, alternative capacity cannot reasonably be made available by the applicable effective date (40 CFR 268.5(a)(3).
4. Showed that the treatment capacity to be provided will be sufficient to manage the entire quantity of the five waste streams for which the CBC extension is requested (40 CFR 268.5(a)(4).
5. Submitted a detailed schedule for obtaining required operating and construction permits or an outline of how and when alternative capacity will be available (40 CFR 268.5(a)(5).
6. Showed that sufficient capacity has been arranged to manage the entire quantity of waste which is the subject of the application during the requested extension period, and document the location of all facilities at which the waste will be managed during the extension period (40 CFR 268.5(a)(6).
7. Showed that any surface impoundment used to manage these five wastes during the extension period meets minimum technological requirements (40 CFR 268.5 (a)(7).

II. Overview of FMC's Case-by-Case Extension Request

A. What Is FMC's Basis for Requesting a CBC Extension?

FMC has provided documentation showing that research and development efforts were initiated in 1990 to develop the technology needed to treat the Pocatello, Idaho facility's elemental phosphorous production waste streams to meet anticipated LDR standards. When EPA issued the supplemental proposal to Phase IV in January 1996, FMC requested a two-year national capacity variance for three waste streams (Medusa Scrubber Blowdown, Anderson Filter Media Rinsate, and Furnace Building Washdown) generated at the Pocatello facility to enable it to design and construct appropriate on-site pollution prevention and treatment technologies. At this time, FMC also submitted the results of an extensive nationwide survey that it conducted in an attempt to find off-site available treatment capacity. This survey indicated that no commercial TSD facility contacted was able or willing to treat the Pocatello waste streams. FMC submitted supplemental comments in August 1996, subsequent to EPA and the Environmental Defense Fund amending the 1994 consent agreement, thereby postponing the promulgation of the Phase IV Supplemental rule. In these comments, FMC informed EPA that it could not design and construct a treatment system until the final treatment standards and applicable wastes were determined.

In August 1997, FMC requested that EPA modify the national capacity variance that was proposed for the initial three waste streams, by removing AFM Rinsate, and adding three additional waste streams (Precipitator Slurry, NOSAP Slurry, and Phossy Water). Each of the five waste streams for which FMC requested a national capacity variance are generated in the elemental phosphorous production process and essentially share the same issues regarding feasibility of treatment off-site. FMC indicates that it was able to further proceed with developing appropriate treatment technology processes for these waste streams but that specific treatment technologies could only be pointedly pursued once the actual final LDR standards were promulgated by EPA in May 1998. In finalizing the Final Phase IV rule, EPA did grant a two-year national capacity variance for these five waste streams generated at the Pocatello facility, extending the LDR effective date until May 26, 2000.

FMC likewise had been engaged in RCRA Consent Decree negotiations with the United States, via the Department of Justice (DOJ) and EPA Region 10, regarding the management of its waste streams. The RCRA Consent Decree was initially filed in October 1998 to promptly address FMC's past mishandling of hazardous wastes and to avoid future environmental

contamination. FMC states that its uncertainties regarding the selection of treatment standards and approval of selected technology under the RCRA Consent Decree also were factors that delayed final selection and development of a treatment technology. The RCRA Consent Decree, proposed in October 1998 and entered as final on July 13, 1999, requires FMC to complete construction and begin operation of the LDR Treatment System by May 2002 and prohibits the discharge of untreated hazardous wastes to the facility's on-site ponds after May 26, 2002. The RCRA Consent Decree does not negate the requirement for FMC to pursue case-by-Case extension(s), as needed, to allow the continued discharge of the LDR subject wastes to on-site surface impoundments beyond the May 26, 2000 expiration date of the current national capacity variance.

Since promulgation of the final LDR standards and entry of the RCRA Consent Decree, FMC states that it was finally able to ascertain the specific treatment technology that was needed to treat the FMC Pocatello waste streams. In July 1999, FMC decided to employ the Zimpro Anoxic hydrolysis process, using caustic hydrolysis at elevated temperature and pressure, as the principal treatment for the proposed on-site LDR Treatment Plant at the Pocatello facility. However, FMC determined that it could not finalize development of the treatment technology, design the LDR Treatment Plant, obtain permits, construct the LDR Treatment Plant, and begin operating the LDR Treatment Plant within the two-year period of the current national capacity variance that expires on May 26, 2000. As such, in July 1999, FMC submitted its request to EPA for a CBC extension to further extend the LDR effective date for the subject five waste streams generated at its Pocatello, Idaho facility.

FMC's Phosphorous Chemicals Division (the current owner/operator of the FMC Pocatello, Idaho facility) and Solutia, Inc. have proposed a plan to operate a joint venture company comprising the combined phosphorous chemical businesses of FMC and Solutia. If this joint venture is approved by the Federal Trade Commission (FTC), this joint-venture company will be known as Astaris LLC. If approved, Astaris will own the Pocatello facility. However, under this joint venture, FMC would retain responsibility for funding the capital costs and implementing all RCRA Consent Decree projects, including the proposed LDR Treatment Plant. FMC's liability under the RCRA Consent Decree is not transferable. Astaris would be responsible for the construction, operation, and maintenance aspects of the LDR Treatment Plant and thus be considered the owner and operator of the Pocatello facility. This CBC extension, if approved, then would be granted to FMC/Astaris. However, as of today, for the purposes of this notice, we will continue to refer to the CBC applicant as FMC Pocatello.

B. How Does FMC's Consent Decree Impact and Correlate With the Requested CBC Extension?

The FMC Pocatello facility is located on Shoshone-Bannock Tribes' lands, referred to as the Fort Hall Indian Reservation. FMC owns over 1,000 acres on the Reservation and has conducted business at this location for the past 50 years. The resulting environmental contamination, and means of redressing it, is of obvious direct concern to the Tribes. The RCRA Consent Decree, initially filed in October 1998, was negotiated to promptly address FMC's past mishandling of hazardous wastes and to avoid future environmental contamination. On July 13, 1999, the U.S. District Court for the District of Idaho entered as final the RCRA Consent Decree (*United States* v. *FMC Corp.*, Civ. 98–0406–E–BLW). This RCRA Consent Decree mandates certain requirements regarding the management of FMC Pocatello waste streams, including site-specific treatment requirements to deactivate ignitable and reactive waste streams, and the requirement to design, construct, and commence operation of a Land Disposal Restriction Treatment System [1] (LDR Treatment System) for these waste streams by no later than May 2002. It also specifically requires closure of specified on-site surface impoundments (ponds used by FMC to manage the generated wastes), establishes a Pond Management Plan, and mandates certain plant upgrades, for example, the installation of secondary containment for sumps, tanks, and piping inside the Furnace Building and at the Phos Dock area.

Many of the demonstrations required under 40 CFR part 268 to obtain a CBC extension of the LDR effective date are indeed addressed under the terms of this RCRA Consent Decree. For example, under the RCRA Consent Decree, FMC is required to design and construct a Land Disposal Treatment System that provides sufficient capacity to manage the waste streams to satisfy LDR requirements, provide a detailed schedule for obtaining operating and construction permits, provide adequate capacity and management of the waste streams while the LDR Treatment System is being constructed, and ensure that, at a minimum, surface impoundments/landfills used to manage these waste streams, meet minimum technological requirements.

In essence, FMC's compliance with the terms of the RCRA Consent Decree likewise satisfies what needs to be documented for certain of the required demonstrations for a CBC extension. If anything, this overlap ensures consistency of both the CBC extension and RCRA Consent Decree processes. In effect, the requirements mandated under the RCRA Consent Decree will support the CBC extension that EPA is proposing to approve today and will further bolster FMC's commitment to begin operation of the LDR Treatment Plant by May 2002. In developing the RCRA Consent Decree, EPA and DOJ assumed that FMC still would need to pursue the CBC extension allowed under 40 CFR Part 268. This intent was elaborated upon on pages 10–11 in the "Reply Memorandum in Further Support of Motion of the United States for Entry of Proposed RCRA Consent Decree," dated May 27, 1999.

Although the RCRA Consent Decree and CBC Extension, if approved, obviously are being used in conjunction to compel FMC to properly manage the subject waste streams, approval of a CBC extension of the LDR effective date does not alter any terms of the RCRA Consent Decree and, in actuality, would only remain effective contingent upon FMC's compliance with the terms of the RCRA Consent Decree. We also note that should FMC subsequently request a renewal of an approved extension, the LDR effective date could, at a maximum, be extended only to May 26, 2002—consistent with the RCRA Consent Decree date by which untreated hazardous wastes generated at the FMC Pocatello facility are prohibited from discharge to the facility's on-site surface impoundments (ponds).

C. Summary of the FMC CBC Application

The FMC facility, located in Pocatello, Idaho, manufactures elemental phosphorous. The elemental phosphorous is shipped to other facilities to produce phosphates and other phosphorous-based products, for use in numerous products, including

[1] The terms "LDR Treatment System" and "LDR Treatment Plant", as used in the RCRA Consent Decree and the FMC CBC extension application, respectively, are essentially referring to the same treatment unit and associated ancillary equipment, needed to be designed, constructed, and operated in order to treat the FMC Pocatello hazardous waste streams to meet the applicable LDR requirements.

processed foods, beverages, detergents, cleaners, agricultural chemicals, and water treatment chemicals. Elemental phosphorous is produced by feeding a combination of phosphate ore, coke, and silica rock into electric arc furnaces. This case-by-Case LDR extension application addresses five waste streams generated during the production of elemental phosphorous at the FMC Pocatello facility. These five waste streams are:

1. *Precipitator Slurry:* a mixture of water and dust, consisting of the suspended particulates removed from the electric arc furnace off gases by electrostatic precipitators and collected in slurry pots.

2. *NOSAP Slurry:* precipitator slurry that, when mixed with lime, meets minimum quality criteria.

3. *Phossy Water:* water that had been used in contact with the phosphorous from the point the elemental phosphorous leaves the primary condensers and is handled in various intermediate operations leading to transfer to railroad tank cars for off-site shipment.

4. *Medusa Scrubber Blowdown:* wastewater from Medusa venturi scrubbers that are used to treat smoke and fumes from furnace tapping, slag and metal runners, and the ferrophos cooling area.

5. *Furnace Building Washdown:* water collected in four sumps from numerous sources within the furnace building.

Quantity Generated and Environmental Concerns for FMC Waste Streams

Waste	Quantity generated	Concerns [2]
Precipitator Slurry	4 million gallons/year (3,000 tons/year of solids).	Due to presence of elemental phosphorous, exhibits ignitable and reactive hazardous waste characteristics.
NOSAP Slurry	21 million gallons/year (15,000 tons/year of solids).	Due to generation of phosphine gas, exhibits reactive hazardous waste characteristic.
Phossy Water	89 million gallons/year	Due to presence of elemental phosphorous, exhibits ignitable and reactive hazardous waste characteristics.
Medusa Scrubber Blowdown	55 million gallons/ year	Exhibits toxicity hazardous waste characteristic for cadmium.
Furnace Building Washdown	93 million gallons/year	Exhibits toxicity (cadmium) and reactive hazardous waste characteristics.

[2] Each of these waste streams contain varying levels of elemental phosphorous and Naturally Occurring Radioactive Material (NORM) which pose unique treatment concerns for off-site commercial TSDs.

Currently, the off-specification Precipitator Slurry, Furnace Building Washdown, and Medusa Scrubber Blowdown waste streams are piped to a holding tank, designated as Tank V3600, from which the mixture is pumped to a surface impoundment, designated as Pond 18, for clarification. Until recently, this mixture had been pumped to another surface impoundment, Pond 16S, that now is filled to capacity and scheduled for closure during the summer of 2000. Clarified water from Cell B of Pond 18 is pumped back to the production process for reuse.

The NOSAP Slurry is pumped from each of the eight slurry pots to a surge tank, designated as Tank V3700, where it is mixed with decant water from another surface impoundment, Pond 17, to increase flow and prevent settling of solids in the pipeline during transfer of the contents of Tank V3700 to Pond 17.

The Phossy Water is sent to a clarification unit to remove residual phosphorous. Clarifier overflow water is transferred to a sump for reuse in the production process. Currently, any excess water that cannot be used is pumped to Pond 18. In the future, FMC plans to first pump this excess water to a new tank, Tank V3800, from which the water then will be pumped to Pond 18. Clarifier underflow is directed to a centrifuge to remove the phosphorous from dirt and water. Water from the multistage centrifuge is directed to a sump and subsequently also pumped to Pond 18.

FMC, both in the CBC application and RCRA Consent Decree, indicates its intent to design and construct a treatment unit, referred to as the LDR Treatment Plant (System), that will treat the FMC Pocatello waste streams to meet the applicable BDAT standards. This treatment system will reduce the levels of elemental phosphorous and cyanide in the wastes such that the treated wastes do not exhibit the characteristic of reactivity for phosphine and hydrogen cyanide gas or the characteristic of ignitability. Underlying hazardous constituents, contained in the wastes, also must be maintained or fixed in a nonleachable form for stabilization treatment prior to disposal. FMC has chosen the Anoxic form of the Zimpro treatment process to achieve these goals. The LDR Treatment Plant, employing this treatment technology, will process three primary waste streams:

1. Discharge from Tank V3800 (Phossy Water),

2. Discharge from Tank V3600 in the Furnace Building (Medusa Scrubber Blowdown, Furnace Building Washdown, and Precipitator Slurry), and

3. Solids reclaimed from Pond 18 (the RCRA Consent Decree requires that solids accumulated in Pond 18 be removed and treated within five years after the LDR Treatment System commences operation).

Once the LDR Treatment Plant is operational, the NOSAP system will no longer be necessary, thereby eliminating the NOSAP Slurry waste stream. Operating the LDR Treatment Plant also will eliminate the need for the continued use of the on-site ponds. The LDR Treatment Plant is expected to be completed and functional by May 2002. At this time, FMC plans to dispose the non-hazardous stabilized treatment residual, that meets LDR and RCRA Consent Decree requirements, at a FMC silica mine located about nine miles from the FMC Pocatello facility. FMC is seeking approval from the State of Idaho to use this site as a landfill for this treatment residual.

The Shoshone-Bannock Tribes oppose the continued generation and disposal of these untreated wastes in the FMC Pocatello on-site surface impoundments. However, as discussed in Section III.A., off-site treatment capacity is not available. It is not yet feasible for FMC to treat these wastes to meet the LDRs. The necessary treatment capacity and capability only will be realized once the proposed LDR Treatment Plant is constructed and commences operation by May 2002. Also, as discussed below in Sections III.F. and III.G., the surface

impoundments into which these wastes would be placed during the CBC extension, if approved, were constructed to meet the RCRA minimum technological requirements of 40 CFR 268.5(h)(2), including liners and groundwater monitoring, and must be operated in compliance with the Pond Management Plan, as incorporated into the Consent Decree.

III. EPA's Evaluation of the Seven Demonstrations Made by FMC To Support the Requested CBC Extension

In order for EPA to approve FMC's CBC extension application, FMC must satisfy the requirements outlined in 40 CFR 268.5 and fully address each of the required seven demonstrations of 40 CFR 268.5(a)(1)–(7). EPA evaluated FMC's demonstrations, as follows:

A. § Section 268.5 (a)(1)—the applicant (FMC) has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage its waste in accordance with the LDR effective date of the applicable restriction (i.e., May 26, 2000).

In 1995, in support of its request for a national capacity variance for several of the subject waste streams, FMC surveyed 168 treatment, storage, and disposal facilities (TSDs) throughout the nation, in an effort to locate commercial treatment or disposal capacity. The results of this survey can be found in the Docket established for this notice. Not one of the surveyed facilities was able or willing to provide treatment or disposal capacity for the FMC Pocatello waste streams. TSDs cited a number of factors in declining to manage these waste streams, including the presence of elemental phosphorous, the potential for generation of phosphine gas, levels of naturally occurring radioactive materials (NORM), and the volume of wastes to be managed. Likewise, EPA was not aware of any available capacity for these waste streams. As such, EPA granted a national capacity variance for the FMC Pocatello waste streams, extending the LDR effective date for these waste streams to May 26, 2000. See 63 FR 28556, May 26, 1998.

In support of its request for this case-by-Case extension of the LDR effective date, FMC performed another survey in February—May 1999 that supplemented the initial 1995 survey of available commercial treatment capacity. This supplemental survey was designed to focus on those facilities likely to have developed additional or new capacity since the 1995 survey. A list of 33 facilities were contacted by FMC. Again, not one of these TSD facilities was able or willing to treat the FMC Pocatello waste streams. Many of the same reasons given by TSDs in the original survey for not being able to treat these waste streams were again cited in the supplemental survey. Results of this supplemental survey likewise can be found in the Docket.

We believe that FMC has made reasonable efforts, over the past four years, to try to locate adequate, alternative treatment capacity for the off-site management of the waste streams for which it is requesting a CBC extension of the LDR effective date. Likewise, we are not aware of any available commercial treatment capacity for these wastes. As such, EPA concludes that FMC has adequately fulfilled the requirements of this § 268.5(a)(1) demonstration.

B. § Section 268.5(a)(2)—the applicant (FMC) has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery, or disposal capacity that meets the treatment standards specified in 40 CFR Part 268, subpart D or, where treatment standards have not been specified, such treatment, recovery, or disposal capacity is protective of human health and the environment.

FMC has committed considerable resources toward the development of a treatment technology necessary to treat the subject Pocatello waste streams to meet BDAT standards. The appropriate treatment technology/process now has been identified and FMC is proceeding with plans to construct the LDR Treatment Plant, incorporating the Zimpro anoxic hydrolysis process as the principal treatment technology in the, treatment system. On June 24, 1999, FMC entered into a contract with Raytheon Engineers and Constructors to design, engineer, and construct the LDR Treatment Plant. A copy of this contract has been provided to EPA as Confidential Business Information (CBI). To further support its demonstration of a binding contractual commitment to construct the LDR Treatment Plant, FMC also has provided EPA with the following documentation:

- Corporate approval of funds to purchase and construct the proposed LDR Treatment Plant at the Pocatello, Idaho facility to treat the wastes to BDAT standards.
- Documentation of Supplemental Authorization for Expenditures by FMC, dedicating a total, thus far, of $15.1 million toward the LDR Treatment System (process design and engineering, development of Part A and interim status applications, analytical efforts, etc.).
- Purchase Orders for equipment.
- Contracts with vendors for supplies and services.

In addition to this documentation of contractual commitment, the RCRA Consent Decree places an additional binding legal commitment on FMC to construct the LDR Treatment System. Under the RCRA Consent Decree, FMC is compelled to design, construct, and permit the proposed LDR Treatment System by May 2002. If FMC fails to meet the stipulations of this RCRA Consent Decree, it will be subject to significant monetary penalties.

We believe, as evidenced by the resources committed by FMC toward the design and construction of the LDR Treatment Plant, that it is fully committed to and aggressively pursuing construction of the necessary on-site treatment capacity to treat the subject waste streams generated at the Pocatello, Idaho facility to BDAT standards. EPA believes FMC has provided the necessary documentation to demonstrate its binding contractual commitment to provide the necessary treatment capacity.

C. § Section 268.5(a)(3)—Due to circumstances beyond the applicant's (FMC's) control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date.

The unique nature of the waste streams, for which the CBC extension is being requested by FMC, pose numerous treatment problems. The non-availability of commercial treatment capacity attests to the unique nature of these waste streams. FMC has been grappling with these problems for quite some time and has provided documentation that details its efforts—involving literature searches, laboratory testing, process design, permitting, pilot plant studies and operations, etc. in attempting to determine the most appropriate treatment technology. FMC states that it has evaluated more than 50 potential waste treatment technologies. However, prior to selecting the most appropriate treatment technology and developing the construction plans, FMC needed to know the final Phase IV LDR treatment standards for these waste streams, promulgated on May 26, 1998, and the requirements of the proposed RCRA Consent Decree which was lodged with the Court on October 16, 1998. Upon learning these requirements, FMC made an intensive effort to determine the treatment technology most appropriate to treat the FMC Pocatello waste streams to meet the LDR requirements. In August 1999, FMC finally chose the Zimpro Anoxic treatment process as the treatment technology to be employed in the proposed LDR Treatment Plant.

The two-year national capacity variance that was approved for these waste streams in the final Phase IV rulemaking will expire on May 26, 2000. Now that a treatment technology has been chosen, the design, construction, and permitting of the proposed LDR Treatment Plant has commenced. The mandate of the RCRA Consent Decree that FMC begin operation of the LDR Treatment System by May 2002 is already ambitious. However, it is virtually impossible for FMC to construct the LDR Treatment Plant needed to provide the treatment capacity and to be operating by May 26, 2000.

Based on the above, we believe that FMC has made a good-faith and reasonable effort in its attempt to provide treatment capacity by the effective date. FMC has aggressively pursued the development of technology capable of treating their wastes to BDAT standards. We believe FMC has acted in good faith to provide the necessary treatment capacity but that such capacity could not reasonably be made available by May 26, 2000, the current effective date of the land disposal restriction for these waste streams. EPA believes the lack of treatment capacity for these waste streams is due to circumstances beyond the control of FMC. As such, FMC has adequately met the demonstration of § 268.5(a)(3).

D. Section 268.5 (a)(4)—The capacity being constructed or otherwise provided by the applicant (FMC) will be sufficient to manage the entire quantity of waste that is the subject of the application.

FMC, in its CBC application, states that the LDR Treatment Plant to be constructed will have sufficient capacity to adequately treat the waste streams generated by the Pocatello, Idaho facility. The RCRA Consent Decree likewise makes this a requirement. The treatment train to be provided by FMC uses a combination of lime treatment, anoxic hydrolysis, metals precipitation, filtration, and stabilization. FMC has provided test results that demonstrate that the treatment system will meet the LDR treatment standards as well as the requirements specified in the RCRA Consent Decree. This treatment system is designed to destroy elemental phosphorous and cyanide in the subject waste streams and remove the hazardous characteristics from these waste streams. FMC has submitted information, designated as CBI, regarding the process design flow and operating conditions of the proposed LDR Treatment System. As such, the planned LDR Treatment Plant is expected to have sufficient treatment capacity. Included in the capacity calculations are the estimated 39 acre-feet of accumulated solids in Pond 18 that is required per the RCRA Consent Decree to be removed and treated in the LDR Treatment System within five years of commencing operation. Using historic and predicted elemental phosphorous production and waste generation data and taking into consideration design requirements mandated in the RCRA Consent Decree, FMC states that it has designed the proposed LDR Treatment Plant to manage 610 gallons per minute of waste, thus providing adequate treatment capacity, including reasonable unexpected increases in waste generation flow rates. FMC anticipates a significant reduction of the quantity of wastes it generates and thus needs to treat in the proposed LDR Treatment Plant. For one thing, FMC anticipates, as part of the proposed joint venture with Solutia, Inc., that the construction of a new raw material supply plant, that produces purified phosphoric acid, potentially will serve as a substitute for some of the elemental phosphorous currently generated at Pocatello. FMC states that this plant should be operational within two to three years. Also, the joint venture's intention to develop additional wet phosphoric acid capacity is expected to reduce the need for elemental phosphorous and thus reduce the quantity of the subject waste streams generated. FMC also describes several ongoing waste minimization projects, including the control of the quantity of fine feed material to the electric arc furnaces and upgrades to operations at the Phos Dock. FMC anticipates that these efforts further will reduce the quantity of wastes, especially solids, needed to be treated in the LDR Treatment Plant. Both the current and anticipated generation rates for the subject waste streams are adequately covered by the design size of the proposed LDR Treatment Plant. The following table shows the current and anticipated generation rates for the waste streams to be treated in the LDR Treatment Plant.

In initial comments on the draft notice, the Tribes questioned whether FMC is constructing alternative treatment capacity sufficient to treat the volume of wastes which are to be removed from Pond 18 (Letter of February 25, 2000). EPA will investigate this issue further. EPA notes that the Consent Decree requires the on-site LDR Treatment System be designed with the capacity necessary to treat all of the phossy wastes, including all sediment collected in Pond 18. More specifically, as previously mentioned above, the Consent Decree mandates that FMC remove and treat all of the Pond 18 sediment within five (5) years after the LDR Treatement System begins operation.

CURRENT AND ANTICIPATED QUANTITIES OF WASTE STREAMS FOR TREATMENT

Waste stream	Current waste generation rate	Expected waste generation rate [3]
Precipitator Slurry	55 gallons per minute	28 gallons per minute.
Phossy Water (from Tank V3800)	200 gallons per minute	180 gallons per minute.
Medusa Scrubber Blowdown and Furnace Building Washdown (from Tank V3600).	300 gallons per minute	250 gallons per minute.
Pond 18 Excavated Solids [4]	Not Applicable	18 gallons per minute.
Total	555 gallons per minute	476 gallons per minute.

[3] Based on projections of reduced production of elemental phosphorous.
[4] Per the RCRA Consent Decree, the Pond 18 excavated solids must be treated in the LDR Treatment System within five years of commencement of operation of the LDR Treatment System.

EPA believes that FMC has adequately demonstrated that the LDR Treatment Plant to be constructed will provide the necessary treatment capacity to ensure that the entire quantity of these waste streams, for which FMC is requesting a CBC extension, and will meet applicable BDAT standards. The proposed LDR Treatment Plant is projected to generate approximately 242 cubic yards/day of non-hazardous stabilized treatment residual. FMC plans to transport this treatment residual in 20 cubic yard roll-off containers for disposal at the FMC silica mine, an off-site facility, located

nine miles from the FMC Pocatello Plant. This proposed landfill currently has an existing capacity of 260 acre feet and is expected to provide disposal capacity for about 5 years. FMC is evaluating several options to manage the treatment residuals generated beyond that time, including expanding the proposed landfill or using other landfill sites. FMC currently is preparing the application to be submitted to the State of Idaho for approval of this site as a landfill.

E. § Section 268.5 (a)(5)" the applicant (FMC) provides a detailed schedule for obtaining operating and construction permits or an outline of how and when alternative capacity will be available.

FMC has provided EPA with a detailed schedule for the design, construction, and permitting of the LDR Treatment Plant to be constructed at its Pocatello, Idaho facility. This schedule, in effect, reflects the requirements for bringing the LDR Treatment System on-line under the Consent Decree. The Table below shows some of the key milestones and dates in the schedule. FMC anticipates actual physical on-site construction to begin in July 2000 and start-up and operation of the LDR Treatment Plant by May 2002.

Key Milestones and Dates in FMC's Schedule for The LDR Treatment Plant

Milestone	Scheduled date of completion
Design and Engineering	January 2001.
RCRA Permitting (Submittal)	Part A—November 1999; Interim Status—March 2000. Part B—March 2001.
Equipment Procurement	June 2000 through July 2001.
Physical On-Site Construction	July 2000 through April 2002.
Start-up/Commence Operation	May 2002.

We believe that FMC has provided the necessary design, construction and permitting milestones for bringing the LDR Treatment Plant on-line and therefore providing the treatment capacity needed to treat the subject waste streams to BDAT standards. However, the CBC extension that EPA is proposing to approve today would only extend the LDR effective date until May 26, 2001. Even this extension apparently will not provide sufficient time for FMC to bring the LDR Treatment Plant into operation. FMC likely will need to request a renewal of any approved CBC extension to provide additional time to complete construction and commence operation of the LDR Treatment Plant. However, any such renewal cannot extend the LDR effective date beyond May 26, 2002.

F. § Section 268.5(a)(6)—the applicant (FMC) has arranged for adequate capacity to manage its waste during an extension, and has documented the location of all sites at which the waste will be managed.

FMC would continue to manage these waste streams in two of its on-site surface impoundments, referred to as Ponds 17 and 18, that it has been using for this purpose. FMC has provided data showing that these surface impoundments would have the necessary capacity available to manage these wastes during the extension, if approved. As of November 1, 1999, FMC estimated that Pond 17 has approximately 58 acre feet of capacity remaining. Pond 17 only is used to manage NOSAP Slurry, which is estimated to accumulate solids at a rate of almost 20 acre feet per year. FMC, however, views this accumulation rate as an upper bound and anticipates that waste minimization efforts and a reduced production mode will reduce the quantity of solids going to Pond 17. Thus, Pond 17, even at the current rate of inflow NOSAP Slurry, would have enough capacity for another three years. Once the LDR Treatment Plant is operating, Pond 17 will no longer be needed and will be closed. As of November 1, 1999, FMC indicated that Pond 18, composed of Cells A and B, has approximately 127 acre-feet of remaining capacity. The bulk of the solids are contained in Cell A, with a capacity of 40 acre-feet. FMC states that solids accumulate in Pond 18 at the rate of about 12.6 acre-feet per year. At this rate of solids accumulation and assuming that most of the solids precipitate out of the water while in Cell A, Pond 18 also would have sufficient capacity for another three years. Once the LDR Treatment Plant is operating, Pond 18 will no longer be needed. The RCRA Consent Decree requires that the solids accumulated in Pond 18 be treated in the LDR Treatment System within five years of commencement of plant operation.

To provide even more assurance of adequate capacity and proper management of these surface impoundments (ponds), FMC is adhering to the Pond Management Plan, as required by the RCRA Consent Decree. Among other requirements, the Pond Management Plan requires that pond levels be maintained within defined minimum and maximum levels.

EPA believes that FMC has provided the documentation necessary to satisfy the demonstration under § 268.5(a)(6).

G. § Section 268.5 (a)(7)—Any waste managed in a surface impoundment or landfill during the extension period will meet the requirements of 40 CFR 268.5(h)(2).

During the extension period, if approved, the subject waste streams would be piped directly to the on-site surface impoundments, i.e., Ponds 17 and 18, as described above. Both of these surface impoundments were constructed to meet the RCRA minimum technological requirements of 40 CFR 268.5(h)(2). Pond 17 has double liners, a leak detection system, and is equipped with one upgradient and three downgradient groundwater monitoring wells. Pond 18 (both Cells A and B) are lined with a double composite geosynthetic/soil liner and a leak detection system. Each liner consists of a flexible membrane overlying a low permeability soil layer. The soil component of the primary liner is a geosynthetic clay liner; the soil component of the secondary liner is compacted bentonite amended soil. A sacrificial 80-mil high-density polyethylene liner covered with one foot of bentonite soil overlays the liner system—constructed to allow sediment removal once the LDR Treatment System is operational. Pond 18 has a groundwater monitoring system composed of two upgradient and four downgradient monitoring wells.

As previously mentioned, the RCRA Consent Decree, incorporating the Pond Management Plan, requires these ponds to meet the minimum technology requirements (MTRs). The Pond Management Plan also imposes stringent operating conditions on the use and management of the FMC Pocatello ponds. These conditions include:

- Pond 18 must have an electronic leak detection system and a sacrificial liner to allow for sediment removal once the LDR Treatment System is operational.
- Human exposure to phosphine and hydrogen cyanide must be minimized at the ponds by installing additional fencing and continuous gas monitors.
- Fires must be prevented by managing pond water levels, using electronic level monitoring and alarm devices.
- Wildlife injuries or fatalities must be prevented at the ponds by installing netting and/or bird balls over pond surfaces to deter avian intrusion.

However, the Shoshone-Bannock Tribes oppose the continued disposal of these untreated wastes in the FMC Pocatello on-site surface impoundments. In initial comments on the draft notice, the Tribes questioned whether the FMC's surface impoundments (Ponds 17 and 18), that would be used to manage the wastes during the requested extension, were capable of meeting the requirements of 268.5 (h)(2). These standards require compliance with the so-called minimum technology requirements of double liners and a leachate collection system. EPA's review of all available information indicates that the impoundments satisfy the minimum technology requirements.

The Tribes further questioned whether the impoundments met other substantive design and operating standards, particularly those relating to air emissions. EPA notes that compliance with air emission standards is not directly relevant to this case-by-case extension (section 3005 (j)(11) of the statute and the codifying regulations in 268.5 (h)(2) refer only to the minimum technology requirements). The regulations in 40 CFR Parts 264 and 265 subpart CC, relate to air emissions from certain hazardous waste surface impoundments. EPA's review of all available information indicates that these provisions do not apply to the FMC impoundments in question because only certain types of volatile organic wastes are subject to the rules (40 CFR 265.1083 (c)(1)), and we do not believe volatile organic wastes are present in these impoundments.

EPA believes that FMC has provided the documentation necessary to satisfy the demonstration under § 268.5(a)(7), but we will of course review any new information received during the comment period to ensure that all conditions are satisfied.

IV. Consultation With Affected State and Indian Tribes

In accordance with 40 CFR 268.5(e), EPA consulted with the State of Idaho—Idaho Division of Environmental Quality (IDEQ) to determine if the State had any permitting, enforcement, or other concerns regarding this respective facility that EPA should take into consideration in deciding to grant or deny FMC's application for a CBC extension of the LDR effective date. The State of Idaho has indicated its support for the approval of the CBC extension requested by FMC.

The majority of the FMC Pocatello site, including most of the processing areas, is located on the Fort Hall Indian Reservation. Consistent with the Presidential Memorandum of April 29, 1994, EPA has engaged in advance consultation of this proposed CBC extension with representatives of the Tribes and also sent a copy of this Notice to the Tribes in advance of the public comment period in order to further provide opportunities for comment. It is EPA's understanding that the Tribes do not wish for the FMC facility to close, and support the overall federal and company efforts to remediate groundwater and soil contamination caused by historic facility operations, and to better control particulate air emissions from the facility. However, the Tribes continue to believe that FMC's hazardous waste should be treated now before being land disposed, and consequently oppose granting a CBC extension of the land disposal prohibition and pretreatment requirement. EPA will continue to consult with the Tribes prior to finalizing any decision on the capacity extension.

V. What Is EPA's Proposed Action?

We believe that FMC has made and is continuing to make a good-faith effort toward providing sufficient and appropriate treatment capacity for the five waste streams that are the subject of its request for a CBC extension of the LDR effective date. The United States recognizes and concurs that it does owe an important trust responsibility to the Tribes, on whose lands the FMC Pocatello facility is located, including a responsibility to perform its obligations under RCRA and other statutes intended to protect the environment. We also recognize the Tribes's legitimate concerns regarding the continued placement of untreated hazardous wastes in the FMC Pocatello on-site surface impoundments. However, as well as considering tribal concerns and recommendations, the United States must also consider other relevant facts when choosing a course of action. EPA notes that the controlling law here is section 3004 (h) (3) of the statute and the rules in 268.5 which implement that provision. These provisions establish that an applicant who satisfies the rigorous conditions for a CBC extension will be granted one. The ultimate and controlling issue in processing FMC's application consequently is whether the company has satisfied the statutory and regulatory conditions.

We see no reasonable and quick way of achieving the goal of the Tribes, *i.e.*, the immediate cessation of on-site disposal of these wastes. As explained earlier in this Notice, we believe that it is not yet feasible for FMC to treat these wastes prior to placement in the on-site surface impoundments, and no other company is willing to accept the wastes for off-site treatment. Treatment capacity and capability only will be available once FMC constructs and commences operation of the proposed LDR Treatment Plant. Short of the FMC facility shutting down—which the Tribes do not want to happen—we believe that the Tribes's concerns about continued on-site disposal can most practically and judiciously be addressed by compelling FMC to expeditiously proceed with the construction of the proposed treatment plant so as to have it operational at the earliest possible date. We believe FMC is on such a schedule.

As such, EPA is proposing to grant an extension of the land disposal restrictions effective date for these wastes, until May 26, 2001. If this extension is finalized, FMC may continue to manage these five waste streams in the on-site surface impoundments (Ponds 17 and 18) at the Pocatello, Idaho facility until May 26, 2001. FMC likely will need to request a renewal of any approved CBC extension to provide additional time to complete construction and commence operation of the LDR Treatment Plant and may request renewal of the one-year extension, if approved. For a renewal of the extension, FMC would need to re-demonstrate each of the seven required demonstrations in § 268.5(a). However, any such renewal cannot extend the LDR effective date beyond May 26, 2002.

Once FMC is granted a one-year CBC extension, it must immediately notify EPA of any change in the demonstrations made in its initial application (40 CFR 268.5(f)). The approval of this one-year CBC extension, and any potential extension renewal, is conditional on FMC adhering to its stated schedule for the construction and operation of the LDR treatment plant. EPA will maintain close oversight of the scheduled progress being made by FMC towards this goal by requiring progress reports. FMC would need to submit progress

reports that describe the progress being made toward constructing and bringing the LDR Treatment Plant into operation. EPA proposes that FMC submit a monthly progress report and that the first progress report be due thirty (30) days after the date of final approval of the requested CBC extension. The progress reports also must identify any delay or possible delay in providing the planned treatment capacity and describe the mitigating actions being taken in response to any such delay (40 CFR 268.5(g)). Likewise, FMC is bound by the terms of the RCRA Consent Decree to have this treatment plant operational by May 2002. If FMC should fail to adhere to this schedule, such that compliance with the requirements of the Consent Decree is jeopardized, EPA has the authority to terminate an approved CBC extension.

VI. How Can I Influence EPA's Thinking on This Notice?

We welcome your comments on the factual issues associated with each of the seven demonstrations made by FMC to support the requested CBC extension and EPA's evaluation of these demonstrations. In addition we would like your comments on the appropriateness of the proposed one-year extension of the LDR effective date for the five waste streams generated at the FMC Pocatello facility for which the CBC extension is requested. We are not requesting comments on the RCRA Consent Decree or regarding other ongoing or planned regulatory/enforcement activities at the FMC Pocatello facility.

Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the notice, such as the units or page numbers.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

VII. What Happens After We Receive Your Comments?

After reviewing comments received, we will issue a final rulemaking to either approve or deny FMC's request for a one-year CBC extension of the LDR effective date. We plan to publish a final notice regarding the Agency's decision on FMC's request for a one-year CBC extension, prior to the May 26, 2000, expiration date of the current national capacity variance for the subject waste streams. The extension, if approved, would remain in effect unless the facility fails to make a good-faith effort to meet the schedule for completion, the Agency denies or revokes any required permit, conditions certified in the application change, the requirements of the RCRA Consent Decree are not met, or the facility violates any law or regulations implemented by EPA.

VIII. Administrative Requirements

A. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's notice will significantly or uniquely affect the communities of Indian tribal governments, but it will not impose substantial direct compliance costs on such communities. EPA is proposing to approve an application for a one-year CBC extension of the May 26, 2000, effective date of the RCRA land disposal restrictions for a facility located on Tribal Lands. This action will significantly or uniquely affect the communities of Indian tribal governments by permitting the facility to continue to treat, store, or dispose of five waste streams as currently managed in on-site surface impoundments until May 26, 2001. These impoundments are located on Tribal Lands. However, this action will not impose any direct compliance costs on the communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this notice.

B. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This notice does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with the State of Idaho in developing this rule, as discussed in section IV. of this notice.

Authority: Sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924).

Dated: March 2, 2000.

Michael Shapiro,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00–5604 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6548–9]

Environmental Laboratory Advisory Board, Meeting Dates and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App 2) notification is hereby given of an open meeting of the Environmental Laboratory Advisory Board (ELAB).

DATES: The meeting will be held on April 11, 2000, from 1:00 p.m. to 4:00 p.m. (EST).

ADDRESSES: While the meeting will be conducted by teleconference, the public is invited to participate by joining David Friedman in EPA Conference Room 2 on the fourth floor of the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW.

SUPPLEMENTARY INFORMATION: Among the items the Board will discuss are updates from its subcommittees, shipment of environmental samples, and any public comments the Board has received since their February 2000 meeting.

The meeting is open to the public and time will be allotted for public comment. Written comments are encouraged and should be directed to David Friedman; USEPA; 1200 Pennsylvania Avenue, NW, (8101R); Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Friedman; Designated Fedeal Officer; USEPA; 1200 Pennsylvania Avenue, NW, (8101R); Washington, DC 20460. If questions arise, please contact Mr. Friedman by phone at (202) 564–6662, by facsimile at (202) 565–2432 or by email at friedman.david@epa.gov.

Dated: February 29, 2000.

Henry L. Longest II,

Deputy Assistant Administrator for Management, Office of Research and Development.

[FR Doc. 00–5623 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–918; FRL–6491–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–918, must be received on or before April 7, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–918 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Product Manager (21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–918. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–918 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services

Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–918. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 21, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

American Cyanamid Company

8F4946

EPA has received a pesticide petition (8F4946) from American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in or on the imported raw agricultural commodities (RAC) of dried hops cones at 45 parts per million (ppm); and on the RAC of tomato fruit at 0.50 ppm and in or on the processed commodities of tomato puree at 0.50 ppm and tomato paste at 1.50 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* American Cyanamid believes that the nature of the residues in hops and tomatoes is considered to be understood. This belief is based upon the results of the metabolism studies conducted on potato, grape, and lettuce. The results of the potato metabolism study show only negligible residues in tubers, 0.01–0.02 ppm total radioactive residues (TRR). This is in contrast to the aerial portions of the plant which were found to have up to 23.5 ppm TRR, thus demonstrating that translocation of dimethomorph within the plant was not significant. Almost all of the radioactive residue (97.8%) was extractable from the plant at harvest. In the aerial portion of the plant, approximately 70% of the TRR was identified as dimethomorph. No metabolites were identified that require regulation.

The results of the grape metabolism study showed that the TRR in/on grapes harvested 35 days following the last of four applications 0.8 lb active ingredient per acre (ai/acre) per application for four consecutive weeks for a total rate of 3.2 lb ai/acre (3x the proposed maximum seasonal rate) was 14.6 ppm. Unmetabolized dimethomorph accounted for 87.3% of the TRR (12.7 ppm). No metabolites were identified that require regulation.

The results of the lettuce metabolism study showed that the TRR in/on lettuce leaves harvested 4 days following the last of four applications approximately 1.0 lb ai/acre per application with a 9 to 11–day spray interval, for a total rate of 4.1 lb ai/acre, was 102 ppm. Of this total residue, 98.5% was extractable and unmetabolized dimethomorph accounted for greater than 93% of the extractable TRR. No metabolites were identified that require regulation.

2. *Analytical method.* A reliable method for the determination of dimethomorph residues in hops and

tomatoes exists; this method is the FDA Multi-Residue Method, Protocol D, as published in the Pesticide Analytical Manual I.

3. *Magnitude of residues.* The residue data for hops submitted to support this tolerance petition were taken from studies conducted in Germany. Dimethomorph residues observed in dried hops cones collected from these field studies ranged from 4.3 ppm to 42.0 ppm. These trials were conducted using four applications of dimethomorph with a maximum seasonal rate of 1.82 lb ai/acre. Therefore, a tolerance of 45.0 ppm is appropriate.

The residue data for tomatoes submitted to support this tolerance petition were collected from 16 studies conducted in tomato-producing regions of the United States. Trials were conducted using multiple applications (6–7) of dimethomorph with a maximum seasonal rate of up to 1.4 lb ai/acre (1.4x the proposed label rate). Dimethomorph residues observed in these field trials ranged from < 0.05 ppm to 0.55 ppm immediately after harvest. In a study on the magnitude of residue in tomato processed commodities, residues of dimethomorph did not concentrate in any fraction except in paste (3x). Therefore, tolerances of 0.50 ppm in/on tomato fruit, 0.50 ppm in/on tomato puree, and 1.50 ppm in/on tomato paste are proposed.

B. Toxicological Profile

1. *Acute toxicity*—i. An acute oral toxicity study in the Sprague-Dawley rat for dimethomorph technical with a LD_{50} of 4,300 milligrams/kilograms body weight (mg/kg bwt) for males and 3,500 mg/kg bwt for females. Based upon EPA toxicity criteria, the acute oral toxicity category for dimethomorph technical is Category III or slightly toxic.

ii. Oral LD_{50} studies were conducted on the two isomers (E and Z) alone:

a. An acute oral toxicity study in the Wistar rat for the E-isomer with a LD_{50} greater than 5,000 mg/kg bwt for males and approximately 5,000 mg/kg bwt for females.

b. An acute oral toxicity study in the Wistar rat for the Z-isomer with a LD_{50} greater than 5,000 mg/kg bwt for both males and females.

iii. An acute dermal toxicity study in the Wistar rat for dimethomorph technical with dermal LD_{50} greater than 5,000 mg/kg bwt for both males and females. Based on the EPA toxicity category criteria, the acute dermal toxicity category for dimethomorph is Category IV or relatively non-toxic.

iv. A 4–hour inhalation study in Wistar rats for dimethomorph technical with a LC_{50} greater than 4.2 milligrams/liter (mg/L) for both males and females. Based on the EPA toxicity category criteria, the acute inhalation toxicity category for dimethomorph technical is Category IV or relatively non-toxic.

2. *Genotoxicity*—i. *Salmonella* reverse gene mutation assays (2 studies) were negative up to a limit dose of 5,000 µg/plate. Chinese hamster (CH) lung V79 cells were negative up to toxic doses in two studies.

ii. Two CH lung structural chromosomal studies were reportedly positive for chromosomal aberrations at the highest dose tested (HDT) (160 (µg/mL)-S9; 170 µg/mL/+S9). Dimethomorph induced only a weak response in increasing chromosome aberrations in this test system. These results were not confirmed in two micronucleus tests under *in vivo* conditions.

iii. Structural chromosomal aberration studies were weakly positive in human lymphocytic cultures, but only in S9 activated cultures treated at 422 µg/mL HDT, which was strongly cytotoxic. No increase in chromosomal aberrations was observed in the absence of S9 activation at all doses. Furthermore, the positive clastogenic response observed under the *in vitro* conditions was not confirmed in two *in vivo* micronucleus assays.

iv. Micronucleus assay (two studies) indicated that dimethomorph was negative for inducing micronuclei in bone marrow cells of mice following i.p. administration of doses up to 200 mg/kg or oral doses up to the limit dose of 5,000 mg/kg. Thus, dimethomorph was found to be negative in these studies for causing cytogenic damage *in vivo*.

v. Dimethomorph was negative for inducing unscheduled DNA synthesis (UDS), in cultured rat liver cells, at doses up to 250 µg/mL, a weakly cytotoxic level.

vi. Dimethomorph was negative for transformation in Syrian hamster embryo cells treated, in the presence and absence of activation, up to cytotoxic concentrations (265 µg/ml/+S9; 50 µg/ml/-S9).

3. *Reproductive and developmental toxicity*—i. A rat developmental toxicity study with a lowest observed adverse effect level (LOAEL) for maternal toxicity of 160 mg/kg/day and a no observed adverse effect level (NOAEL) for maternal toxicity of 60 mg/kg/day. The NOAEL for developmental toxicity is 60 mg/kg/day. Dimethomorph is not teratogenic in the Sprague-Dawley rat.

ii. A rabbit developmental toxicity study with a LOAEL for maternal toxicity of 650 mg/kg/day and a NOAEL for maternal toxicity of 300 mg/kg/day. The NOAEL for developmental toxicity is 650 mg/kg/day HDT. Dimethomorph is not teratogenic in the New Zealand white rabbit.

iii. A 2–generation rat reproduction study with a LOAEL for parental systemic toxicity of 1,000 ppm (80 mg/kg/day) and a NOAEL for parental systemic toxicity of 300 ppm (24 mg/kg/day). The NOAEL for fertility and reproductive function was 1,000 ppm (80 mg/kg bwt/day) HDT.

4. *Subchronic toxicity*—i. A 90–day dietary study in Sprague-Dawley rats with a NOAEL of greater than or equal to 1,000 ppm HDT (73 mg/kg/day) for males and 82 mg/kg/day for females.

ii. A 90–day dog dietary study with a NOAEL 450 ppm (15 mg/kg/day) and a LOAEL 1,350 ppm (43 mg/kg/day).

5. *Chronic toxicity*—i. A 2–year chronic toxicity study in Sprague-Dawley rats with a NOAEL of 200 ppm (9 mg/kg/day for males and 12 mg/kg/day for females). The LOAEL for systemic toxicity is 750 ppm (36 mg/kg/day for males and 58 mg/kg/day for females).

ii. A 1 year chronic toxicity study in dogs with a NOAEL of 450 ppm (14.7 mg/kg/day) and a LOAEL of 1,350 ppm (44.6 mg/kg/day).

iii. A 2–year oncogenicity study in Sprague-Dawley rats with a NOAEL for systemic toxicity of 200 ppm (9 mg/kg/day for males and 11 mg/kg/day for females). The LOAEL for systemic toxicity was 750 ppm (34 mg/kg/day for males and 46 mg/kg/day for females). There was no evidence of increased incidence of neoplastic lesions in treated animals. The NOAEL for oncogenicity is 2,000 ppm (95 mg/kg/day for males and 132 mg/kg/day for females) HDT.

iv. A 2–year oncogenicity study in mice with a NOAEL for systemic toxicity of 100 mg/kg/day and a LOAEL of 1,000 mg/kg/day. There was no evidence of increased incidence of neoplastic lesions in treated animals. The NOAEL for oncogenicity is 1,000 mg/kg/day HDT.

6. *Animal metabolism.* Results from the livestock and rat metabolism studies show that orally administered dimethomorph was rapidly excreted by the animals. The principal route of elimination is the feces.

7. *Metabolite toxicology.* There were no metabolites identified in plant or animal commodities which require regulation.

8. *Endocrine disruption.* Collective organ weights and histopathological findings from the 2–generation reproduction study in rats, as well as

from the subchronic and chronic toxicity studies in two or more animal species, demonstrate no apparent estrogenic effects or effects on the endocrine system. There is no information available which suggests that dimethomorph technical would be associated with endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* For purposes of assessing the potential dietary exposure, a Theoretical Maximum Residue Contribution (TMRC) has been calculated from the tolerance of dimethomorph technical in or on hops at 45 ppm, whole tomatoes at 0.50 ppm, tomato puree at 0.50 ppm, and tomato paste (including tomato juice and catsup) at 1.50 ppm. This exposure assessment is based on very conservative assumptions, namely, 100% of all hops and tomato commodities consumed is treated with dimethomorph technical and that the residues of dimethomorph technical in hops and tomato commodities are equal to the tolerance. Although there are no other established United States permanent tolerances for dimethomorph technical, petitions for a permanent tolerance of 0.05 ppm in or on potatoes and for a time-limited tolerance of 2.0 ppm in or on imported grapes are pending at the Agency. Therefore, the dietary exposures to residues of dimethomorph technical in or on food will be limited to residues in hops, tomatoes, potatoes and grapes. For the overall population, the contribution of the tolerances for hops and tomato commodities to daily consumption uses only 0.05% and 0.58%, respectively, of the Reference Dose (RfD). The combined contributions of the hops, tomato and pending potato and grapes tolerances to the daily consumption uses only 1.58% of the RfD for the overall U.S. population, less than 5% for infants and non-nursing infants (2.38% and 2.60%, respectively) and less than 5% for children ages 1–6 and 7–12 (4.39% and 1.81%, respectively). Therefore, American Cyanamid concludes that the chronic dietary exposure to dimethomorph from all current and pending tolerances is less than 10% of the PAD for the U.S. population and for population subgroups (e.g., for children 1–6 years, 4.3% plus 4.39%).

ii. *Drinking water.* Currently, the only federally-registered food/feed use of dimethomorph in the United States is on potato crops. For this use, the Drinking Water Level of Concern from chronic exposure was estimated by the EPA to be 3,400 parts per billion (ppb) for the U.S. population and for males 13 years and older, 2,900 ppb for females 13 years and older, and 960 ppb for children (1–6 years). These levels are all much greater than that calculated from the Generic Estimated Environmental Concentration (GENEEC); 24 ppb for 56–days which simulates the residues in surface water. Dimethomorph residues in ground water were also estimated using the Screening Concentration in Ground Water Model (SCI–GRO), but these estimates were significantly lower than those obtained from the GENEEC model. Given the low levels of dimethomorph residues as estimated by the GENEEC model, the large margin of exposure (40x–142x), and the similarity in use pattern on potato and tomato, the additional use of dimethomorph on tomatoes is not expected to reach a level of concern for residues in drinking water. Potential exposure in drinking water in the U.S. for the proposed tolerance on imported hops is not relevant to this petition.

2. *Non-dietary exposure.* The proposed tolerances are for imported hops and, there are no residential uses for dimethomorph in the United States; therefore, non-dietary exposure in the United States is not relevant to this petition.

D. Cumulative Effects

There is no information to indicate that any toxic effects produced by dimethomorph would be cumulative with those of any other chemical. The fungicidal mode of action of dimethomorph is unique; dimethomorph inhibits cell wall formation only in Oomycete fungi. The result is lysis of the cell wall which kills growing cells and inhibits spore formation in mature hyphae. This unique mode of action and limited pest spectrum suggest that there is little or no potential for cumulative toxic effects in mammals. In addition, the toxicity studies submitted to support this petition do not indicate that dimethomorph is a particularly toxic compound. No toxic end-points of potential concern were identified.

E. Safety Determination

1. *U.S. population.* The proposed RfD is 0.1 mg/kg bwt/day, based on a NOAEL of approximately 10 mg/kg bwt/day (200 ppm) from a 2–year dietary toxicity study in rats that demonstrated decreased body weight and liver foci in females at 750 ppm. Because American Cyanamid Company believes that dimethomorph technical is not genotoxic, carcinogenic, or teratogenic and is not a reproductive toxicant, the proposed RfD is calculated using an uncertainty factor of 100. The TMRC for imported hops is estimated at 0.0000515 mg/kg bwt/day for the general population. This represents a dietary exposure to the general U.S. population which is 0.05% of the RfD. Similarly, the TMRC for all tomato commodities is estimated at 0.0005818 mg/kg bwt/day for the general U.S. population. This represents a dietary exposure to the general U.S. population which is 0.58% of the RfD. No population subgroup is more highly exposed to hops than the general population. Children ages 1–6 and 7–12 are more highly exposed to tomato commodities than the general population. The TMRC values for tomato commodities are estimated at 0.0011050 and 0.0008449 mg/kg bwt/day for children ages 1–6 and 7–12, respectively. The dietary exposure to children ages 1–6 is 1.10% of the RfD, and the dietary exposure to children ages 7–12 is 0.84% of the RfD. The combined TMRC for all current and proposed dimethomorph tolerances in hop, tomatoes, cereal grain commodities, cantaloupe, cucumber, squash, watermelon, potatoes, and grapes will utilize less than 10% of the RfD for the general U.S. population. Since EPA generally has no concern for exposures below 100% of the RfD, EPA should conclude that there is a reasonable certainty that no harm will result from aggregate exposure to dimethomorph residues in or on commodities of the cited crops.

2. *Infants and children.* The TMRC for hops consumed by infants, non-nursing infants, children ages 1–6 and children ages 7–12 is minimal. For all population subgroups, consumption of residues of dimethomorph in or on hops will use 0.00% of the RfD. The TMRC for tomato commodities consumed by infants, non-nursing infants, children ages 1–6 and children ages 7–12 is also minimal. The consumption of residues of dimethomorph on tomato commodities will use 0.17%, 0.25%, 1.10%, and 0.84% of the RfD for infants, non-nursing infants, children ages 1–6 and children ages 7–12, respectively. The combined TMRC values for the proposed dimethomorph tolerances in/on hops, tomatoes, potatoes and grapes in infants and non-nursing infants are 0.0023770 mg/kg bwt/day and 0.0026026 mg/kg bwt/day, respectively. The combined tolerances will use less than 5% of the RfD for infants and non-nursing infants (2.38% and 2.60%, respectively). The combined TMRC values for the proposed dimethomorph tolerances in/on hops, tomatoes, potatoes and grapes consumed by a child 1–6 years of age is 0.0043911 mg/kg bwt/day, which is less than 5% (actual 4.39%) of the RfD. The

combined TMRC values for the proposed dimethomorph tolerances in/on hops, tomatoes, potatoes and grapes consumed by a child 7–12 years of age is 0.0018062 mg/kg bwt/day, which is also less than 5% (actual 1.81%) of the RfD. Moreover, the combined TMRC values for all current and proposed dimethomorph tolerances will utilize less than 10% of the RfD for each of these subgroups. American Cyanamid Company believes that the results of the studies submitted to support this package provide no evidence that dimethomorph caused reproductive, developmental or fetotoxic effects. No such effects were noted at dose levels which were not maternally toxic. The NOAELs observed in the developmental and reproductive studies were 6 to 65 times higher than the NOAEL used to establish the proposed RfD (10 mg/kg bwt/day). There is no evidence to indicate that children or infants would be more sensitive than adults to toxic effects caused by exposure to dimethomorph. Therefore, American Cyanamid believes that the results of the toxicology and metabolism studies support both the safety of dimethomorph technical to humans based on the intended use as a fungicide on hops, tomatoes, potatoes and grapes and the granting of the requested tolerances for hops, tomato, potato and grape commodities.

F. International Issues

No Codex maximum residue levels have been established for dimethomorph to date.

[FR Doc. 00–5632 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181074; FRL–6493–4]

Acibenzolar; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Virginia Department of Agriculture and Consumer Services to use the pesticide Acibenzolar (CAS No. 135158-54-2) to treat up to 1,000 acres of tomatoes to control bacterial diseases. The Applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket control number OPP-181074, must be received on or before March 23, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181074 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9356; fax number: (703) 308–5433; e-mail address: beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
State government	9241	State agencies that petition EPA for section 18 pesticide exemption

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR 166. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–181074. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181074 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB),

Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3.*Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–181074. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. Virginia Department of Agriculture and Consumer Services has requested the Administrator to issue a specific exemption for the use of acibenzolar on tomatoes to control bacterial diseases. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that discovery of a strain of bacterial speck resistant to the copper-based pesticides traditionally used for control, has created an emergency situation. Significant economic losses are expected without adequate control and Acibenzolar has been shown to provide good control of this disease.

The Applicant proposes to make no more than eight applications at rates of 0.3 to 0.75 oz. of formulation per acre, on up to 1,000 acres of tomatoes in Virginia. The use season would be from May 1, 2000 until December 31, 2000, and at maximum use rates could result in the use of up to 375 lbs. of formulated pesticide.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by the EPA. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Virginia Department of Agriculture Consumer Services.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–5633 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59369; FRL–6496–7]

Approval of Test Marketing Exemption for a Certain New Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–00–1. The test marketing conditions are described in the TME application and in this notice.

DATES: Approval of this TME is effective on March 1, 2000.

FOR FURTHER INFORMATION CONTACT: For general information contact: Joseph S. Carra, Acting Division Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1815 and fax number: (202) 554–0551; and e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Adella Watson, New Chemicals Notice Management Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3752; and e-mail address: watson.adella@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all

the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. *In person.* The Agency has established an official record for this action under docket control number OPPTS–59369. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorize EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

IV. What Action is the Agency Taking?

EPA has approved the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

V. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

TME 00–1.

Date of Receipt: January 7, 2000.
Notice of Receipt: February 25, 2000 (65 FR 10086).
Applicant: The Procter and Gamble Company.
Chemical: (G) Salt of substituted aliphatic benzene sulfonic acid
Use: (G) Consumer product ingredient
Production Volume: CBI
Number of Customers: 300,000 to 625,000 households
Test Marketing Period: 20 months, commencing on first day of commercial manufacture.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

VI. What was EPA's Risk Assessment for this TME?

EPA identified no significant environmental concerns for the test market substance. EPA's concern for lung toxicity and other human health effects were mitigated based on the physical form of the substance (imported as beads) and the closed processing system. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

VII. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: March 1, 2000.

Flora Chow,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 00–5631 Filed 3–7–00; 8:45 am]
BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act Notice

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the Monte Carlo Hotel, Las Vegas, Nevada, on March 9, 2000, from 2:30 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Monte Carlo Hotel, 3770 Las Vegas Boulevard, South, Las Vegas, Nevada 89109, 702–730–7777.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

- *Approval of Minutes*

—February 17, 2000 (Open and Closed)

- *New Business*
—Regulations
- Loans to Designated Parties [12 CFR Part 614] (Proposed)
- Disclosure to Shareholders—Annual Report [12 CFR Part 620] (Proposed)

Dated: March 3, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–5721 Filed 3–3–00; 5:02 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–292]

Auction of Licenses in the 747–762 and 777–792 MHz Bands Scheduled for May 10, 2000; Report No. AUC–0031–C (Auction No. 31)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice announces the auction and procedures governing the auction of licenses for Fixed, Mobile, and Broadcasting service in the 747–762 and 777–792 MHz bands ("Auction No. 31"), scheduled to commence on May 10, 2000. As discussed in greater detail herein, Auction No. 31 will be composed of 12 licenses in 747–762 and 777–792 MHz bands. One 20 megahertz license (consisting of paired 10 megahertz blocks) and one 10 megahertz license (consisting of paired 5 megahertz blocks) will be offered in each of six regions to be known as the 700 MHz band economic area groupings ("700 MHz band EAGs").

DATES: Auction No. 31 is scheduled for May 10, 2000.

FOR FURTHER INFORMATION CONTACT: Media Contact, Meribeth McCarrick at (202) 418–0654; Auctions Legal Branch, Howard Davenport at (202) 418–0660;. Kathy Garland, Project Manager, Auctions Operations Branch at (717) 338–2888; or Craig Bomberger, Analyst, Auctions Operations Branch at (202) 418–0660; Commercial Wireless Division, Roger Noel at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released February 18, 2000. The complete text of the public notice, including all attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, D.C. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. It is also available on the Commission's website at *http://www..fcc.gov.*

List of Attachments Available at the FCC

Attachment A: Summary of 700 MHz Licenses to be Auctioned, Upfront Payments, Minimum Opening Bids
Attachment B: FCC Auction Seminar Registration Form
Attachment C: Electronic Filing and Review of the FCC Form 175
Attachment D: Guidelines for Completion of FCC Form 175 and Exhibits
Attachment E: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159)
Attachment F: FCC Bidding Preference/Remote Software Order Form
Attachment G: Bid Increments and Exponential Smoothing
Attachment H: Accessing the FCC Network Using Windows 95/98
Attachment I: Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules
Attachment J: Incumbent Television Licensees on Channels 59–68

I. General Information

A. Introduction

1. The *Auction Public Notice* announces the procedures and minimum opening bids for the upcoming auction of licenses for Fixed, Mobile, and Broadcasting services in the 747–762 and 777–792 MHz bands ("Auction No. 31"). On January 10, 2000, the Wireless Telecommunications Bureau ("Bureau") released a public notice, (*See* "Auction of Licenses in the 747–762 and 777–792 MHz Bands Scheduled for May 10, 2000; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues," Public Notice, ("*Auction No. 31 Comment Public Notice*"), 65 FR 2956 (January 19, 2000) seeking comment on the establishment of reserve prices or minimum opening bids for Auction No. 31, in accordance with the Balanced Budget Act of 1997. (*See* section 3002(a), Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997) ("Budget Act"); 47 U.S.C. 309(j)(4)(F). In addition, the Bureau sought comment on a number of procedures to be used in Auction No. 31. (*See Auction No. 31 Comment Public Notice* at 5–6.) The Bureau received three comments and five reply comments in response to the *Auction No. 31 Comment Public Notice.*

i. Background of Proceeding

2. The 746–806 MHz band has historically been used exclusively by television stations (Channels 60 through 69). Incumbent analog television broadcasters are permitted by statute to continue operations in this band until their markets are converted to digital television ("DTV"). (*See* 47 U.S.C. 337(e); *See* also Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service, MM Docket No. 87–268, *Reconsideration of Fifth Report and Order*, 63 FR 15774 (April 1, 1998), 13 FCC Rcd 6860, 6887 (1998). The Budget Act directed the Commission to reallocate this spectrum for public safety and commercial use by December 31, 1997, (*See* section 337(a) of the Communications Act, 47 U.S.C. 337(a) and to commence competitive bidding for the commercial licenses on the reallocated spectrum after January 1, 2001. (*See id.* at section 337(b)(2)(a). In November 1999, Congress enacted a consolidated appropriations statute that revised the latter instruction. (*See Consolidated Appropriations*, Appendix E, section 213. *See* also 145 Cong. Rec. H12493–94 (Nov. 17, 1999). This legislation accelerated the schedule for auction of the commercial spectrum bands, and requires that the proceeds from the auction of these bands be deposited in the U.S. Treasury by September 30, 2000.

ii. Licenses To Be Auctioned

3. The licenses available in this auction consist of one 20 megahertz license (consisting of paired 10 megahertz blocks) and one 10 megahertz license (consisting of paired 5 megahertz blocks) in each of six regions to be known as the 700 MHz band economic area groupings ("700 MHz Band EAGs"). The following table contains the Block/Frequency Band Limits Cross-Reference List for each region in Auction No. 31:

747–762 AND 777–792 MHz ALLOCATIONS

License suffix	Frequencies
C	747–752, 777–782
D	752–762, 782–792

B. Rules and Disclaimers

i. Relevant Authority

4. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the 700 MHz band, contained in Title 47, part 27 of the Code of Federal

Regulations, and those relating to application and auction procedures, contained in Title 47, part 1 of the Code of Federal Regulations.

5. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in this public notice; the *Auction No. 31 Comment Public Notice;* Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *First Report and Order*, WT Docket No. 99–168, FCC 00–5 (released January 7, 2000) ("*700 MHz First Report & Order*"), 65 FR 3139 (January 20, 2000); Reallocation of Television Channels 60–69, the 746–806 MHz Band, ET Docket No. 97–157, *Report and Order*, 12 FCC Rcd 22953 (1998), *recon.*, 13 FCC Rcd 21578 (1998) ("*Reallocation Reconsideration*").

6. The terms contained in the Commission's rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC Auctions World Wide Web site at *http://www.fcc.gov/wtb/auctions.* Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314–3070. When ordering documents from ITS, please provide the appropriate FCC number (for example, FCC 00–5 for the *700 MHz First Report & Order*).

ii. Prohibition of Collusion

7. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. (*See 700 MHz First Report & Order*, at paragraphs 128–129.) This prohibition begins with the filing of short-form applications, and ends on the down payment due date after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

8. The Bureau, however, cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted. In Auction No. 31, for example, the rule would apply to any applicants bidding for the same 700 MHz Band EAG. Therefore, applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements *before* filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. (*See* 47 CFR 1.2105(c). (Note that bidders with nationwide status are prohibited from entering to such agreements.) If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same geographic license areas(s). By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c). In addition, § 1.65 of the Commission's Rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. (See 47 CFR 1.65) Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

iii. Protection of Television Services

9. Licensees operating on the spectrum associated with Channels 60, 61, 62, 65, 66, and 67 must comply with the co-channel and adjacent channel provisions of § 27.60 of our rules. For example, a licensee operating on any portion of the 10 megahertz block (*i.e.*, between 752 MHz and 762 MHz) that coincides with Channel 61 will have to provide co-channel protection to television stations operating on Channel 61 and adjacent channel protection to television stations operating on Channels 60 and 62; and any licensee operating on any portion of the 10 megahertz block that coincides with Channel 62 will have to provide co-channel protection to television stations operating on Channel 62 and adjacent channel protection to television stations operating on Channels 61 and 63. Licensees operating on spectrum between 747 MHz and 752 MHz (Channel 60), in addition to providing co-channel protection to Channel 60 television stations, will have to provide adjacent channel protection to television stations operating on both Channel 61 and 59. (*See* 47 CFR 90.309.)

iv. Negotiations With Incumbent Broadcast Licensees

10. As the Commission noted in the *700 MHz First Report & Order:* "The Congressional plan set forth in sections 336 and 337 of the Communications Act and in the 1997 Budget Act is to transition this spectrum from its current use for broadcast services to commercial use and public safety services." (*See 700 MHz First Report & Order* at 145; *See* also 47 U.S.C. 336–337.) Congress also has directed the Commission to auction the 36 MHz of spectrum allocated for commercial use at least six years before the relocation deadline for incumbent broadcasters in this spectrum, while adopting interference limits and other technical restrictions necessary to protect full-service analog television service during the transition to DTV. (See Public Law 106–113 Stat. 1501, Appendix E, Section 213; Consolidated Appropriations, Appendix E, Sec. 213. See also 145 Cong. Rec. at H12493–94, (Nov. 17, 1999)). In these circumstances, the Commission will consider specific regulatory requests needed to implement voluntary agreements reached between incumbent licensees and new licensees in these bands. In considering whether the public interest would be served by approving specific requests, the Commission would, for

example, consider the benefits to consumers of the provision of new wireless services, such as next generation mobile services or Internet fixed access services. The Commission would also consider whether such agreements would help clear spectrum for public safety use in these bands and could result in the provision of new wireless service in rural and other relatively underserved communities. On the other hand, the Commission would also consider loss of service to the broadcast community of the licensee. For example, the Commission would consider the availability of the licensee's former analog programming within the service area, through simulcast of that programming on the licensee's DTV channel or distribution of the programming on cable or DBS, or the availability of similar broadcast services within the service area (e.g., whether the lost service is the only network service, the only source for local service, or the only source for otherwise unique broadcast service).

v. Canadian and Mexican Border Regions

11. There are currently separate agreements with Canada and Mexico covering TV broadcast use of the UHF 470–806 MHz band. Such agreements do not reflect the additional use or services adopted in the *700 MHz First Report & Order* for 746–764 and 776–794 MHz bands. (See 700 MHz First Report & Order at 146.) While the Commission staff has been involved in discussions with both countries regarding coordination of interference criteria for the use of these bands in the border areas for the additional services, agreements have yet to be reached. Therefore, until such agreements have been finalized, the Commission found it necessary to adopt certain interim requirements for licenses in these bands along the Canada and Mexico borders. (*See id.* at fn no.17.) Accordingly, licenses issued for these bands within 120 km of the borders were made subject to whatever future agreements the United States developed with those two countries. In that the existing agreements for the protection of TV stations in those countries are still in effect and must be recognized until they are replaced or modified to reflect the new uses, the Commission decided that licenses in the border areas will be granted on the condition that harmful interference may not be caused to, but must accept interference from, UHF TV transmitters in Canada and Mexico. Furthermore, the Commission pointed out that modifications may be necessary to comply with whatever provisions are ultimately specified in future agreements with Canada and Mexico regarding the use of these bands. (*See id.* at paragraph 146.)

vi. Due Diligence

12. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

13. Potential bidders are reminded that there are a number of incumbent broadcast television licensees already licensed and operating in the 746–764 and 776–794 MHz bands (television Channels 60–62 and 65–67) that will be subject to the upcoming auction. As discussed herein in greater detail, the Commission made clear that geographic area licensees operating on the spectrum associated with Channels 60, 61, 62, 65, 66, and 67 must comply with the co-channel and adjacent channel provision of section 90.545 of the Commission's rules. (*See* 47 CFR 90.545.) In addition, geographic area licensees operating fixed stations in the 746–764 MHz band must comply with the relevant provisions for "base stations" in §§ 90.309 and 90.545 of the Commissions Rules; and licensees operating fixed stations in the 776–794 MHz band must comply with the relevant provisions for "control stations" in those sections of the rules. (*See* 47 CFR 90.309 and 90.545.).

14. These limitations may restrict the ability of such geographic licensees to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license areas. Listed in Attachment K are the facilities of incumbent television permittees and licensees on television Channels 60–62 and 65–67 as well as on television Channels 59 and 68. However, prospective bidders should not rely solely on this list, but should carefully review the Commission's databases and records before formulating bidding strategies. Records relating to these stations are available for public inspection during regular business hours in the Reference Information Center at the Federal Communications Commission, 445 Twelfth Street, SW, CY–A257, Washington, DC 20554. The Commission makes no representation or guarantees regarding the accuracy or completeness of the information in Attachment K. In addition, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the databases. Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

15. Potential bidders should also be aware of the following:

QUALCOMM Incorporated, Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, Service Rules for the 746–764 and 776–794 MHz Bands and Revisions to part 27 of the Commission's rules, Petition for Declaratory Ruling (filed January 28, 2000).

"Wireless Telecommunications Bureau Seeks Comment On QUALCOMM Incorporated's Petition for Declaratory Ruling Seeking 700 MHz Band License Pursuant to Ruling of U.S. Circuit Court of Appeals," *Public Notice*, DA 00–219 (released February 4, 2000); Extension of Filing Deadline for Comments to QUALCOMM Incorporated's Petition for Declaratory Ruling, *Public Notice*, DA 00–273, 65 FR 9266 (February 24, 2000).

16. Potential bidders should also be aware that certain applications (including those for modification), petitions for rulemaking, waiver requests, requests for special temporary authority ("STA"), petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission that relate to the facilities in Attachment K. We note that resolution of these pending matters could have an impact on the availability of spectrum for licensees in the 746–764 and 776–794 MHz bands. While the Commission will continue to act on pending matters, some of these matters may not be resolved by the time of auction. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 31 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 31 are strongly encouraged to continue such research during the auction.

vi. Bidder Alerts

17. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally,

technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

18. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 31 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

19. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific 700 MHz proposals may also call the FCC National Call Center at (888) CALL–FCC ((888) 225–5322).

vii. National Environmental Policy Act (NEPA) Requirements

20. The licensee must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a 700 MHz facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. *See* 47 CFR 1.1305 through 1.1319. The Commission's NEPA rules require that, among other things, the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

21. The Auction No. 31 Comment Public Notice announced that the auction would begin on May 10, 2000. Two commenters ask that the Commission complete any proceeding associated with the terms and conditions for the next C and F block PCS auction before the scheduled commencement of Auction No. 31. Although we have begun consideration of these issues by seeking comment on two petitions regarding C and F block rules, we cannot make the auction start date dependent upon the conclusion of other proceedings. The Commission is under congressional mandate to deposit the receipts from Auction No. 31 into the United States Treasury by September 30, 2000. (*See* Public Law 106–113, 113 Stat. 1501, Appendix E, section 213. *See also Consolidated Appropriations,* Appendix E, section 213. *See* also 145 Cong. Rec. at H12493–94, Nov. 17, 1999.) Therefore, all potential bidders, must make business decisions based on the environment in which they currently operate. The business decisions that these two companies must make are no different than the judgments that any other similarly situated potential bidder must make. Accordingly, the auction will begin on Wednesday, May 10, 2000. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

22. Auction No. 31—700 MHz Band

iii. Bidding Methodology

23. The bidding methodology for Auction No. 31 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

iv. Pre-Auction Dates and Deadlines

24. The following are important events and deadlines related to Auction No. 31:

Auction Seminar: March 30, 2000
Short-Form Application (FCC FORM 175): April 10, 2000; 5:30 p.m. ET
Upfront Payments (via wire transfer): April 24, 2000; 6 p.m. ET
Orders for Remote Bidding Software: April 25, 2000; 5:30 p.m. ET
Mock Auction: May 8, 2000
Auction Begins: May 10, 2000

v. Requirements for Participation

25. Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 5:30 pm ET, April 10, 2000.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 pm ET, April 24, 2000.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

26. The following is general contact information relating to Auction No. 31:

General Auction Information—General Auction Questions; Seminar Registration; Orders for Remote Bidding Software: FCC Auctions Hotline, (888) 225–5322, Press Option #2 or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. ET.

Auction Legal Information—Auction Rules, Policies, Regulations: Auctions and Industry Analysis Division, Legal Branch (202) 418–0660.

Licensing Information—Rules, Policies, Regulations; Licensing Issues; Incumbency/Protection Issues: Commercial Wireless Division, (202) 418–0620.

Technical Support—Electronic Filing Assistance; Software Downloading: FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY), Hours of service: 8 a.m.–6:00 p.m. ET.

Payment Information—Wire Transfers; Refunds: FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax).

Telephonic Bidding—Will be furnished only to qualified bidders.

FCC Copy Contractor—Additional Copies of Commission Documents: International Transcription Services, Inc., 445 12th Street, SW Room CY–B400, Washington, DC 20554, (202) 314–3070.

Press Information—Meribeth McCarrick (202) 418–0654.

FCC Forms—(800) 418–3676 (outside of Washington, DC), (202) 418–3676 (in the Washington Area), http://www.fcc.gov/formpage.

FCC Internet Sites—http://www.fcc.gov/wtb/auctions, http://www.fcc.gov ftp://ftp.fcc.gov,

II. Short-Form (FCC Form 175) Application Requirements

27. Guidelines for completion of the short-form (FCC Form 175) are set forth on Attachment D to this public notice. The short-form application seeks the applicant's name and address, legal classification, status, bidding credit eligibility, identification of the authorization(s) sought, the authorized bidders, and contact persons.

A. Ownership Disclosure Requirements (Form 175 Exhibit A)

28. All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing Form 175, applicants will be required to file an Exhibit A providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (Form 175 Exhibit B)

29. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. (*See* 47 CFR 1.2105(a)(2)(viii); 1.2105(c)(1); Bidders with nationwide bidding status are prohibited from entering such agreements) Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. *See* 47 CFR 1.2105(a)(2)(ix). As discussed herein, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its application and may not continue discussions with applicants for the same geographic license area(s) after the deadline. In cases where applicants have entered into consortia or joint bidding arrangements, applicants must submit an Exhibit B to the FCC Form 175.

30. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same geographic license area provided that (i) the attributable interest holder(s) certify that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. *See* 47 CFR 1.2105(c)(4)(I) & (ii). While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could broach on impermissible subject matters because they may convey pricing information and bidding strategies.

C. Small Business Bidding Credits (Form 175 Exhibit C)

31. In the *700 MHz First Report & Order*, the Commission adopted small business provisions to promote and facilitate the participation of small businesses in competitive bidding for licenses in the 700 MHz band. (*See* 47 CFR 27.502.)

i. Eligibility

32. Bidding credits are available to small businesses and very small businesses as defined in 47 CFR 27.502(a). For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its controlling interests, and affiliates of the applicant and its controlling interests. The Commission does not impose specific equity requirements on controlling interests. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the applicant and its affiliates will be counted in determining small business eligibility. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto control is determined on a case-by-case basis.* The following are some common indicia of control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

33. A consortium of small businesses, or very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which *individually* satisfies the definition of small or very small business in § 27.502. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests' affiliates. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

ii. Application Showing

34. Applicants should note that they will be required to file supporting documentation as Exhibit C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify as a small business or very small business (or consortia of small or very small businesses) for this auction. (*See* 47 CFR 27.502 and 1.2105.) Specifically, for Auction No. 31, applicants applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (i) the applicant; (ii) the applicant's affiliates; (iii) the applicant's controlling interests; and (iv) the affiliates of the applicant's controlling interests. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total

gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, and its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

iii. Bidding Credits

35. Applicants that qualify under the definitions of small business and very small business (or consortia of small or very small businesses) as are set forth in 47 CFR 27.502, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. (*See* 47 CFR 27.502) The size of a 700 MHz band bidding credit depends on the average gross revenues for the preceding three years of the bidder and its controlling interests and affiliates:

- A bidder with average gross revenues of not more than $40 million for the preceding three years receives a 15 percent discount on its winning bids for 700 MHz band licenses ("*small business*"); (*See* 47 CFR 27.502 and 1.2110(e)(iii)).
- A bidder with average gross revenues of not more than $15 million for the preceding three years receives a 25 percent discount on its winning bids for 700 MHz band licenses ("very small business"). (*See* 47 CFR 27.502 and 1.2110(e)(ii)).

36. Bidding credits are not cumulative: qualifying applicants receive either the 15 percent or the 25 percent bidding credit, but not both.

37. Bidders in Auction No. 31 should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. Finally, bidders should also note that there are no installment payment plans in Auction No. 31.

D. Other Information (Form 175 Exhibits D and E)

38. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit D) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so in Exhibit E, Miscellaneous Information to the FCC Form 175.

E. Minor Modifications to Short-Form Applications (FCC Form 175)

39. After the short-form filing deadline (April 10, 2000), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official or change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4–A760 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Howard Davenport of the Auctions and Industry Analysis Division at (202) 418–0660.

F. Maintaining Current Information in Short-Form Applications (FCC Form 175)

40. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

41. On March 30, 2000, the FCC will sponsor a free seminar for Auction No. 31 at the Federal Communications Commission, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the 700 MHz band service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff. To register, complete the appropriate registration form and submit it by Tuesday, March 28, 2000. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due April 10, 2000

42. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission by 5:30 p.m. ET on April 10, 2000. Late applications will not be accepted.

43. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.

i. Electronic Filing

44. Applicants must file their FCC Form 175 applications electronically. (See 47 CFR 1.2105(a).) Applications may generally be filed at any time from March 30, 2000 until 5:30 p.m. ET on April 10, 2000. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on April 10, 2000.

45. Applicants must press the "Submit Form 175" button on the "Submit" page of the electronic form to successfully submit their FCC Forms 175. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service are 8 a.m. to 6 p.m. ET, Monday through Friday.

ii. Completion of the FCC Form 175

46. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

47. The FCC Form 175 electronic review system may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs)

on any Exhibits to their FCC Form 175 applications. There is no fee for accessing this system. *See* Attachment C for details on accessing the review system.

C. Application Processing and Minor Corrections

48. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (ii) those applications rejected; and (iii) those applications that have minor defects that may be corrected, and the deadline for filing such corrected applications.

49. As described more fully in the Commission's rules, after the April 10, 2000, short form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility). (*See* 47 CFR 1.2105.)

D. Upfront Payments—Due April 24, 2000

50. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on April 24, 2000.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 31 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the April 24, 2000 deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Auction Payments by Wire Transfer

51. Wire transfer payments must be received by 6:00 p.m. ET on April 24, 2000. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/AC 910–0171
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter "A31U")
FCC CODE 1 (same as FCC Form 159, block 23A: "31")
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. # 358430

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

52. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 209–6045 or (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 31." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

53. A completed FCC Remittance Advice Form (FCC Form 159) must accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E. An electronic version of the FCC form 159 is available after submitting the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

54. In the Part 1 *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned. (*See* Amendment of part 1 of the Commission's rules—Competitive Bidding Proceeding WT Docket No. 97–82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 62 FR 13540 (March 21, 1997), 12 FCC Rcd. 5686, 5697–5698, paragraph 16 (1997)). In the *Auction No. 31 Comment Public Notice*, the Bureau proposed upfront payments for Auction No. 31. (*See Auction No. 31 Comment Public Notice* at 2–3.) Specifically, the Bureau proposed calculating the upfront payment based on information available in the form of a Congressional estimate of the value of the spectrum. There were no comments filed on the proposed upfront payments set forth in the *Auction No. 31 Comment Public Notice*.

55. Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 31, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, *e.g.*, a $28,000,000 upfront payment provides the bidder with 28,000,000 bidding units. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses that an applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

56. In order to be able to place a bid on a license, in addition to having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

57. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iv. Applicant's Wire Transfer Information for Purposes of Refunds

58. The Commission will use wire transfers for all Auction No. 31 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants may either submit the information electronically after filing their short-form application or fax the Wire Transfer Instructions by April 24, 2000, to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Michelle Bennett or Gail Glasser, at (202) 418–2843. Should the payer fail to submit the requested information, the refund will be returned to the original payer. For additional information, please call (202) 418–1995.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Section V.D.

E. Auction Registration

59. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

60. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

61. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Friday, May 5, 2000, should contact the Auctions Hotline at 717–338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

62. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing *in* person at the FCC Auction Headquarters located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

F. Remote Electronic Bidding Software

63. Qualified bidders are allowed to bid electronically or by telephone. If choosing to bid electronically, each bidder must purchase their own copy of the remote electronic bidding software. Electronic bids will only be accepted from those applicants purchasing the software. However, the software may be copied by the applicant for use by its authorized bidders at different locations. The price of the FCC's remote bidding software is $175.00 and must be ordered by Tuesday, April 25, 2000. For security purposes, the software is only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 31. If bidding telephonically, the telephonic bidding phone number will be supplied in the second Federal Express mailing of confidential login codes. Qualified bidders that do not purchase the software may only bid telephonically. To indicate your bidding preference, an FCC Bidding Preference/Remote Software Order Form can be accessed and electronically completed when submitting the FCC Form 175. This form is Attachment F.

G. Mock Auction

64. All qualified bidders will be eligible to participate in a mock auction on May 8, 2000. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

65. The first round of bidding for Auction No. 31 will begin on May 10, 2000. The initial bidding schedule will be announced in the public notice listing the qualified bidders which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

66. In the *Auction No. 31 Comment Public Notice* at 2, we proposed to award 12 licenses in the 700 MHz bands in a single, simultaneous multiple round auction. We received no comment on this issue. We conclude that it is operationally feasible and appropriate to auction the 700 MHz band licenses through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of any synergies that exist among licenses and is most administratively efficient.

ii. Maximum Eligibility and Activity Rules

67. In the *Auction No. 31 Comment Public Notice at 2–3*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

68. For Auction No. 31 we will adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under "Auction Stages" as set forth in Section IV.A.iv), prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not define the total dollars a bidder may bid on any given license.

69. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their

maximum eligibility during each round of the auction.

70. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (*See* "Minimum Accepted Bids" in Section IV.B.iii). The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions as set forth under "Auction Stages" in Section IV.A.iv and "Stage Transitions" in Section IV.A.v, we adopt them for Auction No. 31.

iii. Activity Rule Waivers and Reducing Eligibility

71. In the *Auction No. 31 Comment Public Notice,* we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction. We received no comment on this issue.

72. Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. We are satisfied that our practice of providing five waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

73. The FCC automated auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

74. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages." Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

75. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

iv. Auction Stages

76. In the *Auction No. 31 Comment Public Notice* at 3–4, we proposed to conduct the auction in three stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 50 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 80 percent of its current bidding eligibility. Finally, we proposed that a bidder in Stage Three, in order to maintain eligibility, would be required to be active on 100 percent of its current bidding eligibility. We received no comment on these proposals.

77. We conclude that the auction will be composed of three stages, which are each defined by an increasing activity rule. We will adopt our proposals for the activity rules as follows. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 50 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by two.

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by five-fourths (5/4).

Stage Three: During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 100 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced eligibility for the next round will be set at current round activity.

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

78. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 31.

v. Stage Transitions

79. In the *Auction No. 31 Comment Public Notice* at 3–4, we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 10 percent for three consecutive rounds of bidding in each stage. However, we further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not

limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We received no comments on this subject.

80. We adopt our proposal. Thus, the auction will start in Stage One. Under the FCC's general guidelines the auction will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 31.

vi. Auction Stopping Rules

81. For Auction No. 31, the Bureau proposed to employ a simultaneous stopping rule. The Bureau also sought comment on a modified version of the simultaneous stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further sought comment on whether this modified stopping rule should be used unilaterally or only in stage three of the auction.

82. The Bureau further proposed retaining the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. (*See Auction No. 31 Comment Public Notice* at 11). We received no comment on these issues.

83. We adopt our proposals concerning the stopping rule. Adoption of these rules, we believe, is most appropriate for Auction No. 31 because our experience in prior auctions demonstrates that the simultaneous stopping rule balances the interests of administrative efficiency and maximum bidder participation. The substitutability between and among licenses in different geographic areas and the importance of preserving the ability of bidders to pursue backup strategies support the use of a simultaneous stopping rule.

84. Under the simultaneous stopping rule, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses. In addition, the Bureau retains the discretion to close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Under this modified stopping rule, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this stopping rule procedure. We will notify bidders in advance of implementing any change to our simultaneous stopping rule.

85. The Bureau also retains the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

86. Further, in its discretion, the Bureau reserves the right to invoke the "special stopping rule," whereby it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day.

vii. Auction Delay, Suspension, or Cancellation

87. In the *Auction No. 31 Comment Public Notice* at 4, we proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.

88. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we will adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

89. The initial bidding schedule will be announced in the public notice listing the qualified bidders which is released approximately 10 days before the start of the auction. This public notice will be included with the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will be included in the Qualified Bidder Public Notice.

90. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

91. The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions. (*See* Amendment of Part of the Commission's Rules-Competitive Bidding Procedures, WT Docket No. 97–82, *Third Report and Order and Second Further Notice of—Proposed Rule Making*, 63 FR 770 (January 7, 1998), 13 FCC Rcd. at 141, 455–456) (1998).

92. In the *Auction No. 31 Comment Public Notice* at 5–6, the Bureau proposed to establish minimum opening bids for Auction No. 31 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 31, the Commission proposed calculating the minimum opening bid based on information available in the form of a Congressional estimate of the value of the spectrum.

93. In its comments, U S West Wireless, LLC (U S West) argues that the proposed minimum opening bid amounts have failed to account for the "overly stringent" limitations adopted in the *700 MHz First Report & Order* on out-of-band emissions ("OOBE") and permissible transmit power. (*See* U S West Comments at 3–4). We are not persuaded that the proposed minimum opening bids are too high. We note that in establishing OOBE, the Commission took into account the impact of limitations on interference from new commercial licensees on public safety service licensees. (*See 700 MHz First Report & Order* at 103–107). The Commission stated: "[W]e recognize the need to adopt technical rules that provide adequate protection to public safety entities operating in this band. We are mindful, however that Congress also intended that we establish rules that will enable viable commercial operations here." (*See id.*). Thus, the Commission set OOBE limits that, while achieving the primary goal of protecting public safety, also struck a reasonable balance between protecting public safety and maintaining the commercial viability of this band.

94. Further, we note that no other parties commented on either the OOBE and transmit power limits or on the proposed minimum opening bids. Significantly, U S West did not submit an alternative proposal or substantiate its position with an alternate valuation or quantitative analysis. Moreover, U S West did not even comment on this issue in the service rule proceeding. Taking all of these factors into account, we will adopt the minimum opening bids, as proposed, for the licenses in Auction No. 31, which are reducible at the discretion of the Bureau. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. (*See* section 3002(F) of the Budget Act). Based on our experience in using minimum opening bids in other auctions, we believe that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient assignment of licenses. (*See* 47 U.S.C. 309(j)(3)(C)).

iii. Bid Increments and Minimum Accepted Bids

95. In the *Auction No. 31 Comment Public Notice* at 6, we proposed to use a smoothing methodology to calculate minimum bid increments. We further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate. (*See id.*). We received no comment on this issue.

96. We will adopt our proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is in Attachment G.

97. We adopt our proposal of initial values for the maximum of 0.2, or 20 percent of the license value, and a minimum of 0.1, or 10 percent of the license value. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. As an alternative approach, the Bureau may, in its discretion, adjust the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment (*e.g.*, by raising the increment floor by one percent every round over the course of ten rounds). The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 31 if circumstances warrant.

iv. High Bids

98. Each bid will be date-and time-stamped when it is entered into the FCC computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which the Commission receives bids. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date-and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

v. Bidding

99. During a bidding round, a bidder may submit bids for as many licenses as it wishes, subject to its eligibility, as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date-and time-stamp of that bid reflects the latest time the bid was submitted.

100. Please note that all bidding will take place remotely either through the

automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 31.

101. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) The licenses applied for on FCC Form 175; and (ii) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

102. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

103. The bid entry screen of the automated auction system software for Auction No. 31 allows bidders to place multiple increment bids, which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license. The bidding software will display the bid increment for each license.

104. To place a bid on a license, the bidder must increase the standing high bid by one to nine times the bid increment. This is done by entering a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field in the software. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

Amount Bid = High Bid + (Bid Mult * Bid Increment)

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter "1" in the bid increment multiplier column and press submit.

105. For any license on which the FCC is designated as the high bidder (*i.e.*, a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter "1" in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

106. In the *Auction No. 31 Comment Public Notice*, we proposed bid removal and bid withdrawal rules. (*See Auction No. 31 Comment Public Notice* at 8.) With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, we proposed, would be at the bidder's discretion. We received no comment on this issue.

107. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various geographic area licenses in combination, we conclude that, for Auction No. 31, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

108. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

109. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.* a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which we received no comments, will enhance bidder flexibility during the auction. Therefore, we will adopt these procedures for Auction No. 31.

110. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in "High Bids," Section IV.B.iv.

111. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. (*See* 47 CFR 1.2104(g) and 1.2109.) Specifically, a bidder ("Bidder X") that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount withdrawn and the amount of the subsequent winning bid. If a high bid is withdrawn on a license that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid. This payment amount is deducted from any upfront payments or down payments that Bidder X has deposited with the Commission. If, in a

subsequent auction, that license receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and Bidder X may request a refund of the interim three (3) percent payment. If, in a subsequent auction, the selling price for that license is less than Bidder X's withdrawn bid amount, then Bidder X will be required to make a final bid withdrawal payment, less the three percent interim payment, equal to either the difference between Bidder X's net withdrawn bid and the subsequent net winning bid, or the difference between Bidder X's gross withdrawn bid and the subsequent gross winning bid, whichever is less.

vii. Special 30 MHz Nationwide Bid Withdrawal Procedure

(a) Background

112. For the licenses being offered in Auction No. 31, we noted that there may be entities whose business plans are such that they may not wish to acquire any licenses if they are unable to aggregate them all. (*See Auction No 31 Comment Public Notice* at 9.) Our current rules are designed to facilitate the aggregation of licenses, and we believe they are adequate to facilitate the aggregation of all the 10 MHz or all 20 MHz licenses or any subset thereof. The bid withdrawal provisions of our Part 1 rules could, however, potentially discourage bidders from attempting a 30 MHz nationwide aggregation in an auction where there are divergent business plans. This is because, were such a large aggregation attempt ultimately to fail, a bidder might be left with a potentially large subset of licenses that it does not wish to win given its all-or-nothing strategy. The bidder would then be forced to withdraw all of the high bids it holds and pay a bid withdrawal payment. We therefore proposed and have determined to adopt a nationwide bid withdrawal procedure for the 747–762 MHz and 777–792 MHz bands to limit the exposure of bidders seeking a 30 MHz nationwide aggregation.

(b) Discussion

113. In its comments, PSINet Inc. (PSINet) asks that we allow applicants that choose to bid for a 30 MHz nationwide aggregation to maintain the ability to also bid on regional 30 MHz aggregations and that the "Commission adopt a similar scheme for entities that desire to participate in regional 30 MHz aggregations to that proposed by the Commission for the nationwide 30 MHz aggregation." Cisco Systems, Inc. (Cisco) submitted reply comments in which it strongly urged the Commission to limit withdrawal penalties for regional 30 MHz bidders by adopting the bidding rule proposed by PSINet. On reply, PSINet emphasizes that the Commission should apply limited withdrawal penalties to applicants seeking to aggregate 30 MHz by obtaining both the 10 MHz and 20 MHz licenses in a region and contends that it is "extremely unlikely that an entity will win a nationwide 30 MHz aggregation." Bell Atlantic Mobile, Inc. (BAM) takes the opposite position in its reply comments. According to BAM, we should not change long-standing auction procedures for either nationwide or regional bidders. AT&T Wireless Services, Inc.'s (AT&T) reply comments strongly suggest that the Commission should reject PSINet's request to impose reduced bid withdrawal penalties on bidders for regional, rather than nationwide, 30 MHz licenses.

114. In the *700 MHz First Report & Order*, the Commission directed the Bureau to create a modified withdrawal procedure for those bidders seeking a 30 megahertz nationwide aggregation, *i.e.*, those who have the greatest exposure under the standard bid withdrawal payment rule. (*See 700 MHz First Report & Order* at 126–127.) Neither PSINet nor Cisco presents compelling reasons why the Bureau can or should apply the special rule to those bidders that face less exposure. In fact, bidders in the past auctions have successfully aggregated licenses under the existing withdrawal rules. However, the Bureau notes that the existence of all-or-nothing nationwide business plans presents a unique situation for bidders. Likewise, BAM has not persuaded the Bureau to exercise its limited discretion not to make this procedure available to 30 MHz nationwide bidders. Accordingly, the Bureau will adopt the bid withdrawal provisions as stated in this section.

115. Bidders not choosing to avail themselves of the nationwide bid withdrawal provision may still aggregate licenses subject to our standard bid withdrawal provisions. (*See* 47 CFR 1.2104(g).) The nationwide bid withdrawal procedure is made available to limit the exposure associated with bid withdrawal payments for those bidders whose business plans require an all-or-nothing aggregation of all licenses in the auction, while still discouraging insincere bidding. Under the nationwide bid withdrawal procedure, an applicant will be required to declare on its short-form application whether it is seeking a 30 MHz nationwide aggregation and wishes to be subject to the nationwide bid withdrawal provisions. Instructions for doing so will be part of the electronic filing system for the short-form application.

116. An applicant that chooses to be a nationwide bidder will be required to be active in each round of bidding on all licenses (a 100 percent activity requirement). A nationwide bidder must win either the entire 30 MHz nationwide aggregation (all 12 licenses) or no licenses at all. (Note that a nationwide bidder does not necessarily have to be the standing high bidder on every license at the end of each round in order to fulfill the 100 percent activity requirement. Activity on a license in a given round is defined as a bidder either holding the high bid from the previous round or placing a valid bid in the current round.) Nationwide bidders that decide to no longer pursue the nationwide aggregation and hold any high bids may withdraw those high bids subject to the modified withdrawal payment described herein. Once a nationwide bidder withdraws a high bid from any market, it must withdraw any remaining high bids it holds from all other markets. (The automated auction system will allow a nationwide bidder only to withdraw all of its standing high bids and not any subset thereof.) The nationwide bidder will then have its eligibility reduced to zero, thus making the bidder ineligible to continue bidding for any licenses.

117. If a 30 MHz nationwide bidder withdraws, eligibility, activity rule waivers, and withdrawal round allowances will be restored to beginning auction levels for all other bidders except for any nationwide bidders that have withdrawn from the auction by either withdrawing their high bids or failing to meet the activity requirement (and thus having their high bids withdrawn for them). Without this restoration, few bidders would likely be eligible to bid on licenses withdrawn late in the auction. Upon the withdrawal of a nationwide bidder, the auction will pause for 24 hours to allow for the restoration of eligibility, activity rules waivers, and withdrawal allowances, and for the notification of all auction participants that such a withdrawal has occurred. The Bureau will contact the contact person listed on the FCC Form 175 for each qualified bidder that is eligible for the restoration of eligibility. Note that non-nationwide bidders that have already dropped out of the auction will also have their eligibility, activity rules waivers, and withdrawal allowances restored, and any nationwide bidders still in the

auction will have their activity rule waivers restored.

118. The automated auction system will not allow bidders that identify themselves as nationwide bidders to submit a group of bids that does not result in the bidder being active on all licenses in the auction. Nationwide bidders, like all other bidders in the auction, will be provided 5 activity rule waivers to preserve their maximum eligibility level in the instance that they do not meet the 100% activity requirement. In each round of bidding that a nationwide bidder fails to meet the activity rule requirement, an automatic waiver will be applied to preserve the bidder's maximum eligibility. If a nationwide bidder fails to meet the activity rule requirement and has no activity rule waivers remaining, the bidder's maximum eligibility will be reduced to zero and any high bids will automatically be withdrawn. In such a case, the system will treat the bidder as if the bidder had placed a withdrawal itself—making the bidder subject to the special withdrawal payments—and the auction will pause to allow for the restoration of eligibility, activity rules waivers, and withdrawal allowances, as described herein.

119. The bid withdrawal payment for a 30 MHz nationwide bidder that withdraws from the auction will be calculated as the difference between the sum of the standing high bids that the nationwide bidder withdraws and the sum of the subsequent winning bids on those withdrawn licenses. In addition, nationwide bid withdrawal payments will be limited to 3 percent of the aggregate withdrawn bids. The withdrawn licenses will be offered in the next round at the second highest bid price, which may be less than or equal to the amount of the withdrawn bid, without any bid increment. The FCC will serve as the "place holder" on the license until a new acceptable bid is submitted.

120. In the *700 MHz First Report & Order*, the Commission stated that nationwide bidders cannot win anything less than a nationwide 30 MHz aggregation. (*See 700 MHz First Report & Order* at 127.). Thus, in the event that there is no other bidding activity in a given round so that the auction would otherwise close under the simultaneous stopping rule, but a nationwide bidder holds the high bid on licenses that comprise less than a 30 MHz nationwide aggregation, the auction will not close. Rather, the auction will proceed another round and the nationwide bidder (and all other bidders failing to meet the activity requirement) will use an activity rule waiver, if any remain. Once all the nationwide bidder's activity rule waivers are used, its standing high bids will be withdrawn, and eligibility will be restored to other bidders, as described herein.

121. In its comments, BAM asks that if the Bureau decides to adopt a special withdrawal penalty rule for nationwide bidders, any such bidder should not be allowed to have any affiliation or bidding arrangement with any other bidder that is pursuing a regional or individual market bidding strategy. We agree with BAM on this point. In the Public Notice, we stated that any applicant who chooses nationwide bidder status will not be allowed to bid on anything other than all licenses comprising the 30 MHz nationwide aggregation. (*See Auction No. 31 Comment Public Notice* at 10.) We will not allow a bidder to do indirectly that which we have directly prohibited. Thus, any bidder who seeks nationwide bidding status shall not have any controlling interest in, or affiliate relationship with, any other applicant or any agreement of any kind relating to the licenses being auctioned.

122. AT&T raises a similar point in seeking clarification that upon withdrawal of a nationwide bidder from the auction, the eligibility of all other bidders, except "bidding partners" of the withdrawing nationwide bidder, will be restored to beginning auction levels. Since nationwide bidders are not permitted to enter into agreements regarding the licenses, AT&T's point is moot.

123. In reply comments, Omnipoint Corporation (Omnipoint) states that the bid withdrawal process for a nationwide bidder is not yet sufficiently clear. In support of its position, Omnipoint states that it is unclear whether the FCC requires nationwide bidders to exercise bid withdrawal. Contrary to Omnipoint's contention, the Commission clearly stated: "An applicant that chooses to be such a nationwide bidder would not be allowed to bid on anything other than all licenses comprising the 30 megahertz nationwide aggregation, and must win either this nationwide aggregation or no licenses at all. Thus, once such a nationwide bidder withdraws from a market, it must withdraw from all markets and will be ineligible to continue bidding for any licenses." (*See 700 MHz First Report & Order* at 127.) If a nationwide bidder has standing high bids on some licenses but decides not to continue bidding on other licenses, then the bidder withdraws its standing high bids. This may be accomplished one of two ways: (i) A nationwide bidder may withdraw standing high bids using the bidding software. The bidding software will only allow a nationwide bidder to remove all or none of its standing high bids. Once a nationwide bidder exercises this option, it is out of the auction. (ii) A nationwide bidder may decide not to bid on licenses on which it is not already the standing high bidder. Once such a bidder's activity rule waivers expire, the FCC will withdraw the standing high bids for the bidder—which has the same effect as if the bidder had withdrawn its own bids.

124. The Bureau provides the following additional information in response to Omnipoint's Reply Comments. When a 30 megahertz nationwide bidder withdraws a standing high bid, initial maximum eligibility, activity rule waivers, and withdrawal allowances for all other bidders are restored to beginning auction levels, except for those nationwide bidders that have withdrawn from the auction. Once a nationwide bidder is out of the auction, it cannot have its eligibility restored. Eligibility restoration does not affect the activity requirements of the different stages. For example, if a bidder has eligibility restored due to the withdrawal from the auction of a nationwide bidder, the bidder with restored eligibility would be subject to the activity rule of whatever stage the auction is in when the eligibility is restored. Finally, we reiterate that the activity rules for Stages I, II, and III do not apply to nationwide bidders. A nationwide bidder will not be allowed to be active on anything less than all licenses comprising the 30 megahertz nationwide aggregation. The bidder must be active on every license in every round, or employ an activity rule waiver.

125. Also, PSINet seeks clarification on two items. First, PSINet asks that the Bureau confirm that the withdrawal payment would be calculated as the difference between the sum of the withdrawn bids and the sum of the "subsequent winning bids" on the withdrawn licenses. PSI Net is correct. The withdrawal payment would be calculated based on the amount of the winning bids and not based upon the subsequent high bids in the next round of bidding. (*See Auction No. 31 Comment Public Notice* at 10.) PSI Net also seeks clarification that the withdrawal payment for a nationwide aggregation will be calculated using the sum of all twelve withdrawn bids and the sum of subsequent bids. In that regard, PSINet is incorrect. The withdrawal payment will be calculated using the sum of only the withdrawn standing high bids and the sum of the

subsequent winning bids for those licenses. (*See Auction No. 31 Comment Public Notice* at 10.)

viii. Round Results

126. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Commission will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 31 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

ix. Auction Announcements

127. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as on the Internet.

x. Maintaining the Accuracy of FCC Form 175 Information

128. As noted in Section II.E., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revisions to exhibits. Filers must make these changes on-line, and submit a letter to: Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

A separate copy of the letter should be mailed to Howard Davenport, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Howard Davenport, Auctions and Industry Analysis Division at (202) 418–0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

129. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing bid withdrawal payments due.

130. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

131. Within ten business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for each 700 MHz band license won through the auction. Winning bidders that are small businesses or very small businesses must include an exhibit demonstrating their eligibility for bidding credits. See 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

C. Default and Disqualification

132. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

133. All applicants that submitted upfront payments but were not winning bidders for a 700 MHz license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

134. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number ("TIN"), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Shirley Hanberry 445 12th Street, SW, Room 1–A824, Washington, DC 20554.

135. Bidders are encouraged to file their refund information electronically using the Refund Information portion of the FCC Form 175, but bidders can also fax their request to the Auctions Accounting Group at (202) 418–2843. Once the request has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Michelle Bennett or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Louis Sigalos,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–5544 Filed 3–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Thursday, March 9, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's resolution and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, DC.

Requests for further information concerning the meeting may be directed

to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: March 6, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–5750 Filed 3–6–00; 1:23 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 207–011649–002.

Title: Interocean Lines, Inc. and Trinity Shipping Line, S.A. Joint Operating Agreement.

Parties: Interocean Lines, Inc., Trinity Shipping Line, S.A.

Synopsis: The proposed modification: (1) Deletes reference to specific vessels to be employed, (2) Specifies that two vessels of approximately 520 TEU capacity and a service speed of approximately 16 knots will be employed, (3) Provides that if a third vessel is employed, the parties shall share operating costs thereof, (4) That automatic renewal shall be for periods of one year, and (5) Colombia is added to the itinerary.

Agreement No.: 232–011694.

Title: CMA CGM/China Shipping Container Lines Cross Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM S.A. ("CMA CGM") China Shipping Container Lines.

Synopsis: Under the proposed agreement, the parties agree to share space and to operate a slot exchange agreement on vessels operating in the trades between the U.S. East Coast and ports in Panama, Jamaica and ports in the Far East in the Japan/Hong Kong range. It also authorizes the parties to engage in certain cooperative activities involving chartering of space, facilities and supplies.

Agreement No.: 232–011695.

Title: CMA CGM/Norasia Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM Norasia Lines (Malta) Ltd.

Synopsis: The proposed Agreement would permit the parties to share space and exchange slots aboard their vessels in the trade between United States West Coast ports, and inland U.S. points via such ports, and ports and points in the Far East, Sri Lanka, and the Eastern and Western Mediterranean Sea. It would also permit the parties to agree on the number and size of vessels to be operated in the trade and to coordinate their vessel services.

Dated: March 3, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–5655 Filed 3–7–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as a Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicant:

Martin E. Button, Inc., 55 New Montgomery Street, Suite 400, San Francisco, CA 94105, Officers: Jennifer Rixford, Secretary, (Qualifying Individual), Martin E. Button, President

Dated: March 3, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–5654 Filed 3–7–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 11 a.m., Monday, March 13, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5673 Filed 3–3–00; 4:13 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed collections; Comment Request

The Department of Health and Human Services (DHHS), Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. Survey of Grant Recipients—NEW—The Office of Grants and Acquisition Management (OGAM) in compliance with Executive Order 12862 conduct surveys to collect data from grant recipients regarding the performance of the grants management operations of the Department's Operating Divisions (OPDIVs) and their awarding components. These surveys will provide OGAM and OPDIVs and their awarding components a necessary tool for the evaluation of the awarding components' operational performance. Respondents: State and local government, Businesses or other for profit organizations, non-profit institutions, small businesses; *Total Annual Number of Respondents:* 2,667; *Frequency of Response:* one time; *Average Burden per Response:* 15 minutes; Estimated Annual Burden 667 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: March 1, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–5636 Filed 3–7–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Fernald Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

NAME: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee.

TIMES AND DATES: 1 pm—8:30 p.m., March 22, 2000. 9 am—5 p.m., March 23, 2000.

PLACE: The Plantation, 9660 Dry Fork Road, Harrison, Ohio 45020, telephone 513/367–5610.

STATUS: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

BACKGROUND: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions form the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

PURPOSE: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

MATTERS TO BE DISCUSSED: Agenda items include presentations from ATSDR on the draft public health assessment and the Fernald uranium recycle sources and potential exposures at Fernald from major constituents; a report from ATSDR on the Health Professionals Seminar; a progress report from the University of Cincinnati on radon and cigarette smoking assessment in Fernald workers; a presentation on cancer mortality due to radiation and chemical exposure among Fernald workers; and a discussion of the evaluation project progress.

Agenda items are subject to change as priorities dictate.

CONTACT PERSONS FOR MORE INFORMATION: Mike R. Donnelly, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, NE, M/S E–39, Atlanta, Georgia 30333, telephone 404/639–2550, fax 404/639–2575.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: March 2, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–5584 Filed 3–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Grant Application and Budget Instrument

OMB No.: 0970–0207

Description: The Head Start program is promulgating a Head Start Grant Application and Budget Instrument to standardize the grant application information which is also instituting a three year grant funding cycle so that applications will only submit full applications in their first year of their three year funding cycle. In addition, the Grant Application and Budget Instrument will be available on a data disk and can be transmitted electronically to Regional Offices. The Administration Children, Youth and Families believes that, in promulgating this application document, the process of applying for grants for the Head Start program will be more efficient for the applicants.

Respondents: Head Start Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start GABI	1,513	1	33	49,929

Estimated Total Annual Burden Hours: 49,929.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: March 2, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–5540 Filed 3–7–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00B–0108]

Microbiology Devices; Reclassification of Fully Automated Short-Term Incubation Cycle Antimicrobial Susceptibility Devices From Class III to Class II

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of panel recommendation.

SUMMARY: The Food and Drug Administration (FDA) is announcing for public comment the recommendation of the Microbiology Devices Panel (the Panel) to reclassify the fully automated short-term incubation cycle antimicrobial susceptibility devices from class III to class II. The Panel made this recommendation after reviewing the reclassification petition submitted by bioMéAE1rieux Vitek, Inc., and other publicly available information. FDA is also announcing for public comment its tentative findings on the Panel's recommendation. After considering any public comments on the Panel's recommendation and FDA's tentative findings, FDA will approve or deny the reclassification petition by order in the form of a letter to the petitioner. FDA's decision on the reclassification petition will be announced in the **Federal Register**. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document that would serve as a special control for the reclassified device.

DATES: Submit written comments by June 7, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), and the FDA Modernization Act of 1997 (Pub. L. 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified postamendments devices is governed by section 513(f)(2) of the act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the Secretary of Health and Human Services (the Secretary) for the issuance of an order classifying the device in class I or class II. FDA's regulations in § 860.134 (21 CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the

proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Under section 513(f)(2)(B)(i) of the act, the Secretary may, for good cause shown, refer a petition to a device classification panel. The Panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the petition was filed.

II. Regulatory History of the Device

The fully automated short-term incubation cycle antimicrobial susceptibility device intended for determining the susceptibility patterns of microorganisms to various antimicrobial agents is a postamendments device classified into class III under section 513(f)(1) of the act. Prior to 1976, antimicrobial susceptibility disks were regulated as drugs. In 1976, with the passage of the 1976 amendments, all antimicrobial susceptibility products were considered transitional devices and automatically classified into class III. In 1978, the Vitek system for antimicrobial susceptibility testing was approved. In 1980, the antimicrobial susceptibility test (AST) disks device and the AST powder device were classified into class II. The semi-automated and automated methodologies were subject to class III controls because they were not substantially equivalent to traditional antibiotic disks and powders. In 1983, FDA denied a petition requesting the AST disks devices to be reclassified into class I. In 1984, the semi-automated and automated AST methodologies were reclassified into class II. The petition did not address the fully automated short-term incubation cycle methodologies. On July 2, 1997, FDA received a petition from bioMéAE1rieux Vitek, Inc., requesting reclassification of the fully automated short-term incubation cycle antimicrobial susceptibility devices from class III to class II under section 513(f)(2) of the act and § 860.134, based on information submitted in the petition.

Consistent with the act and the regulation, FDA referred the petition to the Panel for its recommendation on the requested change in classification.

III. Device Description

The fully automated short-term incubation cycle antimicrobial susceptibility device is intended to determine, in less than 16 hours, the antimicrobial susceptibility of nonfastidious aerobic and/or facultative anaerobic bacteria to FDA-approved antimicrobial agents. These devices are based on optical detection of growth of bacterial isolates in media with selected antimicrobial concentrations during a short term, less than 16 hours, incubation cycle. Test results are used as an aid for the physician in making therapeutic decisions involving the administration of antimicrobial drugs.

IV. Recommendations of the Panel

At a public meeting on February 13, 1998, the Panel unanimously recommended that the fully automated short-term incubation cycle antimicrobial susceptibility devices be reclassified from class III to class II. The Panel believes that class II with special controls would provide reasonable assurance of the safety and effectiveness of the device. Those special controls include: (1) The use of updated and appropriate "challenge strains," (2) the use of a nephelometer for preparing the inoculum, (3) application of "acceptable error" as a range with confidence intervals, (4) identification of a predicate device for comparative clinical performance testing, and (5) guidelines in the FDA guidance document entitled "Review Criteria for Assessment of Antimicrobial Susceptibility Devices." In addition, the Panel believes there is the need for a postmarketing action plan, which the Panel called "postmarket surveillance," to review problems as they arise. (See further discussion under section IX of this document).

The Panel stated that special controls will diminish some of the risks associated with the inappropriate use of antimicrobial agents, including the potential risk of death associated with an ineffective antimicrobial agent.

V. Risks to Health

After considering the information discussed by the Panel during the meeting on February 13, 1998, the published literature, and the Medical Device Reporting (MDR) system reports, FDA believes the following risks are associated with the use of fully automated short-term incubation cycle antimicrobial susceptibility devices.

When an antimicrobial agent result is erroneously reported to the clinician as "sensitive" and in reality is "resistant," the patient may be treated inappropriately and inadvertently subjected to an exacerbation of the infection, drug reaction, an extended hospital stay, collateral infections, or possibly death.

When an antimicrobial agent result is erroneously reported to the clinician as "resistant" and in reality is "sensitive," the appropriate treatment may be delayed with a similar potential of severe sequelae.

VI. Summary of Reasons for Recommendation

Based on the Panel members' personal knowledge and clinical experience with the device, the data and information contained in the petition, the information provided by FDA, and the open discussions during the Panel meeting, the following reasons were given by the Panel in support of its recommendation to reclassify the fully automated short-term incubation cycle antimicrobial susceptibility device for use in the rapid determination of the in vitro susceptibility of nonfastidious aerobic and facultative anaerobic organisms to antimicrobial agents from class III into class II:

1. The safety and effectiveness of the fully automated short-term incubation cycle antimicrobial susceptibility device has become well-established since approval of the first device in 1978.

2. The establishment of special controls, in addition to general controls, provides reasonable assurance of the safety and effectiveness of the fully automated short-term incubation cycle antimicrobial susceptibility device.

3. The rate of serious complications from the fully automated short-term incubation cycle antimicrobial susceptibility device is low and can be effectively minimized by: (a) Evaluating the system with updated challenge strains of organisms, as well as those organisms that are appropriate to the antimicrobial being tested; (b) using a nephelometer for preparing the inoculum; (c) using application of "acceptable error" as a range with confidence intervals; (d) conducting adequate and appropriate clinical testing; and (e) enforcing labeling restrictions and ensuring adherence to the guidelines described in the FDA guidance document entitled "Review Criteria for Assessment of Antimicrobial Susceptibility Devices."

The Panel has identified the risks to health regarding the use of the fully automated short-term incubation cycle AST system as the reporting of erroneous results. Insufficient testing of each unique antimicrobial agent with an inappropriate clinical and challenge organism, the use of an uncalibrated

inoculum, or a nonstandardized acceptable error endpoint can result in such erroneous reports.

The Panel believes that the fully automated short-term incubation cycle AST device should be reclassified into class II because special controls provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

VII. Summary of Data Upon Which the Panel Recommendation is Based

Based on the information discussed by the Panel during the February 13, 1998, Panel meeting, the published literature, the information presented in the petition, and the literature searches done by FDA, the Panel believes that there is reasonable knowledge of the benefits of the device when used for the determination of antimicrobial susceptibilities. The fully automated short-term incubation cycle antimicrobial susceptibility device provides a more timely laboratory report and clinical intervention. The sooner the clinician has the results of susceptibility testing, providing controls are in place to minimize erroneous results, the sooner the patient can be placed on appropriate therapy, thereby increasing the probability of faster recovery.

Automated antimicrobial susceptibility devices have been in the marketplace over 25 years. There is significant scientific and medical information available regarding the nature, complexity, and problems associated with these devices. With the short-term incubation cycle devices, the error rate tends to be higher because of decreased incubation times and the use of algorithms to determine resistance. Because of this, the results can more profoundly affect the clinical decision. This occurs frequently with certain organisms *pneumoniae*, and specific antimicrobial agent-bacterial pathogen combinations.

FDA believes that the special controls discussed in section VIII of this document are capable of providing reasonable assurance of the safety and effectiveness of the fully automated short-term incubation cycle antimicrobial susceptibility device with regard to the identified risks to health with the use of this device.

VIII. Special Controls

In addition to general controls, FDA believes that a special control should be established to minimize the risks to health identified with the use of this device. The special control will be an FDA guidance document as described below.

A. FDA Guidance Document

The FDA guidance document that would serve as a special control provides information to help manufacturers address the risks identified by the Panel. The guidance document describes a means by which fully automated short-term incubation cycle antimicrobial susceptibility devices may comply with the requirement of special controls for class II devices. Designation of this guidance document as a special control means that manufacturers attempting to establish that their device is substantially equivalent to a predicate device must demonstrate that the proposed device complies with either the specific recommendations of this guidance or some alternative control that provides equivalent assurances of safety and effectiveness. Fully automated short-term incubation cycle antimicrobial susceptibility devices remain subject to premarket approval unless and until reclassified by FDA.

Adherence to the revised FDA guidance document entitled "Review Criteria for Assessment of Antimicrobial Susceptibility Devices" (Ref. 1) can control the risks associated with inappropriate challenge strains being used in clinical testing, nonstandardized preparation of inoculum, varying interpretations of error ranges, and clinical performance testing. Each of these risks is addressed in the guidance document.

1. Appropriate Challenge Strains

Inappropriate testing, too few samples, and lack of attention to the specific antimicrobial/organism relationships that were approved by the Center for Drug Evaluation and Research, should be avoided. In the process of doing preclinical and clinical studies, testing of the device with well-characterized strains may detect possible areas where the device needs improvement, as well as providing a greater confidence in the reporting of results with the use of the device.

2. Standardized Preparation of Inoculum

An acknowledged source of error in all systems is the use of an inappropriate inoculum. If the inoculum density falls outside of the established range, the results may provide inaccurate reports of "sensitive" or "resistant." The use of a nephelometer alleviates visual acuity and ambiguity in determining a specific turbidity endpoint. As discussed in the guidance, the National Committee for Clinical Laboratory Standards (NCCLS) *Methods for Dilution Antimicrobial Susceptibility Tests for Bacteria That Grow Aerobically* (M7–A4), recommends use of a nephelometer as an option for preparing the inoculum.

3. Application of "Acceptable Error" as a Range With Confidence Intervals

By using an acknowledged standard (e.g., 95 percent confidence intervals for agreement and error rates that must fall within specified bounds), a consistent threshold can be universally applied.

4. Appropriate Clinical Performance Testing

FDA approves antimicrobial agents with specific indications for use. Many antimicrobial agents will show activity with only "selected" organisms. When manufacturers are performing clinical tests on their systems, it is essential to test only those organisms specifically identified in the "Indication for Use" statement of the approved drug. These are the organisms for which the clinician will require susceptibility results for treating the patient.

5. Reference to the Current Guidelines Established in Standards Published by the NCCLS

The quality of the device is enhanced by conforming to accepted standards. Standards listed in the FDA guidance document include the most recent version of *Performance Standards for Antimicrobial Disk Susceptibility Tests* (M2–A–), *Methods for Dilution Antimicrobial Susceptibility Tests for Bacteria that Grow Aerobically* (M7–A–), *Development of In Vitro Susceptibility Criteria and Quality Control Parameters* (M23–A–), and *Performance Standards for Antimicrobial Susceptibility Testing* (M100–A–).

IX. FDA's Tentative Findings

FDA agrees with the Panel's recommendation. However, FDA interprets the term, "postmarket surveillance," as used by the Panel, to mean continuation of the industry-wide activity already in place to review any problems with these devices as they develop. Many laboratories participate in various recognized surveys, which are widely subscribed to and sent out regularly. The results of these surveys are reviewed, tabulated, often listed by device, and published. For example, the College of American Pathology provides an extensive survey program. The Centers for Disease Control and Prevention do periodic testing to evaluate potential problems with susceptibility testing and disseminate

the results of that research. There is also the Med-Watch program as well as the Medical Device Reporting system to identify problems or trends associated with these devices. The agency believes the above survey, testing, and reporting programs provide adequate postmarket surveillance. The development of an FDA guidance as a special control will minimize the major sources of erroneous reporting associated with the fully automated short-term incubation cycle antimicrobial susceptibility device. Because special controls, in addition to general controls, would provide reasonable assurance of safety and effectiveness, the device should be classified into class II. There is sufficient information to establish special controls to provide such assurance.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday:

1. FDA Guidance Document, "Review Criteria for Assessment of Antimicrobial Susceptibility Devices," 2000 revision.

2. NCCLS Approved Standard, M2 (most recent approved supplement), *Performance Standards for Antimicrobial Disk Susceptibility Tests,* Wayne, PA.

3. NCCLS Approved Standard, M7 (most recent approved supplement), *Methods for Dilution Antimicrobial Susceptibility Tests for Bacteria That Grow Aerobically,* Wayne, PA.

4. NCCLS Approved Standard, M100 (most recent approved supplement), *Performance Standards for Antimicrobial Susceptibility Testing,* Wayne, PA.

5. NCCLS Approved Standard, M23 (most recent approved supplement), *Development of In Vitro Susceptibility Testing Criteria and Quality Control Parameters,* Wayne, PA.

6. Transcript of the Microbiology Devices Panel Meeting, February 13, 1998.

XI. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XII. Analysis of Impacts

FDA has examined the impacts of the notice under Executive Order 12866 and the Regulatory Flexibility Act (Public Law 96–354) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this reclassification action is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the reclassification action is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III to class II will relieve manufacturers of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this reclassification action, if finalized, will not have a significant economic impact on a substantial number of small entities. In addition, this reclassification action will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

XIII. Request for Comments

Interested persons may, on or before June 7, 2000, submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 14, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–5523 Filed 3–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0109]

Draft Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices." This draft guidance is neither final nor is it in effect at this time. This guidance document would serve as a special control for the reclassification of fully automated short-term incubation cycle antimicrobial susceptibility devices from class III to class II.

DATES: Submit written comments concerning this guidance by June 7, 2000.

ADDRESS: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled "Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance to the Dockets Management Branch, (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION:

I. Background

On July 2, 1997, FDA received a petition from bioMerieux Vitek, Inc., requesting reclassification of the fully automated short-term incubation cycle antimicrobial susceptibility devices from class III (premarket approval) to class II (special controls). Based on the petition, a meeting of the Microbiology Devices Panel (the Panel) was convened on February 13, 1998, to obtain the Panel's recommendation on the requested change in classification. The Panel unanimously recommended that fully automated short-term incubation cycle antimicrobial susceptibility devices be reclassified from class III to class II. This guidance document, which takes into consideration the Panel's recommendations and FDA's review experience, would be the special control for the reclassified device.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on fully automated short-term incubation cycle antimicrobial susceptibility devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both. Designation of this guidance document as a special control means that manufacturers attempting to establish that their device is substantially equivalent to a predicate device must demonstrate that the proposed device complies with either the specific recommendations of this guidance or some alternative control that provides equivalent assurances of safety and effectiveness.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive a copy of the draft guidance entitled "Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (631) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH home page includes "Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices" will also be available at http://www.fda.gov/cdrh.

IV. Comments

Interested persons may, on or before June 7, 2000, submit to Docket Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 9, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–5524 Filed 3–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0357]

Draft Guidance for Industry on OTC Treatment of Herpes Labialis With Antiviral Agents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "OTC Treatment of Herpes Labialis with Antiviral Agents." Recent interest in marketing antiviral agents over-the-counter (OTC) to treat herpes labialis has raised public health concerns. This draft guidance summarizes the agency's current thinking on why it does not favor the OTC treatment of herpes labialis with antiherpes agents at this time. The guidance also describes issues that sponsors should consider before submitting a marketing application for an OTC antiviral product to treat herpes labialis.

DATES: Submit written comments on the draft guidance by May 8, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at hppt://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph G. Toerner, Center for Drug Evaluation and Research (HFD–530), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2330.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "OTC Treatment of Herpes Labialis with Antiviral Agents." This draft guidance summarizes the agency's current thinking on the OTC use of antiviral agents to treat herpes labialis. The agency believes that, until other safe

antiherpes agents that lack cross-resistance to the currently available class become available, issues relating to misuse and resistance will need to be thoroughly evaluated in an actual use setting of an antiviral agent for recurrent herpes labialis, particularly if OTC marketing is proposed sometime in the future. At present, based on a public health-based risk/benefit assessment with respect to treatment of herpes labialis, the agency concludes that antiherpes agents should not be made available OTC.

This draft guidance is being issued consistent with FDA's good practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on OTC treatment of herpes labialis with antiviral agents. Its does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such an approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 17, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–5525 Filed 3–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Behavioral Research in Cancer Control.

Date: March 27, 2000.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Olivia T. Preble, Phd, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8052, Rockville, MD 20892–7405, 301/594–2501.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research 93.394, Cancer Detection and Diagnosis Research 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5657 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies for the Molecular Analysis of Cancer and their Applications.

Date: March 22–24, 2000.

Time: 7:00 p.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5658 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Communication and Interactive Media Technology.

Date: March 23–24, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joyce C Pegues, PhD, Scientific Review Administrator, Special Review, Referral, and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8084, Bethesda, MD 20892, 301/594–1286.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5659 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C. The discussions could reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and the premature disclosure of discussions related to personnel and confidential administrative information would be likely to significantly frustrate the subsequent implementation of recommendations.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: March 23–24, 2000.

Open: March 23, 8:30 am to 4:30 pm. March 24, 8:30 am to 12:00 pm.

Agenda: Report of the Director, NCI; Ongoing and New Business, Reports of Program Review Group(s), Budget Presentation, Reports of Special Initiatives, and RFA Concept Reviews.

Closed: March 23, 4:30 pm to 6:00 pm.

Agenda: To review and evaluate personnel and programmatic issues.

Place: National Cancer Institute, 9000 Rockville Pike, building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, Deputy Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Building, Room 8032, 6116 Executive Boulevard, Bethesda, MD 20892, (301) 496–4218.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and prevention research; 93.394, Cancer Detection and Diagnosis Research, 93,395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 00–5660 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Review and Analysis of Tobacco Industry Documents.

Date: March 21, 2000.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8070, Rockville, MD 20892–7405, 301/496–7987.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5662 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, February 22, 2000, 1 PM to February 22, 2000, 5 PM, 6116 Executive Boulevard, 8th Floor, Bethesda, MD 20892 which was published in the **Federal Register** on February 16, 2000, 659279.

The Telephone Conference Call meeting will be held on March 15, 2000 from 3 PM to 5 PM. The meeting is closed to the public.

Dated: March 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5663 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Basic Bio-Behavioral Research on Cancer Related Behaviors.

Date: March 10, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg, Hilton, Gaithersburg, MD 20878.

Contact Person: C.M. Kerwin, Phd., Scientific Review Administrator; Special Review, Referral and Resources Branch; Division of Extramural Activities; National Cancer Institute; National Institutes of Health; 6116 Executive Boulevard, Room 8086, Rockville, MD 20892–7405, 301/496–7421.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5664 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Wireless Telemetry of EKG and Respiratory Information from within an MRI Scanner.

Date: March 8, 2000.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Rockledge Center II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David T. George, PhD, Scientific Review Administrator, Review Branch, NIH, NHLBI, DEA, Rockledge II, 6701 Rockledge Drive, Suite 7188, Bethesda, MD 20892–7924, (301) 435–0280.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 25, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5661 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: March 19–21, 2000.

Time: 7:30 p.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Four Points Hotel, 530 West Pico Blvd., Santa Monica, CA 90405.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 29, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5665 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Population Research Subcommittee.

Date: April 28, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jon M. Ranhand, Phd., Health Scientist Administrator, Division of Scientific Review, National Institute of Child

Health and Human Development, 6100 Executive Blvd., Rm 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5667 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–2(M5)S.

Date: March 6, 2000.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20982, (Telephone Conference Call).

Contact Person: Shan S. Wong, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS43H, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–5(M2)P.

Date: March 29–31, 2000.

Time: 7:30 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Lodge at Torrey Pines, 11480 North Torrey Pines Road, La Jolla, CA 92037.

Contact Person: Francisco O. Calvo, PhD, Deputy Chief, Review Branch, DEA, NIDDK, National Institutes of Health, Room 6AS37D, Bldg. 45, Bethesda, Md 20892, 301–594–8897.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–4(M2)P.

Date: April 12–13, 2000.

Time: 5:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Le Montrose Suite Hotel, 900 Hammond Street, West Hollywood, CA 90069.

Contact Person: William E. Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

(Catalog of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5668 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–6(M5) B.

Date: March 7, 2000.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, NIDDK/DEA/Review Branch, 45 Center Drive, 6AS–37A, Bethesda, MD 20892–6600, (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–2 (M2)B.

Date: March 10, 2000.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIH/NIDDK/Review Branch, Natcher Building, 45 Center Drive, Suite 6AS43H, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shan S. Wong, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS43H, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Disease Special Emphasis Panel, ZDK1 GRB–6(M3)B.

Date: March 13, 2000.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, NIDDK/DEA/Review Branch, 45 Center Drive, 6AS–37A, Bethesda, MD 20892–6600, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–1 (M2) B.

Date: March 15, 2000.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22203.

Contact Person: Carolyn Miles, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–43A, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–6 (M2) B.

Date: March 17, 2000.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 29, 2000.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5669 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given to the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7(M4)B.

Date: March 23, 2000.

Time: 3:00 p.m. to 5:00 p.m.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20982, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS25F, National Institutes of Health, Bureau, MD 20892–6600, (301) 594–7799.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 92.848, Digestic Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5670 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 9, 2000.

Time: 5:30 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn; Bethesda, MD 20814.

Contact Person: Nancy Shinowara, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, shinowan@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 15, 2000.

Time: 1:45 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Nabeeh Mourad, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892 (301) 435–1222.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 15, 2000.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892.

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientic Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892 (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 16, 2000.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Angela M. Pattatucci, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Panel.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, N.W., Washington, DC 20007–3701.

Contact Person: Lawrence N. Yager, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, (301) 435–0903, yageri@csr.hih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: March 16–17, 2000.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221, laingc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: March 16–17, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Initial Review Group, Biological Sciences Subcommittee 1.

Date: March 16–17, 2000.

Time: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW, Washington, DC 20037.

Contact Person: Nancy Pearson, PhD, Chief, Genetic Sciences Integrated Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1047.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 17, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Fortune Room, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–0676.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 17, 2000.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Nancy Pearson, PhD, Chief, Genetic Sciences Integrated Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2112, MSC 7890, Bethesda, MD 20892, (301) 435–1047, pearsonn@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 19–20, 2000.

Time: 7 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 29, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5866 Filed 3–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Correction to a Fiscal Year (FY) 2000 Funding Opportunities Notice

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Correction to a Notice of Funding Availability regarding the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), grants to expand substance abuse treatment capacity in targeted areas of need.

SUMMARY: This notice is to inform the public that there is a correction to the SAMHSA/CSAT Program Announcement PA 00–001 entitled Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need (short title: Targeted Capacity Expansion), published in the **Federal Register** on January 18, 2000 (Volume 5, Number 11, pages 2634–2636). On page 2636, column 1, the Program Contact information for questions concerning program issues should be changed from Clifton Mitchell, Branch Chief at (301) 443–8404 to Ken Robertson, Public Health Advisor, at (301) 443–7612.

The full Program Announcement and the addendum that includes the corrected section is available via the SAMHSA web site at *www.samhsa.gov*, or from the National Clearinghouse for Alcohol and Drug Information (telephone: 800–729–6686).

Dated: March 2, 2000.

Richard Kopanda,

Executive officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–5528 Filed 3–7–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–033–00–1230–00–OHV1]

Temporary Closure of Public Lands: Nevada, Carson City District

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of affected public lands in Lyon, Storey, Churchill, Carson, Douglas, Mineral and Washoe Counties on and adjacent to Off Highway Vehicle race course routes.

Races are conducted along dirt roads, trails and washes approved for such use through the Special Recreation Use Permit application process. Events occur from February through November, 2000. Closure period is generally from 6:00 a.m. race day until race finish.

1. February 20: Lemmon Valley MX Area—Permit NV–030–99502; Washoe Co., T21N R19E S8
2. March 12: Lemmon Valley Hare Scramble—Permit NV–030–00518; Washoe Co., T21N R19E S8 & S16
3. March 19: Lemmon Valley MX Area—Permit NV–030–99502; Washoe Co., T21N R19E S8

4. April 15: Lemmon Valley MX Area—Permit NV–030–99502; Washoe Co., T21N R19E S8
5. May 13 & 14: Virginia City Grand Prix—Permit NV–030–99504A; Storey Co., T 16 & 17N R21E
6. May 28: Yerington 300 Desert Race—Permit NV–030–96510A; Lyon Co.: T13N R24–26E; T14N R24,25E T15N R24E; T16N R24E;
7. July 12: Day 4 of Nevada 2000 OHV Race—Permit NSO–99–001:Churchill Co., Enter CCFO east of Hole-in-the-Wall: T23N R37–40E; T22N R36,38–40E; T21N R35E; T20N R34,35E; T19N R34,35E; T18N R30–34E; End at Salt Wells
8. July 13: Day 5 of Nevada 2000 OHV Race–Permit NSO–99–001:Lyon Co., Start south of Dayton: T16N R21,22,24–27E; T15N R22–24E; T14N R23,24E; Churchill Co., T16N R27–30E; T15N R31,32E; Mineral Co., T14N R31½,32E T11N R30,31E; T10N R30,31E; T9N R30–31½,33E; T8N R31½–35E; T7N R35E; T6N R35–37E; T5 R36E Leaves CCFO south of Blue Link Spring.
9. July 29: Top Gun Desert Race—Permit NV–030–96510B: Churchill Co., T16N R28–33E; T17N R30,31E; 31,32E; T
10. October 29: Hungry Valley Hare Scramble—Permit NV030–00016: Washoe Co., Within Hungry Vly ORV Area
11. November 12: Hare Scramble—Permit NV–99504C; Lyon or Churchill Co.

SUMMARY: The Assistant Manager, Non-Renewable Resources announces the temporary closure of selected public lands under his administration. This action is taken to provide for public safety and to protect adjacent resources.

EFFECTIVE DATES: Listed above. Events may be canceled or rescheduled.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Outdoor Recreation Planner, Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, Nevada 89701, Telephone: (775) 885–6161.

SUPPLEMENTARY INFORMATION: Bureau lands to be closed to public use include the width and length of those roads and trails identified as the race route by colorful flagging and directional arrows attached to wooden stakes. A map of each closure area may be obtained at the contact address. The authorized applicants are required to clearly mark and monitor the event routes during the closure periods.

Public uses generally affected by a Temporary Closure include: road and trail uses, camping, shooting of any kind of weapon including paintball, and public land exploration.

Spectator and support vehicles may be driven on open roads only. Spectators may observe the races from certain locations as directed by event and BLM officials.

Exemptions: Closure restrictions do not apply to race officials, medical/rescue, law enforcement and agency personnel monitoring the event.

Authority: 43 CFR 8364 and 43 CFR 8372.

Penalty: Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Dated: February 10, 2000.

Charles Pope,

Acting Assistant Manager, Non-renewable Resources.

[FR Doc. 00–5533 Filed 3–7–00; 8:45 am]

BILLING CODE 4310–HC–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

March 16, 2000 Public Hearing; Sunshine Act Notice

TIME AND DATE: Thursday, March 16, 2000, 2:00 PM.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Hearing OPEN to the Public at 2:00 PM.

PURPOSE: In conjunction with the quarterly meeting of OPIC's Board or Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURE: Individuals wishing to make statements or present reports must provide advance notice to OPIC's Corporate Secretary on or before March 13, 2000. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a prepared statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 PM., March 13, 2000. Prepared statements must be typewritten, double-spaced and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 408–0297, or via email at cdown@opic.gov.

Dated: March 3, 2000.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 00–5716 Filed 3–3–00; 4:55 pm]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a consent decree in *United States* v. *T. Frank Flippo & Sons, LLC,* Civil Action No. 3:00–CV–58 (E.D. Va.) was lodged with the court on February 4, 2000.

The proposed consent decree resolves the claims of the United States against defendant T. Frank Flippo & Sons, LLC, under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9607, for past response costs at the HH Burn Pit Superfund Site in Hanover County, Virginia. The decree obligates the Settling Defendant to reimburse $35,000 of the United States' past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. and should refer to *United States* v. *Frank Flippo & Sons, LLC,* DOJ Ref. #90–11–3–1408/1.

The proposed consent decree may be examined and copied at the Office of the United States Attorney, Main Street Centre, 600 E. Main Street, Richmond, VA 23219; or at the Region III Office of the Environmental Protection Agency, c/o Andrew Goldman, Assistant

Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box No. 7611, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library. A copy of the exhibits to the decree may be obtained from the same source for an additional charge.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–5534 Filed 3–7–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Extension of Time for Comments Relating to the Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, the Clean Water Act, and the Resource Conservation and Recovery Act

Notice is hereby given of an extension of time under which the Department of Justice will receive comments relating to the proposed Consent Decree in *United States and State of Idaho* v. *Union Pacific Railroad Co.*, Case No. 99–606–N–EJL (D. Idaho) and *Coeur d' Alene Tribe* v. *Union Pacific Railroad Co.*, Case No. CV 91–0342–N–EJL (D. Idaho). The proposed Consent Decree was lodged with the United States District Court for the District of Idaho on December 23, 1999 and previously noticed in the **Federal Register** on January 20, 2000 (65 FR 3249). The earlier noticed comment period would have expired on February 22, 2000, but comments will now be considered if received by March 8, 2000.

The Consent Decree settles claims by the United States, the State of Idaho, and the Coeur d'Alene Tribe (Tribe) asserted against Union Pacific Railroad Company (Union Pacific) under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9606 and 9607, and Section 311 of the Clean Water Act (CWA), 33 U.S.C. 1321. The Complaint of the United States and the State seeks injunctive relief requiring Union Pacific to implement the non-time-critical removal action selected by EPA, the State and the Tribe, for most of Union Pacific's 71.5-mile-long railroad right of way between Mullan and Plummer, Idaho (the ROW) and certain adjacent areas (collectively the Project Area) in the Coeur d'Alene Basin in northern Idaho. The Plaintiffs' Complaints also seek past and future CERCLA response costs incurred by EPA, the Departments of the Interior (Interior) and Agriculture (Agriculture), the State, and the Tribe in connection with the Project Area and damages for injuries to natural resources throughout the Coeur d'Alene Basin.

The Consent Decree requires Union Pacific to implement the response action selected for the Project Area and specified additional work needed to convert the ROW into a biking/hiking trail for public use. The estimated total cost of this work is over $25 million. In addition, Union Pacific agrees to pay (1) the past response costs incurred by the United States, the State and the Tribe in connection with the negotiations and the Engineering Evaluation and Cost Analysis (EE/CA) needed to select the response action (approximately $600,000 for the United States); (2) $2,730,000 to the State and the Tribe, primarily for their expected future costs of maintaining public amenities along the biking/hiking trail; (3) $35,000 to fund educational activities to be conducted by Plaintiffs as part of the Response Action; (4) up to $25,000 per year for 10 years to the Tribe for costs in incurs for operation and maintenance of the Chatcolet Bridge; (5) the future response costs of all three governments for oversight of the removal action; and (6) $2,000,000 to Interior, Agriculture, and the Tribe for natural resource damages.

In exchange, Union Pacific will receive a covenant not to sue for response actions and costs relating to the Project Area (primarily the ROW) pursuant to Sections 106 and 107(a) of CERCLA, Section 311 of the CWA, and Section 7003 of RCRA. Union Pacific will also receive a covenant not to sue for natural resource damages under CERCLA and the CWA in the "Coeur d'Alene Basin Environment," an area that includes the watersheds of both the North and South Forks of the Coeur d'Alene River, the main stem of the Coeur d'Alene River, and Lake Coeur d'Alene.

Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20044–7611, should refer to *United States and State of Idaho* v. *Union Pacific Railroad Co.*, Case No. 99–606–N–EJL (D. Idaho), D.J. Ref. No. 90–11–3–128/1, and should be received by March 8, 2000. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, First Interstate Center, 877 West Main Street, Suite 201, Boise, Idaho 83702 and at North Idaho College Library, 1000 West Garden Avenue, Coeur d'Alene, Idaho 83814. A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $255.75 (25 cents per page reproduction cost, with exhibits) payable to the Consent Decree Library. If requesting a copy of the Consent Decree exclusive of exhibits, please enclose a check in the amount of $27.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–5535 Filed 3–7–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Cancellation of Solicitation for a Cooperative Agreement—Community Restorative Justice Outcomes/ Measurements and Evaluations

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Cancellation of Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections announces the cancellation of the Solicitation: Community Restorative Justice Outcomes/ Measurements and Evaluation. The NIC Application Number is 00A14, 65 Fr 6396 (February 9, 2000).

There are no plans to reannounce at this time.

Dated: March 1, 2000.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 00–5461 Filed 3–7–00; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1261]

Announcement of the Availability of the National Institute of Justice Solicitation for Drug Court Research and Evaluation: National Evaluation of Juvenile Drug Courts and Research on Adult and Juvenile Drug Courts

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice solicitation "Drug Court Research and Evaluation: National Evaluation of Juvenile Drug Courts and Research on Adult and Juvenile Drug Courts."

DATES: Proposals must be received by close of business April 28, 2000.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice, in collaboration with the Office of Justice Programs' Drug Courts Program Office (DCPO), is soliciting proposals in two research areas: a national evaluation of six juvenile drug courts and general research and evaluation in either juvenile or adult drug courts.

There are two goals for national evaluation of six juvenile drug courts: To develop a framework for describing juvenile drug courts, and to assess the success of juvenile drug courts in relation to the framework developed. The six juvenile drug courts are located in Orlando, FL; Missoula, MT; Jersey City, NJ; Las Cruces/Anthony, NM; Dayton, OH/and Charleston, SC. These drug courts were funded in 1996–1997.

It is anticipated that one award, not to exceed $700,000, will be made for this evaluation, which is expected to be completed within 18 to 24 months.

The second area under this solicitation includes research and evaluation projects addressing issues faced by the DCPO-funded adult and/or juvenile drug courts. For these projects, four awards of up to $250,000 are expected. Each of these awards may last up to 24 months.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Drug Court Research and Evaluation: National Evaluation of Juvenile Drug Courts and Research on Adult and Juvenile Drug Courts" (refer to document no. SL000399). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at *http://www.ncjrs.org/fedgrant.htm#nij.*

Dated: March 3, 2000.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 00–5573 Filed 3–7–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1262]

Announcement of the Availability of the National Institute of Justice Solicitation for Research and Evaluation on Violence Against Women FY2000

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice Solicitation "Research and Evaluation on Violence Against Women FY2000."

DATES: Proposals must be received by close of business May 15, 2000.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) is soliciting proposals for research addressing violence against women. Violence against women is defined as intimate partner violence, sexual assault, and stalking, and may include violence committed by acquaintances and strangers. Proposals are encouraged for research aimed at enhancing our knowledge of factors associated with three types of outcomes: Victim safety, offender accountability, and system accountability.

NIJ anticipates awarding up to 10 grants of varying amounts with a funding total of $2,000,000.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Research and Evaluation on Violence Against Women" (refer to document no. SL000398). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Dated: March 3, 2000.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 00–5574 Filed 3–7–00; 8:45 am]

BILLING CODE 4410–18–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, March 16, 2000, and Friday, March 17, 2000, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC. The meeting is tentatively scheduled to begin at 10:00 a.m. on March 16, and 9:00 a.m. on March 17.

Topics for discussion include: survey results on health plans' selection and payment of health care providers, quality assurance for institutional providers, care at the end of life, improving information on the Medicare program, hospital financial performance, prescription drug coverage issues, update on payments to hospital outpatient departments, payments to teaching hospitals, and DRG refinement.

Agendas will be mailed on March 7, 2000. The final agenda will be available on the Commission's website (www.MedPAC.gov).

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 00–5541 Filed 3–7–00; 8:45 am]

BILLING CODE 6820–BW–M

MERIT SYSTEMS PROTECTION BOARD

Relocation of Board Headquarters

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB), whose headquarters is currently located at 1120 Vermont Avenue, N.W., Washington, DC 20419, is announcing that it will be relocating in June of 2000.

DATES: The exact effective date of the Board's move will be announced at a later date in the **Federal Register**.

ADDRESSES: The Board's new headquarters location will be 1615 M Street, N.W., 5th Floor, Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy or Matthew Shannon, Office of the Clerk, at (202) 653–7200.

Dated: March 1, 2000.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–5651 Filed 3–7–00; 8:45 am]

BILLING CODE 7400–01–M

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Proposed New System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Privacy Act of 1974; notice of new system of records.

SUMMARY: As required by The Privacy Act of 1974, 5 U.S.C. 552a, the Merit Systems Protection Board (Board) is publishing a notice proposing establishment of a new system of records. This new records system is the Office of Appeals Counsel Case Production Data System. These records will be used to track the case production of individual employees in the Office of Appeals Counsel.

DATES: Comments must be received on or before April 7, 2000. This system of records becomes effective as proposed, without further notice, on May 8, 2000, unless comments are received which would result in a contrary determination. Comments may be mailed to the Merit Systems Protection Board, Office of the Clerk of the Board, 1120 Vermont Avenue, NW, Washington, DC 20419, or faxed to the same address on 202–653–7130. Electronic mail comments may be sent via the Internet to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Office of the Clerk of the Board, 202–653–7200.

Dated: March 2, 2000.

Robert E. Taylor,

Clerk of the Board.

MSPB/Internal–8

System Name: Office of Appeals Counsel Case Production Data System.

System Location: Office of Appeals Counsel, Merit systems, Protection Board (MSPB), 1120 Vermont Avenue, NW, Washington, DC 20419.

Categories of Individuals Covered by the System: Employees in the Office of Appeals Counsel, MSPB.

Categories of Records in the System: The system consists of information about employees in the Office of Appeals Counsel of the Board, including: Name, position title, grade, and series, organizational unit, work schedule for flexiplace employees, annual and sick leave usage, and leave taken under the Family and Medical Leave Act. The system will also contain the number of cases processed by individual employees, as well as requests for credit for hours spent performing non-case related work and requests for additional credit for time-consuming case related work. The system will also contain the names and docket numbers of certain MSPB cases.

Authority for Maintenance of the System: 5 U.S.C. 1204.

Purposes: These records are used by Board officials to track the case production of individual employees and provide an effective management tool in determining assignments, promotions, training and other personnel actions affecting employees in the office of Appeals Counsel.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Uses: These records and information in them may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court, or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

c. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigation, prosecution, enforcement, or implementation of a statute, rule, regulation, or order, where the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System

Storage: Records are stored in databases on a local area network server with standard password access security.

Retrievability: These records are retrieved by the names of the individuals for whom they are maintained.

Safeguards: Access to these records is limited to persons whose official duties require such access. Records are protected from unauthorized access through password identification procedures and other system-based protection methods.

Retention and Disposal: Records in this system are maintained as long as the individual is an employee of the Board. Expired records will be destroyed by deleting.

System Manager: Director, Office of Appeals Counsel, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419.

Notification Procedures: Individuals wishing to inquire whether this system of records contains information about them should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such inquiries.

Record Access Procedures: Individuals requesting access to their records should contact the Clerk of the Board. Such requests should be addressed to the Clerk of the Board, Merit Systems Protection Board, 1120

Vermont Avenue, NW., Washington, DC 20419. Requests for access to records must follow the MSPB Privacy Act regulations at 5 CFR 1205.11.

Contesting Record Procedures: Individuals requesting amendment of records should write the Clerk of the Board. Requests must follow the MSPB Privacy Act regulations at 5 CFR 1205.21.

Record Source Categories: The individual to whom the information applies; the records maintained in the Board's Office of Appeals Counsel, and records maintained by the U.S. Department of Agriculture, Animal Plant Health Inspection Service.

[FR Doc. 00–5652 Filed 3–7–00; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME:

March 16, 2000: 11:30 a.m.–12 noon—Closed Session
March 16, 2000: 12:45 p.m.–1 p.m.—Closed Session
March 16, 2000: 10 p.m.–6 p.m.—Open Session

PLACE: The National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Closed Session (11:30 a.m.–12:00 noon)

—Closed Session Minutes, November 1999
—Honorary Awards
—Personnel

Closed Session (12:45 p.m.–1 p.m.)

—Awards & Agreements
—NSF Budget

Open Session (1:00 p.m.–6 p.m.)

—Open Session Minutes, February 2000
—Closed Session Items for May 2000
—Chair's Report
—Director's Report
—Graduate Student Survey: Dr. Geoff Davis
—Committee Reports
—Interim Report, Committee on Strategic S&E Policy
—Program Approvals, Directorate for Education & Human Resources
—Budget and Long Range Planning

Marta Cehelsky,
Executive Officer.

[FR Doc. 00–5672 Filed 3–3–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–2377

Finding of No Significant Impact Related to Approval of Adjacent Land Remediation Plan for Kaiser Aluminum & Chemical Corporation, Tulsa, Oklahoma, License No. STB–472 (Terminated)

The U.S. Nuclear Regulatory Commission (NRC) is considering approval of the Adjacent Land Remediation Plan (ALRP) for Kaiser Aluminum & Chemical Corporation (Kaiser), Tulsa, Oklahoma (Kaiser, 1998), submitted to NRC on August 17, 1998. Kaiser is obligated to remediate the offsite property adjacent to their Tulsa, Oklahoma site to meet the release criteria established in the Action Plan to Ensure Timely Remediation of Sites Listed in the Site Decommissioning Management Plan (hereafter known as the SDMP Action Plan) NRC, 1992).

Environmental Assessment

Introduction

On March 7, 1958, NRC issued Source Material License No. C–4012 to Standard Magnesium Corporation (Standard Magnesium), for possession of magnesium-thorium alloy. Standard Magnesium purchased magnesium-thorium scrap metal for reclaiming purposes. The end product from Standard Magnesium's manufacturing process was magnesium anodes used for cathodic protection on items such as tanks and pipelines. NRC License No. STB–472 superceded License No. C–4012 on November 22, 1961. In 1964, Standard Magnesium became a wholly owned subsidiary of Kaiser within the Division of Kaiser Chemical Company. On June 5, 1968, License No. STB–472 was amended to include the possession of uranium, so that Standard Magnesium could process magnesium slag containing uranium. It does not appear that uranium was ever received or processed on site. On March 16, 1971, License No. STB–472 was terminated at the licensee's request.

In 1991, Oak Ridge National Laboratory (ORNL) was contracted, by NRC, to review and evaluate all nuclear material licenses terminated by NRC or its predecessor agencies since inception of material regulation in the late 1940s. One of the objectives of this review was to identify sites with a potential for meaningful residual contamination, based on information in the license documentation. ORNL identified the Kaiser site as having the potential for residual contamination. On November 17, 1993, an NRC inspector surveyed the Kaiser facility to assess the potential for residual contamination at the site. The inspector found contamination on the surface, indicating that waste magnesium-thorium slag was improperly disposed of in the past. Off-site residual thorium contamination was first identified during a subsequent NRC inspection conducted on June 29, 1994. The off-site thorium contamination is due to slag dumping in areas to the east and south of the current Kaiser property boundary, on property which belonged to Standard Magnesium/Kaiser during licensed operations. NRC notified Kaiser on August 19, 1994, that the site had been added to the Site Decommissioning Management Plan (SDMP). Kaiser has agreed to perform remediation activities in accordance with current regulations and release limits, even though it is not currently a licensee since its license was terminated in 1971.

Proposed Action

Kaiser is proposing to remediate the off-site areas to the east and south of Kaiser's property which contain residual thorium contamination above the unrestricted release limits specified in the SDMP Action Plan (370 Becquerel per kilogram (Bq/Kg) (10 picocurie per gram (pCi/g)) total thorium). Kaiser proposes to:

(1) Excavate soil with thorium levels above the maximum average concentration, and transport it directly to the Kaiser storage site, or load the contamination soil onto trucks for transport to the storage site.

(2) Control the excavation process to assure contamination is not spread during excavation or transport;

(3) Stockpile contaminated soil on Kaiser Property within a fenced location. It is estimated the 4673 cubic meters (m^3 (165,000 cubic feet (ft^3)) of contaminated soil will be transported and stored on Kaiser property pending final disposal

(4) Control stockpiled soil to minimize erosion, airborne dust, and precipitation runoff;

(5) Conduct a final survey of excavated areas and transport routes in accordance with NUREG/CR–5849, "Manual for Conducting Radiological Surveys in Support of License Termination;" and

(6) Backfill excavated areas with unaffected material after receiving NRM acceptance of the final survey report (Kaiser, 1998).

The Need for Proposed Action

The Kaiser property and adjacent land areas to the east and south contain thorium contaminated soil upon which magnesium was extracted from magnesium thorium alloys. The thorium-bearing slag was disposed of on-site. Some of the slag was dumped onto, what is now, land adjacent to the Kaiser property. Kaiser is proposing to remediate its property and the adjacent land areas as separate actions, with the adjacent land areas being remediated first.

Site characterization studies (Kaiser, 1999) indicate that thorium contamination in the adjacent land areas extends from the Kaiser fence up to 36.6 m (120 ft) from the fence. Observed thorium concentrations on the adjacent property range from background to 13,478 Bq/kg (363.9 pCi/g) of soil. Exposure rate measurements range from background 2.6 nanoCoulomb per kilogram per hour (nC/kg hr) (10 microRoentgen per hour (uR/hr)) (background) to 31 nC/kg hr (120 uR/hr). Calculations by Kaiser indicate that soil with thorium concentrations above 111.11 Bq/kg (3.0 pCi/g 232Th) of soil will require remediation to meet NRC's unrestricted release limits. Kaiser estimates the volume of contaminated soil in the adjacent land areas to be 4673 m^3 (165,000 ft^3). Kaiser proposes to excavate, transport, and store the contaminated soil on Kaiser property pending final disposition (Kaiser, 1998).

The proposed action is necessary for Kaiser to regain control of the off-site thorium contaminated soil and to minimize exposures to the public who may be inadvertently exposed to it.

Alternative to Proposed Action

The remediation approach proposed by Kaiser allows them to take control of all contaminated material created by Standard Magnesium/Kaiser and make adjacent land areas acceptable for unrestricted use. Further, the proposed approach allows Kaiser to dispose of all contaminated material at once. There are two alternatives to the proposed action of excavating and storing contaminated soil on Kaiser property: (1) No action; and (2) to excavate and transport the contaminated material directly to a licensed disposal facility. The no-action alternative is not acceptable because soil containing thorium at levels exceeding NRC's limit for unrestricted use is accessible to the public. The second alternative is not considered to be advantageous, because it does not give Kaiser the option of disposing of all material collectively. This alternative does not preclude Kaiser from sending contaminated soil from adjacent land areas to a low-level radioactive waste disposal facility in the future, if necessary.

Environmental Impacts of Proposed Action

Remediation of the adjacent land areas could result in both radiological and non-radiological environmental impacts. Radiological environmental impacts that could result from the remediation of the adjacent land areas include exposure, inhalation, and ingestion hazards to workers and the public. These hazards could occur during excavation, transport, or storage of the contaminated soil.

Potential radiological impacts during excavation include: (1) Exposure; (2) inhalation and ingestion to workers; and (3) inhalation and ingestion to the public. Kaiser has committed to perform work activities in accordance with the Radiation Control Plan (RCP) submitted to the NRC as Appendix C of the ALRP. Worker doses due to direct exposure to the contaminated soil are expected to be small. Site characterization revealed that 74 percent of the samples contained less than 370 Bq/kg (10 pCi/g), and 83 percent contained less than 740 Bq/kg (20 pCi/g) (Kaiser, 1999). Since worker exposure time will be short, and thorium concentrations are relatively low, Kaiser estimates that doses due to direct contact with soil will be less than 1 millisievert per year (mSv/yr) (100 millirem per year (mrem/yr)). Inhalation and ingestion impacts will be minimized to the workers and public by controlling airborne material levels. Air sampling will be conducted in work areas, and at work area boundaries to evaluate off-site releases. Action will be taken if radioactivity levels exceed 10 percent of the regulatory limit in work areas and 50 percent of the regulatory limit at the work area boundary. Kaiser's RCP (Kaiser, 1998) includes controls for keeping external and internal radiation exposures to workers, and the public, "as low as reasonably achievable" (ALARA). These controls include implementing: (1) The RCP; (2) radiation worker training; (3) a respiratory protection program; (4) safety work permit procedures; and (5) radioactive material storage and handling procedures.

The potential for radiological impacts during transportation is limited. Spillage during transportation is the only credible scenario for workers receiving a potential dose. Since any spills could be immediately recovered, doses due to direct exposure will be minimal. The potential exists for contaminated material to become airborne during transportation, unloading, or as a result of accidental spills. In the ALRP, Kaiser commits to using load covers, or other means, as necessary to prevent the spread of contamination during hauling. Potential radiological impacts to workers and the public due to airborne material will be controlled as described above.

Potential radiological impacts resulting from the storage of the contaminated soil on Kaiser property include doses to the public from airborne material and precipitation runoff. In the ALRP, Kaiser commits to minimize the spread of contamination by storing soil on land that is already contaminated. Erosion and dust will be controlled by planting vegetation, covering with sheeting, or covering with clean soil. Precipitation runoff will be controlled with engineering measures to ensure that drainage from the stockpile will be into the retention pond. The RCP also references a radioactive liquid handling procedure.

The potential for groundwater contamination at the site is minimal. Site characterization sampling at the site indicates that the vertical migration of the thorium is limited. Sampling revealed that thorium concentrations dropped quickly in undisturbed soil. Sampling also indicates that the freshwater pond, to the west of the site, controls the groundwater flow in the water table aquifer (Kaiser, 1995). Water samples taken from the freshwater pond that thorium concentrations consistent with background levels.

NRC staff conducted an environmental justice review for the Kaiser site. We have determined that there are no environmental justice issues with the Kaiser site because there are no disproportionately high minority or low-income populations near the site.

Agencies and Individuals Consulted

This Environmental Assessment (EA) was prepared entirely by NRC staff. No other sources were used beyond those referenced in this EA.

NRC staff provided a draft of the EA to Oklahoma Department of Environmental Quality (ODEQ) for review. By facsimile dated July 30, 1999, ODEQ agreed with NRC's conclusion that the proposed action will not have any significant affect on the quality of the human environment.

NRC contacted the Fish and Wildlife Service to ensure that the proposed action will not have an adverse impact on threatened and endangered species.

Mr. Ken Frazier informed the NRC by phone on August 2, 1999, that the proposed action will have no impact on threatened and endangered species.

NRC also contacted the Oklahoma Historical Society to determine if the proposed action would have any adverse impacts on sacred or historical properties near the Kaiser site. The Oklahoma Historical Society informed Kaiser, by letter dated August 31, 1999, that there are no historic properties affected by the project.

The Oklahoma Archeological Survey informed NRC, by letter dated August 6, 1999, that no archeological sites are listed as occurring within the project area and no archeological materials are likely to be encountered.

The Creek Nation of Oklahoma informed Kaiser, by letter dated August 5, 1999, that there are no religious or sacred sites within the project area that will be affected by the undertaking of this project.

Conclusions

Radiological exposures to workers and the public will be in accordance with 10 CFR Part 20 limits. Kaiser has committed to perform remediation activities in accordance with an acceptable RCP. NRC staff believes the RCP provides adequate controls to keep potential doses to workers and the public from direct exposure, airborne material, and released effluents, ALARA.

NRC staff also believes that the remediation alternative proposed by Kaiser minimizes the potential dose to members of the public, and other environmental impacts. Potential doses to members of the public will be minimized by removing contaminated soil from public areas and storing on property fenced and controlled by Kaiser. The proposed remediation alternative also minimizes the other potential environmental impacts. The volume of contaminated soil to be excavated and stored on Kaiser property is a small fraction of the total volume of contaminated soil present on Kaiser property requiring remediation. Therefore, the potential environmental impact from the proposed action is insignificant.

References

1. Kaiser Aluminum Specialty Products, "Field Characterization Report," April 18, 1995.

2. Kaiser Aluminum & Chemical Corporation, "Adjacent Land Remediation Plan for Kaiser Aluminum & Chemical Corporation, Tulsa, Oklahoma," Revision 0, August 1998.

3. Kaiser Aluminum and Chemical Corporation, "Adjacent Land Characterization," March 1999.

4. NRC , "Action Plan to Ensure Timely Remediation of Sites Listed in the Site Decommissioning Management Plan," 57 FR 13389, April 16, 1992.

Finding of No Significant Impact

NRC has prepared an EA related to the approval of Kaiser's ALRP, Terminated License No. STB–472. On the basis of this EA, NRC has concluded that the environmental impacts that would be created by the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that Finding of No Significant Impact is appropriate.

The EA and the documents related to this proposed action are available for public inspection and copying at the NRC's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: John T. Buckley, Project Manager, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards. Telephone: (301) 415–6607.

Dated at Rockville, Maryland, this 14th day of February 2000.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–5587 Filed 3–7–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Application for a License to Export Radioactive Waste

Pursuant to 10 CFR 110.70(b)(2) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link <*http://www.nrc.gov/NRC/ADAMS/index.html*> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of the application for a license to export special nuclear material noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant/date of application/date received/application number	Description of material		End use	Country of destination
	Material type	Total qty		
Transnuclear, Inc. ..... February 11, 2000. February 14, 2000. XSNM2611—Revised	High-enriched Uranium (93.45%).	150.348 kg Uranium/140.500 kg U–235.	Fuel for HFR/Petten Reactor	Netherlands.

Dated this 1st day of March 2000 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Deputy Director, Office of International Programs.

[FR Doc. 00–5586 Filed 3–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 12, 2000, through February 25, 2000. The last biweekly notice was published on February 23, 2000 (65 FR 9000).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 7, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner

must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: November 30, 1999.

Description of amendment request: The proposed amendment revises the test standard for laboratory testing of activated charcoal to tests in accordance with the ASTM D3803–1989 standard in response to Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

The changes included in this request do not affect any accident initiating events. No new accident initiators or new failure modes are created. These changes will not result in any change to the charcoal efficiency credited in the accident analyses for any of the air treatment systems. The ability of each of the accident mitigation air treatment systems to perform its function will not be affected. System design flow requirements and filter/adsorber bank bypass leakage requirements remain unchanged. Therefore, the proposed changes will not adversely impact the capability of the accident mitigation air treatment systems and could not represent a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

This LCA [license change application] does not involve the addition of any new hardware. The requested changes only affect testing standards for the three air treatment systems used for accident mitigation. Change[s] of a test standard for the air treatment systems could not create a new accident scenario. Therefore, these changes do not create the potential for any accident different from those that have been evaluated.

C. These proposed changes do not involve a significant reduction in a margin of safety.

The proposed T.S. changes will have no adverse affect on the performance of the three accident mitigation Air Treatment Systems. System design flow requirements and filter/adsorber bank bypass leakage requirements remain unchanged. Use of the charcoal lab testing protocol suggested by Generic Letter 99–02 will ensure that the charcoal adsorber is better able to adsorb radioiodine generated during postulated accidents. These changes do not result in a degradation of safety related equipment, and therefore, do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Jr., Esq., PECO Energy Company, 2301 Market Street, S23–1, Philadelphia, PA 19103.

NRC Section Chief: Marsha Gamberoni, Acting.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: November 19, 1999.

Description of amendments request: The proposed amendments would revise Technical Specification (TS) 5.5.11.c, "Ventilation Filter Testing Program (VFTP)," to change the testing requirements of the engineered safety systems charcoal adsorbers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1—Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS 5.5.11.c, initiates a laboratory performance test of adsorber carbon (charcoal) that yields more accurate results than what is currently required by TS. The proposed change also deletes the specific reference to the ANSI [American National Standards Institute] standard by which the adsorber carbon sample is obtained. The proposed changes to test adsorber carbon to a more current and improved ASTM [American Society for Testing and Materials] standard and delete the ANSI standard by which the adsorber carbon sample is obtained would not be plant accident initiators as described in Chapter 6 or Chapter 15 of the PVNGS [Palo Verde Nuclear Generating Station] UFSAR

[Updated Final Safety Analysis Report]. The changes would not involve a significant increase in the probability of an accident previously evaluated.

Carbon adsorption plays a direct role in mitigating the consequences of a radiological event. Safety-related air-cleaning units used in the ESF [engineering safety features] ventilation systems of nuclear power plants reduce the potential onsite and offsite consequences of a radiological accident by the adsorption of radioiodine. The proposed amendment to change the laboratory performance test for carbon will yield more conservative results than what is currently required by TS. Hence, it will better ensure that the adsorber carbon for TS systems used in the mitigation of an accident remains above the assumed carbon decontamination efficiency referenced in Chapter 6 and Chapter 15 of the UFSAR.

This proposed amendment does not alter, degrade, or prevent actions described or assumed in an accident. It will not alter any assumptions previously made in evaluating radiological consequences or, affect any fission product barriers. It does not increase any challenges to safety systems as well. Therefore, this proposed amendment would not significantly increase the consequences of an accident previously evaluated.

Standard 2—Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to TS 5.5.11.c, initiates a laboratory performance test of adsorber carbon that yields more accurate results than what is currently required by TS. The proposed changes to test adsorber carbon to a more current and improved ASTM standard and delete the specific reference to the ANSI standard by which the adsorber carbon sample is obtained would not be plant accident initiators as described in Chapter 6 or Chapter 15 of the PVNGS UFSAR. The proposed amendment does not change the function of any SSC [structure, system, and component]. TS nuclear air treatment systems function to filter radiological releases during design basis accidents. This change will provide greater assurance that this function is provided. The revised TS required laboratory tests utilize practices now in place, changing only the testing parameters. The changes do not alter, degrade, or prevent actions described or assumed in an accident described in the PVNGS UFSAR from being performed. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety, as defined in the PVNGS Technical Specifications, is not reduced but is enhanced due to improved testing. This change initiates a laboratory performance test on adsorber carbon that yields more accurate results than what is currently required by TS and deletes the specific reference to the ANSI standard by which the adsorber carbon sample is obtained. The proposed change to test adsorber carbon to a more current and improved ASTM standard will ensure the carbon media's ability to adsorb radioactive gases will remain above that credited in the PVNGS' dose analysis for postulated accidents.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: December 1, 1999.

Description of amendments request: The proposed amendments to the operating licenses would delete or update outdated administrative information and delete license conditions that are no longer applicable or have been completed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1—Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No—The proposed administrative changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed administrative Operating License (OL) amendments would (1) delete or update operating license references to outdated administrative information, (2) delete license conditions that were complied with and are no longer applicable to the current operating environment, and (3) delete license conditions that were one-time requirements and have been completed. Since these proposed changes are administrative and have no [e]ffect on the current OL requirements, plant design, operation, or maintenance, the proposed administrative changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2—Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No—The proposed administrative changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes would have no [e]ffect on the physical plant. Consequently, plant configuration and the operational characteristics remain unchanged and the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Does the proposed change involve a significant reduction in a margin of safety?

No—The proposed administrative changes do not involve a significant reduction in a margin of safety. The proposed changes are administrative and have no [e]ffect on the current OL requirements, plant design, operation, or maintenance. No margin of safety would be affected by the proposed administrative changes to the PVNGS [Palo Verde Nuclear Generating Station] OLs since no current operating requirements would be changed.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: January 27, 2000.

Description of amendments request: The proposed amendment modifies the conditions of containment closure during core alterations/fuel handling and loss of shutdown cooling in Calvert Cliffs Units 1 and 2. The reason for this proposed amendment is to improve personnel safety and the progress of outages by allowing greater egress from and access to the Containment during refueling outages. A new containment outage door assembly will be installed on the outside of the equipment hatch opening to provide quicker closure, improve safety when the door is open, and allow more flexibility when staging material in the Containment during an outage. Changes to the way the personnel air lock and the containment

purge system are operated during maintenance activities on the Shutdown Cooling System are also part of the proposed amendment.

The proposed amendment changes Technical Specifications (TSs) 3.9.3 and 3.9.4 to allow the new containment outage door to remain open during core alterations and fuel handling, during maintenance and testing activities on the Shutdown Cooling system, and to be used as an alternate to the existing equipment hatch to close the equipment hatch opening when containment closure is required. The proposed changes will also allow the personnel air lock and the containment purge valves to remain open during maintenance activities on the Shutdown Cooling System. Baltimore Gas and Electric Company (BGE) also proposes to revise TS 3.9.3 to indicate that four bolts is the minimum number required to secure the equipment hatch for closure. In addition, BGE proposes deleting the words "when there is 23 feet of water above the fuel" from Limiting Condition for Operation 3.9.3.c.2 since this requirement is already part of the applicability statement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will modify the conditions of containment closure during core alterations/fuel handling and during maintenance/testing activities on the Shutdown Cooling (SDC) System. Specifically, the proposed changes will allow the new containment outage door, the personnel air lock door, and the containment purge valves to stay open during core alterations/fuel handling, and during maintenance and testing activities on the SDC System. The proposed change will also allow the new containment outage door to be used as an alternate to the existing equipment hatch to close the equipment hatch opening when closure is required. Additionally, the proposed changes will change the wording of the Technical Specifications to indicate that four bolts is the minimum number required to secure the equipment hatch when it is used for containment closure. The proposed changes also remove[ ] the water level requirement from Limiting Condition for Operation 3.9.3 since the water level requirement is part of the applicability statement for this Technical Specification.

Closing the containment penetrations is considered to be a mitigator of the radiological consequences of a fuel handling incident and a loss of SDC, not an initiator. Therefore, allowing the containment outage door, personnel air lock, and the containment purge valves to be open during these outage activities does not involve a significant increase in the probability of an accident previously evaluated.

The consequence of a fuel handling incident is the release of radioactivity from Containment. The potential offsite dose resulting from a fuel handling incident has been evaluated. Based on a minimum decay time of 100 hours prior to handling fuel (Technical Reference Manual Section 15.9.1), the calculated offsite doses resulting from a fuel handling incident are 14.06 rem to the thyroid, and 0.457 rem to the whole body, with the personnel air lock door open. All activity released from Containment over the length of the incident is assumed to be unfiltered. The calculated doses resulting from a fuel handling incident are less than 25% of the limits of 10 CFR Part 100 (75 rem thyroid and 6 rem whole body). This analysis will apply to the equipment hatch opening because the analysis assumes no containment closure. The amount of radioactivity released is bounded by the current analysis of record. Although natural air circulation will cause some containment air to go out through any opening in a fuel handling accident, there is no pressure produced to push the radioactivity out of Containment. Therefore, having the containment outage door open during core alterations and fuel handling does not involve an increase in the consequences of an accident previously evaluated. Additionally, if the equipment hatch is to be used, specifying a minimum number of four bolts will allow the optional use of more bolts, if desired.

The consequence of a loss of SDC is the potential for release of radioactivity to the atmosphere outside Containment. Closing containment penetrations is a mitigator of that consequence. Administrative controls will be put in place to ensure that in an emergency containment closure can be quickly achieved. The emergency air lock will have at least one door closed when containment closure is required by a SDC condition. The containment purge system isolation valves are closed automatically on a containment high radiation signal and can be shut by remote manual operation. The maximum calculated pressure that can develop in the Containment for the limiting loss of SDC case is 12 psig. All required penetration closure devices can withstand that pressure. Therefore, allowing the personnel air lock doors, the containment outage door, and the purge isolation valves to remain open does not involve a significant increase in the consequences of a loss of SDC.

Therefore, the proposed Technical Specificaton changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

This requirement change does not involve a significant change in the operation of the plant and no new accident initiation mechanism is created by the modification. Closing containment penetrations is considered to be a mitigator of the radiological consequences of any accident in the Containment, not an initiator. The equipment hatch opening, the personnel air lock, and the purge supply and exhaust are currently opened and closed during the course of an outage. The proposed changes allows them to remain open during a period when they are currently required to be closed. The closure function of the equipment hatch opening in Modes 5 and 6 will be performed by a hinged containment outage door; thus, closing the equipment hatch opening will be easier and will require fewer people and less time. The operation of the containment outage door is not a significantly different method of operation from that of other dogged doors at Calvert Cliffs. Using the containment outage door to close the equipment hatch opening instead of the equipment hatch also mitigates the consequences of the incident and does not initiate an accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would not involve a significant reduction in the margin of safety.

The margin of safety for containment closure during core alternation/fuel handling is based on the amount of offsite dose resulting from a fuel handling incident and the safety of personnel in the Containment at the time of the incident. An offsite dose calculation previously approved by the NRC for a fuel handling incident is 14.06 rem to the thyroid, and 0.457 rem to the whole body, with no containment closure established, and any activity released from the Containment assumed to be unfiltered. These calculated doses are less than 25% of the limits of 10 CFR Part 100. The analysis will apply to the containment outage door because the analysis assumes no containment closure. Emergency personnel egress from Containment will be through the open door, which is an improvement in personnel safety because this exit is not currently available. Additionally, trained personnel will be available to close the door and contain any radiation released inside Containment as a result of a fuel handling incident. Leaving the containment outage door open during core alterations and fuel handling will not allow more than the calcutated amount of radionuclides to escape from Containment; shutting the door following a fuel handling incident will increase the margin of safety by keeping the actual offsite dose lower than the calculated dose.

Therefore, allowing the containment outage door to be open during fuel handling would not involve a significant reduction in the margin of safety.

The margin of safety for containment closure in the case of loss of SDC is twofold: (1) the time required to close the Containment to prevent a radioactive release to the atmosphere outside Containment if SDC should be lost; and (2) the ability to retain the pressure generated by boiling of reactor coolant as a result of a loss of SDC.

Currently, all containment penetrations are required to be closed prior to taking the SDC

System out-of-service for maintenance, or within four hours if SDC is lost. The radiological consequences of a loss of SDC incident do not occur immediately on loss of SDC. The containment purge isolation valves close rapidly on a high radiation signal or are closed by remote manual operation. The containment outage door and the personnel air lock doors are designed to be closed rapidly by site personnel. Other containment penetrations that could release radiation to the environment outside the Containment will be required to be closed. The maximum calculated pressure that can develop in the containment as a result of a loss of SDC is 12 psig. The purge isolation valves, the personnel air lock doors, and the containment outage door are all designed to meet this pressure retaining requirement. The proposed changes do not increase the possibility of a release of radiation following a loss of SDC incident.

Therefore, the ability to provide containment closure is maintained and the margin of safety is not significantly reduced by this proposed activity.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Marsha Gamberoni, Acting.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: January 11, 2000.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to increase allowable out-of-service times (AOTs) and surveillance test intervals (STIs) for selected actuation instrumentation. The proposed amendments implement AOT/STI changes based on Topical Reports by General Electric Company and the Boiling Water Reactor Owners' Group that have previously been reviewed and approved by the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed TS changes increase the Allowable Outage Times and Surveillance Test Intervals (AOT/STI) for actuation instrumentation based on analyses developed and approved by the Nuclear Regulatory Commission (NRC). TS requirements that govern operability or routine testing of plant instruments are not assumed to be initiators of any analyzed event because these instruments are intended to prevent, detect, or mitigate accidents. Therefore, these changes will not involve an increase in the probability of occurrence of an accident previously evaluated. Additionally, these changes will not increase the consequences of an accident previously evaluated because the proposed changes do not involve any physical changes to plant systems, structures or components (SSCs), or the manner in which these SSCs are operated. These changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients by the plant safety analysis or licensing basis. As justified and approved in the AOT/STI licensing topical reports, the proposed changes establish or maintain adequate assurance that components are operable when necessary for the prevention or mitigation of accidents or transients and that plant variables are maintained within limits necessary to satisfy the assumptions for initial conditions in the safety analyses. The proposed changes establish or modify time limits allowable for operation with inoperable instrument channels based on analyses which have been approved by the NRC. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite. For these reasons, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve any physical changes to SSCs, or the manner in which these SSCs function. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed changes increase the AOTs and STIs for actuation instrumentation based on generic analyses completed by the Boiling Water Reactors Owners' Group (BWROG). The NRC has reviewed and approved the generic studies and has concurred with the BWROG that the proposed changes do not significantly affect the probability of failure or availability of the affected instrumentation systems. The analysis determined that there is no significant change in the availability and/or reliability of instrumentation as a result of the proposed changes in AOTs and STIs.

Furthermore, the change to increase the frequency of the reactor protection system scram contactor testing has been shown to improve plant safety. ComEd has determined these studies are applicable to Dresden Nuclear Power Station, Units 2 and 3. The proposed changes to AOTs provide realistic times to complete required testing and maintenance actions without increasing the overall instrument failure frequency. Likewise, the extended STIs do not result in significant changes in the probability of instrument failure. Furthermore, the proposed changes will reduce the probability of test-induced plant transients and equipment failures. Therefore, it is concluded that the proposed changes will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767

NRC Section Chief: Anthony J. Mendiola.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: November 22, 1999.

Description of amendment request: The proposed amendment would approve the use of new values for post-accident containment pressure in Pilgrim's net positive suction head (NPSH) analyses performed for the emergency core cooling system (ECCS) pumps.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Will crediting the proposed post-LOCA [loss of coolant accident] containment pressure in ECCS analysis involve a significant increase in the probability or consequences of an accident previously evaluated?

Chapter 14 of the FSAR [final safety analysis report] contains evaluations of the worst postulated accidents that the Pilgrim plant was evaluated for, which include the refueling accident, the main steam line break outside primary containment, the recirculation line break inside primary containment, and the control rod drop accident. No increase in the probability of the evaluated accidents will result from crediting the proposed containment pressure because post-LOCA containment pressure does not represent an accident initiator but, rather, is an expected condition that will inherently exist in the containment after the pipe break inside containment.

The worst radiological consequences for the Pilgrim plant are associated with the design basis LOCA which is the double guillotine failure of the recirculation system piping. The radiological analysis of this event contained in FSAR Chapter 14 uses a TID–14844 source term and assumes a 1.5% per day leakage from the containment, which is greater than the maximum leakage allowed by the Technical Specifications. The results of this analysis are presented in Table 14.5–2 of the FSAR and indicate substantial margin when compared to 10 CFR Part 100 limits.

The radiological consequences of the design basis accident are not increased by taking credit for the post-LOCA suppression pool overpressure. Assuming containment integrity exists, the mechanism for increasing the consequences of the accident would be an increased leakage rate caused by an increase of the average differential pressure between primary and secondary containment during the accident response. However, the NPSH analysis performed for Pilgrim that includes post-LOCA containment pressure does not assume or require that the differential pressure between primary and secondary containment be maintained above the lower bounding minimum that exists due to thermal equilibrium conditions between the containment atmosphere and the suppression pool. Specifically, the containment pressure included in the ECCS pump NPSH analysis is inherently provided by the increase in wetwell vapor pressure and air/nitrogen partial pressure that exists due to equilibrium with increasing pool temperature with an accounting for containment initial conditions and leakage.

Inclusion of the post-LOCA containment pressure in the calculation of NPSH does not require that a higher containment pressure than would otherwise occur be purposely maintained, no requirement is incurred to delay operating containment heat removal equipment at the highest rate possible, no requirement is incurred to deliberately continue any condition of high containment pressure to maintain adequate NPSH, and no requirement is incurred for the purposeful addition of air/nitrogen into the containment to increase the available pressure.

The higher debris head losses that required the new NPSH evaluation are based on an updated analysis of LOCA-generated debris. The new debris analysis was performed in response to NRC Bulletin 96–03 using the guidance given in Regulatory Guide 1.82, Revision 2. The NRC guidance is used to ensure sufficient NPSH margin exists to accommodate the debris resulting from a LOCA. Using the proposed containment pressure limits included in this submittal, it is shown there is sufficient NPSH margin at all times following the bounding design basis accident.

Based on these reasons, the probability of accidents previously evaluated is not increased and the consequences of the design basis accident are not increased.

(2) Will crediting the proposed post-LOCA containment pressure create the possibility for new or different kinds of accidents?

As stated above, Chapter 14 of the FSAR contains the worst postulated accidents that the Pilgrim plant was evaluated for, which include the refueling accident, the main steam line break outside primary containment, the recirculation line break inside primary containment, and the control rod drop accident. New or different types of accidents are not created by including the containment pressure in NPSH analyses because post-LOCA containment pressure is an expected condition that will exist in the containment after the pipe break inside containment. The pressure included in the NPSH analysis is the minimum pressure that will exist due to thermal equilibrium conditions and must be considered as part of any accident analysis regardless of whether it is used in the evaluation of NPSH.

(3) Will crediting the proposed new limits for post-LOCA containment pressure in ECCS NPSH analyses involve a significant reduction in a margin of safety?

The integrity of the primary containment and the operation of the ECCS systems in combination limit the off-site doses to values less than those suggested in 10 CFR 100 in the event of a break in the primary system piping. In order for the ECCS pumps to meet their performance requirements, the NPSH available to the pumps throughout the accident response must meet their specific NPSH requirements. Excess NPSH margin will not improve the performance of the ECCS pumps because NPSH available must only meet NPSH requirements for the pump to operate on its pump curve and meet design expectations.

Including the proposed post-LOCA containment pressure in NPSH analyses increases the NPSH available to the ECCS pumps, but the methodology used includes only that pressure that will inherently exist due to thermal equilibrium between the containment atmosphere and the suppression pool because of the primary containment enclosure with an accounting for leakage. Post-accident containment pressure calculated in such a manner represents a conservative lower bound for the pressure that will be available. Therefore, it is expected the actual NPSH margin will exceed that calculated by these methods. The proposed pressure limits are enveloped at all times by the containment pressure calculated using the thermal equilibrium methodology. These methods for calculating NPSH available and NPSH margin were previously reviewed by the NRC for License Amendment 173.

The new debris analysis referenced in this submittal was done in accordance with Regulatory Guide 1.82, Revision 2. The LOCA debris analysis is considered conservative and bounding for all postulated accidents and transients. It is shown that, within the proposed containment pressure limits, there is sufficient NPSH margin at all times following the design basis accident to accommodate the debris head loss without affecting RHR [residual heat removal] or core spray pump performance.

Based on the above discussion, credit for the updated values of containment pressure in ECCS NPSH analyses does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: W. S. Stowe, Esquire, Entergy Nuclear Generation Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Section Chief: James W. Clifford.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2 (ANO–1&2), Pope County, Arkansas; Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi; Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana; and Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 23, 1999.

Description of amendment request: The proposed amendments would incorporate the use of American Society for Testing and Materials (ASTM) D3803–1989, "Standard Test Method for Nuclear-Grade Activated Carbon," into each facility's Technical Specifications (TS). Entergy Operations, Inc. (the licensee) is submitting these proposed amendments as a complete response to NRC Generic Letter (GL) 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. The proposed change does not signficantly increase the probability or consequences of an accident previously evaluated.

The proposed changes do not result from a physical change to the facilities or impact plant operations. Neither do they impact the response of the facilities to an accident.

American Society of Testing and Materials (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' reflects the most up-to-date method for accurately testing the efficiency of activated charcoal contained in engineered safety features (ESF) system adsorbers. Establishing ASTM D3803–1989 as the required method for laboratory testing of activated charcoal represents an upgrade from the current TS requirements. Using ASTM D3803–1989 methodology ensures the tested charcoal will perform in a manner consistent with the facility's licensing basis.

The proposed acceptance criterion values for charcoal efficiency were calculated using the equation specified in GL 99–02. As documented in GL 99–02, the NRC [Nuclear Regulatory Commission] found this equation acceptable for determining charcoal efficiency when using ASTM D3803–1989 as the test method.

Based on the above discussion, the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

II. The proposed change does not create the possiblity of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result from a physical change to the facilities or impact plant operations.

Establishing ASTM D3803–1989 as the method for performing laboratory testing of nuclear-grade activated charcoal does not involve a physical alteration to the facility or impact plant operations. Using ASTM D3803–1989 methodology ensures the tested charcoal will perform in a manner consistent with the facility's licensing basis.

The proposed acceptance criterion values for charcoal efficiency were calcuiated using the equation specified in GL 99–02. As documented in GL 99–02, the NRC found this equation acceptable for determining charcoal efficiency when using ASTM D3803–1989 as the test method.

Based on the above discussion, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not result from a physical change to the facilities or impact plant operations. Neither do they impact the response of the facilities to an accident.

Safety-related air-cleaning units used in the ESF ventilation systems of nuclear power plants reduce the potential onsite and offsite consequences of a radiological accident by adsorbing radioiodine. To ensure the charcoal adsorbers used in these systems perform in a manner that is consistent with the facility's licensing basis, facility TS contain requirements to periodically test (in a laboratory) samples of charcoal taken from the air-cleaning units.

ASTM D3803–1989 reflects the most up-to-date method for accurately testing the efficiency of activated charcoal contained in ESF system adsorbers. Establishing ASTM D3803–1989 as the required method for laboratory testing of activated charcoal represents an upgrade from the current TS requirements and maintains the margin of safety by ensuring the tested charcoal performs in a manner consistent with the facility's licensing basis.

The proposed acceptance criterion values for charcoal efficiency were calculated using the equation specified in GL 99–02. As documented in GL 99–02, the NRC found this equation acceptable for determining charcoal efficiency when using ASTM D3803–1989 as the test method.

Based on the above discussion, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502; and Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: November 23, 1999.

Description of amendment request: The proposed amendments would make the following changes to the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2) Technical Specifications (TSs): (1) For BVPS–1, surveillance requirement (SR) 4.8.1.1.2.b.3.b would be revised to reflect a narrower required diesel generator (DG) frequency band; an associated footnote would be deleted; associated Bases would be revised to reflect these TS changes. (2) For BVPS–2, SR 4.8.1.1.2.f would be revised to clarify that the DGs are only required to achieve a minimum frequency and voltage within the first 10 seconds of the related test, and that the stated voltage and frequency bands are requirements for steady state operation of the DGs; a footnote is also added to this SR. (3) Page formats are revised as needed to permit the addition or deletion of text.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

For the Beaver Valley Power Station (BVPS) Unit No. 1 only, the proposed amendment will revise surveillance requirement (SR) 4.8.1.1.2.b.3.b.

Specifically, the required diesel generator (DG) frequency band specified in SR 4.8.1.1.2.b.3.b will be reduced. In addition, Footnote (6) pertaining to the DG frequency limits and associated Bases wording will be deleted.

For BVPS Unit No. 2 only, SR 4.8.1.1.2.f will be revised to clarify that the diesel generators are only required to achieve a minimum voltage and frequency in ≥ 10 seconds. The DGs are then required to obtain voltages and frequencies within the required bands during steady state operation. A new Footnote (8) will be added which modifies the stated voltage and frequency values in the proposed SR 4.8.1.1.2.f.1. This footnote will require the voltage and frequency values be appropriately increased to account for measurement uncertainties.

Page format will be revised as necessary to permit incorporation and deletion of text. These format changes include the addition or deletion of Technical Specification pages as required.

The DGs are used to support mitigation of the consequences of a design basis accident (DBA); however, they are not considered the initiator of any previously analyzed DBA described in the Updated Final Safety Analysis Report (UFSAR). The proposed amendment does not impact any of the offsite AC distribution system; therefore, the probability of a loss of offsite power event is not increased.

Therefore, the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated.

The proposed reduction in the DG output frequency limits (for BVPS Unit No. 1 only) will continue to protect engineered safety feature (ESF) pumps from runout conditions and ESF pump motors from operating in an unanalyzed condition. The revised frequency limits have no adverse effect on the diesel generator operability. The revised DG output frequency limits do not increase the consequences of a design basis accident; this proposed change ensures that equipment will perform its intended function. This change is intended to prevent the DG from being loaded beyond analyzed loading limits and protect ESF equipment. The revised surveillance requirements being applied to operating limits will provide greater

assurance that increased performance requirements are not imposed on ESF equipment.

The proposed deletion of Footnote (6) (for BVPS Unit No. 1 only) removes the ability to evaluate the DG frequency response. The proposed wording is more restrictive in that the DG frequency response will be required to be demonstrated regardless of the amount of DG loading. The ability of the DGs to maintain the required output frequency as required to meet accident analysis assumptions will continue to be demonstrated on a periodic basis. The proposed deletion of the Bases wording pertaining to Footnote (6) is administrative in nature and does not affect plant safety. This change removes guidance information on how to conduct the engineering evaluation that will no longer be applicable following DG governor modifications.

The proposed revision to SR 4.8.1.1.2.f (for BVPS Unit No. 2 only) will continue to require that both DGs start simultaneously to confirm that there is not a cross-tie that could render both DGs incapable of performing their required functions. The proposed revision to SR 4.8.1.1.2.f will continue to require that each DG obtain the minimum conditions to accept load in the time frame assumed in the accident analysis. In addition, the proposed wording of SR 4.8.1.1.2.f will continue to require that each DG obtain the required steady state voltage and frequency values.

The proposed addition of Footnote (8) (for BVPS Unit No. 2 only) is administrative in nature and does not affect plant safety. The proposed footnote provides information that the values for voltage and frequency need to be increased to account for measurement uncertainties.

The revision to page format as necessary to permit incorporation and deletion of text is editorial in nature and does not affect plant safety.

Therefore, the proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed revisions have no adverse impact on the DBAs previously evaluated in the UFSAR. The proposed revisions will continue to assure that the DGs are available and fully operable to perform their intended safety function of providing sufficient electrical power to ESF equipment following a DBA and a loss of offsite power. New failure modes are not introduced as a result of the proposed revisions to the DG surveillance requirements. The proposed revision to the required DG frequency range will continue to prevent ESF motors and pumps from being subjected to overfrequency conditions which could reduce the life of the equipment. The proposed changes do not affect the probability of malfunction of a DG or its connected emergency AC power system.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety is not significantly reduced as a result of the proposed revisions. The margin of safety depends on the maintenance of specific operating parameters within design limits.

The BVPS Unit No. 1 DG reliability and performance during a loss of offsite power and a DBA are enhanced by the proposed revision to SR 4.8.1.1.2.b.3.b. This proposed revision (for BVPS Unit No. 1 only) will ensure that the maximum calculated DG loading does not exceed the UFSAR limit of 2745 kW. The proposed revision to SR 4.8.1.1.2.b.3.b for DG operating frequency limits continues to protect ESF equipment from overfrequency conditions. ESF equipment will continue to function, as assumed in the safety analysis, to ensure that fuel, reactor coolant system and containment design limits are not exceeded.

The proposed revision to SR 4.8.1.1.2.f (for BVPS Unit No. 2 only) will continue to require that both DGs start simultaneously to confirm that there is not a cross-tie that could render both DGs incapable of performing their required functions. The proposed revision to SR 4.8.1.1.2.f will continue to require that each DG obtain the minimum conditions to accept load in the time frame assumed in the accident analysis. In addition, the proposed wording of SR 4.8.1.1.2.f will continue to require that each DG obtain the required steady state voltage and frequency values.

The remaining changes are either administrative or editorial in nature and do not affect plant safety.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Marsha Gamberoni.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: April 15, 1999, as supplemented on December 22, 1999.

Description of amendment request: The proposed amendment would change the Technical Specification as described below:

Page 1.0–3 Clarification would be added to the definition of Secondary Containment Integrity.

Page 1.0–4 The definition of facility description and safety analysis report (FDSAR) would be expanded.

Page 2.3–3 The Bases section would be separated from this page which is the last page of the specification.

Page 2.3–4 Two paragraphs, which should have been deleted in an earlier revision, would be deleted and subsequent pagination would be affected. Two paragraphs would be moved from the end of the bases to that location. An unrelated wording change would also be made.

Page 2.3–7 In addition to pagination, a sentence would be added about the relays involved in undervoltage situations.

Page 3.4–1 The phrase "(see Note below)" would be deleted as unnecessary and two lines from the top of page 3.4–2 would be included as "c."

Page 3.4–2 Two lines would be moved to the prior page and designated "c."

Page 3.5–7 LCO statement of 36 hours would be deleted from Specification 3.5.B.6.a.3 because it is inconsistent with Specification 3.5.B.7.

Page 3.5–9 A bases statement would be added about administrative control over non-automatic primary containment isolation valves.

Page 3.5–11 A bases statement would be added about the use of the trunion room door.

Page 3.7–1 The phrase "shutdown position" would be corrected to "shutdown condition."

Page 3.17–1 The phrase "the control room HVAC system" would be corrected to "one control room HVAC system."

Page 4.5–13 The word "off" would be changed to "on."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change are relatively minor in nature and are proposed to enhance clarity and understanding. None of the changes have any impact on safety and there is no change to an operating parameter of any system, component or structure. Accordingly, the proposed changes do not affect any accident precursors. Therefore, the probability of an accident previously evaluated is not increased. The proposed TS change will assure the ability of systems to perform their intended function. Therefore, the proposed changes will not involve a significant increase in the consequences of an accident previously evaluated. Therefore, the probability of occurrence

or the consequences of an accident previously evaluated in the Safety Analysis Report (SAR) will not increase as a result of these changes.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are relatively minor in nature and are proposed to enhance clarity and understanding. None of the changes have any impact on safety and there is no change to an operating parameter of any system, component or structure. The proposed changes do not involve placing systems in new configurations or operating systems in a different manner that could result in a new or different kind of accident. Therefore, the proposed activity does not create the possibility for a new or different kind of accident from any previously identified in the SAR.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in the margin of safety. The changes are primarily administrative and are proposed to enhance clarity and understanding. They do not modify an operating parameter of any system, component or structure. They do not adversely affect the performance characteristics of systems nor do they affect the ability of systems to perform their intended function. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: M. Gamberoni, Acting.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: December 15, 1999.

Description of amendment request: The proposed changes will revise the LGS Technical Specifications (TSs) to remove TS Table 3.6.3–1, "Primary Containment Isolation Valves," and references to the table, from the TSs and relocate the information from the TS table to the Technical Requirements Manual, a licensee-controlled document.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of a previously evaluated accident is not increased because containment isolation is not an accident initiator and the proposed changes do not impact any accident initiating conditions. The consequences of an accident previously evaluated are not increased because the proposed changes do not impact the ability of containment to restrict the release of any fission product radioactivity to the environment. The proposed change to remove the primary containment isolation valve table from TS and relocate the information to an administratively controlled document, and to revise the wording in TS to reflect this change, will have no impact on any safety related structures, systems or components. The Technical Specification requirements for the primary containment isolation valves will not be changed. In addition, the details of the table are not being changed, only relocated to a different controlling document. The proposed changes simplify the Technical Specifications, meet the regulatory requirements for control of containment isolation, and are consistent with the guidance provided in Generic Letter 91–08. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature and do not result in physical alterations or changes in the method by which any safety related system performs its intended function(s). The proposed changes do not impact any safety analysis assumptions. The proposed changes do not create any new accident initiators or involve an activity that could be an initiator of an accident of a different type. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed change to remove the primary containment isolation valve table from TS and relocate the information to an administratively controlled document, and to revise the wording in TS to reflect this change, do not alter the Technical Specifications requirements for containment integrity and containment isolation and will not adversely affect the containment isolation capability. The licensee controlled document will be maintained under the requirements of TS Administrative Controls Section 6.0 and the provisions of 10CFR50.59. In addition, the proposed changes do not impact any safety analysis assumptions. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC. Section Chief: James W. Clifford.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: February 9, 2000.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Limiting Condition for Operation (LCO) 3.8.2.1. The proposed change would add two new Action Statements for operating conditions where a Class-1E battery's electrolyte temperature is below the minimum limit specified in TS Surveillance Requirement 4.8.2.1.b.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant structures, systems or components (SSC). The Class-1E batteries will continue to function as designed. The Class-1E battery system is designed to mitigate the consequences of an accident, and therefore, can not contribute to the initiation of any accident. The proposed TS LCO Action Statements will continue to ensure that the Class-1E batteries are capable of performing their required safety functions while providing a sufficiently conservative period of continued plant operation. In addition, this proposed TS change will not increase the probability of occurrence of a malfunction of any plant equipment important to safety, since the manner in which the Class-1E battery system is operated is not affected by these proposed changes. The operating limits specified in the proposed TS LCO ensure that the battery's safety functions will be accomplished. Therefore, the proposed TS changes would not result in the increase of the consequences

of an accident previously evaluated, nor do they involve an increase in the probability of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical changes to the design of any plant SSC. The design and operation of the Class-1E battery system is not changed from that currently described in the UFSAR [Updated Final Safety Analysis Report], only the allocation of battery design margin would be temporarily affected by the proposed TS LCO. The Class-1E battery system will continue to function as designed to mitigate the consequences of an accident. Establishing a 31 day period where a Class-1E battery would be considered operable, with electrolyte temperature at or above 65°F and Category A and Category B limits met as appropriate, does not permit plant operation in a configuration that would create a different type of malfunction to the Class-1E batteries than any previously evaluated. In addition, the proposed TS changes do not alter the conclusions described in the UFSAR regarding the safety related functions of the Class-1E batteries or their support systems.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes contained in this submittal would implement TS requirements that either: (1) Permit continued plant operation when the safety function of the Class-1E batteries can be performed; or (2) conservatively require placing the plant in a safe shutdown condition. A Class-1E battery operating within Category A and Category B limits as appropriate and a 65°F battery electrolyte temperature (for a limited 31 day period) will still perform its safety-related functions. Temporary allocation of battery capacity margins in compensation of degraded operating conditions (low specific gravity) is already permitted by the Hope Creek TS (for a 31 day period). The ability of the Class-1E batteries to independently supply their required loads for four hours without support from battery chargers is not adversely affected by these proposed changes. Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant (PBNP), Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: January 19, 2000 (TSCR 217).

Description of amendment request: The proposed amendments would revise Technical Specification 15.4.4 to clarify that a different containment tendon may be designated as a control tendon providing that the new control tendon had not previously been physically changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendment does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change does not involve a change to structures, systems, or components which would affect the probability or consequences of an accident previously evaluated in the PBNP Final Safety Analyses Report (FSAR). The containment tendons are components integral to maintaining the containment pressure boundary under post accident conditions. Neither the tendons nor the containment tendon testing process are accident initiators. The proposed change simply clarifies the Technical Specifications regarding the selection of control tendons used to develop a tendon relaxation history and correlate observed test data. The proposed change does not affect reactor operations or accident analysis and has no significant radiological consequences. Therefore, this change will not create a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that contribute to initiation of any accidents. This change clarifies the Technical Specifications regarding the selection of control tendons used to develop a history and correlate observed test data. Except for the method of selecting the control tendon, the methods for performing the actual tendon surveillances are not changed. No new accident modes are created by selecting the control tendons. No safety-related equipment or safety functions are altered as a result of this change. Selecting a control tendon has no influence on, nor does it contribute to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. Therefore, the proposed change will not create the possibility of a new or different kind of accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The proposed change affects only the selection of control tendons used to develop a history and correlate observed test data. Except for the method of selecting the control tendons, the methods for performing the actual tests are not changed. The proposed change is based on NRC accepted provisions contained in Regulatory Guide 1.35, Revision 3. Furthermore, the proposed change will not reduce the availability of systems associated with containment integrity when they are required to mitigate accident conditions. Therefore, the proposed change will not create a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental

assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina.

Date of application for amendment: July 9, 1999, as supplemented on January 19, 2000.

Brief description of amendment: This amendment revises Technical Specification (TS) ¾.2.2, "Heat Flux Hot Channel Factor—$F_Q(Z)$," TS ¾.2.3, "RCS Flow Rate And Nuclear Enthalpy Rise Hot Channel Factor," TS ¾.2.5, "DNB Parameters," an associated note in TS Table 2.2–1, and associated Bases. Specifically, the proposed amendment would: (1) Remove the allowance for reduced power operation for reduced Reactor Coolant System (RCS) flow rate conditions; (2) separate the requirements for F delta H and RCS flow rate in the format prescribed by NUREG–1431, Revision 1, "Standard Technical Specifications, Westinghouse Plants," dated April 1995; and (3) implement the guidance of NUREG–1431, Revision 1, and NRC Generic Letter 88–16, dated October 4, 1988, for TS ¾.2.2 and TS ¾.2.3 and associated Bases by removing cycle-specific parameters and placing that information into the Core Operating Limits Report.

Date of issuance: February 24, 2000.

Effective date: February 24, 2000.

Amendment No. 95.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 11, 1999 (64 FR 43765).

The January 19, 2000, submittal contained clarifying information only, and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 2000.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: July 9, 1999.

Brief description of amendment: This amendment revises the Technical Specifications (TS) by relocating several instrumentation TS to plant procedures.

Date of issuance: February 24, 2000.

Effective date: February 24, 2000.

Amendment No. 96.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 11, 1999 (64 FR 43766).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 2000.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: July 30, 1999, as supplemented by letter dated December 2, 1999.

Brief description of amendment: By application dated July 30, 1999, as supplemented by letter dated December 2, 1999, Entergy Operations, Inc. (the licensee) requested changes to the Technical Specifications (TSs) (Appendix A to Facility Operating License No. NPF–47) for the River Bend Station, Unit 1. The proposed change, more commonly referred to as "power uprate," would revise the TSs and the operating license to increase the current licensed power of 2894 megawatts thermal (MW_{th}) to the uprated power level of 3039 MW_{th}, an increase of 5 percent. Included in the power uprate license amendment application was a request to increase the main steam safety and relief valves (S/RV) safety mode/function setpoint tolerance defined in Surveillance Requirement (SR) 3.4.4.1 from +0/−2 percent to ±3 percent.

This amendment approves, prior-to the issuance of the power uprate license amendment, a portion of the S/RV setpoint tolerance change requested. The change increases the safety function lift setpoint tolerances for the S/RVs listed in SR 3.4.4.1 from the current +0/−2 percent of the safety function lift setpoint to +0/−3 percent (*i.e.*, a partial 3 percent tolerance). The remaining ("+3 percent") portion of the proposed setpoint tolerance change will be reviewed in conjunction with approval for the power uprate.

Date of issuance: February 9, 2000.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 109.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 17, 1999.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 23, 1998.

Brief description of amendment: Modification of Limiting Condition for Operation for the chlorine detection system and correction of typographical error in Table 3.3–4.

Date of issuance: February 11, 2000.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 156.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1999 (64 FR 9190).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 3, 1999.

Brief description of amendment: The amendment revises Final Safety Analysis Report, Section 9.5.4.1. The revision changes this section to explicitly list the Waterford Steam Electric Station, Unit 3 (Waterford 3) deviations from American National Standards Institute (ANSI) Standard N195–1976.

Date of issuance: February 15, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 157.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 17, 1999 (64 FR 62713).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: December 24, 1998, as supplemented January 6, 1999.

Brief description of amendments: These amendments change the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2) Technical Specifications (TSs) to ensure that Emergency Diesel Generator (EDG) requirements contained in Technical Specification 3/4.8.1 for both units are consistent with assumptions contained in design analyses and requirements of plant procedures. Revisions to TS 3/4.8.1, "A.C. Sources," contained in these amendments provide more conservative limiting conditions for operation and surveillance requirements that affect EDG fuel oil storage volume, EDG load rejection and overspeed testing, and EDG operating frequency requirements. The applicable bases for each unit are also refined, as necessary, to strengthen the explanations regarding EDG fuel oil storage systems and provide the EDG overspeed in terms of frequency (Hertz) and speed (Revolutions Per Minute).

Date of issuance: February 11, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 227 and 105.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1999, (64 FR 4154). The January 6, 1999, letter requested a 60-day implementation period. This letter did not change the initial proposed no significant hazards consideration determination or expand the amendments beyond the scope of the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: July 27, 1999.

Brief description of amendment: This amendment eliminates TS 6.4, "Training," and relocates TS 6.5.2.8, "Audits," and TS 6.10, "Record Retention," to the USAR Chapter 17 Quality Assurance Program. Additionally, the record keeping requirements of TS 6.14, "Process Control Program," and TS 6.15, "Offsite Dose Calculation Manual," are also being relocated to the USAR Chapter 17 Quality Assurance Program. Finally, an editorial change has been made to TS 6.8, "Procedures and Programs."

Date of issuance: February 14, 2000.

Effective date: Immediately, to be implemented within 120 days.

Amendment No.: 235.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 8, 1999 (64 FR 48863).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: November 8, 1999

Brief description of amendment: This amendment relocates Technical Specification (TS) 6.5.1, Station Review Board, and TS 6.5.2, Company Nuclear Review Board, to the Davis-Besse Nuclear Power Station Updated Safety Analysis Report Chapter 17.2, Quality Assurance During the Operations Phase. These changes are consistent with the recommendations in NRC Administrative Letter 95–06, "Relocation of Technical Specification Administrative Controls Related to Quality Assurance," dated December 12, 1995.

Date of issuance: February 14, 2000.

Effective date: Immediately, to be implemented within 120 days.

Amendment No.: 236.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 15, 1999 (64 FR 70087).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: June 1, 1999, as supplemented September 25, 1999.

Brief description of amendments: These amendments revise the St. Lucie, Units 1 and 2, Technical Specifications (TS) 3.5.2 to allow up to 7 days to restore an inoperable Low Pressure Safety Injection train to operable status.

Date of Issuance: February 15, 2000.

Effective Date: February 15, 2000.

Amendment Nos.: 164 and 106.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the TS.

Date of initial notice in **Federal Register:** June 30, 1999 (64 FR 35206). The supplemental September 25, 1999, letter provided additional information that did not expand the scope of the amendment request beyond the initial notice or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 15, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: November 17, 1999 *Brief description of amendment:* The amendment revised the technical specification (TS) surveillance testing of the safety-related ventilation system charcoal to meet the actions requested in Generic Letter 99–02, "Laboratory testing of Nuclear-Grade Activated Charcoal," dated June 3, 1999.

Date of Issuance: February 17, 2000.

Effective Date: February 17, 2000.

Amendment No.: 107.

Facility Operating License No. NPF–16: Amendment revised the TSs.

Date of initial notice in **Federal Register:** January 12, 2000 (65 FR 1923).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 2000.

No significant hazards consideration comments received: No.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: December 28, 1999.

Brief description of amendment: The amendment revised Technical Specifications Table 4.4.6.1.3–1, "Reactor Vessel Material Surveillance Program—Withdrawal Schedule." The revised requirement permits the withdrawal of surveillance capsule number 1 at 8 effective full-power years (EFPY) instead of the original 10 EFPY.

Date of issuance: February 15, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 90.

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 14, 2000 (65 FR 2443).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 2000.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: December 16, 1999, as supplemented January 21, 2000.

Brief description of amendment: The amendment revises the Technical Specification (TS) Safety Limit Minimum Critical Power Ratio (SLMCPR) values for two recirculation pump and single-loop operation, deletes cycle specific footnotes, updates the single-loop operation Average Planar Heat Generation rate limiting values, corrects a typographical error, and deletes an obsolete reference to Siemens fuel.

Date of issuance: February 16, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 109.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 29, 1999 (64 FR 73094).

The January 21, 2000, submittal provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 2000.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 18, 1998.

Brief description of amendments: The amendments revise Bases 3/4.6.2.1, "Containment Spray System," of the current Technical Specifications (TSs) and Bases 3.6.6, "Containment Spray and Cooling Systems," of the improved TSs, to clarify that containment spray is not required to be actuated during recirculation, but may be actuated at the discretion of the Technical Support Center. Additionally, the Bases are clarified to state that the ability to spray containment using the residual heat removal (RHR) system is demonstrated by opening the RHR Spray Ring Cross Connect Valve 9003A or B. The Bases are clarified to state that flow to the spray headers can be established with only one operable RHR pump by closing the cold leg discharge valve 8809A or B.

Date of issuance: February 9, 2000.

Effective date: February 9, 2000.

Amendment Nos.: Unit 1—139 ; Unit 2—139.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Bases.

Date of initial notice in **Federal Register**: August 26, 1998 (63 FR 45527).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 2000.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: August 10, 1998, as supplemented by letter dated November 24, 1999.

Brief description of amendments: These amendments revise Technical Specification (TS) 3/4.3.2, Table 3.3–5, "Engineered Safety Features Response Times," of the current TS to add the response times for closure of the main feedwater regulating valves (MFRVs) and MFRV bypass valves, and trip of the main feedwater pumps (MFWPs). The change would also revise TS 3/4.7.1.7 to add a limiting condition for operation, actions, and surveillance requirements for the MFWP turbine stop valves, and revise the TS 3/4.7.1.7 actions and surveillance requirements for the MFRVs, MFRV bypass valves, and main feedwater isolation valves to be consistent with the NUREG–1431 requirements. Also, the amendments revise Section 3.7.3 and its associated bases of the improved Technical Specifications (ITS).

Date of issuance: February 22, 2000.

Effective date: February 22, 2000, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—140; Unit 2—140.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 7, 1998 (63 FR 53954). The November 24, 1999, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 2000.

No significant hazards consideration comments received: No.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: November 24, 1999, as supplemented January 13, 2000.

Brief description of amendment: The amendment revises the Technical Specifications to remove the requirement for partial stroking of the main steam isolation valves twice-per-week.

Date of issuance: February 24, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 260.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 29, 1999 (64 FR 73095) The letter of January 13, 2000, provided supplemental information that did not affect the initial proposed no significant hazard consideration determination of the original notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24. 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: January 11, 1999 (PCN–499), as supplemented November 29, 1999.

Brief description of amendments: The amendments revise Technical Specification 3.7.6 to change the minimum inventory of water maintained in the condensate storage tank (T–120) from 280,000 gallons to 360,000 gallons during plant operation Modes 1, 2, and 3.

Date of issuance: February 22, 2000.

Effective date: February 22, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—162; Unit 3—153.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 18, 2000 (65 FR 2648). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: June 8, 1999 (PCN–495).

Brief description of amendments: The amendments modify the Technical Specifications to (1) reflect that charging flow is not required to mitigate the effects of design-basis small-break loss-of-coolant accidents (SBLOCAs), (2) increase the maximum as-found lift pressure positive tolerance of main steam safety valves from +1 percent to +2 percent of the setting, and (3) list the ABB Combustion Engineering Supplement 2 SBLOCA evaluation model as an acceptable method for determining linear heat rate.

Date of issuance: February 22, 2000.

Effective date: February 22, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—163; Unit 3—154

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 30, 1999 (64 FR 35210)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: January 2, 1998 (PCN–482), as supplemented December 13, 1999.

Brief description of amendments: The amendments revise Technical Specification 3.7.5 to add a note that states: The steam driven AFW [auxiliary feedwater] pump is OPERABLE when running and controlled manually to support plant start-ups, plant shut-downs, and AFW pump and valve testing.

Date of issuance: February 23, 2000.

Effective date: February 23, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—164; Unit 3—155.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register** January 19, 2000 (65 FR 2991), as corrected January 26, 2000 (65 FR 4265)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 23, 2000.

No significant hazards consideration comments received: No

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 19, 1999.

Brief description of amendments: These amendments relocate Technical Specification Section 3/4.8.3, "Electrical Equipment Protective Devices," and the associated bases to the Technical Requirements Manual.

Date of issuance: February 22, 2000.

Effective date: As of date of issuance to be implemented no later than 45 days after issuance.

Amendment Nos.: 250 and 241.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: April 21, 1999 (64 FR 19566).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 1st day of March 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5477 Filed 3–7–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24323; File no. 812–11850]

Seligman Portfolios, Inc., et al.

February 29, 2000.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of Seligman Portfolios, Inc. and shares of any other open-end investment company that is designed to fund insurance products and for which J. & W. Seligman & Co. Inc., or any of its affiliates, may serve, now or in the future, as investment adviser, administrator, manager, principal underwriter or sponsor (Seligman Portfolios, Inc. and such other investment companies hereinafter referred to collectively, as "Insurance Products Funds") to be offered to, sold to and held by (a) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans outside of the separate account context.

APPLICANTS: Seligman Portfolios, Inc. ("Seligman Portfolios") and J. & W. Seligman & Co. Inc. ("Seligman").

FILING DATE: The application was filed on November 16, 1999, and amended and restarted on January 27, 2000, and February 25, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on March 23, 2000, and accompanied by proof of service on the Applicants in the form of an affidavit or,

for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 100 Park Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Susan M. Olson, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. the complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Seligman Portfolios is registered under the 1940 Act as an open-end management investment company. Seligman Portfolios was incorporated under the laws of the State of Maryland under the name Seligman Mutual Benefit Portfolios, Inc., on June 24, 1987. Seligman Portfolios is comprised of fifteen separately managed portfolios (each, a "Portfolios"), each of which has its own investment objectives and policies. Additional Portfolios may be added in the future.

2. Seligman is an investment adviser registered with the Commission under the Investment Advisers Act of 1940 and serves as the investment adviser of each Portfolio of Seligman Portfolios.

3. Each Portfolio currently offers its shares to variable annuity separate accounts established by Canada Life Insurance Company of America and Canada Life Insurance Company of New York (together, "Canada Life"), which are life insurance companies that are affiliates of each other. Applicants state that upon receipt of an order requested by the application, Seligman Portfolios intends to offer its shares to Canada Life variable annuity separate accounts and also to variable annuity separate accounts established by life insurance companies that are not affiliated with Canada Life. Applicants contemplate that, following the grant by the Commission of the exemptive order requested by the application, shares of each Portfolio also would be offered to one or more variable life insurance separate accounts established by insurance companies that are not affiliated with Canada Life and possibly to variable life insurance separate accounts established by Canada Life or its affiliates. Canada Life and its affiliates and the other insurance companies to which shares of the Insurance Products Funds will be offered are hereinafter referred to, collective, as "participating Insurance Companies."

4. Applicants state that upon the granting of the requested exemptive relief, shares of each Portfolio also would be offered directly to qualified pension and retirement plans ("Qualified Plans" or "Plans") outside the separate account context.

5. The Participating Insurance Companies will establish their own variable annuity and variable life separate accounts (the "Separate Accounts") and design their own variable annuity and variable life insurance contracts ("Contracts"). Each Participating Insurance Company will have the legal obligation of satisfying all requirements applicable to such Insurance company under state and federal securities law. The role of the Insurance Product Funds, so far as the federal securities laws are applicable, will be to offer their shares to Participating Insurance Companies and their Separate Accounts and to Qualified Plans and to fulfill any conditions that the Commission may impose upon granting the order requested in the application.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted under Rule 6e–2(b)(15) are available, however, only when all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company" (emphasis supplied). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding." in addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying management investment company are offered to variable life insurance separate accounts of unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable life separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

2. Applicants state that the basis for the relief granted by Rule 6e–2(b)(15) is not affected by the purchase of shares of the Insurance Product Funds by Qualified Plans. However, because the relief under Rules 6e–2(b)(15) and 63–3(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Insurance Product Funds are also to be sold to Qualified Plans.

3. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying investment company's shares. However, these exemptions are available only where all of the assets of the separate account consist of shares of one or more registered management investment companies which offers their shares "*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled [premium variable life insurance] contracts or flexible [premium variable life insurance] contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company" (emphasis supplied). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an investment company that also offers its shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies.

4. Applicants state that because the relief granted under Rule 6e–3(T)(b)(15) is available only when shares are offered exclusively to separate accounts, exemptive relief is necessary if shares of the Insurance Product Funds are also to be sold to Qualified Plans.

5. Applicants state that changes in the tax law subsequent to the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) afford the Insurance Products Funds an opportunity to increase their asset base by selling their shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the assets underlying variable annuity contracts and variable life insurance contracts held in the portfolios of the Insurance Product Funds. The Code provides that such contracts will not be treated as annuity contracts or life insurance contracts for any period (or any subsequent period) for which the investments are not, in accordance with regulations issued by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) (the "Regulations") which established specific diversification requirements for investment portfolios underlying variable annuity and variable life contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more life insurance companies. However, the Regulations also contain an exception to this requirement that allows shares of an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the status of the investment company as an adequately diversified underlying investment for variable life contracts issued through separate accounts of insurance companies (Treas. Reg. 1.817–5(f)(3)(iii)).

6. Applicants also note that the promulgation of rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations, which made it possible for shares of an investment company to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable contracts. Thus, the sale of shares of the same investment company to separate accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. In general, Section 9(a) of the 1940 Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from serving in various capacities with respect to an underlying registered management investment company. More specifically, Section 9(a)(3) provides that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2) of the 1940 Act. However, Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

8. Applicants state that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that it is unnecessary to apply Section 9(a) to the thousands of individuals who may be involved in a large insurance company but would have no connection with the investment company funding the Separate Accounts. Those individuals who participate in the management or administration of the Insurance Product Funds will remain the same regardless of which life insurance company Separate Accounts invest in their shares. Therefore, Applicants assert that applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants further assert that applying such restrictions would increase the monitoring costs incurred by the Participating Insurance Companies and, therefore, would reduce the net rates of return realized by Contract owners.

9. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement in limited situations, assuming the limitations on mixed and shared funding are satisfied. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying investment company or any contract between an investment company and its investment adviser, when required to do so by an insurance regulatory authority and subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard voting instructions of contract owners with regard to changes initiated by the contract holders in the investment company's investment policies, principal underwriter or any investment adviser (subject to paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules).

10. Applicants further represent that the Insurance Products Funds' sale of shares to Qualified Plans will not have any impact on the relief requested in this regard. With respect to Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Applicants state that shares of the Insurance Product Funds sold to Qualified Plans would be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the plan with two exceptions: (a) When the plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions states in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

11. When a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some Qualified Plans, however, may provide for the trustee, or another named fiduciary to exercise voting rights in accordance with instructions from Plan participants.

12. When a Qualified Plan does not provide participants with the right to give voting instructions, Applicants submit that there is no potential for material irreconcilable conflicts of interest between or among Contract owners and Qualified Plan participants

with respect to voting of an Insurance Product Fund's shares. Accordingly, Applicants note that unlike the case with insurance company Separate Accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

13. When a Qualified Plan provides participants with the right to give voting instructions, Applicants submit there is no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Contract owners. The purchase of shares of an Insurance Product Fund by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

14. Applicants assert that no increased conflicts of interest would be presented by the granting of the requested relief. Shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. When different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that the possibility is no different and no greater than that which exists when a single insurer and its affiliates offer their insurance products in several states, as is currently permitted.

15. Applicants state that affiliations do not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, Applicants submit that the conditions set forth in the application and included in this notice are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its Separate Account's investment in the relevant Insurance Products Funds.

16. Applicants further assert that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Contract owner voting instructions. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that an insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, if the Participating Insurance Company's decision to disregard Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its Separate Account's investment in that Fund, and no charge or penalty would be imposed upon Contract owners as a result of such withdrawal.

17. Applicants submit that no reason exists why investment policies of an Insurance Products Fund with mixed funding would or should be materially different from what they would or should be if such investment company or series thereof funded only variable annuity or only variable life insurance Contracts. Applicants represent that Each Insurance Products fund will be managed to attempt to achieve its investment objective, and will not be managed to favor or disfavor any particular insurer or type of Contract.

18. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance Contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. Those diversities are of greater significance than any differences in insurance products. An investment company supporting even one type of insurance product must accommodate those diverse factors.

19. Applicants do not believe that the sale of shares to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance Contract owners.

20. A noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, "qualified pension or retirement plans" and separate accounts to share the same underlying management investment company. Therefore, Applicants state that neither the Code, nor the Regulations, nor the Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity Separate Accounts and variable life Separate Accounts all invest in the same management investment company.

21. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity Contracts, variable life insurance Contracts and Qualified Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or Qualified Plan cannot net purchase payments to make the distributions, the Separate Account or the Plan will redeem shares of the Insurance Product Funds at their net asset value in conformity with Rule 22c–1 under the 1940 Act. The Participating Life Insurance Company will make distributions in accordance with the terms of the variable Contract, and the Qualified Plan will make distributions in accordance with the terms of the Plan.

22. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving voting rights to Separate Account Contract owners and to Qualified Plans. Applicants represent that the transfer agent for the Insurance Products Funds will inform each Participating Insurance Company of its share ownership in each Separate Account, as well as inform the trustees of Qualified Plans of their holdings. The Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T). Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of Insurance Products Funds would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds offered to the general public.

23. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a "senior security," as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a Qualified Plan participant. As noted above, regardless of the rights and benefits of Qualified Plan participants, or Contract holders under Contracts, the Qualified Plans

and the Separate Accounts have rights only with respect to their respective shares of the Insurance Products Funds. They can only redeem such shares at their net asset value. No shareholder of any Insurance Products funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

24. Applicants submit that there are no conflicts between the Contract owners of the Separate Accounts and the Qualified Plan participants with respect to state insurance commissioners' veto powers over investment objectives. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their Separate Accounts out of one fund and invest in another. Generally, time-consuming complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Qualified Plans can make the decision quickly and redeem their shares from an Insurance Products Fund and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Therefore, Applicants conclude that even if there should arise issues where the interests of Contract holders and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, on their own, redeem the shares out of the Insurance Products Funds.

25. Applicants also assert that there is no greater potential for material irreconcilable conflicts arising between the interests of Qualified Plan participants and variable Contract owners from possible future changes in federal tax laws than that which already exists between variable annuity and variable life insurance Contract owners.

26. Applicants state that various factors have kept some insurance companies from offering variable annuity and variable life insurance Contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Contract business on their own. Applicants submit use of the Insurance Products Funds as common investment media for Contracts would alleviate these concerns. Participating Insurance Companies would benefit not only from the investment advisory and administrative expertise of Seligman, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Products Funds available for mixed and shared funding may encourage more insurance companies to offer Contracts. This should result in increased competition with respect to both Contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants assert that Contract owners would benefit because mixed and shared funding should benefit Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Moreover, sale of the shares of Insurance Products Funds to Qualified Plans should result in an increased amount of assets available for investment by such Funds. This, in turn, should inure to the benefit of Contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new Portfolios more feasible.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Trustees or Board of Directors (each, a "Board") of each Insurance Products Fund will consist of persons who are not "interested persons" thereof, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Insurance Products Fund for the existence of any material irreconcilable conflict between and among the interests of the Contract owners of all Separate Accounts and the interests of participants in Qualified Plans investing in the Insurance Product Funds and determine what action, if any, should be taken in response to any of those conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Products Funds are being managed; (e) a difference in voting instructions given by variable annuity Contract owners and variable life insurance Contract owners and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of plan participants.

3. Participating Insurance Companies and Qualified Plans that execute a fund participation agreement upon becoming an owner of 10% or more of an Insurance Products Fund's shares ("Participants") and Seligman (or any other investment adviser of an Insurance Products Fund) will report any such potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participants will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by a Participating Insurance Company to inform the Board whenever it has determined to disregard Contract owner voting instructions, and, when pass-through voting is applicable, an obligation of each Qualified Plan to inform the Board whenever it has determined to disregard voting instructions from participants in the Qualified Plans.

4. The responsibilities to report such conflicts and information and to assist the Board will be contractual obligations of all Participants investing in Insurance Product Funds under their agreements governing participation in the Insurance Product Funds, and these responsibilities will be carried out with a view only to the interests of Contract owners, and, if applicable, participants in Qualified Plans.

5. If it is determined by a majority of the Board of an Insurance Products Fund, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participants will, at their expense and to the extent reasonably

practicable (as determined by a majority of the disinterested Board members), take whatever steps are necessary to remedy or eliminate the material conflict, including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Insurance Products Fund or any series and reinvesting such assets in a different investment medium, which may include another series of an Insurance Products Fund or another Insurance Products Fund; (b) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity Contract owners or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed Separate Account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Contract owners' voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Insurance Products Fund, to withdraw its Separate Account's investment in such fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Products Fund, to withdraw its investment in such Insurance Products Fund, with no charge or penalty imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of a material irreconcilable conflict and bearing the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Insurance Products Funds, and these responsibilities will be carried out with a view only to the interests of Contract holders and Qualified Plan participants.

6. For purposes of Condition 5, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Products Fund, Seligman or any of their respective affiliates be required to establish a new funding medium for any Participant. No Participating Insurance Company or Qualified Plan will be required by Condition 5 to establish a new funding medium for any contract if a majority of Contract owners materially and adversely affected by the irreconcilable material conflict vote to decline this offer. No Qualified Plan shall be required by Condition 5 to establish a new funding medium for any such Plan if: (i) A majority of Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer or (ii) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plan makes the decision without Qualified Plan participant vote.

7. Any Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly in writing to all Participants and Seligman.

8. Participating Insurance Companies will be provided pass-through voting privileges to all Contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of an Insurance Product Fund held in their Separate Accounts in a manner consistent with voting instructions timely received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of their Separate Accounts calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in the Insurance Products Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Products Fund. Each Participating Insurance Companies will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received instructions. Each Qualified Plan will vote as required by applicable law and its governing documents.

9. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants and Seligman of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

10. Each Insurance Products Fund will notify all Participants that Separate Account prospectus disclosure or Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund will disclose in its prospectus that: (a) the Insurance Products fund is intended to be a funding vehicle for variably annuity and variable life insurance contracts offered by various insurance companies and for Plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract owners participating in an Insurance Products Fund and the interests of Qualified Plans investing in that Insurance Product Fund may conflict; and (c) the Board of that Insurance Products Fund will monitor for the existence of any material conflicts of interest and determine what action, if any, should be taken.

11. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Insurance Products Fund), and, in particular, each Fund will either provide for annual meeting (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Insurance Product Funds are not within the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

12. If and to the extent Rules 6e–2 and 6e–3(T) are amended (or Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Insurance Products Funds and the Participating Insurance Companies, as appropriate, shall be required to take

such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent applicable.

13. No less than annually, Seligman and the Participants shall submit to the Boards such reports, materials or data as such Boards may reasonably request so that the Boards may fully carry out obligations imposed upon them by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of Seligman, the Participating Insurance Companies and Qualified Plans to provide these reports, materials and data to the Boards, shall be a contractual obligation of Seligman, all Participating Insurance Companies and Qualified Plans under the agreements governing their participation in the Insurance Products Funds.

14. In the event that a Qualified Plan should ever become an owner of 10% or more of the assets of an Insurance Products Fund, the Qualified Plan will execute a fund participation agreement with the Insurance Products Fund, including the conditions set forth herein to the extent applicable. A Qualified Plan shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Insurance Products Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42476; File No. SR–NASD–97–89]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving the Proposed Rule Change on a Temporary Basis and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3 and 4 to the Proposed Rule Change on a Temporary Basis Relating to Bond Mutual Fund Volatility Ratings

February 29, 2000.

I. Introduction

On October 5, 1998,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, the NASD Regulation, Inc. ("NASD" or "Regulation" or "NASDR"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to permit members and associated persons to include bond mutual fund volatility ratings in supplemental sales literature for an 18 month trial period.

A notice of the proposed rule change appeared in the **Federal Register** on November 5, 1998.[4] The Commission received fourteen comment letters concerning the proposed rule change.[5] On November 9, 1998, NASDR filed Amendment No. 2 to clarify a formatting change to NASD Conduct Rule 2210(c).[6] On March 26, 1999, the NASDR filed amendment No. 3, in which it responded to the comment letters and amended the definition of Bond Mutual Fund Volatility Rating to clarify which funds would be subject to the proposal.[7] On August 18, 1999, NASDR filed Amendment No. 4, which amended subsections (b)(1) and (b)(3) by removing language that several commenters found misleading and confusing.[8] This order approves the proposed rule change. Amendment Nos. 3 and 4 are also approved on an accelerated basis.

II. Background

Bond mutual fund volatility ratings are descriptions of the sensitivity of bond mutual fund portfolios to changing market conditions. Currently, NASDR interprets its rules to prohibit members and associated persons from using bond mutual fund volatility ratings in supplemental sales literature. NASD rules do not apply to the use and dissemination of bond mutual fund volatility ratings by non-NASD members, including rating agencies and information vendors that issue the ratings, and mutual fund groups that use the ratings for promotional and marketing purposes.

Specifically, NASD Rule 2210 prohibits the use by members and associated persons of information that is misleading, that contains exaggerated, unwarranted or misleading statements or claims, or that predicts or projects investment results.[9] The NASD currently prohibits the use of bond mutual fund volatility ratings because it believes that judgments of how a bond mutual fund may react to changes in various market conditions may be predictive of fund performance or misleading.

In Notice to Members 96–84 (December 1996), the NASD requested comment on the appropriateness of its current prohibition. A majority of the

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[1] On December 12, 1997, the NASD submitted its initial proposal, which could have limited the effectiveness of the disclosure statement and prevented sales literature from containing relevant explanatory information concerning bond mutual fund volatility ratings. After discussions between NASD and the Commission, the NASD field Amendment No. 1 on October 5, 1998, which replaced and superseded the initial proposal.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Rel. No. 40627 (November 2, 1998), 63 FR 60431.

[5] *See infra* note 14.

[6] Letter from John Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 30, 1998.

[7] The amendment to subsection (a) removes the reference to "bond mutual fund" and inserts after "portfolio," the phase: "of an open-end management investment company that invests in debt securities." Letter from John Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 25, 1999 ("Amendment No. 3").

[8] The amendment to subsection (b)(1) removes the prohibition against using " a single symbol, number or letter" to describe volatility. The amendment to subsection (b)(3) removes the second sentence that stated, in relevant part, that "[subjective factors] may be used solely for purposes of determining whether to issue the rating." *See* letter from John Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Richard C. Strasser, Assistant Director, Division of Market Regulation and Mercer E. Bullard, Assistant Chief Counsel, Division of Investment Management, Commission, dated August 18, 1999 ("Amendment N. 4"). *See also* letter from Alden S. Adkins, Senior Vice President and General Counsel NASD Regulation, to Katherine A, England, Assistant Director, Division of Market Regulation and Mercer E. Bullard, Assistant Chief Counsel, Division of Investment Management, Commission, dated November 2, 1999.

[9] NASD Manual, Conduct Rules, Rule 2210.

commenters supported making the ratings available, and all of the commenters representing investors groups supported the goal of making accurate information regarding risk and volatility characteristics of bond funds available to investors. As a result, NASDR proposed an interpretation to permit the use of bond fund volatility ratings subject to certain conditions and disclosure requirements.

III. Description of the Proposed Rule Change, including Amendment Nos. 3 and 4

Trial Period

The proposed rule change would permit, for an 18 month trial period, the use of the mutual fund volatility ratings subject to certain limitations, and provided certain disclosures are made. The NASD believes that this trial period should be a reasonable amount of time for the Advertising/Regulation Department ("Department") to determine whether the rules have facilitated the dissemination of useful, understandable information to investors and have prevented the dissemination of inappropriate or misleading information by members and associated persons.

Definition of Bond Mutual Fund Volatility Rating

Section(a) of the proposed rule change defines the term "bond mutual fund volatility rating" to mean, in part, a description issued by an independent third party relating to the sensitivity of a bond mutual fund's net asset value to changes in market conditions and the general economy, based on an evaluation of objective factors regarding the fund's current characteristics and its past performance. The definition recognizes that the rating is an opinion of the fund's potential share price movement in response to various economic conditions or market situations, and not a prediction of the actual movement of a fund's share price. In Amendment No. 3, the NASDR also proposes to amend this definition to clarify that the rule applies only to open end investment companies.[10]

Prohibitions

Subsection (b) of the proposed rule change permits members and associated persons to use a bond mutual fund volatility rating only in supplemental sales literature and only when certain requirements are satisfied.

Subsection (b)(1) prohibits the use of a bond mutual fund volatility rating that uses the word "risk" to describe the rating. This prohibition is intended to remove any confusion concerning the word "risk," which is capable of multiple meanings and interpretations. Thus, the NASDR believes that referring to these ratings as "volatility" rather than "risk" ratings is more precise. The proposal had also prohibited the use of a "a single symbol, number or letter" to describe the ratings. Amendment No. 4, however, removed this prohibition to provide rating agencies with more flexibility in how the ratings are presented.[11]

Subsection (b)(2) of the proposed rule change prohibits the use of a bond mutual fund volatility rating that does not incorporate the most recently available rating and that is not current.[12]

Subsection (b)(3) of the proposed rule change further prohibits the use of a bond mutual fund volatility rating that is not based exclusively on objective, quantifiable factors. This subsection also requires that the rating and the disclosure statement that accompanies it be clear, concise, and understandable. This requirement is intended to ensure that the rating information is presented in a way that is accessible and informative to the investor. Originally, this subsection also referred to the use of other factors that could be used to determine whether to issue the rating. Several commenters and the Commission noted that the language seemed to imply that, contrary to the language of the rule, subjective factors could also be considered in determining the rating. Accordingly, the NASDR filed Amendment No. 4 to remove this language.[13]

Subsection (b)(4) of the proposed rule change prohibits the use of bond mutual fund volatility ratings unless the supplemental sales literature containing the rating conforms to the disclosure requirements, which are described below.

Subsection (b)(5) of the proposed rule change prohibits members or associated persons of members from using bond mutual fund volatility ratings unless the entity that issued the ratings provides detailed disclosure on its rating methodology through a toll-free telephone number, a web site, or both.

Disclosure Requirements

Section (c) of the proposed rule change requires that certain disclosures accompany any bond mutual fund volatility rating used in supplemental sales literature by members or associated persons of members.

Specifically, subsection (c)(1) requires that supplemental sales literature containing a bond mutual fund volatility rating include a disclosure statement containing certain specified information required by the rule. It also permits the disclosure statement to contain any additional information that is relevant to an investor's understanding of the rating.

Subsection (c)(2) requires that supplemental sales literature containing a bond fund volatility rating include all other current volatility ratings that have been issued with respect to the same fund. Subsection (c)(2) also permits information concerning multiple ratings to be combined in the disclosure statement, provided that the applicability of the information to each rating is clear. This serves the purpose of avoiding redundant and potentially confusing information, and reduces the possibility that the rating could be buried or hidden in excess information.

Subsection (c)(3) requires that all bond mutual fund volatility ratings be contained within the text of the disclosure statement. The rating should not be located separately from the disclosure statement to avoid the risk that either could be read separately, or not at all, thereby increasing the possibility that the rating would not be understood in the context of the required disclosures.

Subsections (c)(3) (A)–(B) of the proposed rule change require that supplemental sales literature containing a bond mutual fund volatility rating disclose the names of the rating entity, the most current rating (accompanied by the date of that rating), and, if there is any change in the current rating from the most recent prior rating, an explanation of the change.

Subsection (c)(3)(C) of the proposed rule change requires that supplemental sales literature containing a bond mutual fund volatility rating describe the rating in narrative form. Under subsections (c)(3)(C) (i)–(vii), the narrative description must include: (i) A statement that there is no standard method for assigning ratings; (ii) a description of the criteria and methodologies used to determine the rating; (iii) a statement that not all bond funds have volatility ratings; (iv) whether consideration was paid in connection with obtaining the issuance

[10] *See supra* note 7.

[11] S&P notified the NASD that is planned to revise the symbology it uses to label its bond fund risk ratings. The current symbology ranges from 'aaa' to 'ccc,' which S&P planned to convert to a scale ranging from 'S1+' to 'S6.' Letter from R. Clark Hooper, Executive Vice President, Disclosure and Investor Protection, NASD Regulation, to Sanford B. Bragg, Managing Director, Standard & Poor's, dated August 3, 1999.

[12] In this context, "current" describes the most recent calendar quarter ended.

[13] *See supra* note 8.

of the rating; (v) a description of the types of risks the rating measures, such as short-term volatility; (vi) a statement that the portfolio may have changed since the date of the rating; and (vii) a statement that there is no guarantee that the fund will continue to have the same rating or perform in the future as rated.

Filing Requirement

The proposed rule change amends NASD Rule 2210 regarding communications with the public by adding new subsection (c)(3) to require sales literature containing bond mutual fund volatility ratings to be filed with the Department for review and approval at least 10 days prior to use. Members would not be required to file advertising and sales literature that had previously been filed and approved. Members filing sales literature containing bond mutual fund volatility ratings also must provide any supplemental information requested by the Department pertaining to the rating that has been assigned to the bond fund.

IV. Summary of Comments

The Commission received fourteen comment letters from 13 commenters concerning the proposal.[14] Of these commenters, eleven expressed conditional supports for the proposal,[15] and two opposed it.[16] One commenter cited a number of articles from periodicals in support of its position that the use of volatility ratings should only be allowed if appropriate safeguards are implemented.[17] Following are the issues raised, the commenters' positions, and the NASDR's and the Commission's responses.

Trial Period

Most commenters suggested that once the 18 month trial period ends the NASDR conduct a thorough assessment of the proposal to determine whether it should be amended, eliminated, or approved.[18] Federated believes the current ban on volatility rating disclosure is unnecessary and hopes that once the trial period concludes, the results will establish a basis for more reasonable, lenient guidelines.[19] The Commission believes that the trial period will provide the Department with a reasonable amount of time to consider all feedback concerning the use of these ratings, so that a fair and accurate assessment of the proposal's effectiveness can be made. The Commission expects that the Department will keep the Commission appraised of any problems that may arise in the rating process so that they may be promptly addressed.

Clarification of Certain Terminology

There was some debate among commenters on the use of certain terminology in the proposal. Most commenters focused on what term best describes risk.[20] One commenter stated that because the proposal does not restrict the type of entity that can provide ratings, they can be obtained form any entity as long as the ratings are based on objective criteria.[21] The commenter therefore suggested that, to help ensure the quality of the entitle issuing the ratings, the NASDR consider providing guidelines (including specific definitions) for entities to follow.[22]

The NASDR contends that it has provide guidance, albeit indirectly, to entities providing ratings.[23] The proposed rule sets standards for NASD members and their associated persons by prohibiting their use of volatility rating sunless the ratings conform to the rule.[24] The Commission agrees that the proposal provides adequate guidance for NASD members and associated persons that will use these ratings in their supplemental sales literature. The Commission suggests, however, that the NASDR periodically assess the effectiveness of the proposal during the trial period to determine whether additional guidance is needed.

Additional Disclosure Requirements

Several commenters suggested that additional disclosure requirements were necessary to further clarify the meaning of the ratings and their limitations.[25] For example, MFS suggested that the rule require detailed disclosure on an entity's rating methodology and the underlying assumptions used to assess individual securities or types of securities in the fund's portfolio.[26] AARP suggested that a fund's investment philosophy and management be included in the disclosure statement. In response, the NASDR notes that these factors are already disclosed in the fund prospectus.[27] Another commenters suggested that a provision be added to require that the narrative description disclosure not only the type of risk being measured, but also how those risks relate to the stated investment goals of the fund.[28] The NASDR believes such a requirement would be inconsistent with the requirement that these ratings be based on objective, verifiable information.[29] Allowing the rating agency to provide its opinion on how the risks relate to a fund's investment objectives requires a subjective judgment that cannot be verified.[30]

Conversely, two commenters who opposed the proposal expressed doubt that any amount of disclosure would remedy the volatility ratings' inherent deficiencies.[31] For example, both commenters note that the proposal does not address the potential predictive nature of volatility ratings.[32] According to the NASDR, the possible predictive nature of the volatility ratings had been a factor in its current prohibition against the use of volatility ratings.[33] Moreover, this concern prompted the NASDR to

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[14] Letters to Jonathan G. Katz, Secretary, Commission from: Martin A. Corry, Director, Federal Affairs, AARP, dated December 14, 1998 ("AARP Letter"); Lisa G. Hathaway, Compliance Associate, American Funds Distributors, Inc., dated December 9, 1998 ("AFD Letter"); Barbara L.N. Roper, Director of Investor Protection, Consumer Federation of America, dated November 30, 1998 ("CFA Letter"); John B. Hammalian, Associate General Counsel, The Dreyfus Corporation, dated November 24, 1998 ("Dreyfus Letter"); Stephen A. Keen, General Counsel, Federated Investors, Inc., dated November 30, 1998 ("Federated Letter"); David H. Potel, Vice President and Deputy General Counsel, Fidelity Investments, dated November 27, 1998 ("Fidelity Letter"); Betsy Dotson, Director, Federal Liaison Center, Government Finance Officers Association, dated November 30, 1998 ("GFOA Letter"); Craig S. Tyle, General Counsel, Investment Company Institute, dated November 30, 1998 ("ICI Letter No. 1") and dated September 2, 1999 ("ICI Letter No. 2"); A. Michael Lipper, President, Lipper Advisory Services Inc., dated November 20, 1998 ("Lipper Letter"); James F. Des Mais, Assistant General Counsel, Legal, MFS Investment Management, dated November 30, 1998 ("MFS Letter"); Leo C. O'Neill, President and Chief Rating Officer, Standard & Poor's, dated November 30, 1998 ("S&P Letter"); Susan E. Woodward, dated November 25, 1997 ("Woodward Letter"); Henry H. Hopkins, Managing Director and Chief Legal Counsel, T. Rowe Price Associates, Inc., dated November 30, 1998 ("TRP Letter").

[15] AARP Letter, AFD Letter, CFA Letter, Federated Letter, Fidelity Letter, GFOA Letter, ICI Letter Nos. 1 and 2, Lipper Letter, MFS Letter, S&P Letter, and Woodward Letter.

[16] Dreyfus Letter and TRP Letter.

[17] ICI Letter No. 2.

[18] *See, e.g.*, AFD Letter, pp. 1–2 and ICI Letter No. 1, p.2.

[19] Federated Letter, p. 1.

[20] *See, e.g.*, AARP Letter, P. 1, Lipper Letter, p. 1, and Woodward Letter, pp. 2–3 (discussing the terms risk and volatility and the implications of their use).

[21] *Id.* at p. 3.

[22] Dreyfus Letter, pp. 3–4.

[23] NASDR response, pp. 3–4 (responding to a similar issue raised by a different commenter).

[24] *Id.* at p. 4.

[25] *See, e.g.*, AARP Letter, CFA Letter, and MFS Letter

[26] MFS Letter, p. 2.

[27] NASDR Response, p. 2.

[28] CFA Letter, p. 5.

[29] NASDR Response, p. 2.

[30] *Id.*

[31] Dreyfus Letter, pp. 1–2 (suggesting that concerns about availability of additional disclosure information should be directed to the member firm, not the rating agency) and TRP Letter, p. 2.

[32] Dreyfus Letter, pp. 1–2 and TRP Letter, p. 3.

[33] NASDR Response, p. 3.

eliminate from the original proposal the provision allowing subjective factors to be used in the calculation of the rating.[34]

The Commission has consistently supported requirements that attempt to make meaningful information available to the investor. In this case, however, if more information were added to the disclosure statement, it is possible that the investor could be or overwhelmed with information that he fails to read any of the literature, or fails to focus on the key disclosures. The Commission is satisfied with the proposed disclosure requirements and the quality of information being made available to the investor.

Payment for Ratings

Some commenters contended that ratings prepared by independent third parties will be subject to conflicts of interest and potential misuse because the fund companies will pay for these ratings.[35] Two commenters strongly advocated a prohibition on the practice of buying ratings to ensure that the interests of the rating entity are independent of the interests of the fund being rated.[36] Lipper noted that the requirement that the fund disclose whether any payments were made for ratings should reduce, but will not completely eliminate, the incentive to shop for favorable ratings.[37] TRP noted that because funds will now have to pay for ratings, only those that are assured of the highest rating will attempt to procure one.[38] Conversely, Dreyfus contended that these ratings will not be generated if the rating agencies can not charge for them.[39]

The NASDR believes the proposal's prohibitions and substantial disclosure requirements are more than adequate to address potential conflicts of interest that may arise from the fact that the ratings are procured for a fee.[40] The Commission is concerned that rating agencies may be influenced by compensation received in providing fund volatility ratings. This concern is alleviated, however, by the requirement that the narrative description state whether consideration was paid in connection with the issuance of the ratings. Thus, the Commission is satisfied that the rule addresses potential conflicts of interest.

Presentation of Volatility Rating

Some commenters stated that the volatility rating should not be buried or hidden in the text of the required disclosure statement.[41] Two commenters believed that burying the rating in the disclosure statement increases the chances that it will not be found, as few investors thoroughly examine disclosure statements.[42] Thus, they suggested displaying the rating in a conspicuous location, with a prominent reference to the disclosure statement for particulars, to increase the chances of it being examined by investors.[43]

The NASDR believes that the appropriate point of disclosure for the rating is within the text of the disclosure statement.[44] They note that the proposal requires any rating to be filed with the Department for pre-use review.[45] The Department will, therefore, have an opportunity to review whether the rating is prominently displayed or inconspicuous and determine whether to recommend changes to the disclosure statement prior to use.[46] The Commission notes that the NASDR has not outlined the standards for pre-use review. However, the Commission expects that the NASDR will conduct a thorough review of all submitted sales literature containing volatility ratings to ensure compliance with the disclosure requirements.

Applicability of proposal to "in-house" ratings

The NASDR requested comment on whether the descriptions of risk and volatility that mutual fund complexes currently provide for their own funds *i.e.*, in-house ratings) should be subject to the provisions of the proposed rule change.[47] Two commenters suggested that risk or volatility ratings currently developed in-house resemble those provided by independent parties.[48] Because of the similarities between these ratings and the fact that funds often fail to disclose the methodologies used to determine their in-house ratings, both commenters suggested that volatility ratings developed in-house should be subject to the disclosure requirements of the proposal.[49] Moreover, CFA believed that fund companies should not be allowed to use in-house risk or volatility ratings without also disclosing those ratings issued by independent third parties that conflict with the in-house rating.[50]

Conversely, several commenters opposed subjecting current in-house risk disclosures to the requirements of the proposal.[51] These commenters believed that in-house ratings are used primarily as an educational tool for investors to compare the different types of funds within a fund family.[52] Volatility ratings, they content, are used by funds as a marketing tool to distinguish their fund from similar fund families.[53] Thus, according to ICI, in-house ratings do not present the same potential for abuse as volatility ratings and therefore should not be subject to the proposal.[54]

NASDR does not intend to apply the proposed rule to fund companies' in-house risk rating.[55] According to NASDR, these ratings are not procured for a fee, are used primarily by fund investors as an aid in distinguishing between risk levels within a family of funds, and may be calculated using different methods from those used in calculating volatility ratings.[56] The Commission preliminarily agrees with the NASDR that in-house risk ratings need not be subject to the proposed rule because they are primarily used by investors to distinguish between funds in a family of funds, but notes that the NASDR will reconsider at the conclusion of the trial period whether to apply the proposed rule to in-house ratings.[57]

One commenter also wanted the NASDR to clarify that the proposal only applied to open-end investment companies (*i.e.*, mutual funds) and not to other types of investment companies (*e.g.*, unit investment trusts).[58] For the trial period, the NASDR intends for the

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[34] *Id.*

[35] *See, e.g.*, AFD Letter, CFA Letter, and ICI Letter No. 1.

[36] AFD Letter, pp. 1–2 and ICI Letter No. 1, p. 5.

[37] Lipper Letter, p. 1.

[38] TRP Letter, p. 2.

[39] Dreyfus Letter, p. 5 (noting that payment would only be a material issue if subjectivity were an element in the process).

[40] NASDR Response, p. 2.

[41] GFOA Letter, p. 3, S&P Letter, pp. 2–3, and Woodward Letter, p. 3.

[42] GFOA Letter and S&P Letter, *supra* note 41.

[43] GFOA Letter and S&P Letter, *supra* note 41.

[44] NASDR Response, p. 4.

[45] Proposed Rule 2210(c)(3) would require that sales literature containing these volatility ratings by filed with the Department for review and approval at least 10 days prior to use.

[46] NASDR Response, p. 4.

[47] *See* Securities Exchange Act Rel. No. 40627, *supra* note 4, at 60433.

[48] CFA Letter, p. 3 and S&P Letter, p. 3. CFA also noted that because in-house ratings and those of ratings agencies can be similar, fund companies could use in-house ratings in lieu of independent ratings with which they disagree.

[49] CFA Letter and S&P Letter, *supra* note 48.

[50] CFA Letter, p. 3.

[51] Dreyfus Letter, p. 5, ICI Letter No. 1, p. 7, and TRP Letter, p. 3.

[52] ICI Letter No. 1, p. 7 and TRP Letter, p. 3.

[53] ICI Letter and TRP Letter, *supra* note 52.

[54] ICI Letter and TRP Letter, *supra* note 52. TRP notes that these ratings have been filed with and reviewed by the NASD with no previously known objections.

[55] NASD Response, p. 2.

[56] *Id.*

[57] *Id.*

[58] ICI Letter No. 1, p. 6.

proposed rule to apply only to open-end investment companies.[59] The NASDR will decide at the conclusion of the trial period whether to apply the rule to all investment companies.[60] However, until then, the NASDR proposes to amend the definition of Bond Mutual Fund Volatility Rating to clarify that the proposed rule change only applies to open-end investment companies.[61] The Commission is satisfied with the NASDR's determination that, for the duration of the trial period, the proposal will apply only to open-end investment companies.

Prohibitions

Several commenters offered their conditional support for the proposal, provided that all or substantially all of the prohibitions remained intact.[62] After discussions with the Commission, however, the NASDR, has amended the proposal to remove text from two of the prohibitions that several commenters supported.[63] Amendment No. 4 removes the prohibition from subsection (b)(1) against using a single symbol, number, or letter to describe a rating. This amendment clarifies the intended application of this section and provides greater flexibility to members in the use of appropriate symbols for their ratings.[64] The amendment also removes text from subsection (b)(3) that might cause confusion regarding the requirement in subsection (b)(3) that the rating be based on objective, quantifiable factors.

The Commission believes that amended subsection (b)(1) provides the rating agencies with appropriate flexibility. Several commenters suggested that investors were more likely to rely on ratings conveyed in the form of a number or symbol without fully understanding their meaning or significance.[65] The Commission notes, however, that the proposal still requires that the sales literature include a description of the rating in narrative form. The description must include certain disclosures, which should decrease the likelihood of investor confusion concerning a rating's meaning.

Concerning amended subsection(b)(3), the Commission believes the language is now clear that subjective factors should not be used to determine a rating.[66] The NASD stated that it eliminated subjective factors to ensure that any ratings issued during the trial period could be verified and replicated.[67] While most commenters agreed that only objective, quantifiable factors should be used to determine a rating, one commenter noted that this requirement would still allow fund entities to base their ratings on *different*, objective criteria.[68] Another commenter also suggested that the NASD address how it will monitor compliance with subsection (b)(3) and define what an "objective" factor is."[69]

NASDR believes it would be inappropriately constrictive to define what an "objective" factor is, other than to say that such factors should relate to information that is objectively determinable and should permit replication of ratings by third parties.[70] NASDR states that it will monitor compliance by requiring that all volatility ratings be submitted to its Department for pre-use review.[71]

The Commission believes that, during the trial period, rating agencies should be allowed to determine what qualifies as objective criteria, consistent with the NASDR's guidelines, and which objective criteria they should use to calculate the rating.[72] The proposal eliminates the use of subjective, qualitative factors, but does not prevent rating agencies from using their reasonable discretion in selecting which objective criteria to use to calculate a rating. The Commission reiterates that the onus is on the NASD member or associated person to make certain that all required information outlined in the proposal is disclosed so that the rating can be replicated and that the basis for any inconsistencies is readily apparent. The trial period should provide enough time to determine whether additional standards or guidelines are needed to prevent investor confusion or minimize excessive variability among ratings of similar portfolios.

V. Discussion

As discussed above, the Commission finds the proposed rule change is consistent with the Act and the rules and regulations thereunder.[73] Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6)[74] of the Act, which requires that the NASD adopt rules that are designed to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will remove impediments to a free and open market by allowing independent third parties to issue ratings of bond mutual funds based on an evaluation of objective criteria regarding a fund's performance and characteristics. The Commission also believes the various disclosure requirements outlined in the proposal will protect investors and the public interest by providing the information necessary to make an informed decision about a particular bond fund.

The proposed rule change, by imposing certain prohibitions, disclosure, and filing requirements, is designed to permit members and associated persons of members to disseminate bond mutual fund volatility ratings is supplemental sales literature according to standards designed to prevent such ratings from being misleading, predictive, or otherwise inappropriate. The Commission finds that the 18 month trial period is sufficient time to implement the proposed rule change and to determine, based on participation and subsequent feedback, whether the process should continue unchanged or whether modifications are necessary.

The Commission finds that the amended definition of bond mutual fund volatility ratings provides appropriate guidance concerning the type of funds to which the interpretation would apply during the trial period. Given the array of investment vehicles falling within the term "bond mutual fund," Amendment No. 3 provides the necessary clarity on the scope of investments to which this rule applies.

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[59] NASDR Response, p. 4.

[60] *Id.*

[61] *See supra* note 7.

[62] AFD Letter, pp. 1–2, ICI Letter No. 1, p. 4 and MFS Letter, p.2.

[63] Amendment No. 4, *supra* note 8.

[64] *Id.* at p. 1.

[65] AFD Letter, p. 2, CFA Letter, p. 4, and ICI Letter No. 1, pp. 2–3.

[66] *But see* GFOA Letter, p. 2 and Woodward Letter, p. 3 (stating that agencies should be allowed to use the tools they deem appropriate in assessing risk).

[67] NASDR Response, p. 5.

[68] TRP Letter, p. 2. TRP believes this lack of uniformity will ultimately lead to investor confusion, if similar bond funds receive different ratings.

[69] Dreyfus Letter, p. 4.

[70] NASDR Response, p. 3.

[71] *Id.*

[72] The Commission recognizes that without providing an exhaustive list of objective criteria for the agencies to use, similarly-situated bond funds may receive different ratings. However, the Commission is satisfied that the disclosure statement, which should include a description of the criteria and methodologies used, will provide the Department and investors with the requisite information to replicate the rating. Thus, the potential lack of uniformity in ratings and potential investor confusion should be mitigated by the proposal's required disclosures.

[73] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[74] 15 U.S.C. 78*o*–3(b)(6)

The Commission also finds that the prohibitions and Amendment No. 4 strike an appropriate balance. The proposed rule change and the amendment refrain from imposing a specific standard on descriptions (*i.e.*, removing the prohibition against use of a single symbol, number, or letter) or calculations of ratings in recognition of the fact that there is no specified or uniform range of information used by all rating entities, and that rating entities should be allowed to develop competing methods and models of assessing volatility. The amendment also eliminates the use of subject factors from the volatility calculation, thereby reducing the potential variability of ratings, and limiting the ability of funds to "shop around" for the most favorable rating.

The proposal, however, also imposes certain disclosure requirements that should assist investors in determining whether a fund is appropriate for them based on their investment objectives. The disclosure required by subsections (c)(3)(C)(i)–(vii) of the rule will help inform investors of certain potential limitations of a rating (*e.g.*, that a rating may have been paid for, may measure only a certain type of risk or volatility, may not reflect a comparison with all funds of a given class or peer group, and may not reflect a fund's current portfolio). The Commission believes that the requirement that any change in the rating and the reasons for the change be disclosed is important for investors in making informed investment decisions. Thus, the Commission finds that the proposed rule change, in providing access to this supplemental information, should enable investors to obtain answers to questions regarding the meaning of the rating or how it is calculated or derived.[75]

The Commission also finds that the requirement that sales literature containing volatility ratings be filed at least 10 days prior to use should provide the Department with sufficient time to review the sales material for compliance with the proposal's requirements. The Commission expects a thorough review of all sales literature to be conducted and accurate records to be maintained by the NASDR to facilitate the possible assessment of the rating process.

Finally, the Commission believes this proposal represents the best mechanism for disseminating information about bond mutual funds risk to investors. Risk ratings are an important source of information for investors because they can potentially determine the likelihood of gains or losses in the market value of a particular fund. As such, the Commission believes they can be useful tools for investors to aid in making informed investment decisions. Thus, the Commission finds that it is in the public interest to facilitate the dissemination of this information in an environment that encourages disclosure and enhances competition.

The Commission also finds good cause for approving proposed Amendment Nos. 3 and 4 prior to the thirtieth day after the date of the publication of notice of filing thereof in the **Federal Register**. The amendments remove ambiguous language that could hinder understanding of the proposal's applicability by clarifying which types of funds can be subject to the ratings process. The amendments also specify what types of criteria can be used to determine the ratings, while simultaneously providing some flexibility in how the rating agencies provide their services. The Commission believes that these amendments should help make the ratings provided more objective and enhance the disclosures made in the sales literature. Furthermore, the Commission finds that these amendments should enhance competition among those entities issuing the ratings. Thus, the Commission believes the approval of the amendments should not be delayed. For theses reasons, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 4, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect tot he proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal offices of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 29, 2000.

VI. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15A(b)(6).

It is Therefore Ordered, pursuant to Section 19(b)(2)[76] of the Act, that the proposed rule change (SR–NASD–97–89), be, and hereby is, approved for an 18 month trial period, which ends on August 31, 2001. Amendment Nos. 3 and 4 are also approved on an accelerated basis for an 18 month trial period, which also ends on August 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[77]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5557 Filed 3–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42481; File No. SR–NASD–00–7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Extension of Certain Nasdaq Services and Facilities Until 6:30 P.M. Eastern Time

March 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 29, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the

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[75] The Commission emphasizes that sales literature is no substitute for a fund's prospectus and, if investors have not received one, they should request a current prospectus to review in conjunction with the sales materials.

[76] 15 U.S.C. 78s(b)(2).

[77] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq filed the proposed rule change to extend, through October 1, 2000, its pilot program which makes available several Nasdaq services and facilities until 6:30 p.m. Eastern Time. Nasdaq has designated this proposal as non-controversial, and requests that the Commission waive both the 5-day pre-filing notice requirement and the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act,[6] to allow the proposal to be both effective and operative immediately upon filing with the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to extend, through October 1, 2000, its after-hours pilot program that makes available certain Nasdaq systems and facilities until 6:30 p.m. Eastern Time.[7] The Commission approved the pilot on October 13, 1999. The pilot will continue to operate under the same terms and conditions as set forth in SR–NASD–99–57.[8].

2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Section 15A(b)(6) of the Act[9] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become immediately operative upon filing, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq's after-hours pilot to operate without interruption through October 1, 2000, thereby allowing Nasdaq to continue to make available services and facilities that increase the transparency and oversight of trading taking place outside of traditional market hours. For these reasons, the Commission finds good cause to waive the 5-day pre-filing requirement, and to designate that the proposal become operative immediately.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–07 and should be submitted by March 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5558 Filed 3–7–00; 8:45 am]

BILLING CODE 8010–01–M

[5] Nasdaq provided written notice to the Commission on February 28, 2000, that it intended to file this proposal. The Commission agreed to waive the 5-day pre-filing notice requirement. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] *See* Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999) (SR–NASD–99–57).

[8] *Id.*

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, these notices announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before May 8, 2000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the

agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Pam Swilling, Program Review Analyst, Office of Surety Guarantees, Small Business Administration, 409 3rd Street, SW, Suite 8600, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Pam Swilling, Program Review Analyst, 202–205–6546 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION: *Title:* "Surety Bond Guaranty Agreement, Preferred Lenders Program".

Form No's: 990, 991, 994, 994B, 994C, 994F and 994H.

Description of Respondents: Small Business Contractors Applying for the Surety Bond Guarantee Program.

Annual Responses: 55,000.

Annual Burden: 28,837.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Betty J. Smith, Administrative Specialist, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW, Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Betty J. Smith, Administrative Specialist, 202–205–6491 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION: *Title:* "Lender Transcript of Account".

Form No: 1149.

Description of Respondents: SBA Guaranty Lenders.

Annual Responses: 3,752.

Annual Burden: 3,752.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Carol A. Cordova, Employment, Office of Human Resources, Small Business Administration, 409 3rd Street, SW, Suite 4200, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carol A. Cordova, Employment, 202–205–6162 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION: *Title:* "U.S. Small Business Administration's Applicant Survey".

Form No: 1843.

Description of Respondents: Persons seeking employment with SBA.

Annual Responses: 75.

Annual Burden: 13.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Gail A. McDonald, National Ombudsman, Office of the Ombudsman, Small Business Administration, 409 3rd Street, SW, Suite 8000A, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gail A. McDonald, Ombudsman, 202–205–7360 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION: *Title:* "Small Business and Agriculture Regulatory Enforcement Appraisal Form".

Form No: 1993.

Description of Respondents: Small Businesses that need to comment on Agencies Policies and Practices.

Annual Responses: 1000.

Annual Burden: 500.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–5601 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3238]

State of Alaska

The Chugach Regional Education Attendance Area (REAA #21) and the contiguous political subdivisions of Copper River (REAA #17); the City and Borough of Yakutat; Matanuska/Susitna Borough; the Municipality of Anchorage, and Kenai Peninsula Borough in the State of Alaska constitute a disaster area as a result of damages caused by winter storms, heavy snow, high winds, and avalanches beginning on December 19, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 24, 2000 and for economic injury until the close of business on November 24, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 7.625%
Homeowners Without Credit Available Elsewhere: 3.812%
Businesses With Credit Available Elsewhere: 8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere: 4.000%
Others (Including Non-Profit Organizations) With Credit Available Elsewhere: 6.750%

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%

The numbers assigned to this disaster are 323811 for physical damage and 9G7200 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 23, 2000

Aida Alvarez,

Administrator.

[FR Doc. 00–5562 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3237]

State of Georgia (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency dated February 22, 2000, the above-numbered Declaration is hereby amended to include Decatur County, Georgia as a disaster area due to damages caused by severe storms and tornadoes that occurred on February 14, 2000.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Miller and Seminole in Georgia, and Jackson County, Florida may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is April 15, 2000 and for economic injury the deadline is November 15, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: February 24, 2000.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 00–5563 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

(Declaration of Disaster #3239)

Commonwealth of Massachusetts (and a Contiguous County in the State of New Hampshire)

Middlesex County and the contiguous Counties of Essex, Norfolk, Suffolk, and Worcester in Massachusetts, and Hillsborough County, New Hampshire constitute a disaster area as a result of damages caused by a fire that occurred on February 9, 2000 in the City of Newton. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 24, 2000 and for economic injury until the close of business on November 24, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 7.625%
Homeowners Without Credit Available Elsewhere: 3.812%
Businesses With Credit Available Elsewhere: 8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere: 4.000%
Others (Including Non-Profit Organizations) With Credit Available Elsewhere: 6.750%

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%

The numbers assigned for physical damages are 323905 for Massachusetts and 324005 for New Hampshire.

For economic injury the numbers are 9G7300 for Massachusetts and 9G7400 for New Hampshire.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 24, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–5564 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3241]

State of Ohio (and Contiguous Counties in the Commonwealth of Kentucky)

Scioto County and the contiguous Counties of Adams, Jackson, Lawrence and Pike in the State of Ohio, and Greenup and Lewis Counties in Kentucky constitute a disaster area due to damages caused by heavy rain that occurred on February 18, 2000. Applications for loans for physical damage may be filed until the close of business on April 28, 2000 and for economic injury until the close of business on November 28, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 7.625%
Homeowners Without Credit Available Elsewhere: 3.812%
Businesses With Credit Available Elsewhere: 8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere: 4.000%
Others (Including Non-Profit Organizations) With Credit Available Elsewhere: 6.750%

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%

The numbers assigned for physical damages are 324106 for Ohio and 324206 for Kentucky. For economic injury the numbers are 9G7500 for Ohio and 9G7600 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 28, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–5565 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3243]

Commonwealth of Pennsylvania (and Contiguous Counties in West Virginia)

Washington County and the contiguous Counties of Allegheny, Beaver, Fayette, Greene, and Westmoreland in the Commonwealth of Pennsylvania, and Brooke, Hancock, Marshall, and Ohio in West Virginia constitute a disaster area as a result of damages caused by flooding that occurred on February 19, 2000. Applications for loans for physical damage from this disaster may be filed until the close of business on May 1, 2000 and for economic injury until the close of business on November 29, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 7.625%
Homeowners Without Credit Available Elsewhere: 3.812%
Businesses With Credit Available Elsewhere: 8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere: 4.000%
Others (Including Non-Profit Organizations) With Credit Available Elsewhere: 6.750%

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%

The numbers assigned to this disaster for physical damage are 324306 for Pennsylvania and 324406 for West Virginia. For economic injury the numbers are 9G7700 for Pennsylvania and 9G7800 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 29, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–5566 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9G79]

State of Washington

Skagit County and the contiguous Counties of Chelan, Island, Okanogan, Snohomish, and Whatcom in the State of Washington constitute an economic injury disaster area due to an oil spill occurring on October 29, 1999 and a mudslide occuring on December 12, 1999, which resulted in multiple road closures on Highway 20. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on November 29, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: February, 29, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–5567 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

National Advisory Council Meeting; Public Meeting

The U.S. Small Administration National Advisory Council, will hold the National Advisory Council Meeting on April 10, 2000 through April 12, 2000, at the Hyatt Regency Hotel located at 2 West Bay Street, Savannah, Georgia to discuss matters as may be presented by members of the National Advisory Council.

For further information, write or call Kimberly Mace, Staff Assistant, U.S. Small Business Administration. 409 3rd Street, South West, Washington, DC 20416, (202) 401–8252.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–5561 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Western States Regional Fairness Board Public Hearing

Date: March 30, 2000.

Location: Maricopa Community College, 2411 W. 14th Street, Tempe, AZ 85281.

Time: 1:00 p.m.

The Space is being donated by the Community College.

Purpose: To receive comments and testimony from small businesses and representatives of trade associations concerning regulatory enforcement or compliance taken by federal agencies.

Note: Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

Contact: Gary P. Peele (312) 353–0880.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–5560 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Region 1 Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region 1 Advisory Council, located in the geographical area of Augusta, will hold a public meeting at 10:00 a.m. on Tuesday March 14th, 2000 at the Resource Hub, 441 Congress Street, Portland, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mary McAleney, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, 207–622–8378.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–5559 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Region V District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region V District Advisory Council, located in the geographical area of Minneapolis/St. Paul, Minnesota, will hold a public meeting on March 10th at 11:30 a.m., at The Ground Round, 1500 East 78th Street, Richfield, Minnesota to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or other present.

For further information, write or call Nancy Gilbertson, Deputy District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, (612) 370–2319.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–5568 Filed 3–7–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 21–23A, Airworthiness Certification of Civil Aircraft, Engines, Propellers, and Related Products Imported to the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This document announces the availability of and requests comment on a proposed revised advisory circular (AC) that provides information on the Federal Aviation's (FAA) objectives, regulations, and general practices for United States of America (U.S.) airworthiness certification or acceptance of civil aeronautical products imported to the U.S. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received no later than May 8, 2000.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration (FAA), Attention: Marilyn DonCarlos, International Airworthiness Program, AIR–4, Aircraft Certification Service, 800 Independence Avenue S.W., Washington, DC 20591. Comments may be inspected at the above address between 8:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marilyn DonCarlos, International Airworthiness Program Staff, AIR–4, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Ave., S.W., Washington, DC 20591: telephone (202) 267–3319; fax (202) 267–3319; e-mail marilyn.doncarlos@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the AC by title and submit comments in duplicate to the address specified above. The Aircraft Certification Service will consider all communications received on or before the closing date for comments before issuing the final AC.

Availability of Proposed AC

Requests for copies should be directed to the person named above under the

caption **FOR FURTHER INFORMATION CONTACT**. Please specify whether a paper copy or an e-mailed copy is needed.

Discussion

The proposed revisions to the advisory circular (AC) provide a convenient source of current policies, guidance, and practices for U.S. airworthiness certification and acceptance of civil aeronautical products imported to the U.S. Since the publication of current AC 21–23 in 1987, a new format of bilateral aviation agreement, the Bilateral Aviation Safety Agreement (BASA), has been established. A BASA consists of an Executive Agreement, signed by the Department of State and its foreign counterpart, and one or more Implementation Procedures (e.g., for airworthiness, maintenance, flight simulators, environmental approval) signed by the FAA and its foreign civil aviation counterpart. Both a BASA and its predecessor, a Bilateral Airworthiness Agreement (BAA), are intended to facilitate reciprocal airworthiness certification of civil aeronautical products imported or exported between the two signatory countries. Both are based on a high degree of mutual confidence in the technical competence and regulatory capability of the aviation authority of the exporting country for performing aircraft certification functions within the scope of the agreements, but a BASA is more flexible, because if allows for later expansion into other FAA regulatory disciplines. The FAA's objective in issuing this proposed revised AC is to provide guidance on the current procedures and requirements for design and airworthiness approvals of aviation products imported to the United States, including requirements in BASA Implementation Procedures for Airworthiness.

Issued in Washington, DC, on March 3, 2000.

Mary Cheston,

Manager, International Airworthiness Programs Staff, AIR–4.

[FR Doc. 00–5599 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Metro-North Commuter Railroad & Connecticut Department of Transportation

[Docket Number FRA–2000–6778]

Metro-North Commuter Railroad (MNCW) and the Connecticut Department of Transportation (CDOT) seek a temporary waiver of compliance with the Passenger Equipment Safety Standards, 49 CFR Part 238.235, which requires that by December 31, 1999, each power operated door that is partitioned from the passenger compartment shall be equipped with a manual override adjacent to that door. They request that the waiver be granted for 159 passenger coaches equipped with power operated side doors outside the passenger compartment. The waiver if granted would grant an extension of time until July 1, 2001, for the installation manual overrides.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2000–6778) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC. on February 24, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–5537 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Mount Dora Scenic Railway Company

[Docket Number FRA–2000–6850]

Mount Dora Scenic Railway Company seeks a permanent waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR 223.9, which requires certified glazing, for two locomotives (self propelled railway motor cars) utilized in excursion service on the Mount Dora Scenic Railway in Mount Dora, Florida. Mount Dora indicates that they would provide front and rear facing windows with FRA Type I glazing but would like to equip the side facing windows with safety glazing. They state that the two motor cars are not air conditioned, and the passenger compartment side windows can be opened.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–6850) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will

be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on February 24, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–5539 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Docket Number FRA–2000–6848]

Union Pacific Railroad Company (UP) seeks a permanent waiver of compliance with the Blue Signal Protection of Workers, 49 CFR Part 218.29(a)(3), which requires that as part of an alternate method of protection "a blue signal must be attached to each controlling locomotive at a location where it is readily visible to the engineman or operator at the controls of that locomotive." UP requests that at their Hinkle Locomotive Facility located in Hermiston, Oregon, they be allowed to designate the east and west locomotive at the respective end of each repair track as the controlling locomotive regardless of it being set up in control.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–6848) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on February 24, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–5538 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33811]

Wisconsin Central Transportation Corporation—Continuance in Control Exemption—Wisconsin Chicago Link Ltd.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323–25, the control by Wisconsin Central Transportation Corporation of Wisconsin Chicago Link Ltd, a Class III rail common carrier, subject to the employee protection conditions in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

DATES: The exemption will be effective April 7, 2000. Petitions for stay must be filed by March 20, 2000. Petitions for reconsideration must be filed by March 28, 2000.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Finance Docket No. 33811 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K. Street, N.W., Washington, DC 20423–0001. In addition, send one copy of any comments to applicant's representative: Thomas J. Litwiler, Oppenheimer Wolff & Donnelly (Illinois), Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601–6710.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600 [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā-to-Dā Office Solutions, 1925 K Street, NW, Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339.]

Board decisions and notices are available on our website at WWW.STB.DOT.GOV."

Decided: February 29, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–5374 Filed 3–7–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. BTS–99–5889]

Motor Carrier Financial and Operating Information; Requests for Exemption From Public Release of Reports

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: Class I and Class II motor carriers of property and household goods are required to file annual and quarterly reports with the Bureau of Transportation Statistics (BTS). As provided by statute, carriers may request that their reports be withheld from public release. On September 3, 1999, BTS invited comments on several requests submitted by carriers (64 FR 48452). BTS has issued its decisions and these are available through the DOT Dockets Management System. Please follow the instructions listed below.

ADDRESSES: You can read BTS's decision on the exemption requests using the DOT Dockets Management System. This is located at the Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, and is open from 10 a.m. to 5 p.m., Monday through

Friday, except federal holidays. Internet users can access the Dockets Management System at http://dms.dot.gov. Please follow the instructions online for more information and help. The exemption requests and public comments on them are also available through this system.

FOR FURTHER INFORMATION CONTACT: David Mednick, K–1, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–8871; fax: (202) 366–3640; e-mail: david.mednick@bts.gov.

Rolf R. Schmitt,

Associate Director for Transportation Studies.

[FR Doc. 00–5653 Filed 3–7–00; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0563]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before April 7, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0563."

SUPPLEMENTARY INFORMATION:

Title: Army Chemical Corps Vietnam Veterans Health Study, Phase II, VA Form 10–20998(NR).

OMB Control Number: 2900–0563.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: A contractor to VA will conduct telephone surveys, analyze serum for TCDD, retrieve medical records and provide automated databases to VA. VA researchers will use the study data to determine whether there are indications that Army Chemical Corps Vietnam veterans suffer from illnesses at higher or unusual rates than Vietnam era Army Chemical Corps veterans. The relationship between health outcomes and possible exposure to herbicides will also be evaluated.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 22, 1999, at page 33345.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,448 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 4,895.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0563" in any correspondence.

Dated: February 16, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–5570 Filed 3–7–00; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 65, No. 46

Wednesday, March 8, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

THE PRESIDENT

3 CFR

Executive Order 13146 of February 29, 2000

President's Council on the Future of Princeville, North Carolina

Correction

In Executive Order 13146 of February 29, 2000, in the issue of March 2, 2000, on page 11201, the ninth line should read as follows: "and (c) agency assessments and recommendations to repair and rebuild"

[FR Doc. C0–5209 Filed 3–7–00; 8:45 am]

BILLING CODE 1505–01–D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators; Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"

Correction

Proposed rule document 00–4747 was inadvertently published in the Rules and Regulations section of the issue of Wednesday, March 1, 2000, beginning on page 10939. It should have appeared in the Proposed Rules section.

[FR Doc. C0–4747 Filed 3–7–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-182-000]

Young Gas Storage Company, Ltd.; Notice of Tariff Filing

Correction

In notice document 00–4455 beginning on page 10070 in the issue of Friday, February 25, 2000, the docket line should appear as set forth above.

[FR Doc. C0–4455 Filed 3–6–00; 8:45 am]

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

Correction

In notice document 00–5348 beginning on page 11579 in the issue of Friday, March 3, 2000, make the following correction:

On page 11579, in the second column after the heading "AGENCY HOLDING THE MEETING: Federal Maritime Commission.", insert the following heading: "TIME AND DATE: 10:00 a.m. - March 8, 2000."

[FR Doc. C0–5348 Filed 3–6–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Uteroglobin in Treatment of IgA Mediated Autoimmune Disorders

Correction

In notice document 00–4009 beginning on page 8384 in the issue of Friday, February 18, 2000, make the following corrections:

On page 8384, in the third column, seven lines from the bottom, the sentence should end, "on or before May 18, 2000, will be considered."

[FR Doc. C0–4009 Filed 3–6–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-180-1430-ET; CACA 41334]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

Correction

In notice document 00–3983, beginning on page 8734, in the issue of Tuesday, February 22, 2000, in the third column, in the legal description under **Mount Diablo Meridian, Calfornia**, in the last line "P='02'≤" should be removed.

[FR Doc. C0–3983 Filed 3–6–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0061(2000)]

Cotton Dust Standard: Extension of the Office of Managment of Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

Correction

In notice document 00–4867, beginning on page 11087, in the issue of Wednesday, March 1, 2000, make the following corrections:

1. The subject line should appear as set forth above.

2. On page 11088, in the first column, in the 21st line, "1218–0101" should read "1218–0061".

[FR Doc. C0–4867 Filed 3–7–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities

Correction

In notice document 00–4931 beginning on page 11108 in the issue of Wednesday, March 1, 2000, make the following correction:

On page 11108, in the third column, under the heading **ADDRESSES:**, in the sixth line, "Attention 1550-0223" should read " Attention 1550-0023".

[FR Doc. C0–4931 Filed 3–6–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
March 8, 2000

Part II

Department of the Treasury

Office of the Comptroller of the Currency
Office of Thrift Supervision

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 3, 208, 225, 325 and 567
Risk-Based Capital Standards; Recourse and Direct Credit Substitutes; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 00–06]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1055]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB31

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 2000–15]

RIN 1550–AB11

Risk-Based Capital Standards; Recourse and Direct Credit Substitutes

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) are proposing changes to their risk-based capital standards to address the regulatory capital treatment of recourse obligations and direct credit substitutes that expose banks, bank holding companies, and thrifts (collectively, banking organizations) to credit risk. The proposal treats recourse obligations and direct credit substitutes more consistently than under the agencies' current risk-based capital standards. In addition, the agencies would use credit ratings and certain alternative approaches to match the risk-based capital requirement more closely to a banking organization's relative risk of loss in asset securitizations. The proposal also requires the sponsor of a revolving credit securitization that involves an early amortization feature to hold capital against the amount of assets under management, *i.e.* the off-balance sheet securitized receivables.

This proposal is intended to result in more consistent treatment of recourse obligations and similar transactions among the agencies, more consistent risk-based capital treatment for certain types of transactions involving similar risk, and capital requirements that more closely reflect a banking organization's relative exposure to credit risk.

DATES: Your comments must be received by June 7, 2000.

ADDRESSES: Comments should be directed to:

OCC: You may send comments electronically to regs.comments@occ.treas.gov or by mail to Docket No. 00–06, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274. You can inspect and photocopy comments at that address.

Board: Comments, which should refer to Docket No. R–1055, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street between Constitution Avenue and C Street, NW, at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (Fax number: (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention Docket No. 2000–15. These submissions may be hand-delivered to 1700 G Street, NW, from 9 a.m. to 5 p.m. on business days or may be sent by facsimile transmission to FAX number (202) 906–7755; or by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, NW, from 9 to 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Roger Tufts, Senior Economic Advisor or Amrit Sekhon, Risk Specialist, Capital Policy Division, (202) 874–5070; Laura Goldman, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Thomas R. Boemio, Senior Supervisory Financial Analyst, (202) 452–2982, or Norah Barger, Assistant Director (202) 452–2402, Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

FDIC: Robert F. Storch, Chief, Accounting Section, Division of Supervision, (202) 898–8906; or Jamey Basham, Counsel, Legal Division, (202) 898–7265, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Michael D. Solomon, Senior Program Manager for Capital Policy, Supervision Policy, (202) 906–5654; or Karen Osterloh, Assistant Chief Counsel (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

The agencies are proposing to amend their risk-based capital standards to change the treatment of certain recourse obligations, direct credit substitutes, and securitized transactions that expose banking organizations to credit risk. This proposal amends the agencies' risk-based capital standards to align more closely the risk-based capital treatment of recourse obligations and direct credit substitutes and to vary the capital requirements for positions in securitized transactions (and certain other credit exposures) according to their relative risk. The proposal also requires the sponsor of a revolving credit securitization that involves an early amortization feature to hold capital

against the amount of assets under management in that securitization.

This proposal builds on the agencies' earlier work with respect to the appropriate risk-based capital treatment for recourse obligations and direct credit substitutes. On May 25, 1994, the agencies published in the **Federal Register** a proposal to reduce the capital requirement for banks for low-level recourse transactions, to treat first-loss (but not second-loss) direct credit substitutes like recourse, and to implement definitions of "recourse," "direct credit substitute," and related terms. 59 FR 27116 (May 25, 1994) (the 1994 Notice). The 1994 Notice also contained, in an advance notice of proposed rulemaking, a proposal to use credit ratings to determine the capital treatment of certain recourse obligations and direct credit substitutes. The OCC, the Board, and the FDIC subsequently implemented the capital reduction for low-level recourse transactions, thereby satisfying the requirements of section 350 of the Riegle Community Development and Regulatory Improvement Act, Public Law 103–325, sec. 350, 108 Stat. 2160, 2242 (1994) (CDRI Act).[1] The OTS risk-based capital regulation already included the low-level recourse treatment required by the statute.[2] The agencies did not issue a final regulation on the remaining elements of the 1994 Notice.

On November 5, 1997, the agencies published another notice of proposed rulemaking. 62 FR 59943 (1997 Proposal). In the 1997 Proposal, the agencies proposed to use credit ratings from nationally recognized statistical rating organizations to determine the capital requirement for recourse obligations, direct credit substitutes, and senior asset-backed securities. Additionally, the 1997 Proposal requested comment on a series of options and alternatives to supplement or replace the ratings-based approach.

In June 1999, the Basel Committee on Banking Supervision issued a consultative paper, "A New Capital Adequacy Framework, that sets forth possible revisions to the 1988 Basel Accord.[3] The Basel consultative paper discusses potential modifications to the current capital standards, including the capital treatment of securitizations. The suggested changes in the Basel consultative paper move in the same direction as this proposal by looking to external credit ratings issued by qualifying external credit assessment institutions as a basis for determining the credit quality and the resulting capital treatment of securitizations.

[1] *See* 60 FR 17986 (April 10, 1995) (OCC); 60 FR 8177 (February 13, 1995) (Board); 60 FR 15858 (March 28, 1995) (FDIC).

[2] *See* 60 FR 45618 (August 31, 1995.)

[3] International Convergence of Capital Measurement and Capital Standards (July 1988).

II. Background

A. Asset Securitization

Asset securitization is the process by which loans or other credit exposures are pooled and reconstituted into securities, with one or more classes or positions, that may then be sold. Securitization[4] provides an efficient mechanism for banking organizations to buy and sell loan assets or credit exposures and thereby to make them more liquid.

Securitizations typically carve up the risk of credit losses from the underlying assets and distribute it to different parties. The "first dollar," or subordinate, loss position is first to absorb credit losses; the most "senior" investor position is last; and there may be one or more loss positions in between ("second dollar" loss positions). Each loss position functions as a credit enhancement for the more senior loss positions in the structure.

For residential mortgages sold through certain Federally-sponsored mortgage programs, a Federal government agency or Federal government sponsored enterprise (GSE) guarantees the securities sold to investors. However, many of today's asset securitization programs involve nonmortgage assets or are not Federally supported in any way. Sellers of these privately securitized assets therefore often provide other forms of credit enhancement—first and second dollar loss positions—to reduce investors' risk of credit loss.

A seller may provide this credit enhancement itself through recourse arrangements. As defined in this proposal, "recourse" refers to the risk of credit loss that a banking organization retains in connection with the transfer of its assets. Banking organizations have long provided recourse in connection with sales of whole loans or loan participations; today, recourse arrangements frequently are associated with asset securitization programs.

A seller may also arrange for a third party to provide credit enhancement[5] in an asset securitization. If the third-party enhancement is provided by another banking organization, that organization assumes some portion of the assets' credit risk. In this proposal, all forms of third-party enhancements, *i.e.*, all arrangements in which a banking organization assumes risk of credit loss from third-party assets or other claims that it has not transferred, are referred to as "direct credit substitutes." The economic substance of a banking organization's risk of credit loss from providing a direct credit substitute can be identical to its risk of credit loss from transferring an asset with recourse.

Depending on the type of securitization transaction, the sponsor of a securitization may provide a portion of the total credit enhancement internally, as part of the securitization structure, through the use of spread accounts, overcollateralization, retained subordinated interests, or other similar forms of on-balance sheet assets. When these or other types of internal enhancements are provided, the enhancements are considered a form of recourse for risk-based capital purposes. Many asset securitizations use a combination of internal enhancement, recourse, and third-party enhancement to protect investors from risk of credit loss.

B. Risk Management of Exposures Arising From Securitization Activities

While asset securitization can enhance both credit availability and a banking organization's profitability, managing the risks associated with this activity can pose significant challenges. This is because the risks involved, while not new to banking organizations, may be less obvious and more complex than the risks of traditional lending. Specifically, securitization can involve credit, liquidity, operational, legal, and reputational risks in concentrations and forms that may not be fully recognized by management or adequately incorporated into a banking organization's risk management systems.

The risk-based capital treatment described in this proposal provides one important way of addressing the credit risk presented by securitization activities, but a banking organization's compliance with capital standards should be complemented by effective risk management strategies. The agencies expect that banking organizations will identify, measure, monitor and control the risks of their securitization activities (including

[4] For purposes of this discussion, references to "securitization" also include structured finance transactions or programs that generally create stratified credit risk positions, which may or may not be in the form of a security, whose performance is dependent upon a pool of loans or other credit exposures.

[5] As used in this proposal, the terms "credit enhancement" and "enhancement" refer to both recourse arrangements and direct credit substitutes.

synthetic securitizations[6] using credit derivatives) and explicitly incorporate the full range of risks into their risk management systems. Management is responsible for having adequate policies and procedures in place to ensure that the economic substance of their risks is fully recognized and appropriately managed. Banking organizations should be able to measure and manage their risk exposure from risk positions in the securitizations, either retained or acquired, and should be able to assess the credit quality of the retained residual portfolio after the transfer of assets in a securitization transaction. The formality and sophistication with which the risks of these activities are incorporated into a banking organization's risk management system should be commensurate with the nature and volume of its securitization activities. Banking organizations with significant securitization activities, no matter what the size of their on-balance sheet assets, are expected to have more elaborate and formal approaches to manage the risks. Failure to understand the risks inherent in securitization activities and to incorporate them into risk management systems and internal capital allocations may constitute an unsafe or unsound banking practice.

Banking organizations must have adequate systems that evaluate the effect of securitization transactions on the banking organization's risk profile and capital adequacy. Based on the complexity of transactions, these systems should be capable of differentiating between the nature and quality of the risk exposures transferred versus those that the banking organization retains. Adequate management systems usually:

- Have an internal system for grading credit risk exposures, including: (1) Adequate differentiation of risk among risk grades; (2) adequate controls to ensure the objectivity and consistency of the rating process; and (3) analysis or evidence supporting the accuracy or appropriateness of the risk-grading system.[7]
- Evaluate the effect of the transaction on the nature and distribution of the banking book exposures that have not been transferred in connection with securitization. This analysis should include a comparison of the banking book's risk profile before and after the transaction, including the mix of exposures by risk grade and by business or economic sector. The analysis should also include identification of any concentrations of credit risk.
- Perform rigorous, forward-looking stress testing[8] on exposures that have not been transferred (that is, loans and commitments remaining in the banking book), transferred exposures, and exposures retained to facilitate transfers (that is, credit enhancements).
- Have an internal economic capital allocation methodology that provides the banking organization will have adequate capitalization to meet a specific probability that it will not become insolvent if unexpected credit losses occur and that readjusts, as necessary, the sponsoring bank's internal economic capital requirements to take into account the effect of the securitization transactions.

Banking organizations should ensure that their capital positions are sufficiently strong to support all of the risks associated with these activities on a fully consolidated basis and should maintain adequate capital in all affiliated entities engaged in these activities.

C. Current Risk-Based Capital Treatment of Recourse and Direct Credit Substitutes

Currently, the agencies' risk-based capital standards apply different treatments to recourse arrangements and direct credit substitutes. As a result, capital requirements applicable to credit enhancements do not consistently reflect credit risk. The current rules of the OCC, Board, and FDIC (the banking agencies) are also not entirely consistent with those of the OTS.

1. Recourse

The agencies' risk-based capital guidelines prescribe a single treatment for assets transferred with recourse, regardless of whether the transaction is reported as a financing or a sale of assets in a bank's Consolidated Reports of Condition and Income (Call Report), a bank holding company's FR Y–9 reports, or a thrift's Thrift Financial Report.[9] For a transaction reported as a financing, the transferred assets remain on the balance sheet and are risk-weighted. For a transaction reported as a sale, the entire outstanding amount of the assets sold (not just the contractual amount of the recourse obligation) is converted into an on-balance sheet credit equivalent amount using a 100% credit conversion factor. This credit equivalent amount (less any applicable recourse liability account recorded on the balance sheet) is then risk-weighted.[10] If the seller's balance sheet includes as an asset any retained interest in the assets sold, the retained interest is not risk-weighted separately. Thus, regardless of the method used to account for the transfer, risk-based capital is held against the full, risk-weighted amount of the transferred assets, although the transaction is subject to the low-level recourse rule, which limits the maximum risk-based capital requirement to the banking organization's maximum contractual exposure.[11]

For leverage capital ratio purposes, if a transfer with recourse is reported as a financing, the transferred assets remain on the transferring banking organization's balance sheet and the banking organization must hold leverage capital against these assets. If a transfer with recourse is reported as a sale, the assets sold do not remain on the selling

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[6] "Synthetic securitization" refers to the bundling of credit risk associated with on-balance sheet assets and off-balance sheet items for subsequent sale into the market.

[7] In this regard, the agencies note that one increasingly important component of the systems for controlling credit risk at larger banking organizations is the identification of the gradations in credit risk among their business loans and the assignment of internal credit risk ratings to loans that correspond to these gradations. The agencies believe that the use of such an internal rating process is appropriate—indeed, necessary—for sound risk management at large banking organizations. In particular, those banking organizations with significant involvement in securitization activities should have relatively elaborate and formal approaches for assessing and managing the associated credit risk.

[8] Stress testing usually involves identifying possible events or changes in market behavior that could have unfavorable effects on an banking organization and assessing the organization's ability to withstand them. Stress testing should not only consider the probability of adverse events, but also potential "worst case" scenarios. Such an analysis should be done on a consolidated basis and consider, for example, the effect of higher than expected levels of delinquencies and defaults. The analysis should also consider the consequences of early amortization events that could raise concerns regarding a banking organization's capital adequacy and its liquidity and funding capabilities. Stress test analyses should also include contingency plans regarding the actions management might take given certain situations.

[9] Assets transferred with any amount of recourse in a transaction reported as a financing in accordance with generally accepted accounting principles (GAAP) remain on the balance sheet and are risk-weighted in the same manner as any other on-balance sheet asset. Assets transferred with recourse in a transaction that is reported as a sale under GAAP are removed from the balance sheet and are treated as off-balance sheet exposures for risk-based capital purposes.

[10] Consistent with statutory requirements, the agencies' current rules also provide for special treatment of sales of small business loan obligations with recourse. *See* 12 CFR Part 3, appendix A, Section 3(c) (OCC); 12 CFR parts 208 and 225, appendix A, II.B.5 (FRB); 12 CFR part 325, appendix A, II.B.6 (FDIC); 12 CFR 567.6(E)(3) (OTS).

[11] Section 350 of the CDRI Act required the agencies to prescribe regulations providing that the risk-based capital requirement for assets transferred with recourse could not exceed a banking organization's maximum contractual exposure. The agencies may require a higher amount if necessary for safety and soundness reasons. *See* 12 U.S.C. 4808.

banking organization's balance sheet and the banking organization need not hold leverage capital against these assets. However, if the seller's balance sheet includes as an asset any retained interest in the assets sold, leverage capital must be held against the retained interest.

2. Direct Credit Substitutes

Direct credit substitutes are treated differently from recourse under the current risk-based capital standards. Under the banking agencies' current standards, off-balance sheet direct credit substitutes, such as financial standby letters of credit provided for third-party assets, carry a 100% credit conversion factor. However, only the dollar amount of the direct credit substitute is converted into an on-balance sheet credit equivalent amount, so that capital is held only against the face amount of the direct credit substitute. The capital requirement for a recourse arrangement, in contrast, generally is based on the full amount of the assets enhanced.

If a direct credit substitute covers less than 100% of the potential losses on the assets enhanced, the current capital treatment results in a lower capital charge for a direct credit substitute than for a comparable recourse arrangement. For example, if a direct credit substitute covers losses up to the first 20% of the assets enhanced, then the on-balance sheet credit equivalent amount equals that 20% amount, and risk-based capital is held against only the 20% amount. In contrast, required capital for a first-loss 20% recourse arrangement is higher because capital is held against the full outstanding amount of the assets enhanced, subject to the low-level recourse rule.

Currently, under the banking agencies' guidelines, purchased subordinated interests receive the same capital treatment as off-balance sheet direct credit substitutes. That is, the amount of the purchased subordinated interest is placed in the appropriate risk-weight category. In contrast, a banking organization that *retains* a subordinated interest in connection with the transfer of its own assets is considered to have transferred the assets with recourse. As a result, the banking organization must hold capital against the carrying amount of the retained subordinated interest as well as the outstanding amount of all senior interests that it supports, subject to the low-level recourse rule.

The OTS risk-based capital regulation treats some forms of direct credit substitutes (*e.g.*, financial standby letters of credit) in the same manner as the banking agencies' guidelines. However, unlike the banking agencies, the OTS treats purchased subordinated interests (except for certain high quality subordinated mortgage-related securities) under its general recourse provisions. The risk-based capital requirement is based on the carrying amount of the subordinated interest plus all senior interests, as though the thrift owned the full outstanding amount of the assets enhanced.

3. Concerns Raised by Current Risk-Based Capital Treatment

The agencies' current risk-based capital standards raise significant concerns with respect to the treatment of recourse and direct credit substitutes. First, banking organizations are often required to hold different amounts of capital for recourse arrangements and direct credit substitutes that expose the banking organization to equivalent risk of credit loss. Banking organizations are taking advantage of this anomaly, for example, by providing first-loss letters of credit to asset-backed commercial paper conduits that lend directly to corporate customers. This results in a significantly lower capital requirement than if the loans had originally been carried on the banking organizations' balance sheets and then were sold. Moreover, the current capital standards do not recognize differences in risk associated with different loss positions in asset securitizations, nor do they provide uniform definitions of recourse, direct credit substitute, and associated terms.

III. Description of the Proposal

This proposal would amend the agencies' risk-based capital standards as follows:

- The proposal defines "recourse" and revises the definition of "direct credit substitute"; [12]
- It provides more consistent risk-based capital treatment for recourse obligations and direct credit substitutes;
- It varies the capital requirements for positions in securitized transactions according to their relative risk exposure, using credit ratings from nationally recognized statistical rating organizations [13] (rating agencies) to measure the level of risk;
- It permits the limited use of a banking organization's qualifying internal risk rating system, a rating agency's or other appropriate third party's review of the credit risk of positions in structured programs, and qualifying software to determine the capital requirement for certain unrated direct credit substitutes; and
- It requires the sponsor of a revolving credit securitization that involves an early amortization feature to hold capital against the amount of assets under management in that securitization.

The use of credit ratings in this proposal is similar to the 1997 Proposal. Although many commenters expressed concerns about specific details in the 1997 Proposal, commenters generally supported the goal of making the capital requirements associated with asset securitizations more rational and efficient, and viewed the 1997 Proposal as a positive step toward achieving a more consistent, rational, and efficient regulatory capital framework. The agencies have made several changes to the 1997 Proposal in response to commenters' concerns and based on further agency consideration of the issues presented.

Several options and alternatives in the 1997 Proposal have been eliminated: the modified gross-up approach, the ratings benchmark approach, and the historical losses approach.[14] Commenters expressed numerous concerns about these approaches and the agencies agree that better alternatives exist.

Commenters responding to the 1997 Proposal expressed a number of concerns about the use of ratings from rating agencies to determine capital requirements, especially in the case of unrated direct credit substitutes. Commenters noted that banking organizations actively involved in the securitization business have their own internal risk rating systems, that banking organizations know their assets better than third parties, and that a requirement that a banking organization obtain a rating from a rating agency solely for regulatory capital purposes is burdensome. Some commenters also expressed skepticism about the suitability of rating agency credit ratings for regulatory capital purposes.

In the opinion of the agencies, ratings have the advantages of being relatively objective, widely used, and relied upon by investors and other participants in

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[12] The OTS, which already defines the term "recourse" in its rules, would revise its definition so that it is consistent with the definition adopted by the other agencies. The OTS is also adding a definition of "financial guarantee-type letter of credit" to be consistent with the OCC and the Board.

[13] "Nationally recognized statistical rating organization" means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for various purposes, including the capital rules for broker-dealers. *See* SEC Rule 15c3–1(c)(2)(vi)(E), (F) and (H), 17 CFR 240.15c3–091(c)(2)(vi)(E), (F), and (H).

[14] For a description of these approaches, *see* 62 FR 59944, 59952–59961 (November 5, 1997).

the financial markets. Ratings provide a flexible, efficient, market-oriented way to measure credit risk. The agencies recognize, however, that there are drawbacks to using credit ratings from rating agencies to set capital requirements. Moreover, the agencies agree with some commenters' observation that credit ratings are most useful with respect to publicly-traded positions that would be rated regardless of the agencies' risk-based capital requirements.

To minimize the need for banking organizations to obtain ratings on otherwise unrated enhancements that are provided in asset-backed commercial paper securitizations, the proposal permits banking organizations to use their own qualifying internal risk rating systems in place of ratings from rating agencies for risk weighting certain direct credit substitutes. The use of internal risk ratings to assign direct credit substitutes in asset-backed commercial paper programs to rating categories under the ratings-based approach is dependent upon the existence of adequate internal risk rating systems. The adequacy of any internal risk rating system will depend upon a banking organization's incorporation of the prudential standards outlined in this proposal, as well as other factors recommended through supervisory guidance or on a case-by-case basis.

Finally, the agencies are proposing an additional measure to address the risk associated with early amortization features in certain asset securitizations. The managed assets approach, described in Section III.D., would apply a 20% risk weight to the amount of off-balance sheet securitized assets under management in such transactions.

A. Definitions and Scope of the Proposal

1. Recourse

The proposal defines the term "recourse" to mean an arrangement in which a banking organization *retains* risk of credit loss in connection with an asset transfer, if the risk of credit loss exceeds a *pro rata* share of the banking organization's claim on the assets. The proposed definition of recourse is consistent with the banking agencies' longstanding use of this term, and incorporates existing agency practices regarding retention of risk in asset transfers into the risk-based capital standards.[15]

Currently, the term "recourse" is not defined explicitly in the banking agencies' risk-based capital guidelines. Instead, the guidelines use the term "sale of assets with recourse," which is defined by reference to the Call Report Instructions. *See* Call Report Instructions, Glossary (entry for "Sales of Assets for Risk-Based Capital Purposes"). Once a definition of recourse is adopted in the risk-based capital guidelines, the banking agencies would remove the cross-reference to the Call Report instructions from the guidelines. The OTS capital regulation currently provides a definition of the term "recourse," which would also be replaced once a final definition of recourse is adopted.

2. Direct Credit Substitute

The proposed definition of "direct credit substitute" complements the definition of recourse. The term "direct credit substitute" would refer to any arrangement in which a banking organization assumes risk of credit-related losses from assets or other claims it has not transferred, if the risk of credit loss exceeds the banking organization's *pro rata* share of the assets or other claims. Currently, under the banking agencies' guidelines, this term covers guarantee-type arrangements. As revised, it would also include explicitly items such as purchased subordinated interests, agreements to cover credit losses that arise from purchased loan servicing rights, credit derivatives and lines of credit that provide credit enhancement.

Some commenters responding to the 1997 Proposal suggested that the definition of "direct credit substitute" should exclude risk positions that are not part of an asset securitization. Although direct credit substitutes commonly are used in asset securitizations, enhancements involving similar credit risk exposure can arise in other contexts and should receive the same capital treatment as enhancements associated with securitizations.

Several commenters objected to the 1997 Proposal's treatment of direct credit substitutes as recourse. Commenters asserted that the business of providing third-party credit enhancements has historically been safe and profitable for banks and objected that the proposed capital treatment would impair the competitive position of U.S. banks and thrifts. As has been previously described, however, the current treatment of direct credit substitutes is not consistent with the treatment of recourse obligations. The agencies have concluded that the difference in treatment between the two forms of credit enhancement invites banking organizations to obtain direct credit substitutes in place of recourse obligations in order to avoid the capital requirement applicable to recourse obligations and on-balance-sheet assets. For this reason, the agencies are again proposing, as a general rule, to extend the current risk-based capital treatment of asset transfers with recourse, including the low-level recourse rule, to direct credit substitutes.

In an effort to address competitive inequities at the international level, however, the agencies have raised this issue with the bank supervisory authorities from the other countries represented on the Basel Committee on Banking Supervision. The Basel Committee's consultative paper, "A New Capital Adequacy Framework," acknowledges that the current Basel Capital Accord, upon which the agencies' risk-based capital standards are based, lacks consistency in its treatment of credit enhancements.

3. Lines of Credit

One commenter requested clarification that a line of credit that provides credit enhancement for the financial obligations of an account party could be a direct credit substitute only if it represented an irrevocable obligation to the beneficiary. A revocable line of credit would not be a direct credit substitute because the issuer could protect itself against credit losses at any time prior to a draw on the line of credit. However, an irrevocable line of credit could expose the issuer to credit losses and would constitute a direct credit substitute, if it met the criteria in the definitions. Also, any conditions attached to the issuer's ability to revoke the undrawn portion of a line of credit, or that interfere with the issuer's ability to protect itself against credit loss prior to a draw, will cause the line of credit to constitute a direct credit substitute.

4. Credit Derivatives

The proposed definitions of "recourse" and "direct credit substitute" cover credit derivatives to the extent that a banking organization's credit risk exposure exceeds its *pro rata* interest in the underlying obligation. The ratings-based approach therefore applies to rated instruments such as credit-linked notes issued as part of a

[15] The OTS currently defines the term "recourse" more broadly than the proposal to include arrangements involving credit risk that a thrift assumes or accepts from third-party assets as well as risk that it retains in an asset transfer. Under the proposal, credit risk that a banking organization assumes from third-party assets falls under the definition of "direct credit substitute" rather than "recourse."

synthetic securitization.[16] The agencies request comment on the inclusion of credit derivatives in the definitions of "recourse" and "direct credit substitute," as well as on the definition of "credit derivative" contained in the proposal.

5. Risks Other Than Credit Risks

A capital charge would be assessed only against arrangements that create exposure to credit or credit-related risks. This continues the agencies' current practice and is consistent with the risk-based capital standards' traditional focus on credit risk. The agencies have undertaken other initiatives to ensure that the risk-based capital standards take interest rate risk and other non-credit related market risks into account.

6. Implicit Recourse

The definitions cover all arrangements that are recourse or direct credit substitutes in form or in substance. Recourse may also exist when a banking organization assumes risk of loss without an explicit contractual agreement or, if there is a contractual limit, when the banking organization assumes risk of loss in an amount exceeding the limit. The existence of implicit recourse is often a complex and fact-specific issue, usually demonstrated by a banking organization's actions to support a securitization beyond any contractual obligation. Actions that may constitute implicit recourse include: providing voluntary support for a securitization by selling assets to a trust at a discount from book value; exchanging performing for non-performing assets; or other actions that result in a significant transfer of value in response to deterioration in the credit quality of a securitized asset pool.

To date, the agencies have taken the position that when a banking organization provides implicit recourse, it generally should hold capital in the same amount as for assets sold with recourse. However, the complexity of many implicit recourse arrangements and the variety of circumstances under which implicit recourse may be provided raise issues about whether recourse treatment is always the most appropriate way to address the level of risk that a banking organization has effectively retained or whether a different capital requirement would be warranted in some circumstances. Accordingly, the 1997 Proposal requested comment on the types of actions that should be considered implicit recourse and how the agencies should treat those actions for regulatory capital purposes.

Commenters responding to the 1997 Proposal generally supported the view that implicit recourse is best handled on a case-by-case basis, guided by the general rule that actions that demonstrate retention of risk will trigger recourse treatment of affected transactions. The agencies intend to continue to address implicit recourse case-by-case, but may issue additional guidance if needed to clarify further the circumstances in which a banking organization will be considered to have provided implicit recourse.

7. Subordinated Interests in Loans or Pools of Loans

The definitions of recourse and direct credit substitute explicitly cover a banking organization's ownership of subordinated interests in loans or pools of loans. This continues the banking agencies' longstanding treatment of retained subordinated interests as recourse and recognizes that *purchased* subordinated interests can also function as credit enhancements. (The OTS currently treats both retained and *purchased* subordinated securities as recourse obligations.) Subordinated interests generally absorb more than their *pro rata* share of losses (principal and interest) from the underlying assets in the event of default. For example, a multi-class asset securitization may have several classes of subordinated securities, each of which provides credit enhancement for the more senior classes. Generally, the holder of any class that absorbs more than its *pro rata* share of losses from the total underlying assets is providing credit protection for all of the more senior classes.[17]

Some commenters questioned the treatment of purchased subordinated interests as recourse. Subordinated interests expose holders to comparable risk regardless of whether the interests are retained or purchased. If purchased subordinated interests were not treated as recourse, banking organizations could avoid recourse treatment by swapping retained subordinated interests with other banking organizations or by purchasing subordinated interests in assets originated by a conduit. The proposal would mitigate the effect of treating purchased subordinated interests as recourse by reducing the capital requirement on interests that qualify under the multi-level approach described in section III.B.

8. Representations and Warranties

When a banking organization transfers assets, including servicing rights, it customarily makes representations and warranties concerning those assets. When a banking organization purchases loan servicing rights, it may also assume representations and warranties made by the seller or a prior servicer. These representations and warranties give certain rights to other parties and impose obligations upon the seller or servicer of the assets. The proposal addresses those particular representations and warranties that function as credit enhancements, *i.e.* those where, typically, a banking organization agrees to protect purchasers or some other party from losses due to the default or non-performance of the obligor or insufficiency in the value of collateral. Therefore, to the extent a banking organization's representations and warranties function as credit enhancements to protect asset purchasers or investors from credit risk by obligating the banking organization to protect another party from losses due to credit risk in the transferred assets, the proposal treats them as recourse or direct credit substitutes.

The 1997 Proposal treated as recourse or a direct credit substitute any representation or warranty other than a standard representation or warranty. Standard representations and warranties were those referring to facts verified by the seller or servicer with reasonable due diligence or conditions within the control of the seller or servicer and those providing for the return of assets in the event of fraud or documentation deficiencies. Some commenters objected that the 1997 Proposal would treat as recourse many industry-standard warranties that impose only minor operational risk instead of true credit risk. Other commenters objected that the due diligence requirement was burdensome, and that it would impose compliance costs on banking organizations disproportionate to the risk assumed.

The current proposal focuses on whether a warranty allocates credit risk to the banking organization, rather than whether the warranty is somehow standard or customary within the industry. Several commenters suggested

[16] "Synthetic securitization" refers to the bundling of credit risk associated with on-balance sheet assets and off-balance sheet items for subsequent sale into the market. Credit derivatives, and in particular credit-linked notes, are used to structure a synthetic securitization. For more information on synthetic securitizations *see*, Joint OCC and Federal Reserve Board Issuance on Credit Derivatives, "Capital Interpretations—Synthetic Collateralized Loan Obligations," dated November 15, 1999.

[17] Current OTS risk-based capital guidelines exclude certain high-quality subordinated mortgage-related securities from treatment as recourse arrangements due to their credit quality.

that the agencies expressly take accepted mortgage banking industry practice into account in determining whether a warranty should receive recourse treatment. However, the agencies are aware of warranties sometimes characterized as "standard" that effectively function as credit enhancements. These include warranties that transferred loans will remain of investment quality, or that no circumstances exist involving the loan collateral or borrower's credit standing that could cause the loan to become delinquent. They may also include warranties that, for seasoned mortgages, the value of the loan collateral still equals the original appraised value and the borrower's ability to pay has not changed adversely.

The proposal is consistent with the agencies' longstanding recourse treatment of representations and warranties that effectively guaranty performance or credit quality of transferred loans. However, the proposal and the agencies' longstanding practice also recognize that banking organizations typically make a number of factual warranties unrelated to ongoing performance or credit quality. These warranties entail operational risk, as opposed to the open-ended credit risk inherent in a financial guaranty. Warranties that create operational risk include: warranties that assets have been underwritten or collateral appraised in conformity with identified standards, and warranties that provide for the return of assets in instances of incomplete documentation or fraud.

Warranties can impose varying degrees of operational risk. For example, a warranty that asset collateral has not suffered damage from hazard entails risk that is offset to some extent by prudent underwriting practices requiring the borrower to provide hazard insurance to the banking organization. A warranty that asset collateral is free of environmental hazards may present acceptable operational risk for certain types of properties that have been subject to environmental assessment, depending on the circumstances. The agencies address appropriate limits for these operational risks through supervision of a banking organization's loan underwriting, sale, and servicing practices. Also, a banking organization that provides warranties to loan purchasers and investors must include associated operational risks in its risk management of exposures arising from loan sale or securitization-related activities. Banking organizations should be prepared to demonstrate to examiners that the operational risks are effectively managed.

The proposal continues the agencies' current practice of imposing recourse treatment on "early-default" clauses. Early-default clauses typically warrant that transferred loans will not become more than 30 days delinquent within a stated period, such as four months. Once the stated period has run, the early-default clause will no longer trigger recourse treatment, provided that there is no other provision that constitutes recourse. One commenter to the 1997 Proposal stated that early-default clauses carry minimal risk, and are intended to deal with inadvertent transfers of loans that are already 30-day delinquencies, or to guard against unsound originations by the loan seller. Another commenter found recourse treatment of early-default clauses to be an appropriate response to the transfer of credit risk that takes place under these clauses.

The agencies find that early-default clauses are often drafted so broadly that they are indistinguishable from a guaranty of financial assets. The agencies have even found recent examples in which early-default clauses have been expanded to cover the first year after loan transfer. Industry concerns about assets delinquent at the time of transfer or unsound originations could be dealt with by warranties directly addressing the condition of the asset at the time of transfer and compliance with stated underwriting standards or, failing that, exposure caps permitting the banking organization to take advantage of the low-level recourse rule. The proposal also requires recourse treatment for warranties providing assurances about the actual value of asset collateral, including that the market value corresponds to its appraised value or that the appraised value will be realized in the event of foreclosure and sale.

The agencies invite further comment on these issues. The agencies also invite comment on whether "premium refund" clauses should receive recourse treatment under any final rule. These clauses require the seller to refund the premium paid by the investor for any loan that prepays within a stated period after the loan is transferred. The agencies are aware of premium refund clauses with terms ranging from 90 days to 36 months.

9. Loan Servicing Arrangements

The proposed definitions of "recourse" and "direct credit substitute" cover loan servicing arrangements if the servicer is responsible for credit losses associated with the loans being serviced. However, cash advances made by residential mortgage servicers to ensure an uninterrupted flow of payments to investors or the timely collection of the mortgage loans are specifically excluded from the definitions of recourse and direct credit substitute, provided that the residential mortgage servicer is entitled to reimbursement for any significant advances.[18] This type of advance is assessed risk-based capital only against the amount of the cash advance, and is assigned to the risk-weight category appropriate to the party obligated to reimburse the servicer.

If a residential mortgage servicer is not entitled to full reimbursement, then the maximum possible amount of any nonreimbursed advances on any one loan must be contractually limited to an insignificant amount of the outstanding principal on that loan in order for the servicer's obligation to make cash advances to be excluded from the definitions of recourse and direct credit substitute. This treatment reflects the agencies' traditional view that servicer cash advances meeting these criteria are part of the normal mortgage servicing function and do not constitute credit enhancements.

Commenters responding to the 1997 Proposal generally supported the proposed definition of servicer cash advances. Some commenters asked for clarification of the term "insignificant" and whether "reimbursement" includes reimbursement payable out of subsequent collections or reimbursement in the form of a general claim on the party obligated to reimburse the servicer. Nonreimbursed advances on any one loan that are generally contractually limited to no more than one percent of the amount of the outstanding principal on that loan would be considered insignificant. Reimbursement includes reimbursement payable from subsequent collections and reimbursement in the form of a general claim on the party obligated to reimburse the servicer, provided that the claim is not subordinated to other claims on the cash flows from the underlying asset pool.

Some commenters responding to the 1997 Proposal suggested that the agencies treat servicer cash advances as any advances that the servicer reasonably expects will be repaid. The agencies believe that a clear, specific standard is needed to prevent the use of servicer cash advances to circumvent the proposed risk-based capital

[18] Servicer cash advances include disbursements made to cover foreclosure costs or other expenses arising from a loan in order to facilitate its timely collection (but not to protect investors from incurring these expenses).

treatment of recourse obligations and direct credit substitutes.

10. Spread Accounts and Overcollateralization

Several commenters requested that the agencies state in their rules that spread accounts and overcollateralization do not impose a risk of loss on a banking organization and are, therefore, not recourse. By its terms, the definition of recourse covers only the retention of risk in a sale of assets. Overcollateralization does not ordinarily impose a risk of loss on a banking organization, so it normally would not fall within the proposed definition of recourse. However, a retained interest in a spread account that is reflected as an asset on a selling banking organization's balance sheet (directly as an asset or indirectly as a receivable) is a form of recourse and is treated accordingly for risk-based capital purposes.

11. Interaction With Market Risk Rule

Some commenters responding to the 1997 Proposal asked for clarification of the treatment of a transaction covered by both the market risk rule and the recourse rule. Under the market risk rule,[19] a position properly located in the trading account is excluded from risk-weighted assets. The banking agencies are not proposing to modify this treatment, so a position that is properly held in the trading account would not be included in risk-weighted assets, even if the position otherwise met the criteria for a recourse obligation or a direct credit substitute.

12. Participations in Direct Credit Substitutes

If a direct credit substitute is originated by a banking organization which then sells a participation in that direct credit substitute to another entity, the originating banking organization must apply a 100% conversion factor to the full amount of the assets supported by the direct credit substitute. The originating banking organization would then risk weight the credit equivalent amount of the participant's *pro rata* share of the direct credit substitute at the lower of the risk category appropriate to the obligor in the underlying transaction, after considering any relevant guaranties or collateral, or the risk category appropriate to the participant entity. The remaining *pro rata* share of the credit equivalent amount is assigned to the risk-weight category appropriate to the obligor in the underlying transaction, guarantor or collateral.

A banking organization that acquires a risk participation in a direct credit substitute must apply a 100% conversion factor to its percentage share of the direct credit substitute multiplied by the full amount of the assets supported by the credit enhancement. The credit equivalent amount is then assigned to the risk category appropriate to the obligor or, if relevant, the nature of the collateral or guaranty.

Finally, in the case of the syndication of a direct credit substitute where each banking organization is obligated only for its *pro rata* share of the risk and there is no recourse to the originating banking organization, each banking organization must hold risk-based capital against its *pro rata* share of the assets supported by the direct credit substitute.

13. Reservation of Authority

The agencies are proposing to add language to the risk-based capital standards that will provide greater flexibility in administering the standards. Banking organizations are developing novel transactions that do not fit well into the risk-weight categories and credit conversion factors set forth in the standards. Banking organizations also are devising novel instruments that nominally fit into a particular risk-weight category or credit conversion factor, but that impose risks on the banking organization at levels that are not commensurate with the nominal risk-weight or credit conversion factor for the asset, exposure or instrument. Accordingly, the agencies are proposing to add language to the standards to clarify their authority, on a case-by-case basis, to determine the appropriate risk-weight for assets and credit equivalent amounts and the appropriate credit conversion factor for off-balance sheet items in these circumstances. Exercise of this authority by the agencies may result in a higher or lower risk weight for an asset or credit equivalent amount or a higher or lower credit conversion factor for an off-balance sheet item. This reservation of authority explicitly recognizes the agencies retention of sufficient discretion to ensure that banking organizations, as they develop novel financial assets, will be treated appropriately under the risk-based capital standards.[20] In addition, the agencies reserve the right to assign risk positions in securitizations to appropriate risk categories if the credit rating of the risk position is deemed to be inappropriate.

14. Privately-Issued Mortgage-Backed Securities

Currently, the agencies assign privately-issued mortgage-backed securities to the 20% risk-weight category if the underlying pool is composed entirely of mortgage-related securities issued by the Federal National Mortgage Association (Fannie Mae), Federal Loan Mortgage Corporation (Freddie Mac), or Government National Mortgage Association (Ginnie Mae). Privately-issued mortgage-backed securities backed by whole residential mortgages are now assigned to the 50% risk-weight category. The agencies propose to eliminate this "pass-through" treatment in favor of a ratings based approach. Because most mortgage-backed securities usually also receive the highest or second highest credit rating, the agencies believe that "pass-through" treatment will be redundant once the ratings-based approach is implemented and, therefore, propose to eliminate it.

B. Proposed Treatment for Rated Positions

As described in section II.A., each loss position in an asset securitization structure functions as a credit enhancement for the more senior loss positions in the structure. Currently, the risk-based capital standards do not vary the rate of capital requirement for different credit enhancements or loss positions to reflect differences in the relative risk of credit loss represented by the positions.

To address this issue, the agencies are proposing a multi-level, ratings-based approach to assess capital requirements on recourse obligations, direct credit substitutes, and senior and subordinated securities in asset securitizations based on their relative exposure to credit risk. The approach uses credit ratings from the rating agencies and, to a limited extent, banking organization's internal risk ratings and other alternatives, to measure relative exposure to credit risk and to determine the associated risk-based capital requirement. The use of credit ratings provides a way for the agencies to use determinations of credit quality relied upon by investors and other market participants to differentiate the regulatory capital treatment for loss

[19] The OTS does not have a market risk rule.

[20] The Board is also proposing to add language to its risk-based capital standards that would permit the Board to adjust the treatment of a capital instrument that does not fit into the existing capital categories or that provides capital to a banking organization at levels that are not commensurate with the nominal capital treatment of the instrument. The other agencies already have this flexibility under their existing rules.

positions representing different gradations of risk. This use permits the agencies to give more equitable treatment to a wide variety of transactions and structures in administering the risk-based capital system.

The fact that investors rely on these ratings to make investment decisions exerts market discipline on the rating agencies and gives their ratings market credibility. The market's reliance on ratings, in turn, gives the agencies confidence that it is appropriate to consider ratings as a major factor in the risk weighting of assets for regulatory capital purposes. The agencies, however, would retain their authority to override the use of certain ratings or the ratings on certain instruments, either on a case-by-case basis or through broader supervisory policy, if necessary or appropriate to address the risk to banking organizations.

Under the ratings-based approach, the capital requirement for a recourse obligation, direct credit substitute, or traded asset-backed security would be determined as follows: [21]

Rating category	Examples	Risk weight
Highest or second highest investment grade	AAA or AA	20%.
Third highest investment grade	A	50%.
Lowest investment grade	BBB	100%.
One category below investment grade	BB	200%.
More than one category below investment grade, or unrated	B or unrated	"Gross-up" treatment.

Many commenters expressed concerns about the so-called "cliff effect" that would arise because of the small number of rating categories—three—contained in the 1997 Proposal. To reduce the cliff effect, which causes relatively small differences in risk to result in disproportionately large differences in the capital requirement for a risk position, the agencies are proposing to add two additional rating categories, for a total of five.

Under the proposal, the ratings-based approach is available for traded asset-backed securities [22] and for traded and non-traded recourse obligations and direct credit substitutes. A position is considered "traded" if, at the time it is rated by an external rating agency, there is a reasonable expectation that in the near future: (1) The position may be sold to investors relying on the rating; or (2) a third party may enter into a transaction (*e.g.*, a loan or repurchase agreement) involving the position in which the third party relies on the rating of the position. If external rating agencies rate a traded position differently, the single highest rating applies.

An unrated position that is senior (in all respects, including access to collateral) to a rated position that is traded is treated as if it had the rating given the rated position, subject to the banking organization satisfying its supervisory agency that such treatment is appropriate.

Recourse obligations and direct credit substitutes not qualifying for a reduced capital charge and positions rated more than one category below investment grade receive "gross-up" treatment, that is, the banking organization holding the position would hold capital against the amount of the position plus all more senior positions, subject to the low-level recourse rule.[23] This grossed-up amount is placed into risk-weight categories according to the obligor and collateral.

The ratings-based approach is based on current ratings, so that a rating downgrade or withdrawal of a rating could change the treatment of a position under the proposal. However, a downgrade of a position by a single rating agency would not affect the capital treatment of a position if the position still qualified for the previous capital treatment under one or more ratings from a different rating agency.

C. Proposed Treatment for Non-Traded and Unrated Positions

1. Ratings on Non-Traded Positions

In the 1994 Notice, the agencies proposed to permit a banking organization to obtain a rating for a non-traded recourse obligation or direct credit substitute in order to permit that position to qualify for a favorable risk-weight. In response to the 1994 Notice, one rating agency expressed concern that use of ratings by the agencies for regulatory purposes could undermine the integrity of the rating process. Ordinarily, according to the commenter, there is a tension between the interests of the investors who rely on ratings and the interests of the issuers who pay rating agencies to generate ratings. Under the ratings-based approach in the 1994 Notice, however, the holder of a recourse obligation or direct credit substitute that was not traded or sold could, in some cases, seek a rating for the sole purposes of permitting the credit enhancement to qualify for a favorable risk weight. The rating agency expressed a strong concern that, without the counterbalancing interest of investors to rely on ratings, rating agencies may have an incentive to issue inflated ratings.

In response to this concern, the 1997 Proposal included criteria to reduce the possibility of inflated ratings and inappropriate risk weights if ratings are used for a position that is not traded. A non-traded position could qualify for the ratings-based approach only if: (1) It qualified under ratings obtained from two different rating agencies; (2) the ratings were publicly available; (3) the ratings were based on the same criteria used to rate securities sold to the public; and (4) at least one position in the securitization was traded. In comments responding to the 1997 Proposal, banking organizations expressed concern about the cost and delay associated with obtaining ratings, particularly for direct credit substitutes, that they would not need absent the agencies' adoption of a ratings-based approach for risk-based capital purposes.

In this proposal, the agencies continue to permit a non-traded

[21] The example rating designations ("AAA," "BBB," etc.) are illustrative and do not indicate any preference for, or endorsement of, any particular rating agency designation system.

[22] Similar to the current approach under which "stripped" mortgage-backed securities are not eligible for risk weighting at 50% on a "pass-through" basis, stripped mortgage-backed securities are ineligible for the 20% or 50% risk categories under the ratings based approach.

[23] "Gross-up" treatment means that a position is combined with all more senior positions in the transaction. The result is then risk-weighted based on the nature of the underlying assets. For example, if a banking organization retains a first-loss position in a pool of mortgage loans that qualify for a 50% risk weight, the banking organization would include the full amount of the assets in the pool, risk-weighted at 50% in its risk-weighted assets for purposes of determining its risk-based capital ratio. The low level recourse rule provides that the dollar amount of risk-based capital required for assets transferred with recourse should not exceed the maximum dollar amount for which a banking organization is contractually liable. *See*, 12 CFR part 3, appendix A, Section 3(d) (OCC); 12 CFR 208 and 225, appendix A, III.D.1(g) (FRB); 12 CFR part 325, appendix A, II.D.1 (FDIC); 12 CFR 567.6(a)(2)(i)(C) (OTS).

recourse obligation or direct credit substitute to qualify for the ratings-based approach if the banking organization obtains ratings for the position. The agencies have retained the first three of the 1997 Proposal's four criteria for non-traded positions, but have eliminated the fourth criterion, *i.e.*, the requirement that one position in the securitization be traded.

To address concerns expressed by commenters on the 1997 Proposal, however, the agencies have developed, and are also proposing, alternative approaches for determining the capital requirements for unrated direct credit substitutes, which are discussed in the following sections. Under each of these approaches, the banking organization must satisfy its supervisory agency that use of the approach is appropriate for the particular banking organization.

2. Use of Banking Organizations' Internal Risk Ratings

The proposal would permit a banking organization with a qualifying internal risk rating system to use that system to apply the ratings-based approach to the banking organization's unrated direct credit substitutes in asset-backed commercial paper programs. Internal risk ratings could be used to qualify a credit enhancement (other than a retained recourse position) for a risk weight of 100% or 200% under the ratings-based approach, but not for a risk weight of less than 100%. This relatively limited use of internal risk ratings for risk-based capital purposes is a step towards potential adoption of broader use of internal risk ratings as discussed in the Basel Committee's June 1999 Consultative Paper. Limiting the approach to these types of credit enhancements reflects the agencies' view, based on industry research and empirical evidence, that these positions are more likely than recourse positions to be of investment-grade credit quality, and that the banking organizations providing them are more likely to have internal risk rating systems for these credit enhancements that are sufficiently accurate to be relied on for risk-based capital calculations.

Most sophisticated banking organizations that participate extensively in the asset securitization business assign internal risk ratings to their credit exposures, regardless of the form of the exposure. Usually, internal risk ratings more finely differentiate the credit quality of a banking organization's exposures than the categories that the agencies use to evaluate credit risk during examinations of banking organizations (pass, substandard, doubtful, loss). Individual banking organizations' internal risk ratings may be associated with a certain probability of default, loss in the event of default, and loss volatility.

The credit enhancements that sponsors obtain for their commercial paper conduits are rarely rated. If an internal risk ratings approach were not available for these unrated credit enhancements, the provider of the enhancement would have to obtain two ratings solely to avoid the gross-up treatment that would otherwise apply to unrated positions in asset securitizations for risk-based capital purposes. However, before a provider of an enhancement decides whether to provide a credit enhancement for a particular transaction (and at what price), the provider will generally perform its own analysis of the transaction to evaluate the amount of risk associated with the enhancement.

Allowing banking organizations to use internal credit ratings harnesses information and analyses that they already generate rather than requiring them to obtain independent but redundant ratings from outside rating agencies. An internal risk ratings approach therefore has the potential to be less costly than a ratings-based approach that relies exclusively on ratings by the rating agencies for the risk-weighting of these positions.

Internal risk ratings that correspond to the rating categories of the rating agencies could be mapped to risk weights under the agencies' capital standards in a way that would make it possible to differentiate the riskiness of various unrated direct credit substitutes based on credit risk. However, the use of internal risk ratings raises concerns about the accuracy and consistency of the ratings, especially because the mapping of ratings to risk-weight categories will give banking organizations an incentive to rate their risk exposures in a way that minimizes the effective capital requirement. Banking organizations engaged in securitization activities that wish to use the internal risk ratings approach must ensure that their internal risk rating systems are adequate. Adequate internal risk rating systems usually:

(1) Are an integral part of an effective risk management system that explicitly incorporates the full range of risks arising from an organization's participation in securitization activities. The system must also fully take into account the effect of such activities on the organization's risk profile and capital adequacy as discussed in Section II.B.

(2) Link their ratings to measurable outcomes, such as the probability that a position will experience any losses, the expected losses on that position in the event of default, and the degree of variance in losses given default on that position.

(3) Separately consider the risk associated with the underlying loans and borrowers and the risk associated with the specific positions in a securitization transaction.

(4) Identify gradations of risk among "pass" assets, not just among assets that have deteriorated to the point that they fall into "watch" grades. Although it is not necessary for a banking organization to use the same categories as the rating agencies, its internal ratings must correspond to the ratings of the rating agencies so that agencies can determine which internal risk rating corresponds to each rating category of the rating agencies. A banking organization would have the responsibility to demonstrate to the satisfaction of its primary regulator how these ratings correspond with the rating agency standards used as the framework for this proposal. This is necessary so that the mapping of credit ratings to risk weight categories in the ratings-based approach can be applied to internal ratings.

(5) Classify assets into each risk grade, using clear, explicit criteria, even for subjective factors.

(6) Have independent credit risk management or loan review personnel assign or review credit risk ratings. These personnel should have adequate training and experience to ensure that they are fully qualified to perform this function.

(7) Periodically verify, through an internal audit procedure, that internal risk ratings are assigned in accordance with the banking organization's established criteria.

(8) Track the performance of its internal ratings over time to evaluate how well risk grades are being assigned, make adjustments to its rating system when the performance of its rated positions diverges from assigned ratings, and adjust individual ratings accordingly.

(9) Make credit risk rating assumptions that are consistent with, or more conservative than, the credit risk rating assumptions and methodologies of the rating agencies.

The agencies also are considering whether to develop review and approval procedures governing their respective determinations of whether a particular banking organization may use the internal risk rating process. The agencies request comment on the appropriate scope and nature of that process.

If a banking organization's rating system is found to no longer be adequate, the banking organization's primary regulator may preclude it from applying the internal risk ratings approach to new transactions for risk-based capital purposes until it has remedied the deficiencies. Additionally, depending on the severity of the problems identified, the primary regulator may also decline to rely on the internal risk ratings that the banking organization has applied to previous transactions that remain outstanding for purposes of determining the banking organization's regulatory capital requirements.

3. Ratings of Specific Positions in Structured Financing Programs

The agencies also propose to authorize a banking organization to use a rating obtained from a rating agency or other appropriate third party of unrated direct credit substitutes in securitizations that satisfy specifications set by the rating agency. The banking organization would need to demonstrate that the rating meets the same rating standards generally used by the rating agency for rating publicly-issued securities. In addition, the banking organization must also demonstrate to its primary regulator's satisfaction that the criteria underlying the rating agency's assignment of ratings for the program are satisfied for the particular direct credit substitute issued by the banking organization.

The proposal would also allow banking organizations to demonstrate to the agencies that it is reasonable and consistent with the standards of this proposal to rely on the rating of positions in a securitization structure under a program in which the banking organization participates if the sponsor of that program has obtained a rating. This aspect of the proposal is most likely to be useful to banking organizations with limited involvement in securitization activities. In addition, some banking organizations extensively involved in securitization activities already rely on ratings of the credit risk positions under their securitization programs as part of their risk management practices. Such banking organizations also could rely on such ratings under this proposal if the ratings are part of a sound overall risk management process and the ratings reflect the risk of non-traded positions to the banking organizations.

This approach could be used to qualify a direct credit substitute (but not a retained recourse position) for a risk weight of 100% or 200% of the face value of the position under the ratings-based approach, but not for a risk weight of less than 100%.

4. Use of Qualifying Rating Software Mapped to Public Rating Standards

The agencies are also proposing to allow banking organizations, particularly those with limited involvement in securitization activities, to rely on qualifying credit assessment computer programs that the rating agencies or other appropriate third parties have developed for rating otherwise unrated direct credit substitutes in asset securitizations. To qualify for use by banking organizations for risk-based capital purposes, the computer programs must be tracked to the rating standards of the rating agencies. Banking organizations must demonstrate the credibility of these programs in the financial markets, which would generally be shown by the significant use of the computer program by investors and market participants for risk assessment purposes. Banking organizations also would need to demonstrate the reliability of the programs in assessing credit risk. Banking organizations may use these programs for purposes of applying the ratings-based approach under this proposal only if the banking organization satisfies its primary regulator that the programs result in credit assessments that credibly and reliably correspond with the rating of publicly issued securities by the rating agencies. Sophisticated banking organizations with extensive securitization activities generally should use this approach only if it is an integral part of their risk management systems and their systems fully capture the risks from the banking organizations' securitization activities.

This approach could be used to qualify a direct credit substitute (but not a retained recourse position) for a risk weight of 100% or 200% of the face value of the position under the ratings-based approach, but not for a risk weight of less than 100%.

D. Managed Assets Approach

When assets are securitized, the extent to which the selling or sponsoring entity transfers the risks associated with the assets depends on the structure of the securitization and the revolving nature of the assets involved. To the extent the sponsoring institution is dependent on future securitizations as a funding source, as a practical matter, the amount of risk transferred often will be limited. Revolving credits include credit card and home equity line securitizations as well as commercial loans drawn down under long-term commitments that are securitized as collateralized loan obligations (CLOs).

The early amortization feature present in some revolving credit securitizations ensures that investors will be repaid before being subject to any risk of significant credit losses. For example, if a securitized asset pool begins to experience credit deterioration to the point where the early amortization feature is triggered, then the asset-backed securities held by investors begin to rapidly pay down. This occurs because, after an early amortization feature is triggered, new receivables that are generated from the accounts designated to the securitization trust are no longer sold to investors, but are instead retained on the sponsoring banking organization's balance sheet.

Early amortization features raise several distinct concerns about risks to the seller. First, the seller's interest in the securitized assets is effectively subordinated to the interests of the investors by the payment allocation formula applied during early amortization. Investors effectively get paid first, and the seller's residual interest will therefore absorb a disproportionate share of credit losses.

Second, early amortization can create liquidity problems for the seller. For example, a credit card issuer must fund a steady stream of new credit card receivables. When a securitization trust is no longer able to purchase new receivables due to early amortization, the seller must either find an alternative buyer for the receivables or else the receivables will accumulate on the seller's balance sheet, creating the need for another source of funding.

Third, the first two risks to the seller can create an incentive for the seller to provide implicit recourse—credit enhancement beyond any pre-existing contractual obligation—to prevent early amortization. Incentives to provide implicit recourse are to some extent present in other securitizations, because of concerns about damage to the seller's reputation and its ability to securitize assets going forward if one of its securitizations performs poorly. However, the early amortization feature creates additional and more direct financial incentives to prevent early amortization through implicit recourse.

Because of their concerns about these risks, the agencies are proposing to apply a managed assets approach to securitization transactions that incorporate early amortization provisions. The approach would require a sponsoring banking organization's securitized (off-balance sheet) receivables to be included in risk-

weighted assets when determining its risk-based capital requirements. The securitized, off-balance sheet assets would be assigned to the 20 percent risk category, thereby effectively applying a 1.6% risk-based capital charge to those assets.

The 1.6% capital charge against securitized assets could be limited in certain cases. If the sponsoring banking organization in a revolving credit securitization provides credit protection to investors, either in the form of retained recourse or a direct credit substitute, the sum of the regulatory capital requirements for the credit protection and the 1.6% charge on the off-balance sheet securitized assets may not exceed 8% of securitized assets for that particular securitization transaction.

A managed assets approach would require a banking organization to hold additional capital against the potential credit and liquidity risks stemming from the early amortization provisions of revolving credit securitization structures. This proposed capital charge would ensure that a banking organization maintain at least a minimum level of capital against the risks that arise when early amortization provisions are present in securitizations of revolving credits.

The agencies request comment on the purpose of early amortization provisions, the proposed managed assets approach, and on any potential effects that the approach will have on current industry practices involving revolving credit securitizations. The agencies also recognize that there may be concerns that the managed assets approach may not produce safety and soundness benefits commensurate with the additional regulatory burden that would result from a 20% risk weight on managed assets, and they request comment on possible alternative measures that would address more effectively the risks arising from early amortization provisions in revolving securitizations. For example, one alternative to the managed assets approach described here would be to require greater public disclosure of securitization performance. This additional information could allow market participants and regulators to better assess the risks inherent in revolving securitizations with early amortization provisions and the capital level appropriate for those risks. The agencies also request comment on whether the benefits of greater public disclosure outweigh the costs associated with increased reporting.

IV. Effective Date of a Final Rule Resulting From This Proposal

The agencies intend that any final rules adopted as a result of this proposal that result in increased risk-based capital requirements for banking organizations will apply only to securitization activities (as defined in the proposal) entered into or acquired after the effective date of those final rules. Conversely, any final rules that result in reduced risk-based capital requirements for banking organizations may be applied to all transactions outstanding as of the effective date of those final rules and to all subsequent transactions. Because some ongoing securitization conduits may need additional time to adapt to any new capital treatments, the agencies intend to permit banking organizations to apply the existing capital rules to asset securitizations with no fixed term, *e.g.*, asset-backed commercial paper conduits, for up to two years after the effective date of any final rule.

V. Request for Comment

The agencies request comment on all aspects of this proposal, as well as on the specific issues described in the preamble.

VI. Regulatory Flexibility Act

OCC: Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC certifies that this proposal will not have a significant impact on a substantial number of small entities. 5 U.S.C. 601 *et seq.* The provisions of this proposal that increase capital requirements are likely to affect large national banks almost exclusively. Small national banks rarely sponsor or provide direct credit substitutes in asset securitizations. Accordingly, a regulatory flexibility analysis is not required.

Board: Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board has determined that this proposal will not have a significant impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Board's comparison of the applicability section of this proposal with Call Report Data on all existing banks shows that application of the proposal to small entities will be the rare exception. Accordingly, a regulatory flexibility analysis is not required. In addition, because the risk-based capital standards generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies.

FDIC: Pursuant to section 605(b) of the Regulatory Flexibility Act (Public Law 96–354, 5 U.S.C. 601 *et seq.*), the FDIC certifies that the proposed rule will not have a significant impact on a substantial number of small entities. Comparison of Call Report data on FDIC-supervised banks to the items covered by the proposal that result in increased capital requirements shows that application of the proposal to small entities will be the infrequent exception.

OTS: Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposal will not have a significant impact on a substantial number of small entities. A comparison of TFR data on OTS-supervised thrifts shows that the proposed rule would have little impact on the overall level of capital required at small thrifts, since capital requirements (other than the risk-based capital standards) are typically more binding on smaller thrifts. Moreover, the provisions of this proposal that may increase capital requirements are unlikely to affect small savings associations. Small thrifts rarely provide direct credit substitutes in asset securitizations and do not serve as sponsors of revolving securitizations. Accordingly, a regulatory flexibility analysis is not required.

VII. Paperwork Reduction Act

The Agencies have determined that this proposal does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

VIII. Executive Order 12866

OCC: The OCC has determined that this proposal is not a significant regulatory action for purposes of Executive Order 12866. The OCC expects that any increase in national banks' risk-based capital requirement, resulting from the proposed treatment of direct credit substitutes largely will be offset by the ability of those banks to reduce their capital requirement in accordance with the ratings-based approach. The managed assets position of the proposal may require a limited number of national banks to raise additional capital in order to remain in the category to which they are assigned currently under the OCC's prompt corrective action framework. The OCC believes that the costs associated with raising this new capital are below the thresholds prescribed in the Executive Order. Nonetheless, the impact of any final rule resulting from this proposal will depend on factors for which the agencies do not currently collect industry-wide information, such as the

proportion of bank-provided direct credit substitutes that would be rated below investment grade. The OCC, therefore, welcomes any quantitative information national banks wish to provide about the impact they expect the various portions of this proposal to have if issued in final form.

OTS: The Director of the OTS has determined that this proposal does not constitute a "significant regulatory action" under Executive Order 12866. Since OTS already applies a "gross up" treatment for recourse obligations and for most direct credit substitutes, the proposal generally is likely to reduce the risk-based capital requirements for thrifts. The proposed rule would increase capital requirements only for certain direct credit substitutes issued in connection with asset securitizations or for thrifts that may serve as sponsors of revolving securitization programs. Currently, thrifts rarely participate in such activities. As a result, OTS has concluded that the proposal will have only minor effects on the thrift industry.

IX. OCC and OTS—Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS have determined that this proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million or more in any one year. Therefore, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, this proposal will reduce inconsistencies in the agencies' risk-based capital standards and, in certain circumstances, will allow banking organizations to maintain lower amounts of capital against certain rated recourse obligations and direct credit substitutes.

X. Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

(1) Have we organized the material to suit your needs?

(2) Are the requirements in the rule clearly stated?

(3) Does the rule contain technical language or jargon that isn't clear?

(4) Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

(5) Would more (but shorter) sections be better?

(6) What else could we do to make the rule easier to understand?

XI. FDIC Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. Law 105–277).

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

§ 3.4 [Amended]

2. In § 3.4:

A. The undesignated paragraph is designated as paragraph (a);

B. The second sentence in the newly designated paragraph (a) is revised; and

C. New paragraph (b) is added to read as follows:

§ 3.4 Reservation of authority.

(a) * * * Similarly, the OCC may find that a particular intangible asset need not be deducted from Tier 1 or Tier 2 capital. * * *

(b) Notwithstanding the risk categories in section 3 of appendix A to this part, the OCC may find that the assigned risk weight for any asset or the credit equivalent amount or credit conversion factor for any off-balance sheet item does not appropriately reflect the risks imposed on a bank and may require another risk weight, credit equivalent amount, or credit conversion factor that the OCC deems appropriate. Similarly, if no risk weight, credit equivalent amount, or credit conversion factor is specifically assigned, the OCC may assign any risk weight, credit equivalent amount, or credit conversion factor that the OCC deems appropriate. In making its determination, the OCC considers risks associated with the asset or off-balance sheet item as well as other relevant factors.

Appendix A to Part 3—[Amended]

3. In section 3 of appendix A:

A. Footnote 11a in paragraph (a)(3)(v) is revised;

B. Paragraph (b) introductory text is amended by adding a new sentence at its end;

C. Paragraph (b)(1)(i) and footnote 13 are removed and reserved;

D. Paragraph (b)(1)(ii) is revised;

E. Paragraph (b)(1)(iii) and footnote 14 are removed and reserved;

F. Footnotes 16 and 17 in paragraphs (b)(2)(i) and (ii), respectively, are revised; and

G. Paragraph (d) is revised to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

§ 3 Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(3) * * *

(v) * * * [11a]

* * * * *

(b) * * * However, direct credit substitutes, recourse obligations, and securities issued in connection with asset securitizations are treated as described in section 3(d) of this appendix A.

(1) * * *

(ii) Risk participations purchased in bankers' acceptances.

* * * * *

(2) * * *

(i) * * * [16] * * *

(ii) * * * [17] * * *

* * * * *

(d) *Recourse obligations, direct credit substitutes, and asset-backed securities*—(1) *Definitions.* For purposes of this section 3 of this appendix A:

(i) *Covered representations and warranties* means representations and warranties that are made or assumed in connection with a transfer of assets (including loan servicing assets) and that obligate a bank to absorb losses arising from credit risk in the assets transferred or the loans serviced. Covered representations and warranties include promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of the collateral.

(ii) *Credit derivative* means a contract that allows one party (the beneficiary) to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the guarantor). The value of a credit derivative is dependent, at least in part, on the credit performance of a "reference asset."

(iii) *Direct credit substitute* means an arrangement in which a bank assumes credit risk associated with an on-or off-balance sheet asset that was not previously owned by the bank (third-party asset) and the risk assumed by the bank exceeds the *pro rata* share of the bank's interest in the third-party asset. If a bank has no claim on the third-party asset, then the bank's assumption of any risk of credit loss is a direct credit substitute. Direct credit substitutes include:

(A) Financial guarantee-type standby letters of credit that support financial claims on a third party that exceed a bank's *pro rata* share in the financial claim;

(B) Guarantees, surety arrangements, credit derivatives and similar instruments backing financial claims that exceed a bank's *pro rata* share in the financial claim;

(C) Purchased subordinated interests that absorb more than their *pro rata* share of losses from the underlying assets;

(D) Entering into a credit derivative contract under which the bank assumes more than its *pro rata* share of credit risk on a third-party asset;

(E) Loans or lines of credit that provide credit enhancement for the securitization activities of a third party; and

(F) Purchased loan servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes covered representations and warranties with respect to the loans serviced. Cash advances described in section 4(d)(1)(vii) of this appendix A are not direct credit substitutes.

(iv) *Externally rated* means that an instrument or obligation has received a credit rating from at least one nationally recognized statistical rating organization.

(v) *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an asset not held for trading purposes; and the fair value of a trading asset.

(vi) *Financial guarantee-type standby letter of credit* means a letter of credit or similar arrangement that represents an irrevocable obligation to a third-party beneficiary:

(A) To repay money borrowed by, or advanced to, or for the account of, a second party (the account party); or

(B) To make payment on behalf of the account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

(vii) *Mortgage servicer cash advance* means funds that a mortgage servicer advances to ensure an uninterrupted flow of payments, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the loan. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if:

(A) The servicer is entitled to full reimbursement and this right is not subordinated to other claims on the cash flows from the underlying asset pool; or

(B) For any one loan, the servicer's obligation to make nonreimbursable advances is contractually limited to an insignificant amount.

(viii) *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers.

(ix) *Recourse* means the retention, by a bank, of any risk of credit loss directly or indirectly associated with a transferred asset that exceeds a *pro rata* share of that bank's claim on the asset. If a bank has no claim on a transferred asset, then the retention of any risk of credit loss is recourse. A recourse obligation typically arises when a bank transfers assets and retains an explicit obligation to repurchase assets or to absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may also exist implicitly if a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. The following are examples of recourse arrangements:

(A) Making covered representations and warranties on transferred assets;

(B) Retaining loan servicing assets pursuant to an agreement under which the bank will be responsible for losses associated with the loans serviced. Mortgage servicer cash advances, as defined in section 4(d)(1)(vii) of this appendix A, are not recourse arrangements;

(C) Retaining a subordinated interest that absorbs more than its *pro rata* share of losses from the underlying assets;

(D) Selling assets under an agreement to repurchase, if the assets are not already included on the balance sheet; and

(E) Selling loan strips without contractual recourse where the maturity

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[11a] The portion of multifamily residential property loans that is sold subject to a *pro rata* loss sharing arrangement may be treated by the selling bank as sold to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a *pro rata* basis with the selling bank. The portion of multifamily residential property loans sold subject to any loss sharing arrangement other than *pro rata* sharing of the loss shall be accorded the same treatment as any other asset sold under an agreement to repurchase or sold with recourse under section 3(d)(2) of this appendix A.

[16] Participations in performance-based standby letters of credit are treated in accordance with section 3(d) of this appendix A.

[17] Participations in commitments are treated in accordance with section 3(d) of this appendix A.

of the transferred portion of the loan is shorter than the maturity of the whole loan.

(x) *Risk participation* means a participation in which the originating bank remains liable to the beneficiary for the full amount of an obligation (*e.g.* a direct credit substitute) notwithstanding that another party has acquired a participation in that obligation.

(xi) *Securitization* means the pooling and repackaging of assets or other credit exposures into securities that can be sold to investors, including transactions that create stratified credit risk positions.

(xii) *Traded position* means a recourse obligation, direct credit substitute or asset-backed security retained, assumed or issued in connection with a securitization that is externally rated, where there is an expectation that, in the near future, the rating will be relied upon by:

(A) Investors to purchase the position; or

(B) A third party to enter into a transaction involving the position, such as a purchase, loan or repurchase agreement.

(2) *Credit equivalent amounts and risk weights of recourse obligations and direct credit substitutes*—(i) *Credit-equivalent amount.* Except as provided in sections 3(d)(3) and (4) of this appendix A, the credit-equivalent amount for a recourse obligation or direct credit substitute is the full amount of the credit-enhanced assets for which the bank directly or indirectly retains or assumes credit risk multiplied by a 100% conversion factor.

(ii) *Risk-weight factor.* To determine the bank's risk-weighted assets for off-balance sheet recourse obligations and direct credit substitutes, the credit equivalent amount is assigned to the risk category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral. For a direct credit substitute that is an on-balance sheet asset (*e.g.*, a purchased subordinated security), a bank must calculate risk-weighted assets using the amount of the direct credit substitute and the full amount of the assets it supports, *i.e.*, all the more senior positions in the structure.

(3) *Credit equivalent amount and risk weight of participations in, and syndications of, direct credit substitutes.* The credit equivalent amount for a participation interest in, or syndication of, a direct credit substitute is calculated and risk weighted as follows:

(i) In the case of a direct credit substitute in which a bank has conveyed a risk participation, the full amount of the assets that are supported by the direct credit substitute is converted to a credit equivalent amount using a 100% conversion factor. The *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is then assigned to whichever risk-weight category is lower: The risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral, or the risk-weight category appropriate to the institution acquiring the participation. The *pro rata* share of the credit equivalent amount that has not been participated out is assigned to the risk-weight category appropriate to the obligor, guarantor, or collateral.

(ii) In the case of a direct credit substitute in which the bank has acquired a risk participation, the acquiring bank's percentage share of the direct credit substitute is multiplied by the full amount of the assets that are supported by the direct credit substitute and converted using a 100% credit conversion factor. The resulting credit equivalent amount is then assigned to the risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral.

(iii) In the case of a direct credit substitute that takes the form of a syndication where each bank is obligated only for its *pro rata* share of the risk and there is no recourse to the originating bank, each bank's credit equivalent amount will be calculated by multiplying only its *pro rata* share of the assets supported by the direct credit substitute by a 100% conversion factor. The resulting credit equivalent amount is then assigned to the risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral.

(4) *Externally rated positions: Credit-equivalent amounts and risk weights.*—(i) *Traded positions.* With respect to a recourse obligation, direct credit substitute, or asset-backed security that is a "traded position" and that has received an external rating that is one grade below investment grade or better, the bank shall multiply the face amount of the position by the appropriate risk weight, determined in accordance with Table B.[24]

[24] Stripped mortgage-backed securities, such as interest-only or principal-only strips, may be assigned only, at a minimum, to the 100% risk category.

TABLE B

Rating category	Examples	Risk weight (percent)
Highest or second highest investment grade.	AAA, AA ..	20
Third highest investment grade.	A	50
Lowest investment grade.	BBB	100
One category below investment grade.	BB	200

(ii) *Non-traded positions.* A recourse obligation or direct credit substitute extended in connection with a securitization that is not a "traded position" is assigned a risk weight in accordance with section 3(d)(4)(i) of this appendix A if:

(A) It has been externally rated one category below investment grade or better by two NRSROs;

(B) The ratings are publicly available; and

(C) The ratings are based on the same criteria used to rate securities sold to the public. If the two ratings are different, the lower rating will determine the risk category to which the recourse obligation or direct credit substitute will be assigned.

(5) *Senior positions not externally rated.* For a recourse obligation, direct credit substitute, or asset-backed security that is not externally rated but is senior in all credit-risk related features to a traded position (including collateralization), a bank may apply a risk weight to the face amount of the senior position in accordance with section 3(d)(4)(i) of this appendix A, based upon the traded position, subject to the bank satisfying the OCC that this treatment is appropriate.

(6) *Direct credit substitutes that are not externally rated.* A direct credit substitute extended in connection with a securitization that is not externally rated may risk weight the face amount of the direct credit substitute based on the bank's determination of the credit rating of the position, as specified in Table C. In order to qualify for this treatment, the bank's system for determining the credit rating of the direct credit substitute must meet one of the three alternative standards set out in section 3(d)(6)(i) through (iii) of this appendix A.

TABLE C

Rating category	Examples	Risk weight (percent)
Highest or second highest investment grade.	AAA, AA ..	100
Third highest investment grade.	A	100
Lowest investment grade.	BBB	100
One category below investment grade.	BB	200

(i) *Internal risk rating used for asset-backed programs.* The direct credit substitute is issued in connection with an asset-backed commercial paper program sponsored by the bank and the bank's internal credit risk rating system is adequate. Adequate internal credit risk rating systems usually contain the following criteria:[25]

(A) The internal credit risk system is an integral part of the bank's risk management system that explicitly incorporates the full range of risks arising from a bank's participation in securitization activities;

(B) Internal credit ratings are linked to measurable outcomes, such as the probability that the position will experience any loss, the position's expected loss given default, and the degree of variance in losses given default on that position;

(C) The bank's internal credit risk system must separately consider the risk associated with the underlying loans or borrowers, and the risk associated with the structure of a particular securitization transaction;

(D) The bank's internal credit risk system must identify gradations of risk among "pass" assets and other risk positions;

(E) The bank must have clear, explicit criteria that are used to classify assets into each internal risk grade, including subjective factors;

(F) The bank must have independent credit risk management or loan review personnel assigning or reviewing the credit risk ratings;

(G) An internal audit procedure should periodically verify that internal risk ratings are assigned in accordance with the banking organization's established criteria.

(H) The bank must monitor the performance of the internal credit risk ratings assigned to nonrated, nontraded direct credit substitutes over time to determine the appropriateness of the initial credit risk rating assignment and adjust individual credit risk ratings, or the overall internal credit risk ratings system, as needed; and

(I) The internal credit risk system must make credit risk rating assumptions that are consistent with, or more conservative than, the credit risk rating assumptions and methodologies of NRSROs.

(ii) *Program ratings.* The direct credit substitute is issued in connection with a securitization program and a NRSRO (or other entity satisfactory to the OCC) has reviewed the terms of the securitization and stated a rating for positions associated with the program. If the program has options for different combinations of assets, standards, internal credit enhancements and other relevant factors, and the NRSRO or other entity specifies ranges of rating categories to them, the bank may apply the rating category applicable to the option that corresponds to the bank's position. The bank must demonstrate to the OCC's satisfaction that the credit risk rating assigned to the program meets the same standards generally used by NRSROs for rating traded positions. In addition, the bank must also demonstrate to the OCC's satisfaction that the criteria underlying the NRSRO's assignment of ratings for the program are satisfied for the particular direct credit substitute issued by the bank. If a bank participates in a securitization sponsored by another party, the OCC may authorize the bank to use this approach based on a program rating obtained by the sponsor of the program.

(iii) *Computer program.* The bank is using an acceptable credit assessment computer program to determine the rating of a direct credit substitute extended in connection with a securitization. A NRSRO (or another entity approved by the OCC) must have developed the computer program and the bank must demonstrate to the OCC's satisfaction that ratings under the program correspond credibly and reliably with the rating of traded positions.

(7) *Off-balance sheet securitized assets subject to early amortization.* An asset that is sold by a bank into a revolving securitization sponsored by the bank, notwithstanding such sale, shall be converted to an on-balance sheet credit equivalent using a 100% conversion factor, and assigned to the 20 percent risk-weight category, if the securitization has an early amortization feature.[26] The total capital requirement for these assets, including capital charges arising from any retained recourse or direct credit substitute, may not exceed 8% of the amount of the assets in the securitization.

(8) *Limitations on risk-based capital requirements*—(i) *Low-level exposure rule.* If the maximum contractual liability or exposure to loss retained or assumed by a bank is less than the effective risk-based capital requirement for the asset supported by the bank's position, the risk based capital required under this appendix A is limited to the bank's contractual liability, less any recourse liability account established in accordance with generally accepted accounting principles.

(ii) *Related on-balance sheet assets.* If an asset is included in the calculation of the risk-based capital requirement under this section 3(d) of this appendix A and also appears as an asset on a bank's balance sheet, the asset is risk-weighted only under this section 3(d) of this appendix A, except in the case of loan servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In that case, both the on-balance sheet servicing assets and the related recourse obligations or direct credit substitutes are incorporated into the risk-based capital calculation.

* * * * *

4. In appendix A, Table 2, "100 Percent Conversion Factor," Item 1 is revised to read as follows:

* * * * *

Table 2—Credit Conversion Factors for Off-Balance Sheet Items

100 Percent Conversion Factor

1. [Reserved]

* * * * *

Dated: February 9, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92(a), 93(a), 248(a), 248(c), 321–338a, 371d, 461, 481–486,

[25] The adequacy of a bank's use of its internal credit risk rating system must be demonstrated to the OCC considering the criteria listed in this section and the size and complexity of the credit exposures assumed by the bank.

[26] This requirement does not apply to interests that the seller has retained.

601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1835(a), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix A to part 208:

A. The three introductory paragraphs to section *II.* are revised;

B. A new undesignated fifth paragraph is added at the end of section *III.*A;

C. In section *III.*B., paragraph 3 is revised and footnote 23 is removed, and in paragraph 4, footnote 24 is removed;

D. In section *III.*C., paragraphs 1 through 3, footnotes 25 through 37 are redesignated as footnotes 23 through 35, and paragraph 4 is revised;

E. In section *III.*D., the introductory paragraph and paragraph 1 are revised;

F. In sections *III.*D. and *III.*E., footnote 46 is removed and footnotes 47 through 51 are redesignated as footnotes 44 through 48; and

G. In section *IV.*B., footnote 52 is removed.

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. * * *

A bank's qualifying total capital consists of two types of capital components: "core capital elements" (comprising Tier 1 capital) and "supplementary capital elements" (comprising Tier 2 capital). These capital elements and the various limits, restrictions, and deductions to which they are subject, are discussed below and are set forth in Attachment II.

The Federal Reserve will, on a case-by-case basis, determine whether and, if so, how much of any liability that does not fit wholly within the terms of one of the capital categories set forth below or that does not have an ability to absorb losses commensurate with the capital treatment otherwise specified below will be counted as an element of Tier 1 or Tier 2 capital. In making such a determination, the Federal Reserve will consider the similarity of the liability to liabilities explicitly treated in the guidelines, the ability of the liability to absorb losses while the bank operates as a going concern, the maturity and redemption features of the liability, and other relevant terms and factors. To qualify as an element of Tier 1 or Tier 2 capital, a capital instrument may not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

Redemptions of permanent equity or other capital instruments before stated maturity could have a significant impact on a bank's overall capital structure. Consequently, a bank considering such a step should consult with the Federal Reserve before redeeming any equity or debt capital instrument (prior to maturity) if such redemption could have a material effect on the level or composition of the institution's capital base.[4]

* * * * *

III. * * *

A. * * *

The Federal Reserve will, on a case-by-case basis, determine the appropriate risk weight for any asset or the credit equivalent amount of an off-balance sheet item that does not fit wholly within the terms of one of the risk weight categories set forth below or that imposes risks on a bank that are incommensurate with the risk weight otherwise specified below for the asset or off-balance sheet item. In addition, the Federal Reserve will, on a case-by-case basis, determine the appropriate credit conversion factor for any off-balance sheet item that does not fit wholly within the terms of one of the credit conversion factors set forth below or that imposes risks on a bank that are incommensurate with the credit conversion factors otherwise specified below for the off-balance sheet item. In making such a determination, the Federal Reserve will consider the similarity of the asset or off-balance sheet item to assets or off-balance sheet items explicitly treated in the guidelines, as well as other relevant factors.

* * * * *

B. * * *

3. *Recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities.* Direct credit substitutes, assets transferred with recourse, and securities issued in connection with asset securitizations and structured financings are treated as described below. Use of the term "asset securitizations" or "securitizations" in this rule includes structured financings, as well as asset securitization transactions.

a. *Definitions*—(i) *Credit derivatives* are on- or off-balance sheet notes or contracts that allow one party (the "beneficiary") to transfer the credit risk of a "reference asset," which it often owns, to another party (the "guarantor"). The value of a credit derivative is dependent, at least in part, on the credit performance of the reference asset, which typically is a publicly traded loan or corporate bond.

(ii) *Credit-enhancing representations and warranties* means representations and warranties extended by a bank when it transfers assets (including loan servicing assets) or assumed by the bank when it purchases loan servicing assets that obligate the bank to absorb credit losses on transferred assets or serviced loans. These representations and warranties typically arise when the bank agrees to protect purchasers or some other party from losses due to the default or nonperformance of the obligor on the transferred assets or serviced loans, or insufficiency in the value of collateral supporting the transferred assets or serviced loans.

(iii) *Direct credit substitute* means an arrangement in which a bank *assumes*, in form or in substance, any risk of credit loss directly or indirectly associated with a *third-party* asset or other financial claim, that exceeds the bank's *pro rata* share of the asset or claim. If the bank has no claim on the asset, then the assumption of *any* risk of loss is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(*1*) Financial guarantee-type standby letters of credit that support financial claims on the account party;

(*2*) Guarantees, surety arrangements, credit derivatives, and irrevocable guarantee-type instruments backing financial claims such as outstanding securities, loans, or other financial liabilities, or that back off-balance sheet items against which risk-based capital must be maintained;

(*3*) Purchased subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

(*4*) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party; and

(*5*) Purchased loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (other than mortgage servicer cash advances as defined in paragraph *III.*B.3.a.(vi) of this section), or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the serviced loans.

(iv) *Externally rated* means, with respect to an instrument or obligation, that the instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization.

(v) *Financial guarantee-type standby letter of credit* means any letter of credit or similar arrangement, however named or described, that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(*1*) To repay money borrowed by, advanced to, or for the account of, the account party; or

(*2*) To make payment on account of any indebtedness undertaken by the account party in the event that the account party fails to fulfill its obligation to the beneficiary.

(vi) *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if the mortgage servicer is entitled to full reimbursement or, for any one residential mortgage loan, nonreimbursable advances are contractually limited to an insignificant amount of the outstanding principal on that loan.

(vii) *Nationally recognized statistical rating organization* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers (17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H)).

(viii) *Recourse* means an arrangement in which a bank *retains*, in form or in

[4] Consultation would not ordinarily be necessary if an instrument were redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument and the organization's capital position is considered fully adequate by the Federal Reserve.

substance, any risk of credit loss directly or indirectly associated with a transferred asset that exceeds a *pro rata* share of the bank's claim on the asset. If a bank has no claim on a transferred asset, then the retention of any risk of loss is recourse. A recourse obligation typically arises when an institution transfers assets and retains an obligation to repurchase the assets or absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. Recourse obligations include, but are not limited to:

(*1*) Credit-enhancing representations and warranties on the transferred assets that obligate the servicer to absorb credit losses, including early-default clauses;

(*2*) Retained loan servicing assets if the servicer is responsible for losses associated with the loans being serviced other than mortgage servicer cash advances as defined in paragraph *III*.B.3.a.(vi) of this section.

(*3*) Retained subordinated interests or securities or credit derivatives that absorb more than their *pro rata* share of losses from the underlying assets;

(*4*) Assets sold under an agreement to repurchase if the assets are not already included on the balance sheet; and

(*5*) Loan strips sold without direct recourse where the maturity of the transferred loan that is drawn is shorter than the maturity of the commitment.

(ix) *Securitization* means the pooling and repackaging of loans or other credit exposures into securities that can be sold to investors. For purposes of this appendix A, securitization also includes structured finance transactions or programs that generally create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

(x) *Traded position* means a recourse obligation, direct credit substitute, or asset-or mortgage-backed security that is retained, assumed, or issued in connection with an asset securitization and that is rated with a reasonable expectation that, in the near future:

(*1*) The position would be sold to investors relying on the rating; or

(*2*) A third party would, in reliance on the rating, enter into a transaction such as a purchase, loan, or repurchase agreement involving the position.

b. *Amount of position to be included in risk-weighted assets.* Other types of recourse obligations or direct credit substitutes, other than those listed in section III.B.3.b.(i)(*1*) through (*7*) of this appendix A, should be treated in accordance with the principles contained in section *III*.B.3. of this appendix A. The treatment of direct credit substitutes that have been syndicated or in which risk participations have been conveyed or acquired is set forth in section *III*.D.1 of this appendix A.

(i) *General rule for determining the credit equivalent amount and risk weight of recourse obligations and direct credit substitutes.* Except as otherwise provided in section *III* of this appendix A, the risk weighted asset amount or the credit equivalent amount for a recourse obligation or direct credit substitute is the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed. This credit equivalent amount is assigned to the risk weight category appropriate to the obligor or, if relevant, the guarantor or nature of any collateral. Thus, a bank that extends a partial direct credit substitute, *e.g.*, a financial standby letter of credit, that absorbs the first 10 percent of loss on a transaction, must maintain capital against the full amount of the assets being supported. Furthermore, for direct credit substitutes that are on-balance sheet assets, *e.g.*, purchased subordinated securities, banks must maintain capital against the amount of the direct credit substitutes and the full amount of the assets being supported, *i.e.*, all more senior positions. This treatment is subject to the low-level capital rule discussed in section *III*.B.3.c.i. of this appendix A. For purposes of this appendix A, the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed means for:

(*1*) A financial guarantee-type standby letter of credit, surety arrangement, credit derivative, guarantee, or irrevocable guarantee-type instruments, the full amount of the assets that the direct credit substitute fully or partially supports;

(*2*) A subordinated interest or security, the amount of the subordinated interest or security plus all more senior interests or securities;

(*3*) Mortgage servicing assets that are recourse obligations or direct credit substitutes, the outstanding amount of the loans serviced;

(*4*) Credit-enhancing representations and warranties, the amount of the assets subject to the representations or warranties;

(*5*) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party, the full amount of the enhanced financial obligations;

(*6*) Loans strips, the amount of the loans; and

(*7*) For assets sold with recourse, the amount of assets for which risk of loss is directly or indirectly retained, less any applicable recourse liability account established in accordance with generally accepted accounting principles.

(ii) *Determining the credit risk weight of recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities that are rated within one of the five highest rating categories.* (*1*) A traded position is eligible for the risk-based capital treatment described in this paragraph if its external rating is within one of the five highest rating categories, *e.g.*, AAA through BB, used by a nationally-recognized statistical rating organization. A recourse obligation, direct credit substitute, or asset- or mortgage-backed security which is not externally rated but is senior in all respects to a traded position that is externally rated, including access to any collateral, is also eligible for the risk-based capital treatment described in this paragraph *III*.B.3.b.(ii) as if it had the same rating as the traded position. This treatment for the unrated senior position is subject to current and prospective supervisory guidance on a case-by-case basis.

(*A*) *Two highest investment grades.* Except as otherwise provided in section *III*. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in either of the two highest investment grade categories, *e.g.*, AAA or AA, is assigned to the 20 percent risk category.

(*B*) *Third highest investment grade.* Except as otherwise provided in this section *III*. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset-or mortgage-backed security that is rated in the third highest investment grade category, *e.g.*, A, is assigned to the 50 percent risk category.

(*C*) *Lowest investment grade.* Except as otherwise provided in this section *III*. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset-or mortgage-backed security that is rated in the lowest investment grade category, *e.g.*, BBB, is assigned to the 100 percent risk category.

(*D*) *One category below investment grade.* Except as otherwise provided in this section *III*. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset-or mortgage-backed security that is rated in the next lower category below the lowest investment grade category, *e.g.*, BB, is assigned a 200 percent risk weight.

(*2*) Nontraded recourse obligations, direct credit substitutes, or asset-or mortgage-backed securities that are retained, assumed or issued in connection with an asset securitization also are eligible for the treatment described in this paragraph *III*.B.3.b.(ii) if they are externally rated within one of the five highest rating categories by two nationally-recognized statistical rating organizations, the ratings are publicly available, and the ratings are based on the same criteria used to rate securities sold to the public.

(*3*) A direct credit substitute extended in connection with an asset securitization that is not a traded position and is not externally rated by a nationally-recognized statistical rating organization (such as a letter of credit) may be eligible for the treatment described in section *III*.B.3.b.(ii)(1)(*C*) and (D) of this appendix A, *i.e., a minimum risk weight of 100 percent*, if it satisfies the criteria of one of the following approaches deemed appropriate for the institution by the Federal Reserve:

(*A*) A bank, under its qualifying internal risk rating system, assigns an internal rating to a direct credit substitute extended to an asset-backed commercial paper program that is equivalent to an external credit rating one category below investment grade or higher provided by a nationally recognized statistical rating organization. A qualifying internal risk rating system must be reviewed and deemed appropriate by the Federal Reserve and must satisfy the following criteria and any other prudential standards that the Federal Reserve determines are necessary. Qualifying internal risk rating systems at a minimum must:

(*i*) Be an integral part of an effective risk management system that explicitly incorporates the full range of risks arising from a bank's participation in securitization activities;

(*ii*) Link the internal ratings to measurable outcomes, such as the probability that the position will experience any loss, the position's expected loss given default, and the degree of variance in losses given default on that position;

(*iii*) Separately consider the risk associated with the underlying loans or borrowers, and the risk associated with the structure of a particular securitization transaction;

(*iv*) Identify gradations of risk among "pass" assets and other risk positions;

(*v*) Have clear, explicit criteria that are used to classify assets into each internal risk grade, including subjective factors;

(*vi*) Have independent credit risk management or loan review personnel assigning or reviewing the credit risk ratings;

(*vii*) Have an internal audit procedure that periodically verifies that the internal credit risk ratings are assigned in accordance with the established criteria;

(*viii*) Monitor the performance of the internal ratings assigned to nonrated nontraded direct credit substitutes over time to determine the appropriateness of the initial rating assignment and adjust individual ratings accordingly; and

(*ix*) Be consistent with, or more conservative than, the rating assumptions and methodologies of nationally recognized statistical rating organizations.

(*B*) A bank's direct credit substitute extended to a securitization or structured finance program is reviewed by a nationally recognized statistical rating organization, in conjunction with a review of the overall program, and is assigned a rating or its equivalent. If the program has options for different combinations of assets, standards, internal credit enhancements, and other relevant factors, the rating organization may specify ranges of rating categories that may apply premised on which options are utilized by the bank's risk position. The bank must demonstrate to the Federal Reserve that the nationally recognized statistical rating organization's programmatic rating for its risk position generally meets the same standards used by the rating organization for rating traded positions, and that the rating organization's underlying premises are satisfied for particular direct credit substitutes issued by the bank. If a bank participates in a securitization or structured finance program sponsored by another party, the Federal Reserve may authorize the bank to use this approach based on a programmatic rating obtained by the sponsor of the program.

(*C*) A bank may rate its credit risk exposure to direct credit substitutes by relying on a qualifying credit assessment computer program. A nationally recognized statistical rating agency or other acceptable third party must have developed such a credit assessment system for determining the credit risk of direct credit substitutes and other stratified credit positions. Banks must demonstrate to the Federal Reserve that ratings under such a credit assessment computer program correspond credibly and reliably with the ratings assigned by the rating agencies to publicly traded securities.

(iii) *Determining the credit risk weight for off-balance sheet securitized assets that are subject to early amortization provisions.* If a bank securitizes revolving assets, such as credit cards, home equity lines, or commercial loans issued under lines of credit, in a securitization transaction that it has sponsored and which includes early amortization provisions, then the sponsoring bank must maintain risk-based capital against the off-balance sheet securitized assets from the inception of the transaction. An early amortization feature is a provision that, under specified conditions, returns principal to investors prior to the expected payment dates and generally is a result of a deteriorating portfolio. The securitized, off-balance sheet assets are to be converted to an on-balance sheet credit equivalent amount using the 100 percent conversion factor and assigned to the 20 percent risk category. However, this capital requirement, when combined with the capital requirements for any retained recourse or direct credit substitute associated with the securitized assets, is limited to a total of 8 percent of the off-balance sheet securitized assets.

c. *Limitations on risk-based capital requirements.* (i) *Low-level exposure.* If the maximum contractual liability or exposure to loss retained or assumed by a bank in connection with a recourse obligation or a direct credit substitute is less than the effective risk-based capital requirement for the enhanced assets, the risk-based capital requirement is limited to the maximum contractual liability or exposure to loss, less any liability account established in accordance with generally accepted accounting principles. This limitation does not apply to assets sold with implicit recourse.

(ii) *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a bank holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of capital required for the on-balance sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the bank continued to hold these loans as an on-balance sheet asset.

(iii) *Related on-balance sheet assets.* If a recourse obligation or direct credit substitute subject to section *III*.B.3. of this appendix A also appears as a balance sheet asset, the balance sheet asset is not included in a bank's risk-weighted assets to the extent the value of the balance sheet asset is already included in the off-balance sheet credit equivalent amount for the recourse obligation or direct credit substitute, except in the case of loan servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In the latter cases, both the on-balance sheet assets and the related recourse obligations and direct credit substitutes are incorporated into the risk-based capital calculation.

* * * * *

C. * * *

4. *Category 4: 100 percent.* a. All assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

b. This category includes long-term claims on, and the portions of long-term claims that are guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk.[36] This category includes all claims on foreign and domestic private-sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies); claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims;[37] investments in fixed assets, premises, and other real estate owned; common and preferred stock of corporations, including stock acquired for debts previously contracted; all stripped mortgage-backed securities and similar instruments; and commercial and consumer loans (except those assigned to lower risk categories due to recognized guarantees or collateral and loans secured by residential property that qualify for a lower risk weight).

c. Also included in this category are industrial-development bonds and similar obligations issued under the auspices of state or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest, and all obligations of states or political subdivisions of countries that do not belong to the OECD-based group.

d. The following assets also are assigned a risk weight of 100 percent if they have not been deducted from capital: Investments in unconsolidated companies, joint ventures, or associated companies; instruments that qualify as capital issued by other banking organizations; and any intangibles, including those that may have been grandfathered into capital.

D. * * *

The face amount of an off-balance sheet item is generally incorporated into risk-weighted assets in two steps. The face amount is first multiplied by a credit

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[36] Such assets include all nonlocal currency claims on, and the portions of claims that are guaranteed by, non-OECD central governments and those portions of local currency claims on, or guaranteed by, non-OECD central governments that exceed the local currency liabilities held by subsidiary depository institutions.

[37] Customer liabilities on acceptances outstanding involving nonstandard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to U.S. depository institutions or foreign banks are assigned to the 20 percent risk category appropriate to short-term claims guaranteed by U.S. depository institutions and foreign banks.

conversion factor, except for direct credit substitutes and recourse obligations as discussed in section III.D.1. of this appendix A. The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.[38] Attachment IV to this appendix A sets forth the conversion factors for various types of off-balance sheet items.

1. *Items with a 100 percent conversion factor.* a. Except as otherwise provided in section *III.*B.3. of this appendix A, the full amount of an asset or transaction supported, in whole or in part, by a direct credit substitute or a recourse obligation. Direct credit substitutes and recourse obligations are defined in section *III.*B.3. of this appendix A.

b. Sale and repurchase agreements and forward agreements. Forward agreements are legally binding contractual obligations to purchase assets with certain drawdown at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[39] and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

c. Securities lent by a bank are treated in one of two ways, depending upon whether the lender is at risk of loss. If a bank, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the transaction is excluded from the risk-based capital calculation. If, alternatively, a bank lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor, or if applicable to any collateral delivered to the lending bank, or, the independent custodian acting on the lending bank's behalf. Where a bank is acting as agent for a customer in a transaction involving the lending or sale of securities that is collateralized by cash delivered to the bank, the transaction is deemed to be collateralized by cash on deposit in the bank for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities and the cash collateral received and any reinvestment risk associated with that cash collateral is borne by the customer.

d. In the case of direct credit substitutes in which a risk participation[40] has been conveyed, the full amount of the assets that are supported, in whole or in part, by the credit enhancement are converted to a credit equivalent amount at 100 percent. However, the *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is assigned to whichever risk category is lower: the risk category appropriate to the obligor, after considering any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation.[41] Any remainder is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the *pro rata* share of the full amount of the assets supported, in whole or in part, by a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or foreign bank is assigned to the 20 percent risk category.[42]

e. In the case of direct credit substitutes in which a risk participation has been acquired, the acquiring bank's percentage share of the direct credit substitute is multiplied by the full amount of the assets that are supported, in whole or in part, by the credit enhancement and converted to a credit equivalent amount at 100 percent. The credit equivalent amount of an acquisition of a risk participation in a direct credit substitute is assigned to the risk category appropriate to the account party obligor or, if relevant, the nature of the collateral or guarantees.

f. In the case of direct credit substitutes that take the form of a syndication where each bank is obligated only for its *pro rata* share of the risk and there is no recourse to the originating bank, each bank will only include its *pro rata* share of the assets supported, in whole or in part, by the direct credit substitute in its risk-based capital calculation.[43]

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PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In appendix A to part 225:

A. The three introductory paragraphs to section II. are revised;

B. A new fifth undesignated paragraph is added to section III.*A.*;

C. In section III.*B.*, paragraph 3 is revised and footnote 26 is removed, and in paragraph 4 footnote 27 is removed;

D. In section III.*C.*, paragraphs 1 through 3, footnotes 28 through 40 are redesignated as footnotes 26 through 38, and paragraph 4 is revised;

E. In section III.*D.*, the introductory paragraph and paragraph 1 are revised; and

F. In section III.*D.* and III.*E.*, footnote 50 is removed and footnotes 51 through 57 are redesignated as footnotes 47 through 53.

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

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II. * * *

An institution's qualifying total capital consists of two types of capital components: "core capital elements" (comprising Tier 1 capital) and "supplementary capital elements" (comprising Tier 2 capital). These capital elements and the various limits, restrictions, and deductions to which they are subject, are discussed below and are set forth in Attachment II.

The Federal Reserve will, on a case-by-case basis, determine whether, and if so how much of, any liability that does not fit wholly within the terms of one of the capital categories set forth below or that does not have an ability to absorb losses commensurate with the capital treatment otherwise specified below will be counted as an element of Tier 1 or Tier 2 capital. In making such a determination, the Federal Reserve will consider the similarity of the liability to liabilities explicitly treated in the guidelines, the ability of the liability to absorb losses while the institution operates as a going concern, the maturity and redemption features of the liability, and other relevant terms and factors. To qualify as an element of Tier 1 or Tier 2 capital, a capital instrument may not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

Redemptions of permanent equity or other capital instruments before stated maturity could have a significant impact on a organization's overall capital structure. Consequently, an organization considering such a step should consult with the Federal Reserve before redeeming any equity or debt capital instrument (prior to maturity) if such redemption could have a material effect on the level or composition of the organization's capital base.[5]

* * * * *

III. * * *

A. * * *

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[38] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section *III.*B. of this appendix A.

[39] Forward forward deposits accepted are treated as interest rate contracts.

[40] That is, a participation in which the originating bank remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

[41] A risk participation in bankers acceptances conveyed to other institutions is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

[42] Risk participations with a remaining maturity of over one year that are conveyed to non-OECD banks are to be assigned to the 100 percent risk category, unless a lower risk category is appropriate to the obligor, guarantor, or collateral.

[43] For example, if a bank has a 10 percent share of a $10 syndicated direct credit substitute that provides credit support to a $100 loan, then the bank's $1 *pro rata* share in the enhancement means that a $10 *pro rata* share of the loan is included in risk weighted assets.

[5] Consultation would not ordinarily be necessary if an instrument were redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument and the organization's capital position is considered fully adequate by the Federal Reserve. In the case of limited-life Tier 2 instruments, consultation would generally be obviated if the new security is of equal or greater maturity than the one it replaces.

The Federal Reserve will, on a case-by-case basis, determine the appropriate risk weight for any asset or the credit equivalent amount of an off-balance sheet item that does not fit wholly within the terms of one of the risk weight categories set forth below or that imposes risks on a bank that are incommensurate with the risk weight otherwise specified below for the asset or off-balance sheet item. In addition, the Federal Reserve will, on a case-by-case basis, determine the appropriate credit conversion factor for any off-balance sheet item that does not fit wholly within the terms of one of the credit conversion factors set forth below or that imposes risks on an institution that are incommensurate with the credit conversion factors otherwise specified below for the off-balance sheet item. In making such a determination, the Federal Reserve will consider the similarity of the asset or off-balance sheet item to assets or off-balance sheet items explicitly treated in the guidelines, as well as other relevant factors.

B. * * *

3. *Recourse obligations, direct credit substitutes, and asset-and mortgage-backed securities.* Direct credit substitutes, assets transferred with recourse, and securities issued in connection with asset securitizations and structured financings are treated as described below. Use of the term "asset securitizations" or "securitizations" in this rule includes structured financings, as well as asset securitization transactions.

a. *Definitions.* (i) *Credit derivatives* are on- or off-balance sheet notes or contracts that allow one party (the "beneficiary") to transfer the credit risk of a "reference asset," which it often owns, to another party (the "guarantor"). The value of a credit derivative is dependent, at least in part, on the credit performance of the reference asset, which typically is a publicly traded loan or corporate bond.

(ii) *Credit-enhancing representations and warranties* means representations and warranties extended by a bank when it transfers assets (including loan servicing assets) or assumed by the bank when it purchases loan servicing assets that obligate the bank to absorb credit losses on transferred assets or serviced loans. These representations and warranties typically arise when the bank agrees to protect purchasers or some other party from losses due to the default or nonperformance of the obligor on the transferred assets or serviced loans, or insufficiency in the value of collateral supporting the transferred assets or serviced loans.

(iii) *Direct credit substitute* means an arrangement in which a banking organization *assumes,* in form or in substance, any risk of credit loss directly or indirectly associated with a *third-party* asset or other financial claim, that exceeds the banking organization's *pro rata* share of the asset or claim. If the banking organization has no claim on the asset, then the assumption of *any* risk of loss is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(*1*) Financial guarantee-type standby letters of credit that support financial claims on the account party;

(*2*) Guarantees, surety arrangements, credit derivatives, and irrevocable guarantee-type instruments backing financial claims such as outstanding securities, loans, or other financial liabilities, or that back off-balance sheet items against which risk-based capital must be maintained;

(*3*) Purchased subordinated interests or securities that absorb more than their pro rata share of losses from the underlying assets;

(*4*) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party; and

(*5*) Purchased loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (other than mortgage servicer cash advances as defined in paragraph III.*B*.3.a.(vi) of this appendix A), or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the serviced loans.

(iv) *Externally rated* means, with respect to an instrument or obligation, that the instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization.

(v) *Financial guarantee-type standby letter of credit* means any letter of credit or similar arrangement, however named or described, that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(*1*) To repay money borrowed by, advanced to, or for the account of, the account party; or

(*2*) To make payment on account of any indebtedness undertaken by the account party in the event that the account party fails to fulfill its obligation to the beneficiary.

(vi) *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if the mortgage servicer is entitled to full reimbursement or, for any one residential mortgage loan, nonreimbursable advances are contractually limited to an insignificant amount of the outstanding principal on that loan.

(vii) *Nationally recognized statistical rating organization* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers (17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H)).

(viii) *Recourse* means an arrangement in which a banking organization *retains,* in form or in substance, any risk of credit loss directly or indirectly associated with a transferred asset that exceeds a *pro rata* share of the banking organization's claim on the asset. If a banking organization has no claim on a transferred asset, then the retention of any risk of loss is recourse. A recourse obligation typically arises when an institution transfers assets and retains an obligation to repurchase the assets or absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a banking organization provides credit enhancement beyond any contractual obligation to support assets it has sold. Recourse obligations include, but are not limited to:

(*1*) Credit-enhancing representations and warranties on the transferred assets that obligate the servicer to absorb credit losses, including early-default clauses;

(*2*) Retained loan servicing assets if the servicer is responsible for losses associated with the loans being serviced other than mortgage servicer cash advances as defined in paragraph III.*B*.3.a.(v) of this appendix A.

(*3*) Retained subordinated interests or securities or credit derivatives that absorb more than their pro rata share of losses from the underlying assets;

(*4*) Assets sold under an agreement to repurchase if the assets are not already included on the balance sheet; and

(*5*) Loan strips sold without direct recourse where the maturity of the transferred loan that is drawn is shorter than the maturity of the commitment.

(ix) *Securitization* means the pooling and repackaging of loans or other credit exposures into securities that can be sold to investors. For purposes of this appendix A, securitization also includes structured finance transactions or programs that generally create stratified credit risk positions, whether in the form of a security or not, whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

(x) *Traded position* means a recourse obligation, direct credit substitute, or asset- or mortgage-backed security that is retained, assumed, or issued in connection with an asset securitization and that is rated with a reasonable expectation that, in the near future:

(*1*) The position would be sold to investors relying on the rating; or

(*2*) A third party would, in reliance on the rating, enter into a transaction such as a purchase, loan, or repurchase agreement involving the position.

b. *Amount of position to be included in risk-weighted assets.* Types of recourse obligations or direct credit substitutes, other than those listed in section III.B.3.b.(i)(*1*) through (*7*) of this appendix A, should be treated in accordance with the principles contained in section III.*B*.3 of this appendix A. The treatment of direct credit substitutes that have been syndicated or in which risk participations have been conveyed or acquired is set forth in section III.*D*.1 of this appendix A.

(i) *General rule for determining the credit equivalent amount and risk weight of recourse obligations and direct credit substitutes.* Except as otherwise provided in section III of this appendix A, the risk weighted asset amount or the credit equivalent amount for a recourse obligation or direct credit substitute is the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed. This credit equivalent amount is

assigned to the risk weight category appropriate to the obligor or, if relevant, the guarantor or nature of any collateral. Thus, a banking organization that extends a partial direct credit substitute, *e.g.*, a financial standby letter of credit, that absorbs the first 10 percent of loss on a transaction, must maintain capital against the full amount of the assets being supported. Furthermore, for direct credit substitutes that are on-balance sheet assets, *e.g.*, purchased subordinated securities, banking organizations must maintain capital against the amount of the direct credit substitutes and the full amount of the assets being supported, *i.e.*, all more senior positions. This treatment is subject to the low-level capital rule discussed in section III.*B*.3.c.(i) of this appendix A. For purposes of this appendix A, the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed means for:

(*1*) A financial guarantee-type standby letter of credit, surety arrangement, credit derivative, guarantee, or irrevocable guarantee-type instruments, the full amount of the assets that the direct credit substitute fully or partially supports;

(*2*) A subordinated interest or security, the amount of the subordinated interest or security plus all more senior interests or securities;

(*3*) Mortgage servicing assets that are recourse obligations or direct credit substitutes, the outstanding amount of the loans serviced;

(*4*) Credit-enhancing representations and warranties, the amount of the assets subject to the representations or warranties;

(*5*) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party, the full amount of the enhanced financial obligations;

(*6*) Loans strips, the amount of the loans; and

(*7*) For assets sold with recourse, the amount of assets for which risk of loss is directly or indirectly retained, less any applicable recourse liability account established in accordance with generally accepted accounting principles.

(ii) *Determining the credit risk weight of recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities that are rated within one of the five highest rating categories.* (*1*) A traded position is eligible for the risk-based capital treatment described in this paragraph if its external rating is within one of the five highest rating categories, *e.g.* AAA through BB, used by a nationally-recognized statistical rating organization. A recourse obligation, direct credit substitute, or asset- or mortgage-backed security which is not externally rated but is senior in all respects to a traded position that is externally rated, including access to any collateral, is also eligible for the risk-based capital treatment described in this paragraph III.*B*.3.b.(ii) as if it had the same rating as the traded position. This treatment for the unrated senior position is subject to current and prospective supervisory guidance on a case-by-case basis.

(*A*) *Two highest investment grades.* Except as otherwise provided in this section III. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in either of two highest investment grade categories, *e.g.*, AAA or AA, is assigned to the 20 percent risk category.

(*B*) *Third highest investment grade.* Except as otherwise provided in this section III. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in the third highest investment grade category, *e.g.*, A, is assigned to the 50 percent risk category.

(*C*) *Lowest investment grade.* Except as otherwise provided in this section III. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in the lowest investment grade category, *e.g.*, BBB, is assigned to the 100 percent risk category.

(*D*) *One category below investment grade.* Except as otherwise provided in this section III. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in the next lower category below the lowest investment grade category, *e.g.*, BB, is assigned to the 200 percent risk category.

(*2*) Nontraded recourse obligations, direct credit substitutes, or asset- or mortgage-backed securities that are retained, assumed, or issued in connection with an asset securitization are also eligible for the treatment described in this paragraph III.*B*.3.b.(ii) if they are externally rated within one of the five highest rating categories by two nationally-recognized statistical rating organizations, the ratings are publicly available, and the ratings are based on the same criteria used to rate securities sold to the public.

(*3*) A direct credit substitute extended in connection with an asset securitization that is not a traded position and is not externally rated by a nationally-recognized statistical rating organization (such as a letter of credit) may be eligible for the treatment described in paragraph III.*B*.3.b.ii(1)(*C*) and (*D*), *i.e., a minimum risk weight of 100 percent,* if it satisfies the criteria of one of the following approaches deemed appropriate for the organization by the Federal Reserve:

(*A*) A banking organization, under its qualifying internal risk rating system, assigns an internal rating to a direct credit substitute extended to an asset-backed commercial paper program that is equivalent to an external credit rating one category below investment grade or higher provided by a nationally recognized statistical rating organization. A qualifying internal risk rating system must be reviewed and deemed appropriate by the Federal Reserve and must satisfy the following criteria and any other prudential standards that the Federal Reserve determines are necessary. Qualifying internal risk rating systems at a minimum must:

(*i*) Be an integral part of an effective risk management system that explicitly incorporates the full range of risks arising from a banking organization's participation in securitization activities;

(*ii*) Link the internal ratings to measurable outcomes, such as the probability that the position will experience any loss, the position's expected loss given default, and the degree of variance in losses given default on that position;

(*iii*) Separately consider the risk associated with the underlying loans or borrowers, and the risk associated with the structure of a particular securitization transaction;

(*iv*) Identify gradations of risk among "pass" assets and other risk positions;

(*v*) Have clear, explicit criteria that are used to classify assets into each internal risk grade, including subjective factors;

(*vi*) Have independent credit risk management or loan review personnel assigning or reviewing the credit risk ratings;

(*vii*) Have an internal audit procedure that periodically verifies that the internal credit risk ratings are assigned in accordance with the established criteria;

(*viii*) Monitor the performance of the internal ratings assigned to nonrated nontraded direct credit substitutes over time to determine the appropriateness of the initial rating assignment and adjust individual ratings accordingly; and,

(*ix*) Be consistent with, or more conservative than, the rating assumptions and methodologies of nationally recognized statistical rating organizations.

(*B*) A banking organization's direct credit substitute extended to a securitization or structured finance program is reviewed by a nationally recognized statistical rating organization, in conjunction with a review of the overall program, and is assigned a rating or its equivalent. If the program has options for different combinations of assets, standards, internal credit enhancements, and other relevant factors, the rating organization may specify ranges of rating categories that may apply premised on which options are utilized by the bank's risk position. The banking organization must demonstrate to the Federal Reserve that the nationally recognized statistical rating organization's programmatic rating for its risk position generally meets the same standards used by the rating organization for rating traded positions, and that the rating organization's underlying premises are satisfied for particular direct credit substitutes issued by the institution. If a banking organization participates in a securitization or structured finance program sponsored by another party, the Federal Reserve may authorize the institution to use this approach based on a programmatic rating obtained by the sponsor of the program.

(*C*) An institution may rate its credit risk exposure to direct credit substitutes by relying on a qualifying credit assessment computer program. A nationally recognized statistical rating agency or other acceptable third party must have developed such a credit assessment system for determining the credit risk of direct credit substitutes and other stratified credit positions. Institutions must demonstrate to the Federal Reserve that ratings under such a credit assessment computer program correspond credibly and reliably with the ratings assigned by the rating agencies to publicly traded securities.

(iii) *Determining the credit risk weight for off-balance sheet securitized assets that are subject to early amortization provisions.* If a

bank securitizes revolving assets, such as credit cards, home equity lines, or commercial loans issued under lines of credit, in a securitization transaction that it has sponsored and which includes early amortization provisions, then the sponsoring bank must maintain risk-based capital against the off-balance sheet securitized assets from the inception of the transaction. An early amortization feature is a provision that, under specified conditions, returns principal to investors prior to the expected payment dates and generally is a result of a deteriorating portfolio. The securitized, off-balance sheet assets are to be converted to an on-balance sheet credit equivalent amount using the 100 percent conversion factor and assigned to the 20 percent risk category. However, this capital requirement, when conbined with the capital requirements for any retained recourse or direct credit substitute associated with the securitized assets, is limited to a toal of 8 percent of the off-balance sheet securitized assets.

c. *Limitations on risk-based capital requirements.* (i) *Low-level exposure.* If the maximum contractual liability or exposure to loss retained or assumed by a banking organization in connection with a recourse obligation or a direct credit substitute is less than the effective risk-based capital requirement for the enhanced assets, the risk-based capital requirement is limited to the maximum contractual liability or exposure to loss, less any recourse liability account established in accordance with generally accepted accounting principles. This limitation does not apply to assets sold with implicit recourse.

(ii) *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a banking organization holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of capital required for the on-balance sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the banking organization continued to hold these loans as an on-balance sheet asset.

(iii) *Related on-balance sheet assets.* If a recourse obligation or direct credit substitute subject to section III.*B*.3. of this appendix A also appears as a balance sheet asset, the balance sheet asset is not included in a banking organization's risk-weighted assets to the extent the value of the balance sheet asset is already included in the off-balance sheet credit equivalent amount for the recourse obligation or direct credit substitute, except in the case of loan servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In the latter cases, both the on-balance sheet assets and the related recourse obligations and direct credit substitutes are incorporated into the risk-based capital calculation.

* * * * *

C. * * *

4. *Category 4: 100 percent.* a. All assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

b. This category includes long-term claims on, and the portions of long-term claims that are guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk.[39] This category includes all claims on foreign and domestic private-sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies); claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims;[40] investments in fixed assets, premises, and other real estate owned; common and preferred stock of corporations, including stock acquired for debts previously contracted; all stripped mortgage-backed securities and similar instruments; and commercial and consumer loans (except those assigned to lower risk categories due to recognized guarantees or collateral and loans secured by residential property that qualify for a lower risk weight).

c. Also included in this category are industrial-development bonds and similar obligations issued under the auspices of state or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest, and all obligations of states or political subdivisions of countries that do not belong to the OECD-based group.

d. The following assets also are assigned a risk weight of 100 percent if they have not been deducted from capital: investments in unconsolidated companies, joint ventures, or associated companies; instruments that qualify as capital issued by other banking organizations; and any intangibles, including those that may have been grandfathered into capital.

D. * * *

The face amount of an off-balance sheet item is generally incorporated into risk-weighted assets in two steps. The face amount is first multiplied by a credit conversion factor, except for direct credit substitutes and recourse obligations as discussed in section III.*D*.1. of this appendix A. The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.[41] Attachment IV to this appendix A sets forth the conversion factors for various types of off-balance sheet items.

1. *Items with a 100 percent conversion factor.* a. Except as otherwise provided in section III.*B*.3. of this appendix A, the full amount of an asset or transaction supported, in whole or in part, by a direct credit substitute or a recourse obligation. Direct credit substitutes and recourse obligations are defined in section III.*B*.3. of this appendix A. b. Sale and repurchase agreements and forward agreements. Forward agreements are legally binding contractual obligations to purchase assets with certain drawdown at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[42] and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

c. Securities lent by a banking organization are treated in one of two ways, depending upon whether the lender is at risk of loss. If a banking organization, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the transaction is excluded from the risk-based capital calculation. If, alternatively, a banking organization lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor, or if applicable to any collateral delivered to the lending bank, or, the independent custodian acting on the lending banking organization's behalf. Where a banking organization is acting as agent for a customer in a transaction involving the lending or sale of securities that is collateralized by cash delivered to the banking organization, the transaction is deemed to be collateralized by cash on deposit in the banking organization for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities and the cash collateral received and any reinvestment risk associated with that cash collateral is borne by the customer.

d. In the case of direct credit substitutes in which a risk participation[43] has been conveyed, the full amount of the assets that

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[39] Such assets include all nonlocal currency claims on, and the portions of claims that are guaranteed by, non-OECD central governments and those portions of local currency claims on, or guaranteed by, non-OECD central governments that exceed the local currency liabilities held by subsidiary depository institutions.

[40] Customer liabilities on acceptances outstanding involving nonstandard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to U.S. depository institutions or foreign banks are assigned to the 20 percent risk category appropriate to short-term claims guaranteed by U.S. depository institutions and foreign banks.

[41] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral of the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.*B*. of this appendix A.

[42] Forward forward deposits accepted are treated as interest rate contracts.

[43] That is, a participation in which the originating banking organization remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

are supported, in whole or in part, by the credit enhancement are converted to a credit equivalent amount at 100 percent. However, the *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is assigned to whichever risk category is lower: the risk category appropriate to the obligor, after considering any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation.[44] Any remainder is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the *pro rata* share of the full amount of the assets supported, in whole or in part, by a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or foreign bank is assigned to the 20 percent risk category.[45]

e. In the case of direct credit substitutes in which a risk participation has been acquired, the acquiring banking organization's percentage share of the direct credit substitute is multiplied by the full amount of the assets that are supported, in whole or in part, by the credit enhancement and converted to a credit equivalent amount at 100 percent. The credit equivalent amount of an acquisition of a risk participation in a direct credit substitute is assigned to the risk category appropriate to the account party obligor or, if relevant, the nature of the collateral or guarantees.

f. In the case of direct credit substitutes that take the form of a syndication where each banking organization is obligated only for its *pro rata* share of the risk and there is no recourse to the originating banking organization, each banking organization will only include its *pro rata* share of the assets supported, in whole or in part, by the direct credit substitute in its risk-based capital calculation.[46]

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By order of the Board of Governors of the Federal Reserve System, February 10, 2000.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

[44] A risk participation in bankers acceptances conveyed to other institutions is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

[45] Risk participations with a remaining maturity of over one year that are conveyed to non-OECD banks are to be assigned to the 100 percent risk category, unless a lower risk category is appropriate to the obligor, guarantor, or collateral.

[46] For example, if a banking organization has a 10 percent share of a $10 syndicated direct credit substitute that provides credit support to a $100 loan, then the banking organization's $1 *pro rata* share in the enhancement means that a $10 *pro rata* share of the loan is included in risk weighted assets.

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

2. In appendix A to part 325, section II:

A. In paragraph A., the first two undesignated paragraphs are designated 1. and 2. respectively;

B. A new paragraph A.3. is added;

C. Paragraph B. is amended by revising paragraph B.5.;

D. In paragraph C., Category 1—Zero Percent Risk Weight through Category 3—50 Percent Risk Weight, footnotes 15 through 31 are redesignated as footnotes 19 through 34;

E. In paragraph C., Category 2—20 Percent Risk Weight, the three undesignated paragraphs are designated as paragraphs a. through c., respectively, and a new paragraph d. is added;

F. In paragraph C., Category 3—50 Percent Risk Weight, the third undesignated paragraph is removed and the remaining three undesignated paragraphs are designated as paragraphs a. through c., respectively;

G. In paragraph C., Category 3—50 Percent Risk Weight, newly designated footnote 32 is revised;

H. In paragraph C., Category 4—100 Percent Risk Weight is revised;

I. In paragraph C., following the paragraph titled Category 4—100 Percent Risk Weight, a new paragraph titled Category 5—200 Percent Risk Weight is added;

J. In paragraph D., the undesignated introductory paragraph is revised;

K. Paragraph D.1. is revised;

L. In paragraph D.2., footnote 38 is removed; and

M. In paragraphs D.2. and E., footnotes 39 through 42 are redisignated as footnotes 38 through 41.

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

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II. * * *

A. * * *

3. The Director of the Division of Supervision may, on a case-by-case basis, determine the appropriate risk weight for any asset or credit equivalent amount that does not fit wholly within one of the risk categories set forth below or that imposes risks on a bank that are not commensurate with the risk weight otherwise specified below for the asset or credit equivalent amount. In addition, the Director of the Division of Supervision may, on a case-by-case basis, determine the appropriate credit conversion factor for any off-balance sheet item that does not fit wholly within one of the credit conversion factors set forth below or that imposes risks on a bank that are not commensurate with the credit conversion factor otherwise specified below for the off-balance sheet item. In making such a determination, the Director of the Division of Supervision will consider the similarity of the asset or off-balance sheet item to assets or off-balance sheet items explicitly treated in the guidelines, as well as other relevant factors.

B. * * *

5. *Recourse obligations, direct credit substitutes, and asset-and mortgage-backed securities.* Direct credit substitutes, assets sold with recourse, and securities issued in connection with asset securitizations are treated as described below.

(a) *Definitions.* (i) *Credit derivative* means an on-or off-balance sheet note or contract that allows one party (the "beneficiary") to transfer the credit risk of a "reference asset," which the beneficiary often owns, to another party (the "guarantor"). The value of a credit derivative is dependent, at least in part, on the credit performance of the reference asset, which typically is a publicly traded loan or corporate bond.

(ii) *Credit-enhancing representations and warranties* means representations and warranties, extended by a bank when it transfers assets (including loan servicing assets) or assumed by the bank when it purchases loan servicing assets, that obligate the bank to protect another party from losses due to credit risk in the transferred assets or serviced loans. These representations and warranties typically arise when the bank agrees to protect purchasers or some other party from losses due to:

(*1*) The default or nonperformance of the obligor on the transferred assets or serviced loans; or

(*2*) Insufficiency in the value of collateral supporting the transferred assets or serviced loans.

(iii) *Direct credit substitute* means an arrangement in which a bank *assumes*, in form or in substance, any risk of credit loss directly or indirectly associated with a *third-party* asset or other financial claim, that exceeds the bank's *pro rata* share of the asset or claim. If the bank has no claim on the asset, then the assumption of *any* risk of loss is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(*1*) Financial standby letters of credit, which includes any letter of credit or similar arrangement, however named or described, that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(*a*) To repay money borrowed by, advanced to, or for the account of, the account party, or

(*b*) To make payment on account of any indebtedness undertaken by the account party in the event that the account party fails to fulfill its obligation to the beneficiary.

(*2*) Guarantees, surety arrangements, credit derivatives, and irrevocable guarantee-type

instruments backing financial claims such as outstanding securities, loans, or other financial claims, or that back off-balance-sheet items against which risk-based capital must be maintained;

(3) Purchased subordinated interests or securities that absorb more than their pro rata share of credit losses from the underlying assets;

(4) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party; and

(5) Purchased loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (other than mortgage servicer cash advances as defined in paragraph B.5(a)(vi) of this section), or if the servicer makes or assumes credit-enhancing representations and warranties on the serviced loans.

(iv) *Externally rated* means, with respect to an instrument or obligation, that the instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization.

(v) *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an asset not held for trading purposes; and the fair value of a trading asset.

(vi) *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection, so long as the mortgage servicer is entitled to full reimbursement or nonreimbursable advances are contractually limited to an insignificant amount of the outstanding principal for any one residential mortgage loan, and the servicer's entitlement to reimbursement is not subordinated.

(vii) *Nationally recognized statistical rating organization* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers (17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H)).

(viii) *Recourse* means an arrangement in which a bank *retains*, in form or in substance, any risk of credit loss directly or indirectly associated with an asset it has transferred and sold that exceeds a *pro rata* share of the bank's claim on the asset. If a bank has no claim on an asset it has transferred and sold, then the retention of any risk of credit loss is recourse. A recourse obligation typically arises when an institution transfers assets in a sale and retains an obligation to repurchase the assets or absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. Recourse obligations include, but are not limited to:

(1) Credit-enhancing representations and warranties on the transferred assets;

(2) Retained loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (including credit-enhancing representations and warranties), other than mortgage servicer cash advances as defined in paragraph B.5(a)(vi) of this section;

(3) Retained subordinated interests or securities, or credit derivatives that absorb more than their *pro rata* share of credit losses from the underlying assets;

(4) Assets sold under an agreement to repurchase, if the assets are not already included on the balance sheet; and

(5) Loan strips sold without direct recourse where the maturity of the transferred loan that is drawn is shorter than the maturity of the commitment.

(ix) *Securitization* means the pooling and repackaging of loans or other credit exposures into securities that can be sold to investors. For purposes of this section II.B.5, *securitization* also includes transactions or programs that generally create stratified credit risk positions, whether in the form of a security or not, whose performance is dependent upon an underlying pool of loans or other credit exposures.

(x) *Traded position* means a recourse obligation, direct credit substitute, or asset-or mortgage-backed security that is retained, assumed, or issued in connection with an asset securitization and that is externally rated with a reasonable expectation that, in the near future:

(1) The position would be sold to investors relying on the external rating; or

(2) A third party would, in reliance on the external rating, enter into a transaction such as a purchase, loan, or repurchase agreement involving the position.

(b) *Amount of position to be included in risk-weighted assets*—(i) *General rule for determining the credit equivalent amount and risk weight of recourse obligations and direct credit substitutes.* Except as otherwise provided in this section II.B. of this appendix A, the credit equivalent amount for a recourse obligation or direct credit substitute is the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed by the bank. This credit equivalent amount is assigned to the risk category appropriate to the obligor, or if relevant, the guarantor or nature of any collateral. Thus, a bank that extends a partial direct credit substitute, *e.g.*, a financial standby letter of credit that absorbs the first 10 percent of loss on a transaction, must maintain capital against the full amount of the assets being supported. Furthermore, for a direct credit substitute that is an on-balance sheet asset, *e.g.*, a purchased subordinated security, a bank must maintain capital against the amount of the direct credit substitute and the full amount of the assets being supported, *i.e.*, all more senior positions. This treatment is subject to the low-level exposure rule discussed in section II.B.5(c)(i) of this appendix A. For purposes of this appendix A, the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed means for:

(1) A financial standby letter of credit, surety arrangement, credit derivative, guarantee, or irrevocable guarantee-type instrument, the full amount of the assets that the direct credit substitute fully or partially supports;

(2) A subordinated interest or security, the amount of the subordinated interest or security plus all more senior interests or securities;

(3) Loan servicing assets that are recourse obligations or direct credit substitutes, the outstanding amount of the loans serviced;

(4) Credit-enhancing representations and warranties, the amount of the assets subject to the representations or warranties;

(5) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party, the full amount of the enhanced financial obligations;

(6) Loans strips, the amount of the loans sold; and

(7) Assets sold with recourse, the full amount of the assets from which risk of credit loss is directly or indirectly retained, less any applicable recourse liability account established in accordance with generally accepted accounting principles.

(ii) *Participations in and syndications of direct credit substitutes.* Subject to the low-level exposure rule discussed in section II.B.5(c)(i) of this appendix A:

(1) In the case of a direct credit substitute in which the bank has conveyed a risk participation,[14] the full amount of the assets that are supported, in whole or in part, by the direct credit substitute are converted to a credit equivalent amount at 100 percent. However, the *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is assigned to whichever risk category is lower: The risk category appropriate to the obligor, after considering any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation.[15] Any remainder is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the *pro rata* share of the full amount of the assets supported, in whole or in part, by a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or an OECD bank is assigned to the 20 percent risk category.[16]

(2) In the case of a direct credit substitute in which the bank has acquired a risk participation, the acquiring bank's percentage share of the direct credit substitute is multiplied by the full amount of the assets that are supported, in whole or in part, by the direct credit substitute and converted to a credit equivalent amount at 100 percent. The resulting credit equivalent amount is

[14] That is, a participation in which the originating bank remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

[15] A risk participation in a bankers acceptance conveyed to another institution is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

[16] A risk participation with a remaining maturity of one year or less that is conveyed to a non-OECD bank is also assigned to the 20 percent risk category.

assigned to the risk category appropriate to the account party obligor, guarantor, or collateral.

(*3*) In the case of a direct credit substitute that takes the form of a syndication where each bank is obligated only for its *pro rata* share of the risk and there is no recourse to the originating bank, each bank's credit equivalent amount will be only its *pro rata* share of the assets supported, in whole or in part, by the direct credit substitute. The resulting credit equivalent amount is assigned to the risk category appropriate to the obligor, guarantor, or collateral.[17]

(iii) *Face-amount treatment for externally rated recourse obligations, direct credit substitutes, and asset-and mortgage-backed securities.* (*1*) A traded position is eligible for the risk-based capital treatment described in this paragraph II.B.5(b)(iii) if its external rating is within one of the five highest rating categories, *e.g.*, AAA through BB, used by a nationally-recognized statistical rating organization.

(*a*) *Two highest investment grades.* The face amount of a recourse obligation, direct credit substitute, or an asset-or mortgage-backed security that is rated in either of the two highest investment grade categories, *e.g.*, AAA or AA, is assigned to the 20 percent risk category.

(*b*) *Third highest investment grade.* The face amount of a recourse obligation, direct credit substitute, or an asset-or mortgage-backed security that is rated in the third highest investment grade category, *e.g.*, A, is assigned to the 50 percent risk category.

(*c*) *Lowest investment grade.* The face amount of a recourse obligation, direct credit substitute, or an asset-or mortgage-backed security that is rated in the lowest investment grade category, *e.g.*, BBB, is assigned to the 100 percent risk category.

(*d*) *One category below investment grade.* The face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in the next lower category below the lowest investment grade category, *e.g.*, BB, is assigned to the 200 percent risk category.

(*2*) Other recourse obligations and direct credit substitutes that are retained, assumed, or issued in connection with an asset securitization are also eligible for the risk-based capital treatment described in this paragraph II.B.5(b)(iii) if they are externally rated by two nationally-rated statistical rating organizations as falling within one of the five highest rating categories used by the organizations, the ratings are publicly available, and the ratings are based on the same criteria used to rate traded positions.[18] If the two ratings differ, the lower rating will determine the risk category to which the recourse obligation or direct credit substitute will be assigned.

(*3*) Stripped mortgage-backed securities (such as interest-only or principal-only strips) may not be assigned to the 20 percent or 50 percent risk category under section II.B.5(b)(iii)(*1*)(*a*)–(*b*) of this appendix A.

(*4*) A position which is not externally rated but is senior in all respects to a traded position eligible for the risk-based capital treatment described in section II.B.5(b)(iii)(*1*) of this appendix A, including access to any collateral, will be eligible for the risk-based capital treatment described in this paragraph II.B.5(b)(iii) as if it had the same rating as the traded position, if the bank can demonstrate to the FDIC's satisfaction that such treatment is appropriate.

(iv) *Face-amount treatment for direct credit substitutes which are not externally rated.* A direct credit substitute assumed or issued in connection with an asset securitization which does not qualify for face amount treatment under section II.B.5(b)(iii) of this appendix A because it is not externally rated may still qualify for face amount treatment, if the bank determines that the credit risk of the direct credit substitute is equivalent to or better than the external rating category set out at section II.B.5(b)(iii)(*1*)(*d*) of this appendix A (*e.g.*, BB). The face amount of a position which the bank determines is equivalent to or better than the external rating category set out at section II.B.5(b)(iii)(*1*)(*c*) of this appendix A (*e.g.*, BBB) must be assigned to the 100 percent risk category, and a position equivalent to the external rating category set out in section II.B.5(b)(iii)(*1*)(*d*) of this appendix A (*e.g.*, BB) must be assigned to the 200 percent risk category. The bank's determination may only be made pursuant to the following three approaches, the use of which must be satisfactory to the FDIC:

(*1*) *Internal risk ratings for asset-backed commercial paper programs.* A bank, under its internal risk rating system, assigns an internal rating to a direct credit substitute the bank extends to the asset-backed commercial paper program it sponsors, and the rating is equivalent to or better than the rating category set out at section B.5(b)(iii)(*1*)(*d*) of this appendix A (*e.g.*, BB). The internal risk rating system must be satisfactory to the FDIC and must be prudent and appropriate for the size and complexity of the bank's program. Adequate internal risk rating systems typically:

(*a*) are an integral part of an effective risk management system that explicitly incorporates the full range of risks arising from a bank's participation in securitization activities;

(*b*) link the internal ratings to measurable outcomes, such as the probability that the position will experience any loss, the position's expected loss given default, and the degree of variance in losses given default on that position;

(*c*) separately consider the risk associated with the underlying loans or borrowers and the risk associated with the structure of a particular securitization transaction;

(*d*) identify gradations of risk among "pass" assets and other risk positions;

(*e*) have clear, explicit criteria that are used to classify assets into each internal risk grade, including criteria for subjective factors;

(*f*) have independent credit risk management or loan review personnel with adequate training assigning or reviewing the credit risk ratings, subject to internal audit review to verify that ratings are assigned in accordance with the bank's criteria;

(*g*) track the performance of the internal ratings over time and make adjustments to the ratings system when the performance of rated positions has a tendency to diverge from assigned ratings, and adjust individual ratings accordingly; and,

(*h*) are consistent with, or more conservative than, the rating assumptions and methodologies of nationally recognized statistical rating organizations.

(*2*) *Program ratings.* If a nationally recognized statistical rating organization or other entity satisfactory to the FDIC has reviewed the terms of a securitization program and stated a rating for direct credit substitutes to be issued under the program equivalent to or better than the external rating category set out at section II.B.5(b)(iii)(*1*)(*d*) of this appendix A (*e.g.*, BB), a bank may use such a rating for a direct credit substitute the bank issues under the program. If the program has options for different combinations of assets, standards, internal credit enhancements, and other relevant factors, the rating organization or other entity may specify ranges of rating categories that will apply premised on which options correspond to the bank's position. The bank must demonstrate to the FDIC's satisfaction that the program rating meets the same standards generally used by nationally recognized statistical rating organizations for rating traded positions, and that the rating organization's or other entity's underlying premises are satisfied for the particular direct credit substitute issued by the bank.

(*3*) *Credit assessment computer program.* A bank may use an acceptable credit assessment computer program to determine that a direct credit substitute is equivalent to or better than the external rating category set out at section II.B.5(b)(iii)(*1*)(*d*) of this appendix A (*e.g.*, BB). A nationally recognized statistical rating organization or other party satisfactory to the FDIC must have developed the credit assessment system for determining the credit risk of direct credit substitutes and other stratified credit positions. The bank must demonstrate to the FDIC's satisfaction that ratings under such a credit assessment computer program correspond credibly and reliably with the rating of traded positions.

(v) *Determining the credit risk weight for off-balance sheet securitized assets that are subject to early amortization provisions.* If a bank securitizes revolving assets, such as credit cards, home equity lines, or commercial lines of credit, in a transaction that it has sponsored and which includes early amortization provisions, then the bank must maintain risk-based capital against the off-balance sheet securitized assets from the inception of the transaction. An early amortization feature is a provision that, under specified conditions, returns principal to investors prior to the expected payment –

[17] For example, if a bank has a 10 percent share of a $10 syndicated direct credit substitute that provides credit support to a $100 loan to a private obligor, then the bank's $1 *pro rata* share in the enhancement means that a $10 *pro rata* share of the loan is included in the bank's risk weighted assets.

[18] The bank must demonstrate to the FDIC's satisfaction that the ratings are based on the same criteria that the ratings organizations use to rate traded positions.

dates, generally as a result of a deterioration in the portfolio of securitized revolving assets. The securitized, off-balance sheet assets are to be converted to an on-balance sheet credit equivalent amount using the 100 percent conversion factor and the resulting amount is to be assigned to the 20 percent risk category. However, this capital requirement, when combined with the capital requirements for any retained recourse or direct credit substitute associated with the securitized assets, is limited to a total of 8 percent of the managed assets.

(c) *Limitations on risk-based capital requirements*—(i) *Low-level exposure.* If the maximum contractual liability or exposure to loss retained or assumed by a bank in connection with a recourse obligation or a direct credit substitute is less than the effective risk-based capital requirement for the enhanced assets, the risk-based capital requirement is limited to the maximum contractual liability or exposure to loss, less any recourse liability account established in accordance with generally accepted accounting principles. This limitation does not apply to assets sold with implicit recourse.

(ii) *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a bank holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of capital required for the on-balance sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the bank continued to hold these loans as an on-balance sheet asset.

(iii) *Related on-balance sheet assets.* If a recourse obligation or direct credit substitute subject to paragraph B.5. of this section also appears as a balance sheet asset, the balance sheet asset is not included in a bank's risk-weighted assets to the extent the value of the balance-sheet asset is already included in the credit equivalent amount for the recourse obligation or direct credit substitute, except in the case of loan servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In such a case, both the on-balance sheet servicing assets and the related recourse obligations or direct credit substitutes are incorporated into the risk-based capital calculation.

* * * * *

C. * * *

Category 2—20 Percent Risk Weight.

* * * * *

d. This category also includes the credit equivalent amount of off-balance sheet securitized revolving assets in transactions which include early amortization provisions that were sponsored by the bank.

Category 3—50 Percent Risk Weight.

* * * * *

b. * * *[32] * * *

* * * * *

[32] The types of loans that qualify as loans secured by multifamily residential properties are listed in the instructions for preparation of the Consolidated Reports of Condition and Income. In addition, from the standpoint of the selling bank, when a multifamily residential property loan is sold subject to a *pro rata* loss sharing arrangement which provides for the purchaser of the loan to share in any loss incurred on the loan on a *pro rata* basis with the selling bank, that portion of the loan is not subject to the risk-based capital standards. In connection with sales of multifamily residential property loans in which the purchaser of the loan shares in any loss incurred on the loan with the selling institution on other than a *pro rata* basis, the selling bank must treat these other loss sharing arrangements in accordance with section II.B.5. of this appendix A.

Category 4—100 Percent Risk Weight. (a) All assets not included in the categories above, except the assets specifically included in the 200 percent category below, are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

(b) This category includes:

(1) Long-term claims on, and the portions of long-term claims that are guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk;[35]

(2) All claims on foreign and domestic private-sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies);

(3) Claims on commercial firms owned by the public sector;

(4) Customer liabilities to the bank on acceptances outstanding involving standard risk claims;[36]

(5) Investments in fixed assets, premises, and other real estate owned;

(6) Common and preferred stock of corporations, including stock acquired for debts previously contracted;

(7) Commercial and consumer loans (except those assigned to lower risk categories due to recognized guarantees or collateral and loans secured by residential property that qualify for a lower risk weight);

(8) Mortgage- and asset-backed securities that do not meet the criteria for assignment to a lower risk category;

(9) Industrial-development bonds and similar obligations issued under the auspices of states or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest; and

[35] Such assets include all nonlocal currency claims on, and the portions of claims that are guaranteed by, non-OECD central governments and those portions of local currency claims on, or guaranteed by, non-OECD central governments that exceed the local currency liabilities held by the bank.

[36] Customer liabilities on acceptances outstanding involving nonstandard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to U.S. depository institutions or foreign banks are assigned to the 20 percent risk category appropriate to short-term claims guaranteed by U.S. depository institutions and foreign banks.

(10) All obligations of states or political subdivisions of countries that do not belong to the OECD-based group.

(c) The following assets also are assigned a risk weight of 100 percent if they have not already been deducted from capital: investments in unconsolidated companies, joint ventures, or associated companies; instruments that qualify as capital issued by other banks; deferred tax assets; and mortgage servicing assets, nonmortgage servicing assets, and other allowed intangibles.

Category 5—200 Percent Risk Weight. This category includes:

(a) The face amount of externally rated recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities that are rated in the next lower category below the lowest investment grade category, *e.g.*, BB, to the extent permitted in section II.B.5(b)(iii) of this appendix A; and

(b) The face amount of direct credit substitutes for which the bank determines that the credit risk is equivalent to one category below investment grade, *e.g.*, BB, to the extent permitted in section II.B.5.(b)(iii) of this appendix A.

D. * * *

The face amount of an off-balance sheet item is generally incorporated into the risk-weighted assets in two steps. The face amount is first multiplied by a credit conversion factor, except for direct credit substitutes and recourse obligations as discussed in section II.B.5. of this appendix A. The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.[37] Table III to this appendix A sets forth the conversion factors for various types of off-balance-sheet items.

1. Items with a 100 percent conversion factor. (a) Except as otherwise provided in section II.B.5. of this appendix A, the full amount of an asset or transaction supported, in whole or in part, by a direct credit substitute or a recourse obligation. Direct credit substitutes and recourse obligations are defined in section II.B.5. of this appendix A.

(b) Sale and repurchase agreements, if not already included on the balance sheet, and forward agreements. Forward agreements are legally binding contractual obligations to purchase assets with drawdown which is certain at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[38] and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

(c) Securities lent by a bank are treated in one of two ways, depending upon whether

[37] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section II.B. of this appendix A.

[38] Forward forward deposits accepted are treated as interest rate contracts.

the lender is exposed to risk of loss. If a bank, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the securities transaction is excluded from the risk-based capital calculation. On the other hand, if a bank lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor or, if applicable, to the collateral delivered to the lending bank or the independent custodian acting on the lending bank's behalf.

* * * * *

3. In the tables at the end of appendix A to part 325, Table II.—Summary of Risk Weights and Risk Categories:

A. In Category 2—20 Percent Risk Weight, paragraph (11) is removed, paragraph (12) is redesignated as paragraph (11), and new paragraphs (12) and (13) are added;

B. In Category 3—50 Percent Risk Weight, paragraph (3) is revised;

C. In Category 4—100 Percent Risk Weight, paragraph (9) is revised and a new paragraph (10) is added; and

D. Following the paragraph titled Category 4—100 Percent Risk Weight, a new paragraph titled, Category 5—200 Percent Risk Weight, is added to read as follows:

* * * * *

Table II.—Summary of Risk Weights and Risk Categories.

* * * * *

Category 2—20 Percent Risk Weight.

* * * * *

(12) Asset- or mortgage-backed securities (or recourse obligations or direct credit substitutes issued in connection with such securitizations) rated in either of the two highest investment grade categories, *e.g.*, AAA or AA.

(13) The credit equivalent amount of off-balance sheet revolving assets in securitization transactions featuring early amortization provisions sponsored by the bank.

Category 3—50 Percent Risk Weight.

* * * * *

(3) Asset- or mortgage-backed securities (or recourse obligations or direct credit substitutes issued in connection with such securitizations) rated in the third-highest investment grade category, *e.g.*, A.

* * * * *

Category 4—100 Percent Risk Weight.

* * * * *

(9) Asset- or mortgage-backed securities (or recourse obligations or direct credit substitutes issued in connection with such securitizations) rated in the lowest investment grade category, *e.g.*, BBB, as well as certain direct credit substitutes which the bank rates as the equivalent of the lowest investment grade category, *e.g.*, BBB, or above through an internal assessment satisfactory to the FDIC.

(10) All other assets, including any intangible assets that are not deducted from capital, and the credit equivalent amounts[4] of off-balance sheet items not assigned to a different risk category.

Category 5—200 Percent Risk Weight.

Asset- or mortgage-backed securities (or recourse obligations or direct credit substitutes issued in connection with such securitizations) rated one category below investment grade, *e.g.*, BB, as well as certain direct credit substitutes which the bank rates as the equivalent of one category below investment grade, *e.g.*, BB, through an internal assessment satisfactory to the FDIC.

4. In the tables at the end of appendix A to part 325, Table III.—Credit Conversion Factors for Off-Balance Sheet Items:

A. In this table, references to footnote 1 are removed each time they appear and footnote 1 is removed.

B. In 100 Percent Conversion Factor, paragraphs (1) through (3) are revised, and a new paragraph (6) is added, to read as follows:

Table III.—Credit Conversion Factors for Off-Balance Sheet Items.

100 Percent Conversion Factor.

(1) The full amount of assets supported by direct credit substitutes or recourse obligations (unless a different treatment is otherwise specified). For risk participations in such arrangements and acquired by the bank, the full amount of assets supported by the main obligation multiplied by the acquiring bank's percentage share of the risk participation.

(2) Acquisitions of risk participations in bankers acceptances.

(3) Sale and repurchase agreements, if not already included on the balance sheet.

* * * * *

(6) Off-balance sheet revolving assets in securitization transactions featuring early amortization provisions sponsored by the bank.

* * * * *

By Order of the Board of Directors.

Dated at Washington, DC this 9th day of February, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.1 is amended by revising the definitions of direct credit substitute and recourse and adding definitions of covered representations and warranties, credit derivative, financial guarantee-type standby letter of credit, nationally recognized statistical rating organization, performance-based standby letter of credit, rated, securitization, servicer cash advance, standby letter of credit and traded position, to read as follows:

§ 567.1 Definitions.

* * * * *

Covered representations and warranties. The term *covered representations and warranties* means representations and warranties extended by a savings association when it transfers assets (including loan servicing assets) or assumed by a savings association when it purchases loan servicing assets, that obligate the savings association to protect another party from losses due to credit risk in the transferred assets or serviced loans.

Credit derivative. The term *credit derivative* means on- or off-balance sheet notes or contracts that allow one party to transfer the credit risk of a referenced asset, that it may own, to another party. The value of a credit derivative is dependent, at least in part, on the credit performance of the referenced asset.

* * * * *

Direct credit substitute. The term *direct credit substitute* means an arrangement in which a savings association assumes, in form or in substance, any risk of credit loss directly or indirectly associated with an asset or other financial claim owned in whole or in part by another party, that exceeds the association's *pro rata* share of the asset or claim. If the savings association has no claim on the asset, then the assumption of any risk of loss is a direct credit substitute. Direct credit substitutes include:

(1) Financial guarantee-type standby letters of credit that support financial claims on the account party;

(2) Guarantees, surety arrangements, credit derivatives, and irrevocable guarantee-type instruments backing financial claims;

(3) Purchased subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

---

[4] For each off-balance sheet item, a conversion factor (see Table III) must be applied to determine the "credit equivalent amount" prior to assigning the off-balance sheet time to a risk weight category.

(4) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party; and

(5) Purchased loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (other than a servicer cash advance), or if the servicer makes or assumes covered representations and warranties with respect to such loans.

* * * * *

Financial guarantee-type standby letter of credit. The term *financial guarantee-type standby letter of credit* means any letter of credit or similar arrangement, however named or described, that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(1) To repay money borrowed by, advanced to, or for the account of, the account party; or

(2) To make payment on account of any indebtedness undertaken by the account party in the event that the account party fails to fulfill its obligation to the beneficiary.

* * * * *

Nationally recognized statistical rating organization. The term *nationally recognized statistical rating organization* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for various purposes, including the uniform net capital regulations for broker-dealers.

* * * * *

Performance-based standby letter of credit. The term *performance-based standby letter of credit* means any letter of credit, or similar arrangement, however named or described, which represents an irrevocable obligation to the beneficiary on the part of the issuer to make payment on account of any default by a third party in the performance of a nonfinancial or commercial obligation. Such letters of credit include arrangements backing subcontractors' and suppliers' performance, labor and materials contracts, and construction bids.

* * * * *

Rated. The term *rated* means, with respect to an instrument or obligation, that the instrument or obligation has received a credit rating from a nationally recognized statistical rating organization. An instrument or obligation is rated investment grade if it has received a credit rating that falls within one of the four highest rating categories used by the organization. An instrument or obligation is rated in the highest investment grade if it has received a credit rating that falls within the highest rating category used by the organization.

* * * * *

Recourse. The term *recourse* means an arrangement in which a savings association retains, in form or in substance, any risk of credit loss directly or indirectly associated with a transferred asset that exceeds the *pro rata* share of the association's claim on the asset. If a savings association has no claim on a transferred asset, then the retention of any risk of loss is recourse. A recourse obligation typically arises when an institution transfers assets and retains an obligation to repurchase the assets or to absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a savings association provides credit enhancement beyond any contractual obligation to support assets it has sold. Recourse obligations include:

(1) Covered representations and warranties on transferred assets;

(2) Retained loan servicing assets if the servicer is responsible for losses associated with the loans being serviced (other than a servicer cash advance);

(3) Retained subordinated interests or securities, or credit derivatives that absorb more than their *pro rata* share of losses from the underlying assets;

(4) Assets sold under an agreement to repurchase; and

(5) Loan strips sold without direct recourse where the maturity of the transferred loan is shorter than the maturity of the commitment.

* * * * *

Securitization. The term *securitization* means the pooling and repackaging of loans or other credit exposures into securities that can be sold to investors. For purposes of § 567.6(b) of this part, the term *securitization* also includes transactions or programs that generally create stratified credit risk positions, whether in the form of a security or not, whose performance is dependent upon an underlying pool of loans or other credit exposures.

Servicer cash advance. The term *servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection. A servicer cash advance is not a recourse obligation or a direct credit substitute if the servicer is entitled to full reimbursement or, for any single residential mortgage loan, nonreimbursable advances are contractually limited to an insignificant amount of the outstanding principal on that loan.

Standby letter of credit. The term *standby letter of credit* means any financial guarantee-type standby letter of credit or performance-based standby letter of credit.

* * * * *

Traded position. The term *traded position* means a recourse obligation, direct credit substitute, or asset- or mortgage-backed security that is retained, assumed, or issued in connection with an asset securitization and that is rated with a reasonable expectation that, in the near future:

(1) The position would be sold to investors relying on the rating; or

(2) A third party would, in reliance on the rating, enter into a transaction such as a purchase, loan, or repurchase agreement involving the position.

* * * * *

3. Section 567.2 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 567.2 Minimum regulatory capital requirement.

(a) * * *

(1) *Risk-based capital requirement.* (i) A savings associations' minimum risk-based capital requirement shall be an amount equal to 8% of its risk-weighted assets as measured under § 567.6 of this part.

* * * * *

4. Section 567.6 is amended by:

A. Revising paragraph (a) introductory text;

B. Revising paragraph (a)(1) introductory text;

C. Revising paragraph (a)(2) introductory text;

D. Removing and reserving paragraphs (a)(2)(i)(A) and (C);

E. Revising paragraph (a)(2)(i)(B);

F. Revising paragraph (a)(2)(ii)(A);

G. Removing paragraph (a)(3); and

H. Adding paragraph (b) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) *Risk-weighted assets.* Risk-weighted assets equal risk-weighted on-balance-sheet assets (as computed under paragraph (a)(1) of this section), plus risk-weighted off-balance-sheet activities (as computed under paragraph (a)(2) of this section), plus risk-weighted recourse obligations, direct credit substitutes and asset- and mortgage-backed securities (as computed under

paragraph (b) of this section). Assets not included for purposes of calculating capital under § 567.5 are not included in calculating risk-weighted assets.

(1) *On-balance-sheet assets.* Except as provided in paragraph (b) of this section, risk-weighted on-balance-sheet assets are computed by multiplying the on-balance-sheet asset amounts times the appropriate risk weight categories. The risk weight categories for on-balance-sheet assets are:

* * * * *

(2) *Off-balance-sheet activities.* Except as provided in paragraph (b) of this section, risk-weighted off-balance-sheet items are determined by the following two-step process. First, the face amount of the off-balance-sheet item must be multiplied by the appropriate credit conversion factor listed in this paragraph (a)(2). This calculation translates the face amount of an off-balance-sheet exposure into an on-balance-sheet credit-equivalent amount. Second, the credit-equivalent amount must be assigned to the appropriate risk weight category using the criteria regarding obligors, guarantors, and collateral listed in paragraph (a)(1) of this section, *provided* that the maximum risk weight assigned to the credit-equivalent amount of an interest-rate or exchange-rate contract is 50 percent. The following are the credit conversion factors and the off-balance-sheet items to which they apply.

(i) * * *

(B) Risk participations purchased in bank acceptances.

* * * * *

(ii) * * *

(A) Transaction-related contingencies, including, among other things, performance bonds and performance-based standby letters of credit related to a particular transaction;

* * * * *

(b) *Recourse obligations, direct credit substitutes, and asset-and mortgage-backed securities*—(1) *In general.* Except as otherwise provided in this paragraph (b), to calculate the risk-weighted asset amount for a recourse obligation, direct credit substitute, or asset- or mortgage-backed security, multiply the amount of assets from which risk of credit loss is directly or indirectly retained or assumed, by the appropriate risk weight using the criteria regarding obligors, guarantors, and collateral listed in paragraph (a)(1) of this section. For purposes of this paragraph (b), the amount of assets from which risk of credit loss is directly or indirectly retained or assumed means:

(i) For a financial guarantee-type standby letter of credit, surety arrangement, credit derivative, guarantee, or irrevocable guarantee-type instruments, the amount of the assets that the direct credit substitute fully or partially supports;

(ii) For a subordinated interest or security, the amount of the subordinated interest or security plus all more senior interests or securities;

(iii) For mortgage servicing assets that are recourse obligations or direct credit substitutes, the outstanding amount of unpaid principal of the loans serviced;

(iv) For covered representations and warranties, the amount of the assets subject to the representations or warranties;

(v) For loans or lines of credit that provide credit enhancement for the financial obligations of an account party, the amount of the enhanced financial obligations;

(vi) For loans strips, the amount of the loans;

(vii) For assets sold with recourse, the amount of assets from which risk of loss is directly or indirectly retained, less any applicable recourse liability account established in accordance with generally accepted accounting principles; and

(viii) Other types of recourse obligations and direct credit substitutes should be treated in accordance with the principles contained in this paragraph (b).

(2) *Ratings-based approach*—(i) *Calculation.* As an alternative to the calculation described in paragraph (b)(1) of this section, a savings association may calculate the risk-weighted asset amount for eligible recourse obligations, direct credit substitutes, or asset- or mortgage-backed securities described in paragraph (b)(2)(ii) of this section by multiplying the face amount of the position by the risk-weight associated with the applicable rating under the following chart.

Rating category	Risk weight
Highest or second highest investment grade	20%.
Third highest investment grade	50%.
Fourth highest investment grade	100%.
One grade below investment grade	200%.
More than one grade below investment grade or not rated	Risk weight the asset under paragraph (b)(1) of this section.

(ii) *Eligibility.* To be eligible for the treatment described in this paragraph (b)(2), a recourse obligation, direct credit substitute, or asset- or mortgage-backed security must meet one of the following criteria:

(A) *Traded position rated by a rating organization.* (*1*) A traded position is eligible for the risk-based capital treatment described in this paragraph (b)(2), if a nationally recognized statistical rating organization rates the position in one of its five highest grades. If two or more nationally recognized statistical rating organizations assign different ratings to a position, the savings association may use the highest rating as the rating of the position for the purposes of this paragraph (b)(2). If a rating changes, the savings association must use the new rating.

(*2*) If a recourse obligation, direct credit substitute, or asset- or mortgage-backed security or other credit risk position is not rated but is senior in all credit risk related features (including access to any collateral) to a rated, traded position, the savings association may risk weight the position under this paragraph (b)(2) using the rating of the traded position. The savings association must satisfy OTS that this treatment is appropriate.

(B) *Non-traded position rated by two rating organizations.* (*1*) A recourse obligation or direct credit substitute that is not a traded position is eligible for the treatment described in this paragraph (b)(2), if two nationally recognized statistical rating organizations rate the recourse obligation or direct credit substitute in one of their five highest grades. The organizations must apply the same criteria that they use to rate securities that are traded positions and must make the rating publicly available.

(*2*) If two or more national recognized statistical rating organizations assign different ratings to the recourse obligation or direct credit substitute, the savings association must use the second highest rating as the rating of the position for the purposes of this paragraph (b)(2). If a rating changes, the

savings association must use the new rating.

(3) *Internal ratings, qualified structured transactions, and credit assessment computer programs*—(i) *Calculation.* As an alternative to the calculation described in paragraph (b)(1) of this section, a savings association may calculate the risk-weighted asset amount for eligible direct credit substitutes described in paragraph (b)(3)(ii) of this section by multiplying the face amount of the position by the risk-weight associated with the applicable rating under the following chart:

Rating category	Risk weight
Investment grade	100%.
One grade below investment grade	200%.
More than one grade below investment grade or not rated	Risk weight the asset under paragraph (b)(1) of this section.

(ii) *Eligibility.* To be eligible for the treatment described in this paragraph (b)(3), a direct credit substitute must meet one of the following criteria.

(A) *Non-traded position rated internally.* A direct credit substitute assumed or issued in connection with an asset-backed commercial paper program and that is not a traded position is eligible for the treatment described in this paragraph (b)(3), if a savings association that is the sponsor of the program rates the direct credit substitute as investment grade or one category immediately below investment grade. The savings association must use an internal risk weighting system that is satisfactory to OTS. Adequate internal risk rating systems typically:

(*1*) Are an integral part of an effective risk management system that explicitly incorporates the full range of risks arising from the institution's securitization activities.

(*2*) Link ratings to measurable outcomes, such as the probability that the position will experience loss, the expected loss on the position in the event of default, and variance of losses in the event of default on that position;

(*3*) Separately consider the risk associated with the underlying loans or borrowers, and the risk associated with the structure of the particular securitization transaction;

(*4*) Identify gradations of risk even among those assets where no loss is likely as well as other risk positions;

(*5*) Use clear, explicit criteria to classify assets into each internal rating category;

(*6*) Employ independent credit risk management or loan review personnel to assign or review the internal ratings;

(*7*) Include an internal audit procedure to periodically verify that internal risk ratings are assigned in accordance with the savings association's established criteria;

(*8*) Monitor the performance of the assigned internal ratings to determine if the system correctly identified individual ratings and, if appropriate, adjust the rating system and individual ratings; and

(*9*) Use assumptions and methodologies that are consistent with, or more conservative than, the rating assumptions and methodologies used by nationally recognized statistical rating organizations.

(B) *Non-traded positions in approved securitization or structured financing programs.* A direct credit substitute that is not a traded position is eligible for the treatment described in this paragraph (b)(3), if the position is generated through a securitization or structured financing program that is approved by OTS. OTS will not approve the use of a securitization or structured financing program unless the program meets the following minimum criteria and other appropriate prudential standards:

(*1*) A nationally recognized statistical rating organization (or other entity approved by OTS) must review the terms of the program, and state a rating for the direct credit substitutes to be issued under the program. If the program has options for different combinations of assets, standards, internal or external credit enhancements and other relevant factors, the rating organization or other approved entity may specify ranges of rating categories that will be applied based on the options that are utilized in the position.

(*2*) The savings association must demonstrate to OTS' satisfaction that the rating corresponds credibly and reliably with the ratings issued by nationally recognized statistical rating organizations for traded positions, and that the rating organization's or other entity's underlying premises are satisfied by the direct credit substitute.

(*3*) If a savings association participates in a securitization or structured financing program sponsored by another party, OTS may authorize the savings association to use this approach based on the program rating obtained by the sponsor of the program.

(C) *Non-traded position in a structured financing program rated by using qualifying credit assessment computer software.* A direct credit substitute that is not a traded position is eligible for the treatment described in this paragraph (b)(3), if the position is generated through a structured financing program and the position is rated using credit assessment computer software that has been approved by OTS. OTS will not approve the use of credit assessment computer software unless the software meets the following minimum criteria and other appropriate prudential standards:

(*1*) A nationally recognized statistical rating organization (or other entity approved by OTS) developed the computer software for determining the credit ratings of direct credit substitutes and other stratified positions; and

(*2*) The savings association must demonstrate that the ratings generated using the computer software correspond credibly and reliably with the ratings issued by nationally recognized statistical rating organizations for traded positions.

(4) *Alternative capital computation for small business obligations*—(i) *Definitions.* For the purposes of this paragraph (b)(4):

(A) *Qualified savings association* means a savings association that:

(*1*) Is well capitalized as defined in § 565.4 of this chapter without applying the capital treatment described in paragraph (b)(4)(ii) of this section; or

(*2*) Is adequately capitalized as defined in § 565.4 of this chapter without applying the capital treatment described in paragraph (b)(4)(ii) of this section and has received written permission from the OTS to apply that capital calculation.

(B) *Small business* means a business that meets the criteria for a small business concern established by the Small Business Administration in 13 CFR part 121 pursuant to 15 U.S.C. 632.

(ii) *Capital requirement.* With respect to a transfer of a small business loan or lease of personal property with recourse that is a sale under generally accepted accounting principles, a qualified savings association may elect to include

only the amount of its retained recourse in its risk-weighted assets for the purposes of paragraph (b)(1) of this section. To qualify for this election, the savings association must establish and maintain a reserve under generally accepted accounting principles sufficient to meet the reasonable estimated liability of the savings association under the recourse obligation.

(iii) *Aggregate amount of recourse.* The total outstanding amount of recourse retained by a qualified savings association with respect to transfers of small business loans and leases of personal property and included in the risk-weighted assets of the savings association as described in paragraph (b)(4)(ii) of this section, may not exceed 15 percent of the association's total capital computed under § 567.5(c)(4).

(iv) *Savings association that ceases to be a qualified savings association or that exceeds aggregate limits.* If a savings association ceases to be a qualified savings association or exceeds the aggregate limit described in paragraph (b)(4)(iii) of this section, the savings association may continue to apply the capital treatment described in paragraph (b)(4)(ii) of this section to transfers of small business loans and leases of personal property that occurred when the association was a qualified savings association and did not exceed the limit.

(v) *Prompt corrective action not affected.* (A) A savings association shall compute its capital without regard to this paragraph (b)(4) of this section for purposes of prompt corrective action (12 U.S.C. 1831o), unless the savings association is adequately or well capitalized without applying the capital treatment described in this paragraph (b)(4) and would be well capitalized after applying that capital treatment.

(B) A savings association shall compute its capital requirement without regard to this paragraph (b)(4) for the purposes of applying 12 U.S.C. 1381o(g), regardless of the association's capital level.

(5) *Risk participations and syndications of direct credit substitutes.* Except as otherwise provided in this paragraph (b) and subject to the low level recourse rule, a savings association must calculate the risk-weighted asset amount for a risk participation in, or syndication of, a direct credit substitute as described below. For the purposes of this paragraph (b)(5), in a risk participation the originator of the participation remains liable to the beneficiary for the full amount of the direct credit substitute, even though another party may have acquired a participation in the obligation:

(i) Where a savings association conveys a risk participation, the savings association must risk weight the full amount the assets supported, in whole or in part, by the direct credit substitute. The savings association must assign a percentage share (*i.e.*, the percentage of the direct credit substitute that is conveyed) of these assets to the lower of: the risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral; or the risk-weight category appropriate to the entity acquiring the participation. The remainder of the assets supported, in whole or in part, by the direct credit substitute, must be assigned to the risk-weight category appropriate to the obligor, guarantor or collateral.

(ii) If a savings association acquires a risk participation in a direct credit substitute, the savings association must multiply a percentage share (*i.e.* the percentage of the direct credit substitute that is acquired) by the full amount the assets supported, in whole or in part, by the direct credit substitute. The savings association must assign this amount to the risk-weight category appropriate to the account party obligor, guarantor or collateral.

(iii) If the savings association holds a direct credit substitute as a part of a syndication and it is obligated only for its *pro rata* share of the risk of loss on the direct credit substitute and there is no recourse to the originating entity, the savings association must assign its share of the assets supported, in whole or in part, by the direct credit substitute to the risk-weight category appropriate to the obligor, guarantor or collateral.

(6) *Limitations on risk-based capital requirements*—(i) *Low-level recourse.* If the maximum contractual liability or exposure to credit loss retained or assumed by a savings association in connection with a recourse obligation or a direct credit substitute calculated under paragraphs (b)(1) through (5) of this section is less than the effective risk-based capital requirement for the enhanced assets, the risk-based capital requirement is limited to the maximum contractual liability or exposure to loss, less any recourse liability account established in accordance with generally accepted accounting principles. This limitation does not apply to assets sold with implicit recourse.

(ii) *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a savings association holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of capital required for the on-balance-sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the savings association continued to hold these loans as an on-balance-sheet asset.

(iii) *Related on-balance-sheet assets.* To the extent that an asset may be included in the calculation of risk-weighted on-balance-sheet assets under paragraph (a)(1) of this section and may also be included in the calculation of risk-weighted assets under this paragraph (b), the savings association should risk-weight the asset only under this paragraph (b), except mortgage servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In such cases, the mortgage servicing asset is risk weighted as an on-balance-sheet asset under paragraph (a)(1) of this section and the related recourse obligations and direct credit substitutes are risk-weighted under this paragraph (b).

(7) *Obligations of subsidiaries.* If a savings association retains a recourse obligation or assumes a direct credit substitute on the obligation of a subsidiary that is not an includable subsidiary, and the recourse obligation or direct credit substitute is an equity or debt investment in that subsidiary under generally accepted accounting principles, the face amount of the recourse obligation or direct credit substitute is deducted for capital under §§ 567.5(a)(2) and 567.9(c). All other recourse obligations and direct credit substitutes retained or assumed by a savings association on the obligations of an entity in which the savings association has an equity investment are risk-weighted in accordance with this paragraph (b).

(8) *Addition to risk-weighted assets—managed assets.* (i) A savings association must include an additional amount in the risk-weighted asset amount calculated under this paragraph (b), if:

(A) The savings association sells assets to a revolving securitization (*e.g.*, credit card receivables or home equity line securitizations) with an early amortization feature. An early amortization feature is a provision that, under specified conditions, terminates the ability of the savings association to add new receivables or debt to the securitization, and requires the savings

association to use any payments received from the debtors to pay down the receivables or debts previously included in the securitization; and

(B) The savings association is the sponsor of the revolving securitization.

(ii) The additional amount is equal to the face amount of the assets that the savings association sells to the revolving securitization less the face amount of any recourse obligation or direct credit substitute that the savings association retains or assumes in connection with the sale of the asset, multiplied by a 20 percent risk weight.

5. Section 567.11 is amended by redesignating paragraph (c) as paragraph (c)(1) and adding a new paragraph (c)(2) to read as follows:

§ 567.11 Reservations of authority.

* * * * *

(c) * * *

(2) If a savings association has calculated the risk-weighted asset amount for a recourse obligation, a direct credit substitute or an asset under § 567.6(b), OTS may determine that risk-weighted asset amount does not adequately reflect the credit risk that the savings association assumed or retained in the transaction and require the institution to revise the risk-weighted asset amount to reflect the risk of, and other relevant factors associated with, the recourse obligation, direct credit substitute or asset.

Dated: February 9, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–4211 Filed 3–7–00; 8:45 am]

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March 8, 2000

Part III

Securities and Exchange Commission

17 CFR Part 248

Privacy of Consumer Financial Information (Regulation S–P); Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR part 248

[Release Nos. 34–42484, IC–24326, IA–1856; File No. S7–6–00]

RIN 3235–AH90

Privacy of Consumer Financial Information (Regulation S–P)

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission requests comment on proposed Regulation S–P, privacy rules published under section 504 of the Gramm-Leach-Bliley Act. Section 504 requires the Commission and other federal agencies to adopt rules implementing notice requirements and restrictions on the ability of certain financial institutions to disclose nonpublic personal information about consumers to nonaffiliated third parties. Under the Gramm-Leach-Bliley Act, a financial institution must provide its customers with a notice of its privacy policies and practices, and must not disclose nonpublic personal information about a consumer to nonaffiliated third parties unless the institution provides certain information to the consumer and the consumer has not elected to opt out of the disclosure. The Gramm-Leach-Bliley Act also requires the Commission to establish for financial institutions appropriate standards to protect customer information. The proposed rules implement these requirements of the Gramm-Leach-Bliley Act with respect to financial institutions subject to the Commission's jurisdiction under that Act.

DATES: Comments must be received by March 31, 2000.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–6–00; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: For information regarding the proposed rules as they relate to brokers or dealers, contact George Lavdas, Office of Chief Counsel, at the Division of Market Regulation, (202) 942–0073, or regarding the proposed rules as they relate to investment companies or investment advisers, Penelope W. Saltzman, Office of Regulatory Policy, (202) 942–0690, at the Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") today is proposing for public comment new Regulation S–P, 17 CFR 248.1–248.30, under the Gramm-Leach-Bliley Act [Pub. L. No. 106–102, 113 Stat. 1338 (1999), to be codified at 15 U.S.C. 6801–6809], the Securities Exchange Act of 1934 [15 U.S.C. 78a] ("Exchange Act"), the Investment Company Act of 1940 [15 U.S.C. 80a] ("Investment Company Act"), and the Investment Advisers Act of 1940 [15 U.S.C. 80b] ("Investment Advisers Act").

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I. Background

On November 12, 1999, President Clinton signed the Gramm-Leach-Bliley Act ("G–L–B Act") [1] into law. Subtitle A of Title V of the Act, captioned "Disclosure of Nonpublic Personal Information" ("Title V") limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and requires a financial institution to disclose to all of its customers the institution's privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties. Title V also requires the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision (collectively, the "banking agencies"), Secretary of the Treasury, National Credit Union Administration, Federal Trade Commission (collectively with the banking agencies, the "Agencies"), and the Commission, after consulting with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, to prescribe such regulations as may be necessary to carry out the purposes of the provisions in Title V that govern disclosure of nonpublic personal information.

Commission representatives participated with representatives from the Agencies in drafting proposed rules to implement Title V. As is required by the G–L–B Act, the rules we are proposing today are, to the extent possible, consistent with and comparable to the rules proposed by the Agencies. Proposed Regulation S–P contains rules of general applicability that are substantially similar to the rules proposed by the banking agencies.[2] The proposed rules also contain examples that illustrate the application of the general rules. These examples differ from those used by the banking agencies in order to provide more meaningful guidance to the financial institutions subject to the Commission's jurisdiction.

Title V also requires the Commission (and each of the Agencies) to establish appropriate standards for financial institutions subject to their jurisdiction to safeguard customer information and records. The rules we are proposing today include requirements for brokers, dealers, and investment companies, as well as investment advisers registered with the Commission ("registered investment advisers"), to adopt appropriate policies and procedures that address safeguards to protect this information.

We request comment on all aspects of the proposed rules as well as comment on the specific provisions and issues highlighted in the section-by-section analysis below. We specifically request comment on the proposed examples and on any additional examples that would be helpful.

II. Section-by-Section Analysis

Section 248.1 Purpose and Scope

Proposed paragraph (a) of section 248.1 identifies three purposes of the

[1] Pub. L. 106–102, 113 Stat. 1338 (1999) (to be codified at 15 U.S.C. 6801–6809).

[2] 2. *See* G–L–B Act § 504(a). The banking agencies published a joint release proposing rules to implement Title V earlier this month. Privacy of Consumer Financial Information, 65 FR 8770 (Feb. 22, 2000) ("Banking Agencies" Proposal"). The Federal Trade Commision proposed its privacy rules on February 24, 2000 [Privacy of Consumer Financial Information, available at <www.ftc.gov>]. The National Credit Union Administration approved its rule proposal the same day [Privacy of Consumer Financial Information, Requirements for Insurance, available at <www.ncua.gov>].

rules. First, the rules require a financial institution to provide notice to consumers about the institution's privacy policies and practices. Second, the rules describe the conditions under which a financial institution may disclose nonpublic personal information about a consumer to a nonaffiliated third party. Third, the rules provide a method for a consumer to "opt out" of the disclosure of that information to nonaffiliated third parties, subject to certain exceptions discussed below.

Proposed paragraph (b) sets out the scope of the Commission's rules and lists the entities subject to the Commission's enforcement jurisdiction under section 505(a) of the G–L–B Act.[3] This paragraph notes that the rules apply only to information about individuals who obtain a financial product or service from a financial institution to be used for personal, family, or household purposes.

We note that other federal, State, or applicable foreign laws may impose limitations on disclosures of nonpublic personal information in addition to those imposed by the G–L–B Act and these proposed rules.[4] Thus, financial institutions will need to monitor and comply with relevant legislative and regulatory developments that affect the disclosure of consumer information.

Section 248.2 Rule of Construction

Proposed section 248.2 sets out a rule of construction intended to clarify the effect of the examples used in the rules. Given the wide variety of transactions that Title V covers, the proposal would include rules of general applicability and provide examples that are intended to assist financial institutions in complying with the rule. These examples are not intended to be exhaustive; rather, they are intended to provide guidance about how the rules are likely to apply in specific situations.[5] We invite comment on whether including examples in the rule is useful, and suggestions on additional or different examples that may be helpful in providing guidance as to the applicability of the rule.

Section 248.3 Definitions

(a) *Affiliate.* The proposed rules incorporate the definition of "affiliate" used in section 509(6) of the G–L–B Act. A broker, dealer, investment company, or registered investment adviser will be considered affiliated with another company if it "controls," is controlled by, or is under common control with the other company.[6] The definition includes both financial institutions and entities that are not financial institutions.

The Commission's definition of control differs from the definition adopted by the Agencies.[7] The proposed rules also provide that a broker, dealer, investment company, or registered investment adviser will be considered an affiliate of another company for purposes of the privacy rules if: (i) the other company is regulated under Title V by one of the Agencies and (ii) the privacy rules adopted by that Agency treat the broker, dealer, investment company, or registered investment adviser as an affiliate of the other company.[8]

(b) *Broker.* For purposes of this part, the term "broker" is defined to have the same meaning as in section 3(a)(4) of the Exchange Act,[9] whether or not the institution is registered under section 15(b) of the Exchange Act.[10] The term includes a municipal securities broker as defined in section 3(a)(31) of the Exchange Act,[11] whether or not it is registered under section 15(b) of the Exchange Act.[12] The definition also includes a government securities broker as defined in section 3(a)(43) of the Exchange Act [13] (other than a bank as defined in section 3(a)(6) of the Exchange Act [14]) whether or not the broker is registered under sections 15(b) or 15C(a)(2) of the Exchange Act.[15]

(c) *Clear and conspicuous.* Title V and the proposed rules require that various notices be "clear and conspicuous." The proposed rules define this term to mean that the notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice.

The proposed rules do not mandate the use of any particular technique for making the notices clear and conspicuous, but instead allow each financial institution the flexibility to decide for itself how best to comply with this requirement. A notice could satisfy the clear and conspicuous standard, for instance, by using a plain-language caption, in a type set easily read, that is designed to call attention to the information contained in the notice. Other plain language principles are provided in the examples that follow the general rule.

(d) *Collect.* The proposed rules define "collect" to mean obtaining any

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[3] Section 505(a) of the G–L–B Act requires the Commission to enforce the G–L–B Act and regulations adopted under the Act as follows: with respect to brokers and dealers under the Exchange Act, with respect to investment companies under the Investment Company Act, and with respect to investment advisers registered with the Commission under the Investment Advisers Act. Therefore, in addition to its authority under section 504 of the G–L–B Act, the Commission is proposing this part under its rulemaking authority under the Exchange Act, the Investment Company Act, and the Investment Advisers Act. Financial institutions subject to this part would also be subject to the Commission's enforcement of this part under those statutes.

[4] For example, an investment adviser may be subject to fiduciary principles under state law that impose additional limits on the adviser's ability to disclose information about its customers to any third party. *See* Restatement (Second) of Agency § 395 (an agent is subject to a duty to the principal not to use or to communicate information confidentially given him by the principal or acquired by him during the course of his agency); *General Acquisition, Inc.* v. *Gencorp Inc.*, 766 F.Supp. 1460, 1475 (S.D. Ohio 1990) ("[I]t is well settled that a fiduciary is under a duty not to disclose or use for his own benefit confidential information acquired in the course of its fiduciary relationship").

[5] The banking agencies' proposal provides that, to the extent applicable, compliance with the examples would constitute compliance with the applicable rule. *See, e.g.*, Banking Agencies' Proposal, proposed §§ 40.2, 216.2, 332.2, 573.2. The examples in our proposed rules, however, would not provide the same safe harbor. The examples are intended to describe ordinary situations that would comply with the applicable rule, but the particular facts and circumstances relating to each specific situation will determine whether compliance with an example constitutes compliance with the rule.

[6] We have defined "control" for purposes of brokers, dealers, investment companies, and registered investment advisers to mean the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. In addition, ownership of more than 25 percent of a company's voting securities creates a presumption of control of the company. *See infra* discussion of proposed section 248.3(i).

[7] Under the Banking Agencies' Proposal, for example, control means ownership of 25 percent of a company's voting securities, control over the election of a majority of the directors, trustees or general partners of the company, or the power to exercise a controlling influence over management or policies of a company, as determined by the particular agency. *See, e.g.*, Banking Agencies' Proposal, proposed §§ 40.3(g), 216.3(g), 332.3(g), 573.3(g).

[8] Proposed § 248.3(a)(1)–(2). This part of the proposed definition is designed to prevent the disparate treatment of affiliates within a holding company structure. Without this provision, a broker-dealer in a bank holding company structure might not be considered affiliated with another entity in that organization under the Commission's proposed rules, even though the two entities would be considered affiliated under the Banking Agencies' Proposal.

[9] 15 U.S.C. 78c(a)(4).

[10] 15 U.S.C. 78o(b).

[11] 15 U.S.C. 78c(a)(31).

[12] 15 U.S.C. 78o(b).

[13] 15 U.S.C. 78c(a)(43).

[14] 15 U.S.C. 78c(a)(6). For purposes of this definition and the definition of "dealer" (*see* proposed § 248.3(l)), the term "bank" does not include a foreign bank (as that term is defined in section 1(b)(7) the International Banking Act of 1978, 12 U.S.C. 3101(7)) or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)) the deposits of which are insured by the Federal Deposit Insurance Corporation.

[15] 15 U.S.C. 78o(b), 78o–5(a)(2).

information that is organized or retrievable on a personally identifiable basis, irrespective of the source of the underlying information. Several sections of the proposed rules impose obligations that arise when a financial institution collects information about a consumer.[16] This proposed definition clarifies that these obligations arise when the information enables the user to identify a particular consumer. It also clarifies that the obligations arise regardless of whether the financial institution obtains the information from a consumer or from some other source.

(f) *Company.* The proposed rules define "company," which is used in the definition of "affiliate," as any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(g) *Consumer.* The proposed rules define "consumer" to mean an individual who obtains, from a financial institution, financial products or services that are to be used primarily for personal, family, or household purposes. An individual also will be deemed to be a consumer for purposes of a financial institution if that institution purchases the individual's account from some other institution. The definition also includes the legal representative of an individual.

The G–L–B Act distinguishes "consumers" from "customers" for purposes of the notice requirements imposed by the Act. As explained below in the discussion of proposed section 248.4, a financial institution must give a "consumer" the notices required under Title V only if the institution intends to disclose nonpublic personal information about the consumer to a nonaffiliated third party for a purpose that is not authorized by one of several exceptions set out in proposed sections 248.10 and 248.11. By contrast, a financial institution must give all "customers," at the time of establishing a customer relationship and annually thereafter during the continuation of the customer relationship, a notice of the institution's privacy policy.

A person is a "consumer" under the proposed rules if he or she obtains a financial product or service from a financial institution. The definition of "financial product or service" in proposed section 248.3(n) includes, among other things, a financial institution's evaluation of an individual's application to obtain a financial product or service. Thus, a financial institution that intends to share nonpublic personal information about a consumer with nonaffiliated third parties outside of the exceptions described in sections 248.10 and 248.11 will have to give the requisite notices, even if the consumer does not enter into a customer relationship with the institution.

The examples that follow the definition of "consumer" explain when someone is a consumer. The examples clarify that a consumer includes someone who provides nonpublic personal information in connection with seeking to obtain brokerage or investment advisory services, but does not include someone who provides only name, address, and areas of investment interest in order to obtain a prospectus, investment adviser brochure, or other information about a financial product.[17] An individual who has an account with an introducing broker and whose securities are carried by a clearing broker in a special omnibus account in the name of the introducing broker is not a consumer for purposes of the clearing broker if it receives no nonpublic personal information about the consumer. Similarly, investment company shareholders who are not the record owners of their shares would not be consumers for purposes of the investment company.[18]

(h) *Consumer reporting agency.* The proposed rules incorporate the definition of "consumer reporting agency" in section 603(f) of the Fair Credit Reporting Act.[19] This term is used in proposed sections 248.11 and 248.13.

(i) *Control.* The proposed rules define "control" for purposes of brokers, dealers, investment companies, and registered investment advisers to mean the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise.[20] In addition, ownership of more than 25 percent of a company's voting securities creates a presumption of control of the company.[21] This definition is used to determine when companies are affiliated,[22] and would result in financial institutions being considered as affiliates regardless of whether the control is exercised by a company or individual.

(j) *Customer.* The proposed rules define "customer" as any consumer who has a "customer relationship" with a particular financial institution. As explained more fully in the discussion of proposed section 248.4 below, a consumer becomes a customer of a financial institution when he or she enters into a continuing relationship with the institution. For example, a consumer would become a customer when he or she enters into an investment advisory contract (whether written or oral), completes the documents needed to open a brokerage account, or purchases shares of an investment company in his or her own name.

The distinction between consumers and customers determines the notices that a financial institution must provide. If a consumer never becomes a customer, the institution is not required to provide any notices to the consumer unless the institution intends to disclose nonpublic personal information about that consumer to nonaffiliated third parties (outside of the exceptions as set out in sections 248.10 and 248.11). By contrast, if a consumer becomes a customer, the institution must provide a copy of its privacy policy before it establishes the customer relationship and at least annually during the continuation of the customer relationship.

(k) *Customer relationship.* The proposed rules define "customer relationship" as a continuing relationship between a consumer and a financial institution in which the institution provides a financial product or service that is to be used by the consumer primarily for personal, family, or household purposes. Because the G–L–B Act requires annual notices of the financial institution's privacy policies to its customers, we have interpreted the Act as requiring more than isolated transactions between a financial institution and a consumer to establish a customer relationship, unless it is reasonable to expect further contact about that transaction between the institution and consumer afterwards. Thus, the proposed rules define "customer relationship" as one that generally is of a continuing nature. As noted in the examples that follow the definition, this would include a brokerage account or investment advisory relationship. A broker would have a customer relationship with a consumer when the broker regularly effects securities transactions for the

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[16] *See, e.g.*, proposed §§ 248.6, 248.7.

[17] Individuals may provide this information, for example, on "tear-out" cards from magazines, or in telephone or Internet requests for prospectuses or brochures.

[18] *See also infra* discussion of proposed section 248.3(k) (definition of "customer relationship").

[19] 15 U.S.C. 1681a(f).

[20] *See, e.g.*, 17 CFR 240.19g2–1(b)(2).

[21] This presumption may be rebutted by evidence, but, in the case of an investment company, will continue until the Commission makes a decision to the contrary according to the procedures described in section 2(a)(9) of the Investment Company Act [15 U.S.C. 80a–2(a)(9)].

[22] *See* discussion of proposed § 248.3(a), *supra*.

customer, even if the broker holds none of the customer's assets.

A one-time transaction may be sufficient to establish a customer relationship, depending on the nature of the transaction. The examples that follow the definition of "customer relationship" clarify that an individual's purchase of securities through a broker with whom the customer opens an account would be sufficient to establish a customer relationship because of the continuing nature of the service. The individual would be a customer even if the account is established only to hold securities or other assets as collateral for a loan made by another institution. By contrast, an individual who purchases securities through a broker would not be the broker's customer if the broker provides the service as an accommodation but does not open an account for the individual.[23] Similarly, a consumer does not become a broker's customer when the broker liquidates securities for the consumer on a one-time basis.

The examples also clarify that a consumer will have a customer relationship with an investment company whose shares the consumer owns in his or her own name, even if the consumer purchased those shares through a broker or investment adviser. In that case, the individual will be a customer of both the broker or investment adviser who sold the shares *and* the investment company. Similarly, an introducing broker's customer will also be a customer of the broker that clears customer transactions for the introducing broker on a fully disclosed basis.

(l) *Dealer.* The proposed rules define the term "dealer" to have the same meaning as in section 3(a)(5) of the Exchange Act,[24] whether or not the dealer is registered under section 15(b) of the Exchange Act. The term includes a municipal securities dealer as defined in section 3(a)(30) of the Exchange Act,[25] other than a bank (as defined in section 3(a)(6) of the Exchange Act[26]), whether or not the dealer is registered under sections 15(b) or 15B(a)(2) of the Exchange Act. The term also includes a government securities dealer as defined in section 3(a)(44) of the Exchange Act,[27] whether or not the dealer is registered under sections 15(b) or 15C(a)(2) of the Exchange Act.

(m) *Financial institution.* The proposed rules define "financial institution" as any institution the business of which is engaging in activities that are financial in nature, or incidental to such financial activities, as described in section 4(k) of the Bank Holding Company Act of 1956 ("Bank Holding Company Act"),[28] including brokers, dealers, investment companies, and registered investment advisers. The proposed rules also exempt from the definition of "financial institution" those entities specifically excluded by the G–L–B Act.

(n) *Financial product or service.* The proposed rules define "financial product or service," for purposes of Regulation S–P only, as a product or service that a financial institution could offer as an activity that is financial in nature, or incidental to such a financial activity, under section 4(k) of the Bank Holding Company Act. An activity that is complementary to a financial activity, as described in section 4(k), is not included in the definition of "financial product or service" under this part. The proposed definition includes the financial institution's evaluation of information collected in connection with an application by a consumer for a financial product or service even if the application ultimately is rejected or withdrawn. It also includes the distribution of information about a consumer for the purpose of assisting the consumer to obtain a financial product or service. To avoid confusion as to whether an investment company shareholder is an owner or a customer of the institution, the proposed definition clarifies that, for purposes of this regulation, the term "financial product" includes shares of an investment company.

(p) *Government regulator.* The proposed rules define "government regulator" to include the Commission and each of the Agencies and State insurance authorities. This term is used in two places. First, the term is used in proposed section 248.3(a), the definition of "affiliate." Second, the term is used in the exception set out in proposed section 248.11(a)(4) for disclosures to law enforcement agencies, "including government regulators."

(q) *Investment adviser.* The proposed definition incorporates the definition of investment adviser in section 202(a)(11) of the Investment Advisers Act.[29]

(r) *Investment company.* The proposed definition incorporates the meaning of investment company in section 3 of the Investment Company Act, whether or not the investment company is registered with the Commission.[30] The definition also clarifies that the term includes a separate series of an investment company.

(s) *Nonaffiliated third party.* Paragraph (1) of the proposed definition of "nonaffiliated third party" provides that the term means any person (which is defined in proposed section 248.3(u) and includes natural persons as well as legal entities such as corporations, partnerships, and trusts) except (i) an affiliate of a financial institution, and (ii) a joint employee of a financial institution and a third party. This paragraph is intended to be substantively the same as the definition used in section 509(5) of the G–L–B Act.

(t) *Nonpublic personal information.* Section 509(4) of the G–L–B Act defines "nonpublic personal information" to mean "personally identifiable financial information" (which the Act does not define) that (i) is provided by a consumer to a financial institution, (ii) results from any transaction with the consumer or any service performed for the consumer, or (iii) is otherwise obtained by the financial institution. "Nonpublic personal information" also includes any list, description, or other grouping of consumers—and "publicly available information" pertaining to them—that is derived using any nonpublic personal information.

The proposed rules implement this provision of the G–L–B Act by restating, in paragraph (1) of proposed section 248.3(t), the general categories of information described above. Paragraph (2) provides that "nonpublic personal information" does not include publicly available information when the information is part of a list, description, or other grouping of consumers that is derived without using personally identifiable financial information.[31] The definition also excludes any other publicly available information, unless the information is part of a list, description, or other grouping of consumers that is derived using

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[23] The individual would, however, be a consumer for purposes of the broker, which would require the broker to provide notices *if* it intends to disclose nonpublic personal information about the consumer to nonaffiliated third parties outside of the exceptions.

[24] 15 U.S.C. 78c(a)(5).

[25] 15 U.S.C. 78c(a)(30).

[26] *See supra* note 14.

[27] 15 U.S.C. 78c(a)(44).

[28] 12 U.S.C. 1843(k).

[29] 15 U.S.C. 80b–2(a)(11).

[30] 15 U.S.C. 80a–3. Thus, a business development company, which is an investment company but is not required to register with the Commission, would be subject to this part. *See* 15 U.S.C. 80a–2(a)(48).

[31] Nonpublic personal information does include publicly available information that is disclosed in a manner that otherwise indicates the individual is a financial institution's consumer. *See* proposed § 248.3(t)(2)(i). We believe that, in most cases, sharing information (including publicly available information) about a consumer with a third party identifies the individual as the institution's consumer.

personally identifiable financial information.

We invite comment on whether the definition of "nonpublic personal information" should cover information about a consumer that contains no indicators of a consumer's identity. For example, if a broker provided aggregate information about its brokerage accounts (such as securities transaction information) to a nonaffiliated third party for the purpose of preparing market studies, should the broker, without giving notice or opportunity to opt out to the consumer, be permitted to do so if the information contains no personal identifiers?

(v) *Personally identifiable financial information.* As discussed above, the G–L–B Act defines "nonpublic personal information" to include, among other things, "personally identifiable financial information" but does not define the latter term. As a general matter, the proposed rules treat any personally identifiable information as financial if the financial institution obtains the information in connection with providing a financial product or service to a consumer. We believe that this approach reasonably interprets the word "financial" and creates a workable and clear standard for distinguishing information that is financial from other personal information. This interpretation would cover a broad range of personal information provided to a financial institution, including, for example, information about the consumer's health.

The proposed rules define "personally identifiable financial information" to include three categories of information. The first category includes any information that a consumer provides a financial institution in order to obtain a financial product or service from the institution. As noted in the examples that follow the definition, this would include information provided when opening a brokerage account, entering into an investment advisory contract, or obtaining a margin loan or a financial plan. If, for example, a consumer provides medical information on an application to obtain a financial product or service (such as a variable life insurance contract offered by an insurance company separate account), that information would be considered "personally identifiable financial information" for purposes of the proposed rules. Similarly, information that may be required for financial planning purposes, including details about retirement and family obligations, such as the care of a disabled child, would be covered by the definition.

The second category includes any information about a consumer resulting from any transaction between the consumer and the financial institution involving a financial product or service. This would include, as noted in the examples following the definition, information about account balance, payment or overdraft history, credit or debit card purchases, securities positions, or financial products purchased or sold.

The third category includes any financial information about a consumer otherwise obtained by the financial institution in connection with providing a financial product or service.

This would include, for example, information obtained from a consumer report or from an outside source to verify information a consumer provides on an application to obtain a financial product or service. It would not, however, include information that is publicly available (unless, as previously noted, the information is part of a list of consumers that is derived using personally identifiable financial information).

The examples clarify that the definition of "personally identifiable financial information" does not include a list of names and addresses of people who are customers of an entity that is not a financial institution. Thus, the names and addresses of people who subscribe, for instance, to a particular magazine would fall outside the definition. The Commission seeks comment on whether further definition of "personally identifiable financial information" would be helpful.

(w) *Publicly available information.* The proposed rules define "publicly available information" as information the financial institution reasonably believes is lawfully made available to members of the general public from three broad types of sources.[32] First, it includes information from official public records, such as real estate recordations or security interest filings. Second, it includes information from widely distributed media, such as a telephone book, radio program, or newspaper. Third, it includes information from disclosures required to be made to the general public by federal, State, or local law, such as securities disclosure documents. The proposed rules state that information obtained over the Internet will be considered publicly available information if the information is obtainable from a site available to the general public without requiring a password or similar restriction. The Commission invites comment on what information is appropriately considered publicly available, particularly in the context of information available over the Internet.

The proposed rules treat information as publicly available if it **COULD** be obtained from one of the public sources listed in the rules. If an institution reasonably believes the information is lawfully made available to the general public from one of the listed public sources, then the information will be considered publicly available and excluded from the scope of "nonpublic personal information," whether or not the institution obtains it from a publicly available source (unless, as previously noted, it is part of a list of consumers that is derived using personally identifiable financial information). Under this approach, the fact that a consumer has given information to a financial institution would not automatically extend to that information the protections afforded to nonpublic personal information.

The Commission invites comment on whether the proposed definition of "publicly available information" should treat information that is publicly available as nonpublic if the institution does not *obtain* the information from a listed public source ("alternative definition").[33] In many cases, the proposed definition and the alternative definition would result in the same treatment of information that may be publicly available. For example, under either definition, names and addresses that are publicly available would be treated as nonpublic personal information if they appear in a customer list. An institution that intends to share a customer list containing that information with nonaffiliated third parties would have to comply with the proposed rule's notice and opt out requirements. The alternative definition could, however, result in different notice and opt out requirements when an institution shares information available from public sources about individual customers. In that situation the proposed definition would not require the institution to comply with notice and opt out requirements as long

[32] We recognize that some information that is available to the general public may have been published illegally. In some cases, such as a list of customer account numbers posted on a web site, the publication will be obviously unlawful. In other cases, the legality of the publication may be unclear or unresolved. The proposed rule would provide that information is "publicly available" if the institution reasonably believes that informaiton is lawfully available to the public.

[33] The Banking Agencies Proposal (other than the Federal Reserve Board, which proposed the same definition as the Commission) includes this alternative definition. *See, e.g.*, Banking Agencies' Proposal, proposed §§ 40.3(n)–(p), 573.3(n)–(p), Alternatives A and B.

as the institution did not share the information in a manner that would indicate that the individual is or had been the institution's customer. The alternative definition, however, would require compliance with the notice and opt out requirements because the institution did not obtain the information from a public source.

(q) *You.* The term "you" is used in order to make the rules easier to understand and use. The proposed definition refers to the entities within the Commission's jurisdiction under Title V. The term includes brokers, dealers, investment companies, and registered investment advisers.

Section 248.4 Initial Notice to Consumers of Privacy Policies and Practices Required

Initial notice required. The G–L–B Act requires a financial institution to provide an initial notice of its privacy policies and practices in two circumstances. For customers, the notice must be provided at the time of establishing a customer relationship. For consumers who do not (or have not yet) become customers, the notice must be provided before disclosing nonpublic personal information about the consumer to a nonaffiliated third party.

Paragraph (a) of proposed section 248.4 states the general rule regarding these notices. A financial institution must provide a clear and conspicuous [34] notice that accurately reflects the institution's privacy policies and practices. Thus, a financial institution must maintain the protections that the notice represents the institution will provide. The Commission expects that brokers, dealers, investment companies, and registered investment advisers will take appropriate measures to adhere to their stated privacy policies and practices.

The proposed rules do not prohibit two or more institutions from providing a joint initial, annual, or opt out notice, as long as the notice is delivered in accordance with the rule and is accurate for all recipients. For example, institutions that could give a joint initial, annual, or opt out notice include: (i) An introducing broker and its clearing broker (that clears on a fully disclosed basis) and (ii) an investment company and a broker-dealer that distributes its shares. The rules also do not preclude an institution from establishing different privacy policies and practices for different categories of consumers, customers, or products, if each particular consumer or customer receives a notice that is accurate with respect to that individual.

Notice to customers. The proposed rules require that a financial institution provide an individual a privacy notice prior to the time that it establishes a customer relationship. Thus, the notices may be provided at the same time a financial institution is required to give other notices, such as the requirement that credit terms in margin transactions be disclosed under Exchange Act rule 10b–16,[35] or that customers be notified in writing of the existence of a carrying or clearing arrangement for accounts introduced on a fully disclosed basis to another broker, under rules applicable to members of the New York Stock Exchange and National Association of Securities Dealers.[36] This approach is intended to strike a balance between (i) ensuring that consumers will receive privacy notices at a meaningful point when "establishing a customer relationship" and (ii) minimizing unnecessary burdens on financial institutions that may result if a financial institution is required to provide a consumer with a series of notices at different times in a transaction. Nothing in the proposed rules is intended to discourage a financial institution from providing an individual with a privacy notice at an earlier point in the relationship if the institution wishes to do so in order to help the individual compare its privacy policies with those of other institutions before conducting transactions.

Paragraph (c) of proposed section 248.4 identifies the time a customer relationship is established as the point at which a financial institution and a consumer enter into a continuing relationship. The examples in paragraph (c) clarify that, for customer relationships that are contractual in nature (including, for example, investment advisory relationships), a customer relationship is established when the consumer enters into the contract (whether in writing or orally) that is necessary to conduct the transaction in question. Thus, a customer relationship is established with a broker-dealer when a consumer executes a securities trade through the broker-dealer or opens a brokerage account with the broker-dealer under its procedures.[37] The examples further clarify that a consumer who opens an account with an introducing broker establishes a customer relationship with the introducing broker's clearing broker (that clears on a fully disclosed basis) at the same time. Similarly, when a consumer purchases investment company shares (in his or her own name) through a principal underwriter, the consumer establishes a customer relationship with the underwriter and the investment company. We request comment on whether there are different times at which customer relationships with brokers, dealers, investment companies, or investment advisers are established.

Notice to consumers. For consumers who do not establish a customer relationship, the initial notice may be provided at any point before the financial institution discloses nonpublic personal information to nonaffiliated third parties. As provided in paragraph (b) of the proposed rule, if the institution does not intend to disclose the information in question or intends to make only those disclosures that are authorized by one of the exceptions for, among other things, processing and servicing accounts or as required by law,[38] the institution is not required to provide the initial notice.

How to provide notice. Paragraph (d) of proposed section 248.4 sets out the rules governing how financial institutions must provide the initial notices. The general rule requires that the initial notice be provided so that each recipient can reasonably be expected to receive actual notice. The Commission invites comment on who should receive a notice in situations in which there is more than one party to an account.

The notice may be delivered in writing or, if the consumer agrees, electronically. Oral notices alone are insufficient. In the case of customers, the notice must be given in a way so that the customer may either retain it or access it at a later time.[39]

Examples of acceptable ways to deliver the notice include hand-delivering a copy of the notice, mailing a copy to the consumer's last known address, or sending it by electronic mail

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[34] *See* proposed § 248.3(c).

[35] 17 CFR 240.10b–16.

[36] *See* Rule 382 of the New York Stock Exchange, Inc. ("NYSE") Operation of Member Organizations, NYSE Guide (CCH) 3639–40 (1999); Rule 3230 of the National Association of Securities Dealers ("NASD") Conduct Rules, NASD Manual (CCH) 4922 (1999).

[37] As indicated in the examples under the definition of a customer relationship, we do not believe that a customer relationship exists when a broker-dealer executes a securities trade for a consumer as an accommodation or to liquidate securities on a one-time basis, *i.e.*, when there is no expectation of further transactions.

[38] *See* proposed §§ 248.10 and 248.11.

[39] The requirement that the notice be given in a manner permitting access at a later time does not preclude a financial institution from changing its privacy policy. *See* proposed § 248.8(c). Rather the requirement is intended to provide that a customer will be able to access the most recently adopted privacy policy.

to a consumer who obtains a financial product or service from the institution electronically. It would not be sufficient to provide only a posted copy of the notice in a lobby. Similarly, it would not be sufficient to provide the initial notice only on a Web page, unless the consumer is required to access that page to obtain the product or service in question. Electronic delivery generally should be in the form of electronic mail to ensure that a consumer actually receives the notice. In those circumstances in which a consumer is in the process of conducting a transaction over the Internet, electronic delivery also may include posting the notice on a Web page as described above. If a financial institution and consumer enter into a contract for a financial product or service over the telephone, the institution may provide the consumer with the option of receiving the initial notice after providing the product or service in order not to delay the transaction. We invite comment on the regulatory burden of providing the initial notices and on the methods financial institutions anticipate using to provide the notices. We also request comment on whether there are additional circumstances in which an institution should be permitted to provide notices within a reasonable time after the customer relationship is established.

Section 248.5 Annual Notice to Customers Required

Section 503 of the G–L–B Act requires a financial institution to provide notices of its privacy policies and practices at least annually to its customers. The proposed rules implement this requirement by requiring a clear and conspicuous notice that accurately reflects the current privacy policies and practices to be provided at least once during any period of twelve consecutive months. The rules governing how to provide an initial notice also apply to annual notices.

Section 503(a) of the G–L–B Act requires that the annual notices be provided "during the continuation" of a customer relationship. To implement this requirement, the proposed rules state that a financial institution is not required to provide annual notices to a customer with whom it no longer has a continuing relationship.[40] The examples that follow this general rule provide guidance on when there no longer is a continuing relationship for purposes of the rules.

These include, for instance, a brokerage account that has been closed or an investment advisory contract that has been terminated. In addition, an investment company shareholder who has redeemed all of his or her shares or is determined to be a lost securityholder under rule 17a–24 under the Exchange Act would no longer be considered to be a customer of the investment company.[41]

The Commission invites comment generally on whether the examples provided in proposed section 248.5 are adequate and whether there are other situations in which an individual may have an account with an institution but the customer relationship has ended. We also invite comment on the regulatory burden of providing the annual notices and on the methods financial institutions anticipate using to provide the notices.

Section 248.6 Information To Be Included in Initial and Annual Notices of Privacy Policies and Practices

Section 503 of the G–L–B Act identifies the items of information that must be included in a financial institution's initial and annual notices. Section 503(a) of the G–L–B Act establishes the general requirement that a financial institution must provide customers with a notice describing the institution's policies and practices with respect to, among other things, disclosing nonpublic personal information to affiliates and nonaffiliated third parties. Section 503(b) of the Act identifies certain elements that the notice must address.

The required content is the same for both the initial and annual notices of privacy policies and practices. While the information contained in the notices must be accurate as of the time the notices are provided, a financial institution may prepare its notices based on current and anticipated policies and practices.

The information to be included is as follows:

1. *Categories of nonpublic personal information that a financial institution may collect.* Section 503(b)(2) requires a financial institution to inform its customers about the categories of nonpublic personal information that the institution collects. The proposed rules implement this requirement in section 248.6(a)(1) and provide an example of how to comply with this requirement that focuses the notice on the source of the information collected. As noted in the example, a financial institution will satisfy this requirement if it categorizes the information according to the sources, such as application information, transaction information, and consumer report information. Financial institutions may provide more detail about the categories of information collected but are not required to do so.

2. *Categories of nonpublic personal information that a financial institution may disclose.* Section 503(a)(1) of the G–L–B Act requires the financial institution's initial and annual notice to provide information about the categories of nonpublic personal information that may be disclosed either to affiliates or nonaffiliated third parties. The proposed rules implement this requirement in proposed section 248.6(a)(2). The examples of how to comply with this rule focus on the content of information to be disclosed. A financial institution may satisfy this requirement by categorizing information according to source and providing examples of the content of the information. These categories might include application information (such as assets, income, investment goals, and investment risk tolerance), identifying information (such as name, address, and social security number), transaction information (such as information about account activity, account balances, securities positions, and securities purchases and sales), and information from consumer reports (such as credit history).

Financial institutions may choose to provide more detailed information in the initial and annual notices. Conversely, if a financial institution does not disclose, and does not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, its initial and annual notices may simply state this fact without further elaboration about categories of information disclosed.

3. *Categories of affiliates and nonaffiliated third parties to whom a financial institution discloses nonpublic personal information.* As previously noted, section 503(a) of the G–L–B Act includes a general requirement that a financial institution provide a notice to its customers of the institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties. Section 503(b) states that the notice

[40] Proposed § 248.5(c).

[41] 17 CFR 240.17a–24. This rule requires recordkeeping transfer agents to file reports with the Commission on lost securityholder accounts. A "lost securityholder" is a securityholder to whom correspondence has been sent at the address contained in the transfer agent's master securityholder file, that has been returned as undeliverable and for whom the transfer agent has not received information regarding a new address. 17 CFR 240.17a–24(b). The definition permits the transfer agent to deem the securityholder lost as of the date the item has been returned as undeliverable after having been re-sent.

required by section 503(a) must include certain specified items. Among those is the requirement, set out in section 503(b)(1), that a financial institution inform its customers about its policies and practices with respect to disclosing nonpublic personal information to nonaffiliated third parties. We believe that sections 503(a) and 503(b) of the G–L–B Act require a financial institution's notice to address disclosures of nonpublic personal information to both affiliates and nonaffiliated third parties.

The proposed rules implement this notice requirement in section 248.6(a)(3). The example states that a financial institution will adequately categorize the affiliates and nonaffiliated third parties to whom it discloses nonpublic personal information about consumers if it identifies the types of businesses in which they engage. Types of businesses may be described by general terms, such as financial products or services, if the financial institution provides examples of the significant lines of businesses of the recipient, such as retail banking, mortgage lending, life insurance, or securities brokerage.

The G–L–B Act does not require a financial institution to list the categories of persons to whom information may be disclosed under any of the exceptions set out in proposed sections 248.10 and 248.11. The proposed rules state that a financial institution is required only to inform consumers that it makes disclosures as permitted by law to nonaffiliated third parties in addition to those described in the notice. We invite comment on whether such a notice would be adequate.

If a financial institution does not disclose, and does not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, its initial and annual notices may simply state this fact without further elaboration about categories of third parties.

4. *Information about former customers.* Section 503(a)(2) of the G–L–B Act requires the financial institution's initial and annual privacy notices to include the institution's policies and practices with respect to disclosing nonpublic personal information of persons who have ceased to be customers of the institution. Section 503(b)(1)(B) requires that this information be provided with respect to information disclosed to nonaffiliated third parties.

We have concluded that sections 503(a)(2) and 503(b)(1)(B) require a financial institution to include in the initial and annual notices the institution's policies and practices with respect to sharing information about former customers with all affiliates and nonaffiliated third parties. This requirement is set out in the proposed rules at section 248.6(a)(4). This provision does not require a financial institution to provide a notice to a former customer before sharing nonpublic personal information about that former customer with an affiliate.[42]

5. *Information disclosed to service providers.* Section 502(b)(2) of the G–L–B Act permits a financial institution to disclose nonpublic personal information about a consumer to a nonaffiliated third party for the purpose of the third party performing services for the institution, including marketing financial products or services under a joint agreement between the financial institution and at least one other financial institution. In this case, a consumer has no right to opt out, but the financial institution must inform the consumer that it will be disclosing the information in question unless the service falls within one of the exceptions listed in section 502(e) of the Act.

The proposed rules implement these provisions, in section 248.6(a)(5), by requiring that, if a financial institution discloses nonpublic personal information to a nonaffiliated third party under the exception for service providers and joint marketing, the institution is to include in the initial and annual notices a separate description of the categories of information that are disclosed and the categories of third parties providing the services. A financial institution may comply with these requirements by providing the same level of detail in the notice as is required to satisfy proposed sections 248.6(a)(2) and (3).

6. *Right to opt out.* As previously noted, sections 503(a)(1) and 503(b)(1) of the G–L–B Act require a financial institution to provide customers with a notice of its privacy policies and practices concerning, among other things, disclosing nonpublic personal information consistent with section 502 of the Act. Proposed rule 248.6(a)(6) implements this section by requiring the initial and annual notices to explain the right to opt out of disclosures of nonpublic personal information to nonaffiliated third parties, including the methods available to exercise that right.

7. *Disclosures made under the FCRA.* Section 503(b)(4) of the G–L–B Act requires a financial institution's initial and annual notice to include the disclosures required, if any, under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act ("FCRA").[43] Section 603(d)(2)(A)(iii) excludes from the definition of "consumer report" (and, therefore, the protections provided under the FCRA for information contained in those reports) the communication of certain consumer information among affiliated entities if the consumer is notified about the disclosure of that information and given an opportunity to opt out of the information sharing. The information that can be shared among affiliates under this provision includes, for instance, information from consumer reports and applications for financial products or services. In general, this information represents personal information provided directly by the consumer to the institution, such as income and social security number, in addition to information contained within credit bureau reports.

The proposed rules implement section 503(b)(4) of the G–L–B Act by including the requirement that a financial institution's initial and annual notice include any disclosures a financial institution makes under section 603(d)(2)(A)(iii) of the FCRA.[44]

8. *Confidentiality, security, and integrity.* Section 503(a)(3) of the G–L–B Act requires the initial and annual notices to provide information about a financial institution's policies and practices with respect to protecting the nonpublic personal information of consumers. Section 503(b)(3) of the Act requires the notices to include the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information, in accordance with section 501 (which requires the Commission to establish standards governing the administrative, technical, and physical safeguards of customer information).

The proposed rules implement these provisions by requiring a financial institution to include in the initial and annual notices the institution's policies and practices with respect to protecting the confidentiality, security, and integrity of nonpublic personal information.[45] The example in the proposed rules states that a financial institution may comply with the requirement as it concerns confidentiality and security if the institution explains matters such as who has access to the information and the

[42] An institution that intends to share nonpublic personal information about a former customer with a nonaffiliated third party would be required to provide the customer with notice and opportunity to opt out before sharing the information with the third party.

[43] 15 U.S.C. 1681a(d)(2)(A)(iii).

[44] *See* proposed § 248.6(a)(7).

[45] *See* proposed § 248.6(a)(8).

circumstances under which the information may be accessed. The information about integrity should focus on the measures the institution takes to protect against reasonably anticipated threats or hazards. The proposed rules do not require a financial institution to provide technical or proprietary information about how it safeguards consumer information.[46]

Section 248.7 Limitation on Disclosure of Nonpublic Personal Information About Consumers to Nonaffiliated Third Parties

Section 502(a) of the G–L–B Act generally prohibits a financial institution from sharing nonpublic personal information about a consumer with a nonaffiliated third party unless the institution provides the consumer with a notice of the institution's privacy policies and practices. Section 502(b) further requires that the financial institution provide the consumer with a clear and conspicuous notice that the consumer's nonpublic personal information may be disclosed to nonaffiliated third parties, that the consumer be given an opportunity to opt out of that disclosure, and that the consumer be informed of how to opt out.

Section 248.7 of the proposed rules implements these provisions. Paragraph (a)(1) of section 248.7 sets out the criteria that a financial institution must satisfy before disclosing nonpublic personal information to nonaffiliated third parties. As stated in the text of the proposed rules, these criteria apply to direct and indirect disclosures through an affiliate. We invite comment on how the right to opt out should apply in the case of joint accounts. Should, for instance, a financial institution require all parties to an account to opt out before the opt out becomes effective? If not and only one of the parties opts out, should the opt out apply only to information about the party opting out or should it apply to information about all parties to the account? We also request comment on how the opt out right should apply to an investment adviser who manages a trust account on behalf of multiple beneficiaries.

Paragraph (a)(2) defines "opt out" in a way that incorporates the exceptions to the right to opt out stated in proposed sections 248.9, 248.10, and 248.11, which permit disclosures of nonpublic personal information to nonaffiliated third parties without first providing the initial privacy notice and giving the consumer the right to opt out.

The proposed rules implement the requirement that a consumer be given an opportunity to opt out before information is disclosed by requiring that the opportunity be reasonable. The examples that follow the general rule provide guidance in situations involving notices that are mailed and notices that are provided in connection with isolated transactions. In the former case, a consumer will be considered to have a reasonable opportunity to opt out if the financial institution provides 30 days in which to opt out. In the latter case, an opportunity will be reasonable if the consumer must decide as part of the transaction whether to opt out before completing the transaction. We invite comment on whether 30 days is a reasonable opportunity to opt out in the case of notices sent by mail, and on whether an example in the context of transactions conducted using an electronic medium would be helpful.

The requirement that a consumer have a reasonable opportunity to opt out does not mean that a consumer forfeits that right once the opportunity lapses. The consumer always has the right to opt out (as discussed further in proposed section 248.8, below). However, if an individual does not exercise that opt out right when first presented with an opportunity, the financial institution would be permitted to disclose nonpublic personal information to nonaffiliated third parties during the period of time before it implements the consumer's opt out direction.

Paragraph (b) of proposed section 248.7 clarifies that the right to opt out applies regardless of whether a consumer has established a customer relationship with a financial institution. As noted above, all customers are consumers under the proposed rules. Thus, the fact that a consumer establishes a customer relationship with a financial institution does not change the institution's obligations to comply with the requirements of proposed section 248.7(a) before sharing nonpublic personal information about that consumer with nonaffiliated third parties. This also applies in the context of a consumer who had a customer relationship with a financial institution but then terminated that relationship. Paragraph (b) also clarifies that the consumer protections afforded by paragraph (a) of proposed section 248.7 apply to all nonpublic personal information collected by a financial institution, regardless of when collected. Thus, if a consumer elects to opt out of information sharing with nonaffiliated third parties, that election applies to all nonpublic personal information about that consumer in the financial institution's possession, regardless of when the information is obtained.

Paragraph (c) of proposed section 248.7 states that a financial institution may, but is not required to, provide consumers with the option of a partial opt out in addition to the opt out required by this section. This could enable a consumer to limit, for instance, the types of information disclosed to nonaffiliated third parties or the types of recipients of the nonpublic personal information about that consumer. If the partial opt out option is provided, a financial institution must state this option in a way that clearly informs the consumer about the choices available and the resulting consequences.

Section 248.8 Form and Method of Providing Opt Out Notice to Consumers

Paragraph (a) of proposed section 248.8 requires that any opt out notice provided by a financial institution pursuant to proposed section 248.7 be clear and conspicuous, and accurately explain the right to opt out. The notice must inform the consumer that the institution may disclose nonpublic personal information to nonaffiliated third parties, state that the consumer has a right to opt out, and provide the consumer with a reasonable means by which to opt out.

The examples that follow the general rule state that a financial institution will adequately provide notice of the right to opt out if it identifies the categories of information that may be disclosed and the categories of nonaffiliated third parties to whom the information may be disclosed and explains that the consumer may opt out of those disclosures. A financial institution that plans to disclose only limited types of information or to only a specific type of nonaffiliated third party may provide a correspondingly narrow notice to consumers. However, to minimize the number of opt out notices a financial institution must provide, the institution may wish to base its notices on current and anticipated information sharing plans. A new opt out notice is not required for disclosures to different types of nonaffiliated third parties or of different types of information, provided that the most recent opt out notice is sufficiently broad to cover the entities or information in question. A financial institution also need not provide subsequent opt out notices when a consumer establishes a new type of customer relationship with that financial institution, unless the

[46] The proposed rules require brokers, dealers, investment companies, and registered investment advisers to adopt policies and procedures relating to administrative, technical, and physical safeguards (*see* proposed § 248.30).

institution's opt out policies differ based on the type of customer relationship.

The examples suggest several ways in which a financial institution may provide reasonable means to opt out, including check-off boxes, reply forms, and electronic mail addresses. A financial institution does not provide a reasonable means to opt out if the only means provided is for consumers to send their own letters to the institution to exercise their right, although an institution may honor such a letter if received. We also invite comment on whether a financial institution that provides its notice electronically also should be required to provide an electronic means to opt out.

Paragraph (b) applies the same rules to delivery of the opt out notice that apply to delivery of the initial and annual notices. In addition, paragraph (b) clarifies that the opt out notice may be provided together with, or on the same form as, the initial and annual notices. However, if the opt out notice is provided after the initial notice, a financial institution must provide a copy of the initial notice along with the opt out notice. If a financial institution and consumer orally agree to enter into a customer relationship, the institution may provide the opt out notice within a reasonable time thereafter if the consumer agrees. We invite comment on whether the rules should specify the time by which the notice must be given.

Paragraph (c) sets out the rules governing a financial institution's obligations in the event the institution changes its disclosure policies. As stated in that paragraph, a financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless the institution first provides a revised notice and new opportunity to opt out. The institution must wait a reasonable period of time before disclosing information according to the terms of the revised notice in order to afford the consumer a reasonable opportunity to opt out. A financial institution must provide a consumer the revised notice of its policies and practices and opt out notice by using the means permitted for providing the initial notice and opt out notice to that consumer under section 248.4(d) and section 248.8(b), respectively, which require that the notices be given in a manner so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, in electronic form.

Paragraph (d) states that a consumer has the right to opt out at any time. We considered whether to include a time limit by which financial institutions must effectuate a consumer's opt out, but decided that the wide variety of practices of financial institutions made one limit inappropriate. Instead, the proposed rules require a financial institution to stop sharing information as soon as reasonably practicable. We request comment on whether the rules should specify a time within which an institution must stop sharing information, and if so, what the time period should be.

Paragraph (e) states that an opt out will continue until a consumer revokes it. The rules require that such revocation be in writing, or, if the consumer has agreed, electronically.

We invite comment on the likely burden of complying with the requirement to provide opt out notices, the methods financial institutions anticipate using to deliver the opt out notices, and the approximate number of opt out notices they expect to deliver and process.

Section 248.9 Exception To Opt Out Requirements for Service Providers and Joint Marketing

Section 502(b)(2) of the G–L–B Act creates an exception to the opt out rules for the disclosure of information to a nonaffiliated third party for its use to perform services for, or functions on behalf of, the financial institution, including the marketing of the financial institution's own products or services or financial products or services offered under a joint agreement between two or more financial institutions. A consumer will not have the right to opt out of disclosing nonpublic personal information about the consumer to nonaffiliated third parties under these circumstances, if the financial institution satisfies certain requirements.

First, the institution must, as stated in section 502(b)(2), "fully disclose" to the consumer that it will provide this information to the nonaffiliated third party before the information is shared. This disclosure could appear in the initial notice required by section 248.4. We invite comment on whether the proposed rules appropriately implement the "fully disclose" requirement in section 502(b)(2).

Second, the financial institution must enter into a contract with the third party that requires the third party to maintain the confidentiality of the information. This contract should be designed to ensure that the third party (a) will maintain the confidentiality of the information at least to the same extent as is required for the financial institution that discloses it, and (b) will use the information solely for the purposes for which the information is disclosed or as otherwise permitted by sections 248.10 and 248.11 of the proposed rules.

The G–L–B Act allows the Commission to impose requirements on the disclosure of information under the exception for service providers beyond those imposed in the statute. We have not done so in the proposed rules, but invite comment on whether additional requirements should be imposed, and, if so, what those requirements should address. We also invite comments on any other requirements that would be appropriate to protect a consumer's financial privacy, and on whether the rules should provide examples of the types of joint agreements that are covered.

Section 248.10 Exceptions for Processing and Servicing Transactions

Section 502(e) of the G–L–B Act creates exceptions to the requirements that apply to the disclosure of nonpublic personal information to nonaffiliated third parties. Paragraph (1) of that section sets out certain exceptions for disclosures made, generally speaking, in connection with the administration, processing, servicing, and sale of a consumer's account.

Paragraph (a) of proposed section 248.10 sets out those exceptions, making only stylistic changes to the statutory text that are intended to make the exceptions easier to read. Paragraph (b) sets out the definition of "necessary to effect, administer, or enforce" that is contained in section 509(7) of the G–L–B Act, making only stylistic changes intended to clarify the definition.

The exceptions set out in proposed section 248.10, and the exceptions discussed in proposed section 248.11, below, do not affect a financial institution's obligation to provide initial notices of its privacy policies and practices prior to the time it establishes a customer relationship and annual notices thereafter. Those notices must be provided to all customers, even if the institution intends to disclose the nonpublic personal information only under the exceptions in proposed section 248.10.

Section 248.11 Other Exceptions To Opt Out Requirements

As noted above, section 502(e) of the G–L–B Act contains several exceptions to the requirements that otherwise would apply to the disclosures of nonpublic personal information to nonaffiliated third parties. Proposed section 248.11 sets out those exceptions that are not made in connection with

the administration, processing, servicing, or sale of a consumer's account, and makes stylistic changes intended to clarify the exceptions.

One of the exceptions stated in proposed section 248.11 is for disclosures made with the consent or at the direction of the consumer, provided the consumer has not revoked the consent. Following the list of exceptions is an example of consent in which a consumer consents to having a broker or investment adviser confirm the amount of assets in the customer's account to a nonaffiliated mortgage lender so that the lender can evaluate the customer's application for a loan. Consent in such a situation would enable the financial institution to make the disclosure to the third party without first providing the initial notice required by section 248.4 or the opt out notice required by section 248.7, but the disclosure must not exceed the purposes for which consent was given. The example also states that a consumer may revoke consent at any time by exercising the right to opt out of future disclosures. We invite comment on whether safeguards should be added to the exception for consent in order to minimize the potential for consumer confusion. Such safeguards might include, for instance, a requirement that consent be written or that it be indicated on a separate line in a relevant document or on a distinct Web page.

Section 248.12 Limits on Redisclosure and Reuse of Information

Section 248.12 of the proposed rules implements the Act's limitations on redisclosure and reuse of nonpublic personal information about consumers. Section 502(c) of the Act provides that a nonaffiliated third party that receives nonpublic personal information from a financial institution shall not, directly or indirectly through an affiliate, disclose the information to any person that is not affiliated with either the financial institution or the third party, unless the disclosure would be lawful if made directly by the financial institution. Paragraph (a)(1) sets out the Act's redisclosure limitation as it applies to a financial institution that receives information from another nonaffiliated financial institution. Paragraph (b)(1) mirrors the provisions of paragraph (a)(1), but applies the redisclosure limits to any nonaffiliated third party that receives nonpublic personal information from a financial institution.

The Act appears to place the institution that receives the information into the shoes of the institution that disclosed the information for purposes of determining whether redisclosures by the receiving institution are "lawful." Thus, the Act appears to permit the receiving institution to redisclose the information to (i) an entity to whom the original transferring institution could disclose the information pursuant to one of the exceptions in section 248.9, 248.10, or 248.11, or (ii) an entity to whom the original transferring institution could have disclosed the information as described under its notice of privacy policies and practices, unless the consumer has exercised the right to opt out of that disclosure. Because a consumer can exercise the right to opt out of a disclosure at any time, the Act may effectively preclude third parties that receive information to which the opt out right applies from redisclosing the information, except under one of the exceptions in section 248.9, 248.10, or 248.11. We invite comment on whether the rules should require a financial institution that discloses nonpublic personal information to a nonaffiliated third party to develop policies and procedures to ensure that the third party complies with the limits on redisclosure of that information.

Sections 502(b)(2) and 502(e) (as implemented by sections 248.9, 248.10, and 248.11 of the proposed rules) describe when a financial institution may disclose nonpublic personal information without providing the consumer with the initial privacy notice and an opportunity to opt out, but those exceptions apply only when the information is used for the specific purposes set out in those sections. Paragraph (a)(2) of proposed section 248.12 clarifies this limitation on reuse as it applies to financial institutions. Paragraph (a)(2) provides that a financial institution may use nonpublic personal information about a consumer that it receives from a nonaffiliated financial institution in accordance with an exception under section 248.9, 248.10, or 248.11 only for the purpose of that exception. Paragraph (b)(2) applies the same limits on reuse to any nonaffiliated third party that receives nonpublic personal information from a financial institution. The example in (b)(3) clarifies that a nonaffiliated transfer agent who receives nonpublic personal information from a financial institution may not directly or indirectly disclose the information to a nonaffiliated third party of the institution and the transfer agent unless the institution could lawfully share the information with that party.

We invite comments on the meaning of the word "lawful" as that term is used in section 502(c). We specifically solicit comment on whether it would be lawful for a nonaffiliated third party to disclose information under the exception provided in proposed section 248.9 of the rules. Under that exception, a financial institution must comply with certain requirements before disclosing information to a nonaffiliated third party. Given that the statute and proposed rules impose those requirements on the financial institution that makes the initial disclosure, we invite comment on whether subsequent disclosures by the third party could satisfy the requirement that those disclosures be lawful when the financial institution is not party to the subsequent disclosure.

Section 248.13 Limits on Sharing of Account Number Information for Marketing Purposes

Section 502(d) of the G–L–B Act prohibits a financial institution from disclosing, other than to a consumer reporting agency, account numbers or similar forms of access numbers or access codes for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or marketing through electronic mail to the consumer. Proposed section 248.13 applies this statutory prohibition to disclosures made directly or indirectly by a financial institution.

We note that there is no exception in Title V to the flat prohibition established by section 502(d). The conference report for the G–L–B Act encourages the Commission (and the Agencies) to adopt an exception to section 502(d) to permit disclosures of account numbers in limited circumstances. It states:

> In exercising their authority under section 504(b) [which vests the Agencies with authority to grant exceptions to section 502(a)–(d) beyond those set out in the statute], the agencies and authorities described in section 504(a)(1) may consider it consistent with the purposes of this subtitle to permit the disclosure of customer account numbers or similar forms of access numbers or access codes in an encrypted, scrambled, or similarly coded form, where the disclosure is expressly authorized by the customer and is necessary to service or process a transaction expressly requested or authorized by the customer. [47]

We have not proposed an exception to the prohibition of section 502(d) because of the risks associated with third parties' direct access to a consumer's account. We seek comment

[47] H. Rep. No. 434, 106th Cong., 1st Sess. at 173 (1999).

on whether an exception to the section 502(d) prohibition that permits third parties access to account numbers is appropriate, the circumstances under which an exception would be appropriate, and how such an exception should be formulated to provide consumers with adequate protection. In addition, we invite comment on whether a consumer ought to be able to consent to the disclosure of his or her account number, notwithstanding the general prohibition in section 502(d) and, if so, what standards should apply. We also seek comment on whether section 502(d) prohibits the disclosure by a financial institution to a marketing firm of encrypted account numbers if the financial institution does not provide the marketer the key to decrypt the number.

Section 248.14 Protection of Fair Credit Reporting Act

Paragraph (c) of section 506 states that, except for the amendments noted regarding rulemaking authority, nothing in Title V is to be construed to modify, limit, or supersede the operation of the FCRA, and no inference is to be drawn on the basis of the provisions of Title V whether information is transaction or experience information under section 603 of the FCRA. Proposed section 248.14 implements section 506(c) of the G–L–B Act by restating the statute, making only minor clarifying changes.

Section 248.15 Relation to State Laws

Section 507 of the G–L–B Act provides that Title V does not preempt any State law that provides greater protections than are provided by Title V. Determinations of whether a State law or Title V provides greater protections are to be made by the Federal Trade Commission ("FTC") after consultation with the agency that regulates either the party filing a complaint or the financial institution about whom the complaint was filed. Determinations of whether State or Federal law afford greater protections may be initiated by any interested party or on the FTC's own motion.

Proposed section 248.15 is substantively identical to section 507, noting that the proposed rules (like the statute) do not preempt State laws that provide greater protection for consumers than does the regulation.

Section 248.16 Effective Date; Transition Rule

Section 510 of the G–L–B Act states that, as a general rule, the relevant provisions of Title V take effect six months after the date on which rules are required to be prescribed. However, section 510(1) authorizes the Commission (and the Agencies) to prescribe a later date in the rules enacted pursuant to section 504.

Proposed section 248.16(a) provides an effective date of November 13, 2000. This provision is premised on adoption of a final rule within the time frame prescribed by section 504(a)(3). We intend to provide at least six months after the adoption of a final rule for financial institutions to bring their policies and procedures into compliance with the requirements of the final rule. We invite comment on whether six months after adoption of final rules is sufficient to enable financial institutions to comply with the rules.

Proposed section 248.16(b) provides a transition rule for consumers who were customers as of the effective date of the rules. Since those customer relationships already will have been established as of the rules' effective date (thereby making it inappropriate to require a financial institution to provide those customers with a copy of the institution's initial notice at the time of establishing a customer relationship), the rules require instead that the initial notice be provided within 30 days of the effective date. We invite comment on whether 30 days is enough time to permit a financial institution to deliver the required notices, bearing in mind that the G–L–B Act contemplates at least a six-month delayed effective date from the date the rules are adopted.

If a financial institution intends to disclose nonpublic personal information about someone who was a consumer before the effective date, the institution must provide the notices required by sections 248.4 and 248.7 and provide a reasonable opportunity to opt out before the effective date. If, in this instance, the institution already is disclosing information about such a consumer, it may continue to do so without interruption until the consumer opts out, in which case the institution must stop sharing nonpublic personal information about that consumer with nonaffiliated third parties as soon as reasonably practicable. We request comment on whether the proposed rule should specify a time within which the institution must stop sharing information, and if so, what the time period should be.

Section 248.30 Procedures To Safeguard Customer Information and Records

Section 501 of the G–L–B Act directs the Commission (and the Agencies) to establish appropriate standards for financial institutions relating to administrative, technical and physical safeguards to protect customer records and information. Proposed section 248.30 implements this section by requiring every broker, dealer, investment company, and registered investment adviser to adopt policies and procedures to address the safeguards described above. Consistent with the Act, the proposed rule further requires that the policies and procedures be reasonably designed to: (i) Insure the security and confidentiality of customer records and information; (ii) protect against any anticipated threats or hazards to the security or integrity of customer records and information; and (iii) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

We have not prescribed specific policies or procedures that financial institutions must adopt. Rather, we believe it more appropriate for each institution to tailor its policies and procedures to its own systems of information gathering and transfer and the needs of its customers. We request comment on whether the proposed standards should be more specific, and if so, what specifications would be appropriate for particular financial institutions.

III. General Request for Comments

The Commission requests comment on the proposed rules and suggestions for additional examples that may be appropriate to include in the rules. We also solicit comment on whether the inclusion of examples in this part is appropriate. Are there alternative methods to offer guidance of the concepts furnished by the examples?

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[48] we also request information regarding the potential effect of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

The Commission strives to draft its rules according to principles outlined in its Plain English Handbook.[49] We invite your comments on how to make the proposed rule more consistent with those principles and easier to understand.

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[48] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[49] Office of Investor Education and Assistance, U.S. Securities and Exchange Commission, A Plain English Handbook (1998) (available on the Commission's web site at <http://www.sec.gov>).

IV. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules and understands that the proposed rules may impose costs on brokers, dealers, investment companies, and registered investment advisers. Nevertheless, the proposed rules implement the privacy provisions of Title V and, we believe, impose no costs in addition to those that would result from compliance with the G–L–B Act.

We believe that the proposed requirements to provide opt out notices and to protect customer information will benefit consumers and customers by protecting the privacy of their nonpublic personal information. In addition, the proposed requirements to provide initial and annual notices will allow customers to compare the privacy policies of financial institutions.

We also believe that the proposed rules will provide greater certainty to the private sector on how to comply with the G–L–B Act because they are consistent with and comparable to the rules proposed by the Agencies. The examples in the proposed rules also should provide guidance on how the rules will be enforced with respect to brokers, dealers, investment companies, and registered investment advisers. Finally, in order to reduce compliance burdens, the proposed rules would allow financial institutions flexibility to distribute notices and to adopt policies and procedures to protect customer information that are best suited to the institution's business and needs.

We estimate that approximately 5500 broker-dealers, 4300 investment companies and 8100 registered investment advisers would be required to comply with the proposed rules. In the first year after the rules are adopted, these institutions would be required to comply with the following requirements: (i) Prepare notices describing the institution's privacy policies; (ii) provide an initial privacy notice and opt out form to each consumer; (iii) provide an initial privacy notice to each new customer (who did not receive a notice when he or she was a consumer); (iv) provide an annual privacy notice to each existing customer; (v) adopt policies and procedures that address the protection of customer information and records. After the first year, institutions would be required to revise notices only to reflect changes in their privacy policies. Similarly, institutions would have to revise their policies and procedures on safeguarding customer information as appropriate to ensure the protection of the information.

Under the proposed rules, an initial and annual notice could be the same.[50] Many broker-dealers, investment companies, and registered investment advisers currently provide notice of their privacy policies to consumers and customers.[51] Thus, some of these institutions would be required to draft privacy notices, while others would have to review and revise their notices for compliance with the proposed rules.

The amount of time required for each institution to prepare (or revise) its privacy policy notices will vary depending on the extent to which (i) the institution shares information and (ii) the institution's sharing policy differs for certain consumers or customers.[52] We assume that while broker-dealers and investment companies share nonpublic personal information about consumers or customers with their affiliates (or as permitted under one of the exceptions discussed above), few, if any, share information with nonaffiliated third parties.[53] In addition, we assume that most investment advisers do not share the information with any third parties.[54] Based on these assumptions, we estimate that an investment adviser would require, on average, about 5 hours, and a broker-dealer or investment company would require from 5 to over 100 hours, with an average of about 40 hours, to prepare (or revise) its privacy notice. Assuming that an investment adviser would spend on average $615 [55] to draft a notice, and a broker-dealer or investment company would spend on average $4920,[56] we estimate that the total one-time cost to the industry of drafting privacy notices would be approximately $53.2 million.[57]

As noted above, we assume that broker-dealers, investment companies, and registered investment advisers do not share nonpublic personal information with nonaffiliated third parties. Therefore, those institutions would not be required to provide consumers an initial notice or opportunity to opt out. We assume that those institutions generally will include initial and annual privacy notices to customers with disclosure documents or account statements that they currently receive.[58] These statements generally are assembled and sent by organizations that specialize in mailing and distribution. We estimate that the additional material might result in an increase in total annual distribution costs of $2.6 million for broker-dealers, investment companies, and registered investment advisers.[59]

We understand that most if not all broker-dealers, investment companies, and registered investment advisers have established some policies and procedures to protect customer information.[60] Each institution,

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[50] *See* proposed § 248.6(a) (specifying the same content for initial and annual notices).

[51] *See e.g.*, Charles Schwab & Co., The Schwab Privacy Pledge & Notification (Sept. 23, 1999) (available at <http://www.schwab.com>); The Vanguard Group, Privacy Policy (available at <http://www.vanguard.com>).

[52] An institution that does not share information with affiliates or nonaffiliated third parties may simply state that fact without further discussion. *See* discussion regarding proposed section 248.6 above. An institution that has many affiliates and has different policies on sharing based on the affiliate or the customer is likely to require much more time to draft its notices.

[53] This assumption is based on staff conversations with representatives of the securities industry.

[54] *See* Association for Investment Management and Research, Standards of Practice Handbook 123, 125 (1996) (standard requires members to preserve the confidentiality of information communicated by clients or prospects, and procedures for compliance explain the "simplest, most conservative, and most effective" way to comply is to avoid disclosing any information received from a client except to authorized fellow employees who also work for the client).

[55] For purposes of the Paperwork Reduction Act, Commission staff has estimated that an investment adviser would require 4 hours of professional time (at $150 per hour) and 1 hour of clerical or administrative time (at $15 per hour) to prepare (or revise) its privacy notice, for a total of $615 ((4 × $150) + (1 × $15) = $615).

[56] For purposes of the Paperwork Reduction Act, Commission staff has estimated that a broker-dealer or investment company would require 32 hours of professional time and 8 hours of clerical or administrative time to prepare (or revise) its privacy notice, for a total of $4920 ((32 × $150) + (8 × $15) = $4920).

[57] This amount equals the sum of the costs for broker-dealers, investment companies, and investment advisers ((5500 + 4300) × $4920) + (8,100 × $615) = $53.2 million.

[58] Some customers receive all their correspondence electronically and could receive notices through the same medium. We believe that institutions would incur only minimal costs in transmitting notices to these customers electronically.

[59] The individual cost per institution would vary significantly depending on the number of the institution's customers. The estimate is based on an average additional cost per mailing of $0.02 for 130.7 million investor accounts. The number of investor accounts assumes there are 53 million brokerage accounts, 77.3 million individual investment company shareholders (*see* Investment Company Institute, 1999 Mutual Fund Fact Book 41 (May 1999)), and 400,000 customers of investment advisers. The estimated number of accounts may be significantly higher than the actual number because we are unable to estimate the number of individual accounts used for personal, family, or household purposes. *See* proposed § 248.1(b).

[60] *See* Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Securities Act Release No. 7288 (May 9, 1996) [61 FR 24644, 24647 (May 15, 1996)] (advising broker-dealers, transfer agents, and investment advisers to take reasonable precautions to ensure the integrity, confidentiality, and security of information about a customer's personal financial matters, and to tailor those precautions to the medium used (whether electronic means or paper) to ensure the information is reasonably secure from

however, would be likely to review and, as appropriate, revise its protection policies to assure compliance with the proposed rules. Assuming that each institution will on average require approximately 30 hours to review and revise its policies and procedures, the one-time cost to the industry to comply with the rules would be approximately $80.6 million.[61]

As discussed above, the privacy notices will allow customers of broker-dealers, investment companies, and registered investment advisers to compare the privacy policies of different institutions. This information is likely to result in some customers moving their accounts or relationships from one institution to another whose policies are better suited to the customer's needs. We are unable to estimate the number of customers who may make this transfer or the resulting economic impact on the industry. We do not believe, however, that customers would move their accounts from broker-dealers, investment companies, or investment advisers to a different type of financial institution (such as a bank), because we have no basis for assuming that the privacy policies adopted by 17,900 broker-dealers, investment companies, and registered investment advisers would not be sufficiently varied to address the needs of any customer.

We request comment on the costs and benefits of the proposed rules. We specifically request comment on the anticipated costs of drafting or revising privacy notices. We also request comment on the extent to which broker-dealers, investment companies, and registered investment advisers have established policies to protect customer information and the extent to which those policies would have to be revised to comply with the proposed rules. We invite comment on the cost of including privacy notices in other mailings, as well as the proportion of individual account holders who may receive notices electronically and the resulting costs or savings.

V. Paperwork Reduction Act

Certain provisions of the proposed rules contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Commission has submitted these provisions to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collections of information is: "Regulation S–P." An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The proposed rules contain several disclosure requirements. The financial institutions must prepare and provide an initial notice to all current customers and all new customers at the time of establishing a customer relationship.[62] Subsequently, an annual notice must be provided to all customers at least once during a twelve-month period during the continuation of the customer relationship.[63] The initial notice and opt out notice must be provided to a consumer prior to disclosing nonpublic personal information to certain nonaffiliated third parties.[64] If a financial institution wishes to disclose information in a way that is inconsistent with the notices previously given to a consumer, the financial institution must provide consumers with revised notices (proposed § 248.8(c)).

The proposed regulation also contains consumer reporting requirements. In order for consumers to opt out, they must respond to the opt out notice.[65] At any time during their continued relationship, consumers have the right to change or update their opt out status.[66] As discussed above, we believe that most, if not all, financial institutions will not share nonpublic personal information about consumers with nonaffiliated third parties and will not have to provide opt out notices to consumers or customers. Thus, few, if any, consumers will need to respond to opt out notices. The Commission therefore estimates that the annual burden of responding to an opt out notice will be nominal. The Commission requests public comment on all aspects of the collections of information contained in this proposed regulation, including consumer responses to the opt out notice and consumer changes to their opt out status with a financial institution.

The initial and annual privacy notices are mandatory. The opt out notice is not mandatory for institutions that do not share nonpublic personal information with nonaffiliated third parties. The likely respondents are brokers, dealers, investment companies, and registered investment advisers. The required notices are not submitted to the Commission, and there is no assurance of confidentiality of the collections of information. The Commission estimates that approximately 5500 broker-dealers, 4300 investment companies, and 8100 registered investment advisers will respond to the proposed regulation.

Estimated average annual burden hours per respondent: 40.

Estimated average annual dollar burden per respondent: $145.00.[67]

Estimated number of respondents: 17,900.

Estimated total annual hour burden: 716,000 hours.

Estimated total annual dollar burden: $2.6 million.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549 with reference to File No. S7–6–00. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it

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tampering or alteration); Investment Company Institute, Protection of Data Privacy in the Investment Company Industry (June 22, 1998) (available at <http://www.ici.org>) (investment companies and their managers often have written policies to ensure confidentiality of customer information).

[61] This estimate represents the costs of 30 hours of professional time (at $150 per hour) ((5500 + 4300 + 8100) × 30 × $150 = $80.6 million). Our estimates are based on staff conversations with representatives from the industry. We understand that many large institutions currently have comprehensive policies and procedures for protecting customer information and records. Although the policies of those institutions may need little revision, there may be many departments or other divisions that will participate in the review. Smaller institutions that need less comprehensive policies may devote more time to implementation or revision of their policies and procedures.

[62] Proposed § 248.4(a).

[63] Proposed § 248.5(a).

[64] Proposed §§ 248.7(a)(1)(i) and (ii).

[65] Proposed §§ 248.7(a)(2), (a)(3)(i), (c).

[66] Proposed §§ 248.8(d) and (e).

[67] This amount represents an estimated annual cost to include privacy notices in account statements or shareholder reports sent to customers.

within 30 days after publication. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–6–00, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 5th Street, NW, Washington, DC 20549.

VI. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA" or "analysis") for proposed Regulation S–P in accordance with 5 U.S.C. 603. The following summarizes the IRFA. A copy of the IRFA may be obtained by contacting Penelope W. Saltzman, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0506.

The analysis explains that in general, Title V requires financial institutions to provide notice to consumers about the institution's privacy policies and practices. The statute also restricts the ability of a financial institution to share nonpublic personal information about consumers with nonaffiliated third parties, and allows consumers to prevent the institution from sharing nonpublic personal information about them with certain nonaffiliated third parties by "opting out" of the information sharing. In addition, Title V requires the Commission to establish appropriate standards for financial institutions subject to their jurisdiction to safeguard customer information and records.

Section 504 of the G–L–B Act authorizes the Commission and the Agencies to prescribe "such regulations as may be necessary" to carry out the purposes of Title V. As discussed in the analysis, we believe that by adopting rules implementing Title V that are consistent with and comparable to those of the Agencies, we will provide the private sector greater certainty on how to comply with the statute and clearer guidance on how the rules will be enforced with respect to the financial institutions subject to Title V that are under the Commission's jurisdiction.

The analysis explains that subject to certain exceptions, the proposed rules generally require that a financial institution provide all of its *customers* the following notices: (i) An initial privacy notice (before the customer relationship is established or, for existing customers, within 30 days after the rule's effective date); (ii) an opt out notice (before sharing the individual's nonpublic personal information with nonaffiliated third parties); and (iii) an annual privacy notice for the duration of the customer relationship.

The proposed rules also require a financial institution to provide its consumers an initial privacy notice and an opt out notice prior to disclosing the individual's nonpublic personal information with nonaffiliated third parties. If the institution does not intend to share such information about its consumers, then it need not provide a privacy or opt out notice.

The many exceptions to the general rules stated above are set forth in proposed sections 248.9, 248.10, and 248.11. The analysis notes that in cases in which a financial institution enters into a contract with a nonaffiliated third party to undertake joint marketing or to have the third party perform certain functions on behalf of the institution, no opt out notice must be given. In those cases, the institution must disclose to the consumer that it is providing the information and enter into a contract with the third party that restricts the third party's use of the information and requires the third party to maintain confidentiality of the information.

As discussed in the analysis, compliance requirements will vary depending, for example, on an institution's information sharing practices, whether the institution already has or discloses a privacy policy, and whether the institution already has established an opt-out mechanism. A financial institution would have to summarize its practices regarding its collection, sharing, and safeguarding of certain nonpublic personal information in its initial and annual notices. However, if the institution does not share that information (or shares only to the extent permitted under the exceptions), its privacy notice may be brief. We believe that a majority of financial institutions already have privacy policies in place as part of usual and customary business practices.[68] We have estimated that a financial institution would spend approximately 40 hours on average to prepare the privacy notices.

To minimize the burden and costs of distributing privacy policies, the proposed rule does not specify the method for distributing required notices. As discussed more fully in the analysis, a financial institution may include an initial privacy statement with other required disclosure statements, and may include an annual notice with periodic account statements. We estimate that the costs of distributing the notices will be minimal because an institution will include the notices in mailings or distributions that it already sends to consumers and customers.

The analysis notes that we understand that most, if not all, brokers, dealers, investment companies, and investment advisers currently do not share nonpublic personal information about consumers with nonaffiliated third parties except as would be consistent with one of the many exceptions in the proposed rules. We further understand that those institutions that do share information under one of the permitted exceptions generally have contract provisions that prohibit the third party's use of the information for purposes other than the purpose for which the information was shared. Thus we believe that, as a result of the proposed rules, most if not all financial institutions will not have to provide opt out notices to consumers or customers, and will not need to revise their contracts with nonaffiliated third parties to restrict those parties' use of information.

The analysis explains that the proposed rule requires every broker, dealer, investment company, and registered investment adviser to adopt policies and procedures reasonably designed to safeguard customer records and information. We believe that most, if not all, financial institutions already have policies and procedures to address the safety and confidentiality of consumer records and information. Nevertheless, financial institutions may review and revise their policies after the rules are adopted. The amount of time an institution will spend reviewing and revising its policies will depend, among other things, on the institution's current policies and its sharing practices. The rules do not specify the means by which institutions must ensure the safety of customer information and records in order to allow each institution to tailor its policies and procedures to its own systems of information gathering and transfer, and the needs of its customers. We have estimated that in the first year after the proposed rules are adopted, a financial institution would spend an average of 30 hours to adopt or revise its policies.

The proposed rules would affect all brokers, dealers, investment companies, and registered investment advisers, including small entities.[69] We estimate

[68] For example, investment advisers have fiduciary duties under state law that limit the ability of an investment adviser to share information with third parties. *See supra* note 4. This and other assumptions discussed in this paragraph also are based on staff conversations with representatives from the securities industry.

[69] For purposes of the Regulatory Flexibility Act, under the Exchange Act a small entity is a broker

that approximately 1000 out of 5500 brokers and dealers, 227 out of 4300 investment companies, and 1500 out of 8,100 registered investment advisers are small entities.

As noted in the analysis, the scope of the proposed regulation (pursuant to the G–L–B Act) is unique. Nevertheless, as discussed in greater detail in the analysis, there may be some overlap in certain circumstances with certain federal laws.

The analysis explains that the Reg. Flex. Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In addition to clarifying and simplifying the statutory requirements for all financial institutions, the proposed rule also provides substantial flexibility so that any financial institution, regardless of size, may tailor its practices to its individual needs. As discussed more fully in the analysis, we believe that an exception that would create different levels of protections for consumers based on the size of the institution with which they conduct business would not be consistent with the purposes of Title V. The Commission welcomes comment on any significant alternatives, consistent with the G–L–B Act, that would minimize the impact on small entities.

VII. Analysis of Effects on Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act[70] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rules it adopts. We do not believe that the proposed rules will result in anti-competitive effects. The proposed rules, which implement Title V, apply to all broker-dealers, investment companies, and registered investment advisers. Each of these institutions would be required to provide initial and annual privacy notices to customers as well as initial notices and opt out forms to consumers if the institution shares nonpublic personal information about consumers with nonaffiliated third parties. These institutions also would be required to establish standards for protecting customer information and records.

Other financial institutions will be subject to substantially similar privacy notice and opt out requirements under rules proposed by other federal agencies.[71] Under the G–L–B Act, these agencies also are required to adopt rules addressing policies and procedures for protecting customer information.[72] Therefore, all financial institutions will have to bear the costs of implementing the proposed rules or substantially similar rules. Although these costs will vary among institutions, we do not believe that the costs will be significantly greater (as a proportion of the institutions' costs) for any particular institutions.

As noted above, some customers may move their accounts from one institution to another based on the institution's privacy policies. Thus, the proposed rules may promote competition among financial institutions based on customers' preferences regarding privacy policies. The rules do not, however, dictate the privacy policies of any financial institution. We have no basis for estimating the circumstances under which customers may move accounts. Thus, we cannot measure the potential benefits to competition or predict whether there may be anti-competitive effects with respect to institutions based on their privacy policies. We request comment on any anti-competitive effects of the proposed rules.

Section 3(f) of the Exchange Act,[73] and section 2(c) of the Investment Company Act[74] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Our analysis on competition is discussed above. We believe the proposed rules will have little effect on efficiency and capital formation. We have estimated that the proposed rules will result in additional costs for financial institutions. Nevertheless, we believe the additional costs are small enough that they will not affect the efficiency of these institutions. The rules will allow customers of financial institutions to compare privacy policies, which may result in customers choosing to do business with a financial institution based on its policies. This may result in greater efficiencies if customers make this choice before doing business with an institution instead of having to close an account after learning that an institution shares information in ways the customer does not want. We have no basis, however, for estimating the extent of these potential efficiencies. We request comment on these matters in connection with the proposed rule.

VIII. Statutory Authority

The Commission is proposing Regulation S–P under the authority set forth in section 504 of the G–L–B Act [15 U.S.C. 6804], sections 17 and 23 of the Exchange Act [15 U.S.C. 78q, 78w], sections 31 and 38 of the Investment Company Act [15 U.S.C. 80a–30(a), 80a–37], and sections 204 and 211 of the Investment Advisers Act [15 U.S.C. 80b–4, 80b–11].

List of Subjects in 17 CFR Part 248

Brokers, Dealers, Investment advisers, Investment companies, Privacy, Reporting and recordkeeping requirements.

Text of Proposed Rules

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations by adding a new part 248 to read as follows:

PART 248—REGULATION S–P: PRIVACY OF CONSUMER FINANCIAL INFORMATION

Sec.

248.1 Purpose and scope.
248.2 Rule of construction.
248.3 Definitions.
248.4 Initial notice to consumers of privacy policies and practices required.
248.5 Annual notice to customers required.
248.6 Information to be included in initial and annual notices of privacy policies and practices.
248.7 Limitation on disclosure of nonpublic personal information about consumers to nonaffiliated third parties.
248.8 Form and method of providing opt out notice to consumers.
248.9 Exception to opt out requirements for service providers and joint marketing.
248.10 Exceptions to notice and opt out requirements for processing and servicing transactions.
248.11 Other exceptions to notice and opt out requirements.
248.12 Limits on redisclosure and reuse of information.

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or dealer that had total capital of less than $500,000 on the date of its prior fiscal year and is not affiliated with any person that is not a small entity. 17 CFR 240.0–10. Under the Investment Company Act a "small entity" is an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10. Under the Investment Advisers Act, a small entity is an investment adviser that "(i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person that had total assets of $5 million or more on the last day of the most recent fiscal year. 17 CFR 275.0–7.

[70] 15 U.S.C. 78w(a)(2).

[71] *See, e.g.*, Banking Agencies' Proposal, *supra* note 2.

[72] G–L–B Act § 501(b).

[73] 15 U.S.C. 78c(f).

[74] 15 U.S.C. 80a–2(c).

248.13 Limits on sharing of account number information for marketing purposes.
248.14 Protection of Fair Credit Reporting Act.
248.15 Relation to State laws.
248.16 Effective date; transition rule.
248.17–248.29 [Reserved]
248.30 Procedures to safeguard customer records and information.

Authority: 15 U.S.C. 6801–6809; 15 U.S.C. 78q, 78w, 80a–30(a), 80a–37, 80b–4, 80b–11.

§ 248.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution to provide notice to consumers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by "opting out" of that disclosure, subject to the exceptions in §§ 248.9, 248.10, and 248.11.

(b) *Scope.* The rules established by this part apply only to nonpublic personal information about individuals who obtain financial products or services for personal, family or household purposes from the institutions listed in section 248.3(x). This part does not apply to information about companies or about individuals who obtain financial products or services for business purposes. This part applies to brokers, dealers, and investment companies and to investment advisers that are registered with the Commission. These entities are referred to in this part as "you."

§ 248.2 Rule of construction.

The examples in this part provide guidance concerning the rule's application in ordinary circumstances. The facts and circumstances of each individual situation, however, will determine whether compliance with an example constitutes compliance with the applicable rule.

§ 248.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Affiliate* of a broker, dealer, or investment company, or an investment adviser registered with the Commission means any company that controls, is controlled by, or is under common control with the broker, dealer, or investment company, or investment adviser registered with the Commission. In addition, a broker, dealer, or investment company, or an investment adviser registered with the Commission will be deemed an affiliate of a company for purposes of this part if:

(1) That company is regulated under Title V of the G–L–B Act by a government regulator other than the Commission; and

(2) Rules adopted by the other government regulator under Title V of the G–L–B Act treat the broker, dealer, or investment company, or investment adviser registered with the Commission as an affiliate of that company.

(b) *Broker* has the same meaning as in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)).

(c)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice.

(2) *Examples.* (i) You make your notice reasonably understandable if you:

(A) Present the information contained in the notice in clear, concise sentences, paragraphs and sections;

(B) Use short explanatory sentences and bullet lists, whenever possible;

(C) Use definite, concrete, everyday words and active voice, whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology; and

(F) Avoid boilerplate explanations that are imprecise and readily subject to different interpretations.

(ii) You design your notice to call attention to the nature and significance of the information contained in it if, whenever possible, you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read; and

(C) Provide wide margins and ample line spacing.

(iii) If you provide a notice on the same form as another notice or other document, you design your notice to call attention to the nature and significance of the information contained in the notice if you use:

(A) Larger type size(s);

(B) Boldface or italics for key words in the text;

(C) Wider margins and line spacing in the notice; or

(D) Shading or sidebars to highlight the notice.

(d) *Collect* means to obtain information that is organized or retrievable on a personally identifiable basis, irrespective of the source of the underlying information.

(e) *Commission* means the Securities and Exchange Commission.

(f) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(g)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, and that individual's legal representative.

(2) *Examples.* (i) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain brokerage services or investment advisory services is a consumer whether or not you provide brokerage services to the individual or establish an ongoing advisory relationship with the individual.

(ii) An individual who provides you with name, address, and areas of investment interest in connection with a request for a prospectus or an investment adviser brochure or other information about financial products is not a consumer.

(iii) An individual is not a consumer for your purposes when the individual has an account with another broker or dealer that carries securities for the individual in a special omnibus account with you in the name of the broker or dealer, and when you do not routinely receive any information about the consumer.

(iv) If you are an investment company, an individual is not a consumer for your purposes when the individual purchases an interest in shares you have issued only through a broker or investment adviser who is the record owner of those shares.

(h) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(i) *Control* means the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of any company is presumed to control the company. Any person who does not own 25 percent of the voting securities of any company will be presumed not to control the company. Any presumption regarding control may be rebutted by evidence, but, in the case of an investment company, will continue until the Commission makes a decision to the contrary according to the procedures described in section 2(a)(9)

of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(9)).

(j) *Customer* means a consumer who has a customer relationship with you.

(k)(1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) *Examples.* (i) A consumer has a continuing relationship with you if the consumer:

(A) Has a brokerage account with you;

(B) Has an investment advisory contract with you (whether written or oral); or

(C) Is the record owner of securities you have issued if you are an investment company.

(ii) You have a customer relationship with a consumer if the consumer has an account with an introducing broker-dealer that clears transactions with and for its customers through you on a fully disclosed basis.

(iii) You have a customer relationship with a consumer if you hold securities or other assets as collateral for a loan made to the consumer, even if you did not make the loan or do not effect any transactions on behalf of the consumer.

(iv) You have a customer relationship with a consumer if you regularly effect or engage in securities transactions with or for a consumer even if you do not hold any assets of the consumer.

(v) A consumer who does not establish an account with you does not have a continuing relationship with you if you provide brokerage services to the consumer on a one-time basis as an accommodation or to liquidate securities without the expectation of engaging in other transactions.

(l) *Dealer* has the same meaning as in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)).

(m)(1) *Financial institution* means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(n)(1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes your evaluation, brokerage or distribution of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(3) *Financial product,* for purposes of this part, includes an equity interest in an investment company.

(o) *G–L–B Act* means the Gramm-Leach-Bliley Act (Pub. L. No. 106–102, 113 Stat. 1338 (1999)).

(p) *Government regulator* means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Director of the Office of Thrift Supervision;

(5) The National Credit Union Administration Board;

(6) The Securities and Exchange Commission;

(7) The Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping);

(8) A State insurance authority, with respect to any person domiciled in that insurance authority's State that is engaged in providing insurance; and

(9) The Federal Trade Commission.

(q) *Investment adviser* has the same meaning as in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)).

(r) *Investment company* has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), and includes a separate series of the investment company.

(s)(1) *Nonaffiliated third party* means any person except:

(i) Your affiliate; or

(ii) A person employed jointly by you and any company that is not your affiliate (but *nonaffiliated third party* includes the other company that jointly employs the person).

(2) *Nonaffiliated third party* includes any company that is an affiliate by virtue of the direct or indirect ownership or control of the company by the financial institution or any affiliate of the financial institution in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(I)).

(t)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description or other grouping of consumers (and publicly available information about them) that is derived using any personally identifiable financial information.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as provided in paragraph (t)(1)(ii) of this section or when the publicly available information is disclosed in a manner that indicates the individual is or has been your customer; or

(ii) Any list, description, or other grouping of consumers (and publicly available information about them) that is derived without using any personally identifiable financial information.

(3) *Example.* Nonpublic personal information includes any list of individuals' street addresses and telephone numbers that is derived using personally identifiable financial information, such as account numbers.

(u) *Person* has the same meaning as in section 3(a)(9) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(9)).

(v)(1) *Personally identifiable financial information* means any information:

(i) Provided by a consumer to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) *Examples.* (i) Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to establish a brokerage account, enter into an investment advisory contract, or to purchase securities or other financial products or services, including, among other things, medical information;

(B) Information about account balance, payment history, overdraft history, credit or debit card purchases,

securities positions, or investment products purchased or sold;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you, unless that fact is derived using only publicly available information, such as bankruptcy records;

(D) Other information about your consumer if it is disclosed in a manner that indicates the individual is or has been your consumer;

(E) Any information provided by a consumer or otherwise obtained by you or your agent in connection with collecting on a loan or servicing a loan; and

(F) Information from a consumer report.

(ii) Personally identifiable financial information does not include a list of names and addresses of customers of an entity that is not a financial institution.

(w)(1) *Publicly available information* means any information that you reasonably believe is lawfully made available to the general public from:

(i) Federal, State or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by federal, State or local law.

(2) *Examples.* (i) *Government records.* Publicly available information contained in government records includes information contained in government real estate records, security interest filings, and bankruptcy filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or an Internet site that is available to the general public without requiring a password or similar restriction.

(x) *You* means:

(1) Any broker or dealer,

(2) Any investment company; and

(3) Any investment adviser registered with the Commission under the Investment Advisers Act of 1940.

§ 248.4 Initial notice to consumers of privacy policies and practices required.

(a) *When initial notice is required.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) An individual who becomes your customer, prior to the time that you establish a customer relationship, except as provided in paragraph (d)(1) of this section; and

(2) A consumer (who has not become your customer), prior to the time that you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 248.10 and 248.11.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a)(1) of this section if:

(1) You do not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by §§ 248.9, 248.10, or 248.11; and

(2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship.* (1) *General rule.* You establish a customer relationship at the time you and the consumer enter into a continuing relationship.

(2) *Examples.* You establish a customer relationship with a consumer when the consumer:

(i) Effects a securities transaction with you or opens a brokerage account with you under your procedures;

(ii) Opens a brokerage account with an introducing broker or dealer that clears transactions with and for its customers through you on a fully disclosed basis;

(iii) Enters into an advisory contract with you (whether in writing or orally); or

(iv) Purchases shares you have issued (and the consumer is the record owner of the shares), if you are an investment company.

(d) *How to provide notice.* (1) *General rule.* You must provide the privacy notice required by paragraph (a) of this section so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, in electronic form.

(2) *Exceptions to allow subsequent delivery of notice.* You may provide the initial notice required by paragraph (a) of this section within a reasonable time after you establish a customer relationship if you and the consumer orally agree to enter into a customer relationship and the consumer agrees to receive the notice thereafter.

(3) *Oral description of notice insufficient.* You may not provide the initial notice required by paragraph (a) of this section solely by orally explaining, either in person or over the telephone, your privacy policies and practices.

(4) *Retention or accessibility of initial notice for customers.* For customers only, you must provide the initial notice required by paragraph (a)(1) of this section so that it can be retained or obtained at a later time by the customer, in a written form or, if the customer agrees, in electronic form.

(5) *Examples.* (i) You may reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(A) Hand-deliver a printed copy of the notice to the consumer;

(B) Mail a printed copy of the notice to the last known address of the consumer;

(C) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(D) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(ii) You may *not*, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(A) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices;

(B) Send the notice by electronic mail to a consumer who obtains a financial product or service with you in person or through the mail and who does not agree to receive the notice electronically.

(iii) You provide the initial privacy notice to the customer so that it can be retained or obtained at a later time if you:

(A) Hand-deliver a printed copy of the notice to the customer;

(B) Mail a printed copy of the notice to the last known address of the customer upon request of the customer;

(C) Maintain the notice on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and who agrees to receive the notice electronically.

§ 248.5 Annual notice to customers required.

(a) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of twelve consecutive months during which that relationship exists.

(b) *How to provide notice.* You must provide the annual notice required by paragraph (a) of this section to a

customer using a means permitted for providing the initial notice to that customer under § 248.4(d).

(c)(1) *Termination of customer relationship.* You are not required to provide an annual notice to a customer with whom you no longer have a continuing relationship.

(2) *Examples.* You no longer have a continuing relationship with an individual if:

(i) The individual's brokerage account is closed;

(ii) The individual's investment advisory contract is terminated;

(iii) You are an investment company and the individual no longer holds shares in the company; or

(iv) You are an investment company and your customer has been determined to be a lost securityholder as defined in 17 CFR 240.17a–24(b).

§ 248.6 Information to be included in initial and annual notices of privacy policies and practices.

(a) *General rule.* The initial and annual notices that you provide about your privacy policies and practices under §§ 248.4 and 248.5 must include each of the following items of information:

(1) The categories of nonpublic personal information about your consumers that you collect;

(2) The categories of nonpublic personal information about your consumers that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your consumers, other than those parties to whom you disclose information under §§ 248.10 (exceptions for processing and servicing accounts or transactions) and 248.11 (exceptions for consumer consent and to comply with various legal requirements);

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§ 248.10 and 248.11;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 248.9 (and no other exception applies to that disclosure), a separate description of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the right under § 248.8(a) of the consumer to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the methods by which the consumer may exercise that right;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates); and

(8) Your policies and practices with respect to protecting the confidentiality, security and integrity of nonpublic personal information.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information about a consumer to third parties as authorized under §§ 248.10 and 248.11, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 248.4 and 248.5. When describing the categories with respect to those parties, you are only required to state that you make disclosures to other nonaffiliated third parties as permitted by law.

(c) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(d) *Examples.* (1) *Categories of nonpublic personal information that you collect.* You adequately categorize the nonpublic personal information you collect if you categorize it according to the source of the information, such as application information, information about transactions (such as information regarding your brokerage or investment advisory account), and consumer reports.

(2) *Categories of nonpublic personal information you disclose.* You adequately categorize nonpublic personal information you disclose if you categorize it according to source, and provide a few illustrative examples of the content of the information. These might include application information, such as assets and income, investment goals, or investment risk tolerance; identifying information, such as name, address, and social security number; and transaction information, such as information about account balance, payment history, parties to the transaction, credit card usage, securities positions, or securities purchases and sales; and information from consumer reports, such as a consumer's creditworthiness and credit history. You do not adequately categorize the information that you disclose if you use only general terms, such as transaction information about the consumer.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You adequately categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about consumers if you identify the types of businesses that they engage in. Types of businesses may be described by general terms only if you use a few illustrative examples of significant lines of business. For example, you may use the term financial products or services if you include appropriate examples of significant lines of businesses, such as consumer banking, mortgage lending, life insurance, securities brokerage, or financial planning. You also may categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about consumers using more detailed categories.

(4) *Simplified notices.* If you do not disclose, and do not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1) and (a)(8), and (b) of this section.

(5) *Confidentiality, security, and integrity.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you explain who has access to the information and the circumstances under which the information may be accessed. You describe your policies and practices with respect to protecting the integrity of nonpublic personal information if you explain measures you take to protect against reasonably anticipated threats or hazards. You are not required to describe technical information about the safeguards you use.

§ 248.7 Limitation on disclosure of nonpublic personal information about consumers to nonaffiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 248.4;

(ii) You have provided to the consumer an opt out notice as required in § 248.8;

(iii) You have given the consumer a reasonable opportunity, before the time

that you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 248.9, 248.10 and 248.11.

(3) *Examples of reasonable opportunity to opt out.* (i) *By mail.* You provide a consumer with whom you have a customer relationship with a reasonable opportunity to opt out if you mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer a reasonable period of time, such as 30 days, to opt out.

(ii) *Isolated transaction with consumer.* For an isolated transaction, such as the provision of brokerage services as an accommodation to a consumer who does not establish an account with you, you provide a reasonable opportunity to opt out if you provide the consumer with the required notices at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information.*

(1) You must comply with this section regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 248.8 Form and method of providing opt out notice to consumers.

(a)(1) *Form of opt out notice.* You must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under § 248.7(a)(1). The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples.* (i) You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose to nonaffiliated third parties as described in § 248.6 and state that the consumer can opt out of the disclosure of that information.

(ii) You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form together with the opt out notice; or

(C) Provide an electronic means to opt out, such as a form that can be sent by electronic mail or a process at your web site, if the consumer agrees to the electronic delivery of information.

(iii) You do not provide a reasonable means of opting out if the only means of opting out is for the consumer to write his or her own letter to exercise that opt out right.

(b) *How to provide opt out notice.* (1) *Delivery of notice.* You must provide the opt out notice required by paragraph (a) of this section in a manner so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, in electronic form. If you and the consumer orally agree to enter into a customer relationship, you may provide the opt out notice required by paragraph (a) of this section within a reasonable time thereafter if the consumer agrees.

(2) *Oral description of opt out right insufficient.* You may not provide the opt out notice solely by orally explaining, either in person or over the telephone, the right of the consumer to opt out.

(3) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with § 248.4.

(4) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice at a later time than required for the initial notice in accordance with § 248.4, you must also include a copy of the initial notice in writing or, if the consumer agrees, in an electronic form with the opt out notice.

(c) *Notice of change in terms.* (1) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to the consumer under § 248.4, unless:

(i) You have provided to the consumer a revised notice that accurately describes your policies and practices;

(ii) You have provided to the consumer a new opt out notice;

(iii) You have given the consumer a reasonable opportunity, before the time that you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *How to provide notice of change in terms.* You must provide the revised notice of your policies and practices and opt out notice to a consumer using the means permitted for providing the initial notice and opt out notice to that consumer under § 248.4(d) or § 248.8(b).

(3) *Examples.* (i) Except as otherwise permitted by §§ 248.9, 248.10 and 248.11, a change-in-terms notice is required if you:

(A) Disclose a new category of nonpublic personal information to any nonaffiliated third party; or

(B) Disclose nonpublic personal information to a new category of nonaffiliated third party.

(ii) A change-in-terms notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that is adequately described by your prior notice.

(d) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time, and you must comply with the consumer's direction as soon as reasonably practicable.

(e) *Duration of consumer's opt out direction.* A consumer's direction to opt out under this section is effective until revoked by the consumer in writing, or if the consumer agrees, in electronic form.

§ 248.9 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* The opt out requirements in §§ 248.7 and 248.8 do not apply when you provide nonpublic personal information about a consumer to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(1) Provide the initial notice in accordance with § 248.4; and

(2) Enter into a contractual agreement with the third party that:

(i) Requires the third party to maintain the confidentiality of the information to at least the same extent that you must maintain that confidentiality under this part; and

(ii) Limits the third party's use of information you disclose solely to the purposes for which the information is disclosed or as otherwise permitted by §§ 248.10 and 248.11.

(b) *Service may include joint marketing.* The services performed for you by a nonaffiliated third party under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, *joint agreement* means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 248.10 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 248.4(a)(2), the opt out in §§ 248.7 and 248.8, and service providers and joint marketing in § 248.9, do not apply if you disclose nonpublic personal information:

(1) As necessary to effect, administer, or enforce a transaction requested or authorized by the consumer;

(2) To service or process a financial product or service requested or authorized by the consumer;

(3) To maintain or service the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(4) In connection with a proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate, or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: Account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by federal or State law; or

(vi) In connection with settling a transaction, including:

(A) The authorization, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit or other payment information.

§ 248.11 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice to consumers in § 248.4(a)(2), the opt out in §§ 248.7 and 248.8, and initial notice to consumers under the exception for service providers and joint marketing in § 248.9, do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including government regulators), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with federal, State, or local laws, rules and other applicable legal requirements, including rules or other applicable legal requirements of self-regulatory organizations;

(ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, State, or local authorities or self-regulatory organizations; or

(iii) To respond to judicial process, government regulatory authorities, or self-regulatory organizations having jurisdiction over you for examination, compliance, or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated mortgage lender of the value of the assets in the consumer's brokerage or investment advisory account so that the lender can evaluate the consumer's application for a mortgage loan.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 248.8(d).

§ 248.12 Limits on redisclosure and reuse of information.

(a) *Limits on your redisclosure and reuse.* (1) Except as otherwise provided in this part, if you receive nonpublic personal information about a consumer from a nonaffiliated financial institution, you must not, directly or through an affiliate, disclose the

information to any other person that is not affiliated with either the financial institution or you, unless the disclosure would be lawful if the financial institution made it directly to that other person.

(2) You may use nonpublic personal information about a consumer that you receive from a nonaffiliated financial institution in accordance with an exception under §§ 248.9, 248.10, or 248.11 only for the purpose of that exception.

(b) *Limits on redisclosure and the reuse by other persons.* (1) Except as otherwise provided in this part, if you disclose nonpublic personal information about a consumer to a nonaffiliated third party, that party must not, directly or through an affiliate, disclose the information to any other person that is a nonaffiliated third party of both you and that party, unless the disclosure would be lawful if you made it directly to such other person.

(2) A nonaffiliated third party may use nonpublic personal information about a consumer that it receives from you in accordance with an exception under §§ 248.9, 248.10, or 248.11 only for the purpose of that exception.

(3) *Example.* If you provide nonpublic personal information to a nonaffiliated transfer agent that services your customer accounts, the transfer agent may not, directly or through an affiliate, disclose the nonpublic personal information to any other person that is a nonaffiliated third party of you and the transfer agent unless you could lawfully make the disclosure to that party.

§ 248.13 Limits on sharing of account number information for marketing purposes.

You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

§ 248.14 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 248.15 Relation to State laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that the State statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection that statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Federal Trade Commission, after consultation with the Commission, on the Federal Trade Commission's own motion or upon the petition of any interested party.

§ 248.16 Effective date; transition rule.

(a) *Effective date.* This part is effective November 13, 2000.

(b) *Notice requirement for consumers who were your customers on the effective date.* No later than thirty days after the effective date of this part, you must provide an initial notice, as required by § 248.4, to consumers who were your customers on the effective date of this part.

§§ 248.17–248.29 [Reserved]

§ 248.30 Procedures to safeguard customer records and information.

Every broker, dealer, and investment company, and every investment adviser registered with the Commission must adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. These policies and procedures must be reasonably designed to:

(a) Insure the security and confidentiality of customer records and information;

(b) Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and

(c) Protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

By the Commission.

Dated: March 2, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5526 Filed 3–3–00; 10:05 am]

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Part IV

Environmental Protection Agency

40 CFR Part 262

180-Day Accumulation Time Under RCRA for Waste Water Treatment Sludges From the Metal Finishing Industry; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[FRL–6547–6]

RIN 2050–AE60

180-Day Accumulation Time Under RCRA for Waste Water Treatment Sludges From the Metal Finishing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As part of the Common Sense Initiative, the Environmental Protection Agency (EPA) is today finalizing a cleaner, cheaper, and smarter opportunity for environmental protection for the Metal Finishing industry. EPA is promulgating regulations that allow large quantity generators of F006 sludges (certain sludges from the treatment of electroplating wastewaters) up to 180 days (or up to 270 days, as applicable) to accumulate F006 waste without a hazardous waste storage permit or interim status, provided that these generators recycle the F006 through metals recovery and meet certain conditions. On February 1, 1999, EPA proposed the 180-day (or 270-day, as applicable) accumulation time to address existing economic barriers to the recycling of F006 waste through metals recovery and to provide large quantity generators of F006 waste with an incentive to choose metals recovery instead of treatment and land disposal as their final waste management option. Today's final rule adopts that proposal, with some modifications made in response to public comments.

EFFECTIVE DATE: This final rule is effective on March 8, 2000.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket identification number is F–2000–F06F–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that members of the public make appointments by calling (703) 603–9230. Members of the public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the "Supplementary Information" section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Kathy Blanton, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW, Washington, DC 20460–0002, (703) 605–0761, blanton.katherine@epa.gov

SUPPLEMENTARY INFORMATION:

Internet Availability

This rule is available on the Internet. You can find it at: *http://www.epa.gov/epaoswer/hazwaste/gener/f006acum.htm*

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I. Authority

These regulations are promulgated under the authority of sections 2002 and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912 and 6922.

II. Background

A. Purpose and Context of Final Rule

The Resource Conservation and Recovery Act (RCRA) directs EPA to promulgate standards for generators of hazardous waste as necessary to protect human health and the environment (RCRA Section 3002). Section 1003 of RCRA establishes a national objective of "minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitutions, materials recovery, properly conducted recycling and reuse, and treatment." In response to these provisions, EPA has endeavored to develop regulations that promote legitimate recycling of solid and hazardous waste while protecting human health and the environment against the development and use of unsafe or sham recycling practices. On February 1, 1999, in an effort to promote the legitimate materials recovery of F006 hazardous wastes (sludges from the treatment of electroplating wastewaters) and to reduce the volume of F006 that is land disposed, EPA proposed to allow large quantity generators of F006 up to 180 days (or

270 days in certain circumstances) to accumulate F006 on-site without a RCRA permit or interim status, if the F006 waste would be recycled through metals recovery and if the generators complied with certain conditions while the F006 was being accumulated on-site (64 FR 4818). Today's final rule adopts that proposal, with some modifications made in response to public comments.

Today's final rule allows large quantity generators of F006 waste up to 180 days (or 270 days in certain circumstances) to accumulate F006 waste on-site, without a RCRA permit or interim status, as an incentive to encourage metals recovery and pollution prevention practices for this waste. Under this final rule, F006 wastes that are not destined for metals recovery would not be eligible for the 180-day (or 270-day, as applicable) accumulation time. In order to ensure that on-site accumulation of F006 waste is protective of human health and the environment, the management standards for 180-day (or 270-day, as applicable) on-site accumulation of F006 are the same as those that currently apply to 90-day on-site accumulation.

Currently, generators who generate greater than 1,000 kilograms of hazardous waste in a calendar month (i.e., large quantity generators (LQGs)) may accumulate hazardous waste on-site, without having to obtain a RCRA permit for the on-site accumulation activities, for a period of up to 90 days. Many generators of F006 wastewater treatment sludges have indicated that this 90-day accumulation limit restricts their ability to generate a large enough volume of F006 sludge to make recycling economically feasible when compared to treatment and land disposal. This is principally due to: (1) The relatively high cost of transportation of the hazardous sludge from a generator's establishment to a recycling or smelting facility (due, in part, to longer distances to metals recovery facilities and shipment of partial truckloads) and (2) the surcharge that metals recovery facilities generally charge generators and waste brokers managing small quantities of F006 waste.

In this final rule, EPA is allowing large quantity generators of F006 electroplating sludge to accumulate F006 waste on-site for up to 180 days (or 270 days under certain circumstances) in tanks, containers, or containment buildings without a RCRA permit or interim status, if the generator: (1) implements pollution prevention practices that reduce the amount of any hazardous substance, pollutant or contaminant entering F006 or otherwise released into the environment prior to its recycling, (2) recycles the F006 waste through metals recovery, (3) accumulates no more than 20,000 kilograms of F006 waste on-site at any one time, and (4) complies with the applicable management standards in the rule. This proposal does not change any other requirements applicable to generators of hazardous waste. Large quantity generators of F006 are only required to meet the conditions of today's rule if they accumulate F006 on-site, without a RCRA permit or interim status, for more than 90 days. However, the conditions of today's rule must be met for the entire accumulation period. Large quantity generators of F006 who accumulate waste for 90 days or less without a RCRA permit or interim status may continue to comply with the conditions of 40 CFR 262.34(a).

EPA is basing this final rule in part on discussions and information gathered as part of the Agency's Common Sense Initiative for the Metal Finishing Industry. The Common Sense Initiative, as well as broader changes in the regulation of F006 waste being considered as part of the Common Sense Initiative, are discussed in more detail below. The Agency notes that this final rule only affects the amount of time large quantity generators of F006 waste may accumulate that waste on-site, without a RCRA permit or interim status, prior to having it processed for metals recovery. At this time, EPA is making no other changes to the hazardous waste management standards governing generator activities. All other provisions governing large quantity generators under 40 CFR part 262 (e.g. unit specific standards, recordkeeping and reporting, and manifesting requirements) remain unchanged and in effect for large quantity generators of F006 waste.

B. Common Sense Initiative (CSI) for the Metal Finishing Industry and the National Advisory Council for Environmental Policy and Technology (NACEPT) Committee on Sectors

This final rule is an outgrowth of activities conducted under the EPA's Common Sense Initiative (CSI) for the metal finishing industry sector. These activities, including further work on F006 issues, are continuing as part of the Agency's Standing Committee on Sectors of the National Advisory Council for Environmental Policy and Technology (NACEPT).

The CSI, an innovative approach to environmental protection and pollution prevention, was established on October 17, 1994, through a charter pursuant to the Federal Advisory Committee Act (FACA). The goal of the CSI was to use multi-stakeholder consensus decision-making to recommend policy and program changes to the CSI Council and the EPA Administrator. EPA selected six industries to serve as CSI pilot industries: automobile manufacturing, computer and electronics, iron and steel, metal finishing, petroleum refining, and printing. These six industries comprise over 11 percent of the U.S. gross domestic product, employ over 4 million people, and account for over 12 percent of the toxic releases reported by United States industry. As such, they offered excellent opportunities to test and refine CSI concepts, to create environmental solutions that could operate across industries, and to identify opportunities to expand CSI concepts to other relevant industries.

CSI was organized through an advisory committee referred to as the "CSI Council" that was comprised of high-level representatives from various stakeholder groups, including all involved industries. For each industry, known as a "sector" in CSI, the CSI Council established a subcommittee of stakeholders to look for cleaner, cheaper, and smarter opportunities for environmental protection in that sector. Sector subcommittees and work groups met frequently to develop and discuss various projects, policy recommendations, and other issues. Sector options, proposals, issues, and data were forwarded to the CSI Council for further action. The CSI Council considered matters from the sector subcommittees and made recommendations to the Administrator. The CSI process produced better, tailored environmental protection strategies that were developed, in part, by the regulated community, in concert with regulatory agencies and public interest groups.

Since beginning their work in January 1995 the sector subcommittees developed nearly 40 projects involving more than 150 stakeholders who actively participated in sector subcommittees and subcommittee workgroups. Some of the projects were specific to individual sectors. Other projects explored solutions to common issues such as alternative flexible regulatory systems, pollution prevention, reporting, compliance, permitting, and environmental technology.

This final rule stems primarily from CSI efforts in the metal finishing industry sector. The metal finishing industry consists of more than eight thousand "captive" metal finishers that

operate within larger manufacturing facilities and operate within the financial structure of a larger company, as well as more than three thousand "job shops" (i.e. independent metal plating firms that complete jobs on contract). Seventy-one percent of job shops employ fewer than 20 employees and operate with limited capital and personnel. The industry is geographically diverse and is most concentrated in heavily industrialized states. Because of the cross-media impacts of their operations, metal finishers face a broad range of federal, state, and local environmental requirements (especially with regard to water use and waste disposal).

The CSI metal finishing subcommittee had 24 members representing metal finishing companies, trade associations, suppliers, environmental and community groups, organized labor, and state and local governments. Some of the representative organizations included the American Electroplaters and Surface Finishers Society, the National Association of Metal Finishers, the Natural Resources Defense Council, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), the Barrio Planners of Los Angeles, the Water Environment Federation, and the Association of Metropolitan Sewerage Agencies. As part of its work under CSI, the metal finishing subcommittee developed a set of ambitious voluntary performance goals to promote pollution prevention and environmental management beyond what is currently required for the industry under federal regulations (known as the Strategic Goals Program). The goals address resource utilization, hazardous emissions, economic paybacks, and compliance costs.

As a means towards meeting these goals, the metal finishing subcommittee endorsed 14 projects and supported an additional CSI small business sector project. In addition to these 14 projects, the action plan also contains "enabling actions" that all stakeholders have committed to undertake to help the industry meet the Strategic Goals. The focus of today's rule, allowing large quantity generators of F006 waste to accumulate the sludge for up to 180 days (or 270 days, as applicable), is an enabling action identified that would remove some unnecessary barriers to recycling and would promote the goals of the CSI effort. Specifically, the final rule is an outgrowth of the CSI stakeholders' efforts and is designed to encourage more recycling of F006 waste through metals recovery.

Another of the enabling actions is a project to examine whether the physical nature of F006 waste has changed as a result of process improvements in the last twenty years, and if so, whether some type of regulatory, administrative, or other relief for the management of F006 waste is warranted. Phase I of this study was a *Metal Finishing F006 Benchmark Study* issued by EPA in September 1998. This study is included in the docket for this rulemaking. Phase II of the study is now in process. This phase involves identifying additional data needs, if any, and examining potential regulatory and administrative strategies that may promote metals recovery of F006 waste, encourage pollution prevention practices related to the generation of F006 waste, and reduce or remove possible RCRA barriers to metals recovery of F006 waste.

The CSI charter expired on February 17, 1999. However, EPA and the CSI Council felt it was important for EPA to continue to receive stakeholder input on its progress toward a sector-based approach for environmental protection. The Agency found that the National Advisory Council for Environmental Policy and Technology (NACEPT) was the appropriate vehicle to help the Agency incorporate the sector-based approach to environmental protection into EPA's core functions. The NACEPT Standing Committee on Sectors' first meeting was April 15–16, 1999, in Washington, DC. The Committee on Sectors' role is to provide advice and recommendations to the Administrator through the NACEPT Council. Three of the six CSI Subcommittees (Printing, Petroleum Refining, and Metal Finishing) have been set up as work groups under the new NACEPT Standing Committee on Sectors. The Committee on Sectors will provide the workgroups with a forum to continue their work. Thus, the metal finishing sector's further work on F006 issues is continuing under the NACEPT structure. The workgroups are not authorized to advise EPA directly; they will provide advice to the Standing Committee on Sectors which, in turn, provides advice and recommendations to the Administrator through the NACEPT Council.

C. Current Accumulation Time for Large Quantity Generators

The current standards under 40 CFR part 262 for generators of hazardous waste who generate greater than 1,000 kilograms of hazardous waste per calendar month (large quantity generators (LQGs)) limit the amount of time hazardous waste can be accumulated on-site without a RCRA permit. Under the existing 40 CFR 262.34, LQGs may accumulate any quantity of hazardous waste on-site for up to 90 days without having to obtain a RCRA permit. This provision was established to provide generators sufficient time in all reasonable situations for waste accumulation to occur prior to waste management without interfering with generator manufacturing processes. 51 FR 25487 (July 14, 1986).

Under the existing 90-day accumulation rule, LQGs must comply with certain unit-specific standards for accumulation units (e.g. standards for tanks, containers, containment buildings, and drip pads), and standards for marking and labeling, preparedness and prevention, contingency plan and emergency procedures, personnel training, and land disposal restrictions (40 CFR 262.34(a)). Large quantity generators may also petition the EPA Regional Administrator for an extension of up to 30 days to the 90-day accumulation time limit due to unforeseen, temporary, and uncontrollable circumstances, on a case-by-case basis under 40 CFR 262.34(b).

As outlined above, and explained below in Section III, the Agency is promulgating regulations to allow large quantity generators of F006 wastewater treatment sludges to accumulate the waste prior to metals recovery for up to 180 days (or 270 days in certain circumstances) without a RCRA permit, provided the generators comply with certain conditions. Today's final rule makes no changes to the existing conditions for 90-day accumulation under the current regulations, and does not in any way re-open those regulations for review.

III. Rationale for Allowing 180 (or 270) Days to Accumulate F006 Wastes Recycled by Metals Recovery

A. Increased Recycling of F006

Today's rule is designed to provide incentives to large quantity generators of F006 waste to recycle their F006 waste through metals recovery.

EPA data indicates that about 40 percent of large quantity generators of F006 waste potentially affected by this final rule recycle their waste; the remainder use land disposal. EPA believes that some large quantity generators of F006 may be choosing land disposal over recycling for economic reasons, since transportation and costs for recycling by metals recovery can be more expensive for many large quantity generators of F006 than the costs for land disposal.

Of the estimated 1,934 large quantity generators of F006, an estimated 1,483

generally do not generate enough F006 to fill a hazardous waste transporter truck within 90 days. Because under the current regulations large quantity generators may only accumulate hazardous waste on-site without a RCRA permit for 90 days, these 1,483 large quantity generators must ship partial truck loads. The transportation costs for these partial truck loads are disproportionately higher than they would be for full truck loads because there is generally some fixed cost associated with having a truck pick up a load of F006 waste, regardless of whether the truck is picking up a partial or full load. For the fixed cost portion of the load, the cost per unit of F006 waste for shipping the waste is more for partial loads than full loads (i.e., the cost per unit of F006 waste for the fixed cost portion of the truck is twice as much for a half-filled truck compared to a full truck). Allowing large quantity generators of F006 waste to accumulate a full truck load of such waste will therefore decrease the cost per unit of F006 waste associated with shipping the waste off-site for metals recovery.

In the United States, there are significantly more landfills than metals recovery facilities that handle F006 wastes. Because there are fewer recycling facilities in the U.S. that can recover metals from F006 waste than landfills that accept F006 waste for disposal, the distances from generators' sites to metals recovery facilities are generally greater than to landfills. Accordingly, many generators seek to minimize shipping costs (which are usually based on a per-mile unit cost) by finding the nearest RCRA permitted treatment, storage or disposal facility, which is most often a landfill. Thus, many large quantity generators may not choose metals recovery for their F006 waste due to the higher costs associated with longer transport distances to recycling facilities as compared to landfills.

In order to facilitate more F006 waste metals recovery and less F006 land disposal, EPA has, in this final rule, provided an accumulation period of up to 180 days (or 270 days, as applicable) only if a large quantity generator chooses to recycle F006 for metals recovery. EPA estimates, based on its analysis of waste generation and management patterns in the industry, that 1,483 more large quantity generators of F006 waste will be able to accumulate larger amounts (some of which will be full truck loads) and ship less frequently during the 180-day (or 270-day, as applicable) period. Shipping a fuller truck load of F006 waste will make F006 waste metals recovery more cost effective for a significant percentage of large quantity generators who currently land dispose F006, thereby encouraging more F006 waste metals recovery. Shipping a fuller truck load of F006 waste will also make F006 waste metals recovery even more cost effective for large quantity generators who are already recycling F006 waste. In the Regulatory Impact Analysis for this rulemaking (available in the docket for this rulemaking), the Agency estimated that 72% to 89% of the 1,483 generators affected by this rule will take advantage of the flexibility provided in today's final rule. F006 waste metals recovery also promotes resource conservation because metals recovered from the sludges may serve as alternative feedstocks for primary metals in production and manufacturing processes.

In addition, EPA believes that the rationale supporting the 180-day (or 270-day, as applicable) accumulation time in today's rule is consistent with the rationale for the 90-day accumulation rule. In promulgating the 90-day accumulation rule, EPA allowed large quantity generators to accumulate waste on-site without a RCRA permit or interim status, partly because such activity was consistent with typical generator activities. The 180-day (or 270-day, as applicable) accumulation time in today's rule will facilitate the appropriate handling of F006 waste by a large quantity generator prior to its being recycled for metals recovery. EPA believes that accumulating F006 waste on-site for up to 180 days, or up to 270 days, as applicable (to facilitate more recycling through metals recovery), is more consistent with generator activities than with typical treatment, storage, or disposal facility activities, because the 180-day (or 270-day, as applicable) accumulation is part of the initial handling and consolidation of hazardous waste that a generator undertakes prior to moving that waste on for recovery or for final treatment, storage, or disposal. Today's proposed rule maintains the rationale of the 90-day accumulation rule.

B. Protective of Human Health and the Environment

The provisions of today's rule also ensure that on-site accumulation of F006 for 180 days (or 270 days under certain circumstances) is protective of human health and the environment. The same conditions that apply to 90-day accumulation of any hazardous waste apply to the 180-day (or 270-day, as applicable) accumulation of F006. The F006 waste must be accumulated in tanks, containers, or containment buildings that meet applicable management standards.[1] These units and relevant standards are designed to minimize releases of hazardous waste to the environment. F006 waste generators commonly accumulate F006 waste in super sacks (sacks that are reinforced woven resin and designed to accommodate bulk shipments) or bulk accumulation containers. These super sack containers are designed to prevent releases of F006 (see 62 FR 25998, 26013 (1997)). The regulations governing accumulation of hazardous waste in containers require such measures as ensuring that the container is closed except when adding or removing waste, and that the container is never handled in a manner which may cause it to rupture or leak.[2] In addition, as with 90-day accumulation, in order to accumulate F006 on-site for 180 days (or 270 days, as applicable), large quantity generators of F006 are required to follow personnel training, preparedness and prevention, and contingency plan and emergency procedure requirements. With these conditions in place, EPA believes that allowing large quantity generators of F006 waste to accumulate F006 for 180 days (or 270 days as applicable) does not pose any significantly increased potential harm to human health or the environment.

EPA received a number of comments relating to the Agency's rationale for taking this action. Some of the key comments and EPA's responses to these comments are summarized below and in subsequent sections. The docket for today's rule contains responses to all comments. EPA received some comments arguing that accumulating F006 on-site for 180 days (or 270, as applicable) could result in increased risks to human health and the environment. One commenter suggested that the longer accumulation time will create more potential for a release through deterioration, damage, or mismanagement, and that F006 wastes pose particular risks of harm when accumulated for longer periods because many of these wastes are corrosive and highly alkaline, resulting in a higher risk of drum deterioration and leaking if not properly managed. Another commenter stated that having larger amounts of F006 on-site may result in increased risks because human or equipment malfunction may affect more

[1] Today's final rule does not allow accumulation of F006 waste on drip pads (as is provided in the existing accumulation regulations in 40 CFR 262.34) because F006 waste is not managed on drip pads, nor does the Agency believe that it would be appropriate to accumulate F006 waste on drip pads.

[2] 40 CFR 265.173.

than one super sack (container) which will therefore cause a release of more F006. This commenter was also concerned that the proposal would allow additional on-site treatment of F006, resulting in increased air emissions and increased chronic health risks. This commenter believes that much of the F006 treatment occurs in exempted wastewater treatment units (WWTUs) and accumulation units subject to subpart CC (which only addresses volatile organic air emissions), and that EPA should improve subpart CC standards and/or repeal the WWTU exclusion.

EPA disagrees that accumulating F006 on-site for a longer period of time, and in greater amounts, will lead to a greater likelihood of releases, and believes this rule is most likely to result in reduced releases overall. As discussed above, large quantity generators of F006 operating under the terms of today's rule must comply with the same unit-specific and general site operation provisions (e.g. personnel training, contingency planning, emergency response) that apply to generators operating under the existing 90-day regulations.

The unit-specific standards are not based on the length of time a hazardous waste is accumulated. Rather, these standards are essentially the same for small quantity generators of F006 (180–270 day accumulation), large quantity generators of F006 (90 day accumulation), and F006 permitted facilities (where the length of time a waste is stored may be a year or longer). With respect to the general site operation standards, EPA believes the 90-day accumulation standards are also sufficient to ensure protection of human health and the environment for F006 accumulation. In general, these standards require a generator to evaluate his or her particular site circumstances (which would include, for example, the length of time the F006 remains on-site and the total quantity accumulated on-site at any one time) and implement training, planning, and response measures appropriate to those circumstances. For example, in order to be in compliance with § 262.34(g)(4)(v) (which incorporates the existing 90-day general site operation provisions), generators accumulating F006 on-site under the terms of today's final rule should consider whether their current general site operation procedures (e.g. personnel training, contingency planning, etc.) should be modified in light of having more F006 on-site than they would under the 90-day limit.

Thus, EPA believes that these provisions are protective of human health and the environment even when the F006 waste is accumulated for more than 90 days. If an F006 waste is corrosive (F006 was not listed as a hazardous waste due to any corrosive characteristics), the Agency believes that the required inspections will ensure that any deterioration of containers caused by corrosion will be discovered prior to any significant release into the environment.

EPA also does not agree that having larger amounts of F006 on-site is likely to result in increased risks because human or equipment malfunction may affect more than one super sack (container) which will, therefore, cause a release of more F006. The *F006 Benchmark Study* indicates, and other information confirms, that most generators dewater F006 into a cake-like material to remove free liquids and to decrease the costs of accumulation, shipping, recycling and/or disposal. In the event of a spill of dewatered F006 sludge (e.g., a release caused by a rip or tear in a super sack), EPA believes the potential risk of harm to human health and the environment would be low compared to a spill of a free liquid or dust. Other available information corroborates this conclusion, indicating that the cake-like consistency of dewatered F006 sludge ensures that a spill of F006 waste, even of multiple containers, could be contained relatively easily. Spilled dewatered F006 sludge resulting from a release caused by a rip or tear in a super sack (or break in another accumulation unit) retains its solid-like consistency (because it still retains some moisture) and is not likely to run off as a free liquid or disperse in the wind like a dust, which will also result in a lower likelihood of air emissions from F006 accumulated on-site.

In addition, EPA believes the 180-day (or 270-day, as applicable) accumulation time could decrease the potential for releases of hazardous constituents from the handling of F006 waste. A recent review of damage incidents associated with the management of F006 waste (contained in the docket for this rulemaking) indicates that most of the reported incidents of releases of F006 waste were associated with the transfer of F006 waste from accumulation to transport vehicle, from transport vehicle to receiving facility, or while in transport. Because the 180-day (or 270-day, as applicable) accumulation time will mean that the F006 waste is transferred from generator to transporter to receiving facility less often, and that fewer shipments of F006 waste will be made, today's final rule should decrease the potential for releases of F006 waste into the environment. Similarly, workers will be required to handle the F006 waste less often (because transfers will occur less often), thereby decreasing their potential exposure to the F006 waste.

Finally, EPA does not agree with the comment that today's rule will lead to additional treatment activities resulting in significantly increased chronic health risks. For purposes of this discussion, it is important to distinguish between the treatment of electroplating wastewater and the treatment of electroplating wastewater treatment sludge. Most on-site "treatment" that occurs at metal finishing sites is treatment of electroplating wastewaters (not wastewater treatment sludge) in wastewater treatment units (WWTUs)—exempt units not affected by this rule. Increased wastewater generation, and subsequent wastewater treatment, would only be expected to occur as a result of increased process output (i.e., increased metal finishing activity), but this rule will not affect process output, nor will it change generators' treatment of wastewaters. The process output at electroplating facilities is dictated by market demand for electroplating services not by any factors related to how long the electroplater can accumulate the waste on-site. In addition, this rule does not affect exempt WWTUs. Thus issues related to wastewater treatment in exempt WWTUs are outside the scope of this rulemaking.

EPA also does not expect significant, if any, increases in treatment of wastewater treatment sludge as a result of this rule. Although the commenter is correct that the rule will allow longer accumulation time, this does not lead to the inference that they will undertake more treatment. Generators treat electroplating wastewater treatment sludge for a specific purpose and there is no reason to believe they would undertake additional treatment activities simply because they can hold the waste for a longer period of time. First, data from the F006 Benchmark Study indicate, and other available information confirms, that most F006 generators already conduct sludge drying or dewatering. Sludge drying and dewatering reduce the weight of the sludge and thus are usually conducted to save on transportation, disposal and recovery costs, which are largely based on weight. Because transportation and recovery costs for most affected facilities will be less under the final rule than they are currently, this rulemaking does not create an additional economic incentive to conduct additional sludge treatment. Second, this rule will not

result in increased production at electroplating shops and consequently, is not expected to increase the volume of electroplating wastewater sludge generated, or the rate at which it is generated. The process output at electroplating facilities is dictated by market demand for electroplating services not by any factors related to how long the electroplater can accumulate the waste on-site. Third, electroplaters generally do not have excess space to put in additional treatment units. If there were excess space, information available to EPA indicates that plant managers would opt to install additional production units. Finally, new treatment units would require additional investment and resources to install and operate, with little clear benefit to be derived from these added costs, compared to the advantages of installing additional production equipment.

Although unlikely, if, as a consequence of this rule, a generator were to conduct any additional on-site treatment of electroplating wastewater treatment sludge in accumulation units, EPA does not agree that such treatment will result in increased risk. With the exception of the changes in accumulation periods contained in the rule, all other conditions for 90-day accumulation apply. EPA believes the standards for accumulation which the generator of F006 must meet ensure protection of human health and the environment, even if the amount of F006 accumulated (including treatment) on-site increases. In order to accumulate F006 without a RCRA permit, F006 generators operating under the terms of this rule must comply with the same unit-specific and general site operation (*e.g.*, personnel training, contingency planning, emergency response) provisions that apply to generators of F006 operating under the existing 90-day regulations. The unit-specific standards are not based on the amount of F006 hazardous waste accumulated. To the contrary, these standards are essentially the same for small quantity generators of F006 (180–270 day accumulation), large quantity generators of F006 (90 day accumulation), and F006 permitted facilities. The commenter is correct that the 40 CFR part 265 subpart CC standards do not control inorganic emissions. However, metals, with the exception of mercury, which is unlikely to be found in significant concentrations in F006, have a high melting point and low volatility and are therefore unlikely to release volatile emissions. Thus, EPA does not agree there will be increased risk from on-site treatment of F006 in accumulation units simply because generators may accumulate a greater quantity of F006 under this rule.

Finally, to accumulate F006 under the terms of this rule, generators must implement pollution prevention measures, which occur prior to generation of F006. Because some of these pollution prevention activities are designed to reduce the toxicity of the F006 generated at a particular facility, they should also result in reduced risks from any on-site treatment activities.

Some commenters were concerned that sludge drying and dewatering, which were identified in the proposal as pollution prevention practices, could increase air emissions. In response to this and other comments, EPA has narrowed the pollution prevention condition in the final rule to include "practices that reduce the amount of any hazardous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling." This change, and explanatory language in the preamble (see section IV.A.), clarifies that sludge drying and dewatering (or any other measure that merely reduces the volume of the waste) are not considered pollution prevention for purposes of meeting the pollution prevention condition of this rule. Thus, as indicated above, EPA does not expect this activity to increase as a result of this rule.

IV. Special Conditions for Accumulating F006 for 180 (or 270) Days

In today's final rule, large quantity generators of F006 waste are allowed up to 180 days (or up to 270 days, under certain circumstances) to accumulate F006 waste on-site in tanks, containers or containment buildings without a RCRA permit or interim status, provided that the generator: (1) Has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutant, or contaminant entering F006 or otherwise released into the environment prior to its recycling, (2) recycles the F006 waste by metals recovery, (3) accumulates no more than 20,000 kilograms of F006 waste at any one time, and (4) complies with the applicable management standards in this rule. A detailed discussion of the first three conditions follows in the next three subsections of this preamble. Further detail about the applicable management standards is in Section V.E. of this preamble.

A. Pollution Prevention Practices

The primary goal of today's rule is to encourage more recycling through metals recovery of F006. It also has the goal of increasing pollution control measures, prior to the generation of F006, which can make F006 less hazardous for subsequent management and more amenable for metals recovery. Thus, today's rule includes a condition that in order to accumulate the F006 on-site for 180 days (or 270 days, as applicable), large quantity generators of F006 must implement pollution prevention practices that reduce the amount of any hazardous substance, pollutant or contaminant entering F006 or otherwise released into the environment prior to its recycling. In response to comments, this condition of the final rule has been slightly modified from the proposal. This modification is discussed below.

Within the metal finishing industry, generators have implemented a variety of pollution prevention practices (including product substitution, drag-out and counter-current flow rinse systems, flow restrictors, evaporation recovery systems, plating bath reuse, ion exchange systems, and segregation of wastewater streams) to improve process efficiency, cut waste generation and waste management costs, and improve compliance. Table 1 summarizes several categories of pollution prevention practices that are commonly used within the metal finishing industry. These practices reduce the volume and toxicity of the F006 waste generated or make the F006 waste more amenable for metals recovery. Any generator that already has pollution prevention practices in place which reduce the amount of hazardous substances, pollutants or contaminants entering F006 or otherwise entering the environment prior to its recycling would not be required to implement additional pollution prevention practices.

For example, rinse water reduction techniques reduce the volume of effluents discharged from metal finishing processes. Drag-out reduction measures reduce the volume and can reduce the toxicity of effluents discharged from metal finishing processes. Implementation of these methods of pollution prevention promotes protection of human health and the environment because the F006 sludge produced is reduced in volume or toxicity.

Pollution prevention measures such as these may, however, also increase the concentration of pollutants in F006 sludge, including recyclable metals (*e.g.*

copper, zinc, nickel) and non-recyclable toxic pollutants (*e.g.* cyanide, cadmium). Increasing the concentration of recoverable metals in F006 sludge can increase the sludge's value as a secondary material, but increasing the concentration of non-recyclable pollutants (*e.g.* cyanide, cadmium), which pass through the recovery process and must be properly managed and disposed of can pose potential problems for the management and handling of recycling residues. Of course, this relationship between pollution prevention practices and metals recovery is highly dependent on the specific production process and the pollution prevention practices that are employed. For example, some recovery technologies such as ion exchange work better on dilute wastewaters than on wastewaters with higher metal content.

Chemical substitution pollution prevention measures reduce or eliminate toxic substances that are used in the plating process and found in the wastes and therefore are desirable from an environmental perspective wherever they can appropriately be applied. For example, trivalent chromium can be substituted for highly toxic hexavalent chromium in a few applications. In many applications, this substitution may not be possible. Many metal finishers have reduced or eliminated cyanide and cadmium use by substituting other materials, or by ceasing certain plating operations. Chemical substitution pollution prevention practices are generally more protective of human health and the environment because they eliminate or reduce the amount of toxic pollutants in the sludge, and produce sludge that is more amenable for metals recovery (by reducing the amount of non-recyclable toxic pollutants in the sludge).

The number and type of pollution prevention measures used by individual generators vary broadly. The most common pollution prevention measures include drag-out and rinse water reduction methods, which may improve effluent quality and the amount of metals recovered from F006 sludge. The data available to EPA suggest that chemical substitution pollution prevention measures are used less frequently than rinse water and drag-out reduction techniques. EPA encourages generators to make greater progress in reducing the quantity of non-recyclable toxic pollutants that pass through recovery processes and are ultimately disposed of in landfills. The Agency, therefore, urges generators operating under the provisions of today's rule to implement chemical substitution pollution prevention measures to reduce or eliminate the amount of toxic pollutants (*e.g.* cadmium, cyanide, arsenic, hexavalent chromium, or halogenated or chlorinated solvents) contained in F006 sludge that are not economically recoverable from F006 waste.

In its proposed rule, EPA placed the following condition in § 262.34(g)(1) to promote source reduction and recycling of F006 wastes:

"(1) The generator has implemented pollution prevention practices that reduce the volume or toxicity of the F006 waste or that make it more amenable for metals recovery."

EPA requested comment generally on this condition and asked specifically whether more specific pollution prevention practices should be included in this rule. One commenter believed that EPA should be more specific in its pollution prevention condition in order to make the condition more meaningful. Several other commenters did not believe that a generator should be required to implement any specific set of pollution prevention practices in order to qualify for use of the 180-day (or 270-day, as applicable) accumulation time, and that a generator that already implements pollution prevention practices should not have to adopt new ones in order to qualify for the longer accumulation period. In addition, many commenters felt that the proposal did not clearly define "pollution prevention," that the proposal allowed activities that are not source reduction activities (*e.g.* sludge dewatering and sludge drying), and that EPA should consider dropping the pollution prevention requirement altogether (or requiring waste minimization instead). One commenter questioned how a generator would demonstrate compliance with this condition.

For purposes of this rule, EPA defines "pollution prevention" to mean the source reduction of metal and other toxic raw materials that would otherwise enter a waste stream or be released to the environment prior to recycling, treatment, or disposal. EPA agrees with the commenters who expressed concern that the proposed condition could allow activities that would not be source reduction activities. The wording of the proposed condition ("pollution prevention practices that reduce the *volume or toxicity* of the F006 waste *or that make it more amenable for metals recovery*" (emphasis added)) may have allowed activities that are clearly not source reduction activities. For example, activities that merely reduce waste volume, such as sludge dewatering and sludge drying, do make F006 more amenable for metals recovery, but they are not considered source reduction, and thus they are not pollution prevention activities. Table 1, discussed in the preamble to the proposed rule and in today's preamble, illustrates a large variety of pollution prevention practices that are widely used in the metal finishing industry to reduce volume or toxicity of materials that enter the waste stream (*i.e.* prior to waste generation), and also make it more amenable to metals recovery. Filter presses, sludge dewatering and sludge drying practices, incorrectly identified as pollution prevention measures in the proposed rule, merely remove water after the F006 is generated to reduce weight and volume and to make the sludge more amenable to subsequent recovery techniques. Filter presses, sludge dewatering and sludge drying practices are not consistent with the widely accepted definition of pollution prevention through source reduction contained in the Pollution Prevention Act of 1990.[3] A generator using only filter presses, dewatering or sludge drying practices would not be considered in compliance with the pollution prevention condition in today's rule. Therefore, in response to this and other comments, the Agency has modified the regulatory language to include a more precise description of "pollution prevention" and the scope of activities that may be implemented in accordance with this condition. Section 262.34(g)(1) has been revised to read:

"(1) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling;" This revised language in today's rule removes the unintended ambiguity that was contained in the previous language and is consistent with the definition of pollution prevention through source reduction contained in the Pollution Prevention Act.

EPA agrees with commenters who warn against requiring a specific set of pollution prevention practices. The technical and economic variables that affect the feasibility of using one or more specific pollution prevention practices at a particular generator's site are so broad and complex that EPA does not believe it is possible or appropriate to specify by rule any particular approach for all generators. The best approach for one generator may be quite different than the best approach for

[3] Pub. L. 101–508, November 5, 1990 (Omnibus Budget Reconciliation Act of 1990), as amended by Pub. L. 102–389, October 6, 1992.

another generator, and the Agency believes it is important to allow generators the flexibility to maximize the effectiveness of their pollution prevention activities by selecting and designing the approach that best fits their specific situation. Under today's rule, large quantity generators of F006 waste may implement pollution prevention practices that are best suited to their specific metal finishing processes and plating operations. It is important to note that EPA believes that generators that are already implementing pollution prevention practices should not have to adopt new pollution prevention practices to comply with this rule. However, the Agency encourages, but does not require, metal finishers to thoroughly explore additional available pollution prevention techniques and to implement those that most effectively reduce the amount of any hazardous substance, pollutant or contaminant in F006 prior to onsite recycling activities that occur after the sludge is generated (*e.g.* dewatering and sludge drying).

EPA believes it is overly broad to refer to the pollution prevention condition of today's rule as "waste minimization." Waste minimization includes both source reduction and recycling. By using the term "pollution prevention," EPA intends to capture only one element of "waste minimization," *i.e.* source reduction, which is consistent with the definition contained in the Pollution Prevention Act. As mentioned previously, this requirement was included in the rule because pollution prevention measures can make F006 less hazardous for subsequent management and possibly more amenable for metals recovery. Today's rule, therefore, retains the condition that generators must implement pollution prevention measures.

Regarding what kind of demonstration must be made to verify compliance with the pollution prevention condition, the final rule does not include any recordkeeping or reporting requirements specific to this condition. Generators accumulating F006 on-site under the terms of this rule should be prepared to demonstrate, at the request of EPA or the State, that they are implementing pollution prevention measures for F006. Such a demonstration could include, for example, indicating to the requesting official particular technologies or process changes that have been installed to reduce the amount of toxic materials entering the on-site wastewater treatment system or directly discharging into navigable waters. EPA believes it is relatively simple to determine through discussion or direct observation whether a particular facility is using pollution prevention technologies. The Metal Finishing Workgroup, for example, used a checklist to profile operations in 29 facilities (which is available in the docket for this rule). Also, many State pollution prevention and compliance assistance offices have developed checklists for assessing pollution prevention activities, particularly for metal finishing operations (see, for example, http://www.p2.org). Consequently, EPA believes regulated industry can easily identify what practices would qualify as pollution prevention, and that EPA and State field inspectors, compliance assistance personnel, and pollution prevention technical assistance staff can easily determine whether or not companies are using pollution prevention in compliance with this rule.

TABLE 1.—EXAMPLES OF POLLUTION PREVENTION MEASURES

Method	Pollution prevention benefits
Improved Operating Practices	
Remove cadmium and zinc anodes from bath when it is idle. Anode baskets can be placed on removable bars that are lifted from tank by an overhead hoist.	—Eliminates cadmium/zinc buildup causing decanting of solution due to galvanic cell set up between steel anode basket and cadmium/zinc anodes. —Maintains bath within narrow Cd/Zn concentration providing more predictable plating results.
Eliminate obsolete processes and/or unused or infrequently used processes.	—Reduces risks associated with hazardous chemicals. —Creates floor space to add countercurrent rinses or other P2 methods. —Creates safer and cleaner working environment.
Waste stream segregation of contact and non-contact wastewaters	—Eliminates dilution of process water prior to treatment which can increase treatment efficiency. —Reduces treatment reagent usage and operating costs.
Establish written procedures for bath make-up and additions. Limit chemical handling to trained personnel. Keep tank addition logs.	—Prevents discarding process solutions due to incorrect formulations or contamination. —Improves plating solution and work quality consistency. —Improves shop safety.
Install overflow alarms on all process tanks to prevent tank overflow when adding water to make up for evaporative losses.	—Minimizes potential for catastrophic loss of process solutions via overflow. —Prevents loss of expensive chemicals.
Conductivity and pH measurement instruments and alarm system for detecting significant chemical losses.	—Identifies process solution overflows and leaks before total loss occurs. —Alerts treatment operators to potential upset condition. —Reduces losses of expensive plating solutions.
Control material purchases to minimize obsolete material disposal	—Reduces hazardous waste generation. —Reduces chemical purchases.
Use process baths to maximum extent possible before discarding. Eliminate dump schedules. Perform more frequent chemical analysis.	—Prevents discarding of solutions prematurely. —Reduces chemical costs. —Improves work quality with chemical adjustments of baths.
Reduce bath dumps by using filtration to remove suspended solids contamination.	—Extends bath life. —Reduces solid waste generation by reusing filter cartridges. —Improves bath performance.
Process/Chemical Substitution	
Substitute cyanide baths with alkaline baths when possible	—Eliminates use of CN.

TABLE 1.—EXAMPLES OF POLLUTION PREVENTION MEASURES—Continued

Method	Pollution prevention benefits
Substitute trivalent chromium for hexavalent chromium when product specifications allow.	—Reduces/eliminates use of hexavalent chromium.
Eliminate use of cadmium plating if product specifications allow	—Elminates the use of cadmium.
Drag-Out Reduction Methods That Reduce Waste Generation	
Install fog rinses or sprays over process tanks to remove drag out as rack/part exits bath.	—Can inexpensively recover a substantial portion of drag out and does not require additional tankage. —Reduces pollutant mass loading on treatment processes, treatment reagent usage, and resultant sludge generation.
Minimize the formation of drag out by: redesigning parts and racks/barrels to avoid cup shapes, etc. that hold solution; properly racking parts; and reducing rack/part withdraw speed.	—May improve treatment operation/removal efficiency. —Reduces chemical purchases and overall operating costs.
Rinse Water Reduction Methods That Reduce Waste Generation	
Install flow restrictors to control the flow rate of water	—Reduces water and aids in reducing variability in wastewater flow. —Is very inexpensive to purchase and install.
Install conductivity or timer rinse controls to match rinse water needs with use.	—Coordinates water use and production when properly implemented. —Provides automatic control of water use.
Use counter-current rinse arrangement with two to four tanks in series depending on drag-out rate.	—Can achieve major water reduction. —Has high impact on water bills. —May reduce the size of recovery/treatment equipment that is needed.
Track water use with flow meters and accumulators. Keep logs on water use for individual operations.	—Identifies problem areas including inefficient processes or personnel. —Helps management to determine cost for individual plating processes.

B. Metals Recovery

This final rule is designed to create an incentive for large quantity generators of F006 waste to choose recycling through metals recovery instead of treatment and land disposal as their final waste management option for F006 waste. As discussed in Section III.A., EPA is providing 180 days (or 270 days under certain circumstances) for accumulation to eliminate the impediment to F006 recycling created by the 90-day limit for on-site accumulation. The longer accumulation period is available only if the accumulated F006 waste is recycled through metals recovery. In response to comments, EPA has made one change to this requirement from the proposal.

As proposed, only large quantity generators of F006 who send the F006 waste off-site for metals recovery (as well as meeting the other conditions) would have been allowed 180 days (or 270 days, as applicable) to accumulate those wastes on-site. At the time of proposal, the Agency stated that, although reduced transportation costs would not affect on-site metals recovery, there may be other problems related to on-site metals recovery that a longer accumulation period could address. For example, it may be necessary to accumulate enough F006 waste to make some type of on-site batch metals recovery process more cost effective. The Agency, therefore, requested comment on whether large quantity generators who recycle their F006 on-site by metals recovery should also be allowed 180 days to accumulate those wastes on-site.

The Agency received several comments on the proposal in favor of including large quantity generators of F006 who recycle through on-site metals recovery. Some pointed out that the decrease in transportation of F006 waste over highways may lessen overall potential risks to human health and the environment. One commenter stated that on-site recovery methods may prove environmentally superior to off-site methods, but that some recovery methods could result in increased cross-media impacts which may not be adequately controlled by the standards imposed by the proposal. This commenter suggested that EPA should further investigate these and other issues rather than expand the rule.

After considering these comments, EPA has decided to modify the rule to include large quantity generators of F006 who recycle F006 on-site for metals recovery. EPA is not currently aware of any generators who are presently performing metals recovery on-site. Members of the metal finishing industry stated during the CSI process that, due to space considerations at their electroplating sites, installation of on-site metals recovery equipment would be unlikely, and, if space did become available, they would be more likely to install extra electroplating equipment rather than recycling equipment. While EPA does not have any data indicating whether on-site recycling will increase, the Agency is concerned that a rule providing a longer accumulation period only for off-site metals recovery may inadvertently create an incentive against utilizing, and thereby discourage the development of, on-site metals recovery. This result may be of particular importance because, as some commenters suggested, on-site metals recovery may be environmentally superior to off-site metals recovery. The Agency believes that the technologies that would be employed for on-site recycling of F006 would be the same as those presently used for off-site recycling of F006 that are appropriate for small volumes. Also, the unit-specific regulatory controls would be the same. The Agency further believes that the recycling of F006 through metals recovery on-site may be more protective overall of human health and the environment because it will require less transportation of the F006, and transportation-related activities have been the cause of most of the F006 releases to date. In addition, including on-site recovery in today's rule is consistent with the primary goal of encouraging recycling over treatment and land disposal. Because the 180-day accumulation period would only be available for large quantity generators who recycle F006 for metals recovery, and we are not aware that on-site metals recovery is currently occurring or contemplated, EPA expects that generators who are not sending F006 off-site for metals recovery would only

take advantage of the 180-day accumulation period where it would actually facilitate on-site metals recovery. Therefore, today's final rule allows large quantity generators of F006 180 days (or 270 days, as applicable) to accumulate those wastes prior to metals recovery performed either on-site (*i.e.*, at the generator's site) or off-site, provided all other conditions of today's final rule are met. The standards for 180-day (or 270-day, as applicable) accumulation included in today's rule will ensure that on-site accumulation is protective of human health and the environment, whether that accumulation precedes on-site or off-site metals recovery. Only the amount of time large quantity generators may accumulate F006 (without a permit or interim status) on-site if they are recycling F006 on-site for metals recovery is affected by today's final rule.

EPA received several comments on other issues related to the metals recovery condition of the rule. Several commenters sought clarification of whether F006 must be sent directly to a metals recovery facility in order to meet the metals recovery condition of the rule. Specifically, questions were raised regarding intermediate processors, waste brokers, and other intermediate handlers. Additionally, some commenters questioned whether facilities that recycle wastes into animal feed or soil amendments and primary metals smelters are considered metals recovery facilities.

In response, EPA notes that the proposed condition that F006 must be "sent off-site for metals recovery" did not require that F006 be sent directly from the generator to the metals recovery facility. It was never EPA's intent to preclude generators from sending F006 for metals recovery by way of intermediate handlers (*e.g.*, persons conducting transportation, intermediate storage, repackaging or reshipping) or intermediate processors (*e.g.*, persons conducting pre-metals recovery processing steps). Rather, EPA believes including such multi-step management processes in the rule will ensure that the largest number of generators are able to take advantage of the rule, and that the amount of F006 recycled is maximized. The Regulatory Impact Analysis (RIA) conducted in support of the proposed rule included both metal recovery facilities and intermediate processors as shipment destinations when estimating transportation and other costs. Specifically, data used in the model that estimated transportation costs was based on observed shipments to metals recovery from the 1995 Biennial Report Survey. These observations included both shipments directly to metals recovery facilities and to intermediate processors who subsequently ship to metals recovery facilities. Similarly, the cost model used fees charged both by metals recovery facilities and by intermediate processors. The RIA demonstrates that generators who are able to accumulate larger loads of F006 will experience lower transportation costs and administrative costs whether they are shipping directly to a metals recovery facility or to an intermediate processor. Since the transportation patterns would be the same, the same transportation cost analysis would also apply to intermediate handlers who simply repackage or consolidate F006 prior to delivery to a metals recovery facility.

Today's rule retains this metals recovery condition essentially as proposed (it has been modified to include on-site metals recovery). Specifically, EPA considers F006 sent by a generator to an intermediate processor to be sent for "metals recovery" if the intermediate processor then sends the processed material to a facility which extracts the metals (such as a smelter or a metallurgical extraction facility). For purposes of this rule, EPA defines an intermediate processor as a recycler who handles the F006 after the generator and before the ultimate metals extraction facility (*e.g.*, the smelter) and who makes the F006 more amenable for metals recovery through processes such as drying, blending, and/or concentrating. Large quantity generators of F006 who perform intermediate processing activities on-site before sending the waste to a metals reclamation facility are also allowed up to 180 days (or 270 days, if applicable) to accumulate that waste under today's final rule. However, generators performing intermediate processing on-site who need to hold the waste after the accumulation period has expired are required to have a RCRA permit.

In response to the question of whether primary metals smelters and facilities that recycle wastes into animal feed or soil amendments are considered metals recovery facilities, under EPA regulations, recycling is defined as either the use, reuse or reclamation of a material (40 CFR 261.1(c)(7)). EPA defines reclamation as either recovery of a useful product or regeneration of a product for its original use (40 CFR 261.1(c)(4). Under EPA's hazardous waste regulations, recovery is defined as the recovery of *distinct components of a secondary material as separate end products* (40 CFR 261.1(c)(5)(i)). Examples of recovery and regeneration are recovering copper from electroplating sludge like F006 or regenerating a spent solvent for its original use. When distinct components, such as metals, are not separated from the material in which they are constituents, recovery has not occurred. Thus, if F006 were to be incorporated directly into either animal feed or fertilizer without first separating the metals, this would not constitute metals recovery. Therefore, F006 sent for this type of recycling would not be sent for "metals recovery." However, as long as legitimate metals recovery occurs (*i.e.*, distinct components of the F006 waste are recovered as separate end products) the rule would apply, regardless of the ultimate use of the end products.

Regarding primary metals smelters, one commenter appeared to be unclear about whether F006 processed at smelters was considered to be used or reused as an ingredient in an industrial process to make a product, or used or reused as an effective substitute for a commercial product (see 40 CFR 261.2(e)(1)(i) and (ii)). If F006 were used or reused in these ways, it would not be considered a solid or hazardous waste and would therefore would not be subject to hazardous waste managements controls, including use of a hazardous waste manifest. However, the Agency believes that these use/reuse exemptions do not apply to F006 sent to a primary smelter for metals recovery.

40 CFR 261.2(e)(1)(i) specifically provides that materials are not considered to be used or reused as an ingredient in an industrial process to make a product if they are being reclaimed. 40 CFR 261.1(c)(5)(i) provides additionally that materials will not satisfy the "use as an ingredient" exclusion of 40 CFR 261.2(e)(1)(i) "if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials.)" For these reasons, EPA is today clarifying that F006 sent to a smelter is generally not eligible for the exclusions at 40 CFR 261.2(e)(1)(i) and 261.2(e)(1)(ii) since the purpose of sending F006 to a smelter is to recover its metal components. The material would therefore generally be considered a solid and hazardous waste and subject to all applicable RCRA hazardous waste management controls (including use of a hazardous waste manifest).

Another commenter on the metals recovery condition of the rule stated that neither the proposal nor the existing regulatory framework are structured so that only legitimate materials recovery is encouraged. According to this commenter, under the

existing framework legitimacy determinations are largely self-implementing and misuse will not be avoided until there are clear and more objective legitimacy criteria and/or there is greater and more timely review of the legitimacy claims.

The same commenter stated that several factors result in an implementation structure incapable of ensuring that the materials recovery practices employed under the proposal will be legitimate. These include the wide variety of F006 operations; the wide array of constituents in the wastes (many of which would not be recycled); the lack of generator resources; and the lack of Agency oversight. In addition, according to the commenter, nothing in the proposal requires the generator to segregate waste streams so that toxics "along for the ride" are minimized.

EPA agrees that recovery of materials from F006 wastes, like any recovery of materials, must be legitimate to prevent participants from disposing of materials rather than actually recovering and reusing them. EPA also agrees that this rule will encourage F006 recovery operations.

EPA, however, does not agree that its current rules and policies to prevent "sham" recycling operations are insufficient. For example, the Agency has adequately described the F006 legitimacy criteria in existing regulatory and policy documents (see discussion below). In addition, any revision to the criteria is outside the scope of this rulemaking. EPA has promulgated many rules that encourage recycling which rely on the existing policy and regulatory structure to ensure that the recycling involves legitimate reuse of materials. See, for example, the conditional exemption for secondary materials used for recovery within the primary mineral processing industry in 40 CFR 261.4(a)(16) (which requires that materials be "legitimately recycled" without promulgating new rules to define the term). Although EPA acknowledges that this scheme is complex, EPA believes that recycling, under current regulatory restraints and policy, is beneficial, and its regulations have long reflected this. The commenter has not presented any data or examples showing that the current approach is generally inadequate, nor has the commenter submitted any information showing that factors unique to F006 recovery operations make the current approach less effective or less suitable than it is for other wastes.

EPA has existing policy guidance on legitimacy (see discussions at 53 FR 522 (January 8, 1988), 54 FR 17013 (May 6, 1987), 50 FR 638 (January 4, 1985) and F006 Recycling Memo, signed by Sylvia Lowrance on April 26, 1989). As described in this guidance, evaluating legitimacy can in some cases require complex analysis of site specific characteristics and factors to determine whether the secondary material is "commodity-like." The presence of toxics "along for the ride" is a factor in this determination. EPA currently believes that determining whether recycling processes are legitimate requires case-by-case evaluations of many factors that vary depending on the specific materials and processes used. EPA does acknowledge that such evaluations are often complex and time-consuming since F006 wastes and recovery operations involve a fairly wide variety of materials and operations which must be evaluated on a case-by-case basis.

In addition, the commenter did not present any specific proposal for improving assessment of the legitimacy of F006 recovery operations that could be applied in this rulemaking. It would be difficult (if not impossible) to evaluate F006 legitimacy generically rather than on a case-by-case basis. EPA is not aware of any information undercutting its longstanding view that this case-by-case approach has been effective at ensuring legitimate recycling. In the regulatory language being promulgated in this final rule (see new § 262.34(g)(2)), EPA has added the word "legitimate" to clarify that the F006 must be processed using legitimate recycling in order to meet this condition of the rule. The addition of the word "legitimate" does not change any existing Agency regulations or policies on recycling, but merely emphasizes the Agency's intent.

Another issue raised by this commenter was that less legitimate recycling would occur as a result of the pollution prevention condition because there will be more toxics "along for the ride." EPA acknowledges that it is possible that some pollution prevention practices that increase the concentration of non-recoverable toxics in the waste may be implemented under this rule, but the amount of non-recoverable toxics in the wastes (as opposed to the concentration of such toxics) will not increase. However, the Agency encourages metal finishers to carefully and thoughtfully select pollution prevention practices that will reduce levels of toxics that are not recovered, based on the specifics of their processes and design. The Agency also encourages implementing agencies to actively discuss the issues with metal finishers and to assist them, where possible, in choosing pollution prevention technologies. However, whether less legitimate recycling will occur depends on the pollution prevention technology used and the composition of the F006 sludge. As discussed previously, legitimacy determinations are better made on a case-by-case basis, and it is possible that in a situation where an F006 sludge contains a very high concentration of non-recoverable toxic constituents, the Agency could decide that it is not a legitimate recycling scenario under its existing policies on legitimacy.

Finally, given that most recycling processes generate residues, the Agency notes that generators may want to discuss the management of any residues from recycling operations with the recyclers to ensure that they are managed properly and to avoid any future liability from improper management (*e.g.*, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)).

C. Limit on the Amount of F006 Waste That Can Be Accumulated

As discussed above, the purpose of today's rule is to remove an existing regulatory impediment to increased recycling of F006. The current 90-day limit on accumulating waste without a RCRA permit is preventing some large quantity generators of F006 from choosing recycling as a final waste management option. Although large quantity generators are not currently subject to any limits on how much waste they can accumulate on-site at any one time, many generators' process generation rates are such that they do not accumulate sufficient quantities of F006 to make recycling the waste a cost-effective option. EPA believes that it is appropriate to limit the flexibility provided by today's rule to what is reasonably necessary to advance the recycling objectives of the proposal. For this reason, the proposal, and today's final rule, include a limit on the total amount of F006 waste that may be accumulated on-site at any time. In response to comments, EPA has modified this portion of the rule from the proposal.

In the proposed rule, the Agency proposed setting a limit of 16,000 kilograms of F006 that could be accumulated on-site. The Agency proposed this limit because we believed that this amount was approximately the size of a truckload used to transport bulk solids. EPA requested comment on whether it was appropriate to impose any quantity limit to the on-site accumulation of F006 and whether

16,000 kg was an appropriate limit (as opposed to a different amount).

EPA received several comments on these issues. One commenter felt that the limit should be 6,000 kg, which is consistent with the quantity limit for small quantity generators. All other commenters on this issue stated that 16,000 kilograms did not accurately reflect the true size of a truckload for bulk solids (the physical form in which F006 is most commonly transported) based on experience with transportation of F006. In response, although EPA believes it is appropriate to limit the amount of F006 that can be accumulated on-site at any one time, EPA does not believe that the provisions for small quantity generators necessitate a similar 6,000 kg limit for large quantity generators, nor is it an appropriate amount in light of the recycling objectives of the rule. In addition, EPA proposed the 16,000 kg limit believing that it accurately represented a full truckload. In considering the comments disputing this assumption, the Agency investigated the issue further, and located existing information [4] which is consistent with many commenters' views on the weight of bulk solids that can be shipped in a full truckload. According to this confirmatory information, 20,000 kg is more representative of the full amount of bulk solids that would fill a truck. As discussed above, the purpose of the quantity limit is to delineate the minimum amount reasonably necessary to advance the recycling objectives of the proposal. Therefore, since the main goal of this final rule is to allow large quantity generators of F006 to accumulate enough F006 to facilitate the most economically efficient off-site shipment, the Agency has modified the rule to allow 20,000 kilograms of F006 to be accumulated on-site within the 180-day (or 270-day, as applicable) accumulation period in order to accomplish the maximum recycling benefit under this final rule.

Once a generator has accumulated 20,000 kilograms of F006 waste (regardless of whether the waste has been accumulated for less than 180 days, or 270 days if applicable), the generator is required to ship the F006 waste off-site for metals recovery, conduct metals recovery on-site, obtain an exception to the quantity limit under 40 CFR 262.34(i), or obtain a RCRA permit.

[4] U.S. EPA, Office of Regulatory Enforcement (DPRA, SAIC), Estimating Costs for the Economic Benefits of RCRA Noncompliance, September 1997, p. 5–3.

The Agency also requested comments on whether the accumulation limit should apply to the total quantity of F006 waste accumulated on-site or to the quantity of each separate mono-metal F006 waste stream (or other F006 waste streams segregated on the basis of metal content) that must be sent off-site to different metals recovery facilities. This request was based on the idea that a F006 generator could make F006 waste more amenable for metals recovery by generating mono-metal sludges.

EPA received several comments concerning the accumulation of mono-metal F006 sludges. Some commenters opposed expanding the proposal in this way, citing, among other things, concerns with increased risk and enforcement challenges. EPA also received comments requesting that the Agency apply the accumulation limit to each separate mono-metal F006 sludge generated at a site to facilitate metals recovery from each of these mono-metal sludges. The Agency encourages segregation of waste streams to make wastes more amenable to metals recovery, and does not believe that doing so would necessarily increase risks. However, at this time, the Agency does not have a standard for differentiating among the different types of F006 wastes, and none of the commenters suggested any such standard. Without further information, it would be extremely difficult to develop a standard that would be effective and implementable. For example, no definition exists for what constitutes a mono- or bi-metal sludge or how one F006 waste sludge differs compositionally from another F006 waste sludge (*i.e.*, what levels of other metals would be acceptable). Lacking such definitions or standards, it would not be possible at this time for the Agency to develop a regulatory provision allowing separate accumulation quantity limits for different F006 waste types. In addition, implementing and enforcing a separate accumulation limit for different types of F006 wastes would impose a significant burden on both generators and regulators with little or no corresponding benefit.

Finally, data from the *F006 Benchmark Study* shows, and other available information confirms, that very few metal finishers currently utilize separate wastewater treatment units to generate sludges that are compositionally different to improve recovery (*e.g.*, mono- or bi-metal sludges). Thus, at this time EPA believes that very few generators would benefit from separate limits for separate mono-metal sludges (or other sludges that differ from one another by composition). Past discussions with metal finishers in the CSI effort (as well as observations at metal finishing plants) corroborate this conclusion, indicating that most small metal finishing shops generally do not have the space or capital to install separate wastewater treatment units, filter presses or containers in which to manage mono-metal sludges.

Thus, although the Agency strongly encourages segregation of waste types to improve the recyclability of F006, for the reasons discussed above the quantity limit in the final rule applies to the total amount of F006 accumulated on-site at any one time, as was proposed.

V. Summary of Final Rule

A. Scope and Applicability

This final rule is limited to large quantity generators of F006 waste who accumulate F006 on-site for more than 90 days without a RCRA permit or interim status.

In 40 CFR 261.31, F006 waste is defined as:

> Wastewater treatment sludges generated from electroplating operations, except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

In listing electroplating wastewater treatment sludges as hazardous waste, EPA identified several hazardous constituents, including cadmium, hexavalent chromium, nickel, and complexed cyanides that could pose a substantial hazard to human health and the environment if the sludge was mismanaged. The potential hazards associated with the constituents of concern in the sludge and the potential for improper management of the electroplating wastewater treatment sludges served as the basis for listing the sludge as hazardous waste F006. The listing status of the waste is not affected by this final rule.

The physical form of F006 waste can generally be described as a mixed metal hydroxide wastewater treatment precipitate which is 24 to 50 percent solids by weight. Other physical forms of this material can include spent ion exchange columns or iron precipitation solids. F006 sludges may contain metals with commercial value that can be recovered from the sludges. The metals recovered from these sludges are most often concentrates and intermediate materials that require further processing

before a commercially usable metal is produced. Often, the metals contained in these industrial sludges are recovered in the form of a metal oxide or salt (e.g., lead oxide, lead chloride, lead sulfate) through High Temperature Metals Recovery (HTMR) such as smelting operations.

Any large quantity generator (generators of 1,000 kilograms or more of hazardous waste per calendar month) who generates F006 may accumulate the F006 waste generated on-site for up to 180 days (or 270 days, under certain circumstances) without a RCRA permit or interim status, provided they meet the conditions of this final rule. Large quantity generators of F006 are only required to meet the conditions of today's rule if they accumulate F006 on-site, without a RCRA permit or interim status, for more than 90 days; however, the conditions of today's rule must be met for the entire accumulation period. In response to comments, EPA has modified the regulatory language to clarify that 40 CFR 262.34(g), (h), and (i) apply only to generators who accumulate F006 on-site for more than 90 days, but not more than 180 (or 270) days. Any large quantity generator who generates some quantity of F006 hazardous waste may accumulate the F006 waste under the terms of today's final rule. The 180-day (or 270-day, if applicable) accumulation time, however, is only applicable to the F006 waste destined for metals recovery. Other hazardous waste accumulated on-site (including any F006 which will not be recycled by metals recovery) must be accumulated in accordance with the existing provisions for large quantity generators (e.g. 262.34(a), or parts 264, 265, and 270).

Currently, large quantity generators are allowed only 90 days to accumulate hazardous wastes on-site without a RCRA permit, and there is no limit on the amount of hazardous waste that can be accumulated on-site within that 90-day time period. In order to accumulate hazardous waste on-site without a RCRA permit, these large quantity generators must also comply with a number of unit-specific standards (e.g., tank and container standards), and standards for marking and labeling, preparedness and prevention, contingency plan and emergency procedures, personnel training, and land disposal restrictions, in order to accumulate hazardous waste on-site without a RCRA permit. The Agency is not changing any of the existing regulations applicable to large quantity generators in today's final rule, except to allow 180 days (or 270 days, as applicable) for accumulation of F006 wastes with a corresponding limit of 20,000 kilograms on the amount of F006 waste that may be accumulated on-site at one time. Large quantity generators of F006 must still comply with the standards required for all large-quantity generators to accumulate hazardous waste on-site without a permit: unit-specific standards (e.g., tank and container standards) for accumulation units; marking and labeling, preparedness and prevention, contingency plan and emergency procedures, personnel training, and land disposal restrictions. These conditions are explained in more detail below in Section V. E. of this preamble.

Today's final rule does not apply to small quantity generators of hazardous waste (between 100–1000 kg per calendar month) and we have added language to the rule to clarify this. Currently, small quantity generators are allowed 180 days to accumulate hazardous wastes on-site without a RCRA permit or interim status. However, the existing regulations do not allow small quantity generators to accumulate more than 6,000 kilograms of hazardous waste on-site at any one time without a RCRA storage permit. Small quantity generators accumulating hazardous waste without a RCRA permit must also comply with unit-specific and general facility standards that are similar to those for large quantity generators. Today's final rule does not change any of the provisions currently applicable to small quantity generators accumulating hazardous waste without a permit.

The Agency believes that there is no need to specifically allow small quantity generators to take advantage of the benefits of today's final rule. First, these generators are already allowed to accumulate their waste on-site for up to 180 days (or 270 days, if applicable); thus, the 180-day time limit of today's rule is unnecessary for them. Second, the Agency believes that any small quantity generators who generate hazardous waste at a rate which would cause them to exceed their existing 6,000 kilogram on-site accumulation limit will actually be large quantity generators, and therefore will be able to take advantage of the flexibility in this final rule for accumulating larger quantities of F006, as long as they meet the conditions of today's rule.

B. Special Conditions for 180-Day (or 270-Day) Accumulation Time

Today's rule includes several conditions that do not typically apply to the accumulation of hazardous waste by large quantity generators. These conditions are that the generator: (1) Has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling, (2) recycles the F006 waste by metals recovery, and (3) accumulates no more than 20,000 kilograms of F006 waste at any one time. EPA has included these conditions in the rule to ensure that the recycling objectives of this rule are met, and to ensure that the flexibility provided by today's rule is limited to that which is reasonably necessary to achieve those recycling objectives. Each of these conditions is discussed in further detail in Section IV above.

C. Additional Accumulation Time Under Certain Circumstances

1. Transport 200 Miles or More

Under today's final rule, large quantity generators of F006 waste have up to 270 days to accumulate F006 waste on-site without a RCRA permit or interim status if the generator must transport the waste, or offer the waste for transport, a distance of 200 miles or more for off-site metals recovery. The generator must still meet the other conditions of today's rule—i.e., implement pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling, recycle the F006 waste by metals recovery, not accumulate more than 20,000 kilograms of F006 waste at any one time, and comply with the applicable management standards in the proposed rule.

As with the other provisions of this final rule, this provision is intended to allow large quantity generators sufficient time to accumulate enough F006 waste to make recycling this waste by metals recovery more cost effective. Shipping F006 waste to a metals recovery facility that is located more than 200 miles away will cost more than shipping F006 waste to a local (i.e., less than 200 miles away) hazardous waste landfill. For those large quantity generators of F006 waste that do not accumulate enough F006 waste to fill a truck load (i.e., 20,000 kilograms of F006 waste) within 180 days and are located more than 200 miles from a metals recovery facility, treatment and disposal of the F006 waste in the local hazardous waste landfill may be a less expensive management option than metals recovery. For those large quantity generators of F006 waste that are located long distances from a metals recovery

facility, allowing up to 270 days for accumulation is reasonable to allow generators to accumulate more F006 waste to get closer to a full truckload for off-site shipment. The 270-day accumulation period will be particularly helpful for large quantity generators of relatively small amounts of F006 waste (i.e., those that do not accumulate more than 20,000 kilograms of F006 waste in 180 days and that must ship the F006 off-site more than 200 miles to a metals recovery facility) and may provide them with an incentive to send their F006 waste to a metals recovery facility rather than to a treatment and disposal facility.

2. Unforeseen, Temporary, and Uncontrollable Circumstances

Today's final rule also provides for an extension of the accumulation period if the generator's F006 waste must remain on-site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances. Under these circumstances, the generator may request that the EPA Regional Administrator or authorized state grant an extension of up to 30 days. This provision is intended to provide the generator with some temporary relief until the unforeseen, temporary, and uncontrollable circumstances can be rectified. The Agency has previously identified the following circumstances as possible rationales for granting this extension: a facility's refusal to accept waste, transportation delays, or labor strikes (see 47 FR 1248, 1249, January 11, 1982). These extensions will be granted at the discretion of the EPA Regional Administrator or the authorized state on a case-by-case basis. This provision is the same as the provision for large quantity generators in the existing regulations at 40 CFR 262.34(b).

In addition to this extension to the time limit, exceptions to the quantity limit are also available at the EPA Regional Administrator's discretion. Because this final rule sets an accumulation limit of 20,000 kilograms of F006 waste that can be accumulated on-site at any one time, today's final rule also allows a large quantity generator to request permission to accumulate more than 20,000 kilograms of F006 waste if more than 20,000 kilograms must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. The rationale for requiring additional time to accumulate F006 waste on-site due to unforeseen, temporary, and uncontrollable circumstances is equally applicable for accumulating more than 20,000 kilograms under the same kinds of circumstances.

In response to a comment, the regulatory text in this final rule has been modified from the proposal to clarify that, in addition to time limit extensions, accumulation limit exceptions are available.

D. Summary of Applicable Management Standards

Under today's final rule, the same standards applicable to 90-day on-site accumulation of hazardous waste under 40 CFR 262.34, other than the length of time that large quantity generators of F006 waste can accumulate the waste on-site without a RCRA permit,[5] apply to 180-day (or 270-day, as applicable) accumulation of F006 waste. These include technical standards for units used to accumulate hazardous wastes, recordkeeping standards to document the length of time hazardous wastes are accumulated on-site, preparedness and emergency response procedures, and personnel training. While EPA is not changing any of these existing standards in today's rulemaking, the Agency would like to note that in order to be in compliance with § 262.34(g)(4)(v) (which incorporates the existing general site operation provisions), generators accumulating F006 on-site under the terms of today's rule may need to consider whether their current general site operation procedures (*e.g.*, personnel training, contingency planning) should be modified in light of having more F006 on-site than they would under the 90-day limit. The existing management standards as they apply to large quantity generators of F006 waste under this final rule are summarized below. The Agency is not making any changes or amendments to these standards in today's final rule, other than clarifying that these standards apply to large quantity generators of F006 accumulating the waste up to 180 days (or 270 days where applicable) without a RCRA permit.

1. Accumulation Units

A large quantity generator of F006 waste may only accumulate the F006 waste on-site for up to 180 days (or 270 days, if applicable) in tanks, containers, or containment buildings which comply with the unit-specific technical standards of 40 CFR part 265 for containers (subpart I), tanks (subpart J), and containment buildings (subpart DD). In addition, generators accumulating F006 in containers or tanks must also comply with the air emission standards of 40 CFR part 265, subparts AA, BB, and CC.

The unit-specific standards in 40 CFR part 265 include provisions for the design, installation and general condition of each unit. The requirements governing each type of unit include standards for ensuring the compatibility of the waste and the unit and special requirements for ignitable, reactive or incompatible wastes. In addition, there are provisions for performing inspections to monitor for leaks and deterioration of the unit and for proper response to and containment of releases. For example, the container standards specify that a container holding hazardous waste must always be closed except when adding or removing waste and also that the container must not be handled in a manner which may cause it to rupture or leak. As with 90-day accumulation, large quantity generators of F006 waste that comply with the applicable regulatory provisions may treat the waste in the accumulation unit without a RCRA permit during the 180-day (or 270-day, if applicable) accumulation period (see 51 FR 10168, March 24, 1986).

2. Measures to Ensure Wastes Are Not Accumulated for More Than 180 Days (or 270 Days)

Large quantity generators of F006 waste operating under the terms of today's rule must also comply with provisions which indicate that the length of time the wastes remain on-site in certain accumulation units must not exceed 180 days (or 270 days if applicable) from the date the waste is generated. For those accumulating F006 in containers, the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container. Those who choose to accumulate F006 in containment buildings must, among other things, develop a written description of the procedures to ensure that each waste volume remains in the unit for no more than 180 days (or 270 days, as applicable). Today's final rule does not impose documentation standards for generators of F006 waste in addition to those already required for large quantity generators accumulating F006 waste up to 90 days under the existing regulations (see 40 CFR 262.34(a)(2)).

EPA recognizes that there may be circumstances under which a generator may discover that he will not be able to recycle F006 waste that he has accumulated on-site for more than 90 days in anticipation of recycling. The

[5] Today's final rule will not affect any RCRA Subtitle C requirements for generators of F006 waste, other than the changes to 40 CFR 262.34 specified in this final rule.

generator may then be forced to send this material for disposal. In those instances EPA encourages self-disclosure of this violation to the appropriate regulatory agency under the terms of either the Policy on Compliance Incentives for Small Businesses (June 10, 1996) or Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (the "audit policy," December 22, 1995). Many states have adopted similar policies for self-disclosed violations. The generator should be prepared to demonstrate that the F006 waste was accumulated for more than 90 days based on a good faith belief that he would be able to send it to a recycling facility.

3. Labeling and Marking Accumulation Units

Large quantity generators of F006 waste operating under the terms of today's rule are required to clearly label or mark each tank or container used to accumulate hazardous waste with the words "Hazardous Waste."

4. Preparedness and Prevention (40 CFR Part 265, Subpart C)

Under today's final rule, large quantity generators of F006 waste who accumulate F006 waste on-site under the terms of today's rule for up to 180 days (or 270 days, as applicable) must comply with subpart C of part 265 which contains standards for facility preparedness and prevention. These generator facilities must be maintained and operated in a manner that minimizes the possibility of fire, explosion, or any unplanned release of hazardous waste or hazardous waste constituents to the environment. The standards specify that generator facilities must generally be equipped with emergency devices, such as an internal communications or alarm system, a telephone or other device capable of summoning emergency assistance, and appropriate fire control equipment, unless none of the wastes handled at the generation site requires a particular kind of equipment. Equipment must be tested and maintained, as necessary, to assure its proper functioning. All persons involved in hazardous waste handling operations must have immediate access to either an internal or external alarm or communications equipment, unless such a device is not required.

Additionally, large quantity generators are also required to maintain sufficient aisle space to allow for the unobstructed movement of personnel and equipment to any area of the facility operations in an emergency, unless aisle space is not needed for any of these purposes. Large quantity generators also must attempt to make arrangements with police, fire departments, state emergency response teams, and hospitals, as appropriate, to familiarize these officials with the layout of the generator's site and the properties of each type of waste handled at the site in preparation for the potential need for the services of these organizations. If state or local authorities decline to enter into such arrangements, the owner or operator must document the refusal.

5. Contingency Plan and Emergency Procedures (40 CFR Part 265, Subpart D)

Large quantity generators of F006 waste who accumulate that waste on-site for up to 180 days (or 270 days, as applicable) under the terms of today's final rule must comply with the contingency plan and emergency procedures provisions of 40 CFR part 265, subpart D. A large quantity generator's contingency plan must include, where necessary, a description of the generator's planned response to emergencies at the facility, any arrangements with local and state agencies to provide emergency response support, a list of the generator's emergency response coordinators, a list of the generator's emergency equipment, and an evacuation plan. Requirements for distributing and amending the contingency plan are specified. In addition, a facility emergency coordinator must be either present, or on call, whenever the facility is in operation.

Provisions for emergency procedures specified in subpart D of part 265 include immediate notification of employees and local, state, and Federal authorities of any imminent or actual emergencies; measures to preclude the spread of fires and explosions to other wastes; proper management of residues; rehabilitation of emergency equipment and notification of authorities before operations are resumed; and recordkeeping and reporting to EPA on the nature and consequences of any incident that requires implementing the contingency plan.

6. Personnel Training (40 CFR 265.16)

As finalized in today's rule, large quantity generators of F006 waste who accumulate that waste on-site for up to 180 days (or 270 days, as applicable) under the terms of today's rule are subject to the provisions for personnel training in 40 CFR 265.16. These requirements are designed to ensure that personnel are adequately prepared to manage hazardous waste and respond to any emergencies that are likely to arise. Personnel training can be in the form of on-the-job or classroom training, but must be performed by an instructor who is trained in hazardous waste management procedures. Personnel training must be performed within six months of initial employment and must be renewed annually. The generator's owner or operator also must maintain records in accordance with 40 CFR 265.16(d) to document completion of the training requirements for employees.

7. Waste Analysis and Record Keeping (40 CFR 268.7(a)(5))

Under today's final rule, large quantity generators of F006 wastes who accumulate F006 waste on-site for up to 180 days (or 270 days, as applicable) under the terms of today's rule and who treat their wastes in accumulation tanks, containers, or containment buildings located at the generator's site to meet the applicable land disposal treatment standards under 40 CFR part 268, subpart D, must prepare and follow a written waste analysis plan. The waste analysis plan must describe the procedures the generator will use to comply with the treatment standards for the waste. The waste analysis plan must be based upon a chemical and physical analysis of a representative sample of the generator's waste stream. Hazardous waste generators are required to submit a copy of their waste analysis plans for hazardous wastes treated in 180-day (or 270-day, as applicable) accumulation units to either the authorized state or EPA Regional office prior to conducting treatment. Generators also are required to retain a copy of the waste analysis plan in the generator's files.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA hazardous waste program within the state. (See 40 CFR part 271 for the standards and requirements for authorization). Following authorization, EPA maintains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized states have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a state with final authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state and EPA could not issue permits for any facility in the state that the state was

authorized to permit. When new, more stringent federal requirements were promulgated or enacted, authorized states had to enact equivalent authority within specified time frames, but new federal requirements did not take effect in an authorized state until the state adopted the requirements as state law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed under the HSWA take effect in authorized states at the same time that they take effect in non-authorized states. EPA is directed to implement HSWA requirements and prohibitions in an authorized state, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA-related provisions as state law to retain final authorization, HSWA applies in authorized states until the states revise their programs and receive authorization for the new provision.

B. Effect on State Authorization

Today's final rule will promulgate regulations that are not effective under HSWA in authorized states. This rule will, therefore, be applicable only in those states that do not have final authorization.

Authorized states are only required to modify their programs when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent than the federal programs, states are not required to modify their programs. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the federal program. Today's final rule for additional accumulation time for large quantity generators of F006 waste is considered less stringent than the existing federal regulations because it allows more than the existing 90 days of accumulation time that is in the existing regulations. Authorized states are not, therefore, required to modify their programs to adopt regulations consistent with, and equivalent to, today's final rule.

Even though states are not required to adopt the additional accumulation time for large quantity generators of F006 waste in this final rule, EPA strongly encourages states to do so as quickly as possible. As discussed above, this final rule is intended to encourage and facilitate recycling of F006 waste. In addition, states participated as stakeholders in the CSI process and presently participate in the NACEPT Committee on Sectors, and EPA is encouraging all states to participate in the metal finishing sector projects and Strategic Goals implementation programs. States are, therefore, urged to adopt today's final rule, and EPA is committed to making efforts to expedite review of authorized state program revision applications that incorporate this final rule.

VII. Effective Date

This final rule is effective immediately. Section 3010(b)(1) of RCRA allows EPA to promulgate an immediately effective rule where the Administrator finds that the regulated community does not need additional time to come into compliance with the rule. Similarly, the Administrative Procedures Act (APA) provides for an immediate effective date for rules that relieve a restriction (see 5 U.S.C. 553(d)(1)).

This rule does not impose any requirements on the regulated community; rather, the rule provides flexibility in the regulations with which the regulated community is required to comply. The Agency finds that the regulated community does not need six months to come into compliance.

VIII. Technical Correction

The Agency is correcting a reference to section 268 that appears in § 262.34(a)(4). § 262.34(a) identifies the conditions under which a generator may accumulate hazardous waste on-site for 90 days without a permit and refers to the Land Disposal Restriction Testing, Tracking and Recordkeeping Requirements for generators in § 268.7(a). The LDR Phase IV Rule, finalized on May 12, 1997 (62 FR 26091), changed the numbering of § 268.7(a) so that what used to be § 268.7(a)(4) became § 268.7(a)(5). However, the corresponding reference to this section in 262.34(a)(4) was not changed. Therefore the Agency is making this correction today. A similar correction in the accumulation time regulations for Small Quantity Generators (generators of over 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month) in § 262.34(d)(4) was finalized on May 11, 1999 (64 FR 25414). In the proposed rule, § 262.34(g)(v) included this same incorrect reference. In the final rule this has been changed to refer to § 268.7(a)(5) instead.

IX. Regulatory Analyses

A. Executive Order 12866: Determination of Significance

Under Executive Order 12866, (58 FR 51,735, October 4, 1993) the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

The Agency estimated the costs of today's final rule to determine if it is a significant regulation as defined by the Executive Order. The analysis considered compliance costs and economic impacts for F006 wastes affected by this rule. EPA estimates the total cost of the rule to be a savings in the range of $4.2 million to $5.3 million annually, and concludes that this rule is not economically significant according to the definition in E.O. 12866. Moreover, the Agency believes that this rule is not significant because it does not create serious inconsistency with actions taken or planned by another agency, or materially alter budgetary impact or rights and obligations of recipients. The Office of Management and Budget, however, has deemed this rule to be significant for novel policy reasons and has reviewed this rule.

Detailed discussions of the methodology used for estimating the costs, the economic impacts, and the benefits attributable to today's proposed rule for on-site accumulation of F006 wastes, followed by a presentation of the cost, economic impact, and benefit results, may be found in the background document: "Regulatory Impact Analysis of the Proposed Rule for a 180-Day Accumulation Time for F006 Wastewater Treatment Sludges," which is placed in the docket for today's final rule. A summary of this methodology and the results follows.

1. Methodology of Regulatory Impact Analysis

The Agency examined reported values for F006 waste generation from the 1995 Biennial Reporting Systems (BRS) database to estimate the volumes of F006 waste affected by today's rule, to

determine the national level incremental costs (for both the baseline and post-regulatory scenarios), economic impacts (including first-order measures such as the estimated percentage of compliance cost to industry or firm revenues), and benefits.

EPA evaluated two options in completing the economic analysis for this rule. The first option (hereafter Option 1) evaluated a maximum accumulation of 17.7 tons (16,000 kg) of material in a 180-day time period (or 270 days if the modeled shipment exceed 200 miles). The second option (hereafter Option 2) evaluated a maximum accumulation of 22 tons (20,000 kg) in a 180-day time period (or 270 days if the modeled shipment exceeded 200 miles). The second option was added based on information (presented by commenters and confirmed by the Agency) that a 20 to 22 ton load more accurately represented a full truck load.

2. Results

a. Volume Results

The BRS database reports that in 1995 there were 1,483 metal finishing firms potentially affected by today's rule. The data report that these firms generated 35,976 tons of F006 waste annually that are eligible to benefit from today's proposed rule. EPA is aware that this estimate on the number of firms that could benefit from today's proposal probably underestimates the total number of firms affected by today's rulemaking. Information available from other sources indicates that there are more than 11,000 metal finishing establishments in the United States. For example, one source estimates that there are 8,000 "captive" shops (where the metal finishing operation is contained inside a larger manufacturing operation) and 3,000 "job shops" or "independent" metal finishing operations (usually small businesses that operate on a contract basis). In contrast, the most recent BRS data only account for about three thousand of this total. Thus, it is likely that cost savings and benefits associated with this rulemaking are greater than estimated below.

b. Cost Results

For today's final rule, EPA has estimated a cost savings associated with a 180-day accumulation time (or 270 days where transport distance exceeds 200 miles) for large quantity generators of F006 waste. The total annual incremental savings is estimated to be between $3.9 million and $5.0 million for Option 1 and $4.2 million and $5.3 million for Option 2.[6] These savings may result from reducing the total number of shipments of F006 waste off-site for recycling. Savings also may result from a lower cost per ton of transportation because generators are able to accumulate more F006 waste for a shipment off-site and the cost per unit of F006 waste transportation (for the fixed cost portion of the transportation) is less for a full truck as compared to a partial truck load. In addition, literature reviewed in the development of this rulemaking indicates that recyclers sometimes assess a surcharge for small volumes of material due to increased handling and administrative costs.[7] It is possible that a 180-day (or 270-day, if applicable) accumulation time will allow some F006 waste generators to reduce this surcharge.

3. Economic Impact Results

To estimate potential economic impacts resulting from today's proposed rule, EPA has used first order economic impacts measures such as the estimated cost savings of today's proposed rule as a percentage of sales/revenues. EPA has applied this measure to affected F006 waste generators. For affected F006 waste generators, EPA has estimated the cost savings to be less than one percent of a typical metal finisher's sales or revenues. More detailed information on this estimate can be found in the regulatory impact analysis placed into today's docket.

a. Benefits Assessment

The Agency has performed a qualitative benefits assessment for today's final rule. EPA believes that a relatively small, but significant percentage of total F006 waste generated would be diverted from land disposal to off-site recycling. This shift from land disposal to recycling should result in a conservation of natural resources associated with primary mineral extraction, including reduced water and energy inputs as well as reduced solid waste outputs (*e.g.*, slag, tailings, and overburden). Other benefits expected from today's proposed rule include conservation of hazardous waste landfill capacity, reduced balance of payments for nonferrous mineral commodities, and conservation of strategic metals.[8]

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has fewer than 1000, 750, or 500 employees per firm depending upon the SIC code the firm is primarily classified in;[9] (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, we have determined that this action will not have a significant economic impact on a substantial number of small entities.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the

[6] This range of estimated savings results from uncertainty surrounding a number of other factors that affect a generator's ability and interest in sending F006 to either recycling or landfilling. These factors include: (1) The metal value of sludge, (2) the proximity to the nearest landfill, (3) the presence of tramp constituents in the sludge, (4) real or perceived risk of Superfund liability, (5) the ability of several generators to accumulate a full truck load in less than 90 days, and other factors. For more information, see Section 2.3 of the Regulatory Impact Analysis for this final rule.

[7] George C. Cushnie Jr., National Center for Manufacturing Sciences & National Association of Metal Finishers, Pollution Prevention and Control Technology for Plating Operations (Ann Arbor, MI: National Center for Manufacturing Sciences, 1994), p.312.

[8] For more information on balance of trade for nonferrous minerals and conservation of strategic metals, see U.S. Environmental Protection Agency, Report to Congress on Metal Recovery, Environmental Regulation and Hazardous Wastes (Washington D.C., U.S.EPA, 1994), Chapter 7.

[9] F006 is generated by manufacturing firms across a number of SIC codes including 3471, Electroplating, Plating, Polishing, Anodizing and Coloring; 3672, Printed Circuit Boards and other manufacturing SICs. The Small Business Administration has classified firms in the manufacturing sector (SIC Codes 20–39) as small businesses within the sector based on the number of employees per firm. The classification system uses either 500, 750 or 1000 employees depending upon which SIC code. See Small Business Size Standards, 61 FR 3280, 3289 (January 31, 1996). Thus, to determine if a generator of F006 is a small business, the primary SIC code of the firm would have to be determined. Most independent electroplaters or "job shops" are in the 3471 SIC code which has a size standard of 500 employees. Captive platers (those plating operations within a larger manufacturing operation) will have size standards of either 500, 750 or 1000 employees.

impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Data indicate that virtually all independent electroplaters or job shops are small entities.[10] Captive shops contain both large and small entities. Data on captive plating operations is, however, more limited. The regulatory impact analysis completed for this final rule indicated that of 3,296 job shops, all but 2 are small entities. BRS data indicates that a total of 1,934 plating facilities, including both captive and independent operations, generate F006 waste and 1,483 of these firms are potentially affected by today's rule. Although the BRS data does not indicate what proportion of these affected generators are small entities, it is likely that the majority of these affected generators are small entities, because the plating firms most likely to be affected by this final rule generate the smallest quantities of F006 (which is related to both facility size and product output). This final rule would not have a significant economic impact on a substantial number of small entities because today's final rule would relieve regulatory burden for metal finishers and captive operations by allowing them up to 180 days (or 270 days under certain circumstances) instead of 90 days to accumulate F006 wastes on-site. The Agency estimates that this final rule would lead to an overall cost savings in the range of $4.2 to $5.3 million annually. The rule does not impose new burdens on small entities. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and has assigned OMB control number 2050–0035. An Information Collection Request (ICR) document was prepared by EPA (ICR Control Number 0820.07) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); Ariel Rios Building; 1200 Pennsylvania Avenue, NW; Washington, DC 20460, by e-mail at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr.

EPA believes the changes in this final rule do not constitute a substantive or material modification to the information collection requirements. This final rule will not change any of the information collection requirements that are currently applicable to large quantity generators of F006 waste that accumulate the waste on-site. The recordkeeping and reporting requirements of this final rule are identical to the requirements already promulgated and covered under the existing Information Collection Request (ICR). There is no net increase in recordkeeping and reporting requirements. As a result, the reporting, notification, or recordkeeping (information) provisions of this rule will not need to be submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The Agency estimates total projected burden hours associated with the information collection requirements of this final rule to be approximately 13.19 hours per year for each generator. This is the same burden associated with the information collection requirements for large quantity generators who currently accumulate waste on-site for less than 90 days under the existing regulations. These information collection requirements include: (1) Pre-transport informational requirements specific to large quantity generators (e.g., personnel training, contingency planning and emergency procedures, tank systems, containment buildings, and requests for extension of accumulation period); (2) air emission standards for process vents; (3) air emission standards for equipment leaks; and (4) recordkeeping and reporting. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory

[10] See U.S.E.P.A. Office of Solid Waste and Emergency Response, Regulatory Impact Analysis of 180-day Accumulation Time for F006 Wastewater Treatment Sludges, September 30, 1999, p. 13.

provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes and local governments would have no compliance costs under this rule. It is expected that states will adopt similar rules, and submit those rules for inclusion in their authorized RCRA programs, but they have no legally enforceable duty to do so. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The term "policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule imposes no intergovernmental obligations on States. As discussed in Section VI (State Authority), today's rule is less stringent than the existing federal RCRA program; therefore, authorized states are not required to modify their programs to adopt regulations consistent with, and equivalent to, today's final rule. States that do not have a final authorized RCRA program also have no regulatory obligations as a result of today's rule because EPA will be responsible for implementing this rule in non-authorized states. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing this rule. The CSI metal finishing subcommittee included members representing state and local governments. Please refer to Section II.B. of this preamble for further information on the role of the CSI metal finishing subcommittee in developing this rule.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This final rule does not create a mandate for tribal governments, nor does it impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that (1) is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045, because this is not an economically significant regulatory action as defined by Executive Order 12866 and the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

Because this rulemaking retains current waste management standards for large quantity generators accumulating hazardous wastes on-site without a permit (40 CFR 262.34), EPA believes that the new 180-day (or 270-day, where applicable) accumulation period will not result in increased exposures to children. These provisions are discussed in detail in Section V.E. of this rule. EPA believes that these provisions are protective of human health and the environment and minimize the likelihood of exposure to hazardous waste held in these units.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rulemaking does not involve

technical standards. EPA has not, therefore, used any voluntary consensus standards.

I. Executive Order 12898: Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all populations in the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health or environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in safe and healthful environments. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's final rule covers F006 wastes from metal finishing operations. It is not certain whether the environmental problems addressed by this rule could disproportionately affect minority or low-income communities, due to the location of some metal finishing operations. Metal finishing operations are distributed throughout the country and many are located within highly populated areas. Because today's final rule retains provisions for large quantity generators of F006 waste to accumulate F006 waste in protective Subpart J tanks, Subpart I containers or Subpart DD container buildings, the Agency does not believe that today's rule will increase risks from F006 waste. These provisions are discussed in further detail in Section V.E. of this rule. It is, therefore, not expected to have any disproportionately high adverse human health or environmental effects on minority or low-income communities relative to affluent or non-minority communities.

J. Submission to Congress and General Accounting Office

The Congressional Review Act (5 U.S.C. 801(a)(1)(A)) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to the publication of this rule in this **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on March 8, 2000.

List of Subjects in 40 CFR Part 262

Environmental protection, Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Dated: March 1, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 262 as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. Section 262.34 is amended by revising paragraph (a)(4) and adding new paragraphs (g), (h), and (i) to read as follows:

§ 262.34 Accumulation time.

* * * * *

(a) * * *

(4) The generator complies with the requirements for owners or operators in Subparts C and D in 40 CFR part 265, with § 265.16, and with 40 CFR 268.7(a)(5).

* * * * *

(g) A generator who generates 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the RCRA hazardous waste code F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:

(1) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling;

(2) The F006 waste is legitimately recycled through metals recovery;

(3) No more than 20,000 kilograms of F006 waste is accumulated on-site at any one time; and

(4) The F006 waste is managed in accordance with the following:

(i) The F006 waste is placed:

(A) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265; and/or

(B) In tanks and the generator complies with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265, except §§ 265.197(c) and 265.200; and/or

(C) In containment buildings and the generator complies with subpart DD of 40 CFR part 265, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101 in the facility's operating record prior to operation of the unit. The owner or operator must maintain the following records at the facility:

(1) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or

(2) Documentation that the unit is emptied at least once every 180 days.

(ii) In addition, such a generator is exempt from all the requirements in subparts G and H of 40 CFR part 265, except for §§ 265.111 and 265.114.

(iii) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(iv) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste;" and

(v) The generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265, with 40 CFR 265.16, and with 40 CFR 268.7(a)(5).

(h) A generator who generates 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the RCRA hazardous waste code F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the

requirements of paragraphs (g)(1) through (g)(4) of this section.

(i) A generator accumulating F006 in accordance with paragraphs (g) and (h) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264 and 265 and the permit requirements of 40 CFR part 270 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by EPA if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Regional Administrator on a case-by-case basis.

[FR Doc. 00–5503 Filed 3–7–00; 8:45 am]

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Federal Register

Wednesday,
March 8, 2000

Part V

Department of the Interior

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Eleventh Regular Meeting; Proposed U.S. Negotiating Positions for Agenda Items and Species Proposals Submitted by Foreign Governments and the CITES Secretariat; Public Meeting; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Eleventh Regular Meeting; Proposed U.S. Negotiating Positions for Agenda Items and Species Proposals Submitted by Foreign Governments and the CITES Secretariat; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces the provisional agenda for the eleventh regular meeting of the Conference of the Parties (COP11) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The description of each proposed agenda item is followed by a brief explanation of the proposed U.S. negotiating position for that item. Proposals submitted by the United States are not covered in this notice. This notice contains only summaries of the proposed U.S. negotiating positions on agenda items, resolutions, and species proposals submitted by other countries and the CITES Secretariat for COP11. This notice also announces the time and place for a public meeting on these issues.

DATES: In developing the final U.S. negotiating positions on these issues, we will consider information and comments that you submit if we receive them by Friday, March 31, 2000. The public meeting will be held on March 13, 2000, from 1:30 to 4:00 pm.

ADDRESSES: *Comments:* You should send comments pertaining to proposed resolutions and agenda items to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203, or via E-mail at: r9oma_cites@fws.gov. You should send comments pertaining to species proposals to the Office of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, VA 22203, or via E-mail at: r9osa@fws.gov. Comments and materials that we receive will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at either the Office of Management Authority or the Office of Scientific Authority.

Public Meeting: The public meeting will be held in rooms 7000A and B, Department of the Interior, 1849 C Street, NW, Washington, D.C. Directions to the building can be obtained by contacting the Office of Management Authority or the Office of Scientific Authority (see **FOR FURTHER INFORMATION CONTACT,** below). Please note that the room is accessible to the handicapped, and all persons planning to attend the meeting will be required to present photo identification when entering the building. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Office of Management Authority as soon as possible.

FOR FURTHER INFORMATION CONTACT: (1) For information pertaining to proposed resolutions and agenda items: Teiko Saito, Chief, U.S. Fish and Wildlife Service, Office of Management Authority, tel. 703–358–2095, fax 703–358–2298, E-mail at: r9oma_cites@fws.gov. (2) For information pertaining to species proposals: Dr. Susan Lieberman, Chief, U.S. Fish and Wildlife Service, Office of Scientific Authority, tel. 703–358–1708, fax 703–358–2276, E-mail at: r9osa@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, referred to below as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction. These species are listed in Appendices to CITES, copies of which are available from the Office of Management Authority or the Office of Scientific Authority at the above addresses, from our World Wide Website http://international.fws.gov, or from the official CITES Secretariat Website at http://www.cites.org/CITES/eng/index.shtml. Currently, 148 countries, including the United States, are Parties to CITES. CITES calls for biennial meetings of the Conference of the Parties, which review issues pertaining to CITES implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose and vote on amendments to Appendices I and II (species proposals), resolutions, decisions, discussion papers, and agenda items for consideration by the Conference of the Parties. Accredited nongovernmental organizations may participate in the meeting as approved observers, and may speak during sessions, but may not vote or submit proposals. The eleventh regular meeting of the Conference of the Parties (COP11) will be held in Gigiri, Kenya, April 10–20, 2000.

This is our sixth in a series of **Federal Register** notices that, together with announced public meetings, provide you with an opportunity to participate in the development of the United States' negotiating positions for the eleventh regular meeting of the Conference of the Parties to CITES (COP11). We published our first **Federal Register** notice on January 30, 1998 (63 FR 4613), and with it we requested information and recommendations on potential species amendments for the United States to consider submitting for discussion at COP11. You may obtain information on that **Federal Register** notice, and on species amendment proposals, from the Office of Scientific Authority at the above address. We published our second **Federal Register** notice on September 4, 1998 (63 FR 47316), and with it we requested information and recommendations on potential resolutions and agenda items for the United States to consider submitting for discussion at COP11. You may obtain information on that **Federal Register** notice, and on proposed resolutions and agenda items, from the Office of Management Authority at the above address. We published our third **Federal Register** notice on February 26, 1999 (64 FR 9523), and with it we announced the time and place of COP11, announced the times and places for the next meetings of the CITES Animals and Plants Committees, and announced a public meeting to discuss issues that were to be raised at those committee meetings. We published our fourth **Federal Register** notice on July 8, 1999 (64 FR 36893), and with it we listed potential proposed resolutions, agenda items, and proposed amendments to the CITES Appendices that the United States was considering submitting for consideration at COP11; invited your comments on these potential proposals; announced a public meeting to discuss the potential proposals; and provided information on how nongovernmental organizations based in the United States can attend COP11 as observers. You may obtain information on that **Federal Register** notice from the Office of Management Authority (for information pertaining to proposed resolutions and agenda items) or the Office of Scientific Authority (for information pertaining to proposed amendments to the Appendices) at the above addresses. We

also published a correction in the **Federal Register** on August 13, 1999 (64 FR 44234), correcting a paragraph regarding Atlantic swordfish on page 36909 of our July 8 **Federal Register** notice (64 FR 36893). We published our fifth **Federal Register** notice announcing resolution and agenda items and species proposals submitted by the United States to COP11 on February 17, 2000 (65 FR 8190). You may locate our regulations governing this public process in 50 CFR 23.31–23.39. Before COP11, we will announce any changes to the proposed negotiating positions contained in this notice and any undecided negotiating positions by posting a notice on our Internet website (http://international.fws.gov/global/cites.html). Pursuant to 50 CFR 23.38 (a), the Director has decided to suspend the procedure for publishing a notice of negotiating positions in the **Federal Register**, because time and resources needed to prepare a formal **Federal Register** notice would detract from essential preparation for COP11, and because the information on negotiating positions will otherwise be available on the internet. After the meeting of the COP, we will publish a notice in the **Federal Register** announcing the amendments to CITES Appendices I and II that were adopted by the Parties at the meeting, and requesting comments on whether the United States should enter reservations on any of these amendments.

We held public meetings on May 6, 1999 (to discuss issues before the CITES Animals and Plants Committees), and on July 28, 1999 (to discuss species proposals and resolutions and agenda items submitted by the United States to COP11). We will discuss U.S. positions on species amendments and resolutions submitted by other CITES Parties, and other agenda items leading up to COP11, at the public meeting on March 13, 2000.

Proposed Negotiating Positions

In this notice we summarize the proposed U.S. negotiating positions on agenda items and resolutions and proposals to amend the Appendices, which have been submitted by other countries and the CITES Secretariat. (Proposals submitted by the United States are covered in the **Federal Register** notice of February 17, 2000 [65 FR 8190]; see Background, above. We will not cover those issues in this notice. If time permits, they can be discussed at the public meeting on March 13, 2000). Numerals next to each agenda item or resolution correspond to the numbers used in the provisional agenda (Doc. 11.3), posted on the CITES Secretariat's Internet website (http://www.cites.org) and distributed through CITES Notification to the Parties No. 1999/96, issued on November 30, 1999. However, when we completed this notice, we still had not received documents for a number of the agenda items and resolutions from the Secretariat, nor have they been posted on the Secretariat's website. They will be available from the Office of Management Authority after they have been received from the Secretariat, or you may obtain them directly from the Secretariat's website when they are posted.

Some documents may not be received or posted until COP11 begins on April 10, 2000, or later during the Conference. A list of documents that we have received is available upon request from the Office of Management Authority (see **ADDRESSES**, above).

In the discussion that follows below, we have included a brief description of each proposed resolution, agenda item, or species proposal submitted by other countries or the CITES Secretariat, followed by a brief explanation of the proposed U.S. negotiating position for that item. Before COP11, we will announce any changes to the proposed negotiating positions contained in this notice and any undecided negotiating positions by posting a notice on our Internet website (http://international.fws.gov/global/cites.html). However, new information that may become available at COP11 could lead to modifications of these positions. The U.S. delegation will fully disclose any and all position changes and the explanations for those changes through daily public briefings at COP11.

Agenda (provisional) [Doc. 11.3]

Opening Ceremony and Welcoming Addresses

The Secretariat will prepare a document on these agenda items. According to tradition the host country conducts an opening ceremony and makes welcoming remarks at a meeting of the COP. Since COP11 is being hosted by the United Nations Environment Programme (UNEP), not the Government of Kenya, we understand that the opening ceremony and welcoming remarks will be conducted by UNEP.

Strategic and Administrative Matters

1. Rules of Procedure [Doc. 11.1]

The Secretariat, on behalf of the Standing Committee, distributes a provisional version of the Rules of Procedure, which describe the manner in which a COP is conducted, prior to all CITES COPs. The CITES Standing Committee may recommend modification to the Rules of Procedure for the work of the meeting of the COP. However, the COP discusses those proposed modifications, if any, and adopts Rules that guide the work of the Conference for the 2 weeks that it meets. Following COP 10, the Management Authority of Spain, with the cooperation of the CITES Secretariat, prepared a draft revision of portions of the Rules of Procedure. The United States prepared comments on this draft revision in preparation for the 42nd meeting of the Standing Committee, in Lisbon, September 28–October 1, 1999. At this meeting the Standing Committee reviewed the draft Rules of Procedure and made several significant proposed additions to the rules before agreeing that they should be forwarded to COP11 for adoption. One significant addition would provide the possibility for unofficial documents to be circulated at the COP and would give the Bureau the right to decide on appropriate action in the case of complaints from participants. Another significant proposed modification would establish a "dispute resolution" procedure, giving the Bureau authority to expel from the meeting any participant that "vilifies" a Party or brings the Convention into "disrepute." The United States has noted previously our preference (U.S. response to Notification to the Parties 1998/18) that, on a species proposal or other issues before the Conference, the use of a secret ballot should be more restrictive than the current provision in Rule 25. However, in the interest of building consensus, we do not intend to propose any modifications to Rule 25.

The United States proposes to support most aspects of the provisional version of the Rules of Procedure as received from the Secretariat, with the following exceptions: Rule 12, paragraph 1, would allow a simple majority of the Parties present and voting to close from the public any session of the plenary or Committee I or II. This rule is in contrast to the rules that were in effect at COP 10, which allowed such action only "in exceptional circumstances," and only with a two-thirds majority vote of Parties present and voting. The United States feels that transparency of the CITES process at a COP is of the utmost importance and would not support any effort to potentially reduce that transparency.

In Rule 29, the language in paragraph 3 allows significant interpretation in determining what "abuses or vilifies a party, or brings the Convention into disrepute." Clear guidelines should be established for use in determining if a document is offensive, since this

determination could ultimately result in an organization being refused admission to the COP, or a formal complaint being made to a Party. In addition, the language in paragraph 4 that enables the Bureau to decide on appropriate action appears to be in conflict with Article XI paragraph 7 of the treaty that states that the Conference of the Parties is the body that can object to the participation of observers. The authority rests within the Plenary of the COP to decide if an individual observer should be no longer admitted to the meeting. One of the great strengths of CITES is its explicit provisions for observer participation.

2. Election of Chairman and Vice-Chairmen of the meeting and of Chairmen of Committees I and II and of the Budget Committee [no document]

The Secretariat will not prepare a document for this agenda item. The United States will support the election of a highly qualified Conference Chair, Vice-Chair of the Conference, and Committee Chairs representing the geographic diversity of CITES.

The Chair of the CITES Standing Committee (United Kingdom) will serve as temporary Chair of the meeting of the COP until a permanent Conference Chair is elected. According to tradition the host country provides the Conference Chair. Since there is no host country, the Standing Committee and UNEP will jointly recommend a suitable Chair to the Conference of the Parties. The Conference Chair will serve as Presiding Officer of the meeting of the COP and also of the Conference Bureau, the executive body that manages the business of the COP. Other members of the Conference Bureau include the Committee Chairs (discussed below), the members of the Standing Committee, and the Secretary General of CITES.

The major technical work of CITES is done in the two simultaneous Committees, thus, Committee Chairs must have great technical knowledge and skill. In addition, CITES benefits from active participation and leadership of representatives of every region of the world. The United States will support the election of Committee Chairs and a Vice-Chair of the Conference having the required technical knowledge and skills and also reflecting the geographic and cultural diversity of CITES Parties.

3. Adoption of the Agenda [Doc. 11.3]

The United States has reviewed the Provisional Agenda provided by the CITES Secretariat for COP11. The United States' discussion paper "Recognition of the important contribution made by observers to the CITES process at meetings of the Conference of the Parties," which was submitted for consideration in Plenary session under agenda item #7 (Admission of Observers), has instead been assigned under a separate agenda item (#16), causing its consideration to be delayed by 2 days and limiting its initial audience to Committee II. The United States' discussion paper includes six recommendations which, if adopted by the Parties, would ensure the active participation of observers at future meetings of the Conference of the Parties. For many of the issues submitted for discussion at meetings of the COP, the greatest level of expertise lies within the community of nongovernmental organizations (NGOs) that attends meetings of the COP as observers. CITES recognizes this fact by explicitly providing for the active participation of observers at meetings of the COP in Article XI. Given the importance of observers, and in light of the difficulties they encountered while attempting to actively participate at COP10, the United States believes all policy documents concerning observers should be considered on the first working day of the meeting of the COP in Plenary. The United States recently wrote to the Secretariat to ask why that discussion paper was not scheduled for consideration under agenda item 7, as the United States had originally requested. If the United States does not receive a satisfactory response from the Secretariat and the matter remains unresolved, the United States may decide to oppose this aspect of the provisional agenda when it comes up for consideration at COP11.

4. Adoption of the Working Programme [Doc. 11.4]

The United States has received and continues to review the Provisional Working Programme for COP11 provided by the Secretariat. The United States generally supports the Provisional Working Programme, however, the United States is concerned that the discussion paper that the United States submitted on observers (see agenda item #3, above) has not been assigned as an earlier agenda item of the Provisional Agenda for COP11. In addition, the United States notes that on the afternoon of April 12th, Committee I is scheduled to consider agenda items regarding marine species, while Committee II is scheduled to consider interpretation and implementation of the Convention as it relates to the issuance of certificates of introduction from the sea. The United States is concerned that considering these issues simultaneously in different committees may present a scheduling conflict for many Parties, as their staff who cover marine species would probably also cover issues associated with certificates of introduction from the sea. The United States believes this scheduling conflict could be averted by changing the order in which Committee II considers its agenda items that afternoon, moving introduction from the sea to the final item for consideration.

5. Establishment of the Credentials Committee [no document]

A document will not be prepared by the CITES Secretariat on this agenda item. The United States will support the establishment of the Credentials Committee.

The establishment of the Credentials Committee is a standardized matter. The Credentials Committee approves the credentials of delegates to the meeting of the COP by confirming that they are official representatives of their governments, giving them the right to vote in Committee and Plenary sessions. The Credentials Committee consists of representatives from no more than five CITES Party governments nominated by the Standing Committee. The United States was a member of the Credentials Committee at COP10.

6. Report of the Credentials Committee [no pre-meeting document]

The Secretariat will not prepare a document on this agenda item prior to COP11, but one will be available at the Conference. The United States will support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries that are Parties to CITES. The United States will encourage timely production of Credentials Committee reports at the meeting of the COP.

Adoption of the report of the Credentials Committee is generally a standardized exercise. Representatives whose credentials are not in order should be given observer status as provided for under Article XI of the Convention. If evidence is provided that credentials are forthcoming but have been delayed, representatives can be allowed to vote on a provisional basis. A liberal interpretation of the Rules of Procedure on credentials should be adhered to in order to permit clearly legitimate representatives to participate. Exclusion of Party representatives whose credentials are not in order could undermine essential cooperation among Parties. However, greater vigilance is necessary in cases of close votes, or decisions to be made by secret ballot.

7. Admission of Observers [Doc. 11.7]

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. The United States supports admission to the meeting of all technically qualified nongovernmental organizations, and the United States opposes unreasonable limitations on their full participation as observers at COP11. Nongovernmental organizations (NGOs) are admitted as observers if their headquarters are located in a CITES Party country, and if the national government of that country approves their attendance at the meeting of the COP. International NGOs are admitted by approval of the CITES Secretariat. After being approved as an observer, an NGO is admitted to the meeting of the COP, unless one-third of the Parties present objects.

Nongovernmental organizations representing a broad range of viewpoints and perspectives play a vital and important role in CITES activities and have much to offer to the debates and negotiations at a meeting of the COP. Their participation is specifically provided by Article XI of the Convention. The United States supports the opportunity for all technically qualified observers to fully participate at meetings of the COP, as is standard CITES practice. The United States also supports flexibility and openness in approval of documents produced by nongovernmental organizations and the dissemination of these documents to delegates. This information sharing is vital to decision-making and scientific and technical understanding at a CITES meeting.

8. Matters Related to the Standing Committee

The Standing Committee directs the work of the Convention during the period between meetings of the COP. Its work includes: (1) providing general policy and operational direction to the CITES Secretariat concerning the budget and other matters; (2) providing coordination and advice to other CITES Committees and working groups; (3) drafting resolutions for the Parties to consider at meetings of the COP; and (4) carrying out activities on behalf of the Parties. The Standing Committee will meet on April 9, 2000, the day before COP11 begins, to nominate the chairs of COP committees and provide guidance needed to conduct the meeting of the COP.

1. Report of the Chairman [Doc. 11.8]

When we completed this notice, we still had not received a document for this agenda item from the Secretariat. The United States fully supports the presentation of a report by the Chairman of the Standing Committee (United Kingdom) regarding the execution of the Committee's responsibilities and its activities that accurately reflects the discussions and decisions of the Committee. The United States will develop a position on that report after receipt of the document.

2. Election of new regional and alternate regional members [no document]

The Parties are represented on the Standing Committee by region. Regions with many countries may have more than one representative, based on a formula approved by resolution at previous meetings of the COP. Of the six geographic regions, one has three representatives (Africa); three have two representatives (South/Central America and the Caribbean, Europe, and Asia); and two have one representative (North America and Oceania). Parties from each geographic region meet early during the meeting of the COP to select new regional representative(s) and alternates to the Standing, Animals, and Plants Committees, in addition to reviewing other issues.

The United States encourages membership that will continue the active role of the Standing Committee. The Regional Representative for North America from COP9 until now has been Mexico. Discussions have taken place among the three North American CITES Parties (Canada, Mexico, and the United States) on which country should be the regional representative between COP11 and COP12, and those discussions will continue and be finalized at COP11. Resolution Conf. 9.1 (Rev.) specifies that "the terms of office of the regional members shall commence at the close of the regular meeting at which they are elected and shall expire at the close of the second regular meeting thereafter."

9. Reports of the Secretariat

1. Annual report of the Secretariat [Doc. 11.9.1]
2. Staffing of the Secretariat [Doc. 11.9.2]

These two reports are essential to ensure that the Secretariat continues to perform its functions assigned under Article XII of CITES. However, when we completed this notice, we still had not received these documents from the Secretariat. When we receive these documents from the Secretariat, the United States will evaluate them and develop negotiating positions.

10. Financing and Budgeting of the Secretariat and of Meetings of the Conference of the Parties

The Secretariat submits its financial report and budget for approval at each meeting of the COP. The Parties may choose to modify the budget before approving it. Financial support for the Secretariat comes from a Trust Fund consisting of voluntary annual contributions from Party governments, based on a United Nations scale. Additional support for CITES activities is provided through extra contributions from governments and nongovernmental organizations, and is used for projects approved by the Standing Committee. This "external funding" is not part of the Secretariat's budget.

The United States is currently reviewing the budget documents of the Secretariat. The United States advocates fiscal responsibility and accountability on the part of the Secretariat and the Conference of the Parties. The United States plans to be an active participant in discussions in the Budget Committee at COP11.

1. Financial report for 1997, 1998 and 1999 [Doc. 11.10.1]

Issues associated with the financial report of the Secretariat will be fully discussed at COP11, and the United States will closely review and analyze the relevant documents.

2. Estimated expenditures for 2000 [Doc. 11.10.2]

Issues associated with anticipated 2000 expenditures of the Secretariat will be fully discussed at COP11. The United States will review the documents carefully, bearing in mind the need to balance tasks assigned to the Secretariat with available resources.

3. Budget for 2001–2002 and Medium-term Plan for 2001–2005 [Doc. 11.10.3]

The United States believes that coordinating Budget Committee discussions with discussions in Committees I and II that may have budgetary implications is important. The Budget Committee needs to have time to consider the financial and budgetary implications of resolutions approved by Committees I and II. Ideally, the Committees would not take decisions with budgetary implications until the budget is approved. The United States will continue to work through the Bureau at the meeting of the COP to deal with this issue. The United States believes that the Budget Committee should be in a stronger position to deal with these important issues if the meeting of the COP approves the new status of the Budget

Committee, reporting directly to the meeting of the COP as a full committee of the plenary.

4. External funding [Doc. 11.10.4]

External funding refers to the financial support by Parties and nongovernmental organizations for projects that have been approved as priorities for CITES by the Standing Committee. This procedure is designed to avoid any conflicts of interest or even the appearance of a conflict when approving projects and channeling funds between the provider and the recipient. These externally funded projects are outside the CITES Trust Fund.

The United States, through the Department of the Interior and the Department of State, continues to contribute external funding to Standing Committee-approved projects including delegate travel to the meeting of the COP, support for Committee meetings, CITES enforcement and implementation training, and biological studies of significantly traded species.

11. Committee Reports and Recommendations

1. Animals Committee

(a) Report of the Chairman [Doc. 11.11.1]

The current Chair (Mr. Robert Jenkins of Australia) will report on the activities of the Animals Committee since COP10. Since COP10, the Animals Committee held two meetings, the first (May 25–29, 1998) in Caracas, Venezuela, and the second (July 5–9, 1999) in Antananarivo, Madagascar. The Regional Representative from North America on the Animals Committee is Dr. Susan Lieberman of our Office of Scientific Authority, who has led the U.S. delegations to each of the Animals Committee meetings since COP10. The United States is an active participant in Animals Committee meetings, working groups, and activities. When we completed this notice, we still had not received a copy of the Chair's Report. You may obtain information regarding Animals Committee meetings from the Office of Scientific Authority at the address above (see **FOR FURTHER INFORMATION CONTACT**).

(b) Election of new regional and alternate regional members [no document]

The six CITES regions are represented on the Animals Committee by one or two persons, according to the number of countries in each region. This process was established in CITES Resolution Conf. 9.1 (Rev), which is available on the Secretariat's web page. The representatives are individuals, and not governments. Parties within each CITES region meet during the meeting of the COP to elect new Animals Committee members to represent them. The current North American regional representative on the Animals Committee is Dr. Susan Lieberman, Chief of our Office of Scientific Authority, on behalf of the United States. Dr. Lieberman also serves as Vice Chair of the Committee. The United States, Mexico, and Canada have discussed our representation for the interval between COP11 and COP12, and we will meet and finalize the region's selections for representative and alternate during the first week of COP11.

2. Plants Committee

(a) Report of the Chairman [Doc. 11.11.2]

The current Chair (Dr. Margarita Clemente of Spain) will report on the activities of the Plants Committee since COP10. Since COP10, the Plants Committee held two meetings: the eighth meeting of the Plants Committee (November 3–7, 1997) was in Pucon, Chile, and the ninth meeting (June 7–11, 1999), in Darwin, Australia. The United States sent a delegation to both of those Plants Committee meetings and has participated actively in Plants Committee activities. When we completed this notice, we still had not received a copy of the Chair's Report. You may obtain information regarding the Plants Committee from the Office of Scientific Authority at the address above (see **FOR FURTHER INFORMATION CONTACT**).

(b) Election of new regional and alternate regional members [no document]

The six CITES regions are represented on the Plants Committee by one or two persons, according to the number of countries in each region. This process was established in CITES Resolution Conf. 9.1 (Rev), which is available on the Secretariat's web page. The representatives are individuals, and not governments. Party countries within each CITES region meet during the meeting of the COP to elect new Plants Committee members to represent them. The current North American regional representative on the Plants Committee is Dr. Bertrand von Arx, on behalf of Canada. The United States, Mexico, and Canada have discussed our representation for the interval between COP11 and COP12 and will meet and finalize the region's selections for representative and alternate during the first week of COP11.

3. Identification Manual Committee [Doc. 11.11.3]

The Identification Manual Committee develops materials, such as manuals and data sheets, to help CITES Parties identify CITES-listed species. The current Chair is Dr. Ruth Landolt of Liechtenstein; the current Vice-chair is Dr. Chris Schurmann of the Netherlands. The report highlights those countries that have not yet submitted the required identification sheets under Resolution Conf. 9.1. The United States will attempt to fulfill this requirement after COP11. However, we are also actively involved in other identification efforts, and the publication of other more interactive or useful identification materials. We will continue to focus our identification efforts and limited resources on the production of materials most useful to our Wildlife Inspectors and Customs Inspectors and other enforcement personnel in the United States and abroad.

4. Nomenclature Committee

The Nomenclature Committee reviews nomenclature (scientific name) and taxonomic (scientific classification) issues that apply to species listed in the CITES Appendices. The Committee also prepares and adopts checklists for the various taxa (classifications) listed in the CITES Appendices.

(a) Report of the Chairmen [Doc. 11.11.4.1]

The Nomenclature Committee does not have regional representatives and meets only as needed, usually during the meetings of the Plants and Animals Committee. The United States participates in all activities of the Nomenclature Committee. The current Co-chairs are Dr. Marinus Hoogmoed (of the Scientific Authority of the Netherlands) for fauna (animals), and Dr. Noel McGough (of the Scientific Authority of the United Kingdom) for flora (plants). Drs. Hoogmoed and McGough have submitted their report for consideration at COP11 in this document. We note with praise the excellent work of Drs. Hoogmoed and McGough on all of these issues. For fauna, the report details several notable enquiries from the Parties on nomenclatural issues, along with recommendations for standard references for the following groups (taxa): crocodiles, turtles, tortoises, and tuataras; chamaeleons; Cordylid lizards; and fishes. For flora, the report summarizes existing checklists and a proposed work plan for the families Cactaceae, Orchidaceae, and Euphorbiaceae, various bulb genera, carnivorous plants, and the genera *Aloe* and *Pachypodium*.

(b) Recommendations of the Committee [Doc. 11.11.4.2]

This document contains recommendations of the Nomenclature Committee, as discussed in Doc. 11.11.4.1. We are still reviewing the budgetary requests and standard references (proposed in Doc. 11.39). We have not fully evaluated all of these taxonomic references. However, the United States tentatively proposes to support their adoption, pending input during this public comment process. We invite the review of these reports by experts in these taxa. The United States proposes to support all of the recommended annotations to and nomenclatural changes in the Appendices in the report (names used for wild populations of *Bos garus* and *Bos mutus,* names for genera of chameleons, names for species of *Tupinambis,* and *Brachypelma* nomenclature).

12. Evolution of the Convention

1. Action plan to improve the effectiveness of the Convention [Doc. 11.12.1]

Document SC.42.7, prepared by the Secretariat, is a report of actions taken to implement the Decisions in the Action Plan adopted by COP10. The report, which was presented and discussed at the 42nd meeting of the Standing Committee (SC42), held in late September 1999 in Portugal, addresses all the issues related to the "Action Plan," including those directed to the Conference of the Parties, the Parties, the Animals and Plants Committees, UNEP, and the Secretariat.

At SC42, the Committee recommended that the Secretariat continue its work on refining the document, taking into consideration the comments made during the SC42. When we completed this notice, we still had not received the document for this agenda item from the Secretariat. When we receive the document from the Secretariat, the United States will evaluate it and develop a negotiating position.

Although when we completed this notice we still had not received the refined document from the Secretariat for this agenda item, the United States supports the activities and recommendations that were described in Document SC.42.7, and we anticipate that the United States will support its adoption by the Parties.

2. Strategic Plan for the Convention [Doc. 11.12.2]

At the 42nd meeting of the Standing Committee, the Draft Strategic Plan (SC42.5, Annex 1) was presented for discussion. The Draft Strategic Plan presents a long-range vision focused on broad goals and objectives to guide the Parties in achieving CITES' mission. The comments prepared by the Animals and Plants Committees (Annex 2 and 3, respectively) were also made available for review and comment. The Working Group revised the Draft Plan during SC42, taking into consideration the comments made by the Animals and Plants Committees, in addition to those from delegates and observers. Doc. SC.42.5 Annex 1 (Rev.) was presented and approved by the Standing Committee for circulation to the Parties. The Standing Committee also agreed that the Strategic Plan Working Group should continue its work on refining the document.

After the meeting, the Secretariat on behalf of the Standing Committee distributed to the Parties Doc. SC.42.5 Annex 1 (Rev.) in addition to a draft Action Plan to implement the goals and objectives identified in the Strategic Plan (Notification to the Parties No. 1999/76, issued on October 21, 1999). The Working Group met in early December to further refine the Strategic Plan as well as the Action Plan based on comments received from the Parties in response to the Notification. When we completed this notice, we still had not received the documents from the Secretariat for this agenda item. However, the United States as Chair of the Working Group, strongly supports the goals and objectives in the Strategic Plan and supplemental Action Plan and will work towards their adoption at COP11.

3. Co-operation and synergy with the Convention on Biological Diversity and other biodiversity-related conventions [Doc. 11.12.3]

At the 42nd meeting of the Standing Committee Doc. SC.42.17 ("Synergy Between the Biodiversity-related Conventions and Relations With Other Organizations") was prepared by the Secretariat, discussed, and noted. When we completed this notice, we still had not received the document for this agenda item from the Secretariat. Once we receive it, we will develop a negotiating position.

4. Improvement of the effectiveness of the Convention: financing conservation of species of wild fauna and flora [Doc. 11.12.4]

The Government of France has submitted this draft Resolution on financing the conservation of wild species. However, when we completed this notice, we still had not received the official translation of this document from the Secretariat. Once we receive the official translation, the United States will develop a negotiating position.

13. Terms of Reference of Permanent Committees [Doc. 11.13]

At its 42nd meeting, the Standing Committee formally requested the Secretariat to review the terms of reference of existing inter-sessional Committees and to submit proposals to the Parties at COP11 regarding the structure, remit, and resources of each Committee, consistent with the goals and objectives of the CITES Strategic Plan, and allowing sufficient flexibility for the operation of each Committee. We expect Doc. 11.13 to cover this issue. Once we receive this document from the Secretariat, the United States will develop a negotiating position.

14. Synergy with the United Nations Food and Agricultural Organization [Doc. 11.14]

This document was sponsored by the United States, and our reason for submitting it is discussed in the **Federal Register** notice of February 17, 2000 [65 FR 8190]. The United States will work for adoption of the document and its recommendation by the Parties.

15. International Whaling Commission

1. Relationship with the International Whaling Commission [Doc. 11.15.1]

If adopted, this resolution would direct CITES to make decisions regarding international trade in whales and whale products under "their own criteria set forth in Conf. 9.24, taking into account (i) scientific information from the IWC Scientific Committee and other sources and (ii) consistency with scientific requirements for the listing of other species in the Appendixes [sic]." The United States notes that this is a requirement of the treaty and needs no reinforcement from a resolution. The United States also notes that the criteria include not only the biological status of candidate species, but also other elements, *e.g.*, the measures specified in paragraph 2 of Annex 4 of Resolution 9.24. Thus, according to Annex 4 of its own criteria, CITES should consider the IWC's progress on management measures in making decisions on Appendix listings.

The draft resolution also "urges that the Parties apply the provisions for international trade in listed species as laid down in the Convention." This is also an obligation of all Parties to the Convention and, thus, this part of the resolution is also unnecessary.

Because the operative parts of this resolution call on the Parties to do things that are already requirements of the implementation of CITES, the United States opposes this resolution.

In addition, the United States has noticed an error in Doc. 11.15.1. The sixth preambulatory paragraph reads as follows:

Noting that a resolution, adopted at the 51st annual meeting of the IWC held in May 1999 in Grenada by 15 votes in favor, 10 votes against and 9 abstentions, objected for the time being the downlisting of any whales because the moratorium was still in effect;

Page 36 of the Chairman's Report of the 51st Annual Meeting (IWC, 1999) indicates that the resolution passed by a far wider margin, specifically stating, "The resolution . . . was then adopted, with 21 votes in favour, 10 against and 3 abstentions."

The United States has drawn the attention of the CITES Secretariat to this error and requested that corrected text be sent to the Parties.

The United States believes that CITES should honor the request for assistance in enforcing the moratorium on commercial whaling, which was communicated by the IWC to CITES in 1978. This request was answered by the CITES Parties in Resolution Conf. 2.9, which calls on the Parties to "agree not to issue any import or export permit or certificate" for introduction from the sea under CITES for primarily commercial purposes "for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling." These complementary actions established a strong relationship between the two organizations, whereby CITES has agreed to reflect IWC decisions in its Appendices. The United States has proposed a resolution (Doc. 11.15.2) that encourages the continued cooperation between CITES and the IWC. The United States prefers this approach to the issue.

2. Reaffirmation of the synergy between CITES and the International Whaling Commission [Doc. 11.15.2]

This document was submitted by the United States, and our reason for submitting it is discussed in the **Federal Register** notice of February 17, 2000 [65 FR 8190]. The United States will work for adoption of the document.

16. Recognition of the important contribution made by observers to the CITES process at meetings of the Conference of the Parties [Doc. 11.16]

This document is a discussion paper submitted by the United States, and our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 [65 FR 8190]. The United States will work for adoption of the document and its recommendations by the Parties.

Interpretation and Implementation of the Convention

17. Consolidation of Valid Resolutions [Doc. 11.17]

This resolution includes the work of the Secretariat to consolidate existing Resolutions and Decisions of the Conference of the Parties on conservation of cetaceans, trade in cetacean specimens and relationship with the International Whaling Commission, enforcement and compliance; and non-commercial loan, donation or exchange of museum and herbarium specimens. This work was mandated by Decision 10.60.

Conservation of cetaceans—The United States notes that since the Standing Committee is obligated to do this consolidation, comments by some Parties that this consolidation effort should not be forwarded to the Conference of the Parties were ruled out of order. Two draft consolidated resolutions have been presented—a draft consolidated resolution that includes the original text and preamble of the resolutions, without textual changes, and a revised version of the draft consolidated resolution proposed by the Secretariat that takes the comments of some Parties into account. The choice is between the two resolutions. The United States is continuing to discuss this consolidation effort both internally and with other Parties in developing our proposed negotiating position.

We support the consolidation of various enforcement resolutions, and see no substantive changes or negative effects from the proposed consolidation of the enforcement resolutions.

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. We are continuing to review the sections (3 and 3b) on the consolidation of resolutions concerning non-commercial loan, donation, or exchange of museum and herbarium specimens. At the 42nd meeting of the Standing Committee we supported the consolidation of resolutions and still do, provided the new version is "user friendly" and does not "impinge on the validity" of existing resolutions.

18. Interpretation and Implementation of Article III, Paragraph 5, Article IV, Paragraphs 6 and 7 and Article XIV, Paragraphs 4, 5 and 6, Relating to Introduction From the Sea [Doc. 11.18]

Australia submitted a resolution to provide a practical basis for implementing CITES when listed species are taken on the high seas outside the jurisdiction of any country. The Convention refers to this as "introduction from the sea," but is silent on how Parties should specifically implement trade controls in such situations. The Australian resolution clarifies the term "introduction from the sea," recommends a number of measures to assist Parties in the monitoring of trade in listed marine species, and suggests appropriate standards for documenting specimens that enter trade from areas not controlled by any country. The resolution addresses provisions of Article XIV concerning the relationship between the Convention and other related international agreements that entered into force before CITES went into effect and requests that Parties submit information in their annual reports about specimens introduced from the sea under Article XIV. The resolution incorporates the current provisions of Resolution Conf. 10.2 on permits and certificates and Resolution Conf. 9.7 on transit and transhipment. The resolution directs the Secretariat to develop an appropriate mechanism to accurately record transactions involving specimens that are introduced from the sea and requests that the Secretariat, working with the Animals Committee and relevant intergovernmental fisheries organizations, monitor implementation of the measures of the resolution. To ensure effective international cooperation and achieve effective implementation of the resolution, the Secretariat is directed to communicate the provisions of the resolution to the Food and Agriculture Organization, other intergovernmental organizations, and the Secretariat of the U.N. Convention on the Law of the Sea.

The United States strongly supports the adoption of a resolution that provides a standard interpretation of introduction from the sea, as well as develops basic measures for implementation (see our **Federal Register** notice of February 17, 2000 [65 FR 8190]). This draft resolution submitted by Australia lays a solid framework for the Parties to discuss and consider the issue. However, a number of technical issues remain unanswered in this document. These issues include, among others, prior granting of a certificate before landing, information required on an introduction-from-the-sea certificate, how to anticipate type and quantity of catch to make a non-detriment finding and issue a certificate in advance of specimen collection, clarification of procedures for transit, and the issuance of certificates for shipments that are split and/or transferred to vessels that did not harvest the specimens. The United

States intends to support this resolution as a way to define and frame the issue of introduction from the sea, while recognizing that developing a mechanism to address the remaining technical implementation issues is critical. The United States would support broadening operative paragraphs of the draft resolution to ensure these issues are adequately addressed.

19. Report on National Reports Required Under Article VIII, Paragraph 7(a), of the Convention [Doc. 11.19]

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. The United States supports efforts to encourage all Parties to submit annual reports, for all species of fauna and flora, consistent with their domestic legislation. Each Party is required by CITES to submit an annual report containing a summary of the permits it has granted and the types and numbers of specimens of species in the CITES Appendices that it has imported and exported. Accurate annual report data are essential to measure the impact of international trade on CITES-listed species, and it can also be an effective enforcement tool, particularly when imports into a given country are compared to export quotas from other countries. The United States intends to meet our obligation to submit our annual report by the opening of COP11.

20. Enforcement

1. Review of alleged infractions and other problems of implementation of the Convention [Doc. 11.20.1]

Article XIII of CITES provides for a review of alleged infractions by the Conference of the Parties. The Secretariat prepares an Infractions Report for each meeting of the COP, which details instances in which the Convention is not being effectively implemented, or where trade is adversely affecting a species. The United States proposes to support the Secretariat's biennial review of alleged infractions by the Parties and any necessary or appropriate recommendations to obtain wider compliance with the terms of the Convention. When we completed this notice, we still had not received a copy of the infractions report from the Secretariat, but the United States will closely review it when received, and provide comments to the Secretariat if necessary.

2. Implementation of Resolutions [Doc. 11.20.2]

At COP10 Decision 10.120 was adopted which directed the Secretariat to prepare a list of Resolutions in effect so that Parties could assess their level of implementation and determine where they faced difficulties implementing them. The Secretariat prepared a list which was distributed with Notification to the Parties No. 987, and requested information on implementation of resolutions. The Secretariat received limited responses to their request and therefore cannot complete the directed analysis for the COP. The Secretariat is proposing in this document to continue the analysis of resolutions and their implementation difficulties, and present this analysis to the Standing Committee in 2001. We support the analysis by the Secretariat of resolution implementation and recognizing the difficulties encountered with specific resolutions, will support the proposed change in this document.

21. National Laws for Implementation of the Convention

1. National legislation project [Doc. 11.21.1]

The Secretariat prepared this document which provides a report on the progress of the National Legislation Project, which was initiated pursuant to Resolution Conf. 8.4. This document also outlines a legal capacity-building strategy proposed by the Secretariat to assist the Parties in the development of national legislation for the implementation of CITES. This strategy, including the possibility to recommend suspensions of trade, was endorsed by the Standing Committee at its 42nd meeting. Building the capacity for Parties to create solid national laws with full implementation and enforcement provisions is critical. The U.S. supports efforts to assist Parties in the development of adequate measures to implement the Convention, while continuing efforts begun at COP8 (with strong U.S. support) to ensure that all Parties adequately implement Article VIII of the CITES treaty, regarding adoption of implementing legislation with adequate enforcement provisions. The U.S. prefers that priority be given to the Secretariat's efforts to complete its legislative review of the remaining Parties for which this has not been done, and conduct a review of the national legislation of any new Parties that accede to the Convention. Our hope is that the excellent work that has gone into this project will continue to provide encouragement to those Parties without adequate legislation to fulfill their obligations under Article VIII. In implementing the strategy the U.S. supports the Secretariat's intent to conduct activities within existing funding levels and as donor funds become available. We believe that priority should be given to those Parties identified as having inadequate measures to implement the Convention and which also have a high volume of trade. The U.S. believes that the Secretariat should also prioritize efforts to develop model provisions that can be incorporated into national laws.

2. Measures to be taken with regard to Parties without adequate legislation [Doc. 11.21.2]

The Secretariat prepared this document which provides an update on the seven Parties that have been engaged in significant trade and whose legislation at COP10 failed to meet the requirements for implementing CITES. It also provides a draft decision on measures that could be taken in relation to four Parties engaged in high volumes of trade whose legislation was analyzed and determined to be inadequate. The proposed decision lays out the need for the affected Parties to adopt adequate legislation by October 2001. It also proposes that other Parties with inadequate legislation whose trade volume is not high adopt adequate legislation before COP12. We support the review of national laws and strongly believe that CITES' effectiveness is undermined when Parties do not have adequate national laws in place for implementing the Convention. We also fully support the recommendation of taking necessary measures when Parties continue to fail to adopt adequate legislation to implement CITES.

22. Reporting of Seizures [Doc. 11.22]

Israel has proposed this resolution, which recommends that Parties provide, in a timely manner, detailed information on any interceptions or seizures to the country of origin/export and the enforcement unit of the Secretariat, as well as detailed information on arrests and prosecutions. The United States strongly supports the concept of communication with other Parties on seizures, arrests, and prosecutions. The United States routinely provides seizure information as part of its annual report to the CITES Secretariat and information to originating or exporting countries on a case-by-case basis. However, the United States does not believe that Parties have the resources to communicate details on each seizure, arrest, or prosecution. Instead, the United States would propose to encourage Parties to communicate details as soon as possible for all Appendix I species and major

commercial seizures of any CITES species, as well as any related arrests or prosecutions.

23. Persistent Offenders [Doc. 11.23]

This resolution, submitted by Israel, recommends that the CITES Secretariat compile a master list of persistent offenders and circulate the list to each Party, and that national Management Authorities decline to honor any CITES permit listing one or more of these persistent offenders. While the United States recognizes that the issuance of CITES permits to persons or businesses that continually violate the Convention undermines both conservation and enforcement efforts, by our laws, the United States would be unable to provide such a list of persistent offenders, or prevent the importation of any shipments with authentic and valid permits. Alternatively, the U.S. would urge Parties to seek other national solutions to remedy this problem. In the U.S. an applicant may be denied U.S. permits if convicted, or if they have pleaded guilty, for a felony violation of several domestic laws, including the Lacey Act Amendments of 1981.

24. Use of Annotations in the Appendices [Doc. 11.24]

Annotations are "footnotes" in the CITES Appendices that are being used by the CITES Parties for a number of purposes. In recent years, they are increasingly used when species or geographically distinct populations of species are transferred from Appendix I to II with an annotation; the annotation specifies that certain parts, products, or specimens are allowed to be traded under the provisions of Appendix II, while other parts and products are still treated as Appendix I species. Such downlistings can serve a conservation purpose, but the United States is quite concerned that no criteria or guidelines are in place for the Parties on how to use, adopt, or amend these annotations. At COP10, the Parties adopted Decision 10.70, which directed the Standing Committee to consider "ways and means of clarifying legal and implementation issues related to the use of annotations in the appendices" and present a report to COP11. To explore this issue and develop a draft resolution for submission to COP11, the Standing Committee established a working group in which the United States participated, along with Switzerland (Chair), Argentina, Canada, Germany, and Namibia. The Standing Committee endorsed the consensus report of that working group, and agreed to submit it to COP11. The United States notes that several proposals submitted by countries for consideration at COP11 involve such annotations, making such a clarifying resolution that much more necessary. The United States proposes to support the document submitted by the Standing Committee.

25. Procedure for the Review of Criteria for Amendment of Appendices I and II [Doc. 11.25]

The criteria for amending the CITES Appendices were adopted at COP9 in 1994, in Resolution Conf. 9.24, titled "Criteria for Amendment of Appendices I and II." That resolution recommends the following: "that the text and the annexes of this Resolution be fully reviewed before the twelfth meeting of the Conference of the Parties with regard to the scientific validity of the criteria, definitions, notes, and guidelines and their applicability to different groups of organisms." The Standing Committee, with input from the Animals and Plants Committees, and assistance of the Secretariat, has developed a proposed procedure for the Parties to use to fulfill this recommendation. When we completed this notice, we still had not received the final document. The United States supported the procedure developed in consultation with the Animals, Plants, and Standing Committees, and we expect that the United States will support this procedure. The United States looks forward to input from international organizations with management competence for certain organisms, such as marine fish and tropical trees, but the United States considers it of the highest importance that any revision of the CITES listing criteria remain a CITES-driven process.

26. Definition of the Term "appropriate and acceptable destinations" [Doc. 11.26]

This draft resolution was submitted by Kenya and addresses concerns that have resulted from annotations applied to the downlisting of the southern white rhinoceros in South Africa and African elephant populations in Botswana, Namibia, and Zimbabwe to Appendix II. Under these annotations, international trade in live animals was allowed to "appropriate and acceptable destinations." However, the annotations included no guidelines on how to determine if a destination was "appropriate and acceptable" and gave no indication of whether the exporting or importing country was responsible for making such a determination, or if the animals could be subsequently reexported. This draft resolution provides a definition of "appropriate and acceptable destinations" as those where the animals will be humanely treated, free to exhibit normal behavior, and able to contribute to the conservation of their species in the wild, with priority being given to other range states. Only export would be allowed, not reexport, and the Management Authority of the exporting country would be responsible for determining that the terms of the annotation had been met. The draft resolution also includes guidelines to assist the Management Authority of the exporting country in making that determination.

The United States agrees that the wording of these annotations is unclear and believes an effort toward clarifying when a destination is "appropriate and acceptable" is needed. While generally supportive, the United States is concerned about some aspects of the draft resolution and continues to evaluate it.

27. Recognition of Risks and Benefits of Trade in Wildlife [Doc. 11.27]

This document is a draft resolution prepared by Kenya. The United States supports the idea that, when effectively managed, international trade in wildlife specimens may provide important benefits to local communities and may serve an important management need. The United States also agrees that achieving sustainable levels of trade can be difficult and that illegal trade may pose a serious threat to a species' survival. The United States agrees that these are important considerations but is undecided on whether to support this resolution as drafted.

28. Quotas for Species in Appendix I

1. Leopard [Doc. 11.28.1]

This document, prepared by the Secretariat, reports on the use of export quotas for *Panthera pardus* (leopard), under the provisions of Resolution Conf. 10.14. The document discusses the requirement in the resolution that the Secretariat recommend to the Parties to suspend imports of leopard hunting trophies from any country with an export quota that has not met the reporting requirements of the resolution. The Secretariat believes that the reporting requirements of the resolution should be changed, however. The United States is still considering this issue.

2. Markhor [Doc. 11.28.2]

When we completed this notice, we still had not received this document, which is to be prepared by the Secretariat, on the implementation of Resolution Conf. 10.15, "Establishment of Quotas for Markhor Hunting

Trophies," which deals with trophy export quotas for *Capra falconeri* (markhor) from Pakistan. The resolution requires a report from the Secretariat on implementation of this resolution by Pakistan, including the submission of a report. The United States will evaluate the document when it is received and develop a negotiating position.

29. Trade in Bear Specimens [Doc. 11.29]

This report was prepared by the Secretariat in response to Decision 10.65 which required a report on progress made in controlling illegal trade in bear parts and derivatives (Resolution Conf. 10.8). Decision 10.44 requested that Parties and non-Parties document and quantify domestic demand for bear parts and derivatives. The information in these reports, from CITES annual reports and other reports provided by law enforcement agencies, provided the basis for the Secretariat's report. Doc. 11.29 outlines findings on consumer demand, legislation, enforcement factors, education and reduction of demand, and conservation. The Secretariat believes that the guidance and recommendations of Resolution Conf. 10.8 remain valid and relevant. However, it does not believe that illegal trade in bear parts and derivatives will have been significantly reduced by COP11. The Secretariat suggests that range and consumer countries still need to follow the recommendations of the resolution and that the subject of conservation of and trade in bears should continue to be discussed by the Parties. The Secretariat recommends that a report be required for COP12 and that Decision 10.44 be repealed and a new decision be agreed upon at COP11.

The United States proposes to support the Secretariat's report and recommendations in Doc. 11.29.

30. Conservation of and Trade in Tigers

1. Implementation of Resolution Conf. 9.13 (Rev.) [Doc. 11.30.1]
2. Implementation of Decision 10.66 [Doc. 11.30.2]

When we completed this notice, we still had not received either of these documents from the Secretariat for these agenda items. When we receive these documents from the Secretariat, the United States will evaluate them and develop negotiating positions.

In January 1999, we hosted the CITES Tiger Missions Technical Team in Los Angeles, California, as part of its investigations of tiger range and consumer states. This visit provided us as well as other relevant Federal agencies, an opportunity to meet with the members of the technical team and outline law enforcement and public outreach efforts with regard to tiger conservation in the United States. The team prepared a report of its mission, which was presented at the 42nd meeting of the Standing Committee. The United States looks forward to participating in the next step of developing an action plan for improving the control of trade in specimens of tiger and related activities.

In October 1998, Congress passed the Rhinoceros and Tiger Conservation Act of 1998. This Act amended the 1994 Act of the same name by inserting the following: "To prohibit the sale, importation, and exportation of products intended for human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger." The Act also directs the U.S. Fish and Wildlife Service to develop and implement an educational outreach program in the United States for the conservation of rhinoceros and tiger species. We are currently developing a draft interim educational outreach plan and, in the near future, will present it to the public for comment in a **Federal Register** notice. In the notice announcing our draft plan, we will also be seeking partnerships in carrying out the activities of the final plan, once it is developed. The Service also continues to be active in providing funding for tiger conservation worldwide through the Rhinoceros and Tiger Conservation Fund.

31. Conservation of and Trade in Elephants

1. Experimental trade in raw ivory of populations in Appendix II [Doc. 11.31.1]

When we completed this notice, we still had not received the document for this agenda item from the Secretariat. When we receive the document from the Secretariat, the United States will evaluate it and develop a negotiating position.

2. Monitoring of illegal trade and illegal killing [Doc. 11.31.2]

When we completed this notice, we still had not received the document for this agenda item from the Secretariat. When we receive the document from the Secretariat, the United States will evaluate it and develop a negotiating position.

3. Revision of Resolution Conf. 10.10 [Doc. 11.31.3]

The document for consideration was submitted by Kenya and India. The document emphasizes a need to revise Resolution Conf. 10.10 due to apparent inconsistencies in the requirements of Resolution Conf 10.10 as they related to Decision 10.1.

The United States is undecided on whether it will support the proposed resolution from Kenya and India. The United States is continuing to evaluate this issue, and develop a policy position on this proposed resolution.

4. Non-commercial disposal of ivory stockpiles [Doc. 11.31.4]

The document was submitted by Kenya. The document emphasizes the need to revise the process for the noncommercial disposal of ivory stockpiles that was established under the terms of Decision 10.2. We are undecided on whether the United States will support this proposed resolution, and we will continue to consider it and gather relevant information in order to develop a negotiating position.

32. Conservation of and Trade in Rhinoceroses [Doc. 11.32]

The Secretariat prepared this document. The United States agrees with the decision taken at the 42nd meeting of the Standing Committee not to fund the work outlined in the report on the workshop to develop standardized indicators to measure the success of rhinoceros conservation measures in the context of CITES Resolution Conf. 9.14. The United States, however, strongly supports Resolution Conf. 9.14. Furthermore, the United States continues to support efforts in both range states and consumer states to control the illegal trade in rhinoceros horn.

From 1996 through 1999, the U.S. Fish and Wildlife Service, through the Rhinoceros and Tiger Conservation Fund, awarded 80 grants (totaling US$1,437,000) in 12 countries for rhino and tiger conservation. Through this fund, we will continue to support critical international conservation efforts in nations whose activities directly affect rhinoceros and tiger populations. With regard to the Secretariat's recommendation in Doc. 11.32, the United States does not feel that it would be appropriate to repeal Resolution Conf. 9.14. However, the United States believes that revising this resolution along the lines of the revisions made to Resolution Conf. 9.13, with regard to the conservation of and trade in tigers at COP10, would be appropriate.

33. Exports of Vicuña Wool and Cloth [Doc. 11.33]

At COP6, certain populations of the vicuña (*Vicugna vicugna*) in Chile and Peru were transferred from Appendix I

to II. The remaining Peruvian populations were transferred to Appendix II at COP9, with an annotation allowing export only of cloth products, wool sheared from live animals, and the Peruvian stockpile of 3,249 kilograms of wool remaining in November 1994. At COP10, certain vicuña populations of Argentina and Bolivia were also transferred from Appendix I to II with an annotation for specially marked products.

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. When we receive this document from the Secretariat, the United States will evaluate it and develop a negotiating position. At COP10, the United States supported the transfer of certain vicuña populations to Appendix.

34. Conservation of and Control of Trade in Tibetan Antelope [Doc. 11.34]

The People's Republic of China submitted this document as part of their ongoing efforts to promote international cooperation to conserve the Appendix I-listed Tibetan antelope (*Pantholops hodgsonii*). Wild populations of Tibetan antelope on the Tibetan Plateau have been subjected to heavy poaching for their wool, called shahtoosh, which is smuggled to India, woven into high-fashion shawls in the State of Jammu and Kashmir, and illegally exported around the world. An International Workshop on the Conservation and Control of Trade in Tibetan Antelope was held in Xining, China, in October 1999. Participants of the International Workshop, including two representatives of the Fish and Wildlife Service, adopted a consensus declaration, the "Xining Declaration," which, among other things, calls for COP11 to adopt a resolution urging all Parties to strengthen law enforcement to control trade in parts and derivatives of Tibetan antelope, especially shahtoosh. An early draft of this resolution was presented to participants of the International Workshop for comment. The draft more or less reflects the content of the "Xining Declaration" and, if adopted and implemented, would contribute positively to conservation of wild populations of the Tibetan antelope. The United States intends to support an appropriately edited version of this Resolution at COP11.

35. Trade in Freshwater Turtles and Tortoises to and in Southeast Asia [Doc. 11.35]

This document is a discussion paper that was cosponsored by Germany and the United States, and our reason for submitting it is discussed in the **Federal Register** notice of February 17, 2000 [65 FR 8190]. The United States will work for adoption of the document and its recommendations by the Parties.

36. Trade in Seahorses and Other Members of the Family Syngnathidae [Doc. 11.36]

This document is a discussion paper and was cosponsored by Australia and the United States. Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 [65 FR 8190]. The United States will work for adoption of the document and its recommendations by the Parties.

37. Identification and Reporting Requirements for Trade in Specimens of Hard Coral [Doc. 11.37]

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. At COP10 the United States submitted a resolution on coral identification and reporting at the request of the Animals Committee. The proposed resolution was not adopted by the Parties. The issue remained a concern of the Animals Committee and a working group, which included the United States, was formed to develop solutions to the problem of recording coral sand, gravel, and live rock in international trade, as well as the identification of these commodities. The United States strongly supports efforts to simplify the coral identification and reporting process, however, the United States is concerned that some of the proposed solutions in this resolution merely eliminate CITES controls on certain commodities. The United States is firmly engaged in the issue of coral reef conservation, including the role of trade, and proposes to support only those efforts that do not weaken CITES controls for coral.

38. Timber Species

1. Report from the Secretariat [Doc. 11.38.1]

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. At COP10 the Parties adopted several Decisions on timber species. Decision 10.130 requires the Secretariat to investigate the reasons for non-reporting by Parties on CITES timber trade, particularly by importing countries, to investigate the extent to which Parties have informed the timber traders in their countries of CITES procedures, and to report back on these issues at COP11. The United States supports this process. The United States reports U.S. trade in CITES timber species in our CITES annual reports, and we have worked with the U.S. Department of Agriculture (USDA) over the last several years to inform timber traders and producers in the United States and abroad of CITES procedures and requirements. For example, at the 9th meeting of the Plants Committee in June 1999, the USDA's Forest Service presented a draft brochure that it prepared with the help of the Service, the U.S. Department of State, and the International Wood Products Association, aimed at providing timber traders and producers worldwide with a better understanding of CITES.

Under Decision 10.134, the Secretariat will also report at COP11 on the implementation of the special procedures regarding time validity and change of destination for permits issued for timber species and provide recommendations on whether or not these special procedures should be maintained. We have reviewed our annual report records on U.S. timber species trade since COP10, and we have determined that no CITES documents with a change in destination or a change in the time validity were presented for clearance at U.S. ports of import during this time period. If the Secretariat's report shows that the other Parties also have not cleared any CITES timber documents showing a change in destination or a change in the time validity, then the United States would support not maintaining these special procedures for timber species.

2. Progress in the conservation of *Swietenia macrophylla* (bigleaf mahogany) [Doc. 11.38.2]

Brazil has proposed including bigleaf mahogany as an agenda item for discussion. This inclusion will provide the Parties an opportunity to discuss progress in the conservation of *Swietenia macrophylla* since COP10. At COP10, during discussions in Plenary, Brazil offered to host a Mahogany Working Group meeting that would examine the conservation status of the species, including related forest policies and management and international cooperation and trade, and make recommendations accordingly. Brazil submitted Doc. 11.38.2, a summary report of the meeting of the Mahogany Working Group, hosted in Brasilia, Brazil, in June 1998. We will work closely with other Federal agencies and intend to develop for submission an informational document outlining the United States' views on the issue, actions under way to conserve the species, and some useful recommendations. The United States appreciates Brazil's efforts and looks forward to increased efforts to foster the

conservation of this species, both generally and in the CITES context specifically.

39. Standard Nomenclature [Doc. 11.39]

This document was prepared by the Secretariat based on the reports of the co-Chairs of the Nomenclature Committee (Documents 11.11.4.1 and 11.11.4.2). The document is a draft resolution on standard nomenclature. The draft resolution adopts additional standard references for crocodiles, turtles, tortoises, tuataras, snakes, chameleons, lizards in the family Cordylidae, *Tupinambis* species, fish, and plants in the genera *Aloe* and *Pachypodium*. We have not fully evaluated all of these taxonomic references. However, the United States tentatively proposes to support their adoption, pending input during this public comment process. We invite the review of these references by experts in these taxa.

40. Assistance to Scientific Authorities for Making Non-detriment Findings [Doc. 11.40]

The CITES treaty requires scientific non-detriment findings for all exports and introductions from the sea for CITES-listed species, and for all imports of Appendix I species. It is vital for species conservation that scientifically based non-detriment findings are provided prior to issuance of permits, and that these findings are based on biologically sound information. The Parties have recognized, and the United States agrees, that the conservation of species subject to international trade would benefit greatly from increased attention to the issuance of non-detriment findings. Towards that end, we worked closely with the IUCN—the World Conservation Union, which convened two international workshops to "Develop Guidance on the Making of Non-Detriment Findings," held in Hong Kong in October 1998 and the United Kingdom in October 1999. The United States provided funding for the workshops through the U.S. Department of State annual funding to IUCN. Our Office of Scientific Authority was an invited participant at both workshops, as a representative on the Animals Committee, as were several representatives from the Animals and Plants Committees and Scientific Authorities from several countries. This was the first-ever opportunity to develop an international consensus on the CITES scientific decision-making process. The workshops were very productive and produced several useful documents, including a report, checklist for the Parties, and material to be used in training. When we completed this notice, we still had not officially received the document on this agenda item, but we have seen and commented on the drafts, and we anticipate that the United States will fully support it.

41. Significant Trade in Appendix-II Species

1. Implementation of Resolution Conf. 8.9 [Doc. 11.41.1]

This issue pertains to the implementation of Resolution Conf. 8.9, "The Trade in Wild-caught Animal Specimens." This ongoing process is carried out by the Animals Committee, whereby trade in selected Appendix II, wild-caught animal species subject to high levels of international trade is reviewed for sustainability. Based on analyses of biology and trade, the Animals Committee consults with range countries and makes recommendations such as trade quotas, request for non-detriment findings, or field studies. Affected Parties must report their progress in satisfying the recommendations to the Secretariat. Unsatisfactory compliance may result in a recommendation from the Secretariat to the Standing Committee for implementing strict measures such as trade suspensions. The essence of this resolution and this process is implementation of CITES Article IV, specifically dealing with the required non-detriment findings. This process has been an extremely successful, resulting in benefits for species conservation. When we completed this notice, we still had not received this document, which we surmise will be a report of the Secretariat on implementation of this resolution since COP10.

2. Revision of Resolution Conf. 8.9 [Doc. 11.41.2]

The Animals and Plants Committees have cooperated closely since COP10 to develop proposed amendments to Resolution Conf. 8.9 that will both include plants in the process and improve implementation. The Plants Committee submitted several proposed amendments for consideration by the Animals Committee, which provided its views and input to the Plants Committee and the Secretariat. This document was prepared by the Secretariat on behalf of the Animals and Plants Committees and contains draft revisions to Conf. 8.9. We provided detailed comments and suggestions on these proposed revisions of this vital resolution. The document also contains a proposed Decision that will direct the work of the Animals and Plants Committee in implementing this resolution. We have not yet fully reviewed the document, but the proposed U.S. position is to support it, possibly with some minor technical amendments.

42. Trade in Specimens of Species Transferred to Appendix II Subject to Annual Export Quotas [Doc. 11.42]

This document refers to populations of species transferred to Appendix II with a quota on exports, as a precautionary action. Parties are required to report on their exports under these COP-approved quotas, and this document provides the Secretariat an opportunity to comment on which Parties have and have not submitted the required reports. When we completed this notice, we still had not received this document. The United States will develop its position after the document has been received and reviewed.

43. Amendment of Resolution Conf. 5.10 on the Definition of "primarily commercial purposes" [Doc. 11.43]

This draft resolution, submitted by the Republic of South Africa, would amend parts of Resolution Conf. 5.10 and change the interpretation by Parties of the term "primarily commercial purposes." Article III of the Convention requires that a Management Authority of the importing country issue an import permit or certificate of introduction from the sea for specimens of Appendix-I species only if satisfied that the specimens are not to be used for primarily commercial purposes. In 1985, the Parties, recognizing that interpretation of this term varied significantly among Parties, adopted Resolution Conf. 5.10 to help Parties evaluate whether an import could be considered "primarily commercial." It defined the term "commercial" and provided general principles and examples to guide the Parties in assessing the commerciality of intended use of specimens to be imported.

The proposed resolution changes the definition of the term "primarily commercial purposes." The proposed resolution requires a consideration of the benefits of a transaction to the exporting country when evaluating the commercial nature of an import permit for Appendix I specimens. It allows Parties to consider an import "not for primarily commercial purposes" even if it is commercial, if there is a conservation benefit in the exporting country. Parties would be asked to consider the translocation of wild specimens of Appendix-I species to private lands, such as game farms and ranches, as not primarily commercial if

the interest for conservation is demonstrated and predominant.

While the United States is sympathetic to the need to provide resources for conservation of species in the wild, this proposed resolution is not consistent with CITES, and the United States proposes to oppose it. This resolution would create loopholes for commercial trade in specimens of Appendix-I species, which violates the treaty and could lead to significant harm to populations in the wild. Article II, paragraph 1 of CITES states, in regard to Appendix-I species, "Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances." This resolution is not consistent with that article of the treaty. As drafted, the resolution also does not comply with Article III of the treaty, which requires that the importing Management . Authority be satisfied that the purpose of the import is not for primarily commercial purposes. Whether a conservation benefit exists for the species is part of the "non-detriment" finding made by the Scientific Authorities of the exporting and importing countries, not part of the determination as to whether a transaction is for primarily commercial purposes.

44. Bushmeat as a Trade and Wildlife Management Issue [Doc. 11.44]

This document is a discussion paper submitted by the United Kingdom. The United States recognizes that the illegal international commercial trade in African bushmeat poses a serious threat to the survival of numerous protected species, including elephants and the great apes. Further, commercial-level bushmeat hunting threatens both CITES and non-CITES species. Because much of the illegal commercial trade involves CITES-listed species and occurs between CITES member countries, CITES is an appropriate forum for discussing this issue. However, the United States believes that it is important to limit this discussion to the aspects of the larger bushmeat issue that can be addressed within the scope of CITES. Therefore, the United States supports the idea of a discussion on the issue of commercial African bushmeat trade but believes that the United Kingdom's document is too broad. We appreciate that the United Kingdom is calling attention to this issue, and we anticipate being actively involved in discussions on the topic at COP11.

45. Amendment of Resolution Conf. 9.6

1. Concerning diagnostic samples, samples for identification, research and taxonomic purposes and cell cultures and serum for biomedical research [Doc. 11.45.1]

This proposed amendment to Resolution Conf. 9.6 on trade in readily recognizable parts and derivatives was submitted by Switzerland, Germany, and the United Kingdom. If this resolution is adopted, the Parties would agree that certain tissues are not readily recognizable. These tissues include extracted and purified DNA; samples of blood, hair, feather, and other tissues (fresh or preserved, not including live gametes and embryos) sent to laboratories for diagnostic, identification, research, and taxonomic purposes, with the aim of species' conservation, in quantities required to properly perform DNA analyses, sexing of individual specimens, and *in vivo* or *post mortem* veterinary diagnoses; and cell cultures and serum for biomedical research and the production of immunological products. This designation would allow such samples to be shipped across international boundaries without any CITES documents.

The United States recognizes that the timely movement of scientific research specimens can benefit the conservation of protected species and acknowledges that CITES permitting requirements should be simplified for these type of samples. However, the United States plans to oppose this amendment of Resolution Conf. 9.6, but work toward other approaches that could be considered (see next paragraph). The United States is concerned that this proposed resolution uses the purpose of the trade as the basis for whether specimens are considered readily recognizable, rather than limiting such a determination to characteristics of the specimens themselves. To treat such samples as not readily recognizable parts and derivatives could set a precedent that could potentially undermine the effectiveness of the Convention and species' conservation. The resolution does not address whether samples from wild specimens have been collected legally and in conjunction with the conservation agencies in the country of origin, or whether they were collected by persons with appropriate expertise to ensure that collection methods do not pose an unnecessary risk to animals, especially Appendix-I species. It apparently would allow the import of such Appendix I specimens for commercial purposes. Resolution Conf. 5.10, recommends that trade in biomedical specimens be subject to close scrutiny and presumed to be commercial. If adopted, the proposed resolution could eliminate controls on this commercial trade in Appendix-I species for all specimens except live animals. In addition, the resolution raises implementation issues. It does not define "other tissues" and does not address how a country would determine that samples meet the circumstances outlined in the resolution, that is, ensure that the samples to be traded are exempted tissues, are being used for one of the specified purposes, and are in quantities appropriate for the type of analysis.

The United States is evaluating a number of provisions the Parties could consider to assist in streamlining the movement of biological tissue samples. First, the Parties could agree to exempt from CITES requirements synthetically derived DNA that contains no part of the original template. This action would differentiate between DNA extracted directly from blood or tissue samples and synthetically derived DNA, but would not open the discussion to other parts and products that could be exempted from CITES requirements. Second, the Parties could consider whether to amend Resolution Conf. 2.14 on the noncommercial loan, donation, or exchange of museum and herbarium specimens to include preserved samples to be used for diagnostic, identification, research, or taxonomic purposes when between registered institutions. The Parties would need to consider a number of practical implementation issues, such as whether samples could be completely destroyed during analysis or whether a portion of each sample would need to be maintained for future scientific reference. The Parties could also consider treating serial cultured cell lines as a form of asexual propagation that could qualify for the exemptions of Article VII, paragraphs 4 and 5, even for biomedical purposes. Whether other types of specimens could also qualify as artificially propagated or bred in captivity could also be investigated. The United States welcomes suggestions on other approaches that could be considered for the movement of tissue samples.

2. Concerning final cosmetic products containing caviar [Doc. 11.45.2]

This resolution, submitted by Germany and Switzerland, recommends that Resolution Conf. 9.6 (Trade in Readily Recognizable Parts and Derivatives) be amended to eliminate CITES controls for cosmetic products containing caviar. The United States opposes this proposed amendment to

Resolution Conf. 9.6 and is concerned about this attempt to eliminate controls on commodities that may contain only small quantities of wildlife by considering that they are not readily recognizable. The precedent that could be set by adoption of this amendment could extend beyond the legal movement of Appendix II sturgeon caviar. There is no apparent difference in the recognition of this type of commodity than for any other cosmetic product or other processed products including medicinal or food items that contain small quantities of CITES-listed wildlife or plants. The United States proposes that Parties work on streamlining the permitting and control process regulating the international trade in these products rather than eliminate CITES controls.

46. Cross-border Movements of Live Animals for Exhibition [Doc. 11.46]

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. As outlined in our **Federal Register** notice of February 17, 2000 (65 FR 8190), the United States has a strong interest in making the current resolution on transborder movements of live-animal exhibitions (Resolution Conf. 8.16) work better. When we receive the relevant document from the Secretariat, the United States will review it and develop a negotiating position.

47. Revision of Resolutions on Ranching and Trade in Ranched Specimens [Doc. 11.47]

At its 15th meeting (July 1999), the Animals Committee agreed upon a draft resolution that would amend Resolution Conf. 10.18 on ranching and trade in ranched specimens, by incorporating the remaining elements of Resolution Conf. 5.16 (Rev.), on the marking of ranched specimens in trade. This text will be submitted to the meeting of the COP by the Secretariat, on behalf of the Animals Committee. Participants at that meeting raised concerns about the many different management techniques used in ranching and their implications for non-detriment findings, the need for increased monitoring of specimens released into the wild, and interpretation of the terms "uniform marking system" and "year of production."

When we completed this notice, we still had not received a document for this agenda item from the Secretariat. When we receive the document from the Secretariat, the United States will evaluate it and develop a negotiating position.

48. Registration of Operations Breeding Specimens of Appendix I Species in Captivity for Commercial Purposes [Doc. 11.48]

At COP10 the Parties discussed the issue of registration of facilities breeding Appendix I species in captivity for commercial purposes and if a need exists to amend or revise Resolution Conf. 8.15. This issue pertains to implementation of Article VII of the treaty. At COP10 the Parties adopted Decision 10.77, which instructed the Animals Committee to "examine the effectiveness of and the need for the existing registration system for operations breeding specimens of Appendix I species in captivity for commercial purposes." The same Decision also called upon the Animals Committee to consider the proposed definition of "bred in captivity for commercial purposes." In addition, Resolution Conf. 10.16 asked the Animals Committee to develop a list of species that are commonly bred in captivity to the second or following generations. These issues have been very controversial, as a great deal of misunderstanding has occurred. They were all discussed at great length at the 14th and 15th meetings of the CITES Animals Committee. The U.S. Government, through our offices, has worked actively on these issues since COP10.

In terms of the registration of facilities (Resolution Conf. 8.15), the United States' views and comments on this issue have focused on practical solutions to problems related to the registration of commercial breeding operations, including streamlining the process when feasible, allowing for and encouraging range state consultation, and defining breeding for commercial purposes, while at the same time supporting range countries and their concerns, particularly regarding the legality of origin of the founder stock of captive animals. Some countries support repealing the registration requirement altogether. After consultations with Mexico and Canada, we note that all countries in North America support retention of some registration procedure, particularly to provide opportunities for range state input.

In terms of the "commonly bred" list of species, a great deal of misunderstanding has developed concerning the meaning of paragraph (b)(ii)(C)(2)(a) of Resolution Conf. 10.16. This refers to species commonly bred in captivity throughout the world, and we are asked to determine which species, on a global basis, meet the bred-in-captivity criteria of Resolution Conf. 10.16 and qualify for the exemption of Article VII, paragraph 5. A working group of the Animals Committee was established on this issue, chaired by Chile, and the United States has been an active participant in the working group. We have not yet seen the final document on this issue. The United States proposes to support not developing a list of species commonly bred in captivity. Based on the United States' collective experience at the last two meetings of the Animals Committee, agreement on a list, and even the meaning of the list, is probably not possible. Continued efforts to produce a list will probably not advance the cause of global conservation. That is, the United States agrees with the idea of deleting paragraph (b)(ii)(C)(2)(a) of Resolution Conf. 10.16 in its entirety, but only as long as paragraph (b)(ii)(C)(2)(b) is retained, and the rest of the text in Resolution Conf. 10.16 remains virtually the same.

The Chair of the Animals Committee will submit a document outlining all of the discussions on this complex issue. Although the United States commented on earlier drafts, when we completed this notice, we still had not received the final document.

49. Animal Hybrids: Amendment of Resolution Conf. 10.17 [Doc. 11.49]

When we completed this notice, we still had not received this document, which we assume is a document that will be prepared by the Secretariat. We assume as well that this document will deal with aspects of Resolution Conf. 10.17, "Animal Hybrids," that refer to the "recent lineage" of hybrid animals. The resolution uses the term "recent lineage," but does not define the term. The Animals Committee evaluated the issue, and recommended that the term "recent lineage" of a hybrid animal should be understood to mean the previous four generations of its lineage. The Secretariat has made this recommendation to the Parties in Notification No. 1998/28, dated 30 June 1998. We assume that this document will recommend amending Conf. 10.17 to clarify this point since such a determination is up to the Conference of the Parties, ultimately, and not the Animals Committee or the Secretariat. If that is the case, the United States proposes to support the recommendation.

50. Use of Microchips for Marking Live Animals in Trade [Doc. 11.50]

At the 15th meeting of the Animals Committee (Madagascar, July 1999), a document was presented by the Chair of

the working group (Czech Republic) considering this issue under Resolution Conf. 8.13 ("Use of Coded-microchip Implants for Marking Live Animals in Trade"). At the Animals Committee meeting, however, participants determined that the document contained recommendations that were "not realistic." Therefore, the Animals Committee decided the issue should be referred to a smaller working group with the same Chair. This document (Doc. 11.50) was prepared by the Secretariat on behalf of the Animals Committee. It contains draft amendments to Resolution Conf. 8.13, based on discussions at the 15th meeting of the Animals Committee and recommended amendments endorsed by the Committee. The document also contains additional proposed amendments recommended by the Czech Republic, as Chair of the working group, based on discussions within the working group. The United States proposes to support the recommended amendments to Resolution Conf. 8.13 from the Animals Committee. The United States is still evaluating the subsequent proposed amendments from the Czech Republic.

51. Universal Tagging System for the Identification of Crocodilian Skins [Doc. 11.51]

When we completed this notice, we still had not received this document from the Secretariat, although at the 15th meeting of the Animals Committee, the United States participated in drafting the proposed changes to Resolution Conf. 9.22, which this document proposes to amend. We expect the changes discussed in Doc. 11.51 to include the clarification of export procedures for specimens subject to quotas and standards to ensure that skins subject to quotas are tagged before export permits are issued (ensuring that unused tags are destroyed or not reissued) and deleting a section referring to unused stocks of tags that do not conform with the resolution. The proposed Animals Committee amendments are small adjustments to a resolution that has been very helpful in monitoring trade in crocodilian skins. If the final document reflects the changes agreed to at the Animals Committee, the United States proposes to support the changes.

52. Movement of Sample Crocodilian Skins [Doc. 11.52]

This document is a draft decision submitted by the United States. Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will work for adoption of this document by the Parties.

53. Universal Labeling System for the Identification of Sturgeon Specimens (caviar)—[Doc. 11.53]

Resolution Conf. 10.12 ("Conservation of Sturgeons") directs the Secretariat, in consultation with the Animals Committee, to explore the development of a uniform marking system for sturgeon parts and derivatives to assist in identification of the species. The resolution recommends that this marking system be developed in consultation with appropriate experts in fisheries and industry and in collaboration with range States.

A working group created at the 14th Meeting of the Animals Committee drafted recommendations for the creation of a universal marking system for sturgeon. This document was then discussed at the 15th Meeting of the Animals Committee. The members of this working group, which included the United States, discussed at length the draft document on sturgeon marking and submitted a report on their conclusions. The group concluded that, initially, developing a marking system for caviar only would be most feasible. The group further recognized that a marking system should be recommended for the export of caviar from producing countries (primarily exporting countries) to the initial importing country. It was further agreed that the marking system should be as compatible as possible with those marking systems already in place in some caviar-producing countries.

When we completed this notice, we still had not received the document for this agenda item from the Secretariat. When we receive the document from the Secretariat, the United States will evaluate it and develop a negotiating position. The United States supports efforts to more effectively monitor the international movement of caviar of Caspian Sea sturgeon species. If the marking system outlined in this document can be easily implemented, and is also adequate to provide the necessary information, the United States is prepared to support it.

54. Transport of Live Animals [Doc. 11.54]

Resolution Conf. 10.21 ("Transport of Live Animals") requests that Parties record and report to the Secretariat mortality data for CITES-listed species in trade and instructs the Secretariat to report on Parties that do not submit information. Very few Parties have complied. In Notification to the Parties No. 1999/43, the Secretariat requested that the Parties incorporate into their domestic legislation the IATA (International Air Transport Association) Live Animals Regulations (LAR), and that they report on their progress in doing so; ten Parties reported to the Secretariat in response to this Notification. We have incorporated the IATA LAR for mammals and birds into our humane transport regulations, and we are in the process of incorporating the IATA LAR for reptiles and amphibians into our humane transport regulations. At its January 1999 meeting, the Transport Working Group of the Animals Committee developed a simplified mortality/injury reporting form and asked the Parties to report data on selected species. Again, very few Parties have reported.

When we completed this notice, we still had not received the document for this agenda item from the Secretariat. When we receive the document from the Secretariat, the United States will evaluate it and develop a negotiating position. Although this document is not yet available, we expect it to focus on data reporting problems and improved monitoring of live animal transport. The United States is monitoring, at its ports of entry, the trade in these 10 species as recommended on this form and will report this data.

55. Definition of the Term "prepared" [Doc. 11.55]

This document is a draft resolution submitted by Kenya. The resolution emphasizes that the term "prepared," as used in Articles III, IV, and V of CITES, regarding the shipping of live CITES specimens, has not been defined by the Parties but is generally considered to mean the act of packing live animals for shipment and export. The resolution proposes to define the term "prepared" to include all processes from the time of capture of live specimens to the point of export. The United States proposes to support this resolution from Kenya.

This proposed definition is consistent with conditions that the United States uses on permits issued under stricter domestic legislation, such as the Endangered Species Act and the Wild Bird Conservation Act (WBCA). Many permits issued under the WBCA include the following condition: "Furthermore, you should provide a description of collection methods, including measures taken to prevent incidental take (i.e, removal of more specimens from the wild than are actually requested for import)."

56. Trade in Traditional Medicines [Doc. 11.56]

Decision 10.82 directs the Animals Committee to review the trade in animal species for use in traditional medicines, in order to assess its implications for wild populations. At the 15th meeting of the Animals Committee, it became clear that the Committee could not carry out Decision 10.82 without basic information on the many ingredients and uses of CITES-listed species parts or derivatives in traditional medicines, worldwide. The use of many CITES-listed species in traditional medicines remains undocumented, and information is sketchy or not available for entire geographic regions, such as Africa. For similar reasons, at its 42nd meeting, the Standing Committee moved to redraft Decision 10.143, which directs the Secretariat to review the roles of national legislation, law enforcement, forensics identification, and captive breeding, in regulating the trade in traditional medicines that contain parts or derivatives of CITES-listed species, and to report its findings at COP11.

When we completed this notice, we still had not received the document for this agenda item from the Secretariat. When we receive the document, the United States will evaluate it and develop a negotiating position.

57. The Information Management Strategy [Doc. 11.57]

When we completed this notice, we still had not received a document on this agenda item from the Secretariat. In order to effectively implement the Convention, CITES authorities must manage, interpret, and use relevant trade, law enforcement, and biological information. The CITES community generates large volumes of useful data, but the data does not always reach those who need it. At its 37th meeting, the Standing Committee proposed an Information Management Strategy to coordinate the delivery of such data, and to help improve the information management capacity of Parties that require assistance. At COP10, the World Conservation Monitoring Centre (WCMC) submitted a document at the request of the Secretariat that included an Information Management Strategy. The Parties adopted this document, which directed the Secretariat (under Phase 1 of the Strategy) to develop electronically accessible information and to commission a pilot study in one CITES region (Africa was selected) to identify requirements for improving electronic communications among the Parties and the Secretariat. The United States supported the Information Management Strategy adopted at COP10 and continues to support progress toward developing and improving the electronic accessibility of information worldwide.

The United States assumes that document Doc. 11.57 will include the Secretariat's report on the Phase 1 pilot study, as well as some projected costs for funding Phase 2. Phase 2 of the Strategy directs the Secretariat to establish a program of workshops to cover all CITES regions, develop a system to fulfill the needs of Parties identified in Phase 1, and maintain up-to-date standardized products to support the Parties' implementation of CITES. The United States will support the continuance of the Information Management Strategy at COP11.

58. Potential Risk of Wildlife Trade to the Tourism Industry [Doc. 11.58]

This document is a draft resolution submitted by Kenya. The document discusses the potentially detrimental effects of wildlife poaching, and subsequent enforcement actions, on the ecotourism industry. It also cautions that poorly planned wildlife tourism can be harmful to both local economies and the ecosystem. This resolution urges the Parties to recognize the potential economic benefits of appropriately planned wildlife tourism, and it further recommends that the Parties work to minimize the social, cultural and ecological impacts when developing wildlife tourism programs. The United States agrees that these are important considerations but at this time is undecided on whether to support this resolution as drafted.

Consideration of proposals for amendment of Appendices I and II

59. Proposals to Amend Appendices I and II [Doc. 11.59]

In this section, we present the proposed U.S. negotiating positions on species amendment proposals submitted by other countries. Sixty-two species amendment proposals have been submitted for consideration at COP11, including 15 submitted or cosponsored by the United States. A complete list of all proposals, including those submitted or cosponsored by the United States, follows. They are listed in order of the proposal number ("Prop.") assigned to them by the CITES Secretariat; the proposals will be considered in this order at the meeting of the COP, with the exception that all plant proposals will be discussed first. Only a brief discussion and reason are provided for proposals the United States supports. A more in-depth discussion and reasons are provided for proposals the United States opposes. Proposals for which the United States is undecided are so indicated, as is the basis for our indecision. Proposals submitted or cosponsored by the United States are listed but are not discussed here. Please refer to our **Federal Register** notice February 17, 2000 (65 FR 8190) for a discussion of these proposals and our reasons for submitting or co-sponsoring them.

1. Proposals resulting from the periodic review by the Plants Committee [Doc. 11.59.1]

We note that Proposals 11.1 through 11.11 were discussed at the ninth meeting of the Plants Committee in Darwin, Australia (June 7–11, 1999). The Plants Committee, under Resolution Conf. 9.1, Annex 3, regularly reviews plant species included in the CITES Appendices. We reviewed the status of several native U.S. species at the request of the Plants Committee. Many of these species are not in recorded international trade in wild specimens, and the Plants Committee considered and decided to recommend their deletion from the Appendices or transfer from Appendix I to II. This recommendation is based on the view that species not in international trade in wild specimens should not be included in the Appendices, and that the conservation of species native to one country should be addressed through domestic management and trade control measures. The United States has submitted one such proposal (see Prop. 11.57, below). However, some of these species are listed on the U.S. Endangered Species Act, or are protected under State laws in the United States. In several cases, demand for wild specimens exists, and their inclusion and retention in the CITES Appendices is important, especially since CITES listing strengthens enforcement of trade restrictions by bringing the import controls of other countries to bear.

The United States believes that if a CITES-listed species, whether in Appendix I or II, is not in international trade, the species should not necessarily be removed from the Appendices, if trade demand exists. Indeed, the lack of trade could mean that a Scientific Authority of the range country could not make the required non-detriment finding, and the Management Authority, therefore, could not issue permits. In such cases, the lack of trade means that CITES is being effectively implemented. For many of these species, the United States objects to their deletion or downlisting, and so informed the

Secretariat and Chair of the Plants Committee. Switzerland has submitted the proposal at request of the Plants Committee. You may obtain more information about some of these species and the United States' reviews for the Plants Committee on our web site (http://international.fws.gov/global/plantpro.html). The United States supports the activities and actions of the Plants Committee, but also believes that the wishes of range countries should receive the highest consideration in decisions on these proposals.

Prop. 11.1. Deletion of *Ceropegia* spp. from Appendix II. Submitted by Switzerland. Proposed U.S. position: Support, with possible exception of *C. armandii*.

This genus consists of about 200 species, which are widely distributed in tropical and subtropical areas from western Africa to eastern China. Most are not traded internationally, or are traded in very small numbers. In general, threats to these species are from habitat destruction and local use. Ninety-eight percent of the international trade that does occur is in artificially propagated plants. However, in 1985, one shipment involving 40,000 individuals of artificially propagated *C. armandii*, an endangered species, was recorded. In view of the potential for large-scale trade in this species, the United States is considering supporting this proposal with the exception of *C. armandii*.

Prop. 11.2. Deletion of *Frerea indica* from Appendix II. Submitted by Switzerland. Proposed U.S. position: Support.

This species is endemic to India. Only a few individuals exist in the wild. It is highly endangered by fire, grazing, natural disaster, and insects. International trade does not appear to affect this species as it is not collected from the wild for export. *F. indica* appears in trade only in small numbers, and as artificially propagated specimens. It is easily propagated through seeds and stem cuttings. To the United States' knowledge, India has not expressed opposition to this deletion.

Prop. 11.3. Deletion of *Byblis* spp. from Appendix II. Submitted by Australia. Proposed U.S. position: Support.

Most of the five species of *Byblis* are found in remote locations in Australia and are of little horticultural value, though some are sought by carnivorous plant enthusiasts. Limited trade in wild-collected specimens of this taxon has occurred since it was originally listed. Small quantities of seed are permitted to be harvested from State lands in Australia each year. At least four, if not all, of the species of this genus are annual and easily propagated by seed. In spite of unsubstantiated reports of illegal collection from the wild in Australia, these species are considered secure and adequately protected as the only serious concern for this genus regards the southern form of *Byblis gigantea*, which would remain subject to export controls, according to Australian law.

Prop. 11.4. Transfer of *Disocactus macdougalli* from Appendix I to II. Submitted by Switzerland. Proposed U.S. position: Support.

This species, endemic to Mexico, has been found to be more abundant than once thought. It is not threatened by international trade as it is not of interest to collectors. In addition, Mexico prohibits the export of all wild-collected specimens of this species, so Appendix II listing would provide the same amount of protection to this species as it has currently. International trade in this species is negligible and is solely limited to artificially propagated plants. It is easily grown from seed. Habitat destruction is the main threat to this species.

Prop. 11.5. Transfer of *Sclerocactus mariposensis* from Appendix I to II. Submitted by Switzerland. Proposed U.S. position: Oppose.

This species is native to the United States. It is listed as Threatened under the U.S. Endangered Species Act (ESA), in part due to the significant reduction and extirpation of sites of this taxon by amateur and commercial collectors. The U.S. Recovery Plan for the species specifically recommends that CITES protection be maintained at the highest possible level. International demand for this species is documented in U.S. CITES Annual Report data for the years 1994–1997, which indicate an average of 48 export shipments of artificially propagated seeds of *Sclerocactus mariposensis* per year, with an average of 2,225 seeds per shipment, primarily to Europe and Japan. The Management Authority of Switzerland has provided us with additional information on the distribution and abundance of *S. mariposensis* in Mexico, where it is apparently more secure than once thought. In addition, the results of a recent study of *S. mariposensis*, which came to our attention since we conducted our review of this species, suggest that its classification under the Endangered Species Act may warrant reconsideration. The United States will consider proposing to transfer this species to Appendix II in the future, pending continued monitoring of trade and clarification of its status in the wild. The United States believes that such an action would be premature at this time, however, particularly since strict control of trade is currently recommended for recovery. The United States has already informed the Plants Committee and the CITES Secretariat of its opposition to this proposal.

Prop. 11.6. Deletion of *Cephalotus follicularis* from Appendix II. Submitted by Australia. Proposed U.S. position: Support.

Estimates of the frequency and abundance populations of *Cephalotus follicularis*, a carnivorous plant endemic to southwestern Australia, suggest that there are many hundreds of populations each consisting of many thousands of individuals. This species is commonly cultivated by insectivorous plant enthusiasts and commercial nurseries in Australia, as it is easily propagated from small segments of rhizomes. Trade data indicates that the limited international trade in this species is confined to artificially propagated plants. This species is adequately protected in its area of endemism. Australian law will continue to regulate collection from the wild and impose export controls.

Prop. 11.7. Transfer of *Dudleya stolonifera* and *Dudleya traskiae* from Appendix I to II. Submitted by Switzerland. Proposed U.S. position: Oppose.

These species are native to the United States. *Dudleya stolonifera* is listed as Threatened under the Endangered Species Act. It has an extremely restricted range and is considered Endangered by the World Conservation Union (IUCN). The majority of *D. stolonifera* populations appear to be declining due to habitat loss and collection. The Pacific Northwest Regional Office of the U.S. Fish and Wildlife Service "strongly supports continued inclusion in Appendix I for reasons of limited species distribution, accessibility, and interest in this species from collectors and the nursery trade." *Dudleya traskiae* is listed as Endangered under the Endangered Species Act, and is considered Endangered by the IUCN. *D. traskiae* populations are at least stable and may be increasing, but are so restricted in their distribution that any collection could lead to extirpation. The Recovery Plan for *D. traskiae* recognizes collection as a major risk for this species. Though these species are not known to be in legal international trade at this time, potential international demand exists for all *Dudleya* species. The United States believes current CITES protections should be maintained for these species, and that they continue to meet the criteria for retention in Appendix I, under Resolution Conf. 9.24. The United States has already

informed the Plants Committee and the CITES Secretariat of its opposition to this proposal.

Prop. 11.8. (a) Change the listings of Cyatheaceae spp. to *Cyathea* spp. and (b) Change the listing of Dicksoniaceae spp. to *Dicksonia* spp. (the Americas only) and *Cibotium barometz*. Submitted by Switzerland. Proposed U.S. position: Support both (a) and (b).

Tree ferns are found throughout the tropics. About 60 species appear in international trade, 10 of which are traded in significant numbers. All of the species in the Cyatheaceae family that are traded on a relatively large scale are members of the genus *Cyathea*, which would still be protected by CITES if this proposal is adopted. Since identifying the products of *Cyathea* spp. found in trade to the species level is difficult, protection for the entire genus should be maintained. Due to look-alike reasons, the United States supports maintaining listing for all *Dicksonia* spp. in the Americas in order to ensure protection for *Dicksonia sellowiana*, a species from South America of conservation concern. Trade in other species of *Dicksonia* originates in Australia and New Zealand where these species are adequately protected. The United States also supports maintaining protection for *Cibotium barometz*, which is widely traded for medicinal purposes. All species of tree ferns native to the United States are in the genera *Cyathea* and *Dicksonia* and would still be protected under CITES.

Prop. 11.9. Deletion of *Shortia galacifolia* from Appendix II. Submitted by Switzerland. Proposed U.S. position: Undecided; need to consult further with relevant States.

This species is native to the United States. Populations of *Shortia galacifolia* have been lost in the past due to horticultural collection and multiple dam construction projects. This species has a very limited distribution, but is locally common where it is found. It is listed as Endangered in the States of Georgia and North Carolina, and is considered Vulnerable by the IUCN. However, *S. galacifolia* is fairly widely cultivated and not known to be internationally traded. For these reasons, the United States could possibly support the recommendation of the Plants Committee to remove this species from Appendix II. The United States does, however, need to consult the States prior to making a decision on this proposal. The United States has already informed the the Plants Committee and the Secretariat of its concerns.

Prop. 11.10. Deletion of *Lewisia cotyledon*, *Lewisia maguirei*, and *Lewisia serrata* from Appendix II. Submitted by Switzerland. Proposed U.S. position: Oppose.

These species are native to the United States. *Lewisia cotyledon* is apparently secure, but factors exist to cause some concern regarding this species. The U.S. Forest Service cites collection from the wild for the horticultural trade as one of the primary activities that could pose a threat to this species. In addition, the Forest Service has documented specific, though limited, instances of collection pressure on some varieties of this species (especially *Lewisia cotyledon* var. *heckneri*). This taxon is found in international trade, but it is also fairly widely grown, and most *L. cotyledon* plants and seeds for sale come from cultivated sources. *Lewisia maguirei* has a very limited range and is considered Endangered by the IUCN. However, it is protected from most threats, including collection pressures, by its remote habitat. *L. maguirei* is considered of interest to alpine plant enthusiasts, so potential international demand exists for this species, though it is very rarely cultivated and not known to be in trade at this time. *Lewisia serrata* is considered Very Rare and Endangered throughout its range by the California Native Plant Society and Vulnerable by the IUCN. Though monitoring indicates that some populations are currently stable, the Forest Service reports that horticultural collection is a potential threat, and that at least one population is suspected to have been extirpated by illegal collection for this purpose.

The Forest Service's Interim Management Guide for *Lewisia cantelovii* and *Lewisia serrata* cites poaching of *L. serrata* by private or commercial collectors as a potential threat to its existence. *L. serrata* is likely to be cultivated to a limited extent and traded internationally on a small scale, though no exports have been recorded in recent years. Due to the potential for international trade in specimens collected from the wild, the United States believes that Appendix II offers these three species valuable protection, even though no legal trade in wild-collected individuals of these species has been recorded in recent years. The United States has already informed the Plants Committee and the Secretariat of its opposition to this proposal.

Prop. 11.11. Deletion of *Darlingtonia californica* from Appendix II. Submitted by Switzerland. Proposed U.S. position: Oppose.

This species is native to the United States. Although it is generally not known to be declining in distribution or abundance, the Forest Service has informed us that collection is a definite threat to this species and that many of the plants in trade are likely to have been collected from the wild. International demand for *Darlingtonia californica* clearly exists due to documented international trade in artificially propagated specimens. Though no legal trade in wild-collected plants has been recorded in recent years, this species is still subject to collection from the wild for international trade. Therefore, we consider Appendix II to be appropriate at this time, although we intend to review this species for possible delisting prior to COP12. The United States has already informed the Plants Committee and the Secretariat of its opposition to this proposal.

2. Proposals concerning export quotas for specimens of species in Appendix I or II [Doc. 11.59.2]

Prop. 11.12. Maintenance of the Tanzanian population of *Crocodylus niloticus* (Nile crocodile) in Appendix II, with an annual export quota of 1,600. Submitted by Tanzania. Proposed U.S. position: Undecided.

We are continuing to evaluate this proposal, pending our evaluation of the results of discussions at the Crocodile Specialist Group meeting in Cuba in January 2000.

3. Other proposals [Doc. 11.59.3]

Prop. 11.13. Transfer of *Manis crassicaudata*, *Manis pentadactyla*, and *Manis javanica* (Asian pangolins) from Appendix II to I. U.S. proposal cosponsored by India, Nepal, and Sri Lanka.

Prop. 11.14. Transfer of *Tursiops truncatus ponticus* (Bottlenose dolphin, Black Sea/Sea of Azov population) from Appendix II to I. U.S. proposal cosponsored by Georgia.

Prop. 11.15–11.18. Transfer of following stocks of whales from Appendix I to Appendix II: Eastern North Pacific stock of *Eschrichtius robustus* (gray whales), and Southern Hemisphere, Okhotsk Sea -West Pacific, and North-east Atlantic and North Atlantic Central stocks of *Balaenoptera acurostrata* (minke whales). Submitted by Japan and Norway. U.S. position: Oppose.

The United States opposes the downlisting of these populations of whales, which are subject to the International Whaling Commission (IWC) moratorium on commercial whaling. The United States continues to believe that it is inappropriate to consider these species for downlisting until the IWC completes the revision of its management regime in order to bring all whaling under effective IWC control, as discussed below. The United States

also believes that these species do not qualify for transfer to Appendix II, under Annex 4 of Resolution Conf. 9.24. The discussion that follows relates to all four of these proposals.

The United States believes that CITES should honor the request for assistance in enforcing the moratorium which the IWC communicated to the CITES Parties in a resolution passed at the Special Meeting of the IWC in Tokyo, December, 1978. This request was answered by the CITES Parties in Resolution Conf. 2.9 ("Trade in Certain Species and Stocks of Whales Protected by the International Whaling Commission from Commercial Whaling"), which calls on the Parties to "agree not to issue any import or export permit or certificate" for introduction from the sea under CITES for primarily commercial purposes "for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling." Resolution Conf. 2.9 was overwhelmingly reaffirmed by the Parties at COP10, by the defeat of a draft resolution proposed by Japan to repeal this resolution. At the 50th meeting of the IWC subsequent to COP10, the IWC passed a resolution that expressed its appreciation for the reaffirmation of this link between the IWC and CITES. IWC Resolution IWC/51/43 also welcomes the CITES COP10 decision "to uphold CITES Resolution Conf. 2.9." Support for these requests of the IWC necessitate opposition to any proposal to transfer whale stocks to Appendix II.

Additionally, according to Resolution Conf. 9.24, Annex 4, *Precautionary Measures*, paragraph 2.B. a. "Even if such species do not satisfy the relevant criteria in Annex 1, they should be retained in Appendix I unless * * * the species is likely to be in demand for trade, but its management is such that the Conference of the Parties is satisfied * * * with I) implementation by the range States of the requirements of the Convention, in particular Article IV; *and* ii) appropriate enforcement controls and compliance with the requirements of the Convention." Unfortunately, these "appropriate enforcement controls," as part of a Revised Management Scheme, have not yet been adopted by the IWC. These whale stocks do not qualify for transfer to Appendix II, under Resolution Conf. 9.24.

The assumption in the downlisting proposal for these populations of minke whales and gray whales is that the differences within species are discrete, occur in all individuals, and can be readily differentiated by forensic DNA methods. The United States disagrees scientifically with the statement that the precautionary measures of Resolution Conf. 9.24 Annex 4 are fulfilled because DNA analysis techniques allow for the identification of whale stocks, and even individual whales. This is not the case, as the experts who have developed these methods will attest and the scientific literature reinforces. While clear markers differentiate species, finding forensic markers for all individuals within a population or stock is much more problematic. Doing so is usually possible only when the population distinctiveness approaches that of species. Moreover, the use of Japanese and Norwegian DNA registers that are not available for scrutiny by other whale DNA experts is counter to all principles of forensic identification. Only when there is agreement on DNA markers, tested against adequate sample sizes of the whale stocks in question, could they be utilized for verification purposes. This research may show significant evolutionary units within some stocks, and it may also show significant gene flow between stocks making forensic identification of a meat sample to a particular stock impossible.

The previous IWC management regime was not effective in managing the whaling industry. While it was in place, the whaling industry drastically depleted whale stocks until many became threatened with extinction. Since the establishment of the moratorium on global whaling, coupled with the CITES Appendix I listings, the Commission has continued to work on activities that the United States believes must be completed before commercial whaling can even be considered. This management regime must include devising an observation and monitoring program to ensure that quotas are not exceeded. Thus, the United States opposes even considering the downlisting of any whale species until the IWC has taken steps to create and institutionalize a revised management regime that brings all whaling under effective IWC monitoring and control.

Prop. 11.15. Transfer of the Eastern North Pacific stock of *Eschrichtius robustus* from Appendix I to II. Submitted by Japan. Proposed U.S. position: Oppose.

The gray whale's range previously encompassed the Atlantic and Pacific Oceans. The Atlantic population was hunted to extinction by the early 1900s, restricting the gray whale to shallow waters of the Pacific Ocean. Two stocks are recognized in the North Pacific, the western stock or Korean stock, which ranges along the Siberian coast and in the southern Chukchi and northern Bering Seas, and the eastern or California stock, which ranges from the Russian Federation past Canada and the United States to Mexico. The United States opposes this proposed downlisting for the following reasons. As a range state, Japan consulted the United States on their draft of this proposal, and the United States provided Japan its comments and opposition to this proposal. You may obtain that correspondence on our web site. Japan noted the United States' opposition in its proposal but did not elaborate on the United States submission. The United States understands that Mexico, as a range state as well, also provided its comments in opposition to the draft proposal, although they were not incorporated or even noted by Japan in the final proposal. In addition to the above comments, the United States notes that the proposal states that the species should be transferred to Appendix II because the United States removed the species from our domestic Endangered Species Act. This action, in itself, it not adequate justification for CITES downlisting, especially since the grey whale remains fully protected by our Marine Mammal Protection Act.

Prop. 11.16. Transfer of the Southern Hemisphere stock of *Balaenoptera acutorostrata* from Appendix I to II. Submitted by Japan. Proposed U.S. position: Oppose.

According to this proposal, range States for this population are Argentina, Australia, Brazil, Chile, Comoro, Congo, Ecuador, Fiji, France, Gabon, Indonesia, Kenya, Madagascar, Mauritius, Mozambique, Namibia, New Zealand, Papua New Guinea, Peru, Seychelles, South Africa, Tanzania, the United States, the United Kingdom, Uruguay, and Vanuatu. The United States opposes this proposal. The United States disagrees scientifically with the statement in the proposal that "DNA analysis technique advanced enough to distinguish individual whales are already available and will be used to track and control the movements of the whale specimens." No such techniques are available, and full transparency and publication of all DNA sequences by the Government of Japan is vital to fully evaluate this contention. As a range state, Japan consulted the United States on their draft of this proposal, and the United States provided Japan its comments and opposition to this proposal. You may obtain that correspondence on our web site. Japan noted the United States' opposition in its proposal but did not elaborate on the United States' submission.

Prop. 11.17. Transfer of the Okhotsk Sea—West Pacific stock of *Balaenoptera acutorostrata* from Appendix I to II.

Submitted by Japan. Proposed U.S. position: Oppose.

According to this proposal, range States for this population are Canada, the People's Republic of China, Indonesia, Korea, Marshall Islands, the Philippines, the Russian Federation, and the United States. The United States opposes this proposal. As a range state, Japan consulted the United States on their draft of this proposal, and the United States provided Japan its comments and opposition to this proposal. You may obtain that correspondence on our web site. Japan noted the United States opposition in its proposal but did not elaborate on the United States' submission.

Prop. 11.18. Transfer of the North-east Atlantic stock & the North Atlantic Central stock of *Balaenoptera acutorostrata* from Appendix I to II. Submitted by Norway. Proposed U.S. position: Oppose.

According to the Norwegian proposal, range States for these populations are Belgium, Denmark (including the Faroe Islands and Greenland), France, Germany, Iceland, Ireland, the Netherlands, Norway, Portugal, the Russian Federation, Spain, Sweden and the United Kingdom. The United States opposes this proposal. The United States is concerned scientifically with the statement in the proposal that "Norway has established a trade control system based on DNA analysis techniques with samples taken from each individual whale." No such system is available, and full transparency and publication of all DNA sequences by the Government of Norway is vital to fully evaluate this contention.

Prop. 11.19. Deletion of *Parahyaena (Hyaena) brunnea* (Brown hyaena) from Appendix II. Submitted by Namibia and Switzerland. Proposed U.S. position: Support.

The brown hyaena is not found in significant numbers in international trade. It was transferred from Appendix I to Appendix II at COP9, with the ultimate goal of removing the species entirely from the Appendices after trade was monitored for at least two intervals between meetings of the Conference of the Parties (in compliance with precautionary measures provided in Annex 4 of Resolution Conf. 9.24). According to trade data in the proposal, less than three live specimens and four dead specimens were traded annually from 1994 through 1997. The United States agrees with the proponents that the species does not satisfy the criteria for listing or retention in Appendix II.

Prop. 11.20. Transfer the South African population of *Loxodonta africana* (African elephant) from Appendix I to II, with annotations for trade. Submitted by South Africa. Proposed U.S. position: Undecided.

South Africa has proposed the transfer to Appendix II of its population of elephants, allowing for: (1) trade in raw ivory under a quota of 30 tonnes of whole tusks of government-owned stock originating from Kruger National Park; (2) trade in live animals for reintroduction purposes; (3) trade in hides and leather goods; and (4) trade in hunting trophies for noncommercial purposes. The United States is continuing to evaluate this proposal, in the context of all species proposals relevant to the African elephant (11.20–11.25), and other relevant documents (Documents 11.26, 11.31.1, 11.31.2, 11.31.3, and 11.31.4). These issues are very complex, particularly since this proposal requests an annotation that allows for commercial ivory trade. When we completed this notice, we still had not received all of the relevant documents to be evaluated at COP11 dealing with ivory trade, and the United States is continuing to evaluate the impact of decisions and proposals adopted at COP10.

Prop. 11.21. Maintain the Botswana population of *Loxodonta africana* (African elephant) in Appendix II, with annotations for trade. Submitted by Botswana. Proposed U.S. position: Undecided.

Botswana's population was transferred to Appendix II at COP10, with an annotation that, among other aspects, allowed for a one-time sale of ivory stocks to Japan. Botswana has proposed to amend that annotation to allow for commercial trade in government-owned stocks of ivory to "CITES-approved trading partners who will not re-export and subject to an annual quota of 12 tonnes (12,000 kg) of ivory." The United States is continuing to evaluate this proposal, in the context of all proposals relevant to the African elephant (11.20–11.25), and other relevant documents (Documents 11.26, 11.31.1, 11.31.2, 11.31.3, and 11.31.4). These issues are very complex, particularly since this proposal requests increased commercial ivory trade. When we completed this notice, we still had not received all of the relevant documents to be evaluated at COP11 dealing with ivory trade, and the United States is continuing to evaluate the impact of decisions and proposals adopted at COP10.

Prop. 11.22. Maintain the Namibia population of *Loxodonta africana* (African elephant) in Appendix II, with annotations for trade. Submitted by Namibia. Proposed U.S. position: Undecided.

Namibia's population was transferred to Appendix II at COP10, with an annotation that, among other aspects, allowed for a one-time sale of ivory stocks to Japan. Namibia has proposed to amend that annotation to allow for commercial trade in government-owned registered stocks of raw ivory (whole tusks and pieces), to "trading partners that have been verified by the CITES Secretariat to have sufficient national legislation and domestic trade controls to ensure that ivory imported from Namibia will not be re-exported and will be managed according to all requirements of Resolution Conf. 10.10 concerning domestic manufacturing and trade," with an annual quota of 2,000 kg ivory. The United States is continuing to evaluate this proposal, in the context of all species proposals relevant to the African elephant (11.20–11.25), and other relevant documents (Documents 11.26, 11.31.1, 11.31.2, 11.31.3, and 11.31.4). These issues are very complex, particularly since this proposal requests increased commercial ivory trade. When we completed this notice, we still had not received all of the relevant documents to be evaluated at COP11 dealing with ivory trade, and the United States is continuing to evaluate the impact of decisions and proposals adopted at COP10.

Prop. 11.23. Maintain the Zimbabwe population of *Loxodonta africana* (African elephant) in Appendix II, with annotations for trade. Submitted by Zimbabwe. Proposed U.S. position: Undecided.

Zimbabwe's population was transferred to Appendix II at COP10, with an annotation that, among other aspects, allowed for a one-time sale of ivory stocks to Japan. Zimbabwe has proposed to amend that annotation to allow for commercial trade in stocks of raw ivory (whole tusks and pieces), "to trading partners with adequate controls and enforcement measures," with an annual quota of 10,000 kg ivory. The United States is continuing to evaluate this proposal, in the context of all species proposals relevant to the African elephant (11.20–11.25), and other relevant documents (Documents 11.26, 11.31.1, 11.31.2, 11.31.3, and 11.31.4). These issues are very complex, particularly since this proposal requests increased commercial ivory trade. When we completed this notice, we still had not received all of the relevant documents to be evaluated at COP11 dealing with ivory trade, and the United States is continuing to evaluate the impact of decisions and proposals adopted at COP10.

Prop. 11.24. Transfer to Appendix I all populations of *Loxodonta africana*

(African elephant) currently listed in Appendix II. Submitted by India and Kenya. Proposed U.S. position: Undecided.

The United States is continuing to evaluate this proposal, in the context of all species proposals relevant to the African elephant (11.20–11.25), and other relevant documents (Documents 11.26, 11.31.1, 11.31.2, 11.31.3, and 11.31.4). When we completed this notice, we still had not received all of the relevant documents to be evaluated at COP11 dealing with ivory trade, and the United States is continuing to evaluate the impact of decisions and proposals adopted at COP10.

Prop. 11.25. Amend the annotation concerning Appendix II populations of *Loxodonta africana* (African elephant), regarding the destination of live animals. Submitted by Switzerland. Proposed U.S. position: Undecided.

The United States is continuing to evaluate this proposal, in the context of all proposals relevant to the African elephant (11.20–11.25), and relevant documents (Documents 11.26, 11.31.1, 11.31.2, 11.31.3, and 11.31.4). The United States believes that this proposal should be considered together with Document 11.26, submitted by Kenya, and also dealing with the conditions of live animals in trade under an annotation that specifies that commercial trade is allowed to "suitable and acceptable destinations." The United States also supports Doc. 11.24, "Use of Annotations in the Appendices," which was drafted and adopted as a consensus document of the Standing Committee (see discussion, above). That document recommends that the Parties not include live animals in these annotations. The United States believes that the meeting of the COP must evaluate and discuss and decide on this issue, prior to discussion of either this proposal or Doc. 11.26. The United States believes that when a species is transferred from Appendix I to Appendix II with substantive annotations, commercial trade in live animals that requires findings on the part of the importing country or determinations of conditions in the importing country should not be included in the annotation.

Prop. 11.26. Transfer the Australian population of *Dugong dugon* (Dugong) from Appendix II to Appendix I. Submitted by Australia. Proposed U.S. position: Support.

Dugongs were once widely distributed in the tropical and subtropical coastal areas of the Indian Ocean and the southwest Pacific. The species' range extends from eastern Africa and Madagascar east to the eastern coast of Australia and Vanuatu, and north to the Ryukyu Archipelago, Japan. The species has been extirpated or is extremely rare in much of its former range, largely because of over hunting. All subpopulations of dugong, other than the one inhabiting coastal Australia, are currently listed in Appendix I. Australia currently protects its dugong population through domestic commercial harvest prohibitions, and researchers estimate stock size at 85,000 individuals. Some regional populations near the southern Great Barrier Reef have dropped by more than 50 percent in the last decade, but in general the Australian stock is considered to be stable and among the most abundant known.

Although Australian dugongs may not qualify for inclusion in Appendix I on the basis of trade threats or population status, Australia and two regional range countries (Indonesia and Madagascar) believe that transferring the Australian population to Appendix I will assist in regional law enforcement and antipoaching efforts, and simplify CITES permit issuance. Eight other range countries consulted by Australia (Brunei, Cambodia, China, Philippines, Singapore, Solomon Islands, Vanuatu, and Yemen) also support the proposed transfer. In addition, Resolution Conf. 9.24, adopted by the CITES parties in 1997, specifically recommends that "split-listings" (those involving multiple populations of a species listed in different Appendices) should be avoided where possible. For these reasons, the United States supports the Australian proposal.

Prop. 11.27. Transfer all Bolivian populations of *Vicugna vicugna* (Vicuña) that are in Appendix I to Appendix II. Submitted by Bolivia. Proposed U.S. position: Support, with zero quota for trade in cloth from newly downlisted populations. See discussion under Prop. 11.28.

Prop. 11.28. Delete the zero quota for trade in cloth from Bolivian *Vicugna vicugna* (Vicuña) populations in Appendix II. Submitted by Bolivia. Proposed U.S. position: Support provisional quota for three populations downlisted in 1997, with the quota reevaluated at the next CITES Conference of the Parties.

Three vicuña populations were transferred from Appendix I to Appendix II at COP10, with a zero quota for trade in fiber or fiber products. Bolivia appears to have the necessary legal mechanisms in place to control harvest and trade in fiber, and this proposal describes what appears to be an adequate control and monitoring system to minimize illegal harvest and ensure that illegally obtained fiber does not enter legal trade. However, Bolivia has not yet started to harvest fiber from its vicuña populations. Thus, there is no evidence that the control and monitoring systems they describe are actually working. A provisional quota for the three populations downlisted in 1997 will give Bolivia the opportunity to put its system into operation, evaluate its effectiveness, and make any necessary changes prior to implementing a country-wide harvest program. During debate at COP11, the United States will suggest that Bolivia take this measured approach.

Prop. 11.29. Transfer to Appendix I all *Moschus* spp. (Musk deer) populations currently listed in Appendix II. U.S. proposal cosponsored by India and Nepal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will work for adoption of this document by the Parties.

Prop. 11.30. Include in Appendix I all subspecies of *Ovis vignei* (Urial) not yet listed in the Appendices. Submitted by Germany. Proposed U.S. position: Undecided.

The United States is continuing to review information contained in the proposal, and the relevant literature and information available on this species. *Ovis vignei vignei* is currently included in Appendix I, and other subspecies are unlisted. The United States' initial scientific evaluation questions whether all subspecies qualify for inclusion in Appendix I, or whether some should be included in Appendix II. The United States does believe, however, that all unlisted subspecies should be included in one of the two Appendices. We are leaning toward a split listing on the basis of country populations rather than subspecies.

Prop. 11.31. Transfer Argentine populations of *Rhea pennata* (*Pterocnemia pennata pennata*) (Lesser rhea) from Appendix I to II. Submitted by Argentina. Proposed U.S. position: Support.

The United States believes that this species does not meet any of the criteria in Annex 1 of Resolution Conf. 9.34, but does meet the criteria of Annex 4, B.2.b. Based on survey data from one of the four provinces where the subspecies occurs naturally, Argentina estimates that 1,687,253 lesser rheas exist in the entire country. Density estimates have increased in recent times from 0.2 to 2.2 adults per square kilometer. Argentina's proposal would allow trade in specimens only from rhea farms registered with Argentinian authorities (19 farms are now registered) and located within the subspecies natural

range. No individuals will be removed from the wild, except for eggs needed as parental stock. All animals will be individually identified using microchips. Argentina developed a "Conservation and Management Program for the Patagonian Rhea" in 1996. As part of this management program, Argentina intends to conduct annual or biennial surveys of rhea populations. Three of the four Argentinian provinces where the subspecies occurs have laws regulating the establishment of rhea farms and the sustainable management of *Pterocnemia pennata pennata*, and the fourth province (Neuquén) is currently drafting such a law. Other subspecies of the rhea appear to be distinguishable through physical traits. Chile, the only other range state, supports Argentina's proposal.

Prop. 11.32. Transfer the North American population of *Falco rusticolus* (Gyrfalcon) from Appendix I to II, with a zero quota for export of wild birds. U.S. proposal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will work for adoption of this document by the Parties.

Prop. 11.33. Transfer *Eunymphicus cornutus cornutus* from Appendix II to I. Submitted by France. Proposed U.S. position: Support (comments below, under Prop. 11.34).

Prop. 11.34. Transfer *Eunymphicus cornutus uveaensis* from Appendix II to I. Submitted by France. Proposed U.S. position: Support.

At the request of New Caledonia, France has submitted these two proposals to transfer the two subspecies of horned parakeet, *Eunymphicus cornutus cornutus* and *E. c. uveaensis*, to Appendix I from Appendix II. A similar proposal, to transfer only *E. c. uveaensis* to Appendix I, was submitted by Germany for consideration at COP10, but was withdrawn. The United States had opposed the transfer of only one subspecies to Appendix I, resulting in a split-listing, because of difficulties in distinguishing between the two subspecies in trade. However, transfer of the entire species to Appendix I would eliminate this problem, and the United States is considering supporting these proposals pending the receipt of recently published information to help assess the status of the species.

Prop. 11.35. Inclusion of *Garrulax canorus* in Appendix II. Submitted by China. Proposed U.S. position: Support.

The People's Republic of China has submitted this proposal to include *Garrulax canorus* (the hwamei) in Appendix II. The hwamei is a passerine species primarily kept as a songbird in China, although the species had been exported up until August 1998. Although the majority of specimens are traded domestically (estimated 1.7–1.8 million birds annually), over 125,000 birds were authorized for export during 1990–1997. The species is one of the more common species in China, where it exists in a dozen provinces, as well as on Hainan Island and Taiwan, and it also occurs in Vietnam and Lao PDR. Although the United States is considering supporting this proposal, the United States is seeking any additional information that might be available on the status of this species in the wild and the impact of trade on the species, and, in particular, the value of an Appendix-II listing for the conservation of this species.

Prop. 11.36. Inclusion of *Cuora* spp. (Southeast Asian box turtles) in Appendix II (*Cuora amboinensis, Cuora flavomarginata, Cuora galbinifrons* and *Cuora trifasciata* under II.2.a.; *Cuora aurocapitata, Cuora mccordi, Cuora pani, Cuora yunnanensis*, and *Cuora zhoui* under II.2.a. or II.2.b. Submitted by Germany and cosponsored by the United States.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.37. Inclusion of *Clemmys guttata* (spotted turtle) in Appendix II. U.S. proposal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.38. Transfer of *Geochelone sulcata* (African spurred tortoise) from Appendix II to I. Submitted by France. Proposed U.S. position: Support.

The United States supports this proposal, as the species satisfies the criteria of Annex 1, C.i) and C.ii) of Resolution Conf. 9.24. The total wild population has declined from an estimated 100,000 African spurred tortoises in 1950 to just 18,000–20,000 currently. According to the World Conservation Monitoring Centre (WCMC), import of wild specimens has also increased from 461 animals in 1990 to 5,097 in 1996; many of these were exported from three non-range countries: Togo, Ghana, and Cameroon.

Prop. 11.39. Transfer of *Malacochersus tornieri* (Pancake tortoise) from Appendix II to I. Submitted by Kenya and cosponsored by the United States.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.40. Transfer the "Cuban population" of *Eretmochelys imbricata* (Hawksbill sea turtle) from Appendix I to II, with annotation for: (1) export of registered stocks (6,900 kg) to Japan only, and (2) the export each year thereafter, to Japan or to other Parties with equivalent controls, which will not reexport, up to 500 specimens. Submitted by Cuba and Dominica. Proposed U.S. position: Oppose.

Although the United States recognizes and appreciates the considerable efforts made by Cuba to conserve sea turtles in the Caribbean, the United States cannot support this proposal. As a range country, the United States provided comments to Cuba, based on the information provided to us in a proposal summary dated September 27, 1999; those comments are available on our web site. Existing information shows that the Caribbean regional population of hawksbill sea turtle is composed of genetically distinct stocks. Analyses of genetic samples taken from hawksbill turtles on foraging grounds across the region have revealed conclusively that these genetically distinct stocks are mixed on their feeding grounds. Samples collected from hawksbill turtles inhabiting foraging grounds in Cuba reveal that 30 percent to 58 percent of these individuals did not originate on Cuban nesting beaches. The United States is particularly concerned with the harvest of turtles in Cuban waters that are genetically aligned with source nesting populations in Puerto Rico and the U.S. Virgin Islands. Detailed systematic surveys that can begin to assess nesting trends in Cuba have only recently started, the extent to which the Cuban harvest has impacted populations outside of Cuba is also largely unknown, and the United States is concerned that the current (and proposed) harvest is unsustainable, and threatens hawksbills throughout the Caribbean. Hawksbill populations are declining or depleted in 22 of the 26 geopolitical units in the Wider Caribbean area for which some status and trend information is available. Globally, the species has experienced a decline of 80 percent in the last 3 generations (105 years), and it is unlikely that more than 15,000 females nest annually. The species has therefore been categorized by the IUCN as critically endangered.

Based on our current understanding of the status of the hawksbill in the

Caribbean, the United States does not believe it prudent for any range country to be harvesting hawksbills for domestic or international consumption. The United States is very concerned that any reopening of the hawksbill shell trade will undermine hawksbill conservation efforts not only in the Caribbean, but around the world. Based on CITES annual report data and other information, the illegal trade of hawksbill turtle products, as well as other sea turtle species, is the highest volume, most widespread, most long-term, and persistent illegal trade of any CITES Appendix I species in the Convention's 25-year history. The United States is unable to confirm that adequate enforcement controls are in place to prevent illegal trade in hawksbill turtle (or other sea turtle) specimens from Cuba or other hawksbill sea turtle range states in the Wider Caribbean, if an Appendix II listing were adopted by the meeting of the COP. The species does not qualify for transfer to Appendix II under Conf. 9.24: it both satisfies the biological criteria of Annex 1 for inclusion in Appendix I (particularly paragraphs C and D), and does not satisfy the precautionary measures in Annex 4 paragraph B.2.b. of Conf. 9.24.

Prop. 11.41. Transfer the "Cuban population" of *Eretmochelys imbricata* (Hawksbill sea turtle) from Appendix I to II, with annotation allowing export in one shipment of registered stocks (6,900 kg) to Japan only. Submitted by Cuba. Proposed U.S. position: Oppose.

Please see the discussion under Prop. 11.40; all comments are the same. The United States notes further that Cuba has submitted two proposals, that specify different sets of proposed annotations for the same species. The United States believes that, for a Party to submit more than one proposal for the same species or population, somehow hedging its bets that if the Parties do not adopt the first they might adopt the second, is not appropriate. The Rules of Procedure of the meeting of the COP allow a Party to amend a proposal, prior to voting, and that is the more appropriate avenue. The United States believes that a more appropriate course of action is for Cuba to decide which proposal it would like the meeting of the COP to consider, and to withdraw the other. This procedural view is independent of the United States' position on the specifics of this proposal.

Prop. 11.42. Transfer *Crocodylus moreletii* (Morelet's crocodile) populations of Sian Ka'an, Quintana Roo, Mexico from Appendix I to II. Submitted by Mexico.

Mexico has formally withdrawn its proposal to transfer a population of Morelet's crocodile (*Crocodylus moreletii*) from Appendix I to II. Mexico informed us that they withdrew the proposal on January 24, 2000. Mexico withdrew this proposal in response to recommendations made by the IUCN Crocodile Specialist Group during its January 17–20, 2000 meeting in Varadero, Cuba.

Prop. 11.43. Transfer of *Varanus melinus* from Appendix II to I. Submitted by Germany. Proposed U.S. position: Support.

This species is currently affected by increasing levels of trade and also meets the biological criteria in Annex 1 of Resolution Conf. 9.24. The wild population has a restricted area of distribution on several islands of the Sula Archipelago in Indonesia, the quality of habitat within its range has decreased, due to commercial logging. Furthermore, the species is particularly attractive to the pet trade due to its attractive coloration, its "tameness," and manageable size. Finally, a decline in the number of individuals is projected, based on a decrease in the area and quality of habitat, and an increased level of exploitation for the pet trade.

Prop. 11.44. Inclusion of *Crotalus horridus* (Timber rattlesnake) in Appendix II. U.S. proposal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.45. Deletion of *Bufo retiformis* (Sonoran green toad) from Appendix II. U.S. proposal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.46. Inclusion of *Mantella* spp. (Mantella frogs) in Appendix II (*Mantella aurantiaca* is already in Appendix II). Jointly submitted by The Netherlands and the United States.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.47. Inclusion of *Rhincodon typus* (Whale shark) in Appendix II. U.S. proposal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.48. Inclusion of *Carcharodon carcharias* (Great white shark) in Appendix I. Submitted by Australia and cosponsored by the United States.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.49. Inclusion of *Cetorhinus maximus* (Basking shark) in Appendix II. Submitted by the United Kingdom of Great Britain and Northern Ireland. Proposed U.S. position: Support.

The Basking Shark is widely distributed in coastal waters and on the continental shelves of temperate zones in the northern and southern hemisphere. The species is planktivorous (feeds on plankton), ovoviviparous (bears a small number of live young), and is the second largest fish in the world. The biology of the species makes it especially vulnerable to exploitation. It has a slow growth rate, a long time to sexual maturity (approximately 12–20 years), a long gestation period (1–3 years) with a similar interval between pregnancies, low fecundity, and probably small populations. Traditionally, basking sharks have been hunted for their liver, which yields an oil rich in squalene. This market is now largely superseded, but the demand for the fins has increased. The IUCN lists *C. maximus* as Vulnerable in the 1996 IUCN Red List based on past records of declining populations, due to overexploitation of fisheries, slow recovery rates, and the potential for similar declines to occur in the future due to targeted and by-catch fisheries.

There are no directed fisheries for basking sharks in the United States. Since 1997, fishing for and retention of basking sharks has been prohibited by regulation in Atlantic waters. The prohibition was implemented as a precautionary measure to ensure that directed fisheries would not develop. Basking sharks are not regulated in a Fisheries Management Plan (FMP) in U.S. Pacific waters, but the Pacific Fishery Management Council is considering the development of an FMP for highly migratory species in the area the Council covers.

This species meets the criteria listed for inclusion of species in Appendix II in Conference Resolution 9.24, Annex 2a, Bi, that "it is known, inferred and projected that harvesting of specimens from the wild for international trade has, or may have, a detrimental impact on the species by exceeding, over an

extended period, the level that can be continued in perpetuity."

Prop. 11.50. Inclusion of *Latimeria* spp. (Coelacanth) in Appendix I. Submitted by France and the Federal Republic of Germany. Proposed U.S. position: Support.

The species *Latimeria chalumnae* was included in Appendix I in 1989. Coelacanths (*Latimeria spp.*) are the sole survivors of the ancient Devonian lineage of crossopterygian fish, which played a pivotal role in the evolution of land-living tetrapods. According to the latest IUCN Red List of Threatened Animals, the global status of the species *Latimeria chalumnae* is Endangered, due to its small population size and limited distribution. Only a small breeding population exists off two islands of the Comoros Archipelago in the western Indian Ocean. The same must be assumed for *Latimeria menadoensis,* considering that only two specimens have been caught so far. Without protection in Appendix I, trade in this genus (excluding *L. chalumnae*) is possible and likely to exist if specimens become more available. *Latimeria* is probably one of the most sought after fish genera for collectors and scientists and, when occasionally offered in trade, may be confused with a deep sea grouper sought in Traditional Chinese Medicine. Due to a small population size and a limited distribution, any commercial trade in coelacanths will likely damage the existing population seriously. Inclusion in Appendix I would prohibit commercial trade and tightly regulate trade for scientific, educational, or public display purposes.

Prop. 11.51. Inclusion of *Latimeria menadoensis* (Menado coelacanth) in Appendix I. Submitted by Indonesia. Proposed U.S. position: Support if Prop. 11.50 is not adopted.

This proposal will be unnecessary if the proposal to list the *Latimeria* spp. is approved. However, the United States proposes to support this proposal if the *Latimeria* spp. listing proposal is not adopted.

Prop. 11.52. Inclusion of *Poecilotheria* spp. (Eastern hemisphere tarantulas) in Appendix II. U.S. proposal cosponsored by Sri Lanka.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.53. Harmonize exemptions for medicinal products: combine current annotation #2 for *Podophyllum hexandrum* and *Rauvolfia serpentina* with annotation #8 for *Taxus wallichiana*. Submitted by Switzerland. Proposed U.S. position: Support.

This proposal offers a more precise and consistent definition of those parts and derivatives of selected medicinal plant species that are exempted from the controls of the treaty. The United States expects that standardizing annotations will facilitate enforcement of CITES for medicinal plants. The United States is not aware of any negative conservation implications of this proposal.

Prop. 11.54. Inclusion of *Panax ginseng* (Ginseng) roots in Appendix II. Submitted by Russian Federation. Proposed U.S. position: Support.

Historically, the species was found in China, Korea, and Russia. However, the species is now believed to be extinct in China and Korea. The amount (by weight) of wild ginseng harvested and exported from Russia has decreased substantially during the 1990s. The official harvest quota decreased from 100 kg in 1993 to 0 kg in 1998, but poaching has increased. The species is currently listed as endangered under the Red Book of the Russian Federation. Currently, an export permit issued by the Russian Federation Trade Ministry is needed. American and Siberian ginseng are almost indistinguishable.

Prop. 11.55. Transfer of the Argentine population of *Araucaria araucana* from Appendix II to Appendix I. Submitted by Argentina. Proposed U.S. position: Support.

Populations of *Araucaria araucana,* a pine tree found in Chile and Argentina, are restricted and highly threatened in Argentina. This species qualifies for inclusion in Appendix I. Appendix I listing would assist in regulating international trade in seeds of this species, which have been confiscated in large volumes in recent years. It would also harmonize the listing for this species with the Chilean population, which is already in Appendix I. This listing would make enforcement of CITES easier and more effective for this species. This action also supports Resolution Conf. 9.24, which states that split-listings should be avoided whenever possible.

Prop. 11.56. Exempt up to three specimens of rainsticks (Cactaceae, *Echinopsis* and *Eulychnia*) per person from CITES controls. Submitted by Chile. Proposed U.S. position: Oppose.

Cacti rainsticks are products manufactured from dead specimens of several species of columnar cacti, including Chilean species in the genera *Echinopsis* and *Eulychnia*. All species in these two genera are listed in Appendix II of CITES. The raw material from these cacti, called "normata," are dead and dried skeletal parts of these plants collected in the wild and then processed in Chile into the products known as rainsticks (or musical sticks). The dried skeletal parts of Chilean *Echinopsis* and *Eulychnia* species make excellent specimens for manufacturing this type of handicraft because they have central cavities ideal for filling and producing the characteristic musical effect, which sounds like falling rain.

The primary market for rainsticks is as novelty items for sale in gift and souvenir shops, both in Chile and in other countries to which the rainsticks have been exported (including the United States). The international trade in cacti rainsticks is in part commercial, for the gift shop market, and in part noncommercial, as personal effect souvenirs purchased by tourists.

The trade in rainsticks was an issue for discussion at the past several meetings of the CITES Plants Committee. At the 9th meeting of the Plants Committee in June 1999, the Committee recognized the problem of tourists purchasing cacti rainsticks as souvenirs in countries that they are visiting and then having them confiscated when they return to their home countries because they did not obtain CITES permits for the export of these Appendix II items. To address this problem, Chile recommended preparation of a proposal to exempt shipments of up to three units of Chilean *Echinopsis* and *Eulychnia* cacti rainsticks from the provisions of CITES, specifically when being transported by tourists as long as the tourists had the products with them. The Plants Committee agreed that such an exemption did not pose a conservation problem for the species involved, since the skeletal parts used to produce the rainsticks are collected from specimens in the wild that are already dead and dried, and supported the proposal by Chile. Chile has subsequently submitted a proposal to COP11 to exempt up to three specimens of *Echinopsis* and *Eulychnia* cacti rainsticks per person from CITES controls.

The United States agrees with the Plants Committee's assessment that such an exemption would not pose a conservation problem for the species involved. However, the United States does not agree that this exemption should be proposed to the Conference of the Parties via an annotation to the CITES Appendices, as Chile has done by submitting its proposal. CITES Article VII, paragraph 3, already allows the imports and exports of Appendix II cacti rainsticks as personal effects and, therefore, including a personal effects exemption as an annotation to a listing would circumvent or overrule those

Parties that have deliberately chosen not to recognize personal effects exemptions under their domestic legislation.

The United States believes that the appropriate avenue for such an exemption to be considered by the Parties is through a proposed resolution. Inclusion of the exemption as a recommendation in a resolution would allow Parties the option of implementing the exemption or not implementing it. A precedent already exists in Resolution Conf. 10.12, regarding conservation of sturgeon, which includes a recommendation for a personal effects exemption for caviar for up to 250 grams per person, similar to the cacti rainstick exemption being proposed by Chile.

The United States believes that Chile's rainstick exemption proposal should be considered via a proposed amendment to CITES Resolution Conf. 9.18 (Rev), regarding regulation of trade in plants. This resolution already includes a section recommending an exemption for flasked seedlings of orchid species listed in Appendix I, and the rainstick exemption could be added as another recommendation.

Should this exemption be adopted as an amendment to Conf. 9.18 (Rev.), the United States is concerned whether plant inspection officials at ports of import and export will be able to differentiate *Echinopsis* and *Eulychnia* rainsticks from rainsticks made from other species. The United States plans to investigate this matter with plant inspectors of the U.S. Department of Agriculture prior to the United States formulating its final negotiating position on this proposal.

Prop. 11.57. Deletion of *Kalmia cuneata* (White wicky) from Appendix II. U.S. proposal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Prop. 11.58. Inclusion of *Camptotheca acuminata* in Appendix II. Submitted by China. Proposed U.S. position: Support.

This tree, once widely distributed throughout southern China, has been significantly reduced in its distribution and abundance primarily by habitat destruction and harvest for Camptothecin, an alkaloid used to treat AIDS and some types of cancer. This species is widely artificially propagated, though not on a commercial scale outside of China. No synthetic substitute exists for Camptothecin. China is, therefore, the sole source of Camptothecin for the international market. Estimates of average annual Camptothecin production in China suggest that at least 500,000–750,000 trees per year are affected. Appendix II listing could benefit this species if it pertains to all parts and derivatives of the plant.

Prop. 11.59. Inclusion of *Cistanche deserticola* in Appendix II. Submitted by China. Proposed U.S. position: Support.

This species is a parasitic herb native to China that is used to improve kidney function and treat impotence. The main threats to it are overexploitation from the wild for its medicinal value and the destruction of its host plants, *Haloxylon ammondendron* and *H. persicum*. *Cistanche deserticola* has been severely impacted by over collection from the wild in certain areas, especially in the Inner Mongolia Autonomous Region. It is now listed in the Red Data Book of China Plants and as a State Protected Species. International trade in this species grew to an estimated 120 tons per year in the 1980s, but has since declined due to supply restrictions. It is primarily exported to Japan, Hong Kong, and Southeast Asia. This species is difficult to cultivate due to its parasitic nature and is not artificially propagated on a commercial scale.

Prop. 11.60. Inclusion of *Harpagophytum procumbens* and *Harpagophytum zeyheri* in Appendix II. Submitted by Germany. Proposed U.S. position: Support.

These species are found in several countries in southern Africa, but mainly in Namibia and Botswana. A decline in wild populations of *Harpagophytum procumbens* has been recorded in both these countries. A main threat to *H. procumbens* is the large-scale harvest of its secondary storage tubers using detrimental harvesting techniques, primarily for international markets. Export of *H. procumbens* from its main range states is significant and strongly increasing and has led to its overexploitation in Botswana and some parts of Namibia. The material in trade originates exclusively from the wild. Most of it is exported to Europe. *H. zeyheri* is also traded internationally for its medicinal value and is difficult to distinguish from *H. procumbens*. Grazing also presents a threat to these species.

Prop. 11.61. Inclusion of *Adonis vernalis* in Appendix II (potted live plants to be excluded). Submitted by Germany. Proposed U.S. position: Support, with the exception of the exclusion of live potted plants.

This species, primarily used for medicinal purposes but also valued as an ornamental plant, is distributed throughout the steppe and grassland ecosystems of central and eastern Europe. It mainly occurs in isolated, fragmented populations today. It is considered to be threatened and is included in most red data books of its range countries. The many threats to this species include overexploitation for international trade and detrimental harvesting techniques. Bulgaria, Hungary, Romania, Ukraine, and Russia are the main exporters of this species. The main importers are Germany and France. Restrictions on harvest have been established in Bulgaria and Hungary. Almost all plant material in trade originates from wild stock. Regarding the proposed exclusion of potted live plants, we sympathize with the intent, but do not believe it is allowed by the treaty. CITES Article I paragraph (b)(iii) states that, for plants, a specimen is defined as: "for species included in Appendix I, any readily recognizable part or derivative thereof; and for species included in Appendices II and III, any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species." Therefore, the listing of a plant species in Appendix II can specify (or exempt) certain recognizable parts or derivatives. The listing cannot, however, exempt whole plants that are in pots, which is not a part or derivative.

Prop. 11.62. Transfer of *Guaiacum sanctum* (Holywood lignum vitae) from Appendix II to Appendix I. U.S. proposal.

Our proposed negotiating position is discussed in the **Federal Register** notice of February 17, 2000 (65 FR 8190). The United States will actively work towards adoption of this proposal at COP11.

Conclusion of the Meeting

60. Determination of the time and venue of the next regular meeting of the Conference of the Parties [Doc. 11.60]

When we completed this notice, we still had not received a document from the Secretariat regarding candidates as host governments for COP12. The United States favors holding COP12 in a country where all Parties and observers will be admitted without political difficulties. The United States proposes to support the holding of the meetings of the COP on a biennial basis, or, as in the case of COP10, after an interval of approximately 2½ years.

61. Closing remarks [no document]

Future Actions

Before COP11, we will announce any changes to the proposed negotiating

positions contained in this notice and any undecided negotiating positions by posting a notice on our Internet website (http://international.fws.gov/global/cites.html). After the meeting of the COP, we will publish a notice in the **Federal Register** announcing the amendments to CITES Appendices I and II that were adopted by the Parties at the meeting, and requesting comments on whether the United States should enter reservations on any of these amendments.

Dated: March 3, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–5617 Filed 3–3–00; 4:32 pm]

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H.R. 1451/P.L. 106–173

Abraham Lincoln Bicentennial Commission Act (Feb. 25, 2000; 114 Stat. 14)

S. 632/P.L. 106–174

Poison Control Center Enhancement and Awareness Act (Feb. 25, 2000; 114 Stat. 18)

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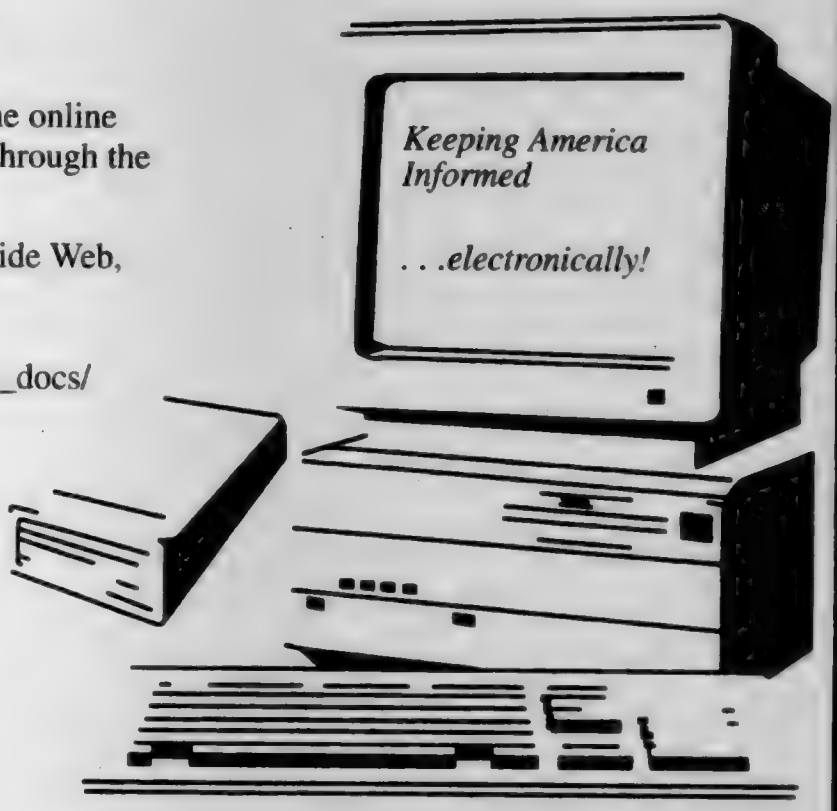

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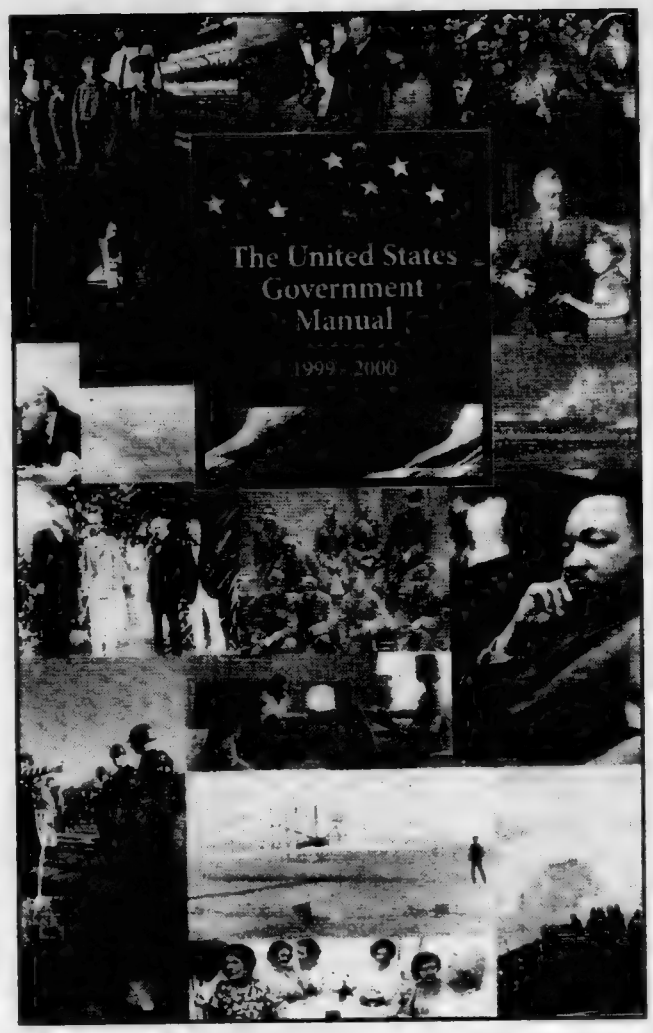

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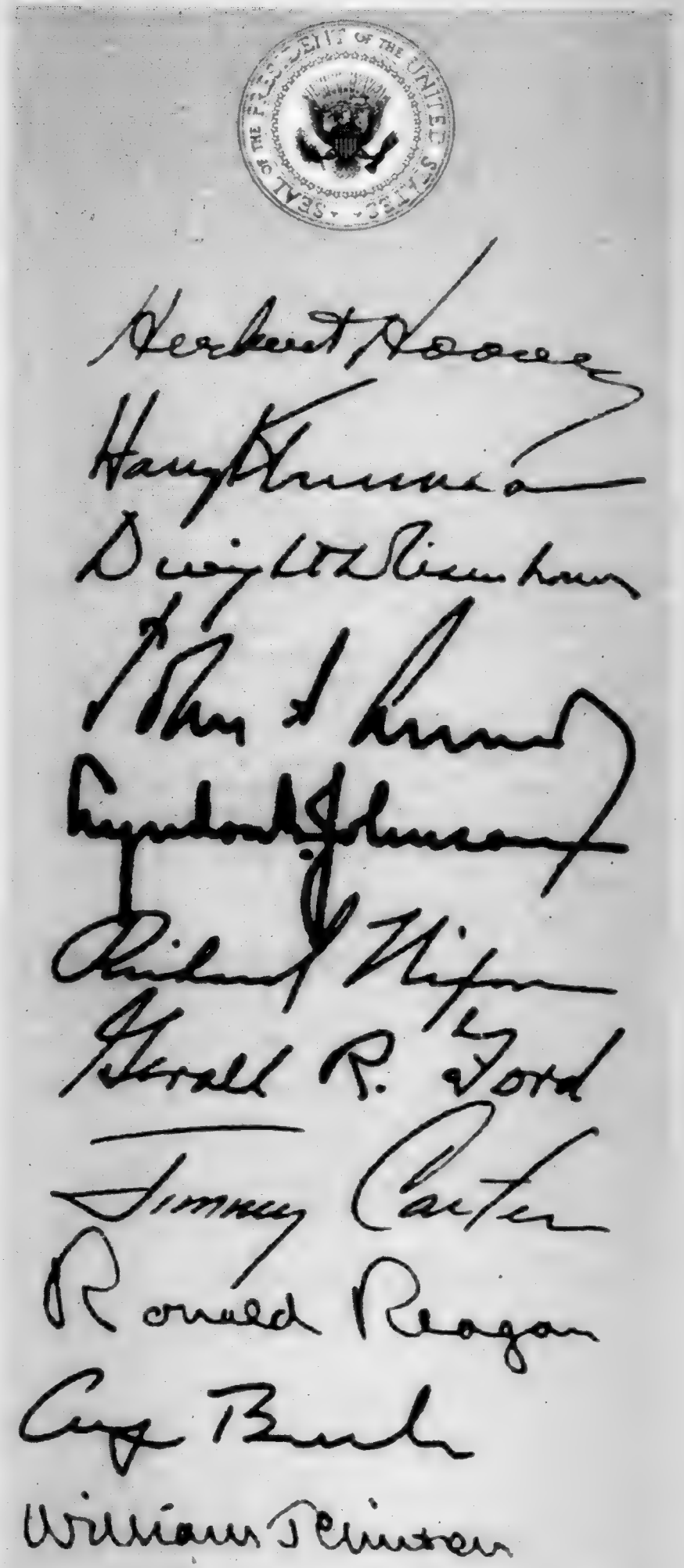

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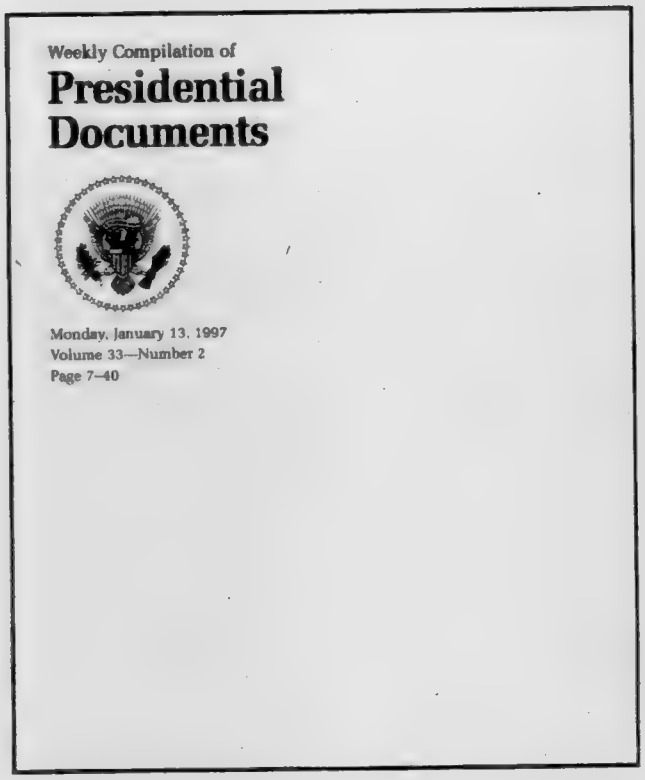

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revisions of Delegations of Authority

AGENCY: Office of the Secretary, Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department of Agriculture (USDA) to reflect an internal reorganization of the pollution prevention, control, and abatement program within USDA.

EFFECTIVE DATE: Effective March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Harwood, Executive Director, USDA Hazardous Materials Policy Council, United States Department of Agriculture, Washington, D.C. 20250, telephone (202) 401–4747.

SUPPLEMENTARY INFORMATION: On January 15, 1999, the Secretary of Agriculture established the USDA Hazardous Materials Policy Council (Council) to direct and coordinate pollution prevention, control, and abatement within USDA. The Council is chaired by an appointee of the Secretary and consists of senior policy representatives of the affected USDA mission areas and agencies and USDA's Office of the General Counsel. By memorandum dated April 14, 1999, the Secretary assigned to the Council lead responsibility for USDA hazardous materials management and Federal facilities compliance activities, with the Council Chairman coordinating program direction with the assistance of an Executive Director. The director of the USDA Hazardous Materials Management Group (HMMG) serves as the Council's Executive Director. The HMMG, which serves as staff to the Council, was placed organizationally in Departmental Administration for administrative support. The Council's Executive Director/HMMG Director reports to the Council Chairman for both management and policy direction. The Assistant Secretary for Administration and the Council Chairman are responsible for presenting the USDA Hazardous Waste Management appropriation budget request to the Office of Management and Budget (OMB) and Congress. The Council Chairman is responsible for reporting on hazardous materials management and Federal facilities compliance program accomplishments to Congress, OMB, and the United States Environmental Protection Agency. Decisions on the allocation of funds to USDA agencies from the USDA central hazardous waste management account are the responsibility of the Council. Finally, the Secretary directed that Departmental Manual (DM) 5600–1, Environmental Pollution Prevention, Control, and Abatement Manual, be revised to reflect these changes in organization and responsibilities. The revisions to DM 5600–1 were issued June 25, 1999. This final rule revises the delegations of authority from the Secretary of Agriculture and general officers of USDA to incorporate the provisions of the Secretary's memoranda and the June 25, 1999, amendments to DM–5600–1.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. In addition, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and, thus, is exempt from the provisions of that Act. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104–121, this rule may be made effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. In § 2.16, paragraph (a)(9) is added to read as follows:

§ 2.16 Under Secretary for Farm and Foreign Agricultural Services.

(a) * * *

(9) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Recommend actions and policies of the loan and grant programs under his or her authority concerning compliance with the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996, Subtitle E of Public Law No. 104–208.

* * * * *

3. In § 2.17, the section heading is revised and paragraph (a)(23) is added to read as follows:

§ 2.17 Under Secretary for Rural Development.

(a) * * *

(23) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and

other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Recommend actions and policies of the loan and grant programs under his or her authority concerning compliance with the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996, Subtitle E of Public Law No. 104–208.

* * * * *

4. In § 2.18, paragraph (a)(7) is added to read as follows:

§ 2.18 Under Secretary for Food Safety.

(a) * * *

(7) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable the USDA agency under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Exercise primary responsibility to regulate drug, pesticide, and environmental contaminants in food products as covered by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*), including the Food Quality Protection Act of 1996, Public Law 104–170, and the Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*), as implemented by the Food Safety and Inspection Service through a Memorandum of Understanding with the United States Department of Health and Human Services, Food and Drug Administration, and the United States Environmental Protection Agency.

* * * * *

5. In § 2.20, paragraph (a)(1)(ii) is revised and paragraphs (a)(1)(ix), (x), and (xi) are added to read as follows:

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) * * *

(1) * * *

(ii) Represent USDA on Regional Response Teams on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*), the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*), the Oil Pollution Act (OPA), as amended (33 U.S.C. 2701 *et seq.*), Executive Order 12580, 3 CFR, 1987 Comp., p. 193, Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Contingency Plan, 40 CFR Part 300.

* * * * *

(ix) Serve on the USDA Hazardous Materials Policy Council.

(x) Recommend actions and policies that enable agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(xi) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

* * * * *

6. In § 2.21, paragraph (a)(10) is added to read as follows:

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) * * *

(10) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Serve as a USDA Environmental Executive responsible for coordinating waste prevention; recycling; and the procurement, acquisition, and use of recycled products and environmentally preferable products, including biobased products, and services pursuant to Executive Order 13101 (dual assignment with the Assistant Secretary for Administration).

* * * * *

7. In § 2.22, paragraph (a)(10) is added to read as follows:

§ 2.22 Under Secretary for Marketing and Regulatory Programs.

(a) * * *

(10) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

* * * * *

8. In § 2.24:

a. Paragraph (a)(3)(i)(I) is removed and paragraphs (a)(3)(i)(J) and (a)(3)(i)(K) are re-designated paragraphs (a)(3)(i)(I) and(a)(3)(i)(J) respectively; and

b. Paragraphs (a)(3)(xi), (a)(3)(xii), and (a)(14) are added to read as follows:

§ 2.24 Assistant Secretary for Administration.

(a) * * *

(3) * * *

(xi) Serve as a USDA Environmental Executive responsible for coordinating waste prevention; recycling; and the procurement, acquisition, and use of recycled products and environmentally preferable products, including biobased products, and services pursuant to Executive Order 13101 (dual assignment with the Under Secretary for Research, Education, and Economics).

(xii) Provide administrative support to the USDA Hazardous Materials Management Group.

* * * * *

(14) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Present, in coordination with the Chairman of the USDA Hazardous Materials Policy Council, the USDA Hazardous Waste Management Appropriation budget request to the Office of Management and Budget and to Congress.

* * * * *

Subpart D—Delegations of Authority to the Other General Officers and Agency Heads

9. In § 2.31, paragraph (p) is added to read as follows:

§ 2.31 General Counsel.

* * * * *

(p) Serve on the USDA Hazardous Materials Policy Council.

* * * * *

Subpart J—Delegations of Authority By the Under Secretary for Natural Resources and Environment

10. In § 2.60, paragraph (a)(35) is revised to read as follows:

§ 2.60 Chief, Forest Service.

(a) * * *

(35) Represent USDA on Regional Response Teams on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*), the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*), the Oil Pollution Act (OPA), as amended (33 U.S.C. 2701 *et seq.*), Executive Order 12580, 3 CFR, 1987 Comp., p. 193, Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Contingency Plan, 40 CFR Part 300.

* * * * *

Dated: March 1, 2000.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 00–5770 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 225 and 226

RIN 0584–AC82

Modification of the "Vegetable Protein Products" Requirements for the National School Lunch Program, School Breakfast Program, Summer Food Service Program and Child and Adult Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule updates the requirements for using "Vegetable Protein Products" in the National School Lunch Program, School Breakfast Program, Summer Food Service Program, and Child and Adult Care Food Program (the Child Nutrition programs). The major changes are to: rename "Vegetable Protein Products" as "Alternate Protein Products;" remove the limit on the amount of these products that can be used; eliminate the requirement that alternate protein products be specially fortified; and update the test used to determine protein quality. These changes provide menu planners with more flexibility to incorporate these products into their menus along with the traditional protein sources of meat, poultry and seafood.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. William Wagoner or Ms. Janice Fabina, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302 or by telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

What Was Proposed?

On July 20,1999, the U.S. Department of Agriculture (USDA) published a rule in the **Federal Register** (64 FR 38839) proposing to update the requirements for using vegetable protein products in the Child Nutrition Programs. Under the National School Lunch Act (NSLA) and the Child Nutrition Act of 1966 (CNA), the Secretary of Agriculture is authorized to establish minimum nutritional requirements for meals served in the various Child Nutrition Programs administered by FNS. One important element of establishing these nutritional requirements is determining how various foods, such as vegetable protein products, should be credited under the meals patterns established for the Child Nutrition Programs. Section 9(a) of the NSLA (42 U.S.C. 1758 (a)) requires the Secretary to establish minimum nutritional requirements for the National School Lunch Program (NSLP). Section 13(f) of the NSLA (42 U.S.C., 1761(f)) mandates this requirement for the Summer Food Service Program (SFSP), as does section 17(g)(1)(A) of the NSLA (42 U.S.C. 1766(g)(1)(A) for the Child and Adult Care Food Program (CACFP). Section 4(e) of the CNA incorporates this oversight requirement as a central feature of the School Breakfast Program (SBP).

The following were the major modifications that we proposed:

(1) Change the name from vegetable protein products to alternate protein products and remove the requirement that alternate protein products only be of plant origin;

(2) Remove the requirement that vegetable protein products could only constitute 30 percent (by weight) of the meat/meat alternate component of the food-based menu planning approaches;

(3) Remove the fortification requirement; and

(4) Update the protein quality test to the Protein Digestibility Corrected Amino Acid Score (PDCAAS) from the Protein Efficiency Ratio (PER) test.

We proposed to amend the requirements found in Appendix A, entitled "Alternate Foods for Meals-Vegetable Protein Products," to the following Code of Federal Regulation (CFR) Parts: 7 CFR Part 210, for the NSLP; 7 CFR Part 225, for the SFSP; and 7 CFR Part 226, for the CACFP. Appendix A to Part 210 also applies to 7 CFR Part 220, the SBP. For additional background on the history of vegetable protein products in the Child Nutrition programs, please refer to the proposed rule.

How Long Was the Comment Period for the Proposed Rule?

We originally established a 60-day comment period which would have ended on September 20, 1999. However, potential commentors requested an extension of the comment period to allow them more time to review the proposed changes. We extended the comment period until November 19, 1999 in response to these requests. The extension notice was published in the **Federal Register** on August 25, 1999 (64 FR 46319).

How Many Comments Were Received?

We received 635 comment letters, including a number of e-mails. The following is a breakdown of the types of commentors:

Commentor classification	Number
General Public*	573
State and Local Food Service Including Child Care Providers	17
Food Industry	26
Advocates	19
Total	635

*Includes unaffiliated health professionals.

The vast majority of commentors (619) approved of the proposed changes. The largest group of commentors that approved of the changes in their entirety (355) made the following points:

1. The changes would increase flexibility for menu planners;

2. The current requirements severely restricted the use of vegetable protein products (VPP) in the Child Nutrition programs; and

3. The changes will provide healthful alternatives to meat products. These commentors also noted that the changes are good for consumers, animals, the environment and those administering the Child Nutrition programs, especially child care providers.

Specific comments are discussed in detail below.

What Did Commentors Say About Changing the Name of VPP?

We proposed removing the requirement that protein products used in the Child Nutrition programs be derived only from plant protein sources. Because of this, we proposed using the term "Alternate Protein Products" (APP) instead of "Vegetable Protein Products" (VPP) to indicate that such products are no longer only vegetable-based.

Only 26 comment letters specifically addressed this provision. Of these, 24 commentors opposed the name change, while two commentors supported it, saying that the term "APP" enhances flexibility and recognizes changes in food technology. Those commentors who opposed the name change felt it was not necessary because there are only two possible sources of protein products that are not vegetable-based that could be used in the Child Nutrition programs, i.e., fruit puree and whey protein. Commentors stated that these sources were the only products that could meet the requirements of the protein quality test used. Commentors also felt that these particular products would not be used in sufficient quantities to meet the protein requirements.

We proposed the name change to indicate that the meat alternate requirement could be met with protein sources other than those that were vegetable-based. Also, we did not want to restrict the use of any alternate protein products that might be developed in the future that were not vegetable-based. We believe the term Alternate Protein Products, as opposed to the term Vegetable Protein Products, most accurately reflects the fact that protein is available from a variety of sources including vegetable-based sources. Therefore, we are adopting the name change as proposed without changes.

What Did Commentors Say About Removing the Limit on the Amount of VPP?

We proposed removing the requirement that that VPP could only constitute up to 30 percent of the meat/meat alternate component of the food-based menu planning approaches used in all of the Child Nutrition programs. One reason for this proposed change was because that limitation did not apply to menus planned under the nutrient standard menu planning approaches used in the NSLP and the SBP, thus there was an inconsistency among the menu planning approaches for the school meals programs. Another reason was that the 30 percent limitation was based on the best data available at the time that regulation was issued in 1983. That data indicated that VPP appeared to inhibit the absorption of iron and other nutrients. This is no longer supported by current research.

Only a few comment letters (26) mentioned this issue; 17 supported removing the limit while 9 opposed it. The following concerns were raised by those who opposed the removing the limit:

1. Use of 100% APP indicates that USDA feels such products are the nutritional equivalent to meat and the commentors feel that the protein quality of meat and that of APP are not the same; and

2. If 100% APP products are offered, the commentors felt menu planners must also offer meat, seafood or poultry in addition for those who do not want the menu items that only consist of APP.

In response to comments about varying levels of protein quality, please note we are maintaining the same protein quality test currently in the regulations which requires that protein quality be at least 80 percent that of casein (milk protein). This is the established benchmark for a high quality protein product used by USDA-sponsored programs for the past several years. We are also maintaining the requirement that APP used in the CN programs be at least 18% protein by weight, the level of protein readily available in meat, poultry or seafood. Given these two standards, APP used in the CN programs is limited to products that provide a level and quality of protein that is similar to that provided by the traditional sources of the meat component.

In response to comments about requiring menu planners to offer choices other than those with 100% APP, we are committed to giving menu planners flexibility to meet the various needs of the participants in the various Child Nutrition programs. Many factors go into menu planning for our programs—preferences of those consuming the meals, economics, availability of foods, and the need to meet program meal patterns as well as the nutrition standards, including the Dietary Guidelines for Americans' recommendation that people consume a variety of foods. We stress the importance of schools and institutions offering choices if possible. We also support adoption of the offer versus serve (OVS) provision in the school meals programs which allows children to select the foods they prefer and decline foods they would not eat. For the NSLP, OVS is required (7 CFR 210.10(k)) for senior high school students and is strongly encouraged for younger children. Given these factors, we believe that menu planners will provide choices and variety to the greatest extent possible and that they will use APP appropriately and will take into account the varied dietary demands of *all* program participants.

We are adopting the proposed change to eliminate the limit on use of APP in the Child Nutrition programs as final without change. This decision reflects current research on APP and seeks to enhance the flexibility of menu planners in finding ways to reduce fat and saturated fat in the meals they plan as well as the need to meet the increasingly varied dietary demands of students.

How Will Program Participants Be Able To Identify Menu Items With APP?

Some commentors suggested that we establish a different category for menu items that contain more than 30% APP. These commentors also stated that such products should not be considered as beef, pork, poultry, or fish. Other commentors were concerned that, particularly given food allergies and the special dietary needs of program participants such as vegetarians, the source of the APP be clearly identified. Some commentors suggested that we require a label showing the percentage and source of the APP in a product and whether the product fulfills the requirement for a meat alternate product (e.g., does the product contain more breading than APP?). Other commentors were concerned that APP offered in the Child Nutrition programs be easily identified at the point of service and for parents of children participating in the various programs.

We proposed in the July, 1999, rulemaking that manufacturers document that their products meet the following requirements in order to assure that schools and institutions can determine if the APP used in the Child Nutrition programs meet the protein quality standards:

1. The APP is processed so that some portion of the non-protein constituents of the food is removed;

2. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS); and

3. The APP contains at least 18 percent protein by weight when fully hydrated or formulated.

We did not specify the form of documentation required. For example, the manufacturer could provide

specification sheets, could provide a letter attesting that the requirements were met, or could put a label on the product. While we want to assure that the APP used in the Child Nutrition programs meet our nutritional standards, we do not want to impose a burden on manufacturers to individually label their products unless they choose to do so.

Food product labeling is regulated by both the Food Safety Inspection Service (FSIS) in USDA and by the Food and Drug Administration (FDA) in the Department of Health and Human Services. FSIS labeling regulations are found at Title 9 of the CFR and cover meat, poultry and egg products. FDA labeling requirements are found at Title 21 of the CFR and cover all other non-meat foods such as shellfish, fruit, milk and grain products. Current FSIS and FDA rules require food manufacturers to list, by common name, the ingredients used in the formulation of processed food products on the label for that product. For FSIS, these provisions are found at 9 CFR 317.2f and 9 CFR 381.118; for FDA, at 21 CFR 101.3. Information about the source or type of protein will be clearly indicated in the ingredient listing, such as whey protein concentrate or hydrolyzed soy protein. However, according to FSIS and FDA regulations, percent labeling is voluntary. FNS cannot modify the rules governing labeling of meat and non-meat products since the authority for labeling rests with FSIS and FDA.

Another method available to schools and institutions to determine how to credit APP in the programs comes through the Child Nutrition (CN) labeling program. The CN labeling program (7 CFR Part 210, Appendix C) has reviewed labels of products containing VPP since 1984 and will continue to do so for APP labels. The CN labeling program, which is widely used by the food manufacturers who market their products to the CN programs, provides information on how products are to be credited under the meal patterns established for each program. In this way, schools and institutions have yet another way to determine the content and creditability of the APP items they use.

With regard to the point of service menu labeling, FNS encourages program administrators to provide menus that accurately describe menu items served to students and their parents to assist them in making choices that meet their dietary demands. Clear point of service menu labeling can assist students and their parents in making menu selections consistent with their dietary needs. We also note that children with special dietary needs due to a disability such as a life-threatening reaction to certain foods or ingredients must be accommodated in accordance with §§ 210.10(g)(1), 210.10a(i)(1), 220.8(b)(1), 220.8a(f), 225.16(g)(4) and 226.20(h).

What Did Commentors Say About Eliminating the Fortification Requirement?

Another proposed change was to remove the requirement that APP used in the Child Nutrition programs be fortified with iron and zinc. At the time the original requirements on VPP were established, fortification with iron and zinc was an additional safeguard to further assure that children received adequate nutrients. We did this so that the fully hydrated VPP was similar to meat in both nutrients and the bioavailability of minerals. However, current scientific research indicates that by eating a variety of foods, mineral intake is adequate and our concern is that unrestricted use of *fortified* APP could actually result in excessive intakes of iron and zinc. Eliminating the requirement on fortification allows the food industry to directly market their existing products to schools and sponsors as they would no longer need to develop and maintain a special product exclusively for the CN programs.

Some commentors addressed this proposed change, saying that they were concerned with the elimination of the fortification requirement because of the difficulty in obtaining the necessary nutrients when an entire food category, such as meat, is removed from the diet. They felt that the fortification requirement should be retained especially as they noted that about two-thirds of APP products they surveyed informally were fortified with iron and zinc, suggesting that a fortification requirement is not overly burdensome.

Because we are removing the limit on the use of APP and because of the current research on minerals and total diet, we feel eliminating the specific fortification requirement is warranted. We feel that the food industry is in the best position to determine if and to what extent APP should be fortified based on available research and the needs and preferences of consumers. Further, current data indicates that APP without any special fortification is equivalent to other meat/meat alternates in terms of the nutrients they supply. Also, the School Nutrition Dietary Assessment Study, issued in 1993, showed that school meals exceeded the minimum Recommended Dietary Allowances for both iron and zinc. All meals served in the Child Nutrition programs must meet certain nutrition standards. For school meals, the Dietary Guidelines for Americans must be met and the meals must provide minimum levels of the Recommended Dietary Allowances for specific nutrients, including iron, as well. The meal patterns for all of the programs are designed to provide children and adult participants with a variety of foods and minimum levels of calories and other nutrients. Therefore, we are adopting this provision as proposed without change.

What Was Proposed About Protein Quality?

As we discussed earlier, the proposed rule did not propose any changes to the requirement that the biological quality of the protein in the APP be at least 80 percent that of casein (milk protein). As indicated earlier, this is an established benchmark for high quality protein products allowed by the Child Nutrition Programs. We also did not propose to change the requirement that the protein content of the fully hydrated APP be a minimum of 18 percent by weight. We received only 4 comments on these provisions, all of which supported the protein quality requirements. We are adopting these provisions as proposed without change.

We also proposed to replace the protein quality test, Protein Efficiency Ratio (PER), with the Protein Digestibility Corrected Amino Acid Score (PDCAAS) test. FDA now requires use of the PDCAAS test for all foods intended for all ages except for infants. We proposed use of the PDCAAS test to achieve consistency with FDA regulations and to reflect the latest scientific advances. As discussed in our proposed rule, we are not requiring that the PER test be conducted in determining protein quality of APP for infants since the infant meal pattern is based on specific foods, not the more general food components. Consequently menu planners are unlikely to offer APP to infants.

We received 7 comments on this provision, all of which approved of the change. Therefore, we are incorporating the PDCAAS test into this final regulation as proposed.

What Technical Amendments Were Proposed?

We proposed adding to 7 CFR Part 220, Appendix A, a new section entitled "Alternate Protein Products." We also issued the proposed rule in plain language. We received no comments on either of these changes. Therefore, the proposed language and structure of Appendix A and the addition of the

provisions on APP to Part 220 are adopted as final without change.

We are also amending the Meal Pattern for the various CN programs charts to indicate how APP is credited under the food-based menu planning approaches. This specificity was not needed previously as VPP was blended into other meat/meat alternate products. Because we are removing the 30% limitation, we are making these technical changes in §§ 210.10, 210.10a, 220.8, 220.8a, 225.16, and 226.20. We are also updating the Meal Pattern chart in § 210.10a to reflect the current requirements on offering milk in the lunch program (see 42 U.S.C. 1758 (a)(2)).

We also proposed to make some minor technical amendments to § 210.30, § 215.16, § 220.20, § 225.19, and § 226.26. These amendments would update information about addresses and coverage of FNS' regional offices.

Executive Order 12866

This final rule was determined to be non-significant and is not subject to review by the Office of Management and Budget under Executive Order 12866.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This final rule was reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of FNS has certified that this rule will not have a significant economic impact on a substantial number of small entities. First, there are relatively few companies that supply alternate protein products to the Child Nutrition programs. Secondly, removing the fortification requirement eliminates the burden on manufacturers to develop and market a product specially for use in the Child Nutrition programs. Lastly, menu planners would have greater flexibility to incorporate alternate protein products into their menus along with the traditional protein sources of meat, poultry and seafood.

Executive Order 12372

The National School Lunch Program, Special Milk Program for Children, and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under No. 10.555, 10.556 and 10.553, respectively. The Child and Adult Care Food Program and the Summer Food Service Program are listed under No. 10.558 and No. 10.559, respectively. Each is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule related notice at 48 FR 29112, June 24, 1983.)

Executive Order 12988

This final rule was reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of the provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by State or local governments and, for disputes involving procurements by State agencies and sponsors, any administrative appeal procedures to the extent required by 7 CFR Part 3016.

For the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR § 210.18(q); (2) school food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR § 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR § 235.11(b)) must follow FNS Administrative Review Process as established pursuant to 7 CFR § 235.11(f).

For the Summer Food Service Program, the administrative procedures are set forth under the following regulations: (1) Program sponsors and food service management companies must follow State agency hearing procedures issued pursuant to 7 CFR § 225.13; and (2) disputes involving procurement by State agencies and sponsors must follow administrative appeal procedures to the extent required by 7 CFR § 225.17 and 7 CFR Part 3015.

For the Child and Adult Care Food Program, the administrative procedures are set forth under the following regulations: (1) institution appeal procedures in 7 CFR § 226.6(k); and (2) disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR § 226.22 and 7 CFR 3015.

Paperwork Reduction Act

This final rule contains no new paperwork burdens or information collection requirements which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs—social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

Food and nutrition, Food assistance programs, Grants programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping.

7 CFR Part 220

Children, Food assistance programs, Grant programs—social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

7 CFR Part 225

Food and nutrition, Food assistance programs, Grant programs—health, Infants and children, Labeling,

Reporting and recordkeeping requirements.

7 CFR Part 226

Accounting, Aged, Day care, Food and Nutrition, Food assistance programs, Grant programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 210, 215, 220, 225 and 226 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.10:

a. Revise paragraph (k)(2); and

b. Revise the first sentence in paragraph (k)(3)(i).

The revisions read as follows:

§ 210.10 Nutrition standards for lunches and menu planning methods.

* * * * *

(k) *Food-based menu planning.* * * *

(2) *Minimum quantities.* At a minimum, school food authorities choosing to plan menus using the food-based menu planning alternative shall offer all five required food items in the quantities provided in the following chart:

ENHANCED FOOD-BASED MENU PLANNING-MEAL PATTERN FOR LUNCHES

Food Components and Food Items	Minimum requirements				Option for Grades K–3
	Ages 1–2	Preschool	Grades K–6	Grades 7–12	
Milk (as a beverage)	6 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces
Meat or Meat Alternate (quantity of the edible portion as served):					
Lean meat, poultry, or fish	1 ounce	1½ ounces	2 ounces	2 ounces	1½ ounces.
Alternate protein products [1]	1 ounce	1½ ounces	2 ounces	2 ounces	1½ ounces.
Cheese	1 ounce	1½ ounces	2 ounces	2 ounces	1½ ounces.
Large egg	½	¾	1	1	¾.
Cooked dry beans or peas	¼ cup	⅜ cup	½ cup	½ cup	⅜ cup.
Peanut butter or other nut or seed butters	2 tablespoons	3 tablespoons	4 tablespoons	4 tablespoons	3 tablespoons.
Yogurt, plain or flavored, unsweetened or sweetened.	4 ounces or ½ cup.	6 ounces or ¾ cup.	8 ounces or 1 cup.	8 ounces or 1 cup.	8 ounces or ¾ cup.
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:					
Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds equals1 ounce of cooked lean meat, poultry or fish)..	½ ounce=50%	¾ ounce=50%	1 ounce=50%	1 ounce=50%	¾ ounce=50%.
Vegetable or Fruit: 2 or more servings of vegetables or fruits or both.	½ cup	½ cup	¾ cup plus an extra 1/2 cup over a week [2].	1 cup	¾ cup.
Grains/Breads: Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or 1/2 cup of cooked rice, macaroni, noodles, other pasta products or cereal grains.	5 servings per week [2]—minimum of 1/2 day.	8 servings per week [2]—minimum of 1 per day.	12 servings per week [2]—minimum of 1 per day [3].	15 servings per week [2]—minimum of 1 per day [3].	10 servings per week [2]—minimum of 1 per day [3].

[1] Must meet the requirements in appendix A of this part.
[2] For the purposes of this chart, a week equals five days.
[3] Up to one grains/breads serving per day may be a dessert.

(3) *Meat or meat alternate component.*
* * *

(i) Enriched macaroni with fortified protein as defined in appendix A of this part may be used to meet part of the meat or meat alternate requirement when used as specified in appendix A of this part. * * *

* * * * *

3. In § 210.10a:

A. Revise the table in paragraph (c); and

b. Revise the first sentence in paragraph (d)(2)(i).

The revisions read as follows:

§ 210.10a Lunch components and quantities for the meal pattern.

* * * * *

(c) Minimum required lunch quantities. * * *

TRADITIONAL FOOD-BASED MENU PLANNING—MEAL PATTERN FOR LUNCHES

Food Components and Food Items	Minimum Quantities				Recommended Quantities
	Group I, ages 1–2 (preschool)	Group II, ages 3–4 (preschool)	Group III, ages 5–8 (K–3)	Group IV, age 9 and older (4–12)	Group V, age 12 and older (7–12)
Milk (as a beverage)	6 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces.
Meat or Meat Alternate (quantity of the edible portion as served):					
Lean meat, poultry, or fish	1 ounce	1½ ounces	1½ ounces	2 ounces	3 ounces.
Alternate protein products[1]	1 ounce	1½ ounces	1½ ounces	2 ounces	3 ounces.
Cheese	1 ounce	1½ ounces	1½ ounces	2 ounces	3 ounces.
Large egg	½	1¾ ounces	1¾ ounces	1 ounces	1½.
Cooked dry beans or peas	¼ cup	⅜ cup	⅜ cup	½cup	¾ cup.
Peanut butter or other nut or seed butters	2 tablespoons	3 tablespoons	3 telephones	4 tablespoons	6 tablespoons.
Yogurt, plain or flavored, unsweetened or sweetened.	4 ounces or ½ cup.	6 ounces or ¾ cups.	6 ounces or ¾ cup.	8 ounces or 1 cup.	12 ounces or 1½.
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:					
Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish).	½ ounce = 50%	¾ ounce = 50%	¾ ounce = 50%	1 ounce = 50%	1½ ounce = 50%.
Vegetable or Fruit: 2 or more servings of vegetables or fruits or both.	½ cup	½ cup	½ cup	¾ cup	¾ cup.
Bread or Bread Alternate: (Servings per week): Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains.	5 servings per week[2]—minimum of ½ day.	8 servings per week[2]—minimum of 1 per day.	8 servings per week[2]—minimum of 1 per day.	8 servings per week[2]—minimum of 1 per day.	10 servings per week[2]—minimum of 1 per day.

[1] Must meet the requirements in appendix A of this part.
[2] For the purposes of this chart, a week equals five days.

(d) *Lunch components.* * * *

(2) *Meat or meat alternate.* * * *

(i) Enriched macaroni with fortified protein as defined in appendix A of this part may be used to meet part of the meat or meat alternate requirement when used as specified in appendix A of this part. * * *

* * * * *

4. In § 210.30, revise paragraphs (b), (c), and (f) to read as follows:

§ 210.30 Regional office addresses.

* * * * *

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 61 Forsyth Street SW, Room 8T36, Atlanta, Georgia 30303.

(c) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 77 West Jackson Boulevard, 20th Floor, Chicago, Illinois 60604–3507.

* * * * *

(f) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 300 Corporate Boulevard, Robbinsville, New Jersey 08691–1598.

* * * * *

5. In Appendix A to Part 210, entitled Alternate Foods for Meals, revise the undesignated center heading "Enriched Macaroni Products with Fortified Protein" to read "I. Enriched Macaroni Products with Fortified Protein."

6. In Appendix A to Part 210, entitled Alternate Foods for Meals, revise the section entitled "Vegetable Protein Products" to read as follows:

Appendix A to Part 210—Alternate Foods for Meals

* * * * *

II. Alternate Protein Products

A. What Are the Criteria for Alternate Protein Products Used in the National School Lunch Program?

1. An alternate protein product used in meals planned under the food-based menu planning approaches in § 210.10(k) or § 210.10a, whichever is applicable, must meet all of the criteria in this section.

2. An alternate protein product whether used alone or in combination with meat or other meat alternates must meet the following criteria:

a. The alternate protein product must be processed so that some portion of the non-protein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.

b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).

c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. ("When hydrated or formulated" refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).

d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs A2. a through c of this appendix.

e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.

f. For an alternate protein product mix, manufacturers should provide information on:

(1) the amount by weight of dry alternate protein product in the package;

(2) hydration instructions; and

(3) instructions on how to combine the mix with meat or other meat alternates.

B. How Are Alternate Protein Products Used in the National School Lunch Program?

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in § 210.10 or § 210.10a, whichever is applicable.

2. The following terms and conditions apply:

a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

C. How Are Commercially Prepared Products Used in the National School Lunch Program?

Schools, institutions, and service institutions may use a commercially prepared meat or meat alternate product combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. The authority citation for part 215 continues to read as follows:

Authority: 42 U.S.C. 1772, 1779.

2. In § 215.16, revise paragraphs (b), (c), (d), and (f) to read as follows:

§ 215.16 Program information.

* * * * *

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 300 Corporate Boulevard, Robbinsville, New Jersey 08691–1598.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 61 Forsyth Street SW., Room 8T36, Atlanta, Georgia 30303.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 77 West Jackson Boulevard, 20th Floor, Chicago, Illinois 60604–3507.

* * * * *

(f) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, The Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for 7 CFR part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.8, revise paragraph (g)(2) to read as follows:

§ 220.8 Nutrition standards for breakfast and menu planning alternatives.

* * * * *

(g) *Food-based menu planning.* * * *

(2) *Minimum quantities.* At a minimum, schools shall serve meals in the quantities provided in the following chart:

MINIMUM REQUIREMENTS—ENHANCED FOOD-BASED MENU PLANNING ALTERNATIVE FOR BREAKFASTS

Food component/item	Required for			Option for Grades 7–12
	Ages 1–2	Preschool	Grades K–12	
Milk (Fluid) (As a beverage, on cereal or both)	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces
Juice/Fruit/Vegetable: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice.	¼ cup	½ cup	½ cup	½ cup
Select one serving from each of the following components or two from one component:				
Grains/breads (one of the following or an equivalent combination):				
Whole-grain or enriched bread	½ slice	½ slice	1 slice	1 slice.
Whole-grain or enriched biscuit, roll, muffin, etc	½ serving	½ serving	1 serving	1 serving.
Whole-grain, enriched or fortified cereal	¼ cup or ⅓ ounce.	⅓ cup or ½ ounce.	¾ cup or 1 ounce	¾ cup or 1 ounce plus an additional serving of one of the Grains/ Breads above.
Meat or Meat Alternates:				
Meat/poultry or fish	½ ounce	½ ounce	1 ounce	1 ounce.
Alternate protein products [1]	½ ounce	½ ounce	1 ounce	1 ounce.
Cheese	½ ounce	½ ounce	1 ounce	1 ounce.
Egg (large)	½	½	½	½.
Peanut butter or other nut or seed butters	1 tablespoon	1 tablespoon	2 tablespoons	2 tablespoons.
Cooked dry beans and peas	2 tablespoons	2 tablespoons	4 tablespoons	4 tablespoons.
Nuts and/or seeds (as listed in program guidance [2]	½ ounce	½ ounce	1 ounce	1 ounce.
Yogurt, plain or flavored, unsweetened or sweetened	2 ounces or ¼ cup.	2 ounces or ¼ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.

[1] Must meet the requirements in appendix A of this part.

[2] No more than 1 ounce of nuts and/or seeds may be served in any one breakfast.

* * * * *

3. In § 220.8a, revise paragraph (a)(2) to read as follows:

§ 220.8a Breakfast components and quantities for the meal pattern.

(a) * * *

(2) *Minimum required breakfast quantities.* Except as otherwise provided in this section and in any appendix to this part, a breakfast eligible for Federal cash reimbursement shall contain at least the per breakfast minimum quantities of each item for the age and grade levels specified in the following table:

MINIMUM REQUIREMENTS—TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE FOR BREAKFASTS

Food component/items	Ages 1–2	Ages 3, 4 and 5	Grades K–12
Milk (Fluid) (As a beverage, on cereal or both)	½ cup	¾ cup	½ pint
Juice/Fruit/Vegetable:[1] Fruit and/or vegetable; or full-strength fruit juice or vegetable juice.	¼ cup	½ cup	½ cup
Select one serving from each of the following components or two from one component:			
Bread/Bread Alternate (one of the following or an equivalent combination):[2]			
Whole-grain or enriched bread	½ slice	½ slice	1 slice.
Whole-grain or enriched biscuit, roll, muffin, etc	½ serving	½ serving	1 serving.
Whole-grain, enriched or fortified cereal	¼ cup or ⅓ ounce	⅓ cup or ½ ounce	¾ cup or 1 ounce.
Meat or Meat Alternates:			
Meat/poultry or fish	½ ounce	½ ounce	1 ounce.
Alternate protein products.[3]	½ ounce	½ ounce	1 ounce.
Cheese	½ ounce	½ ounce	1 ounce.
Egg (large)	½	½	½.
Peanut butter or other nut or seed butters	1 tablespoon	1 tablespoon	2 tablespoons.
Cooked dry beans and peas	2 tablespoons	2 tablespoons	4 tablespoons.
Nuts and/or seeds (as listed in program guidance).[4]	½	½ ounce	1 ounce.
Yogurt, plain or flavored, unsweetened or sweetened	2 ounces or ¼ cup	2 ounces or ¼ cup	4 ounces or ½ cup.

[1] A citrus juice or fruit or a fruit or vegetable or juice that is a good source of vitamin C (See Menu Planning Guide for School Food Service (PA–1260) is recommended to be offered daily.
[2] See Food Buying Guide for Child Nutrition Programs, PA–1331 (1984) for serving sizes for breads and bread alternates.
[3] Must meet the requirements in appendix A of this part.
[4] No more than 1 ounce of nuts and/or seeds may be served in any one meal.

* * * * *

4. In § 220.20, revise paragraphs (a) through (e) to read as follows:

§ 220.20 Program information.

* * * * *

(a) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 300 Corporate Boulevard, Robbinsville, New Jersey 08691–1598.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 161 Forsyth Street SW., Room 8T36, Atlanta, Georgia 30303.

(c) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 77 West Jackson Boulevard, 20th Floor, Chicago, Illinois 60604–3507.

(d) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242.

(e) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

* * * * *

5. In Appendix A to Part 220, entitled Alternate Foods for Meals, revise the undesignated center heading "Formulated Grain-Fruit Products" to read "I. Formulated Grain-Fruit Products".

6. Add a new section to Appendix A of Part 220, entitled "II. Alternate Protein Products" following the table at the end of the Appendix A to read as follows:

Appendix A to Part 220—Alternate Foods for Meals

* * * * *

II. Alternate Protein Products

A. What Are the Criteria for Alternate Protein Products Used in the School Breakfast Program?

1. An alternate protein product used in meals planned under the food-based menu planning approaches in § 220.8(g) or § 220.8a, whichever is applicable, must meet all of the criteria in this section.

2. An alternate protein product whether used alone or in combination with meat or other meat alternates must meet the following criteria:

a. The alternate protein product must be processed so that some portion of the non-protein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.

b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).

c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. ("When hydrated or formulated" refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).

d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs A.2. a through c of this appendix.

e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.

f. For an alternate protein product mix, manufacturers should provide information on:

(1) The amount by weight of dry alternate protein product in the package;

(2) Hydration instructions; and

(3) instructions on how to combine the mix with meat or other meat alternates.

B. How Are Alternate Protein Products Used in the School Breakfast Program?

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in § 220.8 or § 220.8a, whichever is applicable. The following terms and conditions apply:

a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

C. How Are Commercially Prepared Products Used in the School Breakfast Program?

Schools, institutions, and service institutions may use a commercially prepared meat or other meat alternate products combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for 7 CFR part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

2. In 225.16:

a. Revise paragraph (d) in its entirety; and

b. Revise the first sentence of paragraph (e)(3).

The revisions read as follows:

§ 225.16 Meal service requirements.

* * * * *

(d) *Meal patterns.* The meal requirements for the Program are designed to provide nutritious and well-balanced meals to each child. Sponsors shall ensure that meals served meet all of the requirements. Except as otherwise provided in this section, the following tables present the minimum requirements for meals served to children in the Program. Children age 12 and up may be served larger portions based on the greater food needs of older boys and girls.

(1) *Breakfast.* The minimum amount of food components to be served as breakfast are as follows:

Food components	Minimum amount
Vegetables and Fruits	
Vegetable(s) and/or fruit(s) or	½ cup.[1]
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruits(s), and juice	½ cup (4 fluid ounces).
Bread and Bread Alternates[2]	
Bread or	1 slice.
Cornbread, biscuits, rolls, muffins, etc. or	1 serving.[3]
Cold dry cereal or	¾ cup or 1 ounce.[4]
Cooked cereal or cereal grains or	½ cup.
Cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate	½ cup.
Milk[5]	
Milk, fluid	1 cup (½ pint, 8 fluid ounces).
Meat and Meat Alternates (Optional)	
Lean meat or poultry or fish or	1 ounce.
Alternate protein product6 or	1 ounce.
Cheese or	1 ounce.
Egg (large) or	½.
Cooked dry beans or peas or	½ cup.
Peanut butter or an equivalent quantity of any combination of meat/meat alternate or	2 tablespoons.
Yogurt, plain or flavored, unsweetened or sweetened	4 ounces or ½ cup.

[1] For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.
[2] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.
[3] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.
[4] Either volume (cup) or weight (ounces), whichever is less.
[5] Milk shall be served as a beverage or on cereal or used in part for each purpose.
[6] Must meet the requirements in appendix A of this part.

(2) *Lunch or supper.* The minimum amounts of food components to be served as lunch or supper are as follows:

Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or poultry or fish or	2 ounces.
Alternate protein products[1] or	2 ounces.

Food components	Minimum amount
Cheese or	2 ounces.
Egg (large) or	1.
Cooked dry beans or peas or	½ cup.[2]
Peanut butter or soynut butter or other nut or seed butters or	4 tablespoons.
Peanuts or soynuts or tree nuts or seed[3] or	1 ounce=50%.[4]
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	8 ounces or 1 cup.
Vegetables and Fruits	
Vegetable(s) and/or fruit(s)[5]	¾ cup total.
Bread and Bread Alternatives[6]	
Bread or	1 slice.
Cornbread, biscuits, rolls, muffins, etc. or	1 serving.[7]
Cooked pasta or noodle products or	½ cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate	½ cup.
Milk	
Milk, fluid, served as a beverage	1 cup (½ pint, 8 fluid ounces).

[1] Must meet the requirements of appendix A of this part.
[2] For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.
[3] Tree nuts and seeds that may be used as meat alternate are listed in program guidance.
[4] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purposes of determining combinations, 1 ounce of nuts or seeds is equal to 1 ounce of cooked lean meat, poultry or fish.
[5] Serve 2 or more kinds of vegetable(s) and/or fruits or a combination of both. Full strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
[6] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.
[7] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.

(3) *Snacks.* The minimum amounts of food components to be served as snacks are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or poultry or fish or	1 ounce.
Alternate protein products[1] or	1 ounce.
Cheese or	1 ounce.
Egg (large) or	½.
Cooked dry beans or peas or	¼ cup[2].
Peanut butter or soynut butter or other nut or seed butters or	2 tablespoons.
Peanuts or soynuts or tree nuts or seeds[3] or	1 ounce.
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	4 ounce or ½ cup.
Vegetables and Fruits	
Vegetable(s) and/or fruit(s) or	¾ cup.
Full-strength vegetable or fruit juice or an equivalent quantity or any combination of vegetable(s), fruits(s) and juice	¾ cup (6 fluid ounces).
Bread and Bread Alternates[4]	
Bread or	1 slice.
Cornbread, biscuits, rolls, muffins, etc. or	1 serving.[5]
Cold dry cereal or	¾ cup or 1 ounce.[6]
Cooked cereal or	½ cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate	½ cup.
Milk[7]	
Milk, fluid	1 cup (½ pint, 8 fluid ounces).

[1] Must meet the requirements in appendix A of this part.
[2] For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.
[3] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

Food components	Minimum amount

[4] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.
[5] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.
[6] Either volume (cup) or weight (ounces), whichever is less.
[7] Milk should be served as a beverage or on cereal, or used in part for each purpose.

* * * * *

(e) *Meat or meat alternate.* * * *

(3) Enriched macaroni with fortified protein may be used to meet part but not all of the meat/meat alternate requirement. * * *

* * * * *

3. In § 225.19, revise paragraphs (a), (b), (c), (d), and (g) to read as follows:

§ 225.19. Regional office addresses.

* * * * *

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 10 Causeway Street, Room 501, Boston, MA 02222–1065.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 300 Corporate Boulevard, Robbinsville, NJ 08691–1598.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 61 Forsyth Street, SW., Room 8T36, Atlanta, GA 30303.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 77 Jackson Boulevard, 20th Floor, Chicago, IL 60604–3507.

* * * * *

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearney Street, Room 400, San Francisco, CA 94108.

4. Revise Appendix A to Part 225, entitled Alternate Foods for Meals, to read as follows:

Appendix A to Part 225—Alternate Foods for Meals

Alternate Protein Products

A. What Are the Criteria for Alternate Protein Products Used in the Summer Food Service Program?

1. An alternate protein product used in meals planned under the provisions in § 225.16 must meet all of the criteria in this section.

2. An alternate protein product whether used alone or in combination with meat or other meat alternates must meet the following criteria:

a. The alternate protein product must be processed so that some portion of the non-protein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.

b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).

c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. ("When hydrated or formulated" refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).

d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs A. 2. a through c of this appendix.

e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.

f. For an alternate protein product mix, manufacturers should provide information on:

(1) The amount by weight of dry alternate protein product in the package;

(2) Hydration instructions; and

(3) Instructions on how to combine the mix with meat or other meat alternates.

B. How Are Alternate Protein Products Used in the Summer Food Service Program?

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in § 225.20.

2. The following terms and conditions apply:

a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

C. How Are Commercially Prepared Products Used in the Summer Food Service Program?

Schools, institutions, and service institutions may use a commercially prepared meat or meat alternate products combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for 7 CFR part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765, and 1766).

2. In § 226.20:

a. Revise the first sentence of paragraph (a)(2)(ii)(A); and

b. Revise paragraph (c) in its entirety.

The revisions read as follows:

§ 226.20 Requirements for meals.

(a) * * *

(2) * * *

(ii)(A) Lean meat, poultry or fish; alternate protein products; or cheese; or an egg; or cooked dry beans or peas; or peanut butter; or any combination of these foods. * * *

* * * * *

(c) *Meal patterns for children age one through 12 and adult participants.* When individuals over age one participate in the Program, the total amount of food authorized in the meal patterns set forth below shall be provided in order to qualify for reimbursement.

(1) *Breakfast.* The minimum amount of food components to be served as breakfast as set forth in paragraph (a)(1) of this section are as follows:

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12[1]	Adult participants
Milk, fluid	½ cup[2]	¾ cup	1 cup	1 cup.[2]
Vegetables and Fruits or	¼ cup	½ cup	½ cup	½ cup.
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	¼ cup	½ cup	½ cup	½ cup.
Bread and Bread Alternates[3]				
Bread or	½ slice	½ slice	1 slice	2 slices (servings).
Cornbread, biscuits, rolls, muffins, etc.[4] or	½ serving	½ serving	1 serving	2 servings.
Cold dry cereal[5] or	¼ cup or ⅓ ounce.	⅓ cup or ½ ounce.	¾ cup or 1 ounce	1½ cup or 2 ounces.
Cooked cereal or	¼ cup	¼ cup	½ cup	1 cup.
Cooked pasta or noodle products or	¼ cup	¼ cup	½ cup	1 cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup	1 cup.

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[3] Bread, pasta or noodle products, and cereal grains, shall be whole grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole grain or enriched meal or flour; cereal shall be whole grain or enriched or fortified.
[4] Serving sizes and equivalents to be published in guidance materials by FNS.
[5] Either volume (cup) or weight (ounces) whichever is less.

(2) *Lunch.* The minimum amount of food components to be served as lunch as set forth in paragraph (a)(2) of this section are as follows:

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12[1]	Adult participants
Milk, fluid	½ cup[2]	¾ cup	1 cup	1 cup[2].
Vegetables and Fruits[3]				
Vegetables(s) and/or fruit(s)	¼ cup total	½ cup total	¾ cup total	1 cup total.
Bread and Bread Alternates[4]				
Bread or	½ slice	½ slice	1 slice	2 slices (servings).
Cornbread, biscuits, rolls, muffins, etc.[5] or	½ serving	½ serving	1 serving	2 servings.
Cooked pasta or noodle products or	¼ cup	¼ cup	½ cup	1 cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup	1 cup.
Meat and Meat Alternates				
Lean meat or poultry or fish[6] or	1 ounce	1½ ounces	2 ounces	2 ounces.
Alternate protein products[7] or	1 ounce	1½ ounces	2 ounces	2 ounces.
Cheese or	1 ounce	1½ ounces	2 ounces	2 ounces.
Egg (large) or	½	¾	1	1.
Cooked dry beans or peas or	¼ cup	⅜ cup	½ cup	½ cup.
Peanut butter or soynut butter or other nut or seed butters or.	2 tablespoons	3 tablespoons	4 tablespoons	4 tablespoons.
Peanuts or soynuts or tree nuts or seeds[8] or	½ ounce[9]=50%	¾ ounce[9]=50%	1 ounce[9]=50%	1 ounce[9]=50%.
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	4 ounces or ½ cup.	6 ounces or ¾ cup.	8 ounces or 1 cup	8 ounces or 1 cup.

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[3] Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
[4] Bread, pasta or noodle products, and cereal grains, shall be whole grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole grain or enriched meal or flour.
[5] Serving sizes and equivalents to be published in guidance materials by FNS.
[6] Edible portion as served.
[7] Must meet the requirements in appendix A of this part.
[8] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.
[9] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purpose of determining combinations, 1 ounce of nuts or seeds is equal to 1 ounce of cooked lean meat, poultry, or fish.

(3) *Supper.* The minimum amount of food components to be served as supper as set forth in paragraph (a)(3) of this section are as follows:

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12[1]	Adult participants
Milk, fluid	½ cup[2]	¾ cup[2]	1 cup	1 cup.

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 [1]	Adult participants
Vegetables and Fruits [3]				
Vegetables(s) and/or fruit(s)	¼cup total	½ cup total	¾ cup total	1 cup total.
Bread and Bread Alternates [4]				
Bread or	½ slice	½ slice	1 slice	2 slices (servings).[5]
Cornbread, biscuits, rolls, muffins, etc.[5] or	½ serving	½ serving	1 serving	2 servings.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup	1 cup.
Meat and Meat Alternates				
Lean meat or poultry or fish [6] or	1 ounce	1½ ounces	2 ounces	2 ounces.
Alternate protein products [7] or	1 ounce	1½ ounces	2 ounces	2 ounces.
Cheese or	1 ounce	1½ ounces	2 ounces	2 ounces.
Egg (large) or	½	¾	1	1.
Cooked dry beans or peas or	¼ cup	⅜ cup	½ cup	½ cup.
Peanut butter or soynut butter or other nut or seed butters or.	2 tablespoons	3 tablespoons	4 tablespoons	4 tablespoons.
Peanuts or soynuts or tree nuts or seeds [8] or	½ ounce [9]=50%	¾ ounce [9]=50%	1 ounce [9]=50%	1 ounce [9]=50%.
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	4 ounces or ½ cup.	6 ounces or ¾ cup.	8 ounces or 1 cup	8 ounces or 1 cup.

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[3] Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
[4] Bread, pasta or noodle products, and cereal grains, shall be whole grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole grain or enriched meal or flour.
[5] Serving sizes and equivalents to be published in guidance materials by FNS.
[6] Edible portion as served.
[7] Must meet the requirements in appendix A of this part.
[8] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.
[9] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purpose of determining combinations, 1 ounce of nuts or seeds is equal to 1 ounce of cooked lean meat, poultry, or fish.

(4) *Supplemental food.* The minimum amount of food components to be served as supplemental foods as set forth in paragraph (a)(4) of this section are as follows. Select two of the following four components. (For children, juice may not be served when milk is served as the only other component.)

Food Components [1]	Age 1 and 2	Age 3 through 5	Age 6 through 12 [2]	Adult participants
Milk, fluid	½ cup	½ cup	1 cup	1 cup.
Vegetables and Fruits				
Vegetables(s) and/or fruit(s) or	½ cup	½ cup	¾ cup	½ cup.
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	½ cup	½ cup	¾ cup	½ cup.
Bread and Bread Alternates [3]				
Bread or	½ slice	½ slice	1 slice	1 slice (serving).
Cornbread, biscuits, rolls, muffins, etc [4] or	½ serving	½ serving	1 serving	1 serving.
Cold dry cereal or	¼ cup or ⅓ ounce.	⅓ cup or ½ ounce.	¾ cup or 1 ounce	¾ cup or 1 ounce.
Cooked cereal [5] or	¼ cup	¼ cup	½ cup	½ cup.
Cooked pasta or noodle products or	¼ cup	¼ cup	½ cup	½ cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup	½ cup.
Meat and Meat Alternates				
Lean meat or poultry or fish [6] or	½ ounce	1½ ounces	2 ounces	2 ounces.
Alternate protein products [7] or	½ ounce	1½ ounces	2 ounces	2 ounces.
Cheese or	½ ounce	1½ ounces	2 ounces	2 ounces.
Egg (large) or	½	½	½	½.
Cooked dry beans or peas or	⅛ cup	⅛ cup	¼ cup	¼ cup.
Peanut butter or soynut butter or other nut or seed butters or.	1 tablespoon	1 tablespoon	2 tablespoons	2 tablespoons.
Peanuts or soynuts or tree nuts or seeds [8] or	½ ounce	½ ounce	1 ounce	1 ounce.
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	2 ounces or ¼ cup.	2 ounces or ¼ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.

[1] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

[2] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[3] Bread, pasta or noodle products, and cereal grains, shall be whole grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole grain or enriched meal or flour; cereal shall be whole grain or enriched or fortified.
[4] Serving sizes and equivalents to be published in guidance materials by FNS.
[5] Either volume (cup) or weight (ounces) whichever is less.
[6] Edible portion as served.
[7] Must meet the requirements in Appendix A of this Part.
[8] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

* * * * *

3. In § 226.26, revise paragraphs (b), (c), (d), and (g) to read as follows:

§ 226.26 Program information.

* * * * *

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 300 Corporate Boulevard, Robbinsville, NJ 08691–1598.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 61 Forsyth Street, SW., Room 8T36, Atlanta, GA 30303.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 77 Jackson Boulevard, 20th Floor, Chicago, IL 60604–3507.

* * * * *

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearney Street, Room 400, San Francisco, CA 94108.

3. Revise Appendix A to Part 226, entitled Alternate Foods for Meals, to read as follows:

Appendix A to Part 226—Alternate Foods for Meals

Alternate Protein Products

A. *What are the criteria for alternate protein products used in the Child and Adult Care Food Program?*

1. An alternate protein product used in meals planned under the provisions in § 226.20 must meet all of the criteria in this section.

2. An alternate protein product whether used alone or in combination with meat or meat alternate must meet the following criteria:

a. The alternate protein product must be processed so that some portion of the non-protein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.

b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).

c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. ("When hydrated or formulated" refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).

d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs A.2. through c of this appendix.

e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.

f. For an alternate protein product mix, manufacturers should provide information on:

(1) The amount by weight of dry alternate protein product in the package;

(2) Hydration instructions; and

(3) Instructions on how to combine the mix with meat or other meat alternates.

B. *How are alternate protein products used in the Child and Adult Care Food Program?*

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in § 226.20.

2. The following terms and conditions apply:

a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

C. *How are commercially prepared products used in the Child and Adult Care Food Program?*

Schools, institutions, and service institutions may use a commercially prepared meat or meat alternate product combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

Dated: March 2, 2000.

Samuel Chambers, Jr.,

Administrator, Food And Nutrition Service.

[FR Doc. 00–5580 Filed 3–8–00; 8:45 am]
BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV00–955 2 FIR]

Vidalia Onions Grown in Georgia; Changing the Term of Office and Nomination Deadlines

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule changing the term of office for the Vidalia Onion Committee (Committee), and the time for conducting and submitting Committee nominations under the Vidalia onion marketing order. The marketing order regulates the handling of Vidalia onions grown in Georgia and is administered locally by the Committee. This rule continues in effect the change in the term of office from a 24-month period beginning September 16 and ending September 15, to a 24-month period beginning January 1 and ending December 31. It also continues in effect the change in the month for conducting and submitting Committee producer nominations from August to October of each year, and for the public member and alternate member from November 1 to February 15. These changes are expected to improve Committee and program operations.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order

Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the change in the term of office from a 24-month period beginning September 16 and ending September 15, to a 24-month period beginning January 1 and ending December 31. It also continues in effect the change in the times for conducting and submitting Committee producer nominations from August 1 and 15, to October 1 and 15, respectively, each year, and for the public member and alternate member from November 1 to February 15. These changes are expected to improve Committee and program operations.

Section 955.21 of the order provides that the term of office for Committee members and alternates begins on September 16, or such other period as the Committee may recommend and the Secretary approves. In addition, § 955.22 provides that the Committee shall hold or cause to be held not later than August 1 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers for the purpose of designating one nominee for each position as member and for each position as alternate member of the Committee which is vacant, or which is about to become vacant. Nominations for members and alternates are required to be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than August 15 of each year, or by such date as may be specified by the Secretary. That section further provides that the producer members shall nominate the public member and alternate member at the first meeting following the selection of members for a new term of office. The members and alternates serve two-year terms of office and approximately one-half of the total Committee membership is nominated and selected each year. Nominations for the public member and alternate member are required to be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than November 1, or such other date as may be specified by the Secretary.

An interim final rule was published in the **Federal Register** on September 3, 1999 (64 FR 48243), which changed the fiscal period established under the order to a calendar year basis (January 1–December 31) from September 16–September 15 to more closely coincide with the Vidalia onion marketing season. That interim final rule has been adopted, without change, as a final rule published in the **Federal Register** on December 27, 1999 (64 FR 72265). The new fiscal period is specified in § 955.113.

Over the past decade, technological changes in the industry, including the adoption of Controlled Atmosphere (CA) storage of Vidalia onions by three-fourths of the industry handlers, have extended the harvesting and marketing season from April through June to an almost year-round basis. While there are some added storage costs and losses due to shrinkage with CA storage, these costs are more than offset by prices received for Vidalia onions during the holiday season (November and December).

On September 30, 1999, the Committee unanimously recommended that the term of office continue to be established on the same basis as the fiscal period. This rule continues in effect the change in the term of office of Committee members and alternate members from a 24-month period beginning September 16 and ending September 15, to a 24-month period beginning January 1 and ending December 31. The changed term of office is established in § 955.121. Also, for the eight members and alternates whose terms of office were scheduled to end on September 15, 1999, their terms of office continued through December 31, 1999, or until qualified successors are selected. These positions on the Committee were filled by the Secretary on February 24, 2000.

The Committee also recommended changes in the times for conducting and submitting Committee producer member and alternate member nominations to maintain the same approximate nomination deadlines as provided currently. The dates changed from August 1 and August 15 to October 1 and October 15, respectively, and are specified in § 955.122. The deadline for submitting nominations to the Secretary for the public member and alternate changed from November 1 to February 15 to provide the same amount of time for submitting nominations as previously provided after the newly selected Committee's first meeting sometime after January 1. These changes are expected to improve Committee and program operations.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 133 producers of Vidalia onions in the production area and approximately 86 handlers subject to regulation under the

marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on the Georgia Agricultural Statistical Service and committee data, the average price for fresh Vidalia Onions during the 1998–99 season was $15.45 per 50-pound bag, or equivalent and shipments totaled 3,617,017 bags. Many Vidalia onion handlers ship other vegetable products which are not included in the committee data, but would contribute further to handler receipts.

Using the average price, about 97.4 percent of Vidalia Onion handlers could be considered small businesses under the SBA definition. The majority of Vidalia Onion producers and handlers may be classified as small entities.

This rule continues in effect § 955.121 to change the two-year term of office to January 1–December 31 from September 16–September 15 to keep the term of office on a fiscal year basis. It also continues in effect § 955.122 to modify the deadlines when nominations are to be held and reports of the nominations are to be made to the Secretary. The changed deadlines provide the same amount of time for conducting and submitting nominations for producer members and alternates and for the public member and alternate as were provided previously. For producer member and alternate members, the time for conducting nominations was changed from August 1 to October 1, and the time for submitting the nominations to Secretary was changed from August 15 to October 15. The time for submitting the public member and alternate public member nominations was changed from November 1 to February 15 for a new term of office. Also, for the eight Committee members and alternates whose terms of office were scheduled to end on September 15, 1999, their terms of office continued through December 31, 1999, or until qualified successors were selected. These positions on the Committee were filled by the Secretary on February 24, 2000.

The changes in the term of office and the nomination deadlines should not impose any additional costs on large or small firms in the Vidalia onion industry. The changes merely bring the term of office and the nomination deadlines into conformity with the recent change in the fiscal period which was changed to a calendar year basis (January 1–December 31) from September 16–September 15.

The Committee discussed the alternative of leaving the term of office and nomination deadlines as they were. However, the Committee believed that the term of office and nomination deadlines should continue to be based on the fiscal period, which now is established on a calendar year basis.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on December 27, 1999. Copies of the rule were mailed by the Committee's staff to all Committee members and Vidalia onion handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 30-day comment period which ended January 26, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 72267, December 27, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

Accordingly, the interim final rule amending 7 CFR part 955 which was published at 64 FR 72267, December 27, 1999, is adopted as a final rule without change.

Dated: March 6, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–5771 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG 37

List of Approved Spent Fuel Storage Casks: NAC–MPC Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add the NAC International Multi-Purpose Canister cask system to the list of approved spent fuel storage casks. This amendment allows the holders of power reactor operating licenses to store spent fuel in this approved cask system under a general license.

EFFECTIVE DATE: This final rule is effective on April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Merri Horn, telephone (301) 415–8126, e-mail mlh1@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear reactor power sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the

maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule in 10 CFR Part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72 entitled, "Approval of Spent Fuel Storage Casks," containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

This rule will add the NAC International Multi-Purpose Canister cask system to the list of NRC-approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of Subpart L, NAC International (NAC) submitted an application for NRC approval with the Safety Analysis Report (SAR) entitled "Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC–MPC)." The NRC evaluated the NAC submittal and issued a preliminary Safety Evaluation Report (SER) and a proposed Certificate of Compliance (CoC) for the NAC Multi-Purpose Canister (NAC–MPC) cask system. The NRC published a proposed rule in the **Federal Register** (64 FR 45918; August 23, 1999) to add the NAC–MPC cask system to the listing in 10 CFR 72.214. The comment period ended on November 8, 1999. Five comment letters were received on the proposed rule.

Based on NRC review and analysis of public comments, the NRC staff has modified, as appropriate, its proposed CoC and the Technical Specifications (TSs) for the NAC–MPC cask system. The NRC staff has also updated the CoC and removed the bases section from the TSs attached to the CoC to ensure consistency with NRC's format and content. The NRC staff has also modified its SER in response to some of the comments.

The title of the SAR has been revised to delete the revision number so that in the final rule the title of the SAR is "Final Safety Analysis Report for the NAC Multi-Purpose Canister (NAC–MPC) System." This revision conforms the title to the requirements of new 10 CFR 72.248, recently approved by the Commission. The NRC staff has also modified the rule language by changing the word "certification" to "certificate" to clarify that it is the Certificate that expires.

The proposed CoC has been revised to clarify the requirements for making changes to the CoC by specifying that the CoC holder must submit an application for an amendment to the certificate if a change to the CoC, including its appendices, is desired. This revision conforms the change process to that specified in 10 CFR 72.48, as recently approved by the Commission. In addition, other minor, nontechnical changes have been made to the CoC 1025 to ensure consistency with NRC's new standard format and content for CoCs.

The NRC finds that the NAC–MPC cask system, as designed and when fabricated and used in accordance with the conditions specified in its CoC, meets the requirements of 10 CFR Part 72, Subpart L. Thus, use of the NAC–MPC cask system, as approved by the NRC, will provide adequate protection of public health and safety and the environment. With this final rule, the NRC is approving the use of the NAC–MPC cask system under the general license in 10 CFR Part 72, Subpart K, by holders of power reactor operating licenses under 10 CFR Part 50. Simultaneously, the NRC is issuing a final SER and CoC that will be effective on April 10, 2000. Single copies of the CoC and SER are available for public inspection and/or copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Summary of Public Comments on the Proposed Rule

The NRC received five comment letters on the proposed rule. The commenters included two utilities, a public interest group, and two letters from one member of the public. Copies of the public comments are available for review in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20003–1527.

Comments on the NAC–MPC Cask System

The comments and responses have been grouped into nine subject areas: general, radiation protection, accident analysis, welds, design, thermal, structural, technical specifications, and miscellaneous issues. Several of the commenters provided specific comments on the draft CoC, the NRC staff's preliminary SER, and the TSs. To the extent possible, all of the comments on a particular subject are grouped together. The listing of the NAC–MPC cask system within 10 CFR 72.214, "List of approved spent fuel storage casks," has not been changed as a result of the public comments. A review of the comments and the NRC staff's responses follow:

A. General

Comment A.1: One commenter stated that each cask review should be site specific with an Environmental Impact Statement (EIS) and a public hearing. The commenter further stated that the NRC should not be certifying numerous generic cask designs because the waste system in the country lacks standardization and integration.

Response: These comments are beyond the scope of this rulemaking that is focused solely on whether to add a particular cask design, the NAC–MPC cask system, to the list of approved casks. Pursuant to the general license, each licensee must determine whether or not the reactor site parameters are encompassed by the cask design bases considered in the cask SAR and SER. Further, each general licensee must document this determination in accordance with 10 CFR 72.212. The rulemaking process, used by the NRC for generic cask approval, is the regulatory vehicle that provides opportunity for public input.

Comment A.2: One Commenter stated that tiering on past EISs for dry storage is invalid for modern dry cask storage.

Response: The NRC disagrees with the comment. The environmental assessment (EA) and finding of no significant impact (FONSI) prepared as required by 10 CFR Part 51 conform to National Environmental Policy Act (NEPA) procedural requirements. Tiering on past EISs and EAs is a standard process under NEPA. As stated in the Council on Environmental Quality's 40 Frequently Asked Questions, the tiering process makes each EIS/EA of greater use and meaning to the public as the plan or program develops without duplication of the analysis prepared for the previous impact statement.

Comment A.3: One commenter stated that the cask should be built and tested before use at reactors, including the loading and unloading procedures.

Response: The NRC disagrees with the comment. The NAC–MPC storage cask system design has been reviewed by the NRC. The basis of the safety review and findings are identified in the SER and CoC. Testing is normally required when the analytic methods have not been validated or assured to be appropriate and/or conservative. In place of testing, the NRC finds acceptable analytic

conclusions that are based on sound engineering methods and practices. The NRC staff has reviewed the analyses performed by NAC and found them acceptable.

Comment A.4: One commenter objected to the use of the term "transportable" in the SER, SAR and CoC and recommended that the term be removed because the certification is only for storage. In addition the cask cannot be considered a multipurpose cask until both storage and transportation are certified. The commenter further stated that the NRC should review a cask for storage and transport, and issue both certificates at the same time so any changes necessitated in the design can be accounted for in the initial approval. The commenter expressed concern that utilities may end up with loaded casks that cannot be transported.

Response: The NRC disagrees with the comment. The use of the term "transportable" in the SER, SAR, or CoC is descriptive of the intended functionality of the canister. The use of such terminology in a dry storage cask application or an NRC SER/CoC does not represent a certification under 10 CFR Part 71 for the transport of radioactive materials. Further, separate certifications are required for approval of a cask design (or individual components such as a canister) under the provisions of use for 10 CFR Parts 71 and 72. There is no regulatory requirement that the certification be simultaneous. The NRC staff's review schedule depends on applicant submittals and workload considerations. The NRC staff notes that the NRC, on March 25, 1999, approved the NAC–MPC's transportable storage canister and its contents for transport in the NAC–STC cask design (Docket No. 71–9235).

Comment A.5: One commenter stated that the only multi-purpose casks acceptable for the high level repository would be a design that the Office of Civilian Radioactive Waste Management develops and therefore, the cask should not be called a multi-purpose.

Response: The NRC disagrees with the comment. The name or model number given to the cask design is developed by the applicant. The CoC for the NAC–MPC is intended for the interim storage of spent fuel. In the case of the NAC–MPC, the same contents within the Transportable Storage Canister have been approved for transportation. The use of the NAC–MPC cask design for disposal at a high-level waste repository is beyond the scope of this rule. The U.S. Department of Energy (DOE) has not yet made final decisions regarding design or deployment for the cask design to be used in the high-level waste repository.

Comment A.6: One commenter asked TSC to be defined.

Response: TSC stands for Transportable Storage Canister.

Comment A.7: One commenter stated that taking the cask to the pad should not be referred to as transport.

Response: The term "TRANSPORT OPERATIONS" and its associated use is defined in the DEFINITIONS section of the TSs and refers to the on-site movement of a loaded Vertical Concrete Cask (VCC) to the pad. The term is used consistently throughout the TSs and is pertinent only to activities carried out in accordance with the 10 CFR Part 72 CoC. The term is not associated with the offsite transport of spent fuel in accordance with 10 CFR Part 71.

Comment A.8: One commenter stated that dates should be added to some of the references for which the date is missing.

Response: The NRC agrees with the comment. Dates have been added, as appropriate, to the list of references in the SER.

Comment A.9: One commenter asked if the lids, containments, and VCCs were interchangeable, the commenter felt that they should be interchangeable and built to specific criteria.

Response: The NRC agrees with the comment. The specifications to which the storage cask design components are built, including the canister, lids, and vertical concrete casks, are listed in the license drawings contained in Section 1.5 of the SAR. Because all of the components for each cask are built to the same specifications, they are considered interchangeable to that extent.

Comment A.10: One commenter objected to the use of the term "Final" in the title of the SAR because changes will be made. The commenter also objected to the use of "or" instead of "and" in Condition 2 of the CoC because the TSs are part of the CoC.

Response: The use of the term "Final" in the title of the SAR does not imply that changes can not be made. It is indicative that the NRC has approved the design and is consistent with the added regulatory requirement in 10 CFR 72.248 (effective February 1, 2000) to submit a "Final" SAR. The use of the term "or" in Condition 2 is appropriate because it is possible to change the CoC without necessitating a change to the technical specifications.

Comment A.11: One commenter stated that the TSs should be easy to understand (simple directions) and that there should be clear definite criteria.

Response: The NRC agrees that the TSs should be understandable to a knowledgeable user such as licensee staff and should contain clear, definite criteria. An NRC goal in the development of the NAC–MPC TSs was to make them easy to understand and to contain clear, definite criteria.

Comment A.12: One commenter asked what kind of communication devices are mandatory for workers and how the devices were checked (during movement of casks on the pads and in other high noise and low visibility activities) because the workers need to be in constant communication.

Response: Communication devices utilized during the performance of cask operations are beyond the scope of this rule that certifies the cask design. Effective communications are an aspect of site-specific operating procedures to be developed by the cask users.

Comment A.13: One commenter expressed concern that the copy of the SER they received was missing some pages. The commenter was concerned that the SER was not complete when the CoC was proposed for rulemaking.

Response: The SER and CoC were complete at the time of the proposed rulemaking. The copy in the PDR is complete. During the copying process of copies to be dispatched for comment, apparently some pages were skipped by the copy machine. Subsequently, a complete copy was provided to the commenter. The NRC apologizes for any inconvenience that was caused by the missing pages.

Comment A.14: One commenter stated that references from the 1970s should not be used for modern dry casks. Specifically, the commenter referred to a 1974 reference on tornadoes and a 1978 ALARA reference.

Response: The NRC disagrees with the comment. The references cited are considered appropriate for the approval of dry cask storage system designs and were also utilized in the recent development of the standard review plan for dry cask storage systems. The NRC staff is not aware of technical inaccuracies in these documents that would render their use inappropriate. The commenter did not identify any specific technical inaccuracies.

B. Radiation Protection

Comment B.1: One commenter questioned the use of a maximum value for contamination of the outside surface of the canister. The commenter felt that the contamination should be at a minimum to protect worker and public exposure. The commenter also questioned the use of a small accessible area of the canister as being

representative of other areas in checking for contamination and how the interior surface contamination of the transfer cask was verified.

Response: Technical Specification 3.2.2 specifies the maximum permissible levels of removable surface contamination on the exterior surface of the canister. These limits are taken from guidance in NRC IE Circular 81–07. Experience has shown that these limits are low enough to prevent the spread of contamination to clean areas and are consistent with accepted ALARA practices.

By circulating demineralized water through the annulus between the canister and transfer cask to keep the pool water out of this region during loading operations in the spent fuel pool, the chance of contaminating the canister is reduced. The highest levels of canister contamination are expected to be on the accessible surfaces exposed to spent fuel pool water. By ensuring that this area meets the Technical Specification limit for contamination, it is expected that the exterior surface of the canister will also meet the same limits. The cask user is also required to verify the interior surface of the transfer cask is not contaminated. The interior walls of the transfer cask are made of the same material as the canister and will be exposed to the same water environment as the canister during loading in the fuel pool. Therefore, if the transfer cask walls are not contaminated as determined by a survey after VCC loading, then the exterior walls of the canister should also be free of contamination.

Comment B.2: One commenter asked about the surface contamination levels of a transfer cask after frequent use. The commenter also asked where the transfer cask is stored when it is not in use.

Response: After each use of the transfer cask, the surface contamination levels must be verified to be less than or equal to the limit specified in Technical Specification 3.2.2. Additionally, in accordance with 10 CFR Part 20, the end-user of the cask is required to have a radiation protection program in place that is commensurate with the activities of the facility. This program is designed to ensure levels are maintained ALARA.

The question on where the transfer cask is stored when not in use is beyond the scope of this rule. The transfer cask must be handled and stored in accordance with the cask user's radiation program procedures.

Comment B.3: One commenter was concerned about the dose to a worker checking the top outlets or welding near the inlets and outlets or conducting other maintenance or surveillance activities (including for the casks in the future) and asked if there was gap streaming at the top end. The commenter further questioned where the dosimeters for workers were located (on the feet, shoulder height, etc) to make sure the readings were accurate. The commenter further stated that shielding must be confirmed in areas of high dose.

Response: The occupational doses from maintenance and surveillance from MPC casks loaded with design basis fuel is described in Chapter 10 of the SAR. The calculated occupational doses have been reviewed and have been found to be acceptable. Additionally, if the dose rates measured on the loaded concrete cask are equal to or less than the limits specified in Technical Specification 3.2.1, then there is adequate assurance that the shielding is in place.

The specifics on doses received by workers performing maintenance and surveillance will be managed under the cask user's radiation protection program required by 10 CFR Part 20. This program will include radiation surveys of the casks so maintenance workers will know where the areas of high radiation occur, instruction to workers on how long they can stay in the area of the casks to perform maintenance and surveillance, and instructions for proper dosimeter placement.

Comment B.4: One commenter questioned why a Kansas University Skyshine experiment was used as a benchmark and whether this had been rechecked by the NRC. The commenter further questioned why a skyshine input manual was considered proprietary.

Response: The NRC finds conclusions based on sound engineering methods and practices to be acceptable. The previous version of the code, Skyshine II, was sponsored by the NRC. The current version, Skyshine III, extended the program's capabilities and was sponsored by Los Alamos National Laboratories. The changes to NAC's PC version of the Skyshine code were benchmarked against the results of experiments conducted by Kansas State University (KSU). These benchmark computations have been published in technical journals, textbooks on radiation shielding, and in a Sandia National Laboratory report. The KSU Skyshine experiment results are accepted industry wide for the methodology and were conducted by experts in the field of radiation shielding. Therefore, the NRC finds the Skyshine code to be acceptable.

By a letter dated October 8, 1998, NAC requested that the skyshine manual and calculations be considered as proprietary under the provisions of 10 CFR 2.790. By a letter dated May 3, 1999, NRC informed NAC that their request to keep the skyshine manual and calculations proprietary was approved for the following reasons:

a. The information has been held in confidence and is the result of design calculations and computer code development performed by NAC. The information is customarily held in confidence by NAC based on the significant commercial investment expended in its development;

b. The information is not available in public sources, and NAC is transmitting it to the Nuclear Regulatory Commission (NRC) in confidence; and

c. The public disclosure of the information would cause substantial harm to the competitive position of NAC. Competitors seeking to develop similar computer code information and calculations would have to expend similar amounts of time, engineering labor, and money in its development.

Comment B.5: One Commenter stated that the dose consequences from a failure of all fuel rods with a subsequent canister breach, including the source term, should be evaluated because the canister can not be assured to be leaktight.

Response: The NRC disagrees with the comment. Interim Staff Guidance (ISG) No. 3, "Post Accident Recovery and Compliance with 10 CFR 72.122(l)", specifies that only credible accidents, and the associated consequences, be evaluated against the requirements of 10 CFR Part 72. The hypothetical accident of a ground level breach, with 100% fuel rod failure, is considered to be a non-mechanistic, non-credible accident. Therefore, the applicant is not required to analyze the consequence of this type of accident. As indicated in SAR Section 7.1, the confinement boundary is completely welded and inspected in accordance with both the ASME Code and ISG No. 4, "Cask Closure Weld Inspections," and is leak tested to American National Standards Institute leaktight standards. Further, the analyses presented in the SAR demonstrated that the stresses, temperatures, and pressures of the TSC are within the design basis limits under the accident conditions identified by the applicant and that the confinement boundary of the TSC remains intact from all credible accidents. The NRC concurs with the evaluation in the SAR and believes that the design of the confinement boundary, which includes the inspection of welds, is adequately rigorous and meets the applicable regulations.

Comment B.6: One commenter questioned how the effluent from flushing the radioactive gases with nitrogen would be managed, how it would impact workers and the public from ALARA considerations, and how time factored in for the release.

Response: The canister to be unloaded will be flushed with nitrogen gas to remove any accumulated radioactive gases prior to initiating fuel cooldown. The amount of radioactive gases displaced by the nitrogen gas is first assessed by sampling to determine the appropriate radiological controls. Any gaseous effluent released from the cask would be processed through HEPA filters and any additional filtration systems a facility may have in order to filter the air from a fuel handling building or reactor building. All effluents released from this building system would have to be in compliance with the 10 CFR Part 50 license.

C. Accident Analysis

Comment C.1: One commenter questioned the adequacy of administrative controls to exclude explosions (such as a truck bomb) in the vicinity of an Independent Spent Fuel Storage Installation (ISFSI). The commenter recommended that the evaluation of a sabotage event for an ISFSI be updated.

Response: These comments are outside the scope of this rulemaking. Spent fuel in the ISFSI is required to be protected against radiological sabotage under the provisions of 10 CFR 72.212(b)(5). Each utility licensed to have an ISFSI at its reactor site is required to develop physical protection plans and install a physical protection system that provides high assurance against unauthorized activities that could constitute an unreasonable risk to the public health and safety. The physical protection systems at an ISFSI and its associated reactor are similar in design to ensure the detection and assessment of unauthorized activities. Response to intrusion alarms is required. Each ISFSI is periodically inspected by NRC. Also, the licensee conducts periodic patrols and surveillances to ensure that security systems are operating within their design limits. The NRC believes that the inherent nature of the spent fuel storage cask also provides significant protection against malevolent acts.

Comment C.2: One commenter recommended that a multi-missile (natural or man-made) scenario be considered in the accident analysis.

Response: The NRC disagrees with the comment. The NRC staff, in Section 3.4.2 of the SER, agreed with the SAR conclusion that the design basis tornado-driven missiles are not capable of overturning the cask or penetrating the VCC. Multiple tornado-driven high-energy or penetrating missiles impinging simultaneously at the same cask location is beyond the design bases and is not considered to be credible.

NRC regulations in 10 CFR Part 72 establish physical protection requirements for an ISFSI located within the owner-controlled area of a licensed power reactor site. Spent fuel in the ISFSI is required to be protected against radiological sabotage using provisions and requirements as specified in 10 CFR 72.212(b)(5). Further, specific performance criteria are specified in 10 CFR Part 73. Each utility licensed to have an ISFSI at its reactor site is required to develop physical protection plans and install systems that provide high assurance against unauthorized activities that could constitute an unreasonable risk to the public health and safety.

Comment C.3: One commenter questioned the bounding fire analysis (8 minute, 638°F fire) and recommended that a fire initiated from an airplane crash or a different type of vehicle be used. The commenter further questioned the location of the fire at the base because flaming debris could land on top of the cask. The commenter also questioned whether lightning was considered to start a fire.

Response: The basis for the 8-minute fire is associated with the time it would take to burn 50 gallons of fuel, presumably carried by the transporter. Other modes of transport causing the fire (such as airplanes, trains, delivery trucks) are not considered plausible. However, before using the NAC–MPC cask, the general licensee must evaluate the site to determine whether or not the chosen site parameters are enveloped by the design bases of the approved cask as required by 10 CFR 72.212(b)(3). Included in this evaluation is the verification that the cask handling equipment used to move the VCC to the pad is limited to 50 gallons of fuel (as detailed in Technical Specification 4.4.5-Site Specific Parameters and Analyses). The fire is assumed to burn at 1475°F and is assumed to be at ground level since that produces the worse case scenario of fire/heated air entering the inlet vents of the VCC and coming into direct contact with the outside of the canister. Exposure of the VCC to fire of this duration would have little effect on the canister or its contents. Lightning causing a fire in the vicinity of the VCC is not considered plausible because of the absence of combustible material.

Comment C.4: One commenter questioned why a seismic event or a landside that buries a cask is not considered credible.

Response: Burying a cask due to seismic event, landside, or tornado is considered a very unlikely event. Considering the unlikeliness of the event and the capability of cask components and contents to be within their thermal limits after blockage of the air passages for 45 hours, adverse consequences from cask burial are not considered to be credible. For example, casks are designed to withstand tipover loadings, yet tipover is designed not to happen for a certain size earthquake. Further, casks are analyzed to be within their thermal limits for up to 45 hours that would allow ample time for restoring the cask's cooling system to an operable status.

Comment C.5: One commenter questioned whether the pad had been evaluated for an earthquake because the pad could crack and cause the cask to tipover. The commenter further questioned what happens to the pad footer and steel reinforcement during an earthquake.

Response: The storage pad, which is beyond the scope of this cask design rulemaking, has not been evaluated for natural phenomena, including earthquakes. In accordance with 10 CFR 72.212, the cask operators are required to perform written evaluations to ensure that storage pads have been designed to adequately support the stored casks. The earthquake motions defined for the top surface of the pad are the site parameters for which the SAR has satisfactorily demonstrated that the cask will not overturn or slide.

Comment C.6: One commenter questioned what happens to the berm or wall used as a shield during a tornado, hurricane, or earthquake and questioned the composition of the berm.

Response: The use and composition of berms or walls are beyond the scope of this rulemaking for the cask design. If an engineered feature is needed to satisfy the requirements of 10 CFR 72.104(a), then these features are to be considered important to safety and must be evaluated to determine applicable quality assessment category on a site specific basis as required by Section 4.4.7 of the TSs. The cask design does not rely on engineered features to meet the Section 72.106 post-accident dose rate requirement.

Comment C.7: One commenter questioned what would happen if a seismic event occurred while the transfer cask was attached to the top of the concrete shield.

Response: This is not a design basis event for approval of the cask design's capability to safely store spent fuel. Section 72.212(b)(4) requires the general licensee to determine whether activities related to the storage of spent fuel involve any unreviewed safety question or change in the facility TSs, as provided under 10 CFR 50.59.

Comment C.8: One commenter questioned if the drop test considered the condition of materials at the end of cask life.

Response: As noted in SAR Section 11.2.11 and SER Section 3.3.9, the 6-inch end drop will exert a maximum axial deceleration of less than 20 g to the TSC components and the spent fuel assemblies. This g-load is much smaller than the design basis impact load of 56.1 g for which the cask system structural integrity has satisfactorily been demonstrated. Because the margin of safety is large and the material's strength is not expected to degrade, the NRC believes that the cask system will remain capable of withstanding a 6-inch cask drop accident throughout the 20 year storage period.

Comment C.9: One commenter asked a number of questions related to the Boral panels concerning whether the Boral poison remains in place under accident conditions, including cask tipover; the necessity of the Boral panels; how the Boral is manufactured and tested; the content of the Boral; the continued efficiency over time; and whether the panels can structurally deform.

Response: The Boral panels are necessary for ensuring that the NAC-MPC system meets 10 CFR Part 72 requirements for criticality safety. Each Boral poison panel is held in place by a stainless steel cover plate that is welded around its perimeter to the outer wall of the fuel tube. The applicant has shown that impact loads greater than those expected in storage accidents, including a postulated cask tipover, produce maximum stresses in the seal weld that are a small fraction of the weld material's ultimate strength. The NRC staff has found no credible mechanisms for deforming the poison panels in a way that would lead to loss or reduced effectiveness of the panels. Warping of the panels in relation to the tube walls to which they are attached is prevented by the welded stainless steel cover plates.

Boral will be manufactured and tested under the control and surveillance of a quality assurance and quality control program that conforms to the requirements of 10 CFR Part 72, Subpart G. A statistical sample of each manufactured lot of Boral is tested by the manufacturer using wet chemistry procedures and/or neutron attenuation techniques. The specified minimum content of the neutron poison in the Boral panels (*i.e.*, 0.01 grams of ^{10}B per cm^2) is ensured by the acceptance testing procedures described in SAR Section 9.1.6.

Boral has been used in the nuclear industry since the 1950's and used in baskets since the 1960's. Several utilities have also used Boral in spent fuel storage racks. Industry experience has revealed no credible mechanisms for a loss of Boral efficacy in the cask.

Comment C.10: One commenter asked how important the minimum flux trap width is to criticality safety and whether it can be altered in an accident.

Response: The minimum flux trap width is an important design parameter in limiting the system's maximum neutron multiplication factor (k_{eff}) under normal and accident conditions. Bounding structural analysis performed by the applicant indicate that flux trap widths may be slightly reduced as a result of side-impact loads from a postulated cask tipover accident. The NRC staff has analyzed the reactivity effects from hypothetical flux trap deformations well beyond those expected from tipover accidents and concludes that the resulting increases in k_{eff} are minuscule in relation to the large overestimates of k_{eff} arising from the conservatisms used in the applicant's criticality calculations. These conservatisms include modeling the spent fuel as though it were fresh, assuming flooding of the cask interior with unborated water, crediting only 75 percent of the minimum neutron poison content of Boral panels, assuming all major dimensions and parameters of the basket components and fuel contents are at their most reactive tolerances limits, and assuming the most reactive lateral shifting of all basket components and contents.

Comment C.11: One commenter questioned why lateral shifting of tubes in disk holes was not a concern and stated that it should not be allowed because you can not be sure what happens in all cases.

Response: Lateral shifting of the fuel tubes within their disk holes is not a concern because the criticality analysis presented in SAR Section 6.4.3.2 has adequately accounted for tube shifting variations in identifying and analyzing the most reactive configurations of the basket and contents.

Comment C.12: One commenter asked for clarification on what is meant by pure water, whether this meant unborated water. The commenter further questioned whether uneven flooding was a concern and if the analysis had been checked.

Response: Pure water is unborated water. Uneven flooding is not a concern because the basket components are designed to allow the free flow of water between the interior and exterior of the fuel tubes. Prevention of uneven flooding within and outside the fuel tubes ensures that the flux traps function as analyzed in limiting the maximum k_{eff} of the system. The NRC staff has checked and confirmed the applicant's analysis and conclusions regarding the design's ability to prevent uneven flooding of the basket.

D. Design

Comment D.1: One commenter recommended that canister identification be added on the top of the structural lid per the requirements of 10 CFR 72.236(k).

Response: The NRC agrees with the comment. SAR Drawings 455–871 and –872 have been revised to show that the structural lid of the transportable storage canister is steel stamped with its model number, unique identification number, and empty weight.

Comment D.2: One commenter recommended that the number of hose connections be increased to 8 around the transfer cask near the bottom to improve the forced air cooling capability.

Response: The NRC agrees with the comment. Although the original design with two hose connections remains acceptable, increasing the number of hose connections to eight will more evenly distribute the cooling service air supply around the bottom of the transfer cask. The changes have been made to the SAR.

Comment D.3: One commenter recommended that an alternative slip-on flange detail be permitted at the top of the fuel tube versus the butt welded flange detail indicated on the drawing. The commenter further stated that the flange should be attached with continuous full fillet on interior of fuel tube with intermittent weld on exterior.

Response: The NRC agrees with the comment, as the alternative detail provides the same integrity as the original butt weld design. SAR Drawing 455–881 has been revised to show that the flange at the top of the fuel tube is attached to the tube using a continuous fillet weld on the interior of the tube.

Comment D.4: One commenter stated that the venting of hydrogen should not be allowed because of the associated fire or explosion hazard. The commenter further stated that the design should not be certified if hydrogen is generated.

Response: The NRC disagrees with the comment. As noted in SAR Section 3.4.1.2.2, the applicant anticipates that no hydrogen gas is expected to be detected before, or during, the loading or unloading operations. However, in the event that a reaction between the aluminum heat transfer disks and the spent fuel pool water occurs, the loading and unloading procedures of SAR Chapter 8, which include procedures to detect and remove hydrogen from the space between the shield lid and the top of the water during any welding or cutting operations, provide adequate assurance that the welders will be protected. Further, the NRC has licensed other storage casks that utilize aluminum heat transfer components, including 10 TN–32 casks and 2 NAC-I28 casks. Loading of these casks has not resulted in unsafe conditions for the workers.

Comment D.5: One commenter objected to allowing the storage of Reconfigured Fuel Assemblies (RFA) in the same cask as intact fuel assemblies and believed there should be separate analysis and certificates. The commenter questioned whether the RFAs would remain in position during handling, storage, and possible unloading, or if they would float in a reflood and if the tubes would remain leaktight. The commenter asked about the composition of an RFA. The commenter asked how much the "debris" weighs, how dryness is assured, and how the utility can ensure that the cask is not overloaded and that the weight is properly distributed.

Response: The NRC disagrees with the comment. The individual RFA tubes are positioned in a stainless steel container with perforated top and bottom end plates that retain the tubes for all conditions. The individual tubes have plugs at each end to retain their contents. The plugs are trapped in place by the top and bottom end plates. A loaded RFA weighs about 550 pounds and will remain in position for all conditions. Neither the container nor the individual tubes are closed, so they will drain as a canister is emptied and will refill (if canister reflooding is ever necessary) as the canister is filled. Thus, an RFA will not float. Additional description of the RFAs can be found in SAR Section 2.1.2.

No actual weighing of the contents will be done. A conservative maximum weight of contents is analyzed in each fuel assembly location in the basket for each authorized loading configuration. The weight of an actual fuel assembly is always less than that analyzed. The debris that is contained in an RFA cannot exceed the weight of one fuel rod in each of the 64 stainless steel tubes. Because PWR fuel assemblies contain 179 (14x14 assembly) fuel rods or more, the weight of the RFA with only 64 fuel rods is much less than the conservative weight of contents that is analyzed.

The intact or damaged spent fuel rods and fuel debris are loaded into the individual RFA tubes under water. Each tube has a drain hole in each end. There is a perforated plate on the top and bottom ends of the RFA container to permit drainage but retain gross particles and pieces of debris. Thus, as the transportable storage canister is drained, the RFA tubes and container are drained as well. The double vacuum drying cycle specified in the TSs and described in the canister loading procedures ensures the removal of any residual water for the canister and from the RFA.

The slight variation in load distribution due to one or more RFAs has been considered and is bounded for all loading evaluations. Consideration of a fully loaded configuration bounds any reduced loading configuration. The potential for slight unevenness in loading does not affect canister handling because the 3-point lifting arrangement maintains the canister vertical for all lifts.

Comment D.6: One commenter recommended calling the inlet a drain or flow tube to avoid worker confusion.

Response: The NRC disagrees with the comment. The components are labeled to reflect their intended function for loading operations and are shown as such on the drawings. For wet unloading operations, the components are properly called out in the SAR procedures with respect to the drawings. The NRC considers it appropriate to label components to reflect their intended routine function under normal operations.

Comment D.7: One commenter stated that the cask label should clearly identify the contents of the cask, indicating if the cask contains damaged fuel and the type of cladding and that the label should be stainless steel so it won't rust.

Response: The NRC disagrees with the comment. Each stainless steel canister structural lid is stamped to identify the model number, unique identification number, and empty weight. Additionally, each vertical concrete cask has a stainless steel nameplate attached that identifies the model number, unique identification number and empty weight. These markings meet the requirements of 10 CFR 72.236(k). Space is provided in both instances for the addition of cask user specified information; however, the specific identification of cask contents is not required for the permanent markings affixed to the cask. The NRC notes that § 72.212(b)(8) requires each general licensee to accurately maintain a record for each cask that lists the spent fuel stored in the cask. This record must be maintained by the cask user until decommissioning of the cask is complete.

Comment D.8: One commenter questioned why only Yankee class fuel could be stored in the cask. The commenter further questioned whether burnable poison rod assemblies and TPAs would eventually be stored in the cask and if so, stated that the evaluation should be completed before the CoC is issued.

Response: Each cask approval is specific and limited to the contents requested by the applicant, that in this case, is for spent fuels designated as "Yankee Class" within the application. Future changes to the authorized contents, if any, including different spent fuel assemblies and other radioactive materials associated with fuel assemblies, must be requested and approved in accordance with the regulations of 10 CFR Part 72.

Comment D.9: One commenter stated that the documents should make it clear that no control components should be used in an RFA and that any empty position needs a dummy rod.

Response: The NRC agrees with the comment and notes that the Fuel Assembly Limits (Table 2–1 of the TS) specify that intact fuel assemblies and RFAs shall not contain control components, and that any missing fuel rods in an intact fuel assembly shall be replaced with a dummy rod.

Comment D.10: One commenter asked how the lifting slings were attached and if they had ever been tested. The commenter indicated that a dry run should be performed.

Response: SAR Section 1.2.1.4.8 describes the use of the load rated rigging attachments and slings. All slings are designed to have adequate safety margin to meet the requirements of ANSI N14.6 and NUREG–0612 for lifting heavy loads. The administrative controls of the TS require the cask user to perform dry runs of certain evolutions prior to initial loading. These controls specify that the dry runs will include the heavy load activities of moving the concrete cask, moving the transfer cask, and lowering the canister into the concrete cask.

Comment D.11: One commenter asked how the transfer cask is attached to the concrete cylinder, how high up in the air is the transfer cask, and what is

located in the vicinity that the cask could fall on.

Response: As depicted in SAR Figure 1.1–1 and described in SAR Section 8.1.2, after the transfer adapter plate is bolted to the concrete cask top, the transfer cask, with the TSC in place, is brought to rest on the transfer adapter by aligning the transfer cask bottom door rails and connector tees with the adapter plate rails and door connectors. In this configuration, the bottom of the transfer cask is about 160 inches above the bed of a heavy-haul trailer on which the concrete cask is rested. The evaluation of a transfer cask drop is governed by NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants," that is subject to site-specific evaluations and is beyond the scope of this rulemaking.

Comment D.12: One commenter stated that the mockup needs to clearly work for opening and unloading demonstration evaluations.

Response: The NRC agrees with the comment. The administrative controls incorporated in the TSs require that a mockup, if used in place of an actual canister for dry runs, shall demonstrate the activities necessary to open and unload a canister.

Comment D.13: One commenter asked whether structural lids meant the structural and shield lids. The commenter asked several questions about the shield plug concerning whether the NS–4–FR serves the same function as the RX–277 in the VSC–24, if the NS–4–FR was encased in the carbon steel, why carbon steel is used instead of stainless steel (concern over rusting), where the shield plug is located, and if the carbon steel is coated.

Response: The transportable storage canister has a 3-inch shield lid and a 5-inch structural lid. After the loaded canister is placed in the concrete cask, a shield plug is installed over the canister. The shield plug is comprised of 1 inch of NS–4–FR and 4.125 inches of carbon steel. The NS–4–FR is encased in carbon steel. Then, a 1.5-inch thick carbon steel lid is used to seal the concrete cask. The carbon steel is coated with either Keeler and Long E-series epoxy enamel or Ameron PSX738 Siloxane. Therefore, rusting is not a concern. As noted in SER Section 5.1.2, NS–4–FR is a solid borated polymer used for neutron shielding. The RX–277 in the VSC–24 cask design is used as a neutron shielding material in the top plug assembly. The cask designer determines the materials to be used for the cask.

Comment D.14: One commenter stated that ignoring full shielding on the bottom of the cask was a mistake and that the bottom plate needed to be evaluated for better shielding.

Response: The NRC disagrees with the comment. Full shielding on the bottom of the cask is not necessary to provide adequate protection for the public. The calculated occupational doses have been reviewed and have been found to be acceptable. See also the response to B.3.

E. Welds

Comment E.1: One commenter asked how much water is to be drained before welding and stated that the water level should be set as a criteria.

Response: In SAR Chapter 8, Operating Procedures, the cask end user is directed to drain approximately 50 gallons of water from the canister.

Comment E.2: One commenter asked how various welds are checked and tested, and if they were leak tight (could water seep in adding weight). The commenter indicated that the welding procedures were very important.

Response: The examination and testing of welds is described in SAR Sections 9.1.1, 9.1.2 and 9.1.3. Leakage of the confinement boundary is not anticipated because all shop welds are volumetrically and surface examined in accordance with the governing ASME Code's requirements. Field welds (*i.e.* shield lid, structural lid and port cover plates) of the confinement boundary are liquid penetrant examined. In addition, the field weld on the shield lid is leak tested to ensure that it is leaktight. These examinations ensure that the welds will not leak.

Comment E.3: One commenter stated that there should not be any exceptions on the maximum flaw size for a weld that is allowed, the criteria should be clear (including temperature limits). The commenter questioned why the postulated cracks under each liquid penetrant (PT)-examined surface were not required to be additive for comparison to the critical flaw size.

Response: The NRC accepts examination of the cask closure welds in accordance with Interim Staff Guidance-4, Revision 1 that allows the use of a multi-layer (*i.e.* progressive) PT examination in lieu of a volumetric examination. As stated in the ISG, the critical flaw size is determined in accordance with ASME Section XI methodology and is used to determine the spacing between successive PT examination layers. There is enough experience with the progressive PT method to conclude with reasonable assurance that it will detect flaws that are open to the surface and are of a size that would affect the serviceability of the weld. The probability of a flaw of this size not being detected because it did not break the surface is not very high because the liquid penetrant test is undertaken at intermediate weld pass levels. Thus, the concept of adding up theoretical undetected flaw sizes under each PT layer in a way that the sum could be greater than the determined critical flaw size is not considered plausible by the NRC. For the NAC–MPC canister, which is composed of ductile stainless steel, no restriction has been placed on its movement based on permissible flaw sizes.

Comment E.4: One commenter asked about concerns with corner welds of tubes and if they could bend at the corners.

Response: The square fuel tube is fabricated with a full-length longitudinal weld along the center line of one of the four sides of the tube. Weld examination and testing are described in SAR Sections 9.1.1.1 and 9.1.1.2. There are no tube corner welds and, therefore, no concerns with bending the fuel tube at its corners, as suggested.

Comment E.5: One commenter asked what is meant by galling of a weld.

Response: Galling is excessive wear in the region of contact between load bearing surfaces, *i.e.* bolt threads during torquing, or trunnions on a component like a *transport* cask where the lifting device rotates in contact with the trunnions. For the vertical load test of the transfer cask, the loading fixture should not rotate with respect to the trunnions, and thus, galling of the trunnions is not expected to occur. The trunnion welds are inspected for permanent deformation or cracking, and the trunnion load bearing surfaces are inspected for permanent deformation and galling.

Comment E.6: One commenter questioned whether both the structural and shield lids were ultrasonic tested (UT) because the SER claimed the lids provided redundant sealing and the commenter didn't think the claim should be made if they were not both UT tested. The commenter questioned what a progressive penetrant test was and why it could be used instead of the UT. The commenter further stated that the progressive penetrant test should not be allowed for the confinement boundary welds if it was not in agreement with ASME Section III, Class I requirements.

Response: As stated in SAR Section 9.1.1.1 "Nondestructive Weld Examination," the shield lid has a root and final pass liquid penetrant (PT) examination and the structural lid could have either ultrasonic examination or a progressive PT examination. For the shield lid weld, the liquid penetrant examinations of the root and final

surface, the pneumatic pressure test, and the subsequent liquid penetrant re-examination have been accepted by the NRC staff as adequate for demonstrating the weld integrity.

The basis for the structural lid weld examination methods is documented in the NRC's Interim Staff Guidance-4, Revision 1 that allows the use of a multi-layer (*i.e.*, progressive) PT examination in lieu of a volumetric examination. Because the shield lid and structural lid are both welded and examined, this constitutes compliance with the redundant sealing requirement of 10 CFR 72.236(e).

Comment E.7: One commenter stated that a helium leak test of the shield lid was inadequate to provide seal reliability and that a UT should be completed.

Response: The NRC disagrees with the comment. For the type of welding process, the environmental conditions near the weld, and the stainless steel weld base material, there are no known delayed cracking mechanisms that could cause the weld to crack after it has been inspected. Therefore, the liquid penetrant examinations of the root and final surface, the pneumatic pressure test and subsequent liquid penetrant examination, and the helium leak test conducted in accordance with the leak-tight criteria of ANSI N14.5 have been accepted by the NRC staff as meeting the requirements of 10 CFR 72.236(e) for redundant sealing of the confinement boundary.

Comment E.8: One commenter stated that time frame for calibrating UT equipment was very important.

Response: NRC agrees with the comment in that calibration of any equipment used in applications affecting quality needs to be assured. In addition, 10 CFR 72.164 "Control of Measuring and Test Equipment" and 10 CFR 50, Appendix B, XII, "Control of Measuring and Test Equipment" provide the regulatory foundation of a licensee's quality assurance program to ensure that these calibrations take place.

Comment E.9: One commenter stated that the results of a PT examination need to be permanent and that criteria should be established for permanent records. The commenter requested information on what is required to keep records permanent.

Response: 10 CFR Part 72, Subpart G, requires that records pertaining to the design, fabrication, erection, testing, maintenance, and use of systems, structures, and components important to safety shall be maintained until decommissioning of the cask is complete. This includes cask closure welds which are important to safety. Criteria for records is given in Subpart G.

Comment E.10: One commenter questioned what was meant by "sufficient" and indicated that there should be specific criteria for acceptability of a PT exam because "sufficient" is not an acceptable criteria. The commenter also questioned what was meant by in the field in the performance of welding.

Response: The NRC accepts PT examination of field welds (meaning those that are *not* made in the fabricators shop but are made at the location where the spent fuel is being loaded) for the root and final weld passes. For the port covers the welds are relatively small (*i.e.* ¼ inch) fillet welds that do not lend themselves to volumetric examination techniques nor progressive PT examinations, and the welds are not subject to any significant loadings which means they basically perform a sealing function. Therefore, the NRC believes that PT examination of the port cover plate root and final welds is adequate. Additionally, the closure weld of the structural lid will be either progressively PT examined or UT'd at the option of the licensee. The acceptability of the progressive PT examination is documented in NRC's Interim Staff Guidance-4, Revision 1. The term "sufficient" was used in reference to the actual number of intermediate layers of PT examinations necessary to detect critical flaws. For the NAC–MPC "sufficient intermediate layers" means that in addition to the root and final weld passes, each successive ⅜ inch weld thickness will also be PT examined as shown on SAR Drawing 455–872.

Comment E.11: One commenter questioned why the backing ring is not considered in analysis and how the ring affected the timing, equipment, and worker dose for the unloading procedures in cutting the cask.

Response: The backing ring is utilized to aid in the welding process. During the welding operation, it effectively reduces fit up time and welding time without compromising weld integrity. The NRC does not believe that the inclusion of backing rings would impose any additional worker exposure during an unlikely unloading operation and when weighed against dose saved during welding, results in an overall reduction in dose compared to not using a backing ring.

Comment E.12: One commenter questioned how structural and shield lid welds were cut open, what equipment was used, whether shims were used, and how the shims were removed (commenter did not think that shims should be used). The commenter also asked how falling debris is avoided.

Response: The NAC–MPC design does not use shims for positioning the shield lid or structural lid on the canister. The operating procedures for removal of the structural lid, the vent and drain port covers, and the shield lid are included in Section 8.3 of the NAC–MPC SAR. Detailed site-specific procedures for these activities will be developed by the cask user. The adequacy of these specific procedures will be evaluated by the licensee.

F. Structural Evaluation

Comment F.1: One commenter recommended that the certification for the NAC–MPC canister system be withheld because NAC has not considered information that questions the structural integrity of the NAC cask system to withstand a 30-foot drop test. The information is contained in Singh, K.P. and Max DeLong, "A Structural Assessment of Candidate Fuel Basket Designs for Storage and Transport of Spent Nuclear Fuel" (Presented at the INMM Conference, Washington, D.C., January 14–16, 1998).

Response: The NRC disagrees with the comment. The cask-drop test requirements are for transport consideration that is beyond the scope of this rulemaking. Certification of the NAC–MPC for listing under 10 CFR 72.214 can only be used by the general licensee to store, not transport, spent fuel. However, the cask, including the fuel tube has been evaluated for a side impact load of 55 g, that bounds the side impact load associated with a cask tipover accident. The evaluation has satisfactorily demonstrated structural integrity of the system for its storage configuration. There is no basis for withholding the certification for the NAC–MPC storage canister system as suggested.

Comment F.2: The same commenter objected to the NRC staff's discussion, in an NRC letter dated August 25, 1999, to D. Lochbaum regarding the Singh and DeLong paper, which the commenter interpreted as "crediting" NAC's design as conservative by considering the structural properties of portions of the internal basket system and other items. In the commenter's view, allowing design "credit" for portions of the overall structure not intended to provide gross structural support undermines the entire cask drop requirement. The commenter believed that the NAC–MPC system should not be certified if it does not have adequate external structure to withstand the drop test and protect the irradiated fuel bundles within the cask.

Response: Although the 30-foot drop test is not an explicit Part 72 requirement, the applicant referenced, in part, the NAC–STC transportation cask 30-foot analysis. Sections 2.7.8 and 2.7.9 of the SAR for the NAC–STC transportation cask, Docket 71–9235, evaluate structural integrity of the fuel tube under a side impact load of 55 g. The analysis considers the approach and information consistent with those discussed in the paper by Singh and DeLong. With no credit given to the basket structural properties other than the fuel tube and its interaction with the support disks, the analysis has demonstrated that the fuel tube is capable of withstanding a cask-drop test, thus, protecting the irradiated fuel bundles within. Because the load also bounds the side impact load associated with the cask tipover accident, the fuel tube is demonstrated to be capable of maintaining its structural integrity in a cask tipover accident. Moreover, the NRC staff notes that in a November 2, 1999, letter to Mr. Block to offer his comment on NRC's August 25, 1999, communication to Mr. Lochbaum, Dr. K.P. Singh, the senior author of the paper, indicated that he had neither reviewed NAC's design documents nor been in a position to comment on the nuances of NAC's design.

Comment F.3: One commenter asked about the structural soundness of the inlet parts as it relates to withstanding the stress and pressure from the lifting jack use, and whether the inlets could be damaged or deformed by using the jack.

Response: The structural design and analysis of the air cooling inlets when serving as bearing surfaces for lifting the storage cask are described in SAR Section 3.4.3.1. The stress analysis results show that the air inlets are structurally capable of withstanding all forces associated with the cask lifting operation and could not be damaged or deformed by using the jack. SAR Section 8.1.3 describes a procedure for operating the air pads and lifting jacks to transport the concrete cask. The jacks are installed at the bottom of the air inlet without the inlet screens in place. Any effects resulting from use of the air pads or lifting jacks is readily visible for inspection.

Comment F.4: One commenter inquired about a Nelson stud anchor and the TSC support pedestal. The commenter asked if the pedestal took the place of the tiles used in the VSC–24 cask, why the pedestal used 2 inches of carbon steel instead of ceramic or stainless steel because of a concern over rusting, how the pedestal is attached to the VCC bottom plate, how high is the pedestal, and if the pedestal could shift or deform during handling. The commenter further asked if the force had been calculated for possible adherence of the metal surfaces after rusting.

Response: The term "Nelson stud" is a trade name for headed steel studs used for developing anchoring action between reinforced concrete and its steel liner plate. SAR Drawing 455–861 provides design details on how Nelson studs are welded to the cask bottom plate and the air inlet top so that the bottom plate and the concrete wall will act as an integral part to achieve its structural support function. As depicted in the same SAR drawing, the 23-inch high pedestal is a carbon steel weldment that consists of two major structural part, a 2-inch thick horizontal circular pedestal plate for providing direct bearing surface to the TSC and a connecting vertical ring plate assembly as a load path to transmit the TSC inertia load to the cask bottom and storage pad. If carbon steel is exposed to moist air, it may corrode. Detail B–B of SAR Drawing 455–862 shows that a ¼-inch thick stainless steel plate is installed between the TSC bottom and the pedestal plate, in addition to an ⅛-inch thick BISCO insulation. This cover is installed on a sheet of fire block insulation that isolates the TSC from the VCC carbon steel base plate. This construction will prevent the pedestal plate from rusting to the canister bottom. Therefore, no adherence force will develop to cause any shifting, deforming, or cracking of the pedestal plate in handling, as suggested.

Comment F.5: One commenter asked if there would be any deformation of the fuel tubes in a tipover or drop. The commenter further asked how the tubes and disks respond to each other when stressed and how they affect each other.

Response: The support disk cutouts and the fuel tubes are sized to avoid binding when the cask is kept in its upright position. In a cask tipover accident, the support disk ligaments are in contact with fuel tubes and will provide support to fuel assembly inertia loads. Sections 2.7.8 and 2.7.9 of the safety analysis report for the NAC–STC transportation cask, Docket 71–9235, analyzes stresses and strains of the fuel tubes for cask side-drop tests. SAR Section 11.2.12.3.3 evaluates structural performance of the support disks for bounding impact loads. As concluded in SER Section 3.3.8, both the fuel tubes and support disks have been shown to behave satisfactorily for a cask tipover accident.

Comment F.6: One commenter asked about the energy balance method used for estimating impact loads and whether it considered elastic-plastic deformation.

Response: The energy balance method, as used in SAR Section 11.2.11, assumes that the potential energy associated with a 6-inch vertical drop of the TSC is dissipated by plastic deformation of the steel support pedestal. By considering the maximum force associated with the crushed area of and the corresponding flow stress in the pedestal support ring assembly, the method provides a conservative estimate of a height reduction of the air inlet region by 0.35 inches that has been evaluated to be acceptable.

Comment F.7: One commenter questioned why the NRC did not consider a cask tipover off the air pad in movement or from a transporter tipover. The commenter asked what kind of deformation (from a tipover) is acceptable. The commenter further asked if the cask could roll after it is tipped over and what would happen if it rolled into a ditch. The commenter indicated that the transport path should be evaluated (potholes, snow, ice, gravel, *etc.*).

Response: The tipover and bottom end drop analyses form part of the structural design basis for the NAC–MPC system design. NAC described the VCC drop and tipover analyses in SAR Sections 11.2.11 and 11.2.12. The NRC's evaluation of the vendor's analyses is described in the corresponding SER Sections 3.3, 11.2.11 and 11.2.12. The NRC found the results of these analyses to be satisfactory in that the calculated stresses were within the design requirements. Before using the NAC–MPC system, the general licensee must evaluate the foundation materials to ensure that the site characteristics are encompassed by the design bases of the approved cask. The events listed in the comment are among the site-specific considerations that must be evaluated by the licensee using the cask.

Comment F 8: One commenter asked if dry unloading is evaluated for this cask as implied by finding F3.10 and if it is it should be discussed more fully in the SER and TSs.

Response: The SAR procedures only address wet loading and unloading fuel from the NAC–MPC storage cask. Dry loading or unloading procedures are not included with this application and were not a part of the NRC staff's review. The SER was modified to indicate that the materials are compatible with wet loading and unloading operations and facilities.

G. Thermal Evaluation

Comment G.1: One commenter questioned whether the EPRI Report could be used for stainless steel clad fuel. The commenter further stated that 430° C must be the limit.

Response: The NRC disagrees with the implication that improper cladding temperature limits were established. Because the NAC-MPC is designed to store both stainless steel clad and zircaloy clad fuel, the most restrictive temperature limit was used for both the short term and long term storage. These temperature limits bound both types of cladding and therefore, segregating the fuel is not necessary. For general information, the short term temperature limit of 806° F and 430° C are the identical temperature except they are on different temperature scales.

Comment G.2: One commenter asked about the gas in the fuel rods contained in RFAs concerning what it is and whether it will come out over time.

Response: The fuel contained in the RFAs is by definition failed fuel or fuel that has cladding defects. Therefore, it is reasonable to assume that any fission product gases have been released from the rods before to placement into the MPC and that any residual gases have been further reduced to negligible amounts after vacuum drying the canister and purging it with helium.

Comment G.3: One commenter questioned whether 200°F is conservative enough for the water temperature during loading operations because of possible defects in measuring devices.

Response: Defects in temperature measuring devices would not result in an operational safety problem. As a result, Technical Specification 3.1.1 has been deleted (see response to comment H.6). The operating procedures now impose a 20-hour time limit supported by analysis to prevent the water in the canister from approaching boiling during welding operations and through draining.

Comment G.4: One commenter questioned whether 24 hours for the helium filled canister to be in the pool is adequate to cool the canister before restarting loading operations. The commenter asked how a helium filled canister reacts in the pool and if an analysis has been conducted. The commenter also asked if the term "drying" meant the same thing as "cooling".

Response: In Limiting Condition for Operation (LCO) 3.1.5, the term "drying" means vacuum drying where the spent fuel cladding temperature rises due to the lack of a surrounding medium to remove heat. The term "cooling" refers to either in pool cooling or external forced air cooling supplied through the eight connections at the bottom of the transfer cask where the air is forced inside the transfer cask and directed up the outside of the canister, cooling the outside of the canister. As stated in the bases section of the TSs, the temperature of the fuel cladding, based on analysis, will be below 466°F after 24 hours of either in pool cooling or forced air cooling considering an assumed maximum decay heat loading. Therefore, after in pool cooling or forced air cooling, the maximum time to place the canister in the concrete cask is 25 hours (refer to revised LCO 3.1.6.2) that will result in a cladding temperature less than the limit of 806°F, based on analysis. LCO 3.1.6.2 was revised to correct an editorial error on the time duration. As discussed above, the thermal analysis and TS bases support a 25-hour time duration instead of the 15-hour duration previously specified.

Also, under LCO 3.1.5, if the LCO time limits are not met, the transfer cask with the helium filled canister can be placed in the spent fuel pool for cooling. No reaction is anticipated between the helium-filled canister and the pool because the canister is made of corrosion resistant material. Water is prevented from entering the canister since the shield lid welding operations have been completed and by the quick disconnect fittings. Therefore, the helium filled canister placed in the pool is bounded by the standard loading configuration when pool water is in direct contact with the basket internals.

Comment G.5: One commenter asked for clarification of the required actions for LCO 3.1.6 and for forced air cooling.

Response: If the time limits stated in LCO 3.1.6 are not met, one required action is to begin air cooling of the canister by supplying cooling air through the eight connections at the bottom of the transfer cask. This supplies forced air cooling to the outside surface of the canister before exiting out the top of the transfer cask. This action is allowed at the licensee's option in lieu of in pool cooling. As stated in the bases for the subject LCO, this forced air cooling (250 CFM of air at 75°F maximum) is sufficient to maintain the fuel cladding below 644°F (*i.e.*, the long term temperature limit) when cooled in this manner for at least 24 hours. However, because this is a short term event, the short term temperature limit for the fuel cladding (*i.e.*, 806°F) is applicable. Therefore, the time limit of 25 hours that is applicable after the forced air cooling is stopped until the canister is placed in the concrete cask does not result in a temperature rise that would cause the short term cladding temperature limit to be exceeded. No temperature measurements are required to be taken during this action because analysis provides the justification for this approach. If something went wrong (*e.g.*, air supply lost) during cask loading evolutions, the licensee would have the option of placing the helium filled canister in the spent fuel pool. TS 3.1.10 has been added to address time limitations for canister removal from a concrete cask to another concrete cask or the NAC–STC transport cask.

Comment G.6: One commenter questioned if there was an outlet air temperature for air cooling. The commenter further questioned whether forced air cooling works, if it had ever been tested and checked, and what happens if it does not work. The commenter stated that the short-term temperature limits must be maintained.

Response: For forced air cooling of the canister with air supplied at the transfer cask's eight lower connections at a rate of 250 cfm and maximum temperature of 75° F, no monitoring of the outlet air temperature is required. Cooling in this configuration has been evaluated by analysis. See also the response to comment G.5 for a discussion of meeting short term temperature limits.

Comment G.7: One commenter questioned whether cooling water recirculation flow had ever been tried and tested, how long it takes to connect and disconnect the system, and if the flow was through the in pool condenser unit. The commenter asked if there were emergency plans if the system does not work adequately.

Response: The section of the technical specifications associated with monitoring the temperature of the water in the canister during loading operations has been deleted (see response to comment H.6). However, monitoring of the water temperature is a part of the operating procedures. Based on analysis, cooling of the water will not be needed based on analysis because 20 hours is a reasonable amount of time to complete the associated operations of shield lid welding, pressure test, and draining. However, if it appears that there is not enough time to complete these operations, contingencies like recirculating cooling water through an in pool heat exchanger or placing the transfer cask back in the fuel pool will be available through planning, procedures and rehearsal before actually loading fuel. The cooling of the water is not critical to this loading operation or to maintaining the cladding temperature limit. However, the

presence of water is necessary for shielding. Therefore, as long as the water level is maintained, it will perform its shielding function.

Comment G.8: One commenter asked where and how the external temperature is measured.

Response: The external temperature refers to an outside ambient temperature representative of the environment in which the transfer cask might be used. The method of measuring ambient temperatures is a site-specific consideration for the NAC-MPC system user and should be employed using good engineering practice.

H. Technical Specifications

Comment H.1: One commenter indicated that the concrete and soil specifications do not meet the inclusion criteria of 10 CFR 72.44 and should not be included in the Technical Specifications.

Response: The NRC disagrees that the specifications can be removed at this time. The NRC staff determined that the concrete and soil specifications proposed by the applicant were acceptable for ensuring that the cask remains within the design envelope. In order to remove this specification, technical justification is necessary and may be accomplished through the amendment process. Concrete and soil specifications are useful for establishing the site parameter conditions to ensure that once they are met, the impact force associated with a cask tipover accident is bounded by the design basis load considered in evaluating the storage cask. By complying with these specifications, a user is relieved of the burden of calculating the cask impact force for a tipover accident.

Comment H.2: One commenter requested that the TS for the ISFSI pad concrete compressive strength be changed to less than 4,000 psi at 28 days.

Response: The NRC agrees with the comment. SAR Section 11.2.12 has considered a concrete compressive strength of 4,000 psi for the ISFSI pad bounding this revision. The staff also considered a concrete compressive strength of 4000 psi in its SER. SAR Section 4.4, Appendix A of Chapter 12, "Site Specific Parameters and Analysis," Item 6c, has been revised to read: "≤ 4,000 psi at 28 days."

Comment H.3: One commenter requested that TS for the ISFSI pad concrete density be changed to $125 \leq \rho \leq 150$ lbs/ft^3.

Response: The NRC agrees with the comment. NAC's additional calculations with a concrete density up to 150 lbs/ft^3 have shown the maximum impact force of < 45 g, the bounding impact loading considered in SAR Section 11.2.12. SAR Section 4.4, Appendix A of Chapter 12, has been revised as suggested.

Comment H.4: One commenter requested that the soil density upper limit TS be modified to read "$85 \leq \gamma \leq 130$ lbs/ft^3."

Response: The NRC agrees with the comment. NAC's additional calculations with a soil density up to 130 lbs/ft^3 have shown a maximum impact force of < 45 g, which is bounding. SAR Section 4.4, Appendix A of Chapter 12, has been revised as suggested to provide flexibility in the selection of available material.

Comment H.5: One commenter requested that a tolerance of ± 50 be included with this site specific parameter for soil stiffness in order to accommodate soil variability. The commenter recommends that the soil stiffness be expressed as $200 \leq k \leq 300$ psi/inch, where k is the sub-grade modulus.

Response: The NRC agrees with the comment. NAC's additional calculations with a soil stiffness up to 300 psi/in have shown a maximum impact force of < 45 g, which is bounding. Because the lower limit soil stiffness is not meaningful for determining the maximum cask tipover impact force, it need not be considered a soil site parameter. SAR Section 4.4, Appendix A of Chapter 12, "Site Specific Parameters and Analyses," Item 6f, has been revised to read: "$k \leq 300$ psi/in."

Comment H.6: One commenter recommended that LCO Section 3.1.1, "Canister Water Temperature" and its basis be removed from the TSs because this process variable does not represent a significant risk to the public health and safety and is not consistent with the inclusion criteria of 10 CFR 72.44. The commenter recommends that the TS be modified to add air cooling of the canister as an alternative.

Response: The NRC agrees with the comment that the canister water temperature technical specification can be removed from Chapter 12 because defects in temperature measuring devices would not result in an operational safety problem. The operating procedures of Chapter 8 of the SAR have been modified to remove the reference to the subject LCO and to include the 20-hour time limit associated with the rise in canister water temperature after its removal from the spent fuel pool to the completion of draining operations. This limit is necessary to ensure that water remains in the canister for shielding purposes but is not critical to ensuring adequate cooling of the fuel cladding. However, vacuum drying and transfer operations are both controlled by time limits through the TSs because they contribute significantly to the temperature rise of the fuel cladding during these loading operations.

Comment H.7: One commenter noted that the time for vacuum drying is not defined consistently in the TSs and recommended the use of "completion of canister draining operations" as the definition. The commenter also recommended revising the bases section of the TS to address forced air cooling.

Response: The NRC agrees with the comment. The associated surveillances in Surveillance Requirement (SR) 3.1.5.1 and SR 3.1.5.2 have been changed to monitor elapsed time from the completion of canister draining operations until the start of helium backfill. Also, the NRC agrees that forced air cooling (at 250 CFM with 75°F maximum air temperature for 24 hours minimum) be permitted as an alternative cooling method under the required actions section of LCO 3.1.5.

Comment H.8: One commenter recommended that LCO 3.1.5.2 be revised to clarify the term "in pool cooling" and to revise the Required Action to allow air cooling.

Response: The NRC disagrees with the comment and believes the LCO, including the term "in pool cooling," is adequate. The comment lacks specifics as to what is being proposed and if some other cooling configuration is planned then details regarding that cooling arrangement need to be presented.

Comment H.9: One commenter recommended that the Technical Specifications contain a consistent definition of the time duration in LCO 3.1.6.1 and SR 3.1.6.1.

Response: The NRC agrees with the comment. However, the initiation of the time duration has been modified to "from the introduction of helium backfill" to be consistent with the previous LCO 3.1.5 and not "from the completion of backfilling" as requested in the comment. The consistency between LCO's 3.1.5 and 3.1.6 is necessary to avoid any unaccounted time for heatup of the canister and contents during loading operations.

Comment H.10: One commenter requested that the 1,000 cfm value in Required Action A.2.1 of LCO 3.1.5 and the supporting bases be changed to 250 cfm.

Response: The NRC agrees with the comment. Air at 250 cfm with 75°F maximum temperature for 24 hours minimum is an adequate cooling rate. The Required Action and the bases have been changed. Required Action A.1.2

was also changed to add eight connections to supply cooling air instead of the current two connections to ensure even air distribution around the canister.

Comment H.11: One commenter recommended that the Bases for SR 3.1.6.2 be revised to allow forced air cooling.

Response: The NRC agrees with the comment and has added the words "or forced air cooling" to the last sentence in the Bases Section SR 3.1.6.2, because forced air cooling is a permissible cooling option.

Comment H.12: One commenter recommended that the TS for fuel cooldown requirements addressing wet unloading be clarified to only be applicable for licensees maintaining spent fuel pools beyond dry fuel storage or be deleted.

Response: The NRC agrees with the comment. The intent of the first note in LCO 3.1.7 was that this technical specification only applies to wet unloading operations using a spent fuel pool. Interim Staff Guidance No. 2, "Fuel Retrievability" and No. 3, "Post Accident Recovery and Compliance with 10 CFR 72.122(i)" state that spent fuel pools are not required to be maintained for dual purpose designs.

Comment H.13: One commenter noted an inconsistency between the SAR and TSs concerning the canister pressure test value and stated that the correct value is 50 psig.

Response: The NRC agrees with the comment. However, because the test pressure is not invoked by other parts of the technical specification, it has been removed from the table for canister limits. The operational procedures remain unchanged and still specify a 50 psig pressure test.

Comment H.14: One commenter recommended that the TSs be revised to reflect the latest NRC-accepted format, *i.e.*, the UMS TSs.

Response: Large-scale changes to re-format the NAC–MPC TS similar to those of the NAC–UMS or other cask rulemakings should be incorporated through the amendment process. Focused comments modeled after the NAC–UMS regarding the implementation of individual technical specifications have been addressed separately and incorporated in this rulemaking action.

Comment H.15: One commenter stated that the note for LCO 3.1.7 concerning applicability should be located at the top of the page because it was confusing where it is currently located.

Response: The NRC disagrees with the comment. The note is directly below the APPLICABILITY statement and is intended to clarify the operations for which the technical specification is applicable. The APPLICABILITY statement and its location are in accordance with the standard format for technical specifications.

Comment H.16: One commenter stated that TS 3.1.7 should be clarified to make it clear that the transport operations mentioned are limited to onsite transport to and from the pad.

Response: The NRC disagrees with the comment. The term TRANSPORT OPERATIONS is clearly defined in the technical specification DEFINITIONS and includes all activities involved in moving a loaded NAC–MPC concrete cask and canister to and from the ISFSI pad. Further clarification of the term is not warranted.

Comment H.17: One commenter asked what is meant by the terms "outside of the fuel handling facility" and "external to the facility" in LCO 3.1.9. The commenter further questioned whether this TS could be used for dry transfer at the pad.

Response: The terms "outside of the fuel handling facility" and "external to the facility" refers to handling operations of a transfer cask outside of a covered or heated facility as described in the Bases for the TS. The intent of the specification is to ensure that the structural integrity of the transfer cask and its capability to handle and shield a loaded canister is maintained for the temperatures experienced by the ferrous materials of the transfer cask.

A dry unloading operation of spent fuel in the canister was not requested or explicitly described in the SAR and thus is not currently allowed for the NAC–MPC system and is beyond the scope of this rulemaking. The NAC–MPC system is designed to facilitate, using the transfer cask, the dry transfer of a closed canister to the NAC–STC transport cask without the need to unload the canister in a pool. This dry transfer from a vertical concrete cask used for storage to the NAC–STC transport cask would be carried out at a facility that meets both the heavy-loads and overall regulatory requirements for licensed operation, and could be located at or adjacent to the ISFSI pad. Site-specific evaluations and procedures for these operations, consistent with the technical basis established in the storage and transport cask SARs, are required to be developed by the cask user.

Comment H.18: One commenter stated that utilities should not be allowed to use the provisions of Surveillance Requirement (SR) 3.0.2 repeatedly and that allowance for operational convenience should not be provided.

Response: The NRC disagrees with this comment. As stated in the Bases for this specification, the 25 percent extension facilitates surveillance scheduling and considers facility conditions that may not be suitable for conducting the surveillance. The 25% extension does not significantly degrade the reliability that results from performing the surveillance at its specified frequency because the most probable result of any particular surveillance being performed is a verification of conformance. This provision is consistent with the standard format for TSs.

Comment H.19: One commenter stated that the Bases for TS 3.1.1 should describe what is meant by "transfer cask and canister in position", what is meant by on top of the concrete shell and the actual height, and the doors that open at the base and how they work in loading and unloading. The commenter further asked if the procedures had been evaluated for the reverse in unloading and if a dry run had been conducted. The commenter also thought that sampling for water temperature should begin at 12 hours instead of 18 hours.

Response: The background section of the Bases for TS 3.1.1 contains an appropriate amount of detail for an overview of canister and transfer cask operations pertinent to the specification of maximum canister water temperature. Further descriptions of transfer operations are located in Chapters 1 and 8 of the SAR and the NRC staff's SER, including a description of the transfer cask relative to the concrete cask during transfer operations, component dimensions that detail the height of the concrete cask and transfer cask designs, and operation of the shield doors during transfer operations. The start time for monitoring water temperatures was determined based on a bounding conservative analysis found to be adequate by the NRC staff. Detailed site-specific loading and unloading procedures are to be developed by the cask user based on the technical basis established in the SAR . The performance of site-specific dry runs including a canister unloading procedure before the initial system loading is specified in the TS as Administrative Control 5.2.

In response to comment G.3, TS 3.1.1 and its associated Bases have been removed. The NRC staff agrees that the monitoring of canister water temperatures is more appropriately controlled in the detailed site-specific operating and welding procedures. Because the welds are ultimately

examined for acceptance, there would be an insignificant benefit to health and safety of the public by controlling the canister water temperatures in the TS.

I. Miscellaneous

Comment I.1: One commenter asked what kind of deformation of the cask was acceptable in the 30-foot drop test.

Response: The 30-foot drop test is a hypothetical accident condition in 10 CFR Part 71 and is not evaluated for storage. The comment is beyond the scope of this rule.

Comment I.2: One commenter questioned the use of a heavy haul trailer instead of a transporter.

Response: A heavy-haul trailer is described in the application as the method for moving the loaded vertical concrete cask from the fuel handling facility to the ISFSI pad. The method of transport is a site-specific consideration and is subject to the required evaluations under 10 CFR 72.212 to be performed by the cask user to ensure that the NAC–MPC system is used within its analyzed design basis.

Comment I.3: One commenter asked the definition for a post-shutdown decommissioning activities report (PSDAR).

Response: A PSDAR is required to be submitted by reactor licensees no later than 2 years after the permanent cessation of operations. The PSDAR describes planned decommissioning activities, a schedule for accomplishment of significant milestones, an estimate of expected cost, and documents that environmental impacts associated with site-specific decommissioning activities have been considered in previously approved environmental impact statements. The licensee must submit a license amendment request if all of the environmental impacts of decommissioning have not been considered in existing environmental assessments.

Comment I.4: One commenter asked how a lift limit of 3 inches for air pad use could be enforced and whether an air pad has ever failed. The commenter further questioned what happens if an air pad deflates or bursts while in use. The commenter also asked how smooth the pad needs to be for air pads to work, if they can work over ice, and how they are removed.

Response: The maximum lifting height of 6-inches maintains the NAC–MPC system within the design and analysis basis during transport operations of the loaded concrete cask to the ISFSI pad. The NAC–MPC system has been evaluated and found acceptable for a 6-inch VCC drop that bounds the failure of the air pad. An air pad creates an air "filler" between the inflated air cushion and the supporting surface. A reasonably smooth supporting surface, such as an ISFSI pad, facilitates optimum performance of an air pad. From a performance standpoint, an air pad would be able to work over a supporting surface coated with ice, although this is obviously not a desired condition for cask movement operations. It is the general licensee's responsibility to limit the VCC lifting height to allowable values. The lift height requirements are specified in TS LCO 3.1.8. Surveillance requirements require verification that VCC lifting requirements are met after the VCC is lifted to install or remove the air pad, and prior to moving the VCC to and within the ISFSI.

Comment I.5: One commenter stated that the inlet and outlet vents (and screens) need to be checked for blockage due to snow and ice, bird nests, leaves, sand, etc., and that the screens should be cleaned. The commenter asked how the outlets are visually inspected each day and asked if the inlets and outlets were non-planar.

Response: The TSs require the cask user to establish a thermal monitoring program for each cask. The program entails daily measurements of inlet and outlet air temperatures and visual inspection of the inlets and outlets or other appropriate actions for any unexplained reading. As a result of the daily surveillances, appropriate actions are to be taken in response to abnormal indications that would include the clearing of any blockages associated with the air passages. The cooling air pathways are non-planar and designed to minimize radiation streaming at the inlets and outlets.

Comment I.6: One commenter asked that the acceptably low amount of water and potentially oxidizing material remaining in the TSC be specified.

Response: The term "acceptably low amount of water and potentially oxidizing material remaining in the TSC" refers to the 1 gram-mole limit for oxidizing species recommended in PNL–6365, "Evaluation of Cover Gas Impurities and Their Effects on the Dry Storage of LWR Spent Fuel." As stated in this report, if the amount of oxidizing species is less than the 1 gram-mole limit, damage to the fuel cladding as a result of fuel oxidation will be precluded.

Comment I.7: One commenter asked the difference between a suction pump and a vacuum pump, and why a suction pump is used. The commenter further questioned the amount of water removed, the basis for the specific amount, and why the quantity is not the same for each plant.

Response: A suction pump is used to remove water from the canister cavity. Approximately 50 gallons of water corresponding to an air space of about 3 inches by 70 inches in diameter are removed from every cask (independent of which plant is using the cask) to keep moisture away from the regions that need to be welded (*e.g.*, shield lid-to-shell weld, *etc.*). Removal of this amount of water is adequate to perform the welding operations and still provide enough shielding to the workers performing the welding and inspection operations. On the other hand, a vacuum pump is used to remove residual moisture, air, and other gases during vacuum drying after all of the water has been removed from the TSC. Removal of the water and vacuum drying reduce the quantity of oxidizing species in the cask to below 1 gram-mole recommended in PNL–6365, "Evaluation of Cover Gas Impurities and Their Effects on the Dry Storage of LWR Spent Fuel." As stated in this report, if the amount of oxidizing species is less than the 1 gram-mole limit, damage to the fuel cladding as a result of fuel oxidation will be precluded. The amount of water removed is specific to this cask-design to facilitate welding operations and for ALARA considerations, and is not appropriate as a specific criterion for other cask designs.

Comment I.8: One commenter asked if all water evaporates due to the vacuum, even the water in gas or in solids, and fuel debris inside the tubes.

Response: After most of the water has been removed from the cask, there may be a small amount at the bottom of the cask trapped in crevices or other small confined spaces that the suction pump cannot remove. The combination of the heat from the spent fuel and the low pressure (i.e., 3 mm mercury pressure) during vacuum drying will aid in the removal of residual water and moisture from the cask. As noted in the previous response (response to comment I7), the vacuum drying procedures described in SAR Section 8.1 will ensure there is less than 1 gram-mole of oxidizing species in the TSC.

Comment I.9: One commenter questioned the makeup of the pool water, whether the canister changed the composition, what kind of chemical reactions can take place, whether they have been evaluated, and who checks the water.

Response: The maintenance of the spent fuel pool water chemistry is beyond the scope of a 10 CFR Part 72 cask review. However, a Part 72 cask

review does include consideration of chemical and galvanic reactions that may take place while a storage canister and associated hardware are in the spent fuel pool. The materials employed for the transfer cask and the TSC are compatible with wet loading and unloading operations and facilities, and no reactions that affect the spent fuel pool chemistry or water quality are expected.

Comment I.10: One commenter asked who the experienced fabricators are who will ensure the process chosen for a durable cask.

Response: In general, NRC reviews and approves the applicant's quality assurance (QA) program as described in SAR Chapter 13. However, the cask user is ultimately responsible for ensuring the fabricator's QA programs comply with 10 CFR Part 72, Subpart G. Additionally, most storage cask fabricators are certified by the American Society of Mechanical Engineers and are N-Stamp Certificate holders. The N-Stamp Certificate is a certificate that enables a vendor to fabricate certified components for nuclear applications.

Comment I.11: One commenter asked if the characteristics of the epoxy enamel have been checked and considered, and referred to a problem at Trojan concerning curing time.

Response: For the NAC–MPC cask, the applicant demonstrated in SAR Section 3.4.1 that there will be no adverse reactions caused by the epoxy enamel coating. The NRC concurs with the SAR evaluation and concludes the designs of the TSC and transfer cask meet the regulatory requirements. The NRC staff has reviewed the problems at Trojan with basket coatings and has concluded that the Trojan issues do not affect our acceptance of the NAC–MPC coating.

Comment I.12: One commenter questioned whether cobalt impurity and other contaminants had been fully evaluated for interaction concerns in storage and unloading.

Response: The level of cobalt impurity and other contaminants have been evaluated in determining the source term and dose rates that are applicable to loading, storage, and unloading operations. The cobalt and other contaminants are mainly gamma emitters that will increase the dose rate on the surface of the concrete cask. The source term and dose rate evaluations have been reviewed and have been found to be acceptable.

Cobalt is an unintended impurity element that is incorporated in fuel component materials during fabrication. Accordingly, there is such a small amount of cobalt (*i.e.*, parts per million concentration) and other impurities in fuel component hardware that no reactions with other cask components during loading, storage, or unloading is expected.

Comment I.13: One commenter asked what transfer operations ocur in loading and unloading in relation to the use of lead bricks in the transfer cask.

Response: Section 3.1.4.2 of the SER indicates that the temperature of the lead bricks during transfer operations are well below the melting point of this material. The use of the words "transfer operations" in this sentence refers to the time that the TSC is loaded inside the transfer cask. Thus, the highest temperature that the lead bricks will experience (*i.e.*, 191°F, as noted in SAR Section 4 and Table 4.1–4) is expected to occur only when the TSC contains design basis fuel and is loaded inside the transfer cask.

Comment I.14: One commenter asked what temperatures would be expected if vacuum drying or helium refill took longer than expected.

Response: In general, the longer vacuum drying or helium transfer takes, the higher the temperatures will be. The rate at which these temperatures would increase is shown graphically in SAR Figure 4.4.3–5, "History of Maximum Component Temperatures for the Nominal Transfer Conditions". However, the temperatures of components like the fuel cladding are prevented from exceeding their respective temperature limit of 806°F by imposing time limitations during vacuum drying and helium transfer operations. If these time limits are exceeded, required actions are imposed that would prevent the temperature limits from being exceeded.

Comment I.15: One commenter asked what happens if the fuel reaches the temperature limit when conducting a ultrasonic test and if the test is done when the TSC is in the transfer cask.

Response: The welding during loading operations and their associated examinations are performed while the canister is in the transfer cask. The NAC–MPC is designed and operated to preclude the spent fuel from reaching its cladding temperature limits. Therefore, the possibility of performing a UT examination (which is optional to the licensee in lieu of a progressive PT) while the fuel cladding is at its maximum temperature limit is very remote, if not non-existent. However, if the licensee was concerned that the cladding temperature limit was being approached, the licensee would follow the technical specifications and initiate forced air cooling or in pool cooling, and there would be no adverse consequences.

Comment I.16: One commenter asked how can a cask user be certain of the temperature of the lead in the transfer cask. The commenter further questions whether the cask user would know if the lead slumps and hot spots form on the outside of the transfer cask.

Response: The temperature of the lead being below its melting point is assured by design analysis, thermal testing of the first loaded canister above a threshold heat load, and by operating procedures. During unloading, if the canister was placed in the transfer cask for a relatively long period of time (approximately 48 hours for maximum decay heat load) without commencing the cool down in accordance with LCO 3.1.7, some material temperature limits could be exceeded. Therefore, a new LCO 3.1.10 has been added to provide restrictions on the time a canister can be in the transfer cask during unloading operations.

Comment I.17: One commenter questioned how the NS–4–FR neutron shielding could have a high hydrogen content and be fire resistant. The commenter further questioned if hydrogen gas could be created from the neutron shielding.

Response: The NS–4–FR material consists of many elements including hydrogen. The chemistry of the material (*e.g.*, the way the elements are bonded to one another) contribute significantly to the fire retardant capability of the NS–4–FR. Even though the material contains hydrogen, the ingredients were selected so that the NS–4–FR resists fire and hydrogen gas generation that could cause the material to combust.

Comment I.18: One commenter asked if all the chemical analysis for a cask drop or tipover in the transfer cask had been evaluated for possible interaction due to water leaks or gas generation.

Response: Cask drops and tipover analyses of the transfer cask are beyond the scope of the review.

Comment I.19: One commenter questioned why the word "if" was used in describing the need for girth welds. The commenter stated that they should know if it is needed.

Response: The NRC agrees with the comment. The SAR drawings indicate that both seam and girth welds will be used to fabricate the TSC. The SER has been modified accordingly.

Comment I.20: One commenter asked about lead slumping.

Response: Lead slumping is a term that describes the metal flow processes that can occur due to impact, stress, or softening at temperatures close to the melting point of lead (e.g., around

600°F). This phenomenon would only be a concern for the lead that is in the annulus of the transfer cask while the TSC is contained inside. When the transfer cask is not being used, the lead is assumed to be at ambient temperatures. Further, the calculated maximum temperature of the lead during transfer of the TSC from the spent fuel pool facilities to the VCC is 191°F under the conditions the applicant has analyzed in SAR Section 4.4.3. Because this temperature is significantly lower than the melting temperature, no softening or flow of lead in the annulus due to lead slumping is expected.

Comment I.21: One commenter asked how the fuel debris could affect unloading if it clogs the drain tubes during reflooding and stated that this issue should be addressed along with the operating procedures to transfer a loaded cask.

Response: Fuel debris is defined in the TS and is handled within individual fuel tubes in an 8 x 8 array within an RFA. The fuel tubes and RFA are designed to preclude the release of gross particles to the canister. Similar radiological precautions would need to be taken by the cask user for both the loading and the unloading evolution when handling fuel debris. The technical basis for the development of site-specific operating procedures for transferring a loaded canister to the NAC–STC for transport have been approved for Certificate of Compliance No. 71–9235.

Summary of Final Revisions

As a result of the staff's response to public comments, or to rectify issues identified during the comment period, the following items in the TSs have been modified: (1) TS Design Feature Section 4.4.6 (see comments H.2, H.3, H.4 and H.5); (2) TS LCO 3.1.5 (see comments H.7 and H.10); (3) TS LCO 3.1.6 (see comments H.9 and H.11); and (4) TS Table 3–1, Canister Limits (see comment H.13). In addition TS LCO 3.1.1 was deleted (see comments G.3, G.7 and H.6) and TS 3.1.10 was added (see comment G.5). The staff has also updated the CoC, including the addition of explicit conditions governing acceptance tests and maintenance program, approved contents, and design features, and has removed the bases section from the TSs attached to the CoC to ensure consistency with NRC's format and content.

The title of the SAR has been revised to delete the revision number so that in the final rule the title of the SAR is "Final Safety Analysis Report for the NAC Multi-Purpose Canister (NAC–MPC) System." The staff has also modified the rule language by changing the word "certification" to "certificate'.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. This final rule adds an additional cask to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals from the Commission. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8126, e-mail mlh1@nrc.gov.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is adding the NAC–MPC cask system to the list of NRC-approved cask systems for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR Part 72. The amendment provided for the storage of spent nuclear fuel in cask systems with designs approved by the NRC under a general license. Any nuclear power reactor licensee can use cask systems with designs approved by the NRC to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be routinely added to the listing in 10 CFR 72.214 through the rulemaking process. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR Part 72, Subpart L.

The alternative to this action is to withhold approval of this new design and issue a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and utilities more time and money for each site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under a general license, and would be in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors

without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees. This final rule will eliminate the above problems and is consistent with previous Commission actions. Further, the rule will have no adverse effect on public health and safety.

The benefit of this rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plants in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and NWPA direction to certify and list approved casks. This rule has no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the Commission's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and NAC. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

a. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

b. In § 72.214, Certificate of Compliance 1025 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.
SAR Submitted by: NAC International.
SAR Title: Final Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC–MPC System).
Docket Number: 72–1025
Certificate Expiration Date: April 10, 2020.
Model Number: NAC–MPC.

Dated at Rockville, Maryland, this 24th day of February, 2000.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Acting Executive Director for Operations.

[FR Doc. 00–5588 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–06–AD; Amendment 39–11619; AD 2000–05–10]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90–85B Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company GE90–85B series turbofan engines. This action requires removing from service aft mount whiffletrees prior to reaching a new cyclic life limit, and replacing with serviceable parts. This amendment is prompted by a reassessment of the low cycle fatigue capability of the engine mount system due to an increase in engine and propulsion system weight. The actions specified in this AD are intended to prevent aft mount

whiffletree failure, which if it occurred with other critical aft mount component failures, could possibly result in an engine mount system failure, and separation of the engine from the aircraft.

DATES: Effective April 7, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 8, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–06–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7135, fax 781–238–7199.

SUPPLEMENTARY INFORMATION: General Electric Company (GE), the manufacturer of GE90–85B series turbofan engines, has recently reassessed the low cycle fatigue (LCF) capability of the engine mount system due to an increase in engine and propulsion system weight. The analysis indicates a reduction in the LCF life for aft mount whiffletree, part number (P/N) 1692M12G02. Prior to completing the assessment for the engine weight and propulsion system weight increase, there was no life limit for the aft mount whiffletree, P/N 1692M12G02, in Chapter 5, Airworthiness Limitations Section, of the Engine Manual for GE90–85B engines because the calculated LCF life value was greater than the aircraft life. Chapter 5 has now been revised to include a new life limit for the aft mount whiffletree, P/N1692M12G02, of 18,000 cycles-since-new (CSN). An aft mount whiffletree failure, which if it occurred with other critical aft mount component failures, could possibly result in an engine mount system failure, and separation of the engine from the aircraft.

New Components

GE has developed improved aft mount whiffletrees that are eligible for installation on all GE90 engine models and do not have a life limit. The majority of GE90 engines in revenue service incorporate one of these improved wiffletrees.

No Domestic Engines

The FAA estimates that there are only 3 engines in revenue service that contain the aft mount whiffletree, P/N 1692M12G02, and that none of these are installed on aircraft of US registry.

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent aft mount whiffletree failure. This AD requires removing from service aft mount whiffletrees prior to accumulating 18,000 CSN, and replacing with serviceable parts.

Immediate Adoption

There are currently no domestic operators of this engine model with the affected component installed. Accordingly, a situation exists that allows the immediate adoption of this regulation. Notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–06–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (EO) No. 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under EO No. 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–10 General Electric Company: Amendment 39–11619. Docket 2000–NE–06–AD.

Applicability: General Electric Company (GE) GE90–85B series turbofan engines, with aft mount whiffletrees, part number (P/N) 1692M12G02, installed. These engines are installed on but not limited to Boeing 777 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent aft mount whiffletree failure, which if it occurred with other critical aft mount component failures, could possibly result in an engine mount system failure, and separation of the engine from the aircraft, accomplish the following:

New Life Limit

(a) Remove from service aft mount whiffletrees, P/N 1692M12G02, before accumulating 18,000 cycles-since-new, and replace with serviceable parts.

(b) Except for the provisions of paragraph (c) of this AD, no aft mount whiffletrees, P/N 1692M12G02, may remain in service beyond the new life limit stated in paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

(d) This amendment becomes effective on April 7, 2000.

Issued in Burlington, Massachusetts, on March 1, 2000.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–5582 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–76–AD; Amendment 39–11620; AD 2000–05–11]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA.315B, SA.316B, SA.316C, SA 318B, SA 318C, SA.319B, SE 313B, SE 3130, SE.3160, and SA 3180 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model SA.315B, SA.316B, SA.316C, SA 318B, SA 318C, SA.319B, SE 313B, SE 3130, SE.3160, and SA 3180 helicopters that have certain tail rotor blades (blades) installed. This action requires reducing the service life of those blades to 400 hours time-in-service (TIS). This amendment is prompted by the discovery that 10 blades were manufactured incorrectly. This condition, if not corrected, could result in failure of a blade and subsequent loss of control of the helicopter.

DATES: Effective March 24, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–76–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model SA.315B, SA.316B, SA.316C, SA 318B, SA 318C, SA.319B, SE 313B, SE 3130, SE.3160, and SA 3180 helicopters. The DGAC advises that the service life must be reduced on the blades due to the discovery of a non-compliance of blade cuff-stems (blade to hub attachment) metallurgical structure affecting the service life.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA.315B, SA.316B, SA.316C, SA 318B, SA 318C, SA.319B, SE 313B, SE 3130, SE.3160, and SA 3180 helicopters of the same type designs registered in the United States, this AD is being issued to prevent failure of a blade and subsequent loss of control of the helicopter. This AD requires reducing the service life of certain serial-numbered blades, part number 3160S34.11.000.00, to 400 hours TIS. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, retiring the blades from use upon reaching 400 hours TIS is required prior to further flight and this AD must be issued immediately.

None of the Model SA.315B, SA.316B, SA.316C, SA 318B, SA 318C, SA.319B, SE 313B, SE 3130, SE.3160, and SA 3180 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require only a few minutes to note the changed retirement life in the maintenance manual, therefore the cost impact is negligible.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in

less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–76–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that notice and public comment are unnecessary in promulgating this regulation; therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States. The FAA has also determined that this regulation is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–05–11 Eurocopter France: Amendment 39–11620. Docket No. 99–SW–76–AD.

Applicability: Eurocopter France SA.315B, SA.316B, SA.316C, SA 318B, SA 318C, SA.319B, SE 313B, SE 3130, SE.3160, and SA 3180 helicopters, with tail rotor blades, part number (P/N) 3160S34.11.000.00, serial numbers (S/N) 23484 through 23493, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before further flight, unless accomplished previously.

To prevent failure of a tail rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove each tail rotor blade, P/N 3160S34.11.000.00, S/N 23484 through 23493, upon reaching 400 hours time-in-service (TIS). Replace each blade with an airworthy tail rotor blade.

(b) This AD revises the Limitations Section of the maintenance manual by establishing a new life limit of 400 hours TIS for the tail rotor blades.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on March 24, 2000.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD T1999–127–057(A); AD T1999–128–060(A); and AD T1999–129–043(A), all dated March 25, 1999 and AD 1999–129–043(A), AD 1999–127–057(A), and AD 1999–128–060(A), all dated April 7, 1999.

Issued in Fort Worth, Texas, on March 1, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–5733 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–88–AD; Amendment 39–11621; AD 98–21–21 R1]

RIN 2120–AA64

Airworthiness Directives; Bob Fields Aerocessories Inflatable Door Seals

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 98–21–21, which currently requires deactivating the electric door seal inflation system for all aircraft equipped with Bob Fields Aerocessories inflatable door seals. Since issuance of that AD, the manufacturer has developed a modification that would allow these electric door seal inflation systems to remain in service, and the Federal

Aviation Administration (FAA) has approved this modification. This AD requires incorporating this modification as a method of complying with the current AD, and will exclude those airplanes with manual door seal inflation systems from the AD requirements of de-activating the system. The actions specified by this AD are intended to prevent smoke and a possible fire in the cockpit caused by overheating of the electric door seal inflation systems, which could result in passenger injury.

DATES: Effective May 1, 2000.

ADDRESSES: Service information that relates to this AD may be obtained from Bob Fields Aerocessories, 340 East Santa Maria St., Santa Paula, California 93060; telephone: (805) 525–6236; facsimile: (805) 525–5286. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–88–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: George Y. Mabuni, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5341; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all aircraft equipped with Bob Fields Aerocessories inflatable door seals that are installed in accordance with either the applicable Supplemental Type Certificate (STC) or through field approval was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 29, 1999 (64 FR 58359). The NPRM proposed to revise AD 98–21–21, Amendment 39–10844 (63 FR 55321, October 15, 1998). AD 98–21–21 currently requires de-activating the electric door seal inflation system, fabricating and installing a placard specifying that the system is inoperative, and inserting a copy of the AD into the Limitations Section of the airplane flight manual (AFM).

AD 98–21–21 only applies to those aircraft equipped with the Bob Fields Aerocessories inflatable door seals. With this in mind, the owner/operator also has the option of removing all provisions of the Bob Fields Aerocessories inflatable door seals installation, and installing original equipment manufacturer door seals or an FAA-approved equivalent that is of different design than the referenced Bob Fields Aerocessories inflatable door seals.

The NPRM proposed to retain the requirements of the existing AD, would exclude those airplanes incorporating a manual inflatable door seal system from the system de-activation requirements, and would provide the option of incorporating one of the modifications referenced in Bob Fields Aerocessories Service Bulletin No. BFA–001, Date: November 3, 1998, as a method of accomplishing the AD.

The NPRM was the result of the manufacturer developing a modification that would allow these electric door seal inflation systems to remain in service, and the Federal Aviation Administration (FAA) approved this modification.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA does not know the number of aircraft that have the affected electric door seal inflation systems installed. The FAA estimates that it will take approximately 3 workhours per airplane to accomplish the optional modifications that will allow these systems to be put back in service, at an average labor rate of approximately $60 an hour. Based on these figures, the total cost impact of the optional modification in this document on U.S. operators is estimated to be $180 per airplane aircraft equipped with Bob Fields Aerocessories inflatable door seals.

Regulatory Impact

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 98–21–1, Amendment 3910844 (63 FR 55321, October 15, 1998), and adding a new AD to read as follows:

98–21–21 R1 Bob Fields Aerocessories: Amendment 3911621; Docket No. 98–CE–88–AD; Revises AD 98–21–21, Amendment 39–10844.

Applicability: Electric inflatable door seals, installed either in accordance with the applicable supplemental type certificate (STC) or through field approval, that are installed on, but not limited to, the following aircraft:

Affected STC	Make and model aircraft affected
SA3735NM	Cessna Models 170, 170A, and 170B Airplanes.
SA4136WE	Cessna Models 310, 310A, 310B, 310C, 310D, 310F, 310G, 310H, 310I, 310J, 310K, 310L, 310N, 310P, 310Q, 310R, T310P, T310Q, and T310R Airplanes.
SA2226NM	Cessna Models P210N and P210R Airplanes.
SA3736NM	Cessna Models 185, 185A, 185B, 185C, 185D, A185E, and A185F Airplanes.
SA4177WE	Cessna Models 175, 175A, 175B, and 175C Airplanes.
SA4212WE	Cessna Models 210, 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, T210F, T210G, T210H, T210J, T210K, T210L, T210M, T210N, 210–5 (205), and 210–5A (205A) Airplanes.
SA4283WE	Cessna Models 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, and 172N Airplanes.
SA4284WE	Cessna Models 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, and 180K Airplanes.
SA4285WE	Cessna Models 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, R182, and TR182 Airplanes.
SA4286WE	Cessna Models 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TP206D, TP206E, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, and TU206G Airplanes.
SA4287WE	Cessna Models 320, 320A, 320B, 320C, 320D, 320E, 320F, and 320–1 Airplanes.
SA4180WE	Raytheon (Beech) Models H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 35–33, 35–A33, 35–B33, 35–C33, 35–C33A, E33, E33A, E33C, F33, F33A, F33C, G33, 36, A36, A36TC, and B36TC Airplanes.
SA4184WE	Raytheon (Beech) Models 95, B95, B95A, E95, 95–55, 95–A55, 95–B55, 95–B55A, 95–B55B, 95–C55, D55, E55, 56TC, 58, and 58A Airplanes.
SA4239WE	Raytheon (Beech) Models 58P, 58PA, 58TC, and 58TCA Airplanes.
SA4240WE	Raytheon (Beech) Models 50, B50, C50, D50, D50A, D50B, D50C, D50E, D50E–5990, E50, F50, G50, H50, and J50 Airplanes.
SA4282WE	Raytheon (Beech) Models 35, A35, B35, C35, D35, E35, F35, G35, and 35R Airplanes.
SA4178WE	Mooney Models M20, M20A, M20C, M20D, M20E, M20F, M20G, M20J, and M20K Airplanes.
SA4234WE	The New Piper Aircraft, Inc. (Piper) Models PA–34–200, PA–34–200T, and PA–34–220T Airplanes.
SA4179WE	Piper Models PA–24, PA–24–250, PA–24–260, and PA–24–400 Airplanes.
SA4235WE	Piper Models PA–44–180 and PA–44–180T Airplanes.
SA4236WE	Piper Models PA–28–140, PA–28–150, PA–28–160, PA–28–180, PA–28–235, PA–28–151, PA28–181, PA–28–161, PA–28–236, PA–28–201T, PA–28S–160, PA–28S–180, PA–28R–180, PA–28R–200, PA–28R–201, PA–28R–201T, PA–28RT–201, and PA–28RT–201T Airplanes.
SA4237WE	Piper Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 Airplanes.
SA4238WE	Piper Models PA–30, PA–39, and PA–40 Airplanes.
SA4385WP	Piper Models PA–31, PA–31–300, PA–31–325, and PA–31–350 Airplanes.
SA4288WE	Piper Models PA–32–260, PA–32–300, PA–32S–300, PA–32–301, PA–32–301T, PA–32R–300, PA–32R–301, PA–32R–301T, PA–32RT300, and PA–32RT–300T Airplanes.
SA2511NM	Bellanca Models 17–30, 17–31, and 17–31TC Airplanes.
SA2510NM	Bellanca Models 17–30A, 17–31A, and 17–31ATC Airplanes.
SA4316WE	Wing Aircraft Company Model D–1 Airplanes.

Note 1: This AD applies to each airplane identified in the preceding applicability provision that has the affected inflatable door seals installed, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD.The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent smoke and a possible fire in the cockpit caused by overheating of the electric door seal inflation systems, which could result in passenger injury, accomplish the following:

(a) Prior to further flight after October 30, 1998 (the effective date of AD 98–21–21), deactivate the electric door seal inflation system by accomplishing the following:

(1) Disconnect the battery.

(2) Locate the air pump and identify the power wire to the air pump.

(3) Trace the power wire to its connection to the airplane's original electrical power system. Disconnect the power wire at its attachment to the airplane's electrical power system and stow the wire end.

(4) For non-pressurized airplanes, fabricate a placard that incorporates the following words utilizing letters that are at least 0.10-inch in height, and install this placard on the instrument panel within the pilot's clear view:

"ELECTRIC DOOR SEAL INFLATION SYSTEM INOPERATIVE"

(5) For pressurized airplanes or for airplanes that do not have an operating manual door seal inflation system, fabricate a placard that incorporates the following words utilizing letters that are at least 0.10-inch in height, and install this placard on the instrument panel within the pilot's clear view:

"ELECTRIC DOOR SEAL INFLATION SYSTEM INOPERATIVE. THIS AIRPLANE CAN ONLY BE OPERATED IN UNPRESSURIZED FLIGHT"

(6) Reconnect the battery before returning to service.

(b) Prior to further flight after October 30, 1998 (the effective date of AD 98–21–21), insert a copy of this AD into the Limitations Section of the airplane flight manual (AFM).

Note 2: The prior to further flight compliance time of paragraphs (a) and (b) of this AD is being retained from AD 98–21–21. The only substantive difference between this AD and AD 98–21–21 is the addition of the alternative method of compliance referenced in paragraph (c) of this AD.

Note 3: This AD only applies to those aircraft equipped with the Bob Fields Aerocessories inflatable door seals. With this in mind, the owner/operator also has the option of removing all provisions of the Bob Fields Aerocessories inflatable door seals installation, and installing original equipment manufacturer door seals or an FAA-approved equivalent that is of a different design than the referenced Bob Fields Aerocessories inflatable door seals.

(c) One of the following actions may be accomplished as an alternative method of compliance to the requirements of paragraphs (a) and (b) of this AD. No further action is required by this AD as long as one of these configurations remains incorporated on the aircraft.

(1) Modify the electric door seal inflation system in accordance with the procedures in Bob Fields Aerocessories Service Bulletin No. BFA–001, Date: November 3, 1998; or

(2) Install a manual door seal inflation system instead of an electric system. Aircraft with existing manual systems as of the effective date of this AD are excluded from the requirements of paragraphs (a) and (b) of this AD.

(d) As of the effective date of this AD, no person may install, on any aircraft, a Bob Fields Aerocessories electric door seal inflation system unless the actions specified in Bob Fields Aerocessories Service Bulletin No. BFA–001, Date: November 3, 1998, are incorporated.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Blvd., Lakewood, California 90712.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance approved in accordance with AD 98–21–21 are considered approved as alternative methods of compliance for this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to Bob Fields Aerocessories, 340 East Santa Maria St., Santa Paula, California 93060; or may examine this document(s) at the FAA, Central Region, Office of the Regional Counsel, Room 506, 901 Locust, Kansas City, Missouri 64106.

(h) This amendment revises AD 98–21–21, Amendment 39–10844.

(i) This amendment becomes effective on May 1, 2000.

Issued in Kansas City, Missouri, on March 2, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5732 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Use of Electronic Signatures of Customers, Participants and Clients of Registrants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is adopting new rules allowing the use of electronic signatures of lieu of handwritten signatures for certain purposes under the Commission's rules.[1] This action is part of the Commission's ongoing efforts to facilitate the use of electronic technology and media in the futures industry.

EFFECTIVE DATE: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Lawrence P. Patent, Associate Chief Counsel, or Christopher W. Cummings, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

On August 30, 1999, the Commission published for comment proposed rules to permit futures commission merchants ("FCMs"), introducing brokers ("IBs"), commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") to accept electronic signatures from their customers, pool participants and advisory clients, as the case may be, in lieu of manual signatures in each of those instances where the Commission's rules require those registrants to obtain a signature on a document (the "Proposing Release").[2] As noted in the Proposing Release, this rulemaking was prompted by a request to interpret Commission rules to permit an FCM to accept, in lieu of a prospective customer's manually signed, paper acknowledgment that he received and understood the risk disclosure statement specified in Rule 1.55, an electronic mail message to that effect on which the customer has typed his name. In considering that request the Commission determined that customers of FCMs and IBs, as well as commodity pool participants and clients of CTAs, should be permitted to use electronic signatures in those instances where Commission rules require the customer's (or participant's or client's) manual signature. In furtherance of this determination, the Commission proposed defining the term "electronic signature" in new Rule 1.3(tt)[3] and authorizing the use of electronic signatures in new Rule 1.4.

The Proposing Release recounted in some detail various provisions of the Commission's rules that require registrants to obtain a signature,[4] and it noted that the actual steps taken to open an account (including the signing of the actual account agreement between a futures broker and its customer) are not directly covered by Commission rules.[5] Rather, as the Proposing Release explained, Commission rules address a number of ancillary aspects of the account opening process (including, for example, a signed acknowledgment of the receipt of a required disclosure). The Proposing Release also described efforts then pending in Congress and elsewhere to enact a legislative framework for the use of electronic and digital signatures in commercial and governmental transactions.[6]

B. The Commenters

The Commission received five comment letters in response to the Paperwork Release; two from futures industry trade organizations; one from a registered futures association; one from a registered FCM, and one from a corporate group including FCMs and CPOs. Although all of the commenters strongly agreed with the general intent of the rulemaking, each took issue with various aspects of the proposal.

II. Response to the Comments Received

A. General

All of the commenters supported the proposed rulemaking in concept. They saw the proposal as a worthy effort to keep pace with technological developments. Two commenters suggested that the Commission pare down the proposed rule to a definition and a general authorization to use electronic signatures. Another suggestion was to withdrawn the rulemaking and issue an advisory in its stead. As detailed below, the Commission has determined to adopt the proposed definition of the term "electronic signature" in Rule 1.3(tt)

[1] Commission rules referred to herein are found at 17 CFR Ch. I (1999).

[2] "Use of Electronic Signatures by Customers, Participants," 64 FR 47151 (August 30, 1999). Readers may review the text of the Proposing Release in the **Federal Register** or at the Commission's Internet web site (http://www.cftc.gov).

[3] Rule 1.3 contains definitions of terms generally applicable under the Commission's rules.

[4] See 64 FR 47151 at 47152–47153.

[5] See 64 FR 47151 at 47152.

[6] Since the publication date of the Proposing Release, the United States Senate and the House of Representatives have each passed bills aimed in whole or in part at facilitating the use of electronic signatures. The Senate passed S. 761 November 19, 1999, and the House passed H.R. 1714 on November 9, 1999. H.R. 1714 has been received by the Senate and was referred to the Senate Committee on Commerce, Science and Transportation on November 19, 1999. Neither bill has been enacted into law.

essentially as proposed, and to adopt a streamlined version of proposed Rule 1.4.

B. Rule 1.3(tt)—Definition of Electronic Signature

The proposed definition tracked the definition used in the Uniform Electronic Transactions Act.[7] Four of the five commenters mentioned the proposed definition, and all of them endorsed it. Accordingly, the Commission is adopting Rule 1.3(tt) substantially as proposed.[8]

C. Rule 1.4—Use of Electronic Signatures

1. Proposed Paragraph (a)

As proposed, Rule 1.4(a) would have provided that, for purposes of Commission rules, an FCM, IB, COP or CTA could accept an electronic signature in lieu of a handwritten signature wherever Commission rules require that a document be signed by a customer, pool participant or advisory client, if the registrant elects generally to accept electronic signatures. The general permission to accept electronic signatures would been qualified by the caveat that an electronic signature must comply with applicable Federal law and any standards the Commission may adopt or guidance its staff may issue. It would have been further qualified by the requirement that registrants adopt and utilize reasonable safeguards, including at least safeguards to verify that an electronic signature is being used by the person it purports to identify, that the electronically-signed record will not be subsequently altered, and that no changes or errors occur in the electronic signature.

The commenters acknowledged the need for reasonable safeguards in connection with the use and processing of electronic signatures, but they expressed the belief that nature and specifies of the safeguards should be left up to the registrant and not spelled out in a rule. One commenter further stated that an express requirement that electronic signatures comply with applicable Federal law amounted to unnecessarily prescribing procedural safeguards.

After considering the comments, the Commission has determined not to adopt in Rule 1.4(a) the proposed requirements that the safeguards adopted and utilized by registrants must include measures to verify that the electronic signature is that of the person purporting to use it, and measures to detect changes or errors in a person's electronic signature. The rule as adopted retains, however, the proposed requirement to comply with applicable Federal law and includes a requirement to comply with other Commission rules.[9] The rule as adopted also retains a requirement for safeguards to prevent subsequent alteration of an electronically-signed record. The Commission believes that the reference to Federal law is an appropriate deferral to the end product of the pending efforts in Congress to produce legislation covering electronic signatures (and electronic commerce in general), as well as a signal to registrants that other statutory and regulatory provisions may affect the use of electronic signatures. Intact preservation of signed records (whether electronically or manually signed) is required by the recordkeeping requirements included in the Commission's rules.[10] Placing a paper document in a safe place is generally adequate to allow such authorized persons as Commission representatives to review the document at a later date as may be necessary. Electronic documents may require different measures to ensure that they can be retrieved and reviewed in the future. Thus, while the requirement to preserve and retain specified electronically-signed records is the same as for manually-signed documents, the manner in which registrants carry it out will vary—with the particular measures being left up to the registrant.

2. Proposed Paragraph (b)

Proposed Rule 1.4(b) would have required that registrants accepting electronic signatures from customers, pool participants or advisory clients clearly disclose to them that although an electronic signature is sufficient for purposes of the Commodity Exchange Act (the "Act")[11] and Commission rules, it may not be sufficient for purposes of other Federal or state laws or regulations. The commenters unanimously disapproved of this proposed requirement on a variety of grounds, including that it would cause confusion, that it would tend to distinguish manual and electronic signatures qualitatively, that the required disclosure would be subject to constant modification and varying legal interpretations, and that it would likely become moot in the foreseeable future.

After considering the comments, the Commission has determined to eliminate proposed paragraph (b) from Rule 1.4 as adopted. The provisions in Commission rules that require the signature of a customer, pool participant or advisory client generally do not involve the creation of contractual rights or liabilities. The validity of an electronic signature in the context of Commission rules is unlikely to become an issue except as between the Commission and the registrant because the signature generally does no more than confirm, in the event of a Commission audit or review of records, that the registrant has met its disclosure or other obligations under the rules. Accordingly, to accomplish its aim of alerting registrants and their clients to the legal concerns arising from the use of electronic signatures, by this **Federal Register** release the Commission is strongly urging registrants to exercise informed judgment in their decisions to accept electronic signatures (including, as appropriate, consulting legal counsel or performing their own legal research, as the case may be).

Thus, rule 1.4 as adopted consists of a single paragraph with no express requirement that registrants make disclosures relative to electronic signatures. Nevertheless, in the exercise of conscientious business practice, registrants are encouraged to provide information on the nature and significance of electronic signatures, and any legal or practical issues that may be relevant to the use of electronic signatures, by their customers, pool participants and advisory clients. Providing such information is consistent with the registrant's duties of diligent supervision as set forth in Commission rules (*e.g.*, Rule 166.3).

D. Comments Submitted in Response to Specific Questions in the Proposing Release

The Proposing Release contained a set of questions to elicit public comments on issues arising from and related to the use of electronic signatures. Each of the commenters addressed some or all of these questions.

In response to the question whether the Commission should defer rulemaking on electronic signatures to a later date, all of the commenters urged the Commission to act promptly to

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[7] At its annual meeting held July 23–30, 1999, the National Conference of Commissioners of Uniform State Laws approved and recommended for adoption by all of the states the Uniform Electronic Transactions Act.

[8] In order for the definition of the term "electronic signature" in the rule to conform to the definition in the Uniform Electronic Transactions Act (as approved by the National Conference of Commissioners on Uniform State Laws), the language "intent to sign the record" is being substituted in the rule for the proposed language "intent of signing the record."

[9] In the proposed rule, the Commission had stated that the electronic signature "must comply with . . . such standards as the Commission may adopt and such guidance as the Commission's staff may provide."

[10] See, *e.g.*, Rules 1.31, 4.23 and 4.33.

[11] 7 U.S.C. § 1 *et seq.* (1994).

confirm registrants' authority to accept electronic signatures, rather than wait for final Congressional action. The Commission agrees that rulemaking in this area should not be delayed. Commenters did not believe that additional safeguards should be put in place to establish conclusively the identity of a user of an electronic signature or to counter any possible loss of security occasioned by switching from manual to electronic signatures. The commenters did not believe that face-to-face dealings or paper-based transactions were inherently more secure than electronic transactions, and they did not believe that electronic signatures should be treated as qualitatively different from handwritten signatures. They stated that Commission rules should be "Medium-neutral" with identical requirements applicable to paper-based and electronic dealings. The commenters generally saw no need for the imposition of a waiting period to replace the built-in delay that obtains when hard-copy account documents are delivered to a customer, read, signed and returned. The Commission nonetheless remains concerned that traditional high pressure, telephonic sales tactics, in combination with the ability to gain immediate customer approval to begin trading, may increase the pressure on the prospective customer. Industry participants should therefore exercise caution when permitting the use of electronic signatures as part of the solicitation process.

In denying a need for the Commission to adopt additional regulatory safeguards in this area, a view with which the Commission concurs, commenters expressed the belief that registrants will impose their own prudential controls, and that the nature and details of safeguards and protections should be left to the discretion of registrants exercising their supervisory procedures. Registrants are again reminded, however, that they have express obligations under Commission rules (*e.g.*, Rule 166.3) diligently to supervise the handling of all commodity interest accounts carried, operated, advised or introduced by the registrant.

Finally, commenters were split on the question whether the Commission should expressly require that the rules of self-regulatory organizations ("SROs") be consistent with (proposed) Rules 1.3(tt) and 1.4. Some commenters expressed the view that although SROs should defer to the Commission's rules in this ares, there was adequate opportunity in the process by which the Commission reviews proposed SRO rules to ensure consistency without the Commission adopting an express provision in its own rules.[12] Other commenters urged the Commission to require SROs to conform their rules to those of the Commission. The Commission has determined not to adopt any requirement in this area in order to allow SROs to exercise flexibility.

III. Important Additional Considerations

The Commission reminds registrants that the adoption of Rule 1.4 affects the use of electronic signatures only in the context of complying with those Commission rules that require the signature of a customer, pool participant or client. Registrants remain subject, in their business activities generally, to other Federal and state laws and regulations. Congressional action on the use of electronic signatures has not been finalized, and the requirements for, and effect of, electronic signatures under state contract law remains far from uniform (notwithstanding recent submission to the states of the Uniform Electronic Transactions Act).

Accordingly, registrants should make their own inquiries, including consultation with counsel where appropriate, before accepting electronic signatures in situations (*e.g.*, for execution of account agreements by brokerage customers) that are not specifically addressed by Commission rules. In addition, registrants should make an informed judgment as to the information they should provide to prospective customers regarding the nature, use and effect of electronic signatures.

The Commission does not consider it likely that the rules adopted hereby will come into conflict with any law applicable to electronic signatures that may be enacted. Nevertheless, the Commission intends that its staff will monitor legislative developments in this area and that in the event staff identifies such a conflict, the Commission will undertake appropriate action.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA;"), 5 U.S.C. §§ 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[13] The Commission has previously determined that registered FCMs and CPOs are not small entities for the purpose of the RFA.[14] With respect to CTAs and IBs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs and IBs would be considered to be small entities and, if so, the economic impact on them of any rule.[15] In this regard, the Commission notes that the rules being adopted herein do not change the obligations of CTAs and IBs under the Act and Commission regulations, but permit CTAs and IBs to comply with certain existing obligations by using electronic means as an acceptable alternate to paper-based compliance. The Chairman, on behalf of the Commission hereby certifies, pursuant to 5 U.S.C. § 605(b), that these rules will not have a significant economic impact on a substantial number of small entities. No comments were received in response to the Commission's specific request for comments on the impact these rules as proposed would have on small entities.

V. Administrative Procedure Act

The Administrative Procedure Act (the "APA") generally requires that rules promulgated by an agency may not be made effective less than thirty days after publication, except for, among other things, instances where the agency has found good cause to make a rule effective sooner, and has published that finding together with the rule (5 U.S.C. 553). The Commission notes that many persons to whom the new rules would apply have indicated their eagerness to make use of them as soon as possible. The Commission generally attempts to respond to ongoing industry demands to implement technology in the marketplace as it becomes available and recognizes that existing technology supports to use of electronic signatures. Moreover, although these rules clarify that registrants may accept electronic signatures, they do not require any registrant to do so. Indeed, the existing rules remain unchanged. The Commission finds that these new rules facilitate a particular aspect of electronic commerce in a manner that does not impose any additional burdens on registrants or on their customers or

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[12] We note that the Commission has proposed for public comment a rule change to permit futures exchanges to adopt changes to their rules without prior approval by the Commission. See "Proposed Revision of the Commission's Procedure for the Review of Contract Market Rules," 64 FR 66428 (November 26, 1999). The comment period for that proposal closes February 24, 2000.

[13] 47 FR 189618–18621 (April 30, 1982).

[14] 47 FR 18619–18620.

[15] 47 FR 18618–18620.

clients. Accordingly, the Commission finds good cause to make these rules effective March 9, 2000, in accordance with 5 U.S.C. § 553(d)(3).

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, Section 1a, 4b, 4g and 8a, 7 U.S.C. §§ 1a, 6b, 6g and 12a (1994), the Commission hereby amends 17 CFR Part 1 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, 24.

2. Section 1.3 is hereby amended by adding new paragraph (tt) to read as follows:

§ 1.3 Definitions.

* * * * *

(tt) *Electronic signature* means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

3. Section 1.4 is hereby added immediately following § 1.3 to read as follows:

§ 1.4 Use of electronic signatures.

For purposes of complying with any provision in the Commodity Exchange Act or the rules or regulations in this Chapter I that requires a document to be signed by a customer of a futures commission merchant or introducing broker, a pool participant or a client of a commodity trading advisor, an electronic signature executed by the customer, participant or client will be sufficient, if the futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor elects generally to accept electronic signatures; *Provided, however,* That the electronic signature must comply with applicable Federal laws and other Commission rules; And, *Provided further,* That the futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor must adopt and utilize reasonable safeguards regarding the use of electronic signatures, including at a minimum safeguards employed to prevent alteration of the electronic record with which the electronic signature is associated, after such record has been electronically signed.

Issued in Washington D.C. March 3, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–5637 Filed 3–8–00; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–42486]

Delegation of Authority to the Office of the General Counsel

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to delegate to the General Counsel its authority to initiate proceedings under Section 21(e)(1) of the Securities Exchange Act of 1934 to enforce Commission orders, including Commission orders affirming self-regulatory organization sanctions, when the General Counsel determines such a proceeding is appropriate. This delegation would spare the Commissioners and their staff from having to review matters in which the Commission has already issued an order and which are noncontroversial and implicate no policy issues. The effect would be to allow the staff to bring proceedings more expeditiously and to promote efficiency in the enforcement of Commission orders.

EFFECTIVE DATE: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Melinda Hardy, Assistant General Counsel, (202) 942–0877.

SUPPLEMENTARY INFORMATION: Section 21(e)(1) of the Securities Exchange Act of 1934 ("Exchange Act") authorizes the Commission to apply to the district courts of the United States for orders commanding any person to comply with orders issued pursuant to the Exchange Act. Thus, Section 21(e)(1) authorizes the Commission to seek court orders requiring, among other things, payment of unpaid self-regulatory organization sanctions where the Commission has entered an order affirming that sanction. *See Lang* v. *French,* 154 F.3d 217, 222 (5th Cir. 1998).

The Commission is delegating to the General Counsel the authority to determine when to initiate actions under Section 21(e)(1) to enforce Commission-affirmed SRO sanctions and other sanctions because the decision to initiate such an action will rarely involve policy issues or be controversial. Actions under Section 21(e)(1) will necessarily follow a Commission order affirming or imposing a sanction, so Section 21(e)(1) actions will concern primarily the simple issue of whether a person has complied with the order. The staff may submit matters to the Commission for consideration as it deems appropriate.

The Commission finds, in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)), that this revision relates solely to agency organization, procedures, or practices. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for comment. Accordingly, it is effective March 9, 2000.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendment

For the reasons set out in the Preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–14 is amended by adding paragraph (l) to read as follows:

§ 200.30–14 Delegation of authority to the General Counsel.

* * * * *

(l) File applications in district court under Section 21(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(e)(1)) to obtain orders commanding persons to comply with Commission orders.

Dated: March 2, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5756 Filed 3–8–00; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 00—16]

RIN 1515–AC61

Extension of Import Restrictions Imposed on Certain Categories of Archaeological Material From the Prehispanic Cultures of the Republic of El Salvador

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the extension of the import restrictions on certain categories of archaeological material from the Prehispanic cultures of the Republic of El Salvador which were imposed by T.D. 95–20. The Under Secretary for Public Diplomacy and Public Affairs, United States Department of State has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, the restrictions will remain in effect for an additional 5 years, and the Customs Regulations are being amended to indicate this extension. These restrictions are being imposed pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. T.D. 95–20 contains the Designated List of archaeological material representing Prehispanic cultures of El Salvador.

EFFECTIVE DATE: March 8, 2000.

FOR FURTHER INFORMATION CONTACT: (Legal Aspects) Michael L. Smith, Intellectual Property Rights Branch (202) 927–1996; (Operational Aspects) Alfred Morawski, Other Government Agencies Branch (202) 927–0402.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of 1970 UNESCO Convention (codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Public Law 97–446, 19 U.S.C. 2601 *et seq.*) ("the Act")), the United States entered into a bilateral agreement with the Republic of El Salvador on March 8, 1995, concerning the imposition of import restrictions on certain categories of archeological material from the Prehispanic cultures of the Republic of El Salvador. The United States Customs Service issued T.D. 95–20 (March 10, 1995), amending § 12.104g(a) of the Customs Regulations (19 CFR 12.104g(a)) to reflect the imposition of these restrictions and including a list designating the types of article covered by the restrictions.

After reviewing the findings and recommendations of the Cultural Property Advisory Committee, the Under Secretary for Public Diplomacy and Public Affairs, United States Department of State, concluding that the cultural heritage of El Salvador continues to be in jeopardy from pillage of Prehispanic archaeological resources, made the necessary determinations to extend the import restrictions for an additional five years on February 14, 2000. Accordingly, Customs is amending § 12.104g(a) (19 CFR 12.104g(a)) to reflect the extension of the import restrictions.

The Designated List of Archaeological Material Representing Prehispanic Cultures of El Salvador covered by these import restrictions is set forth in T.D. 95–20. The Designated List and accompanying image database may also be found at the following internet website address: http://e.usia.gov/education/culprop.

The restrictions on the importation of these archaeological materials from the Republic of El Salvador are to continue in effect until March 8, 2005. Importation of such material continues to be restricted unless:

(1) Accompanied by appropriate export certification issued by the Government of the Republic of El Salvador or;

(2) With respect to Pre-Columbian material from archaeological sites throughout El Salvador, documentation exists that exportation from El Salvador occurred prior to March 10, 1995; or;

(3) With respect specifically to Pre-Columbian material from the Cara Sucia archaeological region, documentation exists that exportation from El Salvador occurred prior to September 7, 1987.

Regulatory Amendment

This document amends § 12.104g(a), Customs Regulations (19 CFR 12.104g(a)) extending the effective date for five years for the import restrictions on the archaeological material representing Prehispanic cultures of the Republic of El Salvador.

Inapplicability of Notice and Delayed Effective Date

This amendment is being made without notice or public procedure pursuant to 5 U.S.C. 553(a)(1). In addition, pursuant to 5 U.S.C. 553(b)(B), Customs has determined that such notice or public procedure would be impracticable and contrary to the public interest because the action being taken is essential to avoid interruption of the application of the existing import restrictions. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This amendment does not meet the criteria of a "significant regulatory action" as described in Executive Order 12866.

Drafting Information: The principal author of this document was Keith B. Rudich, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspections, Imports.

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority and specific authority citation for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for El Salvador by adding "extended by T.D. 00–16"

immediately after "T.D. 95–20" in the column headed "T.D. No.".

Raymond W. Kelly,
Commissioner of Customs.
Approved: March 1, 1999.
John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 00–5811 Filed 3–6–00; 4:00 pm]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8819]

RIN 1545–AX14

Use of Actuarial Tables in Valuing Annuities, Interests for Life or Term of Years, and Remainder or Reversionary Interests; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction of final and temporary regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Friday, April 30, 1999 (64 FR 23187), relating to the use of actuarial tables in valuing annuities, interests for life or terms of years, and remainder or reversionary interests.

DATES: This correction is effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett at (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject of these corrections are under section 7520 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8819) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8819), which were the subject of FR Doc. 99–10533, is corrected as follows:

§ 1.664–2 [Corrected]

1. On page 23229, in the table in amendatory instruction Par. 32, the entry for 1.664–2(c) is corrected to read as follows:

Section	Remove	Add
* * * * * * *		
1.664–2(c), sixth sentence	April 30, 1989	April 30, 1999.
* * * * * * *		

Dale D. Goode,
Federal Register Liaison, Assistant Chief Counsel (Corporate).
[FR Doc. 00–5245 Filed 3–8–00; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8852]

RIN 1545–AT52

Passthrough of Items of an S Corporation to its Shareholders; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Wednesday, December 22, 1999 (64 FR 71641), relating to the passthrough of items of an S corporation to its shareholders, the adjustments to the basis of stock of the shareholders, and the treatment of distributions by an S corporation.

DATES: This correction is effective December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Schaffer, Deane Burke, or David Shulman at (202) 622–3070, or Brenda Stewart at (202) 622–3120 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under sections 1366, 1367, and 1368 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8852) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8852), which were the subject of FR Doc. 99–32697, is corrected as follows:

§ 1.1366–4 [Corrected]

1. On page 71648, column 3, § 1.1366–4(c), third line from the bottom of the paragraph, the language, "the amount of the tax as the amount of" is corrected to read "the amount of the tax as the net amount of".

§ 1.1367–1 [Corrected]

2. On page 71649, column 2, § 1.1367–1(h) *Example 5.(i),* lines 7 through 11, the language, "section 1377(a)(2)(B) and § 1.1377–1(b)(2), B and C are affected shareholders because B has transferred shares to Corporation S. Pursuant to section 1377(a)(2)(A) and § 1.1377–1(b)(1), B and C, the affected" is corrected to read "section 1377(a)(2)(B) and § 1.1377–1(b)(2), B, C, and D are affected shareholders because B has transferred shares to Corporations S and D. Pursuant to section 1377(a)(2)(A) and § 1.1377(b)(1), B, C, and D, the affected".

Dale D. Goode,
Federal Register Liaison, Assistant Chief Counsel (Corporate).
[FR Doc. 00–5244 Filed 3–8–00; 8:45 am]
BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 184–0220a; FRL–6546–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving revisions to the California State Implementation Plan (SIP). The revisions concern rules from the San Diego County Air Pollution Control District. These rules were submitted by the State of California on behalf of the District to apply as general provisions for the implementation of NSR and other SIP requirements for stationary sources in the District.

This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of air pollutants in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on May 8, 2000, without further notice, unless EPA receives adverse comments by April 10, 2000. If EPA receives such comment, it will publish a timely withdrawal **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted in writing to David Albright at the Region IX mailing address listed below. Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours at the following address: Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

San Diego County Air Pollution Control District, 9150, Chesapeake Drive, San Diego, California 92123–1096

FOR FURTHER INFORMATION CONTACT: David Albright, Permits Office, AIR–3, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1627. Electronic mail: albright.david@epa.gov

SUPPLEMENTARY INFORMATION: Through out this document wherever "we," "us," or "our" are used we mean EPA.

I. Applicability

The rules we are approving into the California SIP are SDCAPCD Rule 19.3—Emission Information and SDCAPCD Rule 60—Circumvention. The California Air Resources Board submitted SDCAPCD Rules 19.3 and 60 to us on October 18, 1996 and July 13, 1994, respectively.

II. Background

On November 15, 1990, Congress enacted the Clean Air Act Amendments of 1990. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(3)(B) of the CAA, Congress statutorily adopted the requirement that each State in which all or part of a marginal or worse ozone nonattainment area is located shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. San Diego County is classified as a serious ozone nonattainment area and SDCAPCD Rule 19.3 is intended to address this CAA section 182 requirement.

On October 21, 1977, we approved SDCAPCD Rule 60 into the California SIP (see 42 FR 56113). A revised version of Rule 60 was submitted for SIP approval on July 13, 1994 along with earlier versions of several SDCAPCD NSR rules that were the focus of a recent EPA rulemaking.[1] Revised Rule 60 is a companion administrative rule to the SDCAPCD NSR rules but was not included in our recent rulemaking package because Rule 60 was deemed by us to be segregable and fully approvable whereas the NSR rules contained certain deficiencies that resulted in a limited approval and limited disapproval. Today's action on Rule 60 does not have any effect on SDCAPCD Rules 20.1, 20.2, 20.3, and 20.4.

The State of California submitted many revised rules for incorporation into its SIP on July 13, 1994 and October 18, 1996, including the rules being acted on in this document. This document addresses EPA's direct final action for SDCAPCD Rule 19.3—Emission Information and SDCAPCD Rule 60—Circumvention. SDCAPCD adopted Rule 19.3 on May 15, 1996 and adopted Rule 60 on May 17, 1994. We determined Rule 19.3 to be complete on December 19, 1996 and Rule 60 to be complete on September 12, 1994, pursuant to EPA's completeness criteria as set forth in 40 CFR part 51, appendix V.

Rule 19.3 requires any person owning or operating any source of emissions to submit emission statement forms to the District in accordance with CAA 182(a)(3)(B). Rule 60 is intended to ensure that the definition of stationary source in SDCAPCD Rule 20.1 and the requirements of SDCAPCD's NSR Rules 20.1, 20.2, 20.3, and 20.4 are not circumvented by sources. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

There is currently no version of SDCAPCD Rule 19.3—Emission Information in the SIP. The submitted rule establishes requirements for any person owning or operating a source of emissions of air pollutants, or any person selling or supplying any material the use of which may cause the emission of air pollutants. Owners/operators of stationary sources which emit 25 tons per year or greater of volatile organic compounds or oxides of nitrogen are required to submit Emissions Statement Forms to the SDCAPCD annually. Owners/operators of sources emitting less than 5 tons per year of each air pollutant are not required to submit Emission Statement Forms. For sources emitting between 5 and 25 tons per year of volatile organic compounds or oxides of nitrogen and for persons selling or supplying any material, the use of which may cause the emission of air pollutants, Rule 19.3 requires the submission of Emission Statement Forms at the discretion of the San Diego County APCO.

Rule 19.3 was adopted by SDCAPCD and submitted for SIP approval to us in accordance with CAA section 182(a)(3)(B). Section 182(a)(3)(B) requires States to revise their SIP to include requirements for owners/operators of stationary sources of oxides

[1] On August 6, 1999, we proposed a limited approval and limited disapproval for the SDCAPCD NSR Rules 20.1, 20.2, 20.3, and 20.4 (see 64 FR 42892).

of nitrogen or volatile organic compounds to submit a statement showing the source's actual emissions of these pollutants.

On October 21, 1977, we approved into the SIP a version of Rule 60—Circumvention that had been adopted by SDCAPCD on November 8, 1976. Revisions to this rule were subsequently adopted on May 17, 1994, and submitted to us. The only significant change in SDCAPCD's submitted Rule 60 from the current SIP is an authorization for the District to aggregate emission units located or proposed to be located on the same or contiguous property and designate them as a single stationary source for purposes of SDCAPCD NSR Rules 20.1, 20.2, 20.3, and 20.4, provided the units are substantially related to each other and a potential intent to circumvent the NSR rules exists. Rule 60 describes several circumstances which, when present, create a potential intent to circumvent the requirements of Rules 20.1, 20.2, 20.3, and 20.4.

We evaluated the submitted rules and determined that they are consistent with the CAA, our regulations, and our policy. Therefore, SDCAPCD Rule 19.3—Emission Information and Rule 60—Circumvention are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. We have prepared a Technical Support Document (TSD) for this rulemaking which describes the requirements of Rules 19.3 and 60 and our evaluation of the rules. The TSD is available as described in the **ADDRESSES** section of this document.

We are publishing this direct final approval without prior proposal because we view this SIP revision as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This direct final approval will be effective May 8, 2000, without further notice unless we receive adverse comments by April 10, 2000.

If we receive such comments, then we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this direct final approval will be effective on May 8, 2000, and no further action will be taken on the proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, New source review, Nitrogen dioxide, Ozone, Permits, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: February 11, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Part 52.220 is being amended by adding paragraph (c)(198(i)(I)(*2*) and (c)(241)(i)(A)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(198) * * *

(i) * * *

(I) * * *

(*2*) Rule 60 adopted on May 17, 1994.

* * * * *

(241) * * *

(i) * * *

(A) * * *

(*4*) Rule 19.3 adopted on May 15, 1996.

* * * * *

[FR Doc. 00–5500 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT061–7220A; A–1–FRL–6542–3]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut and Rhode Island; Clean Fuel Fleets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final rulemaking action to approve both Connecticut's and Rhode Island's Clean Fuel Fleets Substitute Plan, incorporating them into the State Implementation Plan (SIP) under the Clean Air Act (CAA).

DATES: This direct final rule takes effect on May 8, 2000 without further notice, unless EPA receives adverse or critical comments by April 10, 2000. If EPA does receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You may mail comments to David B. Conroy, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, EPA Region 1, One Congress Street, Suite 1100 (CAA), Boston, MA 02114. You may also email comments to judge.robert@epa.gov.

You may review copies of the relevant documents to this action by appointment during normal business hours at the Office Ecosystem Protection, EPA Region 1, One Congress Street, Boston, Massachusetts. In addition, the information for each respective State is available at the Bureau of Air Management, Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, Connecticut 06106–1630; and the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge at 617–918–1045 or judge.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

This section is organized as follows:

What action is EPA taking today?
What are the Clean Fuel Fleets requirements?
How are Connecticut and Rhode Island meeting the Clean Fuel Fleets requirements?
Why is EPA approving Connecticut's and Rhode Island's Clean Fuel Fleets sutstitute Plan SIP revisions?
How does Clean Fuel Fleets affect air quality in Connecticut and Rhode Island?
What is the process for EPA's approval of this SIP revisions?

What Action Is EPA Taking Today?

The EPA is approving both Connecticut's and Rhode Island's Clean Fuel Fleets Substitute Plan submitted May 12, 1994 and October 5, 1994, respectively. We are approving these submittals into the Connecticut and Rhode Island SIPs as meeting the requirements of Section 182(c)(4) of the CAA.

What Are the Clean Fuel Fleets Requirements?

Section 246 of the CAA requires that serious or higher ozone nonattainment areas with populations of more than 250,000 adopt a Clean Fuel Fleets program (CFFP). Both ozone nonattainment areas in Connecticut meet that criterion: the Connecticut portion of the New York-Northern New Jersey-Long Island severe nonattainment area and the Greater Connecticut serious nonattainment area. (See 40 CFR 81.307.) Also, the Rhode Island ozone nonattainment area met that criterion at the time of submittal. (See 40 CFR 81.340.) Since that time, EPA has revoked the one-hour ozone standard for Rhode Island (64 FR 30911). On October 25, 1999 (64 FR 57424), EPA proposed that standard should apply again. In the event that EPA reimposes the one-hour ozone standard in Rhode Island, once again triggering the CFFP mandate, this approval action will ensure that Rhode Island meets the requirement for a CFFP.

Section 182(c)(4)(A) of the CAA requires States with serious ozone nonattainment areas to submit for EPA approval a SIP revision that includes measures to implement the CFFP. Section 182(d) requires the same of severe ozone nonattainment areas. Under this program, a certain specified percentage of vehicles purchased by fleet operators for covered fleets must meet emission standards that are more stringent than those that apply to conventional vehicles.

Alternatively, Section 182(c)(4)(B) of the CAA allows States to "opt out" of the CFFP by submitting a program or programs that will result in at least equivalent long term reductions in ozone-producing and toxic air emissions as achieved by the CFFP. The CAA directs EPA to approve a substitute program if it achieves long term reductions in emissions of ozone producing and toxic air pollutants equivalent to those that would have been achieved by the CFFP or the portion of the CFFP for which the measure is to be substituted.

How Are Connecticut and Rhode Island Meeting the Clean Fuel Fleets Requirements?

Connecticut has decided to opt out of the CFFP. Connecticut's substitute plan relies on the implementation of its reformulated gasoline (RFG) program and the enhanced inspection and maintenance (I/M) program in areas in Connecticut where these programs are not required explicitly by the CAA. Since Connecticut is implementing both programs statewide, an additional 87 towns will use RFG and 40 towns will have enhanced I/M beyond what would be required by the CAA. The resulting reductions of ozone-producing emissions meet or exceed the emissions reductions that would have occurred if the CFFP were implemented. Yet only those emissions reductions needed to meet CFFP targets are being approved herein. Specifically, Connecticut's Clean Fuel Fleets Substitute Plan will result in 0.1 tons per day (tpd) of ozone-producing chemicals (total reduction of volatile organic compounds (VOC) and nitrogen oxides combined) in 2000 and 0.4 tpd in 2015 in the severe area and 0.4 tpd in 2000 and 1.2 tpd in the serious area.

Rhode Island has also decided to opt out of the CFFP. Rhode Island's substitute plan relies on the implementation of its reformulated gasoline (RFG) program, which is required statewide. The resulting reductions of ozone-producing emissions meet or exceed the emissions reductions that would have occurred if the CFFP were implemented. Yet, only those emissions reductions needed to meet CFFP targets are being approved herein. Specifically, Rhode Island's Clean Fuel Fleets Substitute Plan will result in 0.119 tpd of ozone-producing chemicals (total VOC and nitrogen oxides) in 2000 and 0.487 tpd in 2015.

The emission reductions for Connecticut's implementation of enhanced I/M and RFG, and Rhode Island's implementation of RFG greatly exceed the reductions that could have been achieved with the CFFP. In the case of Connecticut, enhanced I/M and RFG were explicitly required by the Act in much of the State. But in other parts of the State, and for RFG in Rhode Island, the programs are being implemented in areas not specifically mandated by the Act. These programs can be counted for the purposes of CFFP substitution and they are needed for meeting CAA rate of progress and air quality goals. In Connecticut, the substitute measures achieve 0.7 tons per day (tpd) of ozone-producing chemicals, or VOC, in this case, in 2000 and 0.4 tpd in 2015 in the severe area. Further, the substitute measures achieve 17.1 tpd in 2000 and 7.8 tpd in the Connecticut serious area beyond the levels explicitly mandated by the Act. In Rhode Island, the substitute measure (RFG) achieves approximately 7 tons per day (tpd) of ozone-producing chemicals (VOC) in 2000 and a comparable reduction in 2015. Again, in all cases, only those emissions reductions needed to meet CFFP targets are being approved herein. Finally, since reductions in toxic air emissions are proportional to the reductions in VOC, any substitute plan which reduces VOCs will also reduce toxic air emissions in the same proportion. Therefore, both Connecticut and Rhode Island's substitute plans will meet substitute CFFP requirement for air toxics.

Why Is EPA Approving Connecticut's and Rhode Island's Clean Fuel Fleets Substitute Plan SIP Revisions?

EPA is approving Connecticut's and Rhode Island's Clean Fuel Fleets Substitute Plan SIP revision because each State has successfully demonstrated that it has achieved long term reductions in emissions of ozone producing and toxic air pollutants equivalent to those that would have been achieved by the CFFP. Both Connecticut's and Rhode Island's emission reduction calculations follow EPA guidance. Further information on both Connecticut's and Rhode Island's Clean Fuel Fleets Substitute Plan SIP revision and EPA's evaluation of these SIP revisions can be found in a memorandum entitled "Technical Support Document—Clean Fuel Fleets, Connecticut and Rhode Island." Copies of this document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

How Does Clean Fuel Fleets Affect Air Quality in Connecticut and Rhode Island?

EPA's approval of both Connecticut's and Rhode Island's Clean Fuel Fleets Substitute Plan will have a positive benefit on air quality in both Connecticut and Rhode Island. The emission reductions which Connecticut and Rhode Island are using to offset a CFFP will be permanent and will not be available for emissions trading.

What Is the Process for EPA's Approval of This SIP Revision?

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is also publishing a separate document that will serve as the proposal to approve this SIP revision should we receive relevant adverse. This action will be effective May 8, 2000 without further notice unless we receive relevant adverse comments by April 10, 2000.

If EPA does receive adverse comments, we will withdraw the direct final rule and publish a document stating that the rule will not take effect. We will then respond to all public comments received in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. If you are interested in commenting on this action, you should do so at this time. If no such comments are received, you should know that this rule will be effective on May 8, 2000 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state laws as meeting federal requirements and imposes no additional requirements beyond those imposed by those state laws. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7,

1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment on the proposed rule rather than filing a petition for review in the Court of Appeals.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 14, 2000.

Mindy S. Lubber,

Acting Regional Administrator, EPA—New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(81) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(81) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on May 12, 1994.

(i) Incorporation by reference.

(A) "Clean Fuel Fleet Substitute Plan," prepared by the Connecticut Department of Environmental Protection, dated May 12, 1994.

(ii) Additional materials.

(A) Letter from the Connecticut Department of Environmental Protection dated May 12, 1994 submitting a revision to the Connecticut State Implementation Plan.

Subpart OO—Rhode Island

3. In § 52.2070 the table in paragraph (e) is amended by adding a new state citation to the end of the table to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(e) * * *

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
*	*	*	*	*
Letter from RI DEM submitting revision for Clean Fuel Fleet Substitution Plan.	Providence (all of Rhode Island) nonattainment area.	October 5, 1994	March 9, 2000 [Insert FR citation from published date].	

[FR Doc. 00–5200 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–054–7213A; A–1–FRL–6545–9]

Approval and Promulgation of Air Quality Implementation Plan; Connecticut, New Hampshire, and Rhode Island; Approval of National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve State Implementation Plan (SIP) revisions submitted individually by the States of Connecticut, New Hampshire and Rhode Island, committing that each State will accept compliance with the National Low Emission Vehicle (National LEV) program requirements as a compliance option for new motor vehicles sold in the State. Connecticut submitted its SIP revision on February 7, 1996 and February 18, 1999. EPA proposed approval of this submittal in a direct final rulemaking action on August 16, 1999 (64 FR 44450), and received

adverse comments. Rhode Island's submittal was made on February 22, 1999 and November 17, 1999. New Hampshire's National LEV submittal was made on August 16, 1999. EPA proposed approval of New Hampshire's and Rhode Island's SIPs on December 22, 1999 (64 FR 71705). EPA received no comments on that proposal. In this action, EPA is responding to the comments received on Connecticut's National LEV SIP commitment, and is approving the National LEV SIP commitments for Connecticut, New Hampshire and Rhode Island.

DATES: This rule is effective on May 8, 2000.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA. In addition, the information for each respective State is available at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630; the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095; and the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

SUPPLEMENTARY INFORMATION:

I. Background

On January 7, 1998, (63 FR 926) the Environmental Protection Agency (EPA) published a final rule outlining a voluntary nationwide clean car program, designed to reduce smog and other pollution from new motor vehicles. The National LEV regulations allow auto manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that are more stringent than EPA can mandate. The regulations provided that the program would come into effect only if northeastern States and the auto manufacturers voluntarily signed up for it. On March 9, 1998 (63 FR 11374), EPA found that nine northeastern States and 23 manufacturers had opted into the National LEV program and that the program is in effect. Now that it is in effect, National LEV is enforceable in the same manner as any other federal new motor vehicle program. National LEV will achieve significant air pollution reductions nationwide. A more complete description of the National LEV program was included in the proposed rulemaking actions, and will not be restated here.

EPA is taking a final action to approve State Implementation Plan (SIP) revisions submitted individually by the States of Connecticut, New Hampshire and Rhode Island, committing that each State will accept automaker's compliance with National LEV program requirements as a compliance option for new motor vehicles sold in the State. Further, for Connecticut and Rhode Island, we are approving the States' backstop California low emission vehicle programs that would apply to any manufacturers not complying with National LEV. Connecticut submitted its SIP revision on February 7, 1996 and February 18, 1999. EPA proposed approval of this submittal in a direct final rulemaking action on August 16, 1999 (64 FR 44411, 64 FR 44450). EPA subsequently withdrew this action on November 12, 1999 (64 FR 61522) because adverse comments were submitted. Rhode Island's submittal was made on February 22, 1999 and November 17, 1999. New Hampshire's National LEV submittal was made on August 16, 1999. EPA proposed approval of New Hampshire's and Rhode Island's SIPs on December 22, 1999 (64 FR 71705). EPA received no comments on that proposal. Below, EPA is responding to the comments received on Connecticut's National LEV SIP commitment, and is approving the National LEV SIP commitments for Connecticut, New Hampshire and Rhode Island.

Response to Comments: On September 15, 1999, the American Canoe Association, Inc. (ACA), submitted adverse comments on the proposed SIP revision for the Connecticut commitment to accept National LEV. EPA took action to ensure that the Connecticut National LEV SIP commitment was not made part of the SIP by withdrawing that direct final rulemaking in the **Federal Register** (64 FR 61522). EPA stated that it would respond to the comments received and make a final determination on approval of the Connecticut National LEV SIP commitment in the future. As outlined below, some of these issues were addressed and resolved under the National LEV rulemaking, and EPA did not reopen these issues for reconsideration in proposing to approve the Connecticut National LEV SIP commitment.

1. ACA Comment: The proposed SIP revision will result in increased auto emissions in Connecticut which will adversely affect Connecticut residents as well as residents in downwind States. This is based on ACA's observation that average emission standards for both passenger cars and light duty trucks for at least 1999 and 2000 model years for NMOG are lower under the CA LEV program than the National LEV program, and their assertion that air quality would suffer in Connecticut and in downwind states such as Rhode Island and Massachusetts because of this action.

Response: As an initial matter, EPA found in the National LEV rulemaking that National LEV would produce NO_x and VOC emission reductions equivalent to or greater than those from State by State adoption of California LEV throughout the Northeast Ozone Transport Region (63 FR 930). Connecticut's SIP commitment to National LEV is necessary to ensure that the National LEV program remains in effect and continues to produce emission reductions and associated air quality benefits. Thus, EPA disagrees with ACA's assertion regarding air quality benefits (see 63 FR 930–931 and Summary and Analysis of Comments, National Low Emission Vehicle Program, December 12, 1997 for further discussion).

Moreover, when the State of Connecticut originally submitted the California LEV program to EPA in 1996, it stated that it preferred the National LEV program, and asked that EPA not act to approve the California program until issues regarding National LEV were resolved. When the State ultimately submitted its SIP commitment to accept National LEV for approval, the State made clear it intended EPA to approve Connecticut's commitment to National LEV in the SIP with the California LEV program as a backstop program, which would only apply if an automaker were no longer to subject to National LEV. Comparisons between California LEV and National LEV are not relevant for the purposes of this approval because EPA is acting on the SIP revision request that is before EPA. The SIP revision meets all Clean Air Act requirements and will strengthen the existing State Implementation Plan, resulting in federally enforceable emission reductions. ACA's opinion that another measure could have been utilized by the State and would result in more pollution reductions is not relevant to EPA's determination of whether to approve the State's submission under section 110(k) of the Clean Air Act. EPA is approving the State's request.

Further, on June 25, 1998, Connecticut held a public hearing on the SIP submittal to commit to National

LEV. This hearing sought public input on the State's proposal to finalize its commitment to National LEV, and its plan to allow National LEV to be a compliance alternative to the States' California LEV program. No parties submitted adverse comments at that hearing. Thus, on February 18, 1999, Connecticut requested approval of the National LEV program, with the State's previously adopted California LEV program as a backstop.

2. ACA Comment: NLEV is illegal under the Clean Air Act. ACA contends that NLEV is illegal because EPA does not have the authority to amend the current Tier 1 standards until at least 2004. ACA further contends that NLEV is illegal because it requires EPA to illegally surrender discretion over EPA's regulatory responsibilities. Finally, ACA contends that NLEV is illegal because EPA has no authority to decide whether a State may exercise its rights under section 177 of the Clean Air Act.

Response: These issues were raised and resolved in the final National LEV rule (See 62 FR 31202–31208; 31221–31223, June 6, 1997; 63 FR 935–945, 956, January 7, 1998; Summary and Analysis of Comments, National Low Emission Vehicle Program, May 1, 1997, 27–35, 71–74; Summary and Analysis of Comments, National Low Emission Vehicle Program, December 12, 1997, 21–24). Thus, all three of these issues relating to the legality of the National LEV program were closed upon promulgation of the final National LEV rule. EPA did not reopen in its proposed SIP approval rulemaking any issues related to the legality of the underlying federal program that States are committing to accept. Thus, these issues relating to the legality of the National LEV program were already closed for purposes of this SIP approval.

3. ACA Comment: The Clean Air Act does not allow a State to use, or EPA to approve, a "compliance alternative" in a State that has adopted California's emission standards. ACA argues that section 177 is clear that no third set of vehicle emission standards is permitted. The standards that can be adopted are either CA LEV programs under section 177, or the federal emission standards.

Response: EPA also resolved in the final National LEV rule the issue of whether States may accept compliance with the National LEV program in lieu of compliance with State section 177 programs, and whether EPA may approve SIP revisions committing to accept National LEV in this way. EPA did not reopen this issue in this rulemaking by proposing to approve SIP revisions committing to accept National LEV as a compliance alternative.

The entire National LEV program is premised on the concept that it will provide motor vehicle manufacturers an alternative to compliance with State section 177 programs in States that opt into the National LEV program. Moreover, the National LEV regulations provide detailed requirements that States must meet to opt into National LEV, including language for SIP revisions committing the State to accept compliance with the program. 40 CFR 86.1705–99(e). These provisions of the National LEV rule were premised on EPA's interpretation that neither section 177 nor section 209 bar a State from exempting motor vehicles from compliance with a State section 177 program if those vehicles complied with federal standards. The provisions were also premised on EPA's interpretation that sections 177 and 209 also do not bar EPA approval of a SIP committing the State to accept such compliance with federal standards. It was clear that sections 177 and 209 would bar a State from adopting the National LEV standards itself and requiring motor vehicle manufacturers to comply with such standards. However, EPA believed that sections 177 and 209 would in no way prevent a State from committing that it would not apply its section 177 requirements to motor vehicle manufacturers that chose to comply with a specified federal regulatory program. This interpretation distinguished between a State adopting new motor vehicle requirements that apply to manufacturers and are different from California's program, and a State providing that its State requirements under section 177 will not apply to manufacturers, as long as they comply with federal requirements. EPA promulgated the National LEV regulations based on this interpretation. Moreover, EPA did not reopen for consideration this fundamental legal interpretation, which supports the validity of the entire structure of the National LEV program, in this direct final rulemaking to approve Connecticut's SIP revision. EPA explained in the preamble to the National LEV final rule that EPA would be able to approve a SIP submission containing the specified language even without further notice-and-comment rulemaking. Here EPA chose to conduct notice-and-comment rulemaking to address any other possible issues regarding the approvability of Connecticut's submission under section 110 of the CAA. 63 FR 935–939. EPA did not reopen the compliance alternative issue in this rulemaking.

Final Action: EPA has evaluated the SIP revisions submitted by Connecticut, New Hampshire, and Rhode Island and has determined that each is consistent with the EPA National LEV regulations and meet the section 110 requirements for SIP approvals. Therefore, EPA is approving the Connecticut SIP revision submitted on February 7, 1996 and February 18, 1999; Rhode Island's SIP revision submitted on February 22, 1999 and November 17, 1999; and New Hampshire's SIP revision submitted on August 16, 1999, which commit each State to the National LEV program.

Nothing in this action should be construed as permitting or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state laws as meeting federal requirements and imposes no additional requirements beyond those imposed by those state laws. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule allowing entities to comply with a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean

Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 17, 2000.

Mindy S. Lubber,

Acting Regional Administrator, Region I.

PART 52—[AMENDED]

40 CFR part 52 is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(79) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(79) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on February 7, 1996 and February 18, 1999.

(i) Incorporation by reference.

(A) Connecticut regulation section 22a–174–36, entitled "Low Emission Vehicles" as dated and effective by determination of the Secretary of State on December 23, 1994.

(B) Connecticut regulation section 22a–174–36(g), entitled "Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program" as dated and effective by determination of the Secretary of State on January 29, 1999.

(ii) Additional material.

(A) Letter from the Connecticut Department of Environmental Protection dated February 7, 1996 submitting a revision to the Connecticut State Implementation Plan for the Low Emission Vehicle program.

(B) Letter from the Connecticut Department of Environmental Protection dated February 18, 1999 submitting a revision to the Connecticut State Implementation Plan for the National Low Emission Vehicle program to be a compliance option under the State's Low Emission Vehicle Program.

3. In § 52.385, Table 52.385 is amended by adding new entries for section 22a–174–36, entitled "Low Emission Vehicles" and section 22a–174–36(g), entitled "Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program" to read as follows:

§ 52.385 - EPA—approved Connecticut Regulations

* * * * *

TABLE 52.385.—EPA-APPROVED RULES AND REGULATIONS

Connecticut State citation	Title/subject	Dates		Federal Register citation	52.370	Comments/description
		Date adopted by State	Date approved by EPA			
*	*	*	*	*	*	*
22a–174–36	Low Emission Vehicles	12/23/94	3/9/00	[Insert FR citation from published date].	(c)(79)	Approval of Low Emission Vehicle Program.
22a–174–36(g)	Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program.	1/29/99	3/9/00	[Insert FR citation from published date].	(c)(79)	Approval of Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program for the "California" low emission vehicle program adopted above.
*	*	*	*	*	*	*

Subpart EE—New Hampshire

4. Section 52.1520 is amended by adding paragraph (c)(65) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(65) Revisions to the State Implementation Plan submitted by the New Hampshire Department of Environmental Services on August 16, 1999.

(i) Incorporation by reference.

New Hampshire regulation Chapter Env-A 3600, entitled "National Low Emission Vehicle (National LEV) Program" adopted July 21, 1999.

(ii) Additional material.

Letter from the New Hampshire Department of Environmental Services dated August 16, 1999 submitting the Low Emission Vehicle program as a revision to the State Implementation Plan.

5. In § 52.1525, Table 52.1525 is amended by adding new entries to existing state citations for Chapter Env-A 3600, entitled "National Low Emission Vehicle (National LEV) Program" to read as follows:

§ 52.1525—EPA-approved New Hampshire state regulations

* * * * *

TABLE 52.1525.—EPA-APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Comments
*	*	*	*	*	*	*
National Low Emission Vehicle Program	CH air 3600	7/21/99		[Insert FR citation from published date].	(c)(65)	Approval of commitment to National Low Emission Vehicle Program.
*	*	*	*	*	*	*

Subpart OO—Rhode Island

§ 52.2070 Identification of plan.

6. In § 52.2070 the Table in paragraph (c) is amended by adding new state citations for Regulation Number 37, entitled "Rhode Island's Low Emission Vehicle Program" and in the Table in paragraph (e) by adding a new entry at the end of the Table in the non-regulatory SIP provision to read as follows:

(c) EPA approved regulations.

EPA APPROVED RHODE ISLAND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
Air Pollution Control Regulation 37.	Rhode Island's Low Emission Vehicle Program.	12/7/99	[Insert FR citation from published date].	Includes National LEV as a compliance alternative.

(d) * * *

(e) Nonregulatory.

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
*	*	*	*	*
Letter outlining commitment to National LEV.	Statewide	2/22/99	[Insert FR citation from published date].	Includes details of the State's commitment to National LEV.

[FR Doc. 00–5630 Filed 3–9–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE046–1022a; FRL–6547–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Regulation Number 37—NO_X Budget Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final rule to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision implements Phase II of the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) which describes a regional nitrogen oxides (NO_X) cap and trade program that will significantly reduce NO_X emissions generated within the ozone transport region. The intended effect of this action is to approve the Delaware Regulation Number 37, NO_X Budget Program.

DATES: This rule is effective on May 8, 2000, without further notice, unless EPA receives adverse written comment by April 10, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Delaware Department of Natural Resources & Environmental Control, Richardson & Robins Building, 89 Kings Highway, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at quinto.rose@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On December 20, 1999, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of Delaware Regulation Number 37, NO_X Budget Program.

I. Background

The Ozone Transport Commission (OTC) adopted a Memorandum of Understanding (MOU) on September 27, 1994, committing the signatory states to the development of a two phase region-wide reduction in NO_X emissions by 1999 and by 2003, respectively. As reasonably available control technology (RACT) to reduce NO_X emissions was required to be implemented by May of 1995, the MOU refers to the NO_X reductions to be achieved by 1999 as Phase II; and the NO_X reductions to be achieved by 2003 as Phase III. The OTC states include Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, the northern counties of Virginia, and the District of Columbia. All OTC member states and the District of Colombia, with the exception of the Commonwealth of Virginia, signed the September 27, 1994 MOU. The OTC MOU requires reductions of NO_X emissions, during the ozone season, from utility and large industrial combustion facilities within the Ozone Transport Region (OTR) in order to further the effort to achieve the health-based National Ambient Air Quality Standard (NAAQS) for ozone.

In the MOU, the OTC states agreed to propose regulations for the control of NO_X emissions in accordance with the following guidelines:

1. The level of NO_X required would be established from a 1990 baseline emissions level.

2. The reduction would vary by location, or zone, and would be implemented in two phases utilizing a region wide trading program.

3. The reduction would be determined based on the less stringent of each of the following:

a. By May 1, 1999, the affected facilities in the inner zone shall reduce their rate of NO_X emissions by 65% from baseline, or emit NO_X at a rate no greater than 0.20 pound per million Btu. (This is referred to as a Phase II requirement).

b. By May 1, 1999, the affected facilities in the outer zone shall reduce their rate of NO_X emissions by 55% from baseline, or shall emit NO_X at a rate no greater than 0.20 pounds per million Btu. (This is referred to as a Phase II requirement).

c. By May 1, 2003, the affected facilities in the inner and outer zone shall reduce their rate of NO_X emissions by 75% from baseline, or shall emit NO_X at a rate of no greater than 0.15 pounds per million Btu. (This is referred to as a Phase III requirement).

d. By May 1, 2003, the affected facilities in the Northern zone shall reduce their rate of NO_X emissions by 55% from baseline, or shall emit NOx at a rate no greater than 0.20 pounds per million Btu. (This is referred to as a Phase III requirement).

A task force of representatives from the OTC states, organized through the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA), were charged with the task of developing a model rule to implement the program defined by the OTC MOU. During 1995 and 1996, the NESCAUM/MARAMA NO_X Budget Task Force worked with EPA and developed a model rule as a template for OTC states to adopt their own rules to implement the OTC MOU. The model rule was issued May 1, 1996. The model rule was developed for the OTC states to implement the Phase II reduction called for in the MOU to be achieved by May 1, 1999. The model rule does not include the implementation of Phase III.

II. Summary of SIP Revision

Delaware's Regulation Number 37 is based solely and completely upon the "NESCAUM/MARAMA NO_X Budget Rule" issued in May 1, 1996. The model rule was developed by the states in the Ozone Transport Region (OTR) using the EPA's economic incentive rules (67 FR 16690) which were published on April 7, 1994, as the general regulatory framework.

The Delaware NO_X Budget Program establishes NO_X emission allowances for each ozone season which falls between May 1, 1999 and September 30, 2002. This program identifies the budgeted sources and identifies the number of allowances each budgeted source is allocated.

The Delaware NO_X Budget Program is divided into twenty sections: (1) General Provisions—purpose and scope of the program; (2) Applicability—any owner or operator of a budget source where the source is located in the State of Delaware; (3) Definitions—defines terms used in the program; (4) Allowance Allocation—the total number of NO_X allowances (tons) which Delaware has been allotted from the regional program to divide among the sources subject to the program during the 1999–2002 ozone seasons; (5) Permits—requirements for revisions and amendments; (6) Establishment of Compliance Accounts; (7) Establishment of General Accounts; (8) Opt-in

Provisions; (9) New Budget Source Provisions; (10) NO_X Allowance Tracking System (NATS); (11) Allowance Transfer—requirements and procedures to notify the NATS Administrator; (12) Allowance Banking—procedures and limitations for banking unused allowances from one year to another; (13) Emission Monitoring—monitored by either a continuous emission monitoring system (CEMS) or equivalent that is approved by the state and EPA; (14) Recordkeeping—records to be retained for a minimum of five years; (15) Emissions Reporting—quarterly in an electronic format (EDR); (16) End-of-Season Reconciliation—how compliance will be determined at the end of each ozone season; (17) Compliance Certification—annual compliance certification requirements for budget units; (18) Failure to Meet Compliance Requirements; (19) Program Audit; and (20) Program Fees. Two appendices are included in this regulation: Appendix A—where budgeted sources and their NO_X allowance allocations are identified; and Appendix B—final OTC NO_X baseline inventory of the budgeted sources.

EPA is publishing this direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on May 8, 2000, without further notice unless EPA receives adverse comment by April 10, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. A more detailed description of the state submittal, the model rule and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. Interested parties may request a copy of this TSD from the EPA Regional Office listed in the **ADDRESSES** section of this document.

III. Final Action

EPA is approving Delaware's December 20, 1999 request to revise its SIP to include Regulation Number 37, NO_X Budget Program.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget (OMB). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 2000. Filing a petition for reconsideration by the Administrator of this final rule approving Delaware's Regulation Number 37—NO_X Budget Program, does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 24, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

2. In section 52.420, the entry for Regulation 37 in the "EPA Approved Regulations in the Delaware SIP" table in paragraph (c) is revised to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/Subject	State effective date	EPA approval date	Additional information
*	* *	*	*	*
Regulation 37		NO_X Budget Program		
Section 1	General Provisions	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 2	Applicability	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 3	Definitions	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 4	Allowance Allocation	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 5	Permits	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 6	Establishment of Compliance Accounts	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 7	Establishment of General Accounts	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 8	Opt In Provisions	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 9	New Budget Source Provisions	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 10	NO_X Allowance Tracking System (NATS)	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 11	Allowance Transfer	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 12	Allowance Banking	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 13	Emission Monitoring	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 14	Recordkeeping	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 15	Emissions Reporting	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 16	End-of-Season Reconciliation	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 17	Compliance Certification	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 18	Failure to Meet Compliance Requirements	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 19	Program Audit	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Section 20	Program Fees	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Appendix A	NO_X Budget Program—Budget Sources & Allowances.	12/11/99	3/9/00 [Insert *Federal Register* cite].	
Appendix B	NO_X Budget Program—Final OTC NO_X Base-line Inventory.	12/11/99	3/9/00 [Insert *Federal Register* cite].	
*	* *	*	*	*

[FR Doc. 00–5614 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[CC Docket No. 99–168; DA 00–450]

Service Rules for the 746–764 and 776–794 MHz Bands; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects two errors that were contained in a document published in the January 20, 2000, **Federal Register**, establishing service rules governing the initial assignment of license, by competitive bidding, and the subsequent regulatory treatment of commercial services to be provided on the 746–764 and 776–794 MHz Bands.

DATES: Effective on March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Jane Phillips, 202–418–1310.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a synopsis of the First Report and Order (synopsis) (FR Doc. 00–1332) in the **Federal Register** of January 20, 2000, (65 FR 3139) establishing service rules governing the initial assignment of license, by competitive bidding, and the subsequent regulatory treatment of commercial services to be provided on the 746–764 and 776–794 MHz Bands. Both in the text of the synopsis and in § 27.13(b) of the Commission's implementing regulation, the specific date as of which a license issued for the 747–762 MHz and 777–792 MHz bands will terminate was erroneously identified as January 1, 2014. The correct date is January 1, 2015. Additionally, in § 27.66(b), the date as of which a fixed service common carrier's application for voluntary discontinuance, reduction, or impairment of service will be automatically granted, absent opposition, is amended from "30" to "31" days.

Correction of Publication

In rule FR Doc. 00–1332, 65 FR 3139, January 20, 2000, make the following corrections. In the text of the supplementary information wherever the date January 1, 2014, appears, correct it to read January 1, 2015. On page 3146, in the second column, § 27.13 (b) is amended by correcting "January 1, 2014," to "January 1, 2015." Additionally, on page 3149, in the second column, § 27.66(b) is amended by correcting "30 days" to read "31 days."

Dated: March 3, 2000.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5678 Filed 3–8–00; 8:45 am]

BILLING CODE 6712–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1806, 1808, 1811, 1813, 1815, 1825, 1835, 1837, 1842, 1848, and 1851

Miscellaneous Administrative Revisions to the NASA FAR Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule to conform the NASA FAR Supplement (NFS) with the Federal Acquisition Regulation (FAR); indicate the method of voluntary consensus standard reporting utilized by NASA; clarify that when using NASA's structured approach for determining profit or fee objectives, values outside the designated ranges must not be used; adds NASA's policy regarding payment of profit or fee under letter contracts which was mistakenly removed; and make editorial corrections and miscellaneous changes dealing with NASA internal and administrative matters.

EFFECTIVE DATE: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, (202) 358–1645, e-mail: *celeste.dalton@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

FAC 97–14, dated September 24, 1999, amended FAR 11.107 to indicate that agencies will describe the reporting method of voluntary consensus standards used. This final rule states that NASA's method of reporting is categorical. This final rule also revises numbering within NFS Part 1848 to reflect the FAC 97–14 changes to FAR 48.104. Changes unrelated to FAC 97–14 are made to: Allow deputy procurement officers to designate cardholders for commercial purchase cards; clarify that when using NASA's structured approach for determining profit or fee objectives, values outside the designated ranges must not be used; and to require submission of hardcopies of RFPs for Headquarters review. The change to NASA's structured approach for developing a profit or fee objective (64 FR 51472–51476, September 23, 1999) mistakenly deleted NASA's policy regarding payment of profit or fee under letter contracts. This final rule corrects this error by adding the previous language as section 1815.404–472. Other editorial changes are made to: Correct referenced document titles; Correct referenced FAR citations; delete expired documents; and remove section 1851.101 as a result of an expired document.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subparts in 48 CFR Parts 1806, 1808, 1811, 1813, 1815, 1825, 1835, 1837, 1842, 1848, and 1851

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1806, 1808, 1811, 1813, 1815, 1825, 1835, 1837, 1842, 1848, and 1851 are amended as follows:

1. The authority citation for 48 CFR Parts 1806, 1808, 1811, 1813, 1815, 1825, 1835, 1837, 1842, 1848, and 1851 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1806—COMPETITION REQUIREMENTS

2. In section 1806.302–7, amend paragraph (c)(2) by removing "(Code LC)" and adding "(Code L)" in its place.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

3. In section 1808.002–70, paragraph (d) is revised to read as follows:

1808.002–70 Acquisitfon of radioisotopes.

* * * * *

(d) Guidance is available from DOE at URL *http://www.ornl.gov/isotopes/catalog.htm.*

1808.1100 [Amended]

4. Amend section 1808.1100 by removing "NMI 6000.5" and adding "NPD 6000.1" in its place.

PART 1811—DESCRIBING AGENCY NEEDS

5. Section 1811.107 is added to read as follows:

1811.107 Solicitation provisions. (NASA supplements paragraph (b))

(b) NASA uses the categorical method to report its use of voluntary consensus standards.

Therefore, use of the provision at 52.211–7 is not required. However, contracting officers must include in draft RFPs (DRFPs) the information required by 1815.201(c)(6)(A).

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

6. In section 1813.301, revise paragraphs (a) and (a)(i) to read as follows:

1813.301 Governmentwide commercial purchase card.

(a) The procurement officer or deputy procurement officer shall designate individual cardholders in accordance with center procedures, subject to the following limitations:

(i) Personnel other than contracting officers may be designated as cardholders for micro-purchases and for individual orders under BPAs up to $5,000 (see 1813.303–3(a)(4)), provided they complete training adequate to ensure appropriate use of the purchase card.

* * * * *

PART 1815—CONTRACTING BY NEGOTIATIONS

7. In section 1815.201, revise paragraph (c)(6)(A) to read as follows:

1815.201 Exchanges with industry before receipt of proposals.

(c)(6)(A) Except for acquisitions described in 1815.300–70(b), contracting officers shall issue draft requests for proposals (DRFPs) for all competitive negotiated acquisitions expected to exceed $1,000,000 (including all options or later phases of the same project). DRFPs shall invite comments from potential offerors on all aspects of the draft solicitation, including the requirements, schedules, proposal instructions, and evaluation approaches. Potential offerors should be specifically requested to identify unnecessary or inefficient requirements. If the DRFP contains Government-unique standards, potential offerors should be invited to identify voluntary consensus standards that meet the Government's requirements as alternatives to Government-unique standards cited as requirements, in accordance with FAR 11.101 and OMB Circular A–119. When considered appropriate, the statement of work or

the specifications may be issued in advance of other solicitation sections.

* * * * *

8. Revise section 1815.203–71 to read as follows:

1815.203–71 Headquarters reviews.

For RFPs requiring Headquarters review and approval, the procurement officer shall submit ten copies of the RFP to the Associate Administrator for Procurement (Code HS). Any significant information relating to the RFP or the planned evaluation methodology omitted from the RFP itself should also be provided.

9. In section 1815.404–471–1, revise paragraph (b) to read as follows:

1815.404–471–1 General.

* * * * *

(b) The contracting officer assigns values to each profit or fee factor; the value multiplied by the base results in the profit/fee objective for that factor. Each factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by NASA. The designated range provides values based on above normal or below normal conditions. Values outside the designated range must not be used. In the negotiation documentation, the contracting officer need not explain assignment of the normal value, but must address conditions that justify assignment of other than the normal value.

10. Section 1815.404–472 is added to read as follows:

1815.404–472 Payment of profit or fee under letter contracts.

NASA's policy is to pay profit or fee only on definitized contracts.

PART 1825—FOREIGN ACQUISITION

1825.7003 [Amended]

11. In section 1825.7003, amend paragraph (b) by removing the reference "(pursuant to NMI 1050.9)".

PART 1835—RESEARCH AND DEVELOP CONTRACTING

1835.016–71 [Amended]

12. In section 1835.016–71, amend paragraph (e)(4) by removing "subparts 15.8 and 15.9" and adding "subparts 15.3 and 15.4" in its place.

PART 1837—SERVICE CONTRACTING

1837.104 [Amended]

13. In section 1837.104, amend paragraph (b) by removing "NMI 3304.1G" and adding "NPD 3000.1, Management of Human Resources" in its place.

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

14. In section 1842.270, the first sentence in paragraph (a) is revised to read as follows:

1842.270 Contracting officer technical representative (COTR) delegations.

(a) The cognizant contracting officer may appoint a qualified Government employee to act as their representative in managing the technical aspects of a particular contract. * * *

1842.1405 [Amended]

* * * * *

15. In section 1842.1405, amend paragraph (a) by removing "NHB 6200.1" and adding "NPG 6200.1" in its place.

PART 1848—VALUE ENGINEERING

1848.104–2 Redesignated as 1848.104–3]

16. Section 1848.104–2 is redesignated as 1848.104–3 and is revised to read as follows:

1848.104–3 Sharing collateral savings. (NASA supplements paragraph (a))

(a) The contracting officer is authorized to make the determination that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

1851.101 [Removed]

17. Section 1851.101 is removed.

[FR Doc. 00–5376 Filed 3–8–00; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 65, No. 47
Thursday, March 9, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 98, and 130

[Docket No. 98–013–1]

Hawaii Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations by removing Honolulu, HI, from the lists of animal import centers and ports of entry that provide U.S. Department of Agriculture quarantine facilities for animals, birds, and poultry imported into the United States. We are also proposing to amend the regulations by adding Honolulu, HI, as a limited port for the importation of animals, birds, poultry, poultry products, and animal germ plasm that do not require U.S. Department of Agriculture quarantine facilities. These proposed actions would update the regulations to reflect the June 1997 closure of the Hawaii Animal Import Center.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by May 8, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–013–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–013–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–3276.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93 and 98 restrict the importation of specified animals and animal products into the United States to prevent the introduction of communicable diseases of livestock and poultry. The regulations designate animal import centers and ports of entry for the importation of certain animals, birds, poultry, poultry products, and animal germ plasm that require inspection or quarantine services.

The regulations in 9 CFR part 130 set forth the user fees that are assessed to reimburse the Animal and Plant Health Inspection Service (APHIS) for the cost of import- and export-related services provided at animal import centers and ports of entry.

Honolulu, HI, is currently listed in parts 93, 98, and 130 as a port of entry with an animal import center that serves as a quarantine facility. The quarantine facility known as the Hawaii Animal Import Center (HAIC) closed on June 30, 1997. The HAIC was located on property owned by the U.S. Coast Guard. APHIS had to close the facility and return the property to the Coast Guard because the Coast Guard was to vacate the property at the beginning of fiscal year 1998. We published a notice regarding the closure of the HAIC in the **Federal Register** on May 22, 1997 (62 FR 28002, Docket No. 97–039–1). Prior to the closure of the HAIC, the number of animals, birds, and poultry imported through the facility was low compared to the number imported through APHIS animal import centers located in Miami, FL, and Newburgh, NY.

To reflect the closure of the HAIC, we are proposing to amend the regulations in parts 93 and 98 by removing Honolulu, HI, from the lists of animal import centers and ports of entry that provide quarantine services. In addition, we propose to amend part 130 by removing all references to the animal import center in Honolulu, HI. We are, however, proposing to amend the regulations in part 93 by adding Honolulu, HI, as a limited port for the importation of animals birds, poultry, and poultry products that do not require U.S. Department of Agriculture (USDA) quarantine facilities. We are also proposing to amend the regulations in part 98 by adding Honolulu, HI, as a limited port for the importation of animal semen.

Importation of Birds

Section 93.102 designates ports for the importation of birds. In § 93.102, paragraph (a) lists the special ports that are equipped for the isolation and quarantine of pet birds that are imported in accordance with § 93.101(c) and performing or theatrical birds that are imported in accordance with § 93.101(f). In § 93.102, paragraph (d) lists the limited ports of entry for pet birds and performing or theatrical birds that do not require USDA quarantine facilities.

Due to the closure of the HAIC, we can no longer provide quarantine services for pet birds and performing or theatrical birds in Honolulu, HI. Therefore, we are proposing to remove Honolulu, HI, from the list of special ports in § 93.102(a). However, pet birds and performing or theatrical birds that are only required to undergo a veterinary inspection and pet birds that are allowed to do home quarantine may be imported through a limited port of entry listed in § 93.102(d). Because the port of entry at Honolulu, HI, has the personnel and facilities to provide such veterinary inspection services, we are proposing to add it to the list of limited ports in § 93.102(d) for the importation of pet birds and performing or theatrical birds that do not require USDA quarantine facilities.

Importation of Ratites

Section 93.103 contains, among other things, provisions for the importation of ratites. Section 93.103(a)(4)(ii) explains how to submit applications for quarantine space at the HAIC. We would remove that paragraph, as well as the final two sentences of § 93.103(a)(4)(iii), which state that a

separate waiting list will be maintained for space at the HAIC and that ostriches may not be quarantined at the HAIC.

In § 93.105, paragraph (c)(2) lists the ports of entry for ratites other than ostriches. In § 93.106, paragraph (b)(1) lists the quarantine facilities for ratites that are imported from any part of the world except Canada. In § 93.107, paragraph (b)(2) lists the ports at which ratites from Canada may enter the United States without quarantine if they meet the requirements set forth in § 93.107. Each of these paragraphs lists Honolulu, HI, as a port of entry or quarantine facility. The HAIC was the only facility in Hawaii that could provide sufficient space for the inspection and quarantine of ratites. Due to its closure, we can no longer provide inspection or quarantine services for ratites in Hawaii. Also, while the HAIC was open, the number of ratites that entered the facility for quarantine services was low. Therefore, we are proposing to remove the references to Honolulu, HI, in §§ 93.105(c)(2), 93.106(b)(1), and 93.107(b)(2).

Importation of Poultry and Poultry Products

We are also proposing to add Honolulu, HI, to the list of limited ports in § 93.203. Those limited ports may be used for the importation of poultry and poultry products, such as poultry test specimens, hatching eggs, and day-old chicks, that do not require restraining and holding facilities for inspection. The port of entry at Honolulu, HI, has the personnel and facilities available to provide inspection services for poultry and poultry products that do not require restraining and holding facilities. Therefore, we are proposing to amend § 93.203(d) by adding Honolulu, HI, to the list of limited ports.

Air and Ocean Ports

Honolulu, HI, is also included in the lists of air and ocean ports for the importation of poultry (§ 93.203(a)), horses (§ 93.303(a)), ruminants (§ 93.403(a)), swine (§ 93.503(a)), miscellaneous animals (§ 93.703(a)(1)), and elephants, hippopotami, rhinoceroses, and tapirs (§ 93.805(a)(1)). We propose to remove references to Honolulu, HI, from these sections because they list ports that have USDA quarantine facilities. However, even though we are proposing to remove Honolulu, HI, from the list of ports in § 93.805(a)(1), elephants, hippopotami, rhinoceroses, and tapirs could be imported through Honolulu, HI, on a case-by-case basis in accordance with § 93.805(a)(2), if the animals will be inspected at a facility provided by the importer.

Limited Ports

Because Honolulu, HI, has inspection facilities for the entry of certain animals and animal products that do not require restraining and holding inspection facilities, we propose to add Honolulu, HI, to the lists of limited ports for the importation of horses (§ 93.303(d)), ruminants (§ 93.403(e)), and swine (§ 93.503(e)).

In addition, to maintain consistency with the proposed changes to part 93, we propose to remove Honolulu, HI, from the list of air and ocean ports in § 98.33(a) for the importation of animal semen and to add Honolulu, HI, to the list of limited ports in § 98.33(d) for the importation of animal semen.

Section 98.6 provides that embryos may be imported only at a port of entry listed in § 93.303 for horses, § 93.403 for ruminants, and § 93.503 for swine. Under this proposed rule, embryos could be imported through Honolulu, HI, because it would be listed in those sections as a limited port.

User Fees

In § 130.1, the definition of *Animal Import Center* lists the quarantine facilities operated by APHIS in Newburgh, NY; Miami, FL; and Honolulu, HI. We are proposing to remove Honolulu, HI, from the definition of *Animal Import Center*.

In addition, in § 130.1 the definition of *nonstandard care and handling* provides the locations and hours of operation of the animal import centers in footnote 2. We would remove the reference to Honolulu, HI, from footnote 2.

Miscellaneous

In § 93.106, paragraph (a) contains a reference to the Cooperative and Trust Fund Agreement and states that information regarding the agreement can be found in § 93.106(c)(7). The Cooperative and Trust Fund Agreement is found in § 93.106(c)(5). We are changing the reference, accordingly.

In § 93.404(a)(2), reference is made to § 93.430 for the importation of domestic ruminants from regions where foot-and-mouth disease or rinderpest has been determined to exist. On November 19, 1998, we published in the **Federal Register** (63 FR 64173–64175, Docket No. 98–070–3) a final rule to close the Harry S Truman Animal Import Center (HSTAIC). Based on the closure of HSTAIC, §§ 93.430 and 93.431 were removed and reserved; however, a reference to § 93.430 in § 93.404(a)(2) was not removed. We are proposing to correct that oversight in this document.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule would amend the regulations in 9 CFR parts 93, 98, and 130 by removing Honolulu, HI, from the lists of animal import centers and ports of entry that provide USDA quarantine facilities for animals, birds, and poultry imported into the United States. These changes are necessary to reflect the closure of the facility known as the Hawaii Animal Import Center (HAIC). However, we would add Honolulu, HI, as a limited port for the importation of animals, birds, poultry, poultry products, and animal germ plasm that do not require USDA quarantine facilities.

The removal of Honolulu, HI, from the lists of animal import centers is primarily an editorial change following the previously announced closure of the HAIC. That closure primarily affected U.S. importers of animals, birds, and poultry that required quarantine services. After HAIC closed, those importers could no longer import these items into the United States through Honolulu, HI. However, prior to the closure of the HAIC, the number of animals, birds, and poultry imported through and quarantined at the port of Honolulu, HI, was low compared to the number imported through other animal import centers located in Miami, FL, and Newburgh, NY. For instance, in fiscal year 1997, the HAIC provided inspection and quarantine services for 40 animals and birds. However, in fiscal year 1997, the animal import center in Miami, FL, provided inspection and quarantine services for over 1,500 animals and birds; and the animal import center located in Newburgh, NY, provided services for over 4,000 animals from January 1, 1997, to December 31, 1997.

Based on the availability of the remaining animal import centers and ports of entry and the low level of use prior to closure of the HAIC, we believe that removing Honolulu, HI, from the lists of animal import centers and ports of entry that provide USDA quarantine facilities for animals, birds, and poultry imported into the United States would not have a significant economic effect on importers. In addition, our proposal to designate Honolulu, HI, as a limited port for the importation of animals, birds, poultry, poultry products, and

animal germ plasm that do not require USDA quarantine facilities would continue to provide a port of entry for U.S. importers of certain animals, birds, poultry, poultry products, and animal germ plasm.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases and Imports.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR parts 93, 98, and 130 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 93.102 [Amended]

2. In § 93.102, paragraph (a) would be amended by removing the words "Honolulu, HI;" and paragraph (d) would be amended by adding the words "Honolulu, HI;" immediately after the words "Atlanta, GA;".

§ 93.103 [Amended]

3. In § 93.103, paragraph (a)(4)(ii) would be removed, and paragraph (a)(4)(iii) would be redesignated as paragraph (a)(4)(ii) and the last two sentences would be removed.

§ 93.105 [Amended]

4. In § 93.105, paragraph (c)(2) would be amended by removing the words "Miami, FL; and Honolulu, HI" and by adding the words "and Miami, FL" in their place.

§ 93.106 [Amended]

5. Section 93.106 would be amended as follows:

a. In paragraph (a), by removing the words "paragraph (c)(7)" and by adding the words "paragraph (c)(5)" in their place.

b. In paragraph (b)(1), by removing the words "the Hawaii Animal Import Center at Honolulu, HI, when the port of entry is Honolulu, HI;".

§ 93.107 [Amended]

6. In § 93.107, paragraph (b)(2) would be amended by removing the words "Honolulu, HI;".

§ 93.203 [Amended]

7. In § 93.203, paragraph (a) would be amended by removing the words "Honolulu, Hawaii;" and paragraph (d) would be amended by adding the words "Honolulu, Hawaii;" immediately after the words "Atlanta, Georgia;".

§ 93.303 [Amended]

8. In § 93.303, paragraph (a) would be amended by removing the words "Honolulu, Hawaii;" and paragraph (d) would be amended by adding the words "Honolulu, Hawaii," immediately after the words "Atlanta, Georgia;".

§ 93.403 [Amended]

9. In § 93.403, paragraph (a) would be amended by removing the words "Honolulu, Hawaii;" and paragraph (e) would be amended by adding the words "Honolulu, Hawaii," immediately after the words "Atlanta, Georgia;".

§ 93.404 [Amended]

10. In § 93.404, paragraph (a)(2) would be amended by removing the words ", except as provided in § 93.430".

§ 93.503 [Amended]

11. In § 93.503, paragraph (a) would be amended by removing the words "Honolulu, Hawaii;" and paragraph (e) would be amended by adding the words "Honolulu, Hawaii;" immediately after the words "Atlanta, Georgia;".

§ 93.703 [Amended]

12. In § 93.703, paragraph (a)(1) would be amended by removing the words "Honolulu, HI;".

§ 93.805 [Amended]

13. In § 93.805, paragraph (a)(1) would be amended by removing the words "Honolulu, Hawaii;".

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

14. The authority citation for part 98 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 103–105, 111, 134a, 134b, 134c, 134d, 134f, 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 98.33 [Amended]

15. In § 98.33, paragraph (a) would be amended by removing the words "Honolulu, Hawaii;" and paragraph (d) would be amended by adding the words "Honolulu, Hawaii;" immediately after "Atlanta, Georgia;".

PART 130—USER FEES

16. The authority citation for part 130 would continue to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.2(d).

§ 130.1 [Amended]

17. Section 130.1 would be amended as follows:

a. In the definition of *Animal Import Center*, by removing the words "Newburgh, New York; Miami, Florida; and Honolulu, Hawaii" and adding the words "Newburgh, New York, and Miami, Florida" in their place.

b. In the definition of *Nonstandard care and handling*, by removing from footnote 2 the words "7:30 a.m. to 11:30 a.m., Honolulu, HI;".

Done in Washington, DC, this 3rd day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–5772 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–45–AD]

Airworthiness Directives; Eurocopter France Model SA–365N1, AS–365N2, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Eurocopter France Model SA–365N1, AS–365N2, and SA–366G1 helicopters, that currently requires initial and repetitive inspections of the tail rotor blade Kevlar tie-bar (Kevlar tie-bar) for cracks or delaminations. This action would require the same actions required by the existing AD, and would correct an incorrectly stated part number (P/N) in the existing AD. This proposal is prompted by a report of delamination of a Kevlar tie-bar. The actions specified by the proposed AD are intended to detect cracks that could lead to delamination of the Kevlar tie-bar, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–45–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–45–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–45–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Model SA–365N1, AS–365N2, and SA–366G1 helicopters. The DGAC advises that delamination outside certain tolerance limits may occur on Kevlar tie-bars.

On April 30, 1998, the FAA issued AD 98–10–04, Amendment 39–10515 (63 FR 25158, May 7, 1998), to require, within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 250 hours TIS, inspecting the Kevlar tie-bar for a crack or delamination and replacing any blade in which a crack or delamination is found with an airworthy blade. That action was prompted by a report of delamination of a Kevlar tie-bar. That condition, if not corrected, could result in loss of tail rotor control and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has discovered that a blade P/N was incorrectly stated in the existing AD. That P/N was incorrectly stated as 365A12–0020–20. The correct P/N is 365A12–0020–02.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Model SA–365N1, AS–365N2, and SA–366G1 helicopters of the same type design, the proposed AD would supersede AD 98–10–04 to require, within 10 hours TIS, and thereafter at intervals not to exceed 250 hours TIS, inspecting the Kevlar tie-bar for a crack or delamination and replacing any blade in which a crack or delamination is found.

The FAA estimates that 47 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,000 per blade. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $152,280 to replace one blade and perform one inspection on each helicopter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10515 (63 FR 25158, May 7, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter France: Docket No. 99–SW–45–AD. Supersedes AD 98–10–04, Amendment 39–10515, Docket No. 97–SW–49–AD.

Applicability: Model SA–365N1, AS–365N2, and SA–366G1 helicopters, with tail rotor blade (blade), Part Number 365A12–010–all dash numbers, 365A12–0020–00, 365A33–2131–all dash numbers, or 365A12–0020–02, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks that could lead to delamination of the tail rotor blade Kevlar tie-bar (Kevlar tie-bar), loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 250 hours TIS, inspect each Kevlar tie-bar for a crack or delamination in accordance with paragraph B, Operational Procedure, of Eurocopter France Service Bulletin 05.00.34, Revision 3, dated November 14, 1996.

(b) If any delamination or cracking is found during any of the inspections required by paragraph (a) of this AD, remove the blade and replace it with an airworthy blade before further flight.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 92–185–33(B)R4, dated December 4, 1996.

Issued in Fort Worth, Texas, on March 1, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–5734 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 883]

RIN: 1512–AC03

Proposed Addition of a New Grape Variety Name for American Wines (99R–142P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco, and Firearms has received a petition proposing to add a new name, "Dornfelder", to the list of prime grape variety names for use in designating American wines. Dornfelder is a red variety, developed in Germany in 1955, currently grown commercially in the United States.

DATES: Written comments must be received by May 8, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; Notice No. 883.

A copy of the petition and written comments in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Office of Liaison and Public Information, Room 6300, 650 Massachusetts Avenue, NW, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Berry, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927–8206.

SUPPLEMENTARY INFORMATION:

1. Background

Under 27 CFR 4.23(b), a wine bottler may use a grape variety name as the designation of a wine if not less than 75 percent of the wine (51 percent in some circumstances) is derived from that grape variety. Under § 4.23(d), a bottler may use two or more grape variety names as the designation of a wine if all varieties are listed on the brand label and the percentage of the wine derived from each grape variety is shown on the label.

Treasury Decision ATF–370 (61 FR 522), January 8, 1996, adopted a list of grape variety names that ATF has determined to be appropriate for use in designating American wines. The list of prime grape names and their synonyms appears at § 4.91, while additional alternative grape names temporarily authorized for use are listed at § 4.92.

ATF has received a petition proposing that a new grape variety name be listed in § 4.91. Under § 4.93 any interested person may petition ATF to include additional grape varieties in the list of prime grape names. Information with a petition should provide evidence of the following:

- Acceptance of the new grape variety;
- The validity of the name for identifying the grape variety;
- Information that the variety is used or will be used in winemaking; and
- Information that the variety is grown and used in the United States.

For the approval of names of new grape varieties, the petition may include:

- A reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization;

• A reference to a plant patent, if patented; and

• Information about the commercial potential of the variety such as the acreage planted or market studies.

Section 4.93 also places certain restrictions on grape names which will be approved. A name will not be approved:

• If it has previously been used for a different grape variety;

• If it contains a term or name found to be misleading under § 4.39; or

• If a name of a new grape variety contains the term "Riesling."

The Director reserves the authority to disapprove the name of a grape variety developed in the United States if the name contains words of geographical significance, place names, or foreign words which are misleading under § 4.39.

2. Dornfelder Petition

ATF has received a petition proposing to add the name "Dornfelder" to the list of prime grape variety names approved for the designation of American wines. Mr. John Weygandt and Ms. Alice Weygandt of Stargazers Vineyard in Coatesville, Pennsylvania, submitted the petition.

According to information submitted by the petitioners, Dornfelder is red variety, developed in Germany in 1955. It is a crossing of Helfenstein (a crossing of Frühburgunder and Trollinger) and Heroldrebe (a crossing of Portugieser and Limberger). According to Jancis Robinson's Vines, Grapes and Wines (First American Edition 1986), Dornfelder is "* * * perhaps Germany's most promising 'new' red crossing." The name "Dornfelder" is derived from Imanuel Dornfeld, founding father of the Württemberg viticultural school during the mid-19th century. "Dornfelder" was approved as a varietal name under German wine regulations in 1980.

In the United States, the breeders have obtained plant variety protection through the Plant Variety Protection Act, 7 U.S.C. Chapter 57, until 2009. The petitioners planted 600 vines of this variety in 1997, which will bear a commercial crop in 2000. In addition, three other growers in the states of Virginia, Pennsylvania, and Michigan have planted this variety. Dornfelder plants have been offered for sale by American Nursery, located in California and Virginia, since 1996. Based on the evidence presented in the petition, ATF is proposing Dornfelder as a grape variety for inclusion in § 4.91.

3. Public Participation

Who May Comment on This Notice?

ATF requests comments from all interested parties. We will carefully consider all comments we receive on or before the closing date. We will also carefully consider comments we receive after that date if it is practical to do so, but we cannot assure consideration for late comments. ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We may also disclose the name of any person who submits a comment. A copy of this notice and all comments will be available for public inspection during normal business hours at: ATF Reference Library, Office of Liaison and Public Information, Room 6300, 650 Massachusetts Avenue, NW, Washington, DC 20226.

How Do I Send Facsimile Comments?

You may submit comments of not more than three pages by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be 8½″ × 11″ in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-Mail) Comments?

You may submit comments by e-mail by sending the comments to nprm.notice883@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on not more than three pages 8½″ × 11″ in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet web site at *http://www.atf.treas.gov/core/regulations/rules.htm.*

3. Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation will permit the use of the grape varietal name Dornfelder. No negative impact on small entities is expected. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

4. Drafting Information

This notice was written by Tom Busey and Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspections, Imports, Labeling, Packaging and containers, Wine.

Authority and Issuance

Accordingly, 27 CFR part 4, Labeling and Advertising of Wine, is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Para. 2. Section 4.91 is amended by adding the name "Dornfelder", in alphabetical order, to the list of prime grape names, to read as follows:

§ 4.91 List of approved prime names.

* * * * *

Dornfelder

* * * * *

Signed: December 15, 1999.
John W. Magaw,
Director.
Approved: January 21, 2000.
John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement)
[FR Doc. 00–5769 Filed 3–8–00; 8:45 am]
BILLING CODE 4310–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–147–FOR]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposes revisions to its statutes that would allow the use of money from its post-1977 abandoned mine reclamation fund, under specified circumstances, to replace domestic water supplies disrupted or affected by surface coal mining and reclamation operations. Indiana intends to revise its program in order to provide additional protection to society and the environment from the adverse effects of surface coal mining operations.

This document gives the times and locations that the Indiana program and amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., e.s.t., April 10, 2000. If requested, we will hold a public hearing on the amendment on April 3, 2000. We will accept requests to speak at the hearing until 4:00 p.m., e.s.t. on March 24, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Indiana program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6700.

Indiana Department of Natural Resources, Bureau of Mine Reclamation, 402 West Washington Street, Room W–295, Indianapolis, Indiana 46204, Telephone: (317) 232–1291.

Indiana Department of Natural Resources, Division of Reclamation, R.R. 2, Box 129, Jasonville, Indiana 47438–9517, Telephone: (812) 665–2207.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, and 914.16.

II. Description of the Proposed Amendment

By letter dated February 25, 2000 (Administrative Record No. IND–1686), Indiana sent us an amendment to its program under SMCRA. Indiana sent the amendment at its own initiative. Indiana proposes to revise the Indiana Surface Coal Mining and Reclamation Act at Indiana Code (IC) 14–34. The Indiana General Assembly amended IC 14–34–6–15, effective July 1, 1999 (House Enrolled Act No. 1568).

IC 14–34–6–15, Abandoned Mine Reclamation Fund

1. Indiana revised IC 14–34–6–15(b) by adding a new provision at subdivision (2) and reformatting the existing provisions. The revised subsection reads as follows:

(b) The post-1977 abandoned mine reclamation fund is established. The fund consists of bond forfeiture money collected under section 16 of this chapter and the civil penalties described in IC 14–34–16–9. The fund may be used as follows:

(1) To effect the restoration of land not otherwise eligible for federal funding on which there has been surface mining activity after August 3, 1977.

(2) To replace domestic water supplies disrupted or affected by a surface coal mining and reclamation operation, including the disposal of coal combustion waste (as defined in IC 13–19–3–3), where the surface coal mining and reclamation operation has been completed and is no longer subject to IC 14–34.

The money held for this purpose may not exceed an amount established by the department that is sufficient to enable the director to cover the anticipated cost of restoration.

2. Indiana revised subsection (c) by adding the language "or replacement of water." The revised subsection reads as follows:

(c) At least five hundred thousand dollars ($500,000) in the fund is dedicated as collateral for the bond pool under IC 14–34–8 and may not be used for the restoration of land or replacement of water described in subsection (b).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Indiana program.

Written Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Your written comments should be specific and pertain only to the issues

proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. IN–147–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Indianapolis Field Office at (317) 226–6700.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on March 24, 2000. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The hearing will not be held if no one requests an opportunity to speak at the public hearing.

To assist the transcriber and ensure an accurate record, we request that you provide us with a written copy of your testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 1, 2000.

John W. Coleman,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 00–5754 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–05–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

[Docket No. 99–1]

RIN 3014–AA20

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; Extension of Comment Period

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On November 16, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a Notice of Proposed Rulemaking to revise and update its accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA). The comment period was scheduled to close on March 15, 2000. The Access Board is extending the comment period until May 15, 2000 to allow the public additional time to prepare comments on the proposed rule.

DATES: Comments should be received by May 15, 2000.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Fax number (202) 272–5447. E-mail comments should be sent to

docket@access-board.gov. Comments sent by e-mail will be considered only if they include the full name and address of the sender in the text. Comments will be available for inspection at the above address from 9:00 a.m. to 5:00 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: Marsha Mazz (on the ADA Accessibility Guidelines) and Jim Pecht (on the ABA Accessibility Guidelines) Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone numbers (202) 272–5434 extension 121 or extension 128 (voice); (202) 272–5449 (TTY). E-mail address: TA@access-board.gov. These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of the proposed rule may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 1 on the telephone keypad, then 1 again, and requesting publication S–36 (ADA and ABA Accessibility Guidelines Notice of Proposed Rulemaking). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication S–36. The proposed rule is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or Ascii text). The proposed rule is also available on the Access Board's Internet site in HTML, Ascii text and PDF formats (http://www.access-board.gov/ada-aba/guidenprm.htm).

Extension of Comment Period

On November 16, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a Notice of Proposed Rulemaking to revise and update its accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA). 64 FR 62248 (November 16, 1999). The comment period was scheduled to close on March 15, 2000. The Access Board is extending the comment period until May 15, 2000 to allow the public additional time to prepare comments on the proposed rule.

Lawrence W. Roffee,
Executive Director.

[FR Doc. 00–5639 Filed 3–8–00; 8:45 am]
BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 184–0220b; FRL–6547–1]

Proposed Approval and Promulgation of California State Implementation Plan for San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). The revisions are rules submitted by the State of California on behalf of the District to apply as general provisions for the implementation of NSR and other SIP requirements for stationary sources in the District.

The intended effect of proposing approval of these rules is to control air pollution in accordance with the requirements of the Act. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments on this proposed action must be received in writing by April 10, 2000.

ADDRESSES: Written comments on this action must be sent to David Albright at the Region IX mailing address listed below.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours at the following address: Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, California 92123–1096

FOR FURTHER INFORMATION CONTACT: David Albright (415) 744–1627 or albright.david@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is proposing to approve the following rules into the SIP: Rule 19.3—Emission Information and Rule 60—Circumvention. Rule 19.3 was adopted by the District on May 15, 1996, and submitted to EPA by the California Air Resources Board (CARB) as a revision to the SIP on October 18, 1996. Rule 60 was adopted by the District on May 17, 1994, and submitted to EPA by CARB on July 13, 1994.

For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Dated: February 11, 2000

Felicia Marcus,
Regional Administrator, Region IX.

[FR Doc. 00–5202 Filed 3–8–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT061–7220B; A–1–FRL–6542–2]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut and Rhode Island; Clean Fuel Fleets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve both Connecticut's and Rhode Island's Clean Fuel Fleets Substitute Plan, incorporating them into the State Implementation Plan (SIP). In the Final Rules Section of this **Federal Register**, EPA is approving these SIP submittals as a direct final rule without prior proposal because we view them as noncontroversial and anticipate no adverse comments. See the direct final rule for detailed rationale for the

approval. If EPA receives no adverse comments in response to this action, no further activity is contemplated. If EPA does receive adverse comments, we will withdraw the direct final rule and respond to all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. If you are interested in commenting on this action, you should do so at this time.

DATES: Written comments must be received on or before April 10, 2000.

ADDRESSES: You may mail comments to David B. Conroy, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, EPA Region 1, One Congress Street, Suite 1100 (CAA), Boston, MA 02114. You may also email comments to judge.robert@epa.gov.

You may review copies of the relevant documents to this action by appointment during normal business hours at the Office Ecosystem Protection, EPA Region 1, One Congress Street, Boston, Massachusetts. In addition, the information for each respective State is available at the Bureau of Air Management, Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, Connecticut 06106–1630; and the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge at 617–918–1045 or judge.robert@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule, which is located in the Rules Section of this **Federal Register**.

Dated: February 14, 2000.

Mindy S. Lubber,

Acting Regional Administrator, EPA–New England.

[FR Doc. 00–5201 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 022–0185; FRL–6548–6]

Approving Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) which concern several Ventura County Air Pollution Control District (District) rules about permitting and New Source Review (NSR) for stationary sources. EPA also proposes to delete from the SIP four rules that are obsolete. The rules subject to this action are both for general permitting requirements and for requirements specific to major new or modified air emission sources. A description of these rules is in our technical support document (TSD) in the administrative record for this action.

The intended effect of proposing limited approval and limited disapproval is to ensure the District's permitting and NSR rules are consistent with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action will incorporate these rules into the federally approved SIP. Although the rules generally strengthen the SIP, some of the rules subject to this action do not fully meet the CAA requirements for non-attainment areas and contain deficiencies which must be corrected. The rules have been evaluated based on CAA guidelines for EPA action on SIP submittals and general rulemaking authority.

In this document we are also requesting comments on one issue.

DATES: Comments must be received by April 10, 2000.

ADDRESSES: Send comments to: Nahid Zoueshtiagh, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. You can review and copy these rules, the existing SIP rules and EPA's TSD at EPA's Region 9 office from 8:00 AM to 4:00 PM Monday-Friday. A reasonable fee may be charged for copying. Copies of the submitted rules are also available for inspection at the following locations:

- California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.
- Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Nahid Zoueshtiagh at (415) 744–1261.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What Action Is EPA Proposing?

1. Limited approval and disapproval of Permitting and New Source Review Rules.

EPA today proposes a limited approval and limited disapproval of revisions to the California SIP for the District rules presented in Table 1. Upon final action, the rules will replace the existing SIP rules, also presented in Table 1.

TABLE 1.—RULES SUBJECT TO TODAY'S PROPOSED ACTION

Rule No.	Existing SIP title	SIP approval date	Current rule title	Adoption date
10	Permits Required	6/18/82	Permits Required	6/13/95
11	Application Contents	6/18/82	Definitions for Regulation II	6/13/95
12	Statement by Engineer or Application Preparer	2/3/89	Application for Permits	6/13/95
13	Statement by Applicant	6/18/82	Action on Applications for an Authority to Construct.	6/13/95
14	Trial Test Runs	9/22/72	Action on Application for a Permit to Operate	6/13/95

TABLE 1.—RULES SUBJECT TO TODAY'S PROPOSED ACTION—Continued

Rule No.	Existing SIP title	SIP approval date	Current rule title	Adoption date
15	Permit Issuance	4/17/87	Standards for Permit Issuance	6/13/95
15.1	None		Sampling and Testing Facilities	10/12/93
16	Permit Contents	6/18/82	BACT Certification	6/13/95
18	Permit to Operate-Application Required for Existing Equipment.	9/22/72	None—Repealed	6/13/95
21	Expiration of Applications and Permits	6/18/82	None—Repealed	6/13/95
23	Exemptions from Permits	6/18/82	Exemptions from Permit	7/9/96
24	Source Recordkeeping & Reporting	6/18/82	Source Recordkeeping & Reporting	9/15/92
25	Action on Applications	6/18/82	None—Repealed	6/13/95
26	New Source Review	7/1/82	New Source Review	10/22/91
26.1	All New & Modified Stationary Sources	7/1/82	New Source Review (NSR) Definitions	1/13/98
26.2	All New & Modified Stationary Sources-Attainment Pollutants.	7/1/82	Requirements	1/13/98
26.3	All New & Modified Stationary Sources Non-attainment Pollutants.	7/1/82	Exemptions	1/3/98
26.4	Banking	None	Emission Banking	1/13/98
26.5	Power Plants	7/1/82	Community Bank	1/13/98
26.6	Air Quality Impact Analysis & Modification	7/1/82	Calculations	1/13/98
26.7	None		NSR-Notification	12/22/92
26.8	None		NSR-Permit to Operate	10/22/91
26.9	None		PowerPlants	10/22/91
26.1	None		Prevention of Significant Deterioration (PSD)	1/13/98
29	Conditions on Permit	6/18/82	Conditions on Permits	10/22/91
30	Permit Renewal	5/3/84	Permit Renewal	5/30/89
37	Source Record Keeping and Reporting	5/18/77	None—Replaced by Rule 24	5/23/79

Generally, the District rules subject to this action will strengthen the SIP. However, some rules contain deficiencies and are not fully approvable under part D of the CAA. Therefore, EPA today proposes a limited approval and limited disapproval of these rules. If our final action remains a limited approval and limited disapproval, the District will have 18 months from the date of the final action to correct any deficiencies to avoid federal sanctions. See CAA section 179(b). Further, the District's failure to correct the deficiencies will trigger the Federal implementation plan requirements under 110(c). We have summarized the rule deficiencies in section II of this document. A discussion of the rules subject to this action, and our evaluation are contained in the TSD for this rulemaking action. The TSD is available from the EPA Region 9 office.

2. Removal of four rules from the SIP

In addition to our action on the rules listed above, we propose to delete the District Rules 18, 21, 25 and 37 from the SIP. As Table-1 shows, these rules have already been repealed by the District. We are approving removal of these rules because their requirements are now contained in the rules subject to today's action.

3. Removal of Conditions in 1981 NSR SIP Approval

In addition to the above proposed actions, we propose to delete the District NSR rule conditions identified when EPA finalized the NSR rules in 1981. See 46 FR 21757 and 40 CFR 52.232(a)(11). These conditions are moot today for the following reasons:

- The current rules will, upon final approval, supercede the 1980 rules;
- EPA has not taken action on any revisions to the District's NSR rule since 1981;
- The District has revised and submitted new NSR rules to comply with the 1990 CAA amendments.

II. How Did EPA Arrive at the Proposed Action?

1. Overview

EPA evaluated the District rules for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). Our interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents. EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing non-attainment NSR SIP requirements (See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion.

The Act requires States to comply with certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act require that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act requires that plan provisions for non-attainment areas shall meet the applicable provisions of section 110(a)(2). We believe that once the District rules subject to this action are approved into the SIP, they will strengthen the existing SIP by:

- Including major source and major modification thresholds that are consistent with the 1990 Clean Air Act Amendments for major stationary sources and major modifications locating in the District which is classified a severe ozone non-attainment area;
- Establishing the appropriate emissions offset ratio for major stationary sources and major modifications locating in severe ozone non-attainment areas;
- Establishing a comprehensive permitting program;

• Clarifying the existing requirements.

2. Deficiencies of Permitting and New Source Review Rules

We are proposing limited approval and limited disapproval for Rule 10 (Permits Required), Rule 11 (Definitions for Regulation II), Rule 12 (Applications for Permits), Rule 13 (Action on Applications for an Authority to Construct (ATC)), Rule 14 (Action on Applications for a Permit to Operate (PTO)), Rule 15 (Standards for Permit Issuance), Rule 15.1 (Sampling and Testing Facilities), Rule 16 (BACT Certification), Rule 23 (Exemptions from Permit), Rule 24 (Recordkeeping & Recording), Rule 26 and its subsection rules (New Source Review), Rule 29 (Conditions on Permits), and Rule 30 (Permit Renewal). These rules were submitted by the California Air Resources Board (CARB) to EPA for incorporation into the SIP. For some rules the District has submitted numerous revisions since the initial SIP approval dates. We are taking action only on the latest SIP submittal. The submittal dates for the rules subject to this action, shown in parentheses, are as follows.

• Rules 30 (3/26/90)
• Rules 26, 26.8–26.9 (1/28/92)
• Rule 29 (6/19/92)
• Rule 24 (11/12/92)
• Rule 26.7 (5/13/93)
• Rule 15.1 (3/29/94)
• Rules 10–15, 16, 18, 21 and 25 (10/13/95)
• Rule 23 (10/18/96)
• Rules 26.1–26.6, and 26.10 (5/18/98)

Although the latest rules that were submitted and are being acted on in this action will strengthen the SIP, the rules have several deficiencies which prevent EPA from being able to fully approve them. These deficiencies relate to Rules 10 and 26. We also note that for Rule 15 we read the reference to a variance as being limited to incorporating a compliance schedule, and not providing any latitude to avoid compliance with an applicable requirement. In addition to identifying the deficiencies, we are suggesting how to correct them. Following is a summary of the rule deficiencies which must be corrected to support full approval:

a. Deficiencies with Rule 10

Part 10.2.b of this rule provides an exemption from obtaining an ATC for emission units which relocate within five miles in the District. This exemption applies only to cases in which there is no emission increase for the relocating units. However, the exemption is not limited to a particular equipment size or type or amount of emissions. Under this exemption, the emission units must only obtain a PTO at the new location. We understand that historically the District has used this provision of the rule for relocation of very small sources (such as dry cleaners) that often relocate because of lease expiration.

We are disapproving this exemption because issuance of only a PTO for the relocated units at the new location will not satisfy two important requirements ensured through an ATC. The first is an analysis for the best available control technology (BACT), as provided in District's Rules 11 and 26. The second is public notification. In regard to the BACT requirements, it should be noted that for non-attainment pollutants, prior to the issuance of an ATC, EPA requires the lowest achievable emission rate (LAER) instead of BACT. However, as discussed in the TSD for this action, EPA has determined that the District's BACT requirements satisfy the federal LAER requirements.

The relocation exemption under Rule 10 does not have any restrictions on the number of units, size, type or the age of the relocating emission unit. Therefore a relocating unit, regardless of its age (i.e. the issuance date of its ATC), could operate under its existing BACT which was determined at the time of the ATC issuance. Further, Rule 10.B.2.d which requires a PTO to include a statement that the PTO shall not be construed to allow any emissions unit to operate in violation of any applicable State or Federal standards, will not satisfy the ATC requirements for BACT and public notice.

We believe Rule 10 is deficient because it circumvents both of the key requirements—BACT and public notice for an ATC. If the District believes that this type of exemption is necessary and justified for certain types of very small sources and operations, then it must clarify the rule and set specific conditions for the exemption from an ATC for very small relocating emission units.

Further, the District must revise section A.3 of its Rule 26.3 (NSR exemption for relocated units) to reflect revisions it is making to Rule 10 to correct the deficiency.

b. Deficiencies with Rule 26

Rules 26.1 through 26.10 constitute the District NSR program. The rules apply to sources of air pollution that require an ATC or a PTO. According to these rules, any new, modified, replaced or relocated major sources of emissions must apply BACT, and must obtain offsets for the increased air pollutants. Rule 26 has three areas of deficiencies. The first deficiency is about the requirements for offsetting air emission increases. The NSR rules must meet the CAA section 173(c)(2) requirements for offsetting air emissions increases. The Act requires that sources provide offsets in order to obtain an ATC permit. Specifically, the Act requires that offsetting emission reductions must be federally enforceable at the time that the NSR permit is issued (section 173(a)), and in effect by the time the source commences operation (section 173(c)(1)). In addition, section 173(c)(2) requires that the offsets be surplus of all other requirements of the Act. In other words, the CAA does not allow the use of emission reduction credits (ERCs) which were surplus some years ago when they were banked, but which are no longer surplus at the time that the ATC permit is issued. Thus, the District is required to adjust all emission reductions to ensure that the requirement of section 173(c)(2) for surplus ERCs is met at the time that the ERCs are used. The District rule is deficient because it does not require that ERCs be surplus at the time of use. To be corrected, Rules 26.2.B and 26.6.D.7.b must specify that the ERCs be surplus at the time of use. The District must revise 26.2.B and 26.6.D.7 to add this requirement. The District should also revise the definition of major modification in Rule 26.1.16, to add that in calculating contemporaneous net emission increases, ERCs that are not surplus at the time of use shall not be included.

A second deficiency in the District NSR program is Rule 26.2.C. Rule 26.2.C provides authority to the District to deny a permit to operate to a source which would cause the violation of any ambient air quality standards. The rule, however, must also provide the District with the authority to deny a permit if a source would cause increases in pollution concentrations over the baseline concentration and would cause violation of ambient air increments. To correct this deficiency, the District must revise this rule to include an authority to deny a permit to operate if a source would cause violation of ambient air increments.

The third deficiency in District's NSR program is about relying entirely on California Environmental Quality Act (CEQA) for the alternatives analysis required by section 173(a)(5) of the Act. We are specifically concerned about certain exemptions provided by CEQA which could result in bypassing the federal requirements for the alternatives analysis. Rule 26.2.E allows a source to

comply with the alternatives analysis by qualifying for a statutory or categorical exemption, or a negative declaration pursuant to CEQA. The CAA does not contain any exemptions from the requirement to conduct an alternatives analysis. The District must revise the rule to remove any exemptions. Further, although the District may base its alternatives analysis on materials developed under CEQA, the District must independently conclude that the alternatives analysis demonstrates that the benefits of the proposed source significantly outweigh the environmental and social cost.

3. Removing Rules 18, 21, 25 and 37

In addition to our proposed limited approval and limited disapproval action on the permitting and NSR rules, we propose to delete Rules 18, 21, 25 and 37. These rules are obsolete today for the following reasons:

- The District has repealed them;
- The requirements of Rules 18, 21 and 25 are contained in Rules 10, 12 and 13.
- The requirements of Rule 37 are now contained in Rule 24.

III. EPA Solicits Comment on One Issue

We are soliciting comments on the following issue:

1. Public Notification

The District does not require public notification for its preliminary ATC decisions for all emission sources. The public notification rule (Rule 26.7) only requires public notification for an ATC if the potential to emit (PTE) from all new, modified, replacement or relocated units exceeds the limits presented in Table—2.

TABLE #2.—PTE THRESHOLD FOR PUBLIC NOTIFICATION

[In tons per year]

#Nitrogen Oxides (NO_X)	15.0
Reactive Organic Compounds (ROC)	15.0
Sulfur Oxides (SO_X)	15.0
Particulate Matter (PM–10)	15.0
Carbon Monoxide (CO)	100.0

Therefore, if the PTE is lower than the above limits, the District is not required to notify the public. Please note that the District's above listed threshold levels are lower than the federal significance levels for NO_X, ROC, and SO_X, and are equal to the federal significance levels for PM–10 and CO. The federal NSR regulation under 40 CFR 51.161 does not specify any emissions threshold for public notification. 40 CFR 51.160(e), however, requires States to "identify types and sizes of facilities that will be subject to review. * * *" and "discuss the basis for determining which facilities will be subject to review." We are soliciting comment on whether the District's PTE emission levels in Rule 26.7 are appropriate to ensure the public has the opportunity to review the proposed ATC permits.

IV. Overview of Limited Approval/ Disapproval

Because of the deficiencies identified in this rulemaking, Rules 10, 15 and 26 are not approvable pursuant to section 182(a)(2)(A) of the CAA and EPA cannot grant full approval of the District's permitting and NSR program under section 110(k)(3) and part D. Rules 10, 15 and 26 are not consistent with the interpretation of sections 110(a)(2)(C) and 173 of the CAA, and may lead to rule enforceability problems.

Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3).

However, EPA may grant a limited approval of the submitted permitting and NSR rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of the District's submitted rules 10–15, 15.1, 16, 23–24, 26, 26.1–26.10 and 29–30 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of the District's rules 10–15, 15.1, 16, 23–24, 26, 26.1–26.10 and 29–30, because they contain deficiencies and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated non-attainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: withholding highway funding and increasing the offset requirements. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final limited disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this proposed rulemaking have been adopted by the District and are currently in effect in the District. EPA's final limited disapproval action will not prevent the District or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

1. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

2. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

3. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084

requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

4. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

5. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

6. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

7. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 25, 2000.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 00–5629 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[(DE046–1022b); FRL–6548–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Regulation 37—NO_X Budget Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the State of

Delaware. This revision implements the Ozone Transport Commission's (OTC) memorandum of understanding (MOU) which describes a regional nitrogen oxides (NO_X) cap and trade program that will significantly reduce NO_X emissions generated within the ozone transport region. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 10, 2000.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, at the EPA Region III address above, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: February 24, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–5615 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 010300F]

RIN 0648–AM42

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for the Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 4 to the Fishery Management Plan for the Scallop Fishery Off Alaska (FMP) for Secretarial review. Amendment 4 to the FMP would create a license limitation program (scallop LLP) in the Federal scallop fishery off Alaska that would limit the number of participants and reduce fishing capacity in this fishery through a limited access system in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is proposed to achieve conservation and management goals for the scallop fishery and is intended to further the objectives of the FMP.

DATES: Comments on the amendment must be submitted on or before May 8, 2000.

ADDRESSES: Comments on this amendment should be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK. Copies of Amendment 4 to the FMP, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the amendment are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: The Council prepared the FMP under the authority of the Magnuson-Stevens Act. The FMP delegates to the State of Alaska (State) the authority to manage all aspects of the scallop fishery, except limited access. Federal regulations governing the scallop fishery appear at 50 CFR parts 600 and 679. State regulations governing the scallop fishery appear in the Alaska Administrative Code (AAC) at 5 AAC Chapter 38—Miscellaneous Shellfish. The Magnuson-Stevens Act provides authority for the FMP to delegate to the State management responsibility for the scallop fishery in Federal waters off Alaska.

The Council adopted the scallop LLP as Amendment 4 to the FMP in February 1999. If approved, the proposed LLP would replace the existing Federal moratorium on the entry of new vessels into the scallop fishery. This moratorium is scheduled to expire on June 30, 2000. The scallop fishery off Alaska has been characterized as overcapitalized. In February 1998, the Council reviewed participation and other data from the scallop fishery and developed a problem statement and alternatives for analysis of a scallop LLP to replace the existing vessel moratorium.

The Council developed six alternatives and two options for the scallop LLP. The Council prepared an EA/RIR/IRFA for Amendment 4, which describes the management background, the purpose and need for action, the alternatives and options, and the socio-economic impacts of the alternatives and options. A copy of the EA/RIR/IRFA can be obtained from the Council (see **ADDRESSES**).

The Council's preferred alternative was the most restrictive considered by the Council and would result in the issuance of a total of nine licenses. The Council's intent in adopting the most restrictive alternative and options was to create an LLP that would reduce the size of the fishery and eliminate growth in harvest capacity.

Under the preferred alternative, licenses would be issued to holders of either Federal or State moratorium permits who used their moratorium permits to make legal landings of scallops in each of any 2 calendar years during the period beginning January 1, 1996, through October 9, 1998 (qualifying period). A scallop LLP license would authorize the person named on the license to catch and retain scallops consistent with applicable State regulations in all waters off Alaska that are open for scallop fishing. The license holder would not be required to be on

board a vessel when it is catching and retaining scallops; however, an original copy of the scallop LLP license would be required to be onboard the vessel at that time. No license holder would be allowed to hold more than two licenses.

Licenses premised on the legal landings of scallops harvested only from Cook Inlet (State Registration Area H) during the qualifying period would have a gear endorsement that would limit allowable gear to a single 6-ft (1.8 m) dredge when fishing for scallops in any area.

No increase in vessel length would be allowed. Each scallop LLP license would specify the maximum length overall (MLOA) of a vessel that the license holder could use to catch and retain scallops. The specified MLOA would be equal to the length overall of the longest vessel used by the applicant to make legal scallop landings during the qualifying period. A scallop LLP license could be used on any vessel equal to or less than the MLOA.

The Council also recommended that no person, corporation, or entity could own more than two scallop licenses. This two-license cap would limit excessive shares in the scallop fishery in accordance with the Magnuson-Stevens Act national standard 4. The two-license cap would prevent any person already holding two licenses from receiving additional scallop LLP licenses by transfer.

The Magnuson-Stevens Act requires that each regional fishery management council submit each FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or FMP amendment, immediately publish a notification in the **Federal Register** that the amendment is available for public review and comment. This action constitutes such notice for FMP Amendment 4. NMFS will consider the public comments received during the comment period in determining whether to approve this FMP amendment. To be considered, a comment must be received by close of business on the last day of postmark or transmission date.

Dated: March 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5780 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 47
Thursday, March 9, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Uruguay Round Agricultural Safeguard Trigger Levels

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of product coverage and trigger levels for safeguard measures provided for in the Uruguay Round Agreement on Agriculture.

SUMMARY: This notice lists the updated quantity trigger levels for products which may be subject to additional import duties under the safeguard provisions of the Uruguay Round Agreement on Agriculture. It also includes the relevant period applicable for trigger levels on each of those products.

EFFECTIVE DATE: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Cathy S. McKinnell, Multilateral Trade Negotiations Division, Foreign Agricultural Service, room 5530–South Building, U.S. Department of Agriculture, Washington, DC 20250–1022, telephone at (202) 720–6064, or email mckinnell@fas.usda.gov.

SUPPLEMENTARY INFORMATION: Article 5 of the Uruguay Round Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication during the Uruguay Round if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties to be imposed if the volume of imports of an article exceeds the average of the most recent 3 years for which data are available by 5, 10, or 25 percent, depending on the article. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity, may be applied at any given time to an article.

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** information regarding the price and quantity safeguards, including the quantity trigger levels, which must be updated annually based upon import levels during the most recent three years. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994. The Secretary of Agriculture further delegated the duty to the Administrator of the Foreign Agricultural Service (7 CFR 2.43 (a)(2)). The Annex to this notice contains the updated quantity trigger levels.

Additional information on the products subject to safeguards and the additional duties which may apply can be found in subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States and in the Secretary of Agriculture's Notice of Safeguard Action, published in the **Federal Register** at 60 FR427 on January 4, 1995.

Notice

As provided in section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the Agreement on Agriculture, the safeguard quantity trigger levels previously notified are superceded by the levels indicated in the Annex to this notice.

Issued at Washington, DC this 29th day of February, 2000.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.

Annex

The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register**, at 60 FR 427 on Wednesday, January 4, 1995.

QUANTITY BASED SAFEGUARD TRIGGER

Product	Trigger level	Period
Beef	982,666 mt	January 1, 2000 to December 31, 2000.
Mutton	12,612 mt	January 1, 2000 to December 31, 2000.
Cream	6,527,820 liters	January 1, 2000 to December 31, 2000.
Evaporated or Condensed Milk	4,584,100 kilograms	January 1, 2000 to December 31, 2000.
Nonfat Dry Milk	4,426,348 kilograms	January 1, 2000 to December 31, 2000.
Dried Whole Milk	2,735,859 kilograms	January 1, 2000 to December 31, 2000.
Dried Cream	541 kilograms	January 1, 2000 to December 31, 2000.
Dried Whey/Buttermilk	147,571 kilograms	January 1, 2000 to December 31, 2000.
Butter	7,335,863 kilograms	January 1, 2000 to December 31, 2000.
Butter Oil and Butter Substitutes	7,480,980 kilograms	January 1, 2000 to December 31, 2000.
Dairy Mixtures	3,000,734 kilograms	January 1, 2000 to December 31, 2000.
Blue Cheese	3,309,790 kilograms	January 1, 2000 to December 31, 2000.
Cheddar Cheese	14,724,970 kilograms	January 1, 2000 to December 31, 2000.
American Type Cheese	7,848,260 kilograms	January 1, 2000 to December 31, 2000.
Edam/Gouda Cheese	7,029,019 kilograms	January 1, 2000 to December 31, 2000.
Italian-Type Cheese	16,396,083 kilograms	January 1, 2000 to December 31, 2000.
Swiss Cheese with Eye Formation	35,361,386 kilograms	January 1, 2000 to December 31, 2000.
Gruyere Process Cheese	8,008,352 kilograms	January 1, 2000 to December 31, 2000.
Lowfat Cheese	3,374,284 kilograms	January 1, 2000 to December 31, 2000.
NSPF Cheese	51,102,583 kilograms	January 1, 2000 to December 31, 2000.
Peanuts	49,248 mt	April 1, 1999 to March 31, 2000.

QUANTITY BASED SAFEGUARD TRIGGER—Continued

Product	Trigger level	Period
	53,000 mt	April 1, 2000 to March 31, 2001.
Peanut Butter/Paste	21,031 mt	January 1, 2000 to December 31, 2000.
Raw Cane Sugar	2,366,204 mt	October 1, 1999 to September 30, 2000.
	1,945,430 mt	October 1, 2000 to September 30, 2001.
Refined Sugar and Syrups	25,484 mt	October 1, 1999 to September 30, 2000.
	27,058 mt	October 1, 2000 to September 30, 2001.
Blended Syrups	0 mt	October 1, 1999 to September 30, 2000.
	0 mt	October 1, 2000 to September 30, 2001.
Articles Over 65% Sugar	0 mt	October 1, 1999 to September 30, 2000.
	0 mt	October 1, 2000 to September 30, 2001.
Articles Over 10% Sugar	80,282 mt	October 1, 1999 to September 30, 2000.
	80,282 mt	October 1, 2000 to September 30, 2001.
Sweetened Cocoa Powder	2,445 mt	October 1, 1999 to September 30, 2000.
	1,555 mt	October 1, 2000 to September 30, 2001.
Chocolate Crumb	21,252,239 kilograms	January 1, 2000 to December 31, 2000.
Lowfat Chocolate Crumb	176 kilograms	January 1, 2000 to December 31, 2000.
Infant Formula Containing Oligosaccharides	84,751 kilograms	January 1, 2000 to December 31, 2000.
Mixes and Doughs	5,424 mt	October 1, 1999 to September 30, 2000.
	6,064 mt	October 1, 2000 to September 30, 2001.
Mixed Condiments and	253 mt	October 1, 1999 to September 30, 2000.
Seasonings	232 mt	October 1, 2000 to September 30, 2001.
Ice Cream	1,516,320 liters	January 1, 2000 to December 31, 2000.
Animal Feed Containing Milk	1,339,075 kilograms	January 1, 2000 to December 31, 2000.
Short Staple Cotton	17,211,112 kilograms	September 20, 1999 to September 19, 2000.
	5,340,573 kilograms	September 20, 2000 to September 19, 2001.
Harsh or Rough Cotton	0 mt	August 1, 1999 to July 31, 2000.
	0 mt	August 1, 2000 to July 31, 2001.
Medium Staple Cotton	9,664 kilograms	August 1, 1999 to July 31, 2000.
	622,754 kilograms	August 1, 2000 to July 31, 2001.
Extra Long Staple Cotton	32,995 kilograms	August 1, 1999 to July 31, 2000.
	1,482,280 kilograms	August 1, 2000 to July 31, 2001.
Cotton Waste	13,378 kilograms	September 20, 1999 to September 19, 2000.
	0 kilograms	September 20, 2000 to September 19, 2001.
Cotton, Processed, Not Spun	383 kilograms	September 11, 1999 to September 10, 2000.
	798 kilograms	September 11, 2000 to September 10, 2001.

[FR Doc. 00–5681 Filed 3–8–00; 8:45 am]
BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Granite Area Mining Projects; Umatilla National Forest, Grant County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) on a proposed action to approve Proposed Plans of Operation on mining claims located in the Granite Area, within the Granite Creek watershed, a tributary to the North Fork John Day River. The project area is located on the North Folk John Day Ranger District, approximately 34 air miles southeast of Ukiah, Oregon.

The proposed action is a compilation of plans submitted by claimants operating within the analysis area. These plans describe the type of mining operations proposed and how they would be conducted, the type and standard of access routes, the means of transportation to be used, the period during which the proposed mining activity will take place and measures to be taken to meet the requirements for environmental protection. Operations include the exploration and extraction of valuable minerals from placer and lode deposits. Methods range from hand panning to more complex operations utilizing mechanical equipment. The 1990 Land and the Resource Management Plan FEIS for the Umatilla National Forest, as amended, provides overall guidance for management of this area. Some of the operations planned in the proposed action may not be in compliance with this plan.

DATES: Written comments concerning the scope of the analysis should be received on or before April 10, 2000.

ADDRESSES: Send written comments and suggestions to the Responsible Official, Craig Smith-Dixon, North Folk John Day District Ranger, P.O. Box 158, Ukiah, OR 97880.

FOR FURTHER INFORMATION CONTACT: Bob Reed, Project Team Leader, North Fork John Day Ranger District. Phone: (541) 427–3231.

SUPPLEMENTARY INFORMATION: The decision area includes approximately 900 acres of claimed lands within the Umatilla National Forest in Grant County, Oregon. It is within the boundary of the Granite Creek Watershed. The legal description of the decision area is as follows: T8–10S, R34, 35, 35½E, W.M. surveyed. Some proposed activities are within the boundary of the North Folk John Day Wilderness Area.

Gold was discovered in the project area in 1864 and a small gold rush shortly followed. Most of the gold produced in this area was placer gold mined from the gravel and bars of streams. There were also several large producing gold and silver mines. A large-scale dredge operated in many of the area streams in the later 1930's Most of the big mining was over by the 1950's as the economical discoveries were mined out. Exploration continues but no major production is occurring. Most current mining activity consists of small-scale placer operations.

During the past years, several species of fish residing within streams located in or near the project area have been listed as threatened under the

Endangered Species Act. After reviewing the new listings, the Forest Service has determined that current mining operations could significantly affect these fish species. Therefore it is necessary for persons operating in the project area to submit new or modified Plans of Operations to the Forest Service. Under the regulations at 36 CFR 228.4 and 228.5, and because of the potential significance of the effects, these plans must be analyzed in an Environmental Impact Statement.

Mining operations are associated with the extraction of precious metals from placer and lode deposits. A number of different practices are being proposed on the various claims within the analysis area. These may include one or more of the following practices:

Suction Dredging: Portable suction dredges would be used in stream during the period specified by the State of Oregon, generally July 15 to August 15.

Test Pits: Holes are dug either by hand or mechanical equipment to sample sub-surface deposits.

Drilling: Portable drills are used as part of the exploration process to sample sub-surface mineral deposits.

Placer Mining: This includes a wide variety of practices to extract minerals from placer deposits. The techniques include handwork with shovels and pans, small sluice boxes and more complex operations that use mechanical equipment. On the more heavily worked claims backhoes and front end loaders are used for digging, and power trommels for separation and extraction. Water, to varying degrees, is used in all these techniques. Some minor road maintenance and maintenance of existing structures is also planned.

Lode Mining: This includes tunneling or other mechanical methods used to extract lode deposits.

Activities, which would occur in association with mining operation, include mitigation practices such as construction or maintenance of settling ponds, and reclamation activities such as recontouring, seeding, and treatment of noxious weeds.

Preliminary issues include: effects of proposed activities on water quality and the effects of proposed activities on fish habitat and aquatic Threatened, Endangered, and Sensitive species.

The Forest Service will consider a full range of alternatives, including a "no-action" alternative in which no mining activities would be approved. The no-action alternative is evaluated in order to establish a baseline condition of existing and future environmental conditions in the project area. Based on the issues gathered through scoping, the action alternatives may vary in the type of operations permitted, the timing of permitted operations and the types of mitigation required. Tentative action alternatives are: the proposed action and an alternative that modifies the proposed plans with additional mitigation to address effects of mining on water quality and fisheries habitat.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). Initial scoping began with the project listing in the 2000 Winter Edition of the Umatilla National Forest's Schedule of Proposed Activities. This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations that may be interested in, or affected by the proposal. This input will be used in preparation of the Draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Considering additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (*i.e.* direct, indirect, and cumulative effects and connected actions).

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available to the public for review by September 1, 2000. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register.** The comment period on the Draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register.** It is important that those interested in the management of the Umatilla National Forest participate at that time. The Final EIS is scheduled to be completed by December 1, 2000. In the Final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or

chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service is the lead agency. Craig Smith-Dixon, District Ranger, is the Responsible Official. As the Responsible Official, he will decide which, if any, of the proposed plans will be implemented. He will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: February 24, 2000.

Craig Smith-Dixon,

District Ranger.

[FR Doc. 00–5726 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan for the White Mountain National Forest; Carroll, Coos, and Grafton Counties, NH and Oxford County, ME

AGENCY: Forest Service, USDA.

ACTION: Notice; Intent to prepare an Environmental Impact Statement.

SUMMARY: The purpose of this notice is to inform the public that the Forest Service intends to prepare an environmental impact statement for revising the White Mountain National Forest Land and Resource Management Plan (Forest Plan) pursuant to 16 U.S.C. 1604(f)(5) and 36 CFR 219.12.

The Forest Plan guides the overall management of the Forest. Six primary decisions are made in the Forest Plan:

1. Forest wide multiple-use goals and objectives (as required by 36 CFR 219.11[b])
2. Forest wide management requirements (36 CFR 219.27)
3. Management area direction (36 CFR 219.11[c])
4. Lands suited and not suited for timber production (36 CFR 219.14, 219.16, 219.21)
5. Monitoring and evaluation requirements (36 CFR 219.11[d])
6. Recommendations to Congress (for example Wilderness recommendation) (36 CFR 219.17)

The purpose for the revision rests in the requirements of the National Forest Management Act and its implementing regulations (U.S.C. 1604[f][5] and 36 CFR 219.10[g]. Forest Plans provide direction for administering the National Forests. Forest Plans are revised every 10 to 15 years. The White Mountain National Forest Plan was approved in 1986. The Forest is nearing the end of the 10–15 year cycle.

The need to revise the Forest Plan is based on changed public expectations, changing agency direction, monitoring and evaluations, and the availability of new information. Specific indicators of the need are: (1) There is growing demand for all recreation uses on the Forest. There is demand for types of recreation uses on the Forest that are not currently being provided; (2) Agency goals and objectives, along with other national guidance for strategic plans and programs, have changed since 1986; (3) Results of monitoring and evaluation suggest the need for revision; and (4) A vast amount of new scientific information has been published since 1986, including technical reports published from research by the Forest Service, as well as universities and organizations that study forest ecosystems and forest management.

The process of revising the Forest Plan will focus on those items that have been identified as most in need of revision. To provide guidance for developing Forest Plan goals and direction the Forest developed a statement describing the role of the Forest in New England, which is basically to manage the White Mountain National Forest under the concept of ecosystem, social and economic sustainability. The issues identified through initial public outreach have been used to identify 23 Revision Topics. The 23 topics are:

1. Air Quality.
2. American Indian Consultation.
3. Biodiversity.
4. Budget and Cost Effectiveness.
5. Commercial Minerals.
6. Environmental Education/Visitor Information.
7. Fire.
8. Heritage Resources.
9. Land Acquisition and Exchange.
10. Monitoring.
11. Recreation Opportunities and Use.
12. Roadless Areas.
13. Roads.
14. Scenery Management.
15. Soil Productivity.
16. Special Uses.
17. Threatened, Endangered, Proposed, and Sensitive Species.
18. Timber Management.
19. Watershed and Aquatic Ecosystems.
20. Wild and Scenic Rivers.
21. Wilderness Management.
22. Wilderness Recommendation.
23. Wildlife Habitat Management.

Additional detail on the Revision Topics is available on request, in the from of the document titled "Need for Change, Description of Proposal for Revising the White Mountain National Forest". You are encouraged to review this additional document prior to commenting on the Notice of Intent. You may request the additional information by calling the phone number listed below, by writing or e-mailing to the addresses listed in this notice, or by accessing the Forest web page at www.fs.fed.us/r9/white.

The past thirteen years of Forest Plan implementation and information from new scientific studies have yielded information that was not available when the direction of the existing Forest Plan was developed. We propose to use the new information to update and add management direction for the previously described revision topics.

A range of alternatives will be considered when revising the Forest Plan. The alternatives will address different options to resolve concerns raised as revision topics listed above and to fulfill the purpose and need. A "no-action alternative" is required, meaning the management would continue under the existing Forest Plan. Alternatives will provide different ways to address and respond to public issues, management concerns, and resource opportunities identified during the scoping process.

The alternatives will display different mixes of recreation opportunities and experiences. We will examine alternatives that address the public's concerns for less timber harvest, for greater timber harvest, and meeting currently planned harvest levels. The alternatives will display different mixes of wildlife habitats across the forest. The mix will vary by the objectives of the particular alternative, though each alternative will be managed to contain the habitat necessary to maintain viable populations of wildlife species. Management of roadless areas will vary by the objectives of any particular alternatives, physical criteria for evaluating each individual roadless area, and public input. In addition, the alternatives will incorporate a range of Wilderness recommendations.

The environmental analysis and decision-making process will include many opportunities for public participation and comment so that people interested in this proposal may contribute to the final decision. The draft environmental impact statement is tentatively scheduled for release in

September 2001. The final environmental impact statement and decision are scheduled for August 2002.

We are now soliciting comments and suggestions from individuals, state and local governments, American Indians, federal agencies, and organizations on the scope of the analysis to be included in the draft environmental impact statement for the revised Forest Plan (40 CFR 1501.7). To be most useful, your comments should focus on (1) the proposed revision topics, (2) issues that you are concerned about that are not addressed in this notice, and (3) possible alternatives for addressing the 23 revision topics.

We will provide the public with general notices on opportunities to participate through mailings, news releases, and public meetings. In addition to formal opportunities for public comment we will consider received at any time throughout the revision process.

The Forest Service will host a series of meetings to (1) Present and clarify proposed changes to the forest plan; (2) describe ways that individuals can respond to this notice of intent; and (3) accept comments from the public on the proposal for revising the Forest Plan. Forest personnel will be available at the following times and locations to answer questions and accept input about this Notice of Intent.

April 10, 2000, 1:30 p.m. to 7:30 p.m., Holiday Inn, Concord NH.
April 11, 2000, 12:30 p.m. to 6:30 p.m., Radisson Hotel, Chelmsford MA.
April 12, 2000, 1 p.m. to 7 p.m., Rumney Town Hall, Rumney NH.
April 13, 2000, 12:30 p.m. to 6:30 p.m., Evans Notch Ranger District Office, Bethel ME.
April 13, 2000, 12:30 p.m. to 6:30 p.m., Woodstock Town Hall, North Woodstock NH.
April 14, 2000, 12:30 p.m. to 6:30 p.m., Saco Ranger District Office, Conway NH.
April 18, 2000, 1 p.m. to 7 p.m., Androscoggin Ranger District Office, Gorham NH.

Additional information on meeting schedules is available on the White Mt. National Forest web page at www.fs.fed.us/r9/white.

DATES: Comments on this Notice of Intent should be received in writing by May 9, 2000.

ADDRESSES: Send written comments to: Forest Planning, White Mountain National Forest, 719 N. Main St., Laconia, NH 03236. Or direct electronic mail to: forestplan__whitemtn@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Bryan Armel, Forest Planner, at (603) 528–8788. TDD (603) 528–8722. E-mail address: forestplan/r9__whitemtn@fs.fed.us or access the Forest web page at www.fs.fed.us/r9/white.

SUPPLEMENTARY INFORMATION: This section contains more information about the process to revise the Forest Plan for the White Mountain National Forest.

Authorization

On November 14, 1997, the Department of Interior and Related Agencies Appropriations Act of 1998, H.R. 2107 was passed. Language in section 333 of the law specifically prohibits the expenditure or obligation of funds for new revisions of National Forest land managment plans until new final or interim final rules for forest plan revision are published in the **Federal Register.** Later in 1997, the Departments of Commerce, Justice, and State, the Judiciary, and related agencies Appropriations Act of 1998, HR 2267 was passed. Language in section 630 of the law specifically permitted the White Mountain National Forest to proceed with developing its next Forest Plan. This subsequent law allows the White Mountain National Forest to proceed with revision in accordance with 36 CFR 219.10(g).

Availability of Public Comment

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decisions under 36 CFR parts 215 or 217.

Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the FOIA (Freedom of Information Act) permits such confidentiality. Persons requesting such confidentiality should be aware that under FOIA confidentiality may be granted in only very limited circumstances, such as to protect trade secrets.

The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and where the requester is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 90 days.

Release and Review of the Draft EIS

The DEIS (Draft Environmental Impact Statement) is expected to be filed with the EPA (Environmental Protection Agency) and to be available for public comment in the fall of 2001. At that time, the EPA will publish a notice of availability in the **Federal Register**. The comment period on the DEIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, that it is important to give reviews notice of several court rulings related to public participation in the environmental review process. First, reviews of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the review's position and contentions. *Vermont Yankee Nuclear Poser Corp.* v. *NRDS, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviews may wish to refer to the Council of Environmental Quality Regulations for implementing the procedural provision of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official is Robert T. Jacobs, Regional Forester, Eastern Region, 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.

Dated: February 14, 2000.

Robert T. Jacobs

Regional Forester.

[FR Doc. 5864 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by May 8, 2000.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, D.C. 20250–1522. Telephone: (202) 720–9552. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Preloan Procedures and Requirements for Telecommunications Program.

OMB Control Number: 0572–0079.

Type of Request: Reinstatement with change of a previously approved information collection.

Abstract: This program is necessary in order for the Rural Utilities Service (RUS) to determine an applicant's eligibility to borrow from RUS under the terms of the RE Act. This information is also used by RUS to determine that the Government's security for loans made by RUS is reasonably adequate and that the loans will be repaid within the time agreed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 hours per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 8.

Estimated Total Annual Burden on Respondents: 3,621.

Copies of this information collection can be obtained from Bob Turner, Program Development and Regulatory Analysis, at (202) 720–0696.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, D.C. 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 2, 2000.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 00–5640 Filed 3–9–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Great River Energy Pleasant Valley Station, Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of an Environmental Assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is publishing an environmental assessment (EA) for a project proposed by Great River Energy (GRE) of Elk River, Minnesota. The project consists of constructing a natural gas-fired simple cycle, combustion turbine power generation facility in Pleasant Valley Township in Mower County, Minnesota. The project will have a total of three combustion turbine units, two 155 megawatts (MW) units and one 124 MW unit, including a new 345/161 kV substation and other associated transmission facilities. The total electrical output from the facility is expected to range from 434 MW to 526 MW depending upon operating conditions. RUS proposes to provide financial assistance to GRE for this project.

FOR FUTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1414; e-mail: nislam@rus.usda.gov. RUS seeks written comments on the GRE proposal. Written comments should be submitted within 30 days of the publication of this notice to the above address.

SUPPLEMENTARY INFORMATION: GRE proposes to construct the power station in Pleasant Valley Township in Mower County, Minnesota. The primary purpose of the facility is to meet GRE peak electrical load during hot summer weather. Under those conditions the facility's expected output is about 434 MW of power. The generation unit consists of turbines similar to those found in commercial airline engines. The primary fuel will be natural gas and the distillate oil will serve as the back up fuel for the plant. The three units will have a total peak capacity of 526 MW. The generating power station will require approximately 24 acres of land. The preferred site for the generating station is located in the northwest quarter of Section 19, Pleasant Valley Township, Mower County, Minnesota. An alternative site was considered and is located approximately two miles south of the preferred site, in the south of the northwest quarter of Section 31, Pleasant Valley Township, Mower County, Minnesota. The following additional facilities will also be constructed. A 345/161 kV substation will be constructed at the plant site. A short, 345 kV transmission tap line, approximately 500 feet long, will be needed to connect to an existing Byron-Adams 345-kV transmission line. A new 161 kV transmission line, between 5 and 7 miles long, will be built from the plant site to the Sargeant Substation. The existing 69 kV line between the Sargeant Substation and south of the City of Brownsdale will be upgraded to a 161/69 kV line. This section of the line will be approximately 10 miles long. A 161 kV line will be built from Brownsdale to the Austin North Substation in Austin, Minnesota. A number of alternative routes have been considered for this section of the transmission line. Approximately three miles of new high pressure gas pipeline will be built to provide gas supply from the proposed generating station north to an existing gas pipeline. The expected water use is

estimated to be approximately 3.1 million gallons per year.

The EA is available for public review at the headquarters of GRE at 17845 East Highway 10, Elk River, Minnesota 55330–0800 and the RUS at the address provided above in this notice or at the following locations:

- Austin Public Library, 323 4th Avenue, NE, Austin, Minnesota, telephone (507) 433–2391
- Brownsdale Public Library, Brownsdale Community Building, Brownsdale, Minnesota, telephone (507) 567–9951
- Rochester Public Library, 101 2nd Street, SE, Rochester, Minnesota, telephone (507) 285–8022
- Sargeant Community Center, Chestnut Avenue, Sargeant, Minnesota, telephone (507) 584–6885

Questions and comments should be sent to RUS at the address provided in this notice. RUS will accept questions and comments on the EA for 30 days from the date of publication of this notice.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR Part 1794, Environmental Policies and Procedures.

Dated: March 3, 2000.

Mark S. Plank,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 00–5642 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Dekehtik Diesel Electric Plant on the Island of Pohnpei, Pohnpei Utilities Corporation, Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and RUS Environmental Polices and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Pohnpei Utilities Corporation (PUC) of Kolonia, Pohnpei, Federated States of Micronesia. Pohnpei is the largest state in the Federated States of Micronesia. The proposed project consists of constructing a 6.5-megawatt diesel electric generating plant at Dekehtik on the Island of Pohnpei. The purpose of the project is to provide power for the residents of the Island. RUS proposes to provide financial assistance to PUC for the project.

RUS has concluded that the impacts from the proposed project would not be significant and that the proposed action is not a major federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, Stop 1571, Engineering and Environmental Staff, RUS, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–1414. His e-mail address is nislam@rus.usda.gov. Information is also available from Mr. Marcelino Actouka, General Manager, PUC, P.O. Box C, Kolonia, Pohnpei FM96941, telephone (691) 320–2374 and Mr. Peter Howard, Executive Vice President, Oceanic Companies, Inc., 1287 Kalani Street, Suite 203, Honolulu, Hawaii 966817–4961, telephone (808) 874–0207.

SUPPLEMENTARY INFORMATION: RUS, in accordance with its environmental policies and procedures, required that PUC prepare an Environmental Report (ER) reflecting the potential impacts of the proposed facilities. The ER, which includes input from federal, state, and local agencies, has been reviewed and accepted as RUS' Environmental Assessment (EA) for the project in accordance with 7 CFR 1794.41. RUS and the PUC published notices of the availability of the EA and solicited public comments per 7 CFR 1794.42.

RUS has received the following comments on the proposed project: A letter from the U.S. Embassy on Kolonia, dated January 4, 2000, addressed the use of the present solid waste dump site as the location of the new power plant with no arrangements for relocating the solid waste facility. Region 9 of the U.S. Environmental Protection Agency (EPA) commented on the disposal and characterization of excavated material, stabilization of the present dump site, and accidental oil spills. Based on the information contained in the ER which RUS accepted as its EA, the responses of the Oceanic Companies, Inc., documented in a letter, dated February 16, 2000, to EPA Region 9, and the PUC commitments to follow mitigation, RUS does not believe that construction and operation of the Dekehtik Generating Station will result in any significant impact to the human environment.

Copies of the EA and FONSI can be reviewed at the headquarters of RUS and the headquarters of PUC and Oceanic Companies, Inc., at the addresses provided in this notice.

Dated: March 1, 2000.

Alex M. Cockey

Acting Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 00–5641 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Estimates of the Voting Age Population for 1999

AGENCY: Office of the Secretary, Commerce.

ACTION: General notice announcing population estimates.

SUMMARY: This notice announces the voting age population estimates, as of July 1, 1999, for each state and the District of Columbia. We are giving this notice in accordance with the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e).

FOR FURTHER INFORMATION CONTACT: John F. Long, Chief, Population Division, Bureau of the Census, Department of Commerce, Room 2011, Federal Building 3, Washington, DC 20233, telephone 301–457–2071.

SUPPLEMENTARY INFORMATION: Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 1999, for each state and the District of Columbia are as shown in the following table.

ESTIMATE OF THE POPULATION OF VOTING AGE FOR EACH STATE AND DISTRICT OF COLUMBIA: JULY 1, 1999

[In thousands]

Area	Population 18 and over
United States	202,491
Alabama	3,304
Alaska	423
Arizona	3,444
Arkansas	1,891
California	24,222

ESTIMATE OF THE POPULATION OF VOTING AGE FOR EACH STATE AND DISTRICT OF COLUMBIA: JULY 1, 1999—Continued

[In thousands]

Area	Population 18 and over
Colorado	2,991
Connecticut	2,454
Delaware	571
District of Columbia	424
Florida	11,541
Georgia	5,731
Hawaii	896
Idaho	901
Illinois	8,947
Indiana	4,414
Iowa	2,150
Kansas	1,955
Kentucky	2,995
Louisiana	3,182
Maine	963
Maryland	3,862
Massachusetts	4,707
Michigan	7,303
Minnesota	3,504
Mississippi	2,016
Missouri	4,069
Montana	659
Nebraska	1,222
Nevada	1,318
New Hampshire	897
New Jersey	6,140
New Mexico	1,244
New York	13,756
North Carolina	5,710
North Dakota	474
Ohio	8,413
Oklahoma	2,476
Oregon	2,489
Pennsylvania	9,141
Rhode Island	750
South Carolina	2,930
South Dakota	535
Tennessee	4,143
Texas	14,325
Utah	1,422
Vermont	454
Virginia	5,208
Washington	4,270
West Virginia	1,403
Wisconsin	3,902
Wyoming	353

I have certified these counts to the Federal Election Commission.

Dated: February 28, 2000.

William M. Daley,

Secretary, Department of Commerce.

[FR Doc. 00–5593 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–851, A–791–808]

Preliminary Determinations of Critical Circumstances: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Valerie Ellis at (202) 482-0631 or 482–2336, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (April 1999).

Background

On December 14, 1999, the Department published the preliminary affirmative determinations in the antidumping duty investigations on certain large diameter carbon and alloy seamless standard, line and pressure pipe from Japan and certain small diameter carbon and alloy seamless standard, line and pressure pipe from Japan and the Republic of South Africa, 64 FR 69718. On January 31, 2000, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of small diameter carbon and alloy seamless standard, line and pressure pipe (seamless pipe) from Japan and South Africa.

Critical Circumstances

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

Japan

Kawasaki, Nippon and Sumitomo

Because we are not aware of any antidumping order in any country on seamless pipe from Japan, we do not find that a reasonable basis exists to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. Therefore, we must look to the second criterion for determining importer knowledge of dumping.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the seamless pipe at less than fair value, the Department's normal practice is to consider margins of 25 percent or more for export price ("EP") sales sufficient to impute knowledge of dumping. *See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China (PRC Plate)*, 62 FR 31972, 31978 (June 11, 1997). In the instant case, the mandatory respondents, Kawasaki Steel Corporation (Kawasaki), Nippon Steel Corporation (Nippon) and Sumitomo Metal Industries (Sumitomo) did not respond to the Department's questionnaire and we have applied, as adverse facts available, the highest of

the dumping margins presented in the petition and corroborated by the Department. This is consistent with section 776 of the Act and with Department practice (*see Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan* (*Vector Supercomputers*), 62 FR 45623 (August 28, 1997)). Kawasaki, Nippon and Sumitomo's assigned dumping margins of 106.07 percent are greater than 25 percent. Therefore, we have imputed knowledge of dumping to importers of subject merchandise from these companies.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. In this case, the ITC has found that a reasonable indication of present material injury due to dumping exists for all identified countries. *See Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania and South Africa* (*ITC Preliminary Determination*), 64 FR 46953 (August 27, 1999). As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports of subject merchandise from Japan.

In determining whether there are "massive imports" over a "relatively short period," the Department normally compares the import volume of the subject merchandise for three months immediately preceding and following the filing of the petition. Imports normally will be considered massive when imports have increased by 15 percent or more during this "relatively short period."

Because we do not have verifiable data from the three uncooperative Japanese companies, the Department must base its "massive imports" determination as to these companies on the facts available, pursuant to section 776(a) of the Act[2]. Accordingly, we examined U.S. Customs data[2] on imports of seamless pipe from Japan for February through June 1999 (the five months preceding the June 30, 1999, filing of the petition) and from July through November (the five months following the filing of the petition).[3] We found, however, that these data are not producer specific and do not permit the Department to ascertain the import volumes for any individual company that failed to respond to the Department's questionnaire. Because these companies' failed to cooperate by not acting to the best of their ability to respond to the Department's questionnaires, we may make an adverse inference in selecting the facts available. Therefore, consistent with Department practice, we have adversely inferred, as facts available, that there were massive imports from Kawasaki, Nippon and Sumitomo over a relatively short period. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan* (*Collated Roofing Nails From Taiwan*), 62 FR 51427 (October 1, 1997).

Based on our determination that there is a reasonable basis to believe or suspect that importers knew or should have known that exporters Kawasaki, Nippon and Sumitomo were selling seamless pipe from Japan at less than fair value, that there was likely to be material injury by reason of such dumped imports, and that there have been massive imports of seamless pipe from these producers over a relatively short period, we preliminarily determine that critical circumstances exist for imports from Japan of seamless pipe produced by Kawasaki, Nippon and Sumitomo.

All Other Exporters from Japan

In regard to the "all others" category, it is the Department's normal practice to conduct its critical circumstances analysis based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey (Rebars from Turkey)*, 62 FR 9737, 9741 (March 4, 1997). In *Rebars from Turkey*, the Department determined that because it found critical circumstances existed for three out of the four companies investigated, critical circumstances also existed for companies covered by the "all others" rate. However, in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan* (*Stainless Steel from Japan*), 64 FR 30574 (June 8, 1999), the Department did not extend its affirmative critical circumstances findings to the "all others" categories while finding affirmative critical circumstances for four of the five respondents, because the affirmative determinations were based on adverse facts available.

Consistent with *Stainless Steel from Japan*, we believe it is appropriate to apply the traditional critical circumstances criteria to the "all others" category. *Id.* First, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the seamless pipe at less than fair value, we look to the "all others" rate, which is based, in the instant case, on facts available. The dumping margin for the "all others" category in the instant case, 70.43 percent, exceeds the 25 percent threshold necessary to impute knowledge of dumping. Second, based on the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from the dumped merchandise.

Finally, with respect to massive imports, we are unable to base our determination on our findings for the mandatory respondents, because our determinations for all of the respondents were based on facts available. We have not inferred, as facts available, that massive imports exist for "all others" because, unlike Kawasaki, Nippon and Sumitomo, the "all others" companies have not failed to cooperate in this investigation. Therefore, an adverse inference with respect to shipment levels by the "all others" companies is not appropriate. Instead, consistent with the approach taken in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan* (*Hot-Rolled Steel from Japan*), 64 FR 24239 (May 6, 1999) and *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand* (*Cold-Rolled Steel from Japan*) 65 FR 5220, 5227 (February 4, 2000), we examined U.S. Customs data on overall imports from Japan for the five months preceding and the five months following the filing of the petition in order to see if we could ascertain whether an increase in

[1] Because the three respondents did not respond to the questionnaire, we considered them non-cooperating respondents and did not request monthly shipment data from these companies.

[2] IM–145 import statistics.

[3] As stated in *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia* (64 FR 73164, December 29, 1999), the Department's practice is to use the longest period for which information is available from the month that the petition was submitted through the date of the preliminary determination.

shipments of greater than 15 percent or more occurred within a relatively short period following the point at which importers had reason to believe that a proceeding was likely. Information on the record indicates that these data cover numerous HTS categories that include merchandise other than subject merchandise. Therefore, we cannot rely on these data in determining whether there were massive imports for the "all others" category.

Based on our determination that massive imports of seamless pipe from the producers included in the "all others" category did not occur and, consequently, that the third criterion necessary for determining affirmative critical circumstances has not been met, we have preliminarily determined that critical circumstances do not exist for imports from Japan of seamless pipe for companies in the "all-others" category.

South Africa

Iscor

We are not aware of any antidumping order in any country on seamless pipe from South Africa. Therefore, we do not find that a reasonable basis exists to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. As a result, we must look to the second criterion for determining importer knowledge of dumping.

As explained in *PRC Plate*, the Department's normal practice is to consider margins of 25 percent or more on EP sales sufficient to impute knowledge of dumping. In this case, for the sole mandatory respondent, Iscor, which did not respond to the Department's questionnaire, we have applied, as adverse facts available, the highest of the dumping margins presented in the petition and corroborated by the Department. This is consistent with section 776 of the Act and with our practice as outlined in *Vector Supercomputers*. Because Iscor's assigned dumping margin of 43.51 percent is greater than 25 percent, we have imputed knowledge of dumping to importers of subject merchandise from Iscor.

Regarding the likelihood of material injury, for the same reasons stated above for Japan, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports of subject merchandise from Iscor. *See ITC Preliminary Determination*.

Finally, regarding "massive imports", because we had no company-specific data, we examined U.S. Customs data on imports of seamless pipe from South Africa in order to determine whether the data reasonably precludes a finding of an increase in shipments of 15 percent or more within a relatively short period for this company. Because Iscor is the only known producer of the subject merchandise, it can be inferred that any increase shown in the Customs data reflects an increase in Iscor's shipments. We examined the same five-month periods described above for Japan and found that there was an increase in shipments of 18.6 percent. Consistent with Department practice, because the Customs data does not preclude the existence of a massive increase in shipments by Iscor (and indeed suggests such an increase), we have inferred, as facts available, that there were massive imports from Iscor over a relatively short period. *See, e.g., Collated Roofing Nails From Taiwan*.

Based on our determination that there is a reasonable basis to believe or suspect that importers knew or should have known that Iscor was selling seamless pipe from South Africa at less than fair value, that there was likely to be material injury by reason of such dumped imports, and that there have been massive imports of seamless pipe from this producer over a relatively short period, we have preliminarily determined that critical circumstances exist for imports from South Africa of seamless pipe produced by Iscor.

All Other Exporters From South Africa

In regard to the "all others"' category, we have followed the same analysis outlined above in the discussion for the "All Others Exporters from Japan." However, since Iscor is currently the only known exporter of seamless pipe in South Africa, we have determined that the Customs information available indicates no massive imports for the "all others" category. As a result, because the massive imports criterion necessary to find critical circumstances has not been met with respect to firms other than Iscor, the Department finds that critical circumstances do not exist for the "all others" category in the South African investigation.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, the Department will direct the Customs Service to suspend liquidation of all entries of seamless pipe from the Japan produced by Kawasaki, Nippon and Sumitomo and all entries of seamless pipe from South Africa produced by Iscor, that are entered, or withdrawn from warehouse, for consumption on or after September 15, 1999, which is 90 days prior to the date of publication in the **Federal Register** of our preliminary determinations of sales at less than fair value. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determinations of sales at less than fair value published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice. The margins in the preliminary determinations are as follows:

	Percent
Japan:	
Nippon Steel Corporation	106.07
Kawasaki Steel Corporation	106.07
Sumitomo Metal Industries ...	106.07
South Africa: Iscor Ltd.	43.51

Final Critical Circumstances Determinations

We will make final critical circumstances determinations when we issue our final determinations in the less-than-fair-value investigations, which are due to be made no later than April 27, 2000.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations.

This notice is published pursuant to section 777(i) of the Act.

Dated: March 1, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5803 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–428–812)

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany: Final Results of Changed Circumstances Review and Revocation of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 18, 2000, the Department of Commerce (the Department) published in the **Federal Register** a notice of recission of countervailing duty administrative review and initiation and preliminary

results of changed circumstances review and intent to revoke the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from Germany (65 FR 2582). We are now revoking this order, retroactive to January 1, 1998, based on the fact that the domestic producers are no longer interested in its continued maintenance.

EFFECTIVE DATE: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Enforcement Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (April 1999).

Background

On November 24, 1999, Ispat Inland Inc. (Ispat) and Republic Technologies International (RTI) (the successors to the petitioners in this proceeding) and domestic producer Birmingham Steel Corporation (BSC) (collectively, the domestic producers) requested that the Department conduct a changed circumstances review to revoke the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from Germany retroactive to January 1, 1998. They stated that circumstances have changed such that they no longer have an interest in maintaining the countervailing duty order. They also stated that they represent approximately 85 to 90 percent of the domestic production of the like product to which the order pertains. On January 5, 2000, the domestic producers submitted a letter withdrawing their request for the administrative review of the period January 1, 1998, through December 31, 1998.

On January 7, 2000, we preliminarily determined that the affirmative statement of no interest by the domestic producers constituted changed circumstances sufficient to warrant revocation of this order. Consequently, on January 18, 2000, we published a notice of recission of countervailing duty administrative review and initiation and preliminary results of changed circumstances review and intent to revoke the countervailing duty order (65 FR 2581). We invited interested parties to comment on the preliminary results of this changed circumstances review and intent to revoke order. We received no comments.

Scope of Review

The products covered are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1(f)), except steels classified as other alloy steels by reasons of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00; 7213.31.60.00; 7213.39.00.30; 7213.39.00.60; 7213.39.00.90; 7213.91.30.00; 7213.91.45.00; 7213.91.60.00; 7213.99.00; 7214.40.00.10, 7214.40.00.30, 7214.40.00.50; 7214.50.00.10; 7214.50.00.30, 7214.50.00.50; 7214.60.00.10; 7214.60.00.30; 7214.60.00.50; 7214.91.00; 7214.99.00; 7228.30.80.00; and 7228.30.80.50. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Final Results of Changed Circumstances Review and Revocation of Order

Pursuant to section 751(d)(1) of the Act, the Department may revoke, in whole or in part, a countervailing duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 351.216(d) require the Department to conduct a changed circumstances review in accordance with 19 CFR 351.221 if it decides that changed circumstances sufficient to warrant a review exist. Section 782(h) of the Act and 19 CFR 351.222(g)(1)(i) provide further that the Department may revoke an order, in whole or in part, if it concludes that the order under review is no longer of interest to producers accounting for substantially all of the production of the domestic like product.

Ispat, RTI, and BSC are domestic interested parties as defined by section 771(9)(E) of the Act and 19 CFR 351.102(b) and represent substantially all of the production of the domestic like product. Based on the affirmative statement by the domestic producers of no interest in the continued application of the order and the fact that no interested parties objected to our preliminary results of this review, we determine that there are changed circumstances sufficient to warrant revocation of the order. Therefore, the Department is revoking the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from Germany, retroactive to January 1, 1998.

In accordance with 19 CFR 351.222(g)(4), we will instruct the Customs Service to end the suspension of liquidation and to refund any estimated countervailing duties collected for all unliquidated entries of certain hot-rolled lead and bismuth carbon steel products from Germany on or after, January 1, 1998. We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act.

This changed circumstances review, revocation of the countervailing duty order, and notice are in accordance with sections 751(b), 751(d) and 782(h) of the Act and 19 CFR 351.216 and 351.222.

Dated: March 1, 2000.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5804 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On February 29, 2000, Stelco, Inc. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping duty administrative review determination made by the International Trade Administration, respecting Certain Corrosion-Resistant Carbon Steel Flat Products from Canada. This determination was published in the **Federal Register** (65 FR 9243) on February 24, 2000. The NAFTA Secretariat has assigned Case Number USA–CDA–00–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel* Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on February 29, 2000, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is March 30, 2000);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is April 14, 2000); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: March 1, 2000.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 00–5609 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On February 29, 2000, Stelco, Inc. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping duty administrative review determination made by the International Trade Administration, respecting Certain Cut-to-Length Carbon Steel Plate from Canada. This determination was published in the **Federal Register** (65 FR 9243) on February 24, 2000. The NAFTA Secretariat has assigned Case Number USA-CDA–00–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

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The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is March 30, 2000);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is April 14, 2000); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: March 1, 2000.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 00–5608 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021600B]

Notice of Availability of Final Stock Assessment Reports

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of completion and availability of revised marine mammal stock assessment reports; response to comments.

SUMMARY: NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs). The 1999 revisions of the reports are now complete, and copies of the final 1999 SARs are available to the public.

ADDRESSES: Send requests for printed copies of reports to: Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

Copies of the regional reports may also be requested from:

Anita Lopez, Alaska Fisheries Science Center (F/AKC), NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115–0070 (Alaska);

Richard Merrick, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543 (Atlantic); and

Tim Price, Southwest Regional Office (F/SWO3), NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213 (Pacific).

FOR FURTHER INFORMATION CONTACT: Thomas Eagle, Office of Protected Resources, NMFS, at (301) 713–2322, ext. 105, Anita Lopez (206) 526–4045, regarding Alaska regional stock assessments; Tim Price, (562) 980–4020, regarding Pacific regional stock assessments; or Richard Merrick, (508) 495–2311, or Steven Swartz, (305) 361–4487, regarding Atlantic regional stock assessments.

SUPPLEMENTARY INFORMATION: Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) required NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals that occurs in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA also requires NMFS and FWS to review these reports annually, or every 3 years for non-strategic stocks, and revise them if the status of the stock has changed or can be more accurately determined. These updated reports represent the 1999 revisions of reports for which NMFS is responsible.

Draft 1999 SARs were made available for a 90-day public review and comment period on May 28, 1999 (64 FR 29000). Prior to release for public review and comment, NMFS subjected the draft reports to internal technical review and to review by regional Scientific Review Groups established under the MMPA. Following the close of the comment period, NMFS revised the reports as needed to prepare final 1999 SARs. Printed copies may be obtained by request (see **ADDRESSES**).

Response to Comments

NMFS received one comment on the 1999 draft SARs. The affected report was revised to reflect the following response.

Comment: The draft report ignores a significant new analysis of Western North Atlantic right whale mortality and population growth, recently published in the Proceedings of the National Academy of Sciences.

Response: The findings regarding right whale survival in the referenced article were incorporated into the final 1999 right whale SAR. Specifically, the decline in crude survival probability is referenced in the Current Population Trend, and Potential Biological Removal sections. Further, these findings will be incorporated into future revisions of the right whale report and used in the estimation of maximum net productivity for this stock.

Dated: March 2, 2000.

Art Jeffers,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–5782 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022900D]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on March 22 and 23, 2000, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, March 22, 2000, beginning at 9 a.m., and Thursday, March 23, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Tavern on the Harbor, 30 Western Avenue, Gloucester, MA 01930; telephone (978) 283–4200. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Wednesday, March 22, 2000

After introductions, the meeting will begin with reports on recent activities from the Council Chairman, Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission.

Following reports, there will be consideration and approval of a schedule of Council management actions for 2000, including approval of modifications to the joint fishery management plan development process. The Research Steering Committee Chairman will review recent committee activities including the development of groundfish research priorities, and cooperative efforts with NMFS to fund collaborative research through recent Congressional appropriations. The Spiny Dogfish Committee will review the results of the joint Mid-Atlantic Fishery Management Council (MAFMC)/New England Fishery Management Council (NEFMC) Scientific and Statistical Committee meeting concerning the 2000–2001 annual specifications for the spiny dogfish fishery, the conclusions of the MAFMC/NEFMC Joint Spiny Dogfish Committee meeting, and the subsequent recommendations of the full MAFMC on the management of spiny dogfish. Following receipt of this information, the Council will consider and approve

its response to this management issue. The Sea Scallop Committee will review comments provided at the recent Sea Scallop FMP Amendment 10 scoping hearings and approve the range of issues to be addressed in that amendment.

Announcement of Experimental Fishery Application

The NMFS Regional Administrator will discuss during the reports portion of the agenda the receipt of an experimental fishing proposal submitted by the Maine Department of Marine Resources (MEDMR) to conduct an experimental fishery for Atlantic halibut. This announcement serves as public notification of the experimental fishing proposal. Specifically, the Regional Administrator is seeking comment on the provisions of the experimental fishing proposal in relation to the goals of management measures for Atlantic halibut contained in the Northeast Multispecies Fishery Management Plan (FMP).

The objective of the proposed experiment is to contribute to the protection and rebuilding of Atlantic halibut by enabling the collection and analyses of basic biological and ecological data essential for the long-term sustainable management of Atlantic halibut. The proposed experiment would collect data on the distribution, relative abundance, migration, stock definition, mortality rates, stock size, yield and other significant biological reference points for Atlantic halibut. The proposed experiment would also collect data on age and growth, size, sex composition, and rate of onset of sexual maturity.

The experimental fishery has been proposed for April 15 through June 15 of each year through 2003 in the northern portion of the Gulf of Maine. The proposed experiment would allow eight vessels, selected by MEDMR, to participate and land up to six Atlantic halibut, 36 inches (66 cm) or greater, per day, for up to 60 days during each year. Halibut caught over the daily limit and those under 36 inches (66 cm) would be tagged and released. Participating vessel owners would be required to be trained in sampling scales, otoliths, stomachs and gonads. Vessel owners would also be required to accommodate observers, use tub trawl gear no longer than 100 hooks, use 1500 circle hooks only, and report catch and other relevant information on special logbooks devised by MEDMR.

Thursday, March 23, 2000

The second day of the meeting will begin with a discussion and possible approval of recommended options for managing fishing capacity in New England fisheries. The Council also may agree to forward approved options to the appropriate oversight committees for further consideration. During the Groundfish Committee Report, the Council will provide guidance to the committee on objectives developed for Amendment 13 to the Northeast Multispecies FMP. Additional input will focus on the resolution of overfishing definition issues and stock rebuilding timelines, alternatives developed to date by the committee and other issues identified for inclusion in the amendment. Northeast Fisheries Science Center staff will then present a report on Stock Definition of New England groundfish. Prior to addressing any other outstanding business, the Red Crab and Herring Committees will each brief the Council on the recent scoping hearings.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Documents pertaining to framework adjustment actions are available for public review 7 days prior to a final vote by the Council. Copies of the documents may be obtained from the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5781 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 000302057–0057–01]

Request for Comments on Patent Law Treaty

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of request for public comments.

SUMMARY: A Diplomatic Conference for the adoption of the draft Patent Law Treaty will be held at the World Intellectual Property Organization in Geneva, Switzerland, from May 11 through June 2, 2000. The Patent and Trademark Office is seeking comments to obtain views of the public on this effort to simplify the formal requirements associated with patent applications and patents and the consequent changes to United States law and practice. Comments may be offered on any aspect of this effort.

DATES: All comments are due by April 21, 2000.

ADDRESSES: Persons wishing to offer written comments should address those comments to the Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231, marked to the attention of Lois E. Boland. Comments may also be submitted by facsimile transmission to (703) 305–8885 or by electronic mail through the Internet to lois.boland@uspto.gov. All comments will be maintained for public inspection in Room 902 of Crystal Park II, at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Lois E. Boland by telephone at (703) 305–9300, by fax at (703) 305–8885 or by mail marked to her attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

1. Background

Since 1995, the United States has been involved in an effort, carried out under the auspices of the World Intellectual Property Organization, to reduce the formal requirements associated with patent applications and patents in the different countries of the world. This effort has involved five sessions of the Committee of Experts on the Patent Law Treaty and three sessions of its successor, the Standing Committee on the Law of Patents. The objective of the meetings has been to develop a Basic Proposal, consisting of articles and regulations, which will

minimize the formal requirements associated with patent applications and patents. Upon adoption, these articles and rules will simplify the formal obligations and reduce associated costs for patent applicants and owners of patents in obtaining and preserving their rights in inventions in many countries of the world. The Diplomatic Conference to conclude this effort will take place in Geneva, Switzerland, from May 11 through June 2, 2000.

The texts of the Basic Proposal, notes on the Basic Proposal and other documents relating to the Diplomatic Conference are available via WIPO's web site for the Standing Committee on the Law of Patents at http://www.wipo.int/scp.

The United States Patent and Trademark Office (USPTO), leading the negotiations for the United States, is interested in assessing support for the effort and in obtaining comprehensive comments on the particulars of the Basic Proposal. Prior to the previous meetings of the Standing Committee and its predecessor, the Committee of Experts, the USPTO informally solicited and received comments on the then-current drafts of the articles, rules and notes. Additionally, on October 22, 1997, before the fifth session of the Committee of Experts, the USPTO formally solicited comments on the effort via a **Federal Register** notice. 62 FR 54836. In light of the upcoming conclusion of this effort, the USPTO desires to ensure that the text of the Basic Proposal for the Treaty is disseminated as widely as possible and that the opportunity to provide comments is correspondingly comprehensive.

Written comments may be offered on any aspect of the Basic Proposal, notes or expected implementation in the United States or elsewhere. Comments are also solicited on the expected benefits to patent applicants and patentees throughout the world of the conclusion and implementation of this Treaty. Comments are also welcome on the following specific issues:

—The substantive and "form or contents" distinctions made in Articles 2 and 6, respectively, that serve to define the freedom of Contracting Parties to impose requirements relating to patent applications and patents;

—The filing date provision in Article 5 and the effect of the "no later than" clause, included in brackets in the Basic Proposal, on the ability of Contracting Parties to be more liberal both for basic filing date issues in Article 5(1) and for missing part-type issues in Article 5(6);

—The reference filing provision in Article 5(7);

—The evidentiary limitation imposed upon Contracting Parties in Article 6(6);

—The exemptions from the ability of a Contracting Party to mandate representation before the Office of that Contracting Party in Article 7(2) and Rule 7(1), with particular reference to the bracketed provisions;

—The application of Article 12 and related Regulations to pending applications and to patents in force on the date the Treaty binds a Contracting Party even where the failure to comply with a time limit occurred prior to that date, as set forth in the bracketed language in Article 21(1)(a); and

—The exceptions available to Contracting Parties for Article 11—Relief in Respect of Time Limits and Article 12—Reinstatement of Rights found in Rule 12(5) and Rule 13(3), respectively.

2. Brief Summary of the Draft Treaty

The Basic Proposal consists of a draft of the Patent Law Treaty (PT/DC/3) and a draft of the Regulations under the Patent Law Treaty (PT/DC/4). Bracketed text, other than for paragraph headings, is not part of the Basic Proposal; it is included in the Basic Proposal for convenience and as an indication of issues for which resolution is expected at the Diplomatic Conference. Explanatory notes on the provisions of the draft Treaty and Regulations are contained in document PT/DC/5. While the notes are not part of the Basic Proposal, they will be published by WIPO with the text of the Treaty upon adoption of the Treaty. The text of the Basic Proposal includes 26 articles and 21 rules. A brief summary of selected articles and significant associated rules follows. To the extent that a given article is not summarized, it is considered to be self-explanatory. Insofar as this effort is focused upon and limited to formal matters associated with patent applications and patents, the USPTO expects that, upon implementation, changes to our patent law would be minimal. However, to the extent the need for any such change has been identified for a given draft article or rule, it is noted below. This discussion is intended, only, to highlight various articles and rules; it is not intended as a comprehensive treatment of the draft texts. The draft texts should be consulted for a complete understanding of the effort that is under way.

Article 1—Abbreviated Expressions—This article provides definitions for terms used throughout the text of the draft articles and rules.

Article 2—General Principles—Paragraphs (1) and (2) of this article are included for the avoidance of doubt. With regard to paragraph (1), it should be noted that the flexibility of a Contracting Party is limited in the context of Article 5, the filing date provision. Paragraph (2) is important to emphasize that the Treaty and regulations cannot be construed to limit the freedom of Contracting Parties concerning substantive law relating to patents. This latter issue also arises in the context of Article 6 where the "form or contents" requirements of the Patent Cooperation Treaty are, except as otherwise provided in the Treaty and regulations, incorporated as the maximum formal or non-substantive, requirements to which a Contracting Party may require compliance.

Article 3—Applications and Patents to Which the Treaty Applies—This article defines the scope of the Treaty by virtue of the types of applications and patents that are encompassed by its terms. As mentioned above; the issue of the application of the Treaty to existing applications and patents, covered in Article 21, should also be noted, especially concerning the bracketed provision in Article 21(1)(b).

Article 4—National Security—This article preserves the right of Contracting Parties to apply measures deemed necessary for the preservation of national security. A similar provision appears in PCT Article 27(8).

Article 5—Filing Date—This article is viewed by the United States as one of the more important features of the Basic Proposal. It mandates that a Contracting Party must provide a filing date for an application as of the date on which its Office has received the following elements:

(i) An indication that submitted elements are intended to be an application;

(ii) Indications allowing the identity of the applicant to be established or allowing the applicant to be contacted; and

(iii) A description.

This filing date requirement is fairly minimal and would greatly simplify the conditions imposed upon the grant of filing dates to patent applications throughout the world. Note that this article would mandate the acceptance, for filing date purposes, of patent applications in any language, subject to the furnishing of later translations. The USPTO has supported this article, with the knowledge that our claim requirement, for filing date purposes, in section 111(a) of title 35, United States

Code, would have to be deleted. Note that such a requirement is not included for provisional applications filed under section 111(b) of title 35, United States Code. The United States has also supported the retention of the bracketed phrase "no later than" throughout this article as it will provide Offices needed flexibility on filing date and missing part issues.

Article 6—Application—This article is another of the more important features of this effort. It mandates that no Contracting Party may impose any requirement relating to the form or contents of an application which is different from or additional to any requirement applicable under the Patent Cooperation Treaty (PCT) in respect of international applications or those requirements relating to form or contents, compliance with which may be required once national processing has begun. In essence, this article states that, except as otherwise provided, if an applicant submits an application to a national office that complies with the requirements of the PCT, that national office can impose no different or additional form or contents requirements on that national application. Of course, as Article 2(1) makes clear, Contracting Parties would be free to impose requirements that are more favorable, from an applicant's perspective, than this Treaty or the PCT. Of note, the incorporation of the "form or contents" requirements from the PCT into this article would mandate the application of the PCT unity of invention standard for all national applications. The USPTO has taken exception to this view insofar as unity of invention is considered to be a substantive matter that is outside the scope of this effort. Nevertheless, Article 22(1) would permit the United States to take a reservation on this issue.

Article 7—Representation—This article addresses requirements regarding representation, mandatory representation and appointment of representatives. Importantly, Article 7(2) provides that Contracting Parties may not mandate representation for filing date purposes, for the payment of maintenance fees or notifications relating thereto. Certain bracketed provisions are also included that would have the effect, if adopted, of expanding the exceptions to mandatory representation, including: any procedure referred to in the filing date provision (Article 5), the payment of fees, the filing of translations and any other procedure as prescribed in the regulations. The United States has consistently supported maximizing the exceptions in this article and Rule 7(1).

Article 8—Communications; Addresses—This article provides the basis upon which Contracting Parties may impose requirements relating to the form, format and means of filing of communications. Note that paragraph (1)(d) mandates that Contracting Parties must, even if they eventually and exclusively adopt electronic filing, accept the filing of communications on paper for the purpose of complying with a time limit. This article also addresses signature issues in paragraph (4). Note Rules 8 through 11 for details regarding these issues.

Article 9—Notifications—This article allocates burdens relating to the sufficiency of notification and the provision of contact information among Contracting Parties and prospective recipients of notifications.

Article 10—Validity of Patent; Revocation—This article, in paragraph (1), mandates that once a patent has been granted, it may not be revoked or invalidated on the ground of non-compliance with certain formal requirements enunciated in Article 6. In paragraph (2), the obligation to provide at least one opportunity to make observations on intended revocation or invalidation is mandated.

Article 11—Relief in Respect of Time Limits—This article, with Rule 12, requires that the Offices of all Contracting Parties must provide either extensions of time limits (similar to practices in the USPTO under 37 CFR 1.136) or continued processing (similar to practices provided for in the context of the European Patent Convention) for time limits fixed by the Office. This article and the associated rule do not necessarily apply to time limits that are not fixed by the Office, in particular, time limits set by national law. The possible exceptions to the requirements of this article that are set forth in Rule 12(5) should be noted.

Article 12—Re-instatement of Rights After a Finding of Due Care or Unintentionality by the Office—This article, with Rule 13, requires that all Contracting Parties must provide for the re-instatement of rights where an applicant or owner has failed to comply with a time limit and that failure has the direct consequence of causing a loss of rights with respect to an application or patent. In the United States, the practice that is embraced by this article is found in our revival procedures under 37 CFR 1.137. The possible exceptions to the requirements of this article that are set forth in Rule 13(3) should be noted.

Article 13—Correction or Addition of Priority Claim; Restoration of Priority Right—Paragraph (1) provides for the correction or addition of a priority claim to an earlier application where a subsequent application is timely filed. Paragraph (2) provides for the restoration of the priority right where a subsequent application is filed after the expiration of the priority period. The United States currently permits correction and late claiming of priority and supports the concept of accepting the delayed filing of a subsequent application. The acceptance of delayed filing of a subsequent application would require an amendment to section 119 of title 35, United States Code.

Article 14—Regulations—This article provides a basis for all matters which the Treaty expressly provides as being "prescribed in the Regulations," for details useful in the implementation of the Treaty and for administrative requirements, matters or procedures. The article also provides a basis for the rules relating to recordation of change in name or address, recordation of change in applicant or owner, recordation of a licensing agreement or security interest and correction of a mistake. There are no longer article provisions for these matters as the level of detail contained in the former articles was considered more appropriate for the rules. This article also provides a basis for certain administrative matters relating to the amendment of the rules, requirement of unanimity and resolution of conflicts between the Treaty and the regulations.

Articles 15 through 26, and associated Rules—These articles are considered the Administrative and Final provisions of the Treaty and are, for the most part, self-explanatory. Many of the provisions are modeled after those employed in other recently adopted treaties such as the Geneva Act of the Hague Agreement, the Trademark Law Treaty, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Article 21 should be noted, including the bracketed provision in paragraph (1)(b), as it relates to the application of the Treaty to existing applications and patents. Rule 21 should be noted as it relates to the requirement of unanimity for amending certain rules under Article 14(3).

Dated: February 25, 2000.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 00–5767 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Air Force C2 Plenary Session will meet at Hurlburt Field, Florida on March 20–21, 2000 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to receive briefings and discuss the direction of the study. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–5698 Filed 3–8–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Membership of the Defense Information Systems Agency Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Information System Agency.

ACTION: Notice of Membership of the Defense Information Systems Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board of the Defense Information Systems Agency. The publication of membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DISA.

EFFECTIVE DATE: January 21, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie K. Bazemore, SES Program Manager, Civilian Personnel Division, Personnel and Administration Directorate, Defense Information Systems Agency (703) 607–4411.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the DISA SES performance Review Board. They will serve a one-year renewable term, effective 24 May 1999.

Ms. Diann L. McCoy, Deputy Manager, National Communications System
Mr. Peter Paulson, Chief, Networks Division
John H. Campbell, Major General, USAF Vice Director, DISA
Mr. Robert Hutten, Deputy Director for Strategic Plans and Policy
Ms. Dawn Hartley, Chief Technology Officer/Technical Director for Joint Interoperability Engineering Organization

Jack Penkoske,

Chief, Civilian Personnel Division.

[FR Doc. 00–5699 Filed 3–8–00; 8:45 am]

BILLING CODE 3610–05–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide current Regulatory Guidance Letters (RGLs) to all interested parties. RGLs are used by the Corps Headquarters as a means to transmit guidance on the permit program (33 CFR 320–330) to its division and district commanders. The Corps is discontinuing the practice of publishing the current RGLs in the Notice Section of the **Federal Register**. As a means to insure the widest dissemination of this information while reducing costs to the Federal Government, all information regarding the RGLs may now be obtained by accessing the Corps of Engineers Regulatory Home Page at: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/. The Corps no longer maintains a mailing list to furnish copies of the RGLs to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Smith, Regulatory Branch, Office of the Chief of Engineers at (202) 761–0201.

SUPPLEMENTARY INFORMATION: RGLs were developed by the Corps of Engineers as a system to organize and track written guidance issued to its field agencies. RGLs are normally issued as a result of evolving policy; judicial decisions and changes to the Corps regulations or another agency's regulations which affect the permit program. RGLs are used only to interpret or clarify existing regulatory program policy, but do provide mandatory guidance to Corps district offices. RGLs are sequentially numbered and expire on a specified date. However, unless superseded by specific provisions of subsequently issued regulations or RGLs, the guidance provided in RGLs generally remains valid after the expiration date. The Corps incorporates most of the guidance provided by RGLs whenever it revises its permit regulations. We are hereby publishing all *current* RGLs beginning with RGL 95–1 and ending with RGL 96–2. RGLs 94–1 and 94–2 expired on December 31, 1999, and both have been removed from this publication. The Corps is discontinuing the practice of publishing each RGL in the Notice Section of the **Federal Register** at this time. All information regarding the RGLs may now be obtained by accessing the Corps of Engineers Regulatory Home Page at: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.

Dated: March 6, 2000.

Charles M. Hess

Chief, Operations Division, Office of Deputy Commanding General for Civil Works.

Regulatory Guidance Letter (RGL 95–1)

Issued: 31 March 1995, EXPIRES: 31 December 2000.

Subject: Guidance on Individual Permit Flexibility for Small Landowners.

1. Enclosed is a memorandum for the field signed by the Acting Assistant Secretary of the Army (Civil Works) and the Environmental Protection Agency dated 6 March 1995. This memorandum provides guidance on flexibility that the U.S. Army Corps of Engineers should apply when making determinations of compliance with the Section 404(b)(1) Guidelines with regard to the alternatives analysis.

2. This memorandum should be implemented immediately. It constitutes an important aspect of the President's Plan for protecting the Nation's wetlands, "Protecting America's Wetlands: A Fair, Flexible, and Effective Approach" (published on 24 August 1993).

3. This guidance expires on 31 December 2000 unless sooner revised or rescinded.

FOR THE DIRECTOR OF CIVIL WORKS:
Encl
/S/
DANIEL R. BURNS, P.E.,
Chief, Operations, Construction and Readiness Division
Directorate of Civil Works

United States Environmental Protection Agency
Office of Water
Washington, DC 20460

United States Department of the Army
Office of the Assistant Secretary
Washington, DC 20310–0103

MEMORANDUM FOR THE FIELD
March 6, 1995

SUBJECT: Individual Permit FPexibility for Small Landowners

In order to clearly affirm the FPexibility afforded to small landowners under Section 404 of the Clean Water Act, this policy clarifies that for discharges of dredged or fill material affecting up to two acres of non-tidal wetlands for the construction or expansion of a home or farm building, or expansion of a small business, it is presumed that alternatives located on property not currently owned by the applicant are not practicable under the Section 404(b)(1) Guidelines.

Specifically, for those activities involving discharges of dredged or fill material affecting up to two acres into jurisdictional wetlands for:

(1) The construction or expansion of a single family home and attendant features, such as a driveway, garage, storage shed, or septic field;

(2) The construction or expansion of a barn or other farm building; or

(3) The expansion of a small business facility; which are not otherwise covered by a general permit, it is presumed that alternatives located on property not currently owned by the applicant are not practicable under the Section 404(b)(1) Guidelines. The Guidelines' requirements to appropriately and practicably minimize and compensate for any adverse environmental impacts of such activities remain.

Discussion

The Clean Water Act Section 404 regulatory program provides that the Army Corps of Engineers evaluate permit applications for the discharge of dredged or fill material into waters of the U.S., including wetlands, in accordance with regulatory requirements of the Section 404(b)(1) Guidelines (Guidelines). The Guidelines are substantive environmental criteria used in evaluating discharges of dredged or fill material.

The Section 404(b)(1) Guidelines establish a mitigation sequence that provides a sound framework to ensure that the environmental impacts of permitted actions are acceptable. Under this framework, there is a three-step sequence for mitigation potential adverse impacts to the aquatic environment associated with a proposed discharge—first avoidance, then minimization, and lastly compensation for unavoidable impacts to aquatic resources.

The Guidelines' mitigation sequence is designed to establish a consistent approach to be used in ensuring that all practicable measures have been taken to reduce potential adverse impacts associated with proposed projects in wetlands and other aquatic systems. The Guidelines define the term "practicable" as "available and capable of being done [by the applicant] after taking into consideration cost, existing technology, and logistics in light of overall project purposes" (40 CFR 230.3(q)). The first step in the sequence requires the evaluation of potential alternative sites under § 230.10(a) of the Guidelines, to locate the proposed project so that aquatic impacts are avoided to the extent practicable.

This policy statement clarifies that, for the purposes of the alternatives analysis, it is presumed that practicable alternatives are limited to property owned by the permit applicant in circumstances involving certain small projects affecting less than two acres of non-tidal wetlands. This presumption is consistent with the practicability considerations required under the Guidelines and reflects the nature of the projects to which the presumption applies—specifically, the construction or expansion of a barn or other farm building, or the expansion of a business. For such small projects that would solely expand an existing structure, the basic project purpose is so tied to the existing structures owned by the applicant, that it would be highly unusual that the project could be practicably located on other sites not owned by the applicant. In these cases, such as construction of driveways, garages, or storage sheds or with home and barn additions, proximity to the existing structure is typically a fundamental aspect of the project purpose.

In the evaluation of potential practicable alternatives, the Guidelines do not exclude the consideration of sites that, while not currently owned by the permit applicant, could reasonably be obtained to satisfy the project purpose. However, it is the experience of the Army Corps of Engineers and EPA that areas not currently owned by the applicant have, in the great majority of circumstances, not been determined to be practicable alternatives in cases involving the small landowner activities described above. Cost, availability, and logistical and capability considerations inherent in the determination of practicability under the Guidelines have been the basis for this conclusion by the agencies.

The agencies recognize that the presumption characterized in this policy statement may be rebutted in certain circumstances. For example, a more thorough review of practicable alternatives would be warranted for individual sites comprising a subdivision of homes, if following issuance of this policy statement, a real estate developer subdivided a large, contiguous wetlands parcel into numerous parcels. In addition, the presumption is applicable to the expansion of existing small business facilities. Small businesses are typically confined to only one location and with economic and logistical limitations that generally preclude the availability of practicable alternative locations to meet their expansion needs. Conversely, larger businesses with multiple locations and greater resources are expected to consider opportunities to practicably avoid adverse aquatic impacts by evaluating off-site alternatives.

Finally, it is important to note that this presumption of practicable alternatives is intended to apply to the individual permit process. Alternatives are not evaluated for activities covered by general permits. Many activities related to the construction or expansion of a home, farm, or business, are already covered by a general permit. In addition, in conjunction with the issuance of this policy statement, a nationwide general permit authorizing discharges related to single family residential development is being proposed and will be available for public comment.

If you have any questions regarding this memorandum, please contact Gregory peck of EPA's Wetlands Division at (202) 260–8794 or Michael Davis of the Corps of Engineer's Regulatory Branch at (202) 272–0199.

\S\
Robert Perciasepe
Assistant Administrator for Water
U.S. Environmental Protection Agency

\S\
John Zirschky
Acting Assistant
Secretary of the Army
(Civil Works)

REGULATORY GUIDANCE LETTER (RGL 96–1)

Issued: 05 NOVEMBER 1998. EXPIRES: 31 DECEMBER 2001

SUBJECT: Use of Nationwide Permit Number 23 for U.S. Coast Guard Categorical Exclusions

1. We have concurred with the categorical exclusions (CE) enclosure submitted by the United States Coast Guard (Coast Guard) pursuant to the subject nationwide permit number 23 at 33 CFR Part 330, including a

notification requirement for CE numbers (6) and (8). The U.S. Army Corps of Engineers published the Coast Guard CEs in 61 FR 18573, April 26, 1996, for comment regarding the applicability of nationwide permit number 23 for those activities requiring Department of the Army authorization. This Regulatory Guidance Letter supersedes the Coast Guard CEs previously approved under nationwide permit number 23 in accordance with Regulatory Guidance Letter 83–5, dated 18 April 1983.

2. The Corps has conditioned the nationwide permit to require notification to the appropriate Corps office prior to beginning work under Coast Guard CE number (6) to address potential impacts to wetlands (notification is only required to the Corps for projects where wetland impacts are proposed) and number (8) to address potential impacts/encroachment on Federal navigation projects. The District Engineer will review the notification and will either verify whether the activity meets the terms and conditions of nationwide permit 23, will require evaluation under standard permit procedures, or that additional conditioning of the activity is necessary to ensure that no unacceptable adverse effects will result to wetlands for projects under CE number (8). Authorization of the Coast Guard CEs does not restrict the Division or District Engineers' authorities to exercise discretionary authority, or the Corps modification, suspension, or revocation procedures. Development of local procedures to streamline coordination is encouraged where a Corps division or district further conditions the nationwide permit to require a notification for additional activities.

3. It should be noted that the Coast Guard provided a complete listing of CEs, including many that do not require Department of the Army authorization. However, to reduce confusion when referencing the CE number, we have included all Coast Guard CEs in the enclosure.

4. This guidance expires 31 December 2001 unless sooner revised or rescinded.

FOR THE DIRECTOR OF CIVIL WORKS:
\S\
DANIEL R. BURNS, P.E.
Chief, Operations, Construction, and Readiness Division
Directorate of Civil Works

U.S. Coast Guard Categorical Exclusion List

The following is a consolidated list prepared from the U.S. Coast Guard Federal Register notices (59 FR 38654, July 29, 1994, 60 FR 32197, June 20, 1995, and 61 FR 13563, March 27, 1996). The list does not include the procedures the U.S. Coast Guard must follow to determine whether certain activities qualify for a categorical exclusion. Notification to the U.S. Army Corps of Engineers is required prior to initiation of work for activities conducted under numbers (6) (notification is only required to the Corps for projects when wetland impacts are proposed) and number (8).

1. Routine personnel, fiscal, and administrative activities, actions, procedures, and policies which clearly do not have any environmental impacts, such as military and civilian personnel recruiting, processing, paying, and record keeping.

2. Routine procurement activities and actions for goods and services, including office supplies equipment, mobile assets, and utility services for routine administration, operation, and maintenance.

3. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an existing approved disposal site.

4. Routine repair, renovation, and maintenance actions on aircraft and vessels.

5. Routine repair and maintenance of buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use, or an impact on a historically significant element or settings.

6. Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use, a historically significant element, or historically significant setting. (When wetland impacts are proposed, notification is required to the appropriate office of U.S. Army Corps of Engineers prior to initiation of work.)

7. Routine repair and maintenance to waterfront facilities, including mooring piles, fixed floating piers, existing piers, and unburied power cables.

8. Minor renovations and additions to waterfront facilities, including mooring piles, fixed floating piers, existing piers, and unburied power cables, which do not require special, site-specific regulatory permits. (Notification is required to the appropriate office of U.S. Army Corps of Engineers prior to initiation of work.)

9. Routine grounds maintenance and activities at units and facilities. Examples include localized pest management actions and actions to maintain improved grounds (such as landscaping, lawn care, and minor erosion control measures) that are conducted in accordance with applicable Federal, State, and local directives.

10. Installation of devices to protect human or animal life, such as raptor electrocution prevention devices, fencing to restrict wildlife movement on to airfields, and fencing and grating to prevent accidental entry to hazardous areas.

11. New construction on heavily developed portions of Coast Guard property, when construction, use, and operation will comply with regulatory requirements and constraints.

12. Decisions to decommission equipment or temporarily discontinue use of facilities or equipment. This does not preclude the need to review decommissioning under Section 106 of the National Historic Preservation Act.

13. Demolition or disposal actions that involve buildings or structures when conducted in accordance with regulations applying to removal of asbestos, PCB's, and other hazardous materials, or disposal actions mandated by Congress. In addition, if the building or structure is listed, or eligible for listing, in the National Register of Historic Places, then compliance with Section 106 of the National Historic Preservation Act is required.

14. Outleasing of historic lighthouse properties as outlined in the Programmatic Memorandum of Agreement between the Coast Guard, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers.

15. Transfer of real property from the Coast Guard to the General Services Administration, Department of the Interior, and other Federal departments and agencies, or as mandated by Congress; and the granting of leases, permits, and easements where there is no substantial change in use of the property.

16. Renewals and minor amendments of existing real estate licenses or grants for use of government-owned real property where prior environmental review has determined that no significant environmental effects would occur.

17. New grants or renewal of existing grants of license, easements, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles; for such existing rights-of-way as electrical, telephone, and other transmission and communication lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and irrigation facilities; and for similar utility and transportation uses.

18. Defense preparedness training and exercises conducted on other than Coast

Guard property, where the lead agency or department is not Coast Guard or Department of Transportation and the lead agency or department has completed its NEPA analysis and documentation requirements.

19. Defense preparedness training and exercise conducted on Coast Guard property that do not involve undeveloped property or increase noise levels over adjacent property and that involve a limited number of personnel, such as exercises involving primarily electric simulation or command post personnel.

20. Simulated exercises, including tactical and logistical exercises that involve small numbers of personnel.

21. Training of an administrative or classroom nature.

22. Operations to carry out maritime safety, maritime law enforcement, search and rescue, domestic ice breaking, and oil or hazardous substance removal programs.

23. Actions performed as a part of Coast Guard operations and the Aids to Navigation Program to carry out statutory authority in the area of establishment of floating and minor fixed aids to navigation, except electronic sound signals.

24. Routine movement of personnel and equipment, and the routine movement, handling, and distribution of nonhazardous materials and wastes in accordance with applicable regulations.

25. Coast Guard participation in disaster relief efforts under the guidance or leadership of another Federal agency that has taken responsibility for NEPA compliance.

26. Data gathering, information gathering, and studies that involve no physical change to the environment. Examples include topographic surveys, bird counts, wetland mapping, and other inventories.

27. Natural and cultural resource management and research activities that are in accordance with interagency agreements and which are designed to improve or upgrade the Coast Guard's ability to manage those resources.

28. Contracts for activities conducted at established laboratories and facilities, to include contractor-operated laboratories and facilities, on Coast Guard-owned property where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable Federal, State, and local laws and regulations.

29. Approval of recreational activities (such as Coast Guard unit picnic) which do not involve significant physical alteration of the environment, increase disturbance by humans of sensitive natural habitats, or disturbance of historic properties, and which do not occur in, or adjacent to, areas inhabited by threatened or endangered species.

30. Review of documents, such as studies, reports, and analyses, prepared for legislative proposals that did not originate in DOT and that relate to matters that are not the primary responsibility of the Coast Guard.

31. Planning and technical studies which do not contain recommendations for authorization or funding for future construction, but may recommend further study. This includes engineering efforts or environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed and does not exclude consideration of environmental matters in the studies.

32. Bridge Administration Program actions which can be described as one of the following:

(a) Modification or replacement of an existing bridge on essentially the same alignment or location. Excluded are bridges with historic significance or bridges providing access to undeveloped barrier islands and beaches. (Approach fills regulated by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act will require a separate individual or general permit.)

(b) Construction of pipeline bridges for transporting potable water.

(c) Construction of pedestrian, bicycle, or equestrian bridges and stream gauging cableways used to transport people.

(d) Temporary replacement of a bridge immediately after a natural disaster or a catastrophic failure for reasons of public safety, health, or welfare.

(e) Promulgation of operating regulations or procedures for drawbridges.

(f) Identification of advance approval waterways under 33 CFR 115.70.

(g) Any Bridge Program action which is classified as a CE by another Department of Transportation agency acting as lead agency for such action.

34. Preparation of guidance documents that implement, without substantive change, the applicable Commandant Instruction or other Federal agency regulations, procedures, manuals, and other guidance documents.

(a) Regulations which are editorial or procedural, such as those updating addresses or establishing application procedures.

(b) Regulations concerning internal agency functions or organization or personnel administration, such as funding, establishing Captain of the Port boundaries, or delegating authority.

(c) Regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel.

(d) Regulations concerning manning, documentation, admeasurement, inspection, and equipping of vessels.

(e) Regulations concerning equipment approval and carriage requirements.

(e) Regulations establishing, disestablishing, or changing the size of Special Anchorage Areas or anchorage grounds.

(f) Regulations establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones.

(g) Special local regulations issued in conjunction with a regatta or marine

(h) parade; provided that, if a permit is required, the environmental analysis conducted for the permit included an analysis of the impact of the regulations.

(i) Regulations in aid of navigation, such as those concerning rules of the road, International Regulations for the Prevention of Collisions at Sea (COLREGS), bridge-to-bridge communication, vessel traffic services, and marking of navigation systems.

35. Approvals of regatta and marine event permits for the following events:

(a) Events that are not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government. For example, environmentally sensitive areas may include such areas as critical habitats or migration routes for endangered or threatened species or important fish or shellfish nursery areas.

(b) Events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government and for which the Coast Guard determines, based on consultation with the Government agency, that the event will not significantly affect the environmentally sensitive area.

Regulatory Guidance Letter 96–02

ISSUED: 12 DECEMBER 1966, EXPIRES: 31 DECEMBER 2001

SUBJECT: Applicability of Exemptions under Section 404(f) to "Deep-Ripping" Activities in Wetlands

1. Enclosed is a memorandum to the field jointly signed by the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers. The memorandum provides guidance clarifying when "deep-ripping" activities within wetlands require Department of the Army authorization.

2. This guidance expires 31 December 2001, unless sooner revived or rescinded.

FOR THE DIRECTOR OF CIVIL WORKS:

s Encl.
DANIEL R. BURNS, P.E.
Chief, Operations, Construction
And Readiness Division
Directorate of Civil Works

Department of the Army
U.S. Army Corps of Engineers
United States Environmental Protection Agency

Memorandum to the Field

12 December 1996

SUBJECT: Applicability of Exemptions under Section 404(f) to "Deep-Ripping" Activities in Wetlands.

PURPOSE: The purpose of this memorandum is to clarify the applicability of exemptions provided under Section 404(f) of the Clean Water Act (CWA) to discharges associated with "deep-ripping" and related activities in wetlands.[1]

Background

1. Section 404(f)(1) of the CWA exempts from the permit requirement certain discharges associated with normal farming, forestry, and ranching practices in waters of the United States, including wetlands. Discharges into waters subject to the Act associated with farming, forestry, and ranching practices identified under Section 404(f)(1) do not require a permit except as provided under Section 404(f)(2).

2. Section 404(f)(1) does not provide a total automatic exemption for all activities related to agricultural silvicultural or ranching practices. Rather, Section 404(f)(1) exempts only those activities specifically identified in paragraphs (A) through (F), and "other activities of essentially the same character as named" [44 FR 34264]. For example, Section 404(f)(1)(A) lists discharges of dredged or fill material from "normal farming, silviculture and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices."

3. Section 404(f)(1)(A) is limited to activities that are part of an "established (*i.e.*, ongoing) farming, silviculture, or ranching operation." This "established" requirement is intended to reconcile the dual intent reflected in the legislative history that although Section 40.4 should not unnecessarily restrict farming, forestry, or ranching from continuing at a particular site, discharge activities which could destroy wetlands or other waters should be subject to regulation.

4. EPA and Corps regulations [40 CFR 230 and 33 CFR 320] and preamble define in some detail the specific "normal" activities fisted in Section 404(f)(1)(A). Three points may be useful in the current context:

a. As explained in the preamble to the 1979 proposed regulations, the words "such as" have been consistently interpreted as restricting the section "to the activities named in the statute and other activities of essentially the same character as named," and "preclude the extension of the exemption * * * to activities that are unlike those named." [44 FR 34264].

b. Plowing is specifically defined in the regulations not to include the redistribution of surface material in a manner which converts wetlands areas to uplands [See 40 CFR 233.35(a)(1)(iii)(D)].

c. Discharges associated with activities that establish an agricultural operation in wetlands where previously ranching had been conducted, represents a "change in use" within the meaning of Section 404(f)(2). Similarly, discharges that establish forestry practices in wetlands historically subject to agriculture also represent a change in use of the site (See 40 CFR 233.35(c)].

5. The statute includes a provision at Section 404(f)(2) that "recaptures" or reestablishes the permit requirement for those otherwise exempt discharges which:

a. Convert an area of the waters of the U.S. to a new use, and

b. Impair the flow or circulation of waters of the U.S. or reduce the reach of waters of the U.S.

Conversion of an area of waters of the U.S. to uplands triggers both provision (a) and (b) above. Thus, at a minimum any otherwise exempt discharge that results in the conversion of waters of the U.S. to upland is recaptured under Section 404(f)(2) and requires a permit. It should be noted that in order to trigger the recapture provisions of Section 404(f)(2), the discharges themselves need not be the sole cause of the destruction of the wetland or other change in use or sole cause of the reduction or impairment of reach, flow, or circulation of waters of the U.S. Rather, the discharges need only be "incidental to" or "part of" an activity which is intended to or will forseeably bring about that result. Thus, in applying Section 404(f)(2), one must consider discharges in context, rather than isolation.

Issue

1. Questions have been raised involving "deep-ripping" and related activities in wetlands and whether discharges associated with these actions fall within the exemptions at Section 404(f)(1)(A). In addition, the issue has been raised whether, if such activities fall within the exemption, they would be recaptured under Section 404(f)(2).

2. "Deep-ripping" is defined as the mechanical manipulation of the soil to break up or pierce highly compacted, impermeable or slowly permeable subsurface soil layers, or other similar kinds of restrictive soil layers. These practices are typically used to break up these subsoil layers (*e.g.*, impermeable soil layer, hardpan) as part of the initial preparation of the soil to establish an agricultural or silvicultural operation. Deep-ripping and related activities are also used in established farming operations to break up highly compacted soil. Although deep-ripping and related activities may be required more than once, the activity is typically not an annual practice. Deep-ripping and related activities are undertaken to improve site drainage and facilitate deep root growth, and often occur to depths greater than 16 inches and, in some cases, exceeding 4 feet below the surface. As such it requires the use of heavy equipment, including bulldozers, equipped with ripper-blades, shanks, or chisels often several feet in length. Deep-ripping and related activities involve extending the blades to appropriate depths and dragging them through the soil to break up the restrictive layer.

3. Conversely, plowing is defined in EPA and Corps regulations [40 CFR 230 and 33 CFR 320] as "all forms of primary tillage * * * used * * * for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops" [40 CFR 232.3(d)(4)]. As a general matter, normal plowing activities involve the annual or at least regular, preparation of soil prior to seeding or other planting activities. According to USDA, plowing generally involves the use of a blade, chisel or series of blades, chisels, or discs, usually 8–10 inches in length pulled behind a farm vehicle to prepare the soil for the planting of annual crops or to support an ongoing farming practice. Plowing is commonly used to break up the surface of the soil to maintain soil tilth and to facilitate infiltration throughout the upper root zone.

[1] As this guidance addresses primarily agricultural-related activities, characterizations of such practices have been developed in consultation with experts at the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service.

Discussion

1. Plowing in wetlands is exempt from regulation consistent with the following circumstances:

a. It is conducted as part of an ongoing, established agricultural, silvicultural or ranching operation; and

b. The plowing is not incidental to an activity that results in the immediate or gradual conversion of wetlands to non-waters.

c. The plowing is not incidental to an activity that results in the immediate or gradual conversion of wetlands to non-waters.

2. Deep-ripping and related activities are distinguishable from plowing and similar practices (*e.g.*, discing, harrowing) with regard to the purposes and circumstances under which it is conducted, the nature of the equipment that is used, and its effect, including in particular the impacts to the hydrology of the site.

a. Deep-ripping and related activities are commonly conducted to depths exceeding 16 inches, and as deep as 6–8 feet below the soil surface to break restrictive soil layers and improve water drainage at sites that have not supported deeper rooting crops. Plowing depths, according to USDA, rarely exceed one foot into the soil and not deeper than 16 inches without the use of special equipment involving special circumstances. As such, deep-ripping and related activities typically involve the use of special equipment, including heavy mechanized equipment and bulldozers, equipped with elongated ripping blades, shanks, or chisels often several feet in length. Moreover, while plowing is generally associated with ongoing operations, deep-ripping and related activities are typically conducted to prepare a site for establishing crops not previously planted at the site. Although deep-ripping may have to be redone at regular intervals in some circumstances to maintain proper soil drainage, the activity is typically not an annual or routine practice.

b. Frequently, deep-ripping and related activities are conducted as a preliminary step for converting a "natural" system or for preparing rangeland for a new use such as farming or silviculture. In those instances, deep ripping and related activities are often required to break up naturally-occurring impermeable or slowly permeable subsurface soil layers to facilitate proper root growth. For example, for certain depressional wetlands types such as vernal pools, the silica-cemented hardpan (durapan) or other restrictive layer traps precipitation and seasonal runoff creating ponding and saturation conditions at the soil surface. The presence of these impermeable or slowly permeable subsoil layers is essential to support the hydrology of the system. Once these layers are disturbed by activities such as deep-ripping, the hydrology of the system is disturbed and the wetland is often destroyed.

c. In contrast, there are other circumstances where activities such as deep-ripping and related activities are a standard practice of an established on-going farming operation. For example, in parts of the Southeast, where there are deep soils having a high clay content, mechanized farming practices can lead to the compaction of the soil below the sod surface. It may be necessary to break up, on a regular although not annual basis, these restrictive layers in order to allow for normal root development and infiltration. Such activities may require special equipment and can sometimes occur to depths greater than 16 inches. However, because of particular physical conditions, including the presence of a water table at or near the surface for part of the growing season, the activity typically does not have the effect of impairing the hydrology of the system or otherwise altering the wetland characteristics of the site.

Conclusion

1. When deep-ripping and related activities are undertaken as part of an established ongoing agricultural silvicultural or ranching operation, to break up compacted soil layers and where the hydrology of the site will not be altered such that it would result in conversion of waters of the U.S. to upland, such activities are exempt under Section 404(f)(1)(A).

2. Deep-ripping and related activities in wetlands are not part of a normal ongoing activity, and therefore not exempt, when such practices are conducted in association with efforts to establish for the first time (or when a previously established operation was abandoned) an agricultural silvicultural or ranching operation. In addition, deep-ripping and related activities are not exempt in circumstances where such practices would trigger the "recapture" provision of Section 404(f)(2):

(a) Deep-ripping to establish a farming operation at a site where a ranching or forestry operation was in place is a change in use of such a site. Deep-ripping and related activities that also have the effect of altering or removing the wetland hydrology of the site would trigger Section 404(f)(2) and such ripping would require a permit.

(b) Deep-ripping a site that has the effect of converting wetlands to non-waters would also trigger Section 404(f)(2) and such ripping would require a permit.

3. It is the agencies' experience that certain wetland types are particularly vulnerable to hydrological alteration as a result of deep-ripping and related activities. Depressional wetland systems such as prairie potholes, vernal pools and playas whose hydrology is critically dependent upon the presence of an impermeable or slowly permeable subsoil layer are particularly sensitive to disturbance or alteration of this subsoil layer. Based upon this experience, the agencies have concluded that, as a general matter, deep-ripping and similar practices, consistent with the descriptions above, conducted in prairie potholes, vernal pools, playas, and similar depressional wetlands destroy the hydrological integrity of these wetlands. In these circumstances, deep-ripping in prairie potholes, vernal pools, and playas is recaptured under Section 404(f)(2) and requires a permit under the Clean Water Act.

Robert H. Wayland III
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[FR Doc. 00–5815 Filed 3–8–00; 8:45 am]
BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Headquarters, U.S. Marine Corps

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Headquarters, U.S. Marine Corps announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed information collection; (c) Ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 8, 2000.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Marine Corps Recruiting Command, Code M3280, Russell Road, Quantico, VA 22134.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Major Andrew Fortunato at (703) 784–9433.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Marine Corps Advertising Awareness and Attitude Tracking Study; OMB Control Number 0704–0155.

Needs and Uses: The Marine Corps Advertising Awareness and Attitude Tracking Study is used by the Marine Corps to measure the effectiveness of current advertising campaigns. This information is also used to plan future advertising campaigns.

Affected Public: Individuals or households.

Annual Burden Hours: 980.

Number of Respondents: 1,400.

Responses per Respondent: 2.

Average Burden per Response: 21 minutes.

Frequency: Semi-annually.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A))

Dated: February 29, 2000.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–5702 Filed 3–8–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Disposal and Reuse of Naval Air Station Alameda, California, and the Fleet and Industrial Supply Center Oakland's Alameda Annex and Facility, Alameda, CA

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) (1994), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR parts 1500–1508, hereby announces its decision to dispose of Naval Air Station (NAS) Alameda and the Fleet and Industrial Supply Center Oakland's Alameda Annex and Facility (Alameda Annex), which are located in Alameda, California.

Navy analyzed the impacts of the disposal and reuse of NAS Alameda and the Alameda Annex in an Environmental Impact Statement (EIS) as required by NEPA. The EIS analyzed four reuse alternatives and identified the NAS Alameda Community Reuse Plan (Reuse Plan), adopted by the Alameda Reuse and Redevelopment Authority (ARRA) on September 3, 1997, and described in the EIS as the Reuse Plan Alternative, as the Preferred Alternative.

The Preferred Alternative proposed to use NAS Alameda and the Alameda Annex for residential, educational, industrial and commercial activities and to develop parks and recreational areas. The Alameda Reuse and Redevelopment Authority is the Local Redevelopment Authority (LRA) for NAS Alameda. Department of Defense rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR § 176.20(a).

Navy intends to dispose of NAS Alameda in a manner that is consistent with the Reuse Plan. Navy has determined that the mixed land use proposed for NAS Alameda will meet the goals of achieving local economic redevelopment, creating new jobs, and providing additional housing, while limiting adverse environmental impacts and ensuring land uses that are compatible with adjacent property.

Navy plans to dispose of the Alameda Annex under the authority of Section 2834(b) of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102–484, as amended by Section 2833 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Section 2821 of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103–337, and Section 2867 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106. Section 2687 of Public Law 104–106 authorizes the Secretary of the Navy to convey property associated with the Fleet and Industrial Supply Center at Oakland to the City of Alameda.

This Record Of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entities and the local zoning authority.

Background

Under the authority of the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note (1994), the 1993 Defense Base Closure and Realignment Commission recommended the closure of Naval Air Station Alameda. This recommendation was approved by President Clinton and accepted by the One Hundred Third Congress in 1993. The Naval Air Station closed on April 30, 1997.

Nearly all of NAS Alameda is located in the City of Alameda. The southwest corner of the property is located in the City of San Francisco. The Air Station is bounded on the north by the Oakland Inner Harbor; on the east by the City of Alameda and the Alameda Annex; and on the south and west by San Francisco Bay. The Navy property covers about 2,515 acres, of which 960 acres are submerged. Navy controls an additional 159 acres (of which 154 acres are submerged) by way of a lease with the City of Alameda. Navy also controls about two acres by way of easements for utilities.

Under the authority of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, 10 U.S.C. 2687 note (1994), the 1995 Defense Base Closure and Realignment Commission recommended the closure of fleet and Industrial Supply Center (FISC) Oakland. The Alameda Annex and Facility were part of the Navy supply complex at FISC Oakland. This recommendation was approved by President Clinton and accepted by the One Hundred Fourth Congress in 1995. The Alameda Annex closed on September 30, 1998.

Because the Alameda Annex was part of the FISC Oakland property, Section 2867 of Public Law 104–106 authorizes Navy to convey the Annex property to the City of Alameda. This authority is independent of the Defense Base Closure and Realignment Act of 1990 as well as the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484 (1994), and its implementing regulations, the Federal Property Management Regulations, 41 CFR part 101–47.

The Alameda Annex is located adjacent to and east of NAS Alameda and is situated within the boundaries of the City of Alameda. The Alameda Annex property is bounded on the north by the Oakland Inner Harbor; on the east and south by the City of Alameda; and on the south and west by NAS Alameda. This Navy property covers about 147 acres, of which six acres are submerged.

During the Federal screening process, three Federal agencies requested interagency transfers of base closure property at NAS Alameda and the Alameda Annex. These included the Department of the Interior's United States Fish And Wildlife Service, the United States Coast Guard, and the Department of Transportation's Maritime Administration (MARAD).

Navy will transfer about 900 acres (of which 375 acres are submerged) in the western and southwestern parts of NAS Alameda to the United States Fish and Wildlife Service, which will establish the Alameda National Wildlife Refuge. This Refuge will protect the Federally-listed endangered California least tern, the endangered California brown pelican, and several species of migratory birds protected under the Migratory Bird Treaty Act of 1918, 16 U.S.C. 703–712 (1994).

Navy may transfer 582 residential units, an administrative building (Building 545), and about 69 acres in the eastern part of NAS Alameda to the United States Coast Guard. The Coast Guard would continue to use these residences and Building 545 for its housing and administrative requirements.

The Maritime Administration requested piers at both NAS Alameda and the Alameda Annex to berth vessels that are elements of the Ready Reserve Force. The Maritime Administration subsequently withdrew its request for piers at NAS Alameda. On March 30, 1998, Navy disapproved MARAD's request for an interagency transfer of piers at the Alameda Annex.

The remaining 1,546 acres of Navy property at NAS Alameda are surplus to the needs of the Federal Government. The entire 147 acres of Navy property at the Alameda Annex are available for disposal under the authority of Public Law 102–484, as amended by Public Law 103–160, Public Law 103–337, and Public Law 104–106.

This Record Of Decision addresses the disposal and reuse of those parts of NAS Alameda that are surplus to the needs of the Federal Government and the entire Alameda Annex property. Navy will transfer its interests in the utility easements at NAS Alameda to local utility providers or the underlying property owners. In addition, Navy will return the 159 acres currently leased from the city of Alameda to the City on or before termination of the lease on June 30, 2005.

The surplus property at NAS Alameda is composed of aviation facilities including parts of the runways and taxiways and seven hangars. Most of the runways and taxiways are located on property that Navy will transfer to the United States Fish and Wildlife Service. The Air Station also contains industrial and warehouse buildings, administrative offices, personnel support facilities, residential facilities, recreational facilities and areas, a seaplane lagoon, wharves, and three piers. The Alameda Annex property contains warehouses, wharves, administrative offices, and open storage areas.

Of the 1,546 acres of surplus property at NAS Alameda, there are about 1,482 acres available to the City for economic redevelopment. The City proposes to develop residential, educational, industrial and commercial facilities on this property.

Navy will dispose of the remaining 64 acres of surplus property at NAS Alameda by way of public benefit conveyances. Navy will assign seven acres in the center of the Coast Guard housing property to the United States Department of Education for subsequent conveyance to the Alameda Unified School District to permit the continuing use of the George P. Miller Elementary School and adjacent child care facility. Navy will assign 57 acres in the northern part of NAS Alameda to the United States Department of the Interior for subsequent conveyance to the City of Alameda for use as parks and recreational areas.

Navy plans to dispose of the entire Alameda Annex property, covering about 147 acres, under the authority of Section 2834(b) of Public Law 102–484, as amended by Section 2833 of Public Law 103–160, Section 2821 of Public Law 103–337, and Section 2867 of Public Law 104–106.

Navy published a Notice of Intent in the **Federal Register** on February 22, 1996, announcing that Navy would prepare an EIS for the disposal and reuse of Naval Air Station Alameda and the Alameda Annex. On March 13, 1996, Navy held a public scoping meeting at Alameda High School in Alameda, and the scoping period concluded on March 29, 1996.

Navy distributed the Draft EIS (DEIS) to Federal, State, and local agencies, elected officials, interested parties, and the general public on April 16, 1999, and commenced a 45-day public review and comment period. During this period, Federal, State, and local agencies, community groups and associations, and interested persons submitted oral and written comments concerning the DEIS. On May 18, 1999, Navy held a public hearing at Alameda High School to receive comments on the DEIS.

Navy's responses to the public comments on the DEIS were incorporated in the Final EIS (FEIS), which was distributed to the public on October 29, 1999, for a review period that concluded on November 29, 1999. Navy received nine letters commenting on the FEIS.

Alternatives

NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this Federal property. In the FEIS, Navy analyzed the environmental impacts of four reuse alternatives. Navy also evaluated a "No Action" alternative that would leave the property in caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

On July 14, 1993, the City Council of Alameda established the Alameda Base Reuse Advisory Group to advise the City Council concerning base conversion issues. The Advisory Group also provided a forum for public participation in the reuse planning process. The Advisory Group held four public workshops on November 6, 1993, October 12, 1994, October 29, 1994, and January 28, 1995, where it solicited comments concerning reuse of the base.

On April 5, 1994, the City of Alameda and Alameda County established the Alameda Reuse and Redevelopment Authority as a joint powers authority responsible for managing the reuse planning process for NAS Alameda. Between April 1994 and January 1996, ARRA issued newsletters and held regular public meetings where it provided status reports and solicited additional comments concerning reuse of the Naval property. On January 31, 1996, ARRA adopted the NAS Alameda Community Reuse Plan, dated January 1996. ARRA Resolution No. 011.

On June 4, 1997, ARRA modified the January 1996 reuse plan by adding office and commercial uses to the center of the Air Station and reducing the amount of property dedicated to educational activities there. It also designated 17 acres in the northwest part of the Air Station for use as a sports complex. On September 3, 1997, ARRA modified the January 1996 reuse plan further to recognize the boundaries and extent of property that Navy will transfer to the United States Fish and Wildlife Service.

The Reuse Plan divided the property at NAS Alameda and the Alameda Annex into six planning areas. The Civic Core, Planning Area One, covers about 334 acres in the center of NAS Alameda. This planning area contains the main administrative buildings and

parade ground, several barracks, a swimming pool and gymnasium complex, medical clinics, a post office, and restaurants. The western and southern parts of this planning area contain industrial buildings, warehouses, and seven aircraft hangars.

The Main Street Neighborhoods, Planning Area Two, covers about 265 acres in the northeastern part of NAS Alameda and the southern part of the Alameda Annex. It lies east of the Civic Core planning area and contains the residential areas on NAS Alameda and industrial buildings at the Alameda Annex.

The Inner Harbor, Planning Area Three, covers about 120 acres in the southeastern part of NAS Alameda. This planning area contains industrial buildings, warehouses, and a park.

The North Waterfront, Planning Area Four, covers about 88 acres situated in the northern part of the Alameda Annex along the Oakland Inner Harbor. This planning areas contains wharves and warehouses.

The Marina, Planning Area Five, covers about 125 acres around the seaplane lagoon in the southern part of NAS Alameda along San Francisco Bay, south of the Civic Core planning area. This planning area contains three piers, two wharves, several buildings and open space.

The northwest part of the Air Station along the Oakland Inner Harbor, designated in the Reuse Plan as the Northwest Territories, Planning Area Six, covers about 272 acres located north of the proposed Alameda National Wildlife Refuge. This planning area includes parts of the runways and taxiways.

The Reuse Plan, identified in the FEIS as the Preferred Alternative, proposed a mix of land uses for each of the six planning areas. The Preferred Alternative would develop residential, educational, industrial, and commercial activities as well as parks and recreational areas. It will be necessary to make extensive utility infrastructure and roadway improvements to support the Reuse Plan's proposed redevelopment of NAS Alameda and the Alameda Annex.

In the Civic Core planning area, the Preferred Alternative would develop a mixed use office and institutional center, providing about 916,000 square feet of existing space and an additional 2,279,000 square feet of space to be built. This center would be composed of offices and educational and commercial facilities.

On 37 acres in the northern part of the Civic Core, this Alternative would build athletic fields and recreational facilities and expand the existing parade ground into a larger open space mall covering 57 acres. The Preferred Alternative would build 192 townhouses on 16 acres in this part of the base. It would also dedicate 52,000 square feet of space to commercial activities that would support the new residents. The commercial activities would include restaurants, cafes, convenience stores, retail stores, and department stores. About one third of the buildings in this planning area would be demolished to accommodate the proposed redevelopment.

On 236 acres in the Main Streets Neighborhoods planning area, the Preferred Alternative would develop a mix of housing units, with 1,314 single family homes and 174 attached homes composed of existing residential units and new construction. On 21 acres, this Alternative would continue to use the George P. Miller Elementary School and adjacent child care center and build a new elementary school to support the proposed residential complex. This Alternative would use the Navy Lodge as a shelter; build small retail and commercial stores on four acres; and reserve an additional four acres for parks and recreational activities.

In the northern part of the Inner Harbor planning area, the Preferred Alternative would develop about 910,000 square feet of space for light industrial activities. This development would also provide offices, restaurants, and service industries that would support the light industrial activities. On 36 acres in the southern part of the Inner Harbor area, this Alternative would develop a regional park to be included in the Bay Trail System. On 13 acres, it would develop a recreational vehicle park with a capacity of 135 recreational vehicles. Where feasible, the existing roadways in this part of the base would be extended to connect with the residential neighborhood outside the Air Station property.

In the northern part of the North Waterfront planning area, the Preferred Alternative would demolish all of the existing structures and develop 418,000 square feet of space for mixed use facilities including offices. This Alternative would also develop a hotel, restaurants, a passenger ferry service, and a waterfront promenade here. On 12 acres, this Alternative would build 144 units of attached waterfront housing along the Oakland Inner Harbor.

In the southern part of the North Waterfront planning area, the Preferred Alternative would develop 993,000 square feet of space for light industrial and research and develop activities. On eight acres at the western edge of this planning area, east of the George P. Miller Elementary School, it would develop an alternative education high school, a regional kitchen facility, a parking area, a storage area, and maintenance facilities for the Alameda Unified School District.

The Preferred Alternative would develop the Marina planning area as a commercial marina. This Alternative would build a 900-slip marina in the seaplane lagoon to accommodate private and public vessels and facilities for a passenger ferry service and deep draft yachts. The three piers in the southeastern part of the Marina would be used to accommodate large cruise ships and historic vessels such as the former USS Hornet, a World War II Aircraft Carrier that is currently moored at Pier Three under a lease between ARRA and the Aircraft Carriers Hornet Foundation. This Alternative would also develop about 264,000 square feet of space for light industrial and commercial marine activities.

In the northern part of the Marina planning area, the Preferred Alternative would develop a promenade and a civic plaza. Near the plaza, this Alternative would develop facilities for civic uses such as offices, a cultural arts center or theater, and recreational activities. It would also build a hotel and conference center on four acres in this part of the base.

On 32 acres along the eastern shore of the seaplane lagoon, the Preferred Alternative would build 384 residential units composed of artists' lofts, low to moderate income apartments, and townhouses. It would allocate 100 of the 900 marina slips for those who wish to live aboard their vessels. All of the large industrial buildings in this planning area would be demolished to accommodate the proposed redevelopment.

In the western part of the Northwest Territories planning area, the Preferred Alternative would build a 162-acre links golf course, a clubhouse on six acres, and a conference center. This Alternative would also develop a 29-acre park along the shore of the Oakland Inner Harbor.

On 58 areas in the center of the Northwest Territories planning area, the Preferred Alternative would develop an international trade and commerce zone that would provide about 980,000 square feet of space. On 17 acres in the eastern part of the Northwest Territories, this Alternative would develop athletic fields that would be associated with the sports complex proposed for the Civic Core planning area.

Navy analyzed a second "action" alternative, described in the FEIS as the Seaport Alternative. Navy considered this Alternative in response to the San Francisco Bay Conservation and Development Commission's designation (in its San Francisco Bay Plan) of 220 acres in the northwestern part of NAS Alameda along the Oakland Inner Harbor for future use as a port. On September 18, 1997, the Commission removed this port priority use designation when it amended the San Francisco Bay Plan and the San Francisco Bay Area Seaport Plan.

The Seaport Alternative proposed land uses similar to those in the Reuse Plan. However, the Seaport Alternative proposed to develop a port facility with five container ship berths instead of the golf course and international trade zone in the Northwest Territories and would develop a college campus instead of light industrial facilities in the Civic Core. The proposed port facilities in the Northwest Territories planning area would require construction of an additional transportation link such as a bridge, a tunnel, or a high rise crane in order to transport cargo across the Oakland Inner Harbor between Alameda and the Port of Oakland.

In the Civic Core planning area, the Seaport Alternative would use about 916,000 square feet of existing space for a college campus and would develop an additional 2,279,000 square feet of space for a mixed use office and institutional center. This Alternative would expand the existing parade ground into a larger open space mall covering 57 acres and would build 192 townhouses on 16 acres in this part of the base. It would also dedicate 52,000 square feet of space to commercial activities that would support the new residents. The commercial activities would include restaurants, cafes, convenience stores, retail stores, and department stores. About one third of the buildings in this planning area would be demolished to accommodate the proposed redevelopment.

On 236 acres in the Main Streets Neighborhoods planning area, the Seaport Alternative would develop a mix of housing units, with 1,314 single family homes and 174 attached homes composed of existing residential units and new construction. On 21 acres, this Alternative would continue to use the George P. Miller Elementary School and adjacent child care center and build a new elementary school to support the proposed residential complex. This Alternative would use the Navy Lodge as a shelter; build small retail and commercial stores on four acres; and reserve an additional four acres for parks and recreational activities.

On 63 acres in the northern part of the Inner Harbor planning area, the Seaport Alternative would develop a residential complex with 378 single family homes. This Alternative would reserve eight acres for a school to be built in the future. On 49 acres in the southern part of the Inner Harbor area, the Seaport Alternative would develop a regional park to be included in the Bay Trail System. Where feasible, the existing roadways in this part of the base would be extended to connect with the residential neighborhood outside the Air Station property.

In the northern part of the North Waterfront planning area, the Seaport Alternative would demolish all of the existing structures and develop 418,000 square feet of space for mixed use facilities including offices. This Alternative would also develop restaurants, a passenger ferry service, and a waterfront promenade here. On 46 acres, this Alternative would build 552 units of attached waterfront housing along the Oakland Inner Harbor.

On eight acres at the western edge of this planning area, east of the George P. Miller Elementary School, the Seaport Alternative would develop an alternative education high school, a regional kitchen facility, a parking area, a storage area, and maintenance facilities for the Alameda Unified School District.

The Seaport Alternative would develop the Marina planning area as a commercial marina. It would build a 500-slip marina in the seaplane lagoon to accommodate private and public vessels and facilities for a passenger ferry service and deep draft yachts. The three piers in the southeastern part of this planning area would be used to accommodate large cruise ships and historic vessels such as the former USS *Hornet*. This Alternative would also develop about 264,000 square feet of space of light industrial and commercial marine activities.

In the northern part of the Marina planning area, the Seaport Alternative would develop a promenade and a civic plaza. Near the plaza, this Alternative would develop facilities for civic uses such as offices, a cultural arts center or theater, and recreational activities. It would also build a hotel and conference center on four acres in this part of the base.

On 32 acres along the eastern shore of the seaplane lagoon, the Seaport Alternative would build 384 residential units composed of artists' lofts, low to moderate income apartments, and townhouses. All of the large industrial buildings in this planning area would be demolished to accommodate the proposed redevelopment.

In the Northwest Territories planning area along the Oakland Inner Harbor, the Seaport Alternative would build a five-berth container ship port facility and container storage yard on 220 acres. The port facility would require a substantial amount of dredging in the Inner Harbor and the installation of several large cranes along the waterfront. This Alternative would also develop roads and rail service to move cargo. It would reserve 52 acres for parks and recreational activities.

Navy analyzed a third "action" alternative, described in the FEIS as the Residential Alternative. This Alternative would increase the amount of property dedicated to residential uses in the Civic Core, Inner Harbor, North Waterfront and Northwest Territories planning areas compared with that proposed under the Reuse Plan. The Residential Alternative would develop 5,456 residential units compared with the 2,378 residential units that the Preferred Alternative would develop.

In the Civic Core planning area, the Residential Alternative would use about 916,000 square feet of existing space for a college campus and develop an additional 1,278,000 square feet of space for a mixed use office and institutional center. It would also reserve 94 acres as open space. It would build 960 townhouses on 80 acres in this part of the base and use 78,000 square feet of space for commercial activities to support the new residents. The commercial activities would include restaurants, cafes, convenience stores, retail stores, and department stores. About one third of the buildings in this planning area would be demolished to accommodate the proposed redevelopment.

On 236 acres in the Main Streets Neighborhoods planning area, the Residential Alternative would develop a mix of housing units, with 1,314 single family homes and 174 attached homes composed of existing residential units and new construction. On 21 acres, this Alternative would continue to use the George P. Miller Elementary School and adjacent child care center and build a new elementary school to support the proposed residential complex. This Alternative would use the Navy Lodge as a shelter; build small retail and commercial stores on four acres; and reserve an additional four acres for parks and recreational activities.

On 63 acres in the northern part of the Inner Harbor planning area, the Residential Alternative would develop a residential complex with 378 single

family homes. On 13 additional acres, this Alternative would build 156 units of attached housing and reserve eight acres for a school to be built in the future. On 36 acres in the southern part of the Inner Harbor area, the Residential Alternative would develop a regional park to be included in the Bay Trail System. Where feasible, the existing roadways in this part of the base would be extended to connect with the residential neighborhood outside the Air Station Property.

In the northern part of the North Waterfront planning area, the Residential Alternative would demolish all of the existing structures and develop 313,000 square feet of space for mixed use facilities including offices. This Alternative would also develop restaurants, a passenger ferry service, and a waterfront promenade here. On 34 acres, this Alternative would build 408 units of attached waterfront housing along the Oakland Inner Harbor. On 20 acres here, the Residential Alternative would develop a 200-slip marina. On eight acres at the western edge of this planning area, east of the George P. Miller Elementary School, this Alternative would develop an alternative education high school, a regional kitchen facility, a parking area, a storage area, and maintenance facilities for the Alameda Unified School District.

The Residential Alternative would develop the Marina planning area as a commercial marina. This Alternative would build a 900-slip marina in the seaplane lagoon to accommodate private and public vessels and facilities for a passenger ferry service and deep draft yachts. The three piers in the southeastern part of this planning area would be used to accommodate large cruise ships and historic vessels such as the former USS *Hornet*. This Alternative would also develop about 264,000 square feet of space for light industrial and commercial marine activities.

In the northern part of the Marina planning area, the Residential Alternative would develop a promenade and a civic plaza. Near the plaza, this Alternative would develop facilities for civic uses such as offices, a cultural arts center or theater, and recreational activities. This Alternative would build a hotel and conference center on four acres in this part of the base.

On 32 acres along the eastern shore of the seaplane lagoon, the Residential Alternative would build 384 residential units composed of artists' lofts, low to moderate income apartments, and townhouses. It would allocate 100 of the 900 marina slips for those who wish to live aboard their vessels. All of the large industrial buildings in this planning area would be demolished to accommodate the proposed redevelopment.

On 226 acres in the Northwest Territories planning area, the Residential Alternative would build 1,200 single family homes and 312 units of attached housing and reserve eight acres for a school to be built in the future. It would also reserve 38 acres for parks and recreational activities.

Navy analyzed a fourth "action" alternative, described in the FESI as the Reduced Density Alternative. The Reduced Density Alternative proposed land uses similar to those advanced in the Preferred Alternative, but the extent of development would be reduced to provide more open space.

In the Civic Core planning area, the Reduced Density Alternative would develop a mixed use office and industrial park providing about 1,822,000 square feet of space. On 37 acres in the northern part of the Civil Core, this Alternative would build athletic fields and recreational facilities. It would expand the existing parade ground into a large open space mall covering 57 acres.

On 16 acres in the Civil Core planning area, the Reduced Density Alternative would build 96 townhouses. It would dedicate 26,000 square feet of space to commercial activities that would support the new residents. The commercial activities would include restaurants, cafes, convenience stores, retail stores, and department stores. On 13 acres, it would a develop a recreation vehicle park with a capacity of 135 recreational vehicles. About one third of the buildings in this planning area would be demolished to accommodate the proposed redevelopment.

On 236 acres in the Main Streets Neighborhoods planning area, the Reduced Density Alternative would develop a mix of housing units, with 793 single family homes and 144 attached homes composed of existing residential units and new construction. On 21 acres, this Alternative would continue to use the George P. Miller Elementary School and adjacent child care center and build a new elementary school to support the proposed residential complex. It would use the Navy Lodge as a shelter; build small retail and commercial stores on four acres; and reserve an additional four acres for parks and recreational activities.

On 76 acres in the northern part of the Inner Harbor planning area, the Reduced Density Alternative would develop a residential complex with 228 single family homes. This Alternative would reserve eight acres for a school to be built in the future. On 36 acres in the southern part of the Inner Harbor area, the Reduced Density Alternative would develop a regional park to be included in the Bay Trail System. Where feasible, the existing roadways in this part of the base would be extended to connect with the residential neighborhood outside the Air Station property.

In the northern part of the North Waterfront planning area, the Reduced Density Alternative would demolish all of the existing structures and develop 418,000 square feet of space for mixed use facilities including offices. This Alternative would also develop restaurants, a passenger ferry service, and a waterfront promenade here. On 12 acres, the Alternative would build 144 units of attached waterfront housing along the Oakland Inner Harbor.

In the southern part of the North Waterfront planning area, the Reduced Density Alternative would develop 381,000 square feet of space for light industrial and research and development activities. On eight acres at the western edge of this planning area, east of the George P. Miller Elementary School, this Alternative would develop an alternative education high school, a regional kitchen facility, a parking area, a storage area, and maintenance facilities for the Alameda Unified School District.

The Reduced Density Alternative would develop the Marina planning area as a commercial marina. It would build a 250-slip marina in the seaplane lagoon to accommodate private and public vessels and facilities for a passenger ferry service and deep draft yachts. The three piers in the southeastern part of this planning area would be used to accommodate large cruise ships and historic vessels such as the former *USS Hornet*. This Alternative would also develop about 115,000 square feet of space for light industrial and commercial marine activities.

In the northern part of the Marina planning area, the Reduced Density Alternative would develop a promenade and a civic plaza. Near the plaza, this Alternative would develop facilities for civic uses such as offices, a cultural arts center or theater, and recreational activities. It would build a hotel and conference center on four acres in this part of the base.

On 32 acres along the eastern shore of the seaplane lagoon, this Alternative would build about 192 residential units composed of artists' lofts, low to moderate income apartments, and townhouses. All of the large industrial buildings in this planning area would be

demolished to accommodate the proposed redevelopment.

In the western part of the Northwest Territories planning area, the Reduced Density Alternative would build a 162-acre links golf course, a clubhouse on six acres, and a conference center. This Alternative would also develop a 29-acre parking along the shore of the Oakland Inner Harbor. On 17 acres in the eastern part of the Northwest Territories, it would develop athletic fields that would be associated with the sports complex proposed for the Civic Core planning area. It would also reserve 58 acres as open space.

Environment Impacts

Navy analyzed the direct, indirect, and cumulative impacts of the disposal and reuse of this Federal property. The EIS addressed impacts of the Preferred Alternative, the Seaport Alternative, the Residential Alternative, the Reduced Density Alternative, and the "No Action" Alternative for each alternative's effects on land use, visual resources, socioeconomics, public services, utilities, cultural resources, biological resources, geology and soils, water resources, traffic and circulation, air quality, noise, and hazardous materials and waste. This Record of Decision focuses on the impacts that would likely result from implementation of the Reuse Plan, identified in the FEIS as the Preferred Alternative.

The Preferred Alternative would not have a significant impact on land use. The land uses proposed in the Preferred Alternative would be generally compatible with each other and with adjacent off-site land uses. The development of a recreational vehicle park adjacent to existing residential and recreational uses would be governed by the City of Alameda's zoning and land use ordinances.

The proposed development in four planing areas (Civic Core, Main Street Neighborhoods, Marina, and Northwest Territories) of residential, educational and commercial facilities that are not related to maritime activities could have a significant impact on land use if these facilities were built on tidelands encumbered by a public trust established by California law. The Tidelands Trust mandates that public tidelands and submerged lands must be used for the benefit of the people of California for commerce, navigation, fisheries and recreation. The proposed residential, educational and general commercial development of property in these planning areas would not be consistent with the Trust's restrictions.

The City of Alameda, however, could avoid this impact by entering into an agreement with the California State Lands Commission to impose public trust restrictions on non-trust lands or by making monetary contributions to the Kapiloff Land Bank Fund in exchange for the removal of Tidelands Trust restrictions on property in these planning areas. The Kapiloff Land Bank Fund is a mitigation fund administered by the State Lands Commission.

The Preferred Alternative would have several impacts on visual resources. The development of light industrial facilities in the Northwest Territories planning area could decrease the visual quality of this part of the Air Station from vantage point in Alameda and Oakland. However, the demolition of warehouses and the elimination of open storage areas in the North Waterfront planning area would improve views of the base from the City of Oakland's Jack London Square and from the Oakland Ferry Terminal located across the Oakland Inner Harbor. The proposed golf course and park in the Northwest Territories planning area would also enhance views of the former Air Station from the Oakland side of the Inner Harbor. Additionally, the Preferred Alternative provides public access to the Northwest Territories and Marina planning areas that will introduce new opportunities to view San Francisco Bay and the Oakland Inner Harbor.

The Preferred Alternative would not have an adverse impact on the socioeconomics of the surrounding area. In the full buildout year of 2020, there would be 2,378 residential units on the NAS Alameda and Alameda Annex properties. This would constitute about two percent of the projected housing increase in Alameda County. By the same year, implementation of the Preferred Alternative would increase the number of Alameda County residents by 19,400 persons. This would constitute only seven percent of the County's total projected population growth.

By the year 2020, this Alternative would create 18,978 jobs, which constitutes about seven percent of the projected job growth for Alameda County. The Preferred Alternative would have a greater impact on the City of Alameda, because the number of new jobs constitutes about 84 percent of the City's projected job growth.

The Preferred Alternative would not have a significant impact on schools. By the year 2020, the Preferred Alternative would generate an increase of 1,103 school age children living in the area. The new elementary school to be built under the Reuse Plan would have a 500-student capacity and would be funded by impact fees, property taxes, and other taxes generated by the reuse of NAS Alameda and the Alameda Annex.

The proposed redevelopment of NAS Alameda and the Alameda Annex would increase the demand for policy, fire, and ambulance services with the resultant requirements for increased staffing, equipment, and an additional fire station. These additional City services would be funded by a variety of sources such as impact fees, special taxes and other public revenues.

The Preferred Alternative would not have a significant impact on utilities. The Reuse Plan's projected demands for potable water and wastewater treatment would be less than the demands generated by Navy's historical usage.

Implementation of the Preferred Alternative would reduce the amount of impervious surface on the property. Consequently, the amount of stormwater would also decrease.

The amount of solid waste generated by the Preferred Alternative would increase during demolition and construction activities but would remain within the maximum daily capacity of the landfill that the City of Alameda uses. It would decrease over time as demolition and construction were completed. The City can remain in compliance with California and Alameda County waste diversion requirements by developing a solid waste management program that maximizes reuse and recycling of solid waste.

The Preferred Alternative would not have a significant impact on cultural resources. Pursuant to Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f (1994), Navy performed cultural resource surveys of NAS Alameda and the Alemeda Annex. In 1992, Navy determined that while there were no individual buildings or structures at NAS Alameda that qualified for listing on the National Register of Historic Places, an area in the center of the case containing 38 buildings and structures qualified for listing as an historic district. In a letter dated September 23, 1992, the California State Historic Preservation Officer (SHPO) concurred with Navy's determination.

In 1997, Navy and the United States Army Corps of Engineers determined that the Air Station's south jetty on the Oakland Inner Harbor was also eligible for listing on the National Register. In a letter dated October 15, 1997, the SHPO concurred that the south jetty is eligible for listing on the National Register as part of the Oakland Inner Harbor Jetties and Federal Channel Historic District.

Later in 1997, Navy determined that 49 houses in the center of the base were also eligible for listing on the National Register as part of the NAS Alameda Historic District. In a letter dated November 5, 1997, the SHPO concurred that the 49 houses were eligible for listing on the National Register as part of the Historic District.

In 1996, Navy determined that there were no buildings or structures at the Alameda Annex that were eligible for listing on the National Register. In a letter dated July 31, 1996, the SHPO concurred with Navy's determination that no buildings or structures at the Annex were eligible for listing on the National Register.

The Reuse Plan proposes to demolish six of the 87 buildings that constitute the Historic District. It is also likely that other buildings in the District will be demolished or modified or will deteriorate and that new structures will be built there. However, the Historic District as a whole will not be modified to such an extent that it is no longer eligible for listing on the National Register.

Navy has completed consultation pursuant to Section 106 of the National Historic Preservation Act with the Advisory Council on Historic Preservation and the California State Historic Preservation Officer. These consultations identified actions that Navy must take before it conveys the NAS Alameda property and actions that acquiring entities must take to avoid or mitigate adverse impacts on the eligible structures. These obligations were set forth in a Memorandum Of Agreement among Navy, the Advisory Council on Historic Preservation, and the California State Historic Preservation Officer dated October 5, 1999.

Navy will nominate the NAS Alameda Historic District for listing on the National Register of Historic Places in accordance with 36 CFR § 60.9. The City of Alameda will adopt an amendment to the Alameda Municipal Code governing Building and Housing, *i.e.*, Article VII, Historical Preservation, Section 13–21, Preservation of Historical Monuments, to require the review of proposed modifications to the exterior of historic structures. This review will ensure that the modifications are consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Additionally, the City will designate the NAS Alameda Historic District as an historic monument protected by the City's historic preservation ordinance. Navy will also request that the City of Alameda place the south jetty on the City's Historic Buildings Study List to provide it with the protection afforded such properties.

The Preferred Alternative would not have a significant impact on biological resources. In a letter dated October 3, 1997, Navy requested formal consultation with the United States Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1536 (1994). In a letter dated March 22, 1999, the Fish and Wildlife Service set forth its biological opinion that the disposal and reuse of NAS Alameda and the Alameda Annex are not likely to jeopardize the continued existence of the Federally-listed endangered California least tern or the endangered California brown pelican. The Service also concluded that since no critical habitat has been designated for either species on those parts of NAS Alameda and the Alameda Annex that lie outside the proposed Alameda National Wildlife Refuge, none will be adversely modified or destroyed.

The Service, however, conditioned its opinion on the implementation of reasonable and prudent measures to minimize incidental take of these species. These measures would protect the species and their critical habitat within the proposed Refuge from intrusion or other dangers originating outside the Refuge. Navy, the City of Alameda, and entities that may acquire property at NAS Alameda and the Alameda Annex will be bound by this requirement. To fulfill its obligation, Navy will ensure that notifications, covenants, restrictions, and agreements to protect Federally-listed endangered or threatened species are in place when the property is conveyed.

The Preferred Alternative would not have a significant impact on geology and soils. The NAS Alameda and Alameda Annex properties are located in a highly active seismic region and consist of a fill placed over submerged land or tidal flats. Thus, the property has a high potential for liquefaction, differential settlement, and dike failure. As a result, it will be necessary for developers to prepare a soils and geology report before the City of Alameda can issue grading and building permits. The City will require developers to take account of the conclusions of the soils and geology report and apply the standards of the California Building Code, the Alameda Building Code, and the Uniform Building Code to the design and construction of buildings on the former Air Station and Annex.

The Preferred Alternative would not have a significant impact on the quality of surface water. The waters of San Francisco Bay, the Oakland Inner Harbor, and the Seaplane Lagoon would not be significantly affected by the proposed grading and construction if standard soil erosion and sedimentation control measures required by existing laws and regulations were implemented.

Stormwater discharge from the proposed light industrial activities, marina, parking areas, golf course, and routine operations and maintenance in developed areas (such as the application of herbicides and pesticides) could enter and contaminate local water. Stormwater must be managed in accordance with Federal, State, and local laws and regulations, and the acquiring entities will be responsible for building adequate drainage facilities.

Certain areas at NAS Alameda and the Alameda Annex could be subject to flooding from high tides, backed up stormwater runoff, a tidal wave, and rising sea level. The City of Alameda's General Plan, dated February 5, 1991, contains a guiding policy regarding flooding, designated 8.3.b, which states that structures to be located in floodplains subject to 100-year floods should have adequate protection from floods. Additionally, in accordance with Executive Order 11988, Floodplain Management, 3 CFR 117 (1978), Navy will place a notice in the conveyance document that describes those uses that are restricted under Federal, State, and local floodplain regulations.

The Preferred Alternative should have significant impacts on traffic and circulation. By the year 2020, this Alternative would generate about 90,530 average daily trips compared with 29,000 average daily trips that were associated with Navy's use of the property. The traffic generated by the Reuse Plan would cause substantial delays during peak commuting hours at four intersections in the City of Alameda and at three intersections in the City of Oakland. Traffic congestion would increase significantly along two freeway segments and on one local roadway. During peak commuting hours, traffic congestion would also increase significantly on State Route 260 at the Webster and Posey Tubes.

The Preferred Alternative would also generate an increase in traffic on the former Air Station and Annex properties. The Reuse Plan would improve existing roadways on the base and build additional roadways to accommodate the increased traffic there.

The Preferred Alternative would have a significant impact on air quality. Carbon monoxide emissions from traffic generated by the Reuse Plan would exceed Federal and State air quality standards at two intersections, Tinker Avenue and Webster Street in the City

of Alameda and Harrison Street and Seventh Street in the City of Oakland.

Section 176(c) of the Clean Air Act, 42 U.S.C. 7506 (1994), requires Federal agencies to review their proposed activities to ensure that these activities do not hamper local efforts to control air pollution. Section 176(c) prohibits Federal agencies from conducting activities in air quality areas such as the San Francisco Bay Area that do not meet one or more of the national standards for ambient air quality, unless the proposed activities conform to an approved implementation plan. The United States Environmental Protection Agency regulations implementing Section 176(c) recognize certain categorically exempt activities. Conveyance of title to real property and certain leases are categorically exempt activities. 40 CFR § 93.153(c)(2) (xiv) and (xix). Therefore, the disposal of NAS Alameda and the Alameda Annex will not require Navy to conduct a conformity determination.

Navy holds Bay Area Air Quality Management District (BAAQMD) air emission reduction credits (ERCs) for stationary air emission sources such as boilers and furnaces, paint spray booths, fuel storage facilities, and jet engine test cells that historically generated air emissions at NAS Alameda. These annual ERCs include 52.4 tons of precursor organic compounds, 29.9 tons of nitrogen oxides, 61 tons of non-precursor organic compounds, 6.5 tons of particulate matter (PM10), 25.3 tons of carbon monoxide, and 3.1 tons of sulfur oxides.

The BAAQMD Emissions Bank credits can be withdrawn to offset air emissions from new stationary sources. Navy has allocated to ARRA credits for 30 tons of precursor organic compounds to support interim leasing requirements and redevelopment of the base. Navy will retain credits for 15.9 tons of precursor organic compounds and 29.9 tons of nitrogen oxides to meet any future permit requirements for Department of Defense facilities and activities. If there are no future Department of Defense needs, the credits will be reallocated. The remaining credits for precursor organic compounds were previously applied to permitted Navy stationary sources that were either demolished or moved to another base and are no longer available for future allocation.

There were mobile source emissions at NAS Alameda and the Alameda Annex associated with sources such as motor vehicles and aircraft and ship operations. These mobile emission sources annually produced about 169 tons of reactive organic compounds, 182 tons of nitrogen oxides, 859 tons of carbon monoxide, ten tons of sulfur oxides, and 30 tons of particulate matter (PM10).

The mobile source emission reductions resulting from the closure of NAS Alameda and the Alameda Annex can be applied to offset emissions from other Federal mobile sources in the area to satisfy Clean Air Act conformity requirements. Navy will retain these mobile source emission offsets to meet future Clean Air Act conformity requirements.

The Preferred Alternative would not have a significant impact on noise. Exposure to noise from aircraft operations would be eliminated, because there would no longer be any aircraft operations on the property. Ambient noise levels would not change substantially as a result of the increased vehicular traffic. Noise levels in the vicinity of NAS Alameda and the Alameda Annex are typical of an urban neighborhood and are already high. Noise arising out of demolition and construction activities would be governed by the City of Alameda's noise ordinance.

Hazardous materials and hazardous waste that may be used and generated by the Preferred Alternative would not cause any significant adverse impacts. The quantity of hazardous materials used, stored, and disposed of and the quantity of hazardous waste generated on the properties would be less under the Preferred Alternative than during Navy's use of NAS Alameda and the Alameda Annex. Hazardous materials used and hazardous waste generated by the Reuse Plan will be managed in accordance with Federal and State laws and regulations.

Implementation of the Preferred Alternative would not have an impact on public health and safety. Navy will inform future property owners about the environmental condition of the property and may, when appropriate, include restrictions, notifications, or covenants in deeds to ensure the protection of human health and the environment in light of the intended use of the property.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 3 CFR 859 (1995) requires that Navy determine whether any low income and minority populations will experience disproportionately high and adverse human health or environmental effects from the proposed action. Navy analyzed the impacts on low income and minority populations pursuant to Executive Order 12898. The FEIS addressed the potential environmental, social, and economic impacts associated with the disposal of NAS Alameda and the Alameda Annex and reuse of the properties under the various proposed alternatives. Minority and low income populations residing within the region would not be disproportionately affected. Indeed, the employment opportunities, housing, and recreational resources generated by the Reuse Plan would have beneficial effects.

Navy also analyzed the impacts on children pursuant to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks, 3 CFR 198 (1998). Under the Preferred Alternative, the largest concentration of children would be present in the residential, educational, and recreational areas. The Preferred Alternative would not pose any disproportionate environmental health or safety risks to children.

Mitigation

Implementation of Navy's decision to dispose of NAS Alameda and the Alameda Annex does not require Navy to implement any mitigation measures. Navy will take certain actions to implement existing agreements and regulations. These actions were treated in the FEIS as agreements or regulatory requirements rather than as mitigation. Before conveying any property at NAS Alameda, navy will nominate the NAS Alameda Historic District for listing on the National Register of Historic Places.

The FEIS identified and discussed those actions that will be necessary to mitigate the impacts associated with the reuse and redevelopment of NAS Alameda and the Alameda Annex. The acquiring entities, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for implementing necessary mitigation measures.

Comments Received on the FEIS

Navy received comments on the FEIS from two State agencies, three local government agencies, three private organizations, and one person. The State agencies were the Governor's Office of Planning and Research and the Department of Parks and Recreation's Office of Historic Preservation. The local agencies were the City of Oakland, the Port of Oakland, and the East Bay Municipal Utility District. The private organizations were the Golden Gate Audubon Society, the San Francisco Bay Chapter of the Sierra Club, and Arc Ecology. These comments concerned issues already discussed in the FEIS and do not require further clarification.

Regulations Governing the Disposal Decision

Since the proposed action contemplates the disposal of NAS Alameda under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note (1994), Navy's decision was based upon the environmental analysis in the FEIS and application of the standards set forth in the DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR parts 174 and 175. Navy's decision to dispose of the Alameda Annex was based upon the environmental analysis in the FEIS and Section 2834(b) of Public Law 102–484, as amended by Section 2833 of Public Law 103–160, Section 2821 of Public Law 103–337, and Section 2867 of Public Law 104–106.

Section 104–47.303–1 of the FPMR requires that disposal of Federal property benefit the Federal Government and constitute the "highest and best use" of the property. Section 101–47.4909 of the FPMR defines the "highest and best use" as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The "highest and best use" determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local and land use regulations, including zoning and subdivision regulations, and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the "highest and best use" of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of the DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth in Part 101–47 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of base closure property closed under the DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by Section 2905(b)(4) of the DBCRA or the authority provided in Section 2867 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, may Navy apply disposal procedures other than those in the FPMR.

In Section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by base closure, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In Section 2903(c) of Public Law 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under Section 2905(b)(2)(E) of the DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in Section 174.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the LRA's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, as reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, Section 175.7(d)(3) of the DoD Rule provides that the LRA's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484 (1994), as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR Sec. 101–47.303–2); by negotiated sale (FPMR Sec. 101–47.304–9); and by competitive sale (FPMR Sec. 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property. The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid, are left to the Federal agency's discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion

The LRA's proposed reuse of NAS Alameda, reflected in the Reuse Plan, is consistent with the requirements of the FPMR and Section 174.4 of the DoD Rule. The LRA has determined in its Reuse Plan that the property should be used for various purposes including residential, educational, industrial, commercial, and park and recreational activities. The property's location, physical characteristics, and existing infrastructure as well as the current uses of adjacent property make it appropriate for the proposed uses.

The proposed reuse of NAS Alameda responds to local economic conditions, promotes rapid economic recovery from the impact of the closure of the base, and its consistent with President Clinton's Five-Part Plan For Revitalizing Base Closure Communities, which emphasizes local economic redevelopment and creation of new jobs as the means to revitalize these communities. 32 CFR parts 174 and 175, 59 FR 16123 (1994).

Although the "No Action" Alternative has less potential for causing adverse environmental impacts, this Alternative would not take advantage of the locations, physical characteristics, and infrastructure of the Air Station and Annex or the current uses of adjacent

property. Additionally, it would not foster local economic redevelopment of the base.

The acquiring entities, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for adopting practicable means to avoid or minimize environmental harm that may result form implementing the Reuse Plan.

Accordingly, Navy will dispose of the surplus Federal property at NAS Alameda in a manner that is consistent with the Alameda Reuse and Redevelopment Authority's Reuse Plan for the property. Navy plans to dispose of the Federal property at the Alameda Annex under the authority of Section 2867 of Public Law 104–106.

Dated: February 29, 2000.

William J. Cassidy, Jr.,

Deputy Assistant Secretary of the Navy (Conversion And Redevelopment).

[FR Doc. 00–5824 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is to conduct the final briefing of the Technology Hedging Strategies Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to proposed Navy Technology Hedging Strategies.

DATES: The meeting will be held on March 23, 2000 from 10:30 am to 11:30 am.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: February 29, 2000.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 00–5700 Filed 3–8–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is to conduct the final briefing of the Warfare in the Information Age Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to proposed Navy strategies for warfare in the Information Age.

DATES: The meeting will be held on March 22, 2000 from 10 a.m. to 11 a.m.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: February 29, 2000.,

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 00–5701 Filed 3–8–00; 8:45 am]

BILLING CODE 3810–FF–U

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

TIME AND DATE OF MEETING: 6:00 p.m., April 5, 2000.

PLACE: American Museum of Science and Energy (AMSE), Lecture Room, 300 South Tulane, Avenue, Oak Ridge, TN 37830.

STATUS: Open. While the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: The Board is visiting the Oak Ridge Y–12 Plant as a part of its oversight of the Department of Energy's (DOE) defense nuclear facility safety management program. The Board's enabling legislation requires health and safety oversight encompassing design, construction, operation and decommissioning activities.

The Board wishes also to avail itself of the opportunity of this visit to meet with the stakeholders and local members of the public. The session is intended to be informal and to provide an opportunity for members of the public, DOE, and its contractor employees or their representatives to comment on or provide information directly to the Board regarding matters affecting health or safety at Oak Ridge.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

Dated: March 6, 2000.

John T. Conway,

Chairman.

[FR Doc. 00–5862 Filed 3–6–00; 5:00 pm]

BILLING CODE 3670–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposed three-year clearance with no changes to the forms EIA–800–804, 807, 810–814, 816, 817, 819M, and 820 of the EIA's Petroleum Supply Reporting System.

DATES: Written comments must be submitted on or before May 8, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Ms. Stefanie Palumbo, Energy Information Administration, EI–42, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585 or by phone at (202) 586–6866, by e-mail stefanie.palumbo@eia.doe.gov, or by FAX (202) 586–5846.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Stefanie Palumbo at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(h) of the Paperwork Reduction Act of 1995.

The Petroleum Supply Reporting System collects data necessary for determining the supply and disposition of crude oil, finished petroleum products, and natural gas liquids. These data are published by the Energy Information Administration in the Weekly Petroleum Status Report, Petroleum Supply Monthly, and the Petroleum Supply Annual. Respondents to the surveys are producers of oxygenates, operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tanker and barge operators, and oil importers.

II. Current Actions

The Energy Information Administration requests a three-year extension with no changes to the existing Petroleum Supply Reporting System survey collection forms.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average as follows. The EIA allows for respondents to report manually or by using the PC Electronic Data Reporting Option (PEDRO) for all forms excluding the EIA–807, EIA–819M, and the EIA–820. EIA believes that reporting by using PEDRO takes less time than manual reporting. Estimated public reporting burden for the collections that utilize:

PEDRO Submission:

—EIA–800, 1 hour
—EIA–801, 30 minutes
—EIA–802, 30 minutes
—EIA–803, 15 minutes
—EIA–804, 1 hour
—EIA–810, 2 hours
—EIA–811, 1 hour
—EIA–812, 1 hour 30 minutes
—EIA–813, 45 minutes
—EIA–814, 1 hour 15 minutes
—EIA–816, 30 minutes
—EIA–817, 1 hour.

The public reporting burden for the average report prepared:

Manual Submission

—EIA–800, 1 hour 15 minutes
—EIA–801, 45 minutes
—EIA–802, 45 minutes
—EIA–803, 30 minutes
—EIA–804, 1 hour 15 minutes
—EIA–807, 1 hour for weekly reports from October through March, and 30 minutes for monthly reports from April through September
—EIA–810, 3 hours 45 minutes
—EIA–811, 1 hour 45 minutes
—EIA–812, 2 hours 15 minutes
—EIA–813, 1 hour 30 minutes
—EIA–814, 2 hours
—EIA–816, 45 minutes
—EIA–817, 1 hour 45 minutes
—EIA–819M, 30 minutes
—EIA–820, 2 hours.

The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. Please comment on the accuracy of the estimate.

D. The agency estimates that the only costs to the respondents are for the time it will take them to complete the collection. Please comment if respondents will incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection.

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, March 3,2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–5779 Filed 3–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–191–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 2000.

Take notice that on February 29, 2000, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective March 1, 2000:

Forty-first Revised Sheet No. 8
Forty-first Revised Sheet No. 9
Fortieth Revised Sheet No. 13
Forty-ninth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.6 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota).

ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%) ANR also advises that the proposed changes would increase current quarterly Above-Market Dakota Cost recoveries from $1,796.681 to $2,586,210.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 or the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5692 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

[Docket No. RP00–192–000]

MARCH 3, 2000: Take notice that on February 29, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, proposed to become effective March 1, 2000.

Fiftieth Revised Sheet No. 18

ANR states that the above-referenced tariff sheet is being filed to implement the annual reconciliation of the recovery of its Above-Market Dakota Costs, as required by its tariff recovery mechanism. ANR advises that the filing proposes a reservation surcharge adjustment of $0.003 applicable to its currently effective, firm service Rate Schedules. This surcharge is proposed to recover from ANR's customers, over the twelve month period of March 1, 2000 to February 28, 2001, the $218,425 of Above-Market Dakota Cost undercollections, inclusive of interest, which are reflected in the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5693 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–193–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

March 3, 2000.

Take notice that, on February 29, 2000, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixteenth Revised Sheet No. 11A, with an effective date of April 1, 2000.

CIG states that the tariff is being filed to reflect a decrease in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 1.31% to 1.01% effective April 1, 2000.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–5694 Filed 3–8–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–194–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 2000.

Take notice that on February 29, 2000, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of April 1, 2000.

Thirty-Eighth Revised Sheet No. 8A
Thirtieth Revised Sheet No. 8A.01
Thirtieth Revised Sheet No. 8A.02
Thirty-Fourth Revised Sheet No. 8B
Twenty-Seventh Revised Sheet No. 8B.01

FGT states that the tariff sheets listed above are being filed pursuant to Section 27 of the General Terms and Conditions (GTC) of FGT's Tariff which provides for the recovery by FGT of gas used in the operation of its system and gas lost from the system or otherwise unaccounted for. The fuel reimbursement charges pursuant to Section 27 consist of the Fuel Reimbursement Charge Percentage (FRCP), designed to recover current fuel usage on an in-kind basis, and the Unit Fuel Surcharge (UFS), designed to recover or refund previous under or overcollections on a cash basis. Both the FRCP and the UFS are applicable to Market Area deliveries and are effective for seasonal periods, changing effective each April 1 (for the Summer Period) and each October 1 (for the Winter Period).

FGT states that it is filing to establish an FRCP of 2.99% to become effective April 1, 2000 based on the actual company fuel use, lost and unaccounted for volumes and Market Area deliveries for the period from April 1, 1999 through September 30, 1999. FGT states that the proposed FRCP of 2.99%, to become effective April 1, 2000, is a decrease of 0.01% from the currently effective FRCP of 3.00%. Additionally, FGT states that it is filing to establish a UFS of $0.0019 per MMBtu, to become effective April 1, 2000. The proposed UFS is a decrease of $0.0009 compared to the currently effective UFS of $0.0028.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protesants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc. fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–5695 Filed 3–8–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP00–93–000, CP00–94–000 and CP00–95–000]

Honeoye Storage Corporation; Notice of Application

March 2, 2000.

Take notice that on February 22, 2000 Honeoye Storage Corporation (Honeoye) c/o EHA, One State Street, Suite 1200, Boston, Massachusetts 02109, filed an application in the above docket, pursuant to sections 7(b) and 7(c) of the Natural Gas Act as amended (NGA), 15 USC 717f(b) and 717f(c), and Parts 157 and 284 of the Federal Energy Regulatory Commission's regulations, seeking:

in CPOO–93–000

(1) to abandon service to Providence Gas Company (Providence),

(2) to construct, install, own, operate and maintain certain facilities that will permit Honeoye to increase the certificated capacity and deliverability of the Honeoye storage field located in Ontario County, New York;

in CP00–94–000

(3) to obtain a blanket certificate of public convenience and necessity pursuant to Subpart G of Part 284 of the Commission's regulations authorizing Honeoye to provide firm and interruptible storage services on a self-implementing basis at market-based rates with pregranted abandonment authorization; and

in CP00–95–000

(4) to obtain a blanket certificate under Subpart F of Part 157 of the Commission's regulations authorizing the construction and operation of certain facilities and certain certificate amendments and abandonment under Section 7 of the NGA;

all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

Honeoye has requested that the Commission make the proposed abandonment authorization effective March 31, 2000 and issue the proposed authorizations by May 31, 2000 in order to permit Honeoye to proceed with construction on or before June 30, 2000.

Honeoye states that it currently has a certificated obligation to provide Providence a Maximum Daily Withdrawal Quantity (MDWQ) of 5,100 Dth/d and Maximum Quantity Stored (MQS) of 613.2 MDth. Providence has notified Honeoye that it wishes to terminate its storage service agreement with Honeoye effective March 31, 2000.

Honeoye states that it proposes to construct, install, own, operate and maintain certain additional facilities necessary to increase the maximum stabilized pressure of the Honeoye Storage Field from 927 psia to 1100 psia, a pressure well below the hydrostatic pressure of the field. This increase in pressure will permit Honeoye to increase the certificated capacity of the Honeoye Storage Field by 1,812 MDth and the certificated deliverability by 15,000 Dth/d. The activities necessary to effectuate the proposed expansion are as follows:

(1) replace the internal components of two of Honeoye's three existing compressors to increase maximum allowable operating pressure from 915 psia to 1045 psia;

(2) pressure test Honeoye's existing field pipeline system to increase the certified maximum allowable operating pressure from 915 psia to 1045 psia;

(3) pressure test Honeoye's existing mainline pipeline system to increase the certified maximum allowable operating pressure from 900 psia to 1045 psia; and

(4) add 781,482 Dth of base gas to the Honeoye field, consisting of 481,482 Dth to replace base gas previously supplied by Providence and add 300,000 Dth of new base gas;

Honeoye proposes that Honeoye, and not its existing Part 157 customers, will bear the full costs of the exposed expansion. Therefore, Honeoye states that its proposed expansion will have no impact on the rates or terms of service to Part 157 customers.

Honeoye requests a blanket certificate pursuant to Subpart G of Part 284 of the Commission's regulations authorizing Honeoye to provide firm and interruptible services on a self-implementing basis at market-based rates with pre-granted abandonment. Honeoye proposes to offer open access services using (i) the 613.2 MDth of storage capacity and 5,100 Dth/d of firm deliverability that will become available when the Commission grants Honeoye authorization to abandon service to Providence, and (ii) the 1,812.8 MDth of storage capacity and 15,000 Dth/d of firm deliverability that will be created once the construction described above is completed.

Honeoye request that the Commission authorize Honeoye to charge market based rates for Part 284 Services. Honeoye's existing storage capacity represents less than two percent of the existing storage capacity in the New York and Pennsylvania region. Honeoye's storage deliverability represents less than one percent of the existing New York and Pennsylvania storage deliverability. Therefore, under applicable Commission policy, Honeoye states that it cannot withhold or restrict services or unduly discriminate with respect to prices or terms and conditions.

Honeoye also requests that with respect to the Open Access Service, the Commission waive the requirements of Section 284.8(d) of the Commission's Regulations. These regulations require that all storage services provided under Section 284 charge reservation fees which recover all fixed costs based on the straight fixed-variable rate design methodology. Honeoye states that if the Commission approves this application for market-based rates, compliance with this Section would be unnecessary. Similarly, Honeoye requests partial waiver of Section 157.14 of the Commission's regulations in order to permit Honeoye to omit Exhibits K, N, and O from its Application. Honeoye states these exhibits will also be unnecessary if Honeoye's request to charge market-based rates is granted.

Any questions regarding this application should be directed to Richard A. Norman, Vice President, Honeoye Storage Corporation, c/o EHA One State Street, Suite 1200, Boston, MA 02109 (617) 367–0032.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 23, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervener status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other interveners. An intervener can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervener must serve copies of comments or any other filing it makes with the Commission to every other intervener in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmenta' review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court. The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervener status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Honeoye to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–5549 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–196–000]

KO Transmission Company; Notice of Tariff Filing

March 3, 2000.

Take notice that on March 1, 2000, KO Transmission Company (KO Transmission) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, bearing a proposed effective date of April 1, 2000.

Eighth Revised Sheet No. 10

KO Transmission states that the purpose of the filing is to revise its fuel retainage percentage consistent with Section 24 of the General Terms and Conditions of its Tariff. According to KO Transmission, Columbia Gas Transmission Corporation (Columbia) operates and maintains a portion of KO Transmission facilities pursuant to the Operating Agreement referenced in its Tariff at Original Sheet No. 7. Pursuant to that Operating Agreement, Columbia retains certain volumes associated with gas transported on behalf of KO Transmission. On February 28, 2000,

Columbia notified KO Transmission that under terms of the Operating Agreement, KO Transmission will be subject to a 0.71% retainage. Accordingly, KO Transmission states that the instant filing tracks this fuel retainage.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5697 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1981]

Oconto Electric Cooperative; Notice of Authorization for Continued Project Operation

March 3, 2000.

On February 25, 1998, Oconto Electric Cooperative, licensee for the Stiles Project No. 1981, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 1981 is located on the Oconto River in Oconto County, Wisconsin.

The license for Project No. 1981 was issued for a period ending February 29, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No.1981 is issued to Oconto Electric Cooperative for a period effective March 1, 2000, through February 28, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before February 28, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Oconto Electric Cooperative is authorized to continue operation of the Stiles Project No. 1981 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5683 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2659]

Pacific Corp; Notice of Authorization for Continued Project Operation

March 3, 2000.

On February 25, 1998, PacificCorp, licensee for the Powerdale Project No. 2659, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2659 is located on the Hood River in Hood River County, Oregon.

The license for Project No. 2659 was issued for a period ending February 28, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2659 is issued to PacificCorp for a period effective February 29, 2000, through February 28, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before February 28, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that PacificCorp is authorized to continue operation of the Powerdale Project No. 2659 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5687 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–59–001]

Petal Gas Storage, L.L.C.; Notice of Amendment

March 2, 2000.

Take notice on February 24, 2000, Petal Gas Storage, L.L.C, (Petal),[1] 229 Milam Street, Shreveport, Louisiana 71101, filed in Docket No. CP00–59–001, an amendment to its application in Docket No. CP00–59–000, for a certificate of public convenience and necessity, pursuant to Section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, to construct and operate storage, pipeline, compression, and appurtenant facilities all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Mr. David Hayden, Petal Gas Storage, L.L.C., 229 Milam Street, Shreveport, Louisiana 71101 or call (318) 677–5511.

By this amendment Petal seeks to withdraw from consideration all of the facilities proposed in its original application except for:

(1) 5.5 miles of 36-inch diameter pipeline that will loop Petal's existing 5.5 mile, 20-inch diameter storage header in Forrest County, Mississippi; and

(2) Four compressor units totaling 20,000 horsepower together with valves and appurtenant flowlines at the Petal storage facility in Forrest County, Mississippi;

In addition Petal now proposes to expand its existing interconnect with Tennessee Gas Pipeline Company (Tennessee), also located in Forest County, Mississippi. Petal proposes an in-service date of May 31, 2001 for the facilities.

Petal also no longer seeks authority to provide transportation pursuant to Part 284 and withdraws for consideration the pro-forma transportation tariff contained in the original application. However, Petal states that it still seeks approval of certain pro-forma changes to Volume 1, Part A of its effective FERC storage services tariff. Petal intends that the changes will become effective upon the in-service date of the facilities. Petal says it intends to continue charging market-based rates for storage services and does not seek any changes in its current authorization to charge market-based rates. Additionally, Petal requests certain waivers of the Commission's regulations.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before March 23, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties, or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters of those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Petal to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–5548 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

[1] Effective January 4, 2000, Petal Gas Storage Company converted to Petal Gas Storage, L.L.C., a Delaware limited liability company, in accordance with the provisions of Section 18–214 of the Delaware Limited Liability Company Act.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–051]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 2000.

Take notice that on February 29, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective March 1, 2000:

Second Revised Sheet No. 8F
Third Revised Sheet No. 8H
Third Revised Sheet No. 8L

REGT states that the purpose of this filing is to reflect the implementation of two new negotiated rate contracts and a change to an existing negotiated rate contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–5689 Filed 3–8–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–189–000]

Southern Natural Gas Company; Notice of Cost Recovery Filing

March 3, 2000.

Take notice that on February 29, 2000, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of April 1, 2000.

Fiftieth Revised Sheet No. 14
Seventy-First Revised Sheet No. 15
Fiftieth Revised Sheet No. 16
Seventy-First Revised Sheet No. 17

Southern sets forth in the filing its revised demand surcharges for the recovery of Order No. 636 transition costs associated with Southern LNG Inc. from the period November 1, 1999 through December 31, 1999. These costs have arisen as a direct results of restructuring under Order No. 636.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–5690 Filed 3–8–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–195–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

March 3, 2000.

Take notice that on March 1, 2000, pursuant to 18 CFR 154.7 and 154.203, and in compliance with the Commission letter order issued May 26, 1999 (May 26 order), in Docket No. RP99–106–003, TransColorado Gas Transmission Company (TransColorado) tendered for filings its first annual Fuel Gas Reimbursement Percentage (FGRP) filings as provided by Section 12.8 of its FERC Gas Tariff (Fuel Gas Reimbursement). TransColorado has requested that the Commission find that TransColorado's initial 1% FGRP was the appropriate level for the period March 31, 1999, through March 31, 2000.

TransColorado also tendered for filing and acceptance, to be effective April 1, 2000, Third Revised Sheet No. 247 to Original Volume No. 1 of its FERC Gas Tariff that sets TransColorado's FGRP at 1.4% and suspends all other aspects of TransColorado's FGRP tariff provision until such time as TransColorado's transportation quantities increase and stabilize. TransColorado further proposed that its FGRP tariff provision be reviewed in connection with its February 1, 2001, cost and revenue report that is required to be filed in compliance with the Commission letter order dated January 14, 2000, (January 14 order) in Docket Nos. RP99–106–000 and 004.

TransColorado stated that a copy of this filing has been served upon its customers, the New Mexico Public Utilities Commission and the Colorado Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–5696 Filed 3–8–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2077–016]

USGen New England Inc.; Notice Extending Deadline for Filing Comments, Final Terms and Conditions, Recommendations and Prescriptions, and Requesting Reply Comments

March 3, 2000.

On November 26, 1999, the Appalachian Mountain Club, Connecticut River Joint Commission, Connecticut River Watershed Council, Conservation Law Foundation, New Hampshire Rivers Council, Trout Unlimited Vermont Chapter, and Trout Unlimited New Hampshire Chapter (NGOs),[1] collectively, requested an extension to June 1, 2000, for filing comments, final terms and conditions, and recommendations and prescriptions for the Fifteen Mile Falls Project, located on the Connecticut River, in Grafton and Coos Counties, New Hampshire, and Caledonia and Essex Counties, Vermont. The NGOs referenced an agreement between the settlement's stakeholders and USGen to complete draft management plans governing Fisheries, Forest and

[1] The NGOs are also signatories to the Settlement Agreement for the project.

Wildlife, Threatened and Endangered Species, and Recreation by June 1, 2000. The NGOs then requested an extension of time, until June 1, 2000, to file comments on the applicant-prepared environmental assessment (APEA), and final terms and conditions, prescriptions and recommendations for the new license.

In response, the Commission, by notice of January 12, 2000,[2] granted an extension of time, to June 1, 2000, for the filing of comments, final terms and conditions, prescriptions and recommendations, but only concerning the subject of the draft management plans. The deadline for filing other comments, final terms and conditions, prescriptions and recommendations, remained January 31, 2000, as had been established by notice of November 22, 1999.[3]

On January 31, 2000, the NGOs renewed the request for extension to June 1, 2000. The NGOs stated that the results of the studies leading to the management plans will bear on more than just the management plans, and will affect conditions identified in the settlement agreement. The request is supported by the U.S. Fish and Wildlife Service and the Vermont Agency for Natural Resources, two resource agencies that have statutory authority to make recommendations under Section 10(j) of the Federal Power Act.

The Commission is concerned with the swift progress of proceedings under the Alternative Licensing Process (ALP). The goal of the ALP is to resolve issues during pre-filing consultation in a collaborative manner so that the Commission may accelerate the environmental review process and licenses may receive speedy review of the filed license application. Therefore, the Commission carefully scrutinizes delays or time extension requests for license applications prepared under the ALP.

In this instance, we recognize the close connection between the management plans and other aspects of the license application, and the benefit to the stakeholders of resolving as many issues as possible before they submit their prescriptions, final terms and conditions, recommendations and comments. We will therefore, pursuant to Rule 2008 of the Commission's Rules of Practice and Procedure,[4] extend the deadline for filing all prescriptions, final terms and conditions, recommendations and comments to June 1, 2000.

The applicant contact is Mr. Cleve Kapala, USGen New England, Inc., 46 Centerra Parkway, Lebanon, NH 03766. The FERC contact is William Guey-Lee, E-mail address: william.gueylee@ferc.fed.us, or telephone (202) 219–2808.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St. NE, Washington, DC 20426. The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, the intervenor must also serve a copy of the document on that resource agency.

All filing must: (1) bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," "PRESCRIPTIONS," or "REPLY COMMENTS;" (2) set forth in the heading the name of the applicant and the project number of the application and APEA to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5684 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

[2] 65 FR 2943 (2000).

[3] 64 FR 66632 (1999).

[4] 18 CFR 385.2008.

DEPARTMENT OF ENERGY

Federal Energy Regulation Commission

[Docket No. RP00–190–000]

Viking Gas Transmission Company; Notice of Tariff Filing

March 3, 2000.

Take notice that on February 29, 2000, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following tariff sheets to become effective April 1, 2000:

Fourth Revised Sheet No. 6B

Viking states that the purpose of this filing is to make Viking's annual adjustment to its Load Management Cost Reconciliation Adjustment in accordance with Section 154.403 of the Commission's Rules and Regulations, 18 CFR § 154.403 (1998) and Section 27 of the General Terms and Conditions of Viking's FERC Gas Tariff.

Pursuant to Rule 207 of the Commission's Rules and Regulations, 18 CFR § 385.207 (1999), Viking also respectfully petitions the Commission for a limited waiver of its FERC Gas Tariff to allow Viking to defer surcharging the Load Management Deferred Account Balance and to surcharge only the carrying charges associated with that balance at this time.

If the Commission declines to grant Viking's request, then Viking respectfully submits for filing an original and fourteen copies of the tariff sheet listed below to be part of its FERC Gas Tariff, First Revised Volume No. 1 to be effective on April 1, 2000:

Alternate Fourth Revised Sheet No. 6B

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5691 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2336–041 Georgia]

Georgia Power Company; Notice of Availability of Final Environmental Assessment

March 2, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing has prepared a final environmental assessment (FEA) for Georgia Power Company's proposal to permit Lambert Sand and Gravel Company to remove sediments by mechanical dredging from the Yellow and South River sections of the project reservoir (Lake Jackson). The Lloyd Shoals Project is located on the Ocumulgee River and its tributaries in Henry, Butts, Jasper, and Newton Counties, Georgia.

The FEA is attached to a Commission order issued on February 15, 2000 for the above application. Copies of the FEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. The FEA may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). In the FEA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

David P. Boergers,

Secretary.

[FR Doc. 00–5555 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2230–028]

City and Borough of Sitka, Alaska; Notice of Availability of Environmental Assessment

March 3, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the City and Borough of Sitka's application filed on November 1, 1999, requesting the Commission's authorization to permit the Global Water Corporation to construct and operate a new, buried, raw water pipeline across project lands, and has prepared an Environmental Assessment (EA) for the proposed action.

The proposed project would include the following specific elements: (1) a tap into the City's existing Pulp Mill Feeder Unit powerhouse tailrace structure (diffusion chamber); and (2) a new 20-inch-diameter, raw water pipeline that would affect approximately 200 feet of City-owned project land located adjacent to the existing powerhouse access road. The proposed pipeline then would extend across non-project lands owned by the State of Alaska situated adjacent to Sawmill Creek Road, and would terminate at Silver Bay where a new mooring facility for loading bulk water into tanker ships would be constructed.

After completion, the pipeline would be used to transport approximately 11,800 acre-feet per year (10.6 million gallons per day) of water from the Blue Lake reservoir to tankers for shipment to purchasers. Blue Lake Project, which was licensed in April 1958, includes a 205-foot-high, concrete arch dam, 1,225-acre reservoir, three powerhouses, and appurtenant facilities, all of which are located within the Borough of Sitka, Alaska.

In the EA, staff indicates that construction of the subject raw water pipeline would result in some minor, short-term adverse impacts to area soils and wildlife. Further, the document indicates that licensee's proposed water withdrawals from Blue Lake reservoir would not result in any major, long-term adverse environmental impacts provided that the order approving the proposed project prohibits water withdrawals when: (1) the elevation of Blue Lake reservoir is at or below the licensee's established rule curve values; and (2) the withdrawals would interfere with the provision of minimum flows in Sawmill Creek, which are required by Article 401 of the existing license. The EA concludes that approval of the proposed amendment of license with the aforementioned conditions does not constitute a major federal action significantly affecting the quality of the human environment.

The EA has been attached to and made part of an Order Approving Non-Project Use of Project Lands and Waters, issued February 23, 2000, for the Blue Lake Hydroelectric Project, FERC No. 2230–028. See 90 FERC ¶ 62,132. Also, the EA is available for inspection at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. Further, the document may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

For further information, please contact Jim Haimes at (202) 219–2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5685 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–82–000]

Williams Gas Pipelines Central, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Pleasant Hill Power Plant Project and Request for Comments on Environmental Issues

March 2, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Pleasant Hill Power Plant Project involving the construction and operation of natural gas transmission facilities by Williams Gas Pipelines Central, Inc. (Williams) in Franklin County, Kansas and Cass and Johnson Counties, Missouri.[1] These proposed facilities would consist of about 1.5 miles of 24-inch-diameter pipeline and 2,890 horsepower (hp) of compression. This EA will be used by the Commission in its decision-making process to determine whether the

[1] Williams' application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to provide an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Williams wants to expand the capacity of its facilities in Kansas and Missouri to provide an additional 44,200 Dekatherms per day (Dth/d) of natural gas in the winter and an additional 88,200 Dth/d of natural gas in the summary to the UtiliCorp United, Inc. (Utilicorp) Pleasant Hill power plant in Cass County, Missouri; to various Utilicorp local distribution systems in western Missouri; and to U.S. Energy Services in Pettis County, Missouri. Williams seeks authority to:

- Construct and operate about 1.5 miles of 24-inch-diameter pipeline, check measurement, and regulation from Williams' Ottawa crossover to the Ottawa Compressor Station in Franklin County, Kansas;
- Upgrade two existing compressor units from 1,350-hp each to 2,000-hp each and add clean-burn technology at its existing Peculiar Compressor Station in Cass County, Missouri; and
- Install an additional 1,590-hp turbine compressor at its existing Peculiar Compressor Station in Cass County, Missouri.

In addition, Williams requests Commission authorization to convert the regulatory authority of an 800-hp compressor unit at its existing Concordia Compressor Station in Johnson County, Missouri, from NGPA Section 311 to Part 284.

The location of the project facilities is shown in appendix 2.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Land Requirements for Construction

Construction of the proposed pipeline would disturb about 13.6 acres of land in Franklin County, Kansas. Following construction, about 12.1 acres would be maintained as permanent right-of-way. This figure includes 5.0 acres of newly disturbed land and 7.1 acres of existing Williams' right-of-way. The remaining 1.5 acres of land would be restored and allowed to revert to its former use. An additional 4.9 acres would be necessary for extra work space, which would be restored to its prior condition following construction. All construction at Williams' Peculiar Compressor Station in Cass County, Missouri would occur within the existing site.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Air quality and noise

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 4.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded.

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP00–082–000; and
- Mail your comments so that they will be received in Washington, DC on or before April 3, 2000.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in the proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–5547 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent Not To File Application for a New License

MARCH 2, 2000. Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent Not to File an Application for New License.

b. *Project No.:* 477.

c. *Date filed:* November 12, 1999.

d. *Submitted By:* Portland General Electric Company, current licensee.

e. *Name of Project:* Bull Run.

f. *Location:* On the Sandy, Little Sandy, and Bull Run Rivers in Clackamas County, Oregon.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the licensee at 121 SW Salmon Street, Portland, Oregon 97204. Interested parties can contact Julie A. Keil, Director, Hydro Licensing, Portland General Electric Company, on (503) 464–8864.

i. *FERC Contact:* Héctor Pérez, (202) 219–2843, *hector.perez@ferc.fed.us.*

j. *Effective Date of Current License:* May 1, 1980.

k. *Expiration Date of Current License:* November 16, 2004.

l. *The project consists of the following existing facilities:* (1) The 40-foot-high and 345-foot-long roller compacted concrete Marmot Diversion Dam, on the Sandy River, with a concrete diversion structure at the right abutment; (2) a 16,280-foot-long flowline consisting of concrete-lined canals, tunnel sections, and a concrete flume; (3) the Little Sandy Dam; (4) a 16,810-foot-long flow line consisting of a treated wood-box flume, concrete-lined canals, and a tunnel section; (5) Roslyn Lake, with a usable storage capacity of 928 acre-feet at elevation 655.27 feet USGS, formed by approximately 8,000 feet of homogeneous earth fill dikes with a maximum height of 45 feet; (6) two 1,400-foot-long penstocks from the outlet structure of Roslyn Lake; (7) a powerhouse containing four units with a rated capacity of 5,250 kW each; (8) a transformer building adjacent to the powerhouse; (9) a 2.8-mile-long transmission line; and (10) appurtenant facilities.

m. The licensee states its unequivocal intent not to submit an application for a new license for Project No. 477, and instead to cause the project to be decommissioned and removed as expeditiously as possible. If the licensee files an application to surrender the current project license and remove the project works, and if the Commission grants such application, there will be no relicense proceeding. Any surrender application filed by the licensee will be the subject of public notice and opportunity for hearing. If the licensee does not, by two years prior to the expiration of the current license, file an application to surrender the current license, the Commission will apply the relicense competition procedures set forth in its regulations at 18 CFR 16.25 (1999).

n. A copy of the notice of intent is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The notice may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

David P. Boergers,

Secretary.

[FR Doc. 00–5550 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

March 2, 2000.

a. *Type of Filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2181.

c. *Date Filed:* January 27, 2000.

d. *Submitted By:* Northern States Power Company—current licensee.

e. *Name of Project:* Menomonie Hydroelectric Project.

f. *Location:* On the Red Cedar River near the City of Menomonie, in Dunn County, Wisconsin.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Lloyd Everhart, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702 (715) 839–2692.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. *Effective date of current license:* April 1, 1955.

k. *Expiration date of current license:* March 31, 2005.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 642-foot-long dam comprised of a gated spillway section; (2) a 1,400-acre reservoir at a normal pool elevation of 814 feet msl; (3) a powerhouse containing two generating units with a total installed capacity of 5,400 kW, (4) a short 4.16-kV transmission line; and (5) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 31, 2003.

David P. Boergers,

Secretary.

[FR Doc. 00–5551 Filed 3–08–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a Subsequent License

March 2, 2000.

a. *Type of Filing:* Notice of Intent to File an Application for Subsequent License.

b. *Project No.:* 2603.

c. *Date Filed:* January 27, 2000.

d. *Submitted By:* Nantahala Power and Light—current licensee.

e. *Name of Project:* Franklin Hydroelectric Project.

f. *Location:* On the Little Tennessee River, a tributary of the Tennessee River, in Macon County, North Carolina.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* John C. Wishon, Nantahala Power and Light, 301 NP&L Loop, Franklin, NC 28734 (828) 369–4604.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. *Effective date of current license:* May 1, 1965.

k. *Expiration date of current license:* July 31, 2005.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 30-foot-high, 460-foot-long concrete dam comprised of a gated spillway section; (2) a 4.6-mile-long, 210-acre reservoir; (3) a powerhouse containing two generating units with a total installed capacity of 1,040 kW; and (4) other appurtenances.

m. each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2003.

David P. Boergers,

Secretary.

[FR Doc. 00–5552 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a Subsequent License

March 2, 2000.

Type of Filing: Notice of Intent to File an Application for Subsequent Licensee.

b. *Project No.:* 2601.

c. *Date Filed:* January 27, 2000.

d. *Submitted By:* Nantahala Power and Light—current licensee.

e. *Name of Project:* Bryson Hydroelectric Project.

f. *Location:* On the Oconaluftee River, a tributary of the Tuckasegee River, in Swain County, North Carolina.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* John C. Wishon, Nantahala Power and Light, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. *Effective date of current license:* May 1, 1965.

k. *Expiration date of current license:* July 31, 2005.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 35-foot-high, 315-foot-long concrete dam comprised of a gated spillway section; (2) a 1.5-mile-long, 60-acre reservoir; (3) a powerhouse containing two generating units with a total installed capacity of 980 kW; and (4) other appurtenances.

m. Each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2003.

David P. Boergers,

Secretary.

[FR Doc. 00–5553 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing With the Commission and Soliciting Motions To Intervene and Protest

March 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* P–3052–003.

c. *Date Filed* August 27, 1999.

d. *Applicant:* City of Black River Falls, Wisconsin.

e. *Name of Project:* Black River Falls Hydroelectric Project.

f. *Location:* On the Black River in Jackson County, Wisconsin. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§791(a)–825(r).

h. *Applicant Contact:* Loren Radcliffe, Administrator, Black River Falls Municipal Utilities, 119 North Water Street, Black River Falls, Wisconsin 54615.

i. *FERC Contact:* Susan B. O'Brien, *susan.obrien@ferc.fed.us.* (202) 219–2840.

j. *Deadline for filing motions to intervene or protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency .

k. *Status of environmental analysis:* This application has been accepted, but is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of the Project:* The existing run-of-river project consists of: (1) 103–foot-long concrete gravity nonoverflow dam with the crest elevation of 773.0 feet; (2) 221-foot-long Taintor gate spillway; (3) 83-foot-long flashboard spillway with 12-inch-high flashboards; (4) nonoverflow concrete wall forming the left side of the powerhouse forebay; (5) headworks consisting of six head gates, a forebay, and the powerhouse intake; (6) powerhouse with a total installed capacity of 920 kilowatts, producing about 4.4 gigawatthours annually; (7) nonoverflow concrete gravity section extending from the headworks to the west retaining wall; (8) concrete retaining wall; (9) 198-acre reservoir with a total storage capacity of 1,980 acre-feet; (10) transmission lines; and (11) other appurtenances.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/ (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Protests or Motions to Intervene—Anyone may submit a protest or a

motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers.

Secretary.

[FR Doc. 00–5554 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File an Application for a Subsequent License

March 3, 2000.

a. Type of Filing: Notice of Intent to File an Application for Subsequent License

b. Project No.: 2602

c. Date Filed: January 19, 2000

d. Submitted By: Nantahala Power and Light—current licensee

e. Name of Project: Dillsboro Hydroelectric Project

f. Location: On the Tuckasegee River, a tributary of the Little Tennessee River, in Jackson County, North Carolina.

g. Filed Pursuant to: Section 15 of the Federal Power Act

h. Licensee Contact: John C. Wishon, Nantahala Power and Light, 301 NP&L Loop, Franklin, NC 28734 (828) 369–4604.

i. FERC Contact: Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. Effective date of current license: May 1, 1965

k. Expiration date of current license: July 31, 2005

l. Description of the Project: The project consists of the following existing facilities: (1) A 12-foot-high, 330-foot-long concrete dam comprised of a gated spillway section; (2) a 0.8-mile-long reservoir; (3) a powerhouse containing two generating units with a total installed capacity of 225 kW; and (4) other appurtenances.

m. Each application for subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2003.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5686 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

March 3, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Transfer of License

b. Project No: 2816–007

c. Date Filed: February 17, 2000

d. Applicants: Vermont Electric Generation & Transmission Cooperative, Inc., Mr. Gleb Glinka, Trustee, and North Hartland, L.L.C.

e. Name and Location of Project: The North Hartland Hydroelectric Project is located at the U.S. Army Corps of Engineers' North Hartland Dam on the Ottauquechee River in Windsor County, Vermont. The project does not occupy additional Federal or Tribal land.

f. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

g. Applicant Contacts: For Transferee: Mr. Robert L. Carey, North Hartland, L.L.C., 10402 Artemel LN, Suite 203, Great Falls, VA 22066, (703) 757–5903 and Mr. Clive R. G. O'Grady, McGuire Woods Battle & Booth LLP, 1050 Connecticut Ave. NW, Suite 1200, Washington, DC 20006, (703) 712–3057. For Transferor: Mr. Gleb Glinka, Trustee, C/O Mr. Larry A. Belluzzo, U.S. Department of Agriculture, Rural Utilities Service, 14th and Independence Ave., SW, Room 4031–S, Stop 1516, Washington, DC 20250, (202) 720–1265.

h. FERC Contact: Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

i. Deadline for filing comments and or motions: April 3, 2000

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the project number (P–2816–007) on any comments or motions filed.

j. Description of Proposal: The applicants propose a transfer of the license for Project No. 2816 from Vermont Electric Generation & Transmission Cooperative, Inc., the current licensee, by and through Mr. Gleb Glinka, Trustee in Bankruptcy, to North Hartland, L.L.C. Transfer is being sought in connection with the settlement of a Chapter 7 bankruptcy proceeding initiated by the current licensee.

k. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available

for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5688 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM99–2–000 et al.]

Regional Transmission Organizations et al.; Notice of Meeting

In the matter of ER97–1523–000, OA97–470–000, ER97–4234–000; EC00–26–000, EC00–49–000, EC00–40–000, EC00–41–000, ECO00–38–000, El00–26–000, ER00–803–000, EC00–1–000, EL00–42–000, ER00–1572–000, ER00–395–000, ER00–1516–000, ER00–941–000, ER00–1630–000, ER00–1533–000, ER00–1389–000, ER99–2335–000, EL00–36–000, ER00–1483–000, OA96–194–000, OA96–138–000, ER97–2353–000, ER97–913–000, OA97–237–000, ER97–1079–000, ER97–3574–000, ER98–1568–000, ER98–1569–000, ER98–4570–000, ER98–1608–000, ER98–1609–000, ER98–1621–000, ER98–2011–000, ER97–3189–000, ER97–3463–000, ER98–1581–000, ER97–3189–000, OA97–261–000, ER97–1082–000, ER97–3189–000, EC97–38–000, ER97–3273–000, EL97–44–000, OA97–678–000, ER96–2668–000, EC96–29–000, ER99–550–000, ER00–556–000, ER00–298–000, EL00–41–000]; New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool, Commonwealth Edison Company, and PECO Energy Company, Consolidated Edison Inc. and Northeast Utilities, Delmarva Power & Light Company, Atlantic City Electric Company, DPL REIT, Inc. and Conectiv Atlantic Generation, LLC, Commonwealth Edison Company, PECO Energy Company, PECO Energy Power Company, Susquehanna Power Company, Energy East Corporation and CMP Group, Inc., PJM Interconnection, L.L.C., USGen New England, Inc., ISO New England Inc., PJM Interconnection, L.L.C., PJM Interconnection, L.L.C., PJM Interconnection, L.L.C., New York Independent System Operator, Inc., New England Power Pool, New England Power Pool, Atlantic City Electric Company, Camden Cogen, L.P., Delmarva Power & Light Company, Edison Mission Marketing & Trading Inc., Electric Power Supply Association, FPL Energy, Inc., New Energy, Inc., Old Dominion Electric Cooperative, PECO Energy Company, PG&E Energy Company, PG&E Energy Trading-Power L.P., Sithe Power Marketing, L.P., Strategic Energy, L.L.C., Virginia Electric and Power Company, Williams Energy Marketing and Trading Company, WPS Energy Services, Inc. v. PJM Interconnection, L.L.C., New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Niagara Mohawk Power Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & gas Corporation, Connecticut Yankee Atomic Power Company, New England Power Pool, Potomac Electric Power Company, Pennsylvania-New Jersey-Maryland Interconnection, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, PP&L, Inc., Potomac Electric Power Company, Public Service Electric and Gas Company, PJM Interconnection, L.L.C., Pennsylvania-New Jersey-Maryland Interconnection, Atlantic City Electric Company; Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, Pennsylvania-New Jersey-Maryland Interconnection Restructuring, Pennsylvania-New Jersey-Maryland Interconnection Restructuring, PJM Interconnection, L.L.C., Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, PECO Energy Company, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corporation, PJM Interconnection, L.L.C.

On December 20, 1999, the Commission issued Order No. 2000 to advance the formation of Regional Transmission Organizations (RTOs). Order No. 2000 announced the initiation of a regional collaborative process to aid in the formation of RTOs. To initiate the collaborative process, the Commission organized a series of regional workshops. These workshops are open to all interested parties. The second workshop is scheduled for March 15–16, 2000 in Philadelphia, Pennsylvania. During the course of the Philadelphia workshop, discussion of the above-listed cases could arise. Any person having an interest in an above-listed case is invited to attend the Philadelphia workshop. There will be no Commission transcript of any of the workshops, and information discussed or disseminated in the workshop will

not constitute part of the decisional record in the above-listed cases, unless formally filed in accordance with Commission regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5763 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6549–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP subpart II: Shipbuilding and Ship Repair (Surface Coating), OMB Control #2060–0330 and EPA ICR number 1712.03, expiration date May 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 10, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No.1712.03. For technical questions about the ICR call Anthony Raia (202) 564–6045.

SUPPLEMENTARY INFORMATION:

Title: NESHAP subpart II: Shipbuilding and Ship Repair (Surface Coating), OMB Control #2060–0330 and EPA ICR number 1712.03, expiration date May 31, 2000. This is a request for extension of a currently approved collection.

Abstract: The respondents are owners or operators of Shipbuilding and Ship Repair Facilities. Operations covered include: primer and top coat application in manufacturing processes and in ship repair processes. The NESHAP regulation 40 CFR part 63, subpart II, was promulgated on December 15, 1995. The Administrator has determined that Hazardous Air Pollutant (HAP) and Volatile Organic Compound (VOC) emissions from Shipbuilding and Ship Repair Facilities cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. In order to ensure compliance with the standards promulgated to protect public health, adequate recordkeeping and reporting is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

These standards rely on the reduction of HAP emissions by using coatings which comply with the volatile organic compound (VOC) limits set forth in this MACT standard. In some cases, the control of emissions of HAP from surface coating at shipbuilding and repair facilities also requires the installation of properly designed equipment, and the operation and maintenance of that equipment. The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the standard is being met. The implementation plans from facilities are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. In addition, the semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. Recordkeeping and reporting are mandatory under this regulation. Records must be maintained for 5 years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published in the **Federal Register** on May 27, 1999; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 492 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Shipbuilding and Ship Repair Facilities.

Estimated Number of Respondents: 45.

Frequency of Response: Initial, Semiannual.

Estimated Total Annual Hour Burden: 22,149.

Estimated Total Annualized Capital, O&M Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1712.03 and OMB Control No. 2060–0330 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania, Ave., NW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: March 1, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–5800 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6549–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Valuing Inland Water Quality Improvements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following proposed Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Valuing Inland Water Quality Improvements (EPA ICR number 1914.01). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 10, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1914.01. For technical questions about the ICR contact Dr. Alan Carlin, Office of Policy and Reinvention, Mail Code 2172, U.S. Environmental Protection Agency, Washington, DC 20460, e-mail carlin.alan@epa.gov, phone 202–260–5499, FAX 202–260–7875.

SUPPLEMENTARY INFORMATION:

Title: Valuing Inland Water Quality Improvements (EPA ICR number 1914.01). This is a new collection.

Abstract: The purpose of this project is to develop economic benefit values for water quality improvements for lakes, rivers, and streams. These estimates are of substantial academic interest since past studies have been based on a water quality ladder, which is believed not to be as scientifically valid a construct for assessing water quality. The estimates may also be useful to the Agency in complying with the requirements of Executive Order 12866 requiring cost-benefit analysis of major Federal regulations. This project will explore how valuations are affected by use of the current EPA approach of specifying different dimensions of water quality such as swimming, fishing, and broader aquatic ecological effects. The findings will be pertinent to economists studying water quality changes, particularly with respect to the task of assessing benefit values for water quality policies. We expect to use data collected with the survey in determining the value of water quality improvements to households in the United States. We plan to recruit subjects randomly across the United States through telephone recruiting. Subjects will be asked to complete a computer survey from a disk, which will be mailed to them. Subjects without convenient access to a personal computer will be referred to a national commercial facility with computer access nearest their home for the purpose of completing the survey. Subjects will return the survey disk by mail when completed. Participation in the survey is voluntary. Respondents will have to expend time, effort, and in many cases travel expense to participate in the study. Avoiding bias in the sample towards individuals and groups who can more easily take the survey is an important concern. As a result, we will compensate subjects for their time (and travel if necessary) to avoid the selection bias that might otherwise result. This survey is innovative both in terms of the survey methodology and the substantive economic focus. On both of these dimensions the survey is breaking new ground. To maximize the research value of the survey, we will proceed iteratively. The version of the survey available now will undergo at least two pre-tests after OMB approves the ICR. These pretests will be designed to identify programming complications arising from the nature of the survey, as well as survey questions that can be refined to promote greater clarity and convergence in the iterative choice process used. The final structure of the survey will depend on how people respond to the draft questions. For example, on any initial pairwise choice question, the researchers seek to present an initial tradeoff where half of the subjects choose each alternative, in order to maximize convergence on tradeoff rates in the least possible number of iterative questions. After the pre-tests are completed, recruiting will proceed as described above.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d) soliciting comments on this collection of information was published on November 12, 1999 (64 FR 61632); two comments were received.

Burden Statement: The annual public reporting burden for this collection of information will average between 50 minutes and 110 minutes per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Individuals/households.

Estimated Number of Respondents: 2,800.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 3,150 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1914.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 1, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–5801 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6549–9]

Transfer of Confidential Business Information to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: EPA will transfer to its contractor, Dynamac Corporation and its subcontractor: Science Applications International Corporation (SAIC) Confidential Business Information (CBI) that has been or will be submitted to EPA under section 3007 of the Resource

Conservation and Recovery Act (RCRA). Under RCRA, EPA is involved in activities to support, expand and implement solid and hazardous waste regulations.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than March 20, 2000.

ADDRESSES: Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, 703–308–7909.

SUPPLEMENTARY INFORMATION:

1. Transfer of Confidential Business Information

Under EPA Contract 68–W–98–231 Dynamac Corporation, and its subcontractor, will assist the Office of Solid Waste, Hazardous Waste Identification Division, by providing technical support in completing hazardous waste listing determinations, defining hazardous waste characteristics, developing the hazardous waste identification rule, and developing rules and reports pertaining to the definition of solid waste, medical waste, used oil, waste generation and transportation, and universal waste, such as batteries and fluorescent light bulbs. EPA has determined that Dynamac Corporation and its subcontractor, will need access to RCRA CBI submitted to the Office of Solid Waste to complete this work. Dynamac Corporation and its subcontractor, needs access to several EPA sources including the Petroleum Refinery Data Base, the Toxics Release Inventory, the EPA National Survey of Hazardous Waste Generators, and the Industries Studies Data Base.

In accordance with 40 CFR 2.305(h), EPA has determined that Dynamac Corporation, and its subcontractor, require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is submitting this notice to inform all submitters of CBI of EPA's intent to transfer CBI to this firm on a need-to-know basis. Upon completing its review of materials submitted, Dynamac Corporation, and its subcontractor, will return all CBI to EPA.

EPA will authorize Dynamac Corporation, and its subcontractor, for access to CBI under the conditions and terms in EPA's "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual." Prior to transferring CBI to Dynamac Corporation, and its subcontractor, EPA will review and approve its security plans and Dynamac Corporation, and its subcontractor, will sign non-disclosure agreements.

Dated: February 18, 2000.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–5802 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6549–1]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the USEPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1. Air Toxics Monitoring Subcommittee

The Air Toxics Monitoring Subcommittee, an ad hoc subcommittee of the Science Advisory Board's Executive Committee, will meet March 29–30, 2000 in conference room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The meeting will begin by 9:00 a.m. on Wednesday, March 29 and adjourn no later than 5:00 p.m. on Thursday, March 30.

Purpose of the Meeting—The Subcommittee will review the draft Air Toxics Monitoring Strategy Concept Paper and the draft "Protocol for Model to Monitor Comparisons for National Air Toxics Screening Assessment". The Air Toxics Monitoring Concept Paper outlines the approach proposed by the Environmental Protection Agency (EPA) and its State and Local Agency partners to develop a national ambient monitoring network for hazardous air pollutants (HAPs). The concept paper describes monitoring and data assessment activities to be performed over the next several years which will facilitate the design of a long-term monitoring program.

The role of this evolving monitoring network is, initially, to provide data on a subset of HAPs to characterize ambient concentrations in representative monitoring areas to support and evaluate dispersion and exposure models. The "Protocol for Model to Monitor Comparisons for National Air Toxics Screening Assessment" provides a proposed collection of data analysis procedures which utilize ambient air monitoring data to evaluate air quality model estimates. Later, the network can be used to establish ambient trends, and evaluate the effectiveness of HAP control strategies. Eventually, the network will support other efforts such as initiatives to focus on multi-media and cumulative risks, various air toxics assessments, and education/outreach.

Charge to the Subcommittee—The preliminary charge questions for this review are:

(a) Since the air toxics monitoring program will be an integral part of the National Air Toxics Assessment activities and will augment the pre-existing State and local toxics monitoring efforts, does the Subcommittee believe that the near-term (1–2 year) focuses (characterizing neighborhood scale HAPs concentrations and providing a reality check on dispersion modeling elements of the strategy) are appropriate initial steps.

(b) Is a basic 24-hour sample, taken at a frequency sufficient to fulfill the objectives of the program, adequate to provide this model reality check and supply data for the characterization of ambient HAPs concentrations?

(c) Is the neighborhood sampling scale an appropriate choice for this program?

(d) Given the enormity of the task of monitoring for all HAPs, we propose to concentrate on monitoring for the 33 HAPs identified in the Urban Air Toxics Strategy (64 FR 38705). We anticipate monitoring for all (approximately 30) HAPs with practical measurement methods at some sites in the proposed network, and monitor for a smaller subset at the majority of new sites. We would appreciate the advice of the Subcommittee regarding the soundness of this strategy.

(e) Are the available Toxic Organic (TO-) methods suitable for the operation of a routine monitoring network

operated by the State and local air pollution control agencies?

(f) EPA expects to support the establishment of moveable monitoring platforms to better assess the multiple program objectives and characterize areas which are disproportionately impacted by HAPs. We would appreciate the Subcommittees thoughts on how best to make use of these data.

(g) In addition to your comments on the overall strategy, we seek your advice regarding the utility of these data analysis approaches to evaluate dispersion model estimates and with the appropriateness of this collection of monitoring methods as a logical starting point to measure a list of urban HAPs.

Availability of Review Materials: The review documents are the revised draft Air Toxics Monitoring Strategy Concept Paper and the draft "Protocol for Model to Monitor Comparisons for National Air Toxics Screening Assessment". Electronic versions of both documents will be available after March 1 at: *http://www.epa.gov/ttn/amtic/*. A limited number of paper copies of these documents can be obtained from Neil Frank, (919) 541–5560, *frank.neil@epa.gov*.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments must contact Ms. Kathleen White Conway, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at *conway.katheen@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. Conway no later than noon Eastern Time on March 22nd.

2. Natural Attenuation Research Subcommittee—Teleconference Meetings on March 30 and May 1

The Natural Attenuation Research Subcommittee of the Science Advisory Board's (SAB) Environmental Engineering Committee (EEC) will conduct public teleconference meetings Thursday, March 30, 2000 and Monday, May 1, 2000 between the hours of 3:00 p.m.—5:00 p.m (Eastern Standard Time). The meetings will be coordinated through a conference call connection in Room 6450V in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The Ariel Rios Building is adjacent to the escalator to the Federal Triangle Metro Station on 12th Street NW. The public is encouraged to attend the meeting in the conference room noted above, however, the public may also attend through a telephonic link if lines are available. Additional instructions about how to participate in either conference call can be obtained by calling Ms. Mary Winston approximately a week prior to each meeting (by March 16 or April 24, respectively) at (202) 564–4538, or via e-mail at *winston.mary@epa.gov*.

Purpose of the Meetings—At the March 30th conference call meeting, the Subcommittee will present and discuss a draft outline for its report on the review of EPA's natural attenuation research. At the May 1st conference call meeting, the Subcommittee members will present their preliminary reactions to the review materials and to clarify the agenda for a face-to-face review meeting to be scheduled at a later date.

Availability of Review Materials: The review materials include background information such as the Directive on Natural Attenuation (*http://www.epa.gov/swerust1/directiv/d9200417.pdf*); the Waste Research Strategy (*http://www.epa.gov/ORD/WebPubs/final/wastepub.pdf*); a list of publications based on the completed research; project descriptions for on-going research; and a description of planned research not yet underway. Where an electronic version of a document is available, the website has been noted. A limited number of paper copies of these documents can be obtained from Dr. Stephen Schmelling at e-mail: *schmelling.steve@epa.gov* or via phone at (580) 436–8540.

For Further Information—Any member of the public wishing further information concerning these two conference call meetings or wishing to submit brief oral comments for any of the meetings must contact Ms. Kathleen White Conway, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at *conway.katheen@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. Conway no later than noon Eastern Time one week prior to each meeting (by March 16 or April 24, respectively).

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting. The SAB will accept written comments until the date of the meeting, unless otherwise stated.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Meeting Access—Individuals requiring special accommodation at this teleconference meeting, including wheelchair access to the conference room, should contact Ms. Conway at least five business days prior to the meetings so that appropriate arrangements can be made.

Dated: March 2, 2000.

John R. Fowle III,

Acting Staff Director, Science Advisory Board.

[FR Doc. 00–5622 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6549–4]

Extension of Time to Comment on the Interim Guidance on the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing an extension of time to comment on the Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions.

DATES: Comments are due by April 10, 2000.

ADDRESSES: Send comments to EPA, CERCLA Federally Permitted Release

Definition, Docket Number EC–G–1999–029, Mail Code 2201–A, and mail to: 1200 Pennsylvania Avenue, NW, Washington, DC 20460; or fax to: (202) 501–1011; or email to: docket.oeca@epa.gov. Commentors who want EPA to acknowledge receipt of their comments must mail a self-addressed, stamped envelope.

FOR FURTHER INFORMATION CONTACT: For further information regarding the extension of time, please contact Beth Burchard, Environmental Protection Agency (Mail Code 2245A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; (202) 564–4177.

SUPPLEMENTARY INFORMATION:

Purpose of this Document

The Environmental Protection Agency announces an extension of time to submit comments on the Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions from March 10, 2000 to April 10, 2000. The guidance discusses EPA's interpretation of the federally permitted release exemption as it applies to certain air emissions, responds to industry questions, and solicits public comment on the issues discussed in the interim guidance. The interim guidance was published in the **Federal Register** at 64 FR 71614 (Dec. 21, 1999).

Eric Schaeffer,

Director, Office of Regulatory Enforcement.

[FR Doc. 00–5798 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6547–5]

Proposed De Minimis Settlement Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act Regarding the Syosset Landfill Superfund Site, Town of Oyster Bay, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative *de minimis* settlement and opportunity for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency ("EPA"), Region II, announces a proposed administrative *de minimis* settlement pursuant to section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Syosset Landfill Superfund Site ("Site"), located in the Town of Oyster Bay, New York. This document is being published pursuant to section 122(i) of CERCLA to inform the public of the proposed settlement and give the public the opportunity to comment.

The proposed settlement, between EPA and Kollmorgen Corporation, Photocircuits Corporation, Konica Graphics Imaging, Inc., and Phelps Dodge Corporation ("Respondents") has been memorialized in an Administrative Order on Consent (Index Number CERCLA–02–99–2025) ("Order"). The Order will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate the Order is inappropriate, improper, or inadequate, and EPA, in accordance with section 122(i)(3) of CERCLA, modifies or withdraws its consent to the Order.

Under the settlement, the Respondents will be obligated to make payments totalling $7,952.76 to the Hazardous Substance Superfund in reimbursement of EPA response costs relating to the Site. In addition, the Order requires one of the Respondents, Phelps Dodge Corp., to pay $17,595.02 to the Town of Oyster Bay, as a contribution toward response costs incurred by the Town with respect to the Site. The settlement amounts established by the Order are based on information indicating that each company contributed minimal volumes of hazardous substances to the Site. In exchange for their payments, Respondents will receive a covenant not to sue from EPA relating to liability for the Site under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

DATES: Comments must be provided on or before April 10, 2000.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007–1866, and should refer to: "Syosset Landfill Superfund Site, U.S. EPA Index No. CERCLA–02–99–2025." For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leilani Davis, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007, Telephone: (212) 637–3249.

Dated: February 24, 2000.

William J. Muszynski,

Acting Regional Administrator, Region II.

[FR Doc. 00–5799 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 2, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 8, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–xxxx.

Title: Medical Implant Communications Service (MICS)—95.1215 Disclosure policies and 95.1217 Labeling requirements.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 20.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 20 hours.

Total Annual Cost: No annual cost burden on respondents from either capital or start-up costs.

Needs and Uses: The information collection contained in sections 95.1215 and 95.1217 require manufacturers of transmitters for the MICS to include with each transmitting device a statement regarding harmful interference and to label the device in a conspicuous location on the device. The requirements will allow use of potential life-saving medical technology without causing interference to other users of the 402–405 MHz band.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5546 Filed 3–8–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, March 14, 2000, 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, March 16, 2000, at 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

President William J. Clinton and the Clinton/Gore '96 Primary Committee, Inc.—Repayment Determination and Disgorgement Determination.

Revision to the Statement of Reasons concerning the 1996 Democratic National Convention Committee, Inc. (LRA#471).

Revision to the Statement of Reasons concerning the 1996 Republican National Convention Committee on Arrangements (LRA #472).

Statement of Reasons—Buchanan for President Committee, Inc.

Advisory Opinion 2000–02: Rick Hubbard and Rick Hubbard for U.S. Senate.

Advisory Opinion 2000–04: National Association of Federal Credit Unions by counsel, Thomas J. Cooper and John F. Cooney.

Final Rules and Accompanying Explanation and Justification to Revise 11 CFR Part 108, Filing Copies of Reports and Statements with State Officers.

Notice of Disposition on Repayments by Federally Financed Presidential Primary Campaign Committees (11 CFR § 9038.2(b)(2).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–5967 Filed 3–7–00; 3:29 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 23, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Matthew N. Smith II 1997 Family Trust, Escanaba, Michigan; to acquire voting shares of Northern Michigan Corporation, Escanaba, Michigan, and thereby indirectly acquire voting shares of Northern Michigan Bank, Escanaba, Michigan.

Board of Governors of the Federal Reserve System, March 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5677 Filed 3–8–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 2000.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. Andover Bancorp, Inc., Andover, Massachusetts; to acquire 100 percent of the voting shares of GBT Bancorp, Gloucester, Massachusetts, and thereby indirectly acquire voting shares of

Gloucester Bank & Trust Company, Gloucester, Massachusetts.

In connection with this application, Applicant also has applied to acquire Gloucester Investment Corp., Gloucester, Massachusetts, and thereby engage in making loans to small businesses and investments in industrial and commercial enterprises in the City of Gloucester and the area known as Cape Ann, pursuant to § 225.28(b)(12) of Regulation Y.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. RSB Financial, Inc., Reading, Kansas; to become a bank holding company by acquiring 80.2 percent of the voting shares of Reading State Bank, Reading, Kansas.

Board of Governors of the Federal Reserve System, March 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5675 Filed 3–8–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 2000.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. Brookline Bancorp, MHC, and Brookline Bancorp, Inc., both of Brookline, Massachusetts; to acquire 100 percent of the voting shares of Lighthouse Bank, Waltham, Massachusetts.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. BB&T Corporation, Winston-Salem, North Carolina; to merge with One Valley Bancorp, Inc., Charleston, West Virginia, and thereby indirectly acquire One Valley Bank, National Association, Charleston, West Virginia; One Valley Bank, Inc., Morgantown, West Virginia; One Valley Bank of Huntington, Inc., Huntington, West Virginia; One Valley Bank of Mercer County, Inc., Princeton, West Virginia; One Valley Bank " South, Inc., Summersville, West Virginia; One Valley Bank " North, Inc., Moundsville, West Virginia; One Valley Bank Central Virginia, National Association, Lynchburg, Virginia; One Valley Bank East, National Association, Martinsburg, West Virginia; and One Valley Bank—Shenandoah, Raphine, Virginia.

In connection with this application, Applicant also has applied to exercise an option to acquire up to 19.9 percent of the voting securities of One Valley Bancorp, Inc., under certain circumstances.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. BGC Bancorp, Inc., Gibson City, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Gibson City, Gibson City, Illinois.

Board of Governors of the Federal Reserve System, March 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5816 Filed 3–9–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Fortress Bancshares, Inc., Westby, Wisconsin; to acquire Fortress Bank of Cresco, Cresco, Iowa, upon its conversion to a federal savings bank, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, March 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5676 Filed 3–8–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

State Median Income Estimates for Four-Person Families (FY 2001); Notice of the Fiscal Year (FY) 2001 State Median Income Estimates for Use Under the Low Income Home Energy Assistance Program (LIHEAP) Administered by the Administration for Children and Families, Office of Community Services, Division of Energy Assistance

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of estimated State median income for FY 2001.

SUMMARY: This notice announces the estimated median income for four-person families in each State and the District of Columbia for FY 2001 (October 1, 2000 to September 30, 2001). LIHEAP grantees may adopt the State median income estimates beginning with the date of this publication of the estimates in the **Federal Register** or at a later date as discussed below. This means that LIHEAP grantees could choose to implement this notice during the period between the heating and cooling seasons. However, by October 1, 2000, or by the beginning of a grantee's fiscal year, whichever is later, LIHEAP grantees using State median income estimates must adjust their income eligibility criteria to be in accord with the FY 2001 State median income estimates.

This listing of estimated State median incomes concerns maximum income levels for households to which LIHEAP grantees may make payments under LIHEAP.

EFFECTIVE DATE: The estimates are effective at any time between the date of this publication and October 1, 2000, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

FOR FURTHER INFORMATION CONTACT: Leon Litow, Administration for Children and Families, HHS, Office of Community Services, Division of Energy Assistance 5th Floor West 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Telephone: (202) 401–5304, Internet E-Mail: llitow@acf.dhhs.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, as amended), we are announcing the estimated median income of a four-person family for each state, the District of Columbia, and the United States for FY 2001 (the period of October 1, 2000, through September 30, 2001).

Section 2605(b)(2)(B)(ii) of the LIHEAP statute provides that 60 percent of the median income for each state, as annually established by the Secretary of the Department of Health and Human Services, is one of the income criteria that LIHEAP grantees may use in determining a household's eligibility for LIHEAP.

LIHEAP is currently authorized through the end of FY 2004 by the Coats Human Services Reauthorization Act of 1998, Pub. L. 105–285, which was enacted on October 27, 1998.

Estimates of the median income of four-person families for each State and the District of Columbia for FY 2001 have been developed by the Bureau of the Census of the U.S. Department of Commerce, using the most recently available income data. In developing the median income estimates for FY 2001, the Bureau of the Census used the following three sources of data: (1) the March 1999 Current Population Survey; (2) the 1990 Decennial Census of Population; and (3) 1998 per capita personal income estimates, by state, from the Bureau of Economic Analysis of the U.S. Department of Commerce.

Like the estimates for FY 2000, the FY 2001 estimates include income estimates from the March Current Population Survey that are based on population controls from the 1990 Decennial Census of Population. Income estimates prior to FY 1996 from the March Current Population Survey had been based on population controls from the 1980 Decennial Census of Population. Generally, the use of 1990 population controls results in somewhat lower estimates of income.

For further information on the estimating method and data sources, contact the Housing and Household Economic Statistics Division, at the Bureau of the Census (301-457–3243).

A state-by-state listing of median income, and 60 percent of median income, for a four-person family for FY 2001 follows. The listing describes the method for adjusting median income for families of different sizes as specified in regulations applicable to LIHEAP, at 45 CFR 96.85(b), which was published in the **Federal Register** on March 3, 1988 at 53 FR 6824.

Dated: March 2, 2000.

Donald Sykes,

Director, Office of Community Services.

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE, FISCAL YEAR 2001 [1]

States	Estimated state median income 4-person families [2]	60 percent of estimated state median income 4-person families
Alabama	$51,156	$30,694
Alaska	59,726	35,836
Arizona	49,397	29,638
Arkansas	44,471	26,683
California	55,209	33,125
Colorado	63,428	38,057
Connecticut	75,534	45,320
Delaware	65,157	39,094
District of Col.	60,674	36,404
Florida	52,581	31,549
Georgia	55,989	33,593
Hawaii	61,838	37,103
Idaho	49,174	29,504
Illinois	61,672	37,003
Indiana	55,284	33,170
Iowa	53,230	31,938
Kansas	55,341	33,205
Kentucky	49,108	29,465
Louisiana	49,037	29,422
Maine	51,059	30,635
Maryland	71,404	42,842
Massachusetts	68,958	41,375
Michigan	59,019	35,411
Minnesota	67,140	40,284
Mississippi	43,907	26,344
Missouri	54,190	32,514
Montana	44,737	26,842
Nebraska	56,692	34,015
Nevada	53,054	31,832
New Hampshire	61,014	36,608
New Jersey	70,983	42,590
New Mexico	43,829	26,297
New York	57,142	34,285
North Carolina	54,331	32,599
North Dakota	51,002	30,601
Ohio	60,169	36,101
Oklahoma	47,436	28,462
Oregon	55,892	33,535
Pennsylvania	58,507	35,104
Rhode Island	62,339	37,403
South Carolina	52,111	31,267
South Dakota	49,702	29,821
Tennessee	50,310	30,186
Texas	51,148	30,689
Utah	54,946	32,968
Vermont	53,691	32,215
Virginia	60,860	36,516
Washington	61,059	36,635
West Virginia	43,239	25,943
Wisconsin	57,890	34,734

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE, FISCAL YEAR 2001 [1]—Continued

States	Estimated state median income 4-person families [2]	60 percent of estimated state median income 4-person families
Wyoming	50,989	30,593

[1] In accordance with 45 CFR 96.85, each State's estimated median income for a 4-person family is multiplied by the following percentages to adjust for family size: 52% for one person, 68% for two persons, 84% for three persons, 100% for four persons, 116% for five persons, and 132% for six persons. For family sizes greater than six persons, add 3% for each additional family member and multiply the new percentage by the State's estimated median income for a 4-person family.

[2] Prepared by the Bureau of the Census from the March 1999 Current Population Survey, 1990 Decennial Census of Population and Housing, and 1998 per capita personal income estimates, by state, from the Bureau of Economic Analysis.

Note—FY 2001 covers the period of October 1, 2000 through September 30, 2001. The estimated median income for 4-person families living in the United States is $56,061 for FY 2001. The estimates are effective for the Low Income Home Energy Assistance Program (LIHEAP) at any time between the date of this publication and October 1, 2000, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

[FR Doc. 00–5679 Filed 3–8–00; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0835]

Draft Guidance for Industry on Conjugated Estrogens, USP: LC–MS Method for Both Qualitative Chemical Characterization and Documentation of Qualitative Pharmaceutical Equivalence; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Conjugated Estrogens, USP: LC–MS Method for Both Qualitative Chemical Characterization and Documentation of Qualitative Pharmaceutical Equivalence." This draft guidance is intended to provide recommendations to applicants who wish to submit a new drug application or abbreviated new drug application for a natural source conjugated estrogens solid oral dosage form. This guidance provides a description of the liquid chromatography-mass spectrometry (LC–MS) method that can be used to address both qualitative chemical characterization and qualitative pharmaceutical equivalence (PE).

DATES: Submit written comments on the draft guidance by June 8, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Wallace P. Adams, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5651.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Conjugated Estrogens, USP: LC–MS Method for Both Qualitative Chemical Characterization and Documentation of Qualitative Pharmaceutical Equivalence." Chemical characterization and PE of natural source conjugated estrogens involve both qualitative and quantitative aspects. Qualitative aspects of both chemical characterization and PE involve detection and measurement of certain of the components in conjugated estrogens. The recommended methodology, LC–MS, is applicable to both the drug substance and/or solid oral dosage forms. This draft guidance provides a description of the LC–MS method developed by the Division of Testing and Applied Analytical Development/Office of Pharmaceutical Science/Center for Drug Evaluation and Research for both the qualitative chemical characterization and documentation of qualitative PE of natural source conjugated estrogens. Interpretation of the data for PE is beyond the scope of this guidance and will be addressed in a separate document. Quantitative aspects of chemical characterization and PE use the gas chromotography (GC) (flame-ionization detector) and high-pressure liquid chromotography (HPLC) (ultraviolet detector) assays described in a draft proposed Conjugated Estrogens, USP, monograph (http://www.fda.gov/cder/drug/monographs/default.htm), and they are not the subject of this guidance.

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on this LC–MS method for both qualitative chemical characterization and documentation of qualitative pharmaceutical equivalence of conjugated estrogens, USP. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 1, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–5751 Filed 3–6–00; 2:58 pm]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–205/Supplement]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send

comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Individual Market-Guarantee Issue Election Packet, and Supporting Regulations in 45 CFR 148, and Forms/Instructions; *Form No.:* HCFA–R–205/Supplement (OMB #0938–NEW); *Use:* This collection is a Supplement of the existing collection for "Information Collection Requirements Referenced in HIPAA for the Individual Market, Supporting Regulations in 45 CFR 148, and forms/instructions (OMB 0938–0703). This supplement is intended to simplify the filing obligations of issuers who participate in the individual market of more than one direct enforcement state. A direct enforcement state is a state in which HCFA has the responsibility to enforce the requirements of HIPAA. This supplement allows the issuer to submit the requested information for multiple states at one time, rather than having to complete a separate transmittal form for each state; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Individuals or Households, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 15; *Total Annual Responses:* 150; *Total Annual Hours:* 566.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Dated: February 29, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5703 Filed 3–8–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1514]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Program;

Form No.: HCFA–1514 (OMB# 0938–0380); *Use:* Section 1861 of the Social Security Act requires hospitals and critical access hospitals to be certified to participate in the Medicare/Medicaid program. These providers must complete the "Hospital Request for Certification in the Medicare/Medicaid Program" form in order to be certified or recertified; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 6,300; *Total Annual Responses:* 4,400; *Total Annual Hours:* 1,100.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Dated: February 28, 2000.

John P. Burke III,

Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5704 Filed 3–8–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0368 and HCFA–R–0144]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to

be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicaid Drug Rebate; *Form No.:* 0938–0582; *Use:* Section 1927 requires State Medicaid agencies to report to drug manufacturers and HCFA on the drug utilization for their State and the amount of rebate to be paid by the manufacturer; *Frequency:* Quarterly; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 51; *Total Annual Responses:* 204; *Total Annual Hours:* 6,125.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Dated: February 28, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5705 Filed 3–8–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0367, 0367a, b, and c]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicaid Drug Rebate Program—Manufacturers; *Form No.:* HCFA–0367 and 0367a, b, and c (0938–0578; *Use:* Section 1927 requires drug manufacturers to enter into and have in effect a rebate agreement with the Federal Government for States to receive funding for drugs dispensed to Medicaid recipients; *Frequency:* Quarterly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 551; *Total Annual Responses:* 2,204; *Total Annual Hours:* 54,660.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Dated: February 28, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5707 Filed 3–8–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0211]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Model Application Template for State Child Health Plan Under Title XXI of the Social Security Act, State Children's Health Insurance Program, and Model Application Template and Instructions; *Form No.:* HCFA–R–211 (OMB #0938–0707); *Use:* States are required to submit Title XXI plans and amendments for approval by the Secretary pursuant to section 2102 of the Social Security Act in order to receive funds for initiating and expanding health insurance coverage for uninsured children. The model application Template is used to assist States in submitting a State Child Health Plan and amendments to that plan; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 37; *Total Annual*

Responses: 37; *Total Annual Hours:* 2,960.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850

Dated: February 28, 2000.

John P. Burke,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00-5709 Filed 3-8-00; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-2746]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Death Notification; *Form No.:* HCFA-2746 (0938-0448); *Use:* The form is completed by all Medicare approved ESRD facilities upon the death of an ESRD patient. Its primary purpose is to collect fact and cause of death. Reports of deaths are used to show cause of death and demographic characteristics of these patients. *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions and Federal Government; *Number of Respondents:* 3,761; *Total Annual Responses:* 52,654; *Total Annual Hours Requested:* 8,951.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503

Dated: January 24, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00-5706 Filed 3-8-00; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-0588]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Authorization agreement for electronic forms transfer; *Form No.:* HCFA-0588 (OMB #0938-0626); *Use:* The information is needed to allow providers to receive funds electronically in their bank accounts; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 1,250.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503

February 28, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00-5708 Filed 3-8-00; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0605]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Hospital Provider of Extender Care Services (Swing-Beds) in the Medicare and Medicaid Programs, 42 CFR 447.280 and 482.66; *Form No.:* HCFA–605 (OMB# 0938–0624); *Use:* This is a facility identification and screening form. It will be completed by a hospital that is requesting approval. It initiates the process of determining the hospital's eligibility and also requests approval for its bed count category. *Frequency:* Other (one time); *Affected Public:* Business or other for profit, and Not for profit institutions; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Hours:* 12.5.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer.

OMB Human Resources and Housing Branch, Attention, Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503

Dated: February 24, 2000.

John P. Burke

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5710 Filed 3–8–00; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request: Pretesting of Office of Cancer Communications Messages

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* Pretesting of Office of Cancer Communications Messages.

Type of Information Collection Request: Extension (OMB #0925–0046, expires (8/31/00).

Need and Use of Information Collection: In order to carry out NCI's legislative mandate to educate and disseminate information about cancer prevention, detection, diagnosis, and treatment to a wide variety of audiences and organizations (*e.g.*, cancer patients, their families, the general public, health providers, the media, voluntary groups, scientific and medical organizations), the Office of Cancer Communications (OCC) needs to pretest its communications strategies, concepts, and messages while they are under development. The primary purpose of this pretesting, or formative evaluation, is to ensure that the messages, communication materials, and information services created by OCC have the greatest capacity of being received, understood, and accepted by their target audiences. By utilizing appropriate qualitative and quantitative methodologies, OCC is able to (1) understand characteristics of the intended target audience—their attitudes, beliefs and behaviors—and use this information in the development of effective communication tools; (2) produce or refine messages that have the greatest potential to influence target audience attitudes and behavior in a positive manner; and (3) expend limited program resource dollars wisely and effectively.

Frequency of Response: On occasion.

Affected Public: Individuals or households; Business or other for profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Type of Respondents: Adult cancer patients; members of the public; health care professionals; organizational representatives. The annual reporting burden is as follows:

Estimated Number of Respondents: 13,780;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours per Response: 1458; and

Estimated Total Annual Burden Hours Requested: 2,010.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ellen Eisner, Communications Research Manager, Health Promotion Branch, OCC, NCI, NIH, Building 31, Room 10A03, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 435–7783 or E-mail your request, including your address to: EisnerE@occ.nci.nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before May 8, 2000.

March 1, 2000.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 00–5786 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Strong Heart Family Study (U01) and Small Grant Program (R03).

Date: April 6, 2000.

Time: 8 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Valerie L. Penger, PhD, Health Science Administrator, NIH, NHLHI, DEA, Review Branch, Rockledge Center II, 6701 Rockledge Drive, Suite 7198, Bethesda, MD 20892–7924, 301–435–0297.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research, 93.837, Heart and Vascular Diseases Research, National Institutes of Health, HHS)

Dated: March 2, 2000.

LaBerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5796 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel To Review Individual National Research Service Award Applications.

Date: March 22, 2000.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary J. Stephens-Frazier, PHD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: March 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5787 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Behavioral Special Emphasis Panel.

Date: March 9, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5788 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, ZNS1 NST 01L.

Date: March 21, 2000.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lillian M. Pubols, PhD, Chief, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, lp28e@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5791 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: April 4, 2000.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Gerald L McLaughlin, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, gm145a@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious diseases Research, National Institutes of Health, HHS)

Dated: March 3, 2000.

LaBerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5792 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 8, 2000.

Time: 10:30 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert H. Stretch, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 16–17, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Robert H. Stretch, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 20, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Terrace Room, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Robert H. Stretch, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 28, 2000.

Time: 10 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.

Contact Person: Robert H. Stretch, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 28, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jean G. Noronha, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 28, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd.,

Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 10–11, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Jean G. Noronha, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9609, Bethesda, MD 20892–9609, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 13, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5793 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, To Review Program Project Application (P01).

Date: March 17, 2000.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: The clarion Hotel—Fifth Avenue, New York, NY 10016.

Contact Person: Arthur Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, To Review Grant Applications.

Date: April 3, 2000.

Time: 10 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Washington Dulles, 1000 Sully Road, Dulles, VA 20166.

Contact Person: Jeffrey M. Chernak, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, To Review Grant Applications.

Date: April 10, 2000.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5795 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Biotechnology (Teleconference) SEP.

Date: March 24, 2000.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockedge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharee Pepper, PhD, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (301) 594–4933.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5794 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Special Emphasis Panel.
Date: March 20–21, 2000.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 2007.
Contact Person: Patricia H. Hand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 20, 2000.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 20, 2000.
Time: 10:30 am to 11:00 am.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 20, 2000.
Time: 1 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Chhanda L. Ganguly, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 20–21, 2000.
Time: 6 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, Fortune Room, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.
Contact Person: Eugene Vigil, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 21, 2000.
Time: 8:20 am to 6:30 pm.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Mary Clare Walker, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 21, 2000.
Time: 10 am to 5 pm.
Agenda: To review and evaluate grant application.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Michael A. Lang, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–8 (01).
Date: March 21, 2000.
Time: 2 pm to 3 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 21, 2000.
Time: 2 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Philip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 21, 2000.
Time: 3 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sami A. Mayyasi, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 22, 2000.
Time: 8:30 am to 6:30 pm.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Mary Clare Walker, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 22, 2000.
Time: 10 am. to 1 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave., Palladian West, Chevy Chase, MD 20815.
Contact Person: Gamil C. Debbas, PHD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 22, 2000.
Time: 2 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sami A. Mayyasi, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 22–23, 2000.
Time: 8 pm to 8 pm.
Agenda: To review and evaluate grant applications.
Place: Bethesda Ramada, 8400 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Jean D. Sipe, PHD,
Name of Committee: Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, sipej@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23–24, 2000.
Time: 8 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, N.W., Washington, DC 20007–3701.
Contact Person: Ron Manning, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23–24, 2000.
Time: 8 am. to 2 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Ave., NW., Washington, DC 20007.
Contact Person: Richard Panniers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23–24, 2000.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Westin Fairfax Hotel, 2100 Massachusetts Ave., N.W., Washington, DC 20008.
Contact Person: Sally Ann Amero, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, (301) 435–1159, ameros@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23, 2000.
Time: 1 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Anshumali Chaudhari, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4124, MSC 7802, Bethesda, MD 20892, 301/435–1210,

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–7 (03).
Date: March 23, 2000.
Time: 2 pm to 3 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23, 2000.
Time: 2 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Lawrence N. Yager, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, (301) 435–0903, yagerl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23, 2000.
Time: 2:45 p.m. to 4:15 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Anshumali Chaudhari, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23–25, 2000.
Time: 7 pm to 1 pm.
Agenda: To review and evaluate grant applications.
Place: City Plaza Downtown Hotel, 210 South Dubuque Street, Iowa City, IA 52240.
Contact Person: Ramesh K. Nayak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23, 2000.
Time: 12 pm to 1:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda MD 20892 (Telephone Conference Call).
Contact Person: Nabeeh Mourad, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222,

(Catalouge of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5789 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 8–9, 2000.
Time: 2 pm to 10 am.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, Versailles III, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 9, 2000.

Time: 10 am to 4:20 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Versailles III, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.892, 93.893, National Institutes of Health, HHS)

Dated: March 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5790 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–7978.

Phase III of the National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program

(New)—SAMHSA's Center for Mental Health Services (CMHS) is conducting Phase III of this national evaluation project. To address the research questions in the national evaluation, a longitudinal quasi-experimental design is being used that includes data collection in all grantee sites and comparison sites over a five year period. Data collection methods include interviews with caregivers and youth, site visits, case record reviews, service diaries, and provider surveys. Phase III collects data on child mental health outcomes, family life, and service system development and performance. Child and family outcomes of interest include the following: Child symptomatology and functioning, family functioning and material resources, and caregiver strain. The length of time that families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation. Service system variables of interest include the following: Maturity of system of care development, adherence to system of care principles, coordination and linkages among agencies, and congruence between family services planned versus those received.

Respondents	Number of respondents	Responses/respondent	Burden/response (Hours)	Total burden hours (annualized)
Caregivers	5,339	1.11	2.58	15,286
Youth	3,203	1.06	1.28	4,347
Providers/Administrators	633	0.52	1.25	413
Total	9,175	.....	.....	20,046

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 3, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–5727 Filed 3–8–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–08]

Notice of Proposed Information Collection: Comment Request; Assisted Living Conversion Program (ALCP)

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 8, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, D.C. 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: For copies of the proposed forms and other available information contact Carissa Janis, telephone number (202) 708–3944, extension 2487 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Assisted Living Conversion Program (ALCP)—Application kit, Annual Report, and Line of Credit Control System (LOCCS)/ Voice Response System (VRS) Assisted Living Conversion Program Payment Voucher.

OMB Control Number: None.

Description of the need for the information and proposed use: HUD uses grant applications to evaluate owners' need for and proposed use of grant funds and their ability to administer such funds. The Department will use program-end Annual Reports to determine how well grant funds were used in meeting stated program goals and in providing affordable and high quality assisted living housing and services. Grantees will also be able to evaluate their efforts through the completion of the Annual Report and will have data and evidence of program effectiveness available for both their future use and that of the public. HUD will use the Payment Voucher to monitor use of grants funds for eligible activities over the term of the grant. The Grantee may similarly use this form to track and record their requests for payment reimbursement for grant-funded activities.

Agency Form Numbers, if applicable: HUD–50080–ALCP, Line of Credit Control System (LOCCS)/ Voice Response System (VRS) Assisted Living Conversion Program Payment Voucher.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 140, the total annual responses is 260, and the total annual hours of response are estimated at 4,300.

Status of the proposed information collection: New collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 3, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–5813 Filed 3–08–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–10]

Notice of Submission of Proposed Information Collection to OMB; Urban Homesteading Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due Date:* April 10, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0042) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice Also Lists the Following Information

Title of Proposal: Urban Homesteading Program.

OMB Approval Number: 2506–0042.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Local Urban Homesteading Agencies (LUHAs) which received properties under HUD's Section 810 Urban Homesteading Program. By statue HUD is required to conduct a continuing evaluation of the program. The primary purpose this collection of data is to determine whether the LUHAs are disposing of the properties as required by law and HUD requirements.

Respondents: Not-for-Profit Institutions, State, Local, or Tribal Government.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	150		1		.28		525

Total Estimated Burden Hours: 525.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 2, 2000.

Wayne Eddins,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–5543 Filed 3–8–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–11]

Notice of Submission of Proposed Information Collection to OMB; Competitive Homeless Assistance Program Annual Progress Report (APR)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 10, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0145) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review as required by the Paperwork Reduction Act (44 U.S.C.. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (7) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Competitive Homeless Assistance Program Annual (APR).

OMB Approval Number: 2506–0145.

Form Numbers: HUD–40118.

Description of the Need for the Information and Its Proposed Use: Annual reporting to HUD by grantees receiving funds for homeless assistance programs. The Annual Progress Report (APR) form has been simplified and the Grantee Annual Report (GAR) information collection (previously cleared under 2506–0126) has been consolidated with this collection.

Respondents: Not-for-Profit Institutions, State, Local, or Tribal Government.

Frequency of Submission: Recordkeeping and Reporting.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	4,000		1		40		160,000
Reporting	4,000		1		10		40,000

Total Estimated Burden Hours: 200,000.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 3, 2000.

Wayne Eddins,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–5814 Filed 3–8–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4538–N–02]

Fiscal Year 2000 Notice of Funding Availability (NOFA) for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program: Withdrawal of NOFA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Withdrawal of NOFA.

SUMMARY: This document withdraws the Notice of Funding Availability (NOFA), published on November 8, 1999, that announced the availability of Fiscal Year 2000 funding for the HUD-administered Small Cities Program in New York State under the Community Development Block Grant Program.

DATES: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Yvette Aidara, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1322 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On November 8, 1999 (64 FR 61000), HUD published a Notice of Funding Availability for the HUD-Administered Small Cities Community Development Block Grant Program that announced Fiscal Year 2000 funding for this program. The Department has

administered the Community Development Block Grant (CDBG) Small Cities program in the State of New York since the inception of the State CDBG program. Forty-eight states administer their own State CDBG program. At the request of Governor George E. Pataki, New York, the Department has withdrawn the Notice of Funding Availability for Fiscal Year 2000 funding. The Department will continue to retain control of past grants and multi-year grants made prior to Fiscal Year 2000.

In response to requests from local officials throughout the State and concerns that the State may not immediately possess the expertise to manage the program, the Department had originally proposed a transition process designed to permit a smooth and orderly transfer of the program from HUD administration to State control. The proposed process would have allowed the HUD-administered competition to continue as outlined in the NOFA of November 8, 1999, while the State completed all necessary steps to administer the program effectively. HUD had recommended a transition process in order to avoid any disruption in funding to the grantees. New York officials, however, indicated they would prefer HUD to transfer the program without a transition process.

Therefore, through this Notice, HUD withdraws the NOFA inviting applications for the HUD-administered Small Cities program published on November 8, 1999.

Dated: March 6, 2000.

Joseph D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 00–5753 Filed 3–6–00; 2:58 pm]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Arturo J. Gutierrez, Weston, MA, PRT–023419.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Diane Klumpp, Emigrant, MT, PRT–023635.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 3, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–5719 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment for the Grand Bayou/Gulf Intracoastal Waterway (GIWW) Freshwater Diversion Project, Terrebonne and Lafourche Parishes, Louisiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

The Service announces the availability of the draft EA for the Grand Bayou/GIWW Freshwater Diversion Project. A more detailed description of the project is outlined in the **SUPPLEMENTARY INFORMATION** section below. A Copy of the draft EA may be obtained by sending a written request to the Service's Louisiana Field Office (see **ADDRESSES**). Requests must be made in writing to be processed. This notice is provided pursuant to NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the Service's EA.

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Field Office (see **ADDRESSES**). You also may comment via the internet to "Ronald_Paille@fws.gov". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at the telephone numbers listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to the Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the draft EA should be sent to the Service's Field Office (see **ADDRESSES**) and should be received on or before April 10, 2000.

ADDRESSES: Persons wishing to review the draft EA may obtain a copy by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 646 Cajundome Boulevard, Suite 400, Lafayette, Louisiana 70506. Documents will also be available for public inspection by appointment (Attn: Ronald Paille) during normal business hours at the Service Field Office. Written data or comments concerning the draft EA should be submitted to the

Service Field Office. The data and comments must be submitted in writing to be adequately considered in the Service's decision-making process.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Paille, Senior Field Biologist, (see **ADDRESSES** above), telephone: 337/291–3117 or 337/291–3100, facsimile: 337/291–3139.

SUPPLEMENTARY INFORMATION: The Grand Bayou/GIWW Freshwater Diversion Project, was funded through the Coastal Wetlands Planning, Protection and Restoration Act on the Fifth Priority Project List. The project purpose is to reduce loss of coastal wetlands within the project area through increased introduction of freshwater from the Gulf Intracoastal Waterway and by reducing canal-induced saltwater intrusion into the project area.

The proposed project would benefit about 42,690 acres of coastal wetlands by the enlargement of Bayou L'Eau Bleu to increase freshwater inflow. The preferred alternative includes water control structures. They would be installed on the Cutoff Canal, just below its junction with Bayou Pointe au Chien, and on the Island Road Borrow Canal, just west of Bayou Pointe au Chien. These water control structures would be operated to reduce canal-induced saltwater intrusion into project area wetlands.

Dated: March 2, 2000.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 00–5728 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Final Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a Final Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem.

SUMMARY: This notice advises the public that the Final Environmental Impact Statement (FEIS) for Grizzly Bear Recovery in the Bitterroot Ecosystem is available for public review. The FEIS evaluates a proposal to establish an experimental population rule and reintroduce grizzly bears into the Bitterroot Ecosystem in east-central Idaho and western Montana. Six alternatives, including the No Action Alternative, are discussed in the FEIS.

The Bitterroot Ecosystem consists of approximately 44,400 square miles in 10 central Idaho and four western Montana counties, of which 76 percent is in Federal surface ownership. A Citizen Management Committee would be tasked with management implementation responsibility for the experimental population. Reintroduction could result in grizzly bear recovery in the Bitterroot Ecosystem in a minimum of 50 years. A recovered grizzly bear population (approximately 280 bears) potentially could kill an average of 6 cattle and 25 sheep and up to 504 wild ungulates per year. Nuisance bear incidents could average 37 per year. Economic analyses indicate grizzly bear recovery in the Bitterroot Ecosystem would lead to total economic benefits of approximately $40.4 to $60.6 million per year.

DATES: Copies of the FEIS will be mailed to government offices, local and regional libraries, and interested parties who specifically requested the FEIS. A Summary of the FEIS will be mailed to all parties on the mailing list who did not specifically request the entire FEIS. Those interested persons not on the FEIS mailing list may request a copy from the project leader at the address below. It is anticipated that the Environmental Protection Agency will publish a Notice of Availability for this FEIS in the **Federal Register** on March 24, 2000. Public comments will be accepted from March 24, 2000, through April 24, 2000. Public comment on the FEIS is solicited pursuant to the National Environmental Policy Act (NEPA) regulations (40 CFR 1503.1). All agencies and individuals are urged to provide comments and suggestions regarding the FEIS for our review prior to completion of a Record of Decision. All comments received by the end of the comment period will be considered in preparation of the Record of Decision.

All comments received from individuals on our environmental impact statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)]. When requested, comment letters with the names and addresses of the individuals who wrote the comments will generally be provided. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish to withhold your name and or address, you must state this prominently at the beginning of your comments.

ADDRESSES: Written comments should be addressed to Dr. Christopher Servheen, U.S. Fish and Wildlife Service Project Leader, Bitterroot Grizzly Bear FEIS, P.O. Box 5127, Missoula, Montana 59806. The document also is available for viewing and downloading at:<http://www.r6.fws.gov/endspp/grizzly/>. Written comments and materials regarding this information should be sent to the Recovery Coordinator at the address given above or can be mailed electronically to <FW6__grizzly@fws.gov>. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above), at telephone (406) 243–4903.

SUPPLEMENTARY INFORMATION

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 1, 2000.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 00–5729 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On January 21, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 14, page 3472, that an application had been filed with the Fish and Wildlife Service by Zachary Sharp, Department of Earth and Planetary Sciences, University of New Mexico for a permit (PRT–021423) to import canine teeth sections from Atlantic walrus (Odobenus rosmarus rosmarus) from Canada for the purpose of scientific research at the University of New Mexico.

Notice is hereby given that on February 24, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the

requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm. 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: March 3, 2000.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–5720 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–020–4310–EU; NMNM–102567] A Direct Sale of Public Land to Florise Martinez, Santa Fe, NM.

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) and at no less than the estimated fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

New Mexico Principal Meridian

T. 17 N., R. 9 E.,
section 31, lot 25.

The subject public land containing 1.33 acres, more or less will be sold to Florise Martinez of Santa Fe, NM. The sale is for the purpose of resolving unauthorized, inadvertent use of the land for forty years. The proposed sale is for surface rights only. The disposal is consistent with the Taos Resource Area Management Plan dated October 1988, state and local government programs, plans, and applicable regulations.

EFFECTIVE DATE: Interested parties may submit comments on the direct sale on or before April 24, 2000.

ADDRESSES: Comments should be sent to the Taos Field Office Manager, BLM, 226 Cruz Alta Road, Taos, NM 87571.

FOR FURTHER INFORMATION CONTACT: Hal Knox, BLM, Taos Field Office, 226 Cruz Alta Rd., Taos, NM 87571, or at (505) 758–8851.

SUPPLEMENTARY INFORMATION: The direct sale will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document or other document of conveyance is available for review at this BLM office.

Publication of this notice in the **Federal Register** will segregate the public land from appropriations under the public land laws including the mining laws but not the mineral leasing laws. This segregation will terminate upon the issuance of a patent or other document of conveyance, 270 days from date of publication of this notice in the **Federal Register** or upon publication of Notice of Termination, which ever occurs first.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 17, 2000.

Ron Huntsinger,

Field Office Manager.

[FR Doc. 00–5711 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Civil Penalties

AGENCY: Minerals Management Service (MMS).

ACTION: Notice Summarizing OCS Civil Penalties Paid, January 1, 1999, through December 31, 1999.

SUMMARY: This notice provides a listing of civil penalties paid January 1, 1999, through December 31, 1999, for violations of the OCS Lands Act. The goal of the MMS OCS Civil Penalties Program is to assure safe and clean operations on the OCS. Through the pursuit, assessment, and collection of civil penalties and referrals for the consideration of criminal penalties, the program is designed to encourage compliance with OCS statutes and regulations. The purpose of publishing the penalties summary is to provide information to the public on violations of special concern in OCS operations and to provide an additional incentive for safe and environmentally sound operations.

FOR FURTHER INFORMATION CONTACT: Greg Gould (Program Coordinator), (703) 787–1591.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA 90) strengthened section 24 of the OCS Lands Act Amendments of 1978. Subtitle B of OPA 90, titled "Penalties," increased the amount of the civil penalty from a maximum of $10,000 to a maximum of $20,000 per violation for each day of noncompliance. More importantly, in cases where a failure to comply with applicable regulations constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life); property; any mineral deposit; or the marine, coastal, or human environment; OPA 90 provided the Secretary of the Interior (Secretary) with the authority to assess a civil penalty without regard to the requirement of expiration of a period of time allowed for corrective action.

On August 8, 1997 (62 FR 42668), MMS published new regulations implementing the civil penalty provisions of the OCS Lands Act. Written in "plain English," the new question-and-answer format provides a better understanding of the OCS civil penalty process. In addition, the provisions of OPA 90 require the Secretary to adjust the maximum civil penalty to reflect any increases in the Consumer Price Index. The new rule increased the maximum civil penalty to $25,000 per day, per violation. Please note, subsequent to publishing the new regulations, MMS made several corrections and amendments, including the appeals procedures. These were published at 63 FR 42711, 8/11/98; 64 FR 9066, 2/24/99; 64 FR 9065, 2/24/99 and 64 FR 26257, 5/13/99.

Between August 18, 1990, and January 31, 2000, MMS initiated 297 civil penalty reviews. The MMS assessed 186 civil penalties and collected $3,539,520 in fines. Thirty-six cases were dismissed, 2 cases were merged, and 73 are under review.

On September 1, 1997, the Associate Director for Offshore Minerals Management issued a notice informing lessees and operators of Federal oil, gas, and sulphur leases on the OCS that MMS will annually publish a summary of OCS civil penalties paid. The annual summary will highlight the identity of the party, the regulation violated, and the amount paid. The following table provides a listing of the penalties paid between January 1, 1999, and December

31, 1999. Please note that MMS published a direct final rule (5/29/98, 63 FR 29477) that renumbers each section in 30 CFR part 250. A quarterly update of this list, along with additional information related to the renumbering of the regulations, is posted on the MMS worldwide web home page, http://www.mms.gov.

In the following chart for regulations violated before the renumbering took effect, we show the regulation number at the time of violation and the redesignated section number.

OCS Civil Penalties Paid

Calendar Year 1999

Operator name and case No.	Violation summary and violation date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
W&T Offshore, Inc. G–1995–006.	The subsurface safety devices (SSSD's) for 3 wells were removed and the wells were left unattended. 1/1/91–1/6/91, 10/11/91–10/23/91, 8/18/90–8/21/90, 10/27/90–11/2/90.	$15,000 6/8/99	250.121(h)(3) Redesignated 250.801(h)(3)
W&T Offshore, Inc. G–1995–007.	The SSSD was removed from Well No. 34 and left unattended. 8/20/90–10/26/90.	$34,000 6/8/99	250.121(h)(3) Redesignated 250.801(h)(3).
Shell Offshore, Inc. G–1997–035.	The pressure safety high/low (PSHL) sensors for the departing 6-inch pipeline were found bypassed. 7/11/97.	$10,000 6/10/99	250.123(c)(1) Redesignated 250.803(c)(1).
ORYX Energy Company G–1997–039.	A 5-by-7 foot open hole in grating not flagged or barricaded. 5/14/97–5/14/97.	$5,000 2/1/99	250.20(a) Redesignated 250.120(a)
Amoco Production Company G–1997–047.	The emergency shut down (ESD) station located near the driller's console was not connected to the MI 622D ESD system from 9/12/97 (workover start date) through 9/16/97. 9/12/97–9/16/97.	$25,000 1/4/99	250.73 Redesignated 250.503
Energy Development Corporation G–1998–004.	The surface controlled subsurface safety valve (SCSSV) was bypassed on Wells A–1 and A–2. The level safety high (LSH) was bypassed on the corrugated plate interceptor (CPI). There was no fire detection system in the bunkhouse/quarters. A sheen measuring 3/8 mile long by 10 yards wide occurred when the sump pump was inoperable. 4/29/97.	$34,000 11/17/99	250.123(b)(9) 250.123(c)(1) 250.40(a) Redesignated 250.803(b)(9) 250.803(c)(1) 250.300(a)
Apache Corporation G–1998–010	The pressure safety high (PSH) and pressure safety low (PSL) for the first stage compressor discharge were disconnected. 5/2/96.	$6,000 10/28/99	250.123(c)(1) Redesignated 250.803(c)(1)
Aviva America, Inc. G–1998–011 ..	Not testing gas-detection system (1 period) and not testing fire-detection system (2 periods). 6/23/97–6/30/97.	$3,000 3/25/99	250.124(a)(8) Redesignated 250.804(a)(8)
Vastar Resources, Inc G–1998–013.	Condensate accumulator, condensate pump, skimmer pump and flotation pump not equipped with fusible material. Pressure safety valve (PSV) on compressor 1st stage discharge and PSH on compressor 1st and 2nd stage discharges set above the working pressure. 7/14/97–1/21/98.	$20,000 7/8/99	250.122(b) 250.123(b)(1)(i) 250.123(b)(1)(iii) Redesignated 250.802(b) 250.803(b)(1)(i) 250.803(b)(1)(iii)
Chieftain International (U.S.) Inc. G–1998–019.	Pollution coming from the CPI Unit water overboard line, the CPI Unit LSH failed to activate and shut-in all wells. Well B–15 flows into low pressure system but serviced through high pressure system. The total select group on the panel was in bypass. Therefore, Well B–15 would not shut-in. 10/10/97.	$20,000 2/10/99	250.123(c)(1) Redesignated 250.803(c)(1)
Callon Petroleum Operating Company G–1998–022.	The level safety low (LSL) for the High Pressure Separator was leaking gas and water. 2/7/97.	$5,000 3/11/99	250.20(a) Redesignated 250.120(a)
Vintage Petroleum, Inc. G–1998–026.	The manual block valve below the pressure safety valve on the compressor discharge was detected in the closed position. 1/19/98–1/28/98.	$50,000 2/16/99	250.123(c)(1) Redesignated 803(c)(1)
Shell Frontier Oil & Gas, Inc. G–1998–029.	No record of testing PSV's on 1st stage and 2nd stage compressor discharge units located on South Pass 62 A, B, and C/D platforms. 9/29/97.	$36,000 7/22/99	250.124(a)(2) Redesignated 804(a)(2)
Stone Energy Corporation G–1998–038.	Operator failed to render a slop oil tank inert prior to conducting burning operations on the tank. This action also was a failure to comply with the Welding, Burning, and Hot-Tapping Plan. 4/11/97.	$12,000 1/22/99	250.52(d)(4) Redesignated 402(d)(4)
Shell Offshore, Inc. G–1998–039 ..	The subsurface safety valve (SSSV) was removed on Well JA–1 for routine operations and was left unattended. 1/26/98–1/28/98.	$45,000 4/6/99	250.121(h)(3) Redesignated 801(h)(3)
Norcen Explorer, Inc. G–1998–040	The drilling unit was not equipped with an operable traveling block safety device. 1/31/98–2/10/98.	$165,000 2/17/99	250.51(b)(1) Redesignated 401(b)(1)
Basin Exploration, Inc. G–1998–044.	Rig personnel were observed working very close to an open hole on the rig drill floor without utilizing fall protection gear. 1/28/98.	$15,000 6/3/99	250.20(a) Redesignated 120(a)

OCS CIVIL PENALTIES PAID—Continued

Calendar Year 1999

Operator name and case No.	Violation summary and violation date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
Chevron U.S.A., Inc. G–1998–047	The 10-inch bulk oil departing pipeline did not have a PSL installed. 6/1/97.	$10,000 4/26/99	250.154(b)(3) Redesignated 1004(b)(3)
Chevron U.S.A., Inc. G–1998–050	The SCSSV was bypassed in Well No. 3. 5/30/98–6/3/98.	$25,000 3/29/99	250.123(c)(1) Redesignated 803(c)(1)
Pennzoil Exploration and Production Company G–1998–054.	The SCSSV for Well A–3 was blocked out of service. 6/24/98.	$12,000 5/12/99	250.123(c)(1) Redesignated 803(c)(1)
Texaco Exploration and Production, Inc. G–1998–056.	The SSV relay for Well B–6 was bypassed and blocked out of service. 8/5/98–8/6/98.	$16,000 5/12/99	250.803(c)(1)
Basin Exploration, Inc. G–1998–057.	The SCSSV for Well A–2 was bypassed and blocked out of service. 4/19/98–4/20/98.	$12,000 7/6/99	250.123(c)(1) Redesignated 803(c)(1)
Conoco, Inc. G–1998–061	During testing, the PSH #1 on the departing KAH–400 pipeline did not shut-in the associated shutdown valve of the KAA–500 pipeline. PSH #2 on the KAH–400 pipeline was pinned out of service thus bypassing the associated shutdown valve on the KAH–400 pipeline. Well N–009 tubing plug tested 4/29/98; found leaking; attempted repair on 5/8/98. 7/20/98 5/8/98–7/20/98.	$64,000 12/13/99	250.1004(b)(3) 250.1004(b)(4) 250.1004(c) 250.124(a)(1)(iii) The last regulation was redesignated 250.804(a)(1)(iii)
Stone Energy Corporation G–1998–063.	An injury occurred when welding and burning operations were conducted within 35 feet of master safety system, high pressure separator and high pressure oil separator. 3/11/98.	$35,000 7/30/99	250.52(a) Redesignated 402(a)
Forcenergy, Inc. G–1998–064	The flow safety valves for Wells Nos. 11 and 13 were not tested within the required timeframe. 9/17/97–8/28/98.	$28,000 11/3/99	250.124(a)(5) Redesignated 804(a)(5)
Seneca Resources Corporation G–1998–066.	Compressor #3 pressure safety lows (PSL's) were in a bypass mode on 11/25/97 (i.e., Class C lockout for Compressor #3 was in bypass). They were unattended and were not in bypass due to testing, start-up, or maintenance. 11/25/97.	$18,000 7/29/99	250.123(c)(1) Redesignated 803(c)(1)
Texaco Exploration and Production, Inc. G–1999–003.	The LSL #2 for glycol reboiler, BBC–9042, and the PSHL for the downtherm pumps, PBA–9100A and PBA–9100B, were bypassed (had tie-wraps around relay pins on control panel holding them in); the one PSHL protects both pumps. 8/18/98–8/19/98 8/19/98.	$17,000 12/17/99	250.803(c)(1)
Texaco Exploration and Production, Inc. G–1999–014.	The PSHL and ESD for Well No. 46–D were bypassed. 9/21/98 9/25/98.	$12,000 11/15/99	250.804(a)(1)(iii) 250.803(c)(1)

Dated: February 17, 2000.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 00–5712 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

Redwood National Park Boundary Revision

July 16, 1999.

AGENCY: National Park Service; Interior.

ACTION: Notice of boundary revision, Redwood National Park.

SUMMARY: This notice announces a revision of the boundaries of Redwood National Park to include within the boundaries six parcels of land adjacent to the park.

FOR FURTHER INFORMATION CONTACT: Sondra S. Humphries, Chief, Pacific Land Resources Program Center at (415) 427–1416.

SUPPLEMENTARY INFORMATION: Pursuant to Sec. 2 (a) of Public Law 90–545 approved October 2, 1968, notice is hereby provided that the boundaries of Redwood National Park are modified, effective as of the date of publication of this notice, to include all that certain property as noted on map REDW 167–60501a, August 1998 situated in the County of Humboldt, State of California. Detailed information is on file at the National Park Service, Pacific Land Resources Program Center, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372.

Dated: July 16, 1999.

James R. Shevock,

Associate Regional Director for Resources, Stewardship and Partnerships, Pacific West Region.

Note: This document was received at the Office of the Federal Register on March 6, 2000.

[FR Doc. 00–5829 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Grant Funds—Fiscal Year 2000 Demonstration Project Grant Program—Chesapeake Bay Gateways and Water Trails Initiative

AGENCY: National Park Service (NPS); Interior.

ACTION: Notice of FY2000 demonstration project grant program—Chesapeake Bay Gateways and Water Trails Initiative.

SUMMARY: This notice announces the availability of grant funds under the Chesapeake Bay Initiative Act of 1998 (the Act), Public Law 105–312, and provides information on the grant application process.

APPLICATION DUE DATE: The NPS will accept grant applications postmarked or sent via overnight delivery on or before April 14, 2000. Applications should be sent to: Jonathan Doherty, Program Manager, National Park Service—Chesapeake Bay Program Office, 410 Severn Avenue, Suite 109, Annapolis, MD 21403.

MORE INFORMATION: Complete information about the demonstration project grant program and the application requirements can be found on the internet at http://www.chesapeakebay.net/gateways.htm. Questions should be directed to: Fred Herling, National Park Service, 200 Chestnut Street, 3rd floor, Philadelphia, PA 19106, phone number 215–597–1782.

ELIGIBILITY: For Fiscal Year 2000, $400,000 is available for demonstration project grants to implement the Act. Grants may be provided to non-profit organizations, state and local government agencies for projects that support a collaborative, partnership network linking the many land-and water-based resources and special places around the Chesapeake Bay region. Grants will be awarded for projects that best demonstrate the initial components of the network. Applications will be required to focus on achieving one or more of the following: Enhancing place-based interpretation and education about the Bay and its related resources, facilitating increased access (physical and informational) to the Bay and its related resources, and fostering conservation and restoration of the Bay and its related resources. With the exception of proposals for new or enhanced water trails (which could be located anywhere within the Chesapeake Bay watershed), all other proposals must be for projects located within the main portion of the Bay or along the tidal portions of its tributaries.

MATCHING FUNDS: Applicants may request federal funding for up to 50% of the total project cost. Matching share value may include in-kind contributions of services or materials, cash or revenue sources. Other federal funds may not be used as a matching share. No more than 10% of all eligible project costs can be used for administrative purposes.

SCHEDULE: Official Announcement: February 28, 2000; Application Due Date: Postmarked or sent via overnight delivery by April 14, 2000; Notification to Applicants: May 12, 2000; Additional Materials Due from Successful Applicants: June 2, 2000; Anticipated Date of Grant Award: June 15, 2000.

Dated: March 1, 2000.

Chrysandra L. Walter,

Deputy Regional Director, National Park Service.

[FR Doc. 00–5828 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: Notice is hereby given that the comment period for the Draft Supplemental Environmental Impact Statement to the 1996 Final Supplement to the Final Environmental Statement for the Animas-La Plata Project is extended an additional 30 days to April 17, 2000.

DATES: The end of the public comment period, as noted in the **Federal Register** (65 FR 2428) on January 14, 2000, was March 17, 2000. The public comment period is now extended to April 17, 2000.

ADDRESSES: Written comments should be addressed to Pat Schumacher, Manager, Four Corners Division, Western Colorado Area Office, 835 Each Second Avenue, Suite 300, Durango, Colorado 81301–5475; faxogram (970) 385–6539; E-mail ALPDSEISComments@uc.usbr.gov.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Pat Schumacher, Manager, Four Corners Division, (970) 385–6590.

Dated: March 3, 2000.

Eluid L. Martinez,

Commissioner of Reclamation.

[FR Doc. 00–5755 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: The U.S. International Trade Commission (USITC) has submitted the following information collection requirements to the Office of Management and Budget (OMB) requesting emergency processing for review and clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Commission has requested OMB approval of this submission by COB March 14, 2000.

EFFECTIVE DATE: February 28, 2000.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332–409, The Impact on the U.S. Economy of Including the United Kingdom in a Free Trade Arrangement with the United States, Canada, and Mexico, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the Committee on Finance of the U.S. Senate. The Commission expects to deliver the results of its investigation to the Committee by August 18, 2000.

SUMMARY OF PROPOSAL:

(1) Number of forms submitted: one.

(2) Title of form: The Impact on the U.S. Economy of Including the United Kingdom in a Free Trade Arrangement with the United States, Canada, and Mexico Telephone Survey for U.S. and Foreign Businesses.

(3) Type of request: new.

(4) Frequency of use: Telephone survey, single data gathering, scheduled for 2000.

(5) Description of respondents: Representative selection of U.S. and foreign firms and organizations that export products to the United States, United Kingdom, Canada, and Mexico.

(6) Estimated total number of respondents: 300.

(7) Estimated total number of hours to complete the forms: 150.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in

a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from Sylvia McDonough, Office of Industries, USITC (202–205–3393). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the survey is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: February 29, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–5643 Filed 3–8–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–406 & 408 (Review)]

Electrolytic Manganese Dioxide From Greece and Japan; Notice of Commission Determination To Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing.

SUMMARY: Upon request of domestic producers Kerr-McGee Chemical LLC and Chemetals, Inc., ("Petitioners") and domestic importer Eveready Battery Co., ("Eveready") the Commission has determined to conduct a portion of its hearing in the above-captioned investigations scheduled for March 2, 2000, in camera. See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 C.F.R. 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Willis S. Martyn, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–2784, e-mail wmartyn@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Petitioners and Eveready have justified the need for a closed session. Petitioners and Eveready seek a closed session to allow for a discussion of their business operations. In this investigation, the aggregate data of the domestic industry and information on purchasers' operations are business proprietary information (BPI). Because discussion by Petitioner and Eveready of their own operations and of the domestic industry's data will necessitate disclosure of business proprietary information (BPI), it can only occur if a portion of the hearing is held in camera. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will begin with a public presentation by the parties opposing revocation of the antidumping duty order (the Petitioners), with questions from the Commission. In addition, the hearing will include a 40-minute in camera session for a confidential presentation by Petitioners, a rebuttal presentation by foreign producers Tosoh Hellas, A.I.C., and Tosoh Corp. (collectively, "Tosoh"), a confidential presentation by Eveready, a rebuttal presentation by Petitioners, and for questions from the Commission relating to the BPI. Petitioners will receive a total of 20 minutes, with Eveready and Tosoh receiving the remainder. For any in camera session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. See 19 C.F.R. 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the in camera session will be taken from their respective overall allotments for the hearing. All persons planning to attend the in camera portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 C.F.R. 201.39) that, in her opinion, a portion of the Commission's hearing in Electrolytic Manganese Dioxide from Greece and Japan, Invs. Nos. 731–TA–406 & 408 (Review) may be closed to the public to prevent the disclosure of BPI.

Issued: March 2, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–5644 Filed 3–8–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–868–871 (Preliminary)]

Steel Wire Rope From China, India, Malaysia, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–868–871 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China, India, Malaysia, and Thailand of steel wire rope, other than of stranded wire and other than brass plated wire, not fitted with fittings or made up into articles, provided for in subheadings 7312.10.60 and 7312.10.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping investigations in 45 days, or in this case by April 17, 2000. The Commission's views are due at the Department of Commerce within five business days thereafter, or by April 24, 2000.

For further information concerning the conduct of these investigations and rules of general application, consult the

Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 1, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Taylor (202–708–4101), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on March 1, 2000, by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 22, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Karen Taylor (202–708–4101) not later than March 20, 2000, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 27, 2000, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: March 3, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–5784 Filed 3–8–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 USC 9622(d), notice is hereby given that on February 22, 2000, a proposed Consent Decree ("Decree") in *United States* v. *Northrop Grumman Corporation, et al.*, Civil Action No. CV–00–1070, was lodged with the United States District Court for the Eastern District of New York. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 USC 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency ("EPA") against defendants Northrop Grumman Corporation, Marmon Corporation. Occidental Chemical Corporation, Town of Oyster Bay, Jakobson Shipyard, Inc., and Keyspan Corporation relating to the Syosset Landfill Superfund Site ("Site") located in the Village of Syosset, in the Town of Oyster Bay, Nassau County, New York. The Complaint alleges that the Town of Oyster Bay is liable as an owner and/or operator of the Site pursuant to Section 107(a)(2) of CERCLA, 42 USC 9607(a)(2). The remaining defendants are liable as generators, or successors to generators, who arranged for the disposal of hazardous substances possessed by them at the Site pursuant to Section 107(a)(3) of CERCLA, 42 USC 9607(a)(3).

Under the terms of the Decree, the settling defendants will deposit into interest-bearing escrow accounts, within 30 days of receipt of this Notice, $890,000 in reimbursement of EPA's past response costs incurred at the Site. Within 20 days after notice of entry of the Decree, settling defendants will withdraw and pay to the United States all principal and accrued interest from the designated escrow accounts.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, PO Box 7611, Washington, DC 20044–7611, and should refer to United States v. Northrop Grumman Corporation, et al., Civil Action No. CV–00–1070, D.J. Ref. 90–11–2–491/1.

The Decree may be examined at the Office of the United States Attorney,

Eastern District of New York, One Pierrepont Plaza, Brooklyn, New York 11201, and at U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, Department of Justice, PO Box 7611, Washington DC 20044–7611. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–5714 Filed 3–8–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in the action entitled *United States of America* v. *Raymark Industries, Inc., et al.*, Civil Action No. 3:97CV00035 (D. Conn.), was lodged on February 18, 2000 with the United States District Court for the District of Connecticut. The proposed consent decree resolves potential claims of the United States, on behalf of the U.S. Environmental Protection Agency ("EPA"), under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601–9675, against third-party defendant the Town of Stratford, Connecticut. These potential claims are for recovery of costs incurred and to be incurred by the United States with respect to certain municipal properties included within the Raymark Industries, Inc. Superfund Site ("Site") in Stratford, Connecticut.

Under the terms of the proposed consent decree, the Town of Stratford will (1) Pay the United States $487,832 in partial reimbursement of past and future federal response costs with respect to the Site; (2) Provide EPA with continuing access to Town properties that are part of the Site; and (3) Establish a public registry of those municipal and residential properties within the Town of Stratford that contain residual hazardous waste which was not removed during response actions by EPA or the State of Connecticut at these properties.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, and should refer to *United States* v. *Raymark Industries, Inc., et al.*, Civil Action No. 3:97CV00035 (D. Conn.), DOJ Ref. No. 90–7–1–545E.

The proposed consent decree may be examined at the offices of EPA Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023, and the Office of the United States Attorney, 915 Lafayette Blvd., Bridgeport, CT 06604. A copy may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611. In requesting a copy by mail, please refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page reproduction costs for the Decree and Appendix) made payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 00–5713 Filed 3–8–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

March 1, 2000.

The Department of Labor has submitted the following (see below) public information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested March 24, 2000. A copy of the ICR with applicable supporting documentation, may be obtained by contacting the Department of Labor, Departmental Clearance Officer, Ira Mills at (202) 219–5096, ext. 143, or by E-mail at Mills-Ira@dol.gov. The proposed Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1), the subject of this ICR, is available for viewing and downloading through the Department of Labor's Internet site (http://www.efast.dol.gov).

Comments and questions about the ICR listed below should be sent to the Office of Information and Regulatory Affairs, Attn: Desk Officer for Pension and Welfare Benefits Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316) within 10 days of the date of this publication in **Federal Register**. After that date and through May 8, 2000, further comments may be submitted to Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210, in response to its separate Notice and request for comments also published in today's **Federal Register.**

OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used:
- Enhance the quality, utility, and clarity of the information to be collected:
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers.

OMB Number: 1210– 0NEW.

Frequency: On occasion.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Total Respondents: 60,250.

Total Responses: 60,250.

Estimated Total Burden Hours: 20,100.

Estimated Total Burden Cost: $22,900.

Description: Under part 1 of Title 1 of the Employee Retirement Income Security Act of 1974 (ERISA), Title IV of ERISA, and the Internal Revenue

Code of 1986, as amended, administrators of pension and welfare benefit plans (collectively, employee benefit plans) subject to those provisions and employers sponsoring certain fringe benefit plans and other plans of deferred compensation are required to file returns/reports annually concerning the financial condition and operations of the plans. These reporting requirements are satisfied generally by filing the Form 5500 Series in accordance with its instructions and the related regulations.

In August of 1998, the Department of Labor, Pension and Welfare Benefits Administration, Department of the Treasury, Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (collectively, the Agencies) received approval for the revised and streamlined Form 5500 Series, subject to the Agencies' solicitation of public comments on a computer scannable format for the Form 5500. A notice requesting comments from the public on computer scannable formats was published by the Agencies on June 28, 1999 (64 FR 34686). The final computer scannable "hand print" and "machine-print" formats for the Form 5500 were announced on February 2, 2000 in connection with the Agencies' Notice of Adoption of Revised Forms (65 FR 5026).

The computer scannable formats were developed to facilitate the implementation of the new computerized system to process the Form 5500 and IRS Form 5500–EZ—the ERISA Filing and Acceptance System, or EFAST. EFAST is designed to simplify and expedite the receipt and processing of the new Form 5500 and Form 5500–EZ by relying on computer scannable forms and electronic filing technologies. The computer scannable forms are being implemented for 1999 plan year filings. The Form 5500 and Form 5500–EZ for 1999 plan years also may be filed electronically via modem, magnetic tape, floppy diskette, or CD–ROM.

In order to participate in the electronic filing program, applicants will be required to submit an Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1), the subject of this ICR. The Internal Revenue Service currently uses forms for similar purposes. This new EFAST form was designed to meet the needs of the new processing system.

Applicants who may file the Form EFAST–1 include: (1) Individuals applying for an electronic signature to sign a Form 5500 or 5500–EZ as, or on behalf of, plan administrators, employers/plan sponsors, or Direct Filing Entities (DFEs) using modem, magnetic tape, floppy diskette, or CD–ROM to file electronically; (2) transmitters (a company, trade, business, or other person) applying for codes to transmit Forms 5500 and/or Forms 5500–EZ for electronic filing using modem, magnetic tape, floppy diskette, or CD–ROM; and, (3) software developers (a company, trade, business, or other person that creates, programs, or otherwise modifies computer software) applying for codes required to develop EFAST-compliant computer software for electronically preparing and filing the Form 5500 and/or Form 5500–EZ. Applicants will provide some or all of the following information depending on applicant type: name and title of applicant, mailing address, Employer Identification Number (EIN), telephone number, facsimile number and e-mail address (optional), contact person if different than applicant, and a signed agreement concerning the terms and conditions of the electronic filing program. Applicants will receive, depending on applicant type, some or all of the following: electronic signature; filer identification number; personal identification number; encryption key; electronic filing identification number; password; and software developer ID. Applicants will use these codes, as applicable, in connection with electronic filing, electronic transmission, or developing EFAST software for the Form 5500 and 5500–EZ.

The information provided by the applicants on EFAST–1, combined with the codes supplied to the applicants by the program, will allow EFAST to verify a filer, transmitter or software developer's standing as a qualified participant in the EFAST electronic filing program for the Form 5500 and 5500–EZ. EFAST–1 information also will establish a means of contact between the EFAST program and filers, transmitters, and software developers for information exchange.

Maureen D. Hill,

Acting Departmental Clearance Officer.

[FR Doc. 00–5764 Filed 3–8–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on April 12 and 13, 2000, in Room N 3437 A–D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to the public and will begin at 9 am lasting until approximately 4:30 p.m. the first day, April 12. On April 13, the meeting will begin at 9:00 a.m. and last no later than 4:00 p.m. However, if work is completed earlier on the draft report the committee will be working on, the meeting may end sooner.

During its November 1998 meeting, NACOSH decided that one of its areas of activity over the next two years would be to study OSHA's standards development process. The Committee has now completed its study after holding panel discussions during the last four meetings involving internal staff and members of the public who were involved with the OSHA standards setting process. This included people who had been involved with the development of the methylene chloride standard; those who had served on two types of advisory committees; representatives of consensus standards setting organizations and other professional associations; and representatives of other Federal regulatory agencies. During its April 12–13 meeting, the committee will be going over its draft report and recommendations in full detail. It is difficult to estimate how long this will take, but the first afternoon and all of the second day have been dedicated to this process.

Other agenda items will include an overview of current activities of the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH) which will be scheduled for the first morning, April 12.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Veneta Chatmon (phone: 202–693–1912; FAX: 202–693–1634) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–693–2350). For additional information contact: Joanne Goodell, Occupational Safety and Health Administration (OSHA); Room N–3641, 200 Constitution Avenue NW, Washington, DC, 20210 (phone: 202–693–2400; FAX: 202–693–1641; e-mail joanne.goodell@osha.gov; or at www.osha.gov).

Dated: Signed at Washington, DC, this 3rd day of March, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 00–5766 Filed 3–08–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Information Collection Request Submitted for Public Comment

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. By this notice, the Department is soliciting comments concerning the Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice. The proposed Form EFAST–1 is also available for viewing and downloading through the Department of Labor's Internet site (http://www.efast.dol.gov).

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 8, 2000.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information. Send comments to Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Under part 1 of Title 1 of the Employee Retirement Income Security Act of 1974 (ERISA), Title IV of ERISA, and the Internal Revenue Code of 1986, as amended, administrators of pension and welfare benefit plans (collectively, employee benefit plans) subject to those provisions and employers sponsoring certain fringe benefit plans and other plans of deferred compensation are required to file returns/reports annually concerning the financial condition and operations of the plans. These reporting requirements are satisfied generally by filing the Form 5500 Series in accordance with its instructions and the related regulations.

In August of 1998, the Department of Labor, Pension and Welfare Benefits Administration, Department of the Treasury, Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (collectively, the Agencies) received approval for the revised and streamlined Form 5500 Series, subject to the Agencies' solicitation of public comments on a computer scannable format for the Form 5500. A notice requesting comments from the public on computer scannable formats was published by the Agencies on June 28, 1999 (64 FR 34686). The final computer scannable "hand print" and "machine-print" formats for the Form 5500 were announced on February 2, 2000 in connection with the Agencies' Notice of Adoption of Revised Forms (65 FR 5026).

The computer scannable formats were developed to facilitate the implementation of the new computerized system to process the Form 5500 and the IRS Form 5500–EZ—the ERISA Filing and Acceptance System, or EFAST. EFAST is designed to simplify and expedite the receipt and processing of the new Form 5500 and Form 5500–EZ by relying on computer scannable forms and electronic filing technologies. The computer scannable forms are being implemented for 1999 plan year filings. The Form 5500 and Form 5500–EZ for 1999 plan years may also be filed electronically via modem, magnetic tape, floppy diskette, or CD–ROM.

In order to participate in the electronic filing program, applicants will be required to submit an Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1), the subject of this ICR. The Internal Revenue Service currently uses forms for similar purposes. This new EFAST form was designed to meet the needs of the new processing system.

Applicants who may file the Form EFAST–1 include: (1) Individuals applying for an electronic signature to sign a Form 5500 or 5500–EZ as, or on behalf of, plan administrators, employers/plan sponsors, or Direct Filing Entities (DFEs) using modem, magnetic tape, floppy diskette, or CD–ROM to file electronically; (2) transmitters (a company, trade, business, or other person) applying for codes to transmit Forms 5500 and/or Forms 5500–EZ for electronic filing using modem, magnetic tape, floppy diskette, or CD–ROM; and, (3) software developers (a company, trade, business, or other person that creates, programs, or otherwise modifies computer software) applying for codes required to develop EFAST-compliant computer software for electronically preparing and filing the Form 5500 and/or Form 5500–EZ. Applicants will provide some or all of the following information depending on applicant type: name and title of applicant, mailing address, Employer Identification Number (EIN),

telephone number, facsimile number and e-mail address (optional), contact person if different than applicant, and a signed agreement concerning the terms and conditions of the electronic filing program. Applicants will receive, depending on applicant type, some or all of the following: electronic signature; filer identification number; personal identification number; encryption key; electronic filing identification number; password; and software developer ID. Applicants will use these codes, as applicable, in connection with electronic filing, electronic transmission, or developing EFAST software for the Form 5500 and 5500–EZ.

The information provided by the applicants on EFAST–1, combined with the codes supplied to the applicants by the program, will allow EFAST to verify a filer, transmitter, or software developer's standing as a qualified participant in the EFAST electronic filing program for the Form 5500 and 5500–EZ. EFAST–1 information will also establish a means of contact between the EFAST program and filers, transmitters, and software developers for information exchange.

II. Review Focus

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

III. Current Actions

Currently, the Pension and Welfare Benefits Administration is requesting comments on the proposed Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1), the subject of this ICR. Although the Department has submitted the ICR to the Office of Management and Budget (OMB) using emergency review procedures,[1] and has requested approved by March 24, 2000, the Department will take comments received by May 8, 2000 into consideration in finalizing the Form EFAST–1, and in its submission to OMB for continuing approval of the ICR.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers.

Agency Form: EFAST–1.

OMB Number: 1210–NEW.

Frequency: On occasion.

Affected Public: Individuals or households; business or other for-profit; Not-for-profit institutions.

Total Respondents: 60,250.

Total Responses: 60,250.

Estimated Total Burden Hours: 20,100.

Estimated Total Burden Cost: $22,900.

Dated: March 3, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–5765 Filed 3–8–00; 8:45 am]

BILLING CODE 4510–29–M

[1] *See* the notice of Submission for OMB Emergency Review published by the Office of the Secretary, Department of Labor, which is also published in today's **Federal Register**.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting—March 2, 2000

TIME AND DATE: 10:00 a.m., Thursday, March 9, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Proposed Settlement Judge Rule (Notice of proposed rulemaking was published at 64 Fed. Reg. 61236 (Nov. 10, 1999)).

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 00–5834 Filed 3–6–00; 4:13 pm]

BILLING CODE 6735–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before April 10, 2000, to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Virginia Huth, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on December 21, 1999 (64 FR 71507). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the

collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request to Microfilm Records.
OMB number: 3095–0017.
Agency form number: None.
Type of review: Regular.
Affected public: Companies and organizations that wish to microfilm archival holdings in the National Archives of the United States or a Presidential library for micropublication.
Estimated number of respondents: 5.
Estimated time per response: 10 hours.
Frequency of response: On occasion (when respondent wishes to request permission to microfilm records).
Estimated total annual burden hours: 50.
Abstract: The information collection is prescribed by 36 CFR 1254.92. The collection is prepared by companies and organizations that wish to microfilm archival holdings with privately-owned equipment. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.94, to evaluate the records for filming and to schedule use of the limited space available for filming.

Dated: March 2, 2000.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 00–5749 Filed 3–8–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Council on the Humanities; Meeting

March 3, 2000.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, D.C. on March 27–28, 2000.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, N.W., Washington, D.C. A portion of the morning and afternoon sessions on March 27–28, 2000, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on Mary 27, 2000 will be as follows:

Committee Meetings

(Open to the Public)
Policy Discussion

9–10:30 a.m.

Education Programs—Room M–07
Federal/State Partnership—Room 507
Preservation and Access/Challenge Grants—Room 415
Public Programs—Room 420
Research Programs—Room 315

(Closed to the Public)
Discussion of specific grant applications and programs before the Council

10:30 a.m. until Adjourned

Education Programs—Room M–07
Federal/State Partnership—Room 507
Preservation and Access/Challenge Grants—Room 415
Public Programs—Room 420
Research Programs—Room 315

1:30–2:30 p.m. Jefferson Lecture Committee Meeting—Room 430

The morning session on March 28, 1999 will convene at 9:15 a.m., in the 1st Floor Council room, M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting

Reports
A. Introductory Remarks and Presentations
B. Staff Report
C. Congressional Report
D. Reports on Policy and General Matters
1. Overview
2. Research Programs
3. Education Programs
3. Preservation and Access/Challenge Grants
4. Public Programs
5. Federal/State Partnership
6. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Ms. Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Laura S. Nelson,

Advisory Committee, Management Officer.

[FR Doc. 00–5725 Filed 3–8–00; 8:45 am]

BILLING CODE 7536–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: 2:30 p.m., Tuesday, March 14, 2000.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW, Suite 800, Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, (202) 220–2372.

AGENDA:

I. Call to Order
II. Approval of Minutes: December 6, 1999, Regular Meeting
III. Audit Committee Report: January 19, 2000, Meeting
IV. Treasurer's Report
V. Executive Director's Quarterly Management Report
VI. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 00–5860 Filed 3–6–00; 4:58 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company and MidAmerican Energy Company Quad Cities Nuclear Power Station, Units 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License

Nos. DPR–29 and DPR–30 for Quad Cities Nuclear Power Station, Units 1 and 2, to the extent held by Commonwealth Edison Company (ComEd). ComEd currently owns 75 percent of Quad Cities and is the licensed operator of both stations. The remaining interest in Quad Cities is owned by MidAmerican Energy Company (MidAmerican). The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of ComEd) and PECO Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The facility is located in Rock Island County, Illinois.

According to an application for approval filed by ComEd, GENCO would become the owner of ComEd's ownership interest in the units following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation and maintenance of Quad Cities. GENCO and MidAmerican would be responsible for the decommissioning costs of Quad Cities in accordance with their respective ownership percentages, with GENCO being responsible for the eventual performance of decommissioning activities. No physical changes to the facility or operational changes are being proposed in the application. The proposed transfer does not involve any change with respect to the non-operating ownership interest held by Mid-American.

The proposed amendments would replace references to ComEd in the licenses with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000 any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000 persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, as supplemented January 14, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5736 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–10, 50–237 and 50–249]

Commonwealth Edison Company Dresden Nuclear Power Station, Units 1, 2 and 3; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. DPR–2, DPR–19 and DPR–25 for

Dresden Nuclear Power Station, Units 1, 2 and 3, currently held by Commonwealth Edison Company (ComEd), as the owner and licensed operator. The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of ComEd) and PECO Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The facility is located in Grundy County, Illinois.

According to an application for approval filed by ComEd, GENCO would assume ownership of the facility following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of Dresden. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendments would replace references to ComEd in the license with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000 any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicant may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000 persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, as supplemented January 14, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

Lawrence W. Rossbach,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5738 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–454 and 50–455]

Commonwealth Edison Company, Byron Station, Units 1 and 2, Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. NPF–37 and NPF–66 for Byron Station, Units 1 and 2, currently held by Commonwealth Edison Company (ComEd), as the owner and licensed operator. The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of ComEd) and PECO Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The facility is located in Ogle County, Illinois.

According to an application for approval filed by ComEd, GENCO

would assume ownership of the facility following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of Byron. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendments would replace references to ComEd in the license with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings as required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000 any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicant may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the consideration contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000 persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, as supplemented January 14, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http:www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Sr. Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 00–5739 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN50–456 and STN 50–457]

Commonwealth Edison Company, Braidwood Station, Units 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. NPF–72 and NPF–77 for Braidwood Station, Units 1 and 2, currently held by Commonwealth Edison Company (ComEd), as the owner and licensed operator. The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of ComEd) and PECO Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. Braidwood is located in Will County, Illinois.

According to an application for approval filed by ComEd, GENCO would assume ownership of the facility following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of Braidwood. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendments would replace references to ComEd in the license with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly,

through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000 any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicant may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Application," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000 persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, as supplemented January 14, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Sr. Project Manager, Section 2 Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5740 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Company LaSalle County Station, Units 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. NPF–11 and NPF–18 for LaSalle County Station, Units 1 and 2, currently held by Commonwealth Edison Company (ComEd), as the owner and licensed operator. The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of ComEd) and PECO Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The facility is located in LaSalle County, Illinois.

According to an application for approval filed by ComEd, GENCO would assume ownership of the facility following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of LaSalle. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendments would replace references to ComEd in the license with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of

1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000 any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicant may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, as supplemented January 14, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L. Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http:www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

Donna M. Skay,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5742 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company Zion Nuclear Power Station, Units 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. DPR–39 and DPR–48 for Zion Nuclear Power Station, Units 1 and 2, currently held by Commonwealth Edison Company (ComEd), as the owner and licensed operator. The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of ComEd) and PECO Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The facility is located in Lake County, Illinois.

According to an application for approval filed by ComEd, GENCO would assume ownership of the facility following approval of the proposed transfer of the licenses, and would become exclusively responsible for the decommissioning of both Zion units, which have ceased operations. No physical changes to the facility or changes to decommissioning activities are being proposed in the application.

The proposed amendments would replace references to ComEd in the licenses with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, not

withstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By April 29, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicants may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon; Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, and supplement dated January 14, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

Dino C. Scaletti,

Senior Project Manager, Decommissioning Section, Project Directorate IV and Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5743 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353]

PECO Energy Company Limerick Generating Station, Units 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. NPF–39 and NPF–85 for Limerick Generating Station, Units 1 and 2 (Limerick Units 1 and 2). PECO Energy Company (PECO) is currently the owner and the licensed operator of Limerick Units 1 and 2. The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of Commonwealth Edison Company) and PECO. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The facility is located in Montgomery County, Pennsylvania.

According to an application for approval filed by PECO, GENCO would assume ownership of the facility following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of Limerick Units 1 and 2. No physical changes to the facilities or operational changes are being proposed in the application.

The proposed amendments would replace references to PECO in the licenses with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer of the licenses.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to

intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon; J.W. Durham, Sr., Esquire, Sr. V.P. & General Counsel, PECO Energy Company, 2301 Market Street, S26–1, Philadelphia, PA 19101 (phone 215–841–4250, fax 215–841–4282 or e-mail JDURHAM@PECO—Energy.COM); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, as supplemented January 3, and February 14, 2000, filed by PECO, and the supplement dated January 14, 2000, filed by Commonwealth Edison Company, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Website (http://www.nrc.gov).

Dated at Rockville, Maryland, this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5735 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–171, 50–277 and 50–278]

Peco Energy Company; Peach Bottom Atomic Power Station, Units 1, 2, and 3; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. DPR–12, DPR–44, and DPR–56 for Peach Bottom Atomic Power Station, Units 1, 2 and 3 (Peach Bottom Units 1, 2, and 3), to the extent held by PECO Energy Company (PECO). PECO is currently the sole owner of Peach Bottom Unit 1, holds a 42.49 percent ownership interest in Peach Bottom Units 2 and 3, and is the licensed operator of all three Peach Bottom units. The remaining interests in Peach Bottom Units 2 and 3 are owned by Public Service Electric and Gas Company (PSE&G), Delmarva Power & Light Company (DP&L), and Atlantic City Electric Company (ACE). The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of Commonwealth Edison Company) and PECO. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The facility is located in York County, Pennsylvania.

According to an application for approval filed by PECO, GENCO would become the owner of PECO's ownership interest in each of the units following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of Peach Bottom Units 1, 2, and 3. No physical changes to the facilities or operational changes are being proposed in the application. The proposed transfer does not involve any change with respect to the non-operating ownership interests held by PSE&G, DP&L and ACE.

The proposed amendments would replace references to PECO in the licenses with references to GENCO and make other changes for administrative purposes to reflect the proposed license transfers.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provide in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000, any person whose interest may be affected by the Commission's action on the application

may request a hearing, and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request for petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon J.W. Durham, Sr., Esquire, Sr. V.P. & General Counsel, PECO Energy Company, 2301 Market Street, S26–1, Philadelphia, PA 19101 (phone 215–841–4250, fax 215–841–4282 or e-mail JDURHAM@PECO-Energy.COM); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, as supplemented January 3, and February 14, 2000, filed by PECO, and the supplement dated January 14, 2000, filed by Commonwealth Edison Company, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Website (http://www.nrc.gov).

Dated at Rockville, Maryland, this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5737 Filed 3–8–00; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

Peco Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56 issued to PECO Energy Company (the licensee) for operation of the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, located in York County, Pennsylvania.

The proposed amendment would add a note to the Completion Time of Condition A for Technical Specification (TS) 3.7.2, "Emergency Service Water (ESW) System and Normal Heat Sink." This note would provide a one-time extension to the completion time (allowed outage time) from 7 to 14 days for one ESW subsystem inoperable.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change adds a note to the Completion Time of Condition A for Technical Specification 3.7.2 ("Emergency Service Water (ESW) System and Normal Heat Sink"). This note extends the completion time for the Condition of one Emergency Service Water (ESW) subsystem inoperable from 7 to 14 days. This note, which will expire on May 31, 2000, allows the replacement of the ESW pump currently scheduled to occur in May 2000. The ESW system is not an input into the probability of occurrence of any of the accidents previously evaluated in the SAR [Safety Analysis Report]. Since accident initiation is not dependent on the operability of either ESW subsystem, changing the maximum allowable time which an ESW subsystem can be inoperable does not involve a significant increase in the probability of an accident previously evaluated.

The ESW system is used to mitigate the consequences of accidents as discussed in the PBAPS, Units 2 and 3, UFSAR [Updated Final Safety Analysis Report], Section 14.6. With the "B" subsystem inoperable, the other subsystem is capable of providing the heat removal function with the "A" ESW pump. In addition, the Emergency Cooling Water pump can provide this function. However, removal of the "B" ESW pump from service would reduce system redundancy. As a result of the loss of redundancy, the Core Damage Probability (CDP) will increase slightly. A comparison to the risk criteria provided in Regulatory Guide 1.174 ("An Approach For Using Probabilistic Risk Assessment In Risk-Informed Decisions On Plant-Specific Changes To The Current Licensing Basis") and Regulatory Guide 1.177 ("An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications") was performed to benchmark the significance of the temporary ESW pump maintenance configuration. This comparison reveals that the change in calculated core damage frequency (CDF) over the 14 day outage time represents a small fraction of the risk considered as the threshold for risk significance. The calculated CDP, the CDF increase multiplied by the fraction of the year this configuration will exist (14 days), is only 7% of the 5E–7 CDP risk significance threshold cited in RG 1.177 for Unit 2, and 3% for Unit 3 for single allowed out-of-service time Technical Specification changes.

These small fractions demonstrate that the risk incurred during the "B" ESW pump outage is not risk significant.

The 100% capacity Emergency Cooling Water (ECW) pump will function as an additional barrier along with the remaining ESW subsystem. However, this additional barrier is not required to ensure the CDP remains below the risk significance threshold cited in RG 1.177. The ECW pump is capable of providing the heat removal function that ESW normally provides during the additional seven (7) day period which is being requested for pump maintenance activities.

The ECW pump receives an automatic start signal coincident with the ESW pumps. The ECW pump is seismically qualified and is powered from a safety-related power source. The safety-related power source used to power the ECW pump is different than the safety-related power source used to power the remaining ESW subsystem. The ECW pump is not safety-related. However, during the replacement of the "B" ESW pump, appropriate actions will be in place to ensure that no planned activities will effect the operability of the remaining ESW subsystem including all support systems associated with the remaining ESW pump, and the ECW pump.

Based on the above, extending the completion time from 7 days to 14 days, when one ESW subsystem is inoperable, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The ESW system is not an accident initiator, nor is any new failure mode introduced by an extension of the completion time from 7 days to 14 days, for the Condition of one ESW subsystem inoperable. This change only affects the single failure capability of the ESW system in that only the "A" ESW system pump will be operable. During this seven (7) day extension, the ECW pump is planned to be maintained available to serve as a backup to the "A" ESW pump. The design basis heat removal capability of this equipment is not being reduced during this seven (7) day period, since one subsystem of ESW (or the ECW pump) is capable of meeting the heat removal requirement in the unlikely possibility of the LOCA [loss-of-coolant accident] coincident with a loss-of-offsite power. Additionally, the method of operation of equipment which utilizes ESW for cooling is not being changed. The length of time that PBAPS, Unit 2 and 3 can operate in Modes 1, 2 and 3 with one ESW subsystem inoperable, does not create a different type accident than any previously evaluated. Changing the length of time with one ESW subsystem inoperable does not create any new failure modes or change any evaluated failure modes. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

This change will not involve a significant reduction in a margin of safety. This change only affects the single failure capability of the ESW system in that only the "A" ESW system pump will be operable. The design basis heat removal capability of this equipment is not being reduced during this seven (7) day period, since one subsystem of ESW (or the ECW pump) is capable of meeting the heat removal requirement in the unlikely possibility of the LOCA coincident with a loss-of-offsite power. Additionally, the method of operation of equipment which utilize ESW for cooling is not being changed.

With adequate heat removal capability, the equipment necessary to function following a design basis accident will be able to perform their required mitigating functions. Therefore, this change does not involve a significant reduction in a margin of safety.

As a result of the loss of redundancy, the Core Damage Probability (CDP) does increase slightly. The calculated CDP, the CDF increase multiplied by the fraction of the year this configuration will exist (14 days), is only 7% of the 5E–7 CDP risk significance threshold cited in RG [Regulatory Guide] 1.177 for Unit 2, and 3% for Unit 3. These small fractions demonstrate that the risk incurred during the "B" ESW pump outage is not significant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 10, 2000 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in

proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 29, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5747 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company Salem Generating Station, Unit Nos. 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses DPR–70 for Salem Nuclear Generating Station, Unit No. 1, and DPR–75 for Salem Nuclear Generating Station, Unit No. 2, to the extent held by PECO Energy Corporation (PECO). PECO holds a 42.59-percent ownership interest in both Salem units, which are operated by Public Service Electric and Gas Company (PSE&G). The remaining interests in Salem, Unit Nos. 1 and 2, are owned by Delmarva Power & Light Company and Atlanta City Electric Company. The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of Commonwealth Edison Company) and PECO. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer.

According to the application for approval filed by PECO, GENCO would become the owner of PECO's ownership interests in each of the Salem units following approval of the proposed transfer of the licenses. After this transfer, PSE&G would continue to be exclusively responsible for the operation, maintenance, and eventual decommissioning of Salem Nuclear Generating Station. No physical changes to the facilities or operational changes are being proposed in the application. The proposed transfer does not involve any change with respect to the non-operating ownership interests held by Delmarva Power & Light and Atlantic City Electric Company, or the ownership interest of PSE&G.

The proposed amendments would replace references to PECO in the licenses with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 50,80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does not conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rulels of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and

Procedures for Hearings on License Transfer Applications, "of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: the counsel for PSE&G, Jeffrie J. Keenan, Esquire, Public Service Electric and Gas Company, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038 (tel: 856–339–5429, fax: 856–339–1234, and e-mail: jeffrie.keenan@pseg.com); the counsel for PECO, William E. Baer, Jr., Esquire, Morgan, Lewis and Bockius LLP, 1800 M Street, NW., Washington, DC 20036–5869 (tel: 202–467–7454, e-mail: webaer@mlb.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: ogclt@nrc.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be publishing in the **Federal Register** and served on the parties to the hearing.

As an alternative to request for hearing and petitions to intervene, by April 10, 2000, persons may submit written comments regarding the license transfer application, as provided for in CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and shoudl cite the publication date and page number of this **Federal Register notice.**

For further details with respect to this action, see the application dated December 20, 1999, and supplement from ComEd dated January 14, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 3rd day of March 2000.

For the nuclear Regulatory Commission.

William Gleaves,

Project Manager Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5741 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Florida Power Corporation, et al.

[Docket No. 50–302]

Crystal River Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the requirements of 10 CFR 70.51(d) for Facility Operating License No. DPR–72 issued to Florida Power Corporation, et. al. (FPC or the licensee), for operation of Crystal River Unit 3, located in Citrus County, Florida.

Environmental Assessment

Identification of the Proposed action

The proposed action would exempt the licensee from the requirement to perform a physical inventory of the fuel in the Crystal River Unit 3 spent fuel pool (SFP) every 12 months. Instead of this requirement, the licensee will perform a physical inventory of the fuel in the SFP within 90 days of removing missile shields covering the SFP, if a physical inventory had not been performed within the previous 12 months.

The proposed action is in accordance with the licensee's application for exemption dated July 14, 1999.

The Need for the Proposed Action

The underlying purpose of the annual physical inventory required by 10 CFR 70.51(d) is to verify that the material control and accounting procedures are sufficient to enable the licensee to account for the special nuclear material in the licensee's possession. When missile shields are in place on the SFP, movement of fuel in the SFP is not possible. Therefore, removing the missile shields for the sole purpose of conducting an annual inventory is an unnecessary burden on the licensee.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that it is administrative only and will have no environmental impact.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Crystal River Unit 3.

Agencies and Persons Consulted

In accordance with its stated policy, on February 15, 2000, the staff consulted with William Passetti, Chief, Department of Health, Bureau of Radiation Control, for the state of Florida, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an

environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 14, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 2nd day of March 2000.

For the Nuclear Regulatory Commission.

L.A. Wiens,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5744 Filed 3–9–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8698]

Plateau Resources Limited

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final Finding of No Significant Impact; Notice of Opportunity for Hearing.

SUMMARY: Plateau Resources Limited (PRL) requested that the U.S. Nuclear Regulatory Commission (NRC) amend NRC Source Material License SUA–1371, to approve the Reclamation Plan, as amended, for the Shootaring Canyon Uranium Mill near Ticaboo, Utah. An Environmental Assessment (EA) was performed by the NRC staff in accordance with the requirements of 10 CFR Part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Weller, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J8, Washington, D.C. 20555. Telephone (301) 415–7287.

SUPPLEMENTARY INFORMATION:

Background

Materials License SUA–1371 was originally issued by NRC on September 21, 1979, pursuant to Title 10, Code of Federal Regulations (10 CFR), Part 40, "Domestic Licensing of Source Material." The Shootaring Canyon site is licensed by the NRC under Materials License SUA–1371 to possess byproduct material in the form of uranium waste tailings and other uranium byproduct waste generated by the licensee's milling operations. The mill is currently in standby status, however, the licensee has requested that the license be amended. The license amendment would approve PRL's reclamation plan (RP). The proposed action is needed to minimize exposure to contaminated materials, once the mill operations have ceased, by reclaiming contaminated areas and stabilizing wastes. The goal of the RP is to permanently isolate and stabilize the tailings and associated contamination by minimizing disturbances by natural forces, and to do so without ongoing maintenance. The design objective is for stabilization to be effective for up to one thousand years, to the extent reasonable, and, in any case for at least 200 years, to provide reasonable assurance that releases of radon–222 from the residual radioactive material will be less than 20 $pCi/m^2/s$ (averaged over the entire impoundment), and to provide reasonable assurances to protect groundwater resources.

The facilities to be reclaimed include the following:

1. Mill buildings and equipment.
2. Tailings disposal area.
3. On-site contaminated areas.
4. Off-site contaminated areas (i.e., potential areas affected by windblown tailings).

The decommissioning and reclamation of the above facilities will include the following:

1. Remove mill structures and re-grade disturbed areas to blend with the surroundings. Radioactive waste and contaminated soils and concrete will be disposed of in the tailings impoundment.
2. Cover and stabilize the tailings impoundment area.
3. Replace stockpiled topsoil in selected areas for plant growth.
4. Re-vegetate disturbed areas using native and introduced species.

The RP further describes the designs, activities, schedule, and estimated costs for reclaiming PRL's Shootaring Canyon Uranium Mill site and tailings impoundment, for bonding and surety coverage requirements. The actual final reclamation design and cost analyses will depend on the quantity and depth of the tailings actually placed in the impoundment area and the surface area that they occupy. All conditions and commitments in the RP are subject to NRC inspection. Violation of the RP may result in enforcement action.

PRL submitted the RP in a letter dated January 10, 1997, and the RP was subsequently amended by letters of July 10, and December 17, 1997, and January 14, February 20, and September 3, 1998.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the RP for the Shootaring Canyon Uranium Mill, in accordance with 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions." In conducting its appraisal, the NRC staff considered the following: (1) information contained in the previous environmental evaluations of the Shootaring Canyon project; (2) information contained in PRL's RP; (3) environmental monitoring reports; and (4) information derived from NRC staff site visits and inspections of the Shootaring Canyon Uranium Mill site and from communications with PRL, the State of Utah Department of Environmental Quality, the U.S. Bureau of Land Management Henry Mountain Field Station, the U.S. National Park Service Glen Canyon National Recreation Area, the U.S. Fish and Wildlife Service, and the State of Utah Historic Preservation Officer. The results of the staff's appraisal are documented in an Environmental Assessment placed in the licensee's docket file. Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

Conclusions

The NRC staff has examined the actual and potential environmental impacts associated with the RP and has determined that the action is: (1) consistent with requirements of 10 CFR part 40; and (2) will not have long-term detrimental impacts on the environment. The following statements support the FONSI and summarize the conclusions resulting from the staff's environmental assessment:

1. An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to determine if applicable regulatory limits are exceeded. Radiological effluents from site operations have been and are expected to continue to remain below the regulatory limits.
2. Potential risks from the reclamation were assessed. Given the remote location, the small area of impact, and the past activities on the site, the staff has determined that the risk factors for health and environmental hazards are insignificant.

Alternatives to the Proposed Action

The proposed action that the NRC is considering is approval of PRL's RP and the amendment to a source material license issued pursuant to 10 CFR Part 40. The principal alternatives available to the NRC are:

1. Approve the license amendment request as submitted; or

2. Amend the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

3. Deny the request.

The NRC staff has concluded that there are no significant environmental impacts associated with the proposed action. Therefore, alternatives with equal or greater impacts need not be evaluated. The staff considers that Alternative 2 is the appropriate alternative for selection as the staff anticipates that some needed license conditions will likely result from the staff's safety review of the RP. A technical evaluation report (TER) will be completed with respect to the criteria for reclamation, specified in 10 CFR part 40, Appendix A, and the proposed license conditions will be discussed in the TER.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed RP for NRC Source Material License SUA–1371. On the basis of this assessment, the NRC staff has concluded that the environmental impact that may result for the proposed action would not be significant, and, therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, D.C. 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of the **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Rulemaking and Adjudications Staff.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Plateau Resources Limited, 877 North 8th West, Riverton, Wyoming, 82501;

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington D.C. 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding:

(2) How that interest may be affected by the results of the proceedings, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's area of concern about the licensing activity that is the subject matter of the proceedings; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 2nd day of March 2000.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Acting Chief Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–5746 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NRC Workshop on Environmentally Assisted Cracking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The NRC Office of Nuclear Regulatory Research (RES) conducts contract research in many technical areas to support NRC activities in nuclear reactor regulation. The Materials Engineering Branch of RES conducts a significant research effort on evaluation of environmentally assisted cracking (EAC) in light water reactor (LWR) systems and components. In FY2000, a significant extension of this program is being planned to provide NRC with confirmatory research which will be required to deal with a variety of issues for operating reactors. The purpose of this workshop is to inform interested stakeholders of NRC research plans and to receive comments and suggestions.

DATES: April 20, 2000, 11 a.m.–5 p.m.

LOCATION: U.S. Nuclear Regulatory Commission Headquarters, Two White Flint North, Room T–10–A1, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

CONTACT: Mike McNeil, Phone: (301) 415–6794, E-mail:mbm@nrc.com.

ATTENDANCE: This meeting is open to the general public.

PROGRAM: The purpose of the meeting is to solicit the views of stakeholders on the proposed NRC research activities in this field. The meeting will start with presentations by NRC staff on past NRC activities in this area, the regulatory pressures leading to the future activities, and the proposed research program. There will then be a period open for questions and discussion. Key NRC and contractor personnel will be in attendance so as to permit, insofar as possible, the on-the-spot resolution of questions.

Dated in Rockville, Maryland this 2nd day of March 2000.

Michael E. Mayfield,

Acting Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 00–5745 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committe on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 118th meeting on March 27–29, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Monday, March 27, 2000—8:30 a.m. until 5 p.m.

A. *8:30 a.m.–10:30 a.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss planned reports on the following topics: the NRC's proposed high-level waste regulation 10 CFR Part 63; a joint letter with the Advisory Committee on Reactor Safeguards on the Defense In-Depth philosophy; the ACNW Year 2000 Action Plan and Self Assessment; and comments on the NRC staff's Strategy for Site Characterization Sufficiency Comments (tentative).

B. *10:45 a.m.–12:15 p.m.: ACNW Planning and Procedures* (Open)—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The ACNW will discuss planned tours and ACNW-related activities of individual members.

C. *1:30 p.m.–3:30 p.m.: Activities of NRC's Spent Fuel Project Office* (Open)—The Committee will hear a review of the activities underway in NRC's Spent Fuel Project Office. Special emphasis will be placed on transportation issues associated with radioactive waste and spent nuclear fuel as well as an update on the modal study. The interrelationship between the Department of Transportation and NRC related to the shipment of radioactive material will be reviewed.

D. *3:45 p.m.–5 p.m.: Continue Preparation of ACNW Reports* (Open)—Continue preparation of ACNW reports noted in item A.

Tuesday, March 28, 2000–8:30 a.m. until 5 p.m.

E. *8:30 a.m.–10 a.m.: NRC Strategy for Site Sufficiency* (Open)—The ACNW will review the NRC staff's plans for the development of a strategy to produce site characterization sufficiency comments on the Department of Energy's Yucca Mountain Site Recommendation.

F. *10:15 a.m.–12 Noon: DOE–NRC Technical Exchange* (Open)—The NRC staff will present a summary of a March 14–15, 2000 DOE-NRC technical exchange on the path forward for resolution of Yucca Mountain key technical issues and sub-issues.

G. *1 p.m.—2 p.m.: Yucca Mountain Review Plan* (Open)—The NRC staff will present a periodic briefing on the development of a Yucca Mountain Review Plan. Emphasis will be on the post-closure sections of the plan.

H. *2 p.m.–3 p.m.: Radionuclide Content of Slag* (Open)—The ACNW will review a project by NRC's Office of Nuclear Regulatory Research on the radioactive content of slag which is produced as byproduct of the manufacture of metals.

I. *3 p.m.–5 p.m.: Continue Preparation of ACNW Reports* (Open)—Continue preparation of ACNW reports noted in item A.

Wednesday, March 29, 2000—8:30 a.m. until 3 p.m.

J. *8:30 a.m.–9:30 a.m.: Meeting with the Director of the Division of Waste Management, Office of Nuclear Material Safety and Safeguards* (Open)—The Committee will meet with the Director to discuss items of mutual interest.

K. *9:30 a.m.–2:00 p.m.: Complete ACNW Reports* (Open)—Complete preparation of ACNW reports noted in item A.

L. *2:00 p.m.–3:00 p.m.: Miscellaneous* (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52352). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Richard K. Major, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Richard K. Major, ACNW (Telephone 301/415–7366), between 8 a.m. and 5 p.m. EST. ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: March 3, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–5748 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

[OMB NUMBER: 0420–0001]

AGENCY: Peace Corps.

ACTION: Notice of public use of form review request to the Office of Management and Budget

SUMMARY: The Associate Director of Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request seeking Emergency Clearance from the Office of Management and Budget to approve the reinstatement of the

National Agency Check Questionnaire for Peace Corps Volunteer Background Investigation [OMB Number 0420–0001]. The Agency will also seek an expiration date starting after the 90 day Emergency Clearance and ending three years from that approval date. Section 22 of the Peace Corps Act (22 U.S.C. 2501 et seq.) mandates that "all persons employed or assigned to duties under the Act shall be investigated to ensure employment or assignment is consistent with national interest in accordance with standards and procedures established by the President."

DATES: The Peace Corps invites comments until May 8, 2000.

ADDRESSES: A copy of the information collection may be obtained from Paul Davis, Manager Placement Unit, Peace Corps, 1111 20th Street NW, Washington, DC 20526. Mr. Davis may be contacted by telephone at (202) 692–1836. Comments on these forms should be addressed to Mr. David Rostker, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20523.

Dated: February 29, 2000.

Michael J. Kole,

Director of Administrative Services and Certifying Official.

[FR Doc. 00–5715 Filed 3–8–00; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27144]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 1, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 23, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 23, 2000, the applicant(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities (70–9563)

Notice of Proposal to Amend Declaration of Trust; Order Authorizing Solicitation of Proxies

Northeast Utilities ("NU"), a registered holding company, located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, has filed a declaration under sections 6(a)(2), 7(e) and 12(e) of the Public Utility Holding Company Act of 1935, as amended ("Act"), and rules 62(d) and 65 under the Act.

NU has entered into an Agreement and Plan of Merger ("Merger Agreement"), dated October 13, 1999, amended and restated January 11, 2000, with Consolidated Edison, Inc. ("CEI"), a New York electric and gas public utility holding company exempt from registration under section 3(a)(1) of the Act under rule 2, Consolidated Edison, Inc. ("New CEI"),[1] a Delaware corporation and a wholly owned subsidiary of CEI, and N Acquisition LLC ("N Acquisition"), a Massachusetts limited liability company, which is directly and indirectly owned by New CEI. Under the Merger Agreement, CEI will be merged with and into New CEI, with New CEI as the surviving corporation, and N Acquisition will be merged with and into NU, with NU as the surviving entity ("Merger"). On January 20, 2000, NU and CEI filed a separate application-declaration (file no. 70–9613) with this Commission requesting authority to consummate the Merger.

NU proposes to make certain amendments ("Amendments") to its Declaration of Trust ("Trust Agreement"). The Amendment would specifically authorize NU to consummate a merger with one or more domestic limited liability companies under Massachusetts law.[2] The Amendments would also allow the number of trustees resulting from the merger to be fixed by the agreement providing for the merger.

NU also proposes to solicit proxies from its common shareholders for the purposes of obtaining required shareholder approvals related to the merger. Specifically, NU proposes to solicit proxies from its common shareholders to approve the Amendments and the Merger Agreement at a special meeting, which is expected to be held in the spring of 2000.

The proposed Amendments, which will be effected regardless of whether the Merger is consummated, and the Merger Agreement must be approved by an affirmative vote of two-thirds of all NU shareholders eligible to vote. The Amendments and the Merger have already been approved by the unanimous vote of the NU board of trustees.

NU requests that an order authorizing the solicitation of proxies be issued as soon as practicable under rule 62(d). It appears to the Commission that NU's declaration regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

Fees, commissions, and expenses to be incurred in connection with the transactions described in the declaration are expected not to exceed $500,000. NU states that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

It is ordered, under rule 62 under the Act, that the declaration regarding the proposed solicitation of proxies can become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5645 Filed 3–8–00; 8:45 am]

BILLING CODE 8010–01–M

[1] New CEI was originally incorporated as CWB Holdings, Inc.

[2] The Trust Agreement already authorizes the NU board of trustees to sell, lease or otherwise dispose of any part or parts of the properties of NU to the extent permitted by law. Under Massachusetts law, however, for a business trust to merge with another entity, its declaration of trust must explicitly authorize such a transaction. The Trust Agreement currently does not authorize NU to merge with another entity.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission

will hold the following meetings during the week of March 13, 2000.

An open meeting will be held on Wednesday, March 15, 2000 at 10:00 a.m. in Room 600. A closed meeting will be held on Thursday, March 16, 2000 at 11:00 a.m.

The subject matter of the open meeting scheduled for Wednesday, March 15, 2000 is:

Consideration of whether to propose amendments to Form N–1A under the Investment Company Act of 1940 and the Securities Act of 1933, Rule 482 under the Securities Act of 1933, and Rule 34b–1 under the Investment Company Act of 1940. The amendments would improve disclosure to investors of the effect of taxes on the performance of open-end management investment companies ("mutual funds" or "funds"). Under the proposed amendments, mutual funds would be required to disclose standardized after-tax returns in the risk/return summary of the prospectus and in Management's Discussion of Fund Performance, which is typically located in the annual report. The proposal also would require funds that chose to include after-tax returns in advertisements and other sales materials to include standardized after-tax returns. For further information, contact Maura S. McNulty, Division of Investment Management, at (202) 942–0721.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matters of the closed meeting scheduled for Thursday, March 16, 2000 are:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

A litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

Dated: March 7, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5909 Filed 3–7–00; 12:37 p.m.]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42493; File No. SR–OPRA–00–03]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Temporary Capacity Allocation Plan

March 3, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 3, 2000, the Options Price Reporting Authority ("OPRA")[2] submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The amendment proposes to allocate the message handling capacity of OPRA's processor among the participant exchanges for a temporary period ending May 13, 2000, to minimize the likelihood that during this period the total number of messages generated by the participants will exceed the processor's (*i.e.*, Securities Industry Automation Corporation) aggregate message handling capacity.[3] The Commission is publishing this notice and order to solicit comments from interested persons on the proposed Plan amendment, and to grant accelerated approval to the proposed Plan amendment through May 13, 2000.

I. Description and Purpose of the Amendment

As discussed above, OPRA proposes to allocate the message handling capacity of its processor among the participant exchanges for a temporary period ending May 13, 2000, to minimize the likelihood that during this period the total number of messages generated by the participants will exceed the processor's aggregate message handling capacity. During this period, the processor's aggregate message-handling capacity, which is estimated by the processor to be 3,540 messages per second, will be allocated among the participants by automatically limiting the number of messages that each participant may input to the processor as follows:

American Stock Exchange: 1,024 messages per second
Chicago Board Options Exchange: 1,366 messages per second
Pacific Exchange: 635 messages per second
Philadelphia Stock Exchange: 515 messages per second

OPRA proposes to allocate the message handling capacity of its processor in response to significant increases in the number of options quotations that have recently been experienced by all of the participant exchanges as a result of the greater number of options series being traded on the exchanges and the heightened volatility in the underlying securities. Although the aggregate amount of options market information messages is generally still within the capacity of the OPRA processor, the aggregate options message traffic is now so close to reaching the processor's maximum message-handling capacity that some short-term solution to the problem is necessary to avoid risking unacceptable delays and queuing in the dissemination of real-time options market information. Although some long-term solutions have been proposed in the course of the Options Capacity Planning and Quote Mitigation Program that has been taking place over the past several months, these may not be in place soon enough to deal with the current expansion of message traffic.[4] For this reason, beginning in January 2000, OPRA's

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges that agreed to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("PHLX").

[3] OPRA has determined to treat this proposed capacity allocation as an amendment to its national market system plan and, accordingly, to file the proposed capacity allocation for Commission review and approval pursuant to paragraph (b) of Rule 11Aa3–2. Any determination made by OPRA to continue the effectiveness of the proposed capacity allocations or any revised capacity allocations beyond May 13, 2000 will be the subject of a separate filing under the same Rule.

[4] *See* Securities Exchange Act Release No. 41843 (September 8, 1999) in which the Commission issued an order authorizing the options exchanges, OPRA, OPRA's processor and other parties to act jointly in planning, developing and discussing approaches and strategies with respect to options quote message traffic and related matters ("September 1999 Order").

participant exchanges have agreed to allocate the assumed maximum processor capacity among themselves. The agreed-upon capacity allocations have been filed and approved under Exchange Act Rule 11Aa3–2 as amendments to the OPRA Plan.[5]

OPRA's processor now estimates that the capacity allocation may prudently be adjusted upwards to reflect an assumed maximum processor capacity of 3,540[6] messages per second. Accordingly, OPRA's participant exchanges, in the presence of Commission staff pursuant to the September 1999 Order, have agreed to the allocation that is proposed in this filing to be effective through May 13, 2000. Because this allocation is based upon an assumed maximum processor capacity of 3,450 messages per second, which the processor advises is a realistic number, it should serve the intended purpose of avoiding delays and queues in OPRA's real-time stream of market information.

To retain sufficient flexibility to deal with the changed circumstances within and among the options markets, including the planned commencement of options trading by the International Securities Exchange, the proposed allocations will remain in effect only until May 13, 2000, unless OPRA or the Commission decides that the proposed allocation or some revised allocation should be continued beyond that date.[7]

II. Implementation of the Plan Amendment

OPRA believes the temporary implementation of the proposed capacity allocation program is essential to avoid delays and queues in the dissemination of options market information, which in turn is necessary to achieve the objective of Section 11A(a)(1)(C)(iii),[8] including to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Accordingly, OPRA requests the Commission to permit the proposed allocation program to be put into effect summarily upon publication of notice of this filing, on a temporary basis, pursuant to paragraph (c)(4) of Rule 11Aa3–2,[9] based on a finding by the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or is otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to file number SR–OPRA–00–03 and should submitted by March 30, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Plan Amendment

After careful review, the Commission finds that the proposed Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[10] Specifically, the Commission believes that the proposed amendment, which allocates the limited capacity of the OPRA system among the options markets, is consistent with Rule 11Aa3–2 in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system. The Commission notes that the aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit of OPRA's systems capacity. OPRA's processor has informed the Commission that current plans to enhance OPRA's systems are not expected to be completed before the end of the second quarter of this year, at the earliest. Consequently, the Commission is concerned that, absent an agreed-to program to allocate systems capacity among the options markets that is put in place immediately, systems queuing of the options quotes may be the norm, to the detriment of all investors and othehr participants in the options markets. The Commission believes that the agreed-upon allocation proposal is a reasonable means for addressing potential strains on capacity that may occur between now and May 13, 2000.

The Commission finds good cause to accelerate the proposed Plan amendment prior to the thirtieth day after the date of publication in the **Federal Register.** The Commission notes that the proposed Plan amendment is intended to allocate OPRA system capacity for a short period of time to mitigate potential disruption to the orderly dissemination of options market information caused by the inability of the OPRA system to handle the anticipated quote message traffic. The Commission believes that approving the proposed capacity allocation will provide the options exchanges and OPRA with an immediate, short-term solution to a pressing problem, while giving the Commission and the options markets additional time to evaluate and possibly, implement, other quote mitigation strategies. In addition, the limited time frame of the applicability of the capacity allocation program should provide the Commission and the options exchanges with greater flexibility to modify the program, as necessary, to ensure the fairness of the allocation process to all of the options markets going forward. The Commission finds, therefore, that granting accelerated approval of the proposed Plan amendment is appropriate and consistent with Section 11A of the Act.[11]

V. Conclusion

It Is Therefore Ordered, pursuant to Rule 11Aa3–2 of the Act,[12] that the proposed Plan amendment (SR–OPRA–00–03) is approved on an accelerated basis through May 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

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[5] *See* Securities Exchange Act Release Nos. 42328 (January 11, 2000), 65 FR 2988 (January 19, 2000) (File No. SR–OPRA–00–01) and 42362 (January 28, 2000), 65 FR 5919 (February 7, 2000) (File No. SR–OPRA–00–02).

[6] The proposed Plan amendment incorrectly referred to 3,518 messages per second. It has been modified here pursuant to OPRA's verbal request. Telephone conversation between Joseph Corrigan, Executive Director, OPRA, and Deborah Flynn, Special Counsel, Division of Market Regulation, Commission, on March 3, 2000.

[7] Any such continued allocation of OPRA capacity that might be approved by OPRA would be the subject of a separate filing under Rule 11Aa3–2. 17 CFR 240.11Aa3–2. *See* note 3, *supra.*

[8] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[9] 17 CFR 240.11Aa3–2(c)(4).

[10] In approving this proposed Plan amendment, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.c. 78c(f).

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 240.11Aa3–2.

[13] 17 CFR 200.30–3(a)(29).

Dated:

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5757 Filed 3–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42489; File No. SR–AMEX–00–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Trading of Options on Biotech HOLDRs

March 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2000, the American Stock Exchange Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Amex as a "non-controversial" rule change under Rule 19b–4(f)(6)[3] under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to trade standardized and FLEX equity options on Biotechnology Holding Company Depositary Receipts ("Biotech HOLDRs" or "HOLDRs"). The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide for the trading of standardized equity options and FLEX[4] equity options on Biotech HOLDRs.[5] Biotech HOLDRs are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the HOLDRs. They are negotiable receipts issued by a trust representing securities of issues that have been deposited and are held on behalf of investors in HOLDRs. Biotech HOLDRs, which trade in round lots of 100, and multiples thereof, may be issued after their initial offering through a deposit of the required number of shares of common stock of the underlying issuers with the trustee. The trust will only issue HOLDRs upon the deposit of the shares of underlying securities that are represented by a round-lot of 100 HOLDRs. Likewise, the trust will cancel, and an investor may obtain, hold, trade or surrender HOLDRs in a round-lot and round lot multiples of 100 HOLDRs. Biotech HOLDRs are currently traded on the Exchange like other equity securities, subject to the Exchange's equity trading rules.

The Exchange believes trading options on Biotech HOLDRs is appropriate because Biotech HOLDRs currently exceed the minimum eligibility criteria for equities set forth in Amex Rule 915, as do each of the underlying securities.[6] Specifically, there are a minimum of 7,000,000 shares of each of the underlying securities owned by persons other than those required to report their security holdings under Section 16(a) of the Act; there are a minimum of 2000 shareholders of each of the underlying securities; trading volume (in all markets in which the underlying securities are traded) has been at least 2,400,000 shares in the preceding twelve months; the market price per share of each of the underlying securities has been at least $7½ for the majority of business days during the three calendar months preceding the date of selection as measured by the lowest closing price reported in any market in which the underlying securities traded on each of the subject days and the issuers are in compliance with any applicable requirements of the Act. The Biotech HOLDRs also satisfy these eligibility criteria.

Options on Biotech HOLDRs will be traded on the Exchange pursuant to the same rules and procedures that apply to trading in options on equity securities. However, the Exchange is also proposing to list FLEX Equity options on Biotech HOLDRs. The Exchange will list option contracts covering 100 HOLDRs, the minimum required round lot trading size for HOLDRs. Strike prices for the contracts will be set to bracket the trust issued receipts at the same intervals that apply to standardized equity options (*i.e.*, 2½ point intervals for underlying equity values up to $25, 5 point intervals for underlying equity values greater than $25 up to $200, and 10 point intervals for underlying equity values greater than $200). The proposed position and exercise limits for options on Biotech HOLDRs will be the same as those established for stock options as set forth in Amex Rule 904 and 905. The Amex anticipates that options on Biotech HOLDRs will initially qualify for a position limit of 13,500 contracts. However, as with standardized equity options, applicable position limits will be increased for options on Biotech HOLDRs if the volume of trading in HOLDRs increases to meet the requirements of a higher limit. As is currently the case for all FLEX Equity options, no position and exercise limits will be applicable to FLEX Equity options overlying the HOLDRs. Options on Biotech HOLDRs will be subject to the listing and maintenance standards set forth in Amex Rule 915 and 916.[7] FLEX options will be subject to the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Flex equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[5] The Exchange's proposal to list and trade Trust Issued Receipts (also referred to as HOLDRs) was approved by the Commission on September 21, 1999. *See* Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

[6] The Exchange represents that both the Biotech HOLDRs and the underlying securities meet the options eligibility criteria outlined in Amex Rule 915. Telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, and Heather Traeger, Attorney, Division of Market Regulation ("Division"), SEC, on February 28, 2000.

[7] Amex has filed proposed listing and maintenance standards specifically for the trading of options on Trust Issued Receipts, proposed Commentary .07 under Amex Rule 915 and proposed Commentary .09 under Amex Rule 916. The proposed standards have not yet been noticed in the **Federal Register**, as the Commission and the Exchange are still discussing the proposed rule change. *See* SR–Amex–99–37. If the proposed standards are approved, Biotech HOLDRs will be subject to these specific listing and maintenance standards. Telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, and Heather Traeger, Attorney, Division, SEC, on February 25, 2000.

standards set forth in the Amex 900G rule series.[8]

Should Biotech HOLDRs cease to trade on an exchange or as national market securities in the over-the-counter market, there will be no opening transactions in the options on the HOLDRs, and all such options will trade on a liquidation-only basis (*i.e.*, only closing transactions to permit the closing of outstanding open options positions will be permitted). In addition, the Amex will consider the suspension of opening transactions in any series of options of the class covering Biotech HOLDRs if: (1) The options fail to meet the uniform equity option maintenance standards in Commentary .01 to Amex Rule 916; [9] (2) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Biotech HOLDRs for 30 or more consecutive trading days; (3) there are fewer than 50,000 HOLDRs issued and outstanding; (4) the market value of all Biotech HOLDRs issued and outstanding is less than $1,000,000; or (5) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on Biotech HOLDRs will be physically-settled and will have the American-style exercise feature used on all standardized equity options, and not the European-style feature. The Exchange, however, also proposes to trade FLEX Equity options which will be available with both the American-style and European-style exercise feature, as well as other FLEX Equity features.[10] Lastly, the proposed margin requirements for options on Biotech HOLDRs will be at the same levels that apply to options generally under Amex Rule 462.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [11] of the Act in general and furthers the objectives of Section 6(b)(5) [12] in particular in that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder [14] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest.[15] Any any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection for investors, or otherwise in the furtherance of the purposes of the Act.[16]

The Exchange has requested that the rule change be accelerated to become operative immediately upon filing of the proposal, because such proposal contemplates trading options on a product in which both the product and each of the underlying component securities exceeds the minimum eligibility requirements for trading options on equities as set forth in Amex Rule 915. Because both the securities underlying Biotech HOLDRs and Biotech HOLDRs themselves meet the eligibility requirements for trading options on equity securities, and because the Exchange is currently working to establish specific listing and maintenance standards for options on HOLDRs, the Commission finds that accelerating the operative date of the rule change is consistent with the protection of investors and the public interest, and thus designates March 2, 2000 as the operative date of this filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–00–13 and should be submitted by March 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5761 Filed 3–8–00; 8:45 am]

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[8] Telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, and Heather Traeger, Attorney, Division, SEC, on February 28, 2000.

[9] Specifically, Commentary .01 to Amex Rule 916 provides that an underlying security will not meet the Exchange's requirements for continued listing when, among other things; (i) There are fewer than 6,300,000 publicly-held shares; (ii) there are fewer than 1,600 holders; (iii) trading volume was less than 1,800,000 shares in the preceding twelve months; and (iv) the share price of the underlying security closed below $5 on a majority of the business days during the preceding 6 months.

[10] An American-style option may be exercised at any time prior to its expiration. A European-style option, however, may be exercised only on its expiration date.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5)

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] Because the Commission and Amex have had ongoing discussions regarding the proposed rule change, the Commission has determined to waive the requirement that Amex provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[16] 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42486; File No. SR–CHX–00–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees

March 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (the "Schedule") to continue, through June 30, 2000, the waiver of all transaction, order processing and floor broker fees for transactions that occur during the CHX's E-Session extended hours trading session. The text of the proposed rule change is available upon request from the CHX and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(II).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change restates and amends the Schedule to eliminate, through June 30, 2000, order processing, transaction and floor broker fees for transactions that occur during the CHX's E-Session.[4] This proposal is designed to allow CHX members to continue to participate in the E-Session without incurring the fees normally associated with their CHX transactions.[5] According to the Exchange, the vast majority of the securities that trade during the E-Session are already subject to order processing and transaction fee waivers under the current fee schedule because they are either Nasdaq/NMS issues or issues within the S&P 500. Waiving fees on the few remaining securities and on floor broker transactions in all securities simplifies the Exchange's fee-related communications with its members.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[4] On October 13, 1999, the Commission approved, on a pilot basis, the CHX's proposed rule change that allowed the CHX to implement an extended hours trading session. *See* Securities Exchange Act Release No. 42004 (October 13, 1999), 64 FR 56548 (October 20, 1999)(SR–CHX–99–16). The E-Session takes place from 3:30 p.m. to 5:30 p.m. Central Time, Monday through Friday. The E-Sessiion is currently approved to continue through October 1, 2000. *See* Securities Exchange Act Release No. 42463 (February 28, 2000)(SR–CHX–00–02).

[5] E-Session fees have been waived since the beginning of the E-Session. *See* Securities Exchange Act Release No. 42089 (November 2, 1999), 64 FR 60864 (November 8, 1999) (SR–CHX–99–23) (waiving fees from October 13, 1999 through December 31, 1999; *see also* Securities Exchange Act Release No. 42329 (January 11, 2000), 65 FR 3000 (January 19, 2000) (SR–CHX–99–29) (waiving fees from January 1, 2000 through March 1, 2000. This proposal simply extends the waiver of the same fees through June 30, 2000. *See* March 2, 2000 telephone conversation between Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, and Joseph P. Morra, Attorney, Division of Market Regulation, SEC.

[6] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because it involves a due, fee, or other charge. At any time with 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–00–05, and should be submitted by March 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

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BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42482; File No. SR–DTC–00–03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Establishing a Depository Link With SIS SegaInterSettle AG

March 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 22, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC proposes to open a free-of-payment omnibus account at SIS SegaInterSettle AG ("SIS"), a Swiss depository.

II. Self-Regulatory Organization's of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) DTC is proposing to establish a depository link with SIS through use of a free-of-payment omnibus account at SIS. The central purpose of the proposed link between SIS and DTC will be to facilitate the efficient processing of cross-border securities transactions between DTC participants and SIS participants.

DTC proposes to open a free-of-payment omnibus account at SIS, creating a one-way DTC–SIS interface. The link would permit, but would not require, DTC positions in issues that are eligible at both DTC and SIS to be held in DTC's account at SIS. The proposed interface will enable DTC participants to effect book-entry transactions with SIS participants. In addition, it is noteworthy that there are a number of major banks and broker-dealers that are participants of both DTC and SIS. The link will enable these dual participants to engage in efficient inventory positioning by moving their security positions from one depository's books to the other in order to meet the dual participants' internal needs.[3]

Establishment of the link will allow DTC (and through it, DTC's participants) to use SIS's custody, book-entry delivery, and other depository services for securities that are eligible in both depositories. The link will enable a DTC participant to settle, on a free-of-payment basis, a cross-border transaction with an SIS counterparty by making a book-entry delivery from DTC's omnibus account at SIS to the SIS participant's account at SIS. Conversely, an SIS participant would be able to settle, on a free-of-payment basis, a cross-border transaction with a DTC participant by making a book-entry delivery from the SIS participant's account at SIS to the DTC omnibus account at SIS (while identifying the DTC participant to which the delivered securities should be credited). The receiving DTC participant could then redeliver the securities on either a free-of-payment or versus-payment basis to any other DTC participant within DTC.

By opening a DTC account at SIS, DTC would enable its participants to substitute efficient book-entry movements for cumbersome physicial movements of securities certificates between SIS and DTC. The link will markedly reduce the significant costs and risks associated with withdrawing physical certificates from one depository and then physically transporting the certificates and ultimately reregistering and redepositing them at the other depository.

SIS will make SIS's depository services (such as income collection, maturity presentments, and reorganization processing) available to DTC in accordance with SIS procedures on securities held in DTC's account at SIS. Whether DTC holds its underlying inventory in Switzerland or in the U.S., DTC services to DTC participants will be the same as are currently provided.

(2) The principal benefits that will attend DTC's opening an omnibus account at SIS are: (i) the accelerated speed of settlement of cross-border transactions in the subject securities; (ii) the elimination of most physical movements of the subject securities between SIS, transfer agents in the U.S. and Switzerland, and DTC; and (iii) a reduction of costs and risks to DTC participants and SIS participants as a result of the above advances. DTC's providing these benefits to participants is in keeping with DTC's objective of providing efficient book-entry clearance and settlement facilities while at the same time reducing risk to DTC participants.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act and the rules and regulations thereunder applicable to DTC because the proposed link will reduce risks and associated costs to DTC participants and SIS participants.[4]

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Today, the "Swiss" issues that are DTC-eligible consist of over five dozen issues of depository receipts, debt, and warrants. DTC understands, however, that UBS AG ("UBS") plans to list UBS registered shares on the New York Stock Exchange at the end of March 2000 and to concurrently have them made eligible in the DTC system.

[4] In establishing an account at a foreign depository such as SIS, DTC performs risk analysis of the foreign depository to assess whether, in the aggregate, the foreign depository has what DTC determines to be an acceptable risk profile. DTC's risk analysis includes, among other things, an evaluation of the foreign depository in the areas of operational control, financial strength, technological capabilities, market reputation and standing, contract and legal protection, regulation, audit arrangements, and subcustody usage. Once an account is established, DTC conducts ongoing monitoring of material events and periodic risk assessments evaluating the same areas as when the account was being established.

as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–00–03 and should be submitted by March 30, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5758 Filed 3–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42487; File No. SR–NYSE–99–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Amend the Exchange's Allocation Policy

March 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 20, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. On February 7, 2000, the Exchange submitted Amendment No. 1 to its proposal.[2] The proposed rule change, as amended, is described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of changes to the Exchange's Allocation Policy and Procedures ("Policy").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The intent of the Exchange's Policy is to (1) ensure that the allocation process for securities is based on fairness and consistency and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) provide an incentive for ongoing enhancement of performance by specialist units; (3) provide the best possible match between a specialist unit and security; and (4) contribute to the strength of the specialist system.

Since 1987, the Exchange's Quality of Markets Committee has appointed a number of Allocation Review Committees ("ARCs") to review the Policy and make recommendations with respect to changes.[3] In February, 1999, the Quality of Markets Committee again appointed in ARC, ARC V, to review the Policy and make recommendations with respect to improvements in the allocation process. Those recommendations, which the Exchange is proposing as changes to the Policy, are discussed below.

Composition of Allocation Committee

Currently, the Allocation Committee is composed of nine members, consisting of seven floor brokers (including three broker Governors (one of whom may be an independent/two dollar broker) and four other floor brokers from the Allocation Panel (one of whom must be an independent/two dollar broker)) and two allied members[4] from the Market Performance Committee[5] or the Allocation Panel. The Allocation Committee presently does not have representation from institutional investor organizations. The Exchange believes that these organizations are significant participants in the securities markets, including the Exchange and therefore, that such representation enhances the expertise and objectivity of the Allocation Process. The proposal would add one institutional investor representative member to the Allocation Committee drawn from the Allocation Panel or from the institutional investor members of the Market Performance Committee.

In connection with this change, however, the Exchange does not believe it is necessary to expand the size of the Committee. Therefore, the NYSE proposes to decrease the number of floor brokers on the Committee from seven to six. This would be accomplished by decreasing from four to three the number of other floor brokers from the Allocation Panel (one of whom must be an independent/two dollar broker).

Composition of Allocation Panel

The Allocation Panel ("Panel") is the resource from which the Allocation Committee is assembled. A Panel is appointed by the Exchange's Quality of Markets Committee from among

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[5] 17 CFR 200.30–3(a)(12).

[1] 5 U.S.C. 78s(b)(1).

[2] In Amendment No. 1, the Exchange provided additional information regarding the allocation of target stocks and merged companies; clarified the selection process for institutional investors and the definition of a senior officer; and revised its procedures so that members of the committee eligible for election as chairman include brokers with four months remaining in their committee term. *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Terri Evans, Attorney, Commission, dated February 4, 2000 ("Amendment No. 1").

[3] *See* Securities Exchange Act Release No. 38372 (March 7, 1997), 62 FR 13421 (March 20, 1997) (containing recommendations made by ARCs I through IV).

[4] *See* Sec. 3(c) of Art. I of the NYSE Constitution.

[5] The Market Performance Committee is appointed by the Exchange's Board of Directors to develop and administer procedures designed to improve the performance of members on the floor. It consists of floor Directors, floor Governors, allied members and representatives of institutional investor organizations.

individuals nominated by the Exchange's membership. The Panel consists of 28 floor brokers; twelve allied members (including the four allied members serving on the Market Performance Committee); the eight floor broker Governors who are part of the Panel by virtue of their appointment as Governors; and a minimum of five Senior Floor Official brokers. The Exchange proposes three changes to the composition of the Panel.

First, the Exchange proposes to expand the Panel to add nine institutional investor organization representatives, including the five serving on the Market Performance Committee, to be consistent with the proposal to add institutional investor representatives to the Allocation Committee. Representatives from institutional investor organizations will be chosen in the same manner as other Panel members (*i.e.*, through nominations from the membership and appointment by the Quality Markets Committee).[6]

The second proposed change relates to the number of floor Governors on the Panel. Floor Governors are Floor Officials who have been appointed as Governors by the Chairman of the Exchange. In 1998, the Exchange increased the number of floor Governors appointed under Exchange Rule 46 from 16 to 20.[7] These 20 governors consist of ten specialists active on the floor and ten-floor brokers. The floor broker Governors are automatically members of the Market Performance Committee and the Panel. The Exchange now proposes to increase the number of floor broker Governors on the Panel from eight to ten to reflect the increased number of floor Governors. In addition, at the time the number of floor Governors was increased, the number of allied member representatives on the Market Performance Committee was increased from four to five. The Exchange proposes to amend the composition of the Panel to reflect this increase.

The new composition of the Allocation Panel would be 28 floor brokers; 13 allied members (including the five allied members serving on the Market Performance Committee); nine institutional members (including the five representatives of institutional investor organizations serving on the Market Performance Committee); the ten floor broker Governors who are part of the Panel by virtue of their appointment as Governors; and a minimum of five Senior Floor Official brokers.

Allocation Committee Quorum Requirement

The Exchange is not proposing to alter the Committee's existing quorum requirement that there be at least six floor brokers, at least two of whom are Governors, and one allied member. The presence of the institutional representative would not be required for a quorum because, at times, it may be difficult to obtain the participation of a representative of an institutional investor organization.

Contact Between Listing Companies and Specialist Units

Currently, specialist units or any individual acting on their behalf are prohibited from having any contact with a company that has applied for listing from the date applications (known as "green sheets") are solicited from specialists for the purpose of allocating the stock to a specialist organization. The Exchange proposes to change this non-contact period to the earlier of the date written notice is given that the listing company filed its listing application with the Exchange or the date allocation applications are solicited, (*i.e.*, the date the "green sheet" is posted). The Exchange presently publishes this notice of listing application in its Weekly Bulletin. This proposal would move the start of the period as to when contact is prohibited to an earlier date in those cases where the "green sheet" is issued after the Weekly Bulletin notice of an application to list has been published. The Exchange believes this is appropriate since once the application is made public, the listing process has begun, and specialist contact with the listing company should be prohibited during this period.

Listing Company Request for Additional Specialist Information Following Interviews

Under the Policy, a listing company may choose to pick its specialist unit after interviewing a pool of three, four, or five units selected by the Allocation Committee. Currently, any follow-up questions conveyed to the Exchange from a listing company regarding specialist unit(s) it interviewed are restricted to questions regarding publicly-available information. The Exchange must approve the request and all units in the group of units interviewed must be notified by the Exchange of the request.

The NYSE proposes that if a listing company has a follow-up question for any specialist unit(s) it interviewed, it must be conveyed to the Exchange. The Exchange will contact the unit(s) to which the question pertains and will provide any information received from the unit(s) to the listing company. The NYSE purposes to eliminate the requirement that only publicly-available information be provided and the language requiring Exchange approval. The requirement that the Exchange notify other units of the company's request also would be deleted to make the process more efficient. The Exchange believes that the listing company should have the ability to selectively request information of a unit it has interviewed. For example, at times, an issue may be discussed at subsequent interviews and the listing company would like similar information from a unit it had already interviewed. Or, a listing company may have further questions of the units it has selected for final consideration. The Exchange believes that it would be an unnecessary burden on the listing company and all the units to require information that is not of interest to the listing company.

Common Stock Listing After Preferred

Currently, the Policy does not address the situation involving a common stock being listed after its preferred stock has been allocated. The Exchange is proposing that the allocation of the common stock of a company listing after its preferred stock has been listed would be open to all units. The company may select Option 1 (in which the Allocation Committee selects the specialist unit to be allocated the company's stock) or Option 2 (in which the company selects a specialist unit from among a group of units chosen by the Allocation Committee). If Option 2 is selected, the specialist unit that trades the preferred stock must be included in the group of units comprising the interview pool. The company will not be able to select the specialist unit trading the preferred stock without going through the allocation process.

Listed Company Mergers

Currently, when two listed companies merge, the merged entity is assigned to the specialist in the company that is determined to be the survivor-in-fact (dominant company). Where no surviving entity can be identified, the matter is referred to the Allocation Committee and all specialists are invited to apply. The merged company may request either Option 1 or Option 2, with no provisions to include or exclude any unit from consideration by

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[6] *See* Amendment No. 1, *supra* note 2.

[7] *See* Securities Exchange Act Release No. 40539 (October 9, 1998), 63 FR 56281 (October 21, 1998). The Exchange stated at the time the increase was needed to maintain sufficient levels of floor Governor supervision and timely response, in the face of an increase in trading volume and number of listed securities in recent years.

the Allocation Committee. There is no provision for the merged company to select a unit that trades one of the listed companies which is merging without going through the allocation interview process.

The Exchange is proposing several changes to the Policy. Where no surviving entity can be identified, the listing company would be permitted to select one of the units trading the merging companies without going through the allocation interview process. This would make the allocation process more efficient and less time consuming for the listing company in those instances in which the company ultimately may have decided that it will select one of the units which traded the merging companies. The Exchange believes that requiring the interview process would be more form over substance. If the listing company determines to go to allocation, it may select Option 1 or Option 2. Under Option 1, the company would not be able to request that the Allocation Committee not allocate the stock to one of the units trading the merging companies. If the company chooses Option 2, the interview pool would consist of the specialist units of the merging companies and must include additional units. The number of additional units must be consistent with the Policy requirement that each pool consists of three to five units. Under Option 2, the company would not be permitted to request that any of the units trading the merging companies be excluded from the interview pool.

The Exchange believes that this approach strikes an appropriate balance between the interests of specialist units, who have developed a relationship and a history of market making performance with a listed company, and the interests of listed companies in choosing the most appropriate unit to be their specialist. Should be merged entity choose to remain with the current specialist (or either of the current specialists), it is free to do so. The distinction in this situation from the one discussed below regarding target stocks is that the merged entity's management team is customarily a combination of the two existing management terms, and the Exchange believes that the current specialist(s) ought to have a reasonable opportunity to present its case to this new management, without, of course, any guarantee of receiving the allocation. A portion of the management team from the pre-merged entities should not have the right to exclude a specialist(s) from even being considered for the allocation. The Exchange believes that such specialist should be given the opportunity to be considered for the allocation, and if it is determined not to be the best candidate for the allocation, then the unit will not be selected. In the viewpoint of the Exchange, based on experience gained over a long history of managing stock allocations, the proposed approach is the fairest to all parties, while furthering the overall objectives of the Policy.[8] The Exchange believes that these changes will make the Policy more consistent in its approach in providing the opportunity for input and choice on the part of the listing company.

Listed/Unlisted Company Mergers

Currently, if the unlisted company is the survivor-in-fact, the company may chose to remain registered with the unit that traded the listed company involved in the merger or may request that the matter be referred to allocation, with applications invited from all units. The company may request that the unit trading the listed company not be allocated the stock (and, as a result, not be included in the pool of units under Option 2) and the Allocation Committee must honor that request.

The Exchange is proposing to conform this Policy to the proposed Policy involving listed company mergers with no survivor-in-fact. Therefore, the Policy would be amended to preclude the unlisted company from excluding the specialist unit that trades the listed company from consideration by the Allocation Committee. Further, the Policy would require that if the unlisted company chooses Option 2, the unit trading the listed company must be included in the allocation pool.

Issuance of Tracking ("Target") Stock

These securities (also known as "letter stock") typically are "targeted" to a specific aspect of an issuer's overall business. There are two instances in which "target" stocks are being listed. The first involves situations in which the "target" stock is being "uncoupled" from the listed company, and itself listing on the Exchange. Under the current Policy, when such a security is "uncoupled" and becomes an independent listing, it remains with the specialist registered in the stock prior to its separate listing ("original stock"), unless the listing company requests that the new stock be referred to the Allocation Committee. The Allocation Committee must honor the company's request not to be allocated to the specialist unit that had traded the original stock. This provision will remain unchanged. However, the Policy is being amended to require the Allocation Committee to honor the listing company's request to include as well as exclude from the allocation pool, the specialist unit that had traded the original stock. This will conform this Policy to that proposed for the second type of "target" stock situation.

The second type of "target" stock involves a listed company issuing a "target" stock to track a separate business line. In these instances, the issue is assigned by Exchange staff to the specialist in the listed company issuing the "target" stock. As a result, the new listing company (the "target" stock) has no input in the allocation decision. The Exchange proposes to amend the Policy to conform with the spin off/related company policy. The Exchange believes that these situations should be treated consistently under the Policy, since they are similar situations.

Target stocks, whether the target stock itself is joining the Exchange as a separate listing (*e.g.*, Con Edison Inc. issuing distinct securities of Con Edison of New York) or where the target stock represents a tracking of a bsuiness line of the current listed company (*e.g.*, GM and GMH), will be treated in the same manner as spin-offs and listing of related companies. This is due to the existing relationship of the specialist with the currently listed company (herein-after referred to as the "Parent") and to the management of the Parent. The policy for allocating such securities is that the listing company may choose to stay with the specialist unit registered in the related listed company or be referred to the Allocation Committee. In the latter case, the company may request not to be allocated to the Parent's specialist and the Allocation Committee will honor such request. Alternatively, the listing company may request the exclusion or inclusion of the Parent's specialist in the allocating pool if the listing company elects Option 2.[9]

Target stocks have a similar relationship with the Parent's specialist and the Exchange believes they should have the option to either include or exclude the Parent's specialist from the pool of specialists determined by the Allocation Committee. According to the Exchange, the rationale for this is two-fold. First, if the Parent company is unsatisfied with the specialist's performance to date, the Exchange believes it is unnecessary to include this unit in the pool if the company so requests. In the same vein, if the Parent company is satisfied with the specialist's performance but wishes to avail itself of the opportunity to

[8] *See* Amendment No. 1, *supra* note 2.

[9] *See* Amendment No. 1, *supra* note 2.

interview other units, the company should have the option of including such specialist in the interview pool along with other specialists determined by the Allocation Committee. Finally, it is important to bear in mind that, often, senior management of the subject companies is the same as that of the Parent (or there is substantial overlap), and, therefore, the choice of a specialist will be influenced by an assessment of the current relationship and market making performance.[10]

Allocation Sunset Policy

When the Exchange allocates a company that is listing its shares from its initial public offering, that allocation decision remains effective for three months. If the company does not list within that time, the matter is referred again to the Allocation Committee. The policy balances the interests of the Exchange in preventing a listing company from delaying listing in order to select a different specialist versus the legitimate economic interests of a listing company to delay an IPO due to market conditions. However, if the selected specialist unit merges or is involved in a combination within the three-month period, the Exchange is proposing to amend the Policy to permit the listing company to choose whether to stay with the merged specialist unit, or be referred to allocation. This recognizes that the listing company may wish to reconsider its choice in light of the changed circumstances regarding the specialist unit it chose.

Listing Company Attendees at Specialist Interviews

The current Policy requires that a senior official of the listing company of the rank of Corporate Secretary or above be present at the interviews with specialists under Option 2. In the case of structured products' listings,[11] the corporate makeup contemplated by the existing requirement often does not exist. The Exchange proposes to amend the Policy to clarify that any senior officer [12] of the issuer may be present at the interview to satisfy the requirement.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) [13] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed changes are consistent with these objectives in that they would enable the Exchange to ensure fairness and equal opportunity in the allocation process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule changeshould be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–34 and should be submitted by March 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5759 Filed 3–8–00; 8:45 am]

BILLING CODE 8010–01–M

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[10] *See* Amendment No. 1, *supra* note 2. In terms of listing standards, target stocks are treated in the same way as any other second class of stock of the issuer. *See* Amendment No. 1, *supra* note.

[11] A structured product is a security whose value is based on the value of another security.

[12] The structured product company will designate which of its officers is a senior officer. *See* Amendment No. 1, *Supra* note 2.

[13] 15 U.S.C. 78f(b)(5).

[14] 17 C.F.R. 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42490; File No. SR–NYSE–00–01]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Continuing Annual Listing Fees for Canadian Companies

March 2, 2000.

On January 4, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change for calculating continuing annual fees for all Canadian companies. The proposed rule change was published for comment in the **Federal Register** on January 25, 2000.[3] No comments were received on the proposal. This order approves the proposal.

It has been the custom and practice of the Exchange to calculate the continuing annual fee for Canadian companies listed before September 8, 1989 on the basis of total worldwide shares, with a 50% discount for companies with more than half of their operations outside the United States. The continuing annual fee for Canadian companies listed after September 8, 1989 and all other non-U.S. companies has been calculated based on shares issued in the U.S. The proposed change will calculate continuing annual fees for all Canadian companies based on shares issued in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42350 (January 19, 2000), 65 FR 4007.

U.S., thereby conforming the continuing annual fee for Canadian companies listed before September 8, 1989, to the standard applied to all other non-U.S. companies.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b).[4] Specifically, the Commission believes that conforming the calculation procedures for the continuing annual fee for Canadian companies into one standard calculation for all Canadian companies is consistent with the Section 6(b)(4)[5] requirements that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.[6]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–00–01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5760 Filed 3–8–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3243]

Office of Overseas Schools, Notice of Information Collection Under Emergency Review: Overseas Schools—Grant Status Reports, OMB No. 1405–0033

AGENCY: Department of State.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Renewal.

Originating Office: A/OPR/OS.

Title of Information Collection: Overseas Schools—Grant Status Reports.

Frequency: Annual.

Form Number: OMB No. 1405–0033.

Respondents: Recipients of grants.

Estimated Number of Respondents: 190.

Average Hours Per Response: .25.

Total Estimated Burden: 47.5.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by February 1, 2000. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until the 60th day from the date that this regular notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Keith D. Miller, Office of Overseas Schools, U.S. Department of State, Washington, DC 20522–0132, (202) 261–8200.

Dated: January 21, 2000

Robert B. Dickson,

Executive Director, Bureau of Administration. U.S. Department of State.

[FR Doc. 00–5776 Filed 3–8–00; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3244]

Bureau of Consular Affairs, Overseas Citizens Services, Office of Children's Issues; 30-Day Notice of Information Collection; Application for Assistance Under the Hague Convention on Child Abduction; OMB Number 1405–0076; Form Number DS–3013 (Formerly DSP–0105)

AGENCY: Department of State.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement.

Originating Office: CA/OCS/CI.

Title of Information Collection: Application for Assistance Under the Hague Convention on Child Abduction.

Frequency: On occasion.

Form Number: DS–3013 (formerly DSP–0105).

Respondents: Individuals.

Estimated Number of Respondents: 500.

Average Hours Per Response: 1.

Total Estimated Burden: 500.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Mary B. Marshall, CA/OCS/CI, Room 4811, 2201 C St. NW, U.S. Department of State, Washington, DC 20520, (202) 647–2598. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: January 19, 2000.

Frank E. Moss,

Executive Director, Bureau of Consular Affairs, U.S. Department of State.

[FR Doc. 00–5777 Filed 3–8–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 3238]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: February 9 and 25, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703 875–6644).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: March 2, 2000.

William J. Lowell,

Director, Office of Defense Trade Controls,

U.S. Department of State,
Washington, DC 20520, February 9, 2000.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of one HS601 HP Galaxy IV–R Commercial Communications satellite to French Guiana for launch on an Ariane launch vehicle.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

U.S. Department of State,
Washington, DC 20520, February 25, 2000.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of 2020 Paveway II and 810 Paveway III laser guided bombs for the French Ministry of Defense for end-use of the French Air Force and Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

[FR Doc. 00–5646 Filed 3–8–00; 8:45 am]

BILLING CODE 4710–25–U

DEPARTMENT OF STATE

[Public Notice 3241]

Culturally Significant Objects Imported for Exhibition Determinations: "Gerrit Dou (1613–1675): Master Painter in the Age of Rembrandt"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999, as amended by Delegation of Authority No. 236–1 of November 9, 1999, I hereby determine that the objects to be included in the exhibit, "Gerrit Dou (1613–1675): Master Painter in the Age of Rembrandt," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the exhibit objects at the National Gallery of Art, Washington, D.C., from on or about April 16, 2000, to on or about August 6, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, S.W., Washington, DC 20547–0001.

Dated: March 1, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–5774 Filed 3–8–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3242]

Bureau of Educational and Cultural Affairs; South Pacific Scholarship Program; Request for Proposals

SUMMARY: The Office of Academic Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the South Pacific Scholarship Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to organize and carry out an academic exchange program for students from the sovereign nations of the South Pacific. The grantee will be responsible for all aspects of the program, including publicity and recruitment of applicants; merit-based competitive selection; placement of students at an accredited U.S. academic institution; student travel to the U.S.; orientation; up to four years of U.S. degree study at the bachelor's or master's level; enrichment programming; advising, monitoring and support; pre-return activities; evaluation; and follow-up. The duration of the grant will be up to five years. The approximate level of funding in FY2000 is $700,000.

Program Information

Overview: The South Pacific Scholarship Program was established by

the United States Congress to provide opportunities for U.S. study to qualified students from the sovereign nations of the South Pacific, in fields important for the region's future development. The Fiscal Year 2000 State Department Authorization Bill (HR–3427) and the Conference Report on the Fiscal Year 2000 Consolidated Appropriations Act (HR–3194) provide for exchanges between the U.S. and South Pacific.

This program supports increased mutual understanding between the people of the U.S. and those of the South Pacific Islands. Students from the following nations are eligible to apply for these scholarships: Cook Islands, Fiji, Kiribati, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. This is the first open competition for administration of this grant.

Requirements and Implementation

The requirements for administration of this program are outlined in further detail in this document and in the Program Objectives, Goals and Implementation document. The proposal should respond to each item in the POGI.

Fields of study under the program are based on recommendations from Department of State geographic office representatives and U.S. embassies abroad and have included public administration, journalism, education, environmental studies, and business. Students selected for these scholarships have enrolled in four year undergraduate degree programs, or in master's degree programs. The latter have generally involved one year of preparatory U.S. study followed by up to two years of master's degree study. This grant award will cover the entire program in the U.S. for the students selected. Students are expected to return home following the completion of their U.S. programs.

Program Components

1. Planning, implementation and monitoring of entire exchange program, based on guidance from the Bureau of Educational and Cultural Affairs. The proposal must demonstrate an understanding of the South Pacific region and culture and the needs of students coming to the U.S. from the region.

2. Publicity, recruitment and application process for the program. The proposal should indicate specifically what methods will be used to carry out this process for the South Pacific Islands.

3. Merit-based selection of principals and alternates. A pool of alternates should be established that may be drawn on if necessary in subsequent years. Communication with applicants and notification of selection for the program.

4. Placement and enrollment of students at an accredited U.S. college/university appropriate to their academic and future professional goals. Students may be placed together at the same institution or at different institutions. The proposal should explain how identification with the South Pacific Scholarship program will be established and maintained among students.

5. Pre-arrival information for students, assistance with visa application process, travel to the U.S., arrival.

6. Orientation and settling in at U.S. institution. The proposal should indicate how the applicant will prepare the students for their exchange experience.

7. Provision of stipends and coverage of other appropriate living/study/enrichment expenses for participants throughout their program. Provision of tax withholding and health insurance.

8. On-going monitoring, academic advising, and general support for students throughout the program.

9. Management of cross-cultural issues, special situations and emergencies.

10. Opportunities for transfers and exchanges to other U.S. universities during the program to diversify the students' experience and fulfill academic goals.

11. Obtaining of tuition waivers, reduced fees, and other forms of cost-sharing.

12. Cultural/community enrichment for students about U.S. society and culture.

13. Internships and professional development.

14. Pre-return and reentry activities.

15. Evaluation and follow-on including alumni activities.

16. Fiscal Management of any sub-contractors.

17. Compliance with J–1 visa requirements regarding health insurance for participants.

Guidelines

The amount of the grant award in FY 2000 is expected to be approximately $700,000, based on availability of funds. The award will be made in Spring/Summer 2000. The grantee should begin planning immediately for recruitment at that time. Participants are expected to begin their U.S. study programs between January 2001 and Fall 2001.

Proposal budgets should include all costs for students to complete the entire three or four years of degree study in the U.S. The proposal should indicate how many students will be supported for a complete degree program with this funding. The grant will remain open for approximately five years.

If performance under this grant is satisfactory, the award may be renewed each year for approximately two additional years at the Bureau's discretion, assuming that the program continues to receive federal funding.]

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

Budget Guidelines

Since grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs are limited to $60,000, such organizations are not eligible to compete for this grant.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program may include the following:

(1) Publicity, recruitment, selection, placement and communication with applicants and participants.

(2) Travel for student participants between home and program location.

(3) Tuition and fees, stipends for living costs, book allowances, and other necessary expenses for the students.

(4) Advising and monitoring of students; academic and cultural support and enrichment activities. May include some U.S. travel.

(5) Pre-departure activities and evaluation.

(6) Staff and administrative expenses to carry out the program activities. Administrative and overhead costs should be as low as possible.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFP should reference the above title and number *ECA/A–SP–00–01.*

FOR FURTHER INFORMATION CONTACT: Marianne Craven, Managing Director of Academic Programs, ECA/A, Room 202, U.S. Department of State, Annex 44, 301 4th Street, SW., Washington, DC 20547, tel. (202) 619–6409, fax. (202) 205–2452, e-mail: mcraven@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award

criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Marianne Craven, program officer for this activity, on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, April 7, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and *10* copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A–SP–00–01*, Program Management, ECA/EX/PM, Room 336, SA–44, 301 4th Street, SW, Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content.

Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package requirements by Bureau offices responsible for these functions. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. For program content, cost-effectiveness, and other criteria spelled out in the RFP, the review is conducted by an advisory, assistance award-review panel composed of Bureau and Department officers. Additional officers, including geographic area personnel, also review proposals for feasibility as well as potential for short- and long-term impact. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the Fiscal Year 2000 State Department Authorization Bill (HR–3427) and the Conference Report on the Fiscal Year 2000 Consolidated Appropriations Act (HR–3194).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding.

Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: February 29, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–5775 Filed 3–8–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice No. 3240]

Bureau of Oceans, International Environmental and Scientific Affairs; Public Meeting To Discuss Preparations for Negotiations on an International Agreement Through the United Nations Environment Program on Persistent Organic Pollutants

SUMMARY: The United States government, through an interagency working group chaired by the U.S. Department of State, is preparing for the fourth in a series of negotiations through the United Nations Environment Program (UNEP) on a global agreement to address certain persistent organic pollutants (POPs) that result in risks of a transboundary nature. The fourth negotiating session is scheduled to take place in Bonn, Germany, on March 20–25, 2000. The Department of State will host a public meeting in advance of this session to outline issues likely to arise in the context of the negotiations. The public meeting will take place on Tuesday, March 14, 2000, from 10 a.m. to 11:30 a.m. in Room 1408 of the U.S. Department of State, 2201 C Street NW, Washington, D.C. To expedite their entrance into the building, attendees should provide to Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (tel. 202–647–9266, fax 202–647–5947) their name, organization, date of birth and Social Security number by noon on Monday, February 13, 2000. Attendees should enter the C Street entrance and bring picture identification with them. For further information, please contact Ms. Cornelia Weierbach, U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW, Washington DC 20520. Phone 202–647–4548, fax 202–647–5947, e-mail weierbachcm@state.gov.

SUPPLEMENTARY INFORMATION:

The UNEP POPs Negotiations

The POPs treaty is the first global treaty to address in a comprehensive manner the risks to human health and the environment of chemicals and other pollutants. The treaty will in the first instance deal with twelve substances: Aldrin, Endrin, HCBs, Toxaphene, Chlordane, Dieldrin, Heptachlor, Mirex, DDT, PCBs, dioxins and furans. These substances fall into three categories: pesticides, industrial chemicals, and unintended by-products of combustion and industrial processes.

These global negotiations are an ambitious undertaking, since they encompass a broad range of measures to address POPs of transboundary concern. These range from controls on production and use for commercial chemicals, controls on POPs wastes, and controls on by-products that come from combustion and industrial processes. For many countries, this will be the first time that these substances have been controlled, and the effects are likely to be far-reaching.

Since the U.S. and other developed countries have already taken actions on these chemicals, major goals are broad participation in the agreement by developing countries and, consequently, meaningful reductions in the amount of pollutants that are released into the environment. A critical part of the agreement will be technical and financial assistance mechanisms to help developing countries effectively implement their obligations.

Timetable and Point of Contact

The POPs Intergovernmental Negotiating Committee (INC) expects to complete its work at its fifth session, which will take place in South Africa in fall 2000. In preparation for the fourth session of the INC, the Administration is preparing its position for the negotiation, and has scheduled a public meeting to be held on Tuesday, March 14, 2000 from 10:00 a.m. to 11:30 a.m. in Room 1408 of the U.S. Department of State. Members of the interagency working group who will participate in the proposed negotiation will provide an overview of U.S. preparations for the fourth session. The U.S. Department of State is issuing this notice to help ensure that interested and potentially affected parties are aware of and knowledgeable about these negotiations, and have an opportunity to offer comments. Those organizations/individuals which cannot attend the March 14, 2000 meeting, but wish to either submit a written comment or to remain informed, should provide Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (phone 202–647–9266; fax 202–647–5947) with their statement and/or their name, organization, address, telephone and fax numbers, and their e-mail address.

Dated: March 3, 2000.

Daniel Fantozzi,

Director, Office of Environmental Policy, Department of State.

[FR Doc. 00–5647 Filed 3–8–00; 8:45 am]

BILLING CODE 4710–06–U

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice–3239]

Extension of the Restriction on the Use of United States Passports for Travel To, In or Through Iraq

On February 1, 1991, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(2) and (a)(3), all United States passports, with certain exceptions, were declared invalid for travel to, in, or through Iraq unless specifically validated for such travel. The restriction was originally imposed because armed hostilities then were taking place in Iraq and Kuwait, and because there was an imminent danger to the safety of United States travelers to Iraq. American citizens then residing in Iraq and American professional reporters and journalists on assignment there were exempted from the restriction on the ground that such exemptions were in the national interest. The restriction has been extended for additional one-year periods since then, and was last extended through March 20, 2000, pursuant to your decision of March 18, 1999.

Conditions in Iraq remain hazardous for Americans. Iraq continues to refuse to comply with UN Security Council resolutions to fully declare and destroy its weapons of mass destruction and missiles while mounting a virulent public campaign in which the United States is blamed for maintenance of U.N. sanctions. The United Nations has withdrawn all U.S. citizen UN humanitarian workers from Iraq because of the Government of Iraq's stated inability to protect their safety. Since January 1999, Iraq has fired anti-aircraft artillery and surface-to-air missiles at U.S. and coalition aircraft enforcing the no-fly zones over northern and southern Iraq over 160 times, and has repeatedly illuminated U.S. and coalition aircraft with target-acquisition radar. In February 1999, Iraqi President Saddam Hussein offered a reward for the downing of an American or British aircraft or the capture of an American or British pilot.

Local conflicts within Iraq also pose hazards to travelers. The central government does not maintain control over all areas in the South and travel at night is particularly hazardous, given the potential for armed clashes between government forces and local resistance elements. Military repression of Shia communities continues in southern Iraq;

hundreds of persons were summarily killed in security sweeps and entire villages were razed during 1999. The government's draconian repression of its civilian population creates a high risk to innocent bystanders.

U.S. citizens and other foreigners working inside Kuwait near the Iraqi borders have been detained by Iraqi authorities in the past and sentenced to lengthy jail terms for alleged illegal entry into the country. Although our interests are represented by the Embassy of Poland in Baghdad, its ability to obtain consular access to detained U.S. citizens and to perform emergency services is constrained by Iraqi unwillingness to cooperate. In light of these circumstances, I have determined that Iraq continues to be a country "where there is imminent danger to the public health or physical safety of United States travelers".

Accordingly, United States passports shall continue to be invalid for use in travel to, in, or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. The restriction shall not apply to American citizens residing in Iraq on February 1, 1991, who continue to reside there, or to American professional reporters or journalists on assignment there.

The Public Notice shall be effective from the date it is published in the **Federal Register** and shall expire at midnight on the same date in the year 2001, unless sooner extended or revoked by Public Notice.

Dated: February 24, 2000.

Madeleine K. Albright,

Secretary of State, U.S. Department of State.

[FR Doc. 00–5773 Filed 3–8–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7004]

Chemical Transportation Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). CTAC provides advice and makes recommendations to the Coast Guard on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S.-flag vessels in U.S. ports and waterways.

DATES: Application forms should reach the Coast Guard on or before September 1, 2000.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling (202) 267–1217/0081; or by faxing (202) 267–4570. Submit application forms to the same address. This notice and the application form are available on the Internet at http://dms.dot.gov. The application form is also available at http://www.uscg.mil/hq/g-m/advisory/ctac/ctac.htm.

FOR FURTHER INFORMATION CONTACT: Commander Robert F. Corbin, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone (202) 267–1217/0081, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: The Chemical Transportation Advisory Committee (CTAC) is a Federal advisory committee constituted under 5 U.S.C. App. 2. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety and Environmental Protection on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S.-flag vessels in U.S. ports and waterways. The advice and recommendations of CTAC also assist the U.S. Coast Guard in formulating the position of the United States on hazardous material transportation issues prior to meetings of the international Maritime Organization.

CTAC meets at least once a year at Coast Guard Headquarters in Washington, DC. It may also meet more often than once a year as necessary. CTAC's subcommittee and working groups may meet to perform specific assignments as required.

The Coast Guard will consider applications for ten positions that expire in December 2000. To be eligible, applicants should have experience in chemical manufacturing, vessel design and construction, marine transportation of chemicals, occupational safety and health, or marine environmental protection issues associated with chemical transportation. Each member serves for a term of three years. Some members may serve consecutive terms. However, not more than 50 percent of the members with expiring terms may be re-appointed. All members serve at their own expense, and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Dated: March 2, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–5832 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–7005]

National Offshore Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for membership on the National Offshore Safety Advisory Committee (NOSAC). NOSAC provides advice and makes recommendations to the Coast Guard on matters affecting the offshore industry.

DATES: Applications should reach us on or before July 30, 2000.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–1181; or by faxing 202–267–4570. A copy of the application form is available from the Coast Guard's Advisory Committee web page at: *http://www.uscg.mil/hq/g-m/advisory/index.htm* Send your application in written form to the above street address. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Captain Peter A. Richardson, Executive Director of NOSAC, or James M. Magill, Assistant to the Executive Director, telephone 202 267–1181, fax 202 267–4570.

SUPPLEMENTARY INFORMATION: NOSAC is a Federal advisory committee constituted under 5 U.S.C. App. 2. It consists of 14 regular members who have particular expertise, knowledge, and experience regarding drilling and production technology, equipment, and techniques that are used, or are being developed for use, in the exploration or recovery of offshore mineral resources. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety and Environmental Protection, on safety and rulemaking matters relating to the offshore mineral and energy industries.

This advice assists us in formulating the positions of the United States in advance of meetings of the International Maritime Organization.

NOSAC meets twice a year, with one of these meetings being held at Coast Guard Headquarters in Washington, DC. It may also meet for extraordinary purposes. Subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for four positions that expire or become vacant in January 2001. To be eligible, applicants should have experience in offshore operations, diving services, pipelaying, or general public interest associated with offshore activities. Each member serves a term of 3 years. A few members may serve consecutive terms. All members serve at their own expense, and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the U.S. Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and minority group members.

If you are selected as the general public member, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: March 2, 2000.

Joseph J. Angelo,

Director of Standards Marine Safety and Environmental Protection.

[FR Doc. 00–5831 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–00–7018]

Fees for FAA Services for Certain Flights; Public Availability of Letter

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces the availability to the public of a letter to known users of "overflight" services concerning the reestablishment of certain fees. This letter states that these fees will be charged for air traffic control (ATC) and related services provided to certain aircraft that fly through U.S.-controlled airspace, but neither take off from nor land in the United States.

FOR FURTHER INFORMATION CONTACT: Randy Fiertz (202) 267–7140, Acting Director, Office of Performance Management (APF–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: The FAA is sending letters to know major users and other interested entities about the reestablishment of "overflight" fees. These fees will be charged for ATC and related services provided to certain aircraft that fly through U.S.-controlled airspace, but neither take off from nor land in the United States. Such fees are comely referred to as "overflight" fees. The FAA is taking this action to give the public notice of the letter being sent to affected parties concerning reestablishment of "overflight" fees. This notice and a copy of the letter below will be available for public inspection in the docket at U.S. Department of Transportation Dockets, 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590, between 10 a.m. and 5 p.m. weekdays, except Federal holiday. The docket may also be examined electronically through the Dockets Management System (DMS) at the fcllowing Internet address: *http://dms.dot.gov/* at any time.

Issued in Washington, DC on March 6, 2000.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Letter to Users of Certain Overflight ATC Services

Dear _____:

The Federal Aviation Administration (FAA) will soon announce the reestablishment of user fees that will be charged for air traffic control (ATC) and related services provided to certain aircraft that fly through U.S.-controlled airspace, but neither take off from, nor land in, the United States. Such fees are commonly referred to as "overflight" fees.

The implementation of these fees is required by the Federal Aviation Reauthorization Act of 1996 (The Act). The Act states that the FAA should establish overflight fees through the publication of an Interim Final Rule. Under the Interim Final Rule process, the fees will take effect shortly after publication in the **Federal Register**. The FAA will invite public comment on the Interim Final Rule. After thorough consideration of the comments received, the FAA will make any appropriate changes and then issue a Final Rule.

You may recall that the FAA published an Overflight Fee Interim Final Rule in March 1997. The costs upon which those overflight fees were based were determined using FAA's 1995 Cost Allocation Study. On January 30, 1998, the U.S. Court of Appeals for the District of Columbia set aside the 1997 rule, concluding that the FAA had used an incorrect methodology to allocate fixed and common costs. As a result of the Court's ruling, the FAA immediately suspended fee collections, subsequently refunded the $40 million in fees that had then been collected, and withdrew the Interim Final Rule.

Although the Court of Appeals' ruling effectively terminated the 1997 overflight fees, the Act remains in effect. To comply with the Act and accurately establish the costs of ATC services using the best available information, the FAA is developing new overflight fees using actual fiscal year 1999 cost data from its new cost accounting system. This system has been reviewed carefully by accounting and financial professionals, both inside and outside the government, to ensure that the ATC enroute and oceanic cost data used are the most accurate available.

The Office of Inspector General of the Department of Transportation recently completed an in-depth review of the fiscal year 1998 cost accounting data and the flight data used to derive the new fees. A copy of the Inspector General's report can be found at *www.oig.dot.gov.avauds.htm* (Report no. FE–2000–024, dated December 17, 1999). The report includes recommendations, which the FAA has acted upon, including basing the overflight fees on actual cost accounting data for fiscal year 1999.

I hope the above information is useful to you in your planning. Our regulatory procedures do not allow me at this time to provide further details beyond those contained in this letter. Once the Interim Final Rule has been published, however, there will be ample opportunity for you to present your views—including a public meeting that will be announced when the Interim Final Rule is published. I look forward to working with you more closely at that time.

While the Interim Final Rule process is not the customary rulemakng approach used by the FAA, it is required by law for this particular rulemaking. Nevertheless, I can assure you that all comments received will be fully considered by the FAA before the Final Rule is issued.

Sincerely,

Donna R. McLean,
Assistant Administrator for Financial Services.

[FR Doc. 00–5778 Filed 3–6–00; 3:13 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No: MARAD–2000–7011]

Requestod Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the Vessel KIRSTEN ANNE.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with P.L. 105–383 and MARAD's regulations at 46 CFR 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 10, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7011. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested: Name of vessel: KIRSTEN ANNE, Owner: Robert and Laurie Lindsey.

(2) Size, capacity and tonnage of vessel: The KIRSTEN ANNE measures 48.5 feet in length and displaces 29 net tons, 33 gross tons. The capacity of the vessel is 12 passengers or less.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "If a waiver is granted, we intend to use this vessel to carry passengers for hire on sailing wildlife/adventure cruises, scientific research charters, whale watching/videography, and Eco-tourism to the refuges and National Monuments in our area of opportunity. We will operate this vessel in the greater Kodiak Island Archipelago and Gulf of Alaska. Some anticipated offerings will be cruises of the Katmai coast and birding expeditions in the Kodiak area as well as the Alaska Peninsula. We look forward to offering the scientific community an affordable alternative for long-range /duration studies involving Stellar Sea Lions and seabirds."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1979, place of construction: Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant:

"The Kodiak Island area is in its infancy of charter work with a small but competent group of operators who offer primarily fishing charters and hunting support. Although many of the vessels offer some Whale watching/Ecotourism type charters, there are no sailing vessels involved in charter work in the Kodiak area. Unofficially, halibut fishing is the largest group of charter operations, Salmon fishing would be second, and Hunter support is third and general sightseeing is the smallest segment of the charter fleet.

We feel the economics are so marginal that we can only afford to offer this service because we were able to purchase our vessel for a very reasonable price. Already established in this area, we can subsidize the operation through startup with income from our other occupations. The only impact that a waiver will have on other operations in this area would be positive based on exposure, a service not previously offered and additional draw for tourists to visit Kodiak. The replacement value of our vessel is approximately $380,000. If that were the only way to start a sail charter operation, it would not be economically feasible in this market.

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The effect a waiver on local shipbuilding /repair in this area would be positive because we will be using our vessel more than we do now which will have the effect of revenue for local businesses. We anticipate some additional equipment may be necessary to begin operations. This equipment will be contracted with locally owned businesses and purchased in Kodiak. Should we need any modifications or repairs to the boat as our business grows, we will use local shipyards and chandlers. There is no shipbuilding other than small one-off aluminum boat shops on Kodiak Island and no large boat builders in the state of Alaska. When our operation becomes successful, we anticipate the need for an American built sailboat designed specifically for this area. Our concept of this vessel would be approximately 65–80 feet in length displacing at least 50 tons. This new vessel will be an American built motorsailer with enhanced diving support and capable of extended cruises. Clearly, we are dedicated to this concept and feel that the only impact on shipbuilding would be positive."

Dated: March 3, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–5638 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–6884]

Reports, Forms, and Recordkeeping Requirements

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit

public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes a collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 8, 2000.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to the Docket Section, Room PL401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided by referencing its OMB Clearance Number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. William Holden, NHTSA, 400 Seventh Street, SW., Room 6124, Washington, DC 20590. Mr. Holden's telephone number is (202) 366–1566. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

National Driver Register Reporting Requirement for 23 CFR Part 1327

Type of Request—Extension of clearance.

OMB Clearance Number—2127–0001.

Form Number—This collection of information uses no standard form.

Requested Expiration Date of Approval—Three years from date of approval.

Summary of the Collection of Information—The National Driver Register Act of 1982 (Pub. L. 97–364), as amended, mandates the Secretary of Transportation to establish and maintain a National Driver Register to assist chief driver licensing officials of participating states in exchanging information about the motor vehicle driving records of individuals. The Act requires the chief driver licensing official of each participating state to submit a report to the Secretary of each individual who is denied a motor vehicle operator's license by that State for cause; whose motor vehicle operator's license is revoked, suspended, or canceled by that State for cause; or who is convicted under the laws of that State of any of the following motor vehicle-related offenses or comparable offenses: (a) Operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; (b) a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways; (c) failing to give aid or provide identification when involved in an accident resulting in death or personal injury; (d) perjury or knowingly making a false affidavit or statement to officials about activities governed by a law or regulation on the operation of a motor vehicle. The Act also requires the chief driver licensing officials of participating states to check the NDR on all first time above-minimum age driver license applicants in their states.

The Commercial Motor Vehicle Safety Act of 1986 requires the states to check the NDR for all applicants for Commercial Driver Licenses.

Description of the need for the information and proposed use of the information—The purpose of the NDR, and thus this information collection activity, is to prevent the issuance of driver's licenses to problem drivers in order to enhance traffic safety. Through amendments to the NDR Act, the activity also serves to prevent the certification of airline pilots, merchant mariners, locomotive operators, and individual employed motor vehicle operators if they are problem drivers.

The information will be used by NHTSA in exercising its statutory authority to operate the NDR. Without this information, states could issue licenses to individuals who are suspended or revoked in other states, or could issue a duplicate license to an individual who is licensed in another state, allowing them to spread their violations over a number of licenses.

Description of Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—The 51 respondents are the State driver licensing agencies, including the District of Columbia. The frequency of response depends on how each state chooses to update the NDR master file. File updates can be daily or monthly.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—The agency estimates the reporting burden for this year will be $37,040 for the 51 jurisdictions. The reporting burden is based on information systems personnel salaries and related expenses.

Authority: 49 U.S.C. 30304; delegation of authority at 49 CFR 1.50.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 00–5806 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–6947 Notice 1]

Subaru of America, Inc.; Receipt of Application for Determination of Inconsequential Non-Compliance

Subaru of America, Inc. (Subaru) of Cherry Hill, New Jersey, has applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 "Motor Vehicle Safety" for a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 209, "Seat Belt Assemblies," on the basis that the noncompliance is inconsequential to motor vehicle safety. Subaru has filed a report of noncompliance pursuant to 49 CFR Part 573 "Defects and Noncompliance Report."

This notice of receipt of the application is published under 49 U.S.C. 30118 and 30120 and does not

represent any agency decision or other exercise of judgement concerning the merits of the application.

Description of Noncompliance

Replacement seat belt assemblies had been packaged by Subaru without instruction sheets required under 49 CFR 571.209, S4.1(k) and (1). All of the seat belt assemblies involved meets all other requirements of FMVSS No. 209.

Approximately 522 sets of replacement seat belt assemblies manufactured and sold were involved.

Supporting Information as Submitted by Subaru

Supporting Data, Views and Arguments:

In accordance with FMVSS 209, S4.1 (k) replacement seat belt assemblies must be accompanied by installation instructions for installing the assembly in a motor vehicle. These instructions "shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles and shall include at least those items specified in SAE Recommended Practice J800c, Motor Vehicle Seat Belt Installation, November 1973."

As Subaru understands SAE Recommended Practice J800c, it deals primarily with the threading of webbing and location and drilling of anchorage holes and is not relevant here since all affected Subaru vehicles have pre-existing anchorage holes. All of the affected replacement seat belt assemblies are supplied ready for use with fully threaded webbing. Subaru believes that S4.1 (k) is intended to prevent the mismatch of a seat belt assembly in the wrong model vehicle or the wrong seating position and prevent improper installation of a seat belt at the correct position.

Subaru replacement seat belts are offered as exclusive parts, unique to each model, vehicle configuration and seating position. Those parts have specific part numbers identified in Subaru parts catalogs with illustrations. The item numbers attached to each illustration enable the ordering dealer to specify the replacement seat belt assembly he is ordering by referring to the corresponding page which shows the applicable part number, specific vehicle model type, location, applicable model year, etc. When ordering Subaru replacement parts, the dealer must refer to the Subaru parts catalog to identify the ordering part number with the information on the specific vehicle model type, location and model year. Each replacement seat belt assembly is packaged individually with a specific part number label clearly attached on the package to ensure shipping the correct parts. Also, the dealer routinely checks to see that the part he received matches the one he ordered.

There are a variety of significant physical differences among Subaru seat belt assemblies, which include various mounting configuration and location differences; differences in buckle latch plate configuration and retractor locking device; webbing length and housing configuration differences, and differences in motorized seat belt guide track shapes.

Given these variances in physical properties, it is not possible that a mechanic would install a replacement seat belt assembly in the wrong model vehicle or the wrong seating position.

Subaru believes that the ordering and shipping procedures for Subaru replacement seat belts make it highly unlikely that the wrong seat belt assembly will be delivered to a dealer and, should the wrong seat belt be delivered, the above mentioned physical differences make it virtually impossible to install the seat belt in the wrong model vehicle or at an incorrect seating position.

Subaru dealers install replacement seat belt assemblies in accordance with the instructions in Subaru service manuals provided to every Subaru dealer and are widely available to the public and independent repair facilities. Therefore, improper installation of replacement seat belt assemblies is highly unlikely.

In most cases of installation of a replacement seat belt, the installer will first remove the seat belt that needs to be replaced from the vehicle. After removal of the old seat belt, the installer will then reverse the steps of removal to properly locate and install the replacement belt. There is no need to specify instructions for threading the webbing or finding locations for and drilling anchorage holes because replacement seat belt assemblies are furnished ready for installation in the vehicle preexisting anchorage holes with a few simple steps.

FMVSS 209, S4.1 (1) requires instruction addressing the importance of wearing seat belt "snugly and properly located on the body" and information about seat belt maintenance (The requirements of S4.1 (1) pertaining to threading and unlocking retractors do not apply to Subaru's seat belt designs). Since Subaru's owner's manual already provides proper usage and maintenance information to the vehicle owner and operator, incorrect usage and maintenance by the vehicle owner and operator is highly unlikely.

Upon discovery of the subject noncompliance, Subaru has taken action to ensure that all replacement seat belt assemblies shipped in the future are packaged with the required installation instructions.

Subaru has corrected all the replacement seat belt assembly inventory for shipment to dealers and will provide additional instruction documents to dealers with inventory subject to the noncompliance.

Replacement seat belt assemblies sold at retail to customers have not resulted in owner complaints as a result of this inconsequential noncompliance.

Interested persons are invited to submit written data, views and arguments on the petition of Subaru, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, National Highway Traffic Safety Administration, Room PL 401, 400 7th Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, a Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 10, 2000.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: March 6, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–5833 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of actions on exemption applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 197, Subpart B), notice is hereby given of the actions on exemption applications in September–December 1999. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on March 3, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

MODIFICATION EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8554–M	DOT–E 8554 ...	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 173.114a, 173.154, 173.93.	To modify the exemption to allow for the transportation of additional Division 5.1 materials in certain motor vehicles and cargo tanks.
8723–M	DOT–E 8723 ...	Nelson Brothers, Inc., Birmingham, AL.	49 CFR 172.101, 173.242, 173.62, 176.83, 177.848.	To modify the exemption to provide for the addition of IM–101 portable tanks equipped with safety relief devices with lower set point devices that meet IM–102 set point and capacity requirements for bulk shipments of certain blasting agents.
8723–M	DOT–E 8723 ...	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 172.101, 173.242, 173.62, 176.83, 177.848.	To modify the exemption to allow for an additional design for the emulsion tote bin for bulk shipments of certain division 1.5 explosives and/or Division 5.1 oxidizers.
8723–M	DOT–E 8723 ...	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 172.101, 173.242, 173.62, 176.83, 177.848.	To modify the exemption to allow for an additional emulsion tote bin design for shipments of certain Division 1.5 explosives and/or Division 5.1 oxidizers.
8723–M	DOT–E 8723 ...	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 172.101, 173.242, 173.62, 176.83, 177.848.	To modify the exemption to allow for the transportation of additional Division 5.1 materials in certain motor vehicles and portable tanks.
9001–M	DOT–E 9001 ...	UEF Chesterfield Cylinders, Chesterfield, Derbyshire, EN.	49 CFR 173.301, 173.302, 173.304, 175.3, 178.45.	To modify the exemption to allow for an additional Division 2.1 material in non-DOT specification cylinders.
10180–M	DOT–E 10180	Fireboy-Xintex; Grand Rapids, MI.	49 CFR 173.304 (a)(2), 173.34(d).	To modify the exemption to authorize an additional Division 2.2 material in DOT Specification 39 cylinders.
10427–M	DOT–E 10427	Astrotech Space Operations, Inc., Titusville, FL.	49 CFR 173.276, 173.301, 173.302, 173.336, 173.61(d), 177.848(d).	To modify the exemption to delete the midnight to 6:00 a.m. transport requirement for shipment of "Flight-ready" spacecraft containing hazardous materials in specially designed non-DOT specification transport containers.
10440–M	DOT–E 10440	MASS Systems, Inc., Baldwin Park, CA.	49 CFR 173.304 (a)(1), 175.3, 178.35(f), 178.47.	To modify the exemption to increase service pressure not to exceed 3100 psig for the welded austenitic stainless steel non-DOT specification cylinder.
10672–M	DOT–E 10672	Burlington Packaging, Inc., Brooklyn, NY.	49 CFR 173.13	To modify the exemption to allow for polyethylene bottles, not exceeding 32 ounces in capacity, in multiple or individual containers for shipment of liquid and solid hazardous materials.
11215–M	DOT–E 11215	Orbital Sciences Corporation, Dulles, VA.	49 CFR 172.101, Special Provision 109, Part 172, Subparts C, D.	To modify the exemption to include new operations origination points and flight path changes for the transportation of certain hazardous materials contained in a rocket configuration secured beneath a L–1011 aircraft.
11432–M	DOT–E 11432	Baker Atlas, Houston, TX	49 CFR 173.61(c), 173.62,E–141, 177.848(g).	To modify the exemption to allow for an alternate lining and relief from certain marking/shipping paper entry requirements for the transportation of Division 1.4 igniters mix-packed with Division 1.4 detonators transported with Class 1 explosives.
11436–M	DOT–E 11436	B&R Specialties, Inc., Staatsburg, NY.	49 CFR 172.101, Col. (8c), 173.197.	To modify the exemption to authorize less than 3 mil. red bags so long as it meets tear-resistance and impact resistance tests for use in the transportation of regulated medical waste.
11506–M	DOT–E 11506	OEA, Inc., Denver, CO	49 CFR 173.301(h), 173.302.	To modify the exemption to include passenger-carrying aircraft as an authorized mode of transportation.
11526–M	DOT–E 11526	BOC Gases, Murray Hill, NJ.	49 CFR 172.302(c), (2), (3), (4), (5), 173.34 (15)(vi), 173.34(e) (1), (3), (4), (8).	To modify the exemption to allow, on exclusive use carrier, condemned cylinders to be transported back to their originating location for gas disposal and cylinder destruction.
11545–M	DOT–E 11545	Bernzomatic, Medina, NY	49 CFR 173.304 (a)(4)(ii), 178.33a–8.	To modify the exemption to allow for the use of an additional container design type for the transportation of certain Division 2.1 materials.
11620–M	DOT–E 11620	CCL Container (Advanced Monobloc Aerosol Div.), Hermitage, PA.	49 CFR 173.306 (3)(ii)	To modify the exemption to allow for the transportation of alternate refrigerants (Division 2.2) in certain DOT Specification 2Q containers.
11667–M	DOT–E 11667	Weldship Corporation, Bethlehem, PA.	49 CFR 173.302(c) (2), (3), (4), 173.34(e).	To authorize the modification of personnel qualifications for retesting of DOT–3AAX and 3T cylinders.
11667–M	DOT–E 11667	Weldship Corporation, Bethlehem, PA.	49 CFR 173.302(c) (2), (3), (4), 173.34(e).	To modify the exemption to allow for the testing of DOT–3AA cylinders and the use of Automatic Sensor Test (AST) method for the transportation of certain compressed gases.

MODIFICATION EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11827–M	DOT–E 11827	NRS America, Inc., White Plains, NY.	49 CFR 173.32b (b)(1), 180.352 (b)(3).	To modify the exemption to add Intermediate Bulk Containers (IBCs) as authorized packaging for the transportation of various classes of hazardous materials.
11856–M	DOT–E 11856	Olin Corporation, Norwalk, CT.	49 CFR 173.304 (a)(2), 173.34(d), 175.3.	To modify the exemption to allow for the addition of a satellite launch "separation system" device classed as Division 1.4C.
11865–M	DOT–E 11865	ACCU Chem Conversion, Inc., City of Industry, CA.	49 CFR 174.67(i), (j)	To modify the exemption to authorize the transportation of certain Class 3 materials in rail cars.
11880–M	DOT–E 11880	International Catalyst Corporation, Lloydminister, Alberta, CN.	49 CFR 173.241, 173.242	To modify the exemption to allow for a valve design in the unloading system of the non-specification steel covered hopper railcars for the transportation of Division 4.2 materials.
11914–M	DOT–E 11914	Dae Ryuk Can Co., Ltd., Seoul, SK.	49 CFR 173.304 (d)(3)(ii), 178.33.	To modify the exemption to allow for a design change for an additional non-DOT specification container with a maximum capacity not to exceed 15 cubic inches for the transportation of a Division 2.1 material.
11986–M	DOT–E 11986	U.S. Department of Defense, Falls Church, VA.	49 CFR 176.136(a), 176.136(b).	To modify the exemption to allow for ventilation of cargo holds during maintenance operations.
11990–M	DOT–E 11990	Taylor-Wharton Coyne, Huntsville, AL.	49 CFR 173.201(c), 173.202(c), 173.302 (a)(1), 173.304 (a)(1), 175.3, 178.35–(e), 178.35–(f), 178.36–(a)(1), 178.36(b), 178.36–(g), 178.36–(j), 178.36–(m).	To modify the exemption to allow for design changes of non-DOT specification cylinders for the transportation of certain Division 2.1, 2.2 and Class 3 materials.
12063–M	DOT–E 12063	The Hydrocarbon Flow Specialist, Morgan City, LA.	49 CFR 173.243(c)	To modify the exemption to provide for additional Class 8 hazardous materials in IM 101 tanks equipped with an external bottom discharge valve.
12093–M	DOT–E 12093	Dynatherm Corporation, Inc., Hunt Valley, MD.	49 CFR 173.302 (a)(1), 173.304 (a)(2), 173.34(d), 175.3.	To modify the exemption to allow for design changes of the non-DOT specification containers containing certain Division 2.1, 2.2 and 2.3 liquefied and compressed gases.
12098–M	DOT–E 12098	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 173.302 (a)(1), 175.3, 178.35(e), 178.44.	To modify the exemption to allow a change to the marking requirements of a non-DOT specification cylinder for the transportation of certain Division 2.2 compressed gases.
12123–M	DOT–E 12123	Eastman Chemical Company, Kingsport, TN.	49 CFR 172.203(a), 172.302(c), 174.67(i).	To modify the exemption to authorize PG II and III to include combustible materials and delete Paragraph 7.C.
12284–M	DOT–E 12284	L&D Safety Marking Corp., Barre, VT.	49 CFR 173.242	To reissue the exemption originally issued on an emergency basis for the transportation of certain non-DOT specification cargo tanks used for roadway striping.
12310–M	DOT–E 12310	Five Star Waste, Inc., Lake Worth, FL.	49 CFR 172.101 (8)(b), 172.101 (8)(c), 173.197.	To reissue the exemption originally issued on an emergency basis for the transportation of regulated medical waste in non-DOT specification containers.
12328–M	DOT–E 12328	Certitank LLC, Coatesville, PA.	49 CFR 173.34(1) subparagraphs 1, 2, 3.	To reissue the exemption originally issued on an emergency basis authorizing the rebuilding or modification and sale of certain DOT Specification 4B, 4BA, and 4BW cylinders.
12362–M	DOT–E 12362	U.S. Department of Defense, Falls Church, VA.	49 CFR 176.164(c)	To reissue the exemption originally issued on an emergency basis authorizing limited maintenance and repair operations to vehicles stowed below deck in the same cargo holds as Class 1 explosives aboard LMSR vessels.

NEW EXEMPTIONS

Application no.	Exemption no.	Applicant	Regulation(s) affected	Nature of exemption thereof
12123–N	DOT–E 12123	Eastman Chemical Company, Kingsport, TN.	49 CFR 172.203(a), 172.302(c), 174.67(i).	To authorize railcars to remain connected during unloading of liquid hazardous materials not under pressure, Class 3, 6, 8, and 9 without the physical presence of an unloader and without required markjng on shipping paper. (Mode 2.)
12126–N	DOT–E 12126	LaRoche Industries, Inc., Atlanta, GA.	49 CFR 179.13	To authorize the transportation in commerce of rail tank cars containing Class 8 hazardous materials that exceed the quantity limitation presently authorized. (Mode 2.)
12171–N	DOT–E 12171	Arichell Technologies, Inc., West Newton, MA.	49 CFR 173.115(b)	To authorize the transportation in commerce of a Class 2 and Division 2.2 hazardous materials combined with non-toxic hand washing liquid soaps and other liquids. (Modes 1, 2, 3, 4.)
12203–N	DOT–E 12203	Celanese, Ltd., Dallas, TX	49 CFR 177.834 (i)(1)(2)(3).	To authorize MC–330 or MC–331 cargo tanks to remain connected when unloading has been temporarily suspended without the physicial presence of an unloader. (Mode 1.)
12206–N	DOT–E 12206	General Electric Silicones, Waterford, NY.	49 CFR 177.834 (i)(3)	To authorize cargo tanks to remain connected to outlets without attendance of a qualified person during unloading of Class 3 and Class 8 hazardous materials. (Mode 1.)
12230–N	DOT–E 12230	Chemtran Services USA, Inc., Houston, TX.	49 CFR 173.13	To authorize the manufacture, mark, and sell of specially designed combination packagings without required labels, markings, placards, or segregation for use in transporting various classes of hazardous materials. (Modes 1, 2, 3, 4.)
12238–N	DOT–E 12238	Eastman Kodak Co., Rochester, NY.	49 CFR 174.67(i)	To authorize rail cars to remain connected while standing without the physical presence of an unloader. (Mode 2.)
12241–N	DOT–E 12241	Solutia, Inc., St. Louis, MO.	49 CFR 172.101(8C)	To authorize the bulk transportation of Metal catalyst, wetted, Division 4.2 in DOT specification tank trucks. (Mode 1.)
12258–N	DOT–E 12258	JL Shepherd & Associates, San Fernando, CA.	49 CFR 171.18, 171.19, 171.20.	To authorize the transportation in commerce of a specially designed device containing Radioactive material, Class 7. (Mode 1.)
12262–N	DOT–E 12262	Sporting Arms & Ammunition Manuf. Instit. (SAAMI) Kennett Square, PA.	49 CFR 173.61(a)	To authorize the transportation in commerce of non-hazardous materials and explosives within the same packaging. (Modes 1, 2, 3, 4.)
12266–N	DOT–E 12266	Toyota Motor Sales, U.S.A., Inc., Torrance, CA.	49 CFR 172.301(c), 173.4 (a)(10), 173.4 (a)(4).	To authorize the transportation in commerce of small quantities of flammable liquids, Class 3, in non-refillable containers enclosed in sealed polyethylene bags with overpacks. (Mode 1.)
12278–N	DOT–E 12278	Morton International, Chicago, IL.	49 CFR 173.243	To authorize the transportation in commerce of composite intermediate bulk containers meeting UN design type 31HA1 for the shipment of Thioglycol, classed as a Division 6.1, PG II material. (Modes 1, 2.)
12286–N	DOT–E 12286	FMC Corporation, Philadelphia, PA.	49 CFR 180.509	To extend the retest period for DOT–111A60W7 tank cars in dedicated hydrogen peroxide service (Division 5.1). (Mode 2.)
12288–N	DOT–E 12288	Huntsman Chemical Company, West Footscray VIC 3012, AU.	49 CFR 178.245–7(a)	To authorize the transportation in commerce of Ethyl chloride, Division 2.1, in non-DOT specification steel portable tanks permanently fitted within an ISO frame. (Modes 1, 2, 3.)
12289–N	DOT–E 12289	Arbel Fauvet Rail (AFR), Cedex, FR.	49 CFR 178.245–1(a)	To authorize the manufacturing, marking sale and use of DOT Specification 51 steel portable tanks permanently enclosed within a ISO frame for use in transporting Division 2.1 and 2.2 materials as presently authorized. (Modes 1, 2, 3.)
12295–N	DOT–E 12295	Uniroyal Chemical Co., Middlebury, CT.	49 CFR 172.101, SP T15	To authorize the transportation in commerce of a Division 6.1 material in IM-tanks equipped with bottom outlets. (Modes 2, 3.)
12299–N	DOT–E 12299	Minnesota School of Diving, Inc., Brainerd, MN.	49 CFR 177.870(e)	To authorize the transportation in commerce of Division 2.2, compressed air in DOT-Specification scuba cylinders that exceed the quantity limitations to be transported aboard passenger-carrying vehicles. (Mode 1.)

NEW EXEMPTIONS—Continued

Application no.	Exemption no.	Applicant	Regulation(s) affected	Nature of exemption thereof
12306–N	DOT–E 12306	Griffin Pipe Products Co., Lynchburg, VA.	49 CFR 172, Subparts C, F.	To authorize the transportation of closed head 1A1 55 gallon drums from a storage yard into the main plant via fork trucks, without required bill of lading or placards. (Mode 1.)
12317–N	DOT–E 12317	Archimica, Gainesville, FL	49 CFR 173.243(c)	To authorize the transportation in commerce of Class 3 material in DOT–57 portable tanks not presently authorized. (Modes 1, 3.)
12319–N	DOT–E 12319	BFI-Atlanta, GA	49 CFR 178.503 (a)(9)(ii)	To authorize the transportation in commerce of 1H2 containers that have not been properly marked and labelled for reuse in transporting regulated medical waste. (Mode 1).
12324–N	DOT–E 12324	STC Technologies, Inc., Bethlehem, PA.	49 CFR 171.11 (d)(14), 171.12 (b)(17), 173.301(e) & (f), 173.304 (a)(1) & (a)(3).	To authorize the one-time transportation in commerce of a specially designed device containing small quantities of Division 2.1 gases. (Modes 1, 2, 3, 4).
12335–N	DOT–E 12335	Baker Hughes, Houston, TX.	49 CFR 173.62(c), PM E–139, PPR 1.	To authorize an alternative packaging method for use in transporting Cord, detonating, Division 1.1D and 1.4D. (Modes 1, 3).
12358–N	DOT–E 12358	BIC Corporation, Milford, CT.	49 CFR 172.400	To authorize the transportation in commerce of Lighters or Lighter refills, Division 2.1, without required labelling when packaged in accordance with 49 CFR. (Mode 1).

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 7657–M ..	DOT–E 7657 ...	Welker Engineering Company, Sugar Land, TX.	49 CFR 173.302 (a)(1), 173.304 (a)(1), 173.304 (b)(1), 175.3, 178.42.	To modify exemption to authorize compressed gas, flammable, n.o.s. (Crude oil under pressure) as an additional commodity contained in a non-DOT specification stainless steel cylinder. (Modes 1, 2, 3, 4.)
EE 11459–M	DOT–E 11459	Quality Containment Company, Owensboro, KY.	49 CFR 173.34, 173.302, 173.304.	To modify the exemption to provide for cargo vessel as an additional mode of transportation to be used in transporting damaged sulfur dioxide cylinders. (Mode 1.)
EE 12299–M	DOT–E 12299	Minnesota School of Diving, Inc., Brainerd, MN.	49 CFR 177.870 (e)	To modify Paragraph 7.c. To authorize the cylinders to be charged to pressure not exceeding 500 psig that are on the return trip from original destination. (Mode 1.)
EE 12344–N	DOT–E 12344	DXI Industries, Inc., Houston, TX.	49 CFR 173.31 (b)(2)	To authorize the transportation of Chlorine (Division 2.3) in a DOT specification 106A500X multi-unit tank car equipped with a Chlorine Institute "B" Kit from Austin, Texas to Houston, Texas. (Mode 1.)
EE 12345–N	DOT–E 12345	United Parcel Service, Louisville, KY.	49 CFR 172.316 (a)(1)	Request for an emergency exemption to authorize shipment of ORM–D materials by air without the authorized markings on the packagings. (Mode 4.)
EE 12349–N	DOT–E 12349	Reilly Industries, Inc., Indianapolis, IN.	49 CFR 172.302(c), 173.24a(d).	Request for an emergency exemption for a one time shipment of 80 55 gallon drums that do not meet the requirements in 173.24a(d). (Modes 1, 3.)
EE 12352–N	DOT–E 12352	Elf Atochem North America, Inc., Philadelphia, PA.	49 CFR 171.12 (b)(8)	Request for an emergency exemption from 171.12 (b)(8), as modified by a final rule under HM206D, which requires 2.3 materials and PIH materials that are imported or exported to be labeled with DOT's new toxic Gas or PIH labels instead of the corresponding labels required by the IMDG. (Modes 2, 3.)
EE 12362–N	DOT–E 12362	U.S. Department of the Navy, Washington, DC.	49 CFR 176.164(c)	Emergency exemption application requesting authorization for limited maintenance and repair operations to vehicles stowed below deck in the same cargo holds as class 1 explosive aboard LMSR vessels. (Mode 3.)
EE 12364–N	DOT–E 12364	American Red Cross Blood Services-NY/PA region, Syracuse, NY.	49 CFR 173.403, 173.413, 173.416, 173.467.	Request for an emergency exemption to transport 2 non-DOT specification packagings which contain RAM. (Mode 1.)
EE 12366–N	DOT–E 12366	American Red Cross Blood Service (AL Region), Birmingham, AL.	49 CFR 173.403, 173.413, 173.416, 173.467.	Request for an emergency exemption to transport RAM in non-DOT specification packages. (Mode 1.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12367–N	DOT–E 12367	Airgas-Nor Pac, Inc., Portland, OR.	49 CFR 173.24(b)	Request for an emergency exemption to transport a leaking cylinder fitted with a B chemical kit. The cylinder contains anhydrous ammonia. (Mode 1.)
EE 12375–N	DOT–E 12375	Alexander Chemical Corp., LaPorte, IN.	49 CFR 173.24	Request for an emergency exemption to transport a leaking chlorine cylinder that has been fitted with an "A Kit". (Mode 1.)
EE 12376–N	DOT–E 12376	Biotech Research Labs Inc., Gaithersburg, MD.	49 CFR 173.196, 178.609	Request for emergency exemption to move 115 freezers that contain specimen collections involved in novel drug and vaccine therapies. (Mode 1.)
EE 12384–N	DOT–E 12384	Oilair Hydraulics Inc., Houston, TX.	49 CFR 173.302 (a)(1), 175.3.	Request for an emergency exemption to transport non-flammable gas in a package (accumulator) whic is not authorized under the HMR. (Modes 1, 2, 3, 4.)
EE 12387–N	DOT–E 12387	DXI Industries, Houston, TX.	49 CFR 173.31 (B)(2)	Request for an emergency exemption to transport a DOT spec tank car tank that has a leading valve fitted with a kit attached. (Mode 1.)

DENIALS

11699–N	Request by GEO Specialty Chemicals Bastrop, LA to authorize the installation of a 1" plugcock value on the air inlet line located on the dome of rail cars that are not equipped with dome vents or safety relief valves that are used for transporting aluminum sulfate, solution, Division 2.3 denied September 13, 1999.
12249–N	Request by Breed Technologies, Inc., Lakeland, FL to authorize the manufacture, mark and sale DOT-Specification 39 compressed gas cylinders (pressure vessels) for use as components of automobile vehicle safety systems with relief from the 30 second holdtime required at test pressure denied October 27, 1999.
12282–N	Request by Defense Technology Corp., Casper, WY to authorize the manufacture, marking and sale of compressed gas, Division 2.2, in non-DOT specification cylinders comparable to DOT-Specification 39 denied October 27, 1999.
12291–N	Request by Jean Phillippe Fragrances, Inc., New York, NY to authorize the transportation in commerce of aerosol fragrance products not to exceed 5 ounces to be transported in aluminum containers with overpack denied October 28, 1999.
12300–N	Request by Container Products Corp., Wilmington, NC to authorize the manufacture, marking and sale of intermediate bulk containers which exceed the quantity limitations presently authorized for use in transporting Package Groups II and III liquid hazardous materials and Packing Groups I, II, & III solid hazardous materials denied September 29, 1999.
23059–N	Request by Fragrance Materials Association of the U.S., Washington, DC to authorize the transportation of samples of flavor and fragrance materials in Class 3, 9 and Division 6.1 to be transported without required marking, labeling and shipping papers denied September 16, 1999.
12305–P	Request by Flavor & Extract Manufacturers', Washington, DC to authorize the transportation of samples of flavor and fragrance materials in Class 3, 9 and Division 6.1 to be transported without required marking, labeling and shipping papers denied September 16, 1999.
12327–N	Request by International Federation of Inspection Agencies, Houston, TX to authorize the transportation in commerce of Packing Group 1 material in non-bulk glass containers denied September 16, 1999.
12347–N	Request by Strainrite Corporation, Lewiston, ME to authorize the manufacture, mark and sale of non-DOT specification polyethylene flexible boxes for materials currently authorized in UN 4H2 boxes denied September 20, 1999.
12365–N	Request by Merck KGaA Darmstradt, GR to authorize the manufacture, mark and sale of non-DOT specification polyethylene flexible boxes for materials currently authorized in UN 4H2 boxes denied November 8, 1999.
12374–N	Request by B & K Equipment Co., Lansing, IL to authorize the manufacture, mark and sale of non-DOT specification polyethylene flexible boxes for materials currently authorized in UN 4H2 boxes denied December 10, 1999.

[FR Doc. 00–5808 Filed 3–8–00; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date of action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application.
M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on February 23, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11767–N	Ausimont USA, Inc., Thorofare, NJ	1	03/31/2000
11862–N	The BOC Group, Murray Hill, NJ	4	03/31/2000
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	03/31/2000
12106–N	Air Liquide America Corporation, Houston, TX	4	03/31/2000
12125–N	Mayo Foundation, Rochester, MN	4	03/31/2000
12138–N	Gas Supply Resources, Inc., Albany, NY	4	03/31/2000
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	03/31/2000
12146–N	Luxfer Gas Cylinders, Riverside, CA	1	03/31/2000
12148–N	Eastman Kodak Company, Rochester, NY	4	03/31/2000
12158–N	Hickson Corporation, Conley, GA	4	03/31/2000
12181–N	Aristech, Pittsburgh, PA	4	03/31/2000
12205–N	Independent Chemical Corp., Glendale, NY	4	04/28/2000
12248–N	Ciba Specialty Chemicals Corp., High Point, NC	4	04/28/2000
12269–N	Solutia, Inc., St. Louis, MO	4	04/28/2000
12277–N	The Indian Sugar & General Engineering Corp. ISGE, Haryana, IX	1	04/28/2000
12280–N	Combined Tactical Systems, Inc., Jamestown, PA	4	04/28/2000
12281–N	ABS Group, Inc., Houston, TX	4	04/28/2000
12290–N	Savage Industries, Inc., Pottstown, PA	4	04/28/2000
12292–N	Westway Trading Corporation, New Orleans, LA	4	04/28/2000
12293–N	Intercontinental Packaging Corp., Tuckahoe, NY	4	03/31/2000
12297–N	Applied Companies, Valencia, CA	4	04/28/2000
12301–N	Niklor Chemical Co., Long Beach, CA	4	03/31/2000
12307–N	Kern County Dept. of Weights & Measures, Bakersfield, CA	4	04/28/2000
12316–N	The Dow Chemical Co., Channahon, IL	4	04/28/2000
12325–N	Lifeline Technologies, Inc., Sharon Hill, PA	4	04/28/2000
12332–N	Automotive Occupant Restraints Council, Lexington, KY	4	04/28/2000
12333–N	BFI, Atlanta, GA	4	04/28/2000
12336–N	AC Plastiques Canada (1992), Inc., Les Cedres, Quebec, CA	1	04/28/2000
12338–N	Aeronex, Inc., San Diego, CA	4	04/28/2000
12339–N	BOC Gases, Murray Hill, NJ	4	04/28/2000
12343–N	City Machine & Welding, Inc. of Amarillo, Amarillo, TX	1	04/28/2000
12350–N	BAC Technologies, Ltd., West Liberty, OH	4	04/28/2000
12360–N	EMCORE Corp., Somerset, NJ	4	04/28/2000
12361–N	PurePak Technology Corp., Gilbert, AZ	4	03/31/2000

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
6611–M	Gardner Cryogenics, Lehigh Valley, PA	1	03/31/2000
6765–M	Gardner Cryogenics, Lehigh Valley, PA	1	03/31/2000
7277–M	Structural Composites Industries, Pomona, CA	4	03/31/2000
8556–M	Gardner Cryogenics, Lehigh Valley, PA	4	03/31/2000
8723–M	Buckley Powder Company, Englewood, CO	4	03/31/2000
9266–M	ERMEWA, Inc., Houston, TX	4	03/31/2000
10480–M	Gardner Cryogenics, Lehigh Valley, PA	1	03/31/2000
10656–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	03/31/2000
10672–M	Burlington Packaging, Inc., Brooklyn, NY	4	03/31/2000
10821–M	BFI Waste Systems of North America, Inc., Atlanta GA	4	03/31/2000
10921–M	The Proctor & Gamble Company, Cincinnati, OH	4	03/31/2000
10928–M	Matheson Tri-Gas, Parsippany, NJ	4	04/28/2000
10929–M	Consolidated Rail Corporation, Philadelphia, PA	4	03/31/2000
10929–M	Matheson Tri-Gas, Parsippany, NJ	4	03/31/2000
10945–M	Structural Composites Industries (SCI), Pomona, CA	4	03/31/2000
10945–M	Structural Composites Industries, Pomona, CA	4	03/31/2000
10962–M	International Compliance Center, Mississauga ON L4Z 1X8, CA	4	03/31/2000
10977–M	Federal Industries Corporation, Plymouth, MN	4	03/31/2000
10987–M	Air Products and Chemicals, Inc., Allentown, PA	4	03/31/2000
11186–M	Cryenco, Inc., Denver, CO	4	03/31/2000
11248–M	HAZMATPAC, Houston, TX	4	03/31/2000
11380–M	Baker Atlas, Houston, TX	4	02/28/2000

MODIFICATIONS TO EXEMPTIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11406–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	04/28/2000
11769–M	Great Western Chemical Company, Portland, OR	4	04/28/2000
11769–M	Great Western Chemical Company, Protland, OR	4	02/28/2000
11903–M	Comptank Corporation, Bothwell, Ontario, CA	4	04/28/2000
11942–M	Niklor Chemical Company, Long Beach, CA	4	04/28/2000
12069–M	Compagnie des Containers Reservoirs, Paris, FR	4	03/31/2000
12074–M	Van Hool NV, B–2500 Lier Koningshooikt, BG	1	04/28/2000
12178–M	STC Technologies, Inc., Bethlehem, PA	1	04/28/2000

[FR Doc. 00–5807 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33556 (Sub–No. 4.)] [1]

Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company (General Oversight)

ACTION: Decision No. 1; Notice of general oversight proceeding, and request for comments from interested persons on the progress of implementation of the CN/IC transaction and the workings of the various conditions imposed.

SUMMARY: In 1999, in *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company*, STB Finance Docket No. 33556, Decision No. 37 (STB served May 25, 1999) (*CN/IC Dec. No. 37*), we approved, subject to various conditions (including a 5-year general oversight condition): (1) the acquisition, by Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated (collectively, CN), of control of Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central & Pacific Railroad Company, and Cedar River Railroad Company (collectively, IC), and (2) the integration of the rail operations of CN and IC. We are now instituting a proceeding to implement the general oversight condition imposed in *CN/IC Dec. No. 37*. We are requiring Canadian National Railway Company (CNR) to file a progress report respecting the CN/IC transaction and to make certain data available to interested persons. We are inviting interested persons to submit comments on the progress of implementation of the CN/IC transaction and the conditions we imposed.

DATES: CNR must file a progress report by July 3, 2000, and must make CN/IC's 100% traffic waybill tapes available to interested persons by July 17, 2000. Comments of interested persons will be due on August 18, 2000. Replies will be due on September 5, 2000.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33556 (Sub-No. 4) and must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Finance Docket No. 33556 (Sub-No. 4), 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each document filed in this proceeding must be sent to CNR's representative: Paul A. Cunningham, HARKINS CUNNINGHAM, 801 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004–2664.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties must also submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), one electronic copy of each such document (e.g., textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence) and must clearly label pleadings and attachments and the corresponding disks/CDs with an identification acronym and pleading number.[2] Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in some version of Lotus, Excel, or Quattro Pro. Parties may individually seek a waiver from the disk/CD requirement.

FOR FURTHER INFORMATION, CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: In *CN/IC Dec. No. 37*, we established general oversight for a period of up to 5 years so that we might assess the competitiveness of service provided by CN/IC and KCS under the Alliance Agreement [3] and the effectiveness of the various conditions we imposed. We reserved jurisdiction to implement the oversight condition and, if necessary, to impose additional conditions and/or to take other action if, and to the extent, we determined that it was necessary to impose additional conditions and/or to take other action to address matters respecting the CN/IC control transaction, including without limitation: (a) Concerns regarding the operation of the Alliance Agreement, particularly with respect to ongoing competition within the Baton Rouge-New Orleans corridor; (b) concerns of North Dakota grain shippers with respect to the Chicago gateway; (c) concerns with respect to investment in and operation of the Detroit River Tunnel; (d) concerns with respect to any merger-related link to any unfair pricing practices in the lumber industry; (e) concerns with respect to lack of appropriate labor protective conditions if unauthorized control of CN/IC and KCS should occur; and (f) any necessary monitoring of our environmental mitigating conditions. *See CN/IC Dec. No. 37*, slip op. at 8 (item 8), 39–40, 56 (ordering paragraph 1).

We are now instituting this proceeding to implement the general oversight condition imposed in *CN/IC*

[1] A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33556.

[2] A copy of each such disk or CD should be provided to any other party upon request.

[3] In *CN/IC Dec. No. 37*: The Kansas City Southern Railway Company and Gateway Western Railway Company, and all other wholly owned (directly or indirectly) subsidiaries of Kansas City Southern Industries, Inc., were referred to collectively as KCS; and a settlement agreement entered into on April 15, 1998, by CN, IC, and KCS was variously referred to as the Alliance Agreement or, on occasion, the CN/IC/KCS Alliance Agreement.

Dec. No. 37.[4] We invite information from interested persons as to both the status of implementation of the CN/IC transaction and the effects of the various conditions we imposed.

We are requiring CNR to file, by July 3, 2000, a progress report respecting implementation of the CN/IC transaction. This progress report should contain an in-depth analysis of implementation of the transaction and of the workings of the various conditions. We are further requiring CNR to make CN/IC's 100% traffic waybill tapes available by July 17, 2000, to those interested persons who have entered the appropriate confidentiality agreement pursuant to the protective order discussed below. These tapes should include the most up-to-date data then accessible by CNR.

We are directing that interested persons submit, by August 18, 2000, any comments respecting the progress of implementation of the CN/IC transaction and the workings of the various conditions we imposed. Replies to comments must be submitted by September 5, 2000.

Protective Order. Parties may submit filings (including electronic submissions contained on disks and CDs), as appropriate, under seal marked Confidential or Highly Confidential pursuant to the protective order entered in STB Finance Docket No. 33556 in Decision No. 1 (served Feb. 26, 1998), as modified in certain respects in Decision No. 36 (served Apr. 6, 1999).[5] Waybill files made available to interested persons will be subject to this protective order.

Service List. A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33556. This decision will serve as notice that persons who were parties of record in STB Finance Docket No. 33556 will not automatically be placed on the service list as parties of record in the STB Finance Docket No. 33556 (Sub-No. 4) general oversight proceeding. Any persons interested in being on the STB Finance Docket No. 33556 (Sub-No. 4) service list and receiving copies of CNR's filings relating to the general oversight proceeding must send us written notification with copies to CNR's representative.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: March 3, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–5809 Filed 3–8–00; 8:45 am]

BILLING CODE 4915–00–P

[4] We are establishing a procedural schedule similar to that imposed in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (General Oversight)*, STB Finance Docket No. 32760 (Sub-No. 21).

[5] Parties submitting filings under seal will be expected to file redacted versions that will be placed in the public docket.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Forms 8109, 8109–B, and 8109–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 8109 and 8109–B, Federal Tax Deposit Coupon, and Form 8109–C, FTD Address Change.

DATES: Written comments should be received on or before May 8, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Federal Tax Deposit Coupon (Forms 8109 and 8109–B) and FTD Address Change (Form 8109–C).

OMB Number: 1545–0257.

Form Numbers: 8109, 8109–B, and 8109–C.

Abstract: Federal tax deposit coupons (Forms 8109 and 8109–B) are used by taxpayers to deposit certain types of taxes at authorized depositaries or in certain Federal Reserve Banks. Form 8109–C, FTD Address Change, is used to change the address on the FTD coupon. The information on the deposit coupon is used by the IRS to monitor compliance with the deposit rules and insure that taxpayers are depositing the proper amounts within the proper time periods with respect to the different taxes imposed by the Internal Revenue Code.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Responses: 62,513,333.

Estimated Time Per Respondent: 2 minutes.

Estimated Total Annual Burden Hours: 1,841,607.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 2, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5819 Filed 3–8–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–G, Certain Government and Qualified State Tuition Program Payments.

DATES: Written comments should be received on or before May 8, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Government and Qualified State Tuition Program Payments.

OMB Number: 1545–0120.

Form Number: 1099–G.

Abstract: Form 1099–G is used to report government payments such as unemployment compensation, state and local income tax refunds, credits, or offsets, discharges of indebtedness by the Federal Government, taxable grants, subsidy payments from the Department of Agriculture, and qualified state tuition program payments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal, state, local or tribal governments.

Estimated Number of Responses: 55,746,627.

Estimated Time Per Response: 12 min.

Estimated Total Annual Burden Hours: 11,149,325.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 29, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5820 Filed 3–8–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 712

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 712, Life Insurance Statement.

DATES: Written comments should be received on or before May 8, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Life Insurance Statement.

OMB Number: 1545–0022.

Form Number: 712.

Abstract: Form 712 provides taxpayers and the IRS with information to determine if insurance on the decedent's life is includible in the gross estate and to determine the value of the policy for estate and gift tax purposes. The tax is based on the value of the life insurance policy.

Current Actions: There are no changes being made to Form 712 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 60,000.

Estimated Time Per Response: 17 hrs., 56 min.

Estimated Total Annual Burden Hours: 1,076,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are

invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 1, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5821 Filed 3–8–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 12575 and Form 12575–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 12575, Notice of Fiduciary Relationship—Illinois Type Land Trust, and Form 12575–A, Notice of Fiduciary Relationship—Illinois Type Land Trust (Part III—Continuation Sheet).

DATES: Written comments should be received on or before May 8, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 12575, Notice of Fiduciary Relationship—Illinois Type Land Trust; Form 12575-A, Notice of Fiduciary Relationship—Illinois Type Land Trust (Part III—Continuation Sheet).

OMB Number: 1545–1683.

Form Number: 12575 and 12575–A.

Abstract: Forms 12575 and 12575–A will be used by trustees of Illinois Land Trusts to report the creation of such trusts and any changes to the trust such as the adding or removing of a beneficiary or a change in the power of direction of the trust.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 12,500.

Estimated Time Per Response: 6 minutes.

Estimated Total Annual Burden Hours: 1,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 2, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5822 Filed 3–8–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine non-Federal nursing home or the residential care home qualification for providing care to veteran patients.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 8, 2000.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–NEW" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's

functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: a. Application for Furnishing Nursing Home Care to Beneficiaries of Veterans Affairs, VA Form 10–1170.

b. Residential Care Home Program—Sponsor Application, VA Form 10–2407.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA medical centers and VA Central Office use the information on the forms to determine non-Federal nursing home or the residential care home qualification for providing care to veterans.

Affected Public: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Annual Burden: a. VA Form 10–1170–167 hours.

b. VA Form 10–2407–83 hours.

Estimated Average Burden Per Respondent: a. VA Form 10–1170–20 minutes.

b. VA Form 10–2407–5 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: a. VA Form 10–1170–500.

b. VA Form 10–2407–1,000.

By direction of the Secretary.

Dated: February 16, 2000.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–5825 Filed 3–8–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine if spouses, surviving spouses, and children of veterans are eligible for Dependents' Educational Assistance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 8, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0098" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Survivors' and Dependents' Educational Assistance (Under Provisions of Chapter 35, Title 38, U.S.C.), VA Form 22–5490.

OMB Control Number: 2900–0098.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–5490 serves as an application for Dependents' Educational Assistance (DEA). Spouses, surviving spouses, and children of veterans must submit evidence to establish eligibility and entitlement to DEA under Title 38, U.S.C., 3513. VA uses the information to determine if an individual claimant qualifies for DEA benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,050 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Once—Initial Application.

Estimated Number of Respondents: 20,100.

Dated: February 16, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–5826 Filed 3–8–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0198]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine if a veteran is eligible for clothing allowance payment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 8, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0198" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Annual Clothing Allowance, VA Form 21–8678.

OMB Control Number: 2900–0198.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8678 is used by veterans to apply for clothing allowance. Without this information, VA would be unable to determine eligibility for this benefit.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,120 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 6,720.

Dated: February 16, 2000.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–5827 Filed 3–9–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the following meetings to be held from 8 am to 5 pm as indicated below:

Subcommittee for	Date	Location
Aging and Clinical Geriatrics	March 20, 2000	Washington Plaza
Surgery	March 20, 2000	The Double Tree
Nephrology	March 22, 2000	Washington Plaza
Neurobiology-C	March 23, 2000	Holiday Inn Central
Respiration	March 27, 2000	Holiday Inn Central
Oncology	March 27–28, 2000	Holiday Inn Central
Cardiovascular Studies	March 31, 2000	Holiday Inn Central
Immunology	April 3–4, 2000	The Double Tree
Hematology	April 6, 2000	Holiday Inn Downtown
Neurobiology-D	April 6–7, 2000	Radisson Barcelo
Epidemiology	April 10, 2000	Holiday Inn Central
Gastroenterology	April 10–11, 2000	Holiday Inn Central
General Medical Science	April 13–14, 2000	Holiday Inn Central
Mental Hlth & Behavioral Sciences	April 13–14, 2000	Holiday Inn Central
Endocrinology	April 17–18, 2000	Washington Plaza
Infectious Diseases	April 17–18, 2000	Washington Plaza
Alcohol and Drug Dependence	April 18, 2000	Washington Plaza
Medical Research Service Merit Review Committee	June 1, 2000	Holiday Inn Central

The addresses of the hotels are:

The Double Tree, 1515 Rhode Island Avenue, NW, Washington, DC 20005

Holiday Inn Central, 1501 Rhode Island Avenue, NW, Washington, DC 20005

Holiday Inn Downtown, 1155 14th Street, NW, Washington, DC 20005

Radisson Barcelo Hotel, 2121 P Street, NW, Washington, DC 20037

Washington Plaza, 10 Thomas Circle, NW, Washington, DC 20005

These subcommittee meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meetings involves discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the subcommittee meetings, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these subcommittee meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC (202) 408–3630.

Dated: March 2, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–5717 Filed 3–8–00; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Health Services Research and Development Service, Notice of Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Pub. L. 92–463, that a meeting of the Scientific Review and Evaluation Board for Health Services Research and Development Service will be held at The New Otani Hotel and Garden, 120 South Los Angeles Street, Los Angeles, CA, June 21 through 24, 2000. On June 21, the meeting will begin at 7:00 p.m. until 9:00 p.m. and on June 22 through 24 from 8:00 a.m. until 5:00 p.m. The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care services and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are prepared for the Chief Research and Development Officer.

This meeting will be open to the public at the start of the June 21 session for approximately one half-hour to cover administration matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols and similar documents. During the portion of the meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to frustrate significantly implementation of proposed agency action regarding such research projects). As provided by the subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact the Assistant Director, Scientific Review (124F), Health Services Research and Development Service, Department of Veterans Affairs, 1400 I Street, N.W., Suite 780, Washington, D.C., at least five days before the meeting. For further information, call (202) 408–3665.

Dated: March 2, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–5718 Filed 3–8–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 65, No. 47
Thursday, March 9, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–29]

Establishment of Class E Airspace; Atmore, AL

Correction

In rule document 00–3979 beginning on page 8270 in the issue of Friday, February 18, 2000, make the following correction:

§71.1 [Corrected]

1. On page 8271, in the second column, in §71.1, in the 10th line, "ES" should read "E5".

2. On the same page, in the same column, in the same section, in the 12th line, "(Lat. 31°26′58"" should read "(Lat. 31°00′58"".

[FR Doc. C0–3979 Filed 3–8–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
March 9, 2000

Part II

Department of Housing and Urban Development

24 CFR Part 81

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac); Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 81

[Docket No. FR–4494–P–01]

RIN 2501–AC60

HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: Through this proposed rule, the Department of Housing and Urban Development is soliciting comments on proposed new housing goal levels for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Government Sponsored Enterprises, or GSEs) for calendar years 2000 through 2003. In accordance with the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, this rule proposes new goal levels for the purchase by Fannie Mae and Freddie Mac of mortgages financing low-and moderate-income housing, special affordable housing, and housing in central cities, rural areas, and other underserved areas. This rule also proposes to clarify HUD's guidelines for counting different types of mortgage purchases toward those goals, and to provide greater public access to certain types of mortgage data on the GSEs' mortgage purchases in HUD's public use database. This rule also solicits public comments on several other issues related to the housing goals.

While Fannie Mae and Freddie Mac have been successful in providing stability and liquidity in the market for certain types of mortgages, their share of the affordable housing market is substantially smaller than their share of the total conventional conforming mortgage market. There are several reasons for these disparities, related both to the GSEs' purchase and underwriting guidelines and to their relatively low level of activity in specific markets that serve lower-income families, including small multifamily rental properties, manufactured housing, single family owner-occupied rental properties, and seasoned affordable housing mortgages. As the GSEs continue to grow their businesses, the proposed new goals will provide strong incentives for the two enterprises to more fully address the housing finance needs for very low-, low-and moderate-income families and residents of underserved areas and thus, more fully realize their public purposes.

DATES: Comments must be submitted on or before: May 8, 2000.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Written comments may also be provided electronically to the following e-mail address: hsg-gse@hud.gov All communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Janet A. Tasker, Director, Office of Government Sponsored Enterprises Oversight, Room 6182, telephone (202) 708–2224. For questions on data or methodology, contact John L. Gardner, Director, Financial Institutions Regulation Division, Office of Policy Development and Research, Room 8234, telephone (202) 708–1464. For legal questions, contact Kenneth A. Markison, Assistant General Counsel for Government Sponsored Enterprises/RESPA, Office of the General Counsel, Room 9262, telephone (202) 708–3137. The address for all of these persons is: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Persons with hearing and speech impairments may access the phone numbers via TTY by calling the Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION:

I. General

A. Purpose

Through this proposed rule, the Department of Housing and Urban Development (HUD or the Department) is soliciting comments on proposed new housing goal levels for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Government Sponsored Enterprises, or GSEs) for calendar years 2000 through 2003. The housing goals will be phased in beginning in calendar year 2000 and will be fully implemented by calendar year 2001. In accordance with the Federal Housing Enterprises Financial Safety and Soundness Act of 1992,[1] which requires the GSEs to facilitate the financing of affordable housing for low- and moderate-income families and underserved neighborhoods and requires the Department to establish housing goals; this rule proposes increased housing goal levels for the purchase by Fannie Mae and Freddie Mac of mortgages financing low- and moderate-income housing, special affordable housing, and housing in central cities, rural areas, and other underserved areas. This rule also proposes to clarify HUD's guidelines for counting different types of mortgage purchases toward those goals, and to provide greater public access to certain types of mortgage data on the GSEs' mortgage purchases in HUD's public use database. This rule also solicits public comments on several other issues related to the housing goals.

While Fannie Mae and Freddie Mac have been successful in providing stability and liquidity in the market for certain types of mortgages, their share of the affordable housing market is substantially smaller than their share of the total conventional conforming mortgage market. The GSEs' mortgage purchases accounted for 39 percent of all owner and rental housing units that were financed in the market during 1997, but their purchases that qualified for the Low- and Moderate-Income Housing Goal represented only 30 percent of the low- and moderate-income housing market and their Special Affordable Housing Goal (directed toward very low- and low-income families) qualifying mortgage purchases represented only 24 percent of that market. There are several reasons for these disparities, related both to the GSEs' purchase and underwriting guidelines and to their relatively low level of activity in specific markets that serve lower-income families, including small multifamily rental properties, manufactured housing, single family owner-occupied rental properties, and seasoned affordable housing mortgages. As the GSEs continue to grow their businesses, the proposed new goals will provide strong incentives for the two enterprises to more fully address the housing finance needs of very low-, low- and moderate-income families and the residents of underserved areas, and,

[1] 12 U.S.C. 4501 et seq.; Pub. L. 102–550, approved Oct. 28, 1992.

thus, more fully realize their public purposes.

In determining the appropriate level of the housing goals, HUD must consider six statutory factors: national housing needs; economic, housing and demographic conditions; performance and effort of Fannie Mae and Freddie Mac toward achieving the housing goals in previous years; the size of the conventional mortgage market serving the targeted population or areas relative to the size of the overall conventional mortgage market; the ability of the GSEs to lead the industry in making mortgage credit available for the targeted population or areas; and the need to maintain the sound financial condition of the GSEs.

Based on consideration of all the statutory factors, HUD is proposing increases to the housing goal levels. In summary, the shares of the mortgage markets that qualify for each of the housing goals are higher than the current goal levels. The proposed goal levels will close the gap between the GSEs' performance and the opportunities available in the primary mortgage market. The proposed goal levels, while consistent with the Department's estimate of the market share for each goal, are higher than the GSEs' current level of performance, yet they would be reasonable even under economic conditions more adverse than have existed recently. There are a number of relatively untapped segments of the multifamily, single family owner-occupied, and single family rental markets where the GSEs might play an enhanced role and thereby increase their shares of targeted loans and their performance on the housing goals. These areas include small multifamily mortgage loans, multifamily rehabilitation loans, single family rental property loans, manufactured housing loans, A-minus mortgage loans, and affordable seasoned loan purchases. The proposed goal levels will challenge both Fannie Mae and Freddie Mac to increase their purchases of mortgages for lower-income families and for properties in underserved areas, and to further their efforts to meet the affordable housing needs of lower-income families, minorities, and residents of underserved areas, who continue to face problems obtaining mortgage credit and who would benefit from a more active and focused secondary market. The Department's analyses indicate that there are substantial opportunities in the mortgage market where the GSEs may purchase additional mortgages that qualify for one or more of the housing goals. The GSEs have the financial and operational capacity to improve their affordable housing performance and lead the industry in supporting mortgage lending for families and neighborhoods targeted by the housing goals. Further, the GSEs themselves have indicated that they want to increase their market presence in many of the business areas identified above.

The current housing goal levels are 42 percent for the Low- and Moderate-Income Housing Goal, 24 percent for the Geographically Targeted Goal, and 14 percent for the Special Affordable Housing Goal. The Special Affordable Housing Goal includes a subgoal for mortgage purchases financing dwelling units in multifamily housing which is 0.8 percent of the dollar volume of mortgages purchased by the respective GSE in 1994—$1.29 billion annually for Fannie Mae and $988 million annually for Freddie Mac. The Department is proposing to increase the housing goal levels as follows: The proposed level of the Low- and Moderate-Income Housing Goal is 48 percent for calendar year 2000 and 50 percent in calendar years 2001–2003; the proposed level of the Geographically Targeted Goal is 29 percent for calendar year 2000 and 31 percent in calendar years 2001–2003; and the proposed level of the Special Affordable Housing Goal is 18 percent in calendar year 2000 and 20 percent in calendar years 2001–2003. In addition, HUD is proposing to increase the special affordable multifamily subgoal to 0.9 percent of the dollar volume of total 1998 mortgage purchases in calendar year 2000 and to 1.0 percent in calendar years 2001–2003.

Further discussion of the statutory factors HUD is required to consider in setting the housing goals, and the rationale for HUD's establishment of these goals, are provided throughout the remainder of this preamble and in the Appendices to the Proposed Rule. In particular, because of the importance of the GSEs' ability to lead the industry in making mortgage credit available for targeted populations and areas, HUD is seeking comment on the following: Are the proposed housing goals appropriate given the statutory factors HUD must consider in setting the goals, and in light of the market estimates of the GSEs' shares of the affordable housing market? (See Section E.7, "Closing the Gap Between the GSEs and The Market.").

B. Background

1. *Fannie Mae and Freddie Mac.* The GSEs engage in two principal businesses: investing in residential mortgages and guaranteeing securities backed by residential mortgages. Fannie Mae and Freddie Mac are Government Sponsored Enterprises, chartered by Congress in order to: (1) Provide stability in the secondary market for residential mortgages; (2) respond appropriately to the private capital market; (3) provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low-and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and (4) promote access to mortgage credit throughout the nation (including central cities, rural areas, and other underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.[2]

Fannie Mae and Freddie Mac receive significant explicit benefits through their status as GSEs that are not enjoyed by any other shareholder-owned corporations in the mortgage market. These benefits include: (1) Conditional access to a $2.25 billion line of credit from the U.S. Treasury; [3] (2) exemption from the securities registration requirements of the Securities and Exchange Commission and the States; [4] and (3) exemption from all State and local taxes except property taxes.[5]

Additionally, although the securities the GSEs guarantee and the debt instruments they issue are not backed by the full faith and credit of the United States, and nothing in this proposed rule should be construed otherwise, the GSEs' securities trade at yields only a few basis points over those of U.S. Treasury securities and at yields lower than those received for securities issued by potentially higher-capitalized, fully private, but otherwise comparable firms. The market prices for GSE debt and mortgage-backed securities, and the fact that the market does not require that those securities be rated by a national rating agency, suggest that investors perceive that the government implicitly backs the GSEs' debt and securities. This perception evidently arises from the GSEs' relationship to the Federal

[2] See sec. 301 of the Federal National Mortgage Association Charter Act (Fannie Mae Charter Act) (12 U.S.C. 1716); sec. 301(b) of the Federal Home Loan Mortgage Corporation Act (Freddie Mac Act) (12 U.S.C. 1451 note).

[3] Secs. 306(c)(2) of the Freddie Mac Act and 304(c) of the Fannie Mae Charter Act.

[4] Secs. 306(g) of the Freddie Mac Act and 304(d) of the Fannie Mae Charter Act.

[5] Secs. 303(e) of the Freddie Mac Act and 309(c)(2) of the Fannie Mae Charter Act.

Government, including their public purposes, their Congressional charters, their potential direct access to U.S. Department of Treasury funds, and the statutory exemptions of their debt and mortgage-backed securities (MBS) from otherwise mandatory security laws. Consequently, each GSE's cost of doing business is significantly less than that of other firms in the mortgage market. According to the U.S. Department of Treasury, the benefits of federal sponsorship are worth almost $6 billion annually to Fannie Mae and Freddie Mac. Of this amount, reduced operating costs (*i.e.*, exemption from SEC filing fees and from state and local income taxes) represent approximately $500 million annually. These estimates are broadly consistent with the magnitudes estimated by the Congressional Budget Office and General Accounting Office. Fannie Mae and Freddie Mac appear to pass through part of these benefits to consumers through reduced mortgage costs and retain part for their own stockholders.[6]

2. Regulation of the GSEs—FHEFSSA. In 1968, Congress assigned HUD general regulatory authority over Fannie Mae[7] and in 1989, Congress granted the Department essentially identical regulatory authority over Freddie Mac.[8] Under the 1968 and 1989 legislation, HUD was authorized to require that a portion of Fannie Mae's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families. Accordingly, the Department established two housing goals—a goal for low-and moderate-income housing and a goal for housing located in central cities—by regulation, for Fannie Mae in 1978.[9] Each goal was established at the level of 30 percent of mortgage purchases. Similar housing goals for Freddie Mac were proposed by the Department in 1991 but were not finalized before October 1992, when Congress revised the Department's GSE regulatory authorities including requirements for new housing goals.

In 1992, Congress enacted the Federal Housing Enterprises Financial Safety and Soundness Act (FHEFSSA),[10] which revamped the statutory requirements and regulatory structure of the GSEs by separating the Government's financial regulation of the GSEs from its mission regulation. FHEFSSA created a new Office of Federal Housing Enterprise Oversight (OFHEO), within HUD, which was assigned new, independent, regulatory powers to ensure the GSEs' financial safety and soundness.[11] At the same time, FHEFSSA affirmed the Secretary of Housing and Urban Development's responsibility for mission regulation and provided that, except for the specific authority of the Director of OFHEO relating to the safety and soundness of the GSEs, the Secretary retains general regulatory power over the GSEs.[12] FHEFSSA also detailed and expanded the Department's specific powers and authorities, including the power to establish, monitor, and enforce housing goals for the GSEs' purchases of mortgages that finance housing for low- and moderate-income families, housing located in central cities, rural areas, and other underserved areas, and special affordable housing, affordable to very low-income families and low-income families in low-income areas.[13]

FHEFSSA also required that the Department prohibit the GSEs from discriminating in their mortgage purchases and charged the Department with several fair lending authorities including the power to take remedial action against lenders found to have engaged in discriminatory lending practices and to periodically review and comment on the GSEs' underwriting and appraisal guidelines to ensure that such guidelines are consistent with the Fair Housing Act and the fair housing requirements in FHEFSSA.[14]

FHEFSSA affirmed and detailed HUD's authority to review and approve new programs of the GSEs[15] and to require reports from the GSEs[16] including periodic data and information submissions.[17] FHEFSSA also required that the Department establish a public use data base and implement requirements for the protection of proprietary information provided by the GSEs.[18] FHEFSSA also contained detailed procedural requirements for the exercise of HUD's regulatory authorities.[19]

FHEFSSA provided that performance under its income based housing goals—the low- and moderate-income and special affordable housing goals—would be counted based on the actual income of owners and renters. The earlier housing goal regulations governing Fannie Mae had counted performance under the then existing low- and moderate-income housing goal based on house prices and rent levels.[20] The previous central cities goal counted Fannie Mae's mortgage purchases in areas designated by the Office of Management and Budget (OMB) as central cities. Following a two year transition, FHEFSSA expanded the central cities goal to include rural and other underserved areas (see discussion below). Under FHEFSSA, the Department is required to establish each of the goals after consideration of certain prescribed factors relevant to the particular goal.[21]

3. Transition Period. For a transition period of calendar years 1993 and 1994, FHEFSSA established statutory targets for purchases by Fannie Mae and Freddie Mac of mortgages on housing for low- and moderate-income families and housing located in OMB-defined central cities; and mortgages on special affordable housing.[22] FHEFSSA's targets for (a) low- and moderate-income mortgage purchases; and (b) central cities mortgage purchases were each established at the pre-FHEFSSA goal level of at least 30 percent of the units financed by each GSEs' total mortgage purchases for those years.[23] FHEFSSA's targets for the Special Affordable Housing Goal for the transition years,[24] unlike the other targets, were set at no less than a minimum amount of mortgage purchases measured in dollars financed, rather than the percentage of units, with the Fannie Mae goal greater than the Freddie Mac goal. For the transition period, FHEFSSA also set subgoals under the Special Affordable

[6] U.S. Department of Treasury, *Government Sponsorship of the Federal National Mortage Association and the Federal Home Loan Mortgage Corporation*(1996), page 3.

[7] Section 802(ee) of the Housing and Urban Development Act of 1968 (Pub. L. 90–448, approved August 1, 1968; 82 Stat. 476, 541).

[8] See sec. 731 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73, approved August 9, 1989), which amended the Freddie Mac Act.

[9] See 24 CFR 81.16(d) and 81.17 (1992 codification).

[10] Pub. L. 102–550, approved Oct. 28, 1992.

[11] Sec. 1311 of FHEFSSA; see also sec. 1313 of FHEFSSA. FHEFSSA charged OFHEO with designing and administering a stress test for capital adequacy and risk-based capital standards to ensure the financial safety and soundness of the GSEs. The proposed rule containing the risk-based capital requirements was published by OFHEO in the **Federal Register** (Vol. 64, No. 70) on April 13, 1999. Hereafter, unless otherwise specified, all section citations are citations to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

[12] Sec. 1321.

[13] See generally secs. 1331–34.

[14] Sec. 1325(1)–(6).

[15] Sec. 1322.

[16] Sec 1327.

[17] See secs. 1381(o)–(p), 1382(r)–(s).

[18] Secs. 1323, 1326.

[19] Secs. 1322, 1336, and 1341–49.

[20] 24 CFR 81.2(1)(3) (1992 codification). Under the previous regulations, "housing for low- and moderate-income families" included "any single family dwelling * * * purchased at a price not in excess of 2.5 times the median family income * * * for the Standard Metropolitan Statistical Area."

[21] Secs. 1332(b), 1333(a)(2), 1334(b).

[22] Secs. 1332(d), 1333(d), and 1334(d).

[23] Secs. 1332(d)(1) and 1334(d)(1).

[24] Sec. 1333(d)(1) and (2).

Housing Goal for purchases of single family and multifamily mortgages.

FHEFSSA required HUD to establish interim goals for the transition period to improve the GSEs' performances relative to the statutory targets for low- and moderate-income and central cities mortgage purchases so that the GSEs would meet the targets by the end of the transition period.[25] Following the transition, the Department would establish the goals under the statutory factors and FHEFSSA required the Department to establish a broader underserved areas goal inclusive of rural and other underserved areas as well as central cities to be defined by HUD.

On October 13, 1993, HUD published notices in the **Federal Register** establishing the interim goals and subgoals for the GSEs' mortgage purchases, and requirements for implementing those goals.[26] For Fannie Mae, HUD set the interim goal for housing for low- and moderate-income families at 30 percent of the units financed by mortgage purchases for 1993 and 1994;[27] for housing located in central cities at 28 percent for 1993 and 30 percent for 1994;[28] and for special affordable housing at $16.4 billion over the 1993–94 transition period.[29] For Freddie Mac, HUD set the interim goal for housing for low- and moderate-income families at 28 percent of the units financed by mortgage purchases for 1993 and 30 percent for 1994;[30] the interim goal for housing located in central cities at 26 percent for 1993 and 30 percent for 1994;[31] and for special affordable housing at $11.9 billion over the 1993–94 transition period.[32] On November 30, 1994,[33] HUD extended the 1994 goals for both GSEs through 1995 while the Department completed its development of post transition goals.

[25] Secs. 1332(d)(2)(A) and 1334(d)(2)(A).

[26] 58 FR 53048, 53072.

[27] 58 FR 53049.

[28] *Id.*

[29] HUD arrived at this amount of $16.4 billion by doubling Fannie Mae's good faith estimate of its mortgage purchases that would have qualified for the Special Affordable Housing Goal in 1992 (*i.e.*, $5.85 billion in single family mortgage purchases and $1.34 billion in multifamily mortgage purchases), and adding the $2 billion increment specified in section 1333(d)(1) of FHEFSSA. See 58 FR 53049.

[30] 58 FR 53072.

[31] *Id.* at 53073.

[32] HUD arrived at this amount of $11.9 billion by doubling Freddie Mac's good faith estimate of its mortgage purchases that would have qualified for the Special Affordable Housing Goal in 1992 (*i.e.*, $5.19 billion in single family mortgage purchases and $0.02 billion in multifamily mortgage purchases), and adding the $1.5 billion increment specified in section 1333(d)(2) of FHEFSSA. See 58 FR 53073.

[33] 59 FR 61504.

Both GSEs surpassed their goals for low- and moderate-income housing in 1993, 1994, and 1995. Neither GSE met its central cities goal in 1993; while Fannie Mae successfully met its central cities goal for 1994 and 1995, Freddie Mac never achieved its central cities goal during the transition period from 1993 through 1995. Both GSEs exceeded their respective special affordable housing goals and their respective single family subgoals. Fannie Mae also exceeded its multifamily subgoals for the transition period. Although Freddie Mac did not achieve the multifamily subgoal during the 1993 through 1994 period, Freddie Mac's multifamily purchases increased every year during the transition period such that Freddie Mac did achieve its multifamily subgoal in 1995.

4. HUD's 1995 Rulemaking. The Department issued proposed and final rules in 1995 to establish and implement the housing goals for the years 1996 through 1999, and to implement the Department's other authorities in FHEFSSA.[34] These regulations replaced HUD's previous regulations governing Fannie Mae, and for the first time established regulations governing Freddie Mac. HUD benefited from substantial comment during the rulemaking process from the public, the GSEs, and representatives of lenders, developers, nonprofit groups, public interest organizations, other Federal agencies and academic experts. Through the 1995 rulemaking, HUD established counting requirements for the goals, revised and streamlined the special affordable housing goal, and redefined the central cities goal to target those geographic areas of central cities, rural areas, and other areas that are underserved by mortgage credit, including those areas—metropolitan and non-metropolitan—with low median incomes and/or high minority populations that typically experience the highest mortgage denial rates and the lowest mortgage origination rates. The new regulations also prohibit the GSEs from discriminating in their mortgage purchases, implement procedures by which HUD exercises its authority to review new programs of the GSEs, require reports from the GSEs, operate a public use data base on the GSEs' mortgage purchase activities while protecting confidential and proprietary information, and enforce HUD's authorities under FHEFSSA.

In setting the first, post-transitional period housing goals for the years 1996 through 1999, HUD sought to recognize the unique position the GSEs occupy in the nation's housing finance system and to ensure that, consistent with their Congressional mandates, the GSEs provide leadership in expanding housing opportunities and providing wider access to mortgage credit. In establishing each of the housing goals, HUD considered the factors presented in FHEFSSA, including national housing needs; economic, housing, and demographic conditions; the previous performance and effort of the GSEs in achieving the specific goal; the size of the primary mortgage market for that goal; the ability of the GSEs to lead the industry; and the need to maintain the sound financial condition of the GSEs.[35] HUD established the goals under the factors, based on its estimates of the market share at that time, at levels that were reasonable and appropriate, reflecting a margin to compensate for the cyclical nature of mortgage markets and the unpredictability of other economic indicators, and allowing the GSEs flexibility in choosing how to achieve the goals.[36] Recognizing the GSEs' and others concerns about need for predictability in order to manage their business operations, HUD established the levels of the goals for a four-year period. The rule provides that the housing goals for 1999 may continue beyond 1999 if the Department does not change the goals, and explained that HUD, under FHEFSSA may change the level of the goals for the years 2000 and beyond based upon HUD's experience and in accordance with HUD's statutory authority and responsibility.

In the 1995 rulemaking, HUD established the annual goals for each GSE's purchases of mortgages on housing for low-and moderate-income families as follows: for 1996, at 40 percent of the total number of dwelling units financed by each GSE's mortgage purchases; and for each of the years 1997 through 1999, at 42 percent of the total number of dwelling units financed by each GSE's mortgage purchases.[37] HUD established the following annual goals for purchases of mortgages on housing located in central cities, rural areas, and other underserved areas: 21 percent of the total number of dwelling units financed by each GSE's mortgage purchases for 1996; and 24 percent of the total number of dwelling units financed by each GSE's mortgage purchases for each of the years 1997

[34] HUD issued the proposed rule on February 16, 1995 (60 FR 9154) and the final rule on December 1, 1995 (60 FR 61846).

[35] Sec. 1332.

[36] 60 FR 61851.

[37] 24 CFR 81.12.

through 1999.[38] HUD established the annual goals for purchases of mortgages on special affordable housing as follows: for 1996, at 12 percent of the total number of dwelling units financed by each GSE's mortgage purchases; and for each of the years 1997 through 1999, at 14 percent of the total number of dwelling units financed by each GSE's mortgage purchases. The Special Affordable Housing Goal includes a subgoal for mortgage purchases financing dwelling units in multifamily housing set at 0.8 percent of the dollar volume of mortgages purchased by the respective GSE in 1994[39]—$1.29 billion annually for Fannie Mae and $988 million annually for Freddie Mac. As described in more detail below, through 1998, the GSEs have met and in some cases exceeded the housing goals that HUD set for the 1996 to 1999 period.

C. Secretary's Approach to Regulating the Enterprises

As explained previously, the GSEs are Congressionally-chartered entities that enjoy substantial public benefits. Through these public benefits and successful corporate management strategies, the GSEs have continued to grow and to earn substantial profits for their shareholders.

In return for the public benefits they receive, Congress has mandated in the GSEs' Charter Acts that the GSEs carry out public purposes not required of other private sector entities in the housing finance industry. The GSEs' Charter Acts require them to continually assist in the efficient functioning of the secondary market for residential mortgages, including mortgages for low- and moderate-income families that may involve a reasonable economic return that is less than the economic return on other mortgages, and to promote access to mortgage credit throughout the nation, including central cities, rural areas, and other underserved areas. These requirements create an obligation for the GSEs to work to ensure that everyone throughout the country has a reasonable opportunity to enjoy access to the mortgage financing benefits resulting from the activities of these Federally-sponsored entities.

The GSEs have achieved an important part of their mission: providing stability and liquidity to large segments of the housing finance markets. As a result of the GSEs' activities, many home buyers have benefited from lower interest rates and increased access to capital, contributing, in part, to a record national homeownership rate of 66.3 percent in 1998. While the GSEs have been successful in providing stability and liquidity to certain portions of the mortgage market, the GSEs must further utilize their entrepreneurial talents and power in the marketplace and "lead the mortgage finance industry" to "ensure that citizens throughout the country enjoy access to the public benefits provided by these federally related entities."[40]

Despite the record national homeownership rate in 1998, lower rates have prevailed for certain minorities, especially for African-American households (45.9 percent) and Hispanics (45.7 percent). These gaps are only partly explained by differences in income, age, and other socioeconomic factors. Disparities in mortgage lending are also reflected in loan denial rates of minority groups when compared to white applicants. Denial rates for conventional (non-government-backed) home purchase mortgage loans in 1997 were 53 percent for African Americans, 52 percent for Native American applicants, 38 percent for Hispanic applicants, 26 percent for White applicants, and 13 percent for Asian applicants.[41] Despite strong economic growth, low unemployment, the lowest mortgage rates in more than 30 years, and relatively stable home prices, housing problems continue to persist for low-income families and certain minorities.

Certain segments of the population have not benefited to the same degree as have others from the advantages and efficiencies provided by Fannie Mae and Freddie Mac. The GSEs have been much less active in markets where there is a need for additional financing sources to address persistent housing needs including small multifamily rental properties, manufactured housing, single family owner-occupied rental properties, seasoned affordable housing mortgages, and older housing in need of rehabilitation.

While HUD recognizes that the GSEs have played a significant role in the mortgage finance industry by providing a secondary market and liquidity for mortgage financing for certain segments of the mortgage market, it is this recognition of their ability, along with HUD's comprehensive analyses of the size of the mortgage market and the opportunities available, America's unmet housing needs, identified credit gaps, and its consideration of all the statutory factors that causes HUD to propose increased goals so that as the GSEs grow their businesses they will address new markets and persistent housing finance needs.

D. Statutory Considerations in Setting the Level of the Housing Goals

In establishing the housing goals, FHEFSSA requires the Department to consider six factors—national housing needs; economic, housing and demographic conditions; performance and effort of the GSEs toward achieving the goal in previous years; size of the conventional mortgage market serving the targeted population or areas, relative to the size of the overall conventional mortgage market; ability of the GSEs to lead the industry in making mortgage credit available for the targeted population or areas; and the need to maintain the sound financial condition of the GSEs. These factors are discussed in more detail in the following sections of this preamble and in the Appendices to this proposed rule. A summary of HUD's findings relative to each factor follows:

1. National Housing Needs. Analysis and research by HUD and others in the housing industry indicate that there are, and will continue to be in the foreseeable future, substantial housing needs among lower-income and minority families. Data from the 1990 Census and the American Housing Surveys demonstrate that there are substantial unmet housing needs among lower-income families. Many households are burdened by high homeownership costs or rent payments and will likely continue to face serious housing problems, given the dim prospects for earnings growth in entry-level occupations. According to HUD's "Worst Case Housing Needs" report, 21 percent of owner households faced a moderate or severe cost burden in 1995. Affordability problems were even more common among renters, with 40 percent paying more than 30 percent of their income for rent in 1995.[42]

Despite the growth during the 1990s in affordable housing lending, disparities in the mortgage market remain, with certain minorities, particularly African-American and Hispanic families, lagging the overall market in rate of homeownership. In addition, there is evidence that the aging stocks of single family rental properties and small multifamily properties with 5–50 units, which play a key role in lower-income housing, have been affected by difficulties in obtaining credit. The ability of the

[38] 24 CFR 81.13.

[39] 24 CFR 81.14.

[40] S. Rep. No. 282, 102d Cong., 2d Sess. 34 (1992).

[41] FFIEC Press Release, August 6, 1998

[42] Rental Housing Assistance—The Crisis Continues: The 1997 Report to Congress on Worst Case Housing Needs, Department of Housing and Urban Development, Office of Policy Development and Research, (April 1998).

nation to maintain the quality and availability of the existing affordable housing stock and to stabilize neighborhoods depends on an adequate supply of affordable credit to rehabilitate and repair older units.

a. *Single Family Mortgage Market.* Many younger, minority, and lower-income families did not become homeowners during the 1980s due to the slow growth of earnings, high real interest rates, and continued house price increases. Over the past six years, economic expansion, accompanied by low interest rates and increased outreach on the part of the mortgage industry, has improved affordability conditions for lower-income families. Between 1994 and 1998, record numbers of lower-income and minority families purchased homes. First time homeowners have become a major driving force in the home purchase market over the past five years. Thus, the 1990s have seen the development of a strong affordable lending market. However, despite the growth of lending to minorities, disparities in the mortgage market remain. For example, African-American applicants are still twice as likely to be denied a loan as white applicants, even after controlling for income.

b. *Multifamily Mortgage Market.* Since the early 1990s, the multifamily mortgage market has become more closely integrated with global capital markets, although not to the same degree as the single family mortgage market. Loans on multifamily properties are still viewed as riskier by some than mortgages on single family properties. Property values, vacancy rates, and market rents in multifamily properties appear to be highly correlated with local job market conditions, creating greater sensitivity of loan performance to economic conditions than may be experienced for single family mortgages.

Recent volatility in the market for Commercial Mortgage Backed Securities (CMBS), an important source of financing for multifamily properties, underlines the need for an ongoing GSE presence in the multifamily secondary market. The potential for an increased GSE presence is enhanced by the fact that an increasing proportion of multifamily mortgages are now originated in accordance with secondary market standards.

The GSEs can play a role in promoting liquidity for multifamily mortgages and increasing the availability of long-term, fixed rate financing for these properties. Increased GSE presence would provide greater liquidity to lenders, *i.e.*, a viable "exit strategy," that in turn would serve to increase their lending. It appears that financing of small multifamily rental properties with 5–50 units, where a substantial portion of the nation's affordable housing stock is concentrated, have been adversely affected by excessive borrowing costs. Multifamily properties with significant rehabilitation needs also appear to have experienced difficulty gaining access to mortgage financing. Moreover, the flow of capital into multifamily housing for seniors has been historically characterized by a great deal of volatility.

2. Economic, Housing, and Demographic Conditions. Studies indicate that changing population demographics will result in a need for the mortgage market to meet nontraditional credit needs and to respond to diverse housing preferences. The U.S. population is expected to grow by an average of 2.4 million per year over the next 20 years, resulting in 1.1 to 1.2 million new households per year. In particular, the continued influx of immigrants will increase the demand for rental housing while those who immigrated during the 1980s will be in the market to purchase owner-occupied housing. The aging of the baby-boom generation and the entry of the smaller baby-bust generation into prime home buying age is expected, however, to have a dampening effect on housing demand. Non-traditional households have, and will, become more important, as overall household formation rates slow down. With later marriages, divorce, and non-traditional living arrangements, the fastest growing household groups have been single-parent and single-person households. With continued house price appreciation and favorable mortgage terms, "trade-up buyers" will also increase their role in the housing market. There will also be increased credit needs from new and expanding market sectors, such as manufactured housing and housing for senior citizens. These demographic trends will lead to greater diversity in the homebuying market, which, in turn, will require greater adaptation by the primary and secondary mortgage markets.

As a result of the above demographic forces, housing starts are expected to average 1.5 million units between 1999 and 2003, essentially the same as in 1996–98.[43] Refinancing of existing mortgages, which accounted for 50 percent of originations in 1998, has continued to play a major role in 1999, but is expected to return to more normal levels during 2000. Thus, the mortgage market remained strong with over one trillion dollars in expected originations in 1999, and a somewhat lower number of originations are expected in 2000.

3. Performance and Effort of the GSEs Toward Achieving the Goal in Previous Years. Both Fannie Mae and Freddie Mac have improved their affordable housing loan performance over the past five years. However, the GSEs' mortgage purchases continue to lag the overall market in providing financing for affordable housing to underserved borrowers and their neighborhoods, indicating that there is more that the GSEs can do to improve their performance. In addition, a large percentage of the lower-income loans purchased by the GSEs have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the needs of those lower-income families which have little cash for making large down payments but can fully meet their monthly obligations. The discussion of the performance and effort of the GSEs toward achieving the housing goals in previous years is specific to each of the three housing goals. This topic is discussed further in Section II., B., "Subpart B—Housing Goals" below and in the Appendices to this proposed rule.

4. Size of the Conventional Mortgage Market Serving the Targeted Population or Areas, Relative to the Size of the Overall Conventional Mortgage Market. The Department's analyses indicate that the size of the conventional conforming market relative to each housing goal is greater than earlier estimates based mainly on HMDA data for 1992 through 1994 used in establishing the 1995–1999 housing goals. Due to inherent uncertainty about future market conditions, HUD has developed a plausible range under each goal, rather than a point estimate, for the current market. The discussion of the size of the conventional mortgage market serving targeted populations or areas relative to the size of the overall conventional mortgage market is specific to each of the three housing goals. The Department's estimate of the size of the conventional mortgage market is discussed further below in Section I, "Setting the Level of the Housing Goals," Section II., B., "Subpart B—Housing Goals" and in the Appendices to this proposed rule.

5. Ability of the GSEs to Lead the Industry in Making Mortgage Credit Available for the Targeted Population or Areas. Research concludes that the GSEs have generally not been leading the market, but have lagged behind the primary market in financing housing for

[43] Standard & Poor's DRI Review of the U.S. Economy. (September 1999), p. 53–55.

lower-income families and their communities. However, the GSEs' state-of-the-art technology, staff resources, share of the total conventional conforming market, and their financial strength suggest that the GSEs have the ability to lead the industry in making mortgage credit available for lower-income families and underserved neighborhoods.

The legislative history of FHEFSSA indicates Congress's strong concern that the GSEs need to do more to benefit low- and moderate-income families and the residents of underserved areas that lack access to credit.[44] The Senate Report on FHEFSSA emphasized that the GSEs should "lead the mortgage finance industry in making mortgage credit available for low- and moderate-income families."[45] FHEFSSA, therefore, specifically required that HUD consider the ability of the GSEs to lead the industry in establishing the level of the housing goals. FHEFSSA also clarified the GSEs' responsibility to complement the requirements of the Community Reinvestment Act[46] and fair lending laws[47] in order to expand access to capital to those historically underserved by the housing finance market.

During the 1995 rulemaking, HUD received comments regarding what it means for the GSEs to "lead the industry." The GSEs themselves and others pointed out that the GSEs are often "leaders" through their introduction of innovative products, technology, and processes. For example, both GSEs have introduced technological advances through their development of automated underwriting systems. Fannie Mae has also developed state-of-the-art mapping software for use by lenders, nonprofit organizations, and State and local governments to help implement community lending programs. In addition, Fannie Mae has established partnership offices in more than 30 cities, allowing it to reach out to local lenders and affordable housing groups regarding Fannie Mae's programs. While Freddie Mac has not established partnership offices, it has established alliances at the national and local level to expand affordable housing opportunities. Nonetheless, while the GSEs are "leaders" in these areas, leadership also involves increasing the availability of financing for homeownership and affordable rental housing. Thus, the GSEs' obligation to "lead the industry" also entails leadership in facilitating access to affordable credit in the primary market for borrowers at different income levels and housing needs, as well as for underserved urban and rural areas.

While the GSEs cannot be expected to solve all of the nation's housing problems, the efforts of Fannie Mae and Freddie Mac have not matched the opportunities that are available in the primary mortgage market. Although the GSEs were directed by Congress to "lead the mortgage finance industry in making mortgage credit available for low- and moderate-income families," depository institutions have been more successful than the GSEs in providing affordable loans to lower income borrowers and in historically underserved neighborhoods.

For example, very low-income borrowers accounted for 9.9 percent of Freddie Mac's purchases of home loans in 1998, 11.4 percent of Fannie Mae's purchases, 15.2 percent of home loans originated and retained by depository institutions, and 13.3 percent of home purchase mortgages originated in the overall conventional conforming market. Similarly, mortgage purchases on properties located in underserved areas accounted for 20.0 percent and 23.5 percent of Freddie Mac's and Fannie Mae's purchases of home loans, respectively, 26.1 percent of home purchase mortgages originated and retained by depository institutions and 24.6 percent of home purchase mortgages originated in the overall conventional conforming market. Since 1992, Fannie Mae has improved its affordable lending performance and has made progress toward closing the gap between its performance and that of the overall mortgage market. Freddie Mac has shown less improvement and, as a result, has not made as much progress in closing the gap between its performance and that of the overall market for home loans.

The GSEs have been much less active in providing financing for the multifamily rental housing market. In 1997, Fannie Mae's multifamily purchases amounted to $6.9 billion and Freddie Mac's, $2.7 billion, for total multifamily purchases of $9.6 billion. The GSEs' purchases have accounted for approximately 22 percent of the multifamily dwelling units that were financed in 1997. By way of comparison, HUD estimates that 4.9 million units were financed by mortgages on single family owner-occupied properties in 1997, and the GSEs have financed 2.4 million, or 49 percent of these units. Thus, the GSEs' presence in the multifamily mortgage market was less than one-half of their presence in the market for mortgages on single family owner-occupied properties.

In addition, the GSEs continue to lag the overall conforming, conventional market in providing affordable home purchase loans to underserved neighborhoods. During 1998, mortgages financing housing in underserved census tracts (as defined by HUD)[48] accounted for 20.0 percent of Freddie Mac's single family mortgage purchases, compared with 22.9 percent of Fannie Mae's single family mortgage purchases, 26.1 percent of mortgage loans originated and held in portfolio by depository institutions, and 24.6 percent of the overall conforming conventional mortgage market. Fannie Mae has improved its performance in underserved areas to almost reach market levels. However, Freddie Mac has made much less progress through 1998 in serving families living in underserved neighborhoods.

Additionally, a large percentage of the lower-income loans purchased by both GSEs have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the needs of lower-income families, who find it difficult to raise enough cash for a large down payment. Also, while single family rental properties are an important source of low- and moderate-income rental housing, they represent only a small portion of the GSEs' business.

The Appendices to this proposed rule provide more information on HUD's analysis of the extent to which the GSEs have not led the mortgage industry in funding loans to underserved borrowers and neighborhoods. From this analysis of the GSEs' performance in comparison with the primary mortgage market and with other participants in the mortgage markets, it is clear that the GSEs need to improve their performance relative to the primary market of conforming conventional mortgage lending. The need for improvements in the GSEs' performance is especially apparent with respect to the single family and multifamily rental markets.

6. Need to Maintain the Sound Financial Condition of the GSEs. Based on HUD's economic analysis and discussions with the Office of Federal Housing Enterprise Oversight, HUD concludes that the proposed level of the goals will not adversely affect the sound financial condition of the GSEs.

E. Setting the Level of the Housing Goals

There are several reasons the Department, having considered all the

[44] See, e.g., S. Rep. at 34.
[45] S. Rep. at 34.
[46] 12 U.S.C. 2901 *et seq.*
[47] See section 1335(3)(B).
[48] 24 CFR 81.2(b).

statutory factors, is proposing increases in the housing goals.

1. *Market Needs and Opportunities.* First, the GSEs appear to have substantial room for growth in serving the affordable housing mortgage market. For example, the Department calculated that the two GSEs' mortgage purchases accounted for 39 percent of the total conventional mortgage market during 1997 (as measured by the total number of units financed by the GSEs). In contrast, GSE purchases comprised only 30 percent of the low- and moderate-income mortgage market in 1997, 33 percent of the underserved areas market, and, a still smaller, 24 percent of the special affordable market.

The GSEs' role in the mortgage market varies somewhat from year to year in response to changes in interest rates, mortgage product types, and a variety of other factors. But underlying market trends show a clear and significant increase in the GSEs' role. Specifically, OFHEO estimates that the share (in dollars) of single-family mortgages outstanding accounted for by mortgage-backed securities issued by the GSEs and by mortgages held in the GSEs' portfolios has risen from 31 percent in 1990 to 37 percent in 1992, 40 percent in 1994, 43 percent in 1996, and 45 percent in 1998. In absolute terms, the GSEs' presence has grown even more sharply, as the total volume of single-family mortgage debt outstanding has increased rapidly over this period.

The GSEs have indicated that they expect their role in the mortgage market to continue to increase in the future, as they develop new products, refine existing products, and enter markets where they have not played a major role in the past. The Department's goals for the GSEs also anticipate that their involvement in the mortgage market will continue to increase.

The Department estimates that 7.4 million owner-occupied and rental units were financed by conventional conforming mortgages in 1997, and that the GSEs provided financing for 39 percent, or 2.9 million, of these units. However, the GSEs' mortgage market presence varies significantly by property type—while they accounted for about 49 percent of the owner-occupied units financed in the primary market in that year, their role was much less in the mortgage market for mortgages on rental properties.

Specifically, HUD estimates that Fannie Mae and Freddie Mac accounted for only about 19 percent of rental units financed in 1997. And within the rental category, the GSEs have yet to play a major role in financing mortgages for single family rental properties—those with at least one rental unit and no more than four units in total.

For the types of units covered by HUD's goals, the GSEs' role is significantly less than their overall market presence of 39 percent. Specifically, HUD estimates that Fannie Mae and Freddie Mac financed 33 percent of the units that qualified for the Geographically Targeted Goal. The GSEs' role was even lower for HUD's other two goals—they financed just 31 percent of units qualifying for the Low- and Moderate-Income Housing Goal, and only 24 percent of special affordable units, for very low-income families and low-income families in low-income areas.

There are a number of relatively untapped segments of the multifamily, single-family owner, and single-family rental markets where the GSEs might play an enhanced role and thereby increase their shares of targeted loans and their performance on the housing goals. Six such areas are discussed below.

a. *Small Multifamily Properties.* One sector of the multifamily mortgage market where the GSEs could play an enhanced role involves loans on small multifamily properties—those containing 5–50 units. The GSEs typically purchase relatively few of these loans, which account for 37 percent of the stock of all multifamily units in mortgaged properties, according to the 1991 Survey of Residential Finance.

HUD estimates that the GSEs acquired loans financing only four percent of units in small multifamily properties originated during 1995 through 1997. This is substantially less than the GSEs' presence in the overall multifamily mortgage market, which the Department estimates was 22 percent in 1997.

Increased purchases of small multifamily mortgages would make a significant contribution to performance on the goals, since the percentages of these units qualifying for the income-based housing goals are high—in 1998, 94 percent of units backing both GSEs' combined multifamily mortgage purchases qualified for the Low- and Moderate-Income Housing Goal and about 55 percent of units backing Freddie Mac's multifamily mortgage purchases met the Special Affordable Housing Goal.[49]

b. *Multifamily Rehabilitation Loans.* Another multifamily market segment holding potential for expanded GSE presence involves properties with significant rehabilitation needs.

Properties that are more than 10 years old are typically classified as "C" or "D" properties, and are considered less attractive than newer properties by many lenders and investors. Fannie Mae's underwriting guidelines for negotiated transactions state that "the Lender is required to use a more conservative underwriting approach" for transactions involving properties 10 or more years old. Fannie Mae funding for rehabilitation projects is generally limited to $6,000 per unit. Multifamily rehabilitation loans accounted for only 0.5 percent of units backing Fannie Mae's 1998 purchases. Freddie Mac's purchases of multifamily rehabilitation loans in 1998 were 1.9 percent of its multifamily total.

c. *Single Family Rental Properties.* Studies show that single family rental properties are a major source of affordable housing for lower-income families. Yet, these properties are only a small portion of the GSEs' overall business.

HUD estimates that approximately 127,000 mortgages were originated on owner-occupied single-family rental properties in 1997. These mortgages financed a total of 286,000 units—the owner units plus an additional 159,000 rental units. Data submitted to HUD by the GSEs indicates that the GSEs combined to finance 94,000 such units, only 33 percent of the units financed in the primary market.

There is ample room for an enhanced GSE role in this "goal-rich" market. For the GSEs combined, 64 percent of the units in these properties qualified for the low-mod goal in 1997, 33 percent qualified for the special affordable goal, and 56 percent qualified for the underserved areas goal. Thus significant gains could be made in performance on all of their goals if Fannie Mae and Freddie Mac played a larger role in the market for mortgages on single-family 2–4 unit owner-occupied properties.

d. *Manufactured Homes.* The Manufactured Housing Institute, in its Annual Survey of Manufactured Home Financing, reported that 116 reporting institutions originated $15.6 billion in consumer loans on manufactured homes in 1998, and that, with an average loan amount of about $30,000, approximately 520,000 loans were originated.

While the GSEs have traditionally played a minimal role in financing manufactured housing, they have recently stepped up their activity. But, even with this stepped-up activity in this market, the GSEs' purchases probably accounted for less than 15 percent of total loans on manufactured

[49] Fannie Mae did not obtain some of the data necessary to qualify many of their multifamily loans for the Special Affordable Housing Goal.

homes in 1998—a figure well below their overall market presence of 39 percent.

There is ample room for an enhanced GSE role in this market, with its high concentration of goals-qualifying mortgage loans. For loans reported in 1998 in accordance with HMDA by 21 manufactured housing lenders, 76 percent qualified for the low-mod goal in 1998, 42 percent qualified for the special affordable goal, and 47 percent qualified for the underserved areas goal. Thus manufactured housing has significantly higher shares of goal-qualifying loans than all single-family owner-occupied properties, though they are not quite as "goal-rich" as loans on multifamily properties. In general, though, goal performance could be enhanced substantially if the GSEs were to play an increased role in the manufactured housing mortgage market.

e. *A-Minus Loans.* Industry sources estimate that subprime mortgage originations amounted to about $125 billion in 1997, and that these loans are divided evenly between the more creditworthy ("A-minus") subprime borrowers and less creditworthy ("B," "C," and "D") borrowers. Based on HMDA data for 200 subprime lenders, the Department estimates that 58 percent of the units financed by subprime loans qualified for the low-mod goal in 1997, 29 percent qualified for the special affordable goal, and 45 percent qualified for the underserved areas goal.

Freddie Mac has begun to purchase loans originated in the A-minus mortgage market, as long as the loans are processed through its Loan Prospector system. Freddie Mac has estimated that 10–30 percent of subprime borrowers would qualify for a prime conventional loan. Freddie Mac has also purchased subprime loans through structured transactions that limit Freddie Mac's risk to the "A" piece of a senior-subordinated transaction. Fannie Mae recently introduced a program aimed at borrowers with past credit problems that would lower the interest rates for those borrowers that were timely on their mortgage payments.

However, there is ample room for further enhancement of both GSEs' roles in the A-minus market. A larger role by the GSEs could help standardize mortgage terms in this market, which would lead to lower interest rates.

f. *Seasoned Mortgages.* Over the past five years, depository institutions (banks and thrifts) have been expanding their affordable loan programs and, as a result, have originated substantial numbers of loans to low-income and minority borrowers and their neighborhoods. Much of this outreach to underserved communities is due to the Community Reinvestment Act (CRA), which requires depository institutions to help meet the credit needs of their communities. A large number of the "CRA-type" loans that have recently originated remain in thrift and bank portfolios; selling these loans on the secondary market would free up capital for depositories to originate new CRA loans. Given its enormous size, the CRA market segment provides an opportunity for Fannie Mae and Freddie Mac to expand their affordable lending programs. While some of these loans, when originated, may not have met the GSE's underwriting guidelines, it appears they are beginning to be purchased by GSEs after the loans have seasoning and through various structured transactions. As explained in Appendix A, Fannie Mae is beginning to purchase these seasoned loans, which has improved its performance on the housing goals. Freddie Mac, on the other hand, has not been as active as Fannie Mae in purchasing seasoned "CRA-type" loans. With billions of dollars worth of CRA loans in bank portfolios, the early experience of Fannie Mae suggests that this could not only be an important strategy for reaching the housing goals but could also provide needed liquidity for a market that is serving the needs of low-income and minority homeowners.

2. *Market Share Higher Than Goal Levels.* The shares of the mortgage markets that qualify for each of the housing goals are higher than the current goals. Specifically, the current Low-and Moderate-Income Housing Goal for 1997 through 1999 is 42 percent, but the market share for low-and moderate-income mortgages is estimated at 50–55 percent. The Geographically Targeted Goal for 1997 through 1999 is 24 percent, but the estimated market share of geographically targeted mortgages is 29–32 percent. The Special Affordable Housing Goal for 1997 through 1999 is 14 percent, but the estimated special affordable market share is 23–26 percent.[50] Thus, the proposed increases in the housing goals, described below, will significantly reduce the disparities that currently exist between the housing goals and HUD's market estimates. HUD's analysis indicates that the proposed goals are reasonable and feasible under more adverse economic environments than have recently existed. Reasons for the remaining disparity between the proposed GSE housing goals and the respective shares of the overall mortgage market qualifying for each of the housing goals are discussed below in Section E.7, "Closing The Gap Between the GSEs and The Market."

3. *Need for Increased Affordable Single Family Mortgage Purchases.* Higher housing goals are needed to assure that both Fannie Mae and Freddie Mac increase their purchases of single family mortgages for lower-income families. The GSEs lag behind depository institutions and other lenders in the conventional conforming market in providing mortgage funds for these underserved families and their neighborhoods. Numerous studies have concluded that Fannie Mae and, especially, Freddie Mac have room to increase their purchases of affordable loans originated by primary lenders. The single family affordable market, which had only begun to grow when HUD set housing goals in 1995, has now established itself with six straight years (1993–1998) of solid performance. Current economic forecasts suggest that the strong housing affordability of the past several years will be maintained in the post-1999 period, leading to additional opportunities for the GSEs to support mortgage lending benefiting families targeted by the housing goals. But, as explained in Appendix D, HUD's housing market estimates allow for more adverse economic conditions than have existed recently.

4. *Market Disparities.* Despite the recent growth in affordable lending, there are many groups who continue to face problems obtaining mortgage credit and who would benefit from a more active and targeted secondary market. Homeownership rates for lower-income families, certain minorities, and central city residents are substantially below those of other families, and the disparities cannot simply be attributed to differences in income. Immigrants represent a ready supply of potential first-time home buyers and will need access to mortgage credit. Special needs in the market, such as rehabilitation of older 2–4 unit properties, could be helped by new mortgage products and more flexibility in underwriting and appraisal guidelines. The GSEs, along with primary lenders and private mortgage insurers, have been making efforts to reach out to these underserved portions of the markets. However, more needs to be done, and the proposed increases in the housing goals are

[50] The low-and moderate-income market share is the estimated proportion of newly mortgaged units in the market serving low-and moderate-income families. The two other shares are similarly defined. HUD's range of estimates (such as 50–55 percent) reflects uncertainty about future market conditions.

intended to encourage additional efforts by Fannie Mae and Freddie Mac.

5. *Impact of Multifamily Mortgage Purchases.* When the 1996–99 goals were established in December 1995, Freddie Mac had only recently reentered the multifamily mortgage market, after an absence in the early 1990s. Freddie Mac has made progress in rebuilding its multifamily mortgage purchase program, with its purchases of these loans rising from $191 million in 1993 to $6.6 billion in 1998. Freddie Mac's limited role in the multifamily market was a significant constraint when HUD set the level of the housing goals for 1996 through 1999. While Freddie Mac has made progress by establishing a solid foundation of multifamily mortgage purchases, they still lag the market in this area. Accordingly, the Department is proposing to provide Freddie Mac with a temporary adjustment factor for purchases of mortgages in multifamily properties with more than 50 units, as discussed in more detail, below.

6. *Financial Capacity to Support Affordable Housing Lending.* A wide variety of quantitative and qualitative indicators demonstrate that the GSEs' have ample, indeed robust, financial strength to improve their affordable lending performance. For example, the combined net income of the GSEs has risen steadily over the last decade, from $677 million in 1987 to $5.1 billion in 1998, an average annual growth rate of 20 percent per year. This financial strength provides the GSEs with the resources to lead the industry in making mortgage financing available for families and neighborhoods targeted by the housing goals.

7. *Closing the Gap Between the GSEs and the Market.* This section discusses the relationship between the housing goals, HUD's market estimates, and key segments of the affordable market in which the GSEs have had only a weak presence. To lay the groundwork for this discussion, the following table summarizes the Department's findings regarding market estimates and GSE performance as well as the levels of the housing goals during 1997–1999 and the goals proposed here:

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Percentage of Eligible Units Financed:

	1997-1999 Requirement	2001-2003 Proposed Requirements[1]	GSEs' Average Performance 1996-1998 (Fannie Mae/ Freddie Mac)	HUD's Estimated 1995-1997 Market Average[2]	HUD's Projected Market Estimate
Low-and Moderate Income Goal	42%	50%	45.1% 42.2%	57.3%	50-55%
Geographically Targeted Goal	24%	31%	28.0% 25.8%	33.1%	29-32%
Special Affordable Housing Goal	14%	20%	15.6% 15.0%	28.6%	23-26%

[1] Proposed year 2000 transition goals are 48 percent, 29 percent, and 18 percent, respectively.

[2] Appendix D explains the specific reasons the 1995-97 market estimates for the low-mod and special affordable goals are higher than the upper end of HUD's market projections for the years 2000-2003. Based on average 1993-98 experience, HUD's projection model assumes that refinance borrowers have higher incomes that home purchase borrowers; however, during the 1995-97 period, refinance borrowers had lower incomes. The 1995-97 period also exhibited a slightly higher percentage of rental units financed than assumed in HUD's projection model. See Appendix D for other reasons the 1995-97 market estimates are higher than those projected for the years 2000-2003.

It is evident from this table that the proposed Low- and Moderate-Income and Special Affordable Housing Goals are below HUD's projected market estimate for the years (2000–2003) covered by the proposed housing goals. One reason for this disparity involves disaggregating GSE purchases by property type, which shows that the GSEs have little presence in some important segments of the affordable housing market. For example, as shown in Figure 1, in 1997 the GSEs purchased loans representing only 13 percent of units in single-family rental properties, and only 2 percent of units in small multifamily properties mortgaged that year. (Figure 2 provides additional detail providing unit data comparing the GSEs' with the conventional conforming market). Typically, more than 90 percent of units in single-family rental and small multifamily properties qualify for the Low- and Moderate-Income Housing Goal. Thus, one reason why the GSEs' performance on the Low- and Moderate-Income Housing Goal falls short of HUD's market estimate, is that the GSEs have had only a weak and inconsistent presence in financing these important sources of affordable housing, but these market segments are important components in the market estimate.

Figure 1
GSEs' Share of the 1997 Conventional Conforming Market by Property Type

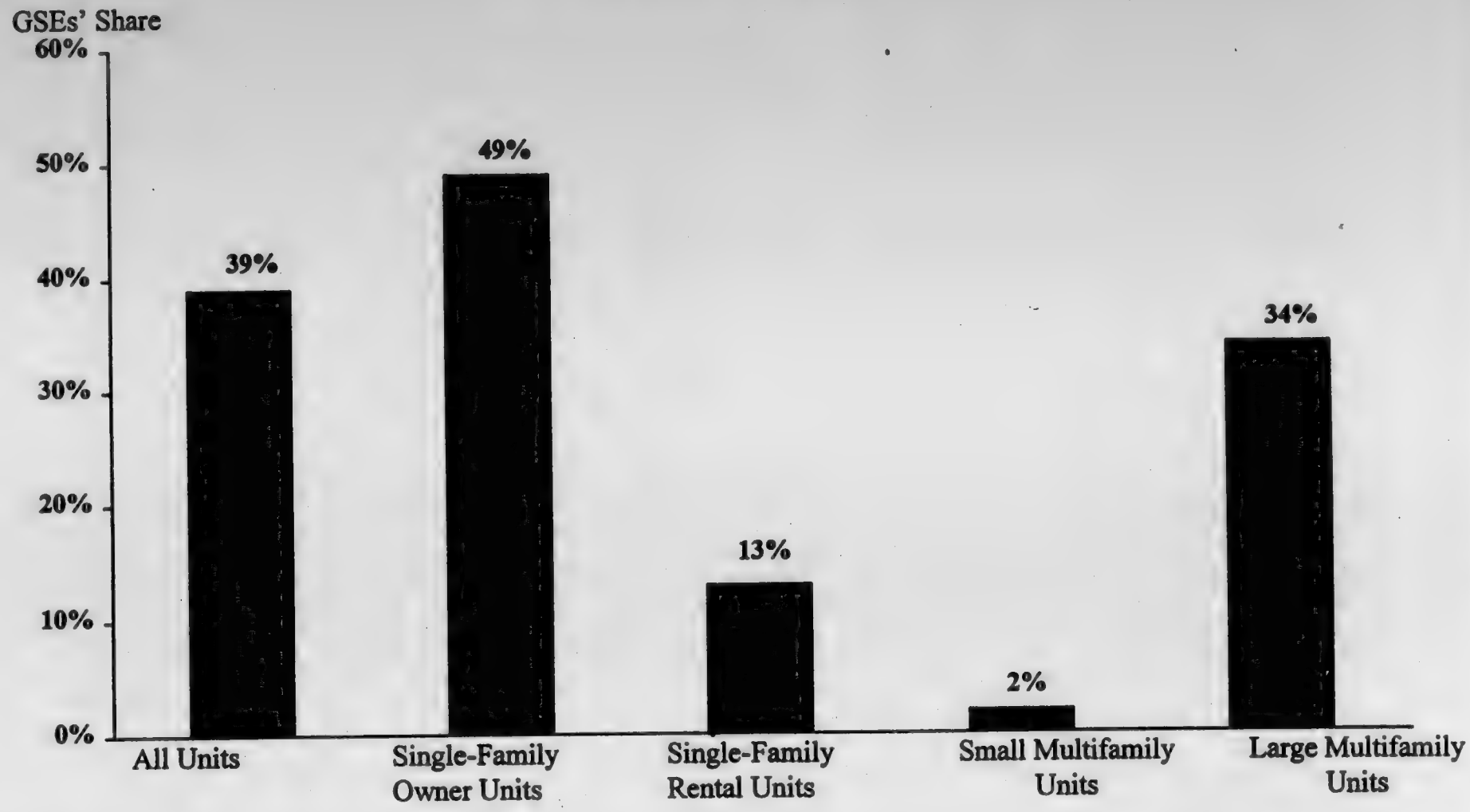

Source: See Table A7, Appendix A, and discussion of mortgages on small multifamily properties in Appendix A, Section G.

Figure 2
Units in the 1997 Conventional Conforming Mortgage Market Compared to GSE Purchases By Property Type

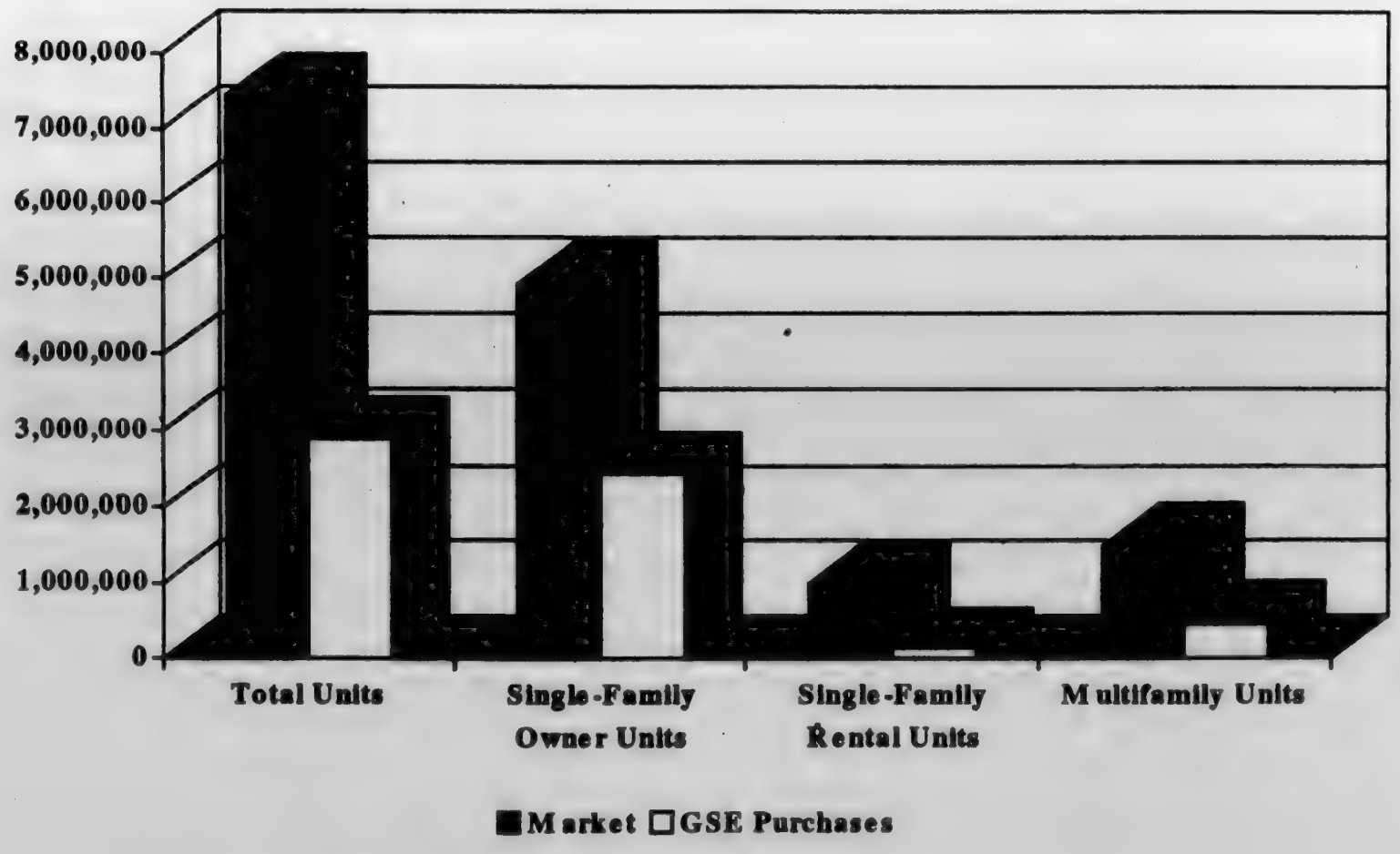

Source: See Table A.7, Appendix A.

The same disparities are seen in figures relating to GSE purchase shares and market shares in the relevant market segments, as utilized by HUD in preparing its market estimates for the Low- and Moderate-Income Housing Goal. In the overall conventional mortgage market, units in single-family rental properties and small multifamily properties are expected to represent approximately 19 percent of the overall mortgage market, and 31 percent of units backing mortgages qualifying for the Low- and Moderate-Income Housing Goal. Yet in 1997, units in such properties accounted for 5.5 percent of the GSEs' overall purchases, and only 10.5 percent of GSE purchases meeting the Low- and Moderate-Income Housing Goal. The continuing weakness in GSE purchases of mortgages on single-family rental and small multifamily properties is a major factor explaining the shortfall between GSE performance and that of the primary mortgage market.

For a variety of reasons, the GSEs have historically viewed the single-family rental and small multifamily market segments as more difficult for them to penetrate than the single-family owner-occupied mortgage market. In order to provide the GSEs with an incentive to enter these markets and provide the benefits of more consistent exposure to secondary markets, HUD is proposing to award "bonus points" for their purchases of mortgages on owner-occupied single-family rental properties and small multifamily properties in calculating credit toward the housing goals, as discussed below. The bonus points will make the Department's proposed housing goals easier for the GSEs to attain if they devote resources to affordable market segments where their past role has been limited. Further, awarding bonus points for these units would have resulted in some increases in the GSEs' performance for the three goals over the 1996–98 period. (See Subpart B, 5a.).

Because of the importance of the GSEs' ability to lead the industry in making mortgage credit available for targeted populations and areas, HUD wishes to solicit comments on the following:

Are the proposed housing goals appropriate given the statutory factors HUD must consider in setting the goals, and in light of the market estimates of the GSEs' share of the affordable housing market?

F. Principles Governing Regulation of the GSEs

In proposing these regulations, the Department was guided by and affirmed the following principles established in the 1995 rulemaking:

1. To fulfill the intent of FHEFSSA, the GSEs should lead the industry in ensuring that access to mortgage credit is made available for very low-, low- and moderate-income families and residents of underserved areas. HUD recognizes that, to lead the mortgage industry over time, the GSEs will have to stretch to reach certain goals and close the gap between the secondary mortgage market and the primary mortgage market. This approach is consistent with Congress' recognition that "the enterprises will need to stretch their efforts to achieve" the goals.[51]

2. The Department's role as a regulator is to set broad performance standards for the GSEs through the housing goals, but not to dictate the specific products or delivery mechanisms the GSEs will use to achieve a goal. Regulating two exceedingly large financial enterprises in a dynamic market requires that HUD provide the GSEs with sufficient latitude to use their innovative capacities to determine how best to develop products to carry out their respective missions. HUD's regulations should allow the GSEs to maintain their flexibility and their ability to respond quickly to market opportunities. At the same time, the Department must ensure that the GSEs' strategies serve all families and markets and address unmet credit needs. The addition of subgoals and/or bonus points to the regulatory structure may provide an additional means of encouraging the GSEs' affordable housing activities to address identified, persistent credit needs while leaving the specific approaches to meeting these needs to the GSEs.

3. Discrimination in lending—albeit sometimes subtle and unintentional—has denied racial and ethnic minorities the same access to credit to purchase a home that has been available to similarly situated non-minorities. The GSEs have a central role and responsibility to promote access to capital for minorities and other identified groups and to thereby exhibit the feasibility of such lending.

4. In addition to the GSEs' purchases of single family home loans, the GSEs also must continue to assist in the creation of an active secondary market for multifamily loans. Affordable rental housing is essential for those families who cannot afford to become homeowners. The GSEs must assist in making capital available to assure the continued development of rental housing.

[51] See footnote 40.

II. Discussion of Proposed Regulatory Changes

This proposed rule includes changes to definitions applicable to the housing goals, establishment of new housing goal levels, new requirements for counting mortgage purchases under the goals, discussion of possible regulatory incentives intended to spur greater GSE involvement in untapped segments of the affordable housing market, and an expansion of data available to the public on the GSEs' mortgage loan purchases. Much of the analysis referenced in this discussion is based on data through calendar year 1997. Information on the GSEs' mortgage purchases for 1998 is referenced where feasible.

Many of the proposed rule changes, included in the final rule, will involve changes in data reporting requirements. The final rule will identify the specific changes to data reporting necessary to implement any new requirements for counting mortgage purchases under the housing goals.

A. Subpart A—General

Since 1996, as a result of HUD's experience with the 1995 GSE rule, the Department has identified several definitions that require greater clarity to ensure consistent application of the housing goal requirements. Accordingly, some definitional changes are proposed for this purpose. Other definitional changes would be necessary as a result of the proposed changes to the housing goals. These types of definitional changes are discussed in the following Subpart B—Housing Goals.

1. *Definitions.* The following definitions are proposed to be added or revised in order to provide greater clarity, consistency and guidance with regard to this regulation.

a. *Metropolitan Area.* This rule proposes to revise the existing definition of "Metropolitan Area" to correct an ambiguity in the relevant area for defining median incomes. "Metropolitan Area" is defined in § 81.2 of the current regulation as a "metropolitan statistical area (MSA), a primary metropolitan statistical area (PMSA), or a consolidated metropolitan statistical area (CMSA), designated by the Office of Management and Budget of the Executive Office of the President." This definition gives rise to an ambiguity in the definitions of underserved area and the denominator of the affordability ratio used to compute the Low- and Moderate-Income Housing Goal and Special Affordable Housing Goal in whether to use the median income of the CMSA or the PMSA. For example, the underserved

area definition requires that the denominator be the metropolitan area median income. Should the median income of a census tract in Washington, D.C. be compared to median income of the Washington PMSA or the Baltimore-Washington CMSA? HUD has consistently defined underserved areas, as well as denominators for the other goals, using the median incomes of the PMSA. This rule would correct this ambiguity by revising the definition of "Metropolitan Area" in § 81.2 to eliminate the reference to CMSAs.

b. *Median Income.* Under § 81.2 of HUD's current regulations, the definition of "Median Income" with respect to an area is the unadjusted median family income for the area, as most recently determined and published by the Department; "area" includes metropolitan areas. "Metropolitan Area" is defined in § 81.2 in terms of areas designated as such by OMB. These definitions give rise to an inconsistency, in that HUD routinely publishes area median family income estimates but, in some cases, determines them not for MSAs, or PMSAs, but rather for portions of such areas. For example, OMB defines the Washington D.C. PMSA to include Berkeley and Jefferson counties in West Virginia and Culpeper, King George and Warren counties in Virginia. However, HUD's published area income estimates for these five counties are based on the incomes specific to these counties, not the PMSA. Moreover, HUD's published area income estimates for the other counties in the Washington MSA are based on data pertaining to the remaining counties and disregarding data for these five counties. As another example, OMB defines the New York City PMSA to include Rockland and Westchester Counties. HUD's published area income estimates for these two counties are based on incomes specific to the counties, not the PMSA. HUD's published area income estimates for the other counties in the New York City PMSA are based on data pertaining to the entire New York City PMSA including Rockland and Westchester Counties. Such differences between HUD's published area estimates and MSAs have led to ambiguity concerning the appropriate determination of area incomes by the GSEs. HUD proposes to change the definition of "Median Income" to require the GSEs to use HUD estimates of median family income. As part of this change to the definition of "Median Income," HUD would provide the GSEs, on an annual basis, with information specifying how HUD's published median family income estimates are to be applied.

c. *Underserved Area.* This rule proposes to revise the existing definition of "Underserved Area" to correct the parameters of rural underserved areas. The definition of rural underserved areas in § 81.2 has an "income-only" portion (*i.e.*, a median income at or below 95 percent of the state non-metropolitan median income or the nationwide non-metropolitan median income, whichever is greater) and "income/minority" portion (i.e., a median income at or below 120 percent of the state non-metropolitan median income and a minority population of at least 30 percent). In the preamble to the 1995 Final Rule, HUD explained that for the income only portion of the definition, the median income of a county would be compared to the greater of either the state or the nationwide non-metropolitan median income, in order to ensure that poor counties in poor states would be included in the definition. However, the 1995 Final Rule did not recognize this comparison in the "income/minority" portion. Therefore, this proposed rule would correct this oversight by proposing to revise the definition of "Underserved Areas" in § 81.2. This rule also proposes a specific change to this definition related to tribal lands and discusses other possible changes to the definition related to metropolitan and non-metropolitan (rural) areas. The changes are proposed are discussed below in Section B., 3., e., "Central Cities, Rural Areas and Other Underserved Areas Housing Goal."

B. Subpart B—Housing Goals

1. *Background.* The Department is required to establish, by regulation, annual housing goals for each GSE. The goals include a Low- and Moderate-Income Goal, a Special Affordable Housing Goal, and a Central Cities, Rural Areas, and Other Underserved Areas Housing Goal (the Geographically Targeted Goal). Section 1331(a) of FHEFSSA requires HUD to establish these goals in a manner consistent with sections 301(3) of the Fannie Mae Charter Act and 301(b)(3) of the Freddie Mac Charter Act, which require the GSEs "to provide ongoing assistance to the secondary market for residential mortgages (including * * * mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities)." Under section 1331(c) of FHEFSSA, HUD may, by regulation, adjust any housing goal from year to year.

In December 1995, HUD established housing goals for the GSEs for 1996–1999, revising and restructuring the transition goals that had been in effect for 1993–1995. The current housing goal levels, which were in place for 1996–1999, are:

A *Low- and Moderate-Income Housing Goal,* which focuses on mortgages on housing for families with incomes no greater than area median income (as defined by HUD),[52] and which was set at 40 percent of total units financed by each of the GSEs' mortgage purchases in 1996 and 42 percent for each calendar year from 1997 though 1999;

A *Geographically Targeted Goal,* which focuses on mortgages on properties located in "underserved areas," defined as low-income and/or high-minority census tracts and rural counties (excluding high-income, high-minority tracts), and which was set at 21 percent of total units financed by each of the GSEs' mortgage purchases in 1996 and at 24 percent for each calendar year from 1997 through 1999;

A *Special Affordable Housing Goal,* which focuses on mortgages on housing for very low-income families and low-income families living in low-income areas, and which was set at 12 percent of total units financed by each of the GSEs' mortgage purchases in 1996 and at 14 percent for calendar each year from 1997 through 1999; and

A *Special Affordable Multifamily Housing Subgoal,* which focuses on mortgages on housing for very low-income families and low-income families living in low-income areas, in multifamily properties (defined as properties with five or more units), and which was set at a fixed amount of 0.8 percent of the total dollar volume of mortgages purchased by each GSE in 1994. This formula results in a subgoal of special affordable multifamily mortgage purchases totaling $1.29 billion per year for Fannie Mae and $988 million per year for Freddie Mac for each calendar year from 1996 through 1999.

These housing goals, excluding the special affordable multifamily housing subgoal, share common characteristics: (1) Annual goal levels are the same for both GSEs; (2) they are percentage based goals defined in terms of percentages of housing units financed; and (3) one unit may qualify for one or more goals. In addition, under the current regulation, goals were established based on consideration of the statutory factors and set for a four-year period from 1996 through 1999 to allow the GSEs time to develop long-range strategies.

A key factor in determining the level of the goals was and is the estimated

[52] 24 CFR 81.2.

size of the conventional market for each goal. In 1995, HUD estimated the low- and moderate-income share of the conventional market at 48–52 percent; the underserved (geographically targeted) areas share at 25–28 percent; and the special affordable share at 20–23 percent. These market estimates were based mainly on HMDA data for 1992 to 1994. Upon further analysis, however, these estimates are below what actual data shows for the period from 1995 to 1998. For example, HUD's 1995 market estimates underestimated the size of the rental market and did not anticipate the underlying strength and persistence of the affordable lending market. A large portion of new mortgages were originated for low-income families and first time homebuyers during the 1995 to 1998 period. Therefore, HUD estimates that the low- and moderate-income market accounted for 57–58 percent of all mortgages originated during the 1995 to 1997 period, and for 54 percent during the heavy refinancing year of 1998. Appendix D, "Estimating the Size of the Conventional Conforming Market for each Housing Goal," provides other reasons that the actual market shares were higher than anticipated in HUD's 1995 estimates.

In accordance with FHEFSSA, HUD has re-estimated the market shares of the mortgages in the primary conventional market that would qualify for each of the GSEs' housing goals for the years 2000 through 2003.[53] HUD estimates that for the years 2000 through 2003 the low- and moderate-income share of the conventional market will be 50–55 percent, the underserved (geographically targeted) areas share of the market will be 29–32 percent, and the special affordable share will be 23–26 percent. Appendix D, "Estimating the Size of the Conventional Conforming Market for Each Housing Goal," provides an extensive analysis of the Department's market share estimates.

The higher market estimates suggest that the gaps between the current goal levels and the market estimates of the opportunities available to the GSEs are wider than was anticipated in 1995. As with the 1995 estimates, these new market estimates also allow for more adverse economic conditions than recently experienced. For example, the lower end—50 percent—of the range for the low- and moderate-income market estimate is consistent with low- and moderate-income borrowers accounting for 35 percent of home purchase loans in the single-family owner market. (The remainder of the low- and moderate-income market share estimate includes multifamily and single family rental properties.) Since the 1992–98 average for the low- and moderate-income share of the home purchase market was 41 percent, and the more recent 1995–1998 average was 42 percent, some leeway is allowed for more adverse income and interest rate conditions. Such leeway may be needed since it is possible that the affordable housing market may not continue at current rates, particularly if there is a slowdown in economic activity.

While the single family affordable market has not changed substantially since 1995 when HUD developed its first market estimates, HUD has revised its new market estimates upward based upon its analyses of the underlying strength of the single family affordable market. That market has been consistently strong for the past six years (1993–1998). When HUD produced the market estimates in 1995, the data was limited to the early 1990s, during which 1993 and 1994 demonstrated the strongest affordable housing markets. Now, with four additional years (1995 to 1998) of data indicating consistent trends in the affordable market, HUD is more confident about the underlying strength of this market.

At the same time, HUD has used assumptions about future economic and market conditions that are more conservative than those that have actually prevailed over the last six years. HUD is well aware of the volatility of mortgage markets and their possible impacts on the GSEs' ability to meet the housing goals. HUD's market estimates have also changed to a small extent by including manufactured housing loans in the single family owner market, and slightly increasing the affordability and underserved area parameters for rental housing.

Under HUD's current regulations, the current levels of the housing goals remain in effect in 2000 and thereafter until such time as the Department establishes new annual housing goals. In this rule, HUD is proposing to establish new levels for the three housing goals and for the special affordable multifamily housing subgoal for the years 2000 through 2003. The housing goals as proposed would be phased in beginning in calendar year 2000 and would be fully in place in calendar years 2001, 2002 and 2003. In proposing the level of the housing goals for 2000 and thereafter, HUD has applied the statutory factors and also has concluded that the goals should be set far enough into the future to allow the GSEs to engage in long-term planning.

2. *Section 81.12 Low- and Moderate-Income Housing Goal.* This section discusses the Department's consideration of all the statutory factors in arriving at its proposed new housing goal level for the Low- and Moderate-Income Housing Goal. Additional information analyzing each of the statutory factors is provided in Appendix A, "Departmental Considerations to Establish the Low- and Moderate-Income Housing Goal," and Appendix D, "Estimating the Size of the Conventional Conforming Market for each Housing Goal."

a. *Definition.* The Low- and Moderate-Income Housing Goal counts mortgages on housing for families with incomes not in excess of area median incomes.

b. *Market Estimate for the Low- and Moderate Income Housing Goal in 2000.* The Department estimates that dwelling units serving low- and moderate-income families will account for 50–55 percent of total units financed in the overall conventional conforming mortgage market during the period 2000 through 2003. Due to inherent uncertainty about future market conditions, HUD has developed a plausible range, rather than a point estimate, for the market. The detailed analyses underlying this estimate are presented in Appendix D, "Estimating the Size of the Conventional Conforming Market for Each Housing Goal."

c. *Past Performance of the GSEs Under the Low- and Moderate-Income Housing Goal.* HUD's current goals specified that in 1996 at least 40 percent of the number of units financed by mortgage purchases of the GSEs and eligible to count toward the Low- and Moderate-Income Goal should qualify as low- and moderate-income, and at least 42 percent should qualify in each year from 1997 through 1999. Fannie Mae surpassed these goal levels by 5.6 percentage points in 1996, 3.7 percentage points in 1997, and 2.1 percentage points in 1998. Freddie Mac surpassed the goals by 1.1 percentage points, 0.6 percentage point and 0.9 percentage point in 1996, 1997 and 1998, respectively. The GSEs' performance under the Low- and Moderate-Income Housing Goal for the 1996 through 1998 period is summarized below:

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[53] The goal-qualifying market shares are estimated for the years 2000–2003 under several projections about the relative sizes of the single family and multifamily markets. Numerous sensitivity analyses that consider alternative market and economic conditions are examined in Appendix D.

SUMMARY OF GSE PERFORMANCE UNDER THE LOW- AND MODERATE-INCOME HOUSING GOAL[1]

	1996	1997	1998
Required Goal Level	40%	42%	42%
Fannie Mae:			
Percent Low-and Moderate-Income	45.6%	45.7%	44.1%
Freddie Mac:			
Percent Low-and Moderate-Income	41.1%	42.6%	42.9%

[1] The figures presented for goal performance are based on HUD analysis of the GSEs' loan level data. Some results differ marginally from the corresponding figures presented by Fannie Mae and Freddie Mac in their respective Annual Housing Activities Reports (AHARs) to HUD, reflecting differences in application of counting rules.

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During the transition period from 1993 through 1995, Fannie Mae's performance under the Low- and Moderate-Income Housing Goal jumped sharply in one year, from 34.2 percent in 1993 to 44.8 percent in 1994, before tailing off to 42.3 percent in 1995. It then stabilized at just over 45 percent in 1996 and 1997. Fannie Mae's performance in 1998 declined to 44.1 percent due in large measure to the high volume of refinance loans that Fannie Mae funded in 1998.

During the transition period, Freddie Mac demonstrated steadier gains in performance under the Low- and Moderate-Income Housing Goal, from 29.7 percent in 1993 to 37.4 percent in 1994 and 38.9 percent in 1995. Freddie Mac then achieved 41.1 percent in 1996, and 42.6 percent and 42.9 percent in 1997 and 1998, respectively. Fannie Mae's performance on the Low- and Moderate-Income Housing Goal has surpassed Freddie Mac's in every year. Nonetheless, Freddie Mac's 1998 performance represented a 44 percent increase over its 1993 level, exceeding the 29 percent increase for Fannie Mae. Freddie Mac's performance was 97 percent of Fannie Mae's low- and moderate-income share in 1998, the highest ratio since the goals took effect in 1993. Freddie Mac's improved performance is due mainly to its increased purchases of multifamily loans as it has become more active in this market. Some housing industry observers believe that the Low- and Moderate-Income Housing Goal has been an important factor explaining Freddie Mac's re-entry into the multifamily market.

In fact, multifamily purchases represent a significant component of both GSEs' activities in meeting the Low- and Moderate-Income Housing Goal, even though multifamily loans comprise a relatively small portion of the GSEs' business activities. In 1997, while Fannie Mae's multifamily purchases represented only 13.4 percent of its total acquisition volume measured in terms of dwelling units, these purchases comprised 26.7 percent of units qualifying for the Low- and Moderate-Income Housing Goal. Multifamily purchases were 8.2 percent of the units financed by Freddie Mac's 1997 mortgage purchases but were 19 percent of Freddie Mac's low- and moderate-income mortgage purchases.

The GSEs' 1998 performance took place in the context of a record level of mortgage originations, with unusually high refinance volume reaching 50 percent of single family mortgage originations. The GSEs relied upon a record volume of multifamily mortgage purchases in 1998—$12.5 billion for Fannie Mae and $6.6 billion for Freddie Mac—to exceed the 42 percent goal.

d. *Proposed Goal Levels for 2000–2003.* Having considered all statutory factors including housing needs, projected economic and demographic conditions for 2000 to 2003, the GSEs' past performance, the size of the market serving low- and moderate-income families, and the GSEs' ability to lead the market while maintaining a sound financial condition; HUD is proposing that the annual goal for mortgage purchases qualifying under the Low- and Moderate-Income Housing Goal be 48 percent of eligible units financed in calendar year 2000, and 50 percent of eligible units financed in each of calendar years 2001, 2002 and 2003. This proposed goal level is intended to increase the GSEs' current level of performance to a level that is consistent with reasonable estimates of the low- and moderate-income housing market. HUD's detailed findings under the statutory factors for establishing the goal are described in Appendix A, "Departmental Considerations to Establish the Low- and Moderate-Income Housing Goal," and Appendix D, "Estimating the Size of the Conventional Conforming Market for Each Housing Goal."

3. *Section 81.13—Central Cities, Rural Areas, and Other Underserved Areas Housing Goal.* This section discusses the Department's consideration of all the statutory factors in arriving at its proposed new housing goal level for the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal (the Geographically Targeted Goal). Additional information analyzing each of the statutory factors is provided in Appendix B, "Departmental Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Goal," and Appendix D, "Estimating the Size of the Conventional Conforming Market for Each Housing Goal." This section also discusses possible changes being considered to the definition of underserved areas.

a. *Definition.* The Geographically Targeted Goal focuses on areas currently underserved by the mortgage finance system. The 1995 Final Rule provides that for properties in metropolitan areas, mortgage purchases count toward the Geographically Targeted Goal if such purchases finance properties that are located in underserved census tracts. In § 81.2, HUD defined "underserved areas" as areas where either: (1) The tract median income is at or below 90 percent of the area median income (AMI); or (2) the minority population is at least 30 percent and the tract median income is at or below 120 percent of AMI. The AMI ratio is calculated by dividing the tract median income by the MSA median income. The minority percent of a tract's population is calculated by dividing the tract's minority population by its total population.

For properties in non-metropolitan (rural) areas, mortgage purchases count toward the Geographically Targeted Goal where such purchases finance properties that are located in underserved counties. These are defined as counties where either (1) the median income in the county does not exceed 95 percent of the greater of the state or nationwide non-metropolitan median income; or (2) minorities comprise at least 30 percent of the residents and the median income in the county does not exceed 120 percent of the state non-metropolitan median income.

b. *Market Estimate for the Geographically Targeted Goal.* The Department estimates that dwelling units in underserved areas will account for 29–32 percent of total units financed in the overall conventional conforming mortgage market during the period 2000 through 2003. Due to inherent uncertainty about future market conditions, HUD has developed a plausible range, rather than a point estimate, for the market. The detailed analyses underlying this estimate are presented in Appendix D, "Estimating the Size of the Conventional Conforming Market for Each Housing Goal."

c. *Past Performance of the GSEs Under the Geographically Targeted Goal.* HUD's goals specified that in 1996 at least 21 percent of the units financed by the GSEs' mortgage purchases should count toward the Geographically Targeted Goal, and at least 24 percent in 1997 through 1999. Fannie Mae surpassed the goal by 7.1 percentage points in 1996, 4.8 percentage points in 1997, and 3.0 percentage points in 1998. Freddie Mac surpassed the goal by 4.0, 2.3 and 2.1 percentage points in 1996, 1997 and 1998, respectively. The GSEs' performance for the 1996–98 period is summarized below:

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SUMMARY OF GSE PERFORMANCE UNDER THE

THE GEOGRAPHICALLY TARGETED GOAL[1]

	1996	1997	1998
Required Goal Level	21%	24%	24%
Fannie Mae:			
Percent Geographically Targeted	28.1%	28.8%	27.0%
Freddie Mac:			
Percent Geographically Targeted	25.0%	26.3%	26.1%

1 The figures presented for goal performance are based on HUD's analysis of the GSEs' loan level data. Some results differ marginally from the corresponding figures presented by Fannie Mae and Freddie Mac in its AHARs, reflecting differences in application of counting rules.

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Although both GSEs have improved their performance in underserved areas, on average, their mortgage purchases continue to lag the primary market in providing financing for affordable loans in underserved neighborhoods. During the 1996–1998 period, underserved areas accounted for 19.9 percent of Freddie Macs purchases of single family home mortgages compared with 22.9 percent of Fannie Mae's purchases, 25.8 percent of mortgages retained by portfolio lenders, and 24.9 percent of all home purchase mortgages originated in the conventional conforming market. As these figures indicate, Freddie Mac has been less likely than Fannie Mae to purchase mortgages on properties in underserved neighborhoods. Freddie Mac has not made progress in reducing the gap between its performance and that of the overall market. In 1992, underserved areas accounted for 18.6 percent of Freddie Mac's purchases of home purchase mortgages and for 22.2 percent of home loans originated in the conforming market, which yields a "Freddie Mac-to-Market" ratio [54] of 0.84 percent. By 1998, the "Freddie Mac-to-Market" ratio had actually fallen to 0.81 percent. During the same period, the "Fannie Mae-to-Market" ratio increased from 0.82 percent to 0.93 percent.

Fannie Mae's performance under this goal improved due to its increased purchases during 1997 and 1998 of mortgages originated in prior years in underserved neighborhoods. For instance, Fannie Mae's purchases of single family home mortgage loans in underserved areas increased from 22.3 percent in 1996 to 23.5 percent in 1997. However, the percentage of Fannie Mae's purchases of newly originated mortgages on dwellings in underserved areas was lower in 1997 (20.8 percent) than in 1996 (21.9 percent). This decline was offset by the fact that a high percentage (30.1 percent) of Fannie Mae's purchases in 1997 of prior year mortgages were home mortgage loans on properties in underserved areas. This focus on prior year mortgages explains why Fannie Mae's performance increased across several affordable lending categories between 1996 and 1997. Fannie Mae's purchases of prior year affordable housing loans continued in 1998.

In evaluating the GSEs' past performance, it should be noted that while borrowers in underserved metropolitan areas tend to have much lower incomes than borrowers in other areas, this does not mean that GSE purchase activity in underserved areas derives totally from lower income families. In 1997, above median-income households accounted for 37 percent of the mortgages the GSEs purchased in underserved areas.

d. *Proposed Goal Levels for 2000–2003.* Having considered all statutory factors including housing needs, projected economic and demographic conditions for 2000 to 2003, the GSEs' past performance, the size of the market for central cities, rural areas and other underserved areas, and the GSEs' ability to lead the market while maintaining a sound financial condition; HUD is proposing that the annual goal for mortgage purchases qualifying under the Geographically Targeted Goal be 29 percent of eligible units financed in calendar year 2000, and 31 percent of eligible units financed in each of calendar years 2001, 2002 and 2003. This proposed goal level is intended to increase the GSEs' current level of performance to a level that is consistent with reasonable estimates of the housing market in underserved areas. The Department's detailed findings under the statutory factors for establishing the goal are described in Appendix B, "Departmental Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Goal," and Appendix D, "Estimating the Size of the Conventional Conforming Market for Each Housing Goal."

e. *Proposed Definitional Changes for Underserved Areas.* (1) Metropolitan Areas. The Department is seeking comments on possible changes to the current metropolitan underserved areas definition in an effort to more accurately target underserved areas with higher mortgage denial rates and thereby promote access to mortgage credit nationwide. Specifically, HUD is considering changing the current tract income ratio to an "enhanced" tract income ratio and requiring that for tracts to qualify they must have an enhanced tract income ratio at or below 80 percent of area median income. The enhanced tract income ratio described below would make the underserved areas definition used by the GSEs consistent with the requirements of Federally insured depository institutions under the Community Reinvestment Act (CRA).

The "enhanced" option is two-fold. First, it would change the tract income ratio (described in the definition of "central city" or "other underserved area" in paragraph (1) of the definition of "Underserved areas" in § 81.2) from one that is calculated using MSA median income to one that is based on the greater of either the national metropolitan median income or the MSA median income. This approach would ensure that low-income census tracts in low-income MSAs are classified as underserved. With this change, 994 tracts, with an average mortgage denial rate of 26.8 percent, would be added to the scope of the current definition.

Second, the enhanced option would change the level of the income ratio required in paragraph (1)(ii) of the definition of "Underserved areas." Tracts would qualify as underserved if their income ratio were 80 percent as compared to a tract income ratio of 90 percent under the current definition. With this change, 2,500 tracts, with an average mortgage denial rate of 17.8 percent, would be dropped from the scope of the current definition. Of the tracts that would be dropped, the mortgage denial rate is not much higher than the average mortgage denial rate for all metropolitan areas, which is 15.3 percent. This suggests that these areas are not experiencing severe problems in obtaining mortgage credit and should not be targeted. The overall number of tracts that would qualify with both parts of the enhanced option is 20,093, with an average mortgage denial rate of 25.0 percent.

Although the Department preliminarily favors adopting a definitional change based on the enhanced tract income option described above, another approach to targeting high mortgage denial areas is to increase the alternative requirement for an underserved area by increasing the minority concentration required from the current 30 percent to 50 percent. Adopting this option would exclude many tracts with high mortgage denial rates. This option would drop 1,045 tracts with a relatively high mortgage denial rate of 20.2 percent. Nevertheless, this proposal should stimulate conventional lending in high minority neighborhoods that have been traditionally underserved.

Either of the possible changes to the existing definition for underserved areas would likely affect the estimated market share for the Geographically Targeted Goal. If either of the possible changes were adopted, the Department would revise its market estimates of underserved areas accordingly and the level of the housing goal as needed to reflect the revised estimates.

HUD seeks comment on the proposed options for revising the definition of underserved metropolitan areas, including the extent to which these definitional changes are likely to increase the availability of credit to areas with high mortgage denial rates.

[54] GSE to market ratio is calculated by dividing the performance of the respective GSE by the performance of the market.

(2) Tribal Lands. In reviewing the criteria for underserved areas, HUD believes that difficulties in obtaining mortgage loans on qualifying American Indian Reservations and trust lands deserve attention. A February 1998 report by the General Accounting Office (GAO) concerning lending on tribal lands found that, during a five year period from 1992 through 1996, only 91 conventional home purchase loans were made to Native Americans on trust lands.[55] The eight lenders making these loans held all of them in portfolio. In addition, government-backed loans were insured by HUD under its Section 184 and Section 248 programs which promote affordable housing opportunities for Native American families, and through programs of the Department of Veterans Affairs, the U.S. Department of Agriculture, and the Federal Home Loan Banks. Fannie Mae has consistently purchased Section 184 loans, and Freddie Mac has recently become involved in this program.

A number of reservations cross county and census tract lines with a portion of the reservation in a county that is otherwise considered high-income and/or low-minority and a portion of the reservation in a county that is neither. Part of a reservation, therefore, may be considered an underserved area and part a served area. To remedy such anomalies, this rule proposes that reservations and trust lands would be considered separate geographic entities rather than parts of the counties in which they are located. Thus, in a non-metropolitan area, median income for the reservation would be compared with state (or national) non-metropolitan median income in determining whether the reservation is an "underserved area;" and in a metropolitan area, median income for the reservation would be compared with the median income of the respective metropolitan area.

HUD has determined that currently 173 non-metropolitan counties that contain Indian reservations or trust lands are classified as underserved areas and 88 such counties are classified as served areas. In metropolitan areas, 131 census tracts that contain Indian reservations or trust lands are currently classified as underserved areas and 115 such tract are classified as served areas. Inclusion of qualifying Indian reservations and trust lands in these 88 counties and 115 census tracts as underserved areas in calculating the Geographically Targeted Goal would not automatically be expected to have a major impact on lending in these areas, at least initially, but it could heighten awareness and encourage future growth in conventional mortgage lending to these areas.

Based on this analysis, the Department proposes to revise § 81.2 to designate all qualifying Indian reservations and trust lands as underserved areas.

(3) Rural Areas. The current definition of underserved non-metropolitan or rural areas under the Geographically Targeted Goal accounts for 53 percent of the households, 57 percent of the census tracts, and 66 percent of the counties in rural areas. Unlike the underserved definition for metropolitan areas, which is based on the minority or low-income concentration of census tracts, the non-metropolitan/rural underserved definition is based on these criteria for counties. During the 1995 rulemaking process, experts on rural lending informed HUD that lenders' business operations in rural areas are oriented toward counties, not census tracts. In addition, counties are easy to identify and geocode, which facilitates the reporting process for lenders who provide the GSEs with loan-level data on mortgages. However, HUD recognized then, and experience has borne out, that, under its county-based definition, the GSEs can achieve the goal by purchasing mortgages located in the parts of underserved counties that have higher incomes.

The broad nature of the underserved definition for non-metropolitan areas raises at least two concerns. The first concern is that the broad definition appears to result in similar borrower characteristics in served and underserved counties. HUD's analysis indicates that the GSEs are less likely to purchase loans for first-time homebuyers and more likely to purchase mortgages for high-income borrowers in underserved than in served counties. Mortgages to first-time homebuyers account for 13.9 percent of the GSEs' mortgage purchases in served counties compared with 12.3 percent in underserved counties. Interestingly, it is more likely for borrowers in underserved counties (71.2 percent) to have incomes above the county median than in served counties (65.5 percent). These findings support the claim that, in rural underserved counties, the GSEs purchase mortgages of borrowers who probably encounter few obstacles to obtaining mortgage credit. Further, mortgages purchased by the GSEs in underserved areas do not have low down payments. In both served and underserved counties, only 27 percent of the GSEs' mortgage purchases have loan-to-value ratios above 80 percent.

Defining underserved areas in terms of an entire county also appears to encourage the GSEs to purchase mortgages in the more affluent tracts. HUD's analysis shows that even though the GSEs purchase a greater percentage of mortgages in high-minority and low-income tracts in underserved than in served counties, they purchase nearly the same percentage of mortgages in both underserved and served counties in high-income tracts. In underserved counties, 12.3 percent of the GSEs' mortgage purchases are in tracts above 120 percent area median income compared with 14.6 percent in served counties.

There are few conclusive studies on access to mortgage credit in rural areas, and the studies that do exist suggest only broad conclusions about credit flows in these areas. Moreover, evaluating which rural locations are underserved in terms of access to mortgage credit cannot be done with HMDA data on which HUD mainly relied in defining urban underserved areas. Other data bases available with mortgage market information have similar limitations with regard to coverage of mortgage activity in rural areas. Nonetheless, based on an analysis of the GSEs' mortgage purchases by tract median income, it does not appear that the current county definition is encouraging the GSEs to target their mortgage purchases to the most underserved portions of rural areas.

For these reasons, the Department is seeking public comment on alternative methodologies and sources of rural market data that HUD might use to define underserved non-metropolitan/rural areas. Specifically, HUD seeks comment on whether the Department should follow a tract-based approach in defining underserved rural areas, which would be consistent with the tract-based definition used in metropolitan areas. As technology and computer mapping capabilities have evolved since 1995, it may be appropriate to revisit the issue of whether entire counties or census tracts within the counties should be used to define rural underserved areas.

4. *Section 81.14 Special Affordable Housing Goal.* This section discusses the Department's consideration of all the statutory factors in arriving at its proposed new housing goal level for the Special Affordable Housing Goal. Additional information analyzing each of the statutory factors is provided in Appendix C, "Departmental Considerations to Establish the Special Affordable Housing Goal," and Appendix D, "Estimating the Size of the Conventional Conforming Market for Each Housing Goal." This section also

[55] GAO/RCED–98–49.

discusses possible changes being considered to the structure of the multifamily subgoal.

a. *Definition.* The Special Affordable Housing Goal targets mortgages on housing for very low-income families and low-income families living in low-income areas. Units that count toward the Special Affordable Housing Goal include units occupied by low-income owners and renters in low-income areas, and very-low-income owners and renters. In addition, low-income rental units in multifamily properties in which at least 20 percent of the units are affordable to families whose incomes are 50 percent of area median income, or less, or where at least 40 percent of the units are affordable to families whose incomes are 60 percent area median income, or less, count toward the goal.

b. *Market Estimate for the Special Affordable Housing Goal.* The Department estimates that dwelling units serving very low-income families and low-income families living in low-income areas will account for 23–26 percent of total units financed in the overall conventional conforming mortgage market during the period 2000 through 2003. Due to inherent uncertainty about future market conditions, HUD has developed a plausible range, rather than a point estimate, for this market. The detailed analyses underlying this estimate are presented in Appendix D, "Estimating the Size of the Conventional Conforming Market for Each Housing Goal."

c. *Past Performance of the GSEs' Under the Special Affordable Housing Goal.* The Special Affordable Housing Goal is designed to ensure that the GSEs consistently focus on serving the very low-and low-income portion of the housing market. However, analysis of American Housing Survey and HMDA data show that the shares of mortgage loans for very low-income homebuyers are smaller for the GSEs' mortgage purchases than for depository institutions and others originating mortgage loans in the conforming conventional market. HUD's analysis suggests that the GSEs should improve their performance in providing financing for the very low-income housing market.

HUD's goals specified that in 1996 at least 12 percent of the number of units eligible to count toward the Special Affordable Housing Goal should qualify as special affordable, and at least 14 percent in 1997 through 1999. As indicated below, Fannie Mae surpassed the goal by 3.4 percentage points in 1996, 3.0 percentage points in 1997 and 0.3 percentage point in 1998. Freddie Mac surpassed the goal by 2.0, 1.2, and 1.9 percentage points in 1996, 1997 and 1998, respectively. The GSEs' performance for the 1996–95 period is summarized below:

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SUMMARY OF GSE PERFORMANCE UNDER THE SPECIAL AFFORDABLE HOUSING GOAL[1]

	1996	1997	1998
Required Goal Level	12%	14%	14%
Fannie Mae:			
Special Affordable Housing Goal	15.4%	17.0%	14.3%
Freddie Mac:			
Special Affordable Housing Goal	14.0%	15.2%	15.9%

[1] The figures presented for goal performance are based on HUD's analysis of the GSEs' loan level data. Some results differ from the corresponding figures presented by Fannie Mae in its AHARs by one to two percentage points. The difference largely reflects differences between HUD and Fannie Mae in application of counting rules relating to counting of seasoned mortgage loans for purposes of this goal. Freddie Mac's AHAR figures for this goal differ marginally from the official figures presented above, also reflecting differences in application of counting rules.

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HMDA and GSE data for metropolitan areas show that both GSEs lag depository institutions and other lenders in providing financing for home loans that qualify for the Special Affordable Housing Goal. Special affordable loans, which include loans for very low-income borrowers and low-income borrowers living in low-income areas, accounted for 9.8 percent of Freddie Mac's purchases of home purchase mortgages during 1996–98, 11.9 percent of Fannie Mae's purchases, 16.7 percent of newly originated loans retained by depository institutions, and 15.3 percent of all new originations in the conventional conforming market. While Freddie Mac has improved its special affordable lending over the past few years, it has not made as much progress as Fannie Mae in closing the gap with depository institutions and other lenders in the home loan market. In 1998, Freddie Mac's special affordable performance was 73 percent of the primary market proportion of home loans that would qualify under the Special Affordable Housing Goal, compared to Fannie Mae's performance of 85 percent during the same period.

The multifamily market is especially important in the establishment of the Special Affordable Housing Goal for Fannie Mae and Freddie Mac because of the relatively high percentage of multifamily units meeting the Special Affordable Housing Goal. In 1997, 57 percent of units financed by Freddie Mac's multifamily mortgage purchases met the Special Affordable Housing Goal, representing 31 percent of units counted toward its Special Affordable Housing Goal, at a time when multifamily units represented only eight percent of its total purchase volume. Corresponding percentages for Fannie Mae's multifamily purchases were: 54 percent of units financed by Fannie Mae's multifamily mortgage purchases met the Special Affordable Goal, multifamily units represented 44 percent of units meeting the Special Affordable Goal but only 13 percent of total purchase volume. In comparison, HUD estimates that multifamily mortgages accounted for 20 percent of the total number of dwelling units financed in the conventional conforming market in 1997.

d. *Proposed Goal Levels for 2000–2003.* Having considered all statutory factors including housing needs, projected economic and demographic conditions for 2000 to 2003, the GSEs' past performance, the size of the market serving very low-income families and low-income families living in low-income areas, and the GSEs' ability to lead the market while maintaining a sound financial condition; HUD is proposing that the annual goal for mortgage purchases qualifying under the Special Affordable Housing Goal be 18 percent of eligible units financed in calendar year 2000, and 20 percent of eligible units financed in each of calendar years 2001, 2002 and 2003. This proposed goal level is intended to increase the GSEs' current level of performance to a level that is consistent with reasonable estimates of the special affordable housing market. The Department's detailed findings under the statutory factors for establishing the goal are described in Appendix C, "Departmental Considerations to Establish the Special Affordable Housing Goal," and Appendix D, "Estimating the Size of the Conventional Conforming Market for Each Housing Goal."

e. *The Multifamily Subgoal.* Under the Special Affordable Housing Goal, HUD established a subgoal for purchases of multifamily mortgages. HUD established this subgoal at 0.8 percent of the dollar value of each GSE's respective 1994 dollar purchase volume, including both single family and multifamily mortgage purchases. This yielded subgoals of $988 million for Freddie Mac and $1.29 billion for Fannie Mae.[56]

Freddie Mac narrowly exceeded the subgoal in 1996 and 1997, with multifamily special affordable acquisitions of $1.1 billion and $1.2 billion, respectively. Freddie Mac exceeded the goal by a wider margin in 1998, when it purchased $2.7 billion in multifamily special affordable loans. Fannie Mae has consistently surpassed its multifamily subgoal, with multifamily mortgage purchases of $2.4 billion in 1996, $3.2 billion in 1997, and $3.5 billion in 1998.[57]

Approximately half of the GSEs' annual multifamily purchase volume usually qualifies toward the Special Affordable Housing Goal. Moreover, multifamily acquisitions typically represent a significant proportion of all GSE purchases qualifying toward the Special Affordable Housing Goal. As noted earlier, multifamily acquisitions contributed 44.0 percent of units qualifying toward Fannie Mae's Special Affordable Housing Goal, with a corresponding figure of 31.4 percent for Freddie Mac.

One of the Department's principal objectives in establishing the subgoal was to ensure Freddie Mac's re-entry into the multifamily market. In 1991–1993, following losses on multifamily mortgage loans, Freddie Mac had virtually no multifamily mortgage purchase capacity. Over the past five years, however, Freddie Mac has built new capacity to support its multifamily mortgage purchase activity and has expanded its presence in the multifamily financing market to the point that it purchased $6.6 billion of multifamily mortgages in 1998. Industry observers believe that the special affordable multifamily subgoal has contributed toward a significantly increased presence by Freddie Mac in the multifamily market.

Fannie Mae was well established in the multifamily mortgage market prior to the establishment of the multifamily special affordable subgoal. Fannie Mae's performance has consistently surpassed the subgoal by a wide margin, as noted above.

f. *Proposed Multifamily Subgoal Level.* The Secretary proposes to retain the special affordable multifamily subgoal for each of the calendar years for the period 2000 through 2003, and to increase the fixed minimum level to 0.9 percent of the dollar volume of combined (single family and multifamily) 1998 mortgage purchases in calendar year 2000, and 1.0 percent of the dollar volume of combined (single family and multifamily) 1998 mortgage purchases in each of calendar years 2001, 2002 and 2003. This approach is consistent with the approach taken under the current regulations.

The proposed subgoal would establish the following new annual thresholds for the two GSEs.[58]

	2000	2001–2003
Proposed Goal Levels	0.9 percent	1.0 percent.

[56] Mortgages that are backed by properties that include both special affordable and other units are counted by multiplying the acquisition unpaid principal balance by the number of units qualifying for the Special Affordable Housing Goal, divided by the total number of units.

[57] These figures are as determined by HUD based on its analysis of GSE loan-level data. They differ somewhat from figures reported by the GSE in their Annual Housing Activities Reports submitted annually to HUD due to differences in application of counting rules, and for other reasons.

[58] HUD has determined that the total dollar volume of the GSEs' combined (single and multifamily) mortgage purchases in 1998, measured in unpaid principal balance at acquisition, was as follows: Fannie Mae $367.589 million: Freddie Mac $273, 231 million.

	2000	2001–2003
Fannie Mae	$3.31 billion	$3.68 billion.
Freddie Mac	$2.46 billion	$2.73 billion.

The proposed subgoal levels can be compared with Fannie Mae's 1998 performance of $3.5 billion, and Freddie Mac's 1998 multifamily special affordable multifamily acquisition volume of $2.7 billion. A 1.0 percent dollar-based multifamily subgoal for 2001–2003 would sustain and likely increase the efforts of both GSEs in the multifamily mortgage market, with particular emphasis upon the special affordable segment.

g. *Alternative Approaches to Setting the Subgoal Level.* A possible consequence of the subgoal as proposed, however, is that, to the extent that the GSEs experience certain fixed transactions costs in each multifamily acquisition, they can attain the special affordable multifamily subgoal with the smallest possible transactions costs by purchasing multifamily mortgages with large unpaid principal balances that have a high proportion of units that qualify for the Special Affordable Housing Goal. This approach, therefore, could foster the GSEs' purchases of loans on large properties with more than 50 units, the market for which is already relatively liquid, at the expense of loans on smaller properties, a sector which has not benefited from same degree of exposure to secondary markets, as discussed in Appendix A. In order to provide incentives for a greater commitment by the GSEs in the market for mortgages on small multifamily properties with 5–50 units, the Department is proposing to award "bonus points" for purchases of such loans, as described below.

A further consequence of a dollar-based goal is that the number of mortgages the GSEs would be required to purchase under the subgoal, and the number of units in the associated properties, would both be expected to decrease over the goals period, due to the effects of inflation and an expected rise in property values over the period of years during which the subgoal is in effect. For example, the rise in multifamily property values over 1996–1998 contributed to an increase in per-unit loan amounts in the GSEs' multifamily special affordable purchases of approximately 15 percent, with a commensurate decrease in the number of units corresponding to the minimum dollar-based purchase volume required under the multifamily special affordable subgoal.

While this proposed rule specifically proposes a dollar-based subgoal, the Department is considering three alternative approaches to structuring the special affordable multifamily subgoal—a unit-based subgoal, a subgoal based on a percentage of multifamily acquisitions, and a mortgage-based subgoal. These approaches may be structured as outlined in the following options. Additional discussion of these subgoal options in relation to GSE past performance is contained in Appendix C.

(1) *Option One—Subgoal Based on Number of Units.* In this approach, the multifamily special affordable subgoal would be expressed as a minimum number of units meeting the Special Affordable Housing Goal. A multifamily subgoal for 2001–2003 established at the level of the dollar-based subgoal defined above, divided by $22,953, which is the average of Fannie Mae's and Freddie Mac's ratios of unpaid principal balance to the number of units in multifamily properties counted toward the Special Affordable Housing Goal in 1997 (as determined by HUD), would generate annual multifamily special affordable subgoals of 160,328 units per year for Fannie Mae and 118,939 units per year for Freddie Mac. Such a multifamily subgoal for 2001–2003 would sustain and likely increase the efforts of both GSEs in the multifamily mortgage market, with particular emphasis upon the special affordable segment.[59]

A unit-based subgoal would result in a greater level of affordability among the GSEs' special affordable purchases than does a dollar-based subgoal. This conclusion is based on GSE loan-level data which shows that the more affordable the unit, the smaller is the associated unpaid principal balance per unit. Therefore, a subgoal based on number of units provides the GSEs with an incentive to purchase mortgages on properties with relatively low loan amounts per unit and, as a result, relatively high affordability, as the least costly method of attaining the subgoal. This unit-based approach also avoids the problem associated with the effects of inflation discussed above in regard to the proposed dollar based subgoal.

However, this approach also has one of the same consequences as the proposed subgoal based on dollar volume of acquisitions, in that a GSE can attain such a subgoal with the smallest possible transactions costs by purchasing a few multifamily mortgage loans with large unpaid principal balances which have a high proportion of units qualifying for the Special Affordable Housing Goal. This approach, therefore, may foster the GSEs' purchase of loans on large multifamily properties, which are already relatively well served by the mortgage market, at the expense of loans on smaller properties.

(2) *Option Two—Subgoal As A Percent of GSEs' Current Multifamily Mortgage Purchases.* Another possible approach is to establish the special affordable multifamily subgoal as a minimum percentage of each GSE's current total dollar volume of multifamily mortgage purchases. For example, the subgoal level for 2001–2003 could be expressed as 58 percent of a GSE's multifamily dollar volume in 2001, 2002 and 2003, respectively.[60]

An advantage of expressing the subgoal in this manner is that it would be flexible, increasing and decreasing in a manner commensurate with the overall presence of the GSEs in the current-year multifamily market. It would not require a fixed quantity of units, or fluctuate based on the GSEs' involvement with the single-family market.

An operational disadvantage is that such a subgoal could undermine the GSEs' incentive to expand multifamily volume that has existed since 1994. For example, one of the GSEs, having met its special affordable multifamily subgoal by the end of the third quarter in a calendar year, could decide to withdraw from the multifamily market in the fourth quarter in order to avoid the possibility of not attaining the subgoal at the end of the year due to the uncertainty regarding the affordability characteristics of multifamily mortgages offered for sale during the remainder of the year. In order to mitigate any such disincentive effects, HUD could establish an "alternative minimum" subgoal floor based on dollar volume, units, or mortgages. However, this

[59] If this option were selected, appropriate subgoal thresholds for the one-year transition period (2000) could be developed along the lines of those proposed under the multifamily special affordable subgoal above.

[60] If this option were selected, appropriate subgoal thresholds for the one-year transition period (2000) could be developed.

would open the possibility that a GSE might choose to simply orient its multifamily business toward the required alternative minimum amount of multifamily mortgage purchases.

(3) *Option Three—Subgoal Based on Number of Mortgages Acquired.* Because the GSEs incur relatively large fixed costs in purchasing multifamily mortgage loans, another alternative to the Special Affordable Multifamily Housing Subgoal would be to establish a subgoal based on the number of mortgages acquired. In this approach, the Special Affordable multifamily subgoal would be expressed as a minimum number of each GSEs' total mortgage purchases. If all the units in the property securing the mortgage are not eligible for the Special Affordable Housing Goal, then subgoal performance would be pro-rated based on the number of qualifying units. In other words, if one mortgage secured a 100-unit property and 50 of the units qualified for the Special Affordable Housing Goal, then subgoal credit would be counted as one-half of a mortgage.[61]

A multifamily subgoal for 2001–2003 established at 0.035 percent of the number of mortgages acquired by each of the GSEs in 1998 (as determined by HUD) would generate annual subgoals of 1,129 multifamily special affordable mortgages for Fannie Mae and 854 for Freddie Mac.[62] A 0.035 percent mortgage-based multifamily subgoal for 2001–2003 would sustain and likely increase the efforts of both GSEs in the multifamily mortgage market, with particular emphasis upon the special affordable segment.[63]

As noted previously, the GSEs incur relatively large fixed costs when underwriting and purchasing multifamily mortgage loans. As a result, there could be an incentive to purchase large multifamily mortgage loans to reduce the cost of the transactions per unit. Under this approach to the special affordable multifamily subgoal utilizing the number of mortgages acquired as the benchmark, the GSEs would have additional incentive to choose a large pool of small loans over a pool consisting of a few large loans.[64] This could facilitate liquidity in the market for mortgages on small multifamily properties where there continues to be unmet credit needs. Because multifamily mortgage purchases are an important source of affordable housing and contribute significantly to meeting the unit based housing goals, the GSEs also would be expected to continue to purchase mortgages secured by larger properties.

This approach also avoids the problem associated with the effects of inflation, discussed above, in regard to the proposed dollar-based subgoal. The magnitude of the goal is independent of the loan amount per unit.

However, while a mortgage-based approach to the subgoal may address the small multifamily rental property issue, it may not have the same impact in financing as many units overall as other approaches.

(4) *Comments Sought.* The Department seeks comment on whether the special affordable multifamily subgoal proposed that is based on a percentage of total dollar volume of mortgages purchased, or the possible alternative structures presented that base the subgoal on (a) the number of units financed, (b) a percent of current multifamily mortgage purchases, or (c) the number of mortgages acquired, are reasonable and desirable approaches to closing market gaps in the very low-and low-income rental market. HUD also solicits comment on the appropriate level for the subgoal as proposed, or under the various possible structures presented, and how the possible levels illustrated herein would likely impact multifamily acquisitions, especially for very low-and low-income multifamily units.

5. *Bonus Points and Subgoals.* Although the GSEs have been successful in meeting their housing goals, analyses of their housing goal performance and market needs indicate that certain credit gaps remain. For example, HUD's analysis reveals that the need for mortgage credit persists in specific markets that focus on lower-income families including small multifamily rental properties; single family, owner-occupied rental properties (2–4 units); manufactured housing; multifamily properties in need of rehabilitation; and properties in tribal areas. As a regulatory incentive to encourage the GSEs to increase their mortgage purchase activity in these underserved markets, the Department is proposing the use of bonus points in certain important segments of the housing market. HUD also seeks comments on the utility of applying similar regulatory incentives (bonus points and/or subgoals) to other underserved segments.

a. *Bonus Points.* Section 1336(a)(2) of FHEFSSA directs the Department to "establish guidelines to measure the extent of compliance with the housing goals, which may assign full credit, partial credit, or no credit toward achievement of the housing goals to different categories of mortgage purchase activities of the enterprises, based on such criteria as the Department deems appropriate." This provision confers broad authority upon HUD to assign varying levels of credit to differing types of mortgage purchases. Under this and other authorities, HUD may offer bonus points for particular categories of mortgage purchase transactions.

The Department proposes to introduce a system of bonus points to encourage the GSEs to increase their activity in underserved markets that serve lower-income families. The intent of bonus points is to encourage increased involvement by the GSEs over the 2000–2003 period in financing mortgages on small multifamily properties and mortgages on 2–4 unit owner-occupied properties that contain rental units, for which the GSEs' mortgage purchases have traditionally played a minor role.

Bonus points would be used in calculating goal performance under each of the affordable housing goals but would not apply in determining performance under the special affordable housing multifamily subgoal. All units counting toward a specific housing goal and, thus, included in the numerator of the fraction used to calculate goal performance under that particular housing goal would be eligible for bonus points provided that the units met the specific criteria for allowable bonus points. This provision would apply to all units included in the numerator even if a unit were missing affordability data and the missing affordability data were treated consistent with the proposal included in the following section II,B,6,b, "Data on Unit Affordability."

(1) *Bonus Point Proposal for Small Multifamily Properties.* HUD proposes to add § 81.16(c)(10)(1) to provide for the assignment of double weight in the numerator for each of the three housing

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[61] A similar pro-rating technique is specified for the special affordable multifamily subgoal in the 1995 Final Rule. See footnote 62.

[62] HUD has determined that the number of mortgage loans purchased by the GSEs in 1998 was as follows:

Fannie Mae: 3,226,786.

Freddie Mac: 2,439,194.

[63] If this option were selected, appropriate subgoal thresholds for the one-year transition period (2000) could be developed.

[64] For example, under this subgoal option, the purchase of a mortgage backed by a 10-unit property with $300,000 mortgage would receive the same subgoal credit as a 100-unit property with a $2.5 million mortgage (provided all units were eligible for the Special Affordable Housing Goal). If all the units in the property securing the mortgage are not eligible for the Special Affordable Housing Goal, then subgoal performance would be pro-rated based on the number of qualifying units, as discussed above.

goals for units in small multifamily properties (5 to 50 units) that qualify under the goals. The GSEs purchase relatively few of these loans. Over the 1996–98 period, only eight percent of the units represented in the combined multifamily purchases of Fannie Mae and Freddie Mac were in properties in the 5–50 unit size range, compared to 37 percent of units which are in 5–50 unit properties among all mortgaged multifamily properties in 1991 (based on the Residential Finance Survey). Loans of this type which are not purchased by the GSEs are often structured with adjustable-rate mortgages, or with fixed-rate financing involving interest rates that are as much as 150 basis points above those on standard multifamily loans. Targeting the GSEs toward these purchases could make these properties and the units in them more available and affordable.

Awarding bonus points for these units would have increased Fannie Mae's and Freddie Mac's performance on the Low- and Moderate-Income Housing Goal by an average of 0.89 and 0.33 percentage points, respectively, over the 1996–98 period. Corresponding percentage point effects for the Special Affordable Housing Goal are 0.55 and 0.21 percentage points, and for the Geographically Targeted Goal, 0.66 and 0.21 percentage points for Fannie Mae and Freddie Mac, respectively. The impacts could be significantly larger in future years if such a bonus point framework provided a significant incentive for the GSEs to step up their role in financing small multifamily properties.

(2) *Counting Units in Small Multifamily Properties.* Implementing this provision would require clear specification of the concept of a multifamily property relative to which the 5–50 unit limit for bonus points would be applied. The Department proposes to award bonus points for small multifamily properties to address the significant needs for their financing, both for properties that are underwritten and financed individually and for properties that are aggregated into larger financing packages. However, the Department further intends that bonus points will not be awarded for properties that are aggregated or disaggregated into 5–50 unit financing packages solely for the purpose of earning bonus points. Normally, a property is the land and improvements associated with one mortgage as defined in HUD's regulations. Ambiguity may arise in connection with GSE financings which are not cash or swap transactions involving mortgages. In such cases, or in other cases where a GSE believes that it would be appropriate to award bonus points in connection with a transaction, the GSEs should seek guidance from the Department concerning the delineation of properties associated with the financing and the consequent allowability of bonus points.

(3) *Bonus Points for Small Rental Properties.* HUD further proposes to add § 81.16(c)(10)(ii) to assign double weight in the numerator for each of the three housing goals for all units in 2- to 4-unit owner-occupied properties that qualify under the goals. Under this proposal, such units would receive bonus-point treatment to the extent that the number of such units financed by mortgage purchases are in excess of 60 percent of the average number of units qualifying for the respective housing goal during the immediately preceding five years. These loans represent a small portion of the GSEs' overall mortgage purchases although these units comprise a large percentage of the low-income housing stock. Use of bonus points in this category could provide incentives for the GSEs to increase their purchases in underserved areas.

The 60 percent threshold, if it were in effect for 1999 GSE mortgage purchases, would be set at the following levels:

	Fannie Mae (No. of units)	Freddie Mac (No. of units)
Low- and Moderate-Income Housing Goal ..	26,294	16,971
Geographically Targeted Goal	25,193	14,889
Special Affordable Housing Goal	12,720	8,564

The Department estimates that, if bonus points for small rental properties had been in effect during 1996–1998, Freddie Mac's goal percentages would have increased by 0.89 percentage point on the Low-and Moderate-Income Housing Goal, 0.67 percentage point on the Geographically Targeted Goal, and 0.47 percentage point on the Special Affordable Housing Goal, based on average purchase volumes over this three-year period. Fannie Mae's goal percentages would have increased by 0.91 percentage point on the Low and Moderate Income Housing Goal, 0.76 percentage point on the Geographically Targeted Goal, and 0.43 percentage point on the Special Affordable Housing Goal.

The purpose of bonus points is to encourage the GSEs to establish a larger and more consistent presence for the GSEs in targeted segments of the mortgage market. During the period that the goals under this proposal are effective, the Department will carefully monitor the effects of the bonus points approach in the housing categories in which they are being applied, to determine whether they are effective in incorporating the financing of properties targeted by the bonus points into the GSEs' mainstream activities. The Department does not plan to award bonus points to the GSEs after December 31, 2003, unless the Department specifically chooses to extend their availability in accordance with provisions of the rule.

b. *Subgoals.* Alternatively, HUD is considering using subgoals to encourage the GSEs to undertake activities to address the unmet credit needs of groups or areas and/or to support public policy initiatives that are consistent with the GSEs' public purposes. HUD may establish subgoals under any of the three housing goals although HUD may only enforce subgoals under the Special Affordable Housing Goal.[65] While FHEFSSA prohibits the enforcement of subgoals under the Low- and Moderate-Income Housing Goal or the Geographically Targeted Goal, the use of subgoals, whether or not they are enforceable, could encourage the GSEs to address unmet credit needs by directing the GSEs' and the public's attention on particular needs. For example, the special affordable housing multifamily subgoal has focused the GSEs' attention on special affordable multifamily activities.

In the 1995 rulemaking, HUD chose not to establish subgoals under either the Low- and Moderate-Income Housing Goal or the Geographically Targeted Goal, despite a number of comments urging the use of such tools. At that time, HUD expressed concern that the establishment of subgoals might be construed as micromanagement of the GSEs' business decisions at that relatively early post-FHEFSSA stage.[66] However, since issuance of the 1996 to 1999 housing goals, HUD has conducted extensive analyses of the GSEs' operations under the housing goals, as well as the size and components of the primary mortgage market. Based on this analysis, HUD can better identify areas of unmet credit needs. Inasmuch as Congress, in FHEFSSA, explicitly authorized HUD to create subgoals—although they would be largely

[65] Section 1332(a) of the FHEFSSA grants HUD authority to "establish separate specific subgoals within the [Low- and Moderate-Income Housing] goal. * * *" Section 1334(a) contains a similar provision for the Geographically Targeted Goal. Section 1333 allows HUD to establish subgoals under the Special Affordable Housing Goal that are enforceable.

[66] *See id.*

unenforceable—and in light of increased experience under the goals, HUD requests comments on the extent to which HUD should utilize subgoals.

c. *Areas Under Consideration for Bonus Points and/or Subgoals.* In addition to those areas described above, for which HUD proposes to award bonus points, HUD has identified several areas of unmet credit needs that could be addressed through the use of bonus points or subgoals, as appropriate. These areas are listed below, along with the possible rationale for taking such approach(es).

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Area of Concern	Rationale
Manufactured housing	Manufactured housing provides some of the most affordable owner-occupied housing for families targeted by HUD's housing goals. In fact, three-quarters of
Single family loans to categories of minorities which data indicates are underserved	Data indicates that certain categories of borrowers have lower home ownership rates than "served" borrowers and they
Single family and multifamily rehabilitation loans	Single family: More funds are needed for purchasing (or refinancing) homes in need of repairs. Multifamily: GSEs apply more stringent underwriting requirements for properties that are
Single family and multifamily loans in tribal areas	While Fannie Mae has participated in HUD's Section 184 program, which promotes affordable housing opportunities for Native Americans,
Single family and multifamily loans in Empowerment Zones/ Enterprise Communities (EZ/EC)	Potential borrowers in these distressed communities have a greater demand for products that allow flexible underwriting including consideration of non-traditional credit information.
Low-income borrowers and tenants in underserved portions of non-metropolitan areas	Studies show that certain parts of rural areas continue to be underserved by the secondary market.
Expiring Section 8 contracts.	The Mark-to-Market legislation provided that the GSEs should receive credit for actions that assist in maintaining the affordability of assisted units in eligible multifamily housing

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In addition to the specific rule changes proposed above, the Department invites comment on the following:

(1) Should HUD use either bonus points or subgoals to target mortgage purchases for one or more of the areas of concern identified above?

(2) Would one or more of these areas benefit more from bonus points or the establishment of subgoals and why? If bonus points are suggested, what amount of bonus points should be assigned, and why?

(3) Are there other areas not identified where bonus points and/or subgoals should be considered?

6. *Calculating Performance Under the Housing Goals.* In the current regulation, HUD set forth general requirements for counting the GSEs' performance under the housing goals in § 81.15, special counting requirements in § 81.16 (including specific exclusions from eligibility in § 81.16(b)), additional special requirements pertaining to counting under the Special Affordable Housing Goal in § 81.14, and rules for classifying families and units into income ranges in §§ 81.17–81.19. HUD's experience since the 1995 issuance of the current regulations indicates that several of these counting rules require clarification to ensure that they are understood and applied in a consistent manner and that the GSEs are achieving FHEFSSA's objectives. HUD invites comment on these clarifications and revisions described below.

a. *Temporary Adjustment Factor for Freddie Mac.* In response to widespread default losses, Freddie Mac ceased purchasing multifamily mortgages for a period of time in the early 1990s. However, Freddie Mac significantly expanded its presence in the multifamily mortgage market in the period since HUD's Interim Housing Goals took effect at the beginning of 1993, with purchases totaling $191 million that year. Freddie Mac's purchases reached $6.6 billion in 1998 and $3.4 billion in the first six months of 1999.

Despite this progress, Freddie Mac's presence in the multifamily market lags far behind that in single-family. Multifamily mortgages held in portfolio or guaranteed by Freddie Mac represented only 3 percent of the outstanding stock of such mortgages as of the end of the third quarter of 1998, compared with 16 percent of single-family mortgages. Corresponding figures for Fannie Mae are 11 percent in multifamily and 21 percent in single-family.[67]

Because of the importance of multifamily acquisitions to the GSE housing goals, the limited scope of Freddie Mac's multifamily acquisition volume has impaired its performance on HUD's housing goals. For example, while multifamily units accounted for only 8 percent of Freddie Mac's overall 1997 business, they accounted for 31 percent of units qualifying toward the Special Affordable Housing Goal, and 19 percent of the units qualifying for the Low- and Moderate-Income Goal. Thus, improved performance by Freddie Mac on the housing goals will require strengthening its efforts in the multifamily mortgage market.

To overcome any lingering effects of Freddie Mac's decision to leave the multifamily market in the early 1990s, it is reasonable for the Department to provide an incentive for Freddie Mac to further expand its scope of multifamily operations. The Department is proposing a "Temporary Adjustment Factor" for Freddie Mac's multifamily mortgage purchases for purposes of calculating performance on the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal. In determining Freddie Mac's performance for each of these two goals, each unit in a property with more than 50 units meeting one or both of these two housing goals would be counted as 1.2 units in calculating the numerator of the respective housing goal percentage. The Temporary Adjustment Factor would be limited to properties with more than 50 units because of separate provisions regarding multifamily properties with 5–50 units, discussed separately in Section II,B,5,a,(1).

The Temporary Adjustment Factor would terminate December 31, 2003. The Adjustment Factor would not be applied to the Geographically Targeted Goal. The Adjustment Factor would not apply to Fannie Mae.

The Department estimates that, if the Temporary Adjustment Factor were in effect during 1996–1998, it would have raised Freddie Mac's performance on the Low- and Moderate-Income Housing Goal by 1.52 percentage points and the Special Affordable Housing Goal by 0.86 percentage points.

HUD specifically requests comments on whether the proposed temporary adjustment factor for Freddie Mac is set at an appropriate level, and if such an adjustment factor should be phased out prior to 2003 or apply for the entire four year cycle.

b. *Data on Unit Affordability.* As indicated in § 81.15(a), each GSE must obtain all required information to determine whether units financed by the GSE purchased mortgages that qualify for one or more of the goals. If any of the information is missing, the GSEs must exclude the mortgage purchase from the numerator as not qualifying but they must include the mortgage in the denominator as a mortgage purchase in calculating performance under a housing goal.[68] The Senate Report on FHEFSSA noted the presence of an "information vacuum" with regard to the GSEs' mortgage purchases, indicating Congress' intention that the Department require accurate and comprehensive data regarding the GSEs' mortgage purchases for purpose of measuring compliance with the housing goals.[69] Therefore, the Department is committed to maintaining a complete and fully reliable loan level data base of the GSEs' mortgage purchases.

The GSEs have indicated that, for certain single family and multifamily mortgage purchases, it is difficult, and therefore costly, to obtain the necessary data on incomes and rents for all units associated with their mortgage purchases, especially for seasoned loan transactions and some negotiated transactions. The GSEs have requested the authority to use estimation techniques to approximate the unit rents in multifamily properties where current rental information is unavailable and to exclude units from the goal calculations where it is impossible to obtain full data or estimate values.

While providing the GSEs relief from the requirement to obtain rental data would remove an incentive to collect such information, the Department recognizes that the lack of such data in the mortgage market poses potentially insurmountable difficulties for the GSEs for a portion of their mortgage purchases. The Department, therefore, proposes the following measures for treatment of cases where a GSE does not obtain full data. The Department seeks comments on these proposals and welcomes suggestions for alternative ways of addressing the issue.

(1) *Multifamily Rental Units.* For purposes of counting rental units

[67] Source: *Federal Reserve Bulletin*, March 1999, p. A35. HUD estimates that, in 1997, Freddie Mac acquired mortgages representing approximately 7 percent of the conventional multifamily market, compared with 17 percent of the conventional, conforming single family market. Corresponding estimates for Fannie Mae are 21 percent of multifamily and 31 percent of single family.

[68] Purchases of mortgages originated prior to 1993 with missing data may be excluded from the denominator.

[69] See Sen. Rep. at 33.

toward achievement of the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, the current regulation requires that mortgage purchases financing eligible units be evaluated based on either the income of the tenant, or where this information is unknown, on the actual or average rent relative to area median income, as of the time the mortgage was acquired.[70] The GSEs generally use rental data in calculating goal achievement.

For units in multifamily properties (five or more units), the Department proposes to allow the use by a GSE of estimated rents based on market rental data. The Department will review and approve the GSEs' data sources and methodologies for estimating rents on multifamily units prior to their use, to assure reliability. Rental data submitted to the Department based on an estimation shall be so identified by the GSE. HUD requests comments on whether it should establish a percentage ceiling for the GSEs' use of estimated data for multifamily mortgage purchases.

The Department further proposes to exclude units in multifamily properties from the denominator as well as the numerator in calculating performance under the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal when sufficient information is not available to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the goal, and when the application of estimated rents based on an approved market rental data source and methodology is not possible. HUD requests comments on whether it should establish a percentage ceiling for the exclusion of multifamily units with missing data from the denominator for goal calculation purposes when estimated rents are not available. Because a relatively large portion of multifamily units count toward the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, an incentive for the GSEs to provide affordability data would remain in place even if such data were excluded from the denominator without limitation.

(2) *Single Family Rental Units.* For purposes of counting rental units in 1–4 unit single family properties toward achievement of the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, the Department proposes to exclude the rental units in 1–4 unit properties from the denominator as well as the numerator in calculating performance under the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal when sufficient information is not available to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the Low- and Moderate Income Housing Goal or the Special Affordable Housing Goal. HUD requests comments on whether it should establish a percentage ceiling for the exclusion of single family rental units with missing data from the denominator for goal calculation purposes when estimated rents are not available. Because a relatively large proportion of rental units in 1–4 unit single family properties count toward the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, an incentive for the GSEs to provide affordability data would remain in place even if such data were excluded from the denominator without limitation.

(3) *Single Family Owner-Occupied Units.* For purposes of counting single family owner-occupied units toward achievement of the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, the current regulation requires that mortgage purchases financing eligible owner units be evaluated based on the income of the owner relative to area median income, as of the time the mortgage was originated.[71]

The Department proposes to allow a GSE to exclude certain single family owner-occupied units from the denominator as well as the numerator in calculating performance under the Low- and Moderate-Income Housing Goal when the GSE lacks sufficient information on borrower income to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the goal, provided the mortgaged property is located in a census tract with median income less than or equal to area median income according to the most recent census. Such exclusion from the denominator and numerator will be permitted up to a ceiling of one percent (1%) of the total number of single family, owner-occupied dwelling units eligible to be counted toward the respective housing goal in the current year. Mortgage purchases in excess of the ceiling will be included in the denominator and excluded from the numerator.

HUD's analysis of GSE loan-level data indicates that the share of single-family owner-occupied units qualifying for the Low- and Moderate Income Housing Goal and the Special Affordable Housing Goal is significantly higher in tracts with median income less than or equal to area median income ("low-mod tracts") than in other tracts, and is in fact higher than the GSEs" overall goals performance across all property types. Consequently, excluding such units from the numerator and denominator in cases where income data are missing is unlikely to result in measured goals performance exceeding actual goals performance.

c. *Seasoned Mortgage Loan Purchases "Recycling" Requirement.* Under section 1333(b)(1)(B) of FHEFSSA, special rules apply for counting purchases of portfolios of seasoned mortgages under the Special Affordable Housing Goal. Specifically, the statute requires that purchases of seasoned mortgage portfolios receive full credit toward the achievement of the Special Affordable Housing Goal if "(i) the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet such goal; and (ii) such purchases or refinancings support additional lending for housing that otherwise qualifies under such goal to be considered for purposes of such goal."[72] HUD refers to this provision as the "recycling requirement."

Section 81.14(e)(4)(i) of HUD's regulations clarify the meaning of the phrase "engaged in a specific program to use the proceeds of such sales to originate additional loans that meet" the Special Affordable Housing Goal by providing that:

> [A] seller must currently operate on its own or actively participate in an ongoing program that will result in originating additional loans that meet the goal. Actively participating in such a program includes actively participating with a qualified housing group that operates a program resulting in the origination of loans that meet the requirements of the goal.

Section 81.14(e)(4)(ii) provides that the GSEs must verify and monitor that the seller is engaging in a specific program to use the proceeds of such sales to originate additional loans that meet the Special Affordable Housing Goal.

Based on a review of the GSEs' performance under the Special Affordable Housing Goal, the Department believes further guidance is needed with regard to the recycling requirements described above to ensure that mortgage purchases granted full credit under this provision satisfy the purposes of FHEFSSA and, at the same

[70] 24 CFR 81.15(e). Rental information may be presented for type-of-unit categories identified by number of bedrooms and average rent level.

[71] 24 CFR 81.15(d).

[72] 12 U.S.C. 4563(b)(1)(B).

time, to ensure that the rules are applied so as to avoid any unnecessary regulatory burden. The Department, therefore, proposes to amend its regulations to further explain the requirements for the GSEs to receive full credit under these provisions and to establish new, simpler rules when it is evident based on the characteristics of a mortgage seller, including the seller's legal responsibilities, that the recycling requirements are met. The new rules would provide that for a mortgage purchase to meet the recycling requirements:

(1) The seller must currently operate on its own or actively participate in an on-going, discernible, active, and verifiable program directly targeted at the origination of new mortgage loans that qualify under the Special Affordable Housing Goal.

(2) The seller's activities must evidence a current intention or plan to reinvest the proceeds of the sale into mortgages qualifying under the Special Affordable Housing Goal, with a current commitment of resources on the part of the seller to this purpose.

(3) The seller's actions must evidence willingness to buy qualifying loans when these loans become available in the market as part of active, on-going, sustainable efforts to ensure that additional loans that meet the goal are originated. Actively participating in such a program includes purchasing qualifying loans from a correspondent originator, including a lender or qualified housing group, that operates an on-going program resulting in the origination of loans that meet the requirements of the goal, has a history of delivering, and currently delivers, qualifying loans to the seller.

Under this proposed rule, as under the current requirements, the GSEs must ordinarily verify and monitor that sellers meet the foregoing requirements and develop any necessary mechanisms to ensure compliance with these requirements. However, HUD does not believe that the efforts of the GSEs are well spent on monitoring compliance when, because of the nature and responsibilities of particular sellers, it is clear that the seller meets the recycling requirements. For this reason, the rule proposes that an institution that is (1) regularly in the business of mortgage lending; (2) a BIF-insured or SAIF-insured depository institution; and (3) subject to, and has received at least a satisfactory performance evaluation rating for at least the two most recent consecutive examinations under, the Community Reinvestment Act,[73] (which requires affordable lending), would meet the recycling requirements. The nature of such an institution's business and regulatory responsibilities require it to engage in a program that satisfies the recycling provisions. This rule, therefore, proposes that HUD and the GSEs may presume that such institutions, classified by the appropriate "Type of Seller Institution" data element, meet the recycling requirements.

Moreover, in the interest of further reducing unnecessary regulatory burden, HUD believes that there are certain additional classes of institutions or organizations that should be recognized as meeting the recycling requirements. For example, classes of institutions whose primary businesses are financing affordable housing mortgages, including possibly State Housing Finance Agencies or Special Affordable Housing Loan Consortia. For such classes of institutions or organizations, HUD is proposing that the GSEs may presume that they meet the recycling requirements. Classes of institutions or organizations must be approved by the Department and be appropriately identified in the GSEs' data submissions. Commenters are invited to provide their views on how to identify and define such classes of organizations or institutions.

In addition to specific changes proposed, commenters are invited to share their views as to whether any additional exemptions or changes to this provision should be established under the recycling provisions that would further its purpose. Comments are also specifically invited on (1) what, if any, provisions should be included in the proposed rule to address the various affiliate structures of depository institutions; and (2) the treatment under the recycling provisions of structured transactions where the mortgage loans included in the transaction were originated by a depository institution or mortgage banker engaged in mortgage lending on special affordable housing but acquired, packaged and re-sold by a third party, *e.g.*, an investment banking firm, that is not in the business of affordable housing lending.

An additional matter concerns the appropriate interpretation of § 81.16(c)(6) for counting seasoned mortgages. During the last four years, both GSEs have asserted that HUD's regulations permit the exclusion of purchases of seasoned mortgages from the denominator as well as from the numerator when the recycling requirements have not been met or when the status of loans with respect to this provision is unknown.

The GSEs believe that the regulation should be interpreted to mean that purchases of seasoned loans should not count in the denominator in calculating Special Affordable Housing Goal performance if the recycling requirements of section 1333(b)(1)(B) are not satisfied. The GSEs maintain that this provision defines whether such loans are "mortgage purchases" and thus, whether they are to be included in the denominator. As a result of this interpretation, Fannie Mae chooses not to undertake the verification and monitoring required to track compliance with the recycling provision and excludes the purchases from the denominator based on its lack of information. Freddie Mac chooses a similar treatment for those seasoned loans it does not count toward its Special Affordable Housing Goal performance.

In calculating its 1996 and 1997 performance under the Special Affordable Housing Goal, Fannie Mae excluded all seasoned loan purchases from both the numerator and the denominator for purposes of reporting its goals performance to HUD. The effect of this action was to reduce the denominator by 212,290 units in 1996 and 197,074 units in 1997, with the result that Fannie Mae considered its goal figures to be two percentage points higher than HUD's determination in 1996 and 2.15 percentage points higher in 1997. Freddie Mac counted most of its seasoned loan purchases towards the Special Affordable Housing Goal and, thus, there was only a marginal impact on its goal performance.

The Department has consistently maintained that the GSEs are required to count all mortgage purchases in the denominator. HUD's rules only permit the GSEs to exclude mortgages from the denominator under explicit circumstances. See §§ 81.15(a) and 81.16(b). As we have stated, the legislative history of FHEFSSA emphasizes the importance of accurate and comprehensive data.[74] On the other hand, experience indicates that incentives for the GSEs to gather accurate and comprehensive data may encourage the GSEs, in some instances, to avoid certain purchases altogether in order to keep such purchases out of their denominator, notwithstanding that such purchases may meet the other goals. Accordingly, while HUD has in the past disagreed with the GSEs' interpretation of its current rules, the Department is now proposing to consider the possibility of limited exceptions to the general rule where it

[73] 12 U.S.C. 2901 *et seq.*

[74] See Sen. Rep. at 33.

would be beneficial for the GSEs to purchase certain mortgages that simply will not meet recycling requirements, without having their goals performance effectively reduced by including the purchases in the denominator. An example would be a GSE's purchase of low- or moderate-income loans from a mortgage seller that enters and then leaves the affordable lending business. Such an entity may not meet the recycling requirements as a statutory matter because the seller would no longer be "engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the goal." [75] However, a GSE's willingness to purchase such mortgages may cause other originators to embark on affordable lending secure that the GSE will provide a secondary market for these loans.

To encourage affordable lending, this rule proposes to permit the Department in certain cases or classes of cases to allow the GSEs to exclude mortgages from the numerator and the denominator under the Special Affordable Housing Goal when the Department determines that such treatment serves to encourage the GSEs' mortgage purchases to further the purposes of the goal. To implement this change, HUD proposes to revise the language in § 81.16(c)(6) so that the Department may permit the exclusion of cases or classes of cases of purchases of seasoned mortgage loans from the numerator and the denominator in a GSE's calculations of performance under the Special Affordable Housing Goal when the Department determines such purchases further the purposes of the goal. The rule proposes that the GSE may request such treatment in writing and that the Department will respond to such request following the Department's determination. Commenters are specifically asked for their views regarding whether the Department should adopt this exclusion and, if so, what, if any, limits should be placed on it. To implement this change, HUD proposes to revise the language in § 81.16(c)(6) so that the Department may permit the exclusion of cases or classes of cases of purchases of seasoned loans from the numerator and the denominator in a GSE's calculations of performance under the Special Affordable Housing Goal when the Department determines such purchases further the purposes of the goal. The rule proposes that the GSE may request such treatment in writing and the Department will respond to such request following the Department's determination. Commenters are specifically asked for their views regarding whether the Department should adopt this exclusion and, if so, what, if any, limits should be placed on it.

d. *Counting Federally Insured Mortgages Including HECMs, Mortgages on Housing in Tribal Areas and Mortgages Guaranteed by the Rural Housing Service Under the Housing Goals.* Under HUD's current rules, non-conventional mortgages—mortgages that are guaranteed, insured or otherwise obligations of the United States—do not generally count under the three housing goals. (§ 81.16(b)(3)) Certain of these mortgages—including under the Home Equity Conversion Mortgage (HECM) Program, 12 U.S.C. 1715z–20, and the Farmers Home Administration's (now the Rural Housing Service's [RHS's]) Housing Loan Program—do, however, count under the Special Affordable Housing Goal. FHEFSSA specifically provides that mortgages that cannot be readily securitized through GNMA or another Federal agency and where a GSE's participation substantially enhances the affordability by statute receive full credit under the Special Affordable Housing Goal. On this basis, these two categories of mortgages count under that goal if they are for very low-income families or low-income families in low-income areas.

HECMs provide an important source of funds for senior citizens, especially those with lower incomes, who have paid off most or all of the mortgages on their homes and who wish to draw on the equity in their home to pay unanticipated expenses or to maintain a higher standard of living than they could support from their current income alone. Under HUD's HECM program they can do this without selling or risking the loss of their home. Fannie Mae has played a major role in the secondary market for HECMs, purchasing 5800 such loans in 1997 and 6700 such loans in 1998. Freddie Mac has not been involved in this program to date; inclusion of these loans for possible credit under all three of the housing goals will provide an incentive for them to play a role in the HECM market.

RHS loans are especially important to cash-strapped families in rural areas, since loan-to-value ratios can be as high as 100 percent. And the RHS's new Section 502 Direct Loan program is targeted to low-income and especially low-income families. Both GSEs have been involved in this market, with Fannie Mae purchasing 1600 such loans in 1997 and 2100 such loans in 1998, and Freddie Mac sharply stepping up its presence from 1400 such loans in 1997 to 3300 such loans in 1998. The GSEs also assist the RHS in outreach through the development of promotional and advertising materials.

One other area the Department is considering counting for goal credit are loans made to Native Americans under FHA's Section 248 program and HUD's Section 184 program. The paucity of home mortgage lending on American Indian reservations and trust lands has been well documented. Secretary Cuomo, in his remarks accompanying President Clinton to the Pine Ridge Indian Reservation in South Dakota, recently commented that "The descendants of the first Americans shouldn't be locked out of the American Dream of homeownership." Allowing goal credit for FHA's Section 248 loans and HUD's Section 184 loans on reservations and trust lands will provide some support for these programs, though much greater efforts will be needed to make this dream of homeownership a reality.

Nonetheless, based upon its review of data on the GSEs mortgage purchases, HUD has concluded that HECMs, RHS mortgages and loans made to Native Americans under FHA's Section 248 program and HUD's Section 184 program comprise very small shares of the GSEs' business. At the same time, the properties secured by these mortgages present substantial and growing financing needs. Accordingly, while HUD maintains that non-conventional mortgages should be excluded under the goals where financing needs are already met by government programs, the Department also believes that non-conventional loans may count where financing needs are not well served. In such cases the goals will serve to direct the GSEs toward these needs. Accordingly, HUD proposes to amend its rules at § 81.16(b)(3) to except mortgages under the HECM program, mortgages guaranteed by RHS, and loans made under FHA's Section 248 program and HUD's Section 184 program on properties in tribal lands from the general exclusion under the rules for non-conventional loans. In addition, the rule allows the Department to count mortgage purchases under other non-conventional mortgage program(s) to count under the goals where the Department determines, in writing, that the financing needs addressed by such program are not well served and that mortgage purchases under such program should count. The proposed rule provides that where non-conventional mortgage purchases will now count toward the goal, they no longer will be

[75] 12 U.S.C. 4563(b)(1)(B).

excluded from the denominator of the GSEs' mortgage purchases as are other non-conventional loans.

e. *Counting Title I Loans.* During the transition period, from 1993 to 1995, HUD explicitly provided that home improvement and manufactured home loans for which lenders are insured under HUD's Title I program received half credit toward all three housing goals for which they qualified.[76] Following the transition period, HUD's 1995 final rule provided that, in accordance with section 1333(b)(1)(A) FHEFSSA, GSE purchases of non-conventional mortgages do not count toward the housing goals.[77] The exception to the rule is that Federally-related mortgages may receive full credit toward the Special Affordable Housing Goal if the mortgages would otherwise qualify for the goal, the Government National Mortgage Association (Ginnie Mae) cannot readily securitize them, and participation by the GSE substantially enhances their affordability.[78]

In a pilot program initiated between July 1996 and July 1997, Ginnie Mae was not successful in securitizing Title I loans. Moreover, while HUD has not analyzed whether GSE participation in these loans enhances their affordability, the pricing efficiencies that result from the securitization of mortgages suggest that an affordability analysis would be favorable.

Under the circumstances, HUD is proposing to amend § 81.14 to explicitly allow the GSEs to receive half credit for Title I loans under the Special Affordable Housing Goal. Units financed with Title I loans would be included at 100 percent (each unit counts as such) in the Special Affordable Housing Goal denominator, and included at 50 percent (each unit counts as such) in the Special Affordable Housing Goal numerator when they otherwise qualify for that goal. However, units financed with Title I loans would be excluded from the numerator and denominator in both the Low- and Moderate-Income Housing Goal and the Geographically Targeted Goal.[79]

f. *Defining the Denominator.* Section 81.15(a) of the 1995 final rule defines the denominator as "the number of dwelling units that could count toward achievement of the goal under appropriate circumstances." HUD proposes to clarify this provision further by adding language to § 81.15 that specifically provides that the denominator shall not include GSE transactions or activities that are not mortgages or that are mortgage purchases or transactions which are specifically excluded as ineligible under § 81.16(b) of the regulations.

g. *Balloon Mortgages.* Single family mortgage refinances that result from the conversion of balloon notes to fully amortizing notes shall not count as mortgage purchases where the GSE already owns or has an interest in the balloon note at the time the conversion occurs and the GSE owns or has an interest in the fully amortizing note. Such conversions shall not be treated as a refinancing and shall not be counted in the numerator or denominator in calculating goal performance. Refinancings of balloon mortgages not owned by the GSE will be included in the denominator and numerator as appropriate. To implement this change to the special counting requirements, HUD proposes to revise the definition of "Refinancing" in § 81.2 to specifically exclude the conversion of balloon mortgages on single family properties and to add this provision to the special counting requirements in § 81.16.

h. *Expiring Assistance Contracts.* Section 517(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997[80] (the 1997 Act) provides that actions taken to assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring Section 8 contracts "shall constitute part of the contribution of each [GSE] in meeting its affordable housing goals * * *, as determined by the Secretary." The Department is proposing to add a provision to § 81.16 that provides partial or full credit for such actions. "Actions" under the 1997 Act relevant to the GSEs would include the restructuring or refinancing of mortgages, and credit enhancements or risk-sharing arrangements to modified or refinanced mortgages. Comments are invited on how and to what extent the GSEs should receive credit for such actions.

i. Especially Low Income. In accordance with section 1333 of FHEFSSA, § 81.14(d)(1)(i) currently provides that dwelling units in a multifamily property will count toward the Special Affordable Housing Goal if 20 percent of the units are affordable to families whose incomes do not exceed 50 percent of the area median income. Sections 81.17 through 81.19 provide that the income requirements are to be adjusted based on family size, and provide such adjustments for moderate-income families (income not in excess of 100 percent of area median income), low-income families (income not in excess of 80 percent of area median income), and very low-income families (income not in excess of 60 percent of area median income); but there is no similar adjustment table provided for families whose incomes do not exceed 50 percent of area median income. While such adjustments could be extrapolated from the adjustment tables provided in §§ 81.17 through 81.19, in order to assist the public, this rule proposes to amend these sections to provide additional adjustment tables for such families. In the interests of consistency, this rule also proposes to designate such families as "especially low-income families" for purposes of the Department"s GSE regulations. Section 81.14 of the proposed rule is amended to make such a designation.

j. Provision for HUD to Review New Activities to Determine Appropriate Counting Under the Housing Goals. While the GSEs participate in transactions and activities that support community and housing development in general, FHEFSSA is clear that only "mortgage purchases" count toward performance on the housing goals.[81] HUD's regulations provide that HUD will determine whether a transaction or activity is a "mortgage purchase" and will therefore count toward one or more of the goals for which it qualifies. Section 81.16 of the current regulations provides that in determining whether a GSE will receive full credit toward one or more of the goals for a transaction or activity, the Department will consider whether the transaction or activity "is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market."

As provided in § 81.16(b), HUD has determined that certain transactions do not meet those criteria and therefore will not count toward a GSE's performance toward the housing goals (*e.g.*, equity investments in housing development projects; commitments, options, or rights of first refusal to acquire mortgages; state and local government housing bonds; and non-conventional mortgages, except under certain circumstances); such purchases are not included in the numerator or the denominator. HUD has also provided guidelines in the regulations for the treatment of other types of transactions, such as credit enhancements, real estate mortgage investment conduits

[76] Fannie Mae continued to count half credit for Title 1 purchases during 1996 through 1998.

[77] Section 81.16(b)(3).

[78] Section 81.14(e)(2).

[79] 12 U.S.C. 4563(b)(1)(A)(ii).

[80] Title V of HUD's 1998 Appropriations Act, Pub. L. 105–65, approved October 27, 1997.

[81] See Sen. Rep. at 38.

(REMICs), risk-sharing arrangements, participations, cooperative housing and condominiums, seasoned mortgages, refinanced mortgages, and mortgage revenue bonds.

In meeting the goal levels proposed here the GSEs will need to continue to develop products and approaches to close the gap between their performance and that of the primary mortgage market. In doing so, however, HUD and the GSEs must be mindful of FHEFSSA's requirements. Since only mortgage purchases count under the goals, this rule proposes new requirements to ensure timely guidance to the GSEs regarding new approaches or new types of transactions. Under the proposed revisions, in order to eliminate confusion about whether a given transaction will receive credit under the housing goals, the GSEs may provide information about specific transactions to the Department for evaluation and a determination of whether the transaction will receive full, partial, or no credit. The Department may also continue to independently request information of the GSEs about certain types of mortgage transactions. The Department will review the transactions to ensure that the counting of such transactions under the housing goals is consistent with FHEFSSA and advise the GSEs of the Department's determination with regard to credit for purposes of counting such transactions under the housing goals. This proposed rule amends § 81.16 to further clarify this point.

k. *Credit Enhancements.* The GSEs utilize a large variety of credit enhancements, for both single family and multifamily mortgage purchases, to reduce the credit risk to which they might otherwise be exposed. For example, the GSEs generally require the use of mortgage insurance on single-family loans with loan-to-value ratios exceeding 80 percent. While more common in the multifamily mortgage market, seller-provided credit enhancements may also be required for GSE purchases of single family mortgage loans when mortgage insurance is not carried on individual mortgage loans. Other types of credit enhancements include:

(1) Credit enhancements in structured transactions where a GSE may acquire a pool of loans, mortgage-backed securities (MBS), or real estate mortgage investment conduits (REMICs), and then create separate senior and subordinated securities, structured so that the subordinated securities absorb credit losses. The senior securities are guaranteed by the GSE; the subordinated securities are not.

(2) Spread accounts, in which a GSE may create a special class of unguaranteed securities where pass-through payments will cease in the event of default of the underlying mortgage collateral. Proceeds from the sale of such securities provide a degree of protection against credit losses. Such transactions differ from structured transactions in that no senior securities are explicitly created. Freddie Mac's 1998 "MODERNs" transactions are an example.[82]

(3) Acquisition of senior tranches of REMIC securities. In these transactions, the GSEs acquire senior tranches of REMICs which are enhanced by the presence of subordinate tranches. These senior tranches typically receive an investment-grade rating from one of the major rating agencies. A difference between this type of transaction and the structured transactions described above is that when the GSEs purchase a senior tranche, the collateral is already credit-enhanced prior to purchase.

(4) Agency pool insurance. A GSE reduces its exposure if insurance is provided by a mortgage seller on a pool of single family mortgage loans which may also individually carry mortgage insurance.

In its recent report titled "HUD's Implementation of Its Mission Oversight Needs to Be Strengthened," dated July 28, 1998, GAO reviewed the effectiveness of HUD's regulation of the GSEs. As part of that report, GAO commented on the Department's treatment of credit enhancements under the current rule. GAO noted that by allocating full credit toward the housing goals on multifamily mortgages with seller provided credit enhancements, through which the seller of mortgages retains some of the credit risk on mortgages, HUD may be providing a "regulatory incentive" for the GSEs to utilize such enhancements.[83] These credit enhancements typically take the form of recourse to the seller or loss-sharing agreements between the seller and the GSE purchasing the mortgage.

The GAO commented further that HUD's treatment of mortgage purchases involving credit enhancements under the housing goals appears inconsistent with HUD's treatment of mortgages acquired by the GSEs under a risk-sharing program with FHA. Under § 81.16(c)(3) of the regulation, the GSEs receive housing goal credit for mortgage purchases under a risk-sharing arrangement only where the GSEs bear at least 50 percent of the credit risk. GAO noted that no similar requirement pertains to mortgages for which sellers provide credit enhancements, even, hypothetically, where a seller would bear 100 percent of the credit risk.

HUD responded that GSE credit enhancement transactions provide liquidity. Moreover, seller provided credit enhancements differ from the FHA risk-sharing program in that seller provided credit enhancements include an element of counterparty risk; in the sense that, in the event of default, some sellers lack the financial resources to fulfill their commitment to repurchase a loan or otherwise share in default losses.

In considering the treatment of credit enhancements, HUD invites comments on the following questions:

(i) Given the wide range of institutional arrangements pertaining to credit enhancements and the interrelationships between credit enhancements and other considerations such as loan-to-value ratio and guarantee fee, how might the credit risk to which the GSEs are exposed be measured under various types of credit enhancement scenarios?

(ii) Assuming credit risk can be adequately measured, should HUD give partial credit under the housing goals when credit enhancements result in a substantial portion of the credit risk of the transaction being borne by the seller or a third party? For example, if the GSE bears less than 50 percent of the credit risk of a transaction should the GSE receive no credit toward housing goal performance? If the GSEs assume between 50 percent and 75 percent of the credit risk of a transaction, should the GSE receive 50 percent credit for housing goal purposes?

(iii) What would be the advantages and disadvantages of linking the amount of goals credit on a GSE mortgage purchase to the degree of associated credit risk? What are the possible effects on low-and moderate-income families and on underserved areas of the GSEs' use of various credit enhancements and how might they be affected if goals credit were linked to the degree of associated credit risk? Would there be potential effects on liquidity or other mortgage market factors?

(iv) Assuming credit risk can be adequately measured, should HUD establish a minimum percentage in the range of 0 to 100 percent for the amount of credit risk borne by the GSEs on their

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[82] "MODERN" is an acronym for Mortgage Default Recourse Notes. See "Freddie Mac Trying Hand at One of Fastest Growing Practices in Mortgage Business: Captive Reinsurance," *Inside Mortgage Finance*, June 26, 1998, pp. 3; "New Details on Freddie Mac's Novel MODERNS Transactions Emerge: 27% Coverage on All Defaults," *Inside MBS & ABS*, June 19, 1998.

[83] HUD's Implementation of Its Mission Oversight Needs to Be Strengthened, page 29 (GAO/GGD–98–173, July 28, 1998).

mortgage purchases in order for such purchases to count toward the housing goals?

(v) If HUD establishes a minimum threshold for credit risk, should it be the same for multifamily and single family purchases, or should it be different for each? At what level should the threshold(s) be established? Should HUD establish the same threshold for all types of credit enhancements, or should this differ between types of credit enhancements? At what level should the threshold(s) be established?

(vi) Should HUD measure counterparty risk on seller-provided credit enhancements? If so, how?

(vii) Should HUD evaluate GSE performance in relation to the use of credit enhancements by calculating and comparing the risk-adjusted rate of return under the use of various credit enhancement alternatives?

1. *High Cost Mortgage Loans.* There is ample evidence that high cost mortgage lending and abusive lending practices increase defaults, have destabilizing effects on neighborhoods, and adversely affect homeownership. High cost mortgage loans characterized by high interest rates and front-end fees are often coupled with requirements for balloon payments, negative amortization, prepayment penalties, and lump sum credit life insurance. Loans with these features sometimes are characterized as "predatory; while they may prove profitable to some originators, they quickly erode home equity for unwary borrowers. Evidence suggests that high cost loans are often the product of "reverse redlining;" these loans tend to target low-income communities and elderly, minority, and immigrant borrowers who have traditionally been denied access to mainstream sources of credit.

In 1994, Congress addressed many abuses in the primary market with the Home Ownership and Equity Protection Act (HOEPA), which provides special disclosures and protections for borrowers of certain high cost refinance mortgages. (15 U.S.C. 1639) To be subject to HOEPA's requirements, mortgage loans covered under the law must have: (1) An annual percentage rate at least 10 points higher than the yield on Treasury securities with comparable maturity to the transaction; or (2) total points and fees payable by the consumer in excess of the greater of either $451 (an amount established annually under the law by the Federal Reserve) or eight percent of the amount loaned. (15 U.S.C. 1602(aa)) Purchasers of these loans, including the GSEs, assume certain legal responsibilities under the Truth in Lending Act ("assignee liability").

Given the concerns about the adverse effects of high cost loans and abusive lending practices on neighborhoods and homeownership, the Department invites comments on whether this rule should disallow goals credit for high cost mortgage loans. The Department also seeks comments on the following: (1) If goals credit is restricted for such loans should the HOEPA definition be used, or should an alternative definition be established for purposes of this rule? (2) What are the potential benefits, if any, associated with the GSEs' presence in various higher cost mortgage markets including mortgages with annual percentage rates between those of the prime market and the market for high cost mortgage loans (for example, standardization of underwriting guidelines and reductions in interest rates)? (3) What are the potential dangers, if any associated with the GSEs' presence in various higher cost mortgage markets?

The presence of the GSEs in the higher cost mortgage markets would seem to warrant increased monitoring and additional reporting by the GSEs to HUD. The Department seeks comments on what additional data would be useful and whether certain of these elements should be included in the public use data base. Possible data elements that could be collected for Department monitoring purposes include loan level data on the annual percentage rate, debt-to-income ratio, points and fees, and prepayment penalties.

C. Subpart F—Access to Information

This subpart discusses proposed modifications to the Department's Final Order of October 1, 1996,[84] "*Proprietary Data Submitted by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)*" (the Final Order), under sections 1323 and 1326 of FHEFSSA. In the Final Order, HUD determined that certain mortgage data that HUD requires the GSEs to submit is proprietary and not to be included in the public use data base. Upon reviewing the previous order published as Appendix F of the 1995 Final Rule,[85] the Final Order finalized existing and identified additional GSE loan-level data elements for single family and multifamily mortgages that HUD determined were proprietary and, therefore, withheld from the public. The Final Order also identified certain data elements that HUD would recode, adjust, or categorize in ranges to protect against the release of proprietary information, as necessary. After careful review of the previous proprietary orders, the Department is proposing a number of changes to the classification of certain GSE single family and multifamily mortgage data elements. The list of data elements that HUD proposes to make available to the public is described in the following sections. Appendix E of this proposed rule also contains full matrices, similar to those found in proprietary orders, that incorporate the changes proposed in this rule. Release of these data elements to public access is consistent with Congress's intent that "every effort should be made to provide public disclosure of the information required to be collected and/or reported to the regulator, consistent with the exemption for proprietary data." [86]

1. *Background on Public Use Data Base and Public Information.* Section 1323 of FHEFSSA requires that HUD make available to the public, data relating to the GSEs' mortgage purchases. In the legislative history of FHEFSSA, Congress indicated its intent that the GSE public use data base supplement the HMDA data.[87] The purpose of the data base is to assist mortgage lenders, planners, researchers, and housing industry groups, as well as HUD and other government agencies, in studying the flow of mortgage credit and capital into the nation's communities. At the same time, Section 1326 protects from public access and disclosure, proprietary data and information that the GSEs submit to the Department and requires HUD to protect such data or information by Order or regulation.

To comply with FHEFSSA, HUD established a public use data base to collect and make available to the public, loan-level data on the GSEs' single family and multifamily mortgage purchases. In Appendix F to the December 1, 1995 final rule, the Department specified the structure of the GSE public use data base and identified the data to be withheld from public use. The single family data was to be disclosed in three separate files—a Census Tract File (with geographic identifiers down to the census tract level), a National File A (with mortgage-level data on owner-occupied 1-unit properties), and a National File B (with unit-level data on all single-family properties). The national files do not

[84] Notice of the Order was published in the **Federal Register** on October 17, 1996 (61 FR 54322).

[85] 60 FR 62001.

[86] Senate Report 102–282, 102d Cong., 2d Sess. 40 (19992).

[87] *See, e.g.*, Rep. at 39.

have geographic indicators. The multifamily data was to be disclosed in two separate files—a Census Tract File and a National File consisting of two parts—one part containing mortgage loan level data and the other containing unit level data for all multifamily properties. For each file, the appendix identified data elements that were considered proprietary and those that were not proprietary and available to the public, and specified further that certain proprietary elements would be recoded or categorized into ranges to protect the proprietary information and to permit the release of non-proprietary information to the public. This multi-file structure was designed at that time to allow the greatest dissemination of loan-level data, without revealing information that would allow competitors to determine the GSEs' marketing and pricing strategies at the local level.

On October 17, 1996, the Final Order describing each data element submitted by the GSEs and the proprietary nature of each element was published in the **Federal Register**. The Final Order also recoded, adjusted, or categorized in ranges certain proprietary loan-level data elements to protect the proprietary nature of the GSE information. HUD released the recoded data elements and the data elements that were identified as non-proprietary information to the public.

In the fall of 1996, the Department released the first GSE public-use data base that contained non-proprietary information on every mortgage purchased by the GSEs from 1993 to 1995. Subsequently, HUD made the 1996 and 1997 databases available to the public.

2. *Changes Proposed in This Rule.* After consideration of the current structure of the public use data base, the Department is proposing several changes to its classifications of the GSEs' mortgage data. These changes are either technical in nature or would make available to the public the same data from the GSEs that is made available by primary lenders under HMDA. These changes, therefore, would not appear to release proprietary information and would, at the same time, affirm Congress's intent that the HMDA data base and the GSE data base complement each other.

a. GSE Single Family Mortgage Data

(1) The Department proposes to change the MSA Code (Field #4) from YES (proprietary) to YES but Recode and to make the recoded data publicly available in National File A and National File B. The Department proposes to recode this data as:

1=Metropolitan
2=Non-Metropolitan
9=Missing

This change will make possible analyses at the national level by researchers beyond HUD of a variety of issues relating to metropolitan and non-metropolitan mortgage lending and GSE activities and will facilitate comparison between the GSE and HMDA data bases. Individual MSAs will not be identified.

(2) The Department proposes to code the Borrower's Annual Income (Field #15) to "99999999" when missing. This change will permit the coding of larger borrower incomes.

(3) The Department proposes to change the Purpose of Loan (Field #22) from YES (proprietary) to NO (non-proprietary) and to make such data publicly available in the Census Tract File and National File A. The Department also proposes to add the following values:

4=Rehabilitation
9=Not Applicable/Not Available

These changes will make possible separate analyses by researchers beyond HUD of home purchase, refinance, second, and rehabilitation mortgages and will facilitate comparisons between the GSE and HMDA data bases.

(4) The Department proposes to change the Federal Guarantee (Field #27) from YES (proprietary) to NO (non-proprietary) and to make such data publicly available in the Census Tract File. These changes will make possible analyses by researchers beyond HUD of conventional and Federally guaranteed mortgages at the local level and will facilitate comparisons between the GSE and HMDA data bases.

(5) The Department proposes to change the Borrower Race/National Origin (Field #41) from YES (proprietary) to NO (non-proprietary) and to make such data publicly available in National File A and National File B. The Department also proposes not to combine Field #41 and Field #42 in National File A and National File B and to delete subgroup #7 indicating that Borrower and Co-Borrower are in different race/national origin categories. The Department also proposes to distinguish in the public use data base causes of missing data coded by the GSEs as "7" (information not provided in mail or telephone application), "8" (not applicable), and "9" (not available). These changes will make possible more precise analyses at the national level by researchers beyond HUD relating to household minority status and will facilitate comparisons between the GSE and HMDA data bases.

(6) The Department proposes to change Co-Borrower Race/National Origin (Field #42) from YES (proprietary) to NO (non-proprietary) and to make such data publicly available in National File A and National File B, as discussed above in paragraph (5) with respect to Field #42.

(7) The Department proposes to change the Occupancy Code (Field #47) from YES (proprietary) to (a) "NO" (non-proprietary) and make the data publicly available in National File A; and (b) "YES but Recode" and to make the recoded data publicly available in the Census Tract File. The Department proposes to recode this data as:

1=Owner-Occupied Property (1–4 units)
2=Investment Property (1–4 units)
9=Not Available

This change will make possible separate analyses by researchers beyond HUD for owner-occupied properties and rental properties and will facilitate comparisons between the GSE and HMDA data bases.

b. GSE Multifamily Mortgage Data

(1) The Department proposes to make Date of Mortgage Note (Field #19) available in the National File, subject to recoding as follows:

1=Originated Same Calendar Year as Acquired
2=Originated Prior to Calendar Year of Acquisition
9=Missing

The change will permit analysis of multifamily loans originated in prior years by researchers beyond HUD and will facilitate comparisons between the GSE and HMDA data bases.

(2) The Department proposes to change the Purpose of Loan (Field #21) to revise the definition of value "9" as follows: 9=Not Applicable/Not Available.

This is a clarifying change.

(3) The Department proposes to change Type of Seller Institution (Field #33) from YES (proprietary) to NO (non-proprietary) in the National File. This change, in connection with others being proposed, will facilitate comparisons between the GSE and HMDA data bases and will also facilitate analyses by researchers beyond HUD of affordability, property, size, and other key characteristics by type of seller at the national level.

3. *Comments Sought.* HUD's specification of the data elements to be included in the public use data base involves complex issues and requires sensitivity to both Congress's concern that there be complete and accurate data

on the GSEs' activities and that there be protection of legitimately proprietary information submitted by the GSEs to the Department. In addition to public comments on these issues along with specific examples of data where disclosure furthers the public interest, comments are requested on the specific changes proposed above. HUD is considering two other changes to the multifamily mortgage data base and invites comments on the nature of these changes—(a) making available information on the term of the mortgage at origination recoded to group the data into buckets (*e.g.*, less than seven years, seven years to less than ten years, ten years to less than 20 years, and more than 20 years); and (b) making available information on the type of acquisition (*e.g.*, cash, swap, credit enhancement, bond/debt purchased, missing and other). Both of these changes would enhance the type of multifamily analyses that could be conducted using the public use data base. Comment is also sought about whether certain data elements that are classified as proprietary when submitted to the Department might no longer be so classified after several years, because they would be unlikely to provide proprietary information about the GSEs' current business activities.

Finally, the Department requests comments on what additional loan level information regarding the GSEs' mortgage purchases—on either a census tract or national level—would be useful to release to expand the public's understanding of the role the GSEs play in the mortgage market. The Department must protect the GSEs' proprietary interests with regard to the loan level data. However, when initially establishing the loan level data base, HUD took a conservative approach in making determinations about the proprietary nature of the loan level data elements. With the benefit of several years of experience with the public use data base, HUD believes it is appropriate to review the initial determinations with regard to the proprietary nature of individual loan level elements and welcomes public comment on what additional data should be made available, why it is needed and how the GSEs might be impacted through the release of this information. Possible examples of data that might be of interest to the public is the availability of data on loan-to-value ratios, special loan program characteristics, and how individual loans are scored for housing goal purposes at the census tract level.

III. Specific Areas for Public Comment

Comment is invited on all aspects of the proposed regulation. In addition, the Department requests comments on several specific issues. These questions are discussed in context in Section II of the preamble and are repeated below for the convenience of commenters:

This proposed rule solicits comments on specific changes to definitions applicable to the housing goal levels, establishment of new housing goals, new requirements for counting mortgage purchases under the goals, and an expansion of loan level data available to the public on the GSEs' mortgage loan purchases.

A. Definitions

Comments are requested to the proposed definitional changes of the terms "Median Income," "Metropolitan Areas," "Refinancing" and "Underserved Areas" in § 81.2.

B. Housing Goal Levels

Comments are requested on the proposed level of the housing goals described below and on whether the level of the proposed housing goals is appropriate given the statutory factors HUD must consider in setting the goals, and in light of the market estimates of the GSEs' shares of the affordable housing market.

1. *Low- and Moderate-Income Housing Goal.* The rule proposes to amend § 81.2 to change the level of the annual housing goal for mortgage purchases qualifying under the Low- and Moderate-Income Housing Goal to be 48 percent of eligible units financed in calendar year 2000, and 50 percent of eligible units financed in each of calendar years 2001, 2002 and 2003.

2. *Central Cities, Rural Areas, and Other Underserved Areas Housing Goal (Geographically Targeted Goal).* The rule proposes to amend § 81.13 to change the level of the annual housing goal for mortgage purchases qualifying under the Geographically Targeted Goal to be 29 percent of eligible units financed in calendar year 2000, and 31 percent of eligible units financed in each of calendar years 2001, 2002 and 2003.

3. *Special Affordable Housing Goal.* The rule proposes to amend § 81.14 to change the level of the annual housing goal for mortgage purchases qualifying under the Special Affordable Housing Goal to be 18 percent of eligible units financed in calendar year 2000, and 20 percent of eligible units financed in each of calendar years 2001, 2002 and 2003.

4. *Special Affordable Housing Multifamily Subgoal.* For the calendar years 2000 through 2003, the rule proposes to amend § 81.14 to change the level of the annual housing subgoal for mortgage purchases qualifying under the Special Affordable Housing Multifamily Subgoal to be 0.9 percent of the dollar volume of combined (single family and multifamily) 1998 mortgage purchases in calendar year 2000, and 1.0 percent of the dollar volume of combined (single family and multifamily) 1998 mortgage purchases in each of calendar years 2001, 2002 and 2003.

C. Possible Changes to Underserved Areas in Geographically Targeted Goal

The Department is considering several possible changes to what is considered an underserved area for purposes of counting mortgage purchases under the Geographically Targeted Goal.

1. *Metropolitan Area.* HUD seeks comment on the proposed options for revising the definition of underserved metropolitan areas in an effort to more accurately target underserved areas with higher mortgage denial rates. Specifically, HUD is considering two possible changes to the definition. The first option being considered is to change the current tract income ratio to an "enhanced" tract income ratio and to require that for tracts to qualify they must (1) calculate the tract income ratio based on the ratio of tract median income to the greater of the national metropolitan median income or the MSA median income; and (2) have a tract income ratio at or below 80 percent. The second option being considered is to increase the requirement for a tract's minority population from the current 30 percent to 50 percent. The Department is also requesting comments on the extent to which these definitional changes are likely to increase the availability of credit to areas with high denial rates.

2. *Tribal Lands.* The Department seeks comment on the amended definition of underserved areas in § 81.2 that includes low-income and/or high minority American Indian Reservations and trust lands in the definition of underserved areas for both metropolitan and non-metropolitan areas.

3. *Rural Areas.* HUD also seeks public comment on alternative methodologies and sources of rural market data that HUD might use to define underserved non-metropolitan/rural areas. Specifically, HUD seeks comment on whether the Department should follow a tract-based approach in defining underserved rural areas, which would be consistent with the tract-based definition used in metropolitan areas. As technology and computer mapping

capabilities have evolved since 1995, it may be appropriate to revisit the issue of whether entire counties or census tracts within the counties should be used to define rural underserved areas.

D. Possible Changes to the Structure of the Special Affordable Housing Multifamily Subgoal

The Department seeks comment on whether the special affordable multifamily subgoal proposed that is based on a percentage of total dollar volume of mortgages purchased, or the possible alternative structures presented that base the subgoal on (a) the number of units financed, (b) a percent of current multifamily mortgage purchases, or (c) the number of mortgages acquired, are reasonable and desirable approaches to closing market gaps in the very low- and low-income rental market. HUD also solicits comment on the appropriate level for the subgoal as proposed, or under the various possible structures presented, and how the possible levels illustrated herein would likely impact multifamily acquisitions, especially for very low- and low-income multifamily units.

E. Bonus Points and Subgoals

Specifically, the Department invites comments on (a) whether, for the four year period ending December 31, 2003, § 81.16(c)(10) should be added to allow small multifamily properties (5–50 units) and all the units in owner-occupied 2–4 unit properties to receive double weight in the numerator for each of the three housing goals that otherwise qualify for the housing goals; and (b) how to count small multifamily properties for purposes of receiving bonus points that may be aggregated into larger financing packages. The Department also seeks comments on the utility of applying similar regulatory incentives (bonus points and/or subgoals) to other underserved segments of the market. In addition, HUD requests comments on the following questions that relate to bonus points and subgoals in general:

1. Whether HUD should use either bonus points or subgoals to target mortgage purchases for one or more of the areas of concern identified earlier?

2. Whether one or more of these areas would benefit more from bonus points or establishment of subgoals and why? If bonus points are suggested, the amount of bonus points which should be assigned and why?

3. Whether there are other areas not identified where bonus points and/or subgoals should be considered?

F. Calculating Performance Under the Housing Goals

The Department invites comments on clarifications and revisions to certain requirements for calculating performance under the housing goals.

1. *Temporary Adjustment Factor for Freddie Mac.* HUD requests comments on the proposal to provide Freddie Mac with an incentive to further expand the scope of its multifamily operations by providing them with a Temporary Adjustment Factor. The proposed rule calculates Freddie Mac's performance under the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal by counting each unit in a multifamily property with more than 50 units meeting the definition of one or both housing goals as 1.2 units (the Temporary Adjustment Factor) in the numerator in determining the respective housing goal percentage. HUD specifically requests comments on whether the proposed temporary adjustment factor for Freddie Mac is set at an appropriate level, and if such an adjustment factor should be phased out prior to 2003 or apply for the entire four year goal cycle.

2. *Data on Unit Affordability.* The Department seeks comments on the proposed revisions to § 81.15(d) and (e)(6) that identify the treatment for purposes of counting under the housing goals of those cases where a GSE does not obtain rental data on units, and welcomes suggestions for alternative ways of addressing the issue.

a. *Multifamily Rental Units.* For units in multifamily properties, the Department proposes to allow the use by a GSE of estimated rents based on market rental data. The Department will review and approve the GSEs' data sources and methodologies for estimating rents on multifamily units prior to their use, to assure reliability. Estimated rental data submitted to the Department shall be so identified by the GSE. HUD requests comments on whether it should establish a percentage ceiling for the GSEs' use of estimated data for multifamily mortgage purchases. The Department further proposes to allow a GSE to exclude units in multifamily properties from the denominator as well as the numerator in calculating performance under the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal when the GSE lacks sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the goal, and when the application of estimated rents based on an approved market rental data source and methodology is not possible.

b. *Single Family Rental Units.* For purposes of counting rental units in 1–4 unit single family properties toward achievement of the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, the Department proposes to allow a GSE to exclude the rental units in 1–4 unit single family properties from the denominator as well as the numerator in calculating performance under the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal when the GSE lacks rent sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the Low- and Moderate Income Housing Goal or the Special Affordable Housing Goal.

c. Single Family Owner-Occupied Units. Comments are requested on the Department's proposal to allow a GSE to exclude certain single family owner-occupied units from the denominator as well as the numerator in calculating performance under the Low- and Moderate-Income Housing Goal when the GSE lacks sufficient information on borrower income to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the goal, provided the mortgaged property is located in a census tract with median income less than or equal to area median income according to the most recent census. Such exclusion from the denominator and numerator will be permitted up to a ceiling of one percent (1%) of the total number of single family, owner-occupied dwelling units eligible to be counted toward the respective housing goal in the current year. Mortgage purchases in excess of the ceiling will be included in the denominator and excluded from the numerator.

3. Seasoned Mortgage Loan Purchases. Comments are requested on specific changes that are proposed in § 81.14 that address how purchases of seasoned mortgage portfolios receive full credit under the Special Affordable Housing Goal. Changes to § 81.16 are proposed to clarify the treatment of seasoned mortgages in calculating goal performance. The suggested changes specifically provide direction and guidance to the GSEs for the purpose of determining whether a seller of special affordable seasoned mortgage portfolios is adequately engaged in a specific program to reinvest the proceeds of the loan sale into additional special affordable lending. In addition, commenters are invited to provide their views on how to identify and define

those classes of organizations or institutions who are primarily engaged in financing affordable housing mortgages, including possibly State Housing Finance Agencies or Special Affordable Housing Loan Consortia, or other types of businesses that further the purpose of the Special Affordable Housing Goal. In addition to specific proposed changes to the regulation, commenters are invited to share their views as to whether any additional exemptions or changes should be established under the recycling provisions that further its purpose. Comments are also specifically invited on (1) what, if any, provisions should be included in the proposed rule to address the various affiliate structures of depository institutions; and (2) the treatment under the recycling provisions of structured transactions where the mortgage loans acquired were originated by a depository institution or mortgage banker engaged in mortgage lending on special affordable housing but acquired and sold by a third party, *e.g.*, an investment banking firm that is not in the business of affordable housing lending.

4. *Certain Federally Insured or Guaranteed Mortgages.* Comments are requested on the proposed change to § 81.16(b)(3) to except mortgages under the HECM program, mortgages guaranteed by RHS and loans made under FHA's Section 248 program and HUD's Section 184 program on properties in tribal lands from the general exclusion under the rules for non-conventional mortgage loans, and to allow the Department to count non-conventional mortgage purchases under the goals where the Department determines, in writing, that the financing needs addressed by such program are not well served and that mortgage purchases under such program should count. In addition, the proposed rule provides that where non-conventional mortgage purchases will now count toward the housing goals, they no longer will be excluded from the denominator of the GSEs' mortgage purchases as are other non-conventional mortgage loans.

5. *Other Counting Changes.* Comments are welcome on the following specific changes to counting requirements contained in the proposed rule: (a) Allowing half-credit for purchases of HUD Title I loans under the Special Affordable Housing Goal (§ 81.14); (b) amending the calculation of "Denominator" to clarify that the denominator does not include GSE transactions or activities that are not mortgages or that are specifically excluded mortgage purchase transactions (§ 81.16); (c) excluding certain single family balloon mortgages from treatment as a refinancing at the time of conversion to a fully amortizing note (§§ 81.2 and 81.16); (d) providing partial or full credit for actions that assist in maintaining the affordability of multifamily properties with expiring assistance contracts including how and to what extent the GSEs should receive credit for such actions; and (e) adding the designation of "especially low-income" in relationship to the Special Affordable Housing Goal (§§ 81.14, 18.17, 81.18, and 81.19). In addition, while no specific change has been proposed, comments are requested on whether the final rule should disallow goals credit for high cost mortgage loans. The Department also seeks comments on the following: (i) If goals credit is restricted for such loans, should the HOEPA definition be used, or should an alternative definition be established for purposes of this rule? (ii) What are the potential benefits, if any, associated with the GSEs' presence in the various higher cost mortgage markets including mortgages with annual percentage rates between those of the prime market and the market for high cost mortgage loans (for example, standardization of underwriting guidelines and reductions in interest rates)? (iii) What are the potential dangers, if any, associated with the GSEs' presence in various higher cost mortgage markets? Finally, the Department requests comments on what additional reporting data would be useful for the purposes of monitoring the GSEs' activities in this area and on whether certain of these data elements should be included in the public use data base. Possible data elements that could be collected for Department monitoring purposes include loan level data on the annual percentage rate, debt-to-income ratio, points and fees, and prepayment penalties.

6. *Provision for HUD to Review New Activities to Determine Appropriate Counting Under the Housing Goals.* The Department is requesting comments on the proposal to add a provision (§ 81.16(d)) for HUD to review activities of the GSEs to ensure that the counting of transactions towards the housing goals is consistent with FHEFSSA and advise the GSEs of the Department's determination with regard to credit for purposes of counting such transactions under the housing goals.

7. *Credit Enhancements.* In relation to credit enhancements, HUD invites comments on the following questions:

a. Given the wide range of institutional arrangements pertaining to credit enhancements and the inter-relationships between credit enhancements and other considerations such as loan-to-value ratio and guarantee fee, how should the credit risk to which the GSEs are exposed be measured under various types of credit enhancement scenarios?

b. Assuming credit risk can be adequately measured, should HUD give partial credit under the housing goals when credit enhancements result in a substantial portion of the credit risk of the transaction being borne by the seller or a third party? For example, if the GSE bears less than 50 percent of the credit risk of a transaction should the GSE receive no credit toward housing goal performance? If the GSE assumes between 50 percent and 75 percent of the credit risk of a transaction, should the GSE receive 50 percent credit for housing goal purposes?

c. What would be the advantages and disadvantages of linking the amount of goals credit on a GSE mortgage purchase to the degree of associated credit risk? What are the possible effects on low- and moderate-income families and on underserved areas of the GSEs' use of various credit enhancements and how might they be affected if goals credit were linked to the degree of associated credit risk? Would there be potential effects on liquidity or other mortgage market factors?

d. Assuming credit risk can be adequately measured, should HUD establish a minimum percentage in the range of 0 to 100 percent for the amount of credit risk borne by the GSEs on their mortgage purchases in order for such purchases to count toward the housing goals?

e. If HUD establishes a minimum threshold for credit risk, should it be the same for multifamily and single family purchases, or should it be different for each? Should HUD establish the same threshold for all types of credit enhancements, or should this differ between types of credit enhancements? At what level should the threshold(s) be established?

f. Should HUD measure counterparty risk on seller-provided credit enhancements? If so, how?

g. Should HUD evaluate GSE performance in relation to the use of credit enhancements by calculating and comparing the risk-adjusted rate of return under the use of various credit enhancement alternatives?

G. Access to Information

HUD's specification of the data elements to be included in the public use data base involves complex issues and requires sensitivity to both Congress's concern that there be

complete and accurate data on the GSEs' activities and that there be protection of legitimately proprietary information submitted by the GSEs to the Department. In addition to public comments on these issues along with specific examples of data where disclosure furthers the public interest, comments are requested on the specific changes proposed to the rule. HUD is considering two other changes to the multifamily mortgage data base and invites comments on the feasibility of these changes—(a) making available information on the term of the mortgage at origination recoded to group the data into buckets; and (b) making available information on the type of acquisition. Both of these changes would enhance the type of multifamily analyses that could be conducted using the public use data base. Comment is also sought about whether certain data elements that are classified as proprietary when submitted to the Department might no longer be so classified after several years, because they would be unlikely to provide proprietary information about the GSEs' current business activities. Finally, the Department requests comments on what additional loan level information regarding the GSEs' mortgage purchases—on either a census tract or national level—would be useful to release to expand the public's understanding of the role the GSEs play in the mortgage markets.

IV. Findings and Certifications

A. Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review,* which the President issued on September 30, 1993. This rule was determined economically significant under E.O. 12866. Any changes made to this proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC. The initial Economic Analysis prepared for this rule is also available for public inspection in the Office of the Rules Docket Clerk.

B. Congressional Review of Major Final Rules

This rule is a "major rule" as defined in Chapter 8 of 5 U.S.C. The rule will be submitted for Congressional review in accordance with this chapter at the final rule stage.

C. Paperwork Reduction Act

HUD's collection of information on the GSEs' activities has been reviewed and authorized by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), as implemented by OMB in regulations at 5 CFR part 1320. The OMB control number is 2502–0514.

D. Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this proposed rule would not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction; nor would it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. This proposed regulation is applicable only to the GSEs, which are not small entities for purposes of the Regulatory Flexibility Act, and, thus, does not have a significant economic impact on a substantial number of small entities.

F. Executive Order 13132, Federalism

Executive Order 13132 ("Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 [88] (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 81

Accounting, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Accordingly, 24 CFR part 81 is proposed to be amended as follows:

PART 81—THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

1. The authority citation for 24 CFR part 81 continues to read as follows:

Authority: 12 U.S.C. 1451 *et seq.*, 1716–1723h, and 4501–4641; 42 U.S.C. 3535(d) and 3601–3619.

2. Section 81.2, is amended by revising the definitions of "*Median Income*" "*Metropolitan Area*", and "*Underserved Area,*" and by adding a new paragraph (7) to the definition of "*Refinancing,*" to read as follows:

§ 81.2 Definitions.

* * * * *

Median Income means, with respect to an area, the unadjusted median family income for the area and most recently determined and published by HUD. HUD will provide the GSEs, on an annual basis, with information specifying how HUD's published median family income estimates for metropolitan areas are to be applied for the purposes of determining median family income in such areas.

Metropolitan Area means a metropolitan statistical area ("MSA"), or primary metropolitan statistical area ("PMSA"), or a portion of such an area for which median family income estimates are published annually by HUD.

* * * * *

Refinancing means: * * *

* * * * *

(7) A conversion of a balloon mortgage note on a single family property to a fully amortizing mortgage note provided the GSE already owns or

[88] Pub. L. 104–4, approved March 22, 1995.

has an interest in the balloon note at the time of the conversion.

* * * * *

Underserved Area means:

(1) For purposes of the definitions of "*Central City*" and "*Other Underserved Area*", a census tract, a Federal or State American Indian reservation or tribal or individual trust land, or the balance of a census tract excluding the area within any Federal or State American Indian reservation or tribal or individual trust land, having:

(i) A median income at or below 120 percent of the median income of the metropolitan area and a minority population of 30 percent or greater; or

(ii) A median income at or below 90 percent of median income of the metropolitan area.

(2) For purposes of the definition of "*Rural Area*":

(i) In areas other than New England, a whole county, a Federal or State American Indian reservation or tribal or individual trust land, or the balance of a county excluding the area within any Federal or State American Indian reservation or tribal or individual trust land, having:

(A) A median income at or below 120 percent of the greater of the State non-metropolitan median income or the nationwide non-metropolitan median income and a minority population of 30 percent or greater; or

(B) A median income at or below 95 percent of the greater of the State non-metropolitan median income or nationwide non-metropolitan median income.

(ii) In New England, a whole county having the characteristics in paragraph (2)(i)(A) or (2)(i)(B) of this definition; a Federal or State American Indian reservation or tribal or individual trust land, having the characteristics in paragraph (2)(i)(A) or (2)(i)(B) of this definition; or the balance of a county, excluding any portion that is within any Federal or State American Indian reservation or tribal or individual trust land, or metropolitan area where the remainder has the characteristics in paragraph (2)(i)(A) or (2)(i)(B) of this definition.

(3) Any Federal or State American Indian reservation or tribal or individual trust land that includes land that is both within and outside of a metropolitan area and that is designated as an underserved area by HUD. In such cases, HUD will notify the GSEs as to applicability of other definitions and counting conventions.

* * * * *

3. Section 81.12 is amended as follows:

a. Paragraph (b) is amended by revising the last sentence; and

b. Paragraph (c) is revised, to read as follows:

§ 81.12 Low- and Moderate-Income Housing Goal.

* * * * *

(b) *Factors.* * * * A statement documenting HUD's considerations and findings with respect to these factors, entitled "Departmental Considerations to Establish the Low- and Moderate-Income Housing Goal," was published in the **Federal Register** on [date of publication of final rule will be inserted].

(c) *Goals.* The annual goals for each GSE's purchases of mortgages on housing for low- and moderate-income families are:

(1) For calendar year 2000, 48 percent of the total number of dwelling units financed by that GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA;

(2) For each of the calendar years 2001–2003, 50 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years unless otherwise adjusted by HUD in accordance with FHEFSSA; and

(3) For calendar year 2004 and thereafter HUD shall establish annual goals. Pending establishment of goals for calendar year 2004 and thereafter, the annual goal for each of those calendar years shall be 50 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those calendar years.

4. Section 81.13 is amended as follows:

a. Paragraph (b) is amended by revising the last sentence; and

b. Paragraph (c) is revised, to read as follows:

§ 81.13 Central Cities, Rural Areas, and Other Underserved Areas Housing Goal.

* * * * *

(b) *Factors.* * * * A statement documenting HUD's considerations and findings with respect to these factors, entitled "Departmental Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal," was published in the **Federal Register** on [date of publication of final rule will be inserted].

(c) *Goals.* The annual goals for each GSE's purchases of mortgages on housing located in central cities, rural areas, and other underserved areas are:

(1) For calendar year 2000, 29 percent of the total number of dwelling units financed by that GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA;

(2) For each of the calendar years 2001–2003, 31 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years unless otherwise adjusted by HUD in accordance with FHEFSSA; and

(3) For calendar year 2004 and thereafter HUD shall establish annual goals. Pending establishment of goals for calendar year 2004 and thereafter, the annual goal for each of those calendar years shall be 31 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those calendar years.

* * * * *

5. Section 81.14 is amended as follows:

a. Paragraph (b) is amended by revising the last sentence;

b. Paragraph (c) is revised;

c. Paragraph (d) is amended by revising paragraph (d)(1)(i);

d. Paragraph (e) is amended by revising paragraphs (e)(2), (e)(3), and (e)(4);

e. Paragraph (f) is redesignated as paragraph (g) and the last sentence of the newly redesignated paragraph (g) is revised; and

f. A new paragraph (f) is added; to read as follows:

§ 81.14 Special Affordable Housing Goal.

* * * * *

(b) * * * A statement documenting the HUD's considerations and findings with respect to these factors, entitled "Departmental Considerations to Establish the Special Affordable Housing Goal," was published in the **Federal Register** on [date of publication of final rule will be inserted].

(c) *Goals.* The annual goals for each GSE's purchases of mortgages on rental and owner-occupied housing meeting the then existing, unaddressed needs of and affordable to low-income families in low-income areas and very low-income families are:

(1) For calendar year 2000, 18 percent of the total number of dwelling units financed by that GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA. The goal shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 0.9 percent of the dollar volume of combined (single family and multifamily) mortgages purchased by the respective GSE in 1998 unless otherwise adjusted by HUD in accordance with FHEFSSA;

(2) For each of the calendar years 2001, 2002, and 2003, 20 percent of the total number of dwelling units financed by that GSE's mortgage purchases in

each of those years unless otherwise adjusted by HUD in accordance with FHEFSSA. The goal for each calendar year shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the dollar volume of combined (single family and multifamily) mortgages purchased by the respective GSE in 1998 unless otherwise adjusted by HUD in accordance with FHEFSSA; and

(3) For calendar year 2004 and thereafter HUD shall establish annual goals. Pending establishment of goals for calendar year 2004 and thereafter, the annual goal for each of those calendar years shall be 20 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those calendar years. The goal for each such calendar year shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the dollar volume of combined (single family and multifamily) mortgages purchased by the respective GSE in 1998.

* * * * *

(d)(1) * * *

(i) 20 percent of the dwelling units in the particular multifamily property are affordable to especially low-income families; or

* * * * *

(e) * * *

* * * * *

(2) Mortgages under HUD's Home Equity Conversion Mortgage ("HECM") Insurance Program, 12 U.S.C. 1715 z–20; mortgages guaranteed by the Rural Housing Services' Guaranteed Rural Housing Loan Program, 7 U.S.C. 1933; and mortgages on properties on tribal lands insured under FHA's Section 248 program, 12 U.S.C. 1715 z–13, or HUD's Section 184 program, 12 U.S.C. 1515 z–13a; meet the requirements of 12 U.S.C. 4563(b)(1)(A)(i) and (ii).

(3) HUD will give full credit toward achievement of the Special Affordable Housing Goal for the activities in 12 U.S.C. 4563(b)(1)(A), provided the GSE submits documentation to HUD that supports eligibility under 12 U.S.C. 4563(b)(1)(A) for HUD's approval.

(4)(i) For purposes of determining whether a seller meets the requirement in 12 U.S.C. 4563(b)(1)(B), a seller must currently operate on its own or actively participate in an on-going, discernible, active, and verifiable program directly targeted at the origination of new mortgage loans that qualify under the Special Affordable Housing Goal.

(ii) A seller's activities must evidence a current intention or plan to reinvest the proceeds of the sale into mortgages qualifying under the Special Affordable Housing Goal, with a current commitment of resources on the part of the seller to this purpose.

(iii) A seller's actions must evidence willingness to buy qualifying loans when these loans become available in the market as part of active, on-going, sustainable efforts to ensure that additional loans that meet the goal are originated.

(iv) Actively participating in such a program includes purchasing qualifying loans from a correspondent originator, including a lender or qualified housing group, that operates an on-going program resulting in the origination of loans that meet the requirements of the goal, has a history of delivering, and currently delivers, qualifying loans to the seller.

(v) The GSE must verify and monitor that the seller meets the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section and develop any necessary mechanisms to ensure compliance with the requirements, except as provided in paragraph (e)(4)(vi) of this section.

(vi) Where a seller's primary business is originating mortgages on housing that qualifies under this Special Affordable Housing Goal (*e.g.*, when such seller is an institution that is regularly in the business of mortgage lending; a BIF-insured or SAIF-insured depository institution; and subject to, and has received at least a satisfactory performance evaluation rating for at least the two most recent consecutive examinations under, the Community Reinvestment Act), such seller is presumed to meet the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section.

(vii) For a class or classes of institutions or organizations whose primary business is financing affordable housing mortgages, *e.g.*, State Housing Finance Agencies or Special Affordable Housing Loan Consortia, such classes of organizations or institutions are presumed to meet the requirements of paragraphs (e)(4)(i) through (e)(4)(iv) of this section. A determination that specific classes of institutions or organizations are primarily engaged in the business of financing affordable housing mortgages must be made in advance by HUD.

* * * * *

(f) *Partial credit activities.* Mortgages insured under HUD's Title I program, which includes property improvement and manufactured home loans, shall receive one-half credit toward the Special Affordable Housing Goal until such time as the Government National Mortgage Association fully implements a program to purchase and securitize Title I loans.

(g) *No credit activities.* * * * For purposes of this paragraph (g), "mortgages or mortgage-backed securities portfolios" includes mortgages retained by Fannie Mae or Freddie Mac and mortgages utilized to back mortgage-backed securities.

* * * * *

6. In § 81.15, paragraph (a) is revised, paragraph (d) is amended by adding a new sentence at the end, and paragraph (e) is amended by redesignating paragraph (e)(6) as (e)(7), and by adding a new paragraph (e)(6), to read as follows:

§ 81.15 General requirements.

(a) *Calculating the numerator and denominator.* Performance under each of the housing goals shall be measured using a fraction that is converted into a percentage.

(1) *The numerator.* The numerator of each fraction is the number of dwelling units financed by a GSE's mortgage purchases in a particular year that count toward achievement of the housing goal.

(2) *The denominator.* The denominator of each fraction is, for all mortgages purchased, the number of dwelling units that could count toward achievement of the goal under appropriate circumstances. The denominator shall not include GSE transactions or activities that are not mortgages or mortgage purchases as defined by HUD or transactions that are specifically excluded as ineligible under § 81.16(b).

(3) *Missing data or information.* When a GSE lacks sufficient data or information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of a particular housing goal, that mortgage purchase shall be included in the denominator for that housing goal, except under the circumstances described in paragraphs (d) and (e)(6) of this section.

* * * * *

(d) *Counting owner-occupied units.* * * * When the income of the mortgagors is not available to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, a GSE may exclude single- family owner-occupied units located in census tracts with median income less than or equal to area median income according to the most recent census from the denominator as well as the numerator, up to a ceiling of one percent of the total number of single-family owner-occupied dwelling units eligible to be counted toward the respective housing goal in the current year. Mortgage

purchases in excess of the ceiling will be included in the denominator and excluded from the numerator.

(e) * * *

* * * * *

(6) *Income or Rent Data Unavailable.* (i) *Multifamily.* When neither the income of prospective or actual tenants of a dwelling unit nor actual or average rent data is available, a GSEs' performance with respect to such a unit may be evaluated with estimated rents based on market rental data, so long as the Department has reviewed and approved the data source and methodology for such estimated data. The GSE must identify such data as estimated data. When the application of estimated rents based on an approved market rental data source and methodology is not possible, and therefore the GSE lacks sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward the achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, a GSE may exclude units in multifamily properties from the denominator as well as the numerator in calculating performance under those goals.

(ii) *Rental units in 1–4 unit single family properties.* When neither the income of prospective or actual tenants of a rental unit in a 1–4 unit single family property nor actual or average rent data is available, and, therefore, the GSE lacks sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, a GSE may exclude rental units in 1–4 unit single family properties from the denominator as well as the numerator in calculating performance under those goals.

* * * * *

7. Section 81.16 is amended as follows:

a. Paragraph (a) is revised;

b. Paragraph (b) is amended by revising paragraphs (b)(3) and (b)(9) and by adding a new paragraph (b)(10);

c. Paragraph (c) is amended by revising the heading, by adding introductory text, by revising paragraph (c)(6), and by adding new paragraphs (c)(9), (c)(10) and (c)(11); and

d. A new paragraph (d) is added; to read as follows:

§ 81.16 Special counting requirements.

(a) *General.* HUD shall determine whether a GSE shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals. In this determination, HUD will consider whether a transaction or activity of the GSE is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market, provided however that such mortgage purchase actually fulfills the GSE's purposes and is in accordance with its Charter Act.

(b) * * *

* * * * *

(3) Purchases of non-conventional mortgages except:

(i) Where such mortgages are acquired under a risk-sharing arrangement with a Federal agency;

(ii) Mortgages under HUD's Home Equity Conversion Mortgage ("HECM") Insurance Program, 12 U.S.C. 1715 z–20; mortgages guaranteed by the Rural Housing Services' Guaranteed Rural Housing Loan Program, 7 U.S.C. 1933; and mortgages on properties on tribal lands insured under FHA's Section 248 program, 12 U.S.C. 1715 z–13, or HUD's Section 184 program, 12 U.S.C. 1515 z–13a; or

(iii) Mortgages under other mortgage programs involving Federal guarantees, insurance or other Federal obligation where the Department determines in writing that the financing needs addressed by the particular mortgage program are not well served and that the mortgage purchases under such program should count under the housing goals, provided the GSE submits documentation to HUD that supports eligibility for HUD's approval.

* * * * *

(9) Single family mortgage refinancings that result from conversion of balloon notes to fully amortizing notes, if the GSE already owns or has an interest in the balloon note at the time conversion occurs. New purchases of balloon mortgages or mortgages for which the borrower has exercised a conversion option prior to purchase and/or guarantee by the GSE will be included in the numerator and denominator as appropriate in accordance with § 81.15.

(10) Any combination of (1) through (9) above.

(c) *Supplemental rules.* Subject to HUD's primary determination of whether a GSE shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals as provided in paragraph (a) of this section, the following supplemental rules apply:

* * * * *

(6) *Seasoned mortgages.* A GSE's purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of these goals and shall be included in the numerator, as appropriate, and the denominator in calculating the GSE's performance under the housing goals, except where the GSE has already counted the mortgage under a housing goal applicable to 1993 or any subsequent year, or where the Department determines, based upon a written request by a GSE, that a seasoned mortgage or class of such mortgages should be excluded from the numerator and the denominator in order to further the purposes of the Special Affordable Housing Goal.

* * * * *

(9) *Expiring assistance contracts.* In accordance with 12 U.S.C. 4565(a)(5), actions that assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring Section 8 contracts shall receive partial to full credit under the housing goals as determined by HUD. For purposes of the paragraph, "actions" include the restructuring or refinancing of mortgages, and credit enhancements or risk-sharing arrangements to modified or refinanced mortgages.

(10) *Bonus points.* The following transactions or activities, to the extent the units otherwise qualify for one or more of the housing goals, will receive bonus points toward the particular goal or goals, by receiving double weight in the numerator under a housing goal or goals and receiving single weight in the denominator for the housing goal or goals. Bonus points will not be awarded for the purposes of calculating performance under the special affordable housing multifamily subgoal included in § 81.14(c). All transactions or activities meeting the following criteria will qualify for bonus points even if a unit is missing affordability data and the missing affordability data is treated consistent with § 81.15(a)(3). Bonus points are available to the GSEs for purposes of determining housing goal performance through December 31, 2003. Beginning in calendar year 2004, bonus points are not available for goal performance counting purposes unless the Department extends their availability beyond December 31, 2003, for one or more types of activities and notifies the GSEs by letter of that determination.

(i) *Small multifamily properties.* HUD will assign double weight in the numerator under a housing goal or goals for each unit in small multifamily properties (5 to 50 units), provided, however, that bonus points will not be awarded for properties that are aggregated or disaggregated into 5–50

unit financing packages for the purpose of earning bonus points.

(ii) *Rental units in 2–4 unit owner-occupied properties.* HUD will assign double weight in the numerator under the housing goals for each unit in 2- to 4-unit owner-occupied properties, to the extent that the number of such units financed by mortgage purchases are in excess of 60 percent of the average number of units qualifying for the respective housing goal during the immediately preceding five years.

(11) *Temporary adjustment factor for Freddie Mac.* In determining Freddie Mac's performance on the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, HUD will count each qualifying unit in a property with more than 50 units as 1.2 units in calculating the numerator and as one unit in calculating the denominator, for the respective housing goal. HUD will apply this temporary adjustment factor for each calendar year from 2000 through 2003; for calendar years 2004 and thereafter, this temporary adjustment factor will no longer apply.

(d) *HUD review of transactions.* HUD will determine whether a class of transactions counts as a mortgage purchase under the housing goals. If a GSE is considering a class of transactions for purposes of counting under the housing goals, the GSE may provide HUD detailed information regarding the transactions for evaluation and determination in accordance with this section. In making its determination, HUD may also request and evaluate information from a GSE with regard to how the GSE believes the transactions should be counted. HUD will notify the GSE of its determination regarding the extent to which the class of transactions should count under the goals.

8. Section 81.17 is amended by adding a new paragraph (d), to read as follows:

§ 81.17 Affordability—income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).

* * * * *

(d) *Especially-low-income* means, in the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	35
2	40
3	45
4	50
5 or more	(*)

*50% plus (4.0% multiplied by the number of persons in excess of 4).

9. Section 81.18 is amended by adding a new paragraph (d), to read as follows:

§ 81.18 Affordability—income level definitions—family size not known (actual or prospective tenants).

(d) *For especially-low-income,* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	35
1 bedroom	37.5
2 bedrooms	45
3 bedrooms or more	(*)

*52% plus (6.0% multiplied by the number of bedrooms in excess of 3).

10. In § 81.19, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added, to read as follows:

§ 81.19 Affordability—Rent level definitions—tenant income is not known.

* * * * *

(d) *For especially-low-income,* maximum affordable rents to count as housing for especially-low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	10.5
1 bedroom	11.25
2 bedrooms	13.5
3 bedrooms or more	(*)

*15.6% plus (1.8% multiplied by the number of bedrooms in excess of 3).

* * * * *

Dated: January 20, 2000.

William C. Apgar,

Assistant Secretary for Housing.

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix A—Departmental Considerations to Establish The Low- and Moderate-Income Housing Goal

A. Introduction

1. Establishment of Goal

In establishing the Low- and Moderate-Income Housing Goals for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), collectively referred to as the Government-Sponsored Enterprises (GSEs), Section 1332 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4562) (FHEFSSA) requires the Secretary to consider:

1. National housing needs;
2. Economic, housing, and demographic conditions;
3. The performance and effort of the enterprises toward achieving the Low-and Moderate-Income Housing Goal in previous years;
4. The size of the conventional mortgage market serving low-and moderate-income families relative to the size of the overall conventional mortgage market;
5. The ability of the enterprises to lead the industry in making mortgage credit available for low- and moderate-income families; and
6. The need to maintain the sound financial condition of the enterprises.

2. Underlying Data

In considering the statutory factors in establishing these goals, HUD relied on data from the 1995 American Housing Survey (AHS), the 1990 Census of Population and Housing, the 1991 Residential Finance Survey (RFS), the 1995 Property Owners and Managers Survey (POMS), other government reports, reports submitted in accordance with the Home Mortgage Disclosure Act (HMDA), and the GSEs. In order to measure performance toward achieving the Low- and Moderate-Income Housing Goal in previous years, HUD analyzed the loan-level data on all mortgages purchased by the GSEs for 1993–98 in accordance with the goal counting provisions established by the Department in the December 1995 rule (24 CFR part 81).

3. Conclusions Based on Consideration of the Factors

The discussion of the first two factors covers a range of topics on housing needs and economic and demographic trends that are important for understanding mortgage markets. Information is provided which describes the market environment in which the GSEs must operate (for example information on trends in refinancing activity) and is useful for gauging the reasonableness of specific levels of the Low- and Moderate-Income Housing Goal. In addition, the severe housing problems faced by lower-income families are discussed.

The third factor (past performance) and the fifth factor (ability of the GSEs to lead the industry) are also discussed in some detail in this Appendix. The fourth factor (size of the market) and the sixth factor (need to maintain the GSEs' sound financial condition) are mentioned only briefly in this

Appendix. Detailed analyses of the fourth factor and the sixth factor are contained in Appendix D and in the economic analysis of this proposed rule, respectively.

The factors are discussed in sections B through H of this appendix. Section I summarizes the findings and presents the Department's conclusions concerning the Low- and Moderate-Income Housing Goal. The consideration of the factors in this Appendix has led the Secretary to the following conclusions:

(i) Despite the record national homeownership rate of 66.3 percent in 1998, much lower rates prevailed for minorities, especially for African-American households (46.1 percent) and Hispanics (44.7 percent), and these lower rates are only partly accounted for by differences in income, age, and other socioeconomic factors.

(ii) Pervasive and widespread disparities in mortgage lending continued across the nation in 1997, when the loan denial rate was 10.2 percent for white mortgage applicants, but 23.3 percent for African Americans and 18.8 percent for Hispanics.[1]

(iii) Despite strong economic growth, low unemployment, the lowest mortgage rates in more than 30 years, and relatively stable home prices, there is clear and compelling evidence of deep and persistent housing problems for Americans with the lowest incomes. The number of very-low-income American households with "worst case" housing needs remains at an all-time high—5.3 million.[2]

(iv) Changing population demographics will result in a need for the primary and secondary mortgage markets to meet nontraditional credit needs, respond to diverse housing preferences and overcome information barriers that many immigrants face. In addition, market segments such as single-family rental properties, small multifamily properties, manufactured housing, and older inner city properties would benefit from the additional financing and pricing efficiencies of a more active secondary mortgage market.

(v) The Low- and Moderate-Income Housing Goals for both GSEs were 40 percent in 1996 and 42 percent in 1997. Fannie Mae surpassed these goals, with a performance of 45.6 percent in 1996, 45.7 percent in 1997 and 44.1 percent in 1998. Freddie Mac's performance of 41.1 percent in 1996, 42.6 percent in 1997 and 42.9 percent in 1998 narrowly exceeded these goals.

(vi) Several studies have shown that both Fannie Mae and Freddie Mac lag behind depository institutions and the overall conventional conforming market in providing affordable home loans to lower-income borrowers and underserved neighborhoods. Fannie Mae has made efforts to improve its performance. Freddie Mac, however, has made much less improvement, and therefore continues to fall behind Fannie Mae, depositories, and the overall market in serving lower-income and minority families and their neighborhoods. Thus, there is room for both GSEs (but particularly Freddie Mac) to improve their funding of single-family home mortgages for lower-income families and underserved communities.

(vii) The GSEs' presence in the goal-qualifying market is significantly less than their presence in the overall mortgage market. Specifically, HUD estimates that they accounted for 39 percent of all owner-occupied and rental units financed in the primary market in 1997, but only 30 percent of low- and moderate-income units financed. Their role was even lower for low- and moderate-income rental properties, where they accounted for 24 percent of low- and moderate-income multifamily units financed and only 13 percent of low- and moderate-income single-family rental units financed.

(viii) Other issues have also been raised about the GSEs' affordable lending performance. A large percentage of the lower-income loans purchased by the enterprises have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the mortgage credit needs of lower-income families who do not have the cash to make a high down payment. Also, while single-family rental properties are an important source of low- and moderate-income rental housing, they represent only a small portion of the GSEs' business.

(ix) Freddie Mac has re-entered the multifamily market after withdrawing for a time in the early 1990s. Thus, concerns regarding Freddie Mac's multifamily capabilities no longer constrain their performance with regard to the Low- and Moderate-Income Housing Goal and for the Special Affordable Housing Goal to the same degree that prevailed at the time the Department issued its 1995 GSE regulations. However, Freddie Mac's multifamily presence remains proportionately lower than that of Fannie Mae. For example, units in multifamily properties accounted for 7.9 percent of Freddie Mac's mortgage purchases during 1996–1998, compared with 12.2 percent for Fannie Mae. Because a relatively large proportion of multifamily units qualify for the Low- and Moderate-Income Housing Goal and for the Special Affordable Housing Goal, Freddie Mac's weaker multifamily presence is a major factor contributing to its weaker overall performance on these two housing goals relative to Fannie Mae.

(x) The overall presence of both GSEs in the multifamily mortgage market falls short of their involvement in the single-family market. Specifically, the GSEs' purchases of 1997 originations have accounted for 49 percent of the owner market, but only 22 percent of the multifamily market. Further expansion of the presence of both GSEs in the multifamily market is needed in order for them to make significant progress in closing the gaps between the affordability of their mortgage purchases and that of the overall conventional market.

(xi) The GSEs have proceeded cautiously in expanding their multifamily purchases during the 1990s. Fannie Mae's multifamily lending has been described by Standard & Poor's as "extremely conservative," and Freddie Mac has not experienced a single default on the multifamily mortgages it has purchased since 1993.[3] By the end of the 1998 calendar year, both GSEs' multifamily performance had improved to the point where multifamily delinquency rates were *less* than those in single-family.[4]

(xii) Because of the advantages conferred by Government sponsorship, the GSEs are in a unique position to provide leadership in addressing the excessive cost and difficulty in obtaining mortgage financing for underserved segments of the multifamily market, including small properties with 5–50 units and properties in need of rehabilitation.

B. Factor 1: National Housing Needs

This section reviews the general housing needs of low- and moderate-income families that exist today and are expected to continue in the near future. In so doing, the section focuses on the affordability problems of lower-income families and on racial disparities in homeownership and mortgage lending. It also notes some special problems, such as the need to rehabilitate our older urban housing stock.

1. Homeownership Gaps

Despite a record national homeownership rate, many Americans, including disproportionate numbers of racial and ethnic minorities, are shut out of homeownership opportunities. Although the national homeownership rate for all Americans was at an all-time high of 66.3 percent in 1998, the rate for minority households was less. The homeownership rate for African-American households was 46.1 percent. Similarly, just 44.7 percent of Hispanic households owned a home.

Importance of Homeownership. Homeownership is one of the most common forms of property ownership as well as savings.[5] In fact, home equity is the largest source of wealth for most Americans. Median net wealth for renters was less than five percent of the median net wealth for homeowners in 1995. Half of all homeowners in 1995 held more than half of their net wealth in the form of home equity. Even among low-income homeowners (household income less than $20,000), half held more than 70 percent of their wealth in home equity in 1995.[6] Thus a homeownership gap translates directly into a wealth gap.

Homeownership promotes social and community stability by increasing the

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[1] Mortgage denial rates are based on 1997 HMDA data; data for selected manufactured housing lenders and subprime lenders are excluded from these comparisons.

[2] U.S. Department of Housing and Urban Development. *Waiting in Vain: Update on America's Rental Housing Crisis.* (March, 1999).

[3] "Final Report of Standard & Poor's to the Office of Federal Housing Enterprise Oversight," February 3, 1997; Freddie Mac, *1998 Annual Report to Shareholders*, p. 6.

[4] Freddie Mac reported delinquency rates of 0.37 for multifamily and 0.50 percent for single-family in its *1998 Annual Report to Shareholders*, p. 30. Corresponding figures for Fannie Mae were 0.29 percent for multifamily and 0.58 percent for single-family *(1998 Annual Report to Shareholders*, p. 28).

[5] According to the National Association of Realtors, *Housing Market Will Change in New Millennium as Population Shifts*, (November 7, 1998), 45 percent of U.S. household wealth is in the form of home equity. Since 1968, home prices have increased each year, on average, at the rate of inflation plus up to two percentage points.

[6] Joint Center for Housing Studies of Harvard University. *State of the Nation's Housing 1997* (1997).

number of stakeholders and reducing disparities in the distributions of wealth and income. There is growing evidence that planning for and meeting the demands of homeownership may reinforce the qualities of responsibility and self-reliance. White and Green [7] provide empirical support for the association of homeownership with a more responsible, self-reliant citizenry. Both private and public benefits are increased to the extent that developing and reinforcing these qualities improve prospects for individual economic opportunities.

Barriers to Homeownership. Insufficient income, high debt burdens, and limited savings are obstacles to homeownership for younger families. As home prices skyrocketed during the late 1970s and early 1980s, real incomes also stagnated, with earnings growth particularly slow for blue collar and less educated workers. Through most of the 1980s, the combination of slow income growth and increasing rents made saving for home purchase more difficult, and relatively high interest rates required large fractions of family income for home mortgage payments. Thus, during that period, fewer households had the financial resources to meet down payment requirements, closing costs, and monthly mortgage payments.

Economic expansion and lower mortgage rates have substantially improved homeownership affordability during the 1990s. Many young, lower-income, and minority families who were closed out of the housing market during the 1980s have re-entered the housing market. However, many of these households still lack the financial resources and earning power to take advantage of today's homebuying opportunities. Several trends have contributed to the reduction in the real earnings of young adults without college education over the last 15 years, including technological changes that favor white-collar employment, losses of unionized manufacturing jobs, and wage pressures exerted by globalization. Fully 45 percent of the nation's population between the ages of 25 and 34 have no advanced education and are therefore at risk of being unable to afford homeownership.[8] African Americans and Hispanics, who have lower average levels of educational attainment than whites, are especially disadvantaged by the erosion in wages among less educated workers.

In addition to low income, high debts are a primary reason households cannot afford to purchase a home. According to a 1993 Census Bureau report, nearly 53 percent of renter families have both insufficient income and excessive debt problems that may cause difficulty in financing a home purchase.[9] High debt-to-income ratios frequently make potential borrowers ineligible for mortgages based on the underwriting criteria established in the conventional mortgage market.

An additional barrier to homeownership is the fear and uncertainty about the buying process and the risks of ownership. A study using focus groups with renters found that even among those whose financial status would make them capable of homeownership, many feel that the buying process was insurmountable because they feared rejection by the lender or being taken advantage of.[10] Also, many fear the obligations of ownership, because of the concerns about the risk of future deterioration of the house or the neighborhood.

Finally, discrimination in mortgage lending continues to be a barrier to homeownership. Disparities in treatment between borrowers of different races and neighborhoods of different racial makeup have been well documented. These disparities are discussed in the next section.

2. Disparities in Mortgage Financing

Disparities Between Borrowers of Different Races. Research based on Home Mortgage Disclosure Act (HMDA) data suggests pervasive and widespread disparities in mortgage lending across the Nation. For 1997, the denial rate for white mortgage applicants was 10.2 percent, while 23.3 percent of African-American and 18.8 percent of Hispanic applicants were denied. Even after controlling for income, the African-American denial rate was approximately twice that of white applicants. A major study by researchers at the Federal Reserve Bank of Boston found that mortgage denial rates remained substantially higher for minorities in 1991–93, even after controlling for indicators of credit risk.[11] African-American and Hispanic applicants in Boston with the same borrower and property characteristics as white applicants had a 17 percent denial rate, compared with the 11 percent denial rate experienced by whites. A subsequent study conducted at the Federal Reserve Bank of Chicago reports similar findings.[12]

Several possible explanations for these lending disparities have been suggested. The studies by the Boston and Chicago Federal Reserve Banks found that racial disparities cannot be explained by reported differences in creditworthiness. In other words, minorities are more likely to be denied than whites with similar credit characteristics, which suggests lender discrimination. In addition, loan officers, who may believe that race is correlated with credit risk, may use race as a screening device to save time, rather than devote effort to distinguishing the creditworthiness of the individual applicant.[13] This violates the Fair Housing Act.

Underwriting Rigidities. Underwriting rigidities may fail to accommodate creditworthy low-income or minority applicants. For example, under traditional underwriting procedures, applicants who have conscientiously paid rent and utility bills on time but have never used consumer credit would be penalized for having no credit record. Applicants who have remained steadily employed, but have changed jobs frequently, would also be penalized. Over the past few years, lenders, private mortgage insurers, and the GSEs have adjusted their underwriting guidelines to take into account these special circumstances of lower-income families. Many of the changes recently undertaken by the industry to expand homeownership have focused on finding alternative underwriting guidelines to establish creditworthiness that do not disadvantage creditworthy minority or low-income applicants.

However, because of the enhanced roles of credit scoring and automated underwriting in the mortgage origination process, it is unclear to what degree the reduced rigidity in industry standards will benefit borrowers who have been adversely impacted by the traditional guidelines. Some industry observers have expressed a concern that the greater flexibility in the industry's written underwriting guidelines may not be reflected in the numerical credit and mortgage scores which play a major role in the automated underwriting systems that the GSEs and others have developed. Thus lower-income and particularly minority loan applicants, who often have lower credit scores than other applicants, may be dependent on the willingness of lenders to take the time to look beyond such credit scores and consider any appropriate "mitigating factors," such as the timely payment of their bills, in the underwriting process. For example, there is a concern in the industry that a "FICO" score less than 620 means an automatic rejection of a loan application without further consideration of any such factors.[14] This could disproportionately affect minority applicants. More information on the distribution of credit scores and on the

[7] Michelle J. White, and Richard K. Green. "Measuring the Benefits of Homeowning: Effects on Children," *Journal of Urban Economics.* 41 (May 1997), pp. 441–61.

[8] Joint Center for Housing Studies of Harvard University. *State of the Nation's Housing 1998* (1998).

[9] Howard Savage and Peter Fronczek, *Who Can Afford to Buy A House in 1991?*, U.S. Bureau of the Census, Current Housing Reports H121/93–3, (July 1993), p. ix.

[10] Donald S. Bradley and Peter Zorn. "Fear of Homebuying: Why Financially Able Households May Avoid Ownership," *Secondary Mortgage Markets* (1996).

[11] Munnell, Alicia H., Geoffrey M. B. Tootell, Lynn E. Browne, and James McEneaney, "Mortgage Lending in Boston: Interpreting HMDA Data," *American Economic Review.* 86 (March 1996).

[12] William C. Hunter. "The Cultural Affinity Hypothesis and Mortgage Lending Decisions," WP–95–8, Federal Reserve Bank of Chicago, (1995). In addition, a study undertaken for HUD also found higher denial rates among FHA borrowers for minorities after controlling for credit risk. See Ann B. Schnare and Stuart A. Gabriel. "The Role of FHA in the Provision of Credit to Minorities," ICF Incorporated, Prepared for the U.S. Department of Housing and Urban Development, (April 25, 1994).

[13] See Charles W. Calomeris, Charles M. Kahn and Stanley D. Longhofer. "Housing Finance Intervention and Private Incentives: Helping Minorities and the Poor," *Journal of Money, Credit and Banking.* 26 (August 1994), pp. 634–74, for more discussion of this phenomenon, which is called "statistical discrimination."

[14] The FICO score, developed by Fair, Isaac and Company, is summary index of an individual's credit history. The FICO score is based on elements from the applicant's credit report, such as number of delinquencies in the past year, number of trade lines, and the amount owed on trade lines as compared to the available maximum credit limits. The FICO score is said to reflect the credit risk of the applicant and a score of 620 is often cited as a threshold between being an acceptable and an unacceptable credit risk.

effects of implementing automated underwriting systems is needed.[15]

Disparities Between Neighborhoods. Mortgage credit also appears to be less accessible in low-income and high-minority neighborhoods. As discussed in Appendix B, 1997 HMDA data show that mortgage denial rates are nearly twice as high in census tracts with low-income and/or high-minority composition, as in other tracts (23 percent versus 12 percent). Numerous studies have found that mortgage denial rates are higher in low-income census tracts, even accounting for other loan and borrower characteristics.[16] These geographic disparities can be the result of cost factors, such as the difficulty of appraising houses in these areas because of the paucity of previous sales of comparable homes. Sales of comparable homes may also be difficult to find due to the diversity of central city neighborhoods. The small loans prevalent in low-income areas are less profitable to lenders because up-front fees to loan originators are frequently based on a percentage of the loan amount, although the costs incurred are relatively fixed. Geographic disparities in mortgage lending and the issue of mortgage redlining are discussed further in Appendix B.

3. Affordability Problems and Worst Case Housing Needs

The severe problems faced by low-income homeowners and renters are documented in HUD's "Worst Case Housing Needs" report. This report, which is prepared biennially for Congress, is based on the American Housing Survey (AHS), conducted every two years by the Census Bureau for HUD. The latest report analyzes data from the 1995 AHS and focuses on the housing problems faced by low-income renters, but some data is also presented on families living in owner-occupied housing. In introducing a recent HUD report, Secretary Cuomo noted that it found "clear and compelling evidence of deep and persistent housing problems for Americans with the lowest incomes."[17]

The "Worst Cases" report measures three types of problems faced by homeowners and renters:

(i) Cost or rent burdens, where housing costs or rent exceed 50 percent of income (a "severe burden") or range from 31 percent to 50 percent of income (a "moderate burden");

(ii) The presence of physical problems involving plumbing, heating, maintenance, hallway, or the electrical system, which may lead to a classification of a residence as "severely inadequate" or "moderately inadequate;" and

(iii) Crowded housing, where there is more than one person per room in a residence.

The study reveals that in 1995, 5.3 million households had "worst case" housing needs, defined as housing costs greater than 50 percent of household income or severely inadequate housing among unassisted households. A preliminary HUD analysis of 1997 AHS data indicates that worst case needs have remained at or near this level.[18]

a. Problems Faced by Owners

Of the 63.5 million owner households in 1995, 4.9 million (8 percent) confronted a severe cost burden and another 8.1 million (13 percent) faced a moderate cost burden. There were 1.2 million households with severe physical problems and 0.9 million which were overcrowded. The report found that 25 percent of American homeowners faced at least one severe or moderate problem.

Not surprisingly, problems were most common among very low-income owners.[19] Nearly a third of these households faced a severe cost burden, and an additional 22 percent faced a moderate cost burden. And nearly 10 percent of these families lived in severely or moderately inadequate housing, while 3 percent faced overcrowding. Only 40 percent of very low-income owners reported no problems.

Over time the percentage of owners faced with severe or moderate physical problems has decreased, as has the portion living in overcrowded conditions. However, affordability problems have grown—the shares facing severe (moderate) cost burdens were only 3 percent (5 percent) in 1978, but rose to 5 percent (11 percent) in 1989 and 8 percent (13 percent) in 1995. The increase in affordability problems apparently reflects a rise in mortgage debt in the late 1980s and early 1990s, from 21 percent of homeowners' equity in 1983 to 36 percent in 1995.[20] As a result of the increased incidence of severe and moderate cost burdens, the share of owners reporting no problems fell from 84 percent in 1978 to 78 percent in 1989 and 75 percent in 1995.

b. Problems Faced by Renters

Problems of all three types listed above are more common among renters than among homeowners. In 1995 there were 6.2 million renter households (18 percent of all renters) who paid more than 50 percent of their income for rent.[21] Another 8 million faced a moderate rent burden, thus in total 40 percent of renters paid more than 30 percent of their income for rent.

Among very low-income renters, 70 percent faced an affordability problem, including 41 percent who paid more than half of their income in rent. More than one-third of renters with incomes between 51 percent and 80 percent of area median family income also paid more than 30 percent of their income for rent.

Affordability problems have increased over time among renters. The shares of renters with severe (moderate) rent burdens rose from 14 percent (18 percent) in 1978 to 15 percent (21 percent) in 1989 and 18 percent (22 percent) in 1995.

The share of families living in inadequate housing in 1995 was higher for renters (9 percent) than for owners (5 percent), as was the share living in overcrowded housing (5 percent for renters, but only 1 percent for owners). Crowding and inadequate housing were more common among lower-income renters, but among even the lowest income group, affordability was the dominant problem. The prevalence of inadequate and crowded rental housing has diminished over time, while affordability problems have grown.

Other problems faced by renters discussed in the "Worst Cases" report include the loss between 1993 and 1995 of 900,000 rental units affordable to very low-income families, the increase in "worst case needs" among working families between 1991 and 1995, and the shortage of units affordable to very low-income households (especially in the West).

The "Worst Cases" report presented analysis of 20-year trends in affordable housing units up through 1995, showing a steady decline in the number of such units. A recently-released HUD analysis of housing vacancy survey data reveals that this trend has continued since 1995, and that in the two years from 1996 to 1998 the number of units that rent for less than $300 (inflation-adjusted) declined by 19 percent.[22] The same study reports the median asking rent for new rental units as $726, or beyond the affordable range.

HUD's recent study on market trends includes also an analysis of trends in the Consumer Price Index from 1996 to 1998.[23] During this two-year period the price index for all items grew by 3.9 percent, but the price index for residential rent rose 6.2 percent. The same report also cites Bureau of Labor Statistics data showing that rents slightly outpaced income between 1995 and 1997 for the 20 percent of U.S. households with the lowest incomes. The report concludes that low-income renters are continuing to face an affordability crisis.

4. Other National Housing Needs

In addition to the broad housing needs discussed above, there are additional needs confronting specific sectors of the housing and mortgage markets. This section presents a brief discussion of three such areas and the roles that the GSEs play or might play in addressing the needs in these areas. Other

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[15] Section 3.b of this appendix provides a further discussion of automated underwriting.

[16] Robert B. Avery, Patricia E. Beeson and Mark E. Sniderman. *Understanding Mortgage Markets: Evidence from HMDA*, Working Paper Series 94–21. Federal Reserve Bank of Cleveland (December 1994).

[17] *Rental Housing Assistance—The Crisis Continues: The 1997 Report to Congress on Worst Case Housing Needs*, Department of Housing and Urban Development, Office of Policy Development and Research, (April 1998), p. i. All statistics in this subsection are taken from this report, except as noted.

[18] U.S. Department of Housing and Urban Development. *Waiting in Vain: Update on America's Rental Housing Crisis*. (March, 1999), section I.

[19] Very low-income households are defined in the report as those whose income, adjusted for family size, is less than 50 percent of area median income. This differs from the definition adopted by Congress in the GSE Act of 1992, which uses a cutoff of 60 percent and which does not adjust income for family size for owner-occupied dwelling units.

[20] Edward N. Wolff, "Recent Trends in the Size Distribution of Household Wealth," *The Journal of Economic Perspectives*, 12(3), (Summer 1998), p. 137.

[21] Rent is measured in this report as gross rent, defined as contract rent plus the cost of any utilities which are not included in contract rent.

[22] "Waiting in Vain" (cited above), section III.2.

[23] *Ibid.*, section III.1.

needs are discussed throughout these appendices.

a. Single-family Rental Housing

The 1995 American Housing Survey (AHS) reported that 43 percent of all rental housing units are located in "multifamily" properties—*i.e.*, properties that contain 5 or more rental units. The bulk (57 percent) of rental units are found in the "mom and pop shops" of the rental market—"single-family" rental properties, containing 1–4 units. These small properties are largely individually-owned and managed, and in many cases the owner-managers live in one of the units in the property. They include many properties in older cities, such as the duplexes in Baltimore and the triple-deckers in Boston. A number of these single-family rental properties are in need of financing for rehabilitation, discussed in the next subsection.

Single-family rental units play an especially important role in lower-income housing. The 1995 AHS found that 57 percent of such units were affordable to very low-income families—exceeding the corresponding share of 49 percent for multifamily units. These units also play a significant role in the GSEs' performance on the housing goals, since 34 percent of the single-family rental units financed by the GSEs in 1997 were affordable to very low-income families.

There is not, however, a strong secondary market for single-family rental mortgages. While single-family rental properties comprise a large segment of the rental stock for lower-income families, they make up a small portion of the GSEs' business. In 1997 the GSEs purchased $11.6 billion in mortgages for such properties, but this represented only 4 percent of the total dollar volume of each enterprise's 1997 business and only 7 percent of total single-family units financed by each GSE. With regard to their credit market share, HUD estimates that the GSEs have financed only about 13 percent of all single-family rental units that received financing in 1997, well below the GSEs' estimated market share of 49 percent for single-family owner properties.

Given the large size of this market, the high percentage of these units which qualify for the GSEs' housing goals, and the weakness of the secondary market for mortgages on these properties, an enhanced presence by Fannie Mae and Freddie Mac in the single-family rental mortgage market would seem warranted.[24]

b. Rehabilitation Problems of Older Areas

A major problem facing lower-income households is that low-cost housing units continue to disappear from the existing housing stock. Older properties are in need of upgrading and rehabilitation. These aging properties are concentrated in central cities and older inner suburbs, and they include not only detached single-family homes, but also small multifamily properties that have begun to deteriorate.

The ability of the nation to maintain the quality and availability of the existing affordable housing stock and to stabilize the neighborhoods where it is found depends on an adequate supply of credit to rehabilitate and repair older units. But obtaining the funds to fix up older properties can be difficult. The owners of small rental properties in need of rehabilitation may be unsophisticated in obtaining financing. The properties are often occupied, and this can complicate the rehabilitation process. Lenders may be reluctant to extend credit because of a sometimes-inaccurate perception of high credit risk involved in such loans.

The GSEs and other market participants have recently begun to pay more attention to these needs for financing of affordable rental housing rehabilitation.[25] However, extra effort is required, due to the complexities of rehabilitation financing, as there is still a need to do more.

c. Small Multifamily Properties

There is evidence that small multifamily properties with 5–50 units have been adversely affected by differentials in the cost of mortgage financing relative to larger properties.[26] While mortgage loans can generally be obtained for most properties, the financing that is available is relatively expensive, with interest rates as much as 150 basis points higher than those on standard multifamily loans. Loan products are characterized by shorter terms and adjustable interest rates. Borrowers typically incur costs for origination and placement fees, environmental reviews, architectural certifications (on new construction or substantial rehabilitation projects), inspections, attorney opinions and certifications, credit reviews, appraisals, and market surveys.[27] Because of a large fixed element, these costs are usually not scaled according to the mortgage loan amount or number of dwelling units in a property and consequently are often prohibitively high on smaller projects.

d. Other Needs

Further discussions of other housing needs and mortgage market problems are provided in the following sections on economic, housing, and demographic conditions. In the single-family area, for example, an important trend has been the growth of the subprime market and the GSEs' participation in the A-minus portion of that market. Manufactured housing finance and rural housing finance are areas that could be served more efficiently with an enhanced secondary market presence. In the multifamily area, properties in need of rehabilitation represent a market segment where financing has sometimes been difficult. Other housing needs and mortgage market problems are also discussed.

C. Factor 2: Economic, Housing, and Demographic Conditions: Single-Family Mortgage Market

This section discusses economic, housing, and demographic conditions that affect the single-family mortgage market. After a review of housing trends and underlying demographic conditions that influence homeownership, the discussion focuses on specific issues related to the single-family owner mortgage market. This subsection includes descriptions of recent market interest rate trends, homebuyer characteristics, and the state of affordable lending. Section D follows with a discussion of the economic, housing, and demographic conditions affecting the multifamily mortgage market.

1. Recent Trends in the Housing Market

Solid economic growth, low interest rates, price stability, and the lowest unemployment rate since 1969 combined to make 1998 a very strong year for the housing market. The employment-population ratio reached a record 64.1 percent last year, and a broad measure of labor market distress, combining the number of unemployed and the duration of unemployment, was down by 47 percent from its 1992 peak.[28] Rising real wages, a strong stock market, and higher home prices all contributed to a continuation of the rise in net household worth, following an estimated $4 trillion gain in 1997, contributing to the strong demand for housing.[29]

Homeownership Rate. In 1980, 65.6 percent of Americans owned their own home, but due to the unsettled economic conditions of the 1980s, this share fell to 63.8 percent by 1989. Major gains in ownership have occurred over the last few years, with the homeownership rate reaching a record level of 66.3 percent in 1998, when the number of households owning their own home was 9 million greater than in 1989.

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[24] A detailed discussion of the GSE's activities in this area is contained in Theresa R. Diventi, *The GSE's Purchases of Single-Family Rental Property Mortgages,* Housing Finance Working Paper No. HF–004, Office of Policy Development and Research, Department of Housing and Urban Development, (March 1998).

[25] One program that shows promise is Fannie Mae's HomeStyle Home IMprovement Mortgage Loan Product. Under this program, Fannie Mae will purchase mortgages that finance the purchase and rehabilitation of 1- to 4-unit properties in "as-is" condition. The mortgage amount is limited to 90 percent of the appraised "as completed" value, with the rehab amount not to exceed 50 percent of this value.

[26] See Drew Schneider and James Follain, "A New Initiative in the Federal Housing Administration's Office of Multifamily Housing Programs: An Assessment of Small Projects Processing," *Cityscape: A Journal of Policy Development and Research* 4(1), (1998), pp. 43–58; and William Segal and Christopher Herbert, *Segmentation of the Multifamily Mortgage Market: The Case of Small Properties,* paper presented to annual meetings of the American Real Estate and Urban Economics Association, (January 2000).

[27] These costs have been estimated at $30,000 for a typical transaction. Presentation by Jeff Stern, Vice President, Enterprise Mortgage Investments, HUD GSE Working Group, July 23, 1998. The most comprehensive account of the multifamily housing finance system as it relates to small properties is contained in Schneider and Follain (see above reference).

[28] This measure is discussed in Paul B. Manchester, "A New Measure of Labor Market Distress," *Challenge,* (November/December 1982).

[29] Office of Federal Housing Enterprise Oversight, *1998 Report to Congress,* (June 1998), p. 28.

Gains in homeownership have been widespread over the last four years.[30] As a result, the homeownership rate rose from:

(i) 42.0 percent in 1993 to 46.1 percent in 1998 for African American households,

(ii) 39.4 percent in 1993 to 44.7 percent in 1998 for Hispanic households,

(iii) 73.7 percent in 1993 to 77.3 percent in 1998 for married couples with children,

(iv) 65.1 percent in 1993 to 66.9 percent in 1998 for household heads aged 35–44, and

(v) 48.9 percent in 1993 to 50.0 percent in 1998 for central city residents.

However, as these figures demonstrate, sizable gaps in homeownership remain—gaps which must be reduced if President Clinton's National Housing Strategy's goal of a homeownership rate of 67.5 percent by the year 2000 is to be met.

Sales of New and Existing Homes.[31] New home sales rose at a rate of 10 percent per year between 1991 and 1998 and exceeded the previous record level (set in 1977) by eight percent in 1998. The market for new homes has been strong throughout the nation, with record sales in the South and Midwest during 1998. New home sales in the Northeast and West, while strong, are running below the peak levels attained during their strong job markets of the mid-1980s and late-1970s, respectively.

The National Association of Realtors reported that 4.8 million existing homes were sold in 1998, overturning the old record set in 1997 by nearly 14 percent. The combined new and existing home sales also set a record of 5.7 million last year. Since existing homes account for more than 80 percent of the total market and sales of existing homes are strong throughout the country, combined sales reach record levels in three of the four major regions of the nation and came within 99 percent of the record in the Northeast.

One of the strongest sectors of the housing market in recent years has been shipments of manufactured homes, which more than doubled between 1991 and 1996, and leveled off at the 1996 record level during 1997 before rising slightly to 373,000 in 1998. Over two-thirds of manufactured home placements were in the South, where they comprised more than one-third of total new homes sold in 1998.

Economy/Housing Market Prospects. As noted above, the U.S. economy is coming off several years of economic expansion accompanied by low interest rates and high housing affordability. In fact, 1998 was a record year for the housing market. This leads to an important issue, what are the future prospects for the housing market?

While the housing market is expected to slow down over the next four years, the sales of existing homes during 1999 are on a record breaking pace of over five million single-family units.[32] Between 2000 and 2003, existing single-family home sales are expected to average 4.4 million units. In addition to existing home sales, housing starts are expected to average 1.5 million units over the same period. Housing should remain affordable, as indicated by out-of-pocket costs as a share of disposable income, which is expected to continue its downward trend through 2003, dipping below 25 percent. According to Standard & Poor's/DRI, mortgage interest rates are expected to average 7.1 percent over the next four years for a 30-year fixed rate mortgage.

The Congressional Budget Office (CBO)[33] projects that real Gross Domestic Product will grow at an average rate of 2.4 percent through 2003, down somewhat from the expected 4.0 percent growth rate during 1999. The ten-year Treasury rate is projected to average 5.6 percent between 2000 and 2003. Inflation, as measured by the Consumer Price Index (CPI) is projected to remain modest during the same period, averaging 2.5 percent. The unemployment rate is expected to remain low over the next four years, ranging between 4.6 and 5.1 percent. CBO expects housing starts to average 1.6 million units between 2000 and 2003, slightly off the 1999 level.

Certain risks exist, however, which could undermine the well-being of the economy. The probability of a recession still exists for the next couple of years. Under a pessimistic scenario (10 percent probability), Standard & Poor's DRI predicts that housing starts could fall during 2000, but by the end of the year, the economy would be well on its way to recovery with housing starts increasing steadily.[34] An alternate scenario has a recession arriving in 2002 (which DRI predicts with a probability of 30 percent). Under this scenario, housing starts would fall, but rebound strongly, along with the economy, in 2003.[35]

2. Underlying Demographic Conditions

Over the next 20 years, the U.S. population is expected to grow by an average of 2.4 million per year. This will likely result in 1.1 to 1.2 million new households per year, creating a continuing need for additional housing.[36] This section discusses important demographic trends behind these overall numbers that will likely affect housing demand in the future. These demographic forces include the baby-boom, baby-bust and echo baby-boom cycles; immigration trends; "trade-up buyers;" non-traditional and single households; and the growing income inequality between people with different levels of education.

As explained below, the role of traditional first-time homebuyers, 25-to-34 year-old married couples, in the housing market will be smaller in the next decade due to the aging of the baby-boom population. However, growing demand from immigrants and non-traditional homebuyers will likely fill in the void. The echo baby-boom (that is, children of the baby-boomers) will also add to housing demand later in the next decade. Finally, the growing income inequality between people with and without a post-secondary education will continue to affect the housing market.

The Baby-Boom Effect. The demand for housing during the 1980s and 1990s was driven, in large part, by the coming of homebuying age of the baby-boom generation, those born between 1945 and 1964. Homeownership rates for the oldest of the baby-boom generation, those born in the 1940s, rival those of the generation born in the 1930s. Due to significant house price appreciation in the late-1970s and 1980s, older baby-boomers have seen significant gains in their home equity and subsequently have been able to afford larger, more expensive homes. Circumstances were not so favorable for the middle baby-boomers. Housing was not very affordable during the 1980s, their peak homebuying age period. As a result, the homeownership rate, as well as wealth accumulation, for the group of people born in the 1950s lags that of the generations before them.[37]

As the youngest of the baby-boomers, those born in the 1960s, reached their peak homebuying years in the 1990s, housing became more affordable. While this cohort has achieved a homeownership rate equal to the middle baby-boomers, they live in larger, more expensive homes. As the baby-boom generation ages, demand for housing from this group is expected to wind down.[38]

The baby boom generation was followed by the baby bust generation, from 1965 through 1977. Since this population cohort is smaller than that of the baby boom generation, it is expected to lead to reduced housing demand during the next decade, though, as discussed below, other factors have kept the housing market very strong in the 1990s. However, the echo baby-boom generation (the children of the baby-boomers, who were born after 1977), while smaller than the baby-boom generation, will reach peak homebuying age later in the first decade of the new millennium, softening the blow somewhat.[39]

Immigrant Homebuyers. Past, present, and future immigration will also help keep homeownership growth at a respectable level. During the 1980s, 6 million legal immigrants entered the United States, compared with 4.2 million during the 1970s and 3.2 million during the 1960s.[40] As a result, the foreign-born population of the United States doubled from 9.6 million in 1970 to 19.8 million in 1990, and is expected

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[30] Homeownership rates prior to 1993 are not strictly comparable with those beginning in 1993 because of a change in weights from the 1980 Census to the 1990 Census.

[31] All of the home sales data in this section are obtained from *U.S. Housing Market Conditions, 2nd Quarter 1999,* U.S. Department of Housing and Urban Development, (August 1999).

[32] Existing home sales, housing starts, housing affordability and 30-year fixed rate mortgage rate forecasts are obtained from Standard & Poor's DRI, *The U.S. Economy.* (September 1999), pp. 53–5.

[33] Real GDP, unemployment, inflation, and treasury note interest rate projects are obtained for fiscal years 2000–2009 from *The Economic and Budget Outlook: An Update,* Washington DC: Congressional Budget Office, (July 1, 1999).

[34] Standard & Poor's DRI, *The U.S. Economy.* (September 1999), p. 54.

[35] Standard & Poor's DRI, *The U.S. Economy.* (September 1999), p. 54.

[36] National Association of Realtors. *Housing Market Will Change in New Millennium as Population Shifts.* (November 7, 1998).

[37] Joint Center for Housing Studies of Harvard University. *State of the Nation's Housing 1998.* (1998), p. 14.

[38] Joint Center for Housing Studies of Harvard University. (1998), p. 15.

[39] National Association of Realtors. *Housing Market Will Change in New Millennium As Population Shifts.* (November 7, 1998).

[40] Joint Center for Housing Studies of Harvard University. (1998).

to reach 31 million by 2010.[41] While immigrants tend to rent their first homes upon arriving in the United States, homeownership rates are substantially higher among those that have lived here for at least 6 years. In 1996, the homeownership rate for recent immigrants was 14.7 percent while it was 67.4 percent for native-born households. For foreign-born naturalized citizens, the homeownership rate after six years was a remarkable 66.9 percent.[42]

Immigration is projected to add even more new Americans in the 1990s, which will help offset declines in the demand for housing caused by the aging of the baby-boom generation. While it is projected that immigrants will account for less than four percent of all households in 2010, without the increase in the number of immigrants, household growth would be 25 percent lower over the next 15 years. As a result of the continued influx of immigrants and the aging of the domestic population, household growth over the next decade should remain at or near its current pace of 1.1–1.2 million new households per year, even though population growth is slowing. If this high rate of foreign immigration continues, it is possible that first-time homebuyers will make up as much as half of the home purchasing market over the next several years.[43]

Past and future immigration will lead to increasing racial and ethnic diversity, especially among the young adult population. As immigrant minorities account for a growing share of first-time homebuyers in many markets, HUD and others will have to intensify their focus on removing discrimination from the housing and mortgage finance systems. The need to meet nontraditional credit needs, respond to diverse housing preferences, and overcome the information barriers that many immigrants face will take on added importance.

Trade-up Buyers. The fastest growing demographic group in the early part of the next millennium will be 45- to 65-year olds. This will translate into a strong demand for upscale housing and second homes. The greater equity resulting from recent increases in home prices should also lead to a larger role for "trade-up buyers" in the housing market during the next 10 to 15 years.

Nontraditional and Single Homebuyers. While overall growth in new households has slowed down, nontraditional households have become more important in the homebuyer market. With later marriages and more divorces, single-person and single-parent households have increased rapidly. First-time buyers include a record number of never-married single households, although their ownership rates still lag those of married couple households. According to the Chicago Title and Trust's Home Buyers Surveys, the share of first-time homebuyers who were never-married singles rose from 21 percent in 1991 to 37 percent in 1996, and to a record 43 percent in 1997. The shares for divorced/separated and widowed first-time homebuyers have stayed constant over the period, at eight percent and one percent, respectively.[44] The National Association of Realtors reports that "single individuals, unmarried couples and minorities are entering the market as first-time buyers in record numbers."[45] With the increase in single person households, it is expected that there will be a greater need for apartments, condominiums and townhomes.

Due to weak house price appreciation, traditional "trade-up buyers" stayed out of the market during the early 1990s. Their absence may explain, in part, the large representation of nontraditional homebuyers during that period. Single-parent households are also expected to decline as the baby-boom generation ages out of the childbearing years. For these reasons, nontraditional homebuyers may account for a smaller share of the housing market in the future.

Growing Income Inequality. The Census Bureau recently reported that the top 5 percent of American households received 21.7 percent of aggregate household income in 1997, up sharply from 16.1 percent in 1977. The share accruing to the lowest 80 percent of households fell accordingly, from 56.5 percent in 1977 to 50.7 percent in 1997. The share of aggregate income accruing to households between the 80th and 95th percentiles of the income distribution was virtually unchanged over this period.[46]

The increase in income inequality over the past two decades has been especially significant between those with and those without post-secondary education. The Census Bureau reports that by 1997, the mean income of householders with a high school education (or less) was less than half that for householders with a bachelor's degree (or more). According to the Joint Center for Housing Studies, inflation-adjusted median earnings of men aged 25 to 34 with only a high-school education decreased by 14 percent between 1989 and 1995.[47] So, while homeownership is highly affordable, this cohort lacks the financial resources to take advantage of the opportunity. As discussed earlier, the days of the well-paying unionized factory job have passed. They have given way to technological change that favors white-collar jobs requiring college degrees, and wages in the manufacturing jobs that remain are experiencing downward pressures from economic globalization. The effect of this is that workers without the benefit of a post-secondary education find their demand for housing constrained.

3. Single-Family Owner Mortgage Market

The mortgage market has undergone a great deal of growth and change over the past few years. Low interest rates, modest increases in home prices, and growth in real household income have increased the affordability of housing and resulted in a mortgage market boom. Total originations of single-family loans increased from $458 billion in 1990 to $859 billion in 1997 and then jumped to $1.507 trillion during the heavy refinancing year of 1998.[48] There has also been many changes in the structure and operation of the mortgage market. Innovations in lending products, added flexibility in underwriting guidelines, the development of automated underwriting systems and the rise of the subprime market, have had impacts on both the overall market and affordable lending during the 1990s.

The section starts with a review of trends in the market for mortgages on single-family owner-occupied housing. Next, trends in affordable lending, including new initiatives and changes to underwriting guidelines and the prospects for potential homebuyers are discussed. The section concludes with a summary of the activity of the GSEs relative to originations in the primary mortgage market.

a. Basic Trends in the Mortgage Market

Interest Rate Trends. The high and volatile mortgage rates of the 1980s and early 1990s have given way to a period with much lower and more stable rates in the last six years. Interest rates on mortgages for new homes were above 12 percent as the 1980s began and quickly rose to more than 15 percent.[49] After 1982, they drifted downward slowly to the 9 percent range in 1987–88, before rising back into double-digits in 1989–90. Rates then dropped by about one percentage point a year for three years, reaching a low of 6.8 percent in October-November 1993 and averaging 7.2 percent for the year as a whole.

Mortgage rates turned upward in 1994, peaking at 8.3 percent in early 1995, but fell to the 7.5 percent–7.9 percent range for most of 1996 and 1997. However, rates began another descent in late-1997 and averaged 6.95 percent for 30-year fixed rate conventional mortgages during 1998, the lowest level since 1968.[50]

Other Loan Terms. When mortgage rates are low, most homebuyers prefer to lock in a fixed-rate mortgage (FRM). Adjustable-rate

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[41] John R. Pitkin and Patrick A. Simmons. "The Foreign-Born Population to 2010: A Prospective Analysis by Country of Birth, Age, and Duration of U.S. Residence," *Journal of Housing Research.* 7(1) (1996), pp. 1–31.

[42] Fred Flick and Kate Anderson. "Future of Housing Demand: Special Markets," *Real Estate Outlook.* (1998), p. 6.

[43] Mark A. Calabria. "The Changing Picture of Homebuyers," *Real Estate Outlook.* (May 1999), p. 10.

[44] Chicago Title and Trust Family of Insurers, *Who's Buying Homes in America.* (1998).

[45] Calabria. (May 1999), p. 11.

[46] Bureau of the Census, "Money Income in the United States: 1997," *Current Population Report P60–200,* (September 1998).

[47] Joint Center for Housing Studies of Harvard University. *State of the Nation's Housing 1998.* (1998).

[48] Data for 1990–97 from *U.S. Housing Market Conditions, 1st Quarter 1999,* U.S. Department of Housing and Urban Development, (May 1999), Table 17; 1998 from the Mortgage Bankers Association.

[49] Interest rates in this section are effective rates paid on conventional home purchase mortgages on new homes, based on the Monthly Interest Rate Survey (MIRS) conducted by the Federal Housing Finance Board and published by the Council of Economic Advisers annually in the *Economic Report of the President* and monthly in *Economic Indicators.* These are average rates for all loan types, encompassing 30-year and 15-year fixed-rate mortgages and adjustable rate mortgages.

[50] *U.S. Housing Market Conditions, 2nd Quarter 1999,* (August 1999), Table 12.

mortgages (ARMs) are more attractive when rates are high, because they carry lower rates than FRMs and because buyers may hope to refinance to a FRM when mortgage rates decline. Thus the Federal Housing Finance Board (FHFB) reports that the ARM share of the market jumped from 20 percent in the low-rate market of 1993 to 39 percent when rates rose in 1994.[51] The ARM share has since trended downward, falling to 22 percent in 1997 and a record low of 12 percent in 1998.

In 1997 the term-to-maturity was 30 years for 83 percent of conventional home purchase mortgages. Other maturities included 15 years (11 percent of mortgages), 20 years (2 percent), and 25 years (1 percent). The average term was 27.5 years, up slightly from 26.9 years in 1996, but within the narrow range of 25–28 years which has prevailed since 1975.

One dimension of the mortgage market which has changed in recent years is the increased popularity of low- or no-point mortgages. FHFB reports that average initial fees and charges ("points") have decreased from 2.5 percent of loan balance in the mid-1980s to 2 percent in the late-1980s, 1.5 percent in the early 1990s, and less than 1.0 percent in 1995–97. Last year 21 percent of all loans were no-point mortgages. These lower transactions costs have increased the propensity of homeowners to refinance their mortgages.[52]

Another recent major change in the conventional mortgage market has been the proliferation of high loan-to-value ratio (LTV) mortgages. Loans with LTVs greater than 90 percent (that is, down payments of less than 10 percent) made up less than 10 percent of the market in 1989–91, but 25 percent of the market in 1994–97. Loans with LTVs less than or equal to 80 percent fell from three-quarters of the market in 1989–91 to an average of 56 percent of mortgages originated in 1994–97. As a result, the average LTV rose from 75 percent in 1989–91 to nearly 80 percent in 1994–97.[53]

The statistics cited above pertain only to home purchase mortgages. Refinance mortgages generally have shorter terms and lower loan-to-value ratios than home purchase mortgages.

Mortgage Originations: Refinance Mortgages. Mortgage rates affect the volume of both home purchase mortgages and mortgages used to refinance an existing mortgage. The effects of mortgage rates on the volume of home purchase mortgages are felt through their role in determining housing affordability, discussed in the next subsection. However, the largest impact of rate swings on single-family mortgage originations is reflected in the volume of refinancings.

During 1992–93, homeowners responded to the lowest rates in 25 years by refinancing existing mortgages. In 1989–90 interest rates exceeded 10 percent, and refinancings accounted for less than 25 percent of total mortgage originations.[54] The subsequent sharp decline in mortgage rates drove the refinance share over 50 percent in 1992 and 1993 and propelled total single-family originations to more than $1 trillion in 1993—twice the level attained just three years earlier.

The refinance wave subsided after 1993, because most homeowners who found it beneficial to refinance had already done so and because mortgage rates rose once again.[55] Total single-family mortgage originations bottomed out at $639 billion in 1995, when the refinance share was only 15 percent. This meant that refinance volume declined by more than 80 percent in just two years.

A second surge in refinancings began in late-1997, abated somewhat in early 1998, but regained momentum in June 1998. The refinance share rose above 30 percent in mid-1997, exceeded 40 percent in late-1997, and peaked at 64 percent in January, before falling to 40 percent by May 1998. This share increased steadily over the June-September 1998 period, and averaged 50 percent for 1998. Total originations, driven by the volume of refinancings, amounted to $859 billion in 1997 and were $1.507 trillion in 1998, nearly 50 percent higher than the previous record level of $1.02 trillion attained in 1993. Total refinance mortgage volume in 1998 was estimated to be nearly 10 times the level attained in 1995. The 1997–98 refinance wave reflects other factors besides interest rates, including greater borrower awareness of the benefits of refinancing, a highly competitive mortgage market, and the enhanced ability of the mortgage industry (including the GSEs), utilizing automated underwriting and mortgage origination systems, to handle this unprecedented volume expeditiously.

Mortgage Originations: Home Purchase Mortgages. In 1972 the median price of existing homes in the United States was $27,000 and mortgage rates averaged 7.52 percent; thus with a 20 percent down payment, a family needed an income of $7,200 to qualify for a loan on a median-priced home. Actual median family income was $11,100, exceeding qualifying income by 55 percent. The National Association of Realtors (NAR) has developed a housing affordability index, calculated as the ratio of median income to qualifying income, which was 155 in 1972.

By 1982 NAR's affordability index had plummeted to 70, reflecting a 154 percent increase in home prices and a doubling of mortgage rates over the decade. That is, qualifying income rose by nearly 400 percent, to $33,700, while median family income barely doubled, to $23,400. With so many families priced out of the market, single-family mortgage originations amounted to only $97 billion in 1982.

Declining interest rates and the moderation of inflation in home prices have led to a dramatic turnaround in housing affordability in the last decade and a half. Remarkably, qualifying income in 1993 was $27,700 in 1993—$6,000 less than it had been in 1982. Median family income reached $37,000 in 1993, thus the NAR's housing affordability index reached 133, reflecting the most affordable housing in 20 years. Housing affordability has remained at about 130 since 1993, with home price increases and somewhat higher mortgage rates in 1994–97 being offset by gains in median family income.[56]

The high affordability of housing, low unemployment, and high consumer confidence meant that home purchase mortgages reached a record level in 1997. However, this record was surpassed in 1998, as a July 1998 survey by Fannie Mae found that "every single previously cited barrier to homeownership—from not having enough money for a down payment, to not having sufficient information about how to buy a home, to the confidence one has in his job, to discrimination or social barriers—has collapsed to the lowest level recorded in the seven years Fannie Mae has sponsored its annual National Housing Survey."[57] Specifically, the Mortgage Bankers Association estimates that home purchase mortgages rose to about $750 billion in 1998, well above the previous record of $576 billion established in 1997.

First-time Homebuyers. First-time homebuyers have been the driving force in the recovery of the nation's housing market over the past several years. First-time homebuyers are typically people in the 25–34 year-old age group that purchase modestly priced houses. As the post-World War II baby boom generation ages, the percentage of Americans in this age group decreased from 28.3 percent in 1980 to 25.4 percent in 1992.[58] Even though this cohort is smaller, first-time homebuyers increased their share of home sales. First-time buyers accounted for about 47 percent of home sales in 1997. Participation rates for first-time homebuyers so far this decade are all in excess of 45 percent. This follows participation rates that averaged 40 percent in the 1980s, including a low of 36 percent in 1985. The highest first-

[51] *All statistics in this section are taken from the Federal Housing Finance Board's MIRS.*

[52] This is discussed in more detail in Paul Bennett, Richard Peach, and Stavros Peristani, *Structural Change in the Mortgage Market and the Propensity to Refinance*, Staff Report Number 45, Federal Reserve Bank of New York, (September 1998).

[53] Other sources of data on loan-to-value ratios such as the American Housing Survey and the Chicago Title and Trust Company indicated that high-LTV mortgages are somewhat more common in the primary market than the Finance Board's survey. However, the Chicago Title survey does not separate FHA-insured loans from conventional mortgages.

[54] Refinancing data is taken from Freddie Mac's monthly *Primary Mortgage Market Survey.*

[55] There is some evidence that lower-income borrowers did not participate in the 1993 refinance boom as much as higher-income borrowers—see Paul B. Manchester, *Characteristics of Mortgages Purchased by Fannie Mae and Freddie Mac: 1996–97 Update*, Housing Finance Working Paper No. HF–006, Office of Policy Development and Research, Department of Housing and Urban Development, (August 1998), pp. 30–32.

[56] Housing affordability varies markedly between regions, ranging in May 1998 from 164 in the Midwest to 100 in the West, with the South and Northeast falling in between.

[57] Fannie Mae, http://www.fanniemae.com/news/housingsurvey/1998, (July 16, 1998).

[58] U.S. Department of Commerce, Bureau of the Census, *Money Income of Households, Families, and Persons in the United States: 1992*, Special Studies Series P–60, No. 184, Table B–25, (October 1993).

time homebuyer participation rate was achieved in 1977 when it was 48 percent.[59]

The Chicago Title and Trust Company reports that the average first time-buyer in 1997 was 32 years old and spent 5 months looking at 14 homes before making a purchase decision. Most such buyers are married couples, but in 1997 21 percent were never-married males and 13 percent were never-married females.

First time buyers paid an average of 35 percent of after-tax income, or $1,020 per month, on their mortgage payments in 1997, and saved for 2.2 years to accumulate a down payment. The National Association of Realtors reports that first-time buyers took out an average mortgage of $102,000 in 1997, corresponding to an LTV of 90 percent, compared with a mortgage of $132,000 and an average LTV of 84 percent for repeat buyers.

GSEs' Acquisitions as a Share of the Primary Single-Family Mortgage Market. The GSEs' single-family mortgage acquisitions have generally followed the volume of originations in the primary market for conventional mortgages, falling from 5.3 million mortgages in the record year of 1993 to 2.2 million mortgages in 1995, but rebounding to 2.9 million mortgages in 1996. In 1997, however, single-family originations were essentially unchanged, but the GSEs' acquisitions declined to 2.7 million mortgages.[60] This pattern was reversed in 1998, when originations rose by 73 percent, but the GSEs' purchases jumped to 5.8 million mortgages.

Reflecting these divergent trends, the Office of Federal Housing Enterprise Oversight (OFHEO) estimates that the GSEs' share of the conventional single-family mortgage market, measured in dollars, declined from 42 percent in 1996 to 37 percent in 1997—well below the peak of 58 percent attained in 1993.[61] OFHEO attributes the 1997 downturn in the GSEs' role to increased holdings of mortgages in portfolio by depository institutions and to increased competition with Fannie Mae and Freddie Mac by private label issuers. However, OFHEO estimates that the GSEs' share of the market rebounded sharply in 1998, to 48 percent.

Mortgage Market Prospects. The Mortgage Bankers Association (MBA) reports that 1998 was a record-breaking year, with $1.507 trillion in mortgage originations. Refinancing of existing mortgages was also up in 1998, accounting for 50 percent share of the total mortgage originations. Meanwhile, ARMs accounted for a smaller share, 12 percent, of originations than usual. The mortgage market should remain strong in 1999, but should settle down a bit in the year 2000. The MBA predicts that originations will amount to $1.29 trillion, with refinancings representing 35 percent of originations, during 1999. The MBA expects originations and refinancing activity to return to a more normal pace in 2000. ARMs are expected to account for a larger share, 23 percent in 1999 and 32 percent in 2000, of total mortgage originations.[62]

b. Affordable Lending in the Mortgage Market

In the past few years, conventional lenders, private mortgage insurers and the GSEs have begun implementing changes to extend homeownership opportunities to lower-income and historically underserved households. The industry has started offering more customized products, more flexible underwriting, and expanded outreach so that the benefits of the mortgage market can be extended to those who have not been adequately served through traditional products, underwriting, and marketing. This section summarizes recent initiatives undertaken by the industry to expand affordable housing. The section also discusses the significant role FHA plays in making affordable housing available to historically underserved groups.

Down Payments. GE Capital's 1989 Community Homebuyer Program first allowed homebuyers who completed a program of homeownership counseling to have higher than normal payment-to-income qualifying ratios, while providing less than the full 5-percent down payment from their own funds. Thus the program allowed borrowers to qualify for larger loans than would have been permitted under standard underwriting rules. Fannie Mae made this Community Homebuyer Program a part of its own offerings in 1990. Affordable Gold is a similar program introduced by Freddie Mac in 1992. Many of these programs allowed 2 percentage points of the 5-percent down payment to come from gifts from relatives or grants and unsecured loans from local governments or nonprofit organizations.

In 1994, the industry (including lenders, private mortgage insurers and the GSEs) began offering mortgage products that required down payments of only 3 percent, plus points and closing costs. Other industry efforts to reduce borrowers' up front costs have included zero-point-interest-rate mortgages and monthly insurance premiums with no up front component. These new plans eliminated large up front points and premiums normally required at closing.

During 1998, Fannie Mae introduced its "Flexible 97" and Freddie Mac introduced its "Alt 97" low down payment lending programs. Under these programs borrowers are required to put down only 3 percent of the purchase price. The down payment, as well as closing costs, can be obtained from a variety of sources, including gifts, grants or loans from a family member, the government, a non-profit agency and loans secured by life insurance policies, retirement accounts or other assets. While these programs started out slowly, by November 1998 both GSEs' programs reached volumes of $200 million per month. However, the GSEs are expected to purchase less than $4 billion in their 97 percent LTV programs by the end of 1998, well below the $75 billion of 97 percent LTV loans that FHA is expected to insure in 1998.[63]

In early 1999, Fannie Mae announced that it would introduce several changes to their mortgage insurance requirements. The planned result is to provide options for low downpayment borrowers to reduce their mortgage insurance costs. Franklin D. Raines, Fannie Mae chairman and chief executive officer stated, "Now, thanks to our underwriting technology, our success in reducing credit losses, and innovative new arrangements with mortgage insurance companies, we can increase mortgage insurance options and pass the savings directly on to consumers."[64]

Partnerships. In addition to developing new affordable products, lenders and the GSEs have been entering into partnerships with local governments and nonprofit organizations to increase mortgage access to underserved borrowers. Fannie Mae's partnership offices in 33 central cities, serving to coordinate Fannie Mae's programs with local lenders and affordable housing groups, are an example of this initiative. Another example is the partnership Fannie Mae and the National Association for the Advancement of Colored People (NAACP) announced in January 1999.[65] Under this partnership, Fannie Mae will provide funding for technical assistance to expand the NAACP's capacity to provide homeownership information and counseling. It will also invest in NAACP-affiliated affordable housing development efforts and explore structures to assist the organization in leveraging its assets to secure downpayment funds for eligible borrowers. Furthermore, Fannie Mae will provide up to $110 million in special financing products, including a new $50 million underwriting experiment specifically tailored to NAACP clientele.

Freddie Mac does not have a partnership office structure similar to Fannie Mae's, but it has undertaken a number of initiatives in specific metropolitan areas. Freddie Mac also announced on January 15, 1999 that it entered into a broad initiative with the NAACP to increase minority homeownership. Through this alliance, Freddie Mac and the NAACP seek to expand community-based outreach, credit counseling and marketing efforts, and the availability of low-downpayment mortgage products with flexible underwriting guidelines. As part of the initiative, Freddie Mac has committed to purchase $500 million in mortgage loans.[66]

The above are only examples of the partnership efforts undertaken by the GSEs. There are more partnership programs than can be adequately described here. For full descriptions of Fannie Mae's and Freddie

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[59] Chicago Title and Trust Family of Insurers, *Who's Buying Homes in America*, (1998).

[60] Single-family originations rose by 10 percent in dollar terms in 1997, but the Mortgage Bankers Association estimates that they fell by 0.6 percent in terms of the number of loans.

[61] Office of Federal Housing Enterprise Oversight, *1998 Report to Congress*, Figure 9, p. 32. The GSEs' market shares in terms of units financed in 1997 are shown below in Table A.7.

[62] Mortgage market projections obtained from the MBA's *MBA Mortgage Finance Forecast*, October 1999.

[63] "After Slow Start, Fannie and Freddie Report Growing Interest in 97 Percent LTV Products," *Inside Mortgage Finance*. (November 20, 1998), pp. 10–11.

[64] Speech before the annual convention of the National Association of Home Builders in Dallas TX, (January 1999).

[65] Fannie Mae News Release (January 1999).

[66] Freddie Mac News Release (January 15, 1999).

Mac's partnership programs, see their respective Annual Reports.

Underwriting Flexibility. Lenders, mortgage insurers, and the GSEs have also been modifying their underwriting standards to attempt to address the needs of families who find qualifying under traditional guidelines difficult. The goal of these underwriting changes is not to loosen underwriting standards, but rather to identify creditworthiness by alternative means that more appropriately measure the circumstances of lower-income households. The changes to underwriting standards include, for example:

(i) Using a stable income standard rather than a stable job standard. This particularly benefits low-skilled applicants who have successfully remained employed, even with frequent job changes.

(ii) Using an applicant's history of rent and utility payments as a measure of creditworthiness. This measure benefits lower-income applicants who have not established a credit history.

(iii) Allowing pooling of funds for qualification purposes. This change benefits applicants with extended family members.

(iv) Making exceptions to the "declining market" rule and clarifying the treatment of mixed-use properties.[67] These changes benefit applicants from inner-city underserved neighborhoods.

These underwriting changes have been accompanied by homeownership counseling to ensure homeowners are ready for the responsibilities of homeownership. In addition, the industry has engaged in intensive loss mitigation to control risks.

Increase in Affordable Lending, 1993–1997.[68] Home Mortgage Disclosure Act (HMDA) data suggest that the new industry initiatives may be increasing the flow of credit to underserved borrowers. Between 1993 and 1997, conventional loans to low-income and minority families increased at much faster rates than loans to higher income and non-minority families. As shown below, over this period home purchase originations to African Americans and Hispanics grew by almost 60 percent, and purchase loans to low-income borrowers (those with incomes less than 80 percent of area median income) increased by 45 percent.

	1993–97 percent	1995–97 percent
All Borrowers	28.1	11.1
African Americans/ Hispanics	57.7	−0.2
Whites	21.9	8.9
Income Less Than 80% AMI	45.1	15.4
Income Greater Than 120% AMI	31.5	24.5

However, as also shown, in the latter part of this period conventional lending for some groups slowed significantly. Between 1995 and 1997, the slowing of the growth of home purchase originations was much greater for low-income borrowers than for higher-income borrowers. Moreover , even though remaining at near-peak levels in 1997, conventional home purchase originations to African Americans and Hispanics actually decreased by two-tenths of a percent over the past three years. It should be noted, however, that total loans (conventional plus government) originated to African-American and Hispanic borrowers increased between 1995 and 1997, but this was mainly the result of a 40.0 percent increase in FHA-insured loans originated for African-American and Hispanic borrowers.

Affordable Lending Shares by Major Market Sector. The focus of the different sectors of the mortgage market on affordable lending can be seen by examining Tables A.1a, A.1b, and A.2. Tables A.1a and A.1b present affordable lending percentages for FHA, the GSEs, depositories (banks and thrift institutions), the conventional conforming sector, and the overall market.[69] The discussion below will center on Table A.1a, which provides information on home purchase loans and thus, homeownership opportunities. Table A.1b, which provides information on total (both home purchase and refinance) loans, is included to give a complete picture of mortgage activity. Both 1997 and 1998 data are included in these tables; the year 1997 represents a more typical year of mortgage activity than 1998, which was characterized by heavy refinance activity.

The interpretation of the "distribution of business" percentages, reported in Table A.1a for several borrower and neighborhood characteristics, can be illustrated using the FHA percentage for low-income borrowers: during 1997, 47.5 percent of all FHA-insured home purchase loans in metropolitan areas were originated for borrowers with an income less than 80 percent of the local area median income. Table A.2, on the other hand, presents "market share" percentages that measure the portion of all home purchase loans for a specific affordable lending category (such as low-income borrowers) accounted for by a particular sector of the mortgage market (FHA or the GSEs). In this case, the FHA market share of 33 percent for low-income borrowers is interpreted as follows: of all home purchase loans originated in metropolitan areas during 1997, 33 percent were FHA-insured loans. Thus, this "market share" percentage measures the importance of FHA to the market's overall funding of loans for low-income borrowers.

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[67] Standard underwriting procedures characterize a property in a declining neighborhood as one at high risk of losing value. Implicitly, these underwriting standards presume that the real estate market is inefficient in economic terms, that is, prices do not reflect all available information.

[68] For an update of this analysis to include 1998, see Randall M. Scheessele, *1998 HMDA Highlights*, Housing Finance Working Paper HF–009, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, (October 1999).

[69] The "overall" market is defined as all loans (including both government and conventional) below the 1997 conforming loan limit of $214,600 and the 1998 conforming loan limit of $227,150.

Table A.1a

Affordable Lending Shares for Major Sectors of the Home Purchase Mortgage Market in Metropolitan Areas, 1997 and 1998

			Conventional Conforming Market				
Borrower Characteristics	Total Market	FHA	Freddie Mac	Fannie Mae	Both GSEs	Depositories	Total Conforming Market
Low-Income: 1997	32.0 %	47.5 %[1]	19.2 %	23.2 %	21.6 %	29.4 %	27.3 %
1998	32.3	49.1	22.4	25.6	24.3	29.9	27.8
African American: 1997	7.8	14.4	3.2	4.6	4.1	4.7	5.1
1998	7.4	14.2	3.3	4.0	3.7	4.8	4.9
Hispanic: 1997	8.7	17.8	5.1	6.3	5.8	5.1	5.9
1998	8.6	18.6	4.7	6.1	5.6	5.5	6.1
Minority: 1997	21.4	35.8	14.0	17.8	16.3	14.6	16.5
1998	21.0	36.5	13.1	16.6	15.2	15.2	16.6
Neighborhood Characteristics							
Low-Income Tract: 1997	12.8 %	19.1 %	7.9 %	9.7 %	9.0 %	12.0 %	10.9 %
1998	12.3	18.7	8.0	9.7	9.0	12.1	10.7
High-Minority Tract: 1997	17.3	27.1	11.4	15.5	13.9	12.2	14.1
1998	16.9	27.0	10.8	14.5	13.0	12.6	14.1
High African-American Tract: 1997	5.8	9.6	3.0	4.9	4.2	4.7	4.6
1998	5.5	9.2	3.2	4.1	3.8	4.7	4.5
Underserved Areas: 1997	29.1	41.3	19.9	23.8	22.3	26.3	25.2
1998	28.2	41.2	20.0	23.5	22.1	26.1	24.6

Notes: All the data are for home purchase mortgages. The FHA, depositories, and the two market percentages are derived from 1997 and 1998 HMDA data. The GSE percentages are derived from the loan-level data that Fannie Mae and Freddie Mac provide to HUD. The GSE data include all home loans purchased during 1997 and 1998; thus, these data include their purchases of seasoned loans (i.e., mortgages originated prior to 1997 or 1998) as well as their purchases of mortgages originated during 1997 and 1998. The "Total Market" combines the government sector (FHA and VA loans) and the conventional conforming market. Thus, it includes all loans except "jumbo" loans above the 1997 (1998) conforming loan limit of $214,600 ($227,150). The "Depositories" data refer to new originations that are not sold by banks and thrift institutions during 1997-1998 and thus are retained in depository portfolios. The HMDA data for low-income borrowers exclude mortgages with a loan-to-borrower-income ratio greater than six.

[1] Each percentage represents the share of a sector's portfolio accounted for by the borrower or neighborhood characteristic. For example, 47.5 percent of FHA-insured home loans were loans for low-income borrowers.

Table A.1b

Affordable Lending Shares for Major Sectors of the Home Purchase and Refinance Mortgage Market in Metropolitan Areas, 1997 and 1998

			Conventional Conforming Market				
Borrower Characteristics	Total Market	FHA	Freddie Mac	Fannie Mae	Both GSEs	Depositories	Total Conforming Market
Low-Income: 1997	31.1 %	47.1 %[1]	20.6 %	22.7 %	21.8 %	28.0 %	28.1 %
1998	28.1	48.2	21.7	22.5	22.1	26.2	25.8
African American: 1997	8.0	14.2	3.2	4.2	3.8	4.8	6.3
1998	6.5	13.7	3.0	3.2	3.1	4.4	5.0
Hispanic: 1997	7.4	17.8	4.8	5.7	5.3	4.6	5.4
1998	6.7	17.2	4.4	4.9	4.7	4.5	5.2
Minority: 1997	20.1	35.6	13.1	16.3	15.0	13.4	16.7
1998	18.0	34.8	12.2	14.0	13.2	13.1	15.3
Neighborhood Characteristics							
Low-Income Tract: 1997	13.6 %	18.9 %	8.6 %	9.6 %	9.2 %	11.9 %	12.7 %
1998	11.5	17.4	8.1	8.4	8.2	10.9	10.7
High-Minority Tract: 1997	17.8	27.5	11.8	15.1	13.8	12.2	15.9
1998	16.2	27.2	11.5	13.2	12.5	12.2	14.5
High African-American Tract: 1997	7.1	9.7	3.5	4.6	4.2	5.1	6.6
1998	5.8	9.1	3.6	3.5	3.5	4.7	5.3
Underserved Areas: 1997	30.0	41.1	21.6	23.9	22.9	26.5	27.8
1998	26.8	39.9	21.0	21.5	21.3	25.0	24.8

Notes: All the data are for home purchase and refinance mortgages. The FHA, depositories, and the two market percentages are derived from 1997 and 1998 HMDA data. The GSE percentages are derived from the loan-level data that Fannie Mae and Freddie Mac provide to HUD. The GSE data include all loans purchased during 1997 and 1998; thus, these data include their purchases of seasoned loans (i.e., mortgages originated prior to 1997 or 1998) as well as their purchases of mortgages originated during 1997 and 1998. The "Total Market" combines the government sector (FHA and VA loans) and the conventional conforming market. Thus, it includes all loans except "jumbo" loans above the 1997 (1998) conforming loan limit of $214,600 ($227,150). The "Depositories" data refer to new originations that are not sold by banks and thrift institutions during 1997-1998 and thus are retained in depository portfolios. The HMDA data for low-income borrowers exclude mortgages with a loan-to-borrower-income ratio greater than six.

[1] Each percentage represents the share of a sector's portfolio accounted for by the borrower or neighborhood characteristic. For example, 47.1 percent of FHA-insured home loans were loans for low-income borrowers. It should be noted that due to FHA's streamline refinance program, borrower income data were not available for almost 70 percent of FHA's refinance loans.

Table A.2

FHA-Insured Loans and GSE Purchases As Shares of Home Purchase Mortgages Originated in Metropolitan Areas During 1997

	FHA-Insured	GSE Purchases
Low-Income Borrowers	33% [1]	28-30%
African-American and Hispanic Borrowers	44%	24-27%
Low-Income Tracts	35%	31%
High Minority Tracts	37%	35%
Underserved Areas[2]	33%	33%
All Loans	23%	44%

Source: 1997 HMDA data and 1997 GSE data.

Notes: The FHA figures (first column) refer to percentages of all newly-mortgaged home purchase mortgage loans (except jumbo loans above the conforming loan limit of $214,600) in metropolitan areas that were FHA insured during 1997. The GSE figures (second column) are defined differently-- they include GSE purchases in metropolitan areas during 1997 of both 1997 and prior-year conventional mortgage originations. (About one-fourth of the GSEs' 1997 purchases were mortgages originated prior to 1997.) See Table A.7 for an analyis that focuses only on the GSEs' purchases of 1997 mortgage originations. The second GSE figure for the borrower income and race variables is calculated by reallocating missing GSE data for the variables. As with the FHA data, the GSE purchases are expressed as a percentage of the total market in metropolitan areas. In this table, the "total market" includes all (government and conventional) home purchase mortgages originated in metropolitan areas during 1997 that were below the conforming loan limit of $214,600. The market data reported in HMDA are adjusted upward by 10 percent, which assumes that HMDA covers 90 percent of the metropolitan mortgage market. A lower coverage assumption would increase the market totals and thus reduce the GSE and FHA market shares. Assumptions about HMDA's coverage of FHA loans were based on a comparison of FHA loans as reported by 1996 HMDA data with FHA loans as reported by FHA for 1996. Thus, an updating of this FHA coverage analysis could change the FHA market shares reported here.

[1] That is, it is estimated that FHA insured for 33 percent of all home purchase loans that were originated during 1997 and were for low-income borrowers in metropolitan areas.

[2] Metropolitan census tracts with (1) median income less than or equal to 90 percent of AMI or (2) minority concentration greater than or equal to 30 percent and tract median income less than or equal to 120 percent of AMI.

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Four main conclusions may be drawn from the data presented in Tables A.1a and A.2. First, FHA places much more emphasis on affordable lending than the other market sectors. Low-income borrowers accounted for 47.5 percent of FHA-insured loans during 1997, compared with 21.6 percent of the home loans purchased by the GSEs, 29.4 percent of home loans retained by depositories, and 27.3 percent of conventional conforming loans.[70] Likewise, 41.3 percent of FHA-insured loans were originated in underserved census tracts, while only 22.3 percent of the GSE-purchased loans and 25.2 percent of conventional conforming loans were originated in these tracts.[71] As shown in Table A.2, while FHA insured only 23 percent of all home purchase mortgages originated in metropolitan areas during 1997, it insured 33 percent of all mortgages originated in underserved areas.[72]

Second, the affordable lending shares for the conventional conforming sector are particularly low for minority borrowers and their neighborhoods. For example, African-American and Hispanic borrowers accounted for only 11.0 percent of all conventional conforming loans originated during 1997, compared with 32.2 percent of FHA-insured loans and 16.5 percent of all loans originated in the market. Within the conventional conforming sector, about 10 percent of both GSE-purchased loans and loans retained by depositories were originated for African Americans and Hispanics. Only 8.3 percent of Freddie Mac's purchases were loans for these borrowers, compared with 10.9 percent of Fannie Mae's purchases. As shown in Table A.1a, Fannie Mae purchased mortgages for minority borrowers and their neighborhoods at higher rates than these loans were originated by primary lenders in the conventional conforming market. During 1997, 17.8 percent of Fannie Mae's purchases were mortgages for minority borrowers, compared with 16.5 percent of conventional conforming loans. During 1998, 14.5 percent of Fannie Mae's purchases financed homes in high-minority census tracts, compared with 14.1 percent of conventional conforming loans. However, the minority lending performance of conventional lenders has been subject to much criticism in recent studies. These studies contend that primary lenders in the conventional market are not doing their fair share of minority lending which forces minorities, particularly African-American and Hispanic borrowers, to the more costly FHA and subprime markets.[73]

Third, the GSEs, but particularly Freddie Mac, tend to lag the conventional conforming market in funding affordable loans for low-income families and their neighborhoods. During 1997 and 1998, low-income census tracts accounted for 8.0 percent of Freddie Mac's purchases, 9.7 percent of Fannie Mae's purchases, 12.1 percent of loans retained by depositories, and 10.8 percent of all home loans originated by conventional conforming lenders. This pattern of Freddie Mac lagging all market participants holds up for all of the borrower and neighborhood categories examined in Table A.1a. One encouraging trend is the significant increase in both GSEs' purchases of low-income-borrower loans between 1997 and 1998; on the other hand, the GSE percentages for the other borrower and neighborhood categories examined in Table A.1a declined between 1997 and 1998. A more complete analysis of the GSEs' purchases of mortgages qualifying for the housing goals will be provided below in Section E.

Finally, within the conventional conforming market, depository institutions stand out as important providers of affordable lending for lower-income families and their neighborhoods (see Table A.1a).[74] Depository lenders have extensive knowledge of their communities and direct interactions with their borrowers, which may enable them to introduce flexibility into their underwriting standards without unduly increasing their credit risk. Another important factor influencing the types of loans held by depository lenders is the Community Reinvestment Act, which is discussed next.

Seasoned CRA Loans. The Community Reinvestment Act (CRA) requires depository institutions to help meet the credit needs of their communities. CRA provides an incentive for lenders to initiate affordable lending programs with underwriting flexibility.[75] CRA loans are typically made to low- and moderate-income borrowers earning less than 80 percent of median income for their area, and in moderate-income neighborhoods. They are usually smaller than typical conventional mortgages and also are likely to have a high LTV, high debt-to-income ratios, no payment reserves, and may not be carrying private mortgage insurance (PMI). Generally, at the time CRA loans are originated, many do not meet the underwriting guidelines required in order for them to be purchased by one of the GSEs. Therefore, many of the CRA loans are held in portfolio by lenders, rather than sold to Fannie Mae or Freddie Mac. On average, CRA loans in a pool have three to four years seasoning.[76]

However, because of the size, LTV and PMI characteristics of CRA loans, they have slower prepayment rates than traditional mortgages, making them attractive for securitization. CRA loan delinquencies also have very high cure rates.[77] For banks, selling CRA pools will free up capital to make new CRA loans. As a result, the CRA market segment may provide an opportunity for Fannie Mae and Freddie Mac to expand their affordable lending programs. In mid-1997, Fannie Mae launched its Community Reinvestment Act Portfolio Initiative. Under this pilot program Fannie Mae purchases seasoned CRA loans in bulk transactions taking into account track record as opposed to relying just on underwriting guidelines. By the end of 1997, Fannie Mae had financed $1 billion in CRA loans through this pilot.[78] With billions of dollars worth of CRA loans in bank portfolios the market for securitization should improve. Section D, below, presents data showing that Fannie Mae's purchases of CRA-type seasoned mortgages have increased recently. Fannie Mae also started another pilot program in 1998 where they purchase CRA loans on a flow basis, as they are originated. Results from this four-year $2 billion nationwide pilot should begin to be reflected in the 1999 production data.

c. Potential Homebuyers

While the growth in affordable lending and homeownership has been strong in recent years, attaining this Nation's housing goals will not be possible without tapping into the vast pool of potential homebuyers. The National Homeownership Strategy has set a goal of achieving a homeownership rate of 67.5 percent by the end of the year 2000. Due to the aging of the baby boomers, this rate reached an annual record of 66.3 percent in 1998, and should rise to 67 percent by 2000. Thus the Strategy's target will require an increase in homeownership above and beyond that resulting from current demographic trends.

The Urban Institute estimated in 1995 that there was a large group of potential homebuyers among the renter population who were creditworthy enough to qualify for homeownership.[79] Of 20.3 million renter households having low-or moderate-incomes, roughly 16 percent were better qualified for homeownership than half of the renter households who actually did become homeowners over the sample period. When one also considered their likelihood of

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[70] The percentages reported in Table A.1a for the year 1998 are similar; in that year, low-income borrowers accounted for 49.1 percent of FHA-insured loans, 24.3 percent of GSE purchases, and 27.8 percent of mortgages originated in the conventional conforming market.

[71] FHA, which focuses on first-time homebuyers and low down payment loans, experiences higher mortgage defaults than conventional lenders and the GSEs. Still, the FHA system is actuarially sound because it charges an insurance premium that covers the higher default costs.

[72] FHA's role in the market is particularly important for African-American and Hispanic borrowers. As shown in Table A.2, FHA insured 44 percent of all 1997 home loan originations for these borrowers.

[73] See Green and Associates. *Fair Lending in Montgomery County: A Home Mortgage Lending Study*, a report prepared for the Montgomery County Human Relations Commission, (March 1998).

[74] However, as shown in Table A.1a, depository institutions resemble other conventional lenders in their relatively low level of originating loans for African-American, Hispanic and minority borrowers.

[75] For an analysis of the impact of CRA agreements signed by lending institutions, see Alex Schwartz, "From Confrontation to Collaboration? Banks, Community Groups, and the Implementation of Community Reinvestment Agreements", *Housing Policy Debate*, 9(3), (1998), pp. 631–662.

[76] "With Securities Market Back on Track, Analysts Expect Surge in CRA Loan Securitization in 1999," *Inside MBS & ABS*. (February 19, 1999), pp. 11–12.

[77] *Inside MBS & ABS*. (February 19, 1999), p. 12.

[78] Fannie Mae. *1997 Annual Housing Activities Report*, (1998), p. 28.

[79] George Galster, Laudan Y. Aron, Peter Tatain and Keith Watson. *Estimating the Size, Characteristics, and Risk Profile of Potential Homebuyers*. Washington: The Urban Institute, (1995). Report Prepared for the Department of Housing and Urban Development.

defaulting relative to the average expected for those who actually moved into homeownership, 10.6 percent, or 2.15 million, low- and moderate-income renters were better qualified for homeownership, assuming the purchase of a home priced at or below median area home price. These results indicate the existence of a significant lower-income population of low-risk potential homebuyer households that might become homeowners with continuing outreach efforts by the mortgage industry.

Other surveys conducted by Fannie Mae indicate that renters desire to become homeowners, with 60 percent of all renters indicating in the July 1998 National Housing Survey that buying a home ranks from being a "very important priority" to their "number-one priority," the highest level found in any of the seven National Housing Surveys dating back to 1992. Immigration is expected to be a major source of future homebuyers—Fannie Mae's 1995 National Housing Survey reported that immigrant renter household were 3 times as likely as renter households in general to list home purchase as their "number-one priority."

The achievement of the National Homeownership Strategy goal for homeownership in 2000 also depends on whether or not recent gains in the homeowning share of specific groups are maintained. The Joint Center for Housing Studies has pointed out that minorities account for only 17 percent of all homeowners, but were responsible for 42 percent of the 4 million increase in the number of homeowners between 1994 and 1997. Minority demand for homeownership continues to be high, as reported by the Fannie Mae Foundation's April 1998 Survey of African Americans and Hispanics. For example, 38 percent of African Americans surveyed said it is fairly to very likely that they will buy a home in the next 3 years, compared with 25 percent in 1997.[80] The survey also reports that 67 percent of African Americans and 65 percent of Hispanics cite homeownership as being a "very important priority" or "number-one priority."[81]

The Joint Center for Housing Studies has stated that if favorable economic and housing market trends continue, and if additional efforts to target mortgage lending to low-income and minority households are made, the homeownership rate could reach 70 percent by 2010.

d. Automated Mortgage Scoring

This, and the following two sections, discuss special topics that have, in recent years, impacted the primary and secondary mortgage markets. They are automated mortgage scoring, subprime loans and manufactured housing.

Automated mortgage scoring was developed as a high-tech tool with the purpose of identifying credit risks in a more efficient manner. As time and cost are reduced by the automated system, more time can be devoted by underwriters to qualifying marginal loan applicants that are referred by the automated system for more intensive review. Fannie Mae and Freddie Mac are in the forefront of new developments in automated mortgage scoring technology. Both enterprises released automated underwriting systems in 1995-Freddie Mac's Loan Prospector and Fannie Mae's Desktop Underwriter. Each system uses numerical credit scores, such as those developed by Fair, Isaac, and Company, and additional data submitted by the borrower, such as loan-to-value ratios and available assets, to calculate a mortgage score that evaluates the likelihood of a borrower defaulting on the loan. The mortgage score is in essence a recommendation to the lender to accept the application, or to refer it for further review through manual underwriting. Accepted loans benefit from reduced document requirements and expedited processing.

Along with the promise of benefits, however, automated mortgage scoring has raised concerns. These concerns are related to the possibility of disparate impact and the proprietary nature of the mortgage score inputs. The first concern is that low-income and minority homebuyers will not score well enough to be accepted by the automated underwriting system resulting in fewer getting loans. The second concern relates to the "black box" nature of the scoring algorithm. The scoring algorithm is proprietary and therefore it is difficult, if not impossible, for applicants to know the reasons for their scores.

Federal Reserve Study. Four economists at the Board of Governors of the Federal Reserve System have recently released a conceptual and empirical study on the use of credit scoring systems in mortgage lending.[82] Their broad assessment of the models is that [C]redit scoring is a technological innovation which has increased the speed and consistency of risk assessment while reducing costs. Research has uniformly found that credit history scores are powerful predictors of future loan performance. All of these features suggest that credit scoring is likely to benefit both lenders and consumers."[83]

The authors evaluate the current state-of-the-art of development of credit scoring models, focusing particularly on the comprehensiveness of statistical information used to develop the scoring equations. They present a conceptual framework in which statistical predictors of default include regional and local market conditions, individual credit history, and applicants' characteristics other than credit history. The authors observe that the developers of credit scoring models have tended to disregard regional and local market conditions in model construction, and such neglect may tend to reduce the predictive accuracy of scoring equations. To determine the extent of the problem, they analyzed Equifax credit scores together with mortgage payment history data for households living in each of 994 randomly selected counties from across the country. The authors use these data to assess the variability of credit scores relative to county demographic and economic characteristics.

The authors find a variety of pieces of evidence which confirm their suspicions: Credit scores tended to be relatively lower in areas with relatively high county unemployment rates, areas that have experienced recent rises in unemployment rates, areas with high minority population, areas with lower median educational attainment, areas with high percentages of individuals living in poverty, areas with low median incomes and low house values, and areas with relatively high proportions of younger populations and lower proportions of older residents.

This analysis suggests the need for a two-step process of improvement of the equations and their application, in which (a) new statistical analyses would be performed to incorporate the omitted environmental variables, and (b) additional variables bearing on individuals' prospective and prior circumstances will be taken into account in determining their credit scores.

These authors also discuss the relationship between credit scoring and discrimination. They find a significant statistical relationship between credit history scores and minority composition of an area, after controlling for other locational characteristics. From this, they conclude that concerns about potential disparate impact merit future study. However, a disparate impact study must include a business justification analysis to demonstrate the ability of the score card to predict defaults and an analysis of whether any alternative, but equally-predictive, score card has a less disproportionate effect.

Urban Institute Study. The Urban Institute recently submitted a report to HUD on a four-city reconnaissance study of issues related to the single-family underwriting guidelines and practices of Fannie Mae and Freddie Mac.[84] The study included interviews with informants knowledgeable about mortgage markets and GSE business practices on the national level and in the four cities.

The study observes, as did the Fed study summarized above, that minorities are more likely than whites to fail underwriting guidelines. Therefore, as a general matter the GSEs' underwriting guidelines—as well as the underwriting guidelines of others in the industry—do have disproportionate adverse effects on minority loan applicants.[85]

Based on the field reconnaissance in four metropolitan housing markets, the study makes several observations about the operation of credit scoring systems in practice, as follows:[86]

(i) Credit scores are used in mortgage underwriting to separate loans that must be

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[80] Fannie Mae Foundation. *African American and Hispanic Attitudes on Homeownership: A Guide for Mortgage Industry Leaders*, (1998), p. 3.

[81] Fannie Mae Foundation. (1998), p. 14.

[82] Robert B. Avery, Raphael W. Bostic, Paul S. Calem, and Glenn B. Canner, *Credit Scoring: Issues and Evidence from Credit Bureau Files*, mimeo., (1998).

[83] Avery *et al.* (1998), p. 24.

[84] Kenneth Temkin, Roberto Quercia, George Galster, and Sheila O'Leary, *A Study of the GSEs' Single Family Underwriting Guidelines: Final Report*. Washington DC: U.S. Department of Housing and Urban Development, (April 1999). This study involves an analysis of the GSEs' underwriting guidelines in general. This section reviews only the aspects of the study related to mortgage scoring. A broader review of this paper is provided below in section E.4.

[85] Temkin, *et al.* (1999), p.2.

[86] Temkin, *et al.* (1999), p. 5; pp. 26–27.

referred to loan underwriters from loans that may be forwarded directly to loan officers; for example, a 620 score was mentioned by some respondents as the line below which the loan officer must refer the loan for manual underwriting. It is very difficult for applicants with low credit scores to be approved for a mortgage, according to the lenders interviewed by the Urban Institute.

(ii) Some respondents believe the GSEs are applying cutoffs inflexibly, while others believe that lenders are not taking advantage of flexibility allowed by the GSEs.

(iii) Some respondents believe that credit scores may not be accurate predictors of loan performance, despite the claims of users of these scores. Respondents who voiced this opinion tended to base these observations on their personal knowledge of low-income borrowers who are able to keep current on payments, rather than on an understanding of statistical validation studies of the models.

(iv) Respondents indicate that the "black box" nature of the credit scoring process creates uncertainty among loan applicants and enhances the intimidating nature of the process for them.

Based on these findings, the authors conclude that "the use of automated underwriting systems and credit scores may place lower-income borrowers at a disadvantage when applying for a loan, even though they are acceptable credit risks."

The report includes several recommendations for ongoing HUD monitoring of the GSEs' underwriting including their use of credit scoring models. One suggestion is to develop a data base on the GSEs' lending activities relevant for analysis of fair lending issues. The data would include credit scores to reveal the GSEs' patterns of loan purchase by credit score. A second suggestion is to conduct analyses of the effects of credit scoring systems using a set of "fictitious borrower profiles" that would reveal how the systems reflect borrower differences in income, work history, credit history, and other relevant factors. HUD has begun following up on the Urban Institute's recommendations. For instance, in February 1999, HUD requested the information and data needed to analyze the GSEs' automated underwriting systems.

Concluding Observation. It is important to note that both of the studies reviewed above comment on the problem of correlation of valid predictors of default (income, etc.) with protected factors (race, etc.). Both studies suggest that, ultimately, the question whether mortgage credit scoring models raise any problems of legal discrimination based on disparate effects would hinge on a business necessity analysis and analysis of whether any alternative underwriting procedures with less adverse disproportionate effect exist.

e. Subprime Loans

Another major development in housing finance has been the recent growth in subprime loans. In the past borrowers traditionally obtained an "A" quality (or "investment grade") mortgage or no mortgage. However, an increasing share of recent borrowers have obtained "subprime" mortgages, with their quality denoted as "A-minus," "B," "C," or even "D." The subprime borrower typically is someone who has experienced credit problems in the past or has a high debt-to-income ratio.[87] Through the first nine months of 1998, "A-minus" loans accounted for 63 percent of the subprime market, with "B" loans representing 24 percent and "C" and "D" loans making up the remaining 13 percent.[88]

Because of the perceived higher risk of default, subprime loans typically carry mortgage rates that in some cases are substantially higher than the rates on prime mortgages. While in many cases these perceptions about risk are accurate, some housing advocates have expressed concern that there are a number of cases in which the perceptions are actually not accurate. The Community Reinvestment Association of North Carolina (CRA*NC), conducted a study based on HMDA data, records of deeds, and personal contacts with effected borrowers in Durham County, NC. They found that subprime lenders make proportionally more loans to minority borrowers and in minority neighborhoods than to whites and white neighborhoods at the same income level. African-American borrowers represent 20 percent of subprime mortgages in Durham County, but only 10 percent of prime market.[89] As a result, these borrowers can end up paying very high mortgage rates that more than compensate for their additional risks to lenders. High subprime mortgage rates make homeownership more expensive or force subprime borrowers to buy less desirable homes than they would be able to purchase if they paid lower prime rates on their mortgages.

The HMDA database does not provide information on interest rates, points, or other loan terms that would enable researchers to separate more expensive subprime loans from other loans. However, the Department has identified 200 lenders that specialize in such loans, providing some information on the growth of this market.[90] This data shows that mortgages originated by subprime lenders, and reported to HMDA, has increased from 104,000 subprime loans in 1993 to 210,000 in 1995 and 997,000 in 1998. Most of the subprime loans reported to HMDA are refinance loans; for example, refinance loans accounted for 80 percent of the subprime loans reported by the specialized subprime lenders in 1997.

An important question is whether borrowers in the subprime market are sufficiently creditworthy to qualify for more traditional loans. Freddie Mac has said that one of the promises of automated underwriting is that it might be better able to identify borrowers who are unnecessarily assigned to the high-cost subprime market. It has estimated that 10–30 percent of borrowers who obtain mortgages in the subprime market could qualify for a conventional prime loan through Loan Prospector, its automated underwriting system.[91]

Most of the subprime loans that were purchased by the GSEs in past years were purchased through structured transactions. Under this form of transaction, whole groups of loans are purchased, and not all loans necessarily meet the GSEs' traditional underwriting guidelines. The GSEs typically guarantee the so-called "A" tranche, which is supported by a "B" tranche that covers default costs.

An expanded GSE presence in the subprime market could be of significant benefit to lower-income families, minorities, and families living in underserved areas. HUD's research shows that in 1998: African-Americans comprised 5.0 percent of market borrowers, but 19.4 percent of subprime borrowers; Hispanics made up 5.2 percent of market borrowers, but 7.8 percent of subprime borrowers; very low-income borrowers accounted for 12.1 percent of market borrowers, but 23.3 percent of subprime borrowers; and borrowers in underserved areas amounted to 24.8 percent of market borrowers, but 44.7 percent of subprime borrowers.[92]

Most subprime borrowers are classified as "A-minus," which means that they are slightly below investment grade due to the borrower's past credit problems. Freddie Mac has developed initiatives to allow its Seller/Servicers using Loan Prospector to sell them "A-minus" loans. In April 1999 Freddie Mac began a purchasing "A-minus" loans with prepayment penalties on a flow basis and has provided guarantees for the senior portions of mortgage securitizations backed in part by B and C loans.[93] Freddie Mac hopes that the information gleaned from these initiatives will enable it to study the performance of subprime loans and enhance its ability to provide financing in this market. One concern Freddie Mac has is that as the GSEs get deeply involved in the subprime market,

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[87] Standard & Poor's B and C mortgage guidelines can be used to illustrate that underwriting criteria in the subprime market becomes more flexible as the grade of borrower moves from the most creditworthy A-borrowers to the riskier D borrowers. For example, the A-grade borrower is allowed to be delinquent 30 days on his mortgage twice in the last year whereas the D grade borrower is allowed to be delinquent 30 days on his mortgage credit five times in the last year. Moreover, the A-borrower is permitted to have a 45 percent debt-to-income ratio compared to the D grade borrower's 60 percent.

[88] "Subprime Product Mix, Strategies Changed During a Turbulent 1998," *Inside B&C Lending.* (December 21, 1998), p. 2.

[89] "Renewed Attack on 'Predatory' Subprime Lenders." *Fair Lending/CRA Compass,* (June 1999) and http://cra-cn.home.mindspring.com.

[90] See Randall M. Scheessele. *1998 HMDA Highlights,* Housing Finance Working Paper HF–009, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, (October 1999). Nonspecialized lenders such as banks and thrifts also make subprime loans, but no data is available to estimate the number of these loans.

[91] Freddie Mac, *We Open Doors for America's Families,* Freddie Mac's Annual Housing Activities Report for 1997, (March 16, 1998), p. 23.

[92] The statistics cited for the "market" refer to all conforming conventional mortgages (both home purchase and refinance). The data for the subprime market are for 200 lenders that specialize in such loans; see Scheessele, op. cit.

[93] "Freddie Mac Begins Buying A-Loans With Prepay Penalties," *Inside Mortgage Finance.* (May 21, 1999), p. 9; and "Democratic Senator Suggests Fannie and Freddie Could Improve Subprime Mortgage Market," *Inside Mortgage Finance.* (June 25, 1999), pp. 5–6.

and if they take on a first-loss position, servicing quality might erode.[94]

Fannie Mae has not been as involved in the subprime market as Freddie Mac to date, but it has expressed its intent to fully enter the "A-minus" market over the next several years.[95] During 1998, Fannie Mae approximates that it purchased $10 billion in "Alt-A" loans, about a quarter of that market. In September 1999, Fannie Mae announced the availability of the "Timely Payment Rewards" mortgage. Under this product, borrowers who qualify but have slightly impaired credit are eligible for a mortgage with a higher rate than the standard conventional mortgage. After 24 months of paying the mortgage on time, the borrower is guaranteed a one percent interest rate reduction.[96] Fannie Mae sees its Desktop Underwriter automated underwriting system and other technology initiatives as the keys which will enable it to manage credit risk of such loans in a manner that allows a greatly expanded presence in the subprime market.

Increased involvement by the GSEs in the subprime market will result in more standardized underwriting guidelines. As the subprime market becomes more standardized, market efficiencies will reduce borrowing costs. Lending to credit-impaired borrowers will, in turn, increasingly make good business sense for the mortgage market.

f. Loans on Manufactured Housing

Manufactured housing provides low-cost, basic-quality housing for millions of American households, especially younger, lower-income families in the South, West, and rural areas of the nation. Many households living in manufactured housing because they simply cannot afford site-built homes, for which the construction cost per square foot is much higher. Because of its affordability to lower-income families, manufactured housing is one of the fastest-growing parts of the American housing market.[97]

The American Housing Survey found that 15.5 million people lived in 7 million manufactured homes in the United States in 1995, and that such units accounted for 6.3 percent of the housing stock, an increase from 5.4 percent in 1985. Shipments of manufactured homes rose steadily from 171,000 units in 1991 to 373,000 units in 1998. The industry grew much faster over this period in sales volume, from $4.7 billion in 1991 to $16.4 billion in 1998, reflecting both higher sales prices and a major shift from single-section homes to multisection homes, which contain two or three units which are joined together on site.[98]

Despite their eligibility for mortgage financing, only about 10–20 percent of manufactured homes[99] are financed with mortgages secured by the property, even though half of owners hold title to the land on which the home is sited. Most purchasers of manufactured homes take out a personal property loan on the home and, if they buy the land, a separate loan to finance the purchase of the land.

In 1995 the average loan size for a manufactured home was $24,500, with a 15 percent down payment and term of 13 years. Rates averaged about 3 percentage points higher than those paid on 15-year fixed rate mortgages, but borrowers benefit from very rapid loan-processing and underwriting standards that allow high debt payment-to-income ("back-end") ratios.

Traditionally loans on manufactured homes have been held in portfolio, but a secondary market has emerged since trading of asset-backed securities collateralized by manufactured home loans was initiated in 1987. Investor interest has been reported as strong due to reduced loan losses, low prepayments, and eligibility for packaging of such loans into real estate mortgage investment conduits (REMICs). The GSEs' underwriting standards allow them to buy loans on manufactured homes that meet the HUD construction code, if they are owned, titled, and taxed as real estate.

The GSEs are beginning to expand their roles in the manufactured home loan market.[100] A representative of the Manufactured Housing Institute has stated that "Clearly, manufactured housing loans would fit nicely into Fannie Mae's and Freddie Mac's affordable housing goals."[101] Given that manufactured housing loans often carry relatively high interest rates, an enhanced GSE role could also improve the affordability of such loans to lower-income families.

D. Factor 2: Economic, Housing, and Demographic Conditions: Multifamily Mortgage Market

Since the early 1990s, the multifamily mortgage market has become more closely integrated with global capital markets, although not to the same degree as the single-family mortgage market. In 1997, 34 percent of multifamily mortgage originations were securitized, compared with 50 percent of single-family originations.[102]

Loans on multifamily properties are typically viewed as riskier than their single-family counterparts. Property values, vacancy rates, and market rents in multifamily properties appear to be highly correlated with local job market conditions, creating greater sensitivity of loan performance to economic conditions than may be experienced in the single-family market.

Within much of the single-family mortgage market, the GSEs occupy an undisputed position of industrywide dominance, holding loans or guarantees with an unpaid principal balance (UPB) of $1.5 trillion, comprising 36 percent of $4.0 trillion in outstanding single-family mortgage debt as of the end of 1997. In multifamily, the overall market presence of the GSEs is more modest. At the end of 1997, the GSEs direct holdings and guarantees were $41.4 billion, representing 13.8 percent of $301 billion in outstanding multifamily mortgage debt.[103] Based on market origination volume estimated at $40.7 billion, GSE acquisitions during 1997 represented 24 percent of the conventional multifamily market.[104]

1. Special Issues and Unmet Needs

Recent studies have documented a pressing unmet need for affordable housing. For

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[94] "Subprime Mortgage Market Nervously Makes Room for Government-Sponsored Enterprises," *Inside Mortgage Finance*. (February 19, 1999), p. 5–6.

[95] Fannie Mae's plans regarding its entry into the A-minus and "Alternative-A" (Alt-A) markets are discussed in "Fannie Mae to Fully Enter Alt-A Market in Two Years," Origination News, November 1998, p. 33. The Alt-A market generally involves conforming size mortgages made to A quality borrowers that fall outside Fannie Mae's or Freddie Mac's purchase requirements due to lack of documentation, the property type, loan-to-value ratio, or a combination of the three.

[96] Fannie Mae press release, (September 30, 1999).

[97] A detailed discussion of manufactured housing is contained in Kimberly Vermeer and Josephine Louie, *The Future of Manufactured Housing*, Joint Center for Housing Studies, Harvard University, (January 1997).

[98] Data on industry shipments and sales has been obtained from "U.S. Housing Market Conditions," U.S. Department of Housing and Urban Development (May, 1999), p. 51.

[99] Although the terms are sometimes used interchangeably, manufactured housing and mobile homes differ in significant ways relative to construction standards, mobility, permanence, and financing (These distinctions are spelled out in detail in Donald S. Bradley, "Will Manufactured Housing Become Home of First Choice?" *Secondary Mortgage Markets*, (July 1997)). Mobile homes are not covered by national construction standards, though they may be subject to State or local siting requirements. Manufactured homes must be built according to the National Manufactured Housing Construction Safety and Standards Act of 1974. In accordance with this act, HUD developed minimum building standards in 1976 and upgraded them in 1994. Manufactured homes, like mobile homes, are constructed on a permanent chassis and include both axles and wheels. However, with manufactured housing, the axles and wheels are intended to be removed at the time the unit is permanently affixed to a foundation. Manufactured homes, unlike mobile homes, are seldom, if ever, moved. Mobile homes are financed with personal property loans, but manufactured homes are eligible for conventional-mortgage financing if they are located on land owned by or under long-term lease to the borrower. Other types of factory-built housing, such as modular and panelized homes, are not included in this definition of "manufactured housing." These housing types are often treated as "site built" for purposes of eligibility for mortgage financing.

[100] Freddie Mac, the Manufactured Housing Institute and the Low Income Housing Fund have formed an alliance to utilize manufactured housing along with permanent financing and secondary market involvement to bring affordable, attractive housing to underserved, low- and moderate-income urban neighborhoods. *Origination News*. (December 1998), p.18.

[101] *Mortgage-Backed Securities Letter*. (September 7, 1998), p. 3.

[102] *The Mortgage Market Statistical Annual for 1998* (Washington, DC: Inside Mortgage Finance Publications), 203, 425; *U.S. Housing Market Conditions* (November 1998), Table 17.

[103] *Federal Reserve Bulletin*, June 1998, A 35. The comparable figure for year-end 1992, before the interim housing goals took effect, was 10.5 percent. (Federal Reserve Bulletin, (December 1993), A 38.)

[104] Mortgages acquired by the GSEs during 1997 include some seasoned loans originated before 1997, but, recognizing that it is likely that the GSE will purchase some 1997 acquisitions in later years, the 24 percent figure provides a fairly good indicator of the magnitude of the GSEs' multifamily presence that year . GSE multifamily market share appears to have risen significantly, to approximately 38 percent, in 1998. The size of the conventional multifamily market is discussed in Appendix D.

example, the Harvard University Joint Center for Housing Studies, in its report *State of the Nation's Housing 1997*, points out that:

(i) Despite the recent growth in homeownership rates, the absolute number of households without access to affordable housing is growing because the rental stock is not keeping up with the growth in household formation. "Homeownership is more affordable today than during much of the 1980s and early 1990s," but renter households "have received no comparable relief from high housing costs."

(ii) The affordable stock continues to shrink as losses due to abandonment and demolition have outpaced the rate at which units filter down into the low cost stock. Reductions in federal subsidies may contribute to further losses in the affordable stock.

(iii) The problems of extremely low-income households remains the largest and most urgent priority. The number of families receiving rental subsidies has actually decreased.[105]

The affordable housing issues go beyond the need for greater efficiency in delivering capital to the rental housing market. In many cases, subsidies are needed in order for low-income families to afford housing that meets adequate occupancy and quality standards. Nevertheless, greater access to reasonably priced capital can reduce the rate of losses to the stock, and can help finance the development of new or rehabilitated affordable housing when combined with locally funded subsidies. Development of a secondary market for affordable housing is one of many tools needed to address these issues.

Recent scholarly research suggests that more needs to be done to develop the secondary market for affordable multifamily housing.[106] Cummings and DiPasquale (1998) point to the numerous underwriting, pricing, and capacity building issues that impede the development of this market. They suggest the impediments can be addressed through the establishment of affordable lending standards, better information, and industry leadership.

(i) More consistent standards are especially needed for properties with multiple layers of subordinated financing (as is often the case with affordable properties allocated Low Income Housing Tax Credits and/or local subsidies).

(ii) More comprehensive and accurate information, particularly with regard to the determinants of default, can help in setting standards for affordable lending.

(iii) Leadership from the government or from a GSE is needed to develop consensus standards; it would be unprofitable for any single purely private lender to provide because costs would be borne privately but competitors would benefit.

2. Underserved Market Segments

There is evidence that segments of the multifamily housing stock have been affected by costly, difficult, or inconsistent availability of mortgage financing. Small properties with 5–50 units represent an example. The fixed-rate financing that is available is typically structured with a 5–10 year term, with interest rates as much as 150 basis points higher than those on standard multifamily loans, which may have adverse implications for affordability.[107] This market segment appears to be dominated by thrifts and other depositories who keep these loans in portfolio. In part to hedge interest rate risk, loans on small properties are often structured as adjustable-rate mortgages.

Multifamily properties with significant rehabilitation needs have experienced difficulty in obtaining mortgage financing. Properties that are more than 10 years old are typically classified as "C" or "D" properties, and are considered less attractive than newer properties by many lenders and investors.[108] Fannie Mae's underwriting guidelines for negotiated transactions state that "the Lender is required to use a more conservative underwriting approach" for transactions involving properties 10 or more years old.[109] Fannie Mae funding for rehabilitation projects is generally limited to $6,000 per unit.[110] Multifamily rehabilitation loans account for 1.9 percent of units backing Freddie Mac 1998 purchases. Rehabilitation loans accounted for only 0.5 percent of units backing Fannie Mae's purchases that year.

Historically, the flow of capital into housing for seniors has been characterized by a great deal of volatility. A continuing lack of long-term, fixed-rate financing jeopardizes the viability of a number of some properties. There is evidence that financing for new construction remains scarce.[111] Both Fannie Mae and Freddie Mac offer Senior Housing pilot programs.

Under circumstances where mortgage financing is difficult, costly, or inconsistent, GSE intervention may be desirable. Follain and Szymanoski (1995) say that "a [market] failure occurs when the market does not provide the quantity of a particular good or service at which the marginal social benefits of another unit equal the marginal social costs of producing that unit. In such a situation, the benefits to society of having one more unit exceeds the costs of producing one more unit; thus, a rationale exists for some level of government to intervene in the market and expand the output of this good."[112] It can be argued that the GSEs have the potential to contribute to the mitigation of difficult, costly, or inconsistent availability of mortgage financing to segments of the multifamily market because of their funding cost advantage, and even a responsibility to do so as a consequence of their public missions, especially in light of the limitations on direct government resources available to multifamily housing in today's budgetary environment.

3. Recent History and Future Prospects in Multifamily

The expansion phase of the real estate cycle been well underway for several years now, at least insofar as it pertains to multifamily. Rental rates have been rising, and vacancy rates have been relatively stable, contributing to a favorable environment for multifamily construction and lending activity.[113] Delinquencies on commercial mortgages reached an 18-year low in 1997.[114] Some analysts have warned that recent prosperity may have contributed to overbuilding in some markets and deterioration in underwriting standards.[115] A

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[105] See also *Rental Housing Assistance—The Crisis Continues: The 1997 Report to Congress on Worst Case Housing Needs*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research (April 1998).

[106] Jean L. Cummings and Denise DiPasquale, "Developing a Secondary Market for Affordable Rental Housing: Lessons From the LIMAC/Freddie Mac and EMI/Fannie Mae Programs," Cityscape: A Journal of Policy Development and Research, 4(1), (1998), pp. 19–41.

[107] Drew Schneider and James Follain assert that interest rates on small property mortgages are as high as 300 basis points over comparable maturity Treasuries in "A New Initiative in the Federal Housing Administration's Office of Multifamily Housing Programs: An Assessment of Small Projects Processing," *Cityscape: A Journal of Policy Development and Research* 4(1): 43–58, 1998. Berkshire Realty, a Fannie Mae Delegated Underwriting and Servicing (DUS) lender based in Boston, was quoting spreads of 135 to 150 basis points in "Loans Smorgasbord," Multi-Housing News, August–September 1996. Additional information on the interest rate differential between large and small multifamily properties is contained in William Segal and Christopher Herbert, *Segmentation of the Multifamily Mortgage Market: The Case of Small Properties*, paper presented to annual meetings of the American Real Estate and Urban Economics Association, (January 2000).

[108] On the relation between age of property and quality classification see Jack Goodman and Brook Scott, "Rating the Quality of Multifamily Housing," *Real Estate Finance*, (Summer, 1997).

[109] *Fannie Mae Multifamily Negotiated Transactions Guide*, Section 305.03, "Properties More than Ten Years Old."

[110] *Fannie Mae Multifamily Delegated Underwriting and Servicing Guide*, Section 306.01, "Definition—Moderate Rehabilitation Property." Loans involving rehabilitation costs exceeding $6,000 per unit may be approved on an exception basis, but in no event may rehabilitation costs exceeds $10,000 per unit or 25 percent of the loan amount, whichever is lower. In October, 1998 Fannie Mae announced a rehabilitation lending initiative providing up to $15,000 per on the condition that all units financed are affordable to low- and moderate income tenants.

[111] W. Donald Campbell. *Seniors Housing Finance*, prepared for American Association of Retired Persons White House Conference on Aging Mini-Conference on Expanding Housing Choices for Older People, (January 26–27, 1995).

[112] James R. Follain and Edward J. Szymanoski. "A Framework for Evaluating Government's Evolving Role in Multifamily Mortgage Markets," *Cityscape: A Journal of Policy Development and Research* 1(2), (1995), p. 154.

[113] Despite sustained economic expansion, however, the rise in homeownership, has not fallen below 9 percent in recent years. (Regis J. Sheehan, "Steady Growth," *Units*, (November/December 1998), pp. 40–43). Regarding rents and vacancy rates see also Ted Cornwell. "Multifamily Lending Approaches Record Level," *National Mortgage News*, (September 23, 1996); and David Berson, Monthly Economic and Mortgage Market Report, Fannie Mae, (November 1998).

[114] American Council of Life Insurance data reported in *Inside MBS & ABS*, (March 20, 1998).

[115] A November, 1998 "Review of the Short-Term Supply/Demand Conditions for Apartments" by Peter P. Kozel of Standard and Poor's concludes that "in some markets, the supply of units exceeds the likely level of demand, and in only a few MSAs should the pace of development accelerate." See also "Apartment Projects Find Lenders Are Ready with Financing," Lew Sichelman, *National*

September, 1998 report by the Office of the Comptroller of the Currency anticipates continued decline in credit standards at the 77 largest national banks as a consequence of heightened competition between lenders, and the Federal Deposit Insurance Corporation has expressed similar concerns regarding 1,212 banks it examined.[116]

Growth in the multifamily mortgage market has been fueled by investor appetites for Commercial Mortgage Backed Securities (CMBS). Nonagency securitization of multifamily and commercial mortgages received an initial impetus from the sale of nearly $20 billion in mortgages acquired by the Resolution Trust Corporation (RTC) from insolvent depositories in 1992–1993. Nonagency issuers typically enhance the credit-worthiness of their offerings through the use of senior-subordinated structures, combining investment-grade senior tranches with high-yield, below investment-grade junior tranches designed to absorb any credit losses.[117]

Because of their relatively low default risk in comparison with loans on other types of income property, multifamily mortgages are often included in mixed-collateral financing structures including other commercial property such as office buildings, shopping centers, and storage warehouses. CMBS volume reached $30 billion in 1996, $44 billion in 1997, and $78 billion in the 1998, approximately 25 percent of which was multifamily.[118]

During the financial markets turmoil in the fall of 1998, investors expressed reluctance to purchase the subordinated tranches in CMBS transactions, jeopardizing the ability of issuers to provide a cost-effective means of credit-enhancing the senior tranches as well.[119] When investor perceptions regarding credit risk on subordinated debt escalated rapidly in August and September, the GSEs, which do not typically use subordination as a credit enhancement, benefited from a "flight to quality."[120] As spreads on AAA-rated CMBS widened from 85 basis points to 200 basis points over to comparable-maturity Treasury securities, some conduits found it advantageous to sell whole loans to the life insurance companies, the GSEs, and other traditional investors rather than securitize them directly as they had originally planned.[121] The withdrawal from the market of a number of the three largest CMBS originators, Nomura/Capital America, Conti-Trade Services and Daiwa Securities will contribute to higher levels of GSE multifamily market share on a continuing basis.[122] Ultimately, the relation between GSE and CMBS yield spreads will be a major determinant of GSE multifamily market share.[123] Continuing uncertainty in the CMBS sector adds a note of uncertainty to projections regarding GSE multifamily acquisition volume in Appendix D.

Depository institutions and life insurance companies, formerly among the largest holders of multifamily debt, have experienced a decline in their share of the market at the expense of CMBS conduits.[124] Increasingly, depositories and life insurance companies are participating in multifamily markets by holding CMBS rather than whole loans, which are often less liquid, more expensive, and subject to more stringent risk-based capital standards.[125] In recent years a rising proportion of multifamily mortgages have been originated to secondary market standards, a consequence of a combination of factors including the establishment of a smoothly functioning securitization "infrastructure;" the greater liquidity of mortgage-related securities as compared with whole loans; and the desire for an "exit strategy" on the part of investors.[126]

Because of their limited use of mortgage debt, increased equity ownership of multifamily properties by REITs may have contributed to increased competition among mortgage originators, servicers and investors for a smaller mortgage market than would otherwise exist. During the first quarter of 1997, REITs accounted for 45 percent of all commercial real estate transactions, and the market capitalization of REITs at the end of January 1998 exceeded that of outstanding CMBS.[127]

Demographic factors will contribute to continued steady growth in the new construction segment of the multifamily mortgage market. The number of apartment households is expected to grow approximately 1.1 percent per year over 2000–2005. Taking into consideration losses from the housing stock, it has been projected that approximately 250,000–275,000 additional multifamily units will be needed in order to meet anticipated demand.[128] This flow is approximately half that of the mid-1980s, but twice that of the depressed early 1990s. In 1998, 273,900 apartment units were completed.[129]

The high degree of volatility of multifamily new construction experienced historically is consistent with a view that this sector of the housing market is driven more by fluctuations in the availability of financing than by demographic fundamentals. The stability and liquidity of the housing finance system is therefore a significant determinant of whether the volume of new construction remains consistent with demand.

Past experience suggests that the availability of financing for all forms of commercial real estate is highly sensitive to the state of the economy. In periods of economic uncertainty, lenders and investors sometimes raise underwriting and credit standards to a degree that properties that would be deemed creditworthy under normal circumstances are suddenly unable to obtain financing. Ironically, difficulty in obtaining financing may contribute to a fall in property values that can exacerbate a credit crunch.[130]

Mortgage News, (April 14, 1997); *Commercial Lenders Warned That They Could Spur Overbuilding, National Mortgage News*, (March 30, 1998); "Multifamily, Commercial Markets Grow Up," Neil Morse, *Secondary Marketing Executive*, (February 1998);" "Recipe for Disaster," *National Mortgage News* editorial, (July 6, 1998).

[116] *1998 Survey of Credit Underwriting Practices*, Comptroller of the Currency, National Credit Committee. "For the fourth consecutive year, underwriting standards for commercial loans have eased," states the OCC report. "Examiners again cite competitive pressure as the primary reason for easing underwriting standards." The weakening of underwriting practices is especially concentrated in commercial real estate lending according to a the Federal Deposit Insurance Corporation's Report on *Underwriting Practices*, (October 1997–March 1998). See also Donna Tanoue, "Underwriting Concerns Grow," *National Mortgage News*, (September 21, 1998), and "Making the Risk-Takers Pay," *National Mortgage News*, (October 12, 1998).

[117] On the effects of multifamily mortgage securitization see "Financing Multifamily Properties: A Play With new Actors and New Lines," Donald S. Bradley, Frank E. Nothaft, and James L. Freund, *Cityscape, A Journal of Policy Development and Research*, vol. 4, No. 1 (1998); and "Financing Multifamily Properties," Donald S. Bradley, Frank E. Nothaft, and James L. Freund, Urban Land (November 1998).

[118] "New-Issue CMBS Volume," *Commercial Mortgage Alert*, (October 5, 1998); Inside MBS & ABS, (February 12, 1999).

[119] "New CMBS Headache: B-Piece Market Softens," *Commercial Mortgage Alert*, (September 21, 1998); "Criimi Bankruptcy Accelerates CMBS Freefall," *Commercial Mortgage Alert*, (October 12, 1998); "Capital America Halts Lending Amid Woes," *Commercial Mortgage Alert*, (October 12, 1998).

[120] On CMBS spreads see "Turmoil Hikes Loan Rates" in *Wall Street Mortgage Report*, (September 14, 1998). Regarding implications for the GSEs of the conduit pullback see "No Credit Crunch for First Mortgages" in *Commercial Mortgage Alert*, (October 12, 1998).

[121] Sally Gordon, "A Lesson From the Capital Markets," *Mortgage Banking* Special Issue—Commercial, (February 1999), pp. 12–18.

[122] See "'99 CMBS Outlook: Fast Start, Then Lull," *Commercial Mortgage Alert*, (December 7, 1998); "Chastened Conduits Get Back to Business," *Commercial Mortgage Alert*, (February 15, 1999). Nomura/Capital America's monthly CMBS volume had been at a level of approximately $1 billion. See also "ContiFinancial Halts Originations, Plans Portfolio Selloff," *Real Estate Finance & Investment*, (November 9, 1998); and "Nomura in US Quits CRE Lending," *National Mortgage News*, (December 21, 1998).

[123] CMBS yield spreads in early 1999 were approximately 75–100 basis points wider than those in the summer of 1998, but approximately 75–100 basis points narrower than the peak reached in the fall of 1998. "Chastened Conduits Get Back to Business," *Commercial Mortgage Alert*, (February 15, 1999).

[124] "Financing Multifamily Properties: A Play With New Actors and New Lines," Donald S. Bradley, Frank E. Nothaft, and James L. Freund, *Cityscape: A Journal of Policy Development and Research*, 4(1), (1998).

[125] *The Impact of Public Capital Markets on Urban Real Estate*, Clement Dinsmore, discussion paper, Brookings Institution Center on Urban and Metropolitan Policy, July 1998; "Capital Availability Fuels Commercial Market Growth," Marshall Taylor, *Real Estate Finance Today*, (February 17, 1997)

[126] Board of Governors of the Federal Reserve System and U.S. Securities and Exchange Commission, *Report to the Congress on Markets for Small-Business- and Commercial-Mortgage-Backed Securities*, (September 1998).

[127] "REITs Tally Nearly Half of All Big CRE Deals in First Quarter," *National Mortgage News*, (July 7, 1997); "Will REITs, Mortgage-Backeds Make Difference in Downturn," Jennifer Goldblatt, *American Banker*, (February 18, 1998).

[128] "Apartment Demographics: Good for the Long Haul?" Jack Goodman, *Real Estate Finance*, (Winter 1997); "The Multifamily Outlook," Jack Goodman, Urban Land, (November 1998).

[129] *U.S. Housing Market Conditions 2nd Quarter 1999*, U.S. Department of Housing and Urban Development (August 1999), Table 4.

[130] Howard Esaki, a principal in CMBS Research at Morgan Stanley Dean Witter stated recently that

Continued

The consensus viewpoint among most economists is that an economic recession in 2000 is unlikely.[131] However, the possibility of a global economic downturn cannot be dismissed.[132] The sensitivity of commercial real estate markets to investor perceptions regarding global volatility was demonstrated by the rise in CMBS spreads in September, 1998.[133] Thus, market disruptions could have adverse implications on U.S. commercial and residential mortgage markets.

4. Recent Performance and Effort of the GSEs Toward Achieving the Low- and Moderate-Income Housing Goal: Role of Multifamily Mortgages

The GSEs have rapidly expanded their presence in the multifamily mortgage market in the period since the housing goals were established in 1993. Fannie Mae has played a much larger role in the multifamily market, with purchases of $6.9 billion in 1997 compared with $2.7 billion by Freddie Mac. If Fannie Mae multifamily acquisitions maintain their recent growth rate, it appears likely that they will be successful in reaching its publicly announced goal of conducting $50 billion in multifamily transactions between 1994 and the end of the decade.[134] Fannie Mae's multifamily underwriting standards are highly influential and have been widely emulated throughout the industry. Freddie Mac has successfully rebuilt its multifamily program after a three-year hiatus during 1991–1993 precipitated by widespread defaults.

Multifamily loans represent a relatively small portion of the GSEs' business activities. For example, multifamily loans held in portfolio or guaranteed by the GSEs at the end of 1997 totaled $41.4 billion, less than 3 percent of their single-family combined portfolio and guaranteed holdings. In comparison, multifamily mortgages held or guaranteed by the GSEs represent approximately 8 percent of the overall stock of mortgage debt.[135]

However, the multifamily market contributes disproportionately to GSE purchases meeting both the Low- and Moderate-Income and Special Affordable Housing goals. In 1997, Fannie Mae's multifamily purchases represented 13.4 percent of their total acquisition volume, measured in terms of dwelling units. Yet these multifamily purchases comprised 26.7 percent of units qualifying for the Low- and Moderate Income Housing Goal, and 44.4 percent of units meeting the Special Affordable goal. Multifamily purchases were 8.2 percent of units backing Freddie Mac's 1997 acquisitions, 18.8 percent of units meeting the Low-and Moderate Income Housing Goal, and 31.4 percent of units qualifying for the Special Affordable Housing Goal.[136] The multifamily market therefore comprises a significant share of units meeting the Low- and Moderate-Income and Special Affordable Housing Goals for both GSEs, and the goals may have contributed to increased emphasis by both GSEs on multifamily in the period since the Final Rule took effect in 1995.[137]

The majority of units backing GSE multifamily transactions meet the Low- and Moderate Income Housing Goal because the great majority of rental units are affordable to families at 100 percent of median income, the standard upon which the Low- and Moderate Income Housing Goal is defined. For example, 33.3 percent of units securing Freddie Mac's 1997 one-family owner-occupied mortgage purchases met the Low- and Moderate Income Housing Goal, compared with 95.9 percent of its multifamily transactions. Corresponding figures for Fannie Mae were 33.8 percent and 85.2 percent.[138] For this reason, multifamily purchases represent a crucial component of the GSEs' efforts in meeting the Low- and Moderate Income Housing Goal.

Because such a large proportion of multifamily units qualify for the Low- and Moderate-Income Housing Goal and for the Special Affordable Housing Goal, Freddie Mac's weaker multifamily performance adversely affects its overall performance on these two housing goals relative to Fannie Mae. Units in multifamily properties accounted for 7.9 percent of Freddie Mac's mortgage purchases during 1996–1998, compared with 12.2 percent for Fannie Mae. Fannie Mae's greater emphasis on multifamily is a major factor contributing to the strength of its housing goals performance relative to Freddie Mac.

5. A Role for the GSEs in Multifamily Housing

By sustaining a secondary market for multifamily mortgages, the GSEs can extend the benefits that come from increased mortgage liquidity to many more lower-income families while helping private owners to maintain the quality of the existing affordable housing stock. In addition, standardization of underwriting terms and loan documents by the GSEs has the potential to reduce transactions costs. As the GSEs gain experience in areas of the multifamily mortgage market affected by costly, difficult, or inconsistent access to secondary markets, they gain experience that enables them to better measure and price default risk, yielding greater efficiency and further cost savings.

Ultimately, greater liquidity, stability, and efficiency in the secondary market due to a significant presence by the GSEs will benefit lower-income renters by enhancing the availability of mortgage financing for affordable rental units—in a manner analogous to the benefits the GSEs provide homebuyers. Providing liquidity and stability is the main role for the GSEs in the multifamily market, just as in the single-family market.

Current volatility in the CMBS market underlines the need for an ongoing GSE presence in the multifamily secondary market. The potential for an increased GSE presence is enhanced by virtue of the fact that an increasing proportion of multifamily mortgages are originated to secondary market standards, as noted previously. While the GSEs have also been affected by the widening of yield spreads affecting CMBS, historical experience suggests that agency spreads will converge to historical magnitudes as a consequence of the perceived benefits of federal sponsorship.[139] When this occurs, the capability of the GSEs to serve and compete in the multifamily secondary market will be enhanced.[140]

6. Multifamily Mortgage Market: GSEs' Ability To Lead the Industry

Holding 9.8 percent of the outstanding stock of multifamily mortgage debt and guarantees as of the end of 1997, Fannie Mae is regarded as an influential force within the multifamily market. Its Delegated Underwriting and Servicing (DUS) program, in which Fannie Mae delegates underwriting responsibilities to originators in return for a commitment to share in any default risk, now accounts for more than half its multifamily acquisitions, and has been regarded as highly successful.

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volatility in global markets contributed to a 10-20 percent decline in commercial real estate values in late 1998. John Hackett, "CRE Seen Down 10% to 20%," *National Mortgage News*, (November 23, 1998), p. 1.

[131] The Congressional Budget Office, *The Economic and Budget Outlook: An Update*, (July 1999) predicts that GDP growth will slow from an annual rate exceeding 3.5 percent in recent years to 2.4 percent over 2000–2003 (p. 11). Standard & Poor's DRI, *The U.S. Economy*, (September 1999), estimates the probability of a recession in 2000, triggered by a collapse of the stock market, at 10 percent. Under this scenario, GDP growth would drop to 0.2 percent in 2000, but rebound to over 3 percent during the 2001–2003period.

[132] The World Bank Group, *Global Economic Prospects and the Developing Countries 1998/99: Beyond Financial Crisis*, 1998. Implications of the economic crisis in developing countries for lenders in developed countries is discussed in Martin Wolf, "Borrowing: Let Lenders Beware," *Financial Times*, (December 9, 1998). DRI/McGraw Hill's *U.S. Financial Notes* says there is about a 30 percent chance of a "hard landing" in 1999 because of Brazil's decision to float the real and Japan's ongoing severe financial problems. Alternatively, if there is no recession in 1999, the result could be a later, but more severe, recession (February 18, 1999, p. 3).

[133] John Holusha, "As Financing Pool Dries Up, Some See Opportunity," *New York Times*, November 1, 1998.

[134] See Fannie Mae's World Wide Web site at http://www.fanniemae.com.

[135] *Federal Reserve Bulletin*, (June 1998), A 35.

[136] 1997 Annual Housing Activity Reports, Table 1.

[137] William Segal and Edward J. Szymanoski. *The Multifamily Secondary Mortgage Market: The Role of Government-Sponsored Enterprises*. Housing Finance Working Paper No. HF–002, Office of Policy Development and Research, Department of Housing and Urban Development, (March 1997).

[138] HUD analysis of GSE loan-level data. Affordability data are missing on 11.1 percent of units backing Fannie Mae's 1997 multifamily acquisitions, which may contribute to the disparity between Fannie Mae and Freddie Mac regarding percentage of multifamily acquisitions contributing to the low-mod goal.

[139] *Fundingnotes*, Vol. 3, Issue 9; (September 1998), Eric Avidon, "PaineWebber Lauds Fannie DUS Paper," *National Mortgage News*, (September 14, 1998), p. 21.

[140] There is evidence that the GSEs have benefited from recent widening in CMBS spreads because of their funding cost advantage. See "No Credit Crunch for First Mortgages," *Commercial Mortgage Alert*, (October 12, 1998); and "Turmoil a Bonanza for Freddie," *Commercial Mortgage Alert*, (November 2, 1998).

Freddie Mac's presence in the multifamily market is not as large as that of Fannie Mae, with year-end 1997 holdings of multifamily debt and guarantees representing 2.5 percent of the total. However, Freddie Mac is credited with rapidly rebuilding its multifamily operations since 1993. The GSEs' ability to lead the multifamily industry is discussed further below.

7. GSEs' Performance in the Multifamily Mortgage Market

GSE activity in the multifamily mortgage market has expanded rapidly since 1993, as noted previously. However, it is not clear that the potential of the GSEs to lead the multifamily mortgage industry has been fully exploited. In particular, the GSEs' multifamily purchases do not appear to be consistently contributing to mitigation of excessive cost of mortgage financing facing small properties with 5–50 units. GSE purchases of small loans with unpaid principal balance (UPB) less than or equal to $1 million have exhibited considerable volatility over 1993–1997, ranging from as little as 15 percent of the number of mortgage loans purchased (1996) to as high as 64 percent (1995).[141]

Based on data from the Survey of Residential Finance showing that 37 percent of units in mortgaged multifamily properties were in properties with 5–49 units, it appears reasonable to assume that loans backed by small properties account for 37 percent of multifamily units financed each year. Applying estimates of the dollar-size of the conventional multifamily market derived in Appendix D, and combining these with figures on loan amount per unit from GSE data in conjunction with data on loans securitized by private conduits to derive estimates of the annual volume of multifamily lending as measured in number of units financed, is appears that, during 1996–1998, the GSEs acquired loans representing only 5 percent of units in small multifamily properties with 5–50 units.

GSE multifamily acquisitions tend to involve larger properties than are typical for the market as a whole.[142] For example, the average number of units in Fannie Mae's 1997 multifamily transactions was 163, with a corresponding figure of 158 for Freddie Mac. Both of these averages are significantly higher than the overall market average of 33.4 units per property on 1995 originations estimated from the HUD Property Owners and Managers (POMS) survey.[143] A factor possibly contributing to the GSEs' emphasis on larger properties is the relatively high fixed multifamily origination costs, including appraisal, environmental review, and legal fees typically required under GSE underwriting guidelines.[144]

After evaluating the results of a $500 million Small Loan Experiment, Fannie Mae announced in October, 1998 that it had established a permanent Small Loan product through selected DUS lenders. Features include streamlined underwriting and due diligence procedures and documentation requirements. Unlike the standard DUS product, which has a $1 million minimum loan amount, there is no minimum loan amount for the Small Loan product.[145]

Another area affected by credit gaps, in which the GSEs have not demonstrated market leadership is rehabilitation loans. Fannie Mae applies more conservative underwriting standards to such properties, as discussed above. Both GSEs' relatively weak performance in the multifamily rehabilitation market segment is related to the fact that, since the inception of the interim housing goals in 1993, the great majority of units backing GSE multifamily mortgage purchases have been in properties securing refinance loans with an established payment history, in a proportion exceeding 80 percent in some years.[146]

In October, 1998 Fannie Mae announced a rehabilitation lending initiative providing up to $15,000 per unit on the condition that all units financed are affordable to low-and moderate income tenants. This product is intended to assist property owners in enhancing property quality and retaining tenants, strengthening competitiveness in relation to other similar properties.[147]

The GSEs have been conservative in their approach to multifamily credit risk.[148] HUD's analysis of prospectus data indicates that the average loan-to-value (LTV) ratio on pools of seasoned multifamily mortgages securitized by Freddie Mac during 1995 through 1996 was 55 percent. In comparison, the average LTV on private-label multifamily conduit transactions over 1995–1996 was 73 percent. Fannie Mae utilizes a variety of credit enhancements to further mitigate default risk on multifamily acquisitions, including loss sharing, recourse agreements, and the use of senior/subordinated debt structures.[149] Freddie Mac is less reliant on credit enhancements than is Fannie Mae, possibly because of a more conservative underwriting approach.[150]

GSE ambivalence regarding the perception of credit risk in lending on affordable multifamily properties is evident with regard to pilot programs established in 1991 between Freddie Mac and the Local Initiatives Managed Assets Corporation (LIMAC), a subsidiary of the Local Initiatives Support Corporation (LISC), and in 1994 between Fannie Mae and Enterprise Mortgage Investments (EMI), a subsidiary of the Enterprise Foundation. Cummings and DiPasquale (1998) conclude that both initiatives had mixed results, although the Fannie Mae/EMI pilot was more successful in a number of regards. The Freddie Mac/LIMAC initiative was suspended after two years with only one completed transaction, involving eight loans with an aggregate loan amount of $4.6 million. As of June, 1997, 15 transactions comprising $20.5 million had been completed under the Fannie Mae/EMI pilot, which is ongoing.

Both programs suffered initially from documentation requirements that borrowers perceived as burdensome. Cummings and DiPasquale observe that "The smaller, nonprofit, and CDC developers that these programs intended to bring to the market were unprepared, and perhaps unwilling or unable, to meet the high costs of Freddie Mac's and Fannie Mae's due diligence requirements."

E. Factor 3: Performance and Effort of the GSEs Toward Achieving the Low- and Moderate-Income Housing Goal in Previous Years

This section first discusses each GSE's performance under the Low- and Moderate-Income Housing Goal over the 1993–98 period. The data presented are "official results"—i.e., they are based on HUD's in-depth analysis of the loan-level data submitted to the Department and the counting provisions contained in HUD's regulations in 24 CFR part 81, subpart B. As explained below, in some cases these "official results" differ from goal performance reported to the Department by the GSEs in their Annual Housing Activities Reports.

Following this analysis, the GSEs' past performance in funding low- and moderate-income borrowers in the single-family mortgage market is provided. Performance indicators for the Geographically-Targeted and Special Affordable Housing Goals are also included in order to present a complete picture in Appendix A of the GSEs' funding of single-family mortgages that qualify for the

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[141] HUD analysis of GSE loan-level data.

[142] Larger properties may be perceived as less subject to income volatility caused by vacancy losses. Scale economies in securitization may also favor purchase of larger multifamily mortgages by the GSEs. Scale economies refer to the fixed costs in creating a mortgage backed security, and the smaller reduction in yield (higher security price) if these costs can be spread over larger unpaid principal balances.

[143] 1995 POMS data are used because 1995 represents the year with the most complete mortgage origination information in the Survey. 1996 GSE data are used because of number of units or property exhibited atypical behavior during 1995.

[144] These costs have been estimated at $30,000 for a typical transaction. Presentation by Jeff Stern, Vice President, Enterprise Mortgage Investments, HUD GSE Working Group, (July 23, 1998).

[145] "Fannie Mae Offers Mortgage Financing for the Rehabilitation of Affordable Apartments; Also Expands Availability, Streamlines Procedures for Financing of Small Apartment Properties," Fannie Mae News Release, October 20, 1998. Freddie Mac's Conventional Cash Multifamily Mortgage Purchase Program includes a Small Loan Program for mortgages of $300,000—$1 million.

[146] Data from the HUD Property Owners and Managers Survey (POMS) suggests that, in and of itself, the GSEs' emphasis on refinance loans may roughly track that of the overall market.

[147] "Fannie Mae Offers Mortgage Financing for the Rehabilitation of Affordable Apartments; Also Expands Availability, Streamlines Procedures for Financing of Small Apartment Properties," Fannie Mae News Release, October 20, 1998.

[148] Standard & Poor's described Fannie Mae's multifamily lending as "extremely conservative" in "Final Report of Standard & Poor's to the Office of Federal Housing Enterprise Oversight (OFHEO)," (February 3, 1997), p. 10.

[149] See William Segal and Edward J. Szymanoski. "Fannie Mae, Freddie Mac, and the Multifamily Mortgage Market," *Cityscape: A Journal of Policy Development and Research*, vol. 4, no. 1 (1998), pp. 59–91.

[150] Freddie Mac's policy of re-underwriting each multifamily acquisition is a response to widespread defaults affecting its multifamily portfolio during the late 1980s according to Follain and Szymanoski (1995).

three housing goals. In addition, the findings from a wide range of studies—employing both quantitative and qualitative techniques to analyze several performance indicators and conducted by HUD, academics, and major research organizations—are summarized below.

Organization and Main Findings. Section E.1 reports the performance of Fannie Mae and Freddie Mac on the Low- and Moderate-Income Housing Goal. Section E.2 uses HMDA data and the loan-level data that the GSEs provide to HUD on their mortgage purchases to compare the characteristics of GSE purchases of single-family loans with the characteristics of all loans in the primary mortgage market and of newly-originated loans held in portfolio by depositories. Section E.3 summarizes the findings from several studies that have examined the role of the GSEs in supporting affordable lending. Section E.4 discusses the findings from a recent HUD-sponsored study of the GSEs' underwriting guidelines.[151] Finally, Section E.5 reviews the GSEs' support of the single-family rental market.

The Section's main findings with respect to the GSEs' single-family mortgage purchases are as follows:

(i) Both Fannie Mae and Freddie Mac surpassed the Low- and Moderate-Income Housing Goals of 40 percent in 1996 and 42 percent in 1997 and 1998.

(ii) Both Fannie Mae and Freddie Mac have improved their affordable lending[152] performance over the past six years but, on average, they have lagged the primary market in providing mortgage funds for lower-income borrowers and underserved neighborhoods. This finding is based both on HUD's analysis of GSE and HMDA data as well as on numerous studies by academics and research organizations.

(iii) The GSEs show very different patterns of home loan lending.[153] Through 1998, Freddie Mac has been less likely than Fannie Mae to fund single-family home mortgages for low-income families and their communities. The percentages of Freddie Mac's purchases benefiting historically underserved families and their neighborhoods have also been substantially less than the corresponding shares of total market originations. Freddie Mac has not made much progress closing the gap between its performance and that of the overall home loan market.

(iv) Fannie Mae's purchases more nearly match the patterns of originations in the primary market than do Freddie Mac's. However, during the 1993–98 period as a whole and the 1996–98 period during which the new goals were in effect, Fannie Mae has lagged depositories and others in the conforming market in providing funding for the lower-income borrowers and neighborhoods covered by the three housing goals.

(v) A large percentage of the lower-income loans purchased by the GSEs have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the needs of lower-income families who have little cash for making large down payments.

(vi) A study by The Urban Institute of lender experience with the GSEs' underwriting standards finds that the enterprises have stepped up their outreach efforts and have increased the flexibility in their underwriting standards, to better accommodate the special circumstances of lower-income borrowers. However, this study concludes that the GSEs' guidelines remain somewhat inflexible and that they are often hesitant to purchase affordable loans. Lenders also tell the Urban Institute that Fannie Mae has been more aggressive than Freddie Mac in market outreach to underserved groups, in offering new affordable products, and in adjusting their underwriting standards.

(vii) While single-family rental properties are an important source of low-income rental housing, they represent only a small portion of the GSEs' business. In addition, many of the single-family rental properties funded by the GSEs are one-unit detached units in suburban areas rather than the older, 2–4 units commonly located in urban areas.

1. Past Performance on the Low- and Moderate-Income Housing Goal

HUD's goals specified that in 1996 at least 40 percent of the number of units eligible to count toward the Low- and Moderate-Income Goal should qualify as low-or moderate-income, and at least 42 percent should qualify in 1997 and 1998. Actual performance, based on HUD's analysis, was as follows:

	1996	1997	1998
Fannie Mae:			
Units Eligible to Count Toward Goal	1,831,690	1,710,530	3,468,428
Low- and Moderate-Income Units	834,393	782,265	1,530,308
Percent Low- and Moderate-Income	45.6	45.7	44.1
Freddie Mac:			
Units Eligible to Count Toward Goal	1,293,424	1,173,915	2,654,850
Low- and Moderate-Income Units	532,219	499,590	1,137,660
Percent Low- and Moderate-Income	41.1	42.6	42.9

Thus, Fannie Mae surpassed the goals by 5.6 percentage points and 3.7 percentage points in 1996 in 1997, respectively, while Freddie Mac surpassed the goals by 1.1 and 0.6 percentage points. In 1998 Fannie Mae's performance fell by 1.6 percentage points, while Freddie Mac's reported performance continued to rise, by 0.3 percentage point.

The figures for goal performance presented above for 1993–97 differ from the corresponding figures presented by Fannie Mae and Freddie Mac in their Annual Housing Activity Reports to HUD by 0.2–0.3 percentage points in both 1996 and 1997, reflecting minor differences in application of counting rules.

Fannie Mae's performance on the Low- and Moderate-Income Goal jumped sharply in just one year, from 34.1 percent in 1993 to 45.1 percent in 1994, before tailing off to 42.8 percent in 1995. As indicated, it then stabilized at the 1994 level, just over 45 percent, in 1996 and 1997, before tailing off to 44.1 percent last year. Freddie Mac has shown more steady gains in performance on the Low- and Moderate-Income Goal, from 30.0 percent in 1993 to 38.0 percent in 1994 and 39.6 percent in 1995, before surpassing 41 percent in 1996 and 42 percent 1997, and rising to nearly 43 percent last year.

Fannie Mae's performance on the Low-and Moderate-Income Goal has surpassed Freddie Mac's in every year. However, Freddie Mac's 1998 performance represented a 44 percent increase over the 1993 level, exceeding the 29 percent increase for Fannie Mae. And Freddie Mac's performance was 97 percent of Fannie Mae's low- and moderate-income share in 1998, the highest ratio since the goals took effect in 1993. This improved performance of Freddie Mac is due mainly to its increased purchases of multifamily loans as it re-entered that market.

2. Comparisons With the Primary Mortgage Market

This section summarizes several analyses conducted by HUD on the extent to which the GSEs' loan purchases through 1998 mirror or depart from the patterns found in the primary mortgage market. The GSEs' affordable lending performance is also compared with the performance of major portfolio lenders such as commercial banks and thrift institutions. Dimensions of lending considered include the borrower income and underserved area dimensions covered by the three housing goals. Subsection *a* defines the primary mortgage market, subsection b addresses some questions that have recently

[151] A more detailed discussion of underwriting guidelines is contained in the analysis below regarding Factor 5, "The GSEs' Ability to Lead the Industry."

[152] The term "affordable lending" is used generically here to refer to lending for lower-income families and neighborhoods that have historically been underserved by the mortgage market.

[153] Throughout these appendices, the terms "home loan" or "home mortgage" will refer to a "home purchase loan," as opposed to a "refinance loan."

arisen about HMDA's measurement of GSE activity, and subsections c–e present the findings.[154]

The market analysis in this section is based mainly on HMDA data for home purchase loans originated in metropolitan areas during the years 1992 to 1998. The HMDA data for 1998 was not released until August 1999 which gave HUD little time to incorporate that data fully into the analyses reported in these appendices; thus, the discussion below will often focus on the year 1997, with any differences from 1998 briefly noted. However, it should be emphasized that 1997 represents more typical mortgage market activity than the heavy refinancing year of 1998. Still, important shifts in mortgage funding that occurred during 1998 will be highlighted in order to offer as complete and updated analysis as possible.

a. Definition of Primary Market

First it is necessary to define what is meant by "primary market" in making these comparisons. In this section this term includes all mortgages on single-family owner-occupied properties that are originated in the conventional conforming market.[155] The source of this market information is the data provided by loan originators to the Federal Financial Institutions Examination Council (FFIEC) in accordance with the Home Mortgage Disclosure Act (HMDA).

There is a consensus that the following loans should be excluded from the HMDA data in defining the "primary market" for the sake of comparison with the GSEs" purchases of goal-qualifying mortgages:

(i) Loans with a principal balance in excess of the loan limit for purchases by the GSEs—$240,000 for a 1-unit property in most parts of the United States in 1999.[156] Loans not in excess of this limit are referred to as "conforming mortgages" and larger loans are referred to as "jumbo mortgages."[157]

(ii) Loans which are backed by the Federal government, including those insured by the Federal Housing Administration and those guaranteed by the Department of Veterans Affairs, which are generally securitized by the Government National Mortgage Association ("Ginnie Mae"), as well as Rural Housing Loans, guaranteed by the Farmers Home Administration.[158] Generally, the GSEs do not receive credit on the housing goals for purchasing loans with Federal government backing. Loans without Federal government backing are referred to as "conventional mortgages."

Questions have arisen about whether loans on manufactured housing should be excluded when comparing the primary market with the GSEs. As discussed elsewhere in this Appendix, the GSEs have not played a significant role in the manufactured housing mortgage market in the past. However, the manufactured home mortgage market is changing in ways that make a higher percentage of such loans eligible for purchase by the GSEs, and the GSEs are looking for ways to increase their purchases of these loans. But more importantly, the manufactured housing sector is one of the most important providers of affordable housing, which makes it appropriate to include this sector in the market definition. For comparison purposes, data are presented for the primary market defined both to include and exclude mortgages originated by manufactured housing lenders. This issue is discussed further in Appendix D, which calculates the market shares for each housing goal.

Questions have also arisen about whether subprime loans should be excluded when comparing the primary market with the GSEs. Appendix D, which examines this issue in some detail, reports the effects of excluding the B&C portion of the subprime market from HUD's estimates of the goal-qualifying shares of the overall (combined owner and rental) mortgage market. As explained Section C.3.e of this appendix, the low-income and minority borrowers in the A-minus portion of the subprime market could benefit from the standardization and lower interest rates that typically accompany an active secondary market effort by the GSEs. A-minus loans are not nearly as risky as B&C loans and Freddie Mac has already starting purchasing A-minus loans, both on a flow basis and through negotiated transactions. Fannie Mae recently introduced a new program targeted at A-minus borrowers. Thus, HUD does not believe that A-minus loans should be excluded from the market definition.

Unfortunately, HMDA does not identify subprime loans, much less separating them into their A-minus and B&C components. There is evidence that many subprime loans are not reported to HMDA but there is no conclusive evidence on this issue.[159] Thus, it is not possible to exclude B&C loans from the comparisons reported below. However, HUD staff has identified HMDA reporters that primarily originate subprime loans.[160] The text below will report the effects of excluding data for these lenders from the primary market. The effects are minor mostly because the analysis below focuses on home purchase loans, which accounted for only twenty percent of the mortgages originated by the subprime lenders. During 1997 and 1998, the subprime market was primarily a refinance market.

b. Methods and Data for Measuring GSE Performance

Several issues have arisen about the methods and the data used to measure the GSEs' performance relative to the characteristics of the mortgages being originated in the primary market. While most of these issues will be discussed throughout the appendices, one issue, the reliability of HMDA data in measuring GSE performance, needs to addressed before presenting the market comparisons, which utilize the HMDA data. Fannie Mae has raised questions about HUD's reliance on HMDA data for measuring its performance.

There are two sources of loan-level information on the characteristics of mortgages purchased by the GSEs—the GSEs themselves and HMDA data. The GSEs provide detailed data on their mortgage purchases to HUD on an annual basis. As part of their annual HMDA reporting responsibilities, lenders are required to indicate whether their new mortgage originations or purchased loans are sold to Fannie Mae, Freddie Mac or some other entity. As discussed later, there have been numerous studies by HUD staff and other researchers that use the HMDA data to compare the borrower and neighborhood characteristics of loans sold to the GSEs with the characteristics of all loans originated in the market. The question is whether the HMDA data, which is widely available to the public, provides an accurate measure of GSE performance, as compared with the GSEs' own data.[161] Fannie Mae has argued that HMDA data have understated its past performance, where performance is defined as the percentage of Fannie Mae's mortgage purchases accounted for by one of the goal-qualifying categories such as underserved areas. As explained below, HMDA provided reliable national-level information through 1997 on the GSEs' purchases of newly-originated loans but not on their purchases of prior-year loans. In 1998, HMDA data differed from data that the GSEs reported to HUD on their purchases of newly-originated loans.

In any given calendar year, the GSEs can purchase mortgages originated in that calendar year or mortgages originated in a

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[154] Subsections *b–d* of this section focus on the single-family mortgage market for home purchase loans, which is the relevant market for analysis of homeownership opportunities. Subsection e extends the analysis to include single-family refinance loans. For a discussion of past performance in the multifamily mortgage market, see Section D of this Appendix.

[155] Thus, the market definition in this section is narrower than the data presented earlier in Section C and Tables A.1a and A.1b, which covered all loans (both government and conventional) less than or equal to the conforming loan limit. In this section, only the GSEs' purchases of conventional conforming loans are considered.

[156] Higher limits apply for loans on 2-, 3-, and 4-unit properties and for properties in Alaska, Hawaii, Guam, and the Virgin Islands.

[157] "Jumbo mortgages" in any given year might become eligible for purchase by the GSEs in later years as the loan limits rise and the outstanding principal balance is reduced.

[158] However, in analyzing the provision of mortgage finance more generally, it is often appropriate to include government loans; see Tables A.1a, A.1b and A.2 in Section C.3.b.

[159] *Fair Lending/CRA Compass*, (June 1999), p. 3.

[160] Randall M. Scheessele developed a list of 42 subprime lenders that was used by HUD and others in analyzing HMDA data through 1997. In 1998, Scheessele updated the list to 200 subprime lenders. For analysis comparing various lists of subprime lenders, see Appendix D of Scheessele (1999), op. cit. That paper also discusses Scheessele's lists of manufactured housing lenders.

[161] See Randall M. Scheessele, *HMDA Coverage of the Mortgage Market*, Housing Finance Working Paper HF–007, Office of Policy Development and Research, Department of Housing and Urban Development, July 1998. Scheessele reports that HMDA data covered 81.6 percent of the loans acquired by Fannie Mae and Freddie Mac in 1996. The main reason for the under-reporting of GSE acquisitions is a few large lenders failed to report the sale of a significant portion of their loan originations to the GSEs. Also see Jim Berkovec and Peter Zorn, "Measuring the Market: Easier Said than Done," *Secondary Mortgage Markets*, McLean VA: Freddie Mac (Winter 1996), pp. 18–21.

prior calendar year. In 1997, purchases of prior-year mortgages accounted for 30 percent of the single-family units financed by Fannie Mae's mortgage purchases and 20 percent of the single-family units financed by Freddie Mac's mortgage purchases.[162] HMDA data provides information mainly on newly-originated mortgages that are sold to the GSEs—that is, HMDA data on loans sold to the GSEs will not include many of their purchases of prior-year loans.[163] The implications of this for measuring GSE performance can be seen in Tables A.3 and A.4a.[164]

Table A.3 summarizes affordable lending by the GSEs, depositories and the conforming market for the six-year period between 1993 and 1998 and for the borrower and census tract characteristics covered by the housing goals. The GSE percentages presented in Table A.3 are derived from the GSEs' own data that they provide to HUD, while the depository and market percentages are taken from HMDA data. Annual data on the borrower and census tract characteristics of GSE purchases are provided in Table A.4a. According to Fannie Mae's own data, 9.9 percent of its purchases during 1997 were loans for very low-income borrowers (see Table A.4a). According to HMDA data (also reported in Table A.4a), only 8.8 percent of Fannie Mae's purchases were loans for very low-income borrowers.[165] Thus, in this case the HMDA data underestimate the share of Fannie Mae's mortgage purchases for very low-income borrowers.

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[162] Since 1993, the GSEs have increased their purchases of seasoned loans. See Paul B. Manchester, *Characteristics of Mortgages Purchased by Fannie Mae and Freddie Mac: 1996–1997 Update*, Housing Finance Working Paper HF–006, Office of Policy Development and Research, Department of Housing and Urban Development, (August 1998), p. 17.

[163] For a discussion of the impact of the GSEs' seasoned mortgage purchases on HMDA data coverage, see Scheessele (1998), op. cit.

[164] Table A.4b, which reports similar GSE information as Table A.4a, provides several alternative estimates of the conventional conforming market depending on the treatment of small loans, manufactured housing loans, and subprime loans. The data in Table A.4b will be referenced throughout the discussion.

[165] Any HMDA data reported in the appendices on borrower incomes excludes loans where the loan-to-borrower-income ratio is greater than six.

Table A.3

GSE Purchases and Single-Family Lending in Metropolitan Areas Goal-Qualifying Home Purchase Mortgages, 1993-1998

Borrower and Tract Characteristics	Fannie Mae	Freddie Mac	Depository Portfolio	Conforming Market	
				Total	W/O Mfg Homes
Very Low-Income					
1993-1998	9.2 %	7.6 %	14.5 %	12.4 %	10.7 %
1993-1995	8.1	6.6	14.5	11.6	10.3
1996-1998	10.1	8.4	14.5	13.0	11.1
Special Affordable					
1993-1998	11.0	9.0	17.0	14.6	12.7
1993-1995	9.9	7.9	17.1	13.8	12.3
1996-1998	11.9	9.8	16.7	15.3	13.1
Less than Area Median Income					
1993-1998	37.4	33.8	43.6	41.8	39.4
1993-1995	36.3	32.4	44.1	40.8	39.0
1996-1998	38.4	34.9	43.1	42.6	39.6
Underserved Area					
1993-1998	22.9	19.7	26.3	24.5	23.4
1993-1995	22.9	19.4	26.8	24.0	23.2
1996-1998	22.9	19.9	25.8	24.9	23.5

Source: The Fannie Mae and Freddie Mac data include information on all their purchases of home loans and are from the loan-level data that they provide to HUD. All mortgages are conventional conforming mortgages. The Depository Portfolio and Conforming Market data are from HMDA; loans with a loan-to-income ratio greater than six are excluded from the borrower income calculations. The "Conforming Market W/O Mfg Homes" data for borrower income exclude loans less than $15,000 and loans from lenders that primarily originate manufactured housing loans. Special affordable includes very low-income borrowers and low-income borrowers in low-income census tracts. Data with missing values are excluded.

Table A.4a

Annual Trends in GSE Purchases and Single-Family Lending in Metropolitan Areas
Goal-Qualifying Home Purchase Mortgages, 1992-1998

	Fannie Mae Data			HMDA Data for Fannie Mae	Freddie Mac Data			HMDA Data for Freddie Mac	Conforming Market	
	Prior Yr	Current Yr	All		Prior Yr	Current Yr	All		All	W/O Mfg Homes
Very Low-Income										
1992				5.2 %				5.3 %	8.7 %	7.6 %
1993	6.5 %	6.7 %	6.7 %	7.4	4.2 %	6.2 %	6.0 %	6.6	10.8	9.6
1994	7.9	8.9	8.7	9.4	6.4	6.8	6.7	7.8	11.9	10.7
1995	11.2	8.9	9.3	8.5	7.7	6.8	7.0	7.5	12.0	10.5
1996	8.8	8.4	8.5	8.7	7.2	7.4	7.4	8.0	12.7	10.8
1997	13.4	8.7	9.9	8.8	7.5	7.6	7.6	8.0	13.0	11.0
1998	15.1	10.5	11.4	9.2	10.1	9.8	9.9	8.4	13.3	11.4
Special Affordable										
1992				6.3				6.5	10.4	9.3
1993	8.2	8.1	8.1	8.8	5.1	7.4	7.2	7.8	12.6	11.3
1994	9.5	10.8	10.6	11.4	7.6	8.1	8.0	9.2	14.1	12.8
1995	13.2	10.8	11.2	10.5	9.1	8.2	8.3	8.9	14.4	12.7
1996	10.6	10.2	10.3	10.5	8.4	8.7	8.7	9.4	15.0	12.8
1997	16.0	10.2	11.7	10.5	9.2	9.0	9.0	9.4	15.3	13.0
1998	17.9	12.1	13.2	10.7	11.8	11.2	11.3	9.7	15.5	13.4
Less Than Area Median Income										
1992				29.2				28.7	34.4	33.0
1993	30.4	33.5	33.2	35.0	24.9	32.1	31.6	32.3	38.9	37.4
1994	35.6	38.9	38.3	40.1	31.5	33.6	33.2	35.6	41.8	40.3
1995	38.6	37.7	37.8	37.1	33.6	32.1	32.4	33.9	41.4	39.2
1996	35.5	36.8	36.5	37.7	31.8	33.5	33.2	35.3	42.2	39.4
1997	41.1	36.4	37.6	37.5	33.7	34.2	34.1	35.4	42.5	39.6
1998	45.3	39.2	40.4	38.1	36.1	37.0	36.9	36.2	43.0	40.4
Underserved Areas										
1992				18.3				18.6	22.2	21.5
1993	23.8	19.4	20.3	18.2	19.5	18.2	18.4	17.6	21.9	21.1
1994	26.6	23.6	24.3	22.5	21.0	19.4	19.7	19.2	24.4	23.5
1995	27.4	23.9	24.7	22.8	22.6	19.4	20.1	19.1	25.5	24.2
1996	23.4	21.9	22.3	21.6	22.3	19.1	19.7	19.0	25.0	23.1
1997	30.1	20.8	23.5	21.0	22.2	19.3	19.9	18.6	25.2	23.3
1998	28.4	21.0	22.9	19.6	22.0	19.5	20.0	17.4	24.6	22.8

Source: The Fannie Mae and Freddie Mac data for their purchases of "Prior Year" mortgages, "Current Year" mortgages, and "All" mortgages are from the loan-level data that they provide to HUD. All mortgages are conventional conforming home purchase mortgages. The "HMDA Data" are those mortgages that HMDA identifies as being sold to the GSEs.The Conforming Market data are from HMDA; loans with a loan-to-income-ratio greater than six are excluded from the borrower income calculations. The "Conforming Market W/O Mfg Homes" data exclude loans less than $15,000 and loans from lenders that primarily originate manufactured housing loans. Special affordable includes very low-income borrowers and low-income borrowers living in low-income census tracts. Data with missing values are excluded.

Table A.4b

low-income borrowers and low-income borrowers living in low-income census tracts. Data with missing values are excluded.

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Table A.4b

Annual Trends in GSE Purchases and Single-Family Lending in Metropolitan Areas
Goal-Qualifying Home Purchase Mortgages, 1992-1998
Various Market Definitions

			Conventional Conforming Market Originations					
Very Low-Income	Fannie Mae Purchases	Freddie Mac Purchases	Total Market	W/O Mfg Loans Only	W/O Loans Less Than $15K	W/O Mfg and Less Than $15K Loans	W/O Subprime Loans	W/O Subprime and Less Than $15K Loans
1992	5.2 %	5.3 %	8.7 %	8.3 %	7.9 %	7.6 %	8.7% %	7.9 %
1993	6.7	6.0	10.8	10.2	10.0	9.6	10.8%	10.0
1994	8.7	6.7	11.9	11.2	11.2	10.7	11.9%	11.2
1995	9.3	7.0	12.0	11.0	11.3	10.5	12.0%	11.2
1996	8.5	7.4	12.7	11.2	12.0	10.8	12.7%	12.0
1997	9.9	7.6	13.0	11.4	12.4	11.0	13.0%	12.3
1998	11.4	9.9	13.3	11.7	12.8	11.4	13.1%	12.6
Special Affordable								
1992	6.3	6.5	10.4	10.0	9.5	9.3	10.4	9.5
1993	8.1	7.2	12.6	12.0	11.8	11.3	12.6	11.8
1994	10.6	8.0	14.1	13.4	13.4	12.8	14.1	13.3
1995	11.2	8.3	14.4	13.3	13.6	12.7	14.4	13.6
1996	10.3	8.7	15.0	13.3	14.2	12.8	15.0	14.2
1997	11.7	9.0	15.3	13.5	14.6	13.0	15.2	14.5
1998	13.2	11.3	15.5	13.7	15.0	13.4	15.2	14.7
Less Than Area Median Income								
1992	29.2	28.7	34.4	33.8	33.4	33.0	34.4	33.4
1993	33.2	31.6	38.9	38.0	38.1	37.4	38.9	38.0
1994	38.3	33.2	41.8	40.8	41.1	40.3	41.8	41.1
1995	37.8	32.4	41.4	39.8	40.5	39.2	41.3	40.3
1996	36.5	33.2	42.2	39.9	41.1	39.4	42.2	41.4
1997	37.6	34.1	42.5	40.1	41.8	39.6	42.4	41.6
1998	40.4	36.9	43.0	40.7	42.5	40.4	42.6	42.1
Underserved Areas								
1992	18.3	18.6	22.2	21.9	21.7	21.5	22.1	21.6
1993	20.3	18.4	21.9	21.5	21.5	21.1	21.8	21.3
1994	24.3	19.7	24.4	23.9	24.0	23.5	24.3	23.8
1995	24.7	20.1	25.5	24.6	25.0	24.2	25.3	24.9
1996	22.3	19.7	25.0	23.5	24.5	23.1	24.8	24.4
1997	23.5	19.9	25.2	23.7	24.8	23.3	24.7	24.3
1998	22.9	20.0	24.6	23.1	24.3	22.8	23.7	23.4

Source: The Fannie Mae and Freddie Mac percentages are based on the loan-level data that they provide to HUD. All mortgages are conventional conforming home purchase mortgages. The Conforming Market data are from HMDA; loans with a loan-to-income-ratio greater than six are excluded from all borrower income calculations. See the text for an explanation of the adjustments for manufactured housing (mfg) and subprime loans. Special affordable includes very low-income borrowers and low-income borrowers living in low-income census tracts. Data with missing values are excluded.

The reason that HMDA data underestimate those purchases can be seen by disaggregating Fannie Mae's purchases during 1997 into their "Prior Year" and "Current Year" components. Table A.4a shows that the overall figure of 9.9 percent for very low-income borrowers is a weighted average of 13.4 percent for Fannie Mae's purchases during 1997 of "Prior Year" mortgages and 8.7 percent for its purchases of "Current Year" purchases. HMDA data report that 8.8 percent of Fannie Mae's 1997 purchases consisted of loans to very low-income borrowers is based mainly on newly-mortgaged (current-year originations) loans that lenders report they sold to Fannie Mae. Therefore, the HMDA data figure is similar in concept to the "Current Year" percentage from the GSEs' own data. As Table A.4a shows, HMDA data and "Current Year" figures are practically the same in this case (about nine percent). Thus, the relatively large share of very low-income mortgages in Fannie Mae's 1997 purchases of "Prior Year" mortgages is the primary reason why Fannie Mae's own data show an overall (both prior-year and current-year) percentage of very low-income loans that is higher than that reported in HMDA data.

A review of the data in Table A.4a yields the following insights about the reliability of HMDA data at the national level for metropolitan areas. First, comparing the HMDA data on GSE purchases with the GSE "Current Year" data suggests that HMDA data provided reasonable estimates of the GSEs' current year purchases through 1997.[166] Second, the HMDA data percentages through 1997 are actually rather close to Freddie Mac's *overall* percentages because Freddie Mac's prior-year purchases often resembled their current-year originations. Fannie Mae, on the other hand, was more apt to purchase seasoned loans with a relatively high percentage of low-income loans, which means that HMDA data was more likely to underestimate its overall performance. However, this underestimation of the share of Fannie Mae's goal-qualifying loans in the HMDA data first arose in 1997, when Fannie Mae's purchases of prior-year loans were particularly targeted to affordable lending groups. For the years 1993 to 1996, Fannie Mae's prior-year loan purchases more closely resembled their current-year originations.

Third, the 1998 data show that even the GSEs' "Current Year" data differ from the HMDA-reported data on GSE purchases. For example, special affordable loans accounted for 12.1 percent of Fannie Mae's current-year purchases in 1998 compared with only 10.7 percent of Fannie Mae's special affordable purchases as reported by HMDA. Similarly, underserved areas accounted for 21.0 percent of Fannie Mae's current-year purchases compared with only 19.6 percent of Fannie Mae's underserved area purchases as reported by HMDA. The same patterns exist for Freddie Mac's 1998 data for the special affordable and underserved area categories. Thus, 1998 HMDA data do not provide a reliable estimate at the national level of the GSEs' purchases of current-year (newly-mortgaged) loans. More research on this issue is needed.

The next section compares the GSE performance with that of the overall market. The fact that the GSE data includes prior-year as well as current-year loans, while the market data includes only current-year originations, means that the GSE-versus-market comparisons are defined somewhat inconsistently for any particular calendar year. Each year, the GSEs have newly-originated affordable loans available for purchase, but they can also purchase loans from a large stock of seasoned loans currently being held in the portfolios of depository lenders. Depository lenders have originated a large number of CRA-type loans over the past six years and many of them remain on their books. In fact, HUD has encouraged the GSEs to purchase seasoned, CRA-type loans that have demonstrated their creditworthiness. One method for making the data more consistent is to aggregate the data over several years, instead of focusing on annual data. This provides a clearer picture of the types of loans that have been originated and are available for purchase by the GSEs. This approach is taken in Table A.3.

c. Affordable Lending by the GSEs and the Primary Market

Table A.3 summarizes goal-qualifying lending by the GSEs, depositories and the conforming market for the six-year period between 1993 and 1998 and for the more recent 1996–98 period, which covers the period since the most recent housing goals have been in effect. As noted above, the data are aggregated over time to provide a clearer picture of how the GSEs' purchases of both current-year and prior-year loans compare with the types of mortgages that have been originated during the past few years. All of the data are for home purchase mortgages in metropolitan areas. Several points stand out concerning the affordable lending performance of Freddie Mac and Fannie Mae.

Freddie Mac. The data in Table A.3 show that Freddie Mac has substantially lagged both Fannie Mae and the primary market in funding affordable home loans. Between 1993 and 1998, 7.6 percent of Freddie Mac's mortgage purchases were for very low-income borrowers, compared with 9.2 percent of Fannie Mae's purchases, 14.5 percent of loans originated and retained by depositories, and 12.4 percent of loans originated in the conforming market (or 10.7 percent if manufactured home loans are excluded from the conforming market definition).[167] As shown by the annual data reported in Table A.4a, Freddie Mac did improve its funding of very low-income borrowers during this period, from 6.0 percent in 1993 to 7.6 percent in 1997, and then to 9.9 percent in 1998. However, Freddie Mac has not made as much progress as Fannie Mae (discussed below) in closing the gap between its performance and that of the overall market. During the 1996–98 period in which the new goals have been in effect, the ratio of Freddie Mac's average performance (8.4 percent) to that of the overall market (13.0 percent) was only 0.65; this "Freddie-Mac-to-market" ratio remains at only 0.76 even when manufactured homes are excluded from the market definition.

A similar conclusion about Freddie Mac's performance can be drawn for the other goal-qualifying categories presented in Tables A.3 and A.4a: Freddie Mac's performance has remained well below the market since 1993. For example, during the 1996–98 period when the new housing goals have been in effect, mortgages financing properties in underserved areas accounted for only 19.9 percent of Freddie Mac's purchases, compared with 22.9 percent of the loans purchased by Fannie Mae and 24.9 percent of the mortgages originated in the conforming market. Similarly, mortgages originated for low- and moderate-income borrowers represented 34.9 percent of Freddie Mac's purchases during this period, compared with 42.6 percent of all mortgages originated in the conforming market.

One encouraging sign for Freddie Mac is that the borrower-income categories showed a rather large increase between 1997 and 1998. Special affordable (low-mod) loans increased from 9.0 (34.1) percent in 1997 to 11.3 (36.9) percent in 1998. The reasons for this increase require further study, but certainly, an interesting question going forward is whether Freddie Mac can continue this 1997–98 pattern and thus further close its performance gap relative to the overall market. It is somewhat surprising that Freddie Mac's purchases of home loans in underserved areas did not increase (in percentage terms) between 1997 and 1998; as shown in Table A.4a, the underserved areas share of Freddie Mac's home loan purchases has remained constant at approximately 20 percent since 1994.

Fannie Mae. The data in Table A.3 show that Fannie Mae has also lagged depositories and the primary market in the funding of homes for lower-income borrowers and underserved neighborhoods. Between 1993 and 1998, 37.4 percent of Fannie Mae's purchases were for low- and moderate-income borrowers, compared with 43.6 percent of loans originated and retained by depositories and with 41.8 percent of loans originated in the primary market. Over the more recent 1996–98 period, 22.9 percent of Fannie Mae's purchases financed properties in underserved neighborhoods, compared with 25.8 percent of loans originated by depositories and 24.9 percent of loans

[166] For example, in 1997 Fannie Mae reported that 20.8 percent of the loans they purchased, that were originated during 1997, were for properties in underserved area. HMDA reports that 21.0 percent of the loans sold to Fannie Mae during 1997 were for properties in underserved areas. The corresponding numbers for Freddie Mac, in 1997, are 19.3 percent reported by them and 18.6 percent reported by HMDA. During 1997, both Fannie Mae and HMDA reported that approximately 37 percent of the "current year" loans purchased by Fannie Mae were for low- and moderate-income borrowers. Freddie Mac reported that 34.2 percent of the current year loans they purchased were for low- and moderate-income borrowers, compared to the 35.4 low-mod percent that HMDA reported as sold to Freddie Mac.

[167] The borrower income distributions in Tables A.3 and A.4a for the "market without manufactured housing" exclude loans less than $15,000 as well as all loans originated by lenders that primarily originate manufactured housing loans. See Table A.4b for market definitions that show the separate effects of excluding small loans and manufactured housing loans.

originated in the conventional conforming market.

However, Fannie Mae's affordable lending performance can be distinguished from Freddie Mac's. First, Fannie Mae has performed much better than Freddie Mac on every goal-category examined here. For example, home loans for special affordable loans accounted for 13.2 percent of Fannie Mae's purchases in 1998, compared with only 11.3 percent of Freddie Mac's purchases (see Table A.4a). In that same year, 22.9 percent of Fannie Mae's purchases were in underserved census tracts, compared with only 20.0 percent of Freddie Mac's purchases.

Second, Fannie Mae has improved its performance over the past six years and has made more progress than Freddie Mac in closing the gap between its performance and the market's performance on the goal-qualifying categories examined here. In fact, Fannie Mae's performance is now close to that of the primary market for some important components of affordable lending. For example, in 1992, very low-income loans accounted for 5.2 percent of Fannie Mae's purchases and 8.7 percent of all loans originated in the conforming market, giving a "Fannie Mae-to-market" ratio of 0.60. By 1998, this ratio had risen to 0.86, as very low-income loans had increased to 11.4 percent of Fannie Mae's purchases and to 13.3 percent of market originations.

A similar trend in market ratios can be observed for Fannie Mae on the underserved areas category. Fannie Mae has been improving its performance relative to the market; for example, the "Fannie-Mae-to-market" ratio for underserved areas increased from 0.82 in 1992 to 0.93 in 1998. This improved performance relative to the overall market by Fannie Mae is in sharp contrast to Freddie Mac's record—the "Freddie-Mac-to-market" ratio for underserved areas actually declined, from 0.84 in 1992 to 0.81 in 1998. As a result, Fannie Mae has been approaching the home loan market in underserved areas while Freddie Mac has been losing ground relative to overall primary market.

B&C Home Purchase Loans. As explained earlier, HMDA does not identify subprime loans, much less separate them into their A-minus and B&C components. Randall Scheessele at HUD has identified 200 HMDA reporters that primarily originate subprime loans and probably accounted for at least half of the subprime market during 1998.[168] As shown in Table A.4b, excluding the home purchase loans originated by these lenders from the primary market data has only minor effects on the goal-qualifying shares of the market. The average market percentages for 1998 are reduced as follows: low- and moderate-income (43.0 to 42.6 percent); special affordable (15.5 to 15.2 percent); and underserved areas (24.6 to 23.7 percent). As explained earlier, the effects are minor mostly because this analysis focuses on home purchase loans, which accounted for only 20 percent of the mortgages originated by these 200 subprime lenders— the subprime market has been mainly a refinance market.

d. Prior-Year Loans

An important source of the differential in affordable lending between Fannie Mae and Freddie Mac concerns the purchase of prior-year loans. As shown in Table A.4a, the prior-year mortgages that Fannie Mae has been recently purchasing are much more likely to be loans for lower-income families and underserved areas than the newly-originated mortgages that they have been purchasing. For example, 30.1 percent of Fannie Mae's 1997 purchases of prior-year mortgages were loans financing properties in underserved areas, compared with 20.8 percent of its purchases of newly-originated mortgages. These purchases of prior-year mortgages are one reason that Fannie Mae improved its performance relative to the primary market, which includes only newly-originated mortgages, in 1997. Sixteen percent of its prior-year mortgages qualified for the Special Affordable Goal, compared with only 10.2 percent of its purchases of newly-originated loans. The same patterns are exhibited by the 1998 data. For example, 17.9 percent of Fannie Mae's prior-year purchases during 1998 qualified for the Special Affordable Goal, compared with only 12.1 percent of its 1998 purchases of newly-originated loans. Fannie Mae seems to be purchasing affordable loans that were originated by portfolio lenders in previous years.

Freddie Mac, on the other hand, does not seem to be pursuing such a strategy, or at least not to the same degree as Fannie Mae. In 1997 and 1998, Freddie Mac's purchases of prior-year mortgages and its purchases of newly-originated mortgages had similar percentages of special affordable and low- and moderate-income borrowers. As Table A.4a shows, there is a small differential between Freddie Mac's prior-year and newly-originated mortgages for the underserved areas category but it is much smaller than the differential for Fannie Mae. Thus, Freddie Mac's purchases of prior-year mortgages are less likely to qualify for the housing goals, and this is one reason Freddie Mac's overall affordable lending performance is below Fannie Mae's.

e. GSE Purchases of Total (Home Purchase and Refinance) Loans

The above sections have examined the GSEs' acquisitions of home purchase loans, which is appropriate given the importance of the GSEs for expanding homeownership opportunities. To provide a complete picture of the GSEs' mortgage purchases in metropolitan areas, this section briefly considers the GSEs' purchases of all single-family-owner mortgages, including both home purchase loans and refinance loans.[169] Shifting the analysis to consider all (home purchase and refinance) mortgages does not change the basic finding that both GSEs lag the primary market in serving low-income borrowers and underserved neighborhoods. For example, in 1998 underserved areas accounted for 21.2 (20.9) percent of Fannie Mae's (Freddie Mac's) purchases, compared to approximately 25.0 percent for both depository institutions and the overall primary market. Similarly, special affordable loans accounted for 11.1 (10.9) percent of Fannie Mae's (Freddie Mac's) purchases of single-family-owner loans, compared to 14.9 percent for depository institutions and 14.3 percent for the overall primary market.

There are two changes when one shifts the analysis from only home purchase loans to include all mortgages—one concerning the relative performance of Fannie Mae and Freddie Mac and one concerning the impact of subprime mortgages on the goals-qualifying percentages. These are discussed next.

Fannie Mae versus Freddie Mac Performance. As indicated by the above percentages, the borrower-income comparisons between Fannie Mae and Freddie Mac change when the analysis switches from their acquisitions of only home purchase loans to their acquisitions of both home purchase and refinance loans. Consider the special affordable income category for 1997 and 1998. As shown in Table A.4a, special affordable loans accounted for a much higher percentage of Fannie Mae's acquisitions of home purchase loans than of Freddie Mac's in each of these two years. Similarly, in 1997, special affordable loans accounted for 11.5 percent of Fannie Mae's total (both home purchase and refinance) purchases, compared with 9.9 percent of Freddie Mac's total purchases. However, between 1997 and 1998, the special affordable percentage of Freddie Mac's total purchases increased from 9.9 percent to 10.9 percent, while the corresponding percentage for Fannie Mae actually declined from 11.5 percent to 11.1 percent. Thus, in 1998, Freddie Mac's overall special affordable percentage (10.9 percent) was approximately the same as Fannie Mae's (11.1 percent).

Further analysis shows that this improvement of Freddie Mac relative to Fannie Mae was due to Freddie Mac's better performance on refinance loans during 1998. The special affordable percentage of Fannie Mae's refinance loans fell from 11.1 percent in 1997 to 9.7 percent in 1998, which is not surprising given that middle- and upper-income borrowers typically dominate heavy refinance markets such as 1998. But the special affordable percentage of Freddie Mac's refinance loans did not drop very much, falling from 11.3 percent in 1997 to 10.7 percent in 1998.[170] Thus, Freddie Mac's

[168] See Scheessele (1999), op. cit. As explained in Appendix D of Scheessele's paper, the number of subprime lenders varies by year; the 200 figure cited in the text applies to 1998. The number of loans identified as subprime in these appendices is the same as reported by Scheessele in Table D.2b of his paper.

[169] Table A.1b in Section C.3.b provides several comparisons of the GSE's total purchases with primary market originations. As shown there, many of the same patterns described above for home purchase loans can be seen in the data for the GSEs' total purchases.

[170] In general, the HMDA-reported affordability percentages for GSE purchases of refinance loans have matched the corresponding GSE-reported percentages. For example, in 1997, both GSEs reported to HUD that special affordable loans accounted for about 11 percent of their purchases of refinance loans in metropolitan areas; HMDA reported the same percentage for each GSE. Similarly, in 1998, both HMDA and Fannie Mae

Continued

higher special affordable percentage (10.7 percent versus 9.7 percent for Fannie Mae) on refinance loans in 1998 enabled Freddie Mac to close the gap between its overall single-family performance and that of Fannie Mae.

The GSEs' underserved areas percentages followed a somewhat similar pattern as their special affordable percentages between 1997 and 1998. In 1997, Freddie Mac's underserved area percentage (21.6 percent) for total purchases was significantly less than Fannie Mae's (23.6), but in 1998, Freddie Mac's underserved areas percentage (20.9) was about the same as Fannie Mae's (21.2 percent). This convergence was mainly due to a sharper decline in Fannie Mae's underserved area percentage for refinance loans between 1997 and 1998.

B&C Loans. Section E.2.c showed that the estimates for the home purchase market did not change much when loans for subprime lenders were excluded from the HMDA analysis; the reason was that these lenders operate primarily in the refinance market. In this section's analysis of the total market (including refinance loans), one would expect the treatment of subprime lenders to significantly affect the market estimates. For the year 1997, excluding subprime lenders reduced the goal-qualifying shares of the total market as follows: special affordable (from 16.3 to 14.8 percent); low-mod (from 43.6 to 41.9 percent); and underserved areas (from 27.8 to 25.5 percent). Similarly, for the year 1998, excluding 200 subprime lenders reduced the goal-qualifying shares of the total market as follows: special affordable (from 14.3 to 12.7 percent); low-mod (from 41.0 to 39.0 percent); and underserved areas (from 24.8 to 22.6 percent). As discussed earlier, the GSEs have been entering the subprime market over the past two years, particularly the A-minus portion of that market. Industry observers estimate that A-minus loans account for at least half of all subprime loans while the more risky B&C loans account for the remaining half. Thus, one proxy for excluding B&C loans originated by the 200 specialized lenders from the overall market benchmark might be to reduce the goal-qualifying percentages from the HMDA data by half the above differentials; accounting for B&C loans in this manner would reduce the 1998 HMDA-reported goal-qualifying shares of the total conforming market as follows: special affordable (from 14.3 to 13.5 percent); low-mod (from 41.0 to 40.0 percent); and underserved areas (from 24.8 to 23.7 percent). However, as discussed in Appendix D, much uncertainty exists about the size of the subprime market and its different components. More data and research are obviously needed on this growing sector of the mortgage market.[171]

f. GSE Mortgage Purchases in Individual Metropolitan Areas

While the above analyses, as well as earlier studies,[172] concentrate on national-level data, it is also instructive to compare the GSEs' purchases of mortgages in individual metropolitan areas (*e.g. MSAs*). In this section, the GSEs' purchases of single-family owner-occupied home purchase loans are compared to the market in individual MSAs.[173] To do so, total primary market mortgage originations from two years, 1995 and 1996, are summed up by year, by MSA, and for GSE purchases of these loans. The GSEs' purchases of 1995 originations include all 1995 originations purchased by each GSE between 1995 and 1998 from 324 MSAs. For their purchases of 1996 originations, all 1996 originations purchased between 1996 and 1998 from 326 MSAs are included. This should cover 90 to 95 percent of the 1995 and 1996 originated loans that will be purchased by the GSEs, thus making the GSE data comparable to HMDA market data. The loans are then grouped by the GSE housing goal categories for which they qualify and the ratio of the housing goal category originations to total originations in each MSA is calculated for each GSE and the market. The GSE-to-market ratio is then calculated by dividing each GSE ratio by the corresponding market ratio. For example, if it is calculated that one of the GSEs' purchases of Low- and Moderate-Income loans in a particular MSA is 47 percent of their overall purchases in that MSA, while 49 percent of all originations in that MSA are Low-Mod, then that GSE-to-market ratio is 47/49 (or 0.96).

Table A.5 shows the performance of the GSEs by MSA for 1995 and 1996 originations of home purchase loans. A GSE's performance is determined to be lagging the market if the ratio of the GSE housing goal loan purchases to their overall purchases is less than 99 percent of that same ratio for the market.[174] For the above example, that GSE is considered to be lagging the market. These results are then summarized in Table A.5, which reports the number of MSAs in which each GSE under-performs the market with respect to the housing goal categories.

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reported that special affordable loans accounted for 9.7 percent of Fannie Mae's refinance purchases. However, in 1998, the Freddie-Mac-reported special affordable percentage (10.7 percent) for its refinance loans was significantly higher than the corresponding percentage (9.5 percent) reported in the HMDA data. The reasons for this discrepancy require further study.

[171] The Mortgage Information Corporation (MIC) has recently started publishing origination and default performance data for the subprime market. For an explanation of their data and some early findings, see Dan Feshbach and Michael Simpson, "Tools for Boosting Portfolio Performance", *Mortgage Banking: The Magazine of Real Estate Finance*, (October 1999), pp. 137–150.

[172] For example, see Bunce and Scheessele (1996 and 1998), op. cit.

[173] This analysis is limited to the conventional conforming market.

[174] This analysis was also conducted where the "lag" determination is made at 95 percent. The results are consistent with those shown in Table A.5. For example, at the 95 percent cutoff, Fannie Mae lagged the market in 275 MSAs (85 percent) in the purchase of 1995 originated Special Affordable category loans. Likewise, Freddie Mac lagged the market in 320 MSAs (99 percent).

Table A.5

Analysis of GSEs' Purchases Across MSAs by Housing Goal Category

1995 Originations

	Underserved Areas		Low-Mod Income		Special Affordable	
Number of MSAs Analyzed	324	100.0%	324	100.0%	324	100.0%
Fannie Mae lags the Market	239	73.8%	264	81.5%	287	88.6%
Freddie Mac lags the Market	300	92.6%	319	98.5%	321	99.1%
Fannie Mae lags Freddie Mac	65	20.1%	26	8.0%	37	11.4%
Freddie Mac lags Fannie Mae	245	75.6%	295	91.0%	281	86.7%

1996 Originations

	Underserved Areas		Low-Mod Income		Special Affordable	
Number of MSAs Analyzed	326	100.0%	326	100.0%	326	100.0%
Fannie Mae lags the Market	266	81.6%	285	87.4%	295	90.5%
Freddie Mac lags the Market	297	91.1%	323	99.1%	323	99.1%
Fannie Mae lags Freddie Mac	95	29.1%	54	16.6%	57	17.5%
Freddie Mac lags Fannie Mac	220	67.5%	261	80.1%	259	79.4%

Source: Fannie Mae and Freddie Mac data include information on all of their purchases for the years 1995 through 1998 and are from the loan-level data they provide to HUD. The conforming market data are originations as reported by HMDA; loans with a loan-to-income ratio greater than six are excluded from Low-Mod Income and Special Affordable categories.

Notes: The GSE loans in this analysis include all single-family owner-occupied conventional conforming home purchase mortgages in metropolitan areas (as defined by OMB in 1995 or 1996) purchased by the GSE between 1995 (1996) and 1998 but were originated during 1995 (1996).

A GSE is determined to lag the market (other GSE) if the ratio of its category share to the market (other GSE) category share is less than 99%.

Exceptions to the "lag" determination:

When there are less than 5 reported category loans in the HMDA data and less than 5 category loans from only one of the GSEs, that GSE will count as approximating the market regardless of calculated ratio.

When there are more than 5 reported category loans in the HMDA data and less than 5 category loans from each of the GSEs, it will count as Fannie Mae approximating Freddie Mac regardless of calculated ratio.

For 1995 originations, Fannie Mae:

(i) Lagged the market in 239 (74 percent) of the MSAs in the purchase of Underserved Area loans,

(ii) Lagged the market in 264 (82 percent) of the MSAs in the purchase of Low- and Moderate-Income loans, and

(iii) Lagged the market in 287 (89 percent) of the MSAs in the purchase of Special Affordable loans.

Freddie Mac lagged the market to an even greater extent in 1995. Specifically, the market outperformed Freddie Mac in:

(i) 300 (93 percent) of the MSAs in the purchase of Underserved Area loans,

(ii) 319 (99 percent) of the MSAs in the purchase of Low- and Moderate-Income loans, and

(iii) 321 (99 percent) of the MSAs in the purchase of Special Affordable loans.

Thus Freddie Mac was behind Fannie Mae in at least three-quarters of the MSAs for all three goal categories. As shown in Table A.5, the results for loans originated in 1996 are similar.

g. High Down Payments on GSEs' Lower-Income Loans

Recent studies have raised questions about whether the lower-income loans purchased by the GSEs are adequately meeting the needs of some lower-income families. In particular, the lack of funds for down payments is one of the main impediments to homeownership, particularly for many lower-income families who find it difficult to accumulate enough cash for a down payment. As this section explains, a noticeable pattern among lower-income loans purchased by the GSEs is the predominance of loans with high down payments.

HUD's 1996 report to Congress on the possible privatization of Fannie Mae and Freddie Mac[175] found, rather surprisingly, that the mortgages taken out by lower-income borrowers and purchased by the GSEs were as likely to have high down payments as the mortgages taken out by higher-income borrowers and purchased by the GSEs. For example, considering the GSEs' purchases of home purchase loans in 1995, 58 percent of very low-income borrowers made a down payment of at least 20 percent, compared with less than 50 percent of borrowers from other groups. In addition, a surprisingly large percentage of the GSEs' first-time homebuyer loans had high down payments. In 1995, 35 percent of Fannie Mae's and 41 percent of Freddie Mac's first-time homebuyer loans had down payments of 20 percent or more.

Table A.6 presents similar data for the GSEs purchases total loans during 1997. Over three-fourths of the GSEs very low-income loans had a down payment more than 20 percent. Essentially, the GSEs have been purchasing lower-income loans with large down payments.[176]

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[175] *Privatization of Fannie Mae and Freddie Mac: Desirability and Feasibility*. Office of Policy Development and Research, Department of Housing and Urban Development, (July 1996).

[176] The Treasury Department reached similar conclusions in its 1996 report on the privatization of the GSEs, *Government Sponsorship of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation*, U.S. Department of the Treasury (July 11, 1996). Based on data such as the above, the Treasury Department questioned whether the GSEs were influencing the availability of affordable mortgages and suggested that the lower-income loans purchased by the GSEs would have been funded by private market entities if the GSEs had not purchased them.

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Table A.6

Down Payment Characteristics of GSE Purchases, 1997

	Size of Down Payment				
GSE Purchases	Less Than 5 Percent Down	5 to 10 Percent Down	10 to 20 Percent Down	20 Percent or More Down	Total [1]
All Loans	36,703	328,467	365,981	1,638,798	2,369,949
Very- Low-Income Loans	7,841	19,945	20,129	158,584	206,499
Less- Than-Median Income Loans	28,383	105,245	114,604	599,257	847,489
Percentage Distribution					
All Loans	1.5%	13.9%	15.4%	69.1%	100.0%
Very- Low-Income Loans	3.8%	9.7%	9.7%	76.8%	100.0%
Less- Than-Median- Income Loans	3.3%	12.4%	13.5%	70.7%	100.0%

Source: Data include all owner-occupied one-unit mortgages (home purchase, refinance, and second loans) purchased by the GSEs in 1997.

[1] Loans with missing down payments are excluded.

The evidence is similar when the data are examined for each GSE separately. Between 1993 and 1997, 71 percent of all one-family owner-occupied loans bought by Fannie Mae, had an LTV less than or equal to 80 percent. Only 13 percent had an LTV greater than 90 percent (one percent with LTVs greater than 95 percent). For Freddie Mac, 75 percent of loans bought had an LTV less than or equal to 80 percent, while 10 percent had LTVs greater than 90 percent. Only one-eighth of one percent of Freddie Mac's loans had an LTV greater than 95 percent. For very low-income loans purchased by Fannie Mae, during the same period, 75 percent had a down payment greater than 20 percent. Large down payment loans accounted for 82 percent of Freddie Mac's purchases of very-low income borrower loans. Thus, these results are consistent with previous studies that show that the proportion of large down payment loans purchased by the GSEs from lower-income borrowers is greater than that for all loans purchases.[177]

As discussed in Section C, Both Fannie Mae and Freddie Mac have introduced high-LTV products: "Flexible 97" and "Alt 97" respectively. By lowering the required down payment to three percent and adding flexibility to the source of the down payment, these loans should be more affordable. The down payment, as well as closing costs, can come from, gifts, grants or loans from a family member, the government, a non-profit agency and loans secured by life insurance policies, retirement accounts or other assets. However, in order to control default risk, these loans also have stricter credit history requirements.

Fed Study. An important study by three economists—Glenn Canner, Wayne Passmore and Brian Surette[178]— at the Federal Reserve Board showed the implications of the GSEs' focus on high down payment loans. Canner, Passmore, and Surette examined the degree to which different mortgage market institutions—the GSEs, FHA, depositories and private mortgage insurers—are taking on the credit risk associated with funding affordable mortgages. The authors combined market share and down payment data with data on projected foreclosure losses to arrive at an estimate of the credit risk assumed by each institution for each borrower group. This study found that Fannie Mae and Freddie Mac together provided only 4 to 5 percent of the credit support for lower-income and minority borrowers and their neighborhoods. The relatively small role of the GSEs providing credit support is due to their low level of funding for these groups and to the fact that they purchase mainly high down payment loans. FHA, on the other hand, provided about two-thirds of the credit support for lower-income and minority borrowers, reflecting FHA's large market shares for these groups and the fact that most FHA-insured loans have less-than-five-percent down payments.

3. Other Studies of the GSEs Performance Relative to the Market

This section summarizes briefly the main findings from other studies of the GSEs' affordable housing performance. These include studies by the HUD and the GSEs as well as studies by academics and research organizations.

a. Studies by Bunce and Scheessele

Harold Bunce and Randall Scheessele of the Department have published two studies of affordable lending. In December 1996, they published a study titled *The GSEs' Funding of Affordable Loans.*[179] This report analyzed HMDA data for 1992–95, including a detailed comparison of the GSEs' purchases with originations in the primary market. In July 1998, they updated their earlier study to analyze the mortgage market and the GSEs' activities in 1996.[180] The findings were largely similar in both studies: [181]

(i) Both GSEs lagged the primary conventional market, depositories, and (particularly) FHA in funding mortgages for lower-income and historically underserved borrowers. FHA stands out as the major funder of affordable loans. In 1996, approximately 30 percent of FHA-insured loans were for African-American and Hispanic borrowers, compared with only 10 percent of the loans purchased by the GSEs or originated in the conventional market.

(ii) The two GSEs show very different patterns of lending—Fannie Mae is much more likely than Freddie Mac to serve underserved borrowers and their neighborhoods. Since 1992, Fannie Mae has narrowed the gap between its affordable lending performance and that of the other lenders in the conforming market. Freddie Mac's improvement has been more mixed—in some cases it has improved slightly relative to the market but in other cases it has actually declined relative to the market. The findings with respect to Freddie Mac are similar to those discussed earlier in Section E.2.c.

b. Studies by Freddie Mac

In 1995 Freddie Mac published *Financing Homes for A Diverse America,* which contained a wide variety of statistics and charts on the mortgage market. Several of the exhibits contained comparisons between the primary mortgage market and Freddie Mac's purchases in 1993 and 1994:

(i) While not asserting strict parity, this report presented comparable frequency distributions of primary market originations and Freddie Mac's purchases by borrower and census tract income, concluding that Freddie Mac "finances housing for Americans of all incomes" and it "buys mortgages from neighborhoods of all incomes."

(ii) With regard to minority share of census tracts, the report stated that Freddie Mac's "share of minority neighborhoods matches the primary market."

(iii) The report acknowledged that Freddie Mac's purchases did not match the primary market in terms of borrower race. It found that in 1994 African-Americans and Hispanics each accounted for 4.9 percent of the primary market but only 2.7 percent and 4.0 percent respectively of Freddie Mac's purchases. On the other hand, Whites and Asian Americans accounted for 83.7 percent and 3.2 percent of the primary market, but 86.3 percent and 3.9 percent respectively of Freddie Mac's acquisitions.

In its March 1998 Annual Housing Activities Report (AHAR) submitted to the Department and Congress, Freddie Mac presented data on this issue for 1996 and 1997. This report stated that its purchases "essentially mirror[ed] the overall distribution of mortgage originations in terms of borrower income." However, the data underlying Exhibit 4 of the AHAR indicated that the share of Freddie Mac's 1997 purchases for borrowers with income (in 1996 dollars) less than $40,000 was more than 4 percentage points below the corresponding share for the primary market in 1996. A similar pattern prevailed in terms of census tract income—the data underlying Exhibit 5 of the AHAR indicated that the share of Freddie Mac's 1997 purchases in tracts with income in excess of 120 percent of area median income exceeded the corresponding share for the primary market in 1996 by about 4 percentage points.

In its March 1998 AHAR, Freddie Mac found a much closer match between the distributions of home purchase mortgages by down payment for Freddie Mac's 1997 acquisitions and the primary market in 1997, as the latter was reported by the Federal Housing Finance Board. Specifically, Exhibit 6 of the AHAR reported that 42 percent of borrowers in each category made down payments of less than 20 percent.[182]

c. Studies by Fannie Mae

Fannie Mae has not published any studies on the comparability of its mortgage purchases with the primary market. However, in an October 1998 briefing for

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[177] See Glenn B. Canner, and Wayne Passmore. "Credit Risk and the Provision of Mortgages to Lower-Income and Minority Homebuyers." *Federal Reserve Bulletin.* 81 (November 1995), pp. 989–1016; Glenn B. Canner, Wayne Passmore and Brian J. Surette. "Distribution of Credit Risk among Providers of Mortgages to Lower-Income and Minority Homebuyers." *Federal Reserve Bulletin.* 82 (December 1996), pp. 1077–1102; Harold L. Bunce, and Randall M. Scheessele, *The GSEs' Funding of Affordable Loans: A 1996 Update.* Housing Finance Working Paper HF–005, Office of Policy Development and Research, Department of Housing and Urban Development, (July 1998); and Manchester, (1998), p. 24.

[178] Canner, et al. (1996).

[179] Harold L. Bunce and Randall M. Scheessele, *The GSEs' Funding of Affordable Loans,* Housing Finance Working Paper HF–001, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, (December 1996).

[180] Harold L. Bunce and Randall M. Scheessele, *The GSEs' Funding of Affordable Loans: A 1996 Update,* Housing Finance Working Paper HF–005, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, (July 1998), pp. 15–16.

[181] Statistics cited are from Table B.1 of Bunce and Scheessele, (1998) and are based on sales to the GSEs as reported by lenders in accordance with the HMDA. "Lagging the market" means, for example, that the percentage of the GSEs' loans for very low- and low-income borrowers is less than the corresponding percentage for the primary market, depositories, and the FHA.

[182] Under their charter acts, loans purchased by the GSEs with down payments of less than 20 percent must carry private mortgage insurance or a comparable form of credit enhancement.

HUD staff, Fannie Mae presented the results of several comparisons of its purchases, based on the data supplied to the Department by Fannie Mae, with loans originated in the conventional conforming market, based on the HMDA data. In these analyses, Fannie Mae stated that:

(i) The percentage of Fannie Mae's home purchase loans serving minorities exceeded the corresponding percentage in the conventional conforming market by 2.6 percentage points in 1995, 2.0 percentage points in 1996, and 2.7 percentage points (18.6 percent vs. 15.9 percent) in 1997;

(ii) The percentage of Fannie Mae's home purchase loans for low- and moderate-income households exceeded the corresponding percentage in the conventional conforming market by 0.2 percentage point in 1995, fell 0.1 percentage point short of the market in 1996, but exceeded it again, by 1.2 percentage points (38.5 percent vs. 37.3 percent), in 1997;

(iii) The percentage of Fannie Mae's home purchase loans for households in underserved areas fell 0.04 percentage point short of the conventional conforming market in 1996, but exceeded the corresponding percentage in the conventional conforming market by 1.4 percentage points (25.5 percent vs. 24.1 percent) in 1997;

(iv) The percentage of Fannie Mae's home purchase loans for very low-income households and low-income households in low-income areas fell 1.0 percentage point short of the of the conventional conforming market in 1995 and 0.9 percentage point short in 1996, but exceeded the corresponding percentage in the conventional conforming market by 2.2 percentage points (12.7 percent vs. 10.5 percent) in 1997.

Some of these findings by Fannie Mae differ from those of other researchers. This is due in part to the fact that most other studies have utilized HMDA data for both the primary market and sales to the GSEs, but Fannie Mae compared the primary market, based on HMDA data, with the patterns in the GSE loan-level data submitted to the Department.[183] [184]

[183] It is generally agreed that HMDA does not capture all loans originated in the primary market—for example, small lenders need not report under HMDA. But Fannie Mae believes that the undercount is not spread uniformly across all borrower classes—in particular, it argues that the HMDA data exclude relatively more loans made to minorities and lower-income families.

[184] Bunce and Scheessele (1998) contained a comparison (Table A.1) of HMDA-reported and GSE-reported data on the characteristics of GSE mortgage purchases in 1996. In most cases the differences between the results utilizing the two different data sources were minimal, but in some cases (such as lending in underserved areas) the evidence lent some support to Fannie Mae's assertion that the HMDA data underreports their level of activity. The discrepancies between HMDA data and GSE data at the national level are also due to the seasoned loan effect (see Section E.2.e above and Table A.4a).

d. Other Studies

Lind. John Lind examines HMDA data in order to compare the GSEs' loan purchase activity to mortgage originations in the primary conventional conforming market.[185] Like other studies, Lind presents an aggregate comparison of GSE/primary market correspondence for Black, Hispanic, low-income borrowers, and low- and moderate-income Census tracts. Unlike other studies, however, Lind also examines market correspondence at the individual metropolitan area and regional levels.

Lind finds that the GSEs are not leading the market, but that Fannie Mae, in particular, improved its performance between 1993 and 1994. In 1994, Lind finds that the shares of Fannie Mae's home purchase loans to minority and low-income borrowers were comparable to the industry's shares. But the share of its home purchase loans for low- and moderate-income census tracts and the shares of Freddie Mac's home purchase loans for all categories examined trailed those for the industry as a whole. For refinance mortgages, on the other hand, both GSEs trailed the industry in terms of the shares of their loans for the groups analyzed. In a subsequent study, Lind found that the difference between the affordable lending performance of Fannie Mae and Freddie Mac was caused by differences in policy and operating procedures of the GSEs, and not differences in the make-up of their suppliers of loans.[186]

Ambrose and Pennington-Cross. There exists a wide variation in the market shares of the GSEs, FHA and portfolio lenders across geographic mortgage markets. Brent Ambrose and Anthony Pennington-Cross analyze FHA, GSE and portfolio lender market shares to find insights into what factors affect the market shares for FHA eligible (under the FHA loan limit) loans.[187] They hypothesize that the GSEs try to mitigate higher perceived risks at the MSA level by tightening lending standards, generating a prediction of higher FHA market share in locations with characteristically higher or dynamically worsening risk. A second hypothesis is that market share of portfolio lenders increases in areas with higher risk due to "reputation effects" and GSE repurchase requirements. In their model, they account for cyclical risk, permanent risk, demographic, lender and regional differences.

Ambrose and Pennington-Cross found that the GSEs exhibit risk averse behavior as evidenced by lower GSE market presence in MSAs experiencing increasing risk and in MSAs that historically exhibit high-risk tendencies. FHA market shares, in contrast, are associated with high or deteriorating risk conditions. Portfolio lenders increase their mortgage portfolios during periods of economic distress, but increase the sale of originations out of portfolio during periods of increasing house prices. Lenders in MSAs with historically high delinquency hold more loans in portfolio. MSA risk is therefore concentrated among portfolio lenders and in FHA, with the GSEs bearing relatively little credit risk of this kind. The study does find that, other things being equal, the GSEs do have a higher presence in underserved areas and in areas where the minority population is highly segregated.

MacDonald (1998). Heather MacDonald [188] examined the impact of the central city housing goal from HUD's 1993–1995 interim housing goals. Census tracts were clustered according to five variables (median house value, median house age, proportion of renters, percent minority and proportion of 2 to 4 units) argued to impede secondary market purchases of homes in some neighborhoods. Borrower characteristics and lending patterns were compared across the clusters of tracts, and across central city and suburban tracts. Clustered tracts were found to be more strongly related to a set of key lending variables than are tracts divided according to central city/suburban boundaries. MacDonald concludes that targeting affirmative lending requirements on the basis of neighborhood characteristics rather than political or statistical divisions may provide a more appropriate framework for efforts to expand access to credit.

MacDonald (1999). In a 1999 study, Heather MacDonald investigated variations in GSE market share among a sample of 426 nonmetropolitan counties in eight census divisions.[189] Conventional conforming mortgage originations were estimated using residential sales data, adjusted to exclude government-insured and nonconforming loans. Multivariate analysis was used to investigate whether GSE market shares differed significantly by location, after controlling for the economic, demographic, housing stock and credit market differences among counties that could affect use of the secondary markets. The study also investigated whether there were significant differences between the nonmetropolitan borrowers served by Fannie Mae and those served by Freddie Mac.

MacDonald found that space contributes significantly to explaining variations in GSE market shares among nonmetropolitan counties, but its effects are quite specific. One region—non-adjacent West North Central counties—had significantly lower GSE market shares than all others. The disparity persisted when analysis was restricted to underserved counties only. The

[185] John E. Lind. *Community Reinvestment and Equal Credit Opportunity Performance of Fannie Mae and Freddie Mac from the 1994 HMDA Data.* San Francisco: Caniccor. Report, (February 1996).

[186] John E. Lind. *A Comparison of the Community Reinvestment and Equal Credit Opportunity Performance of Fannie Mae and Freddie Mac Portfolios by Supplier from the 1994 HMDA Data.* San Francisco: Cannicor. Report, (April 1996).

[187] Brent W. Ambrose and Anthony Pennington-Cross, *Spatial Variation in Lender Market Shares,* Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

[188] Heather MacDonald. "Expanding Access to the Secondary Mortgage Markets: The Role of Central City Lending Goals," *Growth and Change.* (27), (1998), pp. 298–312.

[189] Heather MacDonald, *Fannie Mae and Freddie Mac in Non-metropolitan Housing Markets: Does Space Matter,* Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

study also suggested significant disparities between the income levels of the borrowers served by each agency, with Freddie Mac buying loans from borrowers with higher incomes than the incomes of borrowers served by Fannie Mae. An important limitation on any study of nonmetropolitan mortgages was found to be the lack of Home Mortgage Disclosure Act data. This meant that more precise conclusions about the extent to which the GSEs mirror primary mortgage originations in nometropolitan areas could not be reached.

McClure. Kirk McClure examined the twin mandates of FHEFSSA: To direct mortgage credit to neighborhoods that have been underserved by mortgage lenders; and to direct mortgage credit to low-income and minority households.[190] Using the Kansas City metropolitan area as a case study, mortgages purchased by the GSEs in 1993–96 were compared with mortgages held by portfolio lenders in order to determine the performance of the GSEs in serving these two objectives. Kansas City provides a useful case study area for this analysis, because it includes a range of weak and strong housing market areas where homebuyers have been able to move easily to serve their housing, employment, and neighborhood needs.

McClure found that borrowers are better served if credit is directed to them independent of location. Very low-income and minority borrowers fared better, in terms of the demographic, housing, and employment opportunities of the neighborhoods into which they located, than borrowers in underserved neighborhoods, suggesting that directing credit to low-income and minority households has had the desired effect of helping these households purchase homes in areas where they would find good homes and good employment prospects. According to McClure, HUD's 1996–99 housing goals defined underserved tracts very broadly, such that nearly one-half of the tracts in the Kansas City area are categorized as underserved. Because the definition of underserved is so broad, directing credit to these tracts means only increasing the flow of mortgage credit to the lesser one-half of all tracts, which includes many areas with stable housing stocks and viable job markets. The alternative approach of directing credit to underserved areas was found to be helpful only insofar as it has helped direct credit to neighborhoods with slightly lower household income levels and higher incidence of minorities than found elsewhere in the metropolitan area. McClure concluded that neighborhoods that receive very low levels of mortgage credit seemed to provide insufficient housing or employment opportunities to justify the effort that would be required to direct additional mortgage credit to them.

McClure concluded that whatever the approach, the GSEs have not been performing as well as the primary credit lenders in the Kansas City metropolitan area. In terms of helping underserved areas, the GSEs lagged behind the industry in the proportion of loans found in these areas. In terms of helping low-income and minority borrowers, the GSEs also lagged behind the industry. However, to the extent that the GSEs served these targeted populations, these households used this credit to move to neighborhoods with better housing and employment opportunities than were generally present in the underserved areas.

Williams.[191] This study looks at mortgage lending in underserved markets in the primary and secondary mortgage markets for the MSAs in Indiana. A more extensive analysis is provided for South Bend/St. Joseph County, Indiana that looks at the GSE purchases in underserved markets by type of primary market lender in both 1992 and 1996. It shows the percentage of loans bought by the GSEs and the loan they did not buy. This study found that the GSEs were more aggressive in closing the gap in St. Joseph County than in other MSAs in Indiana. It also found that Fannie Mae's underserved market performance was slightly better than Freddie Mac's performance.

Williams compared the GSEs performance in underserved markets and CRA institutions between 1992 and 1995. It shows that the GSEs have narrowed the gap between themselves and lenders while CRA institutions have lost ground relative to non-CRA lenders. A pattern observed across all Indiana MSAs is that the GSEs do not appear to lead the market but rather almost perfectly mirrored the performance of mortgage companies.

Williams looked at the impact of size and location of lenders on the home mortgage market. Large lenders were more likely to finance mortgages for very low-income and African American borrowers than smaller lenders. Lenders headquartered in Indiana were more likely to purchase mortgages in underserved areas than lenders who only had branches or no apparent physical presence in Indiana. This suggests that served markets might benefit more than underserved areas from increased competition from non-local lenders.

Gyourko and Hu. This study focuses on the GSEs' housing goals looking at the intra-metropolitan distribution of mortgage acquisitions by Fannie Mae and Freddie Mac and the spatial distribution of households within 22 MSAs.[192] The data on the GSEs' mortgage purchases is provided by the Census Tract File of Public Use Data Base and data on households is provided by the 1990 census. The study found that the distribution of goal-qualifying loan purchases by the GSEs does not match the distribution of goal-qualifying households. On average 44 percent of Low- and Moderate-Income Goal and 46 percent of Special Affordable Goal qualifying households are located in central cities. This compares to the GSEs' mortgage purchases where 26 percent of Low- and Moderate-Income Goal and 36 percent of Special Affordable Goal were located in central cities.

This study develops criteria for evaluating the GSEs' mortgage purchasing performance in census tracts. The first measure is a ratio. The numerator of the ratio is the share of the GSEs' mortgage purchases that qualify for the Special Affordable Housing Goal in the census tract. The denominator is the share of households that are targeted by the Special Affordable Housing Goal in the census tract. A ratio is also computed for the Low- and Moderate-Income Housing Goal. If the ratio is less than 0.80 then the census tract is called under-represented, meaning that the share of the GSEs' mortgage purchases which qualify for the housing goal is less than 80 percent of the share of the households that the goal targets. The analysis of these ratios shows that: (1) Central cities are more likely to be under-represented in terms of the share of affordable loans purchased by the GSEs, (2) in suburbs, the larger the census tracts' percent minority the greater the probability that affordable loan purchases are under-represented, and (3) the higher the tract's median income, the greater the likelihood that census tract is over-represented.

Gyourko and Hu's results are broadly consistent across the 22 MSAs analyzed; however, some noteworthy exceptions are made. In a few MSAs, particularly Miami and New York, the mismatch of affordable GSE purchases to affordable households is much less severe. In Boston, Los Angeles and New York, census tracts with higher relative median incomes are more likely to be under-represented.

4. GSEs' Underwriting Guidelines

Most studies on affordability of mortgage loans are quantitative using HMDA data, HUD's GSE Public Use Database or some other related database. To complement these studies, HUD commissioned a study by the Urban Institute (UI) to examine recent trends in the GSEs' underwriting criteria and to seek attitudes and opinions of informed players in four local mortgage market markets (Boston, Detroit, Miami and Seattle).[193] Interviews were conducted with mortgage lenders, community advocates and local government officials—all local actors who would be knowledgeable about the impact of the GSEs' underwriting policies on their ability to fund affordable loans for lower-income borrowers.

The UI report reveals three major trends in the GSEs' underwriting that affects affordable lending. These include increased flexibility in standard[194] underwriting and appraisal guidelines, the introduction of affordable lending products, and the introduction of

[190] Kirk McClure, *The Twin Mandates Given to the GSEs: Which Works Best, Helping Low-Income Homebuyers or Helping Underserved Areas in the Kansas City Metropolitan Area?* Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

[191] Richard Williams, "*The Effect of GSEs, CRA, and Institutional Characteristics on Home Mortgage Lending to Underserved Markets,*" Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, 1999).

[192] Joseph Gyourko and Dapeng Hu. *The Spatial Distribution of Secondary Market Purchases in Support of Affordable Lending,* Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

[193] Kenneth Temkin, Roberto Quercia, George Galster and Sheila O'Leary. *A Study of the GSE's Single Family Underwriting Guidelines: Final Report.* Washington DC: U.S. Department of Housing and Urban Development, (April 1999).

[194] Standard guidelines refer to guidelines not associated with affordable lending programs.

automated underwriting and credit scores in the loan application process. Through these trends, Fannie Mae and Freddie Mac have attempted to increase their capacity to serve low- and moderate-income homebuyers. They are also eliminating practices that could potentially have had disparate impacts on minority homebuyers. While both GSEs have made progress, "most [of those interviewed] thought Fannie Mae has been more aggressive than Freddie Mac in outreach efforts, implementing underwriting changes and developing new products." [195]

While the GSEs improved their ability to serve low- and moderate-income borrowers, it does not appear that they have gone as far as some primary lenders to serve these borrowers and to minimize the disproportionate effects on minority borrowers. From previous published analyses of the GSEs' mortgage purchases, differences between the income characteristics and racial composition of borrowers served by the primary mortgage market and the purchase activity of the GSEs were found. "This means that the GSEs are not serving lower-income and minority borrowers to the extent these families receive mortgages from primary lenders." [196] From UI's discussions with lenders, it was revealed that primary lenders are originating mortgages to lower-income borrowers using underwriting guidelines that allow lower down payments, higher debt-to-income ratios and poorer credit histories than allowed by the GSEs' guidelines. These mortgages are originated to a greater extent to minority borrowers who have lower incomes and wealth. From this evidence, UI concludes that the GSEs appear to be lagging the market in servicing low- and moderate-income and minority borrowers.

Furthermore, UI found "that the GSEs" efforts to increase underwriting flexibility and outreach has been noticed and is applauded by lenders and community advocates. Despite the GSEs' efforts in recent years to review and revise their underwriting criteria, however, they could do more to serve low- and moderate-income borrowers and to minimize disproportionate effects on minorities. Moreover, the use of automated underwriting systems and credit scores may place lower-income borrowers at a disadvantage when applying for a loan, even though they are acceptable credit risks." [197]

5. The GSEs' Support of the Mortgage Market for Single-family Rental Properties

Single-family rental housing is an important part of the housing stock because it is an important source of housing for lower-income households. Based on the 1995 American Housing Survey, 62 percent of all rental units are in structures with fewer than five units and approximately 57 percent of the stock of single-family rental units are affordable to very-low income families (*i.e.*, families earning 60 percent or less of the area median income). Of the GSEs' mortgage purchases in 1997, around 34 percent of the single-family rental units financed were affordable to very-low income households.

While single-family rental properties are a large segment of the rental stock for low-income families, they make up a small portion of the GSEs' overall business. In 1997, Fannie Mae and Freddie Mac purchased more than $11 billion in mortgages for these properties. These purchases represented 4 percent of the total dollar amount of their overall 1997 business.

It follows that since single-family rentals make up such a small part of the GSEs business, they have not penetrated the single-family rental market to the same degree that they have penetrated the owner-occupant market. Table A.7 in Section G shows that in 1997 the GSEs financed 49 percent of owner-occupied dwelling units but only 13 percent of single-family rental units.

There are a number of factors that have limited the development of the secondary market for single-family rental property mortgages thus explaining the lack of penetration by the GSEs. Little is collectively known about these properties as a result of the wide spatial dispersion of properties and owners, as well as a wide diversity of characteristics across properties and individuality of owners. This makes it difficult for lenders to properly evaluate the probability of default and severity of loss for these properties.

Single-family rental properties are important for the GSEs housing goals, especially for meeting the needs of lower-income families. In 1997 around 70 percent of single-family rental units qualified for the Low-and Moderate-Income Goals, compared with 35 percent of one-family owner-occupied properties. This heavy focus on lower-income families meant that single-family rental properties accounted for 10 percent of the units qualifying for the Low-and Moderate-Income Goal, even though they accounted for only 7 percent of the total units (single-family and multifamily) financed by the GSEs. Single-family rental properties account for 12 percent of the geographically-targeted and 13 percent of the special affordable housing goals.

A comparison of the GSEs' single-family rental and one-family owner-occupied mortgage purchases reveals the following broad patterns of borrower and neighborhood characteristics. Borrowers for single-family rental properties are more likely to be minorities than borrowers for one-family owner-occupied properties. Mortgages purchased by the GSEs for single-family rental properties compared with one-family owner-occupied properties are more likely to be located in lower-income and higher minority neighborhoods. More single-family rental than one-family owner-occupied mortgages were refinance or prior-year loans.

A closer look at borrower characteristics for single-family rental properties shows the following. First, based on ethnic/racial characteristics, borrowers for investor-owned properties are similar to borrowers for one-family owner-occupied properties. Second, borrowers for single-family rental properties, especially owner-occupied 2- to 4-unit properties, are more likely to be nonwhite than are borrowers for one-family owner-occupied and investor-owned properties. About 37 percent of the borrowers for owner-occupied 2- to 4-unit properties are non-white compared with around 16 percent for both one-family and investor-owned properties. For one-family owner-occupied and investor-owned properties about 5 percent of borrowers are African American, compared with 9 percent for owner-occupied 2- to 4-unit properties. A similar comparison applies for Hispanic borrowers, 6 percent and 16 percent respectively.

With regard to neighborhood characteristics, a comparison of units in different types of rental properties purchased by the GSEs shows that investor 1-unit properties were more likely to be located in higher-income and lower-minority neighborhoods than were units in 2- to 4-unit rental properties. For units in investor 1-unit properties, about 19 percent were in low-income neighborhoods, compared with 34 percent from units in 2- to 4-unit rental properties. About 25 percent of investor 1-unit properties were in high-minority neighborhoods, compared with 36 percent for units in 2- to 4-unit rental properties. Units in 2- to 4-unit rental properties were commonly located in older cities where many low-income and high-minority neighborhoods are located. Investor 1-unit properties were more characteristic of suburban neighborhoods where smaller populations of minorities and higher income households reside.

The GSEs can mitigate risk by purchasing mortgages which are seasoned or refinanced. The data show that mortgages on properties with additional risk components such as being investor-owned, in low-income neighborhoods, and /or in high-minority neighborhoods are more likely to be seasoned or refinanced. For the GSEs' mortgage purchases, in general, mortgages on investor-owned properties are more likely to be prior-year than mortgages on owner-occupied 2- to 4-unit properties (based on unit counts). These patterns are consistent with the notion that investor properties are more risky than owner-occupied 2- to 4-unit properties.

F. Factor 4: Size of the Conventional Conforming Mortgage Market Serving Low- and Moderate-Income Families Relative to the Overall Conventional Conforming Market

The Department estimates that dwelling units serving low-and moderate-income families will account for 50–55 percent of total units financed in the overall conventional conforming mortgage market during 2000–2003, the period for which the Low-and Moderate-Income Housing Goals are hereby established. Due to uncertainty about future market conditions, HUD has provided a plausible range, rather than a point estimate, for the market. The detailed analyses underlying these estimates are presented in Appendix D.

G. Factor 5: GSEs' Ability To Lead the Industry

FHEFSSA requires the Secretary, in determining the Low- and Moderate-Income Housing Goal, to consider the GSEs' ability to "lead the industry in making mortgage credit available for low-and moderate-income families." Congress indicated that this goal should "steer the enterprises toward the

[195] Temkin, *et al.* (1999), p. 4.
[196] Temkin, *et al.* (1999), p. 5.
[197] Temkin, *et al.* (1999), p. 28.

development of an increased capacity and commitment to serve this segment of the housing market" and that it "fully expect[ed] [that] the enterprises will need to stretch their efforts to achieve [these goals]."[198]

The Department and independent researchers have published numerous studies examining whether or not the GSEs have been leading the single-family market in terms of their affordable lending performance. This research, which is summarized in Section E, concludes that the GSEs have generally lagged behind other lenders in funding lower-income borrowers and their communities. As required by FHEFSSA, the Department has produced estimates of the portion of the total (single-family and multifamily) mortgage market that qualifies for each of the three housing goals (see Appendix D). Congress intended that the Department use these market estimates as one factor in setting the percentage target for each of the housing goals. The Department's estimate for the size of the Low-and Moderate-Income market is 50–55 percent, which is substantially higher than the GSEs' performance on that goal.

[198] Senate Report 102–282, (May 15, 1992), p. 35.

This section provides another perspective on the GSEs' performance by examining the share of the total mortgage market and the share of the goal-qualifying markets (low-mod, special affordable, and underserved areas) accounted for by the GSEs' purchases. This analysis, which is conducted by product type (single-family owner, single-family rental, and multifamily), shows the relative importance of the GSEs in each of the goal-qualifying markets.

1. GSEs' Role in Major Sectors of the Mortgage Market

Table A.7 compares GSE mortgage purchases with HUD's estimates of the numbers of units financed in the conventional conforming market during 1997.[199] HUD estimates that there were 7,443,736 owner and rental units financed by new mortgages in 1997. Fannie Mae's and Freddie Mac's mortgage purchases financed 2,893,046 dwelling units, or 39 percent of all dwelling units financed. As shown in Table A.7, the GSEs play a much smaller role in the goals-qualifying markets than they do in the overall market. During 1997, new mortgages were originated for 4,290,860 dwelling units that qualified for the low-and moderate-income goal; the GSEs low-mod purchases financed 1,305,505 dwelling units, or only 30 percent of the low-mod market. Similarly, the GSEs' purchases accounted for only 24 percent of the special affordable market and 33 percent of the underserved areas market.[200] Obviously, the GSEs are not leading the industry in financing units that qualify for the three housing goals.

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[199] Table A.7 considers GSE purchases during 1997 and 1998 of conventional mortgages that were originated in 1997. HUD's methodology for deriving the 1997 market estimations is explained in Appendix D. B&C loans have been excluded from the market estimates in Table A.7.

[200] Two caveats about the data in Table A.7 should be mentioned here. First, the various market totals for underserved areas are probably understated due to the model's underestimation of mortgage activity in non-metropolitan underserved counties and of manufactured housing originations in non-metropolitan areas. Second, as discussed in Appendix D, some uncertainty exists around the adjustment for B&C single-family owner loans.

Table A.7

Number of Units by Type in the 1997 Conventional Conforming Market Compared To Fannie Mae and Freddie Mac Purchases

	Single-Family Owner	Single-Family Rental	Multifamily	Total Rental	Total
Total Units					
Market	4,936,208	1,015,538	1,491,990	2,507,528	7,443,736
Fannie Mae	1,355,693	81,152	227,531	308,683	1,664,376
Freddie Mac	1,071,065	49,813	107,792	157,605	1,228,670
GSE Total	2,426,758	130,965	335,323	466,288	2,893,046
GSE % of Market	49%	13%	22%	19%	39%
Low-Mod Units					
Market	2,034,085	913,984	1,342,791	2,256,775	4,290,860
Fannie Mae	493,489	72,514	217,134	289,648	783,137
Freddie Mac	375,952	43,711	102,704	146,415	522,367
GSE Total	869,441	116,225	319,838	436,063	1,305,505
GSE % of Market	43%	13%	24%	19%	30%
Underserved Area Units*					
Market	1,230,808	461,930	716,155	1,178,085	2,408,893
Fannie Mae	328,143	38,975	95,774	134,749	462,892
Freddie Mac	257,546	23,056	52,488	75,544	333,090
GSE Total	585,688	62,031	148,262	210,293	795,981
GSE % of Market	48%	13%	21%	18%	33%
Special Affordable Units					
Market	704,384	589,012	865,354	1,454,366	2,158,750
Fannie Mae	143,081	36,661	134,990	171,651	314,732
Freddie Mac	105,850	21,875	65,920	87,795	193,645
GSE Total	248,931	58,537	200,909	259,446	508,377
GSE % of Market	35%	10%	23%	18%	24%

Source: The market data are the estimated number of newly mortgaged units during 1997. The Single-Family Owner market data exclude B&C loans; including the B&C loans in the owner market would have reduced the GSE market share from 49 percent to 42 percent. See Appendix D for an explanation of the market methodology and various caveats (such as excluding manufactured housing in non-metropolitan areas). The GSE data include units from conventional mortgages originated during 1997 and purchased by one of the GSEs during 1997 or 1998. GSE data with missing affordability or geocode fields are reallocated based the distribution of existing data.

*The Single-Family Owner market data for underserved areas should be considered a minimal estimate. The goal-qualifying percentages that were used to derive the Single-Family Owner market estimates were based on HMDA data for metropolitan areas; as discussed in Appendix D, this underestimates the underserved area market in non-metropolitan areas.

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While the GSEs are free to meet the Department's goals in any manner that they deem appropriate, it is useful to consider their performance relative to the industry by property type. As shown in Table A.7, the GSEs accounted for 49 percent of the single-family owner market in 1997 but only 22 percent of the multifamily market and 13 percent of the single-family rental market (or a combined share of 19 percent of the rental market).

Single Family Owner Market. This market is the bread-and-butter of the GSEs' business, and based on the financial and other factors discussed below, they clearly have the ability to lead the primary market in providing credit for low- and moderate-income owners of single-family properties. However, the GSEs have been lagging behind the market in their funding of single-family owner loans that qualify for the housing goals, as discussed in Section E.2.c. Between 1996 and 1998, low- and moderate-income borrowers accounted for 34.9 percent of Freddie Mac's mortgage purchases and 38.4 percent of Fannie Mae's mortgage purchases, but 42.6 percent of primary market originations in metropolitan areas. The market share data reported in Table A.7 for the single-family owner market tell the same story. The GSEs' purchases of single-family owner loans represented 49 percent of all newly-originated owner loans in 1997, but only 43 percent of the low-mod loans that were originated, 35 percent of the special affordable loans, and 48 percent of the underserved area loans. Thus, the GSEs need to improve their performance and it appears that there is ample room in the non-GSE portions of the goals-qualifying markets for them to do so. For instance, the GSEs are not involved in almost two-thirds of special affordable owner market.

Single Family Rental Market. Single-family rental housing is a major source of low- and moderate-income housing. As discussed in Appendix D, data on the size of the primary market for mortgages on these properties is limited, but information from the American Housing Survey on the stock of such units and plausible rates of refinancing indicate that the GSEs are much less active in this market than in the single-family owner market. As shown in Table A.7, HUD estimates that the GSEs' purchases have totaled only 13 percent of newly-mortgaged single-family rental units that were affordable to low- and moderate-income families.

Many of these properties are "mom-and-pop" operations, which may not follow financing procedures consistent with the GSEs' guidelines. Much of the financing needed in this area is for rehabilitation loans on 2–4 unit properties in older areas, a market in which the GSEs' have not played a major role. However, this sector could certainly benefit from an enhanced role by the GSEs, and the Department believes that there is room for such an enhanced role.

Multifamily Market. Fannie Mae is the largest single source of multifamily finance in the United States, and Freddie Mac has made a solid reentry into this market over the last five years. However, there are a number of measures by which the GSEs lag the multifamily market. For example, the share of GSE resources committed to the multifamily purchases falls short of the multifamily proportion prevailing in the overall mortgage market. HUD estimates that newly-mortgaged units in multifamily properties represented 18 percent all (single-family and multifamily) dwelling units financed during 1997.[201] By comparison, multifamily acquisitions represented 13 percent all units backing Fannie Mae's 1997 mortgage purchases, with a corresponding figure of only 8 percent for Freddie Mac.[202] [203] In other words, the GSEs place more emphasis on single-family mortgages than they do on multifamily mortgages.

The GSEs' focus on the single-family market means that they play a relatively small role in the multifamily market. As shown in Table A.7, the GSEs' purchases have accounted for only 22 percent of newly-financed multifamily units during 1997—a market share much lower than their 49 percent share of the single-family owner market. Thus, these data suggest that a further enlargement of the GSEs' role in the multifamily market seems feasible and appropriate in the future.

There are a number of submarkets, such as the market for mortgages on 5–50 unit multifamily properties, where the GSEs' role have particularly lag the market. As mentioned above, the GSEs represented 22 percent of the overall conventional multifamily mortgage market in 1997, but their acquisitions of loans on small multifamily properties represented only about 2 percent of such properties financed that year.[204] Certainly the GSEs face a number of challenges in better meeting the needs of the multifamily secondary market. For example, thrifts and other depository institutions may sometimes retain their best loans in portfolio, and the resulting information asymmetries may act as an impediment to expanded secondary market transaction volume.[205] However, the GSEs have demonstrated that they have the depth of expertise and the financial resources to devise innovative solutions to problems in the multifamily market.

2. Qualitative Dimensions of the GSEs' Ability To Lead the Industry

This section discusses several qualitative factors that are indicators of the GSEs' ability to lead the industry in affordable lending. It discusses the GSEs' role in the mortgage market; their ability, through their underwriting standards, new programs, and innovative products, to influence the types of loans made by private lenders; their development and utilization of state-of-the-art technology; the competence, expertise and training of their staffs; and their financial resources.

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[201] Table A.7 shows that multifamily represented 20 percent of total units financed during 1997 (obtained by dividing 1,491,990 multifamily units by 7,443,736 "Total Market" units). Increasing the single-family-owner number in Table A.7 by 776,193 to account for excluded B&C mortgages increases the "Total Market" number to 8,219,929, which is consistent with the 18 percent multifamily share reported in the text. See Appendix D for discussion of the B&C market.

[202] A similar imbalance is evident with regard to figures on the stock of mortgage debt published by the Federal Reserve Board. Within the single-family mortgage market the GSEs held loans or guarantees with an unpaid principal balance (UPB) of $1.5 trillion, comprising 36 percent of $4.0 trillion in outstanding single-family mortgage debt as of the end of 1997. At the end of 1997, the GSEs direct holdings and guarantees of $41.4 billion represented 13.7 percent of $301 billion in multifamily mortgage debt outstanding. (*Federal Reserve Bulletin*, June 1998, A 35.)

[203] For the most part, GSE multifamily purchases are similar to those in the overall market. For example, 56 percent of units backing Fannie Mae's 1997 multifamily acquisitions met the Special Affordable Goal, with a corresponding proportion of 57 percent for Freddie Mac, compared with a market estimate of approximately 60 percent, based on HUD's analysis of POMS data.

[204] This finding is based on the assumption that units in small multifamily properties represented approximately 37 percent of multifamily units financed in 1997, per the 1991 Residential Finance Survey, as discussed above. Additionally, it is assumed that 1997 multifamily conventional origination volume was $40.7 billion, as discussed in Appendix D. An average loan amount per unit of $25,167 is assumed, using a combination of loan-level GSE data and loan-level data from securitized multifamily mortgages in prospectus disclosures.

[205] The problem of secondary market "adverse selection" is described in James R. Follain and Edward J. Szymanoski. "A Framework for Evaluating Government's Evolving Role in Multifamily Mortgage Markets," *Cityscape: A Journal of Policy Development and Research* 1(2), (1995).

a. Role in the Mortgage Market

As discussed in Section C of this Appendix, the GSEs' single-family mortgage acquisitions have generally followed the volume of originations in the primary market for conventional mortgages. However, in 1997, single-family originations rose by nearly 10 percent, while the GSEs' acquisitions declined by 7 percent. As a result, the Office of Federal Housing Enterprise Oversight (OFHEO) estimates that the GSEs' share of conventional single-family mortgage originations declined from 42 percent in 1996 to 37 percent in 1997. The GSEs' conventional single-family mortgage share rose to an estimated 48 percent in 1998, but that is still well below the peak of 58 percent attained in 1993.[206]

The GSEs' high shares of originations during the 1990s led to a rise in their share of total conventional single-family mortgages outstanding, including both conforming mortgages and jumbo mortgages.[207] OFHEO estimates that the GSEs' share of such mortgages outstanding jumped from 34 percent at the end of 1991 to 40 percent at the end of 1994 and an estimated 45 percent at the end of 1998.[208] All of the increase in the GSEs' relative role between 1991 and 1998 was due to the growth in their portfolio holdings as a share of mortgages outstanding, from 5 percent at the end of 1991 to 17 percent at the end of 1998; relative holdings of the GSEs' mortgage-backed securities by others actually declined as a share of mortgages outstanding, from 29 percent at the end of 1991 to 28 percent at the end of 1998.

The dominant position of the GSEs in the mortgage market is reinforced by their relationships with other market institutions. Commercial banks, mutual savings banks, and savings and loans are their competitors as well as their customers—they compete to the extent they hold mortgages in portfolio, but at the same time they sell mortgages to the GSEs. They also buy mortgage-backed securities, as well as the debt securities used to finance the GSEs' portfolios. Mortgage bankers, who accounted for 58 percent of all single-family loans in 1997, sell virtually all of their conventional conforming loans to the GSEs.[209] Private mortgage insurers are closely linked to the GSEs, because mortgages purchased by the enterprises that have loan-to-value ratios in excess of 80 percent are normally required to be covered by private mortgage insurance, in accordance with the GSEs' charter acts.

b. Underwriting Standards for the Primary Mortgage Market

The GSEs' underwriting guidelines are followed by virtually all originators of prime mortgages, including lenders who do not sell many of their mortgages to Fannie Mae or Freddie Mac.[210] The guidelines are also commonly followed in underwriting "jumbo" mortgages, which exceed the maximum principal amount which can be purchased by the GSEs (the conforming loan limit)—such mortgages eventually might be sold to the GSEs, as the principal balance is amortized or when the conforming loan limit is otherwise increased. The GSEs, through their automated underwriting systems, have started adapting their underwriting for subprime loans and other loans that have not met their traditional underwriting standards.

Because the GSEs' guidelines set the credit standards against which the mortgage applications of lower-income families are judged, the enterprises have a profound influence on the rate at which mortgage funds flow to low- and moderate-income borrowers and underserved neighborhoods. Congress realized the crucial role played by the GSEs' underwriting guidelines when it required each enterprise to submit a study on its guidelines to the Secretary and to Congress in 1993, and when it called for the Secretary to "periodically review and comment on the underwriting and appraisal guidelines of each enterprise." Some of the conclusions from a study of the GSEs' single-family underwriting guidelines prepared for the Department by the Urban Institute have been discussed in Section E.

c. State-of-the-Art Technology

Both GSEs are in the forefront of new developments in mortgage industry technology. Each enterprise released an automated underwriting system in 1995—Freddie Mac's "Loan Prospector" and Fannie Mae's "Desktop Underwriter." Both systems rely on numerical credit scores, such as those developed by Fair, Isaac, and Company, and additional data submitted by the borrower, to obtain a mortgage score. The mortgage score indicates to the lender either that the GSE will accept the mortgage, based on the application submitted, or that more detailed manual underwriting is required to make the loan eligible for GSE purchase.

It is estimated that 25–40 percent of the GSEs' purchases are now based on automated underwriting. These systems have also been adapted for FHA and jumbo loans. They have the potential to reduce the cost of loan origination, particularly for low-risk loans, but the systems are so new that no comprehensive studies of their effects have been conducted. As discussed earlier, concerns about the use of automated underwriting include the impact on minorities and the "black box" nature of the score algorithm.

The GSEs are using their state-of-the-art technology in certain ways to help expand homeownership opportunities. For example, Fannie Mae has developed FannieMaps, a computerized mapping service offered to lenders, nonprofit organizations, and state and local governments to help them implement community lending programs.

d. Staff Resources

Both Fannie Mae and Freddie Mac are well-known throughout the mortgage industry for the expertise of their staffs in carrying out their current programs, conducting basic and applied research regarding mortgage markets, developing innovative new programs, and undertaking sophisticated analyses that may lead to new programs in the future. The leaders of these corporations frequently testify before Congressional committees on a wide range of housing issues, and both GSEs have developed extensive working relationships with a broad spectrum of mortgage market participants, including various nonprofit groups, academics, and government housing authorities. They also contract with outside leaders in the finance industry for technical expertise not available in-house and for advice on a wide variety of issues.

e. Financial Strength

Fannie Mae. The benefits that accrue to the GSEs because of their GSE status, as well as their solid management, have made them two of the nation's most profitable businesses. Fannie Mae's net income has increased from $376 million in 1987 to $1.6 billion in 1992, $3.1 billion in 1997, and $3.4 billion in 1998—an average annual rate of increase of 22 percent. Through the fourth quarter of 1998, Fannie Mae has recorded 48 consecutive quarters of increased net income per share of common equity. Fannie Mae's return on equity averaged 23.8 percent over the 1993–97 period—far above the rates achieved by most financial corporations.

Investors in Fannie Mae's common stock have seen their annual dividends per share nearly double over the last five years, rising from $1.84 in 1993 to $3.36 in 1997. If dividends were fully reinvested, an investment of $1000 in Fannie Mae common stock on December 31, 1987 would have appreciated to $27,983.98 by December 31, 1997. This annualized total rate of return of 39.5 percent over the decade exceeded that of many leading U. S. corporations, including Intel (35.9 percent), Coca-Cola (32.4 percent), and General Electric (24.3 percent).

Freddie Mac. Freddie Mac has shown similar trends. Freddie

Mac's net income has increased from $301 million in 1987 to $622 million in 1992, $1.4 billion in 1997, and $1.7 billion in 1998—an average annual rate of increase of 17 percent. Freddie Mac's return on equity averaged 22.7 percent over the 1993–97 period—also well above the rates achieved by most financial corporations.

Investors in Freddie Mac's common stock have also seen their annual dividends per share nearly double over the last five years, rising from $0.88 in 1993 to $1.60 in 1997.

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[206] Office of Federal Housing Enterprise Oversight, *1998 Report to Congress*, Figure 9, page 32.

[207] A jumbo mortgage is one for which the loan amount exceeds the maximum principal amount for mortgages purchased by the enterprises—$240,000 for mortgages on 1-unit properties in 1999, with limits that are 50 percent higher in Alaska, Hawaii, Guam, and the Virgin Islands.

[208] Office of Federal Housing Enterprise Oversight, *1998 Report to Congress*, (June 15, 1998), Figure 9, p. 32; and unpublished OFHEO estimates for 1998.

[209] Mortgage originations for 1997 were reported in the Department of Housing and Urban Development, *HUD Survey of Mortgage Lending Activity: Fourth Quarter/Annual 1997*, (September 24, 1998).

[210] The underwriting guidelines published by the two GSEs are similar in most aspects. And since November 30, 1992, Fannie Mae and Freddie Mac have provided lenders the same *Uniform Underwriting and Transmittal Summary* (Fannie Mae Form 1008/Freddie Mac Form 1077), which is used by originators to collect certain mortgage information that they need for data entry when mortgages are sold to either GSE.

If dividends were fully reinvested, an investment of $1000 in Freddie Mac common stock on December 29, 1989 would have appreciated to $8,670.20 by December 31, 1997, for an annualized total rate of return of 31.0 percent over this period. This was slightly higher than the annual return on Fannie Mae common stock (29.9 percent) and substantially higher than the average gain in the S&P Financial-Miscellaneous index (24.1 percent) over the 1990–97 period.[211]

Other indicators. Additional indicators of the strength of the GSEs are provided by various rankings of American corporations. One survey found that at the end of 1997 Fannie Mae was first of all companies in total assets and Freddie Mac ranked 13th.[212] Business Week has reported that among Standard & Poor's 500 companies in 1997 Fannie Mae and Freddie Mac respectively ranked 25th and 61st in market value, and 28th and 57th in total profits.[213]

f. Conclusion About Leading the Industry

In light of these considerations, the Secretary has determined that the GSEs have the ability to lead the industry in making mortgage credit available for low-and moderate-income families.

H. Factor 6: The Need To Maintain the Sound Financial Condition of the GSEs

HUD has undertaken a separate, detailed economic analysis of this proposed rule, which includes consideration of (a) the financial returns that the GSEs earn on low- and moderate-income loans and (b) the financial safety and soundness implications of the housing goals. Based on this economic analysis and discussions with the Office of Federal Housing Enterprise Oversight, HUD concludes that the proposed goals raise minimal, if any, safety and soundness concerns.

I. Determination of the Low- and Moderate-Income Housing Goals

The annual goal for each GSE's purchases of mortgages financing housing for low- and moderate-income families is established at 48 percent of eligible units financed in calendar year 2000, and 50 percent of eligible units financed in each of calendar years 2001, 2002 and 2003. This goal will remain in effect for 2004 and thereafter, unless changed by the Secretary prior to that time. The goal represents an increase over the 1996 goal of 40 percent and the 1997–99 goal of 42 percent. The goals for 2001–2003 are in the lower portion of the range of market share estimates of 50–55 percent, presented in Appendix D. The Secretary's consideration of the six statutory factors that led to the choice of these goals is summarized in this section.

1. Housing Needs and Demographic Conditions

Data from the 1990 Census and the American Housing Surveys demonstrate that there are substantial housing needs among low- and moderate-income families, especially among lower-income and minority families in this group. Many of these households are burdened by high homeownership costs or rent payments and will likely continue to face serious housing problems, given the dim prospects for earnings growth in entry-level occupations. According to HUD's "Worst Case Housing Needs" report, 21 percent of owner households faced a moderate or severe cost burden in 1995. Affordability problems were even more common among renters, with 40 percent paying more than 30 percent of their income for rent in 1995.[214]

Single Family Mortgage Market. Many younger, minority and lower-income families did not become homeowners during the 1980s due to the slow growth of earnings, high real interest rates, and continued house price increases. Over the past six years, economic expansion, accompanied by low interest rates and increased outreach on the part of the mortgage industry, has improved affordability conditions for these families. Between 1993 and 1998, record numbers of lower-income and minority families purchased homes. First-time homeowners have become a major driving force in the home purchase market over the past five years. Thus, the 1990s have seen the development of a strong affordable lending market. Despite this growth in affordable lending to minorities, disparities in the mortgage market remain. For example, African-American applicants are still twice as likely to be denied a loan as white applicants, even after controlling for income.

Several demographic changes will affect the housing finance system over the next few years. First, the U.S. population is expected to grow by an average of 2.4 million per year over the next 20 years, resulting in 1.1 to 1.2 million new households per year. The aging of the baby-boom generation and the entry of the baby-bust generation into prime home buying age will have a dampening effect on housing demand. However, the continued influx of immigrants will increase the demand for rental housing, while those who immigrated during the 1980's will be in the market for owner-occupied housing. Non-traditional households have become more important, as overall household formation rates have slowed. With later marriages, divorce, and non-traditional living arrangements, the fastest growing household groups have been single-parent and single-person households. With continued house price appreciation and favorable mortgage terms, "trade-up buyers" will increase their role in the housing market. These demographic trends will lead to greater diversity in the homebuying market, which will require adaptation by the primary and secondary mortgage markets.

As a result of the above demographic forces, housing starts are expected to average 1.5 million units between 2000 and 2003, essentially the same as in 1996–99.[215] Refinancing of existing mortgages, which accounted for 50 percent of originations in 1998, will continue to play a major role in 1999, returning to more normal levels during 2000. Thus the mortgage market should remain strong in 1999, while easing somewhat during 2000.

Multifamily Mortgage Market. Since the early 1990s, the multifamily mortgage market has become more closely integrated with global capital markets, although not to the same degree as the single-family mortgage market. Loans on multifamily properties remain viewed as riskier than their single-family counterparts. Property values, vacancy rates, and market rents in multifamily properties appear to be highly correlated with local job market conditions, creating greater sensitivity of loan performance to economic conditions than may be experienced for single-family mortgages.

Recent volatility in the market for Commercial Mortgage Backed Securities (CMBS), an important source of financing for multifamily properties, underlines the need for an ongoing GSE presence in the multifamily secondary market. The potential for an increased GSE presence is enhanced by virtue of the fact that an increasing proportion of multifamily mortgages is now originated in accordance with secondary market standards.

The GSEs have the capability to increase the availability of long-term, fixed rate financing, thereby contributing greater liquidity in market segments where increased GSE presence can provide lenders with a more viable "exit strategy" than what is presently available. It appears that the cost of mortgage financing on properties with 5–50 units, where much of the nation's affordable housing stock is concentrated, may be higher than warranted by the degree of inherent credit risk.[216] Presently, however, the GSEs purchase only about 5 percent of units in 5–50 unit properties financed annually. Borrowers have also experienced difficulty obtaining mortgage financing for multifamily properties with significant rehabilitation needs. Historically the flow of capital into multifamily housing for seniors has, moreover, been characterized by a great deal of volatility.

2. Past Performance and Ability To Lead the Industry

The GSEs have played a major role in the conventional single-family mortgage market in the 1990s. The GSEs' purchases of single-family-owner mortgages have accounted for 49 percent of mortgages originated in the conventional conforming market during 1997. Many industry observers believe that the role of the GSEs in the late-1980s and 1990s is a major reason why the decline of the thrift industry had only minor effects on the nation's housing finance system.

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[211] Freddie Mac stock was not publicly traded until after the passage of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), thus it is not possible to calculate a 10–year annualized rate of return.

[212] *Forbes*, (April 20, 1998), p. 315.

[213] *Business Week*, (March 30, 1998), p. 154.

[214] *Rental Housing Assistance—The Crisis Continues: The 1997 Report to Congress on Worst Case Housing Needs*, Department of Housing and Urban Development, Office of Policy Development and Research, (April 1998).

[215] Standard & Poor's DRI, *The U.S. Economy*. (September 1999), p. 54.

[216] See Drew Schneider and James Follain, "A New Initiative in the Federal Housing Administration's Office of Multifamily Housing Programs: An Assessment of Small Projects Processing," *Cityscape: A Journal of Policy Development and Research* 4(1), (1998), pp. 43–58.

Additionally, the American mortgage market was not impacted adversely in any way by the recent volatility in world financial markets.

The enterprises' role in the mortgage market is also reflected in their use of cutting edge technology, such as the development of Loan Prospector and Desktop Underwriter, the automated underwriting systems developed by Freddie Mac and Fannie Mae, respectively. Both GSEs are also entering new and challenging fields of mortgage finance, including activities involving subprime mortgages and mortgages on manufactured housing.

The GSEs' performance on the Low- and Moderate-Income Housing Goal has also improved significantly in recent years, as shown in Figure A.1. Fannie Mae's performance increased from 34.2 percent in 1993 to 42.3 percent in 1995, 45.6 percent in 1996, and 45.7 percent in 1997, then falling slightly to 44.1 percent in 1998. Freddie Mac's performance also increased, from 29.7 percent in 1993 to 38.9 percent in 1995, 41.1 percent in 1996, 42.6 percent in 1997, and 42.9 percent in 1998. Although Freddie Mac's low- and moderate-income shares were below Fannie Mae's shares in every year, its goal performance was 97 percent of Fannie Mae's performance in 1998, the highest performance ratio for Freddie Mac since goals were instituted in 1993. This increase in Freddie Mac's relative performance on the Low- and Moderate-Income Housing Goal resulted primarily from its increased role in the multifamily mortgage market.

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Figure A.1

Low- and Moderate-Income Mortgage Purchases

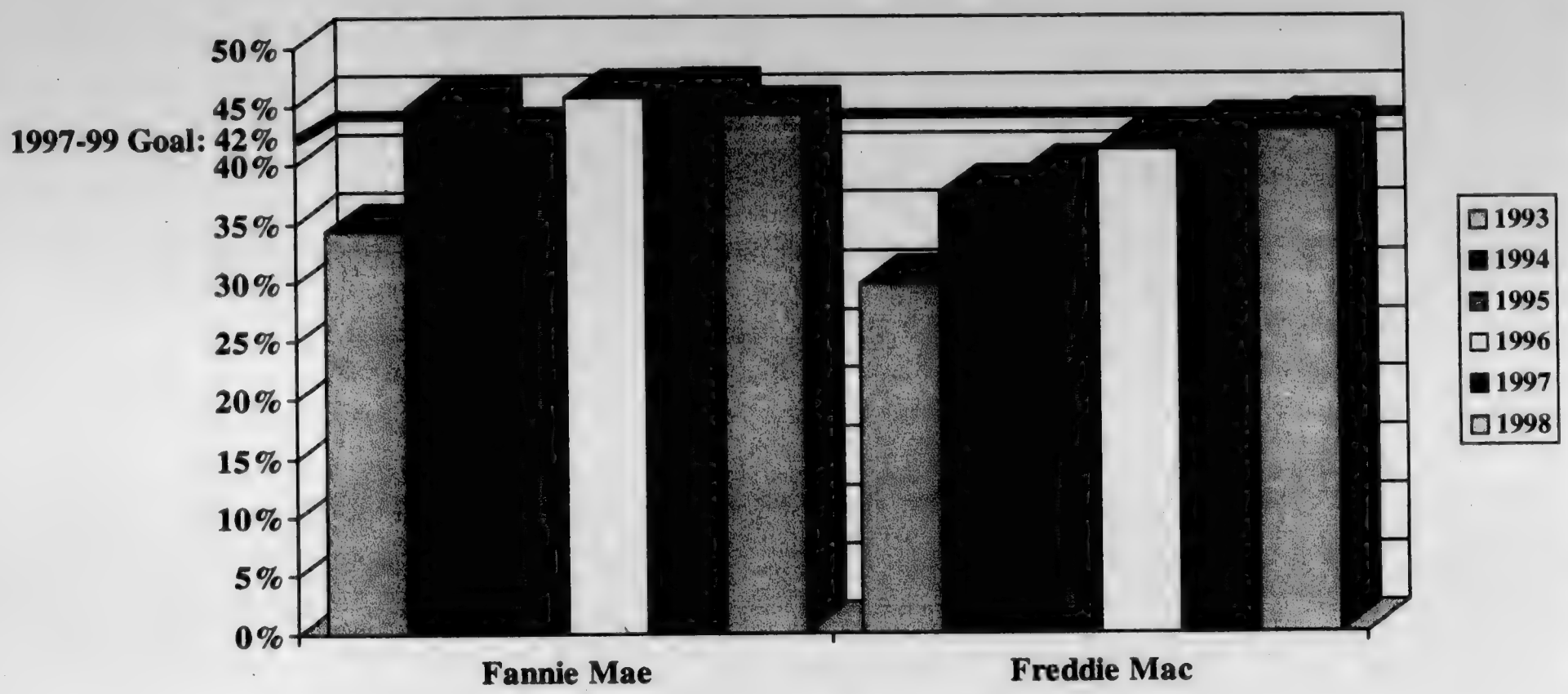

Low- and Moderate-Income Goal is 42% of units financed for 1997-99 (40% for 1996).

Source: HUD analysis of GSEs' loan-level data.

Figure A.2

Distribution of GSE Purchases of Single-Family Owner-Occupied Home Loans by Income Class of Mortgagor for 1997

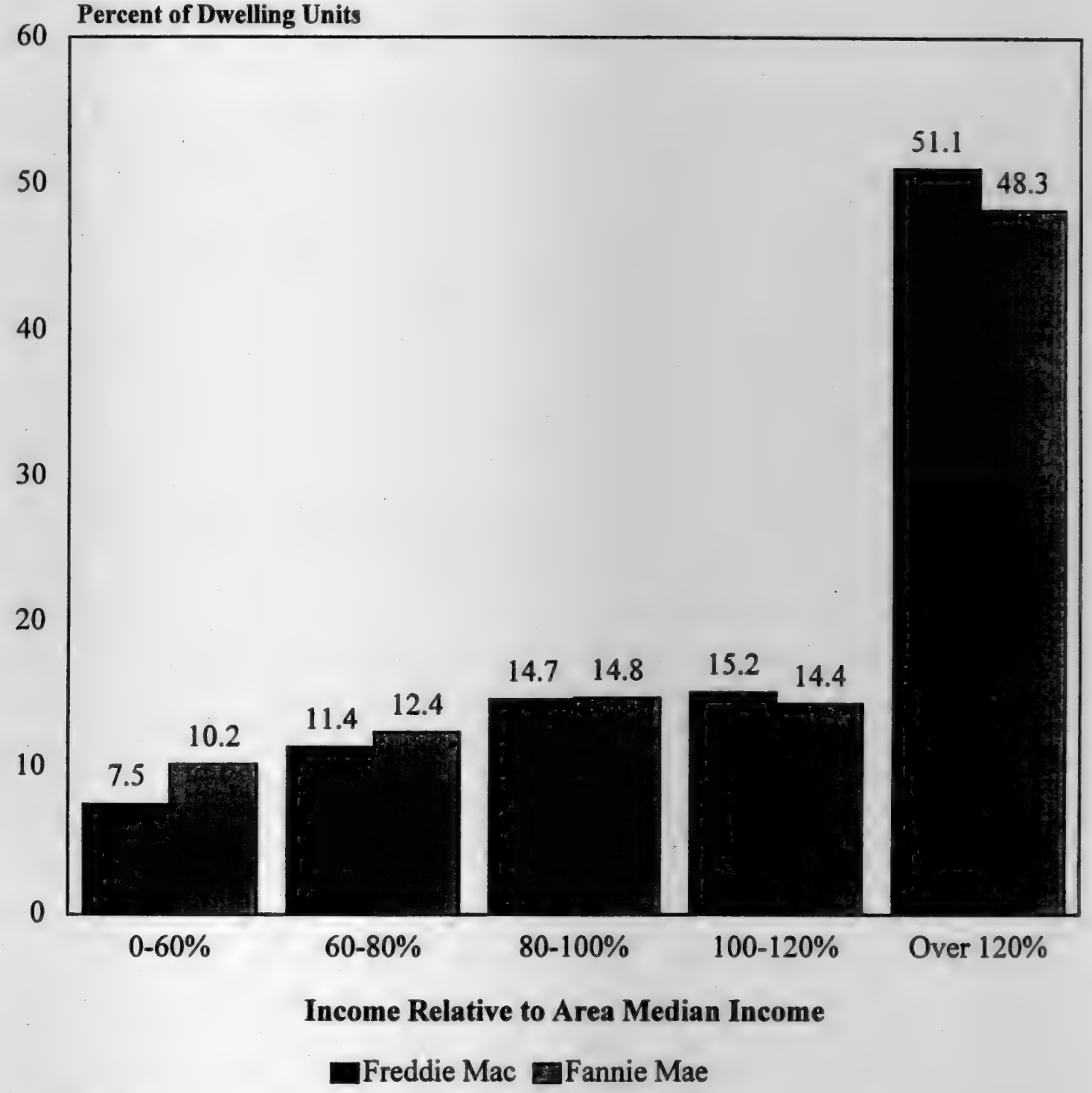

Source: GSE loan-level data on purchases of home loans in both metropolitan and non-metropolitan areas.

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Figure A.3

The Share Of GSE And Conventional Conforming Mortgages for Low- and Moderate-Income Borrowers, 1997 and 1998

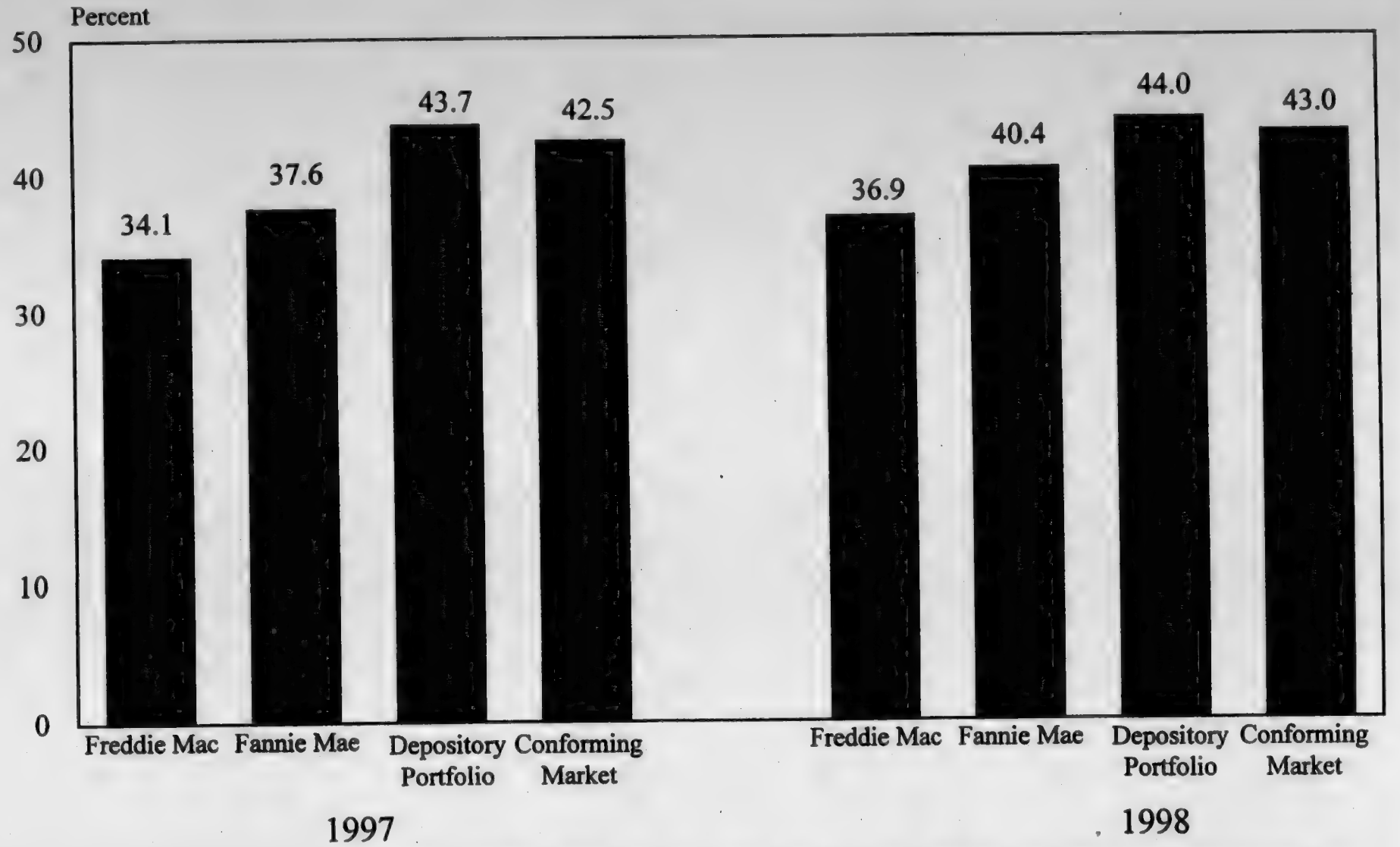

Source: Conforming market and depository data are from 1997 and 1998 HMDA; GSE data are from loan-level data reported to HUD. Data are for single-family home purchase loans in metropolitan areas. See Table A.4a for further explanation.

Single Family Affordable Lending Market. Despite these gains in goal performance, the Department remains concerned about the GSEs' support of lending for the lower-income end of the market. As shown in Figures A.2 and A.3, the lower-income shares of the GSEs' purchases are too low, particularly when compared with the corresponding shares for portfolio lenders and the primary market.

This appendix has reached the following findings with respect to the GSEs' purchases of affordable loans for low- and moderate-income families and their communities.

(i) While Fannie Mae and Freddie Mac have both improved their support for the single-family affordable lending market over the past six years, they have generally lagged the overall single-family market in providing affordable loans to lower-income borrowers. This finding is based on HUD's analysis of GSE and HMDA data and on numerous studies by academics and research organizations.

(ii) The GSEs show somewhat different patterns of mortgage purchases—for example, Freddie Mac is less likely than Fannie Mae to fund mortgages for lower-income families. As a result, the percentage of Freddie Mac's purchases benefiting historically underserved families and their neighborhoods is less than the corresponding shares of total market originations, while Fannie Mae's purchases are closer to the patterns of originations in the primary market (see Figure A.3).

(iii) A study by The Urban Institute of lender experience with the GSEs' underwriting guidelines finds that the enterprises have stepped up their outreach efforts and increased the flexibility in their standards to better accommodate the special circumstances of lower-income borrowers. However, this study concludes that the GSEs' guidelines remain somewhat inflexible and that the enterprises are often hesitant to purchase affordable loans. Lenders also tell The Urban Institute that Fannie Mae has been more aggressive than Freddie Mac in market outreach to underserved groups, in offering new affordable products, and in adjusting its underwriting standards.

(iv) A large percentage of the lower-income loans purchased by the enterprises have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the needs of lower-income families have difficulty raising enough cash for a large down payment.

(v) There are important parts of the single-family market where the GSEs have played a minimal role. For example, single-family rental properties are an important source of low-income housing, but they represent only a small portion of the GSEs' business. GSE purchases have accounted for only 13 percent of the single-family rental units that received financing in 1997. An increased presence by Fannie Mae and Freddie Mac would bring lower interest rates and liquidity to this market, as well as improve their goals performance.

(vi) The above points can be summarized by examining the GSEs' share of the single-family mortgage market. The GSEs' total purchases have accounted for 43 percent of all single-family (both owner and rental) units financed during 1997; however, their low-mod purchases have accounted for only one-third of the low- and moderate-income single-family units that were financed during that year.

In conclusion, the Department's analysis suggests that the GSEs are not leading the single-family market in purchasing loans that qualify for the Low- and Moderate-Income Goal. There is room for Fannie Mae and, particularly, Freddie Mac to improve their performance in purchasing affordable loans at the lower-income end of the market. Moreover, evidence suggests that there is a significant population of potential homebuyers who might respond well to aggressive outreach by the GSEs. Specifically, both Fannie Mae and the Joint Center for Housing Studies expect immigration to be a major source of future homebuyers. Furthermore, studies indicate the existence of a large untapped pool of potential homeowners among the rental population. Indeed, the GSEs' recent experience with new outreach and affordable housing initiatives is important confirmation of this potential.

Multifamily Market. Fannie Mae and, especially, Freddie Mac have rapidly expanded their presence in the multifamily mortgage market in the period since the passage of FHEFSSA. The Senate report on this legislation in 1992 referred to the GSEs' activities in the multifamily arena as "troubling," citing Freddie Mac's September 1990 suspension of its purchases of new multifamily mortgages and criticism of Fannie Mae for "creaming" the market.[217]

Freddie Mac has successfully rebuilt its multifamily acquisition program, as shown by the increase in its purchases of multifamily mortgages from $27 million in 1992 to $847 million in 1994 and $6.6 billion in 1998. As a result, concerns regarding Freddie Mac's multifamily capabilities no longer constrain their performance with regard to low- and moderate-income families in the manner that prevailed at the time of the December 1995 rule.

Fannie Mae never withdrew from the multifamily market, but it has also stepped up its activities in this area substantially, with multifamily purchases rising from $3.0 billion in 1992 to $3.8 billion in 1994 and $12.5 billion in 1998. Fannie Mae publicly announced in 1994 an aggressive goal of conducting $50 billion in multifamily transactions between 1994 and the end of the decade, and it appears likely that it will be successful in reaching this goal.[218] Also, Fannie Mae's multifamily underwriting standards are highly influential and have been widely emulated throughout the multifamily mortgage market.

The increased role of Fannie Mae and Freddie Mac in the multifamily market has major implications for the Low- and Moderate-Income Housing Goal, since a very high percentage of multifamily units have rents which are affordable to low- and moderate-income families. However, the potential of the GSEs to lead the multifamily mortgage industry has not been fully developed. As reported earlier in Table A.7, the GSEs' purchases (through 1998) have accounted for only 22 percent of the multifamily units that received financing during 1997. Standard & Poor's recently described both GSEs' multifamily lending as "extremely conservative."[219] In particular, their multifamily purchases do not appear to be contributing to mitigation of the excessive cost of mortgage financing for small multifamily properties, nor have the GSEs demonstrated market leadership with regard to rehabilitation loans, a segment where financing has sometimes been difficult to obtain. In conclusion, it appears that both GSEs can make improvements in their underwriting policies and procedures and introduce new products that will enable them to more effectively serve segments of the multifamily market that can benefit from greater liquidity.

3. Size of the Mortgage Market for Low- and Moderate-Income Families

As detailed in Appendix D, the low-and moderate-income mortgage market accounts for 50 to 55 percent of dwelling units financed by conventional conforming mortgages. In estimating the size of the market, HUD excluded the effects of the B&C market. HUD also used alternative assumptions about future economic and market conditions that were less favorable than those that existed over the last five years. HUD is well aware of the volatility of mortgage markets and the possible impacts of changes in economic conditions on the GSEs' ability to meet the housing goals. Should conditions change such that the goals are no longer reasonable or feasible, the Department has the authority to revise the goals.

4. The Low- and Moderate-Income Housing Goals for 2000–03

There are several reasons why the Secretary is increasing the Low- and Moderate-Income Housing Goal from 42 percent in 1997–99 to 48 percent of eligible units financed in calendar year 2000 and 50 percent of eligible units financed in each of calendar years 2001, 2002 and 2003.

First, when the 1996–99 goals were established in December 1995, Freddie Mac had only recently reentered the multifamily mortgage market, after its absence in the early 1990s. Freddie Mac has rebuilt its multifamily acquisition program over the past several years, with its 1998 purchases at a level nearly five times what they were in 1994. The limited role of Freddie Mac in the multifamily market was a significant constraint in setting the Low- and Moderate-Income Housing Goals for 1996–99. Freddie Mac's return as a major participant in the multifamily market was an important factor in the improvement in its performance on the Low- and Moderate-Income Housing Goal, as shown in Figure A.1, and it removes an impediment to higher goals for both GSEs. These goals will create new opportunities for the GSEs to further step up their support of mortgages on properties with rents affordable

[217] Senate Report 102–282, (May 15, 1992), p. 36.

[218] See Fannie Mae's World Wide Web site at http://www.fanniemae.com.

[219] "Final Report of Standard & Poor's to the Office of Federal Housing Enterprise Oversight (OFHEO)," (February 3, 1997), p. 10.

to low- and moderate-income families. However, as discussed in the Preamble, to encourage Freddie Mac to further step up its role in the multifamily market, the Secretary is proposing a "temporary adjustment factor" for its purchases of loans on properties with more than 50 units. Specifically, each unit in such properties would be weighted as 1.2 units in the numerator of the housing goal percentage for both the Low and Moderate Income Goal and the Special Affordable Housing Goal for the years 2000–2003.

Second, the single-family affordable market had only recently begun to grow in 1993 and 1994, the latest period for which data was available when the 1996–99 goals were established in December 1995. But the historically high low- and moderate-income share of the primary mortgage market attained in 1994 has been maintained over the 1995–98 period. The three-year average estimate of the low- and moderate-income share of the single-family owner mortgage market was 38 percent for 1992–94, but 42 percent for 1995–98 and 41 percent for the 1992–98 period as a whole. The continued high affordability of housing suggests that a strong low-income market continued for a sixth straight year in 1999. Current economic forecasts suggest that the strong housing affordability of the past several years will be maintained in the post-1999 period, leading to additional opportunities for the GSEs to support mortgage lending benefiting low- and moderate-income families.[220] And various surveys indicate that the demand for homeownership by minorities, immigrants, and younger households will remain strong for the foreseeable future.

Although single-family owner 1-unit properties comprise the "bread-and-butter" of the GSEs' business, evidence presented above demonstrates that the shares of their loans for low- and moderate-income families taking out loans on such properties lag the corresponding shares for the primary market. For example, in 1997 the Department finds that these shares amounted to 34.1 percent for Freddie Mac, 37.6 percent for Fannie Mae, and 42.5 percent for the primary market; as shown in Figure A.3, a similar pattern holds for 1998. Thus the Secretary believes that the GSEs can do more to raise the low- and moderate-income shares of their mortgages on these properties. This can be accomplished by building on various programs that the enterprises have already started, including (1) their outreach efforts, (2) their incorporation of greater flexibility into their underwriting guidelines, (3) their purchases of seasoned CRA loans, (4) their entry into new single-family mortgage markets such as loans on manufactured housing, (5) their increased purchases of loans on small multifamily properties, and (6) their increased presence in other rental markets where they have had only a limited presence in the past.

Third, one particular area where the GSEs could play a greater role is in the mortgage market for single-family rental dwellings. These properties, containing 1–4 rental units, are an important source of housing for low- and moderate-income families, but the GSEs have not played a major role in this mortgage market—they accounted for only 6.5 percent of units financed by Fannie Mae and 6.4 percent of units financed by Freddie Mac in 1997. The Department believes that the GSEs' role in financing loans on such properties, which are generally owned by "mom and pop" businesses, can and should be enhanced, though it recognizes that single-family rental properties are very heterogeneous, making it more difficult to develop standardized underwriting standards for the secondary market. But the Secretary believes that the GSEs can do more to play a leadership role in providing financing for such properties.[221]

Finally, a wide variety of quantitative and qualitative indicators indicate that the GSEs' have the financial strength to improve their affordable lending performance. For example, combined net income has risen steadily over the last decade, from $888 million in 1988 to $5.12 billion in 1998, an average annual growth rate of 19 percent per year. This financial strength provides the GSEs with the resources to lead the industry in supporting mortgage lending for units affordable to low- and moderate-income families.

Summary. Figure A.4 summarizes many of the points made in this section regarding opportunities for Fannie Mae and Freddie Mac to improve their overall performance on the Low- and Moderate-Income Goal. The GSEs' purchases have provided financing for 2,893,046 (or 39 percent) of the 7,443,736 single-family and multifamily units that were financed in the conventional conforming market during 1997. However, in the low- and moderate-income part of the market, the 1,305,505 units that were financed by GSE purchases represented only 30 percent of the 4,290,860 dwelling units that were financed in the market. Thus, there appears to ample room for the GSEs to increase their purchases of loans that qualify for the Low- and Moderate-Income Goal. Examples of specific market segments that would particularly benefit from a more active secondary market have been provided throughout this appendix.

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[220] However, the Department's goals for the GSEs have been set so that they will be feasible even under less favorable conditions in the housing market.

[221] Another area where stepped-up GSE involvement could benefit low- and moderate-income families is lending for the rehabilitation of properties, which is especially needed in our urban areas. The GSEs have made some efforts in this complex area, but the benefits of stepped-up roles by the GSE could be sizable.

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Figure A.4
GSEs' Share of the 1997 Conventional Conforming Market by Housing Goal Category

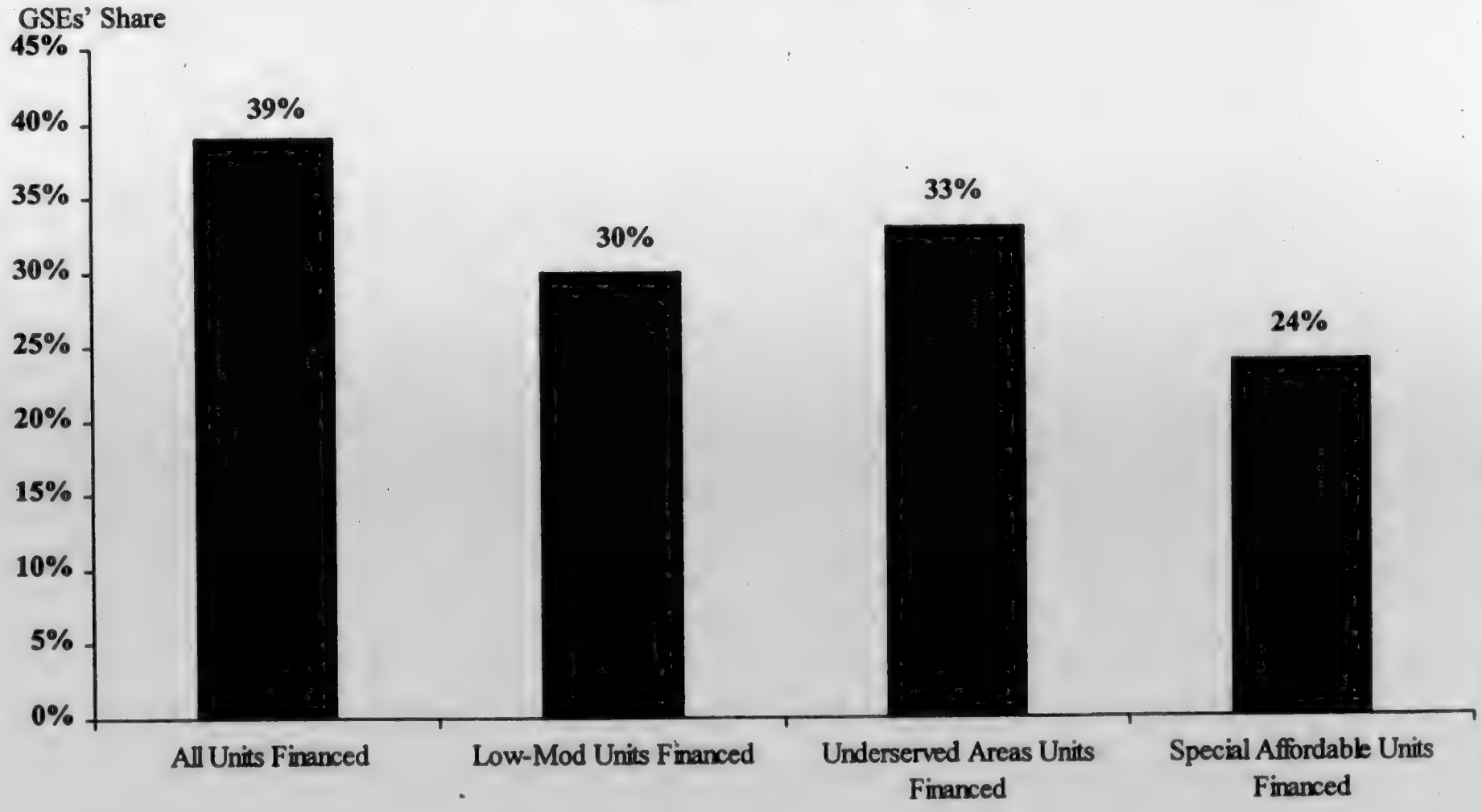

Note: The conventional conforming market, as estimated by HUD, includes single-family owner, single-family rental, and multifamily units financed during 1997. See notes for Table A.7.

5. Conclusions

Having considered the projected mortgage market serving low- and moderate-income families, economic, housing and demographic conditions for 2000–03, and the GSEs' recent performance in purchasing mortgages for low- and moderate-income families, the Secretary has determined that the annual goal of 48 percent of eligible units financed in calendar year 2000 and 50 percent of eligible units financed in each of calendar years 2001, 2002 and 2003 is feasible. Moreover, the Secretary has considered the GSEs' ability to lead the industry as well as the GSEs' financial condition. The Secretary has determined that the goal is necessary and appropriate.

Appendix B.—Departmental Considerations To Establish the Central Cities, Rural Areas, and Other Underserved Areas Goal

A. Introduction

1. Establishment of Goal

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) requires the Secretary to establish an annual goal for the purchase of mortgages on housing located in central cities, rural areas, and other underserved areas (the "Geographically Targeted Goal").

In establishing this annual housing goal, Section 1334 of FHEFSSA requires the Secretary to consider:

1. Urban and rural housing needs and the housing needs of underserved areas;

2. Economic, housing, and demographic conditions;

3. The performance and effort of the enterprises toward achieving the Geographically Targeted Goal in previous years;

4. The size of the conventional mortgage market for central cities, rural areas, and other underserved areas relative to the size of the overall conventional mortgage market;

5. The ability of the enterprises to lead the industry in making mortgage credit available throughout the United States, including central cities, rural areas, and other underserved areas; and

6. The need to maintain the sound financial condition of the enterprises.

Organization of Appendix. The remainder of Section A defines the Geographically Targeted Goal for both metropolitan areas and nonmetropolitan areas. Sections B and C address the first two factors listed above, focusing on findings from the literature on access to mortgage credit in metropolitan areas (Section B) and in nonmetropolitan areas (Section C). Separate discussions are provided for metropolitan and nonmetropolitan (rural) areas because of differences in the underlying markets and the data available to measure them. Section D discusses the past performance of the GSEs on the Geographically Targeted Goal (the third factor) and Sections E–G report the Secretary's findings for the remaining factors. Section H summarizes the Secretary's rationale for setting the level for the Geographically Targeted Goal.

2. HUD's Geographically Targeted Goal

HUD's proposed definition of the geographic areas targeted by this goal is basically the same as that used during 1996–99. It is divided into a metropolitan component and a nonmetropolitan component.

Metropolitan Areas. This proposed rule provides that within metropolitan areas, mortgage purchases will count toward the goal when those mortgages finance properties that are located in census tracts where (1) median income of families in the tract does not exceed 90 percent of area (MSA) median income or (2) minorities comprise 30 percent or more of the residents and median income of families in the tract does not exceed 120 percent of area median income.

The definition includes 20,326 of the 43,232 census tracts (47 percent) in metropolitan areas, which include 44 percent of the metropolitan population.[1] The tracts included in this definition suffer from poor mortgage access and distressed socioeconomic conditions. The average mortgage denial rate in these tracts is 23.4 percent, almost twice the denial rate in excluded tracts. The tracts include 73 percent of the number of poor persons in metropolitan areas.

This definition is based on studies of mortgage lending and mortgage credit flows conducted by academic researchers, community groups, the GSEs, HUD and other government agencies. While more research must be done before mortgage access for different types of people and neighborhoods is fully understood, one finding from the existing research literature stands out—high-minority and low-income neighborhoods continue to have higher mortgage denial rates and lower mortgage origination rates than other neighborhoods. A neighborhood's minority composition and its level of income are highly correlated with measuring access to mortgage credit.

Nonmetropolitan Areas. This proposed rule provides that in nonmetropolitan areas mortgage purchases that finance properties that are located in counties will count toward the Geographically Targeted Goal where (1) median income of families in the county does not exceed 95 percent of the greater of (a) state nonmetropolitan median income and (b) nationwide nonmetropolitan median income or (2) minorities comprise 30 percent or more of the residents and median income of families in the county does not exceed 120 percent of state nonmetropolitan median income.

Two important factors influenced HUD's definition of nonmetropolitan underserved areas—lack of available data for measuring mortgage availability in rural areas and lenders' difficulty in operating mortgage programs at the census tract level in rural areas. Because of these factors, this proposed rule uses a more inclusive, county-based definition of underservedness in rural areas. HUD's definition includes 1,511 of the 2,305 counties (66 percent) in nonmetropolitan areas and accounts for 54 percent of the nonmetropolitan population and 67 percent of the nonmetropolitan poverty population.

Goal Levels. The proposed Geographically Targeted Goal is 29 percent of eligible units financed in calendar year 2000 and 31 percent of eligible units financed in calendar year 2001 and thereafter. HUD estimates that the mortgage market in areas included in the Geographically Targeted Goal accounts for 29–32 percent of the total number of newly-mortgaged dwelling units. HUD's analysis indicates that 28.8 percent of Fannie Mae's 1997 purchases and 27.0 percent of 1998 purchases financed dwelling units located in these areas. The corresponding performance for Freddie Mac was 26.3 percent in 1997 and 26.1 percent in 1998.

B. Consideration of Factors 1 and 2 in Metropolitan Areas: The Housing Needs of Underserved Urban Areas and Housing, Economic, and Demographic Conditions in Underserved Urban Areas

This section discusses differential access to mortgage funding in urban areas and summarizes available evidence on identifying those neighborhoods that have historically experienced problems gaining access to mortgage funding. Section B.1 provides an overview of the problem of unequal access to mortgage funding in the nation's housing finance system, focusing on discrimination and other housing problems faced by minority families and the communities where they live. Section B.2 examines mortgage access at the neighborhood level and discusses in some detail the rationale for the Geographically Targeted Goal in metropolitan areas. The most thorough studies available provide strong evidence that in metropolitan areas low income and minority composition identify neighborhoods that are underserved by the mortgage market.

Three main points are made in this section:

There is evidence of racial disparities in both the housing and mortgage markets. Partly as a result of this, the homeownership rate for minorities is substantially below that for whites.

The existence of substantial neighborhood disparities in mortgage credit is well documented for metropolitan areas. Research has demonstrated that census tracts with lower incomes and higher shares of minority population consistently have poorer access to mortgage credit, with higher mortgage denial rates and lower origination rates for mortgages. Thus, the income and minority composition of an area is a good measure of whether that area is being underserved by the mortgage market.

- Research supports a targeted definition. Studies conclude that characteristics of the applicant and the neighborhood where the property is located are the major determinants of mortgage denials and

[1] Tracts are excluded from the analysis if median income is suppressed or there are no owner-occupied 1–4 unit properties. There are 2,033 such tracts. When reporting denial, origination, and application rates, tracts are excluded from the analysis if there are no purchase or refinance applications. Tracts are also excluded from the analysis if: (1) Group quarters constitute more than 50 percent of housing units or (2) there are less than 15 home purchase applications in the tract and the tract denial rates equal 0 or 100 percent. Excluded tracts account for a small percentage of mortgage applications (1.4 percent). These tracts are not excluded from HUD's underserved areas if they meet the income and minority thresholds. Rather, the tracts are excluded to remove the effects of outliers from the analysis.

origination rates. Once these characteristics are accounted for, other influences, such as location in an OMB-designated central city, play only a minor role in explaining disparities in mortgage lending.[2]

1. Discrimination in the Mortgage and Housing Markets—An Overview

The nation's housing and mortgage finance markets are highly efficient systems where most homebuyers can put down relatively small amounts of cash and obtain long-term funding at relatively small spreads above the lender's borrowing costs. Unfortunately, this highly efficient financing system does not work everywhere or for everyone. Studies have shown that access to credit often depends on improper evaluation of characteristics of the mortgage applicant and the neighborhood in which the applicant wishes to buy. In addition, though racial discrimination has become less blatant in the home purchase market, studies have shown that it is still widespread in more subtle forms. Partly as a result of these factors, the homeownership rate for minorities is substantially below that of whites.

Appendix A provided an overview of the homeownership gaps and lending disparities faced by minorities. A quick look at mortgage denial rates reported by the 1997 HMDA data reveals that minority denial rates were higher than those for white loan applicants. For lower-income borrowers, the conventional denial rate for African Americans was 1.7 times the denial rate for white borrowers, while for higher-income borrowers, the denial rate for African Americans was 2.5 times the rate for white borrowers. Similarly, the FHA denial rate for lower-income African Americans was 1.8 times the denial rates for lower-income white borrowers and twice as high for higher-income African Americans as for whites with similar incomes.

Several analytical studies, some of which are reviewed later in this section, show that these differentials in denial rates are not fully accounted for by differences in credit risk. Perhaps the most publicized example is a study by the Federal Reserve Bank of Boston, described in more detail below, which found that differential denial rates were most prevalent among marginal applicants.[3] Highly qualified borrowers of all races seemed to be treated equally, but in cases where there was some flaw in the application, white applicants seemed to be given the benefit of the doubt more frequently than minority applicants.

In addition to discrimination in the lending market, substantial evidence exists of discrimination in the housing market. The 1991 Housing Discrimination Study sponsored by HUD found that minority home buyers encounter some form of discrimination about half the time when they visit a rental or sales agent to ask about advertised housing.[4] The incidence of discrimination was higher for African Americans than for Hispanics and for homebuyers than for renters. For renters, the incidence of discrimination was 46 percent for Hispanics and 53 percent for African Americans. The incidence among buyers was 56 percent for Hispanics and 59 percent for African Americans.

While discrimination is rarely overt, minorities are more often told the unit of interest is unavailable, shown fewer properties, offered less attractive terms, offered less financing assistance, or provided less information than similarly situated non-minority homeseekers. Some evidence indicates that properties in minority and racially-diverse neighborhoods are marketed differently from those in White neighborhoods. Houses for sale in non-White neighborhoods are rarely advertised in metropolitan newspapers, open houses are rarely held, and listing real estate agents are less often associated with a multiple listing service.[5]

Discrimination, while not the only cause, contributes to the pervasive level of segregation that persists between African Americans and Whites in our urban areas. Because minorities tend to live in segregated neighborhoods, their difficulty in obtaining mortgage credit has a concentrated effect on the viability of their neighborhoods. In addition, there is evidence that denial rates are higher in minority neighborhoods regardless of the race of the applicant. The next section explores the issue of credit availability in neighborhoods in more detail.

2. Evidence About Access to Credit in Urban Neighborhoods

The viability of neighborhoods—whether urban, rural, or suburban—depends on the access of their residents to mortgage capital to purchase and improve their homes. While neighborhood problems are caused by a wide range of factors, including substantial inequalities in the distribution of the nation's income and wealth, there is increasing agreement that imperfections in the nation's housing and mortgage markets are hastening the decline of distressed neighborhoods. Disparate denial of credit based on geographic criteria can lead to disinvestment and neighborhood decline. Discrimination and other factors, such as inflexible and restrictive underwriting guidelines, limit access to mortgage credit and leave potential borrowers in certain areas underserved.

Data on mortgage credit flows are far from perfect, and issues regarding the identification of areas with inadequate access to credit are both complex and controversial. For this reason, it is essential to define "underserved areas" as accurately as possible from existing data. To provide the reasoning behind the Department's definition of underserved areas, this section first uses 1997 HMDA data to examine geographic variation in mortgage denial rates, and then it reviews three sets of studies that support HUD's definition. These include (1) studies examining racial discrimination against individual mortgage applicants, (2) studies that test whether mortgage redlining exists at the neighborhood level, and (3) studies that support HUD's targeted approach to measuring areas that are underserved by the mortgage market. In combination, these studies provide strong support for the definition of underseved areas chosen by HUD. The review of the economics literature draws heavily from Appendix B of the 1995 GSE Rule; readers are referred there for a more detailed treatment of issues discussed below.

a. HMDA Data on Mortgage Originations and Denial Rates

Home Mortgage Disclosure Act (HMDA) data provide information on the disposition of mortgage loan applications (originated, approved but not accepted by the borrower, denied, withdrawn, or not completed) in metropolitan areas. HMDA data include the census tract location of the property being financed and the race and income of the individual loan applicant. Therefore, it is a rich data base for analyzing mortgage activity in urban neighborhoods. HUD's analysis using HMDA data for 1997 shows that high-minority and low-income census tracts have both relatively high loan application denial rates and relatively low loan origination rates.

Table B.1 presents mortgage denial and origination rates by the minority composition and median income of census tracts for metropolitan areas. Two patterns are clear: Census tracts with higher percentages of minority residents have higher mortgage denial rates and lower mortgage origination rates than all-white or substantially-white tracts. For example, the denial rate for census tracts that are over 90 percent minority (28.8 percent) was more than twice that for census tracts with less than 10 percent minority (12.4 percent).

• Census tracts with lower incomes have higher denial rates and lower origination rates than higher income tracts. For example, mortgage denial rates declined from 26.8 to 8.4 percent as tract income increased from less than 60 percent of area median to over 150 percent of area median.[6] Similar patterns arose in HUD's analysis of 1993 and 1994 HMDA data (see Appendix B of the 1995 GSE Rule).

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[2] For the sake of brevity, in the remainder of this appendix, the term "central city" is used to mean "OMB-designated central city."

[3] Alicia H. Munnell, Lynn Browne, James McEneaney, and Geoffrey Tootell. 1996. "Mortgage Lending in Boston: Interpreting HMDA Data." American Economic Review, 86(1) March:25–54.

[4] Margery A. Turner, Raymond J. Struyk, and John Yinger. Housing Discrimination Study: Synthesis. Washington, D.C., U.S. Department of Housing and Urban Development: 1991.

[5] Margery A. Turner, "Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits," Housing Policy Debate, Vol. 3, Issue 2, 1992, pp. 185–215.

[6] The denial rates in Table B.1 are for home purchase mortgages. Denial rates are several percentage points lower for refinance loans than for purchase loans, but denial rates follow the same pattern for both types of loans: rising with minority concentration and falling with increasing income.

Table B.1

Origination and Denial Rates for Conventional Mortgages

Minority Percentage	Originations Per 100 Owner-Occupied Units (Purchases and Refinances) 1996	1997	Denial Rates (Home Purchases) 1996	1997
Less than 10%	8.8 %	8.8 %	11.5 %	12.4 %
10-20	8.1	8.5	14.1	15.0
20-30	7.3	7.8	17.1	18.3
30-40	6.5	7.0	19.7	20.3
40-50	6.1	6.6	21.5	22.9
50-60	6.0	6.4	22.5	22.8
60-70	5.9	6.3	23.7	24.1
70-80	5.8	6.4	24.6	24.1
80-90	5.4	5.8	25.9	25.8
90-100	4.3	5.0	29.7	28.8
All Tracts	7.9	8.2	14.4	15.3

Tract Income Relative to MSA Median	Originations Per 100 Owner-Occupied Units (Purchases and Refinances) 1996	1997	Denial Rates (Home Purchases) 1996	1997
Less than 20%	7.0 %	8.4 %	32.4 %	26.3 %
20-30	5.0	6.0	33.3	26.7
30-40	4.4	5.2	29.8	29.0
40-50	5.0	5.8	27.6	27.4
50-60	4.9	5.6	27.8	26.8
60-70	5.3	6.0	25.4	26.7
70-80	5.9	6.5	23.3	24.3
80-90	6.7	7.1	20.1	21.8
90-100	7.3	7.6	17.1	18.4
100-110	8.1	8.3	14.2	15.5
110-120	9.0	9.0	11.9	12.8
120-150	9.7	9.8	9.8	10.2
150+	9.1	9.1	8.2	8.4
All Tracts	7.9	8.2	14.4	15.3

Source: HUD analysis of 1996 and 1997 HMDA Data. Denial rate data exclude loans from nine lenders that primarily originate manufactured housing loans.

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Table B.2

Mortgage Denial and Origination Rates By Minority and Income Characteristics of the Census Tract

Denial Rates (Purchase Mortgages Only)				
	Minority Composition			
Tract Income	< 30%	30-50%	50-100%	Total
Less Than 90%	21.9%	25.8%	27.7%	24.0%
90-120%	14.9%	20.3%	21.3%	15.6%
120+	9.1%	13.8%	16.8%	9.5%
Total	13.7%	21.3%	25.1%	15.3%

Origination Rates per 100 Owner Occupants (Purchase and Refinance Mortgages)				
	Minority Composition			
Tract Income	< 30%	30-50%	50-100%	Total
Less Than 90%	7.0	6.6	5.5	6.5
90-120%	8.5	6.7	6.2	8.3
120+	9.7	7.8	7.3	9.5
Total	8.7	6.8	5.8	8.2

Source: HUD analysis of 1997 HMDA Data. Data on denial rates exclude loans for nine lenders that primarily originate manufactured housing loans.

Table B.2 illustrates the interaction between percent minority and tract income by aggregating the data in Table B.1 into six minority and income combinations. The low-minority (less than 30 percent minority), high-income (over 120 percent of area median) group has a denial rate of 9.1 percent and an origination rate of 9.7 loans per 100 owner occupants. The high-minority (over 50 percent), low-income (under 90 percent of area median) group has a denial rate of 27.7 percent and an origination rate of only 5.5 loans per 100 owner occupants. The other groupings fall between these two extremes.

The advantages of HUD's underserved area definition can be seen by examining the minority-income combinations highlighted in Table B.2. The sharp differences in denial rates and origination rates between the underserved and remaining served categories illustrate that HUD's definition delineates areas that have significantly less success in receiving mortgage credit. Underserved areas have almost twice the average denial rate of served areas (23.4 percent versus 12.2 percent) and two-thirds the average origination rate per 100 owner occupants (6.6 versus 9.1). HUD's definition does not include high-income (over 120 percent of area median) census tracts even if they meet the minority threshold. The mortgage denial rate (14.9) for high-income tracts with a minority share of population over 30 percent is much less than the denial rate (23.4) in underserved areas as defined by HUD, and only slightly above the average (12.2 percent) for all served areas.

b. Federal Reserve Bank Studies

The analysis of denial rates in the above section suggests that HUD's definition is a good proxy for identifying areas experiencing credit problems. However, an important question is the degree to which variations in denial rates reflect lender bias against certain kinds of neighborhoods and borrowers versus the degree to which they reflect the credit quality of the potential borrower (as indicated by the applicant's available assets, credit rating, employment history, etc.). Some studies of credit disparities have attempted to control for credit risk factors that might influence a lender's decision to approve a loan. Without fully accounting for the creditworthiness of the borrower, racial differences in denial rates cannot be attributed to lender bias.

The best example of accounting for credit risk is the study by researchers at the Federal Reserve Bank of Boston, which analyzed mortgage denial rates.[7] To control for credit risk, the Boston Fed researchers included 38 borrower and loan variables indicated by lenders to be critical to loan decisions. For example, the Boston Fed study included a measure of the borrower's credit history, which is a variable not included in other studies. The Boston Fed study found that minorities' higher denial rates could not be explained fully by income and credit risk factors. African Americans and Hispanics were about 60 percent more likely to be denied credit than Whites, even after controlling for credit risk characteristics such as credit history, employment stability, liquid assets, self-employment, age, and family status and composition. Although almost all highly-qualified applicants of all races were approved, differential treatment was observed among borrowers with more marginal qualifications.[8]

A subsequent reassessment and refinement of the data used by the Federal Reserve Bank of Boston confirmed the findings of that study.[9] William C. Hunter of the Federal Reserve Bank of Chicago confirmed that race was a factor in denial rates of marginal applicants. While denial rates were comparable for borrowers of all races with "good" credit ratings, among those with "bad" credit ratings or high debt ratios, minorities were significantly more likely to be denied than similarly-situated whites. The study concluded that the racial differences in denial rates were consistent with a cultural gap between white loan officers and minority applicants, and conversely, a cultural affinity with white applicants.

The two Fed studies concluded that the effect of borrower race on mortgage rejections persists even after controlling for legitimate determinants of lenders' credit decisions. Thus, they imply that variations in mortgage denial rates, such as given in Table B.2 are not determined entirely by borrower risk but reflect discrimination in the housing finance system. However, the independent race effect identified in these studies is still difficult to interpret. In addition to lender bias, access to credit can be limited by loan characteristics that reduce profitability[10] and by underwriting standards that have disparate effects on minority and lower-income borrowers and their neighborhoods.[11]

c. Controlling for Neighborhood Risk and Tests of the Redlining Hypothesis

In its deliberations leading up to FHEFSSA, Congress was concerned about geographic redlining—the refusal of lenders to make loans in certain neighborhoods regardless of the creditworthiness of individual applicants. During the 1980's and early 1990's, a number of studies using HMDA data (such as that reported in Tables B.1 and B.2) attempted to test for the existence of mortgage redlining. Consistent with the redlining hypothesis, these studies found lower volumes of loans going to low-income and high-minority neighborhoods.[12] However, such analyses were criticized because they did not distinguish between demand, risk, and supply effects[13]—that is, they didn't determine whether loan volume was low because families in high-minority and low-income areas were unable to afford home ownership and therefore were not applying for mortgage loans, or because borrowers in these areas were more likely to default on their mortgage obligations, or because lenders refused to make loans to creditworthy borrowers in these areas.[14] [15]

Recent statistical studies have sought to test the redlining hypothesis by more

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[7] Alicia H. Munnell, Lynn E. Browne, James McEneaney, and Geoffrey M. B. Tootell, "Mortgage Lending in Boston: Interpreting HMDA Data," American Economic Review, march 1996.

[8] A HUD study also found mortgage denial rates for minorities to be higher in ten metropolitan areas, even after controlling for credit risk. In addition, the higher denial rates observed in minority neighborhoods were not purely a reflection of the higher denial rates experienced by minorities. Whites experienced higher denial rates in some minority neighborhoods than in some predominantly white neighborhoods. Ann B. Schnare and Stuart A. Gabriel, "The Role of FHA in the Provision of Credit to Minorities," ICF Incorporated, prepared for the U.S. Department of Housing and Urban Development, April 25, 1994.

[9] William C. Hunter, "The Cultural Affinity Hypothesis and Mortgage Lending Decisions," WP–95–8, Federal Reserve Bank of Chicago, 1995.

[10] Since upfront loan fees are frequently determined as a percentage of the loan amount, lenders are discouraged from making smaller loans in older neighborhoods, because such loans generate lower revenue and are less profitable to lenders.

[11] Traditional underwriting practices may have excluded some lower income families that are, in fact, creditworthy. Such families tend to pay cash, leaving them without a credit history. In addition, the usual front-end and back-end ratios applied to applicants' housing expenditures and other on-going costs may be too stringent for lower income households, who typically pay larger shares of their income for housing (including rent and utilities) than higher income households.

[12] These studies, which were conducted at the census tract level, typically involved regressing the number of mortgage originations (relative to the number of properties in the census tract) on characteristics of the census tract including its minority composition. A negative coefficient estimate for the minority composition variable was often interpreted as suggesting redlining. For a discussion of these models, see Eugene Perle, Kathryn Lynch, and Jeffrey Horner, "Model Specification and Local Mortgage Market Behavior," Journal of Housing Research, Volume 4, Issue 2, 1993, pp. 225–243.

[13] For critques of the early HMDA studies, see Andrew Holmes and Paul Horvitz, "Mortgage Redlining: Race, Risk, and Demand," The Journal of Finance, Volume 49, No. 1, March 1994, pp. 81–99; and Michael H. Schill and Susan M. Watcher, "A Tale of Two Cities: Racial and Ethnic Geographic Disparities in Home Mortgage Lending in Boston and Philadelphia," Journal of Housing Research, Volume 4, Issue 2, 1993, pp. 245–276.

[14] Likely early HMDA studies, an analysis of deed transfer data in Boston found lower rates of mortgage activity in minority neighborhoods. The discrepancies held even after controlling for income, house values and other economic and non-racial factors that might explain differences in demand and housing market activity. The study concluded that "the housing market and the credit market together are functioning in a way that has hurt African American neighborhoods in the city of Boston." Katherine L. Bradbury, Karl E. Case, and Constance R. Dunham, "Geographic Patterns of Mortgage Lending in Boston, 1982–1987," New England Economic Review, September/October 1989, pp. 3–30.

[15] Using an analytical approach similar to that of Bradbury, Case, and Dunham, Anne Shlay found evidence of fewer mortgage loans originated in black census tracts in Chicago and Baltimore. See Anne Shlay, "Not in That Neighborhood: The Effects of Population and Housing on the Distribution of Mortgage Finance within the Chicago SMSA," Social Science Research, Volume 17, No. 2, 1988, pp. 137–163; and "Financing Community: Methods for Assessing Residential Credit Disparities, Market Barriers, and Institutional Reinvestment Performance in the Metropolis," Journal of Urban Affairs, Volume 11, No. 3, 1989, pp. 201–223.

completely controlling for differences in neighborhood risk and demand. The first two studies reviewed below are good examples of the more recent literature. In these studies, the explanatory power of neighborhood race is reduced to the extent that the effects of neighborhood risk and demand are accounted for; thus, they do not support claims of racially induced mortgage redlining. However, as explained below, these studies cannot reach definitive conclusions about redlining because segregation in our inner cities makes it difficult to distinguish the impacts of geographic redlining from the effects of individual discrimination.

Additional studies related to redlining and the credit problems facing low-income and minority neighborhoods are also summarized. Particularly important are studies that focus on the "thin" mortgage markets in these neighborhoods and the implications of lenders not having enough information about the collateral and other characteristics of these neighborhoods. The low numbers of house sales and mortgages originated in low-income and minority neighborhoods result in individual lenders perceiving these neighborhoods to be more risky. It is argued that lenders do not have enough historical information to project the expected default performance of loans in low-income and minority neighborhoods, which increases their uncertainty about investing in these areas.

Holmes and Horvitz Study. First, Andrew Holmes and Paul Horvitz used 1988–1991 HMDA data to examine variations of conventional mortgage originations across census tracts in Houston. Their single-equation regression model included as explanatory variables the economic viability of the loan, characteristics of properties in and residents of the tract (*e.g.*, house value, income, age distribution and education level), measures of demand (*e.g.*, recent movers into the tract and change in owner-occupied units between 1980 and 1990), and measures of credit risk (defaults on government-insured loans and change in tract house values between 1980 and 1990). To test the existence of racial redlining, the model also included as explanatory variables the percentages of African American and Hispanic residents in the tract and the increase in the tract's minority percentage between 1980 and 1990. Most of the neighborhood risk and demand variables were significant determinants of the flow of conventional loans in Houston. The coefficients of the racial composition variables were insignificant, which led Holmes and Horvitz to conclude that allegations of redlining in the Houston market could not be supported.

Schill and Wachter Study. Michael Schill and Susan Wachter posit that the probability that a lender will accept a specific mortgage application depends on characteristics of the individual loan application [16] and characteristics of the neighborhood where the property collateralizing the loan is located. Schill and Wachter include neighborhood risk proxies that are likely to affect the future value of the properties,[17] and they include the percentage of the tract population comprised by African Americans and Hispanics in order to test for the existence of racial discrepancies in lending patterns across census tracts.

Testing their model for conventional mortgages in Philadelphia and Boston, Schill and Wachter found that the applicant race variables—whether the applicant was African American or Hispanic—showed significant negative effects on the probability that a loan would be accepted. Schill and Wachter stated that this finding does not provide evidence of individual race discrimination because applicant race is most likely serving as a proxy for credit risk variables omitted from their model (*e.g.*, credit history, wealth and liquid assets). In an initial analysis that excluded the neighborhood risk variables from the model, the percentage of the census tract that was African American also showed a significant and negative coefficient, a result that is consistent with redlining. However, when the neighborhood risk proxies were included in the model along with the individual loan variables, the percentage of the census tract that was African American becomes insignificant. Thus, similar to Holmes and Horvitz, Schill and Wachter stated that "once the set of independent variables is expanded to include measures that act as proxies for neighborhood risk, the results do not reveal a pattern of redlining." [18]

Other Redlining Studies. To highlight the methodological problems of single-equation studies of mortgage redlining, Fred Phillips-Patrick and Clifford Rossi develop a simultaneous equation model of the demand and supply of mortgages, which they estimate for the Washington, DC metropolitan area.[19] Phillips-Patrick and Rossi find that the supply of mortgages is negatively associated with the racial composition of the neighborhood, which leads them to conclude that the results of single-equation models (such as the one estimated by Holmes and Horvitz) are not reliable indicators of redlining or its absence. However, Phillips-Patrick and Rossi note that even their simultaneous equations model does not provide definitive evidence of redlining because important underwriting variables (such as credit history), which are omitted from their model, may be correlated with neighborhood race.

A few studies of neighborhood redlining have attempted to control for the credit history of the borrower, which is the main omitted variable in the redlining studies reviewed so far. Samuel Myers, Jr. and Tsze Chan, who study mortgage rejections in the state of New Jersey in 1990, develop a proxy for bad credit based on the reasons that lenders give in their HMDA reports for denying a loan.[20] They find that 70 percent of the gap in rejection rates cannot be explained by differences in Black and white borrower characteristics, loan characteristics, neighborhoods or bad credit. Myers and Chan conclude that the unexplained Black-white gap in rejection rates is a result of discrimination. With respect to the racial composition of the census tract, they find that Blacks are more likely to be denied loans in racially integrated or predominately-white neighborhoods than in predominately-Black neighborhoods. They conclude that middle-class Blacks seeking to move out of the inner city would face problems of discrimination in the suburbs.[21]

Geoffrey Tootell has authored two papers on neighborhood redlining based on the mortgage rejection data from the Boston Fed study.[22] Tootell's studies are important because they include a direct measure of borrower credit history, as well as the other underwriting, borrower, and neighborhood characteristics that are included in the Boston Fed data base; thus, his work does not have the problem of omitted variables, at least to the same extent as previous redlining studies.[23] Tootell finds that lenders in the Boston area do not appear to be redlining neighborhoods based on the racial composition of the census tract or the average income in the tract. Consistent with the Boston Fed and Schill and Wachter studies,

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[16] Individual loan characteristics include loan size (economies of scale cause lenders to prefer large loans to small loans) and all individual borrower variables included in the HMDA data (the applicant's income, sex, and race).

[17] Their neighborhood risk proxies include median income and house value (inverse indicators of risk), percent of households receiving welfare, median age of houses, homeownership rate (an inverse indicator), vacancy rate, and the rent-to-value ratio (an inverse indicator). A high rent-to-value ratio suggests lower expectations of capital gains on properties in the neighborhood.

[18] Schill and Wachter, page 271. Munnell, *et al.* reached similar conclusions in their study of Boston. The found that the race of the individual mattered, but that once individual characteristics were controlled, racial composition of the neighborhood was insignificant.

[19] Fred J. Phillips-Patrick and Clifford V. Rossi, "Statistical Evidence of Mortgage Redlining? A Cautionary Tale", The Journal of Real Estate Research, Volume 11, Number 1 (1996), pp.13–23.

[20] Samuel L. Myers, Jr. and Tsze Chan, "Racial Discrimination in Housing Markets: Accounting for Credit Risk", Social Science Quarterly, Volume 76, Number 3 (September 1995), pp. 543–561.

[21] For another study that uses HMDA data on reasons for denial to construct a proxy for bad credit, see Steven R. Holloway, "Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio", Annals of the Association of American Geographers, 88(2), 1998, pp. 252–276. Holloway finds that mortgage denial rates are higher for black applicants (particularly those who are making large loan requests) in all-white neighborhoods than in minority neighborhoods, while the reverse is true for white applicants making small loan requests.

[22] See Geoffrey M. B. Tootell, "Redlining in Boston: Do Mortgage Lenders Discriminate Against Neighborhoods?", Quarterly Journal of Economics, 111, November, 1996, pp. 1049–1079; and "Discrimination, Redlining, and Private Mortgage Insurance", unpublished manuscript, October . 1995.

[23] Tootell notes that both omitted variables and the strong correlation between borrower race and neighborhood racial composition in segregated cities have made it difficult for previous studies to distinguish the impacts of geographic redlining from the effects of individual borrower discrimination. He can unravel these effects because he includes a direct measure of credit history and because over half of minority applicants in the Boston Fed data base applied for mortgages in predominately white areas.

Tootell finds that it is the race of the applicant that mostly affects the mortgage lending decision; the location of the applicant's property appears to be far less relevant. However, he does find that the decision to require private mortgage insurance depends on the racial composition of the neighborhood. Tootell suggests that, rather than redline themselves, mortgage lenders may rely on private mortgage insurers to screen applications from minority neighborhoods. Tootell also notes that this indirect form of redlining would increase the price paid by applicants from minority areas that are approved by private mortgage insurers.

In a 1999 paper, Stephen Ross and Geoffrey Tootell use the Boston Fed data base to take a closer at both lender redlining and the role of private mortgage insurance (PMI) in neighborhood lending.[24] They have two main findings. First, mortgage applications for properties in low-income neighborhoods are more likely to be denied if the applicant does not apply for PMI. Ross and Tootell conclude that their study provides the first direct evidence based on complete underwriting data that some mortgage applications may have been denied based on neighborhood characteristics that legally should not be considered in the underwriting process. Second, mortgage applicants are often forced to apply for PMI when the housing units are in low-income neighborhoods. Ross and Tootell conclude that lenders appear to be responding to CRA by favoring low-income tracts once PMI has been received, and this effect counteracts the high denial rates for applications without PMI in low-income tracts.

Studies of Information Externalities. A recent group of studies that focus on economies of scale in the collection of information about neighborhood characteristics has implications for the identification of underserved areas and understanding the problems of mortgage access in low-income and minority neighborhoods. William Lang and Leonard Nakamura argue that individual home sale transactions generate information which reduce lenders' uncertainty about property values, resulting in greater availability of mortgage financing.[25] Conversely, appraisals in neighborhoods where transactions occur infrequently will tend to be more imprecise, resulting in greater uncertainty to lenders regarding collateral quality, and more reluctance by them in approving mortgage loans in neighborhoods with thin markets. As a consequence, "prejudicial practices of the past may lead to continued differentials in lending behavior."

If low-income or minority tracts have experienced relatively few recent transactions, the resulting lack of information available to lenders will result in higher denial rates and more difficulty in obtaining mortgage financing, independently of the level of credit risk in these neighborhoods.

A number of empirical studies have found evidence consistent with the notion that mortgage credit is more difficult to obtain in areas with relatively few recent sales transactions. Some of these studies have also found that low transactions volume may contribute to disparities in the availability of mortgage credit by neighborhood income and minority composition.

Paul Calem found that, in low-minority tracts, higher mortgage loan approval rates were associated with recent sales transactions volume, consistent with the Lang and Nakamura hypothesis.[26] While this effect was not found in high-minority tracts, he concludes that "informational returns to scale" contribute to disparities in the availability of mortgage credit between low-minority and high-minority areas. Empirical research by David Ling and Susan Wachter finds that recent tract-level sales transaction volume does significantly contribute to mortgage loan acceptance rates in Dade County, Florida, also consistent with the Lang and Nakamura hypothesis.[27]

Robert Avery, Patricia Beeson, and Mark Sniderman find significant evidence of economies associated with the scale of operation of individual lenders in a neighborhood.[28] They conclude that "The inability to exploit these economies of scale is found to explain a substantial portion of the higher denial rates observed in low-income and minority neighborhoods, where the markets are generally thin." Low-income and minority neighborhoods often suffer from low transactions volume, and low transactions volume represents a barrier to the availability of mortgage credit by making mortgage lenders more reluctant to approve and originate mortgage loans in these areas.

d. Geographic Dimensions of Underserved Areas—Targeted Versus Broad Approaches

HUD's definition of underserved areas is a targeted neighborhood definition, rather than a broad definition that would encompass entire cities. It also focuses on these neighborhoods experiencing the most severe credit problems rather than neighborhoods experiencing only moderate difficulty obtaining credit. During the regulatory process leading to the 1995 Rule, some argued that underserved areas under this goal should be defined to include the entire central city. HUD concluded that such broad definitions were not a good proxy for mortgage credit problems; to use them would allow the GSEs to focus on wealthier parts of cities rather than on neighborhoods experiencing credit problems. This section reports findings from several analyses by HUD and academic researchers that support defining underserved areas in terms of the minority and/or income characteristics of census tracts, rather than in terms of a broad definition such as all areas of all central cities.

Socioeconomic Characteristics. The targeted nature of HUD's definition can be seen from the data presented in Table B.3, which show that families living in underserved areas experience much more economic and social distress than families living in served areas. For example, the poverty rate in underserved census tracts is 20.1 percent, or almost four times the poverty rate (5.8 percent) in served census tracts. The unemployment rate and the high-school drop out rate are also higher in underserved areas. In addition, there are nearly three times more female-headed households in underserved areas (11.5 percent) than in served areas (4.3 percent)

The majority of units in served areas are owner-occupied while the majority of units in underserved areas are renter-occupied.

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[24] Stephen L. Ross and Geoffrey M. B. Tootell, "Redlining, the Community Reinvestment Act, and Private Mortgage Insurance", unpublished manuscript, March, 1999.

[25] Lang, William W. and Leonard I. Nakamura, "A Model of Redlining," Journal of Urban Economics, Volume 33, 1993, pp. 223–234.

[26] Calem, Paul S. "Mortgage Credit Availability in Low- and Moderate-Income Minority Neighborhoods: Are Information Externalities Critical?" Journal of Real Estate Finance and Economics, Volume 13, 1996, pp. 71–89.

[27] Ling, David C. and Susan M. Wachter, "Information Externalities and Home Mortgage Underwriting," Journal of Urban Economics, Volume 44, 1998, pp. 317–332.

[28] Robert B. Avery, Patricia E. Beeson, and Mark S. Sniderman, "Neighborhood Information and Home Mortgage Lending," Journal of Urban Economics, Volume 45, 1999, pp. 287–310.

Table B.3

Socioeconomic Characteristics of Underserved Areas in Metropolitan Areas

	Served Tracts	Underserved Tracts	Total
Census Tracts	23,819	21,587	45,406
Households	41,379,104	31,839,636	73,218,740
Population	110,037,735	87,578,825	197,616,560
Unemployment Rate	4.2%	9.0%	6.2%
Poverty Rate	5.8%	20.1%	12.1%
Dropout Rate	10.3%	20.4%	14.8%
Percent Female Household With Children	12.1%	28.3%	19.7%
Percent African-American	3.8%	23.6%	12.6%
Percent Minority	11.1%	46.6%	26.8%
Percent Owner-Occupied	71.3%	47.6%	61.0%
Percent Renter	28.6%	52.4%	38.9%

Source: 1990 Census.

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Figure B.1

1997 Denial And Origination Rates
Underserved Areas And Remainder
By Central Cities And Suburbs

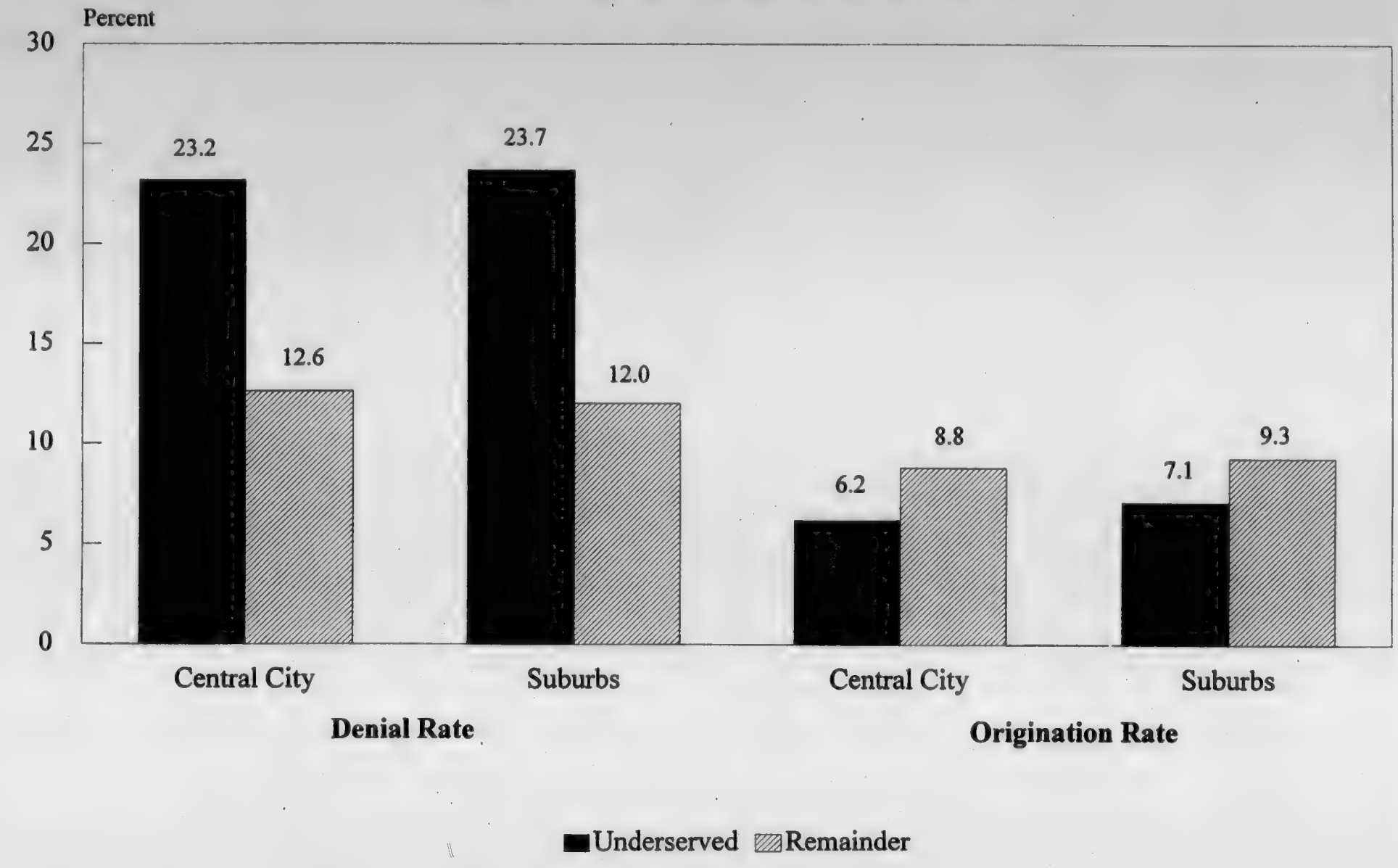

Credit Characteristics. Tables B.1 and B.2 documented the relatively high denial rates and low mortgage origination rates in underserved areas as defined by HUD. This section extends that analysis by comparing underserved and served areas within central cities and suburbs. Figure B.1 shows that HUD's definition targets central city neighborhoods that are experiencing problems obtaining mortgage credit. The 23.2 percent denial rate in these neighborhoods in 1997 is twice the 12.6 percent denial rate in the remaining areas of central cities. A broad, inclusive definition of "central city" that includes all areas of all OMB-designated central cities would include these "remaining" portions of cities. Figure B.1 shows that these areas, which account for approximately 43 percent of the population in OMB-designated central cities, appear to be well served by the mortgage market. As a whole, they are not experiencing problems obtaining mortgage credit.[29]

HUD's definition also targets underserved census tracts in the suburbs as well as in central cities—for example, the average denial rate in underserved suburban areas (23.7 percent) is more than twice that in the remaining served areas of the suburbs (12.0 percent). Low-income and high-minority suburban tracts appear to have credit problems similar to their central city counterparts. These suburban tracts, which account for 40 percent of the suburban population, are encompassed by the definition of other underserved areas.

Another alternative definition proposed by some in 1995 would have relaxed HUD's definition by increasing the income threshold from 90 percent to 100 percent of area median income and by reducing the minority threshold from 30 percent to 20 percent of tract population. This definition would include all areas covered by HUD's definition as well as 5,367 additional census tracts where median income is between 90 and 100 percent of area median or minorities comprise 20–30 percent of tract population. As HUD argued in the 1995 GSE Rule, these tracts do not appear to be experiencing problems obtaining mortgage credit. Their 17.8 percent mortgage denial rate is not much above the average of 15.3 percent and significantly below the 23.4 percent denial rate in tracts covered by HUD's Geographically Targeted Goal.

As explained in the Preamble, HUD is asking for public comment on two options that would tighten the targeting of the underserved definition reducing the number of qualifying census tract. The first option would enhance the definition of the tract income ratio and reduce the ceiling of the qualifying tract income ratio from 90 percent to 80 percent of area median income. The definition of tract income ratio would be enhanced as follows: the definition would change from tract median income as a percent of MSA median income to tract median income as a percent of the greater of either the national metropolitan median income or the MSA median income. Applying the definition changes the current definition in two ways: (1) 994 tracts, with an average denial rate of 26.8, would be added, and (2) 2,500 tracts, with an average denial rate of 17.8 percent, would be dropped due to reducing the income threshold to 80 percent. Of the tracts that would be dropped, the denial rate is not much higher than the average denial rate for all metropolitan areas, which is 15.3 percent. This suggests that these areas are not experiencing severe problems in obtaining mortgage credit and should not be targeted.

The second option would change the definition of underserved areas to qualify census tracts with minority population of 50 percent, an increase from the current definition of 30 percent. An increase in the tract minority population would focus GSE purchases in high-minority neighborhoods that have been traditionally underserved by the mortgage market. One shortcoming of this option is that it would exclude 1,045 tracts with minority population between 30 and 50 percent which have high denial rates (20.2 percent).

Shear, Berkovec, Dougherty, and Nothaft Study. William Shear, James Berkovec, Ann Dougherty, and Frank Nothaft conducted an analysis of mortgage flows and application acceptance rates in 32 metropolitan areas that supports a targeted definition of underserved areas.[30] They found: (a) Low-income census tracts and tracts with high concentrations of African American and Hispanic families had lower rates of mortgage applications, originations, and acceptance rates;[31] and (b) once census tract influences were accounted for, central city location had only a minimal effect on credit flows.

Shear, Berkovec, Dougherty, and Nothaft recognized that it is difficult to interpret their estimated minority effects—the effects may indicate lender discrimination, supply and demand effects not included in their model but correlated with minority status, or some combination of these factors. They explain the implications of their results for measuring underserved areas as follows:

While it is not at all clear how we might rigorously define, let alone measure, what it means to be underserved, it is clear that there are important housing-related problems associated with certain location characteristics, and it is possible that, in the second or third best world in which we live, mortgage markets might be useful in helping to solve some of these problems. We then might use these data to help single out important areas or at least eliminate some bad choices. * * * The regression results indicate that income and minority status are better indicators of areas with special needs than central city location.[32]

Avery, Beeson, and Sniderman Study. Robert Avery, Patricia Beeson, and Mark Sniderman of the Federal Reserve Bank of Cleveland presented a paper specifically addressing the issue of underserved areas in the context of the GSE legislation.[33] Their study examines variations in application rates and denial rates for all individuals and census tracts included in the 1990 and 1991 HMDA data base. They seek to isolate the differences that stem from the characteristics of the neighborhood itself rather than the characteristics of the individuals that apply for loans in the neighborhood or lenders that happen to serve them. Similar to the studies of redlining reviewed in the previous section, Avery, Beeson and Sniderman hypothesize that variations in mortgage application and denial rates will be a function of several risk variables such as the income of the applicant and changes in neighborhood house values; they test for independent racial effects by adding to their model the applicant's race and the racial composition of the census tract. Econometric techniques are used to separate individual applicant effects from neighborhood effects.

Based on their empirical work, Avery, Beeson and Sniderman reach the following conclusions:

The individual applicant's race exerts a strong influence on mortgage application and denial rates. African American applicants, in particular, have unexplainably high denial rates.

- Once individual applicant and other neighborhood characteristics are controlled for, overall denial rates for purchase and refinance loans were only slightly higher in minority census tracts than non-minority census tracts.[34] For white applicants, on the other hand, denial rates were significantly higher in minority tracts.[35] That is,

[29] The Preamble to the 1995 Rule provides additional reasons why central city location should not be used as a proxy for underserved areas.

[30] William Shear, James Berkovec, Ann Dougherty, and Frank Nothaft, "Unmet Housing Needs: The Role of Mortgage Markets," Journal of Housing Economics, Volume 4 , 1996, pp. 291–306. These researchers regressed the number of mortgage originations per 100 properties in the census tract on several independent variables that were intended to account for some of the demand and supply (i.e., credit risk) influences at the census tract level. The tract's minority composition and central city location were included to test if these characteristics were associated with underserved neighborhoods after controlling for the demand and supply variables. Examples of the demand and supply variables at the census tract level include: tract income relative to the area median income, the increase in house values between 1980 and 1990, the percentage of units boarded up, and the age distributions of households and housing units. See also Susan Wharton Gates, "Defining the Underserved," Secondary Mortgage Markets, 1994 Mortgage Market Review Issue, 1995, pp. 34–48.

[31] For example, census tracts at 80 percent of area median income were estimated to have 8.6 originations per 100 owners as compared with 10.8 originations for tracts over 120 percent of area median income.

[32] Shear *et al.*, p. 18.

[33] See Avery, *et al.*

[34] Avery *et al.* find very large unadjusted differences in denial rates between white and minority neighborhoods, and although the gap is greatly reduced by controlling for applicant characteristics (such as race and income) and other census tract characteristics (such as house price and income level), a significant difference between white and minority tracts remains (for purchase loans, the denial rate difference falls from an unadjusted level of 16.7 percent to 4.4 percent after controlling for applicant and other census tract characteristics, and for refinance loans, the denial rate difference falls from 21.3 percent to 6.4 percent). However, when between-MSA differences are removed, the gap drops to 1.5 percent and 1.6 percent for purchase and refinance loans, respectively. See Avery, *et al.*, p. 16.

[35] Avery, *et al.*, page 19, note that, other things equal, a black applicant for a home purchase loan

Continued

minorities have higher denial rates wherever they attempt to borrow but whites face higher denials when they attempt to borrow in minority neighborhoods. In addition, Avery *et al.* found that home improvement loans had significantly higher denial rates in minority neighborhoods. Given the very strong effect of the individual applicant's race on denial rates, Avery *et al.* note that since minorities tend to live in segregated communities, a policy of targeting minority neighborhoods may be warranted.

Other findings are:

The median income of the census tract had strong effects on both application and denial rates for purchase and refinance loans, even after other variables were accounted for.

• There is little difference in overall denial rates between central cities and suburbs, once individual applicant and census tract characteristics are controlled for. Avery, Beeson and Sniderman conclude that a tract-level definition is a more effective way to define underserved areas than using the list of OMB-designated central cities as a proxy.

e. Conclusions From HUD's Analysis and the Economics Literature About Urban Underserved Areas

The implications of studies by HUD and others for defining underserved areas can be summarized briefly. First, the existence of large geographic disparities in mortgage credit is well documented. HUD's analysis of HMDA data shows that low-income and high-minority neighborhoods receive substantially less credit than other neighborhoods and fit the definition of being underserved by the nation's credit markets.

Second, researchers are testing models that more fully account for the various risk, demand, and supply factors that determine the flow of credit to urban neighborhoods. The studies by Holmes and Horvitz, Schill and Wachter, and Tootell are examples of this research. Their attempts to test the redlining hypothesis show the analytical insights that can be gained by more rigorous modeling of this issue. However, the fact that our urban areas are highly segregated means that the various loan, applicant, and neighborhood characteristics currently being used to explain credit flows are often highly correlated with each other which makes it difficult to reach definitive conclusions about the relative importance of any single variable such as neighborhood racial composition. Thus, their results are inclusive and, thus, the need continues for further research on the underlying determinants of geographic disparities in mortgage lending.[36]

Finally, much research strongly supports a targeted definition of underserved areas. Studies by Shear, *et al.* and Avery, Beeson, and Sniderman conclude that characteristics of both the applicant and the neighborhood where the property is located are the major determinants of mortgage denials and origination rates—once these characteristics are controlled for, other influences such as central city location play only a minor role in explaining disparities in mortgage lending. HUD's analysis shows that both credit and socioeconomic problems are highly concentrated in underserved areas within central cities and suburbs. The remaining, high-income portions of central cities and suburbs appear to be well served by the mortgage market.

HUD recognizes that the mortgage origination and denial rates forming the basis for the research mentioned in the preceding paragraph, as well as for HUD's definition of underserved areas, are the result of the interaction of individual risk, demand and supply factors that analysts have yet to fully disentangle and interpret. The need continues for further research addressing this problem. HUD believes, however, that the economics literature is consistent with a targeted rather than a broad approach for defining underserved areas.

C. Consideration of Factors 1 and 2 in Nonmetropolitan Areas: The Housing Needs of Underserved Rural Areas and the Housing, Economic, and Demographic Conditions in Underserved Rural Areas

Because of the absence of HMDA data for rural areas, the analysis for metropolitan underserved areas cannot be carried over to non-metropolitan areas. Based on discussions with rural lenders in 1995, the definition of underserved rural areas was established at the county level, since such lenders usually do not make distinctions on a census tract basis. But this definition parallels that used in metropolitan areas—specifically, a nonmetro county is classified as an underserved area if median income of families in the county does not exceed 95 percent of the greater of state nonmetro or national nonmetro median income, or minorities comprise 30 percent or more of the residents and the median income of families in the county does not exceed 120 percent of state nonmetro median income. For nonmetro areas the median income component of the underserved definition is broader than that used for metropolitan areas. While tract income is compared with area income for metropolitan areas, in rural counties income is compared with "enhanced income"—the greater of state nonmetro income and national nonmetro income. This is based on HUD's analysis of 1990 census data, which indicated that comparing county nonmetro income only to state nonmetro income would lead to the exclusion of many lower-income low-minority counties from the definition, especially in Appalachia. Underserved counties account for 57 percent (8,091 of 14,419) of the census tracts and 54 percent of the population in rural areas. By comparison, the definition of metropolitan underserved areas encompassed 47 percent of metropolitan census tracts and 44 percent of metropolitan residents.

The county-wide definition of rural underserved areas could give the GSEs an incentive to purchase mortgages in the "better served" portions of underserved counties which may face few, if any, barriers to accessing mortgage credit in rural areas. This issue is discussed in more detail in the analysis of the GSEs' purchases below.

The demographic characteristics of served and underserved counties are first presented in this section. Next, a literature review of recent studies provides an overview of rural mortgage markets, GSE activity, and the growing demand for manufactured housing in rural housing markets. It also discusses characteristics of rural housing markets that lead to higher interest rates and mortgage access problems and makes some policy recommendations for addressing market inefficiencies.

1. Demographics

As discussed, majorities of rural households and rural counties fall under the definition of underserved areas. As shown in Table B.4, rural underserved counties have higher unemployment, poverty rates, minority shares of households and homeownership rates than rural served counties. The poverty rate in underserved rural counties (21.2 percent) is nearly twice that in served rural counties (12.2 percent). Joblessness is more common, with average unemployment rates of 8.3 percent in underserved counties and 5.9 percent in served counties. Minorities make up 20.8 percent of the residents in underserved counties and 7.4 percent in served counties. Homeownership is slightly higher in underserved counties (72.4 percent) than in served counties (70.8 percent).

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is 3.7 percent more likely to have his/her application denied in an all-minority tract than in an all-white tract, while a white applicant from an all-minority tract would be 11.5 percent more likely to be denied.

[36] Methodological and econometric challenges that researchers will have to deal with are discussed in Mitchell Rachlis and Anthony Yezer, "Serious Flaws in Statistical Tests for Discrimination in Mortgage Markets," Journal of Housing Research, Volume 4, 1993, pp. 315–336.

Table B.4

Socioeconomic Characteristics of Underserved Counties in Non-Metropolitan Areas

	Served Counties	Underserved Counties	Total
Counties	786	1,511	2,297
Households	8,618,519	10,097,825	18,716,344
Population	23,075,383	27,467,972	50,543,355
Unemployment Rate	5.9%	8.3%	7.1%
Poverty Rate	12.2%	21.2%	17.1%
Dropout Rate	16.3%	22.7%	19.8%
Percent Female Household With Children	14.3%	17.5%	16.1%
Percent African-American	3.9%	12.4%	8.5%
Percent Minority	7.4%	20.8%	14.7%
Percent Owner-Occupied	70.8%	72.4%	71.6%
Percent Renter	29.2%	27.6%	28.4%

Source: 1990 Census.

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Some differences exist between metro and nonmetro underserved areas. The definition is somewhat more inclusive in nonmetro areas—the majority of the nonmetro population lives in underserved counties, while the majority of the metropolitan population lives in served areas. The majority of units in underserved metropolitan areas are occupied by renters, while the majority of units in underserved rural counties are occupied by owners. But poverty and unemployment rates are higher in underserved areas than in served areas in both nonmetropolitan and metropolitan areas.

2. Literature Review

Research related to housing and mortgage finance issues in rural areas is reviewed in this section. It finds that lack of competition between rural lenders and lack of participation in secondary mortgage markets may contribute to higher interest rates and lower mortgage availability in rural areas. The mortgages purchased by the GSEs on properties in underserved counties are not particularly focused on lower-income borrowers and first-time homebuyers, which suggests that additional research needs to be conducted to target areas in nonmetropolitan areas which experience difficulty accessing mortgage credit. The role of manufactured housing in providing affordable housing in rural areas is also discussed.

Mikesell Study (1998).[37] A study by Jim Mikesell provides an overview of mortgage lending in rural areas. It finds that home loans in rural areas have higher costs, which can be attributed to at least three factors that characterize rural mortgage markets. First, the fixed cost associated with rural lending may be higher as a result of the smaller loan size and remoteness of many rural areas. Second, there are fewer mortgage lenders in rural areas competing for business, which may account for higher interest rates. Third, the secondary mortgage market is not as well developed as in metropolitan areas.

Higher interest rates for rural mortgages are documented by the Federal Housing Finance Board's monthly survey of conventional home purchase mortgages. On average, relative to rates on mortgages in urban areas, rates on mortgages in rural areas in 1997 were 8 basis points (bp) higher on 30-year fixed rate mortgages (FRMs), 18 bp higher for 15-year FRMs, 38 bp higher for adjustable-rate mortgages (ARMs), and 52 bp higher for nonstandard loans.[38] The higher rates in rural areas translate into differences in monthly payments of $3 to $16 for a $100,000 mortgage.

Mikesell finds that property location and small loan size are two factors that make lending more costly in rural areas. Borrower characteristics, such as income, assets, and credit history, and lender characteristics, such as ownership, size, and location, might influence loan pricing, but the influence of these factors could not be tested due to lack of data.

Rural-based lenders are fewer and originate a smaller volume of loans than their urban counterparts. These factors contribute to less competition between rural lenders and a less efficient housing finance market, which result in higher costs for rural borrowers.

Rural lenders are less likely than urban lenders to participate in the secondary mortgage market. As a result, rural borrowers do not receive the benefits associated with the secondary market—the increased competition between lenders, the greater potential supply of mortgage financing, and the alignment of financing costs more closely with those in urban markets.

Some obstacles for rural lenders participating in the secondary market are that borrower characteristics and remote properties may not conform to the secondary market's underwriting standards. Rural households may have their borrowing capacity reduced by loan qualification standards which discount income that varies widely from year to year and income from self-employment held for less than several years. Rural properties' may have one or more of the following characteristics which preclude a mortgage from being purchased by the GSEs: Excessive distance to a firehouse, unacceptable water or sewer facilities, location on a less-than-all-weather road, and dated plumbing or electrical systems.

Mikesell concludes that increased participation by rural lenders in the secondary mortgage market would bring down lending costs and offset some of the higher costs characteristic of rural lending, and that HUD's goals for the GSEs could encourage such increased participation.

***MacDonald Study.*[39] This study investigates variations in GSE market shares among a sample of 426 non-metropolitan counties in eight census divisions. Conventional conforming mortgage originations are estimated using residential sales data, adjusted to exclude non-conforming mortgages. Multivariate analysis is used to investigate whether the GSE market share differs significantly by location, after controlling for the economic, demographic, housing stock, and credit market differences among counties that could affect use of the secondary markets by lenders.[40]**

MacDonald has four main findings regarding mortgage financing and the GSEs' purchases in rural mortgage markets. First, smaller, poorer and less rapidly growing non-metro areas have less access to mortgage credit than larger, wealthier and more rapidly growing areas. Second, the mortgages that are originated in the former areas are seldom purchased by the GSEs. Third, higher-income borrowers are more likely, and first-time homebuyers are less likely, to be served by the GSEs in underserved than in served areas. This suggests that the GSEs are not reaching out to marginal borrowers in underserved nonmetropolitan areas. Finally, the GSEs serve a smaller proportion of the low-income market in rural areas than do depository institutions. This finding is consistent with studies of the GSEs' affordable lending performance in metropolitan areas.

With regard to the GSEs' underwriting guidelines MacDonald makes two points. First, the GSEs' purchase guidelines may adversely affect non-metro areas where many borrowers are seasonally- or self-employed and where houses pose appraisal problems. Second, MacDonald speculates that mortgage originators in nonmetropolitan areas may interpret guidelines too conservatively, or may not try to qualify non-traditional borrowers for mortgages.

MacDonald also echoes the findings of Mikesell that the existence and extent of mortgage lending problems are difficult to identify in many rural areas because of the lack of comprehensive mortgage lending data. Problems that have been identified include the lack of market competition among small, conservative lending institutions typical in rural and non-metropolitan areas; consolidation and other changes in the financial services industry, which may have different consequences in rural areas than in urban areas; lack of access to government housing finance programs in more rural locations; and weak development of secondary market sources of funds in rural areas, exacerbating liquidity problems.

MacDonald discusses briefly the importance of low-cost homeownership alternatives in rural areas. One alternative is manufactured (mobile) housing. In general, manufactured housing is less costly to construct than site-built housing. Manufactured housing makes up more than 25 percent of the housing stock in rural counties in the South and Mountain states.

MacDonald concludes that the lower participation of the GSEs in underserved areas compared with served areas may result from additional risk components for some borrowers and from lack of sophistication by the lenders that serve

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[37] Mikesell, Jim. Can Federal Policy Changes Improve the Performance of Rural Mortgage Markets, Economic Research Service, U.S. Department of Agriculture, Issues in Agricultural and Rural Finance. Agriculture Information Bulletin No. 724–12, August 1998.

[38] Standard mortgage types are 30-year fixed-rate mortgages, 15-year FRMs and 30-year adjustable rate mortgages (ARMs). These are the ones most often traded in the secondary markets. Nonstandard mortgages generally have shorter terms than the standard mortgages.

[39] MacDonald, Heather. Fannie Mae and Freddie Mac in Rural Housing Markets: Does Space Matter? Study funded as part of the 1997 GSE Small Grants by HUD's Office of Policy Development and Research.

[40] MacDonald constructs a county-level mortgage market data in rural areas using information collected by the Department of Revenue for counties and states. Annual Sales Ratio Studies conducted by many states' Department of Revenue provide the number of sales for different property types. This is done by using residential sales recorded for property tax purposes. Other county-level variables used to compare rural counties are obtained from the 1990 Census of Population and Housing and Bureaus of labor Statistics. Data obtained from Census included county populations, racial composition, a variety of housing stock characteristics like home ownership rates, vacancy rates, proportion of owner-occupied mobile homes, median housing value in 1990, median age of the housing stock, proportion of units with complete plumbing, and access to infrastructure, *e.g.*, public roads and sewage systems. Data collected from the Bureau of Labor Statistics included unemployment rates and residential building permits.

small non-metro markets. In smaller and poorer counties, low volumes of loan sales to the GSEs may be a result of lower incomes and smaller populations. These counties may not have sufficient loan-generating activity to justify mortgage originators pursuing secondary market outlets.

The Role of Manufactured Housing.[41] The Joint Center for Housing Studies at Harvard University conducted a comprehensive study of the importance of manufactured housing as an affordable housing choice in rural communities. In all segments of the housing market, but especially in rural areas and among low-income households, manufactured housing is growing. Based on the American Housing Survey, in 1985, 61 percent of manufactured housing stock was located in rural areas compared with 70 percent in 1993. Between 1985 and 1993, manufactured housing increased over 2.2 percent annually while all other housing increased 0.7 percent per year. In 1993, 6.0 percent (or 6 million) of households lived in manufactured housing.

Since the 1970's, the face of manufactured housing has changed. Once a highly mobile form of recreational housing in this country, today manufactured housing provides basic quality, year-round housing for millions of American households. Most earlier units were placed in mobile home parks or on leased parcels of land. Today an increasing number of units are owned by households that also own the land on which the manufactured home is located.

Manufactured housing's appeal lies in its affordability. The low purchase price, downpayments, and monthly cash costs of manufactured housing provide households who are priced out of the conventional housing market a means of becoming homeowners. The occupants of manufactured housing on average are younger, have less income, have less education and are more often white than occupants of single-family detached homes. This type of housing is often found in areas with persistent poverty, retirement destinations, areas for recreation and vacations, and commuting counties.

The manufactured housing industry is well positioned for continued growth. The affordability of manufacturing housing is increasingly attractive to the growing ranks of low-income households. Manufactured housing is becoming more popular among first-time homebuyers and the elderly, both of which are growing segments of the housing market. The migration of people to the South, where manufactured housing is already highly accepted, and to metropolitan fringes will further increase the demand for this type of housing.[42]

D. Factor 3: Previous Performance and Effort of the GSEs in Connection With the Central Cities, Rural Areas and Other Underserved Areas Goal

As discussed in Sections B and C, HUD has structured the Geographically Targeted Goal to increase mortgage credit to areas underserved by the mortgage markets. This section looks at the GSEs' past performance to determine the impact the Geographically Targeted Goal is having on borrowers and neighborhoods with particular emphasis on underserved areas. Section D.1 reports the past performance of each GSE with regard to the Geographically Targeted Goal. Section D.2 then examines the role that the GSEs are playing in funding single-family mortgages in underserved urban neighborhoods based on HUD's analysis of GSE and HMDA data. Section D.3 concludes this section with an analysis of the GSEs' purchases in rural (nonmetropolitan) areas.

1. GSE Performance on the Geographically Targeted Goal

This section discusses each GSE's performance under the Geographically Targeted Goal over the 1993–98 period. The data presented here are "official results"—i.e., they are based on HUD's in-depth analysis of the loan-level data submitted annually to the Department, subject and the counting provisions contained in Subpart B of HUD's December 1, 1995 Regulation of Fannie Mae and Freddie Mac. As explained below, in some cases these "official results" differ to some degree from goal performance reported by the GSEs in their Annual Housing Activities Reports to the Department.

HUD's goals specified that in 1996 at least 21 percent of the number of units eligible to count toward the Geographically Targeted Goal should qualify as geographically targeted, and at least 24 percent should qualify in 1997 and 1998. Actual performance, based on HUD analysis of GSE loan-level data, was as follows:

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[41] The Future of Manufactured Housing, Harvard University Joint Center for Housing Studies, February 1997.

[42] Though future demand for manufactured housing is promising, the Joint Center notes some continued obstacles to growth. Challenges for the industry to overcome include a lack of standardization of installation procedures and product guarantees, exclusionary zoning laws, and certain provisions of the national building code.

	1996	1997	1998
Fannie Mae:			
Units Eligible to Count Toward Goal...	1,891,896	1,765,347	3,546,302
Geographically Targeted Units.....	532,434	508,746	958,233
Percent Geographically Targeted.....	28.1%	28.8%	27.0%
Freddie Mac:			
Units Eligible to Count Toward Goal...	1,325,900	1,180,517	2,658,556
Geographically Targeted Units.....	331,495	310,572	693,748
Percent Geographically Targeted.....	25.0%	26.3%	26.1%

Thus, Fannie Mae surpassed the goals by 7.1 percentage points and 4.8 percentage points in 1996 and 1997, respectively, and Freddie Mac surpassed the goals by 4.0 and 2.3 percentage points. In 1998 Fannie Mae's performance fell by 1.8 percentage points, while Freddie Mac's performance fell slightly, by 0.2 percentage point.[43]

Fannie Mae's performance on the Geographically Targeted Goal jumped sharply in just two years, from 23.6 percent in 1993 to 31.9 percent in 1995, before tailing off to 28.1 percent in 1996. As indicated, it then rose slightly to 28.8 percent in 1997, before tailing off to 27.0 percent last year. Freddie Mac has shown more steady gains in performance on the Geographically Targeted Goal, from 21.3 percent in 1993 to 24.2 percent in 1994, 25 percent in 1995–96, and just over 26 percent last year.

Fannie Mae's performance on the Geographically Targeted Goal has surpassed Freddie Mac's in every year. However, Freddie Mac's 1998 performance represented a 23 percent increase over the 1993 level, exceeding the 14percent increase for Fannie Mae. And Freddie Mac's performance was 97 percent of Fannie Mae's geographically targeted share in 1998, the highest ratio since the interim goals took effect in 1993.

[43] The Fannie Mae figures for 1997 differ from corresponding figures presented by Fannie Mae in its Annual Housing Activity Report to HUD by 0.2 percentage points, reflecting minor differences in application of counting rules. The percentages shown above for Fannie Mae in 1996 and 1998 and for Freddie Mac in 1996–1998 are identical to the corresponding percentages in the GSEs' Annual Housing Activity Reports.

2. GSEs' Mortgage Purchases in Metropolitan Neighborhoods

As shown in Table B.5, metropolitan areas accounted for about 85 percent of total GSE purchases under the Geographically Targeted Goal. This section uses HMDA and GSE data for metropolitan areas to examine the neighborhood characteristics of the GSEs' mortgage purchases. In subsection 2.a, the GSEs' performance in underserved neighborhoods is compared with that of portfolio lenders and the overall market. This section therefore expands on the discussion in Appendix A, which compared the GSEs' funding of affordable loans with the overall conventional conforming market. In subsection 2.b., the characteristics of the GSEs' purchases within underserved areas are compared with those for their purchases in served areas.

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Table B.5

Fannie Mae and Freddie Mac Acquisitions of Single-Family and Multifamily Units in Underserved Metro and Nonmetro Areas in 1996 and 1997

	Fannie Mae		Freddie Mac	
	1996	1997	1996	1997
Metropolitan				
Number of Underserved Units	458,925	435,900	266,677	255,729
Percent of Total Units	27.2%	27.8%	23.4%	25.3%
Total	1,686,975	1,570,117	1,138,243	1,012,584
Nonmetropolitan				
Number of Underserved Units	73,509	72,846	64,818	54,842
Percent of Total Units	36.6%	38.2%	34.6%	32.7%
Total	200,961	190,461	187,560	167,932
Overall				
Number of Underserved Units	532,434	508,746	331,495	310,571
Percent of Total Units	28.1%	28.8%	25.0%	26.3%
Total Eligible*	1,891,896	1,765,346	1,325,899	1,180,516

* Overall totals may exceed the metro/nonmetro sum due to units in unidentified census tracts.

Comparisons With the Primary Market

Overview and Main Conclusions. Tables A.3 and A.4a in Appendix A provided information on the GSEs' funding of home purchase loans for properties located in underserved neighborhoods for the years 1993 to 1998. The findings with respect to the GSEs' funding of underserved neighborhoods are similar to those reported in Appendix A regarding the GSEs' overall affordable lending performance. Both GSEs have improved their performance over the past six years but, on average, they continue to lag the conventional conforming market in providing affordable loans to underserved neighborhoods. As discussed in Appendix A, the two GSEs show very different patterns of lending—Freddie Mac has been much less likely than Fannie Mae to fund home loans in underserved neighborhoods. The percentage of Freddie Mac's purchases financing properties in underserved census tracts is substantially less than the percentage of total market originations in these tracts; furthermore, since 1992 Freddie Mac has not made any progress closing the gap with the primary market. Fannie Mae, on the other hand, is much closer to market levels in its funding of underserved areas. The same issue discussed in Appendix A about the down payment characteristics of the GSEs' purchases can also be raised about their purchases in underserved areas—the GSEs' typically purchase high down payment mortgages in these areas, which reduces their ability to help lower-income, cash-constrained borrowers seeking to purchase properties in these neighborhoods. The remainder of this section present data to support these conclusions.

Freddie Mac. During the 1993–1998 period, Freddie Mac has lagged Fannie Mae, portfolio lenders, and the overall conforming market in providing home loans to underserved neighborhoods. Underserved census tracts (as defined by HUD) accounted for 19.7 percent of Freddie Mac's single-family home mortgages, compared with 22.9 percent of Fannie Mae's purchases, 26.3 percent of loans originated and held in portfolio by depository lenders, and 24.5 percent of the overall conforming primary market. If the analysis is restricted to the 1996–98 period during which the current housing goals have been in effect, the data continue to show that Freddie Mac has lagged the market in funding underserved neighborhoods (see Table A.3 in Appendix A). In 1998, underserved census tracts accounted for 20.0 percent of Freddie Mac's purchases and 24.6 percent of loans originated in the conforming home purchase market, yielding a "Freddie Mac-to-market" ratio of only 0.81 (i.e. 20.0 divided by 24.6).

Fannie Mae. Over the longer 1993–98 period and the more

recent 1996–98 period, Fannie Mae has lagged the market and portfolio lenders in funding properties in underserved areas, but to a much smaller degree than Freddie Mac. During the 1996–98 period, underserved tracts accounted for 22.9 percent of Fannie Mae's purchases, compared with 25.8 percent of loans retained in portfolio by depositories and with 24.9 percent of home loans originated in the conventional conforming market. Fannie Mae's performance is much closer to the market than Freddie Mac's performance, as can be seen by the "Fannie Mae-to-market" ratio of 0.92 for the 1996–98 period (*i.e.* 22.9 divided by 24.9).

Fannie Mae's performance improved during 1997, due mainly to Fannie Mae's increased purchases during 1997 of prior-year mortgages in underserved neighborhoods. Overall, Fannie Mae's purchases of home loans in underserved areas increased from 22.3 percent in 1996 to 23.5 percent in 1997. The underserved area percentage for Fannie Mae's purchases of newly-originated mortgages was actually lower in 1997 (20.8 percent) than in 1996 (21.9 percent). This decline was offset by the fact that a particularly high percentage (30.1 percent) of Fannie Mae's 1997 purchases of prior-year mortgages was for properties in underserved areas. Thus, Fannie Mae improved its overall performance in 1997 by supplementing its purchases of newly-originated mortgages with purchases of prior-year mortgages targeted to underserved neighborhoods. As shown in Table A.4a in Appendix A, Fannie Mae continued this strategy in 1998.

The annual data in Table A.4a show the progress that Fannie Mae has made closing the gap between its performance and that of the overall market. In 1992, underserved areas accounted for 18.3 percent of Fannie Mae's purchases and 22.2 percent of market originations, for a "Fannie Mae-to-market" ratio of 0.82. By 1998, underserved areas accounted for 22.9 percent of Fannie Mae's purchases and 24.6 percent of market originations, for a higher "Fannie Mae-to-market" ratio of 0.93. Freddie Mac, on the other hand, fell further behind the market during this period. In 1992, Freddie Mac had a slightly higher underserved area percentage (18.6 percent) than Fannie Mae (18.3 percent). However, Freddie Mac's underserved area percentage had only increased to 20.0 percent by 1998 (versus 22.9 percent for Fannie Mae). Thus, the "Freddie Mac-to-market" ratio fell from 0.84 in 1992 to 0.81 in 1998.

Down Payment Characteristics. Table B.6 reports the down payment and borrower income characteristics of mortgages that the GSEs purchased in underserved areas during 1997. Two points stand out. First, loans on properties in underserved areas were more likely to have a high loan-to-value ratio than loans on properties in served areas. Specifically, about 18 percent of loans in undeserved areas had a down payment less than ten percent, compared with 15 percent of all loans purchased by the GSEs. Second, loans to low-income borrowers in underserved areas were typically high down payment loans. Approximately 70 percent of the GSE-purchased loans to very low-income borrowers living in underserved areas had a down payment more than 20 percent.

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Table B.6

Down Payment Characteristics of GSE Purchases in Underserved Areas, 1997

	Size of Down Payment				
GSE Purchases	Less Than 5 Percent Down	5 to 10 Percent Down	10 to 20 Percent Down	20 Percent or More Down	Total [1]
All Loans	36,703	328,467	365,981	1,638,798	2,369,949
Loans in Underserved Areas	16,265	87,092	91,537	374,087	568,981
Very- Low-Income Loans	4,764	10,463	9,282	57,762	82,271
Less- Than-Median Income Loans	13,617	38,995	37,831	173,687	264,130
Percentage Distribution					
All Loans	1.5%	13.9%	15.4%	69.1%	100.0%
Loans in Underserved Areas	2.9%	15.3%	16.1%	65.7%	100.0%
Very- Low-Income Loans	5.8%	12.7%	11.3%	70.2%	100.0%
Less- Than-Median Income Loans	5.2%	14.8%	14.3%	65.8%	100.0%

Source: National File A of the GSE Public Use Data Base. Data include all owner-occupied one-unit mortgages (home purchase, refinance, and second loans) purchased by the GSEs in underserved areas (both metropolitan and non-metropolitan) in 1997.

[1] Loans with missing down payments are excluded.

Table B.7

Loan and Borrower Characteristics of Single-Family Mortgages Purchased by the GSEs In Metropolitan Areas, 1997

Loan and Borrower Characteristics	Fannie Mae		Freddie Mac		Total	
	Served	Underserved	Served	Underserved	Served	Underserved
Number of Loans	944,391	276,434	667,269	174,981	1,611,660	451,415
Loan Purpose						
Home Purchase	63.7 %	62.9 %	60.8 %	54.6 %	63.2 %	61.3 %
Refinancing	36.3	37.1	39.2	45.4	36.8	38.7
Seasoning						
Seasoned	13.7 %	20.9 %	6.2 %	7.4 %	10.6 %	19.2 %
Not Seasoned	86.3	70.1	93.8	92.6	89.4	80.8
Loan-to-Value Ratio						
Over 95%	1.6 %	4.9 %	0.4 %	1.1 %	1.1 %	3.4 %
91-95%	13.2	15.9	14.4	17.2	13.7	16.4
81-90%	15.8	16.4	14.9	15.2	15.4	16.0
61-80%	50.0	47.0	52.1	51.7	50.9	48.8
60% or Less	19.4	15.8	18.3	14.8	18.9	15.4
Income of Borrower(s)						
60% of Area Median or Below	7.3 %	18.2 %	6.6 %	15.8 %	7.0 %	17.2 %
61-100% of Median	25.9	36.2	25.6	35.3	25.8	35.8
Below Area Median	33.2	54.4	32.2	51.0	32.8	53.1
Over 100% of Median	66.8	45.6	67.8	49.0	67.2	46.9
First-time Home Buyer	18.1 %	23.2 %	15.5 %	18.3 %	17.0 %	21.3 %
Race/National Origin of Borrower						
White	88.7 %	68.5 %	90.8 %	74.3 %	89.6 %	70.8 %
African American	2.4	9.3	2.1	7.1	2.3	8.4
Hispanic	3.5	13.1	2.8	11.4	3.2	12.4
Asian or Pacific Islander	3.7	7.2	2.9	5.6	3.4	6.6
American Indian or Alaskan Native	0.4	0.4	0.3	0.4	0.3	0.4
Other	1.3	1.5	1.2	1.3	1.3	1.4
Age of Borrower						
Under 30	13.0 %	15.1 %	12.8 %	14.0 %	12.9 %	14.6 %
30-39	35.8	33.0	36.6	33.3	36.1	33.1
40 and Over	51.2	52.0	50.5	52.7	50.9	52.3
Gender of Borrower(s)						
All Male	16.7 %	22.3 %	16.2 %	21.4 %	16.5 %	21.9 %
All Female	15.9	21.3	15.5	20.1	15.7	20.8
Male and Female	67.4	56.4	68.3	58.6	67.7	57.2

Source: HUD analysis of GSEs' loan-level data on mortgages on owner-occupied one-unit properties. In computing the percentages, missing data are excluded.

b. Characteristics of GSEs' Purchases of Mortgages on Properties in Metropolitan Underserved Areas

Several characteristics of loans purchased by the GSEs in metropolitan underserved areas are presented in Table B.7. As shown, borrowers in underserved areas are more likely than borrowers in served areas to be first-time homebuyers, females, and older than 40 or younger than 30. And, as expected, they are more likely to have below-median income and to be members of minority groups. For example, first-time homebuyers make up 21 percent of the GSEs' mortgage purchases in underserved areas and 17 percent of their business in served areas. In underserved areas, 53 percent of borrowers have incomes below the area median, compared with 33 percent of borrowers in served areas.

Minorities' share of the GSEs' mortgage purchases in underserved areas (29.2 percent) was nearly three times their share in served areas (10.5 percent). And the pattern was even more pronounced for African Americans and Hispanics, who accounted for 20.8 percent of the GSEs' business in underserved areas, but only 5.5 percent of their purchases in served areas.

Other differences between the GSEs' purchases in underserved and served areas include the fact that prior-year mortgages comprised a higher percentage of Fannie Mae's loans in underserved areas (32.8 percent) than in served areas (25.3 percent) in 1997, which suggests that Fannie Mae may be purchasing prior-year loans in underserved areas to raise its performance on the Geographically Targeted Goal. Also, refinance mortgages comprised a higher percentage of Freddie Mac's loans in underserved areas (44.6 percent) than in served areas (38.8 percent) in 1997, possibly due to the fact that refinance mortgages, which typically have lower loan-to-value ratios than home purchase mortgages, have lower probabilities of default or severity of loss.

3. GSE Mortgage Purchases in Nonmetropolitan Areas

Nonmetropolitan mortgage purchases made up 14 percent of the GSEs' total mortgage purchases in 1997. Mortgages in underserved counties made up 38 percent of the GSEs' business in rural areas.[44]

Unlike the underserved definition for metropolitan areas which was based on census tracts, the rural underserved definition was based on counties. Rural lenders argued that they identified mortgages by the counties in which they were located rather than the census tracts; and therefore, census tracts were not an operational concept in rural areas. Market data on trends in mortgage lending for metropolitan areas is provided by the Home Mortgage Disclosure Act (HMDA); however, no comparable data source exists for rural mortgage markets. The absence of rural market data is a constraint for evaluating credit gaps in rural mortgage lending and for defining underserved areas.

The broad nature of the underserved definition for nonmetropolitan areas raises at least two concerns. The first concern is whether the broad definition overlooks differences in borrower characteristics in served and underserved counties that should be included in the definition. Table B.8 compares borrower and loan characteristics for the GSEs' mortgage purchases in served and underserved areas. The GSEs are less likely to purchase loans for first-time homebuyers and more likely to purchases mortgages for high-income borrowers in underserved than in served counties. Mortgages to first-time homebuyers account for 13.9 percent of the GSEs' mortgage purchases in served counties compared with 12.3 percent in underserved counties. Surprisingly, borrowers in served counties are more likely to have incomes below the median than in underserved counties (34.5 percent compared to 28.8 percent). These findings support the claim that, in rural underserved counties, the GSEs purchase mortgages for borrowers that probably encounter few obstacles to obtaining mortgage credit.

[44] Underserved areas make up about 56 percent of the census tracts in nonmetropolitan areas and 47 percent of the census tracts in metropolitan areas. This is one reason why underserved areas comprise a larger portion of the GSEs' single-family mortgages in nonmetropolitan areas (38 percent) than in metropolitan areas (22 percent).

Table B.8

Loan and Borrower Characteristics of Single-Family Mortgages Purchased by the GSEs In Non-Metropolitan Counties, 1997

Loan and Borrower Characteristics	Fannie Mae		Freddie Mac		Total	
	Served	Underserved	Served	Underserved	Served	Underserved
Number of Loans	108,236	69,275	94,810	52,578	203,046	121,853
Loan Purpose						
Home Purchase	57.5 %	58.3 %	50.3 %	48.3 %	54.2 %	54.1
Refinancing	425.0	41.7	49.7	51.7	45.8	45.9
Seasoning						
Seasoned	25.9 %	30.9 %	16.3 %	16.2 %	21.5 %	24.8
Not Seasoned	74.1	69.1	83.7	83.8	78.5	75.2
Loan-to-Value Ratio						
Over 95%	1.6 %	1.1 %	0.3 %	0.2 %	1.0 %	0.7
91-95%	12.6	13.6	12.7	13.9	12.7	13.7
81-90%	13.7	15.0	12.7	13.1	13.2	14.1
61-80%	51.5	50.4	54.5	54.2	52.9	52.1
60% or Less	20.6	20.0	19.8	18.6	20.2	19.4
Income of Borrower(s)						
60% of Area Median or Below	7.8 %	6.6 %	7.2 %	6.1 %	7.5 %	6.4
61-100% of Median	27.2	22.3	26.7	22.7	27.0	22.5
Below Area Median	35.0	28.9	33.9	28.7	34.5	28.8
Over 100% of Median	65.0	71.1	66.1	71.3	65.5	71.2
First-time Home Buyer	15.2 %	13.0 %	12.4 %	11.4 %	13.9 %	12.3
Race/National Origin of Borrower						
White	95.8 %	90.2 %	96.6 %	93.4 %	96.2 %	91.6
African American	1.1	3.5	0.8	2.0	1.0	2.8
Hispanic	1.3	3.4	1.1	2.4	1.2	2.9
Asian or Pacific Islander	0.6	1.3	0.6	1.0	0.6	1.2
American Indian or Alaskan Native	0.4	0.7	0.3	0.6	0.3	0.6
Other	0.8	1.0	0.6	0.7	0.7	0.8
Age of Borrower						
Under 30	14.5	13.8	14.2	13.7	14.4	13.7
30-39	33.9	32.3	34.1	31.9	34.0	32.1
40 and Over	51.6	53.9	51.7	54.4	51.6	54.2
Gender of Borrower(s)						
All Male	15.7	15.6	15.0	14.9	15.4	15.3
All Female	12.4	12.5	11.9	12.0	12.2	12.3
Male and Female	71.9	71.8	73.1	73.2	72.4	72.4

Source: HUD analysis of GSEs' loan-level data on mortgages on owner-occupied one-unit properties. In computing the percentages, missing data are excluded.

The second concern is whether defining underserved areas in terms of an entire county gives the GSEs an incentive to purchase mortgages in the "better off" tracts. Based on an analysis of the GSEs' mortgage purchases by tract median income, it is unclear if the broad nature of the county definition has an impact on the GSEs' purchasing behavior at the tract level. For example, even though the GSEs purchase a larger percentage of mortgages in high-minority and low-income tracts in underserved than in served counties, they purchase nearly the same percentage of mortgages in both underserved and served counties in high-income tracts.

In underserved areas, the GSEs are more likely to purchase mortgages in low-income and high-minority census tracts than in served counties. The GSEs are more than twice as likely to purchase mortgages in tracts with median incomes at or below 80 percent of AMI in underserved counties than in served counties (15.7 percent vs. 5.1 percent). For census tracts with percent minority above 30 percent, 3.3 percent of the GSEs' purchases in served counties are in these high-minority tracts compared to 23.9 percent in underserved counties. These results are expected since underserved counties are made up of a greater number of low-income and high-minority census tracts than are served counties.

While the GSEs purchase nearly the same percentages of mortgages in the "better off" tracts in underserved counties and served counties, when compared to the percentage of owner-occupied units in these areas, two points stand out. First, as the ratio of tract income to area median income increases, so does the volume of GSE home mortgage purchases relative to the number of owner-occupied units in the tract. Second, this tendency is more pronounced in underserved than in served counties.

Tables B.9 and B.10 provide distributions of owner-occupied units across tracts by tract income ratio, as reported in the 1990 Census, and distributions of 1997 GSE home mortgage purchases by tract income ratio. The two tables provide data for underserved and for served counties, respectively. In underserved counties, 1.1 percent of GSE 1997 purchases and 2.7 percent of owner-occupied units were in tracts with median income at or below 60 percent of area median income. The ratio of these two shares is 0.41 (1.1 divided by 2.7). As the ratio of tract income to area median income increases, the ratio between the two shares increases (see Table B.9). This same result is found for served counties, but the ratios are both larger for low tract income ratios and smaller for high tract income ratios (Compare Table B.10 with Table B.9).

Table B.9

Distributions of GSE Purchases and Housing Units
By Tract Income Ratio
For Non-Metropolitan Underserved Counties

Tract Income Ratio[1]	1997 Distribution of GSE Home Mortgage Purchases	1990 Distribution of All Owner-Occupied Units	Ratio of Shares
0 ≤ 60%	1.1 %	2.7 %	0.41
60 ≤ 80%	14.6	18.4	0.79
80 ≤ 95%	35.6	39.0	0.91
95 ≤ 100%	12.0	12.6	0.95
100 ≤ 120%	24.5	21.2	1.16
> 120%	12.2	6.0	2.03
Total	100.0 %	100.0 %	

[1] Tract median income relative to area median income (i.e., the median income for the county or the nonmetropolitan portion of the State, whichever is greater.)

Table B.10

Distributions of GSE Purchases and Housing Units
By Tract Income Ratio
For Non-Metropolitan Served Counties

Tract Income Ratio[1]	1997 Distribution of GSE Home Mortgage Purchases	1990 Distribution of All Owner-Occupied Units	Ratio of Shares
0 ≤ 60%	0.4 %	0.6 %	0.67
60 ≤ 80%	4.7	6.0	0.78
80 ≤ 95%	22.4	26.4	0.85
95 ≤ 100%	14.4	15.8	0.91
100 ≤ 120%	43.6	41.4	1.05
> 120%	14.5	9.8	1.48
Total	100.0 %	100.0 %	

[1] Tract median income relative to area median income (i.e., the median income for the county or the nonmetropolitan portion of the State, whichever is greater.)

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The fact that the ratio of shares for higher-income tracts is larger in underserved counties than in served counties suggests that the GSEs are purchasing a greater percentage of mortgages in "better off" tracts as a result of the county-based geographically targeted goal. For example, in tracts where the median income is above 120 percent of the area median, the ratio of the GSEs' mortgage purchase share to the owner-occupied units share is 2.03 for underserved counties, compared to 1.48 for served counties. Conversely, in tracts where the median income is at or below 60 percent of the area median, the ratio of the GSEs' mortgage purchase share to the owner-occupied units share is 0.41, compared to 0.67 for served counties.

There are similarities and differences between the types of loans that Fannie Mae and Freddie Mac purchase in served and underserved counties. The GSEs are similar in that their mortgage purchases in underserved counties do not have lower downpayments than in served counties. In both served and underserved counties, approximately 28 percent of the GSEs' 1997 mortgage purchases have loan-to-value ratios above 80 percent. The GSEs differ in their mortgage purchases of refinanced and seasoned loans. Fannie Mae is more likely to purchase more seasoned mortgages in underserved than in served counties; Freddie Mac is more likely to purchase more refinanced mortgages in underserved than in served counties.

E. Factor 4: Size of the Conventional Conforming Mortgage Market for Underserved Areas

HUD estimates that underserved areas account for 29–32 percent of the conventional conforming mortgage market. The analysis underlying this estimate is detailed in Appendix D.

F. Factor 5: Ability to Lead the Industry

This factor is the same as the fifth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see Section G of Appendix A for a discussion of this factor.

G. Factor 6: Need to Maintain the Sound Financial Condition of the Enterprises.

HUD has undertaken a separate, detailed economic analysis of this proposed rule, which includes consideration of (a) the financial returns that the GSEs earn on loans in underserved areas and (b) the financial safety and soundness implications of the housing goals. Based on this economic analysis and discussions with the Office of Federal Housing Enterprise Oversight, HUD concludes that the proposed goals raise minimal, if any, safety and soundness concerns.

H. Determination of the Geographically-Targeted Areas Housing Goals

The annual goal for each GSE's purchases of mortgages financing housing for properties located in geographically-targeted areas (central cities, rural areas, and other underserved areas) is established at 29 percent of eligible units financed in calendar year 2000 and 31 percent of eligible units financed in calendar year 2001. The year 2001 goal will remain in effect through 2003 and thereafter, unless changed by the Secretary prior to that time. The goal represents an increase over the 1996 goal of 21 percent and the 1997–99 goal of 24 percent. However, it is commensurate with the market share estimates of 29–32 percent, presented in Appendix D.

This section summarizes the Secretary's consideration of the six statutory factors that led to the choice of these goals. It discusses the Secretary's rationale for defining these geographically-targeted areas and it compares the characteristics of such areas and untargeted areas. The section draws heavily from earlier sections which have reported findings from HUD's analyses of mortgage credit needs as well as findings from other research studies investigating access to mortgage credit.

1. Credit Needs in Metropolitan Areas

HUD's analysis of HMDA data shows that mortgage credit flows in metropolitan areas are substantially lower in high-minority and low-income neighborhoods and mortgage denial rates are much higher for residents of such neighborhoods. The economics literature discusses the underlying causes of these disparities in access to mortgage credit, particularly as related to the roles of discrimination, "redlining" of specific neighborhoods, and the barriers posed by underwriting guidelines to potential minority and low-income borrowers. Studies reviewed in Section B of this Appendix found that the racial and income composition of neighborhoods influence mortgage access even after accounting for demand and risk factors that may influence borrowers' decisions to apply for loans and lenders' decisions to make those loans. Therefore, the Secretary concludes that high-minority and low-income neighborhoods in metropolitan areas are underserved by the mortgage system.

2. Identifying Underserved Portions of Metropolitan Areas

To identify areas underserved by the mortgage market, HUD focused on two traditional measures used in a number of studies based on HMDA data:[45] application denial rates and mortgage origination rates per 100 owner-occupied units.[46] Tables B.1 and B.2 in Section B of this Appendix presented detailed data on denial and origination rates by the racial composition and median income of census tracts for metropolitan areas.[47] Aggregating this data is useful in order to examine denial and origination rates for broader groupings of census tracts:

Minority composition	Denial rate (percent)	Orig. rate	Tract income	Denial rate (percent)	Orig. rate
0–30%	13.7	8.7	Less than 90%	24.0%	6.5
30–50%	21.3%	6.8	90–120%	15.6	8.3
50–100%	25.1%	5.8	Greater than 20%	9.5	9.5

Two points stand out from these data. First, high-minority census tracts have higher denial rates and lower origination rates than low-minority tracts. Specifically, tracts that are over 50 percent minority have nearly twice the denial rate and two-thirds the origination rate of tracts that are under 30 percent minority.[48] Second, census tracts with lower incomes have higher denial rates and lower origination rates than higher income tracts. Tracts with income less than or equal to 90 percent of area median income have 2.5 times the denial rate and barely two-thirds the origination rate for tracts with income over 120 percent of area median income.

In 1995, HUD's research determined that "underserved areas" could best be characterized in metropolitan areas as census tracts with minority population of at least 30 percent in 1990 and/or census tract median income no greater than 90 percent of area median income in 1990, excluding high-minority high-income tracts. These cutoffs produce sharp differentials in denial and origination rates between underserved areas and adequately served areas. For example, the mortgage denial rate in underserved areas (23.4 percent) was nearly twice that in

[45] HMDA provides little useful information on rural areas. Therefore, the HMDA data reported here apply only to metropolitan areas.

[46] Analysis of application rates are not reported here. Although application rates are sometimes used as a measure of mortgage demand, they provide no additional information beyond that provided by looking at both denial and origination rates. The patterns observed for application rates are still very similar to those observed for origination rates.

[47] As shown in Table B.1, no sharp breaks occur in the denial and origination rates across the minority and income deciles—mostly, the increments are somewhat similar as one moves across the various deciles that account for the major portions of mortgage activity.

[48] The differentials in denial rates are due, in part, to differing risk characteristics of the prospective borrowers in different areas. However, use of denial rates is supported by the findings in the Boston Fed study which found that denial rate differentials persist, even after controlling for risk of the borrower. See Section B for a review of that study.

adequately served areas (12.2 percent) in 1997.

These minority population and income thresholds apply in the suburbs as well as in OMB-defined central cities. HUD's research has found that the average denial rate in underserved suburban areas is almost twice that in adequately served areas in the suburbs. (See Figure B.1 in Section B of this Appendix.) Thus HUD uses the same definition of underserved areas throughout metropolitan areas—there is no need to define such areas differently in central cities and in the suburbs. And HUD's definition, which covers 57 percent of the central city population and 33 percent of the suburban population, is clearly preferable to a definition which would count 100 percent of central city residents and zero percent of suburban residents as living in underserved areas.

This definition of metropolitan underserved areas includes 21,586 of the 46,904 census tracts in metropolitan areas, covering 44 percent of the metropolitan population. It includes 73 percent of the population living in poverty in metropolitan areas. The unemployment rate in underserved areas is more than twice that in served areas, and rental units comprise 52.4 percent of total units in underserved tracts, versus 28.6 percent of total units in served tracts. As shown in Table B.11, this definition covers most of the population in the nation's most distressed central cities: Newark (99 percent), Detroit (96 percent), Hartford (97 percent), and Cleveland (90 percent). The nation's five largest cities also contain large concentrations of their population in underserved areas: New York (62 percent), Los Angeles (69 percent), Chicago (77 percent), Houston (67 percent), and Philadelphia (80 percent).

Table B.11

Needy Areas in Central Cities Would be Covered

Large Cities with High Concentrations of Tracts Included in the Geographically Targeted Goal (Percent of Population)	
Newark	99%
Hartford	97%
Gary	96%
Detroit	96%
Jersey City	92%
Miami	91%
Baltimore	90%
Cleveland	90%
St. Louis	85%

Five Largest Cities	
New York	62%
Los Angeles	69%
Chicago	77%
Houston	67%
Philadelphia	80%

Central Cities with Small Concentrations			
Large Cities		**Small Cities**	
Raleigh	33%	Appleton, WI	6%
Tulsa	38%	Cedar Falls, IA	8%
Nashville-Davidson	41%	Scottsdale, AZ	11%
Oklahoma City	42%	Naples, FL	13%
Wichita	43%	Orem, UT	14%
Colorado Springs	44%	Wheeling, WV	20%
Columbus	46%	Salem, OR	19%
Phoenix	51%	Elkhart, IN	20%

Figure B.2

Geographically Targeted Mortgage Purchases

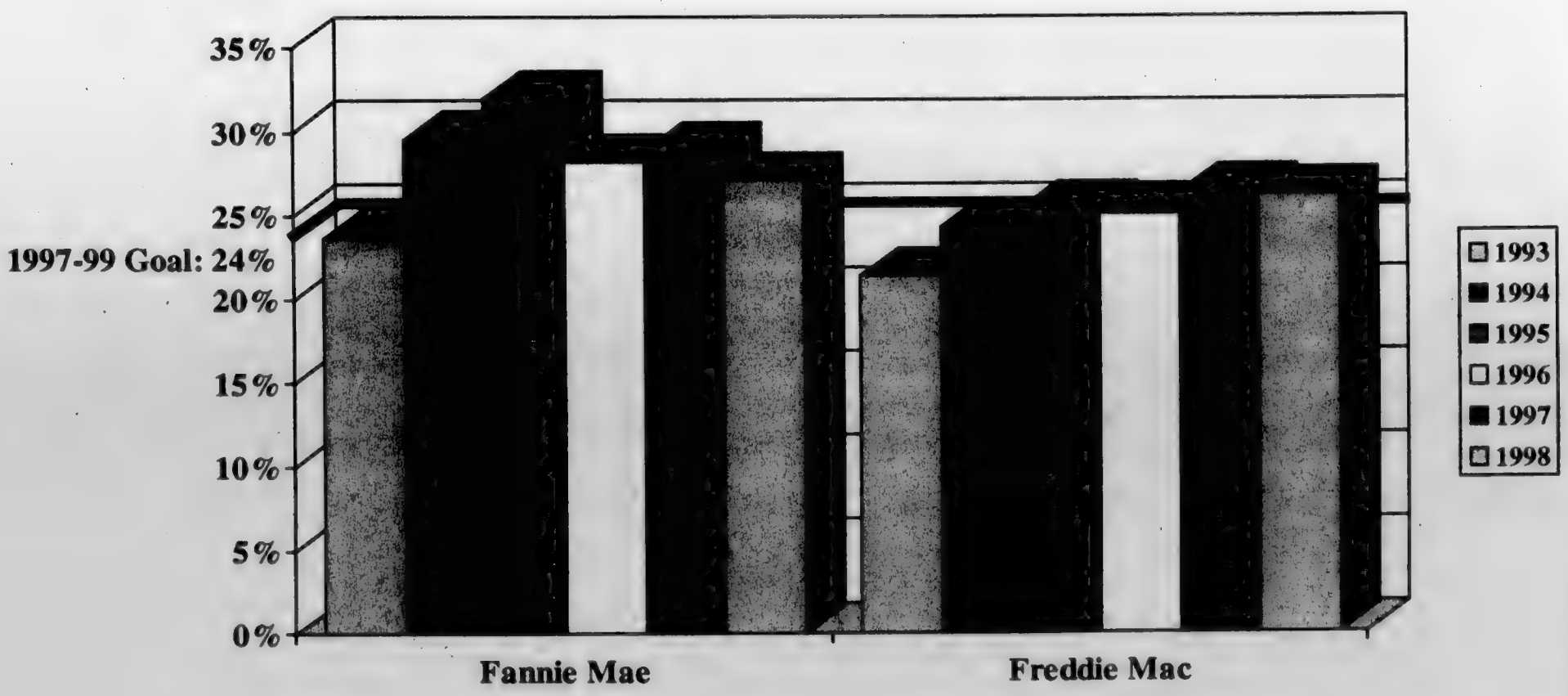

Geographically Targeted Goal is 24% of units financed for 1997-99 (21% for 1996).

Source: HUD analysis of GSEs' loan-level data.

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Figure B.3

The Share Of GSE And Conventional Conforming Mortgages in Census Tracts Included in the Geographically Targeted Goal, 1997 and 1998

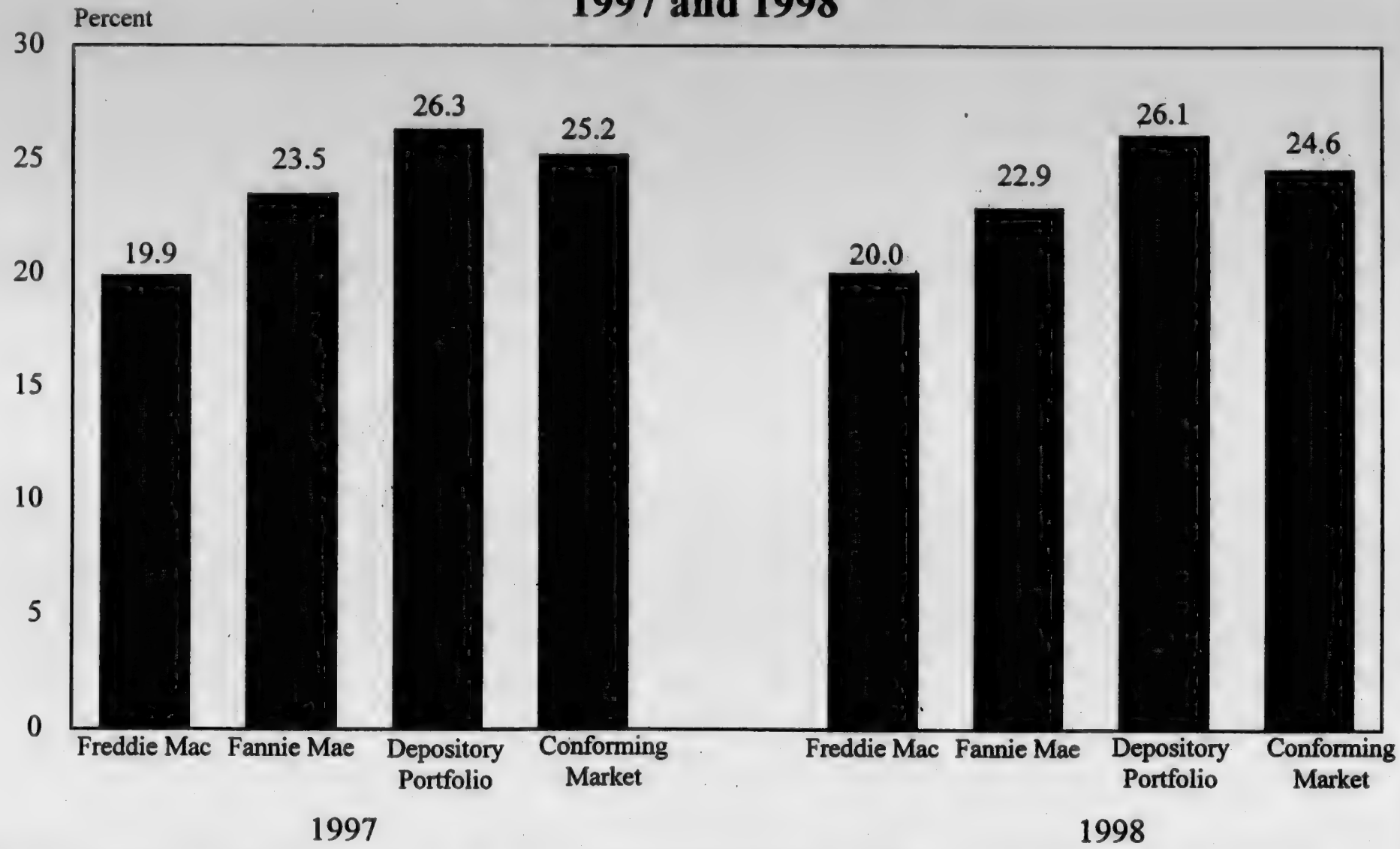

Source: Conforming market and depository data are from 1997 and 1998 HMDA; GSE data are from loan-level data reported to HUD. Data are for single-family home purchase loans in metropolitan areas. See Table A.4a for further explanation.

Identifying Underserved Portions of Nonmetropolitan Areas

Recognizing the difficulty of defining rural underserved areas and the need to encourage GSE activity in such areas, HUD has chosen a rather broad, county-based definition of underservedness in rural areas. Specifically, a nonmetropolitan county is underserved if in 1990 (1) county median family income was less than or equal to 95 percent of the greater of state or national nonmetropolitan income or (2) county median family income was less than or equal to 120 percent of state nonmetropolitan income and county minority population was at least 30 percent of total county population. This definition includes 1,511 of the 2,305 counties in nonmetropolitan areas and covers 54 percent of the nonmetropolitan population. The definition does target the most disadvantaged rural counties—it includes in underserved areas 67 percent of the nonmetropolitan poor and 75 percent of nonmetropolitan minorities. The average poverty rate in underserved counties in 1990 was 21 percent, significantly greater than the 12 percent poverty rate in counties designated as adequately served. The definition also includes 84 percent of the population that resides in remote counties that are not adjacent to metropolitan areas and have fewer than 2,500 residents in towns.

4. Past Performance of the GSEs

The GSEs' performance on the geographically-targeted goal has improved significantly in recent years, as shown in Figure B.2. Fannie Mae's performance, as measured by HUD, increased sharply from 23.6 percent in 1993 to 31.9 percent in 1995, dropped to 28.1 percent in 1996, and rose to 28.8 percent in 1997, and then dropped to 27.0 percent in 1998. Freddie Mac's performance, as measured by HUD, rose from 21.8 percent in 1993 to 26.4 percent in 1995, followed by 25.0 percent in 1996, 26.3 percent in 1997, and 26.1 percent in 1998.

Both GSEs have improved their performance in underserved areas over the past six years but, on average, they continue to lag the conforming primary market in providing single-family home loans to distressed neighborhoods. As discussed in Section D, the GSEs show different patterns of lending—Freddie Mac is less likely than Fannie Mae to purchase mortgages on properties in low-income and high-minority neighborhoods. During the 1996–98 period, Freddie Mac lagged Fannie Mae, portfolio lenders, and the overall conforming market in providing funds to underserved neighborhoods. As shown in Figure B.3, underserved areas accounted for 20.0 percent of Freddie Mac's 1998 purchases of home loans, compared with 22.9 percent of Fannie Mae's purchases, 26.1 percent of home loans retained in depositories' portfolios, and 24.6 percent of the overall conforming market. Freddie Mac has not made any progress since 1992 in reducing the gap between its performance and that of the conventional conforming home purchase market. Fannie Mae, on the other hand, has improved its funding in underserved areas and has closed the gap between its performance and the single-family primary market in funding low-income and high-minority neighborhoods.[49]

HUD also conducted an analysis of the share of the overall (single-family and multifamily) conventional conforming mortgage market accounted for by the GSEs. The GSEs' purchases represented 39 percent of total dwelling units financed during 1997 but they represented only 33 percent of the dwelling units financed in underserved neighborhoods. In other words, the GSEs account for only one-third of the single-family and multifamily units financed in underserved areas. This suggests that there is room for the GSEs to increase their purchases in underserved neighborhoods.

5. Size of the Mortgage Market for Geographically-Targeted Areas

As detailed in Appendix D, the market for mortgages in geographically-targeted areas accounts for 29 to 32 percent of dwelling units financed by conventional conforming mortgages. In estimating the size of the market, HUD used alternative assumptions about future economic and market conditions that were less favorable than those that existed over the last five years. HUD is well aware of the volatility of mortgage markets and the possible impacts on the GSEs' ability to meet the housing goals. Should conditions change such that the goals are no longer reasonable or feasible, the Secretary has the authority to revise the goals.

6. The Geographically-Targeted Areas Housing Goal for 2000–03

There are several reasons that the Secretary is increasing the Geographically Targeted Areas Goal. *First*, the present 24 percent goal level for 1997–99 and the GSEs' recent performance are below the estimated 29–32 percent of the primary mortgage market accounted for by units in properties located in geographically-targeted areas. Raising the goal reflects the Secretary's concern that the GSEs close the remaining gap between their performance and that of the primary mortgage market.

Second, the single-family-owner mortgage market in underserved areas has demonstrated remarkable strength over the past few years relative to the preceding period. This market had only recently begun to grow in 1993 and 1994, the latest period for which data was available when the 1996–99 goals were established in December 1995. But the historically high undeserved areas share of the primary single-family mortgage market attained in 1994 has been maintained over the 1995–98 period. The three-year average of the underserved areas share of the single-family-owner mortgage market in metropolitan areas was 22.2 percent for 1992–94, but 25.1 percent for 1995–98 and 24.1 percent for the 1992–98 period as a whole.

Third, as discussed in detail in Appendix A, there are several market segments that would benefit from a greater secondary market role by the GSEs; many of these market segments are concentrated in underserved areas. For example, one such area is single-family rental dwellings. These properties, containing 1–4 rental units, are an important source of housing for families in low-income and high-minority neighborhoods. However, the GSEs' purchases have accounted for only 13 percent of the single-family rental units financed in underserved areas during 1997. The Secretary believes that the GSEs can do more to play a leadership role in providing financing for such properties. Examples of other market segments in need of an enhanced GSE role include small multifamily properties, rehabilitation loans, seasoned CRA loans, and manufactured housing. Additional efforts by the GSEs in these markets would benefit families living in underserved areas.

Finally, a wide variety of quantitative and qualitative indicators indicate that the GSEs' have the financial strength to improve their affordable lending performance. For example, combined net income has risen steadily over the last decade, from $677 million in 1987 to $4.5 billion in 1997, an average annual growth rate of 21 percent per year. This financial strength provides the GSEs with the resources to lead the industry in supporting mortgage lending for properties located in geographically-targeted areas.

Summary. Figure A.4 of Appendix A summarizes many of the points made in this section regarding opportunities for Fannie Mae and Freddie Mac to improve their overall performance on the Geographically-Targeted Goal. The GSEs' purchases have provided financing for 2,893,046 dwelling units, which represented 39 percent of the 7,443,736 single-family and multifamily units that were financed in the conventional conforming market during 1997. However, in the underserved areas part of the market, the 795,981 units that were financed by GSE purchases represented only 33 percent of the 2,408,393 dwelling units that were financed in the market. Thus, there appears to ample room for the GSEs to increase their purchases in underserved areas. It is hoped that expression of concern in the current rulemaking will foster additional effort by both GSEs to increase their purchases in underserved areas.

7. Conclusions

Having considered the projected mortgage market serving geographically-targeted areas, economic, housing and demographic conditions for 2000–03, and the GSEs' recent performance in purchasing mortgages on properties in geographically-targeted areas, the Secretary has determined that the annual goal of 29 percent in calendar year 2000 and 31 percent in calendar year 2001 and the years following is feasible. Moreover, the Secretary has considered the GSEs' ability to lead the industry as well as the GSEs' financial condition. The Secretary has determined that these goal levels are necessary and appropriate.

[49] Although this goal is targeted to lower-income and high minority areas, it does not mean that GSE purchase activity in underserved areas derives totally from lower income or minority families. In 1997, above-median income households accounted for 37 percent of the mortgages that the GSEs purchased in underserved areas. This suggests that these areas are quite diverse.

Appendix C—Departmental Considerations To Establish the Special Affordable Housing Goal

A. Introduction

1. Establishment of the Goal

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) requires the Secretary to establish a special annual goal designed to adjust the purchase by each GSE of mortgages on rental and owner-occupied housing to meet the unaddressed needs of, and affordable to, low-income families in low-income areas and very-low-income families (the Special Affordable Housing Goal).

In establishing the Special Affordable Housing Goal, FHEFSSA requires the Secretary to consider:

1. Data submitted to the Secretary in connection with the Special Affordable Housing Goal for previous years;

2. The performance and efforts of the GSEs toward achieving the Special Affordable Housing Goal in previous years;

3. National housing needs of targeted families;

4. The ability of the GSEs to lead the industry in making mortgage credit available for low-income and very-low-income families; and

5. The need to maintain the sound financial condition of the enterprises.

2. The Goal

The final rule provides that the Special Affordable Housing Goal is 18 percent of the total number of dwelling units financed by each GSE's mortgage purchases in 2000, and 20 percent in 2001–2003. Of the total Special Affordable Housing Goal for each year, in 2000 each GSE must purchase multifamily mortgages in an amount at least equal to 0.9 percent of the 1998 total dollar volume of mortgages purchased by the GSE, rising to 1.0 percent in 2001–2003.[1]

Approximately 23–26 percent of the conventional conforming mortgage market in 2000 would qualify under the Special Affordable Housing Goal as defined in the proposed rule, as projected by HUD.

Units that count toward the goal: Subject to further provisions specified below, units that count toward the Special Affordable Housing Goal include units occupied by low-income owners and renters in low-income areas, and very-low-income owners and renters. Other low-income rental units in multifamily properties count toward the goal where at least 20 percent of the units in the property are affordable to families whose incomes are 50 percent of area median income or less, or where at least 40 percent of the units are affordable to families whose incomes are 60 percent of area median income or less.

B. Underlying Data

In considering the factors under FHEFSSA to establish the Special Affordable Housing Goal, HUD relied upon data gathered from the American Housing Survey through 1995, the Census Bureau's 1991 Residential Finance Survey, the 1990 Census of Population and Housing, Home Mortgage Disclosure Act (HMDA) data for 1992 through 1997, and annual loan-level data from the GSEs on their mortgage purchases through 1997. Appendix D discusses in detail how these data resources were used and how the size of the conventional conforming market for this goal was estimated.

Section C discusses the factors listed above, and Section D provides the Secretary's rationale for establishing the special affordable goal.

[1] While this proposed rule specifically proposes a dollar based subgoal, the Department is considering three alternative approaches to structuring the Special Affordable multifamily subgoal—a mortgage-based subgoal, a dollar-based subgoal, and a unit-based subgoal. These alternative approaches are described in the Preamble and in Section D of this Appendix.

Consideration of the Factors

1 and 2. Data submitted to the Secretary in connection with the Special Affordable Housing Goal for previous years, and the performance and efforts of the enterprises toward achieving the Special Affordable Housing Goal in previous years.

The discussions of these two factors have been combined because they overlap to a significant degree.

a. GSE Performance Relative to the 1996–98 Goals

This section discusses each GSE's performance under the Special Affordable Housing Goal over the 1993–98 period. The data presented here are "official results"—i.e., they are based on HUD's in-depth analysis of the loan-level data submitted annually to the Department and the counting provisions contained in HUD's regulations in 24 CFR part 81, subpart B. As explained below, in some cases these "official results" differ from goal performance reported to the Department by the GSEs in their Annual Housing Activities Reports.

HUD's goals specified that in 1996 at least 12 percent of the number of units eligible to count toward the Special Affordable goal should qualify as Special Affordable, and at least 14 percent annually beginning in 1997. The actual performance in 1996 through 1998, based on HUD analysis of loan-level data submitted by the GSEs, is shown in Table C.1 and Figure C.1. Fannie Mae surpassed the goal by 3.4 percentage points and 3.0 percentage points, respectively, in 1996 and 1997, while Freddie Mac surpassed the goal by 2.0 and 1.2 percentage points. In 1998, Fannie Mae surpassed the goal by 0.3 percentage points while Freddie Mac surpassed the goal by 1.9 percentage points (Table C.1).

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Table C.1

GSEs' Special Affordable Purchases Based on Final Rule Goal Definitions, 1993-1998

	1993	1994	1995	1996	1997	1998
Fannie Mae:						
Units Eligible to Count Toward Goal	2,909,941	1,832,257	1,417,542	1,852,233	1,748,044	3,486,040
Special Affordable Units	282,170	279,093	199,715	285,642	296,366	499,948
Percent Special Affordable	9.7%	15.2%	14.1%	15.4%	17.0%	14.3%
Special Affordable Multifamily Purchases ($billions)	$1.64	$1.74	$1.34	$2.37	$3.19	$3.53
Freddie Mac:						
Units Eligible to Count Toward Goal	2,170,036	1,290,990	959,137	1,299,589	1,175,271	2,658,174
Special Affordable Units	152,628	146,224	122,954	181,505	178,736	422,900
Percent Special Affordable	7.0%	11.3%	12.8%	14.0%	15.2%	15.9%
Special Affordable Multifamily Purchases ($billions)	$0.14	$0.46	$0.69	$1.06	$1.21	$2.69

Figure C.1
Special Affordable Mortgage Purchases

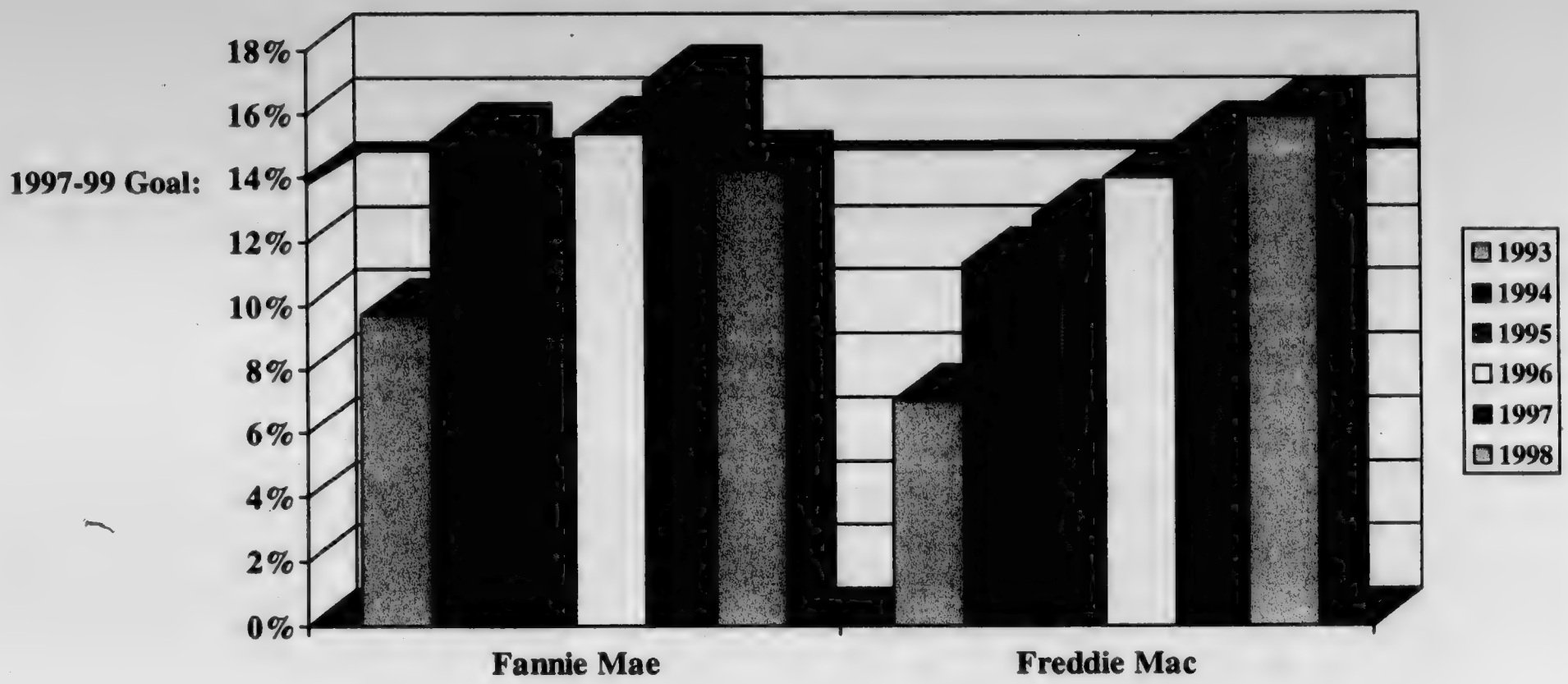

Special Affordable Goal is 14% of units financed for 1997-99 (12% for 1996).

Source: HUD analysis of GSEs' loan-level data.

Figure C.2

Multifamily Special Affordable Mortgage Purchases

(Billions of Dollars Per Year)

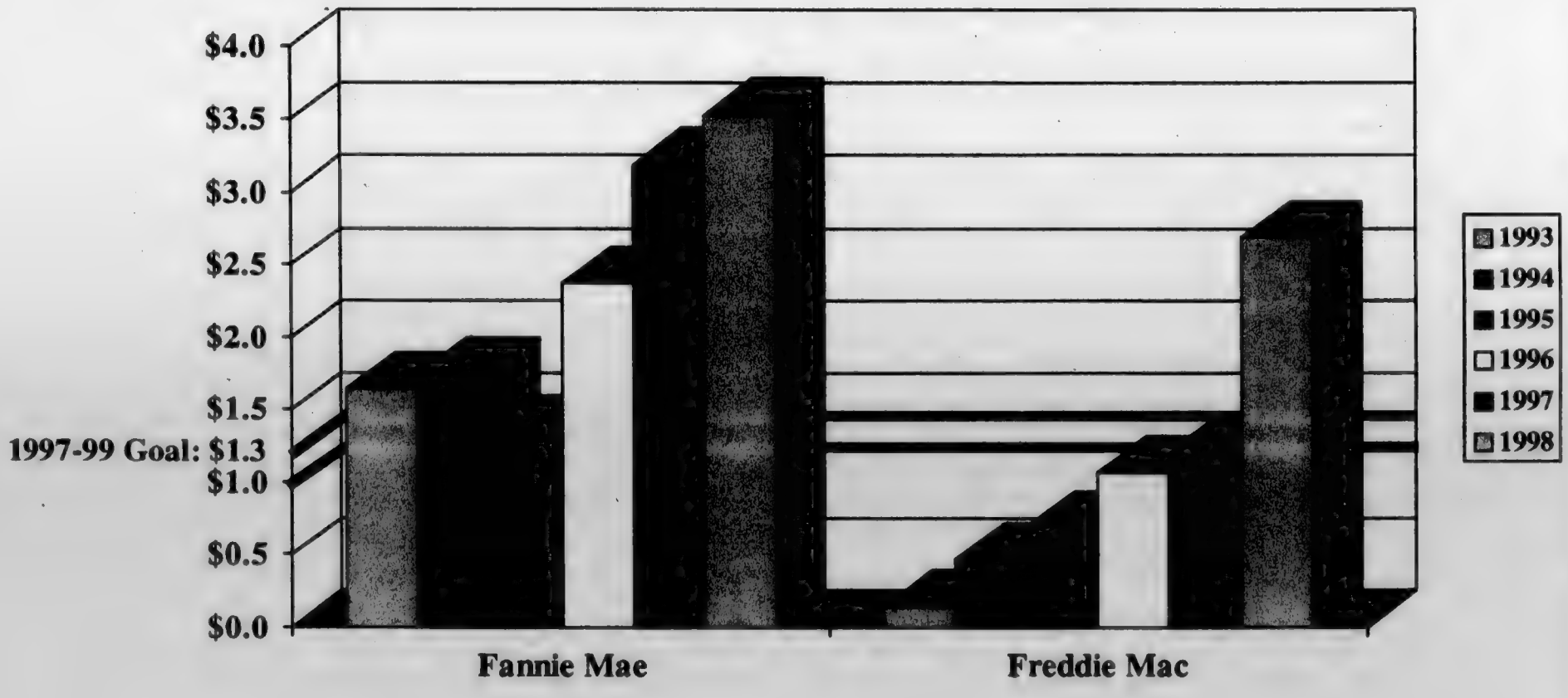

Multifamily Special Affordable Goals for 1996-99 are $1.29 billion per year for Fannie Mae and $988 million per year for Freddie Mac.

Source: HUD analysis of GSEs' loan-level data.

Table C.2

Fannie Mae's Special Affordable Purchases By Unit Affordability and Area Income, 1993-1997

Year of purchase and Type of unit	Very-Low Income Units in Low-Income Areas	Very-Low Income Units Outside Low-Income Areas	Other Low-Income Units in Low-Income Areas	Other Units Qualifying For Goal*	Total Units Qualifying For Goal	Percent
1993						
Single-family owner	21,731	108,354	28,351		158,436	56.1%
Single-family rental	11,474	21,022	12,082		44,578	15.8%
Multifamily	19,831	43,754	10,480	5,092	79,157	28.1%
Total	53,036	173,130	50,913	5,092	282,171	100.0%
Percent	18.8%	61.4%	18.0%	1.8%	100.0%	
1994						
Single-family owner	22,599	88,407	23,310		134,316	48.1%
Single-family rental	14,392	21,637	11,545		47,574	17.0%
Multifamily	25,712	51,173	13,572	6,746	97,203	34.8%
Total	62,703	161,217	48,427	6,746	279,093	100.0%
Percent	22.5%	57.8%	17.4%	2.4%	100.0%	
1995						
Single-family owner	20,292	68,062	18,139		106,493	53.3%
Single-family rental	8,251	11,210	5,887		25,348	12.7%
Multifamily	16,334	33,988	12,801	4,750	67,873	34.0%
Total	44,877	113,260	36,827	4,750	199,714	100.0%
Percent	22.5%	56.7%	18.4%	2.4%	100.0%	
1996						
Single-family owner	25,103	93,029	23,328		141,460	49.5%
Single-family rental	11,242	18,207	6,938		36,387	12.7%
Multifamily	23,703	59,556	15,399	9,136	107,794	37.7%
Total	60,048	170,792	45,665	9,136	285,641	100.0%
Percent	21.0%	59.8%	16.0%	3.2%	100.0%	
1997						
Single-family owner	23,909	91,400	20,825		136,134	45.9%
Single-family rental	9,169	15,290	5,399		29,858	10.1%
Multifamily	27,522	80,069	13,294	9,488	130,373	44.0%
Total	60,600	186,759	39,518	9,488	296,365	100.0%
Percent	20.4%	63.0%	13.3%	3.2%	100.0%	

* Low-income rental units in multifamily properties where at least 20 percent of the units are affordable to families whose incomes are 50 percent of area median income or less or where at least 40 percent of the units are affordable to families whose incomes are 60 percent of area median income or less, which do not otherwise qualify under the goal.

Table C.3

Freddie Mac's Special Affordable Purchases By Unit Affordability and Area Income, 1993-1997

Year of purchase and Type of unit	Very-Low Income Units in Low-Income Areas	Very-Low Income Units Outside Low-Income Areas	Other Low-Income Units in Low-Income Areas	Other Units Qualifying For Goal*	Total Units Qualifying For Goal	Percent
1993						
Single-family owner	14,689	79,181	20,935		114,805	75.2%
Single-family rental	7,426	13,612	8,365		29,403	19.3%
Multifamily	3,432	4,237	577	181	8,427	5.5%
Total	25,547	97,030	29,877	181	152,635	100.0%
Percent	16.7%	63.6%	19.6%	0.1%	100.0%	
1994						
Single-family owner	13,012	61,986	15,509		90,507	55.9%
Single-family rental	16,851	21,047	6,071		43,969	27.2%
Multifamily	12,550	11,546	2,124	1,216	27,436	16.9%
Total	42,413	94,579	23,704	1,216	161,912	100.0%
Percent	26.2%	58.4%	14.6%	0.8%	100.0%	
1995						
Single-family owner	10,801	45,782	11,138		67,721	55.1%
Single-family rental	6,018	10,705	4,697		21,420	17.4%
Multifamily	9,818	15,352	5,199	3,444	33,813	27.5%
Total	26,637	71,839	21,034	3,444	122,954	100.0%
Percent	21.7%	58.4%	17.1%	2.8%	100.0%	
1996						
Single-family owner	15,330	70,731	16,018		102,080	56.2%
Single-family rental	7,539	14,339	4,178		26,056	14.4%
Multifamily	12,634	28,301	8,760	3,675	53,370	29.4%
Total	35,503	113,371	28,956	3,675	181,506	100.0%
Percent	19.6%	62.5%	16.0%	2.0%	100.0%	
1997						
Single-family owner	15,742	66,656	15,449		97,847	54.7%
Single-family rental	7,469	11,612	5,552		24,633	13.8%
Multifamily	16,131	28,789	8,133	3,203	56,256	31.5%
Total	39,342	107,057	29,134	3,203	178,736	100.0%
Percent	22.0%	59.9%	16.3%	1.8%	100.0%	

* Low-income rental units in multifamily properties where at least 20 percent of the units are affordable to families whose incomes are 50 percent of area median income or less or where at least 40 percent of the units are affordable to families whose incomes are 60 percent of area median income or less, which do not otherwise qualify under the goal.

Table C.1 also includes, for comparison purposes, comparable figures for 1993, 1994, and 1995, calculated according to the counting conventions of the 1995 Final Rule that became applicable in 1996. Each GSEs' percentages in 1996, 1997, and 1998 exceeded their percentages in any of the three preceding years.

The Fannie Mae figures presented above are smaller than the corresponding figures presented by Fannie Mae in its Annual Housing Activity Reports to HUD by approximately 2 percentage points in both 1996 and 1997 and 1.3 percentage points in 1998. The difference largely reflects HUD-Fannie Mae differences in application of counting rules relating to counting of seasoned loans for purposes of this goal. In particular, the tabulations reflect inclusion of seasoned loan purchases in the denominator in calculating performance under the Special Affordable goal, as discussed in Preamble section II(B)(6)(c) on the Seasoned Mortgage Loan Purchases "Recycling" Requirement. Freddie Mac's Annual Housing Activity Report figures for this goal differ from the figures presented above by 0.1 percentage point, reflecting minor differences in application of counting rules.

Since 1996 each GSE has been subject to an annual subgoal for multifamily Special Affordable mortgage purchases, established as 0.8 percent of the dollar volume of single-family and multifamily mortgages purchased by the respective GSE in 1994. Fannie Mae's subgoal was $1.29 billion and Freddie Mac's subgoal was $988 million for each year. Fannie Mae surpassed the subgoal by $1.08 billion, $1.90 billion, and $2.24 billion in 1996, 1997, and 1998, respectively, while Freddie Mac surpassed the subgoal by $18 million, $220 million, and $1.70 billion. Table C.1 includes these figures, and they are depicted graphically in Figure C.2.

b. Characteristics of Special Affordable Purchases

The following analysis presents information on the composition of the GSEs' Special Affordable purchases according to area income, unit affordability, tenure of unit and property type (single- or multifamily).

Increased reliance on multifamily housing to meet goal. Tables C.2 and C.3 show that both GSEs have increasingly relied on multifamily housing units to meet the special affordable goal since 1993. Fannie Mae's multifamily purchases represented 44 percent of all purchases qualifying for the goal in 1997, compared with 28.1 percent in 1993. Freddie Mac's multifamily purchases represented 31.5 percent of all purchases qualifying for the goal in 1997, compared to 5.5 percent in 1993. The trends for both GSEs were steadily upward throughout the five-year period.

The other two housing categories—single-family owner and single-family rental—both exhibited downward trends for both GSEs. In 1997 Fannie Mae's single-family owner units qualifying for the goal represented 45.9 percent of all qualifying units, and Fannie Mae's single-family rental units were 10.0 percent of all qualifying units. Freddie Mac's single-family owner units qualifying for the goal represented 54.7 percent of all qualifying units, and Freddie Mac's single-family rental units were 13.8 percent of all qualifying units.

Reliance on household relative to area characteristics to meet goal. Tables C.2 and C.3 also show the allocation of units qualifying for the goal as related to the family income and area median income criteria in the goal definition. Very-low-income families (shown in the two leftmost columns in the tables) accounted for 83.4 percent of Fannie Mae's units qualifying under the goal in 1997, compared to 80.2 percent in 1993. For Freddie Mac, very-low-income families accounted for 81.0 percent of units qualifying under the goal in 1997 and 80.3 percent in 1993. In contrast, mortgage purchases from low-income areas (shown in the first and third columns in the tables) accounted for 33.7 percent of Fannie Mae's units qualifying under the goal in 1997, compared to 36.8 percent in 1993. The corresponding percentages for Freddie Mac were 38.3 percent in 1997 and 36.3 percent in 1993. Thus given the definition of special affordable housing in terms of household and area income characteristics, both GSEs have consistently relied substantially more on low-income characteristics of households than low-income characteristics of census tracts to meet this goal.

c. GSEs' Performance Relative to Market

Section E in Appendix A uses HMDA data with GSE loan-level data for home purchase mortgages on single-family owner-occupied properties in metropolitan areas to compare the GSEs' performance in special affordable lending to the performance of depositories and other lenders in the conventional conforming market. The main findings are: (a) both GSEs lag depositories and the overall market in providing mortgage funds for very low-income and other special affordable borrowers; and (b) the performance of Freddie Mac was particularly weak compared to Fannie Mae, the depositories, and the overall market. For example, between 1996 and 1998, special affordable borrowers accounted for 9.8 percent of the home loans purchased by Freddie Mac, 11.9 percent of Fannie Mae's purchases, 16.7 percent of home loans originated and retained by depositories, and 15.3 percent of all home loans originated in the conventional conforming market (see Table A.3 in Appendix A). While Freddie Mac has improved its performance, it has not closed the gap between its performance and that of the overall market. In 1992, special affordable loans accounted for 6.5 percent of Freddie Mac's purchases and 10.4 percent of market originations, for a "Freddie-Mac-to-market" ratio of 0.63. By 1998, that ratio had increased only to 0.73 (11.3 percent versus 15.5 percent). Thus, there is room for Freddie Mac to improve its purchases of home loans that qualify for the special affordable goals.

Section G in Appendix A discusses the role of the GSEs both in the overall special affordable market and in the different segments (single-family owner, single-family rental, and multifamily rental) of the special affordable market. The GSEs' special affordable purchases have accounted for 24 percent of all special affordable owner and rental units that were financed in the conventional conforming market during 1997. The GSEs' 24-percent share of the special affordable market was approximately three-fifths of their 39-percent share of the overall market. Even in the owner market, where the GSEs account for 50 percent of the market, their share of the special affordable market was only 35 percent. This analysis suggests that the GSEs are not leading the single-family market in purchasing loans that qualify for the Special Affordable Goal. There is room for the GSEs to improve their performance in purchasing affordable loans at the lower-income end of the market.

3. National Housing Needs of Low-Income Families in Low-Income Areas and Very-Low-Income Families

This discussion concentrates on very-low-income families with the greatest needs. It complements Section C of Appendix A, which presents detailed analyses of housing problems and demographic trends for lower-income families which are relevant to the issue addressed in this part of Appendix C.

Data from the 1995 American Housing Survey demonstrate that housing problems and needs for affordable housing continue to be more pressing in the lowest-income categories than among moderate-income families, as established in HUD's analysis for the 1995 Final Rule. Table C.4 displays figures on several types of housing problems—high housing costs relative to income, physical housing defects, and crowding—for both owners and renters. Figures are presented for households experiencing multiple (two or more) of these problems as well as households experiencing a severe degree of either cost burden or physical problems. Housing problems in 1995 were much more frequent for the lowest-income groups.[2] Incidence of problems is shown for households in the income range covered by the special affordable goal, as well as for higher income households.

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[2] Tabulations of the 1995 American Housing Survey by HUD's Office of Policy Development and Research. The results in the table categorize renters reporting housing assistance as having no housing problems.

Table C.4

Incidence of Housing Problems by Household Income, 1995

	Household Income as Percent of Area Median Income			
	0-60%	61-80%	81-100%	> 100%
Renter Households (Thousands)				
Total	17,428	4,579	3,896	8,246
Rent Burden > 50% of Income	6,056	100	25	5
31-50%	5,385	1,299	482	219
Severely Inadequate Housing	587	60	68	134
Moderately Inadequate	1,415	290	197	376
Crowded	1,282	159	99	133
Multiple Problems*	2,022	75	42	34
Priority Problems**	5,492	160	94	139
As Percent of Total				
Rent Burden > 50% of Income	34.7%	2.2%	0.6%	0.1%
31-50%	30.9%	28.4%	12.4%	2.7%
Severely Inadequate Housing	3.4%	1.3%	1.7%	1.6%
Moderately Inadequate	8.1%	6.3%	5.1%	4.6%
Crowded	7.4%	3.5%	2.5%	1.6%
Multiple Problems*	11.6%	1.6%	1.1%	0.4%
Priority Problems**	31.5%	3.5%	2.4%	1.7%
Owner Households (Thousands)				
Total	19,366	7,758	6,492	29,927
Cost Burden > 50% of Income	4,177	437	147	152
31-50%	4,027	1,473	913	1,639
Severely Inadequate Housing	536	123	101	412
Moderately Inadequate	995	266	205	604
Crowded	299	157	95	329
Multiple Problems*	753	130	79	106
Priority Problems**	4,602	550	247	559
As Percent of Total				
Cost Burden > 50% of Income	21.6%	5.6%	2.3%	0.5%
31-50%	20.8%	19.0%	14.1%	5.5%
Severely Inadequate Housing	2.8%	1.6%	1.6%	1.4%
Moderately Inadequate	5.1%	3.4%	3.2%	2.0%
Crowded	1.5%	2.0%	1.5%	1.1%
Multiple Problems*	3.9%	1.7%	1.2%	0.4%
Priority Problems**	23.8%	7.1%	3.8%	1.9%

* Two or three of the following: housing costs >30%, severe or moderate physical problems, and overcrowding.
** Housing costs >50% of income or severely inadequate housing among unassisted households.
Note: Incomes of renter households are estimated based on rents, adjusted for number of bedrooms.

This analysis shows that priority problems of severe cost burden or severely inadequate housing are noticeably concentrated among renters and owners with incomes below 60 percent of area median income (31.5 percent of renter households and 23.8 percent of owner households). In contrast, 3.5 percent of renter households and 7.1 percent of owner households with incomes above 60 percent of area median income, up to 80 percent of area median income, had priority problems. For more than two-thirds of the very-low-income renter families with worst case problems, the only problem was affordability—they do not have problems with housing adequacy or crowding.

4. The Ability of the Enterprises to Lead The Industry in Making Mortgage Credit Available for Low-Income and Very-Low-Income Families

The discussion of the ability of Fannie Mae and Freddie Mac to lead the industry in Section C.5 of Appendix A is relevant to this factor—the GSEs' roles in the owner and rental markets, their role in establishing widely-applied underwriting standards, their role in the development of new technology for mortgage origination, their strong staff resources, and their financial strength. Additional analysis on the potential ability of the enterprises to lead the industry in the low- and very-low-income market appears below—in Section D.2 generally, and in Section D.3 with respect to multifamily housing.

5. The Need To Maintain the Sound Financial Condition of the GSEs

HUD has undertaken a separate, detailed economic analysis of this proposed rule, which includes consideration of (a) the financial returns that the GSEs earn on low- and moderate-income loans and (b) the financial safety and soundness implications of the housing goals. Based on this economic analysis and discussions with the Office of Federal Housing Enterprise Oversight, HUD concludes that the proposed goals raise minimal, if any, safety and soundness concerns.

D. Determination of the Goal

Several considerations, many of which are reviewed in Appendixes A and B and in previous sections of this Appendix, led to the determination of the Special Affordable Housing Goal.

1. Severe Housing Problems

The data presented in Section C.3 demonstrate that housing problems and needs for affordable housing are much more pressing in the lowest-income categories than among moderate-income families. The high incidence of severe problems among the lowest-income renters reflects severe shortages of units affordable to those renters. At incomes below 60 percent of area median, 34.7 percent of renters and 21.6 percent of owners pay more than 50 percent of their income for housing. In this same income range, 65.6 percent of renters and 42.4 percent of owners pay more than 30 percent of their income for housing. 31.5 percent of renters and 23.8 percent of owners exhibit "priority problems", meaning housing costs over 50 percent of income or severely inadequate housing.

2. GSE Performance and the Market

a. GSEs' Single-Family Performance

The Special Affordable Housing Goal is designed, in part, to ensure that the GSEs maintain a consistent focus on serving the very low-income portion of the housing market where housing needs are greatest. The bulk of the GSEs' low- and moderate-income mortgage purchases are for the higher-income portion of this category. The lowest-income borrowers account for a relatively small percentage of each GSE's below-median income purchases—25.9 percent of Freddie Mac's 1998 single-family low-mod owner-occupied mortgage purchases financed homes for single-family homeowners with incomes below 60 percent of area median; the corresponding share was 25.6 percent for Fannie Mae in 1998.

b. Single-Family Market Comparisons in Metropolitan Areas

Section C compared the GSEs' performance in special affordable lending to the performance of depositories and other lenders in the conventional conforming market for single-family home loans. The analysis showed that both GSEs lag depositories and the overall market in providing mortgage funds for very low-income and other special affordable borrowers; and that the performance of Freddie Mac was particularly weak compared to Fannie Mae, the depositories, and the overall market. Figure C.3 illustrates these findings. In 1998, special affordable borrowers accounted for 11.3 percent of the home loans purchased by Freddie Mac, 13.2 percent of Fannie Mae's purchases, 17.7 percent of home loans originated and retained by depositories, and 15.5 percent of all home loans originated in the conventional conforming market. Section C also notes that Freddie Mac has improved its performance since 1992, but it has not made as much progress as Fannie Mae has in closing the gap between its performance and that of the overall market. Thus, there is room for both GSEs, but particularly Freddie Mac, to improve its purchases of home loans that qualify for the special affordable goals.

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Figure C.3

The Share Of GSE And Conventional Conforming Mortgages for Special Affordable Borrowers, 1997 and 1998

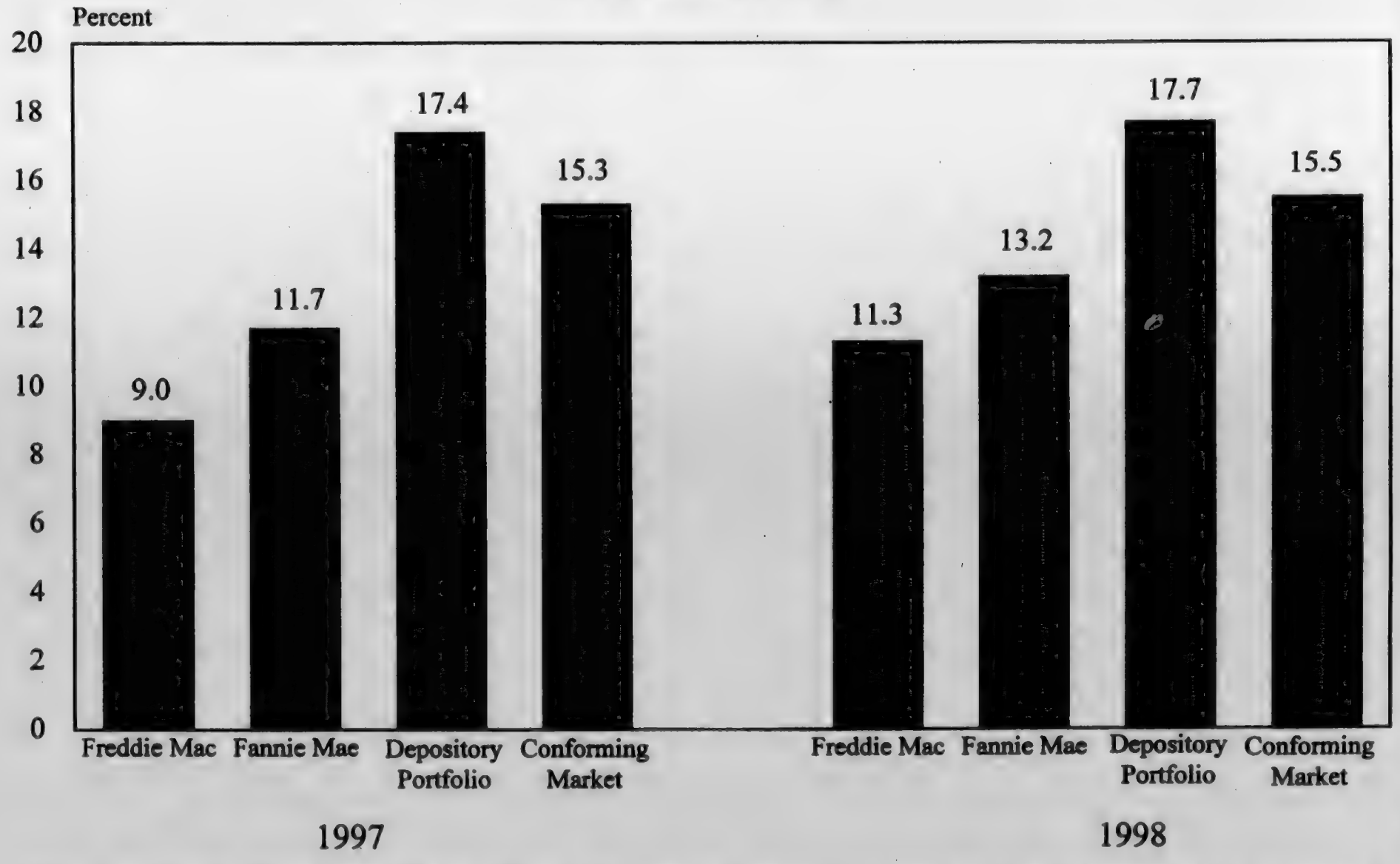

Source: Conforming market and depository data are from 1997 and 1998 HMDA; GSE data are from loan-level data reported to HUD. Data are for single-family home purchase loans in metropolitan areas. See Table A.4a for further explanation.

c. Overall Market Comparisons

Section C compared the GSEs' role in the overall market with their role in the special affordable market. The GSEs' purchases have provided financing for 2,893,046 dwelling units, which represented 39 percent of the 7,443,736 single-family and multifamily units that were financed in the conventional conforming market during 1997. However, in the special affordable part of the market, the 508,377 units that were financed by GSE purchases represented only 24 percent of the 2,158,750 dwelling units that were financed in the market. Thus, there appears to be ample room for the GSEs to improve their performance in the Special Affordable market.

3. Reasons for Increasing the Special Affordable Housing Goal

The reasons the Secretary is increasing the Special Affordable Goal are essentially the same as those given in Section H.4 of Appendix A for the Low- and Moderate-Income Goal. Although that discussion will not be repeated here, the main considerations are the following: Freddie Mac's re-entry into the multifamily market; the underlying strength of the primary mortgage market for lower-income families; the need for the GSEs, and particularly Freddie Mac, to improve their purchases of mortgages for lower-income families and their communities; the existence of several low-income market segments that would benefit from more active efforts by the GSEs; and the substantial profits and financial capacity of Fannie Mae and Freddie Mac. The Department's analysis shows that the GSEs are not leading the market in purchasing loans that qualify for the Special Affordable Goal. There are also plenty of opportunities for the GSEs to improve their performance in purchasing special affordable loans. The GSEs' accounted for only 24 percent of the special affordable market in 1997—a figure substantially below their 39-percent share of the overall market.

4. Multifamily Purchases—Further Analysis

The multifamily sector is especially important in the establishment of the special affordable housing goals for Fannie Mae and Freddie Mac because of the relatively high percentage of multifamily units meeting the special affordable goal as compared with single-family. In 1997, 57 percent of units backing Freddie Mac's multifamily acquisitions met the special affordable goal, representing 31 percent of units counted toward its special affordable goal, at a time when multifamily units represented only 8 percent of total annual purchase volume. Corresponding percentages for Fannie Mae were as follows: 54 percent of units backing multifamily acquisitions met the special affordable goal; multifamily represented 44 percent of units meeting the special affordable goal but only 13 percent of total purchase volume.[3]

Significant new developments in the multifamily mortgage market have occurred since the publication of the current version of the GSE Final Rule in December 1995, most notably the increased rate of debt securitization via Commercial Mortgage Backed Securities (CMBS) and a higher level of equity securitization by Real Estate Investment Trusts (REITs). Fannie Mae has played a role in establishing underwriting standards that have been widely emulated in the growth of the CMBS market. Freddie Mac has contributed to the growth and stability of the CMBS sector by acting as an investor.

Increased securitization of debt and equity interests in multifamily property present the GSEs with new challenges as well as new opportunities. The GSEs are currently experiencing a higher degree of secondary market competition than they did in 1995. At the same time, recent volatility in the CMBS market underlines the need for an ongoing GSE presence in the multifamily secondary market. The potential for an increased GSE presence is enhanced by virtue of the fact that an increasing proportion of multifamily mortgages are originated to secondary market standards.

Despite the expanded presence of the GSEs in the multifamily mortgage market and the rapid growth in multifamily securitization by means of CMBS, increased secondary market liquidity does not appear to have benefited all segments of the market equally. Small properties with 5–50 units appear to have been adversely affected by excessive borrowing costs as described in Appendix A. Another market segment that appears experiencing difficulty in obtaining mortgage credit consists of multifamily properties with significant rehabilitation needs. Properties that are more than 10 years old are typically classified as "C" or "D" properties, and are considered less attractive than newer properties by many lenders and investors

Context. As discussed above, in the 1995 Final Rule, the multifamily subgoal for the 1996–1999 period was set at 0.8 percent of the dollar value of each GSEs' respective 1994 origination volume, or $998 million for Freddie Mac and $1.29 billion for Fannie Mae. Freddie Mac exceeded the goal by a narrow margin in 1996 and more comfortably in 1997–1998. Fannie Mae has exceeded the goal by a wide margin in all three years.

The experience of the past two years suggests the following preliminary findings regarding the multifamily special affordable subgoal:

The goal has contributed toward a significantly increased presence by Freddie Mac in the multifamily market.

Fannie Mae's performance has surpassed the goal by such a wide margin that it can be reasonably inferred that the goal has little effect on their behavior.

- The current goal is out of date, as it is based on market conditions in 1993–94.
- The goal has remained at a fixed level, despite significant growth in the multifamily market and in the GSEs' administrative capabilities with regard to multifamily.
- Given that the GSEs have relatively large fixed costs in purchasing multifamily loans, the minimum cost method of meeting the goal involves purchasing a relatively small number of mortgages, each with a relatively large UPB. Thus the goal may provide the GSEs with an additional incentive to purchase mortgages on large properties.

HUD's proposed rule establishes the multifamily subgoal at 0.9 percent of the dollar volume of combined (single family and multifamily) 1998 mortgage purchases in calendar year 2000, and 1.0 percent in each of calendar years 2001–2003. This implies the following thresholds for the two GSEs:[4]

	2001–2003 (in billions)	2000 (in billions)
Fannie Mae	$3.31	$3.68
Freddie Mac	2.46	2.73

The proposed subgoal can be compared with Fannie Mae's and Freddie Mac's 1998 multifamily special affordable multifamily acquisition volumes of $3.5 billion and $2.7 billion, respectively.[5] A 1.0 percent dollar-based multifamily subgoal for 2001–2003 would sustain and likely increase the efforts of both GSEs in the multifamily mortgage market, with particular emphasis upon the special affordable segment.

HUD has identified three alternative approaches for specifying multifamily subgoals for the GSEs, as follows:

(1) Option One—Subgoal Based on Number of Units. In this approach, the multifamily special affordable subgoal would be expressed as a minimum number of units meeting the Special Affordable Housing Goal. A multifamily subgoal for 2001–2003 established at the level of the dollar-based subgoal defined above, divided by $22,953, which is the average of Fannie Mae's and Freddie Mac's ratios of unpaid principal balance to number of units in multifamily properties counted toward the Special Affordable Housing Goal in 1997 (as

[3] Source: HUD analysis of GSE loan-level data. Loans with missing data are excluded from the calculations of the special affordable proportions of multifamily and the multifamily proportion of special affordable.

[4] HUD has determined that the total dollar volume of the GSEs' combined (single and multifamily) mortgage purchases in 1998, measured in unpaid principal balance at acquisition, was as follows: Fannie Mae $367.6 billion; Freddie Mac $273.2 billion.

[5] HUD analysis of GSE loan-level data.

determined by HUD) would generate annual multifamily special affordable subgoals of 160,328 units for Fannie Mae and 118,939 units for Freddie Mac. These compare with Fannie Mae's multifamily special affordable multifamily acquisition volumes of 130,374 units in 1997 and 138,822 units in 1998, and Freddie Mac's performance of 56,255 units in 1997 and 120,776 units in 1998.[6] Such a multifamily subgoal for 2001–2003 would sustain and likely increase the efforts of both GSEs in the multifamily mortgage market, with particular emphasis upon the special affordable segment.[7]

(2) Option Two—Subgoal As A Percent of GSEs' Current Multifamily Mortgage Purchases. Another possible approach is to establish the special affordable multifamily subgoal as a minimum percentage of each GSE's current total dollar volume of multifamily mortgage purchases. For example, the subgoal level for 2001–2003 could be expressed as 58.0 percent of a GSE's multifamily dollar volume. The 58.0 percent threshold under this subgoal option compares with 1997 performance of 54.2 percent for Fannie Mae and 56.6 percent for Freddie Mac.[8] A 58.0 percent multifamily subgoal for 2001–2003 would sustain and likely increase the efforts of both GSEs in the special affordable segment of the multifamily mortgage market.[9]

(3) Option Three—Subgoal Based on Number of Mortgages Acquired. Because the GSEs incur relatively large fixed costs in purchasing multifamily mortgage loans, another alternative to the Special Affordable Multifamily Housing Subgoal would be to establish a subgoal that would be based on the number of mortgages acquired. In this approach, the Special Affordable multifamily subgoal would be expressed as a minimum number of each GSEs' total mortgage purchases. If all the units in the property securing the mortgage are not eligible for the Special Affordable Housing Goal, then subgoal performance would be pro-rated based on the number of qualifying units. In other words, if one mortgage secured a 100-unit property and 50 of the units qualified for the Special Affordable Housing Goal, then subgoal credit would be counted as one-half of a mortgage.[10]

A multifamily subgoal for 2001–2003 established at 0.035 percent of 1997 combined single-family and multifamily purchase dollar volume in number of mortgages acquired (as determined by HUD) would generate annual subgoals of 1,129 multifamily special affordable mortgages for Fannie Mae and 854 for Freddie Mac.[11] A 0.035 percent mortgage-based multifamily subgoal for 2001–2003 would sustain and likely increase the efforts of both GSEs in the multifamily mortgage market, with particular emphasis upon the special affordable segment.[12]

The preamble to this Proposed Rule includes a more complete analysis of these alternatives, with a request for public comments on the alternatives.

5. Conclusion

HUD has determined that the proposed Special Affordable Housing Goal addresses national housing needs within the income categories specified for this goal, while accounting for the GSEs' past performance in purchasing mortgages meeting the needs of very-low-income families and low-income families in low-income areas. HUD has also considered the size of the conventional mortgage market serving very-low-income families and low-income families in low-income areas. Moreover, HUD has considered the GSEs' ability to lead the industry as well as their financial condition. HUD has determined that a Special Affordable Housing Goal of 18 percent in 2000, and 20 percent in 2001–2003, is both necessary and achievable. HUD has also determined that a multifamily special affordable subgoal set at 0.9 percent of the dollar volume of combined (single family and multifamily) 1998 mortgage purchases in 2000, and 1.0 percent in 2001–2003, or one of the alternatives proposed here, is both necessary and achievable.

Appendix D—Estimating the Size of the Conventional Conforming Market for Each Housing Goal

A. Introduction

In establishing the three housing goals, the Secretary is required to assess, among a number of factors, the size of the conventional market for each goal. This Appendix explains HUD's methodology for estimating the size of the conventional market for each of the three housing goals. Following this introduction, Section B describes the main components of HUD's market-share model and identifies those parameters that have a large effect on the relative market shares. Sections C and D discuss two particularly important market parameters, the size of the multifamily market and the share of the single-family mortgage market accounted for by rental properties. With this as background, Section E provides a more systematic presentation of the model's equations and main assumptions. Sections F, G, and H report HUD's estimates for the Low- and Moderate-Income Goal, the Central Cities, Rural Areas, and other Underserved Areas Goal, and the Special Affordable Housing Goal, respectively. Finally, Section I examines the impact of higher FHA loan limits on the conventional market.

In developing this rule, HUD has carefully reviewed existing information on mortgage activity in order to understand the weakness of various data sources and has conducted sensitivity analyses to show the effects of alternative parameter assumptions. Data on the multifamily mortgage market from HUD's Property Owners and Managers' Survey (POMS), not available at the time published the 1995 GSE Final Rule, is utilized here. HUD is well aware of uncertainties with some of the data and much of this Appendix is spent discussing the effects of alternative assumptions about data parameters and presenting the results of an extensive set of sensitivity analyses.

In a critique of HUD's market share model, Blackley and Follain (1995, 1996) concluded that conceptually HUD had chosen a reasonable approach to determining the size of the mortgage market that qualifies for each of the three housing goals.[1] Blackley and Follain correctly note that the challenge lies in getting accurate estimates of the model's parameters.

This appendix reviews in some detail HUD's efforts to combine information from several mortgage market data bases to obtain reasonable values for the model's parameters. Numerous sensitivity analyses are performed in order to arrive at a set of reasonable market estimates.

The single-family market analysis in this appendix is based heavily on HMDA data for the years 1992 to 1998. The HMDA data for 1998 were not released until August 1999, which gave HUD little time to incorporate that data fully into the analyses reported in these Appendices; thus, the discussion below will often focus on the year 1997, with any differences from 1998 briefly noted. However, it should be noted that the year 1997 represents a more typical mortgage market than the heavy refinancing year of 1998. Still, important shifts in mortgage funding that occurred during 1998 will be highlighted in order to offer as complete and updated analysis as possible.

B. Overview of HUD's Market Share Methodology

1. Definition

The size of the market for each housing goal is one of the factors that the Secretary

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[6] Source: HUD analysis of GSE loan-level data. Fannie Mae's 1998 performance figures may not fully reflect its multifamily special affordable acquisition capabilities because Fannie Mae did not obtain data necessary to qualify many of their multifamily seasoned loan purchases for the special affordable goal.

[7] If this option were selected, appropriate subgoal thresholds for the year 2000 transition period could be developed.

[8] Source: HUD analysis of GSE loan-level data. 1997 figures are used here because the share of Fannie Mae's multifamily acquisitions meeting the special affordable goal is unusually low in 1998 as noted above because Fannie Mae did not verify whether proceeds of seasoned multifamily loans it acquired were "recycled" into new lending per FHEFSSA requirements.

[9] If this option were selected, appropriate subgoal thresholds for the year 2000 transition period could be developed.

[10] A similar pro-rating technique is specified in HUD's regulations at 24 CFR, Section 81.14(d)(2), for purposes of calculating credit toward the multifamily special affordable subgoal. Specifically, the mortgage loan amount is multiplied by the proportion of units qualifying toward the special affordable goal.

[11] HUD has determined that the number of mortgage loans purchased by the GSEs in 1998 was as follows: Fannie Mae—3,226,786; Freddie Mac—2,439,194.

[12] If this option were selected, appropriate subgoal thresholds for the year 2000 transition period could be developed.

[1] Dixie M. Blackley and James R. Follain, "A Critique of the Methodology Used to Determine Affordable Housing Goals for the Government Sponsored Housing Enterprises," unpublished report prepared for Office of Policy Development and Research, Department of Housing and Urban Development, October 1995; and "HUD's Market Share Methodology and its Housing Goals for the Government Sponsored Enterprises," unpublished paper, March 1996.

is required to consider when setting the level of each housing goal.[2] Using the Low- and Moderate-Income Housing Goal as an example, the market share in a particular year is defined as follows:

Low- and Moderate-Income Share of Market: The number of dwelling units financed by the primary mortgage market in a particular calendar year that are occupied by (or affordable to, in the case of rental units) families with incomes equal to or less than the area median income *divided by* the total number of dwelling units financed in the conforming conventional primary mortgage market.

There are three important aspects to this definition. First, the market is defined in terms of "dwelling units" rather than, for example, "value of mortgages" or "number of properties." Second, the units are "financed" units rather than the entire stock of all mortgaged dwelling units; that is, the market-share concept is based on the mortgage flow in a particular year, which will be smaller than total outstanding mortgage debt. Third, the low- and moderate-income market is expressed relative to the overall conforming conventional market, which is the relevant market for the GSEs.[3] The low- and moderate-income market is defined as a percentage of the conforming market; this percentage approach maintains consistency with the method for computing each GSE's performance under the Low- and Moderate-Income Goal (that is, the number of low- and moderate-income dwelling units financed by GSE mortgage purchases relative to the overall number of dwelling units financed by GSE mortgage purchases).

2. Three-Step Procedure

Ideally, computing the low- and moderate-income market share would be straightforward, consisting of three steps:

(Step 1) Projecting the market shares of the four major property types included in the conventional conforming mortgage market:
- (a) Single-family owner-occupied dwelling units (SF–O units);
- (b) Rental units in 2–4 unit properties where the owner occupies one unit (SF 2–4 units);[4]
- (c) Rental units in one-to-four unit investor-owned properties (SF Investor units); and,
- (d) Rental units in multifamily (5 or more units) properties (MF units).[5]

(Step 2) Projecting the "goal percentage" for each of the above four property types (for example, the "Low- and Moderate-Income Goal percentage for single-family owner-occupied properties" is the percentage of those dwelling units financed by mortgages in a particular year that are occupied by households with incomes below the area median).

(Step 3) Multiplying the four percentages in (2) by their corresponding market shares in (1), and summing the results to arrive at an estimate of the overall share of dwelling units financed by mortgages that are occupied by low- and moderate-income families.

The four property types are analyzed separately because of their differences in low- and moderate-income occupancy. Rental properties have substantially higher percentages of low- and moderate-income occupants than owner-occupied properties. This can be seen by the following illustration of Step 3's basic formula for calculating the size of the low- and moderate-income market:[6]

Property type	(Step 1) share of market (percent)	(Step 2) low-mod share (percent)	(Step 3) multiply (1) x (2) (percent)
(a) SF–0	71.1	40.0	28.4
(b) SF 2–4	2.0	90.0	1.8
(c) SF Investor	10.7	90.0	9.6
(d) MF	16.2	90.0	14.6
Total Market	100.0		54.4

In this example, low- and moderate-income dwelling units are estimated to account for 54 percent of the total number of dwelling units financed in the conforming mortgage market. To examine the other housing goals, the "goal percentages" in Step 2 would be changed and the new "goal percentages" would be multiplied by Step 1's property distribution, which remains constant. For example, the Central Cities, Rural Areas, and Other Underserved Areas Goal[7] would be derived as follows under one set of assumptions:

Property Type	(Step 1) share of market (percent)	(Step 2) underserved area share (percent)	(Step 3) multiply (1) x (2) (percent)
(a) SF–0	71.1	25.0	17.8
(b) SF 2–4	2.0	42.5	0.9
(c) SF Investor	10.7	42.5	4.5
(d) MF	16.2	48.0	7.8
Total Market	100.0		31.0

In this example, units eligible under the Underserved Areas Goal are estimated to account for 31 percent of the total number of dwelling units financed in the conforming mortgage market.

3. Data Issues

Unfortunately, complete and consistent mortgage data are not readily available for carrying out the above three steps. A single data set for calculating either the property shares or the housing goal percentages does not exist. However, there are several major data bases that provide a wealth of useful information on the mortgage market. HUD combined information from the following

[2] Sections 1332(b)(4), 1333(a)(2), and 1334(b)(4).

[3] So-called "jumbo" mortgages, greater than $227,150 in 1998 for 1-unit properties, are excluded in defining the conforming market. There is some overlap of loans eligible for purchase by the GSEs with loans insured by the FHA and guaranteed by the Veterans Administration.

[4] The owner of the SF 2–4 property is counted in (a).

[5] Property types (b), (c), and (d) consist of rental units. Property types (b) and (c) must sometimes be combined due to data limitations; in this case, they are referred to as "single-family rental units" (SF–R units).

[6] The property shares and low-mod percentages reported here are based on one set of model assumptions; other sets of assumptions are discussed in Section E.

[7] This goal will be referred to as the "Underserved Areas Goal".

sources: the Home Mortgage Disclosure Act (HMDA) reports, the American Housing Survey (AHS), HUD's Survey of Mortgage Lending Activity (SMLA), Property Owners and Managers Survey (POMS) and the Census Bureau's Residential Finance Survey (RFS). In addition, information on the mortgage market was obtained from the Mortgage Bankers Association, Fannie Mae, Freddie Mac and other organizations.

Property Shares. To derive the property shares, HUD started with forecasts of single-family mortgage originations (expressed in dollars). These forecasts, which are available from the GSEs and industry groups such as the Mortgage Bankers Association, are based on HUD's SMLA. The SMLA does not provide information on conforming mortgages, on owner versus renter mortgages, or on the number of units financed. Thus, to estimate the number of single-family units financed in the conforming conventional market, HUD had to project certain market parameters based on its judgment about the reliability of different data sources. Sections D and E report HUD's findings related to the single-family market.

Total market originations are obtained by adding multifamily originations to the single-family estimate. Because of the wide range of estimates available, the size of the multifamily mortgage market turned out to be one of the most controversial issues raised during the 1995 rule-making process. In 1997, HMDA reported about $20.0 billion in multifamily originations while the SMLA reported more than double that amount ($47.9 billion). Because most renters qualify under the Low- and Moderate-Income Goal, the chosen market size for multifamily can have a substantial effect on the overall estimate of the low- and moderate-income market (as well as on the estimate of the special affordable market). Thus, it is important to consider estimates of the size of the multifamily market in some detail, as Section C does. In addition, given the uncertainty surrounding estimates of the multifamily mortgage market, it is important to consider a range of market estimates, as Sections G–H do.

Goal Percentages. To derive the goal percentages for each property type, HUD relied heavily on HMDA, AHS, and POMS data. For single-family owner originations, HMDA provides comprehensive information on borrower incomes and census tract locations for metropolitan areas. Unfortunately, it provides no information on the incomes of renters living in mortgaged properties (either single-family or multifamily) or on the rents (and therefore the affordability) of rental units in mortgaged properties. The AHS, however, does provide a wealth of information on rents and the affordability of the outstanding stock of single-family and multifamily rental properties. An important issue here concerns whether rent data for the stock of rental properties can serve as a proxy for rents on newly-mortgaged rental properties. The POMS data, which were not available during the 1995 rule-making process, are used below to examine the rents of newly-mortgaged rental properties; thus, the POMS data supplements the AHS data. The data base issues as well as other technical issues related to the goal percentages (such as the need to consider a range of mortgage market environments) are discussed in Sections F, G, and H, which present the market share estimates for the Low- and Moderate-Income Goal, the Underserved Areas Goal, and the Special Affordable Goal, respectively.

4. Conclusions

HUD is using the same basic methodology for estimating market shares that it used during 1995. As demonstrated in the remainder of this Appendix, HUD has attempted to reduce the range of uncertainty around its market estimates by carefully reviewing all known major mortgage data sources and by conducting numerous sensitivity analyses to show the effects of alternative assumptions. Sections C, D, and E report findings related to the property share distributions called for in Step 1, while Sections F, G, and H report findings related to the goal-specific market parameters called for in Step 2. These latter sections also report the overall market estimates for each housing goal calculated in Step 3.

During the 1995 rule-making process, HUD contracted with the Urban Institute to comment on the reasonableness of its market share approach and to conduct analyses related to specific comments received from the public about its market share methodology. HUD continues to rely on several findings from the Urban Institute reports and they are again discussed throughout this Appendix. Since 1995, HUD has continued to examine the reliability of data sources about mortgage activity. HUD's Office of Policy Development and Research has published several studies concerning the reliability of HMDA data.[8] In addition, since 1995, HUD has gathered additional information regarding the mortgages for multifamily and single-family rental properties through the Property Owners and Managers Survey (POMS). Findings regarding the magnitude of multifamily originations, as well as the rent and affordability characteristics of mortgages backing both single-family and multifamily rental properties have been made by combining data from POMS with that from internal Census Bureau files from the 1995 American Housing Survey-National Sample. The results of these more recent analyses will be presented in the following sections.

C. Size of the Conventional Multifamily Mortgage Market

This section derives projections of conventional multifamily mortgage origination volume.[9]

The multifamily sector is especially important in the establishment of housing goals for Fannie Mae and Freddie Mac because multifamily properties are overwhelmingly occupied by low- and moderate-income families. For example, in 1997, 13 percent of units financed by Fannie Mae were multifamily, but 90 percent of those units met the Low- and Moderate-Income Goal, accounting for 27 percent of all of Fannie Mae's low- and moderate-income purchases for that year.[10] Multifamily acquisitions are also of strategic significance with regard to the Special Affordable Goal. In 1997, 57 percent of units backing Freddie Mac's multifamily acquisitions met the Special Affordable Goal, representing 31 percent of units counted toward its Special Affordable Goal, at a time when multifamily units represented only 8 percent of total annual purchase volume.[11]

This discussion is organized as follows: Section 1 identifies and evaluates available historical data resources. Section 2 undertakes an analysis of estimated conforming multifamily origination volume for 1995 through 1998. Section 3 establishes projections regarding conventional multifamily origination volume for the year 2000 and beyond.

1. Conventional multifamily origination volumes, 1987–1997

Two of the principal sources of evidence on conventional multifamily origination volumes are Home Mortgage Disclosure Act data base (HMDA) and the HUD Survey of Mortgage Lending Activity (SMLA).

a. Survey of Mortgage Lending Activity (SMLA)

The data that enter into SMLA are compiled by HUD from source materials generated in various ways from the different institutional types of mortgage lenders. Data on savings associations are collected for HUD by the Office of Thrift Supervision; these data cover all thrifts, not a sample. Mortgage company and life insurance company data are collected through sample surveys conducted by the Mortgage Bankers Association of America and the American Council of Life Insurance, respectively. Data on commercial banks and mutual savings banks are collected through sample surveys conducted by the American Bankers Association. The Federal credit agencies and State credit agencies report their data directly to HUD. Local credit agency data are collected by HUD staff from a publication that lists their mortgage financing activities.

b. Home Mortgage Disclosure Act (HMDA)

HMDA data are collected by lending institutions and reported to their respective regulators as required by law. HMDA was

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[8] See Randall M. Scheessele, *HMDA Coverage of the Mortgage Market*, Housing Finance Working Paper No. 7, Office of Policy Development and Research, Department of Housing and Urban Development, July 1998; and 1998 *HMDA Highlights*, Housing Finance Working Paper No. HF–009, Office of Policy Development and Research, Department of Housing and Urban Development, October 1999.

[9] Because they are not counted toward the GSE housing goals (with the exception of a relatively small risk-sharing program), FHA mortgages are excluded from this analysis. Other categories of mortgages, considering the type of insurer, servicer, or holder, do not tend to have mortgage characteristics that appear to differ substantially from the multifamily mortgages that are purchased by Fannie Mae and Freddie Mac. There is thus no particular basis for excluding them.

[10] Corresponding percentages for Freddie Mac were 95 percent and 19 percent. Missing data are excluded from these calculations. Source: Annual Housing Activity Reports, 1997.

[11] Corresponding percentages for Fannie Mae were 54 percent and 44 percent.

enacted as a mechanism to permit the public to determine locations of properties on which local depository institutions make mortgage loans, "to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. . . ." (12 USC 2801). HMDA reporting requirements generally apply to all depository lenders with more than $29 million in total assets and which have offices in Metropolitan Statistical Areas. Reporting is generally required of other mortgage lending institutions (e.g. mortgage bankers) originating at least 100 home purchase loans annually provided that home purchase loan originations exceed 10 percent of total loans. Reporting is required for all loans closed in the name of the lending institution and loans approved and later acquired by the lending institution, including multifamily loans. Thus, the HMDA data base concentrates on lending by depository institutions in metropolitan areas but, unlike SMLA and RFS, it is not a sample survey; it is intended to include loan-level data on all loans made by the institutions that are required to file reports.

Table D.1 presents figures for 1987 through 1997 for SMLA and HMDA.[12] The main question raised by this comparison is why SMLA and HMDA report such different multifamily estimates. Part of the problem arises from double-counting of originations by mortgage banks in the American Bankers Association (ABA) and Mortgage Bankers Association (MBA) surveys conducted as part of SMLA. Originations by mortgage banks which are affiliated with commercial banks may be counted in both surveys.

There is also evidence that undercounting of multifamily originations in HMDA contributes to observed discrepancies between HMDA and SMLA. For example, less than half of Fannie Mae's 1997 acquisition volume of mortgages originated in 1997 are reported in HMDA. HMDA reports that Freddie Mac purchased 14 loans from mortgage banks in 1997, yet in loan-level data provided to HUD, Freddie Mac indicates that purchased 453 loans from mortgage bankers.[13] Further evidence of the poor quality of the HMDA multifamily data is the fact that it reported that in 1997 a larger volume of multifamily loans were sold to Freddie Mac than to Fannie Mae, when in fact Freddie Mac's purchases were less than that of Fannie Mae's, based on loan-level data provided by the GSEs to HUD.

[12] The comparison between SMLA and HMDA is provided only through 1997 because 1998 SMLA data were not available as of the time of this writing.

[13] Some of loans in the GSE data may have been originated prior to 1997, and therefore not included in 1997 HMDA totals. However, because mortgage banks ordinarily do not hold mortgages in portfolio, it is implausible that a majority of Freddie Mac's purchases from mortgage banks were originated prior to 1997.

Table D.1

Conventional Multifamily Market Estimates
(billions of dollars)

Year	SMLA	HMDA
1987	38.3	
1988	35.2	
1989	30.2	
1990	30.1	
1991	24.6	
1992	25.2	10.2
1993	30.0	12.8
1994	31.7	14.8
1995	37.9	12.8
1996	43.7	16.0
1997	44.6	19.5

Table D.2

Comparison of SMLA and HMDA Figures, 1997
Conventional Multifamily Originations
(millions of dollars)

Type of Lender	SMLA	HMDA
Commercial Banks	$ 24,570	$ 10,766
Savings & Loans; Multifamily Savings Bank	$ 7,164	$ 7,009
Credit Unions	$ -	$ 27
Life Insurance Companies	$ 1,407	$ -
Pension Funds (incl. State & Local Gov't)	$ 1,063	$ -
Mortgage Companies	$ 9,134	$ 1,746
Federal Credit Agencies	$ 408	$ -
State and Local Gov't Credit Agencies	$ 840	$ -
TOTAL	$ 44,586	$ 19,548

(Totals may not add due to rounding.)

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In addition, the HMDA data base does not cover a number of important categories of multifamily lenders such as life insurance companies and State housing finance agencies, providing another reason that the HMDA data understates the size of the multifamily market.

With this in mind, we proceed to an examination of origination volumes reported by these two data sources by type of lender. Table D.2 shows the basic figures. The columns headed "SMLA" and "HMDA" show aggregate dollar volumes of loan originations by category of originator in 1997.

In 1995, the Urban Institute conducted extensive analysis to address the issue of discrepancies between HMDA and SMLA. The researchers found that the 1993 SMLA multifamily figure ($30 billion in conventional originations) was too high, chiefly because of upward bias in the commercial bank originations figure, and the HMDA estimate ($12.8 billion) was too low for a variety of reasons including the omission of some categories of lenders.[14]

2. Alternative Measures

The inconsistencies between SMLA and HMDA underscore the importance of finding other ways to measure the size of the conventional multifamily market. The remainder of this discussion analyzes alternative measures based on (a) analysis of the HUD Property Owners and Managers Survey (POMS); (b) a statistical model developed by Urban Institute researchers; and (c) combining data from a variety of sources in a manner that avoids double-counting.

a. HUD Property Owners and Managers Survey (POMS)

HUD's analysis of data in the HUD Property Owners and Managers Survey (POMS) yields an estimated size of the 1995 multifamily origination market of approximately $37 billion. Analysis of this survey data is complicated by virtue of the fact that data on mortgage loan amount are missing for a large number of properties, requiring the imputation of missing values, and also because the mortgage loan amount is "topcoded" on some observations in order to protect the privacy of respondents. Such topcoding complicates the use of multiple regression techniques for imputation of missing values. In order to more effectively utilize regression techniques, HUD staff and contractors were sworn in as special employees of the Census Bureau in order to gain access to the internal Census file. The regression specification with the greatest explanatory power imputed missing loan amounts on the basis of number of units, region of the country, and a dummy variable for large properties with more than 1,000 units.[15] The use of this specification yielded an estimated total multifamily market size of $39.1 billion. After subtracting $2.3 billion in FHA-insured originations, this yields $36.7 billion as the estimated size of the conforming multifamily mortgage market in 1995, compared with the SMLA figure of $37.9 billion and the HMDA figure of $12.8 billion.[16] These results suggest that SMLA figures more accurately represent the overall size of the conventional multifamily mortgage market than does HMDA.

b. Urban Institute Statistical Model

In 1995, Urban Institute researchers developed a model to project multifamily origination volumes from 1992 forward, based on data from the 1991 Survey of Residential Finance.[17] They applied a statistical model of mortgage terminations based on Freddie Mac's experience from the mid-1970s to around 1990. While mortgage characteristics in 1990 are not wholly similar to the characteristics of these historical mortgages financed by Freddie Mac, nevertheless the prepayment propensities of contemporary mortgages may at least be approximated by the prepayment experience of these historical mortgages. The research methodology took account of the influence of interest rate fluctuations on prepayments of the historical mortgages; the projections assumed that prepayments are motivated mainly by property sales. Forecast total mortgage origination volume (including FHA) based on mortgages existing in 1991 were $40.8 billion for 1995. After removing FHA-insured loans totaling $2.3 billion, this method yields $38.5 billion as the estimated size of the conforming multifamily mortgage market. The latter figure is closer to the $36.7 billion POMS estimate and the $37.9 billion SMLA figure than to the $12.8 billion HMDA number.

Turning to 1997, the Urban Institute model generates a prediction of $47.2 billion. After removing $3.3 billion in FHA-insured originations, this generates an estimated conventional multifamily market figure of $43.9 billion, indicating that actual 1997 conventional origination volume may be closer to the $44.6 billion SMLA figure than to the $19.5 billion HMDA number cited earlier.

c. Alternative Approach

The increased availability of data on mortgages originated for the securitization market suggests yet another alternative method of deriving a rough estimate of the size of the conventional multifamily market as a further check on the accuracy of estimates derived from SMLA, HMDA, POMS, and the Urban Institute model. Total conventional multifamily volume can be estimated as the sum of (i) conventional nonagency (non-FHA, non-GSE) securitization; (ii) commercial bank originations less securitizations and secondary market sales or current-year and seasoned loans in portfolio; and (iii) GSE acquisitions. These data are from data published annually by *Inside MBS & ABS*, a trade newsletter; SMLA, and the loan-level data provided by the GSEs to the Department. Annual commercial bank securitization volume was calculated from a database published by *Commercial Mortgage Alert*, another trade newsletter.

Perhaps the most significant potential shortcoming of this approach is that nonagency securitization and GSE acquisitions include seasoned loans that are originated in years prior to those in which they are securitized or purchased on the secondary market. It is assumed here that seasoned loan transaction volume is relatively constant, in absolute volume, from year to year, which implies that the inclusion of seasoned loans will not bias the results. For example, some non-bank loans originated in 1996 will not be counted under the method proposed here until they are securitized, or purchased by a GSE, in 1997, but a similar volume of 1995 originations are not securitized or sold on the secondary market until 1996.[18] Hence the above technique generates a useful approximation to actual 1996 origination volume. A similar argument applies to other years.

It can also be argued that the SMLA commercial bank figure includes some originations by mortgage banks because of the double-counting issue discussed previously. It is assumed that these are removed when securitizations and secondary market sales are subtracted. This problem aside, the SMLA commercial bank figure appears to be derived using a new, and relatively carefully designed stratified survey, and therefore may be considered fairly reliable when used in the manner proposed here.

This method does not consider unsecuritized acquisitions by thrifts, life insurance companies, and other smaller entities in the multifamily mortgage market. In this regard, this method provides a conservative estimate of the size of the conventional multifamily market.

This method generates the following results for multifamily conventional origination volume for 1995–1997:

1995—$32.3 billion
1996—$37.2 billion
1997—$40.7 billion

The 1995 and 1997 estimates can be compared with the following estimates discussed previously.

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[14] Amy D. Crews, Robert M. Dunsky, and James R. Follain, "What We Know about Multifamily Mortgage Originations," report for the U.S. Department of Housing and Urban Development, October 1995.

[15] R^2, a measure of the degree to which the regression specification explains the variation in mortgage loan amount for observations where this field was populated, was 0.69 for this specification.

[16] FHA volume for 1995 is from *U.S. Housing Market Conditions*, 1998:4, Table 15.

[17] Robert Dunsky, James R. Follain, and Jan Ondrich, "An Alternative Methodology to Estimate the Volume of Multifamily Mortgage Originations," report for the U.S. Department of Housing and Urban Development, October 1995.

[18] Loans originated by banks in 1996 and then sold on the secondary market in 1997 would count only toward the 1996 total. Such loans would count toward the 1996 total because these loans would be counted in 1996 commercial bank originations less sales per the SMLA, since they are not sold in 1996. In 1997, when they are sold on the secondary market, such loans would be added to either the GSE acquisition or nonagency securitization totals, but would be subtracted from commercial bank originations less loan sales per the SMLA. The net effect of adding such loans to the GSE/nonagency categories and subtracting them from the commercial bank category is that they would not be counted toward the 1997 total.

	1995 (billions)	1997 (billions)
Urban Institute	$38.5	$47.2
POMS	36.7	
SMLA figure	37.9	44.6
HMDA	12.8	19.5
Alternative Approach	32.3	40.7

The market estimates based on securitization data are thus somewhat lower that those derived from the POMS and SMLA surveys and by the Urban Institute model, but are considerably higher than those derived from HMDA.

In discussions with HUD staff, Fannie Mae has put the estimated size of the 1997 conforming multifamily market at approximately $35–$40 billion, based upon a combination of various data sources. This range is slightly more conservative than the $40.7 million figure derived here using securitization, GSE, and ABA data.

Preliminary indications suggest that multifamily origination volume in 1998 is unusually high. Unfortunately, 1998 SMLA data were not yet available as of the time of this writing. If 1997 SMLA data are used as a proxy for 1998 multifamily commercial bank originations, and added to nonagency securitization and GSE acquisitions (which were available), a figure of $59.2 billion can be derived. In written comments provided to HUD in early 1999, in contrast, Fannie Mae asserted that 1998 multifamily volume was approximately $38–43 billion. In a meeting with HUD staff, Freddie Mac staff provided an estimate of $40–50 billion. Given the uncertainty regarding 1998 origination activity as of the time of this writing, an adjusted figure of $50 billion may be used on an interim basis until further data becomes available.[19]

3. Projections for 2000 and Beyond

Considerations influencing future multifamily origination volume include interest rates, property values, and construction starts. Taking all of these factors into consideration, Fannie Mae forecasts of a 10 percent decrease in 1999 relative to 1998 followed by a 2 percent increase in 2000, included in comments provided to the Department, appear reasonable. [20]

If these projections regarding 1999 and year 2000 origination volume are applied to the Department's of $50 billion estimate of 1998 conventional multifamily origination volume, a projection of $46 billion in year 2000 volume can be derived. Alternatively, if 1998 origination volume is in the $38–43 billion range indicated by Fannie Mae, year 2000 conventional origination volume is expected to lie in the $35–$40 billion range. On the other hand, if 1998 origination volume reached $59 billion, the high end of the estimates discussed previously, year 2000 volume could be as high as $54 billion. Turning to the Urban Institute statistical model discussed earlier, total multifamily originations (including FHA) are projected to reach $54 billion in 2000. After removing $2.9 billion in anticipated FHA-insured originations, this leaves projected conventional volume of $51.1 billion.[21]

Taking all of these estimates into consideration, year 2000 multifamily conventional origination volume is likely to lie in the $40–$52 billion range, with an expected "baseline" value of $46 billion.

Average Loan Amounts. Another issue regarding the multifamily mortgage market concerns average loan amount per unit. This ratio is used in converting year-2000 estimates of conventional multifamily lending volume as measured in dollars into a number of units financed. For this purpose, the ratio of total UPB to total units financed, rather than UPB on a "typical" multifamily unit, is the appropriate measure.

HUD anticipates overall conventional multifamily loan amount per unit of $30,000 in the year 2000 based on analysis of newly-originated GSE and non-GSE multifamily mortgage loans. GSE figures on loan amount per unit can be obtained from GSE loan-level data provided to HUD. Non-GSE loan amount per unit figures are from HUD's analysis of recently-originated conventional non-GSE multifamily mortgages. [22] Combining these sources, and calculating a weighted average based on relative market shares yields an estimated UPB per unit of $25,167 in 1997 and $29,506 in 1998. The increase from 1997–1998 appears to be largely due to a significant increase in appraised value per unit, which may be associated with the relatively low interest rates prevailing in 1998. [23] Because interest rates are not expected to fall significantly from 1998 levels at the time of this writing, it appears reasonable to project that year-2000 conventional multifamily average loan amount will continue at the 1998 level of $30,000 under HUD's baseline projection of $46 billion for the year 2000. Under the lower projection of $40 billion, an average loan amount of $29,000 is assumed.

D. Single-Family Owner and Rental Mortgage Market Shares

1. Available Data

As explained later, HUD's market model will also use projections of mortgage originations on single-family (1–4 unit) properties. Current data combine mortgage originations for the three different types of single-family properties: owner-occupied, one-unit properties (SF-O); 2–4 unit rental properties (SF 2–4); and 1–4 unit rental properties owned by investors (SF-Investor). The fact that the goal percentages are much higher for the two rental categories argues strongly for disaggregating single-family mortgage originations by property type. This section discusses available data for estimating the relative size of the single-family rental mortgage market.

The RFS and HMDA are the two data sources for estimating the relative size of the single-family rental market. The RFS, based on mortgages originated between 1987 and 1991, provides mortgage origination estimates for each of the three single-family property types. HMDA divides newly-originated single-family mortgages into two property types:[24]

(1) Owner-occupied originations, which include both SF-O and SF 2–4.

(2) Non-owner-occupied mortgage originations, which include SF Investor.

The percentage distributions of mortgages from these data sources are as follows:

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[19] The Urban Institute model predicts $50 billion for the *entire* 1998 multifamily market, including FHA.

[20] Multifamily interest rates increased in September, 1998 as part of a broader "flight to quality" precipitated by volatility in the world economy. While CMBS spreads were the most strongly affected, agency yield spreads also widened during this period. Further detail is provided in Appendix A. "Expectations may have begun to adjust downward even before the recent troubles in the financial markets" according to "The Multifamily Outlook," Jack Goodman, *Urban Land*, November 1998. p. 92. The CMBS market, of which approximately 25 percent is multifamily, is expected by Morgan Stanley to fall from approximately $80 billion in 1998 to $50 billion in 1999 ("A Cloudy '99 for Subprime Lenders, HELs, CMBS," *Mortgage Backed Securities Letter*, January 4, 1999, p. 1). Donaldson, Lufkin & Jenrette anticipates a decrease from $76 billion to $55 billion (March Hochstein, "Commercial Mortgage Bond Issuance Seen Falling," *American Banker*, December 22, 1998, p. 2). To the extent that multifamily origination volume falls in late 1999 associated with concerns regarding Y2K, the contraction in lending volume from 1998 to 1999 could exceed 10 percent. This possibility is taken into consideration here by providing a range of estimates for year 2000 origination volume as discussed below.

[21] Projected year 2000 FHA volume was calculated as the mean of 1997 and 1998 volume pursuant to discussions with staff in HUD's Housing Finance Analysis Division.

[22] Sample sizes on conventional non-GSE multifamily loans are 1,047 and 535 in 1997 and 1998, respectively.

[23] Commercial property values are inversely related to interest rates because a reduction in interest rates reduces the rate at which income streams are discounted.

[24] This ignores the HMDA loans with "non-applicable" for owner type.

	1997 HMDA (percent)			1987–91[1] RFS	HUD's 1995 Rule
	Purchase	Refinance	All		
SF-O	90.6	92.6	91.5	80.4	88.0
SF 2–4	(included above)			2.3	2.0
SF Investor	9.4	7.4	8.5	17.3	10.0
Total	100.0	100.0	100.0	100.0	100.0

[1] The year-by-year distributions from the RFS were not too different from the average distribution given in the text.

Because HMDA combines the first two categories, the comparisons between the data bases must necessarily focus on the SF investor category. According to HMDA, investors account for 9.4 percent of home purchase loans and 7.4 percent of refinance loans.[25] The RFS estimate of 17.3 percent is over twice HMDA's overall estimate of 8.5 percent. In its 1995 rule, HUD projected a 10.0 percent share for the SF investor group, only 1.5 percentage points higher than the 1997 HMDA figure. As discussed below, HUD's projection was probably quite conservative; however, given the uncertainty around the data, it is difficult to draw firm conclusions about the size of the single-family rental market.

2. Analysis of Investor Market Share

Blackley and Follain. During the 1995 rule-making, HUD asked the Urban Institute to analyze the differences between the RFS and HMDA investor shares and determine which was the more reasonable. The Urban Institute's analysis of this issue is contained in reports by Dixie Blackley and James Follain.[26] Blackley and Follain provide reasons why HMDA should be adjusted upward as well as reasons why the RFS should be adjusted downward. One reason for adjusting HMDA's investor share upward is that the investor share of mortgage originations as reported by HMDA is much lower than the investor share of the single-family rental stock as reported by the AHS.

Blackley and Follain also noted that the fact that investor loans prepay at a faster rate than other single-family loans suggests that the investor share of single-family mortgage originations should be higher not lower than the investor share of the single-family housing stock. Blackley and Follain (1995) conclude that "this brings into question the investor share based upon HMDA data" (page 15).

The RFS's investor share should be adjusted downward in part because the RFS assigns all vacant properties to the rental group, but some of these are likely intended for the owner market, especially among one-unit properties. Blackley and Follain's analysis of this issue suggests lowering the investor share from 17.3 percent to about 14–15 percent.

Finally, Blackley and Follain note that a conservative estimate of the SF investor share is advisable because of the difficulty of measuring the magnitudes of the various effects that they analyzed.[27] In their 1996 paper, they conclude that 12 percent is a reasonable estimate of the investor share of single-family mortgage originations.[28] Blackley and Follain caution that uncertainty exists around this estimate because of inadequate data.

3. Single-Family Market in Terms of Unit Shares

The market share estimates for the housing goals need to be expressed as percentages of units rather than as percentages of mortgages. Thus, it is necessary to compare unit-based distributions of the single-family mortgage market under the alternative estimates discussed so far. The mortgage-based distributions given above in Section D.1 were adjusted in two ways. First, the owner-occupied HMDA data were disaggregated between SF-O and SF 2–4 mortgages based on RFS data, which show that SF 2–4 mortgages represent approximately 2 percent of all single-family mortgages. Second, the resulting mortgage-based distributions were shifted to unit-based distributions by applying the unit-per-mortgage assumptions in HUD's proposed rule. HUD assumed 2.25 units per SF 2–4 property and 1.35 units per SF investor property; both figures were derived from the 1991 RFS.[29]

	1997 HMDA (percent)	1987–91 RFS (percent)	HUD's 1995 rule (percent)	Blackley/ Follain Alternative (percent)
SF–O	84.8	73.8	83.0	80.6
SF–2–4 Owner[1]	*1.9	2.1	1.9	1.9
SF 2–4 Renter	*2.4	2.7	2.4	2.3
SF Investor[1]	10.9	21.4	12.7	15.2
Total	100.0	100.0	100.0	100.0
SF-Rental	13.3	24.1	15.1	17.5

[1] Notice that the SF 2–4 category has been divided into its owner and renter subcomponents. This is easily done based on the assumption of 2.25 units per SF 2–4 mortgage. For each mortgage, one unit represents the owner occupant and 1.25 additional units represent renter occupants. The owner-occupant is included in the SF–O category in this Appendix. This is necessary because different data sources are used to estimate the owner's income and the affordability of the rental units. The income of owners of 2–4 properties are included in the borrower income data reported by HMDA. The AHS and POMS will be used to estimate the affordability of the rental units.

* Estimate

[25] The single-family owner percentages based on 1998 HMDA data are as follows: Purchase (91.0 percent), Refinance (94.8 percent), and All (93.2 percent). The higher "All" percent reflects the higher share of refinance mortgages during 1998.

[26] Dixie M. Blackley and James R. Follain, "A Critique of the Methodology Used to Determine Affordable Housing Goals for the Government Sponsored Housing Enterprises," unpublished report prepared for Office of Policy Development and Research, Department of Housing and Urban Development, October 1995; and "HUD's Market Share Methodology and its Housing Goals for the Government Sponsored Enterprises," unpublished paper, March 1996.

[27] For example, they note that discussions with some lenders suggest that because of higher mortgage rates on investor properties, some HMDA-reported owner-occupants may in fact be "hidden" investors; however, it would be difficult to quantify this effect. They also note that some properties may switch from owner to renter properties soon after the mortgage is originated. While such loans would be classified by HMDA as owner-occupied at the time of mortgage origination, they could be classified by the RFS as rental mortgages. Again, it would be difficult to quantify this effect given available data.

[28] Blackley and Follain (1996), p. 20.

[29] The unit-per-mortgage data from the 1991 RFS match closely the GSE purchase data for 1996 and 1997. Blackley and Follain show that an adjustment for vacant investor properties would raise the average units per mortgage to 1.4; however, this increase is so small that it has little effect on the overall market estimates.

Three points should be made about these data. First, notice that the "SF-Rental" row highlights the share of the single-family mortgage market accounted for by all rental units.

Second, notice that the rental categories represent a larger share of the unit-based market than they did of the mortgage-based market reported earlier. This, of course, follows directly from applying the loan-per-unit expansion factors.

Third, notice that the rental share under HMDA's unit-based distribution is again about one-half of the rental share under the RFS's distribution. The rental share in HUD's 1995 rule is slightly larger than that reported by HMDA. The rental share in the "Blackley-Follain" alternative is slightly above that in HUD's 1995 Rule.

4. Conclusions

This section has reviewed data and analyses related to determining the rental share of the single-family mortgage market. There are two main conclusions:

(1) While there is uncertainty concerning the relative size of this market, the projections made by HUD appear reasonable and, in fact, are below the estimate provided by Blackley and Follain.

(2) HMDA likely underestimates the single-family rental mortgage market. Thus, this part of the HMDA data are not considered reliable enough to use in computing the market shares for the housing goals. Various sensitivity analyses of the market shares for single-family rental properties are conducted in Sections F, G, and H. These analyses will show the effects on the overall market estimates of the different projections about the size of the single-family rental market.

E. HUD's Market Share Model

This section integrates findings from the previous two sections about the size of the multifamily mortgage market and the relative distribution of single-family owner and rental mortgages into a single model of the mortgage market. The section provides the basic equations for HUD's market share model and identifies the remaining parameters that must be estimated.

The output of this section is a unit-based distribution for the four property types discussed in Section B.[30] Sections F–H will apply goal percentages to this property distribution in order to determine the size of the mortgage market for each of the three housing goals.

1. Basic Equations for Determining Units Financed in the Mortgage Market

The model first estimates the number of dwelling units financed by conventional conforming mortgage originations for each of the four property types. It then determines each property type's share of the total number of dwelling units financed.

a. Single-Family Units

This section estimates the number of single-family units that will be financed in the conventional conforming market, where single-family units (SF–UNITS) are defined as:

SF–UNITS=SF – O+SF 2 – 4+SF – INVESTOR

First, the dollar volume of conventional conforming single-family mortgages (CCSFM$) is derived as follows:

(1) CCSFM$=CONF%*CONV%*SFORIG$

Where:

CONV%=conforming mortgage originations as a percent (measured in dollars) of conventional single-family originations; estimated to be 87%.[31]

CONF%=conventional mortgage originations as a percent of total mortgage originations; forecasted to 78% by industry and GSEs.[32]

SFORIG$=dollar volume of single-family one-to-four unit mortgages; $1,100 billion is used here as a starting assumption to reflect market conditions during the years 2000–2003.[33] Alternative assumptions will be examined later.[34]

Substituting these values into (1) yields an estimate for the conventional conforming market (CCSFM$) of $746 billion.

Second, the number of conventional conforming single-family mortgages (CCSFM#) is derived as follows:

(2) CCSFM#=CCSFM$/SFLOAN$

Where:

SFLOAN$=the average conventional conforming mortgage amount for single-family properties; estimated to be $100,000.[35]

Substituting this value into (2) yields an estimate of 7.46 million mortgages.

Third, the total number of single-family mortgages is divided among the three single-family property types. Using the 88/2/10 percentage distribution for single-family mortgages (see Section C), the following results are obtained:

(3a) SF – OM#=.88*CCSFM#=number of owner-occupied, one-unit mortgages=6.56 million.

(3b) SF–2–4M#=.02*CCSFM#=number of owner-occupied, two-to-four unit mortgages=.15 million.

(3c) SF–INVM#=.10*CCSFM#=number of one-to-four unit investor mortgages=.75 million.

Fourth, the number of dwelling units financed for the three single-family property types is derived as follows:

(4a) SF–O=SF–OM#+SF–2–4M#=number of owner-occupied dwelling units financed=6.72 million.

(4b) SF 2–4=1.25*SF–2–4M#=number of rental units in 2–4 properties where a owner occupies one of the units=.18 million.[36]

(4c) SF–INVESTOR=1.35* SF–INVM#=number of single-family investor dwelling units financed=1.01 million.

Summing equations 4a–4c gives 7.91 million for the projected number of newly-mortgaged single-family units (SF–UNITS).

b. Multifamily Units

The number of dwelling units financed by conventional conforming multifamily originations is:

(5) MF–UNITS=CCMFM$/MFLOAN$

Where:

CCMFM$=conventional conforming mortgage originations, which are assumed to be $46 billion as a starting point; as discussed in Section C, alternative estimates of the multifamily market will be included in the analysis.

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[30] The property distribution reported in Section A is an example of the output of the market share model. Thus, this section completes Step 1 of the three-step procedure outlined in Section A.

[31] From MBA volume estimates, the conventional share of the 1–4 family market was between 86 and 88 percent of the market from 1993 to 1998, with a one-time low of 81 percent in 1994. Calculated from "1–4 Family Mortgage Origination Volume" tables in Mortgage Finance Review, Vol. 6, No. 4, p. 7, and Vol. 7, No. 1, p. 7, and from "MBA Mortgage Finance Forecast," September 1999, at www.mbaa.org/marketkdata/forecasts/mffore0999.html.

[32] Data provided by Fannie Mae show that conforming loans have been about 78 percent of total conventional loans over the past few years.

[33] Single-family mortgage originations of $1,100 billion is $370 billion less than the record setting $1,470 billion in 1998 and $266 billion higher than the $834 billion in 1997. As discussed later, single-family originations could differ from $1,100 billion during the 2000–2003 period that the goals will be in effect. As recent experience shows, market projections often change. For example, $1,100 billion is similar to year-2000 projections by the Mortgage Bankers Association made in June, 1999. (*See Mortgage Finance Review*, Vol. 7, No. 2, "Mortgage Finance Forecasts," p. 2.) However, more recently, MBA estimates for year 2000 volume have dropped to $952 billion (see MBA Mortgage Finance Forecast, September 1999). Section F will report the effects on the market estimates of alternative estimates of single-family mortgage originations. As also explained later, the important concept for deriving the goal-qualifying market shares is the relative importance of single-family versus multifamily mortgage originations (the "mix effect") rather than the total dollar volume of single-family originations considered in isolation.

[34] The model also requires an estimated refinance rate because purchase and refinance loans have different shares of goals-qualifying units. Over the past year, the MBA has estimated the year 2000 refinance rate to be 20, 30, and 38 percent for the total market (expressed in dollar terms), with 20 percent the latest estimate. The model uses a refinance rate of 40 percent for conforming conventional loans, which is consistent with the MBA's 30 percent estimate, since refinance rates are higher for the number of conventional conforming loans than for the total market expressed in dollar terms. The 40 percent refinance assumption (compared with the recent, lower MBA projections) results in conservative estimates of goals-qualifying units in the market, since the low-mod share of refinance units is lower than the low-mod share of purchase units. Sensitivity analyses for alternative refinance rates are presented in Sections F–H.

[35] The average 1997 loan amount is estimated at $92,844 for owner occupied units using 1997 HMDA metro average loan amounts for purchase and refinance loans, and then weighting by an assumed 40 percent refinance rate. A small adjustment is made to this figure to account for a small number of two-to-four and investor properties (see Section C above). This produces an average loan size of $91,544 for 1997, which is then inflated 3 percent a year for three years to arrive at an estimated $100,000 average loan size for 2000.

[36] Based on the RFS, there is an average of 2.25 housing units per mortgage for 2–4 properties. 1.25 is used here because one (i.e., the owner occupant) of the 2.25 units is allocated to the SF–O category. The RFS is also the source of the 1.35 used in (4c).

MFLOAN$=average loan amount per housing unit in multifamily properties=$30,000.[37]

Substituting these values into (5) yields a projection for MF–UNITS of 1.53 million.

c. Total Units Financed

The total number of dwelling units financed by the conventional conforming mortgage market (TOTAL) can be expressed in three useful ways:

(6a) TOTAL=SF–UNITS+MF–UNITS=9.44 million

(6b) TOTAL=SF–O+SF 2–4+SF–INVESTOR+MF–UNITS

(6c) TOTAL=SF–O+SF–RENTAL+MF–UNITS where SF–RENTAL equals SF–2–4 plus SF–INVESTOR.

2. Dwelling Unit Distributions by Property Type

The next step is to express the number of dwelling units financed for each property type as a percentage of the total number of units financed by conventional conforming mortgage originations.[38]

The projections used above in equations (1)–(6) produce the following distributions of financed units by property type:

	Percent share		Percent share
SF–O	71.1		
SF 2–4	2.0	SF–O	[1] 71.1
SF INVESTOR	10.7	SF–RENTER	12.7
MF–UNITS	16.2	MF–UNITS	16.2
Total	100.0		100.0

[1] Owners of 2–4 properties account for 1.6 percentage points of the 71.1 percent for SF–O.

Sections C and D discussed alternative projections for the volume of the multifamily originations and the investor share of single-family mortgages. The analysis in this appendix will consider three multifamily origination levels—$40 billion, $46 billion, and $52 billion—and three projections about the investor share of single-family mortgages—8 percent, 10 percent, and 12 percent. The middle values ($46 billion and 10 percent) are used in the above calculations and will be considered the "baseline" projections throughout the Appendix.

However, HUD recognizes the uncertainty of projecting origination volume in markets such as multifamily; therefore, the analysis in Sections G–H will also consider market assumptions other than the baseline assumptions.

Table D.3 reports the unit-based distributions produced by HUD's market share model for different combinations of these projections. The effects of the different projections can best be seen by examining the owner category which varies by 7 percentage points, from a low of 67.2 percent (multifamily originations of $52 billion coupled with an investor mortgage share of 12 percent) to a high of 74.3 percent (multifamily originations of $40 billion coupled with an investor mortgage share of 8 percent). The owner share under the baseline projections ($46 billion and 10 percent) is 71.1 percent, which is approximately the same as the owner share (71.0 percent) in the baseline projection of HUD's 1995 Rule.

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[37] See Section C for a discussion of average multifamily loan amounts.

[38] The share of the mortgage market accounted for by owner occupants is (SF–O)/TOTAL; the share of the market accounted for by all single-family rental units is SF–RENTAL/TOTAL; and so on.

Table D.3

Distribution of Financed Dwelling Units by Property Type for Different Projections of Multifamily and Single-Family Investor Originations

Investor Share Percentage of Single-Family Mortgage Market	Size of Mulitfamily Market		
	$40 Billion	$46 Billion	$52 Billion
12 Percent			
Single-Family Owner-Occupied	70.3 %	68.6 %	67.2 %
Single-Family Rental	14.9	15.4	15.1
Multifamily	14.8	16.0	17.7
Total	100.0	100.0	100.0
10 Percent			
Single-Family Owner-Occupied	72.3 %	71.1 %	69.6 %
Single-Family Rental	12.8	12.7	12.3
Multifamily	14.8	16.2	18.1
Total	100.0	100.0	100.0
8 Percent			
Single-Family Owner-Occupied	74.3 %	73.1 %	71.6 %
Single-Family Rental	10.7	10.6	10.3
Multifamily	14.9	16.5	18.1
Total	100.0	100.0	100.0

Comparison with the RFS. The Residential Finance Survey is the only mortgage data source that provides unit-based property distributions similar to those reported in Table D.3. Based on RFS data for 1987 to 1991, HUD estimated that, of total dwelling units in properties financed by recently acquired conventional conforming mortgages, 56.5 percent were owner-occupied units, 17.9 percent were single-family rental units, and 25.6 percent were multifamily rental units.[39] Thus, the RFS presents a much lower owner share than does HUD's model. This difference is due mainly to the relatively high level of multifamily originations (relative to single-family originations) during the mid- to late-1980s, which is the period covered by the RFS.[40]

3. Sensitivity of Property Distributions to Changes in Other Model Parameters

The multifamily and single-family rental markets are not the only areas where some degree of uncertainty exists about their magnitudes. HUD examined the sensitivity of the property distributions given in Table D.3 to changes in several other model parameters. Most of these sensitivity analyses will be reported when discussing the market estimates for each of the housing goals. Suffice it to say here that any changes that reduce the owner category such as reducing the overall level of single-family origination activity or raising the per unit loan amounts for single-family mortgages tend to increase the market estimates for each of the housing goals. This occurs because the goal percentages for owner mortgages are lower than those for rental housing.

F. Size of the Conventional Conforming Mortgage Market Serving Low- and Moderate-Income Families

This section estimates the size of the low- and moderate-income market by applying low- and moderate-income percentages to the property shares given in Table D.3. This section essentially accomplishes Steps 2 and 3 of the three-step procedure discussed in Section B.

Technical issues and data adjustments related to the low- and moderate-income percentages for owners and renters are discussed in the first two subsections. Then, estimates of the size of the low- and moderate-income market are presented along with several sensitivity analyses. Based on these analyses, HUD concludes that 50–55 percent is a reasonable estimate of the mortgage market's low- and moderate-income share for the years (2000–2003) which the new goals will be in effect.

This rule proposes that the Low- and Moderate-Income Goal be established at 48 percent of eligible units financed in calendar year 2000, and 50 percent of eligible units financed in each of calendar years 2001–2003.

1. Low- and Moderate-Income Percentage for Single-Family Owner Mortgages

a. HMDA Data

The most important determinant of the low- and moderate-income share of the mortgage market is the income distribution of single-family borrowers. HMDA reports annual income data for families who live in metropolitan areas and purchase a home or refinance their existing mortgage.[41] Table D.4 gives the percentage of mortgages originated for low- and moderate-income families for the years 1992–1998. Data for home purchase and refinance loans are presented separately; the discussion will focus on home purchase loans because they typically account for the majority of all single-family owner mortgages. For each year, a low- and moderate-income percentage is also reported for the conforming market without loans originated by lenders that primarily originate manufactured home loans (discussed below).

[39] Restricting the RFS analysis to 1991 resulted in only minor changes to the market shares.

[40] Between 1987 and 1991, annual multifamily mortgage originations averaged $32 billion, representing 7.2 percent of conventional mortgage originations. In 1997, conventional multifamily originations stood at $40.7 billion but because of the increase in single-family originations since the late 1980s, the multifamily share of total originations had dropped to 4.7 percent.

[41] As noted earlier, HMDA data are expressed in terms of number of loans rather than number of units. In addition, HMDA data do not distinguish between owner-occupied one-unit properties and owner-occupied 2–4 properties. This is not a particular problem for this section's analysis of owner incomes.

Table D.4

Single-Family Owner-Occupied Mortgage Market by Borrower Income

	Home Purchase		Refinance	
	Conforming Market	Market W/O Mfg loans	Conforming Market	Market W/O Mfg loans
Very-Low-Income Share				
1992	8.7 %	7.6 %	4.5 %	4.2 %
1993	10.8	9.6	5.8	5.6
1994	11.9	10.7	11.0	10.2
1995	12.0	10.5	12.3	11.2
1996	12.7	10.8	13.0	12.2
1997	13.0	11.0	14.5	13.9
1998	13.3	11.4	11.3	11.1
Low- and-Moderate Income Share				
1992	34.4 %	33.0 %	25.2 %	24.8 %
1993	38.9	37.4	29.3	29.1
1994	41.8	40.3	39.9	38.9
1995	41.4	39.2	41.1	39.6
1996	42.2	39.4	42.7	41.6
1997	42.5	39.6	45.0	44.1
1998	43.0	40.4	39.7	39.4

Source: HMDA data for metropolitan areas. "Market without manufactured housing loans" excludes loans by lenders that primarily originate manufactured housing loans and loans less than $15,000.

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Table D.4 also reports similar data for very-low-income families (that is, families with incomes less than 60 percent of area median income). As discussed in Section H, very-low-income families are the major component of the special affordable mortgage market.

Two trends in the income data should be mentioned—one related to the market's funding of low-and moderate-income families since the 1995 Rule was written and the other related to the different borrower income distributions for refinance and home purchase mortgages.

Low-Mod Market Share Since 1995. As discussed in the 1995 Rule, the percentage of borrowers with less than area median income increased significantly between 1992 and 1994. Mortgages to low-mod borrowers increased from 34.4 percent of the home purchase market in 1992 to 41.8 percent of that market in 1994. Over the next four years (1995–98), the low-mod share of the home purchase market remained at a high level, averaging about 42 percent, or almost 40 percent if manufactured loans are excluded from the market totals. The share of the market accounted for by very-low-income borrowers followed a similar trend, increasing from 8.7 percent in 1992 to 11.9 percent in 1994 and then remaining at a high level through 1998. As discussed in Appendix A, this jump in low-income lending has been attributed to several factors, including: a favorable economy accompanied by historically low interest rates; the entry into the housing market of more diverse groups including non-traditional households (*e.g.*, singles), immigrants, and minority families seeking homeownership for the first time; and, affordable lending initiatives and outreach efforts on the part of the mortgage industry. Essentially, the affordable lending market is much stronger than it appeared to be when HUD wrote the 1995 Rule. At that time, there had been two years (1993 and 1994) of increasing affordable lending for lower-income borrowers. The four additional years of data for 1995–98 show more clearly the underlying strength of this market. While lending patterns could change with sharp changes in the economy, the fact that there has been six years (1993–98) of strong affordable lending suggests the market has changed in fundamental ways from the mortgage market of the early 1990s.

Refinance Mortgages. HUD's model for determining the size of the low-and moderate-income market assumes that low-mod borrowers will represent a smaller share of refinance mortgages than they do of home purchase mortgages. However, as shown in Table D.4, the income characteristics of borrowers refinancing mortgages seem to depend on the overall level of refinancing in the market. During the refinancing wave of 1992 and 1993, refinancing borrowers had much higher incomes than borrowers purchasing homes. For example, during 1993 low-and moderate-income borrowers accounted for 29.3 percent of refinance mortgages, compared to 38.9 percent of home purchase borrowers. In 1998, another period of high refinance activity, low-and moderate-income borrowers accounted for 39.7 percent of refinance loans, versus 43.0 percent of home purchase loans. But during the years (1995–97) characterized by lower levels of refinancing activity, the low-mod share for refinance mortgages was about the same as that for home purchase mortgages. In 1997, the low-mod share of refinance mortgages (45.0) was even higher than the low-mod share of home loans (42.5 percent).

The projection model assumes that refinancing will be 40 percent of the single-family mortgage market. However given the volatility of refinance rates from year to year, it is important to conduct sensitivity tests using different refinance rates.

b. Manufactured Housing Loans

The mortgage market definition in this appendix includes manufactured housing loans, which have become an important source of affordable housing and which the GSEs have started to purchase. Because the market estimates in HUD's 1995 Rule were adjusted to exclude manufactured housing loans, several tables in this appendix will show how the goals-qualifying shares of the single-family-owner market change depending on the treatment of manufactured housing loans. As explained later, the effect of manufactured housing on HUD's metropolitan area market estimate for each of the three housing goals is a modest one percentage point.

As discussed in Appendix A, the manufactured housing market has been increasing rapidly over the past few years, as sales volume has increased from $4.7 billion in 1991 to $16.3 billion in 1998. The affordability of manufactured homes for lower-income families is demonstrated by their average price of $41,000 in 1997, a fraction of the $176,000 for new homes and $154,000 for existing homes. Many households live in manufactured housing because they simply cannot afford site-built homes, for which the construction costs per square foot are much higher.

Data on the incomes of purchasers of manufactured homes is not readily available, but HMDA data on home loans made by 21 lenders that primarily originate manufactured home loans, discussed below, indicate that:[42]

(i) A very high percentage of these loans—76 percent in 1998—would qualify for the Low- and Moderate-Income Goal,

(ii) A substantial percentage of these loans—42 percent in 1998—would qualify for the Special Affordable Goal, and

(iii) Almost half of these loans—47 percent in 1998—would qualify for the Underserved Areas Goal.

Thus an enhanced presence in this market by the GSEs would benefit many lower-income families. It would also contribute to their presence in underserved rural areas, especially in the South.

To date the GSEs have played a minimal role in the manufactured home loan market, but both enterprises have expressed an interest in expanding their roles.[43] Except in structured transactions, the GSEs do not purchase manufactured housing loans under their seller/servicer guidelines unless they are real estate loans. That is, such homes must have a permanent foundation and the site must be either purchased as part of the transaction or already owned by the borrower. Industry trends toward more homes on private lots and on concrete foundations suggest that the percentage of manufactured homes that would qualify as real estate loans under GSE guidelines has grown in the past few years. There has also been a major shift from single-section homes to multisection homes, which contain two or three units which are joined together on site.

Although manufactured home loans cannot be identified in the HMDA data, HUD staff have identified 21 lenders that primarily originate manufactured home loans and likely account for most of these loans in the HMDA data for metropolitan areas. In Table D.4, the data presented under "Conforming Market Without Manufactured Home Loans" excludes loans originated by manufactured housing lenders, as well as loans less than $15,000. The lenders include companies such as Green Tree Financial; Vanderbilt Mortgage; Deutsche Financial Capital; Oakwood Acceptance Corporation; Allied Acceptance Corporation; Belgravia Financial Services; Ford Consumer Finance Company; and the CIT Group.[44]

c. American Housing Survey Data

The American Housing Survey also reports borrower income data similar to that reported in Table D.3.[45] The low- and moderate-income market shares from the AHS are as follows:

1985—27.0%
1987—32.0%
1989—34.0%
1991—36.0%
1993—33.0% (38.7% home purchase and 28.6% refinance)
1995—40.0% (38.5% home purchase and 43.2% refinance)

According to the AHS, 38.5 percent of those families surveyed during 1995 who had recently purchased their homes, and who obtained conventional mortgages below the

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[42] Since most HMDA data are for loans in metropolitan areas and a substantial share of manufactured homes are located outside metropolitan areas, HMDA data may not accurately state the goals-qualifying shares for loans on manufactured homes in all areas.

[43] Freddie Mac, the Manufactured Housing Institute and the Low Income Housing Fund have formed an alliance to utilize manufactured housing along with permanent financing and secondary market involvement to bring affordable, attractive housing to underserved, low- and moderate-income urban neighborhoods. *Origination News.* (December 1998), p. 18.

[44] Randall M. Scheessele had developed a list of nine manufactured home lenders that has been used by several researchers in analyses of HMDA data prior to 1997. Scheessele recently developed the expanded list of 21 manufactured home loan lenders in his analysis of 1998 HMDA data. (See Randall M. Scheessele, *1998 HMDA Highlights, op. cit.*) In these appendices, the number of manufactured home loans deducted from the market totals for the years 1993 to 1997 are the same as reported by Scheessele (1999) in his Table D.2b.

[45] See Appendix D of the 1995 Rule for a detailed discussion of the AHS data and improvements that have been made to the survey to better measure borrower incomes and rent affordability.

conforming loan limit, had incomes below the area median; this compares with 39.3 percent based on 1995 HMDA data that excludes manufactured homes (as the AHS data do).

A longer-term perspective of the mortgage market can be gained by examining income data from the last six American Housing Surveys. During the earlier period between 1987 and 1991, the low- and moderate-income share increased from 27 percent to 36 percent, and averaged 32.3 percent. After remaining at a relatively low percentage (33.0 percent) during the heavy refinance year of 1993, the low- and moderate-income share rebounded to 40.0 percent in 1995. As noted earlier, this is about the same market share reported by HMDA data for 1995.

Since HMDA data cover over 80 percent of the single-family-owner mortgage market, and the American Housing Survey represents only a very small sample of this market, the HMDA data will be the major source of information on the characteristics of single-family property owners receiving mortgage financing. As discussed next, the American Housing Survey and the Property Owners and Managers Survey will be relied on for information about the rents and affordability of single-family and multifamily rental properties.

2. Low- and Moderate-Income Percentage for Renter Mortgages

The 1995 Rule relied on the American Housing Survey for a measure of the rent affordability of the single-family rental stock and the multifamily rental stock. As explained below, the AHS provides rent information for the stock of rental properties rather than for the flow of mortgages financing that stock. This section discusses a new survey, the Property Owners and Managers Survey (POMS), that provides information on the flow of mortgages financing rental properties. As discussed below, the AHS and POMS data provide very similar estimates of the low- and moderate-income share of the rental market.

a. American Housing Survey Data

The American Housing Survey does not include data on mortgages for rental properties; rather, it includes data on the characteristics of the existing rental housing stock and recently completed rental properties. Current data on the income of prospective or actual tenants has also not been readily available for rental properties. Where such income information is not available, FHEFSSA provides that the rent of a unit can be used to determine the affordability of that unit and whether it qualifies for the Low- and Moderate-Income Goal. A unit qualifies for the Low- and Moderate-Income Goal if the rent does not exceed 30 percent of the local area median income (with appropriate adjustments for family size as measured by the number of bedrooms). Thus, the GSEs' performance under the housing goals is measured in terms of the affordability of the rental dwelling units that are financed by mortgages that the GSEs purchase; the income of the occupants of these rental units is not considered in the calculation of goal performance. For this reason, it is appropriate to base estimates of market size on rent affordability data rather than on renter income data.

A rental unit is considered to be "affordable" to low- and moderate-income families, and thus qualifies for the Low- and Moderate-Income Goal, if that unit's rent is equal to or less than 30 percent of area median income. Table D.5 presents AHS data on the affordability of the rental housing stock for the survey years between 1985 and 1995. The 21995 AHS shows that for 1–4 unit unsubsidized single-family rental properties, 97 percent of all units and of units constructed in the preceding three years had gross rent (contract rent plus the cost of all utilities) less than or equal to 30 percent of area median income. For multifamily unsubsidized rental properties, the corresponding figure was 95 percent. The AHS data for 1989, 1991 and 1993 are similar to the 1995 data.

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Table D.5

Rental Market By Affordability of Dwelling Unit: American Housing Survey, 1985-1995

Units Affordable at 100% of Area Median Income	Recently Constructed Stock(a)	Stock 4 Years or Older	Existing Stock
1-4 Properties			
1985	75%	94%	93%
1987	80%	93%	92%
1989	90%	97%	97%
1991	92%	97%	97%
1993	92%	98%	98%
1995	89%	97%	97%
Multifamily (5+) Properties			
1985	88%	94%	93%
1987	86%	93%	92%
1989	88%	96%	95%
1991	88%	97%	96%
1993	88%	96%	96%
1995	89%	95%	95%
Units Affordable at 60% of Area Median Income			
1-4 Properties			
1985	8%	56%	54%
1987	17%	54%	52%
1989	24%	60%	59%
1991	26%	64%	63%
1993	37%	61%	61%
1995	30%	58%	57%
Multifamily (5+) Properties			
1985	14%	44%	41%
1987	18%	43%	40%
1989	13%	51%	47%
1991	18%	54%	51%
1993	12%	53%	51%
1995	20%	50%	49%

Source: American Housing Surveys, 1985, 1987, 1989, 1991, 1993, 1995.

a. Constructed in last 3 years.

b. Property Owners and Managers Survey (POMS)

During the 1995 rule-making, concern was expressed about using data on rents from the outstanding rental stock to proxy rents for newly mortgaged rental units.[46] At that time, HUD conducted an analysis of this issue using the Residential Finance Survey and concluded that the existing stock was an adequate proxy for the mortgage flow when rent affordability is defined in terms of less than 30 percent of area median income, which is the affordability definition for the Low- and Moderate-Income Goal. More specifically, that analysis suggested that 85 percent of single-family rental units and 90 percent of multifamily units are reasonable estimates for projecting the percentage of financed units affordable at the low- and moderate-income level.[47] HUD has investigated this issue further using the POMS.

POMS Methodology. The affordability of multifamily and single-family rental housing backing mortgages originated in 1993–1995 was calculated using internal Census Bureau files from the American Housing Survey-National Sample (AHS) from 1995 and the Property Owners and Managers Survey from 1995–1996. The POMS survey was conducted on the same units included in the AHS survey, and provides supplemental information such as the origination year of the mortgage loan, if any, recorded against the property included in the AHS survey. Monthly housing cost data (including rent and utilities), number of bedrooms, and metropolitan area (MSA) location data were obtained from the AHS file.

In cases where units in the AHS were not occupied, the AHS typically provides rents, either by obtaining this information from property owners or through the use of imputation techniques. Estimated monthly housing costs on vacant units were therefore calculated as the sum of AHS rent and utility costs estimated using utility allowances published by HUD as part of its regulation of the GSEs. Observations where neither monthly housing cost nor monthly rent was available were omitted, as were observations where MSA could not be determined. Units with no cash rent and subsidized housing units were also omitted. Because of the shortage of observations with 1995 originations, POMS data on year of mortgage origination were utilized to restrict the sample to properties mortgaged during 1993–1995. POMS weights were then applied to estimate population statistics. Affordability calculations were made using 1993–95 area median incomes calculated by HUD.

POMS Results. The rent affordability estimates from POMS of the affordability of newly-mortgaged rental properties are quite consistent with the AHS data reported in Table D.5 on the affordability of the rental stock. Ninety-six (96) percent of single-family rental properties with new mortgages between 1993 and 1995 were affordable to low- and moderate-income families, and 56 percent were affordable to very-low-income families. The corresponding percentages for newly-mortgaged multifamily properties are 96 percent and 51 percent, respectively. Thus, these percentages for newly-mortgaged properties from the POMS are similar to those from the AHS for the rental stock. As discussed in the next section, the baseline projection from HUD's market share model assumes that 90 percent of newly-mortgaged, single-family rental and multifamily units are affordable to low- and moderate-income families.

3. Size of the Low- and Moderate-Income Mortgage Market

This section provides estimates of the size of the low- and moderate-income mortgage market. Subsection 3.a provides some necessary background by comparing HUD's estimate made during the 1995 rule-making process with actual experience between 1995 and 1998. Subsection 3.b presents new estimates of the low-mod market while Subsection 3.c reports the sensitivity of the new estimates to changes in assumptions about economic and mortgage market conditions.

a. Comparison of Market Estimates with Actual Performance

The market share estimates that HUD made during 1995 can now be compared with actual market shares for 1995 to 1997. Projections for 1998 will be discussed in the next section. This discussion of the accuracy of HUD's past market estimates considers all three housing goals, since the explanations for the differences between the estimated and actual market shares are common across the three goals. HUD estimated the market for each housing goal for 1995–97, and obtained the following results:[48]

	Low-Mod (percent)	Special affordable (percent)	Underserved areas [1] (percent)
1995	56.8	28.4	32.9
1996	57.2	28.5	32.7
1997	57.8	29.0	33.7

[1] The underserved area market shares presented here are based on data for metropolitan areas; as discussed in the next section, accounting for non-metropolitan areas would likely raise the overall market share for this goal by as much as a percentage point.

HUD market estimates in 1995 were 48–52 percent for the Low- and Moderate-Income Goal, 20–23 percent for the Special Affordable Goal, and 25–28 percent for the Underserved Areas Goal. Thus, even the upper bound figures for the market share ranges in the 1995 Rule proved to be low- for the low-mod estimate, 52 percent versus 57–58 percent; for the special affordable estimate, 23 versus 28–29 percent, and for the underserved areas estimate, 28 percent versus 33 percent.

There are several factors explaining HUD's underestimate of the goals-qualifying market shares. The 1995–97 mortgage markets originated more affordable single-family mortgages than anticipated, mainly due to historically low interest rates and strong economic expansion. In 1997, for instance, almost 44 percent of all (home purchase and refinance) single-family-owner mortgages qualified for the Low- and Moderate-Income Goal, 16 percent qualified for the Special Affordable Goal, and 28 percent qualified for the Underserved Areas Goal.[49] HUD's 1995 estimates anticipated smaller shares of new

[46] Some even argued that data based on the recently completed stock would be a better proxy for mortgage flows. In the case of the Low- and Moderate-Income Goal, there is not a large difference between the affordability percentages for the recently constructed stock and those for the outstanding stock of rental properties. But this is not the case when affordability is defined at the very-low-income level. As shown in Table D.5, the recently completed stock houses substantially fewer very-low-income renters than does the existing stock. Because this issue is important for the Special Affordable Goal, it will be further analyzed in Section H when that goal is considered.

[47] In 1997, 75.6 percent of GSE purchases of single-family investor rental units and over 90 percent of their purchases of multifamily units qualified under the Low- and Moderate-Income Goal.

[48] The following goals-qualifying shares for 1995–97 are, of course, estimates themselves; even though information is available from HMDA and other data sources for most of the important model parameters, there are some areas where information is limited, which leads to a range of estimates rather than precise point estimates. For example, HUD had two sets of average per-unit loan amounts for multifamily properties. HUD's "higher" estimates ($24,698 in 1995, $25,268 in 1996, and $27,279 in 1997) are used in the text. HUD's "lower" estimates ($22,310 in 1995, $24,047 in 1996, and $25,167 in 1997) provided slightly higher market shares. For example, the 1997 figures under the "lower" estimates of per-unit multifamily loan amounts were as follows: Low- and Moderate-Income Goal (58.4 percent); Special Affordable Goal (29.5 percent; and Underserved Areas Goal (33.9 percent). The "lower" per-unit loan amounts result in a larger number of multifamily units in HUD's model, which leads to higher percentages of goals-qualifying loans in the overall market.

[49] The 1995–97 goals-qualifying percentages for single-family mortgages are based on HMDA data for all (both home purchase and refinance) mortgages. Thus, the implicit refinance rate is that reported by HMDA for conventional conforming mortgages.

mortgages being originated for low-income families and in their neighborhoods.[50] [51]

The financing of rental properties during 1995–97 was larger than anticipated. HUD's earlier estimates assumed a rental share of 29 percent, which was lower than the approximately 31 percent rental share for the years 1995–97. The underestimate for rental housing was due to a larger multifamily market ($32 billion for 1995, $37 billion for 1996, and $41 billion for 1997) than anticipated in the 1995 GSE Rule ($30 billion) and to lower per unit multifamily loan amounts than assumed in HUD's earlier model.[52]

[50] HUD had based its earlier projections heavily on market trends between 1992 and 1994. During this period, low- and moderate-income borrowers accounted for only 38 percent of home purchase loans, which is consistent with an overall market share for the Low- and Moderate-Income Goal of 52 percent (see Table D.7 below), which was HUD's upper bound in the 1995 Rule. Based on the 1993 and 1994 mortgage markets, HUD's earlier estimates also assumed that refinance mortgages would have smaller shares of lower-income borrowers than home purchase loans; the experience during the 1995–1997 period was the reverse, with refinance loans having higher shares of lower-income borrowers than home purchase loans. For example, in 1997, 45 percent of refinancing borrowers had less-than-area-median incomes, compared with 42.5 percent of borrowers purchasing a home.

[51] The 1995–97 estimates also include the effects of small loans (less than $15,000) and manufactured housing loans which increase the market shares for metropolitan areas by approximately one percentage point. For example, assuming a constant mix of owner and rental properties, excluding these loans would reduce the goals-qualifying shares as follows: the Low- and Moderate-Income Goal by 1.4 percentage points, and the Special Affordable Goal and Underserved Areas Goals by one percentage point. However, dropping manufactured housing from the market totals would increase the rental share of the market, which would tend to lower these impact estimates. It should also be mentioned that manufactured housing in non-metropolitan areas is not included in HUD's analysis due to lack of data; including this segment of the market would tend to increase the goals-qualifying shares of the overall market. Thus, the analyses of manufactured housing reported above and throughout the text pertain only to manufactured housing loans in metropolitan areas, as measured by loans originated by the manufactured housing lenders identified by Scheessele, *op. cit.*

[52] The accuracy of the single-family portion of HUD's model can be tested using HMDA data. The number of single-family loans reported to HMDA for the years 1995 to 1997 can be compared with the corresponding number predicted by HUD's model. Single-family loans reported to HMDA during 1995 were 79 percent of the number of loans predicted by HUD's model; comparable percentages for 1996 and 1997 were 83 percent and 82 percent, respectively. Studies of the coverage of HMDA data conclude that HMDA covers approximately 85 percent of the conventional conforming market. (See Randall M. Scheessele, *HMDA Coverage of the Mortgage Market, op. cit.*) The fact that the HMDA data account for lower percentages of the single-family loans predicted by HUD's model suggests that HUD's model may be slightly overestimating the number of single-family loans during the 1995–97 period. The only caveat to this concerns manufactured housing in non-metropolitan areas. The average loan amount that HUD used in calculating the number of units financed from mortgage origination dollars did not include the effects of manufactured housing in non-metropolitan areas; thus, HUD's average loan amount is too high, which suggests that single-family-owner mortgages are underestimated. (Similarly, the goals-qualifying percentages in HUD's model are based on metropolitan area data and therefore do not include the effects of manufactured housing in non-metropolitan areas.)

B&C Mortgages. As discussed in Appendix A, the market for subprime mortgages has experienced rapid growth over the past 2–3 years. Comprehensive data for measuring the size of this market are not available. However, estimates by various industry observers suggest that the subprime market could have accounted for as much as 15 percent of all mortgages originated during 1997, which would have amounted to approximately $125 billion.[53] In terms of credit risk, this $125 billion includes a wide range of mortgage types. "A-minus" loans, which represented about half of the subprime market in 1997, make up the least risky category. The GSEs are involved in this market—for instance, Freddie Mac has initiated programs to purchase A-minus loans through its Loan Prospector system. The remaining categories (mainly "B" and "C" loans) experience much higher delinquency rates than A-minus loans.[54]

The effects of excluding B&C mortgages on the estimated market shares for goals-qualifying loans in 1997 can be derived by combining information from various sources. First, the $125 billion estimate for the subprime market was reduced by 15 percent to arrive at an estimate of $106 billion for subprime loans that were less than the conforming loan limit of $214,600 in 1997. This figure was reduced by one-half to arrive at an estimate of $53 billion for the conforming B&C market; with an average loan amount of $68,289 (obtained from HMDA data, as discussed below), the $53 billion represented approximately 776,000 B&C loans originated during 1997 under the conforming loan limit.

[53] A 15 percent estimate for 1997 is reported by Michelle C. Hamecs and Michael Benedict, "Mortgage Market Developments", in *Housing Economics*, National Association of Home Builders, April 1998, pages 14–17. Hamecs and Benedict draw their estimate from a survey by *Inside B&C Lending*, an industry publication. A 12 percent estimate is reported in "Subprime Products: Originators Still Say Subprime Is 'Wanted Dead or Alive'" in *Secondary Marketing Executive*, August 1998, 34–38. Forest Pafenberg reports that subprime mortgages accounted for 10 percent of the conventional conforming market in 1997; see his article, "The Changing Face of Mortgage Lending: The Subprime Market", *Real Estate Outlook*, National Association of Realtors, March 1999, pages 6–7. Pafenberg draws his estimate from Inside Mortgage Capital, which used data from the Mortgage Information Corporation. The uncertainty about what these various estimates include should be emphasized; for example, they may include second mortgages and home equity loans as well as first mortgages, which are the focus of this analysis.

[54] Based on information from The Mortgage Information Corporation, Pafenberg reports the following serious delinquency rates (either 90 days past due or in foreclosure) for 1997 by type of subprime loan: 2.97 percent for A-minus; 6.31 percent for B; 9.10 percent for C; and 17.69 percent for D. The D category accounted for only 5 percent of subprime loans. Also see "Subprime Mortgage Delinquencies Inch Higher, Prepayments Slow During Final Months of 1998", *Inside MBS & ABS*, March 12, pages 8–11, where it is reported that fixed-rate A-minus loans have delinquency rates similar to high-LTV (over 95 percent) conventional conforming loans.

HMDA data was used to provide an estimate of the portion of these 776,000 B&C loans that would qualify for each of the housing goals. HMDA data does not identify subprime loans, much less divide them into their A-minus and B&C components. As explained in Appendix A, HUD staff have identified HMDA reporters that primarily originate subprime loans. The goals-qualifying percentages of the loans originated by these subprime lenders in 1997 were as follows: 59.3 percent qualified for the Low- and Moderate-Income Goal, 29.4 percent for the Special Affordable Goal, and 46.1 percent for the Underserved Areas Goal.[55] Applying the goals-qualifying percentages to the estimated B&C market total of 776,000 gives the following estimates of B&C loans that qualified for each of the housing goals in 1997: Low- and Moderate Income (460,000), Special Affordable (228,000), and Underserved Areas (358,000).

Adjusting HUD's model to exclude the B&C market involves subtracting the above four figures for the overall B&C market and for B&C loans that qualify for each of the three housing goals from the corresponding figures estimated by HUD for the total single-family and multifamily market inclusive of B&C loans. HUD's model estimates that 8,220,000 single-family and multifamily units were financed during 1997; of these, 4,751,000 (57.8 percent) qualified for the Low- and Moderate-Income Goal, 2,387,000 (29.0 percent) for the Special Affordable Goal, and 2,767,000 (33.7 percent) for the Underserved Areas Goal. Deducting the B&C market estimates produces the following adjusted market estimates: a total market of 7,444,000, of which 4,291,000 (57.6 percent) qualified for the Low- and Moderate-Income Goal, 2,159,000 (29.0 percent) for the Special Affordable Goal, and 2,409,000 (32.4 percent) for the Underserved Areas Goal.

As seen, the low-mod market share estimate exclusive of B&C loans (57.6 percent) is similar to the original market estimate (57.8 percent) and the corresponding special affordable market estimate (29.0 percent) is the same as the original estimate. This occurs because the B&C loans that were dropped from the analysis had similar low-mod and special affordable percentages as the overall (both single-family and multifamily) market. For example, the low-mod share of the B&C was projected to be 59.3 percent and HUD's market model projected the overall low-mod share to be 57.8 percent. Thus, dropping B&C

[55] These percentages are based on 42 subprime lenders identified by Randall M. Scheessele; slightly lower goals-qualifying percentages for 1997 (57.3 percent, 28.1 percent, and 44.7 percent, respectively) were obtained based on Scheessele's more recent list of subprime lenders. Given the similarity of the two sets of percentages, the analysis was not repeated using the more recent list. For further comparison between the two lists, see Randall M. Scheessele, *1998 HMDA Highlights, op. cit.* Not surprisingly, the goals-qualifying percentages for subprime lenders are much higher than the percentages (43.6 percent, 16.3 percent, and 27.8 percent, respectively) for the overall single-family conventional conforming market in 1997.

loans from the market totals does not change the overall low-mod share of the market appreciably.

The situation is different for the Underserved Areas Goal. Underserved areas account for 46.1 percent of the B&C loans, which is a higher percentage than the underserved area share of the overall market (33.7 percent). Thus, dropping the B&C loans leads to a reduction in the underserved areas market share of 1.3 percentage points, from 33.7 percent to 32.4 percent.[56]

Dropping B&C loans from HUD's model changes the mix between rental and owner units in the final market estimate. Based on assumptions about the size of the owner and rental markets for 1997, HUD's model calculates that single-family-owner units accounted for about 69.5 percent of total units financed during 1997. Dropping the B&C owner loans, as described above, reduces the owner percentage of the market by about three percentage points to 66.3 percent. Thus, another way of explaining why the goals-qualifying market shares are not affected so much by dropping B&C loans is that the rental share of the overall market increases as the B&C owner units are dropped from the market. Since rental units have very high goals-qualifying percentages, their increased importance in the market partially offsets the negative effects on the goals-qualifying shares of any reductions in B&C owner loans. In fact, this rental mix effect would come into play with any reduction in owner units from HUD's model.

There are caveats that should be mentioned concerning the above adjustments for the B&C market. The adjustment for B&C loans depends on several estimates relating to the 1997 mortgage market, derived from various sources. Different estimates of the size of the B&C market in 1997 or the goals-qualifying shares of the B&C market could lead to different estimates of the goals-qualifying shares for the overall market. The goals-qualifying shares of the B&C market were based on HMDA data for selected lenders that primarily originate subprime loans; since these lenders are likely originating both A-minus and B&C loans, the goals-qualifying percentages used here may not be accurately measuring the goals-qualifying percentages for only B&C loans. The above technique of dropping B&C loans also assumes that the coverage of B&C and non-B&C loans in HMDA's metropolitan area data is the same; however, it is likely that HMDA coverage of non-B&C loans is higher than its coverage of B&C loans.[57] Despite these caveats, it also appears that reasonably different estimates of the various market parameters would not likely change, in any significant way, the above estimates of the effects of excluding B&C loans in calculating the goals-qualifying shares of the market. As discussed below, HUD provides a range of estimates for the goals-qualifying market shares to account for uncertainty related to the various parameters included in its projection model for the mortgage market.

1998 Projections. As discussed earlier in Section C.2.c, there is particular uncertainty regarding multifamily origination activity for the year 1998 due to, among other things, HUD's SMLA data not yet being available. The discussion in Section C.2.c concluded that 1998 multifamily originations could have ranged from $50 to $60 billion. In this section, the 1998 goals-qualifying market shares are first estimated assuming $50 billion in multifamily originations, although it is important to recognize the uncertainty of this estimate. The high volume of single-family mortgages in 1998 increased the share of single-family-owner units to 73.1 percent, while single-family rental units comprised 13.0 percent, and multifamily units comprised a reduced 13.9 percent of the market. This shift toward single-family loans, combined with the higher level of single-family refinance activity in 1998, results in market shares for metropolitan areas that are slightly smaller than reported earlier for 1995–97: low-mod, 54.1 percent; special affordable, 26.0 percent; and underserved areas, 30.4 percent. While lower, these estimates remain higher than the market estimates that HUD made in 1995 (see earlier discussion for reasons).[58]

b. Market Estimates

This section provides HUD's estimates for the size of the low- and moderate-income mortgage market that will serve as a proxy for the four-year period (2000–2003) when the new housing goals will be in effect. Three alternative sets of projections about property shares and property low- and moderate-income percentages are given in Table D.6. Case 1 projections represent the baseline and intermediate case; it assumes that investors account for 10 percent of the single-family mortgage market. Case 2 assumes a lower investor share (8 percent) based on HMDA data and slightly more conservative low- and moderate-income percentages for single-family rental and multifamily properties (85 percent). Case 3 assumes a higher investor share (12 percent) consistent with Follain and Blackley's suggestions.

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[56] As discussed later, the underserved area share is probably a percentage point higher than this due to HUD's model not accounting for the high percentage of loans in underserved counties of non-metropolitan areas.

[57] Dropping B&C loans in the manner described in the text results in the goals-qualifying percentages for the non-B&C market being underestimated since HMDA coverage of B&C loans is less than that of non-B&C loans and since B&C loans have higher goals-qualifying shares than non-B&C loans. For instance, the low-mod shares of the market reported in Table D.4 underestimate (to an unknown extent) the low-mod shares of the market inclusive of B&C loans; so reducing the low-mod owner shares by dropping B&C loans in the manner described in the text would provide an underestimate of the low-mod share of the non-B&C owner market. A study of 1997 HMDA data in Durham County, North Carolina by the Coalition for Responsible Lending (CRL) found that loans by mortgage and finance companies are often not reported to HMDA. For a summary of this study, see "Renewed Attack on Predatory Subprime Lenders" in *Fair Lending/CRA Compass*, June 9, 1999.

[58] If B&C loans are excluded from the market (using the techniques discussed earlier), the market estimates fall slightly as follows: low-mod, 53.8 percent; special affordable, 25.8 percent; and underserved areas, 29.4 percent. In 1998, the conforming B&C market is estimated to be $65 billion, with an average loan amount of $77,796, representing an estimated 836,000 B&C conforming loans. The 1998 goals-qualifying percentages (low-mod, 58.0 percent; special affordable, 28.5 percent; and underserved areas, 44.7 percent) used to "proxy" the B&C market were similar to those reported earlier for 1997. As noted earlier, there is much uncertainty about the size of the B&C market.

Table D.6

Alternative Assumptions for Single-Family Rental and Multifamily Mortgage Shares

	Case 1	Case 2	Case 3
1. Single-Family Mortgage Shares			
Single-Family Owner-Ocuupied	88.0%	90.0%	85.6%
Single-Family 2-4	2.0%	2.0%	2.4%
Single-Family 1-4 Investor	10.0%	8.0%	12.0%
2. Units Per Single-Family Mortgage			
Single-Family 2-4	2.25	2.25	2.25
Single-Family 1-4 Investor	1.35	1.35	1.40
3. Multifamily Loan Per Unit	$30,000	$30,000	$30,000
4. Percentage Affordable at Area Median Income (AMI)			
Single-Family Rental	90.0%	85.0%	95.0%
Multifamily	90.0%	85.0%	95.0%
5. Percentage Underserved			
Single-Family Rental	42.5%	40.0%	45.0%
Multifamily	48.0%	46.0%	48.0%
6. Percent Affordable at 60% of AMI			
Single-Family Rental	50.0%	47.0%	53.0%
Multifamily	47.0%	44.0%	50.0%
7. Percentage Low-Income in Low-Income Areas:			
Single-Family Rental	8.0%	6.0%	8.0%
Multifamily	11.0%	10.0%	12.0%

Table D.7

Low- and Moderate-Income Mortgage Market: Sensitivity Analysis

Case 1 with Different Percentages for Single-Family Owner-Occupied's with Income Less than AMI:		Size of Multifamily Market		
		$40 Billion	$46 Billion	$52 Billion
Single-Family: [a]	43%	55.2 %	55.7 %	56.4 %
	42%	54.4	55.0	55.7
	41%	53.7	54.3	55.0
	40%	53.0	53.6	54.3
	39%	52.3	52.9	53.6
	38%	51.5	52.2	52.9
	37%	50.8	51.5	52.3
	36%	50.1	50.7	51.6
	35%	49.4	50.0	50.9
	34%	48.6	49.3	50.2
Single-Family:	40% with:			
	Case 1 (above)	53.0 %	53.6 %	54.3 %
	Case 2	50.7	51.2	51.9
	Case 3	55.8	56.5	57.3
Single-Family:	36% with:			
	Case 1 (above)	50.1 %	50.7 %	51.6 %
	Case 2	47.7	48.3	49.3
	Case 3	53.0	53.7	54.6

[a] These percentages are used for home purchase loans. Refinance loans were assumed to be 3 percentage points less for each alternative.

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Because single-family-owner units account for about 70 percent of all newly mortgaged dwelling units, the low- and moderate-income percentage for owners is the most important determinant of the total market estimate.[59] Thus, Table D.7 provides market estimates for different owner percentages as well as for different sizes of the multifamily market—the $46 billion projection bracketed by $40 and $52 billion. Several low-mod percentages of the owner market are given in Table D.7 to account for different perceptions about the low-mod share of that market. Essentially, HUD's approach throughout this appendix is to provide several sensitivity analyses to illustrate the effects of different views about the goals-qualifying share of the single-family-owner market on the goals-qualifying share of the overall mortgage market. This approach recognizes that there is some uncertainty in the data and that there can be different viewpoints about the various market definitions and other model parameters.

As shown in Table D.7, the market estimate is 54–56 percent if the owner percentage is at or above 40 percent (slightly less than its 1994–98 levels), and it is 53 percent if the owner percentage is 39 percent (its 1993 level). If the low- and moderate-income percentage for owners fell from its 1997–98 level of 43 percent to 36 percent, the overall market estimate would be approximately 51 percent. Thus, 51 percent is consistent with a rather significant decline in the low-mod share of the single-family home purchase market. Under HUD's baseline projections, the home purchase percentage can fall as low as 34 percent—about four-fifths of the 1997–98 level—and the low- and moderate-income market share would still be above 49 percent.

The volume of multifamily activity is also an important determinant of the size of the low- and moderate-income market. HUD is aware of the uncertainty surrounding projections of the multifamily market and consequently recognizes the need to conduct sensitivity analyses to determine the effects on the overall market estimate of different assumptions about the size of that market. As discussed in Section E.2, the baseline assumption of $46 billion in multifamily originations produces a rental mix of 28.9 percent, which is about the same as the baseline projection in HUD's 1995 Rule. Lowering the multifamily projection to $40 billion reduces the rental mix to 27.6 percent, which produces the set of overall low-mod market estimates that are reported in the first column of Table D.7. Compared with $46 billion, the $40 billion assumption reduces the overall low-mod market estimates by slightly over a half percentage point. For example, when the low-mod share of the owner market is 42 percent, the low-mod share of the overall market is 55.0 percent assuming $46 billion in multifamily originations but is 54.4 percent assuming $40 billion in multifamily originations.

The market estimates for Case 2 and Case 3 bracket those for Case 1. The smaller single-family rental market and lower low- and moderate-income percentages for rental properties result in the Case 2 estimates being almost two percentage points below the Case 1 estimates. Conversely, the higher percentages under Case 3 result in estimates of the low-mod market approximately three percentage points higher than the baseline estimates.

The various market estimates presented in Table D.7 are not all equally likely. Most of them equal or exceed 51 percent; in the baseline model, estimates below 51 percent would require the low-mod share of the single-family owner market for home purchase loans to drop to approximately 36 percent which would be over six percentage points lower than the 1993–98 average for the low-mod share of the home purchase market. With multifamily volume at $40 billion, the low-mod share of the owner market can fall to almost 36 percent before the average market share falls below 51 percent.

The upper bound (56 percent) of the low-mod estimates reported in Table D.7 for the baseline case is lower than the low-mod share of the market between 1995 and 1997. As reported above, HUD estimates that the low-mod market share during this period was 57–58 percent. There are two reasons the upper bound of 56 percent is lower than the recent, 1995–97 experience. First, the projected rental share of 29 percent is slightly lower than the rental share of 32 percent for the 1995–97 period; a smaller market share for rental units lowers the market share. Second, HUD's projections assume that refinancing borrowers will have higher incomes than borrowers purchasing a home (explained below). As Table D.4 shows, this was the reverse of the situation between 1995 and 1997 when refinancing borrowers had higher incomes than borrowers purchasing a home.[60] This fact, along with the larger single-family mix effect, resulted in the low-mod share of the market falling below the 1997 level of 57–58 percent.

B&C Loans. B&C loans can be deducted from HUD's low-mod market estimates using the same procedure described earlier. But before doing that, some comments about how HUD's projection model operates are in order. HUD's projection model assumes that the low-mod share of refinance loans will be three percentage points lower than the low-mod share of home purchase loans, even though there have been years recently (1995–97) when the low-mod share of refinance loans has been as high or higher than that for home purchase loans (see Table D.4).[61] Since B&C loans are primarily refinance loans, this assumption of a lower low-mod share for refinance loans partially adjusts for the effects of B&C loans, based on 1995–97 market conditions. For example, in Table D.7, the low-mod home purchase percentage of 43 percent, which reflects 1997 conditions, is combined with a low-mod refinance percentage of 40 percentage when, in fact, the low-mod refinance percentage in 1997 was 45 percent. Thus, by taking the 1992–98 average low-mod differential between home purchase and refinance loans, the projection model deviates from 1995–97 conditions in the single-family owner market.[62]

The effects of deducting the B&C loans from the projection model can be illustrated using the above example of a low-mod home purchase percentage of 43 percent and a low-mod refinance percentage of 40 percent; as Table D.7 shows, this translates into an overall low-mod market share of 55.7 percent. As in Section F.3.a, it is assumed that the subprime market accounts for 15 percent of all mortgages originated, which would be $144 billion based on $957 billion for the conventional market. This $144 billion estimate for the subprime market is reduced by 15 percent to arrive at $122 billion for subprime loans that will be less than the conforming loan limit. This figure is reduced by one-half to arrive at approximately $60 billion for the conforming B&C market; with an average loan amount of $75,043, the $60 billion represents 799,542 B&C loans projected to be originated under the conforming loan limit.[63]

Following the procedure discussed in Section F.3.a, the low-mod share of the market exclusive of B&C loans is estimated to be 55.4 percent, which is only slightly lower than the original estimate (55.7 percent).[64] As noted earlier, this occurs

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[59] The percentages in Table D.7 refer to borrowers purchasing a home. In HUD's model, the low-mod share of refinancing borrowers is assumed to be three percentage points lower than the low-mod share of borrowers purchasing a home; three percentage points is the average differential between 1992 and 1998. Thus, the market share model with the 40 percent owner percentage in Table D.7 assumes that 40 percent of home purchase loans and 37 percent of refinance loans are originated for borrowers with low- and moderate-income. If the same low-mod percentage were used for both refinancing and home purchase borrowers, the overall market share for the Low- and Moderate-Income Goal would increase by 0.8 of a percentage point.

[60] On the other hand, in the heavy refinance year of 1998, refinancing borrowers had higher incomes than borrowers purchasing a home.

[61] The three percentage point differential is the average for the years 1992 to 1998 (see Table D.4).

[62] Rather, this approach reflects 1998 market conditions when the low-mod differential between home purchase and refinance loans was approximately three percentage points.

[63] The $75,043 is derived by adjusting the 1997 figure of $68,289 upward based on recent growth in the average loan amount for all loans. Also, it should be mentioned that one recent industry report suggests that the B&C part of the subprime market has fallen to 37 percent. See "Retail Channel Surges in the Troubled '98 Market" in *Inside B&C Lending*, March 25, 1999, page 3. If the 1998 average ($76,223) for the 200 subprime lenders had been adjusted upward, the projected year 2000 average would have been higher ($81,164), which would have reduced the projected number of B&C loans to 739,244.

[64] As before, 1997 HMDA data for the 42 lenders were used to provide an estimate of 59.3 percent for the portion of the B&C market that would qualify as low- and moderate-income; using the low-mod percentage (58.0 percent) for the larger, 200 sample of subprime lenders would have given similar results. Applying the 59.3 percentage to the estimated B&C market total of 799,542 gives an estimate of 474,128 B&C loans that would qualify for the Low- and Moderate-Income Goal. Adjusting HUD's model to exclude the B&C market involves subtracting the 799,542 B&C loans and the 474,128 B&C low-mod loans from the corresponding figures estimated by HUD for the total single-family and multifamily market inclusive of B&C loans. HUD's projection model estimates that 9,445,609 single-family and multifamily units will be financed and of these, 5,263,085 (55.7 percent as in Table D.7) will qualify for the Low- and Moderate-Income Goal. Deducting the B&C market estimates produces

because the B&C loans that were dropped from the analysis had similar low-mod percentages as the overall (both single-family and multifamily) market (59.3 percent and 55.7 percent, respectively). The impact of dropping B&C loans is larger when the overall market share for low-mod loans is smaller. As shown in Table D.7, a 38 percent low-mod share for single-family owners is associated with an overall low-mod share of 52.2 percent. In this case, dropping B&C loans would reduce the low-mod market share by almost one percentage point (0.7 percent) to 51.5 percent. Still, dropping B&C loans from the market totals does not change the overall low-mod share of the market appreciably.

Dropping B&C loans from HUD's projection model changes the mix between rental and owner units in the final market estimate; rental units accounted for 31.5 percent of total units after dropping B&C loans compared with 28.9 percent before dropping B&C loans. Since practically all rental units qualify for the low-mod goal, their increased importance in the market partially offsets the negative effects on the goals-qualifying shares of any reductions in B&C owner loans.

Section F.3.a discussed several caveats concerning the analysis of B&C loans. It is not clear what types of loans (e.g., first versus second mortgages) are included in the B&C market estimates. There is only limited data on the borrower characteristics of B&C loans and the extent to which these loans are included in HMDA is not clear. Still, the analysis of Table D.7 and the above analysis of the effects of dropping B&C loans from the market suggest that 50–55 percent is a reasonable range of estimates for the low- and moderate-income market for the years 2000–2003. This range covers markets without B&C loans and allows for market environments that would be much less affordable than recent market conditions. The next section presents additional analyses related to market volatility and affordability conditions.

c. Economic Conditions, Market Estimates, and the Feasibility of the Low- and Moderate-Income Housing Goal

During the 1995 rule-making, there was a concern that the market share estimates and the housing goals failed to recognize the volatility of housing markets and the existence of macroeconomic cycles. There was particular concern that the market shares and housing goals were based on a period of economic expansion accompanied by record low interest rates and high housing affordability. This section discusses these issues, noting that the Secretary can consider shifts in economic conditions when evaluating the performance of the GSEs on the goals, and noting further that the market share estimates can be examined in terms of less favorable market conditions than existed during the 1993 to 1998 period.

Volatility of Market. The starting point for HUD's estimates of market share is the projected $1,100 billion in single-family originations. Shifts in economic activity could obviously affect the degree to which this projection is borne out. Changing economic conditions can affect the validity of HUD's market estimates as well as the feasibility of the GSEs' accomplishing the housing goals.

One only has to recall the volatile nature of the mortgage market in the past few years to appreciate the uncertainty around projections of that market. Large swings in refinancing, consumers switching between adjustable-rate mortgages and fixed-rate mortgages, and increased first-time homebuyer activity due to record low interest rates, have all characterized the mortgage market during the nineties. These conditions are beyond the control of the GSEs but they would affect their performance on the housing goals. A mortgage market dominated by heavy refinancing on the part of middle-income homeowners would reduce the GSEs' ability to reach a specific target on the Low- and Moderate-Income Goal, for example. A jump in interest rates would reduce the availability of very-low-income mortgages for the GSEs to purchase. But on the other hand, the next few years may be highly favorable to achieving the goals because of the high refinancing activity in 1998 and anticipated in 1999. A period of low interest rates would sustain affordability levels without causing the rush to refinance seen earlier in 1993 and more recently in 1998. A high percentage of potential refinancers have already done so, and are less likely to do so again.

HUD conducted numerous sensitivity analyses of the market shares. For example, increasing the single-family mortgage origination projection by $200 billion, from $1,100 billion to $1,300 billion, would reduce the market share for the Low- and Moderate-Income Goal by approximately one percentage point, assuming the other baseline assumptions remain unchanged. This reduction in the low-mod share of the mortgage market share occurs because the rental share of newly-mortgaged units is reduced (from 28.9 percent to 27.1 percent).

HUD also examined potential changes in the market shares under two very different macroeconomic environments, one assuming a recession and one assuming a period of low interest rates and heavy refinancing. The recessionary environment was simulated using Fannie Mae's minimum projections of single-family mortgage originations ($880 billion) and multifamily originations ($35 billion) for the year 2000. The low- and moderate-income share of the home purchase market was reduced to 34 percent, or 8.5 percentage points lower than its 1997 share.[65] Under these rather severe conditions, the overall market share for the Low- and Moderate-Income Goal would decline to 49 percent.

The heavy refinance environment was simulated assuming that the single-family origination market increased to $1,650 billion (compared with HUD's baseline of $1,100 billion) and that the multifamily market increased to $52 billion (compared with HUD's baseline of $46 billion). The relatively high level of single-family originations increases the owner share of newly-mortgaged dwelling units from 71 percent under HUD's baseline model to 74 percent in the simulated heavy refinance environment. Refinances were assumed to account for 60 percent of all single-family mortgage originations. If low- and moderate-income borrowers accounted for 40 percent of borrowers purchasing a home but only 36 percent of refinancing borrowers, then the market share for the Low- and Moderate-Income Goal would be 51 percent. If the first two percentages were reduced to 39 percent and 32 percent, respectively, then the market share for the Low- and Moderate-Income Goal would fall to 49 percent. However, if the refinance market resembled 1998 conditions, the low-mod share would be 54 percent, as reported earlier.

Finally, HUD simulated the specific scenario based on the MBA's most recent market estimate of $950 billion and a refinance rate of 20 percent. In this case, assuming a low- mod home purchase percentage of 40, the overall low-mod market share was 54.9 percent, assuming $46 billion in multifamily loans, and 54.3 percent, assuming $40 billion in multifamily loans.

Feasibility Determination. As stated in the 1995 Rule, HUD is well aware of the volatility of mortgage markets and the possible impacts on the GSEs' ability to meet the housing goals. FHEFSSA allows for changing market conditions.[66] If HUD has set a goal for a given year and market conditions change dramatically during or prior to the year, making it infeasible for the GSE to attain the goal, HUD must determine "whether (taking into consideration market and economic conditions and the financial condition of the enterprise) the achievement of the housing goal was or is feasible." This provision of FHEFSSA clearly allows for a finding by HUD that a goal was not feasible due to market conditions, and no subsequent actions would be taken. As HUD noted in the 1995 GSE Rule, it does not set the housing goals so that they can be met even under the worst of circumstances. Rather, as explained above, HUD has conducted numerous sensitivity analyses for economic environments much more adverse than has existed in recent years. If macroeconomic conditions change even more dramatically, the levels of the goals can be revised to reflect the changed conditions. FHEFSSA and HUD recognize that conditions could change in ways that require revised expectations.

Affordability Conditions and Market Estimates. The market share estimates rely on 1992–1998 HMDA data for the percentage of low- and moderate-income borrowers. As discussed in Appendix A, record low interest rates, a more diverse socioeconomic group of households seeking homeownership, and affordability initiatives of the private sector have encouraged first-time buyers and low-income borrowers to enter the market during the six-year period between 1993 and 1998.

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the following adjusted market estimates: a total market of 8,646,268 of which 4,788,957 (55.4 percent) will qualify for the Low- and Moderate-Income Goal.

[65] Refinance mortgages were assumed to account for 15 percent of all single-family originations; 31 percent of refinancing borrowers were assumed to have less-than-area-median incomes, which is 14 percentage points below the 1997 level. The average per unit multifamily loan amount was assumed to be $29,000.

[66] Section 1336(b)(3)(A).

A significant increase in interest rates over their 1993–98 levels would reduce the presence of low-income families in the mortgage market and the availability of low-income mortgages for purchase by the GSEs. As discussed above, the 50–55 percent range for the low-mod market share covers economic and housing market conditions less favorable than recent conditions of low interest rates and economic expansion. The low-mod share of the single-family home purchase market could fall to 34 percent, which is over nine percentage points lower than its 1998 level of about 43 percent, before the baseline market share for the Low- and Moderate-Income Goal would fall below 50 percent.

d. Conclusions About the Size of Low- and Moderate-Income Market

Based on the above findings as well as numerous sensitivity analyses, HUD concludes that 50–55 percent is a reasonable range of estimates of the mortgage market's low- and moderate-income share for the year 2000 and beyond. This range covers much more adverse market conditions than have existed recently, allows for different assumptions about the multifamily market, and excludes the effects of B&C loans. HUD recognizes that shifts in economic conditions could increase or decrease the size of the low- and moderate-income market during that period.

G. Size of the Conventional Conforming Market Serving Central Cities, Rural Areas, and Other Underserved Areas

The following discussion presents estimates of the size of the conventional conforming market for the Central City, Rural Areas, and other Underserved Areas Goal; this housing goal will also be referred to as the Underserved Areas Goal or the Geographically-Targeted Goal. The first two sections focus on underserved census tracts in metropolitan areas. Section 1 presents underserved area percentages for different property types while Section 2 presents market estimates for metropolitan areas. Section 3 discusses B&C loans and rural areas.

This rule proposes that the Central Cities, Rural Areas, and other Underserved Areas Goal for the years 2000 and thereafter be set at 29 percent of eligible units financed in calendar year 2000, and 31 percent of eligible units financed in each of calendar years 2001–2003.

1. Geographically-Targeted Goal Shares by Property Type

For purposes of the Geographically-Targeted Goal, underserved areas in metropolitan areas are defined as census tracts with:

(a) Tract median income at or below 90 percent of the MSA median income; or

(b) A minority composition equal to 30 percent or more and a tract median income no more than 120 percent of MSA median income.

Owner Mortgages. The first set of numbers in Table D.8 are the percentages of single-family-owner mortgages that financed properties located in underserved census tracts of metropolitan areas between 1992 and 1998. In 1997 and 1998, approximately 25 percent of home purchase loans financed properties located in these areas; this represents an increase from 22 percent in 1992 and 1993. In some years, refinance loans are even more likely than home purchase loans to finance properties located in underserved census tracts. Between 1994 and 1997, 28.5 percent of refinance loans were for properties in underserved areas, compared to 25.1 percent of home purchase loans.[67] In the heavy refinance year of 1998, underserved areas accounted for about 25 percent of both refinance and home purchase loans.

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[67] As shown in Table D.8, excluding loans less than $15,000 and manufactured home loans reduces the 1997 underserved area percentage by 1.2 percentage points for all single-family-owner loans from 27.8 to 26.6 percent. Dropping only small loans reduces the underserved areas share of the metropolitan market by 0.4 and dropping manufactured loans (above $15,0000) reduces the market by 0.8.

Table D.8

Underserved Area Mortgage Market In Metropolitan Areas: 1993-1998 HMDA Data

Single-Family Owner-Occupied	Purchase		Refinance		Total	
1992	22.2%	(21.5)	20.1%	(19.9)	20.8	(20.4)
1993	21.9	(21.1)	19.5	(19.4)	20.2	(19.9)
1994	24.4	(23.5)	27.5	(26.7)	25.5	(24.9)
1995	25.5	(24.2)	29.3	(28.1)	26.9	(25.6)
1996	25.0	(23.1)	28.7	(27.9)	26.7	(25.3)
1997	25.2	(23.3)	30.8	(30.1)	27.8	(26.6)
1998	24.6	(22.8)	24.9	(24.5)	24.8	(23.9)
Non-Owner						
1992						42.4
1993		39.3		41.1		40.4
1994		39.6		46.7		43.0
1995		40.1		50.1		43.7
1996		39.7		48.8		43.5
1997		40.5		51.2		45.0
1998		40.3		46.5		43.6
Multifamily[1]						
1992						50.2
1993						47.1
1994						51.0
1995						47.8
1996						48.5
1997						48.0
1998						47.0

Source: HMDA data for metropolitan areas. Numbers in parantheses exclude loans less than $15,000 and loans from lenders that primarily originate manufactured housing home loans. The reductions in the refinance percentages are mainly due to excluding loans less than $15,000, as there are few manufactured housing refinance loans.

[1] A purchase/refinance breakdown is not available for multifamily.

Since the 1995 Rule was written, the single-family-owner market in underserved areas has remained strong, similar to the low- and moderate-income market discussed in Section F. Over the past five years, the underserved area share of the metropolitan mortgage market has leveled off at 25–28 percent, considering both home purchase and refinance loans. This is higher than the 23 percent average for the 1992–94 period, which was the period that HUD was considering when writing the 1995 Rule. As discussed earlier, economic conditions could change and reduce the size of the underserved areas market; however, that market appears to have shifted to a higher level over the past five years.

Renter Mortgages. The second and third sets of numbers in Table D.8 are the underserved area percentages for single-family rental mortgages and multifamily mortgages, respectively. Based on HMDA data for single-family, non-owner-occupied (investor) loans, the underserved area share of newly-mortgaged single-family rental units has been in the 43–45 percent range over the past five years. HMDA data also show that about half of newly-mortgaged multifamily rental units are located in underserved areas.

2. Market Estimates for Underserved Areas in Metropolitan Areas

In the 1995 GSE Rule, HUD estimated that the market share for underserved areas would be between 25 and 28 percent. This estimate turned out to be below market experience, as underserved areas accounted for approximately 33 percent of all mortgages originated in metropolitan areas between 1995 and 1997 and for 30 percent in 1998 (see Section F.3.a above).[68]

Table D.9 reports HUD's estimates of the market share for underserved areas based on the projection model discussed earlier.[69] After presenting these estimates, which are based mainly on HMDA data for metropolitan areas, the effects of dropping B&C loans and including non-metropolitan areas will be discussed.

[68] As mentioned earlier, dropping B&C loans reduces the underserved area estimate for 1997 from 33.7 percent to 32.4 percent. The main reason for HUD's underestimate in 1995 was not anticipating the high percentages of single-family-owner mortgages that would be originated in underserved areas. During the 1995–97 period, about 27 percent of single-family-owner mortgages financed properties in underserved areas; this compares with 24 percent for the 1992–94 period which was the basis for HUD's earlier analysis. There are other reasons the underserved area market shares for 1995 to 1997 were higher than HUD's 25–28 percent estimate. As discussed earlier, rental properties accounted for a larger share (31 percent) of the market during this period than assumed (29 percent) in HUD's 1995 model. Single-family rental and multifamily mortgages originated during this period were also more likely to finance properties located in underserved areas than assumed in HUD's earlier model. In 1997, 45 percent of single-family rental mortgages and 48 percent of multifamily mortgages financed properties in underserved areas, both figures larger than HUD's assumptions (37.5 percent and 42.5 percent, respectively) in its earlier model. Even in the heavy refinance year of 1998, the underserved areas market share (30 percent) was higher than projected by HUD during the 1995 rule-making process.

[69] Table D.9 presents estimates for the same combinations of projections used to analyze the Low- and Moderate-Income Goal. Table D.6 in Section F.3 defines Cases 1, 2, and 3; Case 1 (the baseline) projects a 42.5 percent share for single-family rentals and a 48 percent share for multifamily properties while the more conservative Case 2 projects 40 percent and 46 percent, respectively.

Table D.9

Underserved Area Market Estimates For Metropolitan Areas: Sensitivity Analysis

Case 1 with Different Underserved Areas Percentages for Single-Family Owner-Occupied's:		Size of Multifamily Market		
		$40 Billion	$46 Billion	$52 Billion
Single-Family Owner-Occupied: [a]	28%	32.8 %	33.1 %	33.4 %
	27%	32.1	32.4	32.7
	26%	31.4	31.7	32.0
	25%	30.7	30.9	31.3
	24%	29.9	30.2	30.6
	23%	29.2	29.5	29.9
	22%	28.5	28.8	29.2
	21%	27.8	28.1	28.5
	20%	27.0	27.4	27.8
	19%	25.8	26.7	27.1
	18%	25.6	26.0	26.4
Single-Family Owner-Occupied:	25% with:			
	Case 1 (above)	30.7 %	30.9 %	31.3 %
	Case 2	29.7	30.0	30.3
	Case 3	31.5	31.8	32.1
Single-Family Owner-Occupied:	22% with:			
	Case 1 (above)	28.5 %	28.8 %	29.2 %
	Case 2	27.5	27.8	28.2
	Case 3	29.4	29.7	30.1

[a] These percentages are assumed to be the overall (both home purchase and refinance) percentages of single-family owner mortgages in underserved census tracts.

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The percentage of single-family-owner mortgages financing properties in underserved areas is the most important determinant of the overall market share for this goal. Therefore, Table D.9 reports market shares for different single-family-owner percentages ranging from 28 percent (1997 HMDA) to 20 percent (1993 HMDA) to 18 percent. If the single-family-owner percentage for underserved areas is at its 1994–98 HMDA average of 26 percent, the market share estimate is almost 32 percent. The overall market share for underserved areas peaks at 33 percent when the single-family-owner percentage is at its 1997 figure of 28 percent. Most of the estimated market shares for the owner percentages that are slightly below recent experience are in the 30–31 percent range. In the baseline case, the single-family-owner percentage can go as low as 23 percent, which is over 3 percentage points lower than the 1994–98 HMDA average, and the estimated market share for underserved areas remains almost 30 percent.[70]

Unlike the Low- and Moderate-Income Goal, the market estimates differ only slightly as one moves from Case 1 to Case 3 and from $40 billion to $52 billion in the size of the multifamily market. For example, reducing the assumed volume to $40 billion reduces the overall market projection for underserved areas by only about 0.3 percentage points. This is because the underserved area differentials between owner and rental properties are not as large as the low- and moderate-income differentials reported earlier. Several additional sensitivity analyses were conducted. For example, adding (deducting) $200 billion to the $1,100 billion single-family originations would reduce (increase) the underserved area market share by about 0.7 (1.0) percent, assuming there were no other changes. The MBA estimated in September 1999 that year 2000 single-family mortgage volume would be about $950 billion, with a refinance rate of 20 percent. With these assumptions and a single-family owner underserved area percentage of 25 percent, the overall market share for underserved units is 31.4 percent if multifamily loans total $46 billion, and 31.1 percent if multifamily loans total $40 billion.

3. Adjustments: B&C Loans and the Rural Underserved Area Market

B&C Loans. The procedure for dropping B&C loans from the projections is the same as described in Section F.3.b for the Low- and Moderate-Income Goal. The underserved area percentage for B&C loans is 46.1 percent, which is much higher than the projected percentage for the overall market (slightly over 30 percent as indicated in Table D.9). Thus, dropping B&C loans will reduce the overall market estimates. Consider in Table D.9, the case of a single-family-owner percentage of 28 percent, which yields an overall market estimate for underserved areas of 33.1 percent. Dropping B&C loans from the projection model reduces the underserved areas market share by 1.2 percentage points to 31.9.

Non-metropolitan Areas. Underserved rural areas are non-metropolitan counties with:

(a) County median income at or below 95 percent of the greater of statewide non-metropolitan median income or nationwide non-metropolitan income; or

(b) A minority composition equal to 30 percent or more and a county median income no more that 120 percent of statewide non-metropolitan median income.

HMDA does not provide mortgage data for non-metropolitan counties, which makes it impossible to estimate the size of the mortgage market in rural areas. However, all indicators suggest that underserved counties in non-metropolitan areas comprise a larger share of the non-metropolitan mortgage market than the underserved census tracts in metropolitan areas comprise of the metropolitan mortgage market. For instance, underserved counties within rural areas include 54 percent of non-metropolitan homeowners; on the other hand, underserved census tracts in metropolitan areas account for only 34 percent of metropolitan homeowners.

In 1997, 36 percent of the GSE's total purchases in non-metropolitan areas were in underserved counties while 27 percent of their purchases in metropolitan areas were in underserved census tracts. These figures also suggest the market share for underserved counties in rural areas is higher than the market share for underserved census tracts in metropolitan areas. Thus, HUD's use of the metropolitan estimate to proxy the overall market for this goal, including rural areas, is conservative. If mortgage data for non-metropolitan areas were available, the estimated market share for the Underserved Areas Goal could be as much as one percentage point higher.[71]

The estimates presented in Table D.9 and this section's analysis of dropping B&C loans and including non-metropolitan areas suggest that 29–32 percent is a reasonable range for the market estimate for underserved areas based on the projection model described earlier. This range incorporates market conditions that are more adverse than have existed recently and it excludes B&C loans from the market estimates.

4. Conclusions

Based on the above findings as well as numerous sensitivity analyses, HUD concludes that 29–32 percent is a reasonable estimate of mortgage market originations that would qualify toward achievement of the Geographically Targeted Goal if purchased by a GSE. HUD recognizes that shifts in economic and housing market conditions could affect the size of this market; however, the market estimate allows for the possibility that adverse economic conditions can make housing less affordable than it has been in the last few years. In addition, the market estimate incorporates a range of assumptions about the size of the multifamily market.

H. Size of the Conventional Conforming Market for the Special Affordable Housing Goal

This section presents estimates of the conventional conforming mortgage market for the Special Affordable Housing Goal. The special affordable market consists of owner and rental dwelling units which are occupied by, or affordable to: (a) very-low-income families; *or* (b) low-income families in low-income census tracts; *or* (c) low-income families in multifamily projects that meet minimum income thresholds patterned on the low-income housing tax credit (LIHTC).[72] HUD estimates that the special affordable market is 23–26 percent of the conventional conforming market.

HUD is proposing that the annual goal for mortgage purchases qualifying under the Special Affordable Housing Goal be 18 percent of eligible units financed in calendar year 2000, and 20 percent of eligible units financed in each of calendar years 2001–2003. This proposed rule further provides that of the total mortgage purchases counted toward the Special Affordable Housing Goal, each GSE must annually purchase multifamily mortgages in an amount equal to at least 0.9 percent of the dollar volume of combined (single family and multifamily) 1998 mortgage purchases in each of calendar year 2000, and 1.0 percent in each of calendar years 2001–2003. This implies the following thresholds for the two GSEs:[73]

	2000 (in billions)	2001–2003 (in billions)
Fannie Mae	$3.31	$3.68
Freddie Mac	2.46	2.73

Section F described HUD's methodology for estimating the size of the low- and moderate-income market. Essentially the same methodology is employed here except that the focus is on the very-low-income market (0–60 percent of Area Median Income) and that portion of the low-income market (60–80 percent of Area Median Income) that is located in low-income census tracts. Data are not available to estimate the number of renters with incomes between 60 and 80 percent of Area Median Income who live in projects that meet the tax credit thresholds. Thus, this part of the Special Affordable Housing Goal is not included in the market estimate.

[70] The recession scenario described in Section F.3.c assumed that the underserved area percentage for single-family-owner mortgages was 21 percent or almost seven percentage points lower than its 1997 value. In this case, the overall market share for underserved areas declines to 28 percent.

[71] Assuming that non-metropolitan areas account for 15 percent of all single-family-owner mortgages and recalling that the projected single-family-owner market for the year 2000 accounts for 71 percent of newly-mortgaged dwelling units, then the underserved area differential of 9 percent in the GSE purchase data would raise the overall market estimate by 0.96 of a percentage point (9 times 0.15 times 0.71). Of course, the market differential may not be the same as that reflected in the GSE data.

[72] There are two LIHTC thresholds: at least 20 percent of the units are affordable at 50 percent of AMI or at least 40 percent of the units are affordable at 60 percent of AMI.

[73] HUD has determined that the total dollar volume of the GSEs' combined (single and multifamily) mortgage purchases in 1998, measured in unpaid principal balance at acquisition, was as follows: Fannie Mae $367,589 million; Freddie Mac $273,231 million.

1. Special Affordable Shares by Property Type

The basic approach involves estimating for each property type the share of dwelling units financed by mortgages in a particular year that are occupied by very-low-income families or by low-income families living in low-income areas. HUD has combined mortgage information from HMDA, the American Housing Survey, and the Property Owners and Managers Survey in order to estimate these special affordable shares.

a. Special Affordable Owner Percentages

The percentage of single-family-owners that qualify for the Special Affordable Goal is reported in Table D.10. Table D.10 also reports data for the two components of the Special Affordable Goal—very-low-income borrowers and low-income borrowers living in low-income census tracts. HMDA data show that special affordable borrowers accounted for 15.3 percent of all conforming home purchase loans between 1996 and 1998. The special affordable share of the market has followed a pattern similar to that discussed earlier for the low-mod share of the market. The percentage of special affordable borrowers increased significantly between 1992 and 1994, from 10.4 percent of the conforming market to 12.6 percent in 1993, and then to 14.1 percent in 1994. The additional years since the 1995 Rule was written have seen the special affordable market maintain itself at an even higher level. Over the past four years (1995–98), the special affordable share of the market has averaged 15.1 percent, or almost 13.0 percent if manufactured and small loans are excluded from the market totals. As mentioned earlier, lending patterns could change with sharp changes in the economy, but the fact that there have been several years of strong affordable lending suggests that the market has changed in fundamental ways from the mortgage market of the early 1990s. The effect of one factor, the growth in the B&C loans, on the special affordable market is discussed below in Section H.2.

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Table D.10

Special Affordable Share of Single-Family Owner-Occupied Mortgage Market

		Home Purchase		Refinance	
		Conforming Market	Market W/O Mfg loans	Conforming Market	Market W/O Mfg loans
1. Very-Low-Income					
	1992	8.7 %	7.6 %	4.5 %	4.2 %
	1993	10.8	9.6	5.8	5.6
	1994	11.9	10.7	11.0	10.2
	1995	12.0	10.5	12.3	11.2
	1996	12.7	10.8	13.0	12.2
	1997	13.0	11.0	14.5	13.9
	1998	13.3	11.4	11.3	11.1
2. Low Income in Low Income Areas					
	1992	1.7 %	1.6 %	1.1 %	1.0 %
	1993	1.8	1.7	1.2	1.2
	1994	2.2	2.1	2.3	2.2
	1995	2.4	2.2	2.7	2.5
	1996	2.3	2.0	2.6	2.5
	1997	2.3	2.0	3.0	2.9
	1998	2.2	2.0	2.2	2.1
3. Special Affordable (1 plus 2)					
	1992	10.4 %	9.3 %	5.5 %	5.2 %
	1993	12.6	11.3	7.0	6.8
	1994	14.1	12.8	13.2	12.4
	1995	14.4	12.7	14.9	13.7
	1996	15.0	12.8	15.6	14.7
	1997	15.3	13.0	17.6	16.8
	1998	15.5	13.4	13.5	13.2

Source: HMDA data. "Market without manufactured housing loans" excludes loans by lenders that primarily originate manufactured housing loans and loans less than $15,000.

b. Very-Low-Income Rental Percentages

Table D.5 in Section F reported the percentages of the single-family rental and multifamily stock affordable to very-low-income families. According to the AHS, 57 percent of single-family units and 49 percent of multifamily units were affordable to very-low-income families in 1995. The corresponding average values for the AHS's six surveys between 1985 and 1995 were 58 percent and 47 percent, respectively.

Outstanding Housing Stock versus Mortgage Flow. As discussed in Section F, an important issue concerns whether rent data based on the existing rental stock from the AHS can be used to proxy rents of newly mortgaged rental units.[74] HUD's analysis of POMS data suggests that it can—estimates from POMS of the rent affordability of newly-mortgaged rental properties are quite consistent with the AHS data reported in Table D.5 on the affordability of the rental stock. Fifty-six (56) percent of single-family rental properties with new mortgages between 1993 and 1995 were affordable to very-low-income families, as was 51 percent of newly-mortgaged multifamily properties. These percentages for newly-mortgaged properties from the POMS are similar to those reported above from the AHS for the rental stock. The baseline projection from HUD's market share model assumes that 50 percent of newly-mortgaged, single-family rental units, and 47 percent of multifamily units, are affordable to very-low-income families.

c. Low-Income Renters in Low-Income Areas

HMDA does not provide data on low-income renters living in low-income census tracts. As a substitute, HUD used the POMS and AHS data. The share of single-family and multifamily rental units affordable to low-income renters at 60–80 percent of area median income (AMI) and located in low-income tracts was calculated using the internal Census Bureau AHS and POMS data files.[75] The POMS data showed that 8.3 percent of the 1995, single-family rental stock, and 9.3 percent of single-family rental units receiving financing between 1993 and 1995, were affordable at the 60–80 percent level and were located in low-income census tracts. The POMS data also showed that 12.4 percent of the 1995 multifamily stock, and 13.5 percent of the multifamily units receiving financing between 1993 and 1995, were affordable at the 60–80 percent level and located in low-income census tracts.[76] The baseline analysis below assumes that 8 percent of the single-family rental units and 11.0 percent of multifamily units are affordable at 60–80 percent of AMI and located in low-income areas.[77]

2. Size of the Special Affordable Market

During the 1995 rule making, HUD estimated a market share for the Special Affordable Goal of 20–23 percent. This estimate turned out to be below market experience, as the special affordable market accounted for almost 29 percent of all housing units financed in metropolitan areas between 1995 and 1997. As explained in Section F.3.a, there are several explanations for HUD's underestimate of the 1995–97 market. The financing of rental properties during 1995–97 was larger than anticipated. HUD's earlier estimates assumed a rental share of 29 percent, which was lower that the approximately 31 percent rental share for the years 1995–97. Another important reason for HUD's underestimate was not anticipating the high percentage of single-family-owner mortgages that would be originated for special affordable borrowers. During the 1995–97 period, 15.4 percent of all (both home purchase and refinance) single-family-owner mortgages financed properties for special affordable borrowers; this compares with 9.5 percent for the 1992–94 period which was the basis for HUD's earlier analysis. The 1995–97 mortgage markets originated more affordable single-family mortgages than anticipated.[78] Furthermore, the special affordable market remained strong during the heavy refinance year of 1998. Over 26 percent of all dwelling units financed in 1998 qualified for the Special Affordable Goal.

The size of the special affordable market depends in large part on the size of the multifamily market and on the special affordable percentages of both owners and renters. Table D.11 gives new market estimates for different combinations of these factors. As before, Case 2 is slightly more conservative than the baseline projections (Case 1) mentioned above. For instance, Case 2 assumes that only 6 percent of rental units are affordable to low-income renters living in low-income areas.

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[74] Previous analysis of this issue has focused on the relative merits of data from the recently completed stock versus data from the outstanding stock. The very-low-income percentages are much lower for the recently completed stock—for instance, the average across the five AHS surveys were 15 percent for recently completed multifamily properties versus 46 percent for the multifamily stock. But it seems obvious that data from the recently completed stock would underestimate the affordability of newly-mortgaged units because they exclude purchase and refinance transactions involving older buildings, which generally charge lower rents than newly-constructed buildings. Blackley and Follain concluded that newly-constructed properties did not provide a satisfactory basis for estimating the affordability of newly-mortgaged properties. See "A Critique of the Methodology Used to Determine Affordable Housing Goals for the Government Sponsored Housing Enterprises."

[75] Affordability was calculated as discussed earlier in Section F, using AHS monthly housing cost, monthly rent, number of bedrooms, and MSA location fields. Low-income tracts were identified using the income characteristics of census tracts from the 1990 Census of Population, and the census tract field on the AHS file was used to assign units in the AHS survey to low-income tracts and other tracts. POMS data on year of mortgage origination were utilized to restrict the sample to properties mortgaged during 1993–1995.

[76] During the 1995 rule-making process, HUD examined the rental housing stock located in low-income zones of 41 metropolitan areas surveyed as part of the AHS between 1989 and 1993. While the low-income zones did not exactly coincide with low-income tracts, they were the only proxy readily available to HUD at that time. Slightly over 13 percent of single-family rental units were both affordable at the 60–80 percent of AMI level and located in low-income zones; almost 16 percent of multifamily units fell into this category.

[77] Therefore, combining the assumed very-low-income percentage of 50 percent (47 percent) for single-family rental (multifamily) units with the assumed low-income-in-low-income-area percentage of 8 percent (11 percent) for single-family rental (multifamily) units yields the special affordable percentage of 58 percent (58 percent) for single-family rental (multifamily) units. This is the baseline Case 1 in Table D.6.

[78] The 29.0 percent estimate for 1997 also includes manufactured housing and small loans while HUD's earlier 20–23 percent estimate excluded the effects of these loans. Excluding manufacturing housing and small loans from the 1997 market would reduce the special affordable share of 29.0 percent by a percentage point to 28.0 percent. This can be approximated by multiplying the single-family-owner property share (0.69) for 1997 by the 1.4 percentage point differential between the special affordable share of all (home purchase and refinance) single-family-owner mortgages in 1997 with manufactured and small loans included (16.3 percent) and the corresponding share with these loans excluded (14.9 percent). This gives a reduction of 0.97 percentage point. These calculations overstate the actual reduction because they do not include the effect of the increase in the rental share of the market that accompanies dropping manufactured housing and small loans from the market totals.

Table D.11

Special Affordable Mortgage Market: Sensitivity Analysis

	Size of Multifamily Market		
	$40 Billion	$46 Billion	$52 Billion
Case 1 With:			
(a) Rent Affordable at 60% AMI: Single-Family Rent Percentages= 50%, Multifmaily= 47%			
(b) Low-Income in Low-Income Areas= 8% for Single-Family Rental and 11% for Multifamily			
(c) Single-Family Owner-Occupied's Special Affordable Share: [a]			
15.0%	26.5 %	27.0 %	27.7 %
14.0%	25.8	26.3	27.0
13.0%	25.1	25.6	26.3
12.0%	24.4	24.9	25.6
11.0%	23.6	24.2	24.9
10.0%	22.9	23.5	24.2
9.0%	22.2	22.8	23.5
Case 2 With:			
(a) Rent Affordable at 60% AMI: Single-Family Rent Percentages= 47%, Multifamily= 44%			
(b) Low-Income in Low-Income Areas= 6% for Single-Family Rental and 10% for Multifamily			
(c) Single-Family Owner-Occupied's Special Affordable Share:			
14.0%	23.8 %	24.3 %	24.9 %
13.0%	23.0	23.5	24.2
12.0%	22.3	22.8	23.5
11.0%	21.5	22.1	22.7
10.0%	20.8	21.3	22.0
Case 3 With:			
(a) Rent Affordable at 60% AMI: Single-Family Rent Percentage= 53%, Multifamily= 50%			
(b) Low-Income in Low-Income Areas= 8% for Single-Family Rental and 12% for Multifamily			
(c) Single-Family Owner-Occupied's Special Affordable Share:			
14.0%	28.0 %	28.6 %	29.3 %
13.0%	27.3	27.9	28.6
12.0%	26.6	27.2	27.9
11.0%	25.9	26.5	27.2
10.0%	25.2	25.8	26.6

[a] These percentages are used for home purchase loans. Refinance loans were assumed to be 1.4 percentage points lower for each alternative.

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When the special affordable share of the single-family market for home mortgages is at its 1994–98 level of 14–15 percent, the special affordable market estimate is 26–27 percent under HUD's baseline projections. In fact, the market estimates remain above 24 percent even if the special affordable percentage for home loans falls from its 15-percent-plus level during 1996–1998 to as low as 10–11 percent, which is similar to the 1992 level. Thus, a 24 percent market estimate allows for the possibility that adverse economic conditions could keep special affordable families out of the housing market. On the other hand, if the special affordable percentage stays at its recent levels, the market estimate is as high as 27 percent.[79]

B&C Loans. The procedure for dropping B&C loans from the projections is the same as described in Section F.3.b for the Low- and Moderate-Income Goal. The special affordable percentage for B&C loans is 29.4 percent, which is not much higher than the projected percentages for the overall market given in Table D.9). Thus, dropping B&C loans will not appreciably reduce the overall market estimates. Consider in Table D.11, the case of a single-family-owner percentage of 15 percent, which yields an overall market estimate for Special Affordable Goal of 27 percent. Dropping B&C loans from the projection model reduces the special affordable market share by 0.2 percentage points to 26.8. The effect would be slightly larger for the other cases given in Table D.11.

Based on the data presented in Table D.11 and the analysis of the effects of excluding B&C loans from the market, a range of 23–26 percent is a reasonable estimate of the special affordable market. This range includes market conditions that are much more adverse than have recently existed. Additional sensitivity analyses are provided in the remainder of this section.

Additional Sensitivity Analyses. The market estimate declines by one-half of a percentage point if the estimate of the multifamily mortgage market is changed from $46 billion to $40 billion. For example, when the special affordable share of the owner market is 13 percent, the overall market estimate is reduced from 25.6 percent to 25.1 percent when the multifamily volume assumption is reduced from $46 billion to $40 billion. The market estimates under the more conservative Case 2 projections are approximately two percentage points below those under the Case 1 projections. This is due mainly to Case 2's lower share of single-family investor mortgages (8 percent versus 10 percent in Case 1) and its lower affordability and low-income-area percentages for rental housing (e.g., 53 percent for single-family rental units in Case 2 versus 58 percent in Case 1).

Increasing the volume of single-family originations by $200 billion to $1,300 billion reduces the market estimate by 0.7 percentage points, while reducing the volume of single-family originations by $200 billion to $900 billion increases the market estimate by about one percentage point. Using a recent MBA projection of $950 billion in single-family originations and a 20 percent refinance rate, the special affordable market is projected to be 26.6 percent if multifamily originations are $46 billion, and 26.0 percent if multifamily originations are $40 billion, assuming that the single-family owner-occupied special affordable share is 13 percent.

A recession scenario and a heavy refinance scenario were described during the discussion of the Low- and Moderate-Income Goal in Section F. The recession scenario assumed that special affordable borrowers would account for only 9–10 percent of newly-originated home loans. In these cases, the market share for the Special Affordable Goal declines to 23–24 percent. In the heavy refinance scenario, the special affordable percentage for refinancing borrowers was assumed to be four percentage points lower that the corresponding percentage for borrowers purchasing a home. In this case, the market share for the Special Affordable Goal was typically in the 23–25 percent range, depending on assumptions about the incomes of borrowers in the home purchase market. As noted earlier, the special affordable market share was approximately 26 percent during 1998, a period of heavy refinance activity.

Tax Credit Definition. Data are not available to measure the increase in market share associated with including low-income units located in multifamily buildings that meet threshold standards for the low-income housing tax credit. Currently, the effect on GSE performance under the Special Affordable Housing Goal is rather small. For instance, adding the tax credit condition increases Fannie Mae's 1997 performance by only half a percentage point, from 16.5 to 17 percent. At first glance, this small effect seems at odds with the fact that 26.5 percent of Fannie Mae's multifamily purchases during 1997 involved properties with a very-low-income occupancy of 100 percent, and 43.0 percent involved properties with a very-low-income occupancy of over 40 percent. The explanation, of course, is that most of the rental units in these "tax-credit" properties are covered by the very-low-income and low-income-in-low-income-areas components of the Special Affordable Goal.

3. Conclusions

Sensitivity analyses were conducted for the market shares of each property type, for the very-low-income shares of each property type, and for various assumptions in the market projection model. These analyses suggest that 23–26 percent is a reasonable estimate of the size of the conventional conforming market for the Special Affordable Housing Goal. This estimate excludes B&C loans and allows for the possibility that homeownership will not remain as affordable as it has over the past five years. In addition, the estimate covers a range of projections about the size of the multifamily market.

I. Impact of New FHA Loan Limits

This section discusses recent statutory changes that raised the FHA loan limits and the impact of these changes on the conventional market and the ability of the GSEs to meet their housing goals.

Studies have shown that the FHA has been the primary bearer of credit risk on home mortgage loans to lower-income and African American or Hispanic borrowers and in low-income, central city, and minority neighborhoods. Many of the loans that FHA insures would qualify for one or more of the GSEs' housing goals. Raising the FHA loan limits will increase the portion of the mortgage market that is eligible for FHA, possibly resulting in a shift of loans from the conventional market to FHA. It could also shift loans that would otherwise meet the GSE goals from the conventional market to FHA. To the extent this occurs, the new FHA loan limits could have an impact on the conventional market and on the GSEs.

The information in this section suggests that many of the new FHA loans would not qualify for conventional financing. Some of the above mentioned studies have also shown that there has been little overlap between FHA and the conventional market prior to the loan limit increase. This is likely to be the case for newly eligible FHA loans as the higher loan limits extend FHA access to more families who are denied mortgage credit or otherwise underserved by the conventional market. The new FHA loans are likely to collectively resemble current FHA loans in many respects, but with higher loan amounts and borrower incomes. Differential homeownership rates as well as mortgage credit denials which persist across income levels for minority families and inner city residents provide evidence that underserved markets exist for FHA to serve at these higher loan amounts and incomes.

The number of new FHA loans resulting from the loan limit increase is likely to be relatively small. While reasonable estimates of new FHA volume could vary, their range is likely to be under 50,000 new loans compared to FHA's total home purchase loan volume of about 800,000 in 1998. Standard and Poor's Insurance Ratings Service does not offer a numerical estimate, but this rating agency finds the outlook for the private mortgage insurance industry is stable through 2001, and suggests that the portion of the market that FHA will serve near the new loan limits will be less than the portion it presently serves at lower levels. Similarly, Moody's Investors Service believes the higher FHA loan limits will "dent" the volumes of private mortgage insurers, but is not a source of significant concern with regard to the industry outlook.

Furthermore, most new loans are expected to come from higher cost housing markets. In

[79] The upper bound of 27 percent from HUD's baseline special affordable model is obtained when the special affordable share of home purchase loans is 15.0 percent, which was the figure for 1997 (see Table D.10). However, the upper bound of 27 percent is below the 1997 estimate of the special affordable market of 29.0 percent presented earlier (see Section F.3.a). There are several reasons for this discrepancy. As mentioned earlier, the rental share in HUD's baseline projection model is less than the rental share of the 1997 market. In addition, HUD's projection model assumes that the special affordable share of refinance mortgages will be 1.4 percentage points less than the corresponding share for home purchase loans (1.4 percent is the average difference between 1992 and 1998). But in 1997, the special affordable share (17.6 percent) of refinance mortgages was larger than the corresponding share (15.3 percent) for home loans.

many of these markets the old FHA loan limit ceiling denied FHA access to all but the bottom tier of the local housing market. In these higher cost markets, the new FHA loans will typically be above $150,000 requiring borrower incomes in excess of $60,000 to qualify.

The discussion of this issue is organized as follows. Section I describes the statutory changes in the FHA floor and ceiling. Section 2 discusses the estimated budget impact of the changes in the legislation, including the FHA volume increases that were assumed for making this estimate. Section 3 provides the estimated range of new FHA loan volume. Section 4 discusses why the overlap with the conventional market for the new FHA loans should be small. Finally Section 5 discusses the impacts on the conventional market and the GSEs.

1. Changes in the Statutory FHA Loan Limit Floor and Ceiling

The Department's FY 1999 Appropriations Act raised the FHA loan limit floor and ceiling to 48 and 87 percent, respectively, of the GSEs' conforming loan limit. Prior to this change the FHA loan limit floor and ceiling were 38 and 75 percent, respectively, of the conforming loan limit. The statute did not change the method of establishing FHA loan limits by locality: FHA loan limits for a 1-family dwelling continue to be set at 95 percent of local median home sales price, subject to the statutory floor and ceiling as the minimum and maximum, respectively.[80]

The Department implemented the new FHA loan limit floor and ceiling in October 1998. In January 1999 the Department again revised FHA loan limits to reflect the higher conforming loan limit that went into effect on January 1.[81]

2. Estimated Budget Impacts

Prior to passage of the 1999 HUD Appropriations Act, the Department estimated the budget impact of the legislative proposal to raise the FHA loan limit floor and ceiling to 48 and 87 percent, respectively, of the conforming loan limit.[82] At that time the Department estimated the percentage increase in the number of FHA-insured home purchase loans in FY 1999 relative to the prior year would be about 2.6 percent in metropolitan areas and about 11 percent in non-metropolitan areas. The average loan amount of the new loans was estimated at the time to be about $143,000, reflecting the fact that some new loans would come in at or near the new floor of (then) $109,032 and others in higher cost markets would come in at or near the new ceiling of (then) $197,621. Areas with 1998 loan limits between the new floor of $109,032 and the 1998 ceiling of $170,362 were considered to unaffected by the statutory changes because their loan limit would continue to be set at 95 percent of local median sales price. The Department estimated that 36 high-cost metropolitan areas would be affected by the higher proposed ceiling, 174 lower-cost metropolitan areas and most non-metropolitan counties would be affected by the higher floor, and 115 moderate-cost metropolitan areas would be unaffected.

The biggest impact on FHA volume was expected from raising the ceiling in the 36 highest cost metropolitan areas. In these high cost areas, the old FHA ceiling (75 percent of the conforming loan limit) was lower than 95 percent of the local median house price. Thus, the old ceiling limited FHA eligibility to the lower-priced portion of the local market. Raising the ceiling would extend FHA eligibility into the higher volume middle of the local sales market for these high cost markets.

In lower cost areas where the old FHA floor applied, FHA eligibility was already above the middle of the local market. That is, the old floor (38 percent of the conforming loan limit) was higher than 95 percent of the local median house price.[83] Raising the FHA floor would have a relatively small impact in these lower cost areas, as FHA is likely to capture a smaller share of the newly eligible upper portion of the lower market.

Two additional provisions enacted by the HUD Appropriations Act were not incorporated into the Department's original budget estimate. These are (1) the provision which directed the Department to set new loan limits for entire metropolitan areas based on the median home sales price of the highest cost county within the metropolitan area, and (2) the downpayment simplification provision, which not only simplified the minimum FHA downpayment calculation but also eliminated the 10 percent marginal downpayment requirement for higher priced homes.[84]

The high cost county provision was estimated to raise the budget impact by about 6 percent to $85 million. The impact was at first considered to be small because the Department did not have access to county-level median sales prices in most metropolitan areas with which to implement this provision. Rather, changes due to the highest cost county provision were assumed to come from locally generated sales data submitted to the Department by individual counties to appeal their FHA loan limits. Loan limit changes based on previously approved local appeals would not have a large impact on FHA volume, and would affect primarily moderate cost metropolitan areas (most being among the 115 moderate cost areas unaffected by the new floor and ceiling as noted above). However, the impact of this provision may prove to be larger than the original estimate as additional appeals are being filed from multiple county metropolitan areas, and as the Department

[80] Different percentages of local median sales price apply to 2-, 3-, and 4-family dwellings.

[81] The Department's January 1999 update also represented a comprehensive update of FHA loan limits based on an analysis of 1998 local median sales prices from various data sources. This comprehensive update, the first undertaken by the Department since 1995, raised FHA loan limits in over 90 percent of the nation's 3,141 counties. In many of the counties which received increases in January 1999, the FHA loan limit had not changed since the previous comprehensive update in 1995. For many of these areas the 1999 increase was due to the Department's reestimation of the local median sales price, and not due to the statutory changes.

[82] The budget impact was estimated to be $80 million in first year savings, which represents the net present value of future cash flows associated with the new loans the Department expected to make as a result of the higher loan limit floor and ceiling.

The methodology used by the Department to arrive at these budget estimates was reviewed by the Office of Management and Budget and by the Congressional Budget Office. The methodology was based on a detailed analysis of the 1996 Home Mortgage Disclosure Act data disaggregated to the individual metropolitan area level. For each metropolitan area, the Department analyzed the HMDA distribution of all home purchase loans made in 1996.

The first step in the Department's methodology was to determine the number and size of newly eligible loans in metropolitan areas (as reported in HMDA) had the higher FHA floor and ceiling provisions been in effect in 1996. To do this, the Department used the actual 1996 FHA loan limit for each area and estimated new hypothetical FHA limits for each are using 48 and 87 percent of the 1996 conforming loan limit of $207,000 as the new floor and ceiling. The next step was to estimate the share of the newly eligible loans in each area that might come to FHA. The FHA shares were estimated for each decile of the HMDA distribution in the local market, assuming that FHA's average share of the eligible market in each MSA would decline as FHA's penetration extended into the higher deciles of the market. The assumption of declining FHA market shares in the upper deciles of the market was reasonable for two reasons. First, higher income borrowers generally have more choices in terms of access to conventional financing. Second, FHA's downpayment requirements at the time were greater for higher priced homes. Under FHA downpayment rules in effect at the time this analysis was performed, FHA required a 10 percent marginal downpayment on the amount of property acquisition cost above $125,000. (Acquisition cost is defined as the lesser of sales price or appraised value plus allowable borrower-paid closing costs.) Higher downpayment requirements in the upper end of the market made FHA financing a less attractive alternative to conventional financing for potential borrowers who could qualify for a conventional loan.

For non-metropolitan areas, the methodology was less area specific because HMDA data do not generally cover non-metropolitan areas. Rather, 1995 American Housing Survey data was used to determine that about 75 percent of the rural market was already eligible for FHA under the old floor (38 percent of conforming loan limit). Despite the high eligibility, only 7 percent of the rural market was actually financed with FHA-insured loans. Raising the FHA floor to 48 percent of the conforming loan limit was estimated to increase FHA volume by about 11 percent, assuming a declining share of the newly eligible existing housing market, plus some additional demand for new construction.

[83] The Department used 1995 American Housing Survey data to estimate that 75 percent of the rural market was already covered by the old FHA floor at 38 percent of conforming loan limit.

[84] Prior to the enactment of HUD's FY 1999 Appropriations Act, FHA's statutory downpayment requirements were 3 percent of the first $25,000 of property acquisition cost, 5 percent of the next $100,000 of acquisition cost, and 10 percent of the acquisition cost above $125,000. (Acquisition cost is defined as the lesser of sales price or appraised value of the property plus allowable borrower-paid closing costs.) The new provision limits the mortgage to 97.75 percent (or 97.15 percent in areas with lower than average closing costs), subject to the borrower having a 3 percent minimum cash investment. (Borrower cash investment includes allowable borrower-paid closing costs.) This change in the FHA downpayment provisions will raise the maximum FHA mortgage amount for buyers of higher priced homes.

seeks out new national sources of county level median sales prices.[85]

The downpayment provisions in the HUD Appropriations Act were tested in pilot programs conducted by FHA in Alaska and Hawaii during 1997. In both these states, where home prices are generally higher than the rest of the nation, the downpayment simplification pilot raised the percentage of large loans that FHA insured in 1997 relative to the pre-pilot year of 1996. In the Department's 1998 report to Congress on the Alaska and Hawaii pilots, it was reported that during these two years loans over $150,000 increased from 20 percent to 28 percent in Alaska, and from 51 percent to 54 percent in Hawaii.[86] This experience suggests that the downpayment simplification provision will affect the volume of large loans the Department insures and could produce a higher impact from raising the FHA loan limit ceiling.

3. Estimated FHA Loan Volume

The inclusion of the high cost county and the downpayment simplification provisions in the HUD FY 1999 Appropriations Act suggest that the estimate of about a 3 percent increase in FHA home purchase volume due to the higher FHA loan limits may be low. The impacts of these two additional provisions are difficult to quantify with precision. A volume estimate for FHA which takes into account the high cost county and downpayment simplification provisions could be two times the original 3 percent estimate. That is, the combined impact of all the statutory changes on FHA loan volume would be an increase of approximately 6 percent in home purchase mortgages insured.

In addition, the average loan amount of new loans, which had been estimated at $143,000, should now be estimated at about $154,000, reflecting new loans now coming from moderate-cost previously unaffected areas (due to the high cost county provision), and more loans than originally estimated coming from the highest cost areas (due to downpayment simplification).

The 1999 dollar volume of new FHA business associated with the loan limit increase and the other provisions of the 1999 Appropriations Act is estimated as follows. In FY 1998, the Department insured about 800,000 home purchase loans. Using 6 percent as the estimated increase in the number of home purchase loan cases that FHA will insure in a typical year gives about 50,000 new loans. At an average loan amount of $154,000 per new loan, the estimated annual dollar volume impact would be over $7.0 billion.

An estimate of the breakdown of the new loans by size and minimum income to qualify is as follows. If one assumes the upper end of the likely range of new FHA home purchase loan cases (that is, a 6 percent increase), then the following is an estimated breakdown of loan size and minimum borrower incomes:[87]

Range of loan amounts	Number of new loans	Average New loan amount	Minimum income to qualify for average loan
Under $150,000	12,000	$92,000	$33,000
$150,000 and Over	36,000	175,000	60,000
Total	48,000	154,000	

4. Overlap with the Conventional Market Should be Small

The Department based its original budget impact estimate and the revised volume estimate on an analysis of HMDA data because this data source was determined to be the best available indicator of local market activity by loan size. By using HMDA data for this purpose, one might infer that all the new FHA-insured loans will result in a one-for-one reduction in conventional lending. Rather, as will be discussed below, the Department believes that FHA will extend new housing opportunities to those who are inadequately served by the conventional markets. HMDA data are limited in that they do not support an analysis of the potential overlap between the new FHA loans and the existing conventional market. The question of overlap will instead be addressed by the discussion and analysis presented below.

a. FHA Competition with Private Mortgage Insurance

In a February 1999 commentary on the outlook for the U.S. residential mortgage insurance industry, Standard and Poor's Insurance Ratings Service projected a stable outlook for the PMI industry through 2001 and makes the following comments on the impact of the higher FHA loan limits:

Congress recently increased the size limits of loans eligible for Federal Housing Administration insurance. The [FHA] limit in "high cost" areas is . . . not far below the GSE limit of $240,000. While FHA borrowers meet lower standards than conforming borrowers, and pay higher rates and fees for their loans, a good number of FHA borrowers are thought to qualify for the conforming market. There is no doubt that the increase in the FHA size limitation will pull eligible borrowers from the conforming market. However, borrowers who qualify for private mortgages generally have more financing alternatives as the loan amounts rise. Therefore, the portion of eligible loans that the FHA takes at these upper levels should be less than that of the loans it insures at lower levels.[88]

Similarly, Moody's Investors Service, in an October, 1998 report on the outlook of the U.S. mortgage insurance industry, states

The recently approved increase of the size of eligible mortgages under the FHA programs, while denting the private mortgage insurers' volumes, is not a source of significant additional concern.[89]

The Standard and Poor's analysis is correct in focusing on the impact of the new high cost ceiling and not the new floor. In areas affected by the higher floor, the old floor already gave borrowers access to well over half of the local sales market. Raising the floor only increased FHA access to the upper tiers of these low costs markets and made FHA financing of new construction more feasible. Rather, in the highest cost markets, which were capped by the old ceiling, the new FHA ceiling will have the greatest impact. In these high cost areas, FHA access was previously limited to the lower tiers of the local market. The increase in the ceiling will now extend FHA access to more of the higher-volume middle portion of the market. Yet, as the Standard and Poor's analysis also correctly points out, the higher dollar loan amounts suggest potential borrowers will have more alternatives in the conventional market, and when comparing FHA premiums with PMI premiums, most who qualify for a conventional loan will do so.

b. Cost Comparison: FHA Premiums are Higher

Standard and Poor's acknowledgment that FHA costs are higher than PMI costs is consistent with the Department's own analysis of the premium differentials between FHA and PMI. Except for loan to value ratios above 95 percent (which represent a very small, albeit growing, fraction of the loans that the PMIs insure) FHA's premiums are much higher than PMI premiums. For example, a 30-year $100,000 conventional loan with a 90 percent LTV

[85] The Department is working with the Office of Federal Housing Enterprise Oversight to develop additional data on local median sales price that may prove useful for future FHA loan limit determinations.

[86] "A Study of FHA Downpayment Simplification," April 1998, Tables 11 and 12.

[87] Minimum incomes based on a 7.5 percent, 30–year fixed-rate mortgage loan and a front-end ratio of 29 percent.

[88] Standard and Poor's, 1999. "Stable Outlook Projected for U.S. Domestic Residential Mortgage Insurance, Industry Conditions and Outlook 1998 to 2001," Insurance Ratings Service Commentary, February 17, p. 9.

[89] Moody's Investors Service, Inc., 1998. "US Mortgage Insurers Industry Outlook," October, p. 8.

ratio will typically cost a borrower about $2,900 (net present value at origination) in PMI premiums, assuming the PMI coverage is canceled when the LTV is amortized down to 80 percent. The FHA premium, which cannot be canceled without the lender's consent, will cost $6,000 for a similar loan if the loan is held to term, or $5,200 if the loan is prepaid after 8 years.[90] For the highest LTV loans—those with LTVs above 95 percent—the PMI premium, assuming cancellation when the LTV amortizes down to 80 percent, is $6,600, or $5,500 if the loan is prepaid after 8 years. The comparable FHA premium is $7,300, or $5,200 if the loan is prepaid after 8 years.[91] Although the present value of the FHA premium on these highest LTV loans can be less than the typical PMI premium if the loan is prepaid early, very-low-downpayment loans have a tendency to prepay more slowly than loans with higher initial equity.

c. Evidence of Little Overlap Before Loan Limit Increase

Although the Standard and Poor's report states that "a good number" of FHA borrowers (prior to the loan limit increase) were thought to qualify for the conventional market, there have been numerous studies showing that the overlap between FHA and the conventional market has actually been rather small. A 1996 study by the United States General Accounting Office (GAO) documents that FHA leads in the provision of insurance for riskier low-downpayment mortgages.[92] The GAO report goes on to provide evidence that there has in fact been very little overlap between FHA and PMI loans. According to the GAO:

(i) 65 percent of FHA loans have downpayments of 5 percent or less, compared to 11 percent of PMI loans and less than 2 percent of loans purchased by the GSEs.

(ii) More than three-fourths of FHA-insured first-time borrowers would not have met PMI downpayment requirements. And FHA borrowers who do have the cash for a conventional loan downpayment often fail to meet the more stringent PMI credit standards.

In addition, a recent study by the Board of Governors of the Federal Reserve concluded that FHA is the primary bearer of credit risk for home purchase loans to lower-income and black or Hispanic borrowers and in low-income and minority neighborhoods.[93] The Federal Reserve Board study concluded that FHA bears about two-thirds of the aggregate credit risk for low-income and minority borrowers and their neighborhoods, while private mortgage insurers bear only 6 to 8 percent of this risk, and the GSEs bear only 4 to 5 percent of this risk. With this demonstrated capacity to carry greater risk than the conventional market, FHA complements, not competes with, private sector efforts to expand homeownership opportunities.

d. The New FHA Loans Will Continue to Address Underserved Markets

Other sources confirm that the higher FHA loan limits, particularly those in the highest cost areas (but also other areas), can be useful in addressing many of the same underserved markets that FHA currently addresses. Appendix A refers to studies which show that homeownership rates for young married couples, female-headed households, center city residents, and racial and ethnic minorities lag far behind the national average. In addition, these homeownership gaps persist across income levels.

FHA, which currently serves a disproportionate share of young married couples, female-headed households, center city residents, and racial and ethnic minorities, will continue to address these underserved markets with the new loans based on higher loan limits.[94] Given these homeownership differences which persist across income levels, the higher FHA loan limits will enable FHA extend its service to underserved markets at higher income levels.

e. HMDA Denials by Income Level

Another source that suggests higher FHA loan limits can be useful in addressing many of the same underserved markets that FHA currently addresses is HMDA. Mortgage lending information gathered by the Federal Reserve Board under requirements of the Home Mortgage Disclosure Act shows that in 1996 some 350,000 households—about one in eight applicants—were denied credit in the conforming conventional market. These denials limit homebuying opportunities for both minority and white households seeking to live in urban and suburban communities. Mortgage denial rates are particularly high for racial and ethnic minorities, but white households accounted for nearly two-thirds of the 350,000 denials. In addition to the high denial rates for racial and ethnic minorities seeking to purchase homes in inner city areas, whites choosing to live in the city are also denied mortgages at higher rates than their suburban counterparts. About a third of the 350,000 denials were made to applicants with incomes above the area median income, and nearly a fourth were made to applicants with incomes greater than 120 percent of area median income.

6. Why Small Impacts on the Conventional Market and the GSEs Are Likely

The impacts of the higher FHA loan limits on the conventional market and on the ability of the GSEs to meet their housing goals are likely to be small. The reasons for this conclusion are as follows.

First, there has been little overlap between FHA and the conventional market prior to the loan limit increase, and this is likely to be the case for newly eligible loans as well. The loan limit increase will extend FHA access to more families who are denied mortgage credit or otherwise underserved by the conventional market.

Second, the number of new FHA loans resulting from the loan limit increase is likely to be relatively small. While reasonable estimates of new FHA volume could vary, their range is likely to be under 50,000 new loans compared to FHA's total home purchase loan volume of about 800,000 in 1998. Two major Wall Street rating agencies, while not offering specific volume estimates, have suggested that the impacts of the FHA changes will be small on the private mortgage insurance industry.

Finally, many of these new FHA loans are expected to come from high cost housing markets with loan amounts typically above $150,000 and borrowers with annual incomes in excess of $60,000. Even at these higher loan amounts and borrower incomes, the FHA's higher premium costs would motivate most borrowers to favor conventional financing with private mortgage insurance if they qualified.

The new FHA loans are likely to come from borrowers who are being underserved by the conventional market, collectively resembling current FHA loans in many respects, but with higher loan amounts and borrower incomes. Differential homeownership rates as well as mortgage credit denials which persist across income levels for minority families and inner city residents provides evidence that underserved markets exist for FHA to serve at these higher loan amounts and incomes.

Appendix E—GSE Mortgage Data and AHAR Information: Proprietary Information/Public-Use Data

The following matrices distinguish proprietary from public-use mortgage data elements. A "YES" designation indicates that the data element is proprietary and not included in the public use database in the format indicated. A "NO", "NO, Added field", "Yes, but recode", and "YES, but redefine and recode as" indicate that the data element is included in the public use database. Certain data are coded as missing or not available either because the data was not submitted or because the data is proprietary.

The first matrix relates to GSE data on single-family owner-and renter-occupied 1–

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[90] Assumes 25 percent PMI coverage, an annual PMI premium of 0.52 percent, a mortgage rate of 7.5 percent, and a discount rate of 7 percent. The PMI cost for a loan prepaid after 8 years is not shown because the PMI coverage would be canceled before the 8th year. The FHA premium is 2.25 percent upfront, plus 0.5 percent annually for 12 years. These assumptions do not reflect recent premium reduction initiatives by the GSEs and FHA under which the GSEs will reduce PMI coverage requirements and FHA will reduce its upfront premium for some borrowers. None of these initiatives have achieved high volumes as yet.

[91] Assumes 30 percent PMI coverage, an annual PMI premium of 0.9 percent, a mortgage rate of 7.5 percent, and a discount rate of 7 percent. The FHA premium is 2.25 percent upfront, plus 0.5 percent for 30 years. As noted in the prior footnote, the assumptions do not reflect recent premium reduction initiatives by the GSEs and FHA.

[92] United States General Accounting Office, 1998. "FHA's Role in Helping People Obtain Home Mortgages." GAO/RCED–96–123.

[93] Glenn B. Canner, Wayne Passmore, and Brian J. Surette, 1996. "Distribution of Credit Risk Among Providers of Mortgages to Lower-Income and Minority Homebuyers." *Federal Reserve Bulletin*, 82(12), 1077–1102.

[94] FHA has already been filling credit gaps by serving a disproportionate number of young first-time buyers, borrowers making low downpayments, households living in urban areas, African-Americans and Hispanics, and lower-income borrowers. HMDA data from 1996 indicate that while FHA provided mortgage credit to about 20 percent of conforming loans in metropolitan areas, it insured nearly 40 percent of all such loans made to African American or Hispanic borrowers.

4-unit properties. The second matrix relates to property-level data on multifamily properties. The third matrix relates to unit-class level data on multifamily properties.

The unit-classes are defined by the GSEs for each property and are differentiated based on the number of bedrooms in the units and on the average contract rent for the units. A unit-class must be included for each bedroom/rent category represented in the property.

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Matrix E.1

GSE Single-Family Mortgage Data
~~Owner- and Renter-Occupied~~ 1- to 4-Unit Properties
Proprietary Information/Public-Use Data

The "Census Tract File" contains mortgage-level data on all single-family properties.
The "National File A" contains mortgage-level data on owner-occupied 1-unit properties.
The "National File B" contains unit-level data on all single-family properties.

#	Field Description	Values	Census Tract File	National File A	National File B
0	Agency Flag	1=Fannie Mae 2=Freddie Mac	NO	NO	NO
1	Loan Number		YES, but recode as a Random Number[1]	YES, but recode as a Random Number[1]	YES, but recode as a Random Number[1]
2	US Postal State	0=Missing	NO	YES	YES
3	US Postal Zip Code		YES	YES	YES
4	MSA Code	0000=Missing	NO	YES, but recode as: 1=Metropolitan 2=Non-metropolitan 9=Missing	YES, but recode as: 1=Metropolitan 2=Non-metropolitan 9=Missing
5	Place Code - FIPS		YES	YES	YES
6	County - 1990 Census	000=Missing	NO	YES	YES
7	Census Tract/BNA - 1990 Census	000000=Missing	NO	YES	YES
8[2]	Census Tract Geographic Designation	1=Tract Entirely Within Central City 2=Tract Entirely Outside Central City 3=Central City Split Tract 9=Not Able To Code	NO	YES	YES
9[2]	Central City Flag 1	9999=Not Able To Code	NO	YES	YES
10[2]	Central City Flag 2	9998=Not Available 9999=Not Applicable	NO	YES	YES
11	1990 Census Tract - Percent Minority	9999=Not Available	NO	YES, but recode as: 1=0- <10% 2=10- <30% 3=30- 100% 9=Missing	YES, but recode as: 1=0-<10% 2=10- <30% 3=30- 100% 9=Missing

#	Field Description	Values	Census Tract File	National File A	National File B
12	1990 Census Tract - Median Income	999999=Not Available	NO	YES	YES
13	1990 Local Area Median Income	999999=Not Available	NO	YES	YES
14	Tract Income Ratio	9999=Not Applicable	NO	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing
15	Borrower(s) Annual Income	99999999=Not Available	YES, but recode in terms of dollars for year of acquisition.	YES	YES
16	Area Median Family Income	999999=Not Available or Withheld as Proprietary	YES, but recode in terms of dollars for year of acquisition.	YES	YES
17[3]	Borrower Income Ratio	9999=Not Applicable, Not Available, or Withheld as Proprietary	YES, but recode proprietary data as 9999.	YES, but recode as: 1=0- <=60% 2=60 - <=100% 3= >100 9=Not Applicable	YES, but redefine and recode as:[3] 1=0- <=60% 2=60- <=100% 3= >100 9=Not Applicable
18	Acquisition UPB		YES, but recode as: Actual values for < $200,000 999998= >=$200,000 999999=Missing	YES	YES
19	LTV at Origination	999=Not Applicable	YES	YES, but recode as: 1=0- <=60% 2=60- <=80% 3=80- <=90% 4=90- <=95% 5= > 95% 9=Missing	YES

#	Field Description	Values	Census Tract File	National File A	National File B
20	Date of Mortgage Note		YES	YES	YES, but recode as: 1=Originated same calendar year as acquired 2=Originated prior to calendar year of acquisition 9=Missing
21	Date of Acquisition		YES	YES	YES
22	Purpose of Loan	1=Purchase 2=Refinancing 3=Second Mortgage 4=Rehabilitation 9=Not Applicable/Not Available	NO	NO	NO
23	Cooperative Unit Mortgage	1=Yes 2=No 8=Not Available 9=Not Applicable	YES	YES	YES
24[2]	Refinancing Loan from Own Portfolio	1=Yes 2=No 9=Not Applicable	YES	YES	YES
25	Special Affordable, Seasoned Loan: Are Proceeds Recycled?	1=Yes 2=No 9=Not Applicable	YES	YES	YES
26	Product Type	01=Fixed Rate 02=ARM 03=Balloon 04=GPM/GEM 05=Reverse Annuity Mortgage 06=Other 07...98=List Other Distinct Products 99=Not Available	YES	YES	YES

#	Field Description	Values	Census Tract File	National File A	National File B
27	Federal Guarantee	1=FHA/VA 2=FMHA-Guaranteed Rural Housing Loan 3=HECMs 4=No Federal Guarantee 5=Title 1-FHA	NO	NO	NO
28	RTC/FDIC	1=Yes 2=No	YES	YES	YES
29	Term of Mortgage at Origination		YES	YES	YES
30	Amortization Term	998=Non-Amortizing Loan 999=Not Available	YES	YES	YES
31[4]	Lender Institution Name		YES	YES	YES
32[4]	Lender City		YES	YES	YES
33[4]	Lender State		YES	YES	YES
34	Type of Seller Institution	1=Mortgage Company 2=SAIF Insured Depository Institution 3=BIF Insured Depository Institution 4=NCUA Insured Credit Union 5=Other	YES	YES	NO
35	Number of Borrowers	99=Missing	NO	YES	YES
36	First-Time Home Buyer	1=Yes 2=No 9=Not Available	NO	YES	YES
37	Mortgage Purchased under GSE's Community Lending Program	1=FNMA's Community Homebuyer Program 2=FNMA's Community Lending Other 3=FNMA's Other Housing Impact Programs OR 1=FHLMC's Affordable Gold 2=FHLMC's Alternative Qualifying 9=Not Applicable (either GSE)	YES	YES	YES

#	Field Description	Values	Census Tract File	National File A	National File B
38	Acquisition Type	1=Cash 2=Swap 3=Other 4=Credit Enhancement 5=Bond or Debt Purchase 6=REMIC 7=Reinsurance 8=Risk Sharing 9=REIT	YES	YES	YES
39	GSE's Real Estate Owned	1=Yes 2=No 3=Not Available	YES	YES	YES
40[2]	Public Subsidy Programs	1=Federal only 2=State or Local only 3=Other/Private Subsidy only 4=Federal and State or Local 5=Federal and Other 6=State or Local and Other 7=Federal, State or Local and Other 9=Data Not Provided	YES	YES	YES
41	Borrower Race or National Origin	1=American Indian or Alaskan Native 2=Asian or Pacific Islander 3=Black 4=Hispanic 5=White 6=Other 7=Information Not Provided by Applicant In Mail or Telephone Application 8=Not Applicable 9=Not Available	NO	NO	NO

#	Field Description	Values	Census Tract File	National File A	National File B
42	Co-Borrower Race or National Origin	1=American Indian or Alaskan Native 2=Asian or Pacific Islander 3=Black 4=Hispanic 5=White 6=Other 7=Information Not Provided by Applicant In Mail or Telephone Application 8=Not Applicable 9=Not Available	NO	NO[6]	NO[6]
43	Borrower Gender	1=Male 2=Female 3=Information Not Provided by Applicant In Mail or Telephone Application 4=Not Applicable 9=Not Available	NO	YES, but recode to combine Fields 43 and 44: 1=Male(s) only 2=Female(s) Only 3=Male and Female 9=Original 3, 4, 9	YES, but recode to combine Fields 43 and 44: 1=Male(s) only 2=Female(s) Only 3=Male and Female 9=Original 3, 4, 9
44	Co-Borrower Gender	1=Male 2=Female 3=Information Not Provided by Applicant In Mail or Telephone Application 4=Not Applicable 9=Not Available	NO	YES	YES
45	Age of Borrower	999=Data Not Provided	NO	YES	YES
46	Age of Co-Borrower	999=Data Not Provided	NO	YES	YES
47[5]	Occupancy Code	1=Principal Residence/Owner-Occupied 2=Second Home 3=Investment Property (Rental) 9= Not Available	YES, but recode as: 1= Owner-Occupied Property (1-4 Units) 2= Investment Property (1-4 Units) 9= Not Available	YES	YES, but redefine and recode as:[6] 1=Owner-Occupied 2=Rental Unit in an Owner-Occupied Property 3=Investment Property (Rental) 9=Not Available

#	Field Description	Values	Census Tract File	National File A	National File B
48	Number of Units		YES	NO	NO
49	Unit - Number of Bedrooms	99=Data Not Provided	YES	YES	YES
50	Unit - Owner Occupied	1=Yes 2=No	YES	YES	NO
51	Unit - Affordability Category	1=Low-Income Family (but not Very Low-Income) in a Low-Income Area 2=Very Low-Income Family, in a Low-Income Area 3=Very Low-Income Family, Not in a Low-Income Area 4=Other 9=Not Available 0=Missing	YES	NO	NO
52	Unit - Reported Rent Level	99999=Not Applicable	YES	YES	YES
53	Unit - Reported Rent Plus Utilities	99999=Not Applicable	YES	YES	YES
54	Fannie Mae Exclusions	1=Excluded from Goal Reporting	YES	YES	YES
55[4]	Geographically Targeted Indicator	1=Yes 2=No 9=Not Applicable	NO, Added Field	NO, Added Field	NO, Added Field

[1] Different random number on each of the tract and national files.

[2] Not applicable to 1996 and beyond data sets. Central city is as defined by the Office of Management and Budget.

[3] The borrower income ratio field is defined for rental units on National File B to reflect the affordability of units based on rent data submitted by the GSEs to the Secretary.

[4] Not applicable to 1993-1995 data sets.

[5] National File B is recoded so that rental and owner-occupied units of 2-4 unit properties can be distinguished.

Matrix E.2

GSE Multifamily Mortgage Data
Property Level
Proprietary Information/Public-Use Data

The "Census Tract File" contains property level data on all multifamily properties.
The "National File" consists of two parts: one part contains property level data and the other consists of unit-class-level data for all multifamily properties.

#	Field Description	Values	Census Tract File	National File
0	Agency Flag	1=Fannie Mae 2=Freddie Mac	NO	NO
1	Loan Number		Yes, but recode as a Random Number[1]	Yes, but recode as a Random Number[1]
2	US Postal State	00=Missing	NO	YES
3	US Postal Zip Code		YES	YES
4	MSA Code	0000=Missing	NO	YES
5	Place Code - FIPS		YES	YES
6	County - 1990 Census	000=Missing	NO	YES
7	Census Tract/BNA - 1990 Census	000000=Missing	NO	YES
8[2]	Census Tract Geographic Designation	1=Tract Entirely Within Central City 2=Tract Entirely Outside Central City 3=Central City Split Tract 9=Not Able To Code	NO	YES
9[2]	Central City Flag 1	9999=Not Able To Code	NO	YES
10[2]	Central City Flag 2	9998=Not Available 9999=Not Applicable	NO	YES
11	1990 Census Tract - Percent Minority	9999=Not Available	NO	YES, but recode as: 1=0-<10% 2=10- <30% 3=30- 100% 9=Missing
12	1990 Census Tract - Median Income	999999=Not Available	NO	YES

9

#	Field Description	Values	Census Tract File	National File
13	1990 Local Area Median Income	999999=Not Available	NO	YES
14	Tract Income Ratio	9999=Not Applicable	NO	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing
15	Area Median Family Income	999999=Not Available	NO	YES
16	Affordability Category	1= >=20% are especially-low-income and <40% are very-low-income 2= <20% & >=40% 3= >=20% & >=40% 4= <20% & <40% 8=Not Available 9=Not Eligible 0=Missing	YES	NO
17	Acquisition UPB		YES, but recode as: 1= <= $500,000 2= $500,000-<=$1m 3= $1m-<=$2m 4= $2m-<=$4m 5= > $4m 9=Missing	YES
18	Participation Percent		YES	YES
19	Date of Mortgage Note		YES	YES, but recode as: 1= Originated same calendar year as acquired 2= Originated prior to calendar year of acquisition 9= Missing

#	Field Description	Values	Census Tract File	National File
20	Date of Acquisition		YES	YES
21	Purpose of Loan	1=Purchase 2=Refinancing 3=New Construction 4=Rehabilitation 9=Not Applicable/Not Available	YES	NO
22	Cooperative Project Loan	1=Yes 2=No 8=Not Available 9=Not Applicable	YES	YES
23[2]	Refinancing Loan from Own Portfolio	1=Yes 2=No 9=Not Applicable	YES	YES
24	Special Affordable, Seasoned Loan: Are Proceeds Recycled?	1=Yes 2=No 9=Not Applicable	YES	YES
25	Mortgagor Type	1=Individual 2=For Profit Entity 3=Nonprofit Entity 4=Public Entity 5=Other	YES	YES
26	Term of Mortgage at Origination		YES	YES
27	Loan Type	1=Fixed Rate 2=ARM 3=GPM	YES	YES
28	Construction Loan	1=Yes 2=No	YES	YES
29	Amortization Term	998=Non-Amortizing Loan 999=Not Available	YES	YES
30[3]	Lender Institution		YES	YES

#	Field Description	Values	Census Tract File	National File
31[3]	Lender City		YES	YES
32[3]	~~Lender State~~		~~YES~~	~~YES~~
33	Type of Seller Institution	1=Mortgage Company 2=SAIF Insured Depository Institution 3=BIF Insured Depository Institution 4=NCUA Insured Credit Union 5=Other	NO	NO
34	Government Insurance	1=Yes 2=No 3=FHA Risk Sharing 9=Not Available	YES	NO
35	FHA Risk Share Percent		YES	YES
36	Acquisition Type	1=Cash 2=Swap 3=Other 4=Credit Enhancement 5=Bond/Debt Purchased 6=REMIC 7=Reinsurance 8=Risk Sharing 9=REIT	YES	YES
37	GSE Real Estate Owned	1=Yes 2=No 3=Not Available	YES	YES
38	Public Subsidy Program	1=Federal only 2=State or Local only 3=Other/Private Subsidy only 4=Federal and State or Local 5=Federal and Other 6=State or Local and Other 7=Federal, State or Local and Other 9=Data Not Provided	YES	YES
39	Total Number of Units		YES	NO
40[2]	Special Affordable - 45 Percent	0=Missing or Not Applicable	YES	NO

#	Field Description	Values	Census Tract File	National File
41[2]	Special Affordable - 55 Percent	0=Missing or Not Applicable	YES	NO
42	Fannie Mae Exclusions	1=Excluded from Goal Reporting	YES	YES
43[3]	Geographically Targeted Indicator	1=Yes 2=No 9=Not Applicable	NO, Added Field	NO, Added Field

[1] Different random numbers on tract and national files

[2] Not applicable to 1996 and beyond data sets.

[3] Not applicable to 1993-1995 data sets.

Matrix E.3

GSE Multifamily Mortgage Data
Unit-Class Level
Proprietary Information/Public-Use Data

#	Field Description	Values	Census Tract File	National File
0	Agency Flag		YES	NO
1	Loan Number		YES	Yes, but recode as a Random Number[1]
44	Unit Type XX-Number of Bedrooms		YES	YES, but recode as: 1=0-1 Bedroom 2= 2 or more Bedrooms
45	Unit Type XX-Number of Units		YES	NO
46	Unit Type XX-Average Rent Level		YES	YES
47	Unit Type XX-Average Rent Plus Utilities		YES	YES
48	Unit Type XX-Affordability Level		YES	YES, but recode as: 1=0- <=50% 2=50- <=60% 3=60- <=80% 4=80- <=100% 5= > 100% 9=Not Available
49	Unit Type XX-Tenant Income Indicator	0=No or Not Provided 1=Yes	YES	NO

[1] This number will match the property level random number on the national file.

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Federal Register

Thursday,
March 9, 2000

Part III

Department of Defense

Department of the Army, Corps of Engineers
Final Notice of Issuance and Modification of Nationwide Permits; Notice

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Final Notice of Issuance and Modification of Nationwide Permits

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final notice.

SUMMARY: The Corps of Engineers (Corps) is issuing 5 new Nationwide Permits (NWPs) and modifying 8 existing NWPs to replace NWP 26 which expires on June 5, 2000. The Corps is also modifying nine NWP general conditions and adding two new NWP general conditions. The new NWP general conditions will increase protection of designated critical resource waters and waters of the United States within 100-year floodplains. In December 1996, the Corps decided to replace NWP 26, which authorizes discharges of dredged or fill material into headwaters and isolated waters of the United States, with activity-specific NWPs. The new and modified NWPs authorize many of the same activities that NWP 26 authorized, but the new and modified NWPs are activity-specific, with terms and conditions to ensure that these activities result in minimal adverse effects on the aquatic environment. The new and modified NWPs will substantially increase protection of the aquatic environment, while efficiently authorizing activities with minimal adverse effects on the aquatic environment. The maximum acreage limits of most of the new and modified NWPs is ½ acre. Most of the new and modified NWPs require notification to the district engineer for activities that result in the loss of greater than 1/10 acre of waters of the United States. This notice also constitutes the Corps application to States, Tribes, and the Environmental Protection Agency (EPA) for Section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency determinations. These agencies have 90 days to determine if the new and modified NWPs meet state or Tribal water quality standards and are consistent with state coastal zone management plans.

DATES: The new and modified NWPs and general conditions will become effective on June 5, 2000. The expiration date for NWP 26 is June 5, 2000.

ADDRESSES: HQUSACE, ATTN: CECW–OR, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson or Mr. Sam Collinson at (202) 761–0199 or access the Corps of Engineers Regulatory Home Page at: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.

SUPPLEMENTARY INFORMATION:

Background

In the December 13, 1996, issue of the **Federal Register** (61 FR 65874) the Corps reissued NWP 26 for a period of two years and announced its intention to replace NWP 26 with activity-specific NWPs. NWP 26 authorizes discharges of dredged or fill material into headwaters and isolated waters, provided the discharge does not result in the loss of greater than 3 acres of waters of the United States or 500 linear feet of stream bed. Headwaters are non-tidal streams, lakes, and impoundments that are part of a surface tributary system to interstate or navigable waters of the United States with an average annual flow of less than 5 cubic feet per second. Isolated waters are non-tidal waters of the United States that are not part of a surface tributary system to interstate or navigable waters and are not adjacent to such surface tributary systems to interstate or navigable waters.

In the July 1, 1998, issue of the **Federal Register** (63 FR 36040) the Corps published its initial proposal to replace NWP 26, including 6 new NWPs, modifying 6 existing NWPs, modifying 6 NWP general conditions, and adding one new NWP general condition. In the October 14, 1998, issue of the **Federal Register** (63 FR 55095), the Corps published a supplementary proposal to limit the use of the proposed new and modified NWPs in 100-year floodplains, impaired waters, and designated critical resource waters. In the October 14, 1998, **Federal Register** notice, the Corps also announced the withdrawal of the proposed NWP for master planned development activities and the extension of the expiration date of NWP 26 to September 15, 1999. The Corps also announced, in the October 14, 1998, **Federal Register** notice, its intent to solicit additional comments on the proposed new and modified NWPs and regional conditions proposed by Corps districts.

As a result of the comments received in response to the July 1, 1998, and October 14, 1998, **Federal Register** notices, the Corps made changes to the proposed NWPs and general conditions. The Corps also modified and reproposed the three new NWP general conditions to limit the use of NWPs in 100-year floodplains, impaired waters, and designated critical resource waters. The draft NWPs and general conditions were published in the July 21, 1999, issue of the **Federal Register** (64 FR 39252) for a 45-day comment period. Concurrent with this **Federal Register** notice, Corps districts proposed the latest drafts of their proposed regional conditions for the new and modified NWPs. In the September 3, 1999, issue of the **Federal Register** (64 FR 48386), the Corps announced that the comment period for the draft NWPs and general conditions was extended an additional 30 days to provide a 75-day comment period. The comment period for the July 21, 1999, **Federal Register** notice ended on October 7, 1999. In the September 3, 1999, **Federal Register** notice, the Corps also announced that the expiration date of NWP 26 was extended to January 5, 2000.

As a result of the number of substantial comments received in response to the July 21, 1999, **Federal Register** notice and the need for additional time to review those comments and develop the final NWPs and general conditions, the Corps issued another **Federal Register** notice on December 15, 1999 (64 FR 69994). This **Federal Register** notice announced a revised expiration date for NWP 26 and the process for accepting NWP 26 PCNs. The expiration date for NWP 26 was extended to April 14, 2000.

Since the schedule published in the December 15, 1999, **Federal Register** notice has changed, we are extending the expiration date of NWP 26 to June 5, 2000. NWP 26 PCNs submitted on or before March 9, 2000, (whether required or not) will be reviewed under the existing terms and conditions of NWPs. If those activities are authorized by NWP 26, their authorizations will be valid until February 11, 2002. If the activity is under construction or under contract prior to February 11, 2002, the permittee will have 12 additional months to complete the authorized activity. NWP 26 PCNs for activities that require notification which are submitted after March 9, 2000, will be reviewed under the new and modified NWPs or other types of DA authorization, such as individual permits. NWP 26 activities that do not require a PCN are authorized by NWP 26 until June 5, 2000. For those NWP 26 activities that do not require notification, the permittee has 12 months to complete the work if construction begins or is under contract before June 5, 2000.

The terms and limits of the new and modified NWPs are intended to authorize activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. Most of the new NWPs authorize activities in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters. The

acreage limit for most of the new and modified NWPs is ½ acre. For the new and modified NWPs, the Corps has established pre-construction notification (PCN) thresholds to ensure that any activity that potentially may have more than minimal adverse effects on the aquatic environment is reviewed by a district engineer on a case-by-case basis. Most of the new NWPs require submission of a PCN for discharges of dredged or fill material resulting in the loss of greater than 1/10 acre of waters of the United States. Regional conditions may be added to the NWPs by division engineers to lower notification thresholds.

The new and modified NWPs issued today will become effective on June 5, 2000. This **Federal Register** notice begins the 90-day Clean Water Act Section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency determination processes. Because of the changes to the proposed new and modified NWPs, including the general conditions, we have increased the normal 60-day WQC and CZMA consistency determination processes to 90 days. During this 90-day period, Corps divisions and districts will finalize their regional conditions for the new and modified NWPs.

Discussion of Public Comments

I. Overview

In response to the July 21, 1999, **Federal Register** notice, we received over 1,700 comments. We reviewed and fully considered all of these comments. Most of the commenters expressed opposition to the proposed NWPs, but a few commenters indicated support for these NWPs. One commenter stated that NWP 26 should be retained without any changes. A number of commenters support the current NWP program, because data collected by the Corps during Fiscal Year (FY) 1997 indicates that there are net gains in aquatic resources because of the Corps mitigation requirements. These commenters indicated that this net gain demonstrates that the current NWP program results only in minimal adverse effects on the aquatic environment.

After considering the comments received in response to the July 21, 1999, **Federal Register** notice, we have made several important changes to the new and modified NWPs. For most of these NWPs, we have established a ½ acre limit. Notification to the district engineer will be required for most activities that result in the loss of greater than 1/10 acre of waters of the United States. For NWPs 39, 40, 42, and 43, we have imposed a 300 linear foot limit for filling and excavating stream beds. We have also increased the notification review period to 45 days. We have revised nine general conditions and added two new general conditions. The new NWP general conditions limit activities in designated critical resource waters and fills in waters of the United States within 100-year floodplains. All above-grade fill under NWPs 29, 39, 40, 42, 43, and 44 is prohibited within the FEMA-mapped 100-year floodplain below the headwaters of any stream. Within the headwaters, above-grade fill is prohibited within the FEMA-mapped regulatory floodway, and any above-grade fill in the flood fringe must meet FEMA standards.

These new restrictions on use of the NWPs will substantially increase the protection of the Nation's aquatic environment. These revised NWPs continue a trend by the Corps of Engineers of enhancing the protection of the aquatic environment through the NWP program. In 1977 the predecessor to NWP 26 authorized unlimited fill in headwaters and isolated waters without any notification of the Corps. In 1984 the Corps established a maximum project specific impact limit of 10 acres and a notification of the Corps for any impact greater than 1 acre. In 1996, we reduced these project specific limits to 3 acres maximum and 1/3 acre for notification of the Corps. To further ensure that the NWP program properly protects the aquatic environment, the Corps is conducting a Programmatic Environmental Impact Statement, which will be completed in early 2001. To ensure full protection of endangered species, the Corps is formally consulting with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the NWP program.

All of these substantial improvements will increase costs to applicants to some degree and will increase the funding needed by the Corps to maintain our current level of service to the public. Based on a report prepared by the Corps Institute for Water Resources (IWR) in response to the Corps FY 2000 Appropriations Act, the changes to the NWP program announced today will increase direct costs for permit applicants by about $20 million per year. Further, based on the IWR report, the Corps would need about $6 million in additional funding to maintain current levels of service to the public. We believe the changes are necessary to ensure the statutory requirement that general permits, including NWPs, will have no more than minimal adverse effects on the aquatic environment.

II. General Comments

In the following discussion, where the comments and responses were the same as for the July 21, 1999, **Federal Register** notice, we referred to the July 21, 1999, **Federal Register** notice instead of repeating those responses.

Many commenters objected to the proposed NWPs for the following reasons: (1) The proposed NWPs are too complex; (2) the proposed NWPs are contrary to the Congressional intent of Section 404(e) of the Clean Water Act; (3) the proposed NWPs are contrary to the Administration's 1993 Wetlands Plan, which states that Federal regulatory programs should be fair, flexible, and effective; (4) the proposed NWPs are contrary to the 1998 Clean Water Action Plan, which states that duplication between Federal, state, and local agencies and Tribal governments should be reduced wherever possible; (5) the conditions of these NWPs will cause many activities with minimal adverse effects on the aquatic environment to be processed as individual permits; and (6) these NWPs will result in unnecessary and costly burdens on the regulated public, increase delays, and increase the Corps workload without providing any benefits.

We have reduced the complexity of these NWPs as much as possible by making the scope of applicable waters for most of the new NWPs the same and establishing similar PCN thresholds. In addition, we have eliminated the indexed acreage limits from NWPs 39 and 40 and established a ½ acre limit for these NWPs. However, some complexity is unavoidable because different activities in waters of the United States do not have the same effects on the aquatic environment and each NWP must have different conditions to address those dissimilar impacts. The new and modified NWPs are conditioned to ensure that only those activities that have minimal adverse effects on the aquatic environment are authorized by these permits.

The new and modified NWPs are not contrary to Section 404(e) of the Clean Water Act, because each NWP authorizes activities that are similar in nature, with terms and conditions to ensure that those NWPs authorize only activities with minimal adverse effects on the aquatic environment. These NWPs still provide an expedited authorization process when compared to the standard permit process, because the district engineer must respond to the applicant within 45 days of the receipt date for a complete preconstruction

notification (PCN). The 45-day PCN review period is shorter than the average evaluation time for individual permits, which was 100 days in FY 1999.

The new and modified NWPs comply with the President's 1993 Wetlands Plan, by allowing the Corps regulatory program to continue to provide effective protection of wetlands and other aquatic resources and avoid unnecessary impacts to private property, the regulated public, and the aquatic environment. The new and modified NWPs, including the new and modified general conditions, will more clearly address individual and cumulative adverse effects on the aquatic environment and ensure that those adverse effects are minimal. The new and modified NWPs address specific applicant group needs and provide more predictability and consistency to the regulated public. During the development of these NWPs, we recognized the concerns of the natural resource agencies and environmental interest groups for potential adverse effects on the aquatic environment resulting from activities authorized by these NWPs and the regulated public's need for certainty and flexibility in the NWP program.

Although certain aspects of the new and modified NWPs duplicate existing Federal, state, and local agency programs, such duplication is not contrary to the 1998 Clean Water Action Plan because it provides additional protection for the aquatic environment. While some state and local governments may address some of the same issues that are addressed by the NWPs and general conditions, there are many areas of the country where those issues are not addressed. Therefore, we believe it is necessary to add certain conditions to the NWPs to address potential adverse effects to the aquatic environment. For example, General Condition 9 requires a water quality management plan for certain NWP activities, unless the state or Tribal Section 401 agency requires an adequate water quality management plan. If the state or Tribe does not adequately address impacts to water quality through its water quality certification process, the district engineer can require additional measures such as stormwater management facilities and vegetated buffers to protect water quality. There are circumstances where the Corps needs to consider more stringent NWP requirements to ensure that the adverse effects to the aquatic environment are minimal, individually and cumulatively.

We agree that the terms and conditions of the new and modified NWPs may cause some activities with minimal adverse effects on the aquatic environment to be subject to the individual permit process. It is important to note that aquatic resource functions and values differ greatly across the country. When developing NWPs that have national applicability, there will be many parts of the country where the terms and limits of the NWPs will not authorize some activities that have minimal adverse effects on the aquatic environment. In these areas, district engineers can issue regional general permits in the future to provide expedited authorization for categories of activities with minimal adverse effects on the aquatic environment.

However, for six months after the publication date of the new and modified NWPs, district engineers will not issue regional general permits or letters of permission (LOPs) that explicitly authorize the same activities as the new and modified NWPs. This six month period will allow Corps districts to assess how effectively the new and modified NWPs authorize activities with minimal adverse effects on the aquatic environment, individually and cumulatively.

As required by the Energy and Water Development Appropriations Act, 2000, we have conducted a study of the workload and compliance costs of the NWPs, including the new general conditions, proposed in the July 21, 1999, **Federal Register** notice. The report for this study was finalized in January 2000. This report is available on the Internet at the Corps headquarters regulatory home page.

The workload and compliance costs study determined that the proposal published in the July 21, 1999, **Federal Register** would increase the number of standard individual permit applications received by the Corps by 4,429 per year. This and other workload increases would result in direct compliance costs incurred by the regulated public by an estimated $46 million annually. The study also examined indirect compliance costs (i.e., opportunity costs) of the July 21, 1999, proposal. The indirect compliance costs include the opportunity costs that result from increases in permit processing times and an estimate of foregone development value caused by the vegetated buffer requirement. The study estimates that the processing times for standard permits would steadily increase each year if the July 21, 1999, proposal were to be implemented and Corps budget resources are not increased. Within five years, the average standard permit processing time and number of backlogged permit applications would increase three to four times the levels measured in FY 1998.

The study also examined an alternative replacement NWP package that included lowering the acreage limit of the new and modified NWPs to ½ acre and withdrawing the three proposed new NWP general conditions. The alternative replacement NWP package would result in 40% fewer standard permit applications and 30% less direct compliance costs than the July 21, 1999, proposal would. After five years, the standard permit processing times and permit application backlog would be approximately ½ of that estimated for the proposal published in the July 21, 1999, **Federal Register**.

Many commenters objected to the Corps statement in the July 21, 1999, **Federal Register** notice that NWPs are optional permits, and that if they do not want to comply with the terms and conditions of the NWPs, then they can request an individual permit. Numerous commenters indicated that the new and modified NWPs are likely to result in decreased protection of the aquatic environment because of the higher numbers of individual permits and a greater workload for the Corps that would result if these NWPs were implemented as proposed. Some commenters also stated that the new and modified NWPs would also result in less protection of the aquatic environment because project proponents would have less incentive to build projects with smaller impacts to aquatic resources due to the strict acreage limits, notification requirements, and conditions. In contrast, one commenter said that developers will modify their projects to comply with the new and modified NWPs. Another commenter said that the costs to the Corps and regulated public that are imposed by the new and modified NWPs will be offset by the additional environmental protection provided by those NWPs.

NWPs provide an expedited Corps permit process for activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. The NWPs are conditioned to ensure that only activities with minimal adverse effects are authorized. If a prospective permittee cannot comply with all of the terms and conditions of the NWPs, then he or she can request another form of Department of the Army (DA) authorization, such as a regional general permit or a standard individual permit.

We believe that the terms and conditions of the new and modified NWPs, including the ½ acre limit and 1/10 acre PCN threshold, are substantially more protective of the aquatic environment. The terms and conditions of these NWPs will ensure that only activities with minimal adverse effects on the aquatic environment are authorized by NWPs. Many project proponents will design their projects to comply with the ½ acre limit so that they can qualify for an NWP and receive authorization more quickly than they could through the standard permit process.

Many commenters stated that the new and modified NWPs would cause more than minimal adverse effects on the aquatic environment, individually and cumulatively. A few commenters said that the proposed NWPs do not comply with the requirement that general permits authorize only activities that are similar in nature. A number of commenters objected to the NWPs, because they provide no opportunity for the public to comment on individual projects.

We have developed terms and conditions for the new and modified NWPs to ensure that they authorize only those activities that result in minimal individual or cumulative adverse effects on the aquatic environment. The new and modified NWPs have PCN thresholds that require prospective permittees to notify district engineers prior to conducting activities that could result in more than minimal adverse effects. Most of the new and modified NWPs require notification to district engineers for discharges resulting in the loss of greater than 1/10 acre of waters of the United States. Division engineers can regionally condition these NWPs to lower notification thresholds, protect high value waters, or add additional restrictions to ensure that authorized activities result only in minimal adverse effects. District engineers will review PCNs on a case-by-case basis to determine if the adverse effects of the proposed work are minimal. If the adverse effects of a particular activity are more than minimal, the district engineer can either add conditions to the NWP authorization to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the proposed work.

Each of the new and modified NWPs authorizes activities that are similar in nature, in full compliance with section 404(e) of the Clean Water Act. This issue was discussed in detail in the July 21, 1999, **Federal Register** notice (64 FR 39263), and we have not changed our position on this matter.

The intent of general permits, including NWPs, is to efficiently authorize activities that have minimal adverse effects on the aquatic environment. These activities are usually non-controversial, and would generate few or no comments from the public if they were subject to the standard permit process. Conducting full public interest reviews for activities with minimal adverse effects on the aquatic environment would substantially increase the Corps workload with little or no added value for the aquatic environment.

A large number of commenters objected to the proposed NWPs, stating that the new and modified NWPs would result in significant wetland losses. Many commenters said that the new and modified NWPs would undermine the Administration's goal of net gain in wetland acreage stated in the Clean Water Action Plan.

The new and modified NWPs will not result in significant losses of wetlands because they are conditioned to require prospective permittees to avoid and minimize impacts to waters of the United States on-site to the maximum extent practicable (see General Condition 19). In addition, the ½ acre limit will substantially reduce wetland losses. Compensatory mitigation is often required for activities that require notification to the district engineer, which offset losses of wetlands and other aquatic habitats so that significant losses of wetlands do not occur as a result of the NWP program.

As discussed in the July 21, 1999, **Federal Register** notice, the NWP program supports the Administration's goal of no net loss and is not contrary to the goals of the Clean Water Action Plan.

Several commenters objected to the proposed NWPs, stating that the NWPs place too much reliance on the assertion of discretionary authority by district engineers. They said that this process does not provide adequate protection of the aquatic environment. Another commenter stated that the proposed NWPs are inappropriately based on the intent of the prospective permittee, instead of potential impacts to aquatic resources. One commenter indicated that there is too much overlap between the new and modified NWPs, which would be confusing to permit applicants.

We disagree with these commenters, because the notification process allows case-by-case review of those activities that have the potential for more than minimal adverse effects on the aquatic environment. If the adverse effects of the proposed activity are more than minimal, then the district engineer can either add special conditions to the NWP authorization to ensure that the activity results in minimal adverse effects or exercise discretionary authority and require an individual permit. This process provides substantial protection for the aquatic environment.

The new and modified NWPs are activity-specific to satisfy the requirements of section 404(e) of the Clean Water Act. These NWPs address impacts to the aquatic environment, because they are limited to certain types of waters and are conditioned to ensure that the adverse effects resulting from the authorized work are minimal, individually and cumulatively. Since these NWPs are activity-specific, they have to reflect specific categories of work that are conducted by individuals of certain occupations.

Although there is some overlap between the activities authorized by the new and modified NWPs, such redundancy is necessary because our intent was to develop NWPs that authorize single and complete projects generally without having to resort to using multiple NWPs. For instance, NWP 39 authorizes most features of residential, commercial, or institutional developments, including road crossings and stormwater management facilities.

Several commenters stated that the NWPs should only authorize activities that are water dependent. One of these commenters said that limiting the NWPs only to water dependent activities would result in a regulatory program that is easier to administer and result in wetland gains. Some commenters indicated that the proposed NWPs do not comply with the Section 404(b)(1) guidelines.

We addressed the issue of water dependency in the preamble of the July 21, 1999, **Federal Register** notice and have not changed our position on this issue. The new and modified NWPs comply fully with the requirements for general permits in the Section 404(b)(1) guidelines (see 40 CFR 230.7).

A few commenters opposed the new and modified NWPs because they said that the Corps has failed to define the term "minimal effects" in an understandable or meaningful way. Many commenters stated that the minimal adverse effects criterion for the NWPs is too subjective and that an assessment procedure that considers the size of impacts and quality of waters must be used instead.

The term "minimal effect" as it is used in the context of general permits,

including NWPs, cannot be simply defined. The terms and conditions of general permits are established so that those permits authorize most activities that result in minimal adverse effects on the aquatic environment. Preconstruction notifications are an important mechanism to ensure compliance with the minimal adverse effect requirement. Case-specific special conditions and regional general conditions are also important for addressing site-specific and regional concerns for the aquatic environment and ensuring that the NWPs authorize only activities with minimal adverse effects. For activities that require notification to the district engineer, the minimal adverse effects determination requires consideration of site-specific factors, such as the quality of waters that may be impacted by the proposed work, the functions and values of those waters, the geographic setting of the proposed work, and other factors. The minimal adverse effects criterion must be subjective, due to the complexity of the analysis required.

Two commenters suggested issuing the new NWPs with an expiration date of February 11, 2002, so that these NWPs will expire on the same day as the current NWPs. One commenter said that the new NWPs should be reevaluated when the current NWPs are reevaluated to determine if the use of all NWPs will result in more than minimal impacts. Two commenters recommended allowing NWP 26 to expire in January 2000 and not issuing the new NWPs until the next NWP reissuance in 2002. In the interim, individual permits would be required for activities that do not qualify for any of the current NWPs.

The new and modified NWPs issued today will expire on June 5, 2005 (i.e., five years from their effective date). However, when the current NWPs are proposed for reissuance in 2002, the new and modified NWPs are likely to be part of that proposal, so that all of the NWPs will be on the same five year cycle for review. We do not agree with the third comment of the previous paragraph. Allowing NWP 26 to expire prior to the effective date of the new and modified NWPs would be unfair to the regulated public.

Several commenters requested that the expiration date for NWP 26 should be extended to the expiration date of the current NWPs to ensure that NWP 26 is available until the effective date of the new and modified NWPs.

We do not agree that it is necessary to extend the expiration date of NWP 26 to February 11, 2002, because the new and modified NWPs will become effective on June 5, 2000. Keeping NWP 26 in place while the new and modified NWPs are effective would be contrary to the Corps goal of replacing NWP 26 with activity-specific NWPs.

One commenter suggested that the Corps clarify in this **Federal Register** notice that activities authorized by NWP 26 prior to the expiration date will continue to be authorized by NWP 26 for 12 months, provided the permittee has commenced construction or is under contract to commence construction. Another commenter recommended changing the 12-month grandfather provision for the NWPs to 24 months to provide adequate time for the completion of transportation projects.

A permittee who receives an NWP 26 authorization prior to the expiration date will have up to 12 months to complete the authorized activity, provided the permittee commences construction, or is under contract to commence construction, before the date NWP 26 expires (see 33 CFR 330.6(b)). Except as indicated below, this provision applies to all NWP authorizations unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the NWP authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5(c) or (d). We do not agree that it is necessary to increase the time period for the grandfathering provision from 12 months to 24 months. However, anyone who submitted a NWP 26 PCN on or before March 9, 2000, will have until February 11, 2003, to complete the work, provided the permittee receives an NWP 26 verification and has commenced construction or signed a construction contract prior to February 11, 2002.

Jurisdictional Issues

In response to the July 21, 1999, **Federal Register** notice, we received many comments concerning the scope of the Corps regulatory authority. These comments addressed excavation activities in waters of the United States and whether ephemeral streams, drainage ditches, and certain other categories of waterbodies are waters of the United States. Today's action addresses only NWPs, and in no way affects or alters the geographic or activities-based jurisdiction of the CWA nor is it intended to create new policy related to such jurisdiction.

Many commenters said that the Corps is ignoring recent court decisions by including excavation activities as regulated activities in the text of the new and modified NWPs. These commenters cited the recent decision by the United States Court of Appeals for the District of Columbia which upheld the United States District Court for the District of Columbia's decision in the *American Mining Congress* v. *Corps of Engineers* lawsuit. This lawsuit challenged the Corps and EPA's revised definition of "discharge of dredged material" that was promulgated on August 25, 1993 (58 FR 45008). The revised definition of "discharge of dredged material" was overturned because the District Court held that the rule was outside of the agencies' statutory authority and contrary to the intent of Congress by asserting Clean Water Act jurisdiction over activities where the only discharge associated with the activity is "incidental fallback." These commenters requested that the Corps remove all references to excavation activities from the new and modified NWPs. Two commenters stated that the reference to excavation activities in the new and modified NWPs requires project proponents to submit a notification to the Corps to determine if a Corps permit is required. One commenter said that the final NWPs should contain guidance that explains when excavation is a regulated activity. This commenter also recommended that the Corps clarify how excavation activities are included in the calculation of acreage loss of waters of the United States, to determine if a particular activity exceeds PCN thresholds or NWP acreage limits.

The agencies revised their regulations on May 10, 1999, to respond to the results of the American Mining Congress lawsuit (64 FR 25120). It is important to recognize that not all excavation activities in waters of the United States are conducted so that only incidental fallback occurs. Excavation activities that result in the redeposit of dredged material into waters of the United States other than incidental fallback require a Section 404 permit. For example, excavated material may be temporarily stockpiled in waters of the United States before it is removed. Excavation activities that result only in discharges identified by the Corps as "incidental fallback" do not require a Section 404 permit. However, all excavation activities in Section 10 navigable waters require Corps permits under section 10 of the Rivers and Harbors Act of 1899. We have retained the excavation language in the new and modified NWPs and the definition of "loss of waters of the United States" because some excavation activities in Section 404 only waters of the United States result in discharges that still

require a Section 404 permit. These activities may be authorized by NWPs. NWPs issued under the Corps Section 10 authority also authorize excavation activities in navigable waters of the United States. No permit is required for excavation activities that do not meet the definition of discharge of dredged or fill material. As with any activity in waters of the United States, a landowner who is uncertain whether their activity needs a permit may contact the Corps.

Two commenters noted that a statement in the July 21, 1999, **Federal Register** notice (64 FR 39276) concerning excavation activities is inaccurate and misleading. This statement said that excavation activities that result in the replacement of an aquatic area with dry land or change the bottom elevation of a waterbody require a Section 404 permit. These commenters said that this statement is actually the definition of "fill material" and that excavation cannot, by itself, result in the replacement of an aquatic area with dry land or change the bottom elevation of a waterbody.

We agree that the statement in the **Federal Register** is inaccurate and have included clarification concerning when excavation activities require a Section 404 and/or a Section 10 permit from the Corps (see the above discussion). Excavation activities can change the bottom elevation of a waterbody by removing material and increasing the depth of the waterbody. Increasing the depth of a waterbody without associated discharges of dredged material other than incidental fallback does not require a Section 404 permit, but a Section 10 permit would be required if the activity is in Section 10 waters. However, an excavation activity that involves redeposit of dredged material into waters of the United States other than incidental fallback or involves the discharge of fill material that increases the bottom elevation of a waterbody or creates dry land requires a Section 404 permit (unless the activity qualifies for a Section 404(f) exemption).

A number of commenters stated that the Corps does not have authority to regulate discharges into ephemeral streams because these watercourses, by definition, contain water only briefly and therefore are not waters of the United States. One of these commenters noted that 33 CFR 328.3 includes intermittent streams, but does not include ephemeral streams. A few commenters remarked that the Corps has not explained how an ordinary water mark can be present in a watercourse that has water flow only during a short time after rain events. These commenters assert that under ordinary circumstances, ephemeral watercourses do not have flowing water and cannot develop an ordinary high water mark (OHWM). They said that the Corps needs to define what constitutes an "ordinary flow" in an ephemeral watercourse that establishes an OHWM and what indicators are to be used to determine the presence and location of the OHWM. In addition, these commenters stated that the Corps cannot use peak flows and flood stages in lieu of ordinary flows and the Corps cannot use cut banks, shelving, or debris that is influenced only by peak flows or flooding.

An ephemeral stream is a water of the United States, provided it has an OHWM. An ephemeral stream that does not have an OHWM is not a water of the United States. The frequency and duration at which water must be present to develop an OHWM has not been established for the Corps regulatory program. District engineers use their judgement on a case-by-case basis to determine whether an OHWM is present. The criteria used to identify an OHWM are listed in 33 CFR 328.3(e).

Several commenters said that the Corps can only exercise jurisdictional authority over those ephemeral waters that are tributaries to waters of United States. These commenters said that the low frequency of water flows in these watercourses requires the Corps to define criteria and circumstances to determine whether ephemeral watercourses are tributaries to waters of the United States. Some commenters also stated that the Corps has not demonstrated how ephemeral streams have any nexus to interstate commerce or how discharges of dredged or fill material into those watercourses would affect interstate commerce.

We agree that ephemeral streams that are tributary to other waters of the United States are also waters of the United States, as long as they possess an OHWM. The upstream limit of waters of the United States is the point where the OHWM is no longer perceptible (see 51 FR 41217). Ephemeral streams that are part of an interstate surface tributary system are waters of the United States, because they are an integral part of that surface tributary system, which supports interstate commerce.

Three commenters stated that the proposed NWPs illegally assert jurisdiction over drainage ditches. Three commenters objected to a statement in the July 21, 1999, **Federal Register** notice that drainage ditches constructed in waters of the United States remain waters of the United States. These commenters said that if a drainage ditch converts a water of United States to a non-jurisdictional upland, the drainage ditch would not be a water of United States unless the area remains a wetland or other type of water of United States. These commenters also objected to the Corps assertion that non-tidal drainage ditches are waters of the United States if they extend the OHWM of an existing water of the United States. They said that this position is contrary to preamble to November 13, 1986, final rule for the Corps regulatory program (51 FR 41217) and that this change requires justification. One commenter requested that the Corps clarify whether the entire ditch becomes jurisdictional if the OHWM becomes extended within the ditch or whether jurisdiction is extended only to that portion of the ditch that develops an OHWM. Two commenters asked for clarification whether a drainage ditch that runs through a series of uplands and waters of the United States is jurisdictional. One commenter asked how an OHWM that develops within a drainage ditch would be determined to be due to ordinary flows, not peak flows or flooding.

A drainage ditch constructed in a stream, wetland, or other water of the United States remains a water of the United States, provided an OHWM is still present. Since drainage ditches constructed in waters of the United States are constructed either by channelizing a stream or excavating the substrate to improve drainage, it is unlikely that the drainage ditches will become dry land unless the hydrology is removed by some other action. District engineers will determine, on a case-by-case basis, whether a particular area is a water of the United States. If the construction of a drainage ditch has legally converted the entire area to dry land, then the area drained is not a water of the United States, however, in most cases the drainage ditch would remain a water of the United States.

The statement that non-tidal drainage ditches are waters of the United States if they extend the OHWM of an existing water of the United States is consistent with the final rule published in the November 13, 1986, **Federal Register** and applies to ditches constructed in waters or that connect waters. Nothing in the NWP notice was intended to change the November 13, 1986, **Federal Register** notice which states that drainage ditches constructed entirely in upland areas generally are not considered to be waters of the United States.

Drainage ditches constructed in uplands that connect two waters of the United States may be considered waters of the United States if those ditches

constitute a surface water connection between those two waters of the United States. As previously noted, drainage ditches constructed entirely in uplands generally are not considered to be waters of the United States. District engineers will use the criteria at 33 CFR 328.3(e) to determine the presence and extent of an OHWM that may have developed in a drainage ditch.

One commenter stated that the July 21, 1999, **Federal Register** notice incorrectly asserts jurisdiction over farmed wetlands by considering them to be waters of the United States and the Corps does not have authority to require permits for discharges into these areas. Another commenter said that the Corps does not have the authority to regulate activities in isolated wetlands. Two commenters indicated that the Corps contradicts its regulations concerning the construction and maintenance of stormwater management facilities. These commenters assert that the Corps regulations published in the November 13, 1986, **Federal Register** state that detention and first flush basins are generally not considered waters of the United States. One commenter requested clear definitions of the terms "waters of the United States," "navigable waters," and "navigable waters of the United States."

Farmed wetlands as defined under the Food Security Act are waters of the United States provided they meet the criteria at 33 CFR 328.3. In addition, those criteria further provide that prior converted croplands are not waters of the United States. Isolated wetlands are waters of the United States, provided they meet the criteria at 33 CFR 328.3. (Within the Fourth Circuit, isolated waters must be shown to have an actual connection to interstate or foreign commerce.) Stormwater management facilities constructed in waters of the United States may, under certain circumstances, be considered waters of the United States. The Corps has the discretion to determine on a case-by-case basis whether or not a particular waterbody is a water of the United States (see 51 FR 41217). The term "waters of the United States" is defined at 33 CFR 328.3 and refers to the Corps Section 404 jurisdiction. The term "navigable waters" as used in Section 404 of the Clean Water Act has the same meaning as "waters of the United States." The term "navigable waters of the United States" is defined at 33 CFR part 329 and refers to the Corps Section 10 jurisdiction. None of these definitions were changed by the proposed NWPs or these final NWPs.

Procedural Comments

Many commenters stated that the Corps was required to hold public hearings on the draft NWPs proposed in the July 21, 1999, **Federal Register** notice. Some of these commenters said that the draft NWPs, especially the three proposed new NWP general conditions, represent a substantial change from the proposed NWPs published in the July 1, 1998, **Federal Register** notice and that these changes warrant an additional public hearing. Numerous commenters stated that the 75-day comment period was inadequate to thoroughly review and comment on the July 21, 1999, **Federal Register** notice. Some of these commenters said that the comment period should be extended because many districts did not post their draft regional conditions on their Internet home pages quickly enough.

We believe that we have fully complied with the public hearing requirements of the Clean Water Act. After the publication of the July 1, 1998, **Federal Register** notice, public hearings on the proposed new and modified NWPs were held across the country, including a public hearing in Washington, DC on August 19, 1998. The proposal published in the July 21, 1999, **Federal Register** was a modification of the original July 1, 1998, proposal to replace NWP 26 with activity-specific NWPs.

The 75-day comment period for the July 21, 1999, **Federal Register** notice provided adequate time for the public to review and comment on the draft NWPs. Within one week of the publication of the July 21, 1999, **Federal Register** notice, 31 out of 38 districts had posted their draft regional conditions on their Internet home pages, which allowed the public sufficient time to consider how the regional conditioning process affected the proposed new and modified NWPs. All Corps districts had posted their draft regional conditions on their Internet home pages by September 3, 1999.

A large number of commenters said that the Corps has completely ignored the economic and workload implications of the new and modified NWPs and general conditions proposed in the July 21, 1999, **Federal Register** notice. These commenters indicated that the economic impacts of this proposal would be substantial. Many commenters stated that the new and modified NWPs should not be issued or implemented until an economic and workload analysis study is completed.

As required by the Energy and Water Development Appropriations Act, 2000, we have prepared, through the Institute for Water Resources (IWR), a study of the workload and compliance costs that would be incurred by the July 21, 1999, proposal. The study report will be available on the Internet at the Corps headquarters regulatory home page. This study demonstrated that the proposal published in the July 21, 1999, **Federal Register** would result in substantial increases in workload and costs to the Corps and the regulated public. The proposed new and modified NWPs, including the three proposed general conditions, would result in a 50% increase in the number of standard permit applications received by the Corps each year. The proposed new and modified NWP package would increase the Corps costs for processing permit applications at the current levels of service by $11.5 million annually, nearly a 15% increase over FY 1998 program funding. In addition, the July 21, 1999, proposal would also increase the direct compliance costs incurred by the regulated public by $46 million annually. In contrast, the modifications to the new and modified NWPs issued today (*i.e.*, the ½ acre limit and the revised floodplain condition) would result in impacts very similar to the IWR estimate for a ½ acre approach to the NWPs. That IWR estimate was 40% fewer standard permit applications than the July 21, 1999, proposal and 30% less in direct compliance costs. It is also important to note that the modified NWPs being issued today will protect the aquatic environment substantially better than the July 21, 1999, proposal would. These final NWPs are also less complex than the proposed NWPs, which will assist the regulated public.

Many commenters stated that the proposed new and modified NWPs, including the proposed general conditions, violate the Administrative Procedures Act (APA). These commenters said that the Corps has failed to provide an adequate administrative record and failed to demonstrate that the proposed acreage limits and other restrictions are necessary to provide protection for the aquatic environment. Some of these commenters stated that the Corps must provide an environmental basis for the acreage limits of the new and modified NWPs. Several commenters said that the proposal to issue new and modified NWPs to replace NWP 26 falls under the jurisdiction of the APA, because these NWPs are an agency statement of general applicability to implement, interpret, or prescribe a law or policy. A number of commenters stated that the proposed NWPs violate the APA because the schedule published in the

July 21, 1999, **Federal Register** notice implies that the decision to issue these NWPs and new general conditions was predetermined and the schedule did not include adequate time for the Corps to carefully consider comments received in response to that notice.

The new and modified NWPs issued today comply with Section 404(e), which requires notice and opportunity for public hearing. The Corps notice and comment process is virtually the same as the APA process. We have prepared an adequate administrative record to justify the issuance of these NWPs. In addition, we have fully considered all comments received in response to the July 21, 1999, **Federal Register** notice to determine the terms and conditions for the new and modified NWPs. This included three extensions of the final NWP issuance in order to fully and fairly consider all comments.

The acreage limit for an NWP is established so that the NWP authorizes most activities that result in minimal adverse effects on the aquatic environment, individually or cumulatively. However, since NWPs are issued for national applicability, the terms and conditions of NWPs, including the acreage limits, must be restrictive enough to ensure that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively, across the country. The NWPs also contain notification requirements that provide district engineers with the opportunity to review certain activities to determine if those activities will result in minimal adverse effects on the aquatic environment. Aquatic resource functions and values vary considerably across the country. Therefore, the minimal adverse effects determination by Corps districts is based site-specific or regional criteria.

The acreage limits of the new and modified NWPs do not preclude any proposed activity from qualifying for a DA permit. If a proposed activity does not meet the terms and conditions of an NWP, then that activity could be authorized by other forms of DA permits. Regional general permits may be available to authorize certain activities that have minimal adverse effects on the aquatic environment based on local environmental conditions. The proposed work may also be authorized by individual permits, including letters of permission, if the activity involves more than minimal adverse effects on the aquatic environment.

We recognize that there are specific activities or classes of activities in areas of the country that will result in minimal adverse effects on the aquatic environment, but exceed the acreage limits of the new and modified NWPs. Corps districts can develop regional general permits in the future to authorize these activities.

Several commenters stated that the Corps is obligated to minimize regulatory burdens on small businesses, as required by Small Business Regulatory Enforcement Fairness Act of 1996. Two commenters said that the Corps is not in compliance with the Regulatory Flexibility Act because an "initial regulatory flexibility analysis" was not provided in the **Federal Register** notice. One commenter indicated that the Corps must comply with the Congressional Review Act. Another commenter said that the July 21, 1999, proposal to issue new and modified NWPs does not comply with Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," because the Corps has not identified the takings implications of the proposed NWPs.

The new and modified NWPs comply with the Small Business Regulatory Enforcement Fairness Act of 1996 because they provide an expedited authorization for activities in waters of the United States that have minimal adverse effects on the aquatic environment. We are not required to provide an initial regulatory flexibility analysis because we proposed to issue new and modified NWPs, not change our regulations. The Corps believes it is not required to submit the final new and modified NWPs to Congress pursuant to the Congressional Review Act, but as a matter of comity, we will submit the final NWPs to Congress. The new and modified NWPs will not result in the taking of private property because the NWPs provide an expedited authorization process for certain activities in waters of the United States that have minimal individual and cumulative adverse effects on the aquatic environment but require a Corps permit. If a proposed activity does not comply with the terms and conditions of an NWP, then the project proponent can request another form of DA permit, including regional general permits, letters of permission, or individual permits. Therefore, there are no takings implications for these NWPs.

General Terms and Limits of NWPs

One commenter stated that the acreage limits for the new and modified NWPs are too high. One commenter said that the NWPs should not have an acreage limit greater than 1 acre. Other commenters recommended maximum acreage limits of ⅓ acre and ¼ acre. Several commenters suggested higher acreage limits for NWP activities in ephemeral streams located in the western United States. Two commenters said that the NWPs should have lower acreage limits for activities in certain types of wetlands, such as forested wetlands, playas, prairie potholes, vernal pools, kettles, pocosins, and bogs. Two commenters opposed the use of indexed acreage limits.

We have fully considered comments concerning acreage limits for the new and modified NWPs. To simplify the new and modified NWPs and ensure that these NWPs still authorize only activities with minimal individual and cumulative adverse effects on the aquatic environment, all of the new NWPs, except for NWP 41, will have a ½ acre limit. We have not imposed a ½ acre limit on NWP 41 because it only authorizes activities that benefit the aquatic environment. The acreage limits for specific NWPs are discussed in detail in the preamble discussions for each NWP. Division engineers can regionally condition these NWPs to lower acreage limits if there are specific concerns for the aquatic environment in a particular part of the country. We do not agree that there should be higher acreage limits on the NWPs for discharges of dredged or fill material into ephemeral streams in the western states, due to the national scope of the NWPs. However, Corps districts may issue RGPs with larger acreage thresholds in any local situations where they determine that the activity would result in no more than minimal adverse effects, individually or cumulatively. Division engineers can also regionally condition these NWPs to restrict or prohibit their use in certain types of high value waters of the United States. We have eliminated the indexed acreage limits from NWPs 39 and 40 because the simple ½ acre limit is a more effective way to ensure that these NWPs authorize only activities with minimal adverse effects and the vast majority of activities authorized by NWP 26 are below or slightly above ½ acre.

Many commenters indicated that the PCN thresholds for the new and modified NWPs should be ⅓ acre, instead of ¼ acre. These commenters believe the difference between these two notification thresholds is too small to provide any value and that the lower PCN threshold will increase the Corps workload without providing any benefits. One commenter recommended providing more consistency in PCN thresholds for the NWPs. Several commenters stated that PCNs should be

required for all activities authorized by NWPs and one commenter remarked that PCNs should be required for all discharges into special aquatic sites. One commenter said that lower acreage limits for the NWPs should result in fewer PCN requirements, not a lowering of PCN thresholds.

To further ensure that the new NWPs authorize only activities with minimal adverse effects on the aquatic environment, we have established a 1/10 acre PCN threshold for the new NWPs (except for NWP 41) and retained the original PCN thresholds for impacts to open waters, including streams. The notification threshold for NWP 14 has also been lowered to 1/10 acre. The 1/10 acre PCN threshold will result in a workload increase for Corps districts, but we believe that this increase will be minor, since many permittees request written verification of NWP authorizations, even when notification is not required. We believe that the PCN thresholds in the new and modified NWPs are consistent. There are circumstances, such as NWP 39 activities that impact open waters, where we believe it is necessary to review all proposed activities. However, we do not agree that is necessary to require notification for all NWP activities because most minor activities authorized by NWPs result in minimal adverse effects. Division engineers can impose regional conditions on NWPs to lower PCN thresholds in those geographic areas where there is the potential for more than minimal adverse effects on the aquatic environment. We do not agree that lower acreage limits should result in fewer PCN requirements because the notification process is necessary to address activities that might result in more than minimal adverse effects.

Several commenters suggested adding PCN requirements for discharges into ephemeral streams, not just perennial and intermittent streams, because ephemeral streams are important in arid regions. One commenter recommended reducing the 500 linear foot PCN threshold for perennial and intermittent stream impacts to 200 linear feet. One commenter said that PCNs should be required for all discharges into open waters to allow district engineers to determine appropriate vegetated buffer requirements.

Except for those NWPs that require notification for all activities or all discharges of dredged or fill material into open waters, we believe that notification requirements for stream impacts should be limited to perennial and intermittent streams, since discharges of dredged or fill material into ephemeral streams are likely to result in minimal adverse effects. In geographic areas where discharges of dredged or fill material into ephemeral stream beds may result in more than minimal adverse effects on the aquatic environment, division engineers can regionally condition these NWPs to require notification for these activities. For some of the new NWPs, we have replaced the 500 linear foot PCN threshold for stream bed impacts with a 300 linear foot limit. Division engineers can impose regional conditions to require a PCN threshold to address activities that may result in more than minimal adverse effects. With the exception of NWP 39, we do not agree that it is necessary to require notification for all discharges of dredged or fill material into open waters to determine vegetated buffer requirements. Vegetated buffers are not required for all activities authorized by the NWPs. District engineers will determine on a case-by-case basis when it is appropriate to require vegetated buffers next to open waters.

Cumulative Impact Assessment and Data Collection

Many commenters objected to the Corps position stated in the July 21, 1999, **Federal Register** notice that the Corps can monitor only those cumulative adverse effects on the aquatic environment that result from activities permitted by the Corps regulatory program. Some of these commenters said that this position is contrary to the Clean Water Act and recommended that the Corps utilize the definition of cumulative impacts found in the regulations for the National Environment Policy Act (NEPA). Numerous commenters asserted that cumulative impact analysis should include both regulated and unregulated losses of aquatic habitat within a geographic area. One commenter said that cumulative impact analysis should include all activities that affect water quality. Two commenters objected to the Corps statement in the July 21, 1999, **Federal Register** notice that district engineers must have clear, extensive, and unequivocal evidence that activities regulated pursuant to section 404 of the Clean Water Act or section 10 of the Rivers and Harbors Act are causing more than minimal cumulative adverse effects on the aquatic environment, not unregulated activities, before revoking or suspending the use of NWPs. One commenter stated that cumulative impact assessment should consider temporary and permanent losses of waters of the United States in a different manner. This commenter also remarked that the cumulative impact assessment must also consider both losses of waters of the United States and compensatory mitigation to determine the net cumulative adverse effects on the aquatic environment.

The Corps position in the July 21, 1999, **Federal Register** notice concerning cumulative impact assessment is based on the statutory requirements of Section 404(e) of the Clean Water Act. There are no other references to cumulative adverse effects in Section 404 of the Clean Water Act. The requirement for authorized activities to cause no more than minimal adverse effects on the aquatic environment applies only to general permits (including NWPs), not the entire Corps regulatory program. This position is also supported by the regulations for implementing the Section 404(b)(1) guidelines at 40 CFR 230.7. These regulations state that activities authorized by general permits can result only in minimal adverse effects on water quality and the aquatic environment (see 40 CFR 230.7(a)(3)).

The Corps scope of analysis for the purposes of NEPA is discussed in 33 CFR part 325, appendix B. The Corps can only address the impacts of the specific activity that requires a Department of the Army permit and those portions of the activity over which the district engineer has sufficient control and responsibility to warrant Federal review.

The Corps does provide different consideration to temporary and permanent losses of waters of the United States when assessing the adverse effects of regulated activities on the aquatic environment. As discussed in the NWP definition of "loss of waters of the United States," waters of the United States that are temporarily filled, flooded, excavated, or drained, but restored after construction, are not included in the measurement of loss of waters of the United States. Therefore, temporary losses would not be included in the Corps cumulative impact assessment since the affected areas would be restored as waters of the United States. When assessing cumulative adverse effects on the aquatic environment, the Corps also considers compensatory mitigation for losses authorized by NWPs, because compensatory mitigation is often required to offset losses of waters of the United States and ensure that the activities authorized by NWPs have minimal adverse effects. Corps districts assess cumulative impacts on a watershed basis. Attempting to assess cumulative impacts across the nation is not possible, or appropriate.

Two commenters supported the Corps assertion that cumulative impacts must be assessed on a watershed basis. One of these commenters said that watersheds should be defined by the 8-digit watershed cataloging units designated by the U.S. Geological Survey (USGS). Two commenters requested that the Corps develop a method to quantify potential cumulative and indirect impacts that will result from activities authorized by NWPs in a watershed. Two commenters said that district engineers must demonstrate that the use of NWPs in a watershed or geographic area will not result in more than minimal adverse effects on the aquatic environment.

As discussed in the July 1, 1998, **Federal Register** notice, the Corps utilizes the 8-digit hydrological unit codes developed by USGS to identify watersheds for its data collection process. However, district engineers can utilize subwatersheds within these hydrological units when conducting cumulative impact assessments. The Corps does not have the resources to develop a method to quantify potential cumulative and indirect impacts that may result from activities authorized by NWPs. If the division or district engineer determines that the use of NWPs to authorize activities within a particular watershed or geographic area will result in more than minimal individual or cumulative effects on the aquatic environment, then he or she can modify, suspend, or revoke those NWPs in that area (see 33 CFR 330.4). This is a determination that must be made by districts as they administer the Corps regulatory program in specific geographic areas.

Two commenters said that the Corps should analyze the cumulative impacts of the current NWPs and any NWPs that will be proposed in the future before issuing the new and modified NWPs. These commenters recommended that this analysis consider the efficiency of compensatory mitigation. Two commenters objected to the Corps assertion that it cannot make the individual and cumulative adverse effects determination nationally.

When the Corps issues or modifies an NWP, an environmental assessment, a finding of no significant impact (FONSI), and if necessary, an evaluation of compliance with the Section 404(b)(1) guidelines is prepared for each NWP. These items are contained in one document. This document includes an analysis of the cumulative impacts that are expected to occur during the time the NWP is in effect. This analysis also includes estimates of the amount of compensatory mitigation that will be required to offset losses of waters of the United States authorized by the NWP. We maintain our position that an assessment of cumulative adverse effects that result from the use of the NWPs cannot be made at the national level, and that the only technically sound method to conduct this assessment is on a watershed basis, through the district offices. Concurrent with the issuance of the new and modified NWPs and the final decision documents for each of the new and modified NWPs, division engineers will issue supplementary decision documents that address the impacts of the NWPs in Corps districts.

Several commenters said that Corps record-keeping methods are inadequate and that the Corps should issue quarterly public reports on wetland losses and the status of compensatory mitigation. A number of commenters recommended that the Corps establish a data collection system that tracks various types of compensatory mitigation (i.e., creation, restoration, enhancement, preservation) and monitors compliance with the goal of no net loss. Numerous commenters indicated that the Corps needs to commit to stronger monitoring and enforcement efforts.

We do not have the resources to publish quarterly reports on impacts to waters of the United States and compensatory mitigation at this time. The data collection systems for most Corps districts do not currently differentiate between the amounts of compensatory mitigation provided through restoration, enhancement, creation, or preservation. Instead, most districts track the total amount of compensatory mitigation required for Corps permits. The effectiveness of compensatory mitigation efforts is monitored by district engineers on a case-by-case basis to the extent allowed by workload and personnel resources. Therefore, we cannot collect this type of information for all activities. We are committed to strong enforcement and monitoring efforts, but enforcement and compliance efforts are limited to available district resources. The Corps permit evaluation workload must take precedence over enforcement and monitoring.

Compliance with the National Environmental Policy Act

Several commenters stated that the proposed NWPs require an Environmental Impact Statement (EIS). Two commenters objected to the Corps statement in the July 21, 1999, **Federal Register** notice that the NWP program does not require an EIS because the NWPs can only authorize activities with minimal individual and cumulative adverse effects on the aquatic environment.

We maintain our position that the NWPs do not require an EIS, but we are in the process of preparing a Programmatic Environmental Impact Statement (PEIS) for the NWP program.

A number of commenters indicated that the Corps needs to reevaluate the Finding of No Significant Impact (FONSI) issued on June 23, 1998, since the draft NWPs are substantially different from the NWPs proposed in the July 1, 1998, **Federal Register** notice. These commenters said that the three proposed new general conditions warrant reevaluation of the FONSI.

We do not agree that the FONSI issued on June 23, 1998, requires revision. The FONSI issued on June 23, 1998, was a general statement of findings for the NWP program. That FONSI did not address a specific set of NWPs. The three proposed new general conditions are intended to provide additional protection to the aquatic environment and their implementation would not substantially change the scope of the FONSI issued on June 23, 1998, or its findings.

Two commenters said that the Corps should release or issue the Environmental Assessments (EAs) for the new and modified NWPs before those permits are issued so that the public can comment on those EAs. These commenters stated that the EAs should also include regional analyses in addition to the national analyses. One of these commenters indicated that the EAs should contain analyses of potential impacts on recreation, wildlife habitat, endangered species, cultural resources, land use, and habitat degradation, as well as address cumulative impacts that occur when an NWP is used with other NWPs. Another commenter requested that the EAs assess the expansion of geographic scope of the new NWPs, the amount of cumulative and individual impacts that may be authorized by these NWPs, the types of waters that may be adversely affected by the new and modified NWPs, and the functions of those waters. Other commenters objected to the preliminary EAs, stating that those EAs did not include an ecological rationale for the proposed acreage limits.

We do not agree that it was necessary to issue new preliminary EAs for the draft NWPs proposed in the July 21, 1999, **Federal Register** notice. We received few comments in response to the preliminary EAs that were issued with the July 1, 1998, **Federal Register**

notice. Those individuals that commented on the preliminary EAs requested that the Corps include an alternatives analysis in each EA. We have included an alternatives analysis in each EA for the new and modified NWPs. The EAs for the new and modified NWPs issued today discuss, in general terms, the acreage limits for these NWPs, the types of waters subject to the new and modified NWPs, and the functions of those waters. The EAs also include projected impacts to waters of the United States that will occur through the use of these NWPs. Since aquatic resource functions and values vary considerably across the country, we cannot include detailed ecological analyses to support the acreage limits for these NWPs. However, division engineers will be issuing supplemental EAs that will address issues at the district level.

The final EAs for the new and modified NWPs have been substantially modified from the preliminary EAs issued in conjunction with the July 1, 1998, **Federal Register** notice. The final EAs contain general discussions of potential individual and cumulative impacts to the 20 public interest review factors at 33 CFR 320.4 and the factors in Subparts C through F of the Section 404(b)(1) guidelines (40 CFR Part 230).

In response to the July 21, 1999, **Federal Register** notice, some commenters addressed the Programmatic Environmental Impact Statement (PEIS) of the NWP program that the Corps is preparing. One commenter supported the PEIS, but asserted that an EIS is required. Another commenter stated that the PEIS is unwarranted and unnecessary. Many commenters said that the Corps cannot finalize the NWPs before the PEIS is completed.

These issues concerning the PEIS were addressed in the July 21, 1999, **Federal Register** notice (see 64 FR 39265) and we have not changed our position.

Compliance with the Endangered Species Act

Two commenters stated that the proposed NWPs require Endangered Species Act (ESA) Section 7 consultation. Three commenters asserted that the proposed new and modified NWPs do not comply with ESA. One of these commenters said that the Corps does not adequately address the direct, secondary, and cumulative impacts on endangered and threatened species that will result from activities authorized by the NWPs. This commenter also stated that the Corps cannot rely on prospective permittees to conduct adequate investigations to determine whether endangered or threatened species or designated critical habitat occur on the project site. Three commenters indicated that compliance with ESA cannot be ensured for activities that do not require notification to the district engineer.

We have requested programmatic ESA consultation for the NWP program. We contend that the new and modified NWPs, through the requirements of General Condition 11, comply with ESA. We use the ESA interagency consultation regulations at 50 CFR Part 402 when determining compliance with ESA. Scope of analysis issues for ESA will be resolved through consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS). General Condition 11 requires non-Federal permittees to notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project. The permittee shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

Three commenters asserted that the Corps cannot issue the new and modified NWPs prior to completing programmatic ESA consultation. One commenter stated that programmatic ESA consultation does not obviate the need for regional and site-specific consultation. One commenter said that since Standard Local Operating Procedures for Endangered Species (SLOPES) have not yet been completed, the Corps cannot rely on SLOPES to ensure compliance with ESA. One commenter suggested that SLOPES should be developed for all issued NWPs.

We can issue the NWPs prior to the completion of the NWP programmatic ESA consultation, because issuance of the NWPs has not foreclosed opportunities to address endangered species and the NWPs already contain safeguards to ensure compliance with ESA. The programmatic consultation will provide additional assurance that the existing NWPs, as well as the new and modified NWPs issued today, have a formal process to develop any necessary additional procedures at the district level. The programmatic consultation will provide further assurance that the NWP program does not jeopardize the existence of any Federally-listed threatened or endangered species, or destroy or adversely modify the critical habitat of such species. Both the programmatic ESA consultation and the PEIS will address potential cumulative effects on endangered and threatened species and their designated critical habitat regarding the NWP program. We maintain that the SLOPES help ensure compliance with the ESA at the district level. Districts can meet with local offices of the FWS and NMFS at any time to modify or improve their SLOPES. Districts will enter case-specific consultation in any case where the district determines the proposed project may affect a threatened or endangered species.

In addition to NWP General Condition 11, division and district engineers have imposed and can impose additional regional conditions on the NWPs and case-specific special conditions to address endangered or threatened species or their critical habitat. For example, Corps regional conditions can prohibit the use of NWPs in designated critical habitat for endangered or threatened species or require notification for activities in areas known to be inhabited by threatened or endangered species. Some Corps districts have conducted programmatic consultation for specific geographic areas. Also, Corps districts have and will conduct case-specific Section 7 consultation for endangered species. These efforts usually consider the NWP program in that particular area. In summary, General Condition 11, Corps regional conditions, case-specific special conditions, and SLOPES will ensure that the NWP program complies with ESA.

Stream Impacts

Many commenters objected to the proposed NWPs, stating that thousands of feet of stream bed could be channelized or filled under these NWPs. These commenters said that linear foot limits for stream bed impacts should be imposed on the NWPs instead of acreage limits. A large number of commenters recommended adding a 250 linear foot limit for stream bed impacts to the new and modified NWPs. Other commenters suggested linear stream bed impact limits of 200, 100, and 50 linear feet. A few commenters said that the NWPs should not authorize any stream impacts. Another commenter requested clarification regarding the PCN thresholds for linear feet of stream bed impacts, asking if the flooded area is included with the filled area.

After consideration of these comments, we have decided to impose on NWPs 39, 40, 42, and 43, a 300 linear foot limit for filling or excavation activities in stream beds. This 300 linear foot limit applies only to stream beds that normally have flowing water.

Division engineers can regionally condition the NWPs to lower the 300 linear foot limit for stream bed impacts, impose linear foot limits for stream bed impacts on other NWPs, or establish lower PCN thresholds for filling or excavating stream beds.

Several commenters stated that all Corps districts must use the same method to determine where the average annual flow of a stream is 1 cfs. One of these commenters recommended using drainage area as a substitute. Another commenter suggested that the guidance in the preamble to the final rule for the NWP regulations (33 CFR part 330) published in the November 22, 1991, **Federal Register** (56 FR 59112) should be used to establish where the 1 cfs point of a stream is located. That guidance described how to determine the geographic location of the limit of headwaters for perennial, intermittent, and ephemeral streams.

District engineers will utilize the best methods available to identify where the average annual flow of a stream is 1 cfs. Although the guidance published in the November 22, 1991, **Federal Register** was intended to assist district engineers and the regulated public in identifying the geographic location of headwaters (i.e., where the average annual flow is less than 5 cfs), this guidance can also be used to locate the 1 cfs point on a stream. District engineers can utilize the median flow, rather than the average flow, to establish where the 1 cfs point on a stream is located. This approach recognizes that streams with highly irregular flows, such as those occurring in the western portion of the United States, could be dry at the 1 cfs point for most of the year and still average, on an annual basis, a flow of 1 cfs because of high volume, flash flood type flows which greatly distort the average. Furthermore, we recognize that using the median flow for an entire year in streams that have no stream flow for over half the year but with flows greater than 1 cfs for several months would also distort the average. It should also be noted that precision is not required in establishing the 1 cfs point. The definition allows the district engineer to use approximate means to compute it. The drainage area that will contribute an average annual flow of 1 cfs can be estimated by approximating the proportion of average annual precipitation that is expected to find its way into the stream. Knowing the amount of area that will produce this flow in a particular region, the 1 cfs point can be approximated from drainage area maps. For example, in most areas of the eastern United States (i.e., east of the Mississippi River), one square mile of drainage area produces 1 cfs of stream flow annually.

Applicable Waters for the New and Modified Nationwide Permits

A number of commenters objected to the increased scope of waters in which the proposed NWPs published in the July 21, 1999, **Federal Register** could be used. One commenter stated that the NWPs should be used only in headwaters and isolated waters. Two commenters supported the use of the new and modified NWPs in non-tidal waters. Three commenters objected to prohibiting the use of the new and modified NWPs in tidal waters and non-tidal wetlands adjacent to tidal waters. One commenter stated that the Corps has not provided justification for excluding the new and modified NWPs from non-tidal wetlands that are adjacent to tidal waters and recommended that the Corps utilize the term "contiguous" instead of "adjacent."

We contend that limiting the new NWPs to non-tidal waters, except for non-tidal wetlands adjacent to tidal waters, provides adequate protection of the aquatic environment and helps ensure that these NWPs authorize only activities with minimal adverse effects. Regional conditioning of the new and modified NWPs by division engineers will provide additional protection by restricting or prohibiting the use of the new and modified NWPs in high value waters. General Condition 25 will also protect high value waters. General Condition 26 does not allow permanent, above-grade fills in the 100-year floodplain downstream of the headwaters.

We do not agree that the new and modified NWPs should be used in tidal waters or non-tidal wetlands adjacent to tidal waters. We have identified tidal waters as high value waters on a national basis. Non-tidal wetlands adjacent to tidal waters contribute to the ecological integrity of tidal waters and should not be subject to the new and modified NWPs. District engineers can develop regional general permits for discharges into non-tidal waters adjacent to tidal waters, if such regional general permits are needed for activities that result in minimal adverse effects on the aquatic environment, individually or cumulatively.

One commenter requested that the Corps define the term "adjacent" for the purposes of the new and modified NWPs. One commenter stated that the definition of the term "adjacent" at 33 CFR 328.3(c) is confusing for use in the NWP program and that the Corps needs to provide a definition that is easily understandable by the regulated public. This commenter also said that the NWPs should be limited to only those non-tidal wetlands that are both adjacent to and inundated by spring tides; wetlands landward of the mean high tide line would be considered as non-tidal wetlands adjacent to tidal waters and wetlands landward of the spring high tide line would not be considered adjacent to tidal waters. Two commenters asked the Corps to provide a clear explanation of the upstream limit of non-tidal wetlands adjacent to tidal waters and whether non-tidal wetlands miles upstream of tidal waters would be considered adjacent to those tidal waters.

For the new and modified NWPs, the definition of the term "adjacent" at 33 CFR 328.3(c) will be used. Since aquatic systems vary considerably across the country, we cannot establish more specific criteria at a national level to further define adjacency. District engineers will make appropriate determinations of adjacency, based on regional hydrologic conditions.

Wetlands located between mean high water and the spring high tide line are tidal wetlands because they are inundated by tidal waters (see 33 CFR 328.4(b)(1)). Non-tidal wetlands that are bordering, contiguous, or neighboring to tidal waters are considered adjacent to those tidal waters. The upstream limit of non-tidal wetlands adjacent to tidal waters is determined by the degree of influence of the tidal waterbody on non-tidal wetlands. Those non-tidal wetlands that exert direct hydrologic influence on tidal waters are considered adjacent to those tidal waters. For the purposes of the NWPs, non-tidal streams located upstream of the head of tide are not considered adjacent to tidal waters, although those streams eventually flow into tidal waters and are part of the surface tributary system. Wetlands adjacent to non-tidal streams are within the scope of waters for the new and modified NWPs.

One commenter stated that the new and modified NWPs should not authorize discharges into prairie potholes, playa lakes, or vernal pools. Another commenter said that the NWPs should not be used in rare and irreplaceable wetlands.

We do not agree that the new and modified NWPs should be subject to a national prohibition against discharges of dredged or fill material into prairie potholes, playa lakes, or vernal pools. Rare and irreplaceable wetlands have not been formally defined. General Condition 25 restricts activities in designated critical resource waters. Further, division engineers can

regionally condition these NWPs to restrict or prohibit discharges into high value waters. For those activities that require notification, district engineers can exercise discretionary authority if the proposed work will result in more than minimal adverse effects on the aquatic environment.

Mitigation

A large number of commenters specifically addressed the compensatory mitigation requirements of the proposed new and modified NWPs. One commenter said that the goal of compensatory mitigation is not clearly defined in the proposed NWPs. Several commenters requested that the Corps clarify when compensatory mitigation is required for activities authorized by NWP. These commenters said that there are some inconsistencies concerning compensatory mitigation requirements in the July 21, 1999, **Federal Register** notice. Two of these commenters referred to Corps statements in the July 21, 1999, **Federal Register** notice that: (1) Compensatory mitigation will normally be required for activities that require notification and, (2) in some circumstances, compensatory mitigation may be unnecessary because the adverse effects on the aquatic environment are minimal without mitigation.

For the NWP program, including the new and modified NWPs, the purpose of compensatory mitigation is to ensure that the authorized work results in minimal adverse effects on the aquatic environment. For those activities that require notification to the district engineer, compensatory mitigation may be necessary to ensure that the authorized work results in minimal adverse effects on the aquatic environment. District engineers will determine, on a case-by-case basis, when compensatory mitigation is not practicable. Our use of the word "normally" when referring to compensatory mitigation for NWP activities allows district engineers flexibility in determining when compensatory mitigation will be required and lets the regulated public know that compensatory mitigation is likely to be required for impacts that exceed PCN thresholds, except under circumstances where the adverse effects are minimal without compensatory mitigation. Activities that do not require notification are presumed to result in minimal adverse effects and do not require compensatory mitigation to ensure minimal adverse effects. Division engineers can regionally condition an NWP to lower the notification threshold to allow district engineers to determine, on case-by-case basis, if compensatory mitigation is necessary to ensure that the authorized work results in minimal adverse effects on the aquatic environment.

Many commenters opposed the use of compensatory mitigation to ensure that activities authorized by NWPs result in minimal adverse effects on the aquatic environment. Several commenters supported the use of compensatory mitigation to ensure that authorized activities result in minimal adverse effects. One of these commenters said that compensatory mitigation should not be required simply to meet a "no net loss" of wetland acreage goal. One commenter indicated that compensatory mitigation should not be required for activities authorized by NWP because NWPs can only authorize activities with minimal adverse effects.

Compensatory mitigation is often necessary to offset losses of waters of the United States and ensure that the authorized activity results in minimal adverse effects on the aquatic environment. The NWP regulations at 33 CFR 330.1(e)(3) allow permittees to provide compensatory mitigation to reduce the adverse effects of the proposed work to the minimal level. In the July 21, 1999, **Federal Register** notice, we stated that for the purposes of the NWP program, compensatory mitigation is required to ensure that the authorized activities result in minimal adverse effects on the aquatic environment, individually or cumulatively, not to achieve "no net loss" of wetland acreage. NWP compensatory mitigation requirements are not driven by the "no net loss" goal, but will help support that goal. A district engineer can determine, for an activity that requires notification, that compensatory mitigation is not practicable.

Two commenters said that compensatory mitigation should be required only for impacts to waters of the United States. Another commenter stated that the Corps is proposing to require mitigation for activities not subject to its regulatory authority, such as flooding, excavation, and drainage activities. One commenter indicated that the July 21, 1999, **Federal Register** notice requires compensatory mitigation for non-wetland impacts. One commenter remarked that compensatory mitigation for wetland or stream losses should be subject to a public notice process because mitigation is being used to avoid significant impacts.

Compensatory mitigation may be required by district engineers to offset losses of waters of the United States to ensure that the authorized work results in minimal adverse effects on the aquatic environment. Although district engineers may require out-of-kind compensatory mitigation, such as the restoration of upland riparian zones, to compensate for losses of the functions and values of waters of the United States, compensatory mitigation is required only to offset losses of waters of the United States. District engineers can require compensatory mitigation for losses of aquatic resource functions and values caused by flooding, excavation, and drainage caused by activities that are associated with activities that are regulated by the Corps (i.e., discharges of dredged or fill material). However, if the activity does not involve work in navigable waters of the United States or a discharge of dredged or fill material into waters of the United States, compensatory mitigation cannot be required because no Corps permit is necessary to conduct the activity. We do not agree that a public notice process is required for compensatory mitigation projects.

Several commenters stated that the mitigation requirements discussed in the July 21, 1999, **Federal Register** notice do not adequately protect wetlands. Numerous commenters said that the NWPs should be conditioned to require a full alternatives analysis. Many commenters requested that the Corps condition all NWPs to require project proponents to avoid impacts to the maximum extent practicable and implement compensatory mitigation that fully replaces all losses of wetland acreage and functions. One commenter objected to including minimization as a form of mitigation. Two commenters asserted that the NWPs should be subject to the mitigation requirements of the 1990 mitigation Memorandum of Agreement (MOA), including sequencing requirements.

The mitigation requirements of the new and modified NWPs adequately protect wetlands. General Condition 19 requires permittees to avoid and minimize discharges into waters of the United States on-site to the maximum extent practicable. General Condition 19 also states that district engineers can require compensatory mitigation to ensure that the authorized work results in minimal adverse effects on the aquatic environment. The use of minimization as mitigation is well established in Federal regulations (see the Council on Environmental Quality's regulations at 40 CFR 1508.20). The avoidance provisions of the 1990 mitigation MOA apply only to standard individual permits, not activities authorized by NWPs.

One commenter stated that some of the new NWPs (e.g., NWPs 39 and 43)

require compensatory mitigation without requiring submission of a notification to the district engineer. This commenter said that compensatory mitigation should not be required unless the district engineer reviews the PCN and determines that compensatory mitigation is necessary to offset authorized losses of waters of the United States. One commenter objected to requiring compensatory mitigation for activities that require notification, but another commenter supported this requirement. Two commenters objected to allowing district engineers to make the final determination whether compensatory mitigation is required.

Compensatory mitigation is not required for NWP activities that do not require notification to the district engineer. Division engineers can regionally condition NWPs to lower PCN thresholds or require notification for all activities, if such PCN thresholds are necessary to allow district engineers to require compensatory mitigation to ensure that adverse effects to the aquatic environment are minimal. We believe that it is appropriate for district engineers to make the final decisions whether compensatory mitigation is necessary to ensure that activities authorized by NWPs result in minimal adverse effects.

A large number of commenters recommended that the Corps require acre-for-acre wetland restoration as compensatory mitigation for all activities resulting in the loss of greater than ¼ acre of wetlands. Other commenters suggested ½, ⅓, and 1 acre thresholds for requiring compensatory mitigation. Many commenters said that a minimum 1:1 mitigation ratio should be required for all losses of waters of the United States authorized by NWPs. Other commenters recommended higher mitigation ratios. One commenter said that the Corps should provide compensatory mitigation guidelines that addresses site selection and design, options for compensatory mitigation, and a description of success criteria and monitoring requirements.

While final specific compensatory mitigation requirements, such as replacement ratios, are determined by district engineers on a case-by-case basis, we agree that there should be a minimum requirement of an acre-for-acre (1:1) wetland replacement as compensatory mitigation for all activities requiring notification. The Corps can require compensatory mitigation in excess of a 1:1 ratio of impact acreage to compensatory mitigation acreage to adequately replace aquatic resource functions and values that are lost as a result of activities authorized by NWPs. The Corps can also accept out-of-kind compensatory mitigation, if it is best for the aquatic environment. Existing policy and guidance for compensatory mitigation provides a preference for on-site and in-kind replacement of the functions and values of the impacted aquatic resource. If on-site compensatory mitigation is not practicable, off-site compensatory mitigation should be undertaken in the same geographic area if practicable, (*i.e.*, in close proximity and, to the extent possible, the same watershed) or environmentally preferable. The Corps can also accept out-of-kind compensatory mitigation, if it is best for the aquatic environment.

Many commenters stated that the Corps should require in-kind, on-site replacement of wetlands. Several commenters supported the utilization of off-site, out-of-kind compensatory mitigation for losses of waters of the United States authorized by NWPs. These commenters also supported the Corps position that the appropriate compensatory mitigation required for activities authorized by NWPs should be based on what is best for the aquatic environment. One commenter remarked that the selected mitigation method should best replace site-specific functions and values of the impacted aquatic habitat. One commenter supported the use of out-of-kind compensatory mitigation, such as the establishment and maintenance of vegetated buffers next to streams, and stream restoration, and the preservation of wetland/upland complexes.

When reviewing compensatory mitigation proposals, district engineers will consider what is best for the aquatic environment, including requirements for vegetated buffers next to perennial and intermittent streams and other open waters. Wetland restoration, enhancement, creation, and, only in exceptional circumstances, preservation are not the only methods of providing compensatory mitigation for activities authorized by NWPs. Stream restoration and enhancement, including the restoration or preservation of riparian zones, can also provide compensatory mitigation for losses resulting from activities authorized by NWPs. The establishment and maintenance of vegetated buffers next to streams and other open waters as compensatory mitigation for losses of waters of the United States authorized by NWPs are discussed in the next section of this notice.

Many commenters opposed the Corps preference for the use of mitigation banks and in lieu fee programs to provide compensatory mitigation for losses of waters of the United States authorized by NWPs. A number of other commenters supported the Corps preference for consolidated compensatory mitigation methods. One commenter indicated that the preference for consolidated compensatory mitigation methods should not be limited to mitigation banks. One commenter expressed some support for using mitigation banks and other consolidated mitigation methods as alternatives for on-site compensatory mitigation because of the uncertainty for success in some individual compensatory mitigation projects. This commenter also recommended developing guidance for in lieu fee programs and other consolidated mitigation methods before allowing widespread use of these methods. Another commenter recommended that the text of the NWPs and the preamble to the notice announcing the issuance of the NWPs refer to the Federal guidance for compensatory mitigation, especially for the use of mitigation banks and in lieu fee programs. Two commenters indicated that in lieu fee programs should not be considered as compensatory mitigation until guidance has been developed for these programs. One commenter objected to the use of in lieu fee programs to provide compensatory mitigation because the commenter asserts that these programs are not subject to agency and public review and do not ensure compliance with the goal of no net loss.

Consolidated compensatory mitigation methods, including mitigation banks, are often an efficient means of compensating for losses of waters of the United States, particularly for multiple small activities. We recognize that consolidated compensatory mitigation methods are often more practicable and successful because of the planning and implementation efforts typically expended on these activities by their proponents. Individual efforts to create, restore, or enhance wetlands to replace small wetland losses may be unsuccessful because of poor planning and/or construction. Furthermore, consolidated mitigation efforts are often better monitored and maintained and often result in the establishment of larger contiguous wetland areas that benefit the overall local aquatic environment and many of the species that utilize larger aquatic habitats.

One commenter stated that where mitigation banks and in lieu fee programs are in the same watershed, preference should be given to using the mitigation bank since mitigation banks subject to more stringent requirements

and more likely to be successful. Two commenters said that mitigation banks should be located in the same watershed as the site of the NWP activity. One commenter said that in lieu fee programs should not be used as compensatory mitigation for activities that result in the loss of greater than 1/10 acre of waters of the United States.

Where practicable, mitigation banks and other consolidated mitigation methods should be located in the same watershed as the site of the activity authorized by NWP. District engineers have the authority to approve or disapprove the use of specific mitigation approaches as compensatory mitigation for losses of waters of the United States authorized by NWPs. Permittees should have the flexibility to utilize compensatory mitigation methods that are within their means to accomplish and meet the requirements to offset unavoidable losses of waters of the United States. To the extent practicable, permittees should consider use of approved mitigation banks and other forms of consolidated compensatory mitigation. We do not agree that there should be an acreage limit that would preclude the use of any particular type of mitigation to provide compensatory mitigation for losses of waters of the United States authorized by NWPs.

Several commenters stated that the preservation of high value wetlands should be encouraged as a form of compensatory mitigation. A number of commenters objected to the use of preservation as compensatory mitigation, unless one-to-one replacement of aquatic habitats has been achieved. One commenter objected to the use of enhancement unless one-to-one replacement of wetlands has been accomplished.

We concur that the preservation of high value wetlands is one appropriate method of compensatory mitigation for losses of waters of the United States, but only in exceptional circumstances. Preservation of aquatic habitats should be done in conjunction with aquatic habitat restoration, creation, or enhancement to offset losses of waters of the United States. The amount of preservation or enhancement that will be accepted as compensatory mitigation for impacts authorized by NWPs will be determined by district engineers on a case-by-case basis.

To further clarify the issue of mitigation, we have removed some of the mitigation information from General Condition 13 and consolidated the mitigation requirements for the NWPs in General Condition 19.

Vegetated Buffers

In the July 21, 1999, **Federal Register** notice, we proposed to require the establishment and maintenance of vegetated buffers adjacent to waters of the United States as an alternative form of compensatory mitigation to ensure that activities authorized by NWPs result in minimal adverse effects on the aquatic environment. The vegetated buffer requirement was in the draft NWP 39 and the proposed modifications to General Conditions 13 and 19.

As a result of our review of the comments received in response to the July 21, 1999, **Federal Register** notice, we have made several changes to the vegetated buffer requirements for the NWPs. For example, vegetated buffers are required only if there are perennial or intermittent streams or other open waters on the project site. Vegetated buffers will be established and maintained on the uplands or wetlands next to the open waters. For the purposes of the NWPs, vegetated buffers are not required next to ephemeral streams or wetlands. The use of vegetated buffers as mitigation for NWP activities is discussed in General Condition 19. The changes to the vegetated buffer requirements are discussed in more detail below.

Many commenters supported the vegetated buffer requirements for the new and modified NWPs. A number of commenters stated that vegetated buffers should not be a condition of an NWP authorization. These commenters said that vegetated buffers should be considered only when a landowner voluntarily agrees to establish and maintain vegetated buffers adjacent to waters of the United States as an alternative form of compensatory mitigation. Several commenters contend that compensatory mitigation sites should be protected by vegetated buffers. Another commenter stated that the use of upland buffers should be consistent with current Federal guidance, particularly the "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks" (60 FR 58605). A commenter stated that the vegetated buffer requirement should not apply to all activities that require a Corps permit, such as piers.

Vegetated buffers will be required only when there are open waters, such as perennial or intermittent streams, on the project site, and the NWP activity involves discharges of dredged or fill material into waters of the United States. However, a required vegetated buffer could be established off-site for impacts on the project site. Project proponents will not be required to establish and maintain vegetated buffers next to ephemeral streams. Vegetated buffers are not normally required for activities that require only Section 10 permits, but district engineers can require vegetated buffers as compensatory mitigation for activities authorized by Section 10 permits, if such compensatory mitigation is appropriate. District engineers will determine, on a case-by-case basis, whether or not vegetated buffers are required. Vegetated buffers are required only when it is practicable for the permittee to establish these areas and the vegetated buffer will be self-maintaining, other than restrictions on cutting or removal of the buffer. If the permittee does not own the land next to the open waters, then vegetated buffers are not required unless the permittee can reasonably obtain the appropriate conservation easements for those buffers.

Compensatory mitigation sites can be protected by vegetated buffers, but we do not agree that this should be a requirement of the NWP program. However, providing a buffer to the restored waters of the United States in a mitigation bank is precisely why a good mitigation bank will have a matrix of waters and uplands for maximum ecological functions and values. The "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks" does not contain any useful guidance concerning the establishment and maintenance of vegetated buffers next to open waters. During the revision of the vegetated buffer requirements for the NWPs, we considered the riparian forest buffer Conservation Practice Standard (Code 391A) issued by NRCS in July 1997. We also considered the information in the document entitled "Riparian Forest Buffers: Function and Design for Protection and Enhancement of Water Resources" published by the Forest Service.

A large number of commenters opposed the vegetated buffer requirement. Those in opposition to this requirement were divided into two groups. One group objected to vegetated buffers as compensatory mitigation for discharges of dredged or fill material into wetlands because they believe that wetland losses should be compensated only through wetland restoration, creation, or enhancement. The other group of commenters stated that the Corps does not have the regulatory or statutory authority to require vegetated buffers adjacent to waters of the United States.

Those commenters that oppose the use of vegetated buffers as

compensatory mitigation for losses of wetlands indicated that vegetated buffers adjacent to waters of the United States do not replace the lost functions that would be provided by wetland restoration or creation. Many of these commenters said that vegetated buffers next to open waters and streams do not provide flood storage capacity, wildlife habitat, water quality, or groundwater recharge functions. Numerous commenters stated that using vegetated buffers as compensatory mitigation will not help the Administration achieve its goal of a net gain of 100,000 acres of wetlands per year. Other commenters indicated that vegetated buffers as compensatory mitigation is contrary to the "no net loss" goal. One commenter said that the use of vegetated buffers is contrary to the 1990 mitigation MOA.

Vegetated buffers next to streams and other open waters on the project site are an important type of compensatory mitigation that provides substantial aquatic habitat, water quality, and flood storage benefits. The establishment and maintenance of vegetated buffers may be a preferable form of compensatory mitigation because it may be infeasible to create or restore wetlands on the project site after the activity is built. Vegetated buffers, even if they are established on uplands next to streams and other open waters, would provide on-site aquatic habitat, water quality, and flood storage functions.

Vegetated buffers next to streams and other open waters provide many of the same functions that wetlands provide. In fact, many vegetated buffers will be wetlands. Due to their proximity to open waters, vegetated buffers are more effective at protecting open waters than wetlands distant from those open waters. We have refined the following list of the functions of vegetated buffers from the list of functions published in the July 21, 1999, **Federal Register** notice. In general, vegetated buffers next to streams and open waters provide the following functions: (1) Reduce adverse effects to water quality by removing nutrients and pollutants from surface runoff; (2) reduce concentrations of nutrients and pollutants in subsurface water that flows into streams and other open waters; (3) moderate storm flows to streams, which reduces downstream flooding and degradation of aquatic habitat; (4) stabilize soil (through plant roots), which reduces erosion in the vicinity of the open waterbody; (5) provide shade to the waterbody, which moderates water temperature changes and provides a more stable aquatic habitat for fish and other aquatic organisms; (6) provide detritus, which is a food source for many aquatic organisms; (7) provide large woody debris from riparian zones, which furnishes cover and habitat for aquatic organisms and may cause the formation of pools in the stream channel; (8) provide habitat to a wide variety of aquatic and terrestrial species; (9) trap sediments, thereby reducing degradation of the substrate that provides habitat for fish and other aquatic organisms (*e.g.*, some fish species depend upon gravel stream beds for spawning habitats); and (10) provide corridors for movement and dispersal of many species of wildlife. In addition, vegetated buffers next to streams provide flood storage capacity and groundwater recharge functions.

Although we are requiring the establishment and maintenance of vegetated buffers in uplands next to open waters as compensatory mitigation for certain activities, we expect to continue our documented programmatic no net loss of wetlands approach to the regulatory program. For most activities authorized by NWPs, vegetated buffers will only be a portion of the required compensatory mitigation. Moreover, where the project involves filling wetlands, vegetated buffers will only be required after a 1:1 ratio based on acreage of wetland mitigation has been required. Only ⅓ of the additional mitigation required for the project may be non-wetland vegetated buffers. The vegetated buffer requirement for the NWPs is not contrary to the 1990 mitigation MOA, because vegetated buffers next to open waters help achieve the goals of the Clean Water Act. It is also important to note that the 1990 mitigation MOA applies only to activities subject to the standard permit process.

One commenter requested clarification as to where vegetated buffers must be located. A few commenters disagree with the Corps position that vegetated buffers adjacent to waters of the United States provide benefits for the aquatic environment. One commenter requested that the Corps explain why vegetated buffers are necessary and specify the goals that will be accomplished by vegetated buffers. This commenter said that the goals of vegetated buffers will affect width requirements. This commenter also believes that not all areas adjacent to open waters provide significant benefits to water quality and that all vegetated buffers do not perform all 10 functions listed on page 39274 of the July 21, 1999, **Federal Register** notice, because the functions of vegetation buffers are dependent on the vegetation present and site and soil characteristics.

For the purposes of the NWPs, vegetated buffers are to be established and maintained on uplands or wetlands next to perennial and intermittent streams and other open waters. The functions and values of vegetated buffers next to open waters, especially forested riparian zones next to streams, are well documented in the scientific literature. The main goal of the vegetated buffer requirement is to restore, enhance, and protect open waters. In general, properly designed and implemented vegetated buffers, especially those inhabited by trees, will perform the functions listed above. Since we are not requiring vegetated buffers next to ephemeral streams, most vegetated buffers should have adequate amounts of water to naturally establish and support trees in the riparian zone. Vegetated buffers will normally be 25 to 50 feet wide on both sides of streams, but the district engineer can require wider vegetated buffers to address documented water quality concerns. A 25 to 50 foot wide vegetated buffer next to a stream provides important aquatic habitat functions and values, as well as substantial water quality benefits.

Many commenters believe that the vegetated buffer requirements for the new and modified NWPs exceed the Corps regulatory authority. Several commenters consider the vegetated buffer requirement as an attempt to expand the scope of the Corps jurisdiction to uplands. Numerous commenters indicated that the Corps is requiring vegetated buffers even if the work does not involve discharges of dredged or fill material into waters of the United States. Many commenters said that any vegetated buffer requirements should be imposed by the states, who have authority under Section 401 of the Clean Water Act to address water quality issues. Several commenters said that vegetated buffers could also be imposed by states through the requirements of the National Pollutant Discharge Elimination System program.

The Corps has the statutory authority to require vegetated buffers next to streams and other open waters because the goal of the Clean Water Act is to restore and maintain the chemical, physical and biological integrity of Nation's waters. This goal is stated in Section 101 of the Clean Water Act and is applicable to all sections of the Clean Water Act, including section 404. Vegetated buffers next to streams and other open waters help maintain the chemical, physical, and biological integrity of these waters. The establishment and maintenance of vegetated buffers next to streams is the

restoration of riparian zones. Discharges of dredged or fill material into waters of the United States, which the Corps regulates under section 404 of the Clean Water Act, result in the loss of aquatic resource functions and values. The establishment and maintenance of vegetated buffers next to streams and other open waters offsets losses of aquatic resource functions and values and reduces degradation of these aquatic resources.

The vegetated buffer requirement is not an attempt to expand the Corps regulatory jurisdiction. We are not asserting jurisdiction over uplands next to streams and other open waters. We cannot require compensatory mitigation for upland impacts, but we can require, as compensatory mitigation, upland vegetated buffers that restore or protect aquatic habitat and water quality. The establishment or maintenance of a vegetated buffer next to waters of the United States can be an important part of the compensatory mitigation required for a Corps permit. The establishment and maintenance of vegetated buffers next to open waters can be considered as compensatory mitigation that offsets losses of waters of the United States and ensures that the adverse effects of the authorized work on the aquatic environment are minimal. Vegetated buffers are not normally required for activities that do not involve discharges of dredged or fill material into waters of the United States. For example, vegetated buffers are not required for structures in navigable waters of the United States, unless the district engineer determines that such compensatory mitigation is necessary to offset impacts to those waters.

Vegetated buffers next to streams and other open waters do more than protect water quality. Eight of the 10 functions listed in the July 21, 1999, **Federal Register** notice relate to aquatic habitat. Only two functions listed in that notice exclusively addressed water quality functions. Likewise, most of the functions of vegetated buffers listed in this **Federal Register** notice are aquatic habitat functions. Commenters objecting to the vegetated buffer requirement focused only on the water quality functions of vegetated buffers, and ignored the aquatic habitat functions.

A number of commenters stated that the vegetated buffer requirement duplicates, and may conflict with, local land use planning. Two commenters said that the vegetated buffer requirement is contrary to 33 CFR 320.4(j)(2), which states that the primary responsibility for zoning lies with state, local and Tribal governments. Many commenters believe that the vegetated buffer requirement constitutes a taking of private property. Two commenters said that the vegetated buffer requirement has the potential to result in a taking of private property because the Corps has failed to demonstrate the causal link between the vegetated buffer requirement and specific water quality concerns caused by discharges of dredged or fill material into waters of the United States authorized by the NWPs. These commenters assert that the Corps must allow alternative methods to address water quality concerns.

The vegetated buffer requirement does not duplicate or conflict with local land use planning. Although some state and local governments have vegetated buffer requirements, there are many regions that do not have such requirements. The district engineer will consider state and local vegetated buffer requirements when determining the vegetated buffer requirements for NWP activities. If the state or local vegetated buffer requirements are adequate, then the district engineer can defer to those requirements. The vegetated buffer requirement is not contrary to 33 CFR 320.4(j)(2) because it does not override state or local zoning decisions. If it is impractical for the permittee to establish and maintain vegetated buffers next to open waters on the project site, then vegetated buffers are not required. If the project proponent does not want to establish and maintain vegetated buffers and the district engineer determines that such buffers are necessary to ensure the proposed work results in minimal adverse effects on the aquatic environment, then the project proponent can request an individual permit or other form of DA permit.

The vegetated buffer requirement does not constitute a taking of private property because it is compensatory mitigation to offset losses of aquatic resource functions and values. If the project proponent does not want to establish and maintain vegetated buffers next to open waters on the project site, then he or she can request another form of DA permit to authorize the activity. The removal of nutrients, sediments, and pollutants from surface and shallow subsurface waters by vegetated buffers next to open waters is well documented in the scientific literature. The establishment and maintenance of vegetated buffers is a type of out-of-kind compensatory mitigation to offset authorized losses of wetlands and other waters of the United States, which also remove these chemical compounds from waters. The vegetated buffer requirement is no different than requiring the alteration of uplands to create wetlands as compensatory mitigation for losses of wetlands. In fact, the establishment and maintenance of vegetated buffers next to streams and other open waters is likely to be more successful and less costly than attempting to create wetlands by grading and altering uplands. When reviewing compensatory mitigation proposals, district engineers can consider alternative forms of compensatory mitigation to address water quality concerns, if vegetated buffers are not practical for the project site.

Several commenters opposed the vegetated buffer requirement, stating that it substantially reduces the amount of developable area on a parcel of land. Two commenters said that the vegetated buffer requirement will be difficult to implement for those projects that have already received subdivision approval. These commenters also assert that this requirement will increase the cost of housing. Several commenters said that the establishment and maintenance of vegetated buffers is practical only in large, open spaces. One commenter stated that the vegetated buffer requirement will increase sprawl development because it requires buildings to be constructed farther apart from each other.

Although the vegetated buffer requirement may reduce the amount of developable land on a particular parcel, we do not agree that such a reduction will be substantial. In most situations, vegetated buffers will be located in 100-year floodplains, in which there are often state or local building restrictions. If it is impractical for the project proponent to establish and maintain vegetated buffers on the property because of prior subdivision approval, then the district engineer can determine that vegetated buffers are not required. We do not agree that the vegetated buffer requirement will increase the cost of housing more than any other type of compensatory mitigation requirement, such as the creation of wetlands. In most circumstances, establishing and maintaining vegetated buffers will be less costly than grading land to create wetlands. The vegetated buffer requirement will not encourage sprawl development.

One commenter believes that the Corps needs to provide a cost-benefit analysis for the vegetated buffer requirement. This commenter also stated that this requirement requires an environmental impact statement because it is a major Federal action.

The vegetated buffer requirement does not need a cost-benefit analysis or an environmental impact statement.

In the July 21, 1999, **Federal Register** notice, we stated that vegetated buffers

will normally be 50 to 125 feet wide, but provided district engineers with the flexibility to impose narrower or wider vegetated buffers. Many commenters stated that the widths of vegetated buffers required for NWP activities should be based on the width necessary to ensure that the adverse effects to the aquatic environment are minimal. These commenters said that permit conditions, including mitigation requirements, must be directly related to impacts of the proposed work and appropriate to scope and degree of those impacts. One of these commenters cited 33 CFR 325.4(a). Another commenter cited 33 CFR 320.4(r) and remarked that the Corps has not demonstrated that vegetated buffers provide compensatory mitigation for identifiable losses of resources. Numerous commenters said that the requirement for 50 to 125 foot wide vegetated buffers would, in some cases, result in compensatory mitigation requirements that would exceed the impacts of the activity. Two commenters disapprove of the vegetated buffer requirement, stating that it is not tailored to the effects of the authorized activity and could result in large vegetated buffers for projects that result in small losses of waters of the United States. Several commenters said that vegetated buffer requirements for particular projects must be in proportion of the impacts of the authorized work.

After considering these comments, we have reduced the recommended width of vegetated buffers to 25 to 50 feet wide on both sides of the stream or 25 to 50 feet from the OHWM or bank of the open waterbody. District engineers can require wider vegetated buffers if there are documented water quality concerns. The width of the vegetated buffer is measured in a direction perpendicular to the OHWM or bank of the open waterbody. The 25 to 50 foot wide vegetated buffer will provide aquatic habitat functions and values, as well as water quality benefits. When determining the appropriate width of vegetated buffers, district engineers will consider the degree of the adverse effects on the aquatic environment caused by the authorized work and require compensatory mitigation to the extent necessary to ensure that the adverse effects are minimal. The required compensatory mitigation, including vegetated buffers, will be in proportion, from an aquatic function and value perspective, to the authorized impacts to waters of the United States. If the authorized work results in minimal adverse effects on the aquatic environment without compensatory mitigation, then vegetated buffers are not required.

Two commenters said that the Corps should not specify a minimum width for vegetated buffers. One of these commenters contends that the benefits of vegetated buffers is likely to be different for dissimilar types of wetlands and waterbodies. One commenter requested clarification concerning the criteria that will be used to determine the width of vegetated buffers for specific project sites and which plant species should be used to establish the vegetated buffer. One commenter asked if a 50 to 125 foot wide vegetated buffer will be required in all cases. Two commenters recommended a minimum vegetated buffer width of 100 feet.

One commenter stated that many factors are cited in the current literature for determining the appropriate width of vegetated buffers. This commenter said that the Corps needs a standard method that district engineers can use to determine appropriate, site-specific vegetated buffer widths. This commenter also indicated that the width of the vegetated buffer should be based on the value of the aquatic resource to be protected and adjacent land uses. In addition, the method should identify situations where vegetated buffers are inappropriate or impractical. Several commenters said that the Corps should use a more flexible approach for vegetated buffer requirements, including the consideration of other methods that provide the same benefits, while utilizing less land. One commenter suggested methods to provide flexibility for vegetated buffer requirements, including buffer averaging to allow certain buffer areas to be narrower as long as the average width meets minimum requirements, conservation easements that can be donated to responsible charitable trusts and owner tax benefits, and density trading which allows developers density credits to offset loss of useable land to buffers.

We believe that recommending a 25 to 50 foot wide vegetated buffer and allowing district engineers the flexibility to determine appropriate vegetated buffer widths on a case-by-case basis is appropriate. A 25 to 50 foot wide vegetated buffer next to open waters will protect or restore aquatic habitat functions and values and provide water quality benefits. District engineers can require wider vegetated buffers if there are documented water quality concerns that can be addressed by a wider vegetated buffer. The district engineer will determine the appropriate width of the vegetated buffer on a case-by-case basis, based on the degree of impacts and the quality of waters. District engineers will also assess, on a case-by-case basis, whether or not vegetated buffers are impractical or inappropriate. District engineers can also consider the use of buffer width averaging. Density trading is more appropriately addressed by local planning and zoning agencies.

One commenter suggested using vegetated buffer width guidelines published by NRCS, which are based on soil type, slope, and topography. Two commenters stated that appropriate vegetated buffer widths should be determined by district engineers after consultation with Federal and state resource agencies. Two commenters requested that the Corps provide guidance for determining the length of the vegetated buffer along the open waterbody (i.e., how far upstream and downstream the vegetated buffer should extend).

We do not agree that it is necessary, for the purposes of the NWPs, to utilize complex vegetated buffer width guidelines based on soil types, slopes, and topography. Vegetated buffers 25 to 50 feet wide provide substantial aquatic habitat functions and water quality benefits. District engineers can require wider vegetated buffers to address documented water quality concerns or narrower vegetated buffers where it is not practicable to require 25 foot wide buffers. District engineers can coordinate with Federal and state resource agencies to determine the appropriate vegetated buffer width for a particular project, but we do not believe that this is necessary in all cases. The length of the vegetated buffer should extend along the open waterbody to the extent the district engineer determines necessary to offset authorized impacts.

Several commenters indicated that the guidance in the July 21, 1999, **Federal Register** notice concerning the width of vegetated buffers contradictory. For instance, General Condition 9 states that vegetated buffers must be established to the maximum extent practicable but there is a statement on page 39339 that says that the vegetated buffer should be as wide as possible. In addition, on page 39274 there is a statement that the width of the vegetated buffer must balance the benefits to environment with the uses of property resulting from authorized work. These commenters believe that the width of the vegetated buffer should be based on the benefits of the buffer and the adverse effects of the regulated activity (i.e., the discharge of dredged or fill material into waters of the United States), not all uses of the project.

We do not agree that the discussion of vegetated buffer requirements in the July 21, 1999, **Federal Register** notice contains contradictions. The appropriate width of a vegetated buffer is dependent on what is practicable for the prospective permittee and the amount of vegetated buffer that is necessary to ensure that the activity results in minimal adverse effects to the aquatic environment.

Several commenters said that vegetated buffers should not be required in all cases, particularly in those situations where the adverse effects on the aquatic environment are minimal. One commenter asked if vegetated buffers are required for activities that do not require notification to the district engineer. Another commenter asked if vegetated buffers are required even if the proposed work does not result in any impacts to streams, open waters, or wetlands on the project site. One commenter stated that vegetated buffers should be required only if there are perennial or intermittent streams on the site. Two commenters asserted that vegetated buffers should not be required next to ephemeral streams. One commenter stated that flexibility for district engineers to determine vegetated buffer widths reduces predictability for the regulated public when planning developments. Two commenters recommended that joint Federal agency guidance be developed for vegetated buffer requirements.

Vegetated buffers are not required if the proposed work results in minimal adverse effects on the aquatic environment without compensatory mitigation. Vegetated buffers are only required where the proposed project requires a Corps permit. The Corps is not establishing any new authority to regulate riparian areas, where no Corps permit is otherwise required. Vegetated buffers are not required for activities that do not require notification, since these activities result in minimal adverse effects on the aquatic environment. Vegetated buffers are required if there are open waters on the project site. We agree that vegetated buffers should not be required next to ephemeral streams. We will consider the development of joint guidance for vegetated buffer requirements.

Two commenters objected to requirements for conservation easements or deed restrictions for vegetated buffers. Another commenter supported the requirement for conservation easements or deed restrictions.

As with other forms of compensatory mitigation, conservation easements or deed restrictions for vegetated buffers are necessary to ensure that the compensatory mitigation site is maintained and protected from future alteration.

Three commenters requested clarification concerning how vegetated buffers are to be maintained and for how long vegetated buffers must be maintained. Two commenters stated that the requirement to maintain vegetated buffers is too burdensome for permittees because it implies that the permittees would have to monitor vegetated buffers and replace any vegetation that dies or is damaged during a flood or other storm event. One commenter indicated that the maintenance of vegetated buffers is problematic in arid regions because water would have to be provided to the plants to ensure their survival, which would be costly and contrary to water conservation policies. Two commenters suggested a limit of one year for the maintenance of vegetated buffers.

Permittees are not required to establish and maintain vegetated buffers that would require active management, such as irrigation. If the vegetated buffer must be planted, it must be self-sustaining, without the need for maintenance. Trees and shrubs damaged by storms and other events do not need to be replaced because the vegetation will grow back at the buffer site.

Two commenters supported the requirement for native species in vegetated buffers. Several commenters objected to requiring native species in vegetated buffers. One commenter said that this requirement is contrary to current best management practices because certain non-invasive, non-native plant species may be preferable in certain circumstances. Two commenters stated that the requirement for native species is unnecessary because there is no connection between water quality and the planting of native species or the removal of noxious weeds. Two commenters indicated that the requirement for native trees and shrubs in vegetated buffers is too strict and permittees should be able to plant native grasses and other herbaceous species instead of trees and shrubs. One commenter requested a list of "acceptable" native plant species for vegetated buffers.

Permittees are encouraged to plant vegetated buffers with native species, but this is not an absolute requirement. Vegetated buffers should be planted with native species, but a well-established vegetated buffer that contains some non-native species should not be removed and replaced. We recognize that there are circumstances where non-native species may be more appropriate. The planting of native species is important for the habitat functions of vegetated buffers. We encourage permittees to plant seedlings and saplings of trees in the vegetated buffer, but permittees can plant herbaceous vegetation in the vegetated buffer and allow natural succession processes to allow a woody plant community to develop at a later time. We do not agree that it is necessary to provide a list of "acceptable" native species that should be planted in vegetated buffers.

One commenter requested clarification whether vegetated buffers must be grassed or wooded. Another commenter objected to wooded vegetated buffers because they would impede flood flows and increase erosion. One commenter stated that wooded vegetated buffers would cause a loss of hydraulic capacity of the channel.

Vegetated buffers should have woody vegetation because woody plants, especially trees, are important components of an effective vegetated buffer. Woody plants, especially trees, provide shade to the open waters, as well as substantial amounts of detritus that is an important component of aquatic food webs. Woody vegetation in riparian zones often slows the velocity of floodwaters, which can provide water quality benefits by allowing sediment to drop out of suspension and decrease the sediment load in the water column. We do not agree that vegetated buffers increase erosion. The roots of woody vegetation help stabilize the soil, thereby decreasing erosion. Although woody vegetation, especially tree falls that create snags, may reduce the hydraulic capacity of a stream channel, it is important to consider the ecological functions and values of the stream, not just the hydraulic capacity of the stream channel and water conveyance. With the new and modified NWPs, we are placing greater emphasis on protecting open waters, especially streams.

One commenter supported the Corps statement in the July 21, 1999, **Federal Register** notice that mowed lawns are not considered vegetated buffers. Several commenters objected to this statement and believe that mowed lawns should be considered vegetated buffers.

We do not consider mowed lawns next to streams and other open waters as vegetated buffers because mowed lawns do not provide most of the functions and values that a vegetated buffer inhabited by trees or shrubs would provide. For example, mowed lawns cannot shade streams to moderate water temperature changes or produce

woody debris that creates important aquatic habitat. In many areas, mowed lawns are intensively managed through the application of fertilizers, herbicides, and pesticides. Intensively managed mowed lawns next to streams can exacerbate water quality problems that vegetated buffers are intended to address. Since mowed lawns next to streams and other open waters do not provide the functions and values that wooded vegetated buffers provide, it would be inappropriate to consider mowed lawns next to streams and other open waters as compensatory mitigation for activities authorized by NWPs.

One commenter said that the requirement for vegetated buffers is inconsistent with the proposed NWP definitions. For example, the definition for the term "compensatory mitigation" does not include vegetated buffers that are established and maintained on uplands next to streams and other open waters. This commenter also contends that vegetated buffers cannot be considered enhancement because the proposed NWP definition for this term is limited to activities in aquatic habitats that increase one or more aquatic functions.

The establishment and maintenance of vegetated buffers next to streams and other open waters as compensatory mitigation is not inconsistent with the definition of the term "compensatory mitigation" provided in the "Definitions" section of the NWPs. The planting of trees and shrubs next to a stream in a pasture enhances the quality of the stream. Stream restoration activities usually involve planting the upland or wetland riparian zone with trees and shrubs. We have added a definition of the term "vegetated buffer" in the "Definitions" section of the NWPs.

One commenter requested that the Corps provide guidance concerning the specific amount of vegetated buffer that will be required as compensatory mitigation to offset losses of waters of the United States. Two commenters stated that vegetated buffers should be an additional requirement after the permittee has provided full compensation for wetland losses. A commenter asked if vegetated buffers alone can be used to satisfy compensatory mitigation requirements for the NWPs. This commenter also stated that, in many cases, vegetated buffers already exist on site and that the preservation of these areas is strongly discouraged by Corps mitigation policy because of the "no net loss" goal. This commenter believes that the vegetated buffer requirement is contrary to Corps mitigation policy.

We have modified General Condition 19 to provide guidance regarding the proportion of compensatory mitigation that should consist of vegetated buffers. If there are open waters on the project site and the district engineer requires compensatory mitigation for wetland impacts to ensure that the net adverse effects on the aquatic environment are minimal, any vegetated buffer will comprise a portion or all of the remaining compensatory mitigation acreage after the permanently filled wetlands have been replaced at a one-to-one acreage basis. By using vegetated buffers as compensatory mitigation, the quality of open waters will be protected or enhanced by maintaining these vegetated areas if they already exist on the site. If the vegetated buffer is not used as compensatory mitigation, then the permittee could cut down the existing vegetation next to the open waters (which often does not require a DA permit), which would adversely affect the quality of the open waters. Programmatically, the Corps will continue to support the "no net loss" goal for wetlands, but the establishment and maintenance of vegetated buffers for NWP activities will provide substantial benefits for open waters, especially streams.

Many commenters stated that the vegetated buffer requirement is problematic for companies and agencies that do not own the property where the vegetated buffer would be located on the project site. For example, the authority of flood control agencies is often limited to the channel, not to the land adjacent to the channel. As another example, utility companies have limited easement rights in utility line rights-of-way and cannot impose deed restrictions or conservation easements in these areas. Numerous commenters said that vegetated buffers should not be required where the project proponent does not own the land next to the open waters on the project site. Several commenters stated that the costs for public agencies to obtain rights-of-way to establish and maintain vegetative buffers will be prohibitive or economically impractical.

District engineers will not normally require vegetated buffers next to streams and other open waters if the permittee does not own the land next to the open waterbody. Such vegetated buffers will only be required where the permittee has or can reasonably obtain the appropriate conservation easements. Likewise, vegetated buffers are not required in utility line easements. However, if the utility company is building a substation on its land and there are open waters on the project site, the district engineer can require vegetated buffers next to those open waters as compensatory mitigation.

Two commenters said that vegetated buffers are impractical in urban areas where most of the surface runoff is directed to storm drain pipes, not streams. A commenter stated that maintaining vegetated buffers adjacent to facilities built by developers but handed over to local governments would increase costs to those local governments. Another commenter said that the vegetated buffer requirement will increase project and maintenance costs for state Department of Transportation projects. Two commenters assert that the vegetated buffer requirement will make maintenance of authorized facilities difficult or prohibitive. One commenter requested clarification whether a vegetated buffer disturbed during a maintenance activity will require additional mitigation or whether the project proponent would be required only to replace the disturbed vegetation.

If it is impractical to establish and maintain vegetated buffers next to streams in urban areas because of the limited amount of available land, then vegetated buffers are not required. In these circumstances, off-site compensatory mitigation may be preferable, including off-site vegetated buffers. If vegetated buffers next to open waters would make the maintenance of facilities in waters of the United States too costly, then other forms of compensatory mitigation should be considered. We do not agree that the vegetated buffer requirement would increase costs for transportation projects, because these activities usually require compensatory mitigation. If it is necessary to disturb the vegetated buffer during maintenance activities, the project proponent is only required to allow the vegetation to grow back. Additional compensatory mitigation will not be required for the disturbance of a vegetated buffer if it is allowed to grow back.

Several commenters said that vegetated buffers should not be required for activities authorized by NWPs 3 or 12. One commenter indicated that vegetated buffers should not be required for linear transportation crossings that are constructed perpendicular to the stream. Another commenter said that vegetated buffers should not be required for flood control maintenance activities.

District engineers can require vegetated buffers for activities that involve discharges of dredged or fill material into waters of the United States if there are open waters on the project site. Activities authorized by NWP 3 typically do not require compensatory

mitigation, including vegetated buffers. There may be circumstances where vegetated buffers will be required for utility line activities, if compensatory mitigation is necessary to ensure that the adverse effects on the aquatic environment are minimal. Activities authorized by NWP 31 usually would not require vegetated buffers, especially if the flood control authority does not own the land next to the flood control facility or compensatory mitigation was required for the construction of the facility or previous maintenance activities.

Regional Conditioning

One commenter supported the Corps increased emphasis on regional conditioning to ensure that the new and modified NWPs authorize only those activities that result in minimal adverse effects on the aquatic environment. Numerous commenters objected to imposing regional conditions on the new and modified NWPs and stated that the Corps should rely on case-specific special conditions instead of regional conditions. Several commenters said that regional conditioning of the NWPs is unnecessary and contrary to the purpose of the NWPs, which is to authorize activities that have minimal adverse effects. Two commenters suggested that the Corps impose more stringent national terms and conditions on the NWPs instead of relying on regional conditions. One commenter indicated that the Corps reliance on regional conditions for the new and modified NWPs demonstrates that these NWPs authorize activities with more than minimal adverse effects. Two commenters said that regional conditions do not provide adequate protection for wetlands.

We do not agree that only case-specific special conditions should be added to NWPs. Regional conditions are more effective at ensuring that NWPs authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively. Regional conditions also benefit the regulated public by providing them with advance notice of additional NWP restrictions and promoting consistency in the implementation of the NWP program. Regional conditions are necessary because aquatic resource functions and values vary considerably across the country. Utilization of regional conditions is not contrary to the NWP program because those conditions help ensure that the NWPs do not authorize activities with more than minimal adverse effects on the aquatic environment.

Imposing more stringent national terms and limitations on the NWPs instead of imposing regional conditions would not be a practical alternative, because it would severely limit the ability of the NWPs to authorize many activities that have minimal adverse effects on the aquatic environment. It is far more efficient to develop NWPs that authorize most activities that have minimal adverse effects on the aquatic environment and allow division and district engineers to limit the use of these NWPs or exercise discretionary authority in specific situations that may result in more than minimal adverse effects on the aquatic environment. For particular regions of the country or specific waterbodies where additional safeguards are necessary to ensure that the NWPs authorize only those activities with minimal adverse effects, regional conditions are the appropriate mechanism. Case-specific discretionary authority or special conditions cannot substitute for regional conditions in many cases, especially for those NWP activities that do not require notification to the District Engineer. For example, regional conditions can lower PCN thresholds for activities in high value waters to allow district engineers to review those activities and determine if the work can be authorized by NWPs. Division and district engineers are much more knowledgeable about local aquatic resource functions and values and can prohibit or limit the use of the NWPs in high value waters. We contend that regional conditioning of the NWPs provides effective protection for high value wetlands and other aquatic habitats.

Several commenters indicated that regional conditions should be more consistent between Corps districts. One of these commenters also stated that regional conditions should be based on environmental factors and climate, not political boundaries. One commenter recommended Corps division boundaries as the smallest unit for consistency in regional conditions. Another commenter suggested state boundaries as the smallest unit for consistency of regional conditions. Several commenters said that regional conditions make it more difficult for companies that work in more than one state to efficiently manage their operations to comply with the NWPs.

To a certain extent, regional conditions are based on environmental factors but it is usually necessary to provide some consistency within political boundaries, such as state boundaries. Consistency within a particular state is beneficial to the regulated public because it results in more effective cooperation between state agencies, such as the state agencies responsible for making Section 401 and CZMA determinations, and the Corps. In those states where more than one Corps district is present, we have recommended that those Corps districts develop, to the extent practicable, consistent regional conditions statewide. However, we recognize that there may be certain regions within a state, such as specific high value waterbodies, that may warrant regional conditions that are not necessary in other areas of that state. Different regional conditions can be imposed in those unique situations. Within Corps division boundaries, there is often wide variability in aquatic resource functions and values. Therefore, consistency in regional conditions at a scale larger than a state is contrary to the purpose of the regional conditioning process, which is to consider local differences in aquatic resource functions and values to ensure that the NWPs do not authorize activities with more than minimal adverse effects on the aquatic environment. Companies that work in more than one Corps district or more than one state will have to comply with the regional conditions established in each district or within each state.

One commenter stated that the Corps assertion that regional conditions cannot be elevated to headquarters is inconsistent with the regional conditioning process established in the July 1, 1998, **Federal Register** notice. Three commenters indicated that division engineers should be able to increase the acreage limit of an NWP or delete or modify conditions of an NWP through regional conditions and recommended that the Corps revise its regulations to provide division engineers with such authority.

The authority to require regional conditions lies solely with division engineers and cannot be elevated to the Headquarters level. The regulations for the NWPs (33 CFR Part 330) clearly state that the modification, suspension, or revocation of any NWP on a regional basis is the decision of the division engineer. The regional conditioning process described in the July 1, 1998, **Federal Register** notice did not include elevation of NWP regional conditions to headquarters. Meetings between Corps district commanders and Regional Administrators of EPA and Regional Directors of the U.S. Fish and Wildlife Service and National Marine Fisheries Service were to occur to discuss proposed regional conditions and resolve any disputes concerning those regional conditions (see 63 FR 36048).

As discussed in the July 21, 1999, **Federal Register** notice, division and district engineers cannot use regional conditioning to make the NWPs less restrictive. Only the Chief of Engineers can modify an NWP to make it less restrictive, if it is in the national public interest to do so. Such a modification must go through a public notice and comment process. However, if a Corps district determines that regional general permits (RGPs) are necessary for activities not authorized by NWPs, then that district can develop and implement regional general permits to authorize those activities, as long as those regional general permits comply with Section 404(e) of the Clean Water Act. However, we have established a six month moratorium on RGPs and LOPs that are germane to the new and modified NWPs to allow districts time to assess the true need for such RGPs and LOPs.

One commenter stated that the regional conditioning process violates the Administrative Procedures Act and that proposed regional conditions must be published in the **Federal Register** for comment. This commenter said that posting draft regional conditions on Internet home pages provides inadequate notice because most citizens do not use the Internet. This commenter also requested that the Corps publish a notice in the **Federal Register** that includes all proposed regional conditions to solicit public comments on those regional conditions. Several commenters objected to the regional conditioning process because all draft regional conditions were not available when the July 21, 1999, **Federal Register** notice was published. Two commenters said that regional conditions should not be drafted or subject to comment until the new and modified NWPs are issued.

Regional conditions for the NWPs do not need to be published in the **Federal Register** for public comment. It is important to remember that regional conditions are issued by division commanders, not Corps headquarters. District public notices for regional conditions provide adequate opportunities for public comment. Since the proposed regional conditions do not affect the process for issuing the new and modified NWPs, we do not agree that it was necessary to have all draft regional conditions posted on district Internet home pages at the same time the July 21, 1999, **Federal Register** notice was published. The 75-day comment period provided adequate opportunities for the public to consider both the July 21, 1999, **Federal Register** notice and all draft regional conditions proposed by Corps districts.

One commenter stated that it is difficult for prospective permittees to determine in which district their activities would occur and recommended that the Corps make maps of district boundaries available. One commenter suggested that high value waters subject to regional conditioning include warm water fisheries and waters with benthic macroinvertebrates.

The Corps has a general map of Corps division and district boundaries that is available on the Internet at http://www.usace.army.mil/inet/locations/bdry-pages/. This interactive map also provides links to Corps district home pages. Due to the scale of this map and since most Corps district boundaries are based on watershed boundaries, prospective permittees should contact the nearest Corps district office to determine which Corps district will review their PCN or permit application. Division engineers can determine that waters of the United States supporting warm water fisheries or benthic macroinvertebrates are high value waters that should be subject to regional conditioning.

Essential Fish Habitat

For the proposed new and modified NWPs published in the July 21, 1999, **Federal Register** notice, we conducted programmatic Essential Fish Habitat (EFH) consultation with the National Marine Fisheries Service (NMFS), pursuant to Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act. In response to our request for programmatic consultation, NMFS made two programmatic EFH conservation recommendations. The first EFH conservation recommendation was for Corps districts to work with NMFS regional offices to the extent necessary to develop NWP regional conditions that conserve EFH and are consistent with NMFS regional EFH conservation recommendations. The second EFH conservation recommendation indicated that paragraph (e) of General Condition 13, which states that district engineers will provide no responses to resource agency comments on PCNs, should not apply to EFH conservation recommendations provided by NMFS.

We concur with both of these EFH conservation recommendations. We have directed our district offices in geographic regions with EFH to coordinate with NMFS regional offices to develop, to the extent necessary, regional conditions for the new and modified NWPs that conserve EFH and are consistent with NMFS regional EFH conservation recommendations. In addition, we have added a sentence to paragraph (e) of General Condition 13 to require district engineers to respond to NMFS within 30 days of receipt of any EFH conservation recommendations. This requirement is necessary to comply with section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

Workload Implications of the New and Modified Nationwide Permits

A large number of commenters stated that the lower acreage limits and PCN requirements of the new and modified NWPs, as well as the three proposed general conditions, will result in substantial increases in the number of standard permit applications processed by the Corps and processing times for all Section 404 permits. Many commenters objected to the proposed NWPs because the Corps did not explain how it will handle the increase in workload. A number of commenters said that if the proposed changes to the NWP program are implemented, the Corps will need to increase its resources to process the additional standard applications and PCNs in a timely manner. One commenter said that the cumulative impact analysis requirements will increase the Corps workload while another commenter cited regional conditions as another factor that will increase the Corps workload.

One commenter predicted that the Corps will experience an increase of 17,000 individual permit applications per year. Another commenter estimated an increase of 2,000 individual permits per year as a result of the proposed changes. This commenter also predicted that average individual permit processing times will increase from 89 days to 350 days over the next six years and estimates that the permit application carryover will double during that time period.

The workload and compliance costs study conducted by IWR, and mentioned above in the overview, for the proposal published in the July 21, 1999, **Federal Register** showed that the proposed NWP package would result in a 50% increase in the number of standard individual permit applications received by the Corps per year. The study estimated that the Corps would receive 4,429 additional standard permit applications per year and receive 2,878 fewer NWP PCNs per year. As a result of the increased standard permit workload, the average amount of time that it takes for the Corps to process permit applications would increase three to four times within five years. Likewise, the permit application

backlog would increase by the same amount during that five year period.

The changes to the new and modified NWP issued today, including the ½ acre limit and the modification of the general condition for fills in 100-year floodplains, are estimated to result in 40% fewer standard permit applications compared to the proposal published in the July 21, 1999, **Federal Register**. Also, the standard permit processing times and the permit application backlog would increase by one and a half to two times the amount for FY 1998.

We have also reviewed an analysis, based on the July 21, 1999, proposal, that was conducted on behalf of the National Association of Counties. This analysis examined the impacts of the July 21, 1999, proposal on the Corps workload and costs to the Corps and the regulated public.

We have not proposed any changes to our approach for analyzing cumulative adverse effects on the aquatic environment cause by NWPs. Therefore, cumulative adverse effect analysis will not impose additional workload on Corps district offices. Although regional conditions will cause some increases in the Corps workload, those increases are manageable and necessary to ensure that the NWPs do not authorize activities that result in more than minimal adverse effects on the aquatic environment.

One commenter said that the increases in workload caused by the three proposed general conditions are offset by the increased scope of applicable waters for these NWPs, because many of these activities would have required individual permits when NWP 26 was in place. In contrast, another commenter stated that the proposed NWPs will result in more individual permit applications because the new NWPs do not authorize activities in tidal waters.

We do not agree that the larger geographic scope of the new NWPs, when compared to the geographic scope of NWP 26, will offset the increase in workload caused by the new NWP general conditions. For example, General Condition 26 prohibits discharges of dredged or fill material into waters of the United States within 100-year floodplains of stream segments below headwaters. Since NWP 26 did not authorize discharges of dredged or fill material into tidal waters, prohibiting the use of the new NWPs in tidal waters will not cause any increases in the number of individual permit applications processed by the Corps.

Other Issues

In response to the July 21, 1999, **Federal Register** notice, some commenters raised additional issues related to the new and modified NWPs. Several commenters expressed concern that none of the new and modified NWPs authorize oil and gas development facilities. These commenters said that NWP 26 was used to authorize these facilities where no regional general permits (RGPs) are available and recommended that the Corps develop such an NWP. One commenter suggested that the Corps modify NWP 39 to authorize oil and gas wells as industrial facilities.

When we developed the new and modified NWPs that will replace NWP 26, we considered an NWP to authorize oil and gas facilities. However, when we surveyed Corps districts to determine how frequently such an NWP would be used, we found that there was little need for this NWP because most of the districts that frequently authorize oil and gas facilities have issued RGPs to authorize these activities. The development of RGPs for this activity is more appropriate than developing a new NWP. We do not agree with the recommendation to modify NWP 39 to authorize these activities, because NWP 39 authorizes building pads and attendant features, and oil and gas wells are not buildings.

Two commenters recommended that the Corps develop an NWP to authorize the construction of fish passage facilities and other stream enhancement activities, such as relocating a portion of a stream channel to provide proper alignment for fish passage, because these activities were authorized by NWP 26.

We do not agree that there is sufficient need to develop a new NWP to authorize the construction of fish passage facilities. Stream enhancement activities may be authorized by NWP 27, provided the proposed work meets the terms and conditions of this NWP. Discharges into waters of the United States associated with the construction of fish passage facilities may also be authorized by other NWPs, RGPs, or individual permits.

Several commenters requested that the Corps reverse its decision to withdraw NWP B, which was proposed in the July 1, 1998, **Federal Register** notice to authorize master planned development activities. One of these commenters stated that the withdrawal of proposed NWP B is contrary to "smart growth" initiatives.

Our decision to withdraw NWP B is discussed in the October 14, 1998, and July 21, 1999, **Federal Register** notices. We have not changed our position on this matter, but we could propose an NWP for master planned development activities at a later time. We do not agree that the withdrawal of NWP B is contrary to smart growth initiatives, because developments that are part of smart growth planning efforts can be authorized by other NWPs, such as NWP 39, RGPs, and individual permits.

One commenter objected to the draft NWPs, stating that they do not authorize certain activities associated with railroad operations, such as the completion of drainage improvements along unstable embankments, bank stabilization to protect tracks from slide events, small fills associated with the installation of signals and switches, and the construction of miscellaneous structures associated with railroad tracks.

Some of these activities can be authorized by existing NWPs, including some of the NWPs modified today. For example, bank stabilization activities to protect railroad tracks from slide events may be authorized by NWP 13. Small fills associated with the installation of signals, switches, and minor drainage improvements may be authorized by NWP 18. NWP 14 may also be used to authorize some activities associated with railroads, since railways are linear transportation projects. These activities can also be authorized by RGPs and individual permits, if they do not qualify for authorization under the NWP program.

Two commenters said that a new NWP should be developed to authorize the construction of flood control improvements, including structures and fills for flood control facilities. Two commenters stated that the new and modified NWPs and regional conditions will make it more difficult to maintain a previously authorized flood-control facility.

We do not agree that a new NWP should be developed for the construction of flood control facilities. Such activities are likely to result in more than minimal adverse effects on the aquatic environment by reducing or eliminating the natural functions and values of open waters, including streams, and floodplains. Flood control activities may be authorized by NWPs, RGPs, or individual permits. The new and modified NWPs will not make it more difficult to maintain flood control facilities. We have withdrawn the proposed general condition for impaired waters. General Condition 26, Fills in 100-year Floodplains, does not apply to NWP 31, which authorizes the

maintenance of existing flood control facilities.

One commenter requested that the Corps develop a new NWP to authorize abandoned mined land cleanup activities, since NWP 27 does not authorize all of these activities. This commenter said that NWP 26 was used to authorize these activities.

During the reissuance process for the existing NWPs that will begin in 2001, we will consider developing an NWP to authorize discharges of dredged or fill material into waters of the United States for abandoned mined land cleanup projects.

One commenter recommended that the Corps revoke the NWPs in all watersheds or sub-basins that have exceeded 8% imperviousness. Another commenter suggested that the Corps condition the NWPs to encourage or require planting of native plant species in areas that are impacted by NWP activities, because such a condition would support Executive Order 13112, entitled "Invasive Species." Two commenters said that the Corps should develop and implement a classification system that assesses the potential for restoring or enhancing degraded wetlands to encourage restoration or enhancement, instead of issuing permits to fill these areas.

We do not agree that the NWPs should be revoked simply because the amount of impervious surface within a particular watershed has exceeded a certain threshold. District engineers will monitor the use of the NWPs to ensure that the NWPs do not authorize activities with more than minimal adverse effects on the aquatic environment, individually or cumulatively. We cannot require all permittees to plant native species at sites impacted by activities authorized by NWPs, but they are encouraged for vegetated buffers. While we encourage restoration and enhancement of degraded wetlands as compensatory mitigation for activities authorized by DA permits, including NWPs, we cannot develop a classification system to identify these areas and prohibit discharges of dredged or fill material into those waters.

Two commenters requested that the final notice announcing the issuance of the new and modified NWPs include a statement that the three new NWP conditions proposed in the July 21, 1999, **Federal Register** notice should not become conditions on all Corps permits, including individual permits. Two commenters said that any regional general permits or Section 404 letters of permission issued by Corps districts must include the three proposed new NWP general conditions.

We agree that the proposed general conditions limiting the use of NWPs in designated critical resource waters, impaired waters, and waters of the United States within 100-year floodplains should not be incorporated into all Corps permits. RGPs issued by Corps districts can authorize only activities that result in minimal adverse effects on the aquatic environment. Since RGPs are local solutions for implementing the Corps regulatory program, these general permits will thoroughly address local concerns for the aquatic environment. Therefore, it is not necessary for all RGPs issued by district engineers to contain conditions limiting their use in designated critical resource waters, impaired waters, and waters of the United States within 100-year floodplains. Standard permits are subject to the public interest review process, which considers impacts to public interest factors, including critical resource waters, impaired waters, and waters of the United States within 100-year floodplains.

One commenter recommended that the **Federal Register** notice announcing the final new and modified NWPs contain a compilation of all regulatory information concerning the NWPs to make the preamble discussions available to the regulated public. Another commenter indicated that the Corps cannot issue provisional NWP authorizations in states that have denied water quality certification for those NWPs.

All **Federal Register** notices concerning the new and modified NWPs are currently available to the public. Due to the length of these notices and the many changes that have occurred since these NWPs were initially proposed on July 1, 1998, it would be impractical to compile the preambles for all of these notices into one document. In the July 21, 1999, **Federal Register** notice (64 FR 39261), we addressed comments concerning the issuance of provisional NWP verifications and we have not changed our position on this matter.

One commenter said that the new NWPs and general conditions should not become effective until six to nine months after the new NWPs are issued, so that activities that have already been planned can proceed under the NWPs issued in 1996. One commenter objected to using NWPs to authorize the expansion of existing projects, stating that this discourages avoidance and minimization of losses of waters of the United States. One commenter stated that the new and modified NWPs should address impacts to prior converted cropland. Several commenters said that NWP 29 should be revoked.

The new and modified NWPs, including the new and modified general conditions, will become effective on June 5, 2000. Until the effective date of the new and modified NWPs and general conditions, the current NWPs (as published in the December 13, 1996, **Federal Register**) are applicable. Permittees that begin work, or are under contract to begin work, prior to the effective date of the new and modified NWPs, have one year to complete the work under the term and conditions of the NWPs issued in 1996. However, in a notice published in the December 15, 1999, issue of the **Federal Register** (64 FR 69994), we established a procedure for processing NWP 26 PCNs. We do not agree that a longer implementation schedule is necessary. In addition, an extended implementation schedule would be contrary to our intent to replace NWP 26 with activity-specific NWPs that authorize activities with minimal adverse effects on the aquatic environment.

The use of NWPs to authorize the expansion of existing projects does not discourage avoidance and minimization of activities in waters of the United States. These activities are required to comply with all NWP terms and conditions, including General Condition 19, and must result only in minimal adverse effects on the aquatic environment. The new and modified NWPs do not need to address impacts to prior converted cropland, since these areas are not waters of the United States. If prior converted cropland is abandoned and reverts back to jurisdictional wetlands, then those areas are subject to the permit requirements of Section 404 of the Clean Water Act. We do not agree that NWP 29 should be revoked, since it authorizes single family housing activities with minimal adverse effects on the aquatic environment.

III. Comments and Responses on Specific Nationwide Permits

3. Maintenance: In the July 21, 1999, **Federal Register** notice, we proposed to modify this NWP to authorize the removal of accumulated sediment in the vicinity of existing structures and authorize activities in waters of the United States associated with the restoration of uplands damaged by storms, floods, or other events. These additional activities are in paragraphs (ii) and (iii), respectively, of this NWP.

One commenter said that the proposed modifications are not

maintenance activities and should not be authorized by this NWP. Some commenters requested clarification whether this NWP only applies to activities not statutorily exempt under section 404(f)(1)(B) of the Clean Water Act. One commenter objected to this NWP, stating that it is used to change existing projects to different use categories. Another commenter asked what is meant by the phrase "minor deviations in the structure's configuration or filled area."

We believe that the activities authorized by paragraphs (ii) and (iii) of this NWP are maintenance activities. The note at the end of this NWP states that NWP 3 authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemptions for maintenance. The first sentence of paragraph (i) explicitly states that NWP 3 does not authorize changes in use for the authorized structure or fill. The phrase "minor deviations in the structure's configuration or filled area" allows the project proponent to make minor changes to a previously authorized structure or fill during the repair or maintenance activity so that the structure or fill complies with current construction standards or other regulations.

Several commenters supported the removal of the notification requirement from paragraph (i) of this NWP. One commenter said that replacement activities should allow reconfiguration of structures such as marina piers. One commenter believes that paragraph (i) contains contradictory language because it authorizes the repair, replacement, or rehabilitation of previously authorized, currently serviceable structures or fills and the replacement of structures destroyed by storms. Another commenter said that some maintenance activities take longer than two years and recommended that the NWP be modified to accommodate those longer repair periods. One commenter recommended that the NWP authorize the use of cofferdams during maintenance activities.

The reconfiguration of marinas is authorized by NWP 28. The reconfiguration of other types of structures may be authorized by other NWPs, regional general permits, or individual permits. Authorizing the repair of currently serviceable structures or fills and the replacement of structures or fills damaged by storms, floods, or other discrete events is not contradictory because both of these activities are maintenance activities that typically have minimal adverse effects on the aquatic environment. These provisions are also consistent with the Section 404(f) exemptions for maintenance. We do not agree that it is necessary to increase the two-year limit for maintenance activities because this amount of time is adequate for most maintenance activities. In addition, NWP 3 contains a provision that allows district engineers to waive this time limit. The use of cofferdams during maintenance activities may be authorized by NWP 33.

Some commenters recommended removing the proposed limitations in paragraph (ii) of NWP 3. Several commenters suggested adding acreage limits to paragraph (ii) and others suggested that the 200 linear foot limit should be reduced to 50 feet. One commenter stated that this provision is unnecessary and that NWP 3 should not be modified to authorize this activity. Another commenter said that paragraph (ii) should not authorize the installation of rip rap.

We believe that the 200 linear foot limit for the removal of accumulated sediments in the vicinity of existing structures is appropriate and will ensure that this NWP authorizes only activities with minimal adverse effects on the aquatic environment. The removal of accumulated sediments allows structures to continue to function properly and ensure the safety of the users of the structure. The installation of rip rap is often necessary to protect these structures after the accumulated sediment is removed and should be authorized by this NWP as part of the single and complete project.

One commenter supported paragraph (iii) of the proposed modification of NWP 3, which authorizes activities in waters of the United States associated with the restoration of uplands damaged by storms and other discrete events. One commenter said that paragraph (iii) is unnecessary because these activities should be considered exempt and bank stabilization can be authorized by NWP 13. One commenter stated that the activities authorized by paragraph (iii) will have more than minimal adverse effects on the aquatic environment. Two commenters objected to the proposed modification, stating that it would prevent natural stream processes from occurring and allow stream channelization. A commenter said that this NWP should not authorize bank stabilization activities in floodplains. Another commenter stated that separate authorization should not be required if excavated material is used to replace material that is lost as a result of erosion. One commenter recommended modifying the text of paragraph (iii) to state that the NWP does not authorize the replacement of uplands lost through gradual erosion processes.

The intent of paragraph (iii) of NWP 3 is to authorize activities in waters of the United States associated with the replacement of uplands that are damaged as a result of storms and other catastrophic events. The restoration of uplands damaged as a result of storms and other catastrophic events is exempt from Section 404 permit requirements, as long as the upland area is replaced to its original extent. For example, a hurricane may cause substantial erosion and destroy a section of a road constructed in uplands or on a permitted fill. The restoration of those uplands or the permitted fill and the replacement of the destroyed road are exempt from Section 404 permit requirements, provided the area is repaired to its original extent. However, the restoration work may involve activities in waters of the United States, which are authorized by paragraph (iii), provided those activities comply with the terms and conditions of NWP 3. We maintain our position that this is a maintenance activity that should be authorized by NWP 3. Paragraph (iii) does not authorize new stream channelization or stream relocation activities. We believe that bank stabilization is a necessary component of this activity and should be authorized by paragraph (iii) as part of the single and complete project. We concur with the last comment in the previous paragraph and have made the appropriate modification of the text of paragraph (iii).

One commenter indicated that the district engineer should have discretion over which flood damage repair activities require notification and another commenter said that notification should not be required for any of these activities. One commenter suggested that the 50 cubic yard limit for removal of obstructions should be replaced with 500 linear foot and ⅓ acre limits.

We contend that notification should be required for all of the activities authorized by paragraph (iii) to ensure that these activities result in minimal adverse effects on the aquatic environment. We do not agree that the 50 cubic yard limit for the removal of obstructions should be replaced with 500 linear foot or ⅓ acre limits.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The

issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which requires notification for activities in designated critical resource waters. NWP 3 is reissued with the modifications discussed above.

7. Outfall Structures and Maintenance: In the July 21, 1999, **Federal Register** notice, we proposed to modify NWP 7 to authorize maintenance excavation, including dredging, to remove accumulated sediments from intake or outfall structures and canals associated with these structures.

Several commenters stated that the maintenance activities authorized by the proposed modification of this NWP are exempt from permit requirements. Numerous commenters indicated that the removal of accumulated sediments should be authorized by NWP 3 and that the modification of this NWP is unnecessary. Several commenters requested clarification regarding what types of maintenance activities are authorized by this NWP. Another commenter said that the Corps should withdraw the proposed modification. This commenter also recommended prohibiting removal of material in special aquatic sites and small impoundments. One commenter said that the construction of outfall structures that does not involve discharges of dredged or fill material into waters of the United States should not require a Corps permit.

Maintenance dredging to remove accumulated sediments from intake and outfall structures in Section 10 waters is not exempt from Corps permit requirements. Although the removal of accumulated sediments in the vicinity of existing structures is authorized by paragraph (ii) of NWP 3, there are maintenance dredging or excavation activities associated with intake and outfall structures that do not meet the terms and conditions of NWP 3 and could be authorized by NWP 7. The text of this NWP clearly states which maintenance activities are authorized by NWP 7. District engineers will review PCNs for maintenance activities in special aquatic sites and small impoundments to ensure that the adverse effects on the aquatic environment are minimal. Outfall structures constructed in Section 10 waters require a Corps permit, even if there are no associated discharges of dredged or fill material into waters of the United States.

One commenter said that acreage and linear limits should be imposed on this NWP. Several commenters contend that this NWP should not authorize activities in tidal waters or special aquatic sites. One commenter stated that this NWP should not authorize maintenance activities associated with aquaculture facilities or power plants. A commenter remarked that maintenance excavation and dredging activities could result in more than minimal adverse effects on the aquatic environment and that notification should be required for all activities authorized by this NWP. Another commenter objected to the requirement for notification for all activities authorized by this NWP.

We do not agree that it is necessary to impose acreage or linear foot limits on the activities authorized by this NWP or restrict the applicable waters because all activities authorized by this NWP require notification to the district engineer. The removal of accumulated sediments from outfall and intake structures associated with aquaculture facilities and power plants is necessary to ensure the efficient operation of these installations. The district engineer will review these PCNs to ensure that the NWP authorizes only those activities with minimal adverse effects on the aquatic environment.

One commenter said that delineations of special aquatic sites should be limited to the impact area or within 200 feet of the proposed activity. Two commenters stated that it is unnecessary to require delineations of special aquatic sites since this NWP authorizes maintenance activities. One commenter remarked that there should be a provision in the NWP that allows maintenance of existing structures when the original design capacities and configurations are not available. Another commenter said that paragraph (d) of the proposed modification should be removed because this requirement is already addressed by General Condition 3.

The text of this NWP states that the requirement for delineations of special aquatic sites is limited to the vicinity of the proposed work. The delineation of special aquatic sites, especially vegetated shallows, is necessary to ensure that the NWP authorizes only activities with minimal adverse effects on the aquatic environment. If the original design capacities and configurations of the facility are not available, district engineers will use their judgement to determine if the proposed work is authorized by this NWP. The requirements of paragraph (d) of this NWP and General Condition 3 are not the same. Therefore, we believe that paragraph (d) is necessary to ensure that NWP 7 authorizes only activities with minimal adverse effects on the aquatic environment.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. NWP 7 is reissued with the modifications discussed above.

12. Utility Line Activities: In the July 21, 1999, **Federal Register** notice, we proposed to modify NWP 12 to authorize utility line substations; foundations for overhead utility line towers, poles, and anchors; and permanent access roads for the construction and maintenance of utility lines.

Many commenters supported the proposed modifications, but a few commenters opposed the proposed modifications. Several commenters believe that this NWP will authorize activities with more than minimal adverse effects on the aquatic environment. One commenter said that NWP 12 should have a maximum limit of 2 acres for a single and complete utility line activity and another commenter suggested a ⅓ acre limit. One commenter supported the ¼ acre PCN threshold and also recommended requiring notification for activities that result in the loss of greater than 100 linear feet of stream bed, with agency coordination for activities that result in the loss of greater than 250 linear feet of stream bed. Another commenter said that the PCN threshold should be ⅓ acre. One commenter requested clarification concerning the emergency authorization of utility line activities.

The terms and conditions of this NWP, including PCN requirements, will ensure that NWP 12 will authorize only activities with minimal individual and cumulative adverse effects on the aquatic environment. We do not agree that an overall acreage limit is appropriate for this NWP, since many of the impacts to waters of the United States caused by the construction and maintenance of utility lines will be temporary. Acreage limits and PCN thresholds for specific activities authorized by this NWP are discussed below. This NWP can be used to authorize the emergency installation,

replacement, or repair of utility lines in waters of the United States. Emergency procedures for the Corps regulatory program are discussed in 33 CFR 325.2(e)(4).

One commenter said that this NWP is too restrictive for the installation of underground gas transmission lines. Two commenters stated that this NWP should authorize wireless communication towers. Another commenter suggested that well drilling fluid flowlines should be authorized by this NWP. One commenter said that pipeline maintenance activities should be exempt from permit requirements. A commenter stated that PCNs should be required for all underground utility lines to ensure that the installation of those utility lines does not drain wetlands. Another commenter said that sidecast material from utility line installation should be removed within 30 days. One commenter indicated that utility lines constructed in waters of the United States parallel to streambeds should be limited to 500 feet in length to ensure that those activities result in minimal adverse effects on the aquatic environment.

This NWP authorizes the construction, maintenance, and repair of utility lines, including underground gas transmission lines, that have minimal adverse effects on the aquatic environment. We do not agree that the terms for underground transmission lines are too restrictive. This NWP does not authorize wireless communication towers because these facilities are not utility lines. Well drilling fluid flowlines are not authorized by this NWP, because they are not utility lines. The construction or installation of wireless communication towers or well drilling fluid flowlines in waters of the United States can be authorized by individual permits, regional general permits, or other NWPs. Pipeline maintenance activities can be authorized by this NWP or NWP 3, although some pipeline maintenance activities may be eligible for the Section 404(f) exemption. This NWP contains specific terms to ensure that the installation of utility lines does not drain wetlands. This NWP does not authorize the installation of utility lines that result in french drains. We believe that the 180 day limit is appropriate for temporary sidecasting of excavated material, but division engineers can regionally condition this NWP to reduce this time period, if such a reduction is necessary to ensure that the NWP authorizes only activities with minimal adverse effects. Paragraph (d) of the "Notification" section of this NWP will allow district engineers to review proposed utility lines to be installed in waters of the United States parallel to stream beds and ensure that these activities result in minimal adverse effects on the aquatic environment.

One commenter requested clarification whether a Corps permit is required if the United States Coast Guard does not require a permit under Section 9 of Rivers and Harbors Act. Another commenter said that pipelines are transportation structures.

A Section 10 permit is not required for utility lines constructed over navigable waters of the United States to transport gaseous, liquid, liquifiable, or slurry substances, because these structures are considered bridges which are regulated under Section 9, not Section 10, of the Rivers and Harbors Act. Pipelines constructed over navigable waters may be considered bridges under Section 9 of the Rivers and Harbors Act.

Two commenters supported the inclusion of utility line substations in the proposed modification of this NWP. One commenter said that the acreage limit of utility line substations should be ¼ acre. Several commenters recommended adding "storage facilities" to paragraph (ii) to authorize these activities with utility line substations. Two commenters requested a definition of the term "substation." One commenter said that this NWP should not authorize the construction of substations in floodplains. Another commenter stated that electric and pumping substations should be sited in uplands.

We have changed the acreage limit for the construction or expansion of utility line substations to ½ acre, to ensure that this NWP authorizes only activities with minimal adverse effects on the aquatic environment. Notification is required for discharges of dredged or fill material resulting in the loss of greater than ⅒ acre of non-tidal waters of the United States for the construction or expansion of utility line substations.

We do not agree that storage facilities should be included with utility line substations. These facilities may be authorized by NWPs, regional general permits, or individual permits. The term "utility line substations" includes power line substations, lift stations, pumping stations, meter stations, compressor stations, valve stations, small pipeline platforms, and other facilities integral to the operation of a utility line. There are situations where utility line substations must be located in waters of the United States within 100-year floodplains or other waters of the United States. Utility line substations constructed in waters of the United States within 100-year floodplains must comply with General Condition 26.

One commenter recommended limiting foundations for overhead utility line towers, poles, and anchors to 1 acre or 250 linear foot of stream bed. This commenter also said that losses of waters of the United States resulting from the installation of overhead utility line towers, anchors, and poles should be included with the impacts caused by utility line substations when determining if an activity meets the acreage limits of this NWP.

We do not believe it is necessary to impose an acreage limit on foundations for overhead utility line towers, poles, and anchors, but division engineers can regionally condition this NWP to impose such limits if it is necessary to ensure that the NWP authorizes only activities with minimal adverse effects on the aquatic environment. We do not agree that foundations for overhead utility line towers, poles, and anchors should be included with the acreage limit for utility line substations. For those utility line activities that require notification, district engineers will review PCNs to ensure that these activities result in minimal adverse effects on the aquatic environment.

One commenter objected to the proposed modification to authorize the construction of permanent access roads in waters of the United States. Another commenter asked whether permanent or temporary access roads are authorized by paragraph (iv) of this NWP. One commenter said that the 1 acre limit is too high and recommended a ⅒ acre limit for permanent access roads. Another commenter recommended a 250 linear foot limit on stream bed impacts for the construction of access roads. One commenter asked if the 500 linear foot PCN threshold for permanent access roads constructed above-grade in waters of the United States applies to an entire project or a single crossing.

Permanent access roads are necessary for the operation and maintenance of utility lines and should be authorized by this NWP as part of a single and complete utility line project. Paragraph (iv) of the NWP authorizes only permanent access roads; temporary access roads can be authorized by NWP 33. We have changed the acreage limit for above-grade permanent access roads to ½ acre, to ensure that this NWP authorizes activities with minimal adverse effects on the aquatic environment. We do not agree that it is necessary to impose a 250 linear foot limit on stream bed impacts for access roads, since most of the access roads will be constructed perpendicular to

streams. The 500 linear foot PCN threshold for access roads applies to each single and complete crossing (see 33 CFR 330.2(i)).

One commenter supported the provision requiring access roads to be constructed with pervious surfaces. Two commenters objected to this requirement. One of these commenters noted that it may not be possible to utilize pervious surfaces, because those materials may not be practicable, stable, or safe in certain situations.

We have deleted the last sentence of paragraph (iv) to allow this NWP to authorize permanent access roads constructed with impervious material. However, to ensure that permanent access roads constructed with impervious material result in minimal adverse effects on the aquatic environment, we have added paragraph (g) to the "Notification" section to require notification when access roads for utility lines are constructed with impervious materials.

One commenter requested clarification whether this NWP authorizes mechanized landclearing necessary to maintain a previously established utility line right-of-way. One commenter said that this NWP should not authorize mechanized landclearing of forested wetlands, unless the acreage and functions of those wetlands are replaced. Several commenters objected to the requirement for mitigation to offset permanent adverse effects to waters of the United States, such as the conversion of forested wetlands to emergent wetlands in permanently maintained utility line right-of-ways. One commenter objected to the language in the NWP that excludes temporary adverse effects due to filling, flooding, excavation, or drainage from the calculation of permanent losses of waters of the United States. One commenter said that mitigation plans should be required with all PCNs. Two commenters supported the Corps position that it does not regulate groundwater flow. Another commenter said that this NWP should be conditioned to prohibit impacts to groundwater.

This NWP authorizes mechanized landclearing that is necessary to maintain an existing utility line right-of-way, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as close as possible. District engineers will require mitigation for the permanent conversion of wetland types to ensure that utility line activities will result in minimal adverse effects on the aquatic environment. Impacts to waters of the United States due to temporary filling, flooding, excavation, or drainage should not be considered as permanent losses, because this NWP requires the restoration of temporarily affected waters of the United States. We do not agree that it is necessary to require the submission of mitigation plans with all PCNs, because compensatory mitigation is not required for all utility line activities. We maintain our position that we do not regulate groundwater flows, but district engineers may consider adverse effects to groundwater when reviewing PCNs.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. For utility line activities resulting in discharges of dredged or fill material into waters of the United States within 100-year floodplains, General Condition 26 requires the permittee to notify the district engineer and demonstrate that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. NWP 12 is reissued with the modifications discussed above.

14. Linear Transportation Crossings: In the July 21, 1999, **Federal Register** notice, we proposed to modify NWP 14 to authorize the construction, expansion, modification, or improvement of linear transportation crossings, with a higher acreage limit for public linear transportation crossings constructed in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters.

Two commenters said that the proposed modification of NWP 14 will authorize activities with more than minimal adverse effects on aquatic environment. Two commenters said that this NWP should have the same terms and conditions as NWPs 41 and 43 because these NWPs authorize similar activities.

The terms and conditions of this NWP will ensure that only activities with minimal adverse effects on the aquatic environment will be authorized. Most activities authorized by this NWP require notification to the district engineer, which will allow case-by-case review of proposed NWP 14 activities. NWPs 14, 41, and 43 authorize distinctly different activities and should not contain the same terms. However, these NWPs can be combined to authorize a single and complete project, provided the activity complies with General Condition 15.

One commenter supported limiting the modification of this NWP to the authorization of linear transportation crossings. Another commenter said that this NWP should not authorize new linear transportation crossings. A commenter stated that the maintenance of road crossings should be exempt from permit requirements and that NWP 14 should be needed only for the construction of new crossings. One commenter indicated that this NWP should be limited to the construction of span bridges and should not authorize culverted crossings. A commenter said that the NWP should authorize integral features associated with the linear transportation crossing. One commenter objected to the proposed modification, stating that it should not authorize the expansion of airport runways. Two commenters said that the term "public-use airport" should be used when describing airport runways that are to be used by the general public and considered as public transportation crossings.

We have not changed the categories of authorized activities from the proposed modification of NWP 14 published in the July 21, 1999, **Federal Register** notice. Some road crossing maintenance activities may qualify for the Section 404(f) exemption and not require a DA permit. Maintenance activities that require changes in the configuration or design of the linear transportation crossing are authorized by this NWP, provided the work meets the terms and conditions of the NWP and results in minimal adverse effects on the aquatic environment. We do not agree that this NWP should be limited to span bridges. Culverts and fords can be used to construct linear transportation crossings that have minimal adverse effects on the aquatic environment. Features that are an integral part of the linear transportation crossing, such as interchanges, rail spurs, stormwater detention basins, and water quality enhancement measures are authorized by this NWP. However, this NWP can be combined with other NWPs to authorize a single and complete project provided the activity complies with the requirements of General Condition 15. We maintain our position that this NWP should authorize the expansion of airport runways. We do not agree that it is necessary to incorporate the term "public-use airport" in the text of the NWP. District engineers will determine on a case-by-case basis whether the

construction of a linear transportation crossing for an airport is a public or private activity.

Several commenters objected to the differentiation between public and private linear transportation crossings for the acreage limits of the proposed modification of this NWP. Two commenters agreed that public linear transportation crossings should have higher acreage limits under this NWP. One commenter requested clearer definitions of the terms "public" and "private" as used in the context of this NWP. This commenter asked if the determination whether a particular activity is public or private depends upon the users of the linear transportation crossing or the project proponent. For example, if a private developer is required to build a road that will be used by the general public as a condition of subdivision approval, would that road be considered a public or private road for the purposes of this NWP?

We maintain our position that public linear transportation crossings should have a higher acreage limit because they fulfill a larger proportion of public interest factors and the government agencies that typically sponsor and build these projects have the resources necessary to ensure that these projects have minimal adverse effects on the aquatic environment. Public transportation projects often require detailed planning processes to document compliance with the National Environmental Policy Act, Section 404 of the Clean Water Act, and other applicable laws. As a result, we have decided that it is appropriate to impose a higher acreage limit for public linear transportation projects in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters.

Public linear transportation crossings are available for use by the general public. Private linear transportation crossings are restricted to use by an individual or a specific group of individuals. The users of the crossing determine whether the crossing is public or private, not the builder of the transportation crossing. Public roads that are constructed as a condition of subdivision approval and will be used by the general public are considered public linear transportation crossings for the purposes of this NWP.

Many commenters recommended a 2 acre limit for public linear transportation crossings. One commenter suggested a 3 acre limit. Two commenters said that the 1 acre limit for public linear transportation crossings is too low. Several commenters stated that this NWP should have a ⅓ acre limit. One commenter said that the length of fill should not exceed 200 feet and another commenter remarked that the 200 foot restriction for fills should be removed from the NWP. Two commenters recommended replacing the 200 foot limit with a 500 foot limit. One commenter suggested a 500 linear foot limit for stream bed impacts.

We have determined that the maximum acreage limit for this NWP should be ½ acre, to ensure that this NWP only authorizes activities with minimal adverse effects on the aquatic environment. For public linear transportation crossings constructed in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, the acreage limit will be ½ acre. For public linear transportation crossings in tidal waters or non-tidal wetlands adjacent to tidal waters, the acreage limit will be ⅓ acre. For private linear transportation crossings, the acreage limit will be ⅓ acre. The 200 foot limit for the length of fill in waters of the United States will be retained for public linear transportation crossings constructed in tidal waters or non-tidal wetlands adjacent to tidal waters and for private linear transportation crossings.

One commenter said that PCNs should be required for all activities authorized by this NWP. Several commenters recommended a PCN threshold of ⅓ acre. Two commenters suggested that PCNs should be required for discharges of dredged or fill material resulting in the loss of greater than 500 linear feet of stream bed. Three commenters said that notification should not be required for all discharges into special aquatic sites. One commenter requested clarification concerning when a PCN is required for discharges into waters of the United States that are not special aquatic sites.

We have modified this NWP to require notification for discharges of dredged or fill material resulting in the loss of greater than 1/10 acre of waters of the United States. We are retaining the notification requirement for all discharges of dredged or fill material into special aquatic sites. If the proposed work does not involve discharges of dredged or fill material into special aquatic sites, the prospective permittee is required to notify the district engineer if the proposed work will result in the loss of greater than 1/10 acre of waters of the United States.

One commenter asked if the acreage limits for this NWP apply only to permanent losses of waters of the United States. Three commenters requested clarification whether the requirement for a mitigation proposal in paragraph (c) applies to the mitigation process (i.e., avoidance, minimization, and compensation) or only to compensatory mitigation. One commenter said that there should be an acreage threshold for the requirements of paragraph (c). One commenter said that mitigation should be required for all impacts to waters of the United States and another commenter stated that mitigation should be required for discharges resulting in the loss of greater than 1 acre of waters of the United States.

In accordance with the definition of the term "loss of waters of the United States" in the "Definitions" section of the NWPs, the acreage limit applies only to permanent losses of waters of the United States. We have inserted the word "compensatory" before the phrase word "mitigation proposal" in paragraph (c) to clarify that the prospective permittee must submit a compensatory mitigation proposal with the PCN. The requirement for a compensatory mitigation proposal applies only to those activities that require notification. District engineers can determine, on a case-by-case basis, that compensatory mitigation is not necessary to offset losses of waters of the United States because the work, without compensatory mitigation, will result in minimal adverse effects on the aquatic environment. We have also inserted the phrase "of waters of the United States" after the term "temporary losses" in paragraph (c) to clarify that the required statement must address temporary losses of waters of the United States.

One commenter suggested that notification should be required if NWP 14 was previously used to authorize a road crossing on the same waterbody. Another commenter objected to considering each crossing of a separate waterbody as a distinct single and complete project. One commenter said that the second sentence of paragraph (h) should be deleted because it contradicts the definition of the term "single and complete project."

Since notification is required for all discharges of dredged or fill material into special aquatic sites and discharges resulting in the loss of greater than 1/10 acre of waters of the United States, most activities authorized by this NWP will require notification to the district engineer. If NWP 14 is used more than once by different project proponents to cross a single waterbody, the district engineer will assess the adverse effects on the aquatic environment and determine if those adverse effects are minimal. The second sentence of

paragraph (h) does not contradict the Corps definition of the term "single and complete project" at 33 CFR 330.2(i).

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. For linear transportation crossings resulting in discharges of dredged or fill material into waters of the United States within 100-year floodplains, General Condition 26 requires the permittee to notify the district engineer and demonstrate that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. NWP 14 is reissued with the modifications discussed above.

27. Stream and Wetland Restoration Activities: In the July 21, 1999, **Federal Register** notice, we proposed to modify NWP 27 to authorize the restoration of tidal waters and the restoration and enhancement of non-tidal streams and non-tidal open waters.

One commenter supported the expansion of this NWP to tidal waters. This commenter requested clarification regarding which restoration activities can occur in Section 10 waters and tidal waters. One commenter said that the title of this NWP should be changed to include creation activities. This commenter asked for clarification concerning the types of wetland creation activities that are authorized by this NWP. This commenter said that a Corps permit should be required only if the wetland creation activity includes connecting the wetland creation site to waters of the United States. One commenter said that restoration activities should be limited to restoring areas to their historic state and another commenter stated that NWP 27 should authorize activities that are part of a watershed improvement plan. One commenter said that this NWP should have enforceable conditions and permittees should be required to obtain restoration agreements that are approved by the Corps and the resource agencies. One commenter recommended a 2 acre limit for this NWP. Another commenter recommended that the Corps add a note to this NWP that is similar to the note at the end of NWP 39, which describes open waters of the United States.

This NWP authorizes the restoration of former tidal waters, the enhancement of degraded tidal wetlands, and the creation of tidal wetlands. We do not agree that it is necessary to include the word "creation" in the title of this NWP, since it is clearly indicated in the first paragraph of this NWP that wetland creation activities are authorized. This NWP provides authorization for all wetland creation activities, provided those activities comply with the terms and conditions of this NWP. Wetland creation activities that do not involve discharges of dredged or fill material into waters of the United States do not require a Section 404 permit. We do not agree that this NWP should be limited to restoring wetlands to their historic state, because restoration projects result in net improvements to the aquatic environment, even though they may not restore former waters to their historic state. This NWP can authorize the restoration, enhancement, and creation of aquatic habitats that are part of a watershed improvement plan.

We do not agree that it is necessary to execute restoration agreements for all activities authorized by this NWP. Such a provision would likely to discourage landowners from conducting these activities. Since this NWP authorizes activities that benefit the aquatic environment, an acreage limit would be counterproductive. The activities authorized by this NWP either require notification to the district engineer or involve oversight by other Federal agencies, which will ensure that only activities that benefit the aquatic environment are authorized by this NWP. A definition of the term "open water" is included in the "Definitions" section of the NWPs. Therefore, it is not necessary to include a note in this NWP.

One commenter said that this NWP should authorize the restoration and enhancement of tidal wetlands and streams. Another commenter stated that NWP 27 should authorize restoration, enhancement, and creation activities in drainage ditches, because it is difficult to distinguish between drainage ditches and streams in the mid-West. Several commenters believe that significant stream destruction can be authorized by this NWP and suggested imposing a limit of 250 linear feet on stream impacts.

This NWP authorizes the restoration and enhancement of tidal wetlands, but it does not authorize the restoration of tidal streams, particularly the open water areas of tidal streams. However, the restoration and enhancement of riparian zones next to tidal streams is authorized by this NWP. The restoration of tidal streams is not authorized by NWP 27 because changes in tidal aquatic habitats may result in more than minimal adverse effects on the aquatic environment. The restoration of tidal streams can be authorized by individual permits or regional general permits. This NWP authorizes the restoration and enhancement of non-tidal streams that were channelized to create drainage ditches, including the restoration and enhancement of riparian zones next to those streams. Since the activities authorized by NWP 27 benefit the aquatic environment and most activities require notification or oversight by other agencies, we do not agree that it is necessary to impose a linear limit on stream impacts.

One commenter said that this NWP should authorize only those activities that are conducted or sponsored by Federal or state agencies. Two commenters support the use of this NWP to authorize the restoration of aquatic habitats on public or private land. One commenter stated that the recommendation in paragraph (c) to plant native species on the project site should be modified to require the permittee to use local sources of plant materials.

Limiting this NWP to activities conducted or sponsored by Federal or state agencies would preclude the use of an NWP for many aquatic habitat restoration, enhancement, and creation activities conducted by private individuals that benefit the aquatic environment. We do not agree that permittees should be required to use local sources of plant materials.

One commenter objected to the provision that allows the relocation of aquatic habitats on the project site, stating that this provision is contrary to the avoidance and minimization requirements of the NWPs. Another commenter said that the relocation of aquatic habitats should be authorized only when it is ecologically preferable than avoidance and minimization. This commenter also requested that the NWP contain a provision that requires the relocated waters to be equal or greater in acreage than the waters of the United States filled as a result of the authorized activity. One commenter indicated that the relocation of aquatic habitats on the project site should not be authorized by this NWP.

Allowing the relocation of non-tidal waters on the project site is not contrary to General Condition 19 because NWP 27 requires authorized activities to result in net gains in aquatic resource functions and values. We are retaining

the provision that allows the relocation of non-tidal waters on the project site.

One commenter opposed the use of rip rap for activities authorized by this NWP and another commenter supported the use of rip rap. One commenter said that the removal of accumulated sediments requires a Corps permit only when the work is conducted in navigable waters (i.e., Section 10 waters). Another commenter asked if the removal of accumulated sediments is authorized only once or if this activity can occur for the duration of the project to maintain the restored areas. One commenter stated that this NWP should also authorize the management of the restored, created, or enhanced waters.

Rip rap provides habitat for many species of aquatic organisms and its use should be authorized by this NWP, provided the authorized work results in net gains in aquatic resource functions and values. The Corps regulatory authority regarding excavation activities in waters of the United States is addressed in a previous section of this **Federal Register** notice. The removal of accumulated sediments is authorized by this NWP as often as necessary to maintain the restored areas, although the permittee should endeavor to locate the sediment source and try to stabilize that area to reduce inputs of sediment in the restored waters. This NWP authorizes activities necessary to maintain the restored, enhanced, or created aquatic habitats.

One commenter asked for a definition of the term "small" water control structure. This commenter recommended defining a small water control structure as a structure that impounds water to a maximum depth of 2.5 feet or less. This commenter also requested clarification concerning the extent of mechanized landclearing activities that are authorized by this NWP to remove undesirable vegetation. This commenter said that mechanized landclearing should be limited to establishing or maintaining native herbaceous wetland plant species and selected plant species that provide food for wildlife. This commenter recommended limiting mechanized landclearing to vegetation that has a diameter at breast height of 4 inches or less.

We do not believe that it is necessary to specify the dimensions of small water control structures that are authorized by this NWP. For those activities that require notification, the district engineer will determine whether the water control structure is authorized by this NWP. This NWP authorizes mechanized landclearing to remove undesirable vegetation and we recommend replacing the removed vegetation with native plant species. We do not agree that mechanized landclearing activities authorized by this NWP should be limited to vegetated that has a diameter at breast height of 4 inches or less, because the proposed work may require the removal of larger undesirable trees.

One commenter supported the provision that the conversion of natural wetlands to another aquatic use is not authorized by NWP 27. Two commenters stated that the construction of water impoundments should not be authorized by this NWP. One commenter opposed the prohibition against the impoundment of streams or the conversion of forested wetlands to construct waterfowl impoundments, because this commenter believes that these activities benefit the aquatic environment. This commenter supports the term of NWP 27 that prohibits the channelization of streams.

We maintain our position that this NWP should not authorize the impoundment of streams or the conversion of forested wetlands to construct waterfowl impoundments. These activities often result in more than minimal adverse effects to the aquatic environment by destroying or degrading habitat that is utilized by many other species of wildlife. However, open water impoundments can be created from uplands on the project site or by converting a non-tidal emergent or scrub-shrub wetland, provided that wetland type is recreated elsewhere on the project site and there are net gains in aquatic resource functions and values on the project site.

One commenter stated that all reversion activities on agricultural lands should be authorized by NWP 40 and all reversion activities on reclaimed surface coal mined lands should be authorized by NWP 21. Another commenter requested clarification of the provision that authorizes the reversion of wetlands restored, created, or enhanced on prior converted cropland. This commenter also suggested that a five year time limit for reversions should apply to agreements with the U.S. FWS or NRCS that do not have time limits. One commenter stated that the paragraph of NWP 27 that address reversion activities implies that the Corps is asserting jurisdiction over wetlands that were created on prior converted cropland, even though a Corps permit was not required to restore wetlands on that cropland. This commenter said that the Corps cannot consider all created wetlands to be jurisdictional wetlands.

It is more appropriate to authorize reversion activities by NWP 27, since this NWP was likely to be used to authorize the initial wetland restoration, enhancement, or creation activity. This NWP authorizes the reversion of wetlands that were restored, enhanced, or created on prior converted cropland that has not been abandoned, because prior converted croplands are not waters of the United States and a Section 404 permit is not required for discharges of dredged or fill material into prior converted cropland. We do not agree that it is necessary to impose a five year limit for reversions on U.S. FWS or NRCS agreements that do not have time limits. A Section 404 permit is not required to revert wetlands that are not considered waters of the United States.

One commenter supported the note in the proposed modification of NWP 27, which states that compensatory mitigation is not required for activities authorized by this NWP, provided there are net increases in aquatic resource functions and values in the project area. Two commenters said that this NWP should be used to authorize all compensatory mitigation projects. One commenter supports the use of NWP 27 to authorize the establishment of mitigation banks. Many commenters objected to the use of NWP 27 to authorize discharges of dredged or fill material into waters of the United States to construct mitigation banks. Several commenters oppose this provision, stating that mitigation banks should be subject to public comment because they affect local development patterns and land prices. The Corps received comments that it appeared that NWP 27 could be used to authorized mitigation banks that may not have been approved by an Interagency Mitigation Banking Review Team. That was not our intent. NWP 27 can only be used to authorize impacts at a mitigation bank that has been approved under the National Interagency Federal Mitigation Banking Guidance.

We maintain our position that NWP 27 may be used to authorize compensatory mitigation projects, including mitigation banks, that involve activities in waters of the United States, provided the work results in a net increase in aquatic resource functions and values in the project area. The use of NWP 27 to authorize mitigation banks does not override the Federal guidance for the establishment, use, and operation of mitigation banks that was issued in 1995. We do not agree that it is necessary to require individual permits for all mitigation banks, because they benefit the aquatic environment.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that

the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which requires notification for activities in designated critical resource waters. NWP 27 is reissued with the modifications discussed above.

39. Residential, Commercial, and Institutional Developments: In the July 21, 1999, **Federal Register** notice, we proposed to issue an NWP to authorize discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction of building pads, building foundations, and attendant features for residential, commercial, and institutional developments.

Many commenters opposed the issuance of the proposed NWP. Two commenters said that this NWP should authorize discharges of dredged or fill material into non-tidal wetlands that are adjacent to tidal waters.

We believe that the scope of waters for this NWP is appropriate to ensure that NWP 39 authorizes only those residential, commercial, and institutional development activities that have minimal adverse effects on the aquatic environment.

One commenter said that this NWP should authorize only single and complete projects that consist of buildings and attached or integral attendant features. This commenter indicated that this NWP should not authorize the expansion of existing developments. Several commenters stated that golf courses should not be authorized by this NWP because they are not necessary for residential developments. Another commenter said that this NWP should authorize discharges of dredged or fill material into waters of the United States for the construction of ski areas, since they are not more environmentally harmful than golf courses.

We maintain our position that this NWP should authorize building pads and attendant features for residential, commercial, and institutional development activities. Attendant features should not be limited to structures or fills that are attached to buildings. This NWP can be used to authorize the expansion of existing developments, provided the adverse effects on the aquatic environment are minimal, individually and cumulatively. Many residential subdivisions are constructed with golf courses as important attendant features. These types of residential communities are marketed as golf course communities. We do not agree that ski areas are attendant features of residential communities in the same manner as golf courses. Ski resorts are usually constructed first, with residences constructed at a later time.

A large number of commenters supported the indexed acreage limit for NWP 39 that was proposed in the July 21, 1999, **Federal Register** notice. Many commenters opposed the proposed indexed acreage limit. Two commenters objected to the indexed acreage limit, stating that minimal impact determinations are based on the size and quality of the aquatic resources, not the size of the parcel owned by the applicant. A commenter remarked that the indexed acreage limit will encourage developers to build larger projects to qualify for higher acreage limits. Three commenters said that an indexed acreage limit based on project size will not ensure minimal adverse effects on the aquatic environment. Numerous commenters stated that the maximum 3 acre limit is too high. Several commenters said that the maximum indexed acreage limit should be 1 acre. Another commenter suggested a maximum indexed acreage limit of 10 acres. Several commenters recommended that the Corps impose a simple 5 acre limit for this NWP. A number of commenters suggested a simple 10 acre limit for discharges of dredged or fill material into ephemeral streams.

To ensure that this NWP authorizes only activities with minimal adverse effects on the aquatic environment, we have decided to impose a simple ½ acre limit on NWP 39. We have not adopted the indexed acreage limit, which will make NWP 39 easier to implement for both the Corps and the regulated public.

Various commenters suggested 100, 200, 250, and 500 linear foot limitations for stream impacts. One commenter said that NWP 39 should have a limit for perennial and intermittent stream bed impacts.

We have added a 300 linear foot limit for stream bed impacts (i.e., filling and excavating perennial and intermittent stream bed) to this NWP at paragraph (b). Division engineers can regionally condition this NWP to decrease the 300 linear foot limit for filling and excavating stream bed.

Several commenters suggested a PCN threshold of ⅓ acre. Another commenter said that PCNs should be required for all NWP 39 activities. One commenter stated that notification should be required for discharges resulting in the loss of greater than 500 linear feet of stream bed. One commenter said that a PCN should be required for discharges of dredged or fill material that result in the permanent loss of open waters, not all discharges into open waters. A commenter requested clarification of the PCN thresholds of NWP 39. One commenter said that notification should not be required for discharges into intermittent streams. One commenter recommended removing the phrase "including wetlands" at the end of paragraph (c) of the proposed NWP.

To ensure that district engineers will have the opportunity to review all activities that could result in more than minimal adverse effects on the aquatic environment, we have reduced the PCN threshold to 1/10 acre. We are retaining the requirement for notification for all discharges into open waters. The latter notification requirement applies to both temporary and permanent losses of open waters. Notification is not required for all activities authorized by NWP 39. Discharges of dredged or fill material that result in the loss of 1/10 acre or less of non-tidal wetlands do not require the submission of a PCN to the district engineer, although a post-construction notification is required (see paragraph (i)). We have removed the phrase "including wetlands" at the end of paragraph (d) (paragraph (c) of the proposed NWP).

One commenter said that paragraph (d) of the proposed NWP 39 (now designated as paragraph (e)) should not imply that this NWP can be used more than once for the same activity.

Paragraph (e) requires the discharge of dredged or fill material into waters of the United States for the residential, commercial, or institutional development activity to be for a single and complete project. NWP 39 can be used more than once for a single and complete project, provided the combined losses of waters of the United States from all of the phases of that single and complete project do not exceed the ½ acre or the 300 linear foot limits for NWP 39.

One commenter expressed support for the statement of avoidance and minimization that is required by paragraph (e) of the proposed NWP 39 (now designated as paragraph (f)). Two commenters stated that the requirement for a written avoidance and minimization statement is similar to an alternatives analysis and would be cost-prohibitive for many mid-sized activities. Another commenter opposed this requirement because the NWP

regulations already require avoidance and minimization.

We are retaining the requirement for the submission of a written statement explaining how avoidance and minimization of losses of waters of the United States was achieved on the project site. This statement should consist of a brief explanation that discusses how the activity was planned to avoid and minimize losses of waters of the United States on-site to the maximum extent practicable. An exhaustive analysis is not required. The required statement will document compliance with General Condition 19 and will help expedite reviews of PCNs by district engineers.

One commenter supported the mitigation requirements for NWP 39. Two commenters stated that compensatory mitigation should be required for all activities authorized by this NWP. Another commenter said that compensatory mitigation should be required for activities that require notification. Two commenters stated that the provision of paragraph (e) of the proposed NWP 39 (now designated as paragraph (f)) that provides the prospective permittee with the opportunity to submit justification explaining why compensatory mitigation is unnecessary should be deleted because it is inconsistent with the compensatory mitigation requirements of the other NWPs. One commenter recommended including a reference to the mitigation provisions in General Conditions 13 and 19 in paragraph (e) of the proposed NWP 39. Another commenter said that all prospective permittees should be required to submit detailed mitigation plans with the PCN.

As discussed elsewhere in this **Federal Register** notice, compensatory mitigation will normally be required for those activities that require notification to the district engineer, to ensure that the authorized work results in minimal adverse effects on the aquatic environment. If the proposed work will result in minimal adverse effects on the aquatic environment without compensatory mitigation, then the district engineer can issue an NWP verification without special conditions that require compensatory mitigation. Allowing the prospective permittee to submit a statement with the PCN to assert that compensatory mitigation is unnecessary to ensure minimal adverse effects is not contrary to the compensatory mitigation requirements of the NWPs. District engineers can determine that compensatory mitigation is necessary to ensure that the adverse effects on the aquatic environment are minimal, even though the prospective permittee may believe that compensatory mitigation should not be required. We have added text to paragraph (f) that refers to General Condition 19, which contains the mitigation requirements for the NWPs. As discussed in the section addressing the NWP general conditions, we have moved the compensatory mitigation information from paragraph (g) of General Condition 13 to General Condition 19. We maintain our position that the prospective permittee can submit either conceptual or detailed compensatory mitigation plans with the PCN. Detailed compensatory mitigation plans can be required as special conditions of the NWP authorization.

One commenter requested clarification of the phrase "minimal degradation of water quality," which appears in paragraph (g) of the proposed NWP 39, because it could be subject to broad interpretation.

The requirements of paragraph (g) (now designated as paragraph (h)) are intended to reinforce the fact that the NWPs can authorize only activities with minimal adverse effects on the aquatic environment, by focusing on two important aspects of the aquatic environment that can be altered by NWP activities, namely water quality and stream flows.

Two commenters object to the requirements of paragraph (h) of the proposed NWP 39 (now designated as paragraph (i)) because it infers that mitigation is required for activities that do not require notification. Another commenter identified an inconsistency in this paragraph, because it contains a reference to stream impacts and this commenter noted that NWP 39 requires notification for all discharges of dredged or fill material into streams.

Compensatory mitigation is not required for those NWP activities that do not require notification to the district engineer. However, compensatory mitigation to offset losses of waters of the United States may be required by state or local permits, which should be reported to the Corps through the post-construction notification required by paragraph (i). We have removed the references to stream bed impacts from paragraph (i), since the NWP requires notification for all discharges into open waters.

One commenter opposed the provisions of paragraph (i) of the proposed NWP 39 (now designated as paragraph (j)), which requires the permittee to establish and maintain, to the maximum extent practicable, vegetated buffers next to open or streams within the project area. Another commenter said that Federal and state lands should be required to have a management plan instead of deed restrictions for vegetated buffers.

The requirements for vegetated buffers next to open waters are discussed in detail in a previous section of this **Federal Register** notice. There is flexibility in the requirements of paragraph (j). If there are open waters or streams within the project area and it is impractical for the project proponent to establish and maintain vegetated buffers next to those waters, then those vegetated buffers are not required. However, other types of compensatory mitigation may be required to ensure that the work results in minimal adverse effects on the aquatic environment. District engineers will determine, on a case-by-case basis, when it is practicable to establish and maintain vegetated buffers and the appropriate width of those vegetated buffers.

Several commenters opposed paragraph (j) of the proposed NWP 39 (now designated as paragraph (k)), which prohibits stream channelization or stream relocation downstream of the point on the stream where the average annual flow is 1 cubic foot per second (cfs). One commenter supported this provision. Some of these commenters indicated that this provision will be difficult to implement in areas with many ephemeral streams. Other commenters stated that this requirement is difficult to implement because it will be expensive and time consuming to determine where the 1 cfs point occurs. One commenter suggested that stream channelization or relocation activities should be limited to ephemeral streams instead of prohibiting these activities downstream of the 1 cfs point. Another commenter recommended replacing the 1 cfs criterion with either a prohibition against channelizing perennial streams or utilizing drainage area instead of average annual flow. This commenter suggested applying the prohibition to streams with a drainage area greater than 250 acres.

We discussed the identification of the 1 cfs point on streams in a previous section of this **Federal Register** notice. Drainage area, based on regional criteria, can be used to approximate the location of the 1 cfs point on a stream. We believe that the prohibition in paragraph (k) is necessary to ensure that NWP 39 authorizes only activities with minimal adverse effects on the aquatic environment. This provision is consistent with the increased emphasis we are placing on the protection of open and flowing waters.

Several commenters objected to allowing project proponents to construct

their activities in phases. Numerous commenters said that NWP 39 should not be used with NWP 14 because it will authorize activities that exceed the acreage limit of NWP 39.

District engineers will review PCNs for phased construction projects to determine if those activities comply with the terms and conditions of the NWPs. District engineers will also review the PCNs for these activities to ensure that they result in minimal adverse effects on the aquatic environment. General Condition 15 states that when more than one NWP is used to authorize a single and complete project, that single and complete project is subject to the highest specified acreage limit of those NWPs. Therefore, when NWP 14 is combined with NWP 39 to authorize a single and complete project, the total project acreage limit will be ½ acre.

One commenter asked how a project proponent would know if NWP 40, as it was issued in 1996, was used to construct a farm building that was more than 500 feet from a waterbody, if that land was sold to build a residential, commercial, or institutional development on the land. One commenter objected to the restrictions relating the use of NWP 39 and NWP 40 on the same parcel, but another commenter supported these restrictions.

The limitations for the use of NWPs 39 and 40 on the same parcel apply only to those activities authorized by the NWPs issued today, because the previous version of NWP 40 authorized discharges of dredged or fill material into farmed wetlands for the construction of farm buildings. We are retaining the provisions limiting the use of NWPs 39 and 40 on the same parcel.

Several commenters objected to the subdivision provision in NWP 39, stating that it will allow the authorization of activities with more than minimal adverse effects on the aquatic environment. One commenter requested clarification whether the subdivision provision applies to all of the terms of NWP 39 or whether it only addresses the acreage limits for each parcel within the subdivision. This commenter also indicated that if the district engineer grants an exemption pursuant to the subdivision provision, then the landowner can use NWP 26 to authorize the development activity. Another commenter said that only NWP 29 should be used to authorize activities on individual lots within an exempted subdivision.

The notification requirements of the subdivision provision will ensure that NWP 39 will authorize only activities with minimal adverse effects on the aquatic environment. District engineers can assert discretionary authority if the proposed work will result in more than minimal adverse effects on the aquatic environment. The subdivision provision addresses only the acreage limits for the subdivision, or the individual parcels within that subdivision if an exemption has been granted by the district engineer. The subdivision provision does not keep NWP 26 in effect for those activities that have been granted an exemption by the district engineer. If an exemption has been granted, the activities on individual parcels must comply with the terms and conditions of NWP 39. We do not agree that activities on individual lots should be eligible only for NWP 29 if an exemption has been granted, because other types of buildings may be constructed on these lots, with minimal adverse effects on the aquatic environment.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. For NWP 39 activities resulting in discharges of dredged or fill material into waters of the United States within 100-year floodplains, General Condition 26 requires the permittee to notify the district engineer and demonstrate that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. Furthermore, General Condition 26 prohibits any above-grade fill under NWP 39 within regulatory floodways above the headwaters. NWP 39 is issued with the modifications discussed above.

40. Agricultural Activities: In the July 21, 1999, **Federal Register** notice, we proposed to modify NWP 40 to authorize discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to improve agricultural production.

A large number of commenters expressed opposition to the proposed modification of this NWP. Many commenters said that the use of this NWP will result in substantial losses of wetlands and some commenters stated that the activities authorized by this NWP will result in more than minimal adverse effects on the aquatic environment. Numerous commenters said that the proposed modification of NWP 40 violates the Clean Water Act because it authorizes discharges of dredged or fill material that result in the loss of agricultural wetlands. Some commenters stated that the proposed modification is unnecessary because on-going farming activities are exempt from Section 404 permit requirements. One commenter said that the proposed modification is contrary to other Federal programs, such as the Wetlands Reserve Program and the Conservation Reserve Program. One commenter indicated that the text of this NWP should reference the wetland conservation provisions of the "Food Security Act of 1985, as amended."

NRCS will review those activities authorized by paragraph (a) and district engineers will review most activities authorized by paragraphs (b), (c), and (d) to ensure that the activities authorized by this NWP do not result in more than minimal adverse effects on the aquatic environment. The use of this NWP will not result in substantial losses of wetlands. Compensatory mitigation will be required for most activities authorized by this NWP to offset losses of waters of the United States and ensure that the authorized work results in minimal adverse effects on the aquatic environment.

The modification of NWP 40 does not violate the Clean Water Act, because the Clean Water Act does not prohibit discharges of dredged or fill material into waters of the United States to increase agricultural production. The Clean Water Act merely requires a permit for such activities. The conversion of wetlands to increase agricultural production is not exempt from Section 404 permit requirements. The proposed modification of NWP 40 is not contrary to the Wetlands Reserve Program or the Conservation Reserve Program. We have modified the text of the NWP to refer to the "Food Security Act of 1985, as amended."

One commenter said that the proposed modification of NWP 40 should authorize activities in non-tidal wetlands adjacent to tidal waters to increase the utility of this NWP in coastal areas. Several commenters stated that this NWP should be restricted to frequently cropped wetlands. Many commenters stated that this NWP should not authorize activities in playas, prairie potholes, and vernal pools. Three commenters indicated that this NWP should not authorize activities within 100 feet of playas, prairie potholes, and vernal pools. Another commenter said that this NWP will authorize the destruction of streams.

We do not agree that this NWP should authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters. In addition, this NWP should not be restricted to frequently cropped wetlands. Division engineers can regionally condition paragraph (b) or (c) of this NWP to prohibit or limit its use in playas, prairie potholes, and vernal pools. This NWP does not authorize the destruction of streams. The only stream impacts authorized by this NWP are discharges of dredged or fill material into waters of the United States to relocate drainage ditches constructed in non-tidal streams.

One commenter stated that a separate NWP should be developed for the installation of drainage ditches or drainage tile. Another commenter asked if this NWP authorizes silvicultural or ranching activities.

This NWP can be used to authorize discharges of dredged or fill material into non-tidal wetlands to construct drainage ditches or install drainage tile, provided the work meets the terms and conditions of this NWP and does not result in the loss of greater than ½ acre of non-tidal waters of the United States. This NWP authorizes silvicultural and ranching activities, because they are considered agricultural activities.

One commenter opposed the proposed indexed acreage limit for this NWP and several commenters supported the use of an indexed acreage limit. One commenter said that the activities authorized by paragraphs (c) and (d) should be included in the indexed acreage limit for this NWP. Two commenters supported the maximum 2 acre limit. Many commenters said that this NWP should have a ¼ acre limit. Other commenters suggested 1/10, ⅓, and 1 acre limits. One commenter supported the 1 acre limit for discharges of dredged or fill material into playas, prairie potholes, and vernal pools. Other commenters said that the acreage limit for discharges into these types of waters should be lower, and one commenter recommended a ⅓ acre limit. Several commenters stated that this NWP should have a linear foot limit for stream impacts. Some commenters suggested a 250 linear foot limit and another commenter recommended a 500 linear foot limit.

Based upon our review of the comments received in response to the July 21, 1999, **Federal Register** notice, we have established a ½ acre limit for discharges of dredged or fill material into non-tidal wetlands (including playas, prairie potholes, and vernal pools) to increase agricultural production. This acreage limit will ensure that the activities authorized by this NWP result in minimal adverse effects on the aquatic environment. We have withdrawn the indexed acreage limit for discharges of dredged or fill material into playas, prairie potholes, and vernal pools to increase agricultural production. We have added a 300 linear foot limit for the relocation of existing drainage ditches constructed in non-tidal streams.

One commenter supported the use of farm tracts to identify single and complete projects under NWP 40. This commenter also said that using farm tracts to define single and complete projects for this NWP is problematic, especially when a farmer leases land to other farms. This commenter stated that landowners would need to request tract numbers and boundary determinations for certain areas, such as range land, where tract numbers or boundary determinations have not yet been designated. Several commenters indicated that the acreage limit for this NWP should be based on farms, not farm tracts. Some of these commenters said that basing the acreage limit on farm tracts will allow more than one use of this NWP for a single agricultural operation. One commenter remarked that the use farm tracts in this NWP does not satisfy the definition of independent utility because the majority of farm tracts are not economically self-supporting.

We maintain our position that single and complete projects for this NWP should be based on farm tracts, not farms. Utilizing farm tracts will make this NWP easier to implement for the regulated public, NRCS personnel, and Corps personnel. In addition, the use of farm tracts will avoid the difficulties associated with the leasing of farm tracts. Data from the Farm Service Agency shows that there is an average of 1.5 farm tracts per farm nationwide. Therefore, the use of farm tracts to determine single and complete projects will not result in substantial losses of wetlands. Since NRCS supports the use of farm tracts for this NWP and the national average is 1.5 farm tracts per farm, we cannot agree with the comment that the majority of farm tracts are not economically self-supporting.

Many commenters objected to the terms of paragraph (a) of the proposed modification of NWP 40, stating that the Corps, not NRCS, should review these activities and determine if they can be authorized by NWP 40. One commenter opposed paragraph (a), stating that it does not provide the district engineer with the opportunity to exercise discretionary authority. Two commenters said that the Clean Water Act does not allow the Corps to delegate portions of the Section 404 permit program to NRCS. One of these commenters also stated that there should be a Memorandum of Agreement between the Corps and NRCS to track the use of this NWP. Two commenters said that NRCS does not have the authority under the Clean Water Act to evaluate the indirect or cumulative impacts of activities authorized by this NWP. One commenter remarked that the provisions of paragraph (a) will increase the workload of District Conservationists at local NRCS offices. Many commenters objected to paragraph (a) because division engineers cannot impose regional conditions on this provision of NWP 40.

These terms and conditions of NWP 40, in conjunction with the requirements of NRCS, will ensure that the activities authorized by paragraph (a) will result in minimal adverse effects on the aquatic environment, without oversight by the Corps. The provisions of paragraph (a) do not delegate the Section 404 program to NRCS. The reporting requirements of subparagraph (a)(5) will allow district engineers to monitor the use of this NWP and assess cumulative adverse effects. The comments we received from NRCS do not indicate that the workload increase imposed on District Conservationists will be unmanageable. To assist in the effective implementation of paragraph (a), division engineers cannot impose regional conditions on this term of NWP 40.

One commenter supported the requirement for USDA program participants to be in compliance with the minimal effects criteria of NRCS. One commenter said that subparagraph (a)(1) of NWP 40 should include the terms "categorical minimal effects exemption, minimal effect exemptions, and mitigation exemptions," which are more accurate than the proposed language. This commenter recommended that the phrase "if required" should be included in subparagraph (a)(5) of the proposed modification of NWP 40 because not all activities will require compensatory mitigation. One commenter said that mitigation requirements should be coordinated between NRCS and the Corps to ensure that the mitigation requirements of the Food Security Act and the Clean Water Act are satisfied.

We have modified the text of subparagraph (a)(1) to make it consistent with the terminology utilized in NRCS regulations. We also concur with the third comment in the previous paragraph, and have revised subparagraph (a)(4) accordingly. For

activities authorized by paragraph (a), the Corps will accept the compensatory mitigation requirements of NRCS.

One commenter suggested that NRCS should determine if proposed activities authorized by paragraph (a) will result in unacceptable impact to 100-year floodplains because NRCS must consider impacts to flood storage and flood flowage when determining whether an activity qualifies for a USDA exemption. This commenter also said that if proposed General Condition 27 is not modified to allow NRCS to determine the impacts to 100-year floodplains, then the text of NWP 40 should be revised to include the prohibitions imposed by this general condition.

Since we have modified the proposed General Condition 27 (now designated as General Condition 26) for fills within 100-year floodplains, we have added paragraph (e) to NWP 40. This paragraph states that the permittee must comply with General Condition 26 if the NWP 40 activity is in a 100-year floodplain identified by FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps. We believe that it is adequate to refer the permittee to General Condition 26, instead of incorporating the provisions of this general condition into the text of NWP 40. The Corps, as available, will identify the limits of headwaters for the purposes of General Condition 26.

One commenter said that the PCN threshold for this NWP should be ⅓ acre and another commenter stated that the PCN threshold should be ⅒ acre. A commenter said that the prospective permittee should not be required to disclose past use of NWP 40 with a NWP 40 PCN for additional discharges of dredged or fill material into waters of the United States on the property. Another commenter said that a mitigation plan should be submitted with all NWP 40 PCNs. One commenter said that the phrase "if required" should be included in paragraph (b)(5) because not all activities authorized by NWP 40 will require compensatory mitigation. Another commenter objected to paragraph (b) because it contains no provisions for the Corps to verify wetland determinations.

We have adopted a ⅒ acre PCN threshold for activities authorized by paragraph (b) of this NWP. There is no provision in NWP 40 that requires the permittee to notify the Corps of the past use of NWP 40. Subparagraph (b)(4) of NWP 40 requires the submission of a mitigation plan with the PCN. We do not agree with the fourth comment in the previous paragraph, because we are only requiring the submission of a compensatory mitigation proposal with the PCN. District engineers can determine, on a case-by-case basis, that compensatory mitigation is not necessary to ensure that the authorized activity results in minimal adverse effects on the aquatic environment. Verification of wetland determinations and wetland delineations on agricultural land that will remain in agricultural use is the responsibility of NRCS, not the Corps.

One commenter stated that there should be a separate NWP to authorize discharges of dredged or fill material into waters of the United States for the construction of farm buildings. Several commenters objected to this provision, stating that building pads for farm buildings can be constructed outside of waters of the United States. A commenter remarked that the terms for the construction of farm buildings should be the same as the terms for NWP 29. One commenter said that the use of farm buildings constructed near wetlands and streams will contaminate these waters.

We do not agree that a separate NWP for the construction of farm buildings is necessary. We have reduced the acreage limit from 1 acre to ½ acre to ensure that this NWP authorizes discharges of dredged or fill material for the construction of farm buildings that have minimal adverse effects on the aquatic environment. We disagree with the comment that all farm buildings can be constructed outside of wetlands. Farm buildings serve different purposes and are typically larger than single family residences. Therefore, farm buildings should not be subject to the same terms and conditions as NWP 29. The pollution of streams and other waters from agricultural operations are addressed by other Federal, state, and local programs.

Several commenters stated that this NWP should not authorize the relocation of streams or ditches. One commenter said that there should be a limit on the length of ditch that can be relocated, to ensure that the NWP authorizes only activities with minimal adverse effects. Another commenter indicated that the impacts due to ditch relocations should be included in the 2 acre limit for this NWP.

The relocation of drainage ditches is often necessary to increase agricultural production on the farm tract. We have imposed a 300 linear foot limit for the relocation of existing drainage ditches constructed in non-tidal streams. We do not agree that the relocation of drainage ditches constructed in non-tidal waters of the United States should be included in the ½ acre limit of paragraph (a) or (b) because these relocation activities typically do not result in a net loss of aquatic resource functions and values.

One commenter objected to the proposed NWP, stating that it treats USDA program participants and non-participants differently. Another commenter said that the terms and conditions of NWP 40 should not be established to provide equity between developers and agricultural producers, but instead should be based on activities that are similar in nature that have minimal adverse effects on the aquatic environment. One commenter stated that NWP 40 should be subject to the same terms and conditions as NWP 39.

The terms of paragraphs (a) and (b) do not treat USDA program participants and non-participants differently. These two groups are subject to the same acreage limits and mitigation requirements. The only differences between paragraphs (a) and (b) are the agencies reviewing the proposed work and the reporting requirement for USDA program participants. The terms of NWPs 39 and 40 are established to ensure that these NWPs authorize activities with minimal adverse effects on the aquatic environment. Both NWPs 39 and 40 are subject to the ½ acre limit, but different terms and conditions are necessary because these NWPs authorize different types of activities.

Two commenters expressed concern that NWP 40 will be used by land developers to prepare sites for future development by filling wetlands and keep the land in agricultural production for a few years, and then request authorization under NWP 39 for additional discharges of dredged or fill material into waters of the United States to construct a development. One commenter supported the provision proposed in the July 1, 1998, **Federal Register** notice that allowed the use of this NWP each time it was reissued. Another commenter opposed this NWP, indicating that it can be used repeatedly on a single farm over time. One commenter said that discharges of dredged or fill material into waters of the United States for the construction of compensatory mitigation sites should be calculated in the acreage loss of waters of the United States.

NWP 40 contains provisions that prevent land developers from filling wetlands on agricultural land to increase the amount of non-wetland area on the site for future developments. If NWP 40 was used to authorize discharges of dredged or fill material into non-tidal waters on the farm tract to increase agricultural production and the current landowner wants to use NWP 39 to authorize the construction of

a residential, commercial, or institutional development, the combined acreage loss of waters of the United States authorized by NWPs 39 and 40 cannot exceed ½ acre. NWP 40 cannot be used repeatedly on a single farm tract to exceed the ½ acre limit for a single and complete project. Discharges of dredged or fill material into waters of the United States to construct compensatory mitigation sites should not be calculated in the acreage loss of waters of the United States.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. For NWP 40 activities resulting in discharges of dredged or fill material into waters of the United States within 100-year floodplains, General Condition 26 requires the permittee to notify the district engineer and demonstrate that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. Furthermore, General Condition 26 prohibits any above-grade fill under NWP 40 within regulatory floodways above the headwaters. NWP 40 is reissued with the modifications discussed above.

41. Reshaping Existing Drainage Ditches: In the July 21, 1999, **Federal Register** notice, we proposed to issue an NWP to authorize discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-section of drainage ditches constructed in these waters.

Two commenters opposed the issuance of this NWP if certain channelized streams are considered to be drainage ditches. One commenter said that these activities should be reviewed through the individual permit process. Another commenter stated that this NWP will be abused by landowners who want to reshape the banks of their drainage ditches under the guise of improving water quality.

The maintenance of drainage ditches that were constructed by channelizing streams may be eligible for the Section 404(f) exemption. The purpose of NWP 41 is to provide a general permit that authorizes the reshaping of existing serviceable drainage ditches constructed in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, in a manner that benefits the aquatic environment. This NWP does not authorize reshaping of drainage ditches that increases the area drained by the ditch. We do not agree that this NWP will be abused by landowners, because of the stringent terms of the NWP. Division engineers can revoke this NWP in areas where the reshaping of drainage ditches constructed in non-tidal waters of the United States results in more than minimal adverse effects on the aquatic environment, individually or cumulatively.

Several commenters said that NWP 41 is unnecessary, because these activities are authorized by NWP 3 or are exempt from Section 404 permit requirements. A commenter stated that the discussion of the Section 404(f) exemption for ditch maintenance in the July 21, 1999, **Federal Register** notice is inaccurate because it did not include the recapture provision of Section 404(f)(2). Another commenter indicated that if the intent of NWP 41 is to improve water quality, then these activities should be authorized by NWP 27.

NWP 3 does not authorize the reshaping of drainage ditches constructed in waters of the United States. Maintenance activities explicitly identified in Section 404(f) are exempt from permit requirements, subject to the recapture provisions of Section 404(f)(2). NWP 27 authorizes the restoration, enhancement, and creation of aquatic habitats, not the reshaping of drainage ditches.

One commenter said that this NWP should apply to all man-made ditches, whether or not they are currently serviceable, as long as the cropland draining to the ditch has not been abandoned. A commenter requested criteria that will be used to determine whether a particular ditch is currently serviceable. Another commenter recommended expanding the scope of this NWP to authorize ditch relocation. One commenter said that sidecasting into waters of the United States should not be authorized by this NWP. Another commenter suggested that this NWP should not authorize activities that involve the installation of concrete lining or other hard structures.

This NWP applies only to the reshaping of existing serviceable drainage ditches constructed in waters of the United States. It does not authorize the reconstruction of drainage ditches. We have replaced the word "existing" with the word "currently" in the first sentence of this NWP. For the purposes of NWP 41, the definition of the term "currently serviceable" is the same as the definition provided in NWP 3. This NWP does not authorize ditch relocation, because relocating a drainage ditch is likely to result in draining of areas that were not previously drained. We have modified NPW 41 to allow for the temporary sidecasting of material into waters of the United States. Material may be temporarily sidecast (up to three months) into waters of the United States, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate. This NWP does not authorize discharges of dredged or fill material into waters of the United States to line drainage ditches with concrete or other hard structures.

Several commenters said that the scope of waters for this NWP should be expanded to include tidally influenced drainage ditches. One commenter stated that the text of this NWP is misleading because the Corps has no legal authority to regulate the reshaping of drainage ditches landward of the ordinary high water mark if there is no wetland hydrology. Another commenter recommended adding a provision to NWP 41 which states that the maintenance of existing drainage ditches to their original dimensions and configuration is exempt from Section 404 permit requirements.

We do not agree that this NWP should be expanded to authorize discharges of dredged or fill material into tidal waters of the United States or non-tidal wetlands adjacent to tidal waters. The text of NWP 41 clearly states that it authorizes discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters. If the ditch reshaping activity does not involve discharges of dredged or fill material into waters of the United States, including wetlands, then the project proponent does not need a Section 404 permit. The text of this NWP includes a reference to the Corps regulations that address the Section 404(f) exemptions.

One commenter believes that the water quality benefits of the activities authorized by this NWP are doubtful and that the use of this NWP will increase the drainage of wetlands. Another commenter stated that the activities authorized by this NWP will prevent the development of woody vegetated buffers, which contradicts the goal of no net loss of wetlands and discourage stream restoration. Three commenters said that reshaping a drainage ditch will increase its

hydraulic capacity. One of these commenters indicated that the project proponent should be required to demonstrate that the proposed work will not increase the area drained by the ditch. Two commenters indicated that compensatory mitigation should be required for the activities authorized by this NWP because drainage ditches drain wetlands.

Drainage ditches can be reshaped to improve water quality, without increasing the area drained by those ditches. This NWP does not authorize ditch reshaping activities that expand the area drained by the ditch. The removal of woody vegetation next to the stream is often necessary to maintain or reshape the drainage ditch. We do not agree that it is necessary to require project proponents to provide documentation that demonstrates that the activity will not increase the area drained by the ditch because the work is limited to restoring the ditch to its original capacity. Compensatory mitigation should not be required for activities authorized by this NWP, because it does not authorize the drainage of additional wetlands.

Three commenters recommended a 500 linear foot limit on this NWP and one commenter suggested a 250 linear foot limit. One commenter said that there should not be a limit on this NWP if the activity does not involve sidecasting into waters of the United States. One commenter stated that the PCN threshold should be reduced to 250 linear feet. Two commenters indicated that a delineation of special aquatic sites should not be required for those activities that require notification.

We do not agree that a linear foot limit should be placed on this NWP, because it authorizes activities that typically benefit the aquatic environment. We are retaining NWP 41 on the list of NWPs that require the submission of a delineation of special aquatic sites with the PCN.

One commenter said that NWP 41 should be conditioned to require permittees to obtain certification for best management practices from NRCS. Another commenter stated that this NWP should include a condition prohibiting the construction of berms and levees that would impede overbank flow. One commenter said that this NWP should authorize the reconfiguration of improperly designed drainage ditches, with the submission of a notification that documents the need for reconfiguration, to minimize adverse effects due to headcutting and increases in sediment loads.

We do not agree that it is necessary to require permittees to obtain certification for best management practices from NRCS. General Condition 21 states that NWP activities cannot permanently restrict or impede the passage of normal or expected high flows. Temporarily sidecast material should be placed so that it does not impede overbank flows. No berms, levees, or other similar structures are authorized by NWP 41. The reconfiguration of improperly designed drainage ditches can be authorized by individual permits, regional general permits, or other NWPs.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. NWP 41 is issued with the modifications discussed above.

42. Recreational Facilities: In the July 21, 1999, **Federal Register** notice, we proposed to issue an NWP to authorize discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of recreational facilities that are integrated into the existing landscape.

One commenter said that this NWP will authorize activities with more than minimal adverse effects on the aquatic environment and induce development of neighboring areas. One commenter stated that the word "passive" should be retained in the title of the NWP. One commenter noted that the word "of" should be replaced with the word "or" after the word "construction" in the first sentence. Two commenters said that this NWP should authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

The terms and conditions of this NWP, as well as the ability of division and district engineers to place regional and case-specific conditions on this NWP, will ensure that this NWP authorizes only activities with minimal adverse effects on the aquatic environment. We will not restore the word "passive" to the title of this NWP because it is an ambiguous term that does not provide any value to the NWP. We have replaced the word "of" with the word "or" in the first sentence of the NWP. The scope of applicable waters for this NWP is limited to "non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters" to ensure that this NWP authorizes only activities with minimal adverse effects on the aquatic environment.

Many commenters objected to including the construction and expansion of golf courses and the expansion of ski areas in the list of activities authorized by this NWP. One commenter stated that the improvement of ski areas should be authorized by this NWP, in addition to the expansion of these facilities. One commenter said that other types of recreational facilities should be authorized by this NWP if they do not result in substantial amounts of grading and filling and the adverse effects on the aquatic environment are minimal. This commenter indicated that ball fields should be authorized by this NWP. Another commenter said that impervious surfaces should be authorized in areas where they are required for stabilization or meeting access requirements for disabled persons. One commenter stated that the term "substantial" needs to be defined so that it is consistently implemented by district engineers.

As discussed in the July 21, 1999, **Federal Register** notice, NWP 42 authorizes the construction and expansion of golf courses and the expansion of ski areas that are integrated into the natural landscape. These types of recreational facilities can be constructed without substantial amounts of grading and filling. NWP 42 does not authorize the construction of new ski areas, but this NWP may authorize discharges of dredged or fill material into waters of the United States to improve existing ski areas, provided the activity meets the terms and conditions of this NWP.

This NWP does not authorize the construction or expansion of playing fields because these activities typically require substantial grading and filling to create level playing surfaces, as well as the installation of drainage systems. The construction or expansion of basketball courts, tennis courts, racetracks, stadiums, and areas involve the construction of substantial amounts of impervious surfaces and therefore are not authorized by this NWP. Recreational facilities not authorized by this NWP may be authorized by other NWPs, regional general permits, or individual permits.

This NWP does not authorize discharges of dredged or fill material into waters of the United States to stabilize areas within the recreational facility. NWP 13 may authorize bank stabilization activities associated with the recreational facility. Small amounts of impervious surface may be constructed in recreational facilities

authorized by this NWP to satisfy access requirements for disabled persons. District engineers will determine on a case-by-case basis whether the construction or expansion of a proposed recreational facility will result in substantial changes in preconstruction grades.

Two commenters supported the proposed 1 acre limit. Several commenters stated that the proposed acreage limit is too large. One commenter said that the acreage limit should be ½ acre and two commenters suggested a ⅓ acre limit. A commenter recommended a 100 linear foot limit for stream bed impacts and two commenters suggested a 250 linear foot limit for stream bed impacts.

To ensure that this NWP authorizes activities with minimal adverse effects on the aquatic environment, we have reduced the acreage limit to ½ acre and added a 300 linear foot limit for filling or excavating perennial or intermittent stream beds.

Two commenters said that this NWP should have the same PCN thresholds as NWP 39. Two commenters recommended a PCN threshold of ⅓ acre. One commenter supported the 500 linear foot PCN threshold for perennial and intermittent stream bed impacts. Three commenters stated that the PCN threshold for stream bed impacts should be reduced to 250 linear feet.

We have reduced the PCN threshold to 1/10 acre. Since we have added a 300 linear foot limit for stream bed impacts, we have deleted the 500 linear foot PCN threshold for perennial and intermittent stream bed impacts.

One commenter said that the phrases "has low impact on the aquatic environment" and "consists primarily of open space that" should be deleted from NWP 42 because they are confusing and will cause inconsistent implementation of this NWP. Several commenters indicated that a compensatory mitigation proposal to offset losses of waters of the United States should be required for all activities that require notification.

We have deleted these phrases from the text of NWP 42. We do not agree that it is necessary to require a compensatory mitigation proposal with the PCN, because of the types of recreational facilities authorized by this NWP.

Several commenters said that this NWP should not authorize discharges of dredged or fill material into wetlands for the construction of stables and sanitary facilities. One commenter stated that support facilities should be authorized by NWP 39. Another commenter remarked that support facilities should be constructed in uplands. One commenter said that restaurants and hotels should be authorized by this NWP because these facilities support the recreational facility. One commenter requested a definition of the term "small support facilities." A commenter stated that the phrase "reduced fertilizer use" should be replaced with the term "appropriate fertilizer use" in the last paragraph of this NWP.

We maintain our position that this NWP should authorize small support facilities necessary for the operation of the recreational facility. Permittees are required to comply with General Condition 19, which states that the project proponent must avoid and minimize activities in waters of the United States on-site to the maximum extent practicable. We maintain our position that restaurants and hotels should not be authorized by this NWP. Restaurants and hotels can be authorized by other NWPs, such as NWP 39, regional general permits, or individual permits. District engineers will determine, for those activities that require notification, what constitutes a "small" support facility that is authorized by this NWP. We believe that the term "reduced fertilizer use" is more appropriate because the intent is to encourage permittees to utilize less fertilizer, which will reduce fertilizer loads on neighboring waterbodies.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. For NWP 42 activities resulting in discharges of dredged or fill material into waters of the United States within 100-year floodplains, General Condition 26 requires the permittee to notify the district engineer and demonstrate that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. NWP 42 is issued with the modifications discussed above.

43. Stormwater Management Facilities: In the July 21, 1999, **Federal Register** notice, we proposed to issue an NWP to authorize discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction and maintenance of stormwater management (SWM) facilities.

Several commenters supported the issuance of this NWP and one commenter agreed that the construction of SWM facilities in wetlands is often necessary and that these SWM facilities are often more effective than SWM facilities constructed in uplands. Several commenters objected to the issuance of an NWP that authorizes the construction of SWM facilities in wetlands and other commenters opposed the issuance of a separate NWP for SWM facilities. One commenter said that this NWP should authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

We maintain the position discussed in the July 21, 1999, **Federal Register** notice that the construction of SWM facilities in waters of the United States is often necessary and may provide more protection to the aquatic environment. SWM facilities located in waters of the United States are often more effective than SWM facilities constructed in uplands, because storm runoff flows to streams and wetlands, making these areas more effective at trapping sediments and pollutants than upland areas. The local aquatic environment benefits from more efficient SWM facilities. Low value wetlands and low value ephemeral and intermittent streams may be the best places to locate SWM facilities, to reduce adverse effects to higher value waters by attenuating storm flows and preventing pollutants from further degrading those areas. Division engineers can regionally condition this NWP to prohibit its use in high value waters. For those activities that require notification, district engineers can add case-specific conditions to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority and require an individual permit for activities with more than minimal adverse effects. We do not agree that the scope of applicable waters for this NWP should be expanded to non-tidal wetlands adjacent to tidal waters, because this restriction is necessary to ensure that NWP 43 authorizes activities with minimal adverse effects on the aquatic environment.

Two commenters asked whether NWP 43 authorizes the construction of dams and detention basins to build new SWM facilities. Several commenters said that this NWP does not clearly identify the extent of the Corps regulatory jurisdiction concerning stormwater retention and detention facilities. One of these commenters stated that SWM

facilities constructed in uplands that contain wetland vegetation should not be considered jurisdictional wetlands. One commenter said that 40 CFR 131.10 prohibits states from designating waste transport or waste assimilation uses for any water of the United States. This commenter indicated that NWP 43 is contrary to this regulation because it authorizes the construction of SWM facilities in waters of the United States.

This NWP authorizes the construction of dams and detention basins for SWM facilities. However, this NWP does not authorize discharges of dredged or fill material into perennial streams for the construction of new SWM facilities. SWM facilities that were constructed in uplands and have not been abandoned are generally not considered waters of the United States, but district engineers reserve the right to determine on a case-by-case basis whether these areas are waters of the United States (see 51 FR 41217). The provisions of 40 CFR 131.10 do not prohibit discharges of dredged or fill material into waters of the United States for the construction or maintenance of SWM facilities. Stormwater is not categorized as waste.

One commenter supported the proposed 2 acre limit and several commenters recommended increasing the acreage limit to 3 acres for SWM facilities constructed by local governments or local flood control agencies. One commenter said that the 2 acre limit is too low but another commenter indicated that this acreage limit is too high. One commenter suggested a 1 acre limit for NWP 43 and another commenter recommended a ¼ acre limit. One commenter said that this NWP should have a 100 linear foot limit for stream bed impacts.

We have reduce the acreage limit for this NWP to ½ acre, to ensure that NWP 43 authorizes activities with minimal adverse effects on the aquatic environment. In addition, we have added a 300 linear foot limit for filling or excavating perennial or intermittent stream beds.

One commenter supported paragraph (b) of the proposed NWP (now designated as paragraph (c)), which states that NWP 43 does not authorize discharges of dredged or fill material into perennial streams for the construction of new SWM facilities. One commenter said that this NWP should not authorize discharges of dredged or fill material into any stream with perennial stream segments, because some arid regions of the country have perennial streams that occasionally become dry along certain reaches. Two commenters stated that this NWP should not authorize any discharges of dredged or fill material into streams to construct SWM facilities. One of these commenters expressed concern that the NWP would authorize activities with more than minimal cumulative adverse effects in urban areas and said that the conversion of streams to SWM ponds results in the creation of pollution sinks for urban storm runoff. One commenter said that this NWP should contain a condition that requires the maintenance of stream base flows.

We have retained this paragraph in NWP 43. In arid regions of the country, division engineers can regionally condition this NWP to prohibit or restrict its use in streams with intermittent or ephemeral stream segments, if those streams are high value waters. We do not agree that the prohibition in paragraph (c) should be extended to intermittent or ephemeral streams because we believe that, under the terms and conditions of this NWP, the construction of SWM facilities in these waters will result in minimal adverse effects on the aquatic environment. District engineers will monitor the use of this NWP to ensure that it does not authorize activities with more than minimal adverse effects on the aquatic environment, individually and cumulatively. Compliance with General Condition 21 will ensure that surface water flows will be maintained to the maximum extent practicable.

Two commenters objected to the proposed NWP because it does not contain limits for ephemeral stream impacts. These commenters suggested that this NWP should contain language stating that notification to the district engineer is not required for the construction or maintenance of SWM facilities constructed in ephemeral streams. These commenters also recommended that the text of this NWP explicitly state that SWM facilities that were originally constructed in ephemeral streams that have become perennial or intermittent streams are exempt from any permit requirements.

The ½ acre limit for this NWP adequately limits impacts to ephemeral streams. Division engineers can regionally condition this NWP to impose limits on discharges of dredged or fill material resulting in the loss of ephemeral stream bed, if there are specific concerns for the aquatic environment in those regions. Any discharges of dredged or fill material into waters of the United States associated with SWM facilities constructed in ephemeral streams that are considered waters of the United States requires a Corps permit.

Two commenters said that the ¼ acre PCN threshold is too small and two other commenters suggested a ⅓ acre PCN threshold. One commenter stated that the PCN threshold should be lower.

We have lowered the PCN threshold for this NWP to ⅒ acre, to ensure that district engineers have the opportunity to review all activities that have the potential to result in more than minimal adverse effects on the aquatic environment. We have removed the PCN threshold for activities causing the loss of greater than 500 linear feet of intermittent stream bed, since we have added a 300 linear foot limit for stream bed impacts.

One commenter asked if the PCN threshold applies to wetlands that were created as a result of the impoundment of stormwater. This commenter expressed concern that permittees would be required to mitigate for impacts to wetlands created by the construction of an SWM facility. This commenter said that these wetlands are often removed during routine maintenance activities and that requiring compensatory mitigation for the losses of these created wetlands would adversely affect the ability of permittees to effectively restore SWM facilities to their original design capacities.

Notification to the district engineer is required for discharges of dredged or fill material that result in the loss of greater than ⅒ acre of waters of the United States. District engineers will determine the appropriate amount of compensatory mitigation necessary to offset losses of waters of the United States to ensure that the adverse effects on the aquatic environment are minimal. Subparagraph (d)(3) clearly states that compensatory mitigation is not required for maintenance activities in designated maintenance areas of existing SWM facilities.

One commenter recommended the removal of subparagraph (c)(1) of the proposed NWP (now designated as subparagraph (d)(1)) because the maintenance of SWM facilities occurs on an unpredictable, episodic basis which is not conducive to a maintenance plan. Another commenter said that a compensatory mitigation proposal should not be required for all activities that require notification because the construction of some SWM facilities may result in the establishment of diverse, mature wetlands in areas that are not disturbed for extended amounts of time. This commenter suggested that the district engineer should have the ability to determine whether or not compensatory mitigation should be required for maintenance activities authorized by this NWP.

Subparagraph (d)(1) does not require maintenance on a timed schedule. The maintenance plan can include a statement that maintenance activities will be conducted as needed, to ensure that the SWM facility continues to function effectively. The maintenance plan should also identify the designated maintenance areas of the SWM facility. Subparagraph (d)(3) requires only the submission of a compensatory mitigation proposal with the PCN. Based on the review of a PCN, a district engineer can determine that compensatory mitigation is unnecessary because the adverse effects on the aquatic environment are minimal without compensatory mitigation or that they will be mitigated as wetlands are established in the SWM facility.

Two commenters said that the reference to "watershed protection techniques" should be deleted from paragraph (e) of the proposed NWP (now designated as paragraph (f)) or the term should be defined for the purposes of NWP 43. One commenter stated that the maintenance of existing SWM facilities should be exempted from the requirements of this paragraph. One commenter said that it is inappropriate for the Corps to characterize bioengineering methods as best management practices. This commenter indicated that bioengineering methods should be considered as mitigation and that the permittee should be given compensatory mitigation credits for utilizing bioengineering methods. One commenter indicated that there is a contradiction in the July 21, 1999, **Federal Register** notice because this notice states the district engineer can allow the establishment of mitigation credits in SWM facilities constructed with bioengineering techniques, but mitigation credits cannot be established in regularly maintained areas in SWM facilities. This commenter said that that mitigation credits should be limited to non-maintenance areas and that mitigation credits should not be allowed for the establishment of aquatic benches.

We have retained the phrase "watershed protection techniques" in paragraph (f) because these techniques are an important mechanism to ensure that NWP 43 authorizes activities with minimal adverse effects on the aquatic environment. We will not define this term because appropriate watershed protection techniques may vary in different areas of the country. For example, in many arid regions of the country it may be impractical to establish and maintain vegetated buffers next to streams. In general, the requirements of paragraph (f) apply to the construction of new SWM facilities, but best management practices should be used when conducting maintenance activities. Bioengineering techniques can be used to mitigate adverse effects on surface water quality. These techniques should be considered as best management practices in accordance with the definition in the "Definitions" section of the NWPs. District engineers can grant compensatory mitigation credits for bioengineering methods if those methods result in net gains in aquatic resource functions and values and are not located in areas within SWM facilities that require regular maintenance. Aquatic benches can provide compensatory mitigation, if those areas are not in designated maintenance areas of SWM facilities.

One commenter said the NWP 43 will authorize the construction of more than one stormwater management facility in a single watershed. This commenter stated that paragraph (e) of the proposed NWP (now designated as paragraph (f)) should contain a provision that requires the consideration of other SWM facilities located in the same watershed.

NWP 43 can be used to authorize more than one SWM facility in a particular watershed, provided each of those SWM facilities constitutes a separate single and complete project with independent utility. District engineers will monitor the use of this NWP to ensure that it does not authorize activities with more than minimal adverse effects on the aquatic environment, individually or cumulatively.

Several commenters said that maintenance of SWM facilities should be considered exempt from Corps permit requirements. One commenter stated that the requirements of paragraph (f) of the proposed NWP (now designated as paragraph (g)) are unnecessary because this activity can be authorized by NWP 3.

The maintenance of SWM facilities constructed in Section 404 waters is not exempt from Corps permit requirements. However, most maintenance does not require a Corps permit because the activity only involves incidental fallback of dredged material. NWP 43 authorizes the maintenance of existing SWM facilities that involves discharges of dredged or fill material into waters of the United States. NWP 43 does not authorize maintenance activities in Section 10 waters.

One commenter expressed concern about the provision in paragraph (g) of the proposed NWP (now designated as paragraph (h)). This commenter said that a developer could fill up to 3 acres of waters of the United States under NWP 39 and the local government could build an SWM facility for the development under NWP 43, which would exceed the total acreage for a single and complete project.

We believe that most SWM facilities constructed for a particular development will be built by the developer, not the local government. The developer may turn over the SWM facility to the local government for maintenance, but the construction of the SWM facility will be reviewed with the construction of the development. If NWP 39s and 43 are combined to authorize a single and complete project, the activity is subject to General Condition 15. There may be instances where a local government will construct a regional SWM facility that serves more than one development. These regional SWM facilities are considered to have independent utility from the serviced developments and may be authorized by NWP 43.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. For NWP 43 activities resulting in discharges of dredged or fill material into waters of the United States within 100-year floodplains, General Condition 26 requires the permittee to notify the district engineer and demonstrate that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. NWP 43 is issued with the modifications discussed above.

44. Mining Activities: In the July 21, 1999, **Federal Register** notice, we proposed to issue an NWP to authorize discharges of dredged or fill material into certain types of non-tidal waters of the United States for aggregate and hard rock/mineral mining activities.

A large number of commenters opposed the issuance of NWP 44. Numerous commenters said that NWP 44 is so restrictive that it will be of little use to the mining industry. These commenters also indicated that mining companies will have little incentive to design their projects to meet the terms and conditions of NWP 44 and that these companies will apply for individual permits. Many commenters

stated that the activities authorized by NWP 44 will result in more than minimal cumulative adverse effects on the aquatic environment, individually and cumulatively. Several commenters said that the Corps should issue separate NWPs for aggregate and hard rock/mineral mining activities. One of these commenters stated that aggregate and hard rock/mineral mining activities are distinct forms of mining and that issuing one NWP to authorize both of these activities violates the similar in nature requirement of Section 404(e) of the Clean Water Act.

The terms and conditions of this NWP will ensure that it authorizes only aggregate and hard rock/mineral mining activities with minimal adverse effects on the aquatic environment. Where there are specific concerns for the aquatic environment, division engineers can regionally condition this NWP to prohibit or limit its use in high value waters. Since notification to the district engineer is required for all activities authorized by this NWP, each proposed mining activity will be reviewed by district engineers to ensure that the work results in minimal adverse effects. We maintain our position that it is unnecessary to issue separate NWPs for aggregate and hard rock/mineral mining activities. These activities are sufficiently similar in nature to warrant the issuance of a single NWP.

One commenter asked what is meant by the term "hard rock/mineral mining" as used in the context of NWP 44. This commenter indicated that the district engineer will determine what constitutes mining for the purposes of this NWP on a case-by-case basis. This commenter also requested clarification whether NWP 44 authorizes all discharges of dredged or fill material into waters of the United States for hard rock/mineral mining activities or whether the Corps intends to limit this NWP to a certain subset of mining and related activities. One commenter asked for a definition of the term "support activities" as used in the context of this NWP. Another commenter said that this NWP should be expanded to authorize the mining of clay and dirt.

For purposes of this NWP, hard rock/mineral mining is the extraction of metalliferous ores from subsurface locations. NWP 44 authorizes discharges of dredged or fill material into certain categories of waters of the United States, as identified in the first paragraph of this NWP, for aggregate mining activities and hard rock/mineral mining activities. District engineers will determine, on a case-by-case basis, whether a particular mining activity is within the scope of this NWP. NWP 44 also authorizes fill for support facilities necessary for the mining operation. Support facilities authorized by this NWP include berms, access and haul roads, rail lines, dikes, road crossings, settling ponds and settling basins, ditches, stormwater and surface water management facilities, head cut prevention activities, sediment and erosion controls, and mechanized landclearing. In the July 21, 1999, **Federal Register** notice, we discussed the applicability of this NWP to clay mining activities and the extraction of soil to be used as fill material. NWP 44 does not authorize clay mining or the extraction of fill dirt from waters of the United States. These activities can be authorized by other NWPs, regional general permits, or individual permits.

Several commenters objected to the scope of applicable waters for this NWP, stating that it is too limited for most mining activities A number of commenters stated that hard rock/mineral mining activities should be authorized in ephemeral streams. One commenter said that NWP 44 should authorize mining activities in headwaters, including intermittent and perennial streams. Several commenters stated that there is no need to limit the use of this NWP to the upper portion of headwaters and eliminate the ability for miners to relocate or divert most headwater stream segments. Many commenters indicated that this NWP should not authorize any activities in streams. One commenter asked why NWP 44 does not authorize mining activities between lower perennial streams and the upper segments of headwater streams. One commenter said that the 1 cubic foot per second threshold should be replaced with ephemeral streams as a limit for stream bed impacts for aggregate mining activities. Several commenters said that the Cowardin definition of the term "lower perennial stream" should be included in the "Definitions" section of the NWPs.

The scope of applicable waters for NWP 44 is intended to ensure that this NWP authorizes only those mining activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. We do not agree that hard rock/mineral mining activities should be authorized in streams because these activities are more likely to result in more than minimal adverse effects on the aquatic environment, due to the processing methods used for this type of mining. NWP 44 authorizes aggregate mining activities in perennial and intermittent streams, provided those streams have an average annual flow of 1 cubic foot per second (cfs) or less. NWP 44 also authorizes aggregate mining activities in lower perennial streams. Limiting aggregate mining activities to these small streams will ensure that the NWP authorizes activities with minimal adverse effects on the aquatic environment. Streams segments located between lower perennial streams and the upper reaches of headwater streams often provide valuable aquatic habitat, such as fish spawning areas. We do not agree that the 1 cfs threshold should be replaced with ephemeral streams for aggregate mining activities in headwaters. In the last paragraph of this NWP, we have incorporated a modified version of the Cowardin definition of the term "lower perennial riverine subsystem" to clarify where aggregate mining activities in lower perennial streams are authorized. We have also replaced the word "and" with the term "and/or" between parts (ii) and (iii) of the introductory paragraph to clarify that a particular mining activity authorized by NWP 44 can occur in any or all of the specified waters.

Several commenters stated that the proposed 2 acre limit for NWP 44 is too low. Numerous commenters suggested that this NWP should have a higher, indexed acreage limit. Three commenters recommended a 3 acre limit and another commenter said that impacts to lower perennial streams, isolated wetlands, and ephemeral streams should be limited to 1 acre. One commenter stated that this NWP should have a higher acreage limit because other Federal and state programs that address hard rock/mineral mining activities require measures to minimize impacts to waters of the United States. One commenter suggested that the Corps impose a linear limit on perennial and intermittent stream bed impacts. Another commenter recommended a 500 linear foot limit for stream bed impacts.

To ensure that this NWP authorizes activities with minimal adverse effects on the aquatic environment, we have reduced the acreage limit of NWP 44 to ½ acre. We do not agree that this NWP should have an indexed acreage limit. Since this NWP has applicability nationwide, it would be impractical to utilize state requirements for mining activities, because their requirements are likely to vary considerably between geographic areas. This NWP is limited to small stream segments; therefore it is unnecessary to impose a linear limit on stream bed impacts. However, division engineers can regionally condition this NWP to further limit stream impacts. In addition, notification is required for all activities authorized by this NWP,

which will allow district engineers to review proposed stream impacts on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment.

Two commenters objected to requiring PCNs for all activities authorized by this NWP. One commenter suggested a ⅓ acre PCN threshold. Several commenters stated that the Corps does not have the authority to review reclamation plans and the requirement to submit reclamation plans with the PCN should be removed.

We believe that it is necessary to require notification for all activities authorized by this NWP, to ensure that the NWP authorizes activities with minimal individual and cumulative adverse effects on the aquatic environment. As discussed in the July 21, 1999, **Federal Register** notice, the requirement for submission of a reclamation plan with the PCN is not intended to supersede other Federal or State requirements. The district engineer will not require reclamation *per se*, but will review the reclamation plan to determine if compensatory mitigation is required to offset losses of waters of the United States and ensure that the individual or cumulative adverse effects of the mining activity on the aquatic environment are minimal. If there are no Federal or State requirements for a reclamation plan for a particular mining activity, the applicant should state that fact in the PCN. The District Engineer may require compensatory mitigation for that activity to ensure that the adverse effects on the aquatic environment are minimal. If the reclamation plan required by Federal or state law adequately addresses compensation for losses of waters of the United States, then the District Engineer will not require additional compensatory mitigation, unless there are additional concerns for the aquatic environment.

Several commenters asked whether paragraph (i) of the proposed NWP (now designated as paragraph (h)) applies only to hard rock/mineral mining activities because of the processes involved in mineral extraction. Some of these commenters indicated that the text of this paragraph implies that the 200 foot setback applies to both aggregate and hard rock/mineral mining activities. A number of commenters said that the Corps does not have the authority to prohibit beneficiation and mineral processing within 200 feet of the ordinary high water mark (OHWM) of open waters. One commenter asked if the 200 foot setback is necessary because NWP 44 does not authorize discharges of dredged or fill material into open waters of the United States for hard rock/mineral mining activities.

The requirements of paragraph (h) of the proposed NWP 44, apply only to hard rock/mineral mining activities. We have inserted the phrase "for hard rock/mineral mining activities" into the text of paragraph (h) to clarify that the 200 foot setback applies only to beneficiation and mineral processing associated with hard rock/mineral mining activities. In the mining industry, the term "beneficiation" applies solely to mineral ore processing. We have the authority to condition NWP 44 to prohibit beneficiation and mineral processing within 200 feet of the OHWM of open waters because this requirement is necessary to ensure that the NWP authorizes activities with minimal adverse effects on the aquatic environment. Project proponents conducting hard rock/mineral mining activities in waters of the United States who want to conduct beneficiation and mineral processing within 200 feet of the OHWM of open waters can request another form of DA permit for those activities. The 200 foot setback required for beneficiation and mineral processing activities is necessary to protect water quality.

We have also modified paragraph (i) (paragraph (j) of the proposed NWP) to clarify that the district engineer can require modifications to the water quality management plan for the mining activity to ensure that adverse effects to water quality are minimal. In addition, we have modified paragraph (k) (formerly paragraph (l)) to clarify what constitutes a single and complete mining activity. In paragraph (l) (formerly paragraph (m)), we have changed the first item to require the notification to include a description of waters of the United States adversely affected by the proposed work.

Several commenters objected to the provision in the last paragraph of NWP 44 that prohibits hard rock/mineral mining within 100 feet of the OHWM of headwater streams. Another commenter said that this NWP should contain depth limits for pits because large pits could be constructed under this NWP. One commenter suggested adding a provision to NWP 44 that requires the permittee to fully reclaim or restore the mined site before commencing mining activities on another site in the same stream segment.

The prohibition against hard rock/mineral mining activities in waters of the United States within 100 feet of the OHWM of headwater streams is necessary to ensure that these mining activities result in minimal adverse effects on headwater streams. It is unnecessary to add a depth limit for mining pits because the ½ acre limit and the terms and conditions of NWP 44 provide adequate protection of the aquatic environment. We do not agree that it is necessary to require permittees to fully reclaim or restore the mined site before conducting mining activities on other sites because the NWP regulations concerning single and complete projects already adequately address multiple mining activities.

Several commenters requested further explanation of the proposed "clarification of jurisdiction" for mining operations that was provided in the preamble of the July 21, 1999, **Federal Register** notice. These commenters asked for definitions of the terms "cessation of operations" and "abandonment." Two commenters said that the "clarification of jurisdiction" must clearly state that wetlands, ponds, and other waterbodies will not be considered "waters of the United States" until bond release. One commenter objected to changing the 15 year term proposed in the preamble to the July 1, 1998, **Federal Register** notice to a 5 year term because mining is a cyclical industry and shutdowns of greater than 5 years are not uncommon.

One commenter stated that the "clarification of jurisdiction" statement is inconsistent with the effluent limitation guidelines at 40 CFR part 440. This commenter said that pit lakes should be regulated as waters of the United States, even though the mining site has not been reclaimed. This commenter expressed concern that pit lakes would not be considered waters of the United States even if the mining operation ceased years ago. In addition, this commenter indicated that the construction of pit lakes would does not comply with former paragraph (f) (now designated as paragraph (e)) of the proposed NWP and General Condition 21.

As a result of our review of the comments addressing the proposed "clarification of jurisdiction" we have decided to withdraw the proposed guidance. District engineers will determine, on a case-by-case basis, whether a specific mined area has been abandoned. In most cases, a mining site where no construction, mining, excavation, processing, and/or reclamation activities have occurred during the last 10 years would be considered abandoned, at the district engineer's discretion. Wetlands and waterbodies within an abandoned mined area would be considered "waters of the United States" if those

areas meet the criteria at 33 CFR part 328.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. For NWP 44 activities resulting in discharges of dredged or fill material into waters of the United States within 100-year floodplains, General Condition 26 requires the permittee to notify the district engineer and demonstrate that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. NWP 44 is issued with the modifications discussed above.

IV. Comments and Responses on Nationwide Permit General Conditions

In the July 21, 1999, **Federal Register** notice, the Corps announced its decision to combine the NWP General Conditions with the Section 404 Only conditions. Two commenters supported this change. In the July 21, 1999, **Federal Register** notice, the Corps proposed to modify nine NWP general conditions and add three new NWP conditions. In response to that **Federal Register** notice, we received many comments on specific NWP general conditions.

The general conditions in this **Federal Register** notice will apply to all of the NWPs, including the NWPs published in the December 13, 1996, **Federal Register** notice, unless a particular general condition applies only to specific NWPs listed in that general condition. The general conditions published today will become effective on June 5, 2000.

4. Aquatic Life Movements: In the July 21, 1999, **Federal Register** notice, we proposed to modify this general condition by adding a requirement for culverts to be installed to maintain low flow conditions.

One commenter stated that there are situations, such as stream channels with bedrock substrate, where culverts cannot be installed below grade to maintain low flows. This commenter requested that the Corps remove the requirement to install culverts to maintain low flows. Another commenter asked the Corps to remove the word "substantially" from this general condition because it imposes a threshold that is too high for activities that result in minimal adverse effects on the aquatic environment.

We do not agree that it is necessary to add an exclusion for stream beds that consist solely of bedrock. Road crossings in these streams can be constructed through other means, such as bridges or fords, that allow low flows to pass through the crossing. It is important to maintain low flow conditions to minimize disruptions to movements of aquatic organisms.

We have retained the word "substantially" in the text of this general condition because the removal of this word would change the requirement from "minimal adverse effect" to "no adverse effect." We recognize that most work in waters of the United States will result in some disruption in the movement of aquatic organisms through those waters. District engineers will determine, for those activities that require notification, if the disruption of aquatic life movements is more than minimal and either add conditions to the NWP to ensure that the adverse effects are minimal or exercise discretionary authority and require an individual permit. This general condition is adopted as proposed.

7. Wild and Scenic Rivers: In the July 21, 1999, **Federal Register** notice, we did not propose any changes to this general condition. One commenter objected to the inclusion of "study rivers" in the text of this general condition.

We will retain "study rivers" in this general condition because study rivers are afforded the same protections as designated Wild and Scenic Rivers, while they are in study status. This general condition is retained without change.

9. Water Quality: The draft modification of General Condition 9 that was published in the July 21, 1999, **Federal Register** notice required permittees to develop and implement water quality management plans for activities authorized by NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, if such a plan is not required by the state or Tribal Section 401 water quality certification. The draft modification of this general condition also required the establishment and maintenance of vegetated buffers next to open waters, such as streams.

To clarify the requirements of General Condition 9, we have divided this general condition into two paragraphs. Paragraph (a) discusses the requirement for individual water quality certifications. Paragraph (b) addresses the requirement for water quality management plans, including vegetated buffers.

Many commenters objected to the requirement for a water quality management plan, stating that the Corps lacks the statutory authority to require such a plan. A large number of commenters said that this requirement is duplicative of existing programs, such as state or Tribal water quality certification (WQC) and National Pollutant Discharge Elimination System programs. Several commenters stated that the Corps does not have the authority to determine whether a particular state or Tribal program adequately addresses water quality. Two commenters remarked that the Corps cannot override a state's WQC decision. Several commenters said that the proposed modification of General Condition 9 is not consistent with 33 CFR 320.4(d), which states that: "[c]ertification of compliance with applicable effluent limitations and water quality standards required under provisions of section 401 of the Clean Water Act will be considered conclusive with respect to water quality considerations unless the Regional Administrator, Environmental Protection Agency (EPA), advises of other water quality aspects to be taken into consideration." A number of commenters said that the Corps does not have the expertise to assess the effectiveness of water quality management plans or stormwater management plans for particular activities. One commenter asked for a definition of the term "water quality management plan."

Two commenters objected to the proposed modification of General Condition 9 because it requires stormwater management plans, even if those plans are not required by state or local governments. One commenter supported the statement in the July 21, 1999, **Federal Register** notice that a water quality management plan is not required if water quality issues are adequately addressed by state or local governments. One commenter objected to a statement in the July 21, 1999, **Federal Register** notice that a water quality management plan is not required for activities that have minimal adverse effects on local water quality. This commenter said that this statement is illogical because the NWPs can authorize only activities that have minimal adverse effects on the aquatic environment. Several commenters agreed that a water quality management plan should not be required for activities that have minimal adverse effects and requested that the Corps add

appropriate language to General Condition 9 because the draft general condition published in the July 21, 1999, **Federal Register** notice does not provide that flexibility. Several commenters stated that the requirement for water quality management plans will substantially increase costs for local governments and the regulated public. One commenter suggested that the Corps should rely on standard best management practices to protect water quality, instead of requiring case-specific water quality management plans.

A goal of the Clean Water Act, as stated in section 101 of the Act, is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. We maintain our position that the requirement for a water quality management plan for certain NWPs is necessary to ensure that activities authorized by those NWPs do not result in more than minimal adverse effects to water quality. We can require water quality management plans through our statutory authority under section 404 of the Clean Water Act, because the goal stated in section 101 applies to all sections of the Clean Water Act.

A water quality management plan is a mechanism to ensure that the activity authorized by NWP causes only minimal adverse effects on water quality. It can include stormwater management techniques and vegetated buffers next to open waters to protect water quality. The terms of General Condition 9 are not intended to replace existing state or Tribal section 401 requirements. In regions with strong water quality programs, district engineers will defer to state, Tribal, and local requirements and will not require water quality management plans as special conditions of NWP authorizations. If the 401 agency or other state or local agency does not require adequate measures to protect downstream water quality, we have the authority to require measures, including the construction of stormwater management facilities or the establishment of vegetated buffers next to open waters, that will minimize adverse effects to water quality.

If a district engineer determines that a water quality management plan is unnecessary because the authorized work will result in minimal adverse effects on water quality, then a water quality management plan is not required. For example, the district engineer may determine that a water quality management plan is not required for an activity in a watershed that is not substantially developed. In addition, a water quality management plan is not necessary for activities that are serviced by a regional stormwater management system. We have modified the first sentence of paragraph (b) by replacing the phrase "provide for protection of aquatic resources" with the phrase "will ensure that the authorized work does not result in more than minimal degradation of water quality" to clarify why a water quality management plan may be required by the district engineer.

We have also modified the second sentence of paragraph (b) by replacing the word "project" with the phrase "water quality management plan." This clarifies that stormwater management is a component of the water quality management plan. If the district engineer determines that a water quality management plan is not required because a specific activity will have minimal adverse effects on water quality, then stormwater management methods are not necessary if they are not required by state or local governments.

We recognize that the development and implementation of a water quality management plan may increase costs to the regulated public. It is important to note that the purpose of the water quality management plan is to ensure that the authorized work results in minimal adverse effects on the aquatic environment, especially water quality. In most cases, the requirements of the Section 401 water quality certification and state or local stormwater management requirements will adequately address these issues. These state and local requirements already incur costs on project proponents and we do not agree that the requirements of General Condition 9 will impose substantial additional costs. Since site conditions are extremely variable between geographic regions of the country, we do not agree that generic best management practices are a better approach to address water quality concerns.

Several commenters objected to the requirements of General Condition 9, because the Corps does not define what constitutes a "strong" state water quality program. These commenters said that this requirement would confuse the regulated public because they cannot know when a water quality management plan will be required by the Corps for a particular NWP activity. Two commenters recommended that the Corps add language to General Condition 9 stating that water quality management plans will not be required in states with strong water quality programs. A commenter objected to the proposed modification of General Condition 9 because a district engineer may require modifications that conflict with the requirements of a state-issued WQC. Another commenter said that the Corps should coordinate water quality management requirements with state or local authorities, which would reduce redundancy and assist in enforcement.

We cannot define, at a national level, what constitutes a strong state water quality program. Corps districts can make a programmatic determination that a particular state, Tribe, or local government has a strong water quality program and therefore the Corps would not require project-specific water quality management plans in those jurisdictions. Where these programmatic determinations have not been made, district engineers will determine, on a case-by-case basis, when water quality management plans are necessary. A water quality management plan for a particular activity may be required as a special condition to the NWP authorization, whereby the permittee would submit the specifics of the water quality management plan to the district engineer prior to starting the work. We do not agree that it is necessary to explicitly state in the text of General Condition 9 that water quality management plans will not be required in states with strong water quality programs because this issue is adequately addressed in the preamble.

It is unlikely that a district engineer will request modifications to a particular activity that conflicts with WQC requirements, although the district engineer may require additional measures that are more stringent than the WQC conditions. We encourage district engineers to coordinate water quality management requirements with state and local authorities, to effectively implement the provisions of General Condition 9.

One commenter suggested that the Corps add language to this general condition that explains that the standard to be achieved is "minimal" degradation, not "no" degradation of water quality. This commenter cited the requirement of minimal degradation that was discussed in the preamble in the July 21, 1999, **Federal Register** notice. Two commenters objected to the proposed modification of General Condition 9 because the Corps has not defined what constitutes acceptable "minimal degradation to water quality" or "minimal adverse effects to water quality."

General Condition 9 does not contain a "no degradation" standard. General Condition 9 requires methods to minimize degradation of downstream aquatic habitats. We cannot provide

national definitions of the terms "minimal degradation" or "minimal adverse effects" to water quality because aquatic systems vary considerably across the country. District engineers will utilize their knowledge of local aquatic resources to make these determinations.

Several commenters requested that the Corps add language to this general condition that states that the requirements of General Condition 9 apply only to activities that result in discharges of dredged or fill material into waters of the United States, not to activities in uplands. These commenters cited the example in the preamble to the July 21, 1999, **Federal Register** notice, which indicated that the water quality management plan does not apply to the entire upland site if only a small amount of waters of the United States are filled to provide access to an upland development site. Two commenters stated that the Corps needs to provide a definition of the term "project" as it is used in the context of this general condition, because the general condition requires the establishment and maintenance of vegetated buffers if the activity occurs in the vicinity of open waters. These commenters asserted that the Corps cannot require stormwater management facilities or vegetated buffers to offset adverse effects caused by activities outside of waters of the United States.

The requirements for water quality management plans, including vegetated buffers next to open waters, apply only to those NWP activities that involve discharges of dredged or fill material into waters of the United States. Water quality management plans are required only for those NWPs listed in paragraph (b). We have also modified this general condition to state that vegetated buffers next to open waters are an important component of the water quality management plan. We have included a reference to General Condition 19, which contains the vegetated buffer requirements for the NWPs, in General Condition 9.

The requirement for a water quality management plan does not apply to activities in uplands, if the discharge of dredged or fill material into waters of the United States constitutes only a small portion of the entire activity. In this situation, if a water quality management plan is necessary to ensure that the activity in waters of the United States causes only minimal degradation of water quality, the water quality management plan would address only the specific activity that results in discharges or dredged or fill material into waters of the United States. However, if a large proportion of the project area is comprised of waters of the United States, then the water quality management plan should consider those upland areas within the project area to ensure that the overall activity will result in minimal adverse effects to water quality. Since the applicable area for the water quality management plan depends on the proportion of the project area that is composed of waters of the United States, we cannot provide a definition of the term "project" for the purposes of this general condition.

A commenter requested that the Corps specify the information that should be included in a water quality management plan. One commenter stated that the general condition should include a qualitative assessment procedure. Several commenters stated that water quality management requirements must be directly related to an identifiable water quality concern that is caused by the authorized discharge of dredged or fill material into waters of the United States. A commenter recommended adding a statement to this general condition explaining that water quality mitigation will be required when necessary to address site-specific water quality concerns and that the required mitigation will be accomplished through the most cost-effective method to address those concerns. Several commenters suggested that the Corps add a definition of the term "practicable" as it is used in the context of this general condition.

We cannot specify the components of a water quality management plan because these requirements will vary across the country. In general, stormwater management techniques and vegetated buffers next to open waters can be components of a water quality management plan. The language of General Condition 9 is intended to allow flexibility and minimize the amount of information necessary to determine compliance with its requirements. We cannot include a qualitative assessment procedure in the text of the general condition because of the variability in aquatic resources across the country. District engineers have their own criteria for assessing impacts to water quality, based on local conditions. District engineers will use their judgement to qualitatively determine if a particular activity complies with this general condition and will not require extensive analyses or reviews. Detailed studies are not required. We contend that these assessments should be left to the judgement of district engineers and will not establish a national assessment procedure. Water quality management requirements will be directly related to the activity authorized by NWP, to ensure that the authorized activity results in minimal adverse effects on local water quality.

Water quality management techniques must be practicable and capable of being accomplished by the permittee. For the purposes of General Condition 9, the definition of the term "practicable" is the same as the definition in the first sentence of paragraph (a) of General Condition 19. Measures required by district engineers to ensure that activities authorized by NWPs do not result in more than minimal adverse effects to water quality must be practicable, while allowing the proposed work to accomplish the overall project purpose. For example, the establishment and maintenance of vegetated buffers next to open waters on the project site will help protect water quality, but the width of those vegetated buffers must not reduce the amount of developable land on the project site to the extent that the proposed work is no longer technologically or economically viable.

One commenter recommended expanding the water quality management plan requirement to NWPs 3, 7, 8, 21, 23, 29, and 33. One commenter indicated that water quality management plans should not be required for NWP 44 activities because such plans are already required for hard rock/mineral mining operations. One commenter suggested waiving the water quality management plan requirement for discharges of dredged or fill material into ephemeral streams. One commenter stated that the requirement for stormwater management should apply only to activities that impact more than 4 acres of land.

We do not agree that water quality management plans should be required for activities authorized by NWPs 3, 7, 8, 21, 23, 29, and 33. We addressed the applicability of this general condition to NWP 21 in the preamble of the July 21, 1999, **Federal Register** notice and have not changed our position on this issue. The other NWPs listed in the first sentence of the previous paragraph authorize activities that typically have minor impacts on water quality. Even though other laws or regulations require water quality management plans for hard rock/mineral mining activities, we are not aware of a similar requirement for aggregate mining activities. Therefore, we do not agree that NWP 44 should be removed from the list of applicable NWPs. District engineers can determine, on a case-by-case basis, that water quality management plans are not required for activities involving

discharges of dredged or fill material into ephemeral streams. We do not agree that there should be a minimum project size to determine when stormwater management facilities are necessary.

Numerous commenters addressed the vegetated buffer requirement in the proposed modification of this general condition. Two commenters requested clarification whether the establishment and maintenance of vegetated buffers are required for all NWPs or only the NWPs listed in the second sentence of the proposed modification of General Condition 9. Two commenters said that vegetated buffers should not be required under all circumstances and that district engineers should use their discretion on a case-by-case basis. Several commenters recommended the removal of the vegetated buffer requirement from this general condition. Two commenters stated that vegetated buffers should be required only to address site-specific water quality concerns when the establishment and maintenance of vegetated buffers is practicable.

For the purposes of General Condition 9, vegetated buffers should be an important component of a water quality management plan. The vegetated buffer requirements for the NWPs are discussed in paragraph (b) of General Condition 19. If there are not any open waters on the project site, then vegetated buffers are not required. In addition, vegetated buffers are not required for Section 404 activities that result only in minimal adverse effects to water quality. District engineers will determine, on a case-by-case basis, when vegetated buffers are necessary to ensure that the authorized work results only in minimal adverse effects. The use of vegetated buffers in the NWP program is discussed in more detail in a previous section of this **Federal Register** notice.

Several commenters requested that the Corps clarify what is meant by the phrase "in the vicinity" of an open waterbody as it relates to the vegetated buffer requirement. Two commenters recommended that the Corps replace "vicinity" with "contiguous" to more clearly establish a direct relationship between the vegetated buffer requirement and the impacts caused by the authorized work. Two commenters said that the phrase "to the maximum extent practicable" needs to be defined for the purposes of the vegetated buffer requirement.

The term "in the vicinity" as used in the context of this general condition, means the parcel where the activity is located. If there are not any open waters on the project site, then vegetated buffers are not required. We have replaced the word "adjacent" with the word "next" to clarify that the vegetated buffer is to be established and maintained on land next to the open waterbody. We do not agree that the word "vicinity" should be replaced with "contiguous" because the requirement for vegetated buffers applies only to open waters on the project site. We have removed the phrase "to the maximum extent practicable" as it was used in the context of the vegetated buffer requirement in the proposed general condition. This general condition is adopted with the modifications discussed above.

11. Endangered Species: In the July 21, 1999, **Federal Register** notice, we proposed to modify this general condition by adding a requirement for the prospective permittee to submit, with the notification, the name(s) of the endangered or threatened species that may be affected by the proposed work or utilize designated critical habitat that may be affected by the proposed work.

One commenter objected to the requirement for prospective permittees to notify the Corps if there may be threatened or endangered species in the vicinity of the proposed activity. Another commenter objected to the requirement for applicants to notify the Corps for any activity that will occur in designated critical habitat. A commenter stated that the requirement to notify the district engineer if listed species or critical habitat may be affected by the proposed activity should apply to both Federal and non-Federal applicants. Two commenters opposed the notification requirement, stating that project proponents cannot know if their projects are located in designated critical habitat. Several commenters stated that the Corps is responsible as the lead Federal agency for compliance with section 7 of the Endangered Species Act (ESA) and that the Corps cannot delegate to the prospective permittee the determination whether a listed species or their critical habitat would be affected by the proposed work.

The notification requirements for General Condition 11 are necessary to ensure that activities authorized by NWPs comply with the requirements of ESA. Federal permittees are required to conduct Section 7 ESA consultation directly with either the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), depending on which species may be affected by the proposed work. Prospective permittees should contact the FWS or NMFS to determine if their activities may affect Federally-listed endangered or threatened species or destroy or adversely modify designated critical habitat. We recognize that we are responsible for determining whether an activity is likely to jeopardize the continued existence of a threatened or endangered species or whether an activity will adversely modify or destroy designated critical habitat, but we cannot require permittees to submit notifications for all NWP activities so that we can determine compliance with ESA. Division engineers can regionally condition the NWPs to require notification for NWP activities in known locations of Federally-listed endangered or threatened species and their designated critical habitat.

One commenter suggested that a specific distance should be used to define the phrase "in the vicinity" as it is used in this general condition. Another commenter said that the Corps needs to define what constitutes "affecting critical habitat" as it applies to the NWPs. One commenter stated that the word "destroy" should be defined or deleted from this general condition. A commenter stated that any activity that may affect a Federally-listed endangered or threatened species or its critical habitat must be reviewed by the FWS. Another commenter said that individual permits should be required for activities that may affect endangered or threatened species or their critical habitat.

We do not agree that a specific distance should be established to define the term "vicinity" because the area that constitutes the "vicinity" varies from species to species. Activities in waters of the United States within critical habitat have the potential to destroy or adversely modify that critical habitat and should be reviewed by the Corps to ensure compliance with ESA. The phrase "destruction or adverse modification" is defined at 50 CFR 402.02 and this definition applies to the phrase "destroy or adversely modify" that is found in General Condition 11. We will consult with FWS and NMFS for those activities that may affect or jeopardize Federally-listed endangered or threatened species or may destroy or adversely modify the designated critical habitat of those species. We do not agree that all activities that may affect endangered or threatened species or their critical habitat should be reviewed under the individual permit process because these activities can often be authorized by NWPs in compliance with ESA.

As a consequence of the NWP/General Permit Programmatic ESA Section 7 consultation, district engineers will develop Standard Local Operating Procedures for Endangered Species and

may develop other procedures to ensure that the NWPs and general permits will comply with the ESA. In addition, as part of this process, the Corps may need to adopt regional conditions for endangered species. To ensure that these conditions and procedures are properly coordinated, the decision authority for adding regional conditions for endangered species has been delegated to the district engineer in General Condition 11. This general condition is adopted with the modifications discussed above.

12. Historic Properties: In the July 21, 1999, **Federal Register** notice, we did not propose any changes to this general condition. One commenter objected to requiring compliance with the National Historic Preservation Act (NHPA) for activities authorized by NWPs. Another commenter opposed the notification requirement of General Condition 12 and asked how a permittee would know if his or her activity will affect historic properties. One commenter stated that the requirement to notify the district engineer if eligible cultural resources may be affected by a proposed activity should apply to both Federal and non-Federal applicants. A commenter said that individual permits should be required for all activities that may affect eligible cultural resources. One commenter indicated that the Corps should not require extensive documentation from an applicant demonstrating compliance with the NHPA.

All activities that require a Federal license (including NWPs) must comply with the NHPA. A prospective permittee can contact the local State Historic Preservation Officer to determine if the proposed work will affect known historic properties. Both Federal and non-Federal permittees are required to notify district engineers when authorized activities may affect listed or eligible historic properties. We do not agree that all activities that may affect cultural resources should be reviewed under the individual permit process because these activities can often be authorized by NWPs in compliance with the NHPA. The Corps requires the minimum documentation necessary to ensure compliance with the NHPA. This general condition is retained without change.

13. Notification: In the July 21, 1999, **Federal Register** notice, we proposed to change the 30 day PCN review period to 45 days, and include a requirement for district engineers to determine whether a PCN is complete within 30 days of the date of receipt.

Two commenters supported the proposed changes to the PCN review period. Many commenters objected to the proposed changes, stating that allowing 30 days for a completeness review and 45 days to determine whether the proposed work qualifies for NWP authorization makes the NWP process similar to the standard permit process, in terms of processing times. Two commenters remarked that the 30-day completeness review period should be included in the 45-day PCN review period. Two commenters said that the PCN should be considered complete if the Corps does not request additional information prior to the end of the 30 day completeness review period, so that the Corps cannot defer processing the PCN indefinitely. One commenter suggested that the Corps notify prospective permittees, through telephone calls or postcards, if their PCNs are complete. This commenter said that such a process would relieve some burdens associated with the proposed revisions to the notification process. Another commenter recommended modifying General Condition 13 to impose a time limit for the Corps to notify prospective permittees that all of the requested information has been received.

The 30 day completeness review period and the 45 day PCN review period are not independent of each other (i.e., they do not add up to a 75 day review period for NWP activities). If a prospective permittee submits a complete PCN to the Corps district office, the 45 day PCN review period begins on the date of receipt and the district engineer must decide whether to issue an NWP verification or exercise discretionary authority within 45 days. If the 30 day completeness review period has passed since the date of receipt of a PCN and the district engineer has not requested additional information to make the PCN complete, the applicant can assume the PCN is complete.

Other commenters recommended different time limits for PCN completeness reviews. One commenter said that the completeness review should be done on the date of receipt of the PCN and the applicant should be notified immediately that additional information is necessary to begin the PCN process. Other recommended time periods for completeness review included 7, 10, and 15 days. One commenter objected to the 30 day completeness review period, stating that it was longer than the completeness review period for standard permits (i.e., 15 days).

It is impractical for district engineers to conduct completeness reviews on the date of receipt. We believe the 30 day completeness review period is necessary because district engineers can make only one request for the information needed for a complete PCN.

Two commenters requested clarification whether the 45 day PCN review period starts on the day the Corps determines the PCN to be complete or the date the complete PCN is received in the district office. One commenter asked if the verification of wetland delineations would be done within the 30 day completeness review period. Two commenters supported allowing only one request for additional information. One commenter asserted that allowing only one request for additional information would cause Corps personnel to request large amounts of information, whether or not that information is necessary for the review of the PCN.

The 45 day PCN review period begins on the date of receipt of a complete PCN. If a complete PCN is submitted, the 45 day PCN review period starts on the date of receipt. If the PCN is incomplete and the prospective permittee submits the necessary information to make the PCN complete, the 45 day PCN review period starts on the date the additional information is received by the district engineer. The verification of delineations of special aquatic sites will be conducted during the 30 day completeness review period. A complete PCN is comprised of the information listed in paragraph (b) of General Condition 13. If the prospective permittee provides all of the relevant information listed in paragraph (b), then the PCN is complete (provided any delineations of special aquatic sites are accurate) and the 45 day PCN review period begins. District engineers cannot request information not listed in paragraph (b). If the district engineer believes that the proposed work may result in more than minimal adverse effects on the aquatic environment, based on the information required for the PCN, then he or she should exercise discretionary authority and require an individual permit to conduct a more thorough review of that activity.

Many commenters suggested that the Corps retain the 30 day PCN review period. One commenter said that 15 days would be adequate for the Corps to determine whether a complete PCN would qualify for NWP authorization and another commenter suggested a 40 day review period. Many commenters stated that the larger workload caused by the proposed new and modified NWPs is not sufficient justification for increasing the PCN review period to 45 days and requested that the Corps maintain the 30 day period.

We contend that the 45 day period is necessary to determine if a PCN is complete (within 30 days), conduct agency coordination if necessary, and review the PCN to determine if the proposed work is authorized by NWP. NWP 26 had a PCN review period of 45 days and we believe it is necessary to retain this time period for the new NWPs.

Several commenters stated that paragraph (b) of General Condition 13 should clearly state what is required for a complete PCN, so that applicants will know what they need to submit to the district engineer. These commenters also said that clearly stating what is required for a complete PCN would promote consistency. One commenter requested that the Corps clarify whether the phrase "additional information" refers only to the items necessary to make the PCN complete or to any other information that the district engineer believes is necessary for the review of the PCN. One commenter recommended adding a requirement for prospective permittees to supply all information identified in the NWP, special conditions, and regional conditions, as well as any information required by the district engineer. Two commenters objected to the amount of information required for PCNs.

Paragraph (b) of General Condition 13 lists all of the information necessary for a complete PCN. Corps districts can provide checklists to assist prospective permittees, especially if they have regional conditions that specify additional information that must be submitted with PCNs. The phrase "additional information" as used in the context of General Condition 13 refers only to the information that is necessary to make the PCN complete. We have limited the amount of information that must be submitted with a PCN to the minimum necessary to determine whether the proposed work will result in minimal adverse effects on the aquatic environment, individually and cumulatively.

Two commenters said that the statement in General Condition 13 indicating that the permittee can commence work if the district engineer does not respond to the PCN within 45 days is meaningless because of the suspension procedures at 33 CFR 330.5(d)(2), which allow the Corps to stop NWP activities in progress. These commenters said that the permittee cannot safely proceed with the activity until he or she receives authorization from the Corps.

Some prospective permittees may want assurance that the proposed work is authorized by NWP and will not start work until a written verification is received from the Corps. The procedures at 33 CFR 330.5(d)(2) provide a process where a permittee who begins work after the 45 day PCN period expires can make their case that they have expended resources and it would be inequitable for the Corps to modify their project.

One commenter suggested that the PCN review period should be waived in states using monthly coordination meetings to review and process permit applications. One commenter suggested adding a fourth item in paragraph (a), which would state that the prospective permittee shall not begin the activity "If the District Engineer has notified the prospective permittee in writing that the notification is still incomplete."

Paragraph (a) of General Condition 13 does not prohibit district engineers from responding to PCNs in a more timely manner provided all other requirements are completed. Paragraph (a) clearly states that district engineers will notify prospective permittees if their PCNs are still incomplete, and since the 45 day clock does not start until the PCN is complete, the prospective permittee may not start work.

One commenter stated that all PCNs should include delineations of special aquatic sites. Another commenter recommended adding NWPs 3 and 31 to paragraph (b)(4). One commenter said that delineations of riffle and pool complexes should not be required for PCNs because such a requirement imposes burdens on applicants, especially on large projects such as highways. A commenter suggested that the phrase "submerged aquatic vegetation" used in paragraph (b)(4) should refer only to vascular plants.

We do not agree that delineations of special aquatic sites should be submitted with all NWP PCNs. Since NWPs 3 and 31 authorize maintenance activities, it is not necessary to submit delineations of special aquatic sites with PCNs for these activities. Maps indicating stream segments containing riffle and pool complexes and their location can be used as delineations of these special aquatic sites. It is not necessary to map each riffle and pool complex within a stream. The phrase "submerged aquatic vegetation" refers only to vascular plants, not algae.

One commenter suggested that the Corps revise paragraph (b) of General Condition 13 to require documentation of baseline conditions for NWP 3 activities. This commenter also recommended that PCNs for NWP 3, 7, and 31 activities should include locations of disposal sites for dredged or excavated material. One commenter said that detailed mitigation and monitoring plans should be submitted with PCNs for activities authorized by NWPs 12, 14, 39, 40, 41, 42, 43, and 44. One commenter indicated that a statement discussing on-site avoidance and minimization should be required for all NWP activities that require PCNs. Another commenter asserted that a statement of avoidance and minimization should be required for NWPs 12, 14, 40, 41, and 42. One commenter said that the information required to be submitted with a PCN is inadequate to ensure compliance with ESA.

The text of paragraph (iii) of NWP 3 states that the permittee "should" provide evidence to justify the extent of the proposed restoration, but such evidence is not required. We do not agree that it is necessary to include location maps of disposal sites for dredging or excavation activities authorized by NWPs 3, 7, and 31, because the material removed from waters of the United States will not be deposited in waters of the United States, unless the district engineer issues a separate authorization to discharge that material into waters of the United States. Under that separate authorization process, the district engineer will assess the impacts to the disposal site. We maintain our position that compensatory mitigation plans, including monitoring plans, submitted with a PCN can be either conceptual or detailed. District engineers can require more detailed compensatory mitigation plans through special conditions of the NWP authorization where appropriate. We also do not agree that avoidance and minimization statements should be required for other NWPs. We maintain our position on this matter as it was discussed in the July 21, 1999, **Federal Register** notice. The information that must be submitted with a PCN is adequate for the Corps to make its initial determination concerning compliance with ESA.

Two commenters noted that the Corps did not add a provision to paragraph (b) of General Condition 13 that requires prospective permittees to submit a list of names of Federally-listed endangered or threatened species and the names or locations of historic properties that may be affected by the proposed work. The Corps stated in the July 21, 1999, **Federal Register** notice (64 FR 39340) that it would add these provisions to General Condition 13.

We have added these requirements to paragraph (b) of General Condition 13 as subparagraphs (17) and (18), respectively. In addition, we have modified subparagraph (b)(9) to comply

with the recent modification of NWP 29, which reduced the acreage limit to ¼ acre (see 64 FR 47175). We have also added subparagraph (b)(19), which describes the documentation that must be submitted with the PCNs for certain NWP activities within 100-year floodplains.

In paragraph (d) of the proposed modification of General Condition 13, one commenter objected to the use of the term "net" in the context of determining whether the adverse effects to the aquatic environment are minimal, after considering compensatory mitigation that offsets impacts authorized by NWPs. This commenter says that the wording of the second sentence of paragraph (d) is contrary to the Corps policy of determining that impacts authorized by NWPs are minimal without considering mitigation. One commenter asked if the term "mitigation" in paragraph (d) refers to compensatory mitigation. Another commenter requested a definition of the term "adverse" as it is used in the context of paragraph (d). One commenter requested that the Corps clarify whether the word "work" in paragraph (d) refers only to mitigation work or the permitted activity.

The language of paragraph (d) complies with Corps regulations for the NWP program, specifically 33 CFR 330.1(e)(3), which provides for the use of compensatory mitigation to offset losses of waters of the United States authorized by NWPs and ensure that the adverse effects on the aquatic environment are minimal. The word "mitigation" in the second sentence of paragraph (d) refers to the mitigation process. We do not agree that it is necessary to provide a definition of the term "adverse" since the commonly used definition is applicable. The word "work" refers to the proposed activity, but the compensatory mitigation is also considered when determining whether the adverse effects on the aquatic environment are minimal.

Two commenters supported the 1 acre threshold for agency coordination. One commenter suggested a ⅓ acre threshold. A number of commenters said that agency coordination should be required for all NWP activities that require PCNs. One commenter recommended agency coordination for activities that result in the loss of greater than 250 linear feet of stream bed. One commenter said that PCNs should be coordinated with the U.S. FWS for any NWP activity that could affect Federally-listed endangered or threatened species or their habitats. Another commenter indicated that agency coordination of PCNs should be conducted for any NWP activities in streams or aquatic resources of natural importance.

We are reducing the 1 acre threshold for agency coordination to ½ acre because most of the new NWPs have maximum limits of ½ acre. There will be coordination of some PCNs because there are NWPs based on other government programs, such as NWPs 17 and 38, that can authorize activities that result in the loss of greater than ½ acre of waters of the United States. If those NWPs require submission of a PCN to the district engineer and the proposed work will result in the loss of greater than ½ acre of waters of the United States, then the Corps will conduct agency coordination. Activities that may affect Federally-listed endangered or threatened species or their critical habitat will be coordinated with the U.S. FWS or NMFS, as appropriate. District engineers can conduct agency coordination in other circumstances at their discretion.

One commenter asked for clarification whether a PCN is transmitted to agencies upon receipt of the PCN or whether the PCN must be determined to be complete before it is sent to the agencies. Two commenters said that, for activities requiring agency coordination, the applicant should mail copies of the PCN to the review agencies to expedite the PCN process. One commenter recommended adding the Federal Emergency Management Agency (FEMA) to the list of agencies for coordination. Another commenter said that the Corps should provide written responses to agency comments received in response to PCNs. One commenter recommended inserting the word "aquatic" between the words "adverse environmental" in paragraph (e).

We do not start agency coordination until we determine that the PCN is complete. It would not be advantageous for a prospective permittee to submit a PCN directly to review agencies because the PCN may not be complete. District engineers can, at their discretion, include FEMA with the other review agencies. We do not agree that district engineers should provide written responses to agency comments, except where Essential Fish Habitat (EFH) conservation recommendations are received from NMFS in response to a PCN. There is a statutory requirement in the Magnuson-Stevens Fishery Conservation and Management Act for Federal action agencies to provide written responses to EFH conservation recommendations. We have modified paragraph (e) to address this requirement. We agree that we should include the word "aquatic" in the first sentence of paragraph (e).

Two commenters opposed the proposed changes to the agency coordination period. Three commenters said that 15 days is enough time for agency coordination. Other commenters suggested 5, 10, or 30 days for agency coordination. One commenter recommended 45 days for agency coordination, with the ability for agencies to receive an extension of time. One commenter requested clarification whether the 25 day agency review period is added to the 45 day PCN review period or whether the agency coordination process occurs during the 45 day PCN review period. One commenter said that the 25 day agency coordination period conflicts with ESA regulations, which provide 30 days to respond to a request for a list of species that may occur in the project area.

We will maintain the 10 day period for agencies to request an additional 15 days to provide substantive, site-specific comments on PCNs. Twenty-five days is sufficient for agencies to comment on PCNs. The agency coordination process occurs during the 45 day PCN review period. During the agency coordination period, the Corps is not requesting a list of Federally-listed endangered or threatened species that may be in the project area. Therefore, the agency coordination period does not violate ESA regulations.

Several commenters objected to the text in paragraph (f) that requires wetland delineations to be performed in accordance with the current method required by the Corps. These commenters assert that this language allows Corps personnel to use methods and criteria that are not in the 1987 *Corps of Engineers Wetlands Delineation Manual* and expand the Corps jurisdiction. These commenters said that the text of this paragraph should be revised to specifically reference the 1987 *Corps of Engineers Wetlands Delineation Manual*. Another commenter recommended that paragraph (f) include a statement that the permittee is responsible for the accuracy of the delineation of special aquatic sites.

We do not agree with these commenters. The only currently acceptable method that the Corps uses for delineating wetlands is the 1987 *Corps of Engineers Wetlands Delineation Manual* and associated guidance. We will not change the text of paragraph (f) because the required delineation manual may change in the future.

Several commenters recommended combining paragraph (g) of General

Condition 13 with General Condition 19 so that the mitigation requirements of the NWPs would be in one general condition. One commenter suggested that deed restrictions and protective covenants should be required as part of a compensatory mitigation proposal submitted with a PCN. One commenter recommended that the Corps reinstate the following language into subparagraph (ii) of paragraph (g): "* * *should consider mitigation banking and other forms of mitigation including contributions to wetland trust funds, in lieu fees to non-profit land restoration and stewardship organizations, State or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of wetlands."

We have moved paragraph (g) of General Condition 13 to General Condition 19. Prospective permittees can submit either conceptual or detailed compensatory mitigation proposals with their PCNs, but they are not required to submit deed restrictions or protective covenants at that time. As special conditions to a NWP verification, the district engineer may require deed restrictions or protective covenants for compensatory mitigation projects. We do not agree that it is necessary to put the referenced text back into the general condition because General Condition 19 allows district engineers the flexibility to consider all appropriate forms of compensatory mitigation, including mitigation banks and other consolidated approaches to compensatory mitigation.

One commenter objected to the statement in paragraph (g) of the proposed modification of General Condition 13 that identifies mitigation banks, in lieu fee programs, and other types of consolidated mitigation as preferred methods. This commenter said that if compensatory mitigation is necessary, the method should be at the discretion of the applicant and consider economic and environmental factors. This commenter also stated that the Corps should only determine if the compensatory mitigation method chosen by the applicant is appropriate.

Our preference for consolidated compensatory mitigation methods such as mitigation banks does not prohibit the use of other methods to provide compensatory mitigation, if the district engineer determines that the other methods are appropriate and adequately offset losses of aquatic resource functions and values. General Condition 19 clearly states that mitigation must be practicable, and the district engineer will consider costs and environmental factors when determining if the prospective permittee's compensatory mitigation proposal is acceptable.

Two commenters stated that the Corps should post PCNs on the Internet. Another commenter concurred with the Corps position against posting PCNs on the Internet, stating that such a process would result in delays to the regulated public and provide no additional value to the review of PCNs.

As discussed in the July 21, 1999, **Federal Register** notice, we maintain our position that posting of PCNs on Internet home pages would provide no added value to our review of these PCNs.

This general condition is adopted with the modifications discussed above.

15. Use of Multiple Nationwide Permits: In the July 21, 1999, **Federal Register** notice, we proposed to modify this general condition to ensure that the use of more than one NWP to authorize a single and complete project will result in minimal adverse effects on the aquatic environment.

One commenter supported the proposed modification of General Condition 15. Many commenters objected to the proposed modification of this general condition, stating that it would prohibit the authorization of activities with minimal adverse effects. One commenter said that the proposed modification is contrary to 33 CFR 330.6(c) and must be addressed through rulemaking. A number of commenters indicated that the use of more than one NWP to authorize a single and complete project should be unrestricted because of the low acreage limits of the proposed new and modified NWPs. Several commenters objected to permittees using more than one NWP to authorize a single and complete project. One commenter said that the proposed modification of this general condition will cause more piecemealing of activities and discourage watershed-based planning and compensatory mitigation.

The modification of General Condition 15 is necessary to ensure that the use of more than one NWP to authorize a single and complete project does not result in more than minimal adverse effects on the aquatic environment, individually and cumulatively. The proposed modification is not contrary to 33 CFR 330.6(c) because that provision in the NWP regulations simply states that two or more different NWPs can be combined to authorize a single and complete project. With the modification of General Condition 15, we are not prohibiting the use of more than one NWP to authorize a single and complete project. Instead, we are simply imposing an acreage limit based on the maximum specified acreage limit of those NWPs used to authorize a single and complete project. We do not agree that the modification of General Condition 15 will encourage piecemealing of activities, since the definition of the term "single and complete project" is clearly defined at 33 CFR 330.2(i) and this definition has not changed. The modification of this general condition is adopted as proposed.

16. Water supply intakes: In the July 21, 1999, **Federal Register** notice, we did not propose any changes to this general condition. One commenter objected to this general condition, stating that it is too vague, excessive, and difficult to manage. This commenter recommend that the Corps require submission of a PCN when a proposed activity is within 1 mile upstream of a public water supply intake.

District engineers will determine whether an activity is subject to this general condition. Imposing a notification requirement based on a distance from an intake structure is not appropriate for a national condition, but division engineers can regionally condition the NWPs to establish specific distances from public water supply intakes. This general condition is adopted without change.

17. Shellfish Beds: In the July 21, 1999, **Federal Register** notice, we proposed to change the title of this general condition from "Shellfish Production" to "Shellfish Beds." We also proposed to change the phrase "concentrated shellfish production" to "concentrated shellfish populations" because the word "production" implies that the general condition applies only to areas actively managed for shellfish production.

Two commenters recommended that the Corps change this general condition from a prohibition against activities in areas of concentrated shellfish populations to a notification requirement when any proposed NWP activity may cover concentrated shellfish populations. One commenter objected to changing the title of this general condition from "Shellfish Production" to "Shellfish Beds." This commenter also indicated that the restrictions imposed by this general condition are too broad.

With the exception of NWP 4, we do not agree that the NWPs should authorize activities in concentrated shellfish beds. Changing the terms of this general condition from "shellfish production" to "shellfish beds" is necessary to ensure that activities authorized by NWPs result in minimal

adverse effects on the aquatic environment, especially in areas of concentrated shellfish populations that may be harvested for human consumption. The modification of this general condition is adopted as proposed.

18. Suitable Material: In the July 21, 1999, **Federal Register** notice, we did not propose any changes to this general condition, but one commenter requested further definitions of suitable material and debris that can be used.

We do not agree that it is necessary to further define what constitutes "suitable material" for the purposes of this general condition. It is impractical to provide a comprehensive list of unsuitable materials. If there are questions concerning the suitability of a particular material, the permittee should contact the appropriate Corps district office and ask if that material is considered suitable for the purposes of General Condition 18. This general condition is adopted without change.

19. Mitigation: In the July 21, 1999, **Federal Register** notice, we proposed several changes to this general condition. Several commenters recommended combining the mitigation information in paragraph (g) of General Condition 13 with this general condition. One commenter stated that this general condition is contrary to the 1990 mitigation MOA. Numerous commenters said that General Condition 19 should specify that mitigation is required, to the maximum extent practicable, in the same watershed as the impact site.

We have combined the provisions of paragraph (g) of General Condition 13 with the provisions of General Condition 19, so that the mitigation requirements for the NWPs are in General Condition 19. The 1990 mitigation MOA applies only to standard individual permits, not general permits such as the NWPs. Although we encourage permittees to locate compensatory mitigation in the same watershed as the site of the authorized work, there are occasions where it may be necessary or more beneficial to the aquatic environment to implement compensatory mitigation outside of the watershed. For example, restoring wetlands in a degraded watershed to compensate for losses of wetlands in a watershed with less impacts may be better for the overall aquatic environment.

One commenter suggested that General Condition 19 should contain a provision that allows district engineers to determine that compensatory mitigation is unnecessary if the adverse effects on the aquatic environment are minimal without compensatory mitigation. Several commenters objected to the phrase in the second sentence of the proposed modification of General Condition 19 which states that compensatory mitigation is required "* * * at least to the extent that adverse environmental effects to the aquatic environment are minimal." These commenters contend that this language allows the Corps to require mitigation in excess of the amount necessary to offset the authorized impacts.

In accordance with the NWP regulations, district engineers can determine that compensatory mitigation is not necessary to ensure that the authorized work results in minimal adverse effects on the aquatic environment. District engineers will require only the amount of compensatory mitigation that is needed to ensure that the net adverse effects on the aquatic environment are minimal, individually and cumulatively.

One commenter supported the inclusion of enhancement and preservation in the definition of compensatory mitigation. Another commenter said that the definition of mitigation should be expanded from restoration, creation, enhancement, preservation, and vegetated buffers to include avoiding, minimizing, rectifying, reducing, or compensating for losses of aquatic resources to make it consistent with paragraph (g) of General Condition 13, which recognizes this broader definition.

Since we have moved the provisions of paragraph (g) of General Condition 13 to General Condition 19, this general condition recognizes these types of mitigation. Rectifying impacts to the aquatic environment is similar to the enhancement and restoration of aquatic resources. Reducing impacts to the aquatic environment is similar to minimization.

A number of commenters objected to the removal of the phrase "unless the District Engineer approves a compensation plan that the District Engineer determines is more beneficial to the environment than on-site minimization and avoidance measures" which was in December 13, 1996, version of "Section 404 Only" Condition 4, from which General Condition 19 was derived. These commenters stated that the removal of this language conflicts with some recent statements by the Corps, including preferences for mitigation banks and in lieu fee programs. One commenter indicated that permittees should have options for providing compensatory mitigation, including the ability to utilize off-site compensatory mitigation (e.g., mitigation banks and in lieu fee programs) and out-of-kind compensatory mitigation (e.g., vegetated buffers next to open waters).

The modification of General Condition 19 does not conflict with our preference for using consolidated compensatory mitigation methods to offset losses of waters of the United States authorized by NWPs. General Condition 19 simply states that the district engineer will require, when necessary, the restoration, creation, enhancement, or preservation of aquatic resources to ensure that the adverse effects on the aquatic environment are minimal, individually and cumulatively. That compensatory mitigation can be provided by individual compensatory mitigation projects or consolidated mitigation methods, such as mitigation banks. District engineers have flexibility to determine the appropriate options for compensatory mitigation on a case-by-case basis. For activities authorized by NWPs, the selected compensatory mitigation method should be based on what is best for the aquatic environment and what is practicable for the permittee.

One commenter recommended modifying the vegetated buffer requirements in General Condition 19 to allow district engineers to waive these requirements if it is impractical for the permittee to establish and maintain vegetated buffers. Another commenter suggested that General Condition 19 should be modified to place more emphasis on on-site avoidance and minimization so that large scale mitigation such as vegetated buffers would be required only in exceptional circumstances. Two commenters said that the text of General Condition 19 should be rewritten to acknowledge that NWPs authorize activities that have minimal adverse effects on the aquatic environment and that most mitigation for NWP activities would consist of avoidance and small restoration projects, not the large scale mitigation that would result from establishing 50 to 125 foot wide vegetated buffers. One commenter stated that General Condition 19 does not contain specific requirements for maintaining and protecting vegetated buffers and asked how the maintenance of vegetated buffers will be guaranteed. One commenter objected to requiring vegetated buffers to be comprised of native species, because it would necessitate the removal of undesirable species in existing riparian buffers.

We have added the phrase "to the maximum extent practicable" to the

second sentence in paragraph (c) to clarify that vegetated buffers next to open waters can be required as compensatory mitigation only if such a requirement is practicable for the project proponent. District engineers will determine on a case-by-case basis whether vegetated buffers are necessary and the appropriate width of those vegetated buffers. Recommended widths of vegetated buffers are discussed in a previous section of this **Federal Register** notice. We have also added a provision to General Condition 19 that limits the proportion of compensatory mitigation that can be provided by vegetated buffers next to open waters. If compensatory mitigation for wetland impacts is necessary to ensure that an NWP activity results in minimal adverse effects on the aquatic environment and there are open waters on the project site, any vegetated buffer will comprise no more than 33% of the remaining compensatory mitigation acreage after the permanently filled wetlands have been replaced on a one-to-one acreage basis. Of course, many vegetated buffers will be wetlands and can be included as compensatory mitigation for wetland impacts.

Vegetated buffers are an alternate method of compensatory mitigation and should be protected in the same manner as wetland compensatory mitigation sites (i.e., through deed restrictions, conservation easements, or other appropriate legal means). The language of General Condition 19 does not require the removal of non-native plant species from the area where the vegetated buffer will be established and maintained. If the permittee is planting the vegetated buffer, he or she should use native plant species. Vegetated buffer zones that are already established with mature trees or shrubs can be maintained without removing those plants to replace them with native species. This general condition is adopted with the modifications discussed above.

20. Spawning Areas: In the July 21, 1999, **Federal Register** notice, we proposed to modify this general condition by adding the word "important" before the phrase "spawning areas." The proposed modification would limit this general condition to spawning areas used by species harvested commercially for human consumption.

One commenter objected using the word "important" in this general condition, stating that it ignores the fact that commercially harvested fish species often rely on non-commercial species for survival . Two commenters said that this general condition should apply to all spawning areas. One commenter recommended expanding the scope of General Condition 20 to spawning areas of importance to recreational fisheries. One commenter suggested that the phrase "important spawning areas" should be replaced with "spawning areas that support Federally-listed or special status fish." A commenter said that spawning areas that are important for state-listed endangered or threatened species or ecologically important fish species can be addressed through General Condition 25, Designated Critical Resource Waters. One commenter requested that the Corps provide a definition of the term "substantial" as it is used in the context of this general condition because many species of fish can tolerate high turbidity levels for short periods of time.

We maintain our position that the terms of this general condition should be limited to spawning areas used by species that are harvested commercially for human consumption. Division engineers can impose regional general conditions to restrict or prohibit activities in spawning areas used by other species. We cannot provide a definition of the word "substantial" as it is used in the context of this general condition because it is more appropriate to make this determination on a case-by-case basis, depending on the characteristics of the project site and the species that may be affected. This general condition is adopted as proposed.

21. Management of Water Flows: In the July 21, 1999, **Federal Register** notice, we proposed to modify this general condition to require permittees to maintain, to the maximum extent practicable, preconstruction surface water flow patterns.

Three commenters supported the proposed modification of General Condition 21. Several commenters objected to the proposed modification. One commenter suggested that the text of the proposed modification should be withdrawn and replaced with the original language of "Section 404 Only" Condition 6. A number of commenters stated that the Corps does not have the statutory authority to impose the requirements of this general condition. Two commenters indicated that the proposed modification of General Condition 21 is contrary to 33 CFR 320.4(m). One commenter said that best management practices should be required instead of this general condition. Numerous commenters stated that the requirements of General Condition 21 duplicate existing state or local programs. One commenter expressed concern that this general condition will impose requirements that are contrary to local standards or watershed plans. One commenter said that the requirements of this general condition will make the NWP program useless because all dredge and fill activities affect water flow.

We have statutory authority, through section 404 of the Clean Water Act, to impose General Condition 21 because this general condition is necessary to ensure that activities authorized by NWPs result in minimal adverse effects on the aquatic environment. Flooding and erosion that results from changes in surface water flows can have more than minimal adverse effects on the aquatic environment. The requirements of this general condition are not contrary to 33 CFR 320.4(m) because that section of the Corps regulations, which addresses the allocation of water supplies, is unrelated to the intent of General Condition 21.

District engineers can refer to best management practices to assist permittees in complying with this general condition, but we do not agree that best management practices are more efficient methods of achieving the objectives of General Condition 21. Although the requirements of this general condition may duplicate existing state or local programs, it is important to note that not all state and local governments address the management of water flows. Therefore, we believe that it is necessary to impose, on a nationwide basis, the requirements of General Condition 21 on activities authorized by NWPs. If the state or local government adequately addresses the management of surface water flows, the district engineer will defer to those agencies. However, if the state or local government does not adequately address the management of water flows, district engineers will determine if the proposed work complies with General Condition 21 and may impose special conditions on the NWP to ensure that the authorized work results in minimal adverse effects on surface water flows. If the activity is part of a larger system designed to manage water flows, then activity-specific management of water flows is not required. It is unlikely that this general condition will result in requirements that are contrary to watershed plans, because the intent of General Condition 21 is to ensure that activities authorized by NWPs result only in minimal adverse effects on the aquatic environment.

Although most discharges of dredged or fill material into waters of the United States authorized by NWPs alter surface water flow patterns, these changes are

usually minimal or could be mitigated to the minimal adverse effect level and would comply with General Condition 21. If more than minimal changes to surface water flows will occur as a result of the proposed work, the activity should be reviewed through the individual permit process or the activity should be modified with mitigation to comply with General Condition 21.

Two commenters objected to the proposed modification, stating it is too subjective. These commenters said that a lack of specific criteria will cause inconsistent and arbitrary implementation. These commenters requested specific criteria that will allow consistent determination of compliance. One commenter stated that the general condition should specify a storm event magnitude that will be used to determine compliance, because requiring no change in water flows for a 2-year storm event is different that requiring no change in water flows for a 100-year storm event. A commenter requested clarification whether the general condition addresses stream flow, overland flow, and/or stormwater flow. One commenter objected to the proposed modification of this general condition because it requires only qualitative analysis. Two commenters opposed the proposed modification of General Condition 21 because the Corps has not explained how compliance will be determined, specifically how pre-construction and post-construction water flows will be determined. One commenter recommended that the Corps adopt the guidelines at 23 CFR Part 650 (i.e., the Federal Highway Administration's regulations concerning bridges, structures, and hydraulics) to address floodplain encroachments and provide consistency for permit applicants.

We do not agree that specific criteria should be provided nationally, because of the large variability in hydrologic regimes and site conditions across the country. District engineers are better suited to establish local qualitative criteria to determine compliance with this general condition. As discussed in the July 21, 1999, **Federal Register** notice, this general condition applies to general surface water flow patterns over the course of a year, not to any particular storm event. The types of water flows subject to this general condition include both stream flows and overland flow. For example, this general condition prohibits the use of NWPs to authorize activities that will redirect substantial amounts of surface water to adjoining property owners and more than minimally increase the magnitude of flooding on their property.

To determine compliance with this general condition, district engineers will rely on their judgement and knowledge of local water flow patterns. District engineers will not require detailed hydrologic analyses or engineering studies.

Two commenters stated that requiring permittees to maintain, to the maximum extent practicable, surface water flows from the site is an impossible standard to meet, since such a requirement allows no change from pre-construction water flow conditions. Two commenters said that the phrase "to the maximum extent practicable" is an arbitrary threshold and will result in disputes between the Corps and project proponents with no mechanism for resolution.

The phrase "to the maximum extent practicable" provides flexibility for permittees to comply with the requirements of General Condition 21. This general condition does not establish a "no effect" requirement for compliance. It does not prohibit changes to surface water flows. General Condition 21 merely requires that the activity cause only minimal changes to surface water flows and maintain those flows so that they are similar, not necessarily identical, to preconstruction flow conditions. If changes to surface water flows will be more than minimal, the district engineer will either mitigate those impacts, or if that is not practicable, assert discretionary authority and require an individual permit.

Several commenters said that the analysis required to determine compliance with General Condition 21 is costly and burdensome on project proponents and is inappropriate for NWP activities. One commenter recommended that the text of this general condition include a statement requiring district engineers to defer to state and local agencies that have adequate requirements to manage water flows. A commenter suggested that General Condition 21 should be modified to provide greater flexibility for flood control and stormwater management activities, because this would allow permittees to demonstrate that changes in water flows comply with state or local flood control standards or benefit local hydrology or flow regimes. Another commenter recommended that activities authorized by NWPs should also be designed to allow the movement of aquatic organisms or require mitigation to maintain those movements.

Since district engineers will not require detailed hydrologic or engineering analyses, and must utilize qualitative analyses to determine whether or not a particular activity complies with this general condition, there will not be additional economic burdens on prospective permittees. Although district engineers should defer to state and local agencies if those agencies already impose adequate requirements for maintaining surface water flows, we do not agree that it is necessary to make this statement in the text of General Condition 21. We believe that the text of General Condition 21 provides adequate flexibility for flood control and stormwater management activities because it requires maintenance of surface water flows to the maximum extent practicable. In addition, this general condition does not prohibit the construction of facilities that impound water, such as retention or detention ponds, if the primary purpose of the project is to impound water. General Condition 4, Aquatic Life Movements, already addresses the issues raised by the last comment in the previous paragraph.

In the text of General Condition 21, we have changed the word "project" to "activity" to be consistent with the other general conditions, which refer to activities. This general condition is adopted with the modification discussed above.

23. Waterfowl Breeding Areas: In the July 21, 1999, **Federal Register** notice, we did not propose any changes to this general condition. One commenter recommended expanding this general condition to include all wetland-dependent migratory bird species.

We do not agree with this comment, because the intent of this general condition is to ensure that the NWPs do not authorize activities that result in more than minimal adverse effects to waterfowl, not all migratory bird species that may utilize wetlands. This general condition is retained without change.

24. Removal of Temporary Fills: In the July 21, 1999, **Federal Register** notice, we did not propose any changes to this general condition. One commenter requested clarification as to what constitutes a "temporary" fill by establishing time limits. Another commenter said that certain temporary fills, such as gravel, may be used by project proponents and left in stream beds to enhance habitat for spawning fish species. This commenter suggested that the Corps modify this general condition to allow temporary fills to remain in waters of the United States if those fills are for a permit requirement of any other regulatory agency.

District engineers will determine, on a case-by-case basis, what constitutes a temporary fill. Fills that are left in

waters of the United States as a condition of permit issued by another agency must also be authorized by Section 404 of the Clean Water Act (and Section 10 of the Rivers and Harbors Act if the fill is in navigable waters). These fills may be authorized by NWPs, regional general permits, or individual permits. This general condition is retained without change.

General Comments on Proposed General Conditions 25, 26, and 27: In the July 21, 1999, **Federal Register** notice, we proposed three new NWP general conditions that would limit the use of NWPs in designated critical resource waters, impaired waters, and waters of the United States within 100-year floodplains.

A number of commenters supported the three proposed NWP general conditions. Many commenters objected to the proposed general conditions, stating that there is no need for these restrictions. Several commenters opposed these three general conditions, because they duplicate other programs. Several commenters stated that the proposed general conditions will not provide any environmental benefits. Several commenters said that concerns for critical resource waters, impaired waters, and 100-year floodplains can be adequately addressed through the PCN process and the ability of district engineers to exercise discretionary authority on those activities that will result in more than minimal adverse effects on the aquatic environment. Other commenters stated that regional conditions would adequately address these issues.

After reviewing the comments addressing the three proposed NWP general conditions, we have decided to adopt proposed General Condition 25, Designated Critical Resource Waters, and proposed General Condition 27, Fills Within the 100-year Floodplain. We have decided to withdraw proposed General Condition 26, Impaired Waters. Proposed General Condition 27 has been substantially modified, as discussed below. This general condition has been designated as General Condition 26, Fills Within 100-year Floodplains. The new general conditions, in conjunction with the 1/2 acre limit for most of the new NWPs, will provide substantial environmental benefits. We do not agree that regional conditions are a better mechanism to address these issues, since the new general conditions address issues of national concern.

Several commenters said that the proposed new NWP general conditions will substantially reduce the regulated public's ability to efficiently obtain authorization for activities that have minimal adverse effects on the aquatic environment. Two of these commenters remarked that it will be more difficult to obtain authorization for maintenance activities. Several commenters stated that the proposed general conditions replace the "minimal adverse effect" criterion of the NWPs with a "no effect" criterion. Numerous commenters asserted that the assumption that activities in designated critical resource waters, impaired waters, and 100-year floodplains will result in more than minimal adverse effects on the aquatic environment is incorrect. These commenters said that many activities authorized by NWPs in these areas may actually improve water quality or provide essential public health and safety functions.

The two new NWP general conditions will not make it more difficult to obtain authorization for maintenance activities. Many maintenance activities are eligible for the Section 404(f) exemptions. NWP 3 activities in designated critical resource waters require notification to the district engineer but may be authorized. General Condition 26 does not restrict NWP 3 or NWP 31 activities in 100-year floodplains. The intent of the new general conditions is to ensure that the NWPs comply with the statutory requirements of Section 404(e) of the Clean Water Act. Although these conditions will limit the use of NWPs in certain waters, activities in these waters may be authorized by other forms of DA permits, such as regional general permits or standard permits.

One commenter stated that the proposed general conditions are contrary to the Corps goal of focusing its limited resources on those activities with the potential for greater environmental impacts. Two commenters said that without additional resources to implement and enforce the three proposed general conditions, there will be a decrease in environmental protection. One of these commenters said that these general conditions are too confusing and difficult to enforce. Two commenters objected to these general conditions because they substantially reduce the geographic area in which the NWPs can be used. One commenter stated that the proposed general conditions improperly change the focus of the NWPs from the type of activity to the location of the activity. Another commenter said that the proposed general conditions are confusing because of specific inconsistencies, such as the imposition of an acreage limit in proposed General Condition 26 without similar acreage limits in proposed General Conditions 25 and 27 or the different applicability of these general conditions for specific NWPs. For example, NWP 39 cannot be used in the 100-year floodplain but it can be used to authorize discharges of fill material into impaired waters and adjacent wetlands.

We agree that the proposed general conditions may have resulted in a decrease in environmental protection. However, the changes we have made will ensure that the conditions will substantially increase protection of the aquatic environment. General Condition 25 restricts the use of NWPs in high value waters, which is analogous to the increased emphasis on regional conditioning we placed on the proposed new and modified NWPs. General Condition 26 will minimize adverse effects to the flood-holding capacity of 100-year floodplains, as well as enhance protection of free-flowing streams in the regulated floodway. Although the two new NWP general conditions reduce the geographic scope of the NWPs, these conditions are necessary to ensure that the NWPs do not authorize activities with more than minimal adverse effects on the aquatic environment. The location of a waterbody or wetland has a substantial influence on the functions and values it provides. For example, a wetland within a 100-year floodplain may provide fish spawning habitat that is not provided by an isolated wetland. The differences in the requirements between the two general conditions are necessary because each of these conditions addresses different issues. Therefore, each of the new NWP general conditions requires different restrictions or limitations to ensure that the NWPs authorize activities with minimal adverse effects on the aquatic environment.

25. Designated Critical Resource Waters: In the July 21, 1999, **Federal Register** notice, we proposed a new general condition that would limit the use of certain NWPs in designated critical resource waters.

Many commenters expressed their support for the proposed general condition. A number of commenters opposed this general condition. One commenter said that General Condition 25 will severely restrict the NWP program and make it unusable. Some commenters stated that NWPs should not authorize activities in designated critical resource waters.

Numerous commenters said the proposed general condition is based on an invalid assumption that all discharges of dredged or fill material into designated critical resource waters will always jeopardize any essential functions that make these waters high value. These commenters stated that

this assumption is invalid because the NWPs authorize activities with minimal adverse effects on the aquatic environment. One commenter said that this general condition imposes a "no effect" standard instead of a "minimal effect" standard. Many commenters suggested that protection of designated critical resource waters is more effectively provided through regional conditions imposed by division engineers and the PCN process. The PCN process allows district engineers to add special conditions to NWP authorizations or exercise discretionary authority to require individual permits for activities that result in more than minimal adverse effects on the aquatic environment.

General Condition 25 does not prohibit the use of all NWPs in designated critical resource waters or adjacent wetlands. Only those NWP activities that are likely to result in more than minimal adverse effects on designated critical resource waters are restricted by General Condition 25. Although regional conditions and the PCN process may have fully protected designated critical resource waters, we believe that for the waters listed nationwide restrictions are appropriate. We believe that a national condition is necessary for certain categories of waters.

One commenter said that NOAA-designated marine sanctuaries should be subject to the same restrictions that General Condition 7 imposes on activities in Wild and Scenic Rivers. This commenter stated that the use of NWPs should be allowed if those activities are approved by the agency managing those sanctuaries. This commenter also said that National Estuarine Research Reserves do not require extra protection through General Condition 25 because they are already protected by coastal states and NOAA.

We do not agree that NOAA-designated marine sanctuaries should be subject to the same restrictions as Wild and Scenic Rivers. We believe that the listed NWPs would likely result in more than minimal adverse effects to these important waters. We believe that restricting the use of certain NWPs in National Estuarine Research Reserves is necessary.

Many commenters stated that existing General Condition 7 provides adequate protection for Wild and Scenic Rivers, and recommended the removal of Wild and Scenic Rivers from the list of designated critical resource waters in General Condition 25. Several commenters opposed the inclusion of critical habitat for Federally-listed endangered or threatened species as designated critical resource waters, stating that General Condition 11 already provides sufficient protection for these areas. Numerous commenters objected to the provision in General Condition 25 that requires concurrence from the U.S. FWS or NMFS that the proposed work complies with General Condition 11. One of these commenters said that this provision is contrary to the Endangered Species Act (ESA), which requires consultation only for those activities that adversely affect Federally-listed endangered or threatened species or their critical habitat. Two commenters indicated that this provision inappropriately shifts the responsibility for determining effects on endangered or threatened species from the Corps to the U.S. FWS or NMFS. One commenter said that this provision is not strong enough.

General Condition 25 merely states that activities involving discharges of dredged or fill material into Wild and Scenic Rivers must comply with General Condition 7. This general condition does not impose any additional restrictions on NWP activities in Wild and Scenic Rivers. We believe that the provisions concerning designated critical habitat for Federally-listed endangered or threatened species in General Condition 25 are necessary to ensure compliance with ESA. Moreover, we believe that designated critical habitat deserves the highest level of protection, thus for the NWPs listed, we will seek the concurrence of the FWS to ensure protection.

One commenter recommended the removal of state natural heritage sites from the list of designated critical resource waters. Another commenter said that General Condition 25 will prohibit the use of many NWPs in certain counties, since some state natural heritage sites encompass entire counties. One commenter requested clarification as to what constitutes a "state natural heritage site."

We are maintaining state natural heritage sites in the list of designated critical resource waters because these areas typically contain high value waters. A state natural heritage site has been designated, through a state legislative or regulatory process, as an area that warrants additional protection due to its natural resource characteristics. Therefore, we believe that authorizing projects under NWPs would likely result in more than minimal adverse effects on the aquatic environment.

One commenter objected to including outstanding national resource waters in the list of designated critical resource waters. This commenter said that this general condition should be limited to waters that are defined by Federal standards, not state standards, because there is a need for consistency across state boundaries. Two commenters said that outstanding national resource waters already receive special protection from states through an existing program. These commenters cited EPA's regulations at 40 CFR 131.12(a)(3). Three commenters supported the requirement for the legislature or governor to designate waters with particular environmental or ecological significance. Three commenters said that other state or local officials should be able to designate waters with environmental or ecological significance that should be subject to this general condition.

We believe that outstanding national resource waters should be subject to the provisions of General Condition 25, because these waters are typically high value waters. We maintain our position that outstanding national resource waters must be officially designated by the state as having particular environmental or ecological significance. To be subject to General Condition 25, those outstanding national resource waters must be identified and approved by the district engineer after public notice and opportunity for comment. We do not agree that state or local officials should be able to designate additional waters that will be subject to General Condition 25, without the district engineer providing an opportunity for public notice and comment.

Three commenters supported allowing district engineers to include additional waters after public notice and opportunity for comment. Several commenters opposed this mechanism, because it would provide no additional protection since these waters are already protected by state and local governments. Two commenters indicated that waters identified by Federal and state agencies as designated critical resource waters should be subject to a public review process. Two commenters stated that the use of the word "include" in the first sentence of General Condition 25 implies that there are other waters that are considered to be designated critical resource waters and subject to this general condition. A commenter requested clarification as to what constitutes an official designation as having particular environmental or ecological significance. This commenter said that public notice at the district level should be adequate to make this designation.

We have modified General Condition 25 to explicitly state that district

engineers can designate additional critical resource waters after notice and opportunity for public comment. This process is similar to the NWP regional conditioning process whereby district engineers would identify high value waters that should be subject to NWP restrictions. Waters having particular environmental or ecological significance should be designated by the governor or legislature, and the district engineer can designate these waters as critical resource waters for the purposes of General Condition 25, after public notice and opportunity for comment. In contrast to the regional conditioning process, the district engineer would approve any additional critical resource waters for the purposes of General Condition 25.

One commenter asked why wetlands adjacent to designated critical resource waters are included in General Condition 25. Several commenters recommended that the Corps replace the word "adjacent" with "contiguous" to clarify the geographic scope of this general condition and make it easier to implement. One commenter stated that adjacent wetlands are not clearly defined for the purposes of this general condition. Another commenter remarked that waters adjacent to designated critical habitat are not subject to the same ESA requirements as designated critical habitat and should not be treated as such.

Wetlands adjacent to designated critical resource waters are included in General Condition 25 because these wetlands can have substantial influences on the quality of these waters. We believe that this is true for all critical resource waters, including designated critical habitat for endangered species. For the purposes of this general condition, the definition term "adjacent" is the same as the definition at 33 CFR 328.3(c).

Several commenters requested that the Corps define what constitutes an "effect" to a designated critical resource water. Two commenters indicated that it is difficult for the public to know which waters are subject to General Condition 25 because that information is not readily available and the list of applicable waters can change frequently. Several commenters suggested that the Corps produce maps of designated critical resource waters and subject those maps to a public comment process.

For the purpose of General Condition 25, the term "directly affecting" refers to activities involving discharges of dredged or fill material into waters of the United States. Prospective permittees should contact the appropriate Corps district to determine if any designated critical resource waters occur in the vicinity of the proposed work. Corps districts can produce maps of designated critical resource waters to aid in the implementation of this general condition, but such maps are not required.

Several commenters said that states can restrict the use of NWPs in certain waterbodies through the Section 401 water quality certification process and that state-designated waters should not be subject to General Condition 25. Another commenter stated that the Corps should not restrict discharges into designated critical resource waters if other Federal or state agencies have not imposed restrictions on those waters.

We believe that the provisions in General Condition 25 are necessary to ensure that the NWPs only authorize activities with minimal adverse effects on the aquatic environment, individually or cumulatively. Other Federal and state agencies may not have the regulatory authority to restrict or prohibit discharges of dredged or fill material into designated critical resource waters. Therefore, it is appropriate for the Corps to impose such restrictions, since such discharges are regulated by the Corps under Section 404 of the Clean Water Act.

One commenter recommended adding NWP 13 to the list of NWPs that are prohibited in this general condition. Another commenter suggested that NWP 8 should be added to the list of NWPs that cannot be used in designated critical resource waters. Many commenters objected to the inclusion of maintenance activities (*e.g.*, NWPs 3 and 31) in General Condition 25 because these activities have minimal adverse effects on the aquatic environment and delaying the authorization of these activities is unsafe and contrary to the public interest. Some commenters suggested removing NWPs 7 and 43 from the list of prohibited activities. Many commenters said that NWPs 12 and 14 should not be restricted in these waters. Some of these commenters stated that submission of a PCN to the district engineer is adequate to ensure that the work results in minimal adverse effects on the aquatic environment. Two commenters said that NWP 25 should not be subject to this general condition. A commenter stated that NWP 35 should be included in the list of NWPs that require notification. This commenter also indicated that it is unnecessary to require a PCN for activities authorized by NWPs 22, 27, 30, and 37.

We do not agree that NWPs 13 or 8 should be added to the list of NWPs in paragraph (a) of General Condition 25. NWP 3 activities can occur in designated critical resource waters, provided those activities result in minimal adverse effects on the aquatic environment. The maintenance of flood control facilities constructed in designated critical resource waters could result in more than minimal adverse effects on the aquatic environment, and should be reviewed through other DA permit processes. We continue to believe that NWPs 7, 12, 14, 35, and 43 should be subject to the restrictions in paragraph (a). We do not agree that the PCN process is a more effective mechanism to review activities in designated critical resource waters. We believe that the activities authorized by NWPs 22, 25, 27, 30, and 37, should be reviewed on a case-by-case basis if they are located in designated critical resource waters or adjacent wetlands.

Many commenters suggested additional waters that should be included in the list of designated critical resource waters. Numerous commenters recommended groundwater recharge areas and sources of drinking water as designated critical resource waters. Other suggested waters include: primary nursery areas and shellfish waters; streams that support cold water fisheries; areas used by migratory birds; waters of the United States in wilderness areas, national parks, and wildlife refuges; areas identified by state natural heritage programs as supporting high concentrations of rare species; vernal pools; stream segments and waterbodies proposed for listing under section 303(d) of the Clean Water Act; waters supporting salmonid fisheries; and wetlands that are rare and difficult to replace, such as peatlands, potholes, vernal marshes, playas, kettles, high altitude wetlands, and mature forested wetlands.

Concerns regarding these waters are more effectively addressed through other processes, such as regional conditioning of the NWPs or case-specific review of PCNs. Division engineers can regionally condition the NWPs to prohibit or limit their use in such high value waters. District engineers will exercise discretionary authority and require individual permits if activities proposed in designated critical resource waters will result in more than minimal adverse effects on the aquatic environment. Proposed General Condition 25 is adopted with the modifications discussed above.

26. Impaired Waters: In the July 21, 1999, **Federal Register** notice, we proposed a new general condition that

would limit the use of NWPs in waterbodies that are identified as impaired through the Clean Water Act Section 303(d) process. The sources of impairment considered for the proposed general condition were: nutrients, organic enrichment resulting in low dissolved oxygen concentration in the water column, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, turbidity, or the loss of wetlands. The proposed limitation would also apply to wetlands adjacent to the impaired waterbody.

Many commenters supported the proposed General Condition 26 and many commenters opposed this proposed general condition. Numerous commenters said that the NWPs should not authorize activities in impaired waterbodies. A large number of commenters supported the identification of impaired waters through the Clean Water Act Section 303(d) process. One commenter supported the exclusion of NWP 3 from the 1 acre limit imposed by General Condition 26. Two commenters stated that the limitations in this general condition should apply to all wetlands in the watershed or sub-basin, not only to those wetlands that are adjacent to the impaired waters.

Those commenters that expressed opposition to the proposed general condition stated that the limitations in General Condition 26 are unnecessary and would provide no benefits for the environment. Many commenters objected to the proposed general condition because they believe that activities in waters of the United States may have no effect on the actual cause of impairment. Numerous commenters objected to the presumption in proposed General Condition 26 that NWP activities would result in further impairment of waterbodies. Some commenters indicated that certain NWP activities improve water quality. For example, these commenters said that NWPs can authorize activities that stabilize eroding stream banks, improve fish passage, improve the quality of highway runoff, or decrease peak flows. Several commenters believe that the Corps lacks the legal authority to impose this general condition. One commenter said that General Condition 26 is unnecessary because the quality of waters is improving. Several commenters stated that the limitations of General Condition 26 place more value on impaired waters than unimpaired waters. Two commenters indicated that the requirements of this general condition make permittees responsible for mitigating impacts to water quality that they did not cause.

Many commenters recommended using the PCN process and discretionary authority to address impacts to impaired waters, instead of utilizing a prohibition. A number of commenters said that the NWPs should be used to authorize discharges of dredged or fill material into impaired waters and adjacent wetlands if the adverse effects on the aquatic environment are minimal. Two commenters stated that the criterion of "no further impairment" imposes a "no adverse effect" standard on the NWPs, not a "minimal adverse effect" standard. Several commenters said that the limitations imposed by proposed General Condition 26 offset the utility of regional conditions. A number of commenters objected to the 1 acre limit imposed by the proposed general condition. Two commenters said that the 1 acre limit is arbitrary and violates the Administrative Procedures Act because the Corps provided no justification that this limit is necessary. One commenter stated that the acreage limit should be in the text of the NWPs, not the general condition.

A large number of commenters objected to this proposed general condition because it is duplicative of existing programs, such as the Section 401 water quality certification or National Pollutant Discharge Elimination System programs. Two commenters stated that the issuance of a water quality certification by the state or Tribe should be adequate to ensure that the use of the NWP is consistent with water quality standards. Several commenters asserted that states are best suited to determine which actions are necessary to address causes of impairment, allocate pollutant loads, and protect water quality, and that the Corps should defer these matters to the states. Two commenters said that the proposed general condition is redundant with General Condition 9.

Several commenters objected to the use of Clean Water Act Section 303(d) lists to identify impaired waters. A commenter objected to the provisions of proposed General Condition 26 because EPA is currently proposing to revise its regulations for the Total Maximum Daily Load (TMDL) program, upon which the limitations of the proposed general condition are based. This commenter also opposed the proposed general condition because state Section 303(d) lists are constantly changing and not all state lists are available at the same time. One commenter requested clarification whether the TMDL program is the same as the Section 303(d) program for identifying impaired waters. Another commenter asked how the Corps will be able to enforce this general condition when water quality standards may vary from year to year and the Section 303(d) status of individual stream segments may change. Two commenters objected to the proposed general condition because of the subjective criteria used to identified impaired waters on 303(d) lists.

Several commenters objected to making the prospective permittee responsible for demonstrating that the proposed work will not result in further impairment of the waterbody. Many commenters opposed this general condition because it does not explain how the prospective permittee can rebut the presumption and what information is needed to make the rebuttal. Several commenters indicated that, in many cases, it will be impossible to rebut the presumption in General Condition 26 and in other cases much time and money would be required to rebut the presumption. One commenter suggested that the prospective permittee should be required to provide documentation to the district engineer instead of demonstrating that the activity will not result in further impairment of the waterbody.

Several commenters asserted that permittees should be allowed to use compensatory mitigation to ensure that the authorized work will not result in further impairment of the waterbody. Two commenters said that the prohibition against using compensatory mitigation to ensure no further impairment of the waterbody is contrary to General Condition 19 and the last sentence of paragraph (b) of the proposed General Condition. One commenter requested clarification whether the term "excluding mitigation" refers to compensatory mitigation. This commenter also asked if avoidance and minimization could be used as documentation that the activity will not cause further impairment of the waterbody.

Three commenters asked if tributaries of impaired waters are also considered impaired and subject to proposed General Condition 26. Several commenters requested clarification whether wetlands adjacent to an impaired waterbody are considered part of that waterbody and subject to the 1 acre limit. One commenter questioned whether the proposed general condition is applied on a watershed or stream reach basis.

Several commenters objected to the inclusion of adjacent wetlands in proposed General Condition 26 because the definition of adjacency is too vague and those wetlands may not have direct hydrologic connections to the waterbody. Three commenters requested

a definition of the term "adjacent" as it applies to this general condition. Two commenters said that the general condition should be limited to the impaired waterbody and wetlands with demonstrable hydrologic connections to the impaired waterbody. One commenter recommended that the Corps replace the term "adjacent" with "contiguous" in this general condition. This commenter also said that, for the purposes of this general condition, adjacent wetlands should not include wetlands downstream of the impaired waterbody. Another commenter said that identifying adjacent wetlands is problematic since impaired waters are identified by segments. This commenter requested guidance on how to identify wetlands that are adjacent to impaired stream segments.

Two commenters said that this general condition should be included in General Condition 25 because impaired waters warrant the same protection as designated critical resource waters. Another commenter said that proposed General Condition 26 should not apply to waters where TMDL water quality management plans have been implemented. Two commenters said that this general condition should not apply to activities that do not result in discharges of the listed pollutant.

One commenter requested clarification whether proposed General Condition 26 applies only to waterbodies that are impaired as a result of the causes listed in the text of the proposed general condition or if other sources of impairment are applicable. Two commenters said that the proposed general condition should apply only to waterbodies that are impaired as a result of the loss of wetlands. Many commenters recommended additional criteria to identify waters that should be subject to this general condition. Suggested criteria include: (1) watersheds that have lost more than 50% of their original wetlands; (2) loss of riparian vegetation that results in greater fluctuations in water temperature; (3) waters identified as impaired through EPA's Index of Watershed Indicators; (4) all waters identified as impaired through the Section 303(d) process; (5) pollutants listed in section 502(6) of the Clean Water Act; (6) waters impaired by hydrological and habitat modification; and (7) waters impaired by pesticides and pathogens.

A number of commenters suggested specific NWPs that should not be subject to proposed General Condition 26. Many commenters said that NWP 3 activities should not be subject to the proposed general condition, because it would result in delays for maintenance activities that have minimal adverse effects on the aquatic environment and are not likely to result in further impairment of these waterbodies. One commenter stated that NWP activities that enhance or restore waters, are necessary for public health and safety, or authorize maintenance activities, should not be subject to the proposed general condition. Various commenters recommended that NWPs 12, 13, 14, 31, and 33 should not be subject to proposed General Condition 26. One commenter said that the proposed general condition should not apply to NWPs 3, 13, 27, 41, 42, and 43 because the activities authorized by these NWPs usually improve water quality. Most NWPs were recommended for exclusion from the proposed general condition.

After considering the comments received in response to the July 21, 1999, **Federal Register** notice, we determined that General Condition 26 should be withdrawn. We believe that the 1/2 acre limit and the 1/10 acre PCN limit on the new and modified NWPs will ensure that the adverse effects are no more than minimal. We also agree with the commenters who stated that the limitation would yield limited, if any, value added for the aquatic environment. We agree that in many cases mitigated NWPs will actually improve the status of the aquatic environment. Finally, we believe that impacts to impaired waters are more appropriately addressed through the Section 401 water quality certification process.

27. Fills Within 100-year Floodplains: We proposed, in the July 21, 1999, **Federal Register** notice, to add a new general condition to the NWPs that would limit the use of certain NWPs in waters of the United States within all 100-year floodplains.

We received many comments supporting or opposing proposed General Condition 27. A large number of commenters said that this general condition should include drainage activities in 100-year floodplains. Several commenters recommended expanding the scope of the proposed general condition to include excavation activities in 100-year floodplains. Many commenters stated that the proposed general condition should be expanded to prohibit all fills in 100-year floodplains. Some commenters expressed concern that the proposed general condition does not address increases in flooding caused by stream channelization activities. One commenter supported proposed General Condition 27 because it will provide protection of essential fish habitat and anadromous fish species.

Many commenters opposed proposed General Condition 27, stating that it would provide few benefits and that it will increase delays and costs for the regulated public. A number of commenters contend that the requirements of the proposed general condition are outside of the scope of the Corps regulatory authority. Many commenters stated that the requirements of proposed General Condition 27 imply that the Corps is expanding its regulatory authority to the entire 100-year floodplain. Several commenters objected to the provisions of this general condition because it duplicates the requirements of other government agencies, especially state and local flood protection regulations and ordinances, as well as the National Flood Insurance Program (NFIP) of the Federal Emergency Management Agency (FEMA). One commenter said that General Condition 27 is contrary to the Administration's initiatives that encourage reuse of brownfields, because most brownfields are located within 100-year floodplains in urban areas.

As a result of our review of the comments received in response to the July 21, 1999, **Federal Register** notice, we have modified proposed General Condition 27 and designated it as General Condition 26, Fills Within 100-year Floodplains. The revised general condition prohibits the use of NWPs 29, 39, 40, 42, 43, and 44 to authorize discharges of dredged or fill material into waters of the United States that result in permanent, above-grade fills within the FEMA-mapped 100-year floodplain of streams below the headwaters. NWPs 12 and 14 can be used to authorize discharges of dredged or fill material resulting in permanent, above-grade fills within the 100-year floodplain of streams below headwaters, provided the permittee notifies the district engineer in accordance with General Condition 13 and the activity complies with FEMA or FEMA-approved local floodplain construction requirements.

In flood fringes of FEMA-mapped 100-year floodplains located within headwater streams, NWPs 12, 14, 29, 39, 40, 42, 43, and 44 can be used to authorize permanent, above grade fills in waters of the United States, provided the prospective permittee notifies the district engineer in accordance with General Condition 13 and provides documentation demonstrating that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. In FEMA-designated floodways of 100-year

floodplains located within headwater streams, NWPs 29, 39, 40, 42, 43, and 44 cannot be used to authorize permanent, above-grade fills in waters of the United States. However, NWPs 12 and 14 can be used to authorize permanent, above-grade fills in waters of the United States within floodways of FEMA-designated 100-year floodplains located within headwater streams, provided the prospective permittee notifies the district engineer in accordance with General Condition 13 and provides documentation demonstrating that the activity complies with FEMA or FEMA-approved local floodplain construction requirements. We believe that these changes, combined with the 1/2 acre maximum acreage limit and 1/10 acre PCN threshold, will ensure protection of the functions and values of floodplains. Definitions of the terms "flood fringe" and "floodway" are found at 44 CFR 9.4.

We do not agree that this general condition should be extended to drainage and excavation activities within 100-year floodplains, since these activities do not have substantial adverse effects on the flood-holding capacity of 100-year floodplains. Stream channelization activities authorized by NWPs are subject to General Condition 21, which prohibits substantial changes to surface water flow patterns, including downstream flooding. Stream channelization projects are constructed to improve conveyance of water, which may decrease local flooding.

It is important to note that the requirements of this general condition are not a surrogate for the requisite and separate determination by the Corps of minimal adverse effects on the aquatic environment that is required for all NWPs. District engineers will exercise discretionary authority if proposed discharges of dredged or fill material into waters of the United States within 100-year floodplains will result in more than minimal adverse effects (after consideration of mitigation measures) on the aquatic environment.

We do not believe that the modified version of this general condition will unreasonably increase costs for the regulated public. NWP 26 authorized only discharges of dredged or fill material in headwaters and isolated waters and the modified condition allows the use of NWPs in the flood fringe of the headwaters. The Corps study of the economic and workload implications of the proposed NWPs indicates that the revised approach will cost the regulated public roughly one-half the amount the proposal in the July 21, 1999, **Federal Register** would cost. Moreover, we believe that the modifications we have made will actually enhance protection of the aquatic environment. To participate in the NFIP, the permittee must comply with FEMA or FEMA-approved local floodplain construction requirements, which will not impose additional costs. The requirements of this general condition are not an attempt to, and do not, expand the Corps regulatory jurisdiction to areas outside of waters of the United States.

Two commenters stated that the current NWP program complies with Executive Order (E.O.) 11988, Floodplain Management. One of these commenters said that requiring individual permits for the activities prohibited by the proposed general condition is not considered a practicable alternative in the context of E.O. 11988, because it is impractical to require individual permits for all activities in 100-year floodplains.

We concur that the NWP program fully complies with E.O. 11988, including the "Floodplain Management Guidelines for Implementing E.O. 11988" issued by the U.S. Water Resources Council and "Further Advice on Executive Order 11988 Floodplain Management" issued by the Interagency Task Force on Floodplain Management. "Further Advice on Executive Order 11988 Floodplain Management" states that class review of repetitive actions proposed in 100-year floodplains can be conducted in full compliance with E.O. 11988. The NWPs clearly fall within the category of class review of repetitive actions.

Several commenters indicated that requiring individual permits for activities in 100-year floodplains will not provide any benefits because individual permits will be issued with little or no change from the proposed work. These commenters said that it is likely that the Corps will rely on the NFIP standards when assessing impacts on 100-year floodplains. Two commenters said that the requirements of proposed General Condition 27 will remove incentives for project proponents to design their activities to have minimal adverse effects to qualify for NWP authorization. These commenters believe that project proponents will design larger activities with greater environmental impacts when required to request individual permits. One commenter said that the NWPs should authorize fills that result in the loss of less than 2 acres of waters of the United States in 100-year floodplains.

Several commenters stated that the requirements of proposed General Condition 27 should not be more restrictive than FEMA regulations. Numerous commenters indicated that the proposed general condition is contrary to FEMA regulations, which allow fills in the flood fringe of 100-year floodplains. One commenter said that the proposed general condition should be modified to allow the NWPs to authorize activities that comply with NFIP construction standards. One commenter said that proposed General Condition 27 should not apply in areas with FEMA-certified floodplain management programs in place, where the activity has been approved by the local floodplain management agency.

We agree with these comments and have modified this general condition so that the NWPs can be used to authorize activities within flood fringes of 100-year floodplains within headwater streams, provided those activities comply with FEMA or FEMA-approved local floodplain construction requirements and result in minimal adverse effects on the aquatic environment. We do not agree that there should be a 2 acre limit for discharges of dredged or fill material into waters of the United States within 100-year floodplains. The 1/2 acre limit for most of the new NWPs will allow the NWP program to continue to provide a streamlined authorization process for activities with minimal adverse effects on the aquatic environment.

A large number of commenters stated that proposed General Condition 27 will impose additional requirements on local floodplain authorities that will increase their workload. For example, the proposed general condition required local floodplain authorities to determine the extent of 100-year floodplains, determine whether a proposed activity is outside of the 100-year floodplain, and provide documentation that the proposed work will not decrease the flood-holding capacity of the 100-year floodplain.

We agree with these concerns, but believe that the revised general condition will not impose such additional workload requirements on local floodplain authorities.

Many commenters contend that the prohibitions in proposed General Condition 27 are not necessary because the NWPs authorize only activities with minimal adverse effects on the aquatic environment, including floodplains. Several commenters noted that the terms of proposed General Condition 27 impose a "no effect" standard on the NWPs instead of a "minimal adverse effect" standard.

We agree with these comments. The revised general condition does not

prohibit the use of NWPs 29, 39, 40, 42, 43, and 44 to authorize discharges of dredged or fill material into waters of the United States within flood fringes of 100-year floodplains within headwater streams, provided the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements and results in minimal adverse effects on the aquatic environment. NWPs 12 and 14 can be used to authorize activities in all non-tidal 100-year floodplains, provided those activities comply with FEMA or FEMA-approved local floodplain construction requirements and result in minimal adverse effects on the aquatic environment.

Numerous commenters objected to this general condition because it requires PCNs for all activities. Two commenters requested clarification whether notification to the district engineer is required if the FEMA map or local floodplain map shows that the project site is outside of the 100-year floodplain. Three commenters asked if the PCN requirement in paragraph (a) of the proposed general condition is for all NWPs or only NWPs 21, 29, 39, 40, 42, 43, and 44.

The revised general condition does not require notification for all activities authorized by NWPs 12, 14, 29, 39, 40, 42, 43, and 44. Notification is required only if the proposed activity involves discharges of dredged or fill material into waters of the United States within 100-year floodplains that are mapped through Flood Insurance Rate Maps (FIRMs) published by FEMA or FEMA-approved local floodplain maps.

Numerous commenters said that compensatory mitigation can be used to offset losses of floodplain functions and values, including flood storage, and that the prohibitions in proposed General Condition 27 are unnecessary. Several commenters remarked that floodplain issues are more appropriately addressed through regional conditions. Other commenters suggested that PCNs and discretionary authority should be used instead of prohibitions. Two commenters recommended that the Corps include local floodplain agencies in the agency coordination process to address floodplain concerns.

Compensatory mitigation can be used to ensure that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. Since flood hazards are a national concern, we do not agree that this issue should be addressed solely by regional conditions. Certain NWP activities within 100-year floodplains will be reviewed through the PCN process to ensure that those activities comply with FEMA or FEMA-approved local floodplain construction requirements and result in minimal adverse effects on the aquatic environment. In addition, we believe that the waters of the United States within the mapped floodway have inherently higher wetland functions and values, which should be afforded additional protections.

Several commenters said that proposed General Condition 27 is unnecessary because the proposed modification of General Condition 21 adequately addresses changes to surface water flows, including flooding. Three commenters requested clarification whether runoff from buildings constructed in uplands within 100-year floodplains requires a Section 404 permit. Three commenters asked whether permanent, above-grade fills in uplands within 100-year floodplains are subject to proposed General Condition 27.

We do not agree that General Condition 21 adequately addresses all potential adverse effects to 100-year floodplains. Stormwater runoff from buildings constructed in uplands within 100-year floodplains does not require a Section 404 permit. During reviews of PCNs, district engineers will consider the adverse effects of the proposed activity on the ecological as well as flooding functions and values of 100-year floodplains. Depending on the Corps scope of analysis for the proposed work, district engineers will generally limit their reviews to activities in waters of the United States within 100-year floodplains.

Many commenters addressed problems associated with identifying and mapping 100-year floodplains. One commenter supported the requirement for using up-to-date FEMA maps. Several commenters advocated expanding proposed General Condition 27 to 100-year floodplains not mapped by FEMA on its FIRMs. A large number of commenters indicated that FEMA maps are not accurate and should not be relied upon to identify the extent of 100-year floodplains. Two commenters said that the Corps should map the floodplains. One commenter noted that many FEMA maps do not reflect changes in land use that have occurred since the last FIRM was issued, which makes these maps unreliable.

To effectively implement the requirements of this general condition, and to be consistent with other Federal programs, 100-year floodplains will be identified through the latest FIRMs published by FEMA or FEMA-approved local floodplain maps. If there are no FIRMs or FEMA-approved local floodplain maps available for the area where the proposed work is located, then the requirements of this general condition do not apply. In such cases, the Corps will still consider the impacts of proposed projects through the PCN review process.

Many commenters stated that in areas where there are no FEMA maps or those maps are out of date, local floodplain authorities may be unwilling to certify the extent of the 100-year floodplain without extensive analyses. These commenters said that landowners may have to go through a lengthy and expensive map revision process before the local floodplain authority will provide the documentation required by proposed General Condition 27. Two commenters remarked that the requirement to have a licensed professional engineer certify whether or not the activity is in the 100-year floodplain is too restrictive. These commenters said that this requirement should be modified to allow qualified hydrologists to identify 100-year floodplains in areas not mapped by FIRMs. Several commenters suggested that proposed General Condition 27 should contain a statement requiring the consideration of man-made flood control structures when mapping 100-year floodplains.

The revised general condition does not require local floodplain authorities to certify the extent of 100-year floodplains. In addition, the prospective permittee is not required to have a licensed professional engineer certify whether or not the proposed work is within a 100-year floodplain.

One commenter objected to using FEMA maps, stating that the scale of these maps makes it difficult to determine if a particular parcel is within a 100-year floodplain. Another commenter objected to using FIRMs because they may contain large areas that are within the 100-year floodplain but are not mapped because of inadequate funding. These unmapped areas would place burdens on local governments or the landowners, who would be required to survey the property and map the 100-year floodplain. One commenter objected to proposed General Condition 27, because it would require project proponents to obtain individual permits if they cannot demonstrate that the proposed work is located outside of 100-year floodplains because there are no FEMA or local floodplain maps available for the project sites.

We believe that FIRMs or FEMA-approved local floodplain maps are adequate for the purposes of this general condition. Utilizing existing FIRMs and

FEMA-approved local floodplain maps eliminates the additional burdens on local governments or landowners that existed in the proposed condition. If there are no FIRMs or FEMA-approved local floodplain maps available for the project area, this general condition does not apply.

Several commenters stated that paragraph (b) of proposed General Condition 27 is an illegal delegation of the Corps regulatory authority because it allows FEMA or local floodplain authorities to prohibit the use of NWPs 12 and 14 in 100-year floodplains. Two commenters disapprove of the requirement for prospective permittees to provide, with the notification, a statement from FEMA or the local flood control agency that the proposed work will not increase flooding. One commenter objected to the provisions of paragraph (b) because FEMA regulations require engineering analyses only for work in regulatory floodways. Two commenters recommended modifying paragraph (b) to allow professional engineers to provide documentation to district engineers without submitting it to FEMA or local floodplain authorities for approval.

We have revised this general condition to require the permittee to comply with the appropriate FEMA or FEMA-approved local floodplain construction requirements. These requirements address impacts to base flood elevations and 100-year floodplains to minimize flood damages. The revised general condition does not require engineering analyses on a case-by-case basis.

Two commenters said that the requirements of the proposed general condition will require local floodplain authorities to develop new regulations to address the documentation necessary to comply with paragraph (b), since these are new requirements that are not currently used by local floodplain agencies. These commenters indicated that it would be more appropriate for FEMA to change its regulations to address these documentation requirements. Many commenters stated that FEMA and local floodplain authorities are not equipped to handle the reviews necessary for the rebuttable presumption in paragraph (b) of proposed General Condition 27 because it contains different standards than they currently use. Several commenters disapprove of this general condition because it provides no mechanism to resolve disputes that may occur between FEMA and local floodplain agencies.

We have revised this general condition to require the permittee to comply with FEMA or FEMA-approved local floodplain construction requirements. If those construction requirements change, the permittee would have to comply with the new construction requirements.

Several commenters indicated that the criteria in paragraph (b) of proposed General Condition 27 (i.e., no more than minimal alteration of the hydrology, flow regime, or volume of waters associated with the floodplain) are not well-defined in current FEMA regulations or the guidance for implementing local floodplain regulations. These commenters said that most states do not use these criteria when assessing impacts to 100-year floodplains. Two commenters suggested that the Corps consult with state floodplain regulatory agencies and Federal transportation agencies to develop language that makes this condition practical to implement. Another commenter recommended that other factors, such as the width of the drainage course, slope, roughness coefficients, and location of above-grade fills within the 100-year floodplain should be considered.

We have removed these criteria from this general condition. Instead, we will rely on FEMA or FEMA-approved local floodplain construction requirements to ensure that the authorized work does not result in more than minimal adverse effects to the flood-holding capacity of 100-year floodplains.

One commenter identified inconsistencies between the second and fourth sentences of paragraph (b). The second sentence states that the "* * * project and associated mitigation, will not decrease flood-holding capacity and no more than minimally alter the hydrology, flow regime, or volume of waters associated with the floodplain." The fourth sentence states that the project "* * * will not result in increased flooding or more than minimally alter floodplain hydrology or flow regimes." Since the documentation requirements of these sentences differ, the commenter was unsure as to what constitutes the criteria that will be used to determine compliance with the proposed general condition.

The revised general condition does not contain these inconsistencies.

Two commenters stated that the proposed general condition should apply to NWP activities in smaller tributaries, in addition to the main river. One commenter said that tributaries to streams should be considered as separate watersheds and eligible for the exception in paragraph (c) of proposed General Condition 27. This commenter requested criteria that will be used to determine whether a tributary is separate from the floodplain of the main channel. Another commenter contends that paragraph (c) of the proposed general condition is too confusing and requested clarification explaining how district engineers and prospective permittees would determine if a particular site is located in the portion of the watershed that drains less than one square mile.

This general condition applies to activities authorized by NWPs 12, 14, 29, 39, 40, 42, 43, and 44, where 100-year floodplains are delineated on either FIRMs or FEMA-approved floodplain maps. If no 100-year floodplain map has been produced for a particular tributary, then the provisions of this general condition do not apply. The revised general condition does not contain a provision similar to paragraph (c) of the proposed General Condition 27.

Several commenters suggested that the rebuttable presumption in paragraph (b) should be utilized for NWPs 21, 29, 39, 40, 42, 43, and 44, instead of prohibiting these activities in 100-year floodplains. One commenter recommended expanding proposed General Condition 27 to NWPs 7, 8, 16, and 17. Several commenters said that proposed General Condition 27 should not apply to the construction, replacement, and maintenance of water supply facilities, fish production facilities, flood control facilities, and hydraulic control and drainage facilities. Three commenters indicated that the proposed general condition should not apply to NWP 27 activities.

We have revised the proposed general condition to require, for NWP 29, 39, 40, 42, 43, and 44 activities in flood fringes of the 100-year floodplains within headwater streams, that the permittee notify the district engineer in accordance with General Condition 13 and provide documentation demonstrating that the proposed work complies with FEMA or FEMA-approved local floodplain construction regulations. We have withdrawn NWP 21 from the general condition. We do not agree that this general condition should apply to NWPs 7, 8, and 16 because the activities authorized by these NWPs have little or no adverse effects on the flood-holding capacity of 100-year floodplains. Hydropower projects authorized by NWP 17 would be required to comply with the appropriate floodplain construction requirements. This general condition does not apply to water supply facilities, fish production facilities, flood control facilities, and hydraulic control and drainage facilities, unless those activities are authorized by the NWPs listed in the general condition.

NWP 27 is not subject to this general condition.

Many commenters said that proposed General Condition 27 should not apply to NWP 12 activities. One commenter suggested a ⅓ acre limit for utility line activities in 100-year floodplains. Another commenter stated that the installation of above-ground utility line valves within 100-year floodplains should not be subject to the hydraulic modeling requirements of paragraph (b) because these activities have minor adverse effects on flood-holding capacity. Several commenters said that the requirements of paragraph (b) should not apply to utility lines that are installed underground. Three commenters said that permanent above-grade fills within 100-year floodplains for utility line activities should not be authorized by NWP 12.

We do not agree that NWP 12 activities should be excluded from this general condition. Utility line activities can adversely affect the flood-holding capacity of the 100-year floodplain. NWP 12 activities are required to comply with the appropriate FEMA or FEMA-approved local floodplain construction requirements.

Numerous commenters stated that proposed General Condition 27 should not apply to NWP 14 activities. One commenter said that the proposed general condition should apply only to transportation crossings that are constructed parallel to streams. A commenter suggested a ⅓ acre limit for NWP 14 activities in 100-year floodplains. One commenter said that restricting NWP 14 activities in 100-year floodplains could adversely affect public safety.

NWP 14 activities can adversely affect the flood-holding capacity of 100-year floodplains, as well as surface water flow patterns during flood events. The revised general condition does not prohibit NWP 14 activities in 100-year floodplains. NWP 14 activities must comply with the appropriate FEMA or FEMA-approved local floodplain construction requirements.

Many commenters said that proposed General Condition 27 should not apply to activities authorized by NWP 21 because all coal mining is regulated by the Office of Surface Mining (OSM) and delegated state agencies. Some of these commenters indicated that state mining programs have extensive performance standards for hydrological balance, which address similar issues as proposed General Condition 27. Numerous commenters stated that OSM-approved state programs have requirements to restore mined areas to approximately the original contours and that prohibiting the use of NWP 21 in 100-year floodplains will place burdens on the mining industry without providing any additional benefits.

We concur with these commenters and have removed NWP 21 from the revised general condition.

One commenter stated that, for activities authorized by paragraph (a) of NWP 40, NRCS would have to determine if the proposed work will result in unacceptable impacts on FEMA-mapped 100-year floodplains. This commenter said that NRCS, as part of its review, addresses impacts on flood storage and flood flows and that prospective permittees should be allowed to use NWP 40 if the work will not result in impacts to 100-year flood events. This commenter also recommended incorporating the requirements of proposed General Condition 27 into the text of NWP 40 so that the regulated public will be aware of these requirements.

For activities authorized by paragraph (a) of NWP 40, NRCS will determine if the proposed work complies with this general condition. We have added paragraph (e) to NWP 40, which refers permittees to General Condition 26.

Many commenters objected to applying the prohibition in paragraph (a) of proposed General Condition 27 to NWP 43 activities. A number of these commenters said that this prohibition is inappropriate since stormwater management facilities must be located in or near 100-year floodplains and their purpose is floodplain management and flood control. Several commenters said that prohibiting NWP 43 activities in 100-year floodplains will put citizens at greater risks and make their property more susceptible to flood damage. One commenter stated that proposed General Condition 27 should not apply to the maintenance of existing flood control projects.

We do not agree that NWP 43 should be excluded from this general condition. NWP 43 activities must comply with FEMA or FEMA-approved local floodplain construction requirements, if the activity is located in flood fringes of 100-year floodplains of headwater streams. Furthermore, many in-stream stormwater management facilities are located above the 1 cfs point on streams. General Condition 26 does not apply above the 1 cfs point, thus these projects will not be affected. The revised general condition does not apply to NWP 31 activities.

Many commenters stated that proposed General Condition 27 should not apply to NWP 44 activities because it would not provide any added benefits. Some of these commenters said that aggregate mining activities often increase flood storage capacity and therefore should not be prohibited by this general condition. Several commenters suggested that NWP 44 activities should be subject to the rebuttable presumption in paragraph (b) of the proposed general condition. One commenter said that the proposed general condition should not apply to aggregate mining activities because sand and gravel deposits are typically located within floodplains and off-site alternatives are usually impractical. This commenter also stated that mined land reclamation will restore surface water flow patterns. A commenter noted that dikes, berms, foundations, and impoundments associated with mining activities can be located so that they will not restrict the flow of floodwaters.

We do not agree that NWP 44 should be excluded from this general condition, because permanent, above-grade fills associated with mining activities can adversely affect the flood-holding capacity of 100-year floodplains. Mining activities that do not result in permanent above-grade fills are not subject to the requirements of this general condition.

The Corps of Engineers is very concerned with the loss of life and property resulting from unwise development in the floodplain. The Corps has recently advocated the strengthening of floodplain policy and the use of non-structural measures to reduce flood damages. We believe that the changes to the NWP program published today will play an important role in reducing damages associated with development in the floodplain. We will monitor carefully the effectiveness of the new floodplain condition to ensure that it has the intended impact on reducing floodplain development. Specifically, three years from the effective date of the new NWPs, we will prepare a report on the use of NWPs in the flood fringe area in the headwaters. This report will include an analysis of the extent, if any, to which NWPs are being used in the floodplain of areas with repeated flood damages.

Proposed General Condition 27 is adopted as General Condition 26, with the modifications discussed above.

V. Comments and Responses on Nationwide Permit Definitions

We received many comments concerning the proposed definitions for the NWPs. Comments regarding specific definitions are discussed below. In this section, we also address requests for definitions of additional terms used in the NWP program. One commenter said that certain terms defined in the

"Definitions" section do not appear in the text of NWPs and that they should be removed. This commenter cited the definitions of "aquatic bench" and "ephemeral streams." Another commenter objected to the differential treatment of perennial, intermittent, and ephemeral streams, stating that each stream type has important functions and values and that the proposed NWPs imply that ephemeral streams are less valuable.

We have deleted the definition of the term "aquatic bench," since it is not used in the new NWPs. We believe that it is necessary to retain the definition of the term "ephemeral stream" because it is important to recognize the differences between perennial, intermittent, and ephemeral streams when determining whether a particular project will have more than minimal adverse effects on the aquatic environment. For example, NWP 43 does not authorize the construction of new stormwater management facilities in perennial streams. Division engineers can also regionally condition these NWPs to address regional concerns for different stream types.

Best Management Practices. One commenter recommended adding "and wetlands" after the phrase "surface water quality."

We do not agree that this change is necessary, because wetlands are surface waters. This definition is adopted as proposed.

Compensatory Mitigation. One commenter stated that the requirement in the new NWPs for vegetated buffers adjacent to open waters is inconsistent with the proposed definition of compensatory mitigation, because that definition does not recognize vegetated buffers as a form of compensatory mitigation. Another commenter recommended revising the definition to recognize the use of upland areas to provide out-of-kind compensatory mitigation. One commenter said that the definition of this term should include references to mitigation banks and in lieu fee programs. One commenter said that the word "unavoidable" in the definition is confusing and should be removed.

The establishment and maintenance of vegetated buffers next to open waters, including streams, is not inconsistent with the proposed definition of this term. An integral component of stream restoration projects is the reestablishment of the riparian zone, which may involve planting trees and shrubs next to the stream to restore aquatic habitat. It is not necessary to include mitigation banks and in lieu fee programs in the definition of this term because these are specific forms of compensatory mitigation. The word "unavoidable" is an integral part of this definition because the NWPs require on-site avoidance and minimization of losses of waters of the United States, to the maximum extent practicable (see General Condition 19). This definition is adopted as proposed.

Creation: We did not receive any comments concerning the proposed definition. This definition is adopted as proposed.

Drainage Ditch. Several commenters noted that the term "ordinary high water line," which is used in the proposed definition of this term, is not defined in Corps regulations. These commenters asked if we intended to refer to the "ordinary high water mark." Several commenters stated that channelized streams should not be included in this definition. One commenter recommended that this definition differentiate between channelized streams and drainage ditches by stating that channelized streams convey water from high water tables. Another commenter objected to a statement in the preamble discussion related to this definition (64 FR 39351) that the maintenance of drainage ditches which are constructed by channelizing streams is exempt from Section 404 permit requirements as long as the maintenance activity does not exceed the original ditch design and configuration. Two commenters requested that the Corps add structural drainage ditches and channels to the definition of this term.

One commenter said that a clear definition of the term "upland drainage ditch" is needed. Another commenter objected to the second sentence of the proposed definition, stating that drainage ditches are jurisdictional only when they are constructed in waters of the United States. This commenter indicated that the entire drainage ditch should become jurisdictional if any part of that drainage ditch is constructed in waters of the United States.

We have withdrawn the proposed definition of this term from the "Definitions" section of the NWPs, because of the complexity of the jurisdictional issues related to drainage ditches.

Enhancement: We did not receive any comments concerning the proposed definition. This definition is adopted as proposed.

Ephemeral Stream. Several commenters recommended modifying the proposed definition of this term to state that ephemeral streams are not waters of the United States as defined at 33 CFR 328.3(a)(3). These commenters also noted that in the July 1, 1998, **Federal Register** notice (63 FR 36042), the Corps defined the term stream bed as including only perennial and intermittent streams.

We do not agree that it is necessary to explicitly state in the definition of this term that ephemeral streams are not waters of the United States because such a statement would be inaccurate. An ephemeral stream that meets the criteria at 33 CFR part 328 is a water of the United States. We acknowledge that we made an error on page 36042 of the July 1, 1998, **Federal Register** notice. Our intent was to clarify that the PCN thresholds for stream bed impacts for the proposed NWPs apply only to perennial and intermittent stream beds, not ephemeral stream beds. The term "stream bed," as used for the NWPs, applies to perennial, intermittent, and ephemeral stream beds. This definition is adopted as proposed.

Farm tract: We did not receive any comments concerning the proposed definition. This definition is adopted as proposed.

Independent utility: We did not receive any comments concerning the proposed definition. This definition is adopted as proposed.

Intermittent stream: We did not receive any comments concerning the proposed definition. This definition is adopted as proposed.

Loss of Waters of the United States. During our review of the comments received in response to the July 21, 1999, **Federal Register** notice, we found an error in the proposed definition of the term "loss of waters of the United States." In the fourth sentence of the draft definition, we stated that the loss of stream bed includes the linear feet of perennial or intermittent stream bed that is filled or excavated. This statement is inaccurate because ephemeral stream bed that is filled or excavated can also be considered a loss of waters of the United States. However, the 300 linear foot limit for stream beds filled or excavated does not apply to ephemeral streams. We have modified this sentence to define the loss of stream bed as the linear feet of stream bed that is filled or excavated.

One commenter requested clarification whether the definition of this term refers only to permanent losses. This commenter also said that the proposed definition implies that all permanent losses of waters of the United States, no matter how small, are considered. Several commenters stated that only permanent losses of waters of the United States should be regulated by the Corps. Another commenter suggested that temporary losses should

be included in the measurement of loss of waters of the United States.

All permanent losses of waters of the United States are considered when calculating the amount of loss of waters of the United States to determine whether a particular activity complies with the acreage or linear limits of an NWP. All discharges of dredged or fill material into waters of the United States resulting in permanent or temporary losses of waters of the United States are regulated by the Corps, unless they are specifically exempt under Section 404(f) of the Clean Water Act. We do not agree that temporary losses of waters of the United States should be included in the threshold measurement to determine whether a activity may qualify for an NWP, since these areas revert back to waters of the United States once they are restored.

One commenter asked if the term "loss of waters of the United States" includes the removal of silt that has accumulated in a channel. Another commenter said that the proposed definition is so broad that it would include any effect, not just losses. This commenter said that it is not clear whether maintenance dredging of flood control channels to restore design grades is considered a loss of waters of the United States. One commenter objected to the third sentence of the proposed definition, stating that this sentence is inconsistent with Corps practice of considering compensatory mitigation when determining whether the adverse effects on the aquatic environment are minimal. A commenter suggested that the Corps consider the entire single and complete project to determine the amount of loss of waters of the United States and whether the adverse effects are minimal.

The term "loss of waters of the United States" does not include maintenance dredging activities that remove accumulated sediments, provided the dredged material is deposited in upland disposal sites. An exception occurs where the channel has accumulated so much sediment that wetlands have developed in the channel and the removal of those wetlands are necessary to reconstruct the channel. In that situation, we would consider the activity to result in a loss of waters of the United States. However, in most situations mitigation is not required for the cyclical removal of vegetation during maintenance activities.

The third sentence of this definition is not inconsistent with our policy of using compensatory mitigation to determine whether the net adverse effects of a particular activity on the aquatic environment are minimal. This part of the definition merely states that compensatory mitigation cannot be used to offset a loss of waters of the United States to meet the acreage limit of an NWP. For example, a project proponent cannot create ½ acre of wetlands to change a ¾ acre loss of wetlands to a ¼ acre loss of wetlands (see paragraph (b) of General Condition 19). However, the district engineer will consider compensatory mitigation when determining whether the net adverse effects on the aquatic environment are minimal.

One commenter said that this definition should also include long-term, but temporary, impacts to aquatic resource functions and values. Another commenter stated that discharges of dredged or fill material into waters of the United States to construct compensatory mitigation projects should be included in the measurement of loss of waters of the United States because these projects do not always succeed.

District engineers will determine, on a case-by-case basis whether an activity results in permanent or temporary losses of waters of the United States. We do not agree that impacts due to the construction of compensatory mitigation projects should be included in the measurement of loss of waters of the United States because these activities offset losses of waters of the United States. This definition is adopted with the modification discussed above.

Non-tidal wetland. One commenter said that the third sentence of the proposed definition is not accurate because it changes the definition of high tide line. This commenter believes that the maximum height of the tide is not the spring high tide.

The spring high tide line is the normal high tide line that occurs during the tidal cycle. Water levels higher than spring high tides result from storm surges, which are not part of the normal tidal cycle. This definition is retained as proposed.

Open Water. Two commenters stated that the proposed definition of this term is confusing and asked whether all waters of the United States that have ordinary high water marks are open waters. These commenters also inquired whether this term applies to other areas, such as ephemeral washes, arroyos, and vernal pools, that are not inundated for sufficient amounts of time to develop OHWMs and may not be waters of the United States. Two commenters said that the definition of this term should specifically exclude ephemeral washes. One commenter requested that the Corps clarify whether or not all waters of the United States have an OHWM.

To clarify this definition, we have modified the second sentence to state that open waters either have little or no emergent aquatic vegetation. Vegetated shallows are considered to be open waters. Waters of the United States with substantial amounts of emergent aquatic vegetation are wetlands, which may or may not have an OHWM. An ephemeral wash, arroyo, or vernal pool that does not have an OHWM is not a water of the United States, unless that area has wetlands that meet the criteria in 33 CFR part 328. We have added a sentence to the definition which states that ephemeral waters are not considered open waters, for the purposes of the NWPs. The definition of this term is adopted with the modifications discussed above.

Perennial stream. One commenter recommended that the Corps modify the proposed definition to state that the water table "discharges" into the stream for most of the year.

We do not agree with this comment, because using the word "discharge" in this definition is likely to create confusion since certain NWPs authorize discharges of dredged or fill material into waters of the United States for specific activities. The definition is adopted as proposed.

Permanent above-grade fill. Several commenters requested a more explicit definition of the word "permanent" as used in the context of this term. One commenter asked for clarification of what is considered "above-grade" for the purposes of this definition. One commenter said that any discharge of dredged or fill material into waters of the United States should be considered an above-grade fill.

District engineers will determine, on a case-by-case basis, what constitutes a permanent, above-grade fill for the purposes of this definition and General Condition 26. Not all discharges of dredged or fill material into waters of the United States result in permanent, above-grade fills. For example, during the installation of an underground utility line, a wetland could be excavated and backfilled with no permanent change in grade. We believe the definition is adequately clear.

One commenter expressed concern that the use of the word "substantial" in the definition of this term would prohibit stockpiling in 100-year floodplains during sand and gravel mining operations. Another commenter requested that the last sentence of this definition specifically state which NWPs are excluded from this definition, and whether NWP 12 is one of the excluded NWPs.

Temporary stockpiles of materials during mining operations would not be considered permanent above-grade fills for the purposes of this definition and General Condition 26. The exclusion in the last sentence of this definition applies to all structural discharges authorized by NWPs, except for structural discharges that are authorized by the NWPs listed in General Condition 26 (i.e., NWPs 12, 14, 29, 39, 40, 42, 43, and 44). This definition is adopted as proposed.

Playa. Many commenters objected to the proposed definition of this term, stating that this type of aquatic habitat is found throughout the country. Various commenters suggested additional geographic areas that should be included, such as Oklahoma, Colorado, Kansas, Oregon, Washington, and Idaho. Another commenter objected to the inclusion of the word "small" in the proposed definition because some playas can be large in size. This commenter also objected to including the phrase "emergent hydrophytic vegetation" in the definition because many playas do not support vegetation.

Since we have removed the indexed acreage limit for discharges of dredged or fill material into playas, prairie potholes, and vernal pools from NWP 40, therefore we have removed the proposed definition of a playa.

Prairie pothole. Many commenters objected to the proposed definition of this term, stating that this type of aquatic habitat is found throughout the country.

Since we have removed the indexed acreage limit for discharges of dredged or fill material into playas, prairie potholes, and vernal pools from NWP 40, we have removed the proposed definition of prairie pothole.

Preservation: We did not receive any comments concerning the proposed definition. This definition is adopted as proposed.

Project Area. One commenter objected to the inclusion of open space in the definition of this term, because the commenter believes that it penalizes the permittee for avoiding impacts to waters of the United States. Another commenter said that the exclusion of public roads from the definition of "project area" is unnecessary because the public roads would not have been built unless the subdivision was constructed.

Since we have replaced the indexed acreage limit of NWP 39 with a simple ½ acre limit, we have deleted the proposed definition of project area from this section.

Restoration. One commenter recommended deleting the phrase "or exist in a substantially degraded state" from the definition of this term, because it overlaps with the definition of the term "enhancement."

The definition of this term was taken from the "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks" that was published in the November 28, 1995, **Federal Register** (60 FR 58605). Therefore, we cannot make the recommended change because this guidance is still in effect. The definition is adopted as proposed.

Riffle and Pool Complex. One commenter suggested that this term apply only to perennial streams and not to intermittent or ephemeral streams. This commenter also recommended inserting the word "moderately" before the word "steep" in the second sentence of this definition because stream beds with steep gradients seldom have riffle and pool complexes.

The definition of this term was taken from 40 CFR 230.45. Therefore, we will not modify the definition of this term for the purposes of the NWPs. District engineers will use their judgement to identify riffle and pool complexes at project sites and to distinguish between riffle and pool complexes (which are found in areas with moderate grades) and step-pool complexes (which are found in areas with steep grades, where the stream bed material consists mostly of boulders and large rocks). The definition is adopted as proposed.

Single and Complete Project. One commenter said that the criteria for linear single and complete projects should be the same as for other activities.

We do not agree with this comment. The definition of single and complete linear projects is consistent with the current NWP regulations at 33 CFR 330.2(i). This definition is adopted as proposed.

Stormwater management. Several commenters objected to the proposed definition, stating that it does not specifically include facilities that reduce downstream flooding. These commenters said that the definition should include flood control facilities so that they can be authorized by NWP 43.

The proposed definition does consider flooding and the definition of its related term, "stormwater management facilities," addresses flooding issues by discussing runoff in the definition. NWP 43 can be used to authorize certain types of flood control facilities, if they are constructed to control runoff and reduce flooding impacts. This definition is adopted as proposed.

Stormwater management facilities. Two commenters said that this definition should distinguish between facilities that are designed to protect water quality and facilities that are designed for flood control purposes.

We disagree with these commenters because stormwater management facilities usually perform both functions by slowing runoff during storms and trapping sediments and chemical compounds. This definition is adopted as proposed.

Stream bed: We did not receive any comments concerning the proposed definition. This definition is adopted as proposed.

Stream channelization. One commenter requested that the Corps modify the definition of this term to more specifically identify what constitutes stream channelization. Another commenter said that the definition should contain a statement that excavation activities are not regulated by the Corps. Two commenters stated that this definition should include definitions for the terms "structures" and "fills" so that the regulated public will know when the maintenance of these structures and fills is eligible for NWP 3 or the maintenance exemption in section 404(f) of the Clean Water Act.

The proposed definition already provides sufficient examples of activities that may result in stream channelization. District engineers will determine on a case-by-case basis whether a particular activity involves stream channelization. We discuss the regulation of excavation activities in waters of the United States in a previous section of this **Federal Register** notice and do not believe it is necessary to address that issue in this definition. We do not agree that it is necessary to provide definitions of the terms "structure" and "fill" in the definition of this term. This definition is adopted as proposed.

Tidal Wetland. One commenter stated that the term "spring high tide" should be replaced with the phrase "mean high tide" to make the definition consistent with the provisions of section 10 of the Rivers and Harbors Act.

Although the shoreward limit of jurisdiction for section 10 of the Rivers and Harbors Act is mean (average) high water (see 33 CFR 329.12(a)(2)), spring high tides are waters of the United States under Section 404 of the Clean Water Act (see 33 CFR 328.3(d) and (f)). Tidal wetlands are wetlands that are inundated with tidal waters, including spring high tides. Therefore, this definition is adopted as proposed.

Vegetated Shallows. One commenter suggested inserting the phrase

"submerged or floating" before the word "vegetation" in the proposed definition.

The proposed definition was taken from the definition of vegetated shallows published at 40 CFR 230.43 and we do not agree that the recommended change is necessary. This definition is adopted as proposed.

Vernal pool. Many commenters objected to the proposed definition of this term, stating that this type of aquatic habitat is found throughout the country. One commenter stated that not all regions with vernal pools exhibit the "Mediterranean" climates cited in the proposed definition.

Since we have removed the indexed acreage limit for discharges of dredged or fill material into playas, prairie potholes, and vernal pools from NWP 40, we have removed the proposed definition of vernal pools from this section.

Waterbody. One commenter suggested that the word "contiguous" in the second sentence of the proposed definition should be replaced with the word "adjacent."

We disagree with this recommendation, because wetlands that are adjacent to a waterbody are not necessarily part of the waterbody, unless there is a direct, surface water connection (i.e., contiguous) between the wetland and the waterbody. This definition is adopted as proposed.

Additional Definitions. Several commenters recommended that the Corps include definitions of other terms in this section of the NWPs. These comments are addressed below.

One commenter said that the phrase "minimal effects on the aquatic environment" needs to be precisely defined so that users of NWPs will know the extent of adverse effects authorized by the NWPs. Two commenters suggested adding definitions of the terms "isolated waters" and "headwaters." One of these commenters requested a definition of the term "excavation." One commenter said that a definition of the term "upland" as it is used in the context of NWPs 39, 43, and 44 is needed. Two commenters asked for a definition of the phrase "utility line substations" as used in NWP 12. Another commenter requested a definition of the term "practicable" as it is used in General Condition 21. This commenter recommended adopting the definition in the Section 404(b)(1) guidelines.

We cannot provide a national definition of the term "minimal effects on the aquatic environment" because the determination of minimal adverse effects for the NWPs and other general permits must be made on a case-by-case basis, by considering site characteristics, the functions and values of waters of the United States, the quality of those waters, regional differences in aquatic resource functions and values, and other factors. Definitions of the terms "isolated waters" and "headwaters" are found at 33 CFR 330.2(e) and 33 CFR 330.2(d), respectively. We do not agree that it is necessary to provide a definition of the terms "excavation," "uplands," or "utility line substations." The Corps regulatory program uses the definition of the term "practicable" found at 40 CFR 230.3(q).

One commenter requested a definition of the term "non-tidal wetlands adjacent to tidal waters" because the word "adjacent" can be broadly defined. This commenter recommended limiting the phrase "non-tidal wetlands adjacent to tidal water" to wetlands that are found between the mean tide line and the spring high tide line; wetlands landward of the spring high tide line would not be considered adjacent to tidal waters.

As discussed in a previous paragraph in this section, wetlands located between the mean high tide line and the spring high tide line are tidal wetlands, because they are inundated with tidal waters. Non-tidal wetlands that are landward of the spring high tide line and bordering, contiguous, or neighboring to tidal waters are adjacent to tidal waters. District engineers will determine, on a case-by-case basis, whether a particular non-tidal wetland is adjacent to tidal waters.

One commenter recommended including a more detailed definition of the term "lower perennial stream" that is developed from the Cowardin definition and discusses the stream gradient, water velocity, stream substrate, faunal composition, and floodplain development of the lower perennial stream.

Since the term "lower perennial stream" is used only in the context of NWP 44, we have provided a modified version of the Cowardin definition in the text of this NWP. This modified definition describes the stream gradient, stream flow, water velocity, and the stream substrate. We do not agree that it is necessary to address the type of organisms that inhabit lower perennial streams, since the physical description of these stream segments is adequate for the purposes of NWP 44.

One commenter suggested that the Corps include a definition of the term "vegetated buffer" in this section. We concur with this comment and have added a definition of this term to the "Definitions" section of the NWPs.

For the implementation of General Condition 26, we have also added definitions of the terms "flood fringe" and "floodway" to this section. These definitions were taken from 44 CFR 9.4, FEMA's regulations for floodplain management and protection of wetlands.

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Alaska

Alaska District Engineer, ATTN: CEPOA–CO–R, P.O. Box 898, Anchorage, AK 99506–0898

Arizona

Los Angeles District Engineer, ATTN: CESPL–CO–R, P.O. Box 2711, Los Angeles, CA 90053–2325

Arkansas

Little Rock District Engineer, ATTN: CESWL–ET–WR, P.O. Box 867, Little Rock, AR 72203–0867

California

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Colorado

Albuquerque District Engineer, ATTN: CESPA–OD–R, 4101 Jefferson Plaza NE, Room 302, Albuquerque, NM 87109–3435

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New England District Engineer, ATTN: CENAE–OD–R, 696 Virginia Road, Concord, MA 01742–2751

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Georgia

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Hawaii

Honolulu District Engineer, ATTN: CEPOH–CO–O, Building 230, Fort Shafter, Honolulu, HI 96858–5440

Idaho

Walla Walla District Engineer, ATTN: CENWW–OD–RF, 210 N. Third Street, City-County Airport, Walla Walla, WA 99362–1876

Illinois

Rock Island District Engineer, ATTN: CEMVR–RD, P.O. Box 004, Rock Island, IL 61204–2004

Indiana

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Maryland

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Massachusetts

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Michigan

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Minnesota

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Mississippi

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North Dakota

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Ohio

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Oklahoma

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Oregon

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Rhode Island

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Charleston District Engineer, ATTN: CESAC–CO–P, P.O. Box 919, Charleston, SC 29402–0919

South Dakota

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Ft. Worth District Engineer, ATTN: CESWF–EV–R, P.O. Box 17300, Ft. Worth, TX 76102–0300

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Washington

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West Virginia

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Pacific Territories

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Puerto Rico and Virgin Islands

Jacksonville District Engineer, ATTN: CESAJ–RD, P.O. Box 4970, Jacksonville, FL 32202–4412

Date: February 28, 2000.

Hans A. Van Winkle,

Deputy Commander for Civil Works.

Accordingly, these Nationwide Permits are issued as follows:

Nationwide Permits, Conditions, Further Information, and Definitions

A. Index of Nationwide Permits, Conditions, Further Information, and Definitions

Nationwide Permits

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7. Outfall Structures and Maintenance
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14. Linear Transportation Crossings
27. Stream and Wetland Restoration Activities
39. Residential, Commercial, and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities

43. Stormwater Management Facilities
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Nationwide Permit General Conditions

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2. Proper Maintenance
3. Soil Erosion and Sediment Controls
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8. Tribal Rights
9. Water Quality
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15. Use of Multiple Nationwide Permits.
16. Water Supply Intakes
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18. Suitable Material
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23. Waterfowl Breeding Areas
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Open water
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Restoration
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Single and complete project
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Stormwater management facilities
Stream bed
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Waterbody

B. Nationwide Permits and Conditions

3. *Maintenance.* Activities related to: (i) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement, are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This nationwide permit authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire, or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(ii) Discharges of dredged or fill material, including excavation, into all waters of the United States to remove accumulated sediments and debris in the vicinity of, and within, existing structures (*e.g.*, bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional rip rap to protect the structure, provided the permittee notifies the District Engineer in accordance with General Condition 13. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. The placement of rip rap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the District Engineer.

(iii) Discharges of dredged or fill material, including excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in waters of the United States. (Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a Section 404 permit provided the uplands are restored to their original pre-event location. This NWP is for the activities in waters of the United States associated with the replacement of the uplands.) The permittee must notify the District Engineer, in accordance with General Condition 13, within 12 months of the date of the damage and the work must commence, or be under contract to commence, within two years of the date of the damage. The permittee should provide evidence, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed prior to the damage. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit. Minor dredging to remove obstructions from the adjacent waterbody is limited to 50 cubic yards below the plane of the ordinary high water mark, and is limited to the amount necessary to restore the pre-existing bottom contours of the waterbody. The dredging may not be done primarily to obtain fill for any restoration activities. The discharge of dredged or fill material and all related work needed to restore the upland must be part of a single and complete project. This permit cannot be used in conjunction with NWP 18 or NWP 19 to restore damaged upland areas. This permit does not authorize the replacement of lands lost through gradual erosion processes.

Maintenance dredging for the primary purpose of navigation and beach restoration are not authorized by this permit. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit must not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding (See General Conditions 9 and 21). (Sections 10 and 404)

Note: This NWP authorizes the minimal impact repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemption for maintenance.

7. Outfall Structures and Maintenance. Activities related to: (i) construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or is otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act), and (ii) maintenance excavation, including dredging, to remove accumulated sediments blocking or restricting outfall and intake structures, accumulated sediments from small impoundments associated with outfall and intake structures, and accumulated sediments from canals associated with outfall and intake structures, provided the activity meets all of the following criteria:

a. The permittee notifies the District Engineer in accordance with General Condition 13;

b. The amount of excavated or dredged material must be the minimum necessary to restore the outfalls, intakes, small impoundments, and canals to original design capacities and design configurations (*i.e.*, depth and width);

c. The excavated or dredged material is deposited and retained at an upland site, unless otherwise approved by the District Engineer under separate authorization; and

d. Proper soil erosion and sediment control measures are used to minimize reentry of sediments into waters of the United States.

The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure. For maintenance excavation and dredging to remove accumulated sediments, the notification must include information regarding the original design capacities and configurations of the facility and the presence of special aquatic sites (*e.g.*, vegetated shallows) in the vicinity of the proposed work. (Sections 10 and 404)

12. *Utility Line Activities.* Activities required for the construction, maintenance, and repair of utility lines and associated facilities in waters of the United States as follows:

(i) *Utility lines:* The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the United States, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary side casting not to exceed a total of 180 days, where appropriate. In wetlands, the top 6" to 12" of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the United States (*e.g.*, backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the United States through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

(ii) *Utility line substations:* The construction, maintenance, or expansion of a substation facility associated with a power line or utility line in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than ½ acre of non-tidal waters of the United States.

(iii) *Foundations for overhead utility line towers, poles, and anchors:* The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(iv) *Access roads:* The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than ½ acre of non-tidal waters of the United States. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the United States and as near as possible to preconstruction contours and elevations (*e.g.*, at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

The term "utility line" does not include activities which drain a water of the United States, such as drainage tile or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the loss of waters of the United States includes the filled area plus waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. Activities authorized by paragraphs (i) through (iv) may not exceed a total of ½ acre loss of waters of the United States. Waters of the United States temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevations, are not included in the calculation of permanent loss of waters of the United States. This includes temporary construction mats (*e.g.*, timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the United States are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized landclearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance, and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the United States that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the United States, even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(a) Mechanized land clearing in a forested wetland for the utility line right-of-way;

(b) A Section 10 permit is required;

(c) The utility line in waters of the United States, excluding overhead lines, exceeds 500 feet;

(d) The utility line is placed within a jurisdictional area (*i.e.*, a water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area;

(e) Discharges associated with the construction of utility line substations that result in the loss of greater than 1/10 acre of waters of the United States;

(f) Permanent access roads constructed above grade in waters of the United States for a distance of more than 500 feet; or

(g) Permanent access roads constructed in waters of the United States with impervious materials. (Sections 10 and 404)

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquefiable, or slurry substances over navigable waters of the United States, which are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

Note 3: Where the proposed utility line is constructed or installed in navigable waters of the United States (*i.e.*, Section 10 waters), copies of the PCN and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration, National Ocean Service, for charting the utility line to protect navigation.

14. *Linear Transportation Crossings.* Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (*e.g.*, highways, railways, trails, and airport runways and taxiways) in waters of the United States, including wetlands, provided the activity meets the following criteria:

a. This NWP is subject to the following acreage and linear limits:

(1) For *public linear transportation projects* in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than 1/2 acre of waters of the United States;

(2) For *public linear transportation projects* in tidal waters or non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than 1/3 acre of waters of the United States and the length of fill for the crossing in waters of the United States does not exceed 200 linear feet, or;

(3) For *private linear transportation projects* in all waters of the United States, provided the discharge does not cause the loss of greater than 1/3 acre of waters of the United States and the length of fill for the crossing in waters of the United States does not exceed 200 linear feet;

b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

(1) The discharge causes the loss of greater than 1/10 acre of waters of the United States; or

(2) There is a discharge in a special aquatic site, including wetlands;

c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the United States to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing a water of the United States. Where a road segment (*i.e.*, the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an individual permit. (Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

27. *Stream and Wetland Restoration Activities.* Activities in waters of the United States associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

(a) The activity is conducted on:

(1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS) or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or

(2) Any Federal land; or

(3) Reclaimed surface coal mined lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining or the applicable state agency (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or

(4) Any private or public land;

(b) *Notification:* For activities on any private or public land that are not described by paragraphs (a)(1), (a)(2), or (a)(3) above, the permittee must notify the District Engineer in accordance with General Condition 13; and

(c) Only native plant species should be planted at the site, if permittee is vegetating the project site.

Activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; activities needed to reestablish vegetation, including

plowing or discing for seed bed preparation; mechanized landclearing to remove undesirable vegetation; and other related activities.

This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and creation projects conducted under paragraphs (a)(2) and (a)(4), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under paragraphs (a)(1) and (a)(3), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (*i.e.*, prior to the restoration, enhancement, or creation activities) within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under paragraph (a)(1). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate State agency executing the agreement or permit. Prior to any reversion activity, the permittee or the appropriate Federal or State agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted back to its prior physical condition, it will be subject to whatever the Corps regulatory requirements will be at that future date. (Sections 10 and 404)

Note: Compensatory mitigation is not required for activities authorized by this NWP, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This NWP can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer in accordance with General Condition 13, and the project includes compensatory mitigation for impacts to waters of the United States caused by the authorized work. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition. NWP 27 can be used to authorize impacts at a mitigation bank, but only in circumstances where it has been approved under the Interagency Federal Mitigation Banks Guidelines.

39. Residential, Commercial, and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this NWP. Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

a. The discharge does not cause the loss of greater than ½ acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear feet of stream bed;

c. The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(1) The discharge causes the loss of greater than ⅒ acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters; or

(2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see Note, below).

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

e. The discharge is part of a single and complete project;

f. The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the United States were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the United States. (See General Condition 19.) The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the United States. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;

g. When this NWP is used in conjunction with any other NWP, any combined total permanent loss of waters of the United States exceeding ⅒ acre requires that the permittee notify the District Engineer in accordance with General Condition 13;

h. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream (see General Conditions 9 and 21);

i. For discharges causing the loss of ⅒ acre or less of waters of the United States, the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information: (1) The name, address, and telephone number of the permittee; (2) The location of the work; (3) A description of the work; (4) The type and acreage of

the loss of waters of the United States (*e.g.*, 1/12 acre of emergent wetlands); and (5) The type and acreage of any compensatory mitigation used to offset the loss of waters of the United States (e.g., 1/12 acre of emergent wetlands created on-site);

j. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the maximum extent practicable, wetland or upland vegetated buffers next to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site; and

k. Stream channelization or stream relocation downstream of the point on the stream where the annual average flow is 1 cubic foot per second is not authorized by this NWP.

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The compensatory mitigation proposal required in paragraph (f) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (j) of this NWP will normally be 25 to 50 feet wide on each side of the stream, but the District Engineer may require wider vegetated buffers to address documented water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the United States to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities in waters of the United States on the project site in excess of the acreage limit for NWP 39 (*i.e.*, the combined acreage loss authorized under NWPs 39 and 40 cannot exceed 1/2 acre).

Subdivisions: For any real estate subdivision created or subdivided after October 5, 1984, a notification pursuant to paragraph (c) of this NWP is required for any discharge which would cause the aggregate total loss of waters of the United States for the entire subdivision to exceed 1/10 acre. Any discharge in any real estate subdivision which would cause the aggregate total loss of waters of the United States in the subdivision to exceed 1/2 acre is not authorized by this NWP, unless the District Engineer exempts a particular subdivision or parcel by making a written determination that the individual and cumulative adverse environmental effects would be minimal and the property owner had, after October 5, 1984, but prior to July 21, 1999, committed substantial resources in reliance on NWP 26 with regard to a subdivision, in circumstances where it would be inequitable to frustrate the property owner's investment-backed expectations. Once the exemption is established for a subdivision, subsequent lot development by individual property owners may proceed using NWP 39. For the purposes of NWP 39, the term "real estate subdivision" shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial, or other real estate subdivision, including all parcels and parts thereof. (Sections 10 and 404)

Note: Areas where there is no wetland vegetation are determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the United States based on this criteria would require a PCN even though water is infrequently present in the stream channel (except for ephemeral waters).

40. *Agricultural Activities.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the purpose of improving agricultural production and the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized landclearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities, provided the permittee complies with the following terms and conditions:

a. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is a USDA program participant:

(1) The permittee must obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended (16 U.S.C. 3801 *et seq.*);

(2) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2 acre of non-tidal wetlands on a farm tract;

(3) The permittee must have an NRCS-certified wetland delineation;

(4) The permittee must implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses, if required; and

(5) The permittee must submit a report, within 30 days of completion of the authorized work, to the District Engineer that contains the following information: (a) The name, address, and telephone number of the permittee; (b) The location of the work; (c) A description of the work; (d) The type and acreage (or square feet) of the loss of wetlands (e.g., 1/3 acre of emergent wetlands); and (e) The type, acreage (or square feet), and location of compensatory mitigation (*e.g.*, 1/3 acre of emergent wetlands on the farm tract); or

b. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is not a USDA program participant (or a USDA program participant for which the proposed work does not qualify for authorization under paragraph (a) of this NWP):

(1) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2 acre of non-tidal wetlands on a farm tract;

(2) The permittee must notify the District Engineer in accordance with General Condition 13, if the discharge results in the loss of greater than 1/10 acre of non-tidal wetlands;

(3) The notification must include a delineation of affected wetlands; and

(4) The notification must include a compensatory mitigation proposal to offset losses of waters of the United States; or

c. For the construction of building pads for farm buildings, the discharge does not cause the loss of greater than 1/2 acre of non-tidal wetlands that were in agricultural production prior to December 23, 1985, (*i.e.*, farmed wetlands) and the permittee must notify the District Engineer in accordance with General Condition 13; or

d. Any activity in other waters of the United States is limited to the relocation of existing serviceable drainage ditches constructed in non-tidal streams. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams; and

e. Activities located in 100-year floodplains identified by FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps must comply with General Condition 26.

The term "farm tract" refers to a parcel of land identified by the Farm Service Agency. The Corps will identify

other waters of the United States on the farm tract. NRCS will determine if a proposed agricultural activity meets the terms and conditions of paragraph (a) of this NWP, except as provided below. For those activities that require notification, the District Engineer will determine if a proposed agricultural activity is authorized by paragraphs (b), (c), and/or (d) of this NWP. USDA program participants requesting authorization for discharges of dredged or fill material into waters of the United States authorized by paragraphs (c) or (d) of this NWP, in addition to paragraph (a), must notify the District Engineer in accordance with General Condition 13 and the District Engineer will determine if the entire single and complete project is authorized by this NWP. Discharges of dredged or fill material into waters of the United States associated with completing required compensatory mitigation are authorized by this NWP. However, total impacts, including other authorized impacts under this NWP, may not exceed the ½ acre limit of this NWP. This NWP does not affect, or otherwise regulate, discharges associated with agricultural activities when the discharge qualifies for an exemption under Section 404(f) of the Clean Water Act, even though a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS pursuant to the Food Security Act of 1985, as amended, may be required. Activities authorized by paragraphs (a) through (d) may not exceed a total of ½ acre on a single farm tract. Activities authorized by paragraphs (c) and (d) are not included in the ½ acre limit for the farm tract. If the site was used for agricultural purposes and the farm owner/operator used either paragraphs (a), (b), or (c) of this NWP to authorize activities in waters of the United States to increase agricultural production or construct farm buildings, and the current landowner wants to use NWP 39 to authorize residential, commercial, or industrial development activities in waters of the United States on the site, the combined acreage loss authorized by NWPs 39 and 40 cannot exceed ½ acre. (Section 404)

41. *Reshaping Existing Drainage Ditches.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in these waters. The reshaping of the ditch cannot increase drainage capacity beyond the original design capacity or expand the area drained by the ditch as originally designed (*i.e.*, the capacity of the ditch must be the same as originally designed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality (*e.g.*, by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, increase uptake of nutrients and other substances by vegetation, etc.). The permittee must notify the District Engineer in accordance with General Condition 13, if greater than 500 linear feet of drainage ditch will be reshaped. Material resulting from excavation may not be permanently sidecast into waters but may be temporarily sidecast (up to three months) into waters of the United States, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate. This NWP does not apply to reshaping drainage ditches constructed in uplands, since these areas are not waters of the United States, and thus no permit from the Corps is required, or to the maintenance of existing drainage ditches to their original dimensions and configuration, which does not require a Section 404 permit (see 33 CFR 323.4(a)(3)). This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects. (Section 404)

42. *Recreational Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of recreational facilities, provided the activity meets all of the following criteria:

a. The discharge does not cause the loss of greater than ½ acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear feet of stream bed;

c. For discharges causing the loss of greater than ⅒ acre of non-tidal waters of the United States, the permittee notifies the District Engineer in accordance with General Condition 13;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

e. The discharge is part of a single and complete project; and

f. Compensatory mitigation will normally be required to offset the losses of waters of the United States. The notification must also include a compensatory mitigation proposal which provides for 1:1 replacement to offset authorized losses of waters of the United States.

For the purposes of this NWP, the term "recreational facility" is defined as a recreational activity that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours. For the purpose of this permit, the primary function of recreational facilities does not include the use of motor vehicles, buildings, or impervious surfaces. Examples of recreational facilities that may be authorized by this NWP include: hiking trails, bike paths, horse paths, nature centers, and campgrounds (excluding trailer parks). The construction or expansion of golf courses and the expansion of ski areas may be authorized by this NWP, provided the golf course or ski area does not substantially deviate from natural landscape contours and is designed to minimize adverse effects to waters of the United States and riparian areas through the use of such practices as integrated pest management, adequate stormwater management facilities, vegetated buffers, reduced fertilizer use, etc. The facility must have an adequate water quality management plan in accordance with General Condition 9, such as a stormwater management facility, to ensure that the recreational facility results in no substantial adverse effects to water quality. This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables, that are directly related to the recreational activity. This NWP does not authorize other buildings, such as hotels, restaurants, etc. The construction or expansion of playing fields (*e.g.*, baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, and the construction of new ski areas are not authorized by this NWP. (Section 404)

43. *Stormwater Management Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction and maintenance of stormwater management facilities, including activities for the excavation of

stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins, provided the activity meets all of the following criteria:

a. The discharge for the construction of new stormwater management facilities does not cause the loss of greater than ½ acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear feet of stream bed;

c. The discharge of dredged or fill material for the construction of new stormwater management facilities in perennial streams is not authorized;

d. For discharges or excavation for the construction of new stormwater management facilities or for the maintenance of existing stormwater management facilities causing the loss of greater than ⅒ acre of non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, the permittee notifies the District Engineer in accordance with General Condition 13. In addition, the notification must include:

(1) A maintenance plan. The maintenance plan should be in accordance with State and local requirements, if any such requirements exist;

(2) For discharges in special aquatic sites, including wetlands and submerged aquatic vegetation, the notification must include a delineation of affected areas; and

(3) A compensatory mitigation proposal that offsets the loss of waters of the United States. Maintenance in constructed areas will not require mitigation provided such maintenance is accomplished in designated maintenance areas and not within compensatory mitigation areas (*i.e.*, district engineers may designate non-maintenance areas, normally at the downstream end of the stormwater management facility, in existing stormwater management facilities). (No mitigation will be required for activities which are exempt from Section 404 permit requirements);

e. The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the notification must include a written statement to the District Engineer detailing compliance with this condition (*i.e.*, why the discharge must occur in waters of the United States and why additional minimization cannot be achieved);

f. The stormwater management facility must comply with General Condition 21 and be designed using best management practices (BMPs) and watershed protection techniques. Examples may include forebays (deeper areas at the upstream end of the stormwater management facility that would be maintained through excavation), vegetated buffers, and siting considerations to minimize adverse effects to aquatic resources. Another example of a BMP would be bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources from storm flows, especially downstream of the facility, that provide, to the maximum extent practicable, for long term aquatic resource protection and enhancement;

g. Maintenance excavation will be in accordance with an approved maintenance plan and will not exceed the original contours of the facility as approved and constructed; and

h. The discharge is part of a single and complete project. (Section 404)

44. *Mining Activities.* Discharges of dredged or fill material into: (i) Isolated waters, streams where the annual average flow is 1 cubic foot per second or less, and non-tidal wetlands adjacent to headwater streams, for aggregate mining (*i.e.*, sand, gravel, and crushed and broken stone) and associated support activities; (ii) lower perennial streams, excluding wetlands adjacent to lower perennial streams, for aggregate mining activities (support activities in lower perennial streams or adjacent wetlands are not authorized by this NWP); and/or (iii) isolated waters and non-tidal wetlands adjacent to headwater streams, for hard rock/mineral mining activities (*i.e.*, extraction of metalliferous ores from subsurface locations) and associated support activities, provided the discharge meets the following criteria:

a. The mined area within waters of the United States, plus the acreage loss of waters of the United States resulting from support activities, cannot exceed ½ acre;

b. The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the notification must include a written statement detailing compliance with this condition (*i.e.*, why the discharge must occur in waters of the United States and why additional minimization cannot be achieved);

c. In addition to General Conditions 17 and 20, activities authorized by this permit must not substantially alter the sediment characteristics of areas of concentrated shellfish beds or fish spawning areas. Normally, the mandated water quality management plan should address these impacts;

d. The permittee must implement necessary measures to prevent increases in stream gradient and water velocities and to prevent adverse effects (*e.g.*, head cutting, bank erosion) to upstream and downstream channel conditions;

e. Activities authorized by this permit must not result in adverse effects on the course, capacity, or condition of navigable waters of the United States;

f. The permittee must utilize measures to minimize downstream turbidity;

g. Wetland impacts must be compensated through mitigation approved by the Corps;

h. Beneficiation and mineral processing for hard rock/mineral mining activities may not occur within 200 feet of the ordinary high water mark of any open waterbody. Although the Corps does not regulate discharges from these activities, a Clean Water Act Section 402 permit may be required;

i. All activities authorized by this NWP must comply with General Conditions 9 and 21. Further, the District Engineer may require modifications to the required water quality management plan to ensure that the authorized work results in minimal adverse effects to water quality;

j. Except for aggregate mining activities in lower perennial streams, no aggregate mining can occur within stream beds where the average annual flow is greater than 1 cubic foot per second or in waters of the United States within 100 feet of the ordinary high water mark of headwater stream segments where the average annual flow of the stream is greater than 1 cubic foot per second (aggregate mining can occur in areas immediately adjacent to the ordinary high water mark of a stream where the average annual flow is 1 cubic foot per second or less);

k. *Single and complete project:* The discharge must be for a single and complete project, including support activities. Discharges of dredged or fill material into waters of the United States for multiple mining activities on several designated parcels of a single and complete mining operation can be authorized by this NWP provided the ½ acre limit is not exceeded; and

l. *Notification:* The permittee must notify the District Engineer in accordance with General Condition 13. The notification must include: (1) A description of waters of the United

States adversely affected by the project; (2) A written statement to the District Engineer detailing compliance with paragraph (b), above (i.e., why the discharge must occur in waters of the United States and why additional minimization cannot be achieved); (3) A description of measures taken to ensure that the proposed work complies with paragraphs (c) through (f), above; and (4) A reclamation plan (for aggregate mining in isolated waters and non-tidal wetlands adjacent to headwaters and hard rock/mineral mining only).

This NWP does not authorize hard rock/mineral mining, including placer mining, in streams. No hard rock/mineral mining can occur in waters of the United States within 100 feet of the ordinary high water mark of headwater streams. The terms "headwaters" and "isolated waters" are defined at 33 CFR 330.2(d) and (e), respectively. For the purposes of this NWP, the term "lower perennial stream" is defined as follows: "A stream in which the gradient is low and water velocity is slow, there is no tidal influence, some water flows throughout the year, and the substrate consists mainly of sand and mud." (Sections 10 and 404)

C. Nationwide Permit General Conditions

The following general conditions must be followed in order for any authorization by an NWP to be valid:

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.

2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

4. Aquatic Life Movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions which may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the State or tribe in its Section 401 water quality certification and Coastal Zone Management Act consistency determination.

7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (*e.g.*, National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

8. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. Water Quality. (a) In certain States and tribal lands an individual 401 water quality certification must be obtained or waived (See 33 CFR 330.4(c)).

(b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the State or tribal 401 certification (either generically or individually) does not require or approve a water quality management plan, the permittee must include design criteria and techniques that will ensure that the authorized work does not result in more than minimal degradation of water quality. An important component of a water quality management plan includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality. Refer to General Condition 21 for stormwater management requirements. Another important component of a water quality management plan is the establishment and maintenance of vegetated buffers next to open waters, including streams. Refer to General Condition 19 for vegetated buffer requirements for the NWPs.

10. Coastal Zone Management. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).

11. Endangered Species. (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the NWPs.

(b) Authorization of an activity by a nationwide permit does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at http://www.fws.gov/r9endspp/endspp.html and http://www.nfms.gov/prot_res/esahome.html, respectively.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not

begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification. (a) Timing: Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the PCN is complete within 30 days of the date of receipt and can request the additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an individual permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Notification: The notification must be in writing and include the following information:

(1) Name, address, and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity; and

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (*e.g.*, submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7, Outfall Structures and Maintenance, the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed.

(6) For NWP 14, Linear Transportation Crossings, the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the United States and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable.

(7) For NWP 21, Surface Coal Mining Activities, the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan.

(8) For NWP 27, Stream and Wetland Restoration, the PCN must include documentation of the prior condition of the site that will be reverted by the permittee.

(9) For NWP 29, Single-Family Housing, the PCN must also include:

(i) Any past use of this NWP by the individual permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring ¼ acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than ¼ acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31, Maintenance of Existing Flood Control Projects, the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site.

(11) For NWP 33, Temporary Construction, Access, and Dewatering, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

(12) For NWPs 39, 43, and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization of losses of waters of the United States were achieved on the project site.

(13) For NWP 39, Residential, Commercial, and Institutional Developments, and NWP 42, Recreational Facilities, the PCN must include a compensatory mitigation proposal that offsets unavoidable losses of waters of the United States or justification explaining why compensatory mitigation should not be required.

(14) For NWP 40, Agricultural Activities, the PCN must include a compensatory mitigation proposal to offset losses of waters of the United States.

(15) For NWP 43, Stormwater Management Facilities, the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with State and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the United States.

(16) For NWP 44, Mining Activities, the PCN must include a description of all waters of the United States adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the United States, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for aggregate mining activities in isolated waters and non-

tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities).

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work.

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(19) For NWPs 12, 14, 29, 39, 40, 42, 43, and 44, where the proposed work involves discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within 100-year floodplains (as identified on FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps), the notification must include documentation demonstrating that the proposed work complies with the appropriate FEMA or FEMA-approved local floodplain construction requirements.

(c) Form of Notification: The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)–(19) of General Condition 13. A letter containing the requisite information may also be used.

(d) District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the PCN to expedite the process and the District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary.

Any compensatory mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required in order to ensure no more than minimal adverse effects on the aquatic environment, the activity will be authorized within the 45-day PCN period, including the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the United States will occur until the District Engineer has approved a specific mitigation plan.

(e) Agency Coordination: The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse effects on the aquatic environment to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than ½ acre of waters of the United States, the District Engineer will, upon receipt of a notification, provide immediately (*e.g.*, via facsimile transmission, overnight mail, or other expeditious manner), a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to National Marine Fisheries Service within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) Wetlands Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps. For NWP 29 see paragraph (b)(9)(iii) for parcels less than ¼ acre in size. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. Compliance Certification. Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter. The certification will include: (a) A statement that the authorized work was done in

accordance with the Corps authorization, including any general or specific conditions; (b) A statement that any required mitigation was completed in accordance with the permit conditions; and (c) The signature of the permittee certifying the completion of the work and mitigation.

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed ⅓ acre.

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

19. Mitigation. The project must be designed and constructed to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable at the project site (i.e., on site). Mitigation will be required when necessary to ensure that the adverse effects to the aquatic environment are minimal. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) Compensatory mitigation at a minimum 1:1 ratio will be required for all wetland impacts requiring a PCN. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands to meet the minimum compensatory mitigation ratio, with preservation used only in exceptional circumstances.

(b) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed;

(c) The District Engineer will require restoration, creation, enhancement, or preservation of other aquatic resources in order to offset the authorized impacts to the extent necessary to ensure that the adverse effects on the aquatic environment are minimal. An important element of any compensatory mitigation plan for projects in or near streams or other open waters is the establishment and maintenance, to the maximum extent practicable, of vegetated buffers next to open waters on the project site. The vegetated buffer should consist of native species. The District Engineer will determine the appropriate width of the vegetated buffer and in which cases it will be required. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineer may require wider vegetated buffers to address documented water quality concerns. If there are open waters on the project site and the District Engineer requires compensatory mitigation for wetland impacts to ensure that the net adverse effects on the aquatic environment are minimal, any vegetated buffer will comprise no more than ⅓ of the remaining compensatory mitigation acreage after the permanently filled wetlands have been replaced on a one-to-one acreage basis. In addition, compensatory mitigation must address adverse effects on wetland functions and values and cannot be used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWPs (*e.g.*, for NWP 39, ¼ acre of wetlands cannot be created to change a ½ acre loss of wetlands to a ¼ acre loss; however, ½ acre of created wetlands can be used to reduce the impacts of a ⅓ acre loss of wetlands). If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed.

(d) To the extent appropriate, permittees should consider mitigation banking and other appropriate forms of compensatory mitigation. If the District Engineer determines that compensatory mitigation is necessary to offset losses of waters of the United States and ensure that the net adverse effects of the authorized work on the aquatic environment are minimal, consolidated mitigation approaches, such as mitigation banks, will be the preferred method of providing compensatory mitigation, unless the District Engineer determines that activity-specific compensatory mitigation is more appropriate, based on which is best for the aquatic environment. These types of mitigation are preferred because they involve larger blocks of protected aquatic environment, are more likely to meet the mitigation goals, and are more easily checked for compliance. If a mitigation bank or other consolidated mitigation approach is not available in the watershed, the District Engineer will consider other appropriate forms of compensatory mitigation to offset the losses of waters of the United States to ensure that the net adverse effects of the authorized work on the aquatic environment are minimal.

20. Spawning Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (*e.g.*, excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (*e.g.*, location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and must not increase water flows from the project site, relocate water, or redirect water flow beyond preconstruction conditions. In addition, the activity

must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows.

22. Adverse Effects From Impoundments. If the activity, including structures and work in navigable waters of the United States or discharge of dredged or fill material, creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, State natural heritage sites, and outstanding national resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the United States may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service has concurred in a determination of compliance with this condition.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWPs only after he determines that the impacts to the critical resource waters will be no more than minimal.

26. *Fills Within 100-Year Floodplains.* For purposes of this general condition, 100-year floodplains will be identified through the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) *Discharges Below Headwaters.* Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the 100-year floodplain at or below the point on a stream where the average annual flow is five cubic feet per second (*i.e.*, below headwaters) are not authorized by NWPs 29, 39, 40, 42, 43, and 44. For NWPs 12 and 14, the prospective permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above-grade fills in waters of the United States within the 100-year floodplain below headwaters comply with FEMA or FEMA-approved local floodplain construction requirements.

(b) *Discharges in Headwaters* (*i.e.*, above the point on a stream where the average annual flow is five cubic feet per second).

(1) *Flood Fringe.* Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the flood fringe of the 100-year floodplain of headwaters are not authorized by NWPs 12, 14, 29, 39, 40, 42, 43, and 44, unless the prospective permittee notifies the District Engineer in accordance with General Condition 13. The notification must include documentation that such discharges comply with FEMA or FEMA-approved local floodplain construction requirements.

(2) *Floodway.* Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the floodway of the 100-year floodplain of headwaters are not authorized by NWPs 29, 39, 40, 42, 43, and 44. For NWPs 12 and 14, the permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above grade fills proposed in the floodway comply with FEMA or FEMA-approved local floodplain construction requirements.

D. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other Federal, State, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

E. Definitions

Best management practices: Best Management Practices (BMPs) are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

Compensatory mitigation: For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Creation: The establishment of a wetland or other aquatic resource where one did not formerly exist.

Enhancement: Activities conducted in existing wetlands or other aquatic resources which increase one or more aquatic functions.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Farm tract: A unit of contiguous land under one ownership which is operated as a farm or part of a farm.

Flood Fringe: That portion of the 100-year floodplain outside of the floodway (often referred to as "floodway fringe."

Floodway: The area regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than

a designated amount (not to exceed one foot as set by the National Flood Insurance Program) within the 100-year floodplain.

Independent utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage as a result of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland (*i.e.*, a water of the United States) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (*i.e.*, the spring high tide line).

Open water: An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. The term "open water" includes rivers, streams, lakes, and ponds. For the purposes of the NWPs, this term does not include ephemeral waters.

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Permanent above-grade fill: A discharge of dredged or fill material into waters of the United States, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by NWPs 3, 25, 36, etc. are not included.

Preservation: The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the overall aquatic ecosystem.

Restoration: Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Steep gradient sections of streams are sometimes characterized by riffle and pool complexes. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. Pools are characterized by a slower stream velocity, a streaming flow, a smooth surface, and a finer substrate.

Single and complete project: The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the "single and complete project" (*i.e.*, a single and complete crossing) will apply to each crossing of a separate water of the United States (*i.e.*, a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations: each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland or lake, etc., are not separate waterbodies.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and BMPs, which retain water for a period of time to control runoff and/or improve the quality (*i.e.*, by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the United States, despite the modifications to increase the rate of water flow.

Tidal wetland: A tidal wetland is a wetland (*i.e.*, a water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (*i.e.*, spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

Vegetated buffer: A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (*e.g.*, aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to open waters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement, or preservation of aquatic habitats to ensure that activities authorized by NWPs result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.

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Part IV

The President

Proclamation 7280—Save Your Vision Week, 2000

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Thursday, March 9, 2000

Presidential Documents

Title 3—

The President

Proclamation 7280 of March 6, 2000

Save Your Vision Week, 2000

By the President of the United States of America

A Proclamation

Sight is a precious gift that enables us to experience the wonder of the world around us; but few of us think about what we would do if we lost our vision. Unfortunately, millions of Americans must face this challenge because of conditions like cataracts, glaucoma, diabetic eye disease, or age-related macular degeneration.

Our most powerful tool in the battle against vision loss is early detection. A dilated eye examination can reveal signs of many eye diseases and disorders long before a patient experiences pain or any other noticeable symptom. Through early intervention and treatment, the vision loss accompanying such diseases can be reduced, postponed, or even prevented. Protective eyewear can also play a vital role in saving vision, particularly for individuals who use chemicals or operate machinery.

There is hope as well for people who suffer from low vision. Affecting 1 in 20 Americans, low vision is an impairment that cannot be corrected by standard glasses, contact lenses, medicine, or surgery, and interferes with one's ability to participate in everyday activities. While it can occur in people of all ages and backgrounds, low vision primarily affects the growing population of people over 65 years old; other higher risk populations, including Hispanic and African Americans, are more likely to develop low vision at an earlier age.

While vision loss usually cannot be restored, vision rehabilitation techniques and products can make daily life much easier for people with low vision. From improved lighting in stairways and closets to talking clocks and computers to large-print labels on appliances, there are numerous products and services that can help people with low vision maintain their confidence and independence, and improve their overall quality of life.

Every day, physicians and researchers make progress in the search for better treatments—and ultimately a cure—for vision loss. In this new century, emerging technologies will improve upon existing visual devices and techniques, and new medications will ensure more effective treatment of eye diseases and disorders. By investing in research and technology and committing to regular comprehensive eye examinations, we can ensure a brighter, healthier future for ourselves and our children.

To remind Americans of the importance of safeguarding their eyesight, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 629; 36 U.S.C. 138), has authorized and requested the President to proclaim the first week in March of each year as "Save Your Vision Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 5 through March 11, 2000, as Save Your Vision Week. I urge all Americans to participate by making eye care and eye safety an important part of their lives and to ensure that dilated eye examinations are included in their regular health maintenance programs. I invite eye care professionals, the media, and all public and private organizations dedicated to preserving eyesight to join in activities that will raise awareness of the measures we can take to protect and sustain our vision.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of March, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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H.R. 1451/P.L. 106–173

Abraham Lincoln Bicentennial Commission Act (Feb. 25, 2000; 114 Stat. 14)

S. 632/P.L. 106–174

Poison Control Center Enhancement and Awareness Act (Feb. 25, 2000; 114 Stat. 18)

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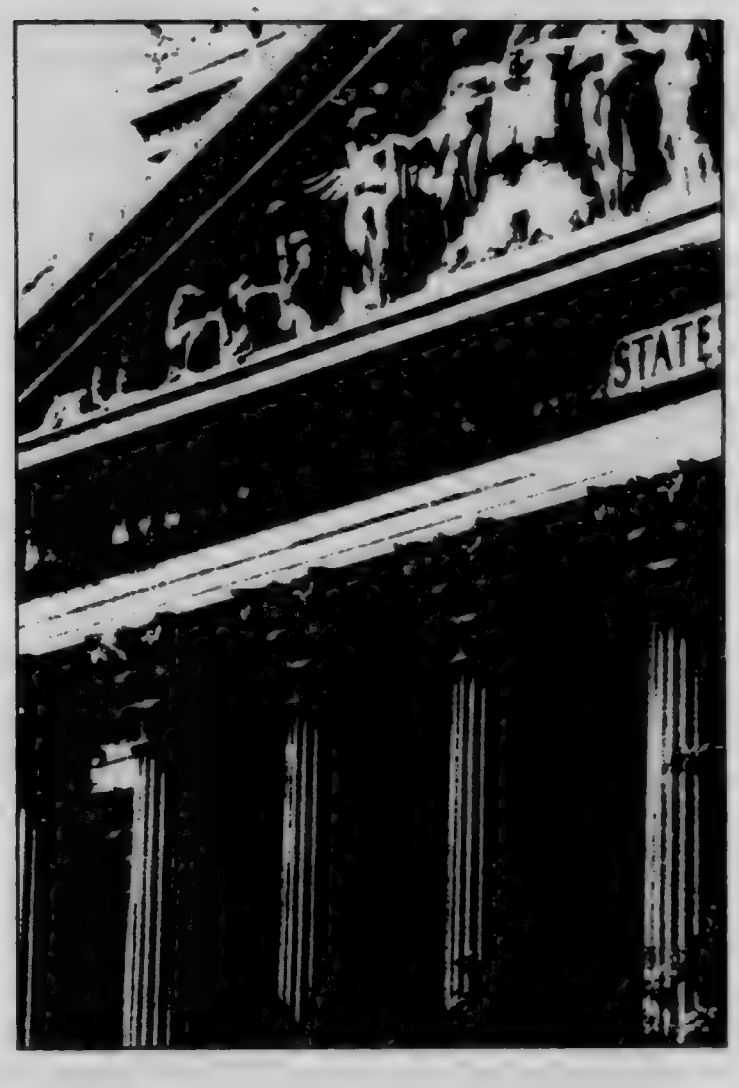

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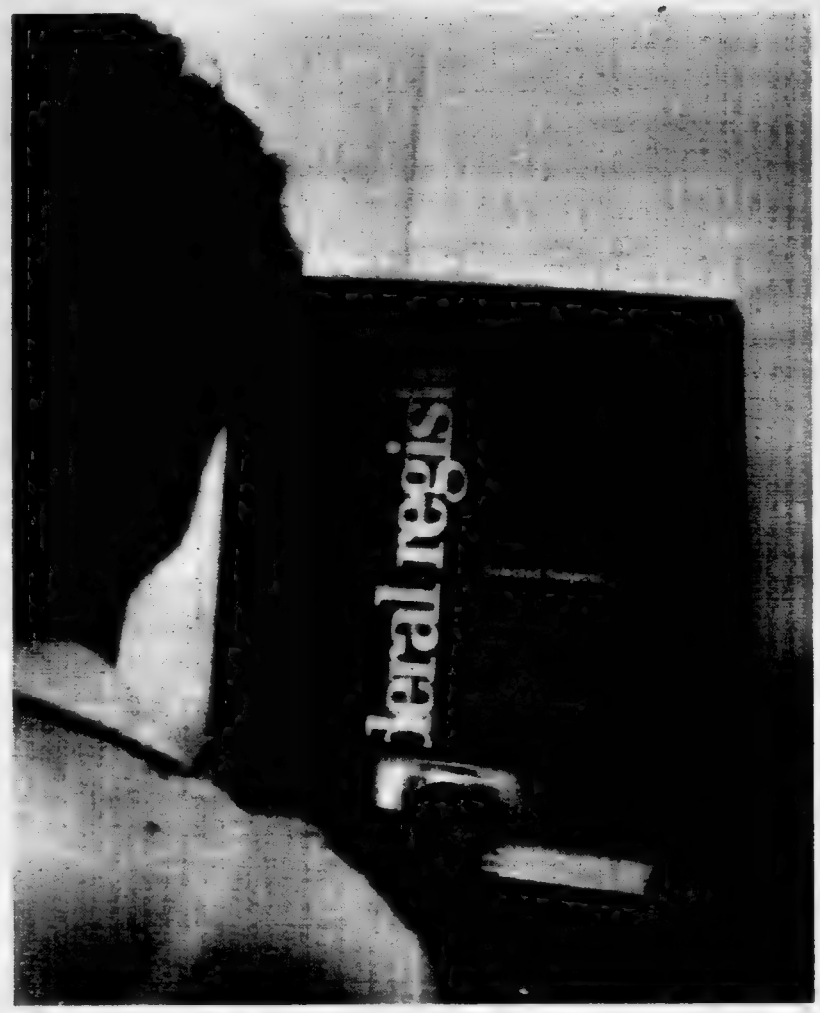

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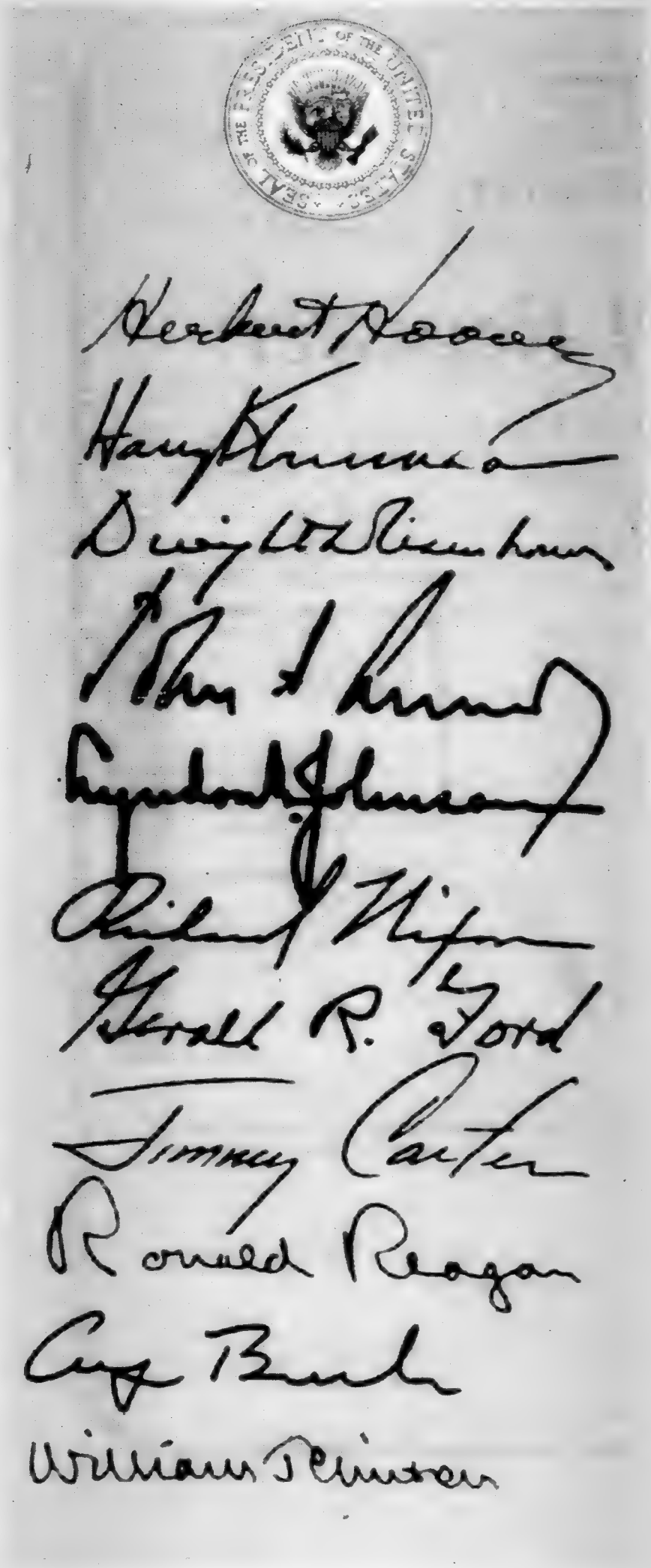

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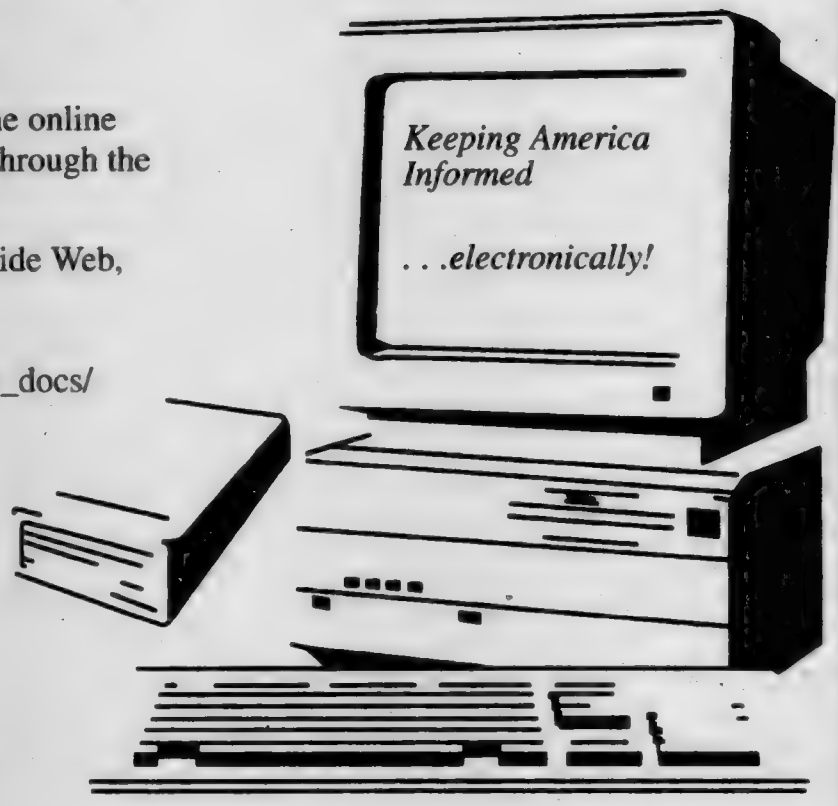

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Federal Register
Vol. 65, No. 48
Friday, March 10, 2000

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 00–07]

RIN 1557–AB80

Financial Subsidiaries and Operating Subsidiaries

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its regulations to implement section 121 of the Gramm-Leach-Bliley Act, which authorizes national banks to conduct expanded financial activities through financial subsidiaries. The OCC also is revising its operating subsidiary rule to make conforming changes and streamline procedures for banks that engage in activities through operating subsidiaries. Finally, the OCC is revising its regulation governing other equity investments to make corresponding changes to the procedures for certain types of non-controlling investments.

EFFECTIVE DATE: March 11, 2000.

FOR FURTHER INFORMATION CONTACT: Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities or Karl Betz, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC, 20219.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 2000, the OCC published a notice of proposed rulemaking (65 FR 3157) (proposal) to implement section 121 of the Gramm-Leach-Bliley Act, Public Law 106–102 (GLBA), which authorizes national banks to invest in a new type of subsidiary called a "financial subsidiary." As defined in the proposal, a financial subsidiary is a company that is controlled by one or more insured depository institutions, other than a subsidiary that engages solely in activities that national banks may engage in directly (under the same terms and conditions that govern the conduct of these activities by national banks) or a subsidiary that a national bank is specifically authorized to control by the express terms of a Federal statute. Under section 121 of the GLBA, a financial subsidiary may engage in specified activities that are financial in nature and in activities that are incidental to financial activities if the bank and the subsidiary meet certain requirements and comply with stated safeguards. The proposal incorporates these requirements and establishes alternative procedures for banks to obtain OCC approval to acquire control of, or an interest in, a financial subsidiary.

Following the enactment of the GLBA, national banks also may continue to use operating subsidiaries to engage in those activities that are part of, or incidental to, the business of banking. Thus, the proposal also revises the OCC's operating subsidiary regulation (12 CFR 5.34) to make conforming changes and streamline procedures for banks that engage in activities through operating subsidiaries.

Comments Received

The OCC received 30 comments on the proposal. The comments included 8 from banks and bank holding companies, 15 from trade associations, 5 from community groups, and 2 from law firms. Most commenters supported the proposal. These commenters generally commended the OCC for proposing regulatory changes that enhance the operational flexibility of national banks and facilitate the ability of national banks to engage in activities through operating subsidiaries and financial subsidiaries.

Several commenters recommended specific changes to the proposal. We carefully considered each of the comment letters, and the following discussion identifies and discusses comments received and changes and additions made to certain sections of the proposal.

Discussion

Financial Subsidiaries (new § 5.39)

Definitions (§ 5.39(d))

The proposal defines a number of key terms used in the rule. One commenter recommended that the OCC define the term "debt" for purposes of the regulation's long term debt rating requirement. We believe, however, that in cases where there is a question about whether an obligation qualifies as "debt," the issue is better addressed on a case-by-case basis. Thus, the final rule adopts the definitions contained in the proposal without change.

Permissible Activities for Financial Subsidiaries (§ 5.39(e) and (f))

The proposal describes activities that are permissible and impermissible for a financial subsidiary. Under proposed § 5.39(e), a financial subsidiary may engage only in activities that are financial in nature or incidental to a financial activity that are not permissible for a national bank to conduct directly (expanded financial activities), as well as activities that may be conducted by an operating subsidiary pursuant to § 5.34 (activities that are part of, or incidental to, the business of banking that are permissible for national banks to conduct directly).

Proposed § 5.39(e) lists the activities that are defined in the Act as "financial in nature." Among other things, this list includes activities that the Board of Governors of the Federal Reserve System (Board) has determined under section 4(c)(8) of the Bank Holding Company Act (BHCA) (12 U.S.C. 1843(c)(8)) to be so closely related to banking or controlling or managing banks as to be a proper incident thereto, and activities that the Board has found under section 4(c)(13) of the BHCA (12 U.S.C. 1843(c)(13)) to be usual in connection with the transaction of banking or other financial operations abroad. [1]

[1] The final rule also recognizes that the Secretary of the Treasury (in consultation with the Board) may determine that additional activities are financial in nature or incidental to a financial activity and therefore are permissible for a financial subsidiary. The GLBA provides specific procedures, not covered in the final rule, for coordination between the Secretary of the Treasury and the

Continued

Proposed § 5.39(f) also lists activities that the GLBA specifically describes as impermissible for financial subsidiaries. These activities include providing annuities and certain types of insurance as principal, real estate development or real estate investment (unless otherwise expressly authorized by law), and certain activities authorized for financial holding companies by new sections 4(k)(4)(H) and (I) of the BHCA, as added by the GLBA. At the end of the five-year period beginning on November 12, 1999, however, the Board and the Secretary of the Treasury may find by regulation that the activities authorized under section 4(k)(4)(H) of the BHCA are permissible for financial subsidiaries.

The OCC received no comments on the description of authorized and impermissible activities, and the final rule adopts the language in the proposal with only minor technical changes.

Qualifications (§ 5.39(g))

Proposed § 5.39(g) contains three conditions that a national bank must satisfy to acquire control of, or hold an interest in, a financial subsidiary. First, the national bank and each of its depository institution affiliates must be "well capitalized" and "well managed." Proposed § 5.39(d) defines these terms consistent with their definitions in the GLBA. Second, under the GLBA, the aggregate consolidated total assets of all financial subsidiaries of the bank may not exceed the lesser of 45 percent of the consolidated total assets of the parent bank or $50 billion. The $50 billion limit is to be adjusted according to an indexing mechanism established jointly by the Secretary of the Treasury and the Board. Third, a national bank that is one of the 100 largest insured banks, as determined by the bank's consolidated total assets at the end of the calendar year, must have outstanding "eligible debt" that is rated in one of the three highest investment grade rating categories by a nationally recognized statistical rating organization (eligible debt requirement). If a national bank is one of the second 50 of the 100 largest insured banks, the proposal permits the bank to satisfy the eligible debt requirement if it meets alternative criteria to be set jointly through regulation by the Secretary of the Treasury and the Board. The eligible debt requirement does not apply, however, if a bank intends to acquire control of, or hold an interest in, a financial subsidiary that engages solely in activities in an agency capacity.

One commenter recommended revising the eligible debt requirement to account for banks that have not issued debt. This commenter suggested permitting a bank to provide a statement from a nationally recognized statistical rating organization regarding the appropriate investment grade rating category that would apply if the bank were to issue *outstanding debt*. The OCC is aware of these concerns but notes that the GLBA requires a bank that is one of the 50 largest insured banks to have appropriately rated outstanding debt to acquire control of, or an interest in, a financial subsidiary. We also note, however, that the Secretary of the Treasury and the Board are authorized to issue regulations for the second 50 of the 100 largest insured banks that are comparable and consistent with the eligible debt rating requirement. Therefore, the final rule adopts these provisions as proposed.

Safeguards (§ 5.39(h))

Under the proposal, a national bank that controls a financial subsidiary must comply with several conditions. First, a national bank must deduct the aggregate amount of its outstanding equity investment, including retained earnings, in its financial subsidiaries from the assets and tangible equity of the bank. Further, the bank may not consolidate the assets and liabilities of its financial subsidiaries with those of the parent bank. Both of these conditions are imposed by the GLBA.

The final rule implements the required deduction from tangible equity and requires the bank to deduct the investment from its total risk-based capital, with the deduction taken equally from Tier 1 and Tier 2 capital. The bank's resulting Tier 1 and Tier 2 capital levels will then be used to determine the bank's capital category for purposes of 12 CFR part 6, including whether the bank qualifies as "well capitalized" as required by the GLBA and § 5.39(g)(1).

Second, any published financial statement of the national bank must, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank in a manner that reflects these capital adjustments. Under the third and fourth conditions, the bank must establish reasonable policies and procedures to preserve the separate corporate identity and limited liability of the bank and its financial subsidiaries, and must establish procedures to identify and manage financial and operational risks within the bank and the financial subsidiary that adequately protect the bank from these risks.

The fifth condition provides that a financial subsidiary is deemed a subsidiary of a bank holding company and not a subsidiary of the bank for purposes of the anti-tying prohibitions in 12 U.S.C. 1971 *et seq.*

Finally, the proposal provides that for purposes of sections 23A and 23B of the Federal Reserve Act (FRA) (12 U.S.C. 371c and 371c–1) a financial subsidiary shall be treated as an affiliate of the bank. Sections 23A and 23B therefore apply to certain transactions between a bank and its financial subsidiary, except that the proposal exempts from the 10 percent quantitative limit of FRA section 23A(a)(1)(A) (12 U.S.C. 371c(a)(1)(A)) covered transactions between a bank and any individual financial subsidiary of the bank. Thus, covered transactions between a bank and any one financial subsidiary may exceed 10 percent of the bank's capital and surplus, but are subject to the 20 percent aggregate limit on transactions with all affiliates and financial subsidiaries found in FRA section 23A(a)(1)(B) (12 U.S.C. 371c(A)(1)(B)). The proposal also provides that, for purposes of FRA sections 23A and 23B, the bank's investment in a financial subsidiary does not include retained earnings of the financial subsidiary. However, the investment in the securities of a financial subsidiary of a bank by an affiliate of the bank is considered to be an investment in those securities by the bank. In addition, the Board may determine that any extension of credit by an affiliate of a bank to a financial subsidiary of that bank is an extension of credit by the bank to the financial subsidiary. The Board can only require this treatment if it determines it is necessary or appropriate to prevent evasions of the FRA or the GLBA.

The final rule adopts the language in the proposal relating to the safeguards as proposed, with additional language clarifying the implementation of the capital deduction requirement.

Procedures (§ 5.39(i))

The GLBA specifically states that OCC approval for a national bank to engage in activities through a financial subsidiary shall be based solely upon specific statutory factors. Thus, the proposal establishes alternative streamlined procedures for national banks seeking OCC approval to acquire control of, or hold an interest in, a financial subsidiary, or to commence an expanded financial activity in an existing financial subsidiary.

Under the first alternative, a national bank may file a "Financial Subsidiary

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Board in defining additional financial and incidental activities under this provision.

Certification" with the OCC listing the bank's depository institution affiliates and certifying that the bank and each of those affiliates is well capitalized and well managed. Thereafter, at such time as the bank seeks OCC approval to acquire control of, or hold an interest in, a new financial subsidiary, or commence an additional expanded financial activity in an existing financial subsidiary, the bank must file a written notice with the appropriate district office. The written notice must be labeled "Financial Subsidiary Notice," must state that the bank's certification remains valid, and describe the activity or activities to be performed in the financial subsidiary as well as cite to the specific authority permitting the expanded financial activity to be conducted by a financial subsidiary. (Where the authority relied on is an agency order or interpretation under section 4(c)(8) or 4(c)(13), respectively, of the BHCA, a copy of the order or interpretation should be attached.) The written notice also must state that the aggregate consolidated total assets of all financial subsidiaries of the national bank do not exceed the lesser of 45 percent of the bank's consolidated total assets or $50 billion (or the increased level set by the indexing process), that the bank will remain well capitalized after making the necessary capital adjustments, and, if applicable, that the bank meets the eligible debt requirement.

Alternatively, a bank may choose to seek approval by filing a combined certification and notification with the appropriate OCC district office at least five business days prior to acquiring control of, or an interest in, a financial subsidiary, or commencing a new expanded financial activity in an existing financial subsidiary. This type of notice would combine the information from the certification and notice described above, and should be labeled "Financial Subsidiary Certification and Notice."

The OCC received 11 comments on the proposed procedures. The commenters generally supported the availability of alternative procedures citing the flexibility they will afford national banks that wish to conduct expanded financial activities through financial subsidiaries. Some commenters, however, suggested that the OCC revise the proposed procedures to require a national bank to provide notice to the OCC at least 15 business days prior to acquiring control of, or an interest in, a financial subsidiary to provide time for public input. Other commenters commended the use of an after-the-fact notice procedure to expedite approvals and to harmonize the OCC's procedures with those recently adopted by the Board in its interim rules implementing Title 1 of GLBA (65 FR 3785, Jan. 25, 2000).

The OCC believes that the factors upon which OCC approval is based support the use of expedited time frames, and the final rule adopts the language in the proposal with minor changes.

One of the changes to the procedures relates to section 307(c) of GLBA (15 U.S.C. 6716), which requires OCC consultation with the appropriate state insurance regulator in connection with initial and continuing affiliations between a depository institution and a company engaged in insurance activities. The OCC and the National Association of Insurance Commissioners have discussed this section and procedures for sharing appropriate information.[2] Thus, the final rules for both operating subsidiaries and financial subsidiaries require that operating subsidiary and financial subsidiary filings pertaining to a company engaged in insurance activities contain in the notice or application a description of the type of insurance activity that such company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable.[3]

Consistent with the GLBA, the proposal also provides that the OCC prohibits a national bank from applying to commence any additional expanded financial activity, or to directly or indirectly acquire control of a company engaged in any such activity, if the bank or any of its insured depository institution affiliates received a Community Reinvestment Act (CRA) rating of less than "satisfactory record of meeting community credit needs" on its most recent CRA examination prior to when the bank files a notice under § 5.39.

Several commenters urged the OCC to allow public comment where the bank or its insured depository institution affiliates have "low satisfactory" ratings in an assessment area or in a lending test in an assessment area. These commenters also requested a regulatory revision that would permit the OCC to condition approvals in these situations.

The OCC recognizes the concerns raised by these commenters but notes that the GLBA imports the bank's CRA rating as a factor to determine whether that rating prohibits the bank from commencing any expanded financial activity, or directly or indirectly acquiring control of a company engaged in any expanded financial activity. Moreover, section 5136A of the Revised Statutes directs the OCC to approve a national bank's acquiring control of, or an interest in, a financial subsidiary solely upon the factors set forth in section 5136A; the statute does not provide a basis to deny an application or notice or to condition approvals based on public comment.

Some commenters also asked the OCC to clarify the treatment of insured depository institution affiliates that do not have a CRA rating. For example, certain types of special purpose banks are not subject to CRA examination. The OCC believes that the provision in the proposal, which is derived directly from the GLBA provision, is sufficiently clear to conclude that the CRA rating requirement does not apply to *de novo* banks that have not yet received (or are not the successors of banks that have received) CRA ratings and to limited purpose banks that do not receive CRA ratings. Thus, the final rule adopts these provisions as proposed.

The OCC also notes that the prohibition on commencing any *new activity* authorized under section 5136A(a)(2)(A)(i) of the Revised Statutes if the bank or any of its insured depository institution affiliates received a CRA rating of less than "satisfactory record of meeting community credit needs" incorporates the term "new activity" that is used in the GLBA to refer to the expanded financial activities newly authorized by section 5136A(a)(2)(A)(i) of the Revised Statutes. Thus, when a bank operates through a financial subsidiary, and the bank or one of its insured depository institution affiliates subsequently receives a CRA rating of less than "satisfactory record of meeting community credit needs," the bank may not start up an additional financial activity that may only be conducted by a national bank through a financial subsidiary, nor may it acquire control of or establish an additional financial subsidiary or acquire all or substantially all of the assets of an additional company that is or would be a financial subsidiary, even if the financial subsidiary to be established or acquired is engaged in the same activities as the existing financial subsidiary.

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[2] It should be noted that under section 5136A of the Revised Statutes the discretion of the OCC to deny approval of a proposed affiliation is limited to the statutory factors in that section.

[3] The final rule also makes conforming changes to revised § 5.35, "Bank service companies," and revised § 5.36, "Other equity investments."

Failure To Continue To Meet Certain Requirements (§ 5.39(j)

The proposal states that a national bank and its affiliated depository institutions must continue to satisfy the well managed, well capitalized, and asset size requirements applicable to its financial subsidiaries and the conditions in proposed § 5.39(h)(1), (2), (3), and (4) after the bank acquires control of, or an interest in, a financial subsidiary. A national bank that fails to continue to satisfy these requirements is subject to several procedural requirements and OCC remedies. For example, the OCC must give notice to the bank and, in the case of an affiliated depository institution to that depository institution's appropriate Federal banking agency, promptly upon determining that the bank, or, as applicable, its affiliated depository institution, does not continue to meet these requirements. Under the proposal, the bank is deemed to have received this notice three days after mailing of the letter by the OCC. Not later than 45 days after receipt of this notice, or any additional time as the OCC may permit, the bank must execute an agreement with the OCC to comply with these requirements.

At any time until the conditions described in the notice are corrected, the OCC may impose limitations on the conduct or activities of the national bank or any subsidiary of the national bank that the OCC determines appropriate under the circumstances and consistent with the purposes of section 5136A of the Revised Statutes. The OCC also may require the bank to divest control of a financial subsidiary if the bank does not correct the conditions giving rise to the notice within 180 days after its receipt of the notice.

The GLBA provides that a national bank that does not continue to meet any applicable eligible debt requirement may not purchase, directly or through a subsidiary, any additional equity capital of a financial subsidiary. The term "equity capital" is defined in § 5.39(j)(2), consistent with the GLBA, to include, in addition to any equity investment, any debt instrument issued by a financial subsidiary if the instrument qualifies as capital of the subsidiary under applicable Federal or State law, regulation, or interpretation. In response to a question posed by a commenter, the final rule clarifies that this limitation applies when the bank has a financial subsidiary where the eligible debt requirement is applicable, *i.e.* where the financial subsidiary is engaged in activities other than solely in an agency capacity, and with respect to additional equity capital of such a subsidiary.

Finally, one commenter recommended adding clarifying language to § 5.39 similar to the provision in § 5.34 that recognizes the GLBA provisions relating to the functional regulation of certain types of bank subsidiaries and affiliates. The OCC agrees with this suggestion and the final rule adds a new § 5.39(k), which provides that a financial subsidiary is subject to examination and supervision by the OCC, subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the GLBA (12 U.S.C. 1820a).

Operating Subsidiaries (revised § 5.34)

Proposed § 5.34 authorizes national banks to engage through operating subsidiaries in activities that are part of, or incidental to, the business of banking. The proposal makes several changes to § 5.34 to be more consistent with the procedural requirements of proposed § 5.39, to remove unnecessary regulatory burden, and to make other adjustments that are necessary in light of the GLBA.

First, the proposal consolidates and moves activities formerly subject to an expedited application review into the more streamlined category which requires banks simply to file a notice with the appropriate OCC district office no later than 10 days after establishing or acquiring an operating subsidiary, or commencing a new activity in an existing operating subsidiary. Second, the proposal expands the list of notice activities to include other activities that the OCC has found to be part of, or incidental to, the business of banking [4] and has approved on a regular basis for national bank operating subsidiaries. Finally, given the expansion of the notice category, a national bank using the notice procedure must be well capitalized and well managed as defined in § 5.34(d).[5]

The final rule makes several changes to the list of activities eligible for a notice filing, and the OCC will periodically review and update this list as necessary. First, the OCC has added two new activities to the list of activities eligible for notice processing: (1) "acting as a digital certification authority" to the extent that activity is permitted by published OCC precedent and is conducted in accordance with the terms and conditions set forth in that precedent; and (2) "providing or selling public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, promotional and advertising material, postage stamps, and Electronic Benefits Transfer (EBT) script, and similar media," to the extent permitted by published OCC precedent, subject to the terms and conditions contained in that precedent. The OCC also has revised the notice provision relating to underwriting credit life insurance to include other types of credit related insurance the OCC has approved. Thus, the final rule refers to underwriting credit related insurance to the extent consistent with section 302 of GLBA. The final rule also clarifies that the notice provision relating to acting as an investment adviser (§ 5.34(e)(5)(v)(I)) includes acting as an investment adviser with discretion and revises the provision on providing check guaranty and verification services to clarify that it includes payment services. Finally, the final rule clarifies that real estate appraisal services for the subsidiary, parent bank, or other financial institutions are moved from the former list of activities eligible for expedited review to the notice list.

One commenter requested that the OCC expand the language in § 5.34(e)(5)(v) regarding finder activities because of the various opportunities created by the proliferation of electronic commerce. The OCC notes that it currently is soliciting comment on a broad range of issues through an advance notice of proposed rulemaking intended to identify changes to existing rules that would facilitate bank use of new technologies.[6] The OCC will review this request in that context.

One commenter also urged the OCC to amend § 5.34(e)(5)(v)(P), which is the notice activity for acting as an insurance agent or broker, to expressly limit that activity in any manner required by 12 U.S.C. 92 or 12 U.S.C. 24 (Seventh). However, the OCC believes that additional language is unnecessary because the rule clearly states that operating subsidiaries may only engage in activities permissible for the parent bank to engage in directly, either as part of, or incidental to, the business of banking or otherwise under other statutory authority. This language would address any requirements in 12 U.S.C. 92 or 12 U.S.C. 24 (Seventh) that are applicable.

[4] This is not a complete list of activities that are part of, or incidental to, the business of banking. The OCC will review new proposals for activities that may be permissible under this section pursuant to the application procedures contained in § 5.34 and in response to requests for legal opinions.

[5] A corresponding change is made with respect to the expanded notice process available for bank service companies in § 5.35(f)(2).

[6] 65 FR 4895 (Feb. 2, 2000).

The proposal also clarifies that "authorized products" referenced in the GLBA are activities permissible for operating subsidiaries under § 5.34. The final rule adopts the language in the proposal without changes.

The proposal also revises § 5.34 to conform to other changes made by the GLBA. First, the OCC proposed to remove former § 5.34(f) because the GLBA makes clear that an operating subsidiary may engage only in activities that are permissible for the parent bank to engage in directly. The final rule makes clear that an operating subsidiary conducts its activities subject to the same authorization, terms, and conditions that apply to the conduct of those activities by its parent bank. Second, the proposal removes the former statement that "each operating subsidiary is subject to examination and supervision by the OCC" and clarifies that the OCC's authority to examine and take action against certain subsidiaries is subject to the limitations and requirements of new section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the GLBA (12 U.S.C. 1820a). The OCC did not receive any comments on these provisions, and the final rule adopts the language as proposed.

Non-Controlling Investments (revised § 5.36)

Several commenters suggested including non-controlling (or minority) investments on the list in § 5.34(e)(5)(v), or otherwise providing an expedited notice process for non-controlling investments proposed to be made in the same types of companies eligible for an expedited operating subsidiary notice. Commenters recommended that the OCC establish expedited procedures to approve non-controlling investments made either by national banks directly or by their operating subsidiaries. Among other things, the commenters suggested that the availability of definite time frames would promote the rapid consummation of transactions and enhance the ability of national banks to compete effectively in areas such as electronic banking.[7]

The OCC previously has authorized national banks to own, either directly or indirectly through an operating subsidiary, a *non-controlling* interest in an enterprise.[8] This authorization, however, is subject to certain conditions that apply in the case of minority investments but do not apply to the other activities on the list in § 5.34(e)(5)(v), and thus the § 5.34(e)(5)(v) list format does not lend itself to a clear description of these conditions. Nevertheless, the OCC believes that prescribing streamlined procedures for national banks seeking to make certain types of minority investments, directly and by operating subsidiaries, is consistent with the new structural flexibility that the GLBA affords to national banks. For these reasons, we have concluded that it is preferable to revise § 5.36, which governs non-controlling investments, rather than to include minority investments on the list of operating subsidiary activities eligible for notice.

Accordingly, the final rule amends current § 5.36 to provide that a qualifying national bank may make certain non-controlling investments, directly or through its operating subsidiary, in an enterprise by filing a written notice with the appropriate OCC district office no later than 10 days after making the investment. The term "enterprise" includes any corporation, limited liability company, partnership, trust, or similar business entity. The notice procedure applies if the activity conducted by the enterprise is on the list in § 5.34(e)(5)(v), or if it is substantively the same as an activity that has been previously approved for a national bank (or its operating subsidiary) in published OCC precedent, and is conducted on the same terms and conditions that apply to the activity approved in that precedent.

This procedure is available for national banks that are well capitalized and well managed (as those terms are defined in § 5.34), that engage in the activities just described, and that submit a notice that contains the following information.

First, the bank must provide a clear description of the activities conducted by the enterprise in which the bank invests. To the extent the notice relates to the affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. Second, the bank must state that the enterprise engages in activities described in § 5.34(e)(5)(v) or state, and describe how, the activities are substantively the same as those contained in published OCC precedent approving a non-controlling investment by a national bank or its operating subsidiary, and that those activities will be conducted in accordance with the same terms and conditions applicable to the activity covered by the precedent. The bank also must provide a citation to the applicable precedent. Third, the bank must certify that it is well capitalized and well managed.

Finally, the bank's notice must demonstrate that it satisfies the requirements applicable to non-controlling investments, as described in the OCC's published decisions. These include: (1) describing how the bank has the ability to prevent the enterprise from engaging in activities that are not set forth in § 5.34(e)(5)(v) or not contained in published OCC precedent approving a non-controlling investment by a national bank or its operating subsidiary, or how the bank otherwise has the ability to withdraw its investment; (2) certifying that the bank will account for its investment under the equity or cost method of accounting; (3) describing how the investment is convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to the bank's banking business; and (4) certifying that the enterprise in which the bank is investing agrees to be subject to OCC supervision and examination, subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act and section 115 of GLBA.

The OCC will continue to address on a case-by-case basis situations where a national bank is not well managed or well capitalized but seeks to make a non-controlling investment directly or where a national bank wishes to invest in a company that engages in activities that are not eligible for the notice procedure.

Other Matters

Financial Subsidiaries and Operating Subsidiaries of Federal Branches and Agencies

The proposal also invited comment on whether national treatment principles would be furthered if Federal branches and agencies of foreign banks are authorized to invest in financial and

[7] Currently, national banks making non-controlling investments directly submit requests for an OCC opinion regarding the permissibility of the investment.

[8] *See, e.g.*, OCC Corporate Decision No. 97–54 (June 26, 1997); OCC Interpretive Letter No. 692, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,007 (Nov. 1, 1995); OCC Interpretive Letter No. 694, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,009 (Dec. 13, 1995); OCC Interpretive Letter No. 705, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,020 (Oct. 25, 1995); OCC Interpretive Letter No. 711, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–026 (Feb. 23, 1996).

operating subsidiaries, and, if so, how the OCC would apply the applicable qualification standards. The OCC received six comments on this issue. The commenters strongly supported permitting Federal branches and agencies to invest in and control financial subsidiaries and operating subsidiaries. The OCC agrees that Federal branches and agencies should be authorized to hold these subsidiaries and expects to issue a separate proposal to address the details of how that authority may be implemented in the near future.

Conforming Technical Changes

Finally, the final rule makes conforming technical changes to §§ 5.24 and 5.33. These changes clarify that separate notices under § 5.39 to acquire control of, or an interest in, a financial subsidiary are not required where that information is supplied in connection with the conversion or merger application. In addition, the final rule revises § 5.35, the OCC rule relating to bank service companies, to remove the provisions in that section relating to expedited application filings. This change was made to conform to similar changes made to § 5.34. Section 5.35 refers to § 5.34 to determine which activities are eligible for notice filing. Thus, the changes to § 5.34 that consolidated and moved the activities formerly listed in the expedited processing list into the notice category will similarly affect § 5.35.

Effective Date

The Administrative Procedure Act provides that, subject to several exceptions, a final rule may not be made effective until 30 days after publication in the **Federal Register**. 5 U.S.C. 553(d). However, an agency may make a final rule immediately effective upon publication if the agency finds good cause for doing so and publishes its findings with the rule. Likewise, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Public Law 103–325, authorizes a banking agency to issue a rule to be effective before the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form if the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1).

This final rule takes effect on March 11, 2000. The OCC finds good cause to dispense with the 30-day delayed effective date pursuant to 5 U.S.C. 553(d)(3). The OCC also has determined that good cause exists to adopt an effective date that is before the first day of the calendar quarter that begins on or after the date on which the regulation is published, as would otherwise be required by section 102 of the CDRI (12 U.S.C. 4802(b)(1)). Unless the OCC has a final rule in place by March 11, 2000, national banks will be unable to exercise the GLBA financial subsidiary authority when it becomes available to them under the law. Moreover, as of March 11, 2000, certain portions of the OCC's current operating subsidiary rule will be superseded by the new law. Therefore, the final rule takes effect on March 11, 2000, in order to eliminate potential confusion or disruption for banks seeking to restructure their operations in accordance with the GLBA.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The principal effect of this final rule is to provide procedures for implementing section 121 of the GLBA for national banks that wish to engage in activities through financial subsidiaries. The final rule also would require national banks making non-controlling investments in certain entities to file a notice with the OCC. The final rule also would reduce regulatory burden by increasing the number of activities that are subject to notice requirements rather than application requirements where a national bank intends to engage in activities through an operating subsidiary or to make a non-controlling investment in an enterprise through an operating subsidiary.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 12866 Determination

The Comptroller of the Currency has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

Paperwork Reduction Act

The collection of information requirements in this final rule are found in §§ 5.24(d)(2)(ii)(G), 5.33(e)(3)(i) and (ii), 5.34(b) and (e), 5.35(f), 5.36(e), and 5.39(b) and (i). These collection of information requirements have been reviewed and approved by the Office of Management and Budget in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) under OMB Control Number 1557–0215.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends chapter I of title 12 of the Code of Federal Regulations as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a; and section 5136A of the Revised Statutes (12 U.S.C. 24a).

2. In § 5.24, paragraph (d)(2)(ii)(G) is revised to read as follows:

§ 5.24 Conversion.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(G) Identify all subsidiaries that will be retained following the conversion, and provide the information and analysis of the subsidiaries' activities that would be required if the converting bank or savings association were a national bank establishing each subsidiary pursuant to §§ 5.34 or 5.39; and

* * * * *

3. In § 5.33, paragraphs (e)(3)(i) and (e)(3)(ii) are revised to read as follows:

§ 5.33 Business combinations.

* * * * *

(e) * * *
(3) * * *

(i) An applicant must identify any subsidiary to be acquired in a business combination and state the activities of each subsidiary. The OCC does not require a separate application under § 5.34 or a separate notice under § 5.39.

(ii) An applicant proposing to acquire, through a business combination, a subsidiary of a depository institution other than a national bank must provide the same information and analysis of the subsidiary's activities that would be required if the applicant were establishing the subsidiary pursuant to §§ 5.34 or 5.39.

* * * * *

4. Section 5.34 is revised to read as follows:

§ 5.34 Operating subsidiaries.

(a) *Authority.* 12 U.S.C. 24 (Seventh), 93a, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

(b) *Licensing requirements.* A national bank must file a notice or application as prescribed in this section to acquire or establish an operating subsidiary, or to commence a new activity in an existing operating subsidiary.

(c) *Scope.* This section sets forth authorized activities and application or notice procedures for national banks engaging in activities through an operating subsidiary. The procedures in this section do not apply to financial subsidiaries authorized under § 5.39.

(d) *Definitions.* For purposes of this § 5.34:

(1) *Authorized product* means a product that would be defined as insurance under section 302(c) of the Gramm-Leach-Bliley Act (Public Law 106–102, 113 Stat. 1338, 1407) (GLBA) (15 U.S.C. 6712) that, as of January 1, 1999, the OCC had determined in writing that national banks may provide as principal or national banks were in fact lawfully providing the product as principal, and as of that date no court of relevant jurisdiction had, by final judgment, overturned a determination by the OCC that national banks may provide the product as principal. An authorized product does not include title insurance, or an annuity contract the income of which is subject to treatment under section 72 of the Internal Revenue Code of 1986 (26 U.S.C. 72).

(2) *Well capitalized* means the capital level described in 12 CFR 6.4(b)(1).

(3) *Well managed* means, unless otherwise determined in writing by the OCC:

(i) The national bank has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination; or

(ii) In the case of any national bank that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(e) *Standards and requirements*—(1) *Authorized activities.* A national bank may conduct in an operating subsidiary activities that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking, as determined by the OCC, or otherwise under other statutory authority, including:

(i) Providing authorized products as principal; and

(ii) Providing title insurance as principal if the national bank or subsidiary thereof was actively and lawfully underwriting title insurance before November 12, 1999, and no affiliate of the national bank (other than a subsidiary) provides insurance as principal. A subsidiary may not provide title insurance as principal if the state had in effect before November 12, 1999, a law which prohibits any person from underwriting title insurance with respect to real property in that state.

(2) *Qualifying subsidiaries.* An operating subsidiary in which a national bank may invest includes a corporation, limited liability company, or similar entity if the parent bank owns more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary; or the parent bank otherwise controls the operating subsidiary and no other party controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary. However, the following subsidiaries are not operating subsidiaries subject to this section:

(i) A subsidiary in which the bank's investment is made pursuant to specific authorization in a statute or OCC regulation (*e.g.*, a bank service company under 12 U.S.C. 1861 *et seq.* or a financial subsidiary under section 5136A of the Revised Statutes (12 U.S.C. 24a)); and

(ii) A subsidiary in which the bank has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid a loss in connection with a debt previously contracted.

(3) *Examination and supervision.* An operating subsidiary conducts activities authorized under this section pursuant to the same authorization, terms and conditions that apply to the conduct of such activities by its parent national bank. If, upon examination, the OCC determines that the operating subsidiary is operating in violation of law, regulation, or written condition, or in an unsafe or unsound manner or otherwise threatens the safety or soundness of the bank, the OCC will direct the bank or operating subsidiary to take appropriate remedial action, which may include requiring the bank to divest or liquidate the operating subsidiary, or discontinue specified activities. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(4) *Consolidation of figures.* Pertinent book figures of the parent bank and its operating subsidiary shall be combined for the purpose of applying statutory or regulatory limitations when combination is needed to effect the intent of the statute or regulation, *e.g.*, for purposes of 12 U.S.C. 56, 60, 84, and 371d.

(5) *Procedures*—(i) *Application required.* (A) Except as provided in paragraph (e)(5)(iv) or (e)(5)(vi) of this section, a national bank that intends to acquire or establish an operating subsidiary, or to perform a new activity in an existing operating subsidiary, must first submit an application to, and receive approval from, the OCC. The application must include a complete description of the bank's investment in the subsidiary, the proposed activities of the subsidiary, the organizational structure and management of the subsidiary, the relations between the bank and the subsidiary, and other information necessary to adequately describe the proposal. To the extent the application relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. The application must state whether the operating subsidiary will conduct any activity at a location other than the main office or a previously approved branch of the bank. The OCC may require the applicant to submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues. In these cases, the OCC encourages applicants to have a pre-filing meeting with the OCC.

(B) A national bank must file an application and obtain prior approval before acquiring or establishing an

operating subsidiary, or performing a new activity in an existing operating subsidiary, if the bank controls the subsidiary but owns 50 percent or less of the voting (or similar type of controlling) interest of the subsidiary. These applications are not subject to the filing exemption in paragraph (e)(5)(vi) of this section and are not eligible for the notice procedures in paragraph (e)(5)(iv) of this section.

(ii) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(iii) *OCC review and approval.* The OCC reviews a national bank's application to determine whether the proposed activities are legally permissible and to ensure that the proposal is consistent with safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the parent national bank. As part of this process, the OCC may request additional information and analysis from the applicant.

(iv) *Notice process for certain activities.* A national bank that is "well capitalized" and "well managed" may acquire or establish an operating subsidiary, or perform a new activity in an existing operating subsidiary, by providing the appropriate district office written notice within 10 days after acquiring or establishing the subsidiary, or commencing the activity, if the activity is listed in paragraph (e)(5)(v) of this section. The written notice must include a complete description of the bank's investment in the subsidiary and of the activity conducted and a representation and undertaking that the activity will be conducted in accordance with OCC policies contained in guidance issued by the OCC regarding the activity. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. Any bank receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(v) *Activities eligible for notice.* The following activities qualify for the notice procedures, provided the activity is conducted pursuant to the same terms and conditions as would be applicable if the activity were conducted directly by a national bank:

(A) Holding and managing assets acquired by the parent bank, including investment assets and property acquired by the bank through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted;

(B) Providing services to or for the bank or its affiliates, including accounting, auditing, appraising, advertising and public relations, and financial advice and consulting;

(C) Making loans or other extensions of credit, and selling money orders, savings bonds, and travelers checks;

(D) Purchasing, selling, servicing, or warehousing loans or other extensions of credit, or interests therein;

(E) Providing courier services between financial institutions;

(F) Providing management consulting, operational advice, and services for other financial institutions;

(G) Providing check guaranty, verification and payment services;

(H) Providing data processing, data warehousing and data transmission products, services, and related activities and facilities, including associated equipment and technology, for the bank or its affiliates;

(I) Acting as investment adviser (including an adviser with investment discretion) or financial adviser or counselor to governmental entities or instrumentalities, businesses, or individuals, including advising registered investment companies and mortgage or real estate investment trusts, furnishing economic forecasts or other economic information, providing investment advice related to futures and options on futures, and providing consumer financial counseling;

(J) Providing tax planning and preparation services;

(K) Providing financial and transactional advice and assistance, including advice and assistance for customers in structuring, arranging, and executing mergers and acquisitions, divestitures, joint ventures, leveraged buyouts, swaps, foreign exchange, derivative transactions, coin and bullion, and capital restructurings;

(L) Underwriting credit related insurance to the extent permitted under section 302 of the GLBA (15 U.S.C. 6712);

(M) Leasing of personal property and acting as an agent or adviser in leases for others;

(N) Providing securities brokerage or acting as a futures commission merchant, and providing related credit and other related services;

(O) Underwriting and dealing, including making a market, in bank permissible securities and purchasing and selling as principal, asset backed obligations;

(P) Acting as an insurance agent or broker, including title insurance to the extent permitted under section 303 of the GLBA (15 U.S.C. 6713);

(Q) Reinsuring mortgage insurance on loans originated, purchased, or serviced by the bank, its subsidiaries, or its affiliates, provided that if the subsidiary enters into a quota share agreement, the subsidiary assumes less than 50 percent of the aggregate insured risk covered by the quota share agreement. A "quota share agreement" is an agreement under which the reinsurer is liable to the primary insurance underwriter for an agreed upon percentage of every claim arising out of the covered book of business ceded by the primary insurance underwriter to the reinsurer;

(R) Acting as a finder pursuant to 12 CFR 7.1002 to the extent permitted by published OCC precedent; [1]

(S) Offering correspondent services to the extent permitted by published OCC precedent;

(T) Acting as agent or broker in the sale of fixed or variable annuities;

(U) Offering debt cancellation or debt suspension agreements;

(V) Providing real estate settlement, closing, escrow, and related services; and real estate appraisal services for the subsidiary, parent bank, or other financial institutions;

(W) Acting as a transfer or fiscal agent;

(X) Acting as a digital certification authority to the extent permitted by published OCC precedent, subject to the terms and conditions contained in that precedent; and

(Y) Providing or selling public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, promotional and advertising material, postage stamps, and Electronic Benefits Transfer (EBT) script, and similar media, to the extent permitted by published OCC precedent, subject to the terms and conditions contained in that precedent.

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[1] *See, e.g.*, the OCC's monthly publication "Interpretations and Actions." Beginning with the May 1996 issue, the OCC's Web site provides access to electronic versions of "Interpretations and Actions" (www.occ.treas.gov).

(vi) *No application or notice required.* A national bank may acquire or establish an operating subsidiary without filing an application or providing notice to the OCC, if the bank is adequately capitalized or well capitalized and the:

(A) Activities of the new subsidiary are limited to those activities previously reported by the bank in connection with the establishment or acquisition of a prior operating subsidiary;

(B) Activities in which the new subsidiary will engage continue to be legally permissible for the subsidiary; and

(C) Activities of the new subsidiary will be conducted in accordance with any conditions imposed by the OCC in approving the conduct of these activities for any prior operating subsidiary of the bank.

(vii) *Fiduciary powers.* If an operating subsidiary proposes to exercise investment discretion on behalf of customers or provide investment advice for a fee, the national bank must have prior OCC approval to exercise fiduciary powers pursuant to § 5.26.

5. Section 5.35 is amended by:

A. Revising paragraph (e);

B. Revising paragraphs (f)(1) and (f)(2);

C. Removing paragraph (f)(3);

D. Redesignating paragraphs (f)(4) through (f)(6) as paragraphs (f)(3) through (f)(5); and

E. Revising paragraphs (g)(2), (h), and (i)(2) to read as follows:

§ 5.35 Bank service companies.

* * * * *

(e) *Standards and requirements.* A national bank may invest in a bank service company that conducts activities described in paragraphs (f)(3) and (f)(4) of this section, and activities (other than taking deposits) permissible for the national bank and other state and national bank shareholders or members in the bank service company.

(f) *Procedures*—(1) *OCC notice and approval required.* Except as provided in paragraphs (f)(2) and (f)(4) of this section, a national bank that intends to make an investment in a bank service company, or to perform new activities in an existing bank service company, must submit a notice to and receive prior approval from the OCC. The OCC approves or denies a proposed investment within 60 days after the filing is received by the OCC, unless the OCC notifies the bank prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue. The notice must include the information required by paragraph (g) of this section.

(2) *Notice process only for certain activities.* A national bank that is "well capitalized" and "well managed" as defined in § 5.34(d) may invest in a bank service company, or perform a new activity in an existing bank service company, by providing the appropriate district office written notice within 10 days after the investment, if the bank service company engages only in the activities listed in § 5.34(e)(5)(v). No prior OCC approval is required. The written notice must include a complete description of the bank's investment in the bank service company and of the activity conducted and a representation and undertaking that the activity will be conducted in accordance with OCC guidance. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. Any bank receiving approval under this paragraph is deemed to have agreed that the bank service company will conduct the activity in a manner consistent with the published OCC guidance.

* * * * *

(g)* * *

(2) A complete description of the activities the bank service company will conduct. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

* * * * *

(h) *Examination and supervision.* Each bank service company in which a national bank is the principal investor is subject to examination and supervision by the OCC in the same manner and to the same extent as that national bank. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(i) * * *

(2) *Other limitations.* Except as provided in paragraph (f)(4) of this section, a bank service company shall only conduct activities that the national bank could conduct directly. If the bank service company has both national and state bank shareholders or members, the activities conducted must also be permissible for the state bank shareholders or members.

6. Section 5.36 is amended by:

A. Redesignating paragraphs (c) and (d) as paragraphs (d) and (f) respectively, and

B. Adding new paragraphs (c) and (e) to read as follows:

§ 5.36 Other equity investments.

* * * * *

(c) *Definitions.* For purposes of this § 5.36:

(1) *Enterprise* means any corporation, limited liability company, partnership, trust, or similar business entity.

(2) *Well capitalized* means the capital level described in 12 CFR 6.4(b)(1).

(3) *Well managed* has the meaning set forth in § 5.34(d)(3).

* * * * *

(e) *Non-controlling investments.* A national bank may make a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in the activities described in paragraph (e)(2) of this section by filing a written notice. The written notice must be filed with the appropriate district office no later than 10 days after making the investment and must:

(1) Describe the structure of the investment and the activity or activities conducted by the enterprise in which the bank is investing. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(2) State which paragraphs of § 5.34(e)(5)(v) describe the activity or activities, or state that, and describe how, the activity is substantively the same as that contained in published OCC precedent approving a non-controlling investment by a national bank or its operating subsidiary, state that the activity will be conducted in accordance with the same terms and conditions applicable to the activity covered by the precedent, and provide the citation to the applicable precedent;

(3) Certify that the bank is well managed and well capitalized at the time of the investment;

(4) Describe how the bank has the ability to prevent the enterprise from engaging in activities that are not set forth in § 5.34(e)(5)(v) or not contained in published OCC precedent approving a non-controlling investment by a national bank or its operating subsidiary, or how the bank otherwise has the ability to withdraw its investment;

(5) Certify that the bank will account for its investment under this section under the equity or cost method of accounting;

(6) Describe how the investment is convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to the bank's banking business; and

(7) Certify that the enterprise in which the bank is investing agrees to be subject to OCC supervision and examination, subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

* * * * *

7. A new § 5.39 is added to subpart C to read as follows:

§ 5.39 Financial subsidiaries.

(a) *Authority.* 12 U.S.C. 93a and section 121 of Public Law 106–102, 113 Stat. 1338, 1373.

(b) *Approval requirements.* A national bank must file a notice as prescribed in this section prior to acquiring a financial subsidiary or engaging in activities authorized pursuant to section 5136A(a)(2)(A)(i) of the Revised Statutes (12 U.S.C. 24a) through a financial subsidiary. When a financial subsidiary proposes to conduct a new activity permitted under § 5.34, the bank shall follow the procedures in § 5.34(e)(5) instead of paragraph (i) of this section.

(c) *Scope.* This section sets forth authorized activities, approval procedures, and, where applicable, conditions for national banks engaging in activities through a financial subsidiary.

(d) *Definitions.* For purposes of this § 5.39:

(1) *Affiliate* has the meaning set forth in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), except that the term "affiliate" for purposes of paragraph (h)(5) of this section shall have the meaning set forth in sections 23A or 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1), as applicable.

(2) *Appropriate Federal banking agency* has the meaning set forth in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) *Company* has the meaning set forth in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), and includes a limited liability company (LLC).

(4) *Control* has the meaning set forth in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(5) *Eligible debt* means unsecured long-term debt that is:

(i) Not supported by any form of credit enhancement, including a guaranty or standby letter of credit; and

(ii) Not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or an affiliate of the bank.

(6) *Financial subsidiary* means any company that is controlled by one or more insured depository institutions, other than a subsidiary that:

(i) Engages solely in activities that national banks may engage in directly and that are conducted subject to the same terms and conditions that govern the conduct of these activities by national banks; or

(ii) A national bank is specifically authorized to control by the express terms of a Federal statute (other than section 5136A of the Revised Statutes), and not by implication or interpretation, such as by section 25 of the Federal Reserve Act (12 U.S.C. 601–604a), section 25A of the Federal Reserve Act (12 U.S.C. 611–631), or the Bank Service Company Act (12 U.S.C. 1861 *et seq.*)

(7) *Insured depository institution* has the meaning set forth in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(8) *Long term debt* means any debt obligation with an initial maturity of 360 days or more.

(9) *Subsidiary* has the meaning set forth in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(10) *Tangible equity* has the meaning set forth in 12 CFR 6.2(g).

(11) *Well capitalized* with respect to a depository institution means the capital level designated as "well capitalized" by the institution's appropriate Federal banking agency pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

(12) *Well managed* means:

(i) Unless otherwise determined in writing by the appropriate Federal banking agency, the institution has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution and, at least a rating of 2 for management, if such a rating is given; or

(ii) In the case of any depository institution that has not been examined by its appropriate Federal banking agency, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

(e) *Authorized activities.* A financial subsidiary may engage only in the following activities:

(1) Activities that are financial in nature and activities incidental to a financial activity, authorized pursuant to 5136A(a)(2)(A)(i) of the Revised Statutes (12 U.S.C. 24a) (to the extent not otherwise permitted under paragraph (e)(2) of this section), including:

(i) Lending, exchanging, transferring, investing for others, or safeguarding money or securities;

(ii) Engaging as agent or broker in any state for purposes of insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, death, defects in title, or providing annuities as agent or broker;

(iii) Providing financial, investment, or economic advisory services, including advising an investment company as defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3);

(iv) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly;

(v) Underwriting, dealing in, or making a market in securities;

(vi) Engaging in any activity that the Board of Governors of the Federal Reserve System has determined, by order or regulation in effect on November 12, 1999, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in the order or regulation, unless the order or regulation is modified by the Board of Governors of the Federal Reserve System);

(vii) Engaging, in the United States, in any activity that a bank holding company may engage in outside the United States and the Board of Governors of the Federal Reserve System has determined, under regulations prescribed or interpretations issued pursuant to section 4(c)(13) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(13)) as in effect on November 11, 1999, to be usual in

connection with the transaction of banking or other financial operations abroad; and

(viii) Activities that the Secretary of the Treasury in consultation with the Board of Governors of the Federal Reserve System, as provided in section 5136A of the Revised Statutes, determines to be financial in nature or incidental to a financial activity; and

(2) Activities that may be conducted by an operating subsidiary pursuant to § 5.34.

(f) *Impermissible activities.* A financial subsidiary may not engage as principal in the following activities:

(1) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability or death, or defects in title (except to the extent permitted under sections 302 or 303(c) of the Gramm-Leach-Bliley Act (GLBA)), 113 Stat. 1407–1409, (15 U.S.C. 6712 or 15 U.S.C. 6713) or providing or issuing annuities the income of which is subject to tax treatment under section 72 of the Internal Revenue Code (26 U.S.C. 72);

(2) Real estate development or real estate investment, unless otherwise expressly authorized by law; and

(3) Activities authorized for bank holding companies by section 4(k)(4)(H) or (I) (12 U.S.C. 1843) of the Bank Holding Company Act, except activities authorized under section 4(k)(4)(H) that may be permitted in accordance with section 122 of the GLBA, 113 Stat. 1381.

(g) *Qualifications.* A national bank may, directly or indirectly, control a financial subsidiary or hold an interest in a financial subsidiary only if:

(1) The national bank and each depository institution affiliate of the national bank are well capitalized and well managed;

(2) The aggregate consolidated total assets of all financial subsidiaries of the national bank do not exceed the lesser of 45 percent of the consolidated total assets of the parent bank or $50 billion (or such greater amount as is determined according to an indexing mechanism jointly established by regulation by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System); and

(3) If the national bank is one of the 100 largest insured banks, determined on the basis of the bank's consolidated total assets at the end of the calendar year, the bank has at least one issue of outstanding eligible debt that is currently rated in one of the three highest investment grade rating categories by a nationally recognized statistical rating organization. If the national bank is one of the second 50 largest insured banks, it may either satisfy this requirement or satisfy alternative criteria the Secretary of the Treasury and the Board of Governors of the Federal Reserve System establish jointly by regulation. This paragraph (g)(3) does not apply if the financial subsidiary is engaged solely in activities in an agency capacity.

(h) *Safeguards.* The following safeguards apply to a national bank that establishes or maintains a financial subsidiary:

(1) For purposes of determining regulatory capital:

(i) The national bank must deduct the aggregate amount of its outstanding equity investment, including retained earnings, in its financial subsidiaries from its total assets and tangible equity and deduct such investment from its total risk-based capital (this deduction shall be made equally from Tier 1 and Tier 2 capital); and

(ii) The national bank may not consolidate the assets and liabilities of a financial subsidiary with those of the bank;

(2) Any published financial statement of the national bank shall, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank in the manner provided in paragraph (h)(1) of this section;

(3) The national bank must have reasonable policies and procedures to preserve the separate corporate identity and limited liability of the bank and the financial subsidiaries of the bank;

(4) The national bank must have procedures for identifying and managing financial and operational risks within the bank and the financial subsidiary that adequately protect the national bank from such risks;

(5) Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) apply to transactions involving a financial subsidiary in the following manner:

(i) A financial subsidiary shall be deemed to be an affiliate of the bank and shall not be deemed to be a subsidiary of the bank;

(ii) The restrictions contained in section 23A(a)(1)(A) of the Federal Reserve Act shall not apply with respect to covered transactions between a bank and any individual financial subsidiary of the bank;

(iii) The bank's investment in the financial subsidiary shall not include retained earnings of the financial subsidiary;

(iv) Any purchase of, or investment in, the securities of a financial subsidiary of a bank by an affiliate of the bank will be considered to be a purchase of or investment in such securities by the bank; and

(v) Any extension of credit by an affiliate of a bank to a financial subsidiary of the bank may be considered an extension of credit by the bank to the financial subsidiary if the Board of Governors of the Federal Reserve System determines that such treatment is necessary or appropriate to prevent evasions of the Federal Reserve Act and the GLBA.

(6) A financial subsidiary shall be deemed a subsidiary of a bank holding company and not a subsidiary of the bank for purposes of the anti-tying prohibitions set forth in 12 U.S.C. 1971 *et seq.*

(i) *Procedures to engage in activities through a financial subsidiary.* A national bank that intends, directly or indirectly, to acquire control of, or hold an interest in, a financial subsidiary, or to commence a new activity in an existing financial subsidiary, must obtain OCC approval through the procedures set forth in paragraph (i)(1) or (i)(2) of this section.

(1) *Certification with subsequent notice.* (i) At any time, a national bank may file a "Financial Subsidiary Certification" with the appropriate district office listing the bank's depository institution affiliates and certifying that the bank and each of those affiliates is well capitalized and well managed.

(ii) Thereafter, at such time as the bank seeks OCC approval to acquire control of, or hold an interest in, a new financial subsidiary, or commence a new activity authorized under section 5136A(a)(2)(A)(i) of the Revised Statutes (12 U.S.C. 24a) in an existing subsidiary, the bank may file a written notice with the appropriate district office at the time of acquiring control of, or holding an interest in, a financial subsidiary, or commencing such activity in an existing subsidiary. The written notice must be labeled "Financial Subsidiary Notice" and must:

(A) State that the bank's Certification remains valid;

(B) Describe the activity or activities conducted by the financial subsidiary. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(C) Cite the specific authority permitting the activity to be conducted by the financial subsidiary. (Where the authority relied on is an agency order or interpretation under section 4(c)(8) or 4(c)(13), respectively, of the Bank Holding Company Act of 1956, a copy of the order or interpretation should be attached);

(D) Certify that the bank will be well capitalized after making adjustments required by paragraph (h)(1) of this section;

(E) Demonstrate the aggregate consolidated total assets of all financial subsidiaries of the national bank do not exceed the lesser of 45 percent of the bank's consolidated total assets or $50 billion (or the increased level established by the indexing mechanism); and

(F) If applicable, certify that the bank meets the eligible debt requirement in paragraph (g)(3) of this section.

(2) *Combined certification and notice.* A national bank may file a combined certification and notice with the appropriate district office at least five business days prior to acquiring control of, or holding an interest in, a financial subsidiary, or commencing a new activity authorized pursuant to section 5136A(a)(2)(A)(i) of the Revised Statutes in an existing subsidiary. The written notice must be labeled "Financial Subsidiary Certification and Notice" and must:

(i) List the bank's depository institution affiliates and certify that the bank and each depository institution affiliate of the bank is well capitalized and well managed;

(ii) Describe the activity or activities to be conducted in the financial subsidiary. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(iii) Cite the specific authority permitting the activity to be conducted by the financial subsidiary. (Where the authority relied on is an agency order or interpretation under section 4(c)(8) or 4(c)(13), respectively, of the Bank Holding Company Act of 1956, a copy of the order or interpretation should be attached);

(iv) Certify that the bank will remain well capitalized after making the adjustments required by paragraph (h)(1) of this section;

(v) Demonstrate the aggregate consolidated total assets of all financial subsidiaries of the national bank do not exceed the lesser of 45% of the bank's consolidated total assets or $50 billion (or the increased level established by the indexing mechanism); and

(vi) If applicable, certify that the bank meets the eligible debt requirement in paragraph (g)(3) of this section.

(3) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, 5.11, and 5.13 do not apply to activities authorized under this section.

(4) *Community Reinvestment Act (CRA).* A national bank may not apply under this paragraph (i) to commence a new activity authorized under section 5136A(a)(2)(A)(i) of the Revised Statutes (12 U.S.C. 24a), or directly or indirectly acquire control of a company engaged in any such activity, if the bank or any of its insured depository institution affiliates received a CRA rating of less than "satisfactory record of meeting community credit needs" on its most recent CRA examination prior to when the bank would file a notice under this section.

(j) *Failure to continue to meet certain qualification requirements*—(1) *Qualifications and safeguards.* A national bank, or, as applicable, its affiliated depository institutions, must continue to satisfy the qualification requirements set forth in paragraphs (g)(1) and (2) of this section and the safeguards in paragraphs (h)(1), (2), (3) and (4) of this section following its acquisition of control of, or an interest in, a financial subsidiary. A national bank that fails to continue to satisfy these requirements will be subject to the following procedures and requirements:

(i) The OCC shall give notice to the national bank and, in the case of an affiliated depository institution to that depository institution's appropriate Federal banking agency, promptly upon determining that the national bank, or, as applicable, its affiliated depository institution, does not continue to meet the requirements in paragraph (g)(1) or (2) of this section or the safeguards in paragraph (h)(1), (2), (3), or (4) of this section. The bank shall be deemed to have received such notice three business days after mailing of the letter by the OCC;

(ii) Not later than 45 days after receipt of the notice under paragraph (j)(1)(i) of this section, or any additional time as the OCC may permit, the national bank shall execute an agreement with the OCC to comply with the requirements in paragraphs (g)(1) and (2) and (h)(1), (2), (3), and (4) of this section;

(iii) The OCC may impose limitations on the conduct or activities of the national bank or any subsidiary of the national bank as the OCC determines appropriate under the circumstances and consistent with the purposes of section 5136A of the Revised Statutes; and

(iv) The OCC may require a national bank to divest control of a financial subsidiary if the national bank does not correct the conditions giving rise to the notice within 180 days after receipt of the notice provided under paragraph (j)(1)(i) of this section.

(2) *Eligible debt rating requirement.* A national bank that does not continue to meet the qualification requirement set forth in paragraph (g)(3) of this section, applicable where the bank's financial subsidiary is engaged in activities other than solely in an agency capacity, may not directly or through a subsidiary, purchase or acquire any additional equity capital of any such financial subsidiary until the bank meets the requirement in paragraph (g)(3) of this section. For purposes of this paragraph (j)(2), the term "equity capital" includes, in addition to any equity investment, any debt instrument issued by the financial subsidiary if the instrument qualifies as capital of the subsidiary under federal or state law, regulation, or interpretation applicable to the subsidiary.

(k) *Examination and supervision.* A financial subsidiary is subject to examination and supervision by the OCC, subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the GLBA (12 U.S.C. 1820a).

Dated: March 3, 2000

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–5830 Filed 3–9–00; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1061]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: The Board is amending an interpretation of Regulation D (Reserve Requirements of Depository Institutions) to include the European Central Bank among the institutions that have been

specifically designated by the Board as "supranational" entities for purposes of certain time deposits under Regulation D.

EFFECTIVE DATE: March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Oliver I. Ireland, Associate General Counsel (202/452–3625), or Alison MacDonald, Senior Attorney (202/452–3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Janice Simms (202/872–4984).

SUPPLEMENTARY INFORMATION: Regulation D (12 CFR part 204) defines those deposits against which depository institutions must maintain reserve balances with a Federal Reserve Bank and sets ratios for those reserves. The regulation imposes a marginal reserve requirement of 10 percent against transaction accounts but exempts international banking facility ("IBF") time deposits from the reserve requirements and imposes a 0 percent reserve ratio on nonpersonal time deposits. Promissory notes and other obligations issued to "[a]ny * * * foreign, international, or supranational entity specifically designated by the Board" are nonpersonal time deposits and may be IBF time deposits under relevant sections of Regulation D regardless of their maturity (12 CFR 204.2(c)).

Consistent with its designation of other multi-national, regional central banks and other European Community entities as "supranational" entities, the Board has designated the European Central Bank a "supranational" entity for purposes of Regulation D and, thus, is revising § 204.125 to include the European Central Bank. Accordingly, depository institutions receiving deposits from the European Central Bank that comply with the requirements of §§ 204.2(c)(1)(iv)(E) and 204.8(a)(2)(i)(B)(5) of Regulation D do not need to hold reserves against European Central Bank deposits under the regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish a regulatory flexibility analysis for any final rule for which the agency was required to publish a general notice of proposed rulemaking. Under 12 U.S.C. 553(b), a general notice of proposed rulemaking is not required for interpretive rules. Accordingly, no regulatory flexibility analysis is required in this case.

Under 12 U.S.C. 553(d), a 30-day period between publication date and effective date is not required for interpretive rules. Accordingly, this interpretation is effective on the date of publication in the **Federal Register**.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act Notice of 1995 (44 U.S.C. ch. 3506; 5 CFR Part 1320, Appendix A.1), the Board has reviewed the rule under authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the rule.

List of Subjects 12 CFR Part 204

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending part 204 in chapter II of title 12 of the Code of Federal Regulations as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. Section 204.125 is amended as follows:

a. In the introductory text, "§§ 204.2(c)(1)(E)" is removed and "§§ 204.2(c)(1)(iv)(E)" is added in its place;

b. In the listing under Europe, a new entry is added in alphabetical order, to read as follows:

§ 204.125 Foreign, international, and supranational entities referred to in §§ 204.2(c)(1)(iv)(E) and 204.8(a)(2)(i)(B)(5).

* * * * *

Europe

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European Central Bank.

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By order of the Board of Governors of the Federal Reserve System, March 6, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–5861 Filed 3–9–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–1]

Establishment of Class E Airspace; Whitesburg, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Whitesburg, KY. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Whitesburg Appalachian Regional Hospital, Whitesburg, KY. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Whitesburg Appalachian Hospital.

EFFECTIVE DATE: 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy P. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On January 26, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Whitesburg, KY, (65 FR 4192). This action provides adequate Class E airspace for IFR operations at the Whitesburg Appalachian Regional Hospital. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at

Whitesburg, KY, for the Whitesburg Appalachian Regional Hospital.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More above the Surface of the Earth.

* * * * *

ASO KY E5 Whitesburg, KY [New]

Whitesburg Appalachian Regional Hospital, Whitesburg, KY
Point in Space Coordinates
Lat. 37°07′16″N, long. 82°50′34″W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 37°07′16″N, long. 82°50′34″W) serving Whitesburg Appalachian Regional Hospital, Whitesburg, KY.

* * * * *

Issued in College Park, Georgia, on February 28, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–5951 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–51]

Amendment to Class E Airspace; Marshall, MO: Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and corrections.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace at Marshall, MO, and corrects an error in the coordinates for the Marshall Memorial Municipal Airport, Airport Reference Point (ARP) as published in the **Federal Register** January 12, 2000 (65 FR 1774), Airspace Docket No. 99–ACE–51.

DATES: The direct final rule published at 65 FR 1774 is effective on 0901 UTC, April 20, 2000. This correction is effective on April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816 329–2524.

SUPPLEMENTARY INFORMATION:

History

On January 12, 2000, The FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Marshall, MO (FR document 00–582, 65 FR 1774, Airspace Docket No. 99–ACE–51). An error was subsequently discovered in the coordinates for the Marshall Memorial Municipal airport ARP. This action corrects that error. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the error in the coordinates of the Marshall Memorial Municipal Airport ARP and confirms the effective date to the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 20, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, coordinates for the Marshall Memorial Municipal Airport ARP as published in the **Federal Register** on January 12, 2000 (65 FR 1774), (**Federal Register** Document 00–782; page 1775, column three) are corrected as follows:

§71.1 [Corrected]

ACE MO 35 Marshall, MO [Corrected]

On page 1775, in the third column, after Marshall Memorial Municipal Airport, MO, correct the coordinates by removing (lat. 39°05′44″N., long. 93°12′02″W.) and substituting (lat. 39°05′45′N., long. 93°12′14″W.)

Issued in Kansas City, MO on February 28, 2000.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–5953 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–04]

RIN 2120–AA66

Modification of Three Jet Routes, Bellingham, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal descriptions of three Jet routes that use the Bellingham, WA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) in their route structures. Currently, the VORTAC and the International Airport share the "Bellingham" name. However,

the navigational aid is approximately nine nautical miles (NM) north of airport. This has caused confusion among users. To eliminate this confusion, the Bellingham VORTAC will be renamed the "Whatcom VORTAC," and all the jet routes with "Bellingham VORTAC" included in their legal descriptions will be amended to reflect the navigational aid name change.

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 71 by changing the legal descriptions of three Jet Routes that have "Bellingham VORTAC" included as part of their route structure. Currently, the VORTAC and the International Airport share the "Bellingham" name but are approximately nine NM apart. This has led to confusion among users. To eliminate this confusion, the Bellingham VORTAC will be renamed the "Whatcom VORTAC," and all the routes with "Bellingham VORTAC" included in their legal descriptions will be amended to reflect the VORTAC's name change. The name change of the VORTAC will coincide with the effective date of this rulemaking action.

Since this action merely involves editorial changes to the legal descriptions of the four Federal airways, and does not involve a change in the dimensions or operating requirements of the airways, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–528 [Revised]

From Whatcom, WA, to Williams Lake, BC, Canada. The airspace within Canada is excluded.

* * * * *

J–534 [Revised]

From INT Seattle, WA, 033° and Whatcom, WA, 090° radials; Whatcom; to Williams Lake, BC, Canada, excluding the airspace within Canada.

J–591 [Revised]

From Whatcom, WA; to Kelowna, BC, Canada. The segment within Canada is excluded.

* * * * *

Issued in Washington, DC, on March 2, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–5950 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 734, 738, 740, 742, 743, 744, 748 and 774

[Docket No. 000204027–0027–01]

RIN 0694–AC14

Revisions to License Exception CTP

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by revising License Exception CTP to reflect continuing technological advancement in the computer industry. Accordingly, High Performance Computers (HPCs) with a composite theoretical performance (CTP) of up to 33,000 millions of theoretical operations per second (MTOPS) can be exported to Computer Tier 2 countries, and HPCs with a CTP up to 20,000 MTOPS can be exported to civilian end-users and end-uses in Computer Tier 3 destinations under License Exception CTP. For military end-users and end-uses in Computer Tier 3 countries, the CTP limit remains at 6,500 MTOPS until August 14, 2000, when it is raised to 12,500 MTOPS. This coincides with the date this rule raises the advance notification level for HPC exports to Computer Tier 3 countries to 12,500 MTOPS. As required by the National Defense Authorization Act of 1998 (NDAA), changes in the advance notification level for HPC exports to Tier 3 destinations are only effective 180 days following the submission of a report to Congress. This report was sent to Congress on February 16, 2000. This rule also moves Romania from Computer Tier 3 to Computer Tier 2, effective June 15, 2000, and links the level of HPCs requiring post-shipment verification reporting to the advance notification level for HPC exports to Computer Tier 3 destinations. This rule also revises the Commerce Control List (CCL) to liberalize the national security thresholds for digital computers to conform with recently agreed changes in the Wassenaar List of Dual-Use Goods and Technologies, and corrects/updates the mailing address for submission of post-shipment reports.

DATES: This rule is effective March 10, 2000.

FOR FURTHER INFORMATION CONTACT: James A. Lewis, Office of Strategic Trade and Foreign Policy Controls,

Bureau of Export Administration, Telephone: (202) 482–0092.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2000, the President announced significant changes to export control policy for HPCs. The new policy continues the Administration's commitment, as announced on July 1, 1999, to review and update its HPC policy every 6 months to reflect rapid advancements in microprocessor technology, as well as identify any risk posed by HPC exports to certain end-users and countries. This policy strengthens America's high-tech competitiveness, while maintaining export controls to protect U.S. national security.

The Administration, in consultation with the national security community and industry, has determined the following adjustments are warranted. Effective immediately, the upper License Exception CTP level for Computer Tier 2 countries is raised from 20,000 to 33,000 MTOPS and the upper License Exception CTP level for civil end-users and civil end-uses in Computer Tier 3 countries is raised from 12,300 to 20,000 MTOPS. For military end-users and end-uses in Computer Tier 3 countries, the upper CTP level remains at 6,500 MTOPS until August 14, 2000, when it is raised to 12,500 MTOPS. This coincides with the date this rule raises the advance notification level for HPC exports to Computer Tier 3 countries from 6,500 to 12,500 MTOPS. As required by the NDAA, changes in the advance notification level for HPC exports to Tier 3 destinations are only effective 180 days following the submission of a report to Congress. This report was sent to Congress on February 16, 2000. This new advance notification level reflects the Administration's determination that widespread commercial availability of computers with performance capabilities up to 12,500 MTOPS makes that a realistic and enforceable level.

This rule removes Romania from Computer Tier 3 and places it in Computer Tier 2. However, due to requirements in the 1998 NDAA, removing Romania from Computer Tier 3 is not effective until 120 days after the Congress receives a report justifying such a removal. On February 16, 2000, the President informed the Congress of his intent to remove Romania from Computer Tier 3; thus, Romania will be moved to Computer Tier 2 effective June 15, 2000.

This rule also links the performance level of HPCs requiring post-shipment verification reporting to the advance notification level for HPC exports to Computer Tier 3 destinations. This change implements Section 1407(c) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65, October 5, 1999), which amended Section 1213(e) of the NDAA for FY98. As a result, post-shipment verification reporting is required for exports of computers with a CTP greater than 6,500 MTOPS to Computer Tier 3 destinations made on or after January 23, 2000. Post-shipment verification reporting is required for exports of computers with a CTP greater than 12,500 MTOPS to Computer Tier 3 destinations made on or after August 14, 2000.

In addition, this rule amends Export Control Classification Number (ECCN) 4A003 by increasing the control level for digital computers from 2,000 to 6,500 MTOPS to conform with recently agreed changes in the Wassenaar List of Dual-Use Goods and Technologies. To fulfill U.S. commitments to the Wassenaar Arrangement with regard to dual-use items, this final rule also revises the reporting requirements for exports of digital computers controlled under the Wassenaar Arrangement and by conforming § 740.7 (License Exception CTP) and § 742.12 (High Performance Computers) to be consistent with the recently agreed national security levels for digital computers.

Finally, this rule makes conforming changes in parts 734, 738, 742, 744 and 748.

Due to rapid advancement in HPC and microprocessor technology, the United States will routinely review these levels to determine if further adjustments are warranted. In particular, agencies will review control levels by April 2000 to determine if further changes are warranted; additional countries may also be moved between tiers.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 13, 1999 (64 FR 44101).

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This regulation involves collections previously approved by the Office of Management and Budget under control numbers 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes per manual submission and 40 minutes per electronic submission. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Information is also collected under OMB control number 0694–0107, "National Defense Authorization Act," Advance Notifications and Post-Shipment Verification Reports, which carries a burden hour estimate of 15 minutes per report. Information is also collected under OMB control number 0694–0106, "Reporting and Recordkeeping Requirements under the Wassenaar Arrangement EAR Section 743", which carries a burden hour estimate of 11 minutes per report. This rule also involves collections of information under OMB control number 0694–0073, "Export Controls of High Performance Computers" and OMB control number 0694–0093, "Import Certificates and End-User Certificates".

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rule making, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rule making and an opportunity for public comment be given for this rule. Because a notice of proposed rule making and opportunities for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Office of Exporter Services, Bureau of Export Administration,

Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

List of Subjects

15 CFR Parts 734 and 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Parts 740, 743 and 748

Administrative practice and procedure, Exports, Foreign trade, Reporting and record keeping requirements.

15 CFR Part 742

Exports, Foreign trade.

15 CFR Parts 744 and 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 734, 738, 740, 742, 743, 744, 748 and 774 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

1. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

2. The authority citation for 15 CFR Part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

3. The authority citation for 15 CFR Part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

4. The authority citation for 15 CFR Part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

5. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

6. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); Notice of August 14, 1996 (61 FR 42527); Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

7. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

8. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 734—[AMENDED]

§ 734.4 [Amended]

9. Section 734.4 is amended by revising the phrase "12,300 MTOPS" in paragraph (a) to read "20,000 MTOPS".

PART 738—[AMENDED]

10. Supplement No. 1 to Part 738 is amended by revising the phrase "greater than 20,000 MTOPS" in the second footnote to read "greater than 33,000 MTOPS".

PART 740—[AMENDED]

11. Section 740.7 is amended by:

a. Adding a sentence at the end of paragraph (c)(1) and adding two sentences at the end of paragraph (d)(1); and

b. Revising paragraphs (b)(2), (c)(2), (d)(2), (d)(5)(i), (d)(5)(v), introductory text (d)(5)(v)(B)(*1*), and (d)(5)(v)(B)(*2*) to read as follows:

§ 740.7 Computers (CTP).

* * * * *

(b) * * *

(2) *Eligible Computers.* The computers eligible for License Exception CTP to Tier 1 destinations are those having a Composite Theoretical Performance (CTP) greater than 6,500 Millions of Theoretical Operations Per Second (MTOPS).

* * * * *

(c) * * *

(1) *Eligible Countries.* * * * As of June 15, 2000, Romania is a Computer Tier 2 country.

(2) *Eligible computers.* The computers eligible for License Exception CTP to Tier 2 destinations are those having a CTP greater than 6,500 MTOPS, but less than or equal to 33,000 MTOPS.

(d) * * *

(1) *Eligible Countries.* * * * Until June 14, 2000, Romania is a Computer Tier 3 country. As of June 15, 2000, Romania is moved to Computer Tier 2.

(2) *Eligible computers.* Computers with a CTP greater than 6,500 MTOPS, but less than or equal to 20,000 MTOPS, are eligible for License Exception CTP to civil end-users and end-uses. Beginning on August 14, 2000, computers having a CTP greater than 6,500 MTOPS, but less than or equal to 12,500 MTOPS, are eligible for License Exception CTP to military end-users and end-uses subject to the restrictions in paragraph (d)(3) of this section.

* * * * *

(5) *NDAA notification.* (i) *General requirement.* The National Defense Authorization Act (NDAA) of FY98 enacted on November 18, 1997 requires advance notification of certain exports and reexports of computers to Computer Tier 3 countries. Prior to August 14, 2000, advance notification is required for all exports and reexports of computers with a CTP greater than 6,500 but less than or equal to 20,000 MTOPS to Computer Tier 3 destinations. Beginning on August 14, 2000, advance notification is required for all exports and reexports of computers with a CTP greater than 12,500 but less than or equal to 20,000 MTOPS to Computer Tier 3 destinations. For each such transaction destined to Computer Tier 3, prior to using License Exception CTP, you must first notify BXA by submitting a completed Multipurpose Application Form (BXA–748P). The Multipurpose Application Form must be completed including all information required for a license application according to the

instructions described in Supplement No. 1 to part 748 of the EAR, with two exceptions. You (the applicant as listed in Block 14) shall in Block 5 (Type of Application) mark the box "Other." This designator will permit BXA to route the NDAA notice into a special processing procedure. (Blocks 6 and 7, regarding support documentation, may be left blank.) You must also provide a notice using this procedure prior to exporting or reexporting items that you know will be used to enhance beyond 6,500 MTOPS the CTP of a previously exported or reexported computer. Beginning on August 14, 2000, you must provide a notice using this procedure prior to exporting or reexporting items that you know will be used to enhance beyond 12,500 MTOPS the CTP of a previously exported or reexported computer. BXA will not initiate the registration of an NDAA notice unless all information on the Multipurpose Application form is complete.

* * * * *

(v) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of certain computers to destinations in Computer Tier 3. Exporters must file post-shipment reports for computer exports, as well as exports of items used to enhance previously exported or reexported computers, according to the following schedule: for exports occurring on or after February 3, 1998, but on or before January 22, 2000, reports are required for computers with a CTP greater than 2,000 MTOPS; for exports occurring on or after January 23, 2000, but on or before August 13, 2000, reports are required for computers with a CTP greater than 6,500 MTOPS; and for exports occurring on or after August 14, 2000, reports are required for computers with a CTP greater than 12,500 MTOPS. Post-shipment reports must be submitted in accordance with the provisions of this paragraph (d)(5)(v), and all relevant records of such exports must be kept in accordance with part 762 of the EAR.

(A) * * *

(B) * * *

(*1*) For deliveries by U.S. postal service: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Attn: Office of Enforcement Analysis HPC Team, Room 4065, Washington, D.C. 20044.

(*2*) For courier deliveries: U.S. Department of Commerce, Office of Enforcement Analysis HPC Team, Room 4065, 14th Street and Constitution Ave. NW, Washington, DC 20230.

* * * * *

§ 740.11 [Amended]

12. Section 740.11 is amended by revising the phrase "20,000 MTOPS" in paragraphs (a)(2)(ii) and (iii) and in paragraph (c)(2)(i) to read "33,000 MTOPS".

13. Supplement No. 1 to section 740.11 is amended by revising the phrase "20,000 MTOPS" in paragraphs (a)(1)(ii), (a)(1)(iii), (b)(1)(ii), and (b)(1)(iii) to read "33,000 MTOPS".

PART 742—[AMENDED]

14. Section 742.12 is amended by revising the phrase "greater than 2000" in paragraph (a)(1) to read "greater than 6,500"; revising the phrase "4,000 MTOPS" in paragraph (a)(3) to read "6,500 MTOPS"; revising the phrase "greater than 20,000" in paragraph (b)(2)(i) to read "greater than 33,000"; revising the phrase "2,000 MTOPS" in paragraphs (b)(3)(i)(A), (b)(3)(iii), and (b)(3)(iv) to read "6,500 MTOPS" wherever it occurs; and by revising paragraphs (b)(3)(i)(B), (b)(3)(i)(C), (b)(3)(iv) introductory text, (b)(3)(iv)(B)(*1*), and (b)(3)(iv)(B)(*2*) to read as follows:

* * * * *

§ 742.12 High Performance Computers

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) A license is required to export or reexport computers with a CTP greater than 20,000 MTOPS for civilian end-users and end-uses in countries in Computer Tier 3. Prior to August 14, 2000, a license is required to export or reexport computers having a CTP greater than 6,500 MTOPS to military end-users and end-uses in Computer Tier 3. Beginning on August 14, 2000, a license is required to export or reexport computers having a CTP greater than 12,500 MTOPS to military end-users and end-uses in Computer Tier 3.

(C) Prior to August 14, 2000, a license may be required to export or reexport computers with a CTP greater than 6,500 MTOPS to countries in Computer Tier 3 pursuant to the NDAA (see § 740.7(d)(5) of the EAR). Beginning on August 14, 2000, a license may be required to export or reexport computers with a CTP greater than 12,500 MTOPS to countries in Computer Tier 3 pursuant to the NDAA (see § 740.7(d)(5) of the EAR).

(ii) * * *

(iii) * * *

(iv) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of certain computers to destinations in Computer Tier 3. Exporters must file post-shipment reports for computer exports, as well as exports of items used to enhance previously exported or reexported computers, according to the following schedule: for exports occurring on or after February 3, 1998, but on or before January 22, 2000, reports are required for computers with a CTP greater than 2,000 MTOPS; for exports occurring on or after January 23, 2000, but on or before August 13, 2000, reports are required for computers with a CTP greater than 6,500 MTOPS; and for exports occurring on or after August 14, 2000, reports are required for computers with a CTP greater than 12,500 MTOPS. Post-shipment reports must be submitted in accordance with the provisions of this paragraph (b)(3)(iv), and all relevant records of such exports must be kept in accordance with part 762 of the EAR.

(A) * * *

(B) * * *

(1) For deliveries by U.S. postal service: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Attn: Office of Enforcement Analysis HPC Team, Room 4065, Washington, D.C. 20044.

(2) For courier deliveries: U.S. Department of Commerce, Office of Enforcement Analysis HPC Team, Room 4065, 14th Street and Constitution Ave. NW, Washington, DC 20230.

* * * * *

PART 743—[AMENDED]

15. Section 743.1 is amended by removing and reserving paragraph (e)(2); and by revising paragraph (c)(2) (the note is unchanged), as follows:

§ 743.1 Wassenaar Arrangement.

* * * * *

(c) * * *

(2) Reports for "digital computers" and "electronic assemblies" controlled under ECCN 4A003.b and .c are required only for computers with a composite theoretical performance (CTP) exceeding 6,500 MTOPS or computer enhancements thereof such that the CTP exceeds 6,500 MTOPS. Records for software controlled by 4D001 are required for software specially designed for the development or production of computers having a CTP exceeding 6,500 MTOPS. For the calculation of CTP, see the Technical Note for Category 4 in the Commerce Control List (Supplement No. 2 to part 774 of the EAR).

* * * * *

PART 744—[AMENDED]

16. Supplement No. 4 to part 744 is amended by revising the phrase "For computers between 2,000 and 7,000 MTOPS" in the License requirement column for the Israeli entity "Ben Gurion University, Israel" to read "For computers above the Tier 3 military level described in § 742.12(b)(3)(i)(B)".

PART 748—[AMENDED]

17. Section 748.10 is amended by revising paragraphs (b)(3) and (b)(4) introductory text as follows:

§ 748.10 Import and End-User Certificates.

* * * * *

(b) * * *

(3) Your transaction involves an export to the People's Republic of China of a computer, you must obtain a PRC End-User Certificate, regardless of dollar value, as follows:

(i) For license applications submitted on or before August 13, 2000, a PRC End-User Certificate is required for computers with a Composite Theoretical Performance (CTP) greater than 6,500 Million Operations Per Second (MTOPS) and for license applications submitted on or after August 14, 2000, a PRC End-User Certificate is required for computers with a CTP greater than 12,500 MTOPS;

(ii) For exports under License Exception CTP occurring on or before August 13, 2000, a PRC End-User Certificate is required for computers with a CTP of greater than 6,500 MTOPS and for such exports occurring on or after August 14, 2000, a PRC End-User Certificate is required for computers with a CTP greater than 12,500.

(4) Your license application involves the export of commodities and software classified in a single entry on the CCL, the total value of which exceeds $5,000. Note that this $5,000 threshold does not apply to exports to the People's Republic of China of computers subject to the provisions of § 748.10(b)(3).

* * * * *

PART 774—[AMENDED]

18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers is amended by revising Export Control Classification Number (ECCN) 4A003, to read as follows:

4A003 "Digital computers", "electronic assemblies", and related equipment therefor, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)	Country chart
NS applies to 4A003.b and .c.	NS Column 1.
NS applies to 4A003.a, d, .e, and .g.	NS Column 2.
MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006.	MT Column 1.
CC applies to digital computers for computerized finger-print equipment.	CC Column 1.
AT applies to entire entry (refer to 4A994 for controls on digital computers with a CTP ≥ 6 but ≤ to 6,500 Mtops).	AT Column 1.
NP applies to digital computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.	
XP applies to digital computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.	

Note: For all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria, no license is required (NLR) for computers with a CTP greater than 6,500 Mtops, and for assemblies described in 4A003.c that are not capable of exceeding a CTP greater than 6,500 Mtops in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

LVS: $5000; N/A for MT and "digital" computers controlled by 4A003.b and having a CTP exceeding 10,000 MTOPS; or "electronic assemblies" controlled by 4A003.c and capable of enhancing performance by aggregation of "computing elements" so that the CTP of the aggregation exceeds 10,000 MTOPS.

GBS: Yes, for 4A003.d, .e, and .g and specially designed components therefor, exported separately or as part of a system.

CTP: Yes, for computers controlled by 4A003.a, .b and .c, to the exclusion of other technical parameters, with the exception of parameters specified as controlled for Missile Technology (MT) concerns and 4A003.e (equipment performing analog-to-digital or digital-to-analog conversions exceeding the limits of 3A001.a.5.a). See § 740.7 of the EAR.

CIV: Yes, for 4A003.d (having a 3–D vector rate less than 75 M vectors/sec), .e, and .g.

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: See also 4A994 and 4A980.

Related Definitions: N/A.

Items:

Note 1: 4A003 includes the following:

a. Vector processors;

b. Array processors;

c. Digital signal processors;

d. Logic processors;

e. Equipment designed for "image enhancement";

f. Equipment designed for "signal processing".

Note 2: The control status of the "digital computers" and related equipment described in 4A003 is determined by the control status of other equipment or systems provided:

a. The "digital computers" or related equipment are essential for the operation of the other equipment or systems;

b. The "digital computers" or related equipment are not a "principal element" of the other equipment or systems; *and*

N.B. 1: The control status of "signal processing" or "image enhancement" equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the "principal element" criterion.

N.B. 2: For the control status of "digital computers" or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).

c. The "technology" for the "digital computers" and related equipment is determined by 4E.

a. Designed or modified for "fault tolerance";

Note: For the purposes of 4A003.a., "digital computers" and related equipment are not considered to be designed or modified for "fault tolerance" if they utilize any of the following:

1. Error detection or correction algorithms in "main storage";

2. The interconnection of two "digital computers" so that, if the active central processing unit fails, an idling but mirroring

central processing unit can continue the system's functioning;

3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; or

4. The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

b. "Digital computers" having a "composite theoretical performance" ("CTP") exceeding 6,500 million theoretical operations per second (Mtops);

c. "Electronic assemblies" specially designed or modified to be capable of enhancing performance by aggregation of "computing elements" ("CEs") so that the "CTP" of the aggregation exceeds the limit in 4A003.b.;

Note 1: 4A003.c applies only to "electronic assemblies" and programmable interconnections not exceeding the limit in 4A003.b. when shipped as unintegrated "electronic assemblies". It does not apply to "electronic assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A003.d, or 4A003.e

Note 2: 4A003.c does not control "electronic assemblies" specially designed for a product or family of products whose maximum configuration does not exceed the limit of 4A003.b.

d. Graphics accelerators and graphics coprocessors exceeding a "three dimensional Vector Rate" of 3,000,000;

e. Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5;

f. Reserved.

g. Equipment specially designed to provide external interconnection of "digital computers" or associated equipment that allows communications at data rates exceeding 80 Mbyte/s.

Note: 4A003.g does not control internal interconnection equipment (e.g., backplanes, buses) passive interconnection equipment, "network access controllers" or "communication channel controllers".

Dated: March 2, 2000.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 00–5516 Filed 3–9–00; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14

AGENCY: Consumer Product Safety Commission.

ACTION: Final amendments.

SUMMARY: The Commission is amending the flammability standards for children's sleepwear in sizes 0 through 6X and sizes 7 through 14 by revising the laundering procedure specified in those standards. These laundering procedures help assure that any chemical flame retardants are not removed or degraded with repeated washing and drying, thereby creating a flammability hazard. The Commission is issuing these amendments because the detergent specified by the existing laundering procedure is no longer available and the operating characteristics of the washing and drying machines required by that procedure are no longer representative of machines now used for home laundering.

DATES: The rule will become effective on April 10, 2000 and will apply to products manufactured or imported after that date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400, extension 1370.

SUPPLEMENTARY INFORMATION:

A. Background

The Flammable Fabrics Act ("FFA") (15 U.S.C. 1191 *et seq.*) authorizes the Commission to issue and amend flammability standards and regulations to protect the public from unreasonable risks of death, injury, and property damage from fire associated with products of wearing apparel made from fabric and related materials.

In 1971, the Secretary of Commerce issued a flammability standard for children's sleepwear in sizes 0 through 6X to protect young children from death and serious burn injuries which had been associated with ignition of sleepwear garments such as nightgowns and pajamas, by small open-flame sources. That standard became effective in 1972, and is codified at 16 CFR Part 1615.

In 1973, authority to issue flammability standards under the FFA was transferred from the Department of Commerce to the Consumer Product Safety Commission by section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)). In 1974, the Commission issued a flammability standard for children's sleepwear in sizes 7 through 14. That standard became effective in 1975 and is codified at 16 CFR part 1616.

B. Amending the Flammability Standards

As discussed below, laundering procedures are prescribed by the standards to help assure that any flame retardant treatment used in the production of children's sleepwear does not deteriorate over time and thereby create a flammability hazard. However, the current procedures are out of date in several respects.

1. Current Laundering Procedures

Each of the children's sleepwear standards describes the apparatus and procedure used to test items for compliance with the standard. See 16 CFR 1615.4 and 1616.5. Section 1615.4(g)(4) of the standard for sizes 0 through 6X and section 1616.5(c)(4) of the standard for sizes 7 through 14 require that testing shall be performed on finished items, as produced (or after one washing and drying in the case of garments labeled with instructions to wash before wearing) and after they have been washed and dried 50 times in accordance with a specified laundering procedure. That laundering procedure is AATCC Test Method 124–69, published by the American Association of Textile Chemists and Colorists ("AATCC").(1) [1] Each standard incorporates specific aspects of that laundering procedure by reference.

The AATCC Test Method was developed in 1967 and revised in 1969. AATCC Test Method 124–69 specifies operating characteristics of the washing machine and dryer to be used, wash water and rinse water temperatures, exhaust temperature of the dryer, and a particular detergent, AATCC Standard Detergent 124. These specifications are representative of the equipment, wash, rinse, and drying temperatures, and detergent used for home laundering in the 1960s. For example, AATCC

[1] Numbers in parentheses identify reference documents in the List of Relevant Documents at the end of this notice. Requests for inspection of any of these documents should be made at the Office of the Secretary, 4330 East-West Highway, room 502, or by calling that office at (301) 504–0800.

Standard Detergent 124 is a high-phosphate powder with optical brightener, similar to the phosphate-based detergents sold to consumers between 1950 and 1970.(3)

Since 1970, environmental concerns about water pollution have resulted in the elimination of phosphate-based detergents for home laundering. Today, all laundry detergents sold to consumers are nonphosphate-based. Additionally, energy-efficient washing machines and dryers currently sold for consumer use have operating characteristics and temperature settings which differ from those specified by AATCC Test Method 124–69.(3)

2. Revised Laundering Test Method

In 1996, AATCC revised AATCC Test Method 124, "Appearance of Fabrics After Repeated Home Laundering."(2) The 1996 AATCC test method more closely resembles the equipment and practices currently used for household laundering of fabrics. The revised test method differs from AATCC Test Method 124–69 by specifying the use of a nonphosphate-based detergent. The 1996 test method also specifies use of a washing machine with different operating characteristics than those specified by AATCC Test Method 124–69, and rinse water temperatures which differ from those in the older test method.(3) Table 1, below, provides a summary comparison of the two test methods.

TABLE 1.—AATCC TEST METHOD 124

Wash/dry Conditions	Version 1969	Version 1996	
Washing Machine;			
Cycle	Normal	Normal/Cotton Sturdy.	
Wash Water Temp.	60±3°C	60 ± 3°C.	
Rinse Water Temp.	41±3°C	Less Than 29°C.	
Water Level	Full	18 ±1 gal.	
Agitator Speed	70 ± 5 spm	179±2spm.	
Wash Time	12 minutes	12 minutes.	
Spin Speed	500–510 rpm	630–660 rpm.	
Final Spin Cycle	4 minutes	6 minutes.	
Dryer:			
Cycle	Normal	Cotton Sturdy	Durable Press
Exhaust Temp.	140–160°F	140–160°F	140–160°F.
Cool Down Cycle	5 minutes	5 minutes	10 minutes.

spm: strokes (or cycles) per minute: rpm = revolutions per minute

In 1996, AATCC also announced that when that organization's supply of Standard Detergent 124 is depleted, that detergent will no longer be available. AATCC is the only source for Standard Detergent 124. Additionally, washing machines now offered for sale do not have the settings and operating characteristics of the washing machine specified by AATCC Test Method 124–69.(3)

3. Review of Existing Standards

As explained in the notice of proposed rulemaking, the Commission staff reviewed and analyzed twelve other international and technical association standards or test methods to determine if any were appropriate for consideration in this proceeding. All of the identified standards for fabric laundering have significant deficiencies. They are either based on earlier versions of AATCC Test Method 124 (with obsolete detergent and equipment), require equipment not available in the U.S., use only water in the laundering procedure, or specify significantly lower wash and rinse water temperatures than those still available for consumers.

4. Comparability of Test Results

In order to compare the results of laundering using AATCC Test Method 124–69 with those of the new AATCC Test Method 124–96 the Commission performed some tests of fabrics using each method. The laundering tests indicated that changes in washing machine and dryer operating conditions between the old and new versions of AATCC Test Method 124 did not make a difference in the flammability performance of the fabrics tested. However, the cotton sleepwear that was treated with the phosphorous-based Pyrovatex CP-new did not perform well in flammability testing after laundering with the new AATCC detergent or after laundering with common powder detergents. Liquid detergents did not seem to adversely affect flammability performance. Fabrics treated with the antimony-based FR showed some random failures that, according to laboratory chemical analyses, apparently were unrelated to the detergent and laundering conditions. The new AATCC detergent did not affect the flammability of the untreated polyester fabrics. However, one polyester fabric did show reduced flame resistance when a liquid fabric softener was used. Labels on both liquid and sheet fabric softener packages state that they should not be used on garments labeled as flame resistant.

After CPSC informed the manufacturer of Pyrovatex of the results the manufacturer conducted additional studies and determined that such factors as the fabric, the application process, storage conditions, and consumer care practices can affect the flame resistance of the light weight fabrics used for children's sleepwear. Because the manufacturer has little control over these factors, the company decided, with one exception, to withdraw Pyrovatex from sale to the sleepwear industry.

With the withdrawal of Pyrovatex for treating children's sleepwear, the change in detergent and laundering equipment from AATCC 124–69 to AATCC 124–96 will not have any effect on the flammability performance of children's sleepwear on the market.

5. Proposed Amendment of Standards

On March 17, 1999, the Commission proposed to revise the laundering procedures specified in 16 CFR 1632.5(b) to those of AATCC Test Method 124–1996. 64 FR 13132. As explained in the preamble to the proposed rule, the Commission determined that an advance notice of proposed rulemaking was not necessary to begin this proceeding. *Id.* at 13128. The amendments preserve the original intent and effect of the existing test method, modifying that method only as necessary to reflect the existence of modern equipment and detergent.

Moreover, the existing regulations permit the Commission to employ a laundering test method different from AATCC Test Method 124 if it concludes that the test method is substantively as protective.

The Commission received comments on the proposed rule from the Soap and Detergent Association ("SDA"), American Textile Manufacturers Institute ("ATMI"), and the National Cotton Council ("NCC"). ATMI and NCC both expressed their support for the proposed revision. SDA's comments are discussed below.

Wash and Rinse Water Temperatures

SDA suggested that the Commission consider a laundering protocol different than AATCC Test Method 124. SDA's suggested protocol calls for cooler wash and rinse temperatures, stating that they are more representative of today's laundering conditions.

The Commission declines to make this change. Many water heaters in use today are set at 60C/140F. Thus, consumers have hotter wash water available to them than the 32C/90F that SDA recommends. It is appropriate that the laundering requirements reflect not necessarily the average conditions, but the most rigorous that a consumer is likely to use. By specifying a hot water wash and a cold water rinse, the revised CPSC standard represents the most rigorous real, although not necessarily average, wash conditions.

Water Hardness

SDA also suggested that the revised standard should specify water hardness criteria. While water hardness is one factor that may affect the flammability performance of some fabrics, the Commission has no evidence that water hardness is a significant problem for flame retardant treated products currently marketed. At this time, the Commission is only correcting the outdated detergent and laundering conditions in the current FFA standards. It is not within the scope of this proceeding to consider additional criteria.

Ballast Load Weight

The SDA suggested changing the ballast load weight to 2.7±0.1 kg (6±0.2 lb). CPSC's current standard specifies 3.64 kg (8 lb) while the AATCC Test Method 124 only requires 1.8kg (4 lb). SDA may not have realized that CPSC is retaining the larger load requirement. As explained above, the Commission is only correcting the outdated aspects of the laundering standard. It is not altering other criteria.

Omit Reference to a Specific Date

Finally, SDA suggested that the Commission not refer to the specific year of the AATCC standard but simply refer to the most current method. This would alleviate the need to revise the standard every time the AATCC standard is revised.

The Commission cannot accept this suggestion. For any change by AATCC to have the force and effect of a Commission rule, the Commission must formally adopt it through notice and comment rulemaking.

6. Final Rule

The amendments require specimens to be tested as produced (or after one washing and drying) and after washing and drying 50 times using the procedure specified in AATCC Test Method 124–1996. The amendments incorporate that test method into the sleepwear standard by reference.

The amendments also include minor changes to the enforcement regulations at 16 CFR 1615.32 and 1616.32 prescribing the procedure for seeking approval from the Commission for use of alternate laundering procedures. The amendments of those sections:

(i) Update the laundering procedure prescribed by the sleepwear standards to AATCC Test Method 124–1996; and

(ii) Substitute the words "Assistant Executive Director for Compliance" for "Associate Executive Director for Compliance and Enforcement" to reflect the current title for that position.

The amendments of the enforcement rules implementing the standard for sizes 7 through 14 also include a revision of § 1616.32(g), Commission testing for compliance. The amendment corrects an erroneous citation in the regulations to the laundering provisions of the standard. The correct citation in the amendment is to § 1616.5(c)(4)(ii) of the standard rather than § 1616.5(c)(4)(iii) in the existing text. No similar error exists in the enforcement rules implementing the standard for sizes 0 through 6X.

7. Effective Date

The Commission proposed that the amendments become effective 30 days after publication of a final rule. 64 FR 13128. As discussed in the preamble to the proposed rule, the standard detergent specified by the existing laundering method in the standard is no longer available. Thus the Commission believes that an effective date 30 days after publication of final amendments will be in the public interest. The Commission is not withdrawing or limiting the exemption for products in inventory or with the trade as provided by section 4(b) of the FFA.

The Commission received no comments on the proposed effective date. The Commission continues to believe that an effective date of thirty days allows adequate notice to all interested persons of the change in laundering procedure, and at the same time assures that the Commission will be able to test for compliance with the standards without interruption. Those manufacturers who perform prototype testing in accordance with the laundering procedure specified in the standard will also benefit from a relatively short effective date.

C. Other Issues

1. Impact on Small Businesses

In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certified that the proposed amendments to the children's sleepwear standards and enforcement rules will not have a significant economic impact on a substantial number of small entities, including small businesses. 64 FR 13129. Because the amendment codifies existing industry testing practices (and reflects current consumer practices), it is not expected to have an effect on small entities.

2. Environmental Considerations

The amendments fall within the categories of Commission actions described at 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. As discussed in the proposed rule, neither an environmental assessment nor an environmental impact statement is required.

3. Executive Orders

Executive Order 12988 (February 5, 1996), requires agencies to state in clear language the preemptive effect, if any, to be given to a new regulation. The amendments modify two flammability standards issued under the FFA. With certain exceptions which are not applicable in this instance, no state or political subdivision of a state may enact or continue in effect "a flammability standard or other regulation" applicable to the same fabric or product covered by an FFA standard if the state or local flammability standard or other regulations is "designed to protect against the same risk of the occurrence fire" unless the state or local flammability standard or regulation "is identical" to the FFA standard. See section 16 of the FFA (15 U.S.C. 1203). Consequently, the

amendments will preempt nonidentical state or local flammability standards or regulations that are intended to address the unreasonable risk of fire associated with ignition of children's sleepwear in sizes 0 through 14.

The Commission has also evaluated this rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

List of Subjects in 16 CFR Parts 1615 and 1616

Clothing, Consumer protection, Flammable materials, Incorporation by reference, Infants and children, Labeling, Records, Sleepwear, Textiles, Warranties.

Conclusion

Therefore, pursuant to the authority of section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)) and sections 4 and 5 of the Flammable Fabrics Act (15 U.S.C. 1193, 1194), the Commission hereby amends title 16 of the Code of Federal Regulations, chapter II, Subchapter D, parts 1615 and 1616 to read as follows:

PART 1615—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X

1. The authority for subpart A of part 1615 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1615.4 is amended by revising paragraphs (g)(4)(i) and (g)(4)(ii) to read as follows:

§ 1615.4 Test procedure.

(g) *Testing* * * *

(4) *Laundering.* (i) The procedures described in sections 1615.4(b) through (g) shall be carried out on finished items (as produced or after one washing and drying) and after they have been washed and dried 50 times in accordance with sections 8.2.2, 8.2.3, and 8.3.1(A) of AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Items which do not withstand 50 launderings shall be tested at the end of their useful service life.

(ii) Washing shall be performed in accordance with sections 8.2.2 and 8.2.3 of AATCC Test Method 124–1996, using wash temperature V (60°±3°C, 140°±5°F) specified in Table II of that method, and the water level, agitator speed, washing time, spin speed and final spin cycle specified for "Normal/Cotton Sturdy" in Table III. A maximum washer load shall be 3.64 Kg (8 pounds) and may consist of any combination of test samples and dummy pieces. Drying shall be performed in accordance with section 8.3.1(A) of that test method, Tumble Dry, using the exhaust temperature (66°±5°C, 150°±10°F) and cool down time of 10 minutes specified in the "Durable Press" conditions of Table IV. Alternatively, a different number of times under another washing and drying procedure may be specified and used, if that procedure has previously been found to be equivalent by the Consumer Product Safety Commission. Such laundering is not required of items which are not intended to be laundered, as determined by the Consumer Product Safety Commission.

* * * * *

3. The authority for subpart B of part 1615 continues to read as follows:

Authority: Sec. 5, 67 Stat. 112–113, as amended, 81 Stat. 570; 15 U.S.C. 1194.

4. Section 1615.32 is amended by revising paragraphs (a)(1), (b)(1), introductory text and (b)(2), the first 3 sentences of (c)(1), (c)(2), the first sentence of (d)(3), the first sentence of (e)(1), the first sentence of (e)(2), and (f) to read as follows:

§ 1615.32 Method for establishment and use of alternate laundering procedures under section 4(g)(4)(ii) of the standard.

(a) *Scope.* (1) Section 1615.4(g)(4)(ii) of the Standard for the Flammability of Children's Sleepwear in sizes 0–6X (16 CFR 1615.4(g)(4)(ii)) requires that all fabrics and certain garments subject to the standard be tested for flammability as produced (or after one washing and drying) and after the items have been washed and dried 50 times in machines, using the procedure specified in AATCC Test Method 124–1986.[6] This section also provides that items may be laundered a different number of times under another washing and drying procedure if the Commission finds that such an alternate laundering procedure is equivalent to the procedure specified in the standard.

* * * * *

(b) *Application procedure.* (1) Applicants seeking approval for use of an alternate laundering procedure under § 1615.4(g)(4)(ii) of the standard must submit the following information in writing to the Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207:

* * * * *

(2) Applications shall be certified by the chief executive officer of the applicant or the official to whom the duty to certify has been delegated in writing. The Commission's Assistant Executive Director for Compliance must be notified in writing of any such delegation.

(c) *Use of alternate laundering procedure.* (1) The applicant may begin to use the alternate laundering procedure 30 days after the application is received by the Assistant Executive Director for Compliance unless notified to the contrary. The Assistant Executive Director for Compliance will normally furnish an applicant with written notice of approval within 30 days. The applicant may be notified that a longer time is needed for evaluation of the application, and in the discretion of the Assistant Executive Director for Compliance, may be authorized to use the alternate laundering procedure pending the final decision. * * *

(2) As provided in detail in § 1615.32(e), applicants must immediately discontinue use of an alternate procedure, and must immediately notify the Assistant Executive Director for Compliance if there are test failures during revalidation testing.

(d) *Revalidation testing.* * * *

(3) Records of revalidation testing need not be submitted to the Assistant

[6] AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Executive Director for Compliance.
* * *

(e) *Revalidation testing failures.* (1) If revalidation testing for any fabric or garment does not meet the criteria of § 1615.32(f), the applicant must immediately discontinue use of the alternate laundering procedure for the fabric or garment and must immediately notify the Assistant Executive Director for Compliance in writing of the failure to meet the criteria. * * *

(2) When use of an alternate laundering procedure for a particular fabric or garment has been discontinued because of a failure to meet the criteria of § 1615.32(f), the alternate laundering procedure shall not be used again unless a new application for approval is submitted to the Assistant Executive Director for Compliance and that officer approves the application in writing. * * *

(f) *Commission criteria for evaluating applications.* (1) The Assistant Executive Director for Compliance will approve the alternate laundering procedure as equivalent to the laundering procedure specified in § 1615.4(g)(4)(ii) of the standard if testing from 20 specimens laundered by the proposed alternate procedure yields as many or more char lengths in excess of five inches as does testing from the twenty specimens laundered by the 50-laundering cycle method prescribed in the standard.

(2) If the alternate laundering procedure yields fewer char lengths in excess of five inches than does the 50-wash and dry cycle, then the Assistant Executive Director for Compliance will not consider the alternate procedure to be equivalent, with the following exception: If the number of five-inch chars from the alternate procedure is within one of the number of five-inch chars obtained from the 50-cycle procedure, the applicant may repeat the original test with new specimens and if the combined results of both tests show the count of chars exceeding five inches from the alternate is equal to, or greater than, the count from the 50-wash cycle procedure, the Assistant Executive Director for Compliance will approve the alternate laundering procedure.
* * * * *

PART 1616—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14

1. The authority for subpart A of part 1616 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1616.5 is amended by revising paragraphs (c)(4)(i) and (c)(4)(ii) to read as follows:

§ 1616.5 Test procedure.

(c) *Testing* * * *

(4) *Laundering.* (i) The procedures described under §§ 1616.4 Sampling and acceptance procedures, 1616.5(b) Conditioning and mounting of specimens, and 1616.5(c) Testing shall be carried out on finished items (as produced or after one washing and drying) and after they have been washed and dried 50 times in accordance with sections 8.2.2, 8.2.3, and 8.3.1(A) of AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Items which do not withstand 50 launderings shall be tested at the end of their useful service life with prior approval of the Consumer Product Safety Commission.

(ii) Washing shall be performed in accordance with sections 8.2.2 and 8.2.3 of AATCC Test Method 124–1996, using wash temperature V (60°±3°C, 140°±5°F) specified in Table II of that method, and the water level, agitator speed, washing time, spin speed and final spin cycle specified for "Normal/Cotton Sturdy" in Table III. A maximum washer load shall be 3.64 Kg (8 pounds) and may consist of any combination of test samples and dummy pieces. Drying shall be performed in accordance with section 8.3.1(A) of that test method, Tumble Dry, using the exhaust temperature (66°±5°C, 150°±10°F) and cool down time of 10 minutes specified in the "Durable Press" conditions of Table IV. Alternatively, a different number of times under another washing and drying procedure may be specified and used, if that procedure has previously been found to be equivalent by the Consumer Product Safety Commission. Such laundering is not required of items which are not intended to be laundered, as determined by the Consumer Product Safety Commission.
* * * * *

3. The authority for subpart B of part 1616 continues to read as follows:

Authority: Sec. 5, 67 Stat. 112–113, as amended, 81 Stat. 570; 15 U.S.C. 1194.

4. Section 1616.32 is amended by revising paragraphs (a)(1), (b)(1), introductory text and (b)(2), the first 3 sentences of (c)(1), (c)(2), the first sentence of (d)(3), the first sentence of (e)(1), the first sentence of (e)(2), (f), and (g)(1) to read as follows:

§ 1616.32 Method for establishment and use of alternate laundering procedures under section 5(c)(4)(ii) of the standard.

(a) *Scope.* (1) Section 1616.5(c)(4)(ii) of the Standard for the Flammability of Children's Sleepwear in sizes 7–14 (16 CFR 1616.5(c)(4)(ii)) requires that all fabrics and certain garments subject to the standard be tested for flammability as produced (or after one washing and drying) and after the items have been washed and dried 50 times in machines, using the procedure specified in AATCC Test Method 124–1996.[7] This section also provides that items may be laundered a different number of times under another washing and drying procedure if the Commission finds that such an alternate laundering procedure is equivalent to the procedure specified in the standard.
* * * * *

(b) *Application procedure.* (1) Applicants seeking approval for use of an alternate laundering procedure under § 1616.5(c)(4)(ii) of the standard must submit the following information in writing to the Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207:
* * * * *

(2) Applications shall be certified by the chief executive officer of the applicant or the official to whom the duty to certify has been delegated in writing. The Commission's Assistant Executive Director for Compliance must be notified in writing of any such delegation.

(c) *Use of alternate laundering procedure.* (1) The applicant may begin to use the alternate laundering procedure 30 days after the application is received by the Assistant Executive Director for Compliance unless notified

[7] AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," Technical Manual of the American Association of Textile Chemists and Colorists, Vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

to the contrary. The Assistant Executive Director for Compliance will normally furnish an applicant with written notice of approval within 30 days. The applicant may be notified that a longer time is needed for evaluation of the application, and in the discretion of the Assistant Executive Director for Compliance, may be authorized to use the alternate laundering procedure pending the final decision. * * *

(2) As provided in detail in § 1616.32(e), applicants must immediately discontinue use of an alternate procedure, and must immediately notify the Assistant Executive Director for Compliance if there are test failures during revalidation testing.

(d) *Revalidation testing.* * * *

(3) Records of revalidation testing need not be submitted to the Assistant Executive Director for Compliance.

* * *

(e) *Revalidation testing failures.* (1) If revalidation testing for any fabric or garment does not meet the criteria of § 1616.32(f), the applicant must immediately discontinue use of the alternate laundering procedure for the fabric or garment and must immediately notify the Assistant Executive Director for Compliance in writing of the failure to meet the criteria. * * *

(2) When use of an alternate laundering procedure for a particular fabric or garment has been discontinued because of a failure to meet the criteria of § 1616.32(f), the alternate laundering procedure shall not be used again unless a new application for approval is submitted to the Assistant Executive Director for Compliance and that officer approves the application in writing.

* * *

(f) *Commission criteria for evaluating applications.* (1) The Assistant Executive Director for Compliance will approve the alternate laundering procedure as equivalent to the laundering procedure specified in § 1616.5(c)(4)(ii) of the standard if testing from 20 specimens laundered by the proposed alternate procedure yields as many or more char lengths in excess of five inches as does testing from the twenty specimens laundered by the 50-laundering cycle method prescribed in the standard.

(2) If the alternate laundering procedure yields fewer char lengths in excess of five inches than does the 50-wash and dry cycle, then the Assistant Executive Director for Compliance will not consider the alternate procedure to be equivalent, with the following exception: If the number of five-inch chars from the alternate procedure is within one of the number of five-inch chars obtained from the 50-cycle procedure, the applicant may repeat the original test with new specimens and if the combined results of both tests show the count of chars exceeding five inches from the alternate is equal to, or greater than, the count from the 50-wash cycle procedure, the Assistant Executive Director for Compliance will approve the alternate laundering procedure.

(g) *Commission testing for compliance.* (1) For the purpose of determining compliance with the standard, the Commission will rely on testing employing the laundering procedure now prescribed by § 1616.5(c)(4)(ii) of the standard. (15 U.S.C. 1193, 1194; 15 U.S.C. 2079(b))

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Dated: March 2, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. American Association of Textile Chemists and Colorists, "Appearance of Durable Press Fabrics After Repeated Home Launderings," AATCC Test Method 124–1969. AATCC Technical Manual, Vol. 46, 1970.

2. American Association of Textile Chemists and Colorists, "Appearance of Fabrics After Repeated Home Laundering," AATCC Test Method 124–1996. AATCC Technical Manual, Vol. 73, 1997.

3. Briefing memorandum from Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, "Proposed Amendments to Flammable Fabrics Act Standards to Replace Obsolete Standard Detergent and Update Laundering Procedures Required for Tests," November 18, 1998.

4. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Amending the Laundering Provisions of the CPSC Flammability Regulations," August 18, 1998.

5. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Textile Laundering Standards," August 18, 1998.

6. Memorandum from Gail Stafford and Shing-Bong Chen, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Detergent Comparison Tests," August 19, 1998.

7. Log of Meeting on January 21, 1998 concerning Flammability Test of Pyrovatex-treated Flame Resistant Fabrics.

8. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Margaret Neily, Project Manager, "Amendments to FFA Standards," August 10, 1998.

9. Memorandum from Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, "Briefing Package Supplement: Laundering/Detergent Update for Flammable Fabrics Act Standards—The Soap and Detergent Association (SDA) Laundering Procedures," January 11, 1999.

10. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Soap and Detergent Association Proposed Laundering Procedure," December 23, 1998.

11. Letter from Jenan Al-Atrash, Director, Human Health & Safety, The Soap and Detergent Association, to Margaret Neily, Technical Program Coordinator, Office of the Executive Director, including SDA Recommended Wash Conditions for CFR 1615.4, September 15, 1998.

12. Letter from Jenan Al-Atrash, Director, Human Health & Safety, The Soap and Detergent Association, to Margaret Neily, Technical Program Coordinator, Office of the Executive Director, follow-up comments to September 15, 1998, letter, November 12, 1998.

13. Memorandum from Margaret L. Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, "Laundering/Detergent Updates—FR notice supplements," February 19, 1999.

14. Briefing Memorandum, from Ron Medford, AED, Office of Hazard Identification and Reduction and Margaret L. Neily, Project Manager, ESME, to the Commission, "Final Rule Updating Standard Detergent and Laundering Procedures for Flammable Fabrics Act Standards," January 6, 2000.

15. Memorandum from Martha A. Kosh, OS, "Comments on Children's Sleepwear Laundering Procedures, Mattress Pads Laundering Procedures, Carpet and Rugs Laundering Procedures," June 1, 1999.

16. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Response to Comments Received as a Result of the Notice of Proposed Rulemaking (NPR) for the Laundering/Detergent Update for the Flammable Fabrics Act Standards," October 25, 1999.

[FR Doc. 00–5531 Filed 3–9–00; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1630 and 1631

Standard for the Surface Flammability of Carpets and Rugs; Standard for the Surface Flammability of Small Carpets and Rugs

AGENCY: Consumer Product Safety Commission.

ACTION: Final amendments.

SUMMARY: The Commission is amending the flammability standards for carpets and rugs and for small carpets and rugs by revising the laundering procedure specified in those standards. The laundering procedures help assure that any fire retardant treatment used on carpets or on fibers used in the manufacture of carpets will not be

removed or degraded by cleaning, thereby creating a flammability hazard. The Commission is issuing these amendments because the detergent specified by the existing laundering procedure is no longer available and the operating characteristics of the washing and drying machines required by that procedure are no longer representative of machines now used for home laundering.

DATES: The rule will become effective on April 10, 2000 and will apply to products manufactured or imported after that date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400, extension 1370.

SUPPLEMENTARY INFORMATION:

A. Background

The Flammable Fabrics Act ("FFA") (15 U.S.C. 1191 *et seq.*) authorizes the Commission to issue and amend flammability standards and regulations to protect the public from unreasonable risks of death, injury, and property damage from fire associated with products of interior furnishing made from fabric and related materials.

In 1970, the Secretary of Commerce issued two flammability standards for carpets and rugs to protect the public from risks of deaths, injuries, and economic losses associated with ignition of carpets and rugs by small ignition sources. The Standard for the Surface Flammability of Carpets and Rugs, now codified at 16 CFR part 1630, is applicable to carpets and rugs with a surface area greater than 24 square feet and one dimension longer than six feet. The Standard for the Surface Flammability of Small Carpets and Rugs, now codified at 16 CFR part 1631, is applicable to carpets and rugs which have an area of 24 square feet or less, and no dimension longer than six feet.

In 1973, authority to issue and amend flammability standards under the FFA was transferred from the Department of Commerce to the Consumer Product Safety Commission by section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)).

B. Amending the Flammability Standards

As discussed below, laundering procedures are required by the standards to help assure that any fire-retardant chemicals used in the production of carpets or rugs will not be removed or degraded by repeated cleaning and create a flammability hazard. However, the current procedures are out of date in several respects.

1. Current Procedures

The carpet flammability standards describe the apparatus and procedure to be used to test carpets and rugs for compliance with the standards. See 16 CFR 1630.4 and 1631.4.

At the time the carpet standards were issued, some carpets and rugs were treated with fire retardants or made from fibers that were treated with fire retardants. Section 1630.4(b)(1)(ii) of the standard for large carpets and rugs and § 1631.4(b)(1)(ii) of the standard for small carpets and rugs require that specimens of a carpet or rug that has a fire-retardant treatment or that is made from fibers which have had a fire-retardant treatment shall be tested after they have been washed and dried 10 times in accordance with a specified laundering procedure, or "such number of times under such other washing and drying procedures as shall have been found to be equivalent by the Consumer Product Safety Commission."

The laundering procedure specified by the standards is AATCC Test Method 124–67, published by the American Association of Textile Chemists and Colorists ("AATCC").(1) [1] This procedure involves washing and drying the specimens in a household washing machine and dryer. The AATCC test method is similar to the method that might be used by consumers to clean small washable carpets and rugs such as bath mats and small area rugs.

Although the AATCC laundering procedure does not resemble the method that consumers could be expected to use for cleaning wall-to-wall carpeting and large carpets or rugs, the Commission has not made a finding that any other washing and drying procedure is equivalent to AATCC Test Method 124–67. Nor has the Commission approved an alternate cleaning procedure that is normally used for them.

AATCC Test Method 124–67 specifies operating characteristics of the washing machine and dryer to be used, wash water and rinse water temperatures, exhaust temperature of the dryer, and a particular detergent, AATCC Standard Detergent 124. AATCC Test Method 124–67 was developed in 1967. These specifications are representative of the equipment, wash, rinse, and drying temperatures, and detergent used for home laundering in the 1960s. For example, AATCC Standard Detergent 124 is a high-phosphate powder with optical brightener, similar to the phosphate-based detergents sold to consumers between 1950 and 1970.(3)

Since 1970, environmental concerns about water pollution have resulted in the elimination of phosphate-based detergents for home laundering. Today, all laundry detergents sold to consumers are nonphosphate-based. Additionally, energy-efficient washing machines and dryers currently sold for consumer use have operating characteristics and temperature settings which differ from those specified by AATCC Test Method 124–67.(3)

2. Revised Laundering Test Method

In 1996, AATCC revised AATCC Test Method 124, "Appearance of Fabrics After Repeated Home Laundering."(2) The 1996 AATCC test method more closely resembles the equipment and practices used for household laundering of fabrics at this time. The revised test method differs from AATCC Test Method 124–67 by specifying the use of 1993 AATCC detergent, a nonphosphate-based detergent. The 1996 test method also specifies use of a washing machine with different operating characteristics than those specified by AATCC Test Method 124–67, and rinse water temperatures which differ from those in the older test method.(3) Table 1, below, provides a summary comparison of the two test methods.

[1] Numbers in parentheses identify reference documents in the List of Relevant Documents at the end of this notice. Requests for inspection of any of these documents should be made at the Office of the Secretary, 4330 East-West Highway, room 502, or by calling that office at (301) 504–0800.

TABLE 1.—AATCC TEST METHOD 124

Wash/Dry conditions	Version 1967	Version 1996	
Washing machine:			
Cycle	Normal	Normal/cotton sturdy	
Wash Water Temp.	60±3°C	60±3°C	
Rinse Water Temp.	41±3C	Less than 29°C	
Water Level	Full	18±1 gal	
Agitator Speed	70±5 spm	179±1 spm	
Wash Time	12 minutes.		
Spin Speed	500–510 rpm	630–660 rpm	
Final Spin cycle	4 minutes	6 minutes	
Dryer:			
Cycle	Normal	Cotton Sturdy	Durable Press
Exhaust Temp.	140–140°F	140–160°F	140–160°F
Cool Down Cycle	5 minutes	5 minutes	10 minutes

spm=strokes (or cycles) per minutes; rpm=revolutions per minute.

In 1996, AATCC also announced that when that organization's supply of Standard Detergent 124 is depleted, that detergent will no longer be available. AATCC is the only source for Standard Detergent 124. Additionally, washing machines offered for sale at this time do not have the settings and operating characteristics of the washing machine specified by AATCC Test Method 124–67.(3)

The laundering procedures specified in the carpet flammability standards must be followed by the Commission when testing carpets manufactured with a fire-retardant treatment to determine their compliance. Information available to the Commission indicates that at this time, no carpets or rugs treated with a fire retardant or made from fibers which have been treated with a fire retardant are offered for sale. However, it is possible that carpets treated with fire retardants may be marketed in the future.

3. Review of Other Existing Standards

As explained in the notice of proposed rulemaking, the Commission staff reviewed and analyzed fourteen other international and technical association standards or test methods to determine if any were appropriate for consideration in this proceeding. All of the standards designed for fabric laundering have significant deficiencies. They are either based on earlier versions of AATCC Test Method 124 (with obsolete detergent and equipment), require equipment not available in the U.S., use only water in the laundering procedure, or specify significantly lower wash and rinse water temperatures than those still available for consumers.

Two of these methods (AATCC 138 and a Canadian standard CAN/CGSB–4.2 No. 30.2-M90) were specifically developed for carpets. However, they use different liquid detergents, and neither of these methods approximates the typical home laundering used in the Flammability Standard for Carpets and Rugs. Further, the AATCC 138 was judged to be too harsh for the hand washable flokati rugs because of the brushing specified by the method.

4. Proposed Amendment

On March 17, 1999, the Commission proposed to revise the laundering procedures specified in 16 CFR 1632.5(b) to those of AATCC Test Method 124–1996. 64 FR 13132. As explained in the preamble to the proposed rule, the Commission determined that an advance notice of proposed rulemaking was not necessary to begin this proceeding. Id. at 13134. The amendments preserve the original intent and effect of the existing test method, modifying that method only as necessary to reflect the existence of modern equipment and detergent. Moreover, the existing regulations permit the Commission to employ a laundering test method different from AATCC Test Method 124 if it concludes that the test method is substantively as protective.

The Commission received comments on the proposed rule from the Soap and Detergent Association ("SDA"), American Textile Manufacturers Institute ("ATMI"), the National Cotton Council ("NCC"), and Shaw Industries. ATMI and NCC both expressed their support for the proposed revision. SDA's and Shaw Industries comments are discussed below.

Wash and Rinse Water Temperatures

SDA suggested that the Commission consider a laundering protocol different than AATCC Test Method 124. SDA's suggested protocol calls for cooler wash and rinse temperatures, stating that they are more representative of today's laundering conditions.

The Commission declines to make this change. Many water heaters in use today are set at 60C/140F. Thus, consumers have hotter wash watef available to them than the 32C/90F that SDA recommends. It is appropriate that the laundering requirements reflect not necessarily the average conditions, but the most rigorous that a consumer is likely to use. By specifying a hot water wash and a cold water rinse, the revised CPSC standard represents the most rigorous real, although not necessarily average, wash conditions.

Water Hardness

SDA also suggested that the revised standard should specify water hardness criteria. While water hardness is one factor that may affect the flammability performance of some fabrics, the Commission has no evidence that water hardness is a significant problem for flame retardant treated products currently marketed. At this time, the Commission is only correcting the outdated detergent and laundering conditions in the current FFA standards. It is not within the scope of this proceeding to consider additional criteria.

Ballast Load Weight

The SDA suggested changing the ballast load weight to 2.7±0.1 kg (6±0.2 lb). CPSC's current standard specifies 3.64 kg (8 lb) while the AATCC Test Method 124 only requires 1.8kg (4 lb). SDA may not have realized that CPSC is retaining the larger load requirement. As explained above, the Commission is only correcting the outdated aspects of the laundering standard. It is not altering other criteria.

Omit Reference to a Specific Date

Finally, SDA suggested that the Commission not refer to the specific year of the AATCC standard but simply refer to the most current method. This would alleviate the need to revise the standard every time the AATCC standard is revised.

The Commission cannot accept this suggestion. For any change by AATCC

to have the force and effect of a Commission rule the Commission must formally adopt it through notice and comment rulemaking.

New Cleaning Method for Carpets

Shaw Industries suggested that the Commission adopt a new cleaning method for carpets, AATCC Test Method 171–1995, because it would better replicate the manner in which most carpets are cleaned.

AATCC Test Method 171–1995 simulates on-floor cleaning of carpets. While most carpets are not cleaned in washing machines as AATCC Test Method 124 prescribes, the purpose of this proceeding is to revise the laundering requirements for those carpets that may be washed in a home washing machine, not to require a new method.

5. Final Rule

The amendments require specimens of carpet manufactured with a fire-retardant treatment to be tested after washing and drying 10 times using the procedure specified in AATCC Test Method 124–1996. The amendments incorporate that test method into the carpet flammability standards by reference.

Existing §§ 1630.4(b)(1)(ii) and 1631.4(b)(1)(ii) contain the following language:

> *Alternatively*, the selected sample or oversized specimens thereof may be *washed, dry-cleaned, or shampooed* 10 times prior to cutting of test specimens, *in such manner* as the manufacturer or other interested party shall previously have established to the satisfaction of the Consumer Product Safety Commission is *normally used* for that type of carpet or rug in service. [Emphasis added.]

Alternative laundering procedures have been approved in accordance with provisions of §§ 1630.4(b)(1)(ii) and 1631.4(b)(1)(ii) for hide carpets and rugs and wool flokati carpets and rugs. See 16 CFR 1630.61, 1630.62 and 1630.63; 16 CFR 1631.61 and 1631.62. The amendments change the references in subpart C of §§ 1630 and 1631 to the revised AATCC Test Method 124–1996 so that they are consistent with the other changes.

6. Effective Date

The Commission proposed that the amendments become effective 30 days after publication of a final rule. 64 FR 13134–35. As discussed in the preamble to the proposed rule, the standard detergent specified by the existing laundering method in the standard is no longer available. Thus the Commission believes that an effective date 30 days after publication of final amendments will be in the public interest. The Commission is not withdrawing or limiting the exemption for products in inventory or with the trade as provided by section 4(b) of the FFA.

The Commission received no comments on the proposed effective date. The Commission continues to believe that an effective date of thirty days allows adequate notice to all interested persons of the change in laundering procedure, and at the same time assures that the Commission will be able to test for compliance with the standards without interruption. Those manufacturers who perform prototype testing in accordance with the laundering procedure specified in the standard will also benefit from a relatively short effective date.

C. Other Issues

1. Impact on Small Businesses

In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certified that the proposed amendments to the carpet flammability standards would not have a significant economic impact on a substantial number of small entities, including small businesses. 64 FR 13135. Because the Commission is unaware of any carpets or rugs currently offered for sale which have been treated with a fire-retardant treatment or made from fibers treated with a fire-retardant, the Commission estimates that the amendments will have no economic consequences to any manufacturers, large or small, of carpets and rugs. In the event that some carpets treated with a fire-retardant or made from fibers treated with a fire-retardant treatment come onto the market in the future, manufacturers will be able to apply for approval of any alternate laundering procedure which is normally used for cleaning those products if the procedure specified by the amendments is not appropriate.

2. Environmental Considerations

The amendments fall within the categories of Commission actions described at 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. As discussed in the proposed rule, neither an environmental assessment nor an environmental impact statement is required. 64 FR 13135.

3. Executive Orders

Executive Order 12988 (February 5, 1996), requires agencies to state in clear language the preemptive effect, if any, to be given to any new regulation. The amendments would modify two flammability standards issued under the FFA. With certain exceptions which are not applicable here, no state or political subdivision of a state may enact or continue in effect "a flammability standard or other regulation" applicable to the same fabric or product as an FFA standard if the state or local flammability standard or regulation is "designed to protect against the same risk of the occurrence of fire" unless the state or local flammability standard or regulation "is identical" to the FFA standard. See section 16 of the FFA (15 U.S.C. 1203). Consequently, the amendments will preempt nonidentical state or local flammability standards or regulations that are intended to address the unreasonable risk of the occurrence of fire associated with ignition of carpets and rugs.

The Commission has also evaluated this rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

List of Subjects in 16 CFR Parts 1630 and 1631

Carpets, Consumer protection, Flammable materials, Floor coverings, Incorporation by reference, Labeling, Records, Rugs, Textiles, Warranties.

Conclusion

Therefore, pursuant to the authority of section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)) and sections 4 and 5 of the Flammable Fabrics Act (15 U.S.C. 1193, 1194), the Commission hereby amends title 16 of the Code of Federal Regulations, Chapter II, Subchapter D, Parts 1630 and 1631 to read as follows:

PART 1630—STANDARD FOR THE SURFACE FLAMMABILITY OF CARPETS AND RUGS

1. The authority for subpart A of part 1630 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1630.4 is amended by revising paragraph (b)(1)(ii), removing footnote 3 and 4 redesignating footnote 5 as footnote 3, and adding new paragraph (b)(1)(iii) to read as follows:

§ 1630.4 Test procedure.

* * * * *

(b) Sampling—(1) * * *

(ii) If the carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the selected sample or oversized specimens thereof shall be washed, prior to cutting of test specimens after they have been washed and dried either 10 times in accordance with sections 8.2.2, 8.2.3, and 8.3.1(A) of AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," using wash temperature V (60°±3° C, 140°±5° F) specified in Table II of that method, and the water level, agitator speed, washing time, spin speed and final spin cycle specified for "Normal/Cotton Sturdy" in Table III, and drying shall be performed in accordance with section 8.3.1(A) of that test method, Tumble Dry, maximum load 3.64 Kg (8 pounds), using the exhaust temperature (66°±5° C, 150°±10° F) and cool down time of 10 minutes specified in the "Durable Press" conditions of Table IV; or such number of times by another washing and drying procedure which the Consumer Product Safety Commission has determined to be equivalent of AATCC Test Method 124–1996. Alternatively, the selected sample or oversized specimens thereof may be washed, drycleaned, or shampooed 10 times, prior to cutting of test specimens, in such manner as the manufacturer or other interested party shall previously have established to the satisfaction of the Consumer Product Safety Commission is normally used for that type of carpet or rug in service.

(iii) AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

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3. The authority for subpart C of part 1630 continues to read as follows:

Authority: Secs. 4, 5, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193, 1194.

4. Section 1630.61 is amended by revising the first sentence of paragraph (a) and adding four new sentences after the first sentence of paragraph (a) to read as follows:

§ 1630.61 Hide carpets and rugs—alternative washing procedure.

(a) The Standard for the Surface Flammability of Carpets and Rugs (FF 1–70) at § 1630.4(b)(1)(ii) provides that if a carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the sample or oversized specimens thereof selected for testing under the standard shall be washed prior to the cutting of test specimens either 10 times under the washing and drying procedure prescribed in Method 124–1996 of the American Association of Textile Chemists and Colorists or such number of times under such other washing and drying procedure as shall previously have been found to be equivalent by the Consumer Product Safety Commission. AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. * * *

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5. Section 1630.62 is amended by revising the first sentences in paragraphs (a) and (d)(3) and adding four new sentences after the first sentence of paragraph (a) to read as follows:

§ 1630.62 Wool flokati carpets and rugs—alternative washing procedure.

(a) The Standard for the Surface Flammability of Carpets and Rugs (FF 1–70) at § 1630.4(b)(1)(ii) provides that if a carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the sample or oversized specimens thereof selected for testing under the standard shall be washed prior to the cutting of test specimens either 10 times under the washing and drying procedure prescribed in Method 124–1996 of the American Association of Textile Chemists and Colorists or such number of times under such other washing and drying procedure as shall previously have been found to be equivalent by the Consumer Product Safety Commission. AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. * * *

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(d) * * *

(3) Place individual specimen face down in a shallow pan which has been filled to a depth of 2″ with a wash solution of 1.1 grams of AATCC (American Association of Textile Chemists and Colorists) Standard Detergent as specified in AATCC Method 124–1996 (or equivalent) per liter of water preheated to 105° F. * * *

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6. Section 1630.63 is amended by revising the first sentence in paragraph (a)(1) and adding four new sentences after the first sentence of paragraph (a)(1) to read as follows:

§ 1630.63 Suspension of washing requirements for carpets and rugs with alumina trihydrate in the backing.

(a)(1) The Standard for the Surface Flammability of Carpets and Rugs (FF 1–70) at § 1630.4(b)(1)(ii) provides that if a carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the sample or oversized specimens thereof selected for testing under the standard shall be washed prior to the cutting of test specimens either 10 times under the washing and drying procedure prescribed in Method 124–1996 of the American Association of Textile Chemists and Colorists or such number of times under such other washing and drying procedure as shall previously have been found to be equivalent by the Consumer Product Safety Commission. AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is

incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. * * *

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PART 1631—STANDARD FOR THE SURFACE FLAMMABILITY OF SMALL CARPETS AND RUGS

1. The authority for subpart A of part 1631 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1631.4 is amended by revising paragraph (b)(1)(ii), removing footnote 3, redesignating footnotes 4 and 5 as footnotes 3 and 4 respectively, and adding new paragraph (b)(1)(iii) to read as follows:

§ 1631.4 Test procedure.

* * * * *

(b) Sampling—(1) * * *

(ii) If the carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the selected sample or oversized specimens thereof shall be washed, prior to cutting of test specimens after they have been washed and dried either 10 times in accordance with sections 8.2.2, 8.2.3, and 8.3.1(A) of AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," using wash temperature V (60°±3° C, 140°±5° F) specified in Table II of that method, and the water level, agitator speed, washing time, spin speed and final spin cycle specified for "Normal/Cotton Sturdy" in Table III, and drying shall be performed in accordance with section 8.3.1(A) of that test method, Tumble Dry, maximum load 3.64 Kg (8 pounds), using the exhaust temperature (66°±5° C, 150°±10° F) and cool down time of 10 minutes specified in the "Durable Press" conditions of Table IV; or such number of times by another washing and drying procedure which the Consumer Product Safety Commission has determined to be equivalent of AATCC Test Method 124–1996. Alternatively, the selected sample or oversized specimens thereof may be washed, drycleaned, or shampooed 10 times, prior to cutting of test specimens, in such manner as the manufacturer or other interested party shall previously have established to the satisfaction of the Consumer Product Safety Commission is normally used for that type of carpet or rug in service.

(iii) AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

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3. The authority for subpart C of part 1631 continues to read as follows:

Authority: Secs. 4, 5, 67 Stat. 112, as amended, 81 Stat. 569–70; 15 U.S.C. 1193, 1194.

4. Section 1631.61 is amended by revising the first sentence of paragraph (a) and adding four new sentences after the first sentence of paragraph (a) to read as follows:

§ 1631.61 Hide carpets and rugs—alternative washing procedure.

(a) The Standard for the Surface Flammability of Carpets and Rugs (FF 1–70) at § 1630.4(b)(1)(ii) provides that if a carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the sample or oversized specimens thereof selected for testing under the standard shall be washed prior to the cutting of test specimens either 10 times under the washing and drying procedure prescribed in Method 124–1996 of the American Association of Textile Chemists and Colorists or such number of times under such other washing and drying procedure as shall previously have been found to be equivalent by the Consumer Product Safety Commission. AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. * * *

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5. Section 1631.62 is amended by revising the first sentences in paragraphs (a) and (d)(3) and adding four new sentences after the first sentence of paragraph (a) to read as follows:

§ 1631.62 Wool flokati carpets and rugs—alternative washing procedure.

(a) The Standard for the Surface Flammability of Carpets and Rugs (FF 1–70) at § 1630.4(b)(1)(ii) provides that if a carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the sample or oversized specimens thereof selected for testing under the standard shall be washed prior to the cutting of test specimens either 10 times under the washing and drying procedure prescribed in Method 124–1996 of the American Association of Textile Chemists and Colorists or such number of times under such other washing and drying procedure as shall previously have been found to be equivalent by the Consumer Product Safety Commission. AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. * * *

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(d) * * *

(3) Place individual specimen face down in a shallow pan which has been filled to a depth of 2" with a wash solution of 1.1 grams of AATCC (American Association of Textile Chemists and Colorists) Standard Detergent as specified in AATCC Method 124–1996 (or equivalent) per liter of water preheated to 105° F. * * *

* * * * *

Dated: March 2, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. American Association of Textile Chemists and Colorists, "Appearance of Durable Press Fabrics After Repeated Home Launderings," AATCC Test Method 124–1969. AATCC Technical Manual, Vol. 46, 1970.

2. American Association of Textile Chemists and Colorists, "Appearance of Fabrics After Repeated Home Laundering," AATCC Test Method 124–1996. AATCC Technical Manual, Vol. 73, 1997.

3. Briefing memorandum from Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, "Proposed Amendments to Flammable Fabrics Act Standards to Replace Obsolete Standard Detergent and Update Laundering Procedures Required for Tests," November 18, 1998.

4. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Amending the Laundering Provisions of the CPSC Flammability Regulations," August 18, 1998.

5. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Textile Laundering Standards," August 18, 1998.

6. Memorandum from Gail Stafford and Shing-Bong Chen, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Detergent Comparison Tests," August 19, 1998.

7. Log of Meeting on January 21, 1998 concerning Flammability Test of Pyrovatex-treated Flame Resistant Fabrics.

8. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Margaret Neily, Project Manager, "Amendments to FFA Standards," August 10, 1998.

9. Memorandum from Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, "Briefing Package Supplement: Laundering/Detergent Update for Flammable Fabrics Act Standards—The Soap and Detergent Association (SDA) Laundering Procedures," January 11, 1999.

10. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Soap and Detergent Association Proposed Laundering Procedure," December 23, 1998.

11. Letter from Jenan Al-Atrash, Director, Human Health & Safety, The Soap and Detergent Association, to Margaret Neily, Technical Program Coordinator, Office of the Executive Director, including SDA Recommended Wash Conditions for CFR 1615.4, September 15, 1998.

12. Letter from Jenan Al-Atrash, Director, Human Health & Safety, The Soap and Detergent Association, to Margaret Neily, Technical Program Coordinator, Office of the Executive Director, follow-up comments to September 15, 1998, letter, November 12, 1998.

13. Memorandum from Margaret L. Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, "Laundering/Detergent Updates—FR notice supplements," February 19, 1999.

14. Briefing Memorandum, from Ron Medford, AED, Office of Hazard Identification and Reduction and Margaret L. Neily, Project Manager, ESME, to the Commission, "Final Rule Updating Standard Detergent and Laundering Procedures for Flammable Fabrics Act Standards," January 6, 2000.

15. Memorandum from Martha A. Kosh, OS, "Comments on Children's Sleepwear Laundering Procedures, Mattress Pads Laundering Procedures, Carpet and Rugs Laundering Procedures," June 1, 1999.

16. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Response to Comments Received as a Result of the Notice of Proposed Rulemaking (NPR) for the Laundering/Detergent Update for the Flammable Fabrics Act Standards," October 25, 1999.

[FR Doc. 00–5530 Filed 3–9–00; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1632

Standard for the Flammability of Mattresses and Mattress Pads

AGENCY: Consumer Product Safety Commission.

ACTION: Final amendments.

SUMMARY: The Commission is amending the flammability standard for mattresses and mattress pads by revising the laundering procedure specified in that standard for mattress pads which contain a chemical fire retardant. These laundering procedures help assure that any chemical flame retardant is not removed or degraded by repeated washing and drying, thereby creating a flammability hazard. The Commission is issuing these amendments because the detergent specified by the existing laundering procedure is no longer available and the operating characteristics of the washing and drying machines required by that procedure are no longer representative of machines now used for home laundering.

DATES: The rule will become effective on April 10, 2000, and will apply to products manufactured or imported after that date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400, extension 1370.

SUPPLEMENTARY INFORMATION:

A. Background

The Flammable Fabrics Act ("FFA") (15 U.S.C. 1191 *et seq.*) authorizes the Commission to issue and amend flammability standards and regulations to protect the public from unreasonable risks of death, injury, and property damage from fire associated with products of interior furnishing made from fabric and related materials.

In 1972, the Secretary of Commerce issued a flammability standard for mattresses and mattress pads to protect the public from death and serious burn injuries associated with ignition of mattresses and mattress pads by smoldering cigarettes. That standard became effective in 1973, and is codified at 16 CFR Part 1632. In 1973, authority to issue flammability standards under the FFA was transferred from the Department of Commerce to the Consumer Product Safety Commission by section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)).

B. Amending the Flammability Standard

As discussed below, laundering procedures are prescribed by the standard to help assure that any fire-retardant chemicals used in the production of mattress pads will not be removed or degraded by repeated washing and drying and create a flammability hazard. However, the current procedures are out of date in several respects.

1. Current Procedures

The mattress flammability standard describes the apparatus and procedure used to test mattress pads for compliance with the standard. See 16 CFR 1632.4 and 1632.5(a). Sections 1632.5 (a) and (b) of the standard require that any mattress pad manufactured with a fire retardant chemical shall be tested in the condition in which it is intended to be sold, and after it has been washed and dried ten times in accordance with a specified laundering procedure. That laundering procedure is AATCC Test Method 124–82, published by the American Association of Textile Chemists and Colorists ("AATCC").(1) [1] The mattress

[1] Numbers in parentheses identify reference documents in the List of Relevant Documents at the end of this notice. Requests for inspection of any of these documents should be made at the Office of the Secretary, 4330 East-West Highway, room

Continued

standard incorporates that laundering procedure by reference. See 16 CFR 1632.5(b)(2)(iv).

AATCC Test Method 124–82 specifies operating characteristics of the washing machine and dryer to be used, wash water and rinse water temperatures, exhaust temperature of the dryer, and a particular detergent, AATCC Standard Detergent 124. AATCC Test Method 124–82 was originally developed in 1967 and subsequently revised. These specifications are representative of the equipment, wash, rinse, and drying temperatures, and the detergent used for home laundering in the 1960s. For example, AATCC Standard Detergent 124 is a high-phosphate powder with optical brightener, similar to the phosphate-based detergents sold to consumers between 1950 and 1970.(3)

Since 1970, environmental concerns about water pollution have resulted in the elimination of phosphate-based detergents for home laundering. Today, all laundry detergents sold to consumers are nonphosphate-based. Additionally, energy-efficient washing machines and dryers currently sold for consumer use have operating characteristics and temperature settings which differ from those specified by AATCC Test Method 124–82.(3)

2. Revised Laundering Test Method

In 1996, AATCC revised AATCC Test Method 124, "Appearance of Fabrics After Repeated Home Laundering".(2) The 1996 AATCC test method more closely resembles the equipment and practices currently used for household laundering of fabrics. The revised test method differs from AATCC Test Method 124–82 by specifying the use of 1993 AATCC detergent, a nonphosphate-based detergent. The 1996 test method also specifies use of a washing machine with different operating characteristics than those specified by AATCC Test Method 124–82, and rinse water temperatures which differ from those in the older test method.(3) Table 1, below, provides a summary comparison of the two test methods.

In 1996, AATCC also announced that when that organization's supply of Standard Detergent 124 is depleted, that detergent will no longer be available. AATCC is the only source for Standard Detergent 124. Additionally, washing machines now offered for sale do not have the settings and operating characteristics of the washing machine specified by AATCC Test Method 124–82.(3)

TABLE 1.—AATCC TEST METHOD 124

Wash/dry conditions	Version 1982	Version 1996	
Washing Machine:			
Cycle	Normal	Normal/Cotton Sturdy	
Wash Water Temp	60±3°C	60±3°C	
Rinse Water Temp	41±3°C	Less Than 29°C	
Water Level	Full	18±1 gal	
Agitator Speed	70±5 spm	179±2 spm	
Wash Time	12 minutes	12 minutes	
Spin Speed	500–510 rpm	630–660 rpm	
Final Spin Cycle	4 minutes	6 minutes	
Dryer:			
Cycle	Normal	Cotton Sturdy	Durable Press
Exhaust Temp	140–160°F	140–160°F	140–160°F
Cool Down Cycle	5 minutes	5 minutes	10 minutes

spm=strokes (or cycles) per minute; rpm=revolutions per minute.

3. Review of Other Existing Standards

As explained in the notice of proposed rulemaking, the Commission staff reviewed and analyzed twelve other international and technical association standards or test methods to determine if any were appropriate for consideration in this proceeding. All of the identified standards for fabric laundering have significant deficiencies. They are either based on earlier versions of AATCC Test Method 124 (with obsolete detergent and equipment), require equipment not available in the U.S., use only water in the laundering procedure, or specify significantly lower wash and rinse water temperatures than those still available for consumers.

4. Comparability of Test Results

The Commission intended to perform some testing of mattress pads manufactured with chemical fire retardants using AATCC Test Method 124–82 and AATCC Test Method 124–1996 to compare the two test methods. However, the staff has been unable to locate any flame retardant-treated mattress pads for this comparison. The Commission believes, however, it is appropriate to revise the laundering method so that it is consistent with actual consumer and industry laundering practices should cotton mattress pads (which might need flame retardant treatment) return to the market in the future.

5. Proposed Amendment

On March 17, 1999, the Commission proposed to revise the laundering procedures specified in 16 CFR 1632.5(b) to those of AATCC Test Method 124–1996. 64 FR 13137. As explained in the preamble to the proposed rule, the Commission determined that an advance notice of proposed rulemaking was not necessary to begin this proceeding. Id. at 13139. The amendments preserve the original intent and effect of the existing test method, modifying that method only as necessary to reflect the existence of modern equipment and detergent. Moreover, the existing regulations permit the Commission to employ a laundering test method different from AATCC Test Method 124 if it concludes that the test method is substantively as protective.

The Commission received comments on the proposed rule from the Soap and Detergent Association ("SDA"), American Textile Manufacturers Institute ("ATMI"), and the National Cotton Council ("NCC"). ATMI and

502, Bethesda, Md., or by calling that office at (301) 504–0800.

NCC both expressed their support for the proposed revision. SDA's comments are discussed below.

Wash and Rinse Water Temperatures

SDA suggested that the Commission consider a laundering protocol different than AATCC Test Method 124. SDA's suggested protocol calls for cooler wash and rinse temperatures, stating that they are more representative of today's laundering conditions.

The Commission declines to make this change. Many water heaters in use today are set at 60C/140F. Thus, consumers have hotter wash water available to them than the 32C/90F that SDA recommends. It is appropriate that the laundering requirements reflect not necessarily the average conditions, but the most rigorous that a consumer is likely to use. By specifying a hot water wash and a cold water rinse, the revised CPSC standard represents the most rigorous real, although not necessarily average, wash conditions.

Water Hardness

SDA also suggested that the revised standard should specify water hardness criteria. While water hardness is one factor that may affect the flammability performance of some fabrics, the Commission has no evidence that water hardness is a significant problem for flame retardant treated products currently marketed. At this time, the Commission is only correcting the outdated detergent and laundering conditions in the current FFA standards. It is not within the scope of this proceeding to consider additional criteria.

Ballast Load Weight

The SDA suggested changing the ballast load weight to 2.7±0.1 kg (6±0.2 lb). CPSC's current standard specifies 3.64 kg (8 lb) while the AATCC Test Method 124 only requires 1.8kg (4 lb). SDA may not have realized that CPSC is retaining the larger load requirement. As explained above, the Commission is only correcting the outdated aspects of the laundering standard. It is not altering other criteria.

Omit Reference to a Specific Date

Finally, SDA suggested that the Commission not refer to the specific year of the AATCC standard but simply refer to the most current method. This would alleviate the need to revise the standard every time the AATCC standard is revised.

The Commission cannot accept this suggestion. For any change by AATCC to have the force and effect of a Commission rule the Commission must formally adopt it through notice and comment rulemaking.

6. Final Rule

The amendments require a mattress pad containing a fire retardant chemical to be tested in the condition in which it is intended to be sold and after washing and drying 10 times using the procedure specified in AATCC Test Method 124–1996. The amendments incorporate that test method into the mattress standard by reference.

The mattress flammability standard and enforcement rules exempt any "one-of-a-kind" mattress or mattress pad manufactured to a physician's written prescription from all requirements of the standard. See §§ 1632.2(b)(4) and 1632.31(f). Those sections are not affected by the amendments.

Additionally, existing § 1632.5(b)(1)(i) exempts from the laundering requirements of the standard any mattress pad intended for "one time use" and any mattress pad which is not intended to be laundered. Existing § 1632.5(b)(1)(ii) states that mattress pads that cannot be laundered and are labeled "dryclean only" shall be drycleaned by a procedure which has been found to be acceptable by the Commission before testing. Existing § 1632.5(b)(2)(v) allows manufacturers of mattress pads manufactured with a chemical fire retardant to test specimens after laundering "a different number of wash and dry cycles using another procedure * * * if that procedure has previously been found to be equivalent by the Consumer Product Safety Commission." These sections are not affected by the amendments.

7. Effective Date

The Commission proposed that the amendments become effective 30 days after publication of a final rule. 64 FR 13139. As discussed in the preamble to the proposed rule, the standard detergent specified by the existing laundering method in the standard is no longer available. Thus the Commission believes that an effective date 30 days after publication of final amendments will be in the public interest. The Commission is not withdrawing or limiting the exemption for products in inventory or with the trade as provided by section 4(b) of the FFA.

The Commission received no comments on the proposed effective date. The Commission continues to believe that an effective date of thirty days allows adequate notice to all interested persons of the change in laundering procedure, and at the same time assures that the Commission will be able to test for compliance with the standards without interruption. Those manufacturers who perform prototype testing in accordance with the laundering procedure specified in the standard will also benefit from a relatively short effective date.

C. Other Issues

1. Impact on Small Businesses

In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certified that the proposed amendments to the mattress flammability standard would not have a significant economic impact on a substantial number of small entities, including small businesses, if issued on a final basis. 64 FR 13140. The Commission has no information that would alter this determination.

2. Environmental Considerations

As discussed in the preamble to the proposed rule, the amendments fall within the categories of Commission actions described at 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. The Commission has no information indicating any special circumstances in which these amendments may affect the human environment. Accordingly, the Commission determined that neither an environmental assessment nor an environmental impact statement is required. 64 FR 13140.

3. Executive Orders

Executive Order 12988 (February 5, 1996), requires agencies to state in clear language the preemptive effect, if any, to be given to a new regulation. The amendments modify a flammability standard issued under the FFA. With certain exceptions which are not applicable here, no state or political subdivision of a state may enact or continue in effect "a flammability standard or other regulation" applicable to the same fabric or product covered by an FFA standard if the state or local flammability standard or regulation is "designed to protect against the same risk of the occurrence of fire" unless the state or local standard or regulation is "identical" to the FFA standard. See section 16 of the FFA (15 U.S.C. 1203). Consequently, the amendments will preempt nonidentical state or local flammability standards or regulations that are intended to address the unreasonable risk of fire from ignition of mattress pads.

The Commission has also evaluated this rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does

not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

List of Subjects in 16 CFR Part 1632

Consumer protection, Flammable materials, Incorporation by reference, Labeling, Mattresses and mattress pads, Records, Textiles, Warranties.

Conclusion

Therefore, pursuant to the authority of section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)) and sections 4 and 5 of the Flammable Fabrics Act (15 U.S.C. 1193, 1194), the Commission hereby amends title 16 of the Code of Federal Regulations, Chapter II, Subchapter D, Part 1632 to read as follows:

PART 1632—STANDARD FOR THE FLAMMABILITY OF MATTRESSES AND MATTRESS PADS

1. The authority for part 1632 continues to read as follows:

Authority: 15 U.S.C. 1193, 1194; 15 U.S.C. 2079(b).

2. Section 1632.5 is amended by revising paragraphs (b)(2)(i) through (iv) and by removing the undesignated paragraph following (b)(2)(iv) to read as follows:

§ 1632.5 Mattress pad test procedure.

* * * * *

(b)* * *

(2) Laundering procedure. (i) Washing shall be performed in accordance with sections 8.2.2 and 8.2.3 of AATCC Test Method 124–1996, using wash temperature V (60°±3°C, 140°±5°F) specified in Table II of that method, and the water level, agitator speed, washing time, spin speed and final spin cycle specified for "Normal/Cotton Sturdy" in Table III.

(ii) Drying shall be performed in accordance with section 8.3.1(A) of AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," Tumble Dry, using the exhaust temperature (66°±5°C, 150°±10°F) and cool down time of 10 minutes specified in the "Durable Press" conditions of Table IV.

(iii) Maximum washer load shall be 3.64 Kg (8 pounds) and may consist of any combination of test samples and dummy pieces.

(iv) AATCC Test Method 124–1996 "Appearance of Fabrics after Repeated Home Laundering," is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

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Dated: March 2, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. American Association of Textile Chemists and Colorists, "Appearance of Durable Press Fabrics After Repeated Home Laun-derings," AATCC Test Method 124–1969. AATCC Technical Manual, Vol. 46, 1970.

2. American Association of Textile Chemists and Colorists, "Appearance of Fabrics After Repeated Home Laundering," AATCC Test Method 124–1996. AATCC Technical Manual, Vol. 73, 1997.

3. Briefing memorandum from Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, "Proposed Amendments to Flammable Fabrics Act Standards to Replace Obsolete Standard Detergent and Update Laundering Procedures Required for Tests," November 18, 1998.

4. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Amending the Laundering Provisions of the CPSC Flammability Regulations," August 18, 1998.

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6. Memorandum from Gail Stafford and Shing-Bong Chen, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Detergent Comparison Tests," August 19, 1998.

7. Log of Meeting on January 21, 1998 concerning Flammability Test of Pyrovatex-treated Flame Resistant Fabrics.

8. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Margaret Neily, Project Manager, "Amendments to FFA Standards," August 10, 1998.

9. Memorandum from Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, "Briefing Package Supplement: Laundering/Detergent Update for Flammable Fabrics Act Standards—The Soap and Detergent Association (SDA) Laundering Procedures," January 11, 1999.

10. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Soap and Detergent Association Proposed Laundering Procedure," December 23, 1998.

11. Letter from Jenan Al-Atrash, Director, Human Health & Safety, The Soap and Detergent Association, to Margaret Neily, Technical Program Coordinator, Office of the Executive Director, including SDA Recommended Wash Conditions for CFR 1615.4, September 15, 1998.

12. Letter from Jenan Al-Atrash, Director, Human Health & Safety, The Soap and Detergent Association, to Margaret Neily, Technical Program Coordinator, Office of the Executive Director, follow-up comments to September 15, 1998, letter, November 12, 1998.

13. Memorandum from Margaret L. Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, "Laundering/Detergent Updates—FR notice supplements," February 19, 1999.

14. Briefing Memorandum, from Ron Medford, AED, Office of Hazard Identificaiton and Reduction and Margaret L. Neily, Project Manager, ESME, to the Commission, "Final Rule Updating Standard Detergent and Laundering Procedures for Flammable Fabrics Act Standards," January 6, 2000.

15. Memorandum from Martha A. Kosh, OS, "Comments on Children's Sleepwear Laundering Procedures, Mattress Pads Laundering Procedures, Carpet and Rugs Laundering Procedures," June 1, 1999.

16. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Response to Comments Received as a Result of the Notice of Proposed Rulemaking (NPR) for the Laundering/Detergent Update for the Flammable Fabrics Act Standards," October 25, 1999.

[FR Doc. 00–5529 Filed 3–9–00; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB48

Exemption From Registration as a Commodity Trading Advisor

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission has amended Commission Rule 4.14 to create an exemption from the Commodity Exchange Act's registration requirements for commodity trading advisors that provide standardized advice by means of media such as newsletters, prerecorded telephone newslines, Internet web sites, and non-customized computer software.

DATES: March 10, 2000.

FOR FURTHER INFORMATION CONTACT: J. Douglas Richards, Deputy General Counsel; Martin White, Attorney; or Michael J. Garawski, Attorney at (202) 418–5120.

SUPPLEMENTARY INFORMATION:

I. Background

The Commodity Futures Trading Commission ("Commission") is adopting CFTC Rule 4.14(a)(9), which exempts certain commodity trading advisors ("CTAs") from Section 4m(1) of the Commodity Exchange Act ("CEA" or "Act"), 7 U.S.C. 6m(1) (1994). Section 4m(1) requires CTAs to register with the Commission. The exemption adopted today is intended to apply to CTAs that provide standardized commodity trading advice by means of media such as newsletters, prerecorded telephone newslines, Internet web sites, and non-customized computer software.[1] For purposes of convenience, these CTAs will be referred to as "Section 4.14(a)(9) CTAs."[2]

Over the last several years, the Commission has been involved in several litigated cases that address whether CTAs that provide advice through newsletters, Internet web sites, or similar means can be required to register under Section 4m(1) of the CEA. In two of those cases, *Taucher* v. *Born*, 53 F. Supp. 2d 464 (D.D.C. 1999), *appeal pending*, No. 99–5293 (D.C. Cir.) and *Commodity Trend Service* v. *CFTC*, No. 97 C 2362 (N.D. Ill. Sept. 28, 1999), *appeals pending*, No. 99–4142 (7th Cir.), federal district courts held that the Section 4m(1) registration requirement constitutes an unconstitutional prior restraint in violation of the First Amendment as applied to the plaintiffs.[3] In both cases, the plaintiffs provided only standardized commodity trading advice through a variety of media, including Internet web sites, computer software, voice recordings accessible by telephone, e-mails, facsimiles, and periodicals. Moreover, the district courts found in these cases that the plaintiffs did not have discretionary control over their clients' accounts, did not provide advice tailored to the financial situation of any specific client, and had no personal contact with their clients. All of the information provided to each client was identical.

The Commission has not itself determined that applying Section 4m(1) to Section 4.14(a)(9) CTAs represent a complete and accurate statement of the constitutional limits of Congress's power with respect to the regulation of Section 4.14(a)(9) CTAs. The Commission has nevertheless determined that it is appropriate to exempt Section 4.14(a)(9) CTAs from registration.

An implicit purpose of the Act is to achieve a regulatory scheme that is consistent with the public interest and that promotes just and equitable principles of trade. This purpose is evident in provisions dealing with the CTA registration scheme, including Sections 41, 4n(1), 4p, 8a(8), as well as other provisions of the Act (*see, e.g.*, Sections 4(c), 4c, 4g, 4j(a)(5)(C), 5, 6(f), 15, 17). Consistent with that, the Act reflects a corollary purpose that the Commission continue to refine its regulatory framework, including its registration scheme, where appropriate in light of other purposes of the Act. *See, e.g.*, Sections 3, 4b, 4k, 4n, 4o. The rule adopted today advances these purposes.

Taucher and *CTS* have created legal uncertainty as to whether Section 4.14(a)(9) CTAs may be required to register with the Commission.[4] Absent a Supreme Court decision on the issue, continued litigation is unlikely to eliminate this uncertainty for a considerable period of time. Moreover, litigation of First Amendment issues has required the expenditure of considerable resources by the Commission and, in some instances, has complicated the Commission's investigation and prosecution of fraud by CTAs.

Furthermore, whatever the courts may determine to be the precise constitutional limits of Congressional authority in this area, the Commission believes that minimizing impact on speech, other than false, deceptive or misleading speech, is a relevant policy consideration in determining the Commission's regulatory approach toward CTAs whose relationship with their clients is limited to standardized advice through media such as newsletters, prerecorded telephone newslines, Internet web sites, and non-customized computer software.

On December 2, 1999, the Commission proposed to exempt from Section 4m1) of the CEA certain CTAs that are not engaged in the type of advisory activities specified in proposed Section 4.14(a)(9) and invited comments. 64 FR 68304 (Dec. 7, 1999). The Commission received eight comment letters on this proposal: One from a bar association committee on futures regulation; two from nonprofit legal advocacy groups; one from a trade association; three from clients of CTAs; and one from a member of the general public. All generally supported the adoption of a rule like CFTC Rule 4.14(a)(9). In light of comments received on that proposed rule, the Commission is adopting a modified version of the proposed rule.

II. CFTC Rule 4.14(a)(9)

CFTC Rule 4.14(a)(9) (to be codified at 17 CFR 4.14(a)(9)) adds a new paragraph to Commission Rule 4.14 to create an additional exemption from registration for certain CTAs. The new exemption is expressed in negative terms: the rule exempts CTAs that are *not* engaged in the types of advisory activities specified in the new paragraph. A CTA must meet both of the specified conditions to qualify for the proposed exemption.

Paragraph 4.14(a)(9)(i) provides that, to quality for the exemption, a CTA may not direct client accounts. As defined by Commission Rule 4.10(f), "[*d*]*irect*, as used in the context of trading commodity interest accounts, refers to agreements whereby a person is authorized to cause transactions to be effected for a client's commodity interest account without the client's specific authorization." The granting of such authority creates a business relationship between the CTA and the client that goes beyond speech. Registration of CTAs that direct client accounts thus raises no First Amendment issue.[5]

Paragraph 4.14(a)(9)(ii) also provides that, to qualify for the exemption, a CTA may not provide commodity trading

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[1] In this final rulemaking, the term "commodity trading advice" refers to advice with respect to trading in a "commodity interest," as defined in Commission Rule 3.1(f), 17 CFR 3.1(f).

[2] "Section 4.14(a)(9) is a reference to CFTC Rule 4.1(a)(9), to be codified at 17 CFR 4.14(a)(9).

A person that provides commodity trading advice by means of newsletters, Internet web sites, or similar means falls within the statutory definition of "commodity trading advisor" unless the person is a "publisher or producer of print or electronic data of general and regular dissemination" and the furnishing of commodity trading advice is "solely incidental to the conduct of their business or profession." *See* Sections 1a(5)(B) and (C) of the Act, 7 U.S.C. 1a(5)(B) and (C) (1994); *In re R&W Technical Services, Ltd.*, [Current Transfer Binder] Comm. Fut. L. Rep.: (CCH) ¶ 27,582 (CFTC Mar. 16, 1999); *In re Armstrong*, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,657 (CFTC Feb. 8, 1993).

[3] Both district courts relied on *Lowe* v. *SEC*, 472 U.S. 181 (1985), in which the Supreme Court held that the Investment Advisers Act of 1940, which regulates investment advisers in the securities industry, should be interpreted to apply only to persons who provide personalized advice. The district courts relied primarily on the concurring opinion in *Lowe*, which rested on constitutional grounds.

[4] Significantly, *CTS* and *Taucher* left the Commission's fraud jurisdiction intact.

[5] One commenter, expressed a similar opinion, stating that paragraph (a)(9)(i) does not raise First Amendment concerns.

advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients. A CTA that provides this kind of advice carries out a function comparable to that of a traditional professional. *See Lowe* v. *SEC*, 472 U.S. 181, 232–33 (1985) (White, J., concurring). This provision is intended to preserve the registration requirement for CTAs whose commodity trading advice depends on and reflects information concerning its advisee(s), such as information concerning a particular commodity interest account, particular commodity interest trading activity, and/or other similar types of information. Moreover, so long as the CTA's advice is based on or tailored to such information, the CTA remains required to register even if it gives the same advice to groups of similarly situated clients.

Retaining the registration scheme for those that engage in the activities described by Rule 4.14(a)(9) is justified because the nature of these activities creates a professional relationship. A client that provides a power of attorney to trade his or her account, or that receives commodity trading advice that is based on or tailored to his or her circumstances, will very likely substitute the CTA's expertise for his or her own judgment and use the advice as a direct basis for action.

The Commission received several comments concerning proposed paragraph 4.14(a)(9)(ii). One commenter suggested that the Commission adopt a proviso to the rule that would, in effect, narrow the activities described in paragraph (ii), thereby expanding the scope of the exemption. The commenter maintained that a CTA that provides advice via a web site that is interactive in nature and that requires a client to select among inquiry paths or categories of information should be exempt from the registration requirement. The commenter suggested that the Rule adopt a proviso that explains that nothing in paragraph (9) be construed to prohibit the use of electronic or other interactive exchanges between clients and advisors that do not include individualized investment advice.

A second commenter voiced a similar concern and suggested that proposed Rule 4.14(a)(9)(ii) be narrowed to maintain the registration requirement only for CTAs that provide commodity trading advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients "with whose circumstances or characteristics the CTA is directly acquainted."

The Commission has determined not to adopt these proposals.[6] These commenters' suggestions fail to reflect that the medium through which advice is communicated is, for the most part, not relevant to whether the CTA can be said to be "exercis[ing] judgment on behalf on the client in the light of the client's individual needs and circumstances." *See Lowe*, 472 U.S. at 232 (J. White, concurring). Instead, the Commission agrees with the statement of another commenter that "the new rule * * * should emphasize that the exemption is based on the nature of the advice that is provided, *regardless of how it is communicated to the client.*"[7] As explained by the district court in *Taucher*, "[i]n today's technologically advanced society a professional can exercise judgment on behalf of another without ever having 'personal' [or direct] contact."[8]

Given the specific comments received on paragraph 4.14(a)(9)(ii), however, further clarity as to the scope of that paragraph may be desirable. Section III of this preamble provides examples of how Rule 4.14(a)(9)(ii) would be applied in specific situations. To the extent that the examples do not resolve how the Commission would apply the new rule to other specific situations, such situations are best addressed in response to specific facts and circumstances.[9]

[6] The Commission notes that paragraph (a)(9)(ii), as interpreted in Example C below, substantially accomplishes the result intended by the proviso suggested by one commenter.

[7] In a borderline case as to whether advice is "based on or tailored to" within the meaning of Section (a)(9)(ii), however, the context of the advice might be taken into account. For example, in such a borderline case, if the advice is provided in a book or a periodical, that factor may weigh against a finding that the CTA is providing advice "based on or tailored to" the client's characteristics, since such modes of communication are ordinarily used as sources of information and ideas that the reader assimilates into his or her own thought process. On the other hand, if the advice is provided to a particular client in a face-to-face communication or over the telephone, that factor may weigh in favor of a finding that the CTA's advice is "based on or tailored to" the customer's characteristics, since such a context suggests that the CTA is being responsive to the client's particular needs.

[8] *Taucher* v. *Born*, No. 97–1711 (RMU) (Jan. 14, 1999) (denying plaintiff's motion for summary judgment). In its later decision finding that the plaintiff CTAs did not "exercise judgment" on behalf of their clients, the district court found that the plaintiffs had no personal contact with their customers. The court, however, did not rely exclusively on this factor, which was only one of several circumstances supporting the court's finding. *Taucher*, 53 F. Supp. 2d at 478. In light of the court's statement made in denying the motion for summary judgment, its position appear to be that lack of personal contacts is a factor, but not a dispositive one, in determining whether the CTA is exercising judgment on behalf of its clients.

[9] The Commission uses various means to assess the applicability of a rule in light of specific factual situations, such as determinations made in its adjudicated decisions. Commission staff also provides interpretative guidance, such as issuing interpretative letters or responding to requests for no-action relief.

The Commission has decided not to adopt proposed paragraph 4.14(a)(9)(iii), which provided that a CTA would qualify for the exemption only if it does not provide commodity trading advice through personally interactive communications with individual clients, such as face-to-face conversations, telephone conversations, or electronic mail exchanges between individuals. In the Notice of Proposed Rulemaking, the Commission explained that the use of such means of communications implies that the advisor is giving advice in the context of a relationship with the client that is more personal than the remote and standardized relationship between the publisher of a newsletter or non-customized software and its readers or users.

Several commenters opposed the adoption of proposed paragraph (a)(9)(iii). One commenter anticipated two serious problems in implementing proposed paragraph (a)(9)(iii). First, the rapid development of communications technology may require periodic reexamination of the language of paragraph (iii), and second, the emphasis in paragraph (iii) on the method of communication would complicate policing the terms of the exemption.

Other commenters questioned whether paragraph (a)(9)(iii) would be constitutionally permissible. One commenter opined that the references in proposed paragraph (a)(9)(iii) to the mode of communication are not appropriate given the recent judicial decisions in this area. Similarly, other commenters opposed proposed paragraph (a)(9)(iii) on the ground that it would be inconsistent with the First Amendment, except in cases where the advice is given in light of the client's individual needs and circumstances.

The Commission has not determined that the application of proposed paragraph (a)(9)(iii) would violate the Constitution under any particular circumstances. The Commission notes that none of the cases upon which the commentators rely for their constitutional positions involved the "interactive communications" situation involved in paragraph (a)(9)(iii). Rather, those cases involved only the provision of advice in a non-interactive setting,

such as through periodicals, books, newsletters, or software programs.[10]

Nevertheless, the Commission has decided not to adopt proposed paragraph 4.14(a)(9)(iii). By this rulemaking, the Commission intends to reduce the legal uncertainty created by the First Amendment decisions in this area and to curtail the impediments that such First Amendment litigation imposes on the Commission's enforcement of the antifraud provisions of the CEA. Considering the comments received, adoption of proposed paragraph (a)(9)(iii) might undermine the accomplishment of those purposes.[11]

As explained in the Notice of Proposed Rulemaking, the Commission intends that a CTA who manages a client's trading under some type of informal arrangement be required to register even if the CTA is not authorized to effect transactions without the client's specific authorization, and therefore does not "direct" the client's accounts. In the Notice of Proposed Rulemaking, the Commission solicited comments on whether a separate paragraph dealing with CTAs that manage their clients' trading under informal arrangements would be necessary to realize this intention.

One commenter supported clarifying the breadth of the proposed rule to retain the registration requirement for CTAs that have informal arrangements with clients and that perform any of the activities outlined in the rule. Although the commenter did not advocate defining the meaning of "informal arrangements," it proposed that the introductory language of Section 4.14(a)(9) be expanded to add the words "directly or indirectly" after the word "engage."[12] The Commission has decided not to adopt the commenter's suggested language in Rule 4.14(a)(9) and instead to rely on the language of paragraph 4.14(a)(9)(ii) to cover CTAs that informally manage their customers' trading.

Any CTA that meets the conditions of Rule 4.14(a)(9) is no longer required to register with the Commission as a requirement for doing business as a CTA. Such a CTA, unless it chooses to register voluntarily, also is now exempt from the various regulatory requirements set forth in the CEA and the Commission's rules that, by their terms, apply only to registrants or persons required to be registered. For example, an exempt CTA is not subject to the recordkeeping and production requirements of Section 4n(3)(A) of the CEA and Commission Rule 4.33, or the ethics training requirement of Section 4p(b) of the CEA. Moreover, an exempt CTA is not subject to the CFTC's reparations jurisdiction under Section 14 of the CEA.[13]

An exempt CTA is still subject to those provisions of the CEA and the Commission's rules that, by their terms, apply to CTAs without regard to registration. These include Section 4*o* of the CEA, which prohibits fraud by CTAs; Commission Rule 4.30, which, broadly speaking, prohibits CTAs from handling clients' funds; Commission Rule 4.41(a), which prohibits deceptive advertising by CTAs; and Commission Rule 4.41(b), which requires representations concerning simulated or hypothetical performance results by CTAs to be accompanied by disclosures describing the limitations of such results as an indicator of actual performance. Exempt CTAs also are subject to those provisions of the CEA that apply to any person, including, for example, Section 4b of the CEA, which is the Act's general anti-fraud provision. Similarly, the proposed exemption does not alter the duty of a Section 4.14(a)(9) CTA to register with the Commission in a capacity other than as a CTA, if the CTA, in addition to its advisory activities, engages in other business activities that require such registration.

A CTA exempt under rule 4.14(a)(9) that wishes to apply for registration or retain its current registration may do so. Pursuant to Rule 4.14(c), a CTA that registers voluntarily is subject to those provisions of the Act and the Commission's regulations that apply to registered CTAs (*i.e.*, the disclosure requirements of Rules 4.31, 4.35 and 4.36, and the recordkeeping requirements of Rule 4.33) as if it were not exempt from registration. The decision to register voluntarily also would subject the CTA to ethics training requirements and the Commission's reparations jurisdiction.

III. Examples[14]

In order to convey the intent of the exemption that we adopt today, the Commission offers the following illustrative examples:[15]

A. A CTA provides commodity trading advice only through newsletters, books and periodicals. The advice includes specific recommendations, such as recommendations to buy or sell specific futures contracts should a particular price level be reached. Recipients of publications all receive the same advice. Under Rule 4.14(a)(9), this CTA is exempt from the Section 4m registration requirement.

B. A CTA provides specific commodity trading advice through e-mails, facsimiles, an Internet web site, telephone calls and face-to-face meetings with customers. The advice is based on a computerized trading system, which also is available for purchase and use on a personal computer. Such advice is provided on a daily basis and is reactive to the latest market activity. The advice consists only of an instruction to buy or sell a futures contract and where, if at all, to place a stop order. The CTA's clients all receive the same advice. Under Rule 4.14(a)(9), this CTA is exempt from the Section 4m registration requirement.

C. A CTA provides commodity trading advice through an Internet web site. The web site requires the user to indicate whether he or she has a preference for trading agricultural futures contracts or financial futures contracts. Users who indicate that their preference is agricultural futures contracts receive different advice from those who indicate that financial futures contracts are their preference. The CTA's advice is not "based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients," within the meaning of Rule 4.14(a)(9)(ii). Rather, the CTA is merely allowing its clients to select which advisory services they wish to

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[10] These cases include *Lowe* v. *SEC*, 472 U.S. 181 (1985), and the *Taucher* and *CTS* district court decisions.

[11] In light of the decision not to adopt proposed paragraph (a)(9)(iii), the Commission need not address whether implementation problems would provide an independent reason not to adopt that paragraph.

[12] The commenter's proposed introductory language would read: "A person is not required to register under the Act as a commodity trading advisor if * * * [i]t does not engage, *directly or indirectly*, in any of the following activities:* * *"

[13] In response to a question posed in the Notice of Proposed Rulemaking, one commenter stated that exempt CTAs should not be subject to the recordkeeping, production or ethics training requirements because to do so would raise "significant constitutional issues." The Commission has not determined that applying these requirements would violate the Constitution. The Commission, however, agrees that CTAs that are exempt from registration under Rule 4.14(a)(9) should not be subject to regulatory requirements like these, which apply only to registered CTAs.

[14] The following examples of the application of Rule 4.14(a)(9) supercede the examples provided in the Notice of Proposed Rulemaking. Examples are illustrative and not intended to be statements of law. As noted above, persons are free to seek advice regarding their specific activities.

[15] In each of the following examples, the CTA does not have powers of attorney from any of its clients to trade accounts. In addition, the CTA in each example remains subject to requirements of the Act and the Commission's regulations that apply to all CTAs without regard to registration, such as Section 4*o* of the Act and Commission Rules 4.30, 4.41(a) and 4.41(b), as well as to provisions that apply to any person, such as Section 4b of the Act.

purchase. Therefore, this CTA is exempt from the Section 4m registration requirement under Rule 4.14(a)(9).

D. A CTA conducts seminars at which it teaches attendees how to trade commodity futures contracts aided by a software program that the CTA sells. After the seminar, the CTA invites seminar attendees to participate in a question-and-answer session. In response to questions, the CTA provides commodity trading advice without asking or receiving information about the personal characteristics of the attendees. Such advice is not "based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients," within the meaning of Rule 4.14(a)(9)(ii). Consequently, this CTA is exempt from the Section 4m registration requirement.

E. A CTA conducts seminars at which it teaches attendees how to trade commodity futures contracts aided by a software program that the CTA sells. Before each seminar commences, the CTA polls the attendees to discover their level of ability and knowledge. The CTA presents a more advanced seminar for classes that have a higher degree of experience. Because such advice is not "based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients," within the meaning of Rule 4.14(a)(9)(ii), this CTA is exempt from the Section 4m registration requirement.

F. A CTA provides commodity trading advice only through facsimile messages, without further discussion with its clients. Before advising any client, the CTA gathers current information about the client, such as information about his or her net assets and liabilities, annual income, annual expenses, imminent large purchases, tolerance for risk, purposes for trading, investment goals and expectations, preferred contracts for trading, any existing futures positions, and other current investments. The CTA's advice is different for different clients, depending on their profile, but the CTA sends similar advice to groups of clients with similar profiles. Under Rule 4.14(a)(9)(ii), this CTA provides commodity trading advice "based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients" and, consequently, is not exempt from the registration requirement.

G. A CTA gives seminars on commodity interest trading. During the seminar, the CTA takes questions from the attendees concerning the trades that the CTA recommends for the upcoming week. Before responding to the question of an attendee, the CTA asks the attendee for specific information about him or herself, such as the types of information listed in Example F. The CTA provides different recommendations to different attendees, based on the information provided. Under Rule 4.14(a)(9)(ii), this CTA provides commodity trading advice "based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients" and therefore is not exempt from the registration requirement.

H. A CTA monitors a client's trading positions and amount of margin in the client's account. Based on that information, along with general technical and fundamental market information, the CTA gives the client commodity trading advice. Because he provides commodity trading advice "based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients," this CTA is not exempt from the registration requirement under Rule 4.14(a)(9)(ii).

IV. Statutory Authority

Pursuant to Section 8a(5) of the CEA, 7 U.S.C. 12a(5), the Commission has statutory authority to promulgate the proposed rule. As explained above, this rule is consistent with the legislative purposes of the CEA.

In the Notice of Proposed Rulemaking, the Commission indicated that it also would rely on Section 4(c)(1) of the Act, 7 U.S.C. 6(c)(1), as authority to adopt Rule 4.14(a)(9). Upon further consideration, the Commission has determined that reliance on Section 4(c) is unnecessary. The Commission previously has relied upon its rulemaking power, as provided in Section 8a(5), to exempt CTAs from the registration requirement. The authority citation for Part 4 of the Commission's rules, therefore, is unchanged.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small entities. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[16] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.

As the Commission noted when proposing the rule, some of the CTAs that would be affected by Rule 4.14(a)(9) could reasonably be considered to be small entities. The rule amendment adopted herein, however, will reduce or remove existing economic burdens. Moreover, the registration requirements that will be affected by the proposed rule involve only minimal economic burdens.

B. Paperwork Reduction Act

Rule 4.14(a)(9) affects information collection requirements. As required by the Paperwork Reduction Act of 1995, the Commission has submitted a copy of Rule 4.14(a)(9) to the Office of Management and Budget (OMB) for its review. 44 U.S.C. 3507(h). In response to the Commission's invitation in the notice of proposed rulemaking to comment on any potential paperwork burden associated with this regulation, no comments were received.

As described in detail above, the Commission received comments concerning the substance of the Rule 4.14(a)(9). In recognition of certain comments received, the Commission has decided not to adopt proposed paragraph 4.14(a)(9)(iii) as part of the final rule. This modification, however, is not expected to change the information collection burden information as described in the notice of proposed rulemaking.

C. Administrative Procedure Act

The Administrative Procedure Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for "a substantive rule which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d). Because Rule 4.14(a)(9) grants an exemption from registration, the Commission has determined to make the rule effective immediately.

List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity Pool Operators, Commodity Trading Advisors, Consumer protection, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 4 as follows:

[16] 47 FR 18618–21 (Apr. 30, 1982).

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Section 4.14 is amended by removing the word "or" at the end of paragraph (a)(5), by removing the period at the end of paragraphs (a)(6), and (a)(7) and adding a semicolon in its place, by removing the period at the end of paragraph (a)(8)(v)(D) and adding "; or" in its place, and by adding paragraph (a)(9) to read as follows:

§ 4.14 Exemption from registration as a commodity trading advisor.

(a) * * *

(9) It does not engage in any of the following activities:

(i) Directing client accounts; or

(ii) Providing commodity trading advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients.

* * * * *

Issued in Washington, D.C. on March 3, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–5823 Filed 3–9–00; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. 33–7728A, IC–23958A, IA–1815A; File No. S7–25–95]

RIN 3235–AG27

Personal Investment Activities of Investment Company Personnel

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final rule.

SUMMARY: This release contains a correction to the final amendments to rule 17j–1 under the Investment Company Act of 1940, which were published Friday, August 27, 1999 (64 FR 46821). Rule 17j–1 addresses conflicts of interest that rise from personal securities activities of investment company personnel.

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Penelope W. Saltzman, Senior Counsel, (202) 942–0690, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The amendments to rule 17j–1 under the Investment Company Act of 1940 were designed to improve the regulation of conflicts of interest that arise when registered investment company ("fund") personnel buy and sell securities for their own accounts. The amendments include a requirement that the board of directors of a fund approve the code of ethics of the fund, and any of its investment advisers and principal underwriters. Section 17j–1(c)(1(ii) also was intended to provide that before approving any of these codes, the fund's board must receive a certification from the fund and each of its investment advisers and principal underwriters that the organization providing the certification has adopted certain procedures.

As adopted, section 17j–1(c)(1)(ii) contains an error that may be misleading and should be clarified.

Accordingly, the publication on August 27, 1999 of the final regulation (33–7728), which was the subject of FR Doc. 99–22310, is corrected as follows:

§ 270.17J–1 [Corrected]

On page 46835, first column, fourteenth and fifteenth lines, the phrase "the investment adviser's or principal underwriter's code of ethics" is corrected to read "the Fund's, investment adviser's, or principal underwriter's code of ethics."

Dated: March 6, 200.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5914 Filed 3–9–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–00–003]

Drawbridge Operation Regulations; Darby Creek, Pennsylvania

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the CONRAIL Railroad Bridge across Darby Creek, mile 0.3, in Essington, Pennsylvania. Beginning at 7 a.m. on March 20, through 5 p.m. on April 3, 2000, the bridge may remain in the closed position. This closure is necessary to conduct the installation of a new bridge control house.

DATES: This deviation is effective from 7 a.m. on March 20 until 5 p.m. on April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Coast Guard received a letter from the Consolidated Rail Corporation (CONRAIL) on February 22, 2000, requesting a temporary deviation from the current operating schedule of the Darby Creek bridge set out in 33 CFR 117.903. CONRAIL intends to install a new bridge control house. To facilitate the installation, disassembly of the machinery including electrical and mechanical components of the bridge will be performed. This work requires completely immobilizing the operation of the bascule span. In the event of an emergency, openings of the span will be provided as quickly as possible, but may take two hours or longer to accomplish. Requests for emergency openings can be made by contacting Conrail's resident engineer at (609) 820–7784.

In accordance with 33 CFR 117.35, the District Commander approved Conrail's request for a temporary deviation from the governing regulations in a letter dated February 25, 2000.

The Coast Guard has informed the known commercial users of the waterway of the bridge closure so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

The temporary deviation allows the CONRAIL Railroad Bridge across Darby Creek, mile 0.3, in Essington, Pennsylvania to remain closed from 7 a.m. on March 20, until 5 p.m. on April 3, 2000.

Dated: March 3, 2000.

James W. Underwood,

Captain, U.S. Coast Guard Acting Commander, Fifth Coast Guard District.

[FR Doc. 00–5959 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[CGD 97–004]

RIN 2115–AF42

Traffic Separation Scheme in the Approaches to Delaware Bay

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is codifying the existing traffic separation scheme (TSS) in the approaches to Delaware Bay. The current scheme consists of an Eastern approach, a Southeastern approach, a two-way route for use by tug and tow traffic, and a precautionary area configured to exclude shoal areas too shallow for deep draft vessels. Its arrangement separates large inbound vessels from tug and barge traffic on traditional New Jersey coastal routes. The TSS reduces the number of near misses and the probability of an incident that could result in a major chemical or petroleum oil spill.

DATES: This final rule is effective April 10, 2000.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket CGD 97–004 and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact George Detweiler, Office of Vessel Traffic Management, Coast Guard, at 202–267–0574; e-mail: Gdetweiler@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 9, 1997, we published a notice of proposed rulemaking (NPRM) entitled "Traffic Separation Scheme in the Approaches to Delaware Bay" in the **Federal Register** (62 FR 25576). We did not receive any letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The 1978 amendments to the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223(c), require that a port access route study (PARS) be conducted before establishing or adjusting a traffic separation scheme (TSS). A TSS is an internationally recognized routing measure used to minimize the risk of collision by separating vessels, through traffic lanes, into opposing streams of traffic. To be internationally recognized, a TSS must be approved by the International Maritime Organization (IMO). The IMO approves a TSS only if the TSS complies with IMO principles and guidelines on ships routing. Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 1972) prescribes the conduct of vessels within or near a TSS adopted by IMO.

The Traffic Separation Scheme in the Approaches to Delaware Bay was originally adopted and implemented by the Inter-Governmental Maritime Consultative Organization (as the IMO was formerly known) on October 28, 1969. A change to the Southeastern Approach lanes was implemented on March 15, 1976.

On March 22, 1994, a notice in the **Federal Register** (59 FR 14126) announced that we were conducting a PARS for the Approaches to Delaware Bay. We started the PARS because of concerns expressed by the maritime community about the many near misses between deep-draft vessels and tugs with tows at the Delaware Bay Entrance. A notice of study results for the Approaches to Delaware Bay was published in the **Federal Register** on September 22, 1995 (60 FR 49237).

The study showed that navigation safety, economic, and environmental considerations necessitated amending the TSS to better separate large inbound vessels from tug and barge traffic transiting easterly and northerly along their traditional New Jersey coastal route. In the old configuration near misses occurred frequently. The probability of a major chemical or petroleum oil spill was too great to ignore. Therefore, we proposed to IMO that the Eastern Approach TSS be adjusted; that a Two-Way Traffic Route for tug and barge traffic entering and departing Delaware Bay be established; and that the precautionary area be reconfigured. IMO adopted and implemented our recommendations in 1996.

We received no comments concerning our NPRM. Since the IMO adopted and implemented traffic separation scheme and precautionary area exist, and have been used since 1996, we are publishing this rule to update Subpart B of 33 CFR part 167 to include a description of the Off Delaware Bay Approach Traffic Separation Scheme and Precautionary Area. By codifying the existing TSS and precautionary area, we will make the Code of Federal Regulations consistent with IMO's Ships' Routeing Guide.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This rule will not impose any costs on industry nor will it impose any costs on the U.S. Coast Guard or Federal Government. The benefit of this rule is to assist in handling the increase of total tonnage in the region and to maintain what is considered to be an increased trend rate of 100 large capacity vessels per year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The rule has no costs to industry and we have received no comments from small entities regarding this rule. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. The traffic separation scheme is currently in use and has no economic impact on any small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(i) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects 33 CFR Part 167

Harbors, Marine safety, Navigation (water), and Waterways.

For reasons discussed in the preamble, the Coast Guard amends 33 CFR part 167 as follows:

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

1. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

2. Add § 167.5(f) to read as follows:

§ 167.5 Definitions.

* * * * *

(f) *Two-way route* means a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

3. Add § 167.170 to read as follows:

§ 167.170 Off Delaware Bay Approach Traffic Separation Scheme: General.

The Off Delaware Bay Approach Traffic Separation Scheme consists of four parts: an Eastern Approach, a Southeastern Approach, a Two-Way Traffic Route, and a Precautionary Area. The specific areas in the Off Delaware Bay Approach Traffic Separation Scheme and Precautionary Area are described in §§ 167.171 through 167.174.

4. Add § 167.171 to read as follows:

§ 167.171 Off Delaware Bay: Eastern approach.

(a) A separation zone is established bounded by a line connecting the following geographic positions:

Latitude	Longitude
38°46.30′N	74°34.45′W
38°46.33′N	74°55.75′W
38°47.45′N	74°55.40′W
38°47.35′N	74°34.50′W

(b) A traffic lane for westbound traffic is established between the separation zone and a line connecting the following geographic positions:

Latitude	Longitude
38°48.32′N	74°55.30′W
38°49.80′N	74°34.60′W

(c) A traffic lane for eastbound traffic is established between the separation zone and a line connecting the following geographic positions:

Latitude	Longitude
38°45.45′N	74°56.20′W
38°44.45′N	74°34.35′W

5. Add § 167.172 to read as follows:

§ 167.172 Off Delaware Bay: Southeastern approach.

(a) A separation zone is established bounded by a line connecting the following geographic positions:

Latitude	Longitude
38°27.00′N	74°42.30′W
38°43.40′N	74°58.00′W
38°44.20′N	74°57.20′W
38°27.60′N	74°41.30′W

(b) A traffic lane for north-westbound traffic is established between separation zone and a line connecting the following geographic positions:

Latitude	Longitude
38°28.80′N	74°39.30′W
38°45.10′N	74°56.60′W

(c) A traffic lane for south-eastbound traffic is established between the separation zone and a line connecting the following geographic positions:

Latitude	Longitude
38°42.80′N	74°58.90′W
38°27.00′N	74°45.40′W

6. Add § 167.173 to read as follows:

§ 167.173 Off Delaware Bay: Two-Way Traffic Route.

The Two-Way Traffic Route is recommended for use predominantly by tug and tow traffic transiting to and from the northeast in order to separate such traffic from large, inbound vessel traffic.

(a) The Two-Way Traffic Route is bounded on the west and south by a line connecting the following geographic positions:

Latitude	Longitude
38°50.75′N	75°03.40′W
38°47.50′N	75°01.80′W
38°48.32′N	74°55.30′W
38°50.20′N	74°49.73′W
39°00.00′N	74°40.23′W

(b) The two-way traffic route is bounded on the east and north by a line connecting the following geographic positions:

Latitude	Longitude
39°00.00′N	74°41.00′W
38°50.48′N	74°50.30′W
38°48.80′N	74°55.25′W

Latitude	Longitude
38°48.33′N	74°59.30′W
38°49.10′N	75°01.65′W
38°51.27′N	75°02.83′W

7. Add § 167.174 to read as follows:

§ 167.174 Off Delaware Bay: Precautionary area.

A precautionary area is established as follows: from 38°42.80′N, 74°58.90′W; then northerly by an arc of eight nautical miles centered at 38°48.90′N, 75°05.60′W to 38°48.32′N, 74°55.30′W; then westerly to 38°47.50′N, 75°01.80′W; then northerly to 38°50.75′N, 75°03.40′W; then northeasterly to 38°51.27′N, 75°02.83′W; then northerly to 38°54.80′N, 75°01.60′W; then westerly by an arc of 6.7 nautical miles centered at 38°48.90′N, 75°05.60′W to 38°55.53′N, 75°05.87′W; then southwesterly to 38°54.00′N, 75°08.00′W; then southerly to 38°46.60′N, 75°03.55′W; then southeasterly to 38°42.80′N, 74°58.90′W.

Datum: NAD 83.

Dated: February 18, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–5805 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Postage and Fees Refunds; Unused Adhesive Stamps and Stamps Affixed to Unmailed Matter

AGENCY: Postal Service.

ACTION: Final rule; comments acceptable.

SUMMARY: The Postal Service is amending a portion of its rule on postage and fees refunds, to clarify that payments may be made in some cases for unused adhesive stamps and adhesive stamps affixed to unmailed matter. The purpose of this change is to allow the Postal Service to test market programs that involve the use of postage stamps to pay for goods and services.

DATES: Effective March 9, 2000. Comments must be received on or before April 10, 2000.

ADDRESSES: Mail or deliver written comments to Manager, Advertising Mail, USPS Headquarters, Room 5413, 475 L'Enfant Plaza SW, Washington, DC 20260–2690. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Chris C. Conboy, (202) 268–3120.

SUPPLEMENTARY INFORMATION: Under section P014.2.7 of the Domestic Mail Manual (DMM), the Postal Service currently disallows refunds for unused adhesive stamps and adhesive stamps affixed to unmailed matter. While this policy is necessary to promote the efficiency of ordinary retail postal operations, the current DMM language hampers the testing and development of innovative marketing programs such as the Micropayment Program. Under this program, vendors would be allowed to receive payment for goods and services, priced between $1.00 and $10.00, in the form of postage stamps affixed to a postcard or a similar item. The vendors, in turn, would return the stamps to the Postal Service and receive payments in an amount less than the face value of the stamps. As amended, section P014.2.7 of the DMM will more clearly allow payment for unused adhesive stamps and stamps affixed to unmailed matter in connection with marketing programs approved by the Senior Vice President for Marketing, thus allowing tests of the Micro Payment Program and similar initiatives to proceed.

List of Subjects 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, the Postal Service hereby amends section P014.2.7 of the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend section P014.2.7 of the Domestic Mail Manual (DMM) to read as follows:

P POSTAGE AND PAYMENT METHODS

P000 Basic Information

P010 General Standards

* * * * *

P014 Refunds and Exchanges

* * * * *

2.0 POSTAGE AND FEES REFUNDS

* * * * *

2.7 Unallowable Refunds

Refunds are not made for the following:

a. An application fee to use permit imprints.

b. Collect on delivery (COD), Express Mail insurance, insured, and registered fees after the USPS accepts the article, even if the article is later withdrawn from the mail.

c. Unused adhesive stamps (may be exchanged under 1.1 through 1.5).

d. Adhesive stamps affixed to unmailed matter.

These limits on refunds are not intended to prohibit payments for unused adhesive stamps and adhesive stamps affixed to unmailed matter in connection with an authorized marketing program.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–5960 Filed 3–9–00; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Changes in Procedures for Standard Mail Destination Entry Mailings

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service, after considering the written responses to its proposed rule published in the **Federal Register** on December 22, 1999 (64 FR 71702–71704), requesting public comment on proposed amendments to the Domestic Mail Manual, gives notice that it is implementing amendments to procedures for Standard Mail Destination Entry Mailings.

EFFECTIVE DATE: March 12, 2000.

FOR FURTHER INFORMATION CONTACT: RoseMarie Gay (202) 268–7810.

SUPPLEMENTARY INFORMATION: On December 22, 1999, the Postal Service published in the **Federal Register** (64 FR 71702–71704) a proposal to amend the Domestic Mail Manual procedures for setting appointments for mailings of Standard Mail (A) and Standard Mail (B) from once a month to once a week for recurring appointments.

In addition, the Postal Service proposed that if a mailer requests an appointment at a destination delivery unit (DDU) for a Standard Mail (A) or Standard Mail (B) mailing, then the 5-digit ZIP Codes of the mail being deposited must be provided at the time of request. Also, consistent with current standards for Standard Mail (A), a

change was proposed to provide for the redirection of Standard Mail (B).

Response to Comments

The Postal Service requested comments by January 21, 2000. Two comments were received from the mailing industry.

One mailer commented that there was no mention of how postage will be adjusted and calculated when mail is redirected by the Postal Service. The Postal Service will recalculate postage according to Domestic Mail Manual section E613.2.2.

The mailer also commented that there was no mention of destination delivery unit (DDU) appointments made by using the Drop Shipment Appointment System (DSAS). The commenter also questioned if mailers can make DDU appointments using DSAS and, if DSAS appointments are allowed, whether the procedures are different when contacting the DDU via DSAS.

In response, the Postal Service notes that this comment is beyond the scope of the **Federal Register** notice; however, the commenter should be aware that the procedures for making DDU appointments have not changed.

One other mailer agreed with the change of frequency from once a month to once a week. The mailer also suggested that DSAS be changed so that if a recurring appointment is made "x" days in advance, DSAS would require reconfirmation of the appointment two days prior to the appointment date. If the appointment is not reconfirmed within the assigned time period, then that time slot would be available for others. Currently, the DSAS system cannot perform this function, and adding this feature would require enhancements to this system. Due to considerable expense involved, the Postal Service has determined not to add this enhancement to the system at this time.

This mailer also commented on the error rate of DDU addresses and asked that DDU acceptance hours be expanded. An additional comment by this mailer was that DDU acceptance hours be expanded. These comments are beyond the scope of this **Federal Register** notice and need not be addressed.

The new amendments become effective on March 12, 2000. Until that date, mailers must follow current mailing standards.

Although exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553 (b), (c)) regarding rulemaking by 39 USC 410, the Postal Service hereby gives notice of the following revisions to the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations (see CFR Part 111).

List of Subjects in 39 CFR Part 111

Administrative practice and procedure.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a): 39 U.S.C 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the Domestic Mail Manual as set forth below:

E Eligibility

* * * * *

E600 Standard Mail

* * * * *

E650 Destination Entry

E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail

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3.0 DEPOSIT

* * * * *

(Redesignate 3.3 through 3.11 as 3.4 through 3.12 respectively; add new 3.3 to read as follows:)

3.3 Appointments

Appointments must be made for destination entry rate mail as follows:

a. Except for a local mailer under 4.0 and mailings of perishable commodities, appointments for deposit of destination entry rate mail at BMCs, ASFs, and SCFs must be scheduled through the appropriate appointment control center at least one business day in advance. Same-day appointments may be granted by a control center only through a telephone request. All appointments for BMC loads must be scheduled by the appropriate BMC control center. Appointments for SCFs and ASFs must be scheduled through the appropriate district control center. Appointments may be made up to 30 calendar days before a desired appointment date. The mailer must adhere to the scheduled mail deposit time and location. The mailer must cancel any appointment by notifying the appropriate control center at least 24 hours in advance of a scheduled appointment.

b. Electronic appointments may be made by a mailer or agent using a USPS-issued computer logon ID. Electronic appointments or cancellations must be made at least 12 hours before the desired time and date. All information required by the USPS appointment system regarding a mailing must be provided.

c. For deposit of DDU mailings, an appointment must be made by contacting the DDU at least 24 hours in advance. If the appointment must be canceled, the mailer must notify the DDU at least one business day in advance of a scheduled appointment. Recurring appointments are allowed if shipment frequency is once a week or more often.

d. When Periodicals are transported together with Standard Mail (A) or Standard Mail (B) as a mixed load (E250), an appointment must be obtained for deposit at a destination entry facility.

(Revise heading of redesignated 3.4 to read as follows:)

3.4 Advance Scheduling

(Amend 3.4 by revising 3.4a, b, c, and d to read as follows:)

Except under 4.0, a mailer must schedule deposit of destination rate mailings at least 24 hours in advance by contacting the proper district or BMC control center or destination delivery unit. Appointments at delivery units must be made by calling the delivery unit at least 24 hours in advance. Appointments for ASFs, SCFs, or for any multistop loads must be made through the USPS district control center. Appointments for BMC loads must be scheduled by the proper BMC control center. When making an appointment, or as soon as available, the mailer must provide the control center or DDU with the following information:

a. Mailer's name and address and, when applicable, the name and telephone number of the mailer's agent or local contact.

b. Description of what is being mailed, product name, number of mailings, volume of mail, how prepared, and whether containerized (e.g., pallets). For DDU entries, the mailer also must provide the 5-digit ZIP Code(s) of the mail being deposited.

c. Where mailing was verified.

d. Postage payment method.

* * * * *

3.6 Redirection by USPS

(Revise redesignated 3.6 to read as follows:)

A mailer may be directed to transport destination entry rate mailings to a facility other than the designated DDU, SCF, or BMC due to facility restrictions, building expansions, peak season mail volumes, or emergency constraints.

* * * * *

(Amend heading of 3.8 by changing "standing" to "recurring" to read as follows:)

3.8 Recurring Appointments

(Revise redesignated 3.8 to read as follows:)

A mailer may request recurring appointments, renewable for a 6-month period, by writing to the BMC control center or the district control center that administers the service area in which the destination facility is located. The mailer must present comparable mailings (by product and volume) on a consistent frequency of at least once a week. Failure to adhere to scheduled appointment procedures can cause revocation of the recurring appointment.

* * * * *

E652 Parcel Post

* * * * *

4.0 DEPOSIT

* * * * *

(Redesignate current 4.6 through 4.11 as 4.7 through 4.12, respectively; add new 4.6 to read as follows:)

4.6 Redirection by USPS

With the exception of mail deposited under 1.3e, a mailer may be directed to transport destination entry rate mailings to a facility other than the designated DDU, SCF, or BMC due to facility restrictions, building expansions, peak season mail volumes, or emergency constraints.

(Revise heading of redesignated 4.7 to read as follows:)

4.7 Advance Scheduling

(Amend redesignated 4.7b by adding second sentence to read as follows:)

When making an appointment, or as soon as available, the mailer must provide the control center or DDU with the following information:

* * * * *

b. Description of what is being mailed, product name, number of mailings, volume of mail, how prepared, and whether containerized (e.g., pallets). For DDU entries, the mailer also must provide the 5-digit ZIP Code(s) of the mail being deposited.

* * * * *

4.8 Deposit Conditions

(Amend redesignated 4.8b by changing the frequency from "once a month" to "once a week" to read as follows:)

Deposit of mail also is subject to these conditions:

* * * * *

b. A mailer may request recurring appointments, renewable for a 6-month period, by writing to the BMC control center or the district control center that administers the service area in which the destination facility is located. The mailer must present comparable mailings (by product and volume) on a consistent frequency of at least once a week. Failure to adhere to scheduled appointment procedures can cause revocation of the recurring appointment.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–5962 Filed 3–9–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–105–9946a; FRL–6545–5]

Approval and Promulgation of Implementation Plans, Commonwealth of Kentucky: Approval of Revisions to the Kentucky State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Commonwealth of Kentucky's State Implementation Plan (SIP) submitted through the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) on April 29, 1998. This revision adds a new regulation 401 KAR 50:032, "Prohibitory rule for hot mix asphalt plants," to establish an enforceable production limit for asphalt plants in Kentucky to limit their potential to emit (PTE).

DATES: This direct final rule is effective May 9, 2000 without further notice, unless EPA receives adverse comment by April 10, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Joey LeVasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104.

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (E-mail: levasseur.joey@epa.gov).

SUPPLEMENTARY INFORMATION: The Commonwealth of Kentucky through the KNREPC submitted revisions to the Kentucky SIP on April 29, 1998. These revisions add new Kentucky regulations 401 KAR 50:032, "Prohibitory rule for hot mix asphalt plants," 60:750, "Standards of performance for municipal solid waste landfills," and 61:036, "Emission guidelines and compliance times for municipal solid waste landfills." However, since regulations 401 KAR 60:750 and 61:036 are not SIP-related, Kentucky resubmitted these regulations on December 3, 1998, as required by section 111(d) of the Clean Air Act as amended in 1990 (CAA), and EPA approved these regulations on April 20, 1999, (64 FR 19290). Therefore, today EPA is only taking action on regulation 401 KAR 50:032 as a revision to the Kentucky SIP as described below.

401 KAR 50:032 Prohibitory Rule for Hot Mix Asphalt Plants

This regulation applies to hot mix asphalt plants that without the operational limits of this regulation would have a PTE that would exceed one or more of the major source thresholds and require these plants to obtain a permit as required under part 70 of Title 40 of the Code of Federal Regulations (40 CFR part 70). Compliance with this regulation would only exempt these sources from the 40 CFR part 70 requirement and would not exempt any source from any other applicable requirement. To be eligible for this exemption, sources must comply with maximum consecutive 12 month production and operation limits as well as fuel and recordkeeping requirements which are specific to the type of plant. These requirements are fully discussed in the submittal and the technical support document (TSD) at the Region 4 office listed in the addresses section of this notice.

Final Action

EPA is approving the aforementioned changes to the SIP without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective May 9, 2000 without further notice unless the agency

receives relevant adverse comments by April 10, 2000.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the rule. Only parties interested in commenting on the rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 9, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612 (Federalism) and E.O. 12875 (Enhancing the Intergovernmental Partnership). E.O. 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the E.O. to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. Thus, the requirements of section 6 of the E.O. do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 14, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. In § 52.920(c) the table is amended by adding the entry for 401 KAR 50:032, under chapter 50 in numerical order to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED KENTUCKY REGULATIONS FOR KENTUCKY

Regulation	Title/subject	State effective date	EPA approval date	Federal Register Notice
	Chapter 50 General Administrative Procedures			
401 KAR 50:032	Prohibitory rule for hot mix asphalt plants.	April 13, 1998	March 10, 2000	[Insert FR page citation].

* * * * *

[FR Doc. 00–5931 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Part 2409

[Docket No. FR–4291–C–03]

RIN 2535–AA25

HUD Acquisition Regulation; Technical Correction

AGENCY: Office of the Chief Procurement Officer (CPO).

ACTION: Final rule; correction.

SUMMARY: This document makes a technical correction to a final rule that amended the Department of Housing and Urban Development (HUD) Acquisition Regulation (HUDAR) by restoring language that had been inadvertently removed.

DATES: *Effective Date:* February 22, 2000.

FOR FURTHER INFORMATION CONTACT: Frederick Graves, Policy and Field Operations Division, Office of Procurement and Contracts (Seattle Outstation), U.S. Department of Housing and Urban Development, Seattle Federal Office Building, 909 1st Avenue, Seattle, WA 98104–1000, telephone (206) 220–5122 extension 3450, FAX (206) 220–5406. Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On January 21, 2000, HUD published a final rule (65 FR 3576) that made several amendments to the HUDAR at 48 CFR chapter 24. In the revision of 48 CFR 2409.507–2 by this rule, HUD inadvertently replaced the existing paragraph with a new paragraph, rather than adding the new paragraph to the existing paragraph. This document corrects that error.

Accordingly, under the authority of 40 U.S.C. 486(c), 42 U.S.C. 3535(d), FR Doc. 00–531, the final rule amending the HUD Acquisition Regulation,

published in the **Federal Register** on January 21, 2000 (65 FR 3576), is amended as follows:

1. On page 3576, in column 3, section 2409.507–1 is corrected to read as follows:

2409.507–2 Contract clauses.

The Contracting Officer shall insert a clause substantially the same as the clause at 48 CFR 2452.209–71, Limitation on Future Contracts, in all contracts above the simplified acquisition threshold. The Contracting Officer shall describe in the clause the nature of the potential conflict, and the negotiated terms and the duration of the limitation. The Contracting Officer shall insert the clause at 2452.209–72, Organizational Conflicts of Interest, in all contracts.

Dated: March 3, 2000.

V. Stephen Carberry,

Chief Procurement Officer.

[FR Doc. 00–5812 Filed 3–9–00; 8:45 am]

BILLING CODE 4210–01–P

Proposed Rules

Federal Register
Vol. 65, No. 48
Friday, March 10, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 201

[Docket No. LS–00–05–610 REVIEW]

Federal Seed Act Regulations; Section 610 Review

AGENCY: Agricultural Marketing Service. USDA.

ACTION: Notice of review and request for comments.

SUMMARY: This action announces the Agricultural Marketing Service (AMS) review of the Federal Seed Act Regulations, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments on this notice of review must be received by May 9, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice of review. Comments must be sent to Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, Room 209, Building 306, BARC–E., Beltsville, Maryland 20705–2325; Telephone (301) 504–9430; Fax (301) 504–8098; or E-mail Richard.Payne2@usda.gov. All comments should reference the docket number and date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Seed Regulatory and Testing Branch during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC-East, Beltsville, Maryland 20725–2325; telephone: (301) 504–9237; Fax: (301) 504–8098; E-mail: Richard.Payne2@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Seed Act Regulations (7 CFR part 201) regulate the labeling of agricultural and vegetable seed in interstate commerce. The regulations are effective under the Federal Seed Act of 1939 (FSA), as amended (7 U.S.C. 1551 *et seq.*). The regulations were last amended by a final rule published in the **Federal Register** on January 11, 2000 (64 FR 1704).

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including the Federal Seed Act Regulations, under criteria contained in section 610 of the Regulatory Flexibility Act (FRA; 5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. The February 18 notice stated that AMS would list the regulations to be reviewed in AMS? regulatory agenda which is published in the **Federal Register** as part of the Unified Agenda. However, after further consideration, AMS has decided to announce the reviews in the **Federal Register** separate from the Unified Agenda. Accordingly, this notice and request for comments is made for the Federal Seed Act Regulations.

The purpose of the review will be to determine whether the Federal Seed Act Regulations should be continued without change, amended, or rescinded (consistent with the objectives of the FSA) to minimize the impacts on small entities. In conducting this review, AMS will consider the following factors: (1) The continued need for the regulations; (2) the nature of complaints or comments received from the public concerning the regulations; (3) the complexity of the regulations; (4) the extent to which the regulations overlap, duplicate, or conflict with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the regulations has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

Written comments, view, opinions, and other information regarding the Federal Seed Act Regulations's impact on small businesses are invited.

Dated: March 7, 2000.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 00–5911 Filed 3–9–00; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710, 1717, and 1718

RIN 0572–AB51

Reduction in Minimum TIER Requirements

AGENCY: Rural Utilities Service, Agriculture.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations, reducing the minimum Times Interest Earned Ratio (TIER) required to be met by distribution borrowers from 1.50 to 1.25. Reducing TIER to 1.25, while retaining the existing Debt Service Coverage (DSC), Operating Times Interest Earned Ratio (OTIER) and Operating Debt Service Coverage (ODSC) standards, will provide the borrowers with the flexibility to develop new and unique rate structures in an increasingly competitive retail marketplace, yet not jeopardize loan security. Conforming amendments relating to exemptions of RUS operational controls under section 306E of the Rural Electrification Act; consolidations and mergers; sale, lease or transfer of capital assets; advance approval— 100 percent private financing of distribution, subtransmission and headquarters facilities; and certain other community infrastructure, and mortgage and loan agreements, are also contained herein.

DATES: Written comments must be received by RUS on or before April 10, 2000.

ADDRESSES: Written comments should be addressed to Blaine D. Stockton, Jr., Assistant Administrator, Electric Program, U.S. Department of Agriculture, Rural Utilities Service, Room 4037 South Building, Stop 1560, 14th & Independence Ave., SW., Washington, DC 20250–1560. Telephone 202–720–95457. RUS requests a signed original and three

copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Robert O. Ellinger, Management/Industry Analyst, Rural Utilities Service, Electric Program, Room 4023 South Building, Stop 1560, 14th & Independence Ave., SW., Washington, DC 20250–1560, Telephone: 202–720–0424.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule and (3) in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912 (e)) administrative appeals procedure, if any are required must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the proposed rule are approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 0572–0032.

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State, local, and tribal governments or the private sector. See the final rule related notice entitled "Department Programs and Activities Excluded From Executive Order 12372" (50 FR 47034).

Background

A Times Interest Earned Ratio (TIER) is a financial measurement relating to the borrower's ability, on an annual basis, to earn margins sufficient to cover the interest charges on its total outstanding indebtedness (long-term and short-term). As originally used in RUS loan documentation, the borrower was required to set rates designed to produce annual margins equal to one and one-half times its annual interest cost on total indebtedness for two of the previous three years. The TIER requirement was first established in RUS mortgages in 1971 to facilitate the ability of the then new National Rural Utilities Cooperative Finance Corporation (CFC) to raise lending capital by issuing bonds secured by the pledge of electric distribution system mortgages requiring a TIER of 1.5 or more. CFC no longer imposes this requirement. However, many older RUS mortgages on which CFC is a co-mortgagee still contain a TIER requirement substantially unchanged since 1971. As discussed below, most electric distribution mortgages used by RUS after 1995 require a 1.5 TIER only as a prerequisite to issuing additional secured indebtedness under such mortgages without the need for obtaining the consent of the mortgagees.

As part of the 1995 revision to 7 CFR Part 1718, Loan Security Documents for Electric Borrowers (July 18, 1995), RUS shifted the covenant to design rates to achieve TIER from the mortgage to the new RUS loan contract for distribution borrowers. RUS also retained the existing standard TIER and DSC ratios set at the existing minimum levels of 1.5 and 1.25 respectively, while adding an Operating Times Interest Earned Ratio (OTIER) and Operating Debt Service Coverage (ODSC), both set at a minimum of 1.1 for the borrower's electric utility operations. Adding OTIER and ODSC achieved the RUS objective of excluding major "non-cash" margins from the coverage tests, requiring that borrowers at least break even, with a small margin for error, on their primary business. The borrower's electric utility business accounts for most of the financing assistance provided by RUS, is the main source of revenue for repaying the loans and provides the primary security for the loans. Therefore, RUS believes it is reasonable to expect the core business to be financially viable and not dependent on other sources of income to cover expenses. The addition of OTIER and ODSC as coverage ratios has made TIER (specifically at the 1.5 level) less critical in determining financial stability.

As the electric utility industry continues to move toward a more competitive retail marketplace, RUS is reviewing and updating its policies and procedures relating to electric borrowers. This new competitive environment brings with it the need to provide borrowers greater flexibility in establishing competitive rates. To this end, RUS believes that a reduction in reducing the minimum TIER level to 1.25 is now appropriate. Such a reduction will provide borrowers with additional flexibility to structure competitive rates in the marketplace without jeopardizing loan security. RUS believes that a thorough review of the TIER (as reduced), DSC, OTIER and ODSC ratios, combined with an in-depth study of a borrower's Annual Financial and Statistical Report, provides sufficient information to evaluate a borrower's credit worthiness and to judge loan repayment ability.

In reducing the minimum TIER requirement RUS does not expect a rush

by borrowers to implement this minimum in their financial planning. RUS recognizes that most borrowers manage their systems in such a fashion as to provide for a financial cushion with respect to operating ratios. In many cases this makes good business sense. However, RUS does expect that such a reduction will provide the flexibility required by borrowers facing severe competitive pressure on retail rates to act accordingly.

With respect to the TIER reduction proposal and its relationship to § 1710.7—Exemptions of RUS operational controls under section 306E of the RE Act; § 1717.615—Consolidations and mergers; § 1717.616—Sale, lease or transfer of capital assets; and § 1717.854—Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure; RUS is also proposing to reduce the TIER ratio level to 1.25 in an effort to maintain uniformity throughout the regulations. RUS believes it would be unwise to propose a TIER level different than 1.25. Establishing different TIER levels for different borrower actions and RUS approvals will only serve to add confusion causing administrative and communication problems. RUS believes that a borrower's strong financial condition can be supported by the reduced TIER and current DSC, OTIER and ODSC operation ratios will support the waivers granted in these provisions.

The proposed rule affects existing loan documents. Most electrical distribution borrower mortgages used by RUS contain the provision found in Section 2.03 of the model mortgage (RUS Information Publication 1718B). Generally speaking, Section 2.03 allows the mortgagor to issue additional secured notes under the mortgage even if it does not satisfy the requirements for issuing additional secured debt specified in section 2.01, *provided that the prior written consent of each mortgagee is obtained*. RUS is proposing that the final rule serve as its written consent to the issuance of additional secured notes under Section 2.03 of such mortgage in cases where the borrower would otherwise satisfy all requirements of section 2.01 of its mortgage if the minimum TIER as contained in section 2.01(1) of the mortgage were 1.25, instead of 1.5. Similarly, mortgages following the model mortgage contain a section 3.10 that imposes limitations on the borrower's ability to merge or consolidate without the prior written consent of the mortgagees. RUS is proposing that the final rule serve as its written consent to such mergers or consolidations under section 3.10 of such a mortgage in cases where the borrower would otherwise satisfy all the requirements of section 3.10(6)(B) of its mortgage if the minimum TIER as contained in such section were 1.25 instead of 1.5.

In other words, in most instances it would not be necessary for borrowers who have already used mortgages following the model mortgage to go through the expense and burden of issuing new mortgages or mortgage supplements to take advantage of the proposed change in TIER. Of course, the written consent of any other mortgagees would still have to be obtained and all requirements in the RUS loan contract would need to be observed. RUS is also proposing that future mortgages use the 1.25 TIER instead of the 1.5 TIER contained in sections 2.01 and 3.10 of the model mortgage and it invites the comments of supplemental lenders on such an approach. RUS expects that RUS Information Publication 1718B (the model mortgage) will be conformed to the proposed 1.25 TIER whenever the rule becomes effective.

Similarly, RUS is proposing to substitute a 1.25 TIER for the 1.5 TIER wherever it appears in the model loan contract 7 CFR part 1718, subpart C, appendix A). Loan contracts entered into after the effective date of the proposed rule will use the new standard. In order to eliminate the expense and burden of amending existing loan contracts to implement the change, RUS is proposing that the final rule operate as a self executing amendment to all provisions contained in any existing electric distribution loan contract with RUS that uses a 1.5 TIER provision. It is not expected that any borrower will object to such an amendment of its existing loan contract but any borrower who does should promptly notify RUS to that effect and RUS will maintain the existing provision as to any such objecting borrower.

List of Subjects

7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1718

Administrative practice and procedure, Electric power, Electric utilities, Loan programs—energy, Loan security documents, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, is proposed to be amended to read as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

2. Revise § 1710.7(c)(13)(vi)(B) and § 1710.7(c)(14)(ii) to read as follows:

§ 1710.7 Exemptions of RUS operational controls under section 306E of the RE Act.

* * * * *

(c) * * *

(13) * * *

(vi) * * *

(B) Having a pro forma TIER of not less than 1.25 and a pro forma DSC of not less than 1.25 for each of the two proceeding calendar years; and

* * * * *

(14) * * *

(ii) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.25, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1, in each case based on the average or the best 2 out of the 3 most recent years.

* * * * *

3. Revise § 1710.114(b)(1) to read as follows:

§ 1710.114 TIER, DSC, OTIER and ODSC requirements.

* * * * *

(b) *Coverage Ratios.* (1) Distribution borrowers. The minimum coverage ratios required of distribution borrowers whether applied on an annual or average basis, are a TIER of 1.25, DSC of 1.25, OTIER of 1.1, and ODSC of 1.1. OTIER and ODSC shall apply to distribution borrowers that receive a loan approved on or after January 29, 1996.

* * * * *

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

4. The authority citation for part 1717 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

5. Revise § 1717.615(f)(2) to read as follows:

§ 1717.615 Consolidations and mergers.

* * * * *

(f) * * *

(2) A pro forma TIER of not less than 1.25 and a pro forma DSC of not less than for each of the two preceding calendar years; and

* * * * *

6. Revise § 1717.616(b) to read as follows:

§ 1717.616 Sale, lease, or transfer of capital assets.

* * * * *

(b) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.25, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1 in each case based on the average or the best 2 out of the 3 most recent years.

* * * * *

7. Revise § 1717.854(c)(1) to read as follows:

§ 1717.854 Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure.

* * * * *

(c) * * *

(1) The borrower has achieved a TIER of at least 1.25 and a DSC of at least 1.25 for each of 2 calendar years immediately preceding, or any 2 consecutive 12 month periods ending within 180 days immediately preceding, the issuance of the debt;

* * * * *

PART 1718—LOAN SECURITY DOCUMENTS FOR ELECTRIC BORROWERS

8. The authority citation for Part 1718 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart B—Mortgage for Distribution Borrowers

9. Article II, section 2.01(a)(1)(i) and Article III, section 3.10(6)(B) of Appendix A to Subpart B to Part 1718 are revised to read as follows:

Appendix A to Subpart B to Part 1718—Model Form of Mortgage for Electric Distribution Borrowers

* * * * *

Article II—Additional Notes

Section 2.01 * * *

(a) * * *

(1) * * *

(i) The Mortgagor shall have achieved for each of the two calendar years immediately preceding the issuance of such Additional Notes, a TIER of not less than 1.25 and a DSC of not less than 1.25;

* * * * *

Article III—Particular Covenants of the Mortgagor

* * * * *

Section 3.10 * * *

(6) * * *

(B) having a *pro forma* TIER of not less than 1.25 and a *pro forma* DSC of not less than 1.25 for each of the two preceding calendar years, and

* * * * *

Subpart C—Loan Contracts With Distribution Borrowers

10. The definition of "Coverage Ratios" in Article I, Definitions, and Article V, section 5.4(b) of Appendix A to Subpart C to Part 1718 are revised to read as follows:

Appendix A to Subpart C to Part 1718—Model Form of Loan Contract for Electric Distribution Borrowers

* * * * *

Article I—Definitions

* * * * *

"Coverage Ratios" shall mean, collectively, the following financial ratios: (i) TIER of 1.25; (ii) Operating TIER of 1.1; (iii) DSC of 1.25; and Operating DSC of 1.1.

* * * * *

Article V—Affirmative Covenants

* * * * *

Section 5.4 * * *

(b) The average Coverage Ratios achieved by the Borrower in the 2 best years out of the 3 most recent calendar years must be not less than any of the following:

TIER=1.25

DSC=1.25

OTIER=1.1

ODSC=1.1

* * * * *

Date: March 3, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–5852 Filed 3–9–00; 8:45 am]

BILLING CODE 3410–15–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

8(a) Business Development/Small Disadvantaged Business Status Determinations

AGENCY: Small Business Administration (SBA).

ACTION: Notice of proposed rulemaking.

SUMMARY: SBA proposes to amend its regulations governing the Small Disadvantaged Business (SDB) program. This proposed rule would grant applicants seeking certification as an SDB a 45-day period to request that SBA reconsider its decision finding the applicant ineligible for SDB certification.

DATES: Submit comments on or before April 10, 2000.

ADDRESSES: Written comments should be addressed to Linda Williams, Deputy Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Terri Dickerson, Acting Associate Administrator, Office of Small Disadvantaged Business Certification and Eligibility, at (202) 619–1727.

SUPPLEMENTARY INFORMATION: On June 30, 1998, in response to and in conjunction with the Department of Justice and the Federal Acquisition Regulation reform proposals to implement a government-wide SDB program, SBA issued a final rule establishing the procedural framework for certifying firms as SDBs and for processing protests challenging the disadvantaged status of a firm claiming to be an SDB. *See* 63 FR 35767. Under existing regulations, firms seeking SDB certification must meet certain citizenship, size, ownership, control and social and economic disadvantaged status requirements. Although SBA is responsible for determining an applicant's eligibility for SDB certification, the Agency has approved certain organizations or business concerns (called Private Certifiers) to perform ownership and control determinations.

When an applicant submits an SDB application to SBA, however, SBA's Assistant Administrator for Small Disadvantaged Business Certification and Eligibility (AA/SDBCE) determines whether the applicant satisfies all of the requirements for certification, and issues a single written decision as to whether the applicant qualifies as an

SDB. The current regulations do not grant SDB applicants a right to request that the AA/SDBCE reconsider his or her negative determination of SDB eligibility. Instead, existing regulations afford applicants declined SDB certification on certain grounds the right to appeal the denial to OHA. Further, the regulations provide that once SBA issues a final decision finding the applicant ineligible, the applicant is precluded from reapplying for 12 months after the date of the final SBA decision to decline the application.

SBA has determined that the absence of an opportunity for firms to obtain a reconsideration, coupled with the one year bar on reapplications for SDB certification following a final SBA decision, deprives applicants of a formal mechanism to immediately correct deficiencies in their applications.

This proposed rule would amend SBA's existing regulations, codified at Title 13 Code of Federal Regulation (CFR) part 124, to: (1) Grant applicants the opportunity to request reconsideration and (2) Establish a reconsideration process. This proposed rule would redesignate 13 CFR § 124.1008(f)(3) as 13 CFR § 124.1008(f)(4) and would add a new 13 CFR § 124.1008(f)(3). The new paragraph (3) Would grant applicants denied SDB certification a 45-day period from the date of the AA/SDBCE's written decision to request that the AA/SDBCE reconsider that decision.

As part of the request for reconsideration, this proposed rule would allow applicants to submit additional evidence to show that they have overcome the reason(s) for the AA/SDBCE's denial. If the AA/SDBCE once again declines the application solely on grounds that were not included in the original denial letter, the AA/SDBCE would be required to grant the applicant an additional 45-day period to request that SBA reconsider the new basis for denial. If, however, the AA/SDBCE determines that the applicant is ineligible for SDB certification for one or more of the same reason(s) as addressed in the original decline, the applicant would not be entitled to a second reconsideration.

This proposed rule would not affect an applicant's right under the current 13 CFR 124.1008(f)(3) to appeal the AA/SDBCE's decision denying eligibility. An applicant denied SDB certification based solely on reasons of social disadvantage, economic disadvantage, or disadvantaged ownership or control, would continue to have the right to appeal to OHA. Under this proposed rule, the applicant would have the option to forego the reconsideration process and appeal the AA/SDBCE's initial decision to OHA, or to request reconsideration and if declined a second time solely on those grounds, to appeal the AA/SDBCE's reconsideration decision.

This proposed rule also does not affect an applicant's right with respect to ownership and control determinations of Private Certifiers. Unlike determinations by SBA, the current regulations allow applicants to reapply at any time following a Private Certifier's negative ownership and control determination and therefore obviate the need for a formal reconsideration process.

The proposed reconsideration process under this rule constitutes a procedural amendment that is designed to improve the efficiency and effectiveness of the certification process. This proposed rule also benefits SDB applicants by granting them the right to request that the AA/SDBC&E reconsider his or her denial of SDB eligibility. The proposed rule in no way deprives the public of any existing rights under SBA regulations, nor does it impose any additional burdens on SDB applicants or any other member of the public. For those reasons, SBA is providing a 30-day comment period to avoid unnecessarily delaying the implementation of this rule and to avoid unnecessarily impeding the efficient administration of the SDB certification program.

Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA has determined that this rule is not a significant regulatory action as defined by Executive Order 12866 in that it is not likely to have an annual economic effect of $100 million or more on the economy, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq,* since it would be a procedural amendment to the SDB certification process that would not impose any mandatory requirements on SDB applicants or deprive them of any existing rights under governing SBA regulations.

For purposes of the Paperwork Reduction Act of 1995 (Public Law 104–13), SBA certifies that this interim rule imposes no new reporting or recordkeeping requirements on firms applying to be certified as an SDB. The rule grants certain SDB applicants the right to submit evidence to SBA that they are socially and economically disadvantaged, that they are citizens of the United States, and that they own and control the applicant concern. Once certified as an SDB, this rule does not require an SDB to report any other information to SBA or to maintain additional records.

For purposes of Executive Order 13132, SBA has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

List of Subjects 13 CFR Part 124

Government procurement, Hawaiian natives, Minority businesses, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, for the reasons set forth above, SBA proposes to amend Title 13, CFR as follows:

PART 124—[AMENDED]

1. The authority citation for 13 CFR part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

2. Section 124.1008 is amended by redesignating paragraphs (f)(3) and (4) as paragraphs (f)(4) and (5), respectively, and adding a new paragraph (f)(3) to read as follows:

§ 124.1008 How does a firm become certified as an SDB?

* * * * *

(f) * * *

(3)(i) If the AA/SDBCE declines the firm's application for SDB certification, the firm may request that the AA/SDBCE reconsider his or her initial decline by submitting a written request to the AA/SDBCE within 45 days of the date of the AA/SDBCE's decision. The applicant may provide any additional information and documentation pertinent to overcoming the reason(s) for the initial decline.

(ii) The AA/SDBCE will issue a written decision within 30 days of receiving the applicant's request for reconsideration, if practicable. The AA/SDBCE may either approve the application, deny it on one or more of the same grounds as the initial decision, or deny it on other grounds. If the application is denied, the AA/SDBCE

will explain why the applicant is not eligible for SDB certification and give specific reasons for the decline. If the AA/SDBCE declines the application solely on issues not raised in the initial decline, the applicant may request another reconsideration as if it were an initial decline. If the AA/SDBCE declines the application for one or more of the same reasons as addressed in the initial decline, the applicant is not entitled to a second reconsideration.

* * * * *

Dated: March 1, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–5600 Filed 3–9–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–96–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A300 B2–1C, B2K–3C, and B2–203 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 series airplanes. That action would have required a supersedure of an existing AD that currently requires a one-time visual inspection and ultrasonic inspection to detect cracks in the wing front spar webs, and repair, if necessary. The NPRM would have required a visual inspection and repetitive ultrasonic inspections to detect cracks in the front face of the front spar on both wings between ribs 10 and 11, and repair, if necessary. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has issued separate rulemaking to require these same actions. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on June 10, 1991 (56 FR 26621). The proposed rule would have superseded an existing airworthiness directive (AD) that requires a one-time visual and ultrasonic inspection to detect cracks in the wing spar webs, and repair, if necessary. The proposed rule would have required a visual inspection and repetitive ultrasonic inspections to detect cracks in the front face of the front spar of both wings between ribs 10 and 11, and repair, if necessary. The proposed rule was prompted by a report of a crack found on an in-service airplane in the wing front spar web between ribs 10 and 11. The proposed actions were intended to detect and correct cracking, which could result in reduced structural integrity of the wing front spar.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of the NPRM, the FAA issued an immediately adopted rule, AD 91–18–01, amendment 39–8004 (56 FR 40771, August 16, 1991), which requires repetitive high frequency eddy current inspections to detect cracks in the vertical web of the wing front spar between ribs 10 and 11, and repair, if necessary. Accomplishment of those actions adequately addresses the unsafe condition identified in this NPRM.

FAA's Conclusions

Since issuance of AD 91–18–01, the FAA has determined that the proposed actions of the NPRM (Docket 91–NM–96–AD) are unnecessary.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 13132, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 91–NM–96–AD, published in the **Federal Register** on June 10, 1991 (56 FR 26621), is withdrawn.

Issued in Renton, Washington, on March 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5892 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–6]

Establishment of Class E Airspace; Salem, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace area at Salem Memorial Airport, Salem, MO. The Federal Aviation Administration has developed Area Navigation (RNAV) runway (RWY) 17, RNAV RWY 35 and VHF Omnidirectional Range (VOR)–A Standard Instrument Approach Procedures (SIAPs) to serve Salem Memorial Airport, Salem, MO. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate aircraft executing the SIAPs. This proposal would create controlled airspace at Salem Memorial Airport. The intended effect of this rule is to provide controlled airspace for aircraft executing the SIAPs at the Salem Memorial Airport.

DATES: Comments must be received on or before April 14, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–6, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Airspace

Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ACE–6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Salem Memorial Airport, Salem, MO. The FAA has developed RNAV RWY 17, RNAV RWY 35 and VOR–A SIAPs to serve the Salem Memorial Airport, Salem, MO. Controlled airspace extending upward from 700 feet AGL is needed to contain aircraft executing these SIAPs. The intended effect of this action is to provide segregation of aircraft operating under Instrument Flight Rules (IFR) from aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Salem, MO [NEW]

Salem Memorial Airport, MO
(Lat. 37°36′55″ N., long. 91°36′16″ W.)
Maples VORTAC
(Lat. 37°35′27″ N., long. 91°47′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Salem Memorial Airport, and within 1.1 miles each side of the Maples VORTAC 080° radial extending from the 6.3-mile radius of the Salem Memorial Airport to .2 miles east of the Maples VORTAC.

* * * * *

Issued in Kansas City, MO, on Feburary 28, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–5952 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–105–9946b; FRL—6545–4]

Approval and Promulgation of Implementation Plans Commonwealth of Kentucky: Approval of Revisions to the Kentucky State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Commonwealth of Kentucky's State Implementation Plan (SIP) submitted through the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) on April 29, 1998. This revision adds a new

regulation 401 KAR 50:032, "Prohibitory rule for hot mix asphalt plants," to establish an enforceable production limit for asphalt plants in Kentucky to limit their potential to emit.

In the final rules section of this **Federal Register**, the EPA is approving Kentucky's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by April 10, 2000.

ADDRESSES: All comments should be addressed to Joey LeVasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104.

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (E-mail: levasseur.joey@epa.gov).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 14, 2000.

A. Stanely Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–5932 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 000303059–0059–01; I.D. No.021700B]

RIN No. 0648–XA49

Endangered and Threatened Wildlife and Plants; 90-Day Findings for a Petition to List North American Populations of Smalltooth Sawfish and Largetooth Sawfish as Endangered Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of petition findings; request for information and comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces 90-day findings for a petition to add North American populations of smalltooth sawfish and largetooth sawfish to the List of Threatened and Endangered Wildlife. NMFS finds that the petition and information available in NMFS records indicate that listing North American populations of smalltooth sawfish as endangered under the Endangered Species Act (ESA) may be warranted; and do not indicate that listing North American populations of largetooth sawfish as endangered may also be warranted. NMFS is now initiating a status review of smalltooth sawfish to determine if the petitioned action for that species is warranted. NMFS will maintain the largetooth sawfish as a candidate species, and continue to solicit more information regarding this species to resolve doubts regarding its range and taxonomy.

DATES: The findings announced in this document were made on March 6, 2000. Comments and information related to this petition finding must be received by May 9, 2000.

ADDRESSES: Information and comments concerning these petition findings should be submitted to Charles A. Oravetz, Assistant Regional Administrator, Protected Resources Division, National Marine Fisheries Service, Southeast Regional Office, 9721 Executive Center Drive North, St. Peterburg, Florida 33702–2432. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Jennifer Lee, NMFS Southeast Region, (727)570–5312; or Marta Nammack, NMFS Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

NMFS designated smalltooth sawfish (*Pristis pectinata*) and largetooth sawfish (*P. perotteti*) as candidate species under the ESA on June 23, 1999. The candidate species list serves to notify the public that NMFS has concerns regarding these species/vertebrate populations that may warrant listing in the future, and it facilitates voluntary conservation efforts. On November 30, 1999, NMFS received a petition from the Center for Marine Conservation requesting NMFS to list North American populations of those two species of sawfish as endangered. The petitioner submitted biological, distributional, and historical information on sawfish and identified potential threats including (1) destruction, modification or curtailment of habitat or range; (2) overutilization for commercial, recreational or scientific purposes; (3) inadequacy of existing regulatory mechanisms; and (4) other natural or manmade factors affecting the species existence. Also, the petitioner cited references in support of the petition.

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary of Commerce (Secretary) to add a species or to remove a species from the List of Endangered and Threatened Wildlife and designate critical habitat. Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding on whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding must be promptly published in the **Federal Register**. In determining whether substantial information exists for a petition to list a species, NMFS takes into account information submitted with and referenced in the petition and all other information readily available in NMFS files. NMFS' ESA implementing regulations define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. 50 CFR 424.14(b). If the petition is found to present such information, the Secretary must conduct

a status review of the involved species and make a determination whether the petitioned action is warranted within 12 months of receipt of the petition (1-year determination).

Under the ESA, a listing determination can address a species, subspecies, or distinct population segment (DPS) of a species (16 U.S.C. 1532(15)). A DPS is a vertebrate population that is discrete in relation to the remainder of the species to which it belongs, and significant in relation to the species to which it belongs (61 FR 4722; February 7, 1996). The petition states that populations of smalltooth sawfish occur in the Atlantic, Pacific and Indian Oceans, and largetooth sawfish in the Atlantic and Pacific Oceans. The petition further states that while the species is widely distributed, smalltooth sawfish exists as "distinct population units...with little chance of recruitment from other stocks". Since the petitioner requested listings for largetooth and smalltooth sawfish in U.S. waters, NMFS considers the petition in the context of DPSs with ranges that lie entirely or partially in U.S. waters.

Analysis of Petition

The sawfish family is characterized by a toothy snout projecting well forward of the head. Approximately 2 ft (0.6m) or greater in length at birth, sawfish commonly grow to 16 ft (4.9m), some reaching lengths of up to 18 ft (5.5m). Sawfish are restricted to shallow coastal, estuarine, and fresh waters. They are often found in brackish water near river mouths and large embayments, preferring partially enclosed waters, lying in deeper holes on bottoms of mud or muddy sand. Sawfish are long lived species that grow slowly, mature late and are ovoviviparous, producing a small number of young, resulting in a very low intrinsic rate of population increase for these species. Such animals are usually successful at maintaining relatively small population sizes in relatively constant environments, but are not able to respond rapidly to additional and new sources of mortality resulting from changes in their environment, such as overexploitation and habitat degradation (Musick, 1999).

Smalltooth sawfish and largetooth sawfish may be morphologically distinguished from each other by the number of pairs of rostral teeth, the placement of their pectoral fins relative to their pelvic fins, and the shape of their caudal fin. Despite these differences in morphology, early literature indicates there were some problem with identification of these species in early records.

Smalltooth sawfish—Smalltooth sawfish historically inhabited marine habitats in selected parts of the eastern Pacific Ocean, western and eastern Atlantic Ocean, Mediterranean Sea, Indo-Pacific, and Red Sea, and freshwater habitats in North, Central and South America, Africa, and India. In North America, historical records indicate that during the 19th century, smalltooth sawfish were abundant along both coasts of Florida and in the summer north to North Carolina, in estuaries and lower reaches of rivers, as well as out to depths of about 25m along open coasts fronted by mud flats of the Atlantic and Gulf of Mexico coastal waters of the southeastern United States. Smalltooth sawfish migrated north along the coast during summer months but was probably not a permanent resident in western Atlantic waters north of Florida.

There are no quantitative data available to conduct a formal stock assessment for smalltooth sawfish species, however, the decline of this species is well documented by anecdotal reports. Historical record of field observations indicates that smalltooth sawfish were abundant as recent as the 1950's. Reports of smalltooth sawfish becoming entangled in fishing nets are common in early literature and indicate smalltooth sawfish were considered a nuisance by fishermen, doing considerable damage to their nets when entangled and capable of inflicting serious wounds with their saw. As a result, these fish were usually killed on the spot by fishermen when captured or released only after removal of their saw.

During the 20th century, smalltooth sawfish have been recorded with declining frequency. An independent assessment of smalltooth sawfish was performed by Adams and Wilson in 1995, by contacting all state fisheries management agencies from New York south and west to Texas and asking for any records of recent landings. In addition, research institutions and museums with marine holdings were contacted. From the responses received, it appears that the species no longer occurs along the eastern seaboard and that by the 1970's the species was confined in the Gulf of Mexico to a few restricted locales in Florida, Louisiana and Texas waters. Today, official records of smalltooth sawfish landings are rare throughout their range in North America. Incidental commercial catch was likely the most significant factor in the population's decline. Snelson and Williams (1981) attribute the loss of the species from the Indian River directly to the activities of commercial fishing for other species (Snelson and Williams, 1981). Sawfish are extremely vulnerable to overexploitation due to their exceptional propensity for entanglement in net gear, their restricted habitat, and their low intrinsic rate of increase.

Largetooth sawfish—Largetooth sawfish historically inhabited warm-temperate to tropical marine waters in the Atlantic and eastern Pacific, possibly in the eastern Mediterranean, and freshwater habitats in Central and South America and Africa. It is represented by a closely allied form, *P. microdon* (or forms) along the Pacific Coast of Central America, off northern Australia, off Indo-China, among the East Indies, and in the tropical-subtropical belt of the Indian Ocean. Largetooth sawfish are very similar to *P. microdon* but their exact relationship remains to be determined.

Historical occurrences of largetooth sawfish in North America were much more limited than those of smalltooth sawfish and were strictly confined to shallow (<10 m) warm-temperate and tropical waters (>18° to at least 30°C) in the immediate vicinity of the shore and to estuarine localities, partly enclosed lagoons, and similar situations. In the United States, largetooth sawfish were reported along the Texas coast from the Mexican border (Brownsville) to the Louisiana border (Port Arthur). Evidence to support its historical abundance in this area stems from one literature source, "Notes on Sawfish, *Pristis perotteti* Muller and Henle, not Previously Reported from the Waters of the United States" (Baughman, 1943), that includes a report of seven large largetooth sawfish taken by one fishermen near Galveston, Texas. Oddly, the same scientist indicates in a 1952 publication that West Indian sawfish (*P. microdon*) were sometimes caught in Texas waters and does not mention the largetooth sawfish.

Compared to occurrences of smalltooth sawfish, largetooth and/or West Indian sawfish were relatively rare. Bigelow and Schroeder (1953) noted the fact that all specimens reported from the coast of Texas have been large, in contrast with the abundance of smaller ones further south, suggesting that the production of young is confined chiefly to regions where the temperature of the water is at least as high as 25–26°C. They believed that most of the large specimens taken from the northern, cooler waters had migrated from a tropical nursery, (Bigelow and Schroeder, 1953).

While historic record of field observations indicate there may have

been largetooth sawfish present in North American waters at one time, there are no data to support that there is presently, or ever was, a resident North American population of largetooth sawfish. All of the information included in the petition on the population status of largetooth sawfish pertains to Lake Nicaraguan populations in Central America. NMFS feels applying this information to other stocks is inappropriate because in Lake Nicaragua, historical conditions permitted residence of a large number of sawfish, which reproduced in the lake and constituted a discrete stock, with limited genetic mixing with other stocks (Thorson 1982). Additionally, this Central American population was subjected to a heavy directed commercial fishery in the 1970's and suffered severe declines. In the United States, there are no directed commercial fisheries for sawfish.

Petition Findings

Given the decline in recorded abundance, limited reproductive capacity and documented take by commercial and recreational fishermen, NMFS finds that the petitioner presents substantial scientific and commercial information indicating that a listing of smalltooth sawfish may be warranted based on the criteria specified in 50 CFR 424.14(b)(2). Under section 4(b)(3)(A) of the ESA, this finding requires that a status review of the status of smalltooth sawfish be completed within 1 year of the receipt of the petition (by November 29, 2000) to determine whether the petitioned action to list smalltooth sawfish as endangered is warranted.

NMFS also finds that there is not substantial evidence to warrant initiation of a status review of North American populations of largetooth sawfish, on the basis that the petition did not contain substantial scientific and commercial information to indicate the present existence of such a population eligible for listing. While the petition presented evidence that largetooth sawfish did occur at one time in Texas waters, based on NMFS' review of the petition and on other available information, we believe that the largetooth species is most likely a tropical species, only rarely straying to North American waters.

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be threatened or endangered for any one of the following reasons: (1) Present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by the State and foreign nations to protect such species.

Within 1 year from the date the petition was received, a finding will be made as to whether listing the North American population of the smalltooth sawfish as endangered is warranted, as required by section 4(b)(3)(B) of the ESA.

Information Solicited

To ensure that the status review is complete and based on the best available scientific and commercial data, NMFS is soliciting information about smalltooth sawfish concerning the following: (1) Historical and current abundance and distribution; (2) the existence of reproducing populations; (3) biological or other relevant data to determine the existence or lack of distinct population segments in U.S. waters; (4) information on any current or planned activities that may adversely impact North American sawfish, especially related to the five listing factors identified here; and (5) ongoing efforts to protect sawfish and their habitat. NMFS requests that data, information, and comments be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and the person's name, address, and any association, institution, or business that the person represents. Such information may be submitted to the address given previously.

NMFS is also soliciting data on largetooth sawfish. Even though NMFS has determined that a formal initiation of a status review of largetooth sawfish under the ESA is not warranted at this time, some concerns about its status still remain. If NMFS becomes aware of new information that would warrant a formal initiation of a status review of the largetooth sawfish, NMFS would announce this in the **Federal Register**.

NMFS also requests quantitative evaluations describing the quality and extent of habitats for both species, as well as information on areas that may qualify as critical habitat. Areas that include the physical and biological features essential to the species should be identified. Essential features include, but are not limited to, the following (1) Habitat for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS requests information describing the activities that affect the area or could be affected by the designation; and the economic costs and benefits of additional requirements of management measures likely to result from the designation. The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact "of the [critical habitat] designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs resulting specifically from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 or 4(d) of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

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Snelson, F.F., Jr. and SE. Williams. 1981. Notes on the occurrence, distribution and biology of elasmobranch fishes in the Indian River Lagoon System, Florida. Estuaries 4(2):110–120.

Thorson, T.B. 1982. Life history implications of a tagging study of the largetooth sawfish, *Pristis perotteti*, in the Lake Nicaragua-Rio San Juan system. Environmental Biology of Fishes 7(3): 207–228

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 6, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5907 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 48
Friday, March 10, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 6, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: New Crop Insurance Programs (pilot and private crop insurance policies).

OMB Control Number: 0563–0057.

Summary of Collection: The Federal Crop Insurance Act (ACT), as amended in 1994 and 1996, further expanded the role of the crop insurance program to be the principal tool for risk management by producers of farm products. The expansion mission of the Risk Management Agency (RMA) is to meet the obligation of mandatory program development and to expand the current program to provide risk management products to the greatest number of people covering the greatest dollar value of commodities. Extensive research is completed prior to the development and implementation of a new pilot program of insurance. The development phase of a pilot program includes gathering, analyzing, and evaluating the agronomic suitability and cultural practices of a crop in each specific area. During the pilot crop insurance coverage development process, RMA prepares the crop insurance policy provisions, underwriting guidelines, actuarial documents, and loss adjustment standards. RMA will collect information using several forms.

Need and Use of the Information: RMA will collect information indicating the crop, type, variety, and practice that will be insured in the state and county along with the premium rates and crop price elections that will be available. The information is used to determine liability and premium. The information collected on the forms will be used by Federal Agencies, RMA, crop insurance companies reinsured by FCIC, and other agencies that require such information in the performance of their duties.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 80,889.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 73,228.

Office of Outreach

Title: USDA Minority Farm Register.

OMB Control Number: 0508–NEW.

Summary of Collection: The 1990 Farm Bill, Section 2501 provides the authority for "The Secretary of Agriculture * * * to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs." A team of USDA leaders in early 1997 was appointed to examine civil rights issues in the USDA. A number of civil rights forums were held around the country to hear program delivery comments and complaints. The Secretary appointed a Civil Rights Implementation Team and ordered that all recommendations be implemented. Establishment of a baseline for the number of minority farms by supporting a voluntary register of minority farms, which will help USDA set goals to halt land loss and to monitor the loss of minority-owned farms, was one of the primary recommendations.

Need and Use of the Information: The Office of Outreach will collect information from minorities and socially disadvantaged farmers to document the amount of farmland owned by race/ethnicity. The Register will establish a baseline of minority farmland ownership, which can be monitored over time. The Office of Outreach will provide names and addresses to approved organizations assisting minorities with land retention and acquisition initiatives.

Description of Respondents: Farms.

Number of Respondents: 120,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10,000.

Agricultural Marketing Service

Title: 7 CFR Part 37—Program to Accredit Organic Certifying Agencies.

OMB Control Number: 0581–0183.

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946, as amended, authorizes the Secretary of Agriculture to provide consumers with voluntary services that facilitate the marketing of meat and meat products. A voluntary program to accredit organic certifying agencies would help ensure that U.S. organic products can be exported to European Union countries that require accreditation by a government body under the International Organization for Standardization Guide 65, entitled General Requirements for Bodies Operating Product Certification Programs." The Agricultural Marketing Service (AMS) will collect information using form LS–314, Quality System

Certification Program Application for Service.

Need and Use of the Information: AMS will collect information to identify the responsible authorities in establishments requesting services and initiate billing and collection accounts. Without a properly signed and approved form LS–314, AMS officials would not have the authority to accredit organic certifying agencies nor would users of the service be legally obligated to abide by the regulations or to remit payment for services rendered.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 44.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly.

Total Burden Hours: 3,531.

Agricultural Marketing Service

Title: Fruit and Vegetable Market News Reports.

OMB Control Number: 0581–0006.

Summary of Collection: Section 203(g) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621) directs and authorizes the collection of information and disseminating of marketing information including adequate outlook information on a market-area basis for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and bring about balance between production and utilization of agriculture products. Market News provides all interested segments of the market chain with market information tends to equalize the competitive position of all market participants. The fruit and vegetable industries, through their organizations, or government agencies present formal requests that the Department of Agriculture issue daily, weekly, semi-monthly, or monthly market news reports on various aspects of the industry. The Agricultural Marketing Service (AMS) will collect information in person and by phone.

Need and Use of the Information: AMS will collect information for the production of Market News reports that are then available to the industry and other interested parties in various formats.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 18,361.

Frequency of Responses: Reporting: Weekly; Monthly; Other (Daily).

Total Burden Hours: 121,010.

Agricultural Marketing Service

Title: Application for Plant Variety Protection Certificate and Objective Description of Variety.

OMB Control Number: 0581–0055.

Summary of Collection: The Plant Variety Protection Act (PVPA, was approved December 24, 1970; 84 Stat. 1542, 7 U.S.C. 2321 *et seq.*) was established to encourage the development of novel varieties of sexually-reproduced plants and make them available to the public, providing intellectual property rights (IPR) protected to those who breed, develop, or discover such novel varieties, and thereby promote progress in agriculture in the public interest. The PVPA is a voluntary user funded program which grants intellectual property ownership rights to breeders of new and novel seed- and tuber-reproduced plant varieties. To obtain these rights the applicant must provide information which shows the variety of eligible for protection and that it is indeed new, distinct, uniform, and stable as the law requires. The Agricultural Marketing Service (AMS) will collect information using forms ST–470, ST–470–E and ST Series Forms.

Need and Use of the Information: AMS will collect information from the applicant to determine if the variety is eligible for protection under the PVPA. If this information is not collected there would be no basis for issuing certificates of protection, and no way for applicants to request protection.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government.

Number of Respondents: 116.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,691.

Agricultural Marketing Service

Title: Generic OMB Fruit Crops, Marketing Order Administration Branch.

OMB Control Number: 0581–NEW.

Summary of Collection: Marketing Orders (Orders) and Agreements (Agreements) covering the respective commodities emanate from the Agricultural Marketing Agreement Act of 1937, Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674. This regulation, hereinafter referred to as the Act, was designated to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to producers. The Act provides in section 608(d)(1) that information necessary to determine the extent to which an order has effectuated the declared policy of the Act shall be furnished at the request of the Secretary of Agriculture (Secretary). Orders/Agreements are administered by committees/boards that consist of producer/growers, handlers, and, in some cases, a member representing the public. Producers who voluntarily apply to participate in certain programs are required to submit certain information, pursuant to the specified sections in the order/agreement. AMS will collect information using several forms.

Need and Use of the Information: AMS will collect information relating to supplies, shipments, and dispositions of their respective commodities and other information needed to effectively carry out the purpose of the AMAA and their respective orders.

Descriptive of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Farms; Federal Government.

Number of Respondents: 4,052.

Frequency of Response: Recordkeeping; Reporting: On occasion; Quarterly; Biennially; Weekly; Semi-annually; Monthly; Annually.

Total Burden Hours: 2,978.

Agricultural Marketing Service

Title: Regulations for Inspection of Eggs.

OMB Control Number: 0581–0113.

Summary of Collection: Congress enacted the Egg Products Inspection Act (21 U.S.C. 1031–1056) (EPIA) to provide a mandatory inspection program to assure egg products are processed under sanitary conditions, are wholesome, unadulterated, and properly labeled; to control the disposition of dirty and checked shell eggs; to control unwholesome, adulterated, and inedible egg products and shell eggs that are unfit for human consumption; and to control the movement and disposition of imported shell eggs and egg products that are unwholesome and inedible. The Agricultural Marketing Service (AMS) will collect information using several forms.

Need and Use of the Information: AMS will collect information to serve the Agency mission, program objectives and management needs in providing information on the efficiency and effectiveness of the program—whether the program meets the needs of the users and consumers; workload; area where the workload may be increasing or decreasing, requiring needed changes in field and supervisory staffing and travel; program and cost analyses; changes that may be needed in the program; evaluating the goals of the Agency; and review and evaluation of information collection. The information will be used to assure compliance with the Act and regulations and to take administrative and regulatory action. The information will also be used to

develop and revise cooperative agreements with the States, which conduct surveillance inspections of shell egg handlers and processors. If the information is not collected AMS would not be able to carry out the intent of Congress; *i.e.*, enforce the Act to control the processing, movement, and disposition of restricted shell eggs, unwholesome, adulterated, and inedible eggs and egg products; to prevent their use as human food; to control imports of such eggs and egg products; and to take regulatory action in case of noncompliance.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,134.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly.

Total Burden Hours: 1,922.

Agricultural Marketing Service

Title: Pricing Pilot Program.

OMB Control Number: 0581–NEW.

Summary of Collection: The pilot program was included in the Consolidated Appropriations Act 2000 (Section 3 of H.R. 3428 of the 106th Congress, as enacted by Section 1001(a)(8) of Public Law 106–113 (113 Stat. 1536), signed into law on November 29, 1999. A disclosure statement is to be completed by dairy farmers who choose to participate in a Congressionally—mandated pilot program. The statement contains guidelines to help the farmer understand the forward contract process. The pilot project is to enable the Agricultural Marketing Service (AMS) to conduct a study of forward contracting to determine the impact of milk prices paid to producers in the U.S.

Need and Use of the Information: AMS will collect information to review the contract to ensure it has been signed before exempting a handler from paying a contractor producer the minimum order price for that portion of his or her milk that is covered by the contract. AMS will also determine the impact on milk prices paid to producers in the United States. If the information is not collected the forward pricing pilot program that was mandated by Congress will not be able to be conducted and forward pricing contractors would not be recognized under the Federal Order program.

Description of Respondents: Farms.

Number of Respondents: 8,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,000.

Agency has requested emergency approval by March 24, 2000.

Food and Nutrition Service

Title: Operating Guidelines, Forms and Waivers.

OMB Control Number: 0584–0083.

Summary of Collection: Section 11(d) of the Food Stamp Act of 1977, as amended, provides that the State agency of each participating State shall submit to the Secretary for approval a plan of operation specifying the manner in which the Food Stamp Program will be conducted within the State in every political subdivision. Section 11(e) of the Act provides that the State plan of operation shall provide for State agency verification of household eligibility prior to certification, completion of certification within 30 days of filing of the application, fair hearing, and submission of reports as required by the Secretary. The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, and the program Activity Statement (272.2(a)(2). Under part 272.2(c), the State agency shall submit to the Food and Nutrition Service (FNS) for approval a Budget Projection Statement (which projects total Federal administration costs for the upcoming fiscal year) and a Program Activity Statement (which provides program activity data for the preceding fiscal year). FNS will collect information using Forms FNS 366A and FNS 366B.

Need and Use of the Information: FNS will collect information to estimate funding needs and also provide data on the number of applications processed, number of fair hearings, and fraud control activity. FNS uses the data to monitor State agency activity levels and performance. If the information was not collected it would disrupt budget planning and delay appropriation distributions.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Annually.

Total Burden Hours: 3,768.

William McAndrew,

Departmental Clearance Officer.

[FR Doc. 00–5853 Filed 3–9–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Special Forest Products Resource Management in the Alaska Region

AGENCY: Forest Service, USDA.

ACTION: Notice of interim policy.

SUMMARY: In October 1997 the Regional Forester appointed a Special Forest Products Task Group for the purpose of formulating recommendations on how the Alaska Region should manage commercial use of special forest product resources. This initiated a process of defining and clarifying a practical method for managing the commercial harvest of special forest product resources in the Alaska Region. The Interim Special Forest Products Resource Management Policy incorporates agency, tribal, and public input.

The interim policy presents a region-wide strategy for management of special forest product resources in National Forests in Alaska. This policy applies only on National Forest system lands. It does not affect use of special forest product resources on state, private, or Native corporation lands. Because the policy is region-wide, it must be broad enough to encompass situations throughout the Alaska Region, from the Anchorage area to Hydaburg. It therefore focuses primarily on consistency with the process of special forest product resource management. Forest-related issues and the applicable Forest Plan will be addressed through forest-level policy development. Site-specific issues will be resolved at the local level by the district ranger, with tribal and community involvement, including the use of appropriate National Environmental Policy Act analysis.

DATES: Comments concerning this interim policy should be received in writing by April 24, 2000.

ADDRESSES: Submit written comments to Phyllis Woolwine, Juneau Ranger District, 8465 Old Dairy Road, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: Write Phyllis Woolwine, Juneau Ranger District, 8465 Old Dairy Road, Juneau Alaska 99801 or send e-mail to *sfp/r10 ketchikan@fs.fed.us*. Copies of the policy can be obtained at any Forest Service District Ranger or Forest Supervisor office in Alaska. The policy can also be read on the internet at www.fs.fed.us/r10.

SUPPLEMENTARY INFORMATION: The following is the Interim Special Forest Product Resource Management Policy.

Definitions

Special Forest Products are products derived from non-timber biological resources that are used for personal, educational, commercial, and scientific use. Special forest product resources include, but are not limited to: Mushrooms, boughs, Christmas trees, bark, ferns, moss, burls, berries, cones,

conks, herbs, roots, and wildflowers. Also included are cuttings (such as of willow used for restoration) and transplants (as for landscaping purposes). Special forest product resources exclude saw-timber, pulpwood, cull logs, small round-wood, house logs, utility poles, minerals, animals, animal parts, rocks, water and soil.

Non-Commercial Use

(1) *Subsistence Use*—Customary and traditional uses by rural residents, as defined in the Alaska National Interest Lands and Conservation Act (ANILCA); Title VIII, for direct personal or family use or consumption, barter, sharing, or customary trade that does not constitute a significant commercial enterprise.

(2) *Personal Use*—Gathering of small quantities of materials for personal or family use or consumption; not intended for selling or resale. This includes cultural and traditional use by non-rural residents.

(3) *Other Non-Commercial Use*—This includes collections of plants by non-commercial entities for research not directed toward development of a commercial product. Educational use is also considered non-commercial when the class or workshop is affiliated with a college, university, tribe or other recognized organization. The class instructor may be compensated for his/her time in gathering and preparing the materials for the classroom, either by the organization or by the students.

Commerical Use—Materials harvested for the primary purpose of sale, resale, or use in a manufacturing process resulting in a product that will be sold or used for business activities. Research collections directed at development of a commercial product are also treated as commercial use.

In compliance with national and regional direction on special forest product resource management, forests and districts shall develop commercial special forest product resource management guidelines. Forests and districts shall outreach to tribes and local interested parties to ensure local involvement with the development of local special forest product resource management guidelines. These guidelines will be consistent in process but may vary in approach to specific species.

Permitting Requirements

Permits are required for commercial harvest of any special forest product resource. Research collections directed primarily at developing a commercial product also require a commercial use permit, and are subject to current national terms and conditions.

Collections that qualify as non-commercial research or educational use can be authorized through an administrative use permit or a free use permit.

In the majority of cases, non-commercial gathering of special forest product resources for subsistence and personal use in the Alaska Region do not require a special forest product permit. People collecting special forest product resources on the National Forest System lands in Alaska are expected to exercise reasonable care in protecting the resource from damage. Exercise control where necessary to prevent destructive gathering, over-harvesting, or damage to resource values. The authorized officer may require a free-use permit in order to mitigate site or species-specific concerns.

The Forest Service reserves the right to unilaterally revoke any permit for the permittee's noncompliance with its terms and conditions or when revocation is in the public's interest.

Special forest product resource use is prioritized according to: (1) Subsistence use (highest priority); (2) personal use, including customary and traditional gathering; (3) non-commercial research and educational uses; (4) commercial use. Priority uses may be sustained by not issuing commercial permits for areas where subsistence, personal, or cultural/traditional users gather, or by restricting commercial permits for certain special forest product resources that these users rely on, and which may be in limited supply.

As part of a community-based development of local guidelines, special forest product resource managers will consult with tribal officials in a government-to-government relationship to identify local areas and species of culturally significant plant resources and possible management practices that may enhance those resources. Special forest product resource managers will also outreach to include involvement by other locally interested parties.

Commercial Harvest Guidelines

Areas of primary consideration for commercial special forest product resource harvest are locations where planned management activities would otherwise damage or destroy the product. Under these circumstances, certain harvest restrictions (*e.g.*, quantity limits, certain restricted species, etc.) for special forest product resources may be modified. Areas scheduled for timber harvest, road and trail construction and maintenance, and any vegetation management that will impact the special forest product resources in the area should be given top priority for commercial special forest product resource harvest. Where such areas are not available, commercial special forest product resource harvest may be allowed in other areas. However, commercial use of special forest product resources shall not conflict with standards and guidelines for management prescriptions in the applicable forest plan. Areas of known traditional subsistence and personal use should be prioritized for subsistence and personal use.

Frequency of commercial harvest is based at a minimum on the ability of a species to return to its pre-harvest condition. Other consideration may apply.

Devil's club (*Oplopanax horridus*) is not available for commercial harvest on the Tongass National Forest, based on Forest-wide cultural sensitivity. The availability of devil's club on the Chugach National Forest will be addressed at the Forest and District levels.

Permits for Commercial Harvest of Special Forest Products: Environmental Analysis

Commercial harvest of special forest product resources on National Forest System lands is subject to the National Environmental Policy Act (NEPA). Different proposed harvest activities require different levels of NEPA analysis, including the environmental impact statement (EIS), environmental analysis (EA), and categorical exclusion (CE).

The NEPA process is the appropriate vehicle for including input from all interested parties when there is a request for commercial harvest of special forest product resources.

As part of NEPA analysis for other disturbance activities, consider existing and future potentials for special forest product resource uses.

Civil rights impact analyses and social impact analyses are accomplished through the NEPA process.

In accordance with national and regional direction and the applicable forest plan, the NEPA analysis should identify and address, as appropriate, disproportionately high and adverse human health and environmental effects of any activity on minority populations and low-income populations.

Coordinate with the State and Private Forestry Forest Health Protection program if there are any recognized concerns regarding insect pests and diseases associated with special forest product resources, as harvest of special forest product resources can contribute to their spread.

Project Level Process

Permits are in all cases required for commercial harvest of special forest product resources, as well as for research collections directed at development of a commercial product. For commercial harvest, the permit must regulate the manner in which special forest product resources are harvested, provide information for monitoring the amount harvested, cover the government's administration cost, and to ensure the agency receives a fair market price for the sale of public resources to individuals receiving benefits beyond those received by the general public.

The following procedures for commercial special forest product permitting shall be followed at the district level, ensuring compliance with national, regional, forest and district direction, as well as adequate review by tribes and interested groups or individuals.

Persons wishing to harvest special forest product for commercial or research uses for the Alaska Region must fill out a special forest product permit application, supplied by the district, detailing requested plants/plant parts, quantities, proposed harvest methods, proposed harvest areas (indicated on a map), dates of harvest, number of people involved in harvest and transport, means of access and transportation, and intended use for the product(s). The application form will include summarized instruction on Alaska Region Policy. This application must be reviewed by district resource managers and the district ranger for consistency with national and regional directive, and with district special forest product guidelines. Any proposal at variance with these directives and guidelines shall be brought to the attention of the applicant for revision or exclusion from the application before further consideration is made.

Allowable harvest areas must be consistent with allowable uses designated in the forest plan. The appropriate line officer has the responsibility to restrict harvest areas or plants as necessary to accommodate local subsistence use, traditional use, and personal use priorities, as well as to mitigate for ecological or sustainability concerns. The line officer may limit allowable harvest quantities by each permittee for a number of reasons, including sound land management practices and diversifying economic opportunities among local residents.

All permit applications shall be made available at the district office for access and review by any member of the public. In addition, any groups or individuals interested in specific plants or areas may receive copes of pertinent applications for review as requested.

Local tribes shall be directly notified of any proposed commercial special forest product resource harvest activities within their use area in the interest of government-to-government relations. Through the consultation process, tribal officials may identify any possible area of conflict with cultural and traditional uses such as traditional gathering areas or traditional-use plants associated with the intended harvest. Confidentiality with regard to culturally sensitive information shall be exercised to the greatest extent possible when consulting with tribes. Accessing traditional knowledge should be done in such a way as to maintain tribal ownership of tribally contributed information wherever possible.

The appropriate line officer shall consider the physical and cultural needs of the tribe when making the final decision on permitting, in keeping with applicable federal laws, regulations, and policies relating to government-to-government relations.

All proposed commercial harvest activities shall be reviewed by the district or forest plant specialist in order to identify potential regeneration or sustainability concerns for individual plant species or groups, such as mosses and lichens. The district shall maintain a list of species having ecological, cultural, or sustainability concerns; harvest for those species may be restricted or prohibited. This list will be updated annually or as necessary to include information gained through monitoring, research, or tribal and community input.

All proposed commercial special forest product harvest activities will be subject to the appropriate level of NEPA analysis. Small amounts of non-controversial special forest products may only need review by the district, Tribe and identified interest groups. A categorical exclusion may be appropriate for such permits, if no concerns are raised during the initial review. Larger amounts or potentially controversial species will require further public scoping process.

If a district receives a significant number of special forest product permit applications, NEPA analysis may be done to identify in advance appropriate commercial use areas and harvest limits for specified special forest product resources, for a given period of time. The purpose would be to minimize community benefits while minimizing impacts to subsistence and personal use. However, this type of analysis shall not be done for areas or species until a significant number of permit applications have been received.

As a result of appropriate NEPA analysis, including review by district personnel, tribal government, and interested parties, as well as public scoping as appropriate, the proposed activity on the permit application may be revised before a permit is issued. The permit will be issued on either form FS–2400–1 or FS–2400–4, depending on the quantity and value of the proposed sale. Permits indicate the type of permitted action, the species involved, the amount permitted for harvest method, the area approved for the permitted action, time frames for removal, terms and conditions, local guidelines, and any specialized instructions deemed necessary for such use. The minimum charge for a commercial special forest product permit is $10, in accordance with national direction.

A blanket commercial use permit may be issued to a tribe for the purpose of allowing tribal administration of non-subsistence commercial use by tribal members. This commercial use permit would be issued to the tribe and, like all other commercial use permits, is subject to national, regional and forest special forest product policy and regulations governing commercial use of special forest product resources. Under the terms and conditions of the permit, the tribe may then issue sub-permits allowing members of that tribe to conduct harvest activities. The tribe will have jurisdiction over its members with regard to compliance.

Valuation of Special Forest Products

Rates for commercial harvest of special forest product resources should reflect local conditions such as distance from the market, difficulty of harvest, quality of the product and market factors.

The Alaska Region shall develop a minimum rates table for sale of specific special forest product resources. Development of minimum rates shall be the responsibility of the Director of Forest Management.

Standard rates shall be established and updated for each forest and shall be the responsibility of the forest timber staff officer. Standard rates should be more reflective of fair market value, should be adjusted annually, and should generally be based on 10 percent of the price paid to harvesters.

Product availability is subject to many factors, including abundance, ecological concerns, and use priorities. Some products will not be available on a forest or district based on management decisions at the forest and district level.

Special forest product requests with an appraised value of $2,000 or greater, or those for which competition exists, shall be advertised for 30 days and made available through a bidding process.

Selling units (bushels, pounds, each, etc.) for specific special forest product resources shall be consistent across the Alaska Region to make record keeping, reporting, and monitoring more accurate and efficient.

Inventory and Monitoring Strategies:

Inventory

In order to determine availability of special forest product resources for the Alaska Region, an inventory must be established to assess the range, distribution and abundance of species. Initially, the inventory may rely on using existing data (*e.g.*, stand exams, botany and ecology surveys, research, etc.) and traditional knowledge. The level of inventory should be determined partly by the level of demand and the scope of harvest. Inventory should be developed at the district level. District inventories shall be integrated at the forest level and regional level. The inventory should encompass the following objectives:

(1) Develop a list of species for which inventory information is needed.

(2) Information derived from the NEPA process should be fed into the inventory.

(3) Such Natural Resource Information System (NRIS) tools as the TERRA (Terrestrial) and FSVEG (Field Sampled Vegetation) databases, and the ECOMAP and Existing Vegetation classification and mapping modules, shall be used to track and integrate the inventories at the forest and regional level.

(4) This species presence and abundance information becomes part of a foundation for district-specific determination of available species for commercial harvest. This information does not replace project-specific NEPA analysis.

Monitoring/Administration

As commercial special forest product resource harvest becomes established in the Alaska Region, it is necessary to monitor the ecological impacts of harvest methods and intensities permitted. Results from monitoring activities should be used to adjust special forest product resource harvest parameters. District managers may share monitoring efforts with their cooperative partners to encourage local investment in the program and benefits to the community. The appropriate level of monitoring is determined through NEPA analysis. Suggested monitoring activities include:

(1) Allow yearly budget, inventories and permit demand to establish a special forest products program that ensures adequate monitoring controls while meeting public demand to the best extent possible.

(2) Establish a monitoring program that involves at a minimum the establishment of pre-harvest baseline conditions and periodic visits after harvest to assess species response to harvest and the associated habitat for impacts.

(3) Incorporate monitoring results into the permitting process (*e.g.* adjustment of harvest limits).

(4) Incorporate monitoring activities into ongoing fieldwork (*e.g.* regeneration surveys, harvest evaluations, etc.) wherever possible.

(5) Tie monitoring into the national corporate data base structure (TIM, FACS).

(6) Track monitoring results in the appropriate NRIS database (TERRA, FSVEG).

(7) Permittees shall report the total amount of each special forest product resource harvested from each location at the end of the permitted period.

(8) The special forest products program should not exceed the ability of the Region to adequately monitor its effects. To do otherwise is to violate NEPA and Forest Service sustained yield requirements.

(9) As the program grows, standard rates should be adjusted to reflect current market conditions as well as inventory, monitoring and administration costs. At that time protocol should be intensified to include permit-specific site visits, including permanent plots, on a scheduled basis.

Accountability

It is imperative that accountability be built into the special forest products program or management will be impossible. In order to ensure that permit conditions are being met, the following steps shall be taken:

(1) A written permit shall be issued to each commercial permittee, identifying at a minimum:

(A) Designated harvest area

(B) Termination date of the permit

(C) Product(s) being harvested

(D) Amount of product authorized for harvest (in standardized unit of measure)

(E) Method by which permittee can track the volume harvested

(F) Allowable damage to residual plants/product

(G) Penalties for violation

(2) Commercial harvest permits shall be carried on the permittee at all times while harvesting and transporting the product(s).

(3) Permittee shall keep a running tally of the amount of each product harvested on the back of the permit.

(4) Visit a monitored site once during harvest activity and once at closure to ensure compliance.

(5) If monitoring/administration of the program identifies that unacceptable impacts are occurring, then such areas shall be closed to allow for the recovery of the products.

Violations

Violators may be cited in accordance with the applicable Code of Federal Regulations (CFR), including:

(1) 36 CFR 261.6(a) Cutting or otherwise damaging a forest product except as authorized by a permit or federal law.

(2) 36 CFR 261.6(e) Loading, removing, or hauling a forest product acquired under any permit unless such product is identified as required in such permit.

(3) 36 CFR 261.10(c) Selling or offering for sale any merchandise or conducting any kind of work activity or service unless authorized by a federal law, regulation, or permit.

(4) 36 CFR 261.10(l) Violating any condition or term of a permit.

Dated: February 29, 2000.

James A. Caplan,

Deputy Regional Forester, Natural Resources.

[FR Doc. 00–5581 Filed 3–9–00; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 10, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Grounds Maintenance

Fort Meade, Maryland
NPA: Baltimore Association for Retarded Citizens, Inc., Baltimore, Maryland

Janitorial/Custodial

U.S. Army Reserve Center, 4655 N. Lexington Avenue, Arden Hills, Minnesota
NPA: Accessability, Inc., Minneapolis, Minnesota

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–5920 Filed 3–9–00; 8:45 am]

BILLING CODE 6353–01–U

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m. on Thursday, March 30, 2000, at the Ala Moana Hotel, Gardenia Room, 410 Atkinson Drive, Honolulu, Hawaii 96814. The purpose of the meeting is to discuss civil rights issues in the State, and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 6, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–5849 Filed 3–9–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 4:00 p.m. on Thursday, March 30, 2000, at the United Way of St. Joseph County, 3517 East Jefferson Boulevard, South Bend, Indiana 46660. The purpose of the meeting is to review and act on the Committee's report, "A Study of Decisions to Prosecute Homicides and Drug Offenses in Marion County, Indiana," and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Hollis E. Hughes, 219–232–8201, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 3, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–5848 Filed 3–9–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 5–2000]

Foreign-Trade Zone 15—Kansas City, MO; Expansion of Manufacturing Authority—Subzone 15E, Kawasaki Motors Manufacturing Corp., U.S.A., Plant (Internal-Combustion Engines, Parts of Industrial Robots), Maryville, MO

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, requesting, on behalf of the Kawasaki Motors Manufacturing Corp., U.S.A. (KMM), operator of FTZ Subzone 15E, KMM plant, Maryville, Missouri, an expansion of the scope of manufacturing authority to include new manufacturing capacity under FTZ procedures within Subzone 15E. It was formally filed on March 1, 2000.

Subzone 15E was approved by the Board in 1989 with authority granted for the manufacture of small internal-combustion engines and transmissions for motorcycles, personal water craft, all-terrain vehicles, subject to certain conditions (Board Order 454, 54 FR 50257, 12–5–89). The Board authorized KMM's request for removal of the conditions in 1992 (Board Order 560, 57 FR 4862, 2–10–92), and an expansion of the scope of manufacturing authority under FTZ procedures (engines for lawn/garden equipment and additional small engine production capacity to 500,000 units/year) was approved in 1999 (Board Order 1014, 64 FR 5765, 2–5–99).

KMM is now requesting that its current scope of FTZ manufacturing authority be extended to include small industrial diesel engines and parts of industrial robots. Subzone 15E at the KMM plant (600 employees, 113 acres) would be expanded by some 525,360 square feet from the current 607,080 to a total of 1.13 million square feet of FTZ manufacturing space. Most of the finished engines and industrial robot components are shipped to KMM's Lincoln, Nebraska, plant to equip vehicles and industrial robots

assembled there. The application states that the additional production activity at the Maryville plant will supplant similar activity currently conducted abroad. The new manufacturing activity will involve casting, machining, finishing, and assembly using domestic and foreign materials and components.

The expanded operations will involve a continuation of KMM's utilization of foreign-sourced materials and components (up to 81% of the finished engines' ex-plant value at the outset). Components that will be sourced from abroad include: belts, electrical components, fuel pumps, housings, fasteners, gaskets, flywheels, rocker arms, pistons, crankshafts, connecting rods, cylinder heads, balancer shafts, manifolds, crankcases, intake/exhaust valves, flanges/spacers/grommets, starter motors, breathers, pulleys, exhaust components, carburetors, turbojets/props/turbines and parts, pumps, parts of transmissions, gauges, bearings, hoses, o-rings, resins, cements, adhesives, ballotini, rubber belts, paper packaging, base metal mountings, netting, articles of plastic/rubber, articles of aluminum and zinc, fabricated steel and copper tube/wire/chain/springs, and electric motors/generators (duty rate range: free—12.5%). The application indicates that the extent of domestic sourcing of materials and components will increase in the future.

FTZ procedures would exempt KMM from Customs duty payments on the foreign components used in export activity (about 13% of shipments). On its domestic sales, the company would be able to elect the duty rate that applies to finished engines and industrial robot parts (duty free—2.8%) for the foreign components noted above. The finished engines and industrial robot parts shipped in-bond to Subzone 59A at KMM's plant in Nebraska would be processed for Customs entry after final assembly of robots and vehicles (duty free—2.8%). The application indicates that the savings from FTZ procedures help improve KMM's international competitiveness.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 9, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 24, 2000.

A copy of the application will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: March 3, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–5937 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 6–2000]

Proposed Foreign-Trade Zone—City of Erie (County of Erie), Pennsylvania; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Erie-Western Pennsylvania Port Authority, to establish a general-purpose foreign-trade zone in the City of Erie (County of Erie), Pennsylvania, within the Erie Customs port of entry (within the Cleveland Customs Service port area). The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 1, 2000. The applicant is authorized to make the proposal under Pennsylvania Revised Code, Chapter 31 of Act 116 of 1978.

The proposed zone (26 acres) would be located at the Erie International Marine Terminal facility at the International Port of Erie, on the shore of Presque Isle Bay at East Bay Drive, City of Erie, Pennsylvania. The site is owned by the applicant and is currently under the management of Mountfort Terminal, Ltd., which intends to act as operator of some portion of the zone.

The application indicates a need for foreign-trade zone services in the Erie port region to serve the plastic products industry and commodities such as locomotives (GE), boilers, engines, meters, turbines, castings, forgings, pipe equipment, motors, diesel engines and paper. Several firms have indicated using zone procedures for warehousing/distribution activity. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on April 5, 2000, 9 am, Erie County Public Library, Raymond M. Blasco, M.D., Memorial Library, H.O. Hirt Auditorium, 160 East Front Street, Erie, Pennsylvania 16507.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 9, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 24, 2000).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Erie County Public Library, Raymond M. Blasco, M.D., Memorial Library, 160 East Front Street, Erie, PA 16507.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: March 6, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–5938 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 7–2000]

Foreign-Trade Zone 94—Laredo, Texas; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Laredo, Texas, grantee of FTZ 94, requesting authority to expand the zone to include an additional site in Laredo, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 3, 2000.

FTZ 94 was approved on November 22, 1983 (Board Order 235, 48 FR 53737, 11/29/83) and expanded on March 26, 1990 (Board Order 468, 55 FR 12696, 4/5/90); on December 29, 1992 (Board Order 620, 58 FR 3533, 1/11/93); and, on January 17, 1997 (Board Order 866, 62 FR 4028, 1/28/97). The zone project currently consists of five sites in the Laredo area: *Site 1* (500 acres)—within the 1,600-acre city-owned Laredo

International Airport Industrial Park; *Site 2* (20 acres)—industrial park owned by the Texas-Mexican Railway, along Highway 359 in Webb County; *Site 3* (550 acres)—within the 1,400-acre Killiam industrial area, owned by Killiam Oil Co., at 12800 Old Mines Road; *Site 4* (1,500 acres)—within 7,000-acre International Commerce Center, Laredo Northwest business and residential development; and *Site 5* (930 acres)—La Barranca Ranch Industrial Park, owned by Librado Pina, Inc., Interstate Highway 35, adjacent to the Union Pacific rail line, in northern Webb County.

The applicant is now requesting authority to expand the zone to include a site in Laredo: *Proposed Site 6* (682 acres)—Unitec Industrial Center, Interstate Highway 35, 12 miles northwest of Laredo International Airport. The privately-owned industrial park/distribution center is served by rail and has 1.5 million square feet of existing warehouse space. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 9, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 24, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Lincoln Juarez Bridge, Administrative Building #2, Laredo, TX 78040.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: March 3, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–5939 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–851–802]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From the Czech Republic

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis McClure at (202) 482–0984; AD/CVD Enforcement, Office VI, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

Amendment of Preliminary Determination

The Department of Commerce (the Department) is amending the preliminary determination in the antidumping duty investigation of certain small diameter carbon and alloy seamless standard, line, and pressure pipe from the Czech Republic. This amended preliminary determination results in revised antidumping rates.

On January 28, 2000, the Department issued its affirmative preliminary determination in this proceeding. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from the Czech Republic*, 65 FR 5599 (February 4, 2000).

On February 10, 2000, the petitioners [1] submitted allegations of certain ministerial errors. The petitioners alleged that the Department applied an incorrect conversion to U.S. packing costs, and, that the Department's margin calculation program language incorrectly matched U.S. sales to constructed value when appropriate identical or similar sales matches were available. On February 10, 2000, Nova Hut, the respondent, submitted a ministerial error allegation regarding our product matching criteria alleging that the Department did not match certain U.S. sales to the most similar home market product.

The Department has reviewed its preliminary calculations and agrees with the petitioners that it made certain ministerial errors within the meaning of 19 CFR 351.224(f) and (g). However, we disagree with Nova Hut that our criteria for matching U.S. and home market products contained a ministerial error. *See* "Ministerial Error Allegations for the Preliminary Determination" memorandum to Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, Group II, February 24, 2000, on file in room B–099 of the Main Commerce building.

As a result of our analysis of the petitioners' allegations, we are amending our preliminary determination to revise the antidumping rate for Nova Hut in accordance with 19 CFR 351.224(e), along with the corresponding correction to the "all others" rate, as listed below. Suspension of liquidation will be revised accordingly and parties shall be notified of this determination, in accordance with sections 733(d) and (f) of the Act.

The revised weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin percentage
Nova Hut	32.26
All Others	32.26

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: March 6, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–5936 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] The petitioners in this investigation are Gulf States Tube, a Division of Vision Metals, Inc.; Koppel Steel Corporation; Sharon Tube Corporation; USS/Kobe Steel Corporation; U.S. Steel Group, a unit of USX Corporation; and the United Steelworkers of America.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030700A]

Submission for OMB Review; Proposed Information Collection; Request for Comments

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application Instructions for a Permit for Scientific Purposes or to Enhance the

Propagation or Survival of Threatened or Endangered Species.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection.

Burden Hours: 4,400.

Number of Respondents: 240.

Average Hours Per Response: Ranges between 10 to 40 hours depending on the requirement.

Needs and Uses: The National Marine Fisheries Services (NMFS) is responsible for the conservation and recovery of marine and anadromous species listed as threatened or endangered under the Endangered Species Act (ESA) of 1973. Section 10 of the ESA allows for certain exceptions, such as a taking that would be incidental to an otherwise lawful activity. NOAA has issued regulations to provide for application and reporting for such exceptions. The information is used to evaluate the proposed activity (permits) and on-going activities (reports) and is necessary for NMFS to ensure the conservation of the species under the ESA.

Frequency: On Occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DoC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at Lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent with 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: March 3, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–5905 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030600C]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Recreational Fisheries Data Task Force (RFDTF) will hold a meeting.

DATES: The meeting will be held March 22, 2000, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: This will be the fourth meeting of the RFDTF which will discuss the following topics: review of minutes from third Task Force meeting, report of Task Force working group meeting on developing materials and strategies for obtaining recreational fishery data from fishing and boat clubs, Chairman's report on Task Force presentations to Council and Scientific and Statistical Committee, reports on recent international meetings on sharks, tagging of fishes with satellite and archival tags, upcoming meetings including the international management of tuna in the Central-Western Pacific and managing marine recreational fisheries in the 21st century, and other business as required.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 7, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5928 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021000B]

Marine Mammals; File No. 758–1459–01

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Kimberlee Beckmen, Institute of Arctic Biology, University of Alaska Fairbanks, P.O. Box 757000, Fairbanks, AK 99775–7000, has been issued an amendment to scientific research Permit No.758–1459.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On May 11, 1999, notice was published in the **Federal Register** (64 FR 25294) that an amendment of Permit No. 758–1459, issued August 21, 1998 (63 FR 46417), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The Permit authorizes the Holder to conduct a variety of capture/release research activities on northern fur seal pups. Research will be carried out in conjunction with the NMFS, National Marine Mammal Laboratory.

Dated: March 3, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–5906 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Safety Standard for Omnidirectional Citizens Band Base Station Antennas

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of December 15, 1999 (64 FR 69992), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Safety Standard for Omnidirectional Citizens Band Base Station (16 CFR part 1204). No comments were received in response to that notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information without change through April 30, 2003.

The Safety Standard for Omnidirectional Citizens Band Base Station Antennas establishes performance requirements for omnidirectional citizens band base station antennas to reduce unreasonable risks of death and injury which may result if an antenna contacts overhead power lines while being erected or removed from its site. Certification regulations implementing the standard require manufacturers, importers, and private labelers of antennas subject to the standard to test antennas for compliance with the standard, and to maintain records of that testing.

The records of testing and other information required by the certification regulations allow the Commission to determine that antennas subject to the standard comply with its requirements. This information would also enable the Commission to obtain corrective actions if omnidirectional citizens band base station antennas failed to comply with the standard in a manner which creates a substantial risk of injury to the public.

Additional Information About the Request for Extension Of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Omnidirectional Citizens Band Base Station Antennas, 16 CFR Part 1204.

Type of Request: Extension of approval without change.

General description of respondents: Manufacturers, importers, and private labelers of omnidirectional citizens band base station antennas.

Estimated number of respondents: 5.

Estimated number of hours per respondent: 220 per year.

Estimated number of hours for all respondents: 1,100 per year.

Estimated cost of collection for all respondents: $15,000 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by April 10, 2000, to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, ext. 2226.

Dated: March 7, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–5963 Filed 3–9–00; 8:45 am]

BILLING CODE 6355–01–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting To Discuss the Future of the Office of the Special Assistant for Gulf War Illnesses (OSAGWI)

AGENCY: Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents, Department of Defense.

ACTION: Notice.

SUMMARY: The Board will conduct a public meeting to obtain information from veterans service organizations and the Departments of Defense, Veterans Affairs, and Health and Human Services regarding the design of a successor organization to OSAGWI. The meeting will begin at 9:00 a.m. EDT.

DATES: April 4, 2000.

ADDRESSES: Truman Room, White House Conference Center, 726 Jackson Place, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Contact Mr. David Edman, Special Oversight Board, 1401 Wilson Blvd, Suite 401, Arlington, VA 22209, phone (703) 696–9468, fax (703) 696–4062, or via Email at *Gulfsyn@osd.pentagon.mil.* Requests to present oral comments regarding an OSAGWI successor organization must be sent to Mr. Edman and received no later than noon Friday, March 24, 2000 for consideration. Written comments must be received no later than noon Thursday, March 30, 2000 to ensure their availability to board members prior to the hearing. Copies of the draft meeting agenda can be obtained by contacting Ms. Sandra Simpson at (703) 696–9464 or at the above fax number or above email.

SUPPLEMENTARY INFORMATION: Seating in the Truman Room is limited, and spaces will be reserved only for scheduled speakers. The remaining seats will be available on a first-come, first-served basis beginning at 8:30 a.m. No teleconference lines will be available. The Special Oversight Board expects that statements presented at this meeting will deal only with the design of a successor organization to OSAGWI and its affiliation, if any, with the Departments of Defense, Veterans Affairs, and Health and Human Services. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments will be provided to Board members if at least 10 copies are received in the Special Oversight Board Staff Office no later than noon March 30, 2000. Written comments received after that date will be mailed to Board members after the adjournment of the April 2000 meeting and will also be included in the official records of that meeting. The White House Conference Center, 726 Jackson, Place, NW, is located on the west side of Lafayette Park. Lafayette Park is on the north side of the White House and bounded by Pennsylvania Avenue on the south, H Street on the north and centered at 16th Street Lafayette Park is within easy walking distance of the Farragut West (two city blocks) or McPherson Square (three city blocks)

MetroRail subway stops (Blue and Orange lines). There is no vehicular access to Jackson Place. Taxicabs should be directed to the Decatur House, 1600 H Street, NW.

Dated: March 6, 2000.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–5902 Filed 3–9–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Historical Records Declassification Advisory Panel of the Department of Defense Historical Advisory Committee

ACTION: Notice of partially closed meeting.

SUMMARY: Notice is hereby given of the forthcoming meeting of the Historical Records Declassification Advisory Panel. The purpose of this meeting is to discuss recommendations to the Department of Defense on topical areas of interest that, from a historical perspective, would be of the greatest benefit if declassified. This is the first session held in 2000. The transcripts of the open to the public session will be published on the HRDAP Webpage as they become available. The OSD Historian will chair this meeting.

DATES: Friday, March 24, 2000; 9:00 a.m.–3:00 p.m.

TIME: The March 24th morning HRDAP session will be open to the public from 9:00 a.m. until 11:45 a.m. The March 24th afternoon HRDAP session will be closed to the public from 1:00 p.m. to 3:00 p.m.

ADDRESSES: The National Archives Building, Room 505, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Ross, Room 1D760, Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence), 6000 Defense Pentagon, Washington, DC 20301–6000, telephone (703) 614–5995.

Dated: March 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 00–5901 Filed 3–9–00; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of the Draft Environmental Impact Statement for the Raritan Bay and Sandy Hook Bay, Hurricane and Storm Damage Reduction Study, Port Monmouth, New Jersey

AGENCY: U.S Army Amry Corps of Engineers, DoD.

ACTION: Notice of Availability.

SUMMARY: The New York District of the U.S. Army Corps of Engineers has prepared a Draft Environmental Impact Statement (DESI) for the Raritan Bay and Sandy Hook Bay, Hurricane and Storm Damage Reduction Study, Port Monmouth, New Jersey. The purpose of the study is to identify a plan that would protect the Port Monmouth community from damages caused by hurricanes and storm. The DEIS was prepared to evaluate those alternative identified in the Feasibility Report. Additional information on the study is provided the **SUPPLEMENTARY INFORMATION** section as indicated below.

DATES: The DEIS will be available for public review on or about March 10, 2000. The review period of the document will be for forty five days from the publication date of the DEIS. To request a copy of the DEIS please call (212) 264–4663.

FOR FURTHER INFORMATION CONTACT: For further information regarding the DEIS, please contact Mark Burlas, Project Wildlife Biologist, telephone (212) 264–4663, Planning Division, ATTN: CENAN–PL–EA, Corps of Engineers, New York District, 26 Federal Plaza, New York, New York 10278–0090.

SUPPLEMENTARY INFORMATION:

1. The Raritan Bay and Sandy Hook Bay (RBSHB), Hurricane and Storm Damage Reduction Study, Port Monmouth, New Jersey was authorized by the U.S. House of Representatives, Committee on Public Works and Transportation, adopted August 1, 1990, which states "Resolved by the Committee on Public Works and Transportation of the United States House of Representatives, that the Board of Engineers for Rivers and Harbors is requested to review the report of Chief of Engineers on RBSHB, New Jersey, published as House Document 464, Eighty-seventh Congress, Second Session, and other pertinent reports, to determine the advisability of modifications to the recommendations contained therein to provide erosion control and storm damage prevention for the RBSHB."

2. The 1.8-square-mile Project area is located in Port Monmouth, Middletown Township, Monmouth County, New Jersey, along the RBSHB, bounded by Compton Creek to the east, Pews Creek to the west, and New Jersey State Highway 36 to the south. The Project was divided into three study area for plan formulation and impact assessment purposes: the Bay Shoreline Study Area (BSSA), the Pews Creek Study Area (PCSA), and the Compton Creek Study Area (CCSA). The BSSA is located along the RBSHB, and comprises the shorefront, beach, and dune complex that has historically experienced significant erosion, and consequently provides limited tidal surge and flood protection to the adjacent Port Monmounth community. The PCSA is located in the western portion of the Project area, and is situated in a highly developed, residential portion of Middletown Township. The PCSA includes the Pews Creek channel, a tidal creek that drains to the north into the RBSHB, and is mostly tidal wetlands. The CCSA is located in the eastern portion of the Project area, and is associated with a high developed, residential portion of Middletown Township. The CCSA includes the Compton Creek channel, a tidal creek that drains to the north into RBSHB, and is mostly tidal wetlands.

3. The selected plan is comprised of levees, floodwalls, a storm gate, road closure gates, fortification of an existing dune, pump stations, stormwater retention basins, beach nourishment, periodic beach renourishment, environmental mitigation, and an offshore borrow area. The selected plan, which is the environmentally preferred plan, was determined to be the National Economic Development (NED) Plan. A NED Plan is one that is consistent with the objectives of contributing to NED through the reduction of flood hazards and associated flood damages while protecting the Nation's natural, cultural, biological, historic, and social resources.

a. The District determined that interior drainage facilities were required to safely store and discharge storm water runoff that would collect on the protected side of the CCSA levee. Specifically, these facilities were planned and evaluated separately from the line of protection (levees and floodwalls) and would provide adequate drainage at least equal to that of the existing infrastructure.

b. Throughout the planning process, the District formulated alternative plans to meet general and specific planning objectives while considering the preferences of various interested parties with regard to plan selection and

design. The District has consulted and coordinated its planning efforts with the New Jersey Department of Environmental Protection (JNDEP), the non-Federal sponsor, and representatives of the Middletown Township and various Monmouth County agencies. The plan formulation process emphasized the avoidance and minimization of environmental impacts, especially to wetlands, and then mitigation was included to compensate for unavoidable habitat loss.

c. The selected plan consists of approximately: 7,000 linear feet (ft) of earthen levees average +14 ft National Geodetic Vertical Datum (NGVD); 3,600 ft of concrete floodwalls averaging about +8 ft NGVD; a 40-ft wide storm gate across Pews Creek with a flood water pump house; initial beach nourishment of about 378,500 cubic yards of sand, with periodic renourishment of approximately 125,000 cubic yards of sand at 10-year intervals; and , three interior drainage ponding areas each with primary and secondary drainage outlets.

2. The selected plan without mitigation would directly and indirectly impact approximately 14.89 acres (ac) of wetland and upland areas. The majority of these impacts would involve the conversion of native habitat types to maintained (grass-covered) levees, permanent floodwalls, and storm gate. Specifically, the selected plan would permanently impact several vegetation cover types. Finally, the selected plan would temporarily impact herbaceous, scrub/shrub, Phragmites wetlands, and high salt marsh habitats due to clearing and equipment operation in temporary work areas.

a. Less mobile aquatic and terrestrial wildlife species within the footprint of the selected plan would experience mortality due to construction. Furthermore, a short-term decrease in reproductive success of these species could occur due to construction activities. In the long-term, following habitat conversion, wildlife species would lose or gain habitat resources based on their habitat requirements. No rare, threatened, or endangered species or their critical habitats would be adversely affected by the implementation of the selected plan.

b. The District conducted a Habitat Evaluation Procedures (HEP) analysis to assess the impacts of the selected plan. This HEP analysis concluded that impacts associated with the construction of the selected plan (without mitigation) will result in the loss of 2.04 black duck (Anas rubripes) and 3.14 marsh ren (Cistothorus palustris) habitat units (HUs) at the year of construction (Year 2002). At the year of 2052, black duck and marsh wren habitat quality would be reduced by 49.94 and 136.71 cumulative habitat units (CHUs). Similarly, the AAHU of the black duck and marsh wren decrease by 1.00 and 2.73 over the 50-year design life of the Project. In addition, the HEP analysis determined that 2.13 acres of upland habitat would be impacted, 7.13 acres of wetlands would be converted to upland, and additional 5.63 acres of wetland habitat would be indirectly impacted by the selected plan. Indirect impacts to wetlands involve the conversion, not the loss of non-Phragmites wetlands to Phragmites-dominated wetlands.

c. The selected plan is expected to have a direct, short-term impact on benthic resources. Beach nourishment is expected to smother benthic organisms causing their mortality. However, once buried, some mobile shellfish species and polycheate worms have the ability to burrow upwards and survive. The recovery of benthic resources to preconstruction conditions should occur shortly after construction. A benthic-monitoring plan will be conducted to quantify benthic recovery rates and the composition of the recolonized benthic community.

d. The District developed a tidal hydrodynamic model to compare the effects of a storm gate in Pews Creek to the existing conditions. The model projected that the selected 40-ft storm gate in the open position would lower the mean spring high tide by only 0.72 inches and all other normal tidal events would be unaffected. Accordingly, the effects to the daily tidal exchange are expected to be minute. A monitoring plan is proposed to support the prediction of the model. In addition, the storm gate is anticipated to increase peak ebb tidal velocities potentially allowing more suspended sediments to be transported out of the salt marsh into the RBSHB. As a result, the sedimentation rate of the salt marsh may be reduced.

e. In addition, the implementation of the selected plan can provide benefits to horseshoe crabs (Limulus polyphemus), migratory birds, and the federally threatened piping plover (Charadrius melodus). A wider sandy beach and improved intertidal habitat conditions may provide more suitable spawning habitat for the horseshoe crab, thus potentially increasing prey resources available for consumption by migratory birds. It is well documented that the timing of the spring migration for many species is linked to the spawning activity of the horseshoe crab. Furthermore, a much larger and wider sandy beach created by the construction of the selected plan should provide more roosting space for wintering waterfowl and increase the amount of potential nesting habitat for shorebirds, such as the piping plover.

f. No areas were identified as containing potential environmental contamination, or were considered to pose a great risk to human health. Subsurface testing was performed and evidence of Native American occupation was found in the vicinity of the selected plan's footprint. Further evaluation will be conducted and coordinated with the New Jersey Historic Preservation Office, as part of Section 106 of the National Historic Preservation Act compliance. Short-term negligible impacts to air quality and traffic are expected only during construction.

3. The District, in consultation with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and NJDEP, developed an array of mitigation plans using HEP protocols. The selected mitigation plan proposes to restore approximately 12.80 acres of wetland Phragmites-dominated habitat to salt marsh habitat. As compared to the No-Action alternative, implementation of the selected plan and selected mitigation plan would increase black duck habitat quality by 0.78 HUs and marsh wren habitat quality by 0.96 HUs at the year of construction. At the year of 2052, black duck and marsh wren habitat quality would increase by 157.83 and 106.55 CHUs. In addition, the AAHU of the black duck and marsh wren would increase by 3.16 and 2.13 over the Project's 50-year design life when compared to the No-Action alternative.

a. Based upon a Phragmites Encroachment Model (PEM) developed by the District specifically for the assessment of future conditions and impacts, the construction of the selected plan and selected mitigation plan would prevent the loss of about 15.27 acres of salt marsh habitat when compared to the No-Action alternative for the 50-year design-life of the Project. In summary, the comparison of the selected plan to the No-Action alternative suggests that implementation of the selected plan will provide long-term benefits to wildlife resources of the intertidal zone and the coastal marsh ecosystem at Port Monmouth.

b. Mitigation measures for cultural resources will be developed in conjunction with the New Jersey Historic Preservation Office, the Advisory Council on Historic Preservation (ACHP), and interested parties.

4. Based on coordination with other federal and state agencies, an unresolved issue has been identified. A consensus to determine the appropriate level of compensatory mitigation to offset environmental impacts has not been reached. The District plans to continue its ongoing coordination effort with other federal and state agencies to secure an agreement concerning the amount of mitigation that is needed to appropriately compensate for environmental impacts. No other unresolved issues are known at this time, pending review of this DEIS.

Frank Santomauro,

Chief, Planning Division.

[FR Doc. 00–5839 Filed 3–9–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement (EIS) for the DeLong Mountain Terminal Navigation Improvements, Northwest Arctic Borough, Alaska

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Alaska District, U.S. Army Corps of Engineers, intends to prepare an EIS for navigation improvements for the DeLong Mountain Terminal in northwestern Alaska. The terminal loads ore concentrate from the world's largest zinc mine onto bulk carrier ships and imports fuels and supplies for the mine. Based on the results of a reconnaissance study, the Corps has determined there is a Federal interest in developing access for larger ships to the terminal to increase ore handling capacity for existing and future mining interests and to develop capability for a regional transportation hub. The Corps also has determined that the proposed action may have a significant effect on the quality of the human and natural environment. To comply with the requirements of the National Environmental Policy Act of 1969, as amended, the Corps will prepare an EIS. The Corps will also prepare a feasibility report.

FOR FURTHER INFORMATION CONTACT: For information about the project, alternatives, or the scoping process, contact Guy McConnell at (907) 753–2614 Fax (907) 753–2625, U.S. Army Engineer District, Alaska Attn: EN–CW–ER, P.O. Box 898, Anchorage AK 99506–0898. E-mail: *guy.r.mcconnell@poa02.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Authority

The feasibility study is authorized by a resolution adopted on December 2, 1970, by the Committee on Public Works of the U.S. House of Representatives. A reconnaissance study of navigation needs at DeLong Mountain Terminal and the region around it was completed in November 1999 and determined a Federal interest in a navigation improvement project.

2. Alternatives

A full range of alternatives addressing regional navigation needs will be identified during the scoping process and evaluated in the EIS and feasibility study. Principal project components and alternatives associated with them may include: mooring and loading facilities, which may be lengthened or expanded to increase capacity; a dredged channel to allow deep-draft ships to load ore concentrate directly and to unload directly without using lightering barges; an onshore airstrip and associated facilities to support transportation of fuel and goods to regional villages; and, a disposal area for dredged material. Additional alternatives identified during scoping, and the no-action alternative also will be evaluated.

3. Scoping Meetings and Opportunities to Comment

Public scoping meetings will be held in Kivalina, Noatak, and Kotzebue, Alaska. Additional scoping meetings may be held in Fairbanks and Anchorage, Alaska, if there is sufficient interest. Meetings will be scheduled for times and places to best fit local needs and will be announced in newspapers, on television and radio, and by mailed public notices, and other appropriate means. Interested parties are invited to comment at the meetings or in writing or by e-mail to the contact address listed earlier in this notice. The public scoping comment period will remain open for at lest 60 days after publication of this notice in the **Federal Register**. Scoping comments received more than 60 days after publication this notice will be given all possible consideration.

4. Issues To Be Considered

Issues and concerns will be identified during the scoping process and will become the basis for the analysis of alternatives and environmental consequences in the EIS. Initial coordination and review of other actions in the area indicate that the following will be of concern and will be subjects of the EIS: Potential effects of the project on marine mammals (seals, whales, walrus, and polar bears), including their movements, feeding, other behavior, and their availability to the people of the region who kill them for food and other uses; potential effects of dredging and dredged material disposal on currents, ice movement, and marine organisms; potential effects of increased power generation, moored ships, and fugitive dust on air quality; and potential for the Federal action to induce additional mining and other regional development.

5. Availability

The draft EIS is scheduled to be completed and released for public review in the spring of 2001.

Dated: February 23, 2000.

Guy R. McConnell,

Chief, Environmental Resources Section.

[FR Doc. 00–5838 Filed 3–9–00; 8:45 am]

BILLING CODE 3710–NL–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; Comment request.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 10, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the

information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 6, 2000.

William Burrow,

Leader Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Targeting Teacher Deferment/ Teacher Shortage Area Collection (JS).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary); Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 4748.

Burden Hours: 1077.

Abstract: Collection of State proposals for Targeted Teacher Deferment/Teacher Shortage Areas, of the Higher Education Act of 1986.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Questions regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5859 Filed 3–9–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION.

Submission for OMB Review; Comment Request

AGENCY: Department of Education

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 10, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 7, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Application for the Safe and Drug-Free Schools and Communities National Programs Federal Activities Grants—Counseling Demonstration Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 400; Burden Hours: 11,200.

Abstract: The Department of Education's Safe and Drug-Free Schools Program supports efforts to promote safe and disciplined schools for all students. In order to establish or expand counseling programs in elementary schools, the Department is providing $20 million to LEAs that demonstrate the greatest need for counseling services in the schools to be served, propose the most innovative and promising approaches, and show the greatest potential for replication and dissemination. The Department will use the information to make grant awards.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 (fax). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5949 Filed 3–9–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of restricted eligibility of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–00NT40767 entitled "Recovery and Utilization of Coal Mine Methane: Pilot Scale Demonstration Phase. Pursuant to 10 CFR 600.6(b), DOE has determined that issuance of this financial assistance solicitation on a restricted eligibility basis is necessary and appropriate. Accordingly, the eligibility of recipients for DOE financial assistance awards under this solicitation is limited to the following firms:

Jim Walter Resources, Inc., PO Box 133, Brookwood, AL 35444, Contact: Randall Mills. FuelCell Energy, Inc., 3 Great Pasture Road, PO Box 1305, Danbury, CT 06813–1305, Contact: Michelle Reichert.

West Virginia University Research Corporation On Behalf of West Virginia University/Appalachian Pacific, PO Box 6845, 886 Chestnut Ridge Road, Morgantown, WV 26506–6845, Contact: William W. Reeves.

Noumenon Corporation, 95 Ringold Lane, Morgantown, WV 26508, Contact: Linda Rizer. Northwest Fuel Development, Inc., 4064 Orchard Drive, Lake Oswego OR 97035, Contact: Peet Soot.

Industry partners will be required to cost share a minimum of 50 percent of the project activities.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, U.S. Department of Energy, National Energy Technology Laboratory, PO Box 880,3610 Collins Ferry Road, Morgantown, WV 26507–0880, E-mail Address: crystal.sharp@netl.doe.gov, Telephone Number: (304) 285–4442

SUPPLEMENTARY INFORMATION: In 1995, a competitive solicitation was issued requesting feasibility studies to determine existing, evolving, and novel technologies which may be applicable for capturing and utilizing coal mine methane emissions generated from active and inactive coal mining operations in the U.S. Ten offerors were selected for the Phase I feasibility effort. Based on the results reported from the Phase I effort, DOE down selected from the initial 10 awardees to the five awardees identified above to continue with Phase II, engineering design preparation. Phase II required each awardee to provide at a minimum 20 percent cost share. These five DOE-industry sponsored projects (which are partnerships with industry: coal, gas, electric, and engine companies) are the only efforts which are ongoing under this specific aspect of DOE's Climate Challenge Program which began in 1993 as a result of the Energy Policy Act of 1992. Since the initial issuance of the fully competitive solicitation in 1995 focused on recovering coal mine methane emissions, the remaining five DOE-industry sponsored partnerships (following prior down selects) are in a singularly unique position, from both a technical and government cost effectiveness basis, to continue with the follow-on detailed engineering designs of those technologies solicited under this procurement action which can be reliably demonstrated in the field for timely verification of the cost-effective recovery and utilization of coal mine methane emissions.

Randolph L. Kesling,

Director, Acquisition and Assistance Division.

[FR Doc. 00–5946 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory (INEEL). Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, March 21, 2000, 8 a.m.–5:30 p.m.; Wednesday, March 22, 2000, 8 a.m.–5 p.m.

ADDRESSES: Ameritel Inn 645 Lindsay Boulevard, Idaho Falls, Idaho

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, INEEL SSAB Facilitator Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, (208–522–1662) or visit the Board's Internet homepage at *http://www.ida.net/users/cab;* or contact Mr. Charles Rice, INEEL SSAB Chair, c/o Jason Associates Corporation

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda

Presentations and discussions on the following:

- Finalize a recommendation on the Draft Idaho High-Level Waste and Facilities Disposition Environmental Impact Statement.
- Receive a presentation and finalize a recommendation on the INEEL Institutional plan.
- Finalize a recommendation on the future of the Waste Experimental Reduction Facility.
- Receive a presentation on the status of DOE's efforts regarding Pit 9 and the other pits and trenches at the Radioactive Waste Management Complex.
- Finalize a recommendation on how DOE should evaluate impacts on ecological health at the INEEL.
- Finalize a recommendation on stakeholder involvement in long-term stewardship planning.
- Receive a briefing on the INEEL Technical Library.

(Agenda topics may change up to the day of the meeting; please call the **FOR FURTHER INFORMATION CONTACT** in this notice for the current agenda or visit the Internet site.)

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. This notice is being less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Charles M. Rice, INEEL CAB Chair, 477 Shoup Ave., Suite 205, Idaho Falls, Idaho 83402 or by calling the Board's facilitator at (208) 522–1662.

Issued at Washington, DC on March 6, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–5941 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management (EM) Site-Specific Advisory Board (SSAB), Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, March 18, 2000: 8:30 a.m.–12 p.m.

ADDRESSES: DOE-Fernald Site, Large Laboratory Conference Room, 7400 Willey Road, Hamilton, OH 45013.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

8:30 a.m. Call to order
8:30–8:45 a.m. Chairs Remarks and Announcements
8:45–9 a.m.
Results of February SSAB Chairs Meeting
Results of Land Use Controls Conference
9–9:15 a.m. Silos Decision Update
9:15–10 a.m. Discussion of 2001 Budget and Impacts on Recommendation Schedule
10–10:15 a.m. Break
10:15–11 a.m. Review Plan for Public Access Decisions at Fernald
11–11:45 p.m. Barbara Crandall, Native American Alliance of Ohio
11:45–12 p.m. Public Comment
12 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, C/O Phoenix Environmental Corporation, MS 76, Post Office Box 538704, Cincinnati, Ohio 45253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on March 2, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–5942 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, March 22, 2000; 6 p.m.–9 p.m.

ADDRESSES: White Rock Town Hall, 139 Longview Drive, White Rock, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: *adubois@doeal.gov;* or Internet http:www.nmcab.org

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Opening Activities, 6 p.m.–6:30 p.m.
Public Comment, 6 p.m.–7 p.m.
Committee Reports:
Environmental Restoration,
Monitoring and Surveillance,
Waste Management,
Community Outreach,
Budget

Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on March 6, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–5943 Filed 3–9–00; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.
ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Tuesday, March 28, 2000: 8 a.m.–3:30 p.m.

ADDRESSES: Carson County Square House Museum, TX HWY 207 & 5th Street, Panhandle, Texas.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3125.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

8:00—Welcome/Goal of Groundwater Seminar
8:30—Issues from July 27, 1999, Groundwater 101 Seminar
9:30—State of Texas Regulatory Authority at Pantex
10:30—Role of Bureau of Economic Geology
11:30—Path Forward
12:00—Lunch (on your own)
1:00—Agenda Review/Approval of Minutes
1:15—Co-Chair Comments
1:30—Co-Chair Nomination/Elections
1:45—Updates/Occurrence Reports/DOE
2:00—Task Force/Subcommittee Reports
2:30—Ex-Officio Reports
3:00—Public Comments
3:15—Closing Comments
3:30—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10 p.m. Monday through Thursday; 7:45 am to 5 p.m. on Friday; 8:30 am to 12 noon on Saturday; and 2 p.m. to 6 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9 am to 7 pm on Monday; 9 am to 5 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on March 2, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–5944 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.
ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, March 27, 2000: 3:30 p.m–8:00 p.m.;Tuesday, March 28, 1999: 8:30 a.m.–4:00 p.m.

ADDRESSES: All meetings will be held at: Houndlake Country Club, 1900 Houndlake Drive, Aiken, SC 29803.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of Environmental Quality, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, March 27, 2000

3:30 p.m. Executive Committee
4:30 p.m. Focus Group Guideline Session
6 p.m. Public Comment Session
6:30 p.m. Committee Meetings
8 p.m. Adjourn

Tuesday, March 28, 2000:

8:30 a.m.
- Approval of Minutes, Agency Updates
- Public Comment Session
- Facilitator Update
- Nuclear Materials Committee Report
- Public Comment
- Public Comment (approximately 10 minutes)

12 p.m. Lunch Break
1 p.m.
- Waste Management Committee Report
- Long Term and Strategic Issues Committee Report
- SSAB Chairs Trip Report
- Administrative Subcommittee Report
- Membership Elections
- Administrative Items
- Public Comments

4 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling (803)–725–5374.

Issued at Washington, DC on March 2, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–5945 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Subcommittee on Accelerator Transmutation of Waste of the Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Subcommittee on Accelerator Transmutation of Waste of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: March 30, 2000, 9 AM–Noon.

ADDRESSES: Rotunda Conference Room, University of New Mexico Science and Technology Park, 801 University Boulevard, SE, Albuquerque, New Mexico 87106.

FOR FURTHER INFORMATION CONTACT: Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy (DOE), NE–1, 1000 Independence Avenue, SW, Washington DC 20585, Telephone Number 202–586–0126, E-mail: Norton.Haberman@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The Subcommittee on the Accelerator Transmutation of Waste of the Nuclear Energy Research Advisory Committees has been requested to provide the Director of the Office of Nuclear Energy, Science and Technology with recommendations on the future course of the Accelerator Transmutation of Waste program. The program, as currently constituted, is proceeding according to the guidelines laid down in DOE/RW–0519, "A Roadmap for Developing Accelerator Transmutation of Waste (ATW) Technology." The subcommittee will consider the views of individuals and corporations that have positions on the structure and content of the Accelerator Transmutation of Waste program.

Tentative Agenda

Thursday, March 30, 2000

The agenda for this meeting will be dependent on the responses to this Notice.

Public Participation: The meeting is open to the public on a first-come, first-serve basis. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements should contact Norton Haberman at the address or telephone listed above. Such statements should be limited to 15 minutes. Requests to make oral statements must be made and received five days prior to the meeting. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room. 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington DC on March 6, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–5940 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–59–000, et al.]

Lake Benton Power Partners II LLC, et al.; Electric Rate and Corporate Regulation Filings

March 2, 2000.

Take notice that the following filings have been made with the Commission:

1. Lake Benton Power Partners II LLC

[Docket No. EC00–59–000]

Take notice that on February 25, 2000, Lake Benton Power Partners II LLC (Lake Benton II) filed an application under Section 203 of the Federal Power Act for approval of the purchase of Lake Benton II by a subsidiary of FPL Energy, LLC. Lake Benton II owns a wind power generation project located in southern Minnesota. All of the power from the project is sold to Northern States Power Company.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Energy, Inc.

[Docket No. ER00–664–001]

Take notice that on February 25, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Energy, Inc.

[Docket No. ER00–665–001]

Take notice that on February 25, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Energy, Inc.

[Docket No. ER00–666–002]

Take notice that on February 25, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Energy, Inc.

[Docket No. ER00–667–002]

Take notice that on February 25, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Energy, Inc.

[Docket No. ER00–668–001]

Take notice that on February 25, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Short-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Energy, Inc.

[Docket No. ER00–669–001]

Take notice that on February 25, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Energy, Inc.

[Docket No. ER00–670–001]

Take notice that on February 25, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PPL Electric Utilities Corporation d/b/a/ PPL Utilities

[Docket No. ER00–1712–000]

Take notice that on February 25, 2000, PPL Electric Utilities Corporation, d/b/a PPL Utilities, filed a Notice of Change in Corporate Name to notify the Federal Energy Regulatory Commission that the corporate name of PP&L, Inc. has been changed to PPL Electric Utilities Corporation, d/b/a PPL Utilities, effective February 14, 2000.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER00–1713–000]

Take notice that on February 28, 2000, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing the First Amendment (Amendment) to the Interconnection and Power Agreement (Interconnection Agreement) between Entergy Services and Hodge Utility Operating Company, acting as agent for the Village of Hodge, Louisiana.

Comment date: March 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Minnesota Power, Inc.

[Docket No. ER00–1714–000]

Take notice that on February 28, 2000, Minnesota Power, Inc. (Minnesota Power) submitted for filing a Service Agreement under which Great River Energy will take network integration transmission service under Minnesota Power's open access transmission tariff. Minnesota Power also filed, pursuant to Section 35.15(a) of the Commission's regulations, a notice of termination for the Integrated Transmission Agreement with the Cooperative Power Association, designated as Minnesota Power FERC Electric Rate Schedule No. 89.

Comment date: March 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Columbus Southern Power Company

[Docket No. ER00–1716–000]

Take notice that on February 28, 2000, American Electric Power Service Corporation (AEP), on behalf of Columbus Southern Power Company (CSP), tendered for filing with the Commission a Facilities, Operations, Maintenance and Repair Agreement (Agreement) dated December 1, 1999, between CSP and South Central Power Company (SCP) and Buckeye Power, Inc. (Buckeye).

Buckeye has requested CSP provide a delivery point, pursuant to provisions of the Power Delivery Agreement between CSP, Buckeye Power, Inc. (Buckeye), The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968.

CSP requests an effective date of April 15, 2000, for the tendered agreements.

CSP states that copies of its filing were served upon South Central Power Company and the Public Utilities Commission of Ohio.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Reliant Energy Shelby County, LP

[Docket No. ER00–1717–000]

Take notice that on February 28, 2000, Reliant Energy Shelby County, LP (Reliant Shelby County), tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 authorizing Reliant Shelby County to make sales at market-based rates.

Reliant Shelby County intends to sell electric power at wholesale. In transactions where Reliant Shelby County sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Reliant Shelby County's Rate Schedule provides for the sale of energy and capacity at agreed prices.

Reliant Shelby County has requested this rate schedule become effective on the in service date Reliant Shelby County of its Shelby County, Illinois generating facility.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Maine Public Service Company

[Docket No. ER00–1718–000]

Take notice that on February 28, 2000, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for Network Integration Transmission Service under Maine Public's open access transmission tariff with Houlton Water Company.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Deseret Generation and Transmission Co-operative, Inc.

[Docket No. ER00–1720–000]

Take notice that on February 28, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing an executed Confirmation Agreement between Deseret and AEP

Service Corporation regarding a long-term power purchase and sale transaction under the Western Systems Power Pool Agreement.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5854 Filed 3–9–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–103–000, et al.]

Madison Windpower, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 3, 2000.

Take notice that the following filings have been made with the Commission:

1. Madison Windpower, LLC

[Docket No. EG00–103–000]

Take notice that on February 29, 2000, Madison Windpower, LLC (Madison), a limited liability company with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD 20814, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Madison proposes to construct, own or lease and operate a nominally rated 11.55 MW wind-power generating facility in the Town of Madison, Madison County, New York. The proposed power plant is expected to commence commercial operation in the 3rd quarter of 2000. All output from the plant will be sold by Madison exclusively at wholesale.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Reliant Energy Shelby County, LP

[Docket No. EG00–104–000]

Take notice that on February 28, 2000, Reliant Energy Shelby County, LP, (Reliant Shelby County) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to Section 32 (a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. 79z–5a (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 365.

Reliant Shelby County is a Delaware limited partnership and proposes to construct, own and operate a generation facility in Shelby County, Illinois.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. The Montana Power Trading and Marketing Company and The Montana Power Company

[Docket No. ER97–399–014 and ER97–449–003]

Take notice that on February 29, 2000, The Montana Power Company and Montana Power Trading and Marketing tendered for filing an updated market analysis and change of status report in connection with their market-based rate authority.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Engage Energy US, L.P.

[Docket No. ER97–654–014]

Take notice that on February 28, 2000, Engage Energy US, L.P. (Engage), tendered for filing a three-year update to its market power study in compliance with the Commission's Order in Docket No. ER97–654–000, granting Newco US, L.P., whose name subsequently was changed to Engage, market rate authority.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. California Power Exchange Corporation

[Docket No. ER00–951–001]

Take notice that on February 29, 2000, the California Power Exchange Corporation, on behalf of its CalPX Trading Services Division (CTS), on February 29, 2000, made a filing to comply with the Commission's February 24, 2000 order in this proceeding.

Copies of the filing were served upon the CTS" jurisdictional customers and the California Public Utilities Commission.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Energy Service Corporation on behalf of West Penn Power Company

[Docket No. ER00–1127–000

Take notice that on February 28, 2000, Allegheny Energy Service Corporation, on behalf of West Penn Power Company (WP), tendered for filing a Power Service Agreement and an Addendum thereto dated February 24, 2000, under which WP will provide full requirements service to the Letterkenny Industrial Development Authority in Franklin County, Pennsylvania.

The parties request a May 3, 1999, effective date. The filing is an amendment of the filing made under cover letter dated January 14, 2000.

Copies of the filing have been provided to the Pennsylvania Public Utility Commission and all parties of record.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Reliant Energy Services, Inc.

[Docket No. ER00–1526–000]

Take notice that on February 28, 2000, Reliant Energy Services, Inc. (RES), tendered for filing at the direction of Commission Staff and pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d (1994), and Part 35 of the Commission's Regulations, 18 CFR 35, an amendment to its February 4, 2000, Petition in the above-captioned docket.

RES requests waiver of the prior notice requirements of Section 35.3 of the Commission's Regulations, 18 CFR 35.3, to permit its amended filing to become effective as of February 4, 2000, the date of its initial filing in this docket.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. New Century Services, Inc.

[Docket No. ER00–1707–000]

Take notice that on February 28, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and American Electric Power Service Corporation.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. New Century Services, Inc.

[Docket No. ER00–1708–000]

Take notice that on February 28, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and American Electric Power Service Corporation.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. FirstEnergy System

[Docket No. ER00–1706–000]

Take notice that on February 28, 1999, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Borough of Zelienople, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is March 1, 2000, for the above mentioned Service Agreement in this filing.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER00–1705–000]

Take notice that on February 28, 2000, PECO Energy Company (PECO), tendered for filing an Interconnection Agreement between PECO and Bio-Energy Partners for Generation Interconnection and Parallel Operation.

Copies of this filing were served on Bio-Energy Partners and the Pennsylvania Public Utility Commission.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Sierra Pacific Power Company

[Docket No. ER00–1709–000]

Take notice that on February 28, 2000, Sierra Pacific Power Company (Sierra), tendered for filing Service Agreements (Service Agreements) with the following entities for Point-to-Point Transmission Service under Sierra Pacific Resources Operating Companies FERC Electric Tariff Original Volume No. 1, Open Access Transmission Tariff (Tariff), for Non-Firm Point-to-Point Transmission Service to Sierra Pacific Energy Company, American Electric Power Company, Inc., and PP&L Montana, LLC., and also Short-Term Firm Point-to-Point Transmission Service to Sierra Pacific Energy Company, American Electric Power Company, Inc., PP&L Montana, LLC.

Sierra filed the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission Regulations.

Sierra also submitted revised Sheet No. 173 (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit and effective date of March 1, 2000, for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. FirstEnergy System

[Docket No. ER00–1710–000]

Take notice that on February 28, 2000, FirstEnergy System tendered for filing Service Agreements to provide Firm Point-to-Point Transmission Service for Borough of Zelienople, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff.

The proposed effective date under this Service Agreement is March 1, 2000, for the above mentioned Service Agreement in this filing.

Comment date: March 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of New Mexico

[Docket No. ER00–1711–000]

Take notice that on February 28, 2000, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement, dated February 4, 2000, for firm point-to-point transmission service and ancillary services, between PNM Transmission Development and Contracts (Transmission Provider) and PNM International Business Development (Transmission Customer), under the terms of PNM's Open Access Transmission Service Tariff. This service agreement supersedes an existing service agreement between the Transmission Provider and the Transmission Customer which expired by its own terms on December 31, 1999.

Under the Service Agreement, Transmission Provider continues to provide to Transmission Customer reserved capacity from PNM's San Juan Generating Station 345 kV Switchyard (point of receipt) to PNM's Luna 345kV Switching Station (point of Delivery) for the period beginning January 1, 2000 and ending December 31, 2001.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–1715–000]

Take notice that on February 28, 2000, Alliant Energy Corporate Services, Inc., tendered for filing an executed Service Agreement for short-term firm point-to-point transmission service, establishing Great River Energy as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of February 4, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Midwest Energy, Inc.

[Docket No. ER00–1719–000]

Take notice that on February 28, 2000, Midwest Energy, Inc. filed a quarterly report for the fourth quarter of 1999.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Pool Participants Pool

[Docket No. ER00–1723–000]

Take notice that on February 29, 2000, the New England Power Pool Participants Committee submitted changes to Appendix 11–D of Market Rule 11, with a requested effective date of May 1, 2000.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER00–1721–000]

Take notice that on February 29, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing proposed modifications to its Open Access Transmission Tariff.

The purpose of these proposed modifications is to accommodate Virginia Power's Retail Access Pilot Program. Virginia Power requests an effective date of May 1, 2000.

Copies of the filing were served upon the public utility's jurisdictional customers, and the U.S. Department of Energy, Virginia State Corporation Commission, Public Service Commission of D.C., South Carolina Public Service Commission, Tennessee Public Service Commission, Texas Public Utility Commission, New Jersey Board of Public Utilities, Illinois Commerce Commission, Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Maine Public Utilities Commission, Maryland Public Service Commission, Missouri Public Service Commission, Alabama Public Service Commission, Arkansas Public Service Commission, Delaware Public Service Commission, New York Public Service Commission, Pennsylvania Public Utility Commission, and the Vermont Public Service Board.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1722–000]

Take notice that on February 29, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 1 to Supplement No. 9 to the Market Rate Tariff to incorporate a Netting Agreement with Virginia Electric and Power Company into the tariff provisions.

Allegheny Energy Supply Company requests a waiver of notice requirements to make the Amendment effective as of February 28, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. New England Power Pool

[Docket No. ER00–1724–000]

Take notice that on February 29, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing three (3) Service Agreements for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's Regulations.

Acceptance of these Service Agreements will recognize the provision of Firm In Service transmission to Northeast Utilities Service Company, in conjunction with Regional Network Service, in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented. In each case, an effective date of March 1, 2000 for commencement of transmission service has been requested.

Copies of this filing were sent to all NEPOOL Participants, the New England public utility commissioners and all parties to the transaction.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Pool

[Docket No. ER00–1725–000]

Take notice that on February 29, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by The Energy Consortium (TEC). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of TEC's signature page would permit NEPOOL to expand its membership to include TEC. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make TEC a member in NEPOOL.

The Participants Committee requests an effective date of March 1, 2000, for commencement of participation in NEPOOL by TEC.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. New England Power Pool Participants Committee

[Docket No. ER00–1726–000]

Take notice that on February 29, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Rumford Power Associates Limited Partnership (Rumford). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Rumford's signature page would permit NEPOOL to expand its membership to include Rumford. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Rumford a member in NEPOOL.

The Participants Committee requests an effective date of March 1, 2000, for commencement of participation in NEPOOL by Rumford.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. American Electric Power Service Corporation

[Docket No. ER00–1727–000]

Take notice that on February 29, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing an amendment to the subject docket to include the Specifications for Long-Term Firm Point-to-Point Transmission Service Reservations to be attached as addenda to the previously filed Firm Point-to-Point Transmission Service Agreements with American Municipal Power—Ohio, Inc., Cleveland Public Power, Commonwealth Edison Company, and PECO Energy Power Team. All of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after January 1, 2000.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Arizona Public Service Company

[Docket No. ER00–1728–000]

Take notice that on February 29, 2000, Arizona Public Service Company (APS), tendered for filing umbrella Service Agreements to provide Short-Term Firm and Non-Firm Point-to-Point Transmission Service to Coral Power, L.L.C., PP&L Montana, L.L.C., and Tri-State Generation and Transmission Association, Inc., under APS' Open Access Transmission Tariff.

A copy of this filing has been served on Coral Power, L.L.C., PP&L Montana, L.L.C., and Tri-State Generation and Transmission Association, Inc., and the Arizona Corporation Commission.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1729–000]

Take notice that on February 29, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 26 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply Company offers generation services; and also files Amendment No. 1 to Supplement No. 26 to incorporate a Netting Agreement with Western Resources, Inc., into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make service available to Western Resources, Inc., and make the Netting Agreement effective as of February 28, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Dayton Power and Light Company

[Docket No. ER00–1730–000]

Take notice that on February 29, 2000, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing Statoil Energy Services, Inc., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Statoil Energy Services, Inc. and the Public Utilities Commission of Ohio.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Southwestern Electric Power Company

[Docket No. ER00–1731–000]

Take notice that on February 29, 2000, Southwestern Electric Power Company (SWEPCO), tendered for filing as Assignment and Consent Agreement reflecting SWEPCO's consent to the assignment of certain rights and obligations under SWEPCO's contract with Cajun Electric Cooperative, Inc. (Cajun Electric). Specifically, the Assignment and Consent Agreement reflects Louisiana Generating LLC's (Louisiana Gen) commitment and SWEPCO's consent for Louisiana Gen to assume the rights, duties and obligations of Cajun Electric to purchase power from SWEPCO under an Electric System Interconnection Agreement dated January 1, 1988, as amended, between Cajun Electric and SWEPCO, and an As-Available Energy Transmission Service Letter Agreement dated May 31, 1989, as amended, between Cajun Electric and SWEPCO.

SWEPCO seeks an effective date for the Assignment and Consent Agreement coincident with the closing date of the Asset Purchase Agreement, which is expected to occur by late March 2000.

Accordingly, to the extent necessary, SWEPCO requests waiver of the Commission's notice requirements. SWEPCO also requests expedited consideration of the filing, including a shortened notice and comment period.

A copy of the filing was served on each of Ralph R. Mabey as Chapter 11 Trustee for Cajun Electric, Louisiana Gen and the Louisiana Public Service Commission.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. New England Power Company

[Docket No. ER00–1733–000]

Take notice that on February 29, 2000, New England Power Company (NEP), tendered for filing an Agreement for Preliminary Engineering and Design Support Services with AES Londonderry, L.L.C.

NEP requests an effective date of March 1, 2000, for the agreement.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. New England Power Pool Participants Committee

[Docket No. ER00–1734–000]

Take notice that on February 29, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by NYSEG Solutions, Inc. (NYSEG). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of NYSEG's signature page would permit NEPOOL to expand its membership to include NYSEG. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make NYSEG a member in NEPOOL. The Participants Committee requests an effective date of May 1, 2000, for commencement of participation in NEPOOL by NYSEG.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. New England Power Pool Participants Committee

[Docket No. ER00–1735–000]

Take notice that on February 29, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by XENERGY Inc., (XENERGY). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of XENERGY's signature page would permit NEPOOL to expand its membership to include XENERGY. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make XENERGY a member in NEPOOL.

The Participants Committee requests an effective date of May 1, 2000, for

commencement of participation in NEPOOL by XENERGY.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Soyland Power Cooperative, Inc.

[Docket No. ER00–1736–000]

Take notice that on February 29, 2000, Soyland Power Cooperative, Inc. (Soyland), tendered for filing with the Federal Energy Regulatory Commission (the Commission) proposed changes to its Rate Schedule A, designated as Supplement No. 2 to its Rate Schedules.

Soyland requests an effective date of February 1, 2000, for the proposed change to its Rate Schedule A. Accordingly, Soyland requests waiver of the Commission's regulations. Rate Schedule A is the formulary rate under which Soyland recovers the costs associated with its service to its Members pursuant to the Wholesale Power Contract that Soyland has with each Member.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Virginia Electric and Power Company

[Docket No. ER00–1737–000].

Take notice that on February 29, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing an Amended and Restated Market-Based Sale Tariff.

Virginia Power requests authorization to sell power at market-based rates at wholesale entities for resale outside the Company's service territory; and to both affiliated and non-affiliated energy service providers who are participating in Virginia's Retail Access Pilot Program. Virginia Power also purposes to correct two errors which it has identified in its currently filed tariff.

Copies of the filing were served upon the public utility's jurisdictional customers and Virginia State Corporation Commission.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Bangor Hydro-Electric Company

[Docket No. ER00–1738–000]

Take notice that on February 29, 2000, Bangor Hydro-Electric Company (Bangor Hydro), tendered pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, revisions to its Open Access Transmission Tariff (OATT) to clarify its retail rate schedules.

Bangor Hydro proposes that the filing become effective March 1, 2000.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Phelps Dodge Energy Services, LLC

[Docket No. ER00–1739–000]

Take notice that on February 29, 2000, Phelps Dodge Energy Services, LLC (PDES), tendered for filing an "umbrella" Service Agreement between PDES and Tucson Electric Power Company (TEP) under which PDES will make short-term sales of capacity and energy to TEP, pursuant to PDES' market-based rate tariff, which was approved by the Commission in Green Power Partners I, LLC, *et al.*, 88 FERC ¶ 61,005 (1999).

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. Southwest Power Pool, Inc.

[Docket No. ER00–1740–000]

Take notice that on February 29, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing an executed service agreement for firm point-to-point transmission service under the SPP Tariff with Southwestern Public Service Company (SPS).

SPP requests an effective date of January 1, 2002 for this agreement.

Copies of this filing were served upon SPS.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. FirstEnergy Operating Companies and Duquesne Light Company

[Docket No. ER00–1741–000]

Take notice that on February 29, 2000, the FirstEnergy Operating Companies and Duquesne Light Company (collectively, Parties), tendered for filing under Section 205 of the Federal Power Act an Ancillary Services Service Agreement under which Duquesne Light Company may purchase certain ancillary services from the FirstEnergy Operating Companies.

The Parties request an effective date of May 1, 2000, for the agreement.

A copy of the filing was served upon the Pennsylvania Public Utility Commission and the Public Utilities Commission of Ohio.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. Madison Windpower, LLC

[Docket No. ER00–1742–000]

Take notice that on February 29, 2000, Madison Windpower, LLC (Madison), tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates and to reassign transmission capacity. Madison is constructing a nominally rated 11.55 MW wind-powered generating facility located in the Town of Madison in Madison County, New York.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5855 Filed 3–9–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2004 Resource Pool-Loveland Area Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed allocation procedures and call for applications.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy, is publishing this notice of proposed procedures to implement Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 CFR part 905. The Energy Planning and Management Program (Program), which was developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20,

1995. Subpart C of the Program provides for establishing project-specific resource pools and allocating power from these pools to new preference customers. These proposed procedures, in conjunction with the Loveland Area Projects Final Post-1989 Marketing Plan (Post-1989 Marketing Plan) will establish the framework for allocating power from the resource pool to be established for the Loveland Area Projects (LAP).

DATES: The comment period on the proposed procedures begins today and ends June 8, 2000. To be assured of consideration, Western must receive all written comments by the end of the comment period. Western will hold public information forums and public comment forums on the proposed procedures on March 14, 21, and 23, 2000, at the following locations and times:

1. March 14, 2000, information forum begins at 10 a.m. Comment forum immediately following in Northglenn, Colorado.

2. March 21, 2000, information forum begins at 10 a.m. Comment forum immediately following in Casper, Wyoming.

3. March 23, 2000, information forum begins at 10 a.m. Comment forum immediately following in Topeka, Kansas.

ADDRESSES: Send written comments regarding these proposed procedures to: Mr. Joel K. Bladow, Regional Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003. All documentation developed or retained by Western for the purpose of developing these procedures will be available for inspection and copying at the Rocky Mountain Customer Service Region Office, at 5555 East Crossroads Boulevard., Loveland, CO 80538–8986.

Public information and comment forums will be held at:

1. Holiday Inn Denver-Northglenn, 10 East 120th Avenue, Northglenn, Colorado.

2. The Events Center, 1 Events Drive, Casper, Wyoming.

3. Holiday Inn Topeka West, 605 Fairlawn Road, Topeka, Kansas.

FOR FURTHER INFORMATION CONTACT: Ron Steinbach, Power Marketing Manager, 970–490–7322; David Holland, Contracts and Energy Services Manager, 970–490–7259; or Susan Steshyn, Public Utilities Specialist, 970–490–7237. Written requests for information should be sent to Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003. After all public comments have been thoroughly considered, Western will prepare and publish Final Post-2004 Resource Pool Allocation Procedures in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Western published the Final Rule for the Program, 60 FR 54151, October 20, 1995. The rule became effective on November 20, 1995. The goal of the Program is to require planning and efficient electric energy use by Western's long-term firm power customers and to extend Western's firm power resource commitments. One aspect of the Program is to establish project-specific power resource pools when existing resource commitments expire and allocate power from these pools to new preference customers. Existing resource commitments for LAP expire on September 30, 2004. In accordance with the Program, 96 percent of the firm power resources available in 2004 was extended to existing customers. The remaining 4 percent will be placed in a resource pool from which power allocations to new customers will be made following these proposed procedures and the Post-1989 Marketing Plan, 48 FR 38279, August 23, 1983. The Proposed Post-2004 Resource Pool Allocation Procedures for LAP address (1) eligibility criteria; (2) how Western plans to allocate the pool resources to new customers as provided for in the Program; and (3) the terms and conditions under which Western will sell the allocated power.

I. Amount of Pool Resources

Western proposes to allocate up to 4 percent of the LAP long-term firm hydroelectric resource available as of October 1, 2004, as firm power (firm power). Present hydrologic studies indicate that about 28 MW will be available for the summer season and about 24 MW will be available for the winter season. Firm power means firm capacity and associated energy allocated by Western and subject to the terms and conditions specified in Western's long term firm power electric service contracts.

II. General Eligibility Criteria

Western proposes to apply the following general eligibility criteria to applicants seeking an allocation of firm power under the proposed Post-2004 Resource Pool Allocation Procedures.

A. Eligible applicants must be preference entities as defined by section 9c of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented.

B. Eligible applicants must be located within the currently established LAP marketing area.

C. Eligible applicants must not be currently receiving benefits from a current LAP firm power allocation. Eligible Native American applicants are not subject to this requirement.

D. Eligible utility and nonutility applicants must be able to use the firm power directly or be able to sell it directly to retail customers.

E. Eligible applicants that are municipalities, cooperatives, public utility districts, and public power districts, must have utility status by September 30, 2000. Utility status means that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis.

F. Eligible Native American applicants must be Native American Tribes as defined in the Indian Self Determination Act of 1975, 25 U.S.C. 450b, as amended.

III. General Allocation Criteria

Western proposes to apply the following general allocation criteria to applicants seeking an allocation of firm power under the proposed Post-2004 Resource Pool Allocation Procedures.

A. Allocations of firm power will be made in amounts as determined solely by Western in exercising its discretion under Reclamation Law.

B. An allottee will have the right to purchase such firm power only after executing an electric service contract between Western and the allottee.

C. Firm power allocated under these procedures will be available only to new eligible applicants in LAP's existing marketing area. This marketing area includes parts of Colorado, Kansas, Nebraska, and Wyoming. LAP's marketing area is specifically defined as the portion of Colorado east of the Continental Divide, Mountain Parks Rural Electric Association's service territory in Colorado west of the Continental Divide, the portion of Kansas located in the Missouri River Basin, and the portion of Kansas west of the eastern borders of the counties intersected by the 100th Meridian, the portion of Nebraska west of the 101st Meridian, and Wyoming east of the Continental Divide.

D. Allocations made to Native American Tribes will be based on estimated or actual load developed by the Native American Tribes. Western will adjust inconsistent estimates during the allocation process. Western is

willing to assist tribes in developing load estimating methods assuring consistent Native American Tribe load estimates across the region.

E. Allocations made to qualified utility and nonutility applicants will be based on 1998–99 winter season and 1999 summer season loads. Western will apply the Post-1989 Marketing Plan criteria to these loads.

F. Firm capacity and energy will be based upon the applicant's seasonal system load factor.

G. Any electric service contract offered by Western to an applicant shall be executed by the applicant within six (6) months from the date of offer, unless otherwise agreed to in writing by Western.

H. The initial resource pool will be dissolved subsequent to the closing date for executing firm power contracts. Firm power not under contract will be used as Western determines.

I. The minimum allocation shall be 100 kilowatts (kW).

J. The maximum allocation for qualified utility and nonutility applicants shall be 5,000 kilowatts (kW).

K. Contract rates of delivery shall be subject to adjustment in the future as provided for in the Program.

L. Western retains the right to provide the economic benefits of its resources directly to tribes, if unanticipated obstacles to delivering hydropower benefits to Native American Tribes arise.

IV. General Contract Principles

Western proposes to apply the following general contract principles to all applicants receiving an allocation of firm power under the proposed Post-2004 Resource Pool Allocation Procedures.

A. Western, at its discretion and sole determination, reserves the right to adjust the contract rate of delivery on 5 years' notice in response to changes in hydrology and river operations. Any such adjustments shall only take place after a public process.

B. Western shall assist allottees to obtain third-party transmission arrangements to deliver firm power allocated under these proposed procedures; nonetheless, each allottee is ultimately responsible for obtaining its own delivery arrangements.

C. Contracts entered into under the proposed Post-2004 Resource Pool Allocation Procedures shall provide for Western to furnish firm electric service effective from the October 2004 billing period, through the September 2024 billing period.

D. The contracts entered into as a result of these proposed procedures shall incorporate Western's standard provisions for power sales contracts, integrated resource planning, and the general power contract provisions.

V. Applications for Firm Power

Applications for an allocation of firm power under these proposed procedures must be submitted in writing to the Regional Manager, Rocky Mountain Customer Service Region. The application consists of two parts, a Letter of Interest and Applicant Profile Data (APD), which must be received in Western's Rocky Mountain Customer Service Region at P.O. Box 3700, Loveland, Colorado 80539–3003, in accordance with the requirements listed here.

A. Letter of Interest

Each applicant should submit to the Regional Manager, Rocky Mountain Customer Service Region, a Letter of Interest in receiving firm power no later than close of business on June 9, 2000. A Letter of Interest does not obligate an applicant in any way. If an applicant is eligible for an allocation under these proposed procedures, an electric service contract between Western and the allottee will be the binding document.

B. Applicant Profile Data

To remain eligible for an allocation, each applicant must submit two typed copies of the APD to Western's Rocky Mountain Customer Service Region no later than close of business on September 6, 2000. The content and format of the APD follows. Requested information should be submitted in the sequence listed. The applicant must provide all requested information or the most reasonable available estimate. The applicant should note any requested information that does not apply. Western is not responsible for errors in data, missing data, or missing pages. All items in the APD should be answered as if prepared by the organization seeking the allocation.

1. Applicant:

a. Applicant's name and address.

b. Person(s) representing applicant: Please provide the name, address, title, and telephone number of such person(s).

c. Type of organization: For example, municipality, rural electric cooperative, Native American Tribe, state agency, or Federal agency. Please provide a brief description of the organization that will interact with Western contract and billing matters and whether the organization owns and operates its own electric utility system.

d. Applicable law under which the organization was established.

2. Loads:

a. Utility and Nonutility Applicants:

i. If applicable, number and type of customers served; *i.e.*, residential, commercial, industry, military base, agricultural.

ii. The actual monthly maximum demand in (kilowatts) and energy use (in kilowatthours) during the 1998–99 winter season (October 1998 through March 1999) and the 1999 summer season (April 1999 through September 1999).

b. Native American Tribe Applicants:

Estimated maximum demand in kilowatts with a description of the method and basis for this estimated demand.

3. Resources:

a. A list of current power supplies, including the applicant's own generation and purchases from others. For each supply, provide capacity and location.

b. Status of power supply contracts, including contract termination date. Indicate whether power supply is on a firm basis or some other type of arrangement.

4. Transmission:

a. Points of delivery: Provide the preferred point(s) of delivery on Western's system or a third party's system and the required service voltage.

b. Transmission arrangements: Describe the transmission arrangements necessary to deliver firm power to the requested points of delivery.

5. Other Information:

The applicant may provide any other information pertinent to receiving an allocation.

6. Signature:

The signature and title of an appropriate official who is able to attest to the validity of the APD and who is authorized to submit the request for allocation.

C. Western's Consideration of Applications

1. When Western receives the APD, Western will verify that the general eligibility criteria set forth in section II have been met, and that all items requested in the APD have been provided.

a. Western will request in writing additional information from any applicant whose APD is determined to be deficient. The applicant shall have 15 days from the date on Western's letter of request to provide the needed information in writing.

b. If Western determines that the applicant does not meet the general eligibility criteria, Western will send a letter explaining why the applicant did not qualify.

c. If the applicant has met the eligibility criteria, Western will determine the amount of firm power to be allocated pursuant to the general allocation criteria set forth in section III. Western will send a draft contract to the applicant for review which identifies the terms and conditions of the offer and the amount of firm power allocated to the applicant.

2. All firm power shall be allocated according to the procedures in the general allocation criteria set forth in section III.

3. Western reserves the right to determine the amount of firm power to allocate to an applicant, as justified by the applicant in its APD.

VI. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (Act), requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. Western has determined that (1) this rulemaking relates to services offered by Western, and, therefore, is not a rule within the purview of the Act, and (2) the impacts of an allocation from Western would not cause an adverse economic impact on a substantial number of such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By his execution of this **Federal Register** notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

VII. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget (OMB) to collect customer information in this rule, under control number 1910–1200.

VIII. Review Under the National Environmental Policy Act

Western has completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in the **Federal Register** on October 12, 1995 (60 FR 53181). Western's NEPA review will assure all environmental effects related to these procedures have been analyzed.

IX. Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Dated: February 25, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–5948 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project-Firm Power Services Base Charge and Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposal to extend rate setting formula.

SUMMARY: Western Area Power Administration's (Western) Desert Southwest Customer Service Region is initiating a rate adjustment process for the Boulder Canyon Project (BCP). Western proposes to extend the existing rate setting formula, and approve the proposed base charge and rates for FY 2001. This **Federal Register** notice begins the formal rate adjustment process for the proposed base charge and rates.

DATES: The consultation and comment period begins today and ends June 8, 2000. Western will hold a public information forum on April 13, 2000, beginning at 10 a.m. MST, at the Desert Southwest Customer Service Regional Office to explain the proposed base charge and rates. Western will receive oral and written comments at a public comment forum on May 9, 2000, beginning at 10 a.m. MST, also to be held at the Desert Southwest Customer Service Regional Office.

ADDRESSES: Send written comments to: Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, or by e-mail: carlson@wapa.gov. Western must receive written comments by the end of the consultation and comment period to be assured consideration. The Desert Southwest Customer Service Regional Office is located at 615 South 43rd Avenue, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Maher A. Nasir, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2768, or by e-mail: nasir@wapa.gov.

SUPPLEMENTARY INFORMATION: Annual base charge and rates adjustments are required by the existing rate setting formula approved by the Federal Energy Regulatory Commission (FERC) on April 19, 1996. The existing rate schedule was placed into effect on November 1, 1995. Western proposes to extend the existing rate setting formula through September 30, 2005, and approve the proposed base charge and rates for FY 2001. The proposed base charge for FY 2001 is $49,460,974. The proposed forecasted energy rate is 5.70 mills per kilowatthour (kWh), and the proposed forecasted capacity rate is $1.02 per kilowattmonth (kWmonth). The existing base charge is $46,145,334. The existing forecasted energy rate is 4.59 mills per kWh, and the existing forecasted capacity rate is $0.95 per kWmonth. The projected base charge and rates adjustments are due to increases in the annual operating expenses and will be explained during the rate adjustment process. All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western in developing the proposed base charge and rates will be made available to all power customers and interested parties. The extension of the existing rate schedule and proposed firm power services base charge and rates are scheduled to become effective October 1, 2000.

Under Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator; and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary. Existing DOE procedures for public participation in power rate adjustments are located at 10 CFR part 903, effective on September 18, 1985 (50 FR 37835).

The proposed firm power services base charge and rates for BCP are being established pursuant to the Department of Energy Organization Act (42 U.S.C.

7101, *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 371, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c) and section 8 of the Act of August 31, 1964, 16 U.S.C. 837g, the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501, *et seq.*), the Colorado River Storage Project Act (43 U.S.C. 620, *et seq.*), the Boulder Canyon Project Act (43 U.S.C. 617, *et seq.*), the Boulder Canyon Project Adjustment Act (43 U.S.C. 618, *et seq.*), the Hoover Power Plant Act of 1984 (43 U.S.C. 619, *et seq.*), the General Regulations for Power Generation, Operation, Maintenance, and Replacement at the BCP, Arizona/Nevada (43 CFR part 431) published in the **Federal Register** (51 FR 23960) on July 1, 1986, and the General Regulations for the Charges for the Sale of Power from the BCP, Final Rule (10 CFR part 904) published in the **Federal Register** (50 FR 37837) on September 18, 1985, and the DOE financial reporting policies, procedures, and methodology (DOE Order No. RA 6120.2, dated September 20, 1979).

Both a public information forum and a public comment forum will be held. After considering public comments, Western will recommend a proposed base charge and rates to be approved on an interim basis by the Deputy Secretary.

Regulatory Procedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it applies to rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council On Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: February 25, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–5947 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6251–9]

Environmental Impact Statements and Regulations; Availability of EPA

Comments Availability of EPA comments prepared February 21, 2000 through February 25, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (63 FR 17856).

Draft EISs

ERP No. D–COE–F39039–00 Rating EO2, John T. Myers and Greenup Lock Improvements, To Alleviate Commerical Navigation Traffic Congestion, Ohio River Mainstem Systems Study, (ORMSS), Interim Feasibility Report, Indiana, Kentucky and Ohio.

Summary: EPA expressed environmental objections based on issues with how the project purpose and need was formulated, the apparent phased approach to NEPA compliance, the lack of cumulative impact analysis, inadequate mitigation and the need for additional analysis of the sediment quality.

ERP No. D–SFW–L65334–WA Rating LO, Simpson Washington Timberlands Forest Management and Timber Harvesting Project, Proposed Issuing of a Multiple Species Incidental Take Permit, Mason, Thurston and Gray Harbor Counties, WA.

Summary: EPA had no objections to the proposed action.

Final EISs

ERP No. F–FRC–E03008–00 Florida Gas Transmission Phase IV Expansion Project (Docket No. CP99–94–000), To Deliver Natural Gas to Electric Generator, FL and MS.

Summary: EPA expressed concerns over the proposed conversion of forested wetlands to herbaceous wetlands and other impacts associated with pipeline placement, including induced growth associated with the project. EPA also expressed concerns over the lack of information regarding potential environmental justice issues.

ERP No. RF–OSM–A01102–00 Valid Existing Rights—Proposed Revisions to the Permanent Program Regulations Implementing Section 522(E) of the Surface Mining Control and Reclamation Act of 1977 and Proposed Rulemaking Clarifying the Applicability of Section 522(E) to Subsidence from Underground Mining.

Summary: The final EIS and rule have adequately addressed EPA's concerns on the air quality analysis, impacts to water quality and environmental justice.

Regulations

ERP No. R–AFS–A65166–00 National Forest Service System Land and Resource Management Planning: Proposed Rule 36 CFR Parts 217 and 219.

Summary: EPA was pleased to see that the Forest Service used the recommendations given by the Committee of Scientists as a corner stone of the planning process, especially ecological sustainability, the principles of ecosystem management and requirements for implementation, monitoring and evaluation. EPA also believes that the proposed rule attempts to simplify planning process; reduce burdensome and costly procedural requirements and strengthen relationships with the public, States, Tribes and other government agencies. EPA requests that the final rule supply additional information on issues related to implementation of pre-decisional appeals, monitoring, terms and definitions sustainability and species viability.

Dated: March 6, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–5929 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6251–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements filed February 29, 2000 through March 03, 2000 pursuant to 40 CFR 1506.9.

EIS No. 000063, Final EIS, AFS, ID, Sloan-Kennally Timber Sale, Proposal to Harvest and Regenerate Timber Strands, Implementation, Payette National Forest, McCall Ranger District, Valley County, ID, Due: April 10, 2000, Contact: Dan Anderson (208) 347–0349.

EIS No. 000064, Draft EIS, BOP, CA, Lassen County Federal Correctional Institution (FCI), Construction and Operation, To House Median-Security Inmates and Federal Prison Camp, Possible Site is Southwest Site, Lassen County, CA, Due: April 24, 2000, Contact: David J. Dorworth (202) 514–6470.

EIS No. 000065, Final EIS, AFS, MT, Flathead National Forest, Swan Lake Ranger District, Meadow Smith Project, Vegetative Treatments and Other Activities to Maintain and Restore Large-Tree Old Grow Forest Characteristics, Lake and Missoula Counties, MT, Due: April 10, 2000, Contact: Keith Soderstrom (406) 837–7510.

EIS No. 000066, Draft EIS, AFS, PA, Allegheny National Forest, To Address the Maintenance and Enhancement of Threatened and Enchangered Species, Elk, Forest, McKean and Warren Counties, PA, Due: April 24, 2000, Contact: Gary W.Kell (814) 723–5150.

EIS No. 000067, Final EIS, NPS, NB, SD, Missouri National Recreational River, General Management Plan, Implementation, Cedar and Dixon Counties, NB and Yakton, Clay and Union Counties, SD, Due: April 10, 2000, Contact: Michael Madell (608) 264–5257.

EIS No. 000068, Draft EIS, AFS, OR, Triangle Land Exchange Project, Between Clearwater Land Exchange Oregon (Clearwater) an Oregon Partnership, Implementation, Malheur, Umatilla and Wallowa-Whitman National Forests, Baker, Grant, Harney and Wallowa Counties, OR, Due: April 24, 2000, Contact: Bob Miles (541) 575–3000.

EIS No. 000069, Final EIS, AFS, MT, Clancy-Unionville Vegetation Manipulation and Travel Management Project, Implementation, Helena National Forest, Helena Ranger District, Lewis and Clark and Jefferson Counties, MT, Due: April 10, 2000, Contact: Dan Mainwaring (406) 449–5490.

EIS No. 000070, Draft EIS, AFS, MN, Gunflint Corridor Fuel Reduction, Implementation, Superior National Forest, Gunflint Ranger District, Cook County, MN, Due: April 24, 2000, Contact: Becky Bartol (218) 387–1750.

Amended Notices

EIS No. 000051, Draft EIS, FTA, OH, Bera/I–X Center Red Line Extension Project, Southwest Corridor Major Investment, Transit Improvements, Funding, Cuyahoga County, OH, Due April 17, 2000, Contact Carlos Pena (312) 353–2865. Revision of FR notice published on 02/25/2000: Completion of Distribution was not completed until 02/25/2000 EIS should not have appeared in the FR until 03/03/2000. The 45-day comment period is calculated from 03/03/2000.

Dated: March 6, 2000

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–5930 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34165B; FRL–6495–2]

Organophosphate Pesticide; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, disulfoton. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34165B, must be received by EPA on or before May 9, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34165B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on disulfoton, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. *In person.* The Agency has established an official record for this action under docket control number OPP–34165B. The official record consists of the documents specifically

referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34165B in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34165B. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate pesticide, disulfoton. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the disulfoton preliminary risk assessments, which was released to the public January 8, 1999 (64 FR 5) (FRL–6055–9) through a notice in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for disulfoton. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific disulfoton use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest ("pre-harvest intervals"), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commenters may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate pesticide tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before May 9, 2000, at the addresses given under the "ADDRESSES" section. Comments and proposals will become part of the Agency record for the organophosphate pesticide specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 2, 2000.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–5927 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6550–2]

Proposed Cost Recovery Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, as Amended (CERCLA), 42 U.S.C. 9622(h)(1)

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed cost recovery settlement pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(h)(1).

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into a cost recovery administrative settlement to resolve a claim under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(h)(1). This settlement is intended to resolve the liability of the Estate of Jeanette Faye Burris for response costs incurred by EPA in connection with a removal action conducted by EPA at 5310 Broadway Avenue, N.E., Altoona, Polk County, Iowa.

The proposed settlement agreement was signed by the Director of EPA Region VII's Superfund Division on February 10, 2000. Because EPA's total response costs did not exceed $500,000, the Attorney General's concurrence is not required for this settlement.

DATES: Written comments must be provided on or before April 10, 2000.

ADDRESSES: Comments should be sent to David A. Hoefer, Office of Regional Counsel, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101 and should refer to: *In the of Matter of 5310 Broadway Avenue, N.E., Altoona, Polk County, Iowa*, EPA Docket No. CERCLA–7–2000-0012.

The proposed administrative settlement may be examined in person at EPA's offices at 901 North 5th Street, Kansas City, Kansas 66101. To arrange to examine the administrative settlement in person please contact Mr. Hoefer at 913–551–7503. To request a copy by mail please refer to the matter name and the docket number set forth above and enclose a check in the amount of $3.00 for reproduction costs (25 cents multiplied by 12 pages), payable to the United States Environmental Protection Agency, and send your request to Kathy Robinson, Regional Hearing Clerk, 901 North 5th Street, Kansas City, KS 66101.

FOR FURTHER INFORMATION CONTACT: David Hoefer at 913–551–7503.

SUPPLEMENTARY INFORMATION: The proposed administrative settlement concerns property located at 5310 Broadway, N.E., Altoona, Polk County, Iowa (the "Site") where EPA had conducted a removal action pursuant to CERCLA in 1997. Mrs. Burris (who died on April 25, 1999) was the owner of the Site and the Site is now part of her probate estate (Iowa District Court for Warren County, Probate No. 05911 ESPR017406).

The removal action performed by EPA involved the excavation and disposal of approximately 1,434 tons of soil contaminated with lead and polychlorinated biphenyls (PCBs), as well as the disposal of PCB capacitors and containerized waste oil which was contaminated with PCBs. EPA incurred costs of $189,523.79 (through July 31, 1998) in connection with this removal action.

Pursuant to this proposed administrative settlement, the Estate of Jeanette Faye Burris has agreed to pay to EPA 20% of the net proceeds from the sale of the Site, or $37,904.76 (which amount represents 20% of EPA's response costs of $189,523.79), whichever is less, in partial reimbursement of EPA's response costs.

Dated: February 17, 2000.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 00–5934 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6550–3]

Proposed Administrative Penalty Assessments and Opportunity to Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed assessment of Clean Water Act Class I Administrative Penalty and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty for an alleged violation of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who has violated the conditions of a National Pollutant Discharge Elimination System permit may be assessed a penalty in a "Class I" administrative penalty proceeding. Class I proceedings under section 309(g) are conducted in accordance with consolidated rules of practice governing the administrative assessment of civil penalties, 40 CFR part 22.

EPA is providing notice of the following Class I penalty proceeding:

In the Matter of Albert Goyenetche, Docket No. CWA–9–2000–0002; Complainant, Thomas Huetteman, Chief, Clean Water Act Compliance Office (WTR–7), Water Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105; Respondent, Mr. Albert Goyenetche, Goyenetche Dairy, 16130 S. Euclid Avenue, Chino, CA 91710; filed February 11, 2000; seeking a penalty of up to $11,000 for discharge from Goyenetche Dairy on April 14, 1999, to a manmade ditch which flows to Prado Flood Control Basin, in violation of "General Discharge Requirements for Concentrated Animal Feeding Operations, including Dairies, within the Santa Ana Region", NPDES No. CAG018001.

Procedures by which the public may comment on a proposed Class I penalty or participate in a Class I penalty proceeding are set forth in the consolidated rules. A commenter may present written comments for the record at any time prior to the close of the record.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of the consolidated rules, review the complaint or other documents filed in the proceeding, or comment or participate in the proceeding, should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in the proceeding are available for inspection during business hours at the office of the Regional Hearing Clerk.

Dated: March 1, 2000.

Thomas Huetteman,

Chief, Clean Water Act Compliance Office, Water Division.

[FR Doc. 00–5933 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 6, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 9, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0906.

Title: Annual DTV Report.

Form Number: FCC 317.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated Time per Response: 2.5 hours (2 hour respondent; 0.5 hours contract attorney).

Frequency of Response: Reporting, annually.

Total Annual Burden: 200.

Total Annual Costs: $10,000.

Needs and Uses: The Commission has established a program for assessing and collecting fees for the provision of ancillary or supplementary services by commercial digital television licensees in compliance with Section 336(e)(1) of the Telecommunications Act of 1996. Licensees are required to report, using FCC 317, whether they provided ancillary or supplementary services, which services were provided, the services provided which are subject to a fee, gross revenues received from all feeable ancillary and supplementary services, and the amount of bitstream used to provide ancillary or supplementary service. This data is collected annually from commercial digital television licensees. Licensees providing services subject to a fee will additionally be required annually to file FCC Form 159 (3060–0589) to remit the required fee. Each licensee will be required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. The data is used by FCC staff to ensure that DTV licensees comply with the requirements of Section 336(e) of the Communications Act.

OMB Control Number: 3060–0909.

Title: 2000 Central Office Code Utilization Survey (COCUS).

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 3750.

Estimated Time Per Response: 6.9 hours.

Total Annual Burden: 25,875.

Estimated Annual Reporting and Record Keeping Cost Burden: $0.

Frequency of Response: On occasion; Annually.

Needs and Uses: The North American Numbering Plan (NANP) is experiencing an unprecedented amount of growth of area codes. Information obtained from the Central Office Code Utilization Survey (COCUS) will assist Commission staff in determining the scope of the number exhaust problem and identifying methods to help alleviate some of the costs associated with the addition of new area codes and which solutions may provide the greatest impact in different areas of the country.

OMB Control Number: 3060–0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98–147.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 1400.

Estimated Time Per Response: 10.71 (Avg.).

Total Annual Burden: 15,000 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: 0.

Frequency of Response: On occasion.

Needs and Uses: In CC Docket No. 98–147and CC Docket No. 96–98, the Commission seeks to implement Congress' goal of promoting innovation and investment by all participating in the telecommunications marketplace, order to stimulate competition for all services, including advanced services. In the Third Report and Order and Fourth Report and Order (Order) the Commission also adopted measures to promote the availability of competitive broadband xDSL-based services, especially to residential and small business customers. The Commission amended its unbundling rules to require incumbent LECs to provide unbundled access to a new network element, the high frequency portion of the local loop. The purpose of this is to enable competitive LECs to compete with incumbent LECs to provide to consumers xDSL-based through telephone lines that the competitive LECs share with incumbent LECs. The Commission also adopted spectrum management policies and rules to facilitate the competitive deployment of advanced services.

Collections of information adopted in the proceeding include the following: Incumbent LECs who refuse a competitive carrier's request to condition a loop must make an affirmative showing to the relevant state commission. Incumbent LECs must provide requesting carriers with access to the loop facility for testing, maintenance, and repair. Under certain circumstances an Incumbent LEC must provide test of equipment. All of the collections required are to facilitate the deployment of advanced data services and to implement section 706 of the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5851 Filed 3–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the first meeting of the Network Reliability and Interoperability Council (Council) under its charter renewed as of January 6, 2000. The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: Monday, March 20, 2000 at 10 a.m. to 12:30 p.m. Publication of this notice was delayed due to the unforeseen urgency of setting the earliest possible meeting date so that necessary participants could be present.

ADDRESSES: Federal Communications Commission, 445 12th St. S.W. Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Kimball at 202–418–2339 or TTY 202–418–2989.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommend measures that would enhance network reliability.

The Council will consider a report on the success of its efforts to ameliorate the possible effects of the year 2000 date change on communications networks, and will also consider reports from the network reliability working groups. In addition, the Council will discuss the modifications that have been made to the Council's charter and how those modifications should be addressed, and any additional issues that may come before it.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Kent Nilsson, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by email (*KNILSSON@FCC.GOV*) or U.S. mail (7–B452, 445 12th St. SW, Washington, DC. 20554). Real Audio and streaming video Access to the meeting will be available at http://www.fcc.gov/.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–5900 Filed 3–9–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2392]

Petition for Reconsideration of Action in Rulemaking Proceeding

March 2, 2000.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by March 27, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Application by New York Telephone Company (d/b/a Bell Atlantic—New York), Bell Atlantic Communications, Inc., Nynex Long Distance Company and Bell Atlantic Global Networks, Inc. for Authorization to Provide In-Region, InterLATA Services in New York.

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5850 Filed 3–9–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 65 FR 12010, March 7, 2000.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Friday, March 10, 2000.

CHANGES IN THE MEETING: Addition of the following open item to the meeting:

Summary Agenda:

1. Consideration of rules to permit state member banks to acquire financial subsidiaries under the Gramm-Leach-Bliley Act.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: March 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6026 Filed 3–8–00; 10:54 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Joint meeting of the Subcommittee on Standards and Security and the Working Group on Computer-based Patient Records.

Times and Dates: 9 a.m.–5 p.m., March 30, 2000; 9 a.m.–5 p.m., March 31, 2000

Place: Conference Room 703A, Hubert H. Humphrey Building, 200 Independence Ave. S.W., Washington, D.C. 20201.

Status: Open.

Purpose: Under the Administrative Simplification provisions of P.L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the National Committee on Vital and Health Statistics (NCVHS) is required to study the issues related to the adoption of uniform data standards for patient medical record information and the electronic interchange of such information, and report to the Secretary of Health and Human Services not later then August 2000 on recommendations and legislative proposals for such standards and electronic interchange. The NCVHS is the Department's federal advisory committee on health data, privacy and health information policy.

At this joint meeting, the Subcommittee and Working Group will review, discuss and revise the draft report to the Secretary under development relating to standards for patient medical record information and its electronic transmission, based on the comments from the full committee. The tentative agenda for the meeting will be posted on the NCVHS website: http://ncvhs.hhs.gov, when available.

Contact Person for More Information: Substantive program information about the meeting may be obtained for Michael Fitzmaurice (AHCPR, 301 594–3938) or Bob

Mayes (HCFA, 410 786–6872), lead staff for the Computer-based Patient Record Working Group. Information about the NCVHS is available on the NCVHS home page of the HHS website, or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245.

Dated: March, 3, 2000.

James Scanlon,

Director, Division of Data Policy, Office of Program Systems, Office of the Assistant Secretary for Planning and Evaluation, and HHS Executive Staff Director NCVHS.

[FR Doc. 00–5841 Filed 3–9–00; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Clinical Laboratory Improvement Advisory Committee, of the Centers for Disease Control and Prevention (CDC), of the Department of Health and Human Services, has been renewed for a 2-year period beginning February 19, 2000, through February 19, 2002.

For further information, contact Edward L. Baker, M.D., Executive Secretary, Clinical Laboratory Improvement Advisory Committee, CDC, 1600 Clifton Road, NE, m/s G–25, Atlanta, Georgia 30333. Telephone 770/488–2402, fax 770/488–2420, e-mail elb1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 6, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–5889 Filed 3–9–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Advisory Committee for Energy-Related Epidemiologic Research, Department of Health and Human Services (HHS)

The Public Health Service is soliciting nominations for possible membership on the Advisory Committee for Energy-Related Epidemiologic Research. The Advisory Committee for Energy-Related Epidemiologic Research provides advice and makes recommendations to the Secretary, HHS; the Director, Centers for Disease Control and Prevention; and the Administrator, Agency for Toxic Substances and Disease Registry, on establishment of a research agenda and the conduct of a research program pertaining to energy-related epidemiologic studies. Advice and recommendations cover a number of important areas, including the appropriate interaction between the Committee and Department of Energy (DOE) regarding the direction HHS should take in establishing a research agenda, development of a research plan, and the respective roles of HHS and DOE in energy-related health research.

Nominations are being sought for the fields of energy-related epidemiologic research and public health, including occupational and environmental health; representatives of public interest groups; and representatives of affected parties (*e.g.*, workers and community residents). Federal Employees will not be considered for membership. Members may be invited to serve a one, two, three, or four-year term. Close attention will be given to minority and female representation; therefore, nominations from these groups are encouraged.

The following information must be submitted: Name of nominee, affiliation, address, telephone and fax number and a current curriculum vitae or resume. Nominations should be sent, in writing, and be postmarked by April 1, 2000, to: Kitty Armstrong, Committee Management Specialist, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Road, NE (MS E–39), Atlanta, Georgia 30333. Telephone or fax submissions cannot be accepted.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: March 6, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–5888 Filed 3–9–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Procedures for Requests to use Child Care and Development Funds for Construction of Major Renovation of Child Care Facilities.

OMB No.: 0970–0160.

Description: The Child Care and Development Block Grant Act, as amended, allows Indian Tribes to use Child Care and Development Fund (CCDF) grant awards for construction and renovation of child care facilities. A tribal grantee must first request and receive approval from the Administration for Children and Families (ACF) before using CCDF funds for construction or major renovation. This information collection contains the statutorily-mandated uniform procedures for the solicitation and consideration of requests, including instructions for preparation of environmental assessments in conjunction with the National Environmental Policy Act. The proposed draft procedures update and clarify the original procedures that were issued in August 1997. Respondents will be CCDF tribal grantees requesting to use CCDF funds for construction or major renovation.

Respondents: State, Local or Tribal Government

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Construction and Renovation	25	1	20	500
Estimated Total Annual Burden Hours				500

Additional Information: In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 6, 2000.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 00–5904 Filed 3–9–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

South Carolina's State Child Support Enforcement Plan; Appeal

AGENCY: Department of Health and Human Services, Administration for Children and Families

ACTION: Notice of appeal.

SUMMARY: By designation of the Administration for Children and Families, a member of the Departmental Appeals Board has been appointed as the presiding officer for an appeal of the Administration for Children and Families' (ACF) proposed disapproval of South Carolina's State Child Support Enforcement Plan submitted pursuant to the Social Security Act. ACF asserts that there are no facts in dispute, and has requested that South Carolina's request for a hearing be denied and a decision be made on the existing record. The purpose of this notice is to give interested parties an opportunity to participate.

REQUESTS TO PARTICIPATE: Requests to participate as a party or as amicus curiae must be submitted to the Departmental Appeals Board in the form specified at 45 CFR § 213.15 by March 27, 2000. Within that time, those persons or organizations seeking participation as parties or amici may file petitions or request extensions of time for submitting petitions to participate, and may also contact the Board to obtain copies of the briefs that the parties have filed.

FOR FURTHER INFORMATION CONTACT: Jeffrey Sacks, Staff Attorney, Departmental Appeals Board, Department of Health and Human Services, Room 635–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Telephone Number (202) 690–8011, jsacks@os.dhhs.gov.

SUPPLEMENTARY INFORMATION: Notice of appeal is hereby given as set forth in the following letter, which has been sent to the State of South Carolina.

Washington, DC, (date)

Virginia Williamson, General Counsel, South Carolina Department of Social Services, P.O. Box 1520, Columbia, South Carolina 29202–1520

and

Robert E. Keith, Associate General Counsel

Linda Grabel, Assistant General Counsel, Children, Families and Aging Division, Room 411–D, HHH Building, 200 Independence Avenue, SW., Washington, DC 20201

Counsel: This letter is in response to the State of South Carolina's (State) request for a hearing to contest the Administration for Children and Families' (ACF) proposed disapproval of the State's plan for implementing Title IV–D of the Social Security Act (Child Support and Establishment of Paternity).

The basis for the proposed disapproval is South Carolina's failure to submit by October 1, 1997 a state IV–D plan certifying that it is operating an automated data processing and information retrieval system for child support, as required by section 454(24)(A) of the Social Security Act (Act).

I have designated M. Terry Johnson, a Departmental Appeals Board Member, as the presiding officer pursuant to 45 CFR 213.21. ACF and the State are now parties in this matter. 45 CFR 213.15(a). South Carolina has conceded that it does not have an approvable automated data processing and information retrieval system for child support. The parties therefore agreed that prior to any factual presentation, they would brief the threshold legal questions of whether ACF has the authority to grant South Carolina relief for noncompliance short of disapproval of its state plan, and what the applicable standard for such relief would be. If the presiding officer rules that relief other than disapproval of the state plan is authorized by statute or regulation, an evidentiary hearing would be provided at which South Carolina could present evidence regarding the circumstances that prevented its compliance with the requirement that it have a statewide automated child support enforcement system.

The parties have briefed this threshold issue before the presiding officer. South Carolina argued that ACF has the discretion to grant relief short of disapproving its IV–D plan. South Carolina argued that federal agencies such as ACF generally have inherent, equitable authority to create exemptions from statutory requirements, such as the requirement of plan approval, on a case-by-case basis, and that South Carolina's

reasonable good-faith efforts to comply with the Act, and mitigating circumstances concerning its failure to operate an approvable automated system, were sufficient to permit ACF to use its inherent discretion to grant some relief short of state plan disapproval. South Carolina also argued that ACF must concede that it has discretion in so much as it grants conditional certification to states that are not fully compliant even though there is no explicit congressional authorization for such action. South Carolina further argued that regulations governing the administration of grants at 45 CFR Part 92 provide federal agencies with greater flexibility to address noncompliance than state plan disapproval, and that failure to consider the reasons for noncompliance would be fundamentally unfair and would amount to poor public policy by failing to consider South Carolina's actual performance in achieving the overall goals of the IV–D program.

ACF argued that the statutory language at section 454(24)(A) of the Act requires that a state operate an automated system which meets the specified requirements as a condition of plan approval, and affords ACF no discretion to excuse noncompliance. ACF argued that it has consistently stated in its program issuances that it is not authorized to provide federal IV–D funds to a state that does not have an approved IV–D state plan and that it is required to disapprove a state's plan where the state is not operating an automated system. ACF argued that court decisions that South Carolina cited in its brief are not applicable to the facts and the statutory requirements at issue here, and that 45 CFR Part 92 applies only where not inconsistent with the more specific statutory provisions addressing IV–D plan approval and the requirement of an operating automated system. ACF further argued that South Carolina presented no standards for granting relief from noncompliance short of plan disapproval, and that the presiding officer's authority is limited to recommending a decision as to whether or not a state plan meets federal requirements.

ACF's and South Carolina's briefs are available for inspection by the public, including persons and organizations who file timely requests to participate as parties or amici.

A ruling in ACF's favor on this threshold issue would limit the appeal to the sole question of whether or not South Carolina's state plan is in compliance with federal requirements. Given South Carolina's concession that it does not have an approvable automated data processing and information retrieval system for child support, such a ruling in ACF's favor would end the reconsideration process without an evidentiary hearing. Consequently, the presiding officer is affording interested parties the opportunity to participate prior to the issuance of a ruling.

A copy of this letter will appear as a Notice in the **Federal Register** and any person wishing to request recognition as a party will be entitled to file a petition pursuant to 45 CFR 213.15(b) with the Departmental Appeals Board within 15 days after that notice has been published. A copy of the petition should be served on each party of record at that time. The petition must explain how the issues to be considered have caused them injury and how their interest is within the zone of interests to be protected by the governing Federal statute. 45 CFR 213.15(b)(1). In addition, the petition must concisely state petitioner's interest in the proceeding, who will represent petitioner, and the issues on which petitioner wishes to participate. 45 CFR 213.15(b)(2). Additionally, if petitioner believes that there are disputed issues of fact which require an in-person evidentiary hearing, petitioner should concisely specify the disputed issues of fact in the petition, and also state whether petitioner intends to present witnesses. Petitioners may also, within 15 days after this notice has been published, request extensions of the time for requesting participation for the purpose of obtaining and reviewing copies of the parties' briefs.

Any party may, within 5 days of receipt of such petition, file comments thereon; the presiding officer will subsequently issue a ruling on whether and on what basis participation will be permitted.

Any interested person or organization wishing to participate as amicus curiae may also file a petition with the Board, which shall conform to the requirements at 45 CFR 213.15(c)(2). This petition, or a request for an extension of time to review the briefs, must be filed within 15 days after this notice, in time to permit the presiding officer an adequate opportunity to consider and rule upon it.

If the presiding officer denies ACF's request for a decision on the written record and rules that a hearing should be held, South Carolina shall be provided a notice of hearing, which shall be held not less than 30 days nor more than 60 days after the date that notice of the hearing is furnished to South Carolina. The notice of the hearing shall also be published in the **Federal Register** to afford notice to interested parties.

Any further inquiries, submissions, or correspondence regarding this matter should be filed in an original and two copies with Ms. Johnson at the Departmental Appeals Board, Room 637–D, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201, where the record in this matter will be kept.

That record is available for public inspection; interested persons or organizations seeking participation as parties or amici may contact Jeffrey Sacks, Board Staff Attorney, at 202–69–8011 (or at jsacks@os.dhhs.gov) to arrange for inspection and copying of the record. Each submission must include a statement that a copy of the submission has been sent to the other parties, identifying when and to whom the copy was sent. For convenience please refer to Board Docket No. A–99–80.

Dated: March 7, 2000.

Olivia A. Golden,

Assistant Secretary for Children and Families.

[FR Doc. 00–5921 Filed 3–9–00; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0553]

Positron Emission Tomography Drug Products; Safety and Effectiveness of Certain PET Drugs for Specific Indications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Commissioner of Food and Drugs (the Commissioner) has concluded that certain commonly used positron emission tomography (PET) drugs, when produced under conditions specified in approved applications, can be found to be safe and effective for certain indications specified in this document. FDA announces the approval procedures for these PET drugs and indications and invites manufacturers of these drugs to submit applications for approval under this document. The agency is taking this action in accordance with provisions of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). Elsewhere in this issue of the **Federal**

Register, FDA is issuing a draft guidance for industry entitled "PET Drug Applications—Content and Format for NDA's and ANDA's," which is intended to assist manufacturers that submit applications for approval as specified in this document.

ADDRESSES: Submit applications for approval to the Center for Drug Evaluation and Research, Food and Drug Administration, 12229 Wilkins Ave., Central Document Room, Rockville, MD 20852. Copies of the published literature listed in the appendix to this document, FDA reviews of the literature, product labeling referenced in section IV of this document, and the transcript of the June 28 and 29, 1999, meeting of the Medical Imaging Drugs Advisory Committee (the Advisory Committee) will be on display at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Electronic versions of these documents are available on the Internet at http://www.fda.gov/cder/regulatory/pet/default.htm.

FOR FURTHER INFORMATION CONTACT: John A. Friel, Center for Drug Evaluation and Research (HFD–200), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1651, FAX 301–827–3056, e-mail: frielj@cder.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

PET is a medical imaging modality that uses a unique type of radiopharmaceutical drug. PET drugs contain an atom that disintegrates principally by emission of a positron, which provides dual photons that are used for imaging, primarily for diagnostic purposes. Most PET drugs are produced using cyclotrons at locations (sometimes called "PET centers") that usually are in close proximity to the patients to whom the drugs are administered (e.g., in hospitals or academic institutions). Each PET drug ordinarily is produced under a physician's prescription and, due to the short half-lives of PET drugs, is injected intravenously into the patient within a few minutes or hours of production.

FDA has approved new drug applications (NDA's) for three PET drug products: Sodium fluoride F 18 injection, rubidium chloride 82 injection, and fludeoxyglucose (FDG) F 18 injection. In 1972, FDA approved NDA 17–042 for sodium fluoride F 18 injection as a bone imaging agent to define areas of altered osteogenic activity. The NDA holder ceased marketing this drug product in 1975. Rubidium chloride 82 injection (NDA 19–414), approved in 1989, is indicated for assessing regional myocardial perfusion in the diagnosis and localization of myocardial infarction. In 1994, FDA approved NDA 20–306, submitted by The Methodist Medical Center of Illinois (Methodist Medical), for FDG F 18 injection for the identification of regions of abnormal glucose metabolism associated with foci of epileptic seizures.

On November 21, 1997, President Clinton signed into law the Modernization Act (Public Law 105–115). Section 121(c)(1)(A) of the Modernization Act directs FDA to establish appropriate procedures for the approval of PET drugs in accordance with section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and to establish current good manufacturing practice (CGMP) requirements for PET drugs. Prior to establishing these procedures and requirements, FDA must consult with patient advocacy groups, professional associations, manufacturers, and persons licensed to make or use PET drugs.

Under section 121(c)(2) of the Modernization Act, FDA cannot require the submission of NDA's or abbreviated new drug applications (ANDA's) for compounded PET drugs that are not adulterated under section 501(a)(2)(C) of the act (21 U.S.C. 351(a)(2)(C)) (i.e., that comply with United States Pharmacopeia (USP) PET compounding standards and monographs) for a period of 4 years after the date of enactment or 2 years after the date that the agency adopts special approval procedures and CGMP requirements for PET drugs, whichever is longer. However, the act does not prohibit the voluntary submission and FDA review of applications before these time periods expire.

In accordance with the Modernization Act, FDA has conducted several public meetings with a PET industry working group and other interested persons to discuss proposals for PET drug approval procedures and CGMP requirements. The industry working group, assembled by the Institute for Clinical PET (ICP), an industry trade association, includes representatives from academic centers, clinical sites, and manufacturers, and it was supported by the Society for Nuclear Medicine, the American College of Nuclear Physicians, and the Council on Radionuclides and Radiopharmaceuticals. After consulting with this working group and other interested persons, FDA decided to conduct its own reviews of the published literature on the safety and effectiveness of some of the most commonly used PET drugs for certain indications. The agency believed that this would be the most efficient way to develop new approval procedures for these drugs. Under current FDA policy, the agency may rely on published literature alone to support the approval of a new drug product under section 505 of the act (see FDA's guidance for industry entitled "Providing Clinical Evidence of Effectiveness for Human Drugs and Biological Products" (May 1998) and its draft guidance entitled "Applications Covered by Section 505(b)(2)" (December 1999)).

FDA reviewed the following PET drugs and indications for safety and effectiveness: (1) FDG F 18 injection for use in oncology and for assessment of myocardial hibernation, (2) ammonia N 13 injection for evaluation of myocardial blood flow, and (3) water O 15 injection for assessment of cerebral perfusion. FDA presented its preliminary findings on the safety and effectiveness of these drugs for certain indications to the ICP and others at public meetings. On June 28 and 29, 1999, FDA presented its findings on these drugs to the Advisory Committee. The Advisory Committee concluded that FDG F 18 injection and ammonia N 13 injection can be safe and effective for certain indications, although it recommended some revisions to the indications proposed by the agency. The Advisory Committee determined that, on the basis of the literature presented for its review, it was unable to conclude that water O 15 injection can be safe and effective for the proposed use of measuring cerebral blood flow in patients with cerebral vascular disorders associated with ischemia, hemodynamic abnormalities, occlusion, and other vascular abnormalities. FDA stated that it would conduct a more comprehensive review of the literature on the safety and effectiveness of water O 15 injection for this use and then ask the Advisory Committee to reconsider this drug at a subsequent meeting.

II. Highlights of This Document

As discussed in section III of this document, FDA concludes that FDG F 18 injection and ammonia N 13 injection, when produced under conditions specified in approved applications, can be found to be safe and effective for certain indications specified in that section and invites manufacturers of these drugs to submit applications for marketing approval [1].

[1] Section 121(c)(1) of the Modernization Act directs FDA to establish approval procedures and

This document states the approval procedures for these PET drugs for the particular indications identified. Depending on the circumstances discussed below, applications for approval of these drugs and indications may be either NDA's of the type described in section 505(b)(2) of the act or ANDA's submitted under section 505(j) of the act.

A 505(b)(2) application is an NDA for which at least one of the investigations that the applicant relies on to demonstrate the drug's safety and effectiveness was not conducted by or for the applicant, and the applicant has not obtained a right of reference or use from the person by or for whom the investigation was conducted.[2] A 505(b)(2) applicant can rely for approval on published literature or on FDA's findings of safety and/or effectiveness for an approved drug.

An ANDA is an application for approval of a "generic" version of an approved drug. An ANDA must include information to show that the drug has the same active ingredient(s), route of administration, dosage form, strength, and conditions of use recommended in the labeling of an approved drug. It must also contain information generally showing that the labeling of the generic drug is the same as that of the approved drug, that the generic drug is bioequivalent to the approved drug, and that the composition, manufacturing, and controls of the generic drug are sufficient to ensure its safety and effectiveness (section 505(j)(2)(A) of the act).

To aid manufacturers in submitting 505(b)(2) applications or ANDA's for FDG F 18 injection and ammonia N 13 injection for the indications reviewed by FDA, the agency is making available a draft guidance document, published elsewhere in this issue of the **Federal Register**, that provides specific instructions for each drug.

In addition, PET drug manufacturers may seek approval of applications for FDG F 18 injection for epilepsy and sodium fluoride F 18 injection for bone imaging by relying on the findings of safety and effectiveness made by the agency in approving the original NDA's for these drugs. Again, such applications may be either NDA's or ANDA's, depending on whether a manufacturer's proposed drug product is the same as an approved drug product.

If, after reviewing the relevant literature and consulting with the Advisory Committee, FDA concludes that water O 15 injection is safe and effective for a cerebral perfusion indication, the agency intends to issue a **Federal Register** notice announcing this conclusion and inviting manufacturers of this drug to submit applications for approval in accordance with the procedures discussed in this document.

In a future issue of the **Federal Register**, FDA intends to state its approach to applications for approval of other PET drugs and new indications for approved products in accordance with the Modernization Act.

III. PET Drugs for Which FDA Has Reviewed Published Literature

As discussed below, FDA generally agrees with and adopts the Advisory Committee's conclusions on the safety and effectiveness of FDG F 18 injection and ammonia N 13 injection, when produced under conditions specified in approved applications, for the indications stated in this document. In determining the safety and effectiveness of these drugs, FDA relied on the published literature and, where appropriate, previous agency determinations of safety or effectiveness. FDA obtained relevant articles in the published literature from the PET community and through the agency's own search of current, peer-reviewed literature. In evaluating a drug's effectiveness, FDA reviewed only those articles meeting the following criteria: (1) The studies involved prospective, controlled trials with an appropriate standard of truth (i.e., "gold standard"); and (2) the article contained sufficient information to evaluate the study protocol, endpoints, statistical plan and methodology, sample size, accounting of enrolled patients, imaging protocol, blinding procedures, and image handling methodology.

FDA reviewed the literature to document the safety and effectiveness of these PET drugs on the basis of clinical pharmacology and biopharmaceutics, pharmacology and toxicology, and clinical and statistical information. The agency sought evidence that the reviewed drugs can provide useful clinical information related to their intended indications for use. The appendix to this document contains a list of published articles reviewed by FDA establishing that FDG F 18 injection and ammonia N 13 injection can be found to be safe and effective for specific indications when produced under conditions specified in approved applications. Copies of FDA's reviews of the published literature can be obtained in accordance with the **ADDRESSES** section of this document.

A. FDG F 18 Injection for Use in Myocardial Hibernation and Oncology

1. Safety

In evaluating the safety of FDG F 18 injection for both the oncology and myocardial hibernation indications, FDA considered the approximately two decades of clinical use of the drug and the conclusions the agency reached in approving NDA 20–306 for this drug. The currently labeled intravenous doses of FDG F 18 injection for epilepsy are 5 to 10 millicuries (mCi) in adults and 2.6 mCi in pediatrics. No significant adverse reactions have been reported for FDG F 18 injection. In addition, FDA found no reports of adverse reactions in the published literature on the effectiveness of FDG F 18 injection or in a recent article by Silberstein and others (1996) reporting the results of a 5-year prospective study on drugs used in nuclear medicine at 18 collaborating institutions.

The literature and FDA's finding on the safety of FDG F 18 injection in NDA 20–306 indicate that for an intravenous dose of 10 mCi of the drug, the critical target organ (the bladder) absorbs only 6.29 rems based on a fixed bladder content over a 3-hour period. For higher doses, the level and extent of radiation absorbed by the bladder walls can be manipulated with hydration and shorter voiding intervals to decrease radiation exposure. On the basis of this information, a 10-mCi dose of FDG F 18 injection appears to pose a relatively low risk to adult patients.

2. Safety and Effectiveness for Identifying Hibernating Myocardium

FDA's search of the recent published literature on FDG F 18 injection yielded 632 articles, from which the agency identified 10 articles that: (1) Met the review criteria; (2) evaluated patients with coronary artery disease (CAD) and left ventricular dysfunction; and (3) considered whether FDG F 18 image findings before coronary revascularization could predict the functional outcome of regions of the left ventricle after revascularization. All of these articles involved adequate and well-controlled clinical trials. FDA also reviewed several other articles in support of the potential clinical usefulness of FDG F 18 for such cardiac evaluations.

CGMP's for all PET drugs, without any exclusion for compounded PET drugs. Consequently, references in this document to PET drugs that are "produced" or "manufactured" include compounded PET drugs.

[2] A right of reference is the authority to rely upon an investigation for approval of an application and includes the ability to make the underlying raw data available for FDA audit, if necessary (21 CFR 314.3(b)).

The use of FDG F 18 injection for this purpose is based on the premise that reversibly injured myocytes can metabolize glucose but irreversibly injured myocytes cannot. Based on its review of the literature, FDA concludes that a 10-mCi dose (for adults) of FDG F 18 injection produced under conditions specified in an approved application can be found to be safe and effective in PET imaging of patients with CAD and left ventricular dysfunction, when used together with myocardial perfusion imaging, for the identification of left ventricular myocardium with residual glucose metabolism and reversible loss of systolic function.

3. Safety and Effectiveness for Evaluating Glucose Metabolism in Oncology

Published articles on the use of FDG F 18 for oncology imaging first appeared in the 1980's. The use of FDG F 18 injection in oncology is based on different rates of glucose metabolism that are expected to occur in benign and malignant tissues.

FDA's search of the published literature revealed about 150 articles involving clinical trials with FDG F 18 injection in oncology. Of these, the agency identified 16 articles that met the review criteria and had both a study population of greater than 50 and histopathologic confirmation of the type of malignancy. Two of the articles involved adequate and well-controlled trials. On the basis of these and other supportive studies, FDA concludes that a 10-mCi dose (for adults) of FDG F 18 injection produced under conditions specified in an approved application can be found to be safe and effective in PET imaging for assessing abnormal glucose metabolism to assist in evaluating malignancy in patients with known or suspected abnormalities found by other testing modalities or in patients with an existing diagnosis of cancer.

B. Ammonia N 13 Injection for Assessing Myocardial Perfusion

The published literature contains reports of clinical investigations involving ammonia N 13 dating back to the 1970's. A principal focus of these studies has been the use of ammonia N 13 injection to evaluate myocardial blood flow.

1. Safety

Ammonia is a ubiquitous substance in the body, and its metabolism and excretion are well understood. The maximum amount of ammonia in a typical dose of ammonia N 13 injection is extremely small compared to the amount of ammonia produced by the body. The reviewed published literature does not identify any adverse events following the administration of ammonia N 13 injection.

The literature indicates that after a total intravenous dose of approximately 25 mCi of ammonia N 13 injection, the critical target organ (bladder wall) absorbs only 1.28 rems. Therefore, a 10-mCi dose of ammonia N 13 injection appears to pose a relatively low risk to adult patients.

2. Safety and Effectiveness for Assessing Myocardial Perfusion

FDA's search of the published literature revealed 76 articles on the use of ammonia N 13 injection for assessing myocardial perfusion. Of these, 17 articles met the review criteria and provided a comparison of myocardial perfusion results of ammonia N 13 injection to a recognized standard of myocardial perfusion or to other appropriate comparators. Two articles discussed the results of adequate and well-controlled studies evaluating the effectiveness of ammonia N 13 injection in assessing myocardial perfusion. On the basis of these studies, FDA concludes that a 10-mCi dose (for adults) of ammonia N 13 injection produced under conditions specified in an approved application can be found to be safe and effective in PET imaging of the myocardium under rest or pharmacological stress conditions to evaluate myocardial perfusion in patients with suspected or existing CAD.

IV. Applications for Approval of Reviewed PET Drugs and Sodium Fluoride F 18 Injection

A. Types of Applications Required for Reviewed PET Drugs

Based on its review of the published literature and the recommendations of the Advisory Committee, FDA has determined that FDG F 18 injection and ammonia N 13 injection, when produced under conditions specified in an approved application, can be found to be safe and effective for the specified indications. Approved applications are required because these drugs cannot be deemed generally recognized as safe and effective under section 201(p)(1) and (p)(2) of the act (21 U.S.C. 321(p)(1) and (p)(2)), making them new drugs subject to regulation under section 505 of the act. Congress recognized that PET drugs are new drugs when it directed FDA, in section 121(c)(1)(A)(i) of the Modernization Act, to establish appropriate approval procedures for these drugs "pursuant to section 505" of the act.

A principal reason why PET drugs are new drugs and not generally recognized as safe and effective is that the approximately 70 PET centers differ considerably in the way they formulate and manufacture these drugs. Such variations in drug constituents and in manufacturing procedures can significantly affect the identity, strength, quality, and purity of the drugs in a manner that may well adversely affect their safety and effectiveness. For example, these PET drugs are injectable products that cannot be safe unless they are at least sterile and pyrogen-free. Therefore, FDA must verify that appropriate conditions and procedures regarding sterility and pyrogenicity exist at each manufacturing site.

Stability concerns are another example of why formulation and manufacturing techniques must be considered in evaluating safety and effectiveness. Without adequate controls, PET drugs may be unstable when produced in high radioconcentrations (as occur at some PET centers) due to radiolytic degradation of the drug substance. Such degradation can result in a subpotent drug as well as administration of radioactive moieties other than the intended drug substance. Depending on their specific localization, such moieties can cause excessive radiation of nontargeted tissues or interfere with imaging. This can make a drug product unsafe in a susceptible population or result in misdiagnosis.

Another aspect of PET drug production that can adversely affect safety is the potential for the development of impurities in the finished product. Some of these impurities would pose a threat to the health of patients.

For these and other reasons, the agency cannot conclude that these PET drugs are generally recognized as safe and effective for the above-noted indications and therefore needs to review information on how each drug product is formulated and produced at each manufacturing site. Because these PET drugs are not generally recognized as safe and effective, they are new drugs for which approved NDA's or ANDA's are required for marketing under section 505(a) of the act and part 314 (21 CFR part 314).

As previously noted, if a PET drug fully complies with all USP standards and monographs pertaining to PET drugs, an application for approval of such drug is not required until 2 years after FDA establishes approval procedures and CGMP requirements for

PET drugs. Although submission of applications is not required at this time, FDA encourages the manufacturers of FDG F 18 injection and ammonia N 13 injection to submit applications for approval under section 505(b)(2) or (j) of the act, as discussed below in sections IV.A.1 and IV.A.2, as soon as possible.

1. Applications for FDG F 18 Injection

As noted above, there is already an approved application (NDA 20–306, held by Methodist Medical) for FDG F 18 injection for the identification of regions of abnormal glucose metabolism associated with foci of epileptic seizures. To obtain approval to market their FDG F 18 injection products for the new (myocardial and oncological) indications discussed in section III.A of this document, initially all applicants except Methodist Medical should submit 505(b)(2) applications. FDA anticipates that such applicants will seek approval for all three indications for FDG F 18 injection. In that case, applicants should reference the safety and effectiveness data in the published literature listed in the appendix to this document for the myocardial and oncological indications for FDG F 18 injection and the findings of safety and effectiveness regarding NDA 20–306 for the epilepsy-related indication in accordance with § 314.54. Methodist Medical may, if it chooses, submit a supplemental NDA for each of the two new indications in accordance with section 506A of the act (21 U.S.C. 356a) and this document. The supplemental applications need only reference the information in the appendix to this document. Applicants need not conduct their own clinical trials or submit copies of the articles listed in the appendix.

The drug product that is the subject of the first approved NDA for FDG F 18 injection for the indications stated in section III.A of this document (myocardial hibernation and oncology) most likely will be the reference listed drug for these indications under section 505(j)(2)(A) of the act and § 314.3. FDA will continue to review as 505(b)(2) applications those applications for FDG F 18 injection that have already been filed at the time of approval of the first application. After FDA approves the first application for FDG F 18 injection submitted in response to this document, subsequent applications for approval of the same drug for the same indications should generally be submitted as ANDA's under section 505(j) of the act and § 314.92(a)(1), rather than as 505(b)(2) applications.[3] FDA anticipates that in many cases, NDA 20–306 will be the appropriate reference listed drug for such ANDA's.[4] However, as 505(b)(2) applications are approved, the agency may identify additional products as reference listed drugs.

If a PET drug manufacturer's FDG F 18 injection product has an active ingredient, route of administration, dosage form, or strength that differs from that of a listed drug, the applicant would probably submit a 505(b)(2) application. Alternatively, the applicant could submit an ANDA after obtaining approval of a "suitability petition" for such a drug, although this would likely be a less efficient means of obtaining marketing approval.[5] (Because FDA has already approved a suitability petition granting permission to submit an ANDA for FDG F 18 injection with a different strength (i.e., 1.6 to 58.4 mCi/mL at the end of bombardment) than that of the reference listed drug, an ANDA applicant could, if it desired, make reference in its own application to the strength in the approved suitability petition.)

2. Applications for Ammonia N 13 Injection

Because there is no approved ammonia N 13 injection product for any indication, initially all manufacturers of this drug should submit 505(b)(2) applications. Applicants should reference the published literature on the safety and effectiveness of ammonia N 13 injection for assessment of myocardial perfusion listed in the appendix to this document.

After FDA approves the first application for ammonia N 13 injection for assessing myocardial perfusion, subsequent applications for approval of the same drug for the same indication could be submitted as ANDA's. However, a 505(b)(2) application (or a suitability petition) should be submitted if the active ingredient, route of administration, dosage form, or strength of the applicant's ammonia N 13 injection product differs from that of a listed drug.

B. Types of Applications Required for Sodium Fluoride F 18 for Bone Imaging

FDA approved sodium fluoride F 18 injection (NDA 17–042) in 1972 as a bone imaging agent to define areas of altered osteogenic activity. The current NDA holder, Nycomed Amersham, stopped marketing the drug in March 1975.

As an approved drug, sodium fluoride F 18 injection would normally be listed in the "Approved Drug Products with Therapeutic Equivalence Evaluations" (generally known as the "Orange Book"), in accordance with section 505(j)(7) of the act. However, certain drug products, including sodium fluoride F 18 injection, that were approved for safety and effectiveness but were no longer marketed on September 24, 1984, are not included in the Orange Book. In implementing section 505(j)(7) of the act, FDA decided not to retrospectively review products withdrawn from the market prior to that date. Rather, the agency determines on a case-by-case basis whether such drugs were withdrawn from the market for safety or effectiveness reasons. FDA must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before it may approve an ANDA that refers to the listed drug (§ 314.161(a)(1)).

FDA reviewed its records and, under § 314.161, determined that sodium fluoride F 18 injection was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will list sodium fluoride F 18 injection in the Orange Book's "Discontinued Drug Product List" section, which delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. Because sodium fluoride F 18 injection was not withdrawn from sale for reasons of safety or effectiveness, it is still a listed drug, and FDA can approve ANDA's that refer to it. FDA therefore invites those PET centers whose sodium fluoride F 18 injection product is the

[3] Under § 314.101(d)(9), FDA may refuse to file a 505(b)(2) application for a drug that is a duplicate of a listed drug and is eligible for approval under section 505(j) of the act.

[4] For the existing reference listed drug for FDG F 18 injection (NDA 20–306), the active ingredient is FDG F 18, the route of administration is intravenous, the dosage form is injection, and the strength is 4.0 to 40 mCi/milliliters (mL) at the end of synthesis.

[5] Under section 505(j)(2)(C) of the act, FDA will approve a petition seeking permission to file an ANDA for a drug that has an active ingredient, route of administration, dosage form, or strength that differs from that of a listed drug unless the agency finds that: (1) Investigations must be conducted to show the safety and effectiveness of the drug or of any of its active ingredients, the route of administration, the dosage from, or strength that differ from the listed drug; or (2) a drug with a different active ingredient may not be evaluated for approval as safe and effective on the basis of the information required to be submitted in an ANDA. If FDA approves a suitability petition for a drug product, the applicant may then submit an ANDA. However, if FDA concludes that additional studies are necessary to show the safety and/or effectiveness of the drug proposed in the petition, the applicant would need to submit a 505(b)(2) application to obtain marketing approval.

same as the reference listed drug to submit ANDA's.[6]

If a sponsor's sodium fluoride F 18 injection product is not the same as the listed drug, the sponsor should submit a 505(b)(2) application (or a suitability petition) rather than an ANDA. FDA anticipates that this will be the case with most manufacturers of sodium fluoride F 18 injection because the strength of their product is likely to differ from that of the listed drug.

C. Additional Guidance on Submission of Applications and Labeling

FDA is issuing a draft guidance document, published elsewhere in this issue of the **Federal Register**, to assist PET drug manufacturers in submitting NDA's and ANDA's for FDG F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection in accordance with this document. Among other things, the draft guidance addresses the chemistry, manufacturing, and controls information that should be provided in applications for these drugs.

FDA has developed suggested labeling for FDG F 18 injection and ammonia N 13 injection products for the indications discussed above. The suggested labeling for FDG F 18 injection also includes the previously approved indication of identification of regions of abnormal glucose metabolism associated with foci of epileptic seizures. A manufacturer seeking approval of FDG F 18 injection, ammonia N 13 injection, or sodium fluoride F 18 injection in accordance with this document should submit product labeling that is consistent with the recommended labeling. This labeling is available on the Internet at http://www.fda.gov/cder/regulatory/pet and is on display in FDA's Dockets Management Branch (address above). The labeling also will be included in the forthcoming draft guidance document on the submission of applications in accordance with this document.

D. Pediatric Assessments

Under § 314.55(a), each application for a new active ingredient or new indication must contain data that are adequate to assess the safety and effectiveness of the drug for the claimed indications in all relevant pediatric subpopulations and to support specific dosing and administration for the drug. When the course of a disease and the effects of a drug are sufficiently similar in adults and pediatric patients, FDA may conclude that pediatric effectiveness can be extrapolated from adequate and well-controlled studies in adults, usually supplemented with other information obtained in pediatric patients. In addition, FDA may defer submission of some or all pediatric assessments until after approval of a drug product for use in adults, including when the agency determines that pediatric studies should be delayed until additional safety or effectiveness data have been collected (§ 314.55(b)).

The original application for FDG F 18 injection (NDA 20–306) is approved for epilepsy in pediatric patients. Based on available radiation dosimetry data for different ages and information on the use of glucose during pediatric development, FDA concludes that sufficient data are available to support the statements on the pediatric use of FDG F 18 injection found in the labeling referenced in section IV.C of this document.

Regarding ammonia N 13 injection, information exists on the known effects of ammonia on the human body, the normal blood levels of ammonia for different ages, the amount of ammonia N 13 injection typically administered to patients, and the radiation dosimetry of the drug for different ages. Therefore, FDA concludes that sufficient data are available to support the statements on the pediatric use of ammonia N 13 injection found in the labeling referenced in section IV.C of this document.

Limited data are available that are relevant to the pediatric use of sodium fluoride F 18 injection for use in defining areas of altered osteogenic activity. Therefore, FDA is deferring the pediatric assessments required under § 314.55(a) for sodium fluoride F 18 injection for this indication until 5 years after the date that the agency adopts approval procedures and CGMP requirements for PET drugs. This deferral will allow the agency to obtain additional safety and effectiveness information on the use of sodium fluoride F 18 injection before determining what pediatric studies may be necessary.

E. User Fees

Under section 736(a)(1)(A)(ii) of the act (21 U.S.C. 379h(a)(1)(A)(ii)), FDA assesses an application fee for any human drug application as defined in the statute. No application fee is required for an ANDA or for a supplement for which clinical data are not required.

An application fee normally would be assessed for a 505(b)(2) application for FDG F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection submitted in accordance with this document. However, FDA intends to grant a waiver of application fees for these drugs. Under section 736(d)(1) of the act, FDA can grant a waiver or reduction in fees for several reasons, including when assessment of a fee would present a significant barrier to innovation because of limited resources available to the applicant or other circumstances (section 736(d)(1)(B) of the act).

FDA finds that, because of the unique circumstances surrounding the regulation of PET drugs, assessment of an application fee on the PET drugs noted above would present a significant barrier to innovation. FDA is aware that Congress directed the agency to develop appropriate approval procedures and CGMP requirements for PET drugs to "take account of the special characteristics of positron emission tomography drugs and the special techniques and processes required to produce these drugs" (section 121(c)(1)(A) of the Modernization Act). One of Congress' goals in enacting section 121 of the Modernization Act is to promote the availability of FDA-approved PET drug products for the patients who need them. As noted in the Senate report on the Modernization Act, most of the approximately 70 PET centers in the United States are part of academic medical centers (S. Rept. No. 43, 105th Cong., 1st Sess., at 53 (1997)). The report states that these academic medical centers are facing unprecedented cost pressures, suggesting that many PET centers would likely close without some kind of regulatory relief. The report emphasizes that if PET centers close, the benefits of PET would be unavailable to patients who need this diagnostic technology.

FDA finds that Congress intended for the agency to ease the regulatory burden on PET centers, including by providing waivers of user fees in appropriate circumstances. FDA further concludes that a waiver of the application fees for applications seeking approval of FDG F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection products submitted in response to this document is consistent with the congressional goal of promoting the availability of FDA-approved PET drugs. Without a fee waiver, there may be a disincentive for manufacturers of these PET drugs to submit NDA's under section 505(b)(2) of the act because an application fee normally would be assessed on each application submitted only until FDA approves the first NDA for a particular drug and indication. Once FDA approves such a product, subsequently submitted 505(b)(2)

[6] For the reference listed drug, the active ingredient is sodium fluoride F 18, the route of administration is intravenous, the dosage form is injection, and the strength is 2.0 mCi/mL at the time of calibration.

applications for the particular drug and indication will not be assessed an application fee.

On the other hand, if an applicant hoped to obtain market exclusivity (as discussed in section IV.F of this document), it would have an incentive to be the first to submit and obtain approval of an NDA for one of these PET drugs. Therefore, for the reasons noted above, FDA will waive the application fee for NDA's for FDG F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection products submitted in accordance with this document, but only if the applicant submits with its NDA a statement that it waives any right to market exclusivity to which it may be entitled under the act.

F. Patent Protection and Market Exclusivity

PET drug products approved by FDA may be protected from competition by patents issued by the U.S. Patent and Trademark Office or by periods of market exclusivity granted by FDA at the time of approval. Patent and exclusivity protections may affect the approval of competing 505(b)(2) applications and ANDA's.

Applicants submitting NDA's under section 505(b) of the act, including 505(b)(2) applications, must file with the application, in accordance with § 314.53, a list of the patent numbers and expiration dates for each patent that claims the drug substance, drug product (formulation and composition), or method of using the drug that is the subject of the application. No other patents may be submitted, including process patents covering the manufacture of the drug. Additional patent information must be submitted within 30 days of approval of an application or, in the case of newly issued patents, within 30 days of issuance of the patent. If an application is approved, FDA will publish the patent information in the Orange Book.

Certain PET drugs may also be eligible for patent term extensions under 35 U.S.C. 156. Patent term extensions are issued by the U.S. Patent and Trademark Office.

Sponsors submitting NDA's for PET drug products may be eligible for market exclusivity under the act. There are four types of exclusivity available: (1) 5-year new chemical entity exclusivity, (2) 3-year exclusivity for applications that require new clinical trials, (3) 6-month pediatric exclusivity, and (4) 7-year exclusivity for drugs intended to treat rare diseases or conditions (i.e., "orphan drugs"). Eligibility for exclusivity depends on, among other things, the characteristics of the drug product and the type of studies conducted by the applicant. A sponsor who believes its drug product is entitled to exclusivity must submit supporting information in its NDA (§ 314.50(j)). Applicants interested in determining whether a PET drug product may be eligible for exclusivity are encouraged to discuss the issue with the Center for Drug Evaluation and Research's Division of Medical Imaging and Radiopharmaceutical Drug Products.

A drug product that contains a new chemical entity may be eligible for 5 years of market exclusivity under sections 505(c)(3)(D)(ii) and (j)(5)(D)(ii) of the act and the regulations at § 314.108. Whether a drug qualifies for new chemical entity exclusivity depends on whether the active moiety has been approved in another application submitted under section 505(b) of the act. The "active moiety" is, in general terms, "the molecule or ion * * * responsible for the physiological or pharmacological action of the drug substance" (§ 314.108(a)). A drug product containing a new chemical entity may be eligible for 5 years of exclusivity even if the drug product is submitted in a 505(b)(2) application that relies for approval on literature reviewed by FDA supporting the safety and effectiveness of the drug. For new chemical entity exclusivity, there is no requirement that the sponsor conduct clinical trials to obtain the approval.

New chemical entity exclusivity generally bars submission of any 505(b)(2) application or ANDA for a drug containing the same active moiety for 5 years from the date the new chemical entity is approved.[7] If at the time the first NDA for an active moiety is approved and given exclusivity, other applicants have already submitted 505(b)(2) applications for products with the same active moiety, the agency may review and approve those applications, notwithstanding the exclusivity the first drug product obtained at the time of approval (54 FR 28872 at 28901, July 10, 1989). The first drug product's exclusivity will only bar submission of new 505(b)(2) applications or ANDA's. Therefore, if applications are submitted relatively close in time, new chemical entity exclusivity may not block approval of multiple 505(b)(2) applications for PET drugs with the same active moiety.

Certain PET drug products may also be eligible for 3 years of market exclusivity under section 505(c)(3)(D)(iii) and (c)(3)(D)(iv) and (j)(5)(D)(iii) and (j)(5)(D)(iv) of the act and § 314.108(b)(4). Three-year exclusivity is granted when an NDA contains reports from new clinical studies conducted or sponsored by the applicant and those studies are essential to approval of the application. Bioequivalence and bioavailability studies are not clinical studies that qualify for exclusivity. A 505(b)(2) application may be eligible for 3-year exclusivity if it relies in part on published literature or on FDA's findings on the safety or effectiveness of a PET drug, but also contains reports of new clinical studies conducted by the sponsor that are essential to the approval of, for example, a new use for the drug.

If a drug product is given 3 years of exclusivity, FDA is barred from approving any 505(b)(2) application or ANDA for the same drug product, or change to the product, as that for which the exclusivity was granted. For example, if an applicant obtains 3 years of exclusivity for a new indication for a PET drug, FDA may not approve an ANDA for that indication for 3 years. However, the agency may approve an ANDA for any previously approved indications not protected by the exclusivity.

Sponsors of PET drug products may also obtain pediatric exclusivity in accordance with section 505A of the act (21 U.S.C. 355a). To be eligible to obtain 6 months of pediatric exclusivity, a drug product must have patent or exclusivity protection to which the pediatric exclusivity period can attach. A drug product that has no patents listed in the Orange Book or other market exclusivity will not be eligible for pediatric exclusivity. To obtain pediatric exclusivity, a sponsor must conduct studies as described in a written request issued by FDA and must submit those studies within the timeframe described in the written request and in accordance with the filing requirements. Detailed information on qualifying for pediatric exclusivity is available in FDA's guidance for industry entitled "Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act" (64 FR 54903, October 8, 1999).

A PET drug product intended for the diagnosis of a rare disease or condition (one that affects fewer than 200,000 people in the United States) may be eligible for 7 years of orphan drug exclusivity under sections 526 and 527 of the act (21 U.S.C. 360bb-360cc). Obtaining orphan drug exclusivity is a two-step process. An applicant must

[7] An exception to this 5-year bar permits an applicant to submit a 505(b)(2) application or ANDA after 4 years if it contains a certification of invalidity or noninfringement for a patent listed for the approved drug.

seek orphan drug designation for its drug prior to submitting an NDA. If FDA designates the drug as an orphan drug and then approves it for the designated indication, the drug will receive orphan drug exclusivity. Orphan drug exclusivity bars FDA from approving another application from a different sponsor for the same drug for the same indication for a 7-year period.

A sponsor who is entitled to any type of exclusivity for a PET drug product may waive such exclusivity to allow one or more applicants to submit applications for the product. For example, if the sponsor of a 505(b)(2) application for a PET drug were to obtain 5-year exclusivity, a complete waiver of such exclusivity would enable other applicants to immediately submit 505(b)(2) applications and ANDA's for a drug containing the same active moiety.

Information regarding patents and exclusivity periods for approved drug products is published in the Orange Book. This information is important for applicants considering submitting ANDA's or 505(b)(2) applications for PET drugs. If a reference listed drug for an ANDA or a listed drug for a 505(b)(2) application has listed patents, the ANDA or 505(b)(2) application will be required to contain certifications regarding those patents (see § 314.94(a)(12) for ANDA's, § 314.50(i) for 505(b)(2) applications).

G. CGMP

As noted in section I of this document, the Modernization Act directs FDA to develop appropriate CGMP requirements for PET drugs. At a public meeting held on February 19, 1999, FDA discussed its preliminary approach to CGMP's for PET drugs with the PET industry working group and other attendees. In response to comments from the PET community, FDA revised its CGMP preliminary draft regulations. These preliminary draft provisions were discussed at a public meeting held on September 28, 1999. FDA intends to propose regulations on CGMP's for PET drugs in a forthcoming issue of the **Federal Register**, after obtaining additional public input.

H. Preapproval Inspections

FDA is authorized under the act to inspect the facilities to be used in the manufacture of a drug product prior to granting approval of an application to ensure that the facilities and controls used to manufacture the drug are adequate to preserve its identity, strength, quality, and purity (sections 505(d)(3) and (k)(2) and 704(a)(1) of the act (21 U.S.C. 374(a)(1)); see also § 314.125(b)(12)). FDA will not inspect PET drug manufacturing facilities for compliance with CGMP's until 2 years after the date that the agency establishes CGMP requirements for such drugs. However, until such time, if an application for approval of a PET drug is submitted, FDA will conduct an inspection to determine whether the facilities and controls used to manufacture the proposed drug product conform to the USP's PET compounding standards and monographs, in accordance with section 501(a)(2)(C) of the act (21 U.S.C. 351(a)(2)(C)),[8] and to verify other aspects of an NDA or ANDA submission.

V. Approval Procedures for Other PET Drugs and Indications

FDA has not yet addressed the procedures for approval of other PET drugs and of new indications for approved PET drugs. In FDA's proposed rule on the evaluation and approval of in vivo radiopharmaceuticals used for diagnosis and monitoring, published in the **Federal Register** of May 22, 1998 (63 FR 28301 at 28303), the agency stated that it expected the standards for determining safety and effectiveness set forth in the proposed rule to apply to PET drugs, which are one type of radiopharmaceutical.

FDA published its final rule on diagnostic radiopharmaceuticals in the **Federal Register** of May 17, 1999 (64 FR 26657). The final rule adds part 315 (21 CFR part 315), which addresses how FDA will interpret and apply certain provisions in part 314 to evaluate the safety and effectiveness of diagnostic radiopharmaceuticals. The agency also issued a draft guidance for industry entitled "Developing Medical Imaging Drugs and Biologics," which, when finalized, will provide information on how the agency will interpret and apply the provisions of the final rule. In a future issue of the **Federal Register**, FDA intends to address whether and, if so, how new part 315 and the medical imaging guidance should be modified in their application to PET drugs.

VI. Conclusions

The Commissioner has concluded that FDG F 18 injection, when produced under the conditions specified in an approved application, can be found to be safe and effective in PET imaging in patients with CAD and left ventricular dysfunction, when used together with myocardial perfusion imaging, for the identification of left ventricular myocardium with residual glucose metabolism and reversible loss of systolic function, as discussed in section III.A.1 and III.A.2 of this document. The Commissioner also has concluded that FDG F 18 injection, when produced under the conditions specified in an approved application, can be found to be safe and effective in PET imaging for assessment of abnormal glucose metabolism to assist in the evaluation of malignancy in patients with known or suspected abnormalities found by other testing modalities or in patients with an existing diagnosis of cancer, as discussed in section III.A.1 and III.A.3 of this document. In addition, the Commissioner has concluded that ammonia N 13 injection, when produced under the conditions specified in an approved application, can be found to be safe and effective in PET imaging of the myocardium under rest or pharmacological stress conditions to evaluate myocardial perfusion in patients with suspected or existing CAD, as discussed in section III.B of this document. The Commissioner bases these conclusions on FDA's review of the published literature on these uses and on the recommendation by the agency's Medical Imaging Drugs Advisory Committee that FDA find these drugs to be safe and effective for these indications.

In addition, manufacturers of FDG F 18 injection and sodium fluoride F 18 injection may rely on prior agency determinations of the safety and effectiveness of these drugs for certain epilepsy-related and bone imaging indications, respectively, in submitting either 505(b)(2) applications or ANDA's for these drugs and indications.

Applications for approval of these PET drug products should be submitted in accordance with sections III and IV of this document as well as the guidance documents and product labeling referenced in section IV of this document.

VII. Assistance for Applicants

If you have questions about this document or need help in preparing an application for approval of one of the PET drugs discussed above, contact John A. Friel (address above); also, application forms are available from Friel's office. For further information and assistance visit the Internet on PET drugs at http//www.fda.gov/cder/regulatory/pet/default.htm.

[8] Section 501(a)(2)(C) of the act, established by the Modernization Act, requires that PET drugs be produced in conformity with the USP's PET drug compounding standards and monographs. This provision will expire 2 years after the date on which FDA establishes approval procedures and CGMP requirements for PET drugs.

VIII. Availability of Published Literature and Other Resources

The published literature referenced in section III of this document is listed in the appendix to this document. Copies of the published literature, FDA reviews of the literature, product labeling referenced in section IV of this document, and the transcript of the June 28 and 29, 1999, Advisory Committee meeting will be on display in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Appendix: Published Literature on the Safety and Effectiveness of Reviewed PET Drugs

I. Published Literature on FDG F 18 Injection:

A. Pharmacology, Toxicology, and Biopharmaceutics

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Dated: March 6, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–5865 Filed 3–7–00; 11:42 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Administration/Industry Exchange Workshop on Medical Device Quality Systems Inspection Technique (QSIT); Public Workshops; Addendum

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an additional workshop in the series of FDA/Industry Exchange Workshops that were conducted in 1999. The original list of workshops was published in the **Federal Register** of September 10, 1999. Topics for discussion include: Development of Quality Systems Inspection Technique (QSIT), Compliance Program and Warning Letter (Pilot), Management Controls, Corrective and Preventive Action, Design Controls, and Industry Perspective QSIT. This additional workshop will enhance the medical device community's understanding of QSIT, and the device industry's establishment of effective quality systems, thereby preventing regulatory problems during inspections.

Date and Time: The meeting will be held on Wednesday, March 29, 2000, 8:30 a.m. to 4:30 p.m.

Location: The meeting will be held at Carlsbad: Four Seasons Resort—Aviara, 7100 Four Seasons Point, Carlsbad, CA 92009, 760–603–6800.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) along with $140 to the registrar by Monday, March 20, 2000. Fees cover refreshments, organization and site cost, and materials. Space is limited, therefore interested parties are encouraged to register early. Please arrive early to ensure prompt registration. If you need special accommodations due to a disability, please inform the registrar at least 7 days in advance of the workshop. A sample registration form is provided at http://www.fda.gov/cdrh/meetings/qsitmeetca.html.

Contact: Marcia Madrigal, FDA, Pacific Region (HFR PA–150), 1301 Clay St., suite 1180–N, Oakland, CA 94612–5217, 510–637–3980.

Registrar and cosponsor: Joyce W. Williams, San Diego Regulatory Affairs Network (SDRAN), c/o Arena Pharmaceuticals, Inc., 6166 Nancy Ridge Dr., San Diego, CA 92121, 858–453–7200, ext. 227, FAX 858–453–7210, e-mail: jwilliams@arenapharm.com.

SUPPLEMENTARY INFORMATION: In the fall of 1999, FDA field offices began using the QSIT nationwide as the tool for medical device inspections. QSIT was developed using a collaborative effort with stakeholders and tested in the three districts. The original list of workshops was published in the **Federal Register** of September 10, 1999 (64 FR 49192).

This additional workshop further implements the FDA Plan for Statutory Compliance (developed under section 406 of the FDA Modernization Act (21 U.S.C. 393)) through working more closely with stakeholders and ensuring access to needed scientific and technical expertise. It also implements a Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) goal of providing outreach activities by Government agencies directed to small businesses.

Dated: March 6, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–5835 Filed 3–9–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0892]

Draft Guidance for Industry on the Content and Format of New Drug Applications and Abbreviated New Drug Applications for Certain Positron Emission Tomography Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "PET Drug Applications —Content and Format for NDA's and ANDA's." The draft guidance is intended to assist manufacturers of certain positron emission tomography (PET) drugs in submitting new drug applications (NDA's) or abbreviated new drug applications (ANDA's) in accordance with a notice entitled "Positron Emission Tomography Drug Products; Safety and Effectiveness of Certain PET Drugs for Specific Indications" published elsewhere in this issue of the **Federal Register**.

DATES: Submit written comments on the draft guidance and the collection of information provisions by June 8, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http:/www.fda.gov/cder/guidance/index.htm and at http:/www.fda.gov/cder/regulatory/pet. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Robert K. Leedham, Jr., Center for Drug Evaluation and Research (HFD–160), 5600 Fishers Lane, Rockville, MD 20857, 301–827–7510.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "PET Drug Applications—Content and Format for NDA's and ANDA's." The draft guidance is intended to assist the manufacturers of certain PET drugs—fludeoxyglucose (FDG) F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection—in submitting NDA's and ANDA's in accordance with a notice entitled "Positron Emission Tomography Drug Products; Safety and Effectiveness of Certain PET Drugs for Specific Indications" published elsewhere in this issue of the **Federal Register**. The notice invites the manufacturers of these PET drugs to submit NDA's of the type described in section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(b)(2)) or ANDA's under section 505(j) of the act. The draft guidance states when submission of a 505(b)(2) application or ANDA is appropriate, and it describes the information that manufacturers of these PET drugs should include in each type of application.

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on the submission of 505(b)(2) applications and ANDA's in accordance with a notice published elsewhere in this issue of the **Federal Register**. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry: PET Drug Applications—Content and Format for NDA's and ANDA's.

Description: The draft guidance is intended to assist manufacturers of certain PET drugs in submitting NDA's or ANDA's in accordance with the notice entitled "Positron Emission Tomography Drug Products; Safety and Effectiveness of Certain PET Drugs for Specific Indications."

Description of Respondents: Manufacturers submitting NDA's or ANDA's for certain PET drugs.

Burden Estimate: The draft guidance is intended to assist manufacturers in preparing NDA's or ANDA's for FDG F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection submitted in accordance with a notice entitled "Positron Emission Tomography Drug Products; Safety and Effectiveness of Certain PET Drugs for Specific Indications" published elsewhere in this issue of the **Federal Register**. Most of the collection of information resulting from this draft guidance is contained in current regulations for submitting NDA's and ANDA's to FDA under part 314 (21 CFR part 314), and has already been reviewed and approved by OMB as follows: (1) Information collection required under part 314 is approved by OMB until November 30, 2001, under OMB control number 0910–0001; (2) information collection required on Form FDA–356h (Application to Market a New Drug, Biologic, or Antibiotic Drug for Human Use) is approved by OMB until April 30, 2000, under OMB control number 0910–0338; and (3) information collection required on Form FDA–3397 (User Fee Cover Sheet) is approved by OMB until April 30, 2001, under OMB control number 0910–0297.

There are three types of submissions requested under the draft guidance that are not specifically required under part 314 or Form FDA–356h or Form FDA–3397 and, therefore, need to be approved by OMB under the PRA:

1. Cover letter—Manufacturers should include with each NDA or ANDA a signed and dated cover letter with a clear, brief introductory statement. The draft guidance specifies the information that should be contained in the cover letter: (1) Purpose of the application; (2) type of submission; (3) name, title, signature, and address of the applicant; (4) established name and proprietary name for the proposed drug product; and (5) number of volumes submitted.

2. Letter of authorization—Manufacturers using an agent or consultant to act on their behalf should include with each NDA or ANDA a letter of authorization, signed and attached to the cover letter, that identifies the authorized agent or consultant.

3. Sample statement—Manufacturers should include a sample statement when responding to an FDA request for a representative sample of the drug product proposed for marketing, the drug substance or components used in the manufacture of the drug product, or the reference standards. The draft guidance provides an example of a sample statement notifying FDA that the applicant is supplying a representative sample of the drug product, the drug substance or components, or the reference standards.

Based on FDA's experience with reviewing NDA's and ANDA's and on its knowledge of the PET drug manufacturing community, FDA has estimated, in table 1 of this document: (1) The number of respondents expected to submit cover letters, letters of authorization, and sample statements with their NDA's or ANDA's as set forth in the draft guidance; (2) the number of cover letters, letters of authorization, and sample statements that respondents will submit with their NDA's or ANDA's as set forth in the draft guidance; and (3)

the amount of time it will take respondents to submit cover letters, letters of authorization, and sample statements with their NDA's or ANDA's as set forth in the draft guidance.

TABLE1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

NDA's and ANDA's	No. of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Cover letters	50	1	50	1/2	25
Letters of authorization	20	1	20	1/2	10
Sample statements	1	1	1	1/2	.5
Total					35.5

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 6, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–5866 Filed 3–7–00; 11:42 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1130–N]

Medicare Program; March 27, 2000, Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for March 27, 2000, from 8 a.m. until 5 p.m., e.s.t.

ADDRESSES: The meeting will be held in the Multipurpose Room 800, Penthouse, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Paul Rudolf, M.D., J.D., Executive Director, Practicing Physicians Advisory Council, Room 435–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–7874. News media representatives should contact the HCFA Press Office, (202) 690–6145. Please refer to the HCFA Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (http://www.hcfa.gov/fac) for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term. The Council held its first meeting on May 11, 1992.

The current members are: Jerold M. Aronson, M.D.; Richard Bronfman, D.P.M.; Wayne R. Carlsen, D.O.; Mary T. Herald, M.D.(pending re-appointment); Sandral Hullett, M.D.; Stephen A. Imbeau, M.D.; Jerilynn S. Kaibel, D.C.; Marie G. Kuffner, M.D.; Derrick K. Latos, M.D.; Dale Lervick, O.D.; Sandra B. Reed, M.D.; Susan Schooley, M.D.; Maisie Tam, M.D.; Victor Vela, M.D.; and Kenneth M. Viste, Jr., M.D. The Council Chairperson is Marie G. Kuffner, M.D.; a new chair is to be appointed.

New Council members and a new Chairperson will be sworn in during the meeting (schedule to be determined). A brief introduction and training program to familiarize the new members with their responsibilities and expectations as Council members will be conducted starting at 8 a.m. and ending at 10 a.m.

Following this orientation session, the agenda will provide for discussion and comment on the following topics:

- Collection of outpatient encounter data for risk adjustment in Medicare+Choice;

— Implementation issues for physicians; and

— Educating physicians on data collection requirements;

- Changing roles of Carrier Advisory Committees:

Issues concerning education of physicians;

- The design of Advance Beneficiary Notices; and
- Practicing physicians' issues concerning the Medicare Provider Enrollment Form.

For additional information and clarification on the topics listed, call the contact person listed above.

Individual physicians or medical organizations that represent physicians that wish to make 5-minute oral presentations on agenda issues should contact the Executive Director by 12 noon, March 13, 2000, to be scheduled. Testimony is limited to listed agenda issues only. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks should be submitted to the Executive Director no later than 12 noon, March 20, 2000, for distribution to Council members for review prior to the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and Council members. The meeting is open

to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodation should contact John Lanigan at (202) 690–7418 at least 10 days before the meeting.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 6, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–5863 Filed 3–9–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Black Lung Clinic Program Guidelines (42 CFR 55a) (OMB No. 0915–0081) Extension

The purpose of the Black Lung Clinic Program (BLCP) is to stimulate and encourage local public and private agencies to improve the health status of coalworkers and to increase coordination with other programs to assist the coalworkers population. The goal of the BLCP is to provide services to minimize the effects of respiratory and pulmonary impairments of coal miners. Grantees provide specific diagnostic and treatment procedures required in the management of problems associated with black lung disease which improve the functional status, *i.e.*, "quality of life", of the miner and reduces economic costs associated with morbidity and mortality arising from pulmonary diseases.

This request is for approval of the application requirements which are included in the program guidelines and the program regulation (42 CFR 55a.201 and 55a.301). Grantees must submit applications annually for continued grant support. The regulations outline the requirements for grant applications for States (55a.201) and the entities other than States (55a.301). The program guidelines further elaborate on these requirements.

The grant application form is cleared under another OMB approval (OMB No. 0920–0428). The burden for completing the application is not reflected in the Black Lung clearance request because the burden is reported in the clearance of the application form. The current request for clearance includes on hour of burden, to keep the clearance of the program-specific application requirements on the OMB database.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 3, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–5836 Filed 3–9–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 2000.

NAME: National Advisory Council on Nurse Education and Practice (NACNEP).

DATE AND TIME: April 6, 2000; 8:30 a.m.–5 p.m.; April 7, 2000; 8:30 a.m.–3 p.m.

PLACE: Doubletree Hotel Rockville, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting is open to the public.

Agenda: Updates on and discussion of Department, Agency, Bureau, and Division activities, and the legislative and budget status of programs; report of COGME/NACNEP joint planning workgroup; discussion of final draft of the National Agenda for Nursing Workforce Diversity report; update on funding allocation methodology; MedPAC; report on medical errors; and Council strategic planning workgroups on Workforce and Practice.

Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5786.

Dated: March 3, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–5837 Filed 3–9–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Use of Thymosin β4 for Wound Healing Applications; Correction

The notice published in the February 28, 2000 **Federal Register**—announcing the prospective grant of an exclusive license for use of thymosin β4 for wound healing applications (65 FR 10505)—incorrectly listed one of the serial numbers for the subject invention as "60/094,960" under the **SUMMARY** section. NIH is publishing this notice to correct this serial number to read "60/094,690." In view of this correction, to allow interested parties adequate time to respond, the **DATES** section is also amended to read "Only written comments and/or license applications

which are received by the National Institutes of Health on or before June 8, 2000 will be considered."

Dated: March 6, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–5785 Filed 3–9–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

American Samoa Economic Advisory Commission

AGENCY: Office of Insular Affairs, Interior.

ACTION: Notice.

SUMMARY: The American Samoa Economic Advisory Commission (ASEAC) will conduct hearings in American Samoa from Monday, March 27 to Thursday, March 30, 2000. The purpose of the hearings is to gather relevant information from the American Samoa Government and community-at-large regarding the future economic development of the territory.

The following is the schedule of dates, time and location of the hearings: Monday, March 27 from 2 p.m. to 5 p.m. at the Fono buildings to hear testimonies of the Governor, Senate President, Speaker, and other members of the local legislature; Tuesday, March 28 from 9 a.m. to 11 a.m. at the American Samoa Community College to hear testimonies of selected local government officials. From 5 p.m. to 9 p.m. to hear testimonies from the community; Wednesday, March 29, from 9 a.m. to 12 noon at Pago Bay Restaurant to hear testimonies from businesses and the community; Thursday, March 30 from 9:30 a.m. to 11:30 a.m. at the Rainmaker Hotel to hear testimonies from other officials. All parties interested in participating in the hearings must submit written testimony by March 15, 2000, to the American Samoa Economic Advisory Commission, 745 Fort Street, Suite 600, Honolulu, Hawaii, 96814; Fax: (808) 538–8705 or E-mail: *DOIASEAC@lava.net.*

FOR FURTHER INFORMATION CONTACT: Gail Mukaihata-Hanneman, 745 Fort Street, Suite 600, Honolulu, Hawaii 96814, (808) 535–4117; or Nikolao I. Pula, Office of Insular Affairs, Department of the Interior, 1849 C Street, N.W., MS 4328, Washington, DC 20240, (202) 208–6816.

Dated: March 6, 2000.

Ferdinand Aranza,

Director, Office of Insular Affairs.

[FR Doc. 00–5840 Filed 3–9–00; 8:45 am]

BILLING CODE 4310–93–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objectives of this meeting are to hear technical reports, to discuss and develop Klamath fall chinook salmon harvest management options for the 2000 season, and to make recommendations to the Pacific Fishery Management Council and other agencies. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 2 p.m. to 5 p.m. on Sunday, April 2, 2000.

PLACE: The meeting will be held at the Columbia River Doubletree Hotel, 1401 N. Hayden Island Drive, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: At the April 2, 2000 meeting, the Klamath Fishery Management Council may schedule short follow-up meetings to be held between Monday, April 3, 2000 and Thursday, April 6, 2000 at the Columbia River Doubletree Hotel, 1401 N. Hayden Island Drive, Portland, Oregon, where the Pacific Fishery Management Council will be meeting.

For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639)

Dated: February 28, 2000.

John Engbring,

Manager, California/Nevada Operations.

[FR Doc. 00–5730 Filed 3–9–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW140718]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW140718 for lands in Niobrara County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW140718 effective October 1, 1999, subject to the original terms and conditions of the lease and increased rental and royalty rates cited above.

Mavis Love,

Acting Chief, Leasable Minerals Section.

[FR Doc. 00–5912 Filed 3–9–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW141501]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW141501 for lands in Niobrara County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at

rates $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW141501 effective October 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Mavis Love,

Acting Chief, Leasable Minerals Section.

[FR Doc. 00–5913 Filed 3–9–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request continued approval for the collections of information for 30 CFR parts 733 and 876.

DATES: Comments on the proposed information collection must be received by May 9, 2000, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 120–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at the address listed in **ADDRESSES.**

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies information collections that OSM will be submitting to OMB for renewed approval. These collections are contained in 30 CFR part 733, Maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs, and part 876, Acid mine drainage treatment and abatement program.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels of adjustments based on reestimates of burden on respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs, 30 CFR 733.

OMB Control Number: 1029–0025.

Summary: This part provides that any interested person may request the Director of OSM to evaluate a State program by setting forth in the request a concise statement of facts which the person believes establishes the need for the evaluation.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Any interested person (individuals, businesses, institutions, organizations).

Total Annual Responses: 2.

Total Annual Burden Hours: 200 hours.

Title: Acid mine drainage treatment and abatement program, 30 CFR 876.

OMB Control Number: 1029–0104.

Summary: This part establishes the requirements and procedures allowing State and Indian Tribes to establish acid mine drainage abatement and treatment programs under the Abandoned Mine Land fund as directed through Public Law 101–508.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments and Indian Tribes.

Total Annual Responses: 1.

Total Annual Burden Hours: 350.

Dated: March 6, 2000.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–5847 Filed 3–9–00; 8:45 am]

BILLING CODE 4310–05–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

March 21, 2000 Board of Directors Meeting; Sunshine Act Meeting

TIME AND DATE: Tuesday, March 21, 2000, 1:00 p.m. (Open Portion) 1:30 p.m. (Closed Portion)

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting Open to the Public from 1:00 p.m. to 1:30 p.m. Closed portion will commence at 1:30 p.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report.
2. OPIC Africa Investment Council.
3. Appointment—Robert B. Drumheller.
4. Approval of December 14, 1999 Minutes (Open Portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 p.m.)

1. Finance Project in Equatorial Guinea.
2. Insurance Project in Venezuela.
3. Insurance Project in Brazil.
4. Finance Project in Guatemala.
5. Finance Project in Papua New Guinea.
6. Approval of December 14, 1999 Minutes (Closed Portion).
7. Pending Major Projects.
8. Pending Reports.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: March 8, 2000.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 00–6025 Filed 3–8–00; 10:47 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1263]

Announcement of the Juvenile Mentoring Program Discretionary Competitive Assistance Program

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is announcing the availability of a program announcement soliciting applications for the Juvenile Mentoring Program (JUMP).

DATES: Applications must be received by 5:00 p.m., ET, on Tuesday, May 23, 2000.

ADDRESSES: All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20650; 301'519'5535. The application should be submitted on 8½–by 11–inch paper, double-spaced on one side of the paper in a standard 12-point font with each page numbered sequentially. Interested applicants can obtain a copy of the program announcement and the *OJJDP Application Kit* from the Juvenile Justice Clearinghouse by calling 800–638–8736 or sending a request via Fax-on-Demand (800–638–8736) or e-mail (askncjrs.org). The program announcement and *Application Kit* are also available at OJJDP's Web site at www.ojjdp.ncjrs.org/grants/current.html.

FOR FURTHER INFORMATION CONTACT: Travis A. Cain or Susan Brunson, Program Managers, Office of Juvenile Justice and Delinquency Prevention, 202–307–5914. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: This action is authorized under Part G of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (Pub. L. 93–415; 42 U.S.C. 5667e *et seq.*). The JUMP program provides funding for one-to-one mentoring projects for youth at risk of educational failure, dropping out of school, or involvement in delinquent activities, including gangs and substance abuse. The JUMP program strategy is to fund collaborative efforts between local educational agencies and public/private nonprofit organizations or tribal nations to support development of effective mentoring programs for at-risk youth. Applicants should target at-risk youth in high crime areas where 60 percent or more of youth in the participating school are approved to receive Chapter I funds (Free and Reduced Lunch Program) under the Elementary and Secondary Education Act of 1965 and where a considerable number of youth are truant or drop out of school each year. OJJDP encourages applications from both new programs and those programs with proven track records that want to expand their mentoring activities in accordance with this solicitation's program goals and objectives. National organizations are not eligible to compete for funding available through this effort. Awards of up to $210,000 for 3-year budget and project periods will be available.

Dated: March 7, 2000.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–5908 Filed 3–9–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1264]

National Institute of Justice Announcement of the Ninth Meeting of the National Commission on the Future of DNA Evidence

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the ninth meeting of the National Commission on the Future of DNA Evidence.

DATES: The ninth meeting of the National Commission on the Future of DNA Evidence will take place on Sunday, April 9, 2000 from 1:00 p.m. to 5:00 p.m.,CDT, and on Monday, April 10, 2000 from 9:00 a.m. to 5:00 p.m., CDT.

ADDRESSES: The meeting will take place at the Regal Knickerbocker Hotel, 163 East Walton Place, Chicago, Illinois, 60611. Phone: (312) 751–9205.

FOR FURTHER INFORMATION CONTACT: Christopher H. Asplen, AUSA, Executive Director. Phone: (202) 616–8123. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Commission on the Future of DNA Evidence, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, will meet to carry out its advisory functions under Sections 201–202 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. This meeting will be open to the public.

The purpose of the National Commission on the Future of DNA Evidence is to provide the Attorney General with recommendations on the use of current and future DNA methods, applications and technologies in the operation of the criminal justice system, from the crime scene to the courtroom. Over the course of its Charter, the Commission will review critical policy issues regarding DNA evidence and provide recommended courses of action to improve its use as a tool of investigation and adjudication in criminal cases.

The Commission will address issues in five specific areas: (1) The use of DNA in postconviction relief cases, (2) legal concerns including *Daubert* challenges and the scope of discovery in DNA cases, (3) criteria for training and technical assistance for criminal justice professionals involved in the identification, collection and preservation of DNA evidence at the crime scene, (4) essential laboratory capabilities in the face of emerging technologies, and (5) the impact of future technological developments in the use of DNA in the criminal justice system. Each topic will be the focus of the in-depth analysis by separate working groups comprised of prominent professionals who will report back to the Commission.

Dated: March 6, 2000.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 00–5893 Filed 3–9–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The U.S. Department of Labor (USDOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance

consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA), Office of Workforce Security (OWS), is soliciting comments concerning a proposed new collection of survey data necessary to perform a benefit-cost analysis of the self-employment assistance (SEA) program.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 9, 2000.

ADDRESSES: Wayne Gordon, USDOL, 200 Constitution Avenue, N.W., Room S–4231, Washington, DC 20210, Phone: (202) 208–5915 x200 (this is not a toll-free number), fax: (202) 219–8506 (this is not a toll-free number), e-mail: wgordon@doleta.gov.

FOR FURTHER INFORMATION CONTACT: Wayne Gordon, USDOL, 200 Constitution Avenue, N.W., Room S–4231, Washington, DC 20210, Phone: (202) 208–5915 x200 (this is not a toll-free number), fax: (202) 219–8506 (this is not a toll-free number), e-mail: wgordon@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background:

As part of its mandate under Section 906 of the Social Security Act to establish a continuing and comprehensive program of research to evaluate the unemployment compensation system, the USDOL, ETA, OWS, is conducting a study of benefits and costs of Unemployment Insurance (UI) SEA programs that are currently operating in a small number of States. This requires conducting a telephone survey to gather information regarding the programs' impacts on society, employers, participants, nonparticipants and the government sectors. As a complement to the benefit-cost analysis, DOL wishes to assemble an inventory of knowledge of current SEA programs to assist States wishing to implement a SEA program.

The study is following through on recommendations included in a report to Congress on implementation of the prior Unemployment Insurance (UI) Self-Employment Assistance Demonstration. That report, which recommended that the program be made permanent, identified a need for follow up on program participants and the desirability of benefit-cost analysis.

In accomplishing this overall purpose, the study will do the following: (1) Determine the net benefits of SEA programs; (2) obtain the necessary SESA and SEA participant cost information associated with these programs; (3) perform an analysis of program-to-program variation in service provision and other program variables; (4) develop a complete demographic profile of current SEA participants and identify the impacts of this relatively new reemployment strategy on labor market outcomes for these participants with regard to their total employment in wage and salary and self-employment (weeks worked), total earnings, and any subsequent claims for unemployment benefits; and (5) inventory the different administrative configurations and service packages offered within the participating States to provide information to other participating States on cost-effective strategies and to assist States wishing to implement a SEA program.

II. Current Actions

To examine these issues, ETA is planning to collect survey data from random samples of present and past SEA participants in three designated States. The survey will collect data unavailable from administrative records. These data include detailed information on background characteristics of sample members, including characteristics of their pre-layoff jobs; information on their employment and earnings and job characteristics following receipt of UI; and information on their participation in any reemployment services, more specifically, the SEA program.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: New.

Agency: U.S. DOL, ETA, Office of Workforce Security.

Title: Benefit-cost Analysis of the Self-Employment Assistance program.

Agency Number: 1205.

Affected Public: Present and past participants in (SEA) programs in Maine, New York and New Jersey.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (minutes)	Burden (hours)
Participant survey	1200	One time	1200	10	200
Totals			1200		200

Total Burden Cost: $35,000.00.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 6, 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 00–5843 Filed 3–9–00; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 (C)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed 24 month extension, with change, of the Employment Service Program Reporting System from the current end date of June 30, 2000 to a new end date of June 30, 2002.

A copy of the previously approved information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 9, 2000.

ADDRESSES: Timothy F. Sullivan, Office of Workforce Security, U.S. Employment Service, 200 Constitution Avenue NW., Room N–4464, Washington, DC 20210, (202–219–5257—not a toll free number) and internet address: *tsullivan@doleta.gov* and/or FAX: (202)–208–5844).

SUPPLEMENTARY INFORMATION:

I. Background

Information on basic labor exchange services is necessary to assure that the States are complying with legal requirements of the Wagner-Peyser Act, as amended by the Workforce Investment Act (WIA) of 1998. Program data items are required from States reporting to the Department of Labor as part of other information in order to determine if the States are complying with the basic labor exchange requirements.

Information regarding employment and training services provided to veterans by State public employment services agencies must be collected by the Department of Labor to satisfy legislative requirements, as follows: (a) To report annually to Congress on specific services (38 U.S.C. 2007(c) and 2012(c)); (b) to establish administrative controls (38 U.S.C. 2007 (b)); and (c) for administrative purposes. These data are reported on the VETS 200 A and B, the VETS 300, and the Manager's Report.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department is requesting an extension of the Employment Service Program Reporting System with changes to data elements, definitions, reporting instructions and/or reporting requirements from the current end date of June 30, 2000 to a new end date of June 30, 2002.

The Veterans' Employment and Training Service is requesting the collection of data for Campaign Veterans which are veterans who served on active duty in the United States armed forces during a war on in a campaign or expedition for which a campaign badge or expeditionary medal has been authorized. The Secretary of Labor is required under WIA to collect this information. This data collection will replace information currently collected on the ETA–9002A under the Service Members Occupation Conversion and Training Act (SMOCTA) (P.L. 102–484).

In light of WIA and in response to the requirements of the Government Performance and Results Act (GPRA) of 1993, the national call for government programs to be more accountable and results oriented, the Department of Labor (DOL), Employment and Training Administration (ETA), Office of Workforce Security, United States Employment Service (USES) will begin steps to establish performance measures for the public labor exchange program in conjunction with WIA activities and One-Stop delivery system implementation.

The United States Employment Service will work cooperatively with States and other stakeholders to develop program specific performance measures which will be released for comment at a later date.

The proposed measures are a starting point for development of comprehensive measures for the labor exchange function of the One-Stop delivery system. It is the Department's intent to use the comments received to develop performance measures for implementation on July 1, 2001.

The effort to finalize the performance measures, to identify the data elements needed to produce the performance measures and to define specific changes to the ETA reporting requirements will take several months to accomplish.

In consideration of these issues, the Department is requesting an extension, with change, of the Employment Service Program Reporting System from the current end date of June 30, 2000 to a new end date of June 30, 2002.

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A) to extend collection of the Employment Service Program Reporting System data previously approved and assigned OMB Control No. 1205–0240 and the data reporting for the ETA–9002A,B and C including the data reporting for the VETS 200 A and B, the VETS 300, and the Manager's Report on services to veterans and record keeping.

Type of Review: Extension with change.

Agency: Employment and Training Administration.

Title: Employment Service Program Reporting System.

OMB Number: 1205–0240.

Total Respondents: 54 States and territories.

Estimated Burden Hours: 7213.

Reports	Respondents	Frequency	Total responses	Average time per response (hours)	Burden (hours)
USES Rpt.	54	Quarterly	216	2.75	594
VETS Rpt.	54	Quarterly	216	.25	54
USES Rec.	54	Annually	54	12.00	648
VETS 200A	54	Quarterly	216	.85	184
VETS 200B	54	Quarterly	216	.85	184
VETS 300	54	Quarterly	216	1.00	216
Mgt. Report	1600	Quarterly	6400	.83	5333
Totals			7534		7213

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 6, 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 00–5845 Filed 3–9–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Final Finding of No Significant Impact (FONSI) for the New Job Corps Center Located on Schoolland Woods Road (the Former Ladd Center) in Exeter, RI

AGENCY: Employment and Training Administration, Labor.

ACTION: Final Finding of No Significant Impact (FONSI) for the New Job Corps Center to be located on Schoolland Woods Road (the former Ladd Center) in Exeter, Rhode Island.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR Part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps gives final notice of the proposed construction of a new Job Corps Center on Schoolland Woods Road (the former Ladd Center), Exeter, Rhode Island, and that this construction will not have a significant adverse impact on the environment. In accordance with 29 CFR 11.11(d) and 40 CFR 1501.4(e)(2), a preliminary FONSI for the new Exeter Job Corps Center was published in the October 14, 1999 **Federal Register** (64 FR 55754–55755). Copies of the environmental assessment (EA) were made available to all interested parties, and two organizations submitted comments on the EA and FONSI. ETA has reviewed all comments submitted, and has issued an addendum to the EA correcting factual errors identified during the public review and comment period. ETA has determined that the issues and concerns raised during the public comment period do not affect the conclusions of the EA or the finding of no significant impact. This notice serves as the Final Finding of No Significant Impact for construction of the new Exeter Job Corps Center to be located on Schoolland Woods Road (the former Ladd Center) in Exeter, Rhode Island.

EFFECTIVE DATE: March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Copies of the EA, the addendum to the EA, or comments submitted by interested parties can be obtained by contacting Michael O'Malley, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW, Room N–4659, Washington, DC, 20210, (202) 219–5468 ext 115 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 14, 1999, the ETA published an environmental assessment (EA) and a preliminary finding of no significant impact (FONSI) for construction of a new Job Corps Center on approximately 19.65 acres located on Schoolland Woods Road in Exeter, Rhode Island. The proposed project parcel is located within the former Ladd Center, an approximately 270 acre facility which served as an institution for the care and rehabilitation of the developmentally disabled. The project includes renovation of two existing buildings and construction of three new buildings on the proposed property parcel, which will be leased by the Department of Labor from the State of Rhode Island for a term of 50 years. The Exeter Job Corps Center will provide training and support for 200 resident students. The EA prepared by the ETA concluded that the construction of a new Job Corps Center at the proposed property parcel would have no significant negative impacts on the natural, cultural, or social environment in the surrounding community. Due to the adaptability of the existing structures on the site, the lack of alternative construction sites, and the absence of any identified adverse environmental impacts from locating a Job Corps Center at the subject property, the "Continue Construction as Proposed" alternative was selected, and a finding of no significant impact was made. Although the Department of Labor's NEPA compliance procedures do not require a public comment period for an environmental assessment that results in a finding of no significant impact, the ETA voluntarily published the FONSI for the Exeter Job Corps Center as a preliminary finding, and provided a 30-day public comment period.

Discussion of Public Comments and Interagency Review

The ETA received written comments from three public agencies: (1) the Town Council for the Town of Exeter, Rhode Island; (2) the Planning Board for the Town of Exeter, Rhode Island; and (3) the United States Environmental Protection Agency, Region I, Rhode Island Program. All three agencies disagreed with the ETA's finding of no significant impact, and offered comments on the EA.

Comments From the Town of Exeter Town Council

The Town of Exeter Town Council provided twelve specific comments and/or questions regarding the EA prepared by the DOL. The first comment was that the format of the EA appeared to be based on the ASTM standard for Phase I environmental site assessments (ESA), and the Town Council questioned whether the EA was prepared primarily to relieve the ETA of CERCLA liability and to provide a boilerplate for a finding of no significant

impact (Section 1.1—Purpose and Scope and Section 4.1—Facility Characteristics). The EA was prepared by a contractor to the ETA under a specific scope of work that included both (1) an ASTM phase I environmental site assessment to identify potential CERCLA liabilities associated with the proposed project parcel; and (2) an evaluation of potential environmental impacts associated with the project, in accordance with the NEPA implementation regulations promulgated by the DOL. Combining these two environmentally related tasks in a single scope of work complies with the Council on Environmental Quality NEPA regulations on paperwork reduction (40 CFR 1500.4). The EA was designed to provide a format for publication of a FONSI if no significant impact was identified, or for development of an environmental impact statement (EIS) if a potentially significant impact was identified. The DOL believes that the scope of work and format for this EA satisfy the intent and specific requirements of the NEPA.

The second comment expressed concern that the Rhode Island Department of Mental Health, Retardation, and Hospitals (DMHRH) had not been consulted regarding the past uses of the property (Section 1.2—Sources of Information and Section 4.3.5.5—Standard Historical Sources). During preparation of the EA, several interviews were conducted with representatives of the Rhode Island Economic Development Corporation (EDC) who had personal knowledge of the site and of the past uses of the property, and written records concerning the past uses of the property were also reviewed. Based on the available information, there are no indications that additional information from the DMHRH would have any affect on the determination of either the potential CERCLA liability of the property or the potential environmental impacts from the proposed Job Corps Center. The finding of no significant impact is therefore reasonable, and the EA has not been edited in response to this comment.

The third comment from the Town Council suggested that, because the specific vocational curriculum at the proposed Job Corps Center has not yet been finalized, environmental concerns from Job Corps training operations (Section 3.1—Proposed Job Corps Center) cannot be thoroughly evaluated at this time. Although the specific vocational curriculum has not yet been finalized, the proposed vocations include carpentry and masonry. Both of these trades are included in vocational programs at Job Corps centers throughout the nation, and neither of these trades is associated with significant air, water, noise, hazardous waste, or solid waste pollution at any of the centers in which they are taught. The finding of no significant impact is therefore reasonable, and the EA has not been edited in response to this comment.

The fourth comment pointed out that the proposed student population listed in the EA (Section 3.2—Facility Characteristics) was 200 residential students and 100 non-resident students, whereas the final project proposal was for 200 residential students only. The removal of non-resident students from the proposed Job Corps Center has no effect on the finding of no significant impact, however, except possibly to reduce even further the anticipated impacts on vehicular traffic, noise, and non-source air pollution. Although this error has no bearing on the finding of no significant impact, the proposed student population was corrected in an addendum to the EA published on January 14, 2000.

The fifth comment stated that the review of the United States Geological Survey (USGS) 7.5 minute topographic map (Section 4.3.5.4) conducted as part of the Phase I ESA was inadequate, and suggested that further evaluation of the Queen's River aquifer should have been included in this section. This section of the ESA was intended only to provide an evaluation of recognized environmental conditions and potential liabilities that could be identified through an evaluation of the USGS 7.5 minute topographic map, and was not intended to include an in-depth discussion of existing groundwater conditions. The EA report has not been edited in response to this comment.

The sixth and seventh comments correctly pointed out that the Town of Exeter is incorrectly identified as the "City of Exeter'in several sections of the EA, and that the EA (Section 5.2.1—Land Use) incorrectly identifies a downtown area of Exeter. Although they have no bearing on the finding of no significant impact, both of these errors have been corrected in an addendum to the EA published on January 14, 2000.

The eighth comment from the Town Council referenced the EA's description of adjoining property land use (Section 5.2.1). The town council stated that, due to the presence of wetlands, farmland, and undeveloped property parcels surrounding the former Ladd Center, impacts to groundwater from the project may have "unforeseeable and irreparable consequences, and * * * justifies the need for further assessment." The DOL recognizes the concern for protection of groundwater in this area, and all buildings, surface improvements, sewage disposal systems, and storm water control systems will be constructed in accordance with Rhode Island Department of Environmental Management (RIDEM) guidelines and regulations to minimize impacts to groundwater. The nature of surrounding land use will not effect the DOL's ability to protect groundwater resources, and therefore does not affect the finding of no significant impact. The EA correctly describes adjoining property use, and has not been edited in response to this comment.

The ninth comment from the Town Council identified an incorrect spelling of a Town Council representative (Section 5.2.2—Demographics and Socio-Economic). Although the error has no bearing on the finding of no significant impact, the spelling was corrected in an addendum to the EA published on January 14, 2000.

The tenth comment referenced the EA's description of historical land use (Section 5.2.3), which stated that an archaeological assessment of the Ladd Center property was warranted "due to the parcel's favorable environmental characteristics such as well-drained soils * * *, level topography and abundance of nearby freshwater wetlands." The town council stated that these conditions created the potential for "unforeseeable and irreparable consequences, and * * * justifies the need for further assessment." As indicated above, the DOL recognizes the concern for protection of groundwater in this area. This section of the EA, however, is intended only to focus on the potential for historic and/or archaeological resources on the proposed project parcel. Since the EA (and a subsequent archaeological assessment of the entire Ladd Center by the Rhode Island Economic Development Corporation) did not identify any historically significant or archaeologically sensitive areas on or immediately adjacent to the proposed Job Corps parcel, the finding of no significant impact is reasonable. The EA has not been edited in response to this comment.

The eleventh comment from the Town Council stated that the EA's description of the Exeter Fire Department (Section 5.2.7.3—Fire/Rescue/Emergency) as a full time department providing 24 hour service was incorrect; the Exeter Fire and Rescue Departments are part-time volunteer agencies. This error was corrected in an addendum to the EA published on January 14, 2000, but the

error has no bearing on the finding of no significant impact.

The final comment stated that insufficient information was researched in order to support the EA's statement that "wastewater flows and resultant demand on the regional infrastructure will not increase significantly" (Section 6.1.1—Hydrogeology). The term "regional infrastructure", as applied to wastewater disposal, generally refers to municipal sewer lines, wastewater pumping stations, and publicly owned treatment facilities. Wastewater disposal for the proposed project will be managed through an individual sewage disposal system (ISDS) in accordance with RIDEM guidelines and regulations, and therefore will have no impact either on groundwater on the regional wastewater infrastructure. The DOL believes that the finding of no significant impact is justified, and the EA has not been edited in response to this comment.

Comments From the Town of Exeter Planning Board

The Exeter Planning Board submitted a letter objecting to the finding of no significant impact, stating that they felt an EIS was required. The Planning Board included twenty-one specific comments on the EA.

Their first comment criticized the database information used by the DOL in preparation of the ESA portion of the report (Section 4.3—Environmental Records Review), suggesting that the site specific information contained in the database should have been verified. The use of environmental databases to identify known environmental concerns is standard practice in the preparation of an ESA. Field verification of the database information is not required or recommended in the ASTM Standard Practice for Environmental Site Assessments. The DOL believes that the information used in preparing the ESA was reliable, and this comment has no bearing on the finding of no significant impact.

The second comment requested that the impacts of leaking underground storage tanks (UST) at the Exeter Mall site should be included in the ESA portion of the report (Section 4.3.2.2—Leaking Underground Storage Tank Sites). This section of the EA report was generated from a RIDEM database of leaking UST sites, which reported no leaking UST sites within a 0.5 mile radius of the proposed Job Corps property parcel. A database search of 0.5 mile radius is specified in the ASTM Standard Practice for Environmental Site Assessments. The proposed project will not have any impact on the site referenced by the Planning Board, and this comment has no bearing on the finding of no significant impact.

The third comment from the planning board suggested that insufficient information was obtained through consultation with interested parties (Section 4.4.2—Interviews with Knowledgeable Parties) for assessment of known environmental conditions. The Board suggested that additional assessment of the 6 USTs on the Ladd Center property should be conducted, and they suggested that the DOL should have consulted with the RIDEM, former property managers, town officials, the Nature Conservatory, and the Audubon Society. The DOL believes that additional assessment of the 6 USTs identified on the Ladd Center is not necessary for satisfactory completion of the EA, since these tanks are not located on or immediately adjacent to the proposed Job Corps property parcel, and the proposed project will not have any impact on surface or subsurface soils in the vicinity of the USTs. With respect to the adequacy of the interviews conducted, the DOL believes that sufficient interviews were conducted to satisfy the informational requirements of both the phase I ESA and the requirements for an EA under the DOL NEPA implementation regulations.

The fourth comment suggested possible environmental impacts due to the presence of mercury in fluorescent light bulbs throughout the buildings to be renovated under this project. The fluorescent light bulbs were identified as a recognized environmental condition in the ESA section of the EA (Section 4.5—Findings and Conclusions). As discussed in Section 6.3.5 of the EA, any fluorescent light fixtures removed during renovation activities will be disposed of in accordance with applicable State and Federal regulations. Although the fluorescent light bulbs represent a potential environmental liability associated with the property, there are no significant impacts associated with the proper removal, handling, and disposal of these fixtures for the proposed Job Corps renovations.

The fifth comment from the Planning Board suggested that a description and diagram of the existing groundwater reservoir and well fields should be included in the EA, and suggested that the USGS report on the Queens River Aquifer should have been reviewed in evaluating the impact of the project (Section 5.1.5—Natural Environment and Resources). The DOL did not include a detailed description of the groundwater aquifer in the EA report, since the EA is intended to be only a brief evaluation and discussion of potential environmental impacts. As indicated previously, the RIDEM has informed the DOL that an individual sewage disposal system (ISDS) for the proposed Job Corps project, with appropriate pretreatment, will meet RIDEM regulations for the protection of ground and surface waters. The estimated groundwater withdrawal for the proposed Job Corps project is also well below the current yield for existing groundwater wells, and will not add significantly to the overall withdrawal from the Queens River Aquifer. The DOL believes that the discussion of natural environment and resources presented in the EA is sufficient, and supports the finding of no significant impact.

The sixth comment from the Planning Board suggested that the EA did not sufficiently address potential impacts to rare species living at the Queens River, and suggested that the DOL should more clearly delineate the wetlands surrounding the Ladd Center (Section 5.1.5—Natural Environment and Resources). Both the U.S. Fish and Wildlife Service and the RIDEM Natural Heritage Program were consulted during preparation of the EA, and no known endangered or threatened plant or animal species were identified on the proposed Job Corps property parcel. The EA indicates that no jurisdictional wetlands are located on or immediately adjacent to the proposed property parcel, although there are protected wetlands to the Southeast, Northwest, and West of the proposed property parcel. As indicated in the EA, all storm water will be managed on-site so as to minimize run-off to wetlands areas and other surface water receptors, in accordance with RIDEM storm water guidelines and regulations.

The Planning Board disagreed with the DOL's conclusion that noise from the proposed Job Corps center will not create a significant impact (Section 5.1.8—Noise), suggesting that construction and operation of the Job Corps center will negatively impact residential communities in the vicinity of the project. As indicated in the EA, construction and operation of the Job Corps center will comply with all applicable noise standards. Due to the remoteness of the center location and its confinement within the boundaries of the 300 acre Ladd Center property, noise impacts from the proposed Job Corps center are anticipated to be minimal. The DOL believes that the discussion of noise levels presented in the EA is reasonable, and supports the finding of no significant impact.

The Planning Board also raised concern over the proposed center's compliance with the Town of Exeter lighting regulations (Section 5.1.9—Lighting). As indicated in the EA, the Job Corps center will comply with all applicable lighting regulations, including those of the Town of Exeter. Due to the remoteness of the center location and its confinement within the Ladd Center boundaries, no significant impacts from the center's lighting system are anticipated.

The ninth comment from the Planning Board supported the conduct of an archaeological assessment for the former Ladd Center, as recommended by the State of Rhode Island Historical Preservation & Heritage Commission and reported in the EA (Section 5.2.3—History and Archaeology). This recommendation was made in reference to the Ladd Center as a whole, and not in reference to the Job Corps property parcel. As reported in the EA, no known or suspected archaeological sites have been identified on the proposed Job Corps property parcel. The findings presented in the EA have been confirmed by an archaeological assessment recently performed by the Rhode Island EDC, which concluded that there is little potential for culturally significant findings on the proposed Job Corps center property parcel. The DOL believes that the discussion of historical and archaeological impacts presented in the EA is reasonable, and supports the finding of no significant impact.

The tenth comment from the Planning Board stated that the EA's statements relating to the impacts of the proposed project on water and sewer resources are inadequate (Section 5.2.6.2—Water and Section 5.2.6.3—Sewer). As discussed in the EA and reiterated above, the estimated water withdrawal for the proposed Job Corps center is well below the current pumping rate for existing on-site wells, and will create a minimal impact on the overall water withdrawal from the Queens River Aquifer. The DOL has consulted with the RIDEM regarding the impacts to groundwater from sewage disposal, and RIDEM informed the DOL that an ISDS can be designed for the proposed project, with appropriate wastewater pre-treatment, to meet all RIDEM regulations and ensure protection of groundwater resources. The DOL believes that the discussions of water use and wastewater treatment presented in the EA are sufficient, and support the finding of no significant impact.

Comment eleven from the Planning Board repeated the concern raised by the Town Council criticizing the finding that wastewater flows will not have significant impact on regional infrastructure (Section 6.1.1—Hydrogeology). This comment has been addressed above, and does not affect the DOL's finding of no significant impact for the proposed Job Corps center.

The twelfth comment stated that the Planning Board does not accept the DOL's statement that the project site has been selected to avoid negative impacts on rare, threatened, or endangered species or wetland habitats (Section 6.1.2—Natural Environment and Resources), and stated that they will independently assess the impact of the project during the Planning Board's site review process. The DOL is aware that many local jurisdictions have established procedures for site plan review, and the DOL will continue to work closely with the Planning Board and other interested parties throughout the design and construction of the proposed project. The Planning Board's site review is separate from the DOL's internal NEPA review, however, and does not impact the finding of no significant impact.

Comment thirteen restated the Planning Board's objection to the finding of no impact from noise at the center (Section 6.1.5—Noise), stipulating that the Job Corps center will inevitably increase traffic flow over the current level, since the Ladd Center is currently vacant. Although vehicular traffic will increase over current levels, the increase will not have any significant effects on air quality, noise levels, or traffic patterns in the vicinity. The traffic associated with construction and operation of the Job Corps center will be well below the traffic levels that previously occurred at the Ladd Center, and the existing road systems and transportation infrastructure is more than adequate to handle the Job Corps traffic load. The DOL believes that the discussion of traffic patterns and noise levels presented in the EA is reasonable, and supports the finding of no significant impact.

The Planning Board challenged the statement in the EA identifying a proposal to establish an educational/residential land use classification for the proposed Job Corps property parcel (Section 6.2.1—Land Use). The Planning Board correctly pointed out that the proposed re-zoning has been withdrawn, and the subject property currently retains a special zoning classification. Although the proposed re-zoning has been withdrawn, there are no restrictions associated with the current special zoning classification that would prevent construction of the proposed Job Corps center. The correct zoning status of the property was included in an addendum to the EA published on January 14, 2000.

The Planning Board also questioned who would pay for fire, police, and rescue services (Section 6.2.2—Demographics and Socio-Economics). As discussed in the EA, the Job Corps center will have on-site security staff and limited medical services. The Job Corps center will rely on the Town of Exeter and the State of Rhode Island for emergency services, as did the Ladd Center during its operation. The demand for emergency services is anticipated to be minimal. A review of fire, police, and rescue service capabilities for the Town of Exeter and the State of Rhode Island indicates that the existing emergency services are sufficient to meet the anticipated needs of the Job Corps Center, and will not result in a significant increased service demand. The issue of compensation for services provided is not relevant to the EA, and has no bearing on the finding of no significant impact.

Comment number sixteen from the Planning Board reiterated their concern over possible impacts from wastewater treatment at the proposed Job Corps center (Section 6.2.6.3—Sewer), stating that the project must take into account the need for nitrogen removal in accordance with the Town of Exeter wastewater regulations. As stated in the EA, the RIDEM has indicated that an ISDS is an appropriate wastewater treatment technology for the proposed Job Corps center. The DOL will continue to consult with the RIDEM, the Town of Exeter, and other interested parties during the design of the ISDS to ensure that the design conforms with all applicable wastewater treatment guidelines and regulations. The ISDS will be maintained and operated by appropriately trained and/or licensed operators, either by a center staff member or through an outside contractor. The DOL believes that the discussion of wastewater impacts in the EA is reasonable, and supports the finding of no significant impact.

The Planning Board also commented that a private contractor will be necessary to transport solid waste from the center to the landfill (Section 6.2.6.4—Solid Waste). The EA indicates that solid waste transport will be handled either by the Town of Exeter or a private solid waste transporter; the proposed Job Corps center will contract with a private transporter to provide solid waste removal.

Comment number eighteen from the Planning Board stated their disagreement with the findings of the EA with respect to storm water drainage patterns at the proposed Job Corps

center. (Section 6.2.6.5—Storm water Management). As stated in the EA, the interior renovation of existing buildings will not affect storm water drainage patterns on the site, and new buildings will be designed and constructed in accordance with applicable storm water regulations so as to minimize soil erosion and storm water run-off from the property. The DOL believes that the discussion of storm water management in the EA is reasonable and sufficient, and supports the finding of no significant impact.

Comment number nineteen repeated the Planning Board's belief that traffic will be increased as a result of the proposed Job Corps center. As discussed above, the increase in traffic is well within the designed capacity of the existing road system, and will not result in any significant impacts to air quality, noise levels, or traffic patterns in the vicinity.

The twentieth comment from the Planning Board indicated that the Town of Exeter will not provide government services without compensation (Section 6.2.7—Government Services). As stated above, the issue of compensation for services provided is not relevant to the EA, and has no bearing on the finding of no significant impact.

The final comment from the Planning Board stated their belief that the information in the EA does not support a finding of no significant impact, and they stated that the Planning Board would require an EIS in accordance with the Exeter Land Development and Subdivision Regulations. The DOL does not believe that any of the comments submitted by the Town of Exeter Planning Board justify the need for an EIS. The DOL has committed to meet all applicable environmental guidelines and regulations during construction and operation, and the EA identifies no significant impacts which will result from the construction and operation of a Job Corps center at the proposed site. The need for an EIS is typically based on the evaluation criteria contained in the DOL NEPA Compliance Procedures (29 CFR part 11) and the Council on Environmental Quality NEPA Regulations (40 CFR part 1500 *et seq.*), not based upon local ordinances. Although the DOL is rejecting the Planning Board's request for an EIS, the DOL will continue to consult with the Town of Exeter, the RIDEM, and other interested parties throughout the design and construction of the proposed Job Corps center.

Comments From the Environmental Protection Agency, Region 1, Rhode Island Program

The Environmental Protection Agency, Region 1, Rhode Island Program challenged the FONSI based on five deficiencies or errors contained in the EA. The first deficiency cited by the EPA was that the EA does not include "clear and accurate descriptions of natural resources down gradient and in proximity to" the proposed Job Corps center. The DOL does not agree with the EPA's assessment. The EA identified no jurisdictional wetlands on or immediately adjacent to the proposed Job Corps property. The EA did identify protected wetlands to the southeast, northwest, and west of the subject property. Since the proposed project will not include any point source discharges to surface water, and buildings and other surface improvements will be designed to minimize storm water run-off, the DOL believes that there will be no significant impacts to these down-gradient resources. As such, a more detailed description of the down gradient wetlands is not necessary.

The EPA's second comment focused on the discussion of endangered or threatened plant and animal species included in the EA. The EPA stated that the Ladd Center is "bordered by some of the most pristine cold water riverine habitat in * * * Rhode Island. The Nature Conservancy and Audubon have acquired hundreds of acres of critical habitat bordering * * * the Ladd property * * *" The EPA goes on to state that the EA has incorrectly reported that there are no protected species in these habitats, suggesting that the wetlands surrounding the Ladd Center support habitat for three protected species: two odonates (dragonfly species) and one fresh water mussel. The DOL disagrees with the EPA's criticism of the EA in this regard, and believes that the EPA's comments are misleading. The description of the wetlands surrounding the Ladd Center suggests that these areas are federally designated critical habitat areas; however, there are no critical habitat areas listed by the U.S. Fish and Wildlife Service within the State of Rhode Island. Also, contrary to the EPA's assertion, the EA correctly states that there are no known threatened or endangered species on or in close proximity to the subject property; the species identified by the EPA are not listed as threatened or endangered species by either the Rhode Island Natural Heritage Program or the U.S. Fish and Wildlife Service, but are listed by the State of Rhode Island as "species of concern". This designation is defined by the Natural Heritage Program as "native species not considered to be State Endangered or State Threatened at the present time, but are listed due to various factors of rarity and/or vulnerability." Although the Natural Heritage Program did not identify any known populations of these species surrounding the Ladd Center during preparation of the EA, the DOL recognizes that the surrounding wetland areas provide habitat that can support these and other species of concern. The DOL has therefore proposed construction of the Job Corps center so as to prevent any surface water discharges to the wetlands.

The EPA's third comment stated that the EA should "have a more factual groundwater quality discussion and surface water quality discussion." The DOL disagrees that a more detailed discussion of ground and surface water impacts is needed. As stated in the EA and above, the project will be designed to prevent surface water discharges and storm water run-off from the site, so no significant impacts to surface waters are anticipated. With respect to groundwater impacts, the DOL has consulted with the RIDEM regarding the selection of an ISDS with associated pre-treatment for the proposed Job Corps center, and the RIDEM does not anticipate any significant impacts on the Queen's River Aquifer from the proposed project. As referenced in the EA, the Job Corps facility will be designed, constructed, and operated in compliance with all applicable wastewater and storm water regulations.

The EPA also stated that the EA should include a "short factual discussion on the volume of water to be withdrawn from the aquifer * * *" The EA reports that drinking water will be drawn from the existing well system at the Ladd Center, and that the current well yield is more than adequate for the proposed usage. Although the DOL does not feel that more detailed analysis is required for the EA, a brief review of the proposed center usage clearly demonstrates that the proposed Job Corps center will not have any significant impacts to the Queens River Aquifer. With an estimated center population of 245 equivalent persons and a consumption rate of 80 gallons per person per day, the estimated withdrawal rate for the Job Corps center is 19,600 gallons per day (gpd). The USGS estimated groundwater withdrawal rate for the Pawcatuck Watershed was 10.54 million gpd in 1990 (the Queens River is a sub-watershed within the Pawcatuck

watershed). The proposed Job Corps center will increase groundwater withdrawal rates within the Pawcatuck watershed by less than 0.2%. Since the use of an on-site ISDS will result in an estimated 85% water return rate, the net withdrawal from the aquifer will be even lower. The DOL believes that the information presented in the EA is accurate, and supports the finding of no significant impact.

The final comment from the EPA states that the EA "does not include an assessment of potential cumulative effects from the training center [Job Corps] and from other future development at Ladd." The EDC is currently preparing a proposal for development of a portion of the remaining Ladd Center property, but no specific development plans have been finalized. The DOL is not involved in the EDC's overall development plan. Although NEPA requires the DOL to consider the cumulative impact on the environment from the proposed federal action, it does not require the DOL to evaluate the impacts from other proposed development projects. The EA has demonstrated that the proposed Job Corps center will not result in a significant impact on the environment, regardless of the future use of the remaining property. If future development of the Ladd Center presents a significant impact on the environment, it will be due to the specific proposed usage of the property, not to any contributions from the proposed Job Corps center.

Conclusions

The DOL appreciates all of the comments submitted by interested parties on the EA for the proposed Job Corps center in Exeter, Rhode Island. An addendum to the EA has been published to correct factual errors in the EA identified by commenting agencies, and copies of the addendum are available from the above address. After reviewing all comments submitted during the review, the DOL believes that the EA satisfactorily addresses the potential impacts from the proposed project, and that the EA supports a finding of no significant impact. This notice serves as the DOL's final notice of their intent to establish a Job Corps center at the former Ladd Center in Exeter, Rhode Island, and that this proposed project will have no significant impacts on the environment.

Dated at Washington, DC, this 2nd day of March, 2000.

Mary Silva,

Director of Job Corps.

[FR Doc. 00–5844 Filed 3–9–00; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I

New Jersey
NJ000002 (Feb. 11, 2000)
New Jersey
NJ000003 (Feb. 11, 2000)

Volume II

Pennsylvania
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PA000004 (Feb. 11, 2000)
PA000012 (Feb. 11, 2000)
PA000016 (Feb. 11, 2000)
PA000020 (Feb. 11, 2000)
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West Virginia
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Alabama
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 2nd day of March 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–5595 Filed 3–9–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Pension and Welfare Benefits Administration (PWBA) is announcing that a collection of information has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 for the Interim Final Rule for Reporting by Multiple Employer Welfare Arrangements and Certain Other Entities That Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers (Interim Final Reporting Rule). This notice announces the OMB approval number and expiration date.

FOR FURTHER INFORMATION CONTACT: Copies of the Form M–1 and instructions (as well as filer's guides) may be obtained by calling PWBA's Publication Hotline at 1–800–998–7542 and via the Internet at: www.dol.gov/dol/pwba. Individuals with questions

about the Form M–1, and individuals who would like assistance in completing the Form M–1, should call the PWBA help desk at (202) 219–8818.

Address requests for copies of the information collection request (ICR) to Gerald B. Lindrew, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, N.W. Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On February 11, 2000, PWBA published an Interim Final Reporting Rule and the Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception (Form M–1)(65 FR 7152). On that day, PWBA also published an Interim Final Rule for the Assessment of Civil Penalties under Section 502(c)(5) of ERISA and an Interim Rule Governing Procedures for Administrative Hearings Regarding the Assessment of Civil Penalties under Section 502(c)(5) of ERISA (Interim Final Penalty Rules, 65 FR 7181). Although written comments on the Interim Final Reporting Rule and Interim Final Penalty Rules may be submitted through March 13, 2000, the Department submitted the information collection request (ICR) included in the Interim Final Reporting Rule to OMB using emergency procedures, and requested approval by March 6, 2000.

On March 2, 2000, OMB approved the ICR under emergency provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*) and 5 CFR 1320. The approval will expire on August 31, 2000. The control number assigned to this ICR by OMB is 1210–0116. Although the ICR has been approved on an emergency basis, interested persons may still submit comments on the ICR through April 11, 2000 to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for Pension and Welfare Benefits Administration. PWBA will take these comments into consideration in finalizing the form and in preparing the application for continuing approval of the ICR that will be submitted to OMB prior to the expiration of the emergency approval.

The Form M–1 that was formerly available from PWBA's Publication Hotline and Internet website has now been revised to include the OMB control number, which was not available at the time of publication on February 11, 2000. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless the collection displays a valid control number. Accordingly, persons required to file the Form M–1 may wish to obtain and file a copy of the Form M–1 displaying the OMB control number.

Dated: March 7, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–5910 Filed 3–9–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Job Training Partnership Act, Title IV, Part C, Program Year 1999—Native American Competitive Grants

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training.

ACTION: Notice of availability of funds and solicitation for grant applications for Job Training Partnership Act, Title IV, Part C, Program Year 1999—Native American Competitive Grants (SGA 00–02).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS) announces a grant competition for Job Training Partnership Act, Title IV, Part C, Program Year 1999—Native American Competitive Grants. Such projects will assist eligible veterans who are Vietnam-era, service-connected disabled and recently separated Native American veterans by providing employment, training, and supportive service assistance. Under this solicitation, VETS expects to award up to three grants in Program Year (PY) 1999.

This notice describes the background, the application process, description of program activities, evaluation criteria, and reporting requirements for Solicitation of Grant Applications (SGA) 00–02. VETS anticipates that up to $450,000 will be available for grant awards under this SGA.

The information and forms contained in the Supplementary Information Section of this announcement constitute the official application package for this Solicitation. In order to receive any amendments to this Solicitation which may be subsequently issued, *all applicants must register their name and address with the Procurement Services Center.* Please send this information as soon as possible, Attention: Grant Officer, to the following address: U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210. Please reference SGA 00–02.

DATES: One (1) blue ink-signed original, complete grant application plus three (3) copies of the Technical Proposal and three (3) copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210, not later than 4:45 p.m., Eastern Standard Time, April 10, 2000. Hand delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Procurement Services Center, Attention: Lisa Harvey, Reference SGA 00–02, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 219–6445 [not a toll free number].

SUPPLEMENTARY INFORMATION:

Job Training Partnership Act, Title IV, Part C, Program Year 1999—Native American Competitive Grants Solicitation

I. Purpose

The U.S. Department of Labor (DOL), Veterans' Employment and Training Service (VETS) is requesting grant applications for the provision of employment and training services for Native American Veterans who meet the eligibility criteria set forth in accordance with the Job Training Partnership Act, Title IV, Part C (JTPA IV–C). These instructions contain general program information, requirements and forms for application for funds to operate a Native American veterans' employment and training program.

II. Background

The Job Training Partnership Act, Title IV, Part C provides that "The Secretary shall conduct, directly or through grant or contract, such employment and training programs as the Secretary determines appropriate to assist Vietnam-era, service-connected disabled and recently separated veterans to obtain gainful employment.

In accordance therewith, the Assistant Secretary for Veterans' Employment and

Training (ASVET) is making $450,000 of the funds available to award grants for unique and innovative Employment and Training programs. Programs should maximize the eligible veterans' military skills, training and experience, by effectively exploring the transitional or transferable occupational opportunities in the geographical area that the grant would be awarded. Programs may develop Licensing and Certification employment and training programs that target occupations that are essential and have a direct impact within the economic environment that the eligible veteran resides in.

III. Application Process

A. Potential Jurisdictions To Be Served

Due to the limited amount of funds available, an emphasis for selection will be placed on in-kind match/ contribution, and the establishing or strengthening of existing linkages with other service providers.

B. Eligible Applicants

Applications for funds will be accepted from State and local public agencies, Private Industry Councils, and nonprofit organizations as follows:

1. Private Industry Councils (PICS) and/or Workforce Investment Boards (WIBS) as defined in Title I, Section 102 of the Job Training Partnership Act (JTPA), Public Law 97–300, are eligible applicants, as well as State and local public agencies. "Local public agency" refers to any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through subgrants, experienced public agencies, private nonprofit organizations, and private businesses which have an understanding of the unemployment and the barriers to employment unique to Native American veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

B. Also eligible to apply are nonprofit organizations who have operated an employment and training program for Native American veterans; have proven capacity to manage Federal grants; and have or will provide the necessary linkages with other service providers. Nonprofit organizations will be required to submit with their application recent (within one year) financial audit statements that attest to the financial responsibility and integrity of the organization. Entities described in Section 501(c)4 of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this announcement. The Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities if they engage in lobbying activities.

C. Funding Levels

The total amount of funds available for this solicitation is $450,000. It is anticipated that 3 awards will be made under this solicitation. Awards will not exceed $150,000. The Federal government reserves the right to negotiate the amounts to be awarded under this competition. *Please be advised that requests exceeding this range by 15% or more will be considered non-responsive.*

D. Period of Performance

The period of performance will be for twelve months from date of award. It is expected that successful applicants will commence program operations under this solicitation on or before June 1, 2000. Actual start dates will be negotiated with each successful applicant. Because JTPA funds will no longer be obligated by the U.S. Department of Labor after June 30, 2000, second year funds/funding will in no instance be available from this funding source.

E. Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 pm EST, April 10, 2000 will not be considered unless it is received before the award is made and:

1. it was sent by registered or certified mail not later than the fifth calendar day before April 10, 2000;

2. it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. it was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to April 10, 2000.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will *not* be accepted.

F. Submission of Proposal

A cover letter, and an original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts:

Part I—Technical Proposal shall consist of a narrative proposal that demonstrates the applicant's knowledge of the need for this particular grant program, its understanding of the services and activities proposed to alleviate the need and its capabilities to accomplish the expected outcomes of the proposed project design. The technical proposal shall consist of a narrative not to exceed fifteen (15) pages double-spaced, typewritten on one side of the paper only. Charts and exhibits are not counted toward the page limit. Applicants should be responsive to the Rating Criteria contained in Section VI and address all of the rating factors noted as thoroughly as possible in the

narrative. The following format is strongly recommended:

1. Need for the project: The applicant should identify the geographical area to be served and provide an estimate of the number of Native American veterans and their needs, poverty and unemployment rates in the area, and gaps in the local community infrastructure the project would fulfill in addressing the employment and other barriers of the targeted veterans. Include the outlook for job opportunities in the service area.

2. Approach or strategy to increase employment and job retention: The applicant must show how the training will enhance the eligible veterans employment opportunities within that geographical area. The applicant should describe the specific supportive services and employment and training services to be provided under this grant and the sequence or flow of such services. Participant flow charts may be provided. Include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP) and the Local Veterans' Employment Representative (LVER) program and programs operated under the Job Training Partnership or Workforce Investment Act. Please include a plan for follow up after 90 days with participants who entered employment. (See discussion on results in Section V. D.) Include the chart of proposed performance goals and planned expenditures listed in Appendix D. Although the form itself is not mandatory, the information in Appendix D must be provided by the applicant.

3. Linkages with other providers of employment and training services to the Native Americans and to veterans: Describe the linkages this program will have with other providers of services to veterans and to the Native Americans outside of the grant. List the types of services provided by each. Note the type of agreement in place if applicable. Linkages with the workforce development system [inclusive of JTPA and State Employment Security Agencies (SESAs)] should be delineated. Describe any linkages with Department of Housing and Urban Development (HUD) and Department of Veterans Affairs (VA) resources and other programs for Native Americans. Indicate how the applicant will coordinate with any "continuum of care" efforts for the Native American among agencies in the community.

4. Organizational capability in providing required program activities: The applicant's relevant current or prior experience in operating employment and training programs should be delineated. (For consideration by panel members, the government reserves the right to have a representative of the Veterans' Employment and Training Service within your state provide programmatic and fiscal information about applicants and forward those findings to the National Office during the review of applications.) Provide information denoting outcomes of past programs in terms of enrollments and placements. Applicants who have operated a Native American program or a JTPA IV–C program, should include final or most recent technical performance reports. (This information is also subject to verification by the Veterans' Employment and Training Service.) Provide evidence of key staff capability. Non-profit organizations should submit evidence of satisfactory financial management capability including recent financial and/or audit statements.

5. Proposed supportive service strategy for Native American veterans: Describe how supportive service resources for Native American veterans will be utilized, obtained or accessed. These resources may be from linkages or sources other than the grant such as HUD, community resources, VA or other programs. The applicant should explain whether grant resources will be used and why this is necessary.

Note: Resumes, charts, and standard forms, transmittal letters, letters of support are not included in the page count. If provided include these documents as attachments to the technical proposal.

Part II—Cost Proposal shall contain the Standard Form (SF) 424, "Application for Federal Assistance," and the Budget Information Sheet in Appendix B. In addition the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Please label this page or pages the "Budget Narrative." Also to be included in this Part is the Assurance and Certification Page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this solicitation. The Catalog of Federal Domestic Assistance number for this program is 17.802, which should be entered on the SF 424, Block 10. Please show leveraged resources/matching funds and/or the value of in-kind contributions in Section B of the Budget Information Sheet.

Budget Narrative Information

As an attachment to the Budget Information Sheet, the applicant must provide at a minimum, and on separate sheet(s), the following information:

(a) A breakout of all personnel costs by position, title, salary rates and percent of time of each position to be devoted to the proposed project (including subgrantees);

(b) An explanation and breakout of extraordinary fringe benefit rates and associated charges (*i.e.*, rates exceeding 35% of salaries and wages);

(c) An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, subgrants/contracts and any other costs. The applicant should include costs of any required travel described in this Solicitation. Mileage charges shall not exceed 32.5 cents per mile;

(d) Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

(e) Identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind Services.

IV. Participant Eligibility

To be eligible for participation under this Native American program, an individual must be a Vietnam-era, service-connected disabled or recently separated veteran defined as follows:

A. The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [Reference 38 USC 101(2)]

B. The term "Vietnam-era veteran"—refers to an eligible veteran for which any part of his or her active military service was during the Vietnam-era (*i.e.*, August 5, 1964 through May 7, 1975). See 29 U.S.C. § 1503(27)(D). In addition, "the period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period."see PL. 104—275, Section 505, enacted October 9, 1996.

C. The term "service-connected disabled"—refers to (1) a veteran who is entitled to compensation under laws administered by the Department of Veterans' Affairs (VA), or (2) an individual who was discharged or released from active duty because of a service-connected disability. (29 U.S.C. § 1503(27)(B)).

D. The term "recently-separated veteran"—refers to any veteran who applies for participation in a JTPA IV–C funded activity within 48 months

after separation from military service. (29 U.S.C., 1503(27)(C))

V. Project Summary

A. Program Concept and Emphasis

The Native American grants under this SGA are intended to address dual objectives: Provide services to assist in reintegrating Native American veterans into meaningful employment within the labor force; and stimulate the development of effective service delivery systems that will seek to address the complex problems facing Native American veterans.

These programs are designed to be flexible in addressing the universal as well as local or regional problems barring Native American veterans from the workforce. The program in PY 1999 will continue to strengthen the provision of comprehensive services through a case management approach, the attainment of supportive service resources for veterans entering the labor force, and strategies for employment and retention.

B. Required Features

1. The Native American program should feature an outreach component consisting of veterans who have experienced working and serving the Native American Veteran population. This requirement can be modified to allow the projects to utilize Native Americans, preferably Native American Veterans in other positions where there is direct client contact if outreach was not needed extensively, such as intake, counseling, peer coaching and follow up. This requirement applies to projects funded under this solicitation.

2. Projects will be required to show linkages with other programs and services which provide support to Native American veterans. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists in the jurisdiction is required.

3. Projects will be "employment focused." That is, they will be directed towards (a) increasing the employability of Native American veterans through providing for or arranging for the provision of services which will enable them to work; and (b) matching Native American veterans with potential employers.

C. Scope of Program Design

The project design should provide or arrange for the following services:

—Outreach, intake, assessment, counseling and employment services. Outreach should, to the degree practical, be provided at Tribal centers, day centers, and other programs or events frequented by Native American veterans. Program staff providing outreach services are to be veterans.

Coordination with veterans' services programs and organizations such as:

—Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the newly instituted workforce development system's One-Stop Centers, or other JTPA Title IV, Part C (JTPA IV–C) Veterans' Employment Programs.
—Department of Veterans' Affairs (VA) services, including its Health Care for Veterans, Domiciliary and other programs, including those offering transitional housing.
—Veterans' service organizations such as The American Legion, Disabled American Veterans, and the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS).

Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

—Alcohol and drug;
—Medical;
—Post Traumatic Stress Disorder;
—Mental Health;
—Coordinating with programs for health care for Native Americans.

If applicable, Referral to housing assistance provided by:

—Local shelters;
—Federal Emergency Management Administration (FEMA) food and shelter programs;
—Transitional housing programs and single room occupancy housing programs funded under MHAA Title IV;
—Department of Veterans' Affairs Transitional housing programs or Domiciliary programs;
—Transitional housing leased by JTPA funds (JTPA IV–C funds cannot be used to purchase housing).

Employment and training services such as:

—Basic skills instruction;
—Basic literacy instruction;
—Remedial education activities;
—Job search activities;
—Job counseling;
—Job preparatory training, including resume writing and interviewing skills;
—Subsidized trial employment (Work Experience).
—On-the-Job Training.
—Classroom Training.
—Job placement in unsubsidized employment.
—Placement follow up services.
—Services provided under JTPA Program Titles.

D. Results-Oriented Model

Based on the past experiences of grantees working with this target group, a workable program model evolved which is presented for consideration by prospective applicants. No model is mandatory, and the applicant should design a program that is responsive to local needs, but will carry out the objectives of the Native American veteran to successfully reintegrate eligible veterans into the workforce.

With the advent of implementing the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than just program processes. While entering employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of programs. The following program discussion emphasizes that followup is an integral program component.

The first phase of activity consists of the level of outreach that is necessary in the community to reach Native American veterans. This may also include establishing contact with other agencies that encounter Native Americans veterans such as Tribal Centers, and other facilities. An assessment should be made of the supportive and social rehabilitation needs of the client and referral may take place to services such as drug or alcohol treatment or temporary shelter. When the individual is stabilized, the assessment should focus on the employability of the individual and they are enrolled into the program if they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan may be monitored by the staff. Entry into full-time employment or a specific job training program should follow in keeping with the objective of Native American program to bring the participant closer to self-sufficiency. Supportive Services may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process. Wherever possible, DVOP and LVER staff will be utilized for job development and placement activities for veterans who are ready to enter employment *or* who are in need of intensive case

management services. Many of these staff have received training in case management at the National Veterans' Training Institute and have as a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

Follow up to determine whether the veteran is in the same or similar job at the 90 day period after entering employment is required and important in keeping contact with the veterans and so that assistance in keeping or retaining the job (job retention) may be provided. The 90 day follow up is fundamental to assessing the results of the program interventions. Grantees should be careful to budget for this activity so that follow up can and will occur for those placed at or near the end of the grant period. Such results will be reported in the final technical performance report.

Retention of records will be reflected in the Special Grant Provisions to be provided at the time of any award.

E. Related Native American Program Development Activities

1. Community Awareness Activities

In order to promote linkages between the Native American program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by the grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, to outstation staff, to develop individual service contracts, and to involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

a. *Providers of hands-on services to the Native American veteran,* such as Tribal Council Elders, to make them fully aware of services available to Native American veterans to make them job-ready and place them in jobs.

b. *Federal, State and local entitlement services* such as the Social Security Administration, Department of Veterans' Affairs (VA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate JTPA, labor exchange and other employment and social services), detoxification facilities, etc., to familiarize them with the nature and needs of Native American veterans.

c. *Civic and private sector groups,* and especially veterans' service organizations, to describe Native American veterans and their needs.

VI. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify 3 applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, demonstration models, and geographical service areas. The Grant Officer's determination for award under SGA 00–02 is the final agency action. The submission of the same proposal from any prior year competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. *Need for the Project:* 15 points.

The applicant shall document the extent of need for this project, as demonstrated by: (1) The potential number or concentration of Native American veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure to effectively address the employment barriers which characterize the target population.

2. *Overall Strategy to Increase Employment and Retention:* 30 points.

The application must include a description of the proposed approach to providing comprehensive employment and training services, including job training, job development, placement and post placement follow up services. Applicants should address their intent to target occupations in expanding (*e.g.* High Tech; Information Technology, and related Service Industries), rather than on declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention should be indicated. The applicant should identify the local human resources and sources of training to be used for participants. A description of the relationship, if any, with other employment and training program such as SESAs (DVOP and LVER Programs), JTPA IV–C, other JTPA programs, and Workforce Investment or Development Boards or entities where in place, should be presented. It should be indicated how the activities will be tailored or responsive to the needs of Native American veterans. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, and job retention. (See Appendix D).

3. *Quality and Extent of Linkages with Other Providers of Services to the Native Americans and to Veterans:* 20 points.

The application should provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the Native American veterans in the local community and/or on the reservation and outside of the grant. For each service, it should be specified who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. Describe to the extent possible, how the project would fit into the community's continuum of care approach to respond to needs of the Native American Veteran and any linkages to HUD or VA programs or resources to benefit the proposed program.

4. *Demonstrated Capability in Providing Required Program Services:* 20 points.

The applicant should describe its relevant prior experience in operating employment and training programs and providing services to participants similar to that which is proposed under this solicitation. Specific outcomes achieved by the applicant should be described in terms of clients placed in jobs, etc. The applicant must also delineate its staff capability and ability to manage the financial aspects of Federal grant programs. Relevant documentation such as recent (within the last 12 months) financial and/or audit statements should be submitted (required for applicants who are non-profit agencies). Final or most recent technical reports for other relevant

programs should be submitted as applicable. The applicant should also address its capacity for timely startup of the program.

5. *Quality of Overall Employment and Training Strategy:* 15 points.

The application should demonstrate how the applicant proposes to obtain or access supportive services resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access transportation, child care, temporary, transitional, and permanent housing for participants through community resources, HUD, lease, JTPA or other means. Native American Grant funds may not be used to purchase housing.

Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness of costs, but will not be scored.

VII. Post Award Conference

A post-award conference will be held in a central location for those awarded PY 1999 JTPA IV–C funds from the Native American competition. It should be planned for June or July, 2000. Costs associated with attending this conference for up to two grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs shall be charged as administrative costs and reflected in the proposed budget. The site of the Post Award conference will be at a location convenient for the grantee and Grant Officer Technical Representative (GOTR). Please use your State Capital location for budget planning purposes. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and will also include best practices from past projects.

VIII. Reporting Requirements

The grantee shall submit the reports and documents listed below:

A. Financial Reports

The grantee shall report outlays, program income, and other financial information on a quarterly basis using SF 269A, *Financial Status Report, Short Form.* These forms shall cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET), whose address will be provided, no later than 30 days after the ending date of each Federal fiscal quarter during the grant period. In addition, a final SF 269 shall be submitted no later than 90 days after the end of the grant period.

B. Program Reports

Grantees shall submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter (*i.e.,* July 30, October 30, January 30 and April 30) to the DVET which contains the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;

2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) Identification of corrective action which will be taken to meet the planned goals, and (ii) a timetable for accomplishment of the corrective action.

A final Technical Performance Report will also be required as part of the final report package due 90 days after grant expiration.

C. Summary of Final Report Package

The grantee shall submit no later than 90 days after the grant expiration date a final report containing the following:

1. Final Financial Status Report (SF–269A) (copy to be provided following grant awards).

(b) Final Technical Performance Report—(Program Goals).

3. Final Narrative Report identifying—(a) major successes of the program; (b) obstacles encountered and actions taken (if any) to overcome such obstacles; (c) the total combined (directed/assisted) number of veterans placed during the entire grant period; (d) the number of veterans still employed at the end of the grant period; (e) an explanation regarding why those veterans placed during the grant period, but not employed at the end of the grant period, are not so employed; and (f) any recommendations to improve the program.

IX. Administrative Provisions

A. Limitation on Administrative and Indirect Costs

1. Direct Costs for administration, plus any indirect charges claimed, may not exceed 20 percent of the total amount of the grant.

2. Indirect costs claimed by the applicant shall be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application. (Do not submit the State cost allocation plan.)

3. Rates traceable and trackable through the SESA Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in Native American grants to SESAS.

4. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

B. Allowable Costs

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State, Local and Indian Tribal Governments—OMB Circular A–87

Nonprofit organizations—OMB Circular A–122.

C. Administrative Standards and Provisions

All grants shall be subject to the following administrative standards and provisions:

29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

29 CFR Part 95—Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 30—Equal Employment Opportunity in Apprenticeship and Training.

29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

Signed at Washington, DC this 3rd day of March, 2000.

Lawrence J. Kuss,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424

Appendix B: Budget Information Sheet, SF 424A

Appendix C: Assurances and Certifications Signature Page

Appendix D: Technical Performance Goals Form

Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants

Appendix F: Glossary of Terms

BILLING CODE 5042–79P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		**3. DATE RECEIVED BY STATE**	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity	Catalog of Federal Domestic Assistance Number	Estimated Unobligated Funds		New or Revised Budget		
		Federal	Non-Federal	Federal	Non-Federal	Total
(a)	(b)	(c)	(d)	(e)	(f)	(g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION SUBMITTED DATE

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

Quarterly
Performance and Enrollment Goals
(Enter all data cumulatively)

Grant Number: **Program Year:**

Performance Goals

	Quarters 1	2	3	4
Participants/Enrollments				
Assessments				
Employment Development Plans				
Job Placement Assistance				
Placements				
Terminations				
Follow-ups				

Core Training

	Quarters 1	2	3	4
Classroom Training				
On-the-job training				
Remedial education				
Literacy and bilingual training				
Institutional skills training				
Occupational skills training				
On-site industry-specific training				
Customized training				
Apprenticeship training				
Upgrading and retraining				
Supportive Services				
Other (specify)				

Ancillary Services

	Quarters 1	2	3	4
Counseling				
Job Search Assistance				
Case Management				
Job Club				
Work Experience				
Other (specify)				

Enrollment Goals by Eligibility Groups (do not double count)

	Quarters 1	2	3	4
Vietnam-era veteran				
Disabled veteran				
Recently separated veteran				

Enrollment Goals by Eligibility Subgroups (from above, as applicable, include here)

	Quarters 1	2	3	4
Female veterans				
Homeless veterans				
African-American veterans				
Hispanic veterans				
Native American veterans				
Other minority veterans				

Benchmarks

	Quarters 1	2	3	4
Average Wage at Placement				
Placement Rate				

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

Sub-Total _____ _____

	Administration	Program
Fringe Benefits For All Positions	_____	_____
Contractual	_____	_____
Travel	_____	_____
Indirect Costs	_____	_____
Equipment	_____	_____
Supplies	_____	_____
Total Costs ----------	_____	_____
	Administration	Program

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

GLOSSARY OF TERMS

Adequate Employment - See Unsubsidized Employment.

Administrative Costs - All direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of recipients and sub-recipients of the JTPA IV-C funds.

Adult Basic Education - Education for adults whose inability to speak, read or write the English language or to effectively reason mathematically, constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, which is designed to help eliminate such inability and raise the level, of education of such individuals with a view to making them less likely to become dependent on others, to improve their ability to benefit from occupational training and otherwise increase their opportunities for more productive and profitable employment, and to make them better able to meet their adult responsibilities.

Ancillary Services - Employment and training related activities other than core training which may enhance a participant's employability.

Apprenticeship Training - A formal occupational training program which combines on-the-job training and related instruction and in which workers learn the practical and conceptual skills required for a skilled occupation, craft, or trade. It may be registered or unregistered.

Assurances and Certifications - The act of certifying compliance with applicable federal and state laws and regulations regarding the receipt and expenditures of grant monies.

ASVET - Assistant Secretary for Veterans' Employment and Training (USDOL)

Average Wage at Placement - This is an average of the wages earned by participants upon entering employment. In the VWIP program this average should never be less than that of the Statewide average for Title IIA achieved during PY98.

Barriers to Employment - Characteristics that may hinder an individual's hiring, promotion or participation in the labor force. Some examples of individuals who may face barriers to employment include: single parents, women, displaced homemakers, youth, public assistance recipients, older workers, substance abusers, teenage parents, veterans, ethnic minorities, and those

with limited English speaking ability or a criminal record or with a lack of education, work experience, credentials, child care arrangements, transportation or alternative working patterns.

Case Management - A client centered approach in the delivery of services, designed to prepare and coordinate comprehensive employment plans for participants, to assure access to the necessary training and supportive services, and to provide support during program participation and after job placement. In accordance with this definition, the case manager acts as a facilitator in assisting the participant toward a successful completion of training.

Classroom Training - Any training of the type normally conducted in an institutional setting, including vocational education, which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of individuals by upgrading basic skills, throughout the provision of courses such as remedial education, training in the primary language of persons with limited English language proficiency, or English-as-language training.

Cognizant Federal Agency - The federal agency that is assigned audit or indirect cost rate approval responsibility for a particular recipient organization by the Office of Management and Budget. (OMB Circulars A-87, A-102)

Core Training - Core training activities are employment focused interventions which address basic vocational skills deficiencies that prevent the participant from accessing appropriate jobs and/or occupations.

Counseling - Counseling in this sense can be any form of assistance which (1) provides guidance in the development of a participant's vocational goals and the means to achieve those goals; and/or (2) assist a participant with the solution to a variety of individual problems which may pose a barrier(s) to the participant in achieving vocational goals, e.g., PTSD counseling, substance abuse counseling, job counseling, etc.

Customized Training - A training program designed to meet the special requirements of an employer who has entered into an agreement with a Service Delivery Area to hire individuals who are trained to the employer's specifications. The training may occur at the employer's site or may be provided by a training vendor able to meet the employer's requirements. Such training usually requires a commitment from the employer to hire a specified number of trainees who satisfactorily complete the training.

Disabled Veteran - A veteran who is entitled to compensation under laws administered by the Veterans Administration; or an individual who was discharged or released from active duty because of service-connected disability.

USDOL - United States Department of Labor

USDVA - United States Department of Veterans Affairs (Formerly the Veterans Administration).

DVET - Director for Veterans' Employment and Training

DVOP - Disabled Veterans' Outreach Program

Economically Disadvantaged - means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program; (B) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673 (2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), or (ii) 70 percent of the lower living standard income level; (C) is receiving (or has been determined within the 6-month period prior to the application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977; (D) qualified as a homeless individual under section 103 of the Stewart B. McKinney Homeless Assistance Act; (E) is a foster child on behalf of whom State or local government payments are made or (F) in cases permitted by regulations of the Secretary, is an individual with a disability whose income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements.

Employment Development Plan (EDP) - An individualized written plan or intervention strategy for serving an individual which, as a result of an assessment of the veteran's economic needs, vocational interests, aptitudes, work history, etc., defines a reasonable vocational or employment goal and the developmental services or steps required to reach the goal and which documents the accomplishments made by the individual.

ETA - The Employment and Training Administration

Enrolled Veteran - Shall be synonymous with the term participant. A veteran who has been determined eligible for services at intake and who is receiving or scheduled to receive core training.

Follow-up - The tracking of what happens to participants when they leave the program for a period of 180 days after initial placement. The reporting requirements are to include the following data/information employment status (number of Entered Employments/Placements at 180 days after program has ended), average hourly wage (earnings change at 180 days after program has ended), and job retention (of those enrolled in training, provide number of those still employed in trained occupation at 180 days after program has ended), these measures can be used to assess long-term program performance and activity strategies for clients with diverse characteristics.

FTE - Full-time Equivalent, a personnel charge to the grant equal to 2,080 hours per annum.

FY - Fiscal Year. For federal government purposes, any twelve month period beginning on October 1 and ending on September 30.

GED - General Equivalency Diploma. A high school equivalency diploma which is obtained by passing the General Educational Diploma Equivalency Test which measures the application of skills and knowledge generally associated with four years of traditional high school instruction.

In-kind services - Property or services which benefit a federally assisted project or program and which are contributed without charge to the grantee.

Indirect Cost - A cost that is incurred for a common or joint purpose benefitting more than one cost objective and that is not readily assignable to the cost objectives specifically benefitted.

Institutional Skills Training - Skills training conducted in an institutional setting and designed to ensure that individuals acquire the skills, knowledge and abilities necessary to perform a job or group of jobs in an occupation for which there is a demand.

Intake - A process for screening individual applicants for eligibility; making an initial determination whether the program can benefit the applicants; providing information about the program, its services and the availability of those services; and selecting individual applicants for participation in the program.

Job Club Activities - A form of job search assistance provided in a group setting. Usually job clubs provide instruction and assistance in completing job applications and developing resumes and focus on maximizing employment opportunities in the labor market and developing job leads. Many job clubs use telephone banks and provide group support to participants before and after

they interview for openings.

Job Development - The process of marketing a program participant to employers, including informing employers about what the participant can do and soliciting a job interview for that individual with the employer.

Job Placement Services - Job placement services are geared towards placing participants in jobs and may involve activities such as job search assistance, training, or job development. These services are initiated to enhance and expedite participants' transition from training to employment.

Job Search Assistance (JSA) - An activity which focuses on building practical skills and knowledge to identify and initiate employer contacts and conduct successful interviews with employers. Various approaches may be used to include participation in a job club, receive instruction in identifying personal strengths and goals, resume and application preparation, learn interview techniques, and receive labor market information. Job search assistance is often a self-service activity in which individuals can obtain information about specific job openings or general job or occupational information.

Labor Exchange - Refers to the services provided to job seekers and employers by the State Employment Service Agencies, JTPA Service -Delivery Areas, or other entities. Services to job seekers may include assessment, testing, counseling, provision of labor market information and referral to prospective employers. Employer service may include accepting job orders, screening applicants, referring qualified applicants and providing follow-up.

Labor Force - The sum of all civilians classified as employed and unemployed and members of the Armed Forces stationed in the United States. (Bureau of Labor Statistics Bulletin 2175)

Literacy and Bilingual Training - See Adult Basic Education.

LVER - Local Veterans' Employment Representative

Minimum Economic Need - The level of wages paid to a program participant that will enable that participant to become economically self-sufficient.

Minority Veterans - For the purposes of this SGA, veterans who are IV-C eligible and are members of the following ethnic categories: African American, Hispanic, American Indian or Alaskan Native, Asian or Pacific Islander.

Occupational Skills Training - Includes both (1) vocational

education which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs, and (2) on-the-job training.

Offender - Any adult or juvenile who has been subject to any stage of the criminal justice process for whom services under this Act may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

OASVET - Office of the Assistant Secretary for Veterans' Employment and Training (ASVET)

OJT - On-the-Job-Training - Training for a specific job and based in the employer's work site. A contract is written through which the employer receives an amount of money, which shall never exceed 50% of the trainee's wages. This payment is made to offset the employer's costs for training an unskilled worker(s). The period of training may never exceed that prescribed by the Dictionary of Occupational Titles (DOT) for the occupation in which the participant is being trained. Usually in the OJT agreement, this is a promise on the part of the employer to hire the trainee upon successful completion of the training.

On-site Industry-specific Training - This is training which is specifically tailored to the needs of a particular employer and/or industry. Participants may be trained according to specifications developed by an employer for an occupation or group of occupations at a job site. Such training is usually presented to a group of participants in an environment or job site representative of the actual job/occupation, and there is often an obligation on the part of the employer to hire a certain number of participants who successfully complete the training.

Outreach - An active effort by program staff to encourage individuals in the designated service delivery area to avail themselves of program services.

Outside Funds - Resources pledged to the JTPA IV-C program which have a quantified dollar value. Such resources may include training funds from programs such as JTPA Title IIA or Title III that are put aside for the exclusive use by participants enrolled in a JTPA IV-C program. Outside funds do not include in-kind services.

Participant, or Enrolled Participant - Means a veteran who: (1) has been determined eligible for participation upon intake; and (2) started or is scheduled to receive training or **ancillary** services. An individual who receives only outreach and/or intake and assessment services does not meet this definition.

Placement Rate - This is a method used to determine the percentage

of participants who become employed. The figure is calculated by dividing the number of total participants who were enrolled in the program by the number of participants who were placed or entered employment through the program.

Placement - The act of securing unsubsidized employment for or by a participant.

Pre-apprenticeship Training - Any training designed to increase or upgrade specific academic, or cognitive, or physical skills required as a prerequisite for entry into a specific trade or occupation.

Pre-enrollment Assessment - The process of determining the employability and training needs of individuals before enrolling them in the VWIP program. Individual factors usually addressed during pre-enrollment assessment include: an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, and personal circumstances.

Program Resources - Includes the total of both VWIP and outside funds.

PY - Program Year. The 12-month period beginning July 1, and ending, on June 30, in the fiscal year for which the appropriation is made.

Recently Separated Veteran - refers to any veteran who applies for participation in a IV-C funded activity within 48 months after separation from military service. (29 U.S.C., Chapter 19, section 1503(27)(C))

Remedial Education - Educational instruction, particularly in basic skills, to raise an individual's general competency level in order to succeed in vocational education or skill training programs, or employment.

Service-Connected Disabled - refers to (1) a veteran who is entitled to compensation under laws administered by the Department of Veterans' Affairs (DVA), or (2) an individual who was discharged or released from active duty because of a service-connected disability. (29 U.S.C., Chapter 19, section 1503(27)(B))

SESA - State Employment Security Agency, the state level organization affiliated with DOL's United States Employment Service.

SGA - Solicitation for Grant Application

Subgrant - An award of financial assistance in the form of money,

or property in lieu of money, made under a grant by a grantee to an eligible subgrantee.

Subgrantee - The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Suitable Employment - See "Unsubsidized Employment"

Substance Abuser - An individual dependent on alcohol or drugs, especially narcotics, whose dependency constitutes or results in a substantial barrier to employment.

Supportive Services - means services which are necessary to enable an individual eligible for training under this Act, but who cannot afford to pay for such services, to participate in a training program funded under the this Act. Such supportive services may include transportation, health care, financial assistance, (except as a post-termination service), drug and alcohol abuse counseling and referral, individual and family counseling, special services and materials for individuals with disabilities, job coaches, child care and dependent care, temporary shelter, financial counseling, and other reasonable expenses required for participation in the training program and may be provided in-kind or through cash assistance.

Unsubsidized Employment - Employment not financed from funds provided under VWIP. In the VWIP Program the term "adequate" or "suitable" employment is also used to mean placement in unsubsidized employment which pays an income adequate to accommodate the participant's minimum economic needs.

Upgrading and Retraining - Training given to an individual who needs such training to advance above an entry level or dead-end position. This training shall include assisting veterans in acquiring needed state certification to be employed in the same field as they were trained in the military (i.e., Commercial Truck Driving License (CDL), Emergency Medical Technician (EMT), Airframe & Powerplant (A&P), Teaching Certificate, etc.).

Veteran - shall refer to an individual who served in the United States active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. (29 U.S.C. Chapter 19, section 1503(27)(A))

Veterans' Workforce Investment Program (VWIP) - Reference made to the "VWIP Program" means all activity funded by VWIP and outside resources.

VWIP Resources - This term is synonymous with VWIP funds/funding.

Vocational Exploration Training - Through assessments such as interest inventories and/or counseling, a process of identifying occupations or occupational areas in which a person may find satisfaction and potential, and for which his or her aptitudes and other qualifications may be appropriate.

Welfare and/or Public Assistance recipient - An individual who, during the course of the program year, receives or is a member of a family who receives cash welfare or public assistance payments under a Federal, State, or local welfare program.

Workforce Investment Act (WIA) - The purpose of this Act is to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals, including veterans, who face serious barriers to employment and who are in need of such training to obtain prospective employment. The Act requires the ASVET to consult with the Secretary of the DVA to ensure that programs funded under VWIP of this Act meet the employment and training needs of service-connected disabled, Campaign and recently separated veterans and are coordinated, to the maximum extent feasible, with-related programs and activities.

Work Experience - A temporary activity (six months or less) which provides an individual with the opportunity to acquire the skills and knowledge necessary to perform a job, including appropriate work habits and behaviors, and which may be combined with classroom or other training. When wages are paid to a participant on work experience and when such wages are wholly paid for under JTPA, the participant may not receive this training under a private, for profit employer.

Youth - An individual, between the age of 20 and 24 years of age, who served on active duty in the U.S. Armed Forces.

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MERIT SYSTEMS PROTECTION BOARD

Opportunity To File Amicus Briefs in Jerry C. Sturdy v. Department of the Army, MSPB Docket No. DA–0330–98–0028–M–1

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board has requested an advisory opinion from the Director of the Office of Personnel Management (OPM) concerning the interpretation of regulations promulgated by OPM. The Board is providing interested parties with an opportunity to submit amicus briefs on the same questions raised in the request to OPM. The Board's request to OPM is reproduced below: Pursuant to 5 U.S.C. 1204(e)(1)(A), the members of the Merit Systems Protection Board request that you provide an advisory opinion concerning the interpretation of regulations promulgated by the Office of Personnel Management (OPM).

Background

After the agency issued the appellant a notice that he would be separated by reduction in force (RIF), the agency reassigned him under its Priority Placement Program. On appeal to the Board, he alleged that his nonselection for reassignment to a different position constituted a violation of his reemployment priority rights under 5 CFR part 330, subpart B (entitled "Reemployment Priority List (RPL)").

The Board dismissed the appeal, finding that it lacked RPL jurisdiction because the appellant was not separated from the agency by the RIF. *Sturdy* v. *Department of the Army*, 80 M.S.P.R. 273 (1998). The appellant filed a petition for judicial review before the U.S. Court of Appeals for the Federal Circuit, and the court in a nonprecedential order granted the agency's motion to remand this case to the Board for reconsideration of its jurisdictional determination.

Applicable Regulations

The Board's RPL jurisdiction is derived from 5 CFR 330.209, which provides that:

An individual who believes that his or her reemployment priority rights under this subpart have been violated because of the employment of another

person who otherwise could not have been appointed properly may appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

Our review of the regulatory history reveals that this provision was not revised in pertinent respects, since 1979. Because the Board's jurisdiction under this provision is based on reemployment priority rights, it is necessary to examine the nature and extent of such rights under part 330, subpart B.

The RPL regulations are derived form 5 U.S.C. 3315(a), which provides that "[a] preference eligible who has been *separated* or furloughed without delinquency or misconduct, on request, is entitled to have his name placed on appropriate registers and employment lists * * * " (Emphasis added.) See 53 FR 408 (1988). The RPL regulations themselves provide, at 5 CFR 330.201, that:

> (a) The reemployment priority list (RPL) is the mechanism agencies use to give reemployment consideration to their *former* competitive service employees *separated* by reduction in force (RIF) or fully recovered from a compensable injury after more than 1 year. * * *

(Emphasis added.) We note that Sturdy does not involve recovery from a compensable injury that, therefore, the discussion here will ignore that aspect of the Board's RPL jurisdiction.

In addition, 5 CFR 330.206(a)(3) provides that "[a]n eligible employee may be entered on the RPL only for the commuting area in which *separated.*" (Emphasis added.) Subsection (a)(2) of the same section provides that "[a]n employee is considered for positions having the same type of work schedule as the position from which *separated* * * * ." (Emphasis added.) These provisions suggest that only "former" employees who were "separated" by RIF have reemployment priority rights under subpart B.

Other provisions of the RPL regulations suggest, however, the employees who have not been separated by RIF may have reemployment priority rights. For instance, 5 CFR § 330.202(a)(1) provides that "[r]egistration [on the RPL] may take place as soon as a specific notice of separation under part 351 of this chapter, or a Certification of Expected Separation as provided in § 351.807 of this chapter, has been issued." Section 330.203(a)(3) provides in pertinent part that, to be eligible to apply for the RPL, the employee must "[h]ave received a specific notice of [RIF] separation * * * or a Certification of Expected Separation * * *" These provisions suggest that employees may have RPL rights once they receive a specific notice of RIF separation or a Certification of Expected Separation and enroll in the RPL, even before they are a separated by RIF.

Discussion

The Board has consistently held that it has jurisdiction over an RPL appeal only if the appellant has been separated by RIF. Stuck v. Department of the Navy, 72 M.S.P.R. 153, 157 (1996); Gometz v. Department of the Navy, 69 M.S.P.S.R. 284, 289 (1996); Horner v. Department of the Navy, 41 M.S.P.R. 20, 24 n.2 (1989); Bartlett v. Department of the Army, 18 M.S.P.R. 75, 77 (1983); see also Sweeney v. Department of the Interior, 76 M.S.P.R. 644, 647 (1997) (listing the jurisdictional criteria for an RPL appeal to include a showing that the employee was separated by RIF).

In Freeman v. Department of Agriculture, 2 M.S.P.R. 224, 226–27 (1980), the Board held that RPL rights vest only upon the employee's RIF separation, and noted that "the very name of the right under discussion, a 'Reemployment Priority right,' clearly implies a right to return to employment" and that "[o]ne can only return after one is no longer employed." In Roberts v. Department of the Army, 168 F.3d 22, 23 (Fed. Cir. 1999), Roberts, who was not on any RPL, appealed his nonselection for a position, alleging that the selection of an individual on an RPL was improper. In holding that the Border lacked jurisdiction over the appeal, the court stated that "[a]s Roberts has not been separated by RIF * * * Roberts does not have reemployment priority rights as set forth in the applicable regulations." *Id.*

As the agency has pointed out before the court in its motion for remand in this appeal, and as the Board noted in Sweeney, 76 M.S.P.R. at 648 n.2, OPM revised the RPL regulations in 1992 to permit enrollment in the RPL up to 6 months prior to the date of a RIF separation. Specifically, the regulations were revised by interim rules to permit enrollment in the RPL upon the employee's receipt of a specific notice of RIF separation (which must be issued at least 60 days before the RIF action, 5 CFR § 351.801(A)(1)) or a Certification of Expected Separation (which may be issued up to 6 months before the RIF action, 5 CFR § 351.807(a)). 57 FR 21899, 21890 (1992); 5 CFR § 330.203 (1993). Contrary to the agency's argument before the court in its motion for remand, however, RPL enrollment prior to 1992 was not "restricted * * * to persons already actually separated by RIF," as discussed below.

Prior to 1988, 5 CFR § 330.201(e) provided, in pertinent part, that an agency's reemployment priority list "shall consist of: (1) *Former* employees in the competitive service in tenure groups I or II who were *separated* [by RIF] under Part 351 of this chapter." (Emphasis added.)

On January 7, 1988, OPM proposed to revise its RPL regulations, noting that "[t]he RPL is the mechanism agencies use to give reemployment consideration to employees who have been *separated* by reduction in force * * *" 53 FR 408, 408 (1988). OPM stated that the proposed "changes are intended to improve the operation of the RPL and clarify requirements." Id. OPM explained that "[u]nder current regulations, * * * employees in the competitive service are eligible for the RPL when they have *received a notice of separation* by reduction in force (RIF)." Id. This rule is not mentioned in the 1988 RPL regulations themselves, and it appears that the rule was contained in the Federal Personnel Manual (FPM). See Washington v. Garrett, 10 F.3d 1421, 1435 (9th Cir. 1993) (the court stated that, as of June 1988, when Washington was separated by RIF, "an employee's name was to be placed automatically on the RPL by the agency the day after she received notification of her impending separation," citing FPM, ch. 330, subch. 2, sec. 2–3)c)). OPM further explained that the proposed revision of the RPL regulations "would require an employee separated by RIF to complete an application specifying the conditions under which he or she would accept a job offer," instead of automatic enrollment in the RPL upon receipt of a RIF separation notice, and that the "period of enrollment would run from the date the eligible is entered on the RPL, rather than from the date of separation." 53 FR 408.

On November 8, 1988, OPM issued its final regulations revising its RPL regulations pursuant to the proposal. 53 FR 45065 (1988). The revisions provided that an "employee must submit the application [for the RPL] within 30 calendar days after the RIF separation date," 53 FR 45067; 5 CFR § 330.202(a)(1) (1989), and that to be eligible to apply for the RPL, an employee must "[h]ave received a specific notice of [RIF] separation," 53 FR 45067; 5 CFR § 330.203(A)(3) (1989). They further provided that the employee must be enrolled on the RPL "no later than 10 calendar days after receipt of an application or request." 53 FR 45067; 5 CFR § 330.202(b) (1989).

Thus, as early as 1988 and apparently before, employees could be enrolled in the RPL upon their receipt of a specific RIF separation notice; they were not required to wait until their actual RIF separation.

On May 26, 1992, OPM issued interim rules that provided for early warning of expected RIF separations. 57 FR 21889 (1992). The early warning was given in the form of a Certification of Expected Separation issued up to 6 months prior to the expected separation date, and employees were allowed to enroll in the RPL upon their receipt of the Certification. *Id.* OPM noted that, "[p]reviously, participation in * * * the RPL * * * was limited to employees who had received a specific RIF notice" and that "[e]perience has shown that the earlier individuals are registered in such programs, the greater their chances of finding other employment and avoiding or minimizing any period of unemployment." *Id.* These interim rules become final rules when OPM revised the RPL regulations in 1995, upon sunsetting the FPM. 60 FR 3055 (1995). OPM noted at that time that "[t]here was particular agreement not to change current policies in the sensitive area of reductions-in-force (RIF) and related reemployment priority lists (RPL)." *Id.* The 1995 revision added to the regulations the explanatory language used by OPM at the time it proposed to revise the RPL regulations in 1988. To wit, section 330.201(a) was revised to add the statement that RPL is "the mechanism agencies use to give reemployment consideration to their *former* competitive service employees *separated* by reduction in force (RIF) * * *." *Id.* at 3,058 (emphasis added). The RPL regulations have not been revised since 1995.

As discussed, the RPL regulations are ambiguous on their face regarding whether the Board has jurisdiction over an RPL claim brought by an employee, such as Sturdy, who has not been separated by RIF, and our review of the regulatory history does not shed light on this issue.

Request for an Advisory Opinion

The members of the Board therefore request that you provide an advisory opinion on whether the Board has jurisdiction over an alleged violation of reemployment priority rights where the appellant was not separated by RIF.

The Director is requested to submit her advisory opinion to the Clerk of the Board within 30 days of her receipt of this letter, and to serve copies of her opinion on the parties and their representatives in the above-captioned appeal. (The addresses of the parties and their representatives are set forth below in the "cc" list.) The parties may file any comments on the Director's opinion no later than 30 days from the date of service of her opinion.

DATES: All briefs in response to this notice shall be filed with the Clerk of the Board on or before April 10, 2000.

ADDRESSES: All briefs should include the case name and docket number noted above (Jerry C. Sturdy v. Department of the Army, MSPB Docket No. DA–0330–98–0028–M–1) and be entitled "Amicus Brief." Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, (202) 653–7200.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 00–5903 Filed 3–9–00; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974; Systems of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice to amend records systems.

SUMMARY: NARA proposes to amend 3 system of records notices in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

Sections 552a(e)(4) and (11) of the Privacy Act require that the public be given 30 days to comment on new routine uses of information in the system. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires 40 days to review the proposed new routine uses and exemptions for the system. Therefore, the public, OMB, and the Congress are invited to submit written comments by April 19, 2000.

DATES: The revised system notices will be effective without further notice on April 19, 2000, unless comments received before that date cause a contrary decision. If, based on the review of comments received, NARA determines to make changes to the system notices, a new final notice will be published.

ADDRESSES: Send comments to the Privacy Act Officer, Office of General Counsel (NGC), Room 3100, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland, 20740–6001. You may also fax comments to 301–713–6040.

FOR FURTHER INFORMATION CONTACT: Mary Ronan at 301–713–6025, extension 226.

SUPPLEMENTARY INFORMATION: NARA proposes to amend the routine uses of 3 system of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The routine use statements for NARA 1, Researcher Application Files; NARA 5, Conference, Workshop, and Training Course Files; and NARA 6, Mailing List Files, are being modified to allow the NARA Development Staff to use the records to generate mailing lists for sending out fundraising materials for the Foundation for the National Archives. Use of records in Privacy Act systems NARA 1 and NARA 5 by the Development Staff is limited to those records where the subject individual has not requested that his or her name not be included on the mailing list. These 3 systems are also being modified to update addresses and contact points, and the authority citations.

We are also modifying Appendix B to update addresses of NARA facilities.

Dated: March 6, 2000.

John W. Carlin,
Archivist of the United States.

NARA 1

SYSTEM NAME:

Researcher Application Files.

SYSTEM LOCATION:

Researcher application files are maintained in the following locations in the Washington, DC, area and other geographical regions. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) Customer Services Division (College Park, MD);

(2) Presidential libraries and projects; and

(3) regional records services facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include persons who apply to use original records for research in NARA facilities in the Washington, DC, area, the Presidential libraries, and the regional records services facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Researcher application files may include: Researcher applications; related correspondence; and electronic records. These files may contain the following information about an

individual: Name, address, telephone number, proposed research topic(s), occupation, name and address of employer/institutional affiliation, educational level and major field, expected result(s) of research, photo, researcher card number, type of records used, and other information furnished by the individual. Electronic systems may also contain additional information related to the application process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2108, 2111 note, and 2203(f)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains researcher application files on individuals to: Register persons who apply to use original records for research at a NARA facility; record initial research interests of researchers; determine which records researchers may want to use; contact researchers if additional information of research interest is found or if problems with the requested records are discovered; and prepare mailing lists for sending information on NARA events, programs, publications, and invitations to join and contribute to the Foundation for the National Archives (unless individuals elect that their application information not be used for this purpose). The electronic databases serve as finding aids to the applications. Information in the system is also used by NARA staff to compile statistical and other aggregate reports regarding researcher use of records.

The routine use statements A, C, E, F, and G, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:
STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in the records may be retrieved by the name of the individual or by researcher card number.

SAFEGUARDS:

During normal hours of operation, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from terminals located in attended offices. After hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Researcher application files are temporary records and are destroyed in accordance with the disposition instructions in the NARA records schedule contained in FILES 203, the NARA Files Maintenance and Records Disposition Manual. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

For researchers who apply to use records and Nixon presidential materials in the Washington, DC area, the system manager for researcher application files is: Assistant Archivist for Records Services—Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001. For researchers who apply to use accessioned records, presidential records, and donated historical materials in the Presidential libraries and the regional records services facilities, the system managers of researcher application files are the directors of the individual libraries and regional records services facilities. The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify: NARA Privacy Act Officer (NGC), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address given above.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in researcher application files is obtained from researchers and from NARA employees who maintain the files.

NARA 5

SYSTEM NAME:

Conference, Workshop, and Training Course Files.

SYSTEM LOCATION:

Conference, workshop, and training course files may be maintained in the following locations in the Washington, DC, area and other geographical regions. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) Office of Records Services—Washington, DC (College Park, MD);

(2) Office of Human Resources and Information Services (College Park, MD);

(3) Presidential libraries and projects; and

(4) Office of Regional Records Services (College Park, MD).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include attendees and speakers at NARA-sponsored conferences, workshops, and training courses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Conference, workshop, and training course files maintained on attendees may include: Standard Forms 182—Request, Authorization, Agreement, and Certification of Training or equivalent forms; application/registration forms; evaluations; other administrative forms; and copies of payment records. Files maintained on speakers may include correspondence, biographical statements, and resumes. These files may contain some or all of the following information about an individual: Name, home address, business address, home telephone number, business telephone number, social security number, birthdate, position title, name of employer/organization, employment history, professional awards, areas of expertise, research interests, reasons for attendance, titles of publications, and other information furnished by the attendee or speaker.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104, 2109, and 2904.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains files on attendees and speakers to: Register attendees for conferences, workshops, training courses, and other events; contact attendees for follow-up discussions; plan, publicize, and document interest in current and future NARA-sponsored conferences, workshops, training courses, and special events; and prepare mailing lists for sending information on NARA events, programs, publications, and invitations to join and contribute to the Foundation for the National Archives (unless individuals elect that that their application information not be used for this purpose). Information in the records is also used to prepare statistical and other reports on conferences, workshops, training

courses, and other events sponsored by NARA.

NARA may disclose information on individuals in the files to outside organizations that co-sponsor conferences, workshops, training courses, and other events for purposes of administering the course or event. NARA may disclose information on an individual to the organization or agency that funded the individual's attendance. The routine use statement F, described in Appendix A following the NARA Notices, also applies to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in paper records may be retrieved by either the title or the date of the conference, workshop, training course, or event and thereunder by the name of the individual. Information in electronic records may be retrieved by the name of the individual.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from terminals located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Conference, workshop, and training course files are temporary records and are destroyed in accordance with the disposition instructions in the NARA records schedule contained in FILES 203, the NARA Files Maintenance and Records Disposition Manual. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

For conference, workshop, and training course files located in the Office of Records Services—Washington, DC, the system manager is the Assistant Archivist for Records Services—Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001. For files located in the Office of Human Resources and Information Services, the system manager is the Assistant Archivist for Human Resources and Information Services (NH), 8601 Adelphi Road, College Park, MD 20740–6001. For files in the following locations, the system manager is the director: Presidential libraries and projects, and regional records services facilities. The addresses are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify: NARA Privacy Act Officer (NGC), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address given above.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in the files may be obtained from speakers, attendees, and potential speakers and attendees at NARA-sponsored conferences, workshops, and training courses, and from references provided by those individuals.

NARA 6

SYSTEM NAME:

Mailing List Files.

SYSTEM LOCATION:

Mailing lists may be maintained in the following NARA locations. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) Communications Staff (College Park, MD);

(2) National Historical Publications and Records Commission (Washington, DC);

(3) Public Programs (NWE) (College Park, MD);

(4) Staff Development Services Branch (College Park, MD);

(5) Acquisitions Services Division (College Park, MD);

(6) Presidential libraries and projects;

(7) Regional records services facilities; and

(8) Development Staff (College Park, MD).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system may include: Members of the media; Members of Congress; members of the National Historical Publications and Records Commission; members of the Foundation for the National Archives; local, political, and other dignitaries; researchers and records managers; historians, archivists, librarians, documentary editors, and other professionals in related fields; educators; authors; subscribers to free and fee publications and newsletters; buyers of NARA products; vendors; and other persons with an interest in NARA programs, exhibits, conferences, training courses, and other events.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to names and addresses, mailing lists may include any of the following information about an individual: Home/business telephone number; position title; name of employer, organization, and/or institutional affiliation; and subscription expiration date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104, 2307 and 2904(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains mailing lists to generate address labels to: Disseminate mailings of NARA and Foundation for the National Archives publications, newsletters, press releases, and announcements of meetings, conferences, workshops, training courses, public and educational programs, special events, and procurements; send invitations for exhibit openings, lectures, and other special events; send information on NARA events, programs, publications, and invitations to join and contribute to the Foundation for the National Archives; and send customers updated information about NARA holdings and about methods of requesting copies of accessioned and non-current records.

The routine use statement F, described in Appendix A following the NARA Notices, also applies to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Electronic records from which paper records may be printed.

RETRIEVABILITY:

Information about individuals maintained in mailing lists may be retrieved by: the name of the individual; the name of an employer or institutional/organizational affiliation; the category of individuals/organizations on mailing lists; the city or zip code.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from terminals located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Mailing lists are periodically updated and purged of outdated information. NARA organizational units retain mailing lists for as long as the lists are needed for the purposes previously cited.

SYSTEM MANAGER(S) AND ADDRESS:

For mailing lists maintained in the previously cited locations (1) through (8), the system managers are:

(1) Director, Communications Staff (NCOM) (College Park, MD);

(2) Executive Director, National Historical Publications and Records Commission (NHPRC) (Washington, DC);

(3) Assistant Archivist for Records Services—Washington, DC (College Park, MD);

(4) Assistant Archivist for Human Resources and Information Services (College Park, MD);

(5) Assistant Archivist for Administrative Services (College Park, MD);

(6) Directors of the Presidential libraries;

(7) Directors of regional records services facilities; and

(8) Development Officer (College Park, MD).

The addresses are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify: NARA Privacy Act Officer (NGC), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address given above.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in mailing lists is obtained from individuals whose names are recorded on mailing lists for the purposes previously cited or from NARA employees who maintain the lists.

APPENDIX B—ADDRESSES OF NARA FACILITIES

Washington, DC, Area Facilities

The National Archives Building, 700 Pennsylvania Avenue, NW, Washington, DC 20408–0001

The National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001

National Records Centers

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409–0002

Military Personnel Records, National Personnel Records Center, 9700 Page Ave., St. Louis, MO 63132–5100

Civilian Personnel Records, National Personnel Records Center, 111 Winnebago St., St. Louis, MO 63118–4199

Presidential Libraries

Herbert Hoover Library, 210 Parkside Dr., West Branch, IA (Mailing address: PO Box 488, West Branch, IA 52358–0488)

Franklin D. Roosevelt Library, 511 Albany Post Rd., Hyde Park, NY 12538–1999

Harry S. Truman Library, 500 W. US Hwy 24, Independence, MO 64050–1798

Dwight D. Eisenhower Library, 200 SE Fourth Street, Abilene, KS 67410–2900

John Fitzgerald Kennedy Library, Columbia Point, Boston, MA 02125

Lyndon Baines Johnson Library, 2313 Red River St., Austin, TX 78705–5702

Gerald R. Ford Library, 1000 Beal Avenue, Ann Arbor, MI 48109–2114

Gerald R. Ford Museum, 303 Pearl St. NW, Grand Rapids MI 49504–5353

Jimmy Carter Library, 1 Copenhill Ave. NE, Atlanta, GA 30307–1406

Ronald Reagan Library, 40 Presidential Dr., Simi Valley, CA 93065–0666

George Bush Library, 1000 George Bush Dr. West, College Station, TX 77845

Regional Records Services Facilities

NARA's Northeast Region (Boston), 380 Trapelo Road, Waltham, MA 02452–6399

NARA's Northeast Region (Pittsfield), 10 Conte Drive, Pittsfield, MA 01201–8230

NARA's Northeast Region (New York City), 201 Varick Street, New York, NY 10014–4811

NARA's Mid Atlantic Region (Northeast Philadelphia), 14700 Townsend Road, Philadelphia, PA 19154–1096

NARA's Mid Atlantic Region (Center City Philadelphia), 900 Market Street, Philadelphia, PA 19107–4292

NARA's Southeast Region, 1557 St. Joseph Avenue, East Point, GA 30344–2593

NARA's Great Lakes Region (Chicago), 7358 South Pulaski Road, Chicago, IL 60629–5898

NARA's Great Lakes Region (Dayton), 3150 Springboro Road, Dayton, OH 45439–1883

NARA's Central Plains Region (Kansas City), 2312 East Bannister Road, Kansas City, MO 64131–3011

NARA's Central Plains Region (Lee's Summit), 200 Space Center Drive, Lee's Summit, MO 64064–1182

NARA's Southwest Region, 501 West Felix Street, Building 1, Fort Worth, TX 76115–3405 (Mailing Address: P.O. Box 6216, Fort Worth, Texas 76115–0216)

NARA's Rocky Mountain Region, Building 48, Denver Federal Center, West 6th Avenue and Kipling Street, Denver, CO (Mailing Address: P.O. Box 25307, Denver, CO 80225–0307)

NARA's Pacific Region (San Francisco), 1000 Commodore Drive, San Bruno, CA 94066–2350

NARA's Pacific Region (Laguna Niguel), 24000 Avila Road, First Floor-East Entrance, Laguna Niguel, CA (Mailing Address: P.O. Box 6719, Laguna Niguel, CA 92607–6719)

NARA's Pacific Alaska Region (Seattle), 6125 Sand Point Way NE, Seattle, WA 98115–7999

NARA's Pacific Alaska Region (Anchorage), 654 West Third Avenue, Anchorage, AK 99501–2145

[FR Doc. 00–5964 Filed 3–9–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

, *Name:* Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date and Time: March 31, 2000; 8 am 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Leon Esterowitz, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Major Research Instrumentation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and person information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6)) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5878 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L., 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Bilogical Sciences (BIO) (1110).

Date and Time: April 6, 2000, 8:45 a.m.–5 p.m.; April 7, 2000, 8:45 a.m–3:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 375.

Type of meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 306–1400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Planning and Issues Discussion.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5883 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biomolecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Biomolecular Structure and Function—(1134) (Panel A).

Date and Time: April 19–21, 2000, 8:30 am to 6 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 340, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Thomas E. Smith or Dr. Barbara Zain, Program Directors, Molecular Biochemistry, Room 655S, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703) 306–1443.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biochemistry Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5875 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biomolecular Structure and Function; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biomolecular Structure and Function—(1134) (Panel B).

Date/Time: April 24–26, 2000 8:30 am to 6 pm.

Place: National Science Foundation, Room 340, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Kamal Shukla, Program Director, Molecular Biophysics, National Science Foundation, Room 655, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1444.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biophysics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5879 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cell Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Cell Biology (1136)—(Panel A).

Date/Time: April 12–14, 2000; 8:30 am to 6 pm.

Place: National Science Foundation, Room 120, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Randolph Addison or Dr. Richard Rodewald, Program Directors, Cell Biology Program, National Science Foundation, Room 655, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1442.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Siganl Transduction and Regulation Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5876 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cognitive, Psychological Language Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following five meetings of the Advisory Panel for Cognitive, Psychological and Language Sciences (#1758):

1. *Date and Time:* March 31, 2000; 9:00 a.m.–3:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 950, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Catherine N. Ball, Program Director for Linguistics, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1731.

Agenda: Closed Session: March 31, 9 a.m.–2 p.m.—To review and evaluate linguistics

dissertation proposals as part of the selection process for awards.

Agenda: Open Session: March 31, 2000, 2:00 p.m.–3:00 p.m.—General discussion of the current status and future plans of Linquistics Dissertations.

2. *Date and Time:* April 12–14, 2000; 9 a.m.–6:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 320, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Catherine N. Ball, Program Director for Linguistics, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1731.

Agenda: Closed Session: April 12, 9 a.m.–6:30 p.m.; April 13, 9:00 a.m.–6:30 p.m.; and April 14, 9:00 a.m.–1:00 p.m.—to review and evaluate linguistics proposals as part of the selection process for awards.

Agenda: Open Session: April 14, 2000, 1:00 p.m.–3:00 p.m.—General discussion of the current status and future plans of Linquistics.

3. *Date and Time:* April 24–26, 2000; 8:30 a.m.–5:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 950, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Rodney R. Cocking, Program Director for Human Cognition and Perception, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1732.

Agenda: Closed Session: April 24, 8:30 a.m.–5:30 p.m.; April 25, 8:30 a.m.–5:30 p.m.; April 26, 8:30 a.m.–2:30 p.m.—To review and evaluate Human Cognition and Perception proposals as part of the selection process for awards.

Agenda: Open Session: April 26, 2000, 2:30 p.m.–5:30 p.m.—General discussion of the current status and future plans of Human Cognition and Perception.

4. *Date and Time:* May 7, 2000; 3 p.m.–7 p.m. May 8–9, 2000; 8:30 a.m.–5:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 365, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Diane Scott-Jones, Program Director for Child Learning and Development, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1732.

Agenda: Closed Session: May 7, 3 p.m.–7 p.m.; May 8, 8:30 a.m.–3 p.m. and 4 p.m.—5:30 p.m.; May 9, 8:30 a.m.–5:30 p.m.—To review and evaluate Child Learning and Development proposals as part of the selection process of awards.

Agenda: Open Session: May 8, 2000, 3 p.m.–4 p.m.— General discussion of current status and future plans of Child Learning Development.

5. *Date and Time:* May 17–19, 2000; 8:30 a.m.–5:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 970, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Steven J. Breckler, Program Director for Social Psychology, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1728.

Agenda: Closed Session: May 17, 8:30 a.m.–5:30 p.m.; May 18, 8:30 a.m.–1:00 p.m.; and 2:00 p.m.–5:30 p.m.; May 19, 8:30 a.m.–5:30 p.m.—To review and evaluate social psychology proposals as part of the selection process for awards.

Agenda: Open Session: May 18, 2000, 1 p.m.–2 p.m.—General discussion of the current status and future plans of Social Psychology.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the National Science Foundation for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5872 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: March 22, 2000, 8 am–5:30 pm.

Place: Room 370, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Kamalakar Rajurkar, Program Director, Manufacturing Machines, and Equipment, (703) 306–1330, National Science Foundation, 4201 Boulevard, Arlington, VA 22230.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate "XYZ On A Chip" proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5877 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Economics, Decision and Management Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings of the Committee of Visitors for the Advisory Panel for Economics, Decision Risk and Management Sciences and Innovation and Organizational Change (#1760);

1. *Date and Time:* March 27, 28 and 29, 2000.

Place: National Science Foundation, 4201 Wilson Blvd, Room 970, Arlington, VA 22230.

Contact Person: Dr. Daniel Newlon, Program Director for Economics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1753.

Agenda: To review and evaluate Economics proposals as part of the selection process for awards.

2. *Date and Time:* March 27, 28 and 29, 2000.

Place: National Science Foundation, 4201 Wilson Blvd, Room 970, Arlington, VA 22230.

Contact Person: Dr. Hal Arkes, Program Director for Decision, Risk and Management Sciences (DRMS), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1757.

Agenda: To review and evaluate DRMS proposals as part of the selection process for awards.

3. *Date and Time:* March 27, 28 and 29, 2000.

Place: National Science Foundation, 4201 Wilson Blvd, Room 970, Arlington, VA 22230.

Contact Person: Dr. Mariann (Sam) Jelinek, Program Director for Innovation and Organizational Change (IOC), National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1757.

Agenda: To review and evaluate IOC proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the

proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5880 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Education and Human Resources (#1119)

Date and Time: April 5—8:30 am–6:15 pm, April 6—8:30 am–3:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: John B. Hunt, Senior Liaison, ACEHR, Directorate for Education and Human Resources, National Science Foundation, 4201 Wilson Boulevard, Room 805, Arlington, VA 22230, 703–306–1602.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Review of FY 2000 Programs and strategic planning for FY 2001 and beyond.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer, HRM.

[FR Doc. 00–5884 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical Communications Systems (1196).

Date and Time: March 16–17, 2000, 8:30 am to 5 p.m.

Place: Room 880, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Vladimir Lumelsky, Program Director, Room 675, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted in response to the XYZ on a Chip program announcement (NSF 00–15).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5867 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date & Time: March 22–23, 2000; 9 am–6:30 pm.

Place: Room 375 both days, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Dr. Gernot Pomrenke, Program Director, Electronics, Photonics, and Device Technologies (EPDT), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate **Regular Research** proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5886 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers (173).

Date/Time: March 15–17, 2000, 8 am to 5 pm.

Place: The Arlington Hilton, 950 N. Stafford Street, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Lynn Preston, Deputy Division Director, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Engineering Research Centers Full Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5874 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193)

Date/Time: March 30, 2000, 8:00 a.m.-5:00 p.m.

Place: Rooms 310, 330 & 330, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed

Contact Person: Dragana Brzakovic, Major Research Instrumentation Program, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Major Research Instrumentation Program proposals submitted in response to the program announcement (NSF 9–34).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5870 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: April 10, 2000; 8: am to 5 pm.

Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Michael Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1557.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Postdoctoral Fellowship Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5873 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: March 22–23, 2000; 8:30 am to 5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 310, 380, and 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Drs. Margrete S. Kline and Ruta Sevo, Program Directors, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1637.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Program for Gender Equity in Science, Mathematics, Engineering, and Technology Large Collaborative Projects/Planning Grants.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management, Division of Human Resource Management.

[FR Doc. 00–5881 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: April 6–7, 2000; 8:30 am to 5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 320 and 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Margrete S. Klein, Program Coordinator, POWRE Program, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1637.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Professional Opportunities for Women in Research and Education (POWRE) Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management, Division of Human Resource Management.

[FR Doc. 00–5882 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Information and Intelligent Systems (#1200).

Dates of meetings	Locations
April 10–11, 2000	National Science Foundation, Arlington, VA.
April 13–14, 2000	Hyatt Regency, San Francisco, CA.
April 13–14, 2000	National Science Foundation, Arlington, VA.
May 1–2, 2000	National Science Foundation, Arlington, VA.
May 4–5, 2000	Hyatt Regency, San Francisco, CA.
May 4–5, 2000	National Science Foundation, Arlington, VA.

Dates of meetings	Locations
May 8–9, 2000	National Science Foundation, Arlington, VA.
May 11–12, 2000	Hyatt Regency, San Francisco, CA.
May 11–12, 2000	National Science Foundation, Arlington, VA.

Time: Meetings will be held 8:00 a.m.–5:00 p.m.

Type of Meeting: Closed.

Contact Persons: Michael Lesk and Richard Hilderbrandt, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1930.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information Technology Research (ITR) proposals submitted to the Information Technology Research Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5868 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR) #1203.

Dates & Times: 8:30 am–5 pm each day.

Date	Room No.	Panel number
April 4, 2000	340	A
April 6–7, 2000	340	B
April 6–7, 2000	365	C
April 17, 2000	365	D
April 17, 2000	320	E
April 18–19, 2000	320	F
April 18–19, 2000	365	G
April 20–21, 2000	320	H
April 20–21, 2000	365	I

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Guebre X. Tessema, Program Director, NAFI, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1817.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for support for the instrumentation proposals submitted in response to program solicitation number NSF 99–170 and NSF 99–168.

Reason for Closing: The activity being evaluated may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.b.(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5871 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: March 26, 2000; 8:30 a.m. until 5:00 p.m.

Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lloyd Douglas, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1874.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Infrastructure Program, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer, Division of Human Resource Management.

[FR Doc. 00–5887 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: Thursday, March 16, 2000; 8:30 am–6:00 pm, Rm. 310—DMR; Rm. 320 CHE; Rm. 370—AST; Rm. 380—PHY; Rm. 390—DMS (both days) Friday, March 17, 2000; 8:30 am–6:00 pm.

Place: Room 310, NSF, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Denise Caldwell, Program Director for the MPS POWRE proposals, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1807.

Purpose of Meeting: To provide advice and recommendations concerning physics submitted to NSF for financial support.

Agenda: To review and evaluate the Professional Opportunities for Women in Research and Education (POWRE) proposals as part of the selection process.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen York,

Committee Management Officer.

[FR Doc. 00–5885 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Physiology and Ethology (1148).

Date/Time: April 5–7, 2000, 8:30 a.m.–5 p.m.

Place: NSF, Room 380, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part-open.

Contact Persons: Dr. Zoe Eppley and Dr. Kim Williams, Program Directors, Ecological & Evolutionary Physiology, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: April 5th, 2000, 4 p.m. to 5 p.m.—discussion on research trends, opportunities and assessment procedures in Integrative Biology and Neuroscience with Dr. James L. Edwards, Deputy Assistant Director, Directorate for Biological Sciences.

Closed Session: April 5th, 2000, 8:30 a.m. to 4 p.m. and 5 p.m. to 6 p.m.; April 6th, 2000, 8:30 a.m. to 6 p.m.; April 7th, 2000, 8:30 a.m. to 5 p.m. To review and evaluate the Ecological & Evolutionary Physiology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5869 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company, Inc., Edwin I. Hatch Nuclear Plant, Units 1 and 2; Notice of Receipt of Application for Renewal of Facility Operating License Nos. DPR–57 and NPF–5 for an Additional Twenty-Year Period

On March 1, 2000, the U.S. Nuclear Regulatory Commission received, by letter dated February 29, 2000, an application from Southern Nuclear Operating Company, Inc., filed pursuant to Section 104(b) and 103 of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, for renewal of Facility Operating License Nos. DPR–57 and NPF–5, which authorizes the applicant to operate Edwin I. Hatch Nuclear Plant, Units 1 and 2 (Hatch 1 and 2), for an additional 20-year period. The current operating licenses for Hatch 1 and 2 expire on August 6, 2014, and June 13, 2018, respectively. Hatch 1 and 2 are boiling-water reactors designed by General Electric and are located in Appling County, Georgia. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of a subsequent **Federal Register** notice.

A copy of the application is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20037, and on the NRC website at www.nrc.gov.

Dated at Rockville, Maryland, this the third day of March, 2000.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Chief, License Renewal and Standardization Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5897 Filed 3–9–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313]

Entergy Operations, Inc., Arkansas Nuclear One, Unit 1; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Entergy Operations, Inc. (Entergy) has submitted an application for renewal of operating license DPR–51 for an additional 20 years of operation at Arkansas Nuclear One, Unit 1 (ANO–1). ANO–1 is located in Pope County, Arkansas. The application for renewal was submitted by letter dated January 31, 2000, pursuant to 10 CFR part 54. A notice of receipt of application, including the environmental report (ER), was published in the **Federal Register** on February 11, 2000 (65 FR 7074). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on March 3, 2000 (65 FR 11609). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29.

In accordance with 10 CFR 54.23 and 10 CFR 51.53(c), Entergy submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Part 51 and is available for public inspection at the Commission's Public Document Room in the Gelman Building, 2120 L Street, NW, Washington, DC, 20003–1527. In addition, the Pendergraft Library, located at Arkansas Tech University, 305 West Q Street, Russellville, AR 72801, has agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," (NUREG–1437) in support of the review of the application for renewal of the ANO–1 operating license for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. 10 CFR 51.95 requires that the NRC prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in this scoping process by members of the public and local, State, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other environmental impact statements (EISs) that are being or will be prepared that are related to

but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, Entergy Operations, Inc.

b. Any person who intends to petition for leave to intervene.

c. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

d. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

e. Any affected Indian tribe.

f. Any person who requests or has requested an opportunity to participate in the scoping process.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice of acceptance for docketing. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold a public meeting for the ANO–1 license renewal supplement to the GEIS. The scoping meeting will be held at the Holiday Inn in Russellville, Arkansas, on Tuesday, April 4, 2000. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 5:00 p.m. The second session will convene at 7:00 p.m. with a repeat of the overview portions of the meeting and will continue until 10:00 p.m. Both meetings will be transcribed and will include (1) an overview by the NRC staff of the National Environmental Policy Act (NEPA) environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; (2) an overview by Entergy of the proposed action, ANO–1 license renewal, and the environmental impacts as outlined in the ER; and (3) the opportunity for interested Government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Persons may register to attend or present oral comments at the meeting on the NEPA scoping process by contacting Mr. Thomas J. Kenyon by telephone at 1 (800) 368–5642, extension 1120, or by Internet to the NRC at anoeis@nrc.gov no later than March 27, 2000. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Kenyon's attention no later than March 27, 2000, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scoping process for the supplement to the GEIS to Chief, Rules and Directives Branch, Division of Administrative Services, Mailstop T–6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. To be considered in the scoping process, written comments should be postmarked by May 9, 2000. Electronic comments may be sent by the Internet to the NRC at anoeis@nrc.gov. Electronic submissions should be sent no later than May 9, 2000, to be considered in the scoping process and will be available for inspection at the NRC Public Document Room.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection at the NRC Public Document Room. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and a separate public meeting. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Kenyon at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 7th day of March, 2000.

For the Nuclear Regulatory Commission.

Scott F. Newberry,

Acting Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5894 Filed 3–9–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Workshop Concerning the Revision of the Oversight Program for Nuclear Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of public workshop.

SUMMARY: NRC will hold a public workshop at the Nuclear Energy Institute (NEI), 1776 I Street, NW (Republic Place), in Washington, DC to provide the public, those regulated by the NRC, and other stakeholders, with information about and an opportunity to provide views on how NRC plans to revise its oversight program for nuclear fuel cycle facilities. This workshop follows the recent public stakeholder workshop held in Rockville, Maryland on February 22–23, 2000. Presentations and other documents provided at each workshop, together with a transcript of each workshop, are placed on the NRC INTERNET web page (http://www.nrc.gov).

Similar to the revision of the oversight program for commercial nuclear power plants, NRC initiated an effort to improve its oversight program for nuclear fuel cycle facilities. This is described in SECY–99–188 titled, "EVALUATION AND PROPOSED REVISION OF THE NUCLEAR FUEL

CYCLE FACILITY SAFETY INSPECTION PROGRAM." SECY–99–188 is available in the Public Document Room and on the NRC Web Page at http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html.

Purpose of Workshop

To obtain stakeholder views for improving the NRC oversight program for ensuring licensee and certificate holders maintain protection of worker and public health and safety, protection of the environment, and safeguards for nuclear material and sensitive information and material in the interest of national security. The oversight program applies to nuclear fuel cycle facilities regulated under 10 CFR Parts 40, 70, and 76. The facilities currently include gaseous diffusion plants, highly enriched uranium fuel fabrication facilities, low-enriched uranium fuel fabrication facilities, and a uranium hexafluoride (UF_6) production facility. These facilities possess large quantities of materials that are potentially hazardous (i.e., radioactive, toxic, and/or flammable) to the workers, public, and environment. In revising the oversight program, the goal is to have an oversight program that: (1) Provides earlier and more objective indications of acceptable and changing safety and safeguards performance, (2) increases stakeholder confidence in the NRC, and (3) increases regulatory effectiveness, efficiency, and realism. In this regard, the NRC desires the revised oversight program to be more risk-informed and performance-based and more focused on significant risks and poorer performers.

The workshop will focus on:

- Plans for communicating revision of the oversight program with stakeholders internal and external to the NRC;
- Objective and scope of safety and national security related cornerstones for meeting the NRC mission;
- Key performance attributes for achieving each cornerstone;
- Licensee performance attributes the NRC needs to monitor/assess by means of licensee provided performance indicators and NRC inspections to ensure cornerstone objectives are met;
- Criteria for selection of performance indicators and risk informed inspections;
- Measurable parameters and measurement methods for performance indicators; and
- Thresholds for performance.

DATES: Members of the public and other stakeholders are invited to attend and participate in the workshop, which is scheduled for 9:00 a.m. to 5:00 p.m. on Wednesday, March 22, and Thursday, March 23, 2000.

ADDRESSES: NEI, 1776 I Street (Republic Place), Washington, DC. Visitor parking around NEI is limited; however, the meeting site may be reached from Rockville by taking the Red line metro to Farragut North, and exiting at K Street. Farragut Park will be in front of you. Notice that 17th Street is parallel to the park. Walk one block along 17th Street to I Street, turn right, walk one more block. NEI is on the left on corner of 18th and I Streets, NW. From Reagan National Airport, NEI may be reached by taking the Blue line train towards Addison Road to Farragut West. Exit to 18th Street, and NEI is diagonally across the street on the corner of 18th and I Streets, NW.

FOR FURTHER INFORMATION CONTACT: Walter Schwink, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7253, e-mail *wss@nrc.gov*.

Dated at Rockville, Maryland, this 6th day of March, 2000.

For the Nuclear Regulatory Commission.

Philip Ting,

Chief, Operations Branch, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 00–5896 Filed 3–9–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1718]

Standard Review Plan for the Mixed Oxide (MOX) Fuel Fabrication Facility Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has extended the public comment period on draft NUREG–1718, "Standard Review Plan for the Review of an Application for the Mixed Oxide (MOX) Fuel Fabrication Facility," to allow interested parties additional time to prepare comments.

DATES: Submit comments by March 27, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm during Federal workdays.

Draft NUREG–1718 is available for inspection and copying for a fee at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

A free single copy of draft NUREG–1718, to the extent of supply, may be requested by writing to the U.S. Nuclear Regulatory Commission, Distribution Services, Washington, DC 20555–0001. Draft NUREG–1718 is available on the World Wide Web at *http://www.nrc.gov/NRC/NUREG/indexnum.html*. Comments may be submitted by selecting the "comments" link on the main page for the draft NUREG.

FOR FURTHER INFORMATION CONTACT: For further information regarding draft NUREG–1718 contact Andrew Persinko, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6522.

Dated at Rockville, Maryland, this 6th day of March, 2000.

For the Nuclear Regulatory Commission.

Melvyn L. Leach,

Branch Chief, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 00–5895 Filed 3–9–00; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Information-Based Indicia Program (IBIP) Performance Criteria for Information-Based Indicia and Security Architecture for Open IBI Postage Evidencing Systems (PCIBI–O)

AGENCY: Postal Service.

ACTION: Notice of availability of Performance Criteria, with request for comments.

SUMMARY: The Postal Service has compiled a revised draft functional Performance Criteria for open systems of the Information-Based Indicia program (IBIP), as defined in this release. The current release contains the performance criteria for the Indicium, the Postal Security Device (PSD), the Host System, and the IBIP Key Infrastructure components of an open IBI system. The Postal Service also seeks comments on intellectual property issues raised by IBIP Performance Criteria, policy, and procedures if adopted in present form. If an intellectual property issue includes patents or patent applications covering

any implementations of the Performance Criteria, the comment should include a listing of such patents and applications and the license terms available for such patents and applications.

ADDRESSES: Copies of the Performance Criteria noted above may be downloaded from the IBIP Web site at http://www.usps.com/ibip/welcome.htm, or obtained from Edmund Zelickman, United States Postal Service, 475 L'Enfant Plaza SW, Room 1P–801, Washington, DC 20260–2444. Copies of all written comments may be inspected, by appointment, between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

DATES: All written comments must be received on or before May 9, 2000.

FOR FURTHER INFORMATION CONTACT: Dan Lord, (202) 268–4599.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–5961 Filed 3–9–00; 8:45 am]

BILLING CODE 7710–12–U

PRESIDIO TRUST

Letterman Complex, The Presidio of San Francisco, Notice of Availability To Review the Final Environmental Impact Statement and Planning Guidelines

AGENCY: The Presidio Trust.

ACTION: Notice of availability to review the Final Environmental Impact Statement (EIS) and Planning Guidelines for new development and uses on 23 acres within the Letterman Complex, The Presidio of San Francisco, San Francisco, California (Presidio). The Final EIS is a supplement to the 1994 Final General Management Plan Amendment (GMPA) EIS for the Presidio.

SUMMARY: Pursuant to section 101(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–90 as amended), the Presidio Trust (Trust) has prepared a Final EIS analyzing the potential impacts of new development and uses on a 23-acre site within the 60-acre Letterman Complex, located in the northeast corner of the Presidio. The Final EIS describes and evaluates a preferred alternative (Digital Arts Center) and five additional alternatives for development and occupancy of new low- to mid-rise buildings totaling approximately 900,000 square feet. The six alternatives were fully examined in the Draft EIS that was circulated and filed in April 1999 (64 FR 22662–63). Two of the six alternatives were previously analyzed in the 1994 GMPA EIS: a specific proposal for the site (Science and Education Center) as part of a proposed action (Alternative A); and a no action alternative (Minimum Requirements/Alternative B). The other alternatives evaluated in the Final EIS were identified through a Request for Qualifications and scoping process and include a Sustainable Urban Village, a Mixed-Use Development, and a Live/Work Village.

CONTENTS OF FINAL EIS: The Final EIS consists of responses to all of the substantive comments received on the Draft EIS, and revisions to the Draft EIS that incorporate analysis, additional information, and suggested changes made in response to comments.

MATERIALS AVAILABLE TO THE PUBLIC: Copies of the Final EIS and Planning Guidelines are available by calling or writing: The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052, Phone: 415–561–5300.

The Final EIS, Planning Guidelines, and GMPA EIS are also available for review at:

The Presidio Trust Library, 34 Graham Street, San Francisco, CA 94129, Phone: 415–561–5300

William Penn Mott, Jr. Visitor Center (Presidio) (open 7 days), Montgomery Street, Main Post, San Francisco, CA 94129, Phone: 415–561–4323

GGNRA Park Headquarters, Building 201, Fort Mason, San Francisco, CA 94123, Phone: 415–561–4720

San Francisco Main Library, Government Information Center, Civic Center, San Francisco, CA 94102, Phone: 415–557–4500

San Francisco Library, Presidio Branch, 3150 Sacramento Street, San Francisco, CA 94115, Phone: 415–292–2155

The Final EIS and Planning Guidelines are available for viewing on the Internet by clicking on "Library" and then "Postings" at the following website: http://www.presidiotrust.gov.

LIMITATION ON ACTION: No decision on the preferred alternative will be made or recorded until at least 30 days after the publication by the U.S. Environmental Protection Agency (EPA) of notice that the Final EIS has been filed with the EPA. Subsequently, the Trust will publish a notice of the Record of Decision in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Dated: March 2, 2000.

Karen A. Cook,

General Counsel.

[FR Doc. 00–5583 Filed 3–9–00; 8:45 am]

BILLING CODE 4310–4R–U

PRESIDIO TRUST

Letterman Complex, The Presidio of San Francisco, Notice of Availability To Review Programmatic Agreement

AGENCY: The Presidio Trust.

ACTION: Notice of availability to review the Programmatic Agreement among the Presidio Trust, the Advisory Council on Historic Preservation, the National Park Service and the California State Historic Preservation Officer Regarding Deconstruction, New Construction, and the Execution of Associated Leases at the Letterman Complex, Presidio of San Francisco, California.

SUMMARY: The Presidio Trust (Trust) announces the availability of the "Programmatic Agreement among the Presidio Trust, the Advisory Council on Historic Preservation, the National Park Service and the California State Historic Preservation Officer Regarding Deconstruction, New Construction, and the Execution of Associated Leases at the Letterman Complex, Presidio of San Francisco, California" (PA). The PA was prepared pursuant to the regulations (36 CFR part 800) implementing the National Historic Preservation Act of 1966, as amended, 16 USC 470 (NHPA). The Trust, the Advisory Council on Historic Preservation, the National Park Service and the California State Historic Preservation Officer are signatories to the PA. The National Trust for Historic Preservation and the National Parks and Conservation Association are concurring parties to the PA. The purpose of the PA is to establish a mechanism for the Trust to comply with its NHPA obligations in the construction, deconstruction and execution of associated leases at the Letterman location. Among other things, the PA provides for public planning sessions, review of planning and design guidelines to ensure conformity with the "Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings," review of conceptual design documents, schematic design documents, and construction documents for conformity with the planning and design guidelines, construction monitoring to ensure conformity with the approved project documents, and a methodology

for addressing archeological properties within the Letterman Complex.

Materials Available to the Public: The PA is available for viewing on the Internet by clicking on "Library" and then "Postings" at the following website: http://www.presidiotrust.gov. Additionally, copies are available for review at:

The Presidio Trust Library, 34 Graham Street, San Francisco, CA 94129, Phone: 415–561–5300.

William Penn Mott, Jr. Visitor Center (Presidio) (open 7 days), Montgomery Street, Main Post, San Francisco, CA 94129, Phone: 415–561–4323.

GGNRA Park Headquarters, Building 201, Fort Mason, San Francisco, CA 94123, Phone: 415–561–4720.

San Francisco Main Library, Government Information Center, Civic Center, San Francisco, CA 94102, Phone: 415–557–4500.

San Francisco Library, Presidio Branch, 3150 Sacramento Street, San Francisco, CA 94115, Phone: 415–292–2155.

For members of the public who do not have Internet access and for whom it would be burdensome to review the PA at any of the above locations, the Trust will consider requests to be sent a copy by mail or fax.

FOR FURTHER INFORMATION CONTACT: Cherilyn Widell, Compliance Officer, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Dated: March 3, 2000.

Karen A. Cook,

General Counsel.

[FR Doc. 00–5731 Filed 3–9–00; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27145]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 3, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 28, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 28, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation and Entergy Power, Inc. (70–9583)

Entergy Corporation ("Entergy"), a registered holding company, located at 639 Loyola Avenue, New Orleans, Louisiana 70113, and Entergy Power, Inc. ("EPI"),[1] a wholly owned electric public utility subsidiary of Entergy (Entergy and EPI, collectively, the "Applicants"), located at Parkwood Two Building, 10055 Grogan's Mill Road, Suite 500, The Woodlands, Texas 77380, have filed an application pursuant to sections 9(a), 10 and 11 of the Act and rules 51 and 54 under the Act.

In conjunction with the power supply arrangements recently negotiated among EPI, Entergy Power Marketing Corp. ("EPMC"), which markets and brokers electricity and other energy commodities and is an associate company of EPI, Sam Rayburn Municipal Power Agency ("SRMPA"), a municipal corporation and political subdivision of Texas, and Vinton Public Power Authority ("VPPA"), a public power authority in Louisiana, SRMPA assigned to EPI its option to purchase from VPPA a 20% undivided ownership interest in Unit No. 6 of the Roy S. Nelson Generating Station ("Nelson 6") and certain related assets ("Nelson 6 Ownership Interest").[2] EPI proposes to exercise the option and acquire from VPPA the Nelson 6 Ownership Interest for $1,000.

The Applicants state that the nominal purchase price that EPI proposes to pay for the Nelson 6 Ownership Interest reflects EPMC's prior purchase from SRMPA of an entitlement to 20% of the output of Nelson 6 ("Nelson 6 Capacity Entitlement").[3]

Nelson 6 is a coal-fired, steam electric generating facility located in Westlake, Calcasieu Parish, Louisiana. Nelson 6 supplies a portion of the electric energy requirements of the cities of Jasper, Liberty, and Livingston, Texas and the Town of Vinton, Louisiana. Currently, Nelson 6 is owned by VPPA (20%), Sam Rayburn Generation & Transmission Cooperative (10%) and Entergy Gulf States (70%), an electric subsidiary of Entergy. Nelson 6 is directly interconnected with the transmission system of Entergy Gulf States and, thus, indirectly interconnected with the entire transmission grid of the Entergy System. Entergy Gulf States operates, maintains, and manages Nelson 6 on behalf of the co-owners.

Central and South West Corporation, et al. (70–9107)

Central and South West Corporation ("CSW") 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a registered holding company, and its wholly owned public utility subsidiary, Central Power and Light Company ("CPL") 539 North Caracahua Street, Corpus Christi, Texas 78401–2902 (collectively, "Applicants"), have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b), 12(c), and 13(b) of the Act, and rules 45, 46, 54, 90 and 91 under the Act, to an application-declaration previously filed under the Act.

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[1] Pursuant to an order of the Commission dated August 27, 1990 (HCAR No. 25136) ("1990 Order"), Entergy formed EPI to participate as a supplier of electricity at wholesale to non-associate companies in bulk power markets. EPI currently owns a total of 665 MW of generating assets in non-exempt electric generating facilities.

[2] In 1981, SRMPA purchased the Nelson 6 Ownership Interest from Entergy Gulf States (an Entergy domestic retail electric utility company). In 1992, for state tax reasons, VPPA purchased the Nelson 6 Ownership Interest from SRMP for the remaining undepreciated book value of the assets. With the sale to VPPA, SRMPA was granted a right of first refusal and an option to repurchase from VPPA legal title to the Nelson 6 Ownership Interest. Once the sale to VPPA occurred, SRMPA still remained responsible for a proportionate share of all costs and expenses of ownership.

[3] Concurrently with the transfer of the Nelson 6 Ownership Interest to VPPA, SRMPA purchased the Nelson 6 Capacity Entitlement with the money it received form VPPA for its sale. In 1998, SRMPA paid EPMC $59,605,565 in consideration for a requirements contract. Under the contract, SRMPA was also to make periodic payments based on the power actually received. Simultaneously, EPMC purchased the Nelson 6 Capacity Entitlement from SRMPA for $59,605,565. EPMC also assumed SRMPA's proportionate share of the costs of ownership of Nelson 6. EPI has agreed to supply EPMC with any power necessary for it to meet its obligations to SRMPA under the requirements contract.

Background

By order dated December 30, 1997 ("Omnibus Financing Order"),[4] the Commission authorized CSW and certain of its subsidiaries, including CPL, through December 31, 2002 ("Authorization Period"), to, among other things, engage in certain internal and external financing.

In 1999, Texas enacted the Texas Public Utility Regulatory Act ("Restructuring Legislation") which governs the restructuring of the electric industry in Texas. The Restructuring Legislation permits electric utilities with assets in Texas to recover stranded costs caused by the transition to a competitive market for electric generation services through the issuance of transition bonds ("Transition Bonds") as authorized by the Public Utility Commission of Texas ("PUCT"). In accordance with procedures set forth in the Restructuring Legislation, on September 18, 1999, CPL filed an application with the PUCT for a financing order ("Financing Order") to permit CPL or a third-party assignee of CPL, to issue Transition Bonds.[5]

Under the terms of PUCT Financing Orders, the Transition Bonds will be secured by the rights and interests of CPL under the Financing Order, including the irrevocable right to impose, collect and receive nonbypassable market transition charges ("TC"),[6] as authorized in the Financing Order. These rights are referred to as "Transition Property." The Restructuring Legislation further provides that the PUCT will make periodic adjustments to the TC.

Proposed Transactions

In connection with the PUCT Financing Order, Applicants and any affiliated successor in interest to CPL's electric distribution businesses and assets, seek authority through the Authorized Period to: (1) Form one or more new wholly owned entities ("Special Purpose Issuer") which are expected to be any one of the following: A trust, corporation, limited liability company or partnership; (2) acquire all the equity securities issued by each Special Purpose Issuer; (3) cause any Special Purpose Issuer to issue and sell Transition Bonds in an aggregate principal amount not to exceed $800 million;[7] (4) enter into or cause any Special Purpose Issuer to enter into interest rate swaps, interest rate hedging programs and credit enhancement arrangements to reduce interest rate risks with respect to, and to facilitate the offering of Transition Bonds; and (5) provide certain services at other than cost.

Applicants further request that the issuance of Transition Bonds in an amount up to $800 million, be in addition to the financing limitations previously authorized in the Omnibus Financing Order.

Following the issuance of the PUCT Financing Order, CPL will sell and transfer the Transition Property and the associated TC revenue stream created by the Financing Order to a Special Purpose Issuer in exchange for the net proceeds from the sale of the Transition Bonds. The Special Purpose Issuer will issue Transition Bonds in an amount not to exceed $800 million to finance its purchase of the Transition Property and the associated TC revenue stream from CPL in accordance with the related Financing Order. CPL will use the gross proceeds from the sale of Transition Bonds to: (1) Pay costs incurred in the issuance and sale of the Transition Bonds; (2) refund or retire utility debt or equity associated with its stranded costs; and (3) pay the costs of such refinancing and retirement.

The Special Purpose Issuer may issue Transition Bonds in one or more series, and each series may be issued in one or more classes. Different series may have different maturities and coupon rates and each series may have classes with different maturities and coupon rates. There will be a date on which each class of Transition bonds is expected to be repaid and a legal final maturity date by which each class of Transition Bonds must be repaid, which will not be later than fifteen years after the date of issuance.[8]

In addition, CPL proposes to enter into a Servicing Agreement with the Special Purpose Issuer, under which CPL will act as the servicer of the TC revenue stream. In this capacity, CPL, among other things, would: (1) Bill customers and retail electric providers and make collections on behalf of the Special Purpose Issuer; and (2) file with the PUCT for adjustment to the TC to achieve a level which permits the payment of all debt service and full recovery of qualified costs to be collected through TCs in accordance with the amortization schedule for each series and class of Transition Bonds. CPL may subcontract with its affiliates to carry out some of its servicing responsibilities, provided that the ratings of the Transition Bonds are neither reduced nor withdrawn as a result. In order to satisfy rating agency requirements, compensation to CPL must be at an arms' length basis. Accordingly, Applicants request an exemption from the at-cost standards of section 13(b).[9]

Applicants also seek authority for the Special Purpose Issuer (and/or CPL, acting on behalf of the Special Purpose Issuer) to enter into transactions to convert all or a portion of any Transition Bond bearing interest at a floating rate ("Floating Rate Transition Bonds") to fixed rate obligations using interest rate swaps ("Swaps") or other derivative products designed for these purposes.

The Special Purpose Issuer may enter into one or more Swaps or one or more derivative instruments, such as interest rate caps, interest rate floors and interest rate collars (collectively, "Derivative Transactions"), with one or more counterparties from time-to-time through the Authorization Period. The notional amounts of the Swaps and the expected average life of the Swaps will not exceed that of the underlying Transition Bonds. The term of the Swaps would match the maturity of the Floating Rate Transition Bonds and the swap notional amount would equal the outstanding principal amount of the bonds. Applicants also seek authorization for the Special Purpose Issuer (or CPL, acting on behalf of the

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[4] Holding Co. Act Release No. 26811.

[5] As provided for in the Restructuring Legislation, Transition Bonds will have terms of not more than 15 years and the proceeds of Transition Bonds may be used solely for purposes of reducing the amount of recoverable regulatory assets and stranded costs, as determined by the PUCT, through the refinancing or retirement of utility debt or equity.

[6] Transition charges are generally defined in the Restructuring Legislation as nonbypassable amounts authorized to be charged for the use or availability of electric service under a Financing Order to recover a utility's "qualified costs." Qualified costs include 100% of a utility's regulatory assets as of December 31, 1998, 75% of a utility's estimated stranded costs as determined by the PUCT, 100% of the costs of issuing, supporting and servicing the Transition Bonds, 100% of the costs of retiring and refunding the utility's debt and equity securities with the proceeds of the Transition Bonds, and certain costs incurred by the PUCT in proceedings under the Restructuring Legislation.

[7] The Transition Bonds reflect the securitization of approximately $764 million of regulatory assets and up to $36 million of other qualified costs.

[8] Applicant state that the Transition Bonds are expected to have a credit rating of AAA.

[9] In addition, the Special Purpose Issuer may enter into an "Administration Agreement" with CPL or another affiliate of CSW (the "Administrator"), under which the Administrator would provide ministerial services on an as-needed basis to the Special Purpose Issuer. These services will consist primarily of administrative or housekeeping matters relating to the Special Purpose Issuer and may include providing Transition Bond documentation notices, maintaining books and records, and maintaining authority to do business in appropriate jurisdictions. The Special Purpose Issuer will reimburse the Administrator for the cost of these services provided in compliance with section 13(b) and rules 90 and 91.

Special Purpose Issuer) to enter into an interest rate hedging program utilizing Derivative Transactions.

For the Commission by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5915 Filed 3–9–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42492; File No. SR–MSRB–00–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Underwriting and Transaction Assessments, Pursuant to Rule A–13

March 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 7, 2000, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing a proposed amendment to its rule A–13 on underwriting and transaction assessments for brokers, dealers and municipal securities dealers. Rule A–13 currently provides for fee assessments based on transaction activity, as measured by the par value of inter-dealer sales, and on under writing activity. The proposed rule change would change the fee assessment based on transaction activity to include the par value of sales to customers. This would provide for necessary increases in revenue sufficient to offset declines in underwriting assessments and increases in Board expenses. In review of the present need to bring Board revenues into better balance with necessary expenditures, the Board is requesting Commission approval of the proposed rule change by April 1, 2000.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to help provide sufficient revenues to fund Board operations and to allocate fees among broker, dealers and municipal securities dealers (collectively "dealers") in a manner that more accurately reflects each dealer's involvement in the municipal securities market. The proposed rule change would accomplish these purposes by revising the current fee based on transaction activity to include, as a basis for measuring involvement in the market, sales of municipal securities by dealers to customers. The proposed rule change would also exclude certain short-term securities from the new customer transaction-based fee assessment and from the existing fee assessment based on inter-dealer transactions.[3]

Current Fee Structure

Rule A–13 currently provides for an assessment based on the total par value of a dealer's inter-dealer sales transactions in municipal securities.[4] Dealers report these transactions by submitting transaction information to the automated comparison system operated by National Securities Clearing Corporation ("NSCC"). The Rule A–13 inter-dealer transaction assessment has been set at $.005 per $1,000 par value of sales since it was instituted in 1996.

In addition to the assessment based on inter-dealer transaction activity, the Board currently levies three other types of fees that are generally applicable to dealers. Rule A–12 provides for a $100 initial fee paid once by a dealer when it enters the municipal securities business. Rule A–14 provides for an annual fee of $200 paid by each dealer that conducts municipal securities business during the year. In addition to the Rule A–13 inter-dealer transaction assessment, Rule A–13 also provides for an assessment on underwriting activity, based on the par value of the dealer's purchases from the issuer of primary offerings of municipal securities.[5]

Proposed Fee Structure

Under the proposed rule change, the transaction-based fee, which currently takes into consideration only the amount of a dealer's inter-dealer sales activity, would be expanded to take into account the dealer's sales transactions to customers as well. A rate of $.005 per $1,000 par value would be used to calculate assessments for both inter-dealer and customer transactions.

The proposed rule change would exclude from the calculation of both inter-dealer and customer transaction-based fees certain transactions in very short-term instruments: securities that have a final stated maturity of nine months or less and securities that may be put to the issuer at least as frequently as every nine months. These excluded categories of short-term issues are referred to hereafter as "municipal commercial paper," "short-term notes," and "variable rate demand obligations." These instruments are not currently excluded from the inter-dealer transaction-based fee, but would be excluded form that fee once the proposed rule change becomes effective.

Need for the Proposed Rule Change

Static or Declining Revenues

The proposed rule change is needed to help bring the Board's revenues more closely into balance with expenditures. During the past three fiscal years, the greatest part of the Board's revenues—

[3] Securities for which transaction fees are not assessed are those with a final stated maturity of nine months or less or which are "puttable" to an issuer at least as frequently as every nine months until maturity. The rationale for excluding these securities is discussed below.

[4] The total par value of sales transactions will be referred to hereafter as "transaction activity."

[5] The Rule A–13 underwriting assessment fee historically has varied, based on new issue volume in the market and the Board's revenue needs. Since 1991, Rule A–13 has provided for an assessment of $.03 per $1,000 on primary offerings (as defined in Exchange Act Rule 15c2–12) of municipal securities that have an aggregate par value of at least $1,000,000, that are not "puttable" to an issuer every two years or less, and that have a final stated maturity of two years or more. Since 1992, the Rule A–13 underwriting assessment has been $.01 per $1,000 for primary offerings with a final stated maturity of nine months or more, but less than two years, and $.01 per $1,000 for primary offerings which are "puttable" to an issuer every two years or less. Rule A–13 exempts from underwriting assessments those primary offerings which have a final stated maturity of nine months or less or which are puttable at least as frequently as every nine months until maturity.

69 percent—has come from the underwriting fee. Underwriting fee revenue, however, decreased by 16 percent in the last fiscal year ("FY")—from $8,162,250 in FY 1998 to $6,819,726 in FY 1999—as total underwriting in the industry declined.[6] The Board projects a further ten percent decrease in underwriting fee revenue in FY 2000,[7] and little or no increase in underwriting volume in the years after 2000. In addition, the Board's annual revenue from inter-dealer transaction activities has been virtually unchanged over the past three years. Thus, the two major current sources of Board revenue are either static or declining. If there is no alteration in the fee structure, overall revenues are projected to decline six percent between FY 1999 and 2000.

Increase in Expenses

During the past five years, due to increased regulatory activities and expanded operation of the Municipal Securities Information Library ("MSIL") system,[8] the Board's expenses have increased from $6,716,681 in FY 1994 to $9,849,701 in FY 1999. Much of the Board's expenses during this time have derived from development and operation of its Transaction Reporting System, which supports market surveillance and price transparency functions for the municipal securities market.[9]

In 1999, the Board began to look into possible ways to provide a "real-time" transaction reporting system in the municipal securities market to make price and volume information public on a more contemporaneous basis than is currently the case. This will continue to require budgetary allocations consistent with, or higher than, that experienced thus far. In addition, the Board's long-range plans call for increased involvement in activities to improve disclosure, which may entail substantial modification or enhancement of the Board's computer sytems.

Projected Shortfall and Request for Commission Approval

The proposed amendment, therefore, is necessary to address a projected shortfall in Board revenues caused by declining underwriting assessments and increases in projected expenses. The Board estimates that sales activity for long-term bonds in FY 2000 will be approximately $350 billion in inter-dealer trades and $480 billion in customer sales.[10] Assuming the customer transaction fee is effective for six months in FY 2000, Board revenues from transaction activity-based fees during FY 2000 would be about three million dollars.

The proposed change in the fee structure would bring the Board's revenues into better balance with its expenditures. Fiscal year 2000 expenditures are projected to be $11.98 million. Total revenues, including the transaction fees estimated above, are projected to be $10.39 million. If the proposed rule change is effective for half the current fiscal year, the projected shortfall will be $1.59 million. Without any assessment based upon customer trade activity, the projected shortfall would be an additional $1.2 million, *i.e.*, the total shortfall would be $2.79 million. For this reason, the Board is requesting that the Commission approve the proposed rule change prior to April 1, 2000, for effectiveness on the same date. In the years after 2000, without the proposed fee, there would be an even larger shortfall, which would be of serious concern to the Board.

Proposed Fee Structure Better Reflects Dealer's Market Participation

The Board's goal in determining the underwriting and transaction assessments has been to make the fees paid by each dealer reflect the dealer's involvement in the municipal securities market. When it originally adopted the rule A–13 underwriting fee in 1976, the Board stated its intention to broaden the scope of the rule, when possible, to reflect market activity occurring after the purchase of a new issue from an issuer. Reliable information to measure inter-dealer transaction activity first become available in 1995 as part of the Board's Transaction Reporting Program. This information, reported by dealers to the Board under Rule G–14, is the basis of the inter-dealer transaction fee that went into effect in 1996. In adopting the inter-dealer transaction fee, the Board noted that, together, the underwriting and inter-dealer transaction fees would more accurately reflect each dealer's participation in the market than the underwriting fee alone. At the same time, the Board stated its intention to examine customer transaction data when it became available, in order to adjust dealer fees even more equitably.[11]

Dealers began reporting customer transactions to the Board under rule G–14 in March 1998. Combined sales data (*i.e.*, inter-dealer plus customer sales) is a better measure of dealer participation in the market than is inter-dealer sales data alone, because there is substantial activity by dealers that buy securities on the inter-dealer market for resale to customers. The Board believes the combination of underwriting, inter-dealer and customer transaction fees to be the best currently available means for comprehensive measurement of dealer participation in the municipal securities market.[12]

Under the proposed rule change, the board would assess transaction fees on a monthly basis, based on transactions that dealers report to the Transaction Reporting System. Dealer sales to customers (not purchases by the dealer from customers) will be used as the measure of transaction activity. This avoids double counting when a dealer buys and sells a block of securities in the customer market.[13]

Exclusions

After reviewing trade data from the Transaction Reporting System, the Board determined to exclude certain

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[6] Underwriting of long-term municipal securities was $286 billion in calendar year 1998 but declined in 1999 by more than 20 percent to $226 billion. *See* "A Decade of Municipal Bond Finance," *The Bond Buyer*, January 7, 2000, at 30.

[7] New issues of municipal securities in January 2000 were about seven billion dollars, a decline of 35% from the level of January 1999. Refunding volume decreased more than 90%. *See* "January's Deep Freeze: New-Issue Volume Lowest Since at Least '95," *The Bond Buyer*, February 1, 2000, at 1.

[8] The MSIL is composed of computer systems that store and disseminate, to the public and municipal securities enforcement agencies, the following information: official statements, advance refunding documents, and continuing disclosure of material events; political contributions by municipal securities professionals; and municipal securities transactions.

[9] MSIL expenditures during the past five fiscal years totaled $16.5 million, more than half of which is for Transaction Reporting System development and operations. Since inception, the Transaction Reporting System has been enhanced to disseminate more information in the transparency reports and to increase the information provided in a surveillance database to support enforcement of Board rules. Annual subscriptions to the transparency reports are available for a fee of $15,000, which has resulted in revenue that less than offsets the marginal cost of production. In January 2000, the Board began making available detailed transaction reports. The Board has determined that, in order to foster the broadest possible dissemination of price information, the new reports will be made available free of charge. *See* Exchange Act Release No. 41916 (Sept. 27, 1999) 64 FR 53759 (Oct. 4, 1999).

[10] Additional FY 2000 inter-dealer activity in short=term notes and short puts (securities excluded from the proposed fee) is estimated by the Board as $3.4 billion. Customer sales in the same securities are estimated to be $720 billion.

[11] *See* "Revisions to Board Fee Assessments: Rules A–13, A–14 and G–14," *MSRB Reports*, Vol. 16, No. 2 (June 1996), at 13–15.

[12] As an alternative to the proposed transaction-based fee structure, the Board considered a revenue-based approach to fees. The Board concluded that it may not be feasible to conduct the objective audits necessitated by revenue-based fee assessment and, therefore, that the transaction-based approach is preferable.

[13] Similarly, the current inter-dealer transaction fee is assessed to the dealer on the "sell side" of each trade.

very short-term municipal issues (*e.g.*, commercial paper, variable rate demand obligations and short-term notes) from both the inter-dealer and customer transaction assessments.[14] There are relatively few transactions in these issues compared to the market as a whole (less than 7 percent of all transactions). However, transactions in these extremely short-term issues, which constitute about 51 percent of the par value traded, typically have very high par values. To assess a transaction activity fee on such issues would result in disproportionate fees for the small number of dealers that trade them, especially since those dealers also generally will have the highest levels of transaction and underwriting activity in issues that are subject to fee assessments.[15]

2. Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act,[16] which requires, in pertinent part, that the Board's rules shall:

provide that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[14] Currently, all inter-dealer transactions required to be reported to the Board are considered for purposes of the fee calculation.

[15] In connection with the Board's proposal in 1995 to institute the inter-dealer transaction fee assessment, several municipal "broker's brokers" expressed a concern that they would be assessed a disproportionate share of Board fee revenue. The presently proposed rule change would address this concern. Since broker's brokers do not effect transactions with customers, the percentage of total Board revenue paid by these brokers would decrease when customer transactions are included in the fee base.

[16] 15 U.S.C. 78*o*–4(b)(2)(J).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the MSRB consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–00–03 and should be submitted by March 31, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5917 Filed 3–9–00; 8:45 am]

BILLING CODE 8010–01–M

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42494; File No. SR–NASD–00–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Delay of the Implementation Date of Changes to Riskless Principal Trade Reporting Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 24, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposal

Nasdaq's proposal is an re-interpretation to NASD Rules 4632, 4642, 4652, 6420, and 6620, regarding riskless principal trade reporting. The intent of this proposed re-interpretation is to delay the effective date of the riskless principal trade reporting rule changes announced in SR–NASD–98–59[5] and SR–NASD–98–08,[6] and the interpretations thereto filed in SR–NASD–99–39[7] and SR–NASD–99–52.[8]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999).

[6] *See* Securities Exchange Act Release No. 41606 (July 8, 1999), 64 FR 37226 (July 15, 1999).

[7] *See* Securities Exchange Act Release No. 41731 (August 11, 1999), 64 FR 44983 (August 18, 1999).

[8] *See* Securities Exchange Act Release No. 41974 (October 4, 1999), 64 FR 55508 (October 13, 1999).

the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 24, 1999 and July 8, 1999, respectively, the Commission approved proposals to amend NASD trade reporting rules relating to riskless principal transactions in Nasdaq National Market, Nasdaq SmallCap Market, Nasdaq convertible debt, non-Nasdaq over-the-counter ("OTC") equity securities, and exchange-listed securities traded in the third market ("Riskless Principal Trade Reporting Rules").[9] Under the new Riskless Principal Trade Reporting Rules, a "riskless" principal transaction is one where an NASD member, after having received an order to buy (sell) a security, purchases (sells) the security as principal at the same price to satisfy the order to buy (sell).[10] The Riskless Principal Trade Reporting Rules provide that if a transaction is "riskless," the offsetting transaction/leg (*e.g.*, the transaction with the customer) need not be reported.

In the Order approving SR–NASD–98–59, the Commission asked Nasdaq to submit an interpretation providing examples of how mark-ups, mark-downs, and other fees will be excluded for purposes of the amended riskless principal rules.[11] On August 5, 1999, Nasdaq filed with the Commission SR–NASD–99–39[12] attached to which was *Notice to Members 99–65*, which gave examples of how mark-ups and other fees will be excluded for purposes of the Riskless Principles Trade Reporting Rules. SR–NASD–99–39 and *Notice to Members 99–65* were filed as an interpretation to existing NASD Rules 4632, 4642, 4652 and 6620. In addition to giving examples of how mark-ups and other fees will be excluded for purposes of the Riskless Principal Trade Reporting Rules, *Notice to Members 99–65* stated that the rule changes announced in SR–NASD–98–59[13] and the interpretations to those rules contained in the *Notice* would become effective on September 30, 1999.

The NASD published *Notice of Members 99–65* (discussing the trade reporting rules for riskless principal transactions in Nasdaq and OTC securities) and *Notice to Members 99–66* (discussing, among other things, the trade reporting rules for the third market) in August 1999. The *Notices* announced that the Riskless Principal Trade Reporting Rules would go into effect on September 30, 1999.

Shortly after publication of *Notices to Members 99–65* and *99–66*, a number of firms represented that they were unable to prepare their systems for compliance with the new Riskless Principal Trade Reporting Rules by the September 30, 1999 deadline. The firms' inability to meet the September 30, 1999 deadline was due, in large part, to Year 2000 ("Y2K") remediation and testing requirements, as well as other code changes. In addition, the firms stated that, due to a Y2K code freeze, they were not able to complete programming for the Riskless Principal Trade Reporting Rules until the end of the first quarter of 2000. Subsequently, Nasdaq filed SR–NASD–99–52,[14] the purpose of which was to delay the implementation date of the new Riskless Principal Trade Reporting Rules until March 1, 2000.

Nasdaq proposes to defer the implementation date of the Riskless Principal Trade Reporting Rules until September 1, 2000, because a number of NASD members have represented that the approach described in *Notices to Members 99–65* and *99–66* for riskless principal trade reporting would raise significant issues that need to be addressed in greater detail through, for example, interpretive guidance. The firms have requested an extension of the implementation date until September 1, 2000, to allow the firms and the NASD time to resolve the issues posed, and to program their systems.

Specifically, Nasdaq received a copy of a letter dated February 18, 2000 ("Letter") in which the signatory firms requested an extension of the implementation date of the Riskless Principal Trade Reporting Rules.[15] The Letter stated that the signatory firms ("Firms") are requesting the extension because they have asked the NASD to consider a proposed new approach to riskless principal trade reporting that differs significantly from the approach described in *Notices to Members 99–65* and *99–66*. The Firms proposed the new approach because they believe that, under the approach set forth in the *Notices*, accurately reporting trades through electronic communication networks would be problematic, as would executions in which both the first and second leg of riskless principal trades are reported by their own trading systems. The Letter gives examples of trade reporting problems presented by the Riskless Principal Trade Reporting Rules.

The Firms request an extension of the implementation date until September 1, 2000, to give them and the NASD adequate time to develop workable solutions to the reporting problems that have been identified, and to program their systems. The extension until September 1, 2000 is necessary because the industry and the NASD will be required to devote a portion of their technology resources in the first and second quarters of 2000 to the implementation of decimal pricing by the July 3, 2000 deadline established by the SEC's Decimalization Order.[16]

Nasdaq believes that a delay in the implementation of the Riskless Principal Trade Reporting Rules is reasonable in light of the decimalization efforts, the need for the NASD and the Firms to develop workable solutions to the problems identified, and the programming changes required by the rule change.

2. Statutory Basis

Nasdaq believes it would not be prudent nor would it be consistent with Section 15A of the Act[17] to require members to implement substantial system changes at a time when they are focusing significant resources and time

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[9] *See* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999) (SR–NASD–98–59). *See also* Securities Exchange Act Release No. 41606 (July 8, 1999), 64 FR 38226 (July 15, 1999) (SR–NASD–98–08).

[10] *See* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999)(SR–NASD–98–59). *See also*, Securities Exchange Act Release No. 41606 (July 8, 1999), 64 FR 38226 (July 15, 1999)(SR–NASD–98–08).

[11] *See* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999) at footnote 15.

[12] *See* Securities Exchange Act Release No. 41731 (August 11, 1999), 64 FR 44983 (August 18, 1999).

[13] *See* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999).

[14] *See* Securities Exchange Act Release No. 41974 (October 4, 1999), 64 FR 55508 (October 13, 1999).

[15] *See* February 18, 2000 letter to Belinda Blaine, Associate Director, SEC (a copy was sent to, among others, Robert Aber, Senior Vice President and General Counsel, Nasdaq), from Automated Securities Clearance, Ltd. and the following NASD member firms: Bernard L. Madoff Securities; CIBC World Markets; Credit Suisse First Boston; Deutsche Banc Alex. Brown; Donaldson, Lufkin & Jenrette; Goldman Sachs & Co.; Jefferies; Lehman Bros.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Morgan Stanley Dean Writer; and Salomon Smith Barney Inc.

[16] Order Directing the Exchanges and the NASD to Submit a Decimalization Implementation Plan Pursuant to Section 11A(a)(3)(B) of the Act, Release No. 34–42360 (January 28, 2000), 65 FR 5003 (February 2, 2000) (File No. 4–430).

[17] 15 U.S.C. 78o–3.

to implement decimal pricing, especially if the changes will not accomplish the objectives of streamlining trade reporting in Nasdaq, OTC, and Third Market securities and reducing SEC transaction fees. Thus, Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act [18] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(i) of the Act,[19] and Rule 19b–4(f)(1) [20] thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[21]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–06 and should be submitted by March 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5916 Filed 3–9–00; 8:45 am]

BILLING CODE 8010–01–M

[18] 15 U.S.C. 78o–3(b)(6).

[19] 15 U.S.C. 78s(b)(3)(A)(i).

[20] 17 CFR 240.19b–4(f)(1).

[21] In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C 3507), SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of the publication of this notice. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of the notice. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Internet Retirement Insurance Benefit (IRIB) Application—0960–NEW. The information collected is used by SSA to determine entitlement to retirement insurance benefits. Currently, applicants for retirement insurance benefits complete an SSA–1 by telephone or in person with the assistance of an SSA employee. The IRIB application will enable individuals to complete the application on their own electronically over the Internet.

Number of Respondents: 80,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 20,000 hours.

2. Request for Internet Service—Authentication—0960–0596. The information collected on the electronic request for Internet Service, Authentication, is used by the Social Security Administration to identify its customers who are requesting Privacy Act protected information. The respondents are members of the public who request services from SSA through the Internet.

Number of Respondents: 21,000.

Frequency of Response: 1.

Average Burden Per Response: 1.5 minutes.

Estimated Annual Burden: 525 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: March 3, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–5768 Filed 3–9–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3246]

Culturally Significant Objects Imported for Exhibition Determinations: "Golden Years of Faberge: Objects and Drawings From the Wigstrom Workshop"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999, as amended by

Delegation of Authority No. 236–1 of November 9, 1999, I hereby determine that the objects to be included in the exhibition "Golden Years of Faberge: Objects and Drawings from the Wigstrom Workshop," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the A La Vieille Russie Gallery, New York, NY from on or about April 12, 2000 to on or about May 19, 2000, and at the New Orleans Museum of Art, from on or about June 17, 2000 to on or about August 20, 2000 is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: March 6, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–5923 Filed 3–9–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3247]

Culturally Significant Objects Imported for Exhibition Determinations: "O'Keeffe on Paper"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition "O'Keeffe on Paper," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. This object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit object at the National Gallery of Art, Washington, DC from April 9, 2000 through July 9, 2000, and at the Georgia O'Keeffe Museum, Santa Fe, CA from July 29, 2000 through October 29, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including the exhibit object, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44; 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: March 6, 2000.

William B. Bader,

Assistant Secretary of State, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–5924 Filed 3–9–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3245]

Statutory Debarment Under the International Traffic in Arms Regulations Involving Orbit/FR, Inc.

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that Orbit/FR, Inc. is statutorily debarred pursuant to section 127.7 (c) of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). It shall be the policy of the Department of State to deny all export license applications and other requests for approval involving Orbit/FR, Inc. directly or indirectly.

EFFECTIVE DATE: November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Eva O. Tyler, Acting Chief, Compliance Enforcement Branch, Office of Defense Trade Controls, Department of State (703–875–6644, Ext. 3).

SUPPLEMENTARY INFORMATION: On November 10, 1999, Oribt/FR, Inc. pled guilty to two (2) counts of violating the Arms Export Control Act (AECA) (22 U.S.C. 2778) in the U.S. District Court, Eastern District of Pennsylvania. The information charges Orbit/FR, Inc. with illegally exporting components for an antenna and radome measurement system, AL–8098, also known as AL–8099 to the People's Republic of China and illegally furnishing a defense service involving the modification of the antenna measurement software so that the antenna measurement system would have sufficient accuracy to measure antennas on a Patriot-type missile system to the People's Republic of China. *United States* v. *Orbit/FR, Inc.*, Eastern District of Pennsylvania, Criminal Docket No. CR 99–560.

Section 38(g)(4)(A) of the Arms Export Control Act (AECA), 22 U.S.C. 2778, prohibits licenses or other approvals for the export of defense articles and defense services to be issued to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA. The term "person", as defined in 22 CFR 120.14 of the International Traffic in Arms Regulations (ITAR), means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. The ITAR, specifically 126.7(e), defines the term "party to the export" to include the president, the chief executive officer, and other senior officers and officials of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end-user of any item to be exported.

The ITAR, Section 127.7, authorizes the Assistant Secretary of State for Political-Military Affairs to prohibit certain persons convicted of violating, or conspiring to violate, the AECA, from participating directly or indirectly in the export of defense articles or in the furnishing of defense services for which a license or approval is required. Such a prohibition is referred to as a "statutory debarment," which may be imposed on the basis of a judicial proceeding that resulted in a conviction for violating, or of conspiring to violate, the AECA. See 22 CFR 127.7(c). The period for debarment will normally be three years from the date of conviction. At the end of the debarment period, and possibly after a period of one year, licensing privileges may be reinstated at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by the AECA, 22 U.S.C. 2778(g)(4).

Statutory debarment is based solely upon a conviction in a criminal proceeding, conducted by a United States court. Thus, the administrative debarment procedures, as outlined in the ITAR, 22 CFR part 128, are not applicable in such cases.

The Department of State will not consider applications for licenses or

requests for approvals that involve any person or any party to the export who has been convicted of violating, or of conspiring to violate, the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the under Secretary for International Security Affairs for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision. 22 CFR 127.7(d).

The Department of State policy permits debarred persons to apply for reinstatement of export privileges one year after the date of the debarment, in accordance with the AECA, 22 U.S.C. 2778(g)(4)(A), and the ITAR, Section 127.7. A reinstatement request is made to the Director of the Office of Defense Trade Controls. Any decision to reinstate export privileges can be made only after the statutory requirements under Section 38(g)(4) of the AECA have been satisfied through a process administered by the Office of Defense Trade Controls. If reinstatement is granted, the debarment will be suspended.

Pursuant to the AECA, 22 U.S.C. 2778(g)(4)(A), and the ITAR, 22 CFR 127.7, the Assistant Secretary for Political-Military Affairs has statutorily debarred Orbit/FR, Inc. which has been convicted of violating the AECA. On November 10, 1999, Orbit/FR, Inc. was convicted of two counts of violating section 38 of the AECA.

Exceptions may be made to this denial policy on a case-by-case basis at the discretion of the Office of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interest; whether an exception would further law enforcement concerns which are not inconsistent with the foreign policy or national security interests of the United States; or, whether other compelling circumstances exist which are not inconsistent with the foreign policy or national security interests of the United States, and which do not conflict with law enforcement concerns.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

Dated: March 6, 2000.

Michael T. Dixon,

Acting Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs Department of State.

[FR Doc. 00–5922 Filed 3–9–00; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195; Flight Information Services Communications (FISC)

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–195 meeting to be held March 28, 29, and 30, 2000, starting at 8:30 a.m. each day. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC., 20036.

The agenda will include: March 28: Plenary convenes for 30 minutes: (1) Welcome and Introductions; (2) Agenda Overview; (3) Working Group (WG) 1, Aircraft Cockpit Weather Display, Work on Comparison Between Aircraft and Ground Weather Radar Document and the design Guidelines & Recommended Standards for Airborne Processing & Display of FIS–B Section for Change 1 to the FIS–B Minimum Aviation System Performance Standards (MASPS); 1:00 p.m. Plenary Reconvenes: (4) Review of Previous Meeting Minutes; (5) Report from WG–1 on Activities; (6) Report on ICAO METLINK Study Group and Program Management Committee Meetings; (7) Report on Concept of Operations for Cockpit Display of Weathers and Airspace Information Documents Development. March 29: (8) Work on FIS–B MASPS Section 4.0, Procedures for Performance Requirement Verification, Development; (9) Work on FIS–B MASPS Appendix E, Application Payload Encoding. March 30: (10) Review Issues (Action Items) and Address Future Work; (11) Dates and Location of Future Meetings; (12) Other Business; (13) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 2, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–5956 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 196; Night Vision Goggle (NVG) Appliances & Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–196 meeting to be held March 28–29, 2000, starting at 8 a.m. The meeting will be held at FAA Rotorcraft Directorate, (4th Floor, Don Watson Room), FAA Southwest Region Headquarters, 2601 Meacham Blvd, Ft. Worth, TX. 76139.

The agenda will include: (1) Welcome and Introductory Remarks; (2) Agenda Overview; (3) Review/Approval of Previous Minutes; (4) Action Item Status Review; (5) Bell Helicopters Training Program; (6) WAMCO NVG External Lighting Brief; (7) FAA Medical Certification Brief; (8) BAE NVG Heads-Up Display Systems; (9) Overview SC–196 Working Group (WG) Activities: (a) WG–1, Operational Concept/ Requirements; (b) WG–2, NVG MOPS; (c) WG–3, Night Vision Imaging System Lighting; (d) WG–4, Maintenance/ Serviceability; (e) WG–5, Training Guidelines/Considerations; (10) Open Forum; (11) WG Breakout Sessions; (12) Other Business; (13) Establish Agenda for Next Meeting; (14) Date and Location of Next Meeting; (15) Closing.

Attendance is open to the interested public but limied to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 2, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–5957 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193/ EUROCAE Working Group 44; Terrain and Airport Databases

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting to be held April 3–7, 2000, starting at 9:00 a.m. The meeting will be held at EUROCONTROL Headquarters, Rue de la Fusee, 96, Brussels B–1130, Belgium.

The agenda will be as follows: April 3, Opening Plenary Session: (1) Welcome and Introductions; (2) Review/ Approval of Meeting Agenda; (3) Review Summary of the Previous Meeting; (4) Presentations; (5) New Business; (Break into Subgroups 2 and 3); (6) Subgroup 2, Terrain and Obstacle Databases: (a) Review of Summary of the Previous Minutes; (b) Review of Actions Taken During the Previous Meeting; (c) Presentations; (d) Review of the Draft Document; (7) Subgroup 3, Airport Databases: (a) Review of Summary of the Previous Meeting Minutes; (b) Review of Actions Taken During the Previous Meeting; (c) Presentations; (d) Review of the Draft Document. April 4–6: (8) Subgroup 2, Continuation of Previous Days Discussions: (9) Subgroup 3, Continuation of Previous Days Discussion. April 7: Closing Plenary Session: (10) Summary of Subgroups 2 and 3 Meetings; (11) Assign Tasks; (12) Other Business; (13) Dates and Locations of Next Meetings; (14) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; (202) 833–9339 (phone), (202) 833–9434 (fax), or http://www.rtca/org (web site) or Mr. Philippe Caisso, at 011–33–5–62–14–5859 or e-mail *CAISSOPhilippe@stna.dgac.fr.* Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 6, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–5958 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at La Crosse Municipal Airport, La Crosse, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at La Crosse Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 10, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Michael A. Daigle, Airport Manager of the La Crosse Municipal Airport at the following address: La Crosse Municipal Airport, 2850 Airport Road, La Crosse, WI 54603.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of La Crosse under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at La Crosse Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act off 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 24, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of La Crosse was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 25, 2000.

The following is a brief overview of the application.

PFC application number: 00–05–C–00–LSE.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 2000.

Proposed charge expiration date: April 1, 2003.

Total estimated PFC revenue: $689,028.00.

Brief description of proposed projects: Reconstruct Runway 18/36 (phase 2 and 3), Install approach light system, Conduct master plan update, Acquire ground level passenger loading bridges, PFC administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: no request to exclude carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of La Crosse.

Issued in Des Plaines, Illinois on February 25, 2000.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 00–5955 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Minot International Airport, Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Minot International Airport under the provisions of the Aviation

Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATE: Comments must be received on or before April 10, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mike Ryan, Airport Director, of the City of Minot, North Dakota at the following address: Minot International Airport, 25 Airport Road, Suite 10, Minot, North Dakota 58701–1457.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Minot, North Dakota under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minot International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 22, 2000, the FAA determined that the application to use the revenue from a PFC submitted by the City of Minot, North Dakota was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 13, 2000.

The following is a brief overview of the application. PFC application number: 00–05–U–00–MOT

Level of the PFC: $3.00.

Actual charge effective date: March 1, 1999.

Estimated charge expiration date: June 1, 2000.

Total estimated PFC revenue: $203,841.00.

Brief description of proposed project: Use: Runway 8–26 Restoration and Extension.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operator (ATCO) Class Carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Minot—Airport Directors offices at the Minot International Airport.

Issued in Des Plaines, Illinois on February 25, 2000.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 00–5954 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–7020]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled, "Approval of Underwriters for Marine Hull Insurance."

DATES: Comments should be submitted on or before May 9, 2000.

FOR FURTHER INFORMATION CONTACT: Otto A. Strassburg, Chief, Division of Marine Insurance, Office of Insurance and Shipping Analysis, MAR–570, Room 8117, Maritime Administration, 400 Seventh Street, SW, Washington, D.C. 20590, telephone number: 202–366–4161. Copies of this collection can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: "Approval of Underwriters for Marine Hull Insurance".

Type of Request: Approval of an existing information collection.

OMB Control Number: 2133–0517.

Form Number: None.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: This collection of information involves the approval of marine hull underwriters to insure MARAD program vessels. Foreign applicants will be required to submit financial data upon which MARAD approval would be based. In certain cases, brokers would be required to certify that American underwriters were offered opportunity to compete for the business.

Need and Use of the Information: 46 CFR Part 249, published as a final rule on June 20, 1988, prescribes regulations for approval of underwriters for marine hull insurance on vessels built or operated with subsidy or covered by vessel obligation guarantees issued pursuant to Title XI of the Merchant Marine Act, 1936, as amended. The regulations provide for approval of foreign underwriters on the basis of an assessment of their financial condition, the regulatory regime under which they operate, and a statement attesting to a lack of discrimination in their country against U.S. hull insurers. The regulations also require that American underwriters be given an opportunity to compete for every placement, thereby necessitating in some cases certification that such opportunity was offered.

Description of Respondents: Foreign underwriters of marine insurance and insurance brokers.

Annual Responses: 62 responses.

Annual Burden: 46 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: March 6. 2000.

Joel C. Richard,

Secretary.

[FR Doc. 00–5899 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on December 23, 1999, [64 FR 72140].

DATES: Comments must be submitted on or before April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Taylor E. Jones, Director, Office of Maritime Labor, Training and Safety, MAR–250, Room 7302, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, telephone number 202–366–5755 or fax 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration.

Title of Collection: "Maritime Administration Service Obligation Compliance Report and Merchant Marine Reserve, U.S. Naval Reserve (USNR), Annual Report."

OMB Control Number: 2133–0509.

Type of Request: Approval of an existing information collection.

Affected Public: Every student and graduate of the USMMA and subsidized State maritime academies.

Form(s): MA–930.

Abstract: In accordance with the Maritime Education and Training Act of 1980, Public Law 96–453, every student and graduate of the U.S. Merchant Marine Academy, and subsidized State maritime academies incur a mandatory service obligation in the U.S. merchant marine. This collection of information is necessary to determine if a graduate of the USMMA or a subsidized State maritime academy is complying with the requirement to submit annually the form MA–930 to MARAD. This form is used to determine if a graduate has complied with the terms of the service obligation for that year.

Annual Estimated Burden Hours: 1500.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on March 6, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–5898 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 2, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

Departmental Offices Community Development Financial Institutions (CDFI) Fund

OMB Number: New.

Form Number: CDFI Form 0012 (Public) and CDFI Form 0013 (Private).

Type of Review: New collection.

Title: Survey on Lending in Indian Country.

Description: The data from this survey will provide information necessary for private lenders and government agencies to respond effectively to the diverse problems Native Americans confront in gaining access to capital.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (one-time only).

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–5857 Filed 3–9–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 28, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0064.

Form Number: IRS Form 4029.

Type of Review: Extension.

Title: Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.

Description: Form 4029 is used by members of recognized religious groups to apply for exemption from social security and Medicare taxes under Internal Revenue Code (IRC) sections 1402(g) and 3127. The information is

used to approve or deny exemption from social security and Medicare taxes.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 3,754.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 7 min.

Learning about the law or the form: 11 min.

Preparing the form: 11 min.

Copying, assembling, and sending the form to the IRS: 35 min.

Frequency of Response: Other (one-time).

Estimated Total Reporting/Recordkeeping Burden: 4,017 hours.

OMB Number: 1545–0928.

Regulation Project Number: EE–35–85 (Final), TD 8219.

Type of Review: Extension.

Title: Income Tax: Taxable Years Beginning After December 31, 1953; OMB Control Number Under the Paperwork Reduction Act; Survivor Benefits, Distribution Restriction and Various Other Issues Under the Retirement Equity Act of 1984.

Description: The notices referred to in this Treasury decision are required by statute and must be provided by employers to retirement plan participants to inform participants of their rights under the plan or under the law. Failure to timely notify participants of their rights may result in loss of plan benefits.

Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 750,000.

Estimated Burden Hours Per Respondent: 31 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 385,000 hours.

OMB Number: 1545–1431.

Regulation Project Number: IA–74–93 (Final).

Type of Review: Extension.

Title: Substantiation Requirement for Certain Contributions.

Description: These regulations provide that, for purposes of substantiation for certain charitable contributions, consideration does not include *de minimis* goods or services. It also provides guidance on how taxpayers may satisfy the substantiation requirement for contributions of $250 or more.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 16,000.

Estimated Burden Hours Per Respondent: 3 hours, 13 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 51,500 hours.

OMB Number: 1545–1519.

Form Number: IRS Form 1099–LTC.

Type of Review: Extension.

Title: Long-Term Care and Accelerated Death Benefits.

Description: Under the terms of Internal Revenue Code (IRC) sections 7720B and 101g, qualified long-term and accelerated death benefits paid to chronically ill individuals are treated as amounts received for expenses incurred for medical care. Amounts received on a per diem basis in excess of $175 per day are taxable. Section 6050Q requires all such amounts to be reported.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 11 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 13,602 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–5858 Filed 3–9–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Report on the Feasibility and Appropriateness of Mandatory Subordinated Debt

AGENCY: Departmental Offices, Treasury.

ACTION: Request for comments.

SUMMARY: Legislation recently enacted requires the Board of Governors of the Federal Reserve System (Board) and the Secretary of the Treasury (Secretary) to conduct a study of the use of subordinated debt to bring market forces and market discipline to bear on the operation and assessment of the viability of large financial institutions. In conducting this study, we will consider the views of the general public. We invite all interested parties to submit written comments on the topics set forth below.

DATE: Comments must be in writing and must be received by May 9, 2000.

ADDRESSES: Send comments to: Subordinated Debt Study, Office of Financial Institutions Policy, Department of the Treasury, Room SC 37, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Joan Affleck-Smith, Director, Office of Financial Institutions Policy, U. S. Treasury Department, 202/622–2470; and Myron Kwast, Associate Director, Division of Research and Statistics, Federal Reserve Board, 202–452–2909.

SUPPLEMENTARY INFORMATION: Section 108 of the Gramm-Leach-Bliley Act of 1999 (Public Law No. 106–102) requires the Board and the Secretary to conduct a study of the feasibility and appropriateness of establishing a requirement that large insured depository institutions [1] and depository institution holding companies [2] maintain some portion of their capital in the form of subordinated debt [3] in order to bring market forces and market discipline to bear on the operation of, and the assessment of the viability of, such institutions and companies and to reduce the risk to economic conditions, financial stability, and any deposit insurance fund.

The Act also requires that, if such a subordinated debt requirement is feasible and appropriate, the study address: (1) The appropriate amount or percentage of capital that should be subordinated debt, and (2) The manner in which any such subordinated debt requirement could be incorporated into existing capital standards and other issues relating to the transition to such a requirement. The Act requires the Board and the Secretary to report to Congress by May 12, 2001 on their findings and conclusions in connection with the study together with any legislative and administrative proposals that the Board and the Secretary may determine to be appropriate.

[1] The term "insured depository institution" has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act.

[2] The term "holding company" has the meaning given the term in section 2 of the Bank Holding Company Act of 1956.

[3] The term "subordinated debt" means unsecured debt that: (a) Has an original weighted average maturity of not less than five years; (b) is subordinated as to payment of principal and interest to all other indebtedness of the bank, including deposits; (c) is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and (d) is not held in whole or in part by any affiliate or institution-affiliated party of the insured depository institution or bank holding company.

Suggested Format of Comments

In order to assist the Board and the Secretary in preparing the subordinated debt study, the two agencies have determined to invite interested parties to submit comments and information that would inform the study. Comment is invited on all of the issues under study and identified below as well as on other issues related to the study that have not been included below.

I. Objectives of a Mandatory Subordinated Debt Requirement

Several changes in the banking industry [4] have complicated the supervision of large banking organizations. These changes include the removal of barriers to interstate banking, the blurring of traditional boundaries between banking and other types of financial services, and the consolidation of bank and nonbank activities in very large organizations. Large banks use highly complex methods for taking, measuring, and controlling risks. This greatly increases the challenge that regulators have in evaluating bank performance and ensuring safety and soundness.

Proponents of a requirement for large banking organizations to issue subordinated debt (SD) argue that it would enhance market discipline exerted on banks, and thus help to promote safety and soundness. A mandatory SD policy could provide direct discipline through changes in a bank's cost of issuing SD. An SD requirement could also enhance indirect discipline, as private market participants and government supervisors evaluate bank risk by monitoring SD secondary market prices. Expectations of higher SD interest costs and the potential imposition of other market or regulatory penalties would provide a bank with incentives to manage risk-taking more effectively.

Some proponents of an SD requirement emphasize its potential in limiting supervisory forbearance towards troubled institutions, while others argue that it would serve the objective of improving transparency and disclosure as SD holders and other market participants demand sufficient information to assess the bank's financial condition.

Finally, an SD requirement is often viewed as a means to increase the protection of the deposit insurance funds, since SD could provide the FDIC an extra buffer to absorb losses in the event of bank failure.

[4] This and subsequent references to the banking industry refer to both commercial banks and savings institutions.

II. Is a Mandatory SD Requirement on Large Banking Organizations Feasible and Appropriate?

Current Market: An understanding of the current market for banking organization SD is necessary to evaluate the feasibility of instituting an SD requirement. Important features of the current market to consider include: Its liquidity; the typical size and frequency of debt issuance; fixed and variable issuance costs; the degree of homogeneity of the debt instruments; the quality of price and volume data; and the size and other characteristics of the issuing organizations. It is also important to assess the effectiveness of the current SD market with respect to: creating market discipline; protecting the FDIC; and providing useful information to government supervisors.

Benefits of Mandatory SD: Proponents of a mandatory SD policy argue that, if structured in certain ways, the policy would provide greater market discipline than that provided by the existing SD market. Some also have argued that: SD compares favorably to other debt instruments and to equity in providing accurate and timely signals about bank risk; mandatory SD could improve bank supervision; and mandatory SD would provide additional protection from losses to the deposit insurance funds.

Costs and Risks of Mandatory SD: Critics of mandatory SD argue that such a requirement may impose additional costs on banking organizations, including the greater underwriting and related costs arising from required periodic issuance. A mandatory policy may alter market liquidity in ways that raise banks' funding costs. There are concerns that a mandatory SD policy might lead to a substitution of debt for equity. Some have cautioned about risks to economic stability, including the possibility that such a policy could exacerbate a business cycle downturn. These critics also say that SD may not be necessary because the deposit insurance reforms enacted early in the 1990s may provide a sufficient amount of market discipline in a downturn. Furthermore, an SD policy structured in certain ways (*e.g.*, capping spreads on the debt or requiring put options) could unduly constrict supervisory flexibility and destabilize financial institutions or debt markets.

III. If an SD Requirement Is Feasible and Appropriate, How Should It Be Structured and to Which Organizations Should It Apply?

Most mandatory SD proposals have called for debt to be issued at the bank level, while the existing market for the publicly traded SD of large banking organizations is primarily at the holding company level. The minimum institution size to which an SD requirement would apply, the amount of SD required, the minimum frequency of issuance and maturity, and other features of the debt all would affect the degree to which the policy meets its desired objectives while avoiding undue costs and risks.

IV. If an SD Requirement is Feasible and Appropriate, How Should It Be Incorporated Into Existing Capital Standards and Supervisory Policies?

Some mandatory SD proposals would allow SD to count towards existing capital requirements while others call for SD over and above capital levels currently required. Application of mandatory SD only to U.S. banks could have implications for international competitiveness. Some argue that using interest rate spreads or SD as supervisory triggers (*e.g.*, in prompt corrective action and in setting risk-based deposit insurance premiums) would be critical to its effectiveness, while others argue that the augmented market discipline and additional information it would provide to supervisors would be worthwhile on their own.

V. If an SD Requirement Is Feasible and Appropriate, What Are the Transition Issues?

Imposing an SD requirement would raise various transition issues, including the treatment of existing SD outstanding (*e.g.*, grandfathering) and the length of a transition period to full implementation of the requirement.

Dated: February 25, 2000.

Gregory A. Baer,

Assistant Secretary for Financial Institutions, Department of the Treasury.

[FR Doc. 00–5856 Filed 3–9–00; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Application of Undertaker for Payment of Funeral Expenses From Funds to the Credit of a Deceased Depositor

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the POD-Form 1672 "Application of Undertaker for Payment of Funeral Expenses From Funds to the Credit of a Deceased Depositor".

DATES: Written comments should be received on or before May 9, 2000.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Programs Branch, Room 144, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Spiegel, Manager, Judgment Fund Branch, Room 6D39, 3700 East West Highway, Hyattsville, Maryland 20872, (202) 874–8664.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Application of Undertaker for Payment of Funeral Expenses From Funds to the Credit of a Deceased Depositor.

OMB Number: 1510–0033.

Form Number: POD 1672.

Abstract: This form is used by the undertaker to apply for payment of a postal savings account of a deceased depositor to apply for funeral expenses. This form is supported by a certificate from a relative (POD 1690) and an itemized funeral bill. Payment is made to the funeral home.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 15.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 8.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Judith R. Tillman,

Assistant Commissioner, Financial Operations.

[FR Doc. 00–5846 Filed 3–9–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 851

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 851, Affiliations Schedule.

DATES: Written comments should be received on or before May 9, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Affiliations Schedule.

OMB Number: 1545–0025.

Form Number: 851.

Abstract: Form 851 is filed by the parent corporation for an affiliated group of corporations that files a consolidated return (Form 1120). Form 851 provides IRS with information on the names and identification numbers of the members of the affiliated group, the taxes paid by each member of the group, and stock ownership, changes in stock ownership and other information to determine that each corporation is a qualified member of the affiliated group as defined in Internal revenue Code section 1504.

Current Actions: There are no changes being made to Form 851 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and farms.

Estimated Number of Responses: 4,000.

Estimated Time Per Response: 12 hrs., 5 min.

Estimated Total Annual Burden Hours: 48,360.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5965 Filed 3–9–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4876–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4876–A, Election To Be Treated as an Interest Charge DISC.

DATES: Written comments should be received on or before May 9, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election To Be Treated as an Interest Charge DISC.

OMB Number: 1545–0190.

Form Number: 4876–A.

Abstract: A domestic corporation and its shareholders must elect to be an interest charge domestic international sales corporation (IC–DISC). Form 4876–A is used to make the election. IRS uses the information to determine if the corporation qualifies to be an IC–DISC.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,000.

Estimated Time Per Response: 5 hrs., 46 min.

Estimated Total Annual Burden Hours: 5,760.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 2, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5966 Filed 3–9–00; 8:45 am]

BILLING CODE 4830–01–U

Federal Register

Friday,
March 10, 2000

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 410

Medicare Program; Negotiated Rulemaking: Coverage and Administrative Policies for Clinical Diagnostic Laboratory Services; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 410

[HCFA–3250–P]

RIN 0938–AJ53

Medicare Program; Negotiated Rulemaking: Coverage and Administrative Policies for Clinical Diagnostic Laboratory Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish national coverage and administrative policies for clinical diagnostic laboratory services payable under Medicare Part B to promote Medicare program integrity and national uniformity, and simplify administrative requirements for clinical diagnostic laboratory services. A Negotiated Rulemaking Committee (the Committee) developed the proposed policies as directed by section 4554(b)(1) of the Balanced Budget Act of 1997 (the BBA).

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 9, 2000.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–3250–P, P.O. Box 8016, Baltimore, MD 21244–8016.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8016.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–3250–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Jackie Sheridan, (410) 786–4635 (for issues related to coverage policies). Brigid Davison, (410) 786–8794 (for issues related to documentation requirements). Dan Layne, (410) 786–3320 (for issues related to claims processing).

SUPPLEMENTARY INFORMATION:

Availability of Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested, and enclose a check or money order payable to the Superintendent of Documents, or enclose your VISA, Discover, or MasterCard number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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Overview

In this proposed rule, we explain the establishment of a negotiated rulemaking committee to develop coverage and administrative policies for clinical diagnostic laboratory services payable under Medicare Part B. We set out and explain proposed revisions to regulations on clinical diagnostic laboratory services payable under Medicare Part B, including provisions relating to national administrative policies. The addenda to this proposed rule include the proposed national coverage policies that are proposed as national coverage decisions, and an introduction explaining the uniform format used by the Committee in developing those decisions.

To assist readers in referencing sections contained in this proposed rule, we are providing the following table of contents:

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IX. Regulatory Impact Analysis

Due to referral practices in the performance of clinical diagnostic laboratory tests, the laboratory performing the test may not be the entity authorized to bill Medicare for the service. In order to avoid confusion, in this proposed rule we have used the word "laboratory" when discussing requirements that apply universally to laboratories and the word "entity billing Medicare" (or a similar phrase) to indicate requirements that apply to a laboratory or other entity that is authorized to submit the Medicare claim for the service.

I. Background

Note: Label comments about this section with the subject: "Background".

A. Current Statutory Authority and Medicare Policies

Section 1861(s)(3) of the Social Security Act (the Act) provides for payment of, among other things, clinical diagnostic laboratory services under Medicare Part B. Tests must be ordered either by a physician, as described in § 410.32(a), or by a qualified nonphysician practitioner, as described in § 410.32(a)(3). Tests may be furnished by any of the entities listed in § 410.32(d)(1). A laboratory furnishing tests on human specimens must meet all applicable requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (Public Law 100–578), as set forth at 42 CFR part 493. Part 493 applies to laboratories seeking payment under the Medicare and Medicaid programs.

Section 1862(a)(1)(A) of the Act, to which there are certain explicit statutory exceptions, provides that no Medicare payment may be made for expenses incurred for items or services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. We have consistently interpreted this provision to exclude services that are not safe and effective, are experimental, and are not furnished in accordance with accepted standards of medical practice. (Some exceptions exist such as category B devices under evaluation with FDA protocals.) Moreover, section 1862(a)(7) of the Act excludes coverage "where such expenses are for routine physical checkups, eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, procedures performed (during the course of any eye examination) to determine the refractive state of the eyes, hearing aids or examination therefore, or immunizations (except as otherwise allowed under section 1861(s)(10) and paragraph (1)(B) or under paragraph (1)(F)."

We have consistently interpreted these provisions to prohibit coverage of screening services, including clinical laboratory tests furnished in the absence of signs, symptoms, complaints, or personal history of disease or injury, except as explicitly authorized by statute.

Under the above statutory authority, we have issued national coverage decisions and policies in a variety of documents, such as HCFA manual instructions, **Federal Register** notices, and HCFA Rulings. We have issued approximately 20 national coverage decisions pertaining to clinical diagnostic laboratory services in the Medicare Coverage Issues Manual (HCFA Pub. 6). Medicare program manuals are posted on the Internet at http://www. hcfa.gov/pubforms/ progman.htm. Program transmittals and program memoranda are posted at http:/ /www.hcfa.gov/pubforms/transmit/ transmit.htm.

Under section 1842(a) of the Act, we contract with organizations to perform bill processing and benefit payment functions for Medicare Part B (Supplementary Medical Insurance). These Medicare contractors, who process Part B claims from noninstitutional entities, are called carriers. Under section 1816(a) of the Act, we contract with fiscal intermediaries to perform claims processing and benefit payment functions for Medicare Part A (Hospital Insurance). Fiscal intermediaries also process claims payable from the Medicare Part B trust fund that are submitted by providers that participate in Medicare Part A, such as hospitals and skilled nursing facilities. We use the term "contractor(s)" to mean carriers and fiscal intermediaries.

Medicare contractors review and adjudicate claims for services to assure that Medicare payments are made only for services that are covered under Medicare Part A or Part B. In the absence of a specific national coverage decision, coverage decisions are made at the discretion of the local contractors. Frequently, local contractors publish local medical review policies (LMRPs) to provide guidance to the public and medical community that they service. Contractors develop these local medical review polices by considering medical literature, the advice of local medical societies and medical consultants, and public comments. Our instructions regarding the development of local medical review policies appear in section 7500ff of the Medicare Carriers Manual (HCFA Pub. 13–3).

These LMRPs explain when an item or service will (or will not) be considered "reasonable and necessary" and thus eligible (or ineligible) for coverage under the Medicare statute. If a contractor develops an LMRP, its LMRP applies only within the area it serves. While another contractor may come to a similar decision, we do not require it to do so. An LMRP may not conflict with a national coverage decision once the national coverage decision is effective. If a national coverage decision conflicts with a previously made LMRP, the contractor must change its LMRP to conform it to the national coverage decision. A contractor may, however, make an LMRP that supplements a national coverage decision where the national coverage decision is silent on an issue. The LMRP may not alter the national coverage decision.

B. Recent Legislation

Section 4554(b)(1) of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, mandates use of a negotiated rulemaking committee to develop national coverage and administrative policies for clinical diagnostic laboratory services payable under Medicare Part B by January 1, 1999. Section 4554(b)(2) requires that these national coverage policies be "designed to promote program integrity and national uniformity and simplify administrative requirements with respect to clinical diagnostic laboratory services payable under Medicare Part B in connection with the following:

- Beneficiary information required to be submitted with each claim or order for laboratory services.
- The medical conditions for which a laboratory test is reasonable and necessary (within the meaning of section 1862(a)(1)(A) of the Social Security Act).
- The appropriate use of procedure codes in billing for a laboratory test, including the unbundling of laboratory services.
- The medical documentation that is required by a Medicare contractor at the time a claim is submitted for a laboratory test (in accordance with section 1833(e) of the Act).
- Recordkeeping requirements in addition to any information required to be submitted with a claim, including physician's obligations regarding such requirements.
- Procedures for filing claims and for providing remittances by electronic media.
- Limitations on frequency of coverage for the same services performed on the same individual."

II. Negotiated Rulemaking Process

Note: Label comments about this section with the subject: "Negotiated Rulemaking Process".

A. Convening the Committee

Negotiated rulemaking under the Negotiated Rulemaking Act (Public Law 101–648) 5 U.S.C. 561–570 is a process by which a committee of representatives of interests that may be significantly affected by a proposed rule, together with an agency representative attempt to reach consensus on the text or content of a proposed rule. The Committee is assisted by an impartial facilitator or mediator.

A convening process was followed to determine the interests likely to be significantly affected by the proposed rule and the individuals who should be appointed to the Committee to represent those interests. Impartial conveners interviewed potential representatives and made recommendations in a convening report. We considered the conveners' recommendations and published a notice of intent to negotiate on June 3, 1998 in the **Federal Register** (63 FR 30166). That notice described the scope of the negotiations and proposed Committee membership. Committee membership is based on responses to the notice, and the Committee is chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). One additional member was added by consensus of the Committee. Committee members represented the following organizations:

- American Association of Bioanalysts.
- American Association for Clinical Chemistry.
- American Association of Retired Persons (AARP).
- American Clinical Laboratory Association.
- American College of Physicians—American Society of Internal Medicine.
- American Health Information Management Association.
- American Hospital Association.
- American Medical Association.
- American Medical Group Association.
- American Society for Clinical Laboratory Science.
- American Society of Clinical Pathologists.
- American Society for Microbiology.
- Clinical Laboratory Management Association.
- American Society for Clinical Laboratory Science.
- College of American Pathologists.
- Health Industry Manufacturers Association.
- Medical Group Management Association.
- National Medical Association.

In addition, we represented the Department of Health and Human Services on the Committee.

B. Summary of the Committee Process

The Committee met nine times from July 13, 1998 to January 27, 1999 and again on August 30 and 31. We published notices of meetings in the **Federal Register** on June 3, 1998 (63 FR 30166), August 11, 1998 (63 FR 42796), January 4, 1999 (64 FR 69), and August 10, 1999 (64 FR 43338). We posted detailed agendas and minutes for each of these meetings on the HCFA web page at http://www.hcfa.gov/quality/qlty-8a.htm.

The Committee operated under organizational groundrules that it adopted by consensus. The organizational groundrule on "consensus" provided for the following:

- The Committee would operate by consensus.
- The Committee would make decisions with the unanimous concurrence of Committee members.
- Concurrence would mean only that the Committee member could live with the decision being considered by the Committee.
- An abstention would be the same as a concurrence for purposes of determining consensus.

Committee meetings were open to the general public. In addition, the Committee provided opportunities for the general public to submit written and oral comments.

The Committee prepared and signed an agreement at the conclusion of the meetings. The agreement states the provisions for which the Committee reached consensus in a consensus report. The Committee members agreed that they would not submit negative comments on this proposed rule as long as it has the same substance and effect as the consensus report. In addition, the Committee developed proposed national coverage decisions for certain clinical diagnostic laboratory tests or groups of tests. The Committee formed six workgroups to assist with this task and a "Drafting Workgroup". Each Committee member was permitted, but not required, to appoint a representative to each workgroup. The agreement signed by Committee Members represents "consensus" under the definition set out above. Thus, a Member may have chosen to abstain on some of the matters negotiated, rather than affirmatively indicating concurrence. In particular, the AARP did not participate in the workgroups which developed proposed national coverage policies for specific tests, and in this agreement defers to Committee members with specialized expertise in the areas covered. Therefore, the AARP's general concurrence reflects its abstention on the proposed national coverage policies for specific tests.

III. Proposed Policy Changes and Clarifications

Section 4554(b)(2) of the BBA explicitly directs that a negotiated rulemaking committee negotiate coverage and administrative policies for clinical diagnostic laboratory services "payable under part B." Therefore, these Medicare policies apply to all laboratory services billed to Medicare Part B regardless of the location of the entity furnishing the service (physicians' office laboratories, hospital laboratories, independent laboratories, etc., or of the type of Medicare contractor processing the claims (carriers or fiscal intermediaries).

Any policy relating to the ordering of clinical diagnostic laboratory tests applies whether the individual ordering the test is a physician or a nonphysician practitioner qualified under § 410.32(a)(3) to order diagnostic tests. Section 410.32(a)(3) provides that nonphysician practitioners (that is, clinical nurse specialists, clinical psychologists, clinical social workers, nurse midwives, nurse practitioners, and physician assistants) who furnish services that would be physicians' services if furnished by a physician, and who are operating within the scope of their Medicare statutory benefit, may be treated the same as physicians treating beneficiaries for purposes of § 410.32. Thus, where this proposed rule discusses ordering clinical laboratory tests and refers to a "physician," it means either a physician or a qualified nonphysician practitioner as defined in § 410.32(a)(3).

These proposed regulations do not purport to provide any immunities or safe harbors. The provisions of this proposed rule are not intended to limit criminal, civil or administrative law enforcement or overpayment recoveries.

A. Information Required With Each Claim

Note: Label comments about this section with the subject: "Information Required with Claim."

1. Required Data Fields

Section 4554(b)(2)(A) of the BBA directs the Committee to negotiate policies that are designed to promote program integrity and national uniformity, and to simplify administrative requirements for beneficiary information that must be submitted with each claim for laboratory services. The Committee reviewed the existing Medicare claims processing requirements that are outlined in the Medicare Carriers Manual (HCFA Pub. 14–3) sections 3005 and 3999, exhibit 10, and in the Medicare Fiscal Intermediary Manual (HCFA Pub. 13–3) section 3605 and Addendum L.

The Committee discussed the existing requirements related to information that must be submitted with the claims. To promote administrative simplicity, some members of the Committee suggested that the preamble to this rule include a listing of the specific data elements that are required for laboratory claims. However, the data elements that are required for a claim for a laboratory service may vary depending on certain factors. For example, required data fields will vary with the individual circumstances of the beneficiary, such as secondary payer situations; and the particular service furnished.

Moreover, claims processing requirements may be subject to change as other program requirements are modified or as the uniform requirements enacted under the Health Insurance Portability and Accountability Act (HIPAA) are implemented. Some members of the Committee expressed concern that having a list in the preamble that may rapidly become inaccurate could generate increased opportunity for errors or confusion. Thus, the Committee agreed to

encourage readers to refer to the claims processing sections of the Medicare Carriers Manual (section 3005 and 3999, exhibit 10) and Medicare Fiscal Intermediary Manual (section 3605 and Addendum L) in order to keep current regarding the specific policies related to data elements. As noted above, these manuals are posted on the Internet at http://www.hcfa.gov/pubforms/progman.htm.

2. Diagnostic Information Requirement

The Committee discussed when diagnostic information to support medical necessity must be submitted with a claim. The discussion focused on whether diagnostic information should be required on claims for all tests, even those not addressed by a national coverage policy or LMRP. Some Committee members emphasized that providing information on the reason for the patient visit or for the test would be useful in evaluating patient outcomes and quality of care and would ensure consistency and simplicity. Physicians' representatives expressed concern, however, about the burden that may be involved in providing the information. Laboratory representatives expressed concern about laboratories' ability to be paid if the physician does not provide the information.

The Committee concurred that this proposed rule would not promulgate a requirement that diagnostic information be submitted with every claim; however, there may be other requirements for a diagnosis code with every claim. The Committee recommended, however, that physicians be encouraged voluntarily to provide diagnosis information (either the reason for the visit or the reason for the test) with the order, and laboratories be encouraged to submit information that they receive with the claim.

3. Date of Service

The date of service is a required data field for laboratory claims. A laboratory service may take place over a period of time. That is, the date the physician orders the test, the date the specimen is collected from the patient, the date the laboratory accesses the specimen, the date of the test, and the date results are produced may not be the same. For example, often several days elapse between taking a sample and producing results in microbiology tests that are cultured. The Committee discussed what "date of service" laboratories must report on claims for clinical diagnostic laboratory services. To ensure equitable treatment of beneficiaries and providers, as well as to promote national claims processing consistency, it is necessary that all laboratories report this date consistently.

Laboratory representatives reported that some laboratory computer systems are programmed to report the date of acquisition of the specimen or the date of accession (the date the test is entered into the computer system), in the date of service field on the claim form. In addition, Medicare issued Program Memorandum A–9j–4 in April, 1995 that instructed some laboratories, primarily hospital-based laboratories, to report the date of performance as the date of service on automated multi-channel tests.

After considerable discussion the Committee reached consensus that the date of service for Medicare claim purposes should be the date the tested specimen was collected and that the person obtaining the specimen must furnish the date of collection of the specimen to the entity billing Medicare. However, the Committee felt that further input was needed to make an informed decision to determine appropriate date of service for Medicare claim purposes. We are committed to the concept that we should establish a national policy regarding date of service for Medicare claims that will promote program integrity and national uniformity, yet minimize the burden on laboratories. Therefore, we are specifically soliciting public comment on this issue from organizations serving on the Negotiated Rulemaking as well as others. As discussed below in "Effective Date of Provisions", we are proposing to provide a grace period of up to 12 months after the effective date of the final rule to accommodate any system changes required by the policy changes or clarifications resulting from the Committee's negotiations. Laboratories will have up to 24 months (12 months delayed effective date and up to 12 months grace period for system changes) after publication of the final rule to achieve system modification to submit claims in accordance with the final policy on date of service.

B. Medical Conditions for Which a Test May Be Reasonable and Necessary

Note: Label comments about this section with the subject: "National Coverage Decisions".

Section 4554(b)(2) of the Act instructs the Committee to consider the medical conditions for which a laboratory test is considered reasonable and necessary (within the meaning of section 1862(a)(1)(A) of the Act) in developing national coverage policies. These policies must be designed to promote program integrity and national uniformity and simplify administrative requirements. We are promulgating these policies as "national coverage decisions" under section 1862(a)(1) of the Act, as defined in § 405.732. These decisions are binding upon the claims processing contractors as well as the review and appeal entities.

1. The Committee Process Used for Proposed National Coverage Decisions

The Committee reached consensus to outline the specific medical conditions for which a number of specific clinical laboratory services may be reasonable and necessary. The Committee developed an extensive list of tests for which it believed that a national coverage decision was appropriate. It focused on those services that have a diversity of LMRPs.

Given the large number of tests under consideration, the Committee used workgroups to assist with the development of the coverage decisions. The Committee formed workgroups to address laboratory tests in six major clinical categories and assigned and prioritized tests (or groups of tests) to the workgroups. The six clinical categories of tests were endocrinology and metabolism, cardiology and other therapeutic drug monitoring, hematology and coagulation, oncology and anatomic pathology, infectious diseases, and gastrointestinal and renal.

Each workgroup was co-chaired by two Committee members. Each Committee member was entitled to appoint a designee to each workgroup. In addition, each workgroup had at least one Medicare carrier medical director as a nonvoting technical consultant. Each workgroup included, at a minimum, a pathologist, another specialty physician, a primary care physician, a laboratory expert, a coding expert, and a Medicare expert (HCFA staff).

To ensure that the workgroups approached the task consistently, the Committee negotiated a process to be used by the workgroups to develop draft recommendations for proposed national coverage decisions. The national coverage decisions are based on authoritative evidence. In addition, the national coverage decisions reflect common, generally accepted medical practice through the input of nationally recognized organizations, rather than solely the opinion of individual practitioners. The workgroup process included the following:

- Seeking input from relevant national medical specialty societies and voluntary health agencies through the AMA representative.
- Reviewing relevant scientific literature and practice guidelines.

• Reviewing existing local medical review policies, as well as any existing relevant templates for local policies developed by a task force of carrier medical directors.

Because of the statutory deadline for the Committee's work, the workgroups operated under very tight time constraints. Workgroup members communicated by telephone conference calls, e-mail, and FAX.

Workgroup recommendations were posted on the HCFA website for the negotiations by November 4, 1998 and public comments were solicited through November 11, 1998. At the Committee's November meeting, the full Committee considered each workgroup's recommendations, and any comments from the public or from other Committee members. The Committee modified the draft policies, where necessary, in order to respond to comments and to achieve consensus.

The Committee reached consensus on the 23 proposed national coverage decisions included in Addendum B. In addition, the Committee reached consensus on the introductory explanation of those decisions included in Addendum A. The Committee reached consensus that the decisions should be published in manual form, rather than as a codified regulation. This would ensure that coverage decisions are updated in a timely manner as appropriate (for example, changes in technology, coding, or national practice standards).

2. Uniform Format

The Committee used a uniform format for the proposed national coverage decisions that included a narrative description of the test, panel of tests, or group of tests addressed in the decision; clinical indications for which the test(s) may be considered reasonable and necessary and not screening for Medicare purposes; limitations on use of the test(s); and diagnosis codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM codes).

The lists of ICD–9–CM codes in each policy were derived from the narrative description, indications, and, in some decisions, limitations, and are included in the decisions to achieve the statutory objective to promote national uniformity in processing claims. The codes are listed in one of the following three sections: (1) ICD–9–CM codes covered by Medicare program; (2) ICD–9–CM codes denied; and (3) ICD–9–CM codes that do not support medical necessity.

The first section lists covered codes—those for which there is a presumption of medical necessity. Diagnoses listed in this section may support medical necessity of the claim, but the claim may be subject to review to determine whether the test was in fact reasonable and necessary in the particular circumstances presented. If the policy takes an "exclusionary" approach (described below), this section states: "Any ICD–9–CM code not listed in either of the ICD–9–CM code sections below."

The second section lists diagnosis codes that are never covered. If an ICD–9–CM code listed in this section is submitted with the claim, the test may be initially billed to the Medicare beneficiary without billing Medicare because the test is a service that is not covered by Medicare under any circumstances, such as a screening service that is not paid for under a statutory screening exception. The beneficiary, however, does have a right to have the claim submitted to Medicare.

The third section lists codes that generally are not considered to support a decision that the test is reasonable and necessary, but for which there are limited exceptions. Generally, diagnoses in this section will result in denial. In certain circumstances, however, additional documentation could support a decision of medical necessity and must be submitted by the ordering provider to the billing entity for submission with the claim. In other circumstances, it may be appropriate for the ordering physician or the laboratory to obtain an advance beneficiary notice from the beneficiary consistent with § 7300.5 of the Medicare Carriers Manual and § 3430—3432.1 of the Fiscal Intermediary Manual. If the policy takes an "inclusionary" approach (described below), this section of the policy states: "Any ICD–9–CM code not listed in either of the ICD–9–CM sections above."

Each proposed national coverage decision published in Addendum B includes a section titled "Reasons for Denial." The Committee did not negotiate the language included in this section. The language represents our interpretation of Medicare's longstanding policies. It is included in the national coverage decision for informational purposes.

Each proposed decision contains a section for sources of information on which the decision is based. A national coverage decision must be based on authoritative evidence. Authoritative evidence could include peer-reviewed medical literature, clinical practice guidelines or consensus, and formal opinions of national medical specialty societies and national voluntary health organizations.

Coding guidelines that apply to all tests are included in each proposed policy. Some policies contain additional coding guidelines relevant for the specific test or group of tests addressed in the policy.

To develop national coverage decisions for the tests assigned to each workgroup, the Committee agreed to use one of two approaches, referred to as "inclusionary" and "exclusionary." Decisions using the "inclusionary" approach list the ICD–9–CM codes in the following two categories: ICD–9–CM Codes Covered by Medicare Program and ICD–9–CM Codes Denied. These decisions do not list the codes that require additional documentation to support medical necessity.

The "exclusionary" approach was used for tests for which LMRPs identified a large number of acceptable ICD–9–CM codes. The Committee used this approach to develop a proposed policy on blood counts, including complete blood counts. In lieu of listing all the ICD–9–CM codes that support medical necessity of a test or group of tests, decisions using the "exclusionary" approach list ICD–9–CM codes in the following two categories: ICD–9–CM codes denied and ICD–9–CM codes that do not support medical necessity. Any diagnosis code not listed in either of those two categories is presumed to support the medical necessity of the billed services.

3. Explanation of Effect of a National Coverage Decision

A national coverage decision for a diagnostic laboratory test is a document that includes the circumstances under which the test may be considered reasonable and necessary and, therefore payable under Medicare. This decision applies nationwide and is binding on all Medicare carriers, fiscal intermediaries, peer review organizations, health maintenance organizations, competitive medical plans, and health care prepayment plans when published in a HCFA program manual or the **Federal Register**. The decisions published in Addendum B of this proposed rule would, when final, be national coverage decisions under section 1862(a)(1) of the Act and regulations codified at § 405.732. When final, these decisions may not be disregarded, set aside, or otherwise reviewed by an Administrative Law Judge. A court's review of a national coverage decision is limited to whether the record is incomplete or otherwise lacks adequate information to support the validity of the decision, unless the case has been remanded to the Secretary to supplement the record previously.

4. Proposed Decisions Developed by the Committee

The committee developed proposed national policy decisions for the following tests:

- Urine bacterial culture.
- Human immunodeficiency virus testing (prognosis, including monitoring).
- Human immunodeficiency virus (diagnosis).
- Blood counts.
- Partial thromboplastin time.
- Prothrombin time.
- Iron studies.
- Blood glucose.
- Glycated hemoglobin/glycated protein.
- Thyroid testing.
- Collagen crosslinks.
- Lipids.
- Digoxin.
- Alpha-fetoprotein.
- Carcinoembronic Antigen.
- Human chorionic gonadotropin.
- Tumor antigen by immunoassay-CA 125.
- Tumor antigen by immunoassay-CA 15–3/CA27.29.
- Tumor antigen by immunoassay-CA 19–9.
- Total Prostate specific antigen.
- Gamma glutamyltransferase.
- Hepatitis panel.
- Fecal occult blood.

5. Request for Comments

The Committee encourages comment on these proposed policies. The Committee recognizes that these proposed policies address important and complex questions concerning the medical necessity of clinical diagnostic laboratory services. The Committee sought to develop evidence-based proposed policies for clinical diagnostic laboratory services that promote program integrity. The Committee found it difficult to do this in some cases because generally accepted medical practice may include testing that is excluded by statute from Medicare coverage, for example, blood glucose screening of patients at high risk for diabetes. The Committee believes that its proposed policies address many concerns that have been raised by the variation among LMRPs. In view of the short time period allowed by the BBA for addressing these complicated issues, the Committee requests public comment, particularly from those with evidence that would support any proposed changes. We encourage commenters to submit, with their comments, copies of medical literature supporting their recommendation for change, rather than simply providing the references to appropriate medical sources.

6. Ongoing Coverage Process

The Committee discussed whether there should be an ongoing process to update these policies, once they are final, and/or to develop additional national coverage policies for other diagnostic laboratory tests or groups of tests. We informed the Committee about steps we are taking to develop a process to address coverage issues for all Medicare services, including laboratory tests. See 80 FR 22619 published April 27, 1999.

The Committee discussed how this process could be used to update the national coverage policies resulting from Committee negotiations, as well as to develop additional policies. We assured Committee Members that they would have an opportunity to comment on that process and on any policies being developed using that process. In light of the information provided and recognizing that section 4554(b)(6) of the Balanced Budget Act provides an opportunity for public notice and comment in a biennial review of laboratory coverage policies, the Committee discontinued its discussions about whether there should be a separate coverage process for laboratory tests.

C. Appropriate Use of Procedure Codes

Note: Label comments about this section with the subject: "Procedure Codes".

The Committee also discussed issues related to procedure codes and modifiers under HCFA's Common Procedure Coding System (HCPCS). HCPCS codes include Current Procedural Terminology (CPT) codes developed by the CPT Editorial Panel of the American Medical Association (AMA) that are copyrighted by the AMA. The Committee reached consensus that certain procedure codes or modifiers should be clarified in this preamble.

1. Use of the Word "Screening" in Descriptor

Some Committee members noted that use of the words "screen" or "screening" in the descriptor of some CPT codes may cause confusion in distinguishing between screening for a disease or disease precursors using a laboratory test (which is generally excluded from Medicare coverage), and screening for a specific analyte or group of related analytes using a laboratory test (which may be covered under Medicare). The use of the term "screening" or "screen" in these CPT code descriptors does not necessarily describe a test performed in the absence of signs or symptoms of an illness, disease, or condition. The failure to make this distinction may lead to inappropriate denial of claims.

If a test is reasonable and necessary for diagnosing or treating a beneficiary's medical condition, Medicare covers testing for a specific analyte or group of related analytes, even though the words "screen" or "screening" may appear in the CPT code descriptor for the test. Examples of CPT codes where screening for an analyte may be used diagnostically include the following:

- 83068: Hemoglobin; unstable, screen.
- 86255: Fluorescent noninfectious agent antibody; screen, each antibody.
- 87081: Culture bacterial; screening, for single organisms.

We will include this clarification in instructions we issue to the contractors.

2. Multiple Testing

Committee members also noted potential confusion about multiple claim submissions by a laboratory for the same CPT code for the same beneficiary for the same day. Generally, multiple testing is considered to be duplicative and is not payable under Medicare. Under certain circumstances, however, claims for multiple services assigned the same CPT code may be submitted because the multiple services are medically necessary to diagnose or treat the beneficiary's condition. In these circumstances, presently the laboratory must use CPT modifier "–59." CPT modifier "–59" is defined in Appendix A of Current Procedural Terminology, Fourth Edition in part, as follows:

> Distinct procedural service: Under certain circumstances, the physician may need to indicate that a procedure or service was distinct or independent from other services performed on the same day. Modifier "–59" is used to identify procedures/services that are not normally reported together, but are appropriate under the circumstances. This may represent a different session or patient encounter, different procedure or surgery, different site or organ system, separate incision/excision, separate lesion, or separate injury (or area of injury in extensive injuries) not ordinarily encountered or performed on the same day by the same physician.

This modifier replaced the previous HCPCS modifier "GB" (Distinct procedural service).

A few examples of appropriate use of CPT modifier "–59" are the following:

- Biochemical studies performed on different samples, for example, renins (CPT code 84244).

• Multiple blood cultures (CPT codes 87040 and 87103), generally 2–3 collected to document etiology of sepsis.
• Multiple lesion samples collected from distinct anatomic sites for culture for bacteria (CPT codes 87070 and 87075).

The American Medical Association's CPT Editorial Panel is considering changes in the modifier codes to indicate multiple services for the year 2000 update. If such changes are implemented, they may alter the clarification discussed above. We will issue instructions to our contractors addressing modifiers to indicate that a procedure or service is distinct or independent from other services performed on the same day.

D. Documentation and Recordkeeping Requirements

Note: Label comments about this section with the subject: "Documentation".

Section 4554(b)(2) of the BBA provides for uniform national coverage and administrative policies in connection with "[t]he medical documentation that is required by a Medicare contractor at the time a claim is submitted for a laboratory test" and "[r]ecordkeeping requirements in addition to any information required to be submitted with a claim, including physicians' obligations regarding such requirements." Section 4317 of the BBA provides, with respect to diagnostic laboratory and certain other services, that "if the Secretary (or fiscal agent of the Secretary) requires the entity furnishing the * * * service to provide diagnostic or other medical information in order for payment to be made to the entity, the physician or practitioner [ordering the service] shall provide that information to the entity at the time the * * * service is ordered by the physician or practitioner."

1. Maintenance of Documentation

Since section 1862(a)(1)(A) of the Act prohibits Medicare payment for services that are not reasonable and necessary for the diagnosis or treatment of illness or injury, information describing the patient's signs, symptoms or medical condition(s) documenting the circumstances making laboratory services medically necessary must be maintained in a form that can be accessible or retrievable.

The Committee discussed what documentation generally exists with each entity. The Committee's consensus reflects members' understanding of existing responsibilities for maintaining information regarding medical necessity of clinical diagnostic laboratory services and accuracy of claims submissions. Generally, physicians maintain information in the patient's medical record, and laboratories maintain the information provided to them by the ordering physician. To promote uniformity, the Committee's consensus was that we propose a codified regulation addressing documentation and recordkeeping requirements for clinical diagnostic laboratory services consistent with present practices.

We are proposing to add a new paragraph (d)(2)(i) to § 410.32 to clarify that the ordering physician is responsible for maintaining documentation of medical necessity in the beneficiary's medical record. In addition, we are proposing to add paragraph (d)(2)(ii) to § 410.32 to clarify that the entity submitting the claim must maintain the documentation it receives from the ordering physician and the documentation that the claim information that it submitted to the Medicare contractor accurately reflects the documentation received from the ordering physician.

We are also proposing to add a new paragraph (d)(2)(iii) to § 410.32 to clarify that the entity submitting the claim may request additional diagnostic and other information to document that the services it bills are reasonable and necessary. Examples of situations in which a billing entity may wish to seek additional documentation may include, but would not be limited to, situations where diagnostic information is not submitted with an order for a test for which there is a national coverage decision or LMRP; where data analysis indicate that the particular beneficiary may exceed applicable frequency parameters for this particular test, or where there is an indication of potential aberrant utilization. In making requests for additional information, laboratories should focus their requests on material relevant to medical necessity of the services billed. In addition, documentation requests must take into account current rules and regulations related to patient confidentiality that are applicable in the area where the physician is practicing.

2. Submission of Documentation

The Committee discussed who should be responsible for supplying documentation when a Medicare contractor reviews a laboratory claim. The Committee acknowledges that, for program integrity purposes, Medicare make payments only for services that are reasonable and necessary under Medicare. The Committee consensus is based on the general principle that physicians and laboratories may each be requested to provide the information that they maintain (as described below) but does not alter the responsibility of the entity submitting the claim.

Specifically, the Committee consensus was that, upon request, laboratories must supply documentation that they maintain, such as the requisition from the ordering physician. We are proposing to add a new paragraph (d)(3)(i) to § 410.32(d) to specify that, upon request, the entity submitting the claim must provide the following information: (1) Documentation of the physician's order for the service billed, including information sufficient to enable us to identify and contact the ordering physician; (2) documentation showing accurate processing of the order and submission of the claim; and, (3) diagnostic and other medical information that supports medical necessity supplied to the laboratory by the ordering physician or qualified nonphysician practitioner, including any ICD–9–CM code or narrative description supplied.

The entity submitting a claim is responsible for documentation of medical necessity of the services to justify and support Medicare payment of the claim. Some Committee members, however, expressed concerns about protecting beneficiary confidentiality if laboratories are required to handle beneficiary medical records. The Committee agreed that if the information supplied by the entity submitting the claim (laboratory) was not sufficient to demonstrate that the services were reasonable and necessary, then we would seek additional information directly from the ordering physician. If the ordering physician does not supply the information, we will notify the laboratory and deny the claim.

We are proposing to add a new paragraph (d)(3)(ii) to § 410.32 to specify that, if the documentation provided under paragraph (d)(3)(i) by the entity submitting the claim does not demonstrate that the service is reasonable and necessary, we would take the following actions: (1) provide the ordering physician information sufficient to identify the claim being reviewed; (2) request from the ordering physician those parts of a beneficiary's medical record that are relevant to the specific claim(s) being reviewed; and (3) if the ordering physician does not supply the documentation requested, inform the entity submitting the claim(s) that the documentation has not been supplied and deny the claim.

Since the entity submitting the claim would be the entity to experience a

payment denial if documentation does not support the medical necessity of the claim, the Committee agreed that the basic premise that Medicare would seek additional diagnostic and other medical information from the entity that usually maintains that documentation—the ordering physician—does not preclude the laboratory from requesting additional diagnostic or other medical information from the ordering provider. In making requests for additional information, laboratories must focus their request for additional information on material relevant to medical necessity. In addition, documentation requests must take into account current rules and regulations related to patient confidentiality that are applicable in the area where the physician is practicing.

Similar to proposed paragraph (d)(2)(iii) of § 410.32, we are proposing to add a new paragraph (d)(3)(iii) to § 410.32 to state that the entity submitting the claim may request additional diagnostic and other medical information to document that the services for which it bills are reasonable and necessary. When such a request is made, it must be focused on material relevant to the medical necessity of the specific test(s), taking into consideration current rules and regulations on patient confidentiality.

3. Signature on Requisition

Section 410.32(a) requires that all diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests must be ordered by the physician who is treating the beneficiary for a specific medical problem and who uses the results in the management of the beneficiary's specific medical problem. Some have interpreted this regulation to require a physician's signature on the requisition as documentation of the physician's order. Regulations implementing the Clinical Laboratory Improvement Act (CLIA) at § 493.1105, relating to the requisition specify that a laboratory must perform services only at the written or electronic request of an authorized person. Further, this section permits oral requests for laboratory services only if the laboratory subsequently requests written authorization for the testing within 30 days. While the signature of a physician on a requisition is one way of documenting that the treating physician ordered the test, it is not the only permissible way of documenting that the test has been ordered.

The Committee consensus is that this issue would be resolved by our publication of an instruction to Medicare contractors clarifying that the signature of the ordering physician is not required for Medicare purposes on a requisition for a clinical diagnostic laboratory test. We will issue a program instruction that reiterates this point.

4. Retention of Records

The Committee discussed the length of time that records to document medical necessity for clinical diagnostic laboratory services must be retained. The Committee consensus was to identify, in this preamble, current record retention requirements in Federal law. The provisions of the Federal statutes and regulations that pertain specifically to retention of records related to laboratory testing, including a brief summary of those provisions are set forth as follows:

- 42 CFR 482.24(b)(1), "Condition of Participation for Hospitals—Standard: Form and Retention of Record" specifies that medical records must be retained in their original or legally reproduced form for at least 5 years.
- 42 CFR 488.5(a) and 488.6, which discuss accreditation standards for hospitals or other providers or suppliers deemed to meet applicable Medicare conditions of participation, include record retention standards.
- 42 CFR 493.1105, which implements the Clinical Laboratory Improvement Amendments of 1988 (CLIA), specifies that records of test requisitions or test authorizations must be retained for a minimum of 2 years. The patient's chart or medical record, if used as the test requisition, must be retained for a minimum of 2 years and must be available to the laboratory at the time of testing and be available to us upon request.
- 42 CFR 493.1107 specifies that records of patient testing, including, if applicable, instrument printouts, must be retained for at least 2 years. Immunohematology and transfusion records must be retained for no less than 5 years in accordance with 21 CFR part 606, subpart I.
- 42 CFR 493.1107 and 1109 state that records of blood and blood product testing must be maintained for a period not less than 5 years after processing records have been completed, or 6 months after the latest expiration date, whichever is the later date, in accordance with 21 CFR 606.160(d).
- 42 CFR 493.1257(g) specifies that the laboratory must retain all slide preparation for cytology exams for 5 years from the date of examination, or slides may be loaned to proficiency testing programs, in lieu of maintaining them for this time period.
- 42 CFR 1003.132, related to civil monetary penalties, assessments, and exclusions, states that an action must begin within 6 years from the date on which the claim was presented, the request for payment was made, or the incident occurred.

E. Procedures for Filing Claims

Note: Label comments about this section with the subject: "Claims Processing".

1. Coding of Narrative Diagnoses

Most laboratory claims are submitted to us electronically. Laboratories that receive narrative diagnosis information from an ordering physician must translate that information into an appropriate diagnosis code (ICD–9-CM code) to submit the claim electronically. The Committee discussed policies for assigning an ICD–9-CM code if there is not an exact match between the code descriptor and the narrative the laboratory received from the ordering physician. The Committee consensus was that an appropriate diagnosis code may be assigned to a narrative, even if the wording of the narrative does not exactly match the code descriptor for the ICD–9-CM code. If an ICD–9-CM code is submitted by the ordering physician, laboratories must use that code in submitting the claim unless the laboratory has obtained documentation from the physician to support altering the code. For example, if a physician submits an incomplete code (that is, only 3 digits of a code that requires 5 digits), the laboratory must document the appropriate subclassification if it is required to report a code on the claim. We will include this clarification in future program instructions.

2. Limitation on Number of Diagnoses

The Committee discussed variation among Medicare contractor's in the number of ICD–9–CM codes on a claim form that the contractor's computer systems will accept. If a contractor's system accepts a limited number of codes, a claim may be denied even if the physician who ordered the test supplied a code that would support the medical necessity of the test. The Committee was informed that, when proposed HIPAA standards are implemented, eight ICD–9–CM codes will be permitted on electronic claims. Committee members provided information indicating that this number would be sufficient for the vast majority of claims.

Until HIPAA standards permitting eight ICD–9–CM codes are implemented, Medicare contractors, whose systems accept fewer than eight ICD–9–CM codes in the diagnoses field, would permit the laboratory to submit additional codes in the narrative field. If it would require the Medicare contractor to make a change in its

claims processing system in order to use this information for automated claims processing, the additional diagnoses would only be used by the contractor in processing claims that were suspended for manual review.

3. Matching of Diagnosis to Procedure

All Medicare contractors presently process claims using any diagnosis-to-procedure code matching supplied by the laboratory. Some Committee members wished to find a way to have contractors examine all submitted codes. The Committee consensus was that, in the absence of matching of codes supplied by the laboratory, Medicare contractors must examine all submitted codes on prepayment review, taking into account program integrity concerns. Claims will not be denied solely because there is no matching of diagnosis and procedure codes on the claim form. We will include this clarification in future instructions to our contractors.

The Committee also discussed ways of avoiding denial of an entire claim if it is submitted with diagnosis codes for multiple procedures (tests) and one of the diagnosis codes indicates screening, but the laboratory does not link the diagnosis and procedure codes. The Committee was concerned that absent information indicating which test(s) is performed for which diagnosis, the contractor may deny all of the claimed services after examining the diagnosis codes.

The Committee consensus was that laboratories have the option of submitting a separate claim for the procedure that is not covered by Medicare. We would instruct the Medicare contractors to allow this option.

In order to ensure that noncovered procedures can be identified, ordering providers must supply to the laboratory the necessary information to specifically identify any noncovered test ordered, such as a test ordered for screening purposes. When this information is supplied to the laboratory, the laboratory must supply this information with any claim for the noncovered service. For example, when an ICD–9–CM code that indicates screening is provided by the physician, the laboratory must either submit a separate claim for the procedure that is not covered by Medicare or match that code on a claim form with the CPT code(s) provided for that purpose.

F. Limitation on Frequency

Note: Label comments about this section with the subject: "Frequency".

Section 4554(b)(2) of the BBA instructs the Committee to negotiate policies that take into consideration "Limitations on frequency of coverage for the same tests performed on the same individual."

1. Notice of Frequency Screens

The Committee discussed the use of frequency screens and their impact on the laboratory community. Some Committee members noted that, since frequency screens are a program integrity tool and therefore are not published, there is no means for a laboratory to know when a claim would be reviewed and perhaps denied in the absence of additional documentation of medical necessity. After studying the data on frequency denials and discussing the issue, we agreed that a frequency screen would not result in a frequency-based denial unless information published by us or our contractor includes an indication of the frequency that is generally considered reasonable utilization of that test for Medicare payment purposes.

We will issue instructions to Medicare contractors through a revision to the program integrity sections of the Medicare Carriers Manual and Fiscal Intermediary Manual. In the future, we will be moving this information to the Program Integrity Manual. These instructions will provide that, except for egregious utilization, contractors may not use a frequency screen that could result in a frequency-based denial unless the contractor has published information about the appropriate frequency for the service or unless we have published information about the appropriate frequency in a national coverage decision. The information regarding appropriate frequency either may include the frequency with which the service is generally considered reasonable utilization for Medicare purposes or may be an absolute limit on coverage. The information must be published in advance of implementation of a frequency screen in a form, such as a contractor bulletin, that is widely disseminated to affected providers and suppliers. The contractor must consult with appropriate advisors, including medical specialty and other organizations before developing and publishing local frequency information for a clinical diagnostic laboratory test. Local frequency information for a particular test may not conflict with a national coverage decision or policy that includes frequency information for that test.

If a Medicare contractor has been applying a frequency screen in the absence of published information about the frequency expectation, the contractor must either publish information about the appropriate frequency or stop using the frequency screen. Frequency screens that can result in denial must not be more restrictive than the frequency described in the published information. Contractors may, however, continue to deal with egregious utilization without prior publication of frequency information by using Category III edits described in section 7506.2 of the Medicare Carriers Manual, which are typically provider specific.

2. Automatic Denial and Manual Review

The Committee discussed Medicare policy on automatic denials of laboratory claims as the policy applies to frequency screens. The Committee consensus is that the current policy regarding automatic denial and manual review of claims as stated in Medicare Carriers Manual sections 7505.1 and 7506 is appropriate and should be codified in regulations.

We are proposing to add a new paragraph (d)(4) to § 410.32 to provide that, except in limited and specified circumstances as described below, we will not deny a claim for services that exceed utilization parameters without reviewing all relevant documentation submitted with the claim (for example, justifications prepared by providers or suppliers, primary and secondary diagnoses, and copies of medical records). We, however, may automatically deny a claim without any manual review under the following circumstances: (1) If a national coverage decision or policy or LMRP review policy specifies the circumstances under which a service is denied and those circumstances exist, or the service is specifically excluded from Medicare coverage by statute; or (2) if we determine that a specific provider or supplier has engaged in egregious overutilization of a particular service and the claim is for that service.

3. Notice to Beneficiaries

The Committee discussed the impact of frequency screens on laboratories furnishing services to beneficiaries who use multiple laboratories. Several Committee members suggested proposals for notifying beneficiaries of frequency denials and requesting that they advise their physicians of the denial in an effort to encourage the physician to obtain an advance beneficiary notice. Such a notification mechanism would be costly to Medicare, would frequently and inaccurately identify potential denial situations due to time lags between

receipt of services, and may be confusing to beneficiaries. Some members of the Committee expressed concern that such a mechanism may have the unintended effect of beneficiaries failing to receive necessary services. The Committee could not agree to a specific proposal and therefore we are soliciting new ideas for addressing this problem from Committee members as well as others. We are especially interested in ideas that include shared responsibility for solving the problem.

4. Consistent Remittance Message

Some Committee Members expressed concern that HCFA may not be using a consistent denial message to indicate claims that are denied for excess frequency. We agreed to instruct the Medicare claims processing contractors (carriers and fiscal intermediaries) to consistently use remittance advice language that identifies the reason for denial as excessive frequency. The language would read as follows: "Claim/service denied/reduced because the payer deems the information submitted does not support this level of service, this many services, this length of service or this dosage."

IV. Other Topics Discussed by the Committee

The Committee also discussed some topics that we identified as outside the scope of the negotiations, but are of concern to some Committee members. The Committee discussed Medicare provisions on limitation of liability (sometimes called waiver of liability) in the context of laboratory services. These provisions are currently found in section 1879 of the Social Security Act, 42 CFR part 411, subpart K, section 7330 of the Medicare Carriers Manual, section 3440—3446.9 of the Fiscal Intermediary Manual, and any currently applicable rulings. If prerequisites for waiver of liability in these provisions are met, these provisions are equally applicable to laboratory services. If we issue revisions or clarifications of these policies in the future, the revisions would be applicable to all providers/suppliers, including laboratories, unless otherwise stated.

V. Provisions of the Proposed Regulations

This proposed rule would establish uniform national coverage and administrative policies for clinical diagnostic laboratory services payable under Medicare Part B. This proposed rule would promote Medicare program integrity and national uniformity and would simplify administrative requirements for clinical diagnostic laboratory services. These regulations do not provide, or purport to provide, any immunities or safe harbors. Additionally, these regulations do not limit any criminal, civil, or administrative law enforcement and overpayment actions. These Medicare policies apply to all Medicare contractors processing Part B laboratory claims, including fiscal intermediaries. The changes we would make to 42 CFR part 410 are set forth as follows:

- We are proposing to redesignate paragraph (d) introductory text as paragraph (d)(1) and adding a heading.
- We are proposing to redesignate paragraphs (d)(1) through (d)(7) as paragraphs (d)(1)(i) through (d)(1)(vii).
- We are proposing to add a new paragraph (d)(2) to § 410.32 that would outline documentation and recordkeeping requirements related to clinical diagnostic laboratory tests. The proposed documentation and recordkeeping requirements read as follows:

+ Paragraph (d)(2)(i) would specify that the physician (or qualified nonphysician practitioner) who orders the service must maintain documentation of medical necessity in the beneficiary's medical record.

+ Paragraph (d)(2)(ii) would require the entity submitting the claim to maintain documentation it receives from the ordering physician and information documenting that the claim submitted accurately reflects the information it received from the ordering physician.

+ Paragraph (d)(2)(iii) would authorize the entity submitting the claim to request additional diagnostic and other medical information to document that the services it bills are reasonable and necessary. This request must be relevant to the medical necessity of the specific test(s), and take into consideration current rules and regulations on patient confidentiality.

- We are proposing to add a new paragraph (d)(3) to § 410.32 relating to claims review.

+ Paragraph (d)(3)(i) would specify that the entity submitting the claim must provide documentation of the physician's order for the service billed, showing accurate processing and submission of the claim, and diagnostic or other medical information supplied to the laboratory by the ordering physician or qualified nonphysician practitioner, including any ICD–9–CM code or narrative description supplied.

+ Paragraph (d)(3)(ii) would specify that if the documentation submitted by the laboratory does not demonstrate that the service is reasonable and necessary, we will provide the ordering physician information sufficient to identify the claim being reviewed and request from the ordering physician those parts of the beneficiary's medical record that are relevant to the claim(s) being reviewed. If the documentation is not provided timely, we will notify the billing entity and deny the claim.

+ Paragraph (d)(3)(iii) would authorize the entity submitting the claim to request additional diagnostic and other medical information that is relevant to the medical necessity of the specific services from the ordering physician consistent with applicable patient confidentiality laws and regulations.

- We are proposing to add a new paragraph (d)(4) to § 410.32 to outline when we may deny a claim without manual review.

+ Paragraph (d)(4)(i) would state that unless indicated in paragraph (d)(4)(ii), we will not deny a claim for services that exceed utilization parameters without reviewing all relevant documentation submitted with the claim.

+ Paragraph (d)(4)(ii) would permit automatic denial of claims when there is a national coverage decision, or LMRP that specifies the circumstances under which the service is denied, the statute excludes Medicare coverage for the service, or the specific provider or supplier has engaged in egregious overutilization of the service and the claim is for that service.

VI. Effective Date of Provisions

The Committee discussed the appropriate effective date of the provisions for which it reached consensus. Changes or clarifications resulting from the Committee's negotiations will impact each entity submitting the claim differently (for example, variance in the time frame for computer systems and software updates in accordance with this proposed regulation, compliance with the comprehensive HIPAA administrative simplification regulations, etc.). We especially are concerned about smaller entities because of the lack of resources at their disposal to identify and implement changes. Due to such differences among laboratories and physician offices, the Committee recommended that HCFA provide an extended period of advance notification prior to implementation. We note that the national coverage decisions included in addendum B effect approximately 60 percent of the total volume of laboratory services billed to the Medicare program. The Committee is concerned that there be an adequate opportunity to educate the community

regarding the decisions and their impact upon claims payment. They were also concerned that there be adequate opportunity to modify computer systems to accommodate these provisions.

The Committee reached consensus to recommend that changes arising from these actions would become effective 12 months after publication of the final regulation. Further, it recommended a grace period of not more than 12 months after the effective date of the changes be available for any system changes any party is required to make. In modifying claims processing systems for the proposed changes, we will give priority to implementation of the national coverage decisions. We are proposing to delay the effective date of this proposed rule and national coverage decisions in accordance with the Committee's consensus recommendation.

The Committee also discussed a strategy to communicate the changes to affected parties. Many members of the Committee will continue to work together in further developing a plan through which they could adequately inform the community, especially physicians and laboratories, of the provisions of this proposed rule and the national coverage decisions. We will instruct the contractors to issue a bulletin to notify affected providers, such as physicians, hospitals, and laboratories, of the policies. Within 90 days of receiving this instruction from us, contractors must issue the bulletin at least 90 days before the effective date of the policy and national coverage decision.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Documentation and Recordkeeping Requirements

In summary, § 410.32(d)(2)(i) requires the physician or (qualified nonphysican practitioner, as defined in paragraph (a)(3) of this section), who orders the service to maintain documentation of medical necessity in the beneficiary's medical record.

While this requirement is subject to the PRA, we believe that the burden associated with this requirement is exempt from the PRA, as defined in 5 CFR 1320.3(b)(2), because this requirement is considered a usual and customary business practice.

Submitting the Claim

In summary, § 410.32(d)(2)(ii) requires an entity submitting the claim to maintain the following documentation:

- The documentation that it receives from the ordering physician.
- The documentation that the information that it submitted with the claim accurately reflects the information it received from the ordering physician.

While this requirement is subject to the PRA, we believe that the burden associated with this requirement is exempt from the PRA, as defined in 5 CFR 1320.3(b)(2), because this requirement is considered a usual and customary business practice.

Entity Request for Additional Information

In summary, § 410.32(d)(2)(iii) requires that an entity submitting a claim may request additional diagnostic and other information to document that the services it bills are reasonable and necessary. If the entity requests additional documentation, it must request material relevant to the medical necessity of the specific test(s), taking into consideration current rules and regulations on patient confidentiality.

The burden associated with this requirement is the time and effort for the physician or (qualified nonphysican practitioner, as defined in paragraph (a)(3) of this section), who orders the service, to disclose additional diagnostic and other information to the entity submitting the claim that demonstrates that the services it bills are reasonable and necessary. While this requirement is subject to the PRA, we believe that the burden associated with this requirement is exempt from the PRA, as defined in 5 CFR 1320.3(b)(2), because this requirement is considered a usual and customary business practice.

Claims Review: Documentation Requirements

In summary, § 410.32(d)(3)(i) requires that an entity submitting a claim provide to HCFA upon request; 1) documentation of the physician's order for the service billed (including information sufficient to enable HCFA to identify and contact the ordering physician), 2) documentation showing accurate processing of the order and submission of the claim and, 3) any diagnostic or other medical information supplied to the laboratory by the ordering physician, including any ICD–9–CM code or narrative description supplied.

In summary, § 410.32(d)(3)(iii) authorizes the entity submitting the claim to request additional diagnostic and other medical information that is relevant to the medical necessity of the specific services from the ordering physician consistent with applicable patient confidentiality laws and regulations.

Since these reporting requirements would be imposed pursuant to the conduct of an administrative action and/or audit, these requirements are not subject to the PRA as defined under 5 CFR 1320.4(a)(2).

If you have any comments on any of these information collection and recordkeeping requirements, please mail the original and 3 copies directly to the following:

Health Care Financing Administration,
Office of Information Services,
Standards and Security Group,
Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn: John Burke HCFA–3250–P

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Eydt, HCFA Desk Officer.

VIII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

IX. Regulatory Impact Analysis

We have examined the impacts of this proposed rule as required by Executive

Order (EO) 12866, the Unfunded Mandates Reform Act of 1995, and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

Section 1102(b) of the Social Security Act (the Act) requires us to prepare a regulatory impact analysis (RIA) if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

A. Executive Order 12866

The intent of this Proposed rule is to promote program integrity and national uniformity and simplify administrative procedures for clinical diagnostic laboratory services. We do not expect the provisions of this proposed rule to have a significant cost effect upon providers or suppliers. The provisions of the proposed rule, for the most part, are administrative and state explicitly and codify practices that are currently in effect. That is, physicians maintain documentation in the medical record and laboratories maintain the information that is provided to them. We expect no cost consequence of codifying this common practice.

Similarly, we do not anticipate a cost effect of the provision related to the documentation that must be submitted upon claims review. While some Medicare contractors presently request medical record information directly from laboratories, the laboratories must in turn seek the information from the physicians. Requiring Medicare contractors to seek medical record information directly from physicians may result in a minimal increase in the administrative cost of conducting claims review. We anticipate that there would be offsetting savings from reduced Medicare contractor requests to laboratories for documentation. This would result in a decreased documentation burden to the laboratories.

The provision in § 410.32(d)(4) merely codifies policies that are presently included in the Medicare program manuals. Since these provisions are currently operational, there is no cost effect to their codification.

The national coverage decisions published as Addendum B to this proposed rule potentially may give rise to a cost effect. Approximately 60 percent of the total volume of laboratory claims would be subject to a national coverage decision if these decisions become effective unchanged. Implementation of the national coverage decisions would result in some adjustments in the amount and degree of coverage (that is, there would be some increases and some decreases). However, we do not have data available to precisely quantify the amounts involved. We estimate that the net cost effect of these coverage decisions would not be significant.

If there is currently an LMRP for a test for which we issue a national coverage decision, and the LMRP was more liberal than the national coverage decisions, this would result in a cost savings to the Medicare program . If an LMRP was more restrictive than an national coverage decision, it would result in a cost increase for the Medicare program. After careful analysis of the information available regarding LMRPs, we estimate that the costs and savings are likely to offset each other, and that the proposed national coverage decisions would have a negligible cost impact.

We should point out, however, that clinical diagnostic laboratory services are considered as part of the calculation of the sustained growth factor used in determining changes in the Medicare payment amounts under the Medicare physician fee schedule. Should there be a significant increase in Medicare payment for laboratory services, Medicare may recover these costs through reductions in the otherwise applicable physician payments.

B. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. As noted above, we do not anticipate that this proposed rule would have a significant cost impact. Thus, we certify that this proposed rule would not result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million.

C. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Intermediaries and carriers, physicians, and many laboratories are considered small entities.

This proposed rule would affect all clinical laboratories located in physician offices, hospitals, other health facilities, Medicare contractors, and independent laboratories. There are approximately 160,000 labs affected. We believe the impact of this proposed rule on these entities, for the most part, would be positive. As stated above, this proposed rule would, for the most part, explicitly state and codify existing policies. Having a clear statement of policies would be beneficial to entities submitting Medicare claims because they can avoid unintentional errors. The provision relating to Medicare seeking medical record information directly from physicians would reduce the burden of recordkeeping and reporting on laboratories without increasing the burden on physicians.

Publication of clear and consistent national coverage decisions would assist physicians and laboratories in knowing in advance situations where additional documentation may be needed to support payment on a claim. The documentation may be submitted with the initial claim, thus avoiding the increased cost of appealing a denied claim. National coverage decisions relating to laboratory claims would result in consistent coverage determination regardless of geography, and consequently, less confusion for beneficiaries, who often do not understand the present situations of coverage for a service in one area and not in other areas. Reduced confusion for the beneficiary results in reduced inquiry workloads for Medicare contractors.

As noted above, there may be some areas where implementation of the national coverage decisions would result in denial of payment in situations where payment is presently made. We believe that the proposed policies, developed in partnership with the physician and laboratory community and based on authoritative evidence, reflect the appropriate treatment of

clinical diagnostic laboratory services. Thus, to the extent that payment is presently being made for these services, we believe it is inappropriate and should be curtailed.

We do not expect any beneficiary to be deprived of medically necessary services as a result of these provisions. Nor do we expect that there would be an impact upon the availability of covered services to beneficiaries. Beneficiaries may, however, experience a minimal increase in out-of-pocket costs if they choose to have testing that is not covered by Medicare. That is, publication of clear decisions regarding when a test is considered medically necessary may prompt physicians and laboratories to execute advanced beneficiary notices and charge patients for noncovered services, when they may not have followed these procedures due to ambiguity regarding whether the service would be covered by Medicare.

If Medicare were to fail to implement the policies proposed in the rule and addendum, inconsistency among the contractors would continue. The inconsistency would cause confusion on the part of laboratories, physicians, and beneficiaries in predicting Medicare coverage decisions and anticipating documentation needs. In debating the provisions of the proposed rule, the Committee considered a broad range of alternatives and their impact upon all affected parties. In light of the explicit language of section 4554(b) of the BBA to use negotiated rulemaking to pursue recommendations relating to the problems of program inconsistency, program abuse, and administrative complexity in Medicare payment of clinical diagnostic laboratory services, we have not independently considered other alternatives. Rather, we have accepted the consensus recommendations of the Committee, which included representatives of laboratories, physicians, and beneficiaries. Because the provisions of this proposed rule have the support of these organizations, we do not anticipate adverse reactions to this proposal.

For these reasons, the Secretary certifies, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

We have reviewed this proposed rule under the threshold criteria of Executive Order 13132. We have determined that it does not significantly affect States' rights, roles, and responsibilities.

List of Subjects in Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

For the reasons set forth in the preamble, 42 CFR chapter IV would be amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

Subpart B—Medical and Other Health Services

1. The authority citation for Part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 410.32:

A. Paragraph (d) introductory text is redesignated as paragraph (d)(1) and a heading is added;

B. Paragraphs (d)(1) through (d)(7) are redesignated as paragraphs (d)(1)(i) through (d)(1)(vii); and

C. Paragraphs (d)(2) through (d)(4) are added to read as follows:

§ 410.32 Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions.

* * * * *

(d) *Diagnostic laboratory tests*—(1) *Who may furnish services.* * * *

(2) *Documentation and recordkeeping requirements.* (i) *Ordering the service.* The physician or (qualified nonphysican practitioner, as defined in paragraph (a)(3) of this section), who orders the service must maintain documentation of medical necessity in the beneficiary's medical record.

(ii) *Submitting the claim.* The entity submitting the claim must maintain the following documentation:

(A) The documentation that it receives from the ordering physician.

(B) The documentation that the information that it submitted with the claim accurately reflects the information it received from the ordering physician.

(iii) *Requesting additional information.* The entity submitting the claim may request additional diagnostic and other medical information to document that the services it bills are reasonable and necessary. If the entity requests additional documentation, it must request material relevant to the medical necessity of the specific test(s), taking into consideration current rules and regulations on patient confidentiality.

(3) Claims review. (i) *Documentation requirements.* Upon request by HCFA, the entity submitting the claim must provide the following information :

(A) Documentation of the physician's order for the service billed (including information sufficient to enable HCFA to identify and contact the ordering physician).

(B) Documentation showing accurate processing of the order and submission of the claim.

(C) Diagnostic or other medical information supplied to the laboratory by the ordering physician, including any ICD–9–CM code or narrative description supplied.

(ii) *Services that are not reasonable and necessary.* If the documentation provided under paragraph (d)(3)(i) of this section does not demonstrate that the service is reasonable and necessary, HCFA takes the following actions:

(A) Provides the ordering physician information sufficient to identify the claim being reviewed.

(B) Requests from the ordering physician those parts of a beneficiary's medical record that are relevant to the specific claim(s) being reviewed.

(C) If the ordering physician does not supply the documentation requested, informs the entity submitting the claim(s) that the documentation has not been supplied and denies the claim.

(iii) *Medical necessity.* The entity submitting the claim may request additional diagnostic and other medical information from the ordering physician to document that the services it bills are reasonable and necessary. If the entity requests additional documentation, it must request material relevant to the medical necessity of the specific test(s), taking into consideration current rules and regulations on patient confidentiality.

(4) *Automatic denial and manual review*—(i) *General rule.* Except as provided in paragraph (d)(4)(ii) of this section, HCFA does not deny a claim for services that exceeds utilization parameters without reviewing all relevant documentation submitted with the claim (for example, justifications prepared by providers, primary and secondary diagnoses, and copies of medical records).

(ii) *Exceptions.* HCFA may automatically deny a claim without manual review under the following circumstances:

(A) A national coverage decision or LMRP specifies the circumstances under which the service is denied, or the service is specifically excluded from Medicare coverage by statute.

(B) HCFA determines that a specific provider or supplier has engaged in egregious overutilization of a particular service, and the claim is for that service.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 9, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: November 24, 1999.

Donna E. Shalala,

Secretary.

Note: The following addendums A-C will not appear in the Code of Federal Regulations.

Addendum A—Introduction to National Coverage Policies for Diagnostic Laboratory Tests

Purpose

This addendum provides an introduction to national coverage policies for diagnostic laboratory tests payable under Part B of Medicare. This addendum explains what a national coverage policy is, what effect a national coverage policy has, and describes the various sections in the policies. In addition, it explains the two approaches used to develop these national coverage policies.

What Is a National Coverage Policy?

Part B of title XVIII of the Social Security Act (the Act) provides for Supplementary Medical Insurance (SMI) for certain Medicare beneficiaries, specifying what health care items or services will be covered by the Medicare Part B program. Diagnostic laboratory tests are generally covered under Part B, unless excluded from coverage by the Act. Services that are generally excluded from coverage include routine physical examinations and services that are not reasonable and necessary for the diagnosis or treatment of an illness or injury. HCFA interprets these provisions to prohibit coverage of screening services, including laboratory tests furnished in the absence of signs, symptoms, or personal history of disease or injury, except as explicitly authorized by statute. A test may be considered medically appropriate, but nonetheless be excluded from Medicare coverage by statute.

A national coverage policy for diagnostic laboratory test(s) is a document stating HCFA's policy with respect to the circumstances under which the test(s) will be considered reasonable and necessary, and not screening, for Medicare purposes. Such a policy applies nationwide. A national coverage policy is neither a practice parameter nor a statement of the accepted standard of medical practice. Words such as "may be indicated" or "may be considered medically necessary" are used for this reason. Where a policy gives a general description and then lists examples (following words like "for example" or "including"), the list of examples is not meant to be all inclusive but merely to provide some guidance.

What Is the Effect of a National Coverage Policy?

A national coverage policy to which this introduction applies is a National Coverage Decision (NCD) under section 1862(a)(1) of the Social Security Act. Regulations on National Coverage Decisions are codified at 42 CFR 405.732(b)–(d). A Medicare contractor may not develop a local policy that conflicts with a national coverage policy.

What Is the Format for These National Coverage Policies?

Below are the headings for national coverage policies, developed by the Negotiated Rulemaking Committee on Clinical Diagnostic Laboratory Tests.

National Coverage Policy For

This section identifies the official title of the policy.

Other Names/Abbreviations

This section identifies other names for the policy. It generally reflects more colloquial terminology.

Description

This section includes a description of the test(s) addressed by the policy and provides a general description of the appropriate uses of the test(s).

Descriptor(s)

The descriptor(s) used in this section is (are) the Current Procedural Terminology (CPT) or other HCFA Common Procedure Coding System (HCPCS). The CPT is developed and copyrighted by the American Medical Association (AMA). If a descriptor does not accurately or fully describe the test, a more complete description may be included elsewhere in the policy, such as in the *Indications* section.

Indications

This section lists detailed clinical indications for Medicare coverage of the test(s).

Limitations

This section lists any national frequency expectations, as well as other limitations on Medicare coverage of the specific test(s) addressed in the policy—for example, if it would be unnecessary to perform a particular test with a particular combination of diagnoses.

ICD–9–CM Codes Covered by Medicare Program

Code: Description

This section includes covered codes—those where there is a presumption of medical necessity, but the claim is subject to review to determine whether the test was in fact reasonable and necessary. The diagnosis codes are from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM). Where the policy takes an "exclusionary" approach, as described below, this section states: "Any ICD–9–CM code not listed in either of the ICD–9–CM code sections below."

Reasons for Denial

This section includes standard language reflecting national policy with respect to all tests—such as denial of screening services and denial if medical necessity is not documented in the patient's medical record. This section may also include reasons for denial related to the specific test(s). This section was not negotiated by the Negotiated Rulemaking Committee, but rather reflects HCFA policy.

ICD–9–CM Codes Denied

Code: Description

This section lists codes that are never covered. If a code from this section is given as the reason for the test, the test may be billed to the Medicare beneficiary without billing Medicare first because the service is not covered by statute, in most instances because it is performed for screening purposes and is not within an exception. The beneficiary, however, does have a right to have the claim submitted to Medicare, upon request.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

This section lists/describes generally non-covered codes for which there are only limited exceptions. However, additional documentation could support a determination of medical necessity in certain circumstances. Subject to section 1879 of the Social Security Act (the Act), 42 CFR 411, subpart K, section 7330 of the Medicare Carriers Manual section 3440–3446.9 of the Medicare Fiscal Intermediary Manual and any applicable rulings, it would be appropriate for the ordering physician or the laboratory to obtain an advance beneficiary notice from the beneficiary. Where the policy takes an "inclusionary" approach, as described below, this section states: "Any ICD–9–CM code not listed in either of the ICD–9–CM sections above."

Sources of Information

Relevant sources of information used in developing the policy are listed in this section.

Coding Guidelines

This section includes coding guidelines that apply generally to all policies, as well any additional coding instructions appropriate for a specific national coverage policy. The coding guidelines may be from or based on a Coding Clinic for ICD–9–CM published by the American Hospital Association.

Documentation Requirements

This section refers to documentation requirements for clinical diagnostic laboratory tests at 42 CFR 410.32(d) and includes any specific documentation requirements related to the test(s) addressed in the policy.

Other Comments

This section may contain any other relevant comments that are not addressed in the sections described above.

What Are the Two Approaches Used in Developing a National Coverage Policy?

To develop national coverage policies for the tests assigned to each Workgroup, the Committee agreed to use one of two approaches, referred to as "inclusionary" and "exclusionary". Policies using the "inclusionary" approach list the ICD–9–CM codes in the following two categories: ICD–9–CM Codes Covered by Medicare Program and ICD–9–CM Codes Denied. These policies do not list the codes that require additional documentation to support medical necessity.

The exclusionary approach was used for tests for which local medical review policies had identified a large number of acceptable ICD–9–CM codes. The Committee used this approach to develop a proposed policy on blood counts. In lieu of listing all the ICD–9–CM codes that support medical necessity of a test or group of tests, policies using the "exclusionary" approach list ICD–9–CM codes in the following two categories: ICD–9–CM Codes Denied and ICD–9–CM Codes That Do Not Support Medical Necessity.

Addendum B—National Coverage Decisions

Medicare National Coverage Decision: Culture, Bacterial, Urine.

Other Names/Abbreviations: Urine culture.

Description.

A bacterial urine culture is a laboratory procedure performed on a urine specimen to establish the probable etiology of a presumed urinary tract infection. It is common practice to do a urinalysis prior to a urine culture. A urine culture may also be used as part of the evaluation and management of another related condition. The procedure includes aerobic agar-based isolation of bacteria or other cultivable organisms present, and quantitation of types present based on morphologic criteria. Isolates deemed significant may be subjected to additional identification and susceptibility procedures as requested by the ordering physician. The physician's request may be through clearly documented and communicated laboratory protocols.

HCPCS Codes: (alpha numeric, CPT © AMA):

Code:	Descriptor:
87086	Culture, bacterial, urine; quantitative, colony count.
87087	Culture, bacterial, urine; commercial kit.
87088	Culture, bacterial, urine; identification, in addition to quantitative or commercial kit.
87184	Sensitivity studies, antibiotic; disk method, per plate (12 or fewer disks).
87186	Sensitivity studies, antibiotic; microtiter, minimum inhibitory concentration (MIC), any number of antibiotics.

Indications

1. A patient's urinalysis is abnormal suggesting urinary tract infection, for example, abnormal microscopic (hematuria, pyuria, bacteriuria); abnormal biochemical urinalysis (positive leukocyte esterase, nitrite, protein, blood); a Gram's stain positive for microorganisms; positive bacteriuria screen by a non-culture technique; or other significant abnormality of a urinalysis. While it is not essential to evaluate a urine specimen by one of these methods before a urine culture is performed, certain clinical presentations with highly suggestive signs and symptoms may lend themselves to an antecedent urinalysis procedure where follow-up culture depends upon an initial positive or abnormal test result.

2. A patient has clinical signs and symptoms indicative of a possible urinary tract infection (UTI). Acute lower UTI may be present with urgency, frequency, nocturia, dysuria, discharge or incontinence. These findings may also be noted in upper UTI with additional systemic symptoms (for example, fever, chills, lethargy); or pain in the costovertebral, abdominal, or pelvic areas. Signs and symptoms may overlap considerably with other inflammatory conditions of the genitourinary tract (for example, prostatitis, urethritis, vaginitis, or cervicitis). Elderly or immunocompromised patients, or patients with neurologic disorders may present atypically (for example, general debility, acute mental status changes, declining functional status).

3. The patient is being evaluated for suspected urosepsis, fever of unknown origin, or other systemic manifestations of infection but without a known source. Signs and symptoms used to define sepsis have been well-established.

4. A test-of cure is generally not indicated in an uncomplicated infection. However, it may be indicated if the patient is being evaluated for response to therapy and there is a complicating co-existing urinary abnormality including structural or functional abnormalities, calculi, foreign bodies, or ureteral/renal stents or there is clinical or laboratory evidence of failure to respond as described in Indications 1 and 2.

5. In surgical procedures involving major manipulations of the genitourinary tract, preoperative examination to detect occult infection may be indicated in selected cases (for example, prior to renal transplantation, manipulation or removal of kidney stones, or transurethral surgery of the bladder or prostate).

6. Urine culture may be indicated to detect occult infection in renal transplant recipients on immunosuppressive therapy.

Limitations

1. CPT 87086 or 87087 may be used one time per encounter. CPT 87086 and 87087 are not used concurrently.

2. Colony count restrictions on coverage of CPT 87088 do not apply as they may be highly variable according to syndrome or other clinical circumstances (for example , antecedent therapy, collection time, degree of hydration).

3. CPT 87088, 87184, and 87186 may be used multiple times in association with or independent of 87086 or 87087, as urinary tract infections may be polymicrobial.

4. Testing for asymptomatic bacteriuria as part of a prenatal evaluation may be medically appropriate but is considered screening and therefore not covered by Medicare. The US Preventive Services Task Force has concluded that screening for asymptomatic bacteriuria outside of the narrow indication for pregnant women is generally not indicated. There are insufficient data to recommend screening in ambulatory elderly patients including those with diabetes. Testing may be clinically indicated on other grounds including likelihood of recurrence or potential adverse effects of antibiotics, but is considered screening in the absence of clinical or laboratory evidence of infection.

ICD–9–CM Codes Covered by Medicare Program

Code	Descriptor
003.1	Salmonella septicemia.
038.0–038.9	Septicemia.
276.2	Acidosis.
276.4	Metabolic acidosis/alkalosis.
286.6	Defibrination syndrome/disseminated intravascular coagulation.
288.0	Agranulocytosis/neutropenia.
288.8	Other specified disease of white blood cells including leukemoid reaction/leukocytosis.
306.53	Psychogenic dysuria.
306.59	Other psychogenic genitourinary malfunction.
518.82	Other pulmonary insufficiency, not elsewhere classified.
570	Acute and subacute necrosis of liver.

Code	Descriptor
580.0–580.9	Acute glomerulonephritis.
583.0–583.9	Nephritis and Nephropathy, not specified as acute or chronic.
584.5	Acute renal failure, with lesion of tubular necrosis.
584.9	Acute renal failure, unspecified.
585	Chronic renal failure.
586	Renal failure, unspecified.
590.00–590.9	Infections of kidney/pyelonephritis acute and chronic.
592.0–592.9	Calculus of kidney and ureter.
593.0–593.9	Other disorders of kidney and ureter (cyst, stricture, obstruction, reflux, etc.).
594.0–594.9	Calculus of lower urinary tract.
595.0–595.9	Cystitis.
597.0	Urethritis, not sexually transmitted and urethral syndrome.
597.80–597.89	Other urethritis.
598.00–598.01	Urethral stricture due to infection.
599.0	Urinary tract infection, site not specified.
599.7	Hematuria.
600	Hyperplasia of prostate.
601.0–601.9	Inflammatory diseases of prostate.
602.0–602.9	Other disorders of prostate (calculus, congestion, atrophy, etc.).
604.0–604.99	Orchitis and epididymitis.
608.0–608.9	Other disorders of male genital organs (seminal vesiculitis, spermatocele, etc.).
614.0–614.9	Inflammatory disease of ovary, fallopian tube, pelvic cellular tissue, and peritoneum.
615.0–615.9	Inflammatory disease of uterus, except cervix.
616.0	Cervicitis and endocervicitis.
616.10–616.11	Vaginitis and vulvovaginitis.
616.2–616.9	Other inflammatory conditions of cervix, vagina and vulva.
619.0–619.9	Fistula involving female genital tract.
625.6	Stress incontinence, female.
639.0	Genital tract and pelvic infection complicating abortion, ectopic or molar pregnancies.
639.5	Shock complicating abortion, ectopic or molar pregnancies.
646.60–.64	Infections of genitourinary tract in pregnancy.
670.00–.04	Major puerperal infection.
672.00–.04	Pyrexia of unknown origin during the puerperium.
724.5	Backache, unspecified.
780.2	Syncope and collapse.
780.6	Fever (Hyperthermia).
780.79	Other malaise and fatigue.
780.9	Other general symptoms (altered mental status, chills, generalized pains).
785.0	Tachycardia, unspecified.
785.50–.59	Shock without mention of trauma.
788.0–788.9	Symptoms involving urinary system. (renal colic, dysuria, retention of urine, incontinence of urine, frequency, polyuria, nocturia, oliguria, anuria, other abnormality of urination, urethral discharge, extravasation of urine, other symptoms of urinary system).
789.00–789.09	Abdominal pain.
789.60–789.69	Abdominal tenderness.
790.7	Bacteremia.
791.0–791.9	Nonspecific findings on examination of urine (proteinuria, chyluria, hemoglobinuria, myoglobinuria, biliuria, glycosuria, acetonuria, other cells and casts in urine, other nonspecific findings on examination of urine).
799.3	Debility, unspecified (only for declining functional status).
939.0	Foreign body in genitourinary tract, bladder and urethra.
939.3	Foreign body in genitourinary tract, penis.
V44.50–V44.6	Artificial cystostomy or other artificial opening of urinary tract status.
V55.5–V55.6	Attention to cystostomy or other artificial opening of urinary tract.
V58.69	Long-term (current) use of other medications.
V72.84	Pre-operative examination, unspecified.

Reasons for Denial

Note: This section has not been negotiated by the Negotiated Rulemaking Committee. It includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. The documentation may include notes documenting relevant signs, symptoms, or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating

nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995).

ICD–9–CM Codes Denied..

Code	Descriptor
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Descriptor

Any ICD–9–CM code not listed in either of the ICD–9–CM sections.

Sources of Information

Bone, RC, RA Bal, FB Cerra, and the ACCP/SCCM Consensus Conference Committee. 1992. Definitions for sepsis and organ failure and guidelines for the use of innovative therapies in sepsis. Chest 101:1644–1655.

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Stamm WE, and TM Hooton. 1993. Management of urinary tract infections in adults. N. Engl. J. Med. 329:1328–1334.

United States Preventive Services Task Force (1996). Guidelines for screening for asymptomatic bacteriuria.

Lachs MS, Nachamkin I, Edelstein PH et al. 1992. Spectrum bias in the evaluation of diagnostic tests: lessons from the rapid dipstick test for urinary tract infection. Ann. Int. Med. 117:135–140.

Coding Guidelines

1. Any claim for a test listed in "HCPCS Codes" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43).

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52).

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44).

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as

though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45).

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test.

6. In the case of pre-operative examination (V72.84), the following codes may support medical necessity: 585, 586, 592.0–592.9, 594.0–594.9, 600, 602.0–602.9, 939.0, 939.3.

7. Specific coding guidelines:

a. Use CPT 87086 Culture, bacterial, urine; quantitative, colony count where a urine culture colony count is performed to determine the approximate number of bacteria present per milliliter of urine. The number of units of service is determined by the number of specimens.

b. Use CPT 87087 Culture, bacterial, urine; commercial kit where a commercial kit uses manufacturer defined media for isolation, presumptive identification, and quantitation of morphotypes present. The number of units of service is determined by the number of specimens.

c. Use CPT 87088 Culture, bacterial, urine; identification in addition to quantitative or commercial kit where identification of morphotypes recovered by quantitative culture or commercial kits and deemed to represent significant bacteriuria requires the use of additional testing, for example, biochemical test procedures on colonies. Identification based solely on visual observation of the primary media is usually not adequate to justify use of this code. The number of units of service is determined by the number of isolates.

d. Use CPT 87184 or 87186, Sensitivity studies where susceptibility testing of isolates deemed to be significant is performed concurrently with identification. The number of units of service is determined by the number of isolates. These codes are not exclusively used for urine cultures but are appropriate for isolates from other sources as well.

e. Appropriate combinations are as follows: CPT 87086 or 87087, 1 per specimen with 87088, 1 per isolate and 87184 or 87186 where appropriate.

f. Culture for other specific organism groups not ordinarily recovered by media used for aerobic urine culture may require use of additional CPT codes (for example, anaerobes from suprapubic samples).

g. Identification of isolates by non-routine, nonbiochemical methods may be coded appropriately (for example, immunologic identification of streptococci, nucleic acid techniques for identification of N. gonorrhoeae).

h. While infrequently used, sensitivity studies by methods other than CPT 87184 or 87186 are appropriate. CPT 87181, agar dilution method, each antibiotic or CPT 87188, macrotube dilution method, each antibiotic may be used. The number of units of service is the number of antibiotics multiplied by the number of unique isolates.

8. ICD–9–CM code 780.02, 780.9 or 799.3 should be used only in the situation of an elderly patient, immunocompromised patient or patient with neurologic disorder who presents without typical manifestations of a urinary tract infection but who presents with one of the following signs or symptoms, not otherwise explained by another co-existing condition: increasing debility; declining functional status; acute mental changes; changes in awareness; or hypothermia.

9. In cases of post renal-transplant urine culture used to detect clinically significant occult infection in patients on long term immunosuppressive therapy, use code V58.69.

Documentation Requirements

Appropriate HCPCS/CPT code(s) must be used as described.

National Coverage Decision for: Human Immunodeficiency Virus Testing (Prognosis including monitoring).

Other Names/Abbreviations: HIV–1 or HIV–2 quantification or viral load.

Description

HIV quantification is achieved through the use of a number of different assays which measure the amount of circulating viral RNA. Assays vary both in methods used to detect viral RNA as well as in ability to detect viral levels at lower limits. However, all employ some type of nucleic acid amplification technique to enhance sensitivity, and results are expressed as the HIV copy number.

Quantification assays of HIV plasma RNA are used prognostically to assess relative risk for disease progression and predict time to death, as well as to assess efficacy of antiretroviral therapies over time.

HIV quantification is often performed together with CD4+ T cell counts which provide information on extent of HIV induced immune system damage already incurred.

HCPCS Codes (alpha numeric, CPT© AMA)

Code	Descriptor
87536	Infectious agent detection by nucleic acid (DNA or RNA); HIV–1, quantification.
87539	Infectious agent detection by nucleic acid (DNA or RNA); HIV–2, quantification.

Indications

1. A plasma HIV RNA baseline level may be medically necessary in any patient with confirmed HIV infection.

2. Regular periodic measurement of plasma HIV RNA levels may be medically necessary to determine risk for disease progression in an HIV-infected individual and to determine when to initiate or modify antiretroviral treatment regimens.

3. In clinical situations where the risk of HIV infection is significant and initiation of therapy is anticipated, a baseline HIV quantification may be performed. These situations include:

a. Persistence of borderline or equivocal serologic reactivity in an at-risk individual.

b. Signs and symptoms of acute retroviral syndrome characterized by fever, malaise, lymphadenopathy and rash in an at-risk individual.

Limitations

1. Viral quantification may be appropriate for prognostic use including baseline determination, periodic monitoring, and monitoring of response to therapy. Use as a diagnostic test method is not indicated.

2. Measurement of plasma HIV RNA levels should be performed at the time of establishment of an HIV infection diagnosis. For an accurate baseline, 2 specimens in a 2-week period are appropriate.

3. For prognosis including antiretroviral therapy monitoring, regular, periodic measurements are appropriate. The frequency of viral load testing should be consistent with the most current Centers for Disease Control and Prevention guidelines for use of antiretroviral agents in adults and adolescents or pediatrics.

4. Because differences in absolute HIV copy number are known to occur using different assays, plasma HIV RNA levels should be measured by the same analytical method. A change in assay method may necessitate re-establishment of a baseline.

5. Nucleic acid quantification techniques are representative of rapidly emerging and evolving new technologies. As such, users are advised to remain current on FDA-approval status.

ICD–9–CM Codes Covered by Medicare Program

Code	Descriptor
042	Human immunodeficiency virus [HIV] disease.
079.53	Human immunodeficiency virus, type 2 [HIV–2].
647.60–.64	Other viral diseases complicating pregnancy (including HIV–I and II).
795.71	Nonspecific serologic evidence of human immunodeficiency virus [HIV].
V08	Asymptomatic human immunodeficiency virus [HIV] infection status.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. It includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. The documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Descriptor
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
DV16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

CDC. 1998. Guidelines for the use of antiretroviral agents in HIV-infected adults and adolescents. MMWR 47 (RR–5).

CDC. 1998. Guidelines for the use of antiretroviral agents in pediatric HIV infection. MMWR 47 (RR–4).

CDC. 1998. Public Health Service Task Force recommendations for the use of antiretroviral drugs in pregnant women infected with HIV–1 for maternal health and for reducing perinatal HIV–1 transmission in the United States. MMWR 47 (RR–2).

Carpenter, C.C., M.A. Fischi, S.M. Hammer, et . al. 1998. Antiretroviral therapy for HIV infection in 1998. Updated recommendations of the international AIDS society-USA panel. .A.M.A. 280:78–86.

Saag, M.S., M. Holodniy, D.R. Kuritzkes, et al. 1996. HIV viral load markers in clinical practice. Nature Medicine 2(6): 625–629.

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be

provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

6. Specific coding guidelines:

a. Temporary code G0100 has been superseded by code 87536 effective January 1, 1998.

b. CPT codes for quantification should not be used simultaneously with other nucleic acid detection codes for HIV–1 (that is, 87534, 87535) or HIV–2 (that is, 87537, 87538).

7. Codes 647.60–.64 should only be used for HIV infections complicating pregnancy.

Other Comments

Assessment of CD4+ T cell numbers is frequently performed in conjunction with viral load determination. When used in concert, the accuracy with which the risk for disease progression and death can be predicted is enhanced.

Medicare National Coverage Decision For: Human Immunodeficiency Virus Testing (Diagnosis).

Other Names/Abbreviations: HIV, HIV–1, HIV–2, HIV1/2, HTLV III, Human T-cell lymphotrophic virus, AIDS, Acquired immune deficiency syndrome.

Description

Diagnosis of Human Immunodeficiency Virus (HIV) infection is primarily made through the use of serologic assays. These assays take one of two forms: antibody detection assays and specific HIV antigen (p24) procedures. The antibody assays are usually enzyme immunoassays (EIA) which are used to confirm exposure of an individual's immune system to specific viral antigens. These assays may be formatted to detect HIV–1, HIV–2, or HIV–1 and 2 simultaneously and to detect both IgM and IgG. When the initial EIA test is repeatedly positive or indeterminant, an alternative test is used to confirm the specificity of the antibodies to individual viral components. The most commonly used method is the Western Blot.

The HIV–1 core antigen (p24) test detects circulating viral antigen which may be found prior to the development of antibodies and may also be present in later stages of illness in the form of recurrent or persistent antigenemia. Its prognostic utility in HIV infection has been diminished as a result of development of sensitive viral RNA assays, and its primary use today is as a routine screening tool in potential blood donors.

In several unique situations, serologic testing alone may not reliably establish an HIV infection. This may occur because the antibody response (particularly the IgG response detected by Western Blot) has not yet developed (that is, acute retroviral syndrome), or is persistently equivocal because of inherent viral antigen variability. It is also an issue in perinatal HIV infection due to transplacental passage of maternal HIV antibody. In these situations, laboratory evidence of HIV in blood by culture, antigen assays, or proviral DNA or viral RNA assays, is required to establish a definitive determination of HIV infection.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
86689	Qualitative or semiquantitative immunoassays performed by multiple step methods; HTLV or HIV antibody, confirmatory test (for example, Western Blot).
86701	Qualitative or semiquantitative immunoassays performed by multiple step methods; HIV–1.
86702	Qualitative or semiquantitative immunoassays performed by multiple step methods; HIV–2.
86703	Qualitative or semiquantitative immunoassays performed by multiple step methods; HIV–1 and HIV–2, single assay.
87390	Infectious agent antigen detection by enzyme immunoassay technique, qualitative or semiquantitative, multiple step; HIV–1.
87391	Infectious agent antigen detection by enzyme immunoassay technique, qualitative or semiquantitative, multiple step; HIV–2.
87534	Infectious agent detection by nucleic acid (DNA or RNA); HIV–1, direct probe technique.
87535	Infectious agent detection by nucleic acid (DNA or RNA); HIV–1, direct probe technique HIV–1, amplified probe technique.
87537	Infectious agent detection by nucleic acid (DNA or RNA); HIV–2, direct probe technique.
87538	Infectious agent detection by nucleic acid (DNA or RNA); HIV–2, amplified probe technique.

Indications

Diagnostic testing to establish HIV infection may be indicated when there is a strong clinical suspicion supported by one or more of the following clinical findings:

1. The patient has a documented, otherwise unexplained, AIDS-defining or AIDS-associated opportunistic infection.

2. The patient has another documented sexually transmitted disease which identifies significant risk of exposure to HIV and the potential for an early or subclinical infection.

3. The patient has documented acute or chronic hepatitis B or C infection which identifies a significant risk of exposure to HIV and the potential for an early or subclinical infection.

4. The patient has a documented AIDS-defining or AIDS-associated neoplasm.

5. The patient has a documented AIDS-associated neurologic disorder or otherwise unexplained dementia.

6. The patient has another documented AIDS-defining clinical condition, or a history of other severe, recurrent, or persistent conditions which suggest an underlying immune deficiency (for example, cutaneous or mucosal disorders).

7. The patient has otherwise unexplained generalized signs and symptoms suggestive of a chronic process with an underlying immune deficiency (for example, fever, weight loss, malaise, fatigue, chronic diarrhea, failure to thrive, chronic cough, hemoptysis, shortness of breath, or lymphadenopathy).

8. The patient has otherwise unexplained laboratory evidence of a chronic disease process with an underlying immune deficiency (for example, anemia, leukopenia,

pancytopenia, lymphopenia, or low CD4+ lymphocyte count).

9. The patient has signs and symptoms of acute retroviral syndrome with fever, malaise, lymphadenopathy, and skin rash.

10. The patient has documented exposure to blood or body fluids known to be capable of transmitting HIV (for example, needlesticks and other significant blood exposures) and antiviral therapy is initiated or anticipated to be initiated.

11. The patient is undergoing treatment for rape. (HIV testing is a part of the rape treatment protocol.)

For a comprehensive tabulation of AIDS-defining and AIDS associated conditions, refer to information source document #5.

Limitations

1. HIV antibody testing in the United States is usually performed using HIV–1 or HIV–½ combination tests. HIV–2 testing is indicated if clinical circumstances suggest HIV–2 is likely (that is, compatible clinical findings and HIV–1 test negative). HIV–2 testing may also be indicated in areas of the country where there is greater prevalence of HIV–2 infections.

2. The Western Blot test should be performed only after documentation that the initial EIA tests are repeatedly positive or equivocal on a single sample.

3. The HIV antigen tests currently have no defined diagnostic usage.

4. Direct viral RNA detection may be performed in those situations where serologic testing does not establish a diagnosis but strong clinical suspicion persists (for example, acute retroviral syndrome, nonspecific serologic evidence of HIV, or perinatal HIV infection).

5. If initial serologic tests confirm an HIV infection, repeat testing is not indicated.

6. If initial serologic tests are HIV EIA negative and there is no indication for confirmation of infection by viral RNA detection, the interval prior to retesting is 3–6 months.

7. Testing for evidence of HIV infection using serologic methods may be medically appropriate in situations where there is a risk of exposure to HIV. However, in the absence of a documented AIDS defining or HIV associated disease, an HIV associated sign or symptom, or documented exposure to a known HIV-infected source, the testing is considered by Medicare to be screening and thus is not covered by Medicare (for example, history of multiple blood component transfusions, exposure to blood or body fluids not resulting in consideration of therapy, history of transplant, history of illicit drug use, multiple sexual partners, same-sex encounters, prostitution, or contact with prostitutes).

8. The CPT Editorial Panel has issued a number of codes for infectious agent detection by direct antigen or nucleic acid probe techniques that have not yet been developed or are only being used on an investigational basis. Laboratory providers are advised to remain current on FDA-approval status for these tests.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
003.1	Salmonella septicemia.
007.2	Coccidiosis (Isoporiasis).
007.4	Cryptosporidiosis.
007.8	Other specified protozoal intestinal diseases.
010.00–010.96	Primary tuberculous infection.
011.00–011.96	Pulmonary tuberculosis.
012.00–012.86	Other respiratory tuberculosis.
013.00–013.96	Tuberculosis of meninges and central nervous system.
014.00–014.86	Tuberculosis of intestines, peritoneum and mesenteric glands.
015.00–015.96	Tuberculosis of bones and joints.
016.00–016.96	Tuberculosis of genitourinary system.
017.00–017.96	Tuberculosis of other organs.
018.00–018.96	Miliary tuberculosis.
027.0	Listeriosis.
031.0–031.9	Diseases due to other mycobacteria.
038.2	Pneumococcal septicemia.
038.43	Septicemia (Pseudomonas).
039.0–.9	Actinomycotic infections (includes Nocardia).
041.7	Pseudomonas infection.
042	HIV disease (Acute retroviral syndrome, AIDS-related complex).
046.3	Progressive multifocal leukoencephalopathy.
049.0–049.9	Other non-arthropod-borne viral diseases of central nervous system.
052.0–052.8	Chickenpox (with complication).
053.0–053.9	Herpes zoster.
054.0–054.9	Herpes simplex.
055.0–055.8	Measles (with complication).
070.20–070.23	Viral hepatitis B with hepatic coma.
070.30–070.33	Viral hepatitis B without mention of hepatic coma.
070.41	Acute or unspecified hepatitis C with hepatic coma.
070.42	Hepatitis delta without mention of active hepatitis B disease with hepatic coma.
070.44	Chronic hepatitis C with hepatic coma.
070.49	Other specified viral hepatitis with hepatic coma.
070.51	Acute or unspecified hepatitis C without hepatic coma.
070.52	Hepatitis delta without mention of active hepatitis B disease without hepatic coma.
070.54	Chronic hepatitis C without hepatic coma.
070.59	Other specified viral hepatitis without hepatic coma.
070.6	Unspecified viral hepatitis with hepatic coma.
070.9	Unspecified viral hepatitis without hepatic coma.
078.0	Molluscum contagiosum.
078.10–078.19	Viral warts.
078.3	Cat-scratch disease.
078.5	Cytomegaloviral disease.
078.88	Other specified diseases due to Chlamydiae.
079.50	Retrovirus unspecified.
079.51	HTLV–I.
079.52	HTLV–II.
079.53	HTLV–III.
079.59	Other specified Retrovirus.

Code	Description
079.88	Other specified chlamydial infection.
079.98	Unspecified chlamydial infection.
085.0–085.9	Leishmaniasis.
088.0	Bartonellosis.
090.0–090.9	Congenital syphilis.
091.0–091.9	Early syphilis symptomatic.
092.0–092.9	Early syphilis, latent.
093.0–093.9	Cardiovascular syphilis.
094.0–094.9	Neurosyphilis.
095.0–095.9	Other forms of late syphilis, with symptoms.
096	Late syphilis, latent.
097.0–097.9	Other and unspecified syphilis.
098.0–098.89	Gonococcal infections.
099.0	Chancroid.
099.1	Lymphogranuloma venereum.
099.2	Granuloma inguinale.
099.3	Reiter's disease.
099.40–099.49	Other nongonococcal urethritis.
099.50–099.59	Other venereal diseases due to Chlamydia trachomatis.
099.8	Other specified venereal disease.
099.9	Venereal disease unspecified.
110.1	Dermatophytosis of nail.
111.0	Pityriasis versicolor.
112.0–112.9	Candidiasis.
114.0–114.9	Coccidioidomycosis.
115.00–115.99	Histoplasmosis.
116.0–116.2	Blastomycotic infection.
117.3	Aspergillosis.
117.5	Cryptococcosis.
118	Opportunistic mycoses.
127.2	Strongyloidiasis.
130.0–130.9	Toxoplasmosis.
131.01	Trichomonal vulvovaginitis.
132.2	Phthirus pubis.
133.0	Scabies.
136.2	Specific infections by free living amebae.
136.3	Pneumocystosis.
136.8	Other specified infectious and parasitic disease (for example, microsporidiosis).
176.0–176.9	Kaposi's sarcoma.
180.0–180.9	Malignant neoplasm of cervix uteri.
200.20–200.28	Burkitt's tumor or lymphoma.
200.80–200.88	Lymphosarcoma, other named variants.
201.00–201.98	Hodgkin's disease.
280.0–280.9	Iron deficiency anemias.
285.9	Anemia, unspecified.
287.3	Primary thrombocytopenia.
288.0	Agranulocytosis.
288.8	Other specified disease of white blood cells.
294.8	Other specified organic brain syndromes (chronic).
310.1	Organic personality syndrome.
322.2	Chronic meningitis.
336.9	Unspecified disease of spinal cord.
348.3	Encephalopathy unspecified.
354.0–354.9	Mononeuritis of upper limbs and mononeuritis multiplex.
356.8	Other specified idiopathic peripheral neuropathy.
363.20	Chorioretinitis, unspecified.
425.4	Other primary cardiomyopathies.
473.0–473.9	Chronic sinusitis.
481	Pneumococcal pneumonia.
482.0–482.9	Other bacterial pneumonia.
484.1	Pneumonia in cytomegalic inclusion disease.
512.8	Other spontaneous pneumothorax.
516.8	Other specified alveolar and parietoalveolar pneumonopathies.
528.2	Oral aphthae.
528.6	Leukoplakia of oral mucosa.
530.2	Ulcer of esophagus.
583.9	Nephropathy with unspecified pathological lesion in kidney.
588.8	Other specified disorders resulting from impaired renal function.
647.60–.64	Other viral diseases complicating pregnancy (use for HIV I and II).
682.0–682.9	Other cellulitis and abscess.
690.10–690.18	Seborrheic dermatitis.
696.1	Other psoriasis.
698.3	Lichenification and lichen simplex chronicus.
704.8	Other specified diseases of hair and hair follicles.

Code	Description
706.0–706.9	Diseases of sebaceous glands.
780.6	Fever.
780.79	Other malaise and fatigue.
783.2	Abnormal loss of weight.
783.4	Lack of expected normal physiological development.
785.6	Enlargement of lymph nodes.
786.00	Respiratory abnormality, unspecified.
786.05	Shortness of breath.
786.2	Cough.
786.3	Hemoptysis.
786.4	Abnormal sputum.
787.91	Diarrhea.
795.71	Nonspecific serologic evidence of human immunodefiency virus.
799.4	Wasting disease.
V01.7	Contact with or exposure to communicable diseases, other viral diseases.
V71.5	Rape.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).

Code	Description
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in neither of the ICD–9–CM sections above.

Sources of Information

CDC, 1993. Revised classification system for HIV infection and expanded surveillance case definition for AIDS among adolescents and adults. MMWR 41 (No. RR17).

CDC, 1994. Revised classification system for human immunodeficiency virus infection in children less than 13 years of age.

CDC, 1998. Guidelines for treatment of sexually transmitted diseases. MMWR 47 (RR1):11–17.

Piatak, M., M.S. Saag, L.C. Yang, *et al.* 1993. High levels of HIV–1 in plasma during all stages of infection determined by competitive PCR. Science 259:1749–1754.

Rhame, R.S. 1994. Acquired immunodeficiency syndrome, p. 628–652. *In Infectious Diseases;* P.D. Hoeprich, M.C. Jordan, and A.R. Ronald (J.B. Lippincott Co., Philadelphia).

Vasudevachari, M.D., R.T. Davey, Jr., J.A. Metcalf, and H.C. Lane. 1997. Principles and procedures of human immunodeficiency virus serodiagnosis. *In Manual of Clinical Laboratory Immunology* (Fifth ed.); N.R. Rose, E.C. de Macario, J.D. Folds, H.C. Lane, and R.M. Nakamura (ASM Press, Washington, DC).

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

6. Specific coding guidelines:

a. CPT 86701 or 86703 is performed initially. CPT 86702 is performed when 86701 is negative and clinical suspicion of HIV–2 exists.

b. CPT 86689 is performed only on samples repeatedly positive by 86701, 86702, or 86703.

c. CPT 87534 or 87535 is used to detect HIV–1 RNA where indicated. CPT 87537 or 87538 is used to detect HIV–2 RNA where indicated.

Documentation Requirements

Appropriate HCPCS/CPT codes must be used as described.

Medicare National Coverage Decision: Blood Counts.

Other Names/Abbreviations: CBC.

Description

Blood counts are used to evaluate and diagnose diseases relating to abnormalities of the blood or bone marrow. These include primary disorders such as anemia, leukemia, polycythemia, thrombocytosis and thrombocytopenia. Many other conditions secondarily affect the blood or bone marrow, including reaction to inflammation and infections, coagulopathies, neoplasms and exposure to toxic substances. Many treatments and therapies affect the blood or bone marrow, and blood counts may be used to monitor treatment effects.

The complete blood count (CBC) includes a hemogram and differential white blood count (WBC). The hemogram includes enumeration of red blood cells, white blood cells, and platelets, as well as the determination of hemoglobin, hematocrit, and indices.

The symptoms of hematological disorders are often nonspecific, and are commonly encountered in patients who may or may not prove to have a disorder of the blood or bone marrow. Furthermore, many medical conditions that are not primarily due to abnormalities of blood or bone marrow may have hematological manifestations that result from the disease or its treatment. As a result, the CBC is one of the most commonly indicated laboratory tests.

In patients with possible hematological abnormalities, it may be necessary to determine the hemoglobin and hematocrit, to calculate the red cell indices, and to measure the concentration of white blood cells and platelets. These measurements are usually performed on a multichannel analyzer that measures all of the parameters on every sample. Therefore, laboratory assessments routinely include these measurements.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
85007	Blood count; manual differential WBC count (includes RBC morphology and platelet estimation).
85008	Blood counts, manual blood smear examination without differential parameters.
85013	Blood counts, Spun microhematocrit.
85014	Blood counts, Other than spun hematocrit.
85018	Blood counts, Hemoglobin.
85021	Blood counts, Hemogram, automated (RBC, WBC, Hgb, Hct, and indices only).
85022	Blood counts, Hemogram, automated, and manual differential WBC count (CBC).
85023	Blood counts, Hemogram and platelet count, automated, and manual differential WBC count (CBC).
85024	Blood counts, Hemogram and platelet count, automated, and automated partial differential WBC count (CBC).

Code	Descriptor
85025	Hemogram and platelet count, automated and automated complete differential WBC count (CBC).
85027	Blood counts, Hemogram and platelet count, automated.
85031	Blood count; hemogram, manual, complete CBC (RBC, Hgb, Hct, differential and indices.
85048	Blood counts, White blood cell (WBC).
85590	Platelet; manual count.
85595	Platelet, automated count.

Indications

Indications for a CBC or hemogram include red cell, platelet, and white cell disorders. Examples of these indications are enumerated individually below.

1. Indications for a CBC generally include the evaluation of bone marrow dysfunction as a result of neoplasms, therapeutic agents, exposure to toxic substances, or pregnancy. The CBC is also useful in assessing peripheral destruction of blood cells, suspected bone marrow failure or bone marrow infiltrate, suspected myeloproliferative, myelodysplastic, or lymphoproliferative processes, and immune disorders.

2. Indications for hemogram or CBC related to red cell (RBC) parameters of the hemogram include signs, symptoms, test results, illness, or disease that can be associated with anemia or other red blood cell disorder (e.g., pallor, weakness, fatigue, weight loss, bleeding, acute injury associated with blood loss or suspected blood loss, abnormal menstrual bleeding, hematuria, hematemesis, hematochezia, positive fecal occult blood test, malnutrition, vitamin deficiency, malabsorption, neuropathy, known malignancy, presence of acute or chronic disease that may have associated anemia, coagulation or hemostatic disorders, postural dizziness, syncope, abdominal pain, change in bowel habits, chronic marrow hypoplasia or decreased RBC production, tachycardia, systolic heart murmur, congestive heart failure, dyspnea, angina, nailbed deformities, growth retardation, jaundice, hepatomegaly, splenomegaly, lymphadenopathy, ulcers on the lower extremities).

3. Indications for hemogram or CBC related to red cell (RBC) parameters of the hemogram include signs, symptoms, test results, illness, or disease that can be associated with polycythemia (for example, fever, chills, ruddy skin, conjunctival redness, cough, wheezing, cyanosis, clubbing of the fingers, orthopnea, heart murmur, headache, vague cognitive changes including memory changes, sleep apnea, weakness, pruritus, dizziness, excessive sweating, visual symptoms, weight loss, massive obesity, gastrointestinal bleeding, paresthesias, dyspnea, joint symptoms, epigastric distress, pain and erythema of the fingers or toes, venous or arterial thrombosis, thromboembolism, myocardial infarction, stroke, transient ischemic attacks, congenital heart disease, chronic obstructive pulmonary disease, increased erythropoetin production associated with neoplastic, renal or hepatic disorders, androgen or diuretic use, splenomegaly, hepatomegaly, diastolic hypertension.)

4. Specific indications for CBC with differential count related to the WBC include signs, symptoms, test results, illness, or disease associated with leukemia, infections or inflammatory processes, suspected bone marrow failure or bone marrow infiltrate, suspected myeloproliferative, myelodysplastic or lymphoproliferative disorder, use of drugs that may cause leukopenia, and immune disorders (e.g., fever, chills, sweats, shock, fatigue, malaise, tachycardia, tachypnea, heart murmur, seizures, alterations of consciousness, meningismus, pain such as headache, abdominal pain, arthralgia, odynophagia, or dysuria, redness or swelling of skin, soft tissue bone, or joint, ulcers of the skin or mucous membranes, gangrene, mucous membrane discharge, bleeding, thrombosis, respiratory failure, pulmonary infiltrate, jaundice, diarrhea, vomiting, hepatomegaly, splenomegaly, lymphadenopathy, opportunistic infection such as oral candidiasis.)

5. Specific indications for CBC related to the platelet count include signs, symptoms, test results, illness, or disease associated with increased or decreased platelet production and destruction, or platelet dysfunction.(e.g., gastrointestinal bleeding, genitourinary tract bleeding, bilateral epistaxis, thrombosis, ecchymosis, purpura, jaundice, petechiae, fever, heparin therapy, suspected DIC, shock, pre-eclampsia, neonate with maternal ITP, massive transfusion, recent platelet transfusion, cardiopulmonary bypass, hemolytic uremic syndrome, renal diseases, lymphadenopathy, hepatomegaly, splenomegaly, hypersplenism, neurologic abnormalities, viral or other infection, myeloproliferative, myelodysplastic, or lymphoproliferative disorder, thrombosis, exposure to toxic agents, excessive alcohol ingestion, autoimmune disorders (SLE, RA and other).

6. Indications for hemogram or CBC related to red cell (RBC) parameters of the hemogram include, in addition to those already listed, thalassemia, suspected hemoglobinopathy, lead poisoning, arsenic poisoning, and spherocytosis.

7. Specific indications for CBC with differential count related to the WBC include, in addition to those already listed, storage diseases/mucopolysaccharidoses, and use of drugs that cause leukocytosis such as G–CSF or GM–CSF.

8. Specific indications for CBC related to platelet count include, in addition to those already listed, May-Hegglin syndrome and Wiskott-Aldrich syndrome.

Limitations

1. Testing of patients who are asymptomatic, or who do not have a condition that could be expected to result in a hematological abnormality, is screening and is not a covered service.

2. In some circumstances it may be appropriate to perform only a hemoglobin or hematocrit to assess the oxygen carrying capacity of the blood. When the ordering provider requests only a hemoglobin or hematocrit, the remaining components of the CBC are not covered.

3. When a blood count is performed for an end-stage renal disease (ESRD) patient, and is billed outside the ESRD rate, documentation of the medical necessity for the blood count must be submitted with the claim.

4. In some patients presenting with certain signs, symptoms or diseases, a single CBC may be appropriate. Repeat testing may not be indicated unless abnormal results are found, or unless there is a change in clinical condition. If repeat testing is performed, a more descriptive diagnosis code (*e.g.*, anemia) should be reported to support medical necessity. However, repeat testing may be indicated where results are normal in patients with conditions where there is a continued risk for the development of hematologic abnormality.

ICD–9–CM Codes Covered by Medicare Program

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9-CM code sections below.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and

necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code	Description
078.10–078.19	Viral warts.
210.0–210.9	Benign neoplasm of lip, oral cavity, and pharynx.
214.0	Lipoma, skin and subcutaneous tissue of face.
216.0–216.9	Benign neoplasm of skin.
217	Benign neoplasm of breast.
222.0–222.9	Benign neoplasm of male genital organs.
224.0	Benign neoplasm of eye.
230.0	Carcinoma in situ of lip, oral cavity and pharynx.
232.0–232.9	Carcinoma in situ of skin.
300.00–300.09	Neurotic disorders.
301.0–301.9	Personality disorders.
302.0–302.9	Sexual deviations and disorders.
307.0	Stammering and stuttering.
307.20–307.23	Tics.
307.3	Stereotyped repetitive movements.
307.80–307.89	Psychalgia.
312.00–312.9	Disturbance of conduct, not elsewhere classified.
313.0–313.9	Disturbance of emotions specific to childhood and adolescence.
314.00–314.9	Hyperkinetic syndrome of childhood.
363.30–363.35	Chorioretinal scars.
363.40–363.43	Choroidal degeneration.

Code		Description
363.50–363.57	.....	Hereditary choroidal dystrophies.
363.70–363.9	.....	Choroidal detachment.
366.00–366.9	.....	Cataract.
367.0–367.9	.....	Disorders of refraction and accommodation.
371.00–371.9	.....	Corneal opacity and other disorders of cornea.
373.00–373.9	.....	Inflammation of eyelids.
375.00–375.9	.....	Disorders of lacrimal system.
376.21–376.9	.....	Disorders of the orbit, *except 376.3 Other exophthalmic conditions.*
377.10–377.16	.....	Optic atrophy.
377.21–377.24	.....	Other disorders of optic disc.
384.20–384.25	.....	Perforation of tympanic membrane.
384.81–384.82	.....	Other specified disorders of tympanic membrane.
385.00–385.90	.....	Other disorders of middle ear and mastoid.
387.0–387.9	.....	Otosclerosis.
388.00–388.5	.....	Other disorders of ear.
389.00–389.9	.....	Hearing loss.
440.0–440.1	.....	Atherosclerosis of aorta and renal artery.
443.8–443.9	.....	Peripheral vascular disease.
448.1	.....	Capillary nevus, non neoplastic.
457.0	.....	Postmastectomy lymphedema syndrome.
470	.....	Deviated nasal septum.
471.0–471.9	.....	Nasal polyps.
478.0	.....	Hypertrophy of nasal turbinates.
478.4	.....	Polyp of vocal cord or larynx.
520.0–520.9	.....	Disorders of tooth development and eruption.
521.0–521.9	.....	Diseases of hard tissues of teeth.
524.00–524.9	.....	Dentofacial anomalies, including malocclusion.
525.0–525.9	.....	Other diseases and conditions of teeth and supporting structures.
526.0–526.3	.....	Diseases of the jaws.
527.6–527.9	.....	Diseases of the salivary glands.
575.6	.....	Cholesterolosis of gallbladder.
600	.....	Hyperplasia of prostate.
603.0	.....	Encysted hydrocele.
603.8	.....	Other specified types of hydrocele.
603.9	.....	Hydrocele, unspecified.
605	.....	Redundant prepuce and phimosis.
606.0–606.1	.....	Infertility, male.
608.1	.....	Spermatocoele.
608.3	.....	Atrophy of testis.
610.0–610.9	.....	Benign mammary dysplasia.
611.1–611.6	.....	Other disorders of breast.
611.9	.....	Unspecified breast disorder.
616.2	.....	Cyst of Bartholin's gland.
618.0–618.9	.....	Genital prolapse.
620.0–620.3	.....	Noninflammatory disorders of ovary, fallopian tube, and broad ligament.
621.6–621.7	.....	Malposition or inversion of uterus.
627.2–627.9	.....	Menopausal and post menopausal disorders.
628.0–628.9	.....	Infertility, female.
676.00–676.94	.....	Other disorders of breast associated with childbirth and disorders of lactation.
691.0–691.8	.....	Atopic dermatitis and related disorders.
692.0–692.9	.....	Contact dermatitis and other eczema.
700	.....	Corns and callosities.
701.0–701.9	.....	Other hypertrophic and atrophic conditions of skin.
702.0–702.8	.....	Other dermatoses.
703.9	.....	Unspecified disease of nail.
706.0–706.9	.....	Diseases of sebaceous glands.
709.00–709.4	.....	Other disorders of skin and subcutaneous tissue.
715.00–715.98	.....	Osteoarthrosis.
716.00–716.99	.....	Other and unspecified arthropathies.
718.00–718.99	.....	Other derangement of joint.
726.0–726.91	.....	Peripheral esthesiopathies and allied syndromes.
727.00–727.9	.....	Other disorders of synovium, tendon, and bursa.
728.10–728.85	.....	Disorders of muscle ligament and fascia.
732.0–732.9	.....	Osteochondropathies.
733.00–733.09	.....	Osteoporosis.
734	.....	Flat foot.
735.0–735.9	.....	Acquired deformities of toe.
736.00–736.9	.....	Other acquired deformities of limb.
737.0–737.9	.....	Curvature of spine.
738.0–738.9	.....	Other acquired deformity.
739.0–739.9	.....	Nonallopathic lesions, not elsewhere classified.
830.0–839.9	.....	Dislocations.
840.0–848.9	.....	Sprains and strains.
905.0–909.9	.....	Late effects of musculoskeletal and connective tissue injuries.

Code	Description
910.0–919.9	Superficial injuries.
930.0–932	Foreign body on external eye, in ear, in nose.
955.0–957.9	Injury to peripheral nerve.
V03.0–V06.9	Need for prophylactic vaccination.
V11.0–V11.9	Personal history of mental disorder.
V14.0–V14.8	Personal history of allergy to medicinal agents.
V16.0	Family history of malignant neoplasm, gastrointestinal tract.
V16.3	Family history of malignant neoplasm, breast.
V21.0–V21.9	Constitutional states in development.
V25.01–V25.9	Encounter for contraceptive management.
V26.0–V26.9	Procreative management.
V40.0–V40.9	Mental and behavioral problems.
V41.0–V41.9	Problems with special senses and other special functions.
V43.0–V43.1	Organ or tissue replaced by other means, eye globe or lens.
V44.0–V44.9	Artificial opening status.
V45.00–V45.89	Other post surgical states.
V48.0–V48.9	Problems with head, neck, and trunk.
V49.0–V49.9	Problems with limbs.
V51	Aftercare involving the use of plastic surgery.
V52.0–V52.9	Fitting and adjustment of prosthetic device and implant.
V53.01–V53.09	Fitting and adjustment of devices related to nervous system and special senses.
V53.1	Fitting and adjustment of spectacles and contact lenses.
V53.31–V53.39	Fitting and adjustment of cardiac device.
V53.4	Fitting and adjustment of orthodontic devices.
V53.5	Fitting and adjustment of other intestinal appliance.
V53.6	Fitting and adjustment of urinary devices.
V53.7	Fitting and adjustment of orthopedic devices.
V53.8	Fitting and adjustment of wheelchair.
V53.9	Fitting and adjustment of other and unspecified device.
V54.0–V54.9	Other orthopedic aftercare.
V55.0–V55.9	Attention to artificial openings.
V57.0–V57.9	Care involving use of rehabilitation procedures.
V58.5	Orthodontics.
V59.0–V59.9	Donors.
V61.0–V61.9	Other family circumstances.
V62.2–V62.9	Other psychosocial circumstances.
V65.2	Person feigning illness.
V65.3	Dietary surveillance and counseling.
V65.40–V65.49	Other counseling, not elsewhere classified.
V65.5	Person with feared complaint in whom no diagnosis was made.
V65.8	Other reasons for seeking consultation.
V65.9	Unspecified reason for consultation.
V66.0-V66.9	Convalescence and palliative care.
V67.3	Follow-up examination following psychotherapy.
V67.4	Follow-up examination following treatment of healed fracture.
V69.3	Problems related to lifestyle, gambling and betting.
V71.01–V71.09	Observation and evaluation for suspected conditions not found, mental.
V72.0–V72.2	Special investigations, examination of eyes and vision, ears and hearing, dental.
V72.4–V72.7	Special investigations, radiologic exam, laboratory exam, diagnostic skin and sensitization tests.
V72.9	Special investigation, unspecified.
V76.10–V76.19	Special screening for malignant neoplasms, breast.
V76.2	Special screening for malignant neoplasms, cervix.

Sources of Information

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Cancer: Principals & Practice of Oncology, DeVita, et al., 5th edition, Philadelphia: Lippincott-Raven, 1997.

Cecil Textbook of Medicine, Bennett, et al., 20th edition, Philadelphia: W.B. Saunders, 1996.

Williams Hematology, Beutler, et al., 5th editiion, New York: McGraw-Hill, 1995.

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding

Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9–CM code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Partial Thromboplastin Time

Other Names/Abbreviations: PTT.

Description

Basic plasma coagulation function is readily assessed with a few simple laboratory tests: The partial thromboplastin time (PTT), prothrombin time (PT), thrombin time (TT), or a quantitative fibrinogen determination. The partial thromboplastin time (PTT) test is an in vitro laboratory test used to assess the intrinsic coagulation pathway and monitor heparin therapy.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
85730	Thromboplastin time, partial (PTT); plasma or whole blood.

Indications

1. The PTT is most commonly used to quantitate the effect of therapeutic unfractionated heparin and to regulate its dosing. Except during transitions between heparin and warfarin therapy, in general both the PTT and PT are not necessary together to assess the effect of anticoagulation therapy. PT and PTT must be justified separately. (See "Limitations" section for further discussion.)

2. A PTT may be used to assess patients with signs or symptoms of hemorrhage or thrombosis. For example:

- Abnormal bleeding, hemorrhage or hematoma petechiae or other signs of thrombocytopenia that could be due to Disseminated Intravascular Coagulation
- Swollen extremity with or without prior trauma

3. A PTT may be useful in evaluating patients who have a history of a condition known to be associated with the risk of hemorrhage or thrombosis that is related to the intrinsic coagulation pathway. Such abnormalities may be genetic or acquired. For example:

- Dysfibrinogenemia.
- Afibrinogenemia (complete).
- Acute or chronic liver dysfunction or failure, including Wilson's disease.
- Hemophilia.
- Liver disease and failure.
- Infectious processes.
- Bleeding disorders.
- Disseminated intravascular coagulation.
- Lupus erythematosus or other conditions associated with circulating inhibitors, e.g., Factor VIII Inhibitor, lupus-like anticoagulant, etc.
- Sepsis.
- Von Willebrand's disease.
- Arterial and venous thrombosis, including the evaluation of hypercoagulable states.
- Clinical conditions associated with nephrosis or renal failure.
- Other acquired and congenital coagulopathies as well as thrombotic states.

4. A PTT may be used to assess the risk of thrombosis or hemorrhage in patients who are going to have a medical intervention known to be associated with increased risk of bleeding or thrombosis. An example is as follows:

- Evaluation prior to invasive procedures or operations of patients with personal or family history of bleeding or who are on heparin therapy

Limitations

1. The PTT is not useful in monitoring the effects of warfarin on a patient's coagulation routinely. However, a PTT may be ordered on a patient being treated with warfarin as heparin therapy is being discontinued. (See coding guidelines for instructions on the use of code V58.61 in this situation.) A PTT may also be indicated when the PT is markedly prolonged due to warfarin toxicity.

2. The need to repeat this test is determined by changes in the underlying medical condition and/or the dosing of heparin.

3. Testing prior to any medical intervention associated with a risk of bleeding and thrombosis (other than thrombolytic therapy) will generally be considered medically necessary only where there are signs or symptoms of a bleeding or thrombotic abnormality or a personal history of bleeding, thrombosis or a condition associated with a coagulopathy. Hospital/clinic-specific policies, protocols, etc., in and of themselves, cannot alone justify coverage.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
002.0–002.9	Typhoid and paratyphoid.
003.0–003.9	Other Salmonella infections.
042	Human immunodeficiency virus (HIV) disease.
038.9	Unspecified Septicemia.
060.0–060.9	Yellow fever.
65.0–065.9	Arthopod borne hemorrhagic fever.
070.0–070.9	Viral Hepatitis.
075	Infectious mononucleosis.
078.6	Hemorrhagic nephrosonephritis.
078.7	Arenaviral hemorrhagic fever.
120.0	Schistosomiasis haematobium.
121.1	Clonorchiasis.
121.3	Fascioliasis.
124	Trichinosis.
135	Sarcoidosis.
155.0–155.2	Malignant neoplasm of liver and intrahepatic bile ducts.
197.7	Malignant neoplasm of liver, specified as secondary.
238.4	Polycythemia vera.
238.7	Other lymphatic and hemapoietic tissues.
239.9	Neoplasm of unspecified nature, site unspecified.
246.3	Hemorrhage and infarction of thyroid.
250.40–250.43	Diabetic with renal manifestations.
269.0	Deficiency of Vitamin K.

Code	Description
273.0–273.9	Disorders of plasma protein metabolism.
273.2	Other paraproteinemias.
275.0–275.9	Disorders of iron metabolism.
277.1	Disorders of porphyrin metabolism.
277.3	Amyloidosis.
285.1	Acute posthemorrhagic anemia.
286.0	Congenital factor VIII disorder—Hemophilia A.
286.1	Congenital factor IX disorder—Hemophilia B.
286.2–286.3	Other congenital factor deficiencies.
286.4	von Willebrand's disease.
286.5	Hemorrhagic disorder due to circulating anticoagulants.
286.6	Defibrination syndrome.
286.7	Acquired coagulation factor deficiency.
286.8–.9	Other and unspecified coagulation defects.
287.0–287.9	Purpura and other hemorrhagic conditions.
289.0	Polycythemia, secondary.
325	Phlebitis and thrombophlebitis of intracranial ventricles sinuses.
360.43	Hemophthalmos, except current injury.
362.34	Amaurosis fugax.
362.43	Hemorrhagic detachment of retinal pigment epithelium.
362.81	Retinal hemorrhage.
363.6	Choroidal hemorrhage.
363.72	Choroidal detachment.
368.9	Unspecified Visual Disturbances.
372.72	Conjunctive hemorrhage.
374.81	Hemorrhage of eyelid.
376.32	Orbital hemorrhage.
377.42	Hemorrhage in optic nerve sheaths.
379.23	Vitreous hemorrhage.
380.31	Hematoma of auricle or pinna.
403.01, 403.11, 403.91	Hypertensive Renal Disease with renal failure.
404.02, 404.12, 404.92	Hypertensive Heart and Renal Disease with renal failure.
423.0	Hemopericardium.
427.31	Atrial fibrillation.
427.9	Cardiac dysrhythmias, unspecified.
428.0	Congestive heart failure.
429.79	Mural thrombus.
430–432.9	Cerebral hemorrhage.
433.00–433.91	Occlusion and stenosis of precerebral arteries.
434.00–434.91	Occlusion of cerebral arteries.
435.9	Focal neurologic deficit.
444.0–444.9	Arterial embolism and thrombosis.
446.6	Thrombotic microangiopathy.
447.2	Rupture of artery.
448.0	Hereditary Hemorrhagic telangiectasia.
451.0–451.9	Phlebitis and thrombophlebitis.
453.0–453.9	Other Venous emboli and thrombosis.
456.0	Esophageal varices with bleeding.
456.1	Esophageal varices without bleeding.
459.89	Ecchymosis.
530.7	Gastroesophageal laceration—hemorrhage syndrome.
531.00–535.61	Gastric-Duodenal ulcer disease.
537.83	Angiodysplasia of stomach and duodenum with hemorrhage.
556.0–557.9	Hemorrhagic bowel disease.
562.02–562.03	Diverticulosis of small intestine with hemorrhage.
562.12	Diverticulosis of colon with hemorrhage.
562.13	Diverticulitis of colon without hemorrhage.
568.81	Hemoperitoneum (nontraumatic).
569.3	Hemorrhage of rectum and anus.
570	Acute and subacute necrosis of liver.
571.0–573.9	Liver disease (in place of specific codes listed).
576.0–576.9	Biliary tract disorders.
577.0	Acute pancreatitis.
578.0–578.9	Gastrointestinal Hemorrhage.
579.0–579.9	Malabsorption.
581.0–581.9	Nephrotic Syndrome.
583.9	Nephritis, with unspecified pathological lesion in kidney.
584.5–584.9	Acute Renal Failure.
585	Chronic Renal Failure.
586	Renal failure.
593.81–593.89	Other disorders of kidney and ureter, with hemorrhage.
596.7	Hemorrhage into bladder wall.
596.8	Other disorders of bladder, with hemorrhage.
599.7	Hematuria.

Code	Description
607.82	Penile hemorrhage.
608.83	Vascular disorders of male genital organs.
611.8	Hematoma of breast.
620.7	Hemorrhage of broad ligament.
621.4	Hematometra.
622.8	Other specified disorders of cervix, with hemorrhage.
623.6	Vaginal hematoma.
623.8	Other specified diseases of the vagina, with hemorrhage.
624.5	Hematoma of vulva.
626.6	Metrorrhagia.
626.7	Postcoital bleeding.
627.0	Premenopausal bleeding.
627.1	Postmenopausal bleeding.
629.0	Hematocele female not elsewhere classified.
632	Missed abortion.
634.00–634.92	Spontaneous abortion.
635.10–635.12	Legally induced abortion, complicated by delayed or excessive hemorrhage.
636.10–636.12	Illegally induced abortion, complicated by delayed or excessive hemorrhage.
637.10–637.12	Abortion unspecified, complicated by delayed or excessive hemorrhage.
638.1	Failed attempt abortion, complicated by delayed or excessive hemorrhage.
639.1	Delayed or excessive hemorrhage following abortion and ectopic and molar pregnancies.
639.6	Complications following abortion and ectopic and molar pregnancies, embolism.
640.00–640.93	Hemorrhage in early pregnancy.
641.00–641.93	Antepartum hemorrhage.
642.00–642.94	Hypertension complicating pregnancy, childbirth, and the puerperium.
646.70–646.73	Liver disorders in pregnancy.
656.00–656.03	Fetal maternal hemorrhage.
658.40–658.43	Infection of amniotic cavity.
666.00–666.34	Postpartum hemorrhage.
671.20–671.54	Phlebitis in pregnancy.
673.00–673.84	Obstetrical pulmonary embolus.
674.30–674.34	Other complications of surgical wounds, with hemorrhage.
710.0	Systemic Lupus erythematosus.
713.2	Arthropathy associated with hematologic disorders (note: may not be used without indicating associated condition first).
713.6	Arthropathy associated with Henoch Schoenlein (note: may not be used without indicating associated condition first).
719.10–.19	Hemarthrosis.
729.5	Leg pain/calf pain.
733.1	Pathologic fracture associated with fat embolism.
762.1	Other forms of placental separation with hemorrhage (affecting newborn code—do not assign to mother's record).
764.90–764.99	Fetal intrauterine growth retardation.
767.0–767.1	Subdural and cerebral hemorrhage.
767.8	Other specified birth trauma, with hemorrhage.
770.3	Fetal and newborn pulmonary hemorrhage.
772.0–.9	Fetal and neonatal hemorrhage.
774.0–.7	Other perinatal jaundice.
776.0–776.9	Hemorrhagic disease of the newborn.
780.2	Syncope.
782.4	Jaundice, unspecified, not of newborn.
782.7	Spontaneous ecchymoses Petechiae.
784.7	Epistaxis.
784.8	Hemorrhage from throat.
785.4	Gangrene.
785.50	Shock.
786.05	Shortness of breath.
786.3	Hemoptysis.
786.59	Chest pain.
789.00–.09	Abdominal pain.
790.92	Abnormal coagulation profile.
800.00–800.99	Fracture of vault of skull.
801.00–801.99	Fracture of base of skull.
802.20–802.9	Fracture of face bones.
803.00–.99	Other fracture, skull.
804.00–.99	Multiple fractures, skull.
805.00–806.9	Fracture, vertebral column.
807.00–807.09	Fractures of rib(s), closed.
807.10–807.19	Fracture of rib(s), open.
808.8–.9	Fracture of pelvis.
809.0–.1	Fracture of trunk.
810.00–.13	Fracture of clavicle.
811.00–.19	Fracture of scapula.
812.00–.59	Fracture of humerus.
813.10–.18	Fracture of radius and ulna, upper end, open.

Code	Description
813.30–.38	Fracture of radius and ulna, shaft, open.
813.50–813.58	Fracture of radius and ulna, lower end, open.
813.90–.98	Fracture of radius and ulna, unspecified part, open
819.0–819.1	Multiple fractures.
820.00– 821.39	Femur.
823.00–.92	Tibia and fibula.
827.0–829.1	Other multiple lower limb.
852.00–853.19	Subarachnoid subdural, and extradural hemorrhage, following injury, Other and specified intracranial hemorrhage following injury.
860.0–860.5	Traumatic pneumothorax and hemothorax.
861.00–.32	Injury to heart and lung.
862.0–.862.9	Injury to other and unspecified intrathoracic organs.
863.0–.9	Injury to gastrointestinal tract.
864.00–.19	Injury to liver.
865.00–.19	Injury to spleen.
866.00–.13	Injury to kidney.
867.0–.9	Injury to pelvic organs.
868.00–.19	Injury to other intra-abdominal organs.
869.0–.1	Internal injury to unspecified or ill defined organs.
900.00–.9	Injury to blood vessels of head and neck.
901.0–.9	Injury to blood vessels of the thorax.
902.0–.9	Injury to blood vessels of the abdomen and pelvis.
903.00–.9	Injury to blood vessels of upper extremity.
904.0–.9	Injury to blood vessels of lower extremity and unspecified sites.
920–924.9	Contusion with intact skin surface.
925.1–929.9	Crushing injury.
958.2	Secondary and recurrent hemorrhage.
959.9	Injury, unspecified site.
964.2	Poisoning by anticoagulants.
964.5	Poisoning by anticoagulant antagonists.
964.7	Poisoning by natural blood and blood products.
980.0	Toxic effects of alcohol.
989.5	Snake venom.
995.2	Unspecified adverse effect of drug, medicinal and biological substance (due to correct medicinal substance properly administered).
996.7	Other complications of internal prosthetic device.
997.02	Iatrogenic cerbrovascular infarction or hemorrhage.
998.11	Hemorrhage or hematoma complicating a procedure.
999.2	Other vascular complications of medical care.
V12.3	Personal history of diseases of blood and blood forming organs.
V58.2	Admission for Transfusion of blood products.
V58.61	Long term (current use) of anticoagulants.
V72.81	Pre-operative cardiovascular examination.
V72.83	Other specified pre-operative examination.
V72.84	Pre-operative examination, unspecified.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–09–CM Codes That Do Not Support Medical Necessity:

Code: Description

Any ICD–9–09CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

CMD Clinical Laboratory Workgroup

1999 CPT Physicians' Current Procedural Terminology, American Medical Association

Blue Book of Diagnostic Tests; PL Liu; Saunders

Wintrobe's Clinical Hematology; 9th Ed, 1993, Lea and Febiger

Harrison's *Principles of Internal Medicine, 14th Ed., McGraw Hill, 1997.*

Disorders of Hemostasis, Ratnoff, Oscar D. and Forbes, Charles D., W.B. Saunders Company, 1996

Hemostasis and Thrombosis: Basic Principles and Clinical Practice. *Colman,* et al editors, J.B. Lippincott, 3rd Edition, 1994, pp 896–898 and 1045–1046.

"College of American Pathologists Conference XXXI on Laboratory Monitoring of Anticoagulant Therapy," Arch Pathol Lab Med, Vol 122, Sep 1998, P 782–798.

Lupus Anticoagulants/Antiphospholipid-protein Antibodies: The Great Imposters, Triplett DA, Lupus 1996:5:431

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9–CM code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test.

6. When patients are being converted from heparin therapy to warfarin therapy, use code V58.61 to document the medical necessity of the PTT.

7. When coding for Disseminated Intravascular Coagulation (DIC), use 286.6 or code for the signs and symptoms clinically indicating DIC.

8. If a specific condition is known and is the reason for a pre-operative test, submit the clinical text description or ICD–9–CM code describing the condition with the order/referral. If a specific condition or disease is not known, and the pre-operative test is for pre-operative clearance only, assign code V72.84.

9. Assign codes 289.8—other specified disease of blood and blood-forming organs only when a specific disease exists and is indexed to 289.8, (for example, myelofibrosis). Do not assign code 289.8 to report a patient on long term use of anticoagulant therapy (for example, to report a PTT value or re-check need for medication adjustment.) Assign code V58.61 to referrals for PTT checks or re-checks. (Reference AHA's Coding Clinic, March–April, pg 12—1987, 2nd quarter pg 8—1989)

Medicare National Coverage Decision for Prothrombin Time

Other Names/Abbreviations: PT

Description

Basic plasma coagulation function is readily assessed with a few simple laboratory tests: the partial thromboplastin time (PTT), prothrombin time (PT), thrombin time (TT), or a quantitative fibrinogen determination. The prothrombin time (PT) test is one in-vitro laboratory test used to assess coagulation. While the PTT assesses the intrinsic limb of the coagulation system, the PT assesses the extrinsic or tissue factor dependent pathway. Both tests also evaluate the common coagulation pathway involving all the reactions that occur after the activation of factor X. Extrinsic pathway factors are produced in the liver and their production is dependent on adequate vitamin K activity. Deficiencies of factors may be related to decreased production or increased consumption of coagulation factors. The PT/INR is most commonly used to measure the effect of warfarin and regulate its dosing. Warfarin blocks the effect of vitamin K on hepatic production of extrinsic pathway factors.

A prothrombin time is expressed in seconds and/or as an international normalized ratio (INR). The INR is the PT ratio that would result if the WHO reference thromboplastin had been used in performing the test.

Current medical information does not clarify the role of laboratory PT testing in patients who are self monitoring. Therefore, the indications for testing apply regardless of whether or not the patient is also PT self-testing.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
85610 ..	Prothrombin Time.

Indications

1. A PT may be used to assess patients taking warfarin. The prothrombin time is generally not useful in monitoring patients receiving heparin who are not taking warfarin.

2. A PT may be used to assess patients with signs or symptoms of abnormal bleeding or thrombosis. For example:

- swollen extremity with or without prior trauma
- unexplained bruising
- abnormal bleeding, hemorrhage or hematoma
- petechiae or other signs of thrombocytopenia that could be due to Disseminated Intravascular Coagulation

3. A PT may be useful in evaluating patients who have a history of a condition known to be associated with the risk of bleeding or thrombosis that is related to the extrinsic coagulation pathway. Such abnormalities may be genetic or acquired. For example:

- dysfibrinogenemia
- afibrinogenemia (complete)
- acute or chronic liver dysfunction or failure, including Wilson's disease and Hemochromatosis
- disseminated intravascular coagulation (DIC)
- congenital and acquired deficiencies of factors II, V, VII, X;
- vitamin K deficiency
- lupus erythematosus
- hypercoagulable state
- paraproteinemia
- lymphoma
- amyloidosis
- acute and chronic leukemias
- plasma cell dyscrasia
- HIV infection
- malignant neoplasms
- hemorrhagic fever
- salicylate poisoning
- obstructive jaundice
- intestinal fistula
- malabsorption syndrome
- colitis
- chronic diarrhea
- presence of peripheral venous or arterial thrombosis or pulmonary emboli or myocardial infarction
- patients with bleeding or clotting tendencies
- organ transplantation
- presence of circulating coagulation inhibitors

4. A PT may be used to assess the risk of hemorrhage or thrombosis in patients who are going to have a medical intervention known to be associated with increased risk of bleeding or thrombosis. For example:

- evaluation prior to invasive procedures or operations of patients with personal history of bleeding or a condition associated with coagulopathy.
- prior to the use of thrombolytic medication

Limitations

1. When an ESRD patient is tested for PT, testing more frequently than weekly (the frequency authorized by 3171.2, Fiscal Intermediary Manual, or 2231.3 Medicare Carrier Manual) requires documentation of medical necessity (e.g. other than "Chronic Renal Failure" (ICD–9–CM 585) or "Renal Failure, Unspecified" (ICD–9–CM 586)]

2. The need to repeat this test is determined by changes in the underlying medical condition and/or the dosing of warfarin. In a patient on stable warfarin therapy, it is ordinarily not necessary to repeat testing more than every two to three weeks. When testing is performed to evaluate a patient with signs or symptoms of abnormal bleeding or thrombosis and the initial test result is normal, it is ordinarily not necessary to repeat testing unless there is a change in the patient's medical status.

3. Since the INR is a calculation, it will not be paid in addition to the PT when expressed in seconds, and is considered part of the conventional prothrombin time, 85610.

4. Testing prior to any medical intervention associated with a risk of bleeding and thrombosis (other than thrombolytic therapy) will generally be considered medically necessary only where there are signs or symptoms of a bleeding or thrombotic abnormality or a personal history of bleeding, thrombosis or a condition associated with a coagulopathy. Hospital/clinic-specific policies, protocols, *etc.*, in and of themselves, cannot alone justify coverage.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
002.0–002.9	Typhoid and paratyphoid.
003.0–003.9	Other Salmonella infections.
038.9	Unspecified Septicemia.
042	Human Immunodeficiency virus (HIV) disease.
060.0–060.9	Yellow fever
065.0–065.9	Arthropod-borne hemorrhagic fever.
070.0–070.9	Viral hepatitis.
075	Infectious mononucleosis.
078.6	Hemorrhagic nephrosonephritis.
078.7	Arenaviral hemorrhagic fever.
84.8	Blackwater fever.
120.0	Schistosomiasis.
121.1	Clonorchiasos.
121.3	Fascioliasis.

Code	Description
124	Trichinosis.
134.2	Hirudiniasis.
135	Sarcoidosis.
152.0–152.9	Malignant neoplasm of small intestine, including duodenum.
155.0–155.2	Malignant neoplasm of liver and intrahepatic bile ducts.
156.0–156.9	Malignant neoplasm of gallbladder and extrahepatic bile ducts.
157.0–157.9	Malignant neoplasm of pancreas.
188.0–189.9	Malignant neoplasm of bladder, kidney, and other and unspecified urinary organs.
198.0	Secondary malignant neoplasm, kidney.
198.1	Secondary malignant neoplasm, other urinary organs.
200.00–200.88	Lymphosarcoma and reticulosarcoma.
202.0–202.98	Nodular and other Lymphomas.
223.0–223.9	Benign neoplasm of kidney and other urinary organs.
238.4	Polycythemia vera.
238.5	Histocytic and mast cells—neoplasm of uncertain behavior.
238.6	Plasma cells—neoplasm of uncertain behavior.
238.7	Other lymphatic and hematopoietic tissues.
239.4	Neoplasm of unspecified nature, bladder.
239.5	Neoplasm of unspecified nature, other genitourinary organs.
239.9	Neoplasm of unspecified nature, site unspecified.
246.3	Hemorrhage and infarction of thyroid.
250.40–250.43	Diabetic with renal manifestations.
263.0–263.9	Other and unspecified protein/calorie malnutrition.
269.0	Deficiency of Vitamin K.
269.2.	Unspecified vitamin deficiency.
273.0–273.9	Disorders of plasma protein metabolism.
275.0	Disorders of iron metabolism.
277.1	Disorders of porphyrin metabolism.
277.3	Amyloidosis.
280.0	Iron deficiency anemia, secondary to blood loss—chronic.
280.9	Iron deficiency anemia, unspecified.
281.0	Pernicious anemia.
281.1	Other Vitamin B12 Deficiency Anemia, NEC.
281.9	Unspecified Deficiency Anemia, NOS.
285.0	Sideroblastic anemia.
285.1	Acute posthemorrhagic anemia.
286.0– 286.9	Coagulation defects.
287.0–287.9	Purpura and other hemorrhagic conditions.
290.40–290.43	Arteriosclerotic dementia.
325	Phlebitis and thrombophlebitis of intracranial venous sinuses.
342.9	Hemiplegia NOS.
42.90	Hemiplegia NOS, Side NEC.
360.43	Hemophthalmios, except current injury.
362.18	Retinal vasculitis.
362.30–362.37	Retinal vascular occlusion.
362.43	Hemorrhagic detachment of retnal pigment epithelium.
362.81	Retinal hemorrhage.
363.61–363.72	Choroidal hemorrhage and rupture, detachment.
368.9	Unspecified Visual Disturbances.
372.72	Conjunctival hemorrhage.
374.81	Hemorrage in optic nerve sheaths.
376.32	Orbital hemorrhage.
377.42	Hemorrhage in optic nerve sheaths.
377.53	Disorders of optic chiasm associated with vascular disorders.
377.62	Disorders of visual pathways associated with vascular disorders.
377.72	Disorders of visual cortex associated with vascular disorders.
379.23	Vitreous hemorrhage.
380.31	Hematoma of auricle or pinna.
386.2	Vertigo of central origin.
386.50	Labyrinthine dysfunction, unspecified.
394.0–394.9	Diseases of the mitral valve.
395.0	Rheumatic aortic stenosis.
395.2	Rheumatic aortic stenosis with insufficiency.
396.0–396.9	Diseases of mitral and aortic valves.
397.0–397.9	Diseases of other endocardial structures.
398.0–398.99	Other rheumatic heart disease.
403.01, 403.11,. 403.91	Hypertensive Renal Disease with renal failure.
404.02, 404.12,. 404.92	Hypertensive Heart and Renal Disease with renal failure.
410.00–410.92	Acute myocardial infarction.
411.1	Intermediate coronary syndrome.
411.81	Coronary occlusion without myocardial infarction.
411.89	Other acute and subacute forms of ischemic heart disease.

Code	Description
413.0–413.9	Angina pectoris.
414.00–414.05	Coronary atherosclerosis.
414.8	Other specified forms of chronic ischemic heart disease.
414.9	Chronic ischemic heart disease, unspecified.
415.0–415.19	Acute pulmonary heart disease.
416.9	Chronic pulmonary heart disease, unspecified.
423.0	Hemopericardium.
424.0	Mitral valve disorders.
424.1	Aortic valve disorder.
424.90	Endocarditis, valve unspecified, unspecified cause.
425.0–425.9	Cardiomyopathy.
427.0–427.9	Cardiac dysrhythmias.
428.0–428.9	Heart failure.
429.0–429.4	Ill-defined descriptions and complications of heart disease.
429.79	Other certain sequelae of myocardial infarction, not elsewhere classified.
430	Subarachnoid hemorrhage.
431	Intracerebral hemorrhage.
432.0–432.9	Other and unspecified intracranial hemorrhage.
433.00–433.91	Occlusion and stenosis of precerebral arteries.
434.00–434.91	Occlusion of cerebral arteries.
435.0–435.9	Transient cerebral ischemia.
436	Acute, but ill-defined cerebrovascular disease.
437.0	Cerebral atherosclerosis.
437.1	Other generalized ischemic cerebrovascular disease.
437.6	Nonpyogenic thrombosis of intracranial venous sinus.
440.0–440.9	Atherosclerosis.
441.0–441.9	Aortic aneurysm and dissection.
443.0–443.9	Other peripheral vascular disease.
444.0–444.9	Arterial embolism and thrombosis.
447.1	Stricture of artery.
447.2	Rupture of artery.
447.6	Arteritis, unspecified.
448.0	Hereditary hemorrhagic telangiectasia.
448.9	Other and unspecified capillary diseases.
451.0–451.9	Phlebitis and thrombophlebitis.
452	Portal vein thrombosis.
453.0–453.9	Other venous embolism and thrombosis.
455.2	Internal hemorrhoids with other complication.
455.5	External hemorrhoids with other complication.
455.8	Unspecified hemorrhoids with other complication.
456.0–456.1	Esophageal varices.
456.8	Varices of other sites.
459.0	Hemorrhage, unspecified.
459.1	Postphlebitis syndrome.
459.2	Compression of vein.
459.81	Venous (peripheral) insufficiency, unspecified.
459.89	Other, other specified disorders of circulatory system.
511.8	Other specified forms of effusion, except tuberculosis.
514	Pulmonary congestion and hypostasis.
530.7	Gastroesophageal laceration—hemorrhage syndrome.
530.82	Esophageal hemorrhage.
531.00–535.61	Gastric ulcer, duodenal ulcer, peptic ulcer, gastrojejunal ulcer, gastritis and duodenitis.
555.0–555.9	Regional enteritis.
556.0–556.9	Ulcerative colitis.
557.0–557.9	Vascular insufficiency of intestine.
562.02—562.03	Diverticulosis of small intestine with hemorrhage.
562.10	Diverticulosis of colon w/o hemorrhage.
562.11	Diverticulitis of colon w/o hemorrhage.
562.12	Diverticulosis of colon with hemorrhage.
562.13	Diverticulitis of colon without hemorrhage.
568.81	Hemoperitoneum (nontraumatic).
569.3	Hemorrhage of rectum and anus.
571.0–571.9	Chronic liver disease and cirrhosis.
572.2	Hepatic coma.
572.4	Hepatorenal syndrome.
572.8	Other sequelae of chronic liver disease.
573.1–573.9	Hepatitis in viral diseases, other and unspecified disorder of liver.
576.0–576.9	Other disorders of Biliary tract.
577.0	Acute pancreatitis.
578.0–578.9	Gastrointestinal hemorrhage.
579.0–579.9	Intestinal Malabsorption.
581.0—581.9	Nephrotic Syndrome.
583.9	Nephritis, with unspecified pathological lesion in kidney.
584.5–584.9	Acute Renal Failure.

Code		Description
585		Chronic Renal Failure.
586		Renal failure, unspecified.
593.81–593.89		Other specified disorders of kidney and ureter.
596.7		Hemorrhage into bladder wall.
596.8		Other specified disorders of bladder.
599.7		Hematuria.
607.82		Vascular disorders of penis.
608.83		Vascular disorders of male genital organs.
611.8		Other specified disorders of breast—hematoma.
620.7		Hemorrhage of broad ligament.
621.4		Hematometra.
622.8		Other specified noninflammatory disorders of cervix.
623.6		Vaginal hematoma.
623.8		Other specified noninflammatory disorders of the vagina.
624.5		Hematoma of vulva.
626.2–626.9		Abnormal bleeding from female genital tract.
627.0		Premenopausal menorrhagia.
627.1		Postmenopausal bleeding.
629.0		Hematocele female, not classified elsewhere.
632		Missed abortion.
634.10–634.12		Spontaneous abortion, complicated by excessive hemorrhage.
635.10–635.12		Legally induced abortion, complicated by delayed or excessive hemorrhage.
636.10–636.12		Illegally induced abortion, complicated by delayed or excessive hemorrhage.
637.10–637.12		Abortion unspecified, complicated by delayed or excessive hemorrhage.
638.1		Failed attempted abortion, complicated by delayed or excessive hemorrhage.
639.1		Delayed or excessive hemorrhage following abortion and ectopic and molar pregnancies.
639.6		Complications following abortion and ectopic and molar pregnancies with embolism.
640.00–640.93		Hemorrhage in early pregnancy.
641.00–641.93		Antepartum hemorrhage, abruptio placentae, and placenta previa.
642.00–642.94		Hypertension complicating pregnancy, childbirth, and the puerperium.
646.70–646.73		Liver disorders in pregnancy.
656.00–656.03		Fetal maternal hemorrhage.
658.40–658.43		Infection of amniotic cavity.
666.00–666.34		Postpartum hemorrhage.
671.20–671.94		Venous complications in pregnancy and the puerperium.
673.00–673.84		Obstetrical pulmonary embolism.
674.30–674.34		Other complications of obstetrical surgical wounds.
713.2		Arthropathy associated with hematological disorders.
713.6		Arthropathy associated with hypersensitivity reaction.
719.15		Hemarthrosis (5th digits 5, 6, and 9 allowed only).
719.16		Lower leg.
719.19		Multiple sites.
729.5		Pain in limb.
733.1		Patholgic fracture, unspecified site.
746.00–746.9		Other Congenital anomalies of heart.
762.1		Other forms of placental separation and hemorrhage.
767.0–767.1		Subdural and cerebral hemorrhage.
767.8		Other specified birth trauma.
770.3		Pulmonary hemorrhage.
772.0–772.9		Fetal and neonatal hemorrhage.
774.6		Unspecified fetal and neonatal jaundice.
776.0–776.9		Hemorrhagic disease of the newborn.
780.2		Syncope an collapse.
782.3		Edema.
782.4		Jaundice, unspecified, not of newborn.
782.7		Spontaneous ecchymosis.
784.7		Epistaxis.
784.8		Hemorrhage from throat.
785.4		Gangrene.
785.50		Shock without mention of trauma.
786.05		Shortness of breath.
786.3		Hemoptysis.
786.59		Chest pain, other.
789.00–789.09		Abdominal pain.
789.1		Hepatomegaly.
789.5		Ascites.
790.92		Abnormal coagulation profile.
790.94		Euthyroid sick syndrome.
791.2		Hemoglobinuria.
794.8		Abnormal Liver Function Study.
800.00–800.99		Fracture of vault of skull.
801.00–801.99		Fracture of base of skull.
802.20–802.9		Fracture of face bones.
803.00–803.99		Other and unqualified skull fractures.

Code	Description
804.00–804.99	Multiple fractures involving skull or face with other bones.
805.00–806.9	Fracture, vertebral column.
807.00–807.09	Fractures of rib(s), closed.
807.10–807.19	Fracture of rib(s), open.
808.8–808.9	Fracture of Pelvis.
809.0–809.1	Ill-defined fractures of bones of Trunk.
810.00–810.13	Fracture of Clavicle.
811.00–811.19	Fracture of Scapula.
812.00–812.59	Fracture of Humerus.
813.10–18	Fracture of radius and ulna, upper end, open.
813.30–38	Shaft, open.
813.50–813.58	Lower end, open.
813.90–98	Fracture unspecified part, open.
819.0–819.1	Multiple fractures involving both upper limbs, closed and open.
820.00–821.39	Fracture of neck of femur.
823.00–823.92	Fracture of tibia and fibula.
827.0–829.1	Other multiple lower limb.
852.00–852.59	Subarachnoid, subdural, and extradural hemorrhage, following injury.
853.00–853.19	Other and specified intracranial hemorrhage following injury.
852.00–853.19	Subarachnoid subdural, and extradural hemorrhage, following injury, Other and specified intracranial hemorrhage following injury.
860.0–860.5	Traumatic pneumothorax and hemothorax.
861.00–.32	Injury to heart and lung.
862.0–.862.9	Injury to other and unspecified intrathoracic organs.
863.0–.9	Injury to gastrointestinal tract.
864.00–.19	Injury to liver.
865.00–.19	Injury to spleen.
866.00–.13	Injury to kidney.
867.0–.9	Injury to pelvic organs.
868.00–.19	Injury to other intra-abdominal organs.
869.0–.1	Internal injury to unspecified or ill defined organs.
900.00–.9	Injury to blood vessels of head and neck.
901.0–.9	Injury to blood vessels of the thorax.
902.0–.9	Injury to blood vessels of the abdomen and pelvis.
903.00–.9	Injury to blood vessels of upper extremity.
904.0–.9	Injury to blood vessels of lower extremity and unspecified sites.
920—924.9	Contusion with intact skin surface.
925.1—929.9	Crushing injury.
958.2	Secondary and recurrent hemorrhage.
959.9	Injury, unspecified site.
964.0–964.9	Poisoning by agents primarily affecting blood constituents.
980.0–980.9	Toxic effect of alcohol.
981	Toxic effect of petroleum products.
982.0–982.8	Toxic effects of solvents other than petroleum-based.
987.0–987.9	Toxic effect of other gases, fumes or vapors.
989.0–989.9	Toxic effect of other substances chiefly non-medicinal as to source.
995.2	Unspecified adverse effect of drug, medicinal and biological substance (due to correct medicinal substance properly administered).
996.82	Complication of transplanted liver.
997.4	Digestive system complications.
998.11–998.12	Hemorrhage or hematoma complicating a procedure.
997.02	Iatrogenic cerbrovascular infarction or hemorrhage.
999.2	Other vascular complications.
999.8	Other transfusion reactions.
V08	Asymptomatic HIV infection.
V12.1	History of nutritional deficiency.
V12.3	Personal history of diseases of blood and blood-forming organs.
V15.1	Personal history of surgery to heart and great vessels.
V15.2	Personal history of surgery of other major organs.
V42.0	Kidney replaced by transplant.
V42.1	Heart replaced by transplant.
V42.2	Heart valve replaced by transplant.
V42.6	Lung replaced by transplant.
V42.7	Liver replaced by transplant.
V42.8	Other specified organ or tissue replaced by transplant.
V43.2	Heart replaced by other means.
V43.3	Heart valve replaced by other means.
V43.4	Blood vessel replaced by other means.
V43.60	Unspecified joint replaced by other means.
V58.2	Transfusion of blood products.
V58.61	Long-term (current) use of anticoagulants.
V72.84	Pre-operative examination, unspecified.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9-CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0—798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

CMD Clinical Laboratory Workgroup.

1999 CPT Physicians' Current Procedural Terminology, American Medical Association

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Hemostasis and Thrombosis: Basic Principles and Clinical Practice. Colman, et al editors, J.B. Lippincott, 3rd Edition, 1994, pp 896–898 and 1045–1046.

Disorders of Hemostasis, Ratnoff, Oscar D. and Forbes, Charles D., W.B. Saunders Company, 1996.

Merck Manual of Diagnosis and Therapy, 16th Edition (should be replaced with 17th Edition when available in 1999.)

"Performance of the Coumatrak System at a Large Anticoagulation Clinic". Coagulation and Transfusion Medicine. January 1995. pp 98–102.

"Monitoring Oral Anticoagulation Therapy with Point-of-Care Devices. Correlation and

Caveats". Clinical Chemistry: No. 9, 1997, pp 1785–1786.

"College of American Pathologists Conference XXXI on Laboratory Monitoring of Anticoagulant Therapy". Arch. Pathol. Lab. Med. Vol. 122. September 1998. pp 768–780.

"A Structured Teaching and Self-management Program for Patients Receiving Oral Anti-coagulation". JAMA; 1999; 281: 145–150.

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9–CM code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test.

6. If a specific condition is known and is the reason for a pre-operative test, submit the text description or ICD–9–CM code describing the condition with the order/referral. If a specific condition or disease is not known, and the pre-operative test is for pre-operative clearance only, assign code V72.84.

7. Assign codes 289.8—other specified disease of blood and blood-forming organs only when a specific disease exists and is indexed to 289.8 (for example, myelofibrosis). Do not assign code 289.8 to report a patient on long term use of anticoagulant therapy (e.g. to report a PT value or re-check need for medication adjustment.) Assign code V58.61 to referrals for PT checks or re-checks. (Reference AHA's Coding Clinic, March–April, pg 12—1987, 2nd quarter pg 8—1989)

Medicare National Coverage Decision for Serum Iron Studies

Other Names/Abbreviations

Description

Serum iron studies are useful in the evaluation of disorders of iron metabolism, particularly iron deficiency and iron excess. Iron studies are best performed when the patient is fasting in the morning and has abstained from medications that may influence iron balance.

Iron deficiency is the most common cause of anemia. In young children on a milk diet, iron deficiency is often secondary to dietary deficiency. In adults, iron deficiency is usually the result of blood loss and is only occasionally secondary to dietary deficiency or malabsorption. Following major surgery the patient may have iron deficient erythropoiesis for months or years if adequate iron replacement has not been given. High doses of supplemental iron may cause the serum iron to be elevated. Serum iron may also be altered in acute and chronic inflammatory and neoplastic conditions.

Total iron binding capacity (TIBC) is an indirect measure of transferrin, a protein that binds and transports iron. TIBC quantifies transferrin by the amount of iron that it can bind. TIBC and transferrin are elevated in iron deficiency, and with oral contraceptive use, and during pregnancy. TIBC and transferrin may be decreased in malabsorption syndromes or in those affected with chronic diseases. The percent saturation represents the ratio of iron to the TIBC.

Assays for ferritin are also useful in assessing iron balance. Low concentrations are associated with iron deficiency and are highly specific. High concentrations are found in hemosiderosis (iron overload without associated tissue injury) and hemochromatosis (iron overload with associated tissue injury). In these conditions the iron is elevated, the TIBC and transferrin are within the reference range or low, and the percent saturation is elevated. Serum ferritin can be useful for both initiating and monitoring treatment for iron overload.

Transferrin and ferritin belong to a group of serum proteins known as acute phase reactants, and are increased in response to stressful or inflammatory conditions and also can occur with infection and tissue injury due to surgery, trauma or necrosis. Ferritin and iron/TIBC (or transferrin) are affected by acute and chronic inflammatory conditions, and in patients with these disorders, tests of iron status may be difficult to interpret.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82728	Ferritin.
83540	Iron.
83550	Iron Binding capacity.
84466	Transferrin.

Indications

1. Ferritin (82728), iron (83540) and either iron binding capacity (83550) or transferrin (84466) are useful in the differential diagnosis of iron deficiency, anemia, and for iron overload conditions.

A. The following presentations are examples that may support the use of these studies for evaluating iron deficiency:

- Certain abnormal blood count values (i.e., decreased mean corpuscular volume (MCV), decreased hemoglobin/hematocrit when the MCV is low or normal, or increased red cell distribution width (RDW) and low or normal MCV).
- Abnormal appetite (pica)
- Acute or chronic gastrointestinal blood loss
- Hematuria
- Menorrhagia
- Malabsorption
- Status post-gastrectomy
- Status post-gastrojejunostomy
- Malnutrition
- Preoperative autologous blood collection(s)
- Malignant, chronic inflammatory and infectious conditions associated with anemia which may present in a similar manner to iron deficiency anemia
- Following a significant surgical procedure where blood loss had occurred and had not been repaired with adequate iron replacement.

B. The following presentations are examples that may support the use of these studies for evaluating iron overload:

- Chronic Hepatitis
- Diabetes
- Hyperpigmentation of skin
- Arthropathy
- Cirrhosis
- Hypogonadism
- Hypopituitarism
- Impaired porphyrin metabolism

- Heart failure
- Multiple transfusions
- Sideroblastic anemia
- Thalassemia major
- Cardiomyopathy, cardiac dysrhythmias and conduction disturbances

2. Follow-up testing may be appropriate to monitor response to therapy, *e.g.*, oral or parenteral iron, ascorbic acid, and erythropoietin.

3. Iron studies may be appropriate in patients after treatment for other nutritional deficiency anemias, such as folate and vitamin B12, because iron deficiency may not be revealed until such a nutritional deficiency is treated.

4. Serum ferritin may be appropriate for monitoring iron status in patients with chronic renal disease with or without dialysis.

5. Serum iron may also be indicated for evaluation of toxic effects of iron and other metals (*e.g.*, nickel, cadmium, aluminum, lead) whether due to accidental, intentional exposure or metabolic causes.

Limitations

1. Iron studies should be used to diagnose and manage iron deficiency or iron overload states. These tests are not to be used solely to assess acute phase reactants where disease management will be unchanged. For example, infections and malignancies are associated with elevations in acute phase reactants such as ferritin, and decreases in serum iron concentration, but iron studies would only be medically necessary if results of iron studies might alter the management of the primary diagnosis or might warrant direct treatment of an iron disorder or condition.

2. If a normal serum ferritin level is documented, repeat testing would not ordinarily be medically necessary unless there is a change in the patient's condition, and ferritin assessment is needed for the ongoing management of the patient. For example, a patient presents with new onset insulin-dependent diabetes mellitus and has a serum ferritin level performed for the suspicion of hemochromatosis. If the ferritin level is normal, the repeat ferritin for diabetes mellitus would not be medically necessary.

3. When an End Stage Renal Disease (ESRD) patient is tested for ferritin, testing more frequently than every three months (the frequency authorized by 3167.3, Fiscal Intermediary manual) requires documentation of medical necessity [*e.g.*, other than "Chronic Renal Failure" (ICD–9–CM 585) or "Renal Failure, Unspecified" (ICD–9–CM 586)].

4. It is ordinarily not necessary to measure both transferrin and TIBC at the same time because TIBC is an indirect measure of transferrin. When transferrin is ordered as part of the nutritional assessment for evaluating malnutrition, it is not necessary to order other iron studies unless iron deficiency or iron overload is suspected as well.

5. It is not ordinarily necessary to measure both iron/TIBC (or transferrin) and ferritin in initial patient testing. If clinically indicated after evaluation of the initial iron studies, it may be appropriate to perform additional iron studies either on the initial specimen or on a subsequently obtained specimen. After a diagnosis of iron deficiency or iron overload is established, either iron/TIBC (or transferrin) or ferritin may be medically necessary for monitoring, but not both.

6. It would not ordinarily be considered medically necessary to do a ferritin as a preoperative test except in the presence of anemia or recent autologous blood collections prior to the surgery.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
002.0–002.9	Typhoid and paratyphoid fevers.
003.0–003.9	Other salmonella infections.
006.0–006.9	Amebiasis.
007.0–007.9	Other protozoal intestinal diseases.
008.00–008.8	Intestinal infections due to other organisms.
009.0–009.3	Ill-defined intestinal infections.
011.50–011.56	Tuberculous bronchiectasis.
014.00–014.86	Tuberculosis of intestines, peritoneum, and mesenteric glands.
015.00–015.96	Tuberculosis of bones and joints.
016.00–016.06	Tuberculosis of kidney.
016.10–016.16	Tuberculosis of bladder.
016.20–016.26	Tuberculosis of ureter.
016.30–016.36	Tuberculosis of other urinary organs.
042	Human Immunodeficiency virus (HIV) disease.
070.0–070.9	Viral hepatitis.
140.0–149.9	Malignant neoplasm of lip oral cavity and pharynx.
150.0–159.9	Malignant neoplasm of digestive organs and peritoneum.
160.0–165.9	Malignant neoplasm of respiratory and intrathoracic organs.
170.0–176.9	Malignant neoplasm of bone, connective tissue, skin and breast.
179–189.9	Malignant neoplasm of genitourinary organs.
190.0–199.1	Malignant neoplasm of other and unspecified sites.
200.0–208.91	Malignant neoplasm of lymphatic and hematopoietic tissue.
210.0–229.9	Benign neoplasms.
230.0–234.9	Carcinoma in situ.
235.0–238.9	Neoplasms of uncertain behavior.
239.0–239.9	Neoplasms of unspecified nature.
250.00–250.93	Diabetes mellitus.
253.2	Panhypopituitarism.
253.7	Iatrogenic pituitary disorders.
253.8	Other disorders of the pituitary and other syndromes of diencephalohypophyseal origin.
256.3	Other ovarian failure.
257.2	Other testicular hypofunction.
260	Kwashiorkor.
261	Nutritional marasmus.
262	Other severe protein-calorie malnutrition.
263.0–263.9	Other and unspecified protein-calorie malnutrition.
275.0	Disorders of iron metabolism.
277.1	Disorders of porphyrin metabolism.
280.0–280.9	Iron deficiency anemias.
281.0–281.9	Other deficiency anemias.
282.4	Thalassemias.
285.0	Sideroblastic anemia (includes hemochromatosis with refractory anemia).
285.1	Acute post-hemorrhagic anemia.

Code	Description
285.9	Anemia, unspecified.
286.0–286.9	Coagulation defects (congenital factor disorders).
287.0–287.9	Purpura and other hemorrhagic conditions.
306.4	Physiological malfunction arising from mental factors, gastrointestinal.
307.1	Anexoria nervosa.
307.50–307.59	Other and unspecified disorders of eating.
425.4	Other primary cardiomyopathies.
425.5	Alcoholic cardiomyopathy.
425.7	Nutritional and metabolic cardiomyopathy.
425.8	Cardiomyopathy in other diseases classified elsewhere.
425.9	Secondary cardiomyopathy, unspecified.
426.0–426.9	Conduction disorders.
427.0–427.9	Cardiac dysrhythmias.
428.0–428.9	Heart Failure.
530.7	Gastroesophageal laceration-hemorrhage syndrome.
530.82	Esophageal hemorrhage.
531.00–531.91	Gastric ulcer.
532.00–532.91	Duodenal ulcer.
533.00–533.91	Peptic ulcer, site unspecified.
534.00–534.91	Gastrojejunal ulcer.
535.00–535.61	Gastritis and duodenitis.
536.0–536.9	Disorders of function of stomach.
537.83	Angiodysplasia of stomach and duodenum with hemorrhage.
555.0–555.9	Regional enteritis.
556.0–556.9	Ulcerative colitis.
557.0	Acute vascular insufficiency of intestine.
557.1	Chronic vascular insufficiency of intestine.
562.02	Diverticulosis of small intestine with hemorrhage.
562.03	Diverticulitis of small intestine with hemorrhage.
562.12	Diverticulosis of colon with hemorrhage.
562.13	Diverticulitis of colon with hemorrhage.
569.3	Hemorrhage of rectum and anus.
569.85	Angiodysplasia of intestine with hemorrhage.
570	Acute and subacute necrosis of liver.
571.0–571.9	Chronic liver disease and cirrhosis.
572.0–572.8	Liver abscess and sequelae of chronic liver disease.
573.0–573.9	Other disorders of liver.
578.0–578.9	Gastrointestinal hemorrhage.
579.0–579.3	Intestinal malabsorption.
581.0–581.9	Nephrotic syndrome.
585	Chronic renal failure.
586	Renal failure, unspecified.
608.3	Atrophy of testis.
626.0–626.9	Disorders of menstruation and other abnormal bleeding from female genital tract.
627.0	Premenopausal menorrhagia.
627.1	Postmenopausal bleeding.
648.20–648.24	Other current conditions in the mother classifiable elsewhere, but complicating pregnancy, childbirth, or the puerperium: Anemia.
698.0–698.9	Pruritis and related conditions.
704.00–704.09	Alopecia.
709.00–709.09	Dyschromia.
719.40–719.49	Pain in joint.
773.2	Hemolytic disease due to other and unspecified isoimmunization.
773.3	Hydrops fetalis due to isoimmunization.
773.4	Kernicterus due to isoimmunization.
773.5	Late anemia due to isoimmunization.
783.9	Other symptoms concerning nutrition, metabolism and development.
790.0	Abnormality of red blood cells.
790.4	Nonspecific elevation of levels of transaminase or lactic acid dehydrogenase [LDH].
790.5	Other nonspecific abnormal serum enzymelevels.
790.6	Other abnormal blood chemistry.
799.4	Cachexia.
964.0	Poisoning by agents primarily affecting blood constituents, iron compounds.
984.0–984.9	Toxic effect of lead and its compounds (including fumes).
996.85	Complications of transplanted organ, bone marrow.
999.8	Other transfusion reaction.
V08	Asymptomatic HIV infection.
V12.1	Personal history of nutritional deficiency.
V12.3	Personal history of diseases of blood and blood forming organs.
V15.1	Personal history of surgery to heart and great vessels.
V15.2	Personal history of surgery to other major organs.
V43.2	Heart replaced by other means.
V43.3	Heart valve replaced by other means.
V43.4	Blood vessel replaced by other means.

Code	Description
V43.60	Unspecified joint replaced by other means.
V72.84	Pre-operative examination, unspecified.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied:

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs
V16.6	Family history of malignant neoplasm, leukemia
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment
V62.1	Adverse effects of work environment
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special screening for disorders of blood and blood-forming organs.
V79.0–V79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above

Sources of Information

CDC. Recommendations to prevent and control iron deficiency in the United States. MMWR 1998; 47(RR–3):1–29.

Powell LW, George DK, McDonnell SM, Kowdley KV. Diagnosis of hemochromatosis. Ann.Intern.Med. 1998; 129:925–931.

Spiekerman AM. Proteins used in nutritional assessment. Clin.Lab.Med. 1993; 13:353–369.

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Guyatt GH, Patterson C, Ali M, Singer J, Levine M, Turpie I, Meyer R. Diagnosis of Iron-Deficiency Anemia in the Elderly. AmJMed. 1990; 88:205–209.

Burns ER, Goldberg SN, Lawrence C, Wenz B. AJCP. 1990; 3:240–245.

Burns ER, *et al.* Brief Clinical Observations. AmJMed. 1991; 90:653–654.

Yang Q, *et al.* Hemochromatosis-associated Mortality in the United States from 1979 to 1992: An Analysis of Multiple-Cause Mortality Data. AnIntMed. 1998; 129:946–953.

Coding Guidelines:

1. Any claim for a test listed in AHCPCS CODES@ above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. ICD–9–CM code V82.9 (special screening of other conditions, unspecified condition), or comparable narratives should be used to indicate screening tests performed in the absence of a specific sign, symptom, or complaint. Use of V82.9 or comparable narrative will result in the denial of claims as non covered screening services. (Note: this language may be inappropriate for screening tests that are specifically covered by statute, such as pap smears.) All ICD–9–CM diagnosis codes must be coded to the highest level of specificity.

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not ■ screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, ■ communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit or fifth-digit classifications are provided, they must be assigned. From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a nonspecific ICD–9–CM code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Collagen Crosslinks, Any Method

Other Names/Abreviations

Description

Collagen crosslinks, part of the matrix of bone upon which bone mineral is deposited, are biochemical markers the excretion of which provide a quantitative measurement of bone resorption. Elevated levels of urinary collagen crosslinks indicate elevated bone resorption. Elevated bone resorption contributes to age-related and postmenopausal loss of bone leading to osteoporosis and increased risk of fracture. The collagen crosslinks assay can be performed by immunoassay or by high performance liquid chromatography (HPLC). Collagen crosslink immunoassays measure the pyridinoline crosslinks and associated telopeptides in urine.

Bone is constantly undergoing a metabolic process called turnover or remodeling. This includes a degradation process, bone resorption, mediated by the action of osteoclasts, and a building process, bone formation, mediated by the action of osteoblasts. Remodeling is required for the maintenance and overall health of bone and is tightly coupled; that is, resorption and formation must be in balance. In abnormal states of bone remodeling, when resorption exceeds formation, it results in a net loss of bone. The measurement of specific, bone-derived resorption products provides analytical data about the rate of bone resorption.

Osteoporosis is a condition characterized by low bone mass and structural deterioration of bone tissue, leading to bone fragility and an increased susceptibility to fractures of the hip, spine, and wrist. The term primary osteoporosis is applied where the causal factor in the disease is menopause or aging. The term secondary osteoporosis is applied where the causal factor is something other than menopause or aging, such as long-term administration of glucocorticosteroids, endocrine-related disorders (other than loss of estrogen due to menopause), and certain bone diseases such as cancer of the bone.

With respect to quantifying bone resorption, collagen crosslink tests can provide adjunct diagnostic information in concert with bone mass measurements. Bone mass measurements and biochemical markers may have complementary roles to play in assessing effectiveness of osteoporosis treatment. Proper management of osteoporosis patients, who are on long-term therapeutic regimens, may include laboratory testing of biochemical markers of bone turnover, such as collagen crosslinks, that provide a profile of bone turnover responses within weeks of therapy. Changes in collagen crosslinks are determined following commencement of antiresorptive therapy. These can be measured over a shorter time interval, such as three months, when compared to bone mass density. If bone resorption is not elevated, repeat testing is not medically necessary.

HCPCS Codes (Alpha numeric, CPT ® AMA):

Code	Descriptor
82523	Collagen cross links, any method.

Indications

Generally speaking, collagen crosslink testing is useful mostly in "fast losers" of bone. The age when these bone markers can help direct therapy is often pre-Medicare. By the time a fast loser of bone reaches age 65, she will most likely have been stabilized by appropriate therapy or have lost so much bone mass that further testing is useless. Coverage for bone marker assays may be established, however, for younger Medicare beneficiaries and for those who might become fast losers because of some other therapy such as glucocorticoids. Safeguards should be incorporated to prevent excessive use of tests in patients for whom they have no clinical relevance.

Collagen crosslinks testing is used to:

- identify individuals with elevated bone resorption, who have osteoporosis in whom response to treatment is being monitored;
- predict response (as assessed by bone mass measurements) to FDA approved antiresorptive therapy in postmenopausal women;
- assess response to treatment of patients with osteoporosis, Paget's disease of the bone, or risk for osteoporosis where

treatment may include FDA approved antiresorptive agents, anti-estrogens or selective estrogen receptor moderators.

Limitations

Because of significant specimen to specimen collagen crosslink physiologic variability (15–20%), current recommendations for appropriate utilization include: one or two base-line assays from specified urine collections on separate days; followed by a repeat assay about three months after starting anti-resorptive therapy; followed by a repeat assay in 12 months after the three-month assay; and thereafter not more than annually, unless there is a change in therapy in which circumstance an additional test may be indicated three months after the initiation of new therapy.

Some collagen crosslink assays may not be appropriate for use in some disorders, according to FDA labeling restrictions.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
203.00–.01	Multiple myeloma.
242.00–242.91	Thyrotoxicosis.
245.2	Chronic lymphocytic thyroiditis (only if thyrotoxic).
246.9	Unspecified disorder of thyroid.
252.0	Hyperparathyroidism.
256.2	Postablative ovarian failure.
256.3	Other ovarian failure.
256.8	Other ovarian dysfunction.
256.9	Unspecified ovarian dysfunction.
268.9	Unspecified vitamin D deficiency.
269.3	Mineral deficiency, not elsewhere classified.
627.0	Premenopausal menorrhagia.
627.1	Postmenopausal bleeding.
627.2	Menopausal or female climacteric state.
627.4	States associated with artificial menopause.
627.8	Other specified menopausal and postmenopausal disorders.
627.9	Unspecified menopausal & postmenopausal disorder.
731.0	Osteitis deformans without mention of bone tumor (Paget's disease of bone).
733.00–733.09	Osteoporosis
733.10–733.19	Pathological fracture
733.90	Disorder of bone and cartilage, unspecified
805.8	Fracture of vertebral column without mention of spiral cord injury, unspecified, closed
V58.69	Long-term (current) use of other medications.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.

Code	Description
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections.

Sources of Information

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Chesnut CH, III, Bell NH, Clark G, et al. Hormone replacement therapy in postmenopausal women: urinary N-telopeptide of type I collagen monitors therapeutic effect and predicts response of bone mineral density. Am. J. Med. 1997; 102:29–37.

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Schneider DL, Barrett-Connor EL. Urinary N-Telopeptide levels discriminate normal, osteopenic, and osteoporotic bone mineral density. Arch. Intern. Med. 1997; 157:1241–5.

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

6. When the indication for the test is long-term administration of glucocorticosteroids, use ICD–9–CM code V58.69.

Medicare National Coverage Decision for Blood Glucose Testing

Description

This policy is intended to apply to blood samples used to determine glucose levels.

Blood glucose determination may be done using whole blood, serum or plasma. It may be sampled by capillary puncture, as in the fingerstick method, or by vein puncture or arterial sampling. The method for assay may be by color comparison of an indicator stick, by meter assay of whole blood or a filtrate of whole blood, using a device approved for home monitoring, or by using a laboratory assay system using serum or plasma. The convenience of the meter or stick color method allows a patient to have access to blood glucose values in less than a minute or so and has become a standard of care for control of blood glucose, even in the inpatient setting.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82947	Glucose; quantitative.
82948	Glucose; blood, reagent strip.
82962	Glucose, blood by glucose monitoring device(s) cleared by the FDA specifically for home use.

Indications

Blood glucose values are often necessary for the management of patients with diabetes mellitus, where hyperglycemia and hypoglycemia are often present. They are also critical in the determination of control of blood glucose levels in the patient with impaired fasting glucose (FPG 110–125 mg/dL), the patient with insulin resistance syndrome and/or carbohydrate intolerance (excessive rise in glucose following ingestion of glucose or glucose sources of food), in the patient with a hypoglycemia disorder such as nesidioblastosis or insulinoma, and in patients with a catabolic or malnutrition state. In addition to those conditions already listed, glucose testing may be medically necessary in patients with tuberculosis, unexplained chronic or recurrent infections, alcoholism, coronary artery disease (especially in women), or unexplained skin conditions (including pruritis, local skin infections, ulceration and gangrene without an established cause). Many medical conditions may be a consequence of a sustained elevated or depressed glucose level. These include comas, seizures or epilepsy, confusion, abnormal hunger, abnormal weight loss or gain, and loss of sensation. Evaluation of glucose may also be indicated in patients on medications known to affect carbohydrate metabolism.

Limitations

Frequent home blood glucose testing by diabetic patients should be encouraged. In stable, non-hospitalized patients who are unable or unwilling to do home monitoring, it may be reasonable and necessary to measure quantitative blood glucose up to four times annually.

Depending upon the age of the patient, type of diabetes, degree of control, complications of diabetes, and other co-morbid conditions, more frequent testing than four times annually may be reasonable and necessary.

In some patients presenting with nonspecific signs, symptoms, or diseases not normally associated with disturbances in glucose metabolism, a single blood glucose test may be medically necessary. Repeat testing may not be indicated unless abnormal results are found or unless there is a change in clinical condition. If repeat testing is performed, a specific diagnosis code (e.g., diabetes) should be reported to support medical necessity. However, repeat testing may be indicated where results are normal in patients with conditions where there is a confirmed continuing risk of glucose metabolism abnormality (e.g., monitoring glucocorticoid therapy).

ICD–9–CM Codes Covered by Medicare Program

Code	Description
011.00–011.96	Tuberculosis.
038.0–038.9	Septicemia.
112.1	Recurrent vaginal candidiasis.
112.3	Interdigital candidiasis.
118	Opportunistic mycoses.
157.4	Malignant neoplasm of Islets of Langerhans.
158.0	Malignant neoplasm of retroperitoneum.
211.7	Benign neoplasm of Islets of Langerhans.
242.00–242.91	Thyrotoxicosis.
250.00–250.93	Diabetes mellitus.
251.0–251.9	Disorders of pancreatic internal secretion.
253.0–253.9	Disorders of the pituitary gland.
255.0	Cushing syndrome.
263.0–263.9	Malnutrition.
271.0–271.9	Disorders of carbohydrate transport and metabolism.
272.0–272–4	Disorders of lipoid metabolism.
275.0	Hemochromotosis.
276.0–276.9	Disorders of fluid, electrolyte and acid-base balance.
278.3	Hypercarotinemia.
293.0	Acute delirium.
294.9	Unspecified organic brain syndrome.
298.9	Unspecified psychosis.
300.9	Unspecified neurotic disorder.
310.1	Organic personality syndrome.
337.9	Autonomic nervous system neuropathy.
345.10–345.11	Generalized convulsive epilepsy.
348.3	Encephalopathy, unspecified.
355.9	Neuropathy, not otherwise specified.
356.9	Unspecified hereditary and idiopathic peripheral neuropathy.
357.9	Unspecified inflammatory and toxic neuropathy.
362.10	Background retinopathy.
362.18	Retinal vasculitis.
362.29	Nondiabetic proliferative retinopathy.
362.50–362.57	Degeneration of macular posterior pole.
362.60–362.66	Peripherial retinal degeneration.
362–81–362.89	Other retinal disorders.
362.0	Unspecified retinal disorders.
365.–04	Borderline glaucoma.
365.32	Corticosteriod-induced glaucoma residual.
366.00–366.09	Presenile cataract.
366.10–366.19	Senile cataract.
367.1	Acute myopia.
368.8	Other specified visual disturbance.

Code	Description
373.00	Blepharitis.
377.24	Pseudopapilledema.
377.9	Autonomic nervous system neuropathy.
378.50–378.55	Paralytic strabiamus.
379.45	Argyll-Robertson pupils.
410.00–410.92	Acute myocardial infarctions.
414.00–414.19	Coronary atherosclerosis and aneurysm of heart.
425.9	Secondary cardiomyopathy, unspecified.
440.23	Arteriosclerosis of extremities with ulceration.
440.24	Arteriosclerosis of extremities with gangrene.
440.9	Arteriosclerosis, not otherwise specified.
458.0	Postural hypotension.
462	Acute pharyngitis.
466.0	Acute bronchitis.
480.0–486	Pneumonia.
490	Recurrent bronchitis, not specified as acute or chronic.
491.0–491.9	Chronic bronchitis.
527.7	Disturbance of salivory secretion (drymouth).
528.0	Stomatitis.
535.50–535.51	Gastritis.
536.8	Dyspepsia.
571.8	Other chronic nonalcoholic liver disease.
572.0–.8	Liver abscess and sequelae of chronic liver disease.
574.50–574.51	Choledocholitiasis.
575.0–575.12	Cholecystitis.
576.1	Cholangitis.
577.0	Acute pancreatitis.
577.1	Chronic pancreatitis.
577.8	Pancreatic multiple calculi.
590.00–590.9	Infections of the kidney.
595.9	Recurrent cystitis.
596.4	Bladder atony.
596.53	Bladder paresis.
599.0	Urinary tract infection, recurrent.
607.84	Impotence of organic origin.
608.89	Other disorders male genital organs.
616.10	Vulvovaginitis.
626.0	Amenorrhea.
626.4	Irregular menses.
628.9	Infertility—female.
648.00	Diabetes mellitus complicating pregnancy, Childbirth or the puerperium, unspecified as to episode of care or not applicable.
648.03	Diabetes mellitus complicating pregnancy, Childbirth or the puerperium, antipartum condition or complication.
648.04	Diabetes mellitus complicating pregnancy, Childbirth or the puerperium, postpartum condition or complication.
648.80	Abnormal glucose tolerance complicating pregnancy, childbirth or the puerperium, unspecified as to episode of care or not applicable.
648.83	Abnormal glucose tolerance complicating pregnancy, childbirth or the puerperium, antipartum condition or complication.
648.84	Abnormal glucose tolerance complicating pregnancy, childbirth or the puerperium, postpartum condition or complication.
656.60–656.63	Fetal problems affecting management of mother—large for-date of fetus.
657.00–657.03	Polyhydramnios.
680.0–680.9	Carbuncle and furuncle.
686.00–686.9	Infections of skin and subcutaneous tissue.
698.0	Pruritis ani.
698.1	Pruritis of genital organs.
704.1	Hirsutism.
705.0	Anhidrosis.
707.0–707.9	Chronic ulcer of skin.
709.3	Degenerative skin disorders.
729.1	Myalgia.
730.07–730.27	Osteomyelitis of tarsal bones.
780.01	Coma.
780.02	Transcient alteration of awareness.
780.09	Alteration of consciousness, other.
780.2	Syncope and collapse.
780.39	Seizures, not otherwise specified.
780.4	Dizziness and giddiness.
780.71–.79	Malaise and fatigue.
780.8	Hyperhidrosis.
782.0	Loss of vibratory sensation.
783.1	Abnormal weight gain.
783.2	Abnormal loss of weight.
783.5	Polydipsia.

Code	Description
785.0	Tachycardia.
785.4	Gangrene.
786.01	Hyperventilation.
786.09	Dyspnea.
786.50	Chest pain, unspecified.
787.6	Fecal incontinence.
787.91	Diarrhea.
788.41–788.43	Frequency of urination and polyuria.
789.1	Hepatomegaly.
790.2	Abnormal glucose tolerance test.
790.6	Other abnormal blood chemistry (hyperglycemia).
791.0	Proteinuria.
791.5	Glycosuria.
796.1	Abnormal reflex.
799.4	Cachexia.
V23.0–.9	Supervision of high risk pregnancy.
V67.2	Follow-up examination, following chemotherapy.
V67.51	Follow up examination with high-risk medication not elsewhere classified.
V58.69	Long term current use of other medication.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

• Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.

• Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.

• Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.

• A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9-CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9-CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.

Code	Description
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD– 9–CM sections above.

Sources of Information

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Bower, Bruce F. And Robert E. Moore, Endocrine Function and Carbohydrates.

Clinical Laboratory Medicine, Kenneth D. McClatchy, editor. Baltimore/Williams & Wilkins, 1994. Pp 321–323.

Report of the Expert Committee on the Diagnosis and Classification of Diabetes Mellitus, Diabetes Care, Volume 20, Number 7, July 1997, pages 1183 *et seq.*

Roberts, H.J., Difficult Diagnoses. W. B. Saunders Co., pp 69–70.

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45).

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

6. A diagnostic statement of impaired glucose tolerance must be evaluated in the context of the documentation in the medical record in order to assign the most accurate ICD–9–CM code. An abnormally elevated fasting blood glucose level in the absence of the diagnosis of diabetes is classified to Code 790.6—other abnormal blood chemistry. If the provider bases the diagnostic statement of "impaired glucose tolerance" on an abnormal glucose tolerance test, the condition is classified to 790.2—normal glucose tolerance test. Both conditions are considered indications for ordering glycated hemoglobin or glycated protein testing in the absence of the diagnosis of diabetes mellitus.

7. When a patient is under treatment for a condition for which the tests in this policy are applicable, the ICD–9–CM code that best describes the condition is most frequently listed as the reason for the test.

8. When laboratory testing is done solely to monitor response to medication, the most accurate ICD–9–CM code to describe the reason for the test would be V58.69—long term use of medication.

9. Periodic follow-up for encounters for laboratory testing for a patient with a prior history of a disease, who is no longer under treatment for the condition, would be coded with an appropriate code from the V67 category—follow-up examination.

10. According to ICD–9–CM coding conventions, codes that appear in italics in the Alphabetic and/or Tabular columns of ICD–9–CM are considered manifestation codes that require the underlying condition to be coded and sequenced ahead of the manifestation. For example, the diagnostic statement, "thyrotoxic exophthalmos (376.21)," which appears in italics in the tabular listing, requires that the thyroid disorder (242.0–242.9) is coded and sequenced ahead of thyrotoxic exophthalmos. Therefore, a diagnostic statement that is listed as a manifestation in ICD–9–CM must be expanded to include the underlying disease in order to accurately code the condition.

Documentation Requirements

The ordering physician must include evidence in the patient's clinical record that an evaluation of history and physical preceded the ordering of glucose testing and that manifestations of abnormal glucose levels were present to warrant the testing.

Medicare National Coverage Decision for Glycated Hemoglobin/glycated Protein

Description

The management of diabetes mellitus requires regular determinations of blood glucose levels. Glycated hemoglobin/protein levels are used to assess long-term glucose control in diabetes. Alternative names for these tests include glycated or glycosylated hemoglobin or Hgb, hemoglobin glycated or glycosylated protein, and fructosamine.

Glycated hemoglobin (equivalent to hemoglobin A1) refers to total glycosylated hemoglobin present in erythrocytes, usually determined by affinity or ion-exchange chromatographic methodology. Hemoglobin A1c refers to the major component of hemoglobin A1, usually determined by ion-exchange affinity chromatography, immunoassay or agar gel electrophoresis. Fructosamine or glycated protein refers to glycosylated protein present in a serum or plasma sample. Glycated protein refers to measurement of the component of the specific protein that is glycated usually by colorimetric method or affinity chromatography.

Glycated hemoglobin in whole blood assesses glycemic control over a period of 4–8 weeks and appears to be the more appropriate test for monitoring a patient who is capable of maintaining long-term, stable control. Measurement may be medically necessary every 3 months to determine whether a patient's metabolic control has been on average within the target range. More frequent assessments, every 1–2 months, may be appropriate in the patient whose diabetes regimen has been altered to improve control or in whom evidence is present that intercurrent events may have altered a previously satisfactory level of control (for example, post-major surgery or as a result of glucocorticoid therapy). Glycated protein in serum/plasma assesses glycemic control over a period of 1–2 weeks. It may be reasonable and necessary to monitor glycated protein monthly in pregnant diabetic women. Glycated hemoglobin/protein test results may

be low, indicating significant, persistent hypoglycemia, in nesidioblastosis or insulinoma, conditions which are accompanied by inappropriate hyperinsulinemia. A below normal test value is helpful in establishing the patient's hypoglycemic state in those conditions.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82985	Glycated protein.
83036	Hemoglobin; glycated.

Indications

Glycated hemoglobin/protein testing is widely accepted as medically necessary for the management and control of diabetes. It is also valuable to assess hyperglycemia, a history of hyperglycemia or dangerous hypoglycemia. Glycated protein testing may be used in place of glycated hemoglobin in the management of diabetic patients, and is particularly useful in patients who have abnormalities of erythrocytes such as hemolytic anemia or hemoglobinopathies.

Limitations

It is not considered reasonable and necessary to perform glycated hemoglobin tests more often than every three months on a controlled diabetic patient to determine whether the patient's metabolic control has been on average within the target range. It is not considered reasonable and necessary for these tests to be performed more frequently than once a month for diabetic pregnant women. Testing for uncontrolled type one or two diabetes mellitus may require testing more than four times a year. The above Description Section provides the clinical basis for those situations in which testing more frequently than four times per annum is indicated, and medical necessity documentation must support such testing in excess of the above guidelines.

Many methods for the analysis of glycated hemoglobin show significant interference from elevated levels of fetal hemoglobin or by variant hemoglobin molecules. When the glycated hemoglobin assay is initially performed in these patients, the laboratory may inform the ordering physician of a possible analytical interference. Alternative testing, including glycated protein, for example, fructosamine, may be indicated for the monitoring of the degree of glycemic control in this situation. It is therefore conceivable that a patient will have both a glycated hemoglobin and glycated protein ordered on the same day. This should be limited to the initial assay of glycated hemoglobin, with subsequent exclusive use of glycated protein.

These tests are not considered to be medically necessary for the diagnosis of diabetes.

ICD–9–CM Codes Covered by The Medicare Program

Code	Description
211.7	Benign neoplasm of islets of Langerhans.
250.00–250.93	Diabetes mellitus & various related codes.
251.0	Hypoglycemic coma.
251.1	Other specified hypoglycemia.
251.2	Hypoglycemia unspecified.
251.3	Post-surgical hypoinsulinemia.
251.4	Abnormality of secretion of glucagon.
251.8	Other specified disorders of pancreatic internal secretion.
251.9	Unspecified disorder of pancreatic internal secretion.
258.0–.9	Polyglandular dysfunction.
271.4	Renal glycosuria.
275.0	Hemochromatosis.
577.1	Chronic pancreatitis.
579.3	Other and unspecified postsurgical nonabsorption.
648.00	Diabetes mellitus complicating pregnancy, Childbirth or the puerperium, unspecified as to episode of care or not applicable.
648.03	Diabetes mellitus complicating pregnancy, Childbirth or the puerperium, antepartum condition or complication.
648.04	Diabetes mellitus complicating pregnancy, Childbirth or the puerperium, postpartum condition or complication.
648.80	Abnormal glucose tolerance complicating pregnancy, childbirth or the puerperium, unspecified as to episode of care or not applicable.
648.83	Abnormal glucose tolerance complicating pregnancy, childbirth or the puerperium, antepartum condition or complication.
648.84	Abnormal glucose tolerance complicating pregnancy, childbirth or the puerperium, postpartum condition or complication.
790.2	Abnormal glucose tolerance test.
790.6	Other abnormal blood chemistry (hyperglycemia.)
962.3	Poisoning by insulin and antidiabetic agents.
V12.2	Personal history of endocrine, metabolic, and immunity disorders.
V58.69	Long-term use of other medication.

Reasons For Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and

necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above

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Sacks, David B., Carbohydrates. In Tietz Textbook of Clinical Chemistry, 2nd Ed., Carl A. Burtis and Edward R. Ashwood, editors. Philadelphia, W.B. Saunders Co., 1994. pp. 980–988.

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Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43)

2. Screening is the testing for disease or disease precursors in seemingly well individuals so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no related sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the

reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52).

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45).

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

6. A diagnostic statement of impaired glucose tolerance must be evaluated in the context of the documentation in the medical record in order to assign the most accurate ICD–9–CM code. An abnormally elevated fasting blood glucose level in the absence of the diagnosis of diabetes is classified to Code 790.6—other abnormal blood chemistry. If the provider bases the diagnostic statement of "impaired glucose tolerance" on an abnormal glucose tolerance test, the condition is classified to 790.2—normal glucose tolerance test. Both conditions are considered indications for ordering glycated hemoglobin or glycated protein testing in the absence of the diagnosis of diabetes mellitus.

Medicare National Coverage Decision For Thyroid Testing

Other Names/Abbreviations

Description

Thyroid function studies are used to delineate the presence or absence of hormonal abnormalities of the thyroid and pituitary glands. These abnormalities may be either primary or secondary and often but not always accompany clinically defined signs and symptoms indicative of thyroid dysfunction.

Laboratory evaluation of thyroid function has become more scientifically defined. Tests can be done with increased specificity, thereby reducing the number of tests needed to diagnose and follow treatment of most thyroid disease. Measurements of serum sensitive thyroid-stimulating hormone (TSH) levels, complemented by determination of thyroid hormone levels [free thyroxine (fT–4) or total thyroxine (T4) with Triiodothyronine (T3) uptake] are used for diagnosis and follow-up of patients with thyroid disorders. Additional tests may be necessary to evaluate certain complex diagnostic problems or on hospitalized patients, where many circumstances can skew tests results. When a test for total thyroxine (total T4 or T4 radioimmunoassay) or T3 uptake is performed, calculation of the free thyroxine index (FTI) is useful to correct for abnormal results for either total T4 or T3 uptake due to protein binding effects.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
84436	Thyroxine; total.
84439	Thyroxine; free.
84443	Thyroid stimulating hormone (TSH).
84479	Thyroid hormone (T3 or T4) uptake or thyroid hormone binding ratio (THBR).

Indications

Thyroid function tests are used to define hyper function, euthyroidism, or hypofunction of thyroid disease. Thyroid testing may be reasonable and necessary to:

- distinguish between primary and secondary hypothyroidism;
- confirm or rule out primary hypothyroidism;
- monitor thyroid hormone levels (for example, patients with goiter, thyroid nodules, or thyroid cancer);
- monitor drug therapy in patients with primary hypothyroidism;
- confirm or rule out primary hyperthyroidism; and
- monitor therapy in patients with hyperthyroidism.

Thyroid function testing may be medically necessary in patients with disease or neoplasm of the thyroid and other endocrine glands. Thyroid function testing may also be medically necessary in patients with metabolic disorders; malnutrition; hyperlipidemia; certain types of anemia; psychosis and non-psychotic personality disorders; unexplained depression; ophthalmologic disorders; various cardiac arrhythmias; disorders of menstruation; skin conditions; myalgias; and a wide array of signs and symptoms, including alterations in consciousness; malaise; hypothermia; symptoms of the nervous and musculoskeletal system; skin and integumentary system; nutrition and metabolism; cardiovascular; and gastrointestinal system.

It may be medically necessary to do follow-up thyroid testing in patients with a personal history of malignant neoplasm of the endocrine system and in patients on long-term thyroid drug therapy.

Limitations

Testing may be covered up to two times a year in clinically stable patients; more frequent testing may be reasonable and necessary for patients whose thyroid therapy has been altered or in whom symptoms or signs of hyperthyroidism or hypothyroidism are noted.

ICD–9–CM Codes Covered by Medicare Program.

Code	Description
017.50–017.56	Tuberculosis of the thyroid gland.
183.0	Malignant neoplasm of ovary.
193	Malignant neoplasm of thyroid gland.
194.8	Malignant neoplasm of other endocrine glands and related structures, other.
198.89	Secondary malignant neoplasm of the thyroid.
220	Benign neoplasm of ovary.
226	Benign neoplasm of thyroid gland.
227.3	Benign neoplasm of pituitary gland and craniopharyngeal duct.
234.8	Carcinoma in situ of other and unspecified sites.
237.4	Neoplasm of uncertain behavior of other and unspecified endocrine glands.
239.7	Neoplasm of unspecified nature, thyroid gland.
240.0–240.9	Goiter specified and unspecified.
241.0–241.9	Nontoxic nodular goiter.
242.00–242.91	Thyrotoxicosis with or without goiter.
243	Congenital hypothyroidism.

Code	Description
244.0–244.9	Acquired hypothyroidism.
245.0–245.9	Thyroiditis.
246.0–246.9	Other disorders of thyroid.
250.00–250.93	Diabetes mellitus.
252.1	Hypoparathyroidism.
253.1	Other and unspecified anterior pituitary hyper function.
253.2	Panhypopituitarism.
253.3–253.4	Pituitary dwarfism.
253.4	Other anterior pituitary disorders.
253.7	Iatrogenic pituitary disorders.
255.2	Adrenogenital disorders.
255.4	Corticoadrenal insufficiency.
256.3	Ovarian failure.
257.2	Testicular hypofunction.
258.0–258.9	Polyglandular dysfunction.
262	Malnutrition, severe.
263.0–263.9	Malnutrition, other and unspecified.
266.0	Ariboflavinosis.
272.0	Pure hypercholesterolemia.
272.2	Mixed hyperlipidemia.
272.4	Other and unspecified hyperlipidemia.
275.40–275.49	Calcium disorders.
276.0	Hyposmolality andor hypernatremia.
276.1	Hyposmolality andor hyponatremia.
278.3	Hypercarotinemia.
279.4	Autoimmune disorder, not classified elsewhere.
281.0	Pernicious anemia.
281.9	Unspecified deficiency anemia.
283.0	Autoimmune hemolytic anemia.
285.9	Anemia, unspecified.
290.0	Senile dementia, uncomplicated.
290.10–290.13	Presenile dementia.
290.20–290.21	Senile dementia with delusional or depressive features.
293.0–293.1	Delirium.
293.81–293.89	Transient organic mental disorders.
294.8	Other specified organic brain syndromes.
296.00–296.99	Affective psychoses.
297.0	Paranoid state, simple.
297.9	Unspecified paranoid state.
298.3	Acute paranoid reaction.
300.00–300.09	Anxiety states.
307.9	Agitation—other and unspecified special symptoms or syndromes, not elsewhere classified.
310.1	Organic personality syndrome.
311	Depressive disorder, not elsewhere classified.
331.0–331.2	Alzheimer's, pick's disease, Senile degeneration of brain.
333.1	Essential and other specified forms of tremor.
354.0	Carpal Tunnel syndrome.
356.9	Idiopathic peripheral neuropathy, unspecified polyneuropathy.
359.9	Myopathy, unspecified.
368.2	Diplopia.
372.71	Conjunctival hyperemia.
372.73	Conjunctival edema.
374.41	Lid retraction or lag.
374.82	Eyelid edema.
376.30–376.31	Exophthalmic conditions, unspecified and constant.
376.33–376.34	Orbital edema or congestion, intermittent exophthalmos.
378.50–378.55	Paralytic strabismus.
401.0–401.9	Essential hypertension.
403.00–403.91	Hypertensive renal disease.
404.00–404.93	Hypertensive heart and renal disease.
423.9	Unspecified disease of pericardium.
427.0	Paroxysmal supraventricular tachycardia.
427.2	Paroxysmal tachycardia, unspecified.
427.31	Atrial fibrillation.
427.89	Other specified cardiac dysrhythmia.
427.9	Cardiac dysrhythmia, unspecified.
428.0	Congestive heart failure.
428.1	Left heart failure.
429.3	Cardiomegaly.
511.9	Unspecified pleural effusion.
518.81	Acute respiratory failure.
529.8	Other specified conditions of the tongue.
560.1	Paralytic ileus.
564.0	Constipation.

Code	Description
564.7	Megacolon, other than Hirschsprung's.
568.82	Peritoneal effusion (chronic).
625.3	Dysmenorrhea.
626.0–626.2	Disorders of menstruation.
626.4	Irregular menstrual cycle.
648.10–648.14	Other current conditions in the mother, classifiable elsewhere, but complicating pregnancy, childbirth, or the puerperium, thyroid dysfunction.
676.20–676.24	Engorgement of breast associated with childbirth and disorders of lactation.
698.9	Unspecified pruritic disorder.
701.1	Keratoderma, acquired (dry skin).
703.8	Other specified diseases of nail (Brittle nails).
704.00–704.09	Alopecia.
709.01	Vitiligo.
710.0–710.9	Diffuse disease of connective tissue.
728.2	Muscle wasting.
728.9	Unspecified disorder of muscle, ligament, and fascia.
729.1	Myalgia and myositis, unspecified.
729.82	Musculoskeletal cramp.
730.30–.39	Periostitis without osteomyelitis.
733.09	Osteoporosis, drug induced.
750.15	Macroglossia, congenital.
759.2	Anomaly of other endocrine glands.
780.01	Coma.
780.02	Transient alteration of awareness.
780.09	Alteration of consciousness, other.
780.50–780.52	Insomnia.
780.6	Fever.
780.71–.79	Malaise and fatigue.
780.8	Hyperhidrosis.
780.9	Other general symptoms (hyperthermia).
781.0	Abnormal involuntary movements.
781.3	Lack of coordination, ataxia.
782.0	Disturbance of skin sensation.
782.3	Localized edema.
782.8	Changes in skin texture.
782.9	Other symptoms involving skin and integumentary tissues.
783.1	Abnormal weight gain.
783.2	Abnormal lost of weight.
783.6	Polyphagia.
784.1	Throat pain.
784.49	Voice disturbance.
784.5	Other speech disturbance.
785.0	Tachycardia, unspecified.
785.1	Palpitations.
785.9	Other symptoms involving cardiovascular system.
786.09	Other symptoms involving respiratory system.
786.1	Stridor.
787.2	Dysphagia.
787.91–787.99	Other symptoms involving digestive system.
789.5	Ascites.
793.9	Nonspecific abnormal findings on radiological and other examination, other (neck).
794.5	Thyroid, abnormal scan or uptake.
796.1	Other nonspecific abnormal findings, abnormal reflex.
799.2	Nervousness.
990	Effects of radiation, unspecified.
V10.87	Personal history of malignant neoplasm of the thyroid.
V10.88	Personal history of malignant neoplasm of other endocrine gland.
V12.2	Personal history of endocrine, metabolic and immunity disorders.
V58.69	Long term (current) use of other medications.
V67.0–V67.9	Follow-up examination.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for routine screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.

A claim for a test for which there is a national coverage or local medical review

policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied:

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
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V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

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Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a

screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM, Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

6. When a patient is under treatment for a condition for which the tests in this policy are applicable, the ICD–9–CM code that best describes the condition is most frequently listed as the reason for the test.

7. When laboratory testing is done solely to monitor response to medication, the most accurate ICD–9–CM code to describe the reason for the test would be V58.69—long term use of medication.

8. Periodic follow-up for encounters for laboratory testing for a patient with a prior history of a disease, who is no longer under treatment for the condition, would be coded with an appropriate code from the V67 category—follow-up examination.

9. According to ICD–9–CM coding conventions, codes that appear in italics in the Alphabetic and/or Tabular columns of ICD–9–CM are considered manifestation codes that require the underlying condition to be coded and sequenced ahead of the manifestation. For example, the diagnostic statement "thyrotoxic exophthalmos (376.21)," which appears in italics in the tabular listing, requires that the thyroid disorder (242.0–242.9) is coded and sequenced ahead of thyrotoxic exophthalmos. Therefore, a diagnostic statement that is listed as a manifestation in ICD–9–CM must be expanded to include the underlying disease in order to accurately code the condition.

10. Use code 728.9 to report muscle weakness as the indication for the test. Other diagnoses included in 728.9 do not support medical necessity.

11. Use code 194.8 (Malignant neoplasm of other endocrine glands and related structures, Other) to report multiple endocrine neoplasia syndromes (MEN–1 and MEN–2). Other diagnoses included in 194.8 do not support medical necessity.

Documentation Requirements

When these tests are billed at a greater frequency than the norm (two per year), the ordering physician's documentation must support the medical necessity of this frequency.

Medicare National Coverage Decision for Lipids

Other Names/Abbreviations

Description

Lipoproteins are a class of heterogeneous particles of varying sizes and densities containing lipid and protein. These lipoproteins include cholesterol esters and free cholesterol, triglycerides, phospholipids and A, C, and E apoproteins. Total cholesterol comprises all the cholesterol found in various lipoproteins.

Factors that affect blood cholesterol levels include age, sex, body weight, diet, alcohol and tobacco use, exercise, genetic factors, family history, medications, menopausal status, the use of hormone replacement therapy, and chronic disorders such as hypothyroidism, obstructive liver disease, pancreatic disease (including diabetes), and kidney disease.

In many individuals, an elevated blood cholesterol level constitutes an increased risk of developing coronary artery disease. Blood levels of total cholesterol and various fractions of cholesterol, especially low density lipoprotein cholesterol (LDL–C) and high density lipoprotein cholesterol (HDL–C), are useful in assessing and monitoring treatment for that risk in patients with cardiovascular and related diseases. Blood levels of the above cholesterol components including triglyceride have been separated into desirable, borderline and high risk categories by the National Heart, Lung and Blood Institute in their report in 1993. These categories form a useful basis for evaluation and treatment of patients with hyperlipidemia (See Reference). Therapy to reduce these risk parameters includes diet, exercise and medication, and fat weight loss, which is particularly powerful when combined with diet or exercise.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
80061	Lipid panel.
82465	Cholesterol, serum, total.
83715	Lipoprotein, blood; electrophoretic separation and quantitation.
83716	Lipoprotein, blood: high resolution fractionation and quantitation of lipoprotein cholesterols (for example, electrophoretic, nuclear magnetic resonance, ultracentrifugation).
83718	Lipoprotein, direct measurement; high density cholesterol (HDL cholesterol).
83721	Lipoprotein, direct measurement, LDL cholesterol.
84478	Triglycerides.

Indications

The medical community recognizes lipid testing as appropriate for evaluating atherosclerotic cardiovascular disease. Conditions in which lipid testing may be indicated include:

- assessment of patients with atherosclerotic cardiovascular disease;
- evaluation of primary dyslipidemias;
- any form of atherosclerotic disease;
- diagnostic evaluation of diseases associated with altered lipid metabolism, such as: nephrotic syndrome, pancreatitis, hepatic disease, and hypo and hyperthyroidism;
- secondary dyslipidemias, including diabetes mellitus, disorders of gastrointestinal absorption, chronic renal failure; and
- signs or symptoms of dyslipidemias, such as skin lesions.
- as follow-up to the initial screen for coronary heart disease (total cholesterol + HDL cholesterol) when total cholesterol is determined to be high (>240 mg/dL), or borderline-high (200–240 mg/dL) plus two or more coronary heart disease risk factors, or an HDL cholesterol <35 mg/dl.

To monitor the progress of patients on anti-lipid dietary management and pharmacologic therapy for the treatment of elevated blood lipid disorders, total cholesterol, HDL cholesterol and LDL cholesterol may be used. Triglycerides may be obtained if this lipid fraction is also elevated or if the patient is put on drugs (for example, thiazide diuretics, beta blockers, estrogens, glucocorticoids, and tamoxifen) which may raise the triglyceride level.

When monitoring long term anti-lipid dietary or pharmacologic therapy and when following patients with borderline high total or LDL cholesterol levels, it may be reasonable to perform the lipid panel annually. A lipid panel (CPT code 80061) at a yearly interval will usually be adequate while measurement of the serum total

cholesterol (CPT code 82465) or a measured LDL (CPT code 83721) should suffice for interim visits if the patient does not have hypertriglyceridemia (for example, ICD–9–CM code 272.1, Pure hyperglyceridemia).

Any one component of the panel or a measured LDL may be reasonable and necessary up to six times the first year for monitoring dietary or pharmacologic therapy. More frequent total cholesterol HDL cholesterol, LDL cholesterol and triglyceride testing may be indicated for marked elevations or for changes to anti-lipid therapy due to inadequate initial patient response to dietary or pharmacologic therapy. The LDL cholesterol or total cholesterol may be measured three times yearly after treatment goals have been achieved.

Electrophoretic or other quantitation of lipoproteins (CPT codes 83715 and 83716) may be indicated if the patient has a primary disorder of lipoid metabolism (ICD–9–CM codes 272.0 to 272.9).

Limitations

Lipid panel and hepatic panel testing may be used for patients with severe psoriasis which has not responded to conventional therapy and for which the retinoid estretinate has been prescribed and who have developed hyperlipidemia or hepatic toxicity. Specific examples include erythrodermia and generalized pustular type and psoriasis associated with arthritis.

Routine screening and prophylactic testing for lipid disorder are not covered by Medicare. While lipid screening may be medically appropriate, Medicare by statute does not pay for it. Lipid testing in asymptomatic individuals is considered to be screening regardless of the presence of other risk factors such as family history, tobacco use, etc.

Once a diagnosis is established, one or several specific tests are usually adequate for monitoring the course of the disease. Less specific diagnoses (for example, other chest pain) alone do not support medical necessity of these tests.

When monitoring long term anti-lipid dietary or pharmacologic therapy and when following patients with borderline high total or LDL cholesterol levels, it is reasonable to perform the lipid panel annually. A lipid panel (CPT code 80061) at a yearly interval will usually be adequate while measurement of the serum total cholesterol (CPT code 82465) or a measured LDL (CPT code 83721) should suffice for interim visits if the patient does not have hypertriglyceridemia (for example, ICD–9–CM code 272.1, Pure hyperglyceridemia).

Any one component of the panel or a measured LDL may be medically necessary up to six times the first year for monitoring dietary or pharmacologic therapy. More frequent total cholesterol HDL cholesterol, LDL cholesterol and triglyceride testing may be indicated for marked elevations or for changes to anti-lipid therapy due to inadequate initial patient response to dietary or pharmacologic therapy. The LDL cholesterol or total cholesterol may be measured three times yearly after treatment goals have been achieved.

If no dietary or pharmacological therapy is advised, monitoring is not necessary.

When evaluating non-specific chronic abnormalities of the liver (for example, elevations of transaminase, alkaline phosphatase, abnormal imaging studies, *etc.*), a lipid panel would generally not be indicated more than twice per year.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
242.00–245.9	Disorders of the thyroid gland with hormonal dysfunction.
250.00–.93	Diabetes mellitus.
255.0	Cushing's syndrome.
260	Kwashiorkor.
261	Nutritional marasmus.
262	Other severe, protein-calorie malnutrition.
263.0	Malnutrition of moderate degree.
263.1	Malnutrition of mild degree.
263.8	Other protein-calorie malnutrition.
263.9	Unspecified protein-calorie malnutrition.
270.0	Disturbances of amino-acid transport.
271.1	Galactosemia.
272.0	Pure hypercholesterolemia.
272.1	Hyperglyceridemia.
272.2	Mixed hyperlipidemia (tuberous xanthoma).
272.3	Hyperchylomicronemia.
272.4	Other and unspecified hyperlipidemia (unspecified xanthoma).
272.5	Lipoprotein deficiencies.
272.6	Lipodystrophy.
272.7	Lipidoses.
272.8	Other disorders of lipoid metabolism.
272.9	Unspecified disorders of lipoid metabolism.
277.3	Amyloidosis.
278.01	Morbid obesity.
303.90–303.92	Alcoholism.
362.10–362.16	Other background retinopathy and retinal vascular change.
362.30–362.34	Retinal vascular occlusion.
362.82	Retinal exudates and deposits.
371.41	Corneal arcus, juvenile.
374.51	Xanthelasma.
379.22	Crystalline deposits in vitreous.
388.00	Degenerative & vascular disorder of ear, unspecified.
388.02	Transient ischemic deafness.
410.00–410.92	Acute myocardial infarction.
411.0–411.1	Other acute & subacute forms of ischemic heart disease.
411.81	Coronary occlusion without myocardial infarction.
411.89	Other acute and subacute ischemic heart disease.
412	Old myocardial infarction.
413.0–413.1	Angina pectoris.
413.9	Other and unspecified angina pectoris.
414.00–414.03	Coronary atherosclerosis.
414.04	Coronary athrscl-artery bypass graft.
414.05	Coronary athrscl-unspec graft.
414.10	Aneurysm, heart (wall).
414.11	Coronary vessel aneurysm.

Code	Description
414.19	Other aneurysm of heart.
414.8	Other specified forms of chronic ischemic heart disease.
414.9	Chronic ischemic heart disease, unspecified.
428.0–428.9	Heart failure.
429.2	Arteriosclerotic cardiovascular disease.
429.9	Heart disease NOS.
431	Intracerebral hemorrhage.
433.00-.91	Occlusion & stenosis of precerebral arteries.
434.00-.91	Occlusion of cerebral arteries.
435.0-.9	Transient cerebral ischemia.
437.0	Other & ill-defined cerebrovascular disease.
437.1	Other generalized ischemic cerebrovascular disease.
437.5	Moyamoya disease.
438.0-.9	Late effects of cerebrovascular disease.
440.0–440.9	Arteriosclerosis.
441.00–441.9	Aortic aneurysms.
442.0	Upper extremity aneurysm.
442.1	Renal artery aneurysm.
442.2	Iliac artery aneurysm.
444.0-.9	Arterial embolism & thrombosis.
557.1	Chronic vascular insufficiency of intestine.
571.8	Other chronic non-alcoholic liver disease.
571.9	Unspecified chronic liver disease without mention of alcohol.
573.8	Other specified disorders of liver.
573.9	Unspecified disorders of liver.
577.0–577.9	Pancreatic disease.
579.3	Other & unspecified postsurgical nonabsorption.
579.8	Other specified intestinal malabsorption.
581.0–581.9	Nephrotic syndrome.
584.5	Acute renal failure with lesion of tubular necrosis.
585	Chronic renal failure.
588.0	Renal osteodystrophy.
588.1	Nephrogenic diabetes insipidus.
588.8	Other specified disorders resulting from impaired renal function.
588.9	Unspecified disorder resulting from impaired renal function.
607.84	Impotence of organic origin, penis disorder.
646.70–646.71	Liver disorders in pregnancy.
646.73	Liver disorder antepartum.
648.10–648.14	Thyroid disfunction in pregnancy and the puerperium.
6.0	Psoriatic arthropathy.
696.1	Other psoriasis.
751.61	Biliary atresia.
764.10–764.19	"Light for dates" with signs of fetal malnutrition.
786.50	Chest pain unspecified.
786.51	Precordial pain.
786.59	Chest pain, other.
789.1	Hepatomegaly.
790.4	Abnormal transaminase.
790.5	Abnormal alkaline phosphatase.
790.6	Other abnormal blood chemistry.
793.4	Abnormal imaging study.
987.9	Toxic effect of unspecified gas or vapor.
996.81	Complication of transplanted organ, kidney, failure.
V42.0	Transplanted organ, kidney.
V58.69	Long term (current) use of other medications.

Reasons For Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.]

• Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.

• Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.

• Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.

• A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating

nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

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National Institutes of Health. Second Report of the Expert Panel on Detection, Evaluation, and Treatment of High Blood Cholesterol in Adults. NIH Publication 93–3095. September 1993.

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Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

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4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a nonspecific ICD–9–CM code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Digoxin Therapeutic Drug Assay

Other Names/Abbreviations

Description

A digoxin therapeutic drug assay is useful for diagnosis and prevention of digoxin toxicity, and/or prevention for under dosage of digoxin.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
80162	Digoxin (Therapeutic Drug Assay)

Indications

Digoxin levels may be performed to monitor drug levels of individuals receiving digoxin therapy because the margin of safety between side effects and toxicity is narrow or because the blood level may not be high enough to achieve the desired clinical effect.

Clinical indications may include individuals on digoxin:

- With symptoms, signs or electrocardiogram (ECG) suggestive of digoxin toxicity;
- Taking medications that influence absorption, bioavailability, distribution, and/or elimination of digoxin;
- With impaired renal, hepatic, gastrointestinal, or thyroid function;
- With pH and/or electrolyte abnormalities;
- With unstable cardiovascular status, including myocarditis;
- Requiring monitoring of patient compliance.

Clinical indications may include individuals:

- Suspected of accidental or intended overdose; or
- Who have an acceptable cardiac diagnosis (as listed) and for whom an accurate history of use of digoxin is unobtainable

The value of obtaining regular serum digoxin levels is uncertain, but it may be reasonable to check levels once yearly after a steady state is achieved. In addition, it may be reasonable to check the level if:

- Heart failure status worsens;
- Renal function deteriorates;
- Additional medications are added that could affect the digoxin level; or
- Signs or symptoms of toxicity develop.

Steady state will be reached in approximately 1 week in patients with normal renal function, although 2–3 weeks may be needed in patients with renal impairment. After changes in dosages or the addition of a medication that could affect the digoxin level, it is reasonable to check the digoxin level one week after the change or addition. Based on the clinical situation, in cases of digoxin toxicity, testing may need to be done more than once a week.

Digoxin is indicated for the treatment of patients with heart failure due to systolic dysfunction and for reduction of the ventricular response in patients with atrial fibrillation or flutter. Digoxin may also be indicated for the treatment of other supraventricular arrhythmias, particularly in the presence of heart failure.

Limitations

This test is not appropriate for patients on digitoxin or treated with digoxin FAB (fragment antigen binding) antibody.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
242.00–242.91	Thyrotoxicosis with or without goiter.
243	Congenital hypothyroidism.
244.0–244.9	Acquired hypothyroidism.
245.0–245.9	Thyroiditis.
275.2	Disorders of magnesium metabolism.
275.40–.49	Disorders of calcium metabolism.
276.0	Hyperosmolality.
276.1	Hyposmolality.
276.2	Acidosis.
276.3	Alkalosis.
276.4	Mixed acid-base balance disorder.
276.5	Volume depletion.
276.6	Fluid overload.
276.7	Hyperpotassemia.
276.8	Hypopotassemia.
276.9	Electrolyte and fluid disorder (not elsewhere classified).
293.0	Acute delirium.
293.1	Subacute delirium.
307.47	Other dysfunctions of sleep stages or arousal from sleep.
368.16	Psychophysical visual disturbances.
368.8	Other specified visual disturbances.
368.9	Unspecified visual disturbances.
397.9	Rheumatic diseases of endocardium.
398.0	Rheumatic myocarditis.
398.91	Rheumatic heart Failure.
402.01	Hypertensive heart disease, malignant with CHF.
402.11	Hypertensive heart disease, benign with CHF.
402.91	Hypertensive heart disease, unspecified with CHF.
403.00–403.91	Hypertensive renal disease.
404.00–404.93	Hypertensive heart & renal disease.
410.00–410.92	Acute myocardial infarction.
411.0–411.89	Other acute & subacute forms of ischemic heart disease.
413.0–413.9	Angina pectoris.

Code	Description
422.0–422.99	Acute myocarditis.
425.0–425.9	Cardiomyopathy.
426.0–426.9	Conduction disorders.
427.0–427.9	Cardiac dysrhythmias.
428.0–428.9	Heart failure.
429.4	Heart disturbances postcardiac surgery.
429.5	Rupture chordae tendinae.
429.6	Rupture papillary muscle.
429.71	Acquired cardiac septal defect.
514	Pulmonary congestion & hypostasis.
579.9	Unspecified intestinal malabsorption.
584.5–584.9	Acute renal failure.
585	Chronic renal failure.
586	Renal failure, unspecified.
587	Renal sclerosis, unspecified.
588.0	Renal osteodystrophy.
588.1	Nephrogenic Diabetes Insipidus.
588.8	Impaired renal function (not elsewhere classified).
588.9	Unspecified disorder resulting from impaired renal function.
780.01	Coma.
780.02	Transient alteration of awareness.
780.09	Other ill-defined general symptoms (drowsiness, semicoma, somnolence, stupor, unconsciousness).
780.1	Hallucinations.
780.2	Syncope & collapse.
780.4	Dizziness and giddiness.
780.71–.79	Malaise & fatigue.
783.0	Anorexia.
784.0	Headache.
787.01–787.03	Nausea & vomiting.
787.91	Diarrhea.
794.31	Abnormal electrocardiogram.
799.2	Nervousness.
972.1	Poisoning by cardiotonic glycosides & drugs of similar action.
995.2	Unspecified adverse effect of drug, medicinal and biological substance.
*E942.1	Adverse effect of cardiotonic glycosides and drugs of similar action.
V58.69	Encounter long term—medication use (not elsewhere classified).

*Code may not be reported as a stand-alone or first-listed code on the claim.

Reasons For Denial

Note: Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
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ICD–9–CM Codes Denied

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V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.

Code	Description
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above

Sources of Information

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Konstam M, Dracup K, Baker D, *et al.* Heart Failure: Evaluation and Care of Patients with Left-Ventricular Systolic Dysfunction. Clinical Practice Guideline No. 11. AHCPR Publication No. 94–0612. Rockville, MD: Agency for Health Care Policy and Research, Public Health Service, U.S. Department of Health and Human Services. June 1994.

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9-CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9-CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9-CM code is submitted, the underlying sign, symptom or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Alpha-fetoprotein

Other Names/Abbreviations: Afp.

Description

Alpha-fetoprotein (AFP) is a polysaccharide found in some carcinomas. It is effective as a biochemical marker for monitoring the response of certain malignancies to therapy.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82105	Alpha-fetoprotein; serum.

Indications

AFP is useful for the diagnosis of hepatocellular carcinoma in high-risk patients (such as alcoholic cirrhosis, cirrhosis of viral etiology, hemochromatosis, and alpha $_1$-antitrypsin deficiency) and in separating patients with benign hepatocellular neoplasms or metastases from those with hepatocellular carcinoma and, as a non-specific tumor associated antigen, serves in marking germ cell neoplasms of the testis, ovary, retro peritoneum, and mediastinum.

Limitations

ICD–9–09CM Codes Covered by Medicare Program

Code	Description
070.22–070.23	Chronic viral hepatitis B with hepatic coma, with or without mention of hepatitis delta
070.32–070.33	Chronic viral hepatitis B without mention of hepatic coma, with or without mention of hepatitis delta
070.44	Chronic hepatitis C with hepatic coma
070.54	Chronic hepatitis C without mention of hepatic coma
095.3	Syphilis of liver
121.1	Clonorchiasis
121.3	Fascioliasis
155.0–155.2	Malignant neoplasm of the liver and intrahepatic bile ducts
164.2–164.9	Malignant neoplasm of the mediastinum
183.0	Malignant neoplasm, ovary
186.0	Malignant neoplasm of undescended testis
186.9	Malignant neoplasm, other and unspecific testis
197.1	Secondary malignant neoplasm of mediastinum
197.7	Secondary malignant neoplasm of liver
198.6	Secondary malignant neoplasm of ovary
198.82	Secondary malignant neoplasm, genital organs
211.5	Benign neoplasm of liver and biliary passages
235.3	Neoplasm of uncertain behavior of liver and biliary passages
272.2	Mixed hyperlipidemia
275.0	Disorder of iron metabolites
275.1	Disorder of copper metabolism
277.00	Cystic Fibrosis without mention of meconium ileus
277.6	Other deficiencies of circulating enzymes
285.0	Sideroblastic Anemia
571.2	Alcoholic cirrhosis of liver
571.40	Chronic hepatitis, unspecified
571.41	Chronic persistent hepatitis
571.49	Other chronic hepatitis
571.5	Cirrhosis of liver without mention of alcohol
608.89	Other specified disorders of male genital organs
793.1	Non-specific abnormal findings of lung field
793.2	Non-specific abnormal findings of other intrathoracic organs
793.3	Non-specific abnormal findings of biliary tract
793.6	Non-specific abnormal findings of abdominal area, including retro peritoneum
V10.07	Personal history of malignant neoplasm, liver
V10.43	Personal history of malignant neoplasm, ovary
V10.47	Personal history of malignant neoplasm, testis

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9-CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE

devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995).

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–099–09CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above

Sources of Information

Tatsuta M. Yamamura H. Iishi H. Kasugai H. Okuda S.Value of serum alpha-fetoprotein and ferritin in the diagnosis of hepatocellular carcinoma. Oncology. 43(5):306–10, 1986.

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45).

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition described by that code must be related to the above indications for the test.

Medicare National Coverage Decision for Carcinoembryonic Antigen

Other Names/Abbreviations: CEA.

Description

Carcinoembryonic antigen (CEA) is a protein polysaccharide found in some carcinomas. It is effective as a biochemical marker for monitoring the response of certain malignancies to therapy.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82378	Carcinoembryonic antigen (CEA).

Indications

CEA may be medically necessary for follow-up of patients with colorectal carcinoma. It would however only be medically necessary at treatment decision-making points. In some clinical situations (*e.g.* adenocarcinoma of the lung, small cell carcinoma of the lung, and some gastrointestinal carcinomas) when a more specific marker is not expressed by the tumor, CEA may be a medically necessary alternative marker for monitoring. Preoperative CEA may also be helpful in determining the post-operative adequacy of surgical resection and subsequent medical management. In general, a single tumor marker will suffice in following patients with colorectal carcinoma or other malignancies that express such tumor markers.

In following patients who have had treatment for colorectal carcinoma, ASCO guideline suggests that if resection of liver metastasis would be indicated, it is recommended that post-operative CEA testing be performed every two to three months in patients with initial stage II or stage III disease for at least two years after diagnosis.

For patients with metastatic solid tumors which express CEA, CEA may be measured at the start of the treatment and with subsequent treatment cycles to assess the tumor's response to therapy.

Limitations

Serum CEA determinations are generally not indicated more frequently than once per chemotherapy treatment cycle for patients with metastatic solid tumors which express CEA or every two months post-surgical treatment for patients who have had colorectal carcinoma. However, it may be proper to order the test more frequently in certain situations, for example, when there has been a significant change from prior CEA level or a significant change in patient status which could reflect disease progression or recurrence.

Testing with a diagnosis of an in situ carcinoma is not reasonably done more frequently than once, unless the result is abnormal, in which case the test may be repeated once.

ICD–9–09–CM Codes Covered by Medicare Program

Code	Description
150.0–150.9	Malignant neoplasm of the esophagus.
151.0–151.9	Malignant neoplasm of stomach.
152.0–154.8	Malignant neoplasm of small intestine, including duodenum, rectum, rectosigmoid junction and anus.
157.0–157.9	Primary malignancy of pancreas.
159.0	Malignant neoplasm of intestinal tract, part unspecified.
162.0–162.9	Malignant neoplasm of trachea, bronchus, lung.
174.0–174.9	Malignant neoplasm of female breast.
175.0–175.9	Malignant neoplasm of male breast.
183.0	Malignant neoplasm of ovary.
197.0	Secondary malignant neoplasm of neoplasm of lung.
197.4	Secondary malignant neoplasm of small intestine.
197.5	Secondary malignant neoplasm of large intestine and rectum.
230.3	Carcinoma in situ of colon.
230.4	Carcinoma in situ of rectum.
230.7	Carcinoma in situ of other/unspecified parts of intestine.
230.9	Carcinoma in situ other and unspecified digestive organs.
235.2	Neoplasm of uncertain behavior of stomach, intestines, rectum.
790.99	Other nonspecific findings on examination of blood.
V10.00	Personal history of malignant neoplasm of gastro-intestinal tract, unspecified.
V10.3	Personal history of malignant neoplasm, breast.
V10.05	Personal history of malignant neoplasm, large intestine.
V10.06	Personal history of malignant neoplasm, rectum, rectosigmoid junction, anus.
V10.11	Personal history of malignant neoplasm, bronchus, and lung.
V10.43	Personal history of malignant neoplasm, ovary.
V67.2	Follow-up examination following chemotherapy.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device

Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995).

ICD–9–CM Codes Denied

Code	Description
798.0–798.9 S	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above

Sources of Information

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Vauthey JN. Dudrick PS. Lind DS. Copeland EM 3rd. Management of recurrent colorectal cancer: another look at carcinoembryonic antigen-detected recurrence [see comments]. [Review] Digestive Diseases. 14(1):5–13, 1996 Jan–Feb.

Grem J. The prognostic importance of tumor markers in adenocarcinomas of the gastrointestinal tract. [Review] [38 refs] Current Opinion in Oncology. 9(4):380–7, 1997 Jul.

Bergamaschi R. Arnaud JP. Routine compared with nonscheduled follow-up of patients with "curative" surgery for colorectal cancer. Annals of Surgical Oncology. 3(5):464–9, 1996 Sep.

Kim YH. Ajani JA. Ota DM. Lynch P. Roth JA. Value of serial carcinoembryonic antigen levels in patients with resectable adenocarcinoma of the esophagus and stomach Cancer. 75(2):451–6, 1995 Jan 15.

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45).

5. When a nonspecific ICD–9–CM code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

6. To show elevated CEA, use ICD–9–CM 790.99 (Other nonspecific findings on examination of blood) only if a more specific diagnosis has not been made. If a more specific diagnosis has been made, use the code for that diagnosis.

Medicare National Coverage Decision for Human Chorionic Gonadotropin

Other Names/Abbreviations: hCG.

Description

Human chorionic gonadotropin

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
84702	Gonodotropin, chorionic (hCG); quantitative.

Indications

hCG is useful for monitoring and diagnosis of germ cell neoplasms of the ovary, testis, mediastinum, retroperitoneum, and central nervous system. In addition, it is useful for diagnosis of pregnancy and pregnancy-associated conditions.

Limitations

Not more than once per month for diagnostic purposes. As needed for monitoring of patient progress and treatment. Qualitative hCG assays (CPT 84703) are not appropriate for medically managing patients with known or suspected germ cell neoplasms.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
158.0	Malignant neoplasm of retroperitoneum.
158.8	Malignant neoplasm of specified parts of peritoneum.
164.2	Malignant neoplasm of anterior mediastinum.
164.3	Malignant neoplasm of posterior mediastinum.
164.8	Malignant neoplasm, other (includes malignant neoplasm of contiguous overlapping sites of thymus, heart, and mediastinum whose point of origin cannot be determined.
164.9	Malignant neoplasm of mediastinum, part unspecified.
181	Malignant neoplasm of placenta.
183.0	Malignant neoplasm of ovary.
183.8	Other specified sites of uterine adnexas.
186.0	Malignant neoplasm of undescended testes.
186.9	Malignant neoplasm of other and unspecified testis.
194.4	Malignant neoplasm of pineal gland.
197.1	Secondary malignant neoplasm of mediastinum.
197.6	Secondary malignant neoplasm of retroperitoneum and peritoneum.
198.6	Secondary malignant neoplasm of ovary.
198.82	Secondary malignant neoplasm of other genital organs.
236.1	Neoplasm of uncertain behavior, placenta.
623.8	Vaginal bleeding.
625.9	Pelvic pain.
630	Hydatidiform mole.
631	Pregnancy, molar.
632	Missed abortion.
633.9	Ectopic pregnancy.
640.00–	Threatened abortion.
V10.09	Personal history of malignant neoplasm, other gastrointestinal sites.
V10.29	Personal history of malignant neoplasm of other respiratory and intrathoracic organs.
V10.43	Personal history of malignant neoplasm, ovary.
V10.47	Personal history of malignant neoplasm, testis.
V22.0–.1	Pregnancy.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9-CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied:

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

O'Callaghan A. Mead GM. Testicular carcinoma. [Review] [23 Refs] Postgraduate Medical Journal. 73(862):4816, 1997 Aug.

Sawamura Y. Current diagnosis and treatment of central nervous system germ cell tumours. [Review] [47 Refs] Current Opinion in Neurology. 9(6):41923, 1996 Dec.

Wilkins M. Horwich A. Diagnosis and treatment of urological malignancy: The testes. [Review] [23 Refs] British Journal of Hospital Medicine. 55(4): 199203, 1996. Feb 21, Mar 5.

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when ■ diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, ■ communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45).

5. When a nonspecific ICD–9–CM code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Tumor Antigen by Immunoassay—CA125

Other Names/Abbreviations

Description

Immunoassay determinations of the serum levels of certain proteins or carbohydrates serve as tumor markers. When elevated, serum concentration of these markers may reflect tumor size and grade.

This policy specifically addresses tumor antigen CA125.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
Not yet assigned	Tumor antigen 125.

Indications

CA125 is a high molecular weight serum tumor marker elevated in 80% of patients who present with epithelial ovarian carcinoma. It is also elevated in carcinomas of the fallopian tube, endometrium, and endocervix. An elevated level may also be associated with the presence of a malignant mesothelioma.

A CA125 level may be obtained as part of the initial pre-operative work-up for women presenting with a suspicious pelvic mass to be used as a baseline for purposes of post-operative monitoring. Initial declines in CA125 after initial surgery and/or chemotherapy for ovarian carcinoma are also measured by obtaining three serum levels during the first month post treatment to determine the patient's CA125 half-life, which has significant prognostic implications.

CA125 levels are again obtained at the completion of chemotherapy as an index of residual disease. Surveillance CA125 measurements are generally obtained every 3 months for 2 years, every 6 months for the next 3 years, and yearly thereafter. CA125 levels are also an important indicator of a patient's response to therapy in the presence of advanced or recurrent disease. In this setting, CA125 levels may be obtained prior to each treatment cycle.

Limitations

These services are not covered for the evaluation of patients with signs or symptoms suggestive of malignancy. The service may be ordered at times necessary to assess either the presence of recurrent disease or the patient's response to treatment with subsequent treatment cycles.

CA125 is specifically not covered for aiding in the differential diagnosis of patients with a pelvic mass as the sensitivity and specificity of the test is not sufficient. In general, a single "tumor marker" will suffice in following a patient with one of these malignancies.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
180.0	Malignant neoplasm, endocervix.
182.0	Malignant neoplasm of corpus uteri, except isthmus.
183.0	Malignant neoplasm,ovary.
183.2	Malignant neoplasm, fallopian tube.
183.8	Malignant neoplasm, other specified sites of uterine adnexa.
184.8	Malignant neoplasm, other specified sites of female genital organs.
198.6	Secondary malignant neoplasm, ovary.
198.82	Secondary malignancy of genital organs.
236.0–236.3	Neoplasm of uncertain behavior of female genital organs.
V10.43–V10.44	Personal history of malignant neoplasm of female genital organs.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.

Code	Description
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions

ICD–9–CM Codes That Do Not Support Medical Necessity

Code Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

Clinical Pancreatic Guideline for the Use of Tumor Markers in Breast and Colorectal Cancer, American Society of Clinical Oncology. J Clin Oncol 14:2843–2877, 1996.

Chan DW, Beveridge RA, Muss H, *et al.* Use of Triquant BR Radioimmunoassay for Early Detection of Breast Cancer Recurrence in Patients with Stage II and Stage III Disease. J Clin Oncol 1977, 15(6):2322–2328.

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9–CM code is submitted, the underlying sign, symptom or condition must be related to the indications for the test above.

Documentation Requirements

Indicated if service request for CA125 is requested more frequently than stipulated.

Medicare National Coverage Decision for Tumor Antigen by Immunoassay CA15–3/CA27.29

Other Names/Abbreviations

Description

Immunoassay determinations of the serum levels of certain proteins or carbohydrates serve as tumor markers. When elevated, serum concentration of these markers may reflect tumor size and grade.

This policy specifically addresses the following tumor antigens: CA15–3 and CA27.29

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
Not yet assigned	Tumor antigen CA15–3/CA27.29.

Indications

Multiple tumor markers are available for monitoring the response of certain malignancies to therapy and assessing whether residual tumor exists postsurgical therapy.

CA 15–3 is often medically necessary to aid in the management of patients with breast cancer. Serial testing must be used in conjunction with other clinical methods for monitoring breast cancer. For monitoring, if medically necessary, use consistently either CA 15–3 or CA 27.29, not both.

CA 27.29 is equivalent to CA 15–3 in its usage in management of patients with breast cancer.

Limitations

These services are not covered for the evaluation of patients with signs or

symptoms suggestive of malignancy. The service may be ordered at times necessary to assess either the presence of recurrent disease or the patient's response to treatment with subsequent treatment cycles.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
174.0–174.9	Breast, primary (female)—malignant neoplasm of female breast.
175.0–175.9	Breast, primary (male)—malignant neoplasm of male breast
198.2	Secondary malignant neoplasm (male breast).
198.81	Secondary malignant neoplasm (female breast).
V10.3	Personal history of malignant neoplasm, breast.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemi.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

Clinical Pancreatic Guideline for the Use of Tumor Markers in Breast and Colorectal Cancer, American Society of Clinical Oncology. J Clin Oncol 14:2843–2877, 1996.

Chan DW, Beveridge RA, Muss H, *et al.* Use of Triquant BR Radioimmunoassay for Early Detection of Breast Cancer Recurrence in Patients with Stage II and Stage III Disease. J Clin Oncol 1977, 15(6):2322–2328.

Bone GG, von Mensdorff-Pouilly S, Kenemans P, van Kamp GJ, *et al.* Clinical and Technical Evaluation of ACS BR Serum Assay of MUC–1 Gene Derived Glycoprotein in Breast Cancer, and Compared with CA15–3 Assays. Clin Chem 1997, 43(4):585–593.

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9–CM code is submitted, the underlying sign, symptom or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Tumor Antigen by Immunoassay CA19–9

Other Names/Abbreviations

Description

Immunoassay determinations of the serum levels of certain proteins or carbohydrates serve as tumor markers. When elevated, serum concentration of these markers may reflect tumor size and grade.

This policy specifically addresses the following tumor antigen: CA19–9.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
Not yet assigned	Tumor antigen CA19–9.

Indications

Multiple tumor markers are available for monitoring the response of certain malignancies to therapy and assessing whether residual tumor exists post-surgical therapy.

Levels are useful in following the course of patients with established diagnosis of pancreatic and biliary ductal carcinoma. The test is not indicated for diagnosing these two diseases.

Limitations

These services are not covered for the evaluation of patients with signs or symptoms suggestive of malignancy. The service may be ordered at times necessary to assess either the presence of recurrent disease or the patient's response to treatment with subsequent treatment cycles.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
155.1	Malignant neoplasm, intrahepatic bile ducts.
156.1	Malignant neoplasm, extrahepatic bile ducts.
156.8	Malignant neoplasm, other specified sites of gallbladder and extrahepatic bile ducts.
156.9	Malignant neoplasm, unspecified part of biliary tract.
157.0–157.9	Malignant neoplasm, pancreas.
197.8	Secondary malignant neoplasm, other digestive organs and spleen.
235.3	Neoplasm of uncertain behavior, liver and biliary passages.
235.5	Neoplasm of uncertain behavior, other and unspecified digestive organs.
V10.09	Other personal history of cancer.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that

exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

Clinical Pancreatic Guideline for the Use of Tumor Markers in Breast and Colorectal Cancer, American Society of Clinical Oncology. J Clin Oncol 14:2843–2877, 1996.

Richter JM, Christensen MR, Rustgi AK, and Silverstein MD. The Clinical Utility of the CA19–9 Radioimmunoassay for the Diagnosis of Pancreatic Cancer Presenting as Pain or Weight Loss: A Cost Effective Analysis. Arch Intern Med 1989, 149:2292–2297.

Safi F, SchlosseW, Falkenreck S, *et al.* Prognostic Value of CA 19–9 Serum Course in Pancreatic Cancer. Hepaetogastroenterology 1998 Jan–Feb; 45(19):253–9.

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs,

symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1993, page 45.)

5. When a non-specific ICD–9–CM code is submitted, the underlying sign, symptom or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Prostate Specific Antigen

Other Names/Abbreviations: Total PSA.

Description

PSA, a tumor marker for adenocarcinoma of the prostate, can predict residual tumor in the post-operative phase of prostate cancer. Three to six months after radical prostatectomy, PSA is reported to provide a sensitive indicator of persistent disease. Six months following introduction of antiandrogen therapy, PSA is reported as capable of distinguishing patients with favorable response from those in whom limited response is anticipated.

PSA when used in conjunction with other prostate cancer tests, such as digital rectal examination, may assist in the decision making process for diagnosing prostate cancer. PSA also, serves as a marker in following the progress of most prostate tumors once a diagnosis has been established. This test is also an aid in the management of prostate cancer patients and in detecting metastatic or persistent disease in patients following treatment.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
84153	Prostate Specific Antigen (PSA), total

Indications

PSA is of proven value in differentiating benign from malignant disease in men with lower urinary tract signs and symptoms (*e.g.*, hematuria, slow urine stream, hesitancy, urgency, frequency, nocturia and incontinence) as well as with patients with palpably abnormal prostate glands on physician exam, and in patients with other laboratory or imaging studies that suggest the possibility of a malignant prostate disorder. PSA is also a marker used to follow the progress of prostate cancer once a diagnosis has been established, such as in detecting metastatic or persistent disease in patients who may require additional treatment. PSA testing may also be useful in the differential diagnosis of men presenting with as yet undiagnosed disseminated metastatic disease.

Limitations

Generally, for patients with lower urinary tract signs or symptoms, the test is performed only once per year unless there is a change in the patient's medical condition.

Testing with a diagnosis of in situ carcinoma is not reasonably done more frequently than once, unless the result is abnormal, in which case the test may be repeated once.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
185	Malignant neoplasm of prostate.
188.5	Malignant neoplasm of bladder neck.
196.5	Secondary malignant neoplasm, lymph nodes inguinal region and lower limb.
196.6	Secondary malignant neoplasm, intrapelvic lymph nodes.
196.8	Secondary malignant neoplasm, lymph nodes of multiple sites.
198.5	Secondary malignant neoplasm, bone and bone marrow.
198.82	Secondary malignant neoplasm, genital organs.
233.4	Carcinoma in situ, prostate.
239.5	Neoplasm of unspecified nature, other genitourinary organs.
596.0	Bladder neck obstruction.
599.7	Hematuria.
601.9	Unspecified prostatitis.
602.9	Unspecified disorder of prostate.
788.20	Retention of urine, unspecified.
788.21	Incomplete bladder emptying.
790.93	Elevated prostate specific antigen.
793.6/793.7	Non-specific abnormal result of radiologic examination, evidence of malignancy.
794.9	Bone scan evidence of malignancy.
V10.46	Personal history of malignant neoplasm; prostate.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance

has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

Laboratory Test Handbook, 3rd edition, pp. 338–340.

Cooner WH, Mosley BR, Rutherford CL, *et al.* Prostate Cancer Detection in a Clinical Urological Practice by Ultrasonography, Digital Rectal Examination and Prostate Specific Antigen. J.Urol.1990;143: 1146–1154.

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9–CM code is submitted, the underlying sign, symptom or condition must be related to the indications for the test above.

6. To show elevated PSA, use ICD–9–CM code 790.93 (Elevated prostate specific antigen). If a more specific diagnosis code has been made, use the code for that diagnosis.

Medicare National Coverage Decision for Gamma Glutamyl Transferase

Other Names/Abbreviations: GGT.

Description

Gamma glutamyltransferase (GGT) is an intracellular enzyme that appears in blood following leakage from cells. Renal tubules, liver, and pancreas contain high amounts, although the measurement of GGT in serum is almost always used for assessment of

hepatobiliary function. Unlike other enzymes which are found in heart, skeletal muscle, and intestinal mucosa as well as liver, the appearance of an elevated level of GGT in serum is almost always the result of liver disease or injury. It is specifically useful to differentiate elevated alkaline phosphatase levels when the source of the alkaline phosphatase increase (bone, liver, or placenta) is unclear. The combination of high alkaline phosphatase and a normal GGT does not, however, rule out liver disease completely.

As well as being a very specific marker of hepatobiliary function, GGT is also a very sensitive marker for hepatocellular damage. Abnormal concentrations typically appear before elevations of other liver enzymes or bilirubin are evident. Obstruction of the biliary tract, viral infection (e.g., hepatitis, mononucleosis), metastatic cancer, exposure to hepatotoxins (e.g., organic solvents, drugs, alcohol), and use of drugs that induce microsomal enzymes in the liver (e.g., cimetidine, barbiturates, phenytoin, and carbamazepine) all can cause a moderate to marked increase in GGT serum concentration. In addition, some drugs can cause or exacerbate liver dysfunction (e.g., atorvastatin, troglitazone, and others as noted in FDA Contraindications and Warnings.)

GGT is useful for diagnosis of liver disease or injury, exclusion of hepatobiliary involvement related to other diseases, and patient management during the resolution of existing disease or following injury.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82977	Glutamyltransferase, gamma (GGT).

Indications

1. To provide information about known or suspected hepatobiliary disease, for example:
   a. following chronic alcohol or drug ingestion;
   b. following exposure to hepatotoxins;
   c. when using medication known to have a potential for causing liver toxicity (e.g., following the drug manufacturer's recommendations); or
   d. following infection (e.g., viral hepatitis and other specific infections such as amebiasis, tuberculosis, psittacosis, and similar infections)
2. To assess liver injury/function following diagnosis of primary or secondary malignant neoplasms
3. To assess liver injury/function in a wide variety of disorders and diseases known to cause liver involvement (e.g., diabetes mellitus, malnutrition, disorders of iron and mineral metabolism, sarcoidosis, amyloidosis, lupus, and hypertension)
4. To assess liver function related to gastrointestinal disease
5. To assess liver function related to pancreatic disease
6. To assess liver function in patients subsequent to liver transplantation
7. To differentiate between the different sources of elevated alkaline phosphatase activity

Limitations

When used to assess liver dysfunction secondary to existing non-hepatobiliary disease with no change in signs, symptoms, or treatment, it is generally not necessary to repeat a GGT determination after a normal result has been obtained unless new indications are present.

If the GGT is the only "liver" enzyme abnormally high, it is generally not necessary to pursue further evaluation for liver disease for this specific indication.

When used to determine if other abnormal enzyme tests reflect liver abnormality rather than other tissue, it generally is not necessary to repeat a GGT more than one time per week.

Because of the extreme sensitivity of GGT as a marker for cytochrome oxidase induction or cell membrane permeability, it is generally not useful in monitoring patients with known liver disease.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
003.1	Salmonella septicemia.
006.0–.9	Amebiasis.
014.00–.86	Tuberculosis of intestines, peritoneum, and mesenteric glands.
017.90–.96	Tuberculosis of other specified organs.
018.90–.96	Miliary tuberculosis, unspecified.
020.0–.9	Plague.
022.3	Anthrax septicemia.
027.0	Listeriosis.
027.1	Erysipelothrix infection.
030.1	Tuberculoid leprosy [Type T].
032.83	Diphtheritic peritonitis.
036.1	Meningococcal encephalitis.
036.2	Meningococcemia.
038.0–.9	Septicemia.
039.2	Actinomycotic infections, abdominal.
040.0	Gas gangrene.
042	Human immunodeficiency virus (HIV) disease.
054.0	Eczema herpeticum.
054.5	Herpetic septicemia.
060.0–.1	Yellow fever.
070.0–.9	Viral hepatitis.
072.71	Mumps hepatitis.
073.0	Ornithosis, with pneumonia.
074.8	Other specified diseases due to Coxsackie virus.
075	Infectious mononucleosis.
078.5	Cytomegaloviral disease.
079.99	Unspecified viral infection.
082.0–.9	Tick-borne rickettsioses, stet.
084.9	Other pernicious complications of malaria.
086.1	Chagas disease with organ involvement other than heart.
088.81	Lyme disease.
091.62	Secondary syphilitic hepatitis.
095.3	Syphilis of liver.
100.0	Leptospirosis icterohemorrhagica.

Code	Description
112.5	Candidiasis, disseminated.
115.00	Infection by Histoplasma capsulatum without mention of manifestation.
120.9	Schistosomiasis, unspecified.
121.1	Clonorchiasis.
121.3	Fascioliasis.
122.0	Echinococcus granulosus infection of liver.
122.5	Echinococcus multilocularis infection of liver.
122.8	Echinococcosis, unspecified, of liver.
122.9	Echinococcus, other and unspecified.
130.5	Hepatitis due to toxoplasmosis.
135	Sarcoidosis.
150.0–159.9	Malignant neoplasm of digestive organs and peritoneum.
160.0–165.9	Malignant neoplasm of respiratory and intrathoracic organs.
170.0–176.9	Malignant neoplasm of bone, connective tissue, skin, and breast.
179–189.9	Malignant neoplasm of genitourinary organs.
200.00–208.91	Malignant neoplasm of lymphatic and hematopoietic tissue.
211.5	Benign neoplasm of liver and biliary passages.
211.6	Benign neoplasm of pancreas, except islets of Langerhans.
211.7	Benign neoplasm of islets of Langerhans.
228.04	Hemangioma of intra-abdominal structures.
230.8	Carcinoma in situ of liver and biliary system.
235.0–238.9	Neoplasms of uncertain behavior.
239.0	Neoplasm of unspecified nature of digestive system.
250.00–.93	Diabetes mellitus.
252.0	Hyperparathyroidism.
263.1	Malnutrition of mild degree.
263.9	Unspecified protein-calorie malnutrition.
268.0	Rickets, active.
268.2	Osteomalacia, unspecified.
269.0	Deficiency of vitamin K.
270.2	Other disturbances of aromatic amino acid metabolism.
270.9	Unspecified disorder of amino acid metabolism.
271.0	Glycogenosis.
272.0	Pure hypercholesterolemia.
272.1	Pure hyperglyceridemia.
272.2	Mixed hyperlipidemia.
272.4	Other and unspecified hyperlipidemia.
272.7	Lipidoses.
272.9	Unspecified disorder of lipoid metabolism.
275.0	Disorders of iron metabolism.
275.1	Disorders of copper metabolism.
275.3	Disorders of phosphorus metabolism.
275.40–.49	Disorders of calcium metabolism.
277.1	Disorders of porphyrin metabolism.
277.3	Amyloidosis.
277.4	Disorders of bilirubin excretion.
277.6	Other deficiencies of circulating enzymes.
282.60–.69	Sickle cell anemia.
286.6	Defibrination syndrome.
286.7	Acquired coagulation factor deficiency.
289.4	Hypersplenism.
291.0–.9	Alcoholic psychoses.
303.00–.03	Acute alcoholic intoxication.
303.90–.93	Other and unspecified alcohol dependence.
304.0–.9	Drug dependence.
305.00–.93	Non-dependent abuse of drugs.
357.5	Alcoholic polyneuropathy.
359.2	Myotonic disorders.
452	Portal vein thrombosis.
453.0–.9	Other vein embolism and thrombosis.
456.0–.21	Esophageal varices.
555.0–.9	Regional enteritis.
556.0–.9	Ulcerative colitis.
557.0	Acute vascular insufficiency of intestine.
558.1–.9	Other noninfectious gastroenteritis and colitis.
560.0–.9	Intestinal obstruction without mention of hernia.
562.01	Diverticulitis of small intestine (without mention of hemorrhage).
562.03	Diverticulitis of small intestine with hemorrhage.
562.11	Diverticulitis of colon (without mention of hemorrhage).
562.13	Diverticulitis of colon with hemorrhage.
567.0–.9	Peritonitis.
569.83	Perforation of intestine.
570	Acute and subacute necrosis of liver.
571.0–.9	Chronic liver disease and cirrhosis.

Code	Description
572.0–.8	Liver abscess and sequelae of chronic liver disease.
573.0–.9	Other disorders of liver.
574.00–.91	Cholelithiasis.
575.0–.9	Other disorders of gallbladder.
576.0–.9	Other disorders of biliary tract.
581.0–.9	Nephrotic syndrome.
582.0–.9	Chronic glomerulonephritis.
583.0–.9	Nephritis and nephropathy not specified as acute or chronic.
584.5–.9	Acute renal failure.
585	Chronic renal failure.
586	Renal failure, unspecified.
587	Renal sclerosis, unspecified.
588.0–.9	Disorders resulting from impaired renal function
590.00–.9	Infections of kidney.
646.7	Liver disorders in pregnancy.
960.0–979.9	Poisoning by drugs, medicinal, and biological substances.
980.0–989.89	Toxic effects of substances chiefly nonmedical as to source.
V58.61–.69	Long term (current) drug use.
V67.1	Follow-up examination, radiotherapy.
V67.2	Follow-up examination, chemotherapy.
V67.51	Follow-up examination after completed treatment with high-risk medications, not elsewhere classified.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.

Code	Description
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

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Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Hepatitis Panel

Description

This panel consists of the following tests:

Hepatitis B surface antigen (HBsAg) (CPT 87340).

Hepatitis C antibody (CPT 86803).

Hepatitis B core antibody (HBcAb), IgM Antibody (CPT 86705).

Hepatitis A antibody (HAAb), IgM Antibody (CPT 86709).

Hepatitis is an inflammation of the liver resulting from viruses, drugs, toxins, and other etiologies. Viral hepatitis can be due to one of at least five different viruses, designated Hepatitis A, B, C, D, and E. Most cases are caused by Hepatitis A virus (HAV), Hepatitis B virus (HBV), or Hepatitis C virus (HCV).

HAV is the most common cause of hepatitis in children and adolescents in the United States. Prior exposure is indicated by a positive IgG anti-HAV. Acute HAV is diagnosed by IgM anti-HAV, which typically appears within four weeks of exposure, and which disappears within three months of its appearance. IgG anti-HAV is similar in the timing of its appearance, but it persists indefinitely. Its detection indicates prior effective immunization or recovery from infection. Although HAV is spread most commonly by fecal-oral exposure, parenteral infection is possible during the acute viremia stage of the disease. After exposure, standard immune globulin may be effective as a prophylaxis.

HBV produces three separate antigens (surface, core, and e (envelope) antigens) when it infects the liver, although only hepatitis B surface antigen (HBsAg) is included as part of this panel. Following exposure, the body normally responds by producing antibodies to each of these antigens; one of which is included in this panel: Hepatitis B surface antibody (HBsAb)-IgM antibody , HBsAg is the earlier marker, appearing in serum four to eight weeks after exposure, and typically disappearing within six months after its appearance. If HBsAg remains detectable for greater than six months, this indicates chronic HBV infection. HBcAb, in the form of both IgG and IgM antibodies, are next to appear in serum, typically becoming detectable two to three months following exposure. The IgM antibody gradually declines or disappears entirely one to two years following exposure, but the IgG usually remains detectable for life. Because HBsAg is present for a relatively short period and usually displays a low titer, a negative result does not exclude an HBV diagnosis. HBcAb, on the other hand, rises to a much higher titer and remains elevated for a longer period of time, but a positive result is not diagnostic of acute disease, since it may be the result of a prior infection. The last

marker to appear in the course of a typical infection is HBsAb, which appears in serum four to six months following exposure, remains positive indefinitely, and confers immunity. HBV is spread exclusively by exposure to infected blood or body fluids; in the U.S., sexual transmission accounts for 30% to 60% of new cases of HBV infection.

The diagnosis of acute HBV infection is best established by documentation of a positive IgM antibody against the core antigen (HBcAb-IgM) and by identification of a positive hepatitis B surface antigen (HBsAg). The diagnosis of chronic HBV infection is established primarily by identifying a positive hepatitis B surface antigen (HBsAg) and demonstrating positive IgG antibody directed against the core antigen (HBcAb-IgG). Additional tests such as Hepatitis B e antigen (HBeAg) and Hepatitis B e antibody (HBeAb), the envelope antigen and antibody, are not included in the Hepatitis Panel, but may be of importance in assessing the infectivity of patients with HBV. Following completion of a HBV, vaccination series, HBsAb alone may be used monthly for up to six months, or until a positive result is obtained, to verify an adequate antibody response.

HCV is the most common cause of post-transfusion hepatitis; overall HCV is responsible for 15% to 20% of all cases of acute hepatitis, and is the most common cause of chronic liver disease. The test most commonly used to identify HCV measures HCV antibodies, which appear in blood two to four months after infection. False positive HCV results can occur. For example, a patient with a recent yeast infection may produce a false positive anti-HCV result. For this reason, at present positive results usually are confirmed by a more specific technique. Like HBV, HCV is spread exclusively through exposure to infected blood or body fluids.

This panel of tests is used for differential diagnosis in a patient with symptoms of liver disease of injury. When the time of exposure or the stage of the disease is not known, a patient with continued symptoms of liver disease despite a completely negative Hepatitis Panel may need a repeat panel approximately two weeks to two months later to exclude the possibility of hepatitis. Once a diagnosis is established, specific tests can be used to monitor the course of the disease.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
80059	Hepatitis Panel.

Indications

1. To detect viral hepatitis infection when there are abnormal liver function test results, with or without signs or symptoms of hepatitis.

2. Prior to and subsequent to liver transplantation.

Limitations

After a hepatitis diagnosis has been established, only individual tests, rather than the entire panel, are needed.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
070.0–.9	Viral hepatitis.
456.0–.21	Esophageal varices with or without mention of bleeding.
570	Acute and subacute necrosis of liver.
571.5	Cirrhosis of liver without mention of alcohol.
572.0–.8	Liver abscess and sequelae of chronic liver disease.
573.3	Hepatitis, unspecified.
780.31	Febrile convulsions.
780.71	Chronic fatigue syndrome.
780.79	Other malaise and fatigue.
782.4	Jaundice, unspecified, not of newborn.
783.0–.6	Symptoms concerning nutrition, metabolism, and development.
784.69	Other symbolic dysfunction.
787.01–.03	Nausea and vomiting.
789.00–.09	Abdominal pain.
789.1	Hepatomegaly.
789.6	Localized abdominal tenderness (RUQ).
794.8	Nonspecific abnormal results of function studies, liver.
999.3	Other infection following infusion, injection, trans fusion, or vaccination.
996.82	Complications of transplanted organ, liver.
V72.85	Liver transplant recipient evaluation.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9-CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical

Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9-CM code not listed in either of the ICD–9-CM sections above

Sources of Information

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Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9-CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are

provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Fecal Occult Blood

Description

The fecal occult blood test detects the presence of trace amounts of blood in stool. The procedure is performed by testing one or several small samples of one, two or three different stool specimens.

This test may be performed with or without evidence of iron deficiency anemia, which may be related to gastrointestinal blood loss. The range of causes for blood loss include inflammatory causes, including acid-peptic disease, non-steroidal anti-inflammatory drug use, hiatal hernia, Crohn's disease, ulcerative colitis, gastroenteritis, and colon ulcers. It is also seen with infectious causes, including hookworm, stronglyoidal ascariasis, tuberculosis, and enteroamebiasis. Vascular causes include angiodysplasia, hemangiomas, varices, blue rubber bleb nevus syndrome, and watermelon stomach. Tumors and neoplastic causes include lymphoma, leiomyosarcoma, lipomas, adenocarcinoma and primary and secondary metastases to the GI tract. Drugs such as nonsteroidal anti-inflammatory drugs also cause bleeding. There are extra gastrointestinal causes such as hemoptysis, epistaxis, and oropharyngeal bleeding. Artifactual causes include hematuria, and menstrual bleeding. In addition, there may be other causes such as coagulopathies, gastrostomy tubes or other appliances, factitial causes, and long distance running.

Three basic types of fecal hemoglobin assays exist, each directed at a different component of the hemoglobin molecule.

(1) Immunoassays recognize antigenic sites on the globin portion and are least affected by diet or proximal gut bleeding, but the antigen may be destroyed by fecal flora.

(2) The heme-porphyrin assay measures heme-derived porphyrin and is least influenced by enterocolic metabolism or fecal storage. This assay does not discriminate dietary from endogenous heme. The capacity to detect proximal gut bleeding reduces its specificity for colorectal cancer screening but makes it more useful for evaluating overall GI bleeding in case finding for iron deficiency anemia.

(3) The guaiac-based test is the most widely used. It requires the peroxidase activity of an intact heme moiety to be reactive. Positivity rates fall with storage. Fecal hydration such as adding a drop of water increases the test reactivity but also increases false positivity.

Of these three tests, the guaiac-based test is the most sensitive for detecting lower bowel bleeding. Because of this sensitivity, it is advisable, when it is used for screening, to defer the guaiac-based test if other studies of the colon are performed prior to the test. Similarly, this test's sensitivity may result in a false positive if the patient has recently ingested meat. Both of these cautions are appropriate when the test is used for screening, but when appropriate indications are present, the test should be done despite its limitations.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82270	Blood, occult; feces, 1–3 simultaneous determinations.

Indications

1. To evaluate known or suspected alimentary tract conditions that might cause bleeding into the intestinal tract.

2. To evaluate unexpected anemia.

3. To evaluate abnormal signs, symptoms, or complaints that might be associated with loss of blood.

4. To evaluate patient complaints of black or red-tinged stools.

Limitations

1. Code 82270 is reported once for the testing of up to three separate specimens (comprising either one or two tests per specimen).

2. In patients who are taking non-steroidal anti-inflammatory drugs and have a history of gastrointestinal bleeding but no other signs, symptoms, or complaints associated with gastrointestinal blood loss, testing for occult blood may generally be appropriate no more than once every three months.

3. When testing is done for the purpose of screening for colorectal cancer in the absence of signs, symptoms, conditions, or complaints associated with gastrointestinal blood loss, HCPCS code G0107 (Colorectal cancer screening; fecal-occult blood test, 1–3 simultaneous determinations) should be used. Coverage of colorectal cancer screening is described in HCFA Program Memorandum Transmittal No. AB–97–24 (November, 1997).

ICD–9–CM Codes Covered by Medicare Program

Code	Description
004.0–.9	Shigellosis.
005.0–.9	Other food poisoning (bacterial).
006.0–.9	Amebiasis.
007.0–.9	Other protozoal intestinal diseases.
008.41–.49	Intestinal infections due to other specified bacteria.
009.0–.3	Ill defined intestinal infections.
014.00–.86	Tuberculosis of intestines, peritoneum, and mesenteric glands.
022.2	Gastrointestinal anthrax.
040.2	Whipple's disease.
123.0–.9	Other cestode infection.
124	Trichinosis.
127.0–.9	Other intestinal helminthiases.
150.0–157.9	Malignant neoplasm of digestive organisms.
176.3	Kaposi's sarcoma, gastrointestinal sites.
197.4–.5	Secondary malignant neoplasm of intestines.
197.8	Secondary malignant neoplasm of other digestive organs and spleen.
199.0	Disseminated malignant neoplasm.
204.00–.91	Lymphoid leukemia.
205.00–208.91	Leukemia.
211.0–.9	Benign neoplasm of other parts of digestive system.
228.04	Hemangioma of intra-abdominal structures.
230.2–.9	Carcinoma in situ of digestive organs.

Code	Description
235.2	Neoplasm of uncertain behavior of stomach, intestines, and rectum.
235.5	Neoplasm of uncertain behavior of other and unspecified digestive organs.
239.0	Neoplasm of unspecified nature, digestive system.
280.0–.9	Iron deficiency anemias.
285.0–.9	Other and unspecified anemias.
286.0–.9	Coagulation defects.
287.0–.9	Purpura and other hemorrhagic conditions.
448.0	Hereditary hemorrhagic telangiectasia.
455.0–.8	Hemorrhoids.
456.0–.21	Esophageal varices with or without mention of bleeding.
530.10–535.61	Diseases of the esophagus, stomach, and duodenum.
536.2	Persistent vomiting.
536.8–.9	Dyspepsia and other specified and unspecified functional disorders of the stomach.
537.0–.4	Other disorders of stomach and duodenum.
537.82–.83	Angiodysplasia of stomach and duodenum.
537.89	Other specified disorders of stomach and duodenum.
555.0–558.9	Non-infectious enteritis and colitis.
560.0–.39	Intestinal obstruction/impaction without mention of hernia.
562.10–.13	Diverticulosis/diverticulitis of colon.
564.0–.9	Functional digestive disorders, not elsewhere classified.
565.0–.1	Anal fissure and fistula.
569.0	Anal and rectal polyp.
569.1	Rectal prolapse.
569.3	Hemorrhage of rectum and anus.
569.41–.49	Other specified disorders of rectum and anus.
569.84–.85	Angiodysplasia of intestine with or wihout mention of hemorrhage.
571.0–.9	Chronic liver disease and cirrhosis.
577.0	Acute pancreatitis.
577.0–.9	Diseases of the pancreas.
578.0–.9	Gastrointestinal hemorrhage.
579.0	Celiac disease.
579.8	Other specified intestinal malabsorption.
617.5	Endometriosis of intestine.
780.71	Chronic fatigue syndrome.
780.79	Other malaise and fatigue.
783.0	Anorexia.
783.2	Abnormal loss of weight.
787.01–.03	Nausea and vomiting.
787.1	Heartburn.
787.2	Dysphagia.
787.7	Abnormal feces.
787.91	Diarrhea.
787.99	Other symptoms involving digestive system.
789.00–.09	Abdominal pain.
789.30–.39	Abdominal or pelvic swelling, mass, or lump.
789.40–.49	Abdominal rigidity.
789.5	Ascites.
789.60–.69	Abdominal tenderness.
790.92	Abnormal coagulation profile.
792.1	Nonspecific abnormal findings in stool contents.
793.6	Nonspecific abnormal findings on radiological and other examination, abdominal area, including retroperitoneum.
794.8	Nonspecific abnormal results of function studies, liver.
863.0–.90	Injury to gastrointestinal tract.
864.00–.09	Injury to liver without mention of open wound into cavity.
864.11–.19	Injury to liver with open wound into cavity.
866.00–.03	Injury to kidney without mention of open wound into cavity.
866.10–.13	Injury to kidney with open wound into cavity.
902.0 –.9	Injury to blood vessels of abdomen and pelvis.
926.11–.19	Crushing injury of trunk, other specified sites.
926.8	Crushing injury of trunk, multiple sites.
926.9	Crushing injury of trunk, unspecified site.
964.2	Poisoning by agents primarily affecting blood constituents, anticoagulants.
995.2	Unspecified adverse effect of drug, medicinal, and biological substance.
V10.00–.09	Personal history of malignant neoplasm, gastrointestinal tract.
V12.00	Personal history of unspecified infectious and parasitic disease.
V12.72	Personal history of colonic polyps.
V58.61	Long term (current) use of anticoagulants.
V58.69	Long term (current) use of other medications.
V67.51	Following treatment with high risk medication, not elsewhere specified.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

• Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.

• Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.

• Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.

• A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above

Sources of Information

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Harrison's Principles of Internal Medicine (14th ed.), 1998, McGraw Hill.

Wallach, J., *Interpretation of Diagnostic Tests*, 1996, Little Brown and Co.

Illustrated Guide to Diagnostic Tests (2nd ed.), 1997, Springhouse Corporation.

Sleisenger and Fordtrans's Gastrointestinal and Liver Disease (6th ed.), 1997, W.B. Saunders.

Coding Guidelines

1. Any claim for a test listed in "HCPCS CODES" above must be submitted with an ICD–9–CM diagnosis code or comparable

narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as "probable," "suspected," "questionable," "rule-out," or "working diagnosis" should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

[FR Doc. 00–4834 Filed 3–9–00; 8:45 am]

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Federal Register

Friday,
March 10, 2000

Part III

Department of the Interior

Bureau of Indian Affairs

Higher Education Workforce Project; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Higher Education Workforce Project

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Intent to Implement Demonstration Project.

SUMMARY: The Bureau of Indian Affairs is announcing the intent to implement a demonstration project. Public Law 105–337, Haskell Indian Nations University (HINU) and Southwestern Indian Polytechnic Institute (SIPI) Administrative Systems Act of 1998, Oct. 31, 1998, allows HINU to conduct a demonstration project to test the feasibility and desirability of new personnel management policies and procedures.

DATES: Implementation of this demonstration project will begin on October 1, 2000. To be considered, written comments must be submitted on or before April 10, 2000: an informal public hearing will be scheduled as follows: April 24, 2000 10 a.m. to 12 Noon in Lawrence, Kansas. At the hearing, parties may present their comments on the project. However, anyone wishing to testify should contact the person listed under the **FOR FURTHER INFORMATION CONTACT** section, so that HINU can plan the hearing and provide sufficient time for all parties to be heard. Priority will be given to those on the schedule, with others speaking during any remaining time. Each speaker will be limited to 10 minutes. Written comments may be submitted to supplement oral testimony during the public comment period.

ADDRESSES: You may send comments to Eddie Lehman, Haskell Indian Nations University, Office of the President, Lawrence, Kansas, 66046; e-mail address: elehman@ross1.cc.haskell.edu.

A public hearing will be held at the following location: Lawrence, Kansas—Haskell Indian Nations University, Haskell Auditorium, 155 Indian Ave., Lawrence Kansas 66046.

FOR FURTHER INFORMATION CONTACT: On proposed demonstration project and public hearings: Eddie Lehman, Haskell Indian Nations University, Lawrence, Kansas 66046, 785–749–8407; e-mail address: elehman@ross1.cc.haskell.edu.

SUPPLEMENTARY INFORMATION: Public Law 105–337 finds that the provision of culturally sensitive curricula for higher education programs at Haskell Indian Nations University is consistent with the commitment of the Federal Government to the fulfillment of treaty obligations to Indian tribes through the principle of self-determination and the use of Federal resources. It further finds that giving a greater degree of autonomy to the institution while maintaining it as an integral part of the Bureau of Indian Affairs will facilitate the transition of Haskell Indian Nations University to a 4-year university.

This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: March 2, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

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I. Executive Summary

The project was designed by an Alternative Personnel System (APS) Team, under the authority of the Interim President of HINU and the Office of Indian Education Programs, Bureau of Indian Affairs. There are three major areas of change: (a) Institution-controlled rapid hiring; (b) a contribution-based compensation system; (c) and a simplified assignment process. The project will cover all employees at HINU. The Department of Interior will perform extensive evaluation of the project.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that greater managerial control over personnel processes and functions at the worksite can enhance the effectiveness of a higher education workforce and, at the same time, expand the opportunities available to employees through a more responsive personnel system. This demonstration project will provide managers at the lowest practical level the authority, control, and the flexibility they need to provide quality educational opportunities for American Indian students. This project not only provides a system that recognizes, rewards, and retains employees for their contribution, but it also supports their personal and professional growth.

B. Problems With the Present System

Haskell Indian Nations University, a Federal higher education institution, provides post-secondary education to Native American students from across the United States. To do this effectively and efficiently, the institution must employ top-quality faculty, administrators, support staff, and technical/specialist workforce. The current personnel system must be re-engineered to provide incentives and rewards to employees who exhibit characteristics of educational mastery, enthusiasm, and innovation, and who increase their contribution to the higher education mission accordingly. Hiring restrictions and overly complex job classifications unduly exhaust valuable resources (staff, time, and budget), and unnecessarily detract attention from the institution's educational mission. Managers must be able to compete with the private sector for the best talent and be able to make timely and competitive job offers to potential employees. Those same managers need the tools to reward employees for continuing excellence so that the higher education system reflects a quality workforce. The current personnel system does not provide an environment that motivates employees to continue to increase their contribution to the institution and its mission. A contribution-based compensation system will help managers acquire motivational tools and provide a forum in which to apply them. The higher education process is continually changing and depends on shared expertise of a highly educated faculty and staff; therefore, managers can implement most effective strategies through local control of positions and

their classification. Managers need the ability to move employees freely within their institution to meet the educational mission and to provide developmental opportunities for employees. Managers at present have only limited tools to shape the workforce to ensure continued growth of new ideas, strategies, and state-of-the-art skills for the 21st century.

The inflexibility of many of today's personnel processes and the diffused authority, accountability, and approval chains throughout the system result in a workforce that cannot posture itself for a rapidly changing technological and academic environment. This demonstration is designed (1) to provide an encouraging environment that promotes the growth of all employees; and (2) to improve the local higher education manager's ability and authority to manage the workforce effectively.

C. Changes Required/Expected Benefits

This project will demonstrate that a human resources' system tailored to the mission and needs of a higher education institution will result in: (a) Increased quality in the higher education workforce and the educational outcomes produced; (b) increased timeliness of key personnel processes, especially hiring; (c) increased retention rates of "excellent contributors" and separation rates of "poor contributors'; (d) increased satisfaction of institutional customers with the higher education process and its outcome; and (e) increased satisfaction with the personnel management system by customers/students, employees and tribal communities.

The Higher Education Workforce Project (HEWP) builds on the features of demonstration projects at the Department of Defense Acquisition, Air Force Research Laboratory, Department of the Navy (China Lake), and National Institute of Standards and Technology (NIST). The long-standing Department of the Navy (China Lake) and NIST demonstration projects have produced impressive statistics on job satisfaction for their employees versus that for the Federal workforce in general. Therefore, in addition to the expected benefits mentioned above, it is anticipated that the HEWP will result in more satisfied employees as a consequence of the proposed demonstration project's hiring procedures, classification accuracy, pay equity, and fairness of performance management. A full range of measures will be collected during project evaluation.

D. Participating Institutions

The Higher Education Workforce Project (HEWP) will cover Haskell Indian Nations University, an institution of higher education of the Department of the Interior, Bureau of Indian Affairs. HINU is located in Lawrence, Kansas.

E. Participating Employees

In determining the scope of the demonstration project, primary consideration was given to the number and diversity of occupations within the Higher Education Workforce Project, which includes professional employees and the supporting personnel. The project provides for adequate development and testing of the Contribution-based Compensation and Assessment System (CCAS). The intent of this project is to provide the institution with increased control and accountability for the covered workforce. Therefore, the decision was made to include all General Schedule (GS) and Wage Grade System (WG) positions. Employees covered under the Performance Management and Recognition System Termination Act (pay plan code GM) are General Schedule employees and are covered under the demonstration project.

F. Bargaining Units

Of the 207 HINU employees, all except managerial employees are under union representation by the National Federation of Federal Employees union and are covered by a negotiated National Agreement. At the time of publishing the Indian Educators Federation union had been certified as the bargaining unit, but the certification had not become effective because of appeals by NFFE. The recent NFFE agreement will be recognized as the applicable agreement until such time as the appeal process is completed; a union is identified as the representative; and/or a new agreement is reached in accordance with the specific requirements under Public Law 105–337. All applicants for employment with, all eligibles and employees of, and all positions in or under HINU shall be included in this demonstration project. Any collective-bargaining agreement in effect on the day before this demonstration project commences shall continue to be recognized by HINU until such date of a new negotiated agreement, as may be determined by mutual agreement of the parties.

G. Project Design

In 1996, after several years of planning and research, HINU submitted legislation to Congress for developing a different higher education personnel system. In 1997 SIPI submitted legislation to Congress proposing an alternative personnel system. In 1998, the two pieces of legislation were joined due to the similarity of the two higher education schools' missions and identification of similar problems with acquiring personnel. Public Law 105–337, Oct. 31, 1998, authorized each institution to carry out a demonstration project for developing a higher education alternative personnel system. A joint Steering Committee was established in September 1999 as the governing body for the project. Members on the Steering Committee represented both institutions and the Office of Indian Education Programs, BIA. An Alternative Personnel System Team was established in October 1999, made up of employees from SIPI and HINU to design and develop the demonstration project that would test a new personnel system for use at SIPI and HINU. The APS team presented recommendations for a new system to the Steering Committee in December 1999 for approval. BIA, OIEP subsequently determined that the two institutions could develop individual alternative personnel systems and the Steering Committee was disbanded. HINU continued to use its APS team to design this project. The APS team developed an alternative personnel system that represents sweeping changes in the entire spectrum of human resources management for HINU. Several of the initiatives are designed to assist the institution in hiring the best people to fulfill mission requirements. Others focus on developing, motivating, and equitably compensating employees based on their contribution to the mission. Initiatives to effectively manage workforce turnover and maintain institutional excellence were also developed.

Public Law 105–337 authorizes HINU to test alternative benefits systems. Though no changes have been made to the existing benefits systems in this publication, HINU reserves the right to test alternative benefits systems in the future in accordance with the provisions of Public Law 105–337.

A. Hiring and Appointment Authorities

1. Simplified, Accelerated Hiring

The complexity of the current system and various hiring restrictions create delays; hamper management's ability to hire, develop, realign, and retain a quality workforce that is reflective of the institution's mission statement; and inhibit a quick response to the technological, economic and

educational needs of tribal communities. Line managers, departmental and divisional managers find the complexity limiting as they attempt to accomplish timely recruitment of needed personnel with appropriate knowledge and skills. To compete with the private sector and institutions of higher learning for the best talent available and be able to make expeditious job offers, managers need a process that is streamlined and easy to administer. In order to create a human resources management system that facilitates meeting HINU's mission and institutional excellence, this demonstration project will respond to today's dynamic environment by obtaining, developing, motivating, and retaining high-performing employees. The project will provide a flexible system that can restructure or renew the workforce quickly to meet diverse mission needs, respond to workload needs, and contribute to quality educational infrastructure.

Specifically, this part of the demonstration project will provide simplified, accelerated hiring of quality personnel by providing HINU full authority to appoint individuals to positions. Appropriate recruitment methods and resources will include those that are likely to yield quality candidates with the knowledge, skills, and abilities necessary to perform the duties of the position.

(a) Delegated Examining Authority

This demonstration project establishes a streamlined applicant examining process. This process will be used to fill all positions at HINU. Basic eligibility factors will be determined, using any and all available resources, linking applicants' knowledge, skills, and abilities to those required in each position. Minimum eligibility requirements will be those at the lowest equivalent GS or WG grade of the appropriate broadband level. Selective placement factors may be established when judged to be critical to successful job performance. These factors will be determined by the HINU selecting officials and communicated to applicants for basic eligibility. Qualified candidates who meet the basic "minimum" qualifications will be further evaluated based on Knowledge, Skills, and Abilities that are directly linked to the position(s) to be filled. Applicants who meet Indian Preference qualifications will receive preference in hiring. Based on assessment, other candidates will receive numerical scores of 70, 80 or 90. No intermediate scores will be granted except for those eligibles that are entitled to veterans' preference. Veteran's preference eligibles meeting basic (minimum) qualifications will receive an additional five or ten points (depending on their preference eligibility) added to the minimum scores identified above. Applicants will be placed in one of the following quality groups based on their numerical score including any preference points: Basically Qualified (score of 70 to 79); Highly Qualified (score of 80 to 89); or Superior (score of 90 and above). The names of veterans' preference eligibles will be entered ahead of others having the same numerical score. The names of Indian preference eligibles will be placed at the top of the Superior quality group.

For professional positions at the basic rate of pay equivalent to GS–9 and above, applicants will be referred by quality groups in the order of the numerical ratings, including any veterans' preference points. For all other positions, (*i.e.*, other than professional positions at the equivalent of GS–9 and above), veterans' preference eligibles with a compensable service-connected disability of ten percent or more who meet basic (minimum) eligibility will be listed at the top of the highest group certified.

For GS–9 academic and administrative positions, hiring committees will convene to review the applications on the certification list. In accordance with academic procedures, hiring committees will recommend a ranked preference list to the hiring officials.

All applicants in the highest group will be certified. If there is an insufficient number of applicants in the highest group, applicants in the next lower group may then be certified; should this process not yield a sufficient number, groups will be certified sequentially until a selection is made or the qualified pool is exhausted. When two or more groups are certified, applicants will be identified by quality group (*i.e.*, Superior, Highly Qualified, Basically Qualified) in the order of their numerical scores. Indian preference eligibles will be placed at the top of the Superior group. Passing over any veteran's preference eligible(s) to select a non-preference eligible requires approval under current pass-over or objection procedures.

The on-site Personnel Director will serve as a consultant during the hiring process, overseeing Indian and veterans' preference, timely processing of paperwork, and other procedures that ensure lawful and equitable procedures for all applicants. The hiring process will reflect the merit principles.

(b) Scholastic Achievement Appointment

This demonstration project establishes a Scholastic Achievement Appointment that provides the authority to appoint candidates with degrees to positions with positive education requirements. Candidates may be appointed under this procedure if: (1) They meet the minimum standards for the positions as published in OPM's Operating Manual "Qualification Standards for General Schedule Positions," plus any selective factors stated in the vacancy announcement; (2) the occupation has a positive education requirement; (3) the candidate has a cumulative grade point average (GPA) of 3.5 or better (on a 4.0 scale) in those courses in those fields of study that are specified in the Qualification Standards for the occupational series and an overall undergraduate GPA of at least 3.0 on a 4.0 scale; and (4) the appointment is into a position at a pay level lower than the top step of GS–7. Appointments may also be made at the equivalent of GS–9 through GS–11 on the basis of graduate education and experience, but with the requirement of a GPA of at least 3.7 on a scale of 4.0 for graduate courses in the field of study required for the occupation. Indian preference and veterans' preference procedures will apply when selecting candidates under this authority. Preference eligibles who meet the above criteria will be considered ahead of non-preference eligibles. Passing over any preference eligibles(s) to select a non-preference eligible requires OPM approval under current objection procedures. This authority allows for competitive appointment to positions at the broadband level II.

2. Permanent and Contingent Appointment Authorities

The educational work environment is seriously affected by variable workload and mission changes that require flexibility not only in workforce numbers but required skills and knowledge. The current personnel system is unable to adapt the workforce rapidly to these changes. This demonstration project provides a method to adjust the workforce as needed. Under this demonstration project there are two appointment options: permanent and contingent appointments. The permanent appointment replaces the existing career and career-conditional appointments. The contingent appointment is a new appointment authority that is based roughly on the existing term

appointment to provide flexible hiring practices for HINU. All contingent appointments will be temporary. All employees under these two appointments will be eligible for benefits under the guidelines of the demonstration project, provided the appointment is the duration of at least one year. Benefits are the same as those currently afforded permanent employees. An academic year is considered equivalent to a calendar year for academic appointments.

Institutions may make a contingent appointment for a period that is expected to last up to a year, but not to exceed four years. Reasons for making a contingent appointment include, but are not limited to, carrying out special project work; staffing new or existing programs of limited duration; filling a position in activities undergoing review for reduction or closure; and replacing permanent employees who have been temporarily assigned to another position, are on extended leave, or have entered military service. Selections for contingent appointments for less than one year will be non-competitive. Selections for contingent appointments of one year or more will be made under competitive examining processes. Employees hired under a one-year or more, contingent appointment authority are temporary, but may be eligible for conversion to permanent appointment. To be converted, the employee must (1) have been selected for the 1 year or more contingent position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the contingent position(s) may be eligible for conversion to permanent appointment at a later date; (2) must have participated in at least one cycle of the contribution-based assessment process; and (3) be selected under merit promotion procedures for the permanent position. Service under a contingent appointment immediately prior to a permanent appointment may be applied toward the probationary period at the discretion of the manager, provided contribution is adequate and the permanent position is in the same career path as the contingent appointment. The institution may place a contingent employee in any other contingent position, provided the employee meets the qualifying requirements of that position. However, such reassignment will not serve to extend the appointment beyond the original contingent appointment time period. Professional conversions will require review by appropriate peers. Contingent and permanent appointments may be used for part-time and full-time purposes. The contingent appointment may not be used to replace or substitute for work performed by employees occupying regular positions required to perform the mission of the institution, but may be used to supplement regular positions work activities.

3. Modified Probationary Period

For employees in the Professional and Technical/Specialist career paths, the current one-year probationary period does not always provide managers the time needed to properly assess the contribution and conduct of new hires in the higher education environment. New hires may be involved in extended training, degree completion and/or educational assignments away from their normal institution. A means of extending the opportunity for management to review and evaluate the contribution and potential of new hires is needed. Expansion of the current one-year probationary period affords management better control over the quality of employees required to meet mission needs and provide sufficient opportunity to evaluate contribution during the beginning of a career. Permanent employees will fulfill a maximum of three years probation that may be decreased to not less than one year. All newly hired employees may be subject to an extension of their probationary period equal to the length of any educational/training assignment that places the employee outside normal supervisory review. The modified probationary period applies to new hires or those who do not have reemployment or reinstatement eligibility. Aside from extending the probationary period, all other features of the current probationary period are retained. Probationary employees will be terminated when they fail to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When a supervisor decides to terminate an employee serving a probationary period because his/her work contribution or conduct during that period fails to demonstrate fitness or qualifications for continue employment, the supervisor shall terminate the employee's services by written notification thirty days prior to the effective date of the action. Probationary employees will receive all the benefits of the non-probationary permanent employees, with the exception that they may be separated without due cause. After fulfilling the probationary requirements, an employee will not be separated without full substantive and procedural rights.

4. Voluntary Emeritus Program

Under the demonstration project, the President of HINU has the authority to offer retired or separated individuals voluntary assignments in the institution and to accept the gratuitous services of those individuals. Voluntary Emeritus Program assignments are not considered employment by the Federal Government (except as indicated below). Thus, such assignments do not affect an employee's entitlement to buy-outs or severance payments based on earlier separation from Federal Service. This program may not be used to replace or substitute for work performed by employees occupying regular positions required to perform the mission of the institution.

The Voluntary Emeritus Program will ensure continued quality higher education by allowing retired employees to retain a presence in the HINU education community. Experienced workers will be available to enrich the institution's educational mission through mentorships and other service.

To be accepted into the Voluntary Emeritus Program, a volunteer must be recommended to the President by one or more HINU education managers. No one who applies is entitled to an emeritus position. The President must document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained for two years.

To ensure success and encourage participation, the volunteer's Federal retirement pay (whether military or civilian) will not be affected while the volunteer is serving in emeritus status. Retired or separated Federal employees may accept an emeritus position without a "break in service" or mandatory waiting period.

Voluntary Emeritus Program volunteers will not be permitted to monitor contracts on behalf of the Government but may participate on any contract if no conflict of interest exists. The volunteer may be required to submit a financial disclosure form annually and will not be permitted to participate on any contracts where a conflict of interest exists.

An agreement will be established by the volunteer, the President, and the Personnel/Human Resources Office. The agreement must be finalized before the assumption of duties and shall include:

(a) a statement that the service provided is gratuitous, does not constitute an appointment in the Civil

Service, is without compensation or other benefits except as provided for in the agreement itself, and that, except as provided in the agreement regarding work-related injury compensation, any and all claims against the Government because of the service are waived by the volunteer;

(b) a statement that the volunteer will be considered a Federal employee for the purposes of:

(I) Subchapter I of Chapter 81 of Title 5, U.S.C. (using the formula established in 10 U.S.C. 1588 for determination of compensation) (work-related injury compensation);

(ii) Chapter 171 of title 28, U.S.C. (tort claims procedure);

(iii) Section 552a of Title 5, U.S.C. (records maintained on individuals); and

(iv) Chapter 11 of title 18, U.S.C. (conflicts of interest).

(c) the volunteer's work schedule;

(d) length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) support provided by the activity (travel, administrative, office space, supplies, etc.);

(f) a one-page statement of duties and experience; a statement specifying that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a member of the Voluntary Emeritus Program a provision allowing either party to void the agreement with ten days' written notice and;

(I) the level of security access required.

B. Broad banding

1. Broadband Levels

Broad banding system will replace the current General Schedule (GS) and Wage Grade structure. Currently, the 15 grades of the General Schedule are used to classify positions and, therefore, to set pay. The General Schedule covers all white-collar work—administrative, technical, clerical, and professional. The Wage Grade System covers all blue-collar work — mechanical, technical, and manual labor.

Occupations with similar characteristics will be grouped together into three career paths with broadband levels designed to facilitate pay progression and to allow for more competitive recruitment of quality candidates at differing rates. Professional, Technical/Specialist and Support designate career paths as depicted in TABLE I. Competitive promotions will be less frequent, and movement through the broadband levels will be a more seamless process than under current procedures. Like the broadband systems used at the Department of the Navy (China Lake) and the National Institute of Standards and Technology (NIST) permanent demonstration projects, advancement within the system is contingent on merit.

There will be five broadband levels in the demonstration project, labeled I, II, III, IV, and V. Levels I through IV will include the current grades of GS–01 through GS–15. These are the grades in which the workforce employees are currently found. Wage grade compensation levels were converted to GS grade, then the GS grades was used in setting the upper and lower dollar limits of the broadband levels; however, once the employees are moved into the demonstration project, GS and WG grades will no longer apply. Broadband level V is reserved for the position of President of HINU and is limited by compensation equivalent to Executive Level III. The three career paths and their associated broadband levels are shown in TABLE I.

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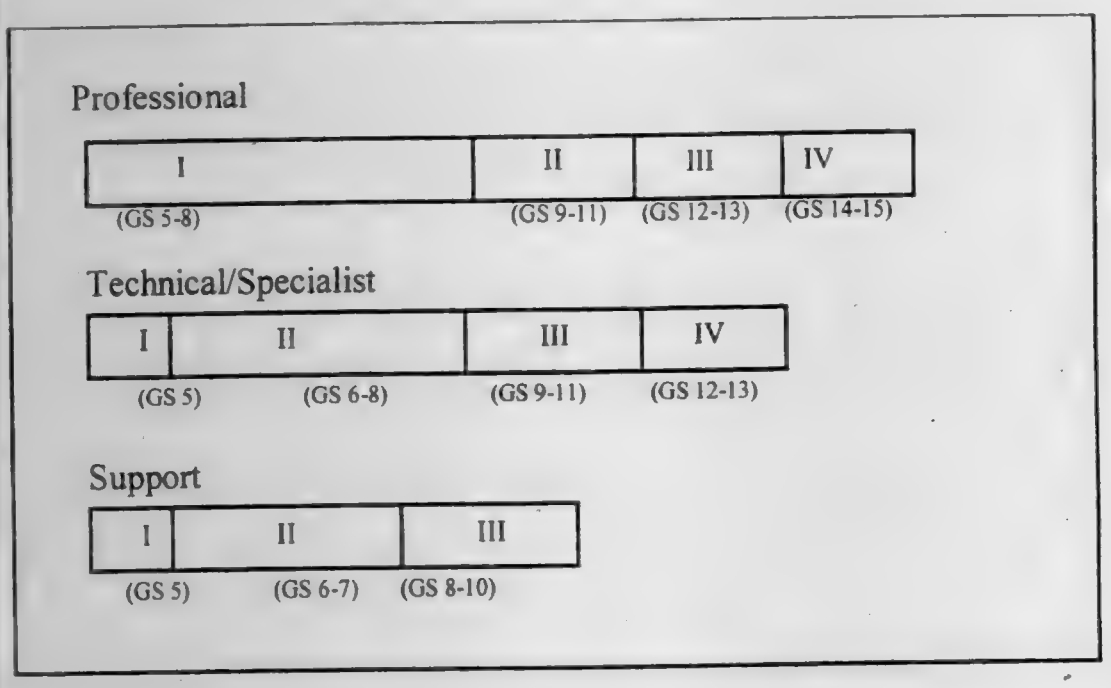

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Generally, employees will be converted into the broadband level that includes their permanent GS and WG grade of record. Each employee is assured an initial place in the system without loss of pay. As the rates of the General Schedule and/or Executive Schedule are increased due to general pay increases, the minimum and maximum rates of the broadband levels will also move up. Individual employees receive pay increases based on their assessments under the Contribution-based Compensation and Assessment System (CCAS). Since pay progression through the levels depends on contribution, there will be no scheduled within-grade increases (WGIs) or scheduled general pay increases for employees once the Broad banding system is in place. Currently no special salary rates are in effect at HINU. However, if a position is created that falls under a special salary rate, that rate will be converted to a broadband level comparable to the special salary rate and that special salary rate will no longer be applicable to the demonstration project employee.

Employees will receive the locality pay of their geographical area.

Newly hired personnel entering the system will be employed at a level consistent with the expected basic qualifications for the level, as determined by rating against qualification standards. Salaries of individual candidates will be based on academic qualifications and/or work experience. The hiring official will determine the starting salary based upon available labor market considerations relative to special qualifications requirements, scarcity of qualified applicants, programmatic urgency, and education/experience of the new candidates. In addition to the flexibility available under the Broad banding system, the authorities for retention, recruitment, and relocation payments granted under the Federal Employees' Pay Comparability Act of 1990 (FEPCA) can also be used.

The use of Broad banding provides a stronger link between pay and contribution to the mission of the institutions. It is simpler, less time consuming, and less costly to maintain. In addition, such a system is more easily understood by managers and employees, is easily delegated to managers, coincides with recognized career paths, and complements the other personnel management aspects of the demonstration project.

2. Simplified Assignment Process

Today's environment of downsizing and workforce transition mandates that the institution has maximum flexibility to assign individuals. Broad banding enables the institution to have the maximum flexibility to assign an employee within broad descriptions, consistent with the needs of the institutions and the individual's qualifications. Assignments may be accomplished as realignments and do not constitute a position change. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or institution consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

C. Classification

1. Occupational Series

The present General Schedule classification system has 434 occupational series that are divided into 22 occupational groups. The present Federal Wage classification system has 39 key ranking jobs. The HEWP currently covers numerous series and key ranking jobs in the 22 occupational groups and Federal Wage System. These occupational series and key ranking jobs will be maintained throughout the demonstration project.

2. Classification Standards

The present system of OPM classification standards will be used for identification of proper series and occupational titles of positions within the demonstration project. References in the position classification standards to grade criteria will not be used as part of the demonstration project. Rather, the CCAS broadband level factors, as aligned in the three career paths, will be used for the purpose of broadband level determination. Under the demonstration project, each broadband level will be represented by a set of descriptors.

3. Classification Authority

Under the HEWP, the President (or equivalent) will have delegated classification authority and may re-delegate this authority to subordinate management levels. Re-delegated classification approval must be exercised at least one management level above the first-line supervisor of the position under review, except in the case of those employees reporting directly to the president or equivalent. First-line supervisors will provide classification recommendations. The Personnel Director will provide on-going consultation and guidance to managers and supervisors throughout he classification process.

4. Statement of Duties and Requirements

Under the demonstration project's classification system, a new statement of duties and requirements (SDR) will replace the current position description. The SDR will combine the position information, staffing requirements, and contribution expectations into a single document. The new SDR will include a description of job-specific information, reference the CCAS broadband level descriptors for the assigned broadband level, and provide other information pertinent to the job. Supervisors may use a computer-assisted process to produce the SDR. The objectives in developing the new SDR are to: (a) Simplify the descriptions and the preparation process through automation; (b) provide more flexibility in work assignments; and " provide a more useful tool for other functions of personnel management, *e.g.*, recruitment, assessment of contribution, employee development, and reduction in force.

5. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption or non-exemption determinations will be made consistent with criteria found in 5 CFR (Code of Federal Regulations) part 551.

All employees are covered by the FLSA unless they meet criteria for exemption. Positions will be evaluated as needed by comparing the duties and responsibilities assigned the broadband level descriptors for each broadband level, and the 5 CFR part 551 FLSA criteria.

6. Classification Appeals

An employee may appeal the occupational series, title, or broadband level of his/her own position at any time. An employee must formally raise the areas of concern to supervisors in the immediate chain of command, either verbally or in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the Haskell Classification Appeals Panel. Time periods for case processing under 5 CFR 511.605 apply.

An employee may not appeal the accuracy of the SDR document, the demonstration project classification criteria, or the pay-setting criteria; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

The evaluation of classification appeals under this demonstration project is based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the personnel/human resources office and will include copies of appropriate demonstration project criteria.

D. Contribution-Based Compensation and Assessment System

1. Overview

The purpose of the Contribution-based Compensation and Assessment System (CCAS) is to provide an equitable and flexible method for assessing and compensating the higher education workforce. CCAS allows for more employee involvement in the performance assessment process, increases communication between supervisors and employees, promotes a clear accountability of contribution by each employee, facilitates employee progression tied to institutional contribution, and provides an understandable basis for salary changes.

CCAS goes beyond a performance-based rating system. It measures the employee's contribution to the mission and goals of the institution, rather than how well the employee performed a job as defined by a performance plan. Past experience with the existing performance appraisal system indicates that performance plans are often tailored to the individual's level of previous performance. Hence, an employee may have been rewarded by salary step increases for accomplishing a satisfactory level of performance against a diminishing set of responsibilities. CCAS promotes salary adjustment decisions made on the basis of an individual's overall annual contribution when compared to all other employees and level of compensation. Therefore, larger-than-average salary increases are possible for employees who are determined to be "under compensated—below the rails" and smaller-than-average increases are permitted for employees who are deemed to be "over compensated—above the rails" in relationship to their institutional contributions.

An employee's performance is a synthesis of contributions that determines the overall contribution score (OCS). Contribution is measured by using a set of six factors, each of which is relevant to the success of the educational institution. The description for each factor will have five levels. Criteria for achieving these levels will be determined by each organizational unit, such as an academic department, within the school. Taken together, these factors capture the critical content of jobs in each career path. The factors may not be modified or supplemented. These factors are the same as those used to classify a position at the appropriate broadband level. Variable weights may be applied to the six factors for different job categories.

The total compensation or pay system is an important indicator of what an organization believes is important to its success. A well-designed compensation system provides a battery of tools to support organizational goals and outcomes. The design should be strategic, flexible, and customer-focused. The current compensation system, because it was implemented in a piecemeal fashion for a hierarchical organization, does not relate to educational needs and is cumbersome. The demonstration project will test a compensation system that is able to change based on the needs of the entire organization, of the taxpayer, and of the student being served.

Employees in all five broadband levels will have the same factors, with applications relevant to the SDR. The six factors are: (1) Primary Duty and Requirements (defined in the SDR); (2) Customer/Student Service; (3) Department and Institutional Service; (4) Teamwork/Supervision; (5) Professional Development Activity; (6) Communications/Research and Publications. These factors were chosen for assessing the yearly contribution of HINU employees in the three career paths (1) Professional, (2) Technical/Specialist, and (3) Support. Each factor has multiple levels of increasing contribution corresponding to the broadband levels within the relevant career paths. These levels will be delineated in the Operations Manual.

Factor 1: Primary Duty and Requirements refers to the activities that relate to the position description title, such as "Carpenter" relating to levels of achievement of carpenter duties; or "Instructor" relating to achievement of levels related to classroom instruction. The individual factor will relate to the activity described by the title.

Factor 2: Customer/Student Service pertains to activities that relate to direct and indirect contact with customers/students, and will cover areas related to advising, tutoring, mentoring, club sponsorship, and other activities that serve the students outside the classroom.

Factor 3: Departmental and Institutional Service refers to committee work, curriculum development, institutional programs (graduation, powwows), public presentations, academic lectures, and other activities that contribute to the worker's organizational unit and the institution as a whole.

Factor 4: Teamwork/Supervision refers to non-managerial employees (Teamwork) or managers (Supervision and Teamwork). Teamwork is a factor that describes any worker's contribution to the mission and goals of the organizational unit, through interactions with other employees. Additional managerial criteria includes supervision of workers. Management of resources is also part of this factor for supervisors.

Factor 5: Professional Development Activity refers to any training, academic course work, instructional conferences, or activity that contributes to the employee's ability to perform duties for the benefit of the institution of higher learning.

Factor 6: Communications/Research and Publications refers to ability to communicate, both receiving and transmitting information, in the workplace, through meetings, written documentation, electronic tools, and other appropriate means. Research and Publication refers to researching relevant sources for curriculum and instructional topic area purposes, and in some cases publishing the results of research.

2. Normal Pay Range (NPR)

The Contribution-based Compensation and Assessment System (CCAS) pay schedule provides a direct link between increasing levels of contribution and increasing salary. This is shown by the graph in Figure 1. The horizontal axis spans from 0 to the maximum overall contribution score (OCS) of 100, with a notional "very high" score of 115 for those employees who are capped at the top of their broadband level. The vertical axis spans from zero dollars to the dollar equivalent of Executive Schedule Level III. With the exception of the president's pay rate, this range encompasses the full salary (excluding locality pay) paid under this demonstration, from GS–1, step 1, through GS–15, step 10, for Calendar Year 2000 (CY00). The president's position is currently a GS–14/15. The salary range for the president's position has been extended to Executive Service Level III. The president's salary is the only salary that may increase beyond GS–15 step 10. Each year the rails for the NPR are adjusted upward on the general pay increase under 5 U.S.C. 5303.) The area between the upper and lower rail is considered the normal pay range (NPR). Employees whose annual overall contribution score (OCS) plotted against their base salary falls on or within the rails are considered "appropriately compensated." Employees whose salaries fall below the NPR for their overall contribution score (OCS) are considered "under compensated—below the rails (B)," and those falling above the NPR are considered "overcompensated—above the rails (A)." The goal of CCAS is to make pay consistent with employees' contributions to the HINU mission.

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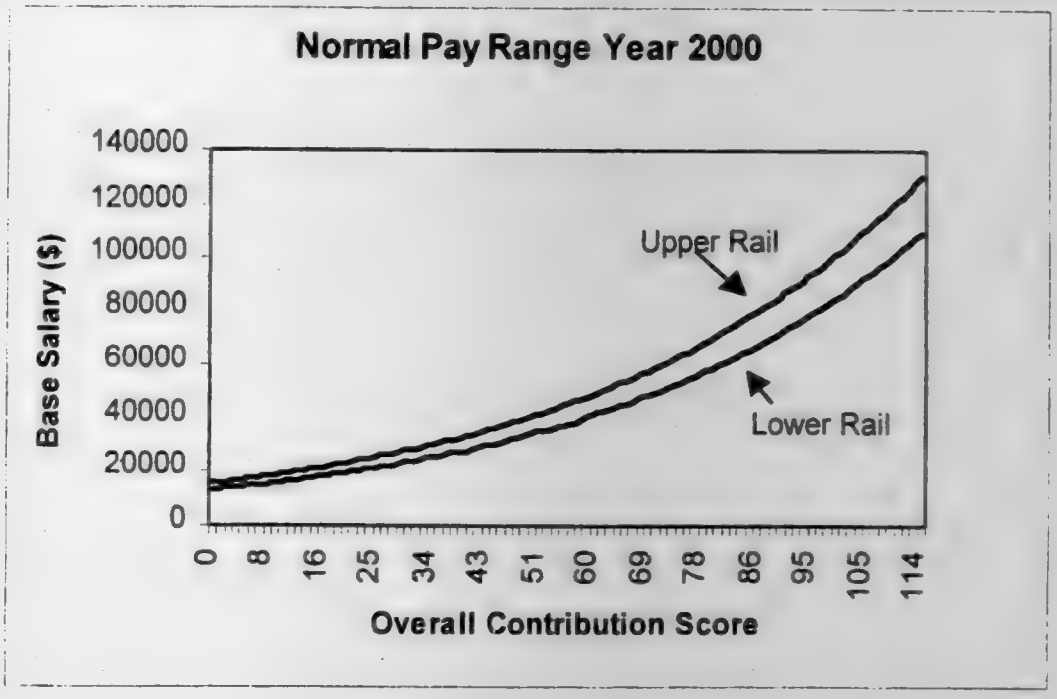

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The NPR was established using the following parameters:

1. The lowest possible score is an OCS score of 0, which equates to the lowest base salary paid under this demonstration, GS–1, step 1.

2. The OCS of 100 equates to the highest base salary paid employees under the president, GS-15, step 10. A "very high" score of 115 may be awarded for employees in the Professional Career Path. There is not a point range in the "very high" category; 115 points are awarded or the individual is not rated "very high". The same is true for the other two career paths: Technical/Specialist with a "very high" score of 95; Support with a "very high" score of 70.

3. Changes in OCS correspond to a constant percentage change in salary along the rails.

4. The upper and lower rails encompass an area of ±4.0 OCS points or ±8.0 percent in terms of salary, relative to the points established in parameters 1 and 2, above.

Given these constraints, the formulae for the rails found in Figure 1 are:

Salary upper rail = (GS–1 Step 1)*(1.0800)*(1.020043)) OCS;

Salary lower rail = (GS–1 Step 1)*(0.9200)*(1.020043)) OCS.

Formula results were normalized using a 100 point scale. The pay schedule and the NPR are the same for all the career paths. What varies among the career paths are the beginnings and endings of the broadband levels. The minimum and maximum numerical OCS values and associated base salaries for each broadband level by career path are provided in TABLE II. These minimum and maximum breakpoints represent the lowest and highest General Schedule (GS) salary rate for the grades banded together and, therefore, the minimum and maximum salaries possible for each level. Each year, the rails for the NPR are adjusted based on the General Schedule pay increase granted to the Federal workforce.

Employees will enter the demonstration project without a loss of pay and without a CCAS score. The first CCAS score will result from the first annual CCAS assessment process. Until then, no employee is inappropriately compensated. Employees, however, may determine their expect contribution range by locating the intersection of their salary with the rails of the NPR. Future CCAS assessments may alter an employee's position relative to these rails.

TABLE II – OCS and Salary Ranges by Broadband Level*

Support			
Broadband Level	GS Grades	Normal OCS Range	Salary Range
I	1-5	0-25	13,870 - 27,778
II	6-7	23-35	23,820 – 34,408
III	8-10	31-47	29,315 – 46,359

Technical Specialist			
Broadband Level	GS Grades	Normal OCS Range	Salary Range
I	5	18-25	21,370 – 27,778
II	6-8	23-39	23,820 – 38,108
III	9-11	36-51	32,380 – 50,932
IV	12-13	51-66	46,955 - 72,586

Professional			
I	5-8	18-39	21,370 – 38,108
II	9-10	34-49	32,380 – 46,359
III	11-13	42-68	39,178 – 72,586
IV	14-15	64-80	65,983 – 100,897

*Not including locality pay

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The pay schedule and the NPR are the same for all the career paths. What varies among the career paths are the beginnings and endings of the broadband levels. The minimum and maximum numerical OCS values and associated base salaries for each broadband level by career path are provided in TABLE II. These minimum and maximum breakpoints represent the lowest and highest General Schedule (GS), Wage Grade (WG), and Executive Level III salary rates for the grades banded together and, therefore, the minimum and maximum salaries possible for each level. Locality salary adjustments are not included in the NPR but are incorporated in the demonstration participants' pay.

Employees will enter the demonstration project without a loss of pay (see section V, Conversion) and without a CCAS score, or OCS. The first CCAS score will result from the first annual CCAS assessment process. Until the first CCAS assessment process is completed no employee is over or under compensated. However, employees may determine their expected contribution range by locating the intersection of their salary with the rails of the NPR. Future CCAS assessments may alter an employee's position relative to these rails.

3. CCAS Assessment Process

The annual CCAS assessment cycle begins on August 1 and ends on July 30 of the following year, with the exception of the first year of the demonstration project, which will begin at the project's inception on October 1, 2000, and end July 30, 2001. At the beginning of the annual assessment cycle, the broadband level descriptors will be provided to employees so that they know the basis on which their contribution will be assessed for their pay pool. (A pay pool is a group of employees among whom the CCAS dollars are calculated and distributed. The President of the institution determines the pay pool structure (see Section III D 04). At that time, employees will be advised that all factors are critical and weights will be established, if appropriate. Key terms will be defined or clarified. Supervisor and employee discussion of specific work assignments, standards, objectives, and the employee's contributions within the CCAS framework should be conducted on an ongoing basis.

Near the end of the annual (August 1 to July 30) assessment cycle, the immediate supervisor (rating official) meets with employees, requesting them to summarize their contributions for each factor. They will complete the rating of individual employees by September 30.

From employees' inputs and his/her own knowledge from all available sources, the rating official identifies for each employee the appropriate contribution level (1, 2, 3, 4, or 5) for each factor.

HINU will establish a performance feedback system using a 360-degree feedback process. The system will use 360-degree feedback from: (a) An employee's manager, (b) peers, and (c) customers. Performance feedback will provide all employees with information on their contribution to the

organization's performance. It will also help them identify their training and developmental needs for the yearly cycle by pinpointing areas of strength and items needing improvement. This information contributes to Learning Contracts. Every employee will have a Learning Contract that will consider needs identified by employee development measures, the performance feedback system, and a certification/recertification system.

The results of the 360-degree performance feedback will go only to the employee, with group or area results being summarized for the manager. In areas with a single employee, the results will be provided to the manager. If an employee appeals his/her rating, the employee may use 360-degree supporting information in the appeal of the original assessment. Training in the use of the performance feedback system will be provided to all employees.

The rating officials within each pay pool (including second-level supervisors) meet together to ensure consistency and equity of the contribution assessments. Then the rating officials calculate the final overall contribution score (OCS) and inform employees of OCSs by October 30. Payout occurs the first full pay period of January. The project's first payout will be the first full pay period of January 2002.

To determine the OCS, numerical values are assigned based on the contribution levels of individuals, using the ranges shown in TABLE II. Generally, the OCS is calculated by averaging the numerical values assigned for each of the six factors. (All OCS values will be rounded to the nearest whole number.) However, at the discretion of the rating official, different weights may be applied to the factors to produce a weighted average, provided that the weights are applied uniformly across the pay pool and employees are advised in advance, *i.e.*, at the beginning of the rating period. Weighting may not result in any factor becoming zero.

The rating officials (including second-level supervisors) meet again to review the OCS for all employees, correcting any inconsistencies identified and making the appropriate adjustments in the factor assessments, and placing the employees in rank order.

The pay pool panel (pay pool manager and the rating officials in the pay pool who report directly to him/her) conducts a final review of the OCS and the recommended compensation adjustments for pay pool members. The pay pool panel has the authority to make OCS adjustments, after discussion with the initial rating officials, to ensure equity and consistency in the ranking of all employees. Final approval of OCS rests with the pay pool manager. The OCS approved by the pay pool manager becomes the final OCS. Rating officials will communicate the factor scores and OCS to each employee and discuss the results by November 30.

If on August 1, the employee has served under CCAS for less than six months, the rating official will wait for the subsequent annual cycle to assess the employee. The first CCAS assessment must be rendered within 18 months after entering the demonstration project.

When an employee cannot be evaluated readily by the normal CCAS assessment process due to special circumstances that take the individual away from normal duties or duty station (*e.g.*, long-term full-time training, active military duty, extended sick leave, leave without pay, union activities, etc.), the rating official will document the special circumstances on the assessment form. The rating official will then determine which of the following options to use:

(a) Re-certify the employee's last OCS; or

(b) Presume the employee is contributing consistently with his/her pay level and will be given minimally the full general increase.

Pay adjustments will be made on the basis of the CCAS assessment (OCS) or substitute determination and the employee's rate of basic pay. Pay adjustments are subject to payout rules discussed in section III D 4. Final pay determinations will be made by the pay pool manager. CCAS scores can only be adjusted after discussion with the rating official.

Pay adjustments will be documented by SF–50, Notification of Personnel Action. For historical evaluation and analytical purposes, dates on the effective date of CCAS assessments, actual assessment scores, the actual salary increases, amounts contributed to the pay pool, and applicable "bonus" amounts will be maintained for each demonstration project employee.

4. Pay Pools

The pay pool structure and allocated funds are under the authority of the President of HINU. The following minimal guidelines will apply to pay pool determinations: (a) A pay pool(s) is based on the institution's organizational structure and should include a range of salaries and contribution levels; (b) a pay pool must be large enough to include a second level of supervision, since the CCAS process uses a group of supervisors in the pay pool to determine OCS and recommended salary adjustments; and—neither the pay pool manager nor the supervisors within a pay pool will recommend or set their own individual pay levels.

The amount of money available in the pay pool fund is determined by (1) the amount of the annual general pay increase (G): And an Incentive amount (I), made up of money that would have been available for quality step increases, within grade in creases, promotions between grades encompassed in the same broadband level, and other appropriate factors. The amount of I will be determined each year by the President, and will be 2.4 percent for the first year. The amount of I may be adjusted as necessary each year to maintain cost discipline. The dollar amount of I will be computed each year based on a percentage of the base pay. Salaries of employees in the pay pool as of September 30. Though not all funds within a pay pool must be distributed each year as pay or bonuses a pool of funds are to be set aside for pay purposes and may not be used for other purposes before annual pay calculations are made.

5. Salary Adjustment Guidelines

After the initial conversion into the CCAS, employees' yearly contributions will be determined by the CCAS process described above, and their overall contribution scores versus their current rate of basic pay will be plotted on a graph along with the NPR. Refer back to Figure 1. The position of those points relative to the upper and lower rails of the NPR gives a measure of the employee's compensation (salary) versus contribution (OCS). Employees fall into one of three categories: Overcompensated—above the upper rail; appropriately compensated—between the rails; or inappropriately compensated—below the lower rail. Depending on the category into which an employee falls, he/she may be eligible for up to three forms of additional compensation. The pay pool panel has the option of awarding the employee up to the full general pay increase (as authorized by Congress and the President), a contribution rating increase (an increase in base salary), and/or a contribution award (a lump-sum payment that does not affect base salary). Employees on retained rate in the demonstration plan will receive pay adjustments in accordance with 5 U.S.C. 5363 and 5 CFR part 536. An employee receiving a retained rate is not eligible for a contribution rating increase, since such increases are limited by the maximum salary rate for the employee's broadband level.

An employee designated as overcompensated, above-the-upper-rail, could have his/her general pay increase reduced or denied and would not be eligible for a contribution rating increase. An employee designated as appropriately compensated, between-the-rails, will receive the general increase and a contribution rating increase provided the increase does not exceed the upper rail of the NPR for the employee's OCS or maximum salary for current broadband level. An employee designated as inappropriately compensated, below-the-lower-rail, would be eligible for the general pay increase and a contribution rating increase. The contribution rating increase may not exceed 6% above the lower rail of the maximum salary for the current broadband level.

A contribution rating increase greater than 20% requires the president's approval. Employees in the categories (1) appropriately compensated and (2) inappropriately compensated, below-the-lower-rail, are eligible for contribution awards up to $10,000 with the approval of the pay pool manager. Amounts exceeding $10,000 require the president's approval.

Basic pay plus locality pay may not exceed Executive Level III basic pay; upper rail of NPR for employee's OCS; or maximum salary for current broadband level. A pay adjustment may not exceed 6% above the lower rail, or the maximum salary for current broadband level. A pay adjustment over 20% requires the President's approval. The pay pool manager approves any increase up to $10,000. Amounts exceeding $10,000 require the president's approval.

In general, those employees who fall in the inappropriately compensated (B, below-the-rails) category of the NPR should expect to receive greater percentage salary increases than those who fall in the inappropriately compensated (A, above-the-rails) category. Over time, all employees outside the rails will migrate closer to the normal pay range and receive a salary appropriate for their level of contribution.

Employees whose OCS would result in a base pay increase such that the salary exceeds the maximum salary for their current broadband level may receive a contribution bonus equaling the difference. This bonus will be paid as a lump sum payment, and will not add to base pay.

HINU will establish Total Awards Budget (TAB) for the institution. The TAB will be set at not less than one percent of the institution's total salary budget calculated on September 30 of each year. The awards budget is separate from Pay Pool funds. Awards budget includes funds formerly spent for performance awards and incentive awards. The awards budget will be available for use as contribution awards and all other incentive awards. Not more than 90 percent of the TAB may be spent for contribution awards each year. This will allow funds for incentive awards not related to CCAS contributions. TAB funds will be paid as lump sum amounts and will not add to base pay. For the first year of the project, the total awards budget will be set at 1.3 percent of total salaries.

Each pay pool manager will set the necessary guidelines for pay adjustments in the pay pool. Decisions will be consistent within the pay pool, reflect cost discipline over the life of the demonstration project, and be subject to Administrative review. The maximum available pay rate under this demonstration project will be the rate for a Executive Level III. Notwithstanding any other provision of this demonstration project, if General Schedule employees receive an increase under 5 U.S.C. 5303 that exceeds the amount otherwise required by that section on the date of this notice, the excess portion of such increase shall be paid to demonstration project employees in the same manner as to General Schedule employees. The excess portion of such increase shall not be distributed through the pay pool process.

6. Movement Between Broadband Levels

It is the intent of the demonstration project to have career growth accomplished through the broadband levels. Movement within a broadband level will be determined by contribution and salary increases following the CCAS process. Movement to a higher broadband level is a competitive action. Movement to a lower broadband level may be voluntary or involuntary.

Broadband levels derive from salaries of the banded GS grades and equivalent Wage Grades. The lowest salary of any given broadband level is that for step 1 of the lowest GS grade in that broadband level. Likewise, the highest salary of any given broadband level is that for step 10 of the highest GS grade in that broadband level. There is a natural overlap in salaries in the GS grades that also occurs in the broadband system. Since the OCS is directly related to salaries, there is also an overlap between OCS across broadband levels.

Under the demonstration project, managers are provided greater flexibility in assigning duties by moving employees among positions within their broadband level. If there are vacancies at higher levels, employees may be considered for promotion to those positions in accordance with competitive selection procedures.

Under competitive selection procedures, the selecting official(s) may consider candidates from any source based on job-related, merit-based methodology. Similarly, if there is sufficient cause, an employee may be demoted to a lower broadband level position according to the contribution reduction-in-pay or removal procedures discussed in section III E 2.

7. Implementation Schedule

The 2000 employee annual appraisal will be done according to the performance plan rules in effect at the time of the 2000 close-out. Employees will be moved by personnel action into the demonstration project and into the appropriate broadband level on October 1, 2000, or as specified in the institution's implementation plan. The first CCAS assessment cycle will run from October 1 2000 to July 30, 2001. Overall assessment scores and pay adjustments resulting from the 2001 assessment cycle will be paid out the first full pay period of January 2002.

8. CCAS Grievance Procedures

Bargaining unit employees who are covered under a collective bargaining agreement may grieve CCAS pay determinations under the grievance-arbitration provisions of the agreement. Other employees not included in a bargaining unit may utilize the appropriate administrative grievance procedures to raise a grievance against CCAS pay decisions (5 CFR Part 771), with supplemental instructions as described below.

An employee may grieve the OCS (rating of record) If an employee is covered by a negotiated grievance procedure that includes grievances over appraisal scores, then the employee must use that procedure. If an employee is not in a bargaining unit, or is in a bargaining unit but grievances over assessment scores are not covered under a negotiated grievance procedure, then the employee may use the administrative grievance procedure (5 CFR Part 771) with supplemental actions described in the following below.

The employee will submit the grievance initially to the first line supervisor, the rating official, who will submit a recommendation to the pay pool panel. The pay pool panel may accept the rating official's recommendation or reach an

independent decision. In the event that the pay pool panel's decision is different from the rating official's recommendation, appropriate justification will be provided. The pay pool panel's decision is final unless the employee requests reconsideration by the next higher official to the pay pool manager. The pay-pool manager will render the final decision on the grievance.

Table IV will be used for the CCAS rating, which will determine additional years of retention service credit during Reduction in Force, according to BIA procedures.

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TABLE IV - RETENTION SERVICE CREDIT ASSOCIATED WITH ASSESSMENT RESULTS

Professional

Broadband Level	OCS Normal Range	OCS Range: Years of Retention Service Credit 20	16	12	0
I	21 - 48	41 or above	31 - 40	21 - 30	20 or lower
II	41 - 60	53 or above	48 - 52	41 - 47	40 or lower
III	51 - 84	75 or above	63 - 74	51 - 82	50 or lower
IV	79 - 100	94 or above	86 - 93	79 - 85	78 or lower

Technical/Specialist

Broadband Level	OCS Normal Range	OCS Range: Years of Retention Service Credit 20	16	12	0
I	22 - 30	27 or above	24 - 26	22 - 24	21 or lower
II	44 - 63	42 or above	35 - 41	28 - 34	27 or lower
III	44 - 63	58 or above	51 - 57	44 - 50	43 or lower
IV	63 - 81	77 or above	70 - 76	63 - 69	62 or lower

Support

Broadband	OCS	OCS Range			
		Years of Retention Service Credit			
Level	Normal Range	20	16	12	0
I	0 - 30	21 or above	11 - 20	1 - 10	0
II	28 - 42	40 or above	35 - 39	23 - 34	28 or lower
III	38 - 58	53 or above	46 - 52	39 - 45	38 or lower

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9. Contribution-Based Reduction-in-Pay or Removal Actions

CCAS is an assessment system that goes beyond a performance-based rating system. Contribution is measured against the CCAS factors for the three career paths, each having multiple levels of increasing contribution. (For the purposes of this section, these factors are considered critical and are synonymous with critical elements as referenced in 5 U.S.C. Chapter 43.) This section applies to reduction-in-pay or removal of demonstration project employees based solely on inadequate contribution. Inadequate contribution in any one factor at any time during the assessment period is considered grounds for initiation of reduction-in-pay or removal action. The following procedures replace those established in 5 U.S.C. 4303 pertaining to reductions in grade or removal for unacceptable performance except with respect to appeals of such actions. 5 U.S.C. 4303(e) provides the statutory authority for appeals of contribution-based actions. As is currently the situation for performance-based actions taken under 5 U.S.C. 4303, contribution-based actions shall be sustained if the decision is supported by substantial evidence and the Merit Systems Protection Board shall not have mitigation authority with respect to such actions. The separate statutory authority to take contribution-based actions under 5 U.S.C. 75, as modified in the waiver section of this notice (section IX), remains unchanged by these procedures.

When an employee's contribution in any factor is at or less than the mid-point of the next lower broadband level (or a factor score of zero for broadband level I employees), the employee is considered to be contributing inadequately. In this case, the supervisor must inform the employee, in writing, that unless the contribution increases to a score above the midpoint of this next lower broadband level (thereby meeting the standards for adequate contribution) and is sustained at this level, the employee may be reduced in pay or removed. For broadband level I employees, a factor score that increases to the midpoint and is sustained at that level is determined to be adequate.

The written notice informing the employee that he/she may be reduced in pay or removed, affords the employee a reasonable opportunity (a minimum of 60 days) to demonstrate acceptable contribution with regard to identifiable factors. As part of the employee's opportunity to demonstrate adequate contribution, he or she will be placed on a Contribution Improvement Plan (CIP). The CIP will state how the employee's contribution is inadequate, what improvements are required, recommendations on how to achieve adequate contribution, assistance that the agency shall offer to the employee in improving inadequate contribution, and consequences of failure to improve.

Additionally, when an employee's contribution plots in the area above the upper rail of the normal pay range, the employee is considered to be contributing inadequately. In this case, the supervisor has two options. The first is to take no action but to document this decision in a memorandum for the record. A copy of this memorandum will be provided to the employee and to higher levels of management. The second option is to inform the employee, in writing, that unless the contribution increases to, and is sustained at, a higher level, the employee may be reduced in pay or removed.

These provisions also apply to an employee whose contribution deteriorates during the year. In such instances, the group of supervisors who meet during the CCAS assessment process may reconvene any time during the year to review the circumstances warranting the recommendation to take further action on the employee.

Once an employee has been afforded a reasonable opportunity to demonstrate adequate contribution but fails to do so, a reduction-in-pay (which may include a change to a lower broadband level and/or reassignment) or removal action may be proposed. If the employee's contribution increases to an acceptable level and is again determined to deteriorate in any factor within two years from the beginning of the opportunity period, actions may be initiated to effect reduction in pay or removal with no additional opportunity to improve. If an employee has contributed acceptably for two years from the beginning of an opportunity period, and the employee's overall contribution once again declines to an inadequate level, the employee will be afforded an additional opportunity to demonstrate adequate contribution before it is determined whether or not

to propose a reduction in pay or removal.

An employee whose reduction in pay or removal is proposed is entitled to a 30-day advance notice of the proposed action that identifies specific instances of inadequate contribution by the employee on which the action is based. The employee will be afforded a reasonable time to answer the notice of proposed action orally and/or in writing.

A decision to reduce in pay or remove an employee for inadequate contribution may be based only on those instances of inadequate contribution that occurred during the two-year period ending on the date of issuance of the proposed action. The employee will be issued written notice at or before the time the action will be effective. Such notice will specify the instances of inadequate contribution on which the action is based and will inform the employee of any applicable appeal or grievance rights.

All relevant documentation concerning a reduction in pay or removal that is based on inadequate contribution will be preserved and made available for review by the affected employee or a designated representative. At a minimum, the records will consist of a copy of the notice of proposed action; the written answer of the employee or a summary when the employee makes an oral reply; and the written notice of decision and the reasons thereof, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate adequate contribution.

E. Special Situations Related to Pay

1. Change in Assignment

The CCAS concept, using the Broad banding structure, provides flexibility in making changes in assignments. In many cases an employee can be reassigned, without change in their rate of basic pay, within broad descriptions, consistent with the needs of the institution, and commensurate with the individual's qualifications. Subsequent institutional assignments to projects, tasks, or functions requiring the same level and area of expertise and the same qualifications would not constitute an assignment outside the scope or coverage of the current level descriptors. In most cases, such assignments would be within the factor descriptors and could be accomplished without the need to process a personnel action. Assignment resulting in series change, broadband level change, or change to KSAs shall be accomplished by official personnel action. Thus, this approach allows for broader latitude in institutional assignments and streamlines the administrative process. Rules for specific types of assignments under CCAS follow:

(a) Promotions. When an employee is promoted to a higher broadband level, the salary upon promotion will be at least six percent, but not more than 20 percent, greater than the employee's current salary. However, if the minimum rate of the new broadband level is more than 20 percent greater than the employee's current salary, then the minimum rate of the new broadband level is the new salary. The employee's salary may not exceed the salary range of the new broadband level. When an employee receiving a retained rate is promoted to a higher broadband level, at a minimum, the employee's salary upon promotion will be set in the higher broadband level at six percent higher than the maximum rate of the employee's existing broadband level; or at the employee's existing retained rate, whichever is greater.

(b) Competitive Selection for a Position with Higher Potential Salary. When an employee is competitively selected for a position with a higher target broadband level than previously held (*e.g.*, Upward Mobility), upon movement to the new position the employee will receive the salary corresponding to the minimum of the new broadband level or the existing salary, whichever is greater.

(c) Voluntary Change to Lower Broadband Level/Change in Career Path (except RIF). A provision exists today for an employee to request a change to lower grade. If that request is totally the employee's choice, then the employee's salary is lowered accordingly. To handle these special circumstances, employees must submit a request for voluntary pay reduction or pay raise declination during the 30-day period immediately following the annual payout, and show reasons for the request. All actions will be appropriately documented. Although the rationale behind such a voluntary request varies under CCAS, a voluntary request for a pay reduction or a voluntary declination of a pay raise would effectively put an overcompensated employee's pay closer to or within the normal pay range. Since an objective of CCAS is to properly compensate employees for their contribution, the granting of such requests is consistent with this goal. Under normal circumstances, all employees should be encouraged to advance their careers through increasing contribution rather than trying to be under compensated at a fixed level of contribution. When an employee accepts a voluntary change to lower broadband level or different career path, salary may be set at any point within the broadband level to which appointed, except that the new salary will not exceed the employee's current salary or the maximum salary of the broadband level to which assigned, whichever is lower.

(d) Involuntary Change to Lower Broadband Level Without Reduction in Pay Due to Contribution-based Action. Due to inadequate contribution, an employee's salary may fall below the minimum rate of basic pay for the broadband level to which he/she is assigned. When an employee is changed to a lower broadband level due to such a situation, this movement is not considered an adverse action.

(e) Involuntary Reduction in Pay, to Include Change to Lower Broadband Level and/or Change in Career Path Due to Adverse Action. An employee may receive a reduction in pay within his/her existing broadband level and career path; be changed to a lower broadband level; and/or be moved to a new position in a different career path due to an adverse action. In these situations, the employee's salary will be reduced by at least 6 percent, but will be set no lower than the minimum salary of the broadband level to which assigned. Employees placed into a lower broadband due to adverse action are not entitled to pay retention.

(f) Reduction-in-Force (RIF) Action (including employees who are offered and accept a vacancy at a lower broadband level or in a different career path). The employee is entitled to pay retention if all Title 5 conditions are met.

(g) Return to Limited or Light Duty from a Disability as a Result of Occupational Injury to a Position in a Lower Broadband Level or to a Career Path with Lower Salary Potential than Held Prior to the Injury. The employee is entitled indefinitely to the salary held prior to the injury and will receive full general and locality pay increases.

2. Academic Ethics

According to the Ethics Reform Act of 1989, Federal employees may not accept outside salaries, stipends, and/or honoraria directly related to work duties. This prevents conflict of interest for employees who would use information acquired through federal employment to seek outside gain. However, normal academic activities fall outside the restrictions of usual government employment. The 1991 Ethics Manual for federal employees (http://www.house.gov/Ethics/

ethicschap3.html) clarifies acceptable guidelines for outside employment: "The Committee has determined that the following types of compensation are not honoraria: Compensation for activities where speaking, appearing, or writing is only an incidental part of the work for which payment is made (*e.g.*, conducting research) * * * " Haskell employees, like other Federal employees, may engage in outside activities that follow the guidelines of the 1991 Ethics Manual.

F. Revised Reduction-In-Force (RIF) Procedures

RIF shall be conducted according to the provisions of 5 CFR part 351 and BIA procedures except as otherwise specified below.

Displacement means the movement via RIF procedures of an employee into a position held by an employee of lower retention standing.

Employees are entitled to additional years of retention service credit in RIF, based on assessment results. This credit will be based on the employee's three most recent annual overall contribution scores (OCSs) of record received during the four-year period prior to the issuance of RIF notices. However, if at the time RIF notices are issued, three CCAS cycles have not yet been completed, the annual performance rating of record under the previous performance management system will be substituted for one or more OCSs, as appropriate. An employee who has received at least one but fewer than three previous ratings of record shall receive credit for performance on the basis of the value of the actual rating(s) of record divided by the number of actual ratings received. Employees with three OCS or performance ratings shall receive credit for performance on the basis of the value of the actual ratings of record divided by three. In cases where an individual employee has no annual OCS or performance rating of record, an average OCS or performance rating will be assigned and used to determine the additional service credit for that individual. (This average rating is derived from the current ratings of record for the employees in that individual's career path and broadband level within the competitive area affected by a given RIF.) See TABLE IV, Retention Service Credit Associated with Assessment Results.

When a competing employee is to be released from his/her position, the activity shall establish separate master retention lists for the competitive and excepted services, by type of work schedule and (for excepted service master retention lists) appointing authority. Within the above groups, competing employees shall be listed on the master retention list in compliance with 5 CFR part 3551 and BIA procedures.

Employees will be ranked in order of their retention standing, beginning with the most senior employee. This employee may displace an employee of lower retention standing occupying a position that is at the same or lower broadband level and that is in a series for which the senior employee is fully qualified, to include a series in a different career path. The undue interruption standard of 5 CFR 351.403(a)(1) shall serve as the criterion to determine if an employee is fully qualified. In addition, to be fully qualified. (However, statutory waivers shall continue to apply) The displaced employee must be appointed under the same authority, if excepted service, and in the same work schedule. Offer of assignment shall be to the position that requires no reduction or the least possible reduction in broadband. Where more than one such position exists, the employee must be offered the position encumbered by the employee with the lowest retention standing.

Displacement rights are normally limited to one broadband level below the employee's present position. However, a preference-eligible employee with a compensable service-connected disability of 30 percent or more may displace up to the two broadband levels below the employee's present position (or the equivalent of five General Schedule grades) below the employee's present level.

Employees covered by the demonstration are not eligible for grade retention. Pay retention will be granted to employees downgraded by reduction in force whose rate of basic pay exceeds the maximum salary range of the broadband level to which assigned. Such employees will be entitled to retain the rate of basic pay received immediately before the reduction, not to exceed 150% of the maximum salary of the lower broadband level.

Under the demonstration project, all employees affected by a reduction-in-force action, other than a reassignment, maintain the right to appeal to the Merit Systems Protection Board (MSPB) if they believe the process/procedures were not properly applied.

Prior to RIF, employees may be offered a vacant position in the same broadband as the highest broadband available by displacement. Employees may also be offered placement into vacant positions for which management has waived the qualifications requirements. If the employee is not placed into a vacant position and cannot be made an offer of assignment via displacement, the employee shall be separated.

G. Academic and Certificate Training

Trained and educated personnel are a critical resource in a higher education institution. This demonstration recognizes that training and development programs are essential to improving the performance of individuals in the higher education workforce, and thereby raising the overall level of performance of the higher education workforce, and that a well-developed training program is a valuable tool for recruiting and retaining motivated employees. The HEWP authorizes degree and certificate training for HINU employees, and authorizes payment for these degree and certificate training programs. This authorization will facilitate continuous acquisition of advanced, specialized knowledge essential to the higher education workforce, and provide a capability to assist in the recruiting and retaining of personnel critical to the present and future requirements of the higher education workforce. Funding for training is the responsibility of the institution.

H. Sabbaticals

The president of HINU will have the authority to grant sabbaticals without application to higher levels of authority. These sabbaticals will permit employees to engage in study, research, or work experience that contributes to their development and effectiveness. The sabbatical provides opportunities for employees to acquire knowledge and expertise that cannot be acquired in the normal working environment. These opportunities should result in enhanced employee contribution. The spectrum of available activities under this program is limited only by the constraint that the activity contribute to the institution's mission and to the employee's development. The program can be used for advanced education; employee development; or training with industry or on-the-job work experience with public, private, or nonprofit organizations. It enables an employee to spend time in an academic or work environment or to take advantage of the opportunity to devote full-time effort to technical, academic, or managerial research.

The HEWP sabbatical program will be available to all demonstration project employees who have seven or more years of service in the institution. Each sabbatical will be of three to twelve months' duration and must result in a

product, service, report, or study that will benefit the higher education community as well as increase the employee's individual effectiveness. A process for application for a sabbatical will be established by the mechanism to recommend sabbaticals to the president or equivalent, who has final approval authority, and who must ensure that the program benefits both the higher education workforce and the individual employee. Funding for the employee's salary and other expenses of the sabbatical is the responsibility of the institution.

IV. Training

The key to the success or failure of the proposed demonstration project will be the training provided for all involved. This training will provide not only the necessary knowledge and skills to carry out the proposed changes, but will also lead to participant commitment to the program.

Training prior to of implementation and throughout the demonstration will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operation of the new system.

The elements to be covered in the orientation portion of this training will include: (1) A description of the personnel system; (2) how employees are converted into and out of the system; (3) the pay adjustment and/or bonus process; (4) the new position requirements document; (5) the new classification system; and (6) the contribution-based compensation and assessment system.

A. Supervisors

The focus of this project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledge and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, as well as skills training in using the classification system, position requirements document, and contribution assessment software developed for use in the project.

B. Administrative Services Staff

The Vice President for Administration, the Director of Personnel and the HEWP administrative staff will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will receive training in the procedural and technical aspects of the project.

C. Employees

Prior to implementation, all employees covered under the demonstration project will be trained through various media. This training is intended to fully inform all affected employees of all significant project policies procedures, and processes.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee-protection approach that ensures each employee's initial placement into a broadband level without loss of pay. Automatic conversion from the permanent GS grade and step of record at time of conversion into the new broadband system will be accomplished.

Adjustments to the employee's base pay for step increase and non-competitive career ladder promotion will be computed based on the current value of the step or promotion increase and a prorated share based upon the number of weeks an employee has completed towards the next higher step or grade, per paragraph VIII A. This conversion process "buy-in is applicable to employees only at the initial entry no the demonstration project in accordance with the approved implementation plan. All HEWP employees will be eligible for the future locality pay increases of their geographic area.

Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary. If the employee's rate of basic pay exceeds the maximum rate of basic pay for the broadband level corresponding to the employee's GS grade, the employee will remain at that broadband level and will receive a retained rate. Employees who enter the demonstration project later by lateral reassignment or transfer will enter at their current basic pay with no loss or gain due to transfer, and will not receive the "buy-in" applied during the initial conversion process of their institution into the demonstration project.

B. Conversion Back to the Former System

If a demonstration project employee is moving to a General Schedule (GS) position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedure will be used to convert the employee's project pay band to a GS grade and the employee's demonstration rate of pay to a GS rate of pay. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral assignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.*, promotion rules, highest previous rate rules, pay retention rules) as if the GS-converted grade and rate were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee is converted to one of the grades in their current broadband level according to the following rules:

(i) The employee's adjusted rate of pay under the demonstration project (including any locality payment) is compared with the step 4 rate in the highest applicable GS rate range. (For this purpose, a GS rate range includes a rate range in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade-interval series, only odd-numbered grades are considered below GS–11.

(ii) If the employee's adjusted demonstration project rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

(iii) If the employee's adjusted demonstration project rate is lower than the applicable step 4 rate of the highest grade, the adjusted rate is compared with the step 4 rate of the second-highest grade in the employee's pay band. If the employee's adjusted rate equals or exceeds the step 4 rate of the second-highest grade, the employee is converted to that grade.

(iv) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted demonstration

project rate equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

(v) Exception: If the employee's adjusted demonstration project rate exceeds the maximum rate of the grade assigned under the above-described step 4 rule but fits in the rate range for the next higher applicable grade (*i.e.*, between step 1 and step 4), then the employee shall be converted to that next higher applicable grade.

(vi) Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral assignment, or lateral transfer into the demonstration project, unless since that time the employee has undergone a reduction in broadband level, reduction in pay based upon an adverse action, a contribution-based action, a reduction-in-force action, or a voluntary change to lower broadband level.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rate of pay to a GS rate of pay in accordance with the following rules:

(i) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(ii) An employee's adjusted rate of pay under the project (including any locality payment) is converted to a GS rate on the highest applicable rate range for the converted GS grade. (For this purpose, a GS rate range includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

(iii) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (*i.e.*, same step position). If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.

(iv) If the highest applicable GS rate range is a special rate range, the employee's adjusted demonstration project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (*i.e.*, same step position).

3. Employees Receiving a Retained Rate Under the Project

If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her broadband level. The institution will confer with the Office of Personnel Management (OPM) to prescribe a procedure for determining GS-equivalent pay rates for employees receiving retained rates.

4. Years of Retention Service Credit and Contribution Provisions

Employees leaving the demonstration project will be assigned ratings of record that conform with pattern E of 5 CFR 430.208(d) based on the years of credit accumulated for the 3 most recent years during the last 4 years while under the demonstration project. Since the demonstration project does not make use of summary level designators (*e.g.*, Outstanding, Level 5. Highly Successful, Level 4; Fully Successful, Level 3; or Unacceptable, Level 1) used in the appraisal system and programs constructed under 5 U.S.C. Chapter 43 and 5 CFR part 430, the retention service credit that is based on the employee's OCS. Employees receiving a Medium or Higher OCS score will convert to a satisfactory rating in the current Federal appraisal system.

5. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. CCAS base salary increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

VI. Project Duration

The project evaluation plan addresses how each intervention will be comprehensively evaluated for at least the first five years of the demonstration project. Major changes and modifications to the interventions can be made through announcement in the **Federal Register**. At the five-year point, the entire demonstration project will be reexamined for: (a) Permanent implementation; (b) modification and additional testing; (c) extension of the evaluation period; or (d) termination.

VII. Evaluation Plan

Demonstration-authorizing legislation (Public Law 105–337) mandates evaluation of the demonstration project to assess the effects of project features and outcomes. The overall evaluation will consist of three phases—baseline, formative, and summary evaluations. The evaluation for the HEWP will be overseen by the Secretary, Department of the Interior, and Office of Indian Education Programs (OIEP). The main purpose of the evaluation is to determine the effectiveness of the personnel system changes to be undertaken. To the extent possible, strong direct or indirect relationships will be established between the demonstration project features, outcomes, and mission-related changes and personnel system effectiveness criteria. The evaluation approach uses an intervention impact model that specifies each personnel system change as an intervention, the expected effects of each intervention, the corresponding measures, and the data sources for obtaining the measures.

The specific measures to be collected using the different methods are determined from the goals and objectives stated for each intervention. Both qualitative and quantitative measures will be obtained. Most of the potential measures can be grouped around three major effectiveness criteria: speed, cost, and quality. Collectively, the outcomes of the interventions are hypothesized to lead to institution personnel management improvements, as reflected by timeliness, cost effectiveness, and quality.

Baseline measures will be taken prior to project implementation. Then, repeated post-implementation measurements will be taken to allow longitudinal comparisons by intervention within HINU A comparison group will be selected and compared to the demonstration project group to determine the effects and outcomes of the project.

The effectiveness of each intervention and of the demonstration project as a whole in meeting stated objectives will be addressed using a multi-approach method. Some methods will be unobtrusive in that they do not require reactions to inputs from employees or managers. These methods include analysis of archival workforce data and

personnel office data, review of logs maintained by site historians documenting contextual events, and assessments of external economic and legislative changes. Other methods, such as periodic attitude surveys, structured interviews, and focus groups, will be used to assess the perceptions of employees, managers, supervisors, and personnel regarding the personnel system changes and the performance of their institutions in general. Evaluation activities will also take into account the unique nature of this project in terms of institutional diversity.

In addition to the intervention impact model, a general context model will be used to determine the effects of potential intervening variables (*e.g.*, downsizing, regionalization of the personnel function, and the state of the economy in general). Potential unintended outcomes will also be monitored, and an attempt will be made by the evaluation team to link the outcomes of demonstration project interventions to institutional effectiveness. In addition to assessing the impact of the individual demonstration project features, the evaluation will also assess the impact of the project as a whole, along with possible context effects and effects of intervening variables.

The evaluation will also monitor impact on veterans and EEO groups, adherence to the merit systems principles and avoidance of prohibited personnel practices. In addition, the evaluation will attempt to link the demonstration project effects and outcomes to institutional outcomes such as mission accomplishment and productivity.

The initial evaluation effort will consist of three main phases—baseline, formative, and summary evaluation covering five (5) years. Baseline will collect workforce data to determine the "as-is" state. The formative evaluation phase will include baseline data collection and analyses, implementation evaluation, and interim assessments. Periodic reports and annual summaries will be prepared to document the findings. The summary evaluation phase will focus on an overall assessment of the demonstration project outcomes, looking initially at the first four (4) years, with a follow-on report covering the first five (5) years. The rationale for summary evaluation after the first four years is to assess whether the demonstration will continue after the fifth year. If the analysis indicates that the interventions show a positive effect towards meeting the goals of the demonstration, then documentation will be generated to support a request that the demonstration progress further. If the analysis indicates that the interventions do not meet the stated objectives, or if HINU does not wish to continue in the demonstration, then documentation and planning for conversion back to the existing personnel system must be prepared. The fifth-year summary evaluation, used in reporting to Congress, will provide overall assessment of all initiatives individually and as a whole. It will also provide recommendations on broader Federal Government application.

VIII. Demonstration Projects Costs

A. Step and Promotion Buy-Ins

Under this demonstration project, implementation of the broad banding pay structure eliminates the step increments of the current GS pay structure. To facilitate conversion to this system without loss of pay, employees will receive a basic pay increase for that portion of the next step corresponding to the time in-step they have completed up to the effective date of the employee conversion. As under the current system, supervisors will be able to withhold these partial increases (step) if the employee's performance has fallen below fully successful.

Rules governing within-grade increases (WGI) within DOI will remain in effect until the employee conversion date. Adjustments to employees' base pay for WGI equity will be computed effective the first pay period in which the employee is reassigned into the demonstration project. WGI equity shall be acknowledged by increasing base salaries by a prorated share based upon the actual number of weeks an employee has completed towards the next higher step. Employees at step 10, or receiving retained pay at the time of conversion, will not be eligible for this equity adjustment. For those employees in career-ladder promotion programs who are scheduled to be promoted to a higher grade and whose performance is at least fully successful, base pay will be increased by a prorated share of the current value of the next scheduled promotion increase based upon the actual number of weeks the employee has completed towards the next scheduled promotion. No WGI equity adjustment will be made if the employee's pay is adjusted for a promotion that would be effective before the next scheduled WGI.

B. Out-Year Project Costs

The overall demonstration cost strategy will be to balance projected costs with benefits of the demonstration to bring about the projected improvements to the institution. The project evaluation results will be used to ensure that out-year project costs will not outweigh the derived benefits to the demonstration. A baseline will be established at the start of the project, and salary expenditures will be tracked yearly. Implementation costs, including the step and grade buy-in costs detailed above, will not be included in the cost evaluations, but will be accounted for separately.

The amount of money available for contribution increases in the out-years will be determined as part of the annual project evaluation process, starting with a review of the prior year's data for HINU by the Personnel Policy Board, and then will be reported to the president of the institution The funds determination will be based on a balancing of appropriate factors, including the following: (1) Historical spending for WGI, quality step increases, and in-level career promotions; (2) labor market conditions and the need to recruit and retain a skilled workforce to meet the business needs of the institution; and (3) the fiscal condition of the institution. Given the implications of base pay increases for long-term pay and benefit costs, the compensation levels will be determined after cost analysis with documentation of the mission-driven rationale for the amount. As part of the evaluation of the project, HINU will track the base pay costs (including average salaries) under the demonstration project and compared to the base pay costs under similar demonstration projects and under a simulation model that replicates General Schedule spending. These evaluations will balance costs incurred against benefits gained, so that both fiscal responsibility and project success are given appropriate weight.

C. Personnel Policy Boards

It is envisioned that HINU shall establish a Personnel Policy Board for the demonstration project that will be representative of the employee population and chaired by the president of the institution or delegated representative. The board is tasked with the following:

(a) Overseeing the pay budget;

(b) Determining the composition of the CCAS pay pool in accordance with the established guidelines and statutory constraints;

(c) Reviewing operation of the Institution's CCAS pay pools;

(d) Providing guidance to pay pool managers;

(e) Administering funds to CCAS pay pool managers;

(f) Reviewing hiring and promotion salaries;

(g) Monitoring award pool distribution by pay pool; Assessing the need for changes to the demonstration project, procedures or policies.

D. Developmental Costs

Costs associated with the development of the demonstration system include software automation, training, and project evaluation. Site-specific costs for follow-on training, employee salary conversion, and any in-house software automation will be borne by the institution from such additional sums as may be necessary for the operation of HINU pursuant to Public Law 105–337. The projected annual expenses for each area are summarized in TABLE V. Project evaluation costs will continue for at least the first five (5) years and may continue beyond that point. TABLE V is an example of the format used. Costs will be determined once an actual plan is selected.

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TABLE V - PROJECTED DEVELOPMENTAL COST (THEN YEAR DOLLARS ($K))

	FY00	FY01	FY02	FY03	F704	FY05	FY06
Training	285	3465	0	0	0	0	0
Project Evaluation	310	449	308	307	534	378	378
Automation	25	70	25	25	25	25	25
Data Systems	100	350	0	0	0	0	0
Total	720	4334	308	307	534	378	378

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IX. Required Waivers to Law and Regulations

A. Waivers to Title 5, United States Code

Chapter 5, Section 552a: Records maintained on individuals. This section is waived only to the extent required to clarify that volunteers under the Voluntary Emeritus Program are considered employees of the Federal Government for purposes of this section.

Chapter 31, Section 3111: Acceptance of volunteer service. This section is waived only to the extent required to allow volunteer service under provisions of the voluntary emeritus program.

Chapter 33, Section 3308: Competitive service; examinations; education requirements prohibited; exceptions (to the extent necessary to accommodate the Scholastic Achievement Appointment's requirement for a college degree).

Chapter 33, Section 3317 (a): Competitive service; certification from registers (insofar as "rule of three" is eliminated under the demonstration project).

Chapter 33, Section 3318 (a): Insofar as "rule of three" is eliminated under the demonstration project. Veterans' preference provisions remain unchanged.

Chapter 41, Section 4107 (a): Prohibition of training for academic degrees.

Chapter 43, Sections 4301–4305 except for 4303 (e) and (f): Related to performance appraisal. In turn, 4303 (3) and (f) are waived only to the extent necessary to (a) substitute "broadband" for "grade" and (2) provide that moving to a lower broadband as a result of not receiving the full amount of a general pay increase because of inadequate contribution is not an action covered by the provisions of section 4303.

Chapter 51, Sections 5101–5102 and Sections 5104–5107: Related to classification standards and grading.

Chapter 53, Sections 5301; 5302 (8) and (9); and 5303–5305 and 5331–5336: Related to special pay and pay rates and systems (Sections 5301, 5302 (8) and (9), and 5304 are waived only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees and to allow basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay).

Chapter 53, Section 5362: Grade retention.

Chapter 53, Section 5363: Pay retention. This waiver applies only to the extent necessary to: (1) allow demonstration project employees to be treated as General Schedule employees; (2) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; and (3) replace the term "grade" with "broadband level."

Chapter 71, to the extent its provisions (e.g. 5 U.S.C. 7103(a)(12) and 7116) would prohibit management or the union from unilaterally terminating negotiations over whether the project will apply to employees represented by the union.

Chapter 75, Sections 7512(3): Related to adverse action (but only to the extent necessary to exclude reductions in broadband level not accompanied by a reduction in pay and replace "grade" with "broadband level") and 7512(4): Related to adverse action (but only to the extent necessary to exclude conversions from a General Schedule special rate to demonstration project pay that do not result in a reduction in the employee's total rate of pay).

B. Waivers to Title 5, Code of Federal Regulations

Part 300, Sections 300.601 through 300.605: Time-in-grade restrictions.

Part 308, Volunteer service: Waived to allow volunteer service under the provisions of the voluntary emeritus program.

Part 315, Sections 315.801 and 315.802: Probationary period.

Part 316, Section 316.301: Term appointment (the extent that modified term appointments may cover a maximum period of 6 years).

Part 316, Section 316.303: Tenure of term employees (to the extent that term employees may compete for permanent status through local merit promotion plans).

Part 316, Section 316.305: Eligibility for within-grade increases.

Part 332, Section 332.402: "Rule of three" will not be used in the demonstration project.

Part 332, Section 332.404: Order of selection is not limited to highest three eligible.

Part 351, Sections 351.402 through 351.403: Competitive Area and Competitive Levels; Section 351.504 (a) and (c): Credit for Performance; and Section 351.601 through .608: References to competitive levels are eliminated.

Part 351, Sections 351.701 (b) and (c): Assignment rights (bump and retreat): To the extent that the distinction between bump and retreat is eliminated and the placement of demonstration project employees is limited to one broadband level below the employee's present level, except that a preference-eligible employee with a compensable service-connected disability of 30 percent or more may displace up to the two b broadband levels below the employee's present position (or the equivalent of five General Schedule grades) below the employee's present level.

Part 410, Section 410.308(a): Prohibition of training for academic degrees.

Part 430, Subpart A and Subpart B: Performance management; performance appraisal.

Part 432, Sections 432.101, 432.102, 432.106 and 432.107: (Only to the extent necessary to (a) substitute "broadband" for "grade" and (2) provide that moving to a lower broadband as a result of not receiving the full amount of a general pay increase because of inadequate contribution is not an action covered by the provisions of section 4303).

Part 432, Section 432.103 through 432.105: Performance-based reduction-in-grade and removal actions.

Part 451, Sections 451.106(b) and 451.107(b): Awards.

Part 511, Section 511.201: Coverage of and exclusions from the General Schedule (To the extent that professional positions are covered by broad banding.)

Part 511, Subpart A; Subpart B; subpart F, Sections 511.601 through 511.612: Classification within the General Schedule; and Subpart G: Effective Dates of Position Classification Actions or Decisions.

Part 530, Subpart C: Special salary rates.

Part 531, Subpart B, Subpart D, Subpart E: Determining rate of pay; within-grade increases and quality step increases.

Part 536, Grade and Pay Retention (only to the extent necessary to eliminate grade retention and to provide that, for the purposes of applying pay retention provisions: (1) Demonstration project employees are to be treated as General Schedule employees; (2) grade is replaced by "Broadband level'; and (3) pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced).

Part 550, Sections 550.703: Severance Pay, definition of "reasonable offer" (by replacing "two grade or pay levels" with "one broadband level" and "grade or pay level" with broadband level").

Part 575, Sections 575.102(a)(1), 575.202(a)(1), 575.302(a)(1), and Subpart D: Recruitment and relocation bonuses, and retention allowances, and supervisory differentials (only to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the General Schedule positions).

Part 752, Sections 752.401(a)(3): Reduction in grade and pay (but only to the extent necessary to exclude reductions in broadband level not accompanied by a reduction in pay and to replace "grade" with "broadband level") and 752.401(a)(4) (but only to the extent necessary to exclude conversions from a General Schedule special rate to demonstration project pay that do not result in a reduction in the employee's total rate of pay).

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Federal Register

Friday,
March 10, 2000

Part IV

Department of Housing and Urban Development

Indian Tribes and Alaska Native Villages; Fiscal Year 2000 Notice of Funding Availability; Community Development Block Grant Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4548–N–01]

Community Development Block Grant Program for Indian Tribes and Alaska Native Villages; Fiscal Year 2000 Notice of Funding Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year 2000.

SUMMARY: This notice announces the availability of up to $67,338,300 for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (ICDBG Program). This figure consists of $67,000,000 in fiscal year 2000 funds and $338,300 in fiscal year 1999 carryover funds. The primary objective of this program is the development of viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities. The program is targeted principally towards people with low and moderate incomes. This Notice of Funding Availability (NOFA) contains the following information:

(a) The purpose of the NOFA;

(b) Information regarding eligibility and available amounts;

(c) A list of steps involved in the application process, including where and how to apply and what to submit;

(d) A checklist of the exhibits required for the application process; and

(e) A description of how applications are processed, including the selection process and the selection criteria.

APPLICATION DUE DATE: You (the applicant) must submit your completed application no later than 5:00 p.m., local time, on May 24, 2000 to one of the addresses shown below. See below for specific procedures covering the method of application submission (*e.g.*, mailed applications, express mail, overnight delivery, or hand carried).

Mailed Applications. We (HUD) will consider your application to be timely filed if it is postmarked on or before 12 midnight on the application due date and received by the appropriate Area Office of Native American Programs (ONAP) within ten (10) days after the application due date.

Applications Sent By Overnight/Express Delivery. If you send your application by overnight delivery or express mail, we will consider it to be timely filed if we receive it before or on the application due date, or if you submit documentary evidence that you placed your application in transit with the overnight delivery service by no later than the specified application due date and we receive it within five (5) days of the application due date.

Hand Carried Applications. You may hand carry your application to the appropriate Area ONAP during normal business hours before the application due date. On the application due date, we will accept applications until 5:00 p.m., local time.

ADDRESSES FOR SUBMITTING APPLICATIONS

If you are applying from this geographic location then	Send your application to this Area ONAP:
All States East of the Mississippi River, Plus Iowa and Minnesota.	Eastern/Woodlands Office of Native American Programs, Grants Management Staff, 77 West Jackson Blvd., Chicago, IL 60604–3507, Telephone: (312) 886–4532, Ext. 2815.
Louisiana, Kansas, Oklahoma, and Texas, except West Texas.	Southern Plains Office of Native American Programs, Grants Management Staff, Suite 400, 500 W. Main Street, Oklahoma City, OK 73102–3202, Telephone: (405) 553–7525.
Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Northern Plains Office of Native American Programs, Grants Management Staff, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, Telephone: (303) 672–5457.
Arizona, California, and Nevada	Southwest Office of Native American Programs, Grants Management Staff, Two Arizona Center, Suite 1650, 400 N. Fifth Street, Phoenix, AZ 85004–2361, Telephone: (602) 379–4197.
New Mexico and West Texas	Southwest Office of Native American Programs, Grants Management Staff, Albuquerque Plaza, 201 3rd Street N.W., Suite 1830, Albuquerque, NM 87102–3368, Telephone: (505) 766–1372.
Idaho, Oregon, Washington	Northwest Office of Native American Programs, Grants Management Staff, Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000, Telephone: (206) 220–5271.
Alaska	Alaska Office of Native American Programs, Grants Management Staff, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4135, (907) 271–4603.

FURTHER INFORMATION, APPLICATION KITS, AND TECHNICAL ASSISTANCE:

For Further Information. You should direct general program questions to the Area ONAP serving your area or to Robert Barth, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, P.O. Box 36003, 450 Golden Gate Avenue, San Francisco, CA 94102; telephone (415) 436–8122. The TTY number is (415) 436–6594. (These are not toll-free numbers.)

For Application Kits. You may obtain an application kit from the Area ONAPs identified above. You should make your request for an application kit immediately to ensure sufficient time for application preparation. We will distribute application kits as soon as they become available.

For Technical Assistance. Before the application deadline, we will be available to provide you with general guidance. We cannot, however, provide you with guidance on the actual contents of your application. If applicable, after selection but before award, we will be available to assist you in clarifying or confirming information that is required to address a pre-award requirement or condition.

SUPPLEMENTARY INFORMATION:

Changes From FY 1999 NOFA

1. *Grant Ceilings.* We have changed the grant ceilings for the following offices: Eastern/Woodlands—$500,000 for all; Northwest $350,000 for all.

2. *Alaska Office.* We have determined that this office will return to the receipt, review, and approval of applications on an annual rather than biennial basis as it did for FY 1998–1999.

3. *Eligible Applicants—Tribal Organizations.* We have clarified the

requirement that the determination of eligibility of the organization under title I of the Indian Self-Determination and Education Assistance Act by the Bureau of Indian Affairs or Indian Health Service must be provided to the relevant Area ONAP by the application submission date.

4. *Housing Rehabilitation—Income Status of Grant Recipients.* We have clarified the requirement that proposed recipients of grant assistance must be of low or moderate income status.

5. *Housing Rehabilitation Grant Limits.* We have changed the grant limits for the following offices: Northern Plains—$45,000; Northwest—$30.000.

6. *New Housing Construction Rating Factor 1—Project Need and Design—Subfactor 1.* We have revised this subfactor. We have re-titled it as *Other resources available for new housing assistance* and have replaced the provision of housing assistance from an IHA as the basis of point award with the amount of Indian Housing Block Grant funds received by the applicant (or TDHE for an applicant).

Promoting Comprehensive Approaches to Housing and Community Development

HUD is interested in promoting and supporting comprehensive, coordinated approaches to housing and community development. Economic development, community development, public housing revitalization, homeownership, assisted housing for special needs populations, supportive services, and welfare-to-work initiatives can work better if linked at the local level. Consistent with this effort, you must demonstrate that housing category projects are consistent with, and where possible, are identified in, the Indian Housing Plan (IHP) submitted by, or on behalf of, you under the provisions of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). If you have not submitted the IHP for the Indian Housing Block Grant (IHBG) program year that includes the implementation period for the proposed ICDBG funded activity by the ICDBG application due date, you must submit an assurance that if an IHP is submitted, it will specifically reference the proposed housing category project.

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Additional Information

I. Authority; Purpose; Amounts Allocated; and Eligibility

(A) *Authority.* Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301, *et seq.*); 24 CFR part 1003; Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Public Law 106–74 113 Stat. 1047, approved October 20, 1999) ($67,000,000 in fiscal year 2000 funds); and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105–276, 112 Stat. 2461, approved October 21, 1998) ($338,300 in fiscal year 1999 carryover funds).

(B) *Purpose.* This notice announces the availability of up to $67,338,300 for the ICDBG Program.

(C) *Amount Allocated.*

(1) *General.* Amendments to title I of the Housing and Community Development Act of 1974 have required that the allocation for Indian Tribes be awarded on a competitive basis in accordance with selection criteria contained in a regulation promulgated by the Secretary after notice and public comment. All grant funds awarded in accordance with this NOFA are subject to the requirements of 24 CFR part 1003. Applicants within an Area ONAP's geographic jurisdiction compete only against each other for that Area ONAP's allocation of funds.

(2) *Allocations.* The requirements for allocating funds to Area ONAPs responsible for program administration are found at 24 CFR 1003.101. Following these requirements, based on the target availability of up to $ 67,338,300, the allocations for FY 2000 are as follows:

Eastern/Woodland	$5,169,533
Southern Plains	12,233,734
Northern Plains	10,318,714
Southwest	28,148,676
Northwest	3,942,513
Alaska	5,525,130
Total	65,338,300

The total allocation includes $338,300 in unused funds from the amount reserved by the Assistant Secretary in Fiscal Year 1999 for imminent threat grants. As indicated in section I.(a)(4) below, $2,000,000 will be retained to fund imminent threat grants.

(3) *Grant Ceilings.* The authority to establish grant ceilings is found at 24 CFR 1003.100(b)(1). Grant ceilings are established for FY 2000 funding at the following levels:

Area ONAP	Population	Ceiling
Eastern/Woodlands	ALL	$500,000
Southern Plains:	ALL	750,000
Northern Plains:	ALL	800,000
Southwest:	50,001+	5,000,000
	10,501–50,000	2,500,000
	7,501–10,500	2,000,000
	6,001–7,500	1,000,000
	1,501–6,000	750,000

Area ONAP	Population	Ceiling
	0–1,500	550,000
Northwest	ALL	3505,000
Alaska	ALL	500,000

For the Southwest Area ONAP jurisdiction, the population used to determine ceiling amounts is the Native American population that resides on a reservation or rancheria. Please contact that office before submitting your application if you are unsure of the population level to use to determine the ceiling amount for your tribe or if you believe that the level used for previous years needs to be revised or corrected. The Southwest ONAP must accept any corrections or revisions before you submit your application.

(4) *Imminent Threats.* (a) The criteria for grants to alleviate or remove imminent threats to health or safety that require an immediate solution are described at 24 CFR part 1003, subpart E. In order to satisfy these criteria, the problem to be addressed must be such that an emergency situation exists or would exist if the problem were not addressed. In addition, you may use funds provided under that subpart only to address imminent threats that are not of a recurring nature and that represent a unique and unusual circumstance that impacts an entire service area. In accordance with the provisions of 24 CFR part 1003, subpart E, we will retain $2,000,000 to meet the funding needs of imminent threat applications submitted to any of the Area ONAPs. The grant ceiling for imminent threat applications for FY 2000 is $350,000. We established this ceiling pursuant to the provisions of § 1003.400(c).

(b) You do not have to submit a request for assistance under the imminent threat set-aside (24 CFR part 1003, subpart E) by the deadline established in this NOFA; the deadline applies only to applications submitted for assistance under 24 CFR part 1003, subpart D, Single purpose grants.

(c) If, in response to a request for assistance, an Area ONAP issues you a letter to proceed under the authority of § 1003.401(a), then your application must be submitted to and approved by the Area ONAP before a grant agreement may be executed. This application must consist of the following components:

(i) Standard Form 424, Application for Federal Assistance;

(ii) Brief description of the proposed project;

(iii) Form HUD–4123, Cost Summary;

(iv) Form HUD–4125, Implementation Schedule;

(v) Form HUD–2880, Applicant/Recipient Disclosure/Update Report;

(vi) Form HUD–4126, Certifications;

(vii) Certification for a Drug-Free Workplace (form HUD 50070); and

(viii) Certification regarding lobbying activities (24 CFR part 87) and SF–LLL (if applicable).

(D) *Eligible Applicants.* (1) *General.* To apply for funding you must be eligible as an Indian Tribe (or as a tribal organization) by the application submission date.

(2) *Tribal Organizations.* Tribal organizations are permitted to submit applications under 24 CFR 1003.5(b) on behalf of eligible tribes when one or more eligible tribe(s) authorize the organization to do so under concurring resolutions. As is stated in this regulatory section, the tribal organization must itself be eligible under title I of the Indian Self-Determination and Education Assistance Act. A determination of such eligibility must be made by the Bureau of Indian Affairs or the Indian Health Service, as appropriate. This determination must be provided to the relevant Area ONAP by the application submission date.

(3) *Successors to Eligible Entities.* If a tribe or tribal organization claims that it is a successor to an eligible entity, the Area ONAP must review the documentation to determine whether it is in fact the successor entity.

(4) *Alaska Tribal Entities.* (a) Due to the unique structure of tribal entities eligible to submit ICDBG applications in Alaska, and as only one ICDBG application may be submitted for each area within the jurisdiction of an entity eligible under 24 CFR 1003.5, a tribal organization that submits an application for activities in the jurisdiction of one or more eligible tribes or villages must include a concurring resolution from each such tribe or village authorizing the submittal of the application. Each such resolution must also indicate that the tribe or village does not itself intend to submit an ICDBG application for that funding round. The hierarchy for funding priority continues to be the IRA Council, the Traditional Village Council, the Village Corporation, and the Regional Corporation.

(b) On December 30, 1998 (63 FR 71941), the Bureau of Indian Affairs published a **Federal Register** notice entitled "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs." This notice provides a listing of Indian Tribal Entities in Alaska found to be Indian Tribes as the term is defined and used in 25 CFR part 83. Additionally, pursuant to title I of the Indian Self-Determination and Education Assistance Act, ANCSA Village Corporations and Regional Corporations are also considered tribes and therefore eligible applicants for the ICDBG program.

(c) Any questions regarding eligibility determinations and related documentation requirements for entities in Alaska should be referred to the Alaska Area ONAP prior to the application submission date. (See 24 CFR 1003.5 for a complete description of eligible applicants.)

Please note: When used in this NOFA the word "tribe" means an Indian tribe, band, group or nation, including Alaska Indians, Aleuts, Eskimos, Alaska Native Villages, ANCSA Village Corporations, and Regional Corporations.

(E) *Eligible Activities.* Activities that are eligible for ICDBG funds are identified at 24 CFR part 1003, subpart C.

II. Program Requirements

(A) *Statutory and Regulatory Requirements.* All applicants must meet and comply with all statutory and regulatory requirements. Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*), contains the applicable program specific statutory requirements for this program. The applicable program specific regulatory requirements are in 24 CFR part 1003. Copies of these regulations are available from the HUD Community Connections Information Clearinghouse.

(B) *Nondiscrimination and Compliance with Civil Rights Laws.* Under the authority of section 107(e)(2) of the Housing and Community Development Act of 1974, as amended, the Secretary has waived the requirement that recipients comply with the anti-discrimination provisions in section 109 of the Act with respect to race, color, and national origin. As a recipient you must comply with the other prohibitions against discrimination in section 109 (HUD's regulations for section 109 are in 24 CFR part 6); the Indian Civil Rights Act (Title

II of the Civil Rights Act of 1968, 24 U.S.C. 1001–1303); the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (HUD regulations are at 24 CFR part 146); and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (HUD regulations are at 24 CFR part 8). You must comply with the substantial rehabilitation and new construction requirements in addition to the other requirements of 24 CFR part 8.

(C) *Relocation.* If your proposed activities involve the relocation or displacement of persons, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the government-wide implementing regulations at 49 CFR part 24 apply to funding under this NOFA.

(D) *Debarred or Suspended Contractors.* The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, contractors, or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(E) *Indian Preference.* HUD has determined that programs funded under this NOFA are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). The provisions and requirements for implementing this section are in 24 CFR 1003.510.

(F) *Conflict of Interest.* In addition to the conflict of interest requirements with respect to procurement transactions found in 24 CFR 85.36 and 84.42, as applicable, the provisions of 24 CFR 1003.606 apply to such activities as the provision of assistance by the recipient or sub-recipients to businesses, individuals, and other private entities under eligible activities that authorize such assistance.

(G) *Certifications and Assurances.* The specific certifications and assurances that you must provide are included under section IV. of this NOFA.

(H) *Economic Opportunities for Low and Very Low Income Persons.* You must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulations at 24 CFR part 135. You must ensure that training, employment, and other economic opportunities are directed, to the greatest extent feasible, toward low and very low income persons, particularly those persons who receive government assistance for housing and to business concerns that provide economic opportunities to low and very low income persons. You must comply with the reporting and recordkeeping requirements found at 24 CFR part 135, subpart E. Tribes that receive HUD assistance described in this part must comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

III. Application Selection Process

(A) *Rating and Ranking.*

(1) *Screening for Acceptance.* Each Area ONAP will screen applications for single purpose grants. The Area ONAP will reject an application that fails this screening and will return the application unrated. Area ONAPs will accept your application if it meets all the criteria listed below as items (a) through (f):

(a) Your application is received or submitted in accordance with the requirements set forth under **APPLICATION DUE DATE** in this NOFA;

(b) You are eligible;

(c) The proposed activities are eligible. Activities assisted with ICDBG funds are subject to the requirements of section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8;

(d) Your application contains substantially all the components specified in section IV.(D) of this notice;

(e) At least 70% of the grant funds are to be used for activities that benefit low and moderate income persons, in accordance with the requirements of 24 CFR 1003.208; and

(f) Your application is for an amount that does not exceed the grant ceilings that are established by the NOFA.

(2) *Application Review Process.*

(a) *Threshold review.* The Area ONAP will review each application that passes the screening process to ensure that each applicant and each proposed project meets the applicable threshold requirements set forth in 24 CFR 1003.301(a) and 1003.302, as implemented by this NOFA. *The Area ONAP will not accept your application for rating and ranking if you fail to meet any of the applicant-specific thresholds. The Area ONAPs will not rate and rank project(s) that do not meet the community development appropriateness or applicable project-specific thresholds.*

(b) *Rating Team.* An Area ONAP rating team of at least three voting members will review and rate each project that meets the acceptance criteria and threshold requirements. The Area ONAP rating team will examine each project to determine in which one of the rating categories set forth in 24 CFR 1003.303(a) the project most appropriately belongs. The project will be rated on the basis of the criteria identified in the rating category component to which the project has been assigned. The total points for a rating component are 100, which is the maximum any project can receive.

(c) *Public service projects.* Because there is a statutory 15 percent cap on public services activities, you may not receive a single purpose grant solely to fund public services activities. Your application, however, may contain a public services component for up to 15 percent of the total grant. This component may be unrelated to the other project(s) included in your application. If your application does not receive full funding, we will reduce the public services allocation proportionately so that it comprises no more than 15 percent of the total grant award. In making such reductions, the feasibility of the proposed project will be taken into consideration. If a proportionate reduction of the public services allocation renders such a project infeasible, the project will not be funded.

(d) *Final ranking.* (i) We will rank all projects against each other according to the point totals they receive, regardless of the rating category or component under which the points were awarded. We will select projects for funding based on this final ranking, to the extent that funds are available. We will determine individual grant amounts in a manner consistent with the considerations set forth in 24 CFR 1003.100(b)(2). Specifically, an Area ONAP may approve a grant amount less than the amount requested. In doing so, the Area ONAP may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives, and the administrative capacity of the applicant to complete the activities in a timely manner.

(ii) If the Area ONAP determines that there are not enough funds available to fund a project as proposed by the applicant, it may decline to fund that project and may fund the next highest ranking project or projects for which adequate funds are available. The Area ONAP may select, in rank order, additional projects for funding if one of the higher ranking projects is not funded or if additional funds become available.

(e) *Tiebreakers.* When rating results in a tie among projects and insufficient resources remain to fund all tied projects, Area ONAPs will approve projects that can be fully funded over those that cannot be fully funded. When that does not resolve the tie, the Area ONAP will use the following factors in the order listed to resolve the tie:

(i) *Eastern/Woodlands Office.*

(*1*) The applicant with the fewest active grants.

(*2*) The applicant that has not received an ICDBG grant over the longest period of time.

(*3*) The project that would benefit the highest percentage of low and moderate income persons.

(ii) *Southern Plains Office.*

(*1*) The applicant that has not received an ICDBG grant over the longest period of time over the last 8 years.

(*2*) The applicant with the fewest active grants.

(*3*) The project that would benefit the highest percentage of low and moderate income persons.

(iii) *Northern Plains and Southwest Offices.*

(*1*) The applicant that has not received an ICDBG grant over the longest period of time.

(*2*) The applicant with the fewest active grants.

(*3*) The project that would benefit the highest percentage of low and moderate income persons.

(iv) *Northwest Office.*

(*1*) The applicant that has not received an ICDBG grant over the longest period of time.

(*2*) The applicant that has received the fewest ICDBG dollars since the inception of the program.

(*3*) The project that would benefit the highest percentage of low and moderate income persons.

(v) *Alaska Office*

(*1*) The applicant that has not received an ICDBG grant over the longest period of time.

(*2*) The project that would benefit the highest percentage of low and moderate income persons.

(*3*) The project that would benefit the most low and moderate income persons.

(f) *Pre-award requirements.*

(i) *Technical Deficiencies.* If there are technical deficiencies in successful applications, you must satisfactorily address these deficiencies before we can make a grant award. Please see section VI. of this NOFA for a definition of such a deficiency and a description of the process to address and correct the deficiency. You must correct all technical deficiencies within the timeframe established by HUD; if they are not corrected, we will not make the grant award and will reject your application.

(ii) We also may require a successful applicant to provide supporting documentation concerning the management, maintenance, operation, or financing of proposed projects before a grant agreement can be executed. We will normally give you no less than thirty (30) calendar days to respond to these requirements. If you do not respond within the prescribed time period or you make an insufficient response, the Area ONAP may determine that you have not met the requirements and may withdraw the grant offer. The Area ONAP requires you to submit supporting documentation if:

(*1*) Specific questions remain concerning the scope, magnitude, timing, or method of implementing the project; or

(*2*) You have not provided information verifying the commitment of other resources required to complete, operate, or maintain the proposed project.

(iii) You may not substitute new projects for those originally proposed in your application.

(iv) We will award, in accordance with the provisions of this NOFA, grant amounts that had been allocated for applicants unable to meet pre-award requirements.

(3) *General threshold requirements.*

(a) *General.* Two types of general thresholds are set forth in 24 CFR 1003.301(a): those that relate to applicants, and those that address the overall community development appropriateness of the project(s) included in the application. Project-specific thresholds are set forth in 24 CFR 1003.302.

(b) *Applicant Thresholds.* (i) *General.* Applicant thresholds focus on the administrative capacity of the applicant to undertake the proposed project on its past performance in the ICDBG program and on its provision of housing assistance to low and moderate income tribal members.

(ii) *Applicant-Specific Thresholds: Capacity.* The Area ONAP will assume, absent evidence to the contrary, that you possess or can obtain the managerial, technical, or administrative capability necessary to carry out the proposed project. Your application should address who will administer the project and how you plan to handle the technical aspects of executing the project. If the Area ONAP determines, based on substantial evidence (which will include information provided by the most recent Risk Assessment conducted by the Area ONAP Grants Evaluation Division), that you do not have or cannot obtain the capacity to undertake the proposed project, it will not consider your application any further.

(iii) *Applicant-Specific Thresholds: Performance.* (*1*) *Community Development.* (*a*) If you have previously participated in the ICDBG Program, the Area ONAP will determine whether you have performed adequately in grant administration and management. This determination will include an evaluation of the most recent risk analysis conducted by the Area ONAP for you.

(*b*) To assess whether or not a recipient is making satisfactory progress in completing previously approved programs, we will measure actual progress against the most recent implementation schedule(s) for the recipient's program(s). We will do this assessment with our evaluation of the risk analysis and other relevant information, *e.g.*, monitoring reports that document or reflect a recipient's performance. We will determine that a recipient which is more than *sixty days* behind schedule is performing inadequately with respect to this aspect of grant administration.

(*c*) If you have been found to be performing inadequately, the Area ONAP will determine whether you have corrected the deficiency or are following a schedule to correct performance to which you and the Area ONAP have agreed. In cases of previously documented deficient performance, the Area ONAP must determine that you have taken appropriate corrective action to improve your performance before the application due date.

(*d*) *The Area ONAP will inform in writing any potential applicant that has been determined not to meet this performance threshold no later than 30 days prior to the application due date.* In its letter, the Area ONAP will specify what actions would have to be taken by the potential applicant to address the identified performance deficiency. If you have not met the performance threshold by the application submission deadline, we will not accept your application for rating and ranking.

(*2*) *Housing assistance.* (*a*) If you have taken any action to prevent or obstruct the provision or operation of assisted housing for low and moderate income persons, we will evaluate that action to determine if it constitutes inadequate performance by you. If you have established or joined an Indian Housing Authority (IHA), and this IHA has obtained housing assistance from HUD, we will take into consideration your

performance in meeting your obligations and responsibilities to the IHA in the development and operation of housing units assisted under the United States Housing Act of 1937 in evaluating your housing assistance performance. This evaluation will include a review of your compliance with the provisions of the documents that created your relationship with the IHA and the requirements of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). In addition, if you have designated another entity (a tribally designated housing entity [TDHE]) to be the recipient of Indian Housing Block Grant Assistance on your behalf, we will also consider in our evaluation your compliance with your agreement with the TDHE.

(*b*) We will not hold you accountable for the poor performance of your IHA (or TDHE) *unless* we find this inadequate performance to be a direct result of your action or inaction. If you are a member of a multi-tribal IHA or are associated with a multi-tribal TDHE, we will judge you only on your individual performance and will not hold you accountable for the poor performance of other tribes that are members of the IHA or that are also associated with the TDHE.

(*c*) If you have received ICDBG funds to provide new housing through a Community Based Development Organization (CBDO), the Area ONAP will consider the following in making its determination regarding housing assistance performance:

(*i*) Whether the proposed units were constructed;

(*ii*) Whether housing assistance was provided to the beneficiaries identified in the funded application, and if not, why not;

(*iii*) Whether the provisions of your housing plan and procedures have been followed; and

(*iv*) Whether there were sustained complaints from tribal members regarding provision and/or distribution of ICDBG housing assistance.

(*d*) *The Area ONAP will inform in writing any potential applicant that has been determined not to meet the housing assistance performance threshold no later than 30 days before the application deadline.*

(iv) *Audits.* The thresholds described in paragraphs (3)(b)(ii) and (3)(b)(iii) of this section III.(A) require you to meet the following performance criteria:

(*1*) You cannot have an outstanding ICDBG obligation to HUD or to an ICDBG program that is in arrears or you must have agreed to a repayment schedule. If you have an outstanding ICDBG obligation that is in arrears or have not agreed to a repayment schedule, you will be disqualified from the current competition and from subsequent competitions until your obligations are current. If a recipient that was current at the time of application submission becomes delinquent during the review period, we may reject the application.

(*2*) You cannot have an overdue or unsatisfactory response to an audit finding pertaining specifically to an ICDBG program. If you have an overdue or unsatisfactory response to an audit finding, you will be disqualified from the current and subsequent competitions until you have taken final action necessary to close the audit finding. The Area ONAP Administrator may provide exceptions to this disqualification if you have made a good faith effort to clear the audit finding. When funds are due HUD or an ICDBG program as a result of a finding, the Area ONAP Administrator may grant an exception only if you have made a satisfactory arrangement to repay the debt and payments are current.

(c) *Community Development Appropriateness.* In order to rate and rank a project contained in an application that has passed the screening tests outlined in section III.(A) of this NOFA, Area ONAPs must determine that the proposed project meets the community development appropriateness thresholds set forth below:

(i) *Costs are reasonable.* The project must be described in sufficient detail so that the Area ONAP can determine:

(*1*) That costs are reasonable; and

(*2*) That the funds requested from the ICDBG program and all other sources are adequate to complete the proposed activity(ies) described in the application.

(ii) *Project is Appropriate.* The project is appropriate for the intended use.

(iii) *Project is Usable or Achievable.* The project is usable or achievable in a timely manner, generally within a two year period. The timetable for project implementation and completion must be set forth on the form HUD 4125, Implementation Schedule, included in the application. A period of more than two years is acceptable in certain circumstances, if it is established that such circumstances are beyond your control.

(B) *Factors for Award Used To Evaluate and Rate Applications.* The factors for rating and ranking applications and the points for each factor are provided below. The maximum number of points for a rating component is 100, which is the maximum any project can receive.

(1) *Summary of Rating Factors and Point Awards.*

	Maximum points
HOUSING	
Sec. III.(B)(3)	
(c) Rehabilitation	
(i) Project Need and Design	
(*1*) percent of funds for standard rehab	20
(*2*) Applicant's selection criteria	5
(*3*) Housing survey	15
(ii) Planning and Implementation	
(*1*) Rehabilitation policies	
(*a*) Rehabilitation standards	10
(*b*) Selection policies and procedures	10
(*c*) Project implementation policies and procedures	10
(*2*) Post rehab maintenance	5
(*3*) Cost estimates	15
(*4*) Cost effectiveness	5
(iii) Leveraging	5
Total points	100

	Maximum points
(e) Land to Support New Housing	
(i) Project Need	40
(ii) Planning and Implementation	
(*1*) Suitability of the land	20
(*2*) Housing resources	10
(*3*) Supportive services	5
(*4*) Commitment of households	5
(*5*) Land to trust status	5
(*6*) Infrastructure commitment	10
(*7*) Land meets need and is reasonably priced	5
Total points	100
(g) New Housing Construction	
(i) Project Need and Design	
(*1*) IHA member/assistance	15
(*2*) Housing policies and plan	25
(*3*) Beneficiary identification	5
(ii) Planning and Implementation	
(*1*) Occupancy standards	10
(*2*) Site acceptability	15
(*3*) Energy conservation design	5
(*4*) Housing survey	10
(*5*) Cost effectiveness	5
(iii) Leveraging	10
Total points	100
COMMUNITY FACILITIES	
Sec. III.(B)(4)	
(a) Infrastructure	
(i) Project Need and Design	
(*1*) Meets an essential need	20
(*2*) Benefits the neediest	15
(*3*) Provides infrastructure/health and safety	25
(ii) Planning and Implementation	
(*1*) Maintenance and operation plan	15
(*2*) Appropriate and effective design scale and cost	15
(iii) Leveraging	10
Total points	100
(c) Buildings	
(i) Project Need and Design	
(*1*) Meets an essential need	20
(*2*) Benefits the neediest	15
(*3*) Provides building/health and safety	25
(ii) Planning and Implementation	
(*1*) Maintenance and operation plan	15
(*2*) Appropriate and effective design scale and cost	15
(iii) Leveraging	10
Total points	100
ECONOMIC DEVELOPMENT	
Sec. III.(B)(5)	
(b) Economic Development	
(i) Organization	8
(ii) Project Success	
(*1*) Market analysis	15
(*2*) Management capacity	15
(*3*) Financial analysis	15
(iii) Leveraging	12
(iv) Jobs	
(*2*) ICDBG cost/job	15
(*3*) Quality of jobs/training	5
(v) Additional considerations	15
Total points	100

(2) Definitions.

Adopt means to approve by formal tribal resolution.

Assure means to comply with a specific NOFA requirement. As an applicant, you should state your compliance or your intent to comply in your application.

Document means to supply supporting written information and/or data in the application that satisfies the NOFA requirement.

Leverage means resources that you will use in conjunction with ICDBG funds to achieve the objectives of the project. Resources include, but are not limited to:

(1) Tribal trust funds;

(2) Loans from individuals or organizations;

(3) State or Federal loans or guarantees;

(4) Other grants; and

(5) Noncash contributions and donated services.

(See section IV.(E) of this NOFA for documentation requirements for point award for leveraged resources).

Project Cost means the total cost to implement the project. Project cost includes both ICDBG and non-ICDBG funds and resources.

Section 8 standards means housing quality standards contained in 24 CFR 982.401 (Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance Under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program).

Standard Housing/Standard Condition means housing that meets the housing quality standards (HQS) adopted by the applicant.

(1) The HQS adopted by the applicant must be at least as stringent as the Section 8 standards unless the Area ONAP approves less stringent standards based on a determination that local conditions make the use of Section 8 standards infeasible.

(2) You may submit, before the application due date, a request for the approval of standards less stringent than Section 8 standards. If you submit the request with your application, you should not assume automatic approval by the Area ONAP.

(3) The adopted standards must provide for the following:

(i) That the house is safe, in a physically sound condition with all systems performing their intended design functions;

(ii) A livable home environment;

(iii) An energy efficient building and systems that incorporate energy conservation measures; and

(iv) Adequate space and privacy for all intended household members.

Housing

(3) *Project Specific Thresholds and Rating Factors for Housing.*

(a) *Specific thresholds for housing category projects.* (i) You must provide an assurance that households that have been evicted from HUD-assisted housing within the past five years will not be assisted by the proposed project except in emergency situations. The Area ONAP Administrator will review each emergency situation proposed by an applicant on a case-by-case basis to determine whether an exception is warranted.

(ii) *Consistency with Indian Housing Plan (IHP).* You must provide an assurance that the housing category project proposed is consistent with, and to the extent possible, identified in the Indian Housing Plan (IHP) submitted by you or on your behalf under the provisions of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). (If the IHP for the IHBG program year that coincides with the implementation of the ICDBG proposed project has not been submitted, you must provide an assurance that when submitted, the IHP will specifically reference the proposed housing category project).

(b) *Rehabilitation Thresholds and Grant Limits.* (i) *Thresholds. Please note that all households to receive grant assistance under a housing rehabilitation project must be of low or moderate income status.* If you are applying for a housing rehabilitation grant, you must adopt rehabilitation standards and rehabilitation policies before you submit an application. *You must submit these standards and policies with the application.* You must provide an assurance that:

(*1*) Any house to be rehabilitated will be the permanent non-seasonal residence of the occupants; the residents will live in the unit at least nine months per year.

(*2*) Houses designated for eventual replacement will only receive repairs essential for the health and safety of the occupants.

(*3*) Project funds will be used to rehabilitate HUD-assisted houses only when the tenant/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the Area ONAP. In emergency situations the Area ONAP administrator may grant exceptions to this requirement on a case-by-case basis.

(*4*) Houses that have received comprehensive rehabilitation assistance from any ICDBG or other Federal grant program within the past 8 years will not be assisted with ICDBG funds to make the same repairs if the repairs are needed as a result of abuse or neglect.

(ii) *Grant limits.* Rehabilitation grant limits for each Area ONAP jurisdiction are as follows:

(1) Eastern/Woodlands: $20,000
(2) Southern Plains: $15,000
(3) Northern Plains: $45,000
(4) Southwest: $40,000
(5) Northwest: $30,000
(6) Alaska: $50,000

(c) *Rating Factors for Rehabilitation Projects.*

(i) *Rating Factor 1: Project Need and Design.* **(40 points)**

(*1*) The percentage of ICDBG funds committed to bring the houses to be assisted up to a standard condition as defined by the applicant. Administrative, planning, and technical assistance expenditures are excluded in computing the percentage of ICDBG funds committed to bring the houses up to a standard condition. The percentage of ICDBG funds not used to bring the houses up to a standard condition must be used for emergency repairs, demolition of substandard units, or another purpose closely related to the housing rehabilitation project.

Percentage of ICDBG funds committed to bring houses to be assisted up to a standard condition:

91–100%: 20 points
81–90.9% 15 points
80.9 and less: 0 points

(*2*) Your selection criteria, which are included in your application, give first priority to the neediest households. "Neediest households" means households whose houses are in the greatest disrepair (but still suitable for rehabilitation treatment) in the project area, or very low-income households.

Yes: 5 points
No: 0 points

(*3*)(*a*) Documentation of project need with a housing survey of all of the houses to be rehabilitated with ICDBG funds. This survey should include standard housing data on each house surveyed (e.g., age, size, type, number of rooms, number of habitable rooms, number of bedrooms/sleeping rooms, type of heating). The survey should indicate the deficiencies for each house. *The survey must include a definition of "suitable for rehabilitation."* At a minimum, this definition must not include houses that need only minor repairs or houses that need such major repairs that rehabilitation is structurally or financially infeasible.

(*b*) The application contains all the required survey data and the required definition of "suitable for rehabilitation." **(15 points)**

(*c*) The application does not contain the required definition of "suitable for rehabilitation" and/or all the survey data, but does contain sufficient data to enable the project to proceed effectively. **(10 points)**

(*d*) The application does not contain survey data *or* the survey data it does contain is not sufficient to enable the project to proceed effectively. **(0 points)**

(ii) *Rating Factor 2: Planning and Implementation.* **(55 points)**

(*1*) *Rehabilitation Policies and Procedures including:*

(*a*) *Adopted rehabilitation standards.* The rehabilitation standards adopted by you, the applicant, will assure that after rehabilitation the houses assisted will be in a standard condition as defined in this NOFA. In addition, these standards include specific requirements that address child safety measures to be incorporated in all appropriate rehabilitation work. Such measures may include, but are not limited to, child safety latches on cabinets, hot water protection devices, and window guards to prevent children from falling.

The standards you adopt will ensure that after rehabilitation the houses assisted will be in a standard condition as defined in this NOFA and that, where applicable, a safer living environment for children has been created. **(10 points)**

The standards you adopt will ensure that after rehabilitation the houses assisted will be in a standard condition as defined in this NOFA but they do not address applicable specific child safety measures. **(5 points)**

The standards do not meet requirements for point award. **(0 points)**

(*b*) *Rehabilitation selection policies and procedures.* (*i*) The rehabilitation selection policies and procedures contained in the application include:

(*A*) Property selection standards;

(*B*) Cost limits;

(*C*) Type of financing (e.g., loan or grant);

(*D*) Homeowner costs and responsibilities;

(*E*) Procedures for selecting households to be assisted; and

(*F*) Income verification procedures.

(*ii*) The application contains all the rehabilitation selection policies and procedures listed above. **(10 points)**

(*iii*) The application does not contain all the rehabilitation selection policies and procedures listed above, but contains sufficient data to enable the project to proceed effectively *or* the application contains all the rehabilitation selection policies and procedures listed above, but in insufficient detail. **(5 points)**

(*iv*) The application does not contain the rehabilitation selection policies and procedures listed above *or* if it does contain policies and procedures, they are not sufficient to enable the project to proceed effectively. **(0 points)**

(*c*) *Project implementation policies and procedures.* (*i*) These policies and procedures must include a description of the following items:

(*A*) The qualifications that will be required of the inspector;

(*B*) The inspection procedures to be used;

(*C*) The procedures to be used to select the contractor or contractors;

(*D*) The manner in which the households to be assisted will be involved in the rehabilitation process;

(*E*) How disputes between the households to be assisted, the contractors, and the applicant will be resolved; and, if applicable;

(*F*) The repayment provisions that will be required if sale of the assisted house occurs prior to 5 years after the rehabilitation work has been completed.

(*ii*) The application contains all the policies and procedures listed above and they will enable the project to be effectively implemented. **(10 points)**

(*iii*) The application contains some but not all of the policies and procedures listed above and these policies and procedures are sufficient for the project to proceed effectively. **(5 points)**

(*iv*) The application does not contain the policies and procedures listed above. **(0 points)**

(*2*) *Post rehabilitation maintenance policies that address counseling and training assisted households on maintenance.* (*a*) The policies included in the application contain a well-planned counseling and training program. Training will be provided for assisted households and provision is made for households unable to do their own maintenance (e.g., elderly and persons with disabilities).

(*b*) The policies include follow-up inspections after rehabilitation is completed to ensure the house is being maintained. **(5 points)**

(*c*) The policies contain a well-planned home maintenance training and counseling program but fail to adequately address all of the items listed above. **(3 points)**

(*d*) Your application does not contain a well-planned home maintenance training and counseling program. **(0 points)**

(3) *Quality of cost estimates.* (*a*) Cost estimates have been prepared by a qualified individual. (You must include qualifications of the estimator in the application). You have documented costs of rehabilitation on a per house basis and are supported by a work write-up for each house to be assisted. The work write-ups are based upon making those repairs necessary to bring the houses to a standard condition in a manner consistent with adopted construction codes and requirements. You must submit the write-ups with the application. If national standards (e.g., the Uniform Building Code) have been locally adopted as the construction codes and requirements, they must be referenced. If you used locally developed and adopted codes and requirements, you must submit them. **(15 points)**

(*b*) You have prepared cost estimates for each house to be rehabilitated to determine the total rehabilitation cost and have included the cost estimates in your application. Costs to rehabilitate each house are documented by a deficiency list. **(12 points)**

(*c*) You have prepared cost estimates and have included them in your application but the estimates are based on surveys and not on individual house deficiency lists. **(5 points)**

(*d*) You have not included cost estimates in your application *or* the basis for the cost estimates included is inappropriate or not provided. **(0 points)**

(*4*) *Cost effectiveness of the rehabilitation program.* (*a*) This is a measure of how efficiently and effectively funds will be used under the proposed program. Applicants must demonstrate how the proposed rehabilitation will bring the houses to be assisted to a standard condition in an efficient and cost effective manner.

(*b*) Rehabilitation project is cost effective. **(5 points)**

(*c*) Rehabilitation project is not cost effective. **(0 points)**

(iii) *Rating Factor 3: Leveraging.* **(5 points)**

We will award points under this component in a manner consistent with the definition of "Leverage" included in this NOFA and the following breakdown:

Non-ICDBG % of Project Cost	Points
25 and over	5
20–24.9	4
15–19.9	3
10–14.9	2
5–9.9	1
0–4.9	0

(d) *Thresholds for Land to Support New Housing.* (i) The application contains information and documentation, such as a preliminary plot plan or its equivalent that establishes that there is a reasonable ratio between the number of net usable acres to be acquired and the number of low and moderate income households

with documented housing needs. A clear objective of the applicant must be to make the most effective and economic use of the land proposed for acquisition.

(ii) Housing assistance needs must be clearly demonstrated and documented with either a survey that identifies the households to be served, their size, income levels, and the condition of current housing or an IHA, or if applicable, the waiting list approved by the IHA or TDHE Board. *The survey or waiting list must be submitted with the application.*

(e) *Rating Factors for Land to Support New Housing.*

(i) *Rating Factor 1: Project Need and Design.* **(40 Points)**

Information included in the application establishes that:

(*1*) The applicant has no suitable land for the construction of new housing and the necessary infrastructure and amenities for this housing. **(40 points);** or

(*2*) The applicant has land suitable for housing construction and needed infrastructure and amenities, but the land is officially dedicated to another purpose. **(30 points);** or

(*3*) The applicant will be acquiring land for housing construction and the construction of needed infrastructure and amenities for both new and existing housing. **(25 points);** or

(*4*) The applicant will be acquiring land for the construction of amenities for existing housing. **(15 points);** or

(*5*) The reason for the land acquisition does not meet any of the criteria listed above. **(0 points)**

(ii) *Planning and Implementation.* **(60 points)**

(*1*) *Suitability of land to be acquired.* You had a preliminary investigation (*a copy of which must be submitted with your application*) conducted by a qualified independent entity. Based on the judgment of this entity, the land meets all applicable requirements:

(*a*) Soil conditions appear to be suitable for individual and/or community septic systems or other acceptable methods for waste water collection and treatment have been identified.

(*b*) The land has adequate:

(*i*) Availability of drinking water;

(*ii*) Access to utilities;

(*iii*) Vehicular access; and

(*iv*) Drainage.

(c) The land appears to comply with environmental requirements. Future development costs are expected to be consistent with other subdivision development costs in the area (subdivision development costs include the costs of the land, housing construction, water and sewer, electrical service, roads, and drainage facilities if required).

Yes: 20 points

No: 0 points

(*2*) *Commitment and availability of housing resources.*

(*a*) The application includes evidence of a commitment and an ability to construct at least 25 percent of the housing units to be built on the land proposed for acquisition. This evidence consists of one (or more) of the following.

(*i*) a firm or conditional commitment to construct (or to finance the construction of) the units;

(*ii*) documentation that an approvable application for the construction of these units has been submitted to a funding source or entity; or

(*iii*) documentation that these units are specifically identified in the Indian Housing Plan submitted on or on behalf of the applicant as an affordable housing resource with a commensurate commitment of Indian Housing Block Grant (IHBG) resources. **(10 points)**

(*b*) Your application does not include evidence required for the award of 10 points. **(0 points)**

(*3*) *Availability/accessibility of supportive services and employment opportunities.* The application includes documentation indicating that, upon completion of construction of the housing to be built on the land to be acquired, fire and police protection will be available to the site and medical and social services, schools, shopping, and employment opportunities will be accessible from the site according to the community's established norms.

Yes: 5 points

No: 0 points

(*4*) *Commitment that households will move into the new housing.* The application includes a documented commitment from households that they will move into the new housing to be built on the land to be acquired.

Yes: 5 points

No: 0 points

(*5*) *Land to trust status.* (*a*) Land can be taken into trust or provisions have been made for taxes and fees. There must be a written assurance from the BIA that the land will be taken into trust or the applicant must demonstrate the financial capability and commitment to pay the property taxes and fees on the land for any period of time during which it anticipates it will own the property in fee. This commitment must be in the form of a resolution by the governing body of the applicant that indicates that the applicant will pay or guarantee that all taxes and fees on the land will be paid.

(*b*) Your application includes documentation from the BIA that land can be taken into trust or the required governing body resolution. **(5 points)**

(*c*) Your application does not include either the assurance or the resolution or they are inadequate. **(0 points)**

(*6*) Infrastructure commitment. (*a*) Your application includes a plan or commitment for any infrastructure needed to support the housing to be built on the land to be acquired. The plan or commitment must address water, waste water collection and treatment, electricity, roads, and drainage facilities necessary to support the housing to be developed.

(*b*) Your application includes financial commitments for all necessary infrastructure or includes documentation demonstrating that all necessary infrastructure is in place. **(10 points)**

(*c*) The application includes a plan to provide all necessary infrastructure but you have not submitted all financial commitments required to implement the plan. **(5 points)**

(*d*) The application does not include either a financial commitment or plan. **(0 points)**

(*7*) *The extent to which the site proposed for acquisition meets the housing needs of the applicant and is reasonably priced.* Your application includes documentation indicating that you have examined and assessed the appropriateness of alternative sites and demonstrating that the site proposed for acquisition best meets the documented housing needs of tribal households. Your application must include comparable sales data that show that the cost of the land proposed for acquisition is reasonable.

Yes: 5 points

No: 0 points

(f) *Thresholds for New Housing Construction.* The following thresholds and the rating factors set forth in paragraph (g) of this section apply to new housing construction to be implemented through a Community-Based Development Organization (CBDO) as provided for under 24 CFR 1003.204. *Please note that all households to be assisted under a new housing construction project must be of low or moderate income status.*

(i) New housing construction can only be implemented through a CBDO. Eligible CBDOs are described in 24 CFR 1003.204(c). You must provide an assurance that you will comply this requirement.

(ii) *You must include in the application documentation supporting the following determinations:*

(*1*) No other housing is available in the immediate reservation area that is suitable for the households to be assisted.

(*2*) No other funding sources including an Indian Housing Block Grant can meet the needs of the household(s) to be served.

(*3*) The house occupied by the household to be assisted is not in standard condition and rehabilitation is not economically feasible, the household is currently in an overcrowded house (sharing house with another household(s)), or the household to be assisted has no current residence.

(iii) Before you submit an application for new housing construction projects, you must adopt construction standards and construction policies. You must identify the building code to be used when constructing the houses and must document that this code has been adopted. The building code may be a tribal building code or a nationally recognized model code. If it is a tribal code it must regulate all of the areas and sub-areas identified in 24 CFR 200.925b and it must be reviewed and approved by the Area ONAP. If the code is recognized nationally, it must be the latest edition of one of the codes incorporated by reference in 24 CFR 200.925c.

(iv) You must provide an assurance that any house to be constructed will be the permanent non-seasonal residence of the household to be assisted; this household must live in the house at least nine months per year.

(g) *Rating Factors for New Housing Construction.*

(i) *Rating Factor 1: Project Need and Design.* **(45 points)**

(*1*) *Other resources available for new housing construction.*

(a) Funds provided to the applicant (or to a Tribally Designated Housing Entity (TDHE) for the applicant) under the Indian Housing Block Grant (IHBG) Program are not sufficient to have a significant impact on identified housing needs of low and moderate income households. (All amounts stated under the point award categories represent the amount of HUD funds received in the most recent Indian Housing Block Grant).

(*b*) The applicant (or TDHE for the applicant) received the minimum IHBG allocation ($25,000). **(15 points)**

(*c*) The applicant (or TDHE for the applicant) received more than $25,000 but less than $75,000 in IHBG funds. **(10 points)**

(*d*) The applicant (or TDHE for the applicant) received more than $75,000 but less than $150,000 in IHBG funds. **(5 points)**

(e) The applicant (or TDHE for the applicant) received more than $150,000 in IHBG funds. **(0 points)**

(*2*) *Adopted housing construction policies and plan.* (*a*) The plan must include a description of the proposed CBDO and its relationship (or proposed relationship) to the applicant. In addition, the policies and plan must include:

(*i*) A selection system that gives priority to the neediest households. "Neediest households" means households whose current residences are in the greatest disrepair, very low-income households, or households without permanent housing. "Very low-income households" refers to households whose income does not exceed 50% of the median income for the area as determined by HUD with adjustments for smaller and larger households.

(*ii*) A system effectively addressing long-term maintenance of the constructed houses.

(*iii*) Estimated costs and identification of the entity responsible for paying utilities, fire hazard insurance, and other normal maintenance costs.

(*iv*) Policies governing ownership of the houses, including the status of the land.

(*v*) Description of a comprehensive plan or approach being implemented by the tribe to meet the housing needs of its members.

(*vi*) Policies governing disposition or conversion to non-dwelling uses of substandard houses that will be vacated when a replacement house is provided.

(*b*) The policies and plan include all of the information listed above and, in addition, they specifically address the incorporation of child safety measures in the housing to be constructed. These measures may include, but are not limited to, child safety latches on cabinets, hot water protection devices, and window guards to prevent children from falling. **(25 points)**

(*c*) The policies and plan include all of the information listed above but do not specifically address the incorporation of child safety measures. **(20 points)**

(*d*) The policies and plan do not include all of the information listed above, but do include sufficient information to allow the project to proceed effectively or all of the information is included, but in insufficient detail. **(10 points)**

(*e*) The information included in the application is not sufficient to meet the requirements for the award of 10 points. **(0 points)**

(*3*) *Beneficiary identification.* (*a*) Your application identifies households to be assisted and documents their income eligibility and household size. **(5 points)**

(*b*) Your application does not identify households to be assisted or, if identified, does not document their income eligibility and household size. **(0 points)**

(ii) *Rating Factor 2: Planning and Implementation.* **(45 points)**

(*1*) *Occupancy Standards.* (*a*) The proposed housing will be designed and built according to adopted reasonable standards that govern the size of the housing in relation to the size of the occupying household (minimum and maximum number of persons allowed for the number of sleeping rooms); the minimum and maximum square footage allowed for major living spaces (bedrooms, living room, kitchen and dining room). *You must submit the standards with your application.*

(*b*) You have adopted reasonable occupancy standards and they are included in your application. **(10 points)**

(*c*) You have not adopted reasonable occupancy standards or did not include the standards in your application. **(0 points)**

(*2*) *Site Acceptability.* (*a*) You (or the proposed beneficiary household) have control of the land upon which the houses will be built. Either: (*i*) the application includes documentation that all housing sites are in trust or documentation from the BIA that the sites will be taken into trust within one year of the date of the ICDBG approval notification. If the sites are not in trust by the date of ICDBG approval notification, you must provide documentation that they are in trust to the Area ONAP before ICDBG funds may be obligated for construction; or

(*ii*) If you cannot provide documentation that the site(s) are in trust or will be taken into trust in the timeframe established, you have provided a formal tribal assurance. This assurance states that deed restrictions (or legal equivalents) will be imposed so that the owner of the site upon which the ICDBG assisted house will be built cannot sell the house without your permission and that the owner must reimburse you for the appraised value of the house at the time of sale (or the value of the ICDBG assistance provided, whichever is less). You must provide evidence that these restrictions have been recorded to the Area ONAP before you may obligate ICDBG funds for construction. You must treat any funds reimbursed to you as the result of future

sales as program income as defined and regulated in 24 CFR 1003.503.

(*b*) You had a preliminary investigation of the site(s) conducted by a qualified independent entity. Based on this investigation (*which must be included in the application*) the site(s) appear to meet all applicable requirements:

Soil conditions appear to be suitable for individual or community septic systems or other acceptable methods for waste water collection and treatment have been identified.

(*i*) Each site has adequate:

(*A*) Availability of drinking water;

(*B*) Access to utilities;

(*C*) Vehicular access;

(*D*) Drainage; and

(*ii*) Each site appears to comply with environmental requirements.

Yes: 15 points
No: 0 points

(*3*) *Energy Conservation Design.* Your application includes documentation demonstrating that the proposed houses have been designed in a manner that will ensure that energy use will be no greater than that for comparable houses in the same general geographic area that have been constructed in accordance with applicable state energy conservation standards for residential construction. Your application describes any special design features, materials, or construction techniques which enhance energy conservation.

Yes: 5 points
No: 0 points

(4) *Housing Survey.* (*a*) You have completed a survey of housing conditions and housing needs of your tribal members. You completed this survey within the twelve months before the application submission deadline (or if an earlier survey, you updated it during this period). *You must submit the survey with your application.* You included the following descriptive data for each household surveyed:

(*i*) Size of the household, including age and gender of any children.

(*ii*) Is the household occupying permanent housing or is it homeless?

(*iii*) Annual household income.

(*iv*) Owner or renter.

(*v*) Number of habitable rooms and number of sleeping rooms.

(*vi*) Physical condition of the house—standard/substandard. If substandard, is it suitable for rehabilitation? *The survey must include a definition of "suitable for rehabilitation."*

(*vii*) Number of distinct households occupying the house/degree of overcrowding.

(*viii*) If there is a need for a replacement house, what are the housing preferences of the household, *e.g.*, ownership or rental; location; manufactured or stick-built.

(*b*) You submitted an acceptable survey. **(10 points)**

(*c*) You did not submit a survey or the survey is not acceptable. **(0 points)**

(*5*) *Cost effectiveness of new housing construction.* (a) This is a measure of how efficiently and effectively funds will be used under the proposed program. You must demonstrate how the proposed housing activities will be accomplished in an efficient and cost effective manner.

(*b*) You have demonstrated that the proposed activities are cost effective. **(5 points)**

(*c*) You have not demonstrated that the proposed activities are cost effective. **(0 points)**

(iii) *Rating Factor 3: Leveraging.* **(10 points)**

We will award points under this component in a manner consistent with the definition of "Leverage" included in this NOFA and the following breakdown:

Non-ICDBG % of project cost	Points
25 and over	10
20–24.9	8
15–19.9	6
10–14.9	4
5–9.9	2
0–4.9	0

Community Facilities

(4) *Project Specific Thresholds and Rating Factors for Community Facilities.*

(a) *Rating Factors for Infrastructure.*

(*i*) *Rating Factor 1: Project Need and Design.* **(60 points)**

(*1*) *Meets an essential need.* (*a*) Your application includes documentation demonstrating that the proposed project meets an essential community development need by fulfilling a function that is critical to the continued existence or orderly development of the community.

(*b*) The proposed project will fulfill a function that is critical to the continued existence or orderly development of the community. **(20 points)**

(*c*) The proposed project will fulfill a function that is not critical to the continued existence or orderly development of the community. **(0 points)**

(*2*) *Benefits the neediest.* (*a*) The proposed project benefits the neediest segment of the population, as identified below. You must include information demonstrating that income data were collected in a statistically reliable and independently verifiable manner and that:

(*b*) 85 percent or more of the beneficiaries are low and moderate income. **(15 points)**

(*c*) Between 75–84.9 percent of the beneficiaries are low and moderate income. **(10 points)**

(*d*) Between 55–74.9 percent of the beneficiaries are low and moderate income. **(5 points)**

(*e*) Less than 55 percent of the beneficiaries are low and moderate income. **(0 points)**

(*3*) *Provides infrastructure/health and safety.*

(*a*) The application includes documentation demonstrating that the proposed project will provide infrastructure that does not currently exist for the area to be served *or* it will eliminate or substantially reduce a health or safety threat or problem *or* it will replace existing infrastructure that no longer functions adequately to meet current needs.

(*b*) The infrastructure does not exist *or* the existing infrastructure no longer functions *or* the existing infrastructure does not contribute to the elimination of, or causes, a verified health or safety threat or problem. **(25 points)**

(*c*) The existing infrastructure no longer functions adequately to meet current needs *or* is unreliable. **(20 points)**

(*d*) The proposed project will replace or supplement existing infrastructure that is adequate for current needs but that will not meet acknowledged future needs. **(12 points)**

(*e*) The proposed project will replace or supplement existing infrastructure that is adequate to meet current needs and future needs that have not been acknowledged or documented. **(0 points)**

(*f*) If the project is intended to address a health or safety threat or problem, you must provide documentation consisting of a signed study or letter from a qualified independent authority that verifies that:

(*i*) A threat to health or safety (or a health or safety problem) exists that has caused or has the potential to cause serious illness, injury, disease, or death; and

(*ii*) The threat or problem can be completely or substantially eliminated if the proposed project is undertaken.

(ii) *Rating Factor 2: Planning and Implementation.* **(30 points)**

(*1*) *A viable plan for maintenance and operation.* (*a*) If you are to assume responsibility for maintenance and operation of the proposed facility, you must adopt a maintenance and operation plan that addresses maintenance, repair and replacement of items not covered by insurance, and that

clearly identifies operating responsibilities and resources. *You must include this plan and the adopting resolution in your application.* The plan must identify a funding source to ensure that the facility will be properly maintained and operated. The resolution adopting the plan must identify the total annual dollar amount you will commit.

(*b*) If an entity other than you commits to pay for maintenance and operation, you must include a letter of commitment that identifies the responsibilities the entity will assume in your application. You are not required to submit a maintenance and operations plan. If this entity is not an established organization or agency, this letter must also identify its financial ability to assume the indicated responsibilities. The Area ONAP will award points only if it is able to determine that the entity is financially able to assume the costs of maintenance and operation.

(*c*) Your application includes an acceptable maintenance and operation plan and adopting resolution (or letter of commitment). **(15 points)**

(*d*) Your application does not include either the plan and resolution or the commitment letter or, if included, they are not acceptable. **(0 points)**

(*2*) *Appropriate and effective design, scale, and cost.* (*a*) Your application includes information demonstrating that the proposed project is the most appropriate and cost effective approach to address the identified need. This information demonstrates that you have considered the use of existing facilities and resources and alternatives, including method of implementation and cost. If only one approach is feasible (there are no alternatives to the proposed project), the application must include an explanation.

(*b*) Your application includes the required information. **(15 points)**

(*c*) Your application does not include the required information or, if included, it is unacceptable. **(0 points)**

(iii) *Rating Factor 3: Leveraging.* **(10 points)**

We will award points under this component in a manner consistent with the definition of "Leverage" included in this NOFA and the following breakdown:

Non-ICDBG % of Project cost	Points
25 and over	10
20–24.9	8
5–19.9	6
10–14.9.	4
5–9.9	2
0–4.9	0

(b) *Threshold for Buildings.* If you propose a facility that would provide health care services funded by the Indian Health Service (IHS), you must assure that the facility meets all applicable IHS facility requirements. We recognize that tribes that are contracting services from the IHS may establish other facility standards. These tribes must assure that these standards at least compare to nationally accepted minimum standards.

(c) *Rating Factors for Buildings.*

(i) *Rating Factor 1: Project Need and Design.* **(60 points)**

(*1*) *Meets an essential need.* (*a*) Your application includes documentation that the proposed building meets an essential community development need by providing space so that a service or function that is critical to the continued existence or orderly development of the community can be provided.

(*b*) The proposed building will provide space for a service or function that is essential to the continued existence or orderly development of the community. **(20 points)**

(*c*) The proposed building will provide space for a service or function that is not critical to the continued existence or orderly development of the community. **(0 points)**

(*2*) *Benefits the neediest.* The proposed project benefits the neediest segment of the population, as identified below. Your application must include information demonstrating that income data was collected in a statistically reliable and independently verifiable manner and that:

(*a*) 85 percent or more of the beneficiaries are low and moderate income. **(15 points)**

(*b*) Between 75–84.9 percent of the beneficiaries are low and moderate income. **(10 points)**

(*c*) Between 55–74.9 percent of the beneficiaries are low and moderate income. **(5 points)**

(*d*) Less than 55 percent of the beneficiaries are low and moderate income. **(0 points)**

(*3*) *Provides building/health and safety.* (*a*) Your application includes documentation demonstrating that the proposed building will be used to provide services or functions that are not currently being provided to service area beneficiaries *or* it will replace a building that does not meet health or safety standards that are currently being used to provide the service or function *or* it will replace a building that is no longer able to provide the space or amenities to meet the current need for the services or functions.

(*b*) The services or functions to be provided in the proposed building do not exist for the service area population *or* the building currently being used does not meet health or safety standards. **(25 points)**

(*c*) The building to be replaced by the proposed building is not able to provide the space or amenities for the services or functions so that current needs cannot be entirely met. **(20 points)**

(*d*) The building to be replaced is able to provide adequate space and current needs are being met but it cannot provide space for acknowledged future needs. **(10 points)**

(*e*) The proposed building is not necessary since current needs and acknowledged future needs can be met through the use of existing facilities. **(0 points)**

(*f*) If the proposed building is intended to replace an existing building that does not meet health or safety standards, your application must include documentation consisting of a signed letter from a qualified independent authority that specifically identifies the standard or standards that are not being met by the existing building.

(ii) *Rating Factor 2: Planning and Implementation.* **(30 points)**

(*1*) *A viable plan for maintenance and operation.* (*a*) If you are to assume responsibility for the maintenance and operation of the proposed building, you must adopt a maintenance and operation plan that addresses maintenance, repair and replacement of items not covered by insurance, and that clearly identifies operating responsibilities and resources. *You must include this plan and the adopting resolution in your application.* The plan must identify a funding source to ensure that the building will be properly maintained and operated. The resolution adopting the plan must identify the total annual dollar amount you will commit.

(*b*) If an entity other than the applicant commits to pay for maintenance and operation, you must include a letter of commitment identifying the responsibilities the entity will assume in your application. You are not required to submit a maintenance and operation plan. If this entity is not an established organization or agency, this letter must also identify its financial ability to assume the indicated responsibilities. The Area ONAP will award points only if it is able to determine that the entity is financially able to assume the costs of maintenance and operation.

(*c*) Your application includes an acceptable maintenance and operation plan and adopting resolution (or letter of commitment). **(15 points)**

(*d*) Your application does not include either the plan and resolution or the commitment letter, or if included, they are not acceptable. **(0 points)**

(*2*) *An appropriate and effective design, scale, and cost.* (*a*) Your application includes information demonstrating that the proposed building is the most appropriate and cost effective approach to address the identified need(s). This information demonstrates that you have considered the use of existing facilities and resources and alternatives, including method of implementation and cost. If only one approach is feasible (there are no alternatives to the proposed building), the application must include an explanation.

(*b*) Your application includes the required information. **(15 points)**

(*c*) Your application does not include the required information or, if included, it is unacceptable. **(0 points)**

(iii) *Rating Factor 3: Leveraging.* **(10 points)**

We will award points under this component based on the definition of "Leverage" included in this NOFA and the following breakdown:

Non-ICDBG % of project cost	Points
25 or more	10
20–24.9	8
15–19.9	6
10–14.9	4
5–9.9	2
0–4.9	0

Economic Development

(5) *Project Specific Thresholds and Rating Factors for Economic Development.*

(a) *Thresholds for Economic Development.* (i) Economic development assistance may be provided only when a financial analysis is provided that shows public benefit commensurate with the assistance to the business can reasonably be expected to result from the assisted project.

(ii) The analysis should also establish that to the extent practicable: Reasonable financial support will be committed from non-Federal sources prior to disbursement of Federal funds; any grant amount provided will not substantially reduce the amount of non-Federal financial support for the activity; not more than a reasonable rate of return on investment is provided to the owner; and that grant funds used for the project will be disbursed on a pro-rata basis with amounts from other sources. In addition, it must be established that the project is financially feasible and has a reasonable chance of success.

(b) *Rating Factors for Economic Development.*

(i) *Rating Factor 1: Organization.* **(8 points)**

(*1*) The application contains information and documentation that addresses all of the following three elements. **(Maximum: 8 points):**

(*a*) You (or entity to be assisted) have an established organization system for operation of a business, (*e.g.*, adopted tribal ordinances, articles of incorporation, Board of Directors in place, tribal department).

(*b*) Formal provisions exist for separation of government functions from business operating decisions. An operating plan has been established and is submitted.

(*c*) The Board of Directors consists of persons who have prior business experience. A staffing plan has been developed and is submitted.

(*2*) The application contains all of the first element listed above and some of the items in the second and third elements *or* the application contains all of the elements listed above, but in insufficient detail. The business should be able to operate effectively. **(Moderate: 5 Points)**

(*3*) The application does not meet the criteria for the award of moderate points. **(Unsatisfactory: 0 Points)**

(ii) *Rating Factor 2: Project Success.* **(45 points)**

We will rate the project on the adequacy and quality of the information included in the application that addresses the following criteria: *We will not consider any project for funding unless it receives at least moderate points in each of the following three rating factors.*

(*1*) *Market analysis.* (*a*) A feasibility/market analysis, generally not older than two years, identifying the market and demonstrating that the proposed activities are highly likely to capture a fair share of the market. *You must submit the analysis with your application.* **(Maximum: 15 points)**

(*b*) A feasibility/market analysis identifying the market and demonstrating that the proposed activities are reasonably likely to capture a fair share of the market. *You must submit the analysis with your application.* **(Moderate: 10 points)**

(*c*) Your submission does not meet the criteria for the award of moderate points. **(Unsatisfactory: 0 points)**

(*2*) *Management capacity.* (*a*) You have identified a management team with qualifying specialized training or technical/managerial experience in the operation of a similar business. *You must submit with your application job descriptions of key management positions as well as resumes showing qualifying specialized technical/managerial training or experience of the identified management team.* **(Maximum: 15 points)**

(*b*) You will hire a management team with qualifying general business training or experience if the grant is approved. *You must submit with your application job descriptions of key management positions.* **(Moderate: 12 points)**

(*c*) The submission does not meet the criteria for the award of 12 points. **(Unsatisfactory: 0 points)**

(*3*) *Financial Analysis of the Business.* (*a*) We will determine the financial viability of a project by analyzing financial and other project related information. *You must submit the following for all proposed projects:*

(*i*) A detailed cost summary for the project;

(*ii*) Evidence of funding sources; and

(*iii*) Five year operating or cash flow financial projections. If the project involves the expansion of an existing business, you must also submit with your application financial statements for the most recent three year period for the business (financial statements include the balance sheet, income statement and statement of retained earnings). For start-up businesses that will not be owned by the recipient, you must also submit with your application current financial or net worth statements of principal business owners or officers.

(*b*) The Area ONAP will review the information derived from the analysis and compare it to local or national industry standards to assess reasonableness of development costs, financial need, profitability, and risk as factors in determining overall financial viability. In determining whether a project is financially viable, the Area ONAP will also consider current and projected market conditions and profitability measures such as cash flow return on equity, cash flow return on total assets, and the ratio of net profit before taxes to total assets. Sources of industry standards include Marshall and Swift Publication Company, Robert Morris Associates, Dun and Bradstreet, the Chamber of Commerce, etc. You may also use local standards. *If you cite one of these standards, you must submit the appropriate data with your application.*

(*c*) Based on the analysis:

(*i*) The project has an excellent chance of achieving financial success. **(Maximum: 15 points)**

(*ii*) The project has an average chance of achieving financial success. **(Moderate: 8 points)**

(*iii*) The project has a minimal prospect of achieving financial success. **(Unsatisfactory: 0 points)**

(iii) *Rating Factor 3: Leveraging.* We will award points under this component in a manner consistent with the definition of "Leverage" included in this NOFA and the following breakdown:

Non-ICDBG % of project cost	Points
30% or more	12
20–29.9%	8
10–19.9%	4
Less than 10%	0

(iv) *Rating Factor 4: Permanent Full-Time Equivalent Job Creation and Training.* **(20 points).** (*1*) You must identify or include in your application the total number of permanent full-time equivalent jobs expected to be created and/or retained as a result of the project as well as a summary of job descriptions. We will not count retained jobs unless you have provided clear evidence that these jobs would be lost without the project. You must identify the number and kind(s) of jobs expected to be available to low and moderate income persons.

(*2*) *ICDBG cost per job:*

$30,000 or less: 15 points
$30,001–40,000: 12 points
$40,001–45,000: 8 points
$45,001+: 0 points

(*3*) *Quality of jobs and/or training targeted to low and moderate income persons:*

(*a*) The jobs offer wages and benefits comparable to area wages and benefits for similar jobs, provide opportunity for advancement, and teach a transferable skill; *or*

(*b*) The employer commits to provide training opportunities. *You must submit a description of the planned training program with your application.*

Yes: 5 points
No: 0 points

(v) Rating Factor 5: Additional Considerations. **(15 points)**

A project must meet three of the following factors to receive 15 points. **(Maximum: 15 points)**

(*1*) Use, improve, or expand members' special skills. Special skills are those that members have developed through education, training, or traditional cultural experiences.

Yes: 5 points
No: 0 points

(*2*) Provide spin-off benefits beyond the initial economic development benefits to employees or to the community.

Yes: 5 points
No: 0 points

(*3*) Provide special opportunities for residents of Federally-assisted housing.

Yes: 5 points
No: 0 points

(*4*) Provide benefits to other businesses owned by Indians or Alaska Natives.

Yes: 5 points
No: 0 points

(*5*) Loan Repayment/Reuse of ICDBG funds. If the business is not tribally owned, at least 50% of the ICDBG assistance to the business will be repaid to the grantee within a 10 year period. If the business is tribally owned, the tribe agrees (by submission of a tribal resolution) within a 10 year period to use funds equal to 50% of the ICDBG assistance for eligible activities that meet a national objective. These funds should come from the profits of the tribally owned business.

Yes: 5 points
No: 0 points

IV. Application Submission Requirements and Checklist

(A) *General.* You must submit your completed application (*one originally signed and two copies*) to the appropriate Area ONAP listed above. You may access any of the telephone numbers listed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. To be eligible for consideration, your application must be received by or be submitted to the appropriate Area ONAP in accordance with the requirements set forth under **APPLICATION DUE DATE** above. You may submit only one application; however, an application may include more than one eligible project (*e.g.*, housing and public facilities). In any event, the ICDBG grant amount requested may not total more than the grant ceiling. We will rate separately each project within your application.

(B) *Demographic data.* You may submit data that are unpublished and not generally available in order to meet the requirements of this section. You must certify that:

(1) Generally available, published data are substantially inaccurate or incomplete;

(2) Data provided have been collected systematically and are statistically reliable;

(3) Data are, to the greatest extent feasible, independently verifiable; and

(4) Data differentiate between reservation and BIA service area populations, when applicable.

(C) *Publication of Community Development Statement.* You must prepare and publish or post the community development statement portion of your application according to the citizen participation requirements of § 1003.604.

(D) *Application Submission.* Your application must include:

(1) Standard Form 424—Application for Federal Assistance;

(2) Community Development Statement that includes:

(a) Components that address the relevant selection criteria;

(b) A brief description or an updated description of community development needs;

(c) A brief description of projects proposed to address needs, including scope, magnitude, and method of implementing the project;

(d) A schedule for implementing the project (form HUD–4125, Implementation Schedule); and

(e) Cost information for each separate project, including specific activity costs, administration, planning, technical assistance, and total HUD share (form HUD–4123, Cost Summary);

(3) Certifications—form HUD 4126;

(4) Certification for a Drug-Free Workplace (form HUD 50070);

(5) Certification regarding lobbying (24 CFR part 87) and SF–LLL (if applicable);

(6) Applicant/Recipient Disclosure/ Update Report—form HUD 2880, as required under subpart A of 24 CFR part 4, Accountability in the Provision of HUD Assistance;

(7) A map showing project location, if appropriate;

(8) If the proposed project will result in displacement or temporary relocation, a statement that identifies:

(a) The number of persons (families, individuals, businesses, and nonprofit organizations) occupying the property on the date of the submission of the application (or date of initial site control, if later);

(b) The number to be displaced or temporarily relocated;

(c) The estimated cost of relocation payments and other services;

(d) The source of funds for relocation; and

(e) The organization that will carry out the relocation activities;

(9) If applicable, evidence of the disclosure required by 24 CFR 1003.606(e) regarding conflict of interest.

(10) If applicable, the demographic data certification described in Section IV(B) of the NOFA. The data accompanying the certification must identify the total number of persons benefiting from the project and the total number of low-and-moderate persons

benefiting from the project. Supporting documentation should include a sample copy of a completed survey form and an explanation of the methods used to collect the data, and a listing of incomes by household.

(11) If the application has been submitted by a tribal organization as defined in 24 CFR 1003.5(b), on behalf of an Indian tribe, band, group, or nation, you must submit concurring resolutions from these entities.

(E) *Documentation requirements for point award for leveraged resources.*

(1) *General.* For your own resources, you must include in your application a council resolution (or legal equivalent) that identifies and commits the resources. For resources to be provided by another entity, you must include in your application written verification of an application or request for the leveraged resources.

(2) *Resources contributed by a public agency, foundation, or other private party.* (a) In addition to the requirement described in section IV.E.(1), above, for grants or other contributed resources from a public agency, foundation, or other private party, you must submit a *written commitment*, which may be contingent on approval of the ICDBG award, and it must be *received* by the Area ONAP no later than *30 days* after the application deadline. This commitment must specifically identify or indicate:

(i) The dollar amount committed (or dollar value of the noncash resource and the basis for the valuation);

(ii) That the resources are currently available or will be available when necessary for successful project implementation; and

(iii) The project.

(b) If the nature of the funding cycle of the contributing entity prevents the entity from making a firm funding commitment in the 30 days, we will consider these resources in the award of points if the entity provides a written statement that identifies the project and the dollar amount under consideration, indicates that the entity has received the application or request for assistance from the ICDBG applicant, and states the date by which its funding determination will be made. This date cannot be more than six months from the anticipated date of grant approval notification by HUD.

(c) If the proposed project rates high enough for funding consideration, we will establish a special condition in the grant agreement for the project. This condition will indicate that, if a firm funding commitment for the leveraged resources is not provided within six months of the date of grant approval, we will recapture the grant funds approved and will use them in accordance with the requirements of § 1003.102.

(d) The Area ONAP must receive the statement described in paragraph (c)(2)(ii) of this section no later than *30 days* after the application deadline. If the commitment or statement is not received in the required timeframe or if the required information is not included, we will not award points for the proposed contribution.

(e) If the proposed project still rates high enough to be approved, we will establish a pre-award condition that will require the applicant to provide evidence of firmly committed resources to cover the entire non-ICDBG project cost. If you do not meet this condition, we will not make the grant award.

(3) *Contributions of goods and services.* In addition to the above requirements for point award, you must include in your application special documentation for certain contributions. We will consider the contribution of goods and services for point award if your application meets the applicable requirements listed above; if you demonstrate and we determine that the items or services are necessary to the actual development of the project; and you have submitted comparable cost and/or time estimates that support the donation.

(4) *Contributions of land.* We will consider land to be contributed for point award when its use and area are integral to the development of the project. In addition, you must verify the value of the land by any of the following means or methods and must include this documentation in your application:

(a) A site specific appraisal no more than two years old;

(b) An appraisal of a nearby comparable site also no more than two years old; and

(c) A reasonable extrapolation of land value based on current area realtors value guides.

(5) *Indirect costs.* We will not consider the contribution of indirect administrative costs as identified in OMB Circular A–87, attachment A, section F, as a leveraged resource for purposes of point award.

(6) *Operations and maintenance expenditures.* We will not consider the contribution of resources to pay for the anticipated operations and maintenance costs of any proposed project to be leveraged resources for purposes of point award.

V. Clarifying Information

After the application due date, Area ONAPs may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from you. The Area ONAP may however, but is under no obligation to, contact you to clarify an item in the application. You should note, however, that the Area ONAP may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. The Area ONAP will make any requests for clarifying information in writing and will specify the item, or items, that need clarification and a timeframe for response. Failure on your part to provide such requested information will result in the rejection of the application.

VI. Correction of Technical Deficiencies

A technical deficiency is an error or oversight that, if corrected, would not alter, either in a positive or negative fashion, the review and rating of an application. Examples of technical deficiencies include the failure to submit the proper certifications or the failure to have an original signature of an authorized official, as required, on an application form. As indicated under Section III(A)(2)(f) above, only successful applicants will be required to address technical deficiencies and this must be done before we make a grant award. If you do not provide the information necessary to address the deficiency within the time allowed, we will not award you the grant and will reject your application. The Area ONAP will notify you in writing and will describe the technical deficiency, what must be done to correct it, and the date by which you must submit this information. The Area ONAP will notify you by facsimile or by return receipt requested. Your response must be submitted (postmarked) by no later than the date established by the Area ONAP. The Area ONAP must provide you at least 14 calendar days to respond to the request.

VII. Error and Appeals

Rating panel judgments made within the provisions of this NOFA and the program regulations (24 CFR part 1003) are not subject to claims of error. You may bring arithmetic errors in the rating and ranking of applications to the attention of an Area ONAP within 30 days of being informed of your score. If an Area ONAP makes an arithmetic error in the application review and rating process that, when corrected, would result in the award of sufficient points to warrant the funding of an otherwise approvable project, the Area ONAP may fund that project in the next funding round without further competition.

VIII. Findings and Certifications

(A) *Paperwork Reduction Act Statement.* The information collection requirements contained in this Notice have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0191. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

(B) *Environmental Finding.* This NOFA provides funding under, and does not alter the environmental requirements of, regulations in 24 CFR part 1003. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and a Finding of No Significant Impact (FONSI) is not required.

(C) *Recipient Compliance with Environmental Requirements.* In accordance with 24 CFR 1003.605, a recipient must comply with the environmental review requirements of 24 CFR part 58, including limitations on the commitment of ICDBG or non-HUD funds on an ICDBG project before HUD approval of the Request for Release of Funds and Certification. If you commit or expend ICDBG or non-HUD funds on a project activity that requires environmental review before HUD approves your certification that the review is complete and your Request for the Release of Funds, ICDBG funding for the project may be denied.

(D) *Federalism, Executive Order 13132.* Executive Order 13132 (captioned "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. While this NOFA will provide financial assistance to Indian tribes, none of its provisions will have federalism implications and they will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

(E) *Prohibition Against Lobbying Activities.* Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, "Disclosure of Lobbying Activities," any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts.

(F) *Section 102 of the HUD Reform Act; Documentation and Public Access Requirements.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(G) *Section 103—HUD Reform Act.* HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact HUD's Ethics Law Division (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate Area ONAP or Headquarters counsel.

(H) *Catalog of Federal Domestic Assistance Number.* The Catalog of Federal Domestic Assistance Number for the ICDBG Program is 14.862.

Dated: March 2, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–5722 Filed 3–9–00; 8:45 am]

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Federal Register

Friday,
March 10, 2000

Part V

Department of Transportation

Federal Transit Administration

Job Access and Reverse Commute Competitive Grants; Availability of Funds; Solicitation for Grant Applications; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Job Access and Reverse Commute Competitive Grants

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of funds: Solicitation for grant applications.

SUMMARY: The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the second round of competitive grants under the Job Access and Reverse Commute grant program, authorized under section 3037 of the Transportation Equity Act for the 21st Century (TEA–21). This announcement describes the conditions under which applications will be received for the FY 2000 Job Access and Reverse Commute competitive grants program and how FTA will determine which projects it will fund. It includes all of the information needed to apply for Job Access and Reverse Commute competitive grants. The announcement also contains information needed to apply for projects specifically allocated funding by Congress.

This announcement is available on the U.S. Department of Transportation's FTA website at *http://www.fta.dot.gov/wtw/*. The website also has commonly asked questions and answers. FTA will announce final selections on the website and in the **Federal Register**.

DATES: FTA will make funding commitments for competitively selected Job Access and Reverse Commute projects through a two-stage process. All proposals must be submitted to the appropriate FTA regional office (see Appendix A) by the close of business May 9, 2000. After evaluation and selection, successful applicants will be required *to submit supplementary documentation demonstrating compliance with all of FTA's Section 5307, "Urbanized Area Formula Grants" requirements.* If the applicant so elects, a proposal and final application documenting standard FTA Section 5307 requirements may be submitted at the same time. Applications for congressionally-designated projects may be submitted as soon as they are completed, but not later than May 9, 2000. A single application containing the proposal and documentation of Section 5307 requirements is required.

ADDRESSES: Comments on, or questions about, the Job Access and Reverse Commute program or the application process may be made at the email address: [JobAccess@fta.dot.gov]. Or they may be mailed or faxed to the following address: *Doug Birnie, Federal Transit Administration, Room 9409, 400 7th Street, S.W., Washington, D.C. 20590 (FAX (202) 366–3765).*

FOR FURTHER INFORMATION: Contact the appropriate FTA Regional Administrator (see Appendix A) for application-specific information and issues. For general program information, contact Doug Birnie, Office of Research Management, TRI–30, (202) 366–0176, email *douglas.birnie@fta.dot.gov*. A TDD is available at 1–800–877–8339 (TDD/FIRS).

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I. Background

The Job Access and Reverse Commute Program has two major goals: to provide transportation services in urban, suburban and rural areas to assist welfare recipients and other low-income individuals in accessing employment opportunities, and to increase collaboration among the regional transportation providers, human service agencies and related service providers, employers, metropolitan planning organizations (MPOs), states, and affected communities and individuals.

The Job Access and Reverse Commute grant program is intended to establish a regional approach to job access challenges through the establishment of an area-wide Job Access and Reverse Commute Transportation Plan. This plan is to be developed through a coordinated transportation/human services planning process. Projects derived from this plan support the implementation of a variety of transportation services that may be needed to connect welfare recipients and other low-income individuals to jobs and related employment activities. All projects funded under the Job Access and Reverse Commute grant program must be derived from such an area-wide plan.

While the projects must be planned in coordination with traditional transit authorities, Metropolitan Planning Organizations and State Departments of Transportation, other interested organizations could take the lead in establishing the collaborative planning process or in submitting a project application.

The Job Access and Reverse Commute grant program will support projects that are implemented by a wide range of transportation providers, but projects should be integrated within or coordinated with the existing transportation system and make efficient and effective use of existing transportation providers.

FTA is placing special emphasis on consultation with the community to be served, including welfare recipients and low-income individuals, individuals with disabilities, migrant workers, Native Americans and community-based, faith-based and other organizations addressing the interests of such individuals.

A Job Access project is designed to transport welfare recipients and low-income individuals in urban, suburban, or rural areas to and from jobs and activities related to their employment. Job Access projects implement new transportation services or extend existing services to fill the gaps that exist in many areas between where welfare recipients and low-income persons live and employment opportunities. Job Access and Reverse Commute grants funded under this program may not be used for planning or coordinating activities and cannot supplant existing sources of funding. Only new or expanded services are eligible for funding.

Funding for Job Access and Reverse Commute grants is authorized at $150 million annually. The Transportation Equity Act for the 21st Century (TEA–21) provided guaranteed funding starting at $50 million in fiscal year (FY) 1999, increasing by $25 million a year, and reaching the full authorized $150 million in FY 2003. Funding above the guaranteed level depends on congressional appropriations. No more than $10 million annually can be used for grants designated as Reverse Commute projects.

Program funding is divided in the following manner: sixty percent (60%) for areas with populations 200,000 and above, twenty percent (20%) for areas between 50,000–200,000 population, and twenty percent (20%) for areas below 50,000 population.

Congress has appropriated $75 million for the Job Access and Reverse Commute grants in FY 2000. Of this amount, Congress has allocated $49.57 million for specific states and localities.

The remaining $25.4 million plus $4.2 million in unobligated FY 1999 funding is available for competitive award. The following chart provides information on the amounts available for competitive projects in each funding category, as well as the amounts reserved for specific areas by each funding category.

	Approximate amounts for projects in areas with population—(funding in millions)			
	>200,000	50–200,000	>50,000	Totals for all areas
FY 2000 Funds Available	$45.0	$15.0	$15.0	$75.0
Amounts Reserved for Specific Projects	30.2	9.0	10.4	49.6
FY 2000 Funds Available for Competitive Award	14.8	6.0	4.6	25.4
FY 1999 Funds Not Allocated	1.0	2.8	.4	4.2
Total Funds Available for Competitive Award	15.8	8.8	5.0	29.6

A 50 percent non-DOT match is required. Other Federal funds that are eligible to be used for transportation costs can be used as part of the match. *Applicants should submit projects that can be started within six months, but no later than within one year.*

II. Changes in the Fiscal Year 2000 Solicitation

A. Area-Wide Job Access and Reverse Commute Transportation Plan

In FY 1999, it was not clear to some what the difference was between the Regional Job Access and Reverse Commute Plan and the Regional Transportation Plan developed by Metropolitan Planning Organizations in urbanized areas as required by the FHWA/FTA Joint Planning regulations. The plans required for the Job Access and Reverse Commute program are short-term, operational service plans that are meant to address gaps in current transit service that impede welfare recipients and low-income persons from reaching jobs and employment support services. The Regional Transportation Plan is a long-range plan that identifies area transportation needs in light of projected growth patterns and broadly charts major capital investments for transportation system development to meet these projected needs. To avoid confusion, we have renamed job access plans as *Area-Wide Job Access and Reverse Commute Transportation Plans.*

B. Persons With Disabilities

Because of high employment experienced by persons with disabilities and their more dispersed residential patterns, the Job Access and Reverse Commute Plans are now required to identify projects which address the mobility needs of this population in reaching employment sites and support activities. Applicants also must submit with their proposals a certification that the requirements of the Americans with Disabilities Act (ADA) will be met. (See Appendix E)

C. Multi-Year Commitments

In FY 1999, a number of applicants sought multi-year commitments from FTA. Because of limited funding available, recipients of FY 1999 Job Access and Reverse Commute funding seeking second year funding must compete with other applicants. They will be evaluated based on demonstrated progress in meeting the goals of their project, as well as on the general evaluation criteria. A full application must be submitted, including the transmittal memo, the proposal narrative and plan and any relevant updates, and documentation of demonstrated progress towards meeting project goals.

D. One-Step Application Process

In fiscal year 1999, FTA required applications to be submitted in two stages: The project proposal, including the Job Access and Reverse Transportation Plan, to be submitted first, and for applications approved for funding, the supplementary documentation necessary to meet the requirements of FTA's Section 5307 program. Some applicants wished to have a one-step instead of a two-step application process. This year, applicants may submit the entire application simultaneously, including project proposal and the supplementary documentation, if they choose to. (See Sections II and III) Those wishing to submit a single application should work closely with the appropriate FTA regional office. (See Appendix A for Regional Contacts)

E. Projects for Congressionally-Designated Areas

Applicants for projects supporting the development of local transportation services and related promotional activities in congressionally-selected areas must submit applications responding to the same program selection criteria as applications for competitive selection. Such applications shall demonstrate conformity with the requirements of the Job Access and Reverse Commute program and will provide information to demonstrate sound project management.

III. General Program Information

A. Authority

Section 3037 of the Transportation Equity Act for the 21st Century (TEA–21).

B. Background

While two-thirds of all new jobs are in the suburbs, three-quarters of welfare recipients live in rural areas or in central cities. In metropolitan areas with extensive transit systems, studies have shown that less than half of the jobs are accessible by transit. Even fewer jobs are accessible by transit in areas with limited transit systems. Many entry-level workers have difficulty reaching jobs during evening or weekend shifts when transit services are frequently diminished or non-existent. Work trips can also be complex, involving several destinations including childcare providers. The problems can be more challenging in rural areas where approximately 40 percent of rural counties lack public transit systems and commuting distances generally are longer than in urban areas.

Auto ownership among welfare recipients and low-income persons is low. Most welfare recipients do not own cars and nearly 40 percent of workers with annual incomes below $10,000 do not commute by car. In 1991, the median price of a new car was equivalent to 25 weeks of salary for the average worker and considerably more for the low-income worker.

Transportation is clearly a key barrier to those moving from welfare to work. Providing a variety of new or expanded transportation options for low-income workers, especially those who are receiving or who have recently received welfare benefits, will increase the

likelihood that those workers will get and retain jobs.

In FY 1999, $75 million was appropriated and FTA awarded approximately $71 million, $67.5 million for job access projects and $3.4 million for reverse commute projects. Successful applicants in the first round were announced on May 13, 1999 and included a variety of services ranging from extended bus routes and specialized van services reaching new employment sites to guaranteed ride home programs and late night and weekend service providing additional hours of service. Project descriptions can be found on the FTA website at (*www.fta.dot.gov/wtw*). The remaining uncommitted funds are added to the FY 2000 appropriation.

C. Scope

Improving mobility and advancing economic development are key strategic goals of the U.S. Department of Transportation. Job Access funds help improve mobility and economic opportunity for welfare recipients and other low-income people through implementing new or expanded transportation activities. Reverse Commute funds help improve mobility to suburban employment opportunities for the general public, as well as for welfare recipients and low-income people.

D. Eligible Applicants

Consistent with Section 3037 (b)(4)(A) & (B), local agencies and authorities, non-profit organizations and designated recipients under other FTA programs (usually a state entity or a regional transit authority) are eligible applicants for Job Access and Reverse Commute grant program funds. Local agencies and authorities include states, local governments, metropolitan planning organizations (MPOs), public transit agencies and tribal governments.

In urbanized areas with 200,000 population or more, MPOs select the applicant(s). FTA urges MPOs to designate a single recipient to submit a consolidated application in urbanized areas with such populations.

In small urbanized areas under 200,000 population and in non-urbanized, rural areas, states select the applicant. For areas between 50,000–200,000 population, applications forwarded to the state for selection must be endorsed by the area MPO as projects that the MPO would be willing to program in the Transportation Improvement Program if the projects were selected for funding States are urged to serve as the designated recipient for grants to small urbanized and non-urbanized areas. The selected grant recipient can sub-allocate funds to other project participants.

Tribal governments must go through the state selection process but, once selected, can choose to be sub-recipients of the state or, as sovereign governments, can apply directly to FTA. States are encouraged to work closely and expeditiously with tribal applicants. FTA regional offices are available to facilitate this process.

E. Eligible Projects

1. In General

Job Access or Reverse Commute projects derived from an Area-Wide Job Access and Reverse Commute Transportation Plan are eligible. Please note that grants awarded under the Job Access and Reverse Commute program may *not* be used for planning or coordinating activities. (Section 3037(e)) However, metropolitan and statewide planning funds made available under the FTA Section 5303 and 5313(b) programs and FHWA/FTA Joint Planning, Section 49 CFR part 613, Section 23 CFR part 420, and state planning and research funds (SPR) can be used to fund welfare to work transportation planning activities at a 100 percent Federal share. Other funds, including the U.S. Department of Health and Human Services' Temporary Assistance for Needy Families (TANF) and the Department of Labor's Welfare-to-Work (WtW) administrative funds, can also be used for transportation planning activities consistent with the allowable uses of those resources. Lead applicants submitting consolidated applications on behalf of a number of subrecipients may apply for administrative costs up to ten percent of the grant request.

2. Job Access Project

A Job Access project is directed at implementing new or expanded transportation services. These services are targeted at filling transportation gaps and designed to transport welfare recipients and low-income individuals to and from jobs and other employment-related support services such as childcare and job readiness, training and retention services. The Job Access Grant Program funds the capital and operating costs of new or expanded transportation services.

Localities have wide flexibility in selecting service strategies that are appropriate for their areas, including, but not limited to:

(a) Adding late night and weekend service;

(b) Providing a guaranteed ride home service;

(c) Initiating shuttle service;

(d) Extending fixed route mass transit service;

(e) Providing demand responsive van service;

(f) Sponsoring ridesharing and carpooling activities; and

(g) Encouraging bicycling.

To improve customer service and operating efficiency, localities are encouraged to:

(a) Establish regional mobility managers or transportation brokerage activities;

(b) Apply Geographic Information System (GIS) tools;

(c) Implement Intelligent Transportation Systems (ITS), including customer trip information technologies;

(d) Integrate automated regional public transit and human service transportation, including health services, information, scheduling and dispatch functions; and

(e) Deploy vehicle position monitoring systems.

Job Access and Reverse Commute grants also may be used for promoting the use of:

(a) Transit by workers with non-traditional work schedules,

(b) The purchase of transit vouchers by appropriate agencies for welfare recipients and eligible low-income individuals;

(c) The development of employer-provided transportation such as shuttles, ridesharing, carpooling; or

(d) The use of transit pass programs and benefits under Section 132 of the Internal Revenue Code of 1986.

Marketing and advertising are examples of promotional activities that could be undertaken to increase awareness of these transportation options and their benefit to welfare recipients and low-income individuals. Other locality-specific actions, strategies and linkages that further the program goals also may be eligible.

While the marketing and promotion of transit pass programs are eligible expenses under the Job Access and Reverse Commute Program, *the funding of individual transit passes is not an eligible expense.* Additionally, the construction of child care centers and other employment support facilities at transit hubs *are not eligible for Job Access grants.* Transit-oriented construction activities are eligible under FTA's Section 5307, 5309 and 5311 Formula Grant programs. Transit passes are eligible expenses under Temporary Assistance for Needy Families (TANF) and Welfare-to-Work (WtW) programs.

Programs for private automobile ownership and repair are not legally eligible under this grant funding

program. However, programs supporting carpooling and other forms of mass transportation and shared-ride use, such as jitneys or special paratransit service, are eligible. In cases where vehicle acquisition is part of the program, vehicles must remain under the continuing control of the agency receiving the grant.

3. Reverse Commute Project

A Reverse Commute project facilitates the provision of new or expanded public mass transportation services for the general public from urban areas, suburban and rural areas to suburban work places. Reverse Commute services include, but are not limited to:

(a) Bus, train, car and van pooling services, van routes, and

(b) The purchase or lease by a nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences and transit transfer points to a suburban work place and back again.

F. Cost Sharing

The Job Access and Reverse Commute grant program is intended to fill gaps in existing services and leverage other Federal, state and local transportation-related funding to address the unmet needs of individuals moving from welfare to work and other low-income populations. Neither funds awarded under this grant program, nor funds used to match the grants, can be used to replace any existing source of funds.

The maximum DOT share of a grant under the Job Access and Reverse Commute program may not exceed 50 percent of the total project cost. The non-DOT share shall be provided in cash. If funds are matched from other Federal programs, the funds must be applied directly to project expenses. Revenues from service agreements are an eligible match, *but revenues from individual fares cannot be used as a match.*

Transportation-eligible funding from Federal programs other than the Department of Transportation may be used to match DOT funds. These funds include but are not limited to:

a. Temporary Assistance for Needy Families (TANF);

b. Community Services Block Grants (CSBG) and Social Services Block Grants (SSBG) administered by the U.S. Department of Health and Human Services;

c. Welfare-to-Work (WtW) formula and competitive grants administered by the U.S. Department of Labor; and

d. Community Development Block grants (CDBG) and HOPE VI grants administered by the U.S. Department of Housing and Urban Development.

The prohibitions on the use of WtW funds for matching requirements under section 403(a)(5)(C)(ii) of the Social Security Act do not apply to Federal or state funds that provide transportation services. TANF and WtW grants, when used as a match, may be expended only for new or expanded transportation services and cannot be used for construction or to subsidize current transit operating expenses. Such funds also must supplement rather than supplant other state expenditures on transportation.

Under the TANF Final Rule, investment in transportation services for families who are employed, including the purchase of transit vouchers, and investments used as match for the Job Access and Reverse Commute program, do not constitute "assistance" and, therefore, do not trigger the 60-month lifetime limit on receipt of Federal benefits nor the reporting requirements of families receiving "assistance." The Secretaries of Transportation, Labor, and Health and Human Services released revised joint guidance on the use of WtW and TANF funds on December 23, 1998, which is currently being updated to reflect the changes in the final TANF rule. Guidance on TANF funds, including specific examples of eligible transportation investments, is available on the web at [http://www.acf.dhhs.gov/programs/ofa/funds2.htm]. ("Child Support Performance and Incentives Act of 1998," Pub.L. 105–200, Sec. 403, "Limitations on Use of TANF Funds for Matching Under Certain Federal Transportation Programs.").

More extensive guidance on the use of TANF and WtW funds for transportation can be found on the FTA web site—— – *http://www.fta.dot.gov/wtw.*

G. Planning

1. Coordinated Transportation/Human Services Planning Process

Proposed Job Access and Reverse Commute projects must be derived from an Area-Wide Job Access and Reverse Commute Transportation Plan (see below) which results from a coordinated public transit and human services transportation planning process. Any interested stakeholder group in the area may initiate the planning process. FTA encourages MPOs to serve as the regional forum in urbanized areas.

The planning process must include transportation planning officials from state and metropolitan transportation planning organizations; representatives from local transit agencies and other existing human service, private, non-profit transportation operators; the agencies administering TANF and WtW formula and competitive grants, and the community to be served. Stakeholders within the community to be served include welfare recipients and low-income residents as well as, community and faith-based organizations, disability groups, farm and migrant worker organizations and other groups representing the interests of low-income persons.

The planning process also should include other stakeholders organized transit labor representatives; employment, human service, and child care support service providers; a variety of local and state workforce development organizations including One-Stop Career Center; public and assisted housing providers and community development agencies; economic development agencies; employers and employer groups (such as transportation management organizations and Chambers of Commerce); elected representatives including tribal officials, and state officials including mayors, county supervisors, state legislators, governors and other state and local officials or their designates, and other interested public citizens.

2. Area-Wide Job Access and Reverse Commute Transportation Plan

The purpose of collaboration is to develop a comprehensive area-wide approach to providing transportation services to welfare recipients and low-income persons regardless of jurisdictional boundaries. In general, the Job Access and Reverse Commute program should be viewed as a catalyst to provide long-term mobility and access to jobs for welfare recipients and low-income individuals. Any project proposed for funding should be identified in the Area-Wide Job Access Transportation Plan resulting from the above process. The Plan is not meant to supersede, but to build upon existing area welfare-to-work transportation planning activities. The Area Wide Job Access and Reverse Commute Transportation Plan must:

a. Identify the geographic distributions of welfare recipients and low-income people in the region;

b. Identify the geographic distributions of employment centers and employment-related activities in the region;

c. Identify existing public, private, non-profit and human service transportation services in the region;

d. Identify transportation gaps between the geographic distributions of

people, as specified in section "a," and employment, as specified in section "b," which are not currently served by the transportation services, as specified in section "c,"

e. Identify projects to address the gaps identified in section "d." Each project identification must include:

(1) the goals and objectives of the project

(2) the cost of the project;

(3) An explanation of how the project will maximize use of existing transportation service providers and what mechanisms will be used to integrate or coordinate the project services with the existing transportation network; and

(4) Identification of any employer-provided or employer-assisted transportation service strategies incorporated in the project.

Prioritize the project(s) identified in section "e" for funding and implementation. *This is a requirement.*

The Area-Wide Job Access and Reverse Commute Transportation Plan should build on and incorporate existing welfare to work transportation planning activities.

In addition, since low-income persons with disabilities tend to be more disbursed throughout the community than other low-income groups that are geographically more concentrated, the Plan should include specific identification of projects that will address the employment-related needs of this population.

3. The Role of Metropolitan Planning Organizations

MPOs are comprised of elected officials representing local governments and transportation service providers within the metropolitan area. They are responsible for adopting transportation plans and improvement programs to address a region's unique transportation needs and working with states to include these priorities in statewide plans.

In regions with populations of more than 200,000, MPOs are responsible for selecting applicants to be considered for Federal Job Access and Reverse Commute grants. In regions with populations between 50,000 and 200,000, MPOs will recommend projects to the state, which will select the applicants to be considered for Federal Job Access and Reverse Commute grants.

This means that MPOs are responsible for the following:

(a) Determining that Job Access and Reverse Commute projects are consistent with the regional long-range transportation plan.

(b) Ensuring that the submitted application contains prioritized projects based on local need. Local priorities can be ascertained through the collaborative human services/transportation planning process and through consultation with the affected stakeholders.

(c) Endorsing and subsequently programming Job Access and Reverse Commute projects into the area Transportation Improvement Program in urbanized areas of over 50,000 population.

(d) Conducting the locally-developed public participation process as required by Joint FHWA/FTA Planning Rule (23 CFR part 450, 49 CFR part 613).

In all regions with MPOs, individual Job Access and Reverse Commute projects must be adopted into the MPO's Transportation Improvement Program (TIP) prior to receiving a grant. Because this entails a formal review and project approval by the MPO Policy Board, FTA strongly urges the partners developing the Area-Wide Job Access and Reverse Commute Transportation Plan to communicate with the MPO at an early stage. Further, as financial sustainability of a project is one of the evaluation criteria, coordination with the agencies participating in the MPO forum could be a critical factor in ensuring long-term support for Job Access and Reverse Commute activities.

4. Statewide Transportation Planning Requirements

In all regions with populations of less than 200,000, the state is responsible for selecting applicants, based on the recommendation of the MPO in areas between 50,000–200,000 population. In addition, Job Access and Reverse Commute projects selected for funding must be endorsed by the state and incorporated into the statewide transportation improvement program (STIP). *Because this requires state approval, FTA strongly urges the partners to communicate with state officials, including the state DOT, at an early stage.* In selecting projects in rural areas, states should give priority to projects providing service to places that are not currently served or are underserved by public transit systems. States must prioritize the projects for funding based on their analysis of local needs and service effectiveness, as well as the collaboration achieved among stakeholders. Given the sovereign nature of tribal governments, tribal projects need not be included in the state's prioritization of projects, though they must be included in the State Transportation Improvement Program (STIP).

5. Improved Transportation Planning

The statewide and metropolitan transportation planning processes mandated by TEA–21 promote ongoing, cooperative, and active involvement of public transportation providers; the public; and state, metropolitan and local government agencies in the development of state-wide and metropolitan transportation plans and improvement programs. DOT expects that the Job Access and Reverse Commute grant program will be a catalyst for broadening the transportation planning process to better integrate employment and social equity considerations.

J. General Grant Requirements

In addition to the project proposal based on the program-specific requirements outlined in this notice, the applicant will be required to submit appropriate certifications, assurances, and other documentation necessary to meet the requirements of FTA's Urbanized Area Formula Grant Program (Section 5307 program under Title 49, United States Code). These include planning, environmental, school bus, charter, procurement, labor protections and civil rights requirements, including the Americans with Disabilities Act, Title VI, Environmental Justice and Disadvantaged Business Enterprise, and drug and alcohol testing requirements.

Applicants are encouraged to coordinate with affected transit labor unions and to gather all information required by the U.S. Department of Labor for labor certification as soon as possible to avoid delay in the certification process upon grant selection. (See Appendix F for a description of required information). Applicants must have the financial, legal, and technical capacity to apply for and administer projects. Copies of the Section 5307 program guidance (circular FTA 9030.1B "Urbanized Area Formula Program: Grant Application Instructions," Oct. 10, 1996) can be obtained from any FTA Regional Office or electronically through the FTA website. (See Appendix D for summary list.)

K. Performance Monitoring

FTA requires grant recipients to monitor the performance of their Job Access and Reverse Commute services and to cooperate with the FTA and General Accounting Office (GAO) national evaluations mandated by law. Performance measures on: (1) Increasing access between welfare recipients and low-income populations and employment sites; and (2) job access/

reverse commute service effectiveness and efficiency will be sought. The required performance measures for FY 1999 grants may be found on FTA's web site (www.fta.dot.gov/wtw). Similar measures will be required for FY 2000 grantees. Performance monitoring primarily will take place through FTA standard project quarterly progress reports. Quarterly reports and other information must be reported in accordance with FTA's standard reporting requirements which are: (1) For projects in non-urbanized areas, reporting requirements for the 5311 Program (FTA C 9040.1E, page VI–6) annual status reports, annual financial status reports, and annual Disadvantaged Business Enterprise (DBE) reports; (2) for projects in urbanized areas, reporting requirements for the 5307 Program, Transit Database Reporting, annual audits and triennial review.

IV. Guidelines for Preparing Grant Application

FTA is conducting a national solicitation for applications under the Job Access and Reverse Commute Program. Grant awards will be made on a competitive basis. FTA encourages both traditional transportation recipients and a variety of new program entrants non-traditional grantees in urban, suburban, and rural areas to participate in the development of projects. To assist new program applicants in particular, a two-step application process is available. Applicants must submit a proposal that describes the proposed project for which funding is sought and responds to the requirements outlined in this Notice. If selected, the applicant must then document compliance with the standard FTA requirements listed in Appendix D as well as complete the securement of the financial match for the grant. Applicants may elect to submit a single application containing both the proposal and documentation of FTA standard requirements. Contact the appropriate FTA regional office for guidance on meeting standard FTA program requirements.

A. Grant Funding Amounts

Suggested grant sizes are identified below. (Applicants may request smaller amounts from FTA.)

1. For urbanized areas with populations of over one million, FTA expects to make grants of no more than $1 million. (Places with populations of above 5 million may request funding above $1 million.)

2. For urbanized areas with populations greater than 200,000 and less than one million, FTA expects to make grants of no more than $500,000.

3. For urbanized areas with populations between 50,000 and 200,000, FTA expects to make grants of no more than $200,000. States should not submit applications that collectively exceed $1 million for this category.

4. For rural areas (areas with populations of less than 50,000), individual area grant applications generally should not exceed $150,000. Collective grant applications by states for rural areas should not exceed $1 million. Tribal applications may be considered separately from the state funding limitation.

B. Project Scope

Proposed projects must be drawn from an Area-Wide Job Access and Reverse Commute Transportation Plan and focus on new or expanded transportation services. Applicants should focus on projects that *can be started* within six months, but no later than within one year of grant award.

V. Application Development and Submission

To promote collaboration and reduce administrative paperwork, FTA strongly encourages the submission of a consolidated application by a single entity in urbanized areas and the submission of a consolidated application by the state for rural areas. In both cases, funds may be passed on to sub-recipients. Tribal governments submitting projects that are selected by the state may choose to allow the state to include their project(s) in the state's application or, as sovereign governments, may apply directly to FTA. Since existing FTA grantees may have already met or have on file information that will satisfy many of the FTA requirements that apply to this program, FTA encourages states and local transit agencies to serve as the single entity by submitting applications on behalf of other entities.

Applicants must submit an original and two paper copies of the application proposal to the appropriate FTA regional office. Additionally, the application proposal is to be submitted via e-mail to the FTA at: (JobAccess@fta.dot.gov). If an applicant is unable to submit the application electronically via e-mail, the proposal should be submitted on a 3.5 formatted disk for use on a personal computer (PC). Documents should be submitted in Word or Rich Text Format (RTF). Tables should be submitted in an Excel, or Tab Delimited Format. Submissions must be postmarked by, as well as electronically sent, where feasible, to FTA by May 9, 2000.

Applicants with access to TEAM, FTA's electronic grant making and management system, should enter standard grant information into TEAM once projects have been selected. For those applicants with access to TEAM that choose the one-step application process and submit a single comprehensive application (application proposal and standard section 5307 requirements), all standard grant requirement information also should be entered into TEAM.

The application proposal should provide detailed information on each project for which FY 2000 funds are being requested. The application should include the following elements:

A. Transmittal Memo

Include the following information:

1. The Name of Applicant(s) and the Type of Agency (See Appendix G for list of agency types).
2. A List of Sub Recipients and the Types of Agencies (See Appendix G).
3. Name, Address and Telephone Number of a Person to be Contacted for Additional Information.
4. Name, Title, and Complete Address of Person to be Notified if Grant is Awarded.
5. Area(s) to be Served: Cities, Counties, Tribal Lands and States.
6. Project Summary. Two paragraphs to be used for press purposes should the application be selected for funding. The summary should contain: a brief description and list of the planning partners; a brief overview of the transportation challenges in the area; a brief description of the services to be funded; the intended project beneficiaries and the identification of any employment support services (*e.g.*, training, child care, or housing) that will be coordinated with the proposed transportation services.
7. A Brief Description of the Applicant's Organizational Capability to Carry Out the Project.
8. Identification of the Area as a Designated Empowerment Zone, Enterprise Community, or Champion Community, if applicable.
9. Total Federal Project Funding Requested:

Major Urbanized Area (Over 200,000 population)
- Job Access Amount: $
- Reverse Commute Amount: $

Medium Urbanized Area (50,000 to 200,000 Population)
- Job Access Amount: $
- Reverse Commute Amount: $

Non-urbanized Area (Rural and Small Urban—less than 50,000 Population)

- Job Access Amount: $
- Reverse Commute Amount: $

10. Total Funds Requested
Job Access Amount: $
- Reverse Commute Amount: $
- Total Requested: $

11. Source(s) and Dollar Amount of Matching Funds.

B. Proposal Narrative

Provide the information identified below to support your application for new or expanded services.

1. Document the coordinated human services and transportation planning process. This should include:

a. A brief description (*no more than three pages—double spaced*) of the collaborative transportation/human services process used in developing the Area-Wide Job Access and Reverse Commute Transportation Plan, including the coordination and consultation process with the organizations that have been specified by law: the community to be served, states and MPOs, existing transportation providers and transit agencies, agencies administering the TANF and WtW funds.

b. A list of the above organizations and other participants in the Job Access and Reverse Commute planning process.

c. A description of the results of the local Job Access and Reverse Commute Plan consultation process with the community to be served, including welfare recipients and low-income individuals, individuals with disabilities, migrant workers, Native Americans and community-based, faith-based and other organizations addressing the interests of such individuals.

d. Letters of endorsement or objections from planning partners.

e. Applicant responses to any letters of objections.

2. Document the unmet transportation needs on a region-wide basis from the Area-Wide Job Access and Reverse Commute Plan and provide project specific information on how the proposed services meet these needs. Where possible, provide maps depicting the information listed below (2a, 2b). Please provide the following information:

a. Describe the unmet need for additional transportation services to transport those leaving welfare and low-income individuals to jobs, training and other employment services on an area-wide and project-specific basis. This should include:

- A definition of the proposed project service areas, the communities to be served and the geographic area covered by the area-wide job access and reverse commute plan.
- The number of welfare recipients and low-income persons and the percentage of the population that they represent within the proposed project service area and the percentage of the population that they represent within the geographic and project/s service area.
- A description of major employment opportunities.
- A description of the existing transportation network, including human services, nonprofit, private and public transportation providers.
- A description of transportation gaps in existing services for welfare recipients and low-income populations seeking to reach jobs and employment support services.
- For reverse commute projects, information on the need for additional transportation services

b. MPOs and states should list projects in priority order for funding implementation and describe how each proposed project(s) will meet the unmet needs described above. Tribal projects do not have to be prioritized because they represent the projects of an independent sovereign government, not subject to state funding priorities. Include or address the following:

- Describe the applicant's organizational capacity to implement the project.
- Specify project goals and objectives.
- Provide indicators that will be used to monitor project performance and to make subsequent adjustments in project implementation.
- Describe the project.
- Provide operation-specific data (*e.g.* miles/hours of service, new routes, route extensions, reduced travel time for target population where appropriate, etc.).
- Estimate capital and operating project costs Estimate annualized cost per rider of proposed project. For job access projects, estimate low-income and welfare recipient ridership and total annual ridership.
- For reverse commute projects, estimate annual ridership.
- Percentage of target population to be served.
- Describe how the project will address the mobility needs of persons with disabilities and provide certification that the ADA requirements will be met. (Certification language—see Appendix E).
- Identify employment potential in the proposed project's service area, including the new jobs and/or job and employment support sites reached.
- Specify how existing service providers will be used to provide proposed services.
- Describe mechanisms to coordinate or integrate new transportation services within existing needs of target populations.
- For applicants who already have received Job Access and Reverse Commute grants in FY 1999, provide a report depicting progress toward meeting project goals/objectives and performance information on the items described above.

3. Document financial commitments, including prospects for sustainability.
- Document sources, or expected sources, of matching funds.
- Provide letters of financial commitment, or intent to commit, that document local match.
- Identify how TANF, WtW, other Federal, state or local financial resources will be leveraged.
- Identify the financial commitment of existing transportation providers.
- Identify employer-provided resources.
- Identify long-term financing that may be proposed or available to support continuation of the proposed project or other aspects of the regional plan, including continued transit, human service and employer provided financial resources.

4. For application for continuation of services previously funded in FY 1999, applicants must provide information on financial commitments plus information drawn from their progress reports that demonstrates achievements in meeting project objectives, including the number of:
- New employment sites reached.
- New employers reached.
- New jobs reached.
- New employment support facilities reached.
- New residential areas served with target populations.
- Ridership on new services, including, if available, number of welfare recipients and low-income persons served, [these figures may be generated by periodic surveys].
- Cost per rider.
- Additional vehicle hours of services provided.
- Other progress and results toward meeting project goals.

C. Project Budget

Provide a project budget for each project. (see Appendix C).

VI. Grant Review Process

Applications for competitive funding are to be submitted to the appropriate FTA Regional Office by the close of business TBD. FTA will screen all applications to determine whether all required eligibility elements, as

described in the following checklist, are present. FTA will select projects based on what is most advantageous to the government, considering, in addition to the award criteria, the time frame in which projects can be implemented, Empowerment Zone or Enterprise Community status, use of innovative approaches, such as transportation mobility management/brokerage institutional arrangements and the application of Geographic Information Systems (GIS) and Intelligent Transportation Systems (ITS) technologies, and geographic distribution of project funding.

A. Project Eligibility Checklist—include the following:

This checklist is provided for the applicant to use to ensure that the required documentation has been provided in the application. *Failure to provide the documentation listed below will make an applicant's proposal non-responsive and it will not be evaluated further.*

(1) A description of the applicant's organizational capacity to implement the proposed project(s).

(2) A brief description and documentation of a coordinated transportation/human services planning process.

(3) An Area-Wide Job Access and Reverse Commute Transportation Plan. The plan must prioritize and rank projects for funding. Tribal projects are exempted for prioritization.

(4) A brief description of each project proposed.

(5) Documentation of matching funds.

(6) Documentation of approval by affected transit authorities.

(7) For urbanized areas with populations over 200,000, documentation of the MPO selection and intention to amend the Transportation Improvement Plan (TIP) if the project is selected for funding.

(8) For urbanized areas with populations between 50,000 and 200,000, documentation of the state selection and MPO intention to amend the TIP if project is selected for funding.

(9) For areas with populations below 50,000, documentation of the state selection and intention to amend the state-wide transportation improvement plan (STIP) if project is selected for funding.

(10) Description of the results of the consultation process with the community to be served.

B. Award Criteria for Competitive Grants:

Once eligibility is established, the merit of each application will be evaluated based on the following factors. (The number of points in parentheses indicates the maximum level of points for a given factor.)

1. A coordinated human services/ transportation planning process. (25 points). Evaluated based on the extent to which the applicant demonstrates a collaborative planning process and the extent to which the organizations listed below demonstrate support for the projects. The entities include the following:

- Existing transportation service providers;
- The state or local agencies that administer the state program funded under Part A of Title IV of the Social Security Act (TANF and WtW grant programs);
- Public housing agencies (including Indian tribes and their tribally designated housing entities as defined by the Secretary of Housing and Urban Development), especially those applying for Welfare to Work Housing Vouchers from the U.S. Department of Housing and Urban Development
- Other human service and employment service agencies and providers;
- The community to be served, including welfare recipients and low-income residents, community-based and faith-based organizations, disability groups, farm and migrant organizations, tribal associations and other organizations representing the interests of low-income persons;
- Employers and their organizations; and
- Other area stakeholders.

An Area-Wide Job Access and Reverse Commute Transportation Plan addressing the transportation needs of welfare recipients and low-income individuals (60 pts.)

a. *Demonstrated need for additional transportation services* (30 Points)

Evaluated based on the extent to which the applicant demonstrates:

- For a job access project, the relative need for additional services in the area to be served to transport welfare recipients and eligible low-income individuals to and from jobs, training and other employment support services; and
- For a reverse commute project, the need for additional services to transport individuals to suburban employment opportunities. b.

b. *Extent to which proposed services will meet the need for services* (30 Points)—Evaluated based on the extent to which:

- The proposed service will meet needs, including those associated with accessing jobs and employment-related services such as training and child care.
- The applicant demonstrates the maximum use of existing transportation service providers and how services will be coordinated with existing the transportation network.

3. *Financial commitments* (15 points)

Evaluated based on the extent to which the applicant identifies:

- Long-term financing strategies to support proposed services.
- Commitment of financial match by source, e.g.

—human service agencies and providers.
—employers.
—existing transportation providers.

C. Notification for Competitive Selections

FTA will notify applicants of selection decisions. Those selected must then submit appropriate certifications, assurances, and other documentation necessary to meet the applicable FTA Section 5307 Urbanized Area Formula Grant Program requirements and be included in the TIP or STIP as appropriate, if these requirements had not been met. Technical assistance regarding these requirements is available in each FTA regional office.

FTA is committed to obligating FY 2000 Job Access and Reverse Commute funding expeditiously. Therefore, FTA urges applicants to develop documentation in accordance with the Section 5307 program guidance as soon as possible. This allows the information necessary for grant approval to be readily available for submission to FTA when projects are selected for funding. FTA will approve final applications as soon as they are complete.

Issued on: March 3, 2000.

Nuria I. Fernandez,

Acting Administrator.

Appendix A: (FTA) Regional Offices

Region I—Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine
Richard H. Doyle, FTA—Regional Administrator, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055

Region II—New York, New Jersey, Virgin Islands,
Letitia Thompson, FTA—Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, (212) 668–2170

Region III—Pennsylvania, Maryland, Virginia, West Virginia, Delaware, Washington D.C.
Sheldon Kinbar, FTA—Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100

Region IV—Georgia, North Carolina, South Carolina, Florida, Mississippi, Tennessee, Kentucky, Alabama, Puerto Rico
Susan Schruth, FTA—Regional Administrator, 61 Forsyth Street, S.W., Suite 17T50, Atlanta, GA 30303–8917, (404) 562–3500
Region V—Illinois, Indiana, Ohio, Wisconsin, Minnesota, Michigan
Joel Ettinger, FTA—Regional Administrator, 200 West Adams Street, Suite 2410, Chicago, IL 60606–5232, (312) 353–2789
Region VI—Texas, New Mexico, Louisiana, Arkansas, Oklahoma
Lee Waddleton, FTA—Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102–9003, (817) 978–0550
Region VII—Iowa, Nebraska, Kansas, Missouri
Mokhtee Ahmad, FTA—Regional Administrator, 901 Locust Street, Suite 404, Kansas City, M0 64106, (816) 329–3920
Region VIII—Colorado, North Dakota, South Dakota, Montana, Wyoming, Utah
Louis Mraz, FTA—Regional Administrator, Columbine Place, Suite 650, 216 Sixteenth Street, Denver, CO 80202–5120, (303) 844–3242
Region IX—California, Arizona, Nevada, Hawaii, American Samoa, Guam
Leslie Rogers, FTA—Regional Administrator, 201 Mission Street, Suite 2210, San Francisco, CA 94105–1839, (415) 744–3133
Region X—Washington, Oregon, Idaho, Alaska
Helen Knoll, FTA—Regional Administrator, Jackson Federal Building, Suite 3142, 915 Second Avenue, Seattle, WA 98174–1002, (206) 220–7954.

Appendix B: Definitions

1. *Welfare Recipient*—An individual who receives or received aid or assistance under a state program funded under Part A of Title IV of the Social Security Act (whether in effect before or after the effective date of the amendments made by Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193); (110 Stat. 2110)) at any time during the three-year period before the date on which the applicant applies for a grant.

2. *Eligible Low-Income Individual*—An individual whose family income is at or below 150 percent of the poverty line (as that term is defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) including any revisions required by that section for a family of the size involved, as calculated by HHS. The 1999 guidelines were published in the March 18, 1999, (Volume 64, Number 52) **Federal Register**, page 13428–13430, and are available on the web at [http://www.aoa.gov/network/99hhspov.html].

3. *Existing Transportation Service Providers*—Public transportation providers including public, private and non-profit fixed route and paratransit operators, and governmental agencies and nonprofit organizations that receive assistance from Federal, state, or local sources for non-emergency transportation services.

4. *Human Services Providers*—Agencies and organizations involved in helping welfare recipients and low-income populations to make the transition to work and providing supportive employment services. These agencies and organizations include state and local workforce development organizations, agencies administering TANF and WtW formula and competitive funds, public and assisted housing providers and community development agencies, and, where appropriate, faith-based and community-based organizations providing employment support services.

5. *Qualified Entity*—(A) With respect to any proposed eligible project in an urbanized area with a population of at least 200,000, the applicant(s) selected by the appropriate Metropolitan Planning Organization that meets the program eligibility requirements, including planning and coordination requirements, from among local governmental authorities and agencies and nonprofit organizations and; (B) With respect to any proposed eligible project in an urbanized area with a population of greater than 50,000 and less than 200,000, or an area other than an urbanized area, the applicant(s) selected by the chief executive officer of the state in which the area is located that meets the program eligibility requirements, including the planning and coordination requirements, from among local governmental authorities and nonprofit organizations.

6. *Transit Capital and Operating Assistance Projects*—Projects to finance acquisition, construction, improvement, and operating costs of facilities, equipment and associated capital maintenance items used in mass transportation service, including crime prevention and security of and for such equipment and facilities. Direct administrative expenses associated with the provision of job access and reverse commute services are also eligible operating expenses.

7. *Community to be Served—neighborhoods and geographic areas with a disproportionate number of welfare recipients and low-income residents as compared to the general population, and population groups such as tribes, migrant workers, and persons with disabilities who experience a disproportionate number of welfare recipients and low-income persons within them.*

Appendix C: Sample Project Budget (One for each project)

FISCAL YEAR 2000 FUNDING

	Applicant	Area size	
		Federal amount	Total amount
	A. Job Access Project		
Capital Costs		.....	.....
Activity	.....	.....	.....
Quantity	.....	.....	.....
Activity	.....	.....	.....
Quantity	.....	.....	.....
Example:		.....	.....
Activity Vans	.....	.....	.....
Quantity 4	.....	.....	.....
Operating Costs:		.....	.....
Activity	.....	.....	.....
Activity	.....	.....	.....
Example:		.....	.....
Activity Late Night	.....	.....	.....
Service (3 Routes):		.....	.....
Total	.....	.....	.....
	B. Reverse Commute Project		
Capital Costs:		.....	.....
Activity	.....	.....	.....

FISCAL YEAR 2000 FUNDING—Continued

Applicant	Area size	
	Federal amount	Total amount
Quantity		
Activity		
Quantity		
Example:		
Activity Vans		
Quantity 4		
Operating Costs:		
Activity		
Activity		
Example:		
Activity Two new routes		
Total		
Grand Total (A or B or A & B)		

For those applicants seeking a multi-year commitment, provide this information for subsequent years or reference budget material from your Area-wide Job Access Transportation Plan.

Appendix D: Summary of FTA'S Section 5307 Requirements

This is the full range of 5307 requirements. Some of these items are covered in the application, in which case you will not need to submit information twice.

Approval Prerequisites

(On file with FTA, or to be submitted with application and updates as appropriate)
Opinion of Counsel
Authorizing Resolution
Current annual Certification and Assurances
Civil rights submissions up-to-date
  Title VI
  Annual DBE Goal
  DBE Program
  EEO Program
  ADA
National Transit Database reports up-to-date
Any outstanding oversight findings resolved or resolution plan and schedule set

Additional Information

Project Budget
Project Description
Project Justification/Supporting Information as necessary
Project Milestone Schedule
Labor Union Description(s) (See Appendix F for a description of required information)
Environmental Review
  Date of FTA's signing of FONSI (Finding of No Significant Impact), or
  Date of FTA's signing of ROD (Record of Decision) closing out the EIS process, or
  Grant applicant's Categorical Exclusion recommendation if neither (a) nor (b) above applies
Air Quality
  Date of project level conformity determination by FTA, or
  Applicant's recommendation concerning list of exemptions in the conformity regulation (40 CFR Part 51)
STIP—Date of Approval by FTA
Request for copy of Master Agreement (If applicant does not have latest one on file)

Appendix E: ADA Certification

Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR part 27, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT 29 U.S.C. 794, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* At 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

Appendix F: Information Required by the U.S. Department of Labor for Labor Certification

I. Background

Federal Transit law requires that fair and equitable arrangements must be made, as determined by the U.S. Department of Labor (DOL), to protect the interests of employees affected by Job Access and Reverse Commute grants. These interests include the preservation of rights, privileges, and benefits under existing collective bargaining agreements, the continuation of collective bargaining rights, the protection of individual employees against a worsening of their positions related to employment, assurances of employment to employees of acquired mass transportation systems, priority of reemployment, and paid training or retraining.

DOL processes the employee protection certifications required under section 5333(b) in accordance with procedural Guidelines published at 29 CFR 215.3 (July 28, 1999 **Federal Register**). The DOL will process Job Access grants serving populations of 200,000 or more by referring a copy of the grant application to labor organizations representing affected employees and seeking the views of organized labor and the grant recipients on proposed certification terms. For grants serving populations under 200,000, DOL will issue its certification without seeking the views of the parties. In either case, the certification terms will be based on existing protective arrangements used for prior FTA grants, if any, or standard operating and/or capital arrangements developed by the DOL where there are no existing arrangements. (Such existing arrangements do not include the Special Section 13(c) Warranty that is used for projects funded under the Section 5311 program.)

It is essential where there are questions regarding the DOL certification process and/or information needed by DOL to obtain a labor certification that the applicant contact the appropriate Regional Office immediately. Where information lacks specificity, is unclear or is missing, DOL will place the grant application in an "incomplete" status until the necessary information is received. Conceptual terms such as "collaborative effort" or "working in conjunction with * * *" or "services will be provided to assist * * *" do not provide the specificity necessary for DOL to process a grant.

Upon receipt of a grant application, DOL will determine whether there is sufficient information to process the grant application. Because it is DOL's responsibility to address the protections afforded employees through the certification of appropriate protections, it must examine the activities of each subrecipient under the grant in order to frame a protective arrangement appropriate to the activity funded. The following information is needed by DOL to process all Job Access and Reverse Commute grant

applications (including those areas under 200,000).

II. Description of Required Information

DOL needs the following information to process a grant application for labor certification.

a. *Project Description (Brief).* This section should contain a brief, succinct description of what is in the project. This generally would cover the major budget line items.

b. *Project Description (Detail).* This section should provide a complete description of each activity to be undertaken. It should include funding information, what the project application is for, how and where line items will be used whether the project is new service, and a description of the operating service area of the recipient or subrecipient. If there is more than one subrecipient under a grant, this information must be developed for each subrecipient's portion of the project.

c. *Grantee Contact Person.* This information is not contained in the TEAM application. Under "Project Details" please enter the name of a contact person for the grantee. In addition, if the grant will "pass through" funding to one or more subrecipients or other public entities, enter the full name of the subrecipient or other public entity, a contact name, mailing address, telephone number and facsimile number for each of these.

d. *Union Information.* This information is not contained in the TEAM application. Under "Project Details" please (1) identify all the labor organizations that represent transit employees of the recipient and each subrecipient, and (2) identify any other transportation providers which operate in the service area of the recipient and the subrecipients and all labor organizations that represent employees of these other transportation providers. Because employee protections are not limited to the employees of the grant recipient, other service area providers must be identified. Please note that a useful reference for obtaining labor union information is contained in *Directory of U.S. Labor Organizations, 1999 edition.* This may be purchased from the Bureau of National Affairs Books, P.O. Box 7814, Edison, N.J. 08810–7814. Telephone orders: 1–(800)–960–1220.

For each local of a nationally affiliated union, the applicant must provide the name of the national organization and the number or other designation of the local union. (For example, Amalgamated Transit Union Local 1258.) Since DOL makes its referral to the national union's headquarters, there is no need to provide a local contact in these situations.

However, for each independent labor organization (*i.e.*, a union that is not affiliated with a national or international organization) the local contact information will be necessary (name of organization, contact person, mailing address, telephone number, facsimile number).

e. *Extended Budget Descriptions.* This must provide a project description and project justification for most line items. There are few line items that need no additional description and/or justification. If there are subreceipients under a grant, indicate which subrecipient will receive funds under each budget description.

If you have any questions, please contact the U.S. Department of Labor, Division of Statutory Programs, at (202) 693–0126

Appendix G: Agency Classifications

State Government
- State DOT
- State Human Services
- State Labor/Employment
- Other State Agencies

Indian Tribe

Transportation Providers
- Public Transportation Providers
- Regional Public Transit Authority
- State Transit Agency
- City Transit Agency
- County Transit Agency
- Private for Profit Companies
- Bus
- Taxi
- Specialized Service (*e.g.*, Medicaid Operator)
- Other
- Non-Profit Organizations
- Human Services Transportation Provider
- Community-Based Organization
- Other

Transportation Planning Organizations
- MPO
- Council of Governments
- Other

Local governments—General Purpose
- County Government
- City Government

Human Sevice Agencies
- Local County/City Public Human Svcs Agency
- Local County/City Welfare Agency
- Local County/City Workforce Development Agency
- Local Public Housing Agency
- Non-Profit Service Providers
- Human Support Services (*e.g.*, Child Care, Substance Abuse)
- Employment (*e.g.*, Job Training, Job Placement)

Economic Development Agencies
- Local/County Government
- Non-Profit Corporations

Private Nonprofit Agencies
- Community Action Agencies & Organizations
- Community-Based Organizations
- Faith-Based Organizations
- Other private nonprofit organizations

Business Organizations
- Chamber of Commerce
- Transportation Management Organization

Other Organizations

[FR Doc. 00–5810 Filed 3–9–00; 8:45 am]

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Federal Register

Friday,
March 10, 2000

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing; Fair Share Allocation of Incremental Voucher Funding for Fiscal Year 2000; Funding Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4570–N–01]

Office of the Assistant Secretary for Public and Indian Housing; Notice of Funding Availability; Fair Share Allocation of Incremental Voucher Funding Fiscal Year 2000

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability (NOFA).

SUMMARY: *Purpose of the Program.* The purpose of this NOFA is to invite public housing agencies (PHAs) to apply for vouchers on a fair share allocation basis under the Section 8 Housing Choice Voucher Program. The vouchers are for issuance to families on a PHA's Section 8 waiting list to enable these families to rent decent, safe, and affordable housing of their choice on the private rental market.

Available Funds. Approximately $346,560,000 in one-year budget authority for approximately 60,000 Section 8 vouchers.

Eligible Applicants. Public housing agencies (PHAs). Indian Housing Authorities (IHA), Indian tribes and their tribally designated housing entities are not eligible applicants. The Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new Section 8 annual contributions contracts (ACC) with IHAs after September 30, 1997.

Application Due Date. April 24, 2000.

Match. None.

Additional Information

If you are interested in applying for funding under this NOFA, please read the balance of this NOFA which will provide you with detailed information regarding the submission of an application, Section 8 program requirements, the application selection process to be used by HUD in selecting applications for funding, and other valuable information relative to a PHA's application submission and participation in the program covered by this NOFA.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

. *Application Due Date.* Your completed application (an original and two copies) is due on or before April 24, 2000 at the addresses shown below.

Address for Submitting Applications. Submit your original application and one copy to Michael E. Diggs, Director of the Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW, Suite 800, Washington, DC 20024.

Submit the second copy of your application to the local HUD Field Office Hub, Attention: Director, Office of Public Housing, or to the local HUD Field Office Program Center, Attention: Program Center Coordinator.

The Grants Management Center is the official place of receipt for all applications in response to this NOFA. For ease of reference, the term "local HUD Field Office" will be used throughout this NOFA to mean the local HUD Field Office Hub and local HUD Field Office Program Center.

Delivered Applications. If you are hand delivering your application, your application is due on or before 5:00 pm, Eastern time, on the application due date to the Office of Public and Indian Housing's Grants Management Center (GMC) in Washington, DC A copy is also to be submitted by the applicant to the local HUD Field Office Hub or local HUD Field Office Program Center.

This application deadline is firm as to date and hour. In the interest of fairness to all competing PHAs, HUD will not consider any application that is received after the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

Mailed Applications. Applications sent by U.S. mail will be considered timely filed if postmarked before midnight on the application due date and received within ten (10) days of that date.

Applications Sent By Overnight Delivery. Applications sent by overnight delivery will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

For Application Kit. An application kit is not available and is not necessary for submitting an application for funding under this NOFA. This NOFA contains all of the information necessary for the submission of an application for voucher funding in connection with this NOFA.

For Further Information and Technical Assistance. You may contact George C. Hendrickson, Housing Program Specialist, Room 4216, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Room 4216, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1872, ext. 4064, or you may contact the Grants Management Center at (202) 358–0273. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

II. Authority, Purpose, Fair Share Allocation Amount, Voucher Funding, and Eligibility

(A) *Authority.* Authority for the approximately $346,560,000 in one-year budget authority for Section 8 vouchers for low-income families is found in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, FY 2000 (Pub.L. 106–74, approved October 20, 1999, referred to as the FY 2000 HUD Appropriations Act. The allocation of housing assistance budget authority for Section 8 vouchers, by State based on fair share factors, is pursuant to the provisions of 24 CFR part 791, subpart D, implementing section 213(d) of the Housing and Community Development Act of 1974, as amended.

(B) *Purpose.* The purpose of the Section 8 voucher funding being made available under this NOFA is to provide housing assistance to low-income families to enable them to rent decent, safe, and affordable housing of their choice on the private rental market.

(Note: Due to the lack of funding in FY 2000 for a Family Unification Program (FUP), PHAs may wish to consider using some portion of their fair share funding under this NOFA to either establish or expand upon their existing FUP. Requirements relative to the operation of a FUP may be found in the FY 1999 FUP NOFA, published under Docket No. FR–4414-N–01, on March 5, 1999, in the **Federal Register**.)

(C) *Fair Share Allocation Amount.* This NOFA announces the availability of approximately $346,560,000 in one-year budget authority for a fair share formula allocation which will provide rental assistance to approximately 60,000 low-income families.

(1) *Fair Share Allocation For Each State.* Attachment 1 lists the allocation of housing assistance budget authority for vouchers for each State, based on fair share factors. Attachment 1 also provides an estimate of the total number of vouchers that could be funded from the housing assistance available for each State based on the weighted local

average costs of voucher assistance for a two-bedroom unit. The actual number of units assisted within each State will vary from the estimates prepared by Headquarters since the actual costs of voucher assistance for each PHA vary from the average.

(2) *Potential additional funding.* If additional voucher funding becomes available for fair share use during FY 2000, HUD plans to distribute any additional funding to States using the same percentage distribution as reflected in Attachment 1 to this NOFA. Any additional funding will be used under the competitive requirements of this NOFA to fund PHA applications which were approvable but not funded, or approved and funded at less than 100 percent of the requested amount for which the PHA was eligible under this NOFA.

(3) *Underfunding Corrections.* The last prior year in which fair share funding was provided to PHAs was in 1994. HUD Headquarters will be funding the only case brought to its attention of a PHA which did not receive fair share funding in FY 1994 due to an error by the local HUD Field Office; *i.e.*, the city of Oceanside, California Housing Authority (OHA). The Grants Management Center will, in coordination with the local HUD Field Office and the OHA, determine the number of units that should have been awarded the OHA under the FY 1994 NOFA and the funding amount that would currently be appropriate under the voucher funding procedures in Section II.(D) of this FY 2000 Fair Share NOFA. The correction of the FY 1994 error will not affect the OHA's ability to compete, nor the amount of funding for which it may be eligible, in FY 2000 under the FY 2000 Fair Share NOFA.

(D) *Voucher Funding.*

(1) *Determination of Funding Amount for the PHA's Requested Number of Vouchers.* HUD will determine the amount of funding that a PHA will be awarded under this NOFA based upon an actual annual per unit cost using the following three step process (as may be modified based upon a percentage of annual per unit cost if necessary to produce the 60,000 vouchers provided for under this NOFA):

(a) HUD will extract the total expenditures for all the PHA's Section 8 tenant-based assistance programs and the unit months leased information from the most recent approved year end statement (form HUD–52681) that the PHA has filed with HUD. HUD will divide the total expenditures for all of the PHA's Section 8 tenant-based assistance programs by the unit months leased to derive an average monthly per unit cost.

(b) HUD will multiply the monthly per unit cost by 12 (months) to obtain an annual per unit cost.

(c) HUD will multiply the annual per unit cost derived under paragraph (b) above by the Section 8 Housing Assistance Payments Program Contract Rent Annual Adjustment Factor (with the highest cost utility included) to generate an adjusted annual per unit cost.

(E) *Eligible Applicants.* A PHA established pursuant to State law may apply for funding under this NOFA. A regional (multi-county) or State PHA is eligible to apply for funding. Indian Housing Authorities (IHA), Indian tribes and their tribally designated housing entities are not eligible to apply because the Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new Section 8 annual contributions contracts (ACC) with IHAs after September 30, 1997. Applicants are limited to those PHAs currently administering Section 8 vouchers or certificates.

Some PHAs currently administering the Section 8 voucher and certificate programs have, at the time of publication of this NOFA, major program management findings from Inspector General audits, HUD management reviews, or independent public accountant (IPA) audits that are open and unresolved or other significant program compliance problems. HUD will not accept applications for additional funding from these PHAs as contract administrators if, on the application due date, the findings are either not closed, or sufficient progress toward closing its findings has not been made to HUD's satisfaction. The PHA must also, to HUD's satisfaction, be making satisfactory progress in addressing any program compliance problems. If the PHA wants to apply for funding under this NOFA, the PHA must submit an application that designates another housing agency, nonprofit agency, or contractor, that is acceptable to HUD. The PHA's application must include an agreement by the other housing agency, nonprofit agency, or contractor to administer the new funding increment on behalf of the PHA, and a statement that outlines the steps the PHA is taking to resolve the program findings and the program compliance problems. *Immediately after the publication of this NOFA, the local HUD Field Office will notify, in writing, those PHAs that are not eligible to apply without such an agreement. Concurrently, the local HUD Field Office will provide a copy of each such written notification to the GMC.* The PHA may appeal the decision, in writing, if HUD has mistakenly classified the PHA as having outstanding management or compliance problems. Any appeal must be accompanied by conclusive evidence of HUD's error and must be received prior to the application deadline. The appeal should be submitted to the local HUD Field Office where a final determination shall be made. Concurrently, the local HUD Field Office shall provide the GMC with a copy of its written response to the appeal, along with a copy of the PHA's written appeal. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new Section 8 voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(F) *Eligible Participants.* Eligible participants include very low-income families, and on an exception basis some low-income families, who are on the PHA's Section 8 waiting list and who are determined to be eligible for rental assistance under the Section 8 regulations at 24 CFR part 982 and part 5. The families must be income eligible under 24 CFR 982.201(b) in order to receive a voucher.

III. General Program Requirements

(A) *General Program Requirements.* (1) *Compliance With Fair Housing and Civil Rights Laws.* All applicants must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If an applicant: (a) Has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, the applicant's application will not be evaluated under this NOFA if, prior to the application deadline, the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken necessary to address allegations of ongoing discrimination in the policies or

practices involved in the charge, lawsuit, or letter of findings.

(2) *Additional Nondiscrimination Requirements.* In addition to compliance with the civil rights requirements listed at 24 CFR 5.105(a), each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*), Title IX of the Education Amendments Act of 1972, and Titles I and V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(3) *Affirmatively Furthering Fair Housing.* Each successful applicant will have a duty to affirmatively further fair housing. Applicants will be required to identify the specific steps that they will take to:

(a) Address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;

(b) Remedy discrimination in housing; or

(c) Promote fair housing rights and fair housing choice. Further, applicants have a duty to carry out the specific activities cited in their responses to address affirmatively furthering fair housing under this NOFA.

(4) *Certifications and Assurances.* Each applicant is required to submit signed copies of Assurances and Certifications. The standard Assurances and Certifications are on Form HUD–52515, Funding Application, which includes the Equal Opportunity Certification, Certification Regarding Lobbying, and Certification Regarding Drug-Free Workplace Requirements.

(5) *PHA Responsibilities and Rental Assistance Requirements.*

(a) *Section 8 Regulations.* PHAs must administer the Section 8 vouchers received under this NOFA in accordance with HUD regulations and requirements governing the Section 8 Housing Choice Voucher Program.

(b) *Section 8 Admission Requirements.* Section 8 assistance must be provided to eligible applicants in conformity with regulations and requirements governing the Section 8 Housing Choice Voucher Program and the PHA's administrative plan.

(c) *Turnover.* When a voucher under this NOFA becomes available for reissue (e.g., the family initially selected for the program drops out of the program or is unsuccessful in the search for a unit), the voucher may be used only for the next eligible family on the PHA's Section 8 waiting list.

IV. Fair Share Application Rating Process

(A) *Selection Criteria.* The GMC will use the Selection Criteria shown below for the rating of applications submitted in response to this NOFA. The maximum score under the selection criteria for fair share funding is 160 points.

(1) Selection Criterion 1: Housing Needs (30 points).

(a) Description: This criterion assesses the housing need in the primary market area specified in the PHA's application compared with the housing need for the State. Housing need is defined as the number of very low-income renter households with severe rent burden, based on 1990 Census data. Very low-income is defined as income at or below the Section 8 very low-income limits. Severe rent burden is defined as a household paying 50 percent or more of its gross income for rent.

(b) Needs Data: For the purpose of this criterion, housing needs are based on a tabulation of 1990 Census data prepared for the Department by the Bureau of the Census. Data on housing needs are available for all States, all counties (county equivalents), and places with populations of 10,000 or more as of 1990. Information will be posted on the HUD Home Page site on the Internet's world wide web (http://www.hud.gov) indicating the proportion of each State's housing needs for primary markets.

(c) Rating and Assessment: The number of points assigned is based on the percentage of the State's housing need that is within the PHA's primary market area. The primary market area is defined as the jurisdiction (or its closest equivalent in terms of areas for which housing needs data are available) in which the PHA is authorized to operate and where the vouchers will be used, as described in its application. (See paragraph VI(C) of this NOFA regarding regional (multi-county) and State PHAs.)

(1) The GMC will assign one of the following point totals:

- 30 points. If the PHA's housing need is 3 percent or more of the State's need.
- 25 points. If the PHA's housing need is equal to or less than 2.99 percent but equal to or greater than 1 percent of the State's need.
- 20 points. If the PHA's housing need is less than 1 percent of the State's need.

(2) A State, regional or multi-county PHA will receive points based on the areas it serves where the vouchers will be used, *e.g.*, the entire State or the sum of the housing needs for the counties and/or localities comprising its primary market area.

(3) A PHA with a primary market area that is a community with a population of 10,000 or less, or a PHA for which housing needs data are not available, will receive 20 points.

(2) Selection Criterion 2: Efforts of PHA to Provide Area-Wide Housing Opportunities for Families (60 points).

(a) Description: Many PHAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. The efforts described in response to this selection criterion must be beyond those required by federal law or regulation such as the portability provisions of the Section 8 voucher program. The GMC will assign points to PHAs that have established cooperative agreements with other PHAs or created a consortium of PHAs in order to facilitate the transfer of families and their rental assistance between PHA jurisdictions. In addition, the GMC will assign points to PHAs that have established relationships with non-profit groups to provide families with additional counseling, or have directly provided counseling, to increase the likelihood of a successful move by the families to areas that do not have large concentrations of poverty.

(b) Rating and Assessment: The GMC will assign point values for any of the following assessments for which the PHA qualifies and add the points for all the assessments (maximum of 60 points) to determine the total points for this Selection Criterion:

- 10 Points—Assign 10 points if the PHA documents that it participates in an area wide exchange program where all PHAs absorb portable Section 8 families.
- 10 Points—Assign 10 points if the PHA certifies that its administrative plan does not include a "residency preference" for selection of families to participate in its voucher program or the PHA certifies that it will eliminate immediately any "residency preference" currently in its administrative plan.
- 10 Points—Assign 10 points if the PHA documents that it has established a contractual relationship with a non-profit agency or the local governmental entity to provide housing counseling for families that want to move to low-poverty or non-minority areas. The five PHAs approved for the FY 93 Moving to Opportunity (MTO) for Fair Housing Demonstration, PHAs participating in the Regional Opportunity Counseling (ROC) Program, and any other PHAs that receive counseling funds from HUD in connection with the demolition of public housing, public housing vacancy consolidation, or settlement of litigation

involving desegregation may qualify for points under this assessment. However, these PHAs must identify all activities undertaken, other than those funded and required under the MTO Demonstration, ROC Program, or the court-ordered plans or plans for relocating public housing families, to expand housing opportunities.

• 10 Points—Assign 10 points if the PHA documents that it participates with other PHAs in using a metropolitan wide or combined waiting list for selecting participants in the program.

• 10 Points—Assign 10 points if the PHA documents that it has implemented other initiatives that have resulted in expanding housing opportunities in areas that do not have undue concentrations of poverty or minority families.

• 10 Points—Assign 10 points if the PHA has formed a consortium or joint venture with other PHAs to administer its voucher program.

(3) Selection Criterion 3: Local Initiatives (20 points).

(a) Description: The application must describe the extent to which the PHA demonstrates locally initiated efforts in support of its voucher and certificate programs or comparable tenant-based rental assistance programs. Evaluation of a locality's contribution is measured competitively by whether the locality is able to provide services, cash contributions, or tax abatements to rental property owners leasing to Section 8 families, or demonstrates its intention to provide this kind of support in the future.

(b) Rating and Assessment: The GMC will assign one of two point-values, as follows:

• 20 points: The State or locality provides local support (*e.g.*, financial, manpower for inspection services) to its voucher or certificate program.

• 0 points: The State or locality does not provide support to the PHA's voucher or certificate program.

(4) Selection Criterion 4: Disabled Families (20 points).

(a) Description: The GMC will assign 20 points to PHAs that indicate at least 15 percent or more of the vouchers they are requesting (or funded by HUD) under this NOFA will be used to house disabled families. The PHA's application must be specific as to the exact percentage of vouchers that will be issued solely to disabled families. Disabled families are defined as follows:

(i) *Disabled Family.* A family whose head, spouse, or sole member is a person with disabilities. The term "disabled family" may include two or more such persons with disabilities living together, and one or more such persons with disabilities living with one or more persons who are determined essential to the care and well-being of the person or persons with disabilities (live-in aides).

(ii) *Person with disabilities.* A person who—

a. Has a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or

b. Is determined to have a physical, mental or emotional impairment that:

1. Is expected to be of long-continued and indefinite duration;

2. Substantially impedes his or her ability to live independently; and

3. Is of such a nature that such ability could be improved by more suitable housing conditions, or

c. Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)).

The term "person with disabilities" does not exclude persons who have the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome (HIV).

(**Note:** While the above definition of a "person with disabilities" is to be used for purposes of determining a family's eligibility for a Section 8 voucher designated as being for a disabled family under this NOFA, the definition of a person with disabilities contained in section 504 of the Rehabilitation Act of 1973 and its implementing regulations must be used for purposes of meeting the requirements of Fair Housing laws, including providing reasonable accommodations.)

No individual shall be considered a person with disabilities for the purpose of determining eligibility solely on the basis of any drug or alcohol dependence.

(b) Rating and Assessment: The GMC will assign one of two point values, as follows:

• 20 points: The PHA will use not less than 15 percent of the vouchers being requested (or funded by HUD) to house disabled families.

• 0 points: The PHA will use less than 15 percent of the vouchers it is requesting (or funded by HUD) to house disabled families.

(5) Selection Criterion 5: Medicaid Home and Community Based Services Waivers Under Section 1915(c) of the Social Security Act (10 points).

(a) Description: This selection criterion is for PHAs interested in the provision of Section 8 voucher assistance to families within their jurisdiction who are disabled and also covered under a waiver of Section 1915(c) of the Social Security Act. Section 1915(c) waivers are approved by the Health Care Financing Administration within the Department of Health and Human Services (HHS) for the agency within each State responsible for the administration of the medicaid program. Contacting the responsible State agency (for example, the Agency for Health Care Administration in the State of Florida) will assist the PHA in determining how many, if any, individuals are covered by a Section 1915(c) waiver in the PHA's legal area of operation. These waivers allow medicaid-eligible individuals at risk of being placed in hospitals, nursing facilities or intermediate care facilities the alternative of being cared for in their homes and communities. These individuals are thereby assisted in preserving their independence and ties to family and friends at a cost no higher than that of institutional care.

While a Section 1915(c) waiver may cover individuals other than those who are disabled, the focus of Selection Criterion 5 is on disabled families only. The definition of disabled families listed under Selection Criterion 4 will be used by PHAs for purposes of the issuance of vouchers to disabled families in connection with Selection Criterion 5; i.e., only those individuals that meet the definition of a disabled family in this announcement are to be considered in connection with a PHA determining how many such disabled families are covered by a Section 1915(c) waiver in their legal area of operation and whether to try to qualify for the 10 points available under Selection Criterion 5. The PHA's application must be specific as to the percentage of vouchers that will be issued to such disabled families.

Any PHA attempting to qualify for the 10 points available under Selection Criterion 5 should also include information within its application indicating the collaborative efforts already undertaken with the responsible State agency to identify eligible families, as well as agreements reached with that agency for future referrals of such families. HUD reserves the right at some future point in time to conduct an evaluation of the success of the PHA's efforts to collaborate with the State agency and to successfully house individuals that meet the requirements of being covered by a Section 1915(c) waiver, qualify as a disabled family under this announcement, and are otherwise eligible for a Section 8 voucher.

(b) Rating and Assessment: The GMC will assign one of two point values as follows:

• 10 points: The PHA will use not less than 3 percent of the vouchers being requested (or funded by HUD) to house Section 8 eligible, disabled families covered by a waiver under Section 1915(c) of the Social Security Act.

• 0 points: The PHA will use less than 3 percent of the vouchers it is requesting (or funded by HUD) to house Section 8 eligible, disabled families covered by a waiver under Section 1915(c) of the Social Security Act.

(c) Prohibition Against Double Counting. The number (percentage) of disabled families that a PHA indicates it will issue vouchers to when qualifying for the 10 points available under Selection Criterion 5 cannot be used to also qualify for the 20 points available under Selection Criterion 4 or conversely.

(6) Selection Criterion 6: Portability (20 Points).

(a) Description: The GMC will assign 20 points to a PHA certifying that it is billing another PHA(s) for portable families comprising not less than 5 percent of the certificates and vouchers being administered by it and will use 20 percent of the funds it is requesting (or funded by HUD) to absorb portable families for which it is currently billing another PHA(s).

(b) Rating and Assessment: The GMC will assign one of two point values, as follows:

• 20 points: The PHA certifies that it is billing another PHA(s) for portable families for not less than 5 percent of the certificates and vouchers it administers and will use 20 percent of the funds being requested (or funded by HUD) to absorb portable families for which it is currently billing another PHA(s).

• 0 points: The PHA has no portables for which it is billing another PHA, or is billing another PHA(s) for less than 5 percent of the certificates and vouchers it administers and will use less than 20 percent of the funds being requested (or funded by HUD) to absorb portable families for which it is currently billing another PHA(s).

V. Fair Share Application Selection Process

(A) *Maximum Funding Allowed.* The GMC may recommend for approval the maximum funding for a PHA under this NOFA that does not exceed the lesser of 25 percent of the PHA vouchers and certificates on the latest HUD-approved budget or 25 percent of the number of vouchers available in the State, whichever is less.

(B) *Funding Procedure.* HUD seeks to maximize, insofar as practical, the number of PHAs awarded funding under this NOFA. The GMC will recommend applications for approval in rank order (highest to lowest score) within each State. No PHA shall be eligible to request or be funded at more than the lesser of 25 percent of the units in its latest HUD-approved budget for certificates and vouchers or 25 percent of the vouchers available for the State. The number of vouchers for which a PHA will first receive consideration by the GMC for funding will be based upon initially using the lesser of a 10 percent calculation for those units in the PHA's latest HUD-approved budget or 25 percent of the vouchers available for the State, whichever is lesser. If funding remains available within the State, the percentage used for the units in the PHAs' latest HUD-approved budget will increase to the percent required to use all funding within the State, not to exceed 25 percent.

Where the GMC finds it has some number of vouchers left but not enough to fully fund the next ranked application or applications receiving the same score, funding will be recommended by the GMC for the application indicating it will accept the lesser number of vouchers (see Section VI(B)of this NOFA). In the event there are two or more PHAs ranked at the same position (same number of rating points) indicating they will accept the lesser number of vouchers, the PHA whose application is eligible for the largest number of vouchers among these PHAs will be recommended by the GMC for funding.

(C) *Reallocations Between States.*

The GMC will make every reasonable effort to use all available funds. It may be necessary, however, to reallocate funds from one State to another when the funds cannot be used in the State to which they were initially assigned. In such cases, the GMC will re-allocate funds to the State having the largest number of approvable vouchers remaining unfunded due to lack of sufficient fair share funding.

(D) *Applications Recommended by the GMC for Funding.* After the GMC has screened PHA applications and disapproved any applications found unacceptable for further processing, the GMC will review all acceptable applications to ensure that they are technically adequate and responsive to the requirements of the NOFA. As PHAs are selected, the cost of funding the applications will be subtracted from the funds available. Applications will be funded for the total number of units recommended for approval by the GMC in accordance with this NOFA.

VI. Fair Share Application Submission Requirements

(A) *Form HUD–52515.* All PHAs must complete and submit form HUD–52515, Funding Application, for Section 8 tenant-based assistance (dated January 1996). This form includes all necessary certifications for Fair Housing, Drug Free Workplace and Lobbying Activities. Attachment 1 to this notice lists the estimate of the number of vouchers and budget authority available for each State. PHAs should limit their applications for the "fair share" program to a reasonable number of vouchers based on the capacity of the PHA to lease-up within 12 months of ACC execution. The number of vouchers on the PHA application may not exceed the lesser of: (a) Twenty-five percent (25%) of the total vouchers and certificates on the most recent HUD-approved budget for the PHA; or (b) twenty-five percent (25%) of the number of units available for the State. Section C of the form should be left blank. Copies of form HUD–52515 may be obtained from the local HUD Field Office or may be downloaded from the HUD Home Page site on the Internet's world wide web (http://www.hud.gov). (On the HUD website click on "handbooks and forms," then click on "forms", then click on "HUD–5" and click on "HUD–52515".) The form must be completed in its entirety, with the exception of Section C, signed and dated.

(1) A PHA may submit only one application (Form HUD–52515) for a State.

(2) The GMC will reduce the number of vouchers requested in any application that exceeds the established application limit in Section VI(A) above.

(B) *Letter of Intent and Narrative.* The PHA must state in its cover letter to the application whether it will accept a reduction in the number of vouchers, and the minimum number of vouchers it will accept, since the funding is limited and HUD may only have enough funds to approve a smaller amount than the number of vouchers requested. The application should include a narrative description of how the application meets, or will meet, the application selection criteria. Failure to submit a narrative description is not cause for application rejection; however, the GMC can only rate and rank the application based on information it has on-hand.

(C) *Description of Primary Market Area.* A Regional (multi-county) or State PHA must specify in the application its primary market area; *i.e.*, the area in which it is authorized to operate and in which the Section 8 vouchers will be

used. This information may be different than that entered by such a PHA on the form HUD–52515, as the form calls for the PHA to identify its "legal area of operation" which may be far more geographically expansive than the specific city, county, or area within a State where a regional or State PHA intends to use the fair share vouchers.

(D) *Statement Regarding the Steps the PHA Will Take to Affirmatively Further Fair Housing.* The areas to be addressed in the PHA's statement should include, but not necessarily be limited to: (a) Elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice; (b) remedy discrimination in housing; or (c) promote fair housing rights and fair housing choice.

(E) *Program Summary.* Provide a separate, one paragraph statement describing how the vouchers being applied for will address the local housing needs of eligible families in renting decent, safe, and affordable housing. Describe, where applicable, how the vouchers will be used to expand existing housing choices, and whether the PHA intends to use the vouchers to establish or expand upon its existing Family Unification Program, partnerships with local government, nonprofit agencies, or private industry groups. Also address any related notable local program activities, best practices, or accomplishments.

(F) *Application Checklist.* Attachment 2 to this NOFA is an Application Checklist to assist applicants in assembling complete applications. The Application Checklist must be submitted as part of the PHA's application.

VII. Corrections to Deficient Applications

(A) *Acceptable Applications.* An acceptable application is one which meets all of the application submission requirements in Section VI of this NOFA and does not fall into any of the categories listed in Section VII(B) of this NOFA. The GMC will initially screen all applications and notify PHAs of technical deficiencies by letter.

With respect to correction of deficient applications, HUD may not, after the application due date and consistent with HUD's regulations in 24 CFR part 4, subpart B, consider any unsolicited information an applicant may want to provide. HUD may contact an applicant to clarify an item in the application or to correct technical deficiencies. Please note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of a response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. *Examples* of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case under this NOFA, the GMC will notify the applicant in writing by describing the clarification or technical deficiency. The applicant must submit clarifications or corrections of technical deficiencies in accordance with the information provided by the GMC within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete, and it will not be considered for funding.

(B) *Unacceptable Applications.*

(1) After the 14-calendar day technical deficiency correction period, the GMC will disapprove all PHA applications that it determines are not acceptable for processing. The GMC's notification of rejection letter must state the basis for the decision.

(2) Applications from PHAs that fall into any of the following categories will not be processed:

(a) Applications from PHAs that do not meet the requirements of Section III(A)(1) of this NOFA, Compliance With Fair Housing and Civil Rights Laws.

(b) The PHA has major program management findings in an Inspector General audit, HUD management review, or independent public accountant (IPA) audit for its voucher or certificate programs that are not closed or on which satisfactory progress in resolving the findings is not being made; or program compliance problems for its voucher or certificate programs on which satisfactory progress is not being made. The only exception to this category is if the PHA has been identified under the policy established in Section II.(E) of this NOFA and the PHA makes application with a designated contract administrator. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new Section 8 voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(c) The PHA has failed to achieve a lease-up rate of 90 percent for its combined certificate and voucher units under contract for its fiscal year ending in 1998. Category (c) may be passed, however, if the PHA achieved a combined certificate and voucher budget authority utilization rate of 90 percent or greater for its fiscal year ending in 1998. In the event the PHA is unable to meet either of these percentage requirements, it may still pass category (c) if it submits information to the GMC, as part of its application, demonstrating that it was able to either increase its combined certificate and voucher lease-up rate to 90 percent or greater for its fiscal year ending in 1999, or was able to increase combined certificate and voucher budget authority utilization to 90 percent or more for its fiscal year ending in 1999. PHAs that have been determined by HUD to have passed either the 90 percent lease-up, or 90 percent budget authority utilization requirement for their fiscal year ending in 1998 will be listed on the HUD Home Page site on the Internet's world wide web (http://www.hud.gov). A PHA not listed must either submit information in its application supportive of its 90 percent lease-up or 90 percent budget authority utilization performance for its fiscal year ending in 1999, or submit information as part of its application supportive of its contention that it should have been included among those PHAs HUD listed on the HUD Home Page as having achieved either a 90 percent lease-up rate or 90 percent funding utilization rate for fiscal years ending in 1998. Attachment 3 of this NOFA indicates the methodology and data sources used by HUD to calculate the lease-up and budget authority utilization percentage rates for PHAs with fiscal years ending in 1998. Any PHA wishing to submit information to the GMC in connection with its 1998 fiscal year or 1999 fiscal year for the purposes described immediately above (so as to be eligible under category (c) to submit an application) will be required to use the same methodology and data sources indicated in Attachment 3.

(d) The PHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA to administer the rental vouchers.

(e) A PHA's application that does not comply with the requirements of 24 CFR 982.102 and this NOFA after the expiration of the 14-calendar day technical deficiency correction period will be rejected from processing.

(f) The PHA's application was submitted after the application due date.

(g) The application was not submitted to the official place of receipt as indicated in the paragraph entitled "Official Place of Application Receipt" at the beginning of this NOFA.

(h) The applicant has been debarred or otherwise disqualified from providing assistance under the program.

VIII. Findings and Certifications

(A) Paperwork Reduction Act Statement

The Section 8 information collection requirements contained in this NOFA have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) Environmental Impact

In accordance with 24 CFR 50.19(b)(11) of the HUD regulations, tenant-based rental activities under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA) and are not subject to environmental review under the related laws and authorities. This NOFA provides funding for these activities under 24 CFR part 982, which does not contain environmental review provisions because of the categorical exclusion of these activities from environmental review. Accordingly, under 24 CFR 50.19(c)(5), issuance of this NOFA is also categorically excluded from environmental review under NEPA.

(C) Catalog of Federal Domestic Assistance Numbers

The Federal Domestic Assistance number for this program is 14.857.

(D) Federalism Impact

Executive Order 13132 (captioned "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. None of the provisions in this NOFA will have federalism implications and they will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order. As a result, the notice is not subject to review under the Order.

(E) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(F) Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

(G) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF-LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

Dated: March 7, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

ATTACHMENT 1.—FAIR SHARE ALLOCATIONS TO STATES BASED UPON HOUSING NEEDS

State	Amount	Units
Alabama	$2,998,660	754
Alaska & Washington	7,431,525	1,241
Arizona	3,891,871	713
Arkansas	1,685,154	453
California	59,653,051	8,428
Colorado	4,344,651	717
Connecticut	4,676,595	708
Delaware	663,416	112
District of Columbia & Maryland	7,250,808	1,221
Florida	13,396,457	2,397
Georgia	6,522,548	1,271
Hawaii & Pacific Island	2,395,085	315
Idaho	790,875	188
Illinois	16,635,009	2,797
Indiana	4,820,548	1,038
Iowa	2,636,009	623
Kansas	1,964,068	481
Kentucky	3,003,250	777
Louisiana	4,117,360	1,002
Maine	1,304,156	263
Massachusetts	12,456,208	1,754
Michigan	10,673,680	2,041
Minnesota	4,248,602	794
Mississippi	1,894,043	515
Missouri	4,419,025	1,028
Montana	799,469	186
Nebraska	1,509,926	343
Nevada	1,611,636	262
New Hampshire	1,162,548	186
New Jersey	12,981,233	1,716
New Mexico	1,276,507	283
New York	57,048,267	7,707
North Carolina	5,908,423	1,232
North Dakota	584,150	139
Ohio	12,346,480	2,570
Oklahoma	2,370,698	610
Oregon	4,050,157	732
Pennsylvania	14,791,053	2,786
Puerto Rico & Virgin Islands	2,902,466	765
Rhode Island	1,753,494	284
South Carolina	2,713,819	614
South Dakota	729,568	166
Tennessee	4,026,565	922
Texas	18,465,474	3,598
Utah	1,525,394	284
Vermont	771,380	138
Virginia	5,404,073	1,113
West Virginia	1,430,622	385
Wisconsin	6,178,218	1,267
Wyoming	349,048	81

Attachment 2.—Fair Share Voucher Application Checklist

PHA Name: _____
City/State: _____
PHA Code #: _____

_____ Delivered by the due date, or mailed and postmarked before midnight on due date, or placed in transit with overnight delivery service before due date.

_____ Original and one copy of application submitted to Michael E. Diggs, Director of the Grants Management Center, Department of Housing and Urban Development, 501 School St., SW, Suite 800, Washington, D.C., 20024; and one copy sent to local HUD Field Office Hub, Attn: Director, Office of Public Housing, or to the local HUD Field Office Program Center, Attention: Program Center Coordinator.

_____ If applicable, PHA designates another housing agency, nonprofit agency, or contractor to administer new funding.

_____ Copy of letter from local HUD Field Office requiring contract administrator.

_____ Agreement from contract agency to administer funding on behalf of applicant.

_____ Copy of PHA letter to local HUD Field Office appealing requirement for contract administrator.

_____ Copy of written response to appeal from local HUD Field Office.

_____ PHA listed on HUD Home Page Internet site as passing 90% lease-up OR 90% budget authority utilization -or-

_____ PHA *not* listed as meeting 90% thresholds. PHA includes information confirming 90% lease-up or budget authority utilization for 1998 or 1999 using same methodology and data sources indicated in Attachment 3 to the Fair Share NOFA.

_____ PHA is in compliance with all fair housing and civil rights laws (refer to Sect. III. General Program Requirements).

_____ PHA has not been debarred or otherwise disqualified from providing assistance under the Section 8 Housing Choice Voucher Program.

_____ Form HUD–52515, Funding Application (January 1996 version), completed in its entirety, except Section C. (See Section VI.(A) of the NOFA and form HUD–52515 regarding information to be entered thereon.)

_____ Letter of Intent and Narrative

_____ Includes statement of acceptance of ▪ reduction in the number of vouchers.

_____ Includes minimum number of vouchers PHA will accept:_____.

_____ Includes a narrative description of how the application meets, or will meet, the application selection criteria.

_____ Housing Needs (Criterion 1). Areas PHA is authorized to operate in (HUD–52515).

_____ Efforts of PHA to Provide Area-Wide Housing Opportunities for Families (Criterion 2).

_____ Evidence of participation in area-wide exchange program where all PHA absorb portable Section 8 families.

_____ Certification that administrative plan does not include or will immediately eliminate residency preferences.

_____ PHA contract to provide housing counseling for families moving to low-poverty/non-minority areas.

_____ Is an approved PHA for FY 1993 Moving to Opportunity (MTO) Fair Housing Demonstration, or

_____ Is a participant in the Regional Opportunity Counseling (ROC) Program, or.

_____ Receives counseling funds related to public housing demolition, vacancy consolidation, or litigation.

_____ Describes other activities expanding housing opportunities (not MTO, ROC, or litigation efforts).

_____Documentation of PHA's Participation With Other PHAs in Using Metropolitan-Wide/Combined Waiting List.

_____Documentation of Other Initiatives Resulting in Expansion of Housing Opportunities.

_____Documentation of Consortium or Joint Venture with other PHAs to administer its voucher program.

_____Local Initiatives (Criterion 3). Narrative description of locally initiated efforts in support of the PHA's voucher and certificate programs.

_____Disabled Families (Criterion 4). Includes a narrative description indicating the PHA will use 15 percent or more of the vouchers being requested/funded to house disabled families.

_____Medicaid Home and Community Based Services Waivers Under Section 1915(c) of the Social Security Act (Criterion 5). Includes narrative description indicating the percentage of vouchers to be issued to disabled families covered by a Section 1915(c) waiver, and the collaborative efforts undertaken with the State agency to identify eligible families/agreements for future referrals of such families from that agency.

_____Portability (Criterion 6). Certification statement from PHA indicating it is billing another PHA(s) for portable families for not less than 5 percent of the certificates and vouchers it administers and will use 20 percent of the funds provided by HUD to absorb portable families for which it is currently billing another PHA(s).

_____Description of Primary Market Area. Regional (multi-county) and State PHAs clearly identify which cities and counties they will use the vouchers in that are within their legal area of operation.

_____Statement Regarding Steps PHA Will Take To: (Affirmatively Further Fair Housing)

_____Eliminate impediments to fair housing identified in local Analysis of Impediments (AI) to Fair Housing Choice,

_____Remedy discrimination in housing, or

_____Promote fair housing rights and fair housing choice.

_____Program Summary. Provide a separate, *one paragraph* statement describing how the vouchers being applied for will address the local housing needs of eligible families in renting decent, safe, and affordable housing. Describe, where applicable, how the vouchers will be used to expand existing housing choices, and whether the PHA intends to use the vouchers to establish or expand upon its existing Family Unification Program, partnerships with local government,

nonprofit agencies, or private industry groups. Also address any related notable local program activities, best practices, or accomplishments.

_____Application Checklist. A copy of this Checklist has been included as part of the PHA's application.

Attachment 3.—Methodology for Determining Lease-Up and Budget Authority Utilization Percentage Rates

Using data from the HUDCAPS system, HUD determined which PHAs met the 90% budget authority utilization or 90% lease-up criteria. The data used in the determination was based on PHA fiscal years ending in 1998. The budget authority utilization and lease-up rates were determined based upon the methodology indicated below.

Budget Authority Utilization

Percentage of budget authority utilization was determined by comparing the total contributions required to the annual budget authority (ABA) available for the PHA 1998 year combining the certificate and voucher programs.

Total contributions required were determined based on the combined actual costs approved by HUD on the form HUD–52681, Year End Settlement Statement. The components which make up the total contributions required are the total of housing assistance payments, ongoing administrative fees earned, hard to house fees earned, and IPA audit costs. From this total any interest earned on administrative fees is subtracted. The net amount is the total contributions required.

ABA is the prorated portion applicable to the PHA 1998 year for each funding increment which had an active contract term during all or a portion of the PHA year.

Example

PHA ABC
Fiscal year 10/1/97 through 9/30/98

HUD 52681 Approved Data:	
HAP	$2,500,000
Administrative Fee	250,000
Hard to House Fee	1,000
Audit	2,000
Total	2,753,000
Interest earned on administrative fee	(2,500)
Total contributions required	2,750,500

Calculation of Annual Budget Authority

Increments	Contract term	Total BA	ABA
001	11/01/97–10/31/98	$1,300,000	$1,191,667
002	01/01/98–12/31/98	1,200,000	900,000
0030	04/01/98–03/31/99	950,000	475,000
004	07/01/98–06/30/99	1,500,000	375,000
Totals		4,950,000	2,941,667

Budget Authority Utilization

Total contributions required divided by	$2,750,000
Annual budget authority equals	$2,941,667
Budget Authority Utilization	93.5%

Lease-Up Rate

The lease-up rate was determined by comparing the contract units (funding increments active as of the end of the PHA 1998 year) to the unit months leased (divided by 12) reported on the combined HUD 52681, Year End Settlement Statement(s) for 1998.

Active funding increments awarded by HUD for special purposes such as litigation, relocation/replacement, housing conversions, etc. were excluded from the contract units as the Department recognizes that many of these unit allocations have special requirements which require extended periods of time to achieve lease-up.

Example

Increments	Contract term	Units
001	11/01/97–10/31/98	242
002	01/01/98–12/31/98	224
003	04/01/98–03/31/99	178
004	07/01/98–06/30/99	280
Totals		924
Increment 003 litigation		(178)
Adjusted contract units		746
Unit months leased reported by PHA		8,726
divided by 12		727
Units Leased		727

Lease-Up Rate

Units leased 727
divided by adjusted contract units 746
equals
Lease-Up Rate 97.4%

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Federal Register

Friday,
March 10, 2000

Part VII

The President

Executive Order 13147—White House Commission on Complementary and Alternative Medicine Policy

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Presidential Documents

Title 3—

The President

Executive Order 13147 of March 7, 2000

White House Commission on Complementary and Alternative Medicine Policy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to establish the White House Commission on Complementary and Alternative Medicine Policy, it is hereby ordered as follows:

Section 1. *Establishment.* There is established in the Department of Health and Human Services (Department) the White House Commission on Complementary and Alternative Medicine Policy (Commission). The Commission shall be composed of not more than 15 members appointed by the President from knowledgeable representatives in health care practice and complementary and alternative medicine. The President shall designate a Chair from among the members of the Commission. The Secretary of Health and Human Services (Secretary) shall appoint an Executive Director for the Commission.

Sec. 2. *Functions.* The Commission shall provide a report, through the Secretary, to the President on legislative and administrative recommendations for assuring that public policy maximizes the benefits to Americans of complementary and alternative medicine. The recommendations shall address the following:

(a) the education and training of health care practitioners in complementary and alternative medicine;

(b) coordinated research to increase knowledge about complementary and alternative medicine practices and products;

(c) the provision to health care professionals of reliable and useful information about complementary and alternative medicine that can be made readily accessible and understandable to the general public; and

(d) guidance for appropriate access to and delivery of complementary and alternative medicine.

Sec. 3. *Administration.* (a) To the extent permitted by law, the heads of executive departments and agencies shall provide the Commission, upon request, with such information and assistance as it may require for the purpose of carrying out its functions.

(b) Each member of the Commission shall receive compensation at a rate equal to the daily equivalent of the annual rate specified for Level 1V of the Executive Schedule (5 U.S.C. 5315) for each day during which the member is engaged in the performance of the duties of the Commission. While away from their homes or regular places of business in the performance of the duties of the Commission, members shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707).

(c) The Department shall provide the Commission with funding and with administrative services, facilities, staff, and other support services necessary for the performance of the Commission's functions.

(d) In accordance with guidelines issued by the Administrator of General Services, the Secretary shall perform the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), with respect to the Commission, except that of reporting to the Congress.

(e) The Commission shall terminate 2 years from the date of this order unless extended by the President prior to such date.

William J. Clinton

THE WHITE HOUSE,
March 7, 2000.

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H.R. 1451/P.L. 106–173

Abraham Lincoln Bicentennial Commission Act (Feb. 25, 2000; 114 Stat. 14)

S. 632/P.L. 106–174

Poison Control Center Enhancement and Awareness Act (Feb. 25, 2000; 114 Stat. 18)

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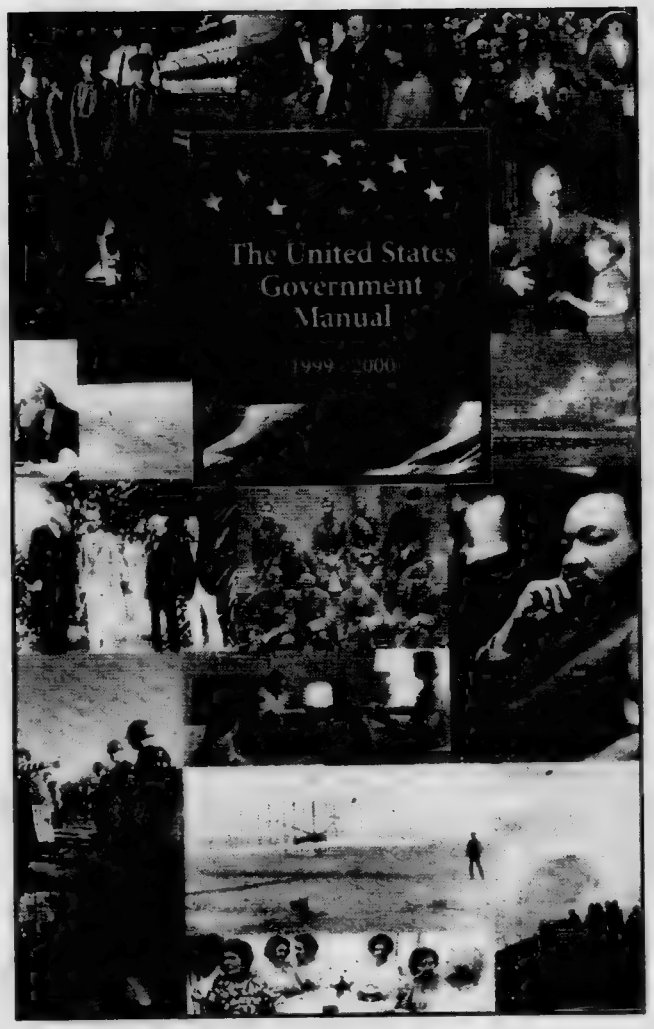

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Rules and Regulations

Federal Register
Vol. 65, No. 49
Monday, March 13, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 242

[Release No. 34–40760B; File No. S7–12–98]

RIN 3235–AH41

Regulation of Exchanges and Alternative Trading Systems; Technical Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Technical amendments.

SUMMARY: The Securities and Exchange Commission ("Commission") today is making a technical change to Exchange Act Rules 17a–4(b)(1) and 301(b)(4). These and other rules and rule amendments that relate to the regulation of exchanges and alternative trading systems were published on December 22, 1998 (63 FR 70844).

EFFECTIVE DATE: March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Elizabeth King, Associate Director, at (202) 942–0140, Constance Kiggins, Special Counsel, at (202) 942–0059, and John Roeser, Attorney, at (202) 942–0762, Division of Market Regulation.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1998, the Commission adopted new rules and rule amendments regarding the regulation of exchanges and alternative trading systems.[1] The Commission also repealed Exchange Act Rule 17a–23 and amended the books and records rules by transferring the recordkeeping requirements from Rule 17a–23 to Rules 17a–3 and 17a–4, as those rules apply to broker-dealer internal trading systems. The Commission amended Exchange Act Rule 17a–3 by adding paragraph (a)(16), which requires broker-dealers to make records regarding the activities of internal broker-dealer systems.[2] The Commission stated in the adopting release that the amendments to Exchange Act Rule 17a–4 would require that the records required under Rule 17a–3(a)(16) be preserved for three years, the first two years in an accessible place. This requirement, however, was not included in the amended rule language of Rule 17a–4. Consequently, the Commission is making a technical amendment to Rule 17a–4(b)(1) to include the records required under Rule 17a–3(a)(16).

In addition, Exchange Act Rule 301(b)(4) contains a typographical error that may prove misleading and requires clarification. Specifically, the first sentence of Rule 301(b)(4), prohibits an alternative trading system from charging fees to broker-dealers, that access the alternative trading system through a national securities exchange or national securities association, that are inconsistent with equivalent access, as "required by paragraph (b)(3)(iv)." The equivalent access requirement, however, is a paragraph (b)(3)(iii). The Commission is making a technical amendment to correctly refer to the equivalent access requirement in paragraph (b)(3)(iii).

List of Subjects

17 CFR Part 240

Brokers-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 242

Securities.

Accordingly, Title 17 CFR Part II is amended by making the following technical amendments:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. § 240.17a–4 is amended by revising paragraph (b)(1) to read as follows:

§ 240.17a–4 Records to be preserved by certain members, brokers and dealers.

* * * * *

(b) * * *

(1) All records required to be made pursuant to paragraphs (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), and (a)(16) of § 240.17a–3.

* * * * *

PART 242—REGULATIONS M AND ATS

3. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 80a–23, 80a–29, and 80a–37.

§ 242.301 [Amended]

4. In § 242.301, the first sentence of paragraph (b)(4), the reference "(b)(3)(iv)" is revised to read "(b)(3)(iii)".

Dated: March 7, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5993 Filed 3–10–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1308

[DEA–200F]

Schedules of Controlled Substances: Addition of Gamma-Hydroxybutyric Acid to Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: This is a final rule issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) placing gamma-hydroxybutyric acid (GHB) and its salts, isomers, and salts of isomers into Schedule I of the Controlled Substances Act (CSA) pursuant to Public Law 106–172. Public

[1] Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

[2] 17 CFR 240.17a–3(a)(16).

Law 106–172 also imposes Schedule III physical security requirements for storage on registered manufacturers and distributors of GHB when it is manufactured, distributed or possessed in accordance with Food and Drug Administration (FDA)-authorized Investigational New Drug (IND) exemptions under the Federal Food, Drug and Cosmetic Act (FFDCA). In addition, this final rule places FDA-approved products containing GHB into Schedule III, if or when they are approved.

EFFECTIVE DATE: March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Is GHB and Why Is It Being Controlled?

GHB is gamma-hydroxybutyric acid, including its salts, isomers and salts of isomers. In recent years, the abuse of GHB has increased substantially. GHB is a drug classified as a central nervous system depressant. It is not approved for marketing as a medicine in the United States, although FDA-authorized studies are in progress to examine its potential use in the treatment of cataplexy associated with narcolepsy. GHB is abused to produce euphoric and hallucinogenic states, and for its alleged role as growth hormone releasing agent to stimulate muscle growth. GHB can produce drowsiness, dizziness, nausea, visual disturbances, unconsciousness, seizures, severe respiratory depression and coma. Overdose usually requires emergency medical treatment, including intensive care for respiratory depression and coma. Several Poison Control Centers have characterized and reported cases of GHB-dependence and withdrawal to the DEA. To date, DEA has documented over 5,700 overdoses and law enforcement encounters with GHB in 45 states. DEA has also documented 65 GHB-related deaths.

On November 8, 1990, the FDA issued an advisory declaring GHB unsafe and illicit, except under FDA-approved physician-supervised protocols. On February 18, 1997, FDA reissued its warning on GHB as an unapproved and potentially dangerous, illegal drug in the United States.

GHB is produced in clandestine laboratories using a relatively simple synthesis with readily available and inexpensive starting materials. Gamma-butyrolactone (GBL) is an industrial solvent which is used in the clandestine manufacture of GHB. Once manufactured, GHB is a clear liquid and has been disguised by adding food coloring, flavorings, and/or storing it in different kinds of bottles and containers.

The DEA has received reports that GBL, the solvent precursor for GHB, is being abused due to its rapid conversion to GHB soon after ingestion. On January 21, 1999, the FDA issued a request for a voluntary recall of all GBL-containing products sold in health food stores and warned the public of its danger to the public health. FDA has also declared 1,4-butanediol, a chemical related to both GHB and GBL, a Class I Health Hazard. On May 11, 1999, the FDA issued another warning on 1,4 butanediol, GHB, and GBL stating that these substances pose a significant health hazard. Public Law 106–172 also placed certain controls on GBL. These will be the subject of a separate **Federal Register** Notice.

Under What Authority Is GHB Being Controlled?

"The Samantha Reid and Hillory J. Farias Date-Rape Prevention Act of 1999" (Pub. L. 106–172) declared that the abuse of GHB is an imminent hazard to the public safety. Section (3)(a)(1) of Public Law 106–172 directs the Attorney General, notwithstanding sections 201(a), 201(b), 201(c), and 202 of the CSA (21 U.S.C. 811(a), 811(b), 811(c) and 812), to issue a final order placing GHB in the same schedule as would apply to a scheduling of a substance under section 201(h)(1) of the CSA (21 U.S.C 811(h)(1)). All substances controlled under 201(h)(1) are placed in Schedule I. Therefore, this final rule will place GHB in Schedule I.

With the issuance of this final order, GHB becomes subject to the regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule I controlled substance with one exception. Section 3(a)(1)(A) of Public Law 106–172 provides that registered manufacturers and distributors of GHB that is subject to an investigational new drug (IND) application exemption under the FFDCA subject to Schedule III physical security requirements rather than the otherwise applicable Schedule I physical security requirements for storage.

In Sections (3)(a)(1)(A) and (B) of Public Law 106–172, reference is made to certain scheduling recommendations contained in the May 19, 1999, letter from the Department of Health and Human Services (DHHS) to the DEA. Pursuant to Public Law 106–172, the DEA is publishing a copy of the May 19, 1999 letter from David Satcher, M.D., Ph.D., Assistant Secretary for Health and Surgeon General. The letter follows:

Assistant Secretary for Health, Office of Public Health and Science, Washington, D.C. 20201

Mr. Donnie R. Marshall, Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537

Dear Mr. Marshall:

In response to your request dated September 16, 1997, and pursuant to the Controlled Substances Act (CSA), 21 U.S.C. § 811(b), (c), and (f), the Department of Health and Human Services (HHS) recommends that gamma-hydroxybutyric acid (GHB) should be subject to control under Schedule I of the CSA, except that GHB substances and products that are the subject of investigational new drug (IND) applications authorized by the Food and Drug Administration (FDA) should be subject to control under Schedule III.

GHB is a central nervous system depressant. As discussed in the attached analysis, GHB has a high potential for abuse relative to substances controlled in Schedules III, IV, and V. GHB has no accepted medical use, and when manufactured clandestinely, it is unsafe for use under medical supervision. Accordingly, and except as provided below, HHS recommends that GHB be controlled in Schedule I of the CSA.

Formulations of GHB currently are being studied under FDA-authorized INDs. At least one sponsor's formulation has been granted orphan drug status under Section 526 of the Food, Drug and Cosmetic Act, and is available under a treatment use protocol under 21 CFR § 312.34. None of the reports of actual abuse of GHB that support the Schedule I recommendation have involved GHB that was diverted from an authorized study. Moreover, given the ease with which GHB can be synthesized from readily available materials, it is unlikely that authorized studies will become a source for abuse. Rather, the abuse potential of GHB, when used under an authorized research protocol, is consistent with substances typically controlled under Schedule IV. Information on the dependence-producing effects of GHB is limited, but available data suggest that its potential for physical and psychological dependence is also consistent with control under Schedule IV.

Authorized formulations of GHB, however, do not meet the "accepted medical use" criteria set forth in Schedule IV. An authorized formulation of GHB is far enough along in the development process to meet the standard under Schedule II of a drug or substance having a "currently accepted medical use with severe restrictions." Under these circumstances, HHS recommends placing authorized formulations of GHB in Schedule III.

You will find enclosed a document prepared by FDA's Drug Abuse Evaluation Staff that is the basis for the combined Schedule I/ Schedule III recommendation.

Should you have any questions regarding this recommendation, please contact Stuart L. Nightingale, M.D., FDA's Associate

Commissioner for Health Affairs, at (301) 443–6143.

Sincerely yours,

David Satcher, M.D., Ph.D., Assistant Secretary for Health and Surgeon General

Enclosure

Specifically, as noted above, Section (3)(a)(1)(A) of Public Law 106–172 directs that the physical security requirements for registered manufacturers and distributors of GHB that is subject to an IND application exemption under the FFDCA shall be those which apply to the schedule recommended in the first paragraph of the DHHS letter. The schedule referred to in this paragraph is Schedule III. This paragraph applies only to GHB which is the subject of an FDA-authorized exemption and does not affect the physical security requirements for GHB manufactured, distributed or possessed for any other purpose or for any other controlled substance handled by the registrant.

Section (3)(a)(1)(B) of Public Law 106–172 directs that a drug product containing GHB for which an application is approved under section 505 of the FFDCA, shall be placed in the schedule recommended in the last sentence of the fourth paragraph of the DHHS May 19, 1999, letter. This sentence recommends Schedule III. Currently, there are no GHB drug products approved under section 505 of the FFDCA. However, if or when a drug product containing GHB is approved by the FDA under this section, it shall be a Schedule III controlled substance except that it will be subject to the criminal sanctions applicable to a Schedule I controlled substance, pursuant to Public Law 106–172. This paragraph applies only to drug products containing GHB which are approved under section 505 of the FFDCA and does not affect the schedule of any other form of GHB handled by the registrant.

Therefore, pursuant to Public Law 106–172 and notwithstanding sections 201(a), 201(b), 201(c), and 202 of the CSA, the Deputy Administrator of the DEA orders that GHB and its salts, isomers, and salts of isomers be placed in Schedule I. With the issuance of this final order, GHB will be subject to the regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule I controlled substance with the following one exception. Registered manufacturers and distributors of FDA-authorized IND exempted GHB shall be subject to Schedule III physical security requirements for storage purposes. In addition, an FDA-approved drug product containing GHB for which an application is approved under section 505 of the FFDCA shall be placed in Schedule III.

What Requirements Will GHB Be Subject To?

Except as noted below, the Schedule I controls on GHB and, where applicable, the Schedule III physical security requirements on GHB will be effective on March 13, 2000. In the event that any of these requirements impose special hardships on the registrants, the DEA will entertain any justified request for an extension of time to comply with the Schedule I regulations regarding GHB. The applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, dispenses, imports or exports GHB or who engages in research or conducts instructional activities with GHB, or who proposes to engage in such activities, must submit an application for Schedule I registration in accordance with part 1301 of Title 21 of the Code of Federal Regulations (CFR) by May 12, 2000.

However, if and when there is an FDA-approved GHB-containing product for which an application is approved under section 505 of the FFDCA, any person who manufactures, distributes, dispenses, imports or exports that product or who engages in research or conducts instructional activities with such an FDA-approved GHB-containing product, or who proposes to engage in such activities, must submit an application for Schedule III registration in accordance with part 1301 of Title 21 of the Code of Federal Regulations.

2. *Security.* GHB is subject to Schedule I security requirements and must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(a), (c), and (d), 1301.73, 1301.74, 1301.75(a) and (c) and 1301.76 of Title 21 of the Code of Federal Regulations.

There is, however, an exception for registered manufacturers and distributors of GHB when manufactured, distributed or possessed in accordance with FDA-authorized IND exemptions under the FFDCA for storage. GHB used in FDA-authorized IND studies and FDA-approved GHB containing products are subject to Schedule III security requirements and must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c) and 1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and packaging.* All labels on commercial containers of, and all labeling of GHB, including FDA-authorized IND exempted formulations, which are distributed on or after May 12, 2000 shall comply with the requirements of §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations. Any commercial containers of GHB packaged on or before May 12, 2000 and not meeting the requirements specified in §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations shall not be distributed on or after June 12, 2000.

Any labels on commercial containers of, and all labeling of, an FDA-approved GHB-containing drug product shall comply with the requirements of §§ 1302.03–1302.7 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* Quotas for GHB are established pursuant to part 1303 of Title 21 of the Code of Federal Regulations. Any manufacturer who desires either a manufacturing or procurement quota for GHB shall apply for such quota to DEA on or before May 12, 2000.

5. *Inventory.* Registrants possessing GHB are required to take inventories pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations. Every registrant who desires registration in Schedule I for GHB shall conduct an inventory of all stocks of GHB on or before May 12, 2000.

6. *Records.* All registrants must keep records on GHB pursuant to §§ 1304.03, 1304.04 and §§ 1394,21–1394,23 if Title 21 of the Code of Federal Regulations.

7. *Reports.* All registrants are required to submit reports on GHB to the DEA pursuant to §§ 1304.33 of Title 21 of the Code of Federal Regulations.

8. *Order Forms.* Each distribution of GHB, with the exception of an FDA-approved GHB-containing product for which an application is approved under section 505 of the FFDCA, shall utilize an order form pursuant to part 1305 of Title 21 of the Code of Federal Regulations.

9. *Prescriptions.* If a drug product containing GHB is approved under section 505 of the FFDCA, all prescriptions for that product are to be issued pursuant to §§ 1306.03–1306.06 and 1306.21–1306.26 of Title 21 of the Code of Federal Regulations.

10. *Important and Exportation.* All importation and exportation of GHB shall be in compliance with part 1312 of Title 21 of the Code of Federal Regulations.

11. *Criminal Liability.* Any activity with GHB not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful on or after March 13, 2000.

Public Law 106–172 directs DEA to publish this final rule and DEA has no discretion in this matter. However, this action is structured in such a manner that limits its financial impact by reducing the physical security requirements for GHB under certain circumstances. Specifically, Congress directed DEA to apply Schedule III physical security requirements to registered manufacturers and registered distributors for the storage of GHB and GHB-containing formulations that are the subject of IND exemptions authorized by FDA.

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. DEA has determined that this rule is not a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget. Further, this action will not have a significant economic impact on a substantial number of entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This action places GHB in Schedule I of the GSA, but provides a reduction of the physical security requirements for GHB under certain circumstances. Specifically, Schedule III physical security requirements will apply to registered manufacturers and registered distributors for the storage of GHB and GHB-containing formulations that are the subject of IND exemptions authorized by FDA.

Unfunded Mandate Reform Act

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132 Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Plain English

The DEA makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation please contact Patricia M. Good, Chief, Policy and Liaison Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, phone (202) 307–7297.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby amends 21 CFR parts 1301 and 1308 as follows:

PART 1301—[AMENDED]

1. The authority citation for Part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.72 is amended by revising the introductory text of paragraphs (a) and (b) to read as follows:

1301.72 Physical Security controls for non-practitioners; narcotic treatment programs and compounders for narcotic treatment programs; storage areas.

(a) *Schedules I and II.* Raw material, bulk materials awaiting further processing, and finished products which are controlled substances listed in Schedule I or II (except GHB that is manufactured or distributed in accordance with an exemption under section 505(i) of the FFDCA which shall be subject to the requirements of paragraph (b) of this section) shall be stored in one of the following secured areas:

* * * * *

(b) *Schedules III, IV and V.* Raw material, bulk materials awaiting further processing, and finished products which are controlled substances listed in Schedules III, IV, and V, and GHB when it is manufactured or distributed in accordance with an exemption under section 505(i) of the FFDCA, shall be stored in the following secure storage areas:

* * * * *

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.11 is amended by redesignating the existing paragraphs (e)(1) through (e)(2) as (e)(2) through (e)(3) and by adding a new paragraph (e)(1) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(e) * * *

(1) gamma-hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate)	2010

* * * * *

3. Section 1308.13 is amended by redesignating the existing paragraphs (c)(5) through (c)(11) as (c)(6) through (c)(12) and by adding a new paragraph (c)(5) to read as follows:

§ 1308.13 Scheduling III.

* * * * *

(c) * * *

(5) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act	2012

* * * * *

Dated: March 3, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–5925 Filed 3–10–00; 8:45 am]

BILLING CODE 4410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA44 & GA36–9948a; FRL–6547–4]

Approval and Promulgation of Revisions to the Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revisions submitted by the State of Georgia on February 11, 1998, and November 19, 1998. The February 11, 1998, revisions update references to the August 15, 1997, version of Georgia's "Procedures for Testing and Monitoring Sources of Air Pollutants" manual. The November 19, 1998, revisions adopt new Permit by Rule provisions for several, small source categories, including: certain types of fuel-burning equipment, on-site power generation, concrete mixing plants, hot mix asphalt plants, cotton ginning operations, coating and/or gluing operations, printing operations, non-reactive mixing operations, fiberglass molding and forming operations, and peanut/nut shelling operations.

For these categories of sources that operate below the major source threshold, the rules may negate the need to file for a Part 70 Permit (also known as a "Title V Permit") or a synthetic minor permit.

DATES: This direct final rule is effective May 12, 2000 without further notice, unless EPA receives adverse comment by April 12, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Michele Notarianni, Air Planning Branch, Air, Pesticides, and Toxics Management Division, EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the State's submittals are available at the following addresses for inspection during normal business hours:

EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. (To make an appointment, please contact Michele Notarianni at 404/562–9031.)

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at 404/562–9031 (or by e-mail at: notarianni.michele@epa.gov).

SUPPLEMENTARY INFORMATION:

I. Revisions Approved by EPA

The EPA is approving SIP revisions to Georgia's Rules for Air Quality Control included in the February 11, 1998, and the November 19, 1998, submittals. Below is a summary of the approved revisions.

Air Quality Control, Rule 391–3–1

- *Rule 391–3–1.02(3):* The revision updates the reference date of Georgia's "Procedures for Testing and Monitoring Sources of Air Pollutants" manual from March 1, 1997, to August 15, 1997.
- *Rule 391–3–1.02(6):* The revisions to subparagraphs (a)2.(v)(I), (a)2.(vii)(I), (a)2.(vii)(II)I, and (b)1.(vi) update the reference date of Georgia's "Procedures for Testing and Monitoring Sources of Air Pollutants" manual from March 1, 1997, to August 15, 1997.
- *Rule 391–3–1–.03(11):* A new paragraph, (11), is added to adopt new Permit by Rule provisions for the following 11 small source categories: (1) Fuel-burning equipment burning natural gas/liquid petroleum gasoline (LPG) and/or distillate oil; (2) fuel-burning equipment burning natural gas/LPG and/or residual oil; (3) on-site power generation; (4) concrete mixing plants; (5) hot mix asphalt plants; (6) cotton ginning operations; (7) coating and/or gluing operations; (8) printing operations; (9) non-reactive mixing operations; (10) fiberglass molding and forming operations; and (11) peanut/nut shelling operations. For these categories of sources that operate below the major source threshold, the rules may negate the need to file for a Part 70 Permit or for a synthetic minor permit. Facilities in these categories that have potential emissions greater than major source thresholds even after the Permit by Rule is met or are not able to meet the relevant conditions established in the Permit by Rule may be required to obtain a Part 70 Permit. A more detailed description of this new paragraph follows.

—*Rule 391–3–1–.03(11)(a):* A new subparagraph, (a), is added to identify general requirements for sources covered by the Permit by Rule. Eligible facilities must certify in writing to the Georgia EPD that they can comply with the Permit by Rule.

—*Rule 391–3–1–.03(11)(b)1:* A new subsection, (b)1, is added to establish Permit by Rule standards for applicable facilities with fuel-burning equipment burning natural gas/LPG and/or distillate oil. Applicable facilities must meet the following conditions. During any 12 consecutive months, facility fuel usage is limited to 900 million cubic feet of natural gas (or 7.0 million gallons of LPG) and 1.6 million gallons of distillate oil except in the counties of Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale (13 county ozone nonattainment area), where fuel usage is limited to 450 million cubic feet of natural gas (or 3.5 million gallons of LPG) and 800,000 gallons of distillate oil. Monitoring and record keeping requirements include maintaining a log of monthly fuel usage.

—*Rule 391–3–1–.03(11)(b)2:* A new subsection, (b)2, is added to establish Permit by Rule standards for applicable facilities with fuel-burning equipment burning natural gas/LPG and/or residual oil. Applicable facilities must meet the following conditions. During any 12 consecutive months, annual facility fuel usage is limited to 1,000 million cubic feet of natural gas (or 7.5 million gallons of LPG) and 400,000 gallons of residual fuel oil except in the 13 county ozone nonattainment area, where fuel usage is limited to 400 million cubic feet of natural gas (or 3.2 million gallons of LPG) and 400,000 gallons of residual fuel oil. Monitoring and record keeping requirements include maintaining a log of monthly fuel usage.

—*Rule 391–3–1–.03(11)(b)3:* A new subsection, (b)3, is added to establish Permit by Rule standards for applicable facilities that operate fuel-burning equipment for on-site power generation. Applicable facilities must meet the following conditions. During any 12 consecutive months, a facility's power generation is limited to a total of no more than 6.7 million horsepower-hours except in the 13 county ozone nonattainment area, where the total is no more than 3.35 million horsepower-hours. Monitoring and record keeping

requirements include maintaining a log of the monthly total horsepower-hours for the facility based on the number of hours of operation of each unit per month multiplied by the maximum horsepower rating of that unit.

—*Rule 391–3–1–.03(11)(b)4:* A new subsection, (b)4, is added to establish Permit by Rule standards for applicable concrete mixing plants, which must meet the following conditions to operate under the Permit by Rule. Production on the plant site is limited to 600,000 cubic yards during any 12 consecutive months. Monitoring and record keeping requirements include maintaining a log of the plant's monthly production.

—*Rule 391–3–1–.03(11)(b)5:* A new subsection, (b)5, is added to establish Permit by Rule standards for applicable hot mix asphalt plants, which must meet the following conditions to operate under the Permit by Rule. New asphalt plants (which commenced construction or modification after June 11, 1973), permitted to burn natural gas/LPG and/or distillate oil only must maintain a log of the monthly production and hours of operation and, during any 12 consecutive months, must limit production to 400,000 tons and operation to 3,000 hours. During any 12 consecutive months, new and existing asphalt plants permitted to burn natural gas/LPG, distillate oil, and residual oil in any combination must limit: production to 200,000 tons, operation to 3,000 hours, fuel oil usage to 678,000 gallons, and fuel sulfur content to less than or equal to 1.5%. Monitoring and record keeping requirements for these plants include maintaining fuel oil certifications showing sulfur content less than or equal to 1.5% and a log of production, hours of operation, and monthly fuel use.

—*Rule 391–3–1–.03(11)(b)6:* A new subsection, (b)6, is added to establish Permit by Rule standards for applicable cotton ginning operations. To operate under the Permit by Rule, applicable facilities must limit production to 65,000 standard bales of cotton during any 12 consecutive months and maintain a log of the monthly production.

—*Rule 391–3–1–.03(11)(b)7:* A new subsection, (b)7, is added to establish Permit by Rule standards for applicable coating and/or gluing operations. Applicable facilities must meet the monitoring and record keeping requirements and declare which of the four, following options will be met to operate under the Permit by Rule. The options are: (1) Consumption of any Volatile Organic Compound (VOC) and/or Hazardous Air Pollutant (HAP) containing materials shall be less than 20,000 pounds during any 12 consecutive months; (2) usage of coating, gluing, cleaning, and washoff materials shall be less than 250 total gallons each month; (3) usage of coating, gluing, cleaning, and washoff materials shall be less than 3,000 total gallons per rolling 12-month period; or (4) usage of materials containing less than five tons of any one HAP per rolling 12-month period, less than 12.5 tons of any combination of HAPs per rolling 12-month period, less than 25 tons of VOC per rolling 12-month period for sources located in the 13 county ozone nonattainment area, and less than 50 tons of VOC per rolling 12-month period for facilities not located in the 13 county ozone nonattainment area.

—*Rule 391–3–1–.03(11)(b)8:* A new subsection, (b)8, is added to establish Permit by Rule standards for applicable printing operations, which must meet the following conditions to operate under the Permit by Rule. The consumption of any VOC and/or HAP emitting materials (including but not limited to inks, thinners, and solvents) by the facility is limited to 20,000 pounds during any 12 consecutive months. Monitoring and record keeping requirements include maintaining a log of the monthly consumption of VOC and/or HAP containing material.

—*Rule 391–3–1–.03(11)(b)9:* A new subsection, (b)9, is added to establish Permit by Rule standards for applicable non-reactive mixing operations, which must meet the following conditions to operate under the Permit by Rule. Materials mixed are limited to 500 tons during any 12 consecutive months, mixing/blending tanks must be equipped with lids, mixing tanks must be maintained at a temperature of less than 150 degree Fahrenheit, and tank lids must be closed at all times during operation except when charging raw materials, retrieving samples, or discharging finished product. Monitoring and record keeping requirements include maintaining a monthly log of materials mixed.

—*Rule 391–3–1–.03(11)(b)10:* A new subsection, (b)10, is added to establish Permit by Rule standards for applicable fiberglass molding and forming operations, which must meet the following conditions to operate under the Permit by Rule. During any 12 consecutive months, annual facility material usage (i.e., the combined weight of polyester resin and gel coat) is limited to 89,000 pounds for any combination of hand and spray lay-up operations or 120,000 pounds for spray lay-up operations only. Monitoring and record keeping requirements include maintaining a log of the combined monthly usage of polyester resin and gel coat.

—*Rule 391–3–1–.03(11)(b)11:* A new subsection, (b)11, is added to establish Permit by Rule standards for applicable peanut/nut shelling operations, which must meet the following conditions to operate under the Permit by Rule. During any 12 consecutive months, facility process input is limited to 130,000 tons of unshelled nuts and annual hours of operation shall not exceed 5,000 hours. Monitoring and record keeping requirements include maintaining a log of the monthly unshelled peanuts/nuts processed.

II. Final Action

The EPA is approving the aforementioned changes to the Georgia SIP because they are consistent with Agency policy and the Clean Air Act as amended in 1990. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 12, 2000 without further notice unless the Agency receives adverse comments by April 12, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 12, 2000.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988), by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 12, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 14, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Accordingly, for the reasons set forth in the preamble, Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart—L—Georgia

§ 52.570 [AMENDED]

2. In § 52.570, a. Adding in numerical order an entry for "391–3–1–.03(11)" to the table in paragraph (c).

b. Revising the entries for "391–3–1–.02(3)", and "391–3–1–.02(6)" in the table to paragraph (c).

§ 52.570 Identification of plan.

* * * * *

(c)

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	* * *		*	*
391–3–1–.02(3)	Sampling	12/25/97	3/13/00	
* *	* * *		*	*
391–3–1–.02(6)	Source Monitoring	12/25/97	3/13/00	
* *	* * *		*	*
391–3–1–.03(11)	Permit by Rule	12/25/97	3/13/00	
* *	* * *		*	*

[FR Doc. 00–5386 Filed 3–10–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6549–3]

RIN 2060–AF92

Standards of Performance for New Stationary Sources: Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: On February 12, 1999 (64 FR 7458), we promulgated final rule amendments to reduce unnecessary reporting and recordkeeping burdens due to regulations implementing the Clean Air Act (CAA). These final rule corrections relating to standards of performance for industrial-commercial-institutional steam generating units serve to correct an error in the final rule amendments as promulgated on February 12, 1999.

EFFECTIVE DATE: March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Fred L. Porter, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5251, facsimile: (919) 541–5450, electronic mail address: *porter.fred@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely redesignating one paragraph and then inserting another paragraph which had been deleted unintentionally. Thus, notice and public procedures are unnecessary, and we find that this constitutes good cause under 5 U.S.C. 553(b)(B).

I. What Is the Background for the Correction?

On February 12, 1999 (64 FR 7458), we promulgated a number of amendments to rules under 40 CFR parts 51, 60, 61, and 63, to reduce unnecessary recordkeeping and reporting burdens due to regulations implementing the CAA. One of these amendments was to add paragraph (s) to § 60.49b, Reporting and Recordkeeping Requirements, Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units. As a paragraph (s) already existed, the amendment unintentionally replaced the existing paragraph (s) with a new paragraph (s).

The existing paragraph (s) provided a facility specific nitrogen oxides standard for the C.AOG incinerator at the Cytec Industries, Fortier plant in Westwego, Louisiana. By unintentionally replacing the existing paragraph (s) with a new paragraph (s), this facility specific nitrogen oxides standard was mistakenly deleted.

To have avoided this error, we should have designated the new paragraph (s) as a new paragraph (w). Today's corrections accomplish this as follows.

First, we amend the new paragraph (s) by replacing it with the old paragraph (s). This corrects the unintentional deletion of the facility specific nitrogen oxides standard for the C.AOG incinerator at the Cytec Industries Fortier plant in Westwego.

Second, we amend § 60.49b, Reporting and Recordkeeping Requirements, by adding a new paragraph (w). This new paragraph (w) is nothing more than the paragraph (s) which was included in the February 12, 1999 action. By adding it as paragraph (w), we correctly implement the February 12, 1999 action to reduce the reporting and recordkeeping burden.

II. What Are the Impacts Associated With the Corrections?

This action consists of a correction of our intent at the time of promulgation of the February 12, 1999 amendments to 40 CFR parts 51, 60, 61, and 63. The correction has no impact.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget. Because we have made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the March 29, 1996 **Federal Register** document (61 FR 14029).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause

finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)).

As stated previously, we have made such a good cause finding, including the reasons therefore, and established an effective date of March 13, 2000. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Recordkeeping and reporting requirements.

Dated: March 2, 2000.

Robert Perciasepe,

Assistant Administrator, Office of Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

2. Section 60.49b is amended by revising paragraph (s) and adding paragraph (w) to read as follows:

§ 60.49b Reporting and recordkeeping requirements.

* * * * *

(s) Facility specific nitrogen oxides standard for Cytec Industries Fortier Plant's C.AOG incinerator located in Westwego, Louisiana:

(1) *Definitions.*

Oxidation zone is defined as the portion of the C.AOG incinerator that extends from the inlet of the oxidizing zone combustion air to the outlet gas stack.

Reducing zone is defined as the portion of the C.AOG incinerator that extends from the burner section to the inlet of the oxidizing zone combustion air.

Total inlet air is defined as the total amount of air introduced into the C.AOG incinerator for combustion of natural gas and chemical by-product waste and is equal to the sum of the air flow into the reducing zone and the air flow into the oxidation zone.

(2) *Standard for nitrogen oxides.* (i) When fossil fuel alone is combusted, the nitrogen oxides emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When natural gas and chemical by-product waste are simultaneously combusted, the nitrogen oxides emission limit is 289 ng/J (0.67 lb/million Btu) and a maximum of 81 percent of the total inlet air provided for combustion shall be provided to the reducing zone of the C.AOG incinerator.

(3) *Emission monitoring.* (i) The percent of total inlet air provided to the reducing zone shall be determined at least every 15 minutes by measuring the air flow of all the air entering the reducing zone and the air flow of all the air entering the oxidation zone, and compliance with the percentage of total inlet air that is provided to the reducing zone shall be determined on a 3-hour average basis.

(ii) The nitrogen oxides emission limit shall be determined by the compliance and performance test methods and procedures for nitrogen oxides in § 60.46b(i).

(iii) The monitoring of the nitrogen oxides emission limit shall be performed in accordance with § 60.48b.

(4) *Reporting and recordkeeping requirements.* (i) The owner or operator of the C.AOG incinerator shall submit a report on any excursions from the limits required by paragraph (a)(2) of this section to the Administrator with the quarterly report required by paragraph (i) of this section.

(ii) The owner or operator of the C.AOG incinerator shall keep records of the monitoring required by paragraph (a)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner of operator of the C.AOG incinerator shall perform all the applicable reporting and recordkeeping requirements of this section.

* * * * *

(w) The reporting period for the reports required under this subpart is each 6 month period. All reports shall be submitted to the Administrator and shall be postmarked by the 30th day following the end of the reporting period.

[FR Doc. 00–5797 Filed 3–10–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–6550–1]

RIN 2050–AE74

Amendments to the List of Regulated Substances and Thresholds for Accidental Release Prevention; Flammable Substances Used as Fuel or Held for Sale as Fuel at Retail Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is modifying its chemical accident prevention regulations to conform to the fuels provision of the recently enacted Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (Pub. L. 106–40). In accordance with the new law, today's rule revises the list of regulated flammable substances to exclude those substances when used as a fuel or held for sale as a fuel at a retail facility. EPA is also announcing there will be no further action on a previous proposal concerning flammable substances, since the new law resolves the issue addressed by the proposal.

DATES: Effective March 13, 2000.

ADDRESSES: Docket. Supporting material used in developing the final rule is contained in Docket No. A–99–36. The docket is available for public inspection and copying between 8:00 am and 5:30 pm, Monday through Friday (except government holidays) at EPA's Air Docket, Room 1500, Waterside Mall, 401 M Street, SW, Washington, DC 20460; phone number: 202–260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Breeda Reilly, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave, NW (5104), Washington, DC 20460, (202) 260–0716.

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I. Introduction and Background

A. Statutory Authority

This rule is being issued under section 112(r) of the Clean Air Act (CAA) as amended by the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (the Act), which President Clinton signed into law on August 5, 1999. Section 2 of the Act immediately removed EPA's authority to "list a flammable substance when used as a fuel or held for sale as a fuel at a retail facility * * * solely because of the explosive or flammable properties of the substance, unless a fire or explosion caused by the substance will result in acute adverse health effects from human exposure to the substance, including the unburned fuel or its combustion byproducts, other than those caused by the heat of the fire or impact of the explosion."

The Act defines "retail facility" as "a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program."

B. Background on Chemical Accident Prevention Regulations

CAA section 112(r) contains requirements for the prevention and mitigation of accidental chemical releases. The focus is on those chemicals that pose the greatest risk to public health and the environment in the event of an accidental release. Section 112(r)(3) mandates that EPA identify at least 100 such chemicals and promulgate a list of "regulated substances" with threshold quantities. Section 112(r)(7) directs EPA to issue regulations requiring stationary sources that contain more than a threshold quantity of a regulated substance to develop and implement a risk management program and submit a risk management plan (RMP).

EPA promulgated the initial list of regulated substances on January 31, 1994 (59 FR 4478) (the "List Rule"). The Agency identified two categories of regulated substances—toxic and flammable—and listed substances accordingly. EPA included 77 chemicals on the toxic substances list based on each chemical's acute toxicity and several other factors—the chemical's physical state, physical/chemical properties and accident history—relevant to the likelihood that an accidental release of the chemical would lead to significant offsite consequences. The Agency also placed 63 substances on the flammable substances list, including vinyl chloride, a substance mandated for listing by Congress. EPA selected chemicals for the flammable substances list based on their flammability rating and the other factors related to likelihood of significant offsite consequences.

Of the originally listed substances, 14 met the criteria for both toxic and flammable substances (arsine, cyanogen chloride, diborane, ethylene oxide, formaldehyde, furan, hydrocyanic acid, hydrogen selenide, hydrogen sulfide, methyl chloride, methyl mercaptan, phosphine, propyleneimine, and propylene oxide). EPA placed these 14 substances on only the toxic substances list, because their toxicity poses the greater threat to human health and the environment.

Following promulgation of the List Rule, EPA issued a rule establishing the accidental release prevention requirements on June 20, 1996 (61 FR 31668) ("the RMP Rule"). Together these rules are codified at 40 CFR part 68.

In accordance with section 112(r)(7), the RMP rule requires that any stationary source with more than a threshold quantity of a regulated substance in a process develop and implement a risk management program and submit an RMP describing the source's program as well as its five-year accident history and potential offsite consequences. The rule further provides that RMPs be submitted by June 21, 1999 for sources with more than a threshold quantity of a regulated substance in a process by that date, or within a specified time of the source first exceeding the applicable threshold.

EPA has amended the List and RMP Rules several times. On August 25, 1997 (62 FR 45132), EPA amended the List Rule to change the listed concentration of hydrochloric acid. On January 6, 1998 (63 FR 640), EPA again amended the List Rule to delist Division 1.1 explosives (classified by the Department of Transportation (DOT)), to clarify certain provisions related to regulated flammable substances, and to clarify the transportation exemption. EPA amended the RMP Rule on January 6, 1999 (64 FR 964) to add several mandatory and optional RMP data elements, to establish procedures for protecting confidential business information, to adopt a new industry classification system and to make technical corrections and clarifications. EPA also amended the RMP Rule on May 26, 1999 (64 FR 28696) to modify the requirements for conducting worst case release scenario analyses for flammable substances and to clarify its interpretation of CAA sections 112(1) and 112(r)(11) as they relate to DOT requirements under the Federal Hazardous Transportation Law.

II. Discussion of Modification

A. Affected Substances

The new Act provides that EPA shall not list a flammable substance when used as a fuel,[1] or held for sale as a fuel at a retail facility solely because of its explosive or flammable properties, except under certain circumstances. The purpose of today's rule is to revise the List Rule as needed to conform to the Act.

As described above, the List Rule currently contains two lists—one of toxic substances and one of flammable substances. The toxic substances list contains those chemicals that meet the criteria listing as toxic substances, even if they also meet the criteria for listing as flammable substances. Accordingly, every chemical on the toxic substances list was listed for its toxicity at least and not solely because of its explosive or flammable properties. The substances on the toxics list are thus not affected by the new Act.

The substances on the flammables list, on the other hand, are listed "solely" because they meet a certain flammability rating, taking other risk factors into account. In deciding what flammable substances to list, EPA concentrated on those substances that have the potential to result in significant offsite consequences. Accidents involving flammable substances may lead to vapor cloud explosions, vapor cloud fires, boiling liquid expanding vapor explosions (BLEVEs), pool fires, and jet fires, depending on the type of substance involved and the

[1] EPA has received a number of questions as to whether the fuel use exclusion is available only to retail facilities. EPA believes that the statute and legislative history are clear that the fuel use exclusion is available to any facility that uses a flammable substance as a fuel.

circumstances of the accident. Historically, flammable substance accidents having significant offsite impacts involved either vapor cloud explosions at refineries and chemical plants, or BLEVEs at sources storing large quantities of flammable substances. Vapor cloud explosions produce blast waves that potentially can cause offsite damage and kill or injure people. High overpressure levels can cause death or injury as a direct result of an a explosion; such effects generally occur close to the site of an explosion. People can also be killed or injured because of indirect effects of the blast (*e.g.*, collapse of buildings, flying glass or debris); these effects can occur farther from the site of the blast.

By contrast, the effects of vapor cloud fires, in which the vapor cloud burns but does not explode, are limited primarily to the area covered by the burning cloud. BLEVEs, which generally involve the rupture of a container, can cause container fragments to be thrown substantial distances; such fragments have the potential to cause damage and injury.

Thermal radiation is the primary hazard of pool and jet fires. The potential effects of thermal radiation generally do not extend for as great a distance as those of blast waves and are related to the duration of exposure; people at some distance from a fire would likely be able to escape.

Based on this analysis and available accident history data, the Agency concluded that vapor cloud explosions and BLEVEs pose the greatest potential hazard from flammable substances to the public and environment. For purposes of the List Rule, EPA consequently focused on those chemicals with the potential to result in vapor cloud explosions or BLEVEs in the event of an accidental release. The Agency determined that chemicals meeting the highest flammability rating of the National Fire Protection Agency (NFPA) had this potential and used that rating as the principal criterion for including chemicals on the flammable substances list.

The other factors EPA considered in listing flammable substances—physical state, physical/chemical properties and accident history—all relate to a chemical's potential to be accidentally released in a way that could lead to a vapor cloud explosion or BLEVE. In short, the Agency included chemicals on the flammable substances list "solely" because of their explosive potential, a basis now disallowed by the new Act for flammable substances when used as a fuel or held for sale as a fuel at a retail facility.

The new Act nevertheless allows EPA to list a flammable substance when used as a fuel, or held for sale as a fuel where a fire or explosion caused by the substance will result in acute adverse health effects from human exposure to the substance or its combustion byproducts. EPA believes, however, that no listed substances on the flammable substances list is a candidate for this exception. As noted above, flammable substances that meet the listing criteria for toxic substances are on the toxic substances list only. Therefore, none of the chemicals on the flammable substances list will qualify for the exception based on acute health effects from exposure to the substance itself.

Further, combustion byproducts are generally not relevant to listing flammable substances. For hydrocarbons, including the listed flammable substances commonly used as fuels, typical combustion products include water vapor, carbon dioxide, carbon monoxide, and relatively small amounts of other oxidized inorganic substances and do not meet the listing criteria for toxic substances. Several other listed flammable substances may result in combustion byproducts that meet the listing criteria for toxic substances, but these substances are not commonly used as fuels. Further, any toxic combustion byproducts will be a fraction of the total mass and not likely to exceed the applicable threshold for coverage by the RMP rule. Quantities below the threshold are unlikely to have significant offsite consequences.

For these reasons, EPA believes that none of the listed flammable substances meet the new statute's test for listing fuels. Consequently, all of the listed flammable substances are potentially affected by the Act.

B. Use or Sale as a Fuel

The Act prohibits the listing of flammable substances "when used as a fuel or held for sale as a fuel at a retail facility." In limiting EPA's authority to list flammable substances used as a fuel, or sold as a fuel at retail facilities, Congress sought greater consistency between the RMP program and the Process Safety Management (PSM) Standard implemented by the Occupational Health and Safety Administration (OSHA). OSHA's PSM Standard is the workplace counterpart of EPA's RMP program. PSM requirements protect workers from accidental releases of highly hazardous substances in the workplace, while the RMP rule protects the public and environment from the offsite consequences of those releases.

The PSM and RMP programs are similar in many ways, covering mostly the same chemicals. Establishments subject to the PSM Standard must comply with the prevention program requirements which are the same as the RMP rule's Program 3 requirements (subpart D of the Part 68 regulations). However, OSHA provides an exemption from the PSM Standard for hydrocarbon fuels used solely for workplace consumption as a fuel (*e.g.*, propane used for comfort heating), if such fuels are not part of a process containing another highly hazardous chemical covered by the standard. It also exempts such substances when sold by retail facilities.

The two prongs of the limitation on EPA's authority to list flammable substances (*i.e.*, use as a fuel or held for sale as a fuel by a retail facility) largely follow the OSHA exemptions relating to fuel. EPA will therefore look to OSHA precedent and coordinate with OSHA in interpreting and applying the limitations to the extent they parallel OSHA's exemptions. For example, the new Act does not define the term "fuel," but OSHA has given "fuel" its ordinary meaning in applying the PSM fuel-related exemptions. Webster's Ninth New Collegiate Dictionary (1990) defines fuel as "a material used to produce heat or power by burning," and EPA has no reason to believe that "fuel" as used by the new Act should be defined differently.

Using the ordinary meaning of fuel, EPA reviewed the chemicals on its flammable substances list to determine which are used as fuel. Several of the listed substances are typically used as fuel, including propane, liquified petroleum gas (propane and/or butane often with small amounts of propylene and butylene); hydrogen; and gaseous natural gas (methane). EPA is aware of the possibility of other flammable substances being used as a fuel in particular circumstances. The following is a list of regulated flammable substances that EPA believes have been used as a fuel.

TABLE 1.—LIST OF COMMON FUELS

Chemical name	CAS No.
Acetylene [Ethyne]	74–86–2
Butane	106–97–8
1-Butene	106–98–9
2-Butene	107–01–7
Butene	25167–67–3
2-Butene-cis	590–18–1
2-Butene-trans [2-Butene, (E)]	624–64–6
Ethane	74–84–0
Ethylene [Ethene]	74–85–1
Hydrogen	1333–74–0

TABLE 1.—LIST OF COMMON FUELS—Continued

Chemical name	CAS No.
Isobutane [Propane, 2-methyl-]	75–28–5
Isopentane [Butane, 2-methyl-]	78–78–4
Methane	74–82–8
Pentane	109–66–0
1-Pentene	109–67–1
2-Pentene, (E)-	646–04–8
2-Pentene, (Z)-	627–20–3
Propane	74–98–6
Propylene	115–07–1

At the same time, all of the substances listed above are sometimes used as feedstock chemicals instead of fuel. Further, every listed flammable substance has the potential to be used as fuel, since it may be burned to create heat or power. Consequently, the List Rule cannot be conformed to the new law by deleting particular chemicals from the flammable substances list. Instead, EPA has added a provision to part 68, Subpart F (listing regulated substances) that excludes flammable substances when used as a fuel, or held for sale as a fuel at a retail facility from the list of regulated substances. The Agency has also annotated both versions of the flammable substances list (one version lists the substances alphabetically, the other by Chemical Abstract Service (CAS) number) to indicate that any flammable substance, when used as a fuel, or held for sale as a fuel at a retail facility, is excluded from the list.

As previously mentioned, the Act defines a "retail facility" as a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program. The income test portion of the definition follows the definition of "retail facility" used by the OSHA in enforcing its PSM Standard (OSHA Directive CPL2–2.45A CH–1-Process Safety Management of Highly Hazardous Chemicals—Compliance Guidelines and Enforcement Procedures): "an establishment that would otherwise be subject to the PSM standard at which more than half of the income is obtained from direct sales to end users."

The effect of the income test portion of the new Act's retail facility definition is to provide relief to the same facilities that qualify for OSHA's retail facility exemption, and conversely, to require facilities that do not quality for OSHA's exemption, and thus are subject to the PSM program, to also be subject to the RMP program, provided no other exemption applies. EPA will consequently coordinate its interpretation and application of the income test portion of the retail facility definition with OSHA.

The second portion of the retail facility definition—concerning cylinder exchange programs—goes beyond that developed by OSHA and so provides greater relief than the OSHA retail facility exemption. In general, cylinder exchange programs represent a link between major retailers (for example, hardware stores, home centers and convenience stores) and propane distributors. The retailer typically provides space outdoors and manages transactions with end users such as homeowners; the propane distributor typically provides racks, filled cylinders, promotional materials, and training to the retailer's employees. Propane distributors may have several markets, including cylinder exchange; temporary heat during construction; commercial cooking, heating, and water heating; fuel to power vehicles, forklifts, and tractors; agricultural drying and heating; and others.

For propane or other fuel distributors which meet the definition of retail facility through either direct sales to end users or a cylinder exchange program, the fuel they hold is no longer covered by the RMP rule. For propane or other fuel distributors that do not meet the definition, the fuel they hold is *not* exempted from the RMP rule by the new law or today's action. EPA has added to part 68 a definition of "retail facility" that mirrors the statutory definition.

III. Previous Actions Related to Fuels

A. Previous Proposed Rule and Administrative Stay

After promulgating the RMP rule, EPA became aware that a significant number of small, commercial sources use regulated flammable substances, particularly propane, as fuel in quantities in excess of the applicable threshold quantity (10,000 lbs in a process). As a result, these small sources, including farms, restaurants, hotels, and other commercial operations, were covered by the RMP requirements. Many of these sources are in rural locations where accidental releases are less likely to have significant offsite consequences. In light of the purpose of section 112(r)—to focus comprehensive accident prevention requirements on the most potentially dangerous sources—EPA reexamined whether farms and other small fuel users should be covered by the RMP rule.

On May 28, 1999, EPA issued a proposed amendment to the List Rule to create an exemption from threshold quantity determinations for processes containing 67,000 pounds or less of a listed flammable hydrocarbon fuel (64 FR 29171). EPA estimated that the proposed amendment, if promulgated, would reduce the universe of regulated sources from 69,485 to 50,300. At the same time (64 FR 29167), EPA published a temporary stay of the effectiveness of the RMP rule for those sources that would be exempted under the proposal. This stay, which expired on December 21, 1999, was in addition to, and did not affect, a stay of the rule for propane processes entered by the U.S. Court of Appeals for the D.C. Circuit (See Litigation and Court Stay).

While EPA was seeking comment on the proposed rule, Congress also studied the fuel issue and considered ways to provide regulatory relief to fuel users and retailers. Congress was concerned that the RMP rule placed a significant regulatory burden on facilities that were not previously covered by the OSHA PSM Standard. Congress decided to amend section 112(r) of the CAA to remove EPA's authority to list any flammable substance when used as a fuel, or held for sale as a fuel at a retail facility, except under specified circumstances.

While the new law and EPA's proposed rule and temporary stay all offer regulatory relief with respect to fuels, the new law reaches farther than EPA's actions. The new law provides relief for all fuels, not just hydrocarbon fuels. It also removes fuels from the RMP program regardless of the amount a stationary source uses or holds for retail sale, whereas EPA's proposal and stay only affects sources having no more than 67,000 lbs of fuel in a process. The new law does limit relief for fuel sellers to fuel retailers, whereas EPA's stay does not distinguish between types of fuel sellers. However, EPA believes that virtually no fuel wholesaler qualifies for the Agency's stay because wholesalers typically hold fuel in quantities far greater than 67,000 lbs. Even if a few wholesalers would have benefitted from EPA's proposed rule, the Agency believes that Congress has addressed the issue of how to provide regulatory relief to fuel users and sellers, and that EPA should thus implement Congress' approach without making exceptions to it.

Therefore, EPA is today withdrawing the proposed rule as it takes final action to amend the List Rule to conform to the new law. As previously mentioned, EPA's temporary stay of effectiveness expired on December 21, 1999.

B. Litigation and Court Stay

Following promulgation of the RMP rule in 1996, several petitions for judicial review of the rule were filed, including one by the National Propane Gas Association (NPGA). At NPGA's request, the U.S. Court of Appeals for the District of Columbia Circuit entered a temporary stay of the RMP rule as it applies to propane (Chlorine Institute v. Environmental Protection Agency, No. 96–1279, and consolidated cases (Nos. 96–1284, 96–1288, and 96–1290), Order of April 27, 1999). The judicial stay meant that any stationary source, or process at a stationary source, subject to the RMP rule only by virtue of propane was not subject to the RMP rule requirements, including those calling for a hazard assessment, accident prevention program, emergency response planning, and submission of (or inclusion in) an RMP by June 21, 1999.

On Jan. 5, 2000, the Court lifted its temporary stay in response to a joint motion by EPA and NPGA to dismiss the case and lift the stay. As of that date, part 68, as revised by the Act, is in effect with respect to any facility having more than the 10,000 pounds of propane in a process unless the facility uses the propane as a fuel or sells the propane as a retail facility. Facilities that use propane in their manufacturing processes or hold propane for purposes other than on-site fuel use at a non-retail facility must immediately come into compliance with Section 112(r) of the CAA.

IV. RMP's Submitted Prior to Today's Action

EPA has received about 1,966 RMP's that address one or more of the 19 listed flammable substances that EPA has identified as likely to be used as a fuel. EPA cannot unilaterally delete any of the RMP's submitted for flammable substances from the RMP database, however, because the determination of whether a facility is eligible for the exclusion is based on information which is not reported to EPA, namely, whether a facility uses the flammable substance as a fuel or holds it for retail sale. Instead, EPA plans to send a letter to each of the 1,966 facilities to notify them of the exclusion, to ask them to evaluate their eligibility for the exclusion, and to describe the process the facilities should use to request a withdrawal of or to update these RMP's.

For about 950 of the 1,966 RMP's that reported a potential flammable fuel, only one chemical is reported. For these cases, the facilities will be asked to evaluate whether they qualify for the exclusion based on use or retail sales. If they determine that they do not qualify, no further action is required. If they determine that they do qualify, they may request that EPA withdraw their submission and EPA will delete it from the RMP database. Facilities will have the option of using the form that EPA developed to facilitate the withdrawal or simply stating their request in a letter. Alternatively, facilities can leave the RMP as a voluntary submission in the database and need not take further action.

The balance of the RMP's reported more than one substance. About 200 RMP's reported a toxic chemical substance in addition to the potential flammable fuel. For these cases, the facilities will be asked to evaluate whether their flammable substance qualifies for the exclusion based on use or retail sales. If they determine that they do not qualify, no further action is required. If they determine that they do qualify, they may resubmit their RMP, reporting only on the toxic substances. Alternatively, facilities can leave the original RMP including the flammable fuel submission in the database and need not take further action.

About 745 RMP's reported multiple flammable substances. For these cases, the facilities will be asked to evaluate whether each reported flammable substance qualifies for the exclusion based on use or retail sales. If they determine that none of their reported flammable substances qualify, no further action is required. If they determine that all of the reported substances qualify, they may request that EPA withdraw their submission and EPA will delete it from the RMP database. Facilities will have the option of using the formal withdrawal process or simply sending a letter. Alternatively, facilities can leave the RMP as a voluntary submission in the database and need not take further action. If they determine that only some of the flammable substances reported qualify, they will need to check their flammable worst case scenario and off-site consequence analysis (OCA). If their original worst case analysis is based on a flammable substance that is excluded, the facility should revise their RMP to provide appropriate OCA. Within its enforcement discretion, EPA plans to treat this similarly to the existing requirement to revise RMP's within 6 months of a process change, giving facilities 6 months to revise their RMP's. If their original worst case analysis is based on a flammable substance that is not excluded, the facility won't need to update their RMP, except as part of the regular reporting cycle.

V. Rationale for Issuance of Rule Without Prior Notice

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment.

EPA is taking this action without prior notice and opportunity to comment. As previously mentioned, section 2 of the new Act, which took effect on August 5, 1999, immediately removed EPA's authority to list flammable substances when used as a fuel, or held for sale as a fuel at a retail facility. Consequently, EPA's regulation containing the list of regulated substances subject to the RMP rule needs to be modified to reflect the new law.

EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the Agency is codifying legislation which focuses clearly on a particular set of regulations and requires little interpretation by the Agency. In addition, EPA believes it is in the public interest to issue the revised list as soon as possible, to avoid confusion about the coverage of the RMP rule. As of August 5, 1999, there is no statutory basis for extending the RMP rule to listed flammable substances when used as a fuel, or held for sale as a fuel at a retail facility, except under certain circumstances. The Agency's rule should therefore be revised to reflect the change in authority as soon as possible. A comment period is unnecessary because today's action is nondiscretionary. A comment period would also be contrary to the public interest because the resulting delay would contribute to confusion about the coverage of the RMP rule. Thus, notice and public procedure are unnecessary and contrary to the public interest. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

The Agency is also issuing this rule with an immediate effective date. Since its effect is to relieve a restriction (*i.e.*, the requirement to comply with the RMP rule), EPA may make it effective upon promulgation. Further, EPA believes it is in the public interest to make it immediately effective, for the same reasons given above for dispensing with prior notice and comment.

VI. Summary of Revisions to Rule

This section summarizes the changes to the rule.

Section 68.3, Definitions, has been revised to add a definition of retail facility, as defined in the new law.

Section 68.126 has been added to create an exclusion for regulated flammable substances used as fuel or held for sale as fuel at retail facilities. The exclusion is derived from the new law.

In Section 68.130, footnotes have been added to Tables 3 and 4. These two tables list the regulated flammable substances and their threshold quantities. Table 3 lists the regulated flammable substances in alphabetical order while Table 4 lists them in CAS number order. The footnotes remind the reader of the exclusion for regulated flammable substances. The reference to each footnote appears as an asterisk following the term "flammable substance" in the titles of Tables 3 and 4.

VII. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, because it allows members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The official record for this rulemaking has been established under Docket A–99–36, and is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks," (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation.

This action is not subject to this Executive Order because it is not economically significant as defined in E.O. 12866, and because it does not establish an environmental standard intended to mitigate health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action reduces burden on flammable fuel users, which may include some sources owned or operated by Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule reduces the burden for those state, local,

or tribal governments that may own or operate sources that use flammable fuels. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Under the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the Agency is required to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Today's final rule is not subject to RFA, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. The rule is subject to the APA, but as described in Section IV of this preamble, the Agency has invoked the "good cause" exemption under APA Section 553(b), which does not require notice and comment. Although this final rule is not subject to the RFA, EPA nonetheless has assessed the potential of this rule to adversely impact small entities subject to the rule. EPA does not believe the rule will adversely impact small entities. This action excludes flammable substances when used as a fuel, or held for sale as a fuel at a retail facility from the list of substances regulated by 40 CFR part 68, which will reduce burden on many small entities that otherwise would be covered by these requirements.

G. Paperwork Reduction Act

This action does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 68 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0144 (EPA ICR No.1656.06). EPA estimates a burden hour reduction of 70,400 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any or any other statute (see Section IV of this preamble), it is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Pursuant to Section 203 of UMRA, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule does not contain any additional requirements, rather it reduces the burden on small governement sources that use flammable substances as fuel.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods. sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a "major rule" as defined by 5 U.S.C. 804(2). It takes effect today.

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Chemical accident prevention.

Dated: March 3, 2000.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, EPA amends 40 CFR part 68 as follows:

PART 68—[AMENDED]

1. The authority section for part 68 is revised to read as follows:

Authority: 42 U.S.C 7412(r), 7601 (a) (1).

Subpart A—[Amended]

2. Section 68.3 is amended to add the following definition in alphabetical order:

§ 68.3 Definitions.

* * * * *

Retail facility means a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.

* * * * *

Subpart F—[Amended]

3. Section 68.126 is added to subpart F to read as follows:

§ 68.126 Exclusion.

Flammable Substances Used as Fuel or Held for Sale as Fuel at Retail Facilities. A flammable substance listed in Tables 3 and 4 of § 68.130 is nevertheless excluded from all provisions of this part when the substance is used as a fuel or held for sale as a fuel at a retail facility.

4. Section 68.130 is amended by:

A. Revising the heading of Table 3;

B. Revising the notes to Table 3 and adding a new footnote 1;

C. Revising the heading to Table 4; and

D. Revising the notes to Table 4 and adding a new footnote 1.

The revisions and additions read as follows:

§ 68.130 - List of substances.

* * * * *

TABLE 3 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES [1] AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[Alphabetical Order–63 Substances]

*	*	*	*	*

[1] A flammable substance when used as a fuel or held for sale as a fuel at a retail facility is excluded from all provisions of this part (see § 68.126).

Note: Basis for Listing:
[a] Mandated for listing by Congress.
[f] Flammable gas.
[s] Volatile flammable liquid.

TABLE 4 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES [1] AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[CAS Number Order–63 Substances]

*	*	*	*	*

[1] A flammable substance when used as a fuel or held for sale as a fuel at a retail facility is excluded from all provisions of this part (see § 68.126).

Note: Basis for Listing:
[a] Mandated for listing by Congress.
[f] Flammable gas.
[s] Volatile flammable liquid.

[FR Doc. 00–5935 Filed 3–10–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–494, MM Docket No. 99–256; RM–9527]

Radio Broadcasting Services; Refugio and Taft, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 293C2 for Channel 291C3 at Refugio, Texas, reallots Channel 293C2 from Refugio, Texas, to Taft, Texas, and modifies the license for Station KTKY(FM) to specify operation on Channel 293C2 at Taft in response to a petition filed by Pacific Broadcasting of Missouri, L.L.C. *See* 64 FR 39963, July 23, 1999. The coordinates for Channel 293C2 at Taft are 27–52–00 and 97–13–08. We shall also allot Channel 291A to Refugio, Texas, at coordinates 28–21–58 and 97–19–11. Mexican concurrence has been received for the allotments at Refugio and Taft, Texas. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 17, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–256, adopted February 23, 2000, and released March 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 291C3 and adding Channel 291A at Refugio and adding Taft, Channel 293C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–6052 Filed 3–10–00; 8:45 am]

BILLING CODE 6712–01–U

Proposed Rules

Federal Register
Vol. 65, No. 49
Monday, March 13, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA02

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed rule; solicitation of reply comments.

SUMMARY: On April 13, 1999, the Office of Federal Housing Enterprise Oversight (OFHEO) published a notice of proposed rulemaking (NPR) entitled "Risk-Based Capital" in the **Federal Register** (64 FR 18083). That notice, known as NPR 2, is the second such proposal related to the development of a regulation to establish risk-based capital standards for the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae). NPR 2 sets forth the specifications for the risk-based capital stress test, completing OFHEO's risk-based capital proposal. OFHEO has requested electronic copies of the comments on NPR2 and will post all NPR2 comments on our web site www.ofheo.gov, as soon as practicable.

In today's notice, OFHEO is soliciting reply comments in response to comments addressing the proposed rule that were submitted by the March 10, 2000, deadline. OFHEO requests that such reply comments only respond to the submitted comments, and not repeat the initial comments at length. This decision to solicit reply comments will insure that all interested parties have ample opportunity to participate in the rulemaking process by providing meaningful comment on the various technical and policy issues involved in the development of the risk-based capital regulation.

DATES: Reply comments are due on or before April 14, 2000.

ADDRESSES: Send written comments to Alfred M. Pollard, General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Written comments may also be sent by electronic mail to RegComments@OFHEO.gov.

FOR FURTHER INFORMATION CONTACT: Patrick J. Lawler, Associate Director of Policy Analysis and Research; Eric Bruskin, Deputy Associate Director of Risk Analysis and Model Development; or David A. Felt, Associate General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3800 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

Dated: March 7, 2000.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 00–6065 Filed 3–10–00; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–65–AD]

Airworthiness Directives; Eurocopter Deutschland GMBH Model BO–105CB–5 and BO–105CBS–5 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Eurocopter Deutschland GMBH (ECD) Model BO–105CB–5 and BO–105CBS–5 helicopters. That AD currently requires, before further flight, creating a component log card or equivalent record and determining the calendar age and number of flights on each tension-torsion (TT) strap. This action would establish a life limit for certain main rotor TT straps. This proposal is prompted by a need to establish a life limit for certain TT straps because of an accident in which a main rotor blade (blade) separated from an ECD Model MBB–BK 117 helicopter due to fatigue failure of a TT strap. The same part-numbered TT strap is used on the ECD Model BO–105 helicopters. The actions specified by this AD are intended to prevent fatigue failure, loss of a blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 12, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–65–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5128, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–65–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–65–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On November 10, 1999, the FAA issued AD 99–24–05, Amendment 39–11429 (64 FR 62973, November 18, 1999), applicable to ECD Model BO–105CB–5 and BO–105CBS–5 helicopters. That AD currently requires, before further flight, creating a component log card or equivalent record and determining the calendar age and number of flights on each tension-torsion (TT) strap. AD 99–24–05 also requires inspecting and removing, as necessary, certain unairworthy TT straps. That action was prompted by an accident in which a blade separated from an ECD Model MBB–BK 117 helicopter due to fatigue failure of a TT strap. The same part numbered TT strap is also used on the ECD Model BO–105CB–5 and BO–105CBS–5 helicopters. The requirements of that AD are intended to prevent failure of a TT strap, loss of a blade, and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined the need to establish a life limit for the TT strap. ECD has issued Alert Service Bulletin BO 105 No. ASB–BO 105–10–113, Revision 1, dated August 31, 1999 (ASB), which specifies establishing a life limit. The ASB specifies that part number (P/N) 2604067 be renumbered as 117–14110 and P/N J17322–1 be renumbered as 117–14111. The ASB also specifies replacing TT strap, part number (P/N) 117–14110 and 117–14111, at intervals not to exceed 120 months after initial installation on any ECD Model BO–105CB–5, BO–105CBS–5, or MBB–BK 117 helicopter or every 25,000 flights, whichever occurs first. The LBA classified this ASB as mandatory and issued AD 1999–289/2, dated September 1, 1999, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

Since an unsafe condition has been identified on the MBB–BK–117 that is likely to exist or develop on the ECD Model BO–105CB–5 and BO–105CBS–5 helicopters, registered in the United States, the proposed AD would require establishing a life limit effective January 1, 2001, for the TT straps of 120 months or 25,000 flights, whichever occurs first.

The FAA estimates that 200 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $10,400 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,272,200.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11429 (64 FR 62973, November 18, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter Deutschland GMBH: Docket No. 99–SW–65–AD. Supersedes AD 99–24–05, Amendment 39–11429, Docket No. 99–SW–58–AD.

Applicability: Model BO–105CB–5 and BO–105CBS–5 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of a TT strap, loss of a main rotor blade (blade), and subsequent loss of control of the helicopter, accomplish the following:

(a) On or before January 1, 2001, remove any TT strap, part number (P/N) 117–14110 or 117–14111, that has been in service 120 months since initial installation or accumulated 25,000 flights (a flight is a takeoff and a landing), on any Model BO–105CB–5, BO–105CBS–5, or MBB–BK–117 helicopter, and replace the TT strap with an airworthy TT strap.

(b) Before further flight,

(1) Create a component log card or equivalent record for each TT strap, P/N 2604067 or J17322–1, by:

(i) Reviewing the history of each helicopter and TT strap.

(ii) Determining the age since initial installation on any helicopter (age) and the number of flights on each TT strap.

(A) To determine the initial number of flights on a TT strap if the time-in-service (TIS) is known and if the number of flights is unknown, multiply the total number of hours TIS by 5 to obtain the number of flights.

(B) If a TT strap has been previously used at any time on Model BO–105 helicopters not affected by this AD, multiply the number of flights accumulated on those other models by a factor of 0.625 and add that result to the number of flights accumulated on the Model BO–105CB–5 and BO–105CBS–5 helicopters.

(iii) Entering both the age and the number of flights on the component log card or equivalent record.

(2) Remove any TT strap from service if:

(i) The total hours TIS or number of flights and age cannot be determined, or

(ii) The TT strap has either accumulated 25,000 or more flights or has an age equal to or greater than 120 months.

(3) Inspect any TT strap with an age less than 120 months that has accumulated less than 25,000 flights in accordance with paragraph 2.B.2 of the "Accomplishment Instructions," of Eurocopter Deutschland GMBH Alert Service Bulletin BO 105 No. ASB–BO 105–10–113, Revision 1, dated August 31, 1999 (ASB).

(i) If a defect is found, remove the TT strap from service.

(ii) If no defect is found, reidentify TT strap P/N 2604067 or J17322–1 before installing in accordance with the "Accomplishment Instructions," paragraph 2.B.1.2., of the ASB.

(c) When any TT strap is replaced because of age, usage, or defect, before further flight, reidentify the main rotor head and TT straps in accordance with the "Accomplishment Instructions," paragraph 2.B.1.2., of the ASB.

(d) This AD revises the Airworthiness Limitations Section of the maintenance manual by establishing a life limit for the TT strap of 120 months or 25,000 flights, whichever occurs first.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in the Luftfahrt Bundesamt (Federal Republic of Germany) AD 1999–289/2, dated September 1, 1999.

Issued in Fort Worth, Texas, on March 6, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–6037 Filed 3–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 3248]

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Bureau of Consular Affairs, State Department.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Schedule of Fees for Consular Services. Specifically, it establishes a fee for the review of the Affidavit of Support, form I–864, when submitted in support of an application for immigration to the United States.

DATES: Written comments must be received on or before April 12, 2000.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Office of the Executive Director, Bureau of Consular Affairs, Department of State, Washington, D.C. 20520–4818; telefax (202) 647–3677.

FOR FURTHER INFORMATION CONTACT: Alcy Frelick, Office of the Executive Director, Bureau of Consular Affairs, Department of State; telefax (202) 647–3677; email address frelickar@state.gov.

SUPPLEMENTARY INFORMATION:

Background Authority To Assess Fees

Public Law 106–113, enacted November 29, 1999, authorizes the Secretary of State to charge and retain a fee for the processing of a sponsor's Affidavit of Support (I–864). The Secretary of State is also authorized under E.O. 10718 of June 27, 1957, to exercise the President's authority under 22 U.S.C. 4219 to prescribe the fees to be charged for official services performed by the Department of State. This authority has been delegated to the Undersecretary for Management. The Schedule of Fees for Consular Services is set forth in 22 CFR 22.1, as amended on December 1, 1999 (64 FR 66769). After an initial review of the costs, the fee for processing has been set initially at $50 per sponsor filing an Affidavit of Support, form I–864.

The Affidavit of Support Processing Fee

This rule amends the Schedule of Fees for Consular Services by adding a new item 61. "Affidavit of Support Processing Fee." It establishes a fee for document review and for providing processing assistance for the Affidavit of Support form, I–864, to any sponsor or joint sponsor who provides an Affidavit of Support under section 213A of the Immigration and Nationality Act (8 U.S.C. 1183a) for an immigrant visa applicant to cover the estimated cost of its services. This fee will be used by the Department of State in assisting sponsors to properly complete such affidavit before it is forwarded to a consular post for adjudication by a consular officer in connection with an application for an immigrant visa. This fee will be in addition to, and separate from, any fee imposed for immigrant visa application processing and issuance. The new fee, which will be reviewed in light of experience, will recover only the costs of services related to assisting the sponsor or joint sponsor in completing the Affidavit of Support and in reviewing the documents for technical completeness; those costs are not recovered by the immigrant visa application processing and issuance fees.

This new fee will be charged only once to a sponsor or joint sponsor who files essentially duplicative Affidavits of Support in connection with immigrant visa applications for the spouse, parents and children of a petitioner who is required by the Immigration and Nationality Act to petition separately for them. No new fee will be assessed for essentially duplicative Affidavits of Support filed in support of additional members of one family, made up of parents and minor unmarried children, even if each member of the family is being processed individually for immigration to the United States or if the family member may have had a separate immigrant visa petition filed on his/her behalf.

The Department will assess one fee for each distinct Affidavit of Support (I–864) filed, whether it is filed by the primary sponsor or by a joint sponsor. If more than one Affidavit of Support is needed to fulfil the requirements of the law, the Department will assess one fee for each separate Affidavit of Support. A new fee will be assessed if a new Affidavit of Support is required in support of any application for immigration. (For example, if an additional Affidavit of Support would be needed from a joint sponsor for an application which has been rejected due to Section 212(a)(4), inability to qualify under the public charge provision of the Immigration Act). The fee is non-refundable as it is a processing fee.

The Department does not consider this rule to be a major rule for purposes of E.O. 12291. These changes to the regulations are hereby certified as not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). In addition, pursuant to the Small

Business Regulatory Fairness Act (U.S.C. Chapter 8), the Department has screened the Rule and determines that it is not a "major rule," as defined in 5 U.S.C. 804(2). This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35. In accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Nor does the rule have federalism implications warranting the application of Executive Order No. 12372 and No.13132. This rule is exempt from E.O. 12866, but the Department has reviewed the rule to ensure consistency with the objectives of the Executive Order, as well as with E.O. 12988, and the Office of Management and Budget has determined this rule would not constitute a significant regulatory action under E.O. 12866. This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) and Executive Order 12875.

This amendment is proposed to take effect June 1, 2000.

Proposed Rule

List of Subjects in 22 CFR Part 22

Passports and visas, Schedule of Consular Fees.

Accordingly, this rule proposes to amend 22 CFR part 22 as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p.382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. In Section 22.1, by adding item 61. to read as follows:

§ 22.1 Schedule of fees.

Item No.	Fee
. . . . .	
61. Affidavit of Support Processing Fee:	$50.000
. . . . .	

Dated: March 6, 2000.

Bonnie R. Cohen,

Under Secretary for Management.

[FR Doc. 00–6100 Filed 3–10–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–777]

RIN 1218–AB36

Ergonomics Program

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed rule; additional information on informal public hearing.

SUMMARY: OSHA is announcing the final locations of the informal public hearing for its proposed Ergonomics Program standard which was published on November 23, 1999 (64 FR 65768).

DATES: The hearing will begin on Monday, March 13, 2000, in Washington, D.C. The hearing in Washington will run for 4 weeks through April 7. The hearing will resume on April 11, in Chicago, Illinois, and will continue there until April 21. The hearing will then resume in Portland, Oregon, on April 24 and run until May 3. The final week of the hearing will be May 8 through 12 in Washington, D.C. The hearing will begin at 9:30 a.m. on March 13; on subsequent days, the starting time will be 8:30 a.m. The hearing will ordinarily conclude by 6:00 p.m. each day; however, in order to assure orderly development of the record on any particular day, the Administrative Law Judge may extend the hearing that day. All questioning of public participants will be completed on the day the participants testify.

ADDRESSES: The March 13 through April 7 hearing in Washington will be in the Frances Perkins Building Auditorium in the U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. The hearing in Chicago will be held at the State of Illinois Building, James R. Thompson Center (Assembly Hall), 100 W. Randolph Street, in Chicago, Illinois. The hearing in Portland will be held at the Mark Hatfield Federal Court House, Courtroom #16, 1000 Southwest 3rd Avenue, in Portland, Oregon. The conclusion of the hearing from May 8 through 12 in Washington will be in the Frances Perkins Building, Room N–3437 A–D, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: OSHA's Ergonomics Team at (202) 693–2116, or visit the OSHA Homepage at www.osha.gov.

Authority: This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. It is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 8th day of March, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 00–6103 Filed 3–10–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ51

Revised Criteria for Monetary Allowance for an Individual Born With Spina Bifida Whose Biological Father or Mother is a Vietnam Veteran

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the evaluation criteria that the Department of Veterans Affairs (VA) uses to determine the amount of the monthly monetary allowance that it pays to an individual born with spina bifida whose biological father or mother is a Vietnam veteran. The intended effect of this proposed amendment is to clarify the criteria to ensure that they are applied consistently and to add a provision allowing the Director of the Compensation and Pension Service to adjust the payment level for individuals with disabling impairments due to spina bifida that are not addressed in the evaluation criteria.

DATES: Comments must be received on or before May 12, 2000.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to: (202) 273–9289; or e-mail comments to "OGCRegulations@mail.va.gov". Comments should indicate that they are

in response to "RIN 2900–AJ51." All comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Policy and Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: Section 421 of Public Law 104–204 authorized VA to provide certain benefits, including a monthly monetary allowance, to children suffering from spina bifida who are the natural children of Vietnam veterans. To implement the provisions of section 421, VA published final regulations, codified at 38 CFR 3.814, in the **Federal Register** on September 30, 1997 (62 FR 51274–281).

38 CFR 3.814(d) provides evaluation criteria for determining which of three levels of monthly monetary allowance an eligible individual will receive for disability due to spina bifida. The evaluation criteria are based not only on the presence of medical impairments due to spina bifida, but also on the disabling effects of those impairments on ordinary day-to-day activities, including activities outside the home, such as holding a job, attending school, traveling, etc. The disabling effects vary significantly from person to person depending on the basic severity of the impairment itself and the extent to which the effects of the impairment can be modified or controlled through mechanical means, medication, surgery, etc. In January 1998, VA reviewed a sample of adjudicated spina bifida claims and, based on actual medical evidence used to adjudicate these claims, assessed the effectiveness of the evaluation criteria and the manner in which they were applied. Based on that assessment, a further review of the medical literature, and suggestions from several service organizations, we propose to amend the evaluation criteria as discussed below.

Under current criteria, the effects of lower extremity impairment are evaluated as follows: Level I (the least severe level) if the child is "able to walk without braces or other external support (although gait may be impaired)"; Level II if the child is "ambulatory, but only with braces or other external support"; and Level III if the child is "unable to ambulate." We found from our review that rating specialists applied the criteria inconsistently to individuals who occasionally use braces or a wheelchair, or who use them only outside the home. We propose to clarify the criteria so that the assessment is based on whichever mode of ambulation represents the individual's primary means of mobility in the community. Although some individuals may be able to move about their homes without braces or wheelchairs, in our view their primary means of mobility outside of the home is the best indicator of the extent to which their ability to engage in ordinary day-to-day activities is impaired. Furthermore, the change would assure that there is a clearly defined and uniform basis for assessing the effects of lower extremity impairment.

The effects of bowel and bladder impairment are currently evaluated as follows: Level I if the child "is continent of urine and feces"; Level II if the child "requires drugs or intermittent catheterization or other mechanical means to maintain proper urinary bladder function, or mechanisms for proper bowel function"; and Level III if the child "has complete urinary or fecal incontinence." In reviewing adjudicated claims, we noted that the terms "proper urinary bladder function" and "proper bowel function" were interpreted differently by different raters. While many individuals with spina bifida do not have normal bowel or bladder function, neither are they completely incontinent of bowel or bladder. We propose to revise the criteria for evaluating the effects of bowel and bladder impairment to more clearly define the three levels and ensure that the criteria are consistently applied.

We propose to evaluate the extent to which bladder impairment affects the ability of the individual to engage in ordinary day-to-day activities based on the length of time the individual is usually able to remain dry during waking hours, and whether or not the individual requires the use of medication or some other means to achieve that level of control. Specifically, we propose to pay an individual who requires medication or other means to control the effects of urinary bladder impairment, and who, no more than two times per week, is unable to remain dry for at least three hours at a time during waking hours at Level II, and an individual who, despite the use of medication or other means to control the effects of urinary bladder impairment, at least three times per week is unable to remain dry for three hours at a time during waking hours at Level III.

The length of time that an individual is able to remain dry is an objective measure of the extent to which his or her ability to engage in ordinary day-to-day activities, such as working or attending school, is limited. Predictable three-hour intervals during waking hours that the individual can rely on remaining dry represent reasonable periods around which an individual can plan to conduct activities such as working, or attending school or social events, etc. At least one major study used a three-hour period in assessing whether conservative therapy could lessen or control incontinence ("The Chances of a Spina Bifida Patient Becoming Continent/Socially Dry By Conservative Therapy" (M. Knoll and H Madersbacher, *Paraplegia*, 1993, Jan; 31 (1): 22–27)). We propose to specify the frequency of inability to remain dry for at least three hours at a time during waking hours—no more than two times per week for Level II, and at least three times per week for Level III—to take into account the fact that individuals who are ordinarily able to remain dry for three hours may occasionally have an accidental involuntary release of urine due to reasons such as an acute illness, miscalculations in controlling fluid intake, etc. Basing evaluations on the frequency of inability to remain dry for at least three hours at a time during waking hours will assure that individuals with bladder impairment are consistently evaluated.

One service organization recommended that we evaluate impairment of bowel and bladder function based on whether the individual has voluntary control of those functions. This organization suggested that doing otherwise punishes children with spina bifida for receiving appropriate treatment and rehabilitation because they are still, in fact, incontinent. Rather than punishing individuals who are able to alleviate urinary incontinence by treatment, the criteria recognize that the ability to alleviate incontinence improves the individual's ability to engage in ordinary day-to-day activities. Thus, we do not propose to adopt this recommendation.

The same organization pointed out that procedures necessary to treat or compensate for loss of voluntary control are intrusive, unpleasant, and time consuming. Although we will continue to evaluate the disabling effects of bowel or bladder impairment by evaluating the ability of an individual to engage in ordinary day-to-day activities, we will provide for special review consideration

where treatment procedures for spina bifida result in disability of equivalent severity to the effects specified under Levels II and III.

The same organization has recommended that we use the results of cystometry with urodynamic testing, a method of directly measuring certain bladder functions, such as muscle tone and bladder capacity, when evaluating bladder impairment. The main value of urodynamic testing is to determine the most appropriate treatment and to evaluate the effectiveness of the treatment. Urodynamic testing does not address the individual's ability to engage in ordinary day-to-day activities, which is the basis of the evaluation criteria. Furthermore, requiring claimants to undergo these additional tests if they are not available from their private medical records would be unnecessarily intrusive and would not add to the evaluation process. Accordingly, we do not propose to incorporate urodynamic testing into the criteria.

The effects of bowel impairment may include difficulty emptying the bowel, fecal leakage, or both. We propose to evaluate the effects of bowel impairment based on the extent and frequency of fecal leakage and the degree to which the individual is able to control or modify the effects of impairment through bowel management techniques or other treatment (which would include suppositories, enemas, medication, biofeedback, behavior modification, diet, manual evacuation, etc.). We propose to determine the severity of fecal leakage based partly on whether or not the individual must wear absorbent materials on a daily basis. We propose that an individual who requires bowel management techniques or other treatment to control the effects of bowel impairment, but has only occasional or minimal fecal leakage, and does not need to wear absorbent materials every day, be evaluated at Level II. On the other hand, we propose that an individual who, despite the use of bowel management techniques or other treatment to control the effects of bowel impairment, has fecal leakage of such severity or frequency that he or she must wear absorbent materials every day, be evaluated at Level III. We also propose that an individual who regularly requires manual evacuation or digital stimulation to empty the bowel be evaluated at Level III, since these procedures may significantly interfere with ordinary day-to-day activities. We propose to substitute these criteria for the current requirement at Level III that there be "complete fecal incontinence." The proposed criteria would take into account the extent to which fecal leakage limits the individual's ability to engage in ordinary day-to-day activities, and would enable raters to consistently and objectively evaluate individuals who, although neither totally continent nor incontinent, have partial control of the effects of bowel or bladder impairment.

One organization has stated that, under VA's Schedule for Rating Disabilities, evaluations of disability of the bowel or bladder are based on the actual loss of function and control without regard to the use of auxiliary means and that it is self-evident that VA should use the same criteria for individuals with spina bifida to avoid rating inconsistencies. Section 1155 of title 38, United States Code, the statutory authority for VA's Schedule for Rating Disabilities, provides that evaluations of disabled veterans be based, as far as practicable, upon average impairment of earning capacity, and be at one of ten grades in 10 percent increments. Section 1805(b) of title 38, United States Code, on the other hand, authorizes VA to pay a monetary allowance to an eligible child with spina bifida at one of three levels based on the degree of disability as determined in accordance with a schedule for rating such disabilities "to be prescribed by the Secretary." By codifying the requirement elsewhere than 38 U.S.C. 1155, by requiring evaluations at three levels rather than 10, and by not directing that evaluations be based on average impairment of earning capacity or be expressed in percentages, we believe that Congress expected that we would not use the rating schedule for evaluating disabilities resulting from spina bifida.

At the urging of a number of service organizations, we considered using neurocognitive testing in lieu of standard IQ testing to measure the effects of intellectual impairment. However, we found no medical literature describing or assessing a standard method of neurocognitive screening to assess the effects of spina bifida. Major studies of disability due to spina bifida, such as "Disability in Children with Myelomeningocele" (J.H. Hagelsteen, J. Lagergren, H.R. Lie, F. Rasmussen, M.C. Borjeson, B. Lagerkvist, M. Muttilainen, K. Taudorf, and L. Kohler, *Acta Paediatrica Scandinavica*, 1989, 78 (5): 721–7), "Long-term Outcome in Surgically Treated Spina Bifida Cystica"; (Isao Date, M.D., Yasunori Yagyu, M.D., Shoji Asari, M.D., and Takshi Ohmoto, M.D., *Surg. Neurol.* 1993, 40:471–5), and "Open spina bifida: a complete cohort reviewed 25 years after closure" (Urology Department, Addenbrooke's Hospital, Cambridge, UK *Dev Med Child Neurol* 1995 Jan;37(1):19–29) used IQ test results to measure intellectual impairment. These documents did not mention neurocognitive testing. Furthermore, neurocognitive testing is a complex and time-consuming process, involves many testing variables, and is neither as widely available nor as standardized as IQ testing. Therefore, in our judgment, it is not feasible to use neurocognitive testing to measure the effects of intellectual impairment due to spina bifida.

A number of sources have suggested that verbal and performance IQ subscores are a better measure of impaired intellect than the overall IQ score, but offered no evidence to support that contention. The three studies referred to above relied on the overall IQ score rather than the subscores to measure intellectual impairment in individuals with spina bifida. We conducted a further search of the medical literature, but found no evidence that IQ subscores are a better measure of intellectual impairment than the overall IQ score. We therefore propose to continue using overall IQ scores to evaluate intellectual impairment.

Although the evaluation criteria are based on the disabling effects of the most common, indeed nearly universal, medical impairments that result from spina bifida, individuals may have other disabilities that result from spina bifida. Several organizations have expressed concern that individuals with conditions such as blindness or seizures resulting from spina bifida might be underpaid under the current criteria. We therefore propose to allow the Director of the Compensation and Pension Service to increase the payment level of an individual who would otherwise be paid at Level I or II and has one or more disabilities, such as blindness, uncontrolled seizures, or renal failure that result either from spina bifida or from treatment procedures for spina bifida, to the level that, in his or her judgment, best represents the extent to which the disabilities limit the individual's ability to engage in ordinary day-to-day activities, including activities outside the home. This provision would allow the Director to award an increase in the level of payment to Level II or Level III for any type of disability resulting from spina bifida or treatment procedures for spina bifida, if the effects of a disability are of equivalent severity to the effects specified under Level II or III. Therefore, should the results of neurocognitive testing or other special examinations,

for example, be submitted, they could be considered, along with all other medical information, in determining whether the level of payment should be increased.

Since only a very limited number of individuals are eligible for the monthly monetary allowance for spina bifida, reserving the authority to increase payments based on disabilities not addressed in the evaluation criteria to the Director of the Compensation and Pension Service is feasible. Further, this procedure will assure that the Compensation and Pension Service is aware of any conditions occurring frequently enough to warrant further revisions of the criteria.

Although the current regulation uses the terms "child" and "children," many of those entitled to this benefit are now adolescents or adults. Therefore, we propose to change the words "child" or "children" to "individual" or "individuals" throughout § 3.814. We also propose to define the term "individual" in § 3.814(c)(2). This definition will make it clear that this regulation applies to eligible individuals regardless of age.

We also propose to amend the regulations to provide that, when VA is required to reassess an individual's level of disability for purposes of the monetary allowance, VA will pay the individual at Level I in the absence of evidence adequate to support a higher level of disability or if the individual fails to report, "without good cause" for a scheduled examination, and to provide examples of good cause. This provision is similar to 38 CFR 3.655(a), "Failure to report for Department of Veterans Affairs examination," as applied to other VA claimants.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: November 18, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.814, the heading for the section and paragraphs (a), (c)(2), and (d) are revised to read as follows:

§ 3.814 Monetary allowance under 38 U.S.C. 1805 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran.

(a) VA will pay a monthly allowance based upon the level of disability determined under the provisions of paragraph (d) of this section to or for an individual who it has determined is suffering from spina bifida and whose biological father or mother is or was a Vietnam veteran. Receipt of this allowance will not affect the right of the individual or any other related individual to receive any other benefit to which he or she may be entitled under any law administered by VA. An individual suffering from spina bifida is entitled to only one monthly allowance under this section, even if the individual's biological father and mother are or were both Vietnam veterans.

* * * * *

(c) * * *

(2) *Individual.* For the purposes of this section, the term "individual" means a person, regardless of age or marital status, whose biological father or mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam era. Notwithstanding the provisions of § 3.204(a)(1), VA shall require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish in the judgment of the Secretary that an individual's biological father or mother is or was a Vietnam veteran.

(d) (1) Except as otherwise specified in this paragraph, VA will determine the level of payment as follows:

(i) *Level I.* The individual walks without braces or other external support as his or her primary means of mobility in the community, has no sensory or motor impairment of the upper extremities, has an IQ of 90 or higher, and is continent of urine and feces without the use of medication or other means to control incontinence.

(ii) *Level II.* Provided that none of the disabilities is severe enough to warrant payment at Level III, and the individual: walks with braces or other external support as his or her primary means of mobility in the community; or, has sensory or motor impairment of the upper extremities, but is able to grasp pen, feed self, and perform self care; or, has an IQ of at least 70 but less than 90; or, requires medication or other means to control the effects of urinary bladder impairment and is unable no more than two times per week to remain dry for at least three hours at a time during waking hours; or, requires bowel management techniques or other treatment to control the effects of bowel impairment but does not have fecal leakage severe or frequent enough to require daily wearing of absorbent materials.

(iii) *Level III.* The individual uses a wheelchair as his or her primary means of mobility in the community; or, has sensory or motor impairment of the upper extremities severe enough to prevent grasping a pen, feeding self, and performing self care; or, has an IQ of 69 or less; or, despite the use of medication or other means to control the effects of urinary bladder impairment, at least three times per week is unable to remain dry for three hours at a time during waking hours; or, despite bowel management techniques or other treatment to control the effects of bowel impairment, has fecal leakage severe or frequent enough to require daily wearing of absorbent materials; or regularly requires manual evacuation or digital stimulation to empty the bowel.

(2) If an individual who would otherwise be paid at Level I or II has one or more disabilities, such as blindness, uncontrolled seizures, or renal failure that result either from spina bifida, or from treatment procedures for spina bifida, the Director of the Compensation and Pension Service may increase the monthly payment to the level that, in his or her judgment, best represents the extent to which the disabilities resulting from spina bifida limit the individual's ability to engage in ordinary day-to-day activities, including activities outside the home. A Level II or Level III

payment will be awarded depending on whether the effects of a disability are of equivalent severity to the effects specified under Level II or Level III.

(3) VA may accept statements from private physicians, or examination reports from government or private institutions, for the purpose of rating spina bifida claims without further examination, provided the statements or reports are adequate for assessing the level of disability due to spina bifida under the provisions of paragraph (d)(1) of this section. In the absence of adequate medical information, VA will schedule an examination for the purpose of assessing the level of disability.

(4) VA will pay an individual eligible for a monetary allowance due to spina bifida at Level I unless or until it receives medical evidence supporting a higher payment. When required to reassess the level of disability under paragraph (d)(5) or (d)(6) of this section, VA will pay an individual eligible for this monetary allowance at Level I in the absence of evidence adequate to support a higher level of disability or if the individual fails to report, without good cause, for a scheduled examination. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant, death of an immediate family member, etc.

(5) VA will pay individuals under the age of one year at Level I unless a pediatric neurologist or a pediatric neurosurgeon certifies that, in his or her medical judgment, there is a neurological deficit that will prevent the individual from ambulating, grasping a pen, feeding himself or herself, performing self care, or from achieving urinary or fecal continence. If any of those deficits are present, VA will pay the individual at Level III. In either case, VA will reassess the level of disability when the individual reaches the age of one year.

(6) VA will reassess the level of payment whenever it receives medical evidence indicating that a change is warranted. For individuals between the ages of one and twenty-one, however, it must reassess the level of payment at least every five years.

(Authority: 38 U.S.C. 501, 1805)

[FR Doc. 00–6066 Filed 3–10–00; 8:45 am]
BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Delivery of Mail to a Commercial Mail Receiving Agency

AGENCY: Postal Service.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this proposal is to amend section D042.2.6(e) of the Domestic Mail Manual (DMM) to revise the requirements for delivery of an addressee's mail to a commercial mail receiving agency. The proposal provides an additional optional secondary address designation element that may be used in the delivery address of holders of private mailboxes.

DATES: Comments must be received on or before April 12, 2000.

ADDRESSES: Written comments should be mailed to Manager, Delivery, U.S. Postal Service, 475 L'Enfant Plaza SW Room 7142, Washington, DC 20260–2802. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Roy E. Gamble, (202) 268–3197.

SUPPLEMENTARY INFORMATION: On March 25, 1999, the Postal Service published a final rule in the **Federal Register** adopting revised regulations governing the operation of commercial mail receiving agencies (CMRAs) with an effective date of April 26, 1999 (64 FR 14385). One of the revised rules, Domestic Mail Manual (DMM) D042.2.6(e), required the use of "PMB" (private mailbox) in the complete mailing address of all CMRA customers. The Postal Service believes the required use of "PMB" in the CMRA customer's private mailbox address will provide CMRA mailbox holders' correspondents with the true identity of the mailing address of the mailbox holder. Under previous standards, many CMRA mailbox holders used addresses bearing secondary address indicators such as "Suite," "Apartment," or other designator indicating a physical presence at that street address. The Postal Service adopted the "PMB" designation to ensure that the public would be aware that the address is not a physical location and thereby discourage fraudulent or deceptive practices that might adversely affect senior citizens and other consumers, businesses, and even federal, state, and local governments.

This proposal to amend DMM D042.2.6(e) is an outgrowth of meetings the Postal Service conducted after publication of the revised rules with various groups representing the CMRA industry, small businesses, the self-employed, small and home office (SOHO) operators, and government organizations. Some of these participants asserted, as had commentors during the rulemaking, that the use of the "PMB" designation would have a negative effect on the businesses of CMRA mailbox holders. That is, they asserted that some consumers might be discouraged from doing business with CMRA mailbox holders due to perceptions that those businesses are somehow "unsavory." Although the Postal Service, as discussed in the March 25 rulemaking, is not convinced that this would happen, it nonetheless wishes to ensure that this unintended consequence does not occur. During the discussions referenced above, some of the participants proposed a modification that would allow private mailbox holders the alternative to use the "#" sign in lieu of "PMB" in their mailing addresses at a CMRA. Although the Postal Service believes that the rule adopted on March 25, 1999, best serves the consumer protection needs of the American public, it nevertheless wishes to balance this goal with the concerns of the small business community. The Postal Service believes that the proposal outlined herein balances these interests.

Summary of Proposed Change

Proposed DMM section D042.2.6(e) provides that the CMRA delivery address designation for customer's mail must contain specific address elements identifying it as the location to which a mailpiece is delivered. Unlike the current rule, the proposed rule would permit use of the "#" sign as an alternative to the "PMB" designation, the only authorized secondary designation that may be used in the delivery address under the rules published on March 25, 1999. As with that rule, the mailbox holder would not be permitted to use "Suite," "Apartment," or any other designator indicating a physical presence at the address. Instead, it would require the use of the designation "PMB" or the alternate "#" designation, along with the appropriate unique number assigned to the mailbox holder by the CMRA.

Current standards specify that a four-line format should be used for CMRA customer addresses. Domestic Mail Manual section D042.2.6(e) remains the preferred format. Nevertheless, CMRA customers will be permitted an option to use a three-line format, if the sender of the mailpiece is unable to provide the four-line format due to computer

software or storage limitations, with the exceptions discussed below. Examples of acceptable three-line format addresses are:

JOE DOE
10 MAIN ST PMB 234
HERNDON VA 22071–2716
or
JOE DOE
10 MAIN ST #234
HERNDON VA 22071–2716
or
JOE DOE
10 MAIN ST STE 11 PMB 234
HERNDON VA 22071–2716

The CMRA customer must not use the # sign in the three-line format when the physical address of the CMRA contains a secondary address element on the delivery address line; for example, "Rural Route Box Number," "Suite," "Floor," "Building," "Unit," "#," or other term. For example, the use of the # sign in a three-line format address of a CMRA customer is not permitted in the following addresses:

JOE DOE
10 MAIN ST STE 11 PMB 234
HERNDON VA 22071–2716
or
Joe Doe
RR 1 BOX 12 PMB 234
HERNDON VA 22071–2716

In this case, the following must be used:

JOE DOE
#234
10 MAIN ST STE 11
HERNDON VA 22071–2716
or
JOE DOE
#234
RR 1 BOX 12
HERNDON VA 22071–2716

Note: It is also impermissible to combine the secondary address element of the physical location of the CMRA address and the CMRA customer private mailbox number (*e.g.*, 10 MAIN ST STE 11–234). In CMRA physical addresses which contain a secondary address element on the delivery address line, the addition of the # sign and the private mailbox number of a CMRA customer on the delivery address line will likely cause operational problems. The problems are related to automation misreading the address, leading to returned or misdirected mail, service delays, and increased costs in processing and delivering the mail. Accordingly, where the CMRA address contains a secondary address element, the CMRA customer must not use the # sign in the address in the three-line format. The four-line format currently set forth in DMM section D042.2.6(e) must be used.

The public would be provided the means to know that an address bearing the "#" designation is located at a CMRA, although in some instances attainment of this knowledge would require a step in addition to reading the address on the mailpiece. An address bearing the "PMB" designation would always be located at a CMRA. However, an address bearing the "#" designation may or may not be at a CMRA; the Postal Service will maintain a toll-free number which will allow individuals to ascertain whether the "#" designation address is located at a CMRA. The Postal Service will also engage in an information campaign to educate the public on the "PMB" and "#" designations and the availability of the toll-free number. Under the rules published by the Postal Service on March 25, 1999, and subsequent extensions, mail addressed to private mailboxes was to include the "PMB" designation by April 26, 2000. Due to the time required for the public comment period and the issuance of the final rule for this proposal, the April 26, 2000, deadline is extended to August 26, 2000.

Although exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. of 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revision to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

For the reasons discussed above, the Postal Service proposes to adopt the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (39 CFR part 111):

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Section D042.2.0 of the Domestic Mail Manual (DMM) is amended by revising subsection D042.2.6 (e) to read as follows:

D DEPOSIT, COLLECTION, AND DELIVERY

D000 Basic Information

* * * * *

D040 Delivery of Mail

* * * * *

D042 Conditions of Delivery

* * * * *

2.0 DELIVERY TO ADDRESSEE'S AGENT

* * * * *

2.6 Delivery to CMRA

* * * * *

e. A CMRA must represent its delivery address designations for the intended addressees by the use of private mailbox (PMB) or the alternative (#) sign. The CMRA delivery address designations must specify the location to which a mailpiece is delivered. Mailpieces must bear a delivery address that contains the following elements, in this order:

Preferred Format

(Line 1) Intended addressee's name or other identification. Examples: JOE DOE or ABC CO.

(Line 2) PMB and number or the alternative # sign and number. Example: PMB 234 or #234.

(Line 3) Street number and name or post office box number or rural route designation and number. Examples: 10 MAIN ST or PO BOX 34 or RR 1 BOX 12.

(Line 4) City, state, and ZIP Code (5-digit or ZIP+4).

Example: HERNDON VA 22071–2716.

Examples of acceptable four-line format addresses are:

JOE DOE
PMB 234
RR 1 BOX 12
HERNDON VA 22071–2716
or
JOE DOE
#234
10 MAIN ST STE 11
HERNDON VA 22071–2716

Alternate Format

(Line 1) Intended addressee's name or other identification.

Examples: JOE DOE or ABC CO.

(Line 2) Street number and name or post office box number and PMB and number or the alternative # sign and number.

Examples: 10 MAIN ST PMB 234 or #234 or PO BOX 34 PMB 234 or #234.

(Line 3) City, state, and ZIP Code (5-digit or ZIP+4).

Example: HERNDON VA 22071–2716.

The CMRA customer must not use the # sign in the three-line format when the physical address of the CMRA contains a secondary address element on the delivery address line; for example, "Rural Route Box Number," "Suite," "Floor," "Building," Unit," "#," or other term. For example, the use of the

sign in a three-line format address of a CMRA customer is not permitted in the following addresses:

JOE DOE
10 MAIN ST STE 11 #234
HERNDON VA 22071–2716
or
Joe Doe
RR 12 BOX 512 #234
Herndon VA 22071–2716

In this case, the following must be used:

JOE DOE
10 MAIN ST STE 11 PMB 234
HERNDON VA 22071–2716
or
JOE DOE
#234
10 MAIN ST STE 11
HERNDON VA 22071–2716
or
JOE DOE
RR 12 Box 512 PMB 234
HERNDON VA 22071–2716
or
JOE DOE
#234
RR 12 Box 512
HERNDON VA 22071–2716

It is also impermissible to combine the secondary address element of the physical location of the CMRA address and the CMRA customer private mailbox number, e.g., 10 MAIN ST STE 11–234. In CMRA physical addresses which contain a secondary address element on the delivery address line, the addition of the # sign and the private mailbox number of a CMRA customer on the delivery address line will likely cause operational problems. The problems are related to automation misreading the address, leading to returned or misdirected mail, service delays, and increased costs in processing and delivering the mail. Accordingly, where the CMRA address contains a secondary address element, the CMRA customer must not use the # sign in the address in the three-line format. The CMRA must write the complete CMRA delivery address used to deliver mail to each individual addressee or firm on the Form 1583 (block 3). The Postal Service may return mail without a proper address to the sender endorsed "Undeliverable as Addressed, Missing PMB or # Sign."

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect this change will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–6050 Filed 3–10–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA44 & GA36–9948b; FRL–6547–3]

Approval and Promulgation of Revisions to the Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Georgia on February 11, 1998, and November 19, 1998. The February 11, 1998, revisions update references to the August 15, 1997, version of Georgia's "Procedures for Testing and Monitoring Sources of Air Pollutants" manual. The November 19, 1998, revisions adopt new Permit by Rule provisions for several, small source categories, including: certain types of fuel-burning equipment, on-site power generation, concrete mixing plants, hot mix asphalt plants, cotton ginning operations, coating and/or gluing operations, printing operations, non-reactive mixing operations, fiberglass molding and forming operations, and peanut/nut shelling operations. For these categories of sources that operate below the major source threshold, the rules may negate the need to file for a Part 70 Permit (also known as a "Title V Permit") or a synthetic minor permit. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before April 12, 2000.

ADDRESSES: All comments should be addressed to: Michele Notarianni, Air Planning Branch, Air, Pesticides, and Toxics Management Division, EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at 404/562–9031 (or by e-mail at: notarianni.michele@epa.gov).

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the Final Rules Section of this **Federal Register**.

Dated: February 14, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–5387 Filed 3–10–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–496; MM Docket No. 99–188; RM–9591]

Radio Broadcasting Services; Bruneau, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting proposing the allotment of FM Channel 273C1 to Bruneau, Idaho, as a first local aural transmission service, for failure to establish that locality is a *bona fide* community for allotment purposes. See 64 FR 30293 June 7, 1999. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–188, adopted February 23, 2000, and released March 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, D.C. 20036, (202) 857–3800.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–6055 Filed 3–10–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–495; MM Docket No. 99–187; RM–9590]

Radio Broadcasting Services; Summit City, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting proposing the allotment of FM Channel 221A to Summit City, California, as a first local aural transmission service, for failure to establish that locality is a *bona fide* community for allotment purposes. See 64 FR 30293, June 7, 1999. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–187, adopted February 23, 2000, and released March 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, D.C. 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–6053 Filed 3–10–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–481, MM Docket No. 00–37, RM–9749]

Radio Broadcasting Services; New Richmond, WI and Coon Rapids & Moose Lake, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by Smith Broadcasting Company, Inc. proposing the substitution of Channel 296C2 for Channel 296C3 at New Richmond, Wisconsin, reallotment of Channel 296C2 to Coon Rapids, Minnesota, and modification of the license for Station WIXK–FM to specify operation on Channel 296C2 at Coon Rapids. The coordinates for Channel 296C2 at Coon Rapids are 45–11–42 and 93–05–14. To accommodate the allotment at Coon Rapids, we shall propose the substitution of Channel 249A for Channel 296A at Moose Lake, Minnesota, and modification of the construction permit for Station KBFH to specify operation on Channel 249A. The coordinates for Channel 249A are 46–27–10 and 92–45–47. Canadian concurrence will be requested for the allotment at Moose Lake. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 296C2 at Coon Rapids.

DATES: Comments must be filed on or before April 24, 2000, and reply comments on or before May 9, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, Scott C. Cinnamon, Shook, Hardy & Bacon, 600 14th Street, N.W., Suite 800, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–37, adopted February 13, 2000, and released March 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Public Reference Center, 445 Twelfth Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–6054 Filed 3–10–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–99–6578]

RIN 2105–AC49

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of agenda for public meeting.

SUMMARY: The U.S. Department of Transportation (DOT) scheduled three public listening sessions on its notice of proposed rulemaking (NPRM) to revise the Department's drug and alcohol testing procedures, published in the **Federal Register** on December 9, 1999 (64 FR 69076). In the meeting notice, published in the **Federal Register** on January 18, 2000 (65 FR 2573), the Department included tentative agendas for the meetings to be held in Los Angeles, California, and Dallas, Texas. However, the Department did not include such an agenda for the meeting to be held in Washington DC. This notice provides the agenda for the Washington DC meeting, which will include a roundtable discussion on the

proposed public interest exclusion (PIE) provisions of the NPRM.

DATES AND ADDRESSES: The public meetings will be held on March 20 and 21, 2000, at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004; on March 28, 2000, at the Hilton Los Angeles Airport, 5711 West Century Boulevard, Los Angeles, CA 90045, telephone number (310) 410–4000, fax (310) 410–6177; and on March 30, 2000, at the Crowne Plaza, Dallas Market Center, 7050 Stemmons Freeway, Dallas, TX 75247, telephone number (214) 630–8500, fax (214) 630–0037.

FOR FURTHER INFORMATION CONTACT: For general meeting information and to register for one of the meetings, contact the DOT contractor, Marti Bludworth, Transportation Safety Institute (TSI), Special Programs Division, DTI–100, 4400 Will Rogers Parkway, Suite 205, Oklahoma City, OK 73108–2057, telephone number (800) 862–4832, extension 323, fax number (405) 946–4268, or e-mail marti__bludworth@tsi.jccbi.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of the meetings is to provide all segments of the transportation industry and the general public with an opportunity to make statements, which have not already been made previously, to the docket. These meetings would also give DOT the opportunity to ask questions and ensure that the public comments are clearly understood by the Department. It may also give the Department the opportunity to clarify issues related to comments that had already been submitted to the docket during the early days of the formal comment period. Questions by commenters and other attendees to the DOT will be permitted as time allows. Registration and meeting procedures were specified in the January 18, 2000, notice.

B. Agenda for the Washington, DC, Meeting

The meeting in Washington, DC will be held for a day and a half to provide ample opportunity for attendees to make comments and for DOT to have additional time, if needed, to ask follow up questions. This geographic location will also provide added opportunity for additional DOT staff and industry representatives from the Capital area to attend the meeting.

The following is a tentative agenda that may be modified as needed to accommodate the needs of commenters and to ensure adequate coverage of the subject matter. We call your attention particularly to the "Roundtable Discussion" on the second day of the meeting concerning the service agent accountability provisions of the proposed rules, known as the public interest exclusion (PIE) proposal. This proposal has generated considerable interest among interested parties, and we believe that it could be useful to schedule an open, interactive discussion among attendees about it. This discussion will be in addition to the opportunity for speakers to address this proposal in their regular statements. As time permits, the Department intends to hold similar discussions as part of the Los Angeles and Dallas meetings as well.

Agenda—DOT Public Meeting, Ronald Reagan and International Trade Center, Atrium Ballroom A

March 20–21, 2000 Washington, DC

Monday, March 20, 2000

09:00–09:15 Introduction and Administrative Items
09:15–09:55 Overview of the Notice of Proposed Rulemaking
10:00–11:10 Collection Issues
11:15–11:30 Laboratory Issues
11:30–12:00 Q&A and Public Comments
01:00–01:50 Labor/Employer/Employee Issues
02:00–03:45 Medical Review Officer Issues
03:50–04:10 Substance Abuse Professional Issues
04:10–05:00 Questions and Answers and Additional Public Comments

Tuesday, March 21, 2000

09:00–10:10 Service Agents/Public Interest Exclusion
10:30–01:30 Public Interest Exclusion Round Table Discussion

Issued this 7th day of March 2000, at Washington, DC.

Mary Bernstein,

Director, Office of Drug and Alcohol Policy and Compliance, Department of Transportation.

[FR Doc. 00–6190 Filed 3–9–00; 12:09 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF95

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Steller's Eider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Alaska-breeding population of the Steller's eider (*Polysticta stelleri*), a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). Proposed designation of critical habitat for the Steller's eider includes areas on the North Slope of Alaska, the Yukon-Kuskokwim Delta (Y–K Delta), and seven marine areas in southwest and south coastal Alaska. These areas total 65,858 square kilometers (km^2) (25,428 square miles (mi^2)). The marine units include 14,458 kilometers (km) (8,984 mi) of coastline.

If this proposal is made final, section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, permit, or carry out are not likely to result in the "destruction or adverse modification" of critical habitat. "Destruction or adverse modification" of critical habitat is defined as an alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Therefore, designation of critical habitat does not restrict human activity or development unless the impact to habitat is so significant that it impairs the survival or recovery potential of the listed taxon as a whole. Furthermore, the regulatory impact of critical habitat designation does not extend beyond those activities funded, permitted, or conducted by Federal agencies. Exclusively State or private actions are not affected.

Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address comments and other information received during the comment period.

DATES: The public comment period for this proposal closes on May 12, 2000. Requests for public hearings must be

received in writing at the address below by April 27, 2000. We will publish the dates and locations of any public hearings in the **Federal Register** and appropriate local newspapers at least 15 days prior to the first hearing.

ADDRESSES: You may inspect the complete file for this rule at the U.S. Fish and Wildlife Service, Northern Alaska Ecological Services, 101 12th Ave., Rm 110, Fairbanks, AK 99701, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Swem, Endangered Species Branch, Northern Alaska Ecological Services, at the above address (telephone 907/456–0203; facsimile 907/456–0208).

SUPPLEMENTARY INFORMATION:

Background

Description

The Steller's eider was first described by Peter Simon Pallas in 1769 (Bent 1925), and given the scientific name *Anas stelleri* Pallas. After seven name changes, it was grouped with other eiders as *Somateria stelleri*. Now it is considered distinct from the other eiders, and is the only species in the genus *Polysticta* (American Ornithologists' Union 1983). This genus is grouped with the other seaducks under the Tribe Mergini (eiders, scoters, mergansers, and allies), the Subfamily Anatinae (ducks), and the Family Anatidae (swans, geese, and ducks).

It is the smallest of four eider species; both sexes are approximately 45 centimeters (17–18 inches) long (Bellrose 1980). The plumage of the breeding adult male is white, black, and chestnut. The head is white with black eye patches and light green tinging on the forehead, lores (space between bill and eye), and below the eye. The chin and throat are black, separated from a broad black collar around the lower neck by a white ring. The shoulders and back are also black and each tertial (inner wing) feather is bicolored longitudinally, with the inner half being white and the outer half being bluish-black, giving the back a striped appearance when the wing is folded. The speculum (patch of colored feathers on the wing) is dark blue and the breast and belly are chestnut shading to black posteriorly. A black spot is present on each side of the breast. The flanks, rump, and under-tail coverts (feathers) are black, and the wedge-shaped tail is dark brown. Males in eclipse plumage (dull plumage assumed prior to molt) during late summer and fall are entirely mottled brown except the wings are like the adult breeding male's and the upper wing-coverts are white. Females and juveniles year-round are mottled brown, and the female adult has a blue speculum bordered in white.

Geographic Range

Three breeding populations of Steller's eiders are recognized, two in Arctic Russia and one in Alaska. The majority of Steller's eiders breed in Russia and are identified by separate breeding and wintering distributions (Nygard et al. 1995). The Russian Atlantic population nests west of the Khatanga River and winters in the Barents and Baltic seas. The Russian Pacific population nests east from the mouth of the Khatanga River and winters in the southern Bering Sea and northern Pacific Ocean, where it presumably intermixes with the Alaska-breeding population. Neither Russia-breeding population is listed as threatened or endangered; only Steller's eiders that nest in Alaska are listed as threatened under the Act.

This proposal for critical habitat addresses the Alaska-breeding population of Steller's eiders, the only population listed under the Act, but the Alaska-breeding population is visually indistinguishable from the unlisted Russian Pacific population. During the autumn molt, winter, and spring migration staging periods, the listed Alaska-breeding population intermixes with the more numerous and unlisted Russia-breeding population in marine waters of southwest Alaska. During these times, it is unknown whether the Alaska-breeding population concentrates in distinct areas or disperses throughout the species' marine range.

The exact historical breeding range of the Alaska-breeding population of Steller's eiders is not clear. The historical range may have extended discontinuously from the eastern Aleutian Islands to the western and northern Alaska coasts, possibly as far east as the Canadian border. In more recent times, breeding occurred in two general areas, the Arctic Coastal Plain on the North Slope, and western Alaska, primarily on the Y–K Delta. Today, Steller's eiders breed on the western Arctic Coastal Plain in northern Alaska, from approximately Point Lay east to Prudhoe Bay, and in extremely low numbers on the Y–K Delta.

On the North Slope, anecdotal historical records indicate that the species occurred from Wainwright east, nearly to the Alaska-Canada border (Anderson 1913; Brooks 1915). There are few historical records from the eastern North Slope, however, so it is unknown whether the species was abundant there or whether sightings were uncommon. Today, the species predominantly breeds on the western North Slope, in the northern half of the National Petroleum Reserve—Alaska (NPR–A). The majority of sightings in the last decade have occurred east of the mouth of the Utukok River, west of the Colville River, and within 90 km (56 mi) of the coast. Within this extensive area, Steller's eiders generally breed at very low densities.

The Steller's eider was considered a locally "common" breeder in the intertidal, central Y–K Delta by naturalists early in the 1900s (Murie 1924; Conover 1926; Gillham 1941; Brandt 1943), but the bird was reported to breed in only a few locations. By the 1960s or 70s, the species had become extremely rare on the Y–K Delta, and only six nests have been found in the 1990s (Flint and Herzog 1999). Given the paucity of early recorded observations, only subjective estimates can be made of the Steller's eider's historical abundance or distribution on the Y–K Delta.

A few Steller's eiders were reportedly found nesting in other locations in western Alaska, including the Aleutian Islands in the 1870s and 80s (Gabrielson and Lincoln 1959), Alaska Peninsula in the 1880s or 90s (Murie and Scheffer 1959), Seward Peninsula in the 1870s (Portenko 1989), and on Saint Lawrence Island as recently as the 1950s (Fay and Cade 1959). Nesting Steller's eiders are no longer found at these western Alaska sites.

After breeding, Steller's eiders move to the Alaska Peninsula where they undergo a flightless molt for about 3 weeks. Most birds molt in four areas—Izembek Lagoon (Metzner 1993; Dau 1999a; Laubhan and Metzner 1999), Nelson Lagoon, Herendeen Bay, and Port Moller (Gill *et al.* 1981; Petersen 1981; Dau 1999a). Additionally, Steller's eiders are known or thought to molt in a number of other locations along the northwestern Alaska coast, around islands in the Bering Sea, and along the coast of Bristol Bay (Swarth 1934; Dick and Dick 1971; Petersen and Sigman 1977; Wilk *et al.* 1986; Dau 1987; Petersen *et al.* 1991; Day *et al.* 1995; Dau 1999a). The breeding derivation of molting Steller's eiders in the Russian Far-East, primarily Kamchatka, is undetermined.

Recoveries of banded Steller's eiders suggest that the Alaska-breeding population of Steller's eiders intermixes with Russian Pacific-breeders in southwest Alaska during molt. Steller's eiders banded during molt at Izembek and Nelson lagoons have been found during the breeding season near Barrow (Jones 1965; Service, U.S. Geological

Survey, and North Slope Borough, unpubl. data) as well as in a number of locations in Russia (Jones 1965). However, it is unknown if Alaska-breeding Steller's eiders molt in locations other than Izembek and Nelson lagoons.

In general, wintering Steller's eiders occupy shallow, near-shore marine waters in much of southwest and south coastal Alaska. They are found around islands and along the coast of the Bering Sea and north Pacific Ocean from the Aleutian Islands, along the Alaska Peninsula and Kodiak Archipelago, east to lower Cook Inlet. Along open coastline, Steller's eiders usually remain within about 400 meters (m) (400 yards (yd)) of shore normally in water less than 10 m (30 feet (ft)) deep (C. Dau, Service, pers. comm. 1999) but can be found well offshore in shallow bays and lagoons or near reefs (C. Dau, pers. comm. 1999; D. Zwiefelhofer, Service, pers. comm. 1999). An unknown number of Steller's eiders winter along the Russian and Japanese coasts. They have been reported from the Anadyr Gulf (Konyukhov 1990), Komandor (Commander) and Kuril islands in Russia (Kistchinski 1973; Palmer 1976), and near Hokkaido Island in northern Japan (Brazil 1991).

Prior to spring migration, thousands to tens of thousands of Steller's eiders stage at a series of locations along the north side of the Alaska Peninsula, including several of the areas used during molt and winter such as Port Heiden, Port Moller, Nelson Lagoon, and Izembek Lagoon (Larned *et al.* 1994; Larned 1998). From there, they cross Bristol Bay, and it is thought that virtually the entire Alaska-wintering adult population spends days or weeks feeding and resting in northern Kuskokwim Bay and in smaller bays along its perimeter (W. Larned, Service, pers. comm. 1999). The number seen there varies among years, presumably because lingering sea ice may slow northward migration in some years. An estimated 42,000 have concentrated in early May in Kuskokwim Bay when ice has delayed northward migration (Larned *et al.* 1994). Steller's eiders also concentrate along the southwest coast of the Y–K Delta and southern coast of Nunivak Island during spring migration (Larned *et al.* 1994; R. King, Service, unpublished data).

Steller's eiders move north through the Bering Strait between mid-May and early June (Bailey 1943; Kessel 1989). Subadults may remain in wintering areas or along the migration route during the summer breeding season, as they have been noted in Nelson Lagoon in July (M. Petersen, U.S. Geological Survey, pers. comm. 1999), around Nunivak Island from July to October (B. McCaffery, Service, pers. comm. 1999) and offshore and along the lagoons of St. Lawrence Island in summer (Fay 1961). Steller's eiders have been seen in lagoons along the northwest coast of Alaska in late July, and these also may be subadults (Johnson *et al.* 1992; Day *et al.* 1995).

Fall migration is protracted, with Steller's eiders moving south through the Bering Strait from late July through October (Kessel 1989), depending on age and sex of individuals and whether migration takes place before or after wing molt (Jones 1965). Fall migration routes are poorly understood but groups have been seen passing near shore at Nunivak Island (Dau 1987) and Cape Romanzof (McCaffery and Harwood 1997).

Population Status

Determining population trends for Steller's eiders is difficult; however, the Steller's eider's breeding range in Alaska appears to have contracted substantially, with the species disappearing from much of its historical range in western Alaska (Kertell 1991) and possibly a portion of its range on the North Slope. In areas where the species still occurs in Alaska, the frequency of occurrence (the proportion of years in which the species is present) and the frequency of breeding (the proportion of years in which the species attempts to nest) have both apparently declined in recent decades (Quakenbush *et al.* in prep.).

We do not know whether the species' breeding population on the North Slope is currently declining, stable, or improving. Although Steller's eiders are counted there during extensive aerial waterfowl and eider surveys, few are seen in most years because the species occurs at very low density and the surveys sample only a small proportion of the suitable breeding habitat. Based on observations at Barrow, we have found that breeding population size and breeding effort vary considerably among years, therefore, detecting statistically significant population trends or precisely estimating population size is difficult.

Despite the difficulty in detecting statistically significant trends with North Slope aerial survey data, these data can be used to derive an estimate of breeding population size. Several dozen Steller's eiders are usually detected during aerial breeding-pair waterfowl surveys on the North Slope each year (Service unpublished data). These surveys sample 2–3 percent of the suitable waterfowl breeding habitat annually. When extrapolated to the entire study area, the number of sightings suggests that hundreds or low thousands (point estimates range from 534 to 2,543 in 1989–1998) of Steller's eiders would be detected if the entire region were surveyed each year. Actual population size is probably higher. Based on these observations, it seems reasonable to estimate that hundreds or thousands of Steller's eiders occur on the North Slope. Similar aerial surveys are conducted on the Y–K Delta, but no Steller's eiders were detected using this technique so population size and trends cannot be estimated; however, it is obvious that a drastic reduction in the species' abundance has occurred (Kertell 1991).

Previous Federal Action

In December 1990, James G. King of Juneau, Alaska, petitioned us to list the Steller's eider under the Act. In May 1992, we determined that listing was warranted but precluded by higher listing priorities elsewhere. In 1993, a status review of the species concluded that listing of the Alaska-breeding population as threatened was warranted, although the available information did not support listing the species worldwide (57 FR 19852). A proposed rule to list the Alaska-breeding population of Steller's eiders as threatened was published in the **Federal Register** on July 14, 1994 (59 FR 35896). Appropriate Federal and State agencies; borough, city, and village governments; scientific and environmental organizations; and other interested parties were contacted and encouraged to comment. Shortly thereafter, a new Service policy (59 FR 34270) was implemented requiring that listing proposals be reviewed by at least three independent specialists. The comment period was reopened in June 1995 to seek peer review, and appropriate parties were again contacted and encouraged to comment. A final determination on whether listing was warranted was further delayed by a national moratorium on listing (Public Law 104–6) implemented in April 1995, which prevented final determination on listing actions for the remainder of the fiscal year; that moratorium was later extended until April 1996.

We received comments on listing Steller's eiders from a total of nine parties during the two comment periods. Of the comments, four supported listing, four were neutral, and one, the Alaska Department of Fish and Game, opposed listing. We also received peer review from five recognized experts on eider or seaduck population monitoring, modeling, or management;

all five supported listing the Alaska-breeding population of Steller's eiders as threatened or endangered. Two environmental organizations (The Wilderness Society and Greenpeace) recommended designating critical habitat in current and historical breeding habitat, wintering habitat along the Alaska Peninsula, and other marine areas. The North Slope Borough supported listing but, although not specifically mentioning "critical habitat," recommended against additional special protection near the village of Barrow. Of the five independent experts who provided peer review, four commented on critical habitat designation. One suggested studies of breeding ecology to identify critical habitat requirements, one recommended designating critical habitat near Barrow, one suggested "absolute protection" for Steller's eiders nesting anywhere in Alaska, and one mentioned that protecting "coastal molting and wintering range" was perhaps more important than breeding habitat.

On June 11, 1997, we listed the Alaska breeding population of Steller's eiders (62 FR 31748) as threatened. That decision included a determination that designation of critical habitat was not prudent at that time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent if designation would not be beneficial to the species. Section 7(a)(2) of the Act requires Federal agencies to ensure, in consultation with the Service, that activities they fund, authorize, or carry out are not likely to jeopardize the continued existence of listed species. At the time of our determination, we stated that critical habitat designation would provide no additional benefit to Steller's eiders because protection of the species' habitat would be ensured through section 7 consultations, the recovery process, and, as appropriate, through the section 10 habitat conservation planning process.

On March 10, 1999, the Southwest Center for Biological Diversity, Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in Federal District Court in the Northern District of California against the Secretary of the Department of the Interior for failure to designate critical habitat for five species in California and two in Alaska. These species include the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helmintholglypta walkeriana*), the Arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider. Subsequently, the Federal Government entered into a settlement agreement with the plaintiffs, by which the Service agreed to readdress the prudency of designating critical habitat for Steller's eiders by March 1, 2000, and propose critical habitat if prudent. If, upon consideration of all available information and comments, we determine that designating critical habitat is prudent, we have agreed to send a final rule to the **Federal Register** by January 5, 2001. If we determine that designation of critical habitat is not prudent, we have agreed to send a notice of this finding to the **Federal Register** by August 1, 2000.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions and the availability of some new information concerning the species' habitat needs, we recognized the value in reexamining the question of whether critical habitat for Steller's eider would be prudent. This proposal is the product of this reexamination and reflects our best interpretation of the recent judicial opinions on critical habitat designation. If additional information becomes available on the biology and distribution of the species, we may reevaluate our critical habitat designation, including proposing additional critical habitat or proposing deletion or boundary refinement of existing critical habitat.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by the species on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" is defined in section 3(3) of the Act as the use of all methods and procedures necessary to bring endangered or threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude any area from critical habitat designation if the benefits of such exclusion outweigh the benefits of including such area as part of the critical habitat, provided the exclusion will not result in the extinction of the species (section 4(b)(2) of the Act). Critical habitat is not to be designated in foreign countries or outside the jurisdiction of the United States (50 CFR 424.12(h)).

The designation of critical habitat does not, in and of itself, restrict human activities or development, nor does it mandate specific management or recovery actions. Critical habitat designation contributes to species conservation primarily by identifying important habitat for the species and by describing the habitat features that are thought to be essential for the species. This action can alert public and private entities to the area's importance and result in cooperative strategies for conserving the habitat and its primary constituent elements. The only regulatory impact of critical habitat designation is through the provisions of section 7 of the Act, and these provisions apply only to actions with a Federal "nexus" (i.e., actions authorized, funded, or conducted by any Federal agency) and do not affect exclusively State or private activities on non-Federal land.

Section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or conduct do not jeopardize the continued existence of listed species. Activities that jeopardize listed species are defined as actions that "directly or indirectly, reduce appreciably the likelihood of both the survival and recovery of a listed species" (50 CFR 402.02). Thus, Federal agencies cannot jeopardize listed species through their actions, regardless of whether critical habitat has been designated for the species. Where critical habitat is designated, section 7 also requires Federal agencies to ensure that activities they authorize, fund, or conduct do not result in the destruction or adverse modification of designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery of the species" (50 CFR 402.02). Common to the definitions of both "jeopardy" and "destruction or

adverse modification of critical habitat" is the concept that the likelihood of both survival and recovery of the species are appreciably reduced by the action. Because of this common threshold, actions that are likely to destroy or adversely modify critical habitat are also likely to jeopardize the species. Therefore, the protection provided by critical habitat designation generally duplicates that provided under the section 7 jeopardy provision.

Clearly identifying the areas and habitat features important to listed species assists Federal agencies and potential permit applicants in identifying where and under what circumstances section 7 consultations are required. More importantly, drawing attention to the species' plight and habitat requirements may increase the consideration given to the species during project planning and land management decisions.

Prudency Finding

In the absence of a finding that critical habitat would increase threats to a species, if critical habitat designation would provide any benefits to the species, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. An example could include occupied habitat that may become unoccupied in the future. Raising the profile of the lands and waters within our proposed critical habitat boundary may also be beneficial to the species because it may increase the degree to which Federal agencies fulfill their responsibilities under section 7(a)(1) of the Act (to use their authorities to carry out programs for the conservation of listed species). Designating critical habitat may also provide some educational or informational benefits.

We do not have specific evidence of taking, vandalism, collection, or trade in this species that might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity. Therefore, we propose that designating critical habitat is prudent for the Steller's eider.

After reviewing the best scientific and commercial data available, we propose to withdraw the previous finding that designation of critical habitat for the Steller's eider is not prudent, and we propose to designate critical habitat on the North Slope of Alaska, the Y–K Delta, and seven marine areas in southwest and southcoastal Alaska.

Methods

Critical habitat is defined as (1) the specific areas within the geographical area currently occupied by the species on which are found those physical and biological features that are essential for the conservation of the species and that may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon determination by the Secretary that such areas are essential for the conservation of the species (50 CFR 424.02(d)). All the geographic areas we propose to designate as critical habitat are within what we believe to be the current range of the species based on available information. To determine which of the occupied areas meet this definition, we reviewed all available information on the distribution, diet, and habitat associations of, and threats to, Steller's eiders. Information reviewed included published and unpublished accounts from early historical investigations and more recent aerial, boat, and ground-based surveys and studies.

Two factors complicate evaluating which areas and habitat features are essential for the conservation of the Alaska-breeding population of the Steller's eider. First, information is inadequate on the distribution of the listed, Alaska-breeding population during the nonbreeding season. The Alaska-breeding population, which likely numbers in the hundreds or low thousands, is thought to molt and winter in the same broad region as the much more numerous Russian Pacific population. If the Alaska-breeding population is distributed proportionately across the species' extensive nonbreeding range, the listed population is greatly diluted in any given location by members of the nonlisted breeding population. In contrast, if the Alaska-breeding population concentrates in specific portions of the species' molting and wintering ranges, the habitat within those geographic areas would be more disproportionately essential for recovery of the listed population. Currently, information to determine which scenario most closely applies is insufficient.

The second factor complicating critical habitat designation for the Steller's eider is that recovery, which is the objective of endangered species conservation, has yet to be defined for Alaska-breeding Steller's eiders. The Steller's Eider Recovery Team is currently working to develop a recovery plan for the species, but has not yet set numerical criteria for recovery, either in terms of population size or distribution. In the absence of clearly defined recovery objectives or criteria, determining which physical and biological features are essential for recovery is difficult. After considering these complicating factors, we believe it is essential to the recovery of the species to maintain the existing population on the North Slope and allow for recovery of the greatly depressed population on the Y–K Delta. Therefore, we believe that the following three components are essential for the conservation of the Alaska-breeding population of Steller's eiders:

(1) The North Slope breeding subpopulation and its habitat must be maintained sufficiently to sustain healthy reproduction and allow for potential population growth;

(2) The Y–K Delta subpopulation must be increased in abundance to decrease the Alaska-breeding population's vulnerability to extirpation; and

(3) Molting, wintering, and spring staging habitat in the marine environment must be maintained to ensure adequate survival during the nonbreeding season.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining what areas to propose as critical habitat, we consider those physical and biological habitat features that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, the following:

Space for individual and population growth, and for normal behavior;

Food, water, air, light, minerals, or other nutritional or physiological requirements;

Cover or shelter;

Sites for breeding, reproduction, or rearing offspring; and, generally

Habitats that are protected from disturbance or are representative of the

historical geographical and ecological distributions of the species.

The primary constituent elements for Steller's eiders vary by season, depending on the habitat occupied. As a result, the primary constituent elements for Steller's eiders are different in proposed terrestrial and marine units; elaboration is provided in the Proposed Critical Habitat section, below.

Proposed Critical Habitat

After reviewing the best scientific and commercial data available, we propose to designate critical habitat for the Alaska-breeding population of the Steller's eider, including breeding habitat on the North Slope and Y–K Delta, and seven marine units in southwest and southern coastal Alaska where the birds molt, winter, or stage during spring migration. The approximate area of proposed critical habitat by land ownership is shown in Table 1. Lands proposed as critical habitat are under private, State, Native, and Federal ownership. Estimates reflect the total area within critical habitat unit boundaries, without regard to the presence of primary constituent elements. The area actually proposed as critical habitat is therefore less than that indicated in Table 1. Given the large area being proposed, estimates made for the proposal could differ significantly from estimates in any final designation due to changes in the information available and improved calculation methods.

TABLE 1.—ESTIMATED HECTARES OF LAND AND MARINE WATERS PROPOSED AS CRITICAL HABITAT, WHICH ARE OCCUPIED BY THE STELLER'S EIDER, SUMMARIZED BY PRIVATE, STATE, FEDERAL AND NATIVE GOVERNMENT OWNERSHIP

Location	Federal		State		Native		Other Private		Total
	Hectares	%	Hectares	%	Hectares	%	Hectares	%	
North Slope (land)	3,652,400	89	132,300	3	303,700	7	.....	.....	4,088,400
Y–K Delta (land)	202,500	65	.....	.....	108,600	35	300	<1	311,400
Nunivak Island (marine)	20,500	100	.....	.....	.....	.....	.....	.....	20,500
Kuskokwim Bay (marine)	.....	.....	1,285,200	100	.....	.....	.....	.....	1,285,200
N. Side Alaska Peninsula (marine)	.....	.....	200,700	100	.....	.....	.....	.....	200,700
Eastern Aleutians (marine)	4,500	5	84,600	95	.....	.....	.....	.....	89,100
S. Side Alaska Peninsula (marine)	4,800	1	337,100	99	.....	.....	.....	.....	341,900
Kachemak Bay/Ninilchik (marine)	.....	.....	114,200	100	.....	.....	.....	.....	114,200
Kodiak (marine)	27,900	21	106,500	79	.....	.....	.....	.....	134,400
Total	3,912,600	59	2.260,600	34	412,300	6	300	<1	6,585,800

Unit 1: North Slope Nesting Unit

The historical distribution of Steller's eiders on Alaska's North Slope encompasses a broad area, from the Chukchi Sea coast to the Canadian border. The North Slope comprises two major ecological regions—the Arctic Coastal Plain, along the northern edge of the North Slope, and the Arctic Foothills, which form the transition between the coastal plain and the mountains of the Brooks Range to the south. The coastal plain is poorly drained and treeless, and underlain by thick permafrost. Lakes and ponds cover 20–50 percent of the land surface. Another 20 percent is classified as wet or flooded tundra, categories in which water cover varies from 10–50 percent (Ducks Unlimited 1998). These abundant shallow water habitats and their associated aquatic invertebrate fauna are important features of Steller's eider nesting habitat. Aquatic emergent vegetation (*Carex aquatilus* or *Arctophila fulva*) is of particular importance for feeding and escape cover, and comprises approximately 5 percent of the Arctic Coastal Plain (Ducks Unlimited 1998). Relative to the coastal plain, the Arctic Foothills zone is characterized by rolling hills and plateaus, better defined drainage patterns, and fewer lakes and ponds (Gallant *et al.* 1995). Steller's eiders are rare or absent from the foothills as a breeding species. Comparison of recent and historical data (late 1800s on) suggests that this species may be withdrawing from the eastern portion of the Arctic Coastal Plain, although it may always have been more common to the west (Quakenbush *et al.* in prep.).

In the North Slope nesting unit the primary constituent elements for Steller's eiders are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, roosting, sheltering, and dispersal. The primary constituent elements include: small ponds and shallow water habitats (particularly those with emergent vegetation), moist tundra within 100 m (326 ft) of permanent surface waters including lakes, ponds, and pools, the associated aquatic invertebrate fauna, and adjacent nesting habitats. During the nesting season, small ponds with emergent vegetation provide for foraging and brood-rearing, the aquatic invertebrate prey upon which Steller's eiders depend, and adjacent moist tundra for nest sites. On the breeding grounds in northern Alaska, Steller's eiders feed primarily by dabbling in shallow ponds (Quakenbush *et al.* 1995). Both adult and juvenile Steller's eiders on the breeding grounds forage mostly on aquatic insect larvae and freshwater crustaceans, including (but probably not limited to) the following taxa: Midges (Chironomidae), craneflies (Tipulidae), caddisflies (Trichoptera), water fleas (Amphipoda), isopods (Isopoda), fairy shrimp (Anostraca), and tadpole shrimp (Notostraca) (Dement'ev and Gladkov 1967; Portenko 1989; Quakenbush *et al.* 1995; M. Myres, *in litt.* 1999).

Steller's eiders generally nest on slightly elevated areas near ponds (Murie 1924; Brandt 1943; Bee 1958; Cramp *et al.* 1977). In the Barrow area, most nests occur on the rims of low-centered polygons, mostly within partially drained lake-basins that contain a mosaic of shallow ponds with emergent water sedges (*C. aquatilis*) and pendant grasses (*A. fulva*) (Service, unpublished data). Most are within 100 m (326 ft) of permanent water (Service, unpublished data). Steller's eiders rear broods in the same habitats used for nesting (Solovieva 1997; Service, unpublished data), usually within 650 m (2,100 ft) of their nest sites. Near Barrow, monitored broods were found using waterbodies with emergent *A. fulva* 80 percent of the time, ponds with emergent *C. aquatilis* 15 percent of the time, and dry tundra between ponds the remaining 5 percent of the time (Service, unpublished data). Broods used *A. fulva* as escape cover from

predators and other disturbances. Broods move to lakes or marine habitats in early September, after the smaller tundra ponds freeze (Service, unpublished data; R.S. Suydam, unpublished data).

The best unbiased representation of Steller's eider's breeding distribution across the North Slope is provided by observations obtained from two broad-scale aerial surveys conducted annually by the Service. One survey is designed to determine numbers and distribution of waterfowl in general and has been conducted in late June/early July each year since 1989. The other survey specifically targets numbers and distribution of spectacled eiders and has been conducted in mid-June each year since 1992. The two surveys differ in area sampled but, in combination, include the best waterfowl breeding habitat over 63,210 km^2 (24,400 mi^2), from the Chukchi Sea coast to the U.S. and Canada border. Only 136 records of Steller's eiders have been obtained over the 11-year survey record (excluding observations of lone females, which are generally not included in aerial waterfowl survey data, and observations made off systematic transects). The low number of records reflects—(1) the scarcity of the species; (2) the low intensity of the surveys, neither of which cover more than 4 percent of the area in any given year; and (3) the presumably large (but unknown) fraction of the birds actually present at the time of the survey but not detected from the air. The aerial survey results show that Steller's eiders currently occur across the western Arctic Coastal Plain, with the vast majority occurring in the northern NPR–A. Within the surveyed area, there is little evidence that density is related to distance from the coast. Aerial survey observations show, however, that a notable concentration occurs within 10 mi of the village of Barrow. Ground surveys conducted in June 1999 over 180 km^2 (69.5 mi^2) surrounding Barrow located approximately 250 Steller's eiders representing 125 to 134 pairs (some Steller's eiders spotted were not in pairs). Although intensive ground surveys have been conducted in a few other areas on the North Slope, the concentrations seen near Barrow have not been found elsewhere.

The proposed North Slope unit extends across the North Slope of Alaska, from the mouth of the Ututok River on the Chukchi Sea coast, to the Colville River delta on the Beaufort Sea coast, encompassing approximately 96 percent of the aerial survey observations (both in terms of locations and numbers of individuals). The boundaries of the proposed unit were based on the distribution of aerial survey observations, but also the distribution of suitable wetland habitat. All townships containing aerial survey observations were included in the proposed unit, with the exception of observations considered outliers, which are explained below. Intervening townships were also included, even if there were no associated aerial survey observations, provided that they contained a similar density of lakes and wetlands, as indicated on USGS 1:250,000 scale maps. For some of those townships, Steller's eider observations exist from other data sources (*e.g.*, Service, unpublished data; Quakenbush *et al.* in prep.). In any case, the resolution of the data is not sufficient to rule out the existence of undetected locations of concentrated use by nesting eiders, which in aggregate could represent a significant portion of the population. Consistent with the distribution of wetlands noted above, the proposed unit is contained almost entirely within the Arctic Coastal Plain ecoregion or the transition zone between the Arctic Coastal Plain and Arctic Foothills ecoregions, extending into the Foothills zone only at locations where there were actual observations (Gallant *et al.* 1995).

Two records south of Point Lay near the Chukchi Sea coast and three records east of the Colville River were considered outliers because they were disjunct from the other observations. Although Steller's eiders historically occurred east of the Colville River (Quakenbush *et al.* in prep.) and still may be observed occasionally in this region (D. Troy, Troy Ecological Research Associates, *in litt.* 1999), this area currently is peripheral for nesting. There is only one breeding record for Steller's eiders in the Prudhoe Bay area since 1970, despite the most intense ornithological scrutiny of any portion of northern Alaska (D. Troy, pers. comm. 1999; Hohenberger *et al.* 1994; Quakenbush *et al.* in prep.). The decision to exclude likely areas of former occupation east of the Colville River is based on our understanding of current distribution and the assumption that the current breeding range is adequate to support recovery.

The proposed North Slope nesting unit encompasses approximately 40,884 km^2 (15,785 mi^2), 89 percent of which lies within the NPR–A, managed by the Bureau of Land Management. Other major landowners include Native Village and Regional Corporations and the State of Alaska. Excluding NPR–A, minor portions of the area are managed by Federal agencies (including U.S. Department of Defense, Service, and the Bureau of Land Management). Excluding Native Corporations, very little land is owned privately.

Nearly the entire listed population currently nests within the proposed boundaries of the proposed North Slope Nesting Unit, thus the survival and recovery of the species is dependent on the habitat within this area. We do not have sufficient information to identify any subset of this area as sufficient to support recovery of the species to the point where it may be removed from the endangered species list. We therefore consider this area to contain the physical and biological features essential to the conservation of the species.

It is difficult to identify obstacles to recovery, because the importance of current threats and the causes of decline are largely unknown. Although it is unclear whether changes in the suitability of breeding habitat contributed to the decline, we can identify factors that would potentially reduce the capacity of the breeding habitat to support recovery. Almost the entire proposed North Slope Nesting Unit (91 percent) is contained within the NPR–A, managed by the Bureau of Land Management. The NPR–A is managed under the authority of the Naval Petroleum Reserves Production Act of 1976, as amended, which encourages oil and gas leasing, while requiring protection of important surface resources and uses (U.S. Department of the Interior 1998). An oil and gas lease sale was conducted in 1999 for the NPR–A's northeast planning area, which overlaps the eastern 40 percent of this proposed unit. Depending on the outcome of exploration and the potential ensuing development, leasing on other portions of the proposed unit may occur. Other existing or potential uses of NPR–A lands include mineral development, subsistence hunting and fishing, and a variety of recreational uses.

Unit 2: Yukon-Kuskokwim Delta Nesting Unit

The Y–K Delta sites at which Steller's eiders were considered common in the mid-1900s were located within 30 km (18 mi) of the coast, between Kokechik Bay and Nelson Island. Published accounts provide little information regarding habitat requirements on the Y–K Delta breeding grounds. Brandt (1943; p. 267) described Steller's eiders near Kokechik Bay "feeding along the margins of the shallow pools, tipping up like Mallards." Nest sites were found near ponds, and females flushed from nests were reported to use ponds as escape cover (Murie 1924, Brandt 1943).

Steller's eider nest sites have been located in habitat similar to that which is used by spectacled eiders on the Y–K Delta (Conover 1924, Flint and Herzog 1999). This zone of high-density nesting by eiders and other waterfowl is identified as the "vegetated intertidal zone" (King and Dau 1981, Kertell 1991) and is described as the area between the outer edge of vascular plant cover and the line of driftwood cast up by high tides, generally within 40 km (25 mi) of the coast. The drift line results from occasional spring and fall storm surges, which inundate the tundra well beyond the normal high tide line. Vegetation in this zone is predominately sedge/grass marsh.

Primary constituent elements for the Y–K Delta nesting unit are assumed to be similar to those described for the North Slope: small ponds and shallow water habitats (particularly those with emergent vegetation), moist tundra within 100 m (326 ft) of permanent surface waters including lakes, ponds, and pools, the associated aquatic invertebrate fauna, and adjacent nesting habitats.

The proposed Y–K Delta Nesting Unit covers approximately 3,114 km^2 (1,202 mi^2) on the outer coastal zone of the central Y–K Delta. The proposed unit is located within 30 km (19 mi) of the coast, bounded by Kokechik Bay and the Askinuk Mountains to the north, and extending south to include Kigigak Island and the north end of Nelson Island. This area represents what we believe likely to be the current range of Steller's eider on the Y–K Delta. It encompasses the core concentration of historical (pre-1970s) occupancy in western Alaska (Kertell 1991; Quakenbush *et al.* in prep.), as well as nests located from 1991–1998 (Flint and Herzog 1999). Although Kertell (1991) suggested that Steller's eiders were extirpated as a breeding species from the Y–K Delta, recent breeding records suggest continued occupancy, at a density below that which is reliably detectable given the level of survey effort (ground or air) of the last 2 decades (Flint and Herzog 1999). We used the locations of historical nesting sites as a partial basis for determining boundaries of the proposed unit, including all central Y–K Delta townships that contained breeding sites recorded in the 1900s. We expanded beyond these townships because it is likely that recent nest sites have gone undetected, given the rarity of the species and the difficulty of detection. Therefore, we also included nearby townships that contain comparable wetland habitat and a high density of spectacled eiders, which are known to utilize the same habitat for nesting on the Y–K Delta (Conover 1924; Kertell 1991; Flint and Herzog 1999). In summary, the proposed unit contains sites where historical and current breeding records exist, and other areas of suitable habitat in which we believe that Steller's eiders persist.

We excluded St. Lawrence Island and most of Nelson Island because breeding status is in doubt in these locations. Breeding has been recorded on Saint Lawrence Island in 1881 and in 1954, and Steller's eiders have been seen there in summer in recent years (Fay and Cade 1959, S. Stephensen, Service, pers. comm., in Quakenbush *et al.* in prep.), but documented historical use is not comparable to the Y–K Delta, and there are no recent breeding records. On the basis of reports provided by local Natives in 1924, Murie and Scheffer (1959) stated that Steller's eiders bred at Nelson Island, but no specific locations were provided. There is likely suitable habitat on both the north and south end of Nelson Island (the central region is upland); however, the northern portion is more contiguous with other historically used habitat, and pairs have been seen on neighboring Kigigak Island in most recent years (Quakenbush *et al.* in prep.). Therefore, we consider the northern end to be part of the present range of the species and propose to designate it as critical habitat. We also exclude areas not known to have been in use for over a century, including the Alaska Peninsula, Nunivak Island, inland Y–K Delta, Saint Michael (northern Y–K Delta), and Point Clarence on the western Seward Peninsula (Quakenbush *et al.* in prep.). We may propose revisions to these boundaries in the future if we obtain new information on the suitability of habitat or the presence of Steller's eiders.

Definitive population trend information was lacking at the time this species was listed (62 FR 31748), but population decline was inferred from an apparent contraction of range, particularly in western Alaska. The recovery plan, including recovery goals, is still in preparation. It is reasonable, however, to predict that re-establishment of a viable breeding population on the Y–K Delta will be an element of the plan, given that the decision to list the species was based, to a large extent, on its near-disappearance from the Y–K Delta. Therefore, we consider the habitat contained within this unit essential to the conservation of the species.

Approximately 65 percent of the proposed Y–K Delta Nesting Unit is located within the Yukon Delta National Wildlife Refuge, although a portion (up to 10 percent) is subject to selection by Native Village or Regional Corporations, under the terms of the Alaska Native Claims Settlement Act of 1971. The remainder of the proposed unit (approximately 35 percent) has been conveyed to Native Village or Regional Corporations. Waterfowl management is a high priority for the Yukon Delta National Wildlife Refuge, and outreach efforts highlight the conservation issues for this species to the Native community.

Marine Units

Steller's eiders occur in marine habitats except during the breeding season. In fall, they congregate primarily in lagoons, bays, and estuaries on the north side of the Alaska Peninsula to molt. Densities can be extremely high; tens of thousands may concentrate in a few square miles in Izembek and Nelson lagoons during the peak of molt in August and September, although use of these areas can vary considerably among years (Petersen 1981). After molt, many disperse to the Aleutian Islands, the south side of the Alaska Peninsula, Kodiak Island, and as far east as Kachemak Bay, although thousands may remain in the lagoons in which they molt unless freezing conditions force them to move to warmer or more protected areas (Metzner 1993). In March or April, Steller's eiders begin to gradually move northward, again congregating on the north side of the Alaska Peninsula and in Bristol and Kuskokwim bays. Nearly 140,000 have been counted in this region during spring migration (Larned *et al.* 1994).

Important molting areas such as Izembek and Nelson lagoons have been repeatedly surveyed for waterfowl in recent decades, but waterfowl surveys in other nearshore marine areas in southwest and southcoastal Alaska have been much more sporadic. Some areas have rarely been surveyed, while others, such as portions of the Kodiak Archipelago's northwest side, have never been surveyed specifically for seaducks. Furthermore, the indication that winter distribution varies considerably in response to changing weather and sea ice conditions suggests that an area must be surveyed several times in different years before its importance to Steller's eiders is determined. Failure to detect Steller's eiders during one or a few surveys is not sufficient to rule out use at other times. Thus, we assume that sites that share similar habitat to that of sites with documented use by Steller's eiders, and for which we cannot rule out based on other current information, are within

the current range of Steller's eiders. Our proposal includes these areas as we believe molting, wintering, and spring staging habitat in marine environments must be maintained to ensure adequate survival during the nonbreeding season.

Most of what is known of the marine ecology of Steller's eider is derived from studies in the shallow bays and lagoons along the Alaska Peninsula. In Izembek and Kinzarof Lagoons, Steller's eiders feed on fauna associated with the extensive eelgrass (*Zostera marina*) beds, eating a variety of crustaceans, bivalves, gastropods, and polychaete worms (Metzner 1993). In Nelson Lagoon, Steller's eiders feed by diving and head dipping in waters less than 6 m (20 ft) deep for invertebrates, with blue mussels (*Mytilus edulis*) and amphipods (*Anisogammarus pugettensis*) being particularly important (Petersen 1980, 1981). The importance of these shallow bays and lagoons to Steller's eiders cannot be overemphasized. They are used by tens of thousands or more during molt, winter, and spring staging, and over a thousand subadults may remain in Nelson Lagoon through the summer in some years (Petersen 1980, 1981; Metzner 1993). These areas must be highly productive to support the huge flocks of Steller's eiders. Petersen (1981) estimated that Steller's eiders may consume 7.3 metric tons (8 tons) of blue mussels per day during molt in Nelson Lagoon.

In addition to these important shallow bays and lagoons, Steller's eiders also winter in several deeper bays and along a massive expanse of open coastline. Much less is known of their ecology in these habitats. Metzner (1993) found that the number of Steller's eiders in Cold Bay on the south side of the Alaska Peninsula increased as waters in Izembek Lagoon froze and the number wintering there decreased. In the deeper waters of Cold Bay, where food-rich eelgrass beds were absent, Steller's eiders foraged by diving close to shore for sessile invertebrates on and in the seafloor and more mobile invertebrates in the water column (Metzner 1993). The propensity for Steller's eiders to use shallow waters and stay nearshore in deeper areas is supported by C. Dau (pers. comm. 1999), who notes that Steller's eiders generally stay within "a quarter of a mile" of shore and in waters less than 10 m (30 ft) deep. Results from aerial survey transects arrayed parallel to, and at various distances from, the north shore of the Alaska Peninsula are consistent with Dau's (1999) observation. Of the four transect lines surveyed throughout the winter, Steller's eiders were seen only on the transect within 400 m (¼ mi) of shore (Troy and Johnson 1987). Beyond these few observations, the habitat requirements of Steller's eiders over much of their vast winter range are unknown.

Based on this information, we identify the primary constituent elements for Steller's eiders in marine habitat as marine waters up to 10 m (30 ft) deep and the underlying substrate, the associated invertebrate fauna in the water column and in and on the underlying substrate, and, where present, eelgrass beds and associated flora and fauna.

We do not propose critical habitat for several marine areas in which Steller's eiders occur. We excluded wintering areas for which recent replicated surveys indicated that Steller's eiders are of rare and/or irregular occurrence, including the Pribilof Islands (A. Sowls, Service, pers. comm. 1999), south side of the Kenai Peninsula (U.S. Fish and Wildlife Service 1998; R. Day, ABR Inc., *in litt.* 1999), and Prince William Sound (Service 1998; Lance *et al.* 1999; R. Day *in litt.* 1999). We also excluded the central and western Aleutian islands, wintering areas for which a consistent historical record indicates scarcity and/or irregular use (Dau 1999b).

In proposing Kuskokwim Bay, and other Bristol Bay areas known to be used for spring staging, we intend to include portions of the migration corridors known to receive sustained use by large numbers of Steller's eiders. Other than spring staging areas, migration routes are ill-defined, and migration may be dispersed over large sections of the Bering and Chukchi Seas, with little sustained use of any given section. Therefore, we do not propose units for general migration corridors.

We do not propose critical habitat at sites that are used exclusively in the summer by nonbreeding birds. For example, subadults and nonbreeding males have been observed on St. Lawrence Island in summer (Fay and Cade 1959, Fay 1961), however, information on this life-history stage is too limited to place observations such as these into a general context that would permit description of features essential to the conservation of Steller's eiders.

We propose marine waters within the following areas as critical habitat. See the accompanying maps for further clarification of proposed unit boundaries.

Unit 3: Nunivak Island

The nearshore areas around this island are used by scattered flocks of hundreds of Steller's eiders during molt (Dau 1999a) and by thousands for staging prior to spring migration (Larned *et al.* 1994; Larned 1998). Large numbers have also been noted passing Cape Etolin on the northeast side of the island during early August (Swarth 1934; Dau 1999a). It is also possible that Steller's eiders may mix with large flocks of common and king eiders (*Somateria mollissima* and *Somateria spectabilis*, respectively) in openings in sea ice along the south side of the island during winter (Dau 1999b). This unit includes the marine waters around Nunivak to a distance of 400 m (¼ mi) offshore, which includes an area of approximately 205 km^2 (79 mi^2) and approximately 600 km (380 mi) of coastline.

Unit 4: Kuskokwim Bay

Aerial surveys during spring migration indicate that virtually all Steller's eiders that winter in Alaska move from the Alaska Peninsula, cross Bristol Bay, and stage in Kuskokwim Bay for days or weeks before resuming their northward migration to their breeding grounds (Petersen and Sigman 1977; Larned *et al.* 1994; Larned 1998; W. Larned, pers. comm. 1999). During this time, flocks of hundreds or thousands are seen along the southeast coast of Kuskokwim Bay from Cape Peirce to Jacksmith Bay and west of the mouth of the Kuskokwim River from Kwigillingok to Kinak Bay (Larned *et al.* 1994; Larned 1998; W. Larned, pers. comm. 1999). Steller's eiders also concentrate in protected bays along the coast including Nanvak, Chagvan, and Goodnews Bays (W. Larned, pers. comm. 1999). Hundreds to thousands have also been observed in the region from Cape Avinof and Pingurbek Island south to Cape Peirce during molt and autumn migration (Dau 1987; Dick and Dick 1971; Petersen and Sigman 1977; Petersen *et al.* 1991), but it is the huge concentrations in spring migration that identify the importance of Kuskokwim Bay to Steller's eiders.

We propose to designate marine waters on the north side of Kuskokwim Bay (from the mouth of the Kolavinarak River to the village of Kwigillingok), to a distance of 40 km (25 mi) offshore. We also propose marine waters on the south side of Kuskokwim Bay (from the mouth of the Kanektok River to Cape Peirce), to a distance of 40 km (25 mi) offshore. In addition, marine waters from Cape Peirce to Tongue Point are proposed, to a distance of 0.8 km (½ mile). The proposed unit includes an area of approximately 12,852 km^2 (4,962 mi^2), and approximately 700 km (450 mi) of shoreline.

Unit 5: North Side of the Alaska Peninsula

A number of bays, lagoons, and nearshore areas between Egegik Bay and Bechevin Bay on the north side of the Alaska Peninsula are used by large numbers of Steller's eiders during molt, winter, or spring staging. Observers surveying this region have recorded hundreds to over a hundred thousand birds (Arneson 1980; Boden 1994; Larned *et al.* 1994; Larned 1998; Dau 1999). Some areas, such as Izembek Lagoon and the Nelson Lagoon/ Herendeen Bay/Port Moller complex, are particularly important, and may harbor tens of thousands during molt and winter (Jones 1965; Petersen 1981; Metzner 1993; Laubhan and Metzner 1999). Port Heiden is used by thousands during autumn molt (Arneson 1980) and again during spring staging (Larned *et al.* 1994), and may support Steller's eiders in winter until the shallow waters freeze (Dau 1999b). Besides those previously mentioned, other areas on the north side of the Alaska Peninsula have been identified as supporting significant numbers of Steller's eiders during spring staging, such as Egegik and Ugashik Bays, Cinder River estuary, Port Heiden, Seal Islands, Cape Seniavin, and Bechevin Bay where hundreds to thousands have been observed in March (Boden 1994) and April and May (Arneson 1980; Larned *et al.* 1994; Larned 1998). The Cinder River estuary has been reported to be used by hundreds to low thousands of Steller's eiders during molt (Wilk *et al.* 1986), as has Port Heiden (Arneson 1980), Seal Islands (Arneson 1980; Dau 1999a), and Bechevin Bay (Arneson 1980). Based on aerial surveys and other available data, the following bays, lagoons, and shoal areas have been identified as important habitat for Steller's eiders and are proposed for designation as critical habitat, in their entirety—Egegik Bay, Ugashik Bay, Cinder River Estuary, Port Heiden, Seal Islands, Cape Seniavin, Nelson Lagoon, Herendeen Bay, Port Moller, Izembek Lagoon, and Bechevin Bay. This proposed unit includes an area of approximately 2,007 km^2 (775 mi^2) and 1,050 km (650 mi) of coastline.

Unit 6: Eastern Aleutians

This is probably a major concentration area for wintering Steller's eiders, particularly when bays and lagoons on the Alaska Peninsula freeze (Metzner 1993; Dau 1999b; Laubhan and Metzner 1999). Although survey coverage has been sporadic and is incomplete, thousands have been seen around Unimak Island in late winter (Arneson 1980; Larned *et al.* 1994); hundreds are seen around Unalaska Island during the National Audubon Society's annual Christmas Bird Counts (summarized in Service 1998); and waterbird surveys in Dutch Harbor recorded Steller's eiders as the most abundant species observed in 1995 (Fairchild and Heer 1997). Over 1,400 Steller's eiders were recorded on winter (February-March) boat surveys of the Krenitzin Islands (Herter 1991). In an aerial survey of the eastern Aleutians from Unimak Island through Samalga Island conducted only in mid-winter, up to low hundreds of Steller's eiders were observed at each of five locations throughout the study area, with greatest densities around Samalga Island (Arneson 1980). We propose to designate all marine waters within 400 m (¼ mi) of mean high water from Unimak Island, west to Samalga Pass, to include Samalga, Umnak, Unalaska and Unimak Islands, and all other associated islands, islets, offshore rocks, reefs, and spires. The proposed unit includes an area of approximately 891 km^2 (344 mi^2), and 2,400 km (1,500 mi) of coastline.

Unit 7: South Side of the Alaska Peninsula

Information on Steller's eiders on the south side of the Alaska Peninsula is limited compared to that on the north side. There are no reports of molting Steller's eiders anywhere along the south side of the Alaska Peninsula between False Pass and lower Cook Inlet, although wintering birds have been observed in scattered locations throughout this huge area. Thousands of wintering Steller's eiders have been reported during aerial surveys in the Sanak Islands (Dau and Chase 1995) and between Cold Bay and Puale Bay (Boden 1994). After completion of molt, Steller's eiders increased in Cold Bay and Kinzarof Lagoon concurrent with a decline in numbers in Izembek Lagoon (Laubhan and Metzner 1999; Metzner 1993). When the birds are excluded from protected waters on the north side of the Alaska Peninsula by encroaching ice, they may be exposed to harsher weather conditions, forcing them into less preferred feeding areas on the south side of the Alaska Peninsula and up to lower Cook Inlet. Aerial and boat surveys of marine birds and mammals conducted in lower Cook Inlet in winter reported hundreds of Steller's eiders in nearshore areas of Kamishak Bay up to the Iniskin Peninsula (Arneson 1980; Agler *et al.* 1995).

We propose to designate all marine waters within 400 m (¼ mi) of mean high water from Isanotski Strait (at False Pass) east to the lower end of west Cook Inlet, as far north as Kamishak Bay. This applies to the Shumagin and Semidi Islands, Chirikof Island, and all other associated islands, islets, offshore rocks, reefs, and spires. We also include waters within 8 km (5 mi) of the south side, and 1.6 km (1 mi) of the north side, of the Sanak Islands and within 1.6 km (1 mi) of the mainland shore of Kamishak Bay. We include the following areas in their entirety, including waters beyond 400 m (¼ mi) offshore—Morzhovoi Bay (northern portion only), Cold Bay, Ivanof Bay, Chignik Lagoon, and Wide Bay. This unit includes an area of approximately 3,419 km^2 (1,320 mi^2), and 5,300 km (3,300 mi) of coastline.

Unit 8: Kachemak Bay/Ninilchik

Available information indicates that Steller's eiders consistently occur in Kachemak Bay in winter. Tens or hundreds frequently occur near Homer and Homer Spit (Christmas Bird Count in Service 1998; Russ Oates, Service, *in litt.* 1997; Agler *et al.* 1998), and flocks of tens were found along transects that sampled offshore waters east of Homer (Rosenberg and Petrula 1998). Hundreds have been observed on the south side of the Bay, particularly along shore between China Poot Bay and Point Bede (Agler *et al.* 1995). Hundreds also apparently winter along the shore south of Ninilchik, where 650 were observed in January 1997 (Russ Oates, *in litt.* 1997).

We propose to designate all marine waters of Kachemak Bay east of a line extending from Point Bede (west of English Bay and Port Graham) north to Anchor Point. In addition, we propose to designate all marine waters within 1.6 km (1 mi) of the mean high water line, from Anchor Point north to the mouth of Deep Creek (near Ninilchik). This unit includes an area of approximately 1,142 km^2 (441 mi^2), and 450 km (300 mi) of coastline.

Unit 9: Kodiak

Steller's eiders are considered a common winter resident in the Kodiak Archipelago. Aerial surveys in nearshore areas of eastern and southern Kodiak Island and in the Trinity Islands located 2,892 Steller's eiders in 1992, 4,032 in 1993, and 5,349 in 1994 (Larned and Zwiefelhofer 1995). Flocks of hundreds were seen, particularly in lagoons and eelgrass beds. In surveys around Sitkalidak, Kodiak, and southern Afognak Islands, Steller's eiders were reported to be present in estimates of low thousands (Forsell and Gould 1980). Steller's eiders are also regularly recorded during annual winter boat surveys in the archipelago (D.

Zwiefelhofer, *in litt.* 1999), and hundreds to low thousands are counted during the Christmas Bird Count in Kodiak (Service 1998). Because of the consistent and extensive use of the areas that have been surveyed in the Kodiak area, we propose to designate all marine waters within 400 m (¼ mi) of Kodiak and Afognak Islands, and all other associated islands, islets, offshore rocks, reefs, and spires. This parcel includes an area of approximately 1,344 km² (519 mi²) and 3,900 km (2,450 mi) of coastline.

Although this proposal is based on the best available information, we recognize that the information on Steller's eiders is incomplete. In particular, better information on Steller's eider distribution and the threats facing the species would improve our ability to identify those areas essential for its conservation. Our ability to identify essential areas is also likely to improve as recovery objectives and criteria are established. As new information becomes available and the recovery planning process develops, we may reevaluate critical habitat designations and propose to add, delete, or modify existing critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing promotes conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with the Service on any action that is likely to result in destruction or adverse modification of proposed critical habitat. These conferences, which consist of informal discussions, are intended to assist responsible agencies and the applicant in identifying and resolving potential conflicts.

If this proposal culminates in the designation of critical habitat, section 7(a)(2) of the Act will require Federal agencies to enter into consultation with us on actions that may affect listed species or destroy or adversely modify critical habitat. Thus, activities on Federal lands that may affect the Steller's eider or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or a section 402 permit from the Environmental Protection Agency, will also be subject to the section 7 consultation process. Federal actions not affecting the species or its critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the species is appreciably diminished. We note that such activities are also almost certain to jeopardize the species (see discussion in Critical Habitat section, above). Activities that have the potential to destroy or adversely modify critical habitat for Steller's eiders include, but are not limited to:

(1) Draining, filling, or contaminating wetlands and associated surface waters;

(2) Filling, dredging, or pipeline construction in marine waters;

(3) Commercial fisheries that harvest or damage the benthic or planktonic flora or fauna in marine waters;

(4) Spilling or discharging petroleum or other hazardous substances; or

(5) Discharge of sediment or toxic substances into freshwater systems that drain into adjacent nearshore marine waters.

Previous Consultations

Since Steller's eiders were listed in 1997, we have consulted with several Federal agencies on a variety of actions to evaluate impacts to the species. In most cases, our consultations with other Federal agencies have determined that the proposed activities would not adversely affect Steller's eiders. One or both of the following reasons precipitated these findings—(1) the proposed activity would occur during seasons when Steller's eiders are absent and would have no permanent impact to habitat (e.g., winter seismic work); and (2) the proposed activity affected a minimal amount of habitat in an area where Steller's eiders occur at extremely low density. In three exceptions, the proposed action would occur in an area where Steller's eiders concentrate or would have affected a considerable amount of habitat. In each of these cases, we determined that the proposed action may adversely affect the species, which triggered a more involved, formal consultation. A brief summary of these consultations follows:

(1) NPR–A Northeast Planning Area Integrated Activity Plan. A management plan for this 4.6 million-acre area was developed that allowed for oil and gas leasing but also addressed recreational activities, aircraft use, hazardous- and solid-material removal and remediation, and seismic activities. Steller's eiders nest in this region and may be affected by disturbance or habitat alteration.

(2) Community expansion in Barrow. The North Slope Borough proposed to expand an existing housing subdivision into an area historically used by nesting Steller's eiders.

(3) Northstar Development project. This consultation addressed the possible effects of an offshore oil development project in the Beaufort Sea and adjacent terrestrial area. Steller's eiders occur at extremely low density in the project area, so direct, local effects were thought to be unlikely. The primary concern arose from possible marine oil spills from a subsea pipeline that could be transported by wind and currents westward to areas where Steller's eiders are more likely to occur.

In each of these three consultations, we determined that the project was not likely to jeopardize the continued existence of Steller's eiders. Following that determination, our biological opinions provided mandatory reasonable and prudent measures designed to minimize the effects of the proposed projects on the species. In each case, our evaluations addressed effects of habitat alteration on Steller's eiders.

TABLE 2. ACTIVITIES POTENTIALLY AFFECTED BY STELLER'S EIDER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities involving a federal action potentially affected by species listing only [1]	Additional activities involving a federal action potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3]	Activities that the Federal Government carries out, such as scientific research, land surveys, law enforcement, oil spill response, resource management, and construction/expansion of physical facilities.	None.
Private Activities Potentially Affected [4]	Activities that also require a Federal action (permit, authorization, or funding), such as scientific research, commercial fishing, sport and subsistence hunting, shipping and transport of fuel oil and gasoline to villages, and village maintenance, construction and expansion.	None.

[1] This column represents impacts of the final rule listing the Steller's eider (June 11, 1997) (62 FR 31748) under the Endangered Species Act.
[2] This column represents the impacts of the critical habitat designation above and beyond those impacts resulting from listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private entity that may need Federal authorization or funding.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is designated subsequent to consultation. Consequently, some Federal agencies may request conferencing with us on actions for which formal consultation has been completed, in anticipation of the need to reinitiate consultation if this proposal becomes finalized.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, have inquiries about prohibitions and permits, or would like copies of the regulations on listed wildlife, contact the Endangered Species Branch, Northern Alaska Ecological Services (see **ADDRESSES** section) (telephone 907/456–0203, facsimile 907/456–0208).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. Although we could not identify any incremental effects of this proposed critical habitat designation above those impacts of listing, we will conduct an economic analysis to further evaluate this finding. We will conduct the economic analysis for this proposal prior to a final determination. When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will reopen the comment period for 30 days at that time to accept comments on the economic analysis or further comment on the proposed rule.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Specific information on the abundance and distribution of Steller's eiders and their habitat;

(3) What areas are essential for the conservation of Steller's eiders and may require special management protection or consideration;

(4) Current or planned activities in proposed critical habitat units and their possible impacts on proposed critical habitat; and

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat.

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the "Supplementary Information" section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In certain circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. The peer reviewers will be invited to comment during the public comment period on the proposal and our interpretation of the available information in regard to critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. We intend to schedule three public hearings on this proposal. We will announce the dates, times, and places of those hearings in local newspapers at least 15 days prior to the first hearing.

Required Determinations

1. Regulatory Planning and Review

This document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Steller's eider was listed as a threatened species in 1997. Between the Fiscal Years 1997–2000, we have conducted 141 section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the Steller's eider. The areas proposed for critical habitat are currently occupied by the Steller's eider. Under the Endangered Species Act, critical habitat may not be adversely modified by a Federal agency action; the Act does not impose any restrictions on non-Federal entities unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

b. This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Steller's eider since the listing in 1997. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist because all proposed critical habitat is occupied. Because of the potential for impacts on other Federal agency actions, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above, we do not anticipate that the adverse modification prohibition (from critical habitat designations) will have any incremental effects because all proposed critical habitat is occupied.

d. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

2. Regulatory Flexibility Act

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed in section 1 above, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated in Table 1 above (see Proposed Critical Habitat section), we have proposed land and marine waters that are occupied by the Steller's eider. Within these areas, activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Steller's eider is appreciably reduced. We note that such activities are also likely to jeopardize the continued existence of the species. Such activities that have the potential to destroy or adversely modify critical habitat for Steller's eiders include, but are not limited to: (1) Draining, filling, or contaminating wetlands and associated surface waters; (2) Filling, dredging, or pipeline construction in marine waters; (3) Commercial fisheries that harvest or damage the benthic or planktonic flora or fauna in marine waters; (4) Spilling or discharging petroleum or other hazardous substances; or (5) Discharge of sediment or toxic substances into freshwater systems that drain into adjacent nearshore marine waters. Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed in section 1 above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities. For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule has no additional restrictions (see Table 2 in the Previous Consultations section above).

3. Small Business Regulatory Enforcement Fairness Act

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises

4. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs using Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in section 1, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

5. Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Steller's eider. Due to the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the Steller's eider.

6. Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The designation of critical habitat in areas currently occupied by the Steller's eider imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas protected are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur). In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from the Alaska Department of Fish and Game. In addition, the State has a representative on our recovery team for this species. As the Steller's eider critical habitat listing process proceeds, we will coordinate with the appropriate State agencies.

7. Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Steller's eider.

8. Paperwork Reduction Act

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

9. National Environmental Policy Act

We have determined that we do not need to prepare Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** in October 1983 (48 FR 49244).

10. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2: We understand that we must relate to federally recognized Tribes on a Government-to-Government basis. Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act," states that "Critical habitat shall not be designated in such areas [an area that may impact Tribal trust resources] unless it is determined essential to conserve a listed species. In designating critical habitat, the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands." While this Order does not apply to the State of Alaska, we recognize our responsibility to inform affected Native Corporations and regional Native governments of this proposal. Subsequent to this proposal, we will coordinate with the Native communities and analyze the need to designate critical habitat on Native lands and consult with other bureaus and offices of the Department about the potential effects of this rule on Native Corporations and regional Native governments.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Endangered Species Branch, Northern Alaska Ecological Services (see **ADDRESSES** section).

Author

The primary authors of this document are Ted Swem, Cathy Donaldson, and Philip Martin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11 (h) revise the entry for Steller's eider under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
.	.	.	.	.	.	.	.
Eider, Steller's	*Polysticta stelleri*	USA (AK): Russia, winters to Scandanavia	U.S.A. (AK breeding population only).	T	616	17.95 (b)	NA
.	.	.	.	.	.	.	.

3. In § 17.95 add critical habitat for the Steller's eider (*Polysticta stelleri*) under paragraph (b) in the same alphabetical order as this species occurs in § 17.11 (h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

STELLER'S EIDER (*Polysticta stelleri*)

1. Critical habitat units are depicted for the North Slope, Yukon-Kuskokwim Delta, and southwest and southcoastal Alaska, on the maps below. The maps are for reference only; the areas in critical habitat are legally described below.

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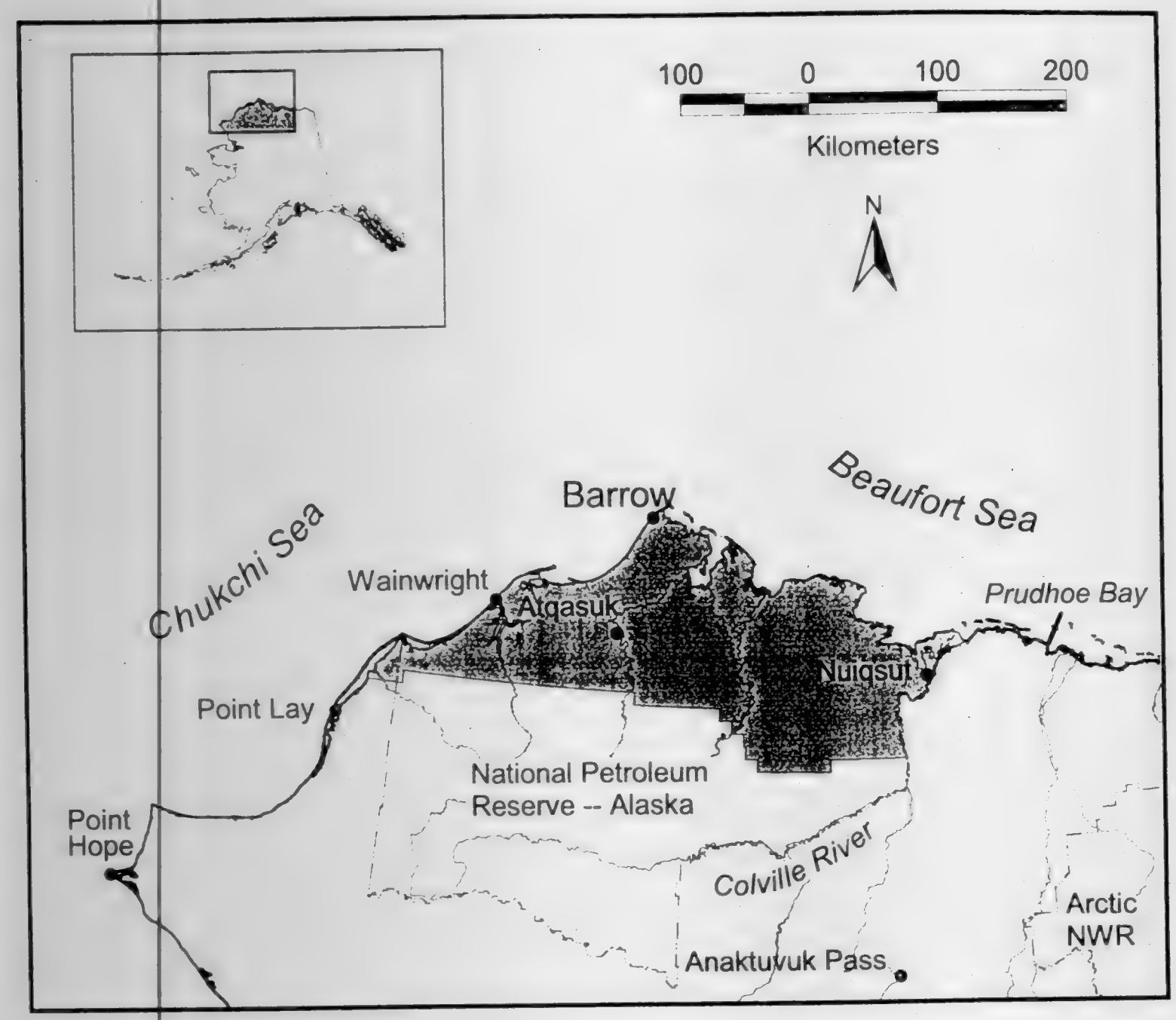

2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of feeding, nesting, brood rearing, roosting, molting, and wintering. In terrestrial critical habitat (North Slope and

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
Eider, Steller's	*Polysticta stelleri*	USA (AK); Russia, winters to Scandanavia.	U.S.A. (AK breeding population only).	T	616	17.95 (b) ..	NA
*	*	*	*	*	*	*	*

3. In § 17.95 add critical habitat for the Steller's eider (*Polysticta stelleri*) under paragraph (b) in the same alphabetical order as this species occurs in § 17.11 (h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

STELLER'S EIDER (*Polysticta stelleri*)

1. Critical habitat units are depicted for the North Slope, Yukon-Kuskokwim Delta, and southwest and southcoastal Alaska, on the maps below. The maps are for reference only; the areas in critical habitat are legally described below.

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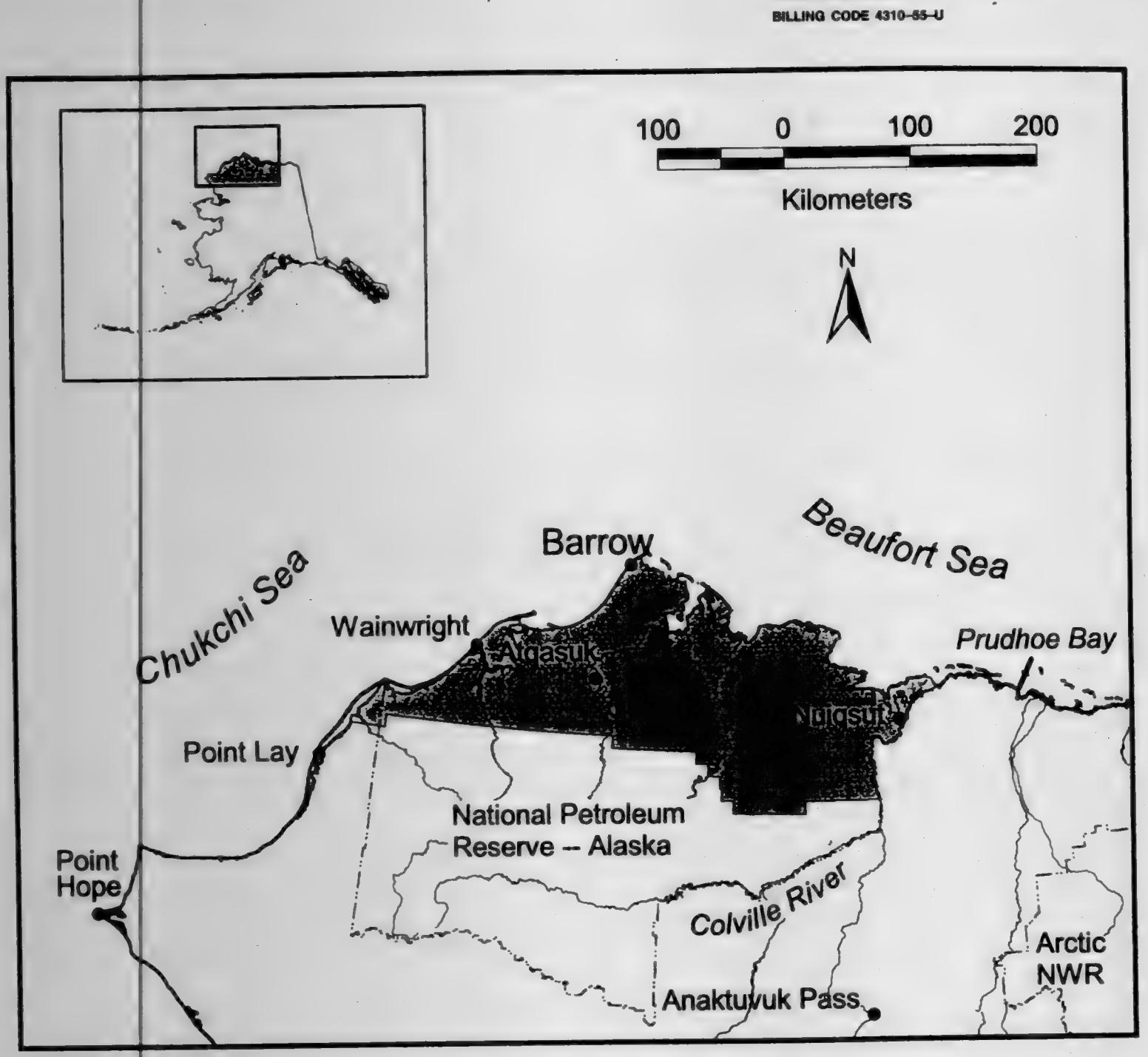

2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of feeding, nesting, brood rearing, roosting, molting, and wintering. In terrestrial critical habitat (North Slope and

Yukon-Kuskokwim Delta Units), the primary constituent elements are small ponds and shallow water habitats (particularly those with emergent vegetation), moist tundra within 100 meters (326 ft) of permanent surface waters including lakes, ponds, and pools, the associated aquatic invertebrate fauna, and adjacent nesting habitats. In marine critical habitat (all other units), the primary constituent elements include the marine waters up to 10 m (30 ft) deep and the underlying substrate, the associated invertebrate fauna in the water column and in and on the underlying substrate, and, where present, eelgrass beds and their associated flora and fauna.

3. Critical habitat does not include existing human structures.

Unit 1. North Slope Nesting Unit

All Umiat Meridian, Alaska

Beginning at a point of land on the line of mean high tide of the Chukchi Sea known as Icy Cape at approximate Latitude 70° 19′ 50″ North, Longitude 161° 53′ 00″ West, within Township 11 North, Range 39 West, Umiat Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE in a southwesterly direction with the line of mean high tide along the ocean side of the barrier islands and sand spits approximately 30 miles to the meander corner for the line dividing Townships 7 and 8 North, Range 43 West;

THENCE east with the line dividing Townships 7 and 8 North approximately 22 miles to the corner common to Townships 7 and 8 North, Ranges 39 and 40 West;

THENCE north with the line dividing Ranges 39 and 40 West approximately 6 miles to the line dividing Townships 8 and 9 North;

THENCE east with the line dividing Townships 8 and 9 North approximately 112 miles to the line dividing Township 8 North, Ranges 20 and 21 West;

THENCE south with the line dividing Ranges 20 and 21 West approximately 6 miles to the corner common to Townships 7 and 8 North, Ranges 20 and 21 West;

THENCE east with the line dividing Townships 7 and 8 North approximately 42 miles to the corner common to Townships 7 and 8 North, Ranges 13 and 14 West;

THENCE south with the line dividing Ranges 13 and 14 West approximately 6 miles to the corner common to Townships 6 and 7 North, Ranges 13 and 14 West;

THENCE east with the line dividing Townships 6 and 7 North approximately 6 miles to the corner common to Townships 6 and 7 North, Ranges 12 and 13 West;

THENCE south with the line dividing Ranges 12 and 13 West approximately 6 miles to the corner common to Townships 5 and 6 North, Ranges 12 and 13 West;

THENCE east with the line dividing Townships 5 and 6 North approximately 6 miles to the corner common to Townships 5 and 6 North, Ranges 11 and 12 West;

THENCE south with the line dividing Ranges 11 and 12 West approximately 6 miles to the line dividing Townships 4 and 5 North;

THENCE east with the line dividing Townships 4 and 5 North approximately 1 mile to the line dividing Township 4 North, Ranges 11 and 12 West;

THENCE south with the line dividing Ranges 11 and 12 West approximately 6 miles to the corner common to Townships 3 and 4 North, Ranges 11 and 12 West;

THENCE east with the line dividing Townships 3 and 4 North approximately 6 miles to the corner common to Townships 3 and 4 North, Ranges 10 and 11 West;

THENCE south with the line dividing Ranges 10 and 11 West approximately 6 miles to the corner common to Townships 2 and 3 North, Ranges 10 and 11 West;

THENCE east with the line dividing Townships 2 and 3 North approximately 36 miles to the corner common to Townships 2 and 3 North, Ranges 4 and 5 West;

THENCE north with the line dividing Ranges 4 and 5 West approximately 6 miles to the corner common to Townships 3 and 4 North, Ranges 4 and 5 West;

THENCE east with the line dividing Townships 3 and 4 North approximately 37 miles to the line of mean high water on the eastern (right) bank of the Colville River within Section 31 of Township 4 North, Range 3 East;

THENCE in a north and northeasterly direction downstream with the line of mean high water on the eastern (right) bank of the Colville River, following the eastern banks of the easternmost sloughs approximately 100 miles along the line of mean high tide of the Arctic Ocean to the meander corner common to Section 36 of Township 13 North, Range 7 East and Section 31 of Township 13 North, Range 8 East;

THENCE in a northwesterly, westerly, and southwesterly direction with the outer perimeter of the Colville River Delta at the line of mean high tide of the Arctic Ocean, including all islands and bars, approximately 30 miles to the boundary of the National Petroleum Reserve-Alaska within Section 32 of Township 13 North, Range 4 East;

THENCE in a northwesterly and southwesterly direction with the highest highwater mark of the Arctic Ocean and the Chukchi Sea, common with the boundary of the National Petroleum Reserve-Alaska as withdrawn by Executive Order 3797–A on February 27, 1923, approximately 400 miles to Icy Cape within Township 11 North, Range 39 West, Umiat Meridian, Alaska, the TRUE POINT OF BEGINNING.

Unit 2. Yukon-Kuskokwim Nesting Unit

All Seward Meridian

Beginning at the U.S. Coast and Geodetic Survey monument "Kokechik South Base" at Latitude 61°38′13.11″ North, Longitude 166°10′16.12″ West (NAD 83), within Section 21 of Township 18 North, Range 93 West, Seward Meridian, Alaska, the TRUE POINT OF BEGINNING of the lands to be described.

THENCE west approximately 150 feet to the line of mean high tide of the Bering Sea;

THENCE southerly and southeasterly with the line of mean high tide of the Bering Sea, common with the boundary of the Yukon Delta and Alaska Maritime National Wildlife Refuges as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980, to the meander corner common to Sections 10 and 11 of Township 16 North, Range 94 West;

THENCE southeasterly with said refuge boundaries, closing the mouth of Hooper Bay to include all islands within Hooper Bay, approximately 7¾ miles to the meander corner common to Sections 2 and 3 of Township 15 North, Range 93 West;

THENCE continuing southeasterly with said refuge boundaries, closing the mouths of all inlets, rivers, and straits, along the line of mean high tide of the Bering Sea to the mouth of the Kashunuk River at the northern meander corner common to Sections 28 and 29 of Township 14 North, Range 91 West;

THENCE southerly with said refuge boundaries approximately 4,200 feet to the south bank of the mouth of the Kashunuk River at the southern meander corner common to Sections 28 and 29 of Township 14 North, Range 91 West;

THENCE continuing southerly with said refuge boundaries along the line of mean high tide of the Bering Sea approximately 20 miles to the easternmost point of a headland at the west side of Hazen Bay within Section 1 of Township 11 North, Range 91 West;

THENCE continuing with said refuge boundaries on an approximate forward bearing of South 38° East approximately ■ miles across the mouth of Hazen Bay to a point on the headland at approximate Latitude 60°59′00″ North, Longitude 165°12′00″ West, within Section 2 of Township 10 North, Range 90 West;

THENCE continuing with said refuge boundaries southerly and southeasterly along the line of mean high tide of the Bering Sea approximately 8 miles to a point on the Naskonat Peninsula at the meander corner common to Sections 2 and 3 of Township ■ North, Range 89 West;

THENCE continuing with said refuge boundaries on an approximate forward bearing of South 21° West approximately 3½ miles to the most northerly tip of Nunivachak Island within Section 21 of Township 9 North, Range 89 West;

THENCE continuing with said refuge boundaries southwesterly along the line of mean high tide of Hazen Bay of the Bering Sea on the seaward side of Nunivachak Island approximately ½ mile to the most southerly tip of Nunivachak Island within Section 21 of Township 9 North, Range 89 West;

THENCE continuing with said refuge boundaries on an approximate forward bearing of South 22° West approximately 4 miles to the most northwesterly tip of Nelson Island within Section 11 of Township 8 North, Range 90 West;

THENCE continuing with said refuge boundaries southeasterly along the line of mean high tide of Hazen Bay of the Bering Sea approximately 4½ miles to the line dividing Townships 7 and 8 North, Range 89 West;

THENCE east with the line dividing Townships 7 and 8 North approximately ■ miles to the corner common to Townships 7 and 8 North, Ranges 88 and 89 West;

THENCE north with the line dividing Ranges 88 and 89 West approximately 6 miles to the line dividing Townships 8 and 9 North;

THENCE east with the line dividing Townships 8 and 9 North approximately 6

miles to the line dividing Township 9 North, Ranges 86 and 87 West;

THENCE north with the line dividing Ranges 86 and 87 West approximately 6 miles to a point in the waters of the Ninglick River on the line dividing Townships 9 and 10 North;

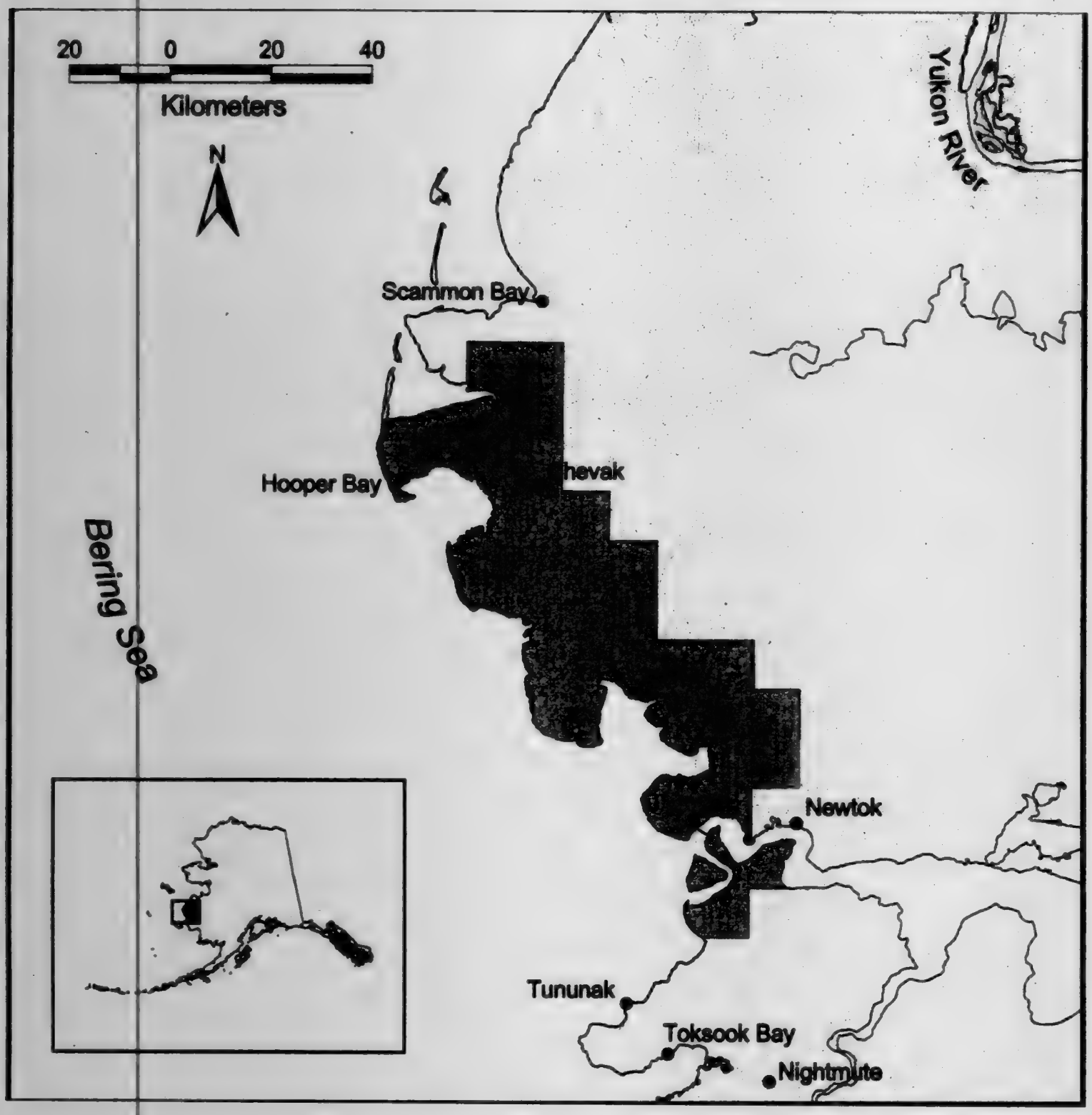

THENCE west with the line dividing Townships 9 and 10 North approximately 6 miles to the corner common to Townships 9 and 10 North, Ranges 87 and 88 West;

THENCE north with the line dividing Ranges 87 and 88 West approximately 6 miles to the corner common to Townships 10 and 11 North, Ranges 87 and 88 West;

THENCE east with the line dividing Townships 10 and 11 North approximately 6 miles to the corner common to Townships 10 and 11 North, Ranges 86 and 87 West;

THENCE north with the line dividing Ranges 86 and 87 West approximately 12 miles to the line dividing Townships 12 and 13 North;

THENCE west with the line dividing Townships 12 and 13 North approximately 6 miles to the line dividing Township 13 North, Ranges 86 and 87 West;

THENCE north with the line dividing Ranges 86 and 87 West approximately 6 miles to the corner common to Townships 13 and 14 North, Ranges 86 and 87 West;

THENCE west with the line dividing Townships 13 and 14 North approximately 12 miles to the corner common to Townships 13 and 14 North, Ranges 88 and 89 West;

THENCE north with the line dividing Ranges 88 and 89 West approximately 12 miles to the corner common to Townships 15 and 16 North, Ranges 88 and 89 West;

THENCE west with the line dividing Townships 15 and 16 North approximately 6 miles to the corner common to Townships 15 and 16 North, Ranges 89 and 90 West;

THENCE north with the line dividing Ranges 89 and 90 West approximately 6 miles to the line dividing Townships 16 and 17 North;

THENCE west with the line dividing Townships 16 and 17 North approximately 6 miles to the line dividing Township 17 North, Ranges 89 and 90 West;

THENCE north with the line dividing Ranges 89 and 90 West approximately 18 miles to the corner common to Townships 19 and 20 North, Ranges 89 and 90 West;

THENCE west with the line dividing Townships 19 and 20 North approximately 12 miles to the corner common to Townships 19 and 20 North, Ranges 91 and 92 West;

THENCE south with the line dividing Ranges 91 and 92 West approximately 5 miles to the line of mean high tide of Kokechik Bay of the Bering Sea at the meander corner common to Section 31 of Township 19 North, Range 91 West and Sections 36 of Township 19 North, Range 92 West;

THENCE southeasterly approximately ¼ mile, closing the mouth of the Lithkealik River, to a point on the line of mean high tide of Kokechik Bay of the Bering Sea within Section 31 of Township 19 North, Range 91 West;

THENCE with the said line of mean high tide southerly and easterly approximately 4¼ miles to the most-western point at the mouth of the Kolomak River within Section 3 of Township 18 North, Range 91 West;

THENCE southerly approximately ½ mile to the said line of mean high tide on the south bank of the Kokechik River within Section 3 of Township 18 North, Range 91 West;

THENCE in a southwesterly direction with the said line of mean high tide approximately 13 miles to the southernmost point of Kokechik Bay within Section 22 of Township 18 North, Range 93 West;

THENCE south approximately 500 feet to the base of the bluff within the same section and township;

THENCE northwesterly parallel to the base of said bluff approximately 1 mile to USC&GS monument "Kokechik South Base" within Section 21 of Township 18 North, Range 93 West, Seward Meridian, Alaska, the TRUE POINT OF BEGINNING.

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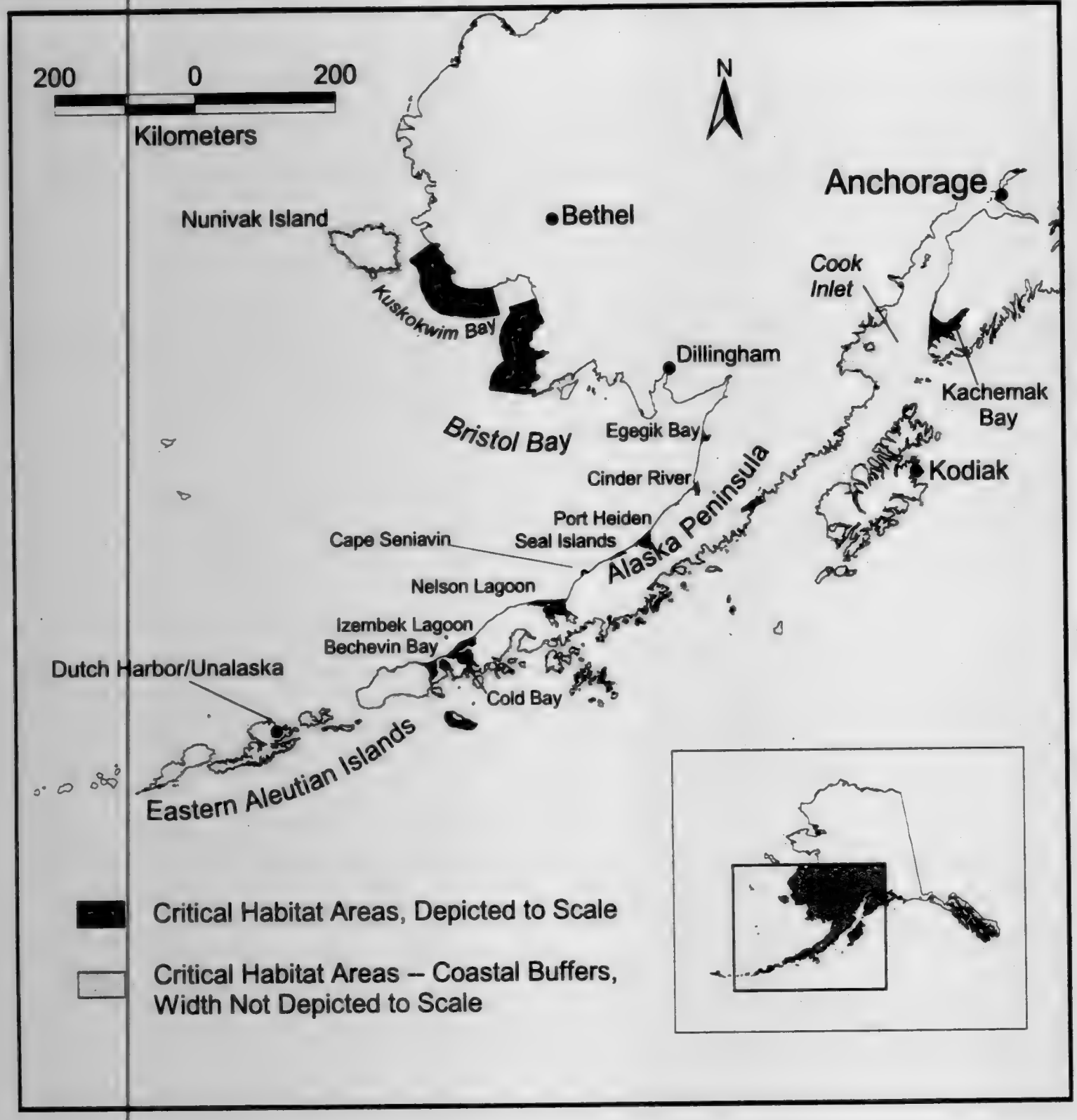

Unit 3. Nunivak Island

Those marine waters immediately surrounding Nunivak Island, Bering Sea, Alaska.

The Nunivak Island Unit consists of the water column from the line of mean high tide of said island to a distance of 1/4 mile (400 meters) seaward for the entire coastline, including the waters surrounding offshore islets, rocks, and reefs. Said unit lies entirely within the boundary of the Yukon Delta National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980.

Unit 4. Kuskokwim Bay

Northern Subunit

All Seward Meridian

Beginning at a point of land on the line of mean high tide of Etolin Strait of the Bering Sea at a meander corner common to Section 6 of Township 2 North, Range 89 West, and Section 1 of Township 2 North, Range 90 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE easterly and southeasterly with the line of mean high tide of Etolin Strait, closing the mouth of the Kolavinarak River, approximately 8 miles to the meander corner common to Section 19 of Township 2 North, Range 88 West, and Section 24 of Township 2 North, Range 89 West;

THENCE southeasterly and easterly with the line of mean high tide of the Bering Sea, common with the boundary of the Yukon Delta and Alaska Maritime National Wildlife Refuges as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980, approximately 70 miles to the meander corner common to Section 6 of Township 4 South, Range 80 West, and Section 1 of Township 1 South, Range 81 West;

THENCE southeasterly, perpendicular to the coastline for a distance of 25 miles (40 kilometers) to a point in the waters of the Bering Sea;

THENCE southwesterly, westerly, and northwesterly, parallel to the coastline of the Bering Sea and Etolin Strait for approximately 80 miles, to a point in the waters of Etolin Strait 25 miles (40 kilometers) southwest of the meander corner common to Section 6 of Township 2 North, Range 89 West, and Section 1 of Township 2 North, Range 90 West;

THENCE northeast 25 miles (40 kilometers) to the line of mean high tide of Etolin Strait at the aforementioned meander corner and the TRUE POINT OF BEGINNING.

Southern Subunit

All Seward Meridian

Beginning at a point of land on the line of mean high tide of Kuskokwim Bay of the Bering Sea at the meander corner common to Section 35 of Township 4 South, Range 74 West, and Section 1 of Township 5 South, Range 74 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southerly with the line of mean high tide of Kuskokwim Bay, common with the boundary of the Yukon Delta, Togiak, and Alaska Maritime National Wildlife Refuges as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980, approximately 120 miles to the meander corner common to Sections 15 and 22 of Township 15 South, Range 75 West;

THENCE continuing with the line of mean high tide of Kuskokwim and Bristol Bays in a southerly, westerly, and easterly direction, inside the boundary of the Togiak National Wildlife Refuge, for approximately 60 miles to the meander corner common to Sections 9 and 10 of Township 18 South, Range 74 West;

THENCE easterly with the line of mean high tide of Bristol Bay and Hagemeister Strait, common with the boundary of the Togiak and Alaska Maritime National Wildlife Refuges, approximately 40 miles to Tongue Point within Section 9 of Township 16 South, Range 69 West;

THENCE south ½ mile (0.8 kilometers) to a point in the waters of Bristol Bay of Hagemeister Strait;

THENCE southwesterly and northerly, parallel to the coastline of Hagemeister Strait and Bristol Bay approximately 60 miles to a point in the waters of Bristol Bay ½ mile west of the meander corner common to Section 36 of Township 18 South, Range 76 West and Section 1 of Township 19 South, Range 76 West;

THENCE due west 24½ miles;

THENCE in a general westerly, easterly, and northerly direction, parallel to the coastline of Bristol and Kuskokwim Bays of the Bering Sea for approximately 100 miles, to a point in the waters of Kuskokwim Bay 25 miles (40 kilometers) southwest of the meander corner common to Section 35 of Township 4 South, Range 74 West, and Section 1 of Township 5 South, Range 75 West;

THENCE northeast 25 miles (40 kilometers) to the line of mean high tide of Kuskokwim Bay at the aforementioned meander corner and the TRUE POINT OF BEGINNING.

Unit 5. North Side of the Alaska Peninsula

Egegik Bay Unit

All Seward Meridian

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at a meander corner common to Section 36 of Township 21 South, Range 51 West, and Section 1 of Township 22 South, Range 51 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southeasterly and northeasterly with the line of mean high tide of the Bering Sea, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980, approximately 8 miles to the meander corner common to Section 35 of Township 22 South, Range 50 West and Section 2 of Township 23 South, Range 50 West;

THENCE east with the line dividing Townships 22 and 23 South approximately 1 ½ miles to a point in the waters of Egegik Bay immediately north of the village of Egegik on the line dividing Ranges 49 and 50 West;

THENCE with the line dividing Ranges 49 and 50 West approximately ¼ mile to the line of mean high tide of Egegik Bay on the boundary of the Alaska Maritime National Wildlife Refuge;

THENCE continuing with said line of mean high tide and refuge boundary in a southwesterly, northerly, and southwesterly direction for approximately 14 miles to the meander corner common to Section 35 of Township 23 South, Range 51 West and Section 2 of Township 24 South, Range 51 West;

THENCE northerly through the waters of Bristol Bay, closing Egegik Bay, to the aforementioned meander corner, the TRUE POINT OF BEGINNING.

Ugashik Bay Unit

All Seward Meridian

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at a meander corner common to Section 34 of Township 29 South, Range 52 West, and Section 3 of Township 30 South, Range 52 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southeasterly with the line of mean high tide of Bristol and Ugashik Bays, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980, approximately 11½ miles to the meander corner common to Sections 17 and 20 of Township 31 South, Range 51 West;

THENCE on the line dividing Sections 18 and 19 of Township 31 South, Range 51 West approximately 1 mile to the headland at the confluence of the Ugashik and King Salmon Rivers;

THENCE westerly with the headland, continuing with said refuge boundary on the line of mean high tide of Ugashik Bay approximately ½ mile to the meander corner common to Sections 13 and 24 of Township 31 South, Range 52 West;

THENCE west, continuing with said refuge boundary on the line dividing Sections 13 and 24 of Township 31 South, Range 52 West to the meander corner common to Sections 14 and 23 of the same township;

THENCE continuing west with the section line dividing the north and south halves of Township 31 South, Ranges 52 and 53 West approximately 8 miles to the line of mean high tide of Bristol Bay at the meander corner common to Sections 16 and 21 of Township 31 South, Range 53 West;

THENCE northwesterly, perpendicular to the coastline for or a distance of ¼ mile (400 meters) to a point in the waters of Bristol Bay of the Bering Sea;

THENCE in a northeasterly direction, parallel to the coastline of Bristol Bay and closing the entrance to Ugashik Bay, for approximately 11 miles to a point in the waters of Bristol Bay ¼ mile (400 meters) southwest of the meander corner common to Section 34 of Township 29 South, Range 52 West, and Section 3 of Township 30 South, Range 52 West;

THENCE northeast ¼ mile to the aforementioned meander corner, the TRUE POINT OF BEGINNING.

Cinder River Unit

All Seward Meridian

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at a meander corner common to Sections 21 and 28 of Township 32 South, Range 54 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE in a general southwesterly direction with the line of mean high tide of Bristol Bay, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980 approximately 3½ miles to the southernmost point of Section 3 of Township 33 South, Range 55 West;

THENCE continuing with the line of mean high tide northeasterly, southwesterly, and northeasterly to encompass the Cinder River/Mud Creek tidal flats area, closing the mouths of the Cinder River and Mud Creek, approximately 15 miles to the northernmost point of Section 4 of Township 33 South, Range 55 West;

THENCE southwest with the said line of mean high tide, common with said refuge boundary, approximately 3 miles to the meander corner common to Section 18 of Township 33 South, Range 55 West, and Section 13 of Township 33 South, Range 56 West;

THENCE northwest, perpendicular to the coastline for a distance of ¼ mile (400 meters) to a point in the waters of Bristol Bay;

THENCE in a northeasterly direction, parallel to the coastline of Bristol Bay, closing the entrance to the Cinder River/Mud Creek tidal flats area, for approximately 6½ miles to a point in the waters of Bristol Bay ¼ mile (400 meters) northwest of the

meander corner common to Sections 21 and 28 of Township 32 South, Range 54 West;

THENCE southeast ¼ mile to the aforementioned meander corner, the TRUE POINT OF BEGINNING.

Port Heiden Unit

All Seward Meridian

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at the meander corner common to Section 31 of Township 36 South, Range 58 West, and Section 3 of Township 37 South; Range 59 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southwesterly, with the line of mean high tide of Bristol Bay, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980, approximately 8½ miles to the southernmost point of Section 17 of Township 38 South, Range 59 West;

THENCE in a general southeasterly direction with said refuge boundary along the line of mean high tide of Port Heiden and the right bank of the Meshik River upstream approximately 12 miles to the line dividing Sections 35 and 36 of Township 39 South, Range 59 West;

THENCE south with said Section line approximately ½ mile to the line dividing Townships 39 and 40 South;

THENCE west with said township line approximately ½ mile to the left bank of the Meshik River;

THENCE northwesterly with said refuge boundary along the left bank of the Meshik River approximately 3 ½ miles to the westernmost point of the mouth of said river at the line of mean high tide of Port Heiden within Section 20 of Township 39 South, Range 59 West;

THENCE westerly, southwesterly, and northeasterly with said refuge boundary at the line of mean high tide of Port Heiden approximately 30 miles to Strogonof Point in Section 17 of Township 38 South, Range 60 West;

THENCE southwest with the said line of mean high tide, common with said refuge boundary, approximately 10 miles to the meander corner common to Section 18 of Township 39 South, Range 61 West, and Section 13 of Township 33 South, Range 62 West;

THENCE northwest, perpendicular to the coastline for a distance of ¼ mile (400 meters) to a point in the waters of Bristol Bay;

THENCE in a northeasterly direction, parallel to the coastline of Bristol Bay, closing the entrance to Port Heiden and parallel to the ocean side of Chistiakof Island, for approximately 20 miles to a point in the waters of Bristol Bay ¼ mile (400 meters) northwest of the meander corner common to Section 31 of Township 36 South, Range 58 West, and Section 3 of Township 37 South, Range 59 West;

THENCE southeast ¼ mile to the aforementioned meander corner, the TRUE POINT OF BEGINNING.

Seal Islands Unit

All Seward Meridian

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at the meander corner common to Section 32 of Township 39 South, Range 62 West, and Section 5 of Township 40 South, Range 62 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southwesterly, with the line of mean high tide of Bristol Bay, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980, approximately 4½ miles to the southernmost point of Section 15 of Township 40 South, Range 63 West;

THENCE continuing with the line of mean high tide and said refuge boundary northeasterly, southwesterly, and northeasterly to encompass the Seal Islands lagoon and Ilnik Lake areas, approximately 45 miles to the northernmost point of Section 1 of Township 41 South, Range 65 West;

THENCE southwest with the said line of mean high tide and refuge boundary, approximately 7 miles to the meander corner common to Section 19 of Township 41 South, Range 65 West, and Section 24 of Township 41 South, Range 66 West;

THENCE northwest, perpendicular to the coastline for a distance of ¼ mile (400 meters) to a point in the waters of Bristol Bay;

THENCE in a northeasterly direction, parallel to the coastline of Bristol Bay and the ocean side of the Seal Islands, closing the entrance to the Seal Islands lagoon, for approximately 18 miles to a point in the waters of Bristol Bay ¼ mile (400 meters) northwest of the meander corner common to Section 32 of Township 39 South, Range 62 West, and Section 5 of Township 40 South, Range 62 West;

THENCE southeast ¼ mile to the aforementioned meander corner common, the TRUE POINT OF BEGINNING.

Cape Seniavin Unit

Those marine waters of the Bering Sea immediately fronting Cape Seniavin, Alaska Peninsula, Alaska.

The Cape Seniavin Unit consists of the water column from the line of mean high tide of the Bering Sea. The radius of the Unit is 3 miles (5 kilometers), the center of which is the Cape Seniavin Light, located at Latitude 56° 23′ 57.64″ North, Longitude 160° 08′ 47.67″ West, within Section 4 of Township 44 South, Range 69 West, Seward Meridian, Alaska.

Nelson Lagoon/Herendeen Bay/Port Moller Unit

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at the meander corner common to Section 33 of Township 47 South, Range 72 West, and Section 4 of Township 48 South, Range 72 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southwesterly, with the line of mean high tide of Bristol Bay, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980, approximately 23 miles to the meander corner common to Section 34 of Township 49 South, Range 72 West and Section 3 of Township 50 South, Range 72 West;

THENCE southwesterly, leaving said refuge boundary, across the waters of Port Moller approximately 7 miles to the meander corner common to Section 31 of Township 50 South, Range 72 West and Section 6 of Township 51 South, Range 72 West;

THENCE northerly, westerly, and southerly with the line of mean high tide of Port Moller and Herendeen Bay common with said refuge boundary approximately 26 miles to the meander corner common to Section 32 of Township 50 South, Range 74 West and Section 6 of Township 51 South, Range 74 West;

THENCE west with the line dividing Townships 50 and 51 South, crossing Herendeen Bay, approximately 5½ miles to the meander corner common to Section 32 of Township 50 South, Range 75 West and Section 5 of Township 51 South, Range 75 West;

THENCE northerly, westerly, and northeasterly with the line of mean high tide of Herendeen Bay and Nelson Lagoon, common with said refuge boundary, approximately 55 miles to Lagoon Point within Section 22 of Township 48 South, Range 76 West;

THENCE southwesterly with the line of mean high tide of the Bering Sea, common with said refuge boundary, approximately 8 miles to the meander corner common to Section 6 of Township 49 South, Range 78 West and Section 1 of Township 49 South, Range 79 West;

THENCE northwest, perpendicular to the coastline for a distance of ¼ mile (400 meters) to a point in the waters of Bristol Bay;

THENCE in a northeasterly direction, parallel to the coastline of Bristol Bay and the ocean side of the Kudobin Islands, closing the entrance to the Hague Channel, for approximately 40 miles to a point in the waters of Bristol Bay ¼ mile (400 meters) northwest of the meander corner common to Section 33 of Township 47 South, Range 72 West, and Section 4 of Township 48 South, Range 72 West;

THENCE southeast ¼ mile to the aforementioned meander corner common, the TRUE POINT OF BEGINNING.

Izembek Lagoon Unit

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at the meander corner common to Section 18 of Township 54 South, Range 86 West, and Section 13 of Township 54 South, Range 87 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southwesterly, with the line of mean high tide of Bristol Bay, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands

Conservation Act (Public Law 96–487) on December 2, 1980, approximately 4 miles to Moffet Point within Section 4 of Township 55 South, Range 87 West;

THENCE continuing with the line of mean high tide, inside the boundary of the Izembek National Wildlife Refuge, northeasterly, southwesterly, and northeasterly to encompass Moffet and Izembek Lagoons, Applegate Cove, and Norma Bay, approximately 55 miles to Cape Glazenap within Section 18 of Township 57 South, Range 90 West;

THENCE southwest with the line of mean high tide of Bristol Bay, common to the Alaska Maritime refuge boundary, approximately 14 miles to the meander corner common to Section 31 of Township 58 South, Range 92 West, and Section 36 of Township 58 South, Range 93 West;

THENCE northwest, perpendicular to the coastline for a distance of ¼ mile (400 meters) to a point in the waters of Bristol Bay;

THENCE in a northeasterly direction, parallel to the coastline of Bristol Bay and the ocean side of the Kudiakof Islands, closing the entrances to Izembek Lagoon, for approximately 30 miles to a point in the waters of Bristol Bay ¼ mile (400 meters) northwest of the meander corner common to Section 18 of Township 54 South, Range 86 West, and Section 13 of Township 54 South, Range 87 West;

THENCE southeast ¼ mile to the aforementioned meander corner common, the TRUE POINT OF BEGINNING.

Bechevin Bay Unit

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at the meander corner common to Section 31 of Township 58 South, Range 92 West, and Section 36 of Township 58 South, Range 93 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southwesterly, with the line of mean high tide of Bristol Bay, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980, approximately 6 miles to Cape Krenitzin at the meander corner common to Sections 17 and 20 of Township 59 South, Range 93 West;

THENCE southerly, northeasterly, and southerly with the line of mean high tide of Bechevin Bay and Isanotski Strait, common with said refuge boundary except to include Hot Springs Bay and Traders Cove, which lie inside the Alaska Peninsula refuge boundary, approximately 50 miles to Palisade Cliffs at the meander corner common to Section 18 of Township 62 South, Range 93 West, and Section 13 of Township 62 South, Range 94 West;

THENCE south with the line dividing Ranges 93 and 94 West, across Ikatan Bay of the Pacific Ocean approximately 3½ miles to a point of land on the Ikatan Peninsula of Unimak Island on the line of mean high tide of Ikatan Bay at the meander corner common to Section 6 of Township 63 South, Range 93 West, and Section 1 of Township 63 South, Range 94 West;

THENCE northwesterly, easterly, and westerly on the shore of Unimak Island with the line of mean high tide of Ikatan Bay, Isanotski Strait, Bechevin Bay, and Bristol Bay, to the meander corner common to Section 30 of Township 59 South, Range 94 West, and Section 25 of Township 59 South, Range 95 West;

THENCE north, perpendicular to the coastline for a distance of ¼ mile (400 meters) to a point in the waters of Bristol Bay;

THENCE in a northeasterly direction, parallel to the coastline of Bristol Bay, closing the entrance to Bechevin Lagoon, for approximately 14 miles to a point in the waters of Bristol Bay ¼ mile (400 meters) northwest of the meander corner common to Sections 17 and 20 of Township 59 South, Range 93 West;

THENCE southeast ¼ mile to the aforementioned meander corner common, the TRUE POINT OF BEGINNING.

Unit 6. Eastern Aleutians

Those marine waters of the Bering Sea and Pacific Ocean immediately fronting Unimak Island (excluding the Bechevin Bay Unit), the Krenitzin Islands (Ugamak and Unalga group), Unalaska Island, Umnak Island, and Samalga Island, Alaska.

The Eastern Aleutians Unit consists of the water column from the line of mean high tide of the Bering Sea and Pacific Ocean to a distance of ¼ mile (400 meters) seaward for the entire coastline lying between the Bechevin Bay Unit on the east and Samalga Pass on the west. Included within the Unit are the waters within ¼ mile (400 meters) of all associated islands and offshore islets, rocks, and reefs.

Unit 7. South Side of the Alaska Peninsula

All Seward Meridian

Those marine waters of the Pacific Ocean immediately fronting the south side of the Alaska Peninsula, Alaska.

The Alaska Peninsula Unit consists of the water column from the line of mean high tide of the Pacific Ocean to a distance of ¼ mile (400 meters) seaward for the entire coastline lying between Ikatan Bay on the west and Cook Inlet on the east. Said boundary points are more particularly described as follows:

West Boundary: a point of land on the Alaska Peninsula at Palisade Cliffs on the line of mean high tide of Ikatan Bay of the Pacific Ocean at the meander corner common to Section 18 of Township 62 South, Range 93 West, and Section 13 of Township 62 South, Range 94 West, Seward Meridian, Alaska.

East Boundary: a point of land on the Iniskin Peninsula of the Alaska Peninsula known as Chinitna Point on the line of mean high tide of Cook Inlet of the Pacific Ocean within Section 5 of Township 6 South, Range 22 West, Seward Meridian, Alaska.

Included within the Unit are the waters within ¼ mile (400 meters) of all associated islands including the Sanak, Shumagin, and Semidi island groups, Chirikof Island, and all offshore islets, rocks, and reefs. Excluded from the Unit are the waters surrounding the Trinity, Kodiak, and Afognak island groups.

Areas of the Unit that are exceptions to the ¼ mile (400 meters) seaward water column are described as follows:

Morzhovoi Bay: Those marine waters of northern Morzhovoi Bay, including Big and Middle lagoons, lying between Boiler Point on the west and Reynolds Head on the east, and to include Littlejohn Lagoon, east of Reynolds Head. The boundary line connecting said points are more particularly described as follows:

West Boundary: A point of land on the Alaska Peninsula known as Boiler Point on the line of mean high tide of Morzhovoi Bay of the Pacific Ocean within Section 6 of Township 60 South, Range 91 West, Seward Meridian, Alaska. Said point is approximately 850 feet northeast of USC&GS monument "Slope" which is at Latitude 55° 00′ 41.69″ North, Longitude 163° 08′ 57.57″ West (NAD 83).

East Boundary: A point of land on the Alaska Peninsula known as Reynolds Head on the line of mean high tide of Morzhovoi Bay of the Pacific Ocean within Section 5 of Township 60 South, Range 90 West, Seward Meridian, Alaska. Said point is the most northwestern point of land within Section 5 of said township.

Cold Bay: Those marine waters of Cold Bay, including Old Mans Lagoon, Lenard Harbor, Mortensons Lagoon, and Kinzarof Lagoon, lying north of a boundary line closing the mouth of Cold Bay. The points on the boundary line closing the mouth of Cold Bay are more particularly described as follows:

West Boundary: A point of land on the Alaska Peninsula on the line of mean high tide of Cold Bay at the meander corner common to Section 36 of Township 59 South, Range 88 West, and Section 1 of Township 60 South, Range 88 West Seward Meridian, Alaska.

East Boundary: A point of land on the Alaska Peninsula known as Vodapoini Point on the line of mean high tide of Cold Bay within Section 36 of Township 59 South, Range 87 West, Seward Meridian, Alaska. Said point is the most western point of land within Section 36 of said township.

Sanak Islands: Those marine waters of the Pacific Ocean surrounding the Sanak Island group, said waters being divided into north and south portions lying between Point Petrof on the west and Lookout Point on the east. These portions are defined as the water column from the line of mean high tide of the Pacific Ocean extending to a distance of 5 miles (8 kilometers) seaward for the southern portion and a distance of 1 mile (1.6 kilometers) seaward for the northern portion.

Said southern portion extends 5 miles from the southern coastlines of Point Petrof, Rabbit Island, Sanak Island, Long Island, Clifford Island, Elma Island, and Caton Island.

Said northern portion extends 1 mile from the northern coastlines of Point Petrof, Sanak Island, Finneys Island, and Caton Island.

Those westernmost and easternmost points that divide the southern and northern portions are more particularly described as follows:

West Boundary: A point of land known as Point Petrof on a small island on the northwest side of Sanak Harbor of the Pacific

Ocean on the line of mean high tide of the Pacific Ocean within Section 3 of Township 66 South, Range 91 West, Seward Meridian, Alaska. Said point is approximately 500 feet west of USC&GS monument "Petrof," which is at Latitude 54° 29′ 37.62″ North, Longitude 162° 49′ 49.37″ West (NAD 83).

East Boundary: A point of land on Caton Island known as Lookout Point on the line of mean high tide of the Pacific Ocean within Section 11 of Township 67 South, Range 88 West, Seward Meridian, Alaska. Said point is the most eastern point of land within Section 11 of said township.

Ivanof Bay: Those marine waters of Ivanof Bay of the Pacific Ocean lying north of a boundary line closing the mouth of said bay. Said boundary line is common with the boundaries of the Alaska Peninsula and Alaska Maritime National Wildlife Refuges as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980. The points on the boundary line closing the mouth of Ivanof Bay are more particularly described as follows:

West Boundary: A point of land on the Alaska Peninsula on the line of mean high tide of Ivanof Bay at the meander corner common to Sections 9 and 16 of Township 51 South, Range 66 West, Seward Meridian, Alaska.

East Boundary: A point of land on the Alaska Peninsula known as Alexander Point on the line of mean high tide of Ivanof Bay within Section 1 of Township 51 South, Range 66 West, Seward Meridian, Alaska. Said point is the most southern point of land within Section 1 of said township.

Chignik Lagoon: Those marine waters of Chignik Lagoon including Mallard Duck Bay and Schooner Cove, lying west of the line dividing Township 44 South, Ranges 58 and 59 West, Seward Meridian, Alaska. The western extent of Chignik Lagoon is described as follows:

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Chignik Lagoon and the Chignik River at the meander corner common to Sections 15 and 16 of Township 45 South, Range 60 West; THENCE south with the section line across the Chignik River approximately ¼ mile to the meander corner common to Sections 21 and 22 of the same township.

Wide Bay: Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Shelikof Strait of the Pacific Ocean at the meander corner common to Section 35 of Township 33 South, Range 44 West, and Section 2 of Township 34 South, Range 44 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE northerly, southwesterly, and northeasterly with the line of mean high tide of Shelikof Strait and Wide Bay approximately 60 miles to Cape Igvak at the southernmost portion of the Alaska Peninsula in Section 12 of Township 32 South, Range 42 West;

THENCE south, perpendicular to the coastline for a distance of 1 mile (1.6 kilometers) to a point in the waters of Shelikof Strait;

THENCE in a southwesterly direction, parallel to the coastline of the Alaska Peninsula, closing the entrance to Wide Bay, and paralleling the ocean side of all islands fronting Wide Bay, for approximately 17 miles to a point in the waters of Shelikof Strait 1 mile east of the meander corner common to Section 35 of Township 33 South, Range 44 West, and Section 2 of Township 34 South, Range 44 West;

THENCE west 1 mile to the aforementioned meander corner common, the TRUE POINT OF BEGINNING.

Kamishak Bay: Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Kamishak Bay of the Pacific Ocean at the meander corner common to Section 7 of Township 14 South, Range 25 West, and Section 12 of Township 14 South, Range 26 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE northwesterly and northeasterly with the line of mean high tide of Kamishak Bay, including all associated bays and coves, approximately 190 miles to a point on the Iniskin Peninsula known as Chinitna Point on the line of mean high tide of Cook Inlet of the Pacific Ocean within Section 5 of Township 6 South, Range 22 West, Seward Meridian, Alaska;

THENCE south, perpendicular to the coastline for a distance of 1 mile (1.6 kilometers) to a point in the waters of Cook Inlet;

THENCE in a southwesterly direction, parallel to the coastline of the Alaska Peninsula, for approximately 150 miles to a point in the waters of Kamishak Bay 1 mile north of the meander corner common to Section 7 of Township 14 South, Range 25 West, and Section 12 of Township 14 South, Range 26 West;

THENCE south 1 mile to the aforementioned meander corner common, the TRUE POINT OF BEGINNING.

Unit 8. Kachemak Bay/Ninilchik

Beginning at a point of land on the Kenai Peninsula on the line of mean high tide of Cook Inlet of the Gulf of Alaska of the Pacific Ocean at the meander corner common to Section 33 of Township 1 South, Range 14 West, and Section 4 of Township 2 South, Range 14 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southwesterly, southeasterly, northeasterly, and southwesterly with the line of mean high tide of Cook Inlet, Kachemak Bay, and all associated bays and coves, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980, approximately 210 miles to a point on the Kenai Peninsula known as Point Bede at the western most extent of Section 16 of Township 10 South, Range 16 West;

THENCE northerly across the mouth of Kachemak Bay, approximately 29 miles to a point in the waters of Cook Inlet 1 mile (1.6 kilometers) northwest of the meander corner common to Section 33 of Township 4 South, Range 15 West, and Section 5 of Township 5 South, Range 15 West;

THENCE in a northeasterly direction, parallel to the coastline of the Kenai Peninsula, approximately 18 miles to a point in the waters of Cook Inlet 1 mile northwest of the meander corner common to Section 33 of Township 1 South, Range 14 West, and Section 4 of Township 2 South, Range 14 West;

THENCE southeast 1 mile to the aforementioned meander corner common, the TRUE POINT OF BEGINNING.

Unit 9. Kodiak

Those marine waters immediately surrounding the islands of the Kodiak Archipelago, Gulf of Alaska, Pacific Ocean, Alaska.

The Kodiak/Afognak Island Unit consists of the water column from the line of mean high tide of Kodiak and Afognak islands to a distance of ¼ mile (400 meters) seaward. Said water column is reserved for all islands of the Kodiak Archipelago, including the waters within ¼ mile (400 m) of the Trinity Islands, Marmot Island, Shuyak Island, and all other offshore islets, rocks, and reefs.

* * * * *

Dated: February 29, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–5436 Filed 3–10–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No.000218046–0046–01; I.D. 121599F]

RIN 0648–AN42

Antarctic Marine Living Resources; Harvesting and Dealer Permits, and Catch Documentation

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to revise permit requirements for U.S. vessels harvesting, or transshipping catch of, *Dissostichus eleginoides* (Patagonian toothfish) and *Dissostichus mawsoni* (Antarctic toothfish) harvested in all waters, including those under the jurisdiction of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). These regulations would also govern U.S. receivers, importers and exporters of toothfish, wherever caught. Persons receiving, importing or re-exporting toothfish would be required to validate and submit *Dissostichus* Catch Documents to

NMFS. This rule is intended to implement U.S. obligations as a Contracting Party of CCAMLR and to conserve Antarctic and Patagonian toothfish by preventing or otherwise discouraging unlawful harvest and trade in these species.

DATES: Comments must be received no later than 5:00 p.m., eastern standard time, on April 7, 2000.

ADDRESSES: Comments on the proposed rule should be submitted to Dean Swanson, International Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. For copies of the draft Environmental Assessment/Regulatory Impact Review/ Regulatory Flexibility Analysis (EA/ RIR/RFA), call 301–713–2276 or write to Dean Swanson. Comments also may be sent via facsimile (fax) to 301–713–2313. Comments will not be accepted if submitted via e-mail or Internet. Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Dean Swanson and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Dean Swanson or Angela Somma at 301-713-2276, fax: 301–713–2313.

SUPPLEMENTARY INFORMATION: The Antarctic fisheries are managed under the authority of the Antarctic Marine Living Resources Convention Act of 1984 (Act) codified at 16 U.S.C. 2431 *et seq.* NMFS implements CCAMLR conservation measures by regulations at 50 CFR part 300, subpart G. Changes to the existing regulations are necessary to incorporate new conservation measures and to revise procedures to facilitate enforcement.

Toothfish Catch Documentation

Due to the scale of illegal, unregulated or unreported fishing for Patagonian toothfish (*Dissostichus eleginoides*) and Antarctic toothfish (*Dissostichus mawsoni*) in and beyond the Convention for the Conservation of Antarctic Marine Living Resources (Convention) waters, CCAMLR has adopted a number of conservation measures in the last several years. These measures have included flag state licensing of fishing vessels, catch quotas, vessel monitoring systems, port inspections of landings and transshipments, and identification of vessels and fishing gear.

Despite increased inspections and sanctions in recent years, the amount of illegal, unregulated or unreported harvest of toothfish has been estimated at 90,000 metric tons, about twice the level of the CCAMLR regulated fisheries. Consequently CCAMLR adopted a catch documentation scheme for toothfish at its eighteenth regular meeting in November, 1999. (64 FR 71165, December 20, 1999). A copy of the proposed CCAMLR *Dissostichus* Catch Document (DCD) and of the CCAMLR Conservation Measure specifying the operation of the catch documentation scheme can be obtained from NMFS (see **ADDRESSES**).

The purposes of the catch documentation scheme are to: monitor international trade; identify the origins of imports; determine if imports caught in the Convention Area were caught consistent with CCAMLR conservation measures; and gather catch data for stock assessment. The documentation scheme requires that CCAMLR Contracting Parties provide a uniquely numbered DCD to each vessel under its jurisdiction that is authorized to harvest toothfish. Upon completion of the document, each DCD accompanies the toothfish as it enters into commerce and/or international trade and documents the chain of custody. This proposed rule would provide a 60-day exception for toothfish harvested prior to the implementation of the DCD by NMFS.

As specified in the CCAMLR conservation measure, a flag state would issue non-transferrable DCDs that are uniquely identified for a vessel. The master of the harvesting vessel would be required to record the catch information specified on the DCD and convey such catch information to the flag state prior to offloading to obtain a confirmation. Upon transshipment of *Dissostichus* species, the master of the harvesting vessel would be required to obtain the signature of the master of the vessel to which the catch is transferred. Upon landing *Dissostichus* species, the master of the harvesting vessel or the transshipment vessel would be required to obtain the signature of a responsible official and the individual that receives the catch at the port of landing. For U.S. vessels, the responsible official would be designated by NMFS in the harvesting permit. After signing the DCD, the master of the harvesting or transshipment vessel would be required to provide a copy to each recipient of the catch and to the flag state.

Any person who exports *Dissostichus* species would be required to complete the DCD(s) by indicating the amount, by net weight, from the original offloading listed on that DCD that is exported in the particular shipment, the name of the importer and point of import, and the exporter's name, address and permit number. The exporter would then be required to sign the DCD and obtain validation by a government authority. The original DCD would be transmitted with the export shipment.

Any person who imports *Dissostichus* species would be required to obtain the DCD(s) that accompany the import shipment and mail or fax the DCD(s) to NMFS. If *Dissostichus* species are re-exported, an exporter would be required to complete a re-export document by indicating the amount from the original DCD(s) that is re-exported in the particular export shipment, the number of the original DCD(s), the name of the importer and point of import, and the exporter's name, address and permit number. The exporter would then be required to sign the re-export document and obtain validation by an authority designated by NMFS. The original re-export document and copies of the original DCD(s) as applicable to that shipment would be transmitted with the export shipment.

Harvesting Permits

To facilitate implementation of the *Dissostichus* catch documentation scheme, permit requirements would be revised to include transshipment vessels. Any vessel subject to the jurisdiction of the United States that receives or attempts to receive *Dissostichus* species from a harvesting vessel at sea would be required to obtain a permit from NMFS.

Dealer Permits

NMFS would revise other permit requirements as well. The import permit requirements would be revised to require a dealer permit for either the import or re-export of *Dissostichus* species whether harvested within or outside of Convention waters. In addition, first receivers from vessels harvesting toothfish and re-exporters of *Dissostichus* would be required to obtain a permit and to maintain reports and records accurately and to make such reports and records available for inspection. NMFS is also adding *Electorna carlsgeri* and *Lepidonothon kempi* to the list of Antarctic living marine resource finish because they are managed by CCAMLR.

Classification

This proposed rule is published under the authority of the Antarctic Marine Living Resources Convention Act of 1984, codified at 16 U.S.C. 2431 *et seq.*

NMFS prepared an EA/RIR/RFA for this proposed rule (see **ADDRESSES**).

NMFS has concluded that this proposed rule to require permits and

catch documentation for the harvest and importation of certain Antarctic marine living resources (AMLRs) would not have a significant economic impact on a substantial number of small entities. The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would prohibit the importation of toothfish unless accompanied by a DCD and would require vessel and dealer permits for the harvest and import of all AMLRs and for the transshipment and re-export of toothfish. This proposed rule entails only the application for permits and the collection, photocopying and submission of forms to NMFS. The principal burden would be the time required to fill out application forms, keep records, obtain certifications and submit DCDs and import tickets. Approximately 30 importers and up to 10 additional re-exporters will be affected. The required information is readily available to importers. Therefore, no incremental investments in information processing technologies would be needed. Accordingly, these proposed actions, considered separately or in aggregate, are not expected to have a significant economic impact and an initial regulatory flexibility analysis was not prepared. The EA/RIR/RFA further discusses the economic effects of the proposed rule.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The proposed action would revise existing and impose new reporting and record-keeping requirements on vessel operators, importers and exporters. Harvesting permits, dealer permits, catch documentation forms, and import tickets applicable to the ALMRs fisheries are subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

OMB has approved CCAMLR harvesting and import permits under 0648–0194. Revisions to these requirements would require that transshipment vessels also obtain a permit and that a broader range of dealers be subject to the permit requirement. Under the proposed rule, the estimate of 30 minutes per occurrence for the dealer permit to import would not change. The application for a dealer permit to re-export is estimated to take 30 minutes per occurrence and the application for a harvest permit authorizing transshipment is estimated to take 12 minutes per occurrence. Completion and submission of an import ticket is estimated to take no more than 15 minutes per occurrence.

A new reporting and record-keeping requirement on vessel operators, importers and exporters would require that all harvesters, transshipers, importers and exporters obtain, validate and submit DCD forms to NMFS. It is estimated that completion and submission of DCDs would require three minutes for each submission by importers, ten minutes for each submission by re-exporters and fifteen minutes for each submission by harvesting vessels and transshipers. The logbook requirement in § 300.107(a) is not subject to the PRA because it is a requirement imposed by an international organization rather than NMFS.

Public comment is sought regarding whether these proposed new or revised collections-of-information are necessary for the proper performance of the functions of NMFS in meeting pending U.S. obligations to CCAMLR, including whether the information has practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Office of Sustainable Fisheries and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Fishing vessels, Foreign relations, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: March 3, 2000.

Gary C. Matlock

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 subpart G is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart G—Antarctic Marine Living Resources

1. The authority citation for part 300, subpart G continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*

2. In § 300.101, the definition of "Antarctic finfishes" is amended by adding entries in the table for "Antarctic toothfish" and "Lanternfish" immediately following the existing entry for "Patagonian toothfish," and an entry for "Striped-eyed rockcod" immediately following the existing entry for "Grey rockcod." The definition of "Antarctic marine living resources or AMLR(s)" is revised, and the definitions for "Dealer", "Dissostichus catch document (DCD)", "Dissostichus species" and "Transship" are added in alphabetical order to read as follows:

§ 300.101 Definitions.

* * * * *

Antarctic finfishes include the following:

Scientific name	Common name
* * * * *	
Lepidonothon kempi	Striped-eyed rockcod
* * * * *	
Dissostichus mawsoni	Antarctic toothfish
Electrona carlsgergi	Lanternfish
* * * * *	

* * * * *

Antarctic marine living resources or AMLR(s) means the populations of finfish, mollusks, crustaceans, and all other species of living organisms, including birds, found south of the Antarctic Convergence, and with respect to all species of *Dissostichus*, wherever found, and their parts or products.

* * * * *

Dealer means the person who first receives AMLRs from a harvesting vessel or transshipment vessel, or who imports AMLRs into, or re-exports AMLRs from the customs territory of the United States.

* * * * *

Dissostichus catch document (DCD) means the uniquely numbered catch documentation form approved by the Commission and issued by a flag state to its vessels authorized to harvest and/or transship *Dissostichus* species.

Dissostichus species means Patagonian toothfish and/or Antarctic toothfish and their parts or products.

* * * * *

Transship means offloading, onloading, otherwise transferring or transporting fish or fish products.

* * * * *

3. Section 300.107 is revised to read as follows:

§ 300.107 Reporting and recordkeeping requirements.

(a) *Vessels.* The operator of any vessel required to have a permit under this subpart must:

(1) Accurately maintain on board the vessel a fishing logbook and all other reports and records required by its permit.

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector.

(3) Within the time specified in the permit, submit a copy of such reports and records to NMFS at an address designated by NMFS.

(b) *Dealers.* Dealers of AMLRs required to have a permit under this subpart must:

(1) Accurately maintain all reports and records required by its permit.

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector.

(3) Within the time specified in the permit, submit a copy of such reports and records to NMFS at an address designated by NMFS.

(c) *Catch documentation.* No shipment of *Dissostichus* species shall be released for entry into the customs territory of the United States unless accompanied by a complete and validated CCAMLR DCD, except as provided in paragraph (c)(6) of this section. The CCAMLR DCD must accompany all shipments of *Dissostichus* species as follows:

(1) *Harvesting vessels.* In addition to any harvesting permit or authorization previously issued, a U.S. vessel harvesting or attempting to harvest *Dissostichus* species must have been issued by NMFS a DCD that is uniquely identified for that vessel and is non-transferrable. The master of the harvesting vessel must ensure that the catch information specified on the DCD is accurately recorded. Prior to offloading the master must convey such catch information to NMFS by the most rapid electronic means possible, and must record on the DCD a confirmation number received from NMFS. Upon transshipment or landing *Dissostichus* species, the master of the harvesting vessel must obtain on the DCD, or copies thereof, either the signature(s) of the master of the vessel(s) to which the catch is transferred or the signature of a responsible official(s) designated by NMFS in the harvesting permit and the dealer(s) that receives the catch at the port(s) of landing. The master of the harvesting vessel shall sign the DCD, or copies thereof, convey each copy to NMFS by the most rapid electronic means possible, and provide a copy to each recipient of the catch. The master of the harvesting vessel must submit the original DCD, or copies thereof with original signatures by the master and recipient(s), to NMFS at an address designated by NMFS no later than 30 days after the end of the fishing season as authorized for that vessel on its harvesting permit.

(2) *Transshipment vessels.* The master of a U.S. vessel issued a permit to receive *Dissostichus* species at sea must, upon receipt of *Dissostichus* species at sea, sign each DCD provided by the master of the harvesting vessel and retain a copy for a period of 2 years. Upon landing *Dissostichus* species received at sea, the master of the receiving vessel must obtain on each DCD, or copies thereof, the signature of a responsible official(s) designated by NMFS in the permit and the person/dealer(s) that receives the catch at the port(s) of landing. The master of the receiving vessel must sign each DCD, or copies thereof, convey each copy to NMFS and to the flag state(s) of the harvesting vessel(s) by the most rapid electronic means possible and provide a copy to each recipient of the catch. The master of the receiving vessel must submit a copy of each DCD with original signatures by the master of the receiving vessel and recipient(s) of the landed catch to NMFS at an address designated by NMFS no later than 30 days after offloading in port.

(3) *Receivers upon landing.* Any dealer who receives *Dissostichus* species from a harvesting vessel or from a transshipment vessel must sign the DCD(s) provided by the master of the vessel.

(4) *Import.* Any dealer who imports *Dissostichus* species must obtain the DCD(s) that accompany the import shipment, mail or fax the DCD(s) to NMFS at an address designated by NMFS within 24 hours of the release from customs custody, retain a copy for his/her records and provide copies to exporters as needed. Dealers must retain at their place of business a copy of the DCD for a period of 2 years from the date on the DCD.

(5) *Re-export.* Any dealer who re-exports *Dissostichus* species must complete a *Dissostichus* re-export document by indicating the amount from the original DCD(s) that is exported in the particular export shipment, the number of the original DCD(s), the name of the importer and point of import, and the exporter's name, address and permit number. The dealer must then sign the re-export document and obtain validation by an authority designated by NMFS. The original validated *Dissostichus* re-export document and copies of the original DCD(s)must accompany the export shipment. The dealer must retain a copy of the re-export document and copies of the DCD(s). Dealers must retain at their place of business a copy of the DCD for a period of 2 years from the date on the DCD.

(6) *Exception. Dissostichus* species harvested prior to the effective date of this rule may be imported during the first 60 days following the effective date of this rule, provided that the date of the harvest are corroborated on the dealer permit.

4. In § 300.112, paragraph (k) is added to read as follows:

§ 300.112 Harvesting permits.

* * * * *

(k) *Transshipment vessels.* Any vessel subject to the jurisdiction of the United States that receives or attempts to receive *Dissostichus* species from a harvesting vessel at sea, regardless of whether such transshipment occurs in waters under the jurisdiction of CCAMLR, must obtain from NMFS a harvesting permit authorizing transshipment. Transshipment vessels must comply with the permitting provisions of this section with respect to harvesting vessels.

5. Section 300.113 is revised to read as follows:

§ 300.113 Dealer permits.

(a) *General.* (1) A dealer must obtain an AMLRs dealer permit from NMFS. Only those specific activities stipulated by the permit are authorized for the permit holder.

(2) An AMLR may be imported into the United States if its harvest has been authorized by a U.S.-issued individual permit or a harvesting permit or its importation has been authorized by a U.S.-issued dealer permit issued pursuant to § 300.112 or paragraph (a) of this section. The harvesting permit, or the individual permit, a NMFS issued dealer permit, or a copy thereof, must accompany the import.

(3) In addition to any applicable catch documentation required under § 300.107, the dealer is required to complete and return to NMFS, no later than 24 hours after the date of the importation, an import ticket reporting the importation. Import tickets will be attached to the permit. Additional

import tickets are available from NMFS. In no event may a marine mammal be imported into the United States unless authorized and accompanied by an import permit issued under the Marine Mammal Protection Act and/or the Endangered Species Act.

(4) A dealer permit issued under this section does not authorize the harvest or transshipment of any AMLR by or to a vessel of the United States.

(b) *Application.* Application forms for AMLR dealer permits are available from NMFS at an address designated by NMFS. A fully completed and accurate application must be submitted for each permit at least 30 days before the anticipated date of the receipt, importation or re-export.

(c) *Issuance.* NMFS may issue a dealer permit if it determines that the activity proposed by the dealer meets the requirements of the Act and that the resources were not or will not be harvested in violation of any conservation measure in force with respect to the United States or in violation of any regulation in this subpart.

(d) *Duration.* A permit issued under this section is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(e) *Transfer.* A permit issued under this section is not transferable or assignable.

(f) *Changes in information.* (1) Pending applications. Applicants for permits under this section must report in writing to NMFS any change in the information submitted in their permit applications. The processing period for the application will be extended as necessary to review and consider the change.

(2) Issued permits. Any entity issued a permit under this section must report in writing to NMFS any changes in previously submitted information. Any changes that would not result in a change in the receipt or importation authorized by the permit must be reported on the import ticket required to be submitted to NMFS no later than 24 hours after the date of receipt or importation. Any changes that would result in a change in the receipt or importation authorized by the permit, such as harvesting vessel or country of origin, type and quantity of the resource to be received or imported, and Convention statistical subarea from which the resource was harvested, must be proposed in writing to NMFS and may not be undertaken unless authorized by NMFS through issuance of a revised or new permit.

(g) *Revision, suspension, or revocation.* A permit issued under this section may be revised, suspended, or revoked, based upon a violation of the permit, the Act, or this subpart. Failure to report a change in the information contained in a permit application voids the application or permit, as applicable. Title 15 CFR part 904 governs permit sanctions under this subpart.

6. In § 300.115, paragraph (b) is revised and paragraphs (q) and (r) are added to read as follows:

§ 300.115 Prohibitions.

* * * * *

(b) Import into or export from the customs territory of the United States any AMLRs taken by vessels without a permit to harvest those resources as required by § 300.112, or without applicable catch documentation as required by § 300.107, or without a dealer permit receive, import or export to the AMLRs as required by § 300.113.

* * * * *

(q) Fail to complete and sign applicable catch documentation, or provide false information about the harvest, transshipment, landing, import or re-export of applicable species as required by § 300.107.

(r) Receive AMLRs from a vessel without a dealer or harvesting permit issued under this subpart or in violation of the terms and conditions for such receipt as specified on the permit.

7. In § 300.116, paragraph (d) is added to read as follows:

§ 300.116 Facilitation of enforcement and inspection.

* * * * *

(d) *Disposition of resources denied entry.* (1) When AMLRs are offered for entry into the Customs territory of the United States unaccompanied by a permit authorizing import and/or required catch documentation, the importer of record must either:

(i) Abandon the resources;

(ii) Waive claim to the resources; or

(iii) Place the resources into a bonded warehouse and attempt to obtain a permit and/or documentation authorizing their importation.

(2) If, within 60 days of such resources being placed into a bonded warehouse, the District Director of the U.S. Customs Service receives documentation that import of the resources into the United States is authorized by a permit and that required documentation has been submitted to NMFS, the resources will be allowed entry. If a permit or catch documentation is not presented within 60 days, the importer's claim to the resources will be deemed waived.

(3) When resources are abandoned or claim to them is waived, the resources will be delivered to the Administrator of NOAA, or a designee, for storage or disposal as authorized by law. In such case, actual costs of delivery, storage and/or disposal may be assessed against the importer of record.

[FR Doc. 00–5783 Filed 3–8–00; 5:07pm]

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Notices

Federal Register
Vol. 65, No. 49
Monday, March 13, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Consensus Development Conference on Osteoporosis Prevention, Diagnosis, and Therapy

Notice is hereby given of the National Institutes of Health (NIH) Consensus Development Conference on "Osteoporosis Prevention, Diagnosis, and Therapy," which will be held March 27–29, 2000, in the NIH's Natcher Conference Center, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:00 am on March 27, at 8:30 am on March 28, and at 9:00 am on March 29 and is open to the public.

The most common bone disease in the United States, osteoporosis affects 10 million people in this country, with 18 million more at increased risk due to low bone mass. Osteoporosis is characterized by low bone mass and structural deterioration of bone tissue, leading to bone fragility and an increased susceptibility to fractures—particularly of the hip, spine, and wrist. Women are four times more likely than men to develop osteoporosis.

The purpose of the 2½-day conference is to clarify, for health care providers and the public, the factors associated with prevention and better diagnosis and treatment of osteoporosis. After 1½ days of presentations and audience discussion of the latest osteoporosis research, an independent, non-Federal consensus development panel will weigh the scientific evidence and draft a statement addressing the following key questions:

What is osteoporosis and what are its consequences?

How do risks vary among different segments of the population?

What factors are involved in building and maintaining skeletal health throughout life?

What is the optimal evaluation and treatment of osteoporosis and fractures?

What are the directions for future research?

On the final day of the conference, the panel's draft statement will be read in public, at which time members of the public are invited to offer comments on the draft.

The primary organizers of this meeting are the National Institute of Arthritis and Musculoskeletal and Skin Diseases and the NIH Office of Medical Applications of Research. Other supporters include the National Institute on Aging; the National Institute of Diabetes and Digestive and Kidney Diseases; the National Institute of Dental and Craniofacial Research; the National Institute of Child Health and Human Development; the National Institute of Nursing Research; the National Institute of Environmental Health Sciences; the National Heart, Lung, and Blood Institute; the NIH Office of Research on Women's Health; and the Agency for Healthcare Research and Quality (formerly the Agency for Health Care Policy and Research).

This is the 111th Consensus Development Conference held by the NIH in the 23-year history of the Consensus Development Program. Advance information about the conference and conference registration materials may be obtained from Prospect Associates of Silver Spring, Maryland, by calling (301) 592–3320 or by sending email to *osteoporosis@prospectassoc.com*. Prospect Associates' address is 10720 Columbia Pike, Suite 500, Silver Spring, Maryland 20901–4437. A conference agenda and registration information is also available on the NIH Consensus Program Web site at *http://consensus.nih.gov*.

Dated: March 2, 2000.

Ruth L. Kirschstein,

Acting Director, NIH.

[FR Doc. 00–6014 Filed 3–10–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH): Notice of Expert Panel Meeting on the Frog Embryo Teratogenesis Assay—Xenopus

SUMMARY: Pursuant to Public Law 103–43, notice is hereby given of a public meeting sponsored by the NIEHS and the National Toxicology Program (NTP), and coordinated by the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM). The agenda topic is an expert panel assessment on the current validation status of the frog embryo teratogenesis assay (FETAX), an *in vitro* method proposed for evaluating the developmental toxicity potential of chemicals. The meeting will take place at the Sheraton Imperial Hotel and Convention Center, 4700 Emperor Blvd., Durham, NC 27703 on May 16–17, 2000 from 8:00 a.m. to 5:30 p.m. and May 18 from 8:00 a.m. to noon and is open to the public.

Background

ICCVAM, with participation by 14 Federal regulatory and research agencies and programs, was established in 1997 to coordinate issues relating to validation, acceptance, and national/international harmonization of toxicological test methods. ICCVAM seeks to promote the scientific validation and regulatory acceptance of toxicological test methods that will enhance agencies' ability to assess risks and make decisions and that will refine, reduce, and replace animal use whenever possible. NICEATM provides administrative and scientific support of ICCVAM-related activities. NICEATM and ICCVAM collaborate to carry out activities needed to develop, validate, and achieve regulatory acceptance of new and improved test methods applicable to Federal agencies. These activities may include:

Test Method Workshops that are convened, as needed, to evaluate the adequacy of current methods for assessing specific toxicities, to identify

areas in need of improved or new testing methods, and to identify research efforts that may be needed to develop a new test method.

Expert Panel Meetings that are typically convened to evaluate the validation status of a method following the completion of initial development and pre-validation studies. An Expert Panel is asked to recommend additional validation studies, which might be helpful in further characterizing the usefulness of a method, and to identify any additional research and development efforts that might enhance the effectiveness of a method.

Independent Peer Review Panel Meetings that are typically convened following the completion of comprehensive validation studies on a test method. Peer Review Panels are asked to develop scientific consensus on the usefulness and limitations of test methods to generate information for specific human health and/or ecological risk assessment purposes. Following the independent peer review of a test method, ICCVAM forwards recommendations on its usefulness to agencies for their consideration. Federal agencies then determine the regulatory acceptability of a method according to their mandates.

Evaluation of FETAX

ICCVAM and NICEATM are coordinating an Expert Panel Meeting to assess the current validation status of FETAX which is proposed as a screening method for evaluating the developmental toxicity potential of chemicals (Bantle, J.A., 1995, FETAX—A Developmental Toxicity Assay Using Frog Embryos, in: Fundamentals of Aquatic Toxicology, 2nd Ed., (Rand, G.M., ed), Taylor and Francis:USA, pp. 207–230). An ICCVAM Developmental Toxicity Working Group composed of Federal employees determined that the assay may have potential for use in screening and prioritizing compounds for further testing, evaluating complex mixtures and environmental samples, and as supplemental information in a weight-of-evidence evaluation of toxicity hazards. NICEATM has prepared a comprehensive Background Review Document (BRD) summarizing available FETAX data and performance characteristics.

Agenda

During the morning session on the first day of the meeting, May 16, the Expert Panel will meet in a plenary session and then divide into five Breakout Groups that will meet on the afternoon of May 16 and all day on May 17. For these sessions, the Breakout Groups will address potential uses of FETAX and develop recommendations for research, additional test method development, and validation efforts that might be considered to further enhance and/or characterize the usefulness of FETAX. On May 18 in a plenary session, the Breakout Groups will individually present their conclusions and recommendations for consideration and discussion by the entire panel. A final report from the Expert Review Panel will be prepared and made publicly available (see below). The public is invited to attend all sessions of the Expert Panel Meeting, and designated times throughout the meeting will be set aside for presentation of public comments.

Summary minutes for the meeting and the final report from the Expert Panel will be prepared and made available upon request to NICEATM and on the web at http://iccvam.niehs.nih.gov. Copies of the FETAX BRD and supporting materials may be obtained from NICEATM, MD: EC–17, P.O. Box 12233, Research Triangle Park, NC, 27709 (919–541–3398), FAX (919–541–0947), e-mail:

ICCVAM@niehs.nih.gov.

Additionally, the FETAX BRD will be available for viewing Monday through Friday, from noon to 4:00 p.m. EST at: Office of Prevention, Pesticides and Toxic Substances, Non-Confidential Information Center, Room 607B, Northeast Mall, 401 M Street SW, Washington, DC 20406. Thirty days prior to the meeting, a detailed agenda will be available online at: http://iccvam.niehs.nih.gov or by contacting NICEATM.

Public Comment

NICEATM invites the submission of written comments on the FETAX test method and BRD, as well as other available information regarding the usefulness of FETAX including information about completed, ongoing, or planned studies. Written comments and additional information should include name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization (if any). This material should be sent by mail, fax, or e-mail to NICEATM at the address given. Information and comments may be sent at any time prior to the meeting; however, materials should be received by April 15, 2000 in order to ensure adequate review by the Expert Panel. This information will be added to the resource materials assembled on FETAX. Copies of written comments will be available for attendees at the meeting.

The Expert Panel Meeting will be open to the public, and time will be provided for presentation of public oral comments at designated times during the meeting. Speakers will be assigned on a first-come, first-serve basis, and at least seven minutes will be allotted to each speaker. In order to facilitate planning for the meeting, persons requesting time for an oral presentation should notify NICEATM at the address given above no later than May 1, 2000. Persons registering to make comments are asked to provide, if possible, a written copy of their statement by May 1st so copies can be made and distributed to the Expert Panel and ICCVAM representatives and experts for their timely review prior to the meeting. Written statements can supplement and expand the oral presentation, and each speaker is asked to provide his/her name, affiliation, mailing address, phone, fax, e-mail and supporting organization (if any). Registration for making public comments will also be available on-site. If registering on-site to speak and reading oral comments from printed copy, the speaker is asked to bring 50 copies of the text. These copies will be distributed to the Chair and Expert Panel members and supplement the record.

Persons needing special assistance, such as sign language interpretation or other special accommodations should contact NICEATM (contact information given above).

Dated: March 6, 2000.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 00–6013 Filed 3–10–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Discretionary Funds for Projects to Establish Individual Development Accounts for Refugees

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Notice of Availability of FY 2000 Discretionary Social Service Funds to Public and Private, Non-profit Agencies for Projects to Establish and Manage Individual Development Accounts for Refugees.

SUMMARY: The Office of Refugee Resettlement invites eligible entities to submit competitive grant applications for projects to establish and manage

Individual Development Accounts (IDAs) for low-income refugee [1] participants. Eligible refugee participants who enroll in these projects will open and contribute systematically to IDAs for specified Savings Goals, including homeownership, business capitalization, and post-secondary education. Grantees may use ORR funds to provide matches for the savings in the IDAs up to $2,000 per individual refugee and $4,000 per refugee household. Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

DATES: The closing date for submission of applications is May 12, 2000. See Part IV of this announcement for more information on submitting applications.

Announcement Availability: The program announcement and the application materials are available on the ORR website at www.acf.dhhs.gov/programs/orr.

FOR FURTHER INFORMATION CONTACT: Henley Portner, Program Specialist, Division of Community Resettlement, Office of Refugee Resettlement, (ACF), (Telephone: (202) 401–5363; Fax: (202) 401–5772; E-mail: HPortner@ACF.DHHS.GOV).

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background—program purpose and objectives, legislative authority, funding availability, CFDA Number, definition of terms.

Part II: Project and Applicant Eligibility—eligible applicants, project and budget periods

Part III: The Review Process—intergovernmental review, initial ACF screening, evaluation criteria and competitive review.

Part IV: The Application—application materials, application development, application submission.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collection is included in the program announcement: OMB Approval No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD), which expires 10/31/2000. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I. Background

Program Purpose and Objectives

The Office of Refugee Resettlement invites qualified entities to submit competing grant applications for new projects that will establish, support, and manage Individual Development Accounts (IDAs) for eligible low-income refugee individuals and families. The Refugee IDA Program represents an anti-poverty strategy built on asset accumulation for low-income refugee individuals and families with the goal of promoting refugee economic independence. In particular, the objectives of this program are to: increase the ability of low-income refugees to save; promote their participation in the financial institutions of this country; assist refugees in advancing their education; increase home ownership; and assist refugees in gaining access to capital. These new projects will accomplish these objectives by establishing programs that combine the provision of matched savings accounts with financial training and counseling.

Eligibility for this program is limited to refugees:

- who have earned income and whose household earned income at time of enrollment does not exceed 200 percent of the federal poverty level; and
- whose assets at time of enrollment do not exceed $10,000, excluding the value of a primary residence.

Grantees may target their projects to refugees with lower incomes and net worth than the limits described above. A copy of the HHS Poverty Guidelines is attached to this announcement. The Poverty Guidelines may also be found at http:/aspe.hhs.gov/.

Grantees, in partnership with qualified financial institutions, will create Individual Development Accounts for refugee participants. Refugee participants will systematically contribute to the IDAs in order to purchase specified Savings Goals. Grantees may include any or all of the following Savings Goals in their IDA program:

- Home Purchase or Renovation;
- Post-Secondary Education, Vocational Training, or Recertification;
- Microenterprise Capitalization;
- Purchase of an Automobile;
- Purchase of a Computer.

Additional information on these Savings Goals is provided in the Definition of Terms section of this announcement.

ORR encourages applicants to include in their projects commitments of additional public or private funds for matching IDA deposits, operational overhead, or training. Documentation of additional funds should be provided in the application in writing, executed with the entity providing the non-ORR contribution, on letterhead of the entity, and signed by a person authorized to make a commitment on behalf of the entity.

The grantee will establish a "Savings Plan Agreement" with each refugee participant. The Savings Plan Agreement should include:

(1) a proposed schedule of savings deposits by the participant;

(2) the rate at which participant's savings will be matched;

(3) the Savings Goal for which the account is maintained;

(4) any training or counseling which the participant agrees to attend;

(5) agreement that the participant will not withdraw funds except for the specified Savings Goal or for an emergency and only after consultation with the grantee; and

(6) a procedure for amending the Agreement.

Applicants may propose additional provisions to be included in Savings Plan Agreements.

The IDA contains only the refugee participant's deposits and interest earned on those deposits. The grantee will create a parallel account (or parallel accounts), separate from the participants' IDAs, in a qualified financial institution, in which all matching ORR grant funds will be deposited and maintained on behalf of the refugee participants.

Drawdown of the ORR grant funds and deposit of those funds into the parallel account(s) will be permitted no earlier than the time of the refugee's deposit to the IDA. Grantees must draw down ORR funds for matching IDA deposits within three months of the date that the refugee participant makes the deposit.

ORR funds may be used at a matching rate no greater than two-to-one for each dollar deposited in the IDA by the

[1] In addition to persons who meet all requirements of 45 CFR 400.43, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons.

refugee participant. Grantees may choose to vary the amount of the match by type of Savings Goal and/or by income level of the refugee participants. Over the course of the five-year project period, not more than $2,000 in ORR grant funds may be provided through matching contributions to any one refugee individual and not more than $4,000 may be provided to any one refugee household.

The interest that accrues on the ORR matching funds deposited in the parallel account must be credited to the IDAs of the refugee participants. Interest on the matching funds is not subject to the $2000/$4000 limitation on total match for an individual and a household. The interest on the match funds in the parallel account may not be retained by the grantee for any purpose, including program administration, participant support services, or program data collection.

ORR strongly encourages applicants to incorporate in these projects financial training for the refugee participants. The training may be provided directly by the grantee or the grantee may choose to provide the training through subgrantees or other providers. The types of training provided by a grantee should reflect both the refugee population and the types of Savings Goals to be included in the program. Such training could include budgeting, cash management, savings, investment, and credit counseling. Specialized training and technical assistance should be provided for refugee participants whose Savings Goals are home purchase or microenterprise.

Legislative Authority

Section 412(c)(1)(A) of the Immigration and Nationality Act authorizes the Director "to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) to assist refugees in obtaining skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services."

Funding Availability

ORR expects to award approximately $3 million in FY 2000 funds for the Refugee IDA Program among approximately eight to twelve grantees. Grants are expected to range from $100,000 to $400,000. Approximately 75–80 percent of the ORR grant funds should be designated for the purpose of providing matches for the refugee IDA accounts. The remaining 20–25 percent of ORR funds may be used for the administrative and operational costs of the project and for financial training, counseling, and technical assistance.

The Director reserves the right to award more or less than the funds described in the absence of worthy applications or such other circumstances as may be deemed to be in the best interest of the government. Applicants may be required to reduce the scope of selected projects based on the amount of the approved grant award.

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this announcement is 93.576. The title of the program is the Refugee Individual Development Account Program.

Applicable Regulations

Applicable U.S. Department of Health and Human Services regulations can be found at 45 CFR Part 74 or Part 92.

Definition of Terms

Individual Development Accounts (IDAs) are leveraged, or matched, savings accounts. IDAs are established in insured accounts in qualified financial institutions; and the funds are intended for the Savings Goals specified in this announcement. Although the refugee participant maintains control of all funds that the participant deposits in the IDA, including all interest that may accrue on the funds, the participant must sign a Savings Plan Agreement with the grantee that specifies that the funds in the account will be used only for the participant's Savings Goal or for an emergency withdrawal. A signed Savings Plan Agreement is required for the refugee participant to be eligible for matching funds.

The *Savings Goals*, as specified below, are the purchases/investments for which the matching funds, and the interest on matching funds, are available when used in conjunction with the savings from the IDAs of refugee participants. The Savings Goal specified by a participant in the Savings Plan Agreement may be for the benefit of the refugee participant or of a refugee dependent of the refugee participant. Savings Goals are defined as follows:

- *Home ownership:* includes costs of a principal residence including the downpayment and closing costs when purchasing a home; also renovation costs of a new home or of an existing primary residence. In the case of acquisition, the purchaser must be a first-time homebuyer.
- *Microenterprise capitalization:* means costs described in a qualified business plan, such as capital, plant, equipment, working capital, and inventory expenses. The business plan must be approved by a financial institution, a microenterprise development organization, or a nonprofit loan fund. The plan must also describe services or goods to be sold and include a marketing plan and projected financial statements. Also included in microenterprise capitalization are expenditures for a business expansion.
- *Post-secondary Education, Vocational Training, and Recertification:* Tuition or fees, professional recertification fees, books, supplies, and equipment related to the enrollment or attendance of a refugee student at an educational institution.
- *Purchase of an Automobile:* if necessary for the purpose of maintaining or upgrading employment.
- *Purchase of a Computer:* including hardware and software, to support a refugee student's enrollment in an educational, vocational, or recertification institution or for a microenterprise.
- *Qualified financial institution* means a Federally insured bank, credit union, or savings and loan institution or a State-insured bank, credit union, or savings and loan institution if no Federally insured bank, credit union, or savings and loan institution is available.
- *A parallel account* is an insured account (or accounts) opened by the grantee in a qualified financial institution for the purpose of depositing the matching funds for the savings deposited by refugee participants in their individual IDAs. Interest earned on the matching funds must remain in the parallel account and be credited to the refugee participants. Both the matching funds and the interest earned on those funds must be made available to the refugee participant at the time that the participant purchases the Savings Goal. The matching funds and the interest on the matching funds in the parallel account are not available to the refugee participant except for the Savings Goals defined in this announcement.
- An *emergency withdrawal* is a withdrawal of funds, or a portion of funds, deposited by the refugee participant in his/her Individual Development Account. The withdrawal may also include any of the interest that may have accrued to the participant's savings in the account. Such a withdrawal must be approved by the

project grantee and be consistent with the terms of the Savings Plan Agreement between the grantee and the refugee participant. Causes for emergency withdrawals include, but are not limited to, medical expenses, payments to prevent eviction or foreclosure, or payments for necessary living expenses. If funds withdrawn for emergency purposes are not repaid within 12 months, the refugee participant forfeits the match on those funds. Emergency withdrawals may never be authorized from the parallel account(s).

Part II. Project and Applicant Eligibility

Eligible Applicants

To be eligible for funding under this announcement, projects must meet the following requirements. Eligible applicants for these funds include States and private, non-profit organizations. Applicants may request funding to administer a refugee IDA project directly with refugee participants or as an intermediary agency which will administer multiple projects through participating community-based organizations. Private, non-profit agency applicants must provide documentation of their 501(c)(3) tax-exempt status at the time of the application submission.

Applicants must also provide documentation of participation of a qualified financial institution(s) in the project. This documentation must be in writing, on letterhead of the financial institution, and signed by a person authorized to make the commitment on behalf of the financial institution. The documentation must include a commitment by the financial institution to establish IDAs for the refugee participants, to establish a parallel account (or accounts) for the matching funds, and to provide the grantee with account activity data on the IDAs and the parallel account(s) in a timely manner.

Project and Budget Periods

This announcement invites applications for project periods up to five years. Awards, on a competitive basis, will be for a one-year budget period. Applications for continuation grants funded under these awards beyond the first one-year budget period but within the five-year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

Under these projects, grantees should schedule their account activities so that all IDA accounts reach their maximum savings, and refugee participants have purchased their Savings Goal, within the five-year project period. Applicants should include in their applications their proposal for handling accounts in the event that any refugee participant has not completed the Savings Goal purchase by the end of the five-year project period. (For instance, applicants may consider creating an escrow account for each participant's matching funds.)

Part III. The Review Process

A. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of November 20, 1998, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions need take no action in regard to E.O. 12372: Alabama, Alaska, American Samoa, Colorado, Connecticut, Kansas, Hawaii, Idaho, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility criteria of the program may still apply for a grant even if a State, Territory, Commonwealth, etc., does not have a Single Point of Contact (SPOC). All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations, which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Attention: Daphne Weeden, ORR Grants Officer, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this program announcement.

B. Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement; and (2) the applicant is eligible for funding.

C. Competitive Review and Evaluation Criteria

Applications that pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria were designed to assess the quality of a proposed project and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement. Proposed projects will be reviewed using the following evaluation criteria:

1. Objectives and Need for Assistance

The application identifies the refugee population to be assisted by this project and describes the need for assistance of this population. Indicators of the need for assistance include low rates of: use of financial institutions, home ownership, education, and access to capital; and high rates of: reliance on public assistance and incomes below 200 percent of the Federal poverty level. (15 points)

2. Approach

The application provides a clear explanation of a feasible, appropriate, and complete plan for establishing and

managing IDAs for the refugee participants. The plan clearly describes the structure, uses, requirements, and management of the IDAs and includes procedures for: managing the parallel account(s); ensuring that interest on the matches is correctly credited to individual refugee participants; and providing financial training appropriate to the refugee population and to the Savings Goals included in the project. (25 points)

3. Organizational Profiles

Applicant organization and staff and partner organizations have demonstrated capability to implement and manage new programs and to recruit and work with the refugee population. The applicant has developed a partnership with a financial institution(s) to implement the IDAs. (25 points)

4. Results or Benefits Expected

The outcomes and benefits proposed are reasonable and reflect the objectives of this announcement. The methodology proposed for collecting outcome data is reasonable. (20 points)

5. Budget and Budget Justification

The budget is reasonable and clearly justified. The methodologies for estimating the number of refugee participants and amount of matching funds are reasonable. (15 points)

Part IV. The Application

A. Application Development

In order to be considered for a grant under this program announcement, an application must be submitted on the Standard Form 424 and in the manner prescribed by ACF. Application materials including forms and instructions are available from the contact named under the **FOR FURTHER INFORMATION, CONTACT** section in the preamble of this announcement.

General Guidelines for Preparing a Project Description

Purpose: The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative, the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

General Instructions: Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

Project Summary/Abstract: Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance: Clearly identify the economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer, or be requested to provide, information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected: Identify the results and benefits to be derived from this project. ORR is particularly interested in the projected outcomes for the refugee groups, including the number of IDAs opened, rate of growth in savings, number and size of withdrawals for each of the Savings Goals, and the impact of the purchase of the Savings Goal on the participant's movement toward self-sufficiency.

Approach: Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of IDAs to be opened. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Geographic Location: Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Additional Information: Following is a description of additional information that should be placed in the appendix to the application.

Staff and Position Data: Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organization Profiles: Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the

time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Third-Party Agreements: Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support: Provide statements from community, public, and commercial leaders that support the project proposed for funding.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ORR-sponsored conferences should be detailed in the budget.

Equipment

Description: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, an applicant may use its own definition of equipment provided that such equipment would at least include all equipment defined above.

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information, which supports the amount requested.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Costs

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature; source and anticipated use of program income in the budget or refer to the pages in the application, which contain this information.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented

and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs

Self-explanatory

B. Application Submission

1. Mailed applications postmarked after the closing date will be classified as late.

2. *Deadline.* Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Attention: Daphne Weeden, ORR Grants Officer, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, ACF Mailroom, Second Floor (near loading dock), Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: Daphne Weeden, ORR Grants Officer." ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. *Late applications.* Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

4. *Extension of deadlines.* ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there is widespread disruption of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

Reporting Requirements

Grantees under this program announcement will be required to provide quarterly program narrative reports, describing outcomes and activities under the grant. Grantees will also be required to submit semi-annual financial reports using the Financial Status Report (SF–269). A final financial and narrative report shall be due 90 days after the end of the Grant Project Period (i.e., after the final budget period).

Dated: March 7, 2000.

Lavinia Limón,

Director, Office of Refugee Resettlement.

[FR Doc. 00–6078 Filed 3–10–00; 8:45 am]

BILLING CODE 4148–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council; Standard Grant Application Instructions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Instructions for applying for standard grants under the U.S. North American Wetlands Conservation Act. This notice focuses on proposals for grants of $51,000 to $1,000,000 for the acquisition, restoration, and enhancement of wetlands. We will issue a separate notice for grant proposals requesting up to $50,000 for these purposes.

DATES: Proposals may be submitted at any time. To ensure adequate review time prior to upcoming North American Wetlands Conservation Council (Council) meetings, the Council Coordinator must *receive* proposals by the last Friday in March (3/31/00) and July (7/28/00). The electronic mail copy of the Proposal Summary is due 1 week earlier (3/24/00 and 7/21/00).

ADDRESSES: For detailed application instructions, sample proposal information, frequently asked questions, and summaries of recently approved proposals, visit the North American Wetlands Conservation Act (NAWCA) web site at *http://northamerican.fws.gov/nawcahp.html.* If you cannot access the web site, request computer disk or paper copies of the web site material from the Council Coordinator, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 110, Arlington, VA 22203. Send proposals to the Council Coordinator at the above address. If you choose to submit the Proposal Summary by electronic mail (versus computer disk), send to *bettina__sparrowe@fws.gov.* Mail one original and two copies of the proposal to the Council Coordinator. Also, mail an electronic copy of the Proposal Summary on computer disk with the rest of the proposal or send an electronic copy by electronic mail to *bettina__sparrowe@fws.gov.* Send a copy of the proposal to your U.S. North American Waterfowl Management Plan Coordinator.

FOR FURTHER INFORMATION CONTACT: North American Wetlands Conservation Council Coordinator at (703) 358–1784, *r9arw__nawwo@fws.gov* or *bettina__sparrowe@fws.gov* or an NAWMP Joint Venture Coordinator (Coordinator) at the numbers given below. Coordinators can give you advice about developing a proposal and about proposal ranking and can provide compliance requirements for the National Environmental Policy Act, National Historic Preservation Act, and contaminant surveys. Even though all areas of all States are not in a Joint Venture, each Coordinator is available to provide information to NAWCA applicants. To determine which Coordinator to call, consult the following Joint Venture list, but note that some States are in more than one Joint Venture and may be listed more than once. To determine exactly which Joint Venture you are in, consult the NAWMP Joint Venture map at *http://northamerican.fws.gov/nawmphp.html.*

Atlantic Coast (AL, CT, DC, DE, FL, GA, MA, MD, ME, NC, NH, NJ, NY, PA, Puerto Rico, RI, SC, VA, Virgin Islands, VT, WV) 413–253–8269

Central Valley (CA) 916–414–6459

Gulf Coast (AL, LA, MS, TX) 505–248–6876

Intermountain West (AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY) 801–524–5110

Lower Mississippi Valley (AL, AR, KY, LA, MS, OK, TN, TX) 601–629–6600

Pacific Coast (AK, Am. Samoa, CA, Com. of N. Mariana Islands, Guam, HI, OR, WA) 360–696–7630
Playa Lakes (CO, KS, NM, OK, TX) 505–248–6877
Prairie Pothole (IA, MN, MT, ND, SD) 303–236–8145 extension 605
Rainwater Basin (KS, NE) 308–382–8112
Upper Mississippi River-Great Lakes (IA, IL, IN, KS, MI, MN, MO, NE, OH, WI) 612–713–5433

SUPPLEMENTARY INFORMATION: The Council has two U.S. conservation grants programs for acquisition, restoration, and enhancement of wetlands. Any individual or organization who has a long-term, partner-based project with matching funds can apply. The focus of this notice is standard grant proposals for requests from $51,000 to $1,000,000 per proposal. A separate notice will be issued sometime this year for small grant proposals for requests up to $50,000 per proposal.

This notice provides general instructions to develop and submit a NAWCA standard grant proposal. In order to complete a proposal correctly, consult the web site at *http://northamerican.fws.gov/nawcahp.html* for detailed instructions. If you cannot access the web site or want a printed version of the complete instructions or a personal computer disk that contains proposal forms, contact the Council Coordinator.

We prepare the instructions to assist partners in developing proposals that comply with NAWCA. The NAWCA established the Council, a Federal-State-private body that recommends projects to the Migratory Bird Conservation Commission (MBCC) for final approval and requires that proposals contain a minimum 1:1 ratio of non-Federal matching funds to grant funds. "Match" (as referred to throughout this document) can be cash, in-kind services, or land acquired/title donated for wetlands conservation purposes.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501), the Office of Management and Budget has assigned clearance number 1018–0100 to this information collection authorized by the North American Wetlands Conservation Act of 1989, as amended (16 U.S.C. 4401 *et seq.*). The information collection solicited is necessary to gain a benefit in the form of a grant, as determined by the Council and MBCC, is necessary to determine the eligibility and relative value of wetland projects, results in an approximate paperwork burden of 400 hours per application, and does not carry a premise of confidentiality. Your response is voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public is invited to submit comments on the accuracy of the estimated average burden hours for application preparation and to suggest ways in which the burden may be reduced. Comments may be submitted to: Information Collection Clearance Officer, Mail Stop 224 ARLSQ, U.S. Fish and Wildlife Service, Washington, D.C. 20240 and/or Desk Officer for Interior Department (1018–0100), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Standard Grant Instructions

Detailed instructions are available at the NAWCA web site at *http://northamerican.fws.gov/nawcahp.html*.

Proposal Definition. A proposal is a 4-year plan of action supported by a NAWCA grant and matching partner funds to conserve wetlands and wetlands-dependent fish and wildlife through acquisition (including easements and land title donations), restoration, and/or enhancement (including creation). Match must be non-Federal and at least equal the grant request (referred to as a 1:1 match). Match is eligible up to 2 years prior to the due date year the proposal is submitted, and grant and match funds are eligible during the 2-year future Grant Agreement period.

Proposal Format. The 2-page Proposal Summary has a specific format. The rest of the proposal should be no more than 10 pages (not including the budget table, maps, and partner letters), and each page should be no larger than 8.5 by 11 inches. It is suggested, but not required, that maps be in color. Neither the original nor copies should be permanently bound. A proposal contains the following sections: Cover Page; Summary; Purpose; Scope of Work; Budget Table; Budget Narrative; Matching Contributions Plan (optional); Technical Assessment Questions; Funding Commitment Letters; Location Information; Standard Form 424 and Attachments.

Proposal Cover Page. The Cover Page contains the following sections: Proposal Title and State(s); Date Submitted; Future Proposals; Project Officer Information; Project Officer's Checklist; and Comments on the NAWCA Program. The Project Officer administers the Grant Agreement and is ultimately responsible for complying with Federal regulations. Correspondence is sent only to the Project Officer. Each proposal can have only one Project Officer, who must belong to the grant recipient's organization.

Proposal Summary. The Summary is a digest of information that is detailed in the rest of the proposal. The Summary is the only narrative material provided to the Council and MBCC, so it must be descriptive and succinct. The Summary contains the following sections: Proposal Title and States; Counties and Congressional Districts; Costs and Acres Summary; Purpose and Scope of Work Summary; and Wetland Values Summary.

Proposal Purpose. Use the Purpose to provide a description of how all the pieces of the proposal fit together to form a solid wetlands and migratory bird conservation proposal that should be funded under the NAWCA.

Proposal Scope of Work. The Scope of Work describes the purpose, need, kinds of work to be done, habitats, and associated wildlife (especially wetland associated migratory birds) and explains how the proposal meets objectives of the NAWMP Joint Ventures, Partners in Flight neotropical bird regional plans, the U.S. Shorebird Plan, the Colonial Waterbird Plan, and other migratory birds and wetlands conservation plans (including water quality management plans). If the proposal is part of a larger multiphase or landscape level project, explain how it fits into the larger effort.

Proposal Budget Table. The Budget Table displays activities and costs broken out by grant funding and partner funding according to cost elements (personnel and travel, appraisals, fee title acquired, fee title donated, easements and leases acquired and donated, materials and equipment, contracts, management agreements acquired and donated).

Proposal Budget Narrative. The Budget Narrative contains the justification for a grant request over $1,000,000 and detailed tract/project information. The tract/project design for this section is optional; however, if you use another format, be sure to include all required information and be sure that the reader can easily compare figures in the Budget Narrative and Budget Table. A sample Budget Narrative is available on the web site. In general, the following information is required for each tract or project within the proposal: (1) Costs and acres broken out by grant funding and individual partner funding for each activity and cost element; (2) Designation of grant and match tracts on map in proposal; (3) Acres of wetlands, wetlands-associated

uplands, and other habitat types; (4) Migratory bird values and wetlands values; (5) Title holder after proposal is completed; (6) Summary of acquired property rights; (7) Matching Contributions Plan information; (8) Explanation of property donations; (9) Justification for match affiliated with wetlands mitigation banks; and (10) Milestones and completion dates.

Matching Contributions Plan. If you have contributions made in the early phases of a multiphase project and sufficient NAWCA proposals cannot be submitted before the match is more than 2 years old, you may request approval to use the match in the future by submitting a Matching Contributions Plan (Match Plan) with a proposal. A Match Plan must include match that is eligible at the time the proposal is submitted, be submitted with a proposal, may be approved only (in writing) if the proposal with which it is submitted is funded, should not be more than one page long, and should show use of the match over a period no greater than 5 years.

Technical Assessment Questions. The Council uses seven Technical Assessment Questions to evaluate proposals. The questions, subparts, and point values follow. Questions 1 and 2 include priority lists of species, so you need to refer to the web site or the Council Coordinator's office to complete a proposal. Answer the questions for the completed proposal and all tracts in the proposal (grant and match).

1. How does the proposal contribute to the conservation of waterfowl habitat (high-priority species, other priority species, other waterfowl)? 15 points

2. How does the proposal contribute to the conservation of other wetland-dependent or wetland-associated migratory birds (breeding and wintering priority species, in-transit migrants of concern, other wetland-dependent species)? 15 points

3. How does the proposal benefit the North American Waterfowl Management Plan and contribute to sites that have been recognized for wetland values (Joint Ventures, Waterfowl Habitat Areas of Concern, specially recognized areas)? 15 points

4. How does the proposal relate to the National status and trends of wetlands types (acres of decreasing, stable, and increasing wetlands types; acres of uplands)? 10 points

5. How does the proposal contribute to long-term conservation of wetlands and associated habitats (acres accruing benefits in perpetuity, for 26–99 years, for 10–25 years, and for less than 10 years)? 15 points

6. How does the proposal contribute to the conservation of habitat for Federally listed, proposed and candidate endangered species, State-listed species, and other wetland-dependent fish and wildlife (Federal species, State species, other wetland-dependent fish and wildlife)? 10 points

7. How does the proposal satisfy the partnership purpose of the North American Wetlands Conservation Act (ratio of the non-Federal match to the grant request, non-Federal partners who contribute 10 percent of the grant request, partner categories, important partnership aspects)? 20 points

Funding Commitment Letters. Send signed commitment letters from all match partners, including the grant recipient and private landowners (if providing funds or land as match), by the proposal due date. The proposal will be returned if the 1:1 match is not documented by partner letters. Letters must document the exact contribution level identified in the proposal and whether the contribution is in cash, goods, services, or land; the partner's responsibility in the proposal's implementation, including land donations; how the partner was involved in proposal planning; and that the partner is fully aware of how the contribution will be spent.

Location Information. State a central point location for the proposal in terms of latitude and longitude and provide 8.5 by 11-inch color (preferred) maps that give the following information: (1) Location of the tracts within State(s) and counties where grant and match funds will be spent and location of land matches; (2) Location of acquisition priority areas if specific tracts cannot be given; (3) Location of major water control structures and other restoration/enhancement features; (4) Location of natural features, such as rivers or lakes, to show how the proposal fits into the natural landscape; and if applicable, (5) Show where the proposal is in relation to a larger wetlands conservation project.

Standard Form 424 "Application for Federal Assistance" and Assurances Forms B "Non-construction" and D "Construction." All applicants, except the U.S. Fish and Wildlife Service, must send an SF 424 and the B, D, or both Assurances forms with the proposal. All applicants must comply with the laws listed on the Assurances forms. The forms are available via the Internet at *http://www.gsa.gov/forms/* or from the Council Coordinator.

Exhibits and Examples. Examples of various sections of a proposal, a list of eligible and ineligible activities and costs, general information about the NAWCA program, and a directory are available via the web site or from the Council Coordinator and should be consulted at some time in the proposal development process.

Blank Proposal Forms. The following forms are available from the web site for you to download and use to develop a proposal: A blank proposal form developed using Microsoft Word, a blank proposal form using Word Perfect, and a blank Budget Table using Microsoft Excel.

Dated: March 6, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–6024 Filed 3–10–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the current list of 556 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792).

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS–4631–MIB, 1849 C Street, NW, Washington, D.C. 20240. Telephone number: (202) 208–2475.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below are lists of federally acknowledged tribes in the contiguous 48 states and in Alaska. The list is updated from the one published on December 30, 1998 (63 FR 71941), to include name changes or corrections, and two additional tribal entities that were acknowledged under 25 CFR Part 83. Those tribal entities are the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan, and the Snoqualmie Tribe. The final determinations for federal acknowledgment became effective on

August 23, 1999, and October 6, 1999, respectively.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: March 3, 2000.

Kevin Gover,

Assistant Secretary, Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
Alabama-Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town, Oklahoma
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Indian Tribe of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation of New York
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation, Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation, Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Indian Tribe, Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of Oregon
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California
Death Valley Timbi-Sha Shoshone Band of California
Delaware Nation, Oklahoma (formerly Delaware Tribe of Western Oklahoma)
Delaware Tribe of Indians, Oklahoma
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona

Grand Traverse Band of Ottawa & Chippewa Indians of Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin (formerly known as the Wisconsin Winnebago Tribe)
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Huron Potawatomi, Inc., Michigan
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown S'Klallam Tribe of Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan
Kialegee Tribal Town, Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Indian Tribe of Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians of Michigan
Little Traverse Bay Bands of Odawa Indians of Michigan
Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation, Oklahoma
Narragansett Indian Tribe of Rhode Island
Navajo Nation, Arizona, New Mexico & Utah
Nez Perce Tribe of Idaho
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation of Utah (Washakie)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Wisconsin
Onondaga Nation of New York
Osage Tribe, Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Rancheria of Pomo Indians of California
Pit River Tribe, California (includes Big Bend, Lookout, Montgomery Creek & Roaring Creek Rancherias & XL Ranch)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians of Michigan

Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Rancheria of Pomo Indians of California
Prairie Band of Potawatomi Indians, Kansas
Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Indians, Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota
Redding Rancheria, California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California (formerly known as the Coast Indian Community of Yurok Indians of the Resighini Rancheria)
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California (formerly known as the Covelo Indian Community)
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Tribe of the Santee Reservation of Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake)
Sheep Ranch Rancheria of Me-Wuk Indians of California
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria, California
Snoqualmie Tribe, Washington
Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California
Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota (formerly known as the Devils Lake Sioux Tribe)
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation
St. Regis Band of Mohawk Indians of New York
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge-Munsee Community of Mohican Indians of Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria, California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of Diegueno Mission Indians of California
Table Bluff Reservation—Wiyot Tribe, California
Table Mountain Rancheria of California
Te-Moak Tribes of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
Thlopthlocco Tribal Town, Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres-Martinez Band of Cahuilla Mission Indians of California
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Luiseno Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians of Oklahoma

Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wyandotte Tribe of Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Village of Afognak
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Native Village of Atka
Asa'carsarmiut Tribe (formerly Native Village of Mountain Village)
Atqasuk Village (Atkasook)
Village of Atmautluak
Native Village of Barrow Inupiat Traditional Government (formerly Native Village of Barrow)
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Tribe (formerly listed as Birch Creek Village)
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chanega (aka Chenega)
Chalkyitsik Village
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Native Village of Chignik
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chistochina
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clark's Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Curyung Tribal Council (formerly Native Village of Dillingham)
Native Village of Deering
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council (formerly Native Village of Russian Mission)
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Native Village of Kasigluk
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
Agdaagux Tribe of King Cove
King Island Native Community
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
New Koliganek Village Council (formerly Koliganek Village)
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Traditional Council (formerly Mentasta Lake Village)
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski

Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Nunakauyarmiut Tribe (formerly Native Village of Toksook Bay)
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point Village
Rampart Village
Village of Red Devil
Native Village of Ruby
Village of Salamatoff
Organized Village of Saxman
Native Village of Savoonga
Saint George Island(See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Nativeive Village
Native Village of Shaktoolik
Native Village of Sheldon's Point
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Qawalangin Tribe of Unalaska
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

[FR Doc. 00–6064 Filed 3–10–00; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Gaming Compact between the Flandreau Santee Sioux Tribe and the State of South Dakota, which was executed on December 27, 1999.

DATES: This action is effective March 13, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: February 18, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–6009 Filed 3–10–00; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–0777–30–24–1A; HAG0–0145]

Notice of Availability of Draft Management Plan/Environmental Impact Statement (DEIS) for the Cascade Siskiyou Ecological Emphasis Area

AGENCY: Bureau of Land Management.

ACTION: Notice of Availability of Draft Management Plan/Environmental Impact Statement (DEIS) for the Cascade Siskiyou Ecological Emphasis Area.

SUMMARY: In accordance with Section 202 of the National Environmental Policy Act of 1969 and Section 202 of the Federal Land Policy and Management Act of 1976, a Draft Management Plan/Environmental Impact Statement (DEIS) for the Cascade Siskiyou Ecological Emphasis Area (CSEEA) has been completed for a portion of the Medford District. The DEIS describes and analyzes future options for managing up to 52,407 acres in southern Jackson County, Oregon. The DEIS address boundary issues associated with adjacent BLM administered land in California. Management activity specific to those lands will be addressed by the BLM Redding Field Office.

Decisions generated during this planning process will partially supersede and supplement interim land use allocations and management direction for the CSEEA, which were analyzed in the 1994 Medford Resource Management (RMP) final EIS which was approved in 1995 in the Medford RMP Record of Decision. Major issues which are addressed include ecosystem management direction, potential use of prescribed fire, motorized recreation and possible off-highway-vehicle restrictions, livestock grazing and vegetation management objectives and expansion of existing or potential Areas of critical Environmental Concern.

DATES: Comments will be accepted until June 14, 2000.

ADDRESSES: Comments should be addressed to: Rich Drehobl, Field Manager, Ashland Resource Area, Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504.

Comments, including names and addresses, will be available for public review. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act,

you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law.

SUPPLEMENTARY INFORMATION: Individual copies of the DEIS may be obtained by contacting Bill Yocum or Lorie List at 541/618–2384. The DEIS is also available on CD–ROM and at *www.or.blm.gov/Medford.*

Copies are also available for inspection at the following locations:

Southern Oregon University Library, Ashland, OR
Jackson County Library, Ashland Branch, OR
Siskiyou County Library, Yreka Branch, CA

The DEIS analyzes five alternatives ranging from emphasis on commodity extraction to emphasis on preservation.

A public meeting will be held on the proposal on Saturday, April 8, 2000, at 1 p.m. in the Arena Room/Stevenson Union at Southern Oregon University. Additional meetings will be considered if there is sufficient interest.

Public participation has occurred throughout the planning process. A Notice of Intent was published in the **Federal Register** on August 27, 1999. Since that time several open houses, public meetings and field tours were conducted to provide information and solicit comments and ideas. Any comments presented throughout the process have been considered.

The notice meets the requirements of 43 CFR 1610.5–5 for plan amendments and 43 CFR 1610.7–2 for designations of Areas of Critical Environmental Concern.

Dated: March 7, 2000.

Rich Drehobl,

Ashland Field Manager, Medford District.

[FR Doc. 00–6032 Filed 3–10–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EU; N–61406]

Notice of Reality Action: Non-Competitive Sale of Public Land

AGENCY: Bureau of Land Management.

ACTION: Non-Competitive Sale of Public Land in Lincoln County, Nevada.

SUMMARY: The below listed public land in Ash Springs, Lincoln County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. In accordance with Section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6910, the described lands are hereby classified as suitable for disposal under the authority of Section 203 and Section 209 of the Act of October 21, 1976; 43 U.S.C. 1713 and 1719.

DATES: On or before April 27, 2000, interested parties may submit comments to the Assistant Field Manager, Non-Renewable Resources.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Gene L. Drais, Assistant Field manager, Nonrenewable Resources, HC33, BOX 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Kevin Finn, Realty Specialist, at the above address or telephone (775) 289–1849.

SUPPLEMENTARY INFORMATION: The following described parcel of land, situated in Lincoln County is being offered as a direct sale to Hi—Desert Springs, LLC.

Mount Diablo Meridian, Nevada

T. 6 S., R. 61 E.,
Section 6,
Government Lots 9 and 10
Containing 11.79 acres more or less.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest. In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral interests. The applicant will be required to pay $50.00 nonreturnable filing fee for the conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. All the oil and gas mineral deposits in the land subject to this conveyance, including without limitation, the disposition of these substances under the mineral leasing laws. Its permittee, licensees and lessees, the right to prospect for, mine and remove the minerals owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mineral leasing laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, or surface mining operation, storage and transportation facilities deemed necessary and authorized under the law and implementing regulations. Unless otherwise provided by separate agreement with surface owner, permittee, licenses of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior. All cause of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against permittee, licenses and lessees of the United States, and the United States shall not be liable for the acts or omissions of its permittee, licensees and lessees.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except leasing under the mineral leasing laws. This segregation will terminate upon issuance ow a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments regarding this action to the Assistant Field Manager, Nonrenewable Resources at the address list above. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify the realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all officer, consumption of the sale would not be fully consistent with the Federal Land Management and Policy Act of 1976, or other applicable laws. The lands will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register.**

Dated: March 1, 2000.

Gene A. Kolkman,

Field Manager.

[FR Doc. 00–6056 Filed 3–10–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–010–2000–1610]

Arizona Strip District Resource Plan: Intent To Amend

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Arizona Strip Resource Management Plan, Arizona.

SUMMARY: Pursuant to the BLM Planning Regulations (43 CFR 1600) this notice advises the public that the Arizona Strip Field Office, Bureau of Land Management, is proposing to amend the Arizona Strip Resource Management Plan to establish allowable resource uses on the Lee's Ferry Allotment. This notice supercedes and replaces a previous similar notice published in the **Federal Register** (Vol. 62, No. 247, page 67401) on December 24, 1997. In accordance with 43 CFR part 4100.0–8 "The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with the applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, * * *". The Bureau of Land Management, in cooperation with the current holder of the grazing privileges associated with the Lee's Ferry Allotment, desires to retire some or all of the associated grazing privileges in order to enhance wilderness values and to alleviate conflicts between livestock and recreation use in the Paria River Canyon corridor.

The main issues anticipated in this plan amendment are: (1) Potential impacts on recreational opportunities; (2) and potential impacts on the socio-economics of Coconino County, Arizona.

This amendment is limited to the area contained within the Lee's Ferry Allotment on the Arizona Strip.

A land use plan amendment and environmental analysis will be prepared for the subject lands by an interdisciplinary team including range, wildlife, and recreation specialists.

DATES: Interested parties may submit comments to the Field Manager at the address shown below on or before April 12, 2000.

FOR FURTHER INFORMATION CONTACT: Phil Seegmiller, Arizona Strip Field Office, Bureau of Land Management, 345 E. Riverside Drive, St. George, Utah 84790, (435) 688–3222 to obtain additional information regarding this plan amendment. Existing land use plans and maps of the subject area are available for review at the Interagency Office in St. George, Utah.

Roger G. Taylor,

Field Manager.

[FR Doc. 00–6057 Filed 3–10–00; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

Study Recommending a Timbisha Shoshone Tribal Homeland In and Around Death Valley National Park, Inyo County, California and Esmeralda and Nye Counties, Nevada; Notice of Intent To Prepare a Legislative Environmental Impact Statement

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969 (P.L. 91–190) and the California Desert Protection Act (P.L. 103–433, Title VII, § 705), the National Park Service has initiated an environmental impact analysis process for a Secretarial Report to Congress regarding a proposal to establish a permanent Timbisha Shoshone Tribal Homeland in and around Death Valley National Park. Furthermore, regulations created by the Council on Environmental Quality (40 CFR 1508) provide that any "proposal for legislation" must be accompanied by an environmental impact statement. (42 U.S.C.A. section 4332(2)c.). A Legislative Environmental Impact Statement (LEIS) is an abbreviated version of an Environmental Impact Statement which may be prepared on an expedited timetable to ensure proper consideration in Congressional hearings and deliberations.

Background

The U.S. Department of the Interior (Department) is considering the transfer of federal lands and acquisition of private lands to be held in trust for the Timbisha Shoshone Tribe. The transfers and acquisitions are for the purposes of creating a tribal homeland in and around Death Valley National Park.

The initial Notice of Scoping was published in the **Federal Register** on April 19, 1999 (V64, N74, PP19193–19194) announcing public meetings and other scoping activities so as to initiate an environmental impact analysis process for the Draft Secretarial Report to Congress. The Secretary of the Interior's draft report, The Timbisha Shoshone Tribal Homeland-A Draft Secretarial Report to Congress to Establish a Permanent Tribal Land Base and Related Cooperative Activities was released for public comment in May 1999.

Over 500 comments were received through July 1999, and the responses addressed a spectrum of regulatory, socio-economic and environmental issues. On September 20, 1999 the Final Scoping Summary Document was released to the public characterizing the nature of public response and comment letters received on the Draft Secretarial Report.

In October 1999, the Department determined that the National Park Service would serve as the lead agency. The Bureau of Land Management, Bureau of Reclamation, Bureau of Indian Affairs, the U.S. Fish and Wildlife Service, and Nye County, Nevada have been cooperators to this project.

Alternatives

In addition to a no-action alternative, the proposed action is primarily to recommend that Congress authorize the transfer of several parcels of lands as identified in the Draft Secretarial Report currently managed by NPS and BLM in California and Nevada. Authorization for the Department to expend appropriated funds for the purchase of several parcels of private land from willing sellers in California and Nevada is also being proposed. All transacted lands would be taken into trust for the Timbisha Shoshone Tribe by the Secretary of the Interior.

For Current Information

Written communications may be addressed to the Superintendent, Death Valley National Park, Post Office Box 579, Death Valley, California 92328. For current information about the ongoing LEIS effort, please contact: Joan DeGraff, Project Manager, (760) 255–8830, or utilize the park website (www.nps.gov/deva).

Approval Process

The Department officials responsible for approval are: the Assistant Secretary Fish, Wildlife and Parks; the Assistant Secretary for Land and Minerals Management; and the Assistant Secretary for Indian Affairs. If approved, the proposal would subsequently be submitted by the Secretary of the Interior to Congress for consideration. If enacted, the National Park Service officials responsible for implementation would be the Superintendent, Death Valley National Park and the Regional Director, Pacific West Region; as well as the State Directors, Bureau of Land Management, Nevada and California; the Assistant Secretary for Indian Affairs; and the Bureau of Indian Affairs, Central California Agency. The draft LEIS is expected to be available for public review in spring, 2000. At this time it is anticipated that the final LEIS will be completed in summer, 2000.

Dated: March 6, 2000.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 00–6112 Filed 3–10–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/ Environmental Impact Statement, Glen Echo Park, Maryland; Notice of Intent

In accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) to assess the impacts of alternative management strategies for the General Management Plan (GMP) for Glen Echo Park, Maryland, which is a unit within the George Washington Memorial Parkway.

The GMP/EIS will evaluate a range of alternatives which address cultural and natural resources protection, socioeconomic concerns, traffic circulation and visitor use and will incorporate findings from studies prepared on transportation issues and financial aspects of managing the park.

Public involvement will be a key component in preparation of the General Management Plan and Environmental Impact Statement.

NPS held a public scoping meeting/ open house on February 3, 1998 at the Clara Barton Community Center. Through a workshop format, the meeting provided an overview of the planning effort and an opportunity for the public to discuss their concerns with park staff and provide oral and written comments. Those unable to attend submitted their comments through the mail or over the Internet.

The draft GMP and EIS are expected to be completed and available for public review by the winter of 2000. After public and interagency review of the draft document, comments will be considered and a final GMP and EIS will be prepared for release by the summer, 2000, which will be followed by a record of decision. The responsible official is the Regional Director, National Capital Region, National Park Service. Written comments should be submitted to the Superintendent of George Washington Memorial Parkway, c/o Turkey Run Park, McLean, Virginia 22101 or via e-mail at GWMP__Superintendent@nps.gov.

Joseph M. Lawler,

Acting, Regional Director.

[FR Doc. 00–6113 Filed 3–10–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Saratoga National Historical Park, Saratoga County, New York; Notice of Intent to Prepare an Environmental Impact Statement and Notice of Public Meetings

In accordance with the National Environmental Policy Act of 1969 (P. L.91–109 section 102(c)), the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) for the Saratoga National Historical Park (NHP), located in the towns of Stillwater, and Saratoga, Saratoga County, New York. The purpose of the EIS is to assess the impacts of alternative management strategies that will be described in the general management plan for Saratoga NHP. A range of alternatives will be formulated for natural and cultural resource protection, visitor use and interpretation, facilities development, and operations.

The NPS will hold two (2) public meetings during the week of March 27, 2000 which will provide an opportunity for public input into the scoping for the GMP/EIS. On Tuesday, March 28, 2000 at 4 p.m., a meeting will be held at the Stillwater Community Center, Community Room, 19 Palmer Street in Stillwater, New York. On Wednesday, March 29 at 7:00 PM, a meeting will be held at the Schuylerville School Administration Office, 18 Spring Street (Route 29) in Schuylerville, New York. The purpose of these meetings is to obtain both written and verbal comments concerning the future direction and development of Saratoga NHP. Those persons who wish to comment verbally or in writing or who require further information should contact Doug Lindsay, Superintendent, Saratoga NHP, 648 Route 32, Stillwater, NY 12170, (518) 664–9821.

The draft GMP/EIS is expected to be completed and available for public review in late 2001. After public and interagency review of the draft document comments will be considered, and a final EIS will be prepared, followed by a Record of Decision.

Dated: February 22, 2000.

Douglas Lindsay,

Superintendent, Saratoga National Historical Park.

[FR Doc. 00–6111 Filed 3–10–00; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Issues Subcommittee Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet to discuss the 2001 proposal solicitation package, water acquisition, and other topics. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The BDAC's Ecosystem Roundtable meeting will be held from 9:30 am to 12:00 pm on Thursday, March 30, 2000.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, Room 1131, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy

direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: March 7, 2000.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 00–6038 Filed 3–10–00; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

Investigation No. 337–TA–429

Certain Bar Clamps, Bar Clamp Pads, and Related Packaging, Display, and Other Materials; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 9, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of American Tool Companies, Inc. of Hoffman Estates, Illinois, and Petersen Manufacturing Co., Inc., of De Witt, Nebraska. A supplement to the complaint was filed on March 1, 2000. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain bar clamps, bar clamp pads, and related packaging, display, and other materials by reason of (a) infringement of claims 1, 2, 19–23, 37, 38, 40, 42, 46, 48, 67, and 68 of U.S. Letters Patent 5,988,616, (b) infringement of U.S. Trademark Registration Nos. 1,638,906 and 2,063,062 and (c) misappropriation of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complaint also alleges that there exists an industry in the United States with respect to the asserted intellectual property.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, as supplemented, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1998).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 6, 2000, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain bar clamps, bar clamp pads, and related packaging, display, and other materials by reason of infringement of claims 1, 2, 19–23, 37, 38, 40, 42, 46, 48, 67, or 68 of U.S. Letters Patent 5,988,616, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; or

(b) whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain bar clamps, bar clamp pads, and related packaging, display, and other materials by reason of infringement of U.S. Trademark Registration Nos. 1,638,906 or 2,063,062, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; or

(c) whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain bar clamps, bar clamp pads, and related packaging, display, and other materials by reason of misappropriation of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

American Tool Companies, Inc., 2800 West Higgins Road, Hoffman Estates, Illinois 60195

Petersen Manufacturing Co., Inc., 108 S. Pear St., De Witt, Nebraska 68341

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Wolfcraft GmbH, Wolff-Straβe, D–56746 Kempenich, Germany

Wolfcraft, Inc., P.O. Box 687, 1222 W. Ardmore Ave., Itasca, IL 60143

(c) Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–P, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in

accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: March 7, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6081 Filed 3–10–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–419]

In the Matter of Certain Excimer Laser Systems for Vision Correction Surgery and Components Thereof and Methods for Performing Such Surgery; Notice of Final Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-referenced investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 1, 1999, based on a complaint by VISX, Inc. ("VISX"), 64 FR 10016–17. The respondents named in the investigation are Nidek Co., Ltd., Nidek Inc., and Nidek Technologies, Inc (herein collectively "Nidek"). Complainant alleges importation and sale of certain excimer laser systems for vision correction surgery that infringe claims of U.S. Letters Patents Nos. 4,718,418 ("the '418 patent") and 5,711,762 ("the '762 patent"). An evidentiary hearing was held from August 18, 1999, to August 27, 1999.

On December 6, 1999, the presiding administrative law judge ("ALJ") issued her final initial determination ("ID") finding that complainant VISX failed to establish the required domestic industry, that there was no infringement of any claim at issue, and that the '762 patent was invalid and unenforceable.

VISX, Nidek, and the Commission investigative attorneys filed petitions for review of the ID on December 17, 1999, and on December 27, 1999, all parties responded to each other's petitions for review of the ID. On February 2, 2000, the Commission determined not to review the ID's findings with respect to the "418 patent and determined to review all the ID's findings with respect to the '762 patent.

Having examined the record in this investigation, including the briefs and the responses thereto, the Commission determined that there is no violation of section 337. More specifically, the Commission found no infringement of any claim at issue of the '762 patent and no domestic industry with respect to the '762 patent. The Commission determined to take no position on the issues of the validity and enforceability of the '762 patent.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.45–210.51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.45–210.51.

Copies of the public versions of the Commission order and the Commission opinion in support thereof are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: March 6, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6080 Filed 3–10–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–388]

Simplification of the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for publication of report for the subject investigation; request for submissions.

EFFECTIVE DATE: March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (202–205–2592); Janis L. Summers, Attorney-Advisor (202–205–2605); or Gil Whitson, Special Assistant to the Director (202–205–2602). The O/TA&TA fax number is 202–205–2616. These officials may be reached via Internet e-mail at rosengarden@usitc.gov; jsummers@usitc.gov; or gwhitson@usitc.gov, respectively. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on 202–205–1810. Media representatives should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). This notice, and other notices published pursuant to section 332(g) of the Tariff Act of 1930, can be obtained from the ITC Internet web server: http://www.usitc.gov.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, Simplification of the Harmonized Tariff Schedule of the United States, on November 5, 1997, following receipt of a letter of request seeking the Commission's report by July 13, 2000. Subsequently, on February 25, 1998, the Commission issued a revised schedule for the subject investigation; on March 25, 1999, the Commission issued a schedule for public comment in conjunction with the investigation, with a closing date of June 30, 1999, for such submissions. That revised work schedule calls for the publication of the Commission's report in the subject investigation by February 28, 2000, following an evaluation of the comments received.

The Commission has determined that additional time should be devoted to preparing its report. Accordingly, the

Commission is again revising the schedule in this investigation with respect to the publication of its final report, and announces that the report will be issued by June 30, 2000. In addition, after examining the volume and nature of the comments received, and following discussions with the Congressional committees concerned, the Commission has decided that a public hearing in the subject investigation will not be conducted, in order to allow the maximum time for work on its final report. The final report in the investigation will set forth the proposed legal provisions of a simplified tariff schedule; statistical annotations and notes would be separately considered for subsequent addition by the Committee for Statistical Annotation of Tariff Schedules (the so-called "484(f) Committee") pursuant to section 484(f) of the Tariff Act of 1930.

In order to assist in that statistical review, the 484(f) Committee requests the submission of written comments regarding the desirability of and possible procedures for "sunsetting" 10-digit statistical annotations to the HTS, in particular with respect to an appropriate period of time (such as 5 years) after which each annotation might be reviewed and/or deleted from the schedule. Interested persons or entities are invited to file comments concerning a possible "sunset" guideline; such comments should be general in nature, rather than being focused on particular statistical categories. Written statements should be filed as quickly as possible, and follow-up statements are permitted; but all statements must be received at the Commission by the close of business on April 3, 2000, in order to be considered and made part of the record. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Office of the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Questions regarding the investigation can be directed to the staff members listed above, and documents concerning the subject investigation have been placed on the Commission's web site for inspection and/or downloading. Printed copies of documents and submissions have been placed in the Secretary's docket section for inspection and copying.

By order of the Commission.

Issued: March 7, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6082 Filed 3–10–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–377 (Review)]

Internal Combustion Industrial Forklift Trucks From Japan

AGENCY: United States International Trade Commission.

ACTION: Revision of the schedule of a full five-year review concerning the antidumping duty order on internal combustion industrial forklift trucks from Japan.

EFFECTIVE DATE: March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1999 (64 FR 46952), the Commission published a notice in the **Federal Register** scheduling a full five-year review concerning the antidumping duty order on internal combustion industrial forklift trucks from Japan. On February 4, 2000 (65 FR 5660), the Commission published a notice in the **Federal Register** revising this schedule. This revised schedule provided for the Commission to make its final release of information on March 9, 2000, and the parties' final comments were due on March 13, 2000. In order to accommodate the late submission of questionnaire data obtained from a domestic producer pursuant to a stipulated order regarding an administrative subpoena issued by the Commission on January 4, 2000, the February 4, 2000, schedule is further revised.

The Commission's new schedule for the review is as follows: The Commission will not collect any additional information after March 10, 2000, and will make its final release of information to the parties on or about March 10, 2000; and final party comments are due on March 15, 2000.

For further information concerning the review, see the Commission's notices cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to sections 201.35 and 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 7, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6083 Filed 3–10–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Anitrust Division

United States of America v. Miller Industries, Inc., Miller Industries Towing Equipment, Inc., and Chevron, Inc., No. 1:00CV00305 (D.D.C., Filed February 17, 2000); Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States of America v. Miller Industries, Inc., Miller Industries Towing Equipment, Inc., and Chevron, Inc., No. 1:00CV00305. On February 17, 2000, the United States filed a Complaint alleging that the acquisition by Miller Industries, Inc. on September 2, 1996, of all the issued and outstanding capital stock of its competitor Vulcan Equipment, Inc., a Mississippi corporation, and the acquisition by Miller Industries, Inc. on December 5, 1997, of all the issued and outstanding capital stock of its competitor Chevron, Inc., a

Pennsylvania corporation, violated Section 7 of the Clayton Antitrust Act, as amended, 15 U.S.C. 18. The proposed Final Judgment, filed with a Stipulation at the same time as the Complaint, would require Miller Industries, Inc. and its wholly owned subsidiaries Miller Industries Towing Equipment, Inc., and Chevron, Inc., to grant to anyone requesting it a non-exclusive license, at unit royalties that are not to exceed specified amounts, under any one or more of five towing and recovery vehicle equipment patents, and to notify the Department of Justice prior to future acquisitions of towing and recovery equipment assets or patents having a value that exceeds $5 million. The Stipulation provides for these patent licenses to become available within ten (10) days following the filing of the Stipulation with the Court. Copies of the Complaint, Stipulation, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C. in Room 207, 325 Seventh Street, NW, where copies may be obtained upon request and payment of a copying fee, and at the Office of the Clerk of the United States District Court for the District of Columbia.

Public comment is invited within sixty days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, Department of Justice, Suite 300, 325 Seventh Street, NW, Washington, D.C. 20530 (telephone: (202) 616–5935)

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in this Court.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending its entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court. As part of this compliance, defendants shall not assign, transfer interest, or take any action, direct or indirect, that will impede or impair the value or ownership rights of the '737, '147, '509, '609, and '623 Patents (as those terms are defined in the proposed Final Judgment) before the proposed Final Judgment shall be effective.

(4) Pursuant to Section IV of the proposed Final Judgment, Defendants shall offer to any requesting third party a license or licenses, the terms of which shall comply with the terms set forth in the proposed Final Judgment and Exhibits A and B thereof; provided, however, that if the proposed Final Judgment has not been entered because Plaintiff has withdrawn its consent or the time for all appeals of any Court ruling declining entry of the proposed Final Judgment has expired, then the license(s) shall terminate effective upon withdrawal of consent of expiration of time for appeals. As provided in Exhibits A and B, licensees shall have the right to sell at any time products made within 60 days of termination caused by the withdrawal of the Plaintiff's consent or by the Court's declining to enter the proposed Final Judgment.

(5) Within ten (10) days of its filing of the proposed Final Judgment and every thirty days thereafter until entry of the Final Judgment, defendants shall provide Plaintiff an affidavit setting forth the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to license, expressed an interest in licensing, entered into negotiations to license, or was contacted or made an inquiry about licensing the '737, '147, '509, '609, or '623 Patents, and shall describe in detail each contact with any such person during that period.

(6) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(7) In the event Plaintiff withdraws its consent, as provided in paragraph (2) above, or in the event that the Court declines to enter the proposed Final Judgment pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(8) Defendants represent that the licenses ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the licensing provisions contained therein.

For plaintiff United States of America:
Susan L. Edelheit,
D.C. Bar No. 250 720, Assistant Chief, Civil Task Force Antitrust Division, U.S. Department of Justice, Suite 300, 325 7th Street, NW, Washington, D.C. 20530, (202) 514–5038.
Date Signed: February 16, 2000.

For Miller Industries, Inc., Miller Industries Towing Equipment, Inc., and Chevron, Inc.
C. Loring Jetton, Jr.,
(202) 663–6738, D.C. Bar No. 083766
John Q. Rounsaville, Jr.,
(202) 663–6328, D.C. Bar No. 162305
William F. Adkinson, Jr.,
(202) 663–6530, D.C. Bar No. 411922
Wilmer, Cutler & Pickering, 2445 M Street, NW, Washington, DC 20037.
Date Signed: February 16, 2000.

Frank Madonia,
Executive Vice President and General Counsel, Miller Industries, Inc., 8503 Hilltop Drive, Ooltewah, TN 37363—0120, (423) 238–4171.
Date Signed: February 16, 2000.

Stipulation Approved for Filing:
Ordered this ____ day of _____, 2000.

_____
United States District Judge

Final Judgment

Whereas, Plaintiff, the United States of America ("United States"), having filed its Complaint in this action, and Plaintiff and Defendants, Miller Industries, Inc. and its wholly-owned subsidiaries Miller Industries Towing Equipment, Inc., and Chevron, Inc. (any one or more of which may be referred to as "Miller Industries"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any

party with respect to any issue of law or fact herein;

And Whereas Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas the essence of this Final Judgment is the prompt and certain licensing of specified patents to one or more third parties;

And whereas Defendants, as alleged in the Complaint, as owners of all right, title, and interest in the L-Arm Patent (defined below), acquired all of the capital stock of Vulcan International, Inc., including all right, title, and interest in the Vulcan Improvement Patents (defined below), and thereafter acquired all of the capital stock of Chevron, Inc., including all right, title and interest in the Independent Wheel Lift Patent and the Backsaver Patent (defined below):

And whereas licensing of the specified patents is necessary to remedy the loss of competition resulting from Defendants' acquisition of control of competitors' assets as alleged in the Complaint;

And whereas Plaintiff takes no position as to the validity or enforceability of the patents at issue or as to whether they are or have been infringed by any third parties, and Plaintiff and Defendants agree that this Final Judgment shall have no impact whatsoever on any adjudication concerning the validity or enforceability of the patents at issue or any other patents assigned to or owned by Defendants;

And whereas Defendants have represented to Plaintiff that Miller Industries is the owner of the patents at issue, that the licensing and other terms and conditions ordered herein can and will be accomplished, and that Defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I.

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II.

Definitions

As used in this Final Judgment:

A. "Miller Industries" shall mean one or more of Miller Industries, Inc., a Tennessee corporation headquartered in Ooltewah, TN, and tits wholly-owned subsidiaries Miller Industries Towing Equipment, Inc., a Delaware corporation headquartered in Ooltewah, TN, and Chevron, Inc., a Pennsylvania corporation headquartered in Mercer, PA, and their successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. "Produce," "Producing," or "Production" shall mean to manufacture, make, have made, import into the United States, use, offer to sell, sell or otherwise dispose of

C. "The '737 Patent" (commonly referred to as the " L-Arm Patent") shall mean United States Patent Number 4,836,737 and all continuations, continuations-in-part, and divisions or reissues thereof, if any.

D. "The '623 Patent" shall mean United States Patent Number 4,637,623 and all continuations, continuations-in-part, and divisions or reissues thereof, if any.

E. "The '509 Patent" shall mean United States Patent Number 4,798,509 and all continuations, continuations-in-part, and divisions or reissues thereof, if any.

F. "The '147 Patent" (commonly referred to as the "Independent Raise-and-Lower Patent") shall mean United States Patent Number 5,061,147 and all continuations, continuations-in-part, and divisions or reissues thereof, if any.

G. "The '609 Patent" (commonly referred to as the "Backsaver Patent") shall mean United States Patent Number 5,628,609 and all continuations, continuations-in-part, and divisions or reissues thereof, if any.

H. The "Century Design" shall mean Miller Industries' wheel lift designs depicted in the engineering drawings attached as Exhibit D and E and which are embodied in Century Model Nos. 124002217 and 12400221, currently being marked by Miller Industries in the United States, as well as the wheel lift designs incorporated in the previously marketed Century Model Nos. 124001824 and 124001825.

I. "The Improvement Patents" (commonly referred to as the "Vulcan Improvement Patents," covering such items as the horizontal and vertical "pivot" L-arm features) shall mean the '623 Patent and the '509 Patent.

J. The "Licensed Claims of the Improvements Patents" shall mean Claims 1–3, 6–10, 12, 15, 17, 18, 20 and 22 of the '623 Patent and Claims 1, 4–9, 11–14 and 16–19 of the '509 Patent. The Licensed Claims include such features as the horizontal and vertical "pivot" of the L-arm.

K. The "Unlicensed Claims of the Improvements Patents" shall mean Claims 4, 5, 11, 13–14, 16, 19 or 21 of the '623 Patent and Claims 2, 3, 10 or 15 of the '509 Patent. The Unlicensed Claims of the Improvement Patents embody the following features of the Improvement Patents: (1) the vertical locking pin device; (2) the elongated curved wheel retainer plate (sometimes referred to as "the Scoop"); and (3) the wheel lift receiver placed completely above the cross-bar. The act of Producing products containing (a) a horizontal locking pin device, (b) a vertical alignment pin on the receiver used in combination with a horizontal locking pin device, or (c) two flat surfaces joined together to form the wheel retainer plate, or any combination of (a), (b), or (c), by a licensee under the Licensed Claims of the Improvement Patent shall not constitute an infringement of any of the Unlicensed Claims of the Improvement Patents.

III.

Applicability

The provisions of this Final Judgment apply to Miller Industries, its successors and assigns (including any transferee or assignee of any ownership rights to, control of, or ability to license the patents referred to in this Final Judgment), its subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Licensing of Patents

A. Beginning no later than ten (10) business days after the filing pursuant to 15 U.S.C. 16(b) of this Final Judgment, Miller Industries shall offer to any third party a non-exclusive license in the form attached hereto as Exhibit A (with the exception of licenses that include the Improvement Patents) or Exhibit B (for licenses that include the Improvement Patents) under the following patents subject to license fees not to exceed the corresponding stated amount per unit:

Patent(s) to be licensed	Unit license fee not to exceed
'737 Patent	125.00
'147 Patent	150.00
'609 Patent	150.00
Licensed Claims of the Improvement Patents	150.00
'737 Patent & '147 Patent, Together	175.00
'737 Patent & '609 Patent, Together	175.00
'737 Patent & Licensed Claims of the Improvement Patents, Together	175.00

The Maximum Unit License Fee shall be adjusted up or down annually in accordance with the change in the U.S. Department of Labor Producer Price Index for Finished Goods.

B. Such licenses shall be available for the life of the licensed patent. The Maximum Unit License Fee for a license covering more than one patent shall, in the event of the expiration of any covered patent, be modified to reflect the Maximum Unit License Fee for the remaining licensed patent or patents. The terms of Exhibit A or Exhibit B may be modified upon consent of both parties to the license.

C. In accomplishing the licensing ordered by this Section IV, Miller Industries shall retain the services of an Independent Auditor (a certified public accountant from a firm of good standing) who shall collect from each licensee reports and royalty payments as required by each license agreement made pursuant to this Final Judgment. Miller Industries shall instruct the Independent Auditor to provide Miller Industries no more frequently than on a quarterly basis the aggregate dollar amount of royalty payments collected under each category of license set forth in Paragraph A hereof, together with a report stating the name of each licensee making royalty payments and the aggregate number of units of licensed products reported by all licensees for that period. Miller Industries shall instruct the Independent Auditor not to provide or disclose any information or data that would allow Miller Industries to determine the number of units of licensed products produced by any particular licensee, but may permit the Independent Audit to disclose to it facts that constitute grounds for material breach under the terms of the license.

D. Any existing licensee of any one or more of the '147, '509, '609, '623 or '737 Patents may elect to modify its existing license to any such patent by substituting the terms and conditions of the licenses available pursuant to this Section IV on thirty (30) days' written notice to Miller Industries.

In accomplishing the licensing ordered by this Section IV, Miller Industries promptly shall make known, by usual and customary means, the availability of the licenses, including mailing within ten (10) days of filing pursuant to 15 U.S.C. 16(b) of this Final Judgment notices of the available licenses in the form of Exhibit C along with copies of this Final Judgment to all firms known to it that manufacture tow trucks, car carriers, or similar towing and recovery vehicles. Miller Industries shall provide any person making an inquiry regarding a possible license with a copy of this Final Judgment, including all exhibits thereto. At Plaintiff's request, Miller Industries shall furnish to Plaintiff copies of any executed licenses made pursuant to this Section IV.

F. Miller Industries shall retain the services of a Designated Expert, to be selected by Plaintiff in its sole discretion, who shall, at the request of any existing or prospective Licensee of the Improvement Patents (hereafter "Licensee"), determine whether a proposed design is an "Approved Proposed Design." A proposed design shall be an Approved Proposed Design if it falls within the Licensed Claims of the Improvement Patents and does not fall within the Unlicensed Claims. Miller Industries shall provide the Designated Expert with a copy of this Final Judgment and shall instruct him/her to use his/her best efforts to provide the Licensee with a written determination within 30 days after receipt of engineering drawings and other necessary information. A Licensee has no obligation to request a determination from the Designated Expert, and use of the Designated Expert is at a Licensee's sole discretion.

G. Miller Industries shall be bound by the Designated Expert's determination that a proposed design is an Approved Proposed Design, and shall not challenge as infringement of any Unlicensed Claim the Licensee's Production of products made in accordance with the specifications of an Approved Proposed Design.

H. Miller Industries shall instruct the Designated Expert to keep confidential all submissions and contact with any Licensee seeking a determination, and shall instruct the Designated Expert not to disclose to Miller Industries or any third party, unless required to do so by law, any information concerning the Licensee's request for a determination on any proposed design. However, Miller Industries may instruct the Designated Expert (1) to notify Miller Industries after a proposed design has been approved, of the identity of the firm submitting the design, and (2) after the Licensee has begun selling products made in accordance with an Approved Proposed Design, to provide Miller Industries with a description of the product and its features sufficient to enable Miller Industries to determine whether the product is made in accordance with the specifications of the Approved Proposed Design, subject to the Licensee's confirmation that the description to be disclosed reveals no confidential data or trade secrets.

I. Miller Industries will pay the Designated Expert's fees, up to maximum of five (5) thousand dollars, for his/her services in gaining sufficient familiarity with the licensed patents and the scope of the claims thereof to enable him/her to undertake to determine whether proposed designs are Approved Proposed Designs. The cost of the Designated Expert's determination of whether a given submitted proposed design is an Approved Proposed Design shall be borne by the Licensee.

J. Within fifteen days from the filing pursuant to 15 U.S.C. 16(b) of this Final Judgment, Miller Industries shall provide Plaintiff with the names of three candidates (each with sufficient expertise in patent interpretation to be able to make qualified determinations) who have no affiliation or relationship with Miller Industries or any other towtruck or car carrier manufacturer to serve as the Designated Expert. After reviewing these candidates, Plaintiff may request from Miller Industries the names of additional candidates to serve as Designated Expert, Miller Industries shall provide such additional names within fifteen days from receipt of such request. Should Plaintiff object to all candidates submitted by Miller Industries, Plaintiff may select a Designated Expert of its own choosing.

K. Miller Industries shall not challenge as infringement of its Unlicensed Claims, or of any other claims of any patents owned by or assigned to Miller Industries, the Production of a product embodying the Century Design by a licensee of the '737 Patent and the Licensed Claims of the Improvement Patents. Miller Industries shall also not challenge as infringement of any claims under the Improvement Patents the Production of a product with a wheel lift design made pursuant to the specification in the '609 Patent (the "Backsaver Design") by a licensee of the '609 Patent.

V

Limitations

A. Nothing in this Final Judgment shall be construed to restrict Miller Industries' ability to manufacture and sell products pursuant to the '737 Patent, the Improvement Patents, the '147 Patent, or the '609 Patent.

B. Notwithstanding Section IV of this Final Judgment, Miller Industries is not required to grant a license to any person to whom a license was previously granted under this Final Judgment that was terminated for material breach.

VI

Notification

A. Miller Industries shall provide advance notification to the Plaintiff (1) when it directly or indirectly acquires (other than in the ordinary course of business as defined in the HSR regulations) any assets of, or any interest (including any financial, security, loan, equity, or management interest) in, any manufacturer of towtrucks, car carriers, or other towing and recovery equipment, with the exception of any transaction where the total value of the assets or interest being acquired is less than five (5) million dollars; or (2) when it directly or indirectly (i) acquires any exclusive license or (ii) acquires or is assigned any ownership or security interest in a patent or patents relating to the manufacture of towtrucks, car carriers, or other towing and recovery equipment, with the execution of any transaction where the total value of the interest acquired in such patent rights is less than five (5) million dollars. For purpose of this paragraph, total value shall be determined as prescribed in 16 CFR § 801.00. If the transaction is covered by the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), Miller Industries' obligation to provide notification under this Section shall be satisfied by compliance with the HSR Act.

B. Notification under this section shall be provided to the Plaintiff in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended. Notification shall be provided at least thirty (30) days prior to the acquisition of such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification representatives of the Plaintiff make a written request for additional information, Defendant shall not consummate the proposed transaction or agreement until twenty (20) days after substantial compliance with the request for such additional information. The Plaintiff may, however, grant defendant early termination of the waiting periods prescribed by this Section. This Section shall be broadly construed, and any ambiguity or uncertainty regarding the necessity of filing such notification under this Section shall be resolved in favor of filing notice.

VII

Affidavits

A. Miller Industries shall provide Plaintiff an affidavit within ten (10) days of the filing pursuant to 15 U.S.C. 16(b) of this Final Judgment, and every six (6) months thereafter until the life of each of '147, '509, '609, '623 and the '737 Patents has expired, as to the fact and manner of compliance with Section IV hereof. Each such affidavit shall set forth efforts made to accomplish licensing of the patents contemplated in his Final Judgment and shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to license, expressed an interest in licensing, entered into negotiations to license, or was contacted or made an inquiry about licensing the patents to be licensed, and shall describe in detail each contact with any such person during that period.

B. Until one year after each of the '147, '509, '609, '623 and the '737 Patents have expired, Miller shall preserve all records of all efforts made to effect the licensing of each such patent.

VIII

Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, or determining whether the Final Judgment should be further modified or terminated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or the Assistant General in charge of the Antitrust Division, and on reasonable notice to Defendants made to their principal offices, shall be permitted:

1. Access during office hours of Defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of Defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Defendants at their principal offices, Defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment.

C. No information nor any documents obtained by the means provided in Sections VII or VIII of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then Plaintiff shall give ten (10) days notice to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not a party.

IX

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the

enforcement of compliance herewith, and for the punishment of any violation hereof.

X

Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XI

Public Interest

Entry of this Final Judgment is in the public interest.

Dated:_____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

Exhibit A: License Agreement

[Exhibit A to be used for licensing United States Patent Number 5,061,147 ("The Independent Raise-and-Lower Patent"); United States Number 5,628,609 ("The Backsaver Patent"); United States Patent Number 4,836,737 ("The L-Arm Patent"); or a combination of the '737 Patent and either the '147 or '609 Patents. Please see Exhibit B for licenses relating to United States Patent Number 4, 798,509 & United States Patent Number 4,637,623 (collectively, the "Improvement Patents")]

This License Agreement is made by and between _____ ("Licensee") and MILLER INDUSTRIES, INC., or a designated subsidiary thereof (and its successors and assigns, collectively "Licensor").

Whereas, Licensor is the owner of [United States Patent Number 5,061,147; United States Patent Number 5,628,609; and/or United States Patent Number 4,836,737]

And whereas, Licensee desires to obtain a license from Licensor relating to said patent [or patents];

And whereas, Licensor desire to grant Licensee such a license;

Now, therefore, in consideration of the foregoing and of the mutual covenants which follow, the parties hereby agree that:

Article 1—Definitions

As used in this Agreement, the following terms shall have the following meanings:

1.01. "The '737 Patent" shall mean United States Patent Number 4,836,737. ["the '147 Patent" shall mean United States Patent Number 5,061,147; and/or "the '609 Patent" shall mean United States Patent Number 5,628,609.]

1.02. "Royalty Bearing Products" shall mean products made in accordance with the claims of the '737 Patent [the '147 Patent and/or the '609 Patent].

1.03. "Independent Auditor" shall mean a person or persons appointed by Licensor subject to the terms and conditions of Section IV of the Final Judgment in United States v. Miller Industries, Inc., Civ. 1:00CV00305 (D.D.C. 2000).

Article 2—License and Related Terms

2.01. *Patent License.* During the term of this Agreement, subject to the terms and conditions hereof, including, without limitation, the timely payment by Licensee to the Independent Auditor of the license fees provided for in Section 2.02 hereof, Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, a non-exclusive, non-transferable (except as specifically provided in Section 5.05 hereof), right and license under the '737 Patent [*the '147 Patent and/or the '609 Patent*] to make, have made, import, use, offer to sell, sell or otherwise dispose of Royalty Bearing Products within the United States.

2.02. *Royalties.* In consideration of the license granted under Section 2.01 hereof, Licensee shall pay Licensor a royalty of $____[1] per unit for each Royalty Bearing Product Sold or Otherwise Disposed of by or for Licensee. The term "Sold or Otherwise Disposed of" includes Royalty Bearing Products sold, leased, placed in commercial service, or delivered by or on behalf of Licensee within the United States. In no event shall a licensee pay more than one royalty on a single unit of Royalty Bearing Product.

Article 3—Notice Provisions

3.01. Licensee shall make written reports to the Independent Auditor within 30 days of the end of each calendar quarter through the life of the '737 patent [*the '147 Patent and/or the '609 Patent*] stating in each such report the aggregate number of Royalty Bearing Products it has Sold or Otherwise Disposed of within the United States during such calendar quarter and upon which royalty is payable as provided in this Agreement. The first such report shall include all Royalty Bearing Products Licensee has Sold or Otherwise Disposed of between the date of this Agreement and the date of such report. The Independent Auditor shall report to the Licensor only such information as is permitted under Paragraph IV.C of the Final Judgment in United States v. Miller Industries, Inc., et al., Civ. 1;00CV00305 (D.D.C. 2000).

3.02. Concurrently with each report, Licensee shall pay to the Independent Auditor royalties at the rate specified in Article 2.02 of this Agreement on the Royalty Bearing Products included in the report.

3.03. Licensee shall keep accurate books and records in accordance with accepted accounting practices showing the Royalty Bearing Products it made, had made, imported, used, offered for sale, Sold or Otherwise Disposed of during the life of this License Agreement. Such records shall be in sufficient detail to enable the royalties payable to Licensor to be determined.

3.04. The Independent Auditor shall notify Licensor when, in his or her independent judgment, an audit is appropriate, and upon Licensor's approval shall conduct an audit. Upon request of the Independent Auditor, Licensee will permit its books and records pertinent to the determination of the royalties payable to Licensor to be examined to the extent reasonably necessary for the Independent Auditor to verify the reports provided by Licensee. In the event that the Auditor shall have questions that appear not to be answered by such books and records, the Auditor shall have the right to confer with representatives of the Licensee, including but not limited to the Licensee's Chief Financial Officer and Plant Manager. Such examination shall be made at the expense of the Independent Auditor and may be requested no more than once per year. The Independent Auditor, who shall be obligated to confidentiality, shall report to Licensor only the amount of royalty payable for the period under audit based upon a review of the books and records provided. If the Independent Auditor determines that Licensee has underpaid the applicable royalties by less than 5% of the total applicable royalties for the period in question, Licensee shall pay the arrears and interest at a rate of 10% per annum, or the maximum allowable interest rate under the applicable state law, if it is lower. If the Independent Auditor determines that Licensee has underpaid the applicable royalties by greater than 5% of the total applicable royalties for the period in question, Licensee shall pay the cost of the audit, the arrears, and interest at a rate of 10% per annum, or the maximum allowable interest rate under the applicable state law, if it is lower.

3.05. Nothing in this Agreement shall restrict the right of Licensor to seek redress for infringement of the [*patents to be licensed*] by Licensee occurring before the date of execution of this Agreement.

Article 4—Term and Termination

4.01. Subject to the terms and conditions hereof, this Agreement shall become effective upon execution by both parties and shall remain in force for the life of the last licensed patent to expire or upon termination. Licensee may terminate this Agreement by giving Licensor at least 90 days' prior written notice of termination. Licensor may terminate this Agreement immediately, and refuse to grant Licensee a new license, if Licensee commits a material breach, as defined in Section 4.02 below.

4.02. Licensor may treat as a material breach: (i) Licensee's failure to make a report pursuant to Section 3.01 hereof, or to pay corresponding royalties due under such report pursuant to Section 3.02 hereof, provided that such failure is not cured or resolved within 30 days after Licensee received notice thereof; (ii) the Independent Auditor's determination, as a result of an audit conducted pursuant to Section 3.04 above, that Licensee has underpaid the royalties by more than 20% in the applicable period, provided that the underpayment is not cured or resolved within 60 days after Licensee is informed of the determination; (iii) the Independent Auditor's determination in two successive audits conducted pursuant to Section 3.04 above, that Licensee has underpaid the royalties by more than 20% in the applicable period, whether or not such

[1] Royalties shall not exceed the following: '737 Patent: $125.00 per unit; '147 Patent: $150.00 per unit; '609 Patent: $150.00 per unit; '147 and '737 Patents, together: $175.00 per unit; '609 and '737 Patents, together: $175.00 per unit.

These maximum limits on royalties shall be adjusted up or down annually in accordance with the change in the U.S. Department of Labor Producer Price Index for Finished Goods.

underpayment is cured; or (iv) Licensee's failure to re-establish compliance with its obligations to maintain liability insurance under Section 5.10(b) hereof within 60 days of receiving notice from Licensor of its non-compliance. The provisions of Section 5.04 concerning Force Majeure shall apply to the curing or resolution of grounds for a material breach.

4.03. [*To be included only in all licenses granted before entry of the Final Judgment.*] Licensor shall have the option to terminate this Agreement if, in the matter United States v. Miller Industries, Inc. et al., either of the following events occur: (1) Plaintiff withdraws its consent to entry of the proposed Final Judgment, or (2) the Court declines to enter the proposed Final Judgment, and the time has expired for all appeals from any Court ruling declining such entry. Such termination shall be effective 60 days after Licensor notifies Licensee of the occurrence of event (1) or (2) under this Section 4.03.

4.04. In the event of termination, Licensee shall report under Section 3.01 hereof, and pay under Section 3.02 hereof, royalties on all Royalty Bearing Products that it has made or imported prior to termination. A terminated Licensee shall have the right at any time to sell or otherwise dispose of any Royalty Bearing Product on which royalties have been paid. Termination shall not affect Licensee's duty to pay royalty obligations hereunder, and shall not affect Licensor's right to request an audit covering any period during which Licensee has a right hereunder to make or import any product.

Article 5—Miscellaneous Provisions

5.01. *Limitations of Liability and Claims.* (a) Licensor warrants that is owns the entire right, title, and interest to the [*patent(s) being licensed*] and has the ability to license the [*patent(s) being licensed*] but otherwise neither party makes any representations, extends any warranties of any kind, either express or implied, and each party specifically disclaims any implied warranty of merchantability or fitness for a particular purpose in relation to the teachings of the [*patent(s) being licensed*].

(b) The parties are under no obligation and shall not be required under this Agreement to bring or prosecute actions or suits against any third party for infringement of the [*patent(s) being licensed*].

5.02. *Relationship of the Parties.* The parties shall be independent contractors hereunder and neither party shall have the power or authority to bind the other party with respect to any third party. Except as specifically provided herein, each party shall bear its own costs and expenses.

5.03. *Effect of Agreement.* This Agreement embodies the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral or written, relating thereto. Any amendment hereof must be in writing and signed by both parties.

5.04. *Force Majeure.* Each party's performance hereunder is subject to interruption or delay due to causes beyond its reasonable control such as acts of God, acts of government, war or other hostility, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, and the like. In the event of such an interruption or delay, any relevant period of performance of the party affected shall be extended for a period of time equal to the period of the interruption or delay and any obligation of the party whose performance is not affected which corresponds to the interrupted or delayed performance shall be suspended for a period of time equal to the period of the interruption or delay. Any party whose performance hereunder is subject to such interruption or delay shall give prompt notice to the other party of the reason or reasons for the commencement of and of the conclusion of such interruption or delay.

5.05. *Assignment and Successors.* This Agreement shall inure to the benefit of and be binding upon the parties as well as subsidiaries, affiliates, and successors-in-interest of the parties hereto. Neither party nor any subsidiary, affiliate or successor-in-interest shall assign or transfer any of its rights, privileges or obligations hereunder without the prior written consent of the other party, except that Licensor may, without the consent of Licensee, assign this license in connection with the transfer of all or substantially all of its towing equipment manufacturing and distribution business. Nothing in this Agreement grants, or is intended to grant the right or authorization to grant, sublicenses of the [*patent(s) being licensed*]. Upon a permitted assignment of this Agreement, said assignee shall expressly agree in writing to be bound by all of the provisions of this Agreement. However, nothing in this Section shall permit a former licensee of the [patents being licensed] who has been terminated for material breach as defined in Section 4.02 to exercise any rights under this Agreement.

5.06. *Severability.* Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby.

5.07. *Non-Waiver.* Failure of either party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision nor of the right to enforce such provision.

5.08. *Notices.* In order to be effective, all notices, requests, demands, agreements, consents, approvals, permissions and other communications required or permitted hereunder shall be in writing, shall be delivered personally, faxed, transmitted by courier or express service, or mailed, with proper charge prepaid, to the party for whom intended as set forth below, and shall be deemed to be given upon the date of actual receipt:

To Licensee:

To Licensor: President, Miller Industries, Inc., 8503 Hilltop Drive, Ooltewah, TN 37363.

(by other means)

The sending party shall have the burden of proving receipt. Either party may change any address to which notices and other communications are to be directed to it by giving notice of such change to the other party in the manner provided above.

5.09. *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of Tennessee.

5.10. *Insurance.* During the term of this Agreement, Licensee shall maintain broad form general liability insurance, including blanket contractual, products and completed operations liability coverage, in the amount of two (2) million dollars. Within 30 days following execution of this Agreement, Licensee shall deliver to Licensor a Certificate of Insurance and, subsequently, any renewals thereof evidencing the insurance required by this Paragraph.

5.11. *Patent Marking.* Licensee shall mark each Royalty Bearing Product made, used, Sold or Otherwise Disposed of under this license with the following marking:

Manufactured and sold under license of United States Patent Nos. [*Patents(s) being licensed*].

5.12. *Trademarks and Trade Names.* The license herein granted conveys no right to Licensee to use or register any trademarks or trade names of the Licensor.

5.13. *Preservation of Licensor's Rights.* Licensor's grant of rights to License pursuant to this Agreement shall in no way restrict Licensor's right to manufacture and sell products pursuant to the [*patent(s) being licensed*].

In witness whereof, the parties have executed this Agreement by their authorized representatives.

[Licensee]

By__ _____

Its__ _____

Date__ _____

[Licensor]

By__ _____

Its__ _____

Date__ _____

Exhibit B: License Agreement

[Exhibit B to be used for licenses relating to United States Patent Number 4,798,509 and United States Patent Number 4,637,623 (collectively, the "Improvement Patents"). The "Alternative" (in italics) relates to terms for licenses of the Improvement Patents together with the '737 L-Arm Patent.]

This License Agreement is made by and between_____("Licensee") and MILLER INDUSTRIES, INC., or a designated subsidiary thereof (and its successors, collectively "Licensor");

Whereas, Licensor is the owner of United States Patent Number 4,798,509 and United States Patent Number 4,637,623; [*and United States Patent Number 4,836,737*]

And whereas, Licensee desires to obtain a license from Licensor relating to said patents;

And whereas, Licensor desires to grant Licensee such a license;

Now, therefore, in consideration of the foregoing and of the mutual covenants which follow, the parties hereby agree that:

Article 1—Definitions

As used in this Agreement, the following terms shall have the following meanings:

1.01. "The '737 Patent" shall mean United States Patent Number 4,836,737.

1.02. "The '623 Patent" and "the '509 Patent" shall mean respectively, United States Patent Number 4,637,623 and United

States Patent Number 4,798,509. (Collectively, the "Improvement Patents").

1.03. The "Licensed Claims" shall mean only Claims 1–3, 6–10, 12, 15, 17, 18, 20 and 22 of the '623 Patent and only Claims 1, 4–9, 11–14 and 16–19 of the '509 Patent. The act of Producing products containing (a) a horizontal locking pin device, (b) a vertical alignment pin on the receiver used in combination with a horizontal locking pin device, or (c) two flat surfaces joined together to form a wheel retainer plate, or any combination of (a), (b), or (c), shall not constitute an infringement of any unlicensed claim of the '623 Patent or the '509 Patent.

1.04. "Royalty Bearing Products" shall mean products made in accordance with the Licensed Claims of the '623 Patent or the '509 Patent. [ALTERNATIVE IF LICENSE IS FOR BOTH—ARM AND IMPROVEMENTS: "Royalty Bearing Products" shall mean products made in accordance with any claim or claims of the '737 Patent and the Licensed Claims of the '623 Patent or the '509 Patent].

1.05. "Independent Auditor" shall mean a person or persons appointed by Licensor subject to the terms and conditions of Section IV of the Final Judgment in *United States* v. *Miller Industries, Inc.*, Civ.1:00 CV00305 (D.D.C. 2000).

1.06. "Produce," "Producing," or "Production" means to manufacture, make, have made, import into the United States, use, offer to sell, sell or otherwise dispose of.

Article 2—License and Related Terms

2.01. *Patent License.* During the term of this Agreement, subject to the terms and conditions hereof, including, without limitations, the timely payment by licensee to the Independent Auditor of the license fees provided for in Section 2.02 hereof, Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, a non-exclusive, non-transferable (except as specifically provided in Section 5.05 hereof), right and license under the '623 Patent and '509 Patent to make, have made, import, use, offer to sell, sell, or otherwise dispose of Royalty Bearing Products within the United States. This agreement does not provide Licensee with the right to make, have made, import, use, offer to sell, sell, or otherwise dispose of products that are made in accordance with (i) Claims 4, 5, 11, 13–14, 16, 19 or 21 of the '623 Patent; (ii) Claims 2, 3, 10 or 15 of the '509 Patent; or (iii) any claim of the '737 Patent.

2.02. *Royalties.* In consideration of the license granted under Section 2.01 hereof, Licensee shall pay Licensor a royalty of $____ per unit [1] for each Royalty Bearing Product Sold or Otherwise Disposed of by or for Licensee. The term "Sold or Otherwise Disposed of" includes Royalty Bearing Products sold, leased, placed in commercial service, or delivered by or on behalf of Licensee within the United States. In no event shall a Licensee pay more than one royalty on a single unit of Royalty Bearing Product.

[1] The royalty shall not exceed $150 per unit, adjusted up or down annually in accordance with the change in the U.S. Department of Labor Producer Price Index for Finished Goods.

Article 2—License and Related Terms

[ALTERNATIVE: LICENSE FOR L-ARM PLUS IMPROVEMENT PATENTS]

2.01. *Patent License.* During the term of this Agreement, subject to the terms and conditions hereof, including, without limitations, the timely payment by Licensee to the Independent Auditor of the license fees provided for in Section 2.02 hereof, Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, non-exclusive, non-transferable (except as specifically provided in Section 5.05 hereof), right and license under the '737 Patent, '623 Patent and '509 Patent to make, have made, import, use offer to sell, sell, or otherwise dispose of Royalty Bearing Products within the United States. This agreement does not provide Licensee with the right to make, have made, import, use, offer to sell, sell, or otherwise dispose of products that embody or are made in accordance with Claims 4, 5, 11, 13–14, 16, 19 or 21 of the '623 Patent or Claims 2, 3, 10 or 15 of the '509 Patent.

2.02. *Royalties.* In consideration of the license granted under Section 2.01 hereof, Licensee shall pay Licensor a royalty of $____ per unit [2] for each Royalty Bearing Product Sold or Otherwise Disposed of by or for Licensee.. The term "Sold or Otherwise Disposed of" includes Royalty Bearing Products sold, leased, placed in commercial service, or delivered by or on behalf of Licensee within the United States. In no event shall a licensee pay more than one royalty on a single unit of Royalty Bearing Product.

Article 3—Notice Provisions

3.01. Licensee shall make written reports to the Independent Auditor within 30 days of the end of each calendar quarter through the life of each patent to be licensed, stating in each such report the aggregate number of Royalty Bearing Products it has Sold or Otherwise Disposed of within the United States during such calendar quarter and upon which royalty is payable as provided in this Agreement. The first such report shall include all Royalty Bearing Products Licensee has Sold or Otherwise Disposed of between the date of this Agreement and the date of such report. The Independent Auditor shall report to the Licensor only such information as is permitted under Paragraph IV.C of the Final Judgment in *United States* v. *Miller Industries, Inc., et al.*, Civ. 1:00 CV00305 (D.D.C. 2000).

3.02. Concurrently with each report, Licensee shall pay to the Independent Auditor royalties as the rate specified in Article 2.02 of this Agreement on the Royalty Bearing Products included in the report.

3.03 Licensee shall keep accurate books and records in accordance with accepted accounting practices showing the Royalty Bearing Products it made, had made, imported, used, offered for sale, Sold or Otherwise Disposed of during the life of this License Agreement. Such records shall be in sufficient detail to enable the royalties payable to Licensor to be determined.

3.04. The Independent Auditor shall notify Licensor when, in his or her independent judgment, an audit is appropriate, and upon Licensor's approval shall conduct an audit. Upon request of the Independent Auditor, Licensee will permit its books and records pertinent to the determination of the royalties payable to Licensor to be examined to the extent reasonably necessary for the Independent Auditor to verify the reports provided by Licensee. In the event that the Auditor shall have questions that appear not to be answered by such books and records, the Auditor shall have the right to confer with representatives of the Licensee, including but not limited to the Licensee's Chief Financial Officer and Plant Manager. Such examination shall be made at the expense of the Independent Auditor and may be requested no more than once per year. The Independent Auditor, who shall be obligated to confidentiality, shall report to Licensor only the amount of royalty payable for the period under audit based upon a review of the books and records provided. If the Independent Auditor determines that Licensee has underpaid the applicable royalties by less than 5% of the total applicable royalties for the period in question, Licensee shall pay the arrears and interest at a rate of 10% per annum, or the maximum allowable interest rate under the applicable state law if it is lower. If the Independent Auditor determines that Licensee has underpaid the applicable royalties by greater than 5% of the total applicable royalties for the period in question, Licensee shall pay the cost of the audit, the arrears, and interest at a rate of 10% per annum. or the maximum allowable interest rate under the applicable state law, if it is lower.

3.05 Nothing in this Agreement shall restrict the right of Licensor to seek redress for infringement of the [patents to be licensed] by licensee occurring before the date of execution of this Agreement.

Article 4—Term and Termination

4.01. Subject to the terms and conditions hereof, this Agreement shall become effective upon execution by both parties and shall remain in force for the life of the last licensed patent to expire or upon termination. Licensee may terminate this Agreement by giving Licensor at least 90 days' prior written notice of termination. Licensor may terminate this Agreement immediately, and refuse to grant Licensee a new license, if Licensee commits a material breach, as defined in Section 4.02 below.

4.02. Licensor may treat as a material breach: (1) Licensee's failure to make a report pursuant to Section 3.01 hereof, or to pay corresponding royalties due under such report pursuant to Section 3.02 hereof, provided that such failure to not cured or resolved within 30 days after Licensee receives notice thereof; (ii) the Independent Auditor's determination, as a result of an audit conducted pursuant to Section 3.04 above, that Licensee has underpaid the royalties by more than 20% in the applicable period, provided that the underpayment is

[2] The royalty shall not exceed $175 per unit, adjusted up or down annually in accordance with the change in the U.S. Department of Labor Producer Price Index for Finished Goods.

not cured or resolved within 60 days after Licensee is informed of the determination; (iii) the Independent Auditor's determination in two successive audits conducted pursuant to Section 3.04 above, that Licensee has underpaid the royalties by more than 20% in the applicable period whether or not such underpayment is cured; or (iv) Licensee's failure to re-establish compliance with its obligations to maintain liability insurance under Section 5. 10(b) hereof within 60 days of receiving notice from Licensor of its non-compliance. The provisions of Section 5.04 concerning Force Majeure shall apply to the curing or resolution of grounds for a material breach.

4.03. [To be included only in all licenses granted before entry of the Final Judgment.] Licensor shall have the option to terminate this Agreement if, in the matter United States v. Miller Industries, Inc. et al., either of the following events occur: (1) Plaintiff withdraws its consent to entry of the proposed Final Judgment, or (2) the Court declines to enter the proposal Final Judgment, and the time has expired for all appeals from any Court ruling declining such entry. Such termination shall be effective 60 days after Licensor notifies License of the occurrence of event (1) or (2) under this Section 4.03.

4.04. In the event of termination, License shall report under Section 3.01 hereof, and pay under Section 3.02 hereof, royalties on all Royalty Bearing Products that it has made or imported prior to termination. A terminated Licensee shall have the right at any time to sell or otherwise dispose of any Royalty Bearing Product on which royalties have been paid. Termination shall not affect Licensee's duty to pay royalty obligations hereunder, and shall not affect Licensor's right to request an audit covering any period during which Licensee has a right hereunder to make or import any product.

Article 5—Miscellaneous Provisions

5.01. *Limitations of Liability and Claims.*

(a) Licensor warrants that it owns the entire right, title, and interest to the [patent(s) being licensed] and has the ability to license the [patent(s) being licensed] but otherwise neither party makes any representations, extends warranties of any kind, either express or implied, and each party specifically disclaims any implied warranty of merchantability or fitness for a particular purpose in relation to the teachings of the [patent(s) being licensed].

(b) The parties are under no obligation and shall not be required under this Agreement to bring or prosecute actions or suits against any third party for infringement of the [patent(s) being licensed].

(c) Licensor warrants that, should Licensee (in its own discretion) obtain an "Approved Proposed Design" from the Designated Expert pursuant to Section IV of the Final Judgment in United States v. Miller Industries, Licensor will not challenge as infringement of any unlicensed claim of the '509 or '623 Patents the Licensee's production of products made in accordance with the specifications of an Approved Proposed Design.

5.02 *Relationship of the Parties.* The parties shall be independent contractors hereunder and neither party shall have the power or authority to bind the other party with respect to any third party. Except as specifically provided herein, each party shall bear its own costs and expenses.

5.03. *Effect Agreement.* This Agreement embodies the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral or written, relating thereto. Any amendment hereof must be in writing and signed by both parties.

5.04. *Force Majeure.* Each party's performance hereunder is subject to interruption or delay due to causes beyond its reasonable control such as acts of God, acts of government, war or other hostility, the elements, fire, explosion, power failure, industrial or labor dispute, and the like. In the event of such an interruption or delay, any relevant period of performance of the party affected shall be extended for a period of time equal to the period of the interruption or delay and any obligation of the party whose performance is not affected which corresponds to the interrupted or delayed performance shall be suspended for a period of time equal to the period of the interruption or delay. Any party whose performance hereunder is subject to interruption or delay shall give prompt notice to the other party of the reason or reasons for the commencement of and of the conclusion of such interruption or delay.

5.05. *Assignment and Successors.* This Agreement shall inure to the benefit of and be binding upon the parties as well as subsidiaries, affiliates, and successors-in-interest of the parties hereto. Neither party nor any subsidiary, affiliate or successor-in-interest shall assign or transfer any of its rights, privileges or obligations hereunder without the prior written consent of the other party, except that Licensor may, without the consent of Licensee, assign this license in connection with the transfer of all or substantially all of its towing equipment manufacturing and distribution business. Nothing in this Agreement grants, or is intended to grant the right or authorization to grant, sublicenses of the [patent(s) being licensed]. Upon a permitted assignment of this Agreement, said assignee shall expressly agree in writing to be bound by all of the provisions of this Agreement. However, nothing in this Section shall permit a former licensee of the [patents being licensed] who has been terminated for material breach as defined in Section 4.02 to exercise any rights under this Agreement.

5.06. *Severability.* Should any provision of this Agreement be held to be void, invalid unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby.

5.07. *Non-Waiver.* Failure of either party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision nor of the right to enforce such provision.

5.08. *Notices.* In order to be effective, all notices, requests, demands, agreements, consents, approvals, permissions and other communications required or permitted hereunder shall be in writing, shall be delivered personally, faxed, transmitted by courier or express service, or mailed, with proper charge prepaid, to the party for whom intended as set forth below, and shall be deemed to be given upon the date of actual receipt:

To Licensee:

To Licensor: President, Miller Industries, Inc., 8503 Hilltop Drive, Ooltewah, TN 37363.

(by other means)

The sending party shall have the burden of proving receipt. Either party may change any address to which notices and other communications are to be directed to it by giving notice of such change to the other party in the manner provided above.

5.09 *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of Tennessee.

5.10. *Insurance.* During the term of this Agreement, Licensee shall maintain broad form general liability insurance, including blanket contractual, products and completed operations liability coverage, in the amount of two (2) million dollars. Within 30 days following execution of this Agreement, Licensee shall deliver to Licensor a Certificate of Insurance and, subsequently, any renewals thereof evidencing the insurance required by this Paragraph.

5.11. *Patent Marking.* Licensee shall mark each Royalty Bearing Product made, used, Sold or Otherwise Disposed of under this license with the following marking:

Manufactured and sold under license of United States Patent Nos. [Patent(s) being licensed].

5.12. *Trademarks and Trade Names.* The license herein granted conveys no right to Licensee to use or register any trademarks or trade names of the Licensor.

5.13. *Preservation of Licensor's Rights.* Licensor's grant of rights to Licensee pursuant to this Agreement shall in no way restrict Licensor's right to manufacture and sell products pursuant to the [patent(s) being licensed].

In witness whereof, the parties have executed this Agreement by their authorized representatives.

[Licensee]

By _____

Its _____

Date _____

[Licensor]

By _____

Its _____

Date _____

Exhibit C: Notification of Available Licenses

Miller Industries, Inc. and Miller Industries Towing Equipment, Inc. ("Miller Industries") have consented to the entry of the attached proposed Final Judgment to resolve a civil suit brought by the Antitrust Division of the Department of Justice. Under the proposed Final Judgment, Miller Industries is required to offer to any third party a non-exclusive license to make and sell products covered by one or more of the following United States Patents. Terms and maximum unit royalty rates for such licenses are specified below and in greater detail in Exhibit A to the Final Judgment:

No. 4,836,737 (the '737 Patent, also known as the L-Arm Patent): $125.00
No. 5,061,147 (the '147 Patent, also known as the "Independent Raise-and-Lower Patent"): $150.00
No. 5,628,609 (the '609 Patent, also known as the "Backsaver" Patent): $150.00
The L-Arm and the Independent Raise-and-Lower Patents, together: $175.00
The L-Arm and the Backsaver Patents, together: $175.00

The proposed Final Judgment also requires Miller Industries to offer to any third party a non-exclusive license to certain improvements in the L-Arm, wheel lift designs covered by United States Patent Nos. 4,637,623 and 4,798,509 (respectively the '623 and '509 Patents, also known as the "Improvement Patents"). Miller Industries will license the features under these Improvement Patents that allow the L-Arm wheel lift to pivot horizontally and vertically. Terms and maximum unit royalty rates for such licenses are specified below and in greater detail in Exhibit B to the Final Judgment:

Licensed Claims of the Improvement Patents: $150.00
Licensed Claims of the Improvement Patents and the L-Arm Patent, together: $175.00

These Improvement Patents ('623 and '509), originally owned by Vulcan International, Inc., embody improvements to the L-Arm wheel lift found on Vulcan products. Under the terms of this license, licensees will be able to use all features covered by the Improvement Patents (such as the horizontal and vertical pivoting of the L-arms) except for three features: (1) The vertical locking pin device, (2) the elongated curved wheel retainer plate, and (3) the wheel lift receiver placed completely above the cross bar.

Licensees under the Licensed Claims of the Improvements Patents will be able to make and sell many wheel lift devices covered by the claims being licensed, including Miller Industries' Century design, drawings of which are attached as Exhibits D and E to the Final Judgment. Licensees under the Licensed Claims of the Improvement Patents may also develop and produce their own independent designs, so long as these do not include the three patented features mentioned above that are not being licensed.

BILLING CODE 4410–11–M

EXHIBIT D

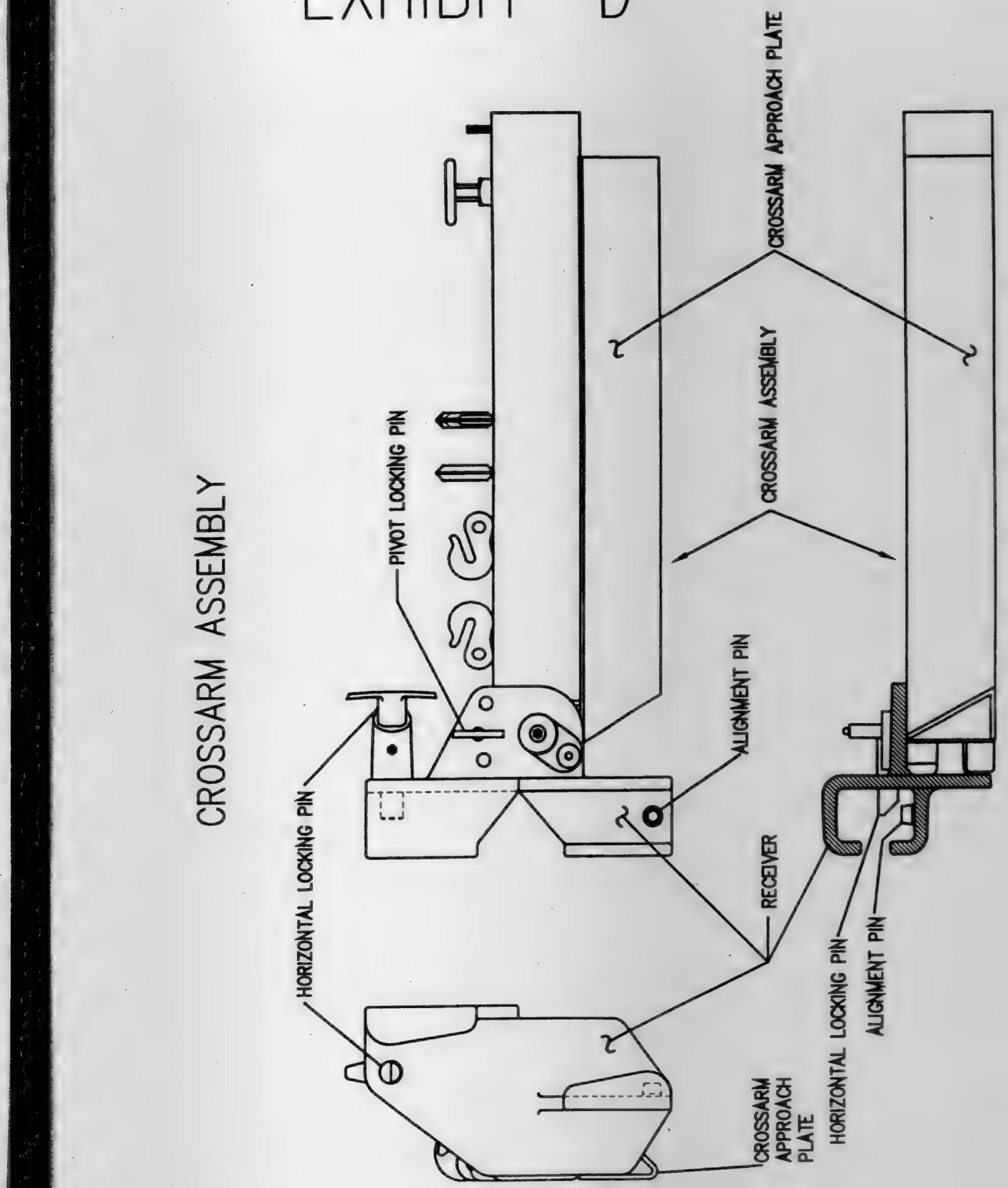
CROSSARM ASSEMBLY
PIVOT LOCKING PIN
HORIZONTAL LOCKING PIN
CROSSARM APPROACH PLATE
CROSSARM ASSEMBLY
ALIGNMENT PIN
RECEIVER
CROSSARM APPROACH PLATE
HORIZONTAL LOCKING PIN
ALIGNMENT PIN

EXHIBIT E

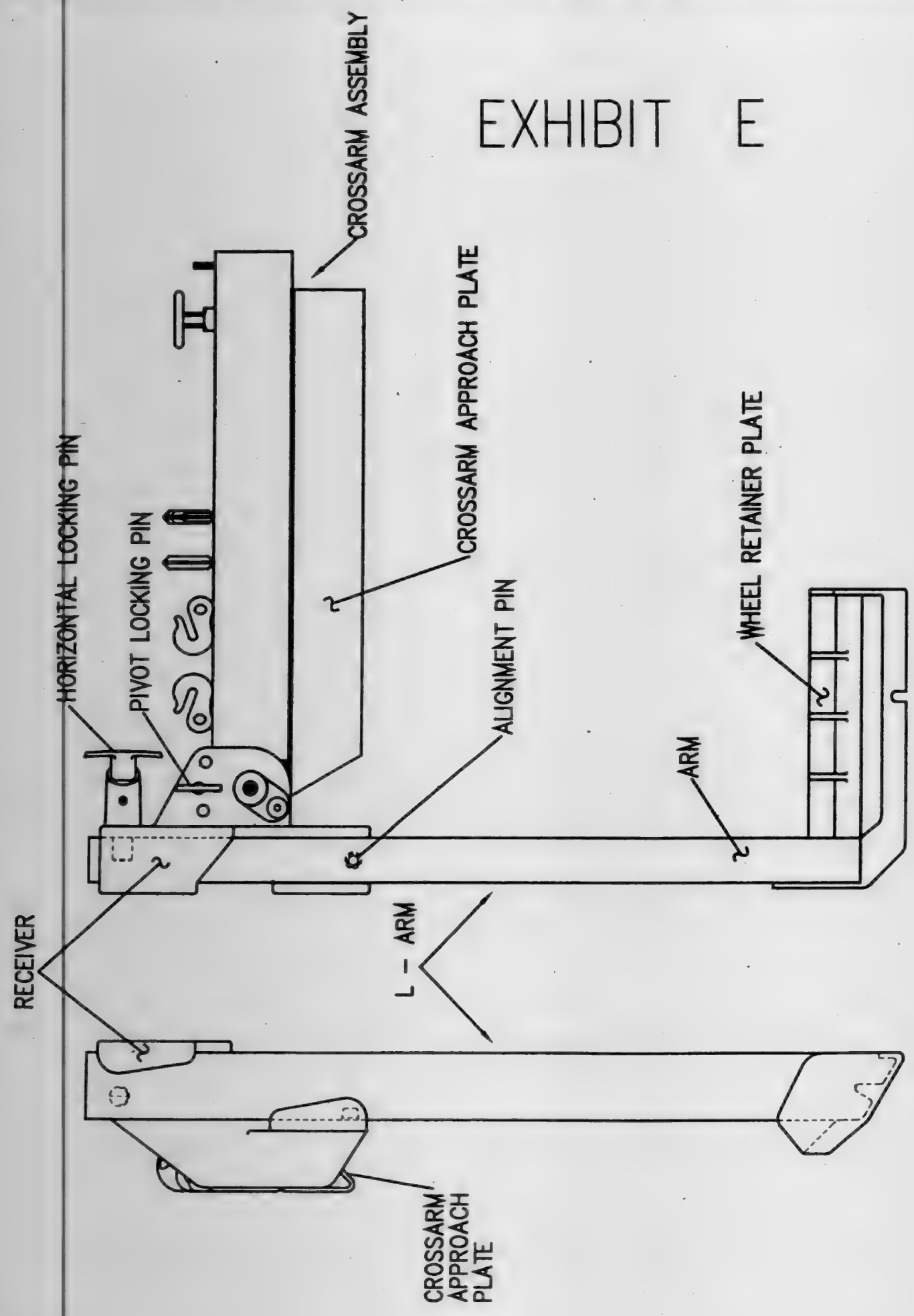

BILLING CODE 4410–11–C

If they want additional assurance that Miller Industries cannot charge their independent designs with infringement of the Unlicensed Claims of the Improvement Patents, licensees may, before marketing a product incorporating their independent design, elect to obtain a determination by an independent expert. Miller Industries will pay for the time that it takes the independent expert to become familiar with the Improvement Patents, and the licensee will pay for the expert's time required, after his/her familiarization, to make the determination. The independent expert's determination that a design is covered by the license under the Improvement Patents will be binding on Miller Industries. The independent expert will be required to keep the licensee's request for a determination, and the design for which the determination is requested, confidential from Miller Industries until the licensee begins selling products based on the design approved by the independent expert.

Section IV of the Final Judgment describes the requirements for these licenses. The licenses are available now and will continue to be available throughout the ten-year life of the Final Judgment. The licenses are uncancelable by Miller Industries during the life of the licensed patents, except on the ground of material breach (for instance, for non-payment of royalties), and in the unanticipated event that the Court declines to enter the proposed Final Judgment. In the event of license cancellation, a licensee will retain the right to sell at any time licensed products manufactured pursuant to the terms of the license.

Please contact Mr./Ms. _____ at Miller Industries [phone number] if you are interested in obtaining a license.

Competitive Impacts Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On February 17, 2000, the United States filed a civil antitrust Complaint in this Court charging that Defendant Miller Industries, Inc., violated Section 7 of the Clayton Act, 15 U.S.C. 18, when it acquired ownership of two horizontal competitors, Vulcan Equipment, Inc. ("Vulcan") and Chevron, Inc. ("Chevron"). Miller Industries acquired Vulcan in September 1996 and acquired Chevron in December 1997.

The Complaint charges that these acquisitions substantially lessened competition in the markets for the design, manufacture, and sale of the two major categories of towing and recovery vehicles generally used to service passenger cars and light trucks in the United States: light-duty towtrucks and light-duty car carriers. Prior to their acquisition, Vulcan and Chevron were proven innovators that had patented and successfully marketed key functional improvements in light-duty towtrucks and light-duty car carriers, and were two of the three most significant competitors faced by Miller Industries [1] in these markets. The acquisitions eliminated head-to-head competition that benefitted consumers, establishing Miller Industries as the dominant firm in the light-duty towtruck and light-duty car carrier markets with the ability unilaterally to raise prices or reduce quality. The acquisitions also increased Miller Industries' ownership of valuable patent rights, and reduced the number of firms with the right to offer towing and recovery vehicles incorporating the important technology covered by those patents. Finally, by reducing the number of competitors, these acquisitions increased the likelihood of anticompetitive coordinated behavior to raise prices or reduce quality.

The request for relief in the Complaint seeks: (1) A judgment that the acquisitions violate Section 7 of the Clayton Act; (2) injunctive or other appropriate relief to restore competition; (3) an award of costs to the Government; and (4) such other relief as the Court may deem just proper.

Shortly before the Complaint was filed, the parties reached a proposed settlement that would substantially restore competition in the United States light-duty towtruck and light-duty car carrier markets, primarily by requiring Miller Industries to grant a non-exclusive license to use certain items of important patented technology to any third party that requests such a license.

Along with the Complaint, the parties filed a Stipulation and proposed Final Judgment setting out the terms of the settlement. Pursuant to the obligations imposed in these documents, beginning within ten days of the time that they are filed with the Court, Miller Industries must offer to any third party a non-exclusive license under as many as five different patents. The proposed Final Judgment specifies the maximum unit royalties payable under these compulsory licenses, and also contains model licenses setting forth other terms. Miller Industries is required to continue to offer these licenses during the ten-year life to the proposed Final Judgment. the licenses are not cancelable by Miller Industries during the life of any licensed patent, unless the licensee commits a material breach as defined in the license (*e.g.*, non-payment of royalties), or the proposed Final Judgment is not entered by the Court. The proposed Final Judgment also requires Miller Industries to notify the Government prior to making future acquisitions of competitive assets valued above a certain dollar amount.

The plaintiff and defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA, unless the plaintiff has theretofore withdrawn its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce provisions of the proposed Final Judgment and punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Illegal Transactions

Defendant Miller Industries, Inc. is a Tennessee corporation. Its wholly owned subsidiary, Miller Industries Towing Equipment, Inc., is a Delaware corporation. Both maintain their principal place of business in Ooltewah, Tennessee. Defendant Chevron, a wholly owned subsidiary of Defendant Miller Industries, Inc., is a Pennsylvania corporation with its principal place of business in Mercer, Pennsylvania.

Miller Industries designs, manufactures, and markets many well known brands of light-duty towtrucks and light-duty car carriers, including those carrying the Century, Vulcan, Chevron, Holmes, Challenger, and Champion brands.

On September 2, 1996, Defendant Miller Industries, Inc., acquired, in exchange for shares of its capital stock having an approximate value of $8.2 million, all of the outstanding capital stock of Vulcan, one of its major competitors in the design, manufacture, and sale of light-duty towtrucks and light-duty car carriers, thereby obtaining control of Vulcan's assets, including several patents of great competitive value in the light-duty towtruck and light-duty car carrier markets. The transaction was not subject to the notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a, ("HSR Act") because the dollar value of the transaction was below $15 million.

Miller Industries continues to market products under the Vulcan label, but Vulcan's production facilities have been dismantled and its operations integrated with those of Miller Industries. Title to the patents formerly owned by Vulcan has passed to Defendant Miller Industries Towing Equipment, Inc.

[1] When used herein, the term "Miller Industries" refer to any one or more of the defendants.

On December 5, 1997, Defendant Miller Industries, Inc. acquired, for $10 million cash, all of the capital stock of Chevron, another of its major competitors in the design, manufacture, and sale of light-duty towtrucks and light-duty car carriers, thereby obtaining control of Chevron's assets, including valuable patents in the light-duty towtruck and light-duty car carrier markets. This transaction also was not subject to the notification requirements of the HSR Act. Although many of Chevron's functions have now been integrated with Miller Industries, Defendant Chevron, Inc. survives as a wholly owned Miller Industries subsidiary and continues as the owner of record of the patents it held before its acquisition.

B. Product and Geographic Markets

Light-duty towtrucks and light-duty car carriers are the principal types of vehicles used by towing companies, garages, and other towing service providers in the United States to recover and transport immobilized or unattended illegally parked passenger cars and light trucks. Manufacturers design, construct, and assemble specialized equipment components, such as booms, winches, and bed-tilting mechanisms, for mounting on standard truck chassis supplied by automotive suppliers such as GM, Ford, Dodge, or Navistar. The installed price of the equipment used to construct a light-duty to towtruck is generally between twelve to fifteen thousand dollars, and between eleven and fourteen thousand dollars for a light-duty car carrier.

Towing and recovery vehicle fleets generally include both light-duty towtrucks and light-duty car carriers because each possesses characteristics that make it more efficient than the other in certain situations. Light-duty towtrucks, which lift a disabled vehicle by its front or back tires to tow it, maneuver better in confined spaces such as parking garages and narrow city streets and are generally more effective in difficult recovery situations. Light-duty car carriers have flat beds that can be titled to permit a disabled vehicle to be winched up onto the truck bed and carried. Light-duty car carriers are preferred for removing vehicles that are particularly susceptible to damage, and are generally more efficient in transporting a disabled vehicle over substantial distances. Also, a light-duty car carrier may be equipped with an "underlift" that permits it to tow a second vehicle in addition to the one on its bed, enabling it to remove two disabled vehicles simultaneously.

Removal and recovery of larger disabled vehicles, such as buses, heavy trucks, or construction equipment, requires the service of larger and more powerful vehicles, which also generally have different equipment. These heavier removal and recovery vehicles also cost more to purchase and operate.

Because of the distinct characteristics of light-duty towtrucks and light-duty car carriers, respectively, prospective buyers would not respond to a small but significant increase in the price of either one by substituting the other, or by substituting any other type of towing and recovery vehicle. Light-duty towtrucks and light-duty car carriers each comprises a separate relevant product market and, as there is no significant importation, the United States comprises the relevant geographic market in which the competitive effects of these acquisitions must be assessed.

C. Patent Barriers

Miller Industries owned valuable patented technology prior to its acquisitions of Vulcan and Chevron, and acquired additional important patents when it acquired these two companies. These patent rights relate to: (1) Improved wheel lift design technology, and (2) the "independent raise and lower" ("IRL") technology.

1. The Wheel-Lift Patents

A wheel lift is a device mounted on the rear end of a light-duty towtruck or light-duty car carrier that cradles and supports from beneath the front or back tires of a disabled vehicle in order to apply the lifting power required to raise it into towing position, and to tow it. Nearly a decade ago, Miller Industries acquired the patents rights to a greatly improved wheel lift design called the L-Arm Wheel Lift (U.S. Patent No. 4,836,737) when it acquired Century Wrecking Company. Century had previously granted a paid-up royalty license under this patent to competitor Jerr-Dan Corporation.

Before being acquired by Miller Industries, Vulcan had invented significant improvements to the basic patented L-Arm Wheel Lift, and obtained the "Vulcan Improvement Patents" (U.S. Patent Nos. 4,637, 623 and 4,798,509). The key features of these improvements allow the L-Arm device to pivot both horizontally and vertically, providing for easier deployment of the wheel lift. Miller Industries and Vulcan entered into a cross license agreement under which Vulcan obtained a license under Miller Industries' L-Arm patent and Miller Industry obtained a license to use the most significant features of the Vulcan Improvement patents.

There is no established, commercially available alternative to the L-Arm or the Vulcan Improvement Patents. Prior to Miller Industries' acquisition of Vulcan, three competitors (Miller Industries, Jerr-Dan, and Vulcan) had the right to compete with products incorporating the L-Arm wheel lift, and two (Miller Industries and Vulcan) had the right also to compete with products incorporating the most significant features of the Vulcan Improvement Patents. Vulcan reserved for itself the exclusive rights to other features of the improvements, such as the use of a vertical looking pin device and the elongated curved plate.

Chevron, lacking rights to the above-described patents, in an effort to design around them, developed and obtained Patent No. 5,628,609 on the "Backsaver" wheel lift. Miller Industries nevertheless sued Chevron and charged that this Backsaver design infringed its L-Arm patent, but Miller Industries acquired Chevron before this issue was adjudicated.

2. The IRL Patent

A light-duty car carrier can be equipped with an "underlift," that is a wheel lift (which can be, but need not be, an L-Arm wheel lift) mounted on its back end that can be used to tow another disabled vehicle once one disabled vehicle has been loaded atop its bed. Prior to its acquisition by Miller Industries, Chevron had developed and patented a greatly improved design for mounting a wheel lift as an underlift on a light-duty car carrier so that it could be raised into towing position, and lowered from it, independently of the tilting truck bed. The right to use this IRL feature (covered by U.S. Patent No. 5,061,147), which significantly facilitates removal and transportation of two vehicles simultaneously by a light-duty car carrier, is a substantial benefit to competitors in the United States light-duty car carrier market. Designing around the patent is difficult, time consuming, and expensive.

D. Harm to Competition as a Consequence of the Merger

Even before it acquired Vulcan and Chevron, Miller Industries was the nation's largest supplier of light-duty towtrucks and the second largest supplier of light-duty car carriers, with 45% and 23% shares of total revenues in those markets, respectively. With these acquisitions, Miller increased its market shares dramatically, so that after the acquisitions it accounted for approximately 73% of total revenues for

U.S. sales of light-duty towtrucks and about 47% of total revenues for U.S. sales of light-duty car carriers, and significantly increased concentration in both markets. As measured by the commonly used Herfindahl-Hirschman Index (HHI),[2] concentration of the light-duty towtruck market, which stood at an HHI of about 2650 before these acquisitions, rose by about 3000 points to an HHI of about 5650 after the acquisitions. Concentration of the light-duty car carrier market, which stood at an HHI of about 2380 before these acquisitions, rose by about 1200 points to an HHI of about 3580 after the acquisitions.

Miller Industries' acquisitions of Vulcan and Chevron also eliminated two significant and effective competitors, both of which had successfully developed and marketed valuable innovations in product design that had provided Miller Industries' products with important competition, and both of which would likely have continued to innovate had they remained independent. The acquisitions also reduced the number of firms able to offer products incorporating the L-Arm wheel lift and the most competitively significant features of the Vulcan Improvement Patents, and substantially increased Miller Industries' ownership of patent rights important for effective competition in the light-duty towtruck and light-duty car carrier markets. Miller Industries now faces competition in these markets from only one large competitor and a number of small firms.

As a result of the acquisitions, Miller Industries became the dominant firm in the light-duty towtruck and light-duty car carrier markets with the ability unilaterally to raise prices or reduce quality. In addition, by reducing the number of competitors, these acquisitions increased the likelihood of anticompetitive coordinated behavior to raise prices or reduce quality.

Successfull entry is difficult and unlikely, in large part because the L-Arm as well as other patented wheel lift designs owned by Miller Industries are critical for effective competition in both of these markets. It would take a new entrant considerable time, expenditure, and effort to develop product designs that did not infringe Miller Industries' patents—if it could be done at all—as well as establish the necessary distribution network and gain customer acceptance of its products.

[2] A definition and explanation of HHI is provided in Appendix A to the Complaint.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to eliminate the anticompetitive effects of Miller Industries' acquisitions of Vulcan and Chevron, primarily by requiring compulsory licensing of the above-described patents to any present competitor or entrant at reasonable royalties.

A. Patent Licenses

The proposed Final Judgment directs Miller Industries to offer, until the expiration of the ten-year term of the decree, to any third party requesting it a non-exclusive license for any one or more of: (1) The L-Arm patent, (2) certain specified claims of the Vulcan Improvement Patents, that allow the L-Arm to pivot horizontally and vertically, (3) the Backsaver patent, and (4) the IRL patent.

All licenses will be uncancelable by Miller Industries until the last of the licensed patents has expired, unless the licensee materially breaches (as defined in the license, *e.g.*, for non-payment of royalties) its terms.

The proposed Final Judgment requires Miller Industries to retain the services of an Independent Auditor to collect royalty payments and provide Miller Industries with the Payments along with reports that do not disclose competitively sensitive sales information about a licensee.

Licenses will be for the full subject matter scope of the L-Arm, Backsaver, IRL patents, and for specified claims of the Vulcan Improvement Patents (the "Licensed Claims"). These Licensed Claims cover the horizontal and vertical pivoting features and are the claims that Vulcan had licensed to Miller Industries before Vulcan was acquired. The claims of the Vulcan Improvement Patents that are not licensed (the "Unlicensed Claims") are also specified and described in the Final Judgment. These cover the same features that, prior to its acquisition by Miller Industries, Vulcan had reserved for its own exclusive use.

To clarify the features covered by the Licensed Claims, and to facilitate the production by licensees of wheel lifts embodying these features, the proposed Final Judgment makes clear that the wheel lift design now used in Miller Industries' Century model towtruck is covered by the Licensed Claims and its not precluded from licensees' use by the Unlicensed Claims. The engineering drawings for the Century model wheel lift design are appended to the proposed Final Judgment as Exhibits D and E.

The Proposed Final Judgment also includes another option to facilitate licensing of the Licensed Claims and promote product innovation. Licensees that wish to incorporate the features of the Licensed Claims into their own wheel lift designs—rather than use the Century model design—may seek assurance that their designs fall within the Licensed Claims and do not infringe the Unlicensed Claims. Miller Industries shall retain a Designated Expert, to be selected at the sole discretion of the Government, who will at the request of an existing or prospective licensee, determine whether a licensee's proposed design falls within Licensed Claims. Miller Industries will be bound by a determination by the Designated Expert that a design falls within the Licensed Claims and will not subsequently challenge that design as an infringement of any Unlicensed Claim of the Vulcan Improvement Patents. The proposed Final Judgment provides that Miller Industries will pay, up to a specified maximum amount, the cost for the Designated Expert to review the licensed patents and gain sufficient familiarity to be able to assess specific design proposals offered by licensees. Any licensee that opts for such a determination will bear the additional cost of the Designated Expert's determination regarding its particular design. The proposed Final Judgment imposes requirements designed to assure that information about the proposed design remains confidential with the Designated Expert until products embodying the design are actually sold.

Each licensee and prospective licensee under the Vulcan Improvement patents may use the services of the Designated Expert, but no one is required to use them. Miller Industries is required to grant each request for a license, and a licensee of the Licensed Claims may choose simply to design and market its product. Of course, a licensee choosing this option would not be protected against the risk of a possible claim of infringement and the costs inherent therein.

The proposed Final Judgment is intended to restore competition and promote further innovation in the markets for light-duty towtrucks and light-duty car carriers. This will benefit customers by providing them with lower prices, better quality, and a greater variety of products. The L-Arm, the Licensed Claims of the Vulcan Improvements, the IRL patent, and the Backsaver Patent are important for effective competition in the markets for light-duty towtrucks and car carriers. Licensing these designs will also lower entry barriers and allow many firms to

offer products with these important features.

The proposed Final Judgment requires broad licensing to promote the wide dispersion and use of this intellectual property. This licensing, offered to all firms now in the industry and to firms that may enter in the future, will likely enable small firms to become more effective competitors, will likely lessen Miller Industries' market dominance, and will substantially ease entry barriers in the future. Broad licensing and use of the intellectual property, now concentrated in Miller Industries' hands, will promote further innovation and improvements in light-duty towtruck and light-duty car carrier technology. Given the configuration of the markets here, and the fact that these acquisitions were completed some years ago, the broad licensing scheme required by the proposed Final Judgment is the most effective form of relief in this case and offers the prospect of substantially increasing competition in the affected markets.

Since the decree requires Miller to license all comers during the term of the decree for the life of the patents, it was necessary to prevent Miller from exercising market power over the price or terms of such licenses or from delaying, through lengthy negotiations, implementation of the compulsory licensing requirement. Therefore, the decree requires that licenses be at reasonable royalty rates not to exceed certain maximum amounts and contains model licenses that set forth the basic terms. However, the decree allows Miller Industries and a licensee to reach a mutual agreement to lower royalty rates or to vary other license terms.

B. Notification of Future Acquisitions

The proposed Final Judgment also requires Miller Industries to notify the Department of Justice prior to acquiring any assets of or interest in a manufacturer of towing and recovery equipment, or any patent relating to the manufacture of towing and recovery equipment, when the value of the acquisition is over $5 million. This provision supplements the statutory notification provisions of the HSR Act, under which parties generally need not file a notification if the dollar value of their transaction is below $15 million. This decree provision was included because the acquisitions of Vulcan and Chevron lessened competition even though the dollar value of these transactions fell below the HSR Act's notification threshold. It will give the Department of Justice the opportunity to assess, before the acquisitions are consummated, the likely competitive effects of any future Miller Industries' asset acquisitions greater than $5 million in value in the towing and recovery vehicle markets.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest. The APPA provides for a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so in writing within sixty days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All written comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. The written comments and the response of the United States will be filed with the Court and published in the Federal Register. Written comments should be submitted to: Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over the action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits. The United States is satisfied, however, that the broad licensing required by the decree is the most effective form of relief in this case, where the challenged acquisitions were completed some years ago and given the configuration of these markets. The proposed relief will provide and promote competition in the design, manufacture and sale of towtrucks, and will significantly ease barriers to entry.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider:

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other consideration bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issuers at trial. 15 U.S.C. 16(e).

As the Court of Appeals for the District of Columbia Circuit held, the APPA permits the Court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See United States v. Microsoft, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.[3] Rather,

[3] 119 Cong. Rec. 24598 (1973); see also United States v. Gillette Co., 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comment in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cas. ¶ 61,508 at 71,980 9W.d. Mo. 1977). Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public. "United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988), quoting United States v. Bechtel Corp., 648 F.2d 660,666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981). Precedent requires that

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability:

[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is "within the reaches of public interest." [5]

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and the Act does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against the cases." Microsoft, 56 F.3d at 1459. Since "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself", and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. Id.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For plaintiff United States of America.

Respectfully submitted,

Kurt Shaffert,

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Dated: February 23, 2000, Washington, DC.

Certificate of Service

This certifies that on this day I caused a true copy of the foregoing Competitive Impact Statement to be served by first class mail, postage prepaid, upon counsel for defendants, as indicated below:

C. Loring Jetton, Jr., Esquire, Wilmer, Cutler & Pickering, 2445 M Street, Northwest, Washington, DC 20037–1420, Counsel for Defendants Miller Industries, Inc., Miller Industries Towing Equipment, Inc., and Chevron, Inc.

Dated: February 23, 2000.

Kurt Shaffert.

[FR Doc. 00–5536 Filed 3–10–00; 8:45 am]

BILLING CODE 4410–11–M

Impact Statement and Response to Comments files pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and the further proceeding would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S.C.C.A.N. 6535, 6538.

[4] United States v. Bechtel, 648 F.2d at 666 (internal citations omitted) (emphasis added); see United v. BNS, Inc., 858 F. 2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette, 406 F. Supp. at 716. See also United States v. American Cyanamid Co., 719 F. 2d 558, 565 (2d Cir. 1983).

[5] United States v. American Tel. & Tel. Co., 552 F. Supp. 131, 150 (D.D.C. 1982) (citations omitted), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983), quoting Gillette, 406 F. Supp. at 716; United States v. Alcan Aluminium, Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985).

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health (MACOSH); Notice of Rechartering

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of Recharting of MACOSH.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. app. I), and after consultation with the General Services Administration (GSA), I have determined that rechartering the Maritime Advisory Committee for Occupational Safety and Health (MACOSH) is in the public interest in connection with the performance of duties imposed on the Department by the Occupational Safety and Health Act of 1970 (OSH Act), 84 Stat. 1590, 29 U.S.C. 651 *et seq.*). Authority to establish this Committee, which addresses maritime matters, is found in sections 6(b) and 7(b) of the OSH Act; section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and by other general agency authority in Title 5 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Chappell Pierce, Acting Director, Office of Maritime Standards, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3609, 200 Constitution Avenue, N.W., Washington, DC 20210; Telephone: (202) 693–2255.

SUPPLEMENTARY INFORMATION:

I. Background

The Committee will advise OSHA on matters relevant to the safety and health of workers in the maritime industry. This includes advice on maritime issues that will result in more effective enforcement, training, and outreach programs, and streamlined regulatory efforts using consensual rulemaking techniques, where appropriate, as well as standard rulemaking procedures.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act and OSHA's regulations covering advisory committees (29 CFR Part 1912). The Committee charter will be filed 15 days from the date of this publication.

II. Nominations

On January 24, 2000, the Agency solicited nominations for membership on MACOSH (65 FR 3740). Interested persons were invited to submit their own names or the name of another person who they believed to be qualified to serve on the advisory committee. OSHA will publish the names of those selected for membership on MACOSH shortly in the **Federal Register**.

III. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210, pursuant to sections 6(b) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR Part 1912.

Signed at Washington, DC this 6th day of March 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–6109 Filed 3–10–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000–11; Exemption Application No. D–10721, et al.]

Grant of Individual Exemptions; Metropolitan Life

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Metropolitan Life Insurance Company (MetLife), Located in New York, NY

[Prohibited Transaction Exemption 2000–11; Exemption Application No. D–10721]

Exemption

Section I. Exemptions Involving the Demutualization of Metlife and the Excess Holding of Consideration by Plans Sponsored by Metlife and its Affiliates (the MetLife Plans)

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the receipt, by any eligible policyholder (the Eligible Policyholder) of MetLife that is an employee benefit plan (the Plan), subject to applicable provisions of the Act and/or the Code, including any Eligible Policyholder that is a Plan covering employees of MetLife or its affiliates, of an interest (the Interest) in a trust (the Trust), whose corpus consists of common stock (the Common Stock) issued by MetLife, Inc. (the Holding Company), the parent of MetLife; or (2) the receipt of cash or policy credits by such Plans,[1] in exchange for such Eligible Policyholder's membership interest in MetLife, pursuant to a plan of conversion (the Plan of Reorganization) adopted by MetLife and implemented in accordance with section 7312 of the New York Insurance Law.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt and holding, by a MetLife Plan, of Trust Interests, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

The exemptions that are described above are subject to the following conditions:

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under New York Insurance Law and is subject to review and approval by the New York Superintendent of Insurance (the Superintendent). The Superintendent reviews the terms of the options that are provided to Eligible Policyholders of MetLife as part of such Superintendent's review of the Plan of Reorganization, and the Superintendent only approves the Plan of Reorganization following a determination that the Plan is fair and equitable to all Eligible Policyholders and is not detrimental to the public.

(b) Each Eligible Policyholder has an opportunity to vote at a special meeting to approve the Plan of Reorganization after receiving full written disclosure from MetLife.

(c) One or more independent fiduciaries of a Plan (the Independent Fiduciary) that is an Eligible Policyholder receives Trust Interests, cash or policy credits pursuant to the terms of the Plan of Reorganization and neither MetLife nor any of its affiliates exercises any discretion or provides "investment advice," within the meaning of 29 CFR 2510.3–21(c) with respect to such acquisition.

(d) In the case of a MetLife Plan, the Independent Fiduciary—

(1) Votes at the special meeting of Eligible Policyholders to approve the Plan of Reorganization;

(2) Makes any election, to the extent available under the Plan of Reorganization, to receive Trust Interests or cash on behalf of the MetLife Plan;

(3) Monitors, on behalf of the MetLife Plan, the acquisition and holding of any Trust Interests received;

[1] Unless otherwise noted, the terms "Plan" and "MetLife Plan" are referred to collectively as the "Plans."

(4) Makes determinations on behalf of the MetLife Plan with respect to the voting and the continued holding of Trust Interests by such Plan.

(5) Withdraws shares of Holding Company Common Stock that are held in Trust which are equivalent to Trust Interests allocated to a MetLife Plan and disposes of such Trust Interests:

(i) Not exceeding the limits of section 407(a) of the Act in a prudent manner.

(ii) Exceeding the limits of section 407(a) of the Act within six months of the initial public offering (the IPO); and

(6) Provides the Department with a complete and detailed final report as it relates to the MetLife Plans prior to the effective date of the demutualization.

(e) Each Eligible Policyholder entitled to receive Trust Interests is allocated at least ten shares of Holding Company Common Stock and additional consideration may be allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of MetLife, which formulas have been reviewed by the Superintendent.

(f) All Eligible Policyholders that are Plans participate in the demutualization transaction on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(g) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of consideration.

(h) All of MetLife's policyholder obligations remain in force and are not affected by the Plan of Reorganization.

(i) The terms of the transactions are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

Section II. Exemptions Involving Sales or Withdrawals Occurring in Connection With the Operation or Termination of the Trust

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the (1) sale by a Plan to the Holding Company of Holding Company Common Stock, which is held in the Trust for the benefit of such participating Plan and is evidenced by Trust Interests, following the effective date of the demutualization or upon the termination of the Trust; and (2) the withdrawal by a Plan of Holding Company Common Stock, as evidenced by Trust Interests, beginning on the first anniversary of the effective date of the demutualization until the termination of the Trust.

The exemptions are subject to the following conditions:

(a) The decision by a Plan to arrange for the sale of Holding Company Common Stock to the Holding Company or to withdraw Holding Company Common Stock is made by a Plan fiduciary which is independent of MetLife and its affiliates.

(b) No Plan pays any fees or commissions in connection with either transaction.

(c) The terms of the transactions are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

(d) Any sale of shares of Holding Company Common Stock held in the Trust for the benefit of a Plan to the Holding Company is at a price reflecting the fair market value of the Common Stock as determined by averaging the high and low trading prices as reported on the New York Stock Exchange on the day of sale, except that if such sale is pursuant to the termination of the Trust, such fair market value is determined as the average of the closing price for a share of such Holding Company Common Stock for the twenty consecutive trading days ending on the third calendar day immediately prior to the date of the sale.

Section III. Definitions

For purposes of this exemption:

(a) The term "MetLife" means Metropolitan Life Insurance Company and any affiliate of MetLife as defined in paragraph (b) of this Section III.

(b) An "affiliate" of MetLife includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with MetLife. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.); and

(2) Any officer, director or partner in such person.

(c) The term "Eligible Policyholder" means a policyholder whose name appears on MetLife's records as the owner of a policy on the adoption date of MetLife's Plan of Reorganization by MetLife's Board of Directors and, which is in full force for its full basic benefits and has not matured by death or otherwise been surrendered or terminated.

(d) The term "policy credit" means (1) an increase in accumulation value, to which the Company will apply no sales, surrender charges, or that will be further increased in value to offset any of these charges, under a policy that is a deferred annuity; (2) an increase in the amount of the payments distributed under a policy that is in the course of annuity payments; (3) additional insurance or dividends with interest, as appropriate (depending upon whether the additional insurance option or the dividends with interest option has been selected with respect to the underlying policy, provided that dividends with interest will apply where an option other than additional insurance or dividends with interest has been selected), under a policy that is a life insurance policy; or (4) an increase in the retired lives reserve, under a policy that is a life or health insurance funding account or a guaranteed life insurance funding account.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) that was published on November 24, 1999 at 64 FR 66201.

Written Comments

The Department received 25 written comments with respect to the Notice. Twenty-four comments were submitted by Eligible Policyholders of MetLife and one comment was submitted by MetLife.

Of the Eligible Policyholder comments received, one commenter was in favor of the exemption and urged the Department to grant it. Six commenters requested general information that was not relevant to the exemption and their comments were, in turn, forwarded to appropriate personnel within MetLife for response.

Seventeen commenters said they were opposed to the exemption for various reasons. These commenters questioned whether the exemption would have an adverse impact upon their benefits or they expressed general dissatisfaction with the demutualization concept or with the insurer. Because many of the comment letters presented similar issues, particularly the effect of the demutualization on policyholder benefits, the Department forwarded a representative sample to MetLife for response.

In its comment, MetLife requested clarification to the Notice. The comment also sought to expand on the description of the transactions described in the Notice and the Summary of Facts and Representations (the Summary).

Discussed below are the substantive comments that were submitted by the Eligible Policyholders as well as MetLife's responses to the comment letters. Also discussed is MetLife's comment and the Department's responses to specific areas of technical

clarification in the Notice and the Summary.

Eligible Policyholder Comments

As noted above, a number of commenters said they were opposed to the exemption because they believed it might affect their policyholder benefits adversely or, as one commenter stated, "relieve those in charge of the plan from the obligations of ERISA."

In response, MetLife asserts that the comments have nothing to do with the merits of the exemption. Instead, MetLife explains that the commenters had an ample opportunity to express their concerns at the policyholder hearing that was held on January 24, 2000. In addition, MetLife states that the concerns of these policyholders have been addressed in the "Policyholder Information Booklet, Part I," which was mailed to all Eligible Policyholders. According to MetLife, in that booklet, it is clearly stated that "Your policy benefits, values, guarantees and dividend eligibility will not be reduced, and your policy premiums will not be increased, in any way, due to the demutualization."

MetLife's Comments

1. *Duties of the Independent Fiduciary.* On page 66202 of the Notice, Section I(d) sets forth the duties of State Street Bank and Trust Company (State Street), the independent fiduciary for the MetLife Plans. MetLife states that it is its understanding that State Street's duty to continue to monitor a MetLife Plan's holding of Trust Interests or Holding Company Common Stock will exist only so long as the MetLife Plan's holding is in excess of the 10 percent limitation in section 407(a) of the Act. Once a MetLife Plan's holdings have been reduced to below this limit, which must occur within six months of the initial public offering (the IPO), MetLife notes that State Street's oversight activities will cease.

The Department wishes to confirm MetLife's understanding of the role of State Street as independent fiduciary for the MetLife Plans.

2. *Eligible Policyholder Consideration.* On page 66202 of the Notice, paragraph (e) of Section I provides for the allocation of Holding Company Common Stock to Eligible Policyholders among the fixed and variable components. However, MetLife represents that it would be more accurate to reword this condition as follows since not all policyholders who receive the fixed component of compensation will also receive the variable component:

(e) Each Eligible Policyholder entitled to receive Trust Interests is allocated at least ten shares of Holding Company Common Stock, and additional consideration may be allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of MetLife, which formulas have been reviewed by the Superintendent.

MetLife points out that the same comment is applicable to Representation 9(d) of the Summary.

In response to this clarification, the Department has made the requested revisions to the Notice and the Summary.

3. *MetLife Definition.* On page 66202 of the Notice, Section III(a) in part, defines the term "MetLife" as "The MetLife Insurance Company." However, MetLife requests that the article "The," be deleted from the term and in response to this comment, the Department has made the requested revision.

4. *Affiliate Definition.* On page 66202 of the Notice, paragraph (b) defines the term "affiliate" of MetLife to include—

(1) Any person directly or indirectly through one or more intermediaries, controlling controlled by, or under common control with MetLife; (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person; and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

While Metlife concedes that subparagraphs (1) and (2) of the definition are acceptable, that portion of subparagraph (3) which includes an entity in which MetLife holds an interest of 5 percent or more is too broad. In preparing the list of MetLife Plans, MetLife states that it included Plans of entities in which it owned a 50 percent or greater interest. If it were required to use the 5 percent threshold, MetLife states that the list of Plans would have to include Plans of companies in which it holds a minority (but greater than 5 percent) interest. In many cases, MetLife represents that it has no knowledge of these Plans, and as a minority owner, has no control over them. Accordingly, MetLife requests that the Department delete subparagraph (3) from the definition. MetLife notes that subparagraph (1) would still pick up the majority-owned subsidiaries whose Plans are already included in the schedule of the MetLife Plans supplied to the Department.

The Department concurs with this comment and has made the requested modification.

5. *Eligible Policyholder Definition.* On page 66202 of the Notice, paragraph (c) of Section III defines the term "Eligible Policyholder" as —

* * * a policyholder whose name appears on MetLife's records as the owner of a policy on the adoption date of MetLife's Plan of Reorganization by MetLife's Board of Directors, which is in full force for its full basic benefits and has not matured by death or otherwise been surrendered or terminated and which remains in force on the effective date of MetLife's demutualization.

MetLife notes that the definition ends with the phrase "and which remains in force on the effective date of MetLife's demutualization." However, MetLife wishes to clarify that New York law was recently amended to eliminate the requirement that the policy remain in force until the effective date to be eligible. Therefore, MetLife states that its Plan of Reorganization now provides that a policy which was in force on the adoption date (September 28, 1999) will be eligible even if it does not remain in force until the effective date.

In response, the Department has considered this clarification and has made the requested modification to the Notice.

6. *Policy Credit Definition.* On page 66202 of the Notice, paragraph (d) of Section III defines the term "policy credit" as —

* * * (1) a dividend deposit or dividend addition; (2) an increase in accumulation value (to which no sales or surrender or similar charges shall be applied); (3) additional coverage or benefits; (4) an extension of the expiry date; or (5) a reduction in premium payments.

MetLife represents that the definition of the term "policy credit" in the Notice is a somewhat simplified version. Therefore, it requests that the term as defined in the Plan of Reorganization, which is stated as follows, be substituted:

* * * (1) an increase in accumulation value, to which the Company will apply no sales, surrender charges, or that will be further increased in value to offset any of these charges, under a policy that is a deferred annuity; (2) an increase in the amount of the payments distributed under a policy that is in the course of annuity payments; (3) additional insurance or dividends with interest, as appropriate (depending upon whether the additional insurance option or the dividends with interest option has been selected with respect to the underlying policy, provided that dividends with interest will apply where an option

other than additional insurance or dividends with interest has been selected), under a policy that is a life insurance policy; or (4) an increase in the retired lives reserve,[2] under a policy that is a life or health insurance funding account or a guaranteed life insurance funding account.

In response, the Department has revised the definition of the term "policy credit" to reflect the version set forth in MetLife's final Plan of Reorganization.

7. *Trust Corpus.* On page 66203 of the Notice, the first sentence of Representation 5 of the Summary provides, in part, that MetLife will establish the Trust "to hold shares of Holding Company Common Stock that are received by millions of policyholders under its Plan of Reorganization." For the sake of accuracy, MetLife states that this clause should be revised to state that the Trust will hold shares of Holding Company Common Stock that are allocated to policyholders since the policyholders will not actually "receive" the shares unless and until they are withdrawn from the Trust.

The Department concurs with this comment and has revised the first sentence of Representation 5.

8. *Miscellaneous Changes/ Clarifications.* On page 66204 of the Notice, in the third paragraph of Representation 7 of the Summary, MetLife points out that the proper spelling of the Superintendent's actuarial adviser is "Milliman & Robertson" and not "Miliman & Robertson." Similarly, on page 66204 of the Notice, in Representation 8 of the Summary, the parenthetical in the first sentence of the fourth paragraph should read "(approximately 11.1 million in the case of MetLife) instead of "(approximately 16 million in the case of MetLife)." Finally, on page 66205 of the Notice, in Representation 9, Footnote 5 of the Summary states that the special policyholder meeting will be held "in early January 2000." However, MetLife wishes to clarify that the public hearing occurred on January 24, 2000 and the policyholder vote took place on February 7, 2000.

The Department notes these clarifications.

9. *Canadian Policies.* On page 66205 of the Notice, in Representation 10 of the Summary, Footnote 6 describes the status of certain former Canadian policyholders of MetLife. To clarify the status of these policies, MetLife states that in July 1998, it sold a substantial portion of its Canadian operations to Clarica Life Insurance Company (Clarica Life). As part of that sale, MetLife explains that a large block of policies in effect with MetLife in Canada were transferred to Clarica Life and the holders of the transferred Canadian policies became policyholders of Clarica Life. MetLife indicates that the transferred policyholders are no longer MetLife policyholders and, therefore, are not entitled to compensation under the Plan of Reorganization.

However, as a result of a commitment made in connection with obtaining Canadian regulatory approval of that sale, if it demutualizes, MetLife states that its Canadian branch will make cash payments to those who are, or are deemed to be, holders of these transferred Canadian policies. MetLife notes that the payments will be determined in a manner that is consistent with the treatment of, and will be fair and equitable to, Eligible Policyholders. Further, MetLife states that the process of the IPO and any Other Capital Raising Transactions must be sufficient to reimburse MetLife for those payments.

Also in Representation 10, MetLife states that there is language describing how the shares of policyholders who elect to be cashed out will be sold to the Holding Company and the proceeds distributed to those policyholders. MetLife states that it is now contemplated that no shares of Holding Company Common Stock will be issued with respect to such policyholders. Instead, "cash for cash-outs" will be funded by the IPO or "Other Capital Raising Transactions," a term defined in the Plan of Reorganization. MetLife adds that the Holding Company will always purchase Holding Company Common Stock at its discretion and it will not purchase such shares to provide cash for cash-outs. Instead, cash for cash-outs will be raised through the IPO or Other Capital Raising Transactions.

Further, the first paragraph of Representation 10 lists those categories of policyholders entitled to receive consideration in the form of cash. However, MetLife wishes to clarify that aside from the listed categories, the following category of policyholders is also entitled to receive cash:

> Each group Eligible Policyholder that (a) is an owner of a policy that is an individual retirement annuity within the meaning of section 408 or 408A of the Code or a tax-sheltered annuity within the meaning of section 403(b) of the Code, and (b) has affirmatively made an election to receive cash in lieu of Trust Interests on a form approved by the Superintendent that has been provided to such Eligible Policyholder pursuant to Section 5.5(b) (of the Plan of Reorganization) and has been properly completed and received by MetLife prior to the date set by the MetLife, but only with respect to such policy.

Additionally, in Representation 10, MetLife requests that the description of the categories of policies which will receive compensation in the form of policy credits be revised to more accurately read as follows:

> * * * Further, MetLife will allocate policy credits to (a) each owner of a policy this is an individual retirement annuity within the meaning of section 408A of the Code or a tax-sheltered annuity within the meaning of section 403(b) of the Code; (b) each owner of a policy that is an individual annuity contract that has been issued pursuant to a Plan qualified under section 401(a) or 403(a) of the Code directly to the Plan participant; (c) each owner of a policy that is an individual life insurance policy that has been issued pursuant to a Plan qualified under section 401(a) or 403(a) of the Code directly to the Plan participant; and (d) each owner of a policy that is a life or health insurance funding account or guaranteed life insurance funding account.

Finally, in Representation 10, Footnote 6 describes the possible limits on cash compensation. MetLife requests that the second bullet be revised to read as follows:

> • Each group Eligible Policyholder that elects to receive cash and is allocated not more than 25,000 shares will receive compensation in the form of cash.

Immediately following this bullet, MetLife also requests that a third bullet be added which would read:

> • Each group Eligible Policyholder that elects to receive cash and is allocated more than 25,000 shares will receive compensation in the form of—

The Department acknowledges these comments and has made the requested revisions.

10. *Holding Company Common Stock Held in the Trust.* On page 66206 of the Notice, the third sentence in the second paragraph of Representation 11 states, in pertinent part, that "shares allocated to the Trust Beneficiary will continue to be held in the Trust until such Trust Beneficiary decides to withdraw allocable shares of Holding Company Common Stock for sale." MetLife wishes to emphasize that after one year from the effective date of the demutualization, shares may be withdrawn for any reason.

Also in Representation 11, Footnote [illegible] refers to Section 3.4(b) of the draft Trust Agreement. MetLife states that the

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[2] MetLife represents that the phrase "retired lives reserve" refers to a reserve which is part of a group term life or health insurance policy by which monies are set aside under the policy for the payment of future premiums for eligible retirees covered under the policy.

reference should be to Section 4.2 of the Trust Agreement which governs the transfer of Trust Interests.

The Department notes these changes.

11. *The Purchase and Sale Program.* On page 66206 of the Notice, Representation 12 of the Summary describes the Purchase and Sale Program which will be established by the Holding Company following the completion of the IPO for each beneficiary of the Trust (the Trust Beneficiary). MetLife wishes to modify the fourth sentence in the second bullet point to read "Following any partial withdrawal for sale, the Trust Beneficiary must still hold at least 100 Trust Interests."

MetLife also notes that purchases under the Purchase and Sale Program will not begin until the first trading day following the 90th day after the effective date of the Plan of Reorganization, and that MetLife expects that sales will not begin until approximately 30 days after the effective date.

Finally, in the third sentence of the third full paragraph of Representation 12 the parenthetical reads "(Accordingly, the Trust Beneficiary will receive the same consideration for its shares whether they are purchased by the Holding Company or by an unrelated party on the open market.)" MetLife wishes to point out that this will not be the case for all sales. If the sale is on the open market, MetLife represents that the Trust Beneficiary will receive consideration equal to the weighted average price for all shares of Holding Company Common Stock that are held by the Trust (the Trust Shares) which are sold on that day. If the sale is to the Holding Company, MetLife explains that the consideration will be equal to the weighted average of the high and low trading prices of the shares for the date of the sale. Further, MetLife notes that these formulas are designed to provide an average market price for the day, but will not necessarily be the same as the price involved for each trade occurring on that day.

The Department notes these clarifications to Representation 12.

Also on page 66206 of the Notice, Representation 13 of the Summary describes the purchase aspect of the Purchase and Sale Program. However, MetLife states that this description can be further clarified. In this regard, MetLife points out that generally, Trust Beneficiaries with fewer than 1,000 Trust Interests may purchase additional shares of Holding Company Common Stock (to be held in the Trust) to increase their Trust Interests up to 1,000. Trust Beneficiaries must purchase at least $250 worth of shares or a smaller amount required to purchase up to the 1,000 maximum number of Trust Interests. Therefore, MetLife explains that "multiple of 100" rule is not part of the purchase side of the Purchase and Sale Program.

The Department has considered this clarification and has revised Representation 13 to reflect this change.

12. *Shareholder Number.* On page 66207 of the Notice, in Representation 14, the first sentence of Footnote 10 states that "MetLife projects that the initial number of shareholders of the Holding Company may exceed 10 million." MetLife states that it would be more accurate to revise this sentence to read as follows: "MetLife projects that, if the Trust mechanism were not used, the initial number of shareholders of the Holding Company could exceed 10 million."

The Department notes this revision and has made the requested modification.

13. *Dividend Distribution.* On page 66207 of the Notice, Representation 15 describes the method of distributing dividends on Trust Shares which are paid to the Trustee. MetLife notes that the Trust Agreement also permits the Trustee to arrange with the Holding Company for the direct payment by the Holding Company of cash dividends to the Trust Beneficiaries at the same time as the payment of dividends to the Holding Company stockholders. Therefore, it wishes to clarify that the Holding Company intends to declare annual cash dividends, subject to the discretion of its Board of Directors, and to distribute them directly to the Trust Beneficiaries, as permitted by this provision.

The Department notes this clarification.

14. *Matters for Trust Beneficiary Voting.* On page 66207 of the Notice, the first sentence in the first paragraph of Representation 16 lists matters on which Trust Beneficiaries would be entitled to direct the Trustee how to vote shares of Holding Company Common Stock. However, MetLife wishes to expand the list to include * * * any merger or consolidation, a sale, lease or exchange of all or substantially all of the assets of the Holding Company, or a recapitalization or dissolution of the Holding Company * * *" MetLife states that this provision would require a vote under applicable Delaware law.

In addition, the second through fourth sentences of the first paragraph of Representation 16 provide that the Trustee will vote all shares of Holding Company Common Stock that is held in Trust in proportion to the instructions received from Trust Beneficiaries which give such instructions unless the issue is a choice of competing candidates for director positions and Trust Beneficiaries representing 20 percent or fewer of the Trust Interests provide instructions. Then, the Trustee will vote only the shares of Holding Company Common Stock that are equal in number to the number of Trust Interests held by Trust Beneficiaries which provide instructions.

MetLife wishes to point out that the exception relating to when fewer than 20 percent of the Trust Beneficiaries provide instructions, has been deleted.

Finally, the third paragraph of Representation 16 discusses the termination of the Trust and provides that a Trust Beneficiary will have the option of receiving shares of allocable Holding Company Common Stock in-kind or receiving cash as a result of the sale of such Stock to the Holding Company. MetLife wishes to emphasize that upon termination of the Trust, a Trust Beneficiary will have the option of receiving shares in-kind or cash only if the Holding Company, in its sole discretion, elects to purchase all or a portion of the shares.[3]

In response, the Department has revised Representation 16 in light of these modifications.

15. *MetLife's Ownership Interest in State Street.* On page 66208 of the Notice, the fourth paragraph of Representation 17 of the Summary states, in part, that MetLife "does not have an ownership interest" in State Street. MetLife explains that this sentence should be read to mean an ownership interest other than the very minor one (*i.e.*, MetLife holds approximately .005962 of the total outstanding shares of State Street) which is described in the immediately preceding paragraph involving separate accounts.

The Department notes this clarification and has added the parenthetical "(other than a negligible one)," after the phrase "ownership interest in State Street" and before the word "nor."

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[3] MetLife represents that it has not yet formulated procedures which will govern the possible purchase of Holding Company Common Stock upon the termination of the Trust. MetLife explains that there may be reasons why such purchase will not be strictly *pro rata*. For example, the Holding Company may wish to buy out odd lot holders first, or buy out holders who own more than (or less than) a certain number of shares. However, Metlife further explains that the result should not result in discrimination among Trust Beneficiaries since those who are not bought out by the Holding Company may sell their shares of Common Stock on the open market for fair market value.

16. *Preliminary Review/MetLife Plans.* On page 66208 of the Notice, the final sentence of Representation 18 states that "MetLife" rather than "State Street" has conducted a preliminary review of the Plan of Reorganization. The Department notes this error and has revised the sentence, accordingly.

Finally, MetLife states that it has come to its attention that seven in-house Plans of a MetLife subsidiary, New England Life Insurance Company, as well as one in-house Plan of another subsidiary, Fulcrum Financial Advisors, hold policies which may be eligible to receive compensation in the demutualization.[4] MetLife points out that State Street will act on behalf of these MetLife Plans and State Street has confirmed that it will undertake independent fiduciary responsibilities on behalf of these Plans.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10721) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

First American Capital Management, Inc. (FACM), Located in Newport Beach, California

[Prohibited Transaction Exemption No. 2000–12; Exemption Application No. D–10819]

Exemption

Section I—Definitions and Special Rules

The following definitions and special rules will apply to this exemption:

(a) The term "person" includes the person and affiliates of the person.

(b) An "affiliate" of a person includes the following:

(1) Any person directly or indirectly controlling, controlled by, or under common control with, the person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), brother, sister, or spouse of a brother or sister, of the person; and

(3) Any corporation or partnership of which the person is an officer, director or partner.

A person is not an affiliate of another person solely because one of them has investment discretion over the other's assets. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) An "affiliate of FACM" includes Pacific American Securities, LLC, (PAS) and any other broker-dealer registered under the Securities Exchange Act of 1934 with respect to which FACM has at least a 40 percent minority ownership interest and which is subject to regulations similar to those to which PAS is subject (such entities referred to collectively herein as "FACM").

(d) An "agency cross transaction" is a securities transaction in which the same person acts as agent for both any seller and any buyer for the purchase or sale of a security.

(e) The term "covered transaction" means an action described in section II(a), (b), or (c) of this exemption.

(f) The phrase "effecting or executing a securities transaction" means the execution of a securities transaction as agent for another person and/or the performance of clearance, settlement, custodial or other functions ancillary thereto.

(g) A Plan fiduciary is independent of a person only if the fiduciary has no relationship to or interest in such person that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(h) The term "profit" includes all charges relating to effecting or executing securities transactions, less reasonable and necessary expenses including reasonable indirect expenses (such as overhead costs) properly allocated to the performance of these transactions under generally accepted accounting principles.

(i) The term "securities transaction" means the purchase or sale of securities.

(j) The term "nondiscretionary trustee" of a Plan means a trustee or custodian whose power and duties with respect to any assets of the Plan are limited to (1) the provision of nondiscretionary trust services to the Plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this exemption, a person does not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype Plan, the power to amend such Plan.

Section II—Covered Transactions

If each condition of Section III of this exemption is either satisfied or non-applicable under Section IV, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code, shall not apply to—

(a) First American Capital Management (FACM) using its authority to cause an employee benefit plan (a "Plan") to pay a fee to PAS, or another affiliate of FACM, for effecting or executing securities transactions as an agent for the Plan, but only to the extent that such transactions are not excessive under the circumstances, in either amount or frequency;

(b) FACM acting through PAS, or another affiliate of FACM, as an agent in an agency cross transaction for both a Plan with respect to which FACM is a fiduciary and one or more other parties to the transaction; or (c) The receipt by FACM, through its affiliates, of reasonable compensation for effecting or executing an agency cross transaction in which a Plan is a party from one or more other parties to the transaction.

Section III—Conditions

Except to the extent otherwise provided in Section IV of this exemption, Section II of this exemption applies only if the following conditions are satisfied:

(a) The person engaging in the covered transaction is not a trustee (other than a nondiscretionary trustee) or an administrator of the Plan, or an employer any of whose employees are covered by the Plan.

(b) The covered transaction is performed under a written authorization executed in advance by a fiduciary of each Plan whose assets are involved in the transaction, which Plan fiduciary is independent of FACM.

(c) The authorization referred to in paragraph (b) of this section is terminable at will by the Plan, without penalty to the Plan, upon receipt by

[4] These MetLife Plans include The New England Benefit Plan for the Field Force; The New England Benefit Plan, The New England 401(k) Plan and Trust; The New England Retirement Plan and Trust; The New England Agents' Retirement Plan and Trust; The New England Agents' Deferred Compensation Plan and Trust; The New England Agency Employees' Retirement Plan and Trust; and Fulcrum Financial Advisors 401(k) Plan.

FACM of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (b) of this section with instructions on the use of the form must be supplied to the authorizing fiduciary no less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the Plan, without penalty to the Plan, upon receipt by FACM of written notice from the authorizing fiduciary or other Plan official having authority to terminate the authorization; and

(2) Failure to return the form will result in the continued authorization of FACM to engage in the covered transactions on behalf of the Plan.

(d) Within three (3) months before an authorization is made, the authorizing fiduciary is furnished with any reasonably available information that FACM reasonably believes to be necessary for the authorizing fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of this exemption, the form for termination of authorization described in Section II(c), a description of FACM's brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests.

(e) FACM furnishes the authorizing fiduciary with either:

(1) a confirmation slip for each securities transaction underlying a covered transaction within ten (10) business days of the securities transaction containing the information described in Rule 10b–10(a)(1–7) under the Securities Exchange Act of 1934, 17 CFR 240.10b–10; or

(2) at least once every three (3) months, and not later than 45 days following the period to which it relates, a report disclosing:

(A) a compilation of the information that would be provided to the Plan pursuant to subparagraph (e)(1) of this Section during the three-month period covered by the report;

(B) the total of all securities transaction-related charges incurred by the Plan during such period in connection with such covered transactions; and

(C) the amount of the securities transaction-related charges retained by FACM and the amount of such charges paid to other persons for execution or other services.

For purposes of this paragraph (e), the words "incurred by the Plan" shall be construed to mean "incurred by the pooled fund" when FACM engages in covered transactions on behalf of a pooled fund in which the Plan participates.

(f) The authorizing fiduciary is furnished with a summary of the information required under paragraph (e)(1) at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following:

(1) the total of all securities transaction-related charges incurred by the Plan during the period in connection with covered securities transactions;

(2) the amount of the securities transaction-related charges retained by FACM and the amount of these charges paid to other persons for execution or other services;

(3) A description of FACM's brokerage placement practices, if such practices have materially changed during the period covered by the summary;

(4) (i) A portfolio turnover ratio, calculated in a manner which is reasonably designed to provide the authorizing fiduciary with the information needed to assist in discharging its duty of prudence. The requirements of this subparagraph (f)(4)(i) will be met if the "annualized portfolio turnover ratio," calculated in the manner described in subparagraph (f)(4)(ii), is contained in the summary;

(ii) The "annualized portfolio turnover ratio" shall be calculated as a percentage of the Plan assets consisting of securities or cash over which FACM had discretionary investment authority, or with respect to which FACM rendered, or had any responsibility to render, investment advice (the "portfolio") at any time or times ("management period(s)") during the period covered by the report. First, the "portfolio turnover ratio" (not annualized) is obtained by dividing (A) the lesser of the aggregate dollar amounts of purchases or sales of portfolio securities during the management period(s) by (B) the monthly average of the market value of the portfolio securities during all management period(s). Such monthly average is calculated by totaling the market values of the portfolio securities as of the beginning and end of each management period and as of the end of each month that ends within such period(s), and dividing the sum by the number of valuation dates so used. For purposes of this calculation, all debt securities whose maturities at the time of acquisition were one year or less are excluded from both the numerator and the denominator.

The "annualized portfolio turnover ratio" is then derived by multiplying the "portfolio turnover ratio" by an annualizing factor. The annualizing factor is obtained by dividing (C) the number twelve (12) by (D) the aggregate duration of the management period(s) expressed in months (and fractions thereof).

(iii) The information described in this paragraph (f)(4) is not required to be furnished in any case where FACM has not exercised discretionary authority over trading in the Plan's account during the period covered by the report.

For purposes of this paragraph (f), the words "incurred by the Plan" shall be construed to mean "incurred by the pooled fund" when FACM engages in covered transactions on behalf of a pooled fund in which the Plan participates.

(g) If an agency cross transaction to which Section IV(b) does not apply is involved, the following conditions must also be satisfied:

(1) The information required under Sections III(d) or IV(d)(1)(B) of this exemption includes a statement to the effect that, with respect to agency cross transactions, FACM will have a potentially conflicting division of loyalties and responsibilities regarding the parties to the transactions;

(2) The summary required under Section III(f) of this exemption includes a statement identifying the total number of agency cross transactions during the period covered by the summary and the total amount of all commissions or other remuneration received or to be received from all sources by FACM in connection with those transactions during the period;

(3) FACM has the discretionary authority to act on behalf of, and/or provide investment advice to, either (A) one or more sellers or (B) one or more buyers with respect to the transaction, but not both;

(4) The agency cross transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available; and

(5) The agency cross transaction is executed or effected at a price that is at or between the independent bid and independent ask prices for the security prevailing at the time of the transaction.

Section IV—Exceptions From Conditions

(a) Certain plans not covering employees. Section III does not apply to covered transactions to the extent they are engaged in on behalf of individual retirement accounts (IRAs) meeting the conditions of 29 CFR 2510.3–2(d), or Plans, other than training programs, that

cover no employees within the meaning of 29 CFR 2510.3–3.

(b) Certain agency cross transactions. Section III of this exemption does not apply in the case of an agency cross transaction, provided that FACM:

(1) does not render investment advice to any Plan for a fee within the meaning of section 3(21)(A)(ii) of the Act with respect to the transaction;

(2) is not otherwise a fiduciary who has investment discretion with respect to any Plan assets involved in the transaction (see 29 CFR 2510.3–21(d)); and

(3) does not have the authority to engage, retain or discharge any person who is, or is proposed to be, a fiduciary regarding any such Plan assets.

(c) Recapture of profits. Section III(a) of this exemption does not apply in any case where FACM returns or credits to the Plan all profits earned by FACM in connection with the securities transactions associated with the covered transaction.

(d) Special rule for pooled funds. If FACM engages in a covered transaction on behalf of an account or fund for the collective investment of the assets of more than one Plan (a Pooled Fund):

(1) Sections III(b), (c), and (d) do not apply if—

(A) The arrangement under which the covered transaction is performed is subject to the prior and continuing authorization, in the manner described in this paragraph (d)(1), of a plan fiduciary with respect to each Plan whose assets are invested in the Pooled Fund who is independent of FACM. The requirement that the authorizing fiduciary be independent of FACM shall not apply in the case of a Plan covering only employees of FACM, if the requirements of Sections IV(d)(2)(A) and (B) are met.

(B) The authorizing fiduciary is furnished with any reasonably available information that FACM believes to be necessary to determine whether the authorization should be given or continued, not less than 30 days prior to implementation of the arrangement or material change thereto, including (but not limited to) a description of FACM's brokerage placement practices, and, where requested, any reasonably available information regarding the matter upon the reasonable request of the authorizing fiduciary at any time.

(C) In the event an authorizing fiduciary submits a notice in writing to FACM objecting to the implementation of, material change in, or continuation of, the arrangement, the Plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the Pooled Fund, without penalty to the Plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing Plans and to the non-withdrawing Plans. In the case of a Plan that elects to withdraw under this subparagraph (d)(1)(C), the withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a Plan electing to withdraw.

(D) In the case of a Plan whose assets are proposed to be invested in the Pooled Fund subsequent to the implementation of the arrangement and that has not authorized the arrangement in the manner described in subparagraphs (d)(1)(B) and (C) of this section, the Plan's investment in the Pooled Fund is subject to the prior written authorization of an authorizing fiduciary who satisfies the requirements of subparagraph (d)(1)(A).

(2) Section III(a) of this exemption, to the extent that it prohibits FACM from being the employer of employees covered by a plan investing in a pool managed by FACM, does not apply if—

(A) FACM is an "investment manager" as defined in section 3(38) of the Act, and

(B) Either (i) FACM returns or credits to the Pooled Fund all profits earned by FACM in connection with all covered transactions engaged in by FACM on behalf of the Pooled Fund, or (ii) the Pooled Fund satisfies the requirements of subparagraph (d)(3) of this section.

(3) A Pooled Fund satisfies the requirements of paragraph (d) of this section for a fiscal year of the Fund if—

(A) On the first day of such fiscal year, and immediately following each acquisition of an interest in the Pooled Fund during the fiscal year by any Plan covering employees of FACM, the aggregate fair market value of the interests in such Fund of all Plans covering employees of FACM does not exceed twenty (20) percent of the fair market value of the total assets of the Fund; and

(B) The aggregate brokerage commissions received by FACM, in connection with covered transactions engaged in by FACM on behalf of all Pooled Funds in which a Plan covering employees of FACM participates, do not exceed five (5) percent of the total brokerage commissions received by FACM from all sources in such fiscal year.

Effective Date: This exemption is effective for transactions occurring on or after March 13, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 17, 1999, at 64 FR 70742.

Notice to Interested Persons: The applicant was unable to provide notice to interested persons of the pendency of the proposed exemption within the time period specified in the notice of proposed exemption published in the **Federal Register** on December 17, 1999. However, by letter dated February 1, 2000, the applicant represents that a copy of the notice of proposed exemption, and a supplemental statement in connection therewith as required by the Department's procedures at 29 CFR 2570.43(b), was delivered by January 25, 2000, to each client of FACM which is, or is using the assets of, an "employee benefit plan" (as defined in section 3(3) of the Act) or a "plan" (as defined in section 4975(e) of the Code). Interested persons were informed that they had until February 28, 2000, to comment or request a hearing on the proposed exemption. No written comments or hearing requests were received by the Department.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Deutsche Bank AG, et al. (Deutsche Bank), Located in New York, NY

[Prohibited Transaction Exemption 2000–13; Exemption Application No. D–10384]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the sale to employee benefit plans (the Plans) of a synthetic guaranteed investment contract (the Buy & Hold Synthetic GIC) offered by Deutsche Bank, which is or may become a party in interest with respect to the Plans; and (2) extensions of credit by Deutsche Bank to the Plans for the purpose of funding benefit withdrawals.

This exemption is conditioned on the requirements set forth below in Section II.

Section II. General Conditions

(a) The decision to enter into a Buy & Hold Synthetic GIC is made on behalf of a participating Plan in writing by a fiduciary of such Plan which is independent of Deutsche Bank.

(b) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to purchase Buy &

Hold Synthetic GICs; provided however that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (*i.e.*, the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity has purchased a Buy & Hold Synthetic GIC, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million, or

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (*i.e.*, the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity has purchased a Buy & Hold Synthetic GIC, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(A) Has full investment responsibility with respect to Plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of $100 million.

(c) Prior to the execution of a Buy & Hold Synthetic GIC, the independent Plan fiduciary receives a full and detailed written disclosure of all material features concerning the Buy & Hold Synthetic GIC, including—

(1) A copy of the contract (the Contract), underlying the Buy & Hold Synthetic GIC, which has been executed by Deutsche Bank and the Plan fiduciary, which stipulates the relevant provisions of such instrument, the interest rate that is credited (the Crediting Rate) to the book value account (the Book Value Account) of the Buy & Hold Synthetic GIC, the applicable fees and the rights and obligations of the parties;

(2) Information explaining in a manner calculated to be understood by a Plan fiduciary that if adverse market conditions occur, that the Crediting Rate to the Book Value Account of a Buy & Hold Synthetic GIC may be as low as 0 percent; and

(3) Copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein.

(d) Following the receipt of such disclosure, the Plan fiduciary approves, in writing, the execution of the Buy & Hold Synthetic GIC on behalf of the Plan.

(e) Upon entering into a Buy & Hold Synthetic GIC with a Plan fiduciary of a Plan that provides for participant investment selection, Deutsche Bank informs the Plan fiduciary that such fiduciary should provide each Plan participant with—

(1) A summary of the primary provisions of the Contract, including the applicable fees; and

(2) Information explaining that if adverse market conditions occur, the Book Value Account's Crediting Rate may be as low as 0 percent.

(f) Subsequent to a Plan's investment in a Buy & Hold Synthetic GIC, the Plan fiduciary and, if applicable, the Plan participant, upon such participant's request, receive a monthly report consisting of a statement of the Book Value Account, which specifies, among other things, the Book Value Account balance for the prior month, withdrawals from the Contract, any reduction in the balance of the Book Value Account on account of a security in the fixed portfolio (the Fixed Portfolio) becoming an impaired security, interest credited to the Book Value Account at the Crediting Rate, and the current month's ending balance for the Book Value Account. The report will also specify the Current Crediting Rate, the prior month's ending fair market value of the Fixed Portfolio, the proceeds of any securities liquidated, fees charged to the Plan, and the current month's ending fair market value of the Fixed Portfolio and rate of return.

(g) As to each Plan, the combined total of all fees and charges imposed under a Buy & Hold Synthetic GIC is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(h) Each Buy & Hold Synthetic GIC specifically provides an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

(i) Each Buy & Hold Synthetic GIC has a predefined maturity date selected by the Plan fiduciary and agreed to by Deutsche Bank.

(j) Neither Deutsche Bank nor its affiliates maintain custody of the assets underlying the Buy & Hold Synthetic GIC or commingle those assets with other funds under their management.

(k) The formulas for computing the Crediting Rate for the Buy & Hold Synthetic GIC and a charge for terminating the Buy & Hold Synthetic GIC within three years of its effective date (the Early Termination Charge) are objectively determined. Further, the Early Termination Charge compensates Deutsche Bank for its direct costs incurred in connection with the Buy & Hold Synthetic GIC.

(l) Deutsche Bank maintains books and records of each Buy & Hold Synthetic GIC transaction for a period of six years in a manner that is accessible for audit and examination. Such books and records are subject to annual audit by independent, certified public accountants.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 1, 2000 at 65 FR 4843 as well as a notice of technical correction published on February 8, 2000 at 65 FR 6228.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and

beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of March, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–6048 Filed 3–10–00; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–026)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Ames Research Center. Claims are deleted from the patent applications to avoid premature disclosure.

DATE: March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, NASA Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035–1000; telephone (650) 604–5104, fax (650) 604–1592.

NASA Case No. ARC–14359–1GE: Method and System for an Automated Tool for En Route Traffic Controllers;

NASA Case No. ARC–14491–1NP: A Neural Net Algorithm that Emulates Chemical Processes.

Dated: March 6, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–6040 Filed 3–10–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–025)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Cytec Industries, Inc., of Five Garret Mountain Plaza, West Paterson, NJ 07424, has applied for an exclusive license to practice the inventions described and claimed in NASA Case Numbers LAR 15544–1 entitled "HIGH PERFORMANCE/HIGH TEMPERATURE TRANSFER MOLDING RESINS," LAR 15543–1 entitled "PHENYLETHYNYL CONTAINING REACTIVE ADDITIVES," LAR 15834–1 entitled, "HIGH PERFORMANCE/HIGH TEMPERATURE RESINS FOR INFUSION AND TRANSFER MOLDING PROCESSES," LAR 15534–1 entitled "METHOD OF PREPARING POLYMERS WITH LOW MELT VISCOSITY," LAR 15700–1 entitled "BLENDS OF POLYMERS WITH REACTIVE AND NON-REACTIVE ADDITIVES HAVING LOWER MELT VISCOSITY," and U.S. Patent No. 5,965,687 entitled "METHOD OF PREPARING POLYMERS WITH LOW MELT VISCOSITY" all of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATE: Responses to this notice must be received by May 12, 2000.

FOR FURTHER INFORMATION CONTACT: Hillary W. Hawkins, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199; Telephone 757–864–8882; Fax 757–864–9190.

Dated: March 7, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–6039 Filed 3–10–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act ("PRMPA", 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR Part 1275), NARA has identified, inventoried, and prepared for public access integral file segments among the Nixon Presidential historical materials.

DATES: NARA intends to make these materials described in this notice available to the public beginning April 27, 2000. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials must notify the Archivist of the United States in writing of the claimed right, privilege, or defense before April 12, 2000.

ADDRESSES: The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland beginning at 8:45 a.m. on April 27, 2000. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301–713–6950.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened on April 27, 2000, consist of 84 cubic feet.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. Some of the materials are from the White House Central Files, Subject Files. The Subject Files are based on an alphanumerical file scheme of 61

primary categories. Listed below are the integral file segments from the White House Central Files, Subject Files in this opening.

Subject Category Volume: 5 Cubic Feet

Federal Government (FG)

FG 54 Courts of the District of Columbia
FG 55 United States Court of Claims
FG 65 Independent Agencies, Boards, and Commissions
FG 67 Advertising Council
FG 68 Advisory Board on National Parks, Historic Sites, Buildings, and Monuments
FG69 Advisory Commission on Intergovernmental Relations

One file group from the Staff Member and Office Files, listed below, will also be made available to the public. This consists of materials that were transferred to Central Files but were not incorporated into the Subject Files.

File Group: Charles B. "Bud" Wilkinson Volume: 26 Cubic Feet

Three files are from the White House Central Files, Name Files. The Name Files were used for routine materials filed alphabetically by the name of the correspondent; copies of documents in the Name Files are usually filed by subject in the Subject Files. The Name Files relating to the three individuals will be made available with this opening.

White House Central Files, Name Files: Volume: 1 Cubic Feet

Earl Landgrebe
Peter W. Rodino
John G. Schmitz

In accordance with the provisions of Executive Order 12958, several series within the National Security Council files have been systematically reviewed for declassification and will be made available. In addition, a number of documents which were previously withheld from public access have been re-reviewed for release and or declassified under the provisions of Executive Order 12958, or in accordance with 36 CFR 1275.56 (Public Access Regulations).

National Security Council Files series: Volume: 51 Cubic Feet

A number of documents which were previously withheld from public access have been reviewed and/ or declassified under the Mandatory Review provisions of Executive Order 12958 and will be made available.

Previously restricted materials Volume: 1 Cubic Feet

Public access to some of the items in the file segments listed in this notice will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: March 1, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–5724 Filed 3–10–00; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Company; Fermi 2, Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (the licensee), for operation of Fermi 2, located in Monroe County, Michigan.

The proposed amendment would revise the Technical Specifications by changing (1) the design features description of the fuel storage equipment and configuration to allow an increase in the spent fuel pool (SFP) storage capacity and (2) the description of the high-density spent fuel racks program to clarify that the surveillance program is applicable only to racks containing Boraflex as a neutron absorber.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The following previously postulated accident scenarios are considered:

a. A spent fuel assembly drop in the SFP.
b. Loss of SFP cooling flow.
c. A seismic event.
d. Misplaced fuel assembly.

The probability that any of the accidents in the above list can occur is not significantly increased by the modification itself. The probabilities of a seismic event or loss of SFP cooling flow are not influenced by the proposed changes. The probabilities of accidental fuel assembly drops or misplacement of a fuel assembly are primarily influenced by the methods used to lift and move these loads. The method of handling loads during normal plant operations is not changed, since the same equipment (*i.e.*, Refuel Bridge) and procedures will be used. Since the methods used to move loads during normal operations remain the same as those used previously, there is no significant increase in the probability of an accident.

During rack removal and installation, all work in the pool area will be controlled and performed in strict accordance with specific written procedures. Any movement of fuel assemblies required to support the modification (*e.g.*, removal and installation of racks) will be performed in the same manner as during normal refueling operations. Spent Fuel shipping cask movements will not be performed during the modification period.

Accordingly, the proposed modification does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of the previously postulated scenarios for an accidental drop of a fuel assembly in the SFP have been re-evaluated for the proposed change. The results show that the postulated accident of a fuel assembly striking the top of the storage racks will not distort the racks sufficiently to impair their functionality. The minimum subcriticality margin, k_{eff} less than or equal to 0.95, will be maintained. The structural damage to the Reactor Building, pool liner, and fuel assembly resulting from a fuel assembly drop striking the pool floor or another assembly located within the racks is primarily dependent on the mass of the falling object and the drop height. Since these two parameters are not changed by the proposed modification, the structural damage to these items remains unchanged. The radiological dose at the exclusion area boundary will not be increased due to the changes. Thus, the results of the postulated fuel drop accidents remain acceptable and do not represent a significant increase in consequences from any of the same previously evaluated accidents that have been reviewed and found acceptable by the NRC.

The time to boil represents the onset of loss of pool water inventory and is commonly used as a gage for

establishing the comparison of consequences before and after a reracking project. The heat up rate in the SFP is a nearly linear function of the fuel decay heat load. The fuel decay heat load will increase subsequent to the proposed changes because of the increase in the number of fuel assemblies stored in the spent fuel pool. The thermal-hydraulic analysis determined the maximum fuel decay heat loads and the corresponding time to boil conditions subsequent to complete loss of forced cooling. These results show that, in the extremely unlikely event of a complete failure of both the FPCCS [fuel pool cooling and cleanup system] and RHR [residual heat removal] System, there would be at least 4.20 hours available for corrective actions. The maximum water boiloff rate is less than 91 gpm. This is less than the normal makeup capacity of 100 gpm available from the condensate storage tanks, and additional sources of makeup are available. It has been determined that this duration provides sufficient time for the operators to provide alternate means of makeup (i.e., fire hoses) before the onset of pool boiling. Therefore, the proposed change represents no increase in the consequences of loss of pool cooling.

The consequences of a design basis seismic event are not increased. The consequences of this accident are evaluated on the basis of subsequent fuel damage or compromise of the fuel storage or building configurations leading to radiological or criticality concerns. The racks are analyzed in their new configuration and found safe during seismic motion. Fuel has been determined to remain intact and the storage racks maintain the fuel and fixed poison configurations subsequent to a seismic event. The structural capability of the pool and liner will not be exceeded under the appropriate combinations of dead weight, thermal, and seismic loads. The Reactor Building structure will remain intact during a seismic event and will continue to adequately support and protect the fuel racks, storage array, and pool moderator/coolant. Thus, the consequences of a seismic event are not increased.

A fuel misplacement accident represents a fuel assembly inadvertently lowered or dropped outside of and adjacent to a storage rack. The consequence of a fuel misplacement accident has been analyzed for the worst possible storage configuration subsequent to the proposed modification, and it has been shown that the consequences remain acceptable with respect to the neutron multiplication factor staying below 0.95 (i.e. the same acceptance criteria as used for normal conditions). Therefore, there is no increase in consequences.

Therefore, it is concluded that the proposed changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

Load drops were determined to be events that might represent a new or different kind of accident. The new loads that will be required during or subsequent to installation of the new racks include the rack modules, the overhead platforms, and the pool gates. Racks will not be allowed to travel over any racks containing fuel assemblies, thus a rack drop onto fuel is precluded. A construction accident of a rack dropping onto the pool floor liner is not a postulated event due to the defense-in-depth approach to be taken, as discussed in detail within Section 10.2 of the attached Licensing Report (Enclosure 4 [to the November 19, 1999, application]). A new temporary hoist and rack lift rig will be introduced to lift and suspend the racks from the bridge of the Reactor Crane. These temporary lift items are designed in accordance with the requirements of NUREG 0612 and ANSI N14.6. Nevertheless, the analysis of a rack dropping to the liner has been performed and shown to be acceptable. The integrity of the liner will be maintained and no loss of pool coolant would occur subsequent to a rack dropping to the liner. Since fuel integrity is maintained and significant loss of coolant does not occur, the drop of a rack is not considered a new type of accident.

A drop of a pool gate is also an extremely unlikely event. The new storage racks will not be located directly beneath the gates. However, the drop of a gate, weighing approximately 9500 pounds, onto racks containing irradiated fuel assemblies, and the drop of a gate onto the pool liner have been analyzed. The analysis performed for the drop of a pool gate onto fuel demonstrates that the number of fuel rods damaged (81) remains below the Fermi 2 fuel handling accident design basis (of 140 rods). The analysis performed for the drop of a pool gate onto the liner demonstrates that the liner would be locally ruptured. However, the underlying concrete slab remains intact and possible leakage would be confined to the leak chase system, which is monitored and controllable. The kinetic energy associated with the drop of the heaviest (1460 pound) overhead platform is enveloped by the kinetic energy associated with the gate drop. Therefore, the potential structural damage to fuel and the liner would be bounded by the results for the gate. Since the resulting fuel damage does not exceed the previously analyzed design basis condition and significant loss of coolant would not occur, the drops of a gate or an overhead platform are not considered a new type of accident.

The additional heat load resulting from additional storage of spent fuel has been evaluated for the possibility of creating a new or different kind of accident. The existing Fermi 2 SFP cooling system, has been shown by analysis, to be capable of removing the decay heat generated by the additional spent fuel assemblies. The pool coolant will not be significantly affected. Thus, the increased heat load does not create the possibility a new or different kind of accident.

No unproven technology has been utilized in the design, analysis or in the proposed installation methodology. The basic technology for the Fermi 2 spent fuel pool capacity increase is consistent with other license amendments (over 80) approved by the USNRC. This change has been evaluated in accordance with the USNRC position paper "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications,[" dated] April 14, 1978 and Addition dated January 18, 1979.

The proposed change does not alter the operating requirements of the plant or of the equipment credited in the mitigation of the design basis accidents. The proposed change does not affect the parameters required for safe fuel storage. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety.

The function of the SFP is to store the fuel assemblies in a subcritical and coolable configuration through all environmental and abnormal loadings, such as an earthquake or fuel assembly drop. The new rack design must meet all applicable requirements for safe storage and be functionally compatible with the SFP.

Detroit Edison has addressed the safety issues related to the expanded pool storage capacity in the following areas:

1. Material, mechanical and structural considerations.
2. Nuclear criticality.
3. Thermal-hydraulic and pool cooling.

The mechanical, material, and structural designs of the new racks are

reviewed in accordance with the applicable provisions of the USNRC position paper "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," [dated] April 14, 1978 and Addition dated January 18, 1979. The rack materials used are compatible with the spent fuel assemblies and the SFP environment. The design of the new racks preserves the proper margin of safety during abnormal loads such as a dropped assembly and tensile loads from a stuck assembly. It has been shown that such loads will not invalidate the mechanical design and material selection to safely store fuel in a coolable and subcritical configuration.

The methodology used in the criticality analysis of the expanded SFP storage capacity meets the appropriate NRC requirements and the ANSI standards (GDC 62, NUREG–0800, Section 9.1.2, the OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications, Reg. Guide 1.13, and ANSI ANS 8.17). The margin of safety for subcriticality is maintained by having the neutron multiplication factor equal to, or less than, 0.95, including uncertainties, under all accident conditions. This criterion is the same as that used previously to establish criticality safety evaluation acceptance and remains satisfied for all analyzed accidents. Therefore, the accepted margin of safety remains the same.

The thermal-hydraulic and cooling evaluation of the pool demonstrated that the pool can be maintained below the specified thermal limits under the conditions of the maximum heat load and during all credible accident sequences and seismic events. The bulk pool temperature will not exceed 150°F during any conditions when forced cooling is available. The increase from the current maximum normal SFP bulk temperature of 125°F is not significant, because the existing racks and cooling system were previously evaluated for the 150°F condition, as stated in UFSAR [Updated Final Safety Analysis Report] sections 9.1.2.2.2 and 9.1.3.1, respectively. The maximum local water temperature in the hottest rack cell will remain below the boiling point. The fuel will not undergo any significant heat up after an accidental drop of a fuel assembly on top of the rack blocking the flow path. The time of 4.20 hours for the onset of pool boiling, subsequent to total loss of forced cooling allows sufficient time for the operators to intervene and line up alternate cooling paths and/or the means of inventory make-up before the onset of pool boiling.

Thus, it is concluded that the changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days of the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 12, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert

opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under Section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in Section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of Section 134 and set for hearing after oral argument.

The Commission's rules implementing Section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors' (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G, apply.

For further details with respect to this action, see the application for amendment dated November 19, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 7th day of March 2000.

For the Nuclear Regulatory Commission.

Andrew J. Kugler,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–6043 Filed 3–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

DOCKET NO. 50–289

Amergen Energy Company, LLC; Three Mile Island Nuclear Station, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–50, issued to AmerGen Energy Company, LLC, (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI–1), located in Dauphin County, PA.

Environmental Assessment

Identification of the Proposed Action

The proposed action would modify the operating license to delete an already completed license condition on reporting of aircraft movement; and delete reference to specific amendment and revision numbers for the Final Safety Analysis Report, Environmental Report, Modified Amended Physical Security Plan, Security Personnel Training and Qualification Plan, and Safeguards Contingency Plan and refer instead to the Updated Final Safety Analysis Report (UFSAR), and refer to the other documents "as revised." Two minor grammatical errors are also corrected. The proposed action also modifies the basis for the Technical Specification (TS) related to pressurizer code safety valves, to delete reference to

the flow rate through the valve. The licensee is also adding to the Bases for this TS, information related to the required American Society for Mechanical Engineers Code, Section XI, required testing. The proposed action to delete reference in the operating license to a specific amendment number for the FSAR and Environmental Report and to correct minor grammatical errors requires an Environmental Assessment.

The proposed action is in accordance with the licensee's application for amendment dated May 13, 1999.

The Need for the Proposed Action

The proposed action is requested to provide administrative updating of the license requirements to delete outdated revisions to documents and refer instead to non-time-sensitive versions of these documents to avoid the need for future revisions to the related license condition.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concluded that the proposed changes are administrative in nature. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would leave uncorrected grammatical errors and outdated references to documents in the license condition, the latter which may be misleading as to the current revision or may require updating of the license periodically to accurately reflect revisions to the documents referenced in the license condition without a specific benefit.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Three Mile Island Nuclear Station, Unit 1.

Agencies and Persons Consulted

In accordance with its stated policy, on February 17, 2000, the staff consulted with the Pennsylvania State official, Mr. Stan Maingi of the Pennsylvania Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 13, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 7th day of March 2000.

For the Nuclear Regulatory Commission.

Timothy G. Colburn, Sr.,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–6041 Filed 3–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Oconee Nuclear Station, Units 1, 2, and 3, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to the Duke Energy Corporation (the licensee/Duke) for operation of the Oconee Nuclear Station, Units 1, 2, and 3, Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, respectively, located in Oconee County, Seneca, South Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would revise the Facility Operating Licenses by (a) deleting the license conditions that have been fulfilled by actions that have been completed, (b) changing the license conditions that have been superseded by the current plant status, and (c) incorporating other administrative changes. In particular, the proposed amendment would remove (1) License Condition 3.C.1 that requires the licensee to accumulate the information required to establish baselines for the evaluation of thermal, chemical, and radiological effects of station operation on terrestrial and aquatic biota in Lakes Keowee and Hartwell; (2) License Condition 3.C.2, which requires the licensee to develop and implement a comprehensive monitoring program that will permit surveillance during plant operation of thermal, chemical, and radiological effects of station operation on terrestrial and aquatic biota in Lakes Keowee and Hartwell; (3) License Condition 3.G, which requires the licensee to implement a secondary water chemistry program having specified attributes; (4) License Condition 3.H, which requires the licensee to implement a program having specified attributes to reduce leakage from certain systems outside containment; (5) License Condition 3.I, which requires the licensee to implement an iodine monitoring program having certain attributes; (6) License Condition 3.J, which requires the licensee to implement a program ensuring the capability to accurately monitor the Reactor Coolant System subcooling margin; and (7) License Condition 3.K, which incorporates into the licenses the additional conditions currently set forth in Appendix C to the license. The proposed action also corrects clerical errors or out-of-date information on the licenses.

The proposed action is in accordance with the licensee's application for an amendment dated January 27, 2000.

The Need for the Proposed Action

After the startup of Oconee, requirements related to the establishment of environmental programs and the performance of studies of the effects of plant operation on the environment have been regulated by other programs. These programs include the Environmental Protection Agency's (EPA's) National Pollution Discharge Elimination System program and Section 316(a) and 316(b) of the Clean Water Act and other EPA programs, the Oconee Environmental

Technical Specifications and Offside Dose Calculations Manual, plant design and operation as described in the Updated Final Safety Analysis Report, and criteria contained in the Selected Licensee Commitments Manual.

In addition, the requirements in License Condition 3.G are equivalent to the requirements of Technical Specification (TS) 5.5.11, "Secondary Water Chemistry;" the requirements of License Condition 3.H are equivalent to those of TS 5.5.3, "Reactor Coolant Sources Outside Containment;" the requirements of License Condition 3.I are equivalent to those of TS 5.5.4, "Post Accident Sampling;" and the requirements of License Condition 3.J are equivalent to those of TS 5.5.17, "Backup Method for Determining Subcooling Margin." Finally, the additional conditions currently set forth in Appendix C to the license, and which are required by License Condition 3.K, are all one-time or time-limited actions that have been completed and were adequately addressed.

Therefore, elimination of the license conditions that are the subject of this environmental assessment would delete (1) provisions for certain activities that are regulated by other government agencies or are being addressed by other programs, (2) requirements redundant to those in TS, and (3) requirements for one-time or time-limited actions that have been completed and were adequately addressed. This would eliminate unnecessary license conditions from the Facility Operating Licenses.

Environmental Impacts of the Proposed Action

The proposed action to implement the amendment would remove extraneous license conditions that (1) are now being regulated by other government agencies or were subsumed by other programs, (2) are redundant to TS, or (3) require actions that have been completed. The proposed action will not change the design of the facilities or the manner in which the licensee operates them. The staff has concluded that the proposed action will not significantly increase the probability or consequences of accidents, there are no changes being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Oconee Nuclear Station, Units 1, 2, and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on March 6, 2000, the staff consulted with the South Carolina State official, Mr. Virgil L. Autry of the Division of Radiological Waste Management, Bureau of Land and Waste Management, Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 27, 2000, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 6th day of March 2000.

For the Nuclear Regulatory Commission.

Richard L. Emch, Jr.,

Section Chief, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–6042 Filed 3–10–00; 8:45 am]

BILLING CODE 7590–01–P

PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

Executive Council on Integrity and Efficiency; Senior Executive Service Performance Review Board Membership

AGENCY: President's Council on Integrity and Efficiency (PCIE) and Executive Council on Integrity and Efficiency (ECIE).

ACTION: Notice.

SUMMARY: This notice sets forth the names and titles of the current membership of the PCIE/ECIE Performance Review Board.

EFFECTIVE DATE: January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Individual Offices of (the) Inspector General.

SUPPLEMENTARY INFORMATION:

I. Background

The Inspector General's Act of 1978, as amended, has created independent audit and investigative units-Offices of (the) Inspector General-at 57 Federal agencies. In 1981, the President's Council on Integrity and Efficiency (PCIE) was established by Executive Order. An Executive Order in 1992 reaffirmed the PCIE and established the Executive Council on Integrity and Efficiency (ECIE). Both councils are interagency committees chaired by the Office of Management and Budget's Deputy Director for Management. Their mission is to continually identify, review, and discuss areas of weakness and vulnerability in Federal programs and operations to fraud, waste, and abuse, and to develop plans for coordinated, Government-wide activities that address these problems and promote economy and efficiency in Federal programs and operations. PCIE members include the 28 Inspectors General appointed by the President; ECIE members include the 29 Inspectors General appointed by their respective agency heads.

II. PCIE Performance Review Board

Under 5 U.S.C. 4314(c) (1)–(5) and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one

or more Senior Executive Service (SES) performance review boards. The purpose of these boards is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current members of the PCIE/ECIE Performance Review Board are as follows:

Joshua Gotbaum,

Executive Associate Director and Controller.

Members	Title
Agency for International Development	
Everett L. Mosley	Deputy Inspector General.
John L. Sullivan	Assistant Inspector General for Investigations.
Robert S. Perkins	Legal Counsel.
Department of Agriculture	
Joyce Fleischman	Deputy Inspector General.
Paula F. Hayes	Assistant Inspector General for Policy Development and Resources Management.
James R. Ebbitt	Assistant Inspector General for Audit.
Richard D. Long	Deputy Assistant Inspector General for Audit.
Robert W. Young, Jr	Deputy Assistant Inspector General for Audit.
Gregory S. Seybold	Assistant Inspector General for Investigations.
Jon E. Novak	Deputy Assistant Inspector General for Investigations.
Christine Jung	Deputy Assistant Inspector General for Investigations.
Department of Commerce	
Judith Gordon	Assistant Inspector General for Systems Evaluation.
Elizabeth Barlow	Counsel to the Inspector General.
Stephen Garmon	Assistant Inspector General for Investigation.
Mary Casey	Deputy Assistant Inspector General for Auditing.
Department of Defense	
John F. Keenan	Assistant Inspector General for Investigations.
Robert J. Lieberman	Assistant Inspector General for Auditing.
Charles W. Beardall	Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight.
Carol L. Levy	Deputy Assistant Inspector General for Investigations.
David K. Steensma	Deputy Assistant Inspector General for Auditing.
Joel L. Leson	Director for Administration and Information Management.
C. Frank Broome	Director for Departmental Inquiries.
David M. Crane	Director for Intelligence Review.
Thomas Gimble	Director, Acquisition Management Audit Directorate.
David A. Brinkman	Director, Audit Follow-up and Technical Support Directorate.
Paul J. Granetto	Director, Contract Management Audit Directorate.
F. Jay Lane	Director, Finance and Accounting Directorate.
Shelton Young	Director, Business and Logistics Support Directorate.
Department of Energy	
Phillip L. Holbrook	Assistant Inspector General for Audit Services.
Judith D. Gibson	Assistant Inspector General for Resource Management.
Sandra L. Schneider	Assistant Inspector General for Inspections.
Herbert Richardson	Assistant Inspector General for Investigations.
Sandford J. Parnes	Counsel to the Inspector General.
Stanley R. Sulak	Director, Office of Performance Audits and Administration.
William S. Maharay	Regional Manager.
Department of Health and Human Services	
Michael F. Mangano	Principal Deputy Inspector General.
Thomas D. Roslewicz	Deputy Inspector General for Audit Services.
Joseph E. Vengrin	Assistant Inspector General for Audit Policy/Oversight.
George Reeb	Assistant Inspector General for Health Care Financing Audits.
Joe Green	Assistant Inspector General for Public Health Service Audits.
John A. Ferris	Assistant Inspector General for Human, Family and Department Service Audits.
John E. Hartwig	Deputy Inspector General for Investigations.
Robert E. Richardson	Assistant Inspector General for Criminal Investigations.
Frank J. Nahlik	Assistant Inspector General for Investigative Oversight and Support.
George Grob	Deputy Inspector General for Evaluation and Inspections.
Dennis J. Duquette	Deputy Inspector General for Management and Policy.
D. McCarty Thornton	Counsel to the Inspector General.
Lewis Morris	Assistant Inspector General for Litigation Coordination.
Department of Housing and Urban Development	
John J. Connors	Deputy Inspector General.
Kathryn M. Kuhl-Inclan	Assistant Inspector General for Audit.
Phillip A. Kesaris	Assistant Inspector General for Investigation.
Phillip X. Newsome	Deputy Assistant Inspector for Investigation.
Michael R. Phelps	Deputy Assistant Inspector General for Audit.

Members	Title
Department of Justice	
Robert L. Ashbaugh	Deputy Inspector General.
Mary W. Demory	Assistant Inspector General for Management and Planning.
Howard L. Sribnick	General Counsel.
Department of Labor	
Patricia A. Dalton	Deputy Inspector General.
Sylvia T. Horowitz	Assistant Inspector General for Management and Counsel.
John J. Getek	Assistant Inspector General for Audit.
Stephen J. Cossu	Assistant Inspector General for Investigations.
Department of State	
J. Richard Berman	Deputy Assistant Inspector General for Audits.
Donald Norman	Assistant Inspector General for Inspections.
LeRoy Lowery	Deputy Assistant Inspector General for Inspections.
James K. Blubaugh	Assistant Inspector General of Policy, Planning, and Management.
Jon Wiant	Assistant Inspector General for Security and Intelligence Oversight.
Department of Transportation	
Raymond J. DeCarli	Deputy Inspector General.
Todd J. Zinser	Assistant Inspector General for Investigations.
Alexis M. Stefani	Assistant Inspector General for Auditing.
Thomas J. Howard	Deputy Assistant Inspector General for Maritime and Departmental Programs.
John L. Meche	Deputy Assistant Inspector General for Financial and Information Technology.
Department of the Treasury	
Richard B. Calahan	Deputy Inspector General.
Dennis S. Schindel	Assistant Inspector General for Audit.
Emilie M. Baebel	Assistant Inspector General for Management Services.
Michael C. Tarr	Assistant Inspector General for Investigations.
Marla A. Freedman	Deputy Assistant Inspector General for Program Audits.
William Pugh	Deputy Assistant Inspector General for Financial Management.
Department of Veterans Affairs	
Thomas Williams	Assistant Inspector General for Investigations.
Michael G. Sullivan	Assistant Inspector General for Audit.
Michael Slachta, Jr	Deputy Assistant Inspector General for Audit.
Jon Wooditch	Assistant Inspector General for Management and Administration.
Alanson Schweitzer	Deputy Assistant Inspector General for Healthcare Inspections.
Maureen T. Regan	Counselor to the Inspector General.
Environmental Protection Agency	
James O. Rauch	Assistant Inspector General for Audit.
John Jones	Assistant Inspector General for Management.
Allen Fallin	Assistant Inspector General for Investigations.
Emmett Dashiell	Deputy Assistant Inspector for Investigations.
Federal Emergency Management Agency	
Richard L. Skinner	Deputy Inspector General.
Nancy L. Hendricks	Assistant Inspector General for Audits.
Paul J. Lillis	Assistant Inspector General for Investigations.
General Services Administration	
Joel S. Gallay	Deputy Inspector General.
Kathleen S. Tighe	Counsel to the Inspector General.
James Henderson	Assistant Inspector General for Investigations.
Mark Woods	Deputy Assistant Inspector General for Investigations.
Eugene L. Waszily	Assistant Inspector General for Auditing.
John Syarto	Deputy Assistant Inspector General for Auditing.
National Aeronautics and Space Administration	
David M. Cushing	Assistant Inspector General for Inspections, Administrative Investigations, and Assessments.
Samuel A. Maxey	Assistant Inspector General for Investigations.
Russell A. Rau	Assistant Inspector General for Auditing.
Nuclear Regulatory Commission	
David C. Lee	Deputy Inspector General.
Thomas J. Barchi	Assistant Inspector General for Audits.
James E. Childs	Assistant Inspector General for Investigations.
Office of Personnel Management	
Joseph R. Willever	Deputy Inspector General.
Harvey D. Thorp	Assistant Inspector General for Audits.
Sanders P. Gerson	Deputy Assistant Inspector General for Audits.

Members	Title
Norbert E. Vint	Assistant Inspector General for Investigations.
E. Jeremy Hutton	Assistant Inspector General for Legal Affairs.
Railroad Retirement Board	
William H. Tebbe	Assistant Inspector General for Investigations.
Henrietta B. Shaw	Assistant Inspector General for Audit.
Small Business Administration	
Peter L. McClintock	Deputy Inspector General.
Richard R. Smith	Assistant Inspector General for Investigations.
Robert G. Seabrooks	Assistant Inspector General for Auditing.
Thomas C. Cross	Assistant Inspector General for Inspections and Evaluation.
Social Security Administration	
Daniel R. Devlin	Deputy Assistant Inspector for Audit.
Patrick O'Carroll	Assistant Inspector General for Investigations.
Kathy Buller	Counsel to the Inspector General.
Peace Corps	
Charles Smith	Inspector General.
Equal Employment Opportunity Commission	
Aletha Brown	Inspector General.

[FR Doc. 00–6023 Filed 3–10–00; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24332; File No. 812–11942]

Calamos Advisors Trust, et al., Notice of Application

March 7, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an order of exemption under Section 6(c) of the Investment Company Act of 1940 ("1940 Act") for exemptions from the provisions of Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek and order to the extent necessary to permit shares of any current of future series of Calamos Advisors Trust ("Fund") designed to fund insurance products and shares of any other investment company or series thereof now or in the future registered under the 1940 Act that is designed to fund insurance products and for which Calamos Asset Management, Inc. ("Calamos"), or any of its affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor (the Fund, together with such other investment companies are referred to, collectively, as the "Funds"), to be sold to and held by (1) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans.

Applicants: Calamos Advisors Trust and Calamos Asset Management, Inc.

FILING DATE: The application was filed on January 12, 2000, and amended on March 1,2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on March 31, 2000, and accompanied by proof of service on the Applicants in the form of an affidavit for lawyers, a certificate of service. Hearing requests should state the nature of your interest, the reason for the request, and the issues you contest. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o James S. Hamman, Jr., Esq., General Counsel Calamos Asset Management, Inc., 1111 E. Warrenville Road, Naperville, Illinois 60563.

FOR FURTHER INFORMATION CONTACT: Ronald A. Holinsky, Attorney or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0607.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Fund is a Massachusetts business trust registered as an open-end management investment company. The Fund commenced operations on May 1, 1999 and currently consists of one series. Additional series may be added in the future.

2. Calamos is registered as an investment adviser under the Investment Advisers Act of 1940 and will be the investment manager for the Fund.

3. The Fund intends to offer its shares to separate accounts of both affiliated and unaffiliated insurance companies, supporting variable annuity and variable life insurance contracts. Separate accounts owning shares of the Fund and their insurance company depositors are referred to as "Participating Separate Accounts" and "Participating Insurance Companies," respectively.

4. The Fund also intends to offer one or more series of its shares directly to qualified pension and retirement plans ("Plans") outside the separate account context. The Plans will be pension or retirement plans intended to qualify under Sections 401(a) and 501(c) of the Internal Revenue Code of 1986, as amended ("Code"). The Fund's shares will be sold to Plans which are, or are designed to be, subject to the Employee Retirement Income Security Act of 1984 ("ERISA"), as amended. Participating Separate Accounts, Participating Insurance Companies, and Plans are collectively referred to as "Participants".

5. The Participating Insurance Companies will establish their own Participating Separate Accounts and design their own contracts. Each

Participating Insurance Company will enter into a fund participation agreement with the Funds on behalf of its Participating Separate Account and will have the legal obligation of satisfying all requirements under state and federal law. The role of the Fund, so far as the federal securities laws are applicable, will be to offer their shares to separate accounts of Participating Insurance Companies and to Plans and to fulfill any conditions that the Commission may impose upon granting the order requested in the application.

6. Plans may choose the Fund (or any series thereof) as their sole investment or as one of several investments. Plan participants may or may not be given an investment choice depending on the Plan itself. Shares of the Fund sold to Plans would be held by the trustee(s) of the Plans as mandated by Section 403(a) of ERISA. Calamos will not act as investment adviser to any of the Plans that will purchase shares of the Fund. There will be no pass-through voting to the participants in such Plans as it is not required to be provided under ERISA.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptive relief from Sections 9(a), 13(a), and 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Fund to be offered and sold to variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated insurance companies and to Plans.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where the management investment company underlying the separate account ("underlying fund") offers its shares "exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company * * *" Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same insurance company or of any affiliated life insurance company is referred to herein as "mixed funding." In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying management investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same insurance company or of any unaffiliated life insurance company is referred to herein as "shared funding."

3. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a). 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available, however, only where the separate account's underlying fund offers its shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account * * *" Therefore, Rule 6e–3(T)(b)(15) permits mixed funding with respect to a flexible premium variable life insurance separate account. However, Rule 6e–3(T)(b)(15) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management investment company that also offers its shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies.

4. Applicants state that the relief granted by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is not affected by the purchase of shares of the Fund by a Plan. However, because the relief under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, exemptive relief is necessary if shares of the Fund are also to be sold to Plans.

5. Applicants state that the current tax law permits the Fund to increase its asset base through the sale of shares to Plans. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of the variable contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain certain exceptions to this requirement, however, one of which permits shares of an investment company to be held by the trustee of a Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts (Treas. Reg. § 1.8 17–5(f)(3)(iii)).

6. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of these Treasury regulations which made it possible for shares of a Fund to be held by the trustee of a Plan without adversely affecting the ability of shares of the Fund to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, Applicants assert that the sale of shares of a Fund to separate accounts through which variable life insurance contracts are issued and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

7. Applicants assert that if the Funds were to sell shares only to Plans or to separate accounts funding variable annuity contracts, no exemptive relief would be necessary. Applicants state that none of the relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Plans or to a registered investment company's ability to sell its shares to such purchasers. Exemptive relief is requested in the application only because some of the separate accounts that will invest in the Fund (or series thereof) may themselves be investment companies that rely on Rules 6e–2 and 6e–3(T) and that desire to have the relief continue in place.

8. In general, Section 9(a) of the 1940 Act disqualifies any person convicted of certain offenses, and any company

affiliated with that person, from serving in various capacities with respect to an underlying registered management investment company. More specifically, Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii), and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management investment company.

9. Applicants state that the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund. Applicants state that the partial relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts. Applicants assert that it also is unnecessary to apply the restrictions of Section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Funds as a funding medium for variable contracts. Moreover, Applicants state that the appropriateness of the relief requested will not be affected by the proposed sale of shares of the Fund to Plans, because the insulation of the Fund from those individuals who are disqualified under the 1940 Act remains in place.

10. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirements with respect to several significant matters, assuming the limitations on mixed and shared funding are observed.

11. Applicants further represent that the sale of Fund shares to Plans should not affect the relief requested. With respect to Plans, there is no requirement to pass-through voting rights to Plan participants. Shares of the Funds sold to Plans would be held by the trustees of such Plans as mandated by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Plan trustees have exclusive authority and responsibility for voting proxies.

12. Applicants state that where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Accordingly, Applicants submit that unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Plans since such Plans are not entitled to pass-through voting privileges.

13. Applicants generally expect many Plans to have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Plan in their discretion. Some of the Plans, however, may provide for the trustee(s), or investment adviser(s) or another named fiduciary to exercise voting rights in accordance with instructions from participants. Applicants submit that where a Plan does not provide participants with the right to give voting instructions, there is no potential for material irreconcilable conflicts of interest between or among contract owners and Plan investors with respect to voting of the Fund's shares. Applicants further submit that where a Plan does provide participants with the right to give voting instructions, they see no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with participants in other Plans, would vote in a manner that would disadvantage contract owners. The purchase of shares of the Fund by Plans that provide voting rights does not present any complications not otherwise occasioned by mixed and shared funding.

14. Applicants submit that even if a Plan were to hold a controlling interest in the Fund, such control would not disadvantage other investors in the Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard applicants submit that investment in the fund by a Plan will not create any of the voting complications occasioned by mixed and shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

15. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. Applicants note that where different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one participating Insurance Company is domiciled could require action that is inconsistent with the requirements of other insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different or greater than exists where a single insurer and its affiliates offer their insurance products in several states.

16. Applicants further submit that affiliation does not reduce the potential for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its participating Separate Account's investment in the Fund.

17. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a participating insurance Company could disregard contract owner voting instructions. Potential disagreement is limited by the

requirement that disregarding voting instructions be both reasonable and based on specified good faith determinations. however, if a participating insurance Company's decision to disregard Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such participating Insurance Company may be required, at the election of the Fund, to withdraw its separate account, investment in the Fund. No charge or penalty will be imposed as a result of such a withdrawal.

18. Applicants submit that there is no reason why the investment policies of the Fund with mixed funding would, or should, be materially different from what those policies would, or should, be if the Fund supported only variable annuity or only variable life insurance contracts. hence, Applicants state, there is no reason to believe that conflicts of interest would result from mixed funding. moreover, Applicants represent that the Fund will not be managed to favor or disfavor any particular insurer or type of contract.

19. As noted above, Section 817(h) of the code imposes certain diversification standards on the assets underlying the variable contracts held in the portfolios of management investment companies. Treasury Regulation Section 1.817–5(f)(3)(iii), which establishes diversification requirements for such portfolios, specifically permits, among other things, "qualified pension or retirement plans" and separate accounts to share the same underlying management investment company. Therefore, Applicants assert that neither the Code, the Treasury regulations, nor the revenue rulings thereunder, recognize or proscribe any inherent conflicts of interest if qualified plans, variable annuity separate accounts, and variable life separate accounts all invest in the same management investment company.

20. Applicants note that while there are differences in the manner in which distributions from variable contracts and Plans are taxed, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Participating Separate Account or a Plan cannot net purchase payments to make the distributions, the Participating Separate Account or Plan will redeem shares of the Fund at their net asset value in conformity with Rule 22c–1 under the 1940 Act to provide proceeds to meet distribution needs. The Plan will then make distributions in accordance with the terms of the Plan. The life insurance company will surrender values from the Separate Account into the general account to make distributions in accordance with the terms of the variable contract.

21. Applicants state that the sale of shares to Plans should not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Applicants submit that there should be very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

22. Applicants also state that it is possible to provide an equitable means of giving voting rights to Participating Separate Account contract owners and to Plans. The transfer agent for the Fund will inform each Participating Insurance Company of each Participating Separate Account's share ownership in the Fund, as well as inform the trustees of Plans of their holdings. The Participating Insurance company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3 (T), as applicable, and its participation agreement with the Fund. Shares held by Plans will be voted in accordance with applicable law. The voting rights provided to Plans with respect to shares of the Fund would be no different from the voting rights that are provided to Plans with respect to shares of funds sold to the general public.

23. Applicants submit that the ability of the Fund to sell its shares directly to Plans does not create a "senior security," as such term is defined under Section 12(g) of the 1940 Act, with respect to any contract owner as opposed to a Plans participant. Regardless of the rights and benefits of Plan participants or contract owners, the Plans and the Participating Separate Accounts only have rights with respect to their respective shares of the Fund. No shareholder of the Fund has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

24. Applicants state that there are no conflicts between the contract owners of Participating Separate Accounts and Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that shareholders may not all agree with a particular proposal. While interests and opinions of shareholders may differ, however, this does not mean that there are any inherent conflicts of interest between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, complex and time-consuming transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Plans can make the decision quickly and redeem their shares of the Fund and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts, or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, applicants represent that even should the interests of contract owners and the interests of Plans conflict, the conflicts can be resolved almost immediately because the trustees of the Plans can, independently, redeem shares out of the Fund.

25. Applicants also assert that there does not appear to be any greater potential for material irreconcilable conflicts arising between the interests of Plan participants and contract owners of Participating Insurance Companies from possible future changes in the federal tax laws than that which already exists between variable annuity and variable life insurance contract owners.

26. Applicants believe that the summary of the discussion contained herein demonstrates that the sale of shares of the Fund to qualified plans and variable contracts does not increase the risk of material irreconcilable conflicts of interest. Furthermore, Applicants state that the use of the Fund with respect to Plans is not substantially different from the Fund's current use, in that Plans, like variable contracts, are generally long-term retirement vehicles. In addition, applicants assert that regardless of the type of shareholder in the Fund, Calamos is or would be contractually or otherwise obligated to manage the Fund solely and exclusively in accordance with the Fund's investment objectives, policies and restrictions as well as any guidelines established by the Fund's Board of Trustees.

27. Applicants assert that various factors have prevented more insurance companies from offering variable annuity and variable life insurance contracts than currently do so. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management, and the lack of public name recognition as investment professionals. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own.

Applicants assert that use of the Fund as a common investment medium for variable contracts would ameliorate these concerns. Participating Insurance companies would benefit not only from the investment advisory and administrative expertise of Calamos and its affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants submit that therefore, making the Fund available for mixed and shared funding will encourage more insurance companies to offer variable contracts. Applicants claim that this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Moreover, the sale of the shares of the Fund to Plans should further increase the amount of assets available for investment by the Fund. This in turn, should inure to the benefit of contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new portfolios to the Fund more feasible.

28. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding and sales of Fund shares to Plans.

Applicant's Conditions

Applicant consents to the following conditions if the application is granted:

1. A majority of the Board of Trustees or Board of Directors ("Board") of the Fund shall consist of persons who are not "interested persons" of the Fund, as defined by Section 2(a)(19) of the Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by rule, or by order upon application.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict among the interests of the contract owners of all separate accounts investing in the Fund and of Plan participants investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Fund or series are being managed; (e) a difference in voting instruction given by variable annuity contract owners and variable life insurance contract owners; (f) a decision by an insurer to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Plan to disregard voting instructions of Plan participants.

3. In the event that a Plan or Plan participant shareholder should become an owner of 10% or more of the assets of the Fund, such Plan will execute a fund participation agreement including the conditions of the Application set forth herein, to the extent applicable. A Plan or Plan participant will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of a Fund.

4. Participating Insurance Companies, Calamos, any other investment adviser of the Fund, and any Plans that execute a fund participation agreement upon becoming an owner of 10% or more of the Fund's assets ("Participants") will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever it has determined to disregard contract owner voting instructions and, when pass-through voting is applicable, an obligation of each Plan to inform the Board whenever it has determined to disregard voting instructions from Plan participants. The responsibilities to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Plans under their agreements governing participation in the Fund, and such agreements shall provide, in the case of Participating Insurance Companies, that such responsibilities will be carried out with a view only to the interests of contract owners or, in the case of Plans, Plan participants.

5. If it is determined by a majority of the Board, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series thereof and reinvesting such assets in a different investment medium which may include another series of the Fund; (b) submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity or life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and the decision represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the Fund, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Plans under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of the contract owners and Plan participants, as appropriate.

6. For purposes of Condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately

remedies any material irreconcilable conflict but in no event will the Fund, or Calamos (or any other investment adviser) be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by Condition 5 to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of the majority of contract owners materially and adversely affected by the material irreconcilable conflict. No Plan shall be required by this Condition 5 to establish a new funding medium for such Plan if: (a) An offer to do so has been declined by a vote of a majority of Plan participants materially and adversely affected by the irreconcilable material conflict, or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without a Plan participant vote.

7. Participants will be informed promptly in writing of the Board's determination of the existence of a material irreconcilable conflict and its implications.

8. Participating Insurance Companies will provide pass-through voting privileges to contract owners who invest in Participating Separate Accounts so long as the Commission continues to interpret the 1940 Act as requiring pass-though voting privileges for contract owners. Accordingly, Participating Insurance Companies will vote shares of the Fund or series thereof held in Participating Separate Accounts in a manner consistent with voting instructions timely received from contract owners. In addition, each Participating Insurance Company will vote shares of the Fund, or series thereof, held in its separate accounts for which it has not received timely voting instructions as well as shares it owns, in the same proportion as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their Participating Separate Accounts calculate voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote the Fund's shares and calculate voting privileges in a manner consistent with all other Participating Separate Accounts shall be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Fund. Each Plan will vote as required by applicable law and governing Plan documents.

9. The Fund will notify all Participating Insurance Companies and Plans that disclosure in separate account prospectuses or plan prospectuses or other plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Fund shall disclose in its prospectus that: (a) Its shares are offered to insurance company separate accounts which fund both annuity and life insurance contracts, (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Fund and the interest of Plans investing in the Fund may conflict, and (c) the Board will monitor for the existence of any material conflicts and determine what action, if any, should be taken.

10. All reports of potential or existing conflicts of interest received by the Board, and all Board action with regard to: (a) determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records and such minutes or other records shall be made available to the Commission upon request.

11. If and to the extent Rule 6e–2 Rule 6e–3(T) are amended, or Rule 6e-3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and proposed Ruled 6e–3, as adopted, to the extent applicable.

12. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Fund). In particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in Section 16(c) of the Act) as well as with Section 16(a) and, if and when applicable, section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

13. No less than annually, the Participants shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board when it so reasonably requests shall be a contractual obligation of all Participants under the agreements governing their participation in the Fund.

Conclusion

For the reasons and upon the facts stated above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–6079 Filed 3–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITY AND EXCHANGE COMMISSION

[Release No. 35–27149]

Filings Under the Public Utility Holding Company "Act" of 1935, as Amended (Act)

March 8, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applicant(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The applicant(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applicant(s) and/or declaration(s) should submit their views in writing by March 8, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or decalarant(s) at the address(es) specified below. Proof of service (by

affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 28, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates (70–9611)

Eastern Utilities Associates ("EUA"), a registered holding company located at 750 West Center Street, P.O. Box 543, West Bridgewater, Massachusetts 02379, has filed a declaration under section 12(b) of the Act and rules 45 and 54 under the Act.

EUA requests Commission approval to guaranty certain performance obligations of EUA Cogenex Corporation ("Cogenex"), a wholly owned nonutility subsidiary of EUA, in connection with (1) Cogenex's sale of certain ("Asset Sale") to Fleet Business Credit Corporation ("Fleet"), and (2) the proposed restructuring and additional funding by Fleet of certain Cogenex contracts previously sold to Fleet under a separate program agreement ("Restructuring").

Under the Asset Sale and the Restructuring, Cogenex proposes to sell to Fleet, for 475 million, approximately $81 million dollars worth of assets, which will include energy service contracts, notes receivable, and energy efficient equipment. EUA estimates that the energy service contracts will generate, as of January 1, 2000, approximately $110 million of gross cash flow.

As a condition to entering into the Asset Sale and the Restructuring, Fleet has requested that EUA (or its agreed upon successor) (1) Maintain a 51% ownership interest in Cogenex, and (2) Guaranty Cogenex's obligations under the Asset Sale and the Restructuring, including the continued service and performance of the energy service contracts ("Performance Guaranty"). Under the Asset Sale and Restructuring, Fleet will assume all third party credit risk under the contracts. The total principal subject to the Performance Guaranty will be approximately $100 million ($75 million for the Asset Sale and Restructuring and $25 million previously funded by Fleet prior to the Restructuring).

For the Commission by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–6077 Filed 3–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42498; File No. SR–Amex–99–21]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC Amending Section 106 of the Amex Company Guide

March 6, 2000.

I. Introduction

On June 10, 1999, the American Stock Exchange LLC ("Exchange" or "Amex"), submitted to the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending Section 106 of the *Amex Company Guide*. The Exchange filed Amendments No. 1[3] and No. 2[4] to the proposed rule change on June 14, 1999 and December 1, 1999, respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on January 24, 2000.[5] The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Exchange proposes to amend Section 106 of the *Amex Company guide* to provide for the trading of stock index industry group warrants[6] pursuant to new Rule 19b–4(e)[7] under the Act. Section 106 of the *Amex Company Guide* currently authorizes the Exchange to trade warrants on a stock index industry group pursuant to Section 19(b)(3)(A) of the Act provided that the index meets the generic criteria set forth in Commentary .02 to Amex Rule 901C.[8] As discussed in the New Products Release, however, the Exchange would no longer be required to submit, pursuant to new Rule 19b–4(e) under the Act, a proposed rule change to trade warrants on a new stock index industry group provided the index meets the generic criteria set forth in Commentary .02 to Amex Rule 901C.

In the New Products Release, the Commission noted that in order to rely on the amendment and not submit filings pursuant to Section 19(b)(3)(A) for warrants that satisfy the criteria of rule 901C, a self-regulatory organization would be required to submit a proposed rule change for Commission approval to eliminate the Section 19(b)(3)(A) rule filing requirement from its existing rules.[9] Accordingly, to enable the Exchange to use new Rule 19b–4(e), the Exchange proposes to eliminate the Section 19(b)(3)(A) rule filing requirement from Section 106 of the *Amex Company Guide*.[10] Amex Rule 901c will remain unchanged. The Exchange represents that the use of new Rule 19b–4(e) will be in accordance with the terms and conditions set forth in the New Products Release.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Scott Van Hatten, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 11, 1999 ("Amendment No. 1"). The Exchange originally filed the proposed rule change under Section 19(b)(3)((A) of the Act. Pursuant to Commission staff's request, the Exchange refiled the proposed rule change under Section 199b)(2) of the Act.

[4] Letter from Scott Van Hatten, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated December 1, 1999 ("Amendment No. 2"). Amendment No. 2 states that the Exchange will issue a circular prior to trading any new index warrant pursuant to Rule 19b–4(e) to (i) highlight specific risks associated with warrants on new indexes and remind members that index warrants are direct obligations of the issuer, which are not subject to a clearing house guarantee, (ii) clarify that index warrants may only be sold to accounts approved for standardized options trading, and (iii) clarify that the Exchange's options suitability standards apply to index warrants. Amendment No. 2 also states that Amex Rules 1100 through 1110, which govern issuer eligibility, margin requirements, discretionary accounts, supervision of accounts, position and exercise limits, reportable positions, and trading halts and suspensions, will apply to index warrants. Finally, Amendment No. 2 states that the Exchange's enhanced surveillance procedures will continue to apply to surveillance of index warrants traded pursuant to rule 19b–4(e).

[5] Securities Exchange Act Release No. 42342 (Jan. 14, 2000), 65 FR 3750.

[6] Amex Rule 900C defines "Stock Index Industry Group" as a stock index group relating to a stock index which reflects representative stock market values or prices of a particular industry or related industries (also referred to as a "narrow based index").

[7] *See* Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998) ("New Products Release").

[8] The Commission granted approval to list and trade narrow-based index warrants pursuant to Section 19(b)(3)(A) in Securities Exchange Act Release No. 37007 (March 21, 1996), 61 FR 14165 (March 29, 1996).

[9] *See supra* n. 7, at n. 89.

[10] The Commission approved a similar change to Amex Rule 901C to permit the trading of narrow-based index options pursuant to new Rule 19b–4(e). *See* Securities Exchange Act Release No. 41091 (Feb. 23, 1999), 64 FR 10515 (March 4, 1999).

the Act [11] and the rules and regulations thereunder applicable to a national securities exchange, in that it is designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market.[12] The Commission believes that proposed rule change will significantly reduce the Exchange's regulatory burden and allow it to compete more effectively in today's marketplace by facilitating the listing and trading of stock index industry group warrants that meet the generic criteria of Commentary .02 to Exchange Rule 901c. The commission also believes that the proposed rule change will benefit investors by enabling the Exchange to more quickly provide them with tailored products that directly meet their evolving investment needs. The Commission notes that the New Products Release authorizes the Exchange to list and trade certain derivative securities without first riling with the Commission a proposed rule change pursuant to Section 19(b)(3)(A) of the Act, but requires the Exchange to eliminate references to these filing requirements before it can rely on Rule 19b–4(e). The Commission also notes that the Exchange's existing trading rules, procedures, surveillance programs, and listing standards will apply to generic stock index industry group warrants listed and traded on the Exchange and that the Exchange has represented that it will comply with the terms and conditions of the New Product Release.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [13] that the proposed rule change (SR–Amex–99–21), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [14]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–6008 Filed 3–10–00; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42491; File No. SR–ODD–00–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval to Proposed Supplement to Options Disclosure Document Regarding FLEX Equity Options

March 2, 2000.

On March 2, 2000, the Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 ("Act"),[1] five definitive copies of a Supplement to its options disclosure document ("ODD"), which describes, among other things, the risks and characteristics of trading in flexibly structure options ("FLEX options"). In particular, the Supplement deletes the discussion of restrictions on exercise price intervals and exercise prices for FLEX equity call options.[2]

The ODD currently contains general disclosures on the characteristics and risks of trading options on equity securities. The Commission has approved proposals by three options exchanges to remove restrictions on exercise price intervals and exercise prices for FLEX equity call options.[3] The proposed Supplement to the ODD deletes the discussion of these restrictions.

The Commission has reviewed the ODD Supplement and finds that it complies with Rule 9b–1 under the Act.[4] The Supplement is intended to be read in conjunction with the ODD, which discusses the characteristics and risks of options generally. The ODD, along with the Supplement, provides information regarding FLEX options sufficient to describe the special characteristics of these products. Rule. 9b–1 provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date definitive copies of the ODD are furnished to customers, unless the Commission determines otherwise, having due regard for the adequacy of information disclosed and the protection of investors.[5] The Commission has reviewed the Supplement, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the Supplement as of the date of this order.

It is therefore ordered, pursuant to Rule 9b–1 under the Act,[6] that the proposed Supplement regarding FLEX equity options (SR–ODD–00–01) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–6007 Filed 3–10–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 240.9b–1.

[2] *See* Letter from James C. Yong, First Vice President and General Counsel, OCC, to Katherine A. England, Division of Market Regulation, Commission, dated March 1, 2000.

[3] The Commission approved these proposals after the Internal Revenue Service clarified the tax treatment of these options. *See* Release No. 34–42371 (January 31, 2000), 65 FR 5921 (February 7, 2000) (order approving SR–CBOE–99–63); Release No. 34–42389 (February 7, 2000), 65 FR 8224 (February 17, 2000) (order approving SR–PCX–00–01 and SR–Amex–00–02).

[4] 17 CFR 240.9b–1.

[5] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[6] 17 CFR 240.9b–1.

[7] 17 CFR 200.30–3(a)(39).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42365A; File No. SR–Phlx–99–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Registration of Trading Floor Personnel

March 7, 2000.

In FR Document No. 00–2634, on page 5923 for Monday, February 7, 2000, Column 1, the second line of the text of proposed Phlx Rule 620 was incorrectly stated. The words "*Each Floor Broker, Specialist and*" should appear prior to "*Registered Options Trader.*" Thus, the first portion of the rule should read as follows: "*(a) Trading Floor Member Registration—Each Floor Broker, Specialist and Registered Options Trader on any Exchange trading floor must register* * * *"

Jonathan G. Katz,

Secretary.

[FR Doc. 00–6006 Filed 3–10–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region I—SBA Providence District Office, Rhode Island SBA Advisory Council; Notice of Public Meeting

The Rhode Island SBA Advisory Council located in Providence, Rhode Island, will hold a public meeting at 8:00 a.m. on Friday, March 24, 2000, at the Marriott Hotel located on One Orms Street in Providence, Rhode Island 02904, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information write or call Mark S. Hayward, Acting District Director, 380 Westminster Street, Room 511, Providence, Rhode Island 02903 or telephone at (401) 528–4561.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–5971 Filed 3–10–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3249]

Culturally Significant Objects Imported for Exhibition; Determinations: "Imperial China: The Art of the Horse in Chinese History"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "Imperial China: The Art of the Horse in Chinese History," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the International Museum of the Horse, Lexington, KY from on or about May 1, 2000, to on or about August 31, 2000, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301–4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: March 5, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–6101 Filed 3–10–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

Public Notice No. 3233

Renewal of Cultural Property Advisory Committee Charter

The Charter of the Cultural Property Advisory Committee is being renewed for a two-year period. The membership of this advisory committee consists of private sector experts in archaeology/anthropology/ethnology; experts in the international sale of cultural property; and, representatives of museums and of the general public. The committee was established by 19 U.S.C. 2601 *et seq*, the Convention on Cultural Property Implementation Act. It reviews requests from other countries seeking U.S. import restrictions on archaeological or ethnological material the pillage of which places a country's cultural heritage in jeopardy. The committee makes findings and recommendations to the Secretary of State, who, on behalf of the President, determines whether to impose the import restrictions.

FOR FURTHER INFORMATION CONTACT: Cultural Property Advisory Committee, U.S. Department of State, Bureau of Educational and Cultural Affairs, Rm. 247, State Annex 44, 301 4th St., SW, Washington, DC 20547. Phone (202) 619–6612; Fax: (202) 619–5177.

Dated March 6, 2000.

Maria P. Kouroupas,

Executive Director, Cultural Property Advisory Committee, Department of State.

[FR Doc. 00–6099 Filed 3–10–00; 8:45 am]

BILLING CODE 4710–11–U

DEPARTMENT OF STATE

[Public Notice No: 3232]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 "C" Street NW, Washington, D.C., April 10–11, 2000 in Conference Room 1406. Prior notification and a valid photo are mandatory for entrance into the building. One week before the meeting the public must notify Gloria Walker, Office of Historian (202–663–1124) providing their date of birth, Social Security number, and telephone number.

The Committee will meet in open session from 9 a.m. through Noon on Monday, April 10, 2000, to discuss the implementation of Executive Order 12958 with respect to Department of State records, the declassification and transfer of Department of State electronic records to the National Archives and Records Administration, and the modernization of the Foreign Relations series. The remainder of the Committee's sessions from 1:45 p.m. on Monday, April 10, 2000 until Noon on Tuesday, April 11, 2000 will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions involving consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to William Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *pahistoff@panet.us-state.gov*).

February 29, 2000.

William Slany,

Executive Secretary.

[FR Doc. 00–6098 Filed 3–10–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Shannon County, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed improvements to the transportation system in Shannon County, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Programs Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101, Telephone: (573) 636–7104 or Mr. Bob

Sfreddo, Director of Project Development, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751–4586.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), the National Park Service (NPS), and the Ozark National Scenic Riverways (ONSR) will prepare an EIS for a proposed project to improve Route 19 in south-central, Missouri. The proposed project extends from 2.0 miles south of Route EE south 3.0 miles to 1.0 mile south of Round Spring, Missouri. This proposal includes the replacement of three bridges over Spring Valley Creek, Sinking Creek, and the Current River. All three rivers are in Ozark National Scenic Riverways. Improvements are considered necessary to: (1) Improve safety and capacity for local and through traffic, (2) replace three bridges which are structurally deficient and functionally obsolete and, (3) support local and regional economic development for Shannon County and the surrounding area.

The proposed project will provide a two-lane roadway with at-grade intersections at rural crossroads. Alternatives under consideration include (1) taking no action; (2) transportation management options; (3) constructing new bridges and roadways beside the existing alignment; and (4) constructing a two-land roadway on new location.

The scoping process will involve all appropriate federal, state, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. The scoping process was initiated at a September 23, 1999 meeting. Further public meetings will be held to engage the regional community in the decision making process and to obtain public comment. A public hearing will be held to present the findings of the draft EIS (DEIS). The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 3, 2000.

Donald L. Neumann,

Program Engineer, Jefferson City.

[FR Doc. 00–6058 Filed 3–10–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environment Impact Statement: Texas and Howell Counties, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed improvements to the transportation system in Texas and Howell Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Programs Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101, Telephone: (573) 636–7104 or Mr. Bob Sfreddo, Director of Project Development, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751–4586.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), the National Park Service (NPS), and the Ozark National Scenic Riverways (ONSR) will prepare an EIS for a proposed project to improve Route 17 in south-central Missouri. The project extends from Route O in Texas County south 2.5 miles to 0.5 mile south of the Howell County Line. This proposal includes the replacement of a bridge over the Jacks Fork River, which is in the Ozark National Scenic Riverways. Improvements are considered necessary to: (1) improve safety and capacity for local and through traffic, (2) replace a bridge which is structurally deficient and functionally obsolete and, (3) support local and regional economic development for Texas and Howell Counties and the surrounding area.

The proposed project will provide a two-lane roadway with at-grade intersections at rural crossroads. Alternatives under consideration include: (1) Taking no action; (2) transportation management options; (3) constructing a bridge and roadway beside the existing alignment; and (4) constructing a roadway on new location.

The scoping process will involve all appropriate federal, state, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. The scoping process was initiated at a September 23, 1999 meeting. Further public meetings will be held to engage the regional community in the decision making process and to obtain public comment. A public hearing will be held to present the findings of the draft EIS (DEIS). The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: March 3, 2000.

Donald L. Neumann,

Programs Engineer, Jefferson City.

[FR Doc. 00–6059 Filed 3–10–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Numbers LI–96–2 and FRA–1999–5894]

Canadian National Railroad, Canadian Pacific Railway; Public Hearing

The Canadian National Railroad and the Canadian Pacific Railway have independently petitioned the Federal Railroad Administration (FRA) seeking a permanent waiver of compliance with the Locomotive Safety Standards, Title 49, Code of Federal Regulations (CFR), Parts 229.27(a) and 229.29(a) concerning the time interval requirements of the periodic cleaning, repairing and testing of locomotive air brake components for all of their locomotives operating in the United States equipped with 26L type brake equipment.

This proceeding is identified as Canadian National Railroad, Docket LI–96–2, and Canadian Pacific Railway, Docket FRA–1999–5894. FRA issued public notices seeking comments of

interested parties and conducted field investigations in this matter. After examining the carriers' proposals, letters of protest, and field reports, FRA has determined that a public hearing is necessary before a final decision is made on these proposals.

Accordingly, a public hearing is hereby set for 9:00 a.m. on Wednesday, April 12, 2000, in Room 2230, Nassif building, 400 Seventh St. S.W., Washington, D.C. 20590. Interested parties are invited to present oral statements at this hearing. The hearing will be informal and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR Part 211.25) by a representative designated by FRA. The hearing will be a non-adversarial proceeding; therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make a brief rebuttal will be given the opportunity to do so in the same order in which initial statements were made. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on March 8, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–6071 Filed 3–10–00; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–2000–6810.

Applicant: Gateway Western Railway Company, Mr. Charles D. Shaffer, Supervisor Communication and Signals, 200 South Main, Venice, Illinois 62090.

Gateway Western Railway Company seeks approval of the proposed modification of the Louisiana Movable Bridge Interlocking, milepost 274.50, on Subdivision No. 2, near Louisiana, Missouri, consisting of the conversion of the manual controlled interlocking to automatic control operation.

The reason given for the proposed changes is to remove Bridge Tenders from the Hours of Service requirements.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, S.W., Washington, D.C. 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on March 8, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–6073 Filed 3–10–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–2000–6811.

Applicant: Gateway Western Railway Company, Mr. Charles D. Shaffer, Supervisor Communication and Signals, 200 South Main, Venice, Illinois 62090.

Gateway Western Railway Company seeks approval of the proposed modification of the Pearl Movable Bridge Interlocking, milepost 251.20, on Subdivision No. 2, near Pearl, Illinois, consisting of the conversion of the manual controlled interlocking to automatic control operation.

The reason given for the proposed changes is to remove Bridge Tenders from the Hours of Service requirements.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, S.W., Washington, D.C. 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on March 8, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–6074 Filed 3–10–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–2000–6779.

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the traffic control system, on the No. 3 main track, between C.P. 005, milepost 4.9 and C.P. 007, milepost 7.1, at East Los Angeles, California, consisting of the discontinuance and removal of controlled signal 3E, near milepost 5.9.

The reason given for the proposed changes is that signal 3E is a controlled leaving signal, and train crews are required to call the dispatcher to clear the signal, causing unnecessary delay to operations, radio traffic, and dispatcher activity.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, S.W., Washington, D.C. 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on March 8, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–6072 Filed 3–10–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the Federally owned invention U.S. Patent No. 5,909,786, issued June 8, 1999, entitled "Apparatus and Method for Reducing Fiber Waste by Lint Cleaners" is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Continental Eagle Corporation, of Prattville, Alabama, an exclusive license to Serial No. 09/107,799.

DATES: Comments must be received on or before June 12, 2000.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention is assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Continental Eagle Corporation has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 00–6010 Filed 3–10–00; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Availability and Intent.

SUMMARY: Notice is hereby given that a Federally owned invention, U.S. Patent No. Re. 35,460, a reissue of U.S. Patent No. 5,233,090, entitled "Method for Fiber Loading a Chemical Compound" is available for licensing and that the U.S. Department of Agriculture, Forest Service, intends to grant to Voith Sulzer Paper Technology North America Inc., of Appleton, Wisconsin, an exclusive license for U.S. Patent No. Re. 35,460.

DATES: Comments must be received on or before June 12, 2000.

ADDRESSES: Send comments to: USDA Forest Service, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398.

FOR FURTHER INFORMATION CONTACT: Janet I. Stockhausen of the USDA Forest Service at the Madison address given above; telephone: 608–231–9502.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Voith Sulzer Paper Technology North America Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C.

209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Forest Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 00–6012 Filed 3–10–00; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–098–1]

Environmental Impact Statement; Importation of Unmanufactured Wood Articles From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement relative to our proposed rule for the importation of pine and fir logs and lumber and other unmanufactured wood articles from Mexico. The environmental impact statement will examine the potential effects of the proposed rule on the human environment, including cumulative impacts of methyl bromide use that could result if our proposed rule is adopted. In order to identify cumulative impacts, the environmental impact statement will consider the incremental impact of the proposed rule when added to other past, present, and reasonably foreseeable future actions. We invite the public to comment on what specific issues we should address in the environmental impact statement.

DATES: We will consider all comments that we receive by April 12, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–098–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–098–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Senior Operations Officer, Policy Planning and Critical Issues, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1234; (301) 734–7601.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 1999, the Animal and Plant Health Inspection Service (APHIS) published a proposed rule in the **Federal Register** (64 FR 31512–31518, Docket No. 98–054–1) to amend the regulations in 7 CFR part 319 to add restrictions on the importation of pine and fir logs and lumber and other unmanufactured wood articles from Mexico. Under the proposal, certain unmanufactured wood articles would be required to be treated in order to be eligible for importation into the United States. The proposed rule would allow treatment with methyl bromide as an alternative to heat treatment.

Several of the comments we received on the proposed rule and its accompanying environmental assessment indicated the need to consider the cumulative environmental impacts of methyl bromide use. Regulations issued by the Council on Environmental Quality (CEQ) implementing the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), define "cumulative impact" as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

Based on the comments described above, APHIS intends to prepare an environmental impact statement (EIS) relative to our proposed rule for the importation of pine and fir logs and lumber and other unmanufactured wood articles from Mexico. The EIS will consider, among other things, the cumulative environmental impacts of methyl bromide use that could result if the proposed rule is adopted. As provided in the definition above, to fully consider the incremental impacts of methyl bromide use that could result if our proposed rule is adopted, we also need to identify other past, present, and reasonably foreseeable uses of methyl bromide.

We plan to seek assistance from, and coordinate closely with, among others, experts at the U.S. Environmental Protection Agency and the United Nations Environmental Programme in drafting the EIS and in identifying uses of methyl bromide. This notice also requests public comments to help us identify other significant environmental issues that should be addressed or analyzed in the EIS and to help us identify additional uses of methyl bromide.

The EIS will analyze the full range of alternatives available to the decisionmaker in the APHIS rulemaking proceeding described above, including "no action'; use of the entire range of treatment options, including methyl bromide; and treatment options other than methyl bromide.

The EIS will also identify other APHIS and non-APHIS uses of methyl bromide in order to determine the potential incremental cumulative impacts that could result if our proposed rule is adopted.

This notice and the upcoming EIS are intended to fulfill the requirements of both NEPA and Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions," to the extent applicable. A notice announcing the availability of the draft EIS for review will be published in the **Federal Register**. The notice will also request comments on the draft EIS.

This notice is issued in accordance with: (1) NEPA, (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 7th day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–6069 Filed 3–10–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–084–2]

Public Meeting; Center for Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is the second notice to producers of veterinary biological products, product users, and other interested persons that we are holding our ninth public meeting to discuss regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. This notice includes information on the agenda, as well as on the place, dates, and times of the meeting. It also indicates a contact person for obtaining registration forms, lodging information, and copies of the agenda.

DATES: The public meeting will be held on Monday and Tuesday, April 3 and 4, 2000, from 8 a.m. to 5 p.m. each day.

ADDRESSES: The public meeting will be held in the Scheman Building at the Iowa State Center, Iowa State University, Ames, IA.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Denato, Center for Veterinary Biologics, Veterinary Services, APHIS, 1800 Dayton Avenue, P.O. Box 844, Ames, IA 50010; telephone (515) 663–7838, fax (515) 663–7673; or e-mail: judith.e.denato@usda.gov.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has previously announced that it is scheduling the ninth public meeting on veterinary biologics in Ames, IA, on April 3 and 4, 2000 (see 64 FR 61058–61059, Docket No. 99–084–1). In that notice, APHIS requested that interested persons submit suggestions for agenda topics. Based on the submissions received and on other considerations, the agenda for the ninth public meeting includes, but is not limited to, the following:

—State of the Center for Veterinary Biologics
—Results of community networking sessions, scenarios, and future strategies
—Regulation approval process/Federal preemption and the Virus-Serum-Toxin Act
—International harmonization and trade issues, including international cooperation on harmonization of technical requirements for registration of veterinary medicinal products (VICH)
—Animal use in testing
—Labeling issues, including concerns with imported products, species without a label claim, duration of immunity, safety, and maternal antibody interference with vaccination
—Updates on current topics of interest

During the "open discussion" portion of the meeting, attendees will have the opportunity to present their views on any matter concerning the APHIS veterinary biologics program. Comments may be either impromptu or prepared. Persons wanting to make a prepared statement should indicate their intention to do so at the time of registration by indicating the subject of their remarks and the approximate amount of time they would like to speak. APHIS welcomes and encourages the presentation of comments at the meeting.

Registration forms, lodging information, and copies of the agenda for the ninth public meeting may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.** This information is also accessible on the world wide web at the following address: http://www.aphis.usda.gov/vs/cvb. The registration deadline is March 13, 2000. A block of hotel rooms has been set aside for this meeting until this date. Early reservation of rooms is strongly encouraged.

Done in Washington, DC, this 7th day of March 2000.

Thomas E. Walton,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–6070 Filed 3–10–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–004C]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0597]

Codex Alimentarius: Meeting of the Codex Committee on General Principles; Organization for Economic Cooperation and Development: Meeting of the Ad Hoc Group on Food Safety

AGENCIES: Food Safety and Inspection Service, USDA; Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food Safety and Inspection Service (FSIS), and the Office of Food Safety, U.S. Department of Agriculture (USDA); and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), announced a public meeting in the March 1, 2000, **Federal Register** (65 FR 11031). That document contained an error in the **DATES** section.

The comment due date of April 24, 2000, was incorrect. This document corrects that date. The correct comment due date is March 24, 2000.

Patrick J. Clerkin,

Associate U.S. Manager for Codex Alimentarius, U.S. Department of Agriculture.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy, Food and Drug Administration.

[FR Doc. 00–6068 Filed 3–10–00; 8:45 am]

BILLING CODE 3410–DM–P; 4164–01–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Rural Housing Loans.

DATES: Comments on this notice must be received by May 12, 2000 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Dean A. Daetwyler, Senior Loan Specialist, Single Family Housing Guaranteed Loan Division, RHS, United States Department of Agriculture, Mail Stop 0784, 1400 Independence Ave., SW, Washington, DC 20250–0784, Telephone (202) 690–0514, E-mail ddaetwyl@rdmail.rural.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1980–D, Rural Housing Loans.

OMB Number: 0575–0078.

Expiration Date of Approval: June 30, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) is authorized under Section 517

(d) of Title V of the Housing Act of 1949, as amended, to issue loan guarantees for the acquisition of new or existing dwellings and related facilities to provide decent, safe, and sanitary living conditions and other structures in rural areas by eligible recipients.

The Act also authorizes the Secretary to pay the holder of a guaranteed loan the difference between the rate of interest paid by the borrower and the market rate of interest.

The purpose of the program is to assist low and moderate income individuals and families acquire or construct a single family residence in a rural area with loans made by private lenders. Eligibility for this program includes low and moderate income families or persons whose income does not exceed 115 percent of the median income for the area, as determined by the Secretary.

The GRH program was authorized under the Cranston-Gonzalez National Affordable Housing Act and the Agency issued a final rule implementing the GRH program on April 17, 1991, before departmental reorganization. The program began as a pilot program in 20 States on May 17, 1991. In 1992, the GRH program was offered on a nationwide basis. During the implementation process, the Agency looked for ways to improve the program and make it more user friendly.

The Agency recognized the need to make its program even more compatible with the existing structure of the mortgage lending community. On May 22, 1995, the Agency published the final rule incorporating the needed changes to encourage greater participation by lenders and the secondary market for mortgage loans.

The information requested by the Agency includes borrower financial information such as household income, assets and liabilities, and monthly expenses. All information collected is vital for the Agency to determine if borrowers qualify for and assure they receive all assistance for which they are eligible. Information requested on lenders is required to ensure lenders are eligible to participate in the GRH program. Lender requirements are in compliance with OMB Circular A–129.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .4 hours per response.

Respondents: Individuals or households and business or other for-profits.

Estimated Number of Respondents: 47,200.

Estimated Number of Responses per Respondent: 8.7.

Estimated Total Annual Burden on Respondents: 154,250 hours.

Copies of this information collection can be obtained from Tracy Gillin, Team Leader, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Gillin, Team Leader, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 2, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

[FR Doc. 00–6102 Filed 3–10–00; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801; C–403–802]

Continuation of Antidumping Duty and Countervailing Duty Orders: Fresh and Chilled Atlantic Salmon From Norway

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Duty and Countervailing Duty Orders: Fresh and Chilled Atlantic Salmon from Norway.

SUMMARY: On February 4, 2000 and February 7, 2000, respectively, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty [1] and countervailing duty [2] orders on fresh and chilled Atlantic salmon from Norway is likely to lead to continuation or recurrence of dumping and a countervailable subsidy. On March 1, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty and countervailing duty orders on fresh and chilled Atlantic salmon from Norway would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 11082). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty and countervailing duty orders on fresh and chilled Atlantic salmon from Norway.

EFFECTIVE DATE: March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION

Background

On July 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 35588 and 64 FR 35680, respectively) of the antidumping duty and countervailing duty orders on fresh and chilled Atlantic salmon from Norway, pursuant to section 751(c) of the Act. As a result of its reviews, the Department found that revocation of the antidumping duty and countervailing duty orders would likely lead to continuation or recurrence of dumping and a countervailable subsidy, and notified the Commission of the magnitude of the margins and a net countervailable subsidy likely to prevail were the orders to be revoked.[3]

On March 1, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty and countervailing

[1] *See Final Results of Expedited Sunset Review: Fresh and Chilled Atlantic Salmon from Norway*, 65 FR 5584 (February 4, 2000).

[2] *See Final Results of Expedited Sunset Review: Fresh and Chilled Atlantic Salmon from Norway*, 65 FR 5854 (February 7, 2000).

[3] *See Final Results of Expedited Sunset Review: Fresh and Chilled Atlantic Salmon from Norway*, 65 FR 5584 (February 4, 2000); and *Final Results of Expedited Sunset Review: Fresh and Chilled Atlantic Salmon from Norway*, 65 FR 5954 (February 7, 2000).

duty orders on fresh and chilled Atlantic salmon from Norway would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Fresh and Chilled Atlantic Salmon from Norway* 65 FR 11082 (March 1, 2000) and USITC Publication 3282 (February 2000), Investigation Nos. 701–TA–302 (Review), and 731–TA–454 (Review).

Scope

The product covered by these orders is the species Atlantic salmon (Salmon Salar) marketed as specified herein; the order excludes all other species of salmon: Danube salmon, Chinook (also called "king" or "quinnat"), Coho ("silver"), Sockeye ("redfish" or "blueback"), Humpback ("pink") and Chum ("dog"). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon was classifiable under item number 110.2045 of the Tariff Schedules of the United States Annotated ("TSUSA"). Prior to January 1, 1990, Atlantic salmon was provided for under item numbers 0302.0060.8 and 0302.12.0065.3 of the Harmonized Tariff Schedule of the United States ("HTSUS") (56 FR 7678, February 25, 1991). Currently, it is provided for under HTSUS item number 0302.12.00.02.09. The subheadings above are provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty and countervailing duty orders would be likely to lead to continuation or recurrence of dumping and a countervailable subsidy, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty and countervailing duty orders on fresh and chilled Atlantic salmon from Norway. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty and countervailing duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751 (c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than February 2005.

Dated: March 7, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–6091 Filed 3–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 and A–580–816]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results of antidumping duty administrative reviews.

SUMMARY: On September 8, 1999, the Department of Commerce ("Department") published the preliminary results of the administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea. These reviews cover three manufacturers/exporters. The period of review ("POR") is August 1, 1997 through July 31, 1998.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Reviews."

EFFECTIVE DATE: March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Juanita Chen (Dongbu), Becky Hagen (the POSCO Group), Marlene Hewitt (Union), Robert Bolling, or James Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230, telephone 202–482–0409 (Chen), 202–482–3362 (Hagen), 202–482–1385 (Hewitt), 202–482–3434 (Bolling), or 202–482–0159 (Doyle), fax 202–482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Background

The Department published antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea on August 19, 1993. Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 58 FR 44159 (August 19, 1993). The Department published a notice of Opportunity to Request Administrative Review of the antidumping duty orders for the 1997/98 review period on August 11, 1998. Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 63 FR 42821 (August 11, 1998). On August 31, 1998, respondent Union Steel Manufacturing Co., Ltd. ("Union") requested that the Department conduct an administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Korea, and respondents Dongbu Steel Co., Ltd. ("Dongbu") and Pohang Iron and Steel Co., Ltd. ("POSCO") requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea. On August 31, 1998, petitioners in the original less-than-fair-value ("LTFV") investigations (AK Steel Corporation; Bethlehem Steel Corporation; Inland Steel Industries, Inc.; LTV Steel Company; National Steel Corporation; and U.S. Steel Group—a unit of USX Corporation) requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea with respect to all three of the aforementioned respondents. We initiated these reviews on September 23, 1998. See 63 FR 51893 (September 29, 1998).

On August 31, 1999, the Department issued the preliminary results of these administrative reviews. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Preliminary Results of Antidumping

Duty Administrative Reviews, 64 FR 48767 (September 8, 1999) ("Korean Flat-Rolled 5th Reviews Prelim."). The Department has now completed these administrative reviews in accordance with section 751 of the Act.

Scope of the Reviews

The review of "certain cold-rolled carbon steel flat products" covers cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, i.e., aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The review of "certain corrosion-resistant carbon steel flat products" covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTS item numbers are provided for convenience and U.S. Customs purposes. The written descriptions remain dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 6, 2000, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the Decision Memo, accessible in B–099 and on the Web at www.ita.doc.gov/import—admin/records/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Use of Facts Available

In accordance with section 776 of the Act, we have determined that the use of facts available is appropriate for certain portions of our analysis of the POSCO Group. For a discussion of our determination with respect to this matter, see the POSCO Group's facts available section of the Decision Memo, accessible in B–099 and on the Web at www.ita.doc.gov/import__admin/records/frn.

Sales Below Cost in the Home Market

The Department disregarded home market below-cost sales that failed the cost test for Dongbu, the POSCO Group, and Union in these final results of review.

Duty Absorption

On October 20, 1998, the petitioners requested that the Department determine whether antidumping duties have been absorbed by an exporter or producer subject to these administrative reviews, in the event that the subject merchandise was sold during this period of review in the United States through an importer affiliated with the POSCO Group, Dongbu, or Union. Section 751(a)(4) of the Act provides that, if requested, the Department will

determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an affiliated importer. Section 751(a)(4) of the Act authorizes this inquiry during an administrative review initiated two years or four years after publication of an order. For transition orders as defined in section 751(c)(6)(C) of the Act (i.e., antidumping orders in effect as of January 1, 1995), section 351.213(j)(2) of the Department's regulations provides that the Department will make such as determination for any administrative review initiated in 1996 or 1998. The orders in these cases are transition orders, which went into effect in 1993. See Notice of Antidumping Duty Orders: Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 58 FR 44159 (August 19, 1993). Because this review was initiated in 1998, and the petitioners made a timely request for a duty absorption determination (i.e., within 30 days of the date of publication of the notice of initiation of this review), we find that the regulatory requirements for a duty absorption determination have been met. See 19 CFR 351.213(j).

We have determined that duty absorption has occurred with respect to the percentages of sales shown below which were made through the respondents' U.S. affiliates and which had positive dumping margins:

Producer/manufacturer/exporter	Percentage of U.S. affiliate's sales with dumping margins
Certain Cold-Rolled Carbon Steel Flat Products	
The POSCO Group	2.70
Certain Corrosion-Resistant Carbon Steel Flat Products	
Dongbu	20.81
The POSCO Group	6.85
Union	4.49

With respect to the above companies, we presume that the duties will be absorbed for those sales which were dumped. This presumption can be rebutted with evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty. However, there is no such evidence on the record. Although we afforded interested parties the opportunity to submit evidence that unaffiliated purchasers in the United States will absorb duties, no party availed itself of this opportunity. Therefore, under these circumstances, we have determined that antidumping duties have been absorbed by the above-listed firms on the percentages of U.S. sales indicated.

Request for Revocation

The POSCO Group

On August 31, 1998, the POSCO Group submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the orders covering certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products from Korea with respect to its sales of this merchandise.

In accordance with 19 CFR 351.222(e), these requests were accompanied by a certification from POSCO that it had not sold the subject merchandise at less than normal value ("NV") for a three-year period, including this review period, and would not do so in the future. POSCO also agreed to its immediate reinstatement of the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, POSCO sold the subject merchandise at less than NV. In the third administrative reviews, we determined that the POSCO Group sold both cold-rolled and corrosion-resistant carbon steel flat products at less than normal value. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170 (March 18, 1998), as amended at 63 FR 20572 (April 27, 1998). Although the final results of the third reviews are subject to litigation, that litigation is not yet complete. In the fourth administrative reviews, the POSCO Group had *de minimis* margins for both products. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 10982 (March 8, 1999). Consequently, we have determined that because the POSCO Group does not have three consecutive years of zero or *de minimis* margins on cold-rolled carbon steel flat products and corrosion-resistant carbon steel flat products, it is not eligible for revocation of these orders under 19 CFR 351.222(e).

Dongbu

On August 31, 1998, Dongbu submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the orders covering certain corrosion-resistant carbon steel flat products from Korea with respect to its sales of this merchandise.

In accordance with 19 CFR 351.222(e), the request was accompanied by a certification from Dongbu that it had not sold the subject merchandise at less than NV for a three-year period, including this review period, and would not do so in the future. Dongbu also agreed to its immediate reinstatement in the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, it sold the subject merchandise at less than NV. In the third administrative review, we determined that Dongbu sold corrosion-resistant carbon steel flat products at less than normal value. *See* Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170 (March 18, 1998), as amended at 63 FR 20572 (April 27, 1998). In the fourth administrative review, we determined that Dongbu was selling corrosion-resistant carbon steel products at less than normal value. *See* Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 10982 (March 8, 1999). Consequently, we determine that because Dongbu does not have three consecutive years of zero or de minimis margins on corrosion-resistant steel, it is not eligible for revocation of the order on corrosion-resistant steel under 19 CFR 351.222(e).

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the "Decision Memorandum," accessible in B–099 and on the Web at www.ita.doc.gov/import—admin/records/frn.

Final Results of the Reviews

We determine that the following percentage weighted-average margins exist for the period August 1, 1997 through July 31, 1998:

Producer/Manufacturer/Exporter	Weighted-average margin
Certain Cold-Rolled Carbon Steel Flat Products	
Dongbu	0.00

Producer/Manufacturer/Exporter	Weighted-average margin
The POSCO Group	0.41
Union	0.00
Certain Corrosion-Resistant Carbon Steel Flat Products	
Dongbu	1.29
The POSCO Group	0.68
Union	0.14

The Department shall determine, and the U.S. Customs Service ("Customs") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to both export price and constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of cold-rolled and corrosion-resistant carbon steel flat products from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall require no deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 14.44 percent (for certain cold-rolled carbon steel flat products) or 17.70 percent (for certain corrosion-resistant carbon steel flat products). These rates are the "all others" rates from the LTFV investigations. See Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 58 FR 44159 (August 19, 1993).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 6, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix

Issues in Decision Memo

Comments and Responses

General Comments

1. Normal Value
A. Currency Conversions

Company-Specific Comments

Dongbu Steel Co., Ltd.

1. EP/CEP.
A. Calculation and Allocation of U.S. Indirect Selling Expense.
2. COP/CV.
A. Use of Fourth Administrative Reviews Databases.
3. Other AD Issues.
A. U.S. Date of Sale.

Pohang Iron and Steel Co., Ltd. ("POSCO"), Pohang Coated Steel Co., Ltd. ("POCOS"), and Pohang Steel Industries Co., Ltd. ("PSI") (collectively, "POSCO Group")

1. Facts Available
A. Adjustment to Costs for Differences in Coating Weight
B. Model Match Criteria/Yield Strength
C. Weighted-Average Costs
D. Cost Reconciliation
2. COP/CV
A. Start-up Costs
B. Major Input/Transactions Disregarded Rule
C. Conversion Costs
3. EP/CEP
A. CEP v. EP Classification
4. Other AD Issues
A. Level-of-Trade
B. Home Market Credit
C. Home Market Downstream Sales Credit
D. Product Characteristics for Downstream Sales
E. Overrun Sales

Union Steel Manufacturing Co., Ltd. ("Union")

1. Other AD Issues
A. Home Market Credit Days
B. Prime v. Non-Prime

[FR Doc. 00–6089 Filed 3–10–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 8, 1999, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (64 FR 48775). This review covers one manufacturer/exporter of the subject merchandise to the United States and the period of review (POR) of August 1, 1997, through July 31, 1998. Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ilissa Kabak or Robert James, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230;

telephone: (202) 482–1395 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 1999, the Department published in the **Federal Register** (64 FR 48775) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (58 FR 44172 (August 19, 1993), *see also* 61 FR 47871 (September 11, 1996)). We invited parties to comment on our preliminary results. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1998).

Scope of this Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Period of Review

The POR is August 1, 1997, through July 31, 1998. This review covers entries of certain cold-rolled carbon steel flat products from the Netherlands produced by Hoogovens Staal B.V. (Hoogovens).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Joseph A. Spetrini to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 6, 2000, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Duty Absorption

We have determined that no duty absorption has occurred with respect to U.S. sales made by Hoogovens. For a discussion of our determination with respect to this matter, see the "Duty Absorption" section of the Decision Memorandum, accessible in B–099 and on the Web at www.ita.doc.gov/import_admin/records/frn/.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the "Decision Memorandum," accessible in B–099 and on the Web at www.ita.doc.gov/import_admin/records/frn/.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Hoogovens Staal B.V	8/1/97–7/31/98	0.26

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, the duty assessment rate will be a specific amount per metric ton. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Hoogovens will be zero, in light of its *de minimis* weighted-average margin; (2) if the

exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review, the cast deposit rate will be 19.32 percent. This is the "all others" rate from the amended final determination in the less than fair value investigation. *See Amended Final Determination Pursuant to CIT Decision: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 61 FR 47871 (September 11, 1996).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and sections 351.213 and 351.221 of the Department's regulations.

Dated: March 6, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comments and Responses

1. Decision of Export Price or Constructed Export Price status
2. CEP Profit
3. Financial Expenses
4. Ministerial Error in Calculating U.S. Warranty Expenses
5. Duty Absorption

[FR Doc. 00–6086 Filed 3–10–00; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–837, A–428–821]

Large Newspaper Printing Presses from Japan and Germany: Postponement of Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for preliminary results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the antidumping duty administrative reviews of the antidumping duty orders on large newspaper printing presses from Japan and Germany. The review involving Japan covers the period September 1, 1998, through August 31, 1999. The reviews involving Germany cover the periods September 1, 1997, through August 31, 1998; and September 1, 1998 through August 31, 1999.

EFFECTIVE DATE: March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim, at (202) 482–2613 for Japan; and Katherine Johnson, at (202) 482–4929 for Germany, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Postponement of Preliminary Results of Reviews: The Department of Commerce (the Department) initiated reviews of the antidumping duty orders on large newspaper printing presses (LNPPs) from Japan and Germany on November 4, 1999 (64 FR 60161). The current deadline for the preliminary results in these reviews is June 1, 2000. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended, we determine that it is not practicable to complete the administrative reviews of LNPPs from Japan and Germany within the original time frame. *See* February 28, 2000, Memorandum from Sunkyu Kim, Acting Program Manager, and Irene Darzenta Tzafolias, Program Manager, to Richard W. Moreland, Deputy Assistant Secretary for Import Administration. Thus, the Department is extending the time limit for completion of the preliminary results until no later than September 29, 2000, which is 365 days after the last day of the anniversary month of the order.

We intend to issue the final results of these administrative reviews within 120 days after the publication of the preliminary results.

Dated: March 6, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–6090 Filed 3–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods From Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 8, 1999, the Department of Commerce ("the Department") published the preliminary results of the antidumping duty administrative review on oil country tubular goods ("OCTG") from Korea (64 FR 48783). This review covers one manufacturer/exporter of the subject merchandise to the United States, SeAH Steel Corporation ("SeAH"), and the period August 1, 1997 through July 31, 1998, which is the third period of review ("POR").

Based on our analysis of the comments received and our discussion of the currency conversion methodology explained below, we have made a change in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Jonathan Lyons, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0374.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations

to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1999).

Background

On August 11, 1995, the Department published in the **Federal Register** (60 FR 41058) the antidumping duty order on oil country tubular goods from Korea. On September 8, 1999, the Department published in the **Federal Register** the preliminary results of the antidumping duty administrative review of this antidumping order (64 FR 48783) for the period August 1, 1997 through July 31, 1998. We invited interested parties to comment and received two comments and rebuttals regarding SeAH. At the request of certain interested parties, we held a public hearing on October 19, 1999. The Department has now completed this review in accordance with section 751(a) of the Act.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On December 14, 1999, the Department published a notice of extension of the time limit for the final results in the review to March 6, 2000. *See Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Oil Country Tubular Goods from Korea*, 64 FR 69723.

Scope of Review

The products covered by this order are oil country tubular goods ("OCTG"), hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute ("API") or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Period of Review

The period of review is August 1, 1997 through July 31, 1998.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 6, 2000, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act. Section 773A(a) of the Act directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. The Department considers a "fluctuation" to exist when the daily exchange rate differs from the benchmark rate by 2.25 percent or more. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we generally substitute the benchmark rate for the daily rate, in accordance with established practice. (An exception to this rule is described below.) (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions*, 61 FR 9434 (March 8, 1996)).

Our analysis of the U.S. dollar/Korean won exchange rates demonstrates that the Korean won declined rapidly in November and December 1997. Specifically, the won declined more than 40 percent over this two-month period. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during recent years, and it did not rebound significantly in a short time. As such, we determine that the decline in the won during November and December 1997 was of such magnitude that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated at that time, *i.e.*, as having experienced only a momentary drop in value relative to the normal benchmark. Accordingly, the Department used actual daily exchange rates exclusively in November and December 1997. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip from the Republic of Korea*, 64 FR 30664, 30670 (June 8, 1999) ("*Stainless Steel from Korea*").

We note, however, that we have refined our methodology somewhat from that applied in both *Stainless Steel from Korea* and our preliminary results of the instant review. We recognize that, following a large and precipitous decline in the value of a currency, a period may exist wherein it is unclear whether further declines are a continuation of the large and precipitous decline or merely fluctuations. Under the circumstances of this case, such uncertainty may have existed following the large, precipitous drop in November and December 1997. Thus, we devised a methodology for identifying the point following a precipitous drop at which it is reasonable to presume that rates differing more than 2.25 percent from the benchmark were merely fluctuating. Following the precipitous drop in November and December 1997, we continued to use only actual daily rates until the daily rates were not more than 2.25 percent below the average of the 20 previous daily rates for five consecutive days. At that point, we determined that the pattern of daily rates no longer reasonably precluded the possibility that they were merely "fluctuating." Using a 20-day average for this purpose

provides a reasonable indication that it is no longer necessary to refrain from using the normal methodology, while avoiding the use of daily rates exclusively for an excessive period of time.

Accordingly, from the first of these five days, we resumed classifying daily rates as "fluctuating" or "normal" in accordance with our standard practice, except that we began with a 20-day benchmark and on each succeeding day added one daily rate to the average until the normal 40-day average was restored as the benchmark. *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 64 FR 56759, 56763 (October 21, 1999). *See also Polyethylene Terephthalate Film, Sheet and Strip From Korea: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke in Part*, 64 FR 62648, 62649 (November 17, 1999). Applying this methodology in the instant case, we used daily rates from November 3, 1997, through January 13, 1998. We then resumed the use of our normal methodology, starting with a benchmark based on the average of the 20 reported daily rates from January 14, 1998. We used the normal 40-day benchmark from February 12, 1998 to the close of the review period.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made a change in the margin calculations to account for the refined exchange rate methodology discussed above. We made no additional changes to the calculations. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the "Decision Memorandum."

Final Results of Review

We determine that the following percentage weighted-average dumping margins exist for the period August 1, 1997 through July 31, 1998:

	Margin (percent)
SeAH Steel Company	15.02

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to both export price and constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of oil country tubular goods from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.17 percent. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: March 6, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix 1—Issues in Decision Memo

Comments and Responses

1. Date of Sale for Third-Country Sales
2. Normal Value Currency Conversions for Third-Country Sales

[FR Doc. 00–6087 Filed 3–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of the 1997–1998 antidumping duty administrative review of sulfanilic acid from the People's Republic of China.

SUMMARY: On September 8, 1999, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China (PRC). The merchandise covered by this order is all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid. The review covers the period August 1, 1997 through July 31, 1998, and all PRC exporters of the subject merchandise.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Dana Mermelstein, AD/CVD Enforcement, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3964 or (202) 482–3208, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1998).

Background

On September 8, 1999, the Department published the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the PRC (64 FR 48788). The review covers all exporters of sulfanilic acid. The period of review (POR) is August 1, 1997 through July 31, 1998. We invited parties to comment on our preliminary results of review. No timely requests were made for a public hearing. The Department has conducted this review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.24 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.79, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 6, 2000 which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in Import Administration's Central Records Unit (CRU), Room B–099 of the Main Commerce Building. For a discussion of our determination with respect to this matter, see the (topic heading) section of the Decision Memo, accessible in the CRU and on the Web at www.ita.doc.gov/import_admin/record/frn under the (topic heading) section. The paper copy and electronic version of the Decision Memo are identical in content.

Use of Facts Available (If Necessary)

For a discussion of our application of the facts available, see the "Facts Available" section of the Decision Memo, which is on file in the CRU and also available at the Web address shown above.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We also have corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming and clerical errors with which we do not agree are discussed in the relevant sections of the Decision Memo, accessible in the CRU and also available at the Web address shown above.

Final Results of Review

We determine that the following percentage weighted-average margins exist for the period August 1, 1997 through July 31, 1998:

Manufacturer/producer/exporter	Time period	Margin (percent)
Yude (Yude/Xinyu) Chemical Industry, Co. and Zhenxing (Zhenxing/Mancheng) Chemical Industry, Co[1]	8/1/97–7/31/98	18.75
PRC Rate[2]	8/1/97–7/31/98	85.20

[1] Exporters Yude (Yude/Xinyu) and Zhenxing (Zhenxing/Mancheng) have been collapsed for the purposes of this administrative review. *See Sulfanilic Acid from the People's Republic of China: Preliminary Results of Antidumping Administrative Review*, 64 FR 48788 (September 8, 1999); Decision Memo, Affiliation/Collapsing section.

[2] This rate will be applied to all firms other than Yude (Yude/Xinyu) and Zhenxing (Zhenxing/Mancheng), including all firms which did not respond to our questionnaire.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to both export price and constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section

751(a)(2)(c) of the Act: (1) The cash deposit rate for Yude/Xinyu and Zhenxing/Mancheng will be the rate shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall require no deposit of estimated antidumping duties; (2) the cash deposit rate for all other PRC exporters (*i.e.*, the PRC rate) will be 85.20 percent; and (3) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 6, 2000.

Robert S. LaRussa.

Assistant Secretary for Import Administration.

Appendix

Issues in the Decision Memo

1. Facts Available
2. Non-Market Economies
   Factor Valuation
3. Affiliation
   Control
   Collapsing
4. EP/CEP
   Movement Expenses
5. Circumstances-of-Sale Adjustments
   Indirect Selling Expenses
6. Packing and Movement Expenses
   Inventory Carrying Costs
7. Miscellaneous Issues
8. Programming and Clerical Errors

[FR Doc. 00–6085 Filed 3–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–810]

Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On September 8, 1999, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the administrative review of the countervailing duty order on certain cut-to-length carbon steel plate (CTL Plate) from Mexico for the period January 1, 1997 through December 31, 1997.

Based on our analysis of the comments received, we have made changes to the net subsidy rate. Therefore, the final results differ from the preliminary results. The final net subsidy rate for the reviewed company is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon or Eric B. Greynolds, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR Part 351(April 1998), unless otherwise indicated. Because the request for this administrative review was filed before January 1, 1999, the Department's substantive countervailing duty regulations, which were published in the **Federal Register** on November 25, 1998 (63 FR 65348), do not govern this review.

Background

On September 8, 1999, the Department published the preliminary results of the administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Mexico. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Preliminary Results of Countervailing Duty Administrative Review*, 64 FR 48796 (September 8, 1999) (*Preliminary Results*). This review covers one manufacturer/exporter, Altos Hornos de Mexico, S.A. (AHMSA). The review covers the period January 1, 1997 through December 31, 1997, and twenty-one programs.

Scope of the Review

The products covered by this administrative review are certain cut-to-length carbon steel plates. These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this administrative review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this administrative review is grade X–70 plate. HTSUS subheadings are provided for convenience and Customs purposes.

The written description of the scope of this proceeding is dispositive.

Analysis of Comment Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Holly Kuga, Acting Deputy Assistant Secretary, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 6, 2000, which is hereby adopted and incorporated by reference into this notice. A list of issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at www.ita.doc.gov/import_admin/records/frn, under the heading "Mexico." The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes to the net subsidy rate. Any changes are discussed in the relevant sections of the Decision Memorandum.

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this review. We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated below on all appropriate entries. For the period January 1, 1997 through December 31, 1997, we determine the net subsidy rate for the reviewed company to be as follows:

MARGIN

Manufacturer/exporter	Percent
AHMSA	10.42

We will instruct Customs to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. See 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993); *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the Act, as amended by the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Mexico*, 58 FR 37352 (July 9, 1993) (*Certain Steel 1993*). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: March 6, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix I—Issues in Discussed in Decision Memorandum

[www.ita.doc.gov/import_admin/records/frn, under the heading ("Mexico")]

Methodology and Background Information

I. Subsidies Valuation Information
  A. Allocation Period
  B. Discount Rates
II. Change in Ownership
  A. Background
  B. Change in Ownership Calculation Methodology
III. Inflation Methodology

Analysis of Programs

I. Programs Conferring Subsidies
  A. GOM Equity Infusions
  B. 1986 Assumption of AHMSA's Debt
  C. 1988 and 1990 Debt Restructuring of AHMSA Debt and the Resulting Discounted Prepayment in 1996 of AHMSA's Restructured Debt Owed to the GOM
  D. IMIS Research and Development Grants
  E. Pre-privatization Lay-off Financing from the GOM and the 1991 Equity Infusion in Connection with the Debt-to-Equity Swap of PROCARSA Shares
  F. Bancomext Export Loans
  G. PITEX Duty-Free Imports for Companies That Export
  H. Immediate Deduction
II. Programs Determined To Be Not Countervailable
  A. Committed Investment
  B. The Mexican Corporation of Materials Research, S.A. de C.V. (COMIMSA)
  C. Waiver of Taxes on AHMSA Purchase of Fundadora de Monterrey, S.A. de C.V. (FMSA)
  D. Discounted Freight Rates
  E. Promotion of Highly Exportable Companies (ALTEX)
III. Other Programs Examined
  A. Nafinsa Long-Term Loans
IV. Programs Not Used
  A. Bancomext Short-Term Import Financing
  B. FONEI Long-Term Financing
  C. Export Financing Restructuring
  D. Bancomext Trade Promotion Services and Technical Support

E. ECEX
F. Article 15 & 94 Loans
V. Analysis of Comments
Comment 1: Requested Use of Facts Available
Comment 2: The 1988 and 1990 Debt Restructuring of AHMSA Debt and the Resulting Discounted Prepayment in 1996 of AHMSA's Restructured Debt Owed to the GOM
Comment 3: Discount Rates Used by the Department as Part of Its Significant Inflation Methodology
Comment 4: Use of Certain Company-Specific Loans in the Derivation of Short-Term and Long-Term Benchmark Interest Rates
Comment 5: Committed Investment
Comment 6: Value-Added Taxes (VAT) Under the Program for Temporary Import for Producing Products for Export (PITEX)
Comment 7: Machinery and Auxiliary Materials Imported Under PITEX
Comment 8: Immediate Deduction
Comment 9: Nafinsa Long-Term Loans
Comment 10: The Department's Compliance With the SCM Agreement Regarding Its Initiation of Investigations of New Subsidies Alleged During the POR

[FR Doc. 00–6088 Filed 3–10–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of availability of final evaluation findings.

SUMMARY: Notice is hereby given of the availability of the final evaluation findings for the Wisconsin, Oregon and Guam Coastal Management Programs, and the Hudson River (New York), Ace Basin (South Carolina), South Slough (Oregon), Wells (Maine), and Weeks Bay (Alabama) National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of coastal management programs, and the operation and management of NERRs.

The states of Wisconsin and Oregon, and the Territory of Guam were found to be implementing and enforcing their federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards.

Hudson River, Ace Basin, South Slough, Wells, and Weeks Bay NERRs were found to be adhering to programmatic requirements of the NERR System. Copies of these final evaluation findings may be obtained upon written request from: Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, or *Margo.E.Jackson@noaa.gov*, (301) 713–3155 Extension 114.

Federal Domestic Assistance Catalog 11.419; Coastal Zone Management Program Administration.

Capt. Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 00–6028 Filed 3–10–00; 8:45 am]
BILLING CODE 3510–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–203–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC GAS Tariff

March 7, 2000.

Take notice that on March 1, 2000, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets proposed to be effective April 1, 2000.

Thirteenth Revised Sheet No. 19
Seventh Revised Sheet No. 68H

ANR states that the purpose of this filing is to comply with the annual redetermination of the levels of ANR's Transporter's Use (%) as required by ANR's currently effective tariff, to become effective April 1, 2000. This redetermination reflects a decrease in the fuel use percentages for all of the transportation rate routes on ANR's system, as well as for storage and gathering services. ANR states that all of its Volume No. 1 and Volume No. 2 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the Web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5987 Filed 3–10–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–741–001]

Canal Emirates Power International, Inc.; Notice of Filing

March 7, 2000.

Take notice that on February 25, 2000, Canal Emirates Power International, Inc. (Canal), 22 Charles Street, Binghamton, New York 13905–2247, tendered for filing with the Federal Energy Regulatory Commission a revision to its market-based rate tariff. The filing consisted of 1st Revised Sheet No. 1, which superseded Original Sheet No. 1. The filing is intended to comply with the January 27, 2000 order of the Federal Energy Regulatory Commission in the above-referenced docket, which granted the Petition of Canal Emirates Power International, Inc., for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority, subject to the requirement that Canal revise its rate schedule to limit its authority to sell ancillary services to sales into the markets administered by the New York ISO.

Canal is a privately-held New York corporation having its principal place of business at 22 Charles Street, Binghamton, New York 13905–2247. Canal is the owner of a 50 MW cogeneration facility that is located in Binghamton. Canal is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric

energy at wholesale. Canal does not have any affiliate corporations.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 17, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5974 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–202–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 7, 2000.

Take notice that on March 1, 2000, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of April 1, 2000:

Forty-fourth Revised Sheet No. 25
Forty-fourth Revised Sheet No. 26
Forty-fourth Revised Sheet No. 27
Fortieth Revised Sheet No. 28
Nineteenth Revised Sheet No. 30
Fifteenth Revised Sheet No. 31

Columbia states that these revised tariff sheets are filed pursuant to Section 45, "Electric Power Costs Adjustment (EPCA)," of the General Terms and Conditions (GTC) of Columbia's FERC Gas Tariff, Second Revised Volume No. 1. Section 45.1 allows Columbia to recover electric power costs incurred for compression of natural gas by means of various Transportation EPCA Rates and an LNG EPCA Rate, each of which shall be comprised of a current EPCA rate and an EPCA surcharge. The Transportation EPCA Rate is applicable to buyers under Columbia's FTS, NTS, SST, GTS, OPT, and ITS rate schedules. The LNG EPCA Rate is applicable to Rate Schedules X–131, X–132, and X–133.

Columbia states that these revised tariff sheets are being filed to reflect adjustments to Columbia's current costs for electric power for the twelve-month period beginning April 1, 2000.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5978 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–200–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 7, 2000.

Take notice that on March 1, 2000, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of April 1, 2000:

Forth-third Revised Sheet No. 25
Forty-third Revised Sheet No. 26
Forty-third Revised Sheet No. 27
Thirty-ninth Revised Sheet No. 28

Columbia states that this filing comprises Columbia's annual filing pursuant to Section 36.2 of the General Terms and Conditions (GTC) of its Tariff. GTC Section 36, "Transportation Costs Rate Adjustment (TCRA)," enables Columbia to adjust its TCRA rates prospectively to reflect estimated current costs and unrecovered amounts for the deferral period. The TCRA rates consist of a current TCRA rate, reflecting an estimate of costs for a prospective 12-month period, and a TCRA surcharge rate, which is a true-up for actual activity within the deferral period. In this filing, the TCRA rate consists of a Current Operational TCRA Rate and an Operational TCRA Surcharge to recover the unrecovered amounts for the deferral period pursuant to GTC Section 36.4(a).

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commissions and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5979 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–198–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 7, 2000.

Take notice that on March 1, 2000, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised

Volume No. 1, the following revised tariff sheet, with a proposed effective date of April 1, 2000:

Eighth Revised Sheet No. 44

Columbia states that it submits its annual filing pursuant to the provisions of Section 35, Retainage Adjustment Mechanism (RAM), of the General Terms and Conditions (GTC) of its Tariff. Eighth Revised Sheet No. 44 sets forth the retainage factors applicable to Columbia's transportation, storage and gathering services, as revised by this filing.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5980 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–197–000

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 7, 2000.

Take notice that on March 1, 2000, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of April 1, 2000:

Twenty-third Revised Sheet No. 18
Thirteenth Revised Sheet No. 18A
Twenty-fourth Revised Sheet No. 19

Columbia Gulf states that this filing represents Columbia Gulf's annual filing pursuant to the provisions of Section 33, Transportation Retainage Adjustment (TRA), of the General Terms and Conditions (GTC) of its Tariff.

Columbia Gulf further states that the tariff sheets listed above set forth the transportation retainage factors as a result of this filing. GTC Section 33.2 enables Columbia Gulf to state retainage factors for its rate zones, which factors consist of a current and an over/under recovered component. Pursuant to GTC Section 33.4(a), the current component reflects the estimate of total company-use, lost, and unaccounted-for quantities required during the 12-month period commencing, in an annual filing such as this, on April 1. Pursuant to GTC Section 33.4(b) the over/under recovered component reflects the reconciliation of "actual" company-use, lost, and unaccounted-for quantities with quantities actually retained by Columbia Gulf for the preceding calendar year; *i.e.*, the deferral period.

The deferral period for this annual filing is the preceding calendar year being January 1, 1999 through December 31, 1999. Appendix A sets forth Columbia Gulf's actual experience during the deferral period. As reflected therein, Columbia Gulf was in a net under-recovery position as of December 31, 1999. Consequently, in this filing Columbia Gulf is implementing an under-recovered surcharge component for each of the retainage factors to increase future quantities to be retained.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers; and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5981 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11516–000]

Commonwealth Power Company; Notice Granting Intervention

March 7, 2000.

On February 9, 1995, the Commission issued a notice of the application for a license filed by Commonwealth Power Company (Commonwealth) for the existing Irving Dam Project No. 11516, located on the Thornapple River in Barry County, Michigan. The notice established April 10, 1995, as the deadline for filing motions to intervene.

On March 24, 1995, the Michigan Department of Natural Resources (MDNR) filed a timely request for intervention. Commonwealth filed a response in opposition to the motion.

Granting the motion to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the motion to intervene in this proceeding file by MDNR is granted, subject to the Commission's Rules and Regulations.

David P. Boergers,

Secretary.

[FR Doc. 00–5990 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–047]

El Paso Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

March 7, 2000.

Take notice that on March 1, 2000, El Paso Natural Gas Company (El Paso), tendered for filing the following tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1–A, to become effective March 1, 2000.

Twenty-Second Revised Sheet No. 31

El Paso states that the above tariff sheet is being filed to implement a

[1] 18 CFR 385.214 (1999).

negotiated rate contract pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.10 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must filed a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5988 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP93–187–017, RP93–62–015 and CP88–546–010]

Equitrans, L.P.; Notice of Refund Report

March 7, 2000.

Take notice that on March 1, 2000, Equitrans, L.P. (Equitrans), tendered for filing its Refund Report pursuant to Article II, Section 2 of the Stipulation and Agreement (Settlement) filed on July 31, 1995 in the above reference dockets, and approved by the Commission on September 28, 1995.

Equitrans states that the purpose of this filing is to report the refunds made to its customers on February 29, 2000 for the difference between the amount collected during the four-year surcharge period for well plugging and abandonment and the $2.6 million Equitrans was authorized to collect. The total amount refunded is $55,882.95, which includes interest computed in accordance with Section 154.501 of the Commission's Regulations. The refunds were allocated based on the same percentages used in collecting the surcharge from each customer over the four-year period.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 14, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5976 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–208–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

March 7, 2000.

Take notice that on March 1, 2000, Panhandle Eastern Pipe Line Company (Panhandle), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective April 1, 2000.

Panhandle states that this filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, First Revised Volume No. 1.

Panhandle states that the revised tariff sheets filed herewith reflect the following changes to Fuel Reimbursement Percentages:

(1) No change in the Gathering Fuel Reimbursement Percentage;

(2) No change in the Field Zone Fuel Reimbursement Percentage;

(3) a (0.05%) decrease in the Market Zone Fuel Reimbursement Percentage;

(4) No change in the Injection and in the Withdrawal Field Area Storage Reimbursement Percentages; and

(5) No change in the Injection and in the Withdrawal Market Area Storage Reimbursement Percentages.

Panhandle further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5985 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–011]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

March 7, 2000.

Take notice that on March 1, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A Seventh Revised Sheet No. 7 and Fourth Revised Sheet No. 7A. PG&E GT–NW requests that the above-referenced tariff sheets become effective March 1, 2000.

PG&E GT–NW states that these sheets are being filed to reflect the implementation of two negotiated rate agreements.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers, and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers.

Secretary.

[FR Doc. 00–5989 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–207–000]

Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

March 7, 2000.

Take notice that on March 1, 2000, Southwest Gas Storage Company (Southwest), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet proposed to become effective April 1, 2000.

First Revised Sheet No. 5

Southwest states that this filing is made in accordance with Section 16 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Southwest's FERC Gas Tariff, First Revised Volume No. 1. The Fuel Reimbursement Adjustment filed herewith reflects the following Fuel Reimbursement Percentage: (1) West Area Storage Facilities Injection 1.36% and Withdrawal 0.59%; and (2) East Area Storage Facilities Injection 2.37% and Withdrawal 1.11%.

Southwest further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers.

Secretary.

[FR Doc. 00–5977 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–204–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 7, 2000.

Take notice that on March 1, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective April 1, 2000.

Transco states that the instant filing is submitted pursuant to Section 41 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file to reflect net changes in the Transmission Electric Power (TEP) rates 30 days prior to each TEP Annual Period beginning April 1. Attached in Appendix B are workpapers supporting the derivation of the revised TEP rates reflected on the tariff sheets included therein.

The TEP rates are designed to recover Transco's transmission electric power costs for its electric compressor stations (Stations 100, 115, 120, 125, 145 and 205). The costs underlying the revised TEP rates consist of two components—the Estimated TEP Costs for the period April 1, 2000 through March 31, 2001 plus the balance in the TEP Deferred Account including accumulated interest as of January 31, 2000. Appendix C contains schedules detailing the Estimated TEP Costs for the period April 1, 2000 through March 31, 2001 and Appendix D contains workpapers supporting the calculation of the TEP Deferred Account.

Transco states that it is serving copies of the instant filing to its affected customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5984 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–209–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 7, 2000.

Take notice that on March 1, 2000, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets enumerated in Appendix A attached to the filing.

Transco states that the instant filing is submitted pursuant to Section 38 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file, to be effective each April 1, a redetermination of its fuel retention percentages

applicable to transportation and storage rate schedules. The derivations of the revised fuel retention percentages included therein are based on Transco's estimate of gas required for operations (GRO) for the forthcoming annual period April 2000 through March 2001 plus the balance accumulated in the Deferred GRO Account at January 31, 2000. Transco has included an adjustment to the calculation of the deferred GRO for the annual period April 1999 through March 2000 in order to comply with the Commission's February 23, 2000 order (Order) in Transco's Docket No. TM99–6–29–000.

Also included in the filing is an alternate sheet that reflects a decrease in the fuel retention percentage applicable to the firm storage service provided by Transco under Rate Schedules LG–A, LNG, LNG–R and LG–S. The fuel percentages on the alternate sheet reflects a large under recovery in Transco's Deferred GRO Account amortized over a three year period, along with the estimate of the GRO for the forthcoming annual period.

Included in Appendices B and B–1 attached to the filing are the workpapers supporting the derivation of the revised fuel retention factors. Appendix C contains workpapers supporting the recalculation of the Deferred GRO Account balance as of January 31, 2000.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5986 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–102–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

March 6, 2000.

Take notice that on February 28, 2000, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, tendered for filing in Docket No. CP00–102–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a delivery point for a new gas transportation customer, Visy Paper, Inc. (Visy Paper), a paper manufacturer, under Transco's blanket certificate issued in Docket No. CP82–426–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that the delivery point will consist of two 4-inch tap valve assemblies, a meter station with one 3-inch orifice meter tube, 3-inch inlet and outlet meter station yard piping, electronic flow measurement equipment, and other appurtenant facilities. Transco states that the delivery point will be installed at or near milepost 1065.00 on Transco's mainline in Rockdale County, Georgia. Transco also states that Visy Paper will construct, or cause to be constructed, appurtenant facilities to enable it to receive gas from Transco at such point and move the gas to its existing paper plant. Transco states the new delivery point will be used by Visy Paper to receive up to 6,000 dekatherms per day (dt/d) of gas from Transco on a firm, capacity release or interruptible basis. Transco states that upon completion of the delivery point, Transco will commence transportation service to Visy Paper or its suppliers pursuant to Transco's Rate Schedules FT, FT–R or IT and Part 284(G) of the Commission's regulations. Transco states that the addition of the delivery point will have no significant impact on its peak day or annual deliveries, and is not prohibited by its FERC Gas Tariff. Transco has estimated the total costs of Transco's proposed facilities to be approximately $254,045. Transco states that Visy Paper will reimburse Transco for all costs associated with such facilities.

In addition, Transco states that Visy Paper's plant is currently served by Atlanta Gas Light Company's (AGL) system. Transco also states that gas is physically delivered to the plant by AGL's system, but Visy Paper purchases the gas from others. Transco states that Visy Paper has informed Transco that, for a variety of business reasons, Visy Paper wants to have gas supplied to its plant in the future by the Transco system.

Transco further states that it filed an application with the Commission on April 29, 1999 in Docket No. CP99–392–000 for its SouthCoast Expansion Project (SouthCoast Project), and that one of the customers on such project is Visy Paper, which will receive gas at this delivery point on a firm basis for 4,500 dt/d. Transco states that once the SouthCoast Project is in service, Visy Paper will be entitled to receive gas at this delivery point on a firm basis. Transco states that the SouthCoast Project is scheduled to go into service on November 1, 2000. Transco states that Visy Paper has represented to Transco that it is important for Visy Paper to begin receiving gas at this delivery point as soon as possible on a capacity release or interruptible basis. Transco states that Visy Paper has, therefore, requested Transco to file this prior notice application now so that it can begin receiving as at this delivery point as soon as possible.

Transco's contact person for this project is Toi Anderson, P.O. Box 1396, Houston, Texas 77251, (713) 215–4540.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6063 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–206–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 7, 2000.

Take notice that on March 1, 2000, Trunkline Gas Company (Trunkline), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing to become effective April 1, 2000.

Trunkline states that this filing is being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of Trunkline's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets listed on Appendix A reflect: a (0.48)% decrease (Field Zone to Zone 2), a (0.46)% decrease (Zone 1A to Zone 2), a (0.17)% decrease (Zone 1B to Zone 2), a 0.08% increase (Zone 2 only), a (0.53)% decrease (Field Zone to Zone 1B), a (o.51)% decrease (Zone 1A to Zone 1B), a (0.22)% decrease (Zone 1B only), a (0.28)% decrease (Field Zone to Zone 1A), a (0.26)% decrease (Zone 1A only) and a 0.01% increase (Field Zone only) to the currently effective fuel reimbursement percentages.

Trunkline states that a copy of this filing are being served on all affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5982 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–257–005]

William Gas Pipelines Central, Inc; Notice of Proposed Changes in FERC Gas Tariff

March 7, 2000.

Take notice that on March 1, 2000, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet Nos. 30–32, with the proposed effective date of November 1, 1999.

Williams states that it made a filing in this docket on December 30, 1999 to set forth each customer's direct bill or refund amount in Williams' FERC Gas Tariff and to modify Articles 14.2, 27 and 28 to refer only to the Settlement. The instant filing is being made to correct the allocations among four customers. Two customers were affected by a capacity release adjustment not reflected correctly. Two other customers were affected by a contract that was transferred from one customer to the other not being reflected in the system on the correct date. A revised Exhibit B1 and B2 are enclosed, as well as revised tariff sheets.

Williams state that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5983 Filed 3–10–00; 8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2720–032 and 2471–005]

Wisconsin Electric Power Company; Notice Granting Late Intervention

March 7, 2000.

On December 2, 1999, the Commission issued a notice of the application for amendment of license filed by Wisconsin Electric Power Company (Wisconsin Electric), for its existing Sturgeon Falls Project No. 2720, located on the Menominee River, in Dickenson County, Michigan and Marinette County, Wisconsin. The notice established January 31, 2000, as the deadline for the filing of motions to intervene.

On December 3, 1999, the Commission issued a notice of the application for surrender of license filed by Wisconsin electric for its existing Sturgeon Hydroelectric Project No. 2471, located on the sturgeon river, in Dickenson County, Michigan. The notice established February 1, 2000, as the deadline for filing motions to intervene.

On February 4, 2000, River Alliance of Wisconsin filed a late motion to intervene in both proceedings.[1] Granting the motion to intervene will not unduly delay or disrupt the proceedings or any other parties to them. Therefore, pursuant to Rule 214,[2] the motion to intervene filed in these proceedings by the River Alliance of Wisconsin is granted, subject to the Commission's rules and regulations.

David P. Boergers,

Secretary.

[FR Doc. 00–5975 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–105–000, *et al.*]

Texas Independent Energy Operating Company, LLC, *et al.* Electric Rate and Corporate Regulation Filings

March 6, 2000.

Take notice that the following filings have been made with the Commission:

[1] By the same pleading, River Alliance of Wisconsin filed timely motions to intervene in several related proceedings. Because those motions were unopposed, they were granted automatically.

[2] 18 CFR 385.214.

[Docket No. EG00–105–000]

1. Texas Independent Energy Operating Company, LLC

Take notice that on March 1, 2000, Texas Independent Energy Operating Company, LLC (Applicant), with its principal office at 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware limited liability company. Applicant will be engaged directly, or indirectly through a Section 2(a)(11)(B) affiliate, and exclusively in operating a 1000 MW natural gas-fired generating facility and certain interconnection facilities necessary to effect the sale of electric energy at wholesale located in Ector County, Texas and a 1000 MW natural gas-fired generating facility and certain interconnection facilities necessary to effect the sale of electric energy at wholesale located in Guadalupe County, Texas; selling electric energy at wholesale; and engaging in project development activities with respect thereto.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

[Docket No. EG00–106–000]

2. Doyle I, L.L.C.

Take notice that on February 28, 2000, Doyle I, L.L.C. (Doyle), a limited liability company with its principal place of business at 1400 Smith Street, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Doyle states that it will be engaged directly and exclusively in the business of owning and operating a natural-gas fired, 342 MW generation facility (Facility) located in Walton, Georgia. Doyle will sell the Facility's capacity exclusively at wholesale.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

[Docket No. EG00–107–000]

3. DTE Georgetown, LLC

Take notice that on March 1, 2000, DTE Georgetown, LLC (DTE Georgetown), a Delaware limited liability corporation with its principal place of business at 425 South Main Street, Suite 201, Ann Arbor, MI 48107, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

[Docket No. ER98–2683–006]

4. Nicole Energy Services, Inc.

Take notice that on March 1, 2000, Nicole Energy Services, Inc. filed a quarterly report for information only.

[Docket No. ER99–933–002]

5. California Power Exchange Corporation

Take notice that on March 1, 2000, the California Power Exchange Corporation (CalPX), tendered for filing a corrected refund report in the above-referenced docket.

Copies of the filing were served on each of CalPX's participants and on the official service list in this docket.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Calcasieu Power, LLC

[Docket No. ER00–1049–000]

Take notice that on March 1, 2000, Calcasieu Power, LLC tendered for filing pursuant to Rule 205, 18 CFR 385.205, a Revised FERC Electric Rate Schedule No. 1 in compliance with the Commission's order dated February 23, 2000.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Reliant Energy HL&P

[Docket No. ER00–1413–000]

Take notice that on February 25, 2000, Reliant Energy HL&P tendered for filing a revised executed transmission service agreement (TSA) with Tex-La Electric Cooperative of Texas, Inc., for Long-Term Firm Transmission Service under Reliant Energy HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. The executed TSA supersedes the unexecuted TSA filed in the above-captioned docket on January 31, 2000.

Reliant Energy HL&P has requested an effective date for the TSA of January 1, 2000.

Copies of the filing were served on Tex-La and the Public Utility Commission of Texas.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Delano Energy Company, Inc.

[Docket No. ER00–891–001]

Take notice that on February 29, 2000, Delano Energy Company, Inc. (Delano) tendered a compliance filing pursuant to the Commission's February 9 Order accepting Delano's request to engage in wholesale electric power and energy transactions at market-based rates (Market Rate Tariff) and directing Delano to limit its authority to sell ancillary services to sales into the markets administered by the California ISO.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PJM Interconnection, L.L.C.

[Docket No. ER99–1618–003]

Take notice that on March 1, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to Schedule 11 (PJM Capacity Credit Markets) of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. extending the expiration date of the mandatory Sell Offers and Buy Bids provision until May 31, 2001.

Copies of this filing were served upon all PJM Members and the electric regulatory commissions in the PJM Control Area.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. California Power Exchange Corporation

[Docket No. ER00–1642–000]

Take notice that on March 1, 2000, the California Power Exchange Corporation, on behalf of its CalPX Trading Services Division (CTS), tendered for filing an amendment to its February 17, 2000, filing in this proceeding. The purpose of the amendment is to make the filing consistent with the Commission's February 24, 2000, Order in Docket No. ER00–951–000.

CTS continues to request the same effective dates as it requested in the February 17, 2000 filing. Specifically, CTS requests waiver of notice to permit a March 1, 2000 effective date for the changes pertaining to providing notice on the new software. CTS requests a May 1, 2000 effective date for the bulk of the filing.

Copies of the filing were served upon the CTS' jurisdictional customers and

the California Public Utilities Commission.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER00–1743–000]

Take notice that on March 1, 2000, Entergy Services, Inc., on behalf of Entergy Corporation and the five Entergy Operating Companies: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (together Entergy), tendered for filing (1) a Pro Forma Interconnection and Operating Agreement and (2) Procedures and Requirements for Adding Generation to Entergy's Transmission System.

Entergy has requested that the Pro Forma Interconnection Agreement and Interconnection Procedures become effective at the earliest possible date.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Pacific Gas and Electric Company

[Docket No. ER00–1744–000]

Take notice that on March 1, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing several agreements between PG&E and East Bay Municipal Utility District (EBMUD)(collectively, Parties) providing for special facilities and the parallel operation of EBMUD's Pardee and Camanche Powerhouses and PG&E's electrical system. PG&E is filing the following agreements for each of the Pardee and Camanche Powerhouses, all dated February 15, 2000: (1) a Generator Special Facilities Agreement (GSFA); (2) a Generator Interconnection Agreement; and (3) a Letter Agreement Regarding Special Facilities and Interconnection.

The GSFA's permit PG&E to recover the ongoing costs associated with owning, operating and maintaining the Special Facilities, including the cost of any alterations and additions. As detailed in the Special Facilities Agreements, PG&E proposes to charge EBMUD a monthly Cost of Ownership Charge equal to the rate for transmission-level, customer-financed facilities in PG&E's currently effective Electric Rule 2, as filed with the California Public Utilities Commission (CPUC). PG&E's currently effective rate of 0.31% for Pardee Powerhouse or 0.307% for Camanche Powerhouse for transmission-level, customer-financed Special Facilities is contained in the CPUC's Advice Letter 1960-G/1587-E, effective August 5, 1996, a copy of which is included as Attachment 6 of this filing.

PG&E has requested permission to use automatic rate adjustments whenever the CPUC authorizes a new Electric Rule 2 Cost of Ownership Rate for transmission-level, customer-financed Special Facilities, but has agreed to cap the rate at 0.52% per month.

Copies of this filing have been served upon EBMUD and the CPUC.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. PJM Interconnection, L.L.C.

[Docket No. ER00–1745–000]

Take notice that on March 1, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing two executed umbrella service agreements for network integration transmission service under state required retail access programs. The agreements are with Total Gas & Electric, Inc., and Agway Energy Services-PA, Inc.

Copies of this filing were served upon the parties to the service agreements and the state commissions within the PJM control area.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. DTE Georgetown, LLC

[Docket No. ER00–1746–000]

Take notice that on March 1, 2000, DTE Georgetown, LLC (Georgetown) tendered for filing a petition for authorization to make sales of capacity and energy at market-based rates, and a request for certain related blanket authorizations and waivers.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. American Electric Power Service Corporation

[Docket No. ER00–1747–000]

Take notice that on March 1, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for El Paso Merchant Energy, L.P. and a Non-Firm Point-to-Point Transmission Service Agreement for Conectiv Energy Supply, Inc. The agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after February 1, 2000.

AEPSC also requests termination of one service agreement executed by Sonat Power Marketing, L.P., under AEP Companies' FERC Electric Tariff Original Volume No. 4. El Paso Merchant Energy, L.P. (EPME), the successor in interest to Sonat Power Marketing, L.P., has requested the termination of the service agreement.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Southwestern Electric Power Company

[Docket No. ER00–1748–000]

Take notice that on March 1, 2000, Southwestern Electric Power Company (SWEPCO), tendered for filing the final return on common equity (Final ROE) to be used in establishing final redetermined formula rates for wholesale service in Contract Year 1999 to Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc., the City of Hope, Arkansas, and East Texas Electric Cooperative, Inc. SWEPCO provides service to these Customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity.

In accordance with the provisions of the formula rate contracts, SWEPCO seeks an effective date of January 1, 1999 and, accordingly, seeks waiver, to the extent necessary, of the Commission's notice requirements.

Copies of the filing were served on the affected wholesale Customers, the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Sithe Maryland Holdings LLC, Sithe New Jersey Holdings LLC and Sithe Pennsylvania Holdings LLC

[Docket No. ER00–1749–000]

Take notice that on March 1, 2000, Sithe Maryland Holdings LLC, Sithe New Jersey Holdings LLC and Sithe Pennsylvania Holdings LLC (collectively, the Sithe PJM Companies), tendered for filing a Notification of

Change in Status and Petition for Acceptance of Pro Forma Revised Rate Schedules and Supplements, by which the Sithe PJM Companies provide notice that upon the closing of the sale of the equity interests in Sithe Maryland, Sithe New Jersey and Sithe Pennsylvania to Reliant Energy Power Generation, Inc., or one or more of its direct or indirect, wholly-owned subsidiaries, the Sithe PJM Companies' successors, Reliant Energy Maryland Holdings, LLC, Reliant Energy New Jersey Holdings, LLC and Reliant Energy Pennsylvania Holdings, LLC, will be affiliated with an electric utility with a franchised service territory and various exempt wholesale generators.

Due to the affiliation post-transaction with a traditional electric utility, the Sithe PJM Companies are submitting for filing pro forma revised FERC Electric Rate Schedules Nos. 1 and 2 and Codes of Conduct.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. PJM Interconnection, L.L.C.

[Docket No. ER00–1750–000]

Take notice that on March 1, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing 4 executed service agreements for network integration transmission service and for point-to-point transmission service under the PJM Open Access Transmission Tariff.

Copies of this filing were served upon the parties to the service agreements and the state commissions within the PJM control area.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Doyle I, L.L.C.

[Docket No. ER00–1751–000]

Take notice that on March 1, 2000, Doyle I, L.L.C., pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1994), and section 35.12 of the Commission's Regulations, 18 CFR 35.12, tendered for filing an initial rate schedule, FERC Electric Rate Schedule No. 1, for the sale of capacity at cost-based rates, applicable to a Power Purchase and Sale Agreement, as amended, between Doyle and Oglethorpe Power Corporation (Oglethorpe).

Doyle requests that the Commission grant waivers of certain regulatory requirements under Subpart A of 18 CFR Part 35, as described below. In addition, Doyle requests waiver of the 60-day prior notice requirement to permit its initial rate schedule to be effective March 15, 2000.

Copies of the filing were served upon Oglethorpe and on the Georgia Public Service Commission.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Services, Inc.

[Docket No. ER00–1752–000]

Take notice that on March 1, 2000, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing an Assignment and Consent Agreement between Entergy Services, Ralph R. Mabey as Chapter 11 Trustee for Cajun Electric Power Cooperative, Inc., and Louisiana Generating LLC.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Duquesne Light Company

[Docket No. ER00–1753–000]

Take notice that March 1, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated February 29, 2000 with Cargill-Alliant, LLC under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Cargill-Alliant, LLC as a customer under the Tariff.

DLC requests an effective date of February 29, 2000 for the Service Agreement.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Duquesne Light Company

[Docket No. ER00–1754–000]

Take notice that March 1, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated February 29, 2000, with Cargill-Alliant LLC under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Cargill-Alliant LLC as a customer under the Tariff.

DLC requests an effective date of February 29, 2000, for the Service Agreement.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Duquesne Light Company

[Docket No. ER00–1755–000]

Take notice that on March 1, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated February 29, 2000 with FirstEnergy Corporation under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds FirstEnergy Corporation as a customer under the Tariff.

DLC requests an effective date of February 29, 2000, for the Service Agreement.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Duquesne Light Company

[Docket No. ER00–1756–000]

Take notice that March 1, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated February 29, 2000, with FirstEnergy Corporation under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds FirstEnergy Corporation as a customer under the Tariff.

DLC requests an effective date of February 29, 2000, for the Service Agreement.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Duquesne Light Company

[Docket No. ER00–1757–000]

Take notice that March 1, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated December 10, 1999 with Allegheny Energy Supply Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Allegheny Energy Supply Company as a customer under the Tariff.

DLC requests an effective date of February 29, 2000, for the Service Agreement.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Duquesne Light Company

[Docket No. ER00–1758–000]

Take notice that March 1, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated December 10, 1999 with Allegheny Energy Supply Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Allegheny Energy Supply Company as a customer under the Tariff.

DLC requests an effective date of February 29, 2000, for the Service Agreement.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Duquesne Light Company

[Docket No. ER00–1759–000]

Take notice that March 1, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated February 29, 2000 with Conectiv Energy Supply, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Conectiv Energy Supply, Inc. as a customer under the Tariff.

DLC requests an effective date of February 29, 2000, for the Service Agreement.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Ameren Services Company

[Docket No. ER00–1760–000]

Take notice that on March 1, 2000, Ameren Services Company (Ameren Services), tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Farmington, Missouri (Farmington). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Farmington pursuant to Ameren's Open Access Tariff.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Ameren Services Company

[Docket No. ER00–1761–000]

Take notice that on March 1, 2000, Ameren Services Company (Ameren Services), tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Owensville, Missouri (Owensville). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Owensville pursuant to Ameren's Open Access Tariff.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Ameren Services Company

[Docket No. ER00–1762–000]

Take notice that on March 1, 2000, Ameren Services Company (Ameren Services), tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and City Light & Power, City of Fredericktown, Missouri (Fredericktown). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Fredericktown pursuant to Ameren's Open Access Tariff.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Cleco Utility Group Inc.

[Docket No. ER00–1763–000]

Take notice that on March 1, 2000, Cleco Utility Group Inc., Transmission services (CLECO), tendered for filing their service agreement for short term firm point-to-point transmission services under its Open Access Transmission Tariff with Aquila Energy Marketing Corporation.

CLECO requests an effective date of March 7, 2000.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Dayton Power and Light Company

[Docket No. ER00–1764–000]

Take notice that on March 1, 2000, Dayton Power and Light (DP&L), tendered for filing a Transmission and Ancillary Service Reassignment Tariff.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Maine Public Service Company

[Docket No. ER00–1765–000]

Take notice that on March 1, 2000, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service under Maine Public's open access transmission tariff with WPS Energy Services, Inc.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Tampa Electric Company

[Docket No. ER00–1766–000]

Take notice that on March 1, 2000, Tampa Electric Company (Tampa Electric) tendered for filing a service agreement with Southern Company Services, Inc. (Southern) under Tampa Electric's market-based sales tariff.

Tampa Electric requests that the service agreement be made effective on February 3, 2000.

Copies of the filing have been served on Southern and the Florida Public Service Commission.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. Conectiv Energy Supply, Inc.

[Docket No. ER00–1770–000]

Take notice that March 1, 2000, Conectiv, on behalf of Conectiv Energy Supply, Inc. (CESI), Conectiv Delmarva Generation, LLC (CDG) and Conectiv Atlantic Generation, LLC (CAG), on March 1, 2000, tendered for filing under the provisions of Section 205 of the Federal Power Act: (1) CESI's updated market-based rate tariff, a notice of change in status and CESI's service agreements with Delmarva Power & Light Company and Atlantic City Electric Company; (2) CDG's market-based rate tariff and CDG's tolling agreement with CESI, which is a service agreement pursuant to this tariff; and (3) CAG's market-based rate tariff and CAG's service agreement with CESI under this tariff.

Conectiv requests that the Commission allow the rate schedule to become effective on May 1, 2000, which is sixty days after the filing and the date on which Conectiv hopes that the transfer of certain generating facilities to CDG and CAG will occur.

Copies of the filing were served upon Delmarva's wholesale requirements customers, and the Maryland People's Counsel, Maryland Public Service Commission, Delaware Public Service Commission, New Jersey Public Service Commission and the Virginia State Corporation Commission.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. Atlantic City Electric Company, Delmarva Power and Light Company

[Docket Nos. ER00–1771–000 and ER00–1772–000]

Delmarva Power and Light Company Docket No. ER00–1772–000

Take notice that March 1, 2000, Atlantic City Electric Company (Atlantic) and Delmarva Power and Light Company (Delmarva), tendered for filing interconnection agreements between Atlantic and Conectiv Atlantic Generation, LLC (CAG); and between Delmarva and Conectiv Delmarva, LLC (CDG).

The Atlantic Interconnection Agreement contains terms and conditions for the interconnection of CAG and Atlantic facilities and the Delmarva Interconnection Agreement contains terms and conditions for the interconnection of CDG and Delmarva facilities.

Copies of the filing were served upon the Delaware Public Service Commission, the Maryland Public Service Commission, the State of New Jersey Board of Public Utilities and the

Virginia State Corporation Commission, Energy Division, where the two utilities operate, Delmarva's jurisdictional requirements customers and Vineland, Dover, Easton and Old Dominion Electric Cooperative who are transmission dependent utilities taking interconnection service from Delmarva and Atlantic.

Comment date: March 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. Oklahoma Gas and Electric Company

[Docket No. ER00–1785–000]

Take notice that on February 25, 2000, Oklahoma Gas and Electric Company (OG&E) tendered for filing a revised Open Access Transmission Tariff to provide Network Integration Transmission Service under the Southwest Power Pool, Inc. (SPP) Regional Tariff.

Copies of this filing have been served on the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

38. Public Service Company of New Mexico

[Docket No. ER00–1786–000]

Take notice that on February 29, 2000, Public Service Company of New Mexico (PNM) filed as an amendment to the San Juan Project Participation Agreement (Participation Agreement) an Interim Invoicing Agreement with respect to invoicing for coal deliveries from San Juan Coal Company among PNM, Tucson Electric Power Company (TEP) and the other owners of interests in the San Juan Generating Station. This interim agreement effectively modifies the Participation Agreement for an interim period from January 1, 2000 through December 31, 2000.

PNM requests waiver of the Commission's notice requirements in order to allow the Interim Invoicing Agreement to be effective as of January 1, 2000.

Copies of this filing have been served upon the New Mexico Public Regulation Commission, TEP and each of the owners of an interest in the San Juan Generating Station.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5992 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

March 8, 2000.

The Following Notice of Meeting is Published Pursuant to Section 3(A) of the Government in The Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission

DATE AND TIME: March 15, 2000, 10:00 a.m.

PLACE: Room 2C 888 First Street, N.E. Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda * Note—Items Listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400, For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 736th—Meeting March 15, 2000, Regular Meeting (10:00 a.m.)

CAH–1.
Docket# EL95–49, 001, Fourth Branch Associates v. Niagara Mohawk Power Corporation
Other#s P–6032, 040, Fourth Branch Associates v. Niagara Mohawk Power Corporation

CAH–2.
Docket# P–6559, 015, H. Bruce Cox

CAH–3.
Docket# P–4632, 021, Clifton Power Corporation
Other#s P–4632, 023, Clifton Power Corporation

CAH–4.
Docket# P–459, 105, The Coalition for the Fair and Equitable Regulation of Docks on Lake of the Ozarks, Inc. V. Union Electric Company, D.B.A. Amerenue

Consent Agenda—Electric

CAE–1.
Docket# ER00–1139, 000, Gleason Power I, L.L.C.
Other#s ER00–1140, 000, Des Plaines Green Land DevelopmenT, L.L.C.
ER00–1141, 000, West Fork Land Development Company, L.L.C.
ER00–1147, 000, Aes Londonderry, LLC
ER00–1171, 000, Tiverton Power Associates Limited Partnership

CAE–2.
Omitted

CAE–3.
Docket# ER00–1182, 000, Puget Sound Energy, Inc.

CAE–4.
Docket# ER00–1258, 000, First Electric Cooperative Corporation
Other#s EL00–37, 000, First Electric Cooperative Corporation

CAE–5.
Docket# ER00–1175, 000, NSP Operating Companies

CAE–6.
Omitted

CAE–7.
Docket# ER97–1523, 022, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., New York Power Authority and Rochester Gas and Electric Corporation

CAE–8.
Docket# OA97–163, 008, Mid-Continent Area Power Pool
Other#s OA97–658, 008, Mid-Continent Area Power Pool
ER97–1162, 007, Mid-Continent Area Power Pool

CAE–9.
Docket# ER99–2609, 000, Firstenergy Operating Companies
Other#s EL99–71, 000, Firstenergy Operating Companies
EL99–71, 001, Firstenergy Operating Companies
ER99–2609, 002, Firstenergy Operating Companies
ER99–2647, 000, American Transmission Systems, Inc.

CAE–10.
Docket# ER99–3084, 000, Entergy Services, Inc.
Other#s ER99–3093, 000, Entergy Services, Inc.
ER99–3133, 000, Entergy Services, Inc.
ER99–3175, 000, Entergy Services, Inc.
ER99–3176, 000, Entergy Services, Inc.
ER99–3188, 000, Entergy Services, Inc.
ER99–3252, 000, Entergy Services, Inc.

ER99–3302, 000, Entergy Services, Inc.
ER99–3315, 000, Entergy Services, Inc.
ER99–3960, 000, Entergy Services, Inc.
CAE–11.
Docket# ER99–3393, 000, PJM Interconnection, L.L.C.
CAE–12.
Docket# EC00–38, 000, Peco Energy Company
Other#s EL00–26, 000, Susquehanna Power Company
ER00–803, 000, Peco Energy Power Company
CAE–13.
Docket# EC00–34, 000, Atlantic City Electric Company, Delmarva Power & Light Company and Peco Energy Company
Other#s EC00–35, 000, Atlantic City Electric Company, Delmarva Power & Light Company and PSEG Nuclear LLC
CAE–14.
Omitted
CAE–15.
Docket# EF99–3021, 000, United States Department of Energy—Southeastern Power Administration
CAE–16.
Omitted
CAE–17.
Omitted
CAE–18.
Docket# EL99–54, 001, San Francisco Bay Area Rapid Transit District v. Pacific Gas and Electric Company
CAE–19.
Omitted
CAE–20.
Docket# ER99–2332, 001, Sierra Pacific Power Company
CAE–21.
Omitted
CAE–22.
Docket# EL99–58, 000, Village of Freeport, New York v. Consolidated Edison Company of New York, Inc.
CAE–23.
Docket# NJ99–3, 000, Salt River Project Agricultural Improvement and Power District
CAE–24.
Docket# EL00–32, 000, Public Service Company of Colorado
CAE–25.
Omitted
CAE–26.
Docket# EL00–12, 000, Tennessee Power Company
CAE–27.
Docket# EL98–36, 000, Aquila Power Corporation v. Entergy Services, Inc., Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc. and Entergy Gulf States, Inc.
Other#s ER91–569, 009, Entergy Services, Inc.
CAE–28.
Docket# EL00–20, 000, Southern California Water Company, d.b.a Bear Valley Electric v. Southern California Edison Company
CAE–29.
Docket# EL99–92, 000, Midamerican Energy Company
CAE–30.
Docket# EL00–24, 000, The Village of Jackson Center, Ohio, The Village of Versailles, Ohio and The City of Tipp City, Ohio v. The Dayton Power & Light Company
CAE–31.
Docket# EL99–66, 000, Wabash Valley Power Association and American Municipal Power-Ohio, Inc. v. American Electric Power Service Corporation
Other#s EL99–72, 000, Indiana Municipal Power Agency v. American Electric Power Service Corporation
CAE–32.
Docket# OA00–2, 000, Midamerican Energy Company

Consent Agenda—Gas and Oil

CAG–1.
Docket# RP00–180, 000, Williston Basin Interstate Pipeline Company
CAG–2.
Docket# RP00–182, 000, Young Gas Storage Company, Ltd.
CAG–3.
Docket# RP99–286, 000, Granite State Gas Transmission, Inc.
Other#s RP99–286, 001, Granite State Gas Transmission, Inc.
CAG–4.
Docket# RP99–176, 010, Natural Gas Pipeline Company of America
CAG–5.
Docket# RP00–76, 001, Wyoming Interstate Company, Ltd.
CAG–6.
Docket# RP00–181, 000, MIGC, Inc.
CAG–7.
Docket# RP00–108, 001 ,Questar Pipeline Company
CAG–8.
Docket# RP99–330, 001, Consumer Services Association, Inc. d/b/2 United Gas Services v. K N Interstate Gas Transmission Company and K N Energy, Inc.
CAG–9.
Omitted
CAG–10.
Docket# RP97–71, 000, Transcontinental Gas Pipe Line Corporation
CAG–11.
Docket# PR99–19, 000, Oneok Gas Storage, L.L.C. and Oneok Sayre Storage Company
CAG–12.
Docket# RP87–15 et al., 036, Trunkline Gas Company, et al.
Other#s RP92–122, 008, Trunkline LNG Company
CAG–13.
Docket# RP96–312, 017, Tennessee Gas Pipeline Company
Other#s RP96–312, 025, Tennessee Gas Pipeline Company
RP96–312, 026, Tennessee Gas Pipeline Company
GT99–26, 002, Tennessee Gas Pipeline Company
CAG–14.
Docket# RP99–335, 001, Transwestern Pipeline Company
CAG–15.
Docket# RP97–375, 009, Wyoming Interstate Company, Ltd.
Other#s RP99–381, 000, Wyoming Interstate Company, Ltd.
CAG–16.
Omitted
CAG–17.
Docket# RP00–8, 003, Reliant Energy Gas Transmission Company
CAG–18.
Docket# GP91–8, 008, Jack J. Grynberg v. Rocky Mountain Natural Gas Company
Other#91–10, 008, Rocky Mountain Natural Gas Company v. Jack J. Grynberg
CAG–19.
Docket# OR99–3, 000, Frontier Oil and Refining Company v. Express Pipeline Partnership
CAG–20.
Docket# MG99–26, 001, Dauphin Island Gathering Partners
CAG–21.
Docket# CP98–238, 002, Destin Pipeline Company, L.L.C.
CAG–22.
Docket# CP00–41, 000, Questar Pipeline Company
CAG–23.
Docket# CP00–56, 000, Atmos Energy Corporation
Other#s CP00–60, 000, Associated Natural Gas Company
CAG–24.
Docket# CP99–615, 000, Petal Gas Storage, L.L.C.
CAG–25.
Docket# CP99–21, 000, Northern Border Pipeline Company
CAG–26.
Docket# CP99–579, 001, Southern LNG Inc.
Other#s CP99–580, 001, Southern LNG Inc.
CP99–581, 001, Southern LNG Inc.
CP99–582, 002, Southern LNG Inc.
CAG–27.
Docket# CP99–61, 002, Tristate Pipeline, L.L.C.
Other#s CP99–62, 002, Tristate Pipeline, L.L.C.
CP99–63, 002, Tristate Pipeline, L.L.C.
CP99–64, 002, Tristate Pipeline, L.L.C.
CAG–28.
Docket# RM98–17, 001, Landowner Notifications, Expanded Categorical Exclusions, and Other Environmental Filing Requirements
CAG–29.
Docket# PR00–1, 000, Oneok Field Services Company
Other#s PR00–1, 001, Oneok Field Services Company
CAG–30.
Docket# CP97–549, 001, CNG Transmission Corporation
CAG–31.
Docket# GP97–1, 002, Rocky Mountain Natural Gas Company
CAG–32.
Docket# RP99–504, 000, Willians Gas Pipelines Central, Inc.

Hydro Agenda

H–1. Reserved

Electic Agenda

E–1.
Docket# EC98–40, 000, Americal Electric Power Company and Central and South West Corporation
Other# ER98–2770, 000, American Electric Power Company and Central and South West Corporation

ER98–2786, 000, American Electric Power Company and Central and South West Corporation Opinion and Order on Merger.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Reserved

David P. Boergers,

Secretary.

[FR Doc. 00–6163 Filed 3–9–00; 11:41 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Revised Landowner Pamphlet

March 7, 2000.

The "most recent edition" of the Commission's pamphlet: "An Interstate Natural Gas Facility on My Land? What Do I Need to Know?", has been issued. It is dated February 2000.

The revised pamphlet is available on the Commission's website. From the home page at www.ferc.fed.us select the link to the Office of External Affairs in the lower right column of links, or enter www.ferc.fed.us/intro/oea directly into your browser. The link to the revised pamphlet (www.ferc.fed.us/intro/oea/6513gpo.pdf) is on this page. This version should be used and may be copied until the full color version of the pamphlet is available through the Government Printing Office (GPO). The Commission will issue a further notice when the pamphlet may be obtained from the GPO.

Questions about the pamphlet should be directed to: Federal Energy Regulatory Commission, Office of External Affairs, 888 First Street, N.E., Washington, DC 20426, (202) 208–1088.

David P. Boergers,

Secretary.

[FR Doc. 00–5991 Filed 3–10–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6560–1]

Interim Statement of Policy on Alternative Dispute Resolution

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This document publishes the interim statement of policy of the United States Environmental Protection Agency regarding the use of alternative dispute resolution ("ADR"). In addition to publishing the interim statement of policy, this document describes a process for developing and issuing a final EPA policy on ADR. We are also requesting public comment on issues that the Agency should take into consideration in preparing a final ADR policy and comments on how EPA can best encourage the acceptance and use of ADR techniques in appropriate circumstances.

This document is published in the **Federal Register** to affirm the commitment of the U.S. Environmental Protection Agency to the use of alternative dispute resolution (ADR) in Agency activities. Nothing in this document creates any right or benefit by a party against the United States.

DATES: Comments must be submitted on or before May 12, 2000.

ADDRESSES: Please address comments to W. Robert Ward, Dispute Resolution Specialist, by mail at U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW (MC 2310A), Washington, D.C. 20460, or by e-mail at ward.robert@epa.gov.

FOR FURTHER INFORMATION CONTACT: W. Robert Ward, Dispute Resolution Specialist, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW (MC 2310A), Washington, D.C., 20460; (202) 564–2922; *ward.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: This interim statement of policy is consistent with the Administrative Dispute Resolution Act of 1996 (Public Law 104–320, Oct. 19, 1996, 5 U.S.C. 571–583), which requires, in part, that each federal agency adopt a policy that addresses the use of ADR. It is also consistent with provisions of the Civil Justice Reform Act (Public Law 101–650, Dec. 1, 1990, 28 U.S.C. 471–482), Executive Order 12988, "Civil Justice Reform," February 5, 1996; the Regulatory Negotiation Act of 1996 (Public Law 104–320, Oct. 19, 1996, 5 U.S.C. 561–570); the Federal Acquisition Streamlining Act (Public Law 103–355, Oct. 13, 1994, 41 U.S.C. 405); the Contracts Disputes Act (41 U.S.C. 601–613); the Federal Acquisition Regulation (48 CFR 33.204); Executive Order 12979, "Agency Procurement Protests," October 25, 1995; Equal Employment Opportunity Commission regulations (29 CFR part 1614); Presidential Memorandum, "Designation of Interagency Committees to Facilitate and Encourage Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking," May 1, 1998, and the Report of the National Performance Review, "Creating a Government that Works Better and Costs Less," September 7, 1993.

Interim Statement of Policy on Alternative Dispute Resolution

It is the policy of the Environmental Protection Agency to consider, under guidelines to be established by the Agency for this purpose, the use of ADR techniques in the conduct of Agency activities and to use ADR whenever it is appropriate. For purposes of this interim statement of policy, ADR has the definition given to it by the Administrative Dispute Resolution Act, namely, "any procedure that is used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact finding, minitrials, arbitration, and use of ombuds, or any combination thereof." 5 U.S.C. 571. In addition, it is the policy of the Environmental Protection Agency to work to prevent disputes and to use ADR techniques where appropriate to engage stakeholders as a part of the dispute prevention effort. It is furthermore the policy of the Environmental Protection Agency to develop new programs that employ alternative means of dispute prevention and resolution; to provide information and training in alternative dispute resolution methods for Agency staff and managers who may have occasion to use ADR in their work; to enhance its program for providing the services of third-party neutrals on an expedited basis; and to track and report on the use of ADR throughout the Agency.

Alternative dispute resolution techniques are increasingly being used by Federal agencies, private citizens and organizations to prevent and resolve disputes and manage cases. The Environmental Protection Agency already has a long history of encouraging and supporting the use of ADR in Agency practice. In 1981, EPA issued a policy designed to provide guidance and direction on reasonable and effective means of involving the public in program decisions under all of the major environmental statutes. 46 FR 5736, Jan. 19, 1981. In 1983, EPA established the Regulatory Negotiation Project to explore and demonstrate the value of negotiation and other consensus-building techniques for developing regulations. In 1987, the Project expanded its activities to the use of consensus-building in policy

dialogues and the development of research strategies.

In 1985, EPA's Office of Enforcement piloted the use of ADR to assist in the resolution of enforcement actions. In 1987, EPA issued a "Guidance on the Use of Alternate Dispute Resolution in EPA Enforcement Cases" establishing the review of all enforcement actions for the potential use of ADR processes and the use of ADR whenever such use may lead to a prompt, fair, and efficient resolution of disputes.

In 1996, the Office of Solid Waste and Emergency Response initiated a program to use ADR professionals to facilitate the resolution of hazardous waste site disputes. Also in 1996, the Office of Civil Rights piloted the use of ADR processes to support the resolution of Equal Employment Opportunity complaints.

In October 1998, as partial fulfillment of the requirements of the ADR Act and in response to the Presidential Memorandum on ADR of May 1, 1998, EPA appointed a Dispute Resolution Specialist. In November of 1999, the establishment of a Conflict Prevention and Resolution Center was announced. The Center will be part of the Agency's ADR Law Office that will serve as EPA's national ADR policy and coordination office. In addition, the Agency has established ombuds programs in several Regional and headquarter offices and is currently developing programs for the use of ADR in contract and claims disputes, and in programs that invite public participation.

The Agency's capacity for accessing outside professional facilitation and mediation support has significantly increased through a series of contracts managed by the Agency. In 1988, EPA issued a contract authorizing up to $1,000,000 in neutral services over three years. The most recent contract, issued in 1999, has a ceiling of more than $41,000,000. The growth in demand for outside dispute resolution services reflects the breadth of ADR activities that have been supported by the Agency.

Additional Steps

An internal Agency workgroup is preparing a final Agency ADR policy and is determining the need for practice-specific guidances on the use of ADR in certain EPA programs. The final policy and/or guidelines will address Agency activities and issues cited in the Administrative Dispute Resolution Act ("ADRA") as well as other issues deemed important to the appropriate practice of ADR at EPA. Activities that will be considered during EPA's policy development process include:

(1) Formal and informal adjudications;
(2) Issuance of rules and regulations;
(3) Development of policy and guidance;
(4) Enforcement and compliance actions;
(5) Issuing and revoking licenses and permits;
(6) Grants administration and Memoranda of Understanding;
(7) Contract placement and administration;
(8) Interactions with the public and regulated community;
(9) Legal actions brought by or against the Agency;
(10) Employment related actions.

In addition, the policy and/or guidances will address salient issues such as confidentiality, the use of binding arbitration, and guidelines for providing appropriate ADR training. In developing the final policy, the Agency will take into account any comments received on the interim statement of policy published in this document. The Agency also plans to issue a draft of the final ADR policy for public review and will seek comment at that time.

Coordination With Public Participation Policy Review

On November 30 of last year, EPA's Regulatory Steering Committee published a document in the **Federal Register** seeking public comment on the Agency's 1981 Policy on Public Participation, including the question of how the Agency can best engage the public in an effort to revise that policy (and other related EPA policies and regulations). (See 64 FR 66906, Nov. 30, 1999) Because interaction with the public and regulated community is one of the areas to be addressed in the final ADR policy, the Agency will be using the feedback received in response to that document to inform the final ADR policy as well.

Request for Public Comment

The Environmental Protection Agency invites public comment on issues that the internal Agency workgroup should consider in developing a final ADR policy. In particular, the Agency would like to hear the views of stakeholders regarding how EPA can best encourage the acceptance and use of ADR techniques in appropriate circumstances. Comments should be received by May 12, 2000.

Dated: March 7, 2000.

Carol Browner,

Administrator.

[FR Doc. 00–6097 Filed 3–10–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6560–2]

Carolina Creosoting Corporation Site, Leland, Brunswick County, North Carolina; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Pursuant to 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the U.S. Environmental Protection Agency (EPA) proposed to settle its claim for past response cost incurred at the Carolina Creosoting Corporation Site (Site) located in Leland, Brunswick County, North Carolina with Mr. Edward Theobold. EPA will consider public comments on the proposed settlement for thirty (30) days following the date of publication of this notice. EPA may withdraw or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Paula V. Batchelor, U.S. EPA Region 4, Waste Management Division, 61 Forsyth Street, SW, Atlanta, Georgia 30303, 404/562–8887.

Written Comments should be sent to Ms. Batchelor at the above address and should reference the Carolina Creosoting Corporation Site.

Dated: February 28, 2000.

Franklin E. Hill,

Chief, CERCLA Programs Services Branch, Waste Management Division.

[FR Doc. 00–6096 Filed 3–10–00; 8:45 am]

BILLING CODE 6570–50–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Thursday, March 16, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 9, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6191 Filed 3–9–00; 1:08 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 991–0278]

Michael T. Berkley, D.C., and Mark A. Cassellius, D.C.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 6, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Nicholas Franczyk, Federal Trade Commission, Midwest Region, 55 E. Monroe St., Suite 1860, Chicago, IL 60603–5701. (312) 960–5633.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 7, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement from Michale T. Berkley, D.C., and Mark A. Cassellius, D.C., to a proposed consent order. The agreement settles charges by the Federal Trade Commission that Drs. Berkley and Cassellius have violated Section 5 of the Federal Trade Commission Act by conspiring between themselves and with other chiropractors to fix prices for chiropractic services and to boycott the Gundersen Lutheren Health Plan ("Gundersen") to obtain higher reimbursement rates for services. The proposed consent order has been placed on the public record for thirty days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the agreement and proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by Drs. Berkley and Cassellius that the law has been violated as alleged in the complaint.

The Complaint

Drs. Berkley and Cassellius are chiropractors with their principal places of business in La Crosse, Wisconsin. Except to the extent that competition has been restrained as alleged in the complaint, Drs. Berkley and Cassellius have been, and are now, in competition with each other and with other chiropractors in and around La Crosse, Wisconsin.

Since at least January 1997, and continuing until at least June 1997, Drs. Berkley and Casselius conspired among themselves and with other chiropractors to fix prices for chiropractic services and to boycott Gundersen, a third-party payer doing business in and around La Crosse County, Wisconsin. The purpose of the boycott was, among other things, to obtain higher reimbursement from Gundersen for chiropractic services. Drs. Berkley and Cassellius organized at least two meetings of La Crosse area chiropractors to discuss their concerns about Gundersen. A central concern raised at these meetings was Gundersen's purportedly low reimbursement rates. During these meetings, the chiropractors agreed that Gundersen should increase its reimbursement rates and determined that a majority of the chiropractors were willing to leave the Gundersen network if it did not address their concerns. Dr. Berkley, acting on behalf of the group of chiropractors, communicated to Gundersen the chiropractors' concerns and the implicit threat of a boycott. The threatened boycott was successful: Gundersen, fearing the loss of a substantial number of chiropractic providers and the disruption of its network, acceded to the chiropractors' demands and increased its reimbursement rates by 20%.

Drs. Berkley and Cassellius and the other unnamed chiropractors have not integrated their practices in any economically significant way, nor have they created any efficiencies that might justify this conduct. Had they done either of these, under some circumstances, the agreement on price might not have been unlawful. Their actions have harmed consumers by increasing the prices that are paid for chiropractic services and by depriving consumers of the benefits of competition among chiropractors.

The Proposed Consent Order

The proposed consent order is designed to prevent the illegal concerted action alleged in the complaint. Paragraph II.A prohibits Drs. Berkley and Cassellius from fixing prices for any chiropractic goods or services. Paragraph II.B prohibits them from: (1) Engaging in collective negotiations on behalf of any chiropractors; (2) orchestrating concerted refusals to deal; or (3) fixing prices, or any other terms, on which chiropractors deal. Paragraph II.C. prohibits Drs. Berkley and Cassellius from encouraging, advising, or pressuring any person to engage in any action that would be prohibited if the person were subject to the order.

Paragraph II. includes a proviso allowing Drs. Berkley and Cassellius to engage in conduct (including collectively determining reimbursement and other terms of contracts with payers) that is reasonably necessary to operate (a) any "qualified risk-sharing joint arrangement," or, provided Drs. Berkley and Cassellius have complied with the order's prior notification requirements, (b) any "qualified clinically integrated joint arrangement."

For the purposes of the order, a "qualified risk-sharing joint arrangement" must satisfy three conditions. First, all physicians participating in the arrangement must share substantial financial risk from their participation in the arrangement. The order lists ways in which physicians might share financial risk, tracking the types of financial risk - sharing set forth in the Statements of Antitrust Enforcement Policy in Health Care, Statement 8 on Physician Network Joint Ventures issued jointly by the FTC and the Department of Justice on August 28, 1996 (4 Trade Reg. Rep. (CCH) ¶13,153 at 20,814). For example, physician participants can agree to provide services to a health plan at a "capitated" rate (a fixed payment per enrollee regardless of the amount of services provided to an enrollee). Second, any agreement on prices or terms of reimbursement entered into by the arrangement must be reasonably necessary to obtain significant efficiencies through the joint arrangement. For example, a joint arrangement for billing services alone would not be sufficient, because the agreement on prices would not be necessary to achieve the benefits of the billing services. Third, the arrangement must be non-exclusive, *i.e.*, physicians can also deal with payers individually or through other arrangements.

For purposes of the order, a "qualified clinically integrated joint arrangement" is one in which physicians undertake cooperative activities to achieve efficiencies in the delivery of clinical services without necessarily sharing substantial financial risk. The cooperation may include: (1) Establishing mechanisms to monitor and control utilization of health care services that are designed to control costs and assure quality of care; (2) selectively choosing network physicians who are likely to further these efficiency objectives; and (3) the significant investment of capital, both monetary and human, in the necessary infrastructure and capability to realize the claimed efficiencies. *Id.* at 20,817.

In order for a qualified clinically integrated joint arrangement formed by Drs. Berkley and Cassellius to fall within the proviso, they must comply with the order's requirements for prior notification. The prior notification mechanism will allow the Commission to evaluate a specific proposed arrangement and assess its likely competitive impact. This requirement will help guard against the recurrence of acts and practices that have restrained competition and consumer choice.

Paragraph III. requires that Drs. Berkley and Cassellius distribute a notification letter and copies of the complaint and order to all current and future agents, representatives, and employees whose activities are affected by the order, or who have responsibilities with respect to the subject matter of the order. Paragraph IV. requires that Drs. Berkley and Cassellius notify the Commission of any change in their employment and would require them to provide copies of the complaint and consent order to any new employer for which their new duties and responsibilities are subject to any provisions in the order.

Paragraph V. requires that Drs. Berkley and Cassellius distribute a copy of the complaint and order to each payer or provider who, at any time since January 1, 1997, has communicated any desire, willingness, or interest in contracting for chiropractic goods and services with either of them.

Paragraphs VI. and VII. consist of standard Commission reporting and compliance procedures. Finally, Paragraph VIII. contains a standard twenty year "sunset" provision under which the terms of the order terminate twenty years after the date of issuance.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–6046 Filed 3–10–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Docket No. 981–0386]

Nine West Group Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 5, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326–2574.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practices (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 6, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 6000 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½-inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and

copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("the Commission") has accepted, subject to final approval, an agreement from Nine West Group Inc. ("Nine West") to a proposed consent order. The agreement settles charges by the Commission that Nine West violated Section 5 of the Federal Trade Commission Act by entering into vertical agreements that restricted retail price competition in the sale of women's shoes. Nine West is a major manufacturer and seller of women's shoes and sells shoes under the "Easy Spirit," "Enzo Angiolini," "Bandolino," cK/Calvin Klein," "Pappagallo," "Selby," "Amalfi," "Calico," "Evan-Picone," "Westies," "Capezio," "Joyce," and "9 & Co." labels. Jones Apparel Group, Inc., purchased Nine West in July of 1999, and is a signatory to the consent agreement, but none of the conduct alleged in the complaint occurred after the purchase.

The proposed consent order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to invite public comment on the proposed order. This analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by Nine West that the law has been violated as alleged in the complaint.

The Complaint

Nine West Group is a Delaware corporation with its principal place of business in White Plains, New York. Nine West sells women's footwear to retail outlets throughout the United States, including many of the nation's largest department stores.

The complaint alleges that beginning in January 1988 and continuing until at least July 31, 1999, Nine West entered into agreements with certain retailers that fixed, raised, and stabilized retail prices to consumers. Nine West adopted pricing policies that determine which shoes the retailer could not discount or promote outside of specified times. Nine West did not merely announce these policies and terminate a retailer that did not adhere to them, which would have been lawful, but instead Nine West sought agreement from these dealers on future pricing. For example, Nine West suspended shipments and said it would resume them only if the dealer promised not to violate the policy again. Nine West also coerced compliance by threatening to withhold discounts or advertising funds if the dealer refused to comply with a pricing policy. Retailers communicated to Nine West that they would adhere to the pricing policies.

The Proposed Consent Order

The proposed consent order is designed to prevent Nine West from agreeing with its dealers to set prices. Paragraph II of the order prohibits Nine West from fixing, controlling, or maintaining the retail price of women's footwear. It also prohibits Nine West from coercing or pressuring any dealer to maintain, adopt, or adhere to any resale price. Nine West also may not secure or attempt to secure commitments or assurances from any dealer concerning resale prices. Finally, Paragraph II prohibits Nine West, for a period of ten years, from notifying a dealer in advance that the dealer is subject to a temporary suspension of supply (e.g., no shoes shipped for six months) or a partial suspension (e.g., no orders of Easy Spirit loafers) if the dealer sells Nine West shoes below a designated price.

Paragraph III of the order requires that for a period of five years from the date on which the order becomes final, Nine West shall clearly and conspicuously include a statement on any list, advertising, book, catalogue, or promotional material where it has suggested any resale price for any Nine West product to any dealer. The required statement explains that while Nine West may suggest resale prices for its products, dealers remain free to determine on their own the prices at which they will sell and advertise Nine West's products.

Paragraph IV of the order requires Nine West to mail a letter (see attachment A) to its retailers with a copy of the Commission's order. The letter states that while Nine West may send materials to them with suggested retail prices, they are free to sell and advertise at a price they choose. Paragraph V requires that the same letter with a copy of the Commission's order be sent to new employees of Nine West.

Paragraph VI of the order requires Nine West to notify the Commission at least thirty days prior to any proposed changes in the corporation, such as dissolution or sale. Paragraph VII consists of standard Commission reporting and compliance procedures. Finally, Paragraph VIII contains a standard "sunset provision," under which the terms of the order terminate twenty years after the date of issuance.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioners Orson Swindle and Thomas B. Leary

We have voted to accept the consent agreement for public comment because we have reason to believe that the conduct engaged in by Nine West falls outside the limited zone of protection afforded by the *Colgate* doctrine,[1] and thus is per se illegal under current law. We do not mean to indicate agreement, however, with the artificial analysis mandated by the *Colgate* doctrine or with the overboard per se condemnation resale price maintenance ("RPM"), which the Colgate doctrine mitigates to some degree.

We do not know what conclusion we might have reached had Nine West's behavior been analyzed under the rule of reason, because that question did not arise. Nevertheless, one can easily posit instances of minimum RPM that involve a mixture of procompetitive and anticompetitive effects, like any other vertical restraint, and undercut the continuing validity of the per se rule against the practice. Several years ago, the Supreme Court took the beneficial step of reexamining the overruling the doctrine that condemned maximum RPM as per se illegal.[2] When an appropriate case arises, we believe that the Court should continue this healthy trend by reassessing the even hoarier per se treatment of minimum RPM.[3]

[FR Doc. 00–6044 Filed 3–10–00; 8:45 am]
BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 971–0117]

Wisconsin Chiropractic Association, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

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[1] *United States* v. *Colgate & Co.*, 250 U.S. 300 (1919).

[2] *State Oil Co.* v. *Khan*, 522 U.S. 3 (1997), overruling *Albrecht* v. *Herald Co.*, 390 U.S. 145 (1968).

[3] *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.* 220 U.S. 373 (1911).

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 6, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Nicholas Franczyk, Federal Trade Commission, Midwest Region, 55 E. Monroe St., Suite 1860, Chicago, IL 60603–5701. (312) 960–5633.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 7, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement from the Wisconsin Chiropractic Association ("WCA") and its executive director, Russell A. Leonard, to a proposed consent order. The agreement settles charges by the Federal Trade Commission that the WCA and Mr. Leonard have violated Section 5 of the Federal Trade Commission Act by conspiring with some of the WCA's members and others to fix prices for chiropractic services and to boycott third-party payers to obtain higher reimbursement rates for services. The proposed consent order has been placed on the public record for thirty days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the agreement and proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the WCA or Mr. Leonard that the law has been violated as alleged in the complaint.

The Complaint

The WCA is a professional trade association of chiropractors with its principal place of business in Madison, Wisconsin. The WCA has approximately 900 chiropractor members. A substantial majority of the chiropractors licensed to practice in the state of Wisconsin are members of the WCA. The WCA exists and operates in substantial part for the pecuniary benefit of its members. Mr. Leonard is, and during the time period addressed by the allegations of the complaint was, the executive director of the WCA.

Professional services performed by chiropractors include, among other things, spinal and extra spinal manipulations. Prior to January 1, 1997, chiropractors generally billed for these services using a single billing code regardless of the number of regions adjusted. Osteopathic physicians performing manipulation treatments, by contrast, had been using multiple codes to bill based on the number of regions of the body adjusted. Beginning in January 1997, the federal government and private insurance companies began accepting four new codes for chiropractic manipulations. The new chiropractic manipulative treatment ("CMT") codes reflected more detailed or precise descriptions of the manipulation services and allowed chiropractors, like osteopathic physicians, to bill based on the number of regions adjusted.

Beginning in late 1996, shortly after the new CMT codes were announced, the WCA, acting through its executive director Mr. Leonard, orchestrated an agreement among its members to raise fees for chiropractic manipulation services. In late 1996 and continuing into early 1997, the WCA conducted training seminars on the new codes for members in localities throughout the state. The WCA urged chiropractors not to make any decisions on their fees under the new codes before attending one of these meetings. During the meetings, Mr. Leonard told the chiropractors that the new CMT codes provided them with a unique opportunity to increase their fees. Mr. Leonard advised members that it was important that the new codes for chiropractic manipulation were priced properly, and that the WCA's view was that proper pricing was at the same level that osteopathic physicians billed for spinal manipulation services. He provided detailed data on current osteopathic pricing, and encouraged chiropractors to raise their prices to the osteopathic levels.

At the meetings Mr. Leonard assured members that if they all raised their rates, third-party payers would not reject or reduce these higher charges for the new codes. Under the "UCR" ("usual, customary, and reasonable rate") system of reimbursement that was in general use in Wisconsin's health care industry, price increases by a significant number of chiropractors would raise the UCR level and thereby result in higher reimbursement for chiropractic services. On the other hand, if other members did not raise their prices, UCR levels would not rise, the chiropractor would not receive higher reimbursement, and he or she would be identified to patients as an "outlier" whose fees were far higher than other chiropractors. Each chiropractor's action in conformity with the WCA's pronouncement would be aided by knowledge that other members were taking similar action. Many members left the WCA local meetings with the understanding that they and others at the meeting would raise their prices in accordance with the WCA's request. After the new codes took effect,

Mr. Leonard surveyed member pricing in certain localities, and reported back to members that chiropractors in these areas had succeeded in raising reimbursement levels.

As a result of these actions by the WCA and Mr. Leonard, many chiropractors raised their fees to the osteopathic levels. Other chiropractors increased their fees substantially more than they had in previous years. Overall, the effect of these actions was to raise the prices that consumers pay for chiropractic services.

In furtherance of the WCA's efforts to raise chiropractic fees, the WCA and Mr. Leonard regularly provided fee surveys to the WCA's members. At times, these fee surveys reflected insufficiently aggregated data, thus effectively identifying current prices by individual chiropractic offices. Fee survey data were also furnished in connection with boycotts of managed care plans.

In March 1997, the WCA and Mr. Leonard organized a boycott by WCA members of MultiPlan, a preferred provider network. At a board meeting, the WCA directors on Mr. Leonard's recommendation agreed to reject, and to encourage their fellow chiropractors to reject, MultiPlan's proposed contract amendments and new fee schedule. Mr. Leonard recommended that chiropractors demand a fee schedule reflecting 85% of market price, and provided survey data that showed current average charges throughout the state. At training seminars held in early April 1997, Mr. Leonard criticized MultiPlan's proposed amendments and fee schedule, encouraged chiropractors to discuss the contract with others in their area, and reminded them that if enough chiropractors rejected the contract, MultiPlan would be forced to renegotiate the terms. Soon thereafter many of the chiropractic members of the WCA submitted letters of termination to MultiPlan.

Mr. Leonard routinely reviewed managed care contract offers to the WCA's members and circulated to the WCA's membership memoranda containing adverse comments about these plans' fee schedules for the new CMT codes. In his comments, Mr. Leonard frequently encouraged chiropractors to negotiate higher fees with the plans, and advised them to exchange all information they received with other chiropractors in their area. In so doing, Mr. Leonard reminded the WCA's members that they would be more successful in their fee negotiations with third-party payers if the members continued to negotiate on a united front. In addition, Mr. Leonard, again acting in his capacity as executive director of the WCA, told third-party payers that they should be paying chiropractors the same amount that osteopaths are paid for manipulation services, encouraged third-party payers to agree to pay specific sums certain or to calculate fees in a manner proposed by the WCA, and called third-party payers to follow up on complaints of low reimbursement that he encouraged and received from individual WCA members.

The WCA's member have not integrated their practices in any economically significant way, nor have they created any efficiencies that might justify this conduct. The purpose of this conduct was to secure higher fees and reimbursement. The WCA's actions harmed consumers by increasing the prices for chiropractic services and depriving consumers of the benefits of competition among chiropractors.

The Proposed Consent Order

The proposed consent order is designed to prevent the illegal concerted action alleged in the complaint. Paragraphs II and III of the proposed order contain the key provisions. These two paragraphs are almost identical in their coverage, except that Paragraph II applies to the WCA and Paragraph III applies to Mr. Leonard. Paragraphs II.A and III.A prohibit the WCA and Mr. Leonard from fixing prices for any chiropractic goods or services (or, in the case of Mr. Leonard, any health care goods or services). The broader category including "any health care goods or services" is needed should Mr. Leonard obtain employment with another health care entity outside the chiropractic field.

Paragraphs II.B and III.B prohibit the WCA and Mr. Leonard from creating, suggesting, or endorsing any proposed fees or conversion factors for any health care goods or services. Here, the WCA is also subject to the broader category of "any health care goods or services" since the allegations in the complaint include the WCA's endorsement of osteopathic fee schedules.

Paragraphs II.C and III.C prohibit the WCA and Mr. Leonard from engaging in negotiations on behalf of any chiropractor or group of chiropractors (or, in the case of Mr. Leonard, any provider or group of providers). In addition, this paragraph prohibits them from orchestrating concerted refusals to deal.

Paragraphs II.D and III.D prohibit the WCA and Mr. Leonard from urging or recommending that any chiropractor (or, in the case of Leonard, any provider) accept or not accept any term or condition of any participation agreement. Paragraphs II.E and III.E prohibit the WCA and Mr. Leonard from soliciting or communicating any chiropractor's (or, in the case of Leonard, any provider's) views, decisions or intentions concerning any participation agreement.

Pursuant to Paragraphs II.F and III.F, the WCA and Mr. Leonard are prohibited from organizing or participating in any meeting or discussion where they expect chiropractors (providers) will discuss intentions concerning participation in any health plans. In addition, these paragraphs prohibit the WCA and Mr. Leonard from continuing any meeting where any person makes such a communication unless the person is ejected from the meeting. Finally, this paragraph requires that the WCA and Mr. Leonard terminate any meeting where two or more persons make such communications.

Paragraphs II.G and III.G ban the WCA and Mr. Leonard from initiating, originating, developing, publishing, or circulating any fee survey for any health care goods or services for a period of two years after the date that the order becomes final, or until December 31, 2001, whichever is earlier. The two-year ban on fee surveys is necessitated by the gross misuse of fee surveys alleged in the complaint. In addition, for five years thereafter, Paragraphs II.H and III.H prohibit the WCA and Mr. Leonard from conducting or distributing any fee survey unless: (1) The data collection and analysis are managed by a third party; (2) the raw fee survey data is retained by the third party and not made available to the respondents; (3) any information that is shared among or is available to providers is more than three months old; and (4) there are at least five providers reporting data upon which each disseminated statistic is based, no individual provider's data represents more than 25 percent on a weighted basis of that statistic, and any information disseminated is sufficiently aggregated that it would not allow respondents or any other recipients to identify the prices charged or compensation paid by any particular provider. These requirements are identical to the requirements found in the safe harbor provisions of the Statements of Antitrust Enforcement Policy in Health Care, Statement 5 on Providers' Collective Provision of Fee-Related Information to Purchasers of Health Care Services, issued jointly by the FTC and the Department of Justice on August 18, 1996 (4 Trade Reg. Rep. (CCH) ¶ 13,153 at 20,809).

Paragraphs II.I and III.I prohibit the WCA and Mr. Leonard from encouraging, advising or pressuring any

person to engage in any action that would be prohibited if the person were subject to the order.

Paragraphs II and III contain provisos allowing the WCA and Mr. Leonard to exercise their First Amendment petitioning rights and to solicit competition-restricting government action where protected under the Noerr-Pennington doctrine. In addition, Paragraph III contains a proviso allowing Mr. Leonard to engage in certain acts otherwise prohibited by the order providing he is acting as an agent, employee, or representative exclusively for a single provider or payer.

Paragraph IV. requires that the WCA maintain copies of: (1) All documents distributed at meetings and seminars; (2) all fee surveys and a record of their distribution; and (3) all documents relating to any subject that is covered by any provision in the order. Paragraph V. requires that the WCA provide copies of the complaint and order: (1) To all current and future officers, directors, and members; (2) to all current and future agents, representatives, and employees whose activities are affected by the order, or who have responsibilities with respect to the subject matter of the order; and (3) to the third-party payers set forth in Appendix B to the order.

Paragraph VI. requires that the WCA notify the Commission of any change in its corporate structure that may affect compliance obligations. Similarly, Paragraph VII. requires that Mr. Leonard notify the Commission of any change in his employment and would require him to provide copies of the complaint and consent order to any new employer for which his new duties and responsibilities are subject to any provisions in the order.

Paragraphs VIII. and IX. consist of standard Commission reporting and compliance procedures. Finally, Paragraph X. contains a standard twenty-year "sunset" provision under which the terms of the order terminate twenty years after the date of issuance.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–6045 Filed 3–10–00; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Regulation and Program Development Division; Cancellation of a Standard Form

AGENCY: Federal Supply Service, General Services Administration.

ACTION: Notice.

SUMMARY: This notice announces the General Services Administration's intent to cancel the following Standard form because of low user demand:

SF 1203, U.S. Government Billing of Lading-Privately Owned Personal Property (7-part snapout version) (identified by NSN 7540–01–082–0589). The 7-part continous feed version of this form is still available from FSS.

FOR FURTHER INFORMATION CONTACT: General Services Administration, Form Management, (202) 501–0581.

DATES: Effective March 13, 2000.

Dated: February 28, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–6084 Filed 3–10–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human services, Office of the secretary will periodically publish summaries of proposed information collections projects and solicit the public comments in compliance with the requirements of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects 1. Evaluation of the BodyWise Eating

Disorder Initiative—NEW

A primary goal of the BodyWise Eating Disorder Initiative is to provide information to and motivate middle school staff to improve understanding and knowledge of eating disorder issues affecting preadolescents. The Office on Women's Health is proposing an evaluation of this initiative to look for changes in school practices and awareness regarding eating disorder issues. The evaluation will also seek information on how the bodyWise materials are being used and their strengths and weaknesses. The study design features an pre-test/post-test model with questionnaires being completed by a sample of middle school staff. Burden Information for Pre-test—Number of Respondents: 357; Burden per Response: 30 minutes; Burden for Pre-test; 179 hours—Burden Information for Post-test—Number of Respondents: 322; Burden per Response: 30 minutes; Burden for post-test: 161 hours—Total Burden: 340 hours.

Send comments to Cynthia Agnes Bauer, OS Reports Clearance Officers, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: March 3, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–5972 Filed 3–10–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Financial Summary of Obligation and Expenditure of Block Grant Funds (45 CFR 96.30). Public Law 101–510 amended 31 U.S.C. Chapter 15 to provide that, by the end of the fifth fiscal year after the fiscal year in which the Federal government obligated the funds, the account will be canceled. If valid charges to a canceled account are presented after cancellation, they may be honored only by charging them to a current appropriation account, not to exceed an amount equal to 1 percent of

the total appropriations of that account. Because of our need to determine the status of grant accounts, we have determined that it is appropriate to require an annual report on obligations and/or expenditures from all grantees under the block grant programs. The expenditure information to be collected under 45 CFR 96.30 will allow the Department to determine aggregate obligations, expenditures, and available balances. The Department can then use the information to close the grant accounts in accordance with P.L. 101–510. Annual Responses: 620; Burden per Response: one hour; Total Annual Burden for Financial Summary: 620 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Office on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designate above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Hubert H. Humphrey Building, 200 Independence Ave S.W., Washington, D.C. 20201.

Written comments should be received within 30 days of this notice.

Dated: March 3, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–5973 Filed 3–10–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substance and Disease Registry

American Indian/Alaska Native Governments and Organizations Budget Planning and Priorities Meeting

The Office of the Director of the Centers for Disease Control and Prevention (CDC) and Agency for Toxic Substance and Disease Registry (ATSDR) announces the following meeting:

Name: Centers for Disease Control and Prevention (CDC) and Agency for Toxic Substances and Disease Registry (ATSDR) American Indian/Alaska Native (AI/AN) Governments and Organizations Budget Planning and Priorities Meeting.

Time and Date: 9 a.m.–5 p.m., March 17, 2000.

Place: Roybal Campus, Building 2, Auditorium A, 1600 Clifton Road, Atlanta Georgia 30333.

Status: The meeting is open to the public and is limited only by the space available. The meeting room accommodates approximately 150 people. For those unable to attend the meeting, a toll-free audio bridge has been arranged from 9:00 am to 5:00 pm. The public comment period is scheduled from 1:30 p.m.–3:00 p.m. Comments and recommendations may be received via audio conference and fax.

Purpose: In accordance with Departmental policy on consultation with (AI/AN) Governments and Organizations, CDC/ATSDR will host this meeting to give AI/AN people an opportunity to present their public health program needs and priorities. The timing of this meeting will allow CDC and ATSDR to consider these needs and priorities in developing the FY 2002 budget request.

Matters to be Discussed: The agenda will include opening remarks/introductions, testimony of AI/AN leaders, public comments period, break-out sessions and general discussion.

Audio Bridge and Fax Information: All times scheduled are Eastern time. Your Conference Name: CDC and ATSDR American Indian and Alaska Native Governments and Organizations Budget Planning and Priorities Meeting. Audio bridge conference telephone number for non-federal participants: 800–311–3437. Audio bridge conference telephone number for Atlanta Area participants: 404–639–3277 Fax telephone number for comments and recommendations: 800–553–6323.

Conference Code: 222222.

Date: March 17, 2000.

Audio bridge Conference Time: 8:45 a.m.–5:00 p.m. Public Comment Period (Audio and Fax): 1:30 p.m.–3:00 p.m. If you have a problem during your audio conference, please call; Non-Federal Participants: 800–793–8598 and Atlanta Area Participants: 404–639–7550.

Contact Person for More Information: Mr. Dean Seneca, Office of the Associate Director for Minority Health, CDC, 1600 Clifton Road, M/S D39, Atlanta, Georgia 30333, telephone 404/639–7220, e-mail zkg8@CDC.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 7, 2000.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–6029 Filed 3–10–00; 8:45 am]

BILLING CODE 4160–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Advisory Committee for Energy-Related Epidemiologic Research, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period extending through February 28, 2002.

For further information, contact Michael Sage, Executive Secretary, Advisory Committee for Energy-Related Epidemiologic Research, Centers for Disease Control and Prevention, of the Department of Health and Human Services, 1600 Clifton Road, NE, M/S F–35–32, Atlanta, Georgia 30333, telephone 404/639–2524 or fax 404/639–2575.

The Director, Management and Analysis and Services office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 7, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–6031 Filed 3–10–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00051]

Research on the Impact of Laws and Policies on Public Health Notice of Availability of Funds

A. Purpose

In cooperation with the Office of Prevention Research (Prevention Research Initiative), the Public Health Practice Program Office at the Centers for Disease Control and Prevention (CDC) announces the availability of Fiscal Year (FY) 2000 funds for grant applications for research to evaluate the impact of laws and policies on public health. CDC is committed to achieving

the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to multiple Healthy People objectives and especially to objective 23–15. For the conference copy of "Healthy People 2010" visit the internet site: http://www.health.gov/healthypeople.

The purpose of this program is to stimulate research evaluating the implementation and impact of federal, state, and local statutes, regulations, contract specifications, licensing requirements, and other legally enforceable public policies on the prevention of death, disease, injury, and disability, on the promotion of health, and on the conduct of public health services. Research is expected to produce scientific findings of interest to public health practitioners and policy makers at the state, local, and federal levels.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations, small and minority women owned businesses, and by governments and their agencies; that is, universities, colleges, research institutions, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2000 to fund approximately 2–3 research project grants. Awards are anticipated to range from $150,000 to $250,000 in total costs (direct and indirect) per year. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period not to exceed 3 years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds in subsequent years.

Use of Funds

Note: Grant funds will not be made available to support the provision of direct care services. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

D. Programmatic Interest Areas

Research applications are requested that address: (1) The specific areas of interest below (not listed in priority order), and (2) other areas that the applicant demonstrates are significant for the purpose identified in Section A of this announcement.

(1) Immunization

The impact of laws on the achievement of recommended immunization rates or related public health services. For example, (a) the impact of laws relevant to state immunization registries (*e.g.*, laws related to privacy/confidentiality of individual patient health care information, sharing of immunization information, and establishment of immunization registries) on immunization rates and/or on the development, quality, provider participation in, and coverage of state immunization registries; (b) comparison of the impact of alternative state laws for school enrollment and alternative approaches to their implementation (*e.g.*, evaluating the impact of different requirements, implementation policies and programs, and attitudes of key stakeholders).

(2) HIV and Sexually Transmitted Diseases

The impact of state or local laws and their enforcement on HIV/STD risk behaviors and incidence or on the use of preventive health services; for example: laws that proscribe certain sexual behaviors (*e.g.*, sodomy laws), laws that regulate access to or possession of drug paraphernalia, laws mandating HIV testing of newborns, criminal penalties for drug use during pregnancy, laws that seek to affect youth behavior (*e.g.*, curfews and/or drinking age), and laws that criminalize the knowing transmission of HIV or that require disclosure of HIV or other STD infection to sexual partners.

(3) Injury Related to Motor Vehicles

The impact of state requirements for licensure of adolescents and older drivers on their mobility, health, and safety (crash, injury, or fatality risks).

(4) Occupational Safety and Health

The impact of the following laws pertaining to the prevention of work injuries and diseases: (a) California and/or Washington state ergonomic standards to prevent work-related musculoskeletal disorders; (b) State "needle-stick" laws requiring safety-engineered devices and related measures to prevent "needle stick" injuries among health care workers; (c) State and local laws and requirements for ensuring healthful indoor air quality for office workers; and, (d) federal health standards of the Occupational Safety and Health Administration and Mine Safety and Health Administration for preventing occupational, noise-induced hearing loss among workers.

(5) Public Health Reporting Laws

Impact of state public health laws and requirements for reporting by health care providers and medical testing laboratories (*e.g.*, reporting of infectious disease cases and cases of elevated blood lead).

(6) Emergency Public Health Practice

Impact of federal, state, and local laws on the preparedness of public health organizations for, and their response to: natural disasters, unintended releases of hazardous chemical or biological agents, threats and incidents of terrorism, and other types of disasters.

(7) Urban Planning

Impact of local laws and requirements on infectious, chronic, and environmental diseases and their risk factors (*e.g.*, air quality and respiratory diseases such as asthma, physical exercise, obesity, and cardiovascular disease), and on injury (*e.g.*, pedestrian and cycling injuries).

(8) Infectious Disease Screening and Treatment for Immigrants

Impact of infectious disease requirements of U.S. immigration laws on the appropriateness and quality of screening and treatment for infectious diseases provided to immigrants.

(9) Public Health System and Infrastructure

Impact of laws on the public health system and its infrastructure: organizations; information, communications, laboratories, and other systems; and public health workforce; (*e.g.*, laws pertaining to performance standards, practitioner competencies, and accountability for public health services).

For all of these programmatic areas, it is the intent of this grant program to fund applications comprising

innovative, multi-disciplinary research strategies. Model approaches are sought for evaluating the impact of public health laws, within or across different areas of public health (*e.g.*, infectious diseases, chronic diseases and health promotion, environmental health, injury prevention, occupational safety and health, and public health systems).

As appropriate and feasible, applications are encouraged to address the fullest complement of possible measures for assessing outcomes. These measures could include health and safety outcomes (*e.g.*, frequency and severity of injury, illness, disability, or hazard exposure); economic outcomes (*e.g.*, costs at the level of the individual, household, community, industry, or society; or distribution of costs among payers); social outcomes (*e.g.*, impact on educational attainment, employment); as well as measures of change in behavior, knowledge, attitudes, use of technological interventions, organization of public health systems, quality and quantity of prevention services and public health practice and other proximate measures associated with health and other outcomes.

Applications are encouraged which include plans to obtain and analyze information on the implementation of the referenced laws, as appropriate and necessary for evaluating their impact. Quantitative and qualitative information on application, enforcement, or compliance activities associated with a law under evaluation, and on compliance-related knowledge, attitudes, and behaviors of the target audience(s), will often be important to the interpretation and inferential value of statistical findings on outcomes generated through regression analyses and other statistical methods. Information on implementation also may address factors that may either impede or promote the impact of laws and policies on public health.

E. Program Requirements

The following are applicant requirements:

1. A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience (on the applicant's project team) in conducting, evaluating, and publishing in peer-reviewed journals research evaluating public health law or other public policies, programs or interventions.

3. Effective and well-defined working relationships within the performing organization and with outside entities that will ensure implementation of the proposed activities.

4. The overall match between the applicant's proposed theme and research objectives described under the heading "Programmatic Interest Areas."

F. Application Content

Letter of Intent (LOI)

Prospective applicants are asked to submit, by April 21, 2000, a letter of intent that includes the number and title of the Announcement, a descriptive title of the proposed research, the name, address, and telephone number of the Principal Investigator, and the identities of other key personnel and participating institutions. Although a letter of intent is not required, is not binding, and is not used in the review of an application, the information that it contains is used to estimate the potential review workload and avoid conflict of interest in the review. The letter of intent is to be submitted to the Grants Management Specialist listed under "Where to Obtain Additional Information" section of this announcement.

Application

Use the information in the Programmatic Interest Areas, Evaluation Criteria and Other Requirements sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your research proposal.

The grant applications for research on the impact of public health laws should include:

1. Justification of the research needs and explanation of the scientific basis for the research, the expected outcome, and the relevance of the findings to preventing disease, injury, and disability.

2. Specific, measurable, and explicitly scheduled objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence.

4. A description of the role and responsibilities of the principal investigator.

5. A description of all the project staff and their role in the proposed research, regardless of their funding source. It should include their title, qualifications, experience, responsibilities in the proposed research, percentage of time each will devote to the research, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed research, if applicable. It should include letters of support and a clear statement of their roles.

8. A detailed first year's budget for the grant with future annual projections.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown.

G. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001). (Adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit and are also available at the following Internet address: http://www.cdc.gov/od/pgo/forminfo.htm.

In addition to sending the original and five copies of the proposal, please also enclose a copy of the proposal on a 3.5 diskette in WordPerfect, Word, or ASCII format. If you have access to an electronic version of PHS–398 (OMB Number 0925–0001), please include the electronic forms on the diskette. If you do not have access or capability to use an electronic version, please ensure that the following items in narrative format are included on your diskette: Abstract, Biographical sketches, Research Plan (items A–I), and Other Support pages. Label the diskette with your name, operating system, software, and proposal title. (Example: John Doe, DOS, WordPerfect 6, Public Law Modeling in the 21st Century). If the title is too long, please truncate.

Please submit on or before June 2, 2000, to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or

(b) above are considered late applications, will not be considered, and will be returned to the applicant.

H. Evaluation Criteria

Applications that are complete and responsive may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review (triage); the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

The evaluation process of the proposals will be conducted through a secure interactive Internet site. Each competitive application will be evaluated individually against the following criteria by a Special Emphasis Panel (SEP) appointed by CDC. The SEP will score each proposal based on scientific and technical merit. Factors to be considered by the SEP include:

1. Significance—Does this study address an important problem related to the research goals outlined in the "Programmatic Interest Areas" section of this document? If the aims of the application are achieved, how would scientific knowledge be advanced? What would be the effect of this study on the concepts and methods that drive this field?

2. Approach—Are the conceptual framework, design (including composition of study population), methods, and analyses adequately developed, well-integrated and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

3. Innovation—Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies that can serve as models for future research?

4. Investigator—Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers, if any?

5. Environment—Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there documentation of cooperation from necessary participants in the project, where applicable? Is there evidence of institutional support and availability of resources necessary to perform the project?

6. Human Subjects—If Human Subjects are involved, does the applicant adequately address the requirements of 45 CFR Part 46 for the protection of human subjects?

7. If Human Subjects are involved, has the applicant met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

A second programmatic review will be conducted by a panel of Senior Federal Officials. The Senior Federal Officials will review the ranked proposals to assure maximal impact and balance of the proposed research. The factors to be considered will include:

1. The results of the peer review.

2. The imporantance of the proposed research for meeting the primary goals of this initiative, as described in "Programmatic Interest Areas."

3. Budgetary considerations.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Annual progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

For descriptions of the following Other Requirements, see Attachment I in the application package:

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–4 HIV/AIDS Confidentiality Provisions

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

J. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 1704 of the Public Health Service Act, 42 U.S.C. section 300u–3, as amended.

The Catalog of Federal Domestic Assistance number is 93.283.

K. Where To Obtain Additional Information

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC homepage is http://www.cdc.gov.

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Carrie Clark, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00051, Centers for Disease Control and Prevention 2920 Brandywine Road, Room 3000, Atlanta, GA 30341, Telephone (770) 488–2719, Email address: zri4@cdc.gov

For program technical assistance, contact: Anthony D. Moulton, Ph.D., Associate Director for Policy, Program Analysis and Academic Programs, Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention, 4770 Buford Hwy. (K–36), Atlanta, GA 30341–3724, Phone 770–488–2404/Fax 770–488–2420, E-mail: ADM6@CDC.GOV

Dated: March 7, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers of Disease Control and Prevention (CDC).

[FR Doc. 00–6030 Filed 3–10–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93631–00–01]

Developmental Disabilities: Final Notice of Availability of Financial Assistance and Request for Applications to Support Family Support Model Demonstration Projects under the Projects of National Significance Program

AGENCY: Administration on Developmental Disabilities (ADD), ACF, DHHS.

ACTION: Notice.

SUMMARY: The Administration on Developmental Disabilities, Administration for Children and Families (ACF), announces that applications are being accepted for funding of Fiscal Year 2000 under family support.

This program announcement consists of five parts. Part I, the Introduction, discusses the goals and objectives of ACF and ADD. Part II provides the necessary background information on ADD for applicants. Part III describes the review process. Part IV describes the priority under which ADD requests applications for Fiscal Year 2000 funding of projects. Part V describes in detail how to prepare and submit an application.

Grants will be awarded under this program announcement subject to the availability of funds for support of these activities.

DATES: The closing date for submittal of applications under this announcement is May 12, 2000.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, ACF/Administration on Developmental Disabilities, 370 L'Enfant Promenade SW, Mail Stop 326F, Washington, DC 20447, Attention: Lois Hodge. Any applications received after 4:30 p.m. on the deadline date will not be considered for competition.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing.

Applications *handcarried* by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, ACF/Administration on Developmental Disabilities, 370 L'Enfant Promenade SW, ACF Mail Center, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "Attention: Lois Hodge." Applicants using express/overnight services should allow two working days prior to the deadline date for receipt of applications. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ADD cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ADD electronically will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications that do not meet the criteria above are considered late applications. ADD shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: ADD may extend the deadline for all applicants because of acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. However, if ADD does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

ADDRESSES: Application materials are available from Pat Laird, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, 202/690–7447; http://www.acf.dhhs.gov/programs/add; or add@acf.dhhs.gov.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families (ACF), Pat Laird, 370 L'Enfant Promenade, S.W., Washington, D.C., 20447, 202/690–7447; or add@acf.dhhs.gov.

Notice of Intent to Submit Application: If you intend to submit an application, please send a post card with the number and title of this announcement, your organization's name and address, and your contact person's name, phone and fax numbers, and e-mail address to: Administration on Developmental Disabilities, 370 L'Enfant Promenade SW, Mail Stop 300F, Washington, DC, 20447, Attn: Family Support. This information will be used to determine the number of expert reviewers needed and to update the mailing list to whom program announcements are sent.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). Although different from the other ACF program administrations in the specific populations it serves, ADD shares a common set of goals that promote the economic and social well being of families, children, individuals and communities. Through national leadership, ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned and integrated to improve client access;
- A strong commitment to working with Native Americans, persons with developmental disabilities, refugees and migrants to address their needs, strengths and abilities; and
- A community-based approach that recognizes and expands on the resources and benefits of diversity.

Emphasis on these goals and progress toward them will help more individuals, including people with developmental disabilities, to live productive and independent lives integrated into their communities.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs that promote

the self-sufficiency and protect the rights of persons with developmental disabilities.

The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C.6000, *et seq.*) (the Act) supports and provides assistance to States and public and private nonprofit agencies and organizations to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, integration and inclusion into the community.

In the Act, Congress expressly found that:

- Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity for independence, productivity, integration and inclusion into the community;
- Individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;
- Individuals with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families; The Act further established as the policy of the United States:
- Individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, integration and inclusion into the community, and often require the provision of services, supports and other assistance to achieve such;
- Individuals with developmental disabilities have competencies, capabilities and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual;
- Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive; and play decision making roles in policies and programs that affect the lives of such individuals and their families; and
- It is in the nation's interest for people with developmental disabilities to be employed, and to live conventional and independent lives as a part of families and communities.

Toward these ends, ADD seeks: To enhance the capabilities of families in assisting people with developmental disabilities to achieve their maximum potential; to support the increasing ability of people with developmental disabilities to exercise greater choice and self-determination; to engage in leadership activities in their communities; as well as to ensure the protection of their legal and human rights.

The four programs funded under the Act are:

- Federal assistance to State developmental disabilities councils;
- State system for the protection and advocacy of individuals rights;
- Grants to University Affiliated Programs for interdisciplinary training, exemplary services, technical assistance, and information dissemination; and
- Grants for Projects of National Significance.

C. Statutory Authorities Covered Under This Announcement

The Developmental Disabilities Assistance and Bill of Rights Act of 1996, 42 U.S.C. 6000, *et seq.* The Projects of National Significance is Part E of the Developmental Disabilities Assistance and Bill of Rights Act of 1996, 42 U.S.C. 6081, *et seq.* The Consolidated Appropriations Act, FY 2000, P.L. 106–113.

Part II. Background Information for Applicants

A. Description of Family Support Program

The Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) was amended in 1994 by adding at the end the "Families of Children With Disabilities Support Act of 1994". The purpose of this new family support program was for states to create or expand statewide systems change. Although authorization levels were provided, funds were never appropriated. The administrative authority for implementing the family support program was given to the U.S. Department of Health and Human Services and within that Department it was delegated to the Administration on Developmental Disabilities. The authority for this program was to expire at the end of fiscal year 1998 or September 30, 1998.

In the fiscal year 2000 appropriations act, funds were provided for this program for one year. It allows for the award of competitive, statewide systems change grants to conduct training and technical assistance and other national activities designed to address the problems which impede the self-sufficiency of families of children with disabilities.

Part III. The Review Process

A. Eligible Applicants

Before applications under this Announcement are reviewed, each will be screened to determine that the applicant is eligible for funding as specified. Applications from organizations that do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition, and the applicant will be so informed.

Only public or non-profit private entities, not individuals, are eligible to apply under any of the priority areas. All applications developed jointly by more than one agency or organization must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees or subcontractors.

Nonprofit organizations must submit proof of nonprofit status in their applications at the time of submission. One means of accomplishing this is by providing a copy of the applicant's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501 (c) (3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

ADD cannot fund a nonprofit applicant without acceptable proof of its nonprofit status.

B. Review Process and Funding Decisions

Timely applications under this announcement from eligible applicants received by the deadline date will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the appropriate evaluation criteria listed later in this Part to review and score the applications. The results of this review are a primary factor in making funding decisions.

ADD reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal

government or the applicant. It may also solicit comments from ADD Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. ADD will consider these comments, along with those of the expert reviewers, in making funding decisions.

In making decisions on awards, ADD will consider whether applications focus on or feature: services to culturally diverse or ethnic populations among others; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations administering or delivering of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

This year, 5 points will be awarded in scoring for any project that demonstrates in their application a partnership and collaboration with any of the 140 Empowerment Zones/ Enterprise Communities. A discussion of how the involvement of the EZ/EC is related to the objectives and/or the activities of the project must be clearly outlined for the award of the 5 points. Also, a letter from the appropriate representative of the EZ/EC must accompany the application indicating its agreement to participate and describing its role in the project.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ADD may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Process

Using the evaluation criteria below, a panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. To facilitate this review, applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Project Narrative Statement.

Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

D. Structure of Priority Area Descriptions

The priority area description is composed of the following sections:

- *Eligible Applicants:* This section specifies the type of organization that is eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.
- *Purpose:* This section presents the basic focus and/or broad goal(s) of the priority area.
- *Background Information:* This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACF and/or other State models are noted, where applicable.
- *Evaluation Criteria:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to need for assistance, results expected, project design, and organizational and staff capabilities. Inclusion and discussion of these items is important since the information provided will be used by the reviewers in evaluating the application against the evaluation criteria.
- *Minimum Requirements for Project Design:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers to evaluate the applications against the evaluation criteria. Project products, continuation of the project after Federal support ceases, and dissemination/ utilization activities, if appropriate, are also addressed.
- *Project Duration:* This section specifies the maximum allowable length of the project period; it refers to the amount of time for which Federal funding is available.
- *Federal Share of Project Costs:* This section specifies the maximum amount of Federal support for the project.
- *Matching Requirement:* This section specifies the minimum non-Federal contribution, either cash or in-kind match, required.
- *Anticipated Number of Projects To Be Funded:* This section specifies the number of projects ADD anticipates funding under the priority area.
- *CFDA:* This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this priority area will be funded. This information is needed to complete item 10 on the SF 424.

Please note that applications under this announcement that do not comply with the specific priority area requirements in the section on "Eligible Applicants" will not be reviewed.

Experience has shown that an application which is broader and more general in concept than outlined in the priority area description is less likely to score as well as an application more clearly focused on, and directly responsive to, the concerns of that specific priority area. Therefore, applicants should tailor their applications according to the requirements of the priority area description.

E. Available Funds

ADD intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 2000, subject to the availability of funding. The size of the awards will vary. The priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

For general information, the term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

F. Grantee Share of Project Costs

Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Cash or in-kind contributions may meet the non-Federal share, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of

at least $33,333 (total project cost is $133,333, of which $33,333 is 25%).

An exception to the grantee cost-sharing requirement relates to applications originating from American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under Section 501(d) of P. L. 95–134, which requires that the Department waive "any requirement for local matching funds for grants under $200,000."

The applicant contribution must generally be secured from non-Federal sources. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. However, funds from some Federal programs benefiting Tribes and Native American organizations have been used to provide valid sources of matching funds. If this is the case for a Tribe or Native American organization submitting an application to ADD, that organization should identify the programs which will be providing the funds for the match in its application. If the application successfully competes for PNS grant funds, ADD will determine whether there is statutory authority for this use of the funds. The Administration for Native Americans and the DHHS Office of General Counsel will assist ADD in making this determination.

G. General Instructions for the Uniform Project Description

The following ACF Uniform Project Description (UPD) has been approved under OMB Control Number 0970–0139.

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions.

1. *Project summary/abstract:* Provide a summary of the project description (a page or less) with reference to the funding request.

2. *Objectives and need for assistance:* Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

3. *Results or benefits expected:* Identify the results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

4. *Approach:* Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

5. *Organization Profile:* Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

H. Cooperation in Evaluation Efforts

Grantees funded by ADD may be requested to cooperate in evaluation efforts funded by ADD. The purpose of these evaluation activities is to learn from the combined experience of multiple projects funded under a particular priority area.

I. Closed Captioning for Audiovisual Efforts

Applicants must include closed captioning and audio description in the development of any audiovisual products.

Part IV. Fiscal Year 2000 Families of Children with Disabilities Support Projects—Description and Requirements

The following section presents the final announcement for the area of family support for Fiscal Year 2000 and solicits the appropriate applications.

Eligible Applicants

A State entity, unit or office designated by the chief executive officer of the state as the lead agency for this project. Proof of designation as lead agency by the governor/CEO must be submitted with the application. Applicants who were awarded grants last year (FY 1999) under this priority area are not eligible.

Purpose

Project funds are to be utilized to support systems change activities designed to assist each State to develop and implement, or expand and enhance, a family-centered and family-directed, culturally competent, community-centered, comprehensive, statewide system of family support for families of children with disabilities designed to—

(1) Ensure the full participation, choice and control of families of children with disabilities in decisions related to the provision of such family support for their family;

(2) Ensure the active involvement of families of children with disabilities in the planning, development,

implementation, and evaluation of such a statewide system;

(3) Increase the availability of, funding for, access to, and provision of family support for families of children with disabilities;

(4) Promote training activities that are family-centered and family-directed and that enhance the ability of family members of children with disabilities to increase participation, choice, and control in the provision of family support for families of children with disabilities;

(5) Increase and promote interagency coordination among State agencies, and between State agencies and private entities that are involved in these projects; and

(6) Increase the awareness of laws, regulations, policies, practices, procedures, and organizational structures, which facilitate or impede the availability or provision of family support for families of children with disabilities.

Background Information

The concept of family support for families with a child with a disability is a relatively new phenomenon in disability policy. Historically, the only means of receiving publicly funded services for a child with a severe disability was by placing the child in a state institution. With a shift in thinking in the early 1980s to a more family-centered approach to service provision many states initiated family support legislation. This legislation was often the result of initiatives developed by the state developmental disabilities councils. Currently, all the states plus the District of Columbia offer some type of family support program; this has consisted of any community-based service administered or financed by the state MR/DD agency providing for vouchers, direct cash payments to families, reimbursement, or direct payments to service providers which the state agency itself identified as family support. A review of these programs reveals the range of services that fall within "family support"—cash subsidy payments, respite care, family counseling, architectural adaptation of the home, in-home counseling, sibling support programs, education and behavior management services and the purchase of specialized equipment. Family support is a growing expenditure in state budgets; in 1996 it constituted 2.3% of total MR/DD resources, compared to 1.6% in 1992. The number of families supported is also growing, from 174,441 in 1992 to 280,535 in 1996.

The Federal government's involvement in family support began in 1982 with what is known as the "Katie Beckett Waiver", an option under Medicaid which allows a state to waive the deeming of parental income and resources for any child eighteen years of age and under who is eligible for placement in a Medicaid certified long term care institution or hospital, ICF/MR or nursing home. This waiver allows parents access to an array of family, home and community supports. A majority of states have not exercised this option.

Federal disability policy in the 1980s increasingly began to reflect the principles of family-centered, community-based, coordinated care as Federal programs were established or reauthorized. The Temporary Respite Care and Crisis Nurseries Act of 1986 funded a variety of in-home and out-of-home respite programs; a new Part H for infants, toddlers, and their families was added in 1986 to the then Education of the Handicapped Act; the reauthorization of the Maternal and Child Health Care Block grant in 1989 emphasized these principles in it's Children with Special Health Care Needs program; and in the Developmental Disabilities Assistance and Bill of Rights Act a definition of family support services was added in 1990.

Minimum Requirements for Project Design

ADD is interested in awarding grant funds that will maximize opportunities for systems change through the collaboration with and strengthening of generic community action service organizations in order to ensure the provision of family support to families of children with disabilities. Activities should contain the following key components:

- Establish a state policy council of families of children with disabilities or utilize an existing council which will advise and assist the lead entity in the performance of activities of this application and be composed of a majority of members who are family members of children with disabilities and who are youth with disabilities (ages 18–21);
- Training and technical assistance for family members, service providers, community members, professionals, members of the Policy Council, state agency staff, students and others;
- Interagency coordination of Federal and State policies, resources, and services; interagency workgroups to enhance public funding options and coordination; and other interagency activities that promote coordination;
- Outreach to locate families who are eligible for family support and to identify groups who are underserved or unserved;
- Policy studies that relate to the development and implementation, or expansion and enhancement, of a statewide system of family support for families of children with disabilities;
- Hearings and forums to solicit input from families of children with disabilities regarding family support programs, policies, and plans for such families;
- Public awareness and education to families of children with disabilities, parent groups and organizations, public and private agencies, students, policymakers, and the general public;
- Needs assessment;
- Data collection and analysis related to the statewide system of family support for families of children with disabilities;
- Implementation plans to utilize generic community service organizations in innovative partnerships to include families of children with disabilities;
- Pilot demonstration projects to demonstrate new approaches to the provision of family support for families of children with disabilities;
- Evaluation system using measurable outcomes based on family satisfaction indicators such as the extent to which a service or support meets a need, solves a problem, or adds value for a family, as determined by the individual family.

ADD is particularly interested in applications that incorporate into these activities one or more of the following populations relevant to their state: (1) Unserved and underserved populations which includes populations such as individuals from racial and ethnic minority backgrounds, economically disadvantaged individuals, individuals with limited-English proficiency, and individuals from underserved geographic areas (rural or urban); (2) aging families of adult children with disabilities who are over age 21 with a focus on assisting those families and their adult child to be included as self-determining members of their communities; (3) foster/adoptive families of children with disabilities; (4) families participating in the state's Temporary Assistance to Needy Families Program (TANF), welfare-to-work, and/or SSI program; (5) veterans with families having a child with a disability; (6) parents with disabilities, especially with cognitive disabilities, having children with or without

disabilities; and (7) families of children with behavioral/emotional issues.

As a general guide, ADD will expect to fund only those applications for projects that incorporate the following elements:

- Consumer/self-advocate orientation and participation.
- Key project personnel with direct life experience with living with a disability.
- Strong advisory components that consist of a majority of individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.
- Research reflects the principles of participatory action.
- Cultural competency.
- A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.
- Attention to unserved and inadequately served individuals, having a range of disabilities from mild to severe, from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families, with severe disabilities.
- Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1998 (P.L. 105–220).
- Collaboration through partnerships and coalitions.
- Development of the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.

Applications should also include provisions for the travel of a key staff person during the project period to Washington, DC.

Evaluation Criteria

The four criteria that follow will be used to review and evaluate each application under this announcement. Each of these criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description. Additional information that must be included is described below.

Criterion 1: Objectives and Need for Assistance (20 points)

The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids must be attached.

Criterion 2: Results or Benefits Expected (20 points)

The extent to which they are consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs is reasonable in view of the expected results.

Criterion 3: Approach (35 points)

Discuss the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4: Organization Profile (25 points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and other work planned, anticipated or under way by the applicant which is being supported by Federal assistance.

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

Project Duration

This announcement is soliciting applications for a project period up to seventeen (17) months under this area. Awards, on a competitive basis, can be up to a seventeen-month (17) budget period.

Federal Share of Project Costs

The maximum Federal share is not to exceed $200,000 for a state and not to exceed $100,000 for a territory for the budget period.

Matching Requirement

Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Cash or in-kind contributions may meet the non-Federal share, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $200,000 in Federal funds (based on an award of $200,000 per budget period) must include a match of at least $66,666 (the total project cost is $266,666, of which $66,666 is 25%).

Anticipated Number of Projects To Be Funded

It is anticipated that up to twenty-two (22) projects will be funded.

CFDA

ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Part V. Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms and other materials can be obtained by any of the following methods: Pat Laird, ADD, 370 L'Enfant Promenade SW, Mailstop 300F, Washington, DC, 20447, 202/690–7447; http://www.acf.dhhs.gov/programs/add; or add@acf.dhhs.gov. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area description is in Part IV.

A. Required Notification of the State Single Point of Contact (SPOC)

All applications under the ADD priority areas are required to follow the Executive Order (E.O.) 12372 process, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100,

"Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/Territory Participation In The Intergovernmental Review Process Does Not Signify Applicant Eligibility for Financial Assistance Under a Program. A Potential Applicant Must Meet The Eligibility Requirements of The Program For Which it is Applying Prior to Submitting an Application to its SPOC, If Applicable, or to ACF.

As of November 20, 1998, all States and territories, except Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, New York, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington, have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these jurisdictions or for projects administered by Federally recognized Indian Tribes need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions.

Applicants must submit all required materials to the SPOC as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials and indicate the date of this submittal (or date SPOC was contacted, if no submittal is required) on the SF 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application due date to comment on proposed new or competing continuation awards. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in delays in awarding grants.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those Official State process recommendations that may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, SW, Mail Stop 326F, Washington, DC 20447, Attn: 93.631 ADD—Projects of National Significance.

Contact information for each State's SPOC is found at the ADD website (http://www.acf.dhhs.gov/programs/add) or by contacting Pat Laird, ADD, 370 L'Enfant Promenade SW, Mailstop 300F, Washington, DC, 20447, 202/690–7447.

B. Notification of State Developmental Disabilities Planning Councils

A copy of the application must also be submitted for review and comment to the State Developmental Disabilities Council in each State in which the applicant's project will be conducted. A list of the State Developmental Disabilities Councils can be found at ADD's website: http:/// www.acf.dhhs.gov/programs/add or by contacting Pat Laird, ADD, 370 L'Enfant Promenade SW, Mailstop 300F, Washington, DC, 20447, 202/690–7447.

C. Deadline for Submittal of Applications

One signed original and two copies of the application must be submitted on or before May 12, 2000 to: U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW, Mail Stop 326F, Washington, DC 20447, Attn: Lois Hodge.

Applications may be mailed or hand-delivered. Hand-delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday. Applications shall be considered as meeting an announced deadline if received by the deadline date at the ACF Grants Office (Close of Business: 4:30 p.m., local prevailing time).

Late applications: Applications that do not meet the criterion stated above are considered late applications. ACF/ADD shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend the deadline for all applicants due to acts of God, such as floods, hurricanes, or earthquakes; or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

D. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A–Page 2 and Certifications/Assurances are contained in the application package that can be accessed as mentioned earlier in this announcement. Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified. Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. "Type of Submission"—Preprinted on the form.

Item 2. "Date Submitted" and "Applicant Identifier" —Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information".

"Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. "Employer Identification Number (EIN)"—Enter the employer

identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—Preprinted on the form.

Item 9. "Name of Federal Agency"—Preprinted on the form.

Item 10. "Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. For all of ADD's priority areas, the following should be entered, "93.631—Developmental Disabilities: Projects of National Significance."

Item 11. "Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If Statewide, a multi-State effort, or nationwide, enter "00."

Items 15. Estimated Funding Levels. In completing 15a through 15f, the dollar amounts entered should reflect, for a 17-month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part III, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of program income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this program income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative" —Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 15 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period of 17 months or less or (2) the first-year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—Line 6c. Enter total costs of out-of-town travel (travel requiring per diem)

for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is tangible, non-expendable personal property having a useful life of more than one year and acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, "Other."

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or the entire program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in title 45 of the Code of Federal Regulations, Parts 74.51 and 92.24, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period,

the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 12 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary/Abstract

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description that accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals must be closed captioned and audio described). The project summary description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

Project Description. The Project Description is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part IV. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) Objectives and Need for Assistance;
(b) Results and Benefits Expected;
(c) Approach; and
(d) Organization Profile.

The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description, and under Part IV, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8 1/2" x 11" plain white paper, with 1" margins on all sides, using black print no smaller than 12 pitch or 12 point size. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. This will be strictly enforced. A page is a single side of an 8 1/2 x 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose copying difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. Part V—Assurances/Certifications

Applicants are required to file a SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. Applicants must also provide certifications regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications can be obtained from the ADD website (http://www.acf.dhhs.gov/programs/add) or by contacting Pat Laird, ADD, 370 L'Enfant Promenade SW, Mailstop 300F, Washington, DC, 20447, 202/690–7447. These forms can be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. *A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications, and need not be mailed back with the application.*

In addition, applicants are required under Section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

E. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;

—Application is from an organization that is eligible under the eligibility requirements defined in the priority area description (screening requirement);

—Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

—Application for Federal Assistance (SF 424, REV 4–88);

—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.

—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);

—Budget justification for Section B—Budget Categories;

— Proof of designation as lead agency;

—Table of Contents;

—Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;

—Copy of the applicant's approved indirect cost rate agreement, if appropriate;

—Project Description (See Part III, Section C);

—Any appendices/attachments;

—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);

—Certification Regarding Lobbying;

—Certification of Protection of Human Subjects, if necessary; and

—Certification of the Pro-Children Act of 1994 (Environmental Tobacco Smoke), signature on the application represents certification.

F. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments,

such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

G. Paperwork Reduction Act of 1995 (P.L. 104–13)

The Uniform Project Description information collection within this announcement is approved under the Uniform Project Description (0970–0139), Expiration Date 10/31/2000.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(Federal Catalog of Domestic Assistance Number 93.631 Developmental Disabilities—Projects of National Significance)

Dated: March 1, 2000.

Sue Swenson,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 00–6107 Filed 3–10–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0836]

Agency Information Collection Activities: Proposed Collection; Comment Request; Environmental Impact Considerations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements governing applications for FDA approval to market a new drug.

DATES: Submit written comments on the collection of information by May 12, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Environmental Impact Considerations—Part 25 (21 CFR Part 25)—(OMB Control Number 0910–0322)—Extension

FDA is requesting OMB approval for the reporting requirements contained in FDA's regulation "Environmental Impact Considerations" (part 25).

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347), states national environmental objectives and imposes upon each Federal agency the duty to consider the environmental effects of its actions. Section 102(2)(C) of NEPA requires the preparation of an environmental impact statement (EIS) for every major Federal action that will significantly affect the quality of the human environment.

FDA's NEPA regulations are at part 25. All applications or petitions requesting agency action require the submission of an Environmental Assessment (EA) or a claim of categorical exclusion. Section 25.15(a) and (d) specify the procedures for submitting to FDA a claim for a categorical exclusion (certain classes of FDA-regulated actions have little or no potential to cause significant environmental effects and are excluded from the requirements to prepare an EA or EIS). Section 25.40(a) and (c) specify the content requirements for EA's for nonexcluded actions.

This collection of information is used by FDA to assess the environmental impact of agency actions and to ensure that the public is informed of environmental analyses. Firms wishing to manufacture and market substances regulated under statutes for which FDA is responsible must, in most instances, submit applications requesting approval. Environmental information must be included in such applications (when not eligible for categorical exclusion) for the purpose of determining whether the proposed action may have a significant impact on the environment. Where significant adverse effects cannot be avoided, the agency uses the submitted information as the basis for preparing and circulating to the public an EIS, made available through **Federal Register** notice also filed for comment at the Environmental Protection Agency (EPA). The final EIS including the comments received is reviewed by the agency to weigh environmental costs and benefits in determining whether to pursue the proposed action or some alternative that would reduce expected environmental impact. When the agency finds that no significant environmental effects are expected, the agency prepares a Finding of No Significant Impact (FONSI).

I. Estimated Annual Reporting Burden for Human Drugs

Under 21 CFR 312.23(a)(7)(*e*), 314.50(d)(1)(iii), and 314.94(a)(9)(i), each investigational new drug

application (IND), new drug application (NDA), and abbreviated new drug application (ANDA) must contain a claim for categorical exclusion under § 25.30 or § 25.31 or an EA under § 25.40. In 1998, FDA received 2,427 IND's from 1,874 sponsors, 129 NDA's from 80 applicants, 2,500 supplements to NDA's from 238 applicants, 345 ANDA's from 101 applicants, and 3,713 supplements to ANDA's from 165 applicants. FDA estimates that it receives approximately 9,094 claims for categorical exclusions as required under § 25.15(a) and (d), and 20 EA's as required under § 25.40(a) and (c). Based on information provided by the pharmaceutical industry, FDA estimates that it takes sponsors or applicants approximately 8 hours to prepare a claim for a categorical exclusion and approximately 3,400 hours to prepare an EA.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS [1]

21 CFR Section	No. of <Respondents	Annual <Frequency per <Response	Total Annual Responses	Hours per <Response	Total Burden Hours
25.15(a) and (d)	2,039	4.46	9,094	8	72,752
25.40(a) and (c)	20	1	20	3,400	68,000
Total					140,752

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. Estimated Annual Reporting Burden for Human Foods

Under 21 CFR 71.1 and 170.39, food additive petitions, color additive petitions, and requests for exemption from regulation as a food additive must contain a claim of categorical exclusion under § 25.30 or § 25.32 or an EA under § 25.40. In 1998, FDA received 57 food additive petitions, 9 color additive petitions, and 26 threshold of regulation exemption requests. FDA estimates that it received approximately 80 claims of categorical exclusions as required under § 25.15(a) and (d), and 12 EA's as required under § 25.40(a) and (c). FDA estimates that it takes petitioners or requestors approximately 8 hours to prepare a claim of categorical exclusion and approximately 210 hours to prepare an EA.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS [1]

21 CFR Section	No. of <Respondents	Annual <Frequency per <Response	Total Annual Responses	Hours per <Response	Total Burden Hours
25.15(a) and (d)	44	1.8	8.0	8	640
25.40(a) and (c)	11	1.1	12	210	2,520
Total					3,160

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) to establish a premarket notification process as the primary method for authorizing a new use of a food additive that is a food contact substance. Section 409(h)(6) of the act defines a food contact substance as any substance intended for use as a component of materials used in manufacturing, packing, transporting, or holding food if such use is not intended to have any technical effect in food. Under the notification process, FDA must be notified at least 120 days prior to the marketing of a food contact substance. If FDA does not object within 120 days to the use of a food contact substance that is the subject of a notification, the substance may be legally marketed for the notified use. FDA expects that the majority of new uses of food contact substances that will be the subject of premarket notifications would previously have been regulated under the food additive petition process or exempted from the requirement of a regulation under the threshold of regulation process. FDA has provided in a separate **Federal Register** notice an opportunity for public comment on the collection of information associated with the premarket notification program, including environmental information requirements (64 FR 61648, November 12, 1999).

III. Estimated Annual Reporting Burden for Medical Devices

Under 21 CFR part 814, premarket approvals (original PMA's and supplementals) must contain a claim for categorical exclusion under § 25.30 or § 25.31 or an EA under § 25.40. In 1998, FDA received 568 claims (original PMA's and supplementals) for categorical exclusions as required under § 25.15(a) and (d), and 0 EA's as required under § 25.40(a) and (c). Based on information provided by less than 10 sponsors, FDA estimates that it takes approximately less than 1 hour to prepare a claim for a categorical exclusion and an unknown number of hours to prepare an EA.

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN FOR MEDICAL DEVICES [1]

21 CFR Section	No. of <Respondents	Annual <Frequency per <Response	Total Annual Responses	Hours per <Response	Total Burden Hours
25.15(a) and (d)	94	6	568	1	568
25.40(a) and (c)	0	0	0	0	0

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN FOR MEDICAL DEVICES [1]—Continued

21 CFR Section	No. of <Respondents	Annual <Frequency per <Response	Total Annual Responses	Hours per <Response	Total Burden Hours
Total					568

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

IV. Estimated Annual Reporting Burden for Biological Products

Under 21 CFR 312.23(a)(7)(iv)(*c*) and 601.2(a), IND and biologics license applications must contain a claim for categorical exclusion under § 25.30 or § 25.31 or an EA under § 25.40. In 1998, FDA received 492 IND's from 278 sponsors, 78 license applications from 20 applicants, and 903 supplements to license applications from 190 applicants. FDA estimates that approximately 10 percent of these supplements would be submitted with a claim for categorical exclusion or an EA.

FDA estimates that it receives approximately 660 claims for categorical exclusion as required under § 25.15(a) and (d), and 2 EA's as required under § 25.40(a) and (c). Based on information provided by industry, FDA estimates that it takes sponsors and applicants approximately 8 hours to prepare a claim for categorical exclusion and approximately 3,400 hours to prepare an EA.

TABLE 4.—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICAL PRODUCTS [1]

21 CFR Section	No. of <Respondents	Annual <Frequency per <Response	Total Annual Responses	Hours per <Response	Total Burden Hours
25.15(a) and (d)	317	2	660	8	5,280
25.40(a) and (c)	2	1	2	3,400	6,800
Total					12,080

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

V. Estimated Annual Reporting Burden for Animal Drugs

Under 21 CFR 514.1(b)(14) new animal drug applications (NADA's) and abbreviated new animal drug applications (ANADA's), 514.8(a)(1) supplemental NADA's and ANADA's, 511.1(b)(10) investigational new animal drug applications (INADA's), 570.35(c)(1)(viii) generally recognized as safe (GRAS) affirmation petitions, and 571.1(c) food additive petitions must contain a claim for categorical exclusion under § 25.30 or § 25.31 or an EA under § 25.40. Since the last OMB Approval of the subject collections of information, the Center for Veterinary Medicine has received approximately 545 claims for categorical exclusions as required under § 25.15(a) and (d), and 32 EA's as required under § 25.40(a) and (c). Based on information provided by industry, FDA estimates that it takes sponsors/applicants approximately 8 hours to prepare a claim for a categorical exclusion and approximately 2,160 hours to prepare an EA.

TABLE 5.—ESTIMATED ANNUAL REPORTING BURDEN FOR ANIMAL DRUGS [1]

21 CFR Section	No. of <Respondents	Annual <Frequency per <Response	Total Annual Responses	Hours per <Response	Total Burden Hours
25.15(a) and (d)	194	2.8	545	8	4,360
25.40(a) and (c)	29	1.1	32	2,160	69,120
Total					73,480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on information provided by industry, FDA estimates that the combined burden for the Environmental Impact Considerations—Part 25 are as follows:

TABLE 6.—ENTIRE TOTAL ESTIMATED ANNUAL REPORTING BURDEN FOR ALL CENTERS [1]

21 CFR Section	No. of <Respondents	Annual <Frequency per <Response	Total Annual Responses	Hours per <Response	Total Burden Hours
25.15(a) and ((d)	2,688	17.06	10,875	33	83,600
25.40(a) and (c)	62	4.02	66	9,170	146,440
Total	2,750	21.08	10,941	9,203	230,040

[1] There are no capital costs or operating and maintenance cost associated with this collection of information.

Dated: March 6, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–5969 Filed 3–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medwatch/MDR/FDA Website Navigation; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

The Food and Drug Administration (FDA) is announcing the following public meeting: Medwatch/Medical Device Reporting (MDR)/FDA Website Navigation. The topics to be discussed are the Medwatch Program, medical device reporting, and the navigation of the FDA website. This public meeting is intended to familiarize the attendees with the Medwatch Program, provide information on the regulations associated with the mandatory medical device reporting system, and furnish training on the navigation of the FDA website.

Date and Time: The public meeting will be held on April 7, 2000, from 9 a.m. to 12 noon.

Location: The public meeting will be held at the Mercy Medical Center Auditorium, 2175 Rosaline Ave., Redding, CA 96049.

Contact: Mary E. Taylor, Food and Drug Administration, 1431 Harbor Bay Pkwy., Alameda, CA 94502–7070, 510–337–6888, FAX 510–337–6708, e-mail: mtaylor1@ora.fda.gov.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by March 30, 2000.

If you need special accommodations due to a disability, please contact Mary E. Taylor at least 7 days in advance.

Dated: March 6, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–5968 Filed 3–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Children's Hospital Graduate Medical Education Program—New

Public Law Number 106–129 amended the Public Health Service Act to establish a new program to support graduate medical education (GME) in children's hospitals. The provision authorizes payments in FY 2000 and FY 2001 for direct and indirect expenses associated with operating approved GME programs. Section 340E(c)(1) states that the amount determined under this subsection for payments for direct medical expenses for a fiscal year is equal to the product of: (A) The updated per resident amount as determined, and (B) the average number of FTE residents in the hospital's approved graduate medical residency training programs as determined under section 1886(h)(4) of the Social Security Act during the fiscal year. The statute directs the Secretary to take into account factors identified in section 340E(b)(1)(B) and 340E(d)(2)—case mix, number of FTE residents, treatment of more severely ill patients and the additional costs related to teaching residents.

Administration of the Children's Hospital Graduate Medical Education Program relies on the reporting of the number of full-time equivalent residents in applicant children's hospital training programs to determine the amount of direct and indirect expense payments to participating children's hospitals. Indirect expense payments will also be derived from a formula that requires the reporting of case mix index information from participating children's hospitals.

Hospitals will be requested to submit such information in an annual application. The statute also requires reconciliation of the estimated numbers of residents with the actual number determined after the close of the fiscal year. Participating children's hospitals would be required to complete an adjusted report to correct such information on an annual basis.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Form name	No. of respondents	Responses per respondent	Total responses	Hrs. per response	Total hour burden
Form A	48	1	48	28	1,344

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 6, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–5970 Filed 3–10–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Special Teleconference Review Panel.

Date: March 9, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Bldg 31, Room 5B50, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lawrence R. Haller, National Center for Complementary and Alternative Mecicine, National Institutes of Health, 31 Center Drive, Room 5B50, Bethesda, MD 20892–2182, (301) 402–9011, hallerl@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: March 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6015 Filed 3–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Special Emphasis Panel, Science Education Partnership Award.

Date: March 17, 2000.

Time: 11 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sybil A. Wellstood, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0814.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6020 Filed 3–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–35, Review of R01.

Date: March 24, 2000.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–44, Review of R03s.

Date: March 29, 2000.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892.

Contact Person: William J. Gartland, PhD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–36, Review of R01s.

Date: April 17, 2000.

Time: 10:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–43, Review of R03 Grant.

Date: April 20, 2000.

Time: 12:05 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PhD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–42, Review of R03 Grant.

Date: May 10, 2000.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PhD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 6, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6016 Filed 3–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Environmental Health Sciences as an Integrative Context for Learning (RFA 99–011).

Date: March 15–17, 2000.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Governors Inn, 1–40 & Davis Dr., Exit 280, Research Triangle Park, NC 27709.

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, SRB/DERT, NIEHS, P.O. Box 12233 MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: March 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6017 Filed 3–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel K08—Progression of Hepatic Neoplasia by PCB/Arsenic Mixtures.

Date: March 31, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Appliced Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: March 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6018 Filed 3–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel K08 Grant Reviews.

Date: March 30, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS–East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel K08 Grant Reviews.

Date: March 30, 2000.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS–East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: March 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6019 Filed 3–10–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–2000–6812.

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company (UP) seeks relief from the requirements of the Rules, Standard and Instructions, 49 CFR, Part 236, § 236.110, to the extent that each test record, need not be signed by the person making the test, in lieu of implementing an electronic record system ("STARS") to record and maintain signal records of tests. The "STARS" electronic record system will provide integrity and several levels of security to uniquely identify a person as the author of a specific record, and once the test record is entered, verified, and saved it cannot be modified. Initially, "STARS" will not be inclusive of all Part 236 records of tests, and future development may result in the addition of subsequent test records. This petition is associated with UP's request to utilize the "STARS" electronic record system for recording and maintaining applicable inspection and test records as defined in 49 CFR, Part 234, subject to approval by the Associate Administrator for Safety, as required by Section 234.273.

Applicant's justification for relief: To provide more flexibility for Federal and State Inspectors who are required to check and inspect records of tests over the UP system.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, S.W., Washington, D.C. 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on March 8, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–6075 Filed 3–10–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements—Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 27, 1999 [64 FR 57924–57925].

DATES: Comments must be submitted on or before April 12, 2000.

FOR FURTHER INFORMATION CONTACT: Sharon Vaughn at the National Highway Traffic Safety Administration, Office of Chief Counsel (NCC–30), 202–366–1834, 400 Seventh Street, SW, Room 5219, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Designation of Agent.

OMB Number: 2127–0040.

Type of Request: Extension of a currently approved collection.

Abstract: This collection of information applies to motor vehicle and motor vehicle equipment manufacturers located outside of the United States (foreign manufacturers). Every manufacturer offering a motor vehicle or item of motor vehicle equipment for importation into the United States is statutorily required to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions and requirements may be made for and on behalf of the manufacturer.

Affected Public: Foreign manufacturers of motor vehicles and motor vehicle equipment located

outside of the United States, which are importing these items into the United States.

Estimated Total Annual Burden: 70.

Address: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, D.C. 20503, Attention: NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, D.C., on March 3, 2000.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–6060 Filed 3–10–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–6992; Notice 1]

Blue Bird Body Company; Receipt of Application for Decision of Inconsequential Noncompliance

Blue Bird Body Company (Blue Bird), 402 N. Camellia Blvd., P.O. Box 937, Fort Valley, Georgia 31030, has determined that 25,839 model TC/2000 Conventional and MiniBird school buses do not meet the 60 percent tensile strength requirements of 49 CFR 571.221, Federal Motor Vehicle Safety Standard (FMVSS) No. 221, "School bus Body Joint Strength," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Blue Bird has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

FMVSS No. 221, S5 requires that when tested in accordance with the test procedures of S6., each body panel joint shall be capable of holding the body panel to the member to which it is joined when subjected to a force of 60 percent of the tensile strength of the weakest joined body panel determined pursuant to S6.2.

Blue Bird has notified the National Highway Traffic Safety Administration that the subject school buses were manufactured at their Mount Pleasant, Iowa, plant between November 1, 1993 through December 6, 1999. The noncompliance involves a failure to meet the 60 percent joint strength requirements on certain 8 inch segments of the exterior roof joints. Agency compliance tests, performed by General Testing Laboratories (GTL), determined that the tensile strength of the roof joint tested was 54.9 percent of the required load. Blue Bird stated that a variance in rivet spacing in the vicinity of the roof stringers occurred as some assembly workers at this plant without authorization, departed from manufacturing procedures of using the pre-punched holes in the roof bows as drill guides to control fastener spacing and, as a result, there are fewer than the six (6) rivets required by Blue Bird in certain eight (8) inch segments of the roof joints in the affected buses.

Blue Bird supported its application for inconsequential noncompliance with the following:

I. Overall Joint and Body Strength

The stated purpose of the School Bus Body Joint Strength Standard No. 221 is "* * * to reduce deaths and injuries resulting from the structural collapse of school bus bodies during crashes." In Docket No. 7334: Notice 1, **Federal Register**, Vol. 39, No. 15—Tuesday, January 22, 1974, the agency observed that FMVSS 221 "derives from section 5.6 of the Vehicle Equipment Safety Commission's Regulation VESC–6 * * * " Docket No. 73–34 went on to state that,

> "In order to bring the basic VESC—6 requirement into a form that satisfied the legal and operational requirements of the motor vehicle safety standards, the agency has included a test procedure to make possible an objective determination of a joint's strength."

The selected test procedure established the use of a twelve (12) inch wide test specimen necked down to eight (8) inches at the center, such that the strength of the joint is evaluated by tensile testing of a randomly selected eight (8) inch long segment of the joint being evaluated. Later in the docket NHTSA outlined its regulatory objective:

> "The agency therefore anticipates that the procedure will permit the overall strength of a bus's joints to be determined without resorting to an unduly burdensome amount of testing."

Blue Bird concludes from the above discussion that the strength of the overall joint and consequently the strength of the overall bus body is the safety objective of standard 221 and that the measured performance of an eight (8)-inch long joint segment is merely a procedure chosen to evaluate the overall joint in a practical manner.

During a December 2, 1999 Blue Bird personnel visit to the GTL facility in Leedstown, VA, the 1998 Blue Bird test bus was inspected and photographed. Paper tape was secured at each roof joint and the location of each rivet in each joint was marked on the tape. Blue Bird thereafter analyzed each tape and the length of each joint and the total number of fasteners in each joint were determined. On average, the seven (7) roof joints on the test bus had 6.76 rivets per eight (8) inches of length. Based on the reported test results of 6220 pounds for the roof joint tested that had five (5) rivets, the strength per rivet is 1244 pounds per rivet, and for the average joint with 6.76 rivets, this equates to a strength of 8409 pounds per eight (8) inch length which far exceeds the required strength of 6788 pounds. This 8409 pound strength equates to a 73.3 percent efficiency as compared to the 60 percent required by Standard 221.

Similarly, the worst case roof joint on the test bus had 6.62 rivets per eight (8) inches of length, which equates in a similar manner to 8239 pounds per eight (8) inch length for an efficiency of 72.8 percent. Here again, this comfortably exceeds the 60 percent requirement of Standard 221.

This analysis shows that the overall strengths of the roof joints on the subject test bus not only meet—but comfortably exceed the strength performance requirements of FMVSS 221. Consequently, Blue Bird believes that the noncompliance of several small selected segments of these roof joints is not representative of actual, overall bus body strength performance and is inconsequential as it relates to motor vehicle safety.

II. Occupants Not Exposed to Roof Joints

In reviewing the regulatory history of FMVSS 221, Blue Bird notes that this rulemaking had a complementary purpose to minimize the likelihood of sharp-edges of sheet metal being

produced by joint separations or gross body deformation in crashes. For interior panel joints it could be argued that the eight (8) inch joint segment length was also chosen to help accomplish this purpose. However, in a crash, vehicle occupants are not exposed to exterior joints like the roof joint in question, and the interior panel sheet metal concern would not be applicable. Also of importance is the fact that the few small segments of exterior roof joints believed to be in noncompliance are completely separated from the occupant compartment by headlining panels with joints in full compliance (71.3%) with FMVSS 221 requirements.

III. Interior Headlining Joint and Overall Bus Body Joint Strength

For school bus bodies, Blue Bird reiterates that the overall strength of the joints is of critical importance with regard to the purpose of Standard 221. Blue Bird notes and emphasizes that the GTL test results showed that the headlining joint performance was 71.3 percent vs. the 60 percent requirement. Extending the analysis in I above, if the strength of the entire body joint consisting of both the interior headlining joint and the exterior roof joint were to be analyzed together, the overall performance of the joint would be 62.4 percent, which exceeds the 60 percent requirement of FMVSS 221 and satisfies the stated purpose and safety objectives of the standard.

IV. The Remedy in this Case Could Result in Degradation and Leakage of Bus Body Panels

There is no safety need to require notification and remedy of the subject school buses to add additional fasteners. Blue Bird believes that in reality, a recall of the subject buses would be counterproductive to safety in that the resulting inconvenience to the owners/operators of the buses could disrupt the service they provide, resulting in the use of much less safe means of transportation.

Equally important, the only feasible remedy on completed buses is the addition of blind repair (pop type) rivets in the areas where there are less than six (6) rivets in each eight (8) inch segment. Blind rivets are susceptible to water leaks and the installation of these rivets could result in mechanical damage to the roof joint sealer and possible damage to the exterior body paint. Water leaks and/or possible corrosion could occur as a result of the mechanical damage done during drilling and rivet installation.

V. The Current Status of FMVSS 221 Indicates That Curved Joints Are Not a Safety Concern

The current version of FMVSS 221, which permitted optional early compliance as of November 5, 1998, provides an instructive insight into the agency's position with respect to curved joint testing. The November 1998 final rule (see Reference 3), in § S5.2.2, appears to exclude all curved and complex joints from the 60 percent strength. requirements of § S5.1.2.

While in a technical sense this revised Standard 221 does not apply to the September 1998 test bus, Blue Bird notes that (1) the GTL test occurred one year after the revised FMVSS 221 became optionally effective, and (2) the roofjoint tested in November 1999 by GTL was in fact a curved panel joint.

To Blue Bird, the thinking and intent of the agency to exclude all curved joints from the joint tensile strength requirements of revised Standard 221 was unambiguous, as borne out by the following statements from the rule's preamble:

"This rule excludes from the joint tensile strength requirement joints from which a test sample cannot be obtained because of the size of the joint or the curvature of the panels comprising the joint."

"NHTSA recognizes that the curved shape of such joints poses difficulty in obtaining accurate test results. The application of force on a curved surface would cause the surface to flatten, thus misrepresenting the actual force loading on the panel." "Since the agency is not aware of any data indicating that injuries have been caused disproportionately by curved joint separation, NHTSA believes that the potential costs and technical difficulty of testing curved joints more than outweigh any potential safety benefits."

"Accordingly, NHTSA has decided that test specimens from joints with discrete fasteners will be taken from 305 mm (12 inch) segments (203 mm (8 inches) at the neck) of only flat body panels."

"While curved, small and complex joints are excluded from the tensile test requirement because they cannot be accommodated on the test apparatus, they are nevertheless subject to the requirement in S5.1.1 that no body panel, when joined to another body panel, shall have an unattached segment at the joint longer than 203 mm. (8 inches). Presumably rivets or other fasteners will be used. This requirement helps ensure that the joints will maintain their integrity in a crash."

Based on the belief that the final rule excluded all curved joints, and for other reasons, Blue Bird first initiated an urgent meeting with NHTSA in early December 1998, then petitioned the agency in a December 16, 1998 letter to reconsider the final rule and thereafter attended a second meeting with NHTSA and other major school bus manufacturers in January 1999. In each instance, Blue Bird urged the agency to properly address the issue of curved joints, including properly defining them and/or showing side and end views of Figure I with tolerances. The meetings and petitions also pointed out other problems with the final rule. In Blue Bird's December 16, 1998 Petition for Reconsideration, the Company went so far as to provide the recommended regulatory text needed to properly amend the final rule. Even so, this final rule has been allowed to stand without corrective amendment or extension for approximately fifteen (15) months despite the objections, petitions and continued urging from the industry.

Until the standard properly defines what does or does not constitute a "curved joint," the actual requirements that roof and ceiling joints must meet will continue to be unclear. By not taking action to correct or clarify the final rule, Blue Bird believes that the agency is saying that one rivet per eight inch segment is sufficiently safe for these joints, as well as other curved, complex and small joints, and is allowing school buses to be manufactured in this manner. Since no action has been forthcoming, we must conclude that curved joints, including roof and ceiling joints, do not constitute enough of a safety issue to warrant making corrections and/or clarifications to the final rule of Reference 3.

VI. There Have Been No Roof Joint Failures in the Field

Blue Bird has never had a field complaint regarding the strength of roof joints and is not aware of any accidents or crash tests which resulted in roof joint separations within the scope of the Standard. The NHTSA test bus from which the subject roof joint was obtained had other joints tested and all were found to be in full compliance with all FMVSS 221 requirements. Further, the same bus had previously been tested and found to be compliant with the agency's other school bus body construction standard, FMVSS 220—School Bus Roll Over Protection.

VII. Blue Bird's Corrective Actions Were Immediate on Learning of the Test Failure

Blue Bird responded quickly to the reported test failure. An internal review was initiated immediately and field inspection and analysis of vehicles in service was conducted to determine the potential scope of the reported test failure. A visit to the General Testing Laboratories facility in Leedstown, Virginia, to gather testing details and

related vehicle information was immediately requested and quickly accomplished. All production facilities were alerted of the situation so assembly procedures would be checked and any required corrective action taken.

The Company's internal review, field inspection and analysis showed that the departure from manufacturing procedures that resulted in the reported test failure was limited to Blue Bird's Midwest Plant in Mount Pleasant, Iowa, during the period beginning November 1, 1993 and ending when corrective action was implemented in early December 1999. All other plants reported ongoing conformance with assembly instructions, such that all such bus roof and other joints were manufactured in compliance with FMVSS 221 requirements.

Blue Bird Midwest initiated corrective procedures in its assembly processes immediately upon notification of the test failure. All units placed in assembly on or after December 6, 1999, have roof joint rivets spaced in conformance with assembly procedures to assure compliance with FMVSS 221 joint strength performance requirements. Further, once a determination of noncompliance was made, a stop delivery order was issued to insure that all units still in Blue Bird Midwest's possession and control were corrected prior to delivery to distributors.

Conclusion

The above facts and discussion have described a noncompliance that has been determined to exist on certain Blue Bird school buses. The Company does not in any way wish to discredit or minimize the performance requirements or test procedures of FMVSS 221 because of this noncompliance. Blue Bird takes full responsibility for the noncompliance that occurred and has explained how it occurred, why the noncompliance is not a safety problem and that corrective action to prevent future occurrences has been taken.

Blue Bird firmly believes that the noncompliance is inconsequential and in no way compromises the safety of the subject school buses and that the disruption of our customers and likely degradation of these buses by the indicated remedy is not in the public interest. For the reasons provided herein, Blue Bird respectfully requests that its petition for exemption be granted.

Interested persons are invited to submit written data, views, and arguments on the application of described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 12, 2000.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: March 8, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–6062 Filed 3–10–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 6, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 12, 2000 to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0046.
Form Number: Customs Form 3485.
Type of Review: Extension.
Title: Lien Notice.
Description: The Lien Notice enables the carriers, cartmen, and similar businesses to notify Customs that a lien exists against an individual/business for non-payment of freight charges, *etc.*, so that Customs will not permit delivery of the merchandise from public stores or a bonded warehouse until the lien is satisfied or discharged.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 8,497 hours.
OMB Number: 1515–0091.
Form Number: None.
Type of Review: Extension.
Title: Importers of Merchandise Subject to Actual Use Provisions.
Description: The Importers or Merchandise Subject to Actual Use Provision is part of the regulation which provides that certain items may be admitted duty-free such as farming implements, seed, potatoes, etc., providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Recordkeepers: 12,000.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 13,000 hours.
OMB Number: 1515–0093.
Form Number: Customs Form 300.
Type of Review: Extension.
Title: Bonded Warehouse Proprietor's Submission.
Description: Customs Form 300 is prepared by Bonded Warehouse Proprietor's submitted to the Customs Service annually. The document reflects all bonded merchandise entered, released, and manipulated, and includes beginning and ending inventories.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 1,800.
Estimated Burden Hours Per Respondent: 132 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 36,000 hours.
OMB Number: 1515–0109.
Form Number: None.
Type of Review: Extension.
Title: Proof of Use Rates of Duty Dependent on Actual Use.
Description: The Proof of Use Rates of Duty Dependent on Actual Use declaration is needed to ensure Customs control over merchandise which is duty free. The declaration shows proof of use and must be submitted within 3 years of the date of entry or withdrawal for consumption.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 10,500.

Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,500 hours.
OMB Number: 1515–0135.
Form Number: None.
Type of Review: Extension.
Title: Required Records for Smelting and Refining Warehouses.
Description: Each manufacturer engaged in smelting or refining must file an annual statement showing any material change in the character of the metal-bearing materials used or changes in the method of smelting or refining. Also, the records must show the receipt and disposition of each shipment.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 15.
Estimated Burden Hours Per Respondent: 85 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 156 hours.
OMB Number: 1515–0137.
Form Number: None.
Type of Review: Extension.
Title: Declaration of Persons Who Perform Repairs or Alterations.
Description: The Declaration of Persons Who Perform Repairs or Alterations.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 10,236.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10,236 hours.
OMB Number: 1515–0154.
Form Number: Customs Form 339.
Type of Review: Extension.
Title: User Fees.
Description: The user Fees, Customs Form 339, information is necessary for Customs to effectively collect fees from private and commercial vessels, private aircraft, operators of commercial trucks, and passenger and freight railroad cars entering the United States and recipients of certain dutiable mail entries for certain official services.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 60,000.
Estimated Burden Hours Per Respondent: 16 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 16,000 hours.
OMB Number: 1515–0163.
Form Number: None.
Type of Review: Extension.
Title: Country of Origin Marking Requirements for Containers or Holders.
Description: Containers or Holders imported into the United States destined for an ultimate purchaser must be marked with the English name of the country of origin at the time of importation into Customs territory..
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Respondent: 15 seconds.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 41 hours.

Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Room 3.2.C, Washington, DC 20229.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 00–6021 Filed 3–10–00; 8:45 am]
BILLING CODE 4820–02–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 6, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 12, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1347.
Regulation Project Number: FI–7–94 and FI–36–92 Final.
Type of Review: Extension.
Title: Arbitrage Restrictions on Tax-Exempt Bonds.
Description: The Code limits the ability of state and local government issuers of tax-exempt bonds to earn and/or keep arbitrage profits earned with bond proceeds. This regulation requires recordkeeping of certain interest rate hedges so that the hedges are taken into account in determining those profits.
Respondents: State, Local or Tribal Government.
Estimated Number of Respondents/Recordkeepers: 3,100.
Estimated Burden Hours Per Respondent/Recordkeeper: 14 hr., 34 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 42,050 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 00–6022 Filed 3–10–00; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Customs Service

Suspension of Operations and Development of the General Test Regarding the International Trade Prototype

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General notice.

SUMMARY: This notice announces that Customs is suspending operations and development of the general test regarding the International Trade Prototype (ITP) due to lack of funding. The ITP was most recently announced in the **Federal Register** on July 27, 1999. Upon prototype suspension, ITP participants must cease entering goods and transmitting data under ITP procedures. This notice identifies instructions to participants on procedures for processing outstanding prototype entries.

DATES: Suspension of the ITP will be effective as of April 12, 2000.

FOR FURTHER INFORMATION CONTACT: Comments regarding the suspension of this prototype should be directed to Daniel Buchanan, U.S. Customs Service at (617) 565–6236, or Pamela McGuyer, U.S. Customs Service at (202) 927–0279.

SUPPLEMENTARY INFORMATION:

Background

The ITP concept has been under consideration by both the U.S. Customs Service (USCS) and Her Majesty's Custom and Excise (HMCE) since 1996. The nucleus of this program is an extension of ideas developed in partnership with the trade community by various members of the Trans-Atlantic Team, primarily comprised of USCS and HMCE officers. The ITP concept also addressed issues raised by international traders, the World Customs Organization (WCO), the United Nations Conference on Trade and Development (UNCTAD), G–7 and other international organizations.

The concept was intended to simplify and standardize Customs processes and procedures in order to facilitate trade while maintaining effective and efficient control.

Additional information on the ITP has been published in the **Federal Register** (63 FR 68353 on December 31, 1997; 63 FR 30288 on June 3, 1998); and (64 FR 40643 on July 27, 1999).

This notice serves to inform the public that the ITP test announced in the aforementioned Notices is suspended due to lack of funding.

Procedures

The ITP system involves initiation of import clearance processing on the basis of an Inter-Customs Advice (ICA) message sent from the export customs authority to the import customs authority.

For all outstanding ITP U.S. import shipments for which an ICA message from HMCE has been received prior to the date of publication of this Notice, USCS will complete processing under ITP procedures. All processing for such shipments must be completed within 30 days following the date of publication of this Notice.

On or after the date of publication of this Notice, USCS will no longer process ICA messages for either U.S. exports or U.S. imports. Participants must revert to non-ITP processing for all cargo shipments.

Dated: March 8, 2000.

Robert J. McNamara,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–6114 Filed 3–10–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Amended Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer program matching Social Security Administration (SSA) records with VA compensation, pension and dependency and indemnity compensation (DIC) records.

The goal of this match is to provide VA with information to identify those who are confined for a period exceeding 60 days due to a conviction for a felony or misdemeanor. VA has the obligation to reduce or suspend compensation, pension, and dependency and indemnity compensation benefit payments to veterans and VA beneficiaries on the 61st day following conviction and incarceration in a Federal, State, or local institution for a felony or misdemeanor. Veterans Benefits Administration also has the obligation to reduce educational assistance to any recipient who is incarcerated for a felony conviction.

VA plans to match records of VA beneficiaries with those reported by SSA as being incarcerated and to adjust their VA benefits accordingly. VA will use the SSA records provided in the match to update the master records of VA beneficiaries and to adjust their VA benefits, accordingly, if needed.

RECORDS TO BE MATCHED: The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) first published at 41 FR 9294, March 3, 1976 and last amended at 63 FR 37941 (July 14, 1998). SSA's system of records and corresponding routine uses allowing the release of records for this purpose are the Master Beneficiary Record, SSA/OSR, 09–60–0090, Routine Use Number 24; Supplemental Security Income Record, SSA/OSR, 09–60–0103, Routine Use Number 19; Master Files of Social Security Number (SSN) Holders and SSN Applications SSA/OSR, 09–60–0058, Routine Use Number 15 (sub-systems are also referred to as the Enumeration Verification System (EVS), the Alphident or the NUMIDENT), Prisoner Update Payment System (PUPS) and the Incarceration Report Control System (IRCS). For each aspect of this program, the EVS will be accessed. In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget (OMB).

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

DATES: The match will start no sooner than April 12, 2000, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs within three months of the ending date of the original match that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Interested individuals may submit written comments to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between 8:00 a.m. and 4:30 p.m., Mondays through Fridays, except holidays.

FOR FURTHER INFORMATION CONTACT: Kathleen Grill (212), (202) 273–7234.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: February 28, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 00–6067 Filed 3–10–00; 8:45 am]

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Federal Register

Monday,
March 13, 2000

Part II

Department of Energy

48 CFR Chapter 9
Department of Energy Acquisition Regulation; Rewrite of Regulations Governing Management and Operating Contracts; Proposed Rule

DEPARTMENT OF ENERGY

48 CFR Chapter 9

RIN 1991–AB49

Department of Energy Acquisition Regulation; Rewrite of Regulations Governing Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its Acquisition Regulation to streamline the policies, procedures, provisions and clauses that are applicable to its management and operating contracts. This rulemaking proposes to eliminate coverage that is obsolete or which duplicates the Federal Acquisition Regulation (FAR), and retain only that coverage which either implements or supplements the FAR for the award and administration of the Department's management and operating contracts. The rule also proposes the addition of four new clauses, and amendments to several existing clauses which will promote more uniform application of the Department's award and administration policies for management and operating contracts.

DATES: Written comments (see Section III., Public Comments) must be submitted no later than May 12, 2000.

ADDRESSES: Comments (3 copies) should be addressed to: John R. Bashista, Office of Procurement and Assistance Management, Office of Procurement and Assistance Policy (MA–51), Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: John R. Bashista (202) 586–8192; e-mail john.bashista@pr.doe.gov; fax (202) 586–0545.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section by Section Analysis
III. Public Comments
IV. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 12612
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999

I. Background

Over the past several years, DOE has achieved significant improvements in the way it conducts business with its management and operating (M&O) contractors. Contract management policies and practices have been strengthened and new processes implemented throughout the Department complex. In its report entitled "Making Contracting Work Better and Cost Less," dated February 1994, the DOE Contract Reform Team recommended a number of changes for improving the Department's acquisition system. New policies were implemented in the Department of Energy Acquisition Regulation (DEAR) to provide for a more uniform contract management approach in the award and administration of the Department's major contracts.

The Department's Office of Procurement and Assistance Management recently completed a review of additional policies and procedures which had been in place for decades. These policies had been developed over many years to provide contract terms and conditions applicable to the unique M&O contracting environment. Further, these policies implement and supplement Subpart 17.6 of the FAR. The purpose of the review was to determine whether the Department's unique regulatory coverage for M&O contracts is still necessary, and if so, what improvements are required to maintain the credibility of the system.

In general, the conclusion of the review was that DEAR Part 970 should be retained and that most of the Department's procurement regulations pertaining to the award and administration of its M&O contracts implement statutory, regulatory or current DOE policy requirements that are not addressed in other Federal regulations. However, the review also concluded that certain policy and procedural requirements should be eliminated, and that several contract clauses are considered unnecessary or redundant of coverage already prescribed in the FAR. Notable recommendations include: (1) Developing guidance and establishing an internal control system to better manage deviations from or modifications to regulatorily prescribed clauses while ensuring that the flexibility exists to do so when necessary; (2) eliminating most of the DOE cost principles that are used for determining the allowability of costs under M&O contracts as they are largely redundant of the cost principles set forth in the FAR; (3) clarifying the applicability of the Uniform Contract Format for M&O contracts pursuant to FAR requirements; (4) clarifying the applicability of FAR provisions, and developing a clause matrix to be used by DOE's contracting professionals as the primary source of guidance for determining the applicability of FAR and DEAR clauses to M&O contracts; and (5) codifying commonly used, but unprescribed, terms and conditions unique to M&O contracts. Implementation of the recommendations resulting from the review will be accomplished through the issuance of internal Departmental guidance, as well as through amendment of the DEAR.

This rule proposes to rewrite DEAR Part 970, in its entirety, to streamline the policies, procedures, provisions and clauses that are applicable to the Department's M&O contracts. The rule proposes to eliminate coverage that is obsolete or that unnecessarily duplicates coverage contained in the FAR. The rule also proposes updates and revisions to the prescriptions and text of certain clauses that will provide greater flexibility for DOE contracting personnel to make administrative modifications to the text of these clauses and to eliminate the need for commonly used deviations to such clauses. Four new clauses are also proposed for inclusion in the DEAR. The new clauses will prescribe uniform Departmental policies concerning: (1) Cooperation between the Department and its contractors in disseminating information to the public; (2) technical direction provided to contractors by a designated Contracting Officer's Representative; (3) collaborating to identify, evaluate, and institutionalize processes that will improve the effectiveness or efficiency of any aspect of contract performance, and collaboration regarding such improvements with the Department and other major site and facility management contractors; (4) implementation of FAR 35.017 regarding the establishment, use, review, and termination of Federally Funded Research and Development Centers which are sponsored by the Department; and (5) outreach to the local communities in which DOE conducts business.

Moreover, it is proposed that Part 970 be reorganized and renumbered so that the coverage corresponds, to the extent practicable, with the FAR Part, subpart, section, and subsection(s) being implemented or supplemented, as appropriate, in Part 970. Accordingly, technical and conforming amendments to DEAR Part 970 and other DEAR Parts are also proposed.

A separate rulemaking will be issued to implement certain recommendations concerning the amendment or removal

of certain DEAR Part 970 cost principles and related provisions and clause. It is anticipated that the final rules for both proposed rulemakings will be issued concurrently.

II. Section by Section Analysis

1. Several sections of Parts 901 through 952 are amended to revise cross-references to coverage that is contained in Part 970 to conform with the new Part 970 numbering system proposed in this rule.

2. Section 902.200 is amended by correcting paragraph citations, and adding a sentence that authorizes the contracting officer to include additional definitions to those contained in the prescribed clause.

3. Part 903 is amended by adding subpart 903.9 to relocate and consolidate coverage currently contained in subpart 922.71 and section 970.2274. New subpart 903.9 will include new section 903.902, which provides a cross-reference to the definition for Contractor which is contained in 10 CFR 708.2, and which is specific to DOE's Employee Protection Program.

4. Subpart 904.72 is added to prescribe a uniform Departmental policy regarding the release of unclassified information relating to M&O contracts to the public and the news media.

5. Section 911.604 is amended to revise the prescription for the use of the clauses at 48 CFR 952.211–70 and 48 CFR 952.211–71 to conform to changes proposed to 48 CFR 970.5204–33.

6. Subsection 915.408–70 is added to prescribe the use of a new clause at 48 CFR 952.215–70, Key Personnel. The new clause will accommodate both M&O and other than M&O contracts, thus replacing the two clauses currently prescribed at 48 CFR 952.235–70 (for other than M&O contracts) and 48 CFR 970.5204–42 (for M&O contracts).

7. Section 917.600 is amended to clarify the scope of Subpart 917.6.

8. Section 917.601 is amended to revise the definition of performance-based contracting to cross-reference the definition of the term that is already contained in the FAR.

9. Section 917.602 is amended to add a new paragraph (a), which contains certain text that is currently contained in section 970.0000 that implements FAR 17.602.

10. Section 917.604 is removed as unnecessary.

11. Section 917.605 is removed and the coverage is relocated to proposed new subsection 970.1706–1(c) consistent with the reorganization and renumbering of Part 970.

12. Subpart 922.71 is removed due to amendments addressed in paragraph 3.

13. Section 927.303 is amended by revising paragraph (a) to prescribe the use of the clauses at 952.227–11 and 952.227–13 for M&O contracts pursuant to the removal of sections 970.5204–71 and 970.5204–72 from Part 970 proposed in this rule. Proposed new Alternate I to the clause at 952.227–11, and proposed new Alternate I for the clause at 952.227–13 contain, verbatim, the text currently in 970.5204–71 and 970.5204–72, respectively.

14. Section 935.070 is removed due to the amendments addressed in paragraph 6.

15. Subpart 942.2 is added to prescribe uniform DOE policy regarding technical direction that is provided to contractors by a designated Contracting Officer's Representative.

16. Subpart 947.70 is added to incorporate guidance in the DEAR regarding contractor foreign travel and to add a prescription for the use of the clause that is currently contained in section 952.247–70, Foreign Travel. Currently, there is no policy section in the regulation to prescribe the basis and use of the existing clause.

17. Section 952.203–70 is added to accommodate the proposed redesignation of section 970.5204–59 as section 952.203–70.

18. Section 952.204–75 is added to prescribe a uniform clause pertaining to the dissemination of unclassified information relating to M&O contracts to the public and the news media (see paragraph 4.).

19. Section 952.215–70 is added to provide for a single clause which will accommodate M&O and other than M&O contracts (see paragraph 6.).

20. Section 952.222–70 is removed due to amendments addressed in paragraph 3.

21. Section 952.227–11 is amended by revising the prescription and clause date and adding an Alternate I to provide a single clause for M&O and other than M&O contracts (see paragraph 13.).

22. Section 952.227–13 is amended by revising the prescription and clause date and adding an Alternate I to provide a single clause for M&O and other than M&O contracts (see paragraph 13.).

23. Section 952.242–70 is added to prescribe a uniform clause pertaining to Contracting Officer's Representative authorities and limitations in providing technical direction to DOE contractors (see paragraph 15.).

24. Section 952.247–70 is amended by revising the prescription in the preface to the clause pursuant to the addition of new Subpart 947.70 (see paragraph 16.).

25. Section 952.250–70 is amended to revise an incorrect clause reference in paragraph (h) of the clause.

26. The table below provides a crosswalk reflecting, by section, the proposed reorganization and redesignation of Part 970, and descriptions of the amendments being proposed. The Department is seeking comments on only those changes marked with an "✔" in the comments column. The "Remarks" column of the table explains the specific changes to the section. Comments are not solicited on the amendments addressed in the table which are not marked with an "✔" since they are technical and conforming changes only.

PART 970 REWRITE

New citation	Current citation	Title	Remarks	Comments
970.01	N/A	Management and Operating Contract Regulatory System.	Subpart number and title are added for organizational purposes.	✔
970.0100	970.0000	Scope of Part	970.0000 is redesignated as 970.0100 and the text revised to clarify the scope of Part 970.	✔
N/A	970.0001	[Reserved]	Section is removed as unnecessary.	✔
970.0103	N/A	Publication and Codification	Section number, title and text are added. The new coverage in this section supplements FAR 1.303 to describe the new organization and numbering system for Part 970.	✔

PART 970 REWRITE—Continued

New citation	Current citation	Title	Remarks	Comments
970.03	970.03 [Note: Current 970.03 is reserved].	Improper Business Practices and Personal Conflicts of Interest.	Subpart number and title are added for organizational purposes.	✔
970.0309	970.2274	Whistleblower Protection of Contractor Employees.	970.2274 is redesignated as 970.0309..	
970.0309–1	970.2274–1(a)	Applicability	Section is added to prescribe the applicability of the coverage contained in new subpart 903.9, as proposed in this rule, to management and operating contracts. New subpart 903.9 contains coverage currently contained in sections 970.2274–1 and 970.2274–2 which is proposed for relocation to subpart 903.9.	✔
970.0370	970.0901 (Title)	Management Controls and Improvements	970.0901 (Title only) is redesignated as 970.0370 and amended. The new subsections of this section contain the text of 970.0901 as described below.	
970.0370–1	970.0901(a), (b), and (c).	Policy	970.0901, paragraphs (a), (b) and (c), is redesignated as 970.0370–1. The subsection is also amended to add new paragraph (d) to implement new DOE policy to facilitate collaboration of improvements in any aspect of performance among the contractor, DOE, and other major facility contractors.	✔
970.0370–2	N/A	Contract Clause	Subsection is added to prescribe the use of the existing clause at 970.5204–20, Management Controls. Although use of the clause is prescribed in the preface to the clause itself, there is no coverage in the policy section of the regulation to prescribe the basis and use of the clause. The subsection also prescribes the use of new clause 970.5203–2, Performance Improvement and Collaboration, to implement the policy proposed at new 970.0370–1(d).	✔
970.0371	970.2272 (Title)	Conduct of Employees of DOE Management and Operating Contractors.	970.2272 (Title only) is redesignated as 970.0371 and modified to remove the term "Consultants." The subsections of this section contain the text of 970.2272, as amended (see following subsections for summary of amendments).	✔
970.0371–1	970.2272(a)	Scope of Section	Contains coverage codified at 970.2272, paragraph (a).	✔
970.0371–2	970.2272(b)(1)	Applicability	Contains coverage codified at 970.2272, subparagraph (b)(1). The text is revised to remove the prescription for the use of DEAR clauses 970.5204–27(a) and (b) which are proposed for removal.	✔
970.0371–3	N/A	Definition	Subsection is added to clarify the definition of "Employee" for the purposes of the policies contained in section 970.0371.	✔
970.0371–4	970.2272(c)	Gratuities	Contains coverage codified at 970.2272, paragraph (c). Text is revised to remove the reference to "41 U.S.C. 51–54" and to substitute in lieu thereof a reference to "FAR 3.502."	✔
970.0371–5	970.2272(d)	Use of Privileged Information	Contains coverage codified at 970.2272, paragraph (d).	✔
970.0371–6	970.2272(g)	Incompatibility Between Regular Duties and Private Interests.	Contains coverage codified at 970.2272, paragraph (g).	✔
970.0371–7	970.2272(e)	Outside Employment of Contractor Employees.	Contains coverage codified at 970.2272, paragraph (e).	✔

PART 970 REWRITE—Continued

New citation	Current citation	Title	Remarks	Comments
970.0371–8	970.2272(f)	Employee Disclosure Concerning Other Employment Service.	Contains coverage codified at 970.2272, paragraph (f). Title and text are revised to prescribe a requirement for a disclosure (previously required by 970.5204–27) in lieu of an information statement.	✔
970.0371–9	970.2272(b)(2) and (3).	Contract Clause	Contains coverage codified at 970.2272, subparagraph (b)(2). Prescription at 970.2272(b)(3) is removed.	✔
970.04	970.04	Administrative Matters	No change.	
970.0404	970.0404	Safeguarding Classified Information	No change.	
970.0404–1	970.0404–1	Definitions	No change.	
970.0404–2	970.0404–2	General	No change.	
970.0404–3	970.0404–3 (a) and (b) 970.0404–4 (d).	Responsibilities of Contracting Officers	970.0404–3, paragraphs (a) and (b) are unchanged. 970.0404–4, paragraph (d) is redesignated as 970.0404–3, paragraph (c).	
970.0404–4	970.0404–4 (a), (b) and (c).	Solicitation Provision and Contract Clauses.	Subsection is amended to revise the title, and to: (a) remove the redundant prescription for the use of several DEAR 952 clauses which are already prescribed in 904.404 and 904.7103; and (b) substitute a cross-reference to these sections. The prescription for the clause entitled Counterintelligence is retained.	✔
N/A	970.0406	[Reserved]	Section is removed	
970.0407	N/A	Contractor Records Retention	Section number and title are added for organizational purposes. The subsections of this section contain coverage relocated from 970.0407.	
970.0407–1	970.0407	Applicability	970.0407 is redesignated as 970.0407–1 and the title revised to conform with related FAR coverage.	
970.0407–1–1	970.0407–1	Alternate Retention Schedules	970.0407–1 is redesignated as 970.0407–1–1and revised to update the DOE directive reference.	
970.0407–1–2	970.0407–2	Access to and Ownership of Records	970.0407–2 is redesignated as 970.0407–1–2.	
970.0407–1–3	970.0407–3	Contract Clause	970.0407–3 is redesignated as 970.0407–1–3.	
970.0470	970.0470	Department of Energy Directives	No change.	
970.0470–1	970.0470–1	General	Subsection is revised to prescribe DOE policy pertaining to requirements addressed in paragraphs (a) and (c) of the clause at 970.5204–78, Laws, Regulations and DOE Directives. Current coverage addresses only requirements addressed in paragraph (b) of the clause.	✔
970.0470–2	970.0470–2	Contract Clause	No change.	
970.08	970.08	Required Sources of Supplies and Services.	No change	
970.0801	970.0801 (Title)	Excess Personal Property	No change (Title only).	
970.0801–1	970.0801 (Text)	Policy	Section and title are added. Contains text of coverage currently codified at 970.0801.	
970.0808	N/A	Acquisition of Printing.	Section number and title are added for organizational purposes. Currently, there is no coverage in the policy section of the regulation to prescribe the basis and use of the clause entitled "Printing.".	
970.0808–1	N/A	Scope of Section	Section number and title are added for organizational purposes (see 970.0808 above).	
970.0808–2	N/A	Policy	Section number and title are added for organizational purposes (see 970.0808 above).	
970.0808–3	N/A	Contract Clause	Section number and title are added (see 970.0808 above).	
970.09	970.09	Contractor Qualifications	No change.	

PART 970 REWRITE—Continued

New citation	Current citation	Title	Remarks	Comments
970.0905	970.0905	Organizational Conflicts of Interest	No change.	
970.0970	N/A	Performance Guarantees	Section number and title are added for organizational purposes.	
970.0970–1	970.0902(a), (b) and (c).	Determination of Responsibility	970.0902, paragraphs (a), (b) and (c) are redesignated as 970.0970–1.	
970.0970–2	970.0902(d)	Solicitation Provision	970.0902, paragraph (d), is redesignated as 970.0970–2.	
970.11	970.10	Describing Agency Needs	970.10 is redesignated as 1970.11.	
970.1100	N/A	Policy	Section number and title are added for organizational purposes.	
970.11.00–1	970.1001	Performance-based Contracting	970.1001 is redesignated as 970.1100–1.	
970.11.00–2	970.1002	Additional Considerations	970.1002 is redesignated as 970.1100–2.	
970.15	970.15	Contracting by Negotiation	No change.	
970.1504	N/A	Contract Pricing	Section number and title are added for organizational purposes.	
970.1504–1	N/A	Price Analysis	Subsection number and title are added for organizational purposes.	
970.1504–1–1	970.15404–4	Fees for Management and Operating Contracts.	970.15404–4 is redesignated as 970.1504–1–1.	
970.1504–1–2	970.15404–4–1	Fee Policy	970.15404–4–1 is redesignated as 970.1504–1–2.	
970.1504–1–3	970.15404–4–2	Special Considerations: Laboratory Management and Operation.	970.15404–4–2 is redesignated as 970.1504–1–3.	
970.1504–1–4	970.15404–4–3	Types of Contracts and Fee Arrangements.	970.15404–4–3 is redesignated as 970.1504–1–4.	
970.1504–1–5	970.15404–4–4	General Considerations and Techniques for Determining Fixed Fees.	970.15404–4–4 is redesignated as 970.1504–1–5.	
970.1504–1–6	970.15404–4–5	Calculating Fixed Fee	970.15404–4–5 is redesignated as 970.1504–1–6.	
970.1504–1–7	970.15404–4–6	Fee Base	970.15404–4–6 is redesignated as 970.1504–1–7.	
970.1504–1–8	970.15404–4–7	Special Equipment Purchases	970.15404–4–7 is redesignated as 970.1504–1–8.	
970.1504–1–9	970.15404–4–8	Special Considerations: Cost-plus-award-fee.	970.15404–4–8 is redesignated as 970.1504–1–9.	
970.1504–1–10	970.15404–4–9	Special Considerations: Fee Limitations	970.15404–4–9 is redesignated as 970.1504–1–10.	
970.1504–1–11	970.15404–4–10	Documentation	970.15404–4–10 is redesignated as 970.1504–1–11.	
970.1504–2	970.15405	Price Negotiation	970.15405 is redesignated as 970.1504–2.	
970.1504–3	N/A	Documentation	Subsection number and title are added for organizational purposes.	
970.1504–3–1	970.15406–2	Cost or Pricing Data	970.15406–2 is redesignated as 970.1504–3–1.	
970.1504–4	N/A	Special Cost or Pricing Areas	Subsection number and title are added for organizational purposes.	
970.1504–4–1	970.15407–2	Make-Or-Buy Plans	970.15407–2 is redesignated as 970.1504–4–1.	
970.1504–4–2	970.15407–2–1	Policy	970.15407–2–1 is redesignated as 970.1504–4–2.	

PART 970 REWRITE—Continued

New citation	Current citation	Title	Remarks	Comments
970.1504–4–3	970.15407–2–2	Requirements	970.15407–2–2 is redesignated as 970.1504–4–3. The section is also amended in paragraph (a) to specifically assign to the Head of the Contracting Activity (HCA) the responsibility for ensuring that program specific make-or-buy criteria are developed and provided to the contractor for use in its make-or-buy plan administration activities for the facility, site, or specific program, as appropriate. It is recognized that the HCA must rely on program, technical, and business specialists within the agency for the actual development of the program specific make-or-buy criteria so that the criteria appropriately reflect program considerations applicable to the contractor's make-or-buy decisions. The section also is being amended by adding language recognizing the collaboration needed to develop effective program specific make-or-buy criteria.	✔
970.1504–5	970.15404–4–11, 970.15407–2–3.	Solicitation Provision and Contract Clauses.	970.15404–11 is redesignated as 970.1504–5, paragraphs (a), (c), (d) and (e). 970.15407–2–3 is redesignated as 970.1504–5, paragraph (b), and amended to revise the clause prescription to authorize an administrative modification to the clause.	
970.17	970.17	Special Contracting Methods	No change.	
970.1706	N/A	Management and Operating Contracts	Section number and title are added for organizational purposes.	
970.1706–1	970.1702–1	Award, Renewal, and Extension	970.1702–1, paragraphs (a) and (b), is redesignated as 970.1706–1, paragraphs (a) and (b), and the title revised. Coverage contained at 917.605 is redesignated as 970.1706–1, paragraph (c).	
970.1706–2	970.1702–2	Contract Clause	970.1702–2 is redesignated as 970.1706–2 and the title revised. The subsection is further revised to: (a) remove the prescription for use of the provision at 970.5204–73 and the clause at 970.5204–74, which are proposed for removal under this rule; and (b) add supplemental coverage to FAR 17.208(g) to prescribe the use of FAR clause 52.217–9 in DOE M&O contracts..	✔
970.19	970.19	Small, Small Disadvantaged and Women-owned Small Business Concerns.	No change.	
970.1907	N/A	Subcontracting with Small Business, Small Dis-advantaged Business and Woman-owned Small Business Concerns.	Section number and title are added for organizational purposes.	
970.1907–1	970.1901	Subcontracting Plan Requirements	970.1901 is redesignated as 970.1907–1. Section is revised to remove paragraph (a) in favor of existing FAR coverage (FAR 19.708)..	✔
N/A	970.20	[Reserved]	Subpart is removed.	
970.22	970.22	Application of Labor Policies	No change.	
970.2200	N/A	Scope of Subpart	Section number and title are added for organizational purposes.	
970.2201	970.2201	Basic Labor Policies.	No change.	
970.2201–1	N/A	Labor Relations	Section number and title are added for organizational purposes.	
970.2201–1–1	970.2201(a)	General	Contains coverage codified at 970.2201, paragraph (a).	

PART 970 REWRITE—Continued

New citation	Current citation	Title	Remarks	Comments
970.2201–1–2	970.2201(b)	Policies	Contains coverage codified at 970.2201, paragraph (b).	
970.2201–1–3	970.2201(b)(5) (ii)	Contract Clause	Contains coverage codified at 970.2201, last sentence of paragraph (b)(5)(ii).	
970.2201–2	970.2275	Overtime Management	970.2275 is redesignated as 970.2201–2.	
970.2201–2–1	970.2275–1	Policy.	970.2275–1 is redesignated as 970.2201–2–1.	
970.2201–2–2	970.2275–2	Contract Clause	970.2275–2 is redesignated as 970.2201–2–2.	
N/A	970.2206	Walsh-Healey Public Contracts Act	Section is removed. Coverage to be reissued as internal DOE guidance..	✔
970.2204	N/A	Labor Standards for Contracts Involving Construction.	Subpart number and title are added for organizational purposes. The subordinate sections/subsections of this Subpart contain coverage codified at 970.2273. These changes conform the numbering of supplemental DEAR coverage with related FAR coverage to the extent practicable.	
970.2204–1	N/A	Statutory and Regulatory Requirements	Section number and title are added for organizational purposes.	
970.2204–1–1	970.2273	Administrative Controls and Criteria for Application of the Davis-Bacon Act in Operational or Maintenance Activities.	Section 970.2273 is redesignated as 970.2204–1–1.	
970.2208	970.2208	Equal Employment Opportunity	No change.	
970.2210	970.2210	Service Contract Act	No change.	
970.2270	970.2270	Unemployment Compensation	No change.	
970.23	970.23	Environmental, Conservation, and Occupational Safety Programs.	No change.	
970.2303	970.2303	Hazardous Materials Identification and Material Safety.	No change.	
970.2303–1	970.2303–1	General	No change.	
970.2303–2	970.2303–2	Clauses	No change.	
970.2304	970.2304	Use of Recovered/Recycled Materials	No change.	
970.2304–1	970.2304–1	General	No change.	
970.2304–2	970.2304–2	Contract Clause	No change.	
970.2305	970.2305	Workplace Substance Abuse Programs—Management and Operating Contracts.	No change.	
970.2305–1	970.2305–1	General	No change.	
970.2305–2	970.2305–2	Applicability	No change.	
970.2305–3	970.2305–3	Definitions	No change.	
970.2305–4	970.2305–4	Solicitation Provision and Contract Clause.	No change.	
970.2306	970.2305–5	Suspension of Payments, Termination of Contract, and Debarment and Suspension Actions.	970.2305–5 is redesignated as 970.2306.	
N/A	970.25	Foreign Acquisition	Subpart is removed. The coverage codified at 970.2501 is relocated to new subsection 970.3701–1(see below).	
970.26	970.26	Other Socioeconomic Programs	No change.	
970.2670	970.2601 (Title)	Implementation of Section 3021 of the Energy Policy Act of 1992.	970.2601 (Title only) is redesignated as 970.2670. The text of 970.2601 is contained in new subsections 970.2670–1 and 970.2671–1,as noted below.	
970.2670–1	970.2601(a)	Requirements	Contains coverage codified at 970.2601, paragraph (a).	
970.2671	N/A	Diversity	Section number and title are added for organizational purposes.	
970.2671–1	970.2601(b)	Policy	Contains coverage codified at 970.2601, paragraph (b).	
970.2671–2	970.2602–2(b)	Contract Clause	Contains coverage codified at 970.2602–2, paragraph (b).	
970.2672	970.2602–1	Implementation of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.	970.2602–1 (Title only) is redesignated as 970.2672. The text of 970.2602–1 is contained in new subsections 970.2672–1 and 970.2672–2 as noted below.	
970.2672–1	970.2602–1(a)	Policy	Contains coverage codified at 970.2602–1, paragraph (a).	

PART 970 REWRITE—Continued

New citation	Current citation	Title	Remarks	Comments
970.2672–2	970.2602–1(b)	Requirements	Contains coverage codified at 970.2602–1, paragraph (b).	
970.2672–3	970.2602–2(a)	Contract Clause	Contains coverage codified at 970.2602–2, paragraph (a).	
970.2673	N/A	Regional Partnerships	New section number and title are added	✔
970.2673–1	N/A	Policy	New subsection added to prescribe DOE policy concerning the establishment of constructive business partnerships in geographic regions in which DOE conducts business.	✔
970.2673–2	N/A	Contract Clause	Prescribes the use of new contract clause 970.5226–3, Community Commitment.	✔
970.27	970.27	Patents, Data, and Copyrights	No change.	
970.2701	970.2701 (Title)	General	No change (Title)	
970.2701–1	970.2701 (Text)	Applicability	Contains the text of the coverage codified at 970.2701.	
970.2703	970.2702 (Title)	Patent Rights	970.2702 (Title only) is redesignated as 970.2703	
970.2703–1	970.2702 (Text)	Policy	Contains the text of the coverage codified at 970.2702.	
970.2703–2	970.2704	Contract Clauses	970.2704 is redesignated as 970.2703–2. Section is revised to remove existing coverage pursuant to amendments to 927.303, 952.227–11 and 952.227–13 proposed in this rule, and to add a cross-reference to 927.303.	✔
970.2704	N/A	Rights in Data	Section number and title are added for organizational purposes.	
970.2704–1	970.2705	General	970.2705 is redesignated as 970.2704–1 and the title revised.	
970.2704–2	970.2706	Procedures	970.2706 is redesignated as 970.2704–2 and the title revised.	
970.2704–3	970.2707	Contract Clauses	970.2707 is redesignated as 970.2704–3 and the title revised.	
970.2770	970.73	Technology Transfer	970.73 is redesignated as 970.2770.	
970.2770–1	970.7310	General	970.7310 is redesignated as 970.2770–1.	
970.2770–2	970.7320	Policy	970.7320 is redesignated as 970.2770–2.	
970.2770–3	970.2703	Technology Transfer and Data Rights	970.2703 is redesignated as 970.2770–3 and the title revised.	
970.2770–4	970.7330	Contract Clause	970.7330 is redesignated as 970.2770–4.	
970.28	970.28	Bonds and Insurance	No change.	
970.2803	N/A	Insurance	Section number and title are added for organizational purposes.	
970.2803–1	970.2271	Workers' Compensation Insurance	970.2271 is redesignated as 970.2803–1.	
970.2803–2	970.2830	Contract Clause	970.2830 is redesignated as 970.2803–2.	
970.29	970.29	Taxes	No change.	
970.2902	N/A	Federal Excise Taxes	Section number and title are added for organizational purposes.	
970.2902–1	970.2901	Exemptions from Federal Excise Taxes	970.2901 is redesignated as 970.2902–1.	
970.2903	N/A	State and Local Taxes	Section number and title are added for organizational purposes.	
970.2903–1	970.2902	Applicability of State and Local Taxes to the Government.	970.2902 is redesignated as 970.2903–1 and the title revised.	
970.2904	N/A	Contract Clauses	Section number and title are added for organizational purposes.	
970.2904–1	970.2903	Management and Operating Contracts	970.2903 is redesignated as 970.2904–1 and revised to add a prescription for the modification of the clause at 48 CFR 52.229–10 for management and operating contracts.	✔
970.30	970.30	Cost Accounting Standards	No change.	
970.3002	970.3001	CAS Program Requirements	970.3001 is redesignated as 970.3002 and the title revised.	
970.3002–1	970.3001–1	Applicability	970.3001–1 is redesignated as 970.3002–1.	

PART 970 REWRITE—Continued

New citation	Current citation	Title	Remarks	Comments
970.3002–2	970.3001–2	Limitations	970.3001–2 is redesignated as 970.3002–2.	
970.31	970.31	Contract Cost Principles and Procedures	No change.	
970.3100	970.3100	Scope of Subpart	The section title is revised.	
970.3100–1	970.3100–1	Definitions	No change.	
970.3100–2	970.3100–2	Responsibilities	No change.	
970.3101	N/A	Applicability	Section number and title are added for organizational purposes.	
970.3101–1	970.3100–3	Objectives	970.3100–3 is redesignated as 970.3101–1 and the title revised.	
970.3101–2	970.3101–6	Advance Agreements	970.3101–6 is redesignated as 970.3101–2 and the title revised.	
970.3101–3	970.3101–7	Cost Certification and Penalties on Unallowable Costs.	970.3101–7 is redesignated as 970.3101–3 and the title revised.	
970.3102	N/A	Contracts with Management and Operating Contractors.	Section number and title are added for organizational purposes.	
970.3102–1	970.3101	General	970.3101 is redesignated as 970.3102–1 and the title revised.	
970.3102–1–1	970.3101–1	Actual Cost Basis	970.3101–1 is redesignated as 970.3102–1–1.	
970.3102–1–2	970.3102	Application of Cost Principles	970.3102 is redesignated as 970.3102–1–2.	
970.3102–1–3	970.3101–3	General Basis for Reimbursement of Costs.	970.3101–3 is redesignated as 970.3102–1–3.	
970.3102–1–4	970.3101–4	Cost Determination Based on Audit	970.3101–4 is redesignated as 970.3102–1–4.	
970.3102–1–5	970.3101–5	Contractor's System of Accounting	970.3101–5 is redesignated as 970.3102–1–5.	
970.3102–2	970.3101–2	Direct and Indirect Costs	970.3101–2 is redesignated as 970.3102–2.	
970.3102–3	N/A	Selected Costs	Section number and title are added for organizational purposes.	
970.3102–3–1	970.3102–19	Public Relations and Advertising	970.3102–19 is redesignated as 970.3102–3–1.	
970.3102–3–2	970.3102–2	Compensation for Personal Services	970.3102–2 is redesignated as 970.3102–3–2.	
970.3102–3–3	970.3102–3	Cost of Money	970.3102–3 is redesignated as 970.3102–3–3.	
970.3102–3–4	970.3102–4	Depreciation	970.3102–4 is redesignated as 970.3102–3–4.	
970.3102–3–5	970.3102–5	Employee Morale, Health, Welfare, Food Service, and Dormitory Costs.	970.3102–5 is redesignated as 970.3102–3–5.	
970.3102–3–6	970.3102–21	Fines, Penalties, and Mischarging Costs	970.3102–21 is redesignated as 970.3102–3–6.	
970.3102–3–7	970.3102–7	Lobbying and Political Activity Costs	970.3102–7 is redesignated as 970.3102–3–7 and the title revised.	
970.3102–3–8	970.3102–1	General and Administrative Expenses	970.3102–1 is redesignated as 970.3102–3–8.	
970.3102–3–9	970.3102–12	Plant Reconversion Costs	970.3102–12 is redesignated as 970.3102–3–9.	
970.3102–3–10	970.3102–13	Precontract Costs	970.3102–13 is redesignated as 970.3102–3–10.	
970.3102–3–11	970.3102–9	Professional and Consultant Service Costs.	970.3102–9 is redesignated as 970.3102–3–11.	
970.3102–3–12	970.3102–16	Relocation Costs	970.3102–16 is redesignated as 970.3102–3–12.	
970.3102–3–13	970.3102–8	Trade, Business and Professional Activity Costs.	970.3102–8 is redesignated as 970.3102–3–13 and the title revised.	
970.3102–3–14	970.3102–17	Travel Costs	970.3102–17 is redesignated as 970.3102–3–14.	
970.3102–3–15	970.3102–20	Cost Related to Legal and Other Proceedings.	970.3102–20 is redesignated as 970.3102–3–15 and the title revised.	
970.3102–3–16	970.3102–10	Overtime, Shift, and Holiday Premiums	970.3102–10 is redesignated as 970.3102–3–16.	
970.3102–3–17	970.3102–11	Page Charges in Scientific Journals	970.3102–11 is redesignated as 970.3102–3–17.	
970.3102–3–18	970.3102–14	Preparatory and Make-Ready Costs	970.3102–14 is redesignated as 970.3102–3–18.	
970.3102–3–19	970.3102–6	Facilities (Plant and Equipment)	970.3102–6 is redesignated as 970.3102–3–19.	
970.3102–3–20	970.3102–18	Special Funds in the Construction Industry.	970.3102–18 is redesignated as 970.3102–3–20.	

PART 970 REWRITE—Continued

New citation	Current citation	Title	Remarks	Comments
970.3102–3–21	970.3102–15	Procurement: Subcontracts, Contractor-Affiliated Sources, and Leases.	970.3102–15 is redesignated as 970.3102–3–21.	
970.3170	970.3103	Contract Clauses	970.3103 is redesignated as 970.3170.	
970.32	970.32	Contract Financing	No change.	
970.3200	970.3201	Policy	970.3201 is redesignated as 970.3200 and the title revised.	
970.3200–1	970.3272(a) and (b)	Reduction or Suspension of Advance, Partial, or Progress Payments.	970.3272, paragraphs (a) and (b) are redesignated as 970.3200–1.	
970.3200–1–1	970.3272 (c)	Contract Clause	970.3272, paragraph (c) is redesignated as 970.3200–1–1.	
970.3204	970.3202 (Title)	Advance Payments	970.3202 (Title only) is redesignated as 970.3204.	
970.3204–1	970.3202 (Text)	Applicability	Contains the text of the coverage codified at 970.3204–1.	
970.3204–2	970.3171	Special Bank Account Agreement	970.3171 is redesignated as 970.3204–2.	
970.3204–3	970.3170	Contract Clause	970.3170 is redesignated as 970.3204–3 and the title revised.	
970.3270	N/A	Standard Financial Management Clauses	Section number and title are added for organizational purposes. The section consolidates the prescriptions for certain financial management clauses contained in subpart 970.52.which are now only prescribed in the preface of each clause.	✔
970.34	970.70	Major System Acquisition	970.70 is redesignated as 970.34 and the title revised	
970.3400	N/A	General Requirements	Section number and title are added for organizational purposes.	
970.3400–1	970.7000	Mission-oriented Solicitation	970.7000 is redesignated as 970.3400–1.	
970.35	N/A	Research and Development Contracting	Subpart number and title are added to prescribe uniform policies and procedures for DOE implementation of FAR 35.017.	✔
970.3500	N/A	Scope of Subpart	Section number and title are added to prescribe the scope of new Subpart 970.35.	✔
970.3501	N/A	Federally Funded Research and Development Centers.	Section number and title are added for organizational purposes.	✔
970.3501–1	N/A	Sponsoring Agreements	Subsection number and title are added to prescribe implementing requirements for FAR 35.017–1.	✔
970.3501–2	N/A	Using an FFRDC	Subsection number and title are added to prescribe implementing requirements for FAR 35.017–3.	✔
970.3501–3	N/A	Reviewing FFRDC's	Subsection number and title are added to prescribe implementing requirements for FAR 35.017–4.	✔
970.3501–4	N/A	Contract Clause	Subsection number and title are added to prescribe a uniform clause for implementing Subpart 970.35.	✔
970.36	970.36	Construction and Architect-Engineer Contracts.	No change.	
970.3605	N/A	Contract Clauses	Section number and title are added for organizational purposes.	
970.3605–1	970.5204–43	Other Contracts	970.5204–43 is redesignated as 970.3605–1and the title and text revised. The DOE clause is removed and a supplement to the FAR prescription for the use of FAR clause 52.236–8 is added..	✔
970.3605–2	970.3601	Special Construction Clause for Operating Contracts.	970.3601 is redesignated as 970.3605–2.	
970.37	N/A	Facilities Management Contracting	Subpart number and title are added for organizational purposes.	
970.3701	N/A	General	Section number and title are added for organizational purposes.	
970.3701–1	970.2501	Severance Payments for Foreign Nationals.	970.2501 is redesignated as 970.3701–1.	
970.3701–1–1	970.2501(a)	Waiver of Cost Allowability Provisions	Contains coverage codified at 970.2501, paragraph (a).	

PART 970 REWRITE—Continued

New citation	Current citation	Title	Remarks	Comments
970.3701–1–2	970.2501(b)	Solicitation Provision and Contract Clause.	Contains coverage codified at 970.2501, paragraph (b).	
970.3770	970.72	Facilities Management	970.72 is redesignated as 970.3770.	
970.3770–1	970.7201	Policy	970.7201 is redesignated as 970.3770–1 (except the clause prescription).	
970.3770–2	970.7201	Contract Clause	970.7201 (clause prescription) is redesignated as 970.3770–2.	
970.41	970.41	Acquisition of Utility Services	No change.	
970.4102	N/A	Acquiring Utility Services	Section number and title are added for organizational purposes.	
970.4102–1	970.4100	Policy	970.4100 is redesignated as 970.4102–1 and the title revised.	
970.43	N/A	Contract Modifications	Subpart number and title are added for organizational purposes.	
970.4302	N/A	Changes	Section number and title are added for organizational purposes.	
970.4302–1	N/A	Contract Clause	Section number and title are added for organizational purposes. Subsection prescribes the use of existing DEAR clause entitled "Changes." Currently, there is no coverage in the policy section of the regulation to prescribe the basis and use of the clause.	
970.44	970.71	Management and Operating Contractor Purchasing.	970.71 is redesignated as 970.44.	
970.4400	N/A	Scope	Section number and title are added for organizational purposes.	
970.4401	N/A	Responsibilities	Section number and title are added for organizational purposes.	
970.4401–1	970.7102	General	970.7102 is redesignated as 970.4401–1 and the title and text revised. Paragraph (b)(4) is revised to provide for two alternative methods which may be used by the contracting officer for conducting periodic appraisals of the contractor's purchasing function.	✔
970.4401–2	970.7108	Review and Approval	970.7108 is redesignated as 970.4401–2.	
970.4401–3	970.7109	Advance Notification	970.7109 is redesignated as 970.4401–3.	
970.4402	N/A	Contractor Purchasing System	Section number and title are added for organizational purposes.	
970.4402–1	970.7101	Policy	970.7101 is redesignated as 970.4402–1 and the title revised.	
970.4402–2	970.7103	General Requirements	970.7103 is redesignated as 970.4402–2 and the title revised. The subsection is also revised to add new paragraph (d)(9) to emphasize the Department's policy regarding the maximization of opportunities for small, small disadvantaged, and woman-owned small business concerns in the performance of its major site and facility management contracts.	✔
970.4402–3	970.7105	Purchasing From Contractor-Affiliated Sources.	970.7105 is redesignated as 970.4402–3.	
970.4402–4	970.7110	Nuclear Material Transfers	970.7110 is redesignated as 970.4402–4.	
970.4403	N/A	Contract Clause	Section number and title are added for organizational purposes. Subsection prescribes the use of existing DEAR clause entitled "Contractor Purchasing System." Currently, there is no coverage in the policy section of the regulation to prescribe the basis and use of the clause.	
970.45	970.45	Government Property	No change.	
970.4501	N/A	General	Section number and title are added for organizational purposes.	

PART 970 REWRITE—Continued

New citation	Current citation	Title	Remarks	Comments
970.4501–1	970.4501	Contract Clause	970.4501 is redesignated as 970.4501–1 and amended to authorize the contracting officer to list specific managerial personnel in paragraph (j) of the clause.	✔
970.49	970.49	Termination of Contracts	No change.	
970.4905	N/A	Contract Termination Clause	Section number and title are added for organizational purposes.	
970.4905–1	970.4901 and 970.4902.	Termination for Convenience and Default.	970.4901 and 970.4902 are redesignated as 970.4905–1 and the coverage revised to reflect the removal of the clause at 970.5204–45 in favor of FAR clause 52.249–6.	✔
970.50	N/A	Extraordinary Contractual Actions	Subpart number and title are added for organizational purposes.	
970.5070	970.2870 (Title)	Indemnification	970.2870 (Title only) is redesignated as 970.5070. The text of 970.2870 is contained in the subordinate subsections to this new section 970.5070 as noted below.	
970.5070–1	970.2870(a) and (b)	Scope and Applicability	Contains coverage codified at 970.2870, paragraphs (a) and (b).	
970.5070–2	970.2870(e)	General	Contains coverage codified at 970.2870, paragraph (e).	
970.5070–3	970.2870(c) and (d)	Contract Clauses	Contains coverage codified at 970.2870, paragraphs (c) and (d).	
N/A	970.51	Use of Government Sources by Contractors.	Subpart and subordinate sections are removed. Coverage to be reissued as internal DOE guidance.	✔
970.52	970.52	Solicitation Provisions and Contract Clauses for Management and Operating Contracts.	No change.	
970.5200	970.5201	Scope of Subpart	970.5201 is redesignated as 970.5200 and the title and text revised. The section is revised to clarify the use of the clauses prescribed in the Subpart in relation to the clauses prescribed in the FAR and in DEAR part 952.	✔
N/A	970.5203	Modifications and Notes to Far Clauses	Section is removed as the coverage contained in the subordinate sections are unnecessarily duplicative of FAR coverage.	✔
970.5201	970.5204	Text of Provisions and Clauses	970.5204 is redesignated as 970.5201 and the title is revised.	
970.5203–1	970.5204–20	Management Controls	970.5204–20 is redesignated as 970.5203–1. The text of paragraph (a) has been divided into paragraphs (a)(1) through (a)(4). The text of current paragraph (a) is unchanged except that paragraph (a)(2) contains new coverage to contractually implement the requirement that is already prescribed at current 970.0901(b)(10) (which is redesignated as 970.0371–1 in this rule), but which was not previously set forth in the clause. Paragraph (b) of the clause is unchanged.	✔
970.5203–2	N/A	Performance Improvement and Collaboration.	Subsection is added for proposed new clause. The new clauses implement new DOE policy to facilitate collaboration of improvements in any aspect of performance among the contractor, DOE, and other major facility contractors.	✔

PART 970 REWRITE—Continued

New citation	Current citation	Title	Remarks	Comments
970.5203–3	970.5204–12	Contractor's Organization	970.5204–12 is redesignated as 970.5203–3. The clause is further amended to remove alternate paragraph (c) of the current clause, and to add a new paragraph (d) to the standard clause to contractually implement the requirements set forth in proposed new section 970.0371.	✔
970.5204–1	970.5204–1	Counterintelligence	970.5204–1 is redesignated as 970.5204–1 and the title and text revised. The section is revised to remove paragraph (a), which is unnecessarily duplicative of the prescription at DEAR 904.404 for the use of certain DEAR clauses. The coverage in paragraph (b) of the section is retained with technical and conforming amendments	✔
970.5204–2	970.5204–78	Laws, Regulations, and DOE Directives	970.5204–78 is redesignated as 970.5204–2 and amended to add a new paragraph (d) to merge the substance of the clause at 970.5204–29 (which is proposed for removal), and to redesignated current paragraph (d) as paragraph (e). The clause is also revised to clarify applicability of requirements to subcontracts.	✔
970.5204–3	970.5204–79	Access to and Ownership of Records	970.5204–79 is redesignated as 970.5204–3. The clause is further amended in paragraph (b)(1) to recognize non-employee patient medical/health related records as property of the contractor, and to update a DOE directive reference in paragraph (f).	✔
970.5208–1	970.5204–19	Printing	970.5204–19 is redesignated as 970.5208–1 and the title revised.	
970.5209–1	970.5204–89	Requirement for Guarantee of Performance.	970.5204–89 is redesignated as 970.5209–1.	
970.5215–1	970.5204–54	Total Available Fee: Base Fee Amount and Performance Fee Amount.	970.5204–54 is redesignated as 970.5215–1.	
970.5215–2	970.5204–76	Make-or-Buy Plan	970.5204–76 is redesignated as 970.5215–2.	
970.5215–3	970.5204–86	Conditional Payment of Fee, Profit, or Incentives.	970.5204–86 is redesignated as 970.5215–3.	
970.5215–4	970.5204–87	Cost Reduction	970.5204–87 is redesignated as 970.5215–4.	
970.5215–5	970.5204–88	Limitation on Fee	970.5204–88 is redesignated as 970.5215–5.	
970.5222–1	970.5204–63	Collective Bargaining Agreements—Management and Operating Contracts.	970.5204–63 is redesignated as 970.5222–1.	
970.5222–2	970.5204–80	Overtime Management	970.5204–80 is redesignated as 970.5222–2.	
970.5223–1	970.5204–2	Integration of Environment, Safety and Health into Work Planning and Execution.	970.5204–2 is redesignated as 970.5223–1. The clause is also revised to clarify applicability of requirements to subcontracts.	
970.5223–2	970.5204–39	Acquisition and Use of Environmentally Preferable Products and Services.	970.5204–39 is redesignated as 970.5223–2. The clause is amended in paragraph (a)(1) to update the reference to the applicable Executive Order.	
970.5223–3	970.5204–57	Agreement Regarding Workplace Substance Abuse Programs at DOE Facilities.	970.5204–57 is redesignated as 970.5223–3.	
970.5223–4	970.5204–58	Workplace Substance Abuse Programs at DOE Sites.	970.5204–58 is redesignated as 970.5223–4.	
970.5226–1	970.5204–81	Diversity Plan	970.5204–81 is redesignated as 970.5226–1.	
970.5226–2	970.5204–77	Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.	970.5204–77 is redesignated as 970.5226–2.	

PART 970 REWRITE—Continued

New citation	Current citation	Title	Remarks	Comments
970.5227–1	970.5204–82	Rights in Data–Facilities	970.5204–82 is redesignated as 970.5227–1.	
970.5227–2	970.5204–83	Rights in Data–Technology Transfer	970.5204–83 is redesignated as 970.5227–2.	
970.5227–3	970.5204–40	Technology Transfer Mission	970.5204–40 is redesignated as 970.5227–3.	
970.5228–1	970.5204–31	Insurance—Litigation and Claims	970.5204–31 is redesignated as 970.5228–1. The clause is also amended in paragraph (h) by removing the words "including employees" from the phrase "contractor's liabilities to third persons" for clarification and consistency with paragraphs (a) and (e)(2) of the clause.	✔
970.5229–1	970.5204–23	State and Local Taxes	970.5204–23 is redesignated as 970.5229–1, and the title revised.	
970.5231–1	970.5204–13	Allowable Costs and Fee (Management and Operating Contracts).	970.5204–13 is redesignated as 970.5231–1. Amended to convert the "Notes" to "Alternates." The title is also amended to accommodate other types of fee (see Alternate I of the clause).	
970.5231–2	970.5204–17	Political Activity Cost Prohibition	970.5204–17 is redesignated as 970.5231–2.	
970.5231–3	970.5204–61	Cost Prohibitions Related to Legal and Other Proceedings.	970.5204–61 is redesignated as 970.5231–3.	
970.5231–4	970.5204–75	Preexisting Conditions	970.5204–75 is redesignated as 970.5231–4.	
970.5232–1	970.5204–85	Reduction or Suspension of Advance, Partial, or Progress Payments upon Finding of Substantial Evidence of Fraud.	970.5204–85 is redesignated as 970.5232–1.	
970.5232–2	970.5204–16	Payments and Advances	970.5204–16 is redesignated as 970.5232–2. The clause is amended to convert the "Notes" to "Alternates." The clause is also amended in paragraphs (b) and (e) and in paragraph (a) of Alternate II to update and conform the clause with the recently amended DOE fee policy (64 FR 12220)—e.g., update certain terms pertaining to fee, negotiated fixed amounts, and other items specifically approved by the contracting officer.	✔
970.5232–3	970.5204–9	Accounts, Records, and Inspection	970.5204–9 is redesignated as 970.5232–3. The clause is amended to convert the "Notes" to "Alternates." The clause is also amended in paragraph (a) to address "negotiated fixed amounts", which are authorized and frequently included in M&O contracts.	✔
970.5232–4	970.5204–15	Obligation of Funds	970.5204–15 is redesignated as 970.5232–4. Amended to convert the "Notes" to "Alternates."	
970.5235–1	N/A	Federally Funded Research and Development Center.	Section is added to add a uniform clause to implement the requirements prescribed at 970.35.	✔
970.5236–1	970.5204–38	Government Facility Subcontract Approval.	970.5204–38 is redesignated as 970.5236–1 and the title revised.	
970.5237–1	970.5204–84	Waiver of Limitations on Severance Payments to Foreign Nationals.	970.5204–84 is redesignated as 970.5237–1.	
970.5237–2	970.5204–60	Facilities Management	970.5204–60 is redesignated as 970.5237–2.	
970.5243–1	970.5204–11	Changes	970.5204–11 is redesignated as 970.5243–1.	

PART 970 REWRITE—Continued

New citation	Current citation	Title	Remarks	Comments
970.5244–1	970.5204–22	Contractor Purchasing System	970.5204–22 is redesignated as 970.5244–1. Paragraph (a) is revised to provide for two alternative methods which may be used by the contracting officer for conducting periodic appraisals of the contractor's purchasing function. The clause is also amended to add paragraph (x), which incorporates certain coverage from 970.5204–44, which is proposed for removal in this rule. Amended coverage addresses subcontract flowdown requirements which are not otherwise required by the terms and conditions of the prime contract.	✔
970.5245–1	970.5204–21	Property	970.5204–21 is redesignated as 970.5245–1. Amended to convert the "Notes" to "Alternates."	
N/A	970.5204–3	Buy American Act—Construction Materials.	Section is removed in favor of existing FAR coverage (FAR 52.225–5).	✔
N/A	970.5204–4	New Mexico Gross Receipts and Compensating Tax.	Section is removed. The prescription for modified text of FAR clause 52.229–10 is located at new 970.2904–1(a).	✔
N/A	970.5204–5	Disclosure of Information	Section is removed in favor of existing DEAR coverage (DEAR 952.204–72).	✔
N/A	970.5204–6	Nuclear Hazards Indemnity	Section is removed in favor of existing DEAR coverage (DEAR 952.250–70).	✔
N/A	970.5204–7	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	Section is removed in favor of existing FAR coverage. (FAR 52.209–6).	✔
N/A	970.5204–8	Indemnity Assurance to Architect-Engineer or Supplier Prior to Operation of a Nuclear Facility.	Section is removed in favor of existing DEAR coverage (DEAR 952.250–70).	✔
N/A	970.5204–10	Foreign Ownership, Control, or Influence over Contractors (FOCI).	Section is removed in favor of existing DEAR coverage (DEAR 952.204–73).	✔
N/A	970.5204–14	Allowable Costs and Fixed-fee (Support Contracts).	Section is removed as obsolete	✔
N/A	970.5204–25	Workmanship and Materials	Section is removed in favor of existing FAR coverage (FAR 52.211–5).	✔
N/A	970.5204–27	Consultant or Other Comparable Employment Services of Contractor Employees.	Section is removed pursuant to changes proposed to 970.2272 (redesignated as 970.0371) and 970.5204–12 (redesignated as 970.5203–3).	✔
N/A	970.5204–28	Assignment	Section is removed in favor of existing FAR coverage (FAR 52.232–23 and 52.232–24).	✔
N/A	970.5204–29	Permits or Licenses	Section is removed and the substance of the clause incorporated into new paragraph (d) of the clause at 970.5204–78 (redesignated as 970.5204–2).	✔
N/A	970.5204–30	Notice of Labor Disputes	Section is removed in favor of existing FAR coverage (FAR 52.222–1).	✔
N/A	970.5204–33	Priorities and Allocations	Section is removed in favor of existing DEAR coverage (DEAR 952.211–71).	✔
N/A	970.5204–35	Controls in the National Interest (Unclassified Contracts with Educational Institutions).	Section is removed in favor of existing DEAR coverage (see DEAR 970.5204–78, redesignated as 970.5204–2 in this rule).	✔
N/A	970.5204–36	Preventing Conflicts of Interest in University Research.	Section is removed as obsolete	✔
N/A	970.5204–37	Statement of Work (Management and Operating Contracts).	Section is removed as obsolete	✔
N/A	970.5204–42	Key Personnel	Section is removed pursuant to the consolidation of the clauses at 952.235–70 and 970.5204–42 into a single clause, as proposed in this rule.	✔
N/A	970.5204–43	Other Government Contractors	Section is removed in favor of existing FAR coverage (FAR 52.236–8); see proposed new subsection 970.3605–1.	✔

PART 970 REWRITE—Continued

New citation	Current citation	Title	Remarks	Comments
N/A	970.5204–44	Flowdown of Contract Requirements to Subcontracts.	Section is removed as unnecessary. Certain portions of the coverage in this section are incorporated into 970.5204–22, redesignated as 970.5244–1 in this rule.	✔
N/A	970.5204–45	Termination	Section is removed in favor of existing FAR coverage (FAR 52.249–6).	✔
N/A	970.5204–52	Foreign Travel	Section is removed in favor of existing DEAR coverage (DEAR 952.247–70).	✔
N/A	970.5204–53	Contractor Employee Travel Discounts	Section is removed in favor of existing DEAR coverage (DEAR 952.251–70).	✔
952.203–70	970.5204–59	Whistleblower Protection for Contractor Employees.	Section 970.5204–59 is redesignated as 952.203–70.	✔
N/A	970.5204–71	Patent Rights-nonprofit Management and Operating Contractors.	Section is removed pursuant to amendments to 927.303 and 952.227–11 proposed in this rule.	✔
N/A	970.5204–72	Patent Rights-profit-making Management and Operating Contractors.	Section is removed pursuant to amendments to 927.303 and 952.227–13 proposed in this rule.	✔
N/	A970.5204–73	Notice Regarding Options	Section is removed in favor of existing FAR coverage (FAR 52.217–9).	✔
N/A	970.5204–74	Option to Extend the Term of the Contract.	Section is removed in favor of existing FAR coverage (FAR 52.217–9).	✔

III. Public Comments

The amendments proposed in this rulemaking constitute primarily technical and conforming changes resulting from the reorganization of Part 970 and the elimination of coverage determined to be obsolete or unnecessarily duplicative of other governing regulations. Because these amendments involve extensive changes to the composition of the existing regulation, Part 970 is being republished, in its entirety, for the convenience of the reader. This rule also proposes to amend the text of several clauses and add material in order to ensure that uniform DOE policies and procedures are prescribed for certain issues. Interested persons are invited to submit comments regarding the proposed reorganization and numbering system for Part 970. Comments are also solicited regarding those amendments described in Section II., Section by Section Analysis, paragraphs 1. through 25., and to those amendments addressed in the table contained in paragraph 26., which are marked with a "✔"

Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room lE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the "**DATES**" section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination (See 10 CFR 1004.11).

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of Energy has completed the required review and determined that, to the extent permitted by law, the proposed regulation meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. Today's proposed rule streamlines the Department's policies, procedures, provisions and clauses that apply to its M&O contracts. M&O contractors are not small entities. Accordingly, DOE certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the proposed amendments to the DEAR do not change the environmental effect of the rule being amended (categorical exclusion A5). Therefore, this proposed rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule, when finalized, will revise certain policy and procedural requirements. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to state, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking affects private sector entities, and the impact is less than $100 million.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

List of Subjects in 48 CFR Parts 901, 902, 903, 904, 909, 911, 915, 917, 922, 923, 927, 941, 942, 947, 952 and 970.

Government procurement.

Issued in Washington, D.C. on February 15, 2000.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

1. The authority citations for parts 901, 902, 903, 904, 909, 911, 915, 917, 922, 923, 941, 942, 947 and 952 continue to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

901.105 [Amended]

2. Section 901.105 is amended in the second sentence by revising "(see 48 CFR (DEAR) 970.5204–76)" to read "(see 48 CFR 970.5215–2)", and revising "(see 48 CFR (DEAR) 970.5204–2)" to read "(see 48 CFR 970.5223–1)."

PART 902—DEFINITIONS OF WORDS AND TERMS

3. Section 902.200 is revised to read as follows:

902.200 Definitions clause.

As prescribed by 48 CFR subpart 2.2, insert the clause at 48 CFR 52.202–1, Definitions, but modify the clause to limit the definition at paragraph (a) to encompass only the Secretary, Deputy Secretary, or Under Secretary of the Department of Energy, and the Chairman, Federal Energy Regulatory Commission. The contracting officer shall also add a paragraph at the end of the clause that defines "DOE" as meaning the United States Department of Energy and "FERC" as meaning the Federal Energy Regulatory Commission. Additional definitions may be included, provided they are consistent with the clause, the Federal Acquisition Regulation and this Department of Energy Acquisition Regulation.

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

4. Subpart 903.9 is added to read as follows:

Subpart 903.9—Whistleblower Protection for Contractor Employees

Sec.

903.901 Scope.
903.902 Definition.
903.903 Applicability
903.970 Remedies
903.971 Contract clause.

Subpart 903.9—Whistleblower Protection for Contractor Employees

903.901 Scope.

This subpart implements the DOE Contractor Employee Protection Program as set forth at 10 CFR part 708. Part 708 establishes criteria and procedures for the investigation, hearing, and review of allegations from DOE contractor employees of employer reprisal resulting from employee disclosure of information to DOE, to members of Congress, or to the contractor; employee participation in proceedings before Congress or pursuant to this rule; or employee refusal to engage in illegal or dangerous activities, when such disclosure, participation, or refusal pertains to employer practices which the employee believes to be unsafe; to violate laws, rules, or regulations; or to involve fraud, mismanagement, waste, or abuse.

903.902 Definition.

Contractor, as used in this subject, has the meaning contained in 10 CFR 708.2

903.903 Applicability.

10 CFR part 708 is applicable to complaints of retaliation filed by employees of contractors, and subcontractors, performing work on behalf of DOE directly related to DOE-owned or leased facilities, if the complaint stems from a disclosure, participation, or refusal described in 10 CFR 708.5.

903.970 Remedies.

(a) Contractors found to have retaliated against an employee in reprisal for such disclosure, participation or refusal are required to provide relief in accordance with decisions issued under 10 CFR part 708.

(b) 10 CFR part 708 provides that for the purposes of the Contract Disputes Act (41 U.S.C. 605 and 606), a final decision issued pursuant to 10 CFR part 708 shall not be considered to be a claim by the Government against a contractor or a decision by the contracting officer subject to appeal. However, a contractor's disagreement and refusal to comply with a final decision could result in a contracting officer's decision to disallow certain costs or to terminate the contract for default. In such case, the contractor could file a claim under the Disputes clause of the contract regarding the disallowance of cost or the termination of the contract.

903.971 Contract clause.

The contracting officer shall insert the clause at 952.203–70, Whistleblower Protection for Contractor Employees, in management and operating contracts.

PART 904—ADMINISTRATIVE MATTERS

5. Subpart 904.72 is added as follows:

Subpart 904.72—Public Affairs

Sec.
904.7200 Purpose.
904.7201 Contract clause.

904.7200 Purpose.

It is the policy of the Department of Energy to provide to the public and the news media, accurate and timely unclassified information on Departmental policies, programs, and activities. The Department's contractors share the responsibility for releasing unclassified information related to efforts under their contracts and must coordinate the release of unclassified information with the cognizant contracting officer and appropriate DOE Public Affairs personnel.

904.7201 Contract clause.

The contracting officer shall insert the clause at 952.204–75 in solicitations and contracts that require the contractor to release unclassified information related to efforts under its contract regarding DOE policies, programs, and activities.

PART 909—CONTRACTOR QUALIFICATIONS

6. Subsection 909.104–1 is amended by revising "48 CFR 970.5204–57" to read "48 CFR 970.5223–3."

PART 911—DESCRIBING AGENCY NEEDS

7. Section 911.604 is amended by revising paragraphs (d) and (e) to read as follows:

911.604 Solicitation provision and contract clause.

* * * * *

(d) The contracting officer shall insert the provision at 952.211–70, Priorities and Allocations (Domestic Energy Supplies), with its Alternate I, in solicitations that may result in the placement of rated orders for authorized energy programs, and in all management and operating contracts.

(e) The contracting officer shall insert the clause at 952.211–71, Priorities and Allocations (Domestic Energy Supplies), with its Alternate I, if it is believed the contract involves a program the purpose of which is to maximize domestic energy supplies, and in all management and operating contracts.

PART 915—CONTRACTING BY NEGOTIATION

8. Subsection 915.408–70 is added to read as follows:

915.408–70 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 48 CFR 952.215–70, Key Personnel, in contracts under which performance is largely dependent on the expertise of specific key personnel.

PART 917—SPECIAL CONTRACTING METHODS

9. Section 917.600 is revised to read as follows:

917.600 Scope of subpart.

(a) This subpart implements 48 CFR subpart 17.6, Management and Operating Contracts. Departmental policies, procedures, provisions and clauses to be used in the award and administration of management and operating contracts that either implement or supplement the Federal Acquisition Regulation and parts 901 through 952 of this Chapter are contained in 48 CFR part 970.

(b) The requirements of this subpart apply to any Department of Energy management and operating contract, including performance-based management contracts as defined in 48 CFR 917.601. References in this Subpart to "management and operating contracts" include performance-based management contracts.

10. Section 917.601 is amended by revising the definition of performance-based contracting as follows:

917.601 Definitions.

Performance-based contracting has the meaning contained in 48 CFR 37.101.

* * * * *.

11. Section 917.602 is revised to read as follows:

917.602 Policy.

(a) The use of a management and operating contract must be authorized by the Secretary, Deputy Secretary or Under Secretary.

(b) It is the policy of the Department of Energy to provide for full and open competition in the award of management and operating contracts, including performance-based management contracts.

(c) A management and operating contract may be awarded or extended at the completion of its term without providing for full and open competition only when such award or extension is justified under one of the statutory authorities identified in 48 CFR 6.302 and only when authorized by the Head of the Agency. Documentation and processing requirements for justifications for the use of other that full and open competition shall be accomplished in accordance with internal agency procedures

917.604 and 917.605 [Removed]

12. Sections 917.604 and 917.605 are removed.

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

922.71 [Removed]

13. Subpart 922.71 is removed.

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY AND DRUG-FREE WORKPLACE

923.570–2 [Amended]

14. Subsection 923.570–2 is amended in paragraph (a) by revising "48 CFR 970.5204–57" to read "48 CFR 970.5223–3"; and in paragraph (b) by revising "970.5204–58" to read "48 CFR 970.5223–4."

923.570–3 [Amended]

15. Subsection 923.570–3 is amended in paragraph (a) by revising "970.5204–58" to read "48 CFR 970.5223–4", and in paragraph (b)(2) by revising "970.5204–57" to read "970.5223–3."

PART 927—PATENTS, DATA, AND COPYRIGHTS

16. The authority citation for part 927 continues to read as follows:

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); Sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168); Federal Nonnuclear Energy Research and Development Act of 1974, Sec. 9 (42 U.S.C. 5908); Atomic Energy Act of 1954, as amended, Sec. 152 (42 U.S.C. 2182); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987, as amended, Sec. 3131(a), (42 U.S.C. 7261a.).

17. Section 927.303 is amended by revising paragraph (a) to read as follows:

927.30 Contract clauses.

(a) In solicitations and contracts for experimental, research, developmental, or demonstration work (but see 48 CFR 27.304–3 regarding contracts for construction work or architect-engineer services), and all management and operating contracts, the contracting officer shall include the following clauses:

(1) Insert the clause at 48 CFR 952.227–11, Patent Rights by the Contractor (Short Form), in contracts in which the contractor is a domestic small business or nonprofit organization as defined at 48 CFR 27.301, except where the work of the contract is subject to an Exceptional Circumstances Determination by DOE. In contracts with nonprofit entities for the management and operation of DOE laboratories and production facilities, the contracting officer shall insert the clause with its Alternate I.

(2) Insert the clause at 48 CFR 952.227–13, Patent Rights Acquisition by the Government, in all contracts other than those described in paragraph (a)(1) of this section. In contracts with profit-making entities for the management and operation of DOE laboratories and production facilities, the contracting officer shall insert the clause with its Alternate I.

* * * * *

927.402–1 [Amended]

18. Subsection 927.402–1 is amended in paragraph (b) by revising "(see 970.2705)" to read "(see 48 CFR 970.2704)", and by revising "970.5204–82" to read "48 CFR 970.5227–1."

927.404 [Amended]

19. Section 927.404 is amended in paragraph (g)(4) by revising "970.5204–82" to read "48 CFR 970.5227–2."

20. Section 927.409 is amended in paragraph (a)(2)(vi) by revising "(See 970.2705)" to read "(see 48 CFR 970.2704)."

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

935.070 [Removed]

21. Section 935.070 is removed.

PART 941—ACQUISITION OF UTILITY SERVICES

22. Subsection 941.201–71 is amended by revising "48 CFR 970.0803" to read "48 CFR 970.4102–1."

PART 942—CONTRACT ADMINISTRATION

23. Subpart 942.2 is added as follows:

Subpart 942.2—Contract Administration Services

9427.2–1 Contract Administration Services.

942.270–1 Contracting officer's representatives.

In accordance with internal agency procedures, a contracting officer may designate other qualified personnel to be the Contracting Officer's Representative (COR) for the purpose of performing certain technical functions in administering a contract. These functions include, but are not limited to, technical monitoring, inspection, approval of shop drawings, testing, and approval of samples. The COR acts solely as a technical representative of the contracting officer and is not authorized to perform any function that results in a change in the scope, price, terms or conditions of the contract. COR designations must be made in writing by the contracting officer, and shall identify the responsibilities and limitations of the designation. A copy of the COR designation must be furnished to the contractor and the contract administration office.

942.270–2 Contract clause.

The clause at 952.242–70 may be inserted in solicitations and contracts when a designated Contracting Officer's Representative will issue technical direction to the contractor under the contract.

PART 947—TRANSPORTATION

24. Subpart 947.70 is added to read as follows:

Subpart 947.70—Foreign Travel

Sec.
947.7000 Definition.
947.7001 Policy.
947.7002 Contract clause.

947.70—Foreign Travel

947.7000 Definition.

Foreign travel, for purposes of this subpart, means any travel outside of Canada, Mexico and the United States and its territories and possessions.

947.7001 Policy.

Prior approval of the contracting officer is required by the contractor when foreign travel by contractor personnel will be charged directly to a DOE contract. Such approval shall be required for each separate trip regardless of whether funds for such travel are contained in an approved budget.

947.7002 Contract clause.

When foreign travel may be required under the contract, the contracting officer shall insert the clause at 48 CFR 952.247–70, Foreign Travel.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

25. Section 952.203–70 is added to read as follows:

952.203–70 Whistleblower protection for contractor employees.

As prescribed in 48 CFR 903.971, insert the following clause:

Whistleblower Protection for Contractor Employees (Month and Year TBE)

(a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

(b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

(End of Clause)

26. Section 952.204–75 is added as follows:

952.204–75 Public affairs.

As prescribed in 48 CFR 904.7201, insert the following clause.

Public Affairs (Month and Year TBE)

(a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating its effort under the contract. The responsibilities under this clause must be accomplished through

coordination with the Contracting Officer and appropriate DOE public affairs personnel.

(b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.

(c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.

(d) The Contractor must comply with established DOE procedures for obtaining advance clearances on all oral, written, and audio/visual informational material prepared for public dissemination or use.

(e) Unless prohibited by law, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of any communications or contacts with Members of Congress relating to the effort performed under the contract.

(f) The Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of any activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.

(g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

27. Section 952.215–70 is added as follows:

952.215–70 Key Personnel.

As prescribed in 48 CFR 915.408–70(a), the contracting officer shall insert the following clause:

Key Personnel (Month and Year TBE)

(a) The personnel listed below or elsewhere in this contract [Insert cross-reference, if applicable] are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

[Insert List of Key Personnel unless listed elsewhere in the contract]

(End of clause)

952.222–70 [Removed]

28. Section 952.222–70 is removed.

952.223–71 [Removed]

29. Section 952.223–71 is amended by revising "970.5204–2" to read "48 CFR 970.5223–1."

30. Section 952.227–11 is amended by revising the prescription and clause date, and adding Alternate I as follows:

952.227–11 Patent rights—retention by the contractor (short form).

As prescribed in 48 CFR 927.303(a)(1), the contracting officer shall insert the following clause:

Patent Rights—Retention by the Contractor (Short Form) (Month and Year TBE)

* * * * *

Alternate I (Month and Year TBE). As prescribed in 48 CFR 927.303(a)(1), replace paragraph (e)(1) with the following paragraph (e)(1), and add the following paragraphs (m) and (n):

(e)(1) The contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. When DOE approves such reservation, the contractor's license will extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(m) Transfer to successor contractor. (1) In the event of termination or expiration of this contract, the contractor shall transfer any unexpended balance of income received relating to intellectual property, in accordance with instructions from the contracting officer, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The contractor shall also transfer title, as one package, in all patents and patent applications, license agreements, accounts containing royalty revenues from such license agreements, including equity positions in third-party entities, and other intellectual property that arose under the performance of this contract, to the successor contractor or to the Government, as directed by the contracting officer. (2) The Government agrees that the recipient of such title shall assume any remaining obligations and liabilities in connection with the patents and patent applications.

(n) Facilities license. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of these rights shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

31. Section 952.227–13 is amended by revising the prescription and clause date, and adding Alternate I as follows:

952.227–13 Patent rights—acquisition by the Government.

As prescribed in 48 CFR 927.303(a)(2), the contracting officer shall insert the following clause:

Patent Rights—Acquisition by the Government (Month and Year TBE)

* * * * *

Alternate I (Month and Year TBE). As prescribed in 48 CFR 927.303(a)(2), add the following paragraphs (j) and (k):

(j) Transfer to successor contractor. (1) In the event of termination or expiration of this contract, the contractor shall transfer any unexpended balance of income received relating to intellectual property, in accordance with instructions from the contracting officer, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The contractor shall also transfer title, as one package, in all patents and patent applications, license agreements, accounts containing royalty revenues from such license agreements, including equity positions in third-party entities, and other intellectual property that arose under the performance of this contract, to the successor contractor or to the Government, as directed by the contracting officer.

(2) The Government agrees that the recipient of such title shall assume any remaining obligations and liabilities in connection with the patents and patent applications.

(k) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the

Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of these rights shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

32. Section 952.242–70 is added as follows:

952.242–70 Technical Direction

As prescribed in 48 CFR 942.270–2, insert the following clause.

Technical Direction (Month and Year TBE)

(a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:

(1) Providing direction to the contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.

(2) Providing written information to the contractor that assists in interpreting drawings, specifications, or technical portions of the work description.

(3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government.

(b) The contractor will receive a copy of the written COR designation from the contracting officer. It will specify the extent of the COR's authority to act on behalf of the contracting officer.

(c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the contract clause entitled "Changes;"

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions or specifications of the contract; or

(5) Interferes with the contractor's right to perform the terms and conditions of the contract.

(d) All technical direction shall be issued in writing by the COR.

(e) The contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the contractor, the Contracting Officer must:

(1) Advise the contractor in writing within thirty (30) days after receipt of the contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract; or

(2) Advise the contractor in writing within a reasonable time that the Government will issue a written change order.

(f) A failure of the contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

(End of Clause)

33. Section 952.247–70 is amended by revising the prescription to read as follows:

952.247–70 Foreign travel.

As prescribed in 48 CFR 947.7002, insert the following clause:

* * * * *

952.250–70 [Amended]

34. Section 952.250–70 is amended in paragraph (h) by revising "Audit and records—Negotiation", to read "Accounts, records, and inspection."

35. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

36. Part 970 is revised to read as follows:

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

Sec.

Subpart 970.01—Management and Operating Contract Regulatory System

970.0100 Scope of part.
970.0103 Publication and codification.

Subpart 970.03—Improper Business Practices and Personal Conflicts of Interest

970.0309 Whistleblower protection of contractor employees.
970.0309–1 Applicability.
970.0370 Management controls and improvements.
970.0370–1 Policy.
970.0370–2 Contract clause.
970.0371 Conduct of employees of DOE management and operating contractors.
970.0371–1 Scope of section.
970.0371–2 Applicability.
970.0371–3 Definition.
970.0371–4 Gratuities.
970.0371–5 Use of privileged information.
970.0371–6 Incompatibility between regular duties and private interests.
970.0371–7 Outside employment of contractor employees.
970.0371–8 Employee disclosure concerning other employment services.
970.0371–9 Contract clause.

Subpart 970.04—Administrative Matters

970.0404 Safeguarding classified information.
970.0404–1 Definitions.
970.0404–2 General.
970.0404–3 Responsibilities of contracting officers.
970.0404–4 Solicitation provision and contract clauses.
970.0407 Contractor records retention.
970.0407–1 Applicability.
970.0407–1–1 Alternate retention schedules.
970.0407–1–2 Access to and ownership of records.
970.0407–1–3 Contract clause.
970.0470 Department of Energy directives.
970.0470–1 General.
970.0470–2 Contract clause.

Subpart 970.08—Required Sources of Supplies and Services

970.0801 Excess personal property.
970.0801–1 Policy.
970.0808 Acquisition of printing.
970.0808–1 Scope of section.
970.0808–2 Policy.
970.0808–3 Contract clause.

Subpart 970.09—Contractor Qualifications

970.0905 Organizational conflicts of interest.
970.0970 Performance guarantees.
970.0970–1 Determination of responsibility.
970.0970–2 Solicitation provision.

Subpart 970.11—Describing Agency Needs

970.1100 Policy.
970.1100–1 Performance-based contracting.
970.1100–2 Additional considerations.

Subpart 970.15—Contracting by Negotiation

970.1504 Contract pricing.
970.1504–1 Price analysis.
970.1504–1–1 Fees for management and operating contracts.
970.1504–1–2 Fee policy.
970.1504–1–3 Special considerations: Laboratory management and operation.
970.1504–1–4 Types of contracts and fee arrangements.
970.1504–1–5 General considerations and techniques for determining fixed fees.
970.1504–1–6 Calculating fixed fee.
970.1504–1–7 Fee base.
970.1504–1–8 Special equipment purchases.
970.1504–1–9 Special considerations: Cost-plus-award-fee.
970.1504–1–10 Special considerations: Fee limitations.
970.1504–1–11 Documentation.
970.1504–2 Price negotiation.
970.1504–3 Documentation.
970.1504–3–1 Cost or pricing data.
970.1504–4 Special cost or pricing areas.
970.1504–4–1 Make-or-Buy Plans.
970.1504–4–2 Policy.
970.1504–4–3 Requirements.
970.1504–5 Solicitation provision contract clauses.

Subpart 970.17—Special Contracting Methods

970.1706 Management and operating contracts.

970.1706–1 Award, renewal, and extension.
970.1706–2 Contract clause.

Subpart 970.19—Small, Small Disadvantaged and Women-Owned Small Business Concerns

970.1907 Subcontracting with Small Business, Small Disadvantaged Business and Woman-owned Small Business Concerns.
970.1907–1 Subcontracting plan requirements.

Subpart 970.22—Application of Labor Policies

970.2200 Scope of subpart.
970.2201 Basic labor policies.
970.2201–1 Labor relations.
970.2201–1–1 General.
970.2201–1–2 Policies.
970.2201–1–3 Contract clause.
970.2201–2 Overtime management.
970.2201–2–1 Policy.
970.2201–2–2 Contract clause.
970.2204 Labor standards for contracts involving construction.
970.2204–1 Statutory and regulatory requirements.
970.2204–1–1 Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities.
970.2208 Equal employment opportunity.
970.2210 Service Contract Act.
970.2270 Unemployment compensation.

Subpart 970.23—Environmental, Conservation, and Occupational Safety Programs

970.2303 Hazardous materials identification and material safety.
970.2303–1 General.
970.2303–2 Contract clauses.
970.2304 Use of recovered/recycled materials.
970.2304–1 General.
970.2304–2 Contract clause.
970.2305 Workplace substance abuse programs—management and operating contracts.
970.2305–1 General.
970.2305–2 Applicability.
970.2305–3 Definitions.
970.2305–4 Solicitation provision and contract clause.
970.2306 Suspension of payments, termination of contract, and debarment and suspension actions.

Subpart 970.26—Other Socioeconomic Programs

970.2670 Implementation of section 3021 of the Energy Policy Act of 1992.
970.2670–1 Requirements.
970.2671 Diversity.
970.2671–1 Policy.
970.2671–2 Contract clause.
970.2672 Implementation of section 3161 of the National Defense Authorization Act for Fiscal Year 1993.
970.2672–1 Policy.
970.2672–2 Requirements.
970.2672–3 Contract clause.
970.2673 Regional partnerships.
970.2673–1 Policy.
970.2673–2 Contract clause.

Subpart 970.27—Patents, Data, and Copyrights

970.2701 General.
970.2701–1 Applicability.
970.2703 Patent rights.
970.2703–1 Policy.
970.2703–2 Contract clauses.
970.2704 Rights in data.
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970.2704–3 Contract clauses.
970.2770 Technology transfer.
970.2770–1 General.
970.2770–2 Policy.
970.2770–3 Technology transfer and patent rights.
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Subpart 970.28—Bonds and Insurance

970.2803 Insurance.
970.2803–1 Workers' compensation insurance.
970.2803–2 Contract clause.

Subpart 970.29—Taxes

970.2902 Federal Excise Taxes.
970.2902–1 Exemptions from Federal Excise Taxes.
970.2903 State and Local Taxes.
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970.2904 Contract clauses.
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Subpart 970.30—Cost Accounting Standards

970.3002 CAS Program Requirements.
970.3002–1 Applicability.
970.3002–2 Limitations.

Subpart 970.31—Contract Cost Principles and Procedures

970.3100 Scope of Subpart.
970.3100–1 Definitions
970.3100–2 Responsibilities.
970.3101 Applicability.
970.3101–1 Objectives.
970.3101–2 Advance agreements.
970.3101–3 Cost certification and penalties on unallowable costs.
970.3102 Contracts with Management and Operating Contractors.
970.3102–1 General.
970.3102–1–1 Actual Cost Basis.
970.3102–1–2 Application of Cost Principles.
970.3102–1–3 General Basis for Reimbursement of Costs.
970.3102–1–4 Cost Determination Based on Audit.
970.3102–1–5 Contractor's System of Accounting.
970.3102–2 Direct and Indirect Costs.
970.3102–3 Selected Costs.
970.3102–3–1 Public Relations and Advertising.
970.3102–3–2 Compensation for Personal Services.
970.3102–3–3 Cost of Money.
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970.3102–3–6 Fines, Penalties, and Mischarging Costs.
970.3102–3–7 Lobbying and Political Activity Costs.
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970.3102–3–9 Plant Reconversion Costs.
970.3102–3–10 Precontract Costs.
970.3102–3–11 Professional and Consultant Service Costs.
970.3102–3–12 Relocation Costs.
970.3102–3–13 Trade, Business, Technical and Professional Activity Costs.
970.3102–3–14 Travel Costs.
970.3102–3–15 Cost Related to Legal and Other Proceedings.
970.3102–3–16 Overtime, Shift and Holiday Premiums.
970.3102–3–17 Page Charges in Scientific Journals.
970.3102–3–18 Preparatory and Make-Ready Costs.
970.3102–3–19 Facilities (Plant and Equipment).
970.3102–3–20 Special Funds in the Construction Industry.
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970.3170 Contract Clauses.

Subpart 970.32—Contract Financing

970.3200 Policy.
970.3200–1 Reduction or Suspension of Advance, Partial, or Progress Payments.
970.3200–1–1 Contract Clause.
970.3204 Advance Payments.
970.3204–1 Applicability.
970.3204–2 Special Bank Account Agreement.
970.3204–3 Contract clause.
970.3270 Standard Financial Management Clauses.

Subpart 970.34—Major System Acquisition

970.3400 General Requirements.
970.3400–1 Mission-oriented Solicitation.

Subpart 970.35—Research and Development Contracting

970.3500 Scope of Subpart
970.3501 Federally Funded Research and Development Centers.
970.3501–1 Sponsoring Agreements.
970.3501–2 Using an FFRDC.
970.3501–3 Reviewing FFRDC's.
970.3501–4 Contract Clause.

Subpart 970.36—Construction and Architect-Engineer Contracts.

970.3605 Contract Clauses.
970.3605–1 Other Contracts.
970.3605–2 Special Construction Clause for Operating Contracts.

Subpart 970.37—Facilities Management Contracting

970.3701 General.
970.3701–1 Severance Payments to Foreign Nationals.
970.3701–1–1 Waiver of Cost Allowability Provisions.
970.3701–1–2 Solicitation Provision and Contract Clause.
970.3770 Facilities Management.
970.3770–1 Policy.
970.3770–2 Contract clause.

Subpart 970.41—Acquisition of Utility Services

970.4102 Acquiring Utility Services.
970.4102–1 Policy.

Subpart 970.43—Contract Modifications

970.4302 Changes.
970.4302–1 Contract Clause.

Subpart 970.44—Management and Operating Contractor Purchasing

970.4400 Scope.
970.4401 Responsibilities.
970.4401–1 General.
970.4401–2 Review and Approval.
970.4401–3 Advance Notification.
970.4402 Contractor Purchasing System.
970.4402–1 Policy.
970.4402–2 General Requirements.
970.4402–3 Purchasing from Contractor-Affiliated Sources.
970.4402–4 Nuclear Material Transfers.
970.4403 Contract Clause.

Subpart 970.45—Government Property

970.4501 General.
970.4501–1 Contract Clause.

Subpart 970.49—Termination of Contracts

970.4905 Contract Termination Clause.
970.4905–1 Termination for Convenience of the Government and Default.

Subpart 970.50—Extraordinary Contractual Actions

970.5070 Indemnification.
970.5070–1 Scope and Applicability.
970.5070–2 General.
970.5070–3 Contract Clauses.

Subpart 970.52—Solicitation Provisions and Contract Clauses for Management and Operating Contracts

970.5200 Scope of Subpart.
970.5201 Text of Provisions and Clauses.
970.5203–1 Management Controls.
970.5203–2 Performance Improvement and Collaboration.
970.5203–3 Contractor's Organization.
970.5204–1 Counterintelligence.
970.5204–2 Laws, Regulations, and DOE Directives.
970.5204–3 Access to and Ownership of Records.
970.5208–1 Printing.
970.5209–1 Requirement for Guarantee of Performance.
970.5215–1 Total Available Fee: Base Fee Amount and Performance Fee Amount.
970.5215–2 Make-or-Buy Plan.
970.5215–3 Conditional Payment of Fee, Profit, or Incentives.
970.5215–4 Cost Reduction.
970.5215–5 Limitation on Fee.
970.5222–1 Collective Bargaining Agreements—Management and Operating Contracts.
970.5222–2 Overtime Management.
970.5223–1 Integration of Environment, Safety, and Health into Work Planning and Execution.
970.5223–2 Acquisition and Use of Environmentally Preferable Products and Services.
970.5223–3 Agreement Regarding Workplace Substance Abuse Programs at DOE Facilities.
970.5223–4 Workplace Substance Abuse Programs at DOE Sites.
970.5226–1 Diversity Plan.
970.5226–2 Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.
970.5226–3 Community Commitment.
970.5227–1 Rights in Data—Facilities.
970.5227–2 Rights in Data—Technology Transfer.
970.5227–3 Technology Transfer Mission.
970.5228–1 Insurance—Litigation and Claims.
970.5229–1 State and Local Taxes.
970.5231–1 Allowable Costs and Fee (Management and Operating Contracts).
970.5231–2 Political Activity Cost Prohibition.
970.5231–3 Cost Prohibitions Related to Legal and Other Proceedings.
970.5231–4 Preexisting Conditions.
970.5232–1 Reduction or Suspension of Advance, Partial, or Progress Payments Upon Finding of Substantial Evidence of Fraud.
970.5232–2 Payments and Advances.
970.5232–3 Accounts, Records, and Inspection.
970.5232–4 Obligation of Funds.
970.5235–1 Federally Funded Research and Development Center Sponsoring Agreement.
970.5236–1 Government Facility Subcontract Approval.
970.5237–1 Waiver of Limitations on Severance Payments to Foreign Nationals.
970.5237–2 Facilities Management.
970.5243–1 Changes.
970.5244–1 Contractor Purchasing System.
970.5245–1 Property.

Subpart 970.01—Management and Operating Contract Regulatory System

970.0100 Scope of Part.

This part provides Departmental policies, procedures, provisions, and clauses that implement and supplement the Federal Acquisition Regulation (FAR) and other parts of the Department of Energy Acquisition Regulation (DEAR) for the award and administration of the Department's management and operating contracts, as defined at 48 CFR subpart 17.6.

970.0103 Publication and codification.

(a) Organization of Part 970. (1) To the extent possible, the titles and text of the subparts, sections, and subsections of this part are numbered to correspond with related material that is contained in the FAR.

(2) The number to the left of the decimal point represents the DEAR Part number (i.e., 970). The numbers to the right of the decimal point and to the left of the dash represent, in order, the DEAR subpart (first two digits), and the DEAR section number (second two digits). The numbers to the right of the dash represent the DEAR subsection. A second dash may follow the DEAR subsection number. As applicable, numbers to the right of the second dash represent subordinate subsections.

(3) To the extent practicable, the subpart number corresponds with the FAR part which contains related coverage, and the section number corresponds with the FAR subpart which contains related coverage (e.g., the coverage contained in DEAR 970.0309 corresponds with material contained in FAR 3.9).

(4) Where the FAR does not contain related coverage on a particular subject, the DEAR section number will be numbered using numbers of 70 and up (e.g., 970.0370).

(b) Special note regarding clause numbering. The section number for clauses prescribed in part 970 are numbered to correspond with the subpart in which the clause is prescribed (e.g., 970.5203–1 is prescribed for use at subpart 970.03).

Subpart 970.03—Improper Business Practices and Personal Conflicts of Interest

970.0309 Whistleblower Protection for Contractor Employees.

970.0309–1 Applicability.

The contracting officer shall refer to 48 CFR subpart 903.9 regarding the applicability of the DOE Employee Protection Program to management and operating contracts.

970.0370 Management Controls and Improvements.

970.0370–1 Policy.

(a) Management and operating contractors shall develop and maintain systems of management and quality control to discourage waste, fraud and abuse; and to ensure that components, products, and services that are provided to DOE satisfy the contractor's obligations under the contract.

(b) As a part of the required overall management structure, the contractor must maintain management control systems which, in compliance with the requirements of the clause at 48 CFR 970.5203–1:

(1) Are documented and satisfactory to DOE;

(2) Ensure that all levels of management are accountable for effective management systems and internal controls within their areas of assigned responsibility;

(3) Cover both programmatic and administrative functions;

(4) Provide reasonable assurance that Government resources are safeguarded against theft, fraud, waste, and unauthorized use;

(5) Promote efficient and effective operations;

(6) Ensure that all obligations and costs incurred are in compliance with the intended purposes and the terms and conditions of the contract;

(7) Properly record, manage, and report all revenues, expenditures, transactions and assets;

(8) Maintain financial, statistical and other reports necessary to maintain accurate, reliable, and timely accountability and management controls;

(9) Are periodically reviewed to ensure that the systems provide reasonable assurance that the objectives of the system are being accomplished and that these controls are working effectively;

(10) Are in accordance with the Comptroller General's standards for internal controls, as set forth in the General Accounting Office Policy and Procedures Manual For Guidance To Federal Agencies, (Oct 1984), as amended.

(c) Management and operating contractors shall also develop and maintain a baseline program of quality assurance that will implement documented performance and quality standards, and management controls and assessment techniques to ensure components, services, and products meet DOE's, design criteria and other governing and applicable specifications.

(d) DOE expects all its contractors to seek to identify improvements in any aspect of performance. Management and operating contracts are very large and complex; therefore, the opportunities to identify changes in performance that will increase the effectiveness or efficiency of contract performance are more prevalent than under other contracts. The clause at 48 CFR 970.5203–2 requires DOE management and operating contractors to affirmatively seek to identify, evaluate, and institute, where appropriate, processes that will improve the effectiveness or efficiency of any aspect of contract performance. It further requires the contractor to communicate any such improvements to DOE, other management and operating contractors, and DOE major facilities contractors. The contractor is required to participate in efforts by those contractors to address common problems or the institution of improvements. It allows the contractor to enlist the aid of the DOE contracting officer where necessary to institute or communicate the improvements. The obligations under the clause in no way affect the contractor's obligations under other provisions of the contract to notify or acquire the approval of the contracting officer.

970.0370–2 Contract clause.

(a) The contracting officer shall insert the clause at 970.5203–1, Management Controls, in all management and operating contracts.

(b) The contracting officer shall insert the clause at 970.5203–2, Performance Improvement and Collaboration, in all management and operating contracts.

970.0371 Conduct of employees of DOE management and operating contractors.

970.0371–1 Scope of section.

This section establishes the policies for maintaining satisfactory standards of conduct on the part of individuals employed by DOE management and operating contractors.

970.0371–2 Applicability.

The policies in this section are applicable to all DOE management and operating contractors.

970.0371–3 Definition.

Employees, as used in this section, are defined to mean individuals employed by the contractor, both full and part-time, who are assigned to work under a DOE management and operating contract.

970.0371–4 Gratuities.

Employees of a management and operating contractor shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, accept any gratuity or special favor from individuals or organizations with whom the contractor is doing business, or proposing to do business, in accomplishing the work under the contract. Reference is made to the requirements prescribed in 48 CFR 3.502.

970.0371–5 Use of privileged information.

Management and operating contractor employees shall not use privileged information for personal gain, or make other improper use of privileged information which is acquired in connection with their employment on contract work. For the purposes of this subsection, the term "privileged information" includes but is not limited to, unpublished information relating to technological and scientific developments; medical, personnel, or security records of individuals; anticipated materials' requirements or pricing action; possible new sites for DOE program operations; and knowledge of selections of contractors or subcontractors in advance of official announcement.

970.0371–6 Incompatibility between regular duties and private interests.

Employees of a management and operating contractor shall not be permitted to make or influence any decisions on behalf of the contractor which directly or indirectly affect the interest of the Government, if the employee's personal concern in the matter may be incompatible with the interest of the Government. For example: An employee of a contractor will not negotiate, or influence the award of, a subcontract with a company in which the individual has an employment relationship or significant financial interest; and an employee of a contractor will not be assigned the preparation of an evaluation for DOE or for any DOE contractor of some technical aspect of the work of another organization with which the individual has an employment relationship, or significant financial interest, or which is a competitor of an organization (other than the contractor who is the individual's regular employer) in which the individual has an employment relationship or significant financial interest. The contractor shall be responsible for informing employees that they are expected to disclose any incompatibilities between duties performed for the contractor and their private interests and to refer undecided questions to the contractor.

970.0371–7 Outside employment of contractor employees.

Employees of a management and operating contractor are entitled to the same rights and privileges with respect to outside employment as other citizens. Therefore, there is no general prohibition against contractor employees having outside employment. However, no employee of a contractor performing work on a full or part-time basis under a DOE management and operating contract may engage in employment outside official hours of duty or while on leave if such employment will:

(a) In any manner interfere with the proper and effective performance of the duties of the position;

(b) Appear to create a conflict-of-interest situation, or

(c) Appear to subject DOE or the contractor to public criticism or embarrassment.

970.0371–8 Employee disclosure concerning other employment services.

(a) Management and operating contractors are responsible for requiring its employees to file with the contractor, a written disclosure statement concerning outside employment

services which involve the use of information in the area of the employee's employment with the contractor. The disclosure shall contain such information concerning the outside employment as the contractor may prescribe. At a minimum, the employee's disclosure shall:

(1) Acknowledge that the employee has read and is familiar with:

(i) The requirements and restrictions prescribed in this section,

(ii) DOE publication entitled, "Reporting Results of Scientific and Technical Work Funded by DOE", and

(iii) The requirements of the contractor's contract with DOE relating to patents.

(2) Include information concerning any rate of remuneration significantly in excess of the employee's regular rate of remuneration;

(3) Identify any actual or potential conflicts with DOE's policies regarding conduct of employees of DOE's contractors set forth in this section;

(4) Address any potential impacts that such employment may have on the contractor's responsibility to report fully and promptly to DOE all significant research and development information; and

(5) Identify any potential conflicts such employment may have with the patent provisions of the contractor's contract with DOE.

(b) The contractor shall provide a copy of all disclosures to the contracting officer.

970.0371–9 Contract clause.

The contracting officer shall insert the clause at 970.5203–3, Contractor's Organization, in all management and operating contracts.

Subpart 970.04—Administrative Matters

970.0404 Safeguarding classified information.

970.0404–1 Definitions.

Classified information means any information or material that is owned by or produced for, or is under the control of the United States Government, and determined pursuant to provisions of Executive Order 12356, April 2, 1982 (47 FR 14874, April 6, 1982), or prior orders, or as authorized under the Atomic Energy Act of 1954, as amended, to require protection against unauthorized disclosure, and is so designated.

Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communication security programs.

Restricted data means data which is defined, in section 11, of the Atomic Energy Act of 1954, as amended, as "all data concerning:

(1) Design, manufacture, or utilization of atomic weapons;

(2) The production of special nuclear material; or

(3) The use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142."

970.0404–2 General.

(a) The basis of DOE's security requirements is the Atomic Energy Act of 1954, as amended.

(b) DOE regulations concerning national security information are codified at 10 CFR parts 1045 and 710. Supplemental security material is found in the DOE Directives system. Foreign ownership, control, or influence over contractors as it relates to security is discussed at 48 CFR 904.70 also applies to management and operating contracts. Regulations pertaining to the protection of restricted data are found under 10 CFR part 1016.

(c) Statutory requirements to be observed in connection with the release of Restricted Data to foreign governments are contained in the Atomic Energy Act of 1954, Sections 141 and 144 (42 U.S.C. 2161 and 2164).

(d) Section 148 of the Atomic Energy Act (42 U.S.C. 2168) prohibits the unauthorized dissemination of unclassified nuclear information with respect to the atomic energy defense programs pertaining to:

(1) The design of production facilities or utilization facilities;

(2) Security measures (including security plans, procedures, and equipment) for the physical protection of:

(i) Production or utilization facilities,

(ii) Nuclear material contained in such facilities, or

(iii) Nuclear materials in transit; or

(3) The design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act (42 U.S.C. 2162).

(e) Executive Order 12333, United States Intelligence Activities, provides for the organization and control of United States foreign intelligence and counterintelligence activities. In accordance with this Executive Order, DOE has established a counterintelligence program which is described in DOE Order 5670.3 (as amended). All DOE elements, including management and operating contractors and other contractors managing DOE-owned facilities which require access authorizations, should undertake the necessary precautions to ensure that DOE and covered contractor personnel, programs and resources are properly protected from foreign intelligence threats and activities.

970.0404–3 Responsibilities of contracting officers.

(a) If access to Restricted Data may be required during the solicitation process for a management and operating contract, security clearances shall be obtained in accordance with applicable DOE Directives in the safeguards and security series.

(b) Management and operating contracts which may require the processing or storage of Restricted Data or Special Nuclear Material require application of the applicable DOE Directives in the safeguards and security series.

(c) The contracting officer shall refer to 48 CFR 904.71 for guidance concerning the prohibition on award of a DOE contract under a national security program to a company owned by an entity controlled by a foreign government when access to proscribed information is required to perform the contract.

970.0404–4 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 970.5204–1, Counterintelligence, into all management and operating contracts and other contracts for the management of DOE-owned facilities which include the security and classification/declassification clauses.

(b) The contracting officer shall refer to 48 CFR 904.404 and 48 CFR 904.7103 for the prescription of solicitation provisions and contract clauses relating to safeguarding classified information and foreign ownership, control, or influence over contractors.

970.0407 Contractor records retention.

970.0407–1 Applicability.

970.0407–1–1 Alternate retention schedules.

Records produced under the Department's contracts involving management and operation

responsibilities relative to DOE-owned or—leased facilities are to be retained and disposed of in accordance with the guidance contained in DOE G 1324.5B, Records Management Program and DOE Records Schedules (see current version), rather than those set forth at 48 CFR subpart 4.7, Contractor Records Retention.

970.0407–1–2 Access to and ownership of records.

Contracting officers may agree to contractor ownership of certain categories of records designated in the instruction contained in paragraph (b) of the clause at 48 CFR 970.5204–3, Access to and Ownership of Records, provided the Government's rights to inspect, copy, and audit these records are not limited. These rights must be retained by the Government in order to carry out the Department's statutory responsibilities required by the Atomic Energy Act and other statutes for oversight of its contractors, including compliance with the Department's health, safety and reporting requirements, and protection of the public interest.

970.0407–1–3 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5204–3, Access to and Ownership of Records, in management and operating contracts.

970.0470 Department of Energy Directives.

970.0470–1 General.

(a) The contractor is required to comply with the requirements of applicable Federal, State and local laws and regulations, unless relief has been granted by the appropriate authority. For informational purposes, the contracting officer may append the contract with a list of applicable laws or regulations (see 970.5204–2, Laws, Regulations, and DOE Directives, paragraph (a)).

(b) The Department of Energy Directives System is a system of instructions, including orders, notices, manuals, guides, and standards, for Departmental elements. In certain circumstances, requirements contained in these directives may apply to a contractor through operation of a contract clause. Program and requirements personnel are responsible for identifying requirements in the Directives System which are applicable to a contract, and for developing a list of applicable requirements and providing it to the contracting officer for inclusion in the contract.

(c) Where directives requirements are established using either the Standards/Requirements Identification Process or the Work Smart Standards Process, the applicable process should also be used to establish the environment, safety, and health portion of the list identified in paragraph (b) of this section.

(d) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under a management and operating contract may be determined by a DOE approved process to evaluate the work and the associated hazards, and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under 48 CFR 970.5223–1, Integration of Environment, Safety, and Health into Work Planning and Execution. When such a process is used, the contracting officer shall ensure that the set of tailored requirements, as approved by DOE pursuant to the process, is incorporated into the list identified in paragraph (b) of this section. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement which varies from an ES&H requirement of an otherwise applicable law or regulation, the contractor must request an exemption or other appropriate regulatory relief that may be specified in the governing regulation.

970.0470–2 Contract clause.

The contracting officer shall insert the clause at DEAR 970.5204–2, Laws, Regulations, and DOE Directives, in management and operating contracts.

Subpart 970.08—Required Sources of Supplies and Services

970.0801 Excess personal property.

970.0801–1 Policy.

The provisions of 48 CFR subpart 8.1 (Federal Acquisition Regulation), 41 CFR 101–43 (Federal Property Management Regulation), and 41 CFR 109–43 (DOE Property Management Regulation) apply to DOE's management and operating contracts.

970.0808 Acquisition of printing.

970.0808–1 Scope of section.

This section prescribes the Department's policy concerning duplicating or printing services which may be required in the performance of management and operating contracts.

970.0808–2 Policy.

Management and operating contractors shall provide or secure duplication and printing services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and applicable DOE Directives.

970.0808–3 Contract clause.

The contracting officer shall insert the clause at 970.5208–1, Printing, in all management and operating contracts.

Subpart 970.09—Contractor Qualifications

970.0905 Organizational conflicts of interest.

Management and operating contracts shall contain an organizational conflict of interest clause substantially similar to the clause at 48 CFR 952.209–72, Organizational Conflicts of Interest, and which is appropriate to the statement of work of the individual contract. In addition, the contracting officer shall assure that the clause contains appropriate restraints on intra-corporate relations between the contractor's organization and personnel operating the Department's facility and its parent corporate body and affiliates. Such retrains shall include personnel access to the facility, technical transfer of information from the facility, and the availability from the facility of other advantages flowing from performance of the contract. The contracting officer is responsible for ensuring that M&O contractors adopt policies and procedures in the award of subcontracts that will meet the Department's need to safeguard against a biased work product and an unfair competitive advantage. To this end, the organizational conflicts of interest clause in management and operating contracts shall include Alternate I.

970.0970 Performance Guarantees.

970.0970–1 Determination of Responsibility.

(a) In the award of a management and operating contract, the contracting officer shall determine that the prospective contractor is a responsible contractor and is capable of providing all necessary financial, personnel, and other resources in performance of the contract.

(b) DOE contracts with entities that have been created solely for the purpose of performing a specific management and operating contract. Generally, such newly created entities will have very limited financial and other resources. In such instances, when making the determination of responsibility required under this section, the contracting officer may evaluate the financial resources of other entities only to the

extent that those entities are legally bound, jointly and severally if more than one, by means of a performance guarantee or other equivalent enforceable commitment to supply the necessary resources to the prospective contractor and to assume all contractual obligations of the prospective contractor. A performance guarantee should be the means used unless an equivalent degree of commitment can be obtained by an alternative means.

(c) The guaranteeing corporate entity(ies) must be found to have sufficient resources in order to satisfy its guarantee.

970.0970–2 Solicitation provision.

The contracting officer shall insert the provision at 48 CFR 970.5209–1, Requirement for Guarantee of Performance, in solicitations when the awardee will be required to be organized solely for performance of the requirement.

Subpart 970.11—Describing Agency Needs

970.1100 Policy.

970.1100–1 Performance-based contracting.

(a) It is the policy of the Department of Energy to use, to the maximum extent practicable, performance-based contracting methods in its management and operating contracts. Office of Federal Procurement Policy Letter 91–2 provides guidance concerning the development and use of performance-based contracting concepts and methodologies that may be generally applied to management and operating contracts. Performance-based contracts: describe performance requirements in terms of results rather than methods of accomplishing the work; use measurable (*i.e.*, terms of quality, timeliness, quantity) performance standards and objectives and quality assurance surveillance plans; provide performance incentives (positive or negative) where appropriate; and specify procedures for award or incentive fee reduction when work activities are not performed or do not meet contract requirements.

(b) The use of performance-based statements of work, where feasible, is the preferred method for establishing work requirements. Such statements of work and other documents used to establish work requirements (such as work authorization directives) should describe performance requirements and expectations in terms of outcome, results, or final work products, as opposed to methods, processes, or design.

(c) Contract performance requirements and expectations should be consistent with the Department's strategic planning goals and objectives, as made applicable to the site or facility through Departmental programmatic and financial planning processes. Measurable performance criteria, objective measures, and where appropriate, performance incentives, shall be structured to correspond to the performance requirements established in the statement of work and other documents used to establish work requirements.

(d) Quality assurance surveillance plans shall be developed to facilitate the assessment of contractor performance and ensure the appropriateness of any award or incentive fee payment. Such plans shall be tailored to the contract performance objectives, criteria, and measures, and shall, to the maximum extent practicable, focus on the level of performance required by the performance objectives rather than the methodology used by the contractor to achieve that level of performance.

970.1100–2 Additional considerations.

(a) While it is not feasible to set forth standard language which would apply to every contract situation, language must be designed for inclusion in a management and operating contract to describe clearly the work being undertaken; the controls, as appropriate, to be exercised by DOE over the performance of that work; and the relationship contemplated between the parties.

(b) The language shall also include the following with respect to subcontracting performance of the work described pursuant to paragraph (a) of this section: "The contractor shall, when directed by DOE and may, but only when authorized by DOE, enter into subcontracts for the performance of any part of the work under this clause."

(c) The provisions required in paragraphs (a) and (b) of this section shall be set forth in the statement of work of the contract.

Subpart 970.15—Contracting by Negotiation

970.1504 Contract pricing.

970.1504–1 Price analysis.

970.1504–1–1 Fees for management and operating contracts.

This subsection sets forth the Department's policies on fees for management and operating contracts and may be applied to other contracts as determined by the Procurement Executive, or designee.

970.1504–1–2 Fee policy.

(a) DOE management and operating contractors may be paid a fee in accordance with the requirements of this subsection.

(b) There are three basic principles underlying the Department's fee policy:

(1) The amount of available fee should reflect the financial risk assumed by the contractor.

(2) It is the policy of the Department, when work elements cannot be fixed price, incentive fees (including award fees) tied to objective measures should be used to the maximum extent appropriate.

(3) When work elements cannot be fixed price and award fees are employed, they should be tied to either objective or subjective measures. Each measure should, to the maximum extent appropriate, be directly tied to a specific portion of the fee pool.

(c) Fee objectives and amounts are to be determined for each contract. Standard fees or across-the-board fee agreements will not be used or made. Due to the nature of funding management and operating contracts, it is anticipated that fee shall be established in accordance with the annual funding cycle; however, with the prior approval of the Procurement Executive, or designee, a longer period may be used where necessary to incentivize performance objectives that span funding cycles or to optimize cost reduction efforts.

(d) Annual fee amounts shall be established in accordance with this subsection. Annual amounts shall not exceed maximum amounts derived from the appropriate fee schedule (and Classification Factor, if applicable) unless approved in advance by the Procurement Executive, or designee. In no event shall any fee exceed statutory limits imposed by 41 U.S.C. 254(b).

(e)(1) Contracting Officers shall include negative fee incentives in contracts when appropriate. A negative fee incentive is one in which the contractor will not be paid the full target fee amount when the actual performance level falls below the target level established in the contract.

(2) Negative fee incentives may only be used when:

(i) A target level of performance can be established, which the contractor can reasonably be expected to reach;

(ii) The value of the negative incentive is commensurate with the lower level of performance and any additional administrative costs;

(iii) Factors likely to prevent attainment of the target level of performance are clearly within the control of the contractor; and

(iv) The contract indicates clearly a level below which performance is not acceptable.

(f) Prior to the issuance of a competitive solicitation or the initiation of negotiations for an extension of an existing contract, the HCA shall coordinate the maximum available fee, as allowed by 48 CFR 970.1504–1–1, and the fee amount targeted for negotiation, if less, with the Procurement Executive, or designee. Solicitations shall identify maximum available fee under the contract and may invite offerors to propose fee less than the maximum available.

(g) When a contract subject to this subsection requires a contractor to use its own facilities or equipment, or other resources to make its own cost investment for contract performance (e.g., when there is no letter-of-credit financing), consideration may be given, subject to approval by the Procurement Executive, or designee, to increasing the total available fee amount above that otherwise provided by this subsection.

(h) Multiple fee arrangements should be used in accordance with 48 CFR 970.1504–1–4.

970.1504–1–3 Special considerations: Laboratory management and operation.

(a) For the management and operation of a laboratory, the contracting officer shall consider whether any fee is appropriate. Considerations should include:

(1) The nature and extent of financial or other liability or risk assumed or to be assumed under the contract;

(2) The proportion of retained earnings (as established under generally accepted accounting methods) that are utilized to fund the performance of work related to the DOE contracted effort;

(3) Facilities capital or capital equipment acquisition plans;

(4) Other funding needs, to include contingency funding, working capital funding, and provision for funding unreimbursed costs deemed ordinary and necessary;

(5) The utility of fee as a performance incentive; and

(6) The need for fee to attract qualified contractors, organizations, and institutions.

(b) In the event fee is considered appropriate, the contracting officer shall determine the amount of fee in accordance with this subsection.

(1) Costs incurred in the operation of a laboratory that are allowable and allocable under the cost principles (i.e., commercial using 48 CFR 31.2, nonprofit using OMB Circular A–122, or university-affiliated using OMB Circular A–21), regulations, or statutes applicable to the operating contractor should be classified as direct or indirect (overhead or G&A) charges to the contract and not included as proposed fee. Exceptions must be approved by the Procurement Executive, or designee.

(2) Except as specified in 48 CFR 970.1504–1–3(c)(3), the maximum total amount of fee shall be calculated in accordance with 48 CFR 970.1504–1–5 or 48 CFR 970.1504–1–9, as appropriate. The total amount of fee under any laboratory management and operating contract or other designated contract shall not exceed, and may be significantly less than, the result of that calculation. In determining the total amount of fee, the contracting officer shall consider the evaluation of the factors in paragraph (a) of this subsection as well as any benefits the laboratory operator will receive due to its tax status.

(c) In the event fee is considered appropriate, the contracting officer shall establish the type of fee arrangement in accordance with this subsection.

(1) The amount of fee may be established as total available fee with a base fee portion and a performance fee portion. Base fee, if any, shall be an amount in recognition of the risk of financial liability assumed by the contractor and shall not exceed the cost risk associated with those liabilities or the amount calculated in accordance with 48 CFR 970.1504–1–5, whichever is less. The total available fee, excepting any base fee, shall normally be associated with performance at or above the target level of performance as defined by the contract. If performance in either of the two general work categories appropriate for laboratories (science/technology and support) is rated at less than the target level of performance, the total amount of the available fee shall be subject to downward adjustment. Such downward adjustment shall be subject to the terms of the clause at 48 CFR 970.5215–3, Conditional Payment of Fee, Profit, or Incentives, if contained in the contract.

(2) The amount of fee may be established as a fixed fee in recognition of the risk of financial liability to be assumed by the contractor, with such fixed fee amount not exceeding the cost risk associated with the liabilities assumed or the amount of fee calculated in accordance with 48 CFR 970.1504–1–5, whichever is less.

(3) If the fixed fee or total available fee exceeds 75% of the fee that would be calculated per 48 CFR 970.1504–1–5 or 48 CFR 970.1504–1–9; or if a fee arrangement other than one of those set forth in paragraphs (c) (1) or (2) of this subsection is considered appropriate, the approval of the Procurement Executive, or designee, shall be obtained prior to its use.

(4) Fee, if any, as well as the type of fee arrangement, will normally be established for the life of the contract. It will be established at time of award, as part of the extend/compete decision, at the time of option exercise, or at such other time as the parties can mutually reach agreement, e.g., negotiations. Such agreement shall require the approval of the Procurement Executive, or designee.

(5) Fee established for longer than one year shall be subject to adjustment in the event of a significant change (greater than +/−10% or a lessor amount if appropriate) to the budget or work scope.

(6) Retained earnings (reserves) shall be identified and a plan for their use and disposition developed.

(7) The use of retained earnings as a result of performance of laboratory management and operation may be restricted if the operator is an educational institution.

970.1504–1–4 Types of contracts and fee arrangements.

(a) Contract types and fee arrangements suitable for management and operating contracts may include cost, cost-plus-fixed-fee, cost-plus-award-fee, cost-plus-incentive-fee, fixed-price incentive, firm-fixed-price or any combination thereof (see 48 CFR 16.1). In accordance with 48 CFR 970.1504–1–2(b)(1), the fee arrangement chosen for each work element should reflect the financial risk for project failure that contractors are willing to accept. Contracting officials shall structure each contract and the elements of the work in such a manner that the risk is manageable and, therefore, assumable by the contractor.

(b) Consistent with the concept of a performance-based management contract, those contract types which incentivize performance and cost control are preferred over a cost-plus-fixed-fee arrangement. Accordingly, a cost-plus-fixed-fee contract in instances other than those set forth in 48 CFR 970.1504–1–3(c)(2) may only be used when approved in advance by the Procurement Executive, or designee.

(c) A cost-plus-award-fee contract is generally the appropriate contract type for a management and operating contract.

(1) Where work cannot be adequately defined to the point that a fixed price contract is acceptable, the attainment of acquisition objectives generally will be enhanced by using a cost-plus-award-fee contract or other incentive fee

arrangement to effectively motivate the contractor to superior performance and to provide the Department with flexibility to evaluate actual performance and the conditions under which it was achieved.

(2) The construct of fee for a cost-plus-award-fee management and operating contract is that total available fee will equal a base fee amount and a performance fee amount. The total available fee amount including the performance fee amount the contractor may earn, in whole or in part during performance, shall be established annually (or as otherwise agreed to by the parties and approved by the Procurement Executive, or designee), in an amount sufficient to motivate performance excellence.

(3) However, consistent with concepts of performance-based contracting, it is Departmental policy to place fee at risk based on performance. Accordingly, a base fee amount will be available only when approved in advance by the Procurement Executive, or designee, except as permitted in 48 CFR 970.1504–1–3(c)(1). Any base fee amount shall be fixed, expressed as a percent of the total available fee at inception of the contract, and shall not exceed that percent during the life of the contract.

(4) The performance fee amount may consist of an objective fee component and a subjective fee component. Objective performance measures, when appropriately applied, provide greater incentives for superior performance than do subjective performance measures and should be used to the maximum extent appropriate. Subjective measures should be used when it is not feasible to devise effective predetermined objective measures applicable to cost, technical performance, or schedule for particular work elements.

(d) Consistent with performance-based contracting concepts, performance objectives and measures related to performance fee should be as clearly defined as possible and, where feasible, expressed in terms of desired performance results or outcomes. Specific measures for determining performance achievement should be used. The contract should identify the amount and allocation of fee to each performance result or outcome.

(e) Because the nature and complexity of the work performed under a management and operating contract may be varied, opportunities may exist to utilize multiple contract types and fee arrangements. Consistent with paragraph (a) of this subsection and 48 CFR 16.1, the contracting officer should apply that contract type or fee arrangement most appropriate to the work component. However, multiple contract types or fee arrangements:

(1) Must conform to the requirements of 48 CFR part 915 and 48 CFR parts 15 and 16, and

(2) Where appropriate to the type, must be supported by:

(i) Negotiated costs subject to the requirements of the Truth in Negotiations Act,

(ii) A pre-negotiation memorandum, and

(iii) A plan describing how each contract type or fee arrangement will be administered.

(f) Cost reduction incentives are addressed in the clause at 48 CFR 970.5215–4, Cost Reduction. This clause provides for incentives for quantifiable cost reductions associated with contractor proposed changes to a design, process, or method that has an established cost, technical, and schedule baseline, is defined, and is subject to a formal control procedure. The clause is to be included in management and operating contracts as appropriate. Proposed changes must be: initiated by the contractor, innovative, applied to a specific project or program, and not otherwise included in an incentive under the contract. Such cost reduction incentives do not constitute fee and are not subject to statutory or regulatory fee limitations; however, they are subject to all appropriate requirements set forth in this subpart.

(g) Operations and field offices shall take the lead in developing and implementing the most appropriate pricing arrangement or cost reduction incentive for the requirements. Pricing arrangements which provide incentives for performance and cost control are preferred over those that do not. The operations and field offices are to ensure that the necessary resources and infrastructure exist within both the contractor's and government's organizations to prepare, evaluate, and administer the pricing arrangement or cost reduction incentive prior to its implementation.

970.1504–1–5 General considerations and techniques for determining fixed fees.

(a) The Department's fee policy recognizes that fee is remuneration to contractors for the entrepreneurial function of organizing and managing resources, the use of their resources (including capital resources), and, as appropriate, their assumption of the risk that some incurred costs (operating and capital) may not be reimbursed.

(b) Use of a purely cost-based structured approach for determining fee objectives and amounts for DOE management and operating contracts is inappropriate considering the limited level of contractor cost, capital goods, and operating capital outlays for performance of such contracts. Instead of being solely cost-based, the desirable approach calls for a structure that allows evaluation of the following eight significant factors, as outlined in order of importance, and the assignment of appropriate fee values (subject to the limitations on fixed fee in 48 CFR 970.1504–1–6):

(1) The presence or absence of financial risk, including the type and terms of the contract;

(2) The relative difficulty of work, including specific performance objectives, environment, safety and health concerns, and the technical and administrative knowledge, and skill necessary for work accomplishment and experience;

(3) Management risk relating to performance, including:

(i) Composite risk and complexity of principal work tasks required to do the job;

(ii) Labor intensity of the job;

(iii) Special control problems; and

(iv) Advance planning, forecasting and other such requirements;

(4) Degree and amount of contract work required to be performed by and with the contractor's own resources, as compared to the nature and degree of subcontracting and the relative complexity of subcontracted efforts, subcontractor management and integration;

(5) Size and operation (number of locations, plants, differing operations, etc.);

(6) Influence of alternative investment opportunities available to the contractor (i.e., the extent to which undertaking a task for the Government displaces a contractor's opportunity to make a profit with the same staff and equipment in some other field of activity);

(7) Benefits which may accrue to the contractor from gaining experience and knowledge of how to do something, from establishing or enhancing a reputation, or from having the opportunity to hold or expand a staff whose loyalties are primarily to the contractor; and

(8) Other special considerations, including support of Government programs such as those relating to small and minority business subcontracting, energy conservation, etc.

(c) The total fee objective for a particular annual fixed fee negotiation is established by evaluating the factors in this subsection, assigning fee values to them, and totaling the resulting amounts

(subject to limitations on total fixed fee in 48 CFR 970.1504–1–6).

970.1504–1–6 Calculating fixed fee.

(a) In recognition of the complexities of the fee determination process, and to assist in promoting a reasonable degree of consistency and uniformity in its application, the following fee schedules set forth the maximum amounts of fee that contracting activities are allowed to award for a particular fixed fee transaction calculated annually.

(b) Fee schedules representing the maximum allowable annual fixed fee available under management and operating contracts have been established for the following management and operating contract efforts:

(1) Production;

(2) Research and Development; and

(3) Environmental Management.

(c) The schedules are:

PRODUCTION EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
Up to $1 Million	.....	.....	7.66
1,000,000	$76,580	7.66	6.78
3,000,000	212,236	7.07	6.07
5,000,000	333,670	6.67	4.90
10,000,000	578,726	5.79	4.24
15,000,000	790,962	5.27	3.71
25,000,000	1,161,828	4.65	3.35
40,000,000	1,663,974	4.16	2.92
60,000,000	2,247,076	3.75	2.57
80,000,000	2,761,256	3.45	2.34
100,000,000	3,229,488	3.23	1.45
150,000,000	3,952,622	2.64	1.12
200,000,000	4,510,562	2.26	0.61
300,000,000	5,117,732	1.71	0.53
400,000,000	5,647,228	1.41	0.45
500,000,000	6,097,956	1.22	.....
Over $500 Million	6,097,956	.....	0.45

RESEARCH AND DEVELOPMENT EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
Up to $1 Million	.....	.....	8.42
1,000,000	$84,238	8.42	7.00
3,000,000	224,270	7.48	6.84
5,000,000	361,020	7.22	6.21
10,000,000	671,716	6.72	5.71
15,000,000	957,250	6.38	4.85
25,000,000	1,441,892	5.77	4.22
40,000,000	2,075,318	5.19	3.69
60,000,000	2,813,768	4.69	3.27
80,000,000	3,467,980	4.33	2.69
100,000,000	4,006,228	4.01	1.69
150,000,000	4,850,796	3.23	1.14
200,000,000	5,420,770	2.71	0.66
300,000,000	6,083,734	2.03	0.53
400,000,000	6,667,930	1.67	0.50
500,000,000	7,172,264	1.43	.....
Over $500 Million	7,172,264	.....	0.50

ENVIRONMENTAL MANAGEMENT EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
Up to $1 Million	.....	.....	7.33
1,000,000	$73,298	7.33	6.49
3,000,000	203,120	6.77	5.95
5,000,000	322,118	6.44	5.40
10,000,000	592,348	5.92	4.83
15,000,000	833,654	5.56	4.03
25,000,000	1,236,340	4.95	3.44
40,000,000	1,752,960	4.38	3.29
60,000,000	2,411,890	4.02	3.10
80,000,000	3,032,844	3.79	2.49
100,000,000	3,530,679	3.53	1.90
150,000,000	4,479,366	2.99	1.48
200,000,000	5,219,924	2.61	1.12

ENVIRONMENTAL MANAGEMENT EFFORTS—Continued

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
300,000,000	6,337,250	2.11	0.88
400,000,000	7,219,046	1.80	0.75
500,000,000	7,972,396	1.59	0.58
750,000,000	9,423,463	1.26	0.55
1,000,000,000	10,786,788	1.08	.....
Over $1.0 Billion	10,786,788	.....	0.55

970.1504–1–7 Fee Base.

(a) The fee base is an estimate of necessary allowable costs, with some exclusions. It is used in the fee schedules to determine the maximum annual fee for a fixed fee contract. That portion of the fee base that represents the cost of the Production, Research and Development, or Environmental Management work to be performed, shall be exclusive of the cost of source and special nuclear materials; estimated costs of land, buildings and facilities whether to be leased, purchased or constructed; depreciation of Government facilities; and any estimate of effort for which a separate fee is to be negotiated.

(b) Such portion of the fee base, in addition to the adjustments in paragraph (a) of this subsection, shall exclude:

(1) Any part of the estimated cost of capital equipment (other than special equipment) which the contractor procures by subcontract or other similar costs which is of such magnitude or nature as to distort the technical and management effort actually required of the contractor;

(2) At least 20% of the estimated cost or price of subcontracts and other major contractor procurements;

(3) Up to 100% of the estimated cost or price of subcontracts and other major contractor procurements if they are of a magnitude or nature as to distort the technical and management effort actually required of the contractor;

(4) Special equipment as defined in 48 CFR 970.1504–1–8;

(5) Estimated cost of Government-furnished property, services and equipment;

(6) All estimates of costs not directly incurred by or reimbursed to the operating contractor;

(7) Estimates of home office or corporate general and administrative expenses that shall be reimbursed through the contract;

(8) Estimates of any independent research and development cost or bid and proposal expenses that may be approved under the contract;

(9) Any cost of work funded with uncosted balances previously included in a fee base of this or any other contract performed by the contractor;

(10) Cost of rework attributable to the contractor; and

(11) State taxes.

(c) In calculating the annual fee amounts associated with the Production, Research and Development, or Environmental Management work to be performed, the fee base is to be allocated to the category reflecting the work to be performed and the appropriate fee schedule utilized.

(d) The portion of the fee base associated with the Production, Research and Development, or Environmental Management work to be performed and the associated schedules in this part are not intended to reflect the portion of the fee base or related compensation for unusual architect-engineer, construction services, or special equipment provided by the management and operating contractor. Architect-engineer and construction services are normally covered by special agreements based on the policies applying to architect-engineer or construction contracts. Fees paid for such services shall be calculated using the provisions of 48 CFR 91504–1–5 relating to architect-engineer or construction fees and shall be in addition to the operating fees calculated for the Production, Research and Development, or Environmental Management work to be performed. Special equipment purchases shall be addressed in accordance with the provisions of 48 CFR 970.1504–1–8 relating to special equipment.

(e) No schedule set forth in 48 CFR 915.404–4–71–5 or 48 CFR 970.1504–1–6 shall be used more than once in the determination of the fee amount for an annual period, unless prior approval of the Procurement Executive, or designee, is obtained.

970.1504–1–8 Special equipment purchases.

(a) Special equipment is sometimes procured in conjunction with management and operating contracts. When a contractor procures special equipment, the DOE negotiating official shall determine separate fees for the equipment which shall not exceed the maximum fee allowable as established using the schedule in 48 CFR 915.404–4–71–5(h).

(b) In determining appropriate fees, factors such as complexity of equipment, ratio of procurement transactions to volume of equipment to be purchased and completeness of services should be considered. Where possible, the reasonableness of the fees should be checked by their relationship to actual costs of comparable procurement services.

(c) For purposes of this subsection, special equipment is equipment for which the purchase price is of such a magnitude compared to the cost of installation as to distort the amount of technical direction and management effort required of the contractor. Special equipment is of a nature that requires less management attention. When a contractor procures special equipment, the DOE negotiating official shall determine separate fees for the equipment using the schedule in 48 CFR 915.404–4–71–5(h). The determination of specific items of equipment in this category requires application of judgment and careful study of the circumstances involved in each project. This category of equipment would generally include:

(1) Major items of prefabricated process or research equipment; and

(2) Major items of preassembled equipment such as packaged boilers, generators, machine tools, and large electrical equipment. In some cases, it would also include special apparatus or devices such as reactor vessels and reactor charging machines.

970.1504–1–9 Special Considerations: Cost-plus-award-fee.

(a) When a management and operating contract is to be awarded on a cost-plus-award-fee basis, several special considerations are appropriate.

(b) All annual performance incentives identified under these contracts are funded from the annual total available fee, which consists of a base fee amount (which may be zero) and a performance fee amount (which typically will consist of an incentive fee component for

objective performance requirements, an award fee component for subjective performance requirements, or both).

(c) The annual total available fee for the contract shall equal the product of the fee(s) that would have been calculated for an annual fixed fee contract and the classification factor(s) most appropriate for the facility/task. If more than one fee schedule is applicable to the contract, the annual total available fee shall be the sum of the available fees derived proportionately from each fee schedule; consideration of significant factors applicable to each fee schedule; and application of a Classification Factor(s) most appropriate for the work.

(d) Classification Factors applied to each Facility/Task Category are:

Facility/task category	Classification factor
A	3.0
B	2.5
C	2.0
D	1.25

(e) The contracting officer shall select the Facility/Task Category after considering the following:

(1) Facility/Task Category A. The main focus of effort performed is related to:

(i) The manufacture, assembly, retrieval, disassembly, or disposal of nuclear weapons with explosive potential;

(ii) The physical cleanup, processing, handling, or storage of nuclear radioactive or toxic chemicals with consideration given to the degree the nature of the work advances state of the art technologies in cleanup, processing or storage operations and/or the inherent difficulty or risk of the work is significantly demanding when compared to similar industrial/DOE settings (i.e., nuclear energy processing, industrial environmental cleanup);

(iii) Construction of facilities such as nuclear reactors, atomic particle accelerators, or complex laboratories or industrial units especially designed for handling radioactive materials;

(iv) Research and development directly supporting paragraphs (e)(1)(i), (ii), or (iii) of this subsection and not conducted in a laboratory, or

(v) As designated by the Procurement Executive, or designee. (Classification factor 3.0)

(2) Facility/Task Category B. The main focus of effort performed is related to:

(i) The safeguarding and maintenance of nuclear weapons or nuclear material;

(ii) The manufacture or assembly of nuclear components;

(iii) The physical cleanup, processing, handling, or storage of nuclear radioactive or toxic chemicals, or other substances which pose a significant threat to the environment or the health and safety of workers or the public, if the nature of the work uses state of the art technologies or applications in such operations and/or the inherent difficulty or risk of the work is more demanding than that found in similar industrial/DOE settings (i.e., nuclear energy, chemical or petroleum processing, industrial environmental cleanup);

(iv) The detailed planning necessary for the assembly/disassembly of nuclear weapons/components;

(v) Construction of facilities involving operations requiring a high degree of design layout or process control;

(vi) Research and development directly supporting paragraphs (e)(2)(i), (ii), (iii), (iv) or (v) of this subsection and not conducted in a laboratory; or

(vii) As designated by the Procurement Executive, or designee. (Classification factor 2.5)

(3) Facility/Task Category C. The main focus of effort performed is related to:

(i) The physical cleanup, processing, or storage of nuclear radioactive or toxic chemicals if the nature of the work uses routine technologies in cleanup, processing or storage operations and/or the inherent difficulty or risk of the work is similar to that found in similar industrial/DOE settings (*i.e.*, nuclear energy, chemical processing, industrial environmental cleanup);

(ii) Plant and facility maintenance;

(iii) Plant and facility security (other than the safeguarding of nuclear weapons and material);

(iv) Construction of facilities involving operations requiring normal processes and operations; general or administrative service buildings; or routine infrastructure requirements;

(v) Research and development directly supporting paragraphs (e)(3)(i), (ii), (iii) or (iv) of this subsection and not conducted in a laboratory; or

(vi) As designated by the Procurement Executive, or designee. (Classification factor 2.0)

(4) Facility/Task Category D. The main focus of the effort performed is research and development conducted at a laboratory. (Classification factor 1.25)

(f) Where the Procurement Executive, or designee, has approved a base fee, the Classification Factors shall be reduced, as approved by the Procurement Executive, or designee.

(g) Any risks which are indemnified by the Government (for example, by the Price-Anderson Act) will not be considered as risk to the contractor.

(h) All management and operating contracts awarded on a cost-plus-award-fee basis shall set forth in the contract, or the Performance Evaluation and Measurement Plan(s) required by the contract clause at 48 CFR 970.5215–1, Total Available Fee: Base Fee Amount and Performance Fee Amount, a site specific method of rating the contractor's performance of the contract requirements and a method of fee determination tied to the method of rating.

(i) Prior approval of the Procurement Executive, or designee, is required for an annual total available fee amount exceeding the guidelines in paragraph (c) of this subsection.

(j) DOE Operations/Field Office Managers must ensure that all important areas of contract performance are specified in the contract or Performance Evaluation and Measurement Plan(s), even if such areas are not assigned specific weights or percentages of available fee.

970.1504–1–10 Special considerations: Fee limitations.

In situations where the objective performance incentives are of unusual difficulty or where the successful completion of the performance incentives would provide extraordinary value to the Government, fees in excess of those allowed under 48 CFR 970.1504–1–5 and 48 CFR 970.1504-1–9 may be allowed with the approval of the Procurement Executive, or designee. Requests to allow fees in excess of those provided under other provisions of this fee policy must be accompanied by a written justification with detailed supporting rationale as to how the specific circumstances satisfy the two criteria listed in this subsection.

970.1504–1–11 Documentation.

The contracting officer shall tailor the documentation of the determination of fee prenegotiation objective based on 48 CFR 15.406–1, Prenegotiation objectives, and the determination of the negotiated fee in accordance with 48 CFR 15.406–3, Documenting the negotiation. The contracting officer shall include as part of the documentation: the rationale for the allocation of cost and the assignment of Facility/Task Categories; a discussion of the calculations described in 48 CFR 970.1504–1–5; and discussion of any other relevant provision of this subsection.

970.1504–2 Price negotiation.

(a) Management and operating contract prices (fee) and DOE

obligations to support contract performance shall be governed by:

(1) The level of activity authorized and the amount of funds appropriated for DOE approved programs by specific program legislation;

(2) Congressional budget and reporting limitations;

(3) The amount of funds apportioned to DOE;

(4) The amount of obligational authority allotted to program officials and Approved Funding Program limitations; and

(5) The amount of funds actually available to the DOE operating activity as determined in accordance with applicable financial regulations and directives.

(b) Funds shall be obligated and made available by contract provision or modification after the funds become available for obligation for payment to support performance of DOE approved projects, tasks, work authorizations, or services.

(c) Contractor expenditures shall be limited to the overall amount of funds available and obligated on the contract. As prescribed at 48 CFR 970.3270(b), the clause at 48 CFR 970.5232–4, Obligation of Funds, is used for this purpose.

970.1504–3 Documentation.

970.1504–3–1 Cost or pricing data.

(a) The certification requirements of 48 CFR 15.406–2 are not applied to DOE cost-reimbursement management and operating contracts.

(b) The contracting officer shall ensure that management and operating contractors and their subcontractors obtain cost or pricing data prior to the award of a negotiated subcontract or modification of a subcontract in accordance with 48 CFR 15.406–2, and incorporate appropriate contract provisions similar to those set forth at 48 CFR 52.215–10 and 48 CFR 52.215–11 that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of the submission of defective cost or pricing data by a subcontractor at any tier.

(c) The clauses at 48 CFR 52.215–12 and 48 CFR 52.215–13 shall be included in management and operating contracts.

970.1504–4 Special cost or pricing areas.

970.1504–4–1 Make-or-buy plans.

970.1504–4–2 Policy.

(a) Contracting officers shall require management and operating contractors to develop and implement make-or-buy plans that establish a preference for providing supplies or services (including construction and construction management) on a least-cost basis, subject to program specific make-or-buy criteria. The emphasis of this make-or-buy structure is to eliminate bias for in-house performance where an activity may be performed at less cost or otherwise more efficiently through subcontracting.

(b) A work activity, supply or service is provided at "least cost" when, after consideration of a variety of appropriate programmatic, business, and financial factors, it is concluded that performance by either "in-house" resources or by contracting out is likely to provide the property or service at the lowest overall cost. Programmatic factors include, but are not limited to, program specific make-or-buy criteria established by the Department of Energy, the impact of a "make" or a "buy" decision on mission accomplishment, and anticipated changes to the mission of the facility or site. Business factors pertain to such elements as market conditions, past experience in obtaining similar supplies or services, and overall operational efficiencies that might be available through either in-house performance or contracting out. Among the financial factors that may be considered to determine a least-cost alternative in a make-or-buy analysis are both recurring and one-time costs attributable to either retaining or contracting out a particular item, financial risk, and the anticipated contract price.

(c) In developing and implementing its make-or-buy plan, a contractor shall be required to assess subcontracting opportunities and implement subcontracting decisions in accordance with the following:

(1) The contractor shall conduct internal productivity improvement and cost-reduction programs so that in-house performance options can be made more efficient and cost-effective.

(2) The contractor shall consider subcontracting opportunities with the maximum practicable regard for open communications with potentially affected employees and their representatives. Similarly, a contractor will communicate its plans, activities, cost-benefit analyses, and decisions with those stakeholders likely to be affected by such decisions, including representatives of the community and local businesses.

970.1504–4–3 Requirements.

(a) Development of program-specific make-or-buy criteria.

(1) Program specific make-or-buy criteria are those factors that reflect specific mission or program objectives (including operational efficiency, contractor diversity, environment, safety and health, work force displacement and restructuring, and collective bargaining agreements) and that, upon their application to a specific work effort, would override a decision based on a purely economic rationale. These criteria are to be used to assess each work effort identified in a facility's or site's make-or-buy plan to determine the appropriateness of a contractor's make-or-buy decisions.

(2) Heads of Contracting Activities shall ensure that program specific make-or-buy criteria are developed and provided to the contractor for use in its make-or-buy plan administration activities for the facility, site, or specific program, as appropriate. Although the Head of the Contracting Activity has the responsibility for ensuring that the program-specific make-or-buy criteria are developed and provided to the contractor, the actual development of the program specific make or buy criteria should be accomplished by the appropriate collaboration of headquarters and field office program, technical, and business specialists. Accordingly, these organizations and individuals should be relied on for the development of the program specific make or buy criteria so that they appropriately reflect program considerations applicable to the contractor's make-or-buy decisions.

(b) Make-or-buy plan property and services. Supplies or services estimated to cost less than one (1) percent of the estimated total operating cost for a year or $1 million for the same year, whichever is less, need not be included in the contractor's make-or-buy plan. However, adjustments may be made to these thresholds where programmatic or cost considerations would indicate that a particular supply or service should be included in the make-or-buy plan.

(c) Competitive solicitation requirements. (1) To the extent practicable, a competitive solicitation for the management and operation of a Department of Energy facility or site should:

(i) Identify those programs, projects, work areas, functions or services that the Department intends for the successful offeror to include in any make-or-buy plan; and

(ii) Require the submission of a preliminary make-or-buy plan for the period of performance of the contract from each offeror as part of its proposal submitted in response to the competitive solicitation.

(2) If the requirement for each offeror to submit a preliminary make-or-buy plan as part of its proposal is

impractical or otherwise incompatible with the acquisition strategy, consideration should be given to structuring the evaluation criteria for the competitive solicitation in such a manner as to permit the evaluation of an offeror's approach to conducting its make-or-buy program within the context of the contractual requirements.

(3) The successful offeror's preliminary make-or-buy plan shall be submitted for final approval within 180 days after contract award, consistent with the requirements of 48 CFR 970.5215–2(c), Make-or-Buy Plan.

(d) Evaluation of the contractor's make-or-buy plan. In evaluating the contractor's make-or-buy plan, the contracting officer shall consider the following factors:

(1) The program specific make-or-buy criteria (such as operational efficiency, contractor diversity, environment, safety and health, work force displacement and restructuring, and collective bargaining agreements) with particular attention to the effect of a "buy" decision on the contractor's ability to maintain core competencies needed to accomplish mission-related programs and projects;

(2) The impact of a "make" or "buy" decision on contract cost, schedule, and performance and financial risk;

(3) The potential impact of a "make" or "buy" decision on known future mission or program activities at the facility or site;

(4) Past experience at the facility or site regarding "make-or-buy" decisions for the same, or similar, supplies or services;

(5) Consistency with the contractor's approved subcontracting plan, as required by the clause entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan" (48 CFR 52.219–9), and implementation of Section 3021 of the Energy Policy Act of 1992.

(6) Local market conditions, including contractor work force displacement and the availability of firms that can meet the work requirements with regard to quality, quantity, cost, and timeliness;

(7) Where the construction of new or additional facilities is required, that the cost of such facilities is in the Government's best interest when compared to subcontracting or privatization alternatives; and

(8) Whether all relevant requirements and costs of performing the work by the contractor and through subcontracting are considered and any different requirements for the same work are reconciled.

(e) Approval. The contracting officer shall approve all plans and revisions thereto. Once approved, a make-or-buy plan shall remain effective for the term of the contract (up to a period of five years), unless circumstances warrant a change.

(f) Administration. The contractor's performance against the approved make-or-buy plan shall be monitored to ensure that:

(1) The contractor is complying with the plan;

(2) Items identified for deferral decisions are addressed in a timely manner; and

(3) The contractor periodically updates the make-or-buy plan based on changed circumstances or significant new work.

970.1504–5 Solicitation provision contract clauses.

(a) The contracting officer shall insert the clause at 48 CFR 970.5215–1, Total Available Fee: Base Fee Amount and Performance Fee Amount, in management and operating contracts, and other contracts determined by the Procurement Executive, or designee, that include cost-plus-award-fee arrangements.

(1) The contracting officer shall include the clause with its Alternate I when the award fee cycle consists of two or more evaluation periods.

(2) The contracting officer shall include the clause with its Alternate II when the award fee cycle consists of one evaluation period.

(3) The contracting officer shall include the clause with its Alternate III when the DOE Operations/Field Office Manager, or designee, requires the contractor to submit a self-assessment.

(4) The contracting officer shall include the clause with its Alternate IV when the DOE Operations/Field Office Manager, or designee, permits the contractor to submit a self-assessment at the contractor's option.

(b) The contracting officer shall insert the clause at 48 CFR 970.5215–2, Make-or-Buy Plan, in management and operating contracts. The contracting officer may add a sentence at the end of paragraph (d) of the clause to identify where in the contract the make-or-buy plan is located.

(c) The contracting officer shall insert the clause at 48 CFR 970.5215–3, Conditional Payment of Fee, Profit, or Incentives, in management and operating contracts, and other contracts determined by the Procurement Executive, or designee. The contracting officer shall include the clause with its Alternate I in contracts awarded on cost-plus-award-fee, multiple fee, or incentive fee basis which may include various types of fee and incentive arrangements.

(d) The contracting officer shall insert the clause at 48 CFR 970.5215–4, Cost Reduction, in management and operating contracts, and other contracts determined by the Procurement Executive, or designee, if cost savings programs are contemplated.

(e) The Contracting officer shall insert the provision at 48 CFR 970.5215–5, Limitation on Fee, in solicitations for management and operating contracts, and other contracts determined by the Procurement Executive, or designee.

Subpart 970.17—Special Contracting Methods

970.1706 Management and operating contracts.

970.1706–1 Award, renewal, and extension.

(a) Contract term. Effective work performance under a management and operating contract is facilitated by the use of a relatively long contract term of up to ten (10) years. Accordingly, management and operating contracts shall provide for a basic contract term not to exceed five (5) years and may include an option(s) to extend the term for additional periods; provided, that no one option period exceeds five (5) years in duration and the total term of the contract, including any options exercised, does not exceed ten (10) years. The specific term of the base period and of any options periods shall be determined at the time of the authorization to compete or extend the contract. The term "option" as used herein means a unilateral right in the contract by which the Government can extend the term of the contract. Accordingly, except as may be provided for through the inclusion of an option(s) in the contract to extend the term, any extension to continue the contract with the incumbent contractor beyond its term shall only occur when such extension can be justified under one of the statutory authorities identified in 48 CFR 6.302 and when authorized by the Head of the Agency.

(b) Exercise of option. As part of the review required by 48 CFR 17.605(b), the contracting officer shall assess whether competing the contract will produce a more advantageous offer than exercising the option. The incumbent contractor's past performance under the contract, the extent to which performance-based management contract provisions are present, or can be negotiated into, the contract, and the impact of a change in a contractor on the Department's discharge of its programs are considerations that shall

be addressed in the contracting officer's decision that the exercise of the option is in the Government's best interest. The contracting officer's decision shall be approved by the Procurement Executive and the cognizant Assistant Secretary(s).

(c) Conditional authorization of non-competitive extension made pursuant to authority under CICA. Authorization to extend a management and operating contract by the Head of the Agency shall be considered conditional upon the successful negotiation of the contract to be extended in accordance with the Department's negotiation objectives. The Head of the Contracting Activity shall advise the Procurement Executive no later than 6 months after receipt of the conditional authorization as to whether the Department's objectives will be met and, if not, the contracting activity's plans for competing the requirement.

970.1706–2 Contract clause.

The contracting officer shall insert the clause at 48 CFR 52.217–9, Option to Extend the Term of the Contract, in all management and operating contracts when the inclusion of an option is appropriate.

Subpart 970.19—Small, Small Disadvantaged and Women-Owned Small Business Concerns

970.1907 Subcontracting with Small Business, Small Disadvantaged Business and Woman-Owned Small Business Concerns.

970.1907–1 Subcontracting plan requirements.

Pursuant to the clause at 48 CFR 52.219–9, Small, Small Disadvantaged and Woman-Owned Small Business Subcontracting Plan, which is required for all management and operating contracts, each management and operating contract shall include a subcontracting plan which is effective for the term of the contract. Goals for the contract shall be negotiated annually when revised funding levels are determined. The plan should include provisions for revising the goals or any other sections of the plan. Such revisions shall be in writing, approved by the contracting officer, and shall be specifically made a material part of the contract.

Subpart 970.22—Application of Labor Policies

970.2200 Scope of Subpart.

This Subpart prescribes Department of Energy labor policies pertaining to the award and administration of management and operating contracts.

970.2201 Basic labor policies.

970.2201–1 Labor relations.

970.2201–1–1 General.

Contracting officers shall, in appropriate circumstances, follow the guidance in 48 CFR subpart 22.1, as supplemented in this section, in the award and administration of management and operating contracts.

970.2201–1–2 Policies.

(a) The extent of Government ownership of the nation's energy plant and materials, and the overriding concerns of national defense and security, impose special conditions on personnel and labor relations in the energy program. Such special conditions include the need for continuity of vital operations at DOE installations; retention by DOE of absolute authority on all questions of security; and DOE review of labor expenses under management and operating contracts as a part of its responsibility for assuring judicious expenditure of public funds. It is the intent of DOE that personnel and labor policies throughout the energy program reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations that are essential to the proper development of the energy program. The following enunciates the principles upon which the DOE policy is based:

(1) Employment standards. (i) Management and operating contractors are expected to bring experienced, proven personnel from their private operations to staff key positions on the contract work and to recruit other well-qualified personnel as needed. Such personnel should be employed and treated during employment without discrimination by reason of race, color, religion, sex, or national origin. Contractors shall be required to take affirmative action to achieve these objectives.

(ii) The job qualifications and suitability of prospective employees should be established by the contractor prior to employment by careful personnel investigations. Such personnel investigations should include, as appropriate: a credit check; verification of high school degree/diploma or degree/diploma granted by an institution of higher learning within the last 5 years; contacts with listed personal references; contacts with listed employers for the past 3 years (excluding employment of less than 60 days duration, part-time employments, and craft/union employments); and local law enforcement checks when such checks are not prohibited by State or local law or regulation, and when the individual resides in the jurisdiction where the contractor is located. When a DOE access authorization (security clearance) will be required, the aforementioned preemployment checks must be conducted and the applicant's job qualifications and suitability must be established before a request is made to the DOE to process the applicant for access authorization. Evidence must be furnished to the DOE with the applicant's security forms that specify: the date each check was conducted, the entity contacted that provided information concerning the applicant, a synopsis of the information provided as a result of each contact, and a statement that all information available has been reviewed and favorably adjudicated in accordance with the contractor's personnel policies. When an applicant is being hired specifically for a position which requires a DOE access authorization, the applicant shall not be placed in that position prior to the access authorization being granted by the DOE unless an exception has been obtained from the Head of the Contracting Activity, or designee. If an applicant is placed in that position prior to access authorization being granted by the DOE, the applicant may not be afforded access to classified matter or special nuclear materials (in categories requiring access authorization) until the DOE notifies the employer that access authorization has been granted. Management and operating contractors and other contractors operating DOE facilities may include the requirements set forth in this subsection in subcontracts (appropriately modified to identify the parties) wherein subcontract employees will be required to hold DOE access authorization in order to perform on-site duties, such as protective force operations.

(iii) Consistent with the policies set forth in this subpart, the contractor is responsible for maintaining satisfactory standards for employee qualifications, performance, conduct, and business ethics under its own personnel policies.

(2) Security. On all matters of security at its facilities, DOE retains absolute authority and neither the regulations and policies pertaining to security, nor their administration, are matters for collective bargaining between the contractor's management and labor. Insofar as DOE security regulations affect the collective bargaining process, the security policies and regulations will be made known to both parties. To the fullest extent feasible, DOE will consult with representatives of the contractor's management and labor when formulating security regulations

and policies that may affect the collective bargaining process.

(3) Wages, salaries, and employee benefits. (i) Wages, salaries, and employee benefits shall be administered in a manner designated to adapt the normal practices and conditions of industry or institutions of higher education to the contract work, and to provide for appropriate review by DOE. Area practices, valid patterns, and well-established commercial or academic practices of the contractors, as appropriate, form the criteria for the establishment and adjustment of compensation schedules.

(ii) The aspects of wages, hours, and working conditions which are the substance of collective bargaining in normal organized industries will be left to the orderly processes of negotiation and agreement between DOE contractor management and employee representatives with maximum possible freedom from Government interference.

(4) Employee relations. The handling of employee relations on contract work, including such matters as the conduct and discipline of the work force and the handling of employee grievances, is part of the normal management responsibility of the contractor.

(5) Collective bargaining. (i) DOE review of collective bargaining practices will be premised on the view that management's trusteeship for the operation of the Government facilities includes the duty to adopt practices which are fundamental to the friendly adjustment of disputes, and which experience has shown, promote orderly collective bargaining relationships. Practices inconsistent with this view may be objected to if not found to be otherwise clearly warranted.

(ii) Consistent with the policy of assuring continuity of operation of vital facilities, all collective bargaining agreements at DOE-owned facilities should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement entered into during the period of performance of this contract should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operation for the term of the collective bargaining agreement.

(iii) DOE expects its management and operating contractors and the unions representing the contractor's employees to cooperate fully with the Federal Mediation and Conciliation Service.

(6) Personnel training. DOE encourages and supports personnel training programs aimed at improving work efficiency or developing needed skills which are not otherwise obtainable.

(7) Working conditions. Accident, fire, health, and occupational hazards associated with DOE activities will be held to a practical minimum level and controlled in the interest of maintenance of health and prevention of accidents. Subject to DOE control, contractors shall be required to maintain comprehensive continuous preventive and protective programs appropriate to the particular activities throughout all operations. Appropriate financial protection in case of occupational disability must be provided to employees on DOE projects.

(c) Title to payroll and associated records under certain contracts for the management and operation of DOE facilities, and for necessary miscellaneous construction incidental to the function of these facilities, shall vest in the Government. Such records are to be disposed of in accordance with DOE directions. For such contracts, the Solicitor of Labor has granted a tolerance from the Department of Labor Regulations to omit from the prescribed labor clauses the requirement for the retention of payrolls and associated records for a period of three years after completion of the contract. Under this tolerance, the records retention requirements for all labor clauses in the contract and the Fair Labor Standards Act are satisfied by disposal of such records in accordance with applicable DOE directives.

970.2201–1–3 Contract clause.

In addition to the clause at 48 CFR 52.222–1, Notice to the Government of Labor Disputes, the contracting officer shall insert the clause at 970.5222–1, Collective Bargaining Agreements'. Management and Operating Contracts, in all management and operating contracts.

970.2201–2 Overtime management.

970.2201–2–1 Policy.

Contracting officers shall ensure that management and operating contractors manage overtime cost effectively and use overtime only when necessary to ensure performance of work under the contract.

970.2201–2–2 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5222–2, Overtime Management, in management and operating contracts.

970.2204 Labor standards for contracts involving construction.

970.2204–1 Statutory and regulatory requirements.

970.2204–1–1 Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities.

(a) Particular work items falling within one or more of the following criteria normally will be classified as noncovered by the Davis-Bacon Act, hereinafter referred to in this section as the "Act."

(1) Individual work items estimated to cost $2,000 or less. The total dollar amount of the management and operating contract is not a factor to be considered and bears no relation to individual work items classified as construction, alteration and/or repair, including painting and decorating. However, no item of work, the cost of which is estimated to be in excess of $2,000, shall be artificially divided into portions less than $2,000 for the purpose of avoiding the application of the Act.

(2) Work and services that are a part of operational and maintenance activities or which, being very closely and directly involved therewith, are more in the nature of operational activities than construction, alteration, and/or repair work. This includes work and services which would involve a material risk to continuity of operations, to life or property, or to DOE operating requirements, if performed by persons other than the contractor's regular production and maintenance forces. However, any decision that contracts or work items are noncovered for these reasons must be made by the Head of the Contracting Activity without power of delegation.

(3) Assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment. However, it is noted that these activities are covered if they are part of, or would be a logical part of, the construction of a facility, or if construction-type work which is not "incidental" to the overall effort is involved.

(4) Experimental development of equipment, processes, or devices, including assembly, fitting, installation, testing, reworking, and disassembly. This refers to equipment, processes, and devices which are assembled for the purpose of conducting a test or experiment. The design may be only conceptual in character, and professional personnel who are responsible for the experiment participate in the assembly. Specifically

excluded from the category of experimental development are buildings and building utility services, as distinguished from temporary connections thereto. Also specifically excluded from this category is equipment to be used for continuous testing (*e.g.*, a machine to be continuously used for testing the tensile strength of structural members).

(5) Experimental work in connection with peaceful uses of nuclear energy. This refers to equipment, processes and devices which are assembled and/or set in place and interconnected for the purpose of conducting a test or experiment. The nature of the test or experiment is such that professional personnel who are responsible for the test or experiment and/or data to be derived therefrom must, by necessity, participate in the assembly and interconnections. Specifically excluded from experimental work are buildings, building utility services, structural changes, drilling, tunneling, excavation, and back-filling work which can be performed according to customary drawings and specifications, and utility services of modifications to utility services, as distinguished from temporary connections thereto. Work in this category may be performed in mines or in other locations specifically constructed for tests or experiments.

(6) Emergency work to combat the effects of fire, flood, earthquake, equipment failure, accident, or other casualties, and to restart the operational activity following the casualty. Work which is not directly related to restarting the activity or which involves rebuilding or replacement of a structure, structural components, or equipment is excluded from this category.

(7) Decontamination, including washing, scrubbing, and scraping to remove contamination; removal of contaminated soil or other material; and painting or other resurfacing, provided that such painting or resurfacing is an integral part of the decontamination activity and performed by the employees of the contractors performing the decontamination.

(8) Burial of contaminated soil waste or contained liquid; however, initial preparatory work readying the burial ground for use (*e.g.*, any grading or excavating that is a part of initial site preparation, fencing, drilling wells for continued monitoring of contamination, construction of guard or other office space) is covered. Work performed subsequent to burial which involves the placement of concrete or other like activity is also covered.

(b) The classification of a contract as a contract for operational or maintenance activities does not necessarily mean that all work and activities at the contract location are classifiable as outside coverage of the Act since it may be necessary to separate work which should be classified as covered. Therefore, the Heads of Contracting Activities shall establish and maintain controls for the careful scrutiny of proposed work assignments under such contracts to assure that:

(1) Contractors whose contracts do not contemplate the performance of work covered by the Act with the contractor's own forces are neither asked nor authorized to perform work within the scope of the Act. If the actual work assignments do involve covered work, the contract should be modified to include applicable provisions of the Act.

(2) Where covered work is performed by a contractor whose contract contains provisions required by the Act, such work is performed as required by law and the contract. After the contractor has been informed, as provided in paragraph (b)(3) of this subsection, that certain work is covered, the responsibilities of the Head of the Contracting Activity to assure compliance is the same as it would be if the work were being performed under a separate construction contract.

(3) Controls provided for above include consideration by the Head of the Contracting Activity and the contractor, before work is begun or contracted out, of the relation of the Act to (i) the annual programming of work; (ii) the contractor's work orders; and (iii) work contracted out in excess of $2,000. The Head of the Contracting Activity may, if consistent with DOE's responsibilities as described in this subsection, prescribe from time to time classes of work as to which applicability or nonapplicability of the Act is clear, for which the Head of the Contracting Activity will require no further DOE determination on coverage in advance of the work. For all work, controls to be established by the Head of the Contracting Activity should provide for notification to the contractor before work is begun as to whether such work is covered. The Head of the Contracting Activity is responsible for submitting to the Wage and Hours Division, Employment Standards Administration, Department of Labor, Washington, D.C. 20210, all DOE requests for project area or installation wage determinations, or individual determinations, or extensions or modification thereto. Requests for such determinations shall be made on Standard Form 308, at least 30 calendar days before they are required for use in advertising for bids or requests for proposals.

(c) Experimental installations. Within DOE programs, a variety of experiments are conducted involving materials, fuels, coolants, and processing equipment. Certain types of situations where tests and experiments have presented coverage questions are described as follows:

(1) Set-ups of device and/or processes. The proving out of investigative findings and theories of a scientific and technical nature may require the set-up of various devices and/or processes at an early, pre-prototype stage of development. These may range from laboratory bench size to much larger set-ups. As a rule, these set-ups are made within established facilities (normally laboratories), required utility connections are made to services provided as a part of the basic facilities, and the activity as a whole falls within the functional purpose of the facility. Such set-ups are generally not covered. However, the erection of structures which are public works is covered if construction type work, other than incidental work, is involved. Preparatory work for the set-up requiring structural changes or modifications of basic utility services, as distinguished from connections thereto, is covered. The following are illustrations of noncovered set-ups of devices and/or processes:

(i) Assembly of piping and equipment within existing "hot cell" facilities for proving out a conceptual design of a chemical processing unit;

(ii) Assembly of equipment, including adaptation and modification thereof, in existing "hot cell" facilities to prove out a conceptual design for remotely controlled machining equipment;

(iii) Assembly of the first graphite pile in a stadium at Stagg Field in Chicago;

(iv) Assembly of materials and equipment for particular aspects of the direct current thermonuclear experiments to explore feasibility and to study other ramifications of the concept of high energy injection and to collect data thereon.

(2) Loops. Many experiments are carried on in equipment assemblies, called loops, in which liquids or gases are circulated under monitored and controlled conditions. For purposes of determining coverage under the Act, loops may be classed as loop facilities or as loop set-ups. Both of these classes of loops can include in-reactor loops and out-of-reactor loops. In differentiating between clearly identified loop set-ups and loop facilities, an area exists in which there have been some questions of coverage,

such as certain loops at the Material Test Reactor and at Engineering Test Reactor and the Idaho National Engineering and Environmental Laboratory site. Upon clarification of this area, further illustrations will be added. In the meantime, the differentiation between loop set-ups and loop facilities must be made on a case-by-case basis, taking into account the total criteria set forth in this subpart.

(i) Loop set-ups. The assembly, erection, modification, and disassembly of a loop set-up is noncovered. A noncontroversial example of a loop set-up is one which is assembled in a laboratory, *e.g.*, Oak Ridge National Laboratory, Argonne National Laboratory, or Lawrence Livermore National Laboratory, for a particular test and thereafter disassembled. However, preparatory work for a loop set-up requiring structural changes or modifications of basic utility services as distinguished from connections thereto is covered, as are material and equipment that are installed for a loop set-up which is a permanent part of the facility or which is use for a succession of experimental programs.

(ii) Loop facilities. A loop facility differs from a loop set-up in that it is of a more permanent character. It is usually, but not always, of greater size. It normally involves the building or modification of a structure. Sometimes it is installed as a part of construction of the facility. It may be designed for use in a succession of experimental programs over a longer period of time. Examples of loop facilities are the in-reactor "K" loops at Hanford and the large Aircraft Nuclear Propulsion loop at the Idaho National Engineering and Environmental Laboratory site. The on-site assembly and erection of such loop facilities are covered. However, once a loop facility is completed and becomes operational, the criteria set forth above for operational and maintenance activities apply.

(3) Reactor component experiments. Other experiments are carried on by insertion of experimental components within reactor systems without the use of a loop assembly. An example of reactor facilities erected for such experimental purposes are the special power excursion test reactors (SPETRs) at the National Reactor Test Site which are designed for studying reactor behavior and performance characteristics of certain reactor components. Such a facility may consist of a reactor vessel, pressurizing tank, coolant loops, pumps, heat exchangers, and other auxiliary equipment as needed. The facility also may include sufficient shielding to permit work on the reactor to proceed following a short period of power interruption, and buildings as needed to house the reactor and its auxiliary equipment. The erection and on-site assembly of such a reactor facility is covered, but the components whose characteristics are under study are excluded from coverage. To illustrate, one of the SPETRs planned for studies of nuclear reactor safety is designed to accommodate various internal fuel and control assemblies. The internal structure of the pressure vessel is designed so that cores of different shapes and sizes may be placed in the vessel for investigation, or the entire internal structure may be easily removed and replaced by a structure which will accept a different core design. Similarly, the control rod assembly is arranged to provide for flexibility in the removal of instrument leads and experimental assemblies from within the core.

(4) Tests or experiments in peaceful uses of nuclear energy. These tests or experiments are varied in nature and some are only in a planning stage. They consist of one or more nuclear or nonnuclear detonations for the purposes of acquiring data. The data can include seismic effects, radiation effects, amount of heat generated, amount of material moved and so forth. Some of these tests are conducted in existing mines, while others are conducted in facilities specifically constructed for the tests or experiments. In general, all work which can be performed in accordance with customary drawings and specifications, as well as other work in connection with preparation of facilities is treated as covered work. Such work includes tunneling, drilling, excavation and backfilling, erection of buildings or other structures, and installation of utilities. The installation of the nonnuclear material or nuclear device to be detonated, and the instrumentation and connection between such material or device and the instrumentation are treated as noncovered work.

(5) Tests or experiments in military uses of nuclear energy. As in 970.2204–1–1(c)(4), these tests or experiments can be varied in nature. However, under this category it is intended to include only detonation of nonnuclear material or nuclear devices. The material or devices can be detonated either underground, at ground level, or above the ground. These tests or experiments have been conducted in, on, or in connection with facilities specifically constructed for such tests or experiments. As in tests or experiments in peaceful uses of nuclear energy, all work which can be performed in accord with customary drawings and specifications, as well as other work in connection with preparation of facilities are treated as covered work. Such work includes building towers or similar structures, tunneling, drilling, excavation and backfilling, erection of buildings or other structures, and installation of utilities. The installation of the nonnuclear material or nuclear devices and instrumentation are treated as noncovered work.

(d) Construction site contiguous to an established manufacturing facility. As DOE-owned property sometimes encompasses several thousand acres of real estate, a number of separate facilities may be located in areas contiguous to each other on the same property. These facilities may be built over a period of years, and established manufacturing activities may be regularly carried on at one site at the same time that construction of another facility is underway at another site. On occasion, the regular manufacturing activities of the operating contractor at the first site may include the manufacture, assembly, and reconditioning of components and equipment which in other industries would normally be done in established commercial plants. While the manufacture of components and equipment in the manufacturing plant is noncovered, the installation of any such manufactured items on a construction job is covered.

970.2208 Equal employment opportunity.

The equal employment opportunity provisions of 48 CFR subpart 22.8 and subpart 922.8 of this chapter, including Executive Order 11246 and 41 CFR part 60, are applicable to DOE management and operating contracts.

970.2210 Service Contract Act.

The Service Contract Act of 1965 is not applicable to contracts for the management and operation of DOE facilities.

970.2270 Unemployment compensation.

(a) Each state has its own unemployment compensation system to provide payments to workers who become unemployed involuntarily and through no fault of their own. Funds are provided for unemployment compensation benefits through a payroll tax on employers. Most DOE contractors are subject to the unemployment compensation tax laws of the states in which they are located. It is the policy to assure, both in the negotiation and administration of cost-reimbursement type contracts, that economical and practical arrangements are made and

practiced with respect to unemployment compensation.

(b) Contract exempt from state laws. (1) Some contractors are exempt from state unemployment compensation laws, usually on grounds that they are nonprofit organizations or subdivisions of State governments. Most states, however, permit such employers to elect unemployment compensation coverage on a voluntary basis. Under such circumstances, all existing or prospective cost-reimbursement contractors shall be encouraged to provide unemployment compensation coverage or equivalent substitutes.

(2) It is also DOE policy that, prior to the award or extension of a management and operating contract, exempt contractors or prospective contractors shall be required to submit to the contracting officer a statement that they will either elect coverage or provide equivalent substitutes for unemployment compensation, or in the alternative, submit evidence that it is impractical to do so. If any exempt contractor or prospective contractor submits that it is impractical to elect coverage or to provide an equivalent substitute, appropriate Office of Contract and Resource Management, within the Headquarters procurement organization, staff shall review that position prior to recommending an award or extension of the contract. If there are substantial reasons for not electing coverage or for not providing equivalent substitutes, a contract may be awarded or extended. Headquarters' staff review and recommendation shall be based on such factors as:

(i) The specific provisions of the unemployment compensation law of the State;

(ii) The extent to which the establishment of special conditions on DOE work may have an adverse effect on the contractor's general policies and operating costs in its private operations;

(iii) The numerical relationship between the contractor's private work force and its employees performing only work for DOE;

(iv) The contractor's record with respect to work force stability and the general outlook with respect to future work force stability;

(v) In a replacement contractor situation, whether or not the prior contractor had coverage or suitable substitutes; and

(vi) The particular labor relations implications involved.

Subpart 970.23—Environmental, Conservation, and Occupational Safety Programs

970.2303 Hazardous materials identification and material safety.

970.2303–1 General.

(a) The Department of Energy regulates the nuclear safety of its major facilities under its own statutory authority derived from the Atomic Energy Act and other legislation. The Department also regulates, under certain specific conditions, the use by its contractors of radioactive materials and ionizing radiation producing machines.

(b) The inclusion of environmental, safety and health clauses in DOE contracts shall be made by the contracting officer in accordance with this subpart and in consultation with appropriate environmental, safety and health program management personnel.

970.2303–2 Contract clauses.

(a) When work under management and operating contracts and subcontracts thereunder is to be performed at a facility where DOE will exercise its statutory authority to enforce occupational safety and health standards applicable to the working conditions of the contractor and subcontractor employees at such facility, the clause at 48 CFR 970.5223–1, Integration of Environment, Safety and Health into Work Planning and Execution, shall be used in such contract or subcontract and made applicable to the work if conditions in paragraphs (a)(1) through (3) of this section, are satisfied:

(1) DOE work is segregated from the contractor's or subcontractor's other work;

(2) The operation is of sufficient size to support its own safety and health services; and

(3) The facility is government-owned, or leased by or for the account of the government.

(b) The clause set forth in 952.223–72, Radiation Protection and Nuclear Criticality, shall be included in those contracts or subcontracts for, and be made applicable to, work to be performed at a facility where DOE does not elect to assert its statutory authority to enforce occupational safety and health standards applicable to the working conditions of contractor and subcontractor employees, but does need to enforce radiological safety and health standards pursuant to provisions of the contract or subcontract rather than by reliance upon Nuclear Regulatory Commission licensing requirements (including agreements with States under section 274 of the Atomic Energy Act).

970.2304 Use of recovered/recycled materials.

970.2304–1 General.

The policy for the acquisition and use of environmentally preferable products and services is described at 48 CFR subpart 923.4.

970.2304–2 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5223–2, Acquisition and Use of Environmentally Preferable Products and Services, in management and operating contracts.

970.2305 Workplace substance abuse programs—management and operating contracts.

970.2305–1 General.

(a) The Department of Energy (DOE), as part of its overall responsibilities to protect the environment, maintain public health and safety, and safeguard the national security, has established policies, criteria, and procedures for management and operating contractors to develop and implement programs that help maintain a workplace free from the use of illegal drugs.

(b) Regulations concerning DOE's management and operating contractor workplace substance abuse programs are promulgated at 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

970.2305–2 Applicability.

(a) All management and operating contracts awarded under the authority of the Atomic Energy Act of 1954, as amended, are required to implement the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

(b) Except as otherwise provided for in this subpart, management and operating contracts subject to the requirements of 10 CFR part 707 and this subpart shall not be subject to 48 CFR 23.5, Drug Free Workplace.

970.2305–3 Definitions.

Terms and words relating to DOE's Workplace Substance Abuse Programs, as used in this section, have the same meanings assigned to such terms and words in 10 CFR part 707.

970.2305–4 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 48 CFR 970.5223–3, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations for the management and operation of DOE-owned or -controlled sites operated under the authority of the Atomic Energy Act of 1954, as amended.

(b) The contracting officer shall insert the clause at 970.5223–4, Workplace Substance Abuse Programs at DOE Sites, in contracts for the management and operation of DOE-owned or -controlled sites operated under the authority of the Atomic Energy Act of 1954, as amended.

970.2306 Suspension of payments, termination of contract, and debarment and suspension actions.

(a) The contracting officer shall comply with the procedures of 48 CFR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and the debarment and suspension of a contractor relative to failure to comply with the clause at 48 CFR 970.5223–4, Workplace Substance Abuse Programs at DOE Sites.

(b) For purposes of 10 CFR part 707, the specific causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are:

(1) The contractor fails to either comply with the requirements of 10 CFR part 707 or perform in a manner consistent with its approved program;

(2) The contractor has failed to comply with the terms of the provision at 48 CFR 970.5223–3, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites;

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes for violations occurring on the DOE-owned or -controlled site, as to indicate that the contractor has failed to make a good faith effort to provide a drug free workplace; or,

(4) The offeror has submitted a false certification in response to the provision at 48 CFR 970.5223–3, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites.

Subpart 970.26—Other Socioeconomic Programs

970.2670 Implementation of Section 3021 of the Energy Policy Act of 1992.

970.2670–1 Requirements.

The goal requirements of Section 3021 of the Energy Policy Act of 1992, and the attendant reporting requirements shall be included in the subcontracting plan for the management and operating contract and shall apply to the annual dollar obligations specifically provided to the contractor for competitively awarded subcontracts that fulfill Energy Policy Act requirements.

970.2671 Diversity.

970.2671–1 Policy.

Department of Energy policy recognizes that full utilization of the talents and capabilities of a diverse work force is critical to the achievement of its mission. The principal goals of this policy are to foster and enhance partnerships with small, small disadvantaged, women-owned small businesses, and educational institutions; to match capabilities with existing opportunities; to track small, small disadvantaged, women-owned small business, and educational activity; and to develop innovative strategies to increase opportunities.

970.2671–2 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5226–1, Diversity Plan, in all management and operating contracts.

970.2672 Implementation of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.

970.2672–1 Policy.

Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, in instances where the Department of Energy has determined that a change in work force at a DOE Defense Nuclear Facility is necessary, DOE contractors and subcontractors at DOE Defense Nuclear Facilities shall accomplish work force restructuring or displacement so as to mitigate social and economic impacts and in a manner consistent with any DOE work force restructuring plan in effect for the facility or site. In all cases, mitigation shall include the requirement for hiring preferences for employees whose positions have been terminated (except for termination for cause) as a result of changes to the work force at the facility due to restructuring accomplished under the requirements of Section 3161. Where applicable, contractors may take additional actions to mitigate consistent with the Department's Workforce Restructuring Plan for the facility or site.

970.2672–2 Requirements.

The requirements set forth in 48 CFR 926.71, Implementation of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, for contractors and subcontractors to provide a hiring preference for employees under Department of Energy contracts whose employment in positions at a Department of Energy Defense Nuclear Facility is terminated (except for a termination for cause) applies to management and operating contracts.

970.2672–3 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5226–2, Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, in contracts for the management and operation of Department of Energy Defense Nuclear Facilities and, as appropriate, in other contracts that include site management responsibilities at a Department of Energy Defense Nuclear Facility.

970.2673 Regional partnerships.

970.2673–1 Policy.

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include:

(1) Recognizing the diverse interests of the region and its stakeholders,

(2) Engaging regional stakeholders in issues and concerns of mutual interest, and

(3) Recognizing that giving back to the community is a worthwhile business practice.

970.2673–2 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5226–3, Community Commitment, in all management and operating contracts.

Subpart 970.27—Patents, Data, and Copyrights

970.2701 General.

970.2701–1 Applicability.

This Subpart applies to negotiation of patent rights and rights in technical data provisions for the Department of Energy contracts for the management and operation of its research and development and production facilities.

970.2703 Patent rights.

970.2703–1 Policy.

(a) Whenever a contract has as a purpose, the design, construction, or operation of a Government-owned research, development, demonstration or production facility, it is necessary that the Government be accorded certain rights with respect to further use of the facility by or on behalf of the Government upon termination of the contract, including the right to make, use, transfer, or otherwise dispose of all articles, materials, products, or processes embodying inventions or discoveries used or embodied in the facility regardless of whether or not conceived or first actually reduced to

practice under or in the course of such a contract. Thus, both versions of the Department's clauses which address patent rights for management and operating contracts (952.227–11, Alternate I, and 952.227–13, Alternate I) contain a facilities license.

(b) In the case of contractors operating and managing DOE research and development or production facilities that are not the beneficiaries of the Bayh-Dole Act (35 U.S.C. 200, *et. seq.*, as amended), the Department is statutorily obligated to take title to inventions conceived or first actually reduced to practice in the performance of the contracts. Here, as in all other circumstances in which the Department takes title to inventions by statute, the contractors may request a waiver at the time of contracting for a class of inventions or during contract performance for identified inventions. DOE includes the considerations at 42 U.S.C. 5908 in its determination as to whether to approve the request.

(c) While no contractor that manages and operates a DOE research and development or production facility is a small business, several have historically been nonprofit organizations. As such, they are the beneficiaries of the Bayh-Dole Act (35 U.S.C. 200 *et seq.*, as amended) and, therefore, receive the right to retain title to inventions conceived or first actually reduced to practice in the performance of their contracts with the Department, except in areas of technology covered by Exceptional Circumstances Determinations made by DOE or of nuclear weapons and naval nuclear propulsion. In these latter two areas, the contractor may request that the Department waive its title and, therefore, subject to the exceptions identified in the subsection below, may be granted title to inventions conceived or first actually reduced to practice in the performance of its contract with the Department.

(d) DOE has exercised the statutory authority granted under 35 U.S.C. 202(a)(ii) and 202(a)(iv). In accordance with 35 U.S.C. 202(a)(ii), DOE has issued several Exceptional Circumstances Determinations pursuant to which DOE nonprofit management and operating contractors have no right to elect title to inventions conceived or first actually reduced to practice in the course of or under their contracts within covered areas of technology. However, those contractors may be given some lesser property right in an invention within limits set by DOE in a particular Exceptional Circumstances Determination so that the contractor can effectively assist with a mission of DOE, such as technology transfer. As new technologies evolve, DOE may issue additional Exceptional Circumstances Determinations, as appropriate.

(e) In accordance with 35 U.S.C. 202(a)(iv), DOE has exempted its weapons-related and naval nuclear propulsion programs from the broad Bayh-Dole right of its nonprofit management and operating contractors to elect title to inventions conceived or first actually reduced to practice in the course of or under their contracts. The effect of this exemption is that, if the contractors want to acquire title, they must request title to covered inventions. DOE may then grant the request subject to a case-by-case determination that the contractor has met all procedural requirements unilaterally set by DOE to insure that all national security concerns of DOE relating to the contractor's use of an invention in either of these two areas for commercialization have been met.

970.2703–2 Contract clauses.

The contracting officer shall refer to 48 CFR 927.303 for guidance concerning the use of clauses in management and operating contracts addressing patent rights.

970.2704 Rights in data.

970.2704–1 General.

(a) Rights in data relating to the performance of the contract and to all facilities are significant in assuring continuity of the management and operation of DOE facilities. It is crucial in assuring DOE's continuing ability to perform its statutory missions that DOE obtain rights to all data produced or specifically used by its management and operating contractors and appropriate subcontractors. In order to obtain the necessary rights in technical data, DOE contracting officers shall assure that management and operating contracts contain either the Rights in Data clause at 48 CFR 970.5227–1, Rights in Data-Facilities, or the clause at 48 CFR 970.5227–2, Rights in Data-Technology Transfer. Selection of the appropriate clause is dependent upon whether technology transfer is a mission of the management and operating contract pursuant to the National Competitiveness Technology Transfer Act of 1989, Public Law 101–189, (15 U.S.C. 3711 *et seq.*, as amended). If technology transfer is not a mission of the management and operating contract, the clause at 48 CFR 970.5227–1, Rights in Data-Facilities, shall be used. In those instances in which technology transfer is a mission of the contract, the clause at 48 CFR 970.5227–2, Rights in Data-Technology Transfer, shall be used.

(b) Employees of the management and operating contractor may not be used to assist in the preparation of a proposal or bid for services which are similar or related to those being performed under the contract, which are to be performed by the contractor or its parent or affiliate organization for commercial customers unless the employee has been separated from work under the DOE contract for such period as the Head of the Contracting Activity or designee shall have directed.

970.2704–2 Procedures.

(a) The clauses at 48 CFR 970.5227–1, Rights in Data-Facilities, and 48 CFR 970.5227–2, Rights in Data-Technology Transfer, both provide generally for Government ownership and for unlimited rights in the Government for all data first produced in the performance of the contract and unlimited rights in data specifically used in the performance of the contract. Both clauses provide that, subject to patent, security, and other provisions of the contract, the contractor may use contract data for its private purposes. The contractor, under either clause, must treat any data furnished by DOE or acquired from other Government agencies or private entities in the performance of their contracts in accordance with any restrictive legends contained therein.

(b) Since both clauses secure access to and, if requested, delivery of technical data used in the performance of the contract, there is generally no need to use the Additional Technical Data Requirements clause at 48 CFR 52.227–16 in the management and operating contract.

(c)(1) Paragraph (d) of the clause at 48 CFR 970.5227–1, Rights in Data-Facilities, and paragraph (f) of the clause at 48 CFR 970.5227–2, Rights in Data-Technology Transfer, provide for the inclusion in subcontracts of the Rights in Technical Data-General clause at 48 CFR 52.227–14, with Alternate V, and modified in accordance with DEAR 927.409. Those clauses also provide for the inclusion in appropriate subcontracts Alternates II, III, and IV to the clause at 48 CFR 52.227–14 with DOE's prior approval and the inclusion of the Additional Technical Data Requirements clause at 48 CFR 52.227–16 in all subcontracts for research, development, or demonstration and all other subcontracts having special requirements for the production or delivery of data. In subcontracts, including subcontracts for related support services, involving the design or

operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated by the contractor under its contract with DOE, the management and operating contractor shall use the Rights in Data-Facilities clause at 48 CFR 970.5227–1.

(2) Where, however, a subcontract is to be awarded by the management and operating contractor in connection with a program, as discussed at 927.404–70, which provides statutory authority to protect from public disclosure, data first produced under contracts awarded pursuant to the program, contracting officers shall ensure that the management and operating contractor includes in that subcontract the rights in data clause provided by DOE Patent Counsel, consistent with any accompanying guidance.

(3) Management and operating contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use, nor may they acquire rights in a subcontractor's limited rights data or restricted computer software except through the use of Alternate II or III to the clause at 48 CFR 52.227–14, respectively, without the prior approval of DOE Patent Counsel.

(d)(1) Paragraphs (e) and (f) of the clause at 48 CFR 970.5227–1, Rights in Data-Facilities, and paragraphs (g) and (h) of the clause at 48 CFR 970.5227–2, Rights in Data-Technology Transfer, provide for the contractor's granting a nonexclusive license in any limited rights data and restricted computer software specifically used in performance of the contract.

(2) In certain instances the objectives of DOE would be frustrated if the Government did not obtain, at the time of contracting, limited license rights on behalf of responsible third parties and the Government, and to limited rights data or restricted computer software or both necessary for the practice of subject inventions or data first produced or delivered in the performance of the contract. This situation may arise in the performance of management and operating contracts and contracts for the management or operation of a DOE facility or site. Contracting officers should consult with program officials and Patent Counsel. No such rights should be obtained from a small business or non-profit organization, unless similar rights in background inventions of the small business or non-profit organization have been authorized in accordance with 35 U.S.C. 202(f). Where such a background license is in DOE's interest, a provision that provides substantially as Alternate VI at 48 CFR 952.227–14 should be added to the appropriate clause, 48 CFR 970.5227–1, Rights in Data-Facilities, or 48 CFR 970.5227–2, Rights in Data-Technology Transfer.

(e) The Rights in Data-Technology Transfer clause at 48 CFR 970.5227–2 differs from the clause at 48 CFR 970.5227–1, Rights in Data'Facilities, in the context of its more detailed treatment of copyright. In management and operating contracts that have technology transfer as a mission, the right to assert copyright in data first produced under the contract will be a valuable right, and commercialization of such data, including computer software, will assist the management and operating contractor in advancing the technology transfer mission of the contract. The clause at 48 CFR 970.5227–2, Rights in Data-Technology Transfer, provides for DOE approval of DOE's taking a limited copyright license for a period of five years, and, in certain rare cases, specified longer periods in order to contribute to commercialization of the data.

(f) Contracting officers should consult with Patent Counsel to assure that requirements regarding royalties and conflicts of interest associated with asserting copyright in data first produced under the contract are appropriately addressed in the Technology Transfer Mission clause (48 CFR 970.5227–3) of the management and operating contract. Where it is not otherwise clear which DOE program funded the development of a computer software package, such as where the development was funded out of a contractor's overhead account, the DOE program which was the primary source of funding for the entire contract is deemed to have administrative responsibility. This issue may arise, among others, in the decision whether to grant the contractor permission to assert copyright. See paragraph (e) of the Rights in Data-Technology Transfer clause at 970.5227–2.

(g) In management and operating contracts involving access to DOE-owned Category C–24 restricted data, as set forth in 10 CFR part 725, DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including its related restricted data and technology. Alternate I to each clause shall be used where access to Category C–24 restricted data is contemplated in the performance of a contract.

970.2704–3 Contract clauses.

(a) The contracting officer shall insert the clause at 48 CFR 970.5227–1, Rights in Data-Facilities, in management and operating contracts which do not contain the clause at 48 CFR 970.5227–2, Rights in Data-Technology Transfer Mission. The contracting officer shall include the clause with its Alternate I in contracts where access to Category C–24 restricted data, as set forth in 10 CFR part 725, is to be provided to contractors.

(b) The contracting officer shall insert the clause at 970.5227–2, Rights in Data-Technology Transfer, in management and operating contracts which contain the clause at 970.5227–3, Technology Transfer Mission. The contracting officer shall include the clause with its Alternate I in contracts where access to Category C–24 restricted data, as set forth in 10 CFR part 725, is to be provided to contractors.

970.2770 Technology transfer.

970.2770–1 General.

This subpart prescribes policies and procedures for implementing the National Competitiveness Technology Transfer Act of 1989, Public Law 101–189, (15 U.S.C. 3711 *et seq.*, as amended). The Act requires that technology transfer be established as a mission of each Government-owned laboratory operated under contract by a non-Federal entity. The National Defense Authorization Act for Fiscal Year 1994 expanded the definition of "laboratory" to include weapon production facilities that are operated for national security purposes and are engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

970.2770–2 Policy.

All new awards for or extensions of existing DOE laboratory or weapon production facility management and operating contracts shall have technology transfer, including authorization to award Cooperative Research and Development Agreements (CRADAs), as a laboratory or facility mission under Section 11(a)(1) of the Stevenson-Wydler Technology Innovation Act of 1980, Public Law 96–480 (15 U.S.C. 3701 *et seq.*, as amended). A management and operating contractor for a facility not deemed to be a laboratory or weapon production facility may be authorized on a case-by-case basis to support the DOE technology transfer mission including, but not limited to, participating in CRADAs awarded by DOE laboratories and weapon production facilities.

970.2770–3 Technology transfer and patent rights.

The National Competitiveness Technology Transfer Act of 1989 (NCTTA) established technology transfer as a mission for Government-owned, contractor-operated laboratories, including weapons production facilities, and authorizes those laboratories to negotiate and award cooperative research and development agreements with public and private entities for purposes of conducting research and development and transferring technology to the private sector. In implementing the NCTTA, DOE has negotiated technology transfer clauses with the contractors managing and operating its laboratories. Those technology transfer clauses must be read in concert with the patent rights clause required by this subpart. Thus, each management and operating contractor holds title to subject inventions for the benefit of the laboratory or facility being managed and operated by that contractor.

970.2770–4 Contract clause.

(a) The contracting officer shall insert the clause at 970.5227–3, Technology Transfer Mission, in each solicitation for a new or an extension of an existing laboratory or weapon production facility management and operating contract.

(b) If the contractor is a nonprofit organization or small business eligible under 35 U.S.C. 200 *et seq.*, to receive title to any inventions under the contract and proposes to fund at private expense the maintaining, licensing, and marketing of the inventions, the contracting officer shall use the basic clause with its Alternate I.

(c) If the facility is operated for national security purposes and engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, the contracting officer shall use the basic clause with its Alternate II.

Subpart 970.28—Bonds and Insurance

970.2803 Insurance.

970.2803–1 Workers' compensation insurance.

(a) Policies and requirements. (1) Workers' compensation insurance protects employers against liability imposed by workers' compensation laws for injury or death to employees arising out of, or in the course of, their employment. This type of insurance is required by state laws unless employers have acceptable programs of self-insurance.

(2) Special requirements. Certain workers' compensation laws contain provisions which result in limiting the protection afforded persons subject to such laws. The policy with respect to these limitations as they affect persons employed by management and operating contractors is set forth as follows:

(i) Elective provisions. Some worker's compensation laws permit an employer to elect not to be subject to its provisions. It is DOE policy to require these contractors to be subject to workers' compensation laws in jurisdictions permitting election.

(ii) Statutory immunity. Under the provisions of some workers' compensation laws, certain types of employers; *e.g.*, nonprofit educational institutions, are relieved from liability. If a contractor has a statutory option to accept liability, it is DOE policy to require the contractor to do so.

(iii) Limited medical benefits. Some workers' compensation laws limit the liability of the employer for medical care to a maximum dollar amount or to a specified period of time. In such cases, a contractor's workers' compensation insurance policy should contain a standard extrastatutory medical coverage endorsement.

(iv) Limits on occupational disease coverage and employers' liability. Some workers' compensation laws do not provide coverage for all occupational diseases. In such situations, a contractor's workers' compensation insurance policy should contain voluntary coverage for all occupational diseases.

(3) Contractor "employees' benefit plan"—self-insurers. The policies and requirements set forth in paragraph (a)(2) of this section apply where management and operating contractors purchase workers' compensation insurance. With respect to self-insured contractors, the objectives specified in paragraph (a)(2) also shall be met through primary or excess workers' compensation and employers' liability insurance policy(ies) or an approved combination thereof. "Employees' benefit plans" which were established in prior years may be continued to contrast termination at existing benefit levels.

(b) Assignment of responsibilities. (1) Office of Contract and Resource Management, within the Headquarters procurement organization, other officials, and the Heads of Contracting Activities, consistent with their delegations of responsibility, shall assure management and operating contracts are consistent with the policies and requirements of paragraph (a) of this section.

(2) In discharging assigned responsibility, the Heads of Contracting Activities shall:

(i) Periodically review workers' compensation insurance programs of management and operating contractors in the light of applicable workers' compensation statutes to assure conformance with the requirements of paragraph (a) of this section.

(ii) Evaluate the adequacy of coverage of "self-insured" workers' compensation programs;

(iii) Provide arrangements for the administration of any existing "employees' benefit plans until such plans" are terminated; and

(iv) Submit to the Office of Contract and Resource Management, within the Headquarters procurement organization, all proposals for the modification of existing "employees' benefit plans."

(3) The Office of Contract and Resource Management, within the Headquarters procurement organization, is responsible for approving management and operating contractor "employees' benefit plans."

970.2803–2 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5228–1, Insurance—Litigation and Claims, in all management and operating contracts. Paragraphs (h)(3) and (j)(2) apply to a nonprofit contractor only to the extent specifically provided in the individual contract.

Subpart 970.29—Taxes

970.2902 Federal excise taxes.

970.2902–1 Exemptions from Federal Excise Taxes.

(a) The exemption respecting taxes on communication services or facilities has been held to extend to such services when furnished to DOE management and operating contractors who pay for such services or facilities from advances made to them by DOE under their contracts.

(b) Where it is considered that a request for an additional exemption in the performance of a management and operating contract would be justified, a recommendation that such a request be made should be forwarded to the Chief Financial Officer, Headquarters.

(c) Where tax exemption certificates are required in connection with the foregoing taxes, the Head of the Contracting Activity will supply standard Government forms (SF 1094, U.S. Tax Exemption Certificate) on request.

970.2903 State and local taxes.

970.2903–1 Applicability of state and local taxes to the Government.

It is DOE policy to secure those immunities or exemptions from state and local taxes to which it is entitled under the Federal Constitution or state laws. In carrying out this policy, the Heads of Contracting Activities shall:

(a) Take all necessary steps to preclude payment of any taxes for which any of the foregoing immunities or exemptions are available. Advice of Counsel should be sought as to the availability of such immunities or exemptions;

(b) Acquire directly and furnish to contractors as Government furnished property, equipment, material, or services when, in the opinion of the Head of the Contracting Activity:

(1) Such direct acquisition will result in substantial savings to the Government, taking into consideration any additional administrative costs;

(2) Such direct acquisition will not have a substantial adverse effect on the relationship between DOE and its contractor; and

(3) Such direct acquisition will not have a substantial adverse effect on the DOE program or schedules.

970.2904 Contract clauses.

970.2904–1 Management and operating contracts.

(a) Pursuant to 48 CFR 29.401–6(b), the clause at 48 CFR 52.229–10, State of New Mexico Gross Receipts And Compensating Tax, is applicable to all management and operating contracts. For all DOE management and operating contracts, the contracting officer shall modify paragraph (b) of the clause to replace the phrase "Allowable Cost and Payment clause" with the phrase "Allowable Costs and Fixed Fee Clause."

(b) Contracting officers shall include the clause at 48 CFR 970.5229–1, State and Local Taxes, in management and operating contracts.

Subpart 970.30—Cost Accounting Standards

970.3002 CAS program requirements.

970.3002–1 Applicability.

The provisions of 48 CFR part 30 and 48 CFR 9904.414 shall be followed for management and operating contracts.

970.3002–2 Limitations.

Cost of money as an element of the cost of facilities capital (CAS 414) and as an element of the cost of capital assets under construction (CAS 417) is not recognized as an allowable cost under management and operating contracts (see 970.3102–3–3).

Subpart 970.31—Contract Cost Principles and Procedures

970.3100 Scope of subpart.

The cost principles, procedures and general policy for the determination of reimbursable costs that are applicable to the administration of management and operating contracts are set forth in this subpart. The terms "reimbursement" and "reimbursable" are used interchangeably as they pertain to "allowable costs" as a matter of editorial convenience. No "reimbursement" is actually involved in those situations where the cost-type contractor makes payments for "allowable cost" from Government funds advanced to the contractor by DOE.

970.3100–1 Definitions.

Off-site work is contract required work (under a contract covered by 48 CFR subpart 17.6) performed in contractor-owned facilities, such as a central or branch office.

On-site work (under a contract covered by 48 CFR subpart 17.6) is work performed at the Government site.

Direct costs of a management and operating contract are defined as follows:

(a) With respect to on-site work, "direct costs" technically include all performance costs; i.e., such costs are identified specifically for, or account of, the contract. However, in some circumstances it may be desirable or necessary because of the requirements of the contract to distinguish between direct and indirect types of costs. "Direct costs," when the foregoing circumstances apply, are those which are identified as having been incurred specifically for, or on account of a designated cost objective, such as a particular product (or groups of similar products), work order, job, project, program or contract. Materials, labors or expenses which relate specifically and solely to the manufacture of a particular product or to the performance of a distinct job or work are broad examples of direct costs. Direct costs are not limited to items incorporated in an end product.

(b) With respect to "off-site" work, "direct costs" are as defined in 48 CFR 31.202 and discussed in other sections of this subpart. "Indirect costs" of a management and operating contract are defined as follows:

(1) With respect to "on-site" work, when it is desirable or necessary to distinguish them from direct costs, "indirect costs" are those items of material, labor, and expenses not directly identified with a single final cost accumulation point, but identified with applicability to two or more objectives or with at least one intermediate cost objective.

(2) With respect to "off-site" work, "indirect cost" are as defined in 48 CFR 31.203 and discussed in other sections of this subpart.

970.3100–2 Responsibilities.

(a) The Senior Procurement Executive is responsible for developing and revising the policy and procedures for the determination of allowable costs reimbursable under a management and operating contract, and for seeing that they are properly coordinated with other Headquarters' offices having joint interests.

(b) The Head of the Contracting Activity is responsible for following the policy, principles and standards set forth herein in establishing the compensation provisions of contracts and subcontracts and for submission of deviations for Headquarters consideration.

970.3101 Applicability.

970.3101–1 Objectives.

Deviations from the policies and principles set forth in this subpart shall not be made unless authorized by the Senior Procurement Executive on the basis of a written justification stating clearly the special circumstances involved. As appropriate, approved deviations shall be reflected in the compensation provisions of the contract.

970.3101–2 Advance agreements.

(a) In order to avoid the potential for subsequent disallowance or dispute of certain costs, it is important that agreement between DOE and its management and operating contractors be reached in advance of the incurrence of costs in categories where reasonableness as to amounts, or allocability of costs to the management and operating contract are difficult to determine. Any such agreement should be incorporated in the contract. However, the absence of such agreement on any element of cost will not, in itself, serve to make the element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

(1) Deferred maintenance costs;

(2) Precontract costs;

(3) Professional or technical consulting services;

(4) Reconversion costs;

(5) Research and development costs;

(6) Royalties;

(7) Selling and distribution costs;
(8) Unemployment insurance experience ratings;
(9) Employee compensation, including amounts of money or percentage of payment authorized to be expended annually for groups of employees for all types of wage and salary increases, travel, relocation expenses and other personnel costs.
(10) Lobbying costs;
(11) Public relations and advertising; and
(12) Travel and relocation costs as related to special or mass personnel movements and as related to travel via contractor-owned leased, or chartered aircraft.

(b) Generally, DOE utilizes the following two basic methods of achieving and recording understandings with contractors regarding the allowability of employee compensation, travel, relocation, and other personnel costs: Negotiation of a personnel appendix to the contract, which sets forth the policies, programs, and schedules which are accepted as the basis for determining the allowability of costs; or reviewing and reaching agreements on established policies, programs, and schedules (and any changes thereto during the contract term) that are applicable to the contractor's private operations which are acceptable for contract work and which will be consistently followed throughout the contractor's organization. A personnel appendix to the contract setting forth advance understandings covering compensation for personal services shall be utilized in management and operating contracts when one or more of the following circumstances exist: when policies, programs, and schedules are established specifically for contract work; when the contractor's work is predominantly or exclusively made up of negotiated Government contract work; when contract work is so different from the organization's private work that existing established policies, programs, and schedules cannot reasonably be extended to and consistently applied on contract work; or, when established policies, programs, and schedules proposed for contract work are not sufficiently definitive to permit a clear advance mutual understanding of allowable costs and to provide a basis for audit. The Head of the Contracting Activity is authorized to select the alternative method of achieving and recording advance understandings that they find most appropriate pursuant to the facts of the particular contract situation.

(c) With regard to the costs described in paragraph (a)(9) of this subsection:
(1) Compensation for personal services includes wages and salaries, bonuses and incentives, premium payments, pay for time not worked, and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation covered by 970.3102–3–2.
(2) Employee travel costs include transportation expenses incurred while on official business, within the U.S. or outside the U.S. as necessary. Travel of executive officers is covered in 970.3102–3–14. Contractor travel policies must be acceptable to the Department, and result in reasonable cost necessary for contract performance. To avoid disputes and to clearly state the treatment that applies to travel cost, advance understandings should be reached with the management and operating contractor. They should be sufficiently definitive to evidence the contractor's responsibility to minimize costs consistent with contract performance. The allowability to certain travel costs, such as air travel, are specifically limited by Department policy. For example, the added cost of first class air travel is prohibited as a reimbursable cost, except under stringent conditions, which must be justified in writing. Contractually enforceable understandings concerning the allowability and reimbursement of other potentially significant travel costs (such as the use of Government-furnished automobiles or Government-contract provided rental automobiles) should be reached with the contractor. A reasonable basis for such understandings is the Federal travel policy applicable to Government and directly paid contractor employees.
(3) Other personnel costs include:
(i) Morale, health, welfare, food service and dormitory costs covered in 970.3102–3–5;
(ii) Training and education costs covered in 970.5231–1;
(iii) Relocation costs for relocating employees as discussed in 970.3102–3–12; and special or mass personnel movement covered in 970.3102–3–2(i).

970.3101–3 Cost certification and penalties on unallowable costs.

(a) The contracting officer shall require that management and operating contractors provide a submission for settlement of costs incurred during the period stipulated on the submission and a certification that the costs included in the submission are allowable. The contracting officer shall assess a penalty if unallowable costs are included in the submission. Unallowable costs are either expressly unallowable or determined unallowable.
(1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.
(2) A cost determined unallowable is one which, for that contractor:
(i) Was subject to a contracting officer's final decision and not appealed;
(ii) The Department's Board of Contract Appeals or a court has previously ruled as unallowable; or
(iii) Was mutually agreed to be unallowable.
(b) If, during the review of the submission, the contracting officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the contracting officer shall assess a penalty.
(c) If the contracting officer determines that a cost submitted by the contractor in its submission for settlement is:
(1) Expressly unallowable, then the contracting officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to 26 U.S.C. 6621(a)(2).
(2) Determined unallowable, then the contracting officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.
(d) The contracting officer may waive the penalty provisions when:
(1) The contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;
(2) The amount of the unallowable costs allocated to covered contracts is $10,000 or less; or
(3) The contractor demonstrates to the contracting officer's satisfaction that:
(i) It has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the contractor's submission for settlement of costs; and
(ii) The unallowable costs subject to the penalty were inadvertently incorporated into the submission.
(e) The Head of the Contracting Activity may waive the certification when:

(1) It is determined that it would be in the best interest to waive such certification; and

(2) The Head of the contracting Activity states in writing the reasons for that determination and makes such determination available to the public.

970.3102 Contracts with management and operating contractors.

970.3102–1 General.

The cost policies of the DOE regarding management and operating contracting are as discussed in this subsection.

970.3102–1–1 Actual cost basis.

(a) DOE shall reimburse its contractors for costs incurred in the performance of a management and operating contract in accordance with its terms and the provisions of this subpart. Such costs are those allowable costs provided for in the contract to the extent that they are necessary or incident, and either directly attributable or equitably allocable to the work under the contract. This broad expression of the DOE's cost-reimbursement policy is further developed and elaborated upon throughout this subpart.

(b) DOE uses retrospective or after-the-fact determination, usually called the actual cost basis, to establish the amount reimbursable. This general policy precludes the use of predetermined fixed percentage rates except for provisional payments.

(c) When a fixed compensation for any otherwise allowable cost is separately negotiated, the items of such costs covered by the fixed amount shall be identified with maximum clarity and set forth in an appropriate appendix to the contract as an amount otherwise exclusive of other reimbursable costs (this is done in order to distinguish between those allowable costs subject to reimbursement and those costs which are covered by the negotiated fixed amount).

970.3102–1–2 Application of cost principles.

(a) The incurred costs of performing management and operating contracts shall be reimbursed to the extent they are reasonable, allocable, and determined to be allowable under the provisions of this Subpart and the terms of the contract.

(b) This subsection does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability shall be based on the principles and standards in this subpart and the treatment of similar or related items. When more than one paragraph in this subsection is relevant to a contractor cost, the cost shall be apportioned among the applicable subsections, and the determination of allowability of each portion shall be based on the guidance contained in the applicable subsection. As an example, the cost of meals while in a travel status would normally be allowable if reasonable. However, the cost of alcoholic beverages associated with a meal would be unallowable. In no case shall costs made specifically unallowable under one cost principle be made allowable under another cost principle.

970.3102–1–3 General basis for reimbursement of costs.

(a) The total reimbursable cost of a DOE management and operating contract is the sum of the allowable direct costs necessary or incident to the performance of the contract, plus any properly allocable portion of allowable indirect costs, (including corporate or home office G&A expense, or branch office indirect expenses), if any, less applicable income and other credits. In determining allowability and reimbursability of costs, the following shall be considered:

(1) Allowability and reasonableness in accordance with 48 CFR 31.201-2(d) and 31.201–3;

(2) Allocability of a cost to management and operating contract. A cost is allocable if it is assignable or chargeable for work and performance of the contract in accordance with the relative benefits received or other equitable relationship;

(3) Application of generally accepted accounting principles and practices appropriate to identifying and measuring costs of performing the contract in accordance with this subpart;

(4) All exclusions of and limitations of types and amounts of items of cost set forth in the contract;

(5) Approvals by the contracting officer required under the contract terms; and

(6) Cost accounting standards if applicable.

(b) A contracting officer shall not resolve any questioned costs until the contracting officer has obtained:

(1) Adequate documentation with respect to such costs; and

(2) The opinion of the Department of Energy's auditor on the allowability of such costs.

(c) The contracting officer shall ensure that the documentation supporting the final settlement addresses the amount of the questioned costs and the subsequent disposition of such questioned costs.

(d) The contracting officer shall ensure, to the maximum extent practicable, that the Department of Energy's auditor is afforded an opportunity to attend any negotiation or meeting with the contractor regarding a determination of allowability.

970.3102–1–4 Cost determination based on audit.

The amount reimbursable under management and operating contracts shall be determined in accordance with the principles set forth in this subpart and in accordance with the terms of the respective contract on the basis of audit. In the event that the contractual terms differ, or are inconsistent with (see 48 CFR 970.3101–1 for approval of deviations) the principles stated in this subpart, the contractual terms control; however, it is expected that contractual terms be based on the principles stated in the subpart. The audit may be performed directly by DOE, or by the cognizant Federal agency pursuant to arrangements made by the DOE.

970.3102–1–5 Contractor's system of accounting.

(a) Careful DOE study of a management and operating contractor's usual accounting procedures shall be made prior to arriving at an understanding with the contractor as to the accounting system to be employed by the contractor during the period of contract performance.

(b) A contractor's customary accounting practices are usually accepted for management and operating contracts if they conform to generally accepted accounting principles, produce equitable results, are consistently applied, are not in conflict with the provisions of this subpart, are conducive to accurate costing of the contract work, and produce reports required by the DOE.

970.3102–2 Direct and indirect costs.

(a) Direct costs identified specifically with a management and operating contract are direct cost of performing that contract and are to be charged directly thereto. All costs specifically identified with other final cost objectives of the management and operating contractor are direct cost of those cost objectives and are not to be charged to the contract directly or indirectly. For reasons of practicality, any direct cost of minor dollar amount may be treated as an indirect cost if the accounting treatment.

(1) Is consistently applied; and

(2) Produces substantially the same results as treating the cost as a direct cost.

(b) Indirect cost are not subject to treatment as a direct cost and thus directly chargeable to a contract. After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated from an appropriate indirect cost accumulation account. The following principles and procedures shall apply to indirect costs to the extent that they are incurred under management and operating contracts.

(1) Indirect costs to the extent required to be or otherwise incurred in the accounting system of the operating contractor shall be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the cost objectives to which it is to be allocated. Generally, overhead and general and administrative (G&A) expenses are separately grouped. Similarly, the particular case may require subdivision of these groupings; *e.g.*, building occupancy costs might be separable from those of personnel administration within a specific overhead group such as manufacturing overhead. This necessitates selecting a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the cost objectives. The number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(2) Once an appropriate base for distributing indirect costs has been accepted, it shall not be fragmented by removing individual elements. For example, when a cost input base is used for the distribution of G&A costs, all items that would properly be part of the costs input base, whether allowable or unallowable, shall be included in the base and bear their pro rata share or G&A costs.

(3) The method of allocating indirect costs shall be in accordance with generally accepted accounting principles which are consistently applied.

(4) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period.

970.3102–3 Selected costs.

970.3102–3–1 Public relations and advertising.

(a) *Public relations* means all functions and activities dedicated to:

(1) Maintaining, protection, and enhancing the image of a concern or its products; or

(2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term "public relations" includes activities associated with areas such as advertising, customer relations, community service, etc.

(b) *Advertising* means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) of this subsection regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.

(c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) of this section.

(d) The only advertising costs that are allowable are those specifically required by contract, approved in advance by the contracting officer, or that arise from requirements of the contract and that are exclusively for the following to the extent that they are determined by the contracting officer to be reasonable, necessary, and incident to contract performance:

(1) Recruiting personnel required for contract performance;

(2) Acquiring scarce items for contract performance;

(3) Disposing of scrap or surplus materials acquired for contract performance;

(4) The transfer of federally owned or originated technology to State and local governments and to the private sector; or

(5) Obtaining supplies and services including contract-required equipment, leases, banking services, etc.

(e) Allowable public relations costs include the following:

(1) Costs specifically required by contract, or approved in advance by the contracting officer.

(2) Costs of:

(i) Responding to inquiries on company policies and activities.

(ii) Communicating with the public, press, stockholders creditors, local communities, and customers, including responses to inquiries from and initiation of press releases and other communications with the news media.

(iii) Conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed matters of public concern such as notice of contract awards, plant closures or openings, employee layoffs or rehires, financial information environmental impact of plant operations, etc.

(3) Costs of participation in community service activities (*e.g.*, blood bank drives, charity drives, savings bond drives, disaster assistance, outreach programs, etc.), exclusive of contractor cash contributions and donations which are unallowable. The contractor's cost of services or contractor-owned property provided to support community service activities (*e.g.*, the contractor's cost of making payroll deductions for employee contributions to a charity, cost of employee services provided to community organizations, or other similar, nominal in-kind participation) is allowable.

(4) Costs of plant tours, visitors centers, and open houses (but see paragraph (f)(5) of this section).

(f) Unallowable public relations and advertising costs include the following activities except when the principal purpose of the activity or event is to disseminate technical information or stimulate production in accordance with contract requirements:

(1) All advertising costs other than those specified in paragraph (d) of this section.

(2) Costs of air shows and other special events, such as conventions and trade shows including:

(i) Costs of displays, demonstrations and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings.

(3) Costs of sponsoring meetings, symposia, seminars, and other special events.

(4) Costs of ceremonies such as corporate celebrations and new product announcements.

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to benefit the contractor's organization by calling favorable public attention to contractor activities.

(g) Unallowable public relations and advertising costs include the following:

(1) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.

(2) Cost of memberships in civic and community organizations.

(3) All advertising and public relations costs, other than as specified in paragraphs (d), (e) and (f) of this section, whose primary purpose is to benefit the contractor's organization by promoting the sale of products or services by stimulating interest in a product or product line or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services unless such sales activities are required under the management and operating contract to support the DOE mission. Nothing in this paragraph (g)(3) modifies the express unallowability of costs listed in paragraphs (f), (g)(1) and (g)(2) of this section. The purpose of this paragraph is to provide criteria for determining whether advertising and public relations costs not specifically identified should be unallowable.

970.3102–3–2 Compensation for personal services.

(a) General. Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance (except as otherwise provided for severance pay costs in paragraph (b)(4)(i) of this subsection and for pension cost in paragraph (b)(1) of this subsection). It includes, but is not limited to, salaries; wages; directors' and executive committee members' fees; bonuses (including stock bonuses); incentive awards; employee stock options, stock appreciation rights, and stock ownership plans; employee insurance; fringe benefits; contributions to pension, annuity, and management employee incentive compensation plans; and allowances for off-site pay, incentive pay, location allowances, hardship pay, severance pay, and cost of living differential.

(b) Allowability. Reimbursable costs for compensation for personal services are to be set forth in a personnel appendix in the contract as discussed at 970.3101–2. This personnel appendix shall be negotiated using the principles and policies of this 970.3102–3–2, and other pertinent parts of the DEAR. However, costs that are unallowable pursuant to other paragraphs of 970.3102–3 or contract terms shall not be allowable under this 970.3102–3–2 on the basis they constitute compensation for personnel services. Costs of compensation for personal services are reimbursable to the extent that:

(1) The compensation is for personal services work performed by the employee in the current year and must not represent a retroactive adjustment of prior year's salaries or wages (but see 970.3102–3–2(i), (j), (l), (m), and (n));

(2) The compensation in total is reasonable for the work performed; however, specific restrictions on individual compensation elements must be observed where they are prescribed;

(3) The compensation is based upon and conforms to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment;

(4) Any approvals prescribed by this 970.3102–3–2 are obtained. No assumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor.

(i) Has not notified the cognizant contracting officer of the changes either before their implementation, or within a reasonable period after their implementation, and

(ii) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.

(5) Costs that are unallowable under the contract terms or other paragraphs of this 970.3102–3 shall not be allowable under this 970.3102–3–2 solely on the basis that they constitute compensation for personal services.

(c) *Reasonableness.* Subject to 970.3102–3–2(d) of this subsection, compensation for personal services will be considered reasonable if the total compensation conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area for similar services or work performed. This does not preclude the Government from challenging the reasonableness of an individual element of compensation where costs are excessive in comparison with compensation paid by other firms of the same size, same industry, or in the same geographic area for similar services. In administering this principle, it is recognized that not every compensation case need be subjected in detail to these requirements. The requirements need be applied only when a general review reveals amounts or types of compensation that appear unreasonable or unjustified. In questionable cases, the contractor has responsibility to support the reasonableness of compensation in relation to the effort performed. Compensation costs under certain conditions give rise to the need for special consideration. Among such conditions are the following:

(1) Compensation to owners of closely held corporations, partners, sole proprietors, or members of their immediate families, or persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that salaries are reasonable for the personal services rendered rather than being a distribution of profits. Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits. For closely held corporations, compensation costs covered by this paragraph shall not be recognized in amounts exceeding those costs that are deductible as compensation under the Internal Revenue Code and its regulations.

(2) Any change in a contractor's compensation policy that results in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in the treatment of allowability of specific types of compensation due to changes in Government policy. No presumption of reasonableness will exist where major revisions of existing compensation plans or new plans are introduced by the contractor; and the contractor.

(i) Has not notified the cognizant contracting officer of the change either before their implementation or within a reasonable period after their implementation; and

(ii) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the reasonableness of the changes.

(3) The contractor's business is such that its compensation levels are not subject to the restraints that normally

occur in the conduct of competitive business.

(4) The contractor incurs costs for compensation in excess of the amounts which are deductible under the Internal Revenue Code and its regulations.

(d) *DOE review and approval of compensation paid individual employees.* In determining the reasonableness of compensation, the compensation of each individual contractor employee normally need not be subjected to review and approval. Generally, the compensation paid individual employees should be left to the judgment of contractors subject to the limitations of DOE-approved compensation policies, programs, classification systems, and schedules, and amounts of money authorized for wage and salary increases for groups of employees. However, all compensation due an individual of $80,000 or more shall require the contracting officer's or designee's review and approval. In addition, it will often be necessary that employee compensation be subjected to review and approval on an individual basis at a level below $80,000, when the contracting officer finds it appropriate for the particular situation. The contract shall specifically provide for the approval by the contracting officer of the cost of compensating an individual contractor employee above the level determined by the contracting officer, if a total of 50 percent or more of such compensation is reimbursed under DOE cost-type contracts. For purposes of determining the level for individual review and approval, total compensation as used in this paragraph includes only the employee's salary and bonus or incentive compensation. As in the case of other personnel and compensation costs, it is intended that contracting officer review and approval of individual compensation normally will be prior to incurrence of costs.

(e) Labor-management agreements. Notwithstanding any other DOE requirements, costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in performing Government contracts, are determined to be unreasonable because they are either unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (*e.g.*, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (*e.g.*, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this paragraph (e) unless:

(1) The contractor has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether unusual conditions pertain to Government contract work, imposing burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(f) Salaries and wages. Salaries and wages for current services include gross compensation paid to employees in the form of cash, stock (see paragraph (h)(2) of this subsection regarding valuation), products, or services, and are allowable.

(g) Domestic and foreign differential pay. When personal services are performed in a foreign country, compensation may also include a differential that may properly consider all expenses associated with foreign employment such as housing, cost of living adjustments, transportation, bonuses, additional Federal, state, local or foreign income taxes resulting from foreign assignment, and other related expenses.

(h) *Bonuses and incentive compensation.* Incentive compensation and cash bonuses based on production, cost reduction or efficient performance, suggestion awards, and safety awards are to be treated as allowable, to the extent that the contractor's overall compensation plan is determined to be reasonable and such costs are paid or accrued, pursuant to an agreement entered into in good faith between the contractor and the employees before the services were rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payment (see 970.3101–2). In determining reasonableness, it will be necessary to take into account, not only bonuses and incentive compensation payments charged directly to the contract, but also payments charged indirectly to the contract through overhead. Bonuses, awards, and incentive compensation, when any of them are deferred, are to be treated as allowable to the extent provided in paragraph (m) of this subsection.

(1) Bonuses and incentive compensation paid to employees other than those whose pay is directly reimbursed will not be made allowable in on-site construction and management and operating contracts, where home office general and administrative expense is unallowable.

(2) When the costs of bonuses and incentive compensation are paid in the stock of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the stock shall be the fair market value on the measurement date (*i.e.*, the first date the number of shares awarded is known) determined upon the most objective basis available; and

(ii) Accruals for the cost of stock before issuing the stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive the stock and that their interest in the accruals will be forfeited.

(3) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of paragraph (h)(1) of this subsection and of paragraph (m) of this subsection.

(i) Severance pay. (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in paragraph (l)(6) of this subsection.

(2) Severance pay to be allowable must meet the general allowability criteria in paragraph (i)(2)(i) of this subsection, and, depending upon whether the severance is normal or abnormal, criteria in paragraph (i)(2)(ii) of this subsection for normal severance pay or paragraph (i)(2)(iii) of this subsection for abnormal severance pay also apply. In addition, paragraphs (i)(2)(iv) and (v) of this subsection apply if the severance cost is for foreign nationals employed outside the United States.

(i) Severance pay is allowable only to the extent that, in each case, it is required by law, employer-employee agreement, established policy that constitutes, in effect, an implied agreement on the contractor's part, or circumstances of the particular employment. Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility,

subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.

(ii) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant, or where the contractor provides for accrual of pay for normal severances, that method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period and if amounts accrued are allocated to all work performed at the facility.

(iii) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis.

(iv) Notwithstanding the provision of paragraph (c) of this subsection, which references geographic area, under 41 U.S.C. 256(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States.

(v) Further, under 41 U.S.C. 256(e)(1)(N), the costs of severance payments referred to in paragraph (i)(2)(iv) of this subsection are unallowable if the termination of employment is the result of the closing of, or curtailment of, activities at a United States facility in that country at the request of the government of that country.

(vi) The Head of the Contracting Activity may waive the application of the provisions of paragraphs (i)(2)(iv) and (v) of this subsection under the conditions specified in subpart 970.37.

(3) Subject to paragraph (a) of this subsection, the following standards apply in determining allowability of costs for severance pay plans of management and operating contractors:

(i) Payments should be made only upon involuntary termination by reduction in force (RIF) of an employee which results in a permanent separation from the employment of the contractor. However, payments may also be made upon voluntary separation of an employee within a RIF grouping, but not otherwise scheduled for termination, which thereby eliminates the need for terminating another employee involuntarily.

(ii) Payments should not be provided for in the event of temporary layoffs; employment or offer of employment with a replacement contractor (employer) where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment; early or normal retirement; or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor. Contractor employees should not have the option of refusing employment to receive severance pay.

(j) Backpay. (1) Backpay resulting from violations of Federal labor laws or the Civil Rights Act of 1964. Backpay may result from a negotiated settlement, order, or court decree that resolves a violation of Federal labor laws or the Civil Rights Act of 1964. Such backpay falls into two categories: one requiring the contractor to pay employees additional compensation for work performed for which they were underpaid, and the other resulting from other violations, such as when the employee was improperly discharged, discriminated against, or other circumstances for which the backpay was not additional compensation for work performed. Backpay resulting from underpaid work is compensation for the work performed and is allowable. All other backpay resulting from willful violation of Federal labor laws or the Civil Rights Act of 1964 is unallowable.

(2) Other backpay. Backpay may also result from payments to union employees (union and non-union) for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiations. Such backpay is allowable. Backpay to nonunion employee based upon results of union agreement negotiations is allowable only if:

(i) A formal agreement or understanding exists between management and the employees concerning these payments, or

(ii) An established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payment.

(k) Stock options, stock appreciation rights, and phantom stock plans. (1) The cost of stock options awarded to employees to purchase stock of the contractor or of an affiliate will be treated as deferred compensation and must comply with the requirements of paragraph (m) of this subsection and with the allowability criteria contained in paragraph (k)(2) of this subsection. The allowable cost of stock appreciation rights, whether offered separately or combined with stock options, will be determined in the same manner as stock options.

(2) The allowable costs of stock options and stock appreciation rights will be limited to the difference between the option price or stock-appreciation-right price and the market price of the stock on the measurement date (i.e., the first date on which both the number of shares and the option or stock-appreciation-right price are known). Accordingly, when the option or stock-appreciation-right price is equal to or greater than the market price on the measurement date, then no costs are allowed for contract costing purposes.

(3) In phantom-stock-type plans, contractors assign or attribute contingent shares of stock to employees as if the employees own the stock, even though the employees neither purchase the stock nor receive title to it. Under these plans, an employee's account may be increased by the equivalent of dividends issued and any appreciation in the market price of the stock over the price of the stock on the measurement date (*i.e.*, the first date the number of shares awarded is known). Such increases in employee accounts for dividend equivalents and market price appreciation are unallowable.

(l) *Pension costs.* (1) A pension plan is a deferred compensation plan that is established and maintained by one or more employers to provide systematically for paying benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employee. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees may be treated as pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs.

(2) Pension plans are normally segregated into two types of plans: defined benefit or defined contribution pension plans. Except as provided by other DOE directives, the cost of all defined benefit pension plans shall be measured, allocated, and accounted for in compliance with the provisions of CAS 412, Composition and Measurement of Pension Costs, and CAS 413, Adjustment and Allocation of Pension Cost. The costs of all defined contribution pension plans shall be measured, allocated, and accounted for in accordance with the provisions of CAS 412. Pension costs are allowable subject to directives issued by the Office

of Contract and Resource Management, within the Headquarters procurement organization, the referenced standards and the cost limitations and exclusions set forth below in this paragraph and in paragraphs (l)(3), (4), (5), (6), and (7) of this subsection.

(i) To be allowable in the current year, pension costs must be funded by the time set for filing the Federal income tax return or any extension thereof. Pension costs assigned to the current year, but not funded by the tax return time, shall not be allowable in any subsequent year.

(ii) Pension payments must be reasonable in amount and be paid pursuant to: an agreement entered into in good faith between the contractor and employees before the work or services are performed and the terms and conditions of the established plan. The cost of changes in pension plans which are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future are not allowable.

(iii) Except as provided for early retirement benefits in paragraph (1)(6) of this subsection, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in accordance with a policy or practice consistently followed.

(3) *Defined benefit pension plans.* This paragraph covers pension plans in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits. The cost limitations and exclusions pertaining to defined benefit plans are as follows:

(i) Normal costs of pension plans not funded in the year incurred, and all other components of pension costs (see CAS 412.40(a)(1)) assignable to the current accounting period but not funded during it, shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any part of a pension cost that is computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of the Employee's Retirement Income Security Act of 1974 (ERISA) (see CAS 412.50(c)(3)), will be allowable in those future accounting periods in which the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding occurred in the year the costs would have been assigned except for the waiver.

(ii) Any amount paid or funded before the time it becomes assignable and allowable shall be applied to future years, in order of time, as if actually paid and deductible in those years. The interest earned on such premature funding, based on the valuation rate of return, may be excluded from future years' computations of pension costs in accordance with CAS 412.50(a)(7).

(iii) Increased pension costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in CAS 413.50(c)(5). Determination of unallowable costs shall be made in accordance with the actuarial method used in calculating pension costs.

(iv) Allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA section 4062 or 4064 arising from terminating an employee deferred compensation plan will be considered on a case-by-case basis; provided that if insurance was required by the PBGC under ERISA section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate in the indemnification payment to the extent of its fair share.

(4) Defined contribution pension plans. This paragraph covers those pension plans in which the contributions to be made are established in advance and the level of benefits is determined by the contributions made. It also covers profit sharing, savings plans, and other such plans provided the plans fall within the definition of a pension plan in paragraph (l)(1) of this subsection.

(i) The pension cost assignable to a cost accounting period is the net contribution required to be made for that period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of ERISA (see CAS 412.50(c)(3)) will be allowable in those future accounting periods when the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding been made in the year the costs would have been assigned except for the waiver.

(ii) Any amount paid or funded to the trust before the time it becomes assignable and allowable shall be applied to future years, in order of time, as if actually paid and deductible in such years.

(iii) The provisions of paragraph (l)(3)(vi) of this subsection concerning payments to PBGC apply to defined contribution plans.

(5) Pension plans using pay-as-you-go methods. A pension plan using pay-as-you-go methods is a plan in which the contractor recognizes pension cost only when benefits are paid to retired employees or their beneficiaries. Regardless of whether the payment of pension benefits contribution can or cannot be compelled, allowable costs for these types of plans shall not exceed an amount computed as follows:

(i) Compute, by using an actuarial cost method, the plan's actuarial liability for benefits earned by plan participants. This entire liability is always unfunded for a pay-as-you-go plan.

(ii) Compute a level amount which, including an interest equivalent, would amortize the unfunded actuarial liability over a period of no less than 10 or more than 40 years from the inception of the liability.

(iii) Compute, by using an actuarial cost method, a normal cost for the period.

(iv) The sum of paragraphs (l)(5) (i), (ii), and (iii) of this subsection represents the amount of pension costs assignable to the current period. This amount, however, is limited to the amount paid in the year.

(v) For purposes of determining contract cost where a pay-as-you-go plan is initiated as either a supplemental plan or an additional but separate plan to a basic funded plan, the plans will be treated as one plan; e.g., the actuarial cost method, past service amortization period, etc., of the basic plan will be used on the supplemental or additional pay-as-you-go plan in determining the proper costs assignable to the current period. Any costs in excess of those determined by using the actuarial cost method and assumptions

of the basic plan are unallowable. However, where assumption for salary progressions, mortality rates of the participants, and so forth are significantly different, the assumptions used for the basic and supplemental plan may be different.

(vi) The requirements of paragraphs (l)(3) (i) through (iv) of this subsection are also applicable to pay-as-you-go plans.

(6) Early retirement incentive plans. An early retirement incentive plan is a plan under which employees receive a bonus or incentive, over and above the requirement of the basic pension plan, to retire early. These plans normally are not applicable to all participants of the basic plan and do not represent life income settlements, and as such would not qualify as pension costs. However, for contract costing purposes, early retirement incentive payments are allowable subject to pension criteria contained in paragraphs (l)(3)(i) through (iv) provided:

(i) The costs are accounted for and allocated in accordance with the contractor's system of accounting for pension costs (see paragraph (l)(5)(v) of this subsection for supplemental pension benefits);

(ii) The payments are made in accordance with the terms and conditions of the contractor's plan;

(iii) The plan is applied only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and

(iv) The total of the incentive payments to any employee may not exceed the amount of the employee's annual salary for the previous fiscal year before the employee's retirement.

(7) Employee stock ownership plans (ESOP). (i) An ESOP is an individual stock bonus plan designed specifically to invest in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property. Costs of ESOP's are allowable subject to the following conditions:

(A) Contributions by the contractor in any one year may not exceed 15 percent (25 percent when a money purchase plan is included) of salaries and wages of employees participating in the plan in any particular year.

(B) The contribution rate (ratio of contribution to salaries and wages of participating employees) may not exceed the last approved contribution rate except when approved by the contracting officer based upon justification provided by the contractor. When no contribution was made in the previous year for an existing ESOP, or when a new ESOP is first established, and the contractor proposes to make a contribution in the current year, the contribution rate shall be subject to the contracting officer's approval.

(C) When a plan or agreement exists wherein the liability for the contribution can be compelled for a specific year, the expense associated with that liability is assignable only to that period. Any portion of the contribution not funded by the time set for filing of the Federal income tax return for that year or any extension thereof shall not be allowable in subsequent years.

(D) When a plan or agreement exists wherein the liability for the contribution cannot be compelled, the amount contributed for any year is assignable to that year provided the amount is funded by the time set for filing of the Federal income tax return for that year.

(E) When the contribution is in the form of stock, the value of the stock contribution shall be limited to the fair market value of the stock on the date that title is effectively transferred to the trust. Cash contributions shall be allowable only when the contractor furnishes evidence satisfactory to the contracting officer demonstrating that stock purchases by the ESOT are or will be at a fair market price; *e.g.*, makes arrangements with the trust permitting the contracting officer to examine purchases of stock by the trust to determine that prices paid are at fair market value. When excessive prices are paid, the amount of the excess will be credited to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the excess price over fair market value shall be credited to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan. When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

(ii) Amounts contributed to an ESOP arising from either:

(A) An additional investment tax credit (see 1975 Tax Reduction Act); or

(B) A payroll-based tax credit (see Economic Recovery Tax Act of 1981) are unallowable.

(iii) The requirements of paragraphs (l)(3)(ii) of this subsection are applicable to Employee Stock Ownership Plans.

(m) *Deferred compensation.* (1) Deferred compensation is an award given by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of receipt of compensation by the employee. Deferred compensation does not include the amount of year-end accruals for salaries, wages, or bonuses that are paid within a reasonable period of time after the end of a cost accounting period. Subject to 970.3102–3–2(a), deferred awards are allowable when they are based on current or future services. Awards made in periods subsequent to the period when the work being remunerated was performed are not allowable.

(2) The costs of deferred awards shall be measured, allocated, and accounted for in compliance with the provisions of CAS 415, Accounting for the Cost of Deferred Compensation.

(3) Deferred compensation payments to employees under awards made before the effective date of CAS 415 are allowable to the extent they would have been allowable under prior acquisition regulations.

(n) *Fringe benefits.* Fringe benefits are allowances and services provided by the contractor to its employees, as compensation, in addition to regular wages and salaries. Subject to the determination that total compensation is reasonable in accordance with this 970.3102–3–2, costs of fringe benefits such as pay for vacations, holidays, sick leave, military leave, employee insurance, pension, retirement plans, and supplemental unemployment benefit plans are to be treated as allowable, provided such fringe benefits meet the following conditions:

(1) The benefits contribute to the performance of contract work and are appropriate for reimbursement from public funds;

(2) Such benefit plans as exist in the contractor's private operations that are inconsistent with DOE published requirements are appropriately modified or disallowed;

(3) Employee benefit plans especially established to meet the particular needs of the contract are in conformity with published DOE policy and standards;

(4) Appropriate controls under the contract are established to assure that employees on contract work are treated no more or no less favorably than employees in the contractor's private operation, except to the extent that

paragraphs (n)(2) and (3) of this subsection apply;

(5) To the fullest extent possible, definite limitations or terminal points are established for each of the various benefit plans, so that DOE's full liability with respect thereto is established under the contract; and

(6) DOE has access to all information necessary to complete understanding of the means of computing or determining the cost of the benefits afforded contract employees and their dependents under the benefit plans.

(o) Training and education expenses. See 970.5231–1.

(p) Special compensation. The following costs are unallowable:

(1) Special compensation to employees pursuant to agreements which permit payments in excess of the contractor's normal severance pay practices, if their employment terminates following a change in the management control over, or ownership of, the contractor or a substantial portion of its assets.

(2) Special compensation to employees pursuant to agreements which permit payments resulting from a change, whether actual or prospective, in the management control over, or ownership of, the contractor or a portion of its assets which is contingent upon the employee remaining with the contractor for a stated period of time.

(*q*) *Limitation on allowability of compensation for certain contractor personnel.* Costs incurred for compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy, are unallowable. Allowable costs of executive compensation shall be determined pursuant to Federal Acquisition Regulation 31.205–6(p).

970.3102–3–3 Cost of money.

Cost of money as an element of the cost of facilities capital (CAS 414) and cost of capital assets under construction (CAS 417) is not an allowable cost under DOE management and operating contracts. Under the provisions of CAS 414 and CAS 417, cost of money is an imputed cost applicable to contractor owned and financed tangible capital assets employed in contract performance or being constructed, fabricated, or developed for ultimate employment in contract performance. Cost of money is not applicable to DOE management and operating contracts since the Government provides for assets used, or under construction for use in performance of its contracts (such as through Government furnished or contractor-acquired Government property contract provisions and/or through granting cash advances, including letters-of-credit.)

970.3102–3–4 Depreciation.

(a) Depreciation is allowable subject to the following:

(1) The charge represents normal depreciation on a contractor's plant and equipment used in performance of management and operating work.

(2) The charge to current operations is a distribution of the cost of acquisition of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset, in a systematic and logical manner.

(3) Any generally accepted accounting method consistently applied to assets concerned having the approval of the Internal Revenue Service for Federal income tax purposes, if subject to the Internal Revenue Code of 1954, as amended, may be used including:

(i) The straight-line method;

(ii) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (a)(3)(i) of this subsection;

(iii) The sum-of-the-years digits method;

(iv) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used, had such allowances been computed under the method described in paragraph (a)(3)(ii) of this subsection.

(4) If a nonprofit or tax-exempt organization, the method shall be such that it could have had the approval of the Internal Revenue Service, had the organization been subject to the Internal Revenue Code of 1954, as amended.

(5) The contractor must use the same approved method of depreciation for costing its contract work as for costing its other work at the same facility.

(6) The method of depreciation shall produce equitable and reasonable results.

(b) Depreciation of the following is unallowable:

(1) Idle or excess facilities (machinery and equipment), other than reasonable standby facilities;

(2) Assets fully amortized or depreciated on the contractor's books;

(3) Unrealized appreciation of values of assets; and

(4) Accelerated amortization under Certificates of Necessity or other system in excess of normal depreciation, as computed under paragraph (a) of this subsection.

(c) In entering into contracts involving the use of "special facilities" under section 161 of the Atomic Energy Act of 1954, as amended (section 7 of Public Law 85–681 approved Aug. 19, 1958), the percentage of the total cost of such special facilities devoted to contract performance and chargeable to the DOE should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such facilities.

970.3102–3–5 Employee morale, health, welfare, food service, and dormitory costs.

(a) Employee morale, health, and welfare activities are those services or benefits provided by the contractor to its employees to improve working conditions, employer-employee relations, employee morale, and employee performance. These activities include such items as house or employee publications, health or first-aid clinics, wellness/fitness centers, employee counseling services, awards for performance or awards made in recognition of employee achievements pursuant to an established contractor plan or policy, and, for the purpose of this subsection, food service and dormitory costs. However, these activities do not include, and should be differentiated from compensation for personal services as defined in 970.3102–3–2. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities or site of the contract work.

(b) Costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events are unallowable, except for the costs of employees' participation in company sponsored intramural sports teams or employee' organizations designed to improve company loyalty, team work, or physical fitness.

(c) Except as limited by paragraph (d) of this subsection, the aggregate of costs incurred on account of all activities mentioned in paragraph (a) of this subsection, less income generated by all such activities, is allowable to the extent that the net aggregate cost of all such activities, as well as the net cost of each individual activity, is reasonable and allocable to the contract work. Additionally, advance understandings

with respect to the costs mentioned in paragraph (a) of this subsection are to be reached prior to the incurrence of these costs as required in 48 CFR 970.3101–2.

(d) Losses from the operation of food or dormitory services may be included as costs incurred under paragraph (c) of this subsection only if the contractor's objective is to operate such services at least on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to operation on a break-even basis are not allowable, except in those instances where the contractor can demonstrate that unusual circumstances exist, such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Typical examples of such unusual circumstances are:

(1) Where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or (2) Where it is necessary to operate a facility at a lower volume than the facility could economically support. Cost of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(e) In those situations where the contractor has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the contractor's plant, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the contractor were providing the service, except as provided in paragraph (f) of this subsection.

(f) Contributions by the contractor to an employee organization, including funds set over from vending machines receipts or similar sources, may be included as cost incurred under paragraph (c) of this subsection, only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable, if incurred by the contractor directly.

970.3102–3–6 Fines, penalties and mischarging costs.

It is Department of Energy policy not to reimburse management and operating contractors for fines and penalties except as provided in 48 CFR 970.5231–1(e)(12), Allowable Costs and Fixed Fee (Management and Operating Contracts), and 48 CFR 970.5231–4, Preexisting Conditions.

970.3102–3–7 Lobbying and political activity Costs.

The following costs are unallowable, except for costs associated with providing information pursuant to 970.5231–2, Political Activity Cost Prohibition, unless approved by the contracting officer. Contractor costs incurred to influence either directly or indirectly:

(a) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or

(b) Federal, State, or executive body of a political subdivision of a State action on regulatory and contract matters.

970.3102–3–8 General and administrative expenses.

(a) For on-site work, the DOE considers that its fee allowance for management and operating contracts provides for the recognition of appropriate compensation for home or corporate office general and administrative expenses incurred in the general management of the contractor's business as a whole.

(b) The policy in paragraph (a) of this subsection is intended to preclude the payment of general and administrative expenses merely because they are incurred or accounted for at or by a contractor's home or corporate office and not the operating site. The DOE recognizes some benefit of such cost to the DOE program. The basis of recognition through fee allowance is associated with the difficulty of determining and assessing the dollar value of such expenses that might be applicable to or have benefit to a management and operating contract. Conventional allocation techniques; *i.e.*, total operating costs, labor dollars or hours, etc., are generally not considered appropriate because they normally distribute such expenses over a base representative of contractor investment (in terms of its own resources, including labor, material, overhead, etc.). Contractor investments and home office contributions are minimal under DOE's operating and management contracts in as much as they are totally financed and supported by DOE advance payments under the letter-of-credit method and by DOE's provision of government-owned and project-exclusive facilities, property, and other needed resources.

(c) Notwithstanding the concept in paragraph (a) of this subsection, it is recognized that from time to time the fee amounts established for a management and operating contract, to meet the purpose cited in 970.1504–1–2 and consideration of the factors in 970.1504–1–5, may be considered insufficient to adequately recognize a contractor's general and administrative expenses incurred in general management and administration of the contractor's business as a whole and which appear to have a directly benefitting relationship to the DOE program. Such recognitions may be the basis of requesting fee amounts in excess of the limitations set forth in 970.1504–1–6 or alternatively, in any particular case, the contractor may be compensated on the basis of cost in accordance with 970.3102–1–1 if the Head of the Contracting Activity or other approving contract official authorizes or approves the procedure and a fair and reasonable amount can be agreed upon. Such amount shall normally be in addition to the applicable fee amounts.

(d) The DOE allows company general and administrative expenses under off-site architect-engineer, supply and research contracts with commercial contractors performing the work in their own facilities. Contractor's general and administrative expenses, may, however, be included for reimbursement under such DOE off-site architect-engineer, supply and research contracts, only to the extent that they are established, after careful examination, to be allowable in nature an properly allocable to the work. Work performed in a contractor's own facilities under a management and operating or construction contract may likewise be allowed to bear the properly allocable portion of allowable company general and administrative expense.

970.3102–3–9 Plant reconversion costs.

Plant reconversion costs are those incurred in the restoration of the contractor's facilities to approximately the same condition existing immediately prior to the commencement of the contract work, fair wear and tear excepted.

970.3102–3–10 Precontract costs.

Precontract costs are those incurred prior to the effective date of the contract directly pursuant to the negotiation and in anticipation of the award of the contract, where such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after the effective date of the contract. They do not include costs of preparing bids or of participation in the negotiation. The allowability of

precontract costs is dependent upon appropriate coverage in the contract.

970.3102–3–11 Professional and consultant service costs.

Technical and professional consultants, as used in this subpart, refer to private individuals acting in their own behalf, who make their services available on a fee or per diem basis. It does not refer to employees of firms acting in the firm's behalf whose services may be made available by the firm on, for example, a fixed rate basis. Consultant arrangements may permit bringing to contract work, the services of outstanding specialists who would not be available on a full-time basis, or whose employment on a full-time basis would not be economically feasible. Costs of such outside consultant services are normally allowable (however, see 970.5231–1 regarding compensation of an individual who is employed by another contractor and concurrently performing work on a full-time annual basis under a DOE cost-type contract), provided that the services are essential to, and will make a material contribution to, the performance of contract work; the services may be performed more economically or more successfully by a consultant than by the contractor's regular personnel; the fee or per diem charged is reasonable; and, when approved by the contracting officer. If the cost of such services is charged directly to the DOE contract, the cost of like items properly chargeable only to other work of the contractor must be eliminated from indirect costs allocable to the DOE contract (see 970.3102–2).

970.3102–3–12 Relocation costs.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of costs are allowable as noted, subject to provisions of paragraphs (b), (c), and (d) of this subsection.

(1) Costs of travel of the employee and members of his/her immediate family and transportation of household and personal effects to the new location.

(2) Costs of finding a new home, such as advance trips by employees and spouses to locate living quarters, and temporary lodging during the transition periods, not exceeding separate cumulative totals of 60 days for employees and 45 days for spouses and dependents, including advance trip time.

(3) Closing costs (*i.e.*, brokerage fees, legal fees, appraisal fees, points, finance charges, *etc.*) incident to the disposition of actual residence owned by the employee when notified of transfer; Provided that closing costs when added to the continuing costs described in (a)(6) of this subsection shall not exceed 14% of the sales price of the property sold.

(4) Other necessary and reasonable miscellaneous expenses incident to relocation, such as disconnection and connecting household appliances; automobile registration; drivers license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(5) Costs incident to the acquisition of a home in a new location, except that these costs will not be allowable for existing employees or newly recruited employees who prior to the relocation were not homeowners and the total costs shall not exceed 5% of the purchase price of the new home.

(6) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, mortgage interest, *etc.*, after settlement date or lease date of new permanent residence; provided that when added to the closing costs described in (a)(3) of this subsection, the costs shall not exceed 14% of the sales price of the property sold.

(7) Mortgage interest differential payments, except that these costs are not allowable for existing or newly recruited employees who prior to the relocation were not homeowners, and the total payments are limited to an amount determined as follows:

(i) Difference between the mortgage interest rates of the old and new residence times the current balance of the old mortgage times 3 years; and

(ii) When mortgage differential payments are made on a lump sum basis and the employee leaves or is transferred again in less than 3 years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual time of the relocation.

(8) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payment may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times 3 years.

(9) Cost of canceling an unexpired lease.

(b) The costs described in paragraph (a) of this subsection must also meet the following criteria to be considered allowable.

(1) The move is for the benefit of the Government.

(2) Reimbursement must be in accordance with an established policy or practice and program that is consistently followed and is designed to motivate employees to relocate promptly and economically.

(3) Amounts to be reimbursed do not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in paragraph (a)(4) of this subsection, a flat amount, not to exceed $1,000, may be paid in lieu of actual costs.

(c) The following types of costs are not allowable:

(1) Loss on sale of a home.

(2) Continuing mortgage principle payments on residence being sold.

(3) Cost incident to the acquisition of a home in a new location as follows:

(i) Real estate brokers fees and commissions;

(ii) Costs of litigation;

(iii) Real and personal property insurance against damage or loss of property;

(iv) Mortgage life insurance;

(v) Owner's title policy insurance when such insurance was not previously carried by the employees on the old residence (however, costs of a mortgage title policy is allowable) and;

(vi) Property taxes and operating or maintenance costs.

(4) Payments for employee's income taxes or FICA (social security taxes) incident to reimbursed relocation costs.

(5) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

(d) If relocation costs for an employee have been allowed and the employee resigns within 12 months for reasons within the employee's control, it is expected the contractor shall refund or credit the relocation costs to the Government.

(e) Contractor payments to an independent relocation assistance firm handling acquisitions and sales of houses of transferred employees are allowable in amounts which otherwise represent payment for itemized cost which are allowable in accordance with the provisions of this subsection.

970.3102–3–13 Trade, business, technical and professional activity costs.

(a) The costs of memberships in trade, business and technical organizations are unallowable, except as approved by the contracting officer.

(b) In considering approval of membership dues, the contracting officer shall:

(1) Ensure that dues payments to an organization are clearly justified and provide necessary and specific agency benefit;

(2) Do not constitute payments for, or in support of partisan and political activity; and,

(3) Are solely for purposes of enhancing trade, business, or technical knowledge necessary for, and related to, performance of DOE contracts.

970.3102–3–14 Travel costs.

(a)(1) Commercial air travel. It is the policy of the DOE to require management and operating contractors to use the lowest commercial airfare accommodations for all necessary travel under the contract, except when such accommodations are not reasonably available. Airfare costs in excess of the lesser of the lowest available commercial discount airfare, Government contract airfare, or customary standard (coach or equivalent) airfare, shall be disallowed except where the use of such accommodations would: require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. The contractor shall be required to establish appropriate airfare travel policies and procedures requiring the use of the lowest available commercial airfare consistent with this paragraph and prudent travel management. Where a contractor can reasonably demonstrate to the contracting officer, or designee, the nonavailability of discount airfare or Government contract airfare for a particular trip or, on an overall basis, that it is the contractor's practice to make routine use of such airfare, specific contractor determinations of nonavailability should generally not be questioned, unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable; *e.g.*, use of first-class airfare, the contractor must be able to justify and document on a case-by-case basis the applicable condition(s) set forth in this paragraph.

(2) Air travel by other than commercial carrier. "Cost of travel by contractor-owned, -leased, or -chartered aircraft," as used in this paragraph, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance and other related costs. Costs of travel via contractor-owned, -leased, and -chartered aircraft shall not exceed the cost of commercial air travel accommodations, unless the management and operating contractor can demonstrate that costs in excess of such amounts are necessary for contract performance and that the increase in cost, if any, in comparison with alternative means of transportation is commensurate with the advantage gained.

(b) Government-owned, commercial rental, and company-furnished vehicles. Commercial rental automobile costs in excess of the cost of a Government-furnished automobile or, when a Government-furnished automobile is not available, the cost of a Government-contract rental automobile available under a GSA Federal Supply Schedule contract, is unallowable unless:

(1) A Government-furnished or a Government contract rental automobile is not reasonably available to the traveler, or

(2) The traveler's use and the cost of a commercial rental automobile are justified and authorized as more advantageous to the Government.

(3) The costs of contractor-owned or -leased vehicles include the costs of lease, operation, maintenance, depreciation, insurance, and other similar costs. These costs are unallowable except as approved by the contracting officer. That portion of the cost of company-furnished automobiles that relates to personal use by employees, including transportation to and from work is unallowable.

(c) *Lodging, meals and incidental expenses.* (1) Costs for lodging, meals, and incidental expenses incurred by management and operating contractor personnel traveling on official business in the performance of contract work are allowable costs but subject to the limitations set forth in this subsection. Payments for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable cost to DOE.

(2) Except as provided in paragraph (c)(3) of this subsection, management and operating contractor payments for lodging, meals, and incidental expenses (as defined in the regulations cited in paragraphs (c)(2) (i) through (iii) of this subsection) shall be considered to be reasonable and allowable cost only to the extent that they do not exceed, on a daily basis, the maximum per diem rates in effect at the time of travel as set forth in the:

(i) Federal Travel Regulation (41 CFR Chapters 300 through 304) prescribed by the General Services Administration, for travel in the conterminous 48 United States.

(ii) Joint Travel Regulations, Volume 2, DOD Civilian Personnel, Appendix A. prescribed by the Department of Defense, for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), section 925, "Maximum Travel Per Diem Allowances for Foreign Areas," prescribed by the Department of State, for travel in areas not covered in paragraphs (c)(2) (i) and (ii) of this subsection.

(3) In special or unusual situations, management and operating contractor personnel may be paid for actual expenses in excess of the above-referenced maximum per diem rates provided such payments do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in paragraph (c)(2) (i), (ii) or (iii) of this subsection and all of the following conditions are met:

(i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in paragraph (c)(2) (i), (ii) or (iii) of this subsection exist.

(ii) A written justification for payment of the higher amounts is approved by an officer or appropriate official of the management and operating contractor's organization.

(iii) Documentation exists to support the payment of actual expenses incurred and each employee expenditure in excess of $25.00 is supported by a receipt. The approved justification required by paragraph (c)(3)(ii) and, if applicable, DOE advance approvals required under paragraph (c)(5) of this subsection must also be retained.

(4) Paragraphs (c)(2) and (c)(3) of this subsection do not incorporate the regulations cited in paragraphs (c)(2) (i), (ii) and (iii) of this subsection in their entirety. Only the coverage in the referenced regulations dealing with special or unusual situations, the maximum per diem rates and the definitions of lodging, meals and

incidental expenses are to be applied to management and operating contractors.

(5) An advance agreement with respect to compliance with paragraphs (c)(2) and (c)(3) of this subsection will be established in the personnel appendix of the contract. The management and operating contractor shall also be required to obtain advance approval from DOE, if it becomes necessary for the contractor to exercise the authority to make payments based in the higher actual expense method repetitively or on a continuing basis in a particular area. It is not intended that individual contractor authorizations to pay actual expenses in excess of applicable maximum per diem rates be approved in advance by DOE. Such before the fact, case-by-case approvals should only be invoked when the management and operating contractor does not have acceptable travel cost policies, procedures or practices in effect.

(6)(i) The maximum per diem rates referenced in paragraph (c)(2) of this subsection generally would not constitute a reasonable daily charge:

(A) When no lodging costs are incurred; and/or

(B) On partial travel days (*e.g.*, same day of departure and return).

(ii) Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated pursuant to the Federal Travel Regulation, Joint Travel Regulations, or Standardized Regulations, they must result in a reasonable charge.

970.3102–3–15 Cost related to legal and other proceedings.

(a) Contractor costs incurred in connection with a criminal, civil or administrative proceeding involving contractor violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation are subject to the allowable costs limitations established in section 8 of The Major Fraud Act of 1988, Public Law 100–700 (41 U.S.C. 256).

(b) Implementation of the Major Fraud Act's contract cost limitations is specified in the applicable cost principles clauses at 970.5231–1(e)(33). Definitive cost principle criteria for determining the allowability of an M&O contractor's costs incurred in connection with a criminal, civil or administrative proceeding are set forth in the contract clause at 970.5231–3, Cost Prohibitions Related to Legal and Other Proceedings. Any change made to the cost principle criteria specified therein constitutes a deviation requiring Senior Procurement Executive approval pursuant to 970.3101–1.

970.3102–3–16 Overtime, shift, and holiday premiums.

(a) Overtime, shift, and holiday premiums are allowable only to the extent provided in the contract or approved by the contracting officer. The amount of such premiums charged to a management and operating contract shall be equitable in relation to the amount of such costs charged to other work currently performed in the contractor's plant and the factors which necessitate incurrence of the costs. When the necessity for overtime, shift, and holiday work arises from inadequacy of the contractor's plant or department to perform its total workload on a purely straight-time basis, inclusions in overhead for apportionment to all work of the plant or department, as the case may be, appears appropriate. When particular work, DOE or other, is being specially expedited to a point that its fair share of the contractor's purely straight-time efforts on a single-shift basis will not get the particular job completed within the time desired, direct charging of the related premiums appears appropriate.

(b) When premiums for overtime, shift, and holiday work are charged direct to the work concerned, if the operating overhead of the plant or related department is distributed on the basis of direct labor (cost or hours), the premiums should be excluded from the direct labor base for purposes of overhead distribution. That is, the direct labor base should be, as appropriate, direct labor straight-time cost or direct labor hours actually worked. While the premiums for authorized overtime, shift, and holiday work are acceptable as reimbursable costs, it is generally recognized that direct labor hours worked on an overtime, shift, or holiday basis should participate in indirect costs to the same extent as hours worked on a straight-time basis.

970.3102–3–17 Page charges in scientific journals.

It is a policy of the DOE to permit DOE contractors to budget for and pay page charges for scientific journal publication, as a necessary part of research costs, in all cases where:

(a) The research papers report work supported by the Government.

(b) The charges are levied impartially on all research papers published by the journal, whether by non-Government or by Government authors.

(c) Payment of such charges is in no sense a condition for acceptance of manuscripts by the journal.

(d) The journals involved are not operated for profit.

(e) The author does not receive an emolument from the journal for the research paper.

970.3102–3–18 Preparatory and make-ready costs.

Since indirect costs are usually apportioned to individual jobs wholly or substantially on the basis of the direct labor applied to the particular job, a contract will absorb no overhead by apportionment prior to the inception of the actual performance of direct work on the contract. The effort of the contractor's overhead organization in preparing for one job and in getting it underway, will thus be absorbed by jobs previously commenced and still being performed; later, the job, which in its initial stages of preparation and make-ready was relieved of expenses that were actually applicable to it, will partially absorb, through their apportionment as overhead, similar costs equally applicable in fact to other, subsequently undertaken jobs. This procedure is in accordance with generally accepted accounting practices and normally is reasonably equitable in its results. The initial advantages and subsequent disadvantages to the individual contract that result from consistent application of the procedure tend to offset each other and balance out. It is quite appropriate, however, to employ the direct charge method in connection with overhead costs in preparing for actual performance by segregating such preparatory and make-ready costs and identifying them specifically with the contract to which the effort actually pertains. However, if preparatory and make ready costs are charged direct to a DOE contract, care must be taken, as performance of the DOE contract work proceeds toward completion, to segregate subsequent indirect expenses similarly applicable to the preparation for, and commencement of, other jobs and to account for them as direct charges to those other jobs.

970.3102–3–19 Facilities (plant and equipment).

(a) *Use of Government-owned facilities.* If the Government furnishes to the contractor, or the contractor acquires at Government expense, Government-owned equipment with which to do all or a significant amount of the work under the DOE contract, on which equipment the Government is bearing the expenses of depreciation, maintenance, insurance, and taxes, appropriate procedures must be established to avoid apportioning to DOE work performed with DOE-owned

equipment, a share of the expenses of depreciation, maintenance, insurance and taxes on the contractor's equipment not used to perform such work. If the Government-owned equipment is placed in a segregated area, that area should be accounted for as a separate department. If the Government-owned equipment is not placed at the separate area, other steps must be taken to avoid what would amount to a double equipment burden on work performed with the Government-owned facilities. Such work shall be so accounted for as to be relieved of charges for expenses related to contractor's equipment not used in its performance.

(b).*Contractor's costs covering plant and equipment.* Charges relating to contractor-owned plant and equipment shall be restricted to the applicable costs, such as depreciation, maintenance, insurance, and taxes, and shall not be on a rental basis. (Compensation in excess of costs is covered by the fixed fee.) Rentals of plant or equipment owned by third parties are normally allowable, if the rates are reasonable in the light of the type, value, condition of the property involved, and option and other provisions of the lease agreement. However, where the plant and equipment used by the contractor is rented by the contractor under a sale and lease-back agreement, only the normal costs (such as depreciation, maintenance, insurance, and taxes) that would have been incurred if the contractor had retained title to the facilities, should be allowed. Allowances for plant and equipment rented under agreements that are not arms-length transactions should be similarly restrictive.

970.3102–3–20 Special funds in the construction industry.

Costs of special "funds," financed by employer contributions, in the construction industry for such purposes as methods and materials research, public and industry relations, market development, disaster relief, etc., are unallowable, except as specifically authorized by the contracting officer and provided for in the contract.

970.3102–3–21 Procurement: Subcontracts, contractor-affiliated sources, and leases.

(a) *Subcontracts.* Award and management policies for subcontracts placed under operating contracts when necessary to the performance of the required services and work efforts of the management and operating contractor are set forth in 970.44. The cost of performing such subcontracts shall be allowable under the DOE contract when:

(1) The award/approval is otherwise in accord with the contract terms and conditions and the provisions of 970.44 and

(2) The reimbursement of subcontractor costs of the management and operating contractor is in accordance with the provisions of the DOE cost principles set forth in 48 CFR part 31, as appropriate to the type of subcontractor being selected; i.e., commercial, educational, state/local government, or nonprofit organization.

(b) Procurement or transfer from contractor-affiliated sources (See 970.4402–3). Allowance for all equipment, materials, supplies, and services which are sold or transferred between any division, subsidiary, or affiliate of a management and operating contractor under a common control shall be on the basis of cost incurred in accordance with the terms of the contract; except, when it is the established practice of the transferring organization to price inter-organization transfers of equipment, materials, supplies, and services at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, allowance may be at a price when:

(1) It is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public" in accordance with 48 CFR subpart 15.4 or

(2) It is the result of "adequate price competition" in accordance with 48 CFR subpart 15.4 and is the price at which an award was made to the affiliated organization, after obtaining quotations of an equal basis from such organization and one or more outside sources which normally produce the item or its equivalent in significant quantity, provided that in either case:

(i) The price is not in excess of the transferor's current sales price to its most favored customer (including any division, subsidiary, or affiliate of the contractor under a common control) for a like quantity under comparable conditions, and

(ii) The price is not determined to be unreasonable by the contracting officer, provided, however, that if the price is determined unreasonable, such determination must be supported by an enumeration of facts on which it is based and approved at a level above the contracting officer. The price determined in accordance with paragraph (a) of this subsection should be adjusted, when appropriate, to reflect the quantities being procured and may be adjusted upward or downward to reflect the actual cost of any modifications necessary because of contract requirements.

(c) Leases. Contractor lease payments will be considered an allowable cost when a leasing arrangement is not prohibited by the contract terms (*e.g.*, see 970.5244–1). If a lease for property, plant or equipment (land and/or depreciable assets) is required to be classified as a capital lease under generally accepted accounting principles (GAAP), imputed interest costs determined in accordance with GAAP for any such contractor lease shall be an allowable contract charge if the following are met:

(1) The specific decision to enter into a capital leasing arrangement is authorized by DOE in accordance with applicable DOE procedures, prior to execution of the lease,

(2) The lease is accounted for in accordance with GAAP, and

(3) The imputed interest costs are separately accounted for in special DOE accounts established for the recordation of such costs.

970.3170 Contract Clauses.

(a) The contracting officer shall insert the clause at 48 CFR 970.5231–1, Allowable Cost and Fixed Fee (Management and Operating Contracts), in all management and operating contracts.

(1) The contracting officer shall include the clause with its Alternate I when necessary to address situations where the fee is for a period of time or different fees are allowed for various phases of the work.

(2) The contracting officer shall include the clause with its Alternate II when personnel costs and related expenses will be incurred by the contractor in accordance with established policies, programs, and schedules that are applicable to the contractor's private operations and consistently followed throughout the contractor's organization.

(3) The contracting officer shall include the clause with its Alternate III if the contractor will perform construction.

(4) The contracting officer shall include the clause with its Alternate IV if no contractor-owned equipment is being utilized in the performance of the contract.

(5) The contracting officer shall include the clause with its Alternate V in contracts with for-profit contractors.

(b) The contracting officer shall insert the clause at 48 CFR 970.5231–2, Political Activity Cost Prohibition, in all management and operating contracts.

(c) The contracting officer shall insert the clause at 48 CFR 970.5231–3, Cost Prohibitions Related to Legal and Other Proceedings, in all management and operating contracts.

(d) The contracting officer shall insert the clause at 48 CFR 970.5231–4, Preexisting Conditions, in all management and operating contracts.

(1) The contracting officer shall include the clause with its Alternate I in contracts with incumbent management and operating contractors.

(2) The contracting officer shall include the clause with its Alternate II in contracts with management and operating contractors not previously working at that particular site or facility.

Subpart 970.32—Contract Financing

970.3200 Policy.

It is the policy of the DOE to finance management and operating contracts through advance payments and the use of special bank accounts. Appropriate procedures for properly managing and controlling funds for obligation and expenditure under a management and operating contract are maintained by the Chief Financial Officer of DOE.

970.3200–1 Reduction or suspension of advance, partial, or progress payments.

(a) The procedures prescribed at 48 CFR 32.006 shall be followed regarding the reduction or suspension of payments under management and operating contracts.

(b) Agency head responsibilities under 48 CFR 32.006 have been delegated to the Senior Procurement Executive.

(c) The remedy coordination official is responsible for receiving, assessing, and making recommendations to the Senior Procurement Executive.

970.3200–1–1 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5232–1, Reduction or suspension of contract payments, in management and operating contracts.

970.3204 Advance payments.

970.3204–1 Applicability.

(a) The Head of the Contracting Activity shall authorize advance payments without interest, and approve the findings, determinations and the contract terms and conditions concerning advance payments in accordance with the procedures set forth in 48 CFR subpart 32.4, Advance Payments, as supplemented by 48 CFR subpart 932.4.

(b) Advance payments shall be made under a letter-of-credit arrangement for deposit in a special bank account.

(c) Prior to providing any advance payments, the contracting officer shall enter into an agreement with the contractor and a financial institution regarding a special bank account where the advanced funds are to be deposited by the Government. Such agreement shall: (1) Provide that DOE shall retain title to the unexpended balance of funds in the special bank account including revenues if any, deposited by the contractor, and that such title shall be superior to any claim or lien of the bank of deposit; and

(2) Incorporate as necessary or appropriate, additional financial provisions required by Treasury or Departmental financial regulations.

(d) Deviations from the requirements cited in paragraph (c) of this subsection shall be considered a deviation requiring approval of the Head of the Contracting Activity.

(e) Letter-of-credit arrangements shall be prepared in accordance with 48 CFR 32.406, Letters of Credit, and shall be coordinated between the procurement and finance organizations.

970.3204–2 Special bank account agreement.

The following agreement shall be used with special bank accounts in accordance with 970.3204–1(c).

Agreement entered into this .. day of ..., 19 ., between the United States of America (hereinafter called the Government) represented herein by the Department of Energy (hereinafter called the "DOE"), and .... (hereinafter called the "Contractor,") a corporation under the laws of the State of ...., and ....., (hereinafter called the "Bank,") a banking corporation under the laws of ...., located at .....

Recitals

(a) On the date of ..., 19 ., DOE and the Contractor entered into Contract(s) No. ...., or a supplemental agreement thereto, providing for the making of advances of Government funds to the contractor a copy of such advance provisions has been furnished to the Bank.

(b) DOE requires that amounts advanced to the Contractor under said contract or supplemental agreement be deposited in a Special Bank Account or accounts with a bank designated by the Treasury Department as depositary and financial agent of the Government (Section 10 of the Act of June 11, 1942, 56 Stat. 356; 12 U.S.C. 265), separate from any of the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(c) This Special Bank Account shall be designated "... (Name of Contractor), ... (Contract Number), Department of Energy Special Bank Account."

Covenants

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that,

(1) The Government shall have title to the credit balance in said account to secure the return of all advances made to the contractor, which title shall be superior to any lien or claim of the Bank or others with respect to such account.

(2) The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account, but shall not be responsible for the application of funds properly withdrawn from said account. After receipt by the Bank of written directions from the contracting officer, or from the duly authorized representative of the contracting officer, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions.

(3) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including, without limitation, the inspection or copying of such books and records and any and all memoranda, checks, correspondence, or documents pertaining thereto. Except as agreed upon by the Government and the Bank, all books and records pertaining to the Special Bank Account in the possession of the Bank relating to the Special Bank Account agreement shall be preserved by the Bank for a period of three (3) years after final payment under the contract to which the Special Bank Account agreement pertains or otherwise disposed of in such manners as may be agreed upon by the Government and the Bank.

(4) In the event of the services of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify the Head of the Contracting Activity, DOE.

In witness whereof the parties hereto have caused this Agreement to be executed, as of the day and year first above written.

(Signatures and Official Titles) _____

970.3204–3 Contract clause.

The clause at 970.5232–2, Payments and Advances, shall be included in management and operating contracts when advances of funds are to be placed in a special bank account.

(a) The contracting officer shall insert the basic clause with its Alternate I if a separate fixed-fee is provided for a separate item of work.

(b) The contracting officer shall insert the basic clause with its Alternate II when award-fee provisions in the basic clause are used.

(c) The contracting officer shall insert the basic clause with its Alternate III in management and operating contracts with integrated contractors.

970.3270 Standard financial management clauses.

(a) The contracting officer shall insert the clause at 48 CFR 970.5232–3, Accounts, Records, and Inspection, in all management and operating contracts.

(1) If the contract includes the clause at 48 CFR 52.215–22, Price Reduction for Defective Cost or Pricing Data, the contracting officer shall use the clause with its Alternate I.

(2) If the contract is a cost-reimbursement contract involving an estimated cost exceeding $5 million and expected to run for more than 2 years, or any other cost-reimbursement contract determined by the Head of the Contracting Activity in which the contractor has an established internal audit organization, the contracting officer shall insert the clause with its Alternate II.

(b) The contracting officer shall insert the clause at 48 CFR 970.5232–4, Obligation of funds, in all management and operating contracts. The contracting officer may use the clause with its Alternate I in contracts which, expressly or otherwise, provide a contractual basis for equivalent controls in a separate clause.

Subpart 970.34—Major System Acquisition

970.3400 General requirements.

970.3400–1 Mission-oriented solicitation.

Contractors shall be required to promptly advise the DOE contracting officer of any advance notices of, or solicitations for, requirements which would logically involve DOE facilities or resources operated or managed by the contractor, which are received from another agency pursuant to 48 CFR 34.005. Management and operating contracts shall provide that the contractor shall not respond or otherwise propose to participate in response to the requirements of such solicitations unless the contractor has obtained the prior written approval of the DOE manager of the field activity having cognizance over the contract. Such approval shall not be given except in compliance with applicable DOE directives, and with the concurrence of the cognizant Senior Program Official.

970.35—Research and development contracting

970.3500 Scope of Subpart.

This subpart implements 48 CFR 35.017 regarding the establishment, use, review, and termination of Federally Funded Research and Development Centers (FFRDCs) sponsored by the Department of Energy.

970.3501 Federally funded research and development centers.

970.3501–1 Sponsoring agreements.

(a) The contract award document constitutes the sponsoring agreement between the Department of Energy and the contractor operating an FFRDC.

(b) The contract statement of work shall define the purpose and mission of the FFRDC.

(c) Other elements of the sponsoring agreement which shall be incorporated into the contract include:

(1) The appropriate termination clause of the contract (as prescribed in 48 CFR Subpart 49.5).

(2) The plan for the identification, use, and disposition of retained earnings developed pursuant to 48 CFR 970.1504–1–3(c)(6), if applicable;

(3) The clause entitled "Federally Funded Research and Development Center Sponsoring Agreement," which, in part, prescribes limitations on the FFRDC competing with the private sector, and requirements for the FFRDC's acceptance of work from a nonsponsor; and

(4) Other terms and conditions considered necessary for the particular circumstances of the FFRDC (e.g., advance understandings on particular cost items).

970.3501–2 Using an FFRDC.

The contractor may only accept work from a nonsponsor (as defined in 48 CFR 35.017) in accordance with the requirements of DOE Order 481.1, Work for Others (Non-Department of Energy Funded Work).

970.3501–3 Reviewing FFRDC's.

(a) All Department of Energy sponsored FFRDC's are operated by management and operating contractors.

(b) Coincident with the review required by 48 CFR 17.605(b) and 48 CFR 970.1702–1(b) regarding the decision to extend or compete a management and operating contract, the contracting officer shall, in accordance with internal Departmental procedures:

(1) Conduct the review required by 48 CFR 35.017–4 concerning the use and need for the FFRDC; and

(2) Recommend for Secretarial approval, the continuation or termination of the Department's sponsorship of an FFRDC at the time authorization is required to extend or compete a management and operating contract.

970.3501–4 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5235–1, Federally Funded Research and Development Center Sponsoring Agreement, in all solicitations and contracts for the management and operation of an FFRDC sponsored by the Department of Energy.

Subpart 970.36—Construction and Architect-Engineer Contracts

970.3605 Contract clauses.

970.3605–1 Other contracts.

The clause in 48 CFR 52.236–8, Other Contracts, shall be used in all management and operating contracts.

970.3605–2 Special construction clause for operating contracts.

The clause in 48 CFR 970.5236–1, Government Facility Subcontract Approval, shall be used in management and operating contracts when the contractor will not perform covered work with its own forces but may procure construction by subcontract.

Subpart 970.37 Facilities Management Contracting

970.3701 General.

970.3701–1 Severance payments to foreign nationals.

970.3701–1–1 Waiver of cost allowability provisions.

(a) The Head of the Contracting Activity may waive the application of the provisions of 48 CFR 970.3102–3–2(i)(2)(iv) and (v) in accordance with 41 U.S.C. 256(e)(2) if:

(1) The application of the provisions would adversely affect the continuation of a program, project, or activity that provides significant support services for Department of Energy employees posted outside the United States;

(2) The contractor has taken, or plans to take, appropriate actions within its control to minimize the amount and number of incidents of payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay under the contract is necessary to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services or is necessary to comply with a collective bargaining agreement.

(b) [Reserved]

970.3701–1–2 Solicitation provision and contract clause.

(a) The solicitation provision at 970.5237–1, Waiver of Limitations on Severance Payments to Foreign Nationals, shall be included in solicitations and resulting contracts involving support services for Department of Energy operations

outside of the United States expected to exceed $500,000, when, prior to the solicitation, the limitations on severance to foreign nationals has been waived.

(b) The contracting officer shall use the clause with its Alternate I when the Head of the Contracting Activity may waive the limitations on severance to foreign nationals after contract award.

970.3770 Facilities management.

970.3770–1 Policy.

Contractors managing DOE facilities shall be required to comply with the DOE Directives applicable to facilities management.

970.3770–2 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5237–2, Facilities Management, in all management and operating contracts.

Subpart 970.41—Acquisition of Utility Services

970.4102 Acquiring utility services.

970.4102–1 Policy.

(a) Utility services defined at 48 CFR 41.101 for the furnishing of electricity, gas (natural or manufactured), steam, water, and/or sewerage to facilities owned or leased by DOE shall be acquired directly by DOE and not by a contractor using a subcontractor arrangement, except as provided in paragraph (b) of this subsection.

(b) Where it is determined to be in the best interest of the Government, a DOE contracting activity may authorize a management and operating contractor for a facility to acquire such utility service for the facility, after requesting and receiving concurrence to make such an authorization from the Director, Public Utilities Branch, Headquarters. Any request for such concurrence should be included in the Utility Service Requirements and Options Studies required by DOE directives in subseries 4540 (Public Services). Alternatively, it may be made in a separate document submitted to the Director of that office early in the acquisition cycle. Any request shall set forth why it is in the best interest of the DOE to acquire utility service(s) by subcontract, *i.e.*, what the benefits are, such as economic advantage.

(c) The requirements of 48 CFR part 41, this section, and DOE directives in subseries 4540 shall be applied to a subcontract level acquisition for furnishing utility services to a facility owned or leased by DOE.

Subpart 970.43—Contract Modifications

970.4302 Changes.

970.4302–1 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5243–1, Changes, in all management and operating contracts.

Subpart 970.44—Management and Operating Contractor Purchasing

970.4400 Scope.

This subpart prescribes policies and procedures concerning the purchasing systems and activities of management and operating contractors.

970.4401 Responsibilities.

970.4401–1 General.

(a) In the Department of Energy, overall responsibility for the oversight of the performance of management and operating contractors, including their purchasing activities, rests with the cognizant DOE contracting activity and, in particular, the Head of the Contracting Activity (HCA). Contracting officers are responsible for the management and operating contractors' conformance with this subpart and the applicable terms and conditions of their contracts, and for determining whether those purchasing activities provide timely and effective support to DOE programs.

(b) In carrying out their overall responsibilities, HCAs shall:

(1) Require management and operating contractors to maintain written descriptions of their individual purchasing systems and methods and further require that, upon award or extension of the contract, the entire written description be submitted to the contracting officer for review and acceptance;

(2) Require that any changes to the management and operating contractor's written description having any substantive impact upon the contractor's purchasing system and methods be submitted to the contracting officer for review and acceptance prior to issuance;

(3) Ensure the review of individual purchasing actions of certain types, or above stated dollar levels, by the contracting officer pursuant to 48 CFR Subpart 44.2 or as set forth in the contractor's approved system and methods; and

(4) Ensure that periodic appraisals of the contractor's management of all facets of the purchasing function, including compliance with the contractor's approved system and methods, are performed by the contracting officer. Such appraisals shall be performed through either of the following methodologies:

(i) Contractor Purchasing System Reviews, conducted in accordance with 48 CFR Subpart 44.3; or

(ii) When approved by the contracting officer, contractor participation in the conduct of the Balanced Scorecard performance measurement and performance management system.

(c) In performing the reviews required by paragraphs (b)(1) and (2), and the appraisals required by paragraph (b)(4) of this subsection, HCAs shall assure that contracting officers determine that the contractors' written systems and methods are consistent with this subpart and the applicable terms and conditions of their contracts.

970.4401–2 Review and approval.

(a) The Heads of the Contracting Activities shall establish thresholds, by subcontract type and dollar level, for the review and approval of proposed subcontracting actions by each management and operating contractor under their cognizance. Such thresholds may not exceed the authority delegated to the Head of the Contracting Activity by the Senior Procurement Executive. In establishing these thresholds, the Heads of the Contracting Activities should consider such factors as the following:

(1) The nature of work to be performed under the management and operating contract;

(2) The size, experience, ability, reliability, and organization of the management and operating contractor's purchasing function;

(3) The internal controls, procedures, and organizational stature of the management and operating contractor's purchasing function; and

(4) Policies with respect to such reviews and approvals established by the Senior Procurement Executive.

(b) Prior approval shall be required for the subcontracting of any work a contractor is obligated to perform under a contract entered into under section 41, entitled Production of Special Nuclear Material, of the Atomic Energy Act of 1954, as amended.

(c) The Heads of the Contracting Activities shall take such action as may be required to insure compliance with the procedure for purchasing from contractor-affiliated sources or the purchase of specific items, or classes of items, which by the terms of the contract may require DOE approval.

(d) The Heads of the Contracting Activities may raise or lower the review and approval thresholds established pursuant to paragraph (a) of this

subsection at any time. Such action may be considered upon the periodic review of the contractor's purchasing system, but in any case those adjusted thresholds may not exceed the approval authority delegated to the Head of the Contracting Activity by the Senior Procurement Executive.

(e) DOE approvals of specific proposed purchases pursuant to this Subpart shall communicate that such approval does not relieve the management and operating contractor of any obligation under its prime contract with DOE; is given without prejudice to any rights or claims of the Government thereunder; creates no obligation on the part of the Government to the subcontractor, and is not a predetermination of the allowability of costs to be incurred under the subcontract.

(f) Contracting officers shall assure that management and operating contractors establish and maintain subcontract files which contain those documents essential to present an accurate and adequate record of all purchasing transactions.

(g) Contracting officers shall assure that management and operating contractors document purchases in writing, setting forth the information and data used in determining that the purchases are in the best interest of the Government. The scope and detail of this documentation shall be consistent with the nature, dollar value, and complexity of the purchase.

(h) The Heads of the Contracting Activities shall assure that the contracting activity establishes and maintains files of the documents associated with the review and approval of subcontract actions subject to DOE review and approval. Those files shall include, among other necessary documentation, an appraisal of the proposed action by the contracting activity and a copy of the approving or disapproving document forwarded to the management and operating contractor, including a listing of any deficiencies, a listing of any required corrective actions, any suggestions, or other relevant comments.

970.4401–3 Advance notification.

(a) Contracting officers shall assure that the written description of the management and operating contractor's purchasing system and methods provides for advance notice to the DOE contracting officer of the proposed award of the following specified types of subcontracts, except as stated in paragraph (b) of this subsection:

(1) Pursuant to section 304(b) of the Federal Property and Administrative Service Act of 1949, as amended (41 U.S.C. 254(b)):

(i) Cost reimbursement-type subcontracts of any award value; and

(ii) Fixed price-type subcontracts which exceed the simplified acquisition threshold, or 5 percent of the total estimated cost of the prime contract.

(2) Purchases from contractor-affiliated sources over a value established by the HCA.

(b) Pursuant to section 602(d)13 of the Act (40 U.S.C. 474(13)) referred to in paragraph (a) of this section, the advance notification requirement for the types of purchases listed in paragraphs (a) (1) and (2) of this subsection shall not apply to subcontracts relating to functions derived from the Atomic Energy Commission.

(c) The advance notice shall contain, at a minimum, a description of work, estimated cost, type of contract or reimbursement provisions, and extent of competition, or justification for a noncompetitive purchase procurement. The contracting officer may at any time request additional information that must be furnished promptly and prior to award of the subcontract.

970.4402 Contractor purchasing system.

970.4402–1 Policy.

(a) DOE contracts for the management and operation of its facilities, the design and production of nuclear weapons, energy research and development, and the performance of other services. These management and operating (M&O) contractors have been selected for their technical and managerial expertise and are expected to bring to bear these technical and managerial skills to accomplish the significant Federal mission(s) described in their contracts with, and work plans approved by, DOE.

(b) Purchasing done by management and operating contractors is one area in which the particular skills of the contractors will be brought to bear in order to more readily accomplish the contractors' assigned missions. The contracting procedures of the contractor's organization, therefore, form the basis for the development of a purchasing system and methods that will comply with its contract with DOE and this subpart.

970.4402–2 General requirements.

The following shall apply to the purchasing systems of management and operating contractors:

(a) The objective of a management and operating contractor's purchasing system is to deliver to its customers on a timely basis those best value products and services necessary to accomplish the purposes of the Government's contract. To achieve this objective, contractors are expected to use their experience, expertise and initiative consistent with this subpart.

(b) The purchasing systems and methods used by management and operating contractors shall be well-defined, consistently applied, and shall follow purchasing practices appropriate for the requirement and dollar value of the purchase. It is anticipated that purchasing practices and procedures will vary among contractors and according to the type and kinds of purchases to be made.

(c) Contractor purchases are not Federal procurements, and are not directly subject to the Federal Acquisition Regulations in 48 CFR. Nonetheless, certain Federal laws, Executive Orders, and regulations may affect contractor purchasing, as required by statute, regulation, or contract terms and conditions.

(d) Contractor purchasing systems shall identify and apply the best in commercial purchasing practices and procedures (although nothing precludes the adoption of Federal procurement practices and procedures) to achieve system objectives. Where specific requirements do not otherwise apply, the contractor purchasing system shall provide for appropriate measures to ensure the:

(1) Acquisition of quality products and services at fair and reasonable prices;

(2) Use of capable and reliable subcontractors who either:

(i) Have track records of successful past performance, or

(ii) Can demonstrate a current superior ability to perform;

(3) Minimization of acquisition lead-time and administrative costs of purchasing;

(4) Use of effective competitive techniques;

(5) Reduction of performance risks associated with subcontractors, and facilitation of quality relationships which can include techniques such as partnering agreements, ombudsmen, and alternative disputes procedures;

(6) Use of self-assessment and benchmarking techniques to support continuous improvement in purchasing;

(7) Maintenance of the highest professional and ethical standards;

(8) Maintenance of file documentation appropriate to the value of the purchase and which is adequate to establish the propriety of the transaction and the price paid; and

(9) Maximization of opportunities for small business, HUBZone small

business, small disadvantaged business, and woman-owned small business concerns to participate in contract performance.

970.4402–3 Purchasing from contractor-affiliated sources.

(a) A management and operating contractor may purchase from sources affiliated with the contractor (any division, subsidiary, or affiliate of the contractor or its parent company) in the same manner as from other sources, provided:

(1) The management and operating contractor's purchasing function is independent of the proposed contractor-affiliated source;

(2) The same terms and conditions would apply if the purchase were from a third party;

(3) Award is made in accordance with policies and procedures designed to permit effective competition which have been approved by the contracting officer. (This requirement for competition shall not preclude acquisition of technical services from contractor-affiliated entities where those entities have a special expertise, and the basis therefor is documented.); and

(4) The award is legally enforceable where the entities are separately incorporated.

(b) Subcontracts for performance of contract work itself (as distinguished from the purchase of supplies and services needed in connection with the performance of work) require DOE authorization and may involve an adjustment of the contractor's fee, if any. If the management and operating contractor seeks authorization to have some part of the contract work performed by a contractor-affiliated source, and that contractor's performance of that work was a factor in the negotiated fee, DOE approval would normally require:

(1) That the contractor-affiliated source perform such work without fee or profit, or

(2) An equitable downward adjustment to the management and operating contractor's fee, if any.

(c) Determination on cost of money allowance as prescribed at 48 CFR 31.205–10 shall be treated as follows:

(1) When a purchase from a contractor-affiliated source results from competition and is in accord with provisions and conditions of paragraphs (a)(1) through (a)(4) of this subsection, the contractor-affiliated source may include cost of money as an allowable element of the costs of its goods or services supplied to the contractor; provided:

(i) The purchase is based on cost as set forth in 48 CFR 970.3102–3–21 and

(ii) The cost of money amount is computed in accordance with 48 CFR 31.205–10 and related procedures (see 48 CFR 970.30).

(2) When a purchase from a contractor-affiliated source is made non-competitively, cost of money shall not be considered an allowable element of the cost of the contractor-affiliated source purchase.

970.4402–4 Nuclear material transfers.

(a) Management and operating contractors, in preparing subcontracts or other agreements in which monetary payments or credits depend on the quantity and quality of nuclear material, shall be required to assure that each such subcontract or agreement contains a:

(1) Description of the material to be transferred;

(2) Provision specifying the method by which the quantities are to be measured and reported;

(3) Provision specifying the procedures to be used in resolving any differences arising as a result of such measurements;

(4) Provision for the use of an independent third party as an umpire to settle unresolved differences in the analytical samples; and

(5) Provision specifying in detail which party shall bear the costs of resolving a difference and what constitutes such costs.

(b) The provisions providing for resolution of measurement differences must be such that resolution is always accomplished, while at the same time minimizing any advantage one party may have over the other.

970.4403 Contract clause.

The contracting officer shall insert the clause at 970.5244–1, Contractor Purchasing System, in all management and operating contracts.

Subpart 970.45—Government Property

970.4501 General.

970.4501–1 Contract clause.

(a) The contracting officer shall insert the clause at 970.5245–1, Property, in management and operating contracts. Paragraph (f)(1)(iii) of the clause applies to a non-profit contractor only to the extent specifically provided in the individual contract. Specific managerial personnel may be listed in paragraph (j), provided their listing is consistent with the clause and the DEAR.

(b) The contracting officer shall insert the basic clause with its Alternate I in contracts with nonprofit contractors.

Subpart 970.49—Termination of Contracts

970.4905 Contract termination clause.

970.4905–1 Termination for convenience of the Government and default.

(a) The contracting officer shall include the clause at 48 CFR 52.249–6, Termination (Cost Reimbursement), as modified pursuant to paragraph (b) of this subsection, in all cost-reimbursement management and operating contracts, regardless of whether the contract is for production, or research and development with an educational or nonprofit institution.

(b) The contracting officer shall modify paragraph (i) of the clause to insert "as supplemented in Subpart 970.31 of the Department of Energy Acquisition Regulation," after the phrase, "Part 31 of the Federal Acquisition Regulation."

Subpart 970.50—Extraordinary Contractual Actions

970.5070 Indemnification.

970.5070–1 Scope and applicability.

(a) Section 170d. of the Atomic Energy Act of 1954, as amended, requires DOE to enter into agreements of indemnity with contractors whose work involves the risk of public liability for the occurrence of a nuclear incident or precautionary evacuation.

(b) Details of such indemnification are discussed at 48 CFR 950.70.

970.5070–2 General.

DOE contractors with whom statutory nuclear hazards indemnity agreements under the authority of section 170d. of the Atomic Energy Act of 1954, as amended, are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents. However, if authorized by the DOE Headquarters office having responsibility for contractor casualty insurance programs, DOE contractors may be:

(a) Permitted to furnish financial protection to themselves, or

(b) Permitted to continue to carry such insurance at cost to the Government if they currently maintain insurance for such liability.

970.5070–3 Contract clauses.

(a) The clause at 48 CFR 952.250–70, Nuclear Hazards Indemnity Agreement, shall be included in all management and operating contracts involving the risk of public liability for the occurrence of a nuclear incident or precautionary evacuation arising out of or in

connection with the contract work, including such events caused by a product delivered to a DOE-owned, facility for use by DOE or its contractors. The clause at 48 CFR 952.250–70 also shall be included in any management and operating contract for the design of a DOE facility, the construction or operation of which may involve the risk of public liability for a nuclear incident or a precautionary evacuation.

(b) The clause at 48 CFR 952.250–70 shall not be included in contracts in which the contractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170 c. or k. of the Act for activities to be performed under the contract.

Subpart 970.52—Solicitation Provisions and Contract Clauses for Management and Operating Contracts

970.5200 Scope of subpart.

This subpart prescribes solicitation provisions and contract clauses for use in management and operating contracts. The provisions and clauses contained in this subpart supplement the provisions and clauses prescribed in the FAR and in other parts of the DEAR, and, pursuant to the individual provision or clause prescription, are to be used in addition to or in place of such clauses. To assist Departmental contracting personnel in determining the applicability of FAR and DEAR clauses to management and operating contracts, additional guidance is published and made available by the Office of Procurement and Assistance Policy, within the Headquarters procurement organization.

970.5201 Text of provisions and clauses.

970.5203–1 Management controls

As prescribed in 48 CFR 970.0370–2(a), insert the following clause:

Management Controls (Month and Year TBE)

(a)(1) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against theft, fraud, waste, and unauthorized use; all obligations and costs that are incurred under the contract are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all revenues, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.

(2) The systems of controls employed by the contractor shall be documented and satisfactory to DOE, and shall be developed and maintained in accordance with the Comptroller General's standards for internal controls, as set forth in General Accounting Office Policy and Procedures Manual for Guidance to Federal Agencies, (Oct 1984), as amended.

(3) Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and internal controls in their areas of assigned responsibility.

(4) The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and internal controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the system are being accomplished and that these systems and controls are working effectively.

(b) The contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

(End of Clause)

970.5203–2 Performance improvement and collaboration.

As prescribed in 48 CFR 970.0370–2(b), insert the following clause:

Performance Improvement and Collaboration (Month and Year TBE)

(a) The contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of contract performance or reduce overall cost of operation under the contract. Such improvements may result from changes in organization, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.

(b) The contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management contractors and affiliated contractors which manage or operate DOE sites or facilities for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.

(c) The contractor may consult with the contracting officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The contractor may request the assistance of the contracting officer in the communication of the success of improvements to other management and operating contractors in accordance with paragraph (b) of this clause.

(d) The contractor shall notify the contracting officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

(End of Clause)

970.5203–3 Contractor's organization.

As prescribed in 48 CFR 970.0371–9, insert the following clause:

Contractor's Organization (Month and Year TBE)

(a) *Organization chart.* As promptly as possible after the execution of this contract, the contractor shall furnish to the contracting officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215–70) to be employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.

(b) *Supervisory representative of contractor.* Unless otherwise directed by the contracting officer, a competent full-time resident supervisory representative of the contractor satisfactory to the contracting officer shall be in charge of the work at the site, and any work off-site, at all times.

(c) *Control of employees.* The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be contrary to the public interest, the Government reserves the right to require the contractor to remove the employee.

(d) *Standards and procedures.* The contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the contracting officer.

(End of Clause)

970.5204–1 Counterintelligence.

(a) As prescribed in 48 CFR 970.0404–4(a), insert the following clause in contracts containing the clauses at 48 CFR 952.204–2, Security, and 48 CFR 952.204–70, Classification/Declassification:

Counterintelligence (Month and Year TBE)

(a) The contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) The contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

(End of Clause)

970.5204–2 Laws, regulations, and DOE directives.

As prescribed in 48 CFR 970.0470–2, insert the following clause:

Laws, Regulations, and DOE Directives (Month and Year TBE)

(a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and Regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.

(b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, "Changes."

(c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

(d) Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses required for the performance of work under this contract.

(e) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

(End of Clause)

970.5204–3 Access to and ownership of records.

As prescribed in 48 CFR 970.0407–1–3, insert the following clause:

Access to and Ownership of Records (Month and Year TBE)

(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the process of the work or, in any event, as the contracting officer shall direct upon completion or termination of the contract.

(b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. [The contracting officer shall identify which of the following categories of records will be included in the clause.]

(1) Employment-related records (such as workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health related records, except for those records described by the contract as being maintained in Privacy Act systems of records.

(2) Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (*i.e.*, the contractor's corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232–3, Accounts, Records, and Inspection, are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its

designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(d) Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.

(f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

(g) Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:

(1) The value of the subcontract is greater than $2 million (unless specifically waived by the contracting officer);

(2) The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or

(3) The subcontract includes 48 CFR 970.5223–1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

(End of Clause)

970.5208–1 Printing.

As prescribed in 48 CFR 970.0808–3, insert the following clause:

Printing (Month and Year TBE)

(a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

(b) The term "Printing" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

(c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.

(d) The Contractor shall include the substance of this clause in all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations).

(End of Clause)

970.5209–1 Requirement for guarantee of performance.

As prescribed in 48 CFR 970.0970–2, the contracting officer shall insert the following provision in solicitations for management and operating contracts:

Requirement for Guarantee of Performance (Month and Year TBE)

The successful offeror is required by other provisions of this solicitation to organize a dedicated corporate entity to carry out the work under the contract to be awarded as a result of this solicitation. The successful offeror will be required, as part of the determination of responsibility of the newly organized, dedicated corporate entity and as a condition of the award of the contract to that entity, to furnish a guarantee of that entity's performance. That guarantee of performance must be satisfactory in all respects to the Department of Energy.

(End of Clause)

970.5215–1 Total available fee: Base fee amount and performance fee amount.

As prescribed in 48 CFR 970.1504–5(a), insert the following clause. The clause should be tailored to reflect the contract's actual inclusion of base fee amount and performance fee amount.

Total Available Fee: Base Fee Amount and Performance Fee Amount (Month and Year TBE)

(a) Total available fee. Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, "Payments and advances."

(b) Fee Negotiations. Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Senior Procurement Executive, or designee, the contracting officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The contracting officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the contracting officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Senior Procurement Executive, or designee.

(c) Determination of Total Available Fee Amount Earned. (1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the contracting officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.

(2) The DOE Operations/Field Office Manager, or designee, will be (insert title of DOE Operations/Field Office Manager, or designee). The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the DOE Operations/Field Office Manager, or designee.

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled, "Conditional Payment of Fee, Profit, or Incentives" if contained in the contract.

(d) Performance Evaluation and Measurement Plan(s). To the extent not set forth elsewhere in the contract:

(1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor:

(i) prior to the start of an evaluation period if the requirements, evaluation areas, specific

incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or

(ii) not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the contracting officer.

(2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.

(3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The contracting officer shall notify the contractor:

(i) of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;

(ii) of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or

(iii) if such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.

(e) Schedule for total available fee amount earned determinations. The DOE Operations/Field Office Manager, or designee, shall issue the final total available fee amount earned determination in accordance with the schedule set forth in the Performance Evaluation and Measurement Plan(s). However, a determination must be made within sixty calendar days after the receipt by the contracting officer of the Contractor's self-assessment, if one is required or permitted by paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later. If the contracting officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the contracting officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

(End of Clause)

Alternate I (Month and Year TBE). As prescribed in 48 CFR 970.1504–5(a)(1), when the award fee cycle consists of two or more evaluation periods, add the following to paragraph (c):

(4) At the sole discretion of the Government, unearned total available fee amounts may be carried over from one evaluation period to the next, so long as the periods are within the same award fee cycle.

Alternate II (Month and Year TBE). As prescribed in 48 CFR 970.1504–5(a)(2), when the award fee cycle consists of one evaluation period, add the following to paragraph (c):

(4) Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.

Alternate III (Month and Year TBE). As prescribed in 48 CFR 970.1504–5(a)(3), when the DOE Operations/Field Office Manager, or designee, requires the contractor to submit a self-assessment, add the following as paragraph (f):

(f) Contractor self-assessment. Following each evaluation period, the Contractor shall submit a self-assessment within (*Insert Number*) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

Alternate IV (Month and Year TBE). As prescribed in 48 CFR 970.1504–5(a)(4), when the DOE Operations/Field Office Manager, or designee, permits the contractor to submit a self-assessment at the contractor's option, add the following text as paragraph (f):

(f) Contractor self-assessment. Following each evaluation period, the Contractor may submit a self-assessment, provided such assessment is submitted within (*Insert Number*) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the Contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

970.5215–2 Make-or-buy plan.

As prescribed in 48 CFR 970.1504–5(b), insert the following clause:

Make-or-Buy Plan (Month and Year TBE)

(a) *Definitions. Buy item* means a work activity, supply, or service to be produced or performed by an outside source, including a subcontractor or an affiliate, subsidiary, or division of the contractor.

Make item means a work activity, supply, or service to be produced or performed by the contractor using its personnel and other resources at the Department of Energy facility or site.

Make-or-buy plan means a contractor's written program for the contract that identifies work efforts or requirements that either are "make items" or "buy items".

(b) *Make-or-buy plan.* The contractor shall develop and implement a make-or-buy plan that establishes a preference for providing supplies and services on a least-cost basis, subject to any specific make or buy criteria identified in the contract or otherwise provided by the contracting officer. In developing and implementing its make-or-buy plan, the contractor agrees to assess subcontracting opportunities and implement subcontracting decisions in accordance with the following:

(1) The contractor shall conduct internal productivity improvement and cost-reduction programs so that in-house performance options can be made more efficient and cost-effective.

(2) The contractor shall consider subcontracting opportunities with the maximum practicable regard for open communications with potentially affected employees and their representatives. Similarly, a contractor shall communicate its plans, activities, cost-benefit analyses, and decisions to those stakeholders, including representatives of the community and local businesses, likely to be affected by such actions.

(c) *Submission and approval.* For new contract awards, the contractor shall submit an initial make-or-buy plan, for approval, within 180 days after contract award. If the existing contract is to be extended, the contractor shall submit a make-or-buy plan for review and approval at least 90 days prior to the commencement of the negotiations for the extension. The following documentation shall be prepared and submitted:

(1) A description of each work item, and if appropriate, the identification of the associated Work Authorization or Work Breakdown Structure element;

(2) The categorization of each work item as "must make," "must buy," or "can make or buy," with the reasons for such categorization in consideration of the program specific make or buy criteria (including least cost considerations). For non-core capabilities categorized as "must make," a cost/benefit analysis must be performed for each item if:

(i) The contractor is not the least-cost performer, and

(ii) A program specific make-or-buy criterion does not otherwise justify a "must make" categorization;

(3) A decision to either "make" or "buy" in consideration of the program specific

make or buy criteria (including least cost considerations) for work effort categorized as "can make or buy";

(4) Identification of potential suppliers and subcontractors, if known, and their location and size status;

(5) A recommendation to defer a make or buy decision where categorization of an identifiable work effort is impracticable at the time of initial development of the plan and a schedule for future re-evaluation;

(6) A description of the impact of a change in current practice of making or buying on the existing work force; and

(7) Any additional information appropriate to support and explain the plan.

(d) *Conduct of operations.* Once a make-or-buy plan is approved, the contractor shall perform in accordance with the plan.

(e) *Changes to the make-or-buy plan.* The make-or-buy plan established in accordance with paragraph (b) of this clause shall remain in effect for the term of the contract, unless:

(1) A lesser period is provided either for the total plan or for individual items or work effort;

(2) The circumstances supporting the make-or-buy decisions change, or

(3) New work is identified.

At least annually, the contractor shall review its approved make-or-buy plan to ensure that it reflects current conditions. Changes to the approved make-or-buy plan shall be submitted in advance of the effective date of the proposed change in sufficient time to permit evaluation and review. Changes shall be submitted in accordance with the instructions provided by the contracting officer. Modification of the make-or-buy plan to incorporate proposed changes or additions shall be effective upon the contractor's receipt of the contracting officer's written approval.

(End of Clause)

970.5215–3 Conditional payment of fee, profit, or incentives.

As prescribed in 48 CFR 970.1504–5(c), insert the following clause:

Conditional Payment of Fee, Profit, or Incentives (Month and Year TBE)

In order for the Contractor to receive all otherwise earned fee, fixed fee, profit, or share of cost savings under the contract in an evaluation period, the Contractor must meet the minimum requirements in paragraphs (a) and (b) of this clause, and if Alternate I is applicable, (a) through (d) of this clause. If the Contractor does not meet the minimum requirements, the DOE Operations/Field Office Manager or designee may make a unilateral determination to reduce the evaluation period's otherwise earned fee, fixed fee, profit or share of cost savings as described in the following paragraphs of this clause.

(a) *Minimum requirements for Environment, Safety & Health (ES&H) Program.* The Contractor shall develop, obtain DOE approval of, and implement a Safety Management System in accordance with the provisions of the clause entitled, "Integration of Environment, Safety and Health into Work Planning and Execution," if included in the contract, or as otherwise agreed to with the contracting officer. The minimal performance requirements of the system will be set forth in the approved Safety Management System, or similar document. If the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the system during the evaluation period, the DOE Operations/Field Office Manager or designee, at his/her sole discretion, may reduce any otherwise earned fees, fixed fee, profit or share of cost savings for the evaluation period by an amount up to the amount earned.

(b) *Minimum requirements for catastrophic event.* If, in the performance of this contract, there is a catastrophic event (such as a fatality, or a serious workplace-related injury or illness to one or more Federal, contractor, or subcontractor employees or the general public, loss of control over classified or special nuclear material, or significant damage to the environment), the DOE Operations/Field Office Manager or designee may reduce any otherwise earned fee for the evaluation period by an amount up to the amount earned. In determining any diminution of fee, fixed fee, profit, or share of cost savings resulting from a catastrophic event, the DOE Operations/Field Office Manager or designee will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the contractor or other sources.

(End of Clause)

Alternate I (Month and Year TBE). As prescribed in 48 CFR 970.1504–5(c), for contracts awarded on a cost-plus-award-fee, incentive fee or multiple fee basis, add the following paragraphs (c) and (d):

(c) *Minimum requirements for specified level of performance.* (1) At a minimum the Contractor must perform the following:

(i) the requirements with specific incentives at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimal level of performance has been established in the specific incentive;

(ii) all of the performance requirements directly related to requirements specifically incentivized at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

(iii) all other requirements at a level of performance such that the total performance of the contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the contracting officer. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

(d) *Minimum requirements for cost performance.* (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.

(2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.

(3) The Contractor's performance within the stipulated cost performance levels for the evaluation period shall be determined by the contracting officer. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, at his/her sole discretion, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

970.5215–4 Cost reduction.

As prescribed in 48 CFR 970.1504–5(d), insert the following clause:

Cost Reduction (Month and Year TBE)

(a) *General.* It is the Department of Energy's (DOE's) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected, and develop and submit Cost Reduction Proposals (CRPs) to the contracting officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (g) of this clause.

(b) *Definitions. Administrative cost* is the contractor cost of developing and administering the CRP.

Design, process, or method change is a change to a design, process, or method which has established cost, technical and schedule baseline, is defined, and is subject to a formal control procedure. Such a change must be innovative, initiated by the contractor, and applied to a specific project or program.

Development cost is the Contractor cost of up-front planning, engineering, prototyping, and testing of a design, process, or method.

DOE cost is the Government cost incurred implementing and validating the CRP.

Implementation cost is the Contractor cost of tooling, facilities, documentation, etc., required to effect a design, process, or method change once it has been tested and approved.

Net Savings means a reduction in the total amount (to include all related costs and fee) of performing the effort where the savings revert to DOE control and may be available for deobligation. Such savings may result from a specific cost reduction effort which is

negotiated on a cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price basis, or may result directly from a design, process, or method change. They may also be savings resulting from formal or informal direction given by DOE or from changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget.

Shared Net Savings are those net savings which result from:

(1) A specific cost reduction effort which is negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, and is the difference between the negotiated target cost of performing an effort as negotiated and the actual allowable cost of performing that effort; or

(2) A design, process, or method change, which occurs in the fiscal year in which the change is accepted and the subsequent fiscal year, and is the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort utilizing a revised plan intended to reduce costs along with any Contractor development costs, implementation costs, administrative costs, and DOE costs associated with the revised plan. Administrative costs and DOE costs are only included at the discretion of the contracting officer. Savings resulting from formal or informal direction given by the DOE or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not to be considered as shared net savings for purposes of this clause and do not qualify for incentive sharing.

(c) *Procedure for submission of CRPs.* (1) CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts or for design, process, or methods changes submitted by the Contractor shall contain, at a minimum, the following:

(i) Current Method (Baseline)—A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative, and supporting documentation.

(ii) New Method (New Proposed Baseline)—A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished, and supporting documentation.

(iii) Feasibility Assessment—A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current method (baseline) and proposed new method including all related costs.

(2) In addition, CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts shall contain, at a minimum, the following:

(i) The proposed contractual arrangement and the justification for its use; and

(ii) A detailed cost/price estimate and supporting rationale. If the approach is proposed on an incentive basis, minimum and maximum cost estimates should be included along with any proposed sharing arrangements.

(d) *Evaluation and Decision.* All CRPs must be submitted to and approved by the contracting officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may:

(1) Pose a risk to the health and safety of workers, the community, or to the environment;

(2) Result in a waiver or deviation from DOE requirements, such as DOE Orders and joint oversight agreements;

(3) Require a change in other contractual agreements;

(4) Result in significant organizational and personnel impacts;

(5) Create a negative impact on the cost, schedule, or scope of work in another area;

(6) Pose a potential negative impact on the credibility of the Contractor or the DOE; and

(7) Impact successful and timely completion of any of the work in the cost, technical, and schedule baseline.

(e) *Acceptance or Rejection of CRPs.* Acceptance or rejection of a CRP is a unilateral determination made by the contracting officer. The contracting officer will notify the Contractor that a CRP has been accepted, rejected, or deferred within (*Insert Number*) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will:

(1) Result in net savings (in the sharing period if a design, process, or method change);

(2) Not reappear as costs in subsequent periods; and

(3) Not result in any impairment of essential functions.

(f) The failure of the contracting officer to notify the Contractor of the acceptance, rejection, or deferral of a CRP within the specified time shall not be construed as approval.

(g) *Adjustment to Original Estimated Cost and Fee.* If a CRP is established on a cost-plus-incentive-fee, fixed-price incentive or firm-fixed-price basis, the originally estimated cost and fee for the total effort shall be adjusted to remove the estimated cost and fee amount associated with the CRP effort.

(h) *Sharing Arrangement.* If a CRP is accepted, the Contractor may share in the shared net savings. For a CRP negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, with the specific incentive arrangement (negotiated target costs, target fees, share lines, ceilings, profit, etc.) set forth in the contractual document authorizing the effort, the Contractor's share shall be the actual fee or profit resulting from such an arrangement. For a CRP negotiated as a cost savings incentive resulting from a design, process, or method change, the Contractor's share shall be a percentage, not to exceed 25% of the shared net savings. The specific percentage and sharing period shall be set forth in the contractual document.

(i) *Validation of Shared Net Savings.* The contracting officer shall validate actual shared net savings. If actual shared net savings cannot be validated, the contractor will not be entitled to a share of the net shared savings.

(j) *Relationship to Other Incentives.* Only those benefits of an accepted CRP not rewardable under other clauses of this contract shall be rewarded under this clause.

(k) *Subcontracts.* The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs, and any CRP incentive payments to a subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings.

(End of Clause)

970.5215–5 Limitation on fee.

As prescribed in 48 CFR 970.1504–5(e), the contracting officer shall insert the following provision:

Limitation on Fee (Month and Year TBE)

(a) For the purpose of this solicitation, fee amounts shall not exceed the total available fee allowed by the fee policy at 48 CFR 970.1504–1–1,or as specifically stated elsewhere in the solicitation.

(b) The Government reserves the unilateral right, in the event an offeror's proposal is selected for award, to limit: fixed fee to not exceed an amount established pursuant to 48 CFR 970.1504–1-5; and total available fee to not exceed an amount established pursuant to 48 CFR 970.1504–1–9; or fixed fee or total available fee to an amount as specifically stated elsewhere in the solicitation.

(End of Clause)

970.5222–1 Collective bargaining agreements—management and operating contracts.

As prescribed in 48 CFR 970.2201–1–3, insert the following clause:

Collective Bargaining Agreements—Management and Operating Contracts (Month and Year TBE)

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

(End of Clause)

970.5222–2 Overtime management.

As prescribed in 48 CFR 970.2201–2–2, insert the following clause:

Overtime Management (Month and Year TBE)

(a) The contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this contract.

(b) The contractor shall notify the contracting officer when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.

(c) The contracting officer may require the submission, for approval, of a formal annual overtime control plan whenever contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the contracting officer otherwise deems overtime expenditures excessive. The plan shall include, at a minimum:

(1) An overtime premium fund (maximum dollar amount);

(2) Specific controls for casual overtime for non-exempt employees;

(3) Specific parameters for allowability of exempt overtime;

(4) An evaluation of alternatives to the use of overtime; and

(5) Submission of a semi-annual report that includes for exempt and non-exempt employees:

(i) Total cost of overtime;

(ii) Total cost of straight time;

(iii) Overtime cost as a percentage of straight-time cost;

(iv) Total overtime hours;

(v) Total straight-time hours; and

(vi) Overtime hours as a percentage of straight-time hours.

(End of Clause)

970.5223–1 Integration of environment, safety, and health into work planning and execution.

As prescribed in 48 CFR 970.2303–2(a), insert the following clause:

Integration of Environment, Safety, and Health Into Work Planning and Execution (Month and Year TBE)

(a) For the purposes of this clause,

(1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2) Employees include subcontractor employees.

(b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:

(1) Define the scope of work;

(2) Identify and analyze hazards associated with the work;

(3) Develop and implement hazard controls;

(4) Perform work within controls; and

(5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.

(e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives." The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the contractor is responsible for compliance with the ES&H requirements applicable to this contract. The contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

(i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may require that the subcontractor submit a Safety Management System for the contractor's review and approval.

(End of Clause)

970.5223–2 Acquisition and use of environmentally preferable products and services.

As prescribed in 48 CFR 970.2304–2, insert the following clause:

Acquisition and Use of Environmentally Preferable Products and Services (Month and Year TBE)

(a) In the performance of this contract, the Contractor shall comply with the requirements of the following issuances:

(1) Executive Order 13101 of September 14, 1998, entitled "Greening the Government Through Waste Prevention, Recycling and Federal Acquisition."

(2) Section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. 6962, Pub. L. 94–580, 90 Stat. 2822).

(3) Title 40 of the Code of Federal Regulations, Subchapter I, Part 247 (Comprehensive Guidelines for the Procurement of Products Containing Recovered Materials) and such other Subchapter I Parts or Comprehensive Procurement Guidelines as the Environmental Protection Agency may issue from time to time as guidelines for the procurement of products that contain recovered/recycled materials.

(4) "U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials" and related guidance document(s), as they are identified in writing by the Department.

(b) The Contractor shall prepare and submit reports on matters related to the use of environmentally preferable products and services from time to time in accordance with written direction (*e.g.*, in a specified format) from the contracting officer.

(c) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its concerns and seek implementing guidance on Federal and Departmental policy, plans, and program guidance with the DOE recycling point of contact, who shall be identified by the contracting officer. Reports required pursuant to paragraph (b) of this clause, shall be submitted through the DOE recycling point of contact.

(End of Clause)

970.5223–3 Agreement regarding workplace substance abuse programs at DOE facilities.

As prescribed in 970.2305–4(a), the contracting officer shall insert the following provision:

Agreement Regarding Workplace Substance Abuse Programs at DOE Sites (Month and Year TBE)

(a) Any contract awarded as a result of this solicitation will be subject to the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

(b) By submission of its offer, the officer agrees to provide to the contracting officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707.

(c) Failure of the offeror to agree to the condition of responsibility set forth in paragraph (b) of this provision, renders the offeror unqualified and ineligible for award.

(End of Provision)

970.5223–4 Workplace substance abuse programs at DOE sites.

As prescribed in 48 CFR 970.2305–4(b), insert the following clause:

Workplace Substance Abuse Programs at DOE Sites (Month and Year TBE)

(a) Program Implementation. The contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) Remedies. In addition to any other remedies available to the Government, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Subcontracts. (1) The contractor agrees to notify the contracting officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the contractor believes may be subject to the requirements of 10 CFR part 707.

(2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.

(3) The contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

(End of clause)

970.5226–1 Diversity Plan.

As prescribed in 48 CFR 970.2671–2, insert the following clause:

Diversity Plan (Month and Year TBE)

The Contractor shall submit a Diversity Plan to the contracting officer for approval within 90 days after the effective date of this contract. The contractor shall submit an update to its Plan with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in Appendix ____. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, and (5) economic development (including technology transfer).

(End of Clause)

970.5226–2 Workforce restructuring under section 3161 of the National Defense Authorization Act for Fiscal Year 1993.

As prescribed in 48 CFR 970.2672–3, insert the following clause:

Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Month and Year TBE)

(a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the contractor agrees to (1) comply with the Department of Energy Workforce Restructuring Plan for the facility, if applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.

(b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

(End of Clause)

970.5226–3 Community Commitment.

As prescribed in 48 CFR 970.2673–2, insert the following clause:

Community Commitment (Month and Year TBE)

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.

(End of Clause)

970.5227–1 Rights in Data—Facilities.

As prescribed in 48 CFR 970.2704–3(a), insert the following clause:

Rights in Data—Facilities (Month and Year TBE)

(a) *Definitions.* (1) *Computer data bases,* as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) *Computer software,* as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or

cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) *Data*, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) *Limited rights data*, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.

(5) *Restricted computer software*, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

(6) *Technical data*, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(7) *Unlimited rights*, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.* (1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause ("Rights in Limited Rights Data") or paragraph (f) of this clause ("Rights in Restricted Computer Software"); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material. (1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

(2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the technical data or computer software prior to its delivery.

(d) Subcontracting. (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227–14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227–16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227–1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and (ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

(e) *Rights in Limited Rights Data.* Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided,

however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. ____ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(f) Rights in Restricted Computer Software. (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice—Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. ____. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used:

Restricted Rights Notice—Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. ____ with (name of Contractor).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

(g) *Relationship to patents.* Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of Clause)

Alternate I (Month and Year TBE). As prescribed in 48 CFR 970.2704–3(a), where access to Category C–24 restricted data is contemplated in the performance of a contract the contracting officer shall insert the phrase "and except Restricted Data in category C–24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology" after "laser isotope separation" and before the comma in paragraph (b)(2)(ii) of the clause at 48 CFR 970.5227–1, Rights in Data—Facilities, as appropriate.

(End of Clause)

970.5227–2 Rights in Data—Technology Transfer.

As prescribed in 48 CFR 970.2704–3(b), insert the following clause:

Rights in Data Technology Transfer (Month and Year TBE)

(a) *Definitions.* (1) *Computer data bases,* as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) *Computer software,* as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) *Data,* as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) *Limited rights data,* as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (g) of this clause.

(5) *Restricted computer software,* as used in this clause, means computer software developed at private expense and that is a

trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (h) of this clause.

(6) *Technical data*, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(7) *Unlimited rights*, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.* (1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (g) of this clause ("Rights in Limited Rights Data") or paragraph (h) of this clause ("Rights in Restricted Computer Software"); and (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) *Copyright (General).* (1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(d) *Copyrighted works (scientific and technical articles).* (1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) The contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this manuscript, or allow others to do so, for United States Government purposes.

(End of Notice)

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) *Copyrighted works (other than scientific and technical articles and data produced under a CRADA).* The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) Contractor Request to Assert Copyright.

(i) For data other than scientific and technical articles and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:

(A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as

well as an abstract which is descriptive of the data and is suitable for dissemination purposes, (B) The program under which it was funded, (C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement, (D) Whether the data is subject to export control, (E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, "Technology Transfer Mission," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period, and (F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE will be expressly withheld. Such excepted categories include data whose release (A) would be detrimental to national security, *i.e.*, involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes, (B) would not enhance the appropriate transfer or dissemination and commercialization of such data, (C) would have a negative impact on U.S. industrial competitiveness, (D) would prevent DOE from meeting its obligations under treaties and international agreements, or (E) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which DOE may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the contracting officer.

(2) DOE Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond, and the reasons therefor.

(3) Permission for Contractor to Assert Copyright.

(i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause: (A) an abstract describing the software suitable for publication, (B) the source code for each software program, and (C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(ii) Unless otherwise directed by the contracting officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

(iii) For a five year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Upon request, the initial period may be extended after DOE approval. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.

(iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3) (iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows: Notice: These data were produced by (insert name of Contractor) under Contract No. ____ with the Department of Energy. For (period approved by DOE Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data , apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(End of Notice)

(vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made

a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65—"Appeals."

(vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.

(viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

(4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy (DOE). All rights in the computer software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(End of Notice)

(5) a similar notice can be used for data, other than computer software, upon approval of DOE Patent Counsel.

(f) Subcontracting. (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227–14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227–16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(h). The Contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227–1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

(g) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice:"

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. ____ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(h) Rights in Restricted Computer Software. (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice:"

Restricted Rights Notice—Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. ____. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the

type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice—Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. ____ with (name of Contractor).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

(i) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of Clause)

Alternate I (Month and Year TBE). As prescribed in 48 CFR 970.2704–3(b), where access to Category C–24 restricted data is contemplated in the performance of a contract the contracting officer shall insert the phrase "and except Restricted Data in category C–24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology" after "laser isotope separation" and before the comma in paragraph (b)(2)(ii) of the clause at 48 CFR 970.5227–2, Rights in Data—Technology Transfer, as appropriate.

(End of Clause)

970.5227–3 Technology Transfer Mission.

As prescribed in 48 CFR 970.2770–4(a), insert the following clause:

Technology Transfer Mission (Month and Year TBE)

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101–189 and as amended by Pub. L. 103–160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) Authority. (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Laboratory, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101–189, Sections 3134 and 3160 of Pub. Law 103–160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 *et seq.*); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Laboratory; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Laboratory that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel, assignments, and licensing in accordance with this clause.

(b) *Definitions* (1) *Contractor's Laboratory Director* means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

(2) *Intellectual Property* means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

(3) *Cooperative Research and Development Agreement (CRADA)* means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.

(4) *Joint Work Statement (JWS)* means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the following:

(i) Purpose;

(ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;

(iii) Schedule for the work; and

(iv) Cost and resource contributions of the parties associated with the work and the schedule.

(5) *Assignment* means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.

(6) *Laboratory Biological Materials* means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(7) *Laboratory Tangible Research Product* means tangible material results of research which

(i) Are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;

(ii) Are not materials generally commercially available; and

(iii) Were made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(8) *Bailment* means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Laboratory Biological Materials or Laboratory Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

(c) *Allowable Costs.* (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the

Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work For Others) of the Laboratory for that fiscal year without written approval of the contracting officer.

(2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Insurance—Litigation and Claims" of this contract.

(d) Conflicts of Interest—Technology Transfer. The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to other persons participating in Laboratory research or related technology transfer activities. Such implementing procedures shall be provided to the contracting officer for review and approval within sixty (60) days after execution of this contract. The contracting officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with the CRADA activity in accordance with the provisions of paragraph (n)(5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;

(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;

(5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the contracting officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this Contract, obtain the approval of the contracting officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the contracting officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any individual who has been a Laboratory employee within the previous two years or to the company in which the individual is a principal; and

(9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements.

(10) Notify DOE prior to evaluating a proposal by a third party or DOE, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.

(e) Fairness of Opportunity. In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory and by entities other than the Contractor.

(f) U.S. Industrial Competitiveness. (1) In the interest of enhancing U.S. Industrial Competitiveness, the Contractor shall, in its licensing and assignments of Intellectual Property, give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its licensing and assignment decisions involving Laboratory intellectual property where the Laboratory obtains rights during the course of the Contractor's operation of the Laboratory under this contract:

(i) whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

(ii) (A) whether the proposed licensee or assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and

(B) in licensing any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights.

(2) If the Contractor determines that neither of the conditions in paragraphs (f)(1)(i) or (ii) of this clause are likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the contracting officer. The contracting officer shall act on any such requests for approval within thirty (30) days.

(3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204 (Preference for United States industry).

(g) Indemnity—Product Liability. In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the contracting officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) Disposition of Income. (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and development mission and objectives of the Laboratory and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 *et seq.*) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the Laboratory's budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.

(2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

(3) The Contractor shall establish subject to the approval of the contracting officer a

policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the contracting officer.

(i) Transfer to Successor Contractor. In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the contracting officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the contracting officer.

(j) Technology Transfer Affecting the National Security.

(1) The Contractor shall notify and obtain the approval of the contracting officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) Records. The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the contracting officer to enable DOE to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE and in such a format which will serve to adequately inform DOE of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

(l) Reports to Congress. To facilitate DOE's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the contracting officer on or before October 1st of each year.

(m) Oversight and Appraisal. The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the contracting officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) Technology Transfer Through Cooperative Research and Development Agreements. Upon approval of the contracting officer and as provided in a DOE approved Joint Work Statement (JWS), the Laboratory Director, or designee, may enter into CRADAs on behalf of the DOE subject to the requirements set forth in this paragraph.

(1) Review and Approval of CRADAs. (i) Except as otherwise directed in writing by the contracting officer, each JWS shall be submitted to the contracting officer for approval. The Contractor's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the contracting officer in the approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.

(iii) Within ninety (90) days after submission of a JWS, the contracting officer shall approve, disapprove or request modification to the JWS. If a modification is required, the contracting officer shall approve or disapprove any resubmission of the JWS within thirty (30) days of its resubmission, or ninety (90) days from the date of the original submission, whichever is later. The contracting officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS.

(iv) Upon approval of a JWS, the Contractor's Laboratory Director or designee may submit a CRADA, based upon the approved JWS, to the contracting officer. The contracting officer, within thirty (30) days of receipt of the CRADA, shall approve or request modification of the CRADA. If the contracting officer requests a modification of the CRADA, an explanation of such request shall be provided to the Laboratory Director or designee.

(v) Except as otherwise directed in writing by the contracting officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the contracting officer. The Contractor may submit its proposed CRADA to the contracting officer at the time of submitting its proposed JWS or any time thereafter. However, the contracting officer is not obligated to respond under paragraph (n)(1)(iv) of this clause until within thirty (30) days after approval of the JWS or thirty (30) days after submittal of the CRADA, whichever is later.

(2) Selection of Participants. The Contractor's Laboratory Director or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;

(iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

(iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.

(3) Withholding of Data. (i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5)years from the time the data is first produced. The DOE shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the contracting officer in advance for a specific CRADA, the Contractor agrees, at the request of the contracting officer, to transmit such data to other DOE facilities for use by DOE or its Contractors by or on behalf of the Government. When data protected pursuant

to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) Work For Others and User Facility Programs. (i) WFO and User Facility Agreements (UFAs) are not CRADAs and will be available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees form prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith.

(ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including Work for Others and User Class Waivers) or individually negotiated waiver which applies to the agreement.

(5) Conflicts of Interest. (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee—

(*1*) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

(*2*) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.

(o) Technology Transfer in Other Cost-Sharing Agreements. In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(End of clause)

Alternate I (Month and Year TBE). As prescribed in 48 CFR 970.2770–4(b), add the following definition under paragraph (b) and the following new paragraph (p):

(b)(8) Privately funded technology transfer means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADAs) when such activities are conducted entirely without the use of Government funds.

(p) Nothing in paragraphs (c) Allowable Costs, (e) Fairness of Opportunity, (f) U.S. Industrial Competitiveness, (g) Indemnity—Product Liability, (h) Disposition of Income, and (i) Transfer to Successor Contractor of this clause are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

Alternate II (Month and Year TBE). As prescribed in 48 CFR 970.2770–4(c), the contracting officer shall substitute the phrase "weapon production facility" wherever the word "laboratory" appears in the clause.

970.5228–1 Insurance—Litigation and Claims.

As prescribed in 48 CFR 970.2803–2, insert the following clause:

Insurance—Litigation and Claims (Month and Year TBE)

(a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(c)(1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.

(2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.

(d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.

(e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed—

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled, "Obligation of Funds."

(f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)—

(1) Which are otherwise unallowable by law or the provisions of this contract; or

(2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.

(h) In addition to the cost reimbursement limitations contained in DEAR 970.3102–1–2, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's—

(1) Willful misconduct,

(2) Lack of good faith, or

(3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.

(j)(1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.

(4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR 970.5245–1.

(k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.

(l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall—

(1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Department representatives to collaborate with: In-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

(End of Clause)

970.5229–1 State and Local Taxes.

As prescribed in 48 CFR 970.2904–1(b), insert the following clause in management and operating contracts. The requirement for the notice prescribed in paragraph (a) of the clause may be broadened to include all State and local taxes which may be claimed as allowable costs when considered to be appropriate.

State and Local Taxes (Month and Year TBE)

(a) The contractor agrees to notify the contracting officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the contracting officer has advised the contractor, is or may be inapplicable or invalid; and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the contracting officer. Any State or local tax, fee, or charge paid with the approval of the contracting officer or on the basis of advice from the contracting officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

(b) The contractor agrees to take such action as may be required or approved by the contracting officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the contracting officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the contracting officer directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this article, the procedures and requirements of the clause entitled "Insurance-Litigation and Claims" shall apply and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.

(c) The Government shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

(End of Clause)

970.5231–1 Allowable Costs and Fee (Management and Operating Contracts).

As prescribed in 48 CFR 970.3170(a), insert the following clause:

Allowable Costs and Fee (Management And Operating Contracts) (Month and Year TBE)

(a) Compensation for contractor's services. Payment for the allowable costs as hereinafter defined, and of the fixed-fee, if any, as hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.

(b) Fixed-fee. The fixed-fee payable to the contractor for the performance of the work under this contract is $____ There shall be no adjustment in the amount of the contractor's fixed-fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual costs for performance of that work.

(c) Allowable costs. The allowable cost of performing the work under this contract shall be the costs and expenses that are actually incurred by the contractor in the performance of the contract work in accordance with its terms, that are necessary or incident thereto, and that are determined to be allowable as set forth in this paragraph. The determination of allowability of cost shall be based on:

(1) Allowability and reasonableness in accordance with 48 CFR 31.201–2(d) and 31.201–3;

(2) Standards promulgated by the Cost Accounting Standards Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances; and

(3) Recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost. Allowable costs shall not include the cost of any item described as unallowable in paragraph (e) of this clause except as indicated therein. Failure to mention an item of cost specifically in paragraphs (d) or (e) of this clause shall not imply either that it is allowable or that it is unallowable.

(d) Items of allowable cost. Subject to the other provisions of this clause, the following items of cost of work done under this contract shall be allowable to the extent indicated:

(1) Bonds and insurance, including self-insurance, as provided in the clause entitled, "Insurance-Litigation and Claims."

(2) Communication costs, including telephone services, local and long-distance calls, telegrams, cablegrams, postage, and similar items.

(3) Consulting services (including legal and accounting), and related expenses, as approved by the contracting officer, except as made unallowable by paragraphs (e)(16) and (e)(26).

(4) Reasonable litigation and other legal expenses, including counsel fees, if incurred in accordance with the clause of the contract entitled, "Insurance-Litigation and Claims", and the DOE approved contractor litigation management procedures (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable in this contract.

(5) Losses and expenses (including settlements made with the consent of the contracting officer) sustained by the contractor in the performance of this contract and certified in writing by the contracting officer to be reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.

(6) Materials, supplies, and equipment, including freight transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use and disposition thereof, subject to approvals required under other provisions of this contract.

(7) Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the contracting officer, and preparation of invention disclosures, reports and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with any "Patent Rights" clause of this contract.

(8) Personnel costs and related expenses incurred in accordance with the personnel appendix which is hereby incorporated by reference and made a part of this contract. It is specifically understood and agreed that said personnel appendix sets forth in detail personnel costs and related expenses to be allowable under this contract and is intended to document those personnel policies, practices and plans which have been found acceptable by the contracting officer. It is further understood and agreed that the contractor will advise DOE of any proposed changes in any matters covered by said policies, practices or plans which relate to this item of cost, and that the personnel appendix may be modified from time to time in writing by mutual agreement of the contractor and DOE without execution of an amendment to this contract for the purpose of effectuating any such changes in, or additions to, said personnel appendix as may be agreed upon by the parties. Such modifications shall be evidenced by execution of written numbered approval letters from the contracting officer or the contracting officer's representative. Types of personnel costs and related expenses to be incorporated into the personnel appendix, or amendments thereto, are as follows:

(i) Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time, including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor) committees, provided, however, that the contracting officer's approval is required in each instance of total compensation to an individual employee at an annual rate of $—— (see 48 CFR 970.3102–3–2) or more, when it is proposed that a total of 50 percent or more of such compensation be reimbursed under DOE cost-type contracts. Total compensation, as used here, includes only the employee's base salary, bonus, and incentive compensation payments;

(ii) Legally required contributions to old-age and survivors' insurance, unemployment compensation plans, and workers compensation plans, (whether or not covered by insurance); voluntary or agree-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);

(iii) Travel (except foreign travel, which requires specific approval by the contracting officer on a case-by-case basis); incidental subsistence and other allowances of contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents);

(iv) Employee relations, welfare, morale, etc.; programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; house or employee publications; and wellness/fitness centers;

(v) Personnel training (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the contracting officer on a case-by-case basis); including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills, and to develop scientific and technical personnel in specialized fields required in the contract work;

(vi) Recruitment of personnel (including help-wanted advertisement), including service of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the contractor for employment interviews; and

(vii) Net cost of operating plant-site cafeteria, dining rooms, and canteens attributable to the performance of the contract.

(viii) Compensation of a senior executive, provided that such compensation does not exceed the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy. Costs of executive compensation shall be determined pursuant to 48 CFR 31.205–6(p).

(9) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property and the restoration or clean-up of site and facilities to the extent approved by the contracting officer and as allowable under paragraph (f) of the clause of this contract entitled, "Property."

(10) Subcontracts and purchase orders, including procurements from contractor-controlled sources, subject to approvals required by other provisions of this contract.

(11) Subscriptions to trade, business, technical, and professional periodicals, as approved by the contracting officer.

(12) Taxes, fees, and charges levied by public agencies which the contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.

(13) Utility services, including electricity, gas, water, and sewerage.

(14) Indemnification of the Pension Benefit Guaranty Corporation, pursuant to the Employee Retirement Income Security Act of 1974, in accordance with 48 CFR 31.205–6(j)(3)(iv).

(15) Establishment and maintenance of bank accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the contracting officer.

(e) Items of unallowable costs. The following items of costs are unallowable under this contract to the extent indicated:

(1) Advertising and public relations costs designed to promote the contractor or its products, including the costs of promotional items and memorabilia such as models, gifts and souvenirs, and the cost of memberships in civic and community organizations; except those advertising and public relations costs

(i) Specifically required by the contract,

(ii) Approved in advance by the contracting officer as clearly in furtherance of work performed under the contract,

(iii) That arise from requirements of the contract and that are exclusively for recruiting personnel, acquiring scarce items for contract performance, disposing of scrap or surplus materials, the transfer of federally owned or originated technology to State and local governments and to the private sector, or acquisition of contract-required supplies and services, or

(iv)Where the primary purpose of the activity is to facilitate contract performance in support of the DOE mission.

(2) Bad debts (including expenses of collection) and provisions for bad debts arising out of other business of the contractor.

(3) Proposal expenses and costs of proposals.

(4) Bonuses and similar compensation under any other name, which (i) are not pursuant to an agreement between the

contractor and employee prior to the rendering of the services or an established plan consistently followed by the contract or (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.

(5) Central and branch office expenses of the contractor, except as specifically set forth in the contract.

(6) Commissions, bonuses, and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the contractor for the purpose of obtaining Government business.

(7) Contingency reserves, provisions for.

(8) Contributions and donations, including cash, contractor-owned property and services, regardless of the recipient.

(9) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Code of 1954, as amended, including the straight-line declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight line method), or sum-of-the-years digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life.

(10) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profit.

(11) Entertainment, including costs of amusement, diversion, social activities; and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization.

(12) Fines and penalties, except, with respect to civil fines and penalties only, if the contractor demonstrates to the contracting officer that—

(i) Such a civil fine or penalty was incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer; or

(ii) Such a civil fine or penalty was imposed without regard to fault and could not have been avoided by the exercise of due care.

(13) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of DOE applicable to transfers of such property to the contractor from others.

(14) Insurance (including any provisions of a self-insurance reserve) on any person where the contractor under the insurance policy is the beneficiary, directly or indirectly, and insurance against loss of or damage to Government property as defined in Clause

* * *

(15) Interest, however represented (except (i) Interest incurred in compliance with the contract clause entitled "State and local Taxes" or, (ii) imputed interest costs relating to leases classified and accounted for as capital leases under generally accepted accounting principles (GAAP), provided that the decision to enter into a capital leasing arrangement has been specifically authorized and approved by the DOE in accordance with applicable procedures and such interest costs are recorded in an appropriately specified DOE account established for such purpose), bond discounts and expenses, and costs of financing and refinancing operations.

(16) Legal, accounting, and consulting services and related costs incurred in connection with the preparation and issuance of stock, rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions of proposed actions of the United States, and prosecution or defense of patent infringement litigation (except where incurred pursuant to the contractor's performance of the Government-funded technology transfer mission and in accordance with the "Insurance—Litigation and Claims" clause).

(17) Losses or expenses: (i) On, or arising from the sale, exchange, or abandonment of capital assets, including investments;

(ii) On other contracts, including the contractor's contributed portion under cost-sharing contracts;

(iii) In connection with price reductions to and discount purchases by employees and others from any source;

(iv) That are compensated for by insurance or otherwise or which would have been compensated for by insurance required by law or by written direction of the contracting officer but which the contractor failed to procure or maintain through its own fault or negligence;

(v) That result from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel (as that term is defined in the clause of this contract entitled, "Property");

(vi) That represent liabilities to third persons that are not allowable under the clause of this contract entitled, "Insurance—Litigation and Claims"; or

(vii) That represent liabilities to third persons for which the contractor has expressly accepted responsibility under other terms of this contract.

(18) Maintenance, depreciation, and other costs incidental to the contractor's idle or excess facilities (including machinery and equipment), other than reasonable standby facilities.

(19) Membership in trade, business, and professional organizations, except as approved by the contracting officer.

(20) Precontract costs, except as expressly made allowable under other provisions in this contract.

(21) Research and development costs, unless specifically provided for elsewhere in this contract.

(22) Selling cost, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and other services performed for such purposes as applying or adapting the contractor's product for agency use.

(23) Storage of records pertaining to this contract after completion of operations under this contract, irrespective of contractual or statutory requirement for the preservation of records.

(24) Taxes, fees, and charges in connection with financing, refinancing, or refunding operations, including listing of securities on exchanges, taxes which are paid contrary to the clause entitled "State and Local Taxes," federal taxes on net income and excess profits, special assessments on land which represent capital improvement and taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to section 4971 or section 4975 of the Internal Revenue Code of 1954, as amended, respectively.

(25) Travel expenses of the officers, proprietors, executives, administrative heads and other employees of the contractor's central office or branch office organizations concerned with the general management, supervision, and conduct of the contractor's business as a whole, except to the extent that particular travel is in connection with the contract and approved by the contracting officer.

(26) Salary or other compensation (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organizational and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that cash payment therefor is required pursuant to the provisions of this contract or procedure of DOE applicable to the borrowing of such an individual from another cost-type contractor.

(27) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this contract or the cost of which exceeds the lesser of the lowest available commercial discount airfare, Government contract airfare, or customary standard (coach or equivalent) commercial airfare. Airfare costs in excess of the lowest such airfare are unallowable, except when such accommodations: Require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. Individual contractor determinations of nonavailability of commercial discount airfare or Government contract airfare will not be contested by DOE when the contractor can reasonably demonstrate such nonavailability or, on an overall basis, that established policies and procedures result in the routine use of the lowest available airfare. However, in order for air travel costs in excess of customary standard airfare to be allowable, the contractor must justify and document the applicable condition(s) set forth above.

(28) Special construction industry "funds" financed by employer contributions for such purposes as methods and materials research, public and industry relations, market

development, and disaster relief, except as specifically provided elsewhere in this contract.

(29) Late premium payment charges related to employee deferred compensation plan insurance.

(30) Facilities capital cost of money. (CAS 414 and CAS 417).

(31) Contractor costs incurred to influence either directly or indirectly—

(i) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or

(ii) Federal, State, or executive body of a political subdivision of a State action on regulatory and contract matters as described in the "Political Activity Cost Prohibition" clause of this contract.

(32) Commercial automobile rental expenses unless approved by the contracting officer.

(33) Costs incurred in connection with any criminal, civil or administrative proceeding commenced by the Federal Government or a State, local or foreign government, as provided in the clause titled "Cost prohibitions related to legal and other proceedings" incorporated elsewhere in this contract.

(34) Costs of alcoholic beverages.

(35) Contractor employee travel costs incurred for lodging, meals and incidental expenses which exceed on a daily basis the applicable maximum per diem rates in effect for Federal civilian employees at the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however, such payments must be properly authorized by an officer or appropriate official of the contractor and shall not exceed the higher amounts that may be authorized for Federal civilian employees in a similar situation.

Alternate I (Month and Year TBE). As prescribed in 48 CFR 970.3170(a)(1), paragraph (b) of the basic clause may be appropriately modified to address situations where the fee is for a period of time or different fees are allowed for various phases of the work.

Alternate II (Month and Year TBE). As prescribed in 48 CFR 970.3170(a)(2), the lead sentence in subparagraph (d)(8) of the basic clause may be modified, in appropriate circumstances, to read as follows:

"Personnel costs and related expenses incurred in accordance with established policies, programs, and schedules, and any changes thereto during the contract term, applicable to the contractor's private operations and consistently followed throughout its organization, as approved by the contracting officer, such as".

Alternate III (Month and Year TBE). As prescribed in 48 CFR 970.3170(a)(3), if the contractor will perform construction, add the following to paragraph (d) of the basic clause:

(16) Camp operations, to the extent approved by the contracting officer.

(17) Maintenance, inspection, repair, replacement, and transportation of construction plant and equipment to the extent not covered by rentals or insurance and as provided in rental agreements approved by the contracting officer.

(18) Rental for (i) construction plant and equipment rented by the contractor from others at rates and under written agreements approved by the contracting officer, and (ii) construction plant and equipment owned and furnished by the contractor under this contract.

Alternate IV (Month and Year TBE). As prescribed in 48 CFR 970.3170(a)(4), if no contractor-owned equipment is being utilized in the performance of the contract, paragraph (e)(18) of the basic clause may be omitted and the remaining subparagraphs renumbered accordingly.

Alternate V (Month and Year TBE). As prescribed in 48 CFR 970.3170(a)(5), in contracts with for-profit contractors, add the following to paragraph (e):

(36) Notwithstanding any other provision of this contract, the costs of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the contractor and/or subcontractor against otherwise unallowable costs, unless such insurance or bond is required by law, the express terms of this contract, or is authorized in writing by the contracting officer. The cost of commercial insurance to protect the contractor against the costs of correcting its own defects in materials or workmanship is an unallowable cost.

(37) Costs of gifts; however, gifts do not include awards for performance or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.

(38) The costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events except for the costs of employees' participation in company sponsored intramural sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

(End of Clause)

970.5231–2 Political activity cost prohibition.

As prescribed in 48 CFR 970.3170(b), insert the following clause:

Political Activity Cost Prohibition (Month and Year TBE)

(a) Pursuant to the allowable cost provisions established elsewhere under the contract, costs associated with the following activities are not reimbursable under the contract:

(1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities.

(6) Contractor costs incurred to influence (directly or indirectly) Federal, State, or local executive branch action on regulatory and contract matters.

(b) Costs of the following activities are excepted from the coverage of paragraph (a) of this clause; provided that the resultant contract costs are reasonable and otherwise comply with the allowable cost provisions of the contract:

(1) Providing Members of Congress, their staff members or staff of cognizant legislative committees, in response to a request (written or oral, prior or contemporaneous) from Members of Congress, their staff members or staff of cognizant legislative committees, or as otherwise directed by the contracting officer, information or expert advice of a factual technical, or scientific nature, with respect to topics directly related to the performance of the contract proposed legislation. In providing this information or expert advice, the contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging or meals incurred by contractor employees for the purpose of providing such information or expert advice shall also be reimbursable, provided the request for such information or expert advice is a prior written request signed by a Member of Congress, and provided such costs also comply with the allowable cost provisions of the contract.

(2) Providing State legislatures or subdivisions thereof, their staff members, or staff of cognizant legislative committees, in response to a prior written request from a State legislator, or as otherwise directed by the contracting officer, information or expert advice of factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. In providing this information or expert advice, the contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by contractor employees shall be

reimbursable, provided such costs also comply with the allowable costs provision of the contract.

(3) Any lobbying made unallowable under subparagraph (a)(3) above to influence State legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract if authorized by the contracting officer.

(4) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) Unallowable lobbying costs incurred, if any, shall not be charged to DOE, paid for with DOE funds or recorded as allowable cost in DOE's system of accounts.

(d) The contractor's annual certification, submitted as part of its annual claim (*i.e.*, Voucher Accounting for Net Expenditures Accrued required under the clause titled "Payments and Advances") or cost incurred statement, that the costs claimed are allowable under the contract, shall also serve as the contractor's certification that the requirements and standards of this clause have been complied with.

(e) The contractor shall maintain adequate records to demonstrate that the annual certifications of claimed costs as being allowable comply with the requirements of this clause.

(f) Time logs, calendars, or similar records shall not be created for purposes of complying with this clause during any particular calendar month when: (1) An employee engages in legislative liaison activities (as delineated in paragraphs (a) and (b) of this clause) 25 percent or less of the employees's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the contractor has not materially misstated allowable or unallowable costs of any nature, including legislative liaison costs. When conditions (f)(1) and (2) of this clause are met, the contractor is not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (f) (1) and (2) of this clause are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of legislative liaison activity time spent by employees during any calendar month.

(g) During contract performance, the contractor should resolve, in advance, any significant questions or disagreements between the contractor and DOE concerning compliance with this clause.

(h) In providing information or expert advice under paragraph (b)(1) and (b)(2) of this clause, the contractor shall advise the contracting officer in advance or as soon as practicable.

(End of Clause)

970.5231–3 Cost Prohibitions Related to Legal and Other Proceedings.

As prescribed in 48 CFR 970.3170(c), insert the following clause:

Cost Prohibitions Related to Legal and Other Proceedings (Month and Year TBE)

(a) *Definitions. Conviction*, as used in this section, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a conviction due to a plea of *nolo contendere*.

Costs include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; all elements of compensation, related costs, and expenses of employees, officers and directors; and any similar costs incurred before, during, and after commencement of a proceeding which bears a direct relationship to the proceeding.

Fraud, as used herein, means: (i) Acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents,

(ii) Acts which constitute a cause for debarment or suspension under 48 CFR 9.406–(2)(a) and 48 CFR 9.407–(2)(a), and

(iii) Acts which violate the False Claims Act, 31 U.S.C. 3729–3731, or the Anti-kickback Act, 41 U.S.C. 51 and 54.

Penalty does not include restitution, reimbursement, or compensatory damages.

Proceeding includes an investigation.

(b) Except as otherwise described in this section, costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, or costs incurred in connection with any criminal, civil or administrative proceeding by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding relates to a violation of, or failure to comply with a Federal, State, local or foreign statute or regulation by the contractor, and results in any of the following dispositions:

(1) In a criminal proceeding, conviction.

(2) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability.

(3) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(4) A final decision by an appropriate Federal official to debar or suspend the contractor, to rescind or void a contract, or to terminate a contract for default by reason of a violation of or failure to comply with a law or regulation.

(5) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b) (1), (2), (3) or (4) of this section.

(6) Not covered by paragraphs (b)(1) through (5) of this section, but where the underlying alleged contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of paragraphs (b)(1) through (5) of this section.

(c)(1) If a proceeding referred to in paragraph (b) of this clause is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the contractor and the Federal Government, then the costs incurred by the contractor in connection with such proceeding that are otherwise unallowable under paragraph (b) of this clause may be allowed to the extent specifically provided in such agreement.

(2) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the contractor in connection with such a proceeding that are not otherwise unallowable by regulation or by separate agreement with the United States, may be allowed if the contracting officer, in consultation with legal counsel, determines that there was very little likelihood that the third party would have been successful on the merits.

(d) If a proceeding referred to in paragraph (b) of this clause is commenced by a State, local or foreign government, the contracting officer may allow the costs incurred in such proceeding, provided the Senior Procurement Executive determines that the costs were incurred as a result of compliance with a specific term or condition of the contract, or specific written direction of the contracting officer.

(e) Costs incurred in connection with a proceeding described in paragraph (b) of this section, but which are not made unallowable by that paragraph, may be allowed by the contracting officer only to the extent that:

(1) The total costs incurred are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable contract costs, is not prohibited by any other provision(s) of this contract;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and

(4) The amount of costs allowed does not exceed 80 percent of the total costs incurred and otherwise allowable under the contract. Such amount that may be allowed (up to the 80 percent limit) shall not exceed the percentage determined by the contracting officer to be appropriate, considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. The amount of reimbursement allowed for legal costs in connection with any proceeding described in subparagraph (c)(2) shall be the amount determined to be reasonable by the contracting officer but shall not exceed 80 percent of otherwise allowable costs incurred. Agreements reached under paragraph (c) of this subsection shall be subject to this limitation. If, however, an agreement explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or less of the stated legal fees, no additional limitation need be applied.

(f) Contractor costs incurred in connection with the defense of suits brought by employees or ex-employees of the contractor under section 2 of the Major Fraud Act of 1988, including the cost of all relief necessary to make such employee whole, where the contractor was found liable or settled, are unallowable.

(g) Costs which may be unallowable under this clause, including directly associated costs, shall be differentiated and accounted for by the contractor so as to be separately identifiable. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the contracting officer shall generally withhold payment and not authorize the use of funds advanced under the contract for the payment of such costs. However, the contracting officer may, in appropriate circumstances, provide for conditional payment upon provision of adequate security; or other adequate assurance, and agreements by the contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

970.5231–4 Preexisting Conditions.

As prescribed in 48 CFR 970.3170(d), insert the following clause:

Preexisting Conditions (Month and Year TBE)

(a) The Department of Energy agrees to reimburse the contractor, and the contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the contractor arising out of any condition, act, or failure to act which occurred before the contractor assumed responsibility on [Insert date contract began]. To the extent the acts or omissions of the contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to [Insert date contract began], the contractor shall be responsible in accordance with the terms and conditions of this contract.

(b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

(End of Clause)

Alternate I (Month and Year TBE). As prescribed in 48 CFR 970.3170(d)(1), in contracts with incumbent management and operating contractors, substitute the following for paragraph (a) of the basic clause:

(a) Any liability, obligation, loss, damage, claim (including without limitation, a claim involving strict or absolute liability), action, suit, civil fine or penalty, cost, expense or disbursement, which may be incurred or imposed, or asserted by any party and arising out of any condition, act or failure to act which occurred before [Insert date this clause was included in contract], in conjunction with the management and operation of [Insert name of facility], shall be deemed incurred under Contract No. [Insert number of prior contract].

Alternate II (Month and Year TBE). As prescribed in 48 CFR 970.3170(d)(2), add the following paragraph (c) to the basic clause in contracts with management and operating contractors not previously working at that particular site or facility:

(c) The contractor has the duty to inspect the facilities and sites and timely identify to the contracting officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation. The contractor has the responsibility to take corrective action, as directed by the contracting officer and as required elsewhere in this contract.

(End of Clause)

970.5232–1 Reduction or suspension of advance, partial, or progress payments upon finding of substantial evidence of fraud.

As prescribed in 48 CFR 970.3200–1–1, insert the following clause:

Reduction or Suspension of Advance, Partial, or Progress Payments (Month and Year TBE)

(a) The contracting officer may reduce or suspend further advance, partial, or progress payments to the contractor upon a written determination by the Senior Procurement Executive that substantial evidence exists that the contractor's request for advance, partial, or progress payment is based on fraud.

(b) The contractor shall be afforded a reasonable opportunity to respond in writing.

(End of Clause)

970.5232–2 Payments and Advances.

As prescribed in 48 CFR 970.3204–3, insert the following clause:

Payments And Advances (Month and Year TBE)

(a) Installments of fixed-fee. Ninety percent (90%) of the fixed-fee shall become due and payable in periodic installments in amounts based on the proportion of the work then completed, as determined by the contracting officer, and the balance upon completion and acceptance of all work under this contract. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment, the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the letter-of-credit without prior written approval of the contracting officer.

(b) Payments on Account of Allowable Costs. The contracting officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the contracting officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

(c) Special bank account— use. All advances of Government funds shall be withdrawn pursuant to a letter of credit in favor of the bank or, in the option of the Government, shall be made by check payable to the contractor, and shall be deposited only in the Special Bank Account referred to in the Agreement for Special Bank Account, which is attached hereto and incorporated into this contract as an appendix. The contractor shall likewise deposit in the Special Bank Account any other revenues received by the contractor in connection with the work under this contract. No part of the funds in the Special Bank Account shall be (1) mingled with any funds of the contractor or (2) used for a purpose other than that of making payments for costs allowable under this contract or payments for other items specifically approved in writing by the contracting officer. If the contracting officer shall at any time determine that the balance on such bank account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.

(d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any bank account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the bank of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

(e) Financial settlement. The Government shall promptly pay to the contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the contracting officer) and fixed fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after (1) compliance by the contractor with DOE's patent clearance requirements, and (2) the furnishing by the contractor of:

(i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled "Property;" and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon

liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor should provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see also 48 CFR 970.5228–1, Insurance—Litigation and Claims); and

(C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents.

In arriving at the amount due the contractor under this clause, there shall be deducted, any claim which the Government may have against the contractor in connection with this contract, and deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the Special Bank Account may be applied to the amount due and any balance shall be returned to the Government forthwith.

(f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the contracting officer shall prescribe.

(g) Discounts. The contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the contracting officer finds that action is not in the best interest of the Government.

(h) Revenues. All revenues other than the contractor's fixed fee or fees, if any, accruing to the contractor in connection with the work under this contract shall be Government property and shall be deposited in the Special Bank Account to be available for payment of allowable cost under this contract.

(i) Direct payment of charges. The Government reserves the right, upon ten days written notice from the contracting officer to the contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the contractor therefor.

Alternate I (Month and Year TBE). As prescribed in 48 CFR 970.3204–3(a), if a separate fixed-fee is provided for a separate item of work, paragraph (a) of the basic clause should be modified to permit payment of the entire fixed-fee upon completion of that item.

Alternate II (Month and Year TBE). As prescribed in 48 CFR 970.3204–3(b), when total available fee provisions are used, replace paragraph (a) of the basic clause with the following paragraph (a):

(a) Payment of Base Fee and Award Fee. The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the FDO's issuing a Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled "Total Available Fee: Base Fee Amount and Performance Fee Amount." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement with the prior written approval of the contracting officer.

Alternate III (Month and Year TBE). As prescribed in 48 CFR 970.3204–3(c), the following paragraph (j) shall be included in management and operating contracts with integrated contractors:

(j) Review and approval of costs incurred. The contractor shall prepare and submit annually as of September 30, a voucher for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the voucher, and DOE, after audit and appropriate adjustment, will approve such voucher. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

970.5232–3 Accounts, Records, and Inspection.

As prescribed in 48 CFR 970.3270(a), insert the following clause:

Accounts, Records, and Inspection (Month and Year TBE)

(a) Accounts. The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues or other applicable credits, negotiated fixed amounts, fixed-fee accruals, and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

(b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE at all reasonable times, before and during the period of retention provided for in (d) below, and the contractor shall afford DOE proper facilities for such inspection and audit.

(c) Audit of subcontractors' records. The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.

(d) Disposition of records. Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable, revenues, and other applicable credits under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as provided in this contract, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

(e) Reports. The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.

(f) Inspections. The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time in such manner as it shall deem appropriate.

(g) Subcontracts. The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (i) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) Comptroller General. (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

(End of Clause)

Alternate I (Month and Year TBE). As prescribed in 48 CFR 970.3270(a)(1), if the contract includes the clause at 48 CFR 52.215–22, Price Reduction for Defective Cost or Pricing Data, the basic clause shall be modified as follows:

(a) Paragraph (a) of the basic clause shall be modified by adding the words "or anticipated to be incurred" after the words "allowable costs incurred."

(b) Paragraph (g) of the basic clause shall be modified by adding the following:

The contractor further agrees to include an "Audit" clause, the substance of which is the "Audit" clause set forth at 48 CFR 52.215–2, in each subcontract which does not include provisions similar to those in paragraph (a) through paragraph (g) and paragraph (h) of this clause, but which contains a "defective cost or pricing data" clause.

Alternate II (Month and Year TBE). As prescribed in 48 CFR 970.3270(a)(2), in cost-reimbursement contracts involving an estimated cost exceeding $5 million and expected to run for more than 2 years, and any other cost-reimbursement contract determined by the Head of the Contracting Activity in which the contractor has an established internal audit organization, add the following paragraph (i) to the basic clause:

(i) Internal audit. The contractor agrees to conduct an internal audit and examination satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the contracting officer. The contractor shall include this paragraph (i) in all cost-reimbursement subcontracts with an estimated cost exceeding $5 million and expected to run for more than 2 years, and any other cost-reimbursement subcontract determined by the Head of the Contracting Activity.

970.5232–4 Obligation of funds.

As prescribed in 48 CFR 970.3270(b), insert the following clause:

Obligation of Funds (Month and Year TBE)

(a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is ____ dollars ($)____. Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph (a) is to be construed as authorizing the contractor to exceed limitations stated in financial plans established by DOE and furnished to the contractor from time to time under this contract.

(b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the termination clause of the contract, or costs of claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fee. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of:

(1) Collections accruing to the contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract, and

(2) Other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) Notices—Contractor excused from further performance. The contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause, plus the contractor's best estimate of collections to be received and available during the ____ day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only ____ days and to cover the contractor's unpaid fee, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause, less the amount of the contractor's fee then earned but not paid, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the termination clause of the contract.

(d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor hereby agrees.

(1) To comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,

(2) To comply with other requirements of such plans and directives, and

(3) To notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

(e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the termination clause of the contract.

(End of Clause)

Alternate I (Month and Year TBE). As prescribed in 48 CFR 970.3270(b), paragraph (d) of the clause may be omitted in contracts which, expressly or otherwise, provide a contractual basis for equivalent controls in a separate clause.

970.5235–1 Federally Funded Research and Development Center Sponsoring Agreement.

As prescribed in 48 CFR 970.3501–4, the contracting officer shall insert the following clause:

Federally Funded Research and Development Center Sponsoring Agreement (Month and Year TBE)

(a) Pursuant to 48 CFR 35.017–1, this contract constitutes the sponsoring agreement between the Department of Energy and the contractor, which establishes the relationship for the operation of a Department of Energy sponsored Federally Funded Research and Development Center (FFRDC).

(b) In the operation of this FFRDC, the contractor may be provided access beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to Government employees and facilities needed to discharge its responsibilities efficiently and effectively. Because of this special relationship, it is essential that the FFRDC be operated in the public interest with objectivity and independence, be free from organizational conflicts of interest, and have full disclosure of its affairs to the Department of Energy.

(c) Unless otherwise provided by the contract, the contractor may accept work from a nonsponsor (as defined in 48 CFR 35.017) in accordance with the requirements and limitations of DOE Order 481.1, Work for Others (Non-Department of Energy Funded Work) (see current version).

(d) As an FFRDC, the contractor shall not use its privileged information or access to government facilities to compete with the private sector. Specific guidance on restricted activities is contained in DOE Order 481.1.

(End of Clause)

970.5236–1 Government Facility Subcontract Approval.

As prescribed in 48 CFR 970.3605–2, insert the following clause:

Government Facility Subcontract Approval (Month and Year TBE)

Upon request of the contracting officer and acceptance thereof by the contractor, the contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the contracting officer and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

(End of Clause)

970.5237–1 Waiver of Limitations on Severance Payments to Foreign Nationals.

As prescribed in 48 CFR 970.3701–1–2, the contracting officer shall insert the following solicitation provision:

Waiver of Limitations on Severance Payments to Foreign Nationals (Month and Year TBE)

Pursuant to 48 CFR 970.3701–1, Severance Payments to Foreign Nationals, the cost allowability limitations in 48 CFR 970.3102–3–2(i)(iv) and (v) are waived for this contract.

(End of Clause)

Alternate I (Month and Year TBE). As prescribed in 48 CFR 970.3701–1–2(b), substitute the following paragraph for the foregoing solicitation provision when the waiver of limitations to severance payments for foreign nationals has not been predetermined by the Department.

Pursuant to 48 CFR 970.3701–1, Severance Payments to Foreign Nationals, the Department will consider waiving the cost allowability limitations in 48 CFR 970.3102–3–2(i)(iv) and (v) for this contract.

970.5237–2 Facilities management.

As prescribed in 48 CFR 970.3770–2, insert the following clause:

Facilities Management (Month and Year TBE)

Copies of DOE Directives referenced herein are available from the contracting officer.

(a) Site development planning. The Government shall provide to the contractor site development guidance for the facilities and lands for which the contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the contractor shall prepare, and maintain through annual updates, a Long-Range Site Development Plan (Plan) to reflect those actions necessary to keep the development of these facilities current with the needs of the Government and allow the contractor to successfully accomplish the work required under this contract. In developing this Plan, the contractor shall follow the procedural guidance set forth in the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall use the Plan to manage and control the development of facilities and lands. All plans and revisions shall be approved by the Government.

(b) General design criteria. The general design criteria which shall be utilized by the contractor in managing the site for which it is responsible under this contract are those specified in the applicable DOE Directives in the 6430, Design Criteria, series listed elsewhere in this contract. The contractor shall comply with these mandatory, minimally acceptable requirements for all facility designs with regard to any building acquisition, new facility, facility addition or alteration or facility lease undertaken as part of the site development activities of paragraph (a) above. This includes on-site constructed buildings, pre-engineered buildings, plan-fabricated modular buildings, and temporary facilities. For existing facilities, original design criteria apply to the structure in general; however, additions or modifications shall comply with this directive and the associated latest editions of the references therein. An exception may be granted for off-site office space being leased by the contractor on a temporary basis.

(c) Energy management. The contractor shall manage the facilities for which it is responsible under the terms and conditions of this contract in an energy efficient manner in accordance with the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall develop a 10-year energy management plan for each site with annual reviews and revisions. The contractor shall submit an annual report on progress toward achieving the goals of the 10-year plan for each individual site, and an energy conservation analysis report for each new building or building addition project. Any acquisition of utility services by the contractor shall be conducted in accordance with 48 CFR 970.41.

(d) Subcontract Requirements. To the extent the contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

(End of Clause)

970.5243–1 Changes.

As prescribed in 48 CFR 970.4302–1, the contracting officer shall insert the following clause in all management and operating contracts:

Changes (Month and Year TBE)

(a) Changes and adjustment of fee. The contracting officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of change; provided, however, that the contracting officer, if it is determined that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."

(b) Work to continue. Nothing contained in this clause shall excuse the contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

(End of Clause)

970.5244–1 Contractor Purchasing System.

As prescribed in 48 CFR 970.4402–5, insert the following clause:

Contractor Purchasing System (Month and Year TBE)

(a) General. The contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR 970.44. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 970.4401–1. The contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer. DOE will conduct periodic appraisals of the contractor's management of all facets of the purchasing function, including the contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the contracting officer, through the contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (x) of this clause.

(b) Acquisition of utility services. Utility services shall be acquired in accordance with the requirements of 48 CFR 970.41.

(c) Acquisition of Real Property. Real property shall be acquired in accordance with 48 CFR Subpart 917.74.

(d) Advance Notice of Proposed Subcontract Awards. Advance notice shall be provided in accordance with 48 CFR 970.4401–3.

(e) Audit of Subcontractors. (1) The contractor shall provide for:

(i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and

(ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The contractor shall provide, in appropriate cases, for the timely involvement of the contractor and the DOE contracting officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402–3 and 48 CFR 970.3102–3–21(b).

(f) Bonds and Insurance. (1) The contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102–2(a) for all fixed priced and unit-priced construction subcontracts in excess of $100,000. The contractor shall consider the use of performance bonds in fixed price nonconstruction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of $100,000 a payment bond shall be obtained on Standard Form 25A modified to name the contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102–2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts, greater than $25,000, but not greater than $100,000, the contractor shall select two or more of the payment protections at 48 CFR 28.102–1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

(g) Buy American. The contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225–3 and 48 CFR 52.225–5. The contractor shall forward determinations of nonavailability of individual items to the DOE contracting officer for approval. Items in excess of $100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the contractor to make determinations of nonavailability for individual items valued at $100,000 or less.

(h) Construction and Architect-Engineer Subcontracts. (1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."

(3) Prevention of Conflict of Interest. (i) The contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) Contractor-Affiliated Sources. Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402–3.

(j) Contractor-Subcontractor Relationship. The obligations of the contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.

(k) Government Property. Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of 48 CFR part 45, 48 CFR part 945, the Federal Property Management Regulations 41 CFR chapter 101, the DOE Property Management Regulations 41 CFR chapter 109, and their contracts.

(l) Indemnification. Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.

(m) Leasing of Motor Vehicles. Contractors shall comply with 48 CFR 8.11 and 48 CFR 908.11.

(n) Make-or-Buy Plans. Acquisition of property and services shall be obtained on a least-cost basis, consistent with the requirements of the "Make-or-Buy Plan" clause of this contract and the contractor's approved make-or-buy plan.

(o) Management, Acquisition and Use of Information Resources. Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.

(p) Priorities, Allocations and Allotments. Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) Purchase of Special Items. Purchase of the following items shall be in accordance with the following provisions of 48 CFR 908.71 and the Federal Property Management Regulations, 41 CFR chapter 101:

(1) Motor vehicles—48 CFR 908.7101
(2) Aircraft—48 CFR 908.7102
(3) Security Cabinets—48 CFR 908.7106
(4) Alcohol—48 CFR 908.7107
(5) Helium—48 CFR 908.7108
(6) Fuels and packaged petroleum products—48 CFR 908.7109
(7) Coal—48 CFR 908.7110
(8) Arms and Ammunition—48 CFR 908.7111
(9) Heavy Water—48 CFR 908.7121(a)
(10) Precious Metals—48 CFR 908.7121(b)
(11) Lithium—48 CFR 908.7121(c)
(12) Products and services of the blind and severely handicapped—41 CFR 101–26.701
(13) Products made in Federal penal and correctional institutions—41 CFR 101–26.702

(r) Purchase vs. Lease Determinations. Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. purchase determinations. Such determinations shall be made:

(1) At time of original acquisition;

(2) When lease renewals are being considered; and

(3) At other times as circumstances warrant.

(s) Quality Assurance. Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) Setoff of Assigned Subcontractor Proceeds. Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.

(u) Strategic and Critical Materials. The contractor may use strategic and critical materials in the National Defense Stockpile.

(v) Termination. When subcontracts are terminated as a result of the termination of all or a portion of this contract, the contractor

shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR Subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR Subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the contracting officer.

(w) Unclassified Controlled Nuclear Information. Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.

(x) Subcontract Flowdown Requirements. In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the contractor shall include the following clauses in subcontracts, as applicable:

(1) Davis-Bacon clauses prescribed in 48 CFR 22.407.
(2) Foreign Travel clause prescribed in 48 CFR 952.247–70.
(3) Counterintelligence clause prescribed in 48 CFR 970.0404–4(a).
(4) Service Contract Act clauses prescribed in 48 CFR 22.1006.
(5) State and local taxes clause prescribed in 48 CFR 970.2904–1.
(6) Cost or pricing data clauses prescribed in 48 CFR 970.1504–3–1(b).

(End of Clause)

970.5245–1 Property.

As prescribed in 48 CFR 970.4501–1(a), insert the following clause:

Property (Month and Year TBE)

(a) Furnishing of Government property. The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(b) Title to property. Except as otherwise provided by the contracting officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the contractor, for the cost of which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The contractor shall make such disposition of rejected items as the contracting officer shall direct. Title to other property, the cost of which is reimbursable to the contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(c) Identification. To the extent directed by the contracting officer, the contractor shall identify Government property coming into the contractor's possession or custody, by marking and segregating in such a way, satisfactory to the contracting officer, as shall indicate its ownership by the Government.

(d) Disposition. The contractor shall make such disposition of Government property which has come into the possession or custody of the contractor under this contract as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor may, upon such terms and conditions as the contracting officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the contracting officer and the contractor as the fair value thereof. The amount received by the contractor as the result of any disposition, or the agreed fair value of any such property acquired by the contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the contracting officer may direct. Upon completion of the work or the termination of this contract, the contractor shall render an accounting, as prescribed by the contracting officer, of all government property which had come into the possession or custody of the contractor under this contract.

(e) Protection of government property—management of high-risk property and classified materials.

(1) The contractor shall take all reasonable precautions, and such other actions as may be directed by the contracting officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the contractor's possession or custody.

(2) In addition, the contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) Risk of loss of Government property. (1)(i) The contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:

(A) Willful misconduct or lack of good faith on the part of the contractor's managerial personnel;

(B) Failure of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the contracting officer to safeguard such property under paragraph (e) of this clause; or

(C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the contracting officer informs the contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the contractor to show that the contractor should not be required to compensate the government for the loss, destruction, or damage.

(2) In the event that the contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the contractor's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.

(g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the contractor with a value above the threshold set out in the contractor's approved property management system, the contractor:

(1) Shall immediately inform the contracting officer of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the contracting officer. The contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) Government property for Government use only. Government property shall be used only for the performance of this contract.

(i) Property Management. (1) Property Management System. (i) The contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The contractor's property management system shall be submitted to the contracting officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the contracting officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for:

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) Employee personal responsibility and accountability for Government-owned property;

(C) Full integration with the contractor's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.

(iii) Approval of the contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) Property Inventory. (i) Unless otherwise directed by the contracting officer, the contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) If the contractor is succeeding another contractor in the performance of this contract, the contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.

(j) The term "contractor's managerial personnel" as used in this clause means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:

(1) All or substantially all of the contractor's business; or

(2) All or substantially all of the contractor's operations at any one facility or separate location to which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract; or

(4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or

(5) A separate and discrete major task or operation in connection with the performance of this contract.

(k) The contractor shall include this clause in all cost reimbursable subcontracts.

(End of Clause)

Alternate I (Month and Year TBE). As prescribed in 48 CFR 970.4501–1(b), when the award is to a nonprofit contractor, replace paragraph (j) of the basic clause with the following paragraph (j):

(j) The term "contractor's managerial personnel" as used in this clause means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of:

(1) The contractor's business; or

(2) The contractor's operations at any one facility or separate location at which this contract is being performed; or

(3) The contractor's Government property system and/or a Major System Acquisition or Major Project as defined in DOE Order 4700.1 (Version in effect on effective date of contract).

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Federal Register

Monday,
March 13, 2000

Part III

Department of Agriculture

Agricultural Marketing Service
7 CFR Part 205
National Organic Program; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Docket Number: TMD–00–02–PR2]

RIN 0581–AA40

National Organic Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a National Organic Program (NOP or program) under the direction of the Agricultural Marketing Service (AMS), an arm of the United States Department of Agriculture (USDA). This national program is intended to facilitate interstate commerce and marketing of fresh and processed food that is organically produced and to assure consumers that such products meet consistent, uniform standards. This program will establish national standards for the production and handling of organically produced products, including a National List of substances approved and prohibited for use in organic production and handling. This proposal will establish a national-level accreditation program to be administered by AMS for State officials and private persons who want to be accredited as certifying agents. Under the program, certifying agents will certify production and handling operations in compliance with the requirements of this regulation and initiate compliance actions to enforce program requirements. The proposal includes requirements for labeling products as organic and containing organic ingredients. The rule also provides for importation of organic agricultural products from foreign programs determined to have equivalent organic program requirements. The program is proposed under the Organic Foods Production Act of 1990, as amended.

DATES: Comments must be submitted on or before June 12, 2000.

ADDRESSES: Interested persons are invited to submit written comments on this proposal to: Keith Jones, Program Manager, National Organic Program, USDA–AMS–TMP–NOP, Room 2945–So., Ag Stop 0275, PO Box 96456, Washington, DC 20090–6456. Comments also may be sent by fax to (703) 365–0760 or filed via the Internet through the National Organic Program's homepage at: http://www.ams.usda.gov/nop. Written comments to this proposed rule submitted by regular mail and faxed comments should be identified with docket number TMD–00–02-PR. To facilitate the timely scanning and posting of comments to the NOP homepage, multiple page comments submitted by regular mail should not be stapled or clipped. Commenters should identify the topic and section number of this proposal to which the comment refers.

It is our intention to have all comments to this proposal, whether mailed, faxed, or submitted via the Internet, available for viewing on the NOP homepage at http://www.ams.usda.gov/nop in a timely manner. Comments submitted in response to this proposal will be available for viewing at USDA–AMS, Transportation and Marketing, Room 2945–South Building, 14th and Independence Ave., SW, Washington, DC, from 9:00 a.m. to 12:00 p.m. and from 1:00 p.m. to 4:00 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposal are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Richard Mathews, Senior Agricultural Marketing Specialist, USDA–AMS–TM–NOP, Room 2510–So., PO Box 96456, Washington, DC 20090–6456; Telephone: (202) 205–7806; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

Background of the National Organic Program

To address problems created by inconsistent organic standards, the organic industry attempted to establish a national voluntary organic certification program in the late 1980's. However, that effort failed to develop a consensus on needed organic standards. Congress was then petitioned by an organic industry trade association to establish a mandatory national organic program, resulting in the Organic Foods Production Act of 1990 (the Act). Congress passed the Act to: (1) Establish national standards governing the marketing of certain agricultural products as organically produced products; (2) assure consumers that organically produced products meet a consistent standard; and (3) facilitate commerce in fresh and processed food that is organically produced. This proposal is designed to implement the Act.

To help readers better understand this proposal, we have provided answers to some frequently asked questions about the proposed rule, including some of the issues most commonly raised in public comments.

Is this the final word on National organic standards?

No. This is only a proposed rule. It is important that you take the time to read it carefully and write to USDA to give us your recommendations, being as specific as you can. Your comments are due by June 12, 2000.

Your comments do matter. On December 16, 1997, the first proposed rule was published in the **Federal Register**, and 275,603 people wrote to us to explain why and how the rule should be rewritten, the largest public response to a proposed rule in USDA history. Then, in the October 24, 1998 **Federal Register**, we asked for public comment on issues concerning livestock confinement, medications, and the authority of certifying agents, and 10,817 people wrote to us. As you read through this document, you will get a sense of what these comments said because in each section we briefly summarize the relevant comments and provide our response to them.

We expect to publish a final rule later this year, once we know what you think about this proposal. The final rule will have, as proposed here, an implementation phase-in period so farmers and processors won't have to change overnight.

Has there been citizen input on this proposal beyond public comments?

Yes. The National Organic Standards Board (NOSB) is a 15-member citizen board that advises the Secretary on all aspects of the National Organic Program and has special responsibility for development of the National List. Established by law in 1990, the NOSB includes 3 environmental representatives, 3 consumer representatives, 4 organic farmers/ranchers, 2 organic processors, 1 retailer, 1 scientist, and 1 certifying agent. Currently, the NOSB comprises 14 members. The 15th member, an accredited certifying agent, would be appointed after certifying agents are accredited by the Secretary. Since the first NOSB was appointed in 1993, the Board has held 19 public meetings, including one public teleconference, crisscrossing the country to hear from the public before making recommendations to the Secretary on national standards. The vast majority of commenters on the first proposed rule urged the Secretary to rewrite the proposal in line with NOSB recommendations—and this is what we have done. More information on NOSB

members, meeting minutes, and a side-by-side comparison of this proposal with NOSB recommendations can be found at www.ams.nop/gov.

In addition, to be consistent with OMB Circular No, A–119, which directs agencies to use voluntary consensus standards, USDA considered adoption of the *American Organic Standards, Guidelines for the Organic Industry* as a voluntary consensus standard for use in the National Organic Program. In October 1999, the Organic Trade Association published the American Organic Standards (AOS). The AOS standards were developed over several months with two opportunities for comment from interested parties. The introduction states that the standards are written as an up-to-date compilation and codification of organic standards and certification procedures, as they are understood and applies in the United States. Organic Trade Association members are expected to follow the guidelines.

USDA has determined that it would be impractical to use the American Organic Standards in lieu of USDA developed standards for the following reasons: (1) Not all participants in the organic industry elected to participate in developing the AOS; (2) the AOS are new to the industry so there has not been sufficient time for the industry to assess their effectiveness, and (3) some certifying agents disagree with portions of the AOS.

Why do we need national standards for organic food?

National standards for organic food production are designed to bring about greater uniformity in the production, manufacture, and marketing of organic products. In the absence of a national standard, 49 State and private organizations have established individual programs and standards for certifying organic agricultural products. The lack of consistency between these standards has created problems for farmers and handlers of organic products, particularly if they want to sell their products in multiple States with different standards. Lack of a nationwide standard has also created confusion for consumers, who may be uncertain what it really means when a food product is called "organic."

With a national standard, consumers across the country can go into any store and have full confidence that any food product labeled "organic" meets a strict, consistent standard no matter where it was made. Use of the word, "organic," on the label of any product that does not meet the standard is strictly prohibited.

Consumers will have that confidence, because this proposal requires for the first time that all organic operations be certified by USDA-approved certifying agents. Up to now, certification has been optional; some farmers choose not to be certified at all, and others are certified by State or private certifiers using different standards. It can be hard for consumers to know if a product has been certified, or, if it has, to what standard. Under this proposal, all organic operations, except for the very smallest, would be certified to the same standard. And all products labeled as "organic" would have to comply with the production and handling standards in this rule.

Consumers can also look for the USDA organic seal, which can only be used on products that have been certified by USDA-approved certifying agents. This seal assures consumers that the maker of the product is part of a rigorous certification program and has been thoroughly reviewed by professional inspectors trained in organic agriculture.

National standards will also bring greater predictability for producers of organic foods. There will be no confusion about whether a product satisfies the particular standard of any State, for example, because all organic foods will meet the same standards.

Finally, a national standard for organic food will help our farmers and manufacturers sell organic products in other countries. The lack of a consistent national organic program has limited access to important markets in other countries because of the confusion created by multiple, independent standards. A strong national standard will help to ensure buyers in other countries that all U.S. organic products meet the same standards.

How can I tell how much organic food is in a product?

This proposal sets strict labeling standards based on the percentage of organic content. If a product is 100 percent organic, it can, of course, be labeled as such. A product that is at least 95 percent organic can be described as, for example, "organic cereal." If a cereal, for example, contains between 50 and 95 percent organic content, it can be described as "cereal made with organic ingredients," and up to three organic ingredients can be listed. Finally, if the food contains less than 50 percent organic content, the term, "organic," may only appear on the ingredient information panel. These four new labeling categories will provide consumers with much greater information than they have today. [Labeling is covered in subpart D.]

What is the National List?

The National List of Allowed and Prohibited Substances (known as the National List) identifies specific substances that may or may not be used in organic production and handling operations. The National List is developed by the NOSB, through consultation with outside experts, and forwarded to the Secretary for approval. The list identifies those synthetic substances, which would otherwise be prohibited, that may be used in organic production based on the recommendations of the NOSB. Only those synthetic substances found on the National List may be used. The National List also identifies those natural substances that may not be used in organic production, as determined by the Secretary based on the NOSB recommendations.

The first proposal included some substances on the National List that were not recommended by the NOSB. This proposal contains no substances on the approved list that were not found in the NOSB recommendations.

This proposal also includes restrictions or other conditions on the use of allowed substances, also known as "annotations," as recommended by the NOSB. Such annotations have been used by existing State and private certification programs to further ensure that allowed substances are used in a manner that is consistent with organic production. (The National List is covered in subpart G, §§ 205.600 through 205.607.)

Does this proposal prohibit use of genetic engineering in organic production?

Yes. This proposal prohibits the use of genetic engineering (included in the broad definition of "excluded methods" in this proposal, based on the definition recommended by the National Organic Standards Board) in the production of all foods and ingredients that carry the organic label.

275,603 commenters on the first proposal nearly universally opposed the use of this technology in organic production systems. Based on this overwhelming public opposition, this proposal prohibits its use in the production of all organic foods even though there is no current scientific evidence that use of excluded methods presents unacceptable risks to the environment or human health. While these methods have been approved for use in general agricultural production and may offer certain benefits for the

environment and human health, consumers have made clear their strong opposition to their use in organically grown food. Since the use of excluded methods in the production of organic foods runs counter to consumer expectations, foods produced with these methods will not be permitted to carry the organic label. (Excluded methods are defined in subpart A and discussed further under Production and Handling (subpart C), Labeling (subpart D), and the National List (subpart G).)

Will genetic engineering be allowed in the production of foods that contain both organic and nonorganic ingredients?

No. For products with mostly organic content—those products where more than half of the ingredients are organic and that have the word, "organic," on the main product label— excluded methods must not be used in the production of any ingredients. Only those products, in which fewer than half of the ingredients are organic and in which the organic ingredients are only identified on the ingredient panel, could contain nonorganic ingredients produced through excluded methods.

We believe consumers have expressed a clear expectation that these methods should not be used in the production of any ingredients contained in mostly organic products. Because prominent use of the word, "organic," on the label of such products reinforces that expectation, we have chosen to prohibit use of excluded methods in production of both the organic and nonorganic ingredients.

We recognize that this policy will place additional burdens on organic food processors and certifying agents because the ability to meet these requirements will depend largely on practices used in conventional agricultural markets. For organic food processors, it may be harder to find sources of nonorganic ingredients that are produced without use of excluded methods. Similarly, certifying agents may face greater difficulty because they will be required to ensure that handlers have complied with this requirement. However, we believe that the need to meet strong consumer expectations outweighs these concerns. Furthermore, we anticipate that as marketplace practices or standards evolve, these practices will be the basis for implementing this provision, providing handlers and certifying agents recognize criteria with which to evaluate sources of nonorganic ingredients in products containing both organic and nonorganic ingredients.

Does this proposal prohibit use of irradiation in organic production?

Yes. This proposal prohibits the use of irradiation in the production of all foods and ingredients that carry the organic label. 275,603 commenters on the first proposal almost universally opposed the use of this technology in organic production systems. Based on this overwhelming public opposition, this proposal prohibits its use in the production of all organic foods even though there is no current scientific evidence that use of irradiation presents unacceptable risks to the environment or human health and may, in fact, offer certain benefits. Because this rule is a marketing standard and consumers have expressed a clear expectation that irradiation should not be used in the production of organic foods, foods produced with this technology will not be permitted to carry the organic label.

The prohibition on irradiation extends to nonorganic ingredients used in mostly organic ingredients—those products where more than half of the ingredients are organic and that have the word, "organic," on the main product label. Only those products, in which fewer than half of the ingredients are organic and in which the organic ingredients are only identified on the ingredient panel, could contain irradiated nonorganic ingredients. We do not believe that this prohibition on irradiation in nonorganic ingredients will place undue burden on either handlers or certifiers because of current labeling requirements for irradiated products.

Does this proposal prohibit use of sewage sludge in organic production?

Yes. This proposal prohibits the use of sewage sludge in the production of all foods and ingredients that carry the organic label. This prohibition extends to nonorganic ingredients used in the production of mostly organic foods—those products in which more than half of the ingredients are organic and that have the word, "organic," on the main product label. Only those products, in which fewer than half of the ingredients are organic and which the organic ingredients are only identified on the ingredient panel, could contain nonorganic ingredients produced using sewage sludge.

275,603 commenters on the first proposal almost universally opposed the use of this technology in organic production systems. Based on this overwhelming public opposition, this proposal prohibits its use in the production of all organic foods, even though there is no current scientific evidence that use of sewage sludge in the production of foods presents unacceptable risks to the environment or human health. We believe consumers have expressed a clear expectation that sewage sludge should not be used in the production of any ingredients contained in mostly organic products. Because prominent use of the word, "organic," on the label of such products reinforces that expectation, we have chosen to prohibit use of sewage sludge in production of both the organic and nonorganic ingredients. We recognize that this policy may place additional burdens on organic food processors and certifying agents. However, we believe that the need to meet strong consumer expectations outweighs these concerns.

Does this proposal set standards for livestock production?

Yes. The proposal sets the first comprehensive standards for production of organic animals and meat products. Under this proposal, use of antibiotics would be prohibited in organic livestock production. The standards also prohibit the routine confinement of animals and require that ruminant animals have access to outdoor land and pasture, although temporary confinement would be allowed under certain, limited circumstances. Animals under organic management must also receive 100-percent organically grown feed. (Organic livestock management issues are discussed in greater detail under subpart C, 205.236 through 205.239.)

Does this proposal prohibit "ecolabeling"?

No. This proposal only regulates use of the term, "organic," on product labels. Other labels would be allowed as long as they are truthful and not misleading and meet general food labeling requirements. The labeling requirements of this proposal are intended to assure that the term, "organic," and other similar terms or phrases are not used in a way that misleads consumers. Should we find that terms or phrases are being used to represent "organic" when the products are not produced to the requirements of this regulation, we would proceed to restrict their use. (Labeling is covered in subpart D.)

Are organic foods pesticide-free?

No. Organic farmers can use natural pesticides to control weeds and insects and maintain the high quality of organic products that consumers have come to expect. Use of synthetic chemical pesticides, however, is prohibited unless specifically allowed on the National List as recommended by the

National Organic Standards Board and approved by the Secretary. (The National List is covered in subpart G, sections 205.600 through 205.607.)

Who needs to be certified?

As a general rule, all organic production and handling operations must be certified. The Act and this proposal, however, do provide for some exceptions. For example, organic operations with less than $5,000 in annual sales of organic products do not require certification. Similarly, organic operations that handle only those products with less than 50 percent organic content or that restrict labeling of organic ingredients to the ingredient information panel do not require certification. Finally, we are not requiring certification of most grocery stores and restaurants (referred to in this proposal as "retail food establishments") at this time.

Even where operations do not require certification, however, all organic food products must meet the national standards as described in this proposal. In that way, consumers can be confident that all products labeled as "organic" meet the national standards, even if they did not require certification under the NOP. (Certification is covered in subpart E; the exceptions from certification are found in subpart B.)

Will organic farmers have to pay fees?

Organic farmers and other organic operations will have to pay fees for organic certification but will not be charged any fees by USDA. Fees for certification services will be set by the private or State certifying agents. The proposal also requires that certifying agents make their schedule of fees publicly available so that organic operations can plan appropriately and so that they can make informed choices where multiple certifying agents are available. USDA will also review fees charged by certifying agents to ensure that they are reasonable and that they are being applied fairly to all organic operations. Under this proposal, USDA would only charge fees for reviewing ("accrediting") certifying agents. These fees will primarily be based on the actual costs of the accreditation work done by USDA staff so that certifying agents with smaller and less complex programs will pay lower fees. The proposal also provides for a reduction in the accreditation fees during the first 18 months of the program to provide an incentive for certifying agents to become accredited under the new national program as soon as possible. (Fees are covered in subpart G, §§ 205.640 through 205.642.)

How do I become an accredited certifying agent?

All certifying agents must be accredited by USDA. Certifying agents may apply for accreditation effective with publication of the final rule and are encouraged to apply as soon after publication of the final rule as possible. USDA will provide additional information on applying for accreditation on or about the date of publication of the final rule. This information will be available on the NOP website and by mail upon request.

Applications for accreditation will be handled on a first-come-first-served basis. Those that apply within the first 6 months following publication of the final rule and are determined by the Administrator to meet the requirements for accreditation will be notified of their status in writing on or about 12 months after publication of the final rule. This approach is being taken because of the market advantage that could be realized by accredited certifying agents if USDA did not announce the accreditations simultaneously. (Accreditation is covered in subpart F.)

What are the roles and responsibilities of certifying agents in the National Organic Program?

Certifying agents are the "front line" representatives of USDA and play a critical role in the oversight and enforcement of the national organic standards program. Once accredited by USDA, certifying agents are empowered to make key decisions regarding the status of organic operations. Certifying agents review the organic plans of organic operations and are authorized to grant certification to those operations that meet the strict national organic standards. Certifying agents are also responsible for the continuing oversight of organic operations— reviewing annual updates of organic plans, conducting residue analyses, and conducting other monitoring activities.

In cases in which a certifying agent finds that an organic operation does not meet the national standards, the agent is empowered to issue notices of noncompliance and to initiate suspension or revocation of certification. Organic operations can appeal such decisions to USDA but unless the organic operation appeals the certifying agent's decision or can correct the problems identified by the certifying agent, the agent's decision will stand. (Accreditation is covered in subpart F; Compliance is covered in subpart G, §§ 205.660 through 205.668; and Appeals are covered in subpart G, §§ 205.680 through 205.681.]

How will USDA ensure that the National standards are applied fairly and consistently by all certifying agents?

Because this proposal gives certifying agents such an important role in enforcing the national standards, USDA oversight of those certifying agents is particularly important. Under this proposal, all certifying agents, both private and in State organic programs, would have to be accredited by USDA before they could begin to certify organic operations. It is this accreditation process, in which USDA reviews all certifying agents to make sure they understand and can accurately apply the national organic standards, that is USDA's main tool to ensure that the standards are applied fairly and consistently by all certifying agents.

The accreditation process is really one of ongoing oversight by USDA. Accreditation must be renewed every 5 years so that we can be sure certifying agents continue to meet the program standards. USDA will conduct one or more site visits of certifying agents during the period of accreditation as another mechanism of monitoring their compliance. Finally, certified operations may file complaints with USDA if they believe they have been treated unfairly or if a certifying agent is otherwise not following the program requirements. We will investigate these complaints for possible enforcement action.

Can States have organic standards that are more strict than the National standard?

Yes. Some States may have unique environmental or other concerns that they believe require extra conditions above the national standard. In those cases, States would apply to USDA to have their special State program approved by the Secretary.

However, no State would be allowed to set up a program that does not at least meet the national standard. And States would not be allowed to use their programs to keep out or otherwise discriminate against organic products made in another State. (State Programs are covered in subpart G, §§ 205.620 through 205.622.)

What is the timeframe for implementation?

The final rule in this rulemaking process will establish a procedure and a timeframe for implementing the NOP. We expect that the interim period between publication of the final rule in this rulemaking process and the effective date of the program (actual implementation of regulations) will be 18 months. The following is a

preliminary list of several administrative and program issues that must be implemented during that period. Certifying agent applications will be evaluated and accreditation granted. Certifying agents will, in turn, certify production and handling operations to the requirements of these regulations. Equivalency discussions will be held with foreign governments and foreign certifying agents. Guidelines and practice standards on production and handling practices must be finalized and distributed by the NOP. A petition process for recommending amendments to the National List must be developed and distributed. The NOSB will continue to review materials for the National List. State programs may have to make adjustments in their organic certification programs for consistency with the standards of this program. Producers should use the interim period to prepare their production operations to comply with the relevant requirements of this program. Handlers should use the interim period to prepare for necessary changes in the labeling of their products.

Prior Documents in This Proceeding

This proposed rule is issued pursuant to the Organic Food Production Act of 1990 (Act or OFPA), as amended (7 U.S.C. 6501 *et seq.*). This proposal replaces the proposed rule published in the **Federal Register** December 16, 1997. Comments to the first proposal were considered in the preparation of this proposed rule.

The following notices related to the NOSB and the development of this proposed regulation have been published in the **Federal Register**. Five notices of nominations for membership on the NOSB were published between April 1991 and June 1999 (56 FR 15323, 59 FR 43807, 60 FR 40153, 61 FR 33897, 64 FR 33240). Two notices of extension of time for submitting nominations were published on September 22, 1995, and September 23, 1996 (60 FR 49246, 61 FR 49725). Seventeen notices of meetings of the NOSB were published between March 1992 and October 1999 (57 FR 7094, 57 FR 27017, 57 FR 36974, 58 FR 85, 58 FR 105, 58 FR 171, 59 FR 58, 59 FR 26186, 59 FR 49385, 60 FR 51980, 60 FR 15532, 61 FR 43520, 63 FR 7389, 63 FR 64451, 64 FR 3675, 64 FR 28154, 64 FR 54858). One notice of public hearings on organic livestock and livestock products was published on December 30, 1993 (58 FR 69315). One notice specifying a procedure for submitting names of substances for inclusion on the National List was published on March 27, 1995 (60 FR 15744). A rule proposing the NOP was published on December 16, 1997 (62 FR 65850). An extension of the time period for submitting comments to the proposed rule was published on February 9, 1998 (63 FR 6498). One request for comments on Issue Papers was published on October 28, 1998 (63 FR 57624). A notice of a program to assess organic certifying agencies was published on June 9, 1999 (64 FR 30861).

This preamble includes a discussion of the proposed rule and supplementary information, including the Regulatory Impact Assessment, Regulatory Flexibility Act Analysis, Federalism Impact Statement, and Paperwork Reduction Act Analysis. The Civil Rights Impact Analysis is not included as an attachment but may be obtained by writing at the address provided above or via the Internet through the National Organic Program's homepage at: http://www.ams.usda.gov/nop.

National Organic Program Overview

Subpart A—Definitions

Proposal Description

This subpart defines various terms used in this part. These definitions are intended to enhance conformance with the regulatory requirements through a clear understanding of the meaning of key terms.

We have amended terms and definitions carried over from the first proposal where necessary to make their wording consistent with the language used in this proposal. We have removed the definition for the following terms because the terms are not used in this proposal or have been determined to be unnecessary: Active ingredient in any input other than pesticide formulations, active ingredient in pesticide formulations, agroecosystem, botanical pesticides, breeding, chapter, cation balancing agent, certification activities, certification applicant, certified facility, chapter, confirmation of accreditation, contaminant, critical control point, cytotoxic mode of action, degradation, detectable residue level, extract, farm, foliar nutrient, formulated product, fungicide, generic name, incidental additive, inert ingredient in any input other than pesticide formulations, intentionally applied, made with certain organic ingredients, mating disrupter, micronutrient, nonactive residues, nonorganic agricultural ingredient or product, petition, preliminary evaluation, processing methods, production aid, production input, proper manuring, putrefaction, site evaluation, soil amendment, split operation, subtherapeutic, suspension of accreditation, synergist, synthetic volatile solvent, treated, untreated seeds, USDA seal, and weed. We received comments on some of the definitions that have been deleted. We have not addressed these comments here because the relevant definitions have been deleted.

Definitions—Changes Based On Comments

This subpart differs from our first proposal in several respects as follows:

(1) We have amended the term, "audit trail," by replacing the category, "organic" or "made with certain organic ingredients," with "100 percent organic," "organic," or "made with organic (specified ingredients)," or agricultural product containing less than 50 percent organic ingredients identified as organic in an ingredients statement. We have taken this action to clarify the definition as requested by several commenters.

(2) We have amended the term, "buffer area," to "buffer zone" and amended the term by replacing "a certified farm or portion of a farm" with "a certified production operation or portion of a production operation." A few commenters suggested including a minimum size for the buffer zone and specifying that buffer zones must be uncropped vegetated areas. The appropriate size and type of a buffer zone is highly site-specific and cannot be rigidly specified for all locations without placing unreasonable burdens on some producers. Several commenters supported determination of the appropriate buffer zone size and type by the producer in consultation with the certifying agent. Additional information on this issue can be found at subpart C, Crop Production, Changes Requested But Not Made, item 1.

(3) We have amended the definition of the term, "certification or certified," to make the language in the definition consistent with the language of this proposal. We have also removed the language concerning the information to be found on a certificate. Commenters suggested amending the definition by adding the words, "annual" and "based on an on-site inspection and comprehensive review of the operation." Other commenters recommended deleting the reference to products on a certificate because it is the operation, not the product, that is certified. We have not made the suggested additions because the issues are adequately addressed in the regulations. We have removed the language concerning information found on a certificate because this information

is adequately addressed in the regulations.

(4) We have amended the definition of "certifying agent" to clarify that the term only applies to State-entity and private-entity certifying agents. We have taken this action because there was some confusion among commenters over whether the original definition included a State program's governing State official.

(5) We have amended the definition of "commercially available" by removing the phrase, "to be feasibly and economically used." We have taken this action because we agree with commenters that use of the phrase provides an opportunity for producers and handlers to avoid use of preferred inputs. We have also clarified that "commercially available" applies to processors by including the words, "or processing ingredient." Additional information on this issue can be found at subpart C, Production and Handling (General), Changes Requested But Not Made, item 2.

(6) We have amended the definition of "compost" by referring to compost as "the product of a carefully managed process through which microorganisms break down plant and animal materials into more available forms suitable for application to the soil." We also state that "composting" must use methods to raise the temperature of raw materials to the levels needed to stabilize nutrients and kill pathogens. Specific instructions on the production of compost for use in organic production has been referenced to the National Resources Conservation Service's (NRCS) practice standard for a composting facility (Code 317). The NRCS practice Standard provides a field tested and verifiable procedure for producing compost. We have made these changes because commenters suggested that we clarify the meaning of compost. Several commenters stated that the definition should include rules about what kinds of materials are acceptable for use in compost. Additional information on this issue can be found at subpart C, Production and Handling (General), Changes Based On Comments, item 4.

(7) We have amended the definition of "crop rotation" by adding a statement about the relationship of crop rotation to perennial crops as suggested by an industry association.

Several commenters suggested inserting references to the use of legumes and sod as essential to crop rotation. The benefits achieved through the use of legumes and sod could be fulfilled through many types of rotation plans, which could only be developed according to the site-specific climate, soil type, and type of crops or livestock produced on a given operation. In the interest of flexibility this proposal does not specify what specific crops have to be included in a crop rotation. The issue addressed in this suggestion is addressed in the crop rotation practice standard at § 205.205. Additional information on crop rotation can be found at subpart C, Production, Changes Based On Comments, item 5.

(8) We have amended the definition of "disease vectors" by adding that disease vectors include plants and animals that transmit disease organisms or pathogens which may attack crops or livestock. A few commenters pointed out that the definition as originally proposed was technically inaccurate because it did not address the transmission of disease organisms to crops or livestock.

(9) We have rewritten the definition of "employee" to provide that an employee is any person providing paid or volunteer services for a certifying agent. A few States requested that the definition clearly reference volunteers. A trade association recommended expanding the definition to include any person who works for a certifying agent. We have included volunteers in this proposal because of their substantial use by some certifying agents. Other States suggest changing "certification decisions" to "certification activities" to include any person who is involved in the certification process. We have addressed the commenters' concern by referring to services provided by the employee for the certifying agent. A few States stated that the definition needs to clarify who is the employer of an independent inspector. An independent inspector would not be included in the definition of employee. Such persons are considered to be contractors. Some States expressed concern regarding the use of volunteers from certified production and handling operations. Section 205.501(a)(11) requires that a certifying agent prevent conflicts of interest by not permitting any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected, except that a certifying agent that is a not-for-profit organization with an Internal Revenue Code tax exemption may accept voluntary labor from certified operations. Under this exception all volunteers would be excluded from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or handling operations for all entities in which such person has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the prior 12-month period. Additional information on conflicts of interest can be found at subpart F, Changes Based On Comments, items 4 and 5, and subpart F, Changes Requested But Not Made, items 5, 6, 7, and 8; subpart F, Additional Provisions, item 2.

(10) We have rewritten the definition of "fertilizer" to provide for the inclusion of minor nutrients and trace elements with the three primary nutrients (nitrogen, phosphorus, potassium) contained in a substance or a blended substance utilized in a soil fertility program. This is a generic definition of fertilizer. Issues concerning what substances may be present in a fertilizer for organic production are addressed in subpart C of this proposal.

(11) We have amended the definition of "handle" by providing that the term shall not include the sale, transportation, or delivery of crops or livestock by the producer thereof to a handler. This change was made because we found merit in a certifying agent's concern that farmers were turned into handlers by definition. This was not our intent.

(12) We have amended the definition of "inspector" to make terms used in the definition consistent with terms used in this proposal and to remove the phrase, "who is qualified." A State certifying agent suggested deleting the phrase, "who is qualified," because the issue of inspector qualification is more appropriately addressed in the regulations. We concur that the definition of "inspector" does not need to address the issue of qualifications, especially in light of the fact that certifying agents are required by these regulations to use qualified inspectors.

(13) We have amended the definition of "livestock" by adding reference to the production of fiber, feed, and other agricultural-based consumer products and by providing that "livestock" shall not include fish or bees for the production of food, fiber, feed, or other agricultural-based consumer products. A trade association and several States recommended adding fibers to the definition. We have added fiber, feed, and other agricultural-based consumer products to the definition to capture all types of consumer products that would be produced from livestock. We have excluded aquatic animals from the definition of livestock pending future development of detailed practice standards for specific aquatic animals. We have also excluded bees from the definition of livestock pending future National Organic Standards Board (NOSB or Board) review and recommendations on apiculture.

Additional information on this issue can be found at subpart C, Livestock Production, Changes Based On Comments, items 3 and 4.

(14) We have amended the definition of "market information." A commenter suggested that the definitions of the terms, "labeling" and "market information," were difficult to distinguish from one another and needed clarification. We have added language to make a distinction between the two terms. "Market information" now includes the phrase, "distributed, broadcasted, or made available outside of retail outlets." This phrase indicates that any information distributed, broadcasted, or made available outside of retail outlets to assist in the sale or promotion of a product falls under the "market information" category. "Labeling" includes any information displayed or made available in retail outlets on or about the product.

(15) We have amended the definition of "organic" to clarify that the term, "organic," is used as a labeling term. Commenters, including several States, stated that the definition repeated the proposed requirements for allowing the use of "organic" on a product label. They suggested amending the definition to clarify that the term, "organic," is used as a labeling term. We made the suggested change because we agree that the definition unnecessarily repeated regulatory information and that use of the term, "organic," is intended as a labeling term.

(16) We have amended the definition of "producer" to clarify that the term includes the production of fiber and other agricultural-based consumer products. Several States suggested that the definition of "producer" be amended to clarify that a producer could also be growing or producing a fiber product. We agree that this clarification is needed and have also added reference to "other agricultural-based consumer products" to further clarify that the term includes all agricultural-based consumer products produced by a producer.

(17) We have changed the definition of "routine use of parasiticide" to the definition recommended by the NOSB. Commenters suggested removing "without cause" from the definition in the first proposal and adding such phrases as "without an indication of illness from parasites," "administration with need based on the presence of a diagnosed problem with parasites," and "with or without cause." The NOSB's definition solves the problems caused by the use of the phrase, "without cause." Additional information on this issue can be found at subpart C, Livestock Production, Changes Based On Comments, item 9.

(18) We have amended the definition of "slaughter stock" by changing "human consumption" to "consumption by humans and other animals." A few commenters recommended deleting the word, "human," to indicate that organic livestock may also be used to produce pet food. We agree that slaughter stock may be used in the production of products for consumption by humans and other animals.

(19) We have amended the term, "soil quality," and its definition by referencing "water" in the term and the definition. This change was made because of the reference to "soil and water quality" in § 205.200 of this proposal. Several State commenters stated that the definition of "soil quality" was too vague and would pose problems in enforcing a requirement that addressed the effect of various practices on soil quality. Other commenters requested expansion of the definition to include a discussion of why soil quality is important and what functions healthy soil serves in an organic production system. Another State suggested expanding the definition to include water quality, since there were several references in the regulations to effects on soil or water quality. The importance of soil quality has been addressed under subpart C of this proposal. We acknowledge that the phrase, "soil and water quality," is used in subpart C and have, therefore, expanded the term, "soil quality," to "soil and water quality" and amended the definition accordingly. We have also added a new phrase to the previous definition to acknowledge that one important criterion of soil and water quality is the control of environmental contaminants. The determination of which observable indicators to monitor and how to interpret the observations will be subject to documentation in the organic system plan and consultation between the producer and the certifying agent. Guidance will be provided to certifying agents through program manuals. Additional information on this issue can be found at subpart C, Production and Handling (General), Changes Based On Comments, item 2.

(20) We have amended the term, "governing State official," to "State program's governing State official" and retained the definition to clarify the difference between a State certifying agent and a governing State official. We have used the term, "State program's governing State official," throughout this proposal. A trade association and a State recommended removing the word, "certification," from the definition. We have not made this change because the term is meant to identify the person responsible for administering the State's organic certification program. By "State organic certification program," we mean the law, regulations, and any policies and procedures established by the State to govern the organic certification of producers or handlers by State or private certifying agents.

(21) We have amended the definition of "unavoidable residual environmental contamination." Commenters stated that USDA should set levels rather than make case-by-case decisions regarding residual environmental contamination. They suggested that background levels could be used to determine whether land exceeds the level. Another commenter requested a clear statement of "unavoidable" and "contamination" to facilitate enforcement. Some States stated that there should be a level that is unacceptable for organic agriculture. A commenter suggested that the definition read, "The presence of a material prohibited in organic production, processing, or handling in soil, crop, or food that occurs as a result of factors beyond the control of the producer, processor, or handler." Another commenter suggested that the definition read, "Background levels of prohibited substances at a site which are clearly beyond the control of a certified organic farm operator through notices to neighbors, careful avoidance of abnormally precontaminated sites, and establishment of buffer zones." In this proposal, we have defined "unavoidable residual environmental contamination" as "background levels of naturally occurring or synthetic chemicals that are persistent in the soil or present in organically produced agricultural products that are below established tolerances."

Definitions—Changes Requested But Not Made

This subpart retains from our first proposal terms and their definitions on which we received comments as follows:

(1) A few commenters requested that the definition of "Administrator" be revised to provide that authority to administer the National Organic Program may be delegated to a State official. We have not made the recommended change because the definition of "Administrator" merely addresses the top official of the Agricultural Marketing Service (AMS) and any AMS official to whom the Administrator may delegate authority. The definition is not meant to address working relationships established

between AMS and a State or State entity.

(2) An environmental group requested that we delete the phrase, "other than during the manufacture of a multiingredient product containing both types of ingredients," from the definition of "commingling." This proposal requires that a handler prevent the commingling of organic and nonorganic products but permits use of the word, "organic," in labeling a product made with organic and nonorganic ingredients in accordance with these regulations. Therefore, it is necessary to indicate that the term, "commingling," does not apply to the manufacture of multiingredient products produced in accordance with these regulations.

(3) A farmers' association recommended that the Secretary delegate authority for determining crop year to certifying agents because crop year will vary from region to region. We have found no compelling reason to make certifying agents responsible for determining crop year and have not made the recommended change.

(4) A few commenters requested that the definition of "handling operation" be amended to exclude retailers of prepackaged agricultural products. This change is unnecessary because such retailers are excluded by the definition of "handling operation" through the phrase, "except final retailers of agricultural products that do not process agricultural products."

(5) Several commenters, including a State department of agriculture, recommended elimination of the exception for weight labels in the definition of "label." We have not made the recommended change to the definition of "label" because, as used in this proposal, "label" is intended to represent the organic nature of the product. A weight label that does not refer to the organic nature of the product would not constitute a label for the purposes of this proposal.

(6) A commenter requested that the definitions for "labeling" and "market information" be amended to refer only to products produced by the seller. We have not made this requested change because changing the definitions to only include products produced by the seller would severely restrict the application of the terms, "labeling" and "market information." As defined, "labeling" and "market information" correctly include any information that may be presented to consumers concerning all products sold whether produced by the seller, most likely a retail outlet, or produced by a production or handling operation from which the seller acquired the products.

(7) A commenter requested that we include definitions for "manure" and "aged or rotted manure." Under this proposal it is not necessary to define either term.

(8) An environmental organization requested that a phrase be added to the definition of "mulch" to indicate that acceptable mulch materials leave no chemical or toxic residues. This proposal allows the use of composted plant and animal wastes obtained from nonorganic sources, such as commercial compost products. Uncomposted plant or animal waste material which has been treated with a substance can be as utilized as a mulch provided the substance appears on the National List or complies with the OFPA. Off-farm plant and animal wastes from food processing, municipal yard waste facilities, and other sources are used extensively in existing organic operations and generally permitted by organic certification programs. Using such organic wastes is consistent with a system of organic production and handling, which calls for recycling organic wastes to return nutrients to the land. We believe that concerns about potential contaminants in plant and animal waste materials can be addressed by the requirement in this proposal that these materials be managed in a manner that prevents such contamination. Accordingly, this change has not been made. Additional information on this issue can be found at subpart C, Crop Production, Changes Requested But Not Made, items 2 and 3.

(9) Several commenters suggested adding information to the definition of "National Organic Standards Board" to address the role of the NOSB with regard to the National List. This change is unnecessary because the role of the NOSB is adequately covered in section 6517, National List, of the Act.

(10) Numerous comments were received from consumers, environmental groups, and organic producers concerning the definition of the term, "nonagricultural ingredient." Commenters expressed the view that this term represented an attempt by USDA to circumvent the intent of the Act that synthetic ingredients not be permitted in organic processed products. We disagree with the position that the Act prohibits the use of synthetic ingredients in organic processed products. The use of synthetic ingredients in organic processed products is discussed in the preamble to the National List found in subpart G. We have changed the term, "nonagricultural ingredient," to "nonagricultural substance" to be consistent with the language used in this proposal. The definition remains the same.

(11) Commenters stated their objection to the use of the term, "nonsynthetic (natural)," and its definition. A commenter mistakenly stated that the term, "natural," was defined in the Act. Other commenters felt that use of any term that was not included in the Act was a violation of the Act. Because the term, "natural," is so ambiguous and subject to differing interpretations, the term, "nonsynthetic," as used throughout this regulation, represents an important clarification of the intent of the Act, and we have, therefore, retained it in this proposal.

(12) A few commenters requested that the definition of "petition" be amended by adding the phrase, "to the National Organic Standards Board," immediately following the word, "submitted." We have not made the requested change for two reasons. First, the change is unnecessary. Second, petitions, whether addressed to the NOSB or National Organic Program (NOP) Staff, will be received by the NOP because the administrative functions of the NOSB are performed at the NOP office. Petitions received will be distributed by the NOP to the NOSB and appropriate technical reviewers.

(13) A producers association stated that the definition for "processing" was confusing with regard to the difference between a handler and a processor. A handling operation that performs any of the activities listed in the definition of processing becomes a processor. We have found no compelling reason to revise this comprehensive definition for processing, which comes directly from the Act. A commenter suggested that this definition be changed to include repackaging for weight. In addition to the definition being stipulated by the Act, affixing a weight label to a product is a normal retail activity that does not warrant the expense and effort necessary to certify all retailers who routinely affix weight labels to organic product.

(14) A few commenters requested that the definition of "State organic certification program" be amended by adding a statement indicating that a State program could have additional requirements. This issue is addressed in subpart G, State Organic Certification Programs, Proposal Description.

(15) A technical institute recommended including genetically engineered organisms and their products in the definition of "synthetic," and an environmental

group wanted the definition to include the combustion of minerals. We have not amended the definition as given in the Act because it already includes the combustion of minerals, which are chemically changed by the process of combustion. We also do not consider it necessary to classify genetically engineered organisms as either synthetic or nonsynthetic for the purposes of this regulation, since these organisms and their products are prohibited for use in organic production or handling regardless of whether or not they are synthetic.

(16) A commenter recommended adding the word, "synthetic," immediately preceding the word, "substances," in the second sentence of the definition of "system of organic farming and handling." We disagree with this suggestion because "substances" as used in this definition could be synthetic or nonsynthetic. A few commenters requested deletion of the word, "extraneous," as a modifier of "synthetic additives" in the definition of "system of organic farming and handling." The commenters stated that use of the word, "extraneous," implied that synthetic additives can be used in organic processed products. Synthetics may be used in processed products if the substance is included on the National List. Additionally, the word, "extraneous," modifies the word, "processing," in the definition, and we consider use of extraneous processing to be inconsistent with organic handling. For these reasons, we have not removed the word, "extraneous," from the definition. We have, however, amended the term, "system of organic farming and handling," by deleting "farming" and inserting "production." The definition for the term, "system of organic production and handling," is unchanged. We have taken this action to make the term consistent with the language of this proposal. Additional information on this issue can be found at subpart C, Production and Handling (General), Changes Requested But Not Made, item 1.

(17) Several commenters, including a State Department of Agriculture and a fishery association, requested that wild game and aquatic animals be included in the definition of "wild crop." Regarding aquatic animals, we intend to develop detailed practice standards for specific aquatic species, which will be published for comment and finalized prior to the implementation of the NOP. Given the virtual absence of recognized certification programs for aquatic operations, including aquaculture, there are no U.S. models on which to base national standards. Additional information on this issue can be found at subpart B, Changes Requested But Not Made, item 11 and subpart C, Crop Production, Changes Requested But Not Made, item 7. Accordingly, we have not made the requested changes to the definition of "wild crop."

Definitions—Additional Provisions

Upon further review of the definitions in the first proposal, we have decided to propose the following additions and changes.

Amended Definitions

(1) We have amended the definition of "accreditation" to include foreign entities as now provided for in subpart F, Accreditation. Additional information on including foreign entities in accreditation can be found at subpart B, Additional Provisions, item 1, and subpart F, Changes Based On Comments, item 1.

(2) We have amended the definition of "allowed synthetic" by replacing "for use in organic farming" with "for use in organic production, or handling." This correction was necessary because the National List includes synthetic substances used in organic production and handling.

(3) We have amended the terms, "certified organic farm," "certified organic handling operation," and "certified organic wild-crop harvesting operation," with the term, "certified operation." The term, "certified operation," is used throughout this proposal to refer to a crop or livestock production, wild-crop harvesting, or handling operation or portion of an operation that is certified by an accredited certifying agent as utilizing a system of organic production or handling as described by the Act and regulations in this part. We have taken this action to simplify the regulatory language.

(4) We have amended the term, "cultural," to "cultural methods" and amended the definition by removing all references to livestock. We have taken this action because this proposal does not refer to cultural methods with reference to livestock health care.

(5) We have amended the definition of "field" by replacing "farm" with "production operation." This action was taken because "farm" has been replaced by "production operation" throughout this proposal.

(6) We have amended the definition of "handler" by adding the phrase, "including producers who handle crops or livestock of their own production." We have made this change to clarify that producers who handle their own production become handlers under the regulations. Such producer/handlers must be certified as a handler.

(7) We have amended the term, "inert ingredient in pesticide formulations," to "inert ingredient." We have also amended the definition by specifying that the pesticide product is used in organic crop or livestock production and handling. These changes have been made to make the term and its definition consistent with the language used in the National List. This proposal takes a different position on inert ingredients, as explained in subpart G, National List, Changes Based on Comments, item 6, than was taken in the first proposal. Because of the increased importance of inert ingredients in this proposal, we have rejected the position of the few commenters who recommended removal of this definition.

(8) We have amended the term, "organic plan," to "organic system plan" and made editorial changes to the definition to make the term and language of the definition consistent with the language in this proposal.

(9) We have amended the definition of "peer review panel" by removing "to assist in evaluating the performance of a certifying agent" and inserting "to assist in evaluating applicants for accreditation as certifying agents." This change clarifies that the role of the peer review panel is to evaluate applicants for accreditation. Additional information on "peer review panel" can be found at subpart C, Proposal Description, Production and Handling (General).

(10) We have amended the definition of "person" by adding "contractor" to clarify that, when the regulations use "person," the meaning includes "contractors."

(11) We have amended the definition of "records" by removing the record examples. A trade association and several States recommend adding "process flow charts" to the examples of records. Another commenter, who does not want to give USDA unlimited access to personnel files, suggested the creation of a specific list of records to be maintained. We have rewritten the recordkeeping provisions, removing all references to specific records or types of records which must be maintained. We have taken this action because we believe that it is impracticable to specify in detail every class of records which may be found essential in demonstrating compliance with the Act and regulations. Different types of certified production and handling operations will, by the very nature of their business, be required to maintain different records to establish their

compliance with the Act and regulations. Additional information on the issue of listing every class of records which may be found essential in demonstrating compliance with the Act and regulations can be found at subpart B, Changes Based On Comments, item 6.

(12) We have amended the definition of "State." Addition of the term, "State entity," necessitated our amendment of the definition of "State" to clarify that State means the States of the United States of America.

(13) We have amended the term, "system of organic farming and handling," to "system of organic production and handling" and retained the original definition in this proposal. The original definition was crafted to be consistent with the requirements of the Act. We have changed "farming" to "production" to provide a more encompassing term, which may come to include such diverse activities as hydroponics, green house production, and harvesting of aquatic animals. The purpose of the original definition was to describe practices and substances consistent with systems of organic farming and organic handling as required by the Act and to provide an explicit reference point for determining which practices and substances are most consistent with these systems. Several commenters suggested that the definition include the concepts, "agroecosystem health," "ecological harmony," and "biological diversity." Commenters also suggested including definitions for "organic agriculture," "organic farming," and "transition to organic." This definition is intended to clarify regulatory provisions in this proposal and is not intended as a broad philosophical statement. The terms, "organic agriculture," "organic farming," and "transition to organic," are not used in this proposal and, therefore, are not defined.

(14) We amended the definition of transplant to prevent confusion with a related term, "seedling." While the terms, "transplant" and "seedling" are often used interchangeably, the Act treats them as distinct and establishes separate regulatory requirements. We have determined that the physical process of moving and replanting a seedling results in that seedling becoming a transplant. We have created this distinction to be able to enforce the full requirements of the Act. Additional information on "transplant" can be found at subpart C, Crop Production, Changes Based On Comments, item 4.

New Definitions

(1) We have defined "accredited laboratory." Information concerning "accredited laboratory" can be found at subpart G, Inspection and Testing, Reporting, and Exclusion from Sale, Proposal Description.

(2) We have defined "action level." Information concerning "action level" can be found at subpart G, Inspection and Testing, Reporting, and Exclusion from Sale, Changes Based On Comments, item 2.

(3) We have defined "agricultural inputs." Information concerning "agricultural inputs" can be found at subpart G, Inspection and Testing, Reporting, and Exclusion from Sale, Changes Based On Comments, item 1.

(4) We have defined "Agricultural Marketing Service (AMS) " because the term is used throughout this proposal.

(5) We have defined "breeder stock." We have added this definition because this proposal establishes conditions for the administration of an allowed synthetic parasiticide to livestock producing offspring for incorporation into an organic operation. We have also proposed conditions under which dairy stock, whose milk or milk products are to be sold, labeled, or represented as organically produced, may be treated with allowed synthetic parasiticides. Additional information on this issue can be found at subpart C, Livestock Production, Changes Based On Comments, item 9.

(6) We have defined "bulk." Information concerning "bulk" can be found at subpart D, Additional Provisions, item 7.

(7) We have defined "claims." Information concerning "claims" can be found at subpart D, Changes Based On Comments, item 1.

(8) We have defined "detectable residue." Information concerning "detectable residue" can be found at subpart G, Inspection and Testing, Reporting, and Exclusion from Sale, Proposal Description and at Changes Based On Comments, item 2.

(9) We have defined "drift." Information concerning "drift" can be found in subpart G, Residue Testing, changes based on comments, item 2.

(10) We have defined "estimated national mean." Information concerning "estimated national mean" can be found at subpart G, Inspection and Testing, Reporting, and Exclusion from Sale, Proposal Description and at Changes Based On Comments, item 2.

(11) We have defined "excluded methods." As a result of extensive public comment, we have revised the definition of certain methods to be excluded from organic production systems. Many commenters suggested that we use the definition for certain methods to be excluded from organic production systems proposed by the NOSB. This proposal essentially adopts that definition. "Excluded methods" refers to a variety of methods used to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production. Such methods would include recombinant DNA, cell fusion, and micro-and macroencapsulation. Such methods would not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture.

We recognize that the phrases, "natural conditions or processes" and "not considered compatible with organic production," may be subject to interpretation. We have proposed to use these phrases for two reasons. First, "natural conditions or processes" is used in the NOSB and American Organic Standards definitions, both of which were the result of consultation with organic industry and consumer stakeholders and, thus, accurately reflect current industry practices as well as consumer preferences. Second, we recognize that industry and consumer expectations regarding the products of these techniques in organic production systems may evolve. We believe that, taken together, these phrases allow for a degree of flexibility to ensure that our regulations continue to accurately reflect industry practices and consumer preferences. In cases where questions may arise regarding a specific technique, we anticipate that such questions would be resolved by the Administrator based on recommendations from the NOSB.

(12) We have defined "feed additive." Information concerning "feed additive" can be found at subpart C, Livestock Production, Changes Based On Comments, item 7.

(13) We have defined "feed supplement" Information concerning feed supplement" can be found at subpart C, Livestock Production, Changes Based On Comments, item 7.

(14) We have defined "forage." Information concerning "forage" can be found at subpart C, Livestock Production, Changes Based On Comments, item 4.

(15) We have defined "immediate family." Information concerning "immediate family" can be found at subpart F, Changes Based On Comments, items 14 and 15; Changes Requested But Not Made, item 18; and Additional Provisions, item 2.

(16) We have defined "ingredient" because the term is used throughout subpart D.

(17) We have defined "inspection" because the term is used throughout subparts E and F.

(18) We have defined "lot." Information concerning "lot" can be found at subpart D, Proposal Description and at Additional Provisions, item 6.

(19) We have defined "natural resources of the operation." This definition has been added to provide greater context for evaluating the "maintain or improve" requirement for a system of organic production and handling. Information concerning "natural resources of the operation" can be found at subpart C, Production and Handling (General), Changes Based On Comments, item 2.

(20) We have defined "nonretail container." Information concerning "nonretail container" can be found at subpart D, Proposal Description and at Additional Provisions, item 6.

(21) We have defined "practice standard." Practice standards have been added to this proposal in response to commenter requests for more specific guidelines for measuring the performance of an organic system of production and handling. A practice standard is a series of specific guidelines, requirements, and operating procedures through which a production or handling operation implements a required component of its organic system plan. For example, this proposal contains a practice standard for soil fertility and crop nutrient management which describes the tillage practices, sources and handling restrictions for nutrients, and prohibited activities that a production operation must comply with. There are specific practice standards applicable to crop, livestock, and wild-crop production, and handling operations. We are also proposing to incorporate the terms of the NRCS practice standard for a composting facility into the requirements of this proposal. Additional information on "practice standards" can be found at subpart C, Production and Handling (General), Changes Based On Comments, item 4.

(22) We have defined "private entity" because the term is used throughout subpart F to differentiate between governmental (State entity) and nongovernmental (private entity) organizations providing certification services.

(23) We have defined "production lot number." Information concerning "production lot number" can be found at subpart D, Proposal Description and at Additional Provisions, item 6.

(24) We have defined "residue testing" because the term is used throughout the inspection and Testing, Reporting, and Exclusion from Sale portion of subpart G.

(25) We have defined "retail food establishment." Information on "retail food establishment" can be found in subpart B, Applicability, Proposal Description and Additional Provisions, item 2.

(26) We have defined "sewage sludge." This term has been added and defined as synonymous with "biosolids" to incorporate the Environmental Protection Agency's regulatory language for this category of materials. Information concerning "sewage sludge" can be found at subpart C, Crop Production, Changes Based On Comments, item 1.

(27) We have defined "State entity." This proposal provides for the accreditation of domestic, tribal government, and foreign governmental subdivisions that provide certification services. We refer to such an entity in this proposal as a "State entity." Additional information on "State entity" can be found at subpart F, Changes Based On Comments, item 1.

(28) We have defined "tolerance." Information concerning "tolerance" can be found at subpart G, Inspection and Testing, Reporting, and Exclusion from Sale, Proposal Description and at Changes Based On Comments, item 2.

Subpart B—Applicability

This subpart provides an overview of what has to be certified under the National Organic Program (NOP), describes exemptions and exclusions from certification, addresses use of the term, "organic," and addresses recordkeeping by certified production and handling operations.

Proposal Description

Except for exempt and excluded operations, each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)" must be certified. Certified operations must meet all applicable requirements of these regulations.

Certifying agents will begin the process of certifying organic production and handling operations to the national standards upon receipt of their accreditation from the Administrator. All production and handling operations certified by an accredited certifying agent will be considered certified to the national standards until the certified operation's anniversary date of certification. We are providing this phase-in procedure for production and handling operations certified by newly accredited certifying agents because we believe that such certifying agents will, upon publication of the final rule, demonstrate their eligibility for accreditation by applying the national standards to the certification and renewal of certification of their clients. We are also providing this phase-in procedure to provide relief to certified operations which would otherwise have to be certified twice within a 12-month period (prior to their certifying agent's accreditation and again following their certifying agent's accreditation). This relief will only be available to those certified operations certified by a certifying agent that receives its accreditation within 18 months from the date of publication of the final rule. We anticipate that certifying agents and production and handling operations will move as quickly as possible to begin operating under the national organic standards. We are providing this substantial phase-in period because accredited certifying agents will have to schedule on-site inspections around varying growing seasons and because certifying agents and production and handling operations will need time to adapt to the new national organic standards.

Exempt and Excluded Operations. This regulation establishes several categories of exempt or excluded operations. Exempt operations derive their exemption from the Act while excluded operations are excluded as a result of a Departmental policy decision. An exempt or excluded operation does not need to be certified. However, operations that qualify as exempt or excluded operations may elect to apply for certification. A production or handling operation that is exempt or excluded from obtaining certification still must meet other regulatory requirements contained in this rule as explained below.

Exempt Operations. (1) A production or handling operation that has $5,000 or less in gross agricultural income from organic sales annually is exempt from certification and does not need to submit an the organic system plan to anyone for acceptance or approval. However, an exempt producer or handler must comply with the labeling requirements of § 205.309 and the organic production and handling requirements applicable to its type of operation. For example a producer of organic vegetables, that performs no handling functions, would have to comply with the labeling requirements

of § 205.309 and the applicable production requirements in §§ 205.202 through 205.207. The labeling and production and handling requirements protect the integrity of organically produced products.

(2) A retail food establishment or portion of a retail food establishment that handles organically produced agricultural products but does not process them is exempt from all of the requirements in these regulations.

(3) A handling operation or portion of a handling operation that handles agricultural products containing less than 50 percent organic ingredients by total weight of the finished product (excluding water and salt) is exempt from the requirements in these regulations, except the recordkeeping provisions of § 205.101(c); the provisions for prevention of contact of organic products with prohibited substances in § 205.272; and the labeling regulations in § 205.309. The recordkeeping provisions maintain an audit trail for organic products. The prevention of contact with prohibited substances and the labeling requirements protect the integrity of organically produced products.

(4) If a handling operation or portion of a handling operation that handles agricultural products containing at least 50 percent organic ingredients by weight (excluding water and salt) does not use the word, "organic," on any package panel other than the information panel, it is exempt from the requirements in these regulations, except the recordkeeping provisions of § 205.101(c); the provisions for prevention of contact of organic products with prohibited substances as provided in § 205.272; and the labeling regulations in § 205.309. The recordkeeping provisions maintain an audit trail for organic products. The prevention of contact with prohibited substances and labeling requirements protect the integrity of organically produced products.

As noted above, exempt handling operations producing multiingredient products must maintain records as required by § 205.101(c). This would include records sufficient to: (1) prove that ingredients identified as organic were organically produced and handled, and (2) verify quantities produced from such ingredients. Such records must be maintained for no less than 3 years and the operation must allow representatives of the Secretary and the applicable State program's governing State official access to the records during normal business hours for inspection and copying to determine compliance with the applicable regulations.

Excluded Operations. (1) A handling operation or portion of a handling operation that sells organic agricultural products labeled as "100 percent organic," "organic," or "made with organic (specified ingredients)" that are packaged or otherwise enclosed in a container prior to being received or acquired by the operation, remain in the same package or container, and are not otherwise processed while in the control of the handling operation is excluded from the requirements in these regulations, except for the provisions for prevention of commingling and contact of organic products with prohibited substances in § 205.272. The requirements for the prevention of commingling and contact with prohibited substances protect the integrity of organically produced products.

This exclusion will avoid creating an unnecessary barrier for handlers who distribute nonorganic products and who want to offer a selection of organic products.

(2) A retail food establishment or portion of a retail food establishment that processes or prepares, on the premises of the retail food establishment, raw and ready-to-eat food from certified agricultural products labeled as "100 percent organic," "organic," or "made with organic (specified ingredients)" is excluded from the requirements in these regulations, except for the provisions for prevention of contact of organic products with prohibited substances as provided in § 205.272; and the labeling regulations in § 205.309. The prevention of commingling and contact with prohibited substances and labeling requirements protect the integrity of organically produced products.

Excluded retail food establishments include restaurants; delicatessens; bakeries; grocery stores; or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar, or other eat-in or carry-out service of processed or prepared raw and ready-to-eat food.

We have excluded such retail food establishments because comments to the first proposal concerning the issue of certification of retail food establishments were completely divergent. Comments ranged from the certification of all retail food establishments to exclusion of all retail food establishments. There is clearly a great deal of public concern regarding the handling of organic products by retail food establishments. Someday retail food establishments may be subject to regulation under this NOP. Any such regulation would be preceded by rulemaking with an opportunity for public comment. Our exclusion of retail food establishments from this proposal does not prevent a State from developing an organic retail food establishment certification program or otherwise regulating retail food establishments that prepare, package, or process organic agricultural products.

No retailer, regardless of this exclusion and the exceptions found in the definitions for "handler" or "handling operation," may sell, label, or provide market information on a product unless such product has been produced and handled in accordance with the Act and these regulations. Any retailer who knowingly sells or labels a product as organic, except in accordance with the Act and these regulations, will be subject to a civil penalty of not more than $10,000 under this program. Such retailer may also be subject to enforcement actions and penalties under Federal statutes and their implementing regulations administered by other agencies of the Federal government.

Recordkeeping Requirements for Certified Operations. A certified operation must maintain records concerning the production and handling of agricultural products that are sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)" sufficient to demonstrate compliance with the Act and regulations. Such records must be adapted to the particular business that the certified operation is conducting, fully disclose all activities and transactions of the certified operation in sufficient detail to be readily understood and audited, be maintained for not less than 5 years beyond their creation, and be sufficient to demonstrate compliance with the Act and regulations. Certified operations must make the records required by this regulation available for inspection and copying by authorized representatives of the Secretary, the applicable State program's governing State official, and the certifying agent. Access to such records must be provided during normal business hours.

Examples of Records. Each exempt, excluded, and certified operation should maintain the records which demonstrate compliance with the Act and the regulations applicable to it and which it believes establish an audit trail sufficient to prove to the Secretary, the applicable State program's governing State official, and the certifying agent that the exempt, excluded, or certified operation is and has been in compliance with the Act and regulations.

Examples of records include: Application and supporting documents for certification; organic system plan and supporting documents; purchased inputs, including seeds, transplants, livestock, and substances (fertilizers, pesticides, and veterinary biologics consistent with the livestock provisions of subpart C), cash purchase receipts, receiving manifests (bills of lading), receiving tickets, and purchase invoices; field records (planting, inputs, cultivation, and harvest); storage records (bin register, cooler log); livestock records, including feed (cash purchase receipts, receiving manifests (bills of lading), receiving tickets, purchase invoices, copies of grower certificates), breeding records (calendar, chart, notebook, veterinary documents), purchased animals documentation (cash purchase receipts, receiving manifests (bills of lading), receiving tickets, purchase invoices, copies of grower certificates), herd health records (calendar, notebook, card file, veterinary records), and input records (cash purchase receipts, written records, labels); producer invoice; producer contract; receiving manifests (bills of lading); transaction certificate; producer certificate; handler certificate; weigh tickets, receipts, and tags; receiving tickets; cash purchase receipts; raw product inventory reports and records; finished product inventory reports and records; daily inventories by lot; records as to reconditioning, shrinkage, and dumping; production reports and records; shipping reports; shipping manifests (bills of lading); paid freight and other bills; car manifests; broker's contracts; broker's statements; warehouse receipts; inspection certificates; residue testing reports; soil and water testing reports; cash receipt journals; general ledgers and supporting documents; sales journals; accounts payable journals; accounts receivable journals; cash disbursement journals; purchase invoices; purchase journals; receiving tickets; producer and handler contracts; cash sales receipts; cash purchase journals; sales invoices, statements, journals, tickets, and receipts; account sales invoices; ledgers; financial statements; bank statements; records of deposit; canceled checks; check stubs; cash receipts; tax returns; accountant's or other work papers; agreements; contracts; purchase orders; confirmations and memorandums of sales; computer data; computer printouts; and compilations of data from the foregoing.

Request for Comment. This proposal provides that all ingredients in a multiingredient product identified as organic must have been produced by a production or handling operation certified by an accredited certifying agent. We are seeking comment on the following question. Should handlers be allowed to identify organically produced products produced by exempt production operations as organic ingredients? Such identification would be restricted to the ingredients list on the information panel. This may provide a wholesale outlet for organically produced agricultural products produced by producers exempted from certification because their gross agricultural income from organic sales totals $5,000 or less annually.

Compliance with Federal Statutes and Regulations. Any agricultural product that is sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)" must be produced and handled in accordance with the requirements in these regulations. Organic agricultural products must be produced and handled in compliance with the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act, concerning meat, poultry, and egg products; the Federal Food, Drug, and Cosmetic Act; the Federal Insecticide, Fungicide, and Rodenticide Act; and any other applicable Federal statute and its implementing regulations.

Foreign Applicants. The regulations in this part, as applicable, apply equally to domestic and foreign applicants for accreditation, accredited certifying agents, domestic and foreign applicants for certification as organic production or handling operations, and certified production and handling operations unless otherwise specified.

Applicability—Changes Based on Comments

This subpart differs from our first proposal in several respects as follows:

(1) *Exception for Handlers Serving Three or Fewer Certified Operations.* We have removed the provision that would have allowed handlers providing services to fewer than three certified organic producers to operate without separate certification under the NOP (§ 205.201). Such handlers will now have to be certified unless otherwise exempted or excluded from certification under § 205.101 of these regulations. We have taken this action because we believe that the first proposal invites problems, such as making certain that the contracted handler maintains compliance with the Act and regulations, taking enforcement actions against persons violating the Act and regulations, and being equitable to all handlers since large-volume handling operations may qualify for inclusion under the provision on the basis of few clients while small-volume handlers would be disqualified because they have three or more clients.

More than 100 comments were received, most from consumers, in opposition to the provision. Many of the commenters erroneously interpreted the provision as an exemption for handlers of product for less than three certified operations. Most of these commenters expressed the belief that it is a violation of the Act to allow handlers to operate through inclusion under another certified operation's certification rather than through separate certification under the Act and regulations. Several commenters stated that it is unacceptable to exempt handling operations providing services to fewer than three certified entities from separate certification. Several commenters stated that operations that process products from a certified producer should always be certified. Several State departments of agriculture and others stated that the exemption for handlers servicing fewer than three certified operations does not make sense. They emphasized that certified operations could produce very large quantities of organic product and a large-scale handler may contract with only a few certified producer operations. Therefore, they called for elimination of the exemption. A few commenters questioned the certified operation's ability to ensure that the contracted handler maintains compliance with the Act and regulations. They expressed their belief that the certified operation would have no authority to maintain compliance with the Act within a facility it neither owns nor manages.

We never intended to exempt handlers of fewer than three certified operations from certification. Rather, we proposed a means by which handlers of fewer than three certified operations could be covered under the certification of a certified operation for which it provides handling services.

Several of the commenters favored the provision that any handling operation that provides handling services to fewer than three certified entities that produce or handle agricultural products that are or that are intended to be sold, labeled, or represented as organic or made with certain organic ingredients would not be required to be separately certified apart from the operations for which it provides such services. However, supporters of the concept differed in their position on the proposal. Most stated that the provision would work

only if it is made clear that a handler can provide services to only one or two separate entities and qualify for the exemption and only if included in the certifications of and inspected along with the entities for which the handler will provide the services. They further emphasized that all applicable standards must be met. A few supporters recommended that there be a contract between the handler and the certified operation and that the certified operation be responsible for any failure of the handler to adhere to these regulations. Another commenter stated that, if handlers are to be exempt from certification, the qualifying parameter for exemption should be based upon economic value similar to that for production operations.

Two commenters supported the proposal but wanted the fewer-than-three-certified-operations limitation removed. One of the commenters, a nonprofit agricultural organization, expressed the belief that the limitation needlessly restricts commercial activity, invites an excessive amount of paperwork related to certification applications, and provides no greater assurances for quality control. This commenter, referring to the definition of handling operation at section 6502(10) of the Act, interpreted "to receive or otherwise acquire" as synonymous with taking legal title to the product. This commenter stated that this interpretation creates a distinct, verifiable threshold which clearly identifies those operations needing to be certified and those that do not need to be certified. Under the commenter's suggested system, handlers who take legal title to organic products assume responsibility for their subsequent handling and are required to have their operations certified. Any handler who works on organic products without taking legal title would have his or her activities approved and monitored by the certifying agent responsible for the product when it arrived at the handler's door. The commenter believes that noncertified handlers who wanted to serve organic customers would quickly learn to provide the quality control and accountability requirements which certifying agents expect to see.

We disagree with the commenters who recommended removal of the fewer-than-three-certified-operations restriction on the grounds that the proposal to limit exemptions to handlers contracting with fewer than three certified operations needlessly restricts commercial activity, invites an excessive amount of paperwork related to certification applications, and provides no greater assurances for quality control. The primary justification given for removal of the fewer-than-three-certified-operations restriction is the belief that any handler who works on organic products without taking legal title would have his or her activities approved and monitored by the certifying agent responsible for the product when it arrived at the handler's door. First, it is unreasonable to expect the certifying agent to be responsible for monitoring noncertified handlers even if they are providing services to an operation certified by the certifying agent. Second, we disagree with the commenter's interpretation that "to receive or otherwise acquire" is synonymous with taking legal title to the product. "To receive or otherwise acquire" involves the possession, control, or custody of a product. Such possession, control, or custody of a product may or may not involve the transfer of title to the product. In other words, a handler may have possession, control, or custody of the product under a right derived from a certified operation but not under a claim of the handler's title to the product.

(2) *Certification for a Portion of a Production or Handling Operation.* We have clarified that a portion of a production or handling operation can be certified. We have taken this action because we agree with the association commenter who suggested that the Department clarify for potential applicants for certification that a portion of their production or handling operation can be certified. The Act at section 6506(b) authorizes the certification of specific fields of a production operation or parts of a handling operation when: (1) In the case of a production operation or field, the area to be certified has distinct, defined boundaries and buffer zones separating the land being operated through the use of organic methods from land that is not being operated through the use of such methods; (2) the operators of such production or handling operation maintain records of all organic operations separate from records relating to other operations and make such records available at all times for inspection by the Secretary, the certifying agent, and the State program's governing State official; and (3) appropriate physical facilities, machinery, and management practices are established to prevent the possibility of a mixing of organic and nonorganic products or a penetration of prohibited chemicals or other substances on the certified area. This clarification is found at § 205.100 of this proposal.

(3) *Exemption for Operations with $5000 or Less in Income.* We have clarified at § 205.101(a)(1) that the producer and handler exemption from certification applies to production and handling operations that sell agricultural products as organic but whose gross agricultural income from organic sales totals $5,000 or less annually. We have taken this action because of commenter confusion over whether the $5,000 level applied to all sales of agricultural products or just sales of organic agricultural products. This action is consistent with the position of a State department of agriculture, which stated that the $5,000 exemption should apply to organic sales, not sales of all agricultural products. The commenter believes that, as originally proposed, the regulation would limit opportunities for organic industry development, especially for small producers and other small agribusinesses.

(4) *Applicability of Regulation to Exempt Operations.* We have revised the producer and handler exemption, provided to producers and handlers with gross agricultural income from organic sales totaling $5,000 or less annually, to provide that such operations are exempt from certification and do not need to submit an organic system plan to anyone for acceptance or approval but must comply with the requirements for organic production and handling and the labeling requirements for agricultural products produced on an exempt or excluded operation. We have taken this action because the first proposal too narrowly addressed the regulatory requirements that exempt producers must meet. Our purpose is to exempt such production and handling operations from the regulatory and financial burdens of certification but not to exempt them from the standards for organic production and handling. A fundamental concept of this regulation is to establish a label for organic. To the extent that these entities will be using the term, "organic," to describe their product, they must be truthful. If they don't comply with the other requirements of this part, they cannot truthfully describe their product as organic.

Several State commenters expressed the belief that the producer exemption would be too difficult to enforce. Some expressed the belief that exempt production operations would still require monitoring to verify compliance with organic standards. A State department of agriculture commented that some monitoring of uncertified operations would still be needed to verify compliance with standards; otherwise there would be no guarantee that standards would be met for

products being sold as organic. Another State, which expressed strong disagreement with the producer exemption, asked how complaints against such producers would be reconciled if they are exempt from the NOP and do not have to maintain records over a multiple-year period. This commenter stated its intent, under its State program, to require certification of organic production operations producing less than $5,000 in agricultural product yearly. This same commenter acknowledged the Federal program's obligation to provide the exemption as required by section 6505(d) of the Act.

A producer raised the issue of having exempt operations provide affidavits of compliance with the Act and regulations except for certification. A certifying agent made the observation that the rule as first proposed would not permit exempt producers, whether operating under an affidavit or not, to sell any of their products to a certified operation for further processing unless they were fully certified. This certifying agent stated that it did not believe excluding exempt producers from selling any of their products to a certified operation for further processing unless they were fully certified was consistent with the intent of the Act.

We disagree with both commenters. First, we believe that an affidavit program for exempt producers, opting to exercise their right to the exemption, would impose unnecessary regulation upon entities that the Act clearly intended not to impose such regulation upon. Second, an affidavit program would create a regulatory burden on the Department and certifying agents that would not be justified by the size of such operations. We recognize, as pointed out by commenters, that some State programs currently require organic production operations that would be exempt under this national program to register with the State and to comply with requirements such as filing financial records and maintaining records of production methods and substances used.

While we believe that an affidavit program is not appropriate at the national level, we do believe that States would be authorized to regulate organic operations exempted under the NOP's $5,000-or-less organic sales exemption under an approved State program. Under this proposal, producers and handlers exempted under the NOP's $5,000-or-less organic sales exemption will be exempt from the certification regulations and will not have to submit an organic system plan to anyone for acceptance or approval but will be required to comply with the requirements for organic production and handling and for labeling. States may implement a program for monitoring the activities of exempt production and handling operations and enforcing compliance with the NOP. States will be permitted to require certification of federally exempted producers and handlers under an approved State organic certification program. The Department will consider any complaint of noncompliance with these regulations by an exempt production or handling operation and take appropriate action.

(5) *Applicability of Federal Statutes.* We have added at § 205.102(c) reference to a production or handling operation's responsibility for complying with all applicable Federal statutes and their implementing regulations as those statutes may apply to the production and handling of agricultural products. We have made this addition as a means of advising producers, handlers, and the public that these regulations do not supersede or alter a producer's or handler's responsibilities under other Federal statutes and their implementing regulations.

A processors association urged the Department to advise the public in this rule that food products produced and processed under the organic standard must comply with applicable provisions of the Federal Food, Drug, and Cosmetic Act; the Federal Meat Inspection Act; the Poultry Products Inspection Act; and all other relevant statutes and their implementing regulations, in all respects, especially related to adulteration and misbranding.

(6) *Recordkeeping Provisions.* We have rewritten the recordkeeping provisions removing all references to specific records or types of records which must be maintained. In their place, we are requiring that certified operations maintain records adapted to the particular business that the certified operation is conducting. Such records must disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited and must be sufficient to demonstrate compliance with the Act and regulations. We have taken this action because we believe that it is impracticable to specify in detail every class of records which may be found essential in demonstrating compliance with the Act and regulations. Different types of certified production and handling operations will, by the very nature of their business, be required to maintain different records to establish their compliance with the Act and regulations.

A certifying agent and a beekeepers association expressed support for the recordkeeping requirements in the first proposal. The beekeeping association emphasized the value of such recordkeeping in monitoring the use of substances. A marketing association and a State commented that the recordkeeping period for a list of substances applied to a certified operation should be changed from 3 to 5 years to be consistent with the requirements of section 6511(d) of the Act. A research foundation suggested removal of the requirement for identifying the name and address of the person who applies and who has applied any substance to any part of the farm and any livestock or other agricultural product. A trade association recommended the addition of a new paragraph addressing the records required to be maintained by crop production operations to establish an audit trail. Specifically, the commenter recommended that the new paragraph require that an audit trail be maintained by all organic crop production operations, which records: (1) All sources and amounts of all off-farm inputs; (2) the dates, rate, method of application, location, reason for use, and name and address of applicator for all off-farm inputs; (3) the dates, projected and actual yield, and harvest location of all crops produced by the operation, both organic and nonorganic; (4) the dates, quantities, and locations of all crops stored; (5) the transport system(s) used to distribute organic crops; and (6) the product name, date, quantity, and buyer of all products sold, both organic and nonorganic. A State commenter stated that the maintenance of records on a certified operation is important, but there must be restraint in requiring redundant or irrelevant information. Approximately 50 retail commenters, speaking on behalf of a producer handler, stated that the recordkeeping requirements were burdensome and overly complicated.

Comments indicated that there was some concern regarding what records had to be maintained by certified operations. Commenters were concerned about requiring the maintenance of the correct records for establishing an audit trail, avoiding the retention of redundant or irrelevant records, and minimizing the burden and complexity of the recordkeeping.

We agree with the commenters who stated that the recordkeeping period for a list of substances applied should be consistent with the 5-year recordkeeping requirements of the Act.

Accordingly, this proposal at § 205.103(b)(3) requires that certified operations maintain all records applicable to their organic operations for not less than 5 years beyond their creation. We disagree with those commenters who called for more specifics relative to what records need to be maintained and agree with those commenters who expressed concern regarding the magnitude of records required to be maintained. This proposal provides each production and handling operation with the opportunity to decide for itself what records are necessary to demonstrate its compliance with the Act and regulations.

(7) *Exemption from Prevention of Commingling.* We have removed the requirement that a handling operation or portion of a handling operation that handles only agricultural products that contain less than 50 percent organic ingredients by total weight of the finished product (excluding water and salt) that is exempt from the requirements in this part comply with the provision for the prevention of commingling. As noted in item 8 below, exempt handlers of agricultural products that contain at least 50 percent organic ingredients by weight will also be exempt from complying with the provision for the prevention of commingling. We have taken this action because the commingling of agricultural products is often a part of the processing activity. Such operations must, however, comply with all of the applicable labeling provisions of subpart D including the prohibition on the combining of organic and nonorganic forms of the same agricultural product. In other words, the handler must not, for example, combine organic and nonorganic corn if corn is to be shown on the information panel as "organic corn."

A commenter called for the removal of the requirement that an exempt handler comply with the provisions for the prevention of commingling and contact of organic products with prohibited substances. The commenter claimed that requiring exempt handlers to prevent commingling of organic and nonorganic products and contact of organic products with prohibited substances is inconsistent with the Act. We do not agree. As noted above, we have removed the prevention of commingling requirement because the commingling of agricultural products is often a part of the processing activity. We have not, however, removed the requirement for the prevention of contact of organic products with prohibited substances because the requirement is necessary to safeguard the integrity of organic ingredients used in the products being handled.

(8) *Exemption for Handlers that Handle Product Containing at Least 50 Percent Organic Ingredients.* We have provided at § 205.101(a)(4) that any handling operation or portion of a handling operation that handles agricultural products that contain at least 50 percent organic ingredients by weight (excluding water and salt) that chooses to not use the word, "organic," on any panel other than the information panel is exempt from the requirements in these regulations, except the provisions for prevention of contact of organic products with prohibited substances as set forth in § 205.272, the labeling provisions of § 205.309, and the recordkeeping provisions of § 205.101(c).

A commenter stated that the Department is required under the Act to exempt any handling operation or portion of a handling operation that processes agricultural products that contain at least 50 percent organically produced ingredients by weight (excluding water and salt). We disagree with the commenter. Section 6505(c)(1) of the Act ties the exemption from certification to use of the word, "organic," on the principal display panel. The Secretary, in consultation with the National Organic Standards Board (NOSB) and the Secretary of Health and Human Services, may require certification of any operation that chooses to use the word, "organic," on the principal display panel. This proposal provides that handlers, processing agricultural products that contain at least 50 percent organically produced ingredients by weight (excluding water and salt), who choose to only use the word, "organic," on the information panel are exempt from certification. Handlers processing agricultural products that contain at least 50 percent organically produced ingredients by weight (excluding water and salt) who choose to use the word, "organic," on any other panel, including the principal display panel, must be certified. Use of the word, "organic," on the principal display panel carries with it connotations in the minds of consumers regarding the organic nature of the product which necessitate certification of handlers of such products. Further, requiring certification of handlers of such products is consistent with current industry practice.

Applicability—Changes Requested But Not Made

This subpart retains from our first proposal regulations on which we received comments as follows:

(1) *Exemptions for Handlers.* Commenters stated that under no circumstances should organic handling operations be exempt from certification. A few environmental organizations, a certifying agent, and an industry association commented that the first proposal exceeded statutory authority by broadening the producer exemption in section 6505(d) of the Act to apply to handlers. An agriculture research and education organization stated that, while the Act does not specifically identify handling operations under the producer exemption, including them is a reasonable and workable interpretation of the Act. The commenter stated that the Act provides an exemption to persons who sell no more than $5,000 annually in value of agricultural products and it sees no reason why the exemption should not include handlers. This commenter also recommended that the NOP develop a new category of exemption of up to $10,000 for on-farm processing. The commenter's recommended exemption would apply to value-added, made-on-site products, such as maple syrup, jams, and relishes, and would allow individuals to combine their production and handling exemptions.

We do not agree with those commenters who stated that the first proposal exceeded statutory authority. The title of the exemption in the Act (section 6505(d)) specifically refers to small farmers. However, the text to the exemption provides, in full, that "subpart (a)(1) shall not apply to persons who sell no more than $5,000 annually in value of agricultural products." "Person" is defined in the Act as "an individual, group of individuals, corporation, association, organization, cooperative, or other entity." The Act defines "agricultural product" as "any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock, that is marketed in the United States for human or livestock consumption. Handlers are covered by the definition of "person" and "agricultural product" and are thereby eligible for exemption.

The financial burden of certification is no less for handlers with sales of no more than $5,000 annually than it is for producers with sales of no more than $5,000 annually. Therefore, since the cost of certification is the primary reason for exempting production

operations with sales of no more than $5,000 annually, it is reasonable to also exempt handling operations with sales of no more than $5,000 annually.

This proposal exempts production and handling operations that sell agricultural products as "organic" but whose gross agricultural income from organic sales totals $5,000 or less annually. Production and handling operations exempted on the basis of organic sales of $5,000 or less annually are exempt from certification under Subpart E and do not need to submit an organic system plan under § 205.201 but must comply with the applicable organic production and handling requirements of subpart C and the labeling requirements of § 205.309.

Exemptions for production operations and handling operations are separate exemptions. Therefore, a production operation that is also a handling operation, due to its production and sale of processed products, must qualify for each exemption separately. The balance of this paragraph lists exemption eligibility examples. A production operation with gross agricultural income from organic sales totaling $5,000 or less annually will be exempt from certification as an organic production operation. A handling operation with gross agricultural income from organic sales totaling $5,000 or less annually will be exempt from certification as an organic handling operation. A production and handling operation with gross agricultural income from organic production sales totaling $5,000 or less annually and organic handling sales totaling $5,000 or less annually will be exempt from certification as an organic production operation and from certification as an organic handling operation. A production and handling operation with gross agricultural income from organic production sales totaling $5,000 or less annually and organic handling sales totaling more than $5,000 annually will be exempt from certification as an organic production operation only. A production and handling operation with gross agricultural income from organic production sales totaling more than $5,000 annually and organic handling sales totaling $5,000 or less annually will be exempt from certification as an organic handling operation only.

Products marketed by exempt production operations and handling operations cannot be represented as certified organic or display the U.S. Department of Agriculture (USDA) organic seal. Products from exempt operations may not be included as organic ingredients in a multiingredient product produced or processed in a certified operation. We anticipate that this exemption will be used primarily by small market gardeners, hobbyists, and other small producers who sell produce and other agricultural products at farmers markets and roadside stands to consumers within their communities.

(2) *Exceeding $5000 Limit for Exemption.* A few commenters, including a State, raised the concern that an organic operation might not anticipate sales over $5,000 but could exceed its exemption due to a bumper crop or market price increases, putting the operation in violation. The Department believes that once an exempted operation reaches the $5,000 maximum exemption level, it is compelled to seek certification, which it would have to obtain and maintain if it is to continue to sell organic products. A certified organic operation, including one which previously lost its exempt status, could switch from certified to exempt if its size or operations were changed such that it no longer sold more than $5,000 annually in value of agricultural products.

(3) *Certification of Exempt Operations.* A producer interpreted "exempt" as meaning that operations exempted from certification could not be certified as an organic operation. This interpretation is not correct. Any production or handling operation, including an exempt operation, which makes application for certification as an organic operation and meets the requirements for organic certification may be certified.

(4) *Increasing the Statutory Limitation of $5000 for Exemption.* In the first proposal, we asked for comments as to whether the $5,000 level for exemption from certification should be raised to $10,000 or to another amount and why an increased amount would be appropriate. Suggested levels ranged from $2,000 to $50,000. The suggested levels and justifications for such levels are not sufficiently consistent for us to recommend that Congress change the $5,000 level.

In addition, we requested data as to the number of operations that may be exempt under the current $5,000 limitation for exemption and the number of operations that may be exempt under any new monetary amount suggested. Comments from the few States responding to the request for data as to the number of operations that may be exempt under the current $5,000 limitation revealed that from one-third to one-half of organic producers in the commenting States would be exempt under the statutorily authorized $5,000 exemption limitation.

(5) *Certification of Retail Operations.* A commenter said the first proposal ignored retail operations which contract with an organic farm to produce organic products with the store's brand on the label. The commenter said the retail operation should be certified because it is responsible if violation occurs in the organic production or handling of the branded product. The commenter is incorrect in suggesting that the retailer would be held responsible for a violation if the violation occurred at the production or handling facility. When a retail operation contracts for the production, packaging, or labeling of organic product, it is the certified production or handling operation that is responsible for meeting the applicable organic production or handling requirements under the Act and these regulations. If a violation occurs in the organic production or handling of the product, the certified production or handling operation retains responsibility for the violation even if the retailer's name is on the label.

(6) *Exemption for Products Containing Less than 50 Percent Organic Ingredients.* Several commenters representing States and organic organizations opposed the exemption of a handling operation or portion of a handling operation that handles only agricultural product containing less than 50 percent organic ingredients. They stated that handling operations creating products with organic ingredients should be certified regardless of the percentage of organic ingredients found in the products they produce. These commenters stated that exemptions from certification undermine audit trails and consumer confidence. Each of these commenters called for removal of the proposed exemption. Another commenter stated that, if a product is less than 50 percent organic, then it is not organic and should not be labeled or sold as such.

We disagree with the comments. Because such products consist of less than 50 percent organic ingredients, handlers may only use the word, "organic," on the information panel of such products to truthfully represent the organic nature of the ingredients. Such handlers must also comply with the recordkeeping provisions of § 205.101(c), the prevention of contact of organic products with prohibited substances provisions of § 205.272, and the labeling provisions of § 205.309.

(7) *Ensuring Organic Ingredients are Not Contaminated.* A commenter asked how the Department would ensure that organic ingredients are not contaminated without certification of the handling operation creating the final

product. Handling operations that handle agricultural products containing less than 50 percent organic ingredients and at least 50 percent organic ingredients that are exempt from certification must maintain records sufficient to: (1) Prove that ingredients identified as organic were organically produced and handled, and (2) verify quantities produced for such ingredients. Such operations are required at § 205.101(c) of this proposal to allow representatives of the Secretary and the applicable State program's governing State official access to these records for inspection and copying during normal business hours to determine compliance with the applicable regulations.

(8) *Exclusion for Handlers that Receive and Distribute Prepackaged Product.* Commenters raised several issues regarding the exclusion of handlers who receive and distribute prepackaged organic products. At least three certifying agents commented that all retailers should be certified unless they handle only organic product in a "final, sealed retail container," or "final impermeable containers." The commenters are apparently seeking further assurance that nothing is added to the organic product while under control of a distributor or retail operation. Because of the wide variety of organic products and the special needs of some of those products, establishing restrictions on the kind of containers used for transportation could unfairly treat some products and commodity industries. For example, some organic products may require containers which "breathe" or allow the exchange of air and outside temperatures. Nonpermeable containers could hasten spoilage of some fresh and processed organic products.

A few certifying agents proposed that distributors and trucking companies which transport agricultural products also should be certified under this part. However, such transportation operations do not carry out the functions specified in the definitions for handler and handling operations. Distributors and trucking companies have traditionally been excluded from requirements of agricultural production regulations. The Act cannot be used to regulate activities or entities beyond its regulatory authorities. In this case, it is the responsibility of producers, handlers, interim handlers, and retailers to meet the requirements of this regulation by ensuring that their contracted shippers and distributors understand, respect, and protect the integrity of the organic products they are transporting.

An organic association requested that proper notification of "good organic handling practices" be made to the transportation, trucking, and public warehousing sectors to inform them of their responsibilities. The commenter stated that the notification should include requirements for audit trail records, measures needed to prevent commingling and contamination by prohibited substances. This commenter expressed the belief that excluded handlers should preregister and provide a signed statement of acknowledgment of the requirements. Regarding enforcement of the suggested requirements, this commenter stated that enforcement of the requirements should be funded and administered by existing State and Federal inspection services.

We acknowledge the need for education regarding the requirements of this rule as well as such issues as the handling of organic products. The NOP, in cooperation with the NOSB, will provide educational material to the public regarding the requirements of this rule. Such educational material will include good organic handling practices made available to the transportation, trucking, and public warehousing sectors. However, we disagree with the suggestions calling for preregistration of exempt and excluded handlers and enforcement of the requirements by existing State and Federal inspection services. We believe the suggestions create a burden, on exempt and excluded handlers, the Department, and certifying agents, not justified by the nature of the handling performed.

(9) *Seafood Products.* A marketing institute recommended that the first proposal be revised to address seafood products in a separate seafood section and to include provisions that apply to seafood harvested in the wild. This commenter stated that wild-caught seafood should be allowed to be labeled as organic. A processors association also called for the labeling of wild-caught seafood as organic.

While the first proposal contained no standards solely for aquatic animals in an organic operation, it did contain provisions applicable to their production. The first proposal allowed fish and crustaceans, among other livestock types, to be sold, labeled, or represented as organic if such livestock had been brought into an organic operation no later than the earliest commercially available stage of life. Several commenters suggested that the management of aquatic animals differs sufficiently from mammals and poultry to require separate regulatory provisions. We concur and intend to develop detailed practice standards for specific aquatic animals as discussed further under the production and handling subpart.

Applicability—Additional Provisions

Upon further review of the applicability provisions in the first proposal, we have decided to propose the following additions and changes.

(1) *Foreign Applicants.* We have added a new provision at § 205.104 addressing applicability of these regulations to foreign applicants. We have made this addition to clarify our intent that the regulations in this part apply equally to domestic and foreign applicants for accreditation, accredited certifying agents, domestic and foreign applicants for certification as organic production or handling operations, and certified organic production and handling operations unless otherwise specified in these regulations.

(2) *New Exclusions.* We have excluded retail food establishments that process or prepare raw and ready-to-eat food from most of the requirements in these regulations. An excluded retail food establishments must comply with the requirements for the prevention of contact with prohibited substances provisions of § 205.272 and the labeling provisions of § 205.309. We have excluded such retail food establishments because comments to the first proposal concerning the issue of certification of retail food establishments (restaurant, delicatessen, bakery, grocery store, or other retail outlet) preparing, packaging, or processing raw and ready-to-eat organic agricultural products that are previously labeled as "100 percent organic," "organic," or "made with organic (specified ingredients)" were completely divergent. The first proposal also contained an inconsistency which would have required a supermarket delicatessen to be certified but would have excluded from certification a restaurant with carry-out delicatessen products.

As the comments discussed below show, there is clearly a great deal of public concern regarding the handling of organic products by retail food establishments. Should we decide to regulate retail food establishments under the NOP, we will proceed with rulemaking and provide an opportunity for public comment.

Our exclusion of retail food establishments from this proposal does not prevent a State from developing an organic retail food establishment certification program or otherwise regulating retail food establishments that prepare, package, or process organic

agricultural products. Texas and Maryland currently have retailer certification programs.

No retailer, regardless of this exclusion and the exceptions found in the definitions for "handler" or "handling operation," may sell or label a product as organically produced and handled or fix a label to or provide other market information concerning an agricultural product if such label or information implies that such product is produced and handled using organic methods unless such product has been produced and handled in accordance with the Act and these regulations. Any retailer who knowingly sells or labels a product as organic, except in accordance with the Act and these regulations, will be subject to a civil penalty of not more than $10,000 under this program. Such retailer may also be subject to enforcement actions and penalties under Federal statutes and their implementing regulations administered by other agencies of the Federal Government.

More than 90 commenters, including an organic association, stated that the retailer exclusion in the first proposal violates the requirement to certify all handling operations. The organic association believes that processing, as defined in the Act, includes all the normal culinary arts, food manufacturing, and packaging. All of these commenters, including some States, recommended removal of the exclusion. Several commenters, including a few States, expressed concern that exclusions from certification eliminate effective audit trails and undermine consumer confidence in organic products. One State commented that it believed retail food establishments should be certified because they are the last handler link from producer to consumer.

Several commenters stated that retailers who receive organic product have a high potential for loss of integrity of the organic product due to accidental misuse of pesticides and sanitizers during shipping or storage and to inadvertent commingling with nonorganic product. The commenters believe that, even though a retailer may only display and sell organic product, such retailer should be certified and monitored for compliance to ensure proper treatment of the product in shipment and storage. A State agency, however, cautioned against establishing another burden on the organic industry. The commenter said that if sorting from bulk and repackaging into smaller packages requires certification, then many small "natural food" retail outlets would find certification more costly than the economic benefits of marketing organic products. The commenter said many small, natural food retail food establishments would likely stop carrying organic items.

A few commenters stated there is a high potential for fraud among retailers who have the opportunity to repackage, mislabel, and sell nonorganic product as organic. Therefore, they believe that all retailers must be subject to certification or some form of oversight to assure that they are not mislabeling product.

A commenter representing a large retail grocery store operation said that good identification procedures enable retail stores to keep organic product separated from nonorganic product during transportation, storage, and in-store displays. The commenter continued that unduly rigid requirements would be burdensome on retailers. The commenter indicated that the costs of certification and compliance may outweigh the benefits of carrying organic product.

Another commenter from a major retail food establishment suggested that retailers that wash and sort fresh organic produce for display should be required to follow "good organic handling practices" that would establish recordkeeping responsibilities and prevent commingling with nonorganic products and contamination by prohibited materials. The commenter suggested that conformance could be maintained by existing State or local health inspectors or Federal inspectors with special training in organic handling systems. However, there is no authority in the Act to require the services of State or local inspectors.

Another retailer stated that retailers will comply with regulations because consumers will hold retailers responsible for deficiencies or illegal actions through the entire production and processing chain for agricultural products.

A commenter stated that, if a restaurant serves organic foods, it should be allowed to so state. The commenter went on to say that restaurants and grocery stores have a right to state that they used organic ingredients in preparing a given dish. This commenter believes that restaurants and grocery stores selling organic products, even if they prepare them, should not have to be certified. A few commenters claimed that processing, as defined in the Act, includes all culinary arts and food manufacturing. They stated that restaurants must be certified or, at the very least, be required to keep records of organic foods prepared. A State commenter who stated that exemptions undermine audit trails and consumer confidence suggested that restaurants serving organic foods be required to maintain records showing the origin and certification status of raw agricultural ingredients used in the restaurant's food products.

The Department routinely monitors compliance of various food producers, handlers, distributors, and retailers which are regulated under a variety of Departmental programs. The Department responds to consumer complaints and often conducts unannounced compliance investigations and audits of agricultural industry businesses. The Department understands the need for and commits Departmental resources to this organic program. In addition, oversight of these operations can be conducted by State agencies.

Subpart C—Organic Crop, Wild Crop, Livestock, and Handling Requirements

Proposal Description

This subpart sets forth the requirements with which production and handling operations must comply in order to sell, label, or represent agricultural products as "100 percent organic," "organic," or "made with organic (specified ingredients)." The producer or handler of an organic production or handling operation must comply with all applicable provisions of subpart C. Any practice implemented in accordance with this subpart must maintain or improve the natural resources, including soil and water quality, of the operation. Production and handling operations which sell, label, or represent agricultural products as organic in any manner and which are exempt or excluded from certification must comply with the requirements of this subpart, except for the development of an organic system plan.

Production and Handling (General). The Organic Food Production Act of 1990 (OFPA or Act) requires that all crop, wild crop, livestock, and handling operations requiring certification submit an organic system plan to their certifying agent and, where applicable, the State organic program. The organic system plan is a detailed description of how an operation will achieve, document, and sustain compliance with all applicable provisions in the OFPA and these regulations. The certifying agent must concur that the proposed organic system plan fulfills the requirements of Subpart C, and any subsequent modification of the organic plan by the producer or handler must receive the approval of the certifying agent.

The organic system plan is the forum through which the producer or handler and certifying agent collaborate to define, on a site-specific basis, how to achieve and document compliance with the requirements of certification. The organic system plan commits the producer or handler to a sequence of practices and procedures resulting in an operation that complies with every applicable provision in the regulations. Accreditation qualifies the certifying agent to attest to whether an organic system plan comports with the organic standard. The organic system plan must be negotiated, enacted, and amended through an informed dialogue between certifying agent and producer or handler, and it must be responsive to the unique characteristics of each operation.

An organic system plan contains six components. First, the organic system plan must describe the practices and procedures used, including the frequency with which they will be used, in the certified operation. Second, it must list and characterize each substance used as a production or handling input. Third, it must identify the monitoring techniques which will be used to verify that the organic plan is being implemented in a manner which complies with all applicable requirements. Fourth, it must explain the recordkeeping system used to preserve the identity of organic products from the point of certification through delivery to the customer who assumes legal title to the goods. Fifth, the organic system plan must describe the measures to be taken to avoid contact between certified production and handling operations and prohibited substances and document how the operation will prevent commingling of organic and nonorganic products. Finally, the organic system plan must contain the additional information deemed necessary by the certifying agent to evaluate site-specific conditions relevant to compliance with these or applicable State program regulations. Producers or handlers may submit a plan developed to comply with other Federal, State, or local regulatory programs if it fulfills the requirements of an organic system plan.

The first element of the organic system plan requires a narrative or other descriptive format that identifies the practices and procedures to be performed and maintained, including the frequency with which they will be performed. Practices are tangible production and handling techniques such as the method for applying manure, the mechanical and biological methods used to prepare and combine ingredients and package finished products, and the measures taken to exclude pests from a facility. Procedures are the protocols established for selecting appropriate practices and materials for use in the organic system plan, such as a procedure for locating commercially available organically produced seed. Procedures reflect the decision-making process used to implement the organic system plan.

By requiring information on the frequency with which production and handling practices and procedures will be performed, this proposal calls for the organic system plan to include an implementation schedule, including information on the timing and sequence of all relevant production and handling activities. The plan will include, for example, information about planned crop rotation sequences, the timing of any applications of organic materials, and the timing and location of soil tests. Livestock management practices might describe development of a rotational grazing plan or addition of mineral supplements to the feed supply. A handling operation might identify steps involved in locating and contracting with farmers who could produce organic ingredients that were in short supply.

The second element that must be included in an organic system plan is information on the application of substances to land, facilities, or agricultural products. This requirement encompasses both natural and synthetic materials allowed for use in production and handling operations. For natural materials which may be used in organic operations under specific restrictions, the organic plan must detail how the application of the materials will comply with those restrictions. For example, farmers who apply manure to their fields must document in their organic system plans how they will prevent that application from contributing to water contamination.

The third element of the organic system plan is a description of the methods used to evaluate its effectiveness. Producers and handlers are responsible for identifying measurable indicators that can be used to evaluate how well they are achieving the objectives of the operation. For example, production objectives could be measured through regular tallies of bushels or pounds of product sold from the farm or in numbers of cases sold from a handling operation. Indicators that can identify changes in quality or effectiveness of management practices could be relatively simple, such as the information contained in a standard soil test. The specific indicators used to evaluate a given organic system plan will be determined by the producer or handler in consultation with the certifying agent. Thus, if the organic system plan calls for improvements in soil organic matter content in a particular field, it would include provisions for analyzing soil organic matter levels at periodic intervals. If herd health improvement is an objective, factors such as somatic cell count or observations about changes in reproductive patterns might be used as indicators.

The fourth element of the organic system plan is a description of the recordkeeping system used to verify and document an audit trail, as appropriate to the operation. For each crop or wild-crop harvested, the audit trail must trace the product from the field, farm parcel, or area where it is harvested through the transfer of legal title. A livestock operation must trace each animal from its entrance into through removal from the organic operation. A handling operation must trace each product that is handled and sold, labeled, or represented as organic from the receipt of its constituent ingredients to the sale of the processed product. In response to several comments received, this proposal provides information, found in subpart B, § 205.103, on the records needed to establish a verifiable audit trail.

The fifth element which must be included in an organic system plan pertains to split production or handling operations. This provision requires an operation that produces both organic and nonorganic products to describe the measures used to prevent commingling of organic and nonorganic products. This requirement addresses contact of organic products, including livestock, organic field units, storage areas, and packaging to be used for organic products, with prohibited substances. Requirements in the first proposal for information about the nonorganic portion of the operation have been removed.

We do not propose to list the specific requirements to be included in an organic system plan. We expect to publish a program manual to provide guidance on appropriate documentation for the certification process. In the meantime, the accreditation process provides an assurance that certifying agents are competent to determine the specific documentation they require to review and evaluate an operation's organic system plan. Section 205.200(a)(6) allows a certifying agent to request additional information needed to determine that an organic system plan meets the requirements of this

subpart. The site-specific nature of organic production and handling necessitates that certifying agents have the authority to determine whether specific information is needed to carry out their function.

Crop Production. Any field or farm parcel used to produce an organic crop must have been managed in accordance with the requirements in §§ 205.203 through 205.206 and have had no prohibited substances applied to it for at least 3 years prior to harvest of the crop. Such fields and farm parcels must also have distinct, defined boundaries and buffer zones to prevent contact with the land or crop by prohibited substances applied to adjoining land.

A producer of an organic crop must manage soil fertility, including tillage and cultivation practices, in a manner that maintains or improves the physical, chemical, and biological condition of the soil and minimizes soil erosion. Crop nutrients must be budgeted and supplied through proper use of manure or other animal and plant materials, mined mineral substances, and other substances approved for use under these regulations. The producer must manage animal and plant waste materials to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, pathogenic organisms, heavy metals, or residues of prohibited substances. Raw animal manure must either be composted, applied to land used for a crop not intended for human consumption, or incorporated into the soil at least 90 days before harvesting an edible product that does not come into contact with the soil or soil particles and at least 120 days before harvesting an edible product that does come into contact with the soil or soil particles. Composted plant or animal waste materials used for soil fertility must be produced in compliance with the Natural Resources Conservation Service's (NRCS) Conservation Practice Standard for a Composting Facility (Code 317). Uncomposted plant and animal waste materials may be used to amend soil fertility. A plant or animal waste material that has been chemically altered by a manufacturing process may be used only if it is included on the National List of synthetic substances allowed for use in organic production. Mined substances of low solubility may be used as sources of crop nutrients, as may mined substances of high solubility, when justified by soil or crop tissue analysis. Ashes of untreated plant or animal materials which have not been combined with a prohibited substance and which are not included on the National List of nonsynthetic substances prohibited for use in organic crop production may be used to produce an organic crop. Synthetic crop nutrient supplements that appear on the National List of allowed synthetic substances may be used as a source of crop nutrients when justified by soil or crop tissue analysis. The producer may not use any fertilizer that contains a synthetic substance not allowed for crop production on the National List or use sewage sludge. Burning crop residues as a means of disposal, except for trimmings of perennial crops burned to suppress the spread of disease, is prohibited.

The producer must use organically grown seeds, annual seedlings, and planting stock, except that untreated nonorganic seeds and planting stock may be used when equivalent organic varieties are not commercially available. Seed and planting stock treated with substances that appear on the National List of synthetic substances allowed for use in organic production may be used when an organically produced or untreated variety is not commercially available. Nonorganically produced annual seedlings may be used when a temporary variance has been established due to damage caused by unavoidable business interruption, such as fire, flood, or frost. Planting stock used to produce a perennial crop may be sold as organically produced planting stock after it has been maintained under a system of organic management for at least 1 year. Seeds, annual seedlings, and planting stock treated with prohibited substances may be used to produce an organic crop when the application of the substance is a requirement of Federal or State phytosanitary regulations. Seeds, annual seedlings, or planting stock produced through an excluded method may not be used for organic production.

The producer is required to implement a crop rotation, including but not limited to sod, cover crops, green manure crops, and catch crops. The crop rotation must maintain or improve soil organic matter content, provide for effective pest management in perennial crops, manage deficient or excess plant nutrients, and control erosion to the extent that these functions are applicable to the operation.

The producer must use preventive practices to manage crop pests, weeds, and diseases, including but not limited to crop rotation, soil and crop nutrient management, sanitation measures, and cultural practices that enhance crop health. Such cultural practices include the selection of plant species and varieties with regard to suitability to site-specific conditions and resistance to prevalent pests, weeds, and diseases. Mechanical and biological methods that do not entail application of synthetic substances may be used as needed to control pest, weed, and disease problems that may occur. Pest control practices include augmentation or introduction of pest predators or parasites; development of habitat for natural enemies; and nonsynthetic, nontoxic controls such as lures, traps, and repellents. Weed management practices include mulching with fully biodegradable materials; mowing; livestock grazing; hand weeding and mechanical cultivation; flame, heat, or electrical techniques; and plastic or other synthetic mulches, provided that they are removed from the field at the end of the growing or harvest season. Disease problems may be controlled through management practices which suppress the spread of disease organisms and the application of nonsynthetic biological, botanical, or mineral inputs. When these practices are insufficient to prevent or control crop pests, weeds, and diseases, a biological or botanical substance, or a synthetic substance that is allowed on the National List may be used provided that the producer evaluates and mitigates the effects of repetitive use of the same or similar materials on resistance and shifts in pest, weed, or disease types. The producer must use a pest, weed, or disease control substance in compliance with the Federal Insecticide, Fungicide, and Rodenticide Act. Pest control substances produced through excluded methods are prohibited.

Any wild crop that is to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)" must be harvested from land to which no prohibited substances have been applied for at least 3 years prior to harvest. The wild crop must also be harvested in a manner that ensures such harvesting or gathering will not be destructive to the environment and will sustain the growth and production of the wild crop.

Livestock Production. We propose that any livestock or edible livestock product to be sold, labeled, or represented as organic must be maintained under continuous organic management from birth or hatching, with four exceptions. Poultry or edible poultry products must be from animals that have been under continuous organic management beginning no later than the second day of life. Milk or milk products must be from animals that

have been under continuous organic management beginning no later than 1 year prior to the production of such products. A nonedible livestock product must be derived from an animal that has been under continuous organic management beginning no later than 1 year prior to the harvest of the nonedible product. Livestock used as breeder stock may be brought from a nonorganic operation into an organic operation at any time, provided that, if such livestock are gestating and the offspring are to be organically raised from birth, the breeder stock must be brought into the organic operation prior to the last third of pregnancy.

We also propose that, should an animal be brought into an organic operation pursuant to this section and subsequently moved to a nonorganic operation, neither the animal nor any products derived from it may be sold, labeled, or represented as organic. Breeder or dairy stock that has not been under continuous organic management from birth may not be sold, labeled, or represented as organic slaughter stock. No organism produced with excluded methods may be used for breeding purposes or for the production of livestock products intended to be sold, labeled, or represented as organic. The producer of an organic livestock operation must maintain records sufficient to preserve the identity of all organically managed livestock and all edible and nonedible organic livestock products produced on his or her operation.

We are proposing that, except for feed additives and supplements included on the National List of synthetic substances allowed for use in organic livestock production, the total feed ration for livestock managed in an organic operation must be composed of agricultural products, including pasture and forage, that are organically produced. Any portion of the feed ration that is handled must comply with organic handling requirements. The producer must not use animal drugs, including hormones, to promote growth in an animal or provide feed supplements or additives in amounts above those needed for adequate growth and health maintenance for the species at its specific stage of life. The producer must not feed animals under organic management plastic pellets for roughage or formulas containing urea or manure. The feeding of mammalian and poultry slaughter by-products to mammals or poultry is prohibited. The producer must not supply animal feed, feed additives, or feed supplements in violation of the Federal Food, Drug, and Cosmetic Act.

The producer of an organic livestock operation must establish and maintain preventive animal health care practices. The producer must select species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites. The producer must provide organic feedstuffs, as well as vitamins, minerals, and other supplements, sufficient to meet the animals' nutritional requirements. The producer must establish appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites. Animals in an organic livestock operation must be maintained under conditions which provide for exercise, freedom of movement, and reduction of stress appropriate to the species. Additionally, all physical alterations performed on animals in an organic livestock operation must be conducted to promote the animals' welfare and in a manner that minimizes stress and pain.

The producer of an organic livestock operation must administer vaccines and other veterinary biologics as needed to protect the well-being of animals in his or her care. When preventive practices and veterinary biologics are inadequate to prevent sickness, the producer may administer medications included on the National List of synthetic substances allowed for use in livestock operations. The producer may not administer synthetic parasiticides to breeder stock during the last third of gestation if the progeny is to be sold, labeled, or represented as organically produced. After administering synthetic parasiticides to dairy stock, the producer must observe a 90-day withdrawal period before selling the milk or milk products produced from the treated animal as organically produced. Every use of a synthetic medication or parasiticide must be incorporated into the livestock operation's organic system plan subject to approval by the certifying agent.

We propose that the producer of an organic livestock operation must not treat an animal in that operation with antibiotics, any synthetic substance not included on the National List of synthetic substances allowed for use in livestock production, or any substance that contains a nonsynthetic substance included on the National List of nonsynthetic substances prohibited for use in organic livestock production. The producer must not administer any animal drug, other than vaccinations, in the absence of illness. The use of hormones is prohibited in organic livestock production, as is the use of synthetic parasiticides on a routine basis. The producer must not administer synthetic parasiticides to slaughter stock or administer any animal drug in violation of the Federal Food, Drug, and Cosmetic Act. The producer must not withhold medical treatment from a sick animal to maintain its organic status. All appropriate medications and treatments must be used to restore an animal to health when methods acceptable to organic production standards fail. Livestock that are treated with prohibited materials must be clearly identified and shall not be sold, labeled, or represented as organic.

Under this proposal, a livestock producer must document in his or her organic system plan the preventative measures he or she has in place to deter illness, the allowed practices he or she will employ if illness occurs, and his or her protocol for determining when a sick animal must receive a prohibited animal drug. The standards we are proposing will not allow an organic system plan that envisions an acceptable level of chronic illness or proposes to deal with disease by sending infected animals to slaughter. Neither situation can be considered consistent with the principles of organic management. The organic system plan must reflect a proactive approach to health management, drawing upon allowable practices and materials. Animals with conditions that do not respond to this approach must be treated appropriately and diverted to nonorganic markets.

The producer of an organic livestock operation must establish and maintain livestock living conditions for the animals under his or her care which accommodate the health and natural behavior of the livestock. The producer must provide access to shade, shelter, exercise areas, fresh air, and direct sunlight suitable to the species, its stage of production, the climate, and the environment. This requirement includes access to pasture for ruminant animals. The producer must also provide appropriate clean, dry bedding, and, if the bedding is typically consumed by the species, it must comply with applicable organic feed requirements. The producer must provide shelter designed to allow for the natural maintenance, comfort level, and opportunity to exercise appropriate to the species. The shelter must also provide the temperature level, ventilation, and air circulation suitable to the species and reduce the potential for livestock injury. The producer may provide temporary confinement of an animal because of inclement weather; the animal's stage of production;

conditions under which the health, safety, or well-being of the animal could be jeopardized; or risk to soil or water quality. The producer of an organic livestock operation is required to manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimizes nutrient recycling.

Handling. This proposal permits mechanical or biological methods to be used to process an agricultural product intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)" for the purpose of retarding spoilage or otherwise preparing the agricultural product for market. It permits the use of nonagricultural substances and nonorganically produced agricultural products that are included on the National List in or on a processed agricultural product intended to be sold, labeled, or represented as "organic" or "made with organic (specified ingredients)." This proposal prohibits a handler from using ionizing radiation for any purpose, an ingredient produced with excluded methods, or a volatile synthetic solvent in or on a processed agricultural product intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)."

The practice standard for facility pest management requires the producer or handler operating a facility to use management practices to prevent pests, including removing pest habitat, food sources, and breeding areas; preventing access to handling facilities; and controlling environmental factors, such as temperature, light, humidity, atmosphere, and air circulation to prevent pest reproduction. Permitted pest control methods include augmentation or introduction of predators or parasites for the pest species; mechanical or physical controls, including traps, light, or sound; and nontoxic, nonsynthetic controls, such as lures and repellents.

This proposal permits the use of a nonsynthetic biological or botanical substance or any synthetic substance to control facility pests if the permitted prevention and control practices are not effective. Any substance applied must be used in accordance with the label provisions as approved by the appropriate authority, such as the Environmental Protection Agency (EPA) or the Food and Drug Administration (FDA). We propose that the handler of an organic handling operation who uses any biological, botanical, or synthetic substance to control facility pests must specify in the organic system plan all measures taken or intended to be taken to prevent contact between the substance and any ingredient or finished product intended to be sold, labeled, or represented as organic or made with organic ingredients. In addition to these restrictions, the handler must include in the organic handling plan an evaluation of the effects of repetitive use of the same or similar materials on pest resistance and shifts in pest types.

This proposal delineates practice standards that must be followed by an organic handling operation to prevent the commingling of organic and nonorganic products and protect organic products from contact with prohibited substances. An organic handling operation must not use packaging materials and storage containers or bins that contain a synthetic fungicide, preservative, or fumigant in handling an organic product. The operation also must not use or reuse any storage bin or container that was previously in contact with any prohibited substance unless the reusable bin or container has been thoroughly cleaned and poses no risk of prohibited materials contacting the organic product.

Temporary Variances. This subpart establishes conditions under which operations may receive temporary variances from the provisions contained in §§ 205.203 through 205.207, 205.336 through 205.239, and 205.270 through 205.272. The Administrator may establish temporary variances due to natural disasters declared by the Secretary; unavoidable business interruption caused by catastrophe such as wind, fire, hail, flooding, excessive moisture, earthquake, or drought; or to conduct research on organic production and handling techniques or inputs. A certifying agent may recommend that the Administrator establish a temporary variance for unavoidable business interruption. The Administrator will determine how long a temporary variance will be in effect at the time it is established, subject to extension as the Administrator deems necessary. Upon notification by the Administrator that a temporary variance has been established due to a natural disaster, a certifying agent must inform each production and handling operation it certifies within the affected geographical region or each individual production and handling operation affected by the temporary variance. Temporary variances may not be issued for any practice, material, or procedure which is otherwise prohibited by these regulations.

A request for issuance of a temporary variance, the justification for it, and measures to evaluate the impact of the practice on the operation's natural resources must be documented in the organic plan and approved by the certifying agent. For example, if a drought resulted in a severe shortage of organically produced hay, a dairy operation might be permitted to substitute some nonorganic hay for a portion of the herd's diet to prevent liquidation of the herd. The producer must keep records showing the source and amount of the hay and update the organic plan to describe the justification for the practice and a timeframe for restoring the total feed ration to organic sources. The certifying agent might also request that the plan include contingency measures to avoid the need to resort to nonorganic feed in case of a future shortage. A variance for experimental purposes might be issued to permit a crop producer to undertake on-farm trials of small quantities of a new (but not produced with excluded methods) crop variety that was not available as organic seed.

Production and Handling (General)—Changes Based on Comments

The subpart differs from our first proposal in several respects as follows:

(1) *Genetically Engineered Organisms.* In the first proposal, we invited public comment on the use of genetically engineered organisms (GEO's) or their products in a system of organic production and handling. Specifically, we asked whether the use of GEO's or their products should be permitted, prohibited, or allowed on a case-by-case basis in organic production or handling operations. Hundreds of thousands of public comments opposed the use of GEO's or their products in organic production or processing. In response to these comments, this proposal prohibits use of genetic engineering (included in the broad definition of "excluded methods" in this proposal, based on the definition recommended by the National Organic Standards Board (NOSB)) in all stages of organic production and handling. This proposal contains a specific prohibition on the use of seeds, annual seedlings and planting stock (§ 205.204(b)), pest control substances (§ 205.206(f)), organisms (§ 205.236 (b)(3)), and ingredients (§ 205.270(c)(2)) produced with excluded methods.

Products created with modern biotechnology techniques have been tested, approved by the appropriate regulatory agencies, and can be used safely in general agricultural production. At the same time,

consumers have made clear their opposition to use of these techniques in organic food production. This rule is a marketing standard, not a safety standard. Since use of genetic engineering in the production of organic foods runs counter to consumer expectations, foods produced through excluded methods will not be permitted to carry the organic label.

We acknowledge that the broad prohibition on use of excluded methods in organic production and handling systems may create compliance obstacles for organic operations and certifying agents. For example, many current certification programs allow vaccination of animals with synthetic compounds when such treatment is mandatory. However, while many FDA-approved vaccines are now produced using excluded methods, we are unaware of any certification program which has an enforcement mechanism to ensure that such substances are not used in organic production. We do not know to what extent, if any, organic livestock producers are currently using vaccines produced with excluded methods or how a prohibition on the use of such substances would affect development of the industry.

Similarly, the prohibition on the use of excluded methods in the production of organic foods may also present challenges to organic handlers and certifying agents. This may pose a particular problem with respect to the nonorganic ingredients of multiingredient products with 50-95 percent organic content, to which the prohibition on use of excluded methods also applies. For example, it may be harder for organic food processors, who may struggle to find sources of nonorganic ingredients that are produced without use of excluded methods and for certifying agents, who must ensure that handlers have complied with this requirement.

As with most elements of this program, compliance monitoring and enforcement will rely on the ongoing oversight of organic operations by USDA-accredited certifying agents, rather than on product testing. Certifying agents must approve organic plans that detail procedures and practices to be followed by organic operations and will review extensive records maintained by organic operations to ensure that they are complying with the approved organic plans and the regulations.

This system of compliance assurance will be particularly important with respect to the prohibition on use of excluded methods. Producers and handlers must be vigilant in the acquisition of materials and products. Certifying agents should be aware of agricultural products produced through excluded methods and must carefully review material and product origin documentation. It will be the responsibility of certifying agents to review the sourcing specifications and other provisions of producer and handler organic plans to ensure the integrity of organic and multiingredient products. We anticipate that this system of carefully reviewed and documented organic plans, which establishes documented procedures demonstrating good faith efforts to diligently pursue and maintain the integrity of ingredients produced without use of excluded methods, could satisfy the requirements in this regulation.

With respect to the prohibition on the use of excluded methods in production of the nonorganic ingredients in multiingredient products, we recognize that the ability to meet these requirements depends primarily on practices used in conventional agricultural markets. We also recognize that practices for preserving product identity, including segregating genetically engineered and nongenetically engineered products, are evolving in some conventional markets. Currently there are no consensus industry standards for product segregation, rather contractual agreements are used to the extent possible. As the marketplace evolves toward recognized best practices or standards for product testing and segregation, we anticipate that these methods and systems will become the standards for implementing the prohibition on use of excluded methods in production of nonorganic ingredients in multiingredient products. Linking the requirements pertaining to nonorganic ingredients in this proposal to the evolving practices within the marketplace will provide certifying agents with a verifiable criterion against which to evaluate production and handling processes, as well as providing greater certainty to handlers and processors as they seek to identify acceptable sources of nonorganic ingredients.

As with other prohibited substances, a positive detection of a product of excluded methods would trigger an investigation by the certifying agent to determine if a violation of organic production or handling standards occurred and would not necessarily represent a violation on its own. The presence of a detectable residue alone does not necessarily indicate use of a product of excluded methods that would constitute a violation of the standards.

We anticipate that these issues will be of particular interest to commenters on the proposal, and that comments may help to shed light on industry capabilities and expectations. We recognize that this policy will place additional burdens on certified operations and certifying agents, but we believe that the necessity to meet strong consumer expectations outweighs these concerns.

(2) *Measurable Degradation Standard.* We are proposing that any practice implemented in accordance with the requirements for organic production and handling must maintain or improve the soil and water quality of the operation. This provision is a modification of the requirement in the first proposal that the use or application of a practice not result in measurable degradation of soil or water quality. Some commenters stated that the concept of measurable degradation was too limiting and reduced the holistic principles behind organic production to an exercise in risk assessment. In introducing the concept of measurable degradation, we stated that its purpose was to "clarify that all methods and substances used in an organic operation shall be consistent with a system of organic farming and handling and the purposes of the OFPA." As such, measurable degradation and the specific indicators of soil and water quality used to monitor it were designed as tools to evaluate compliance with the OFPA and not as ends in themselves.

The new provision requiring that an organic operation maintain or improve its soil and water quality retains the linkage between production and handling practices and the natural resources of the operation, which is a fundamental tenet of both organic production and the OFPA. We have introduced the "maintain or improve" provision to allow for consideration of a variety of environmental indicators that contribute to the overall performance of the operation. Both the objective of certification—establishing an organic system of production and handling—and the standard by which it is achieved—the requirements in this proposal—remain constant for all operations. The environmental indicators used to establish and monitor compliance with an approved organic system plan will depend upon the site-specific conditions of the individual operation. For example, a producer and certifying agent would consider the soil types, hydrology, other environmental conditions and the specific nature of the crops and livestock being produced to

determine which indicators would best reflect the performance of the organic system plan. Site-specific conditions—high water table, soils that are prone to erosion—combined with the operation's production practices—the use of persistent inputs such as copper or sulfur compounds, the type of tillage practices used—will dictate the selection of environmental indicators. While individual indicators, especially when signaling that significant change has occurred, remain important, the "maintain or improve" provision allows a producer or handler and his or her certifying agent to assume a broader perspective in monitoring compliance with the OFPA.

Many commenters objected to the requirement in the first proposal that certain production practices "not result in a measurable degradation of the soil." The purpose of the "measurable degradation" requirement was solely to provide producers and their certifying agents with quantifiable, verifiable tools with which to evaluate compliance with the applicable regulations. While the current proposal does not refer to "measurable degradation" in the practice standards, producers and handlers must identify and incorporate into their organic system plans specific testing and evaluation techniques to measure the environmental impact of their production practices. In many cases, this requirement could be filled with a standard soil analysis, which would indicate trends in soil organic content, nutrient composition, and physical properties. In other cases, chemical or biological analysis of stream water entering and leaving a crop or livestock operation could suffice to monitor compliance with the practice standards. There is no way to substantiate the effectiveness of the practices and materials used in an organic production system without some form of measurable verification. Analytical procedures to monitor the condition, over time, of an operation's resource base are a standard feature of efficient resource management, whether or not the operation is organically managed.

(3) *Function and Content Requirements of the Organic System Plan.* We propose significant changes in the function and content requirements of the organic system plan to solidify its role in the relationship between producer or handler and certifying agent. Public comment on the first proposal identified numerous perceived deficiencies in the provisions for an organic system plan. Some commenters, including organic certifying agents and industry associations, stated that the proposed content requirements were a "shadow" of the plan intended by the OFPA because the regulatory text did not include the words, "management," "rotation," or "manure." Some commenters characterized the organic system plan in the first proposal as a simple list of materials to be used and practices to be followed and thought that it would not adequately address why the producer or handler made specific production choices. Echoing the recommendation adopted by the NOSB at its June 1994 meeting in Santa Fe, NM, other commenters suggested that each organic system plan should be required to include key elements of organic production, such as soil and crop management, resource conservation, crop protection, and maintenance of organic integrity through growing, harvesting, and postharvest operations. We fully agree with the principle that a comprehensive organic system plan is an integral component of a certified operation and that it provides the foundation for the working relationship between the certifying agent and the producer or handler. This proposal contains a standard that defines and characterizes an organic system of production and handling and establishes the organic system plan as the centerpiece of the relationship between producer or handler and certifying agent.

Some commenters expressed concern that the first proposal did not link the organic system plan to specific regulatory requirements such as proper tillage, crop rotation, and manuring. The first proposal did, however, require operations to document compliance with all applicable standards. The obligation to document compliance with all applicable standards was implicit in the requirement that an organic system plan contain a description of the practices to be performed and maintained to establish a system of organic farming and handling. A producer or handler intending to engage in a practice must comply with the corresponding standards and include his or her intentions for doing so in the organic system plan. This proposal contains a similar provision, found in § 205.200(a)(1), which requires a description of the practices and procedures used in the certified operation, again, without stating the specific standards with which the operation must comply.

We acknowledge that, by providing the regulatory guidance necessary to implement the OFPA, the Secretary is further empowering accredited certifying agents to determine whether an operation's organic system plan meets the requirements of the statute. The provisions for an organic system plan in § 205.200(a)(1)–(6) outline the prerequisites for certification. Combined with the production and handling standards in §§ 205.201 through 205.207, 205.236 through 205.239, and 205.270 through 205.272, these requirements provide the criteria necessary for certifying agents to determine whether to grant certification.

For similar reasons, we propose not to include in this proposal a list of the specific requirements to be included in a particular type of organic system plan. For example, while the first proposal required that a farm operation submit the total acreage under organic management as part of its organic system plan, there is no similar requirement in this proposal. We believe that accredited certifying agents are capable of determining the specific documentation they require to review an application for certification. Certifying agents are granted authority to request the information they deem essential to the performance of their duties. Many resources are available to certifying agents for determining the information needed to make certification decisions. The Federal-State Marketing Improvement Program of the Agricultural Marketing Service (AMS) helped fund a project (#12–25–G–0202) which created an organic inspection manual and developed a whole set of organic certification form templates. Among these templates are detailed forms for organic farm, livestock, and handling system plans. AMS worked with the Independent Organic Inspectors Association and the Organic Certifiers Council on this project and supports continued movement toward standardized certification documentation. The NOSB provided recommendations, including sample questionnaires, for the information it deems necessary for inclusion in an organic system plan. Additionally, the Organic Trade Association recently released the American Organic Standards that drew upon broad industry involvement to create a detailed description of organic system plan requirements.

The organic system plan in the first proposal included requirements for split farming operations—meaning farms that engage in both organic and nonorganic production—that some commenters stated were excessive. These commenters pointed out that the OFPA does not provide for the organic system plan to include any production or handling practice not consistent with the OFPA, and that the practices on the nonorganic portion of the split-farm

would not be consistent with the Act. Based on these comments, this proposed organic production system plan will not require information about a split-farm's nonorganic operations. However, this proposal requires that a split operation, whether a production or a handling operation, describe the measures it is taking or will take to prevent commingling of organic and nonorganic product and to prevent contact of organic products, fields, or facilities with prohibited substances.

(4) *Regulatory Enforcement.* The National Organic Program (NOP) will require consistent and effective enforcement of the regulations across diverse crop, wild crop, livestock, and handling operations which are differentiated by site-specific conditions within dissimilar geographic regions. The resources and objectives of each certified operation are unique, and the OFPA, accordingly, provides certifying agents with criteria, not formulas, to determine whether the practices, procedures, and inputs described in an organic system plan constitute compliance with the OFPA. The flexibility implicit in this approach allows producers and handlers to choose from a variety of production and handling options. In addition to being flexible, a regulatory mechanism must be clear, consistent, and enforceable. For this reason, producers and handlers must document the choices they make in an organic system plan and demonstrate a good-faith effort to implement the plan. For example, the decision to use an allowed synthetic pest control substance must be based on evidence that prevention and nonsynthetic pest control measures are not adequate.

Public comment indicated that the regulatory mechanisms that were introduced in the first proposal, including orders of preference, performance standards, and provision for allowance of certain practices "if necessary," provided producers and handlers too much discretion in selecting materials and practices. These comments indicated that insufficient oversight by certifying agents could dilute the meaning of organic certification. Therefore, we are proposing significant changes in the regulatory mechanisms which govern producers, handlers, and their certifying agents in determining the materials, practices, and procedures used in an organic operation.

One regulatory mechanism used in the first proposal was an "order of preference" scheme for selecting organic practices or materials employed in production and handling. This scheme was proposed for a number of areas: Crop rotation; manuring practices; soil fertility and nutrient management; seeds and planting stock selection; crop pest, weed, and disease prevention and management; livestock health care; selection of handling ingredients; and prevention and facility pest management. There was also a general order of preference requirement that mandated the use of nonsynthetic substances in preference to synthetic substances.

Comments from at least one industry association supported using orders of preference to assure that choices made by producers and handlers will be as consistent as possible with organic farming and handling principles. Others, including several organic certifying agents, felt that the conditions for choosing a lower order of preference were not specified clearly enough and could result in inconsistent enforcement of the standards. Some commenters thought that certifying agents would be overly burdened by having to review and approve the justification in the organic plan for choosing less preferable practices, although some stated that if the criteria for choosing a lower order of preference were clarified and documentation of the reasoning behind the choice was explicitly required, then this scheme would be workable. Some noted that ranking practices and inputs according to their suitability is analogous to the "approved, restricted, prohibited" scheme which many State and private certification programs employ. A few commenters expressed the belief that establishing provisions to issue variances would address their concerns and provide for adequate oversight and enforcement concerning practices, procedures, and inputs that are considered to be acceptable but less desirable for organic production and handling.

However, several commenters, including consumers and organic certifying agents, asserted that "preference" could be interpreted as purely based on the personal choice or convenience of the producer or handler. Some certifying agents indicated that the soil fertility order of preference was too complex and difficult to enforce. A number of consumers disliked this concept because it permitted some deviation from the most desirable standards, such as use of organically produced seeds. Another commenter speculated that this scheme could be interpreted as establishing different levels of "organicness." Although these interpretations do not reflect the intent of the first proposal, in the interest of clarity, we have removed references to orders of preference in the current regulatory text. We also removed the general requirement for orders of preference and to simplify the scheme so that it will be less burdensome for certifying agents to enforce. Several provisions in this proposal, including the seeds and planting stock practice standard (§ 205.204) and the crop pest, weed, and disease management practice standard (§ 205.206) will allow less desirable practices or substances to be used only if the preferred alternative is either ineffective or not commercially available. As was true of the first proposal, justification for choosing a less desirable alternative, such as nonorganic seeds or planting stock, must be documented in the relevant organic system plan and approved by the certifying agent.

Several commenters, including industry and environmental associations, also took issue with the use in the first proposal of performance standards, which specify the required outcome but not the practices that must be used to achieve it. The general provision that any practice or substance used in an organic operation not contribute to measurable degradation of soil or water quality is an example of such a performance standard. Objections to the use of performance standards referred to the nature of organic production standards, which focus on the production process and not quantifiable outcomes such as pesticide residue levels. Some of these commenters asserted that such a mechanism would relegate organic standards to a risk assessment model, which is not appropriate for evaluating a system of organic management.

We agree that standards for an organic management system cannot be reduced to measurable outcomes, and this was not the intent of the proposed performance standards in the first proposal. The evaluation of measurable indicators as benchmarks of the proper functioning of a management system is compatible with the overall requirement that practices be implemented that are consistent with a system of organic farming and handling. Such indicators help to determine whether a given operation is in compliance with the regulations. For example, the crop rotation provisions in this proposal list a series of functions, including weed management, that should be provided by an appropriate rotation. While the possible types of rotation that could achieve this objective are virtually limitless and could not be specifically prescribed, recording changes in weed populations could document the

effectiveness of the rotation being implemented.

Another type of regulatory provision employed in the first proposal permitted the use of certain practices or substances only "if necessary." This was proposed for the introduction of nonorganic animals into an organic operation, for using up to 20 percent nonorganic livestock feed, for permitting restrictions on access by livestock to space for movement and access to outdoors, and for use of synthetic processing aids in producing an organic processed product. A producer or handler was required to establish his or her need to use a particular practice or substance based on site-specific circumstances. The basis for each such decision was to be stated in the organic system plan and evaluated by the certifying agent. Many commenters indicated that this provision was not appropriate because, for example, the allowance for the use of 20 percent nonorganic livestock feed, "if necessary," left a loophole that could permit an unscrupulous producer to use nonorganic feed without a valid reason that was consistent with the regulations. We concur that this allowance for practices "if necessary" is overly vague and have removed the provision from this proposal. It has been replaced by more specific regulatory restrictions, referred to as practice standards, which better reflect the recommendations of the NOSB.

We have addressed comments that requested more specific guidelines for acceptable organic practices by introducing the concept of practice standards. Practice standards are a series of specific guidelines, requirements, and operating procedures for common agricultural practices such as crop rotation, pest management, and crop nutrient management. The NOSB reviewed portions of the current NRCS practice standards for crop rotation, nutrient management, pest management, composting facilities, and cover or green manure crops at its Washington, DC, meeting in June 1999. NRCS practice standards, while not public health standards, contain rigorous, field-tested provisions which provide specific benchmarks for monitoring the performance of many required organic production techniques. A practice standard can also serve as the foundation for an even more detailed program manual.

For example, we are proposing that composted animal and plant waste materials which are used for soil fertility and crop nutrient management must be produced at a facility in compliance with the NRCS practice standard for a Composting Facility (Code 317). This document establishes minimum acceptable requirements for the design, construction, and operation of a composting facility. A copy of this practice standard may be obtained from any NRCS field office. A copy of this practice standard may be viewed at USDA–AMS–TMD–NOP, Room 2510—South Building; 1400 Independence Ave., SW, Washington, DC 20250–0248. The NOP intends to publish additional practice standards for public comment in the **Federal Register**. We are also holding discussions with NRCS to determine whether farming operations which comply with the certification requirements of the NOP will have the added benefit of being able to participate simultaneously with NRCS cost-share programs.

Incorporating NRCS practice standards into the requirements for organic certification introduces a significantly greater degree of specificity than most organic standards have previously contained. For example, the Composting Facility practice standard includes specifications for facility size, moisture content of the compost pile, carbon-nitrogen ratio, and the interval which certain temperatures must be sustained to achieve a finished product. The practice standard also contains restrictions on source materials which may make it difficult to utilize certain categories of materials which have traditionally been allowed in organic compost production. Enforcing these additional requirements will require far greater oversight from the certifying agent, and expertise in this area will become another factor in accreditation. NRCS uses its practice standards for voluntary cost-share programs, and organic producers may find the requirements burdensome as an added, mandatory expense. Despite the many comments we received criticizing the provisions for performance standards in the first proposal, organic certification schemes have traditionally prescribed outcomes and allowed producers and handlers flexibility in selecting practices used to achieve them. However, we received many other comments stating that more rigorous, clearly defined regulatory mechanisms were needed to protect the integrity of organic certification. We have considered the use of NRCS practice standards to provide clear, consistent, and verifiable guidelines for conducting essential organic production practices. We are particularly interested in receiving specific comment on the feasibility of using NRCS practice standards for compost production and how such practice standards may generally be used to establish organic standards.

(5) *Temporary Variances.* Section 205.201(b) of this proposal provides procedures for establishing a temporary variance from certain requirements of subpart C. The temporary variance is a mechanism for providing regulatory flexibility that did not appear in the first proposal. This mechanism is proposed in response to comments from an industry association and several certifying agents who expressed the need, in certain circumstances, to use practices that would otherwise not comply with the applicable practice standard. Similar mechanisms are used by most existing certifying agents to make exceptions in cases of compelling need, when there is minimal concern for compromising the integrity of an organic system. Temporary variances are established from specific requirements and not, unless specified, from all production standards. They are established for a determined period of time, subject to extension as deemed necessary by the Administrator. For example, the Administrator could, under appropriate circumstances, waive the requirement that a producer must provide livestock with a ration composed of 100 percent organically produced feed.

Temporary variances are created under very specific circumstances and are subject to strong oversight by the Department to prevent potential abuse. This proposal contains three situations in which the Administrator could establish a temporary variance. These situations are: natural disasters as declared by the Secretary in a specific geographical area; business interruption caused by wind, flood, fire, or other catastrophic event; or for the purpose of conducting research or trials of techniques, varieties, or ingredients used in organic production or handling. In the case of natural disaster declared by the Secretary, the Administrator will establish a temporary variance available to all organic operations within the area designated as affected. For local catastrophic events in which the Secretary does not declare a disaster, the certifying agent is responsible for making recommendations to the Administrator for establishing temporary variances. Catastrophic events must be of a sufficient magnitude and have a direct, immediate impact such that the operation could not continue to function without the temporary variance. Certifying agents are responsible for making a recommendation for a temporary variance in situations prompted by

research needs. Producers and handlers cannot appeal directly to the Administrator for a temporary variance but must make such a request through their certifying agent.

Temporary variances, as proposed here, will not extend to any practice or substance that is expressly prohibited by any provision of the OFPA, the applicable standards, these regulations, or any other Federal, State, or local laws or regulations. For example, a variance cannot be granted for use of an organism produced through excluded methods, for use of sewage sludge as a fertilizer, or for use of irradiation to process an organic product or ingredient. We expect to provide additional guidelines in a program manual to assist certifying agents in evaluating how much of an allowance is appropriate, such as how much of the ration for which animals could come from nonorganic sources under a variance.

Production and Handling (General)—Changes Requested But Not Made

This subpart retains from our first proposal regulations on which we received comments as follows:

(1) *Definition of "System of Organic Farming and Handling".* The first proposal contained a definition of a "system of organic farming and handling" to provide an explicit reference point for determining which practices and substances were consistent with such a system. Several industry associations and certifying agents commented that the definition was helpful but lacking in key concepts, such as "ecological balance," "agroecosystem health," and "biological diversity." Several thought the definition should receive greater emphasis in the regulations as a reference point for the underlying principles of organic production and handling and that the NOSB's definition should be used. Although we considered many of the concepts discussed by commenters, only the scope and not the meaning of the original definition has been changed. The definition in this proposal is based on the one we developed in consultation with the NOSB but is limited to concepts that are incorporated into the OFPA. Measuring compliance with the component-based mandates of the OFPA, such as fostering soil fertility and preventing water contamination by manure, does not require criteria as far-reaching as "agroecosystem health" or "biological diversity." We also took into consideration the costs to comply with such open-ended requirements and determined that this could be excessively burdensome. Synergistic benefits may be associated with organic production and handling systems, but the OFPA requires only that individual components of the system—soil, water, wild crop environment—be protected. Adherence to the conservation practices found in the individual practice standards will result in cumulative benefits to the agroecosystem, but producers and handlers would have difficulty measuring compliance at this scale. Establishing standards that address individual components of an organic farming system, such as tillage practices and manure management, will directly and beneficially impact the entire ecosystem. For the purpose of enforcement, however, we propose retaining the component-based criteria for evaluating a system of organic farming and handling.

(2) *Commercial Availability Standard.* The first proposal allowed certain materials and practices, such as nonorganic seeds and nonorganic minor ingredients in a product labeled organic, to be chosen if preferable alternatives were not "commercially available." We have retained the commercial availability principle in this proposal but have limited its use to the provisions addressing the selection of organic or untreated seeds and planting stock. A number of producers, consumers, and certifying agents expressed concern that producers or handlers not be permitted to base claims of commercial unavailability on any price difference between organic and nonorganic inputs. They argued that the term, "feasibly and economically," in the proposed definition of "commercially available" were too vague to be enforceable. Comments from an industry association supported the use of this concept but requested a more specific definition that could be used to assess the economic dimension of commercial availability. The NOSB has also cited commercial availability as a valid criterion for allowing some flexibility in the choice of inputs and stated that the term is applicable to the quantity and quality of available product as well as its cost.

Although commercial availability is not defined in the OFPA, the concept is well established within current certification programs and the commercial world in general. To be considered commercially available, a preferred input must be known and readily available in the sense that a producer or handler can locate and acquire the quantity and quality of product needed to sustain his or her operation. The producer or handler must make a good faith effort to procure the preferred input but should not be expected to rely on an inconsistent supply of a necessary commodity. We do not provide a formula for determining when price difference alone is enough to justify purchase of the less desirable input because of the multiple factors which could affect such a decision.

By limiting the application of the commercial availability standard to the selection of organic or untreated seeds and planting stock, we are limiting its use to relatively narrow and well defined markets. A producer must justify a choice based on commercial availability when submitting an organic plan to the certifying agent, and it must be supported by evidence of a good-faith effort to obtain the preferred input. The attempt to source an input from known suppliers and an investigation to discover potential new suppliers constitute the producer's good-faith effort. Certifying agent approval of the organic plan provides sufficient protection against abuse of this provision. Although comments reflected concern that too many allowances for nonorganic inputs could dilute the integrity of certification, the organic industry has built its reputation while using the commercial availability exemption for sourcing certain materials. Certifying agent oversight can ensure that it works in the NOP as well.

Production and Handling (General)—Additional Provisions

Upon further review of the provisions in the first proposal, we have decided to propose the following additions and changes.

(1) *Dual Use of an Organic System Plan.* Section 205.201(b) allows a producer or handler to submit an organic production system plan developed to meet the requirements of another Federal, State, or local regulatory program if the plan fulfills the applicable requirements of this section. Government agencies may have programs in place that require participating agricultural producers or handlers to develop and follow a management plan. For example, the NRCS Environmental Quality Incentives Program (EQIP) requires a conservation plan. An organic production system plan could be incorporated into such a conservation plan and fully comply with the requirements proposed in § 205.201 of this proposal. This new provision could reduce the paperwork burden for an operation that participates in more than one program requiring a farm conservation plan.

Crop Production—Changes Based on Comments

This subpart differs from our first proposal in several respects as follows:

(1) *Biosolids.* The first proposal requested public comment on the possible use of biosolids as a means of enhancing soil fertility on an organic agricultural operation. Our interpretation of the term, "biosolids," is synonymous with the definition of sewage sludge contained in 40 CFR part 503. In response to the comments we received, this proposal adds biosolids to the list in § 205.203(e)(2) of substances that are specifically prohibited for use in organic production.

The first proposal reviewed some historical information about the Federal enforcement of biosolids use and the steps taken by EPA, FDA, and the U.S. Department of Agriculture (USDA) to ensure that biosolids are safe to use on crops for human consumption. Comments were solicited as to whether biosolids should be permitted or prohibited in organic production. The first proposal noted that the NOSB recommended that biosolids should be classified as synthetic and were not appropriate for use in organic crop production. The NOSB took this position at its 1996 meeting in Indianapolis, IN, and reaffirmed it at its 1998 meeting in Ontario, CA.

We received hundreds of thousands of comments, virtually all of which strongly opposed the use of biosolids in organic agriculture. The vast majority of the commenters stated that biosolids can contain synthetic substances prohibited in organic agriculture, such as industrial waste, street runoff containing petroleum products, and household waste contaminated with cleaning products, polychlorinated biphenyls (PCB's) and dioxins. Commenters indicated that sewage sludge should not be allowable because it may contain synthetic materials prohibited in organic production which are not restricted under EPA regulations. Many commenters stated that biosolids are not currently allowed in organic production and that permitting their use would run contrary to consumer expectations. Such an allowance would place producers at a competitive disadvantage in domestic and international markets. While sewage sludge may be safely used in conventional agriculture, allowing its use under these standards would be inconsistent with the historical understanding of organic fertility management shared by producers and consumers. Therefore, this proposal prohibits the use of sewage sludge in organic production.

(2) *Tillage and Conservation Practices.* While no comments objected to the inclusion of tillage and cultivation practices in the first proposal, a few took issue with the requirement that these practices result in "no measurable degradation" of soil quality. In this proposal, the concept of " no measurable degradation" has been replaced with the requirement to "maintain or improve" soil quality. We agree with commenters who suggest that prevention of soil erosion is an important consideration for the selection of tillage and cultivation methods and have included a requirement that tillage and cultivation practices maintain or improve the physical, chemical, and biological condition of soil and minimize soil erosion. We have removed other references to preventing measurable degradation when using plant or animal wastes in the first proposal and replaced them with a requirement, in § 205.203(c), that the producer manage these materials to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, pathogenic organisms, heavy metals, or residues of prohibited substances. In accordance with several comments received, this provision frames the requirement in terms of achieving a positive outcome rather than avoiding a negative one. This proposal specifies the types of measurable degradation that could result from improper or excessive application of plant or animal waste materials, and producers, in consultation with the certifying agent, will identify potential problems and address them in the organic system plan. The organic system plan must also identify appropriate monitoring activities to ensure that the "maintain or improve" requirement is being met. For example, a producer who manages an on-farm composting facility might make regular observations of the pile to check for leaking and periodically sample a nearby stream for nitrate content.

(3) *Application of Raw Manure.* The first proposal requested public comment on appropriate guidelines to ensure that use of raw animal manure would not cause contamination of food products by pathogens that cause foodborne illness. The OFPA restricts the use of raw manure by requiring that a reasonable period of time elapse between its application to a crop intended for human consumption and the harvest of that crop. This period of time must be approved by the certifying agent, but in no event may it be less than 60 days. The OFPA stipulates that the certifying agent determine the interval between the last application of raw manure and harvest of the crop to ensure the safety of the crop. Furthermore, the OFPA prohibits raw manure from being applied to any crop in a way that significantly contributes to water contamination by nitrates or bacteria. The first proposal contained an order of preference which favored the use of composted materials, including manure, as inputs for soil fertility but allowed raw manure applications subject to the 60-day minimum preharvest interval contained in the OFPA.

Many public comments addressed the issue of raw manure use, and some industry, producer, consumer, and environmental groups submitted substantial technical information. Many of these commenters addressed the human health risk associated with the use of manure in organic crop production. Most of these comments suggested that a determination of sufficient time to ensure the safety of a crop depends on soil and climate conditions, but that the 60-day period specified in the OFPA was not sufficient. Some commenters cited various amounts of time that might be considered safe. Other commenters stated that no interval between application and harvest could be considered safe and recommended prohibiting the application of raw manure to any crop. The NOSB had extensive deliberations on the use of raw manure in organic crop production at its June 1999 meeting in Washington, DC.

The OFPA's requirement that raw manure be applied in a manner that ensures the safety of the crop presents a unique regulatory challenge. We have consistently maintained that the NOP is for marketing, not food safety, purposes. Organic production and handling standards, which are not based on risk assessment of public health consequences, may differ from the requirements established by agencies that are responsible for food safety regulations. The OFPA's requirement that the application of raw manure ensures the safety of the food to which it has been applied requires the NOP to move toward establishing a public health standard. This requirement is especially challenging given that there is no Federal oversight of the application of raw manure to any kind of crop nor any public health standards to establish what constitutes safe use of raw manure. Applications of raw manure are a hazardous, threatening

pathogenic contamination of food products, notwithstanding the use of composted manure, which can carry similar hazards.

We have responded to the concerns regarding the application of raw manure to organically produced crops by proposing the standards contained in § 205.203(c)(1). We propose that raw animal manure must be composted, unless it is applied to land used for a crop not intended for human consumption, incorporated into the soil not less than 120 days prior to the harvest of a product in direct contact with the soil surface or particles, or incorporated into the soil not less than 90 days prior to the harvest of a product the edible portion of which does not have contact with the soil surface or particles. However, many site-specific variables affect the viability of pathogens in raw manure, and we cannot determine whether this standard will be sufficient under all conditions to fulfill the safe food requirement contained in the OFPA. We are requesting comment on the development of more comprehensive standards that certifying agents are capable of enforcing. We are also requesting comment on how to regulate the authority to determine the "reasonable period of time" between the last application of raw manure and harvest of a crop which the OFPA delegates to the certifying agent. Given the need for far greater scientific understanding of the spread of pathogens in raw manure, we do not consider that certifying agents should be expected to make the determination of safety.

Several comments were received which suggest that any use of raw animal manure could jeopardize human health and that the use of raw animal manure by organic farmers thereby increases the risk that organic foods may not be as safe as conventionally produced foods. We recognize that our knowledge of the risks from foodborne pathogens has advanced since the OFPA was passed a decade ago, and that safety precautions have been strengthened accordingly. Therefore, we are seeking further guidance for developing regulations that minimize the potential for contamination of crops grown for human consumption by pathogens from raw animal manure. This approach is consistent with the traditional organic certification procedures which have restricted the use of raw manure for environmental as well as health concerns. Other Federal and State regulatory programs may impose additional requirements on the use of raw manure in crop production which could be applicable to organic operations.

The first proposal required that management practices for the application and storage of raw manure be implemented in a manner that does not significantly contribute to contamination of water by nitrates and bacteria, including human pathogens. The use of the word, "significantly," in this provision is a direct reference to the authorizing language in the OFPA (Section 2114(b)(2) (C)). However, commenters suggested that this language implies that "insignificant" contamination would be acceptable. This proposal requires that soil management practices aim at preventing, to the extent possible, any contamination of water by nitrates and pathogenic bacteria.

(4) *Use of Treated Seed.* The first proposal permitted the use of treated seeds if the same variety was not commercially available in untreated form or if unanticipated or emergency circumstances made it infeasible to obtain untreated seeds. In this context, "treated seed" refers to the application of a pesticide to a seed prior to planting and does not include the use of a disinfection treatment for a seed that is intended for sprouting and food use. A number of comments from producer and industry groups suggested that this was appropriate but that a producer should have to choose an "equivalent" untreated seed variety that was commercially available. The term, "equivalent," indicates that two seed varieties have similar performance attributes, such as resistance to drought and insects, and production traits, including yield, size, and shape of the commodity. We agree with this provision because it favors a nonsynthetic input over a synthetic one and have, therefore, included it in this proposal. We are also requiring that, when selecting a nonorganically produced seed, a producer select an untreated equivalent variety in preference to one which has been treated with an allowed synthetic treatment.

Some comments objected to any allowance for the use of treated seeds or planting stock, citing the prohibition in 2109(c)(3) of the OFPA (7 U.S.C. 6508(c)(3)) on the use of transplants that are treated with any synthetic or prohibited material. We recognize that the use of synthetic seed treatments, some of which are acutely toxic, may seem inconsistent with a system of organic production and handling, but it is an established practice in State and private certification programs and is supported by provisions of the OFPA. We believe that retention of the commercial availability requirement, a preference for untreated, nonorganically produced seed over treated, nonorganically produced seed, and the use of temporary variances in this proposal provide an appropriate context for regulating the use of synthetic seed treatments.

The requirement from the first proposal that all seeds, annual seedlings, and planting stock be organically produced is retained in this proposal. Similarly, this proposal contains a comparable exception to the requirement so that nonorganically produced seeds and planting stock could be used to produce an organic crop when an equivalent organically produced variety is not commercially available. A producer's decision to use nonorganically produced seeds and planting stock for reasons of commercial nonavailability of equivalent organic varieties must be included in his or her organic plan and agreed to by the certifying agent. We decided to retain these provisions from the first proposal after receiving comments from producer and industry groups that acknowledged that the supplies of organic farm inputs will not be sufficient to provide for the seed and planting stock needs of all organic operations in the near future. We have added the requirement that producers select equivalent untreated seed over treated seed when commercial availability allows them to use a nonorganically produced variety. We recognize that these provisions could lead to certifying agents facing numerous decisions regarding commercial availability and equivalency in the organic system plans they review. This degree of oversight is warranted, however, to ensure that the use of synthetic materials in organic production is kept to a minimum. We are not extending the commercial availability exception to the requirement for organically produced annual seedlings because the comments indicated that the organic input suppliers are effectively meeting this demand.

In contrast to the first proposal, we propose that any synthetic seed treatment used in organic production must be included on the National List of synthetic substances allowed for use in organic production. We base this requirement on the OFPA, which identifies "treated seed" as a category of synthetic substances eligible for inclusion on the National List. We believe that including specific seed treatments on the National List will satisfy the requirement in the OFPA that a farmer shall not apply a material to or

engage in a practice on seeds or seedlings that is contrary to or inconsistent with the applicable certification program. The approach we are proposing is also consistent with current practice in the organic industry. The NOSB endorsed this approach at its 1994 meeting in Santa Fe, NM, by recommending that seed treated with synthetic fungicides appearing on the National List be allowed when nontreated varieties are commercially unavailable.

We propose that producers or handlers may request a temporary variance due to unavoidable natural disaster in order to use nonorganically produced annual seedlings. The temporary variance will be appropriate in instances in which an unexpected event such as a frost, flooding, fire, or other catastrophic event destroyed the producer's nontreated planting materials and no organically produced replacements are commercially available. This provision cannot be used to compensate for mismanagement by the producer. For example, a producer who planted seedlings prior to the recognized frost date and lost his or her crop to a freeze could not claim that this disaster was unavoidable. This provision requires that the producer make all reasonable efforts to protect his or her seeds, annual seedlings, and planting stock before being allowed to substitute with treated replacements.

Some commenters cited the prohibition in section 2109(c)(3) of the OFPA against using transplants that are treated with any synthetic or prohibited material as justification for prohibiting the use of synthetic seed treatments. However, the statute permits the use of seeds and seedlings treated with substances included on the National List of allowed synthetic substances. The seemingly inconsistent requirements for seedlings and transplants, functionally equivalent terms, have made this a difficult issue to resolve. The first proposal attempted to reconcile these differences by defining transplant as an annual seedling produced on an organic farm and transplanted to a field on the same farm operation to raise an organically produced crop. Many commenters felt that distinguishing between annual seedlings which originated on and off the operation was not a valid approach. We concur, and have removed this definition, and interpret the term," transplant," as applying to any seedling which is transported and replanted, regardless of whether it originated on the operation or not. We interpret the prohibition on using a transplant treated with any synthetic or prohibited material as taking effect after the seedling has been physically transplanted. Therefore, the prohibition only applies to materials applied after transplanting and not to the synthetic treatment included on the National List, which may have been applied to the seed that produced the seedling.

The application of disinfectants to seeds used for sprouting represents a unique dimension of the seed treatment issue. Raw sprouts pose a potential food safety risk because the conditions under which they are produced—growing time, temperature, water activity, pH and nutrient content—can foster the rapid growth of bacteria. In 1999, FDA issued guidance advising sprout producers and seed suppliers of measures to reduce microbial hazards common to sprout production. These measures include treating seeds with one or more approved methods such as presprout soaking with 20,000 ppm calcium hypochlorite. Based on the recommendation of the NOSB, the Secretary has included on the National List in this proposal three chlorine materials to disinfect and sanitize food contact surfaces. However, these materials carry the annotation that residual chlorine levels in water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act, which is well below the 20,000 ppm level that FDA currently advises sprout producers to follow.

Existing State and private certification programs have diverged in their response to the FDA guidance on chlorine treatments. While treating food products with high concentrations of chlorine has traditionally been prohibited, some certifying agents currently allow sprout treatment at the 20,000 ppm level. Producers of organic sprouts are finding it increasingly difficult to balance the FDA guidance, the expectations of consumers, and the requirements of their certifying agents. This proposal contains no specific guidance on the use of chlorine treatments on seeds used in sprout production. As synthetic compounds, chlorine materials would have to be added to the National List at specified concentrations to be used for disinfecting sprouts. Without a specific National List exemption, operations that treat sprouts at the level established in the FDA guidance could not be organically managed.

(5) *Crop Rotation.* The OFPA requires an organic crop production plan to foster soil fertility through practices that include a crop rotation. The first proposal required the establishment of a crop rotation or other "means" of ensuring soil fertility and effective pest management but did not provide explicit restrictions concerning situations in which those means could be substituted. Producers and producer groups sent many comments stressing the importance of a proper crop rotation for successful organic crop production and objecting to the vague allowance for other methods to be used in its place. Although we have not changed the definition of crop rotation from the first proposal, the new practice standard eliminates the possibility that an organic producer will substitute some other practice for a crop rotation. This proposal does, however, allow for variances from an approved crop rotation plan due to natural disasters, including weather.

A few commenters made the point that, although the OFPA includes a provision for a crop rotation as a means of improving soil fertility, a crop rotation serves other critical functions as well. We reviewed the NRCS practice standard for crop rotation (Code 328) which addresses many of the concerns raised in public comment. Accordingly, § 205.205 of this proposal requires the producer to implement a crop rotation, including, but not limited to, cover crops, sod, green manure crops, alley crops, and catch crops. These techniques serve the following functions as applicable to the operation: maintain or improve soil organic matter content; provide for effective pest management in annual and perennial crops; manage deficient or excess plant nutrients; provide erosion control to minimize soil loss; and manage subsurface water to prevent transport of dissolved materials.

A few comments suggested requiring that rotation plans include sod or legumes, which serve to improve soil organic matter content and increase soil nitrogen supplies to meet the demands of a following crop. However, all of these functions could be fulfilled through many different types of rotation plans, which could only be developed according to the site-specific climate, soil type, and type of crops or livestock produced on a given operation. In the interest of flexibility, therefore, this proposal does not specify what crops have to be included in a crop rotation. An organic plan that meets the criteria specified in this proposal must be developed by a producer and approved by the certifying agent.

Proposed § 205.205(b) specifically applies to perennial crops. Under this provision, an orchard plan might include establishment of hedgerow areas that provide habitat for beneficial insects to assist in effective pest management. This provision was added

in response to comments stating that an organic farm plan should address the functions provided by crop rotations even in the case of perennial crops such as orchards and sod. We expect to develop program manuals containing more detailed information on different types of rotations, including methods to fulfill the prescribed functions for perennial crops, that are suitable to a wide range of types of operations and geographic conditions.

(6) *Prohibition on Cytotoxic Pest Control Substances.* In response to several comments, we have deleted the provision in the first proposal to prohibit use of a synthetic carbon-based substance having a cytotoxic mode of action for any use as a pest control substance. Some commenters interpreted this provision to mean that this single criterion would substitute for those specified in the OFPA for evaluating substances proposed for inclusion on the National List. Other commenters, including industry groups, objected to this provision because it has not previously been part of certification standards and its meaning was too ambiguous. Some substances that have historically been accepted for organic production could have cytotoxic effects when used in inappropriate concentrations. Although this provision added to and did not replace the evaluation criteria contained in the OFPA and eliminated the need for the NOSB to review clearly inappropriate substances, it has been removed from this proposal in the interest of clarity.

Crop Production—Changes Requested But Not Made

This subpart retains from our first proposal regulations on which we received comments as follows:

(1) *Buffer Zones.* Section 205.202(a)(3) of this proposal requires that any land on which organic crops are produced have distinct, defined boundaries and buffer zones, such as runoff diversions, to prevent the unintended exposure of the crop to prohibited substances from adjoining land. Several commenters suggested that the regulations should specify a minimum size for buffer zones, as is currently required by some organic certifying agents. Although specifying a size for these zones would establish a more definable requirement, it could also impose unnecessary burdens on some organic producers without offering greater protection of organic fields and crops from unintended contact with prohibited substances. Another commenter argued that buffer zones should not be required for unmanaged lands such as wilderness areas or abandoned farms. There might be no need for a buffer zone if an organic farm were completely surrounded by wilderness or abandoned farms, which is one reason why a the size of a buffer zone should not be specified. This proposal leaves the determination of an adequate buffer zone to the organic producer and the certifying agent on a case-by-case basis. Buffer zone provisions are an important part of each organic production system plan, and we will provide guidelines for buffer zones in program manuals.

(2) *Nonorganic Plant and Animal Waste Materials.* The first proposal permitted the use of any uncomposted plant or animal wastes. It also allowed use of composted plant or animal wastes obtained from nonorganic sources, such as commercial compost products. Several consumer and environmental groups objected to permitting the use of plant or animal wastes from nonorganic sources. Such materials, they argued, could potentially contain residues of prohibited substances that could compromise the integrity of the organic farm system. However, off-farm plant and animal wastes from food processing, municipal yard waste facilities, and other sources are used extensively in existing organic operations and are generally permitted by organic certification programs. Bone meal, fish meal, and seaweed meal are also commonly used as organic farm inputs. Commercial fertilizer products that contain mixtures of such plant and animal by-products are commonly permitted for use in existing organic certification programs, subject to certifying agent review. Using such organic wastes is consistent with a system of organic production and handling, which calls for recycling organic wastes to return nutrients to the land. We believe that concerns about potential contaminants in plant and animal waste materials can be addressed by the requirement in this proposal that these materials be managed in a manner that prevents such contamination. For example, cotton gin trash that had been treated with a prohibited substance could only be used if the organic system plan specified composting the material before adding it to the soil. Composting has been shown to effectively biodegrade synthetic organic compounds, and the organic system plan could also call for the compost or soil to be monitored regularly for specific residues.

Finally, the first proposal and this proposal prohibit the use of any commercially blended fertilizer product that contains a prohibited substance, as required by the OFPA. Although a number of commenters worried that a product containing toxic synthetic substances as inert ingredients could be used for organic production, this prohibition prevents such products from being used. For this reason, the use of any composted or uncomposted plant or animal wastes to supply soil or crop nutrient is permitted without further limitation other than preventing contamination of soil or water by pathogenic organisms, heavy metals, or residues of prohibited substances. The certifying agent will be expected to have the expertise to recognize materials that might be of concern and ensure that they are properly addressed in the organic system plan. We expect to provide additional guidelines in program manuals to help evaluate whether animal manure is fully decomposed, as well as guidelines for other types of materials to address potential soil or water quality concerns. We acknowledge the need to examine carefully commercial blended fertilizers and soil amendments to ensure that such products do not contain prohibited substances.

(3) *Chemically Altered Plant or Animal Waste Materials.* The first proposal allowed the use of a composted or uncomposted plant or animal waste material that had been chemically altered by a manufacturing process—such as leather meal, newspaper, and biosolids—if the material was included on the National List of allowed synthetics. Only newspaper was proposed for inclusion on the National List. A few commenters objected to this allowance, although newspaper is commonly permitted as a mulch material or as an ingredient in compost in existing organic certification programs and was recommended for this use by the NOSB. The National List review process offers an adequate safeguard to ensure that other waste materials that may be permitted in the future will be consistent with a system of organic production and handling, and we propose to retain this provision in § 205.203(c)(5) of this proposal.

(4) *Soil and Crop Mineral Nutrients.* This proposal includes provisions for supplying soil and crop mineral nutrients that are similar to those in the first proposal. While use of a proper crop rotation and recycled plant and animal wastes can often provide all the mineral nutrients required by crops, supplemental sources of these nutrients are sometimes needed. Section 205.203(d) of this proposal permits a producer to supply soil and crop nutrients through use of mined minerals and other nonsynthetic sources. Synthetic micronutrients are also allowed if they are included on the

National List. Ash from plant or animal materials can be used, as long as the burned material was not treated or combined with a prohibited substance and was not included on the National List of prohibited nonsynthetic substances. For example, ashes from treated wood or incinerator ash are not permitted, nor is ash from manure, which is on the National List of prohibited nonsynthetics. The prohibition of burning crop residues on the farm in the first proposal has been retained, but an exception for burning trimmings of perennial crops to control diseases has been added in response to an NOSB recommendation.

Commenters raised no objection to the proposed allowance for mineral substances of low solubility, including lime, greensand (glauconite), and rock phosphate, which have traditionally been permitted in organic certification programs. However, numerous producers and certifying agents expressed concern about the allowance for use of mined mineral substances of high solubility or salinity. These include substances such as sodium (Chilean) nitrate or potassium nitrate (niter), potassium chloride (muriate of potash), langbeinite (sulfate of potash magnesia), and potassium sulfate. Because of their potential to degrade soil quality by contributing to soil salinization, these substances, along with the synthetic micronutrients that are on the National List of allowed synthetics, were allowed only when used in cases of known nutrient deficiency. Many commenters objected to the use of sodium nitrate and potassium nitrate in organic production, and some contested the determination that nonsynthetic, mined sources of potassium nitrate are available. Some also objected to allowing potassium chloride, which has traditionally been prohibited in most organic certification programs. Several commenters argued that no highly soluble source of nitrogen, synthetic or not, should be permitted for application to soil in an organic management system. They indicated that these materials are not permitted in international organic standards, and approval could potentially harm exports of organic products. The NOSB reviewed Chilean nitrate in 1995 and recommended certain restrictions on the use of this material, which is allowed with restrictions in some existing organic certification programs and prohibited in others. In accordance with the NOSB's recommendation, this proposal permits these materials to be used according to justifications in the organic system plan. More detailed guidance will be provided in program manuals on the appropriate justifications for the use of highly soluble nutrient sources, including plans for discontinuing their use. Soil or tissue testing will be an important aspect of justifying the need for any such supplementation. Producers concerned about requirements for export markets can request certification to the standards required by individual contracts.

(5) *Nonorganically Produced Planting Stock.* The first proposal allowed nonorganically produced planting stock used to produce a perennial crop to be sold, labeled, or represented as organically produced after the planting stock had been managed on an organic operation for a period of no less than 1 crop year. This provision is authorized by section 2107(a)(11) of the OFPA (7 U.S.C. 6506(a)(11)). Some commenters thought this provision provided a loophole for indiscriminate use of treated planting stock on an organic operation. They argued that a producer could purchase treated nursery stock and list it as organic planting stock in the organic plan after only 1 year. However, producer and industry groups supported this provision as an important stimulus to the organic input suppliers, since it allows a nursery operation to purchase planting stock from a nonorganic operation and later resell this stock as organically produced. The first proposal described an organic nursery operation which could purchase nonorganic dwarf apple rootstock and graft it with locally adapted varieties and then sell the resulting planting stock as organically produced after raising it organically for at least 1 year. We agree that the potential benefits of this provision outweigh its possible abuses, and § 205.204(d) of this proposal permits nonorganically produced planting stock to be used as planting stock to produce a perennial crop to be sold, labeled, or represented as organically produced after the planting stock has been under a system of organic management for no less than 1 crop year.

(6) *Pest, Weed, and Disease Control Practice Standard.* The OFPA sets forth practices such as the use of natural poisons that persist in the environment or plastic mulches that are prohibited or restricted in the control of pests, weeds, and diseases in organic crops. It also lists the following categories of active synthetic pest, weed, and disease control substances that may be considered for exemption if they are included on the National List: Copper and sulfur compounds; toxins derived from bacteria; pheromones; soaps; horticultural oils; fish emulsions; treated seed; vitamins and minerals; livestock parasiticides and medications, and production aids, including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleansers. Section 205.206 of this proposal contains the practice standard to implement the provisions of the OFPA for synthetic pest control substances.

We have made a minor modification by eliminating one element of the order of preference which commenters considered too difficult to enforce. There is no distinction made in this proposal between pest prevention and control practices in terms of preferability. However, a provision in the first proposal that permitted application of a botanical or allowed synthetic pest control substance only if previously delineated methods were ineffective has been retained. This provision is supported by public comments from producers, certifying agents, and many consumers who emphasized that such substances, while sometimes necessary, should only be permitted as a last resort. This provision requires a producer to document the need for copper and sulfur fungicides, dormant oils, or similar materials in their organic system plan.

(7) *Wild-crop Harvesting.* We received few comments on the provision in the first proposal concerning wild-crop harvesting, and, therefore, this proposal retains similar requirements. Changing the term for the location from which wild crops may be harvested from "land" to "area" is the only substantive difference between the first proposal and this one. We made this change to be consistent with the language in the OFPA. One commenter stated that maps should be required as part of the certification process. A certifying agent could reasonably require such maps to assist in evaluating the organic system plan, but we have not made their inclusion a requirement.

The provisions of this section apply only to the management of wild crops. The OFPA includes "fish used for food, wild or domesticated game, or other nonplant life" in the definition of livestock, and we are considering additional standards for animals and animal products harvested from the wild. We received substantial public comment on the opportunities for developing standards for marine and freshwater aquatic animals (encompassing finfish and shellfish) and apiculture operations. Additional comments addressed the feasibility of developing production standards for harvesting wild terrestrial animals.

The certification of aquatic animals has very limited precedent among existing certifying agents and will require additional dialogue before credible standards can be developed. The FY 2000 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act provides funds for the NOP to convene national meetings to consider the development of organic standards for aquatic animals. Meetings will be held in Alaska, Alabama, and Rhode Island. Simultaneously, the NOP will be working with stakeholders from the aquaculture community to consider standards for the production of farm-raised aquatic animals.

The certification of apiculture operations has some precedent among certifying agents. However, due to many unique production considerations, organic certification for apiculture operations has been very limited. Public comment on the first proposal indicated that consensus on critical apiculture issues including forage area and pest management will require considerable additional dialogue. The NOSB has expressed interest in leading the discussion of the key issues pertinent to certification of apiculture operations. We will incorporate public participation and the NOSB's recommendations into future production standards for apiculture as well as for other wild harvested livestock operations as needed.

(8) *Practice Standards for Specialty Crop Operations.* Several organic certifying agents and producer associations commented that the proposed rule did not sufficiently detail prescribed practices for many specialized aspects of organic production and handling, such as mushrooms, greenhouses, and aquaculture. We concur that such details are lacking, and to a certain extent, this proposal addresses that gap through the introduction of more detailed practice standards. In some cases, more specific regulations appropriate for such specialized operations, including aquaculture, mushroom production, and greenhouse operations, will be filled in as recommendations are developed by the NOSB. Beyond this, the Department expects to address the need for greater specificity through program manuals, which will provide more detailed guidance about site-specific decisions. For example, program manuals could include examples of crop rotation plans suited to different geographic regions, soil conditions, and types of enterprises. Program manuals could also be used to provide guidance about how indicators of the condition of the natural resource base can be qualitatively assessed using simple field observations so that the impact of site-specific practices on soil and water quality can be documented in the organic plan.

Crop Production—Additional Provisions

Upon further review of the provisions in the first proposal, we have decided to propose the following additions and changes.

(1) *Mandatory Phytosanitary Treatment of Seeds, Seedlings, and Planting Stock.* Section 205.204(e) of this proposal contains a new provision that permits the use of treated seeds, seedlings, or planting stock in cases in which Federal or State phytosanitary regulations require treatment. For example, some States require seed potatoes or strawberry crowns to be treated to prevent the spread of plant diseases. The OFPA authorizes reasonable exemptions from specific requirements for compliance with Federal or State emergency pest or disease treatment programs. This provision is also consistent with the NOSB's recommendation on the use of treated planting stock.

(2) *Restriction on the Use of a Synthetic Pest Control Substance.* The first proposal included a provision that any use of biological or botanical pest control substances or synthetic pest control substances approved for use on the National List had to be used in a manner that did not result in measurable degradation of soil or water quality. This provision has been removed, and § 205.207(e) of this proposal includes a new provision that further restricts use of these substances by requiring the producer to implement measures to evaluate and mitigate the effects of repetitive use of the same or similar materials on pest resistance and shifts in pest types. This requirement can be met by reviewing available research on pest resistance to the substance being used and observing changes in pest populations following repeated application of the substance. Public comments pointed out evidence that nonsynthetic biological and botanical pest control substances, if overused, pose concerns for inducing accelerated resistance in pest populations.

Livestock Production—Changes Based on Comments

This subpart differs from our first proposal in several respects as follows:

(1) *Minimum Period of Organic Management—Nonedible Products.* The first proposal established a 90-day minimum period of organic management for animals from which nonedible products, such as wool, were to be harvested. Many consumers and producers said that a 90-day period was too short and that an animal should be under organic management for at least 1 year before a nonedible organic product could be obtained from it. This requirement is consistent with the provision that dairy animals receive a minimum of 1 year of continuous organic management prior to the production of the milk or milk products to be sold, labeled, or represented as organic. Therefore, this proposal has been revised to state that an animal brought into an organic operation must be under continuous organic management for 1 year prior to the harvest of nonedible products that are sold, labeled, or represented as organic.

(2) *Origin of Mammalian Slaughter Stock.* The first proposal allowed mammalian livestock from a nonorganic source for the production of organic meat if the livestock was brought into an organic operation no later than the 15th day of life, if necessary. Public comment was sought as to the specific conditions, such as commercial unavailability of organic livestock or an emergency situation, that should be a prerequisite for allowing mammalian livestock of nonorganic origin to be designated as organic slaughter stock. Thousands of commenters, along with the NOSB, strongly opposed allowing the use of cows, sheep, or other mammals as organic slaughter stock if they were not organic from birth. Most of them also rejected allowing such practices on an "if necessary" basis. Accordingly, § 205.236 requires that mammalian slaughter stock be organically raised from birth.

(3) *Standard for Aquatic Animal Production.* While the first proposal contained no standards solely for aquatic animals in an organic operation, it did contain provisions applicable to their production. The first proposal allowed fish and crustaceans, among other livestock types, to be sold, labeled, or represented as organic if such livestock had been brought into an organic operation no later than the earliest commercially available stage of life. Several commenters suggested that the management of aquatic species differs significantly from mammals and poultry and would require separate regulatory provisions. We concur and intend to develop detailed practice standards for specific aquatic species that will be published for comment and finalized prior to the implementation of the NOP. Given the virtual absence of recognized certification programs for

aquatic operations, including aquaculture, there are limited models on which to base national standards. Therefore, we must create opportunities for producers, consumers, certifying agents, and other interested parties to participate in the development of practice standards. We will hold public meetings in Alaska, Alabama, and Rhode Island to receive comment and anticipate that the NOSB will also provide recommendations.

(4) *Apiculture Standard.* The first proposal allowed bees to be brought into an organic operation at any stage of life and required that the predominant portion of their forage be organically produced. Several commenters, including producer and industry groups, pointed out that bees differ significantly from other livestock types and that the first proposal lacked sufficient details to guide honey producers. Many consumers stated that the provisions proposed for bee forage, which required only that a predominant portion of the bees' forage be organic, were too vague and lenient. Recognizing that the provisions in the first proposal for certifying beekeeping operations were inadequate, we removed them entirely from this proposal. We will review the detailed production and handling standards for beekeeping operations that several certifying agents have developed and assess the feasibility of developing a practice standard. The NOSB has agreed to review and recommend an apiculture practice standard for organic honey production and hive care, including the origin of organic bees.

(5) *Organic Feed Requirement.* The first proposal allowed a producer to feed livestock up to 20 percent of the total feed ration in a given year that was not organically produced. Furthermore, in an emergency situation, the first proposal allowed the Administrator to increase the amount of nonorganic feed that could be provided. Thousands of comments were received opposing any allowance for nonorganic livestock feed, and many thought that no conditions justified providing any nonorganic feed to organic animals. Most producer groups, organic certifying agents, and industry groups, however, recognized that eliminating all flexibility in this regard could seriously inhibit growth of the organic livestock industry and reduce the availability organic livestock products. Several existing certification programs allow some use of nonorganic feed in emergencies, in one case specifying that up to 10 percent of the livestock ration may be nonorganic. Commenters made it clear that the commercial availability of certified organic livestock feed has increased enough to eliminate exemptions based on availability, even in regions such as the Northeast where supplies were previously difficult to obtain. The NOSB also recommended providing an allowance for livestock to receive nonorganic feed in emergency situations, with strict requirements for documentation in the organic system plan.

Based on the public comment received and the recommendations of the NOSB, we agree that allowances for providing nonorganic feed to organically managed livestock should be limited to emergencies, such as fire, drought, flood, and other natural disasters. Accordingly, we have removed the provision from the first proposal that a producer may provide up to 20 percent nonorganically raised feed "as necessary." Exemptions for emergency use of nonorganic feed must be authorized by the Administrator through the procedures for establishing a temporary variance. Producers will work with their certifying agents to determine the minimum percentage of nonorganic feed needed to supply the nutritional requirements of the livestock until the 100 percent organic ration can be restored.

(6) *New Dairy Herd exemption.* The first proposal included an exemption to allow an entire, distinct dairy herd—converted to organic management for the first time—to be fed nonorganic feed up to 90 days prior to the production of milk or milk products labeled as organic. A few producer groups supported this allowance for a one-time, whole-herd exemption to make it feasible for existing conventional dairy farmers to convert to organic management without incurring the costs of 100 percent organic feed for 12 months prior to certification. However, in light of the strong opposition to any nonorganic feed allowance by consumers and its inconsistency with NOSB recommendations, we have eliminated this provision.

(7) *Synthetic Feed Additives.* The first proposal prohibited the feeding of substances containing synthetic amino acid additives and synthetic trace elements to stimulate the growth or production of livestock. In § 205.237(c)(2), the term, "synthetic amino acids," is replaced with the term, "additives," which includes nutritional substances other than amino acids. Some commenters stated that the term, "additives," more precisely reflects the intent of the OFPA, which prohibits the use of growth stimulants. The provision in the first proposal to permit use of synthetic amino acid additives to fulfill the normal nutritional needs of livestock is retained in § 205.237(a).

(8) *Prohibition on Antibiotics.* The OFPA prohibits producers from using subtherapeutic doses of antibiotics. While this suggests that treatment with antibiotics at therapeutic levels is allowed, the OFPA does not contain affirmative conditions for their use. In developing provisions in the first proposal for treating livestock with antibiotics, we reviewed the NOSB recommendations, public input received at NOSB meetings, testimony presented at livestock hearings, and existing State and private standards. We found that innovative production practices and consumer expectations had increasingly diminished the use of antibiotics in organic livestock since passage of the OFPA. At its 1994 meeting in Santa Fe, NM, the NOSB recommended prohibiting the use of antibiotics in the production of organic slaughter stock but allowing their use with extended withdrawal intervals for dairy and breeder stock. By its Ontario, CA, meeting in 1998, the NOSB recommended prohibiting all antibiotic use after animals were brought into an organic operation. Other comments we reviewed favored allowing the use of antibiotics because organic livestock might benefit from receiving such treatments. Other commenters requested that organic producers be prohibited from withholding treatment from sick animals for economic reasons.

The first proposal permitted mammals raised as organic slaughter stock to receive antibiotics in the first 21 days of life and other species to be given antibiotics in the first 7 days of life. The rationale for allowing antibiotic use was based on concerns about the vulnerability of newly born or hatched livestock brought into an organic operation from a nonorganic source. The first proposal permitted organic slaughter stock to originate from nonorganic sources if it was brought under organic management at an early stage of life. Allowing the use of animal drugs could be an appropriate safety net for young organic livestock during their first week of organic management. We requested public comment on the use of animal drugs in the production of organic livestock, including organic slaughter stock. We also published an issue paper in October 1998 entitled "The Use of Antibiotics and Parasiticides in Organic Livestock Production," requesting additional public comment on this subject.

We received thousands of comments from consumers, producers, and industry groups objecting to any allowance for antibiotic use in

organically produced livestock. Many of these comments supported a comprehensive prohibition on the use of antibiotics, regardless of the animal's age or the type of products produced from it. Based on these public comments and the availability of alternative production practices, this proposal prohibits selling, labeling, or representing as organic any animal that has been treated with an antibiotic at any dosage.

(9) *Parasiticide Use.* The first proposal permitted livestock in an organic operation to receive parasiticides topically at any time of life, provided that the producer complied with the prohibition against routine use of a synthetic internal parasiticide. We concluded that, while some earlier public comment favored prohibiting the use of internal parasiticides and the NOSB recommended restricting their use, many producers had indicated that parasiticides were essential to their operations. These producers stated that parasites can threaten animal health at any stage of life and that the use of parasiticides is unavoidable in certain regions of the country. Even under highly controlled situations, some parasites endemic to certain regions can be carried by wild birds, water, or feed. Concerns for the overall health of an animal warranted that parasiticides be used as soon as possible after determining the presence of parasites at a level affecting the health of the infected livestock.

In responding to the first proposal, a large number of commenters stated that synthetic parasiticides should be prohibited in organic production, especially for slaughter stock. The NOSB also recommended prohibiting the use of parasiticides in slaughter animals. For other livestock, the Board recommended that, in certain climates, in certain stages of production, and for certain animals, the use of synthetic parasiticides might be necessary. The Board stated that breeding stock, for example, could receive parasiticides up to certain stages of gestation specific to the type of livestock. Such use of synthetic parasiticides would be highly restricted and include a lengthy period of elapsed time before the animal's offspring would be eligible for use in a certified operation. The Board proposed developing practice standards to address specific instances in which parasiticides could be allowed.

This proposal allows the use of synthetic parasiticides included on the National List for use in organic production on breeder and dairy stock provided that preventative practices and veterinary biologics are inadequate to prevent infestation. This proposal prohibits administering synthetic parasiticides to livestock sold for slaughter. These provisions reflect an attempt to balance the conflicting positions taken by consumers and producers in response to the first proposal and the subsequent issue paper on livestock medications. We recognize that the goal of organic production is to use management practices and natural substances to eliminate, when possible, reliance on synthetic materials. However, we do not believe that a comprehensive prohibition on synthetic parasiticides is feasible for all species and for all regions of the country at this time. Additionally, the new requirements for access to the outdoors for organically managed livestock contained in this proposal may exacerbate exposure to parasites for animals in systems which previously used greater degrees of confinement. These provisions are also consistent with the position of the NOSB, which recommended at its October 1999 meeting to allow a synthetic parasiticide for use on organically raised breeder and dairy stock with the same restrictions incorporated in this proposal.

The OFPA prohibits the use of synthetic internal parasiticides on a routine basis. In the first proposal, the word, "routine," was defined as administering an animal drug "without cause." Many commenters objected to that definition, pointing out that producers would not administer a parasiticide unless they perceived a justifiable cause. Commenters fear that this might lead to dependence on parasiticides rather than a management system to reduce the number of parasites. Therefore, this proposal adopts the NOSB-recommended definition for "routine" as use of a synthetic parasiticide on a regular, planned, or periodic basis. The prohibition on using synthetic treatments on a routine basis is retained in § 205.238(c)(4).

(10) *Temporary Confinement.* The first proposal provided that, if necessary, animals could be maintained under conditions that restrict the available space for movement or access to outdoors if other living conditions were adequate to maintain the animals' health without the use of permitted animal drugs. This provision considered the effects of climate, geographical location, and physical surroundings on the ability of animals to have access to the outdoors. We explained that a system of organic production is soil based and that animals should be allowed, as appropriate, access to the soil. This understanding was considered in balance with animal health issues, such as the need to keep animals indoors during extended periods of inclement weather. The determination of necessity was to be based on site-specific conditions described by the producer in an organic system plan or updates to an organic plan, which required approval from the certifying agent. We requested public comment as to the conditions under which animals may be maintained to restrict the available space for movement or access to the outdoors. We also released an issue paper in October 1998 entitled "Livestock Confinement in Organic Production Systems" to solicit further public participation in preparing this proposal.

Many commenters stated that, while confinement is appropriate under certain conditions, access to the outdoors is a fundamental tenet of organic livestock production. Commenters cited the widespread prohibition on confinement systems, such as raising poultry in battery cages, contained in domestic and international standards. Producers of organic livestock have incorporated access to the outdoors into viable production systems for all major commercial species, and consumers clearly identify these practices as a distinguishing characteristic of organic products. Some commenters stated that production standards containing broad allowances for confinement would weaken their incentive for purchasing organic products. Some producers pointed out that providing animals access to the outdoors can reduce stress and diminish the risk of transmitting disease. The vast majority of commenters strongly indicated that protection of an animal's welfare or the soil and water resources of the operation were the only appropriate conditions for restricting access to the outdoors. Furthermore, many commenters stated that the condition and properties of the outdoor area to which an animal receives access, such as the nutritional content of pasture, must be important considerations in developing livestock production standards.

Section 205.239(b) of this proposal specifies the circumstances under which animals may be temporarily confined. This new requirement proposes temporary confinement during periods of inclement weather; certain stages of production such as when dairy animals are very young; when the animal's health, safety, or well-being are jeopardized; or when there is risk to soil and water quality. The NOSB specified that the stage of an animal's production

is not intended to include the lactation cycle of dairy animals in which only dry cows would be allowed access to the outside and pasture. The NOSB recommended and we propose that when there is a risk to soil or water quality, livestock should be temporarily confined. Practice standards addressing when and how individual species may be temporarily confined will be developed and published in program manuals. We are also incorporating the NOSB recommendation that ruminants receive access to pasture during the periods they are not temporarily confined.

(11) *Physical Alterations.* This proposal contains a requirement in § 205.238(a)(5) that the producer of an organic livestock operation must perform, as needed, physical alterations on livestock to promote the animal's welfare and in a manner that minimizes pain and stress. Physical alterations include castration and other practices, such as wing clipping, intended to modify or affect the animal's behavior in confinement. We received comments on the first proposal which stated that the performance of physical alterations is integral to a system of organic livestock production which must be addressed in the standards. Subsequently, some commenters on the confinement issue paper drew a connection between certain physical alterations, such as debeaking in poultry, and the conditions for space and mobility under which livestock are raised We anticipate that this subject will be a significant consideration when the NOP engages in equivalency discussions under the Codex Alimentarius guidelines.

While many certification programs have production standards for conducting physical alterations on animals, we cannot identify general consensus on which practices should be approved or prohibited. Many production variables, including breed, the number and concentration of animals raised, and the available natural resource base, influence the selection of production practices. Operations which raise the same species of livestock could, due to differences in production practices, require different approaches to whether and how to conduct physical alterations. We do not have sufficient information at this time to propose species-specific guidelines but anticipate working with producers, consumers, and certifying agents to develop a better understanding on which to act. By including the requirement for conducting physical alterations in a manner which promotes an animal's welfare and minimizes pain and stress in this proposal, we are acknowledging two points. One, physical alterations have an appropriate and at times necessary role in livestock production, and, two, consideration for animal welfare and comfort is an integral component of organic livestock production.

In order to use an animal's welfare and comfort as a condition for establishing standards, we are requesting comment on techniques to measure animal stress. Certifying agents will need objective, verifiable methods to determine whether a producer is fulfilling the livestock management conditions established in the organic system plan. Such methods may include physiological or behavioral approaches to measuring stress and may be directed at individual animals or larger groups such as herds or flocks. The many comments addressing the well-being of animals under organic management indicate that this issue is central to the differentiation of organic production standards from nonorganic practices. We need consistent, verifiable enforcement techniques to ensure that organic producers are capable of attaining and documenting such standards.

(12) *Treatment of Sick or Injured Animals.* In this proposal, any animal that is to be sold, labeled, or represented as organic may not be treated with a prohibited animal drug, including antibiotics, synthetic substances that are not allowed, or nonsynthetic substances that are prohibited. Any substance used as an animal drug in organic livestock production must be approved by FDA or registered by EPA and must be administered in compliance with the Federal Food, Drug, and Cosmetic Act. This proposal simultaneously requires that sick or injured animals must be treated with the appropriate animal medicine regardless of whether organic status is lost as a result of doing so. This requirement has been added in response to an NOSB recommendation. Thousands of comments expressed concern that organic livestock would suffer unduly if producers were not required to provide treatment, especially to save the life of a critically ill animal, rather than risk the suffering or death of the animal simply to maintain its organic status. If the treatment required under this proposal includes the use of a prohibited substance, the animal and any product derived from it must be diverted to the nonorganic market.

(13) *Feeding of Animal By-Products.* Although we received thousands of comments supporting a ban on the feeding of any animal by-products to livestock under organic management, a broad prohibition would prevent certain essential practices, such as feeding milk to young mammals. This prohibition is also inappropriate in the case of carnivorous livestock, such as many aquatic species. We believe that the comments we received were not intended to prohibit such practices but were, rather, motivated by concerns for food safety and the humane treatment of animals. This proposal prohibits the feeding of poultry and mammalian slaughter by-products to organically raised poultry or mammals. This change is based on the thousands of comments that expressed strong consumer preference against adding animal by-products into feed for the same species. There was concern that this practice could expose ruminant animals to Bovine Spongiform Encephalopathy (BSE). FDA regulates animal feed additives and uses its authority to address the human health considerations of animal refeeding. FDA continually revises its regulations to ensure the highest level of protection against known and emerging human health risks. The prohibition on feeding poultry and mammalian slaughter by-products to organically raised poultry or mammals contained in this proposal is based solely on the consumer preference expressed in public comment and is not a food safety standard. Future changes that are made to FDA regulations will be reflected in NOP standards.

(14) *Withdrawal Intervals.* The first proposal required that a producer determine that an animal was fully recovered from the condition for which an animal drug was administered before a product obtained from that animal could be sold, labeled, or represented as organic. In compliance with FDA regulations, this could not have been less than the withdrawal time specified on the label of the animal drug administered. We received comments from producer groups that favored extending the withdrawal times specified on animal drug labels. Many private certification programs applied the principle of extended withdrawal periods to the use of antibiotics in dairy and breeder stock before innovations in production led to such substances being prohibited. The NOSB has continued to include extended withdrawal period annotations with its recommendations for the use of parasiticides.

Based on consumer preference and the recommendations of the NOSB, we are proposing an extended withdrawal interval for three animal drugs (Ivermectin, Lidocaine, and Procaine) included on the National List in this proposal. FDA exercises full responsibility for determining and

enforcing the withdrawal intervals for animal drugs. No food safety arguments are used or implied to support the use of extended withdrawal periods. Rather, we determined that extended withdrawal periods are more compatible with consumer expectations of organically raised animals. In emergency situations where the need for a synthetic parasiticide or medicine is unavoidable, an extended withdrawal period would indicate that such use was neither routine nor normal. This approach is consistent with the manner in which organic certification agencies addressed antibiotic use in livestock production. Before the current prohibition on antibiotics became the industry norm, certifying agents allowed their use under restricted conditions, including extended withdrawal intervals, to demonstrate to consumers that such use was genuinely essential.

Livestock Production—Changes Requested But Not Made

This subpart retains from our first proposal regulations on which we received comments as follows:

(1) *Feed Requirements.* The first proposal required the use of preventive health care practices, including diverse feedstuffs, appropriate housing, well maintained pasture, and good sanitation practices, and this proposal contains similar provisions. It also included provisions for administering appropriate veterinary biologics, vitamins, and minerals, and on selecting species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites. Preventive health care practices were generally supported by comments as being consistent with a system of organic livestock production.

Many commenters requested an explanation of the term, "diverse feedstuffs," and some expressed concern that this provision could permit use of feed supplements which might be prohibited by other Federal, State, or local laws. All provisions proposed in this subpart must be in compliance with applicable laws and regulations, including the Federal Food, Drug, and Cosmetic Act; the OFPA; and our definition of a system of organic production and handling. Vitamins, minerals, and other synthetic or nonagricultural supplements, which appear on the National List of allowed synthetic livestock products in the first proposal are similarly permitted here, and provide a means to diversify an animal's diet. Soybean meal and other organically produced feed concentrates also serve this purpose. We encourage the NOSB to develop and recommend practice standards to provide additional guidance regarding the appropriate variety of feed for specific livestock species. Both the first proposal and this one defer to publications of the National Research Council's Committee on Animal Nutrition to establish nutrient requirements for livestock. Producers and certifying agents will use these publications to ensure that animal nutrient requirements are met.

Handling—Changes Based on Comments

This subpart differs from our first proposal in several respects as follows:

(1) *Irradiation.* In the first proposal, we requested public comment on the compatibility of ionizing radiation (irradiation) with a system of organic production and handling. We also asked if there are effective alternatives to ionizing radiation, such as sanitary practices, heat pasteurization, and incidental additives, that are compatible with a system of organic production and handling, and, if so, how they are compatible. We further asked whether the use of ionizing radiation was considered an essential standard industry practice or good manufacturing practice. Although the NOSB recommended prohibiting the use of ionizing radiation for organic products, we requested this information because of increasing concern about foodborne illness and growing interest in FDA-approved ionizing radiation as a sanitation or preservation treatment for a wide range of agricultural products.

We received hundreds of thousands of comments from every segment of the organic community—producers, processors, certifying agents, consumers, environmental groups, and retailers—opposing the use of ionizing radiation. These comments indicated that ionizing radiation has been expressly prohibited in all existing organic certification standards, international as well as domestic. Allowing this practice could put domestic producers and handlers at a trade disadvantage, disrupt international markets, and undermine consumer faith in the integrity of the domestic organic label.

Comments suggested alternatives to ionizing radiation for preventing contamination by human pathogens. Alternatives include heat disinfection, refrigeration, moisture and oxygen reduction, packaging, hygienic handling, and appropriate use of disinfectant substances. Although no one suggested that any products might be unavailable if irradiation were prohibited, many commenters expressed the willingness to do without any product that required irradiation. In response to the overwhelming consensus of public comment, this proposal prohibits any use of ionizing radiation for the handling of any organic product in § 205.270(c).

(2) *Incidental Additives.* The first proposal included a provision that permitted the use of incidental additives in processing, except those extracted with a volatile synthetic solvent, if it was necessary for the production of the product. As with previous provisions for practices that could be used only "if necessary," the preamble to the first proposal explained that a determination of necessity was based on site-specific conditions that were described by a producer or handler in an organic system plan or updates to an organic system plan and reviewed by the certifying agent. We requested comments as to the conditions under which an incidental additive might be considered necessary and requested comment as to whether handlers who handle only products sold, labeled, or represented as "made with certain organic ingredients" should be exempted from the restriction of using incidental additives only if necessary. An incidental additive was defined as an additive that is present in an agricultural product at an insignificant level, does not have any technical or functional effect in the product, and is not considered an active ingredient. This definition is consistent with 21 CFR 101.100(a)(3)(ii) and is the basis for the definition of an incidental additive in this proposal.

Although thousands of consumers objected to the use of synthetic substances in processed organic products, many others specified that an incidental additive that had been reviewed and approved by the NOSB would be acceptable. Few respondents supported exempting products labeled as "made with organic ingredients" from restrictions on the use of incidental additives. The NOSB recommended that documentation be required for use of synthetic incidental additives and that handlers demonstrate progress over time in finding replacements. Organic industry groups also commented that hundreds of incidental additives are currently being used to process organic products and that prohibiting the use of such substances would severely restrict the choices available to consumers and limit the growth of the organic sector. The NOSB recommended several synthetic incidental additives for the National List, recognizing that a wide range of organic products could not be feasiblely manufactured without the use

of incidental additives such as defoaming agents, adjuvants, clarifiers, filtering agents, and equipment cleansers. Therefore, this proposal requires that any incidental additive used to process agricultural products that are intended to be sold, labeled, or represented as "organic" or "made with organic (specified ingredients)" must be included on the National List of allowed nonagricultural (nonorganic) substances in § 205.605. A product labeled as "100 percent organic" could not be produced through the use of any synthetic processing aid.

(3) *Prevention and Control of Facility Pests.* The first proposal addressed the prevention and control of facility pests and authorized the NOP to require such terms and conditions as are determined necessary. These provisions were based on existing organic certification programs and NOSB recommendations. The first proposal included a three-step order of preference, which commenters found to be overly complex and difficult to enforce. This proposal retains similar provisions but simplifies the scheme so that there are only two levels of distinction between preferable and less preferable practices. In this proposal, pest prevention and control methods that do not entail use of biological, botanical, or synthetic substances are equally acceptable, and the producer or handler may only use biological, botanical, or synthetic substances if other approved methods are not effective. Paragraph (c) of § 205.271 parallels the provision proposed in § 205.206(d) addressing crop pest, weed, and disease management. Accordingly, it requires an operator of an organic handling operation who applies any biological, botanical, or synthetic substance for the prevention or control of pests to implement measures to evaluate the effects of repetitive use of the same or similar materials on pest resistance and shifts in pest types.

(4) *Storage Containers.* Sections 205.272 (b)(1) and (b)(2) of this proposal contain provisions similar to the first proposal which prohibit the use of storage containers or bins, including packages and packaging materials, that contain synthetic fungicides, preservatives, or fumigants. These requirements also prohibit the use or reuse of any bag or container that was previously in contact with any substance that could compromise the organic integrity of its contents. This proposal adds a provision to permit the reuse of a bag or container originally used for conventional products if the reusable bin or container has been thoroughly cleaned and poses no risk of prohibited materials contacting organic products. Producers and handlers commented that it is possible and desirable to reuse some kinds of containers if precautions are taken. This modification is consistent with the OFPA, which requires that the organic quality of a product not be compromised.

(5) *Agricultural Fibers.* Some commenters stated that the labeling provisions in the first proposal for processed commodities containing organically produced cotton fibers were excessively restrictive. The OFPA provides the Secretary with the authority to implement standards for organically produced agricultural fibers, including cotton, used for nonfood purposes. This authority includes standards for the production of the agricultural fiber as well as handling standards to regulate the practices and materials that are used in the manufacture of the nonfood commodity. State and private certification agents have made substantial progress in developing and implementing handling standards for organically produced agricultural fibers that are gaining acceptance in the marketplace. We are reviewing the existing certification guidelines and industry practices and anticipate developing standards for processing organically produced agricultural fibers.

Handling—Changes Requested But Not Made

This subpart retains from our first proposal regulations on which we received comments as follows:

(1) *Facility Pest Control Substances.* The first proposal permitted the use of any substance to control facility pests, as long as the intended use was approved by the appropriate regulatory authority and the substance was applied in a manner that prevents it from coming into contact with any organic product. Many consumers objected to this provision and suggested that prohibited substances should never be allowed to be used in any organic operation. However, comments from a number of organic handlers and one industry association stated that, because handling operations must comply with health regulations that require elimination of any pests that may invade food handling facilities, prohibited substances must sometimes be used. The NOSB also acknowledged this possibility in its recommendations, and most organic certification programs similarly allow for such an occurrence, with strict provisions for safeguarding the integrity of organic products. In agreement with these comments, we have proposed a similar allowance in § 205.271(c). The handler must fully document in his or her organic plan the evidence that such a measure was necessary and the measures taken to protect organic products or ingredients from coming into contact with any pest control substance.

(2) *Waxes.* We propose to retain the definition of packaging included in the first proposal, which encompasses waxes used in contact with an edible surface of an agricultural product. A number of commenters disagreed with the inclusion of waxes in the definition of packaging, arguing that waxes should be considered nonagricultural ingredients and, therefore, should be required to appear on the National List of nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients)." However, the first proposal did require carnauba and other waxes to be on the National List of nonagricultural ingredients allowed for use in organic processed products, and this proposal contains a similar provision. These provisions adequately address the concerns expressed by the commenters that only waxes meeting the criteria for ingredients in organic processed products be permitted. It is appropriate to include waxes in the definition of packaging to ensure that prohibited substances are not added to approved waxes that may be applied to the edible surface of organic products, in accordance with the OFPA, which prohibits use of any packaging materials that contain synthetic fungicides, preservatives, or fumigants.

Subpart D—Labels, Labeling, and Market Information

The Act provides that a person may sell or label an agricultural product as organically produced only if the product has been produced and handled in accordance with provisions of the Act and these regulations. This subpart sets forth labeling requirements for organic agricultural products and products with organic ingredients based on their percentage of organic composition. For each labeling category, this subpart establishes what "organic" terms and references can and cannot be displayed on a product package's principal display panel, information panel, ingredient statement, and on other package panels. Labeling is proposed for containers used in shipping and storing organic product and for denoting organic bulk products in market information which is displayed or disseminated at the point of retail sale. Restrictions on labeling organic product produced by exempt operations are described. Finally, this

subpart proposes a new USDA organic seal or shield (hereafter referred to as the USDA Seal) and regulations for display of the USDA seal and display of the seals, logos, or other identifying marks of certifying agents.

The intent of these sections is to ensure that organically produced agricultural products are consistently labeled to aid consumers in selection of organic products and to prevent labeling abuses. These provisions cover the labeling of a product as "organic" and are not intended to supersede other labeling requirements specified in various Federal labeling regulations. For instance, we propose that the percent of organic ingredients and the name of the certifying agent be displayed on the information panel of packaged products and that the organic ingredients be identified as "organic" in the ingredient statement. The Food and Drug Administration (FDA) has authority to regulate the placement of information on package information panels and, thus, FDA labeling requirements in 21 CFR parts 100 through 169 must be complied with by handler when affixing organic labels to product packages. Display of the USDA Seal and certifying agent seals, logos, or other identifying marks also must be in accordance with those regulations. The requirements of FDA's Fair Packaging and Labeling Act (FLPA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) must be followed. Likewise, the Federal Trade Commission has authority over product advertising and the extent to which a handler or retail food establishment engages in advertising as part of its market information activities. The Federal Trade Commission (FTC) regulations in 16 CFR must be followed. USDA's Food Safety and Inspection Service's (FSIS) Federal Meat Inspection Act, Poultry Products Inspection Act, and Egg Products Inspection Act also have implementing regulations in 9 CFR which must be followed. The labeling requirements specified in this subpart must not be applied in a manner so that they would conflict with the labeling requirements of these and other Federal and State programs.

While this regulation does not require labeling of an organic product as organic, we assume that producers and handlers will choose to label their organic products and display the USDA Seal to the extent allowed in these regulations. They will do this to improve the marketability of their organic product.

In this proposal, assembly, packaging, and labeling of a multiingredient organic product are considered handling activities. The certification of handling operations is covered in subpart C of this regulation. No claims, statements, or marks using the term, "organic," or display of certification seals, other than as provided in this regulation, may be used. A handler which chooses not to use these required and prohibited labeling provisions may not otherwise label or represent a product as organic.

Once a handler makes a decision to market a product as organic or containing organic ingredients, the handler is required to follow the provisions in this subpart regarding use, display, and location of organic claims and certification seals. Handlers who may produce organic ingredients and/or assemble multiingredient products composed of more than 50 percent organic ingredients must be certified as an organic handling operation. Handlers of products of less-than-50-percent organic ingredients do not have to be certified unless the handler actually produces one or more of the ingredients used in the less-than-50-percent product. Repackers who purchase certified organic product from other entities for repackaging and labeling must be certified as an organic operation. Entities which simply relabel a product package would be subject to recordkeeping requirements to show proof that the product purchased prior to relabeling was, indeed, organically produced. Distributors which receive and transport labeled product to market are not subject to certification or any handling requirements of this regulation.

Proposal Description

The general labeling principle employed in this proposal, and to which we think most commenters would subscribe, is that labeling or identification of the organic nature of a product should increase as the organic content of the product increases. In other words, the higher the organic content of a product, the more prominently its organic nature can be displayed. This is consistent with provisions of the Act which establishes the three percentage categories for organic content and basic labeling requirements in two of those categories.

Section 205.300 specifies the general use of the term, "organic," on product labels. Paragraph (a) establishes that the term, "organic," may be used only on labels and in market information of agricultural products and ingredients that have been certified as produced and handled in accordance with these regulations. The term, "organic," cannot be used on a product label for any purpose other than to modify or identify the product or ingredient in the product that is organically produced and handled. Products not organically produced and handled will not be able to use the term, "organic," on any package panel or in market information in any way that implies the product is organically produced.

Categories of Organic Content. The type of labeling and market information that can be used and its placement on different panels of consumer packages will be based on the percentage of organic ingredients in the product. The percentage will reflect the actual weight or fluid volume (excluding water and salt) of the organic ingredients in the product. Four categories of organic content are proposed: 100 percent organic; 95 percent or more organic content; 50 to 95 percent organic content; and less than 50 percent organic content.

100 Percent Organic

For labeling and market information purposes, this proposal allows a "100 percent organic" label for an agricultural product that is composed of a single ingredient such as raw, organically produced fruits and vegetables. The product also may be composed of two or more organically produced ingredients, provided that the individual ingredients are organically produced and handled consistent with provisions in subpart C of this regulation. No processing aids may be used in the production of 100 percent organic products. This proposal provides that labeling provisions for "100 percent organic" products be the same as provisions for the 95 percent "organic" products specified below.

Organic

Products labeled or represented as "organic" will contain, by weight (excluding water and salt), at least 95 percent organically produced raw or processed agricultural product. The organic ingredients must be produced using production and handling practices pursuant to subpart C of this regulation. The nonorganic (5 percent or less) ingredients may be composed of nonorganic or nonagricultural substances. The difference between 100 percent organic products and 95 percent-plus products is that the latter may contain up to 5 percent nonorganic or nonagricultural products.

Multiingredient Product: 50–95 Percent Organic Ingredients

For labeling and market information purposes, the third category of agricultural products are multiingredient products containing by weight or fluid volume (excluding water

and salt) between 50 and 95 percent organic agricultural ingredients produced pursuant to these regulations. Such products may be labeled or represented as "made with organic (specified ingredients)." By "specified," we mean the name of the agricultural product forming the organic ingredient. The organic ingredients must be produced using substances on the approved National List in subpart G and employing organic production and handling practices consistent with subpart C of this regulation. For instance, breakfast cereal made with 75 percent organically produced and processed wheat and 25 percent other, nonorganically produced grains, raisins, and nuts can be labeled as "made with organic wheat" on the principal display panel. To qualify for this organic labeling, the nonorganic ingredients (grains, raisins, and nuts) must be produced and handled without use of the first three prohibited practices specified in paragraph (e) (excluded methods, sewage sludge, or ionizing radiation). However, those nonorganic ingredients may be produced or handled using practices prohibited in paragraphs (e)(4) through (e)(7) (using substances not on the National List; containing added sulfites, nitrates, or nitrites; using nonorganic ingredients when organic ingredients are available; and using organic and nonorganic forms of the same ingredient).

Multiingredient Product: Less Than 50 Percent Organic Ingredients

The final labeling category covers multiingredient products with less than 50 percent organic ingredients (by weight or fluid volume, excluding water and salt). The organic ingredients must be produced using substances on the approved National List in subpart G and employing organic production and handling practices consistent with subpart C of this part. The remaining nonorganic ingredients (50 percent or more of the product) may be produced, handled, and assembled without regard to these regulations (using prohibited substances and prohibited production and handling practices). Organic labeling of these products is limited to the information panel only as provided in § 205.305.

Prohibited Practices. This proposal prohibits labeling of whole products or ingredients as "organic" if those products or ingredients are produced using any of the following production or handling practices: (1) Ingredients or processing aids containing or created using excluded methods (genetically modified organisms (GMO)) or the products of excluded methods; (2) ingredients that have been produced using applications of sewage sludge (biosolids) as fertilizer; (3) ingredients that have been processed with ionizing radiation; (4) processing aids not approved on the National List; (5) sulfites, nitrates, or nitrites added to or used in processing of an organic product in addition to those substances occurring naturally in a commodity; (6) use of the phrase, "organic when available," or similar statement on labels or in market information when referring to products composed of nonorganic ingredients used in place of specified organic ingredients; and (7) labeling as "organic" any product containing both organic and nonorganic forms of an ingredient specified as "organic" on the label. The prohibitions on the use of excluded methods, sewage sludge, irradiated products, and prohibited processing aids are included here to be consistent with the revised National List of Approved and Prohibited Substances in subpart G.

These seven prohibitions apply to the four labeling categories of products and are not individually repeated as prohibited practices in the following sections. Table 1, Prohibited Production and Handling Practices for Organic Labeling, is a summary reference of how the seven prohibited practices must be applied in the production and handling of organic and nonorganic ingredients of products in the four labeling categories.

TABLE 1.—PROHIBITED PRODUCTION AND HANDLING PRACTICES FOR LABELING CATEGORIES

Labeling category	Use excluded methods	Use sewage sludge	Use irradiation	Use processing aids not on national list	Contain added sulfites, nitrates, nitrites	Use organic ingredients when available	Use both organic & nonorganic forms of same ingredient
"100 percent Organic"							
Single/multiingredients completely organic	NO	NO	NO	Use NO Processing Aids.	NO	NO	NO.
"Organic"							
Organic Ingredients (95% or more)	NO	NO	NO	NO	NO	NO	NO.
Nonorganic Ingredients (5% or less)	NO	NO	NO	NO	NO	NO	NO.
"Made with Organic (specified ingredients)"							
Organic Ingredients (50–95%)	NO	NO	NO	NO	NO	NO	NO.
Nonorganic Ingredients (49% or less)	NO	NO	NO	OK	OK	NA*	NA*.
Less-than 50% Organic Ingredients							
Organic Ingredients (49% or less)	NO	NO	NO	NO	NO	NO	NO.
Nonorganic Ingredients (50% or more)	OK	OK	OK	OK	OK	NA*	NA*

* Not applicable.

Calculating the Percentage of Organic Ingredients. This proposal specifies procedures for calculating the percentage, by weight or fluid volume, of organically produced ingredients in an agricultural product labeled or represented as "organic."

The organic percentage of liquid products and liquid ingredients will be determined based on the fluid volume of the product and ingredients (excluding water and salt). When a product is identified on the principal display panel or the information panel as being reconstituted with water from a concentrate, the organic content will be calculated on the basis of a single-strength concentration.

Some products may contain both dry and liquid ingredients that are produced organically. In such cases, this proposal provides that the percentage of total organic ingredients will be based on the

combined weight of the dry organic ingredient(s) and the weight of the liquid organic ingredient(s), excluding water and salt. For example, a product may be made using organically produced vegetable oils or grain oils or contain organic liquid flavoring extracts in addition to other organic and nonorganic ingredients. In these cases, the weight of the liquid organic oils or flavoring extracts, less any added water and salt, would be added to other solid organic ingredients in the product, and their combined weight would be the basis for calculating the percentage of organic ingredients. We believe this process provides the most appropriate and least burdensome method for calculating the organic percentage of such multiingredient products.

Only one figure providing the total percentage of all organic ingredients will be shown on the information panel. The total percentage will be displayed on the information panel of the consumer package above or below the ingredient statement with the words, "contains X percent organic ingredients," or a similar phrase. If the total percentage is a fraction, it will be rounded down to the nearest whole number. The percentage of each organic ingredient will not be required to be displayed.

Labeling "100 Percent Organic" and "Organic" Products. This proposal includes optional, required, and prohibited practices for labeling packages of agricultural products that are "100 percent organic" or "organic" (at least 95 percent organic). Only products that are composed of a wholly organic single ingredient or entirely of certified organic ingredients may be identified with a percentage number (100 percent) on the principal display panel. Products between 95 and 100 percent organic composition, when identified as "organic" on the principal display panel, will be required to state on the information panel the percentage of organic ingredients in the finished product and identify each organic ingredient in the ingredient statement.

The handler may display the following information on the principal display panel, the information panel, and any other part of the package and in market information representing the product: (1) The term, "100 percent organic" or "organic," as applicable, to the content of the product; (2) the USDA Seal; and (3) the seal, logo, or other identifying mark of the certifying agent (hereafter referred to as "seal or logo") which certified the handler of the finished product. The seals or logos of other certifying agents which certified organic raw materials or organic ingredients used in the product also may be displayed, at the discretion of the handler. If multiple organic ingredients are identified on the ingredient statement, the handler of the finished product that combined the various organic ingredients must maintain documentation, pursuant to subpart B of this regulation, certifying the organic content of the added ingredients.

While certifying agent identifications can appear on the package with the USDA Seal, they may not appear larger than the USDA Seal on the package. There is no restriction on the size of the USDA Seal as it may appear on any panel of a packaged product, provided that display of the Seal conforms with the labeling requirements of FDA and FSIS.

This proposal specifies three labeling practices that will be required if a handler labels a product "100 percent organic" or "organic" on the principal display panel. If a product is labeled as "100 percent organic" the ingredients may also be modified with the term, "organic," but would not have to be so labeled because it is assumed from the 100 percent label that all ingredients are organic. For 95 percent-plus products that contain more than one ingredient, each organic ingredient listed in the ingredient statement must be modified with the term, "organic." Water and salt in the ingredient will not be identified as "organic." Secondly, the total percentage of organic ingredients in the product must be shown on the information panel. The percentage statement should be placed in a manner that it can be viewed in relation to the ingredient statement.

The handler also must display on the information panel the name of the certifying agent which certified the handler producing the finished product. The handler has the option to include the business address or telephone number of the certifying agent. This information must be placed below or otherwise near the manufacturer or distributor's name.

Labeling Products "Made with Organic (Specified Ingredients)". With regard to agricultural products "made with organic (specified ingredients)"—those products containing between 50 and 95 percent organic ingredients—this proposal establishes the following optional, required, and prohibited labeling practices.

Under optional practices, the statement, "made with organic (specified ingredients)," may be placed on the principal display panel and other panels of the package. The same statement can also be used in market information representing the product. However, the following restrictions will be placed on the statement, "made with organic (specified ingredients)," when it appears on the principal display panel: (1) The statement cannot list more than three organic ingredients in the product; (2) the statement cannot appear in print that is larger than one half (50 percent) of the size of the largest print or type appearing on the principal display panel; and (3) the statement must appear in its entirety in the same type size, style, and color without highlighting. Display of the statement, "made with organic (specified ingredients)," on other panels must be similarly consistent with the size of print used on those panels. These restrictions are consistent with FDA regulations and similar to the recommendations of the National Organic Standards Board (NOSB). This provision will help assure that the statement, "made with organic (specified ingredients)," is not displayed in such a manner as to misrepresent the actual organic composition of the product.

We also propose that, at the handler's option, the certifying agent's seal or logo may be displayed on the principal display panel or other package panel.

Packages of products labeled as "made with organic (specified ingredients)" will be required to display on the information panel the total percentage of organic ingredients in the product and modify each organic ingredient listed in the ingredient statement with the term, "organic." The percentage of organic ingredients must be displayed so that it can be viewed in relation to the ingredient statement.

The name of the certifying agent which certified the handler of the finished product must be displayed below or otherwise near the manufacturer or distributor's name. The statement may include the phrase, "Certified organic by * * *" or "Ingredients certified as organically produced by * * *" to help distinguish the certifying agent from the manufacturer or distributor. At the handler's option, this label may include the business address or telephone number of the certifying agent which certified the handler of the finished product.

Labeling Products with Less Than 50 Percent Organic Ingredients. The final labeling category covers packaged multiingredient agricultural product containing less than 50 percent organic ingredients.

Handlers of "less than 50 percent" multiingredient products, who choose to declare the organic nature of the

product, may do so only on the information panel by declaring the total percentage of organic ingredients in the product and, in the ingredient statement, modifying the organic ingredients with the term, "organic." The percentage statement must be displayed so that it can be viewed in relation to the ingredient statement.

Products composed of less than 50 percent organic content cannot display the USDA Seal or any certifying agent's seal or logo anywhere on the product package or in market information.

Handlers of such products will be subject to this regulation in the following ways. Those handlers who only purchase organic and nonorganic ingredients and assemble a finished product of less than 50 percent organic content do not have to be certified as organic handlers. They will be responsible for appropriate handling and storage of the organic ingredients prior to product assembly and for maintaining records verifying the organic certification of the ingredients used in the product. To the extent that the packaging process includes affixing the label to finished product package, those handlers will be responsible for meeting the labeling requirements of this subpart. Handlers who produce an organic ingredient prior to assembly into a finished product, even though the finished product contains less than 50 percent organic content, and must be certified as to the source of the organic ingredient(s). The nonorganic ingredients may be produced, handled, and assembled without regard to the requirements of this part.

The handler who affixes the label to the product package will be responsible for calculating the percentage of organic ingredients in an organic product. As part of the certifying agent" annual certification of the handler, the certifier will verify the calculation and labeling of packages.

Table 2, *Labeling Consumer Product Packages,* provides a summary of the required and prohibited labeling practices for the four labeling categories.

TABLE 2.—LABELING CONSUMER PRODUCT PACKAGES

Labeling category	Principal display panel	Information panel	Ingredient statement	Other package panels
"100 percent Organic" (Entirely organic; whole, raw or processed product).	"100 percent organic"	"100% Organic"	If multiingredient product, identify each ingredient as "organic".	"100 percent Organic".
	USDA Seal and Certifying agent sets(s).	Certifying agent name (required); business address, tele. # (optional).	.....	USDA Seal and Certifying agent seal(s).
"Organic" (95% or more organic ingredients).	"Organic"	"*X*% Organic Ingredients".	Identify organic ingredients as "organic".	"Organic".
	USDA Seal and Certifying agent seals(s).	Certifying agent name (required); business address, tele. # (optional).	.....	USDA Seal and Certifying agent seal(s).
"Made with Organic (specified ingredients)" (50 to 95% organic ingredients).	"Made with organic (specified ingredients)".	*"X% Organic Ingredients".*	Identify organic ingredients as "organic".	"Made with organic (specified ingredients)".
	Certifying agent seal of final product handler.	Certifying agent name (required; business address, tele. # (optional).	Identify organic ingredients as "organic".	"Made with organic (specified ingredients)".
	Prohibited: USDA Seal ..	*Prohibited: USDA Seal ..*	.....	*Prohibited: USDA Seal.*
Less-than 50% Organic Ingredients (49% or less organic ingredients).	*Prohibited: Any reference to organic content of product.*	"*X*% Organic Ingredients".	Identify organic ingredients as "organic".	*Prohibited: Any reference to organic content of product.*
	Prohibited: USDA Seal & Certifying agent seal.	*Prohibited: USDA Seal & Certifying agent seal.*	.....	*Prohibited: USDA Seal & Certifying agent seal.*

Misrepresentation in Labeling of Organic Products. The labeling requirements of this proposal are intended to assure that the term, "organic," and other similar terms or phrases are not used on a product package or in marketing information in a way that misleads consumers as to the contents of the package. Thus, we intend to monitor the use of the term, "organic," and other similar terms and phrases. Should we find that terms or phrases are being used on product packages to represent "organic" when the products are not produced to the requirements of this regulation, we will proceed to restrict their use.

After consideration of alternative labeling terms that handlers might wish to use to qualify or modify the term, "organic," we have determined that handlers may not qualify or modify the term, "organic," using adjectives such as, "pure" or "healthy," *e.g.,* "pure organic beef" or "healthy organic celery." The term, "organic," is used in labeling to indicate a certified system of agricultural production and handling. Terms such as "pure," "healthy," and other similar adjectives attribute hygienic, compositional, or nutritional characteristics to products. Use of such adjectives misrepresents products produced under the organic system of agriculture as having special qualities as a result of being produced under the organic system. Furthermore, use of such adjectives would incorrectly imply that products labeled in this manner are different from other "organic" products that are not so

Moreover, "pure," "healthy," and other similar terms are regulated by FSIS and FDA. These terms may be used only in accordance with the labeling requirements of FDA and FSIS. For example, the regulations implemented by FSIS, 9 CFR 317.363, define the terms, "healthy," "health," and similar derivations and the conditions of use as a nutritional claim. Also, according to FSIS regulations, 9 CFR 317.8(b)(34), the term, "pure," as well as the terms, "all," "100 percent," and similar terms, may only be used to indicate that a single ingredient product is composed of 100 percent of the product ingredient and contains no other ingredients. The term, "healthy," is regulated by FDA (21 CFR

101.14) and can be used, with documentation, only to indicate or characterize a relationship of the product to a disease or health-related condition. The prohibition on use of these terms to modify "organic" does not otherwise preclude their use in other labeling claims.

We also intend to monitor the use of the term, "organic," in corporate or company names and seek additional guidance from the FTC. We do not believe that the term, "organic," in a brand name context inherently implies an organic production or handling claim or inherently constitutes a false or misleading statement.

The determination as to whether the use of the term, "organic," in a brand name conveys a message about the product's attributes must be made by the Secretary. We will monitor use of the term, "organic," in product and company names at this time. However, if we find that the term is being used in a false or misleading way to misrepresent the organic nature of the product, we have the authority under section 6519(b) of the Act to take action against such use. Such determinations and actions will be taken on a case-by-case basis.

Labeling of Products Shipped in International Markets. Domestically produced organic products intended for export may be labeled to meet the requirements of the country of destination or any labeling requirements specified by a particular foreign buyer. For instance, a product label may require a statement that the product has been certified to, or meets, certain European Union organic standards. Such factual statements regarding the organic nature of the product will be permitted. However, those packages must be exported and cannot be sold in the United States with such a statement on the label because the statement indicates certification to standards other than are required under this program. As a safeguard for this requirement, we require that shipping containers and bills of lading for such exported products display the statement, "for export only," in bold letters. Handlers also will be expected to maintain records, such as bills of lading and U.S. Customs Service documentation, showing export of the products. Only products which have been certified and labeled consistent with the requirements of the National Organic Program (NOP) may be shipped to international markets without marking the shipping containers "for export only."

Organic product produced under a foreign country's or international association's organic standards deemed equivalent to these standards and certified by a certifying agent accredited by the Secretary may be imported into the United States provided that the product labels are consistent with the requirements of this subpart. Any labeling on the product package or in market representation cannot imply that the product is also certified to other organic standards or requirements that are more restrictive than this national program. These provisions are consistent with international standards and will facilitate international trade of organically produced products and, thus, benefit the global organic industry.

Labeling Nonretail Containers. Section 205.306 provides for labeling nonretail containers used to ship or store raw or processed organic agricultural products that are labeled "100 percent organic," "organic," and "made with organic (specified ingredients)." These labeling provisions are not intended for shipping or storage containers that also will be used in displays at the point of retail sale. They would be used for easy identification of the product to help prevent commingling with nonorganic product or handling of the product which would destroy the organic nature of the product (fumigation, etc.). Retail containers will have to meet labeling provisions specified in § 205.307.

Containers used only for shipping and storage of any product labeled as containing 50 percent or more organic content may, at the handler's discretion, display the following information: (1) The name and contact information of the certifying agent which certified the handler of the finished product; (2) the term, "organic," modifying the product name; (3) any special handling instructions that must be followed to maintain the organic integrity of the product; and (4) the USDA Seal and the appropriate certifying agent seal. This information is optional if handlers believe display of the information helps ensure special handling or storage practices which are consistent with organic practices.

Containers used for shipping and storage of organic product must display a production lot number if such a number is used in the processing and handling of the organic product being shipped or stored. The lot number must be included for inventory control and quality assurance purposes. To help assure export of organic product produced and labeled to foreign specifications, the shipping containers and shipping documents (bills of lading) must be marked with the phrase, "for export only," in bold letters. The handler also must maintain records showing export of the product to a foreign country.

Much of the required information may overlap information that the handler normally affixes to shipping and storage containers or information that is required under other Federal labeling regulations. Provisions in this proposal do not take precedence over food safety or quality control provisions which may be required for specified products or types of products covered by such Federal regulations. There are no restrictions on size or display of the term, "organic product," or the certifying agent seal unless otherwise required by other Federal or State statutes.

Labeling Products at the Point of Retail Sale Section 205.101(b)(2) of subpart B on Applicability provides regulations regarding the certification of retail food establishments under this program. Those operations are subject to labeling and market information requirements concerning products offered to consumers at the point of retail sale. Such labeling and market information must truthfully represent the organic nature and handling of the product.

Section 205.307 applies to organically produced products that are not prepackaged prior to sale and are presented in a manner which allows the consumer to select the quantity of the product purchased.

To be labeled as "100 percent organic" or "organic" at the point of retail sale, the processing and assembly of such products must be carried out by a certified manufacturing facility for distribution to a retail food establishment. For instance, a tossed salad may be labeled as "100 percent organic tossed salad" or "organic tossed salad" (consistent with the percentage of organic ingredients in the salad) provided the salad and ingredients have been produced and assembled under organic certification. If the multiingredient product is identified as "organic" at the point of retail sale, any ingredient statement displayed at retail sale must identify the organic ingredients as "organic." The retail materials may also display the USDA Seal and the seal or logo of the certifying agent. If shown, the certifying agent seal must not be larger than the USDA Seal.

Using the same example, a product made with 95 percent or more certified organic salad components but which is assembled at an uncertified operation may be labeled "tossed salad made with organic (specified ingredients)." The retail food establishment may not

display the USDA Seal or the seal or seals of cerftifying agents involved in ingredient certifications because the final assembly of the product was not certified pursuant to the handling requirements of this regulation.

Our position on the applicability of these regulations to different business entities is more completely explained in subpart B, Applicability, of this regulation.

"Section 205.308 addresses processed products "made with organic (specified ingredients)" that are not prepackaged prior to sale and are presented in a manner which allows the consumer to select the quantity of the product purchased. These products will include, but will not be limited to, multiingredient products containing between 50 and 95 percent organic ingredients. Retail displays, display containers, and market information for such products may display the phrase, "made with organic (specified ingredients)" provided that the product has been assembled by a manufacturing facility certified pursuant to this regulation. Up to three organic ingredients may be identified in the statement. If such statement is declared in market information at the point of retail sale, the ingredient statement must identify the organic ingredients as "organic." Retail display and market information of such bulk products cannot use the USDA Seal but may display the seal or logo of the certifying agent which certified the finished product, provided that assembly of the product was carried out at a certified manufacturing facility. The certifying agent's seal or logo may be displayed at the option of the retail food establishment. If such a product has not been assembled at a certified manufacturing facility, the retail display and market information may not identify the product as "made with organic (specified ingredients)."

Prepared food products containing less than 50 percent organic ingredients at retail sale may not be identified as organic or containing organic ingredients. The USDA Seal and any certifying agent seal or logo may not be displayed.

Labeling Products Produced on Exempt or Excluded Operations. This proposal provides limited organic labeling provisions for organic product produced or handled on exempt and excluded operations. Such operations would include retail food establishments, certain manufacturing facilities, and production and handling operations with annual organic sales of less the $5,000. They are discussed more thoroughly in subpart B, Applicability.

Under this proposal, any such operation that is exempt or excluded from certification, or which chooses not to be certified, may not label its products in a way which indicates that the operation has been certified as organic. Primarily, this means that the exempt or excluded operation may not display the USDA Seal or any seal or logo of a certifying agent. Any packaged organic product from an exempt or excluded operation may not use the labeling terms "100 percent organic," or "organic," or "made with organic (specified ingredients)," on the principal display panel. Those labeling terms are reserved for products produced by certified operations. The organic representation of exempt or excluded operation products may only be made on the information panel where the organic percentage can be displayed and the organic ingredients identified as "organic."

Retail displays and market representation of such products may not indicate that the product has been certified as organic. For instance, a whole, raw, organic product marketed directly to consumers at a farmers market or roadside stand as "organic apples" or "organic tomatoes." However, no terms may be used which indicate "certified" organic apples, etc. No organic seal or logo may be displayed with the product at the point of retail sale.

We propose these restrictions simply as truth in labeling provisions because use of terms or phrases reserved for certified operations and products and display a certification seal will indicate that the product has been certified. We believe this requirement will help differentiate between certified and not certified products and help maintain the integrity of certified products while providing limited organic labeling opportunities for exempt and excluded operations.

Finally, this rule proposes that exempt organic producers cannot sell their product to a handler for use as an ingredient or for processing into an ingredient that will be labeled as "organic" on the information panel. However, this restriction is raised for public comment in subpart B, Applicability, of this part.

Small producers or handlers who qualify for exemption but who choose to be certified pursuant to these regulations can label their product as certified organic and can sell that product to certified handlers for further processing as an organic ingredient.

USDA Seal. This proposal introduces a new, redesigned, USDA Seal, that can be placed on consumer packages, displayed at retail food establishments, and used in market information to show that products have been produced and handled in accordance with these regulations. The Seal can only be used to identify raw and processed products that are labeled as "100 percent organic" or "organic." It cannot be used for products labeled as "made with organic (specified ingredients)" (50 to 95 percent organic ingredients) or on multiingredient products with less than 50 percent organic ingredients.

The USDA Seal presented in this proposal will consist of the phrase, "USDA Certified Organic," on a shield or badge design. When used, the seal must be the same form and design as shown in figure 1 of § 205.310 of this proposal. The seal must be printed legibly and conspicuously. On consumer packages, retail displays, and labeling and market information, the Seal may be printed on a white, light colored, or transparent background with contrasting dark colored words and shield outline or on a dark colored background with contrasting words and shield outline in one or two light colors. The Seal also may be printed in the colors red, white, and blue as follows: a white background, with dark blue shield outline, and red words. The choice of color scheme is left to the discretion of the producer, handler, or retail food establishment based on other colors on the product package and other considerations.

Labeling—Changes Based On Comments

This subpart differs from our first proposal in several respects as follows:

(1) *Use of terms other than "organic."* The first proposal stated that informational statements which imply "organic" production and handling should be used only on products that are produced and handled in accordance with these regulations. The proposal identified several informational statements commonly referred to as "eco-label" or "green" terms and phrases such as: "produced without synthetic fertilizers," "pesticide free farm," "no drugs or growth hormones used," "raised without antibiotics," "ecologically produced," "sustainably harvested," etc. We asked for comments on these and other terms or phrases which directly or indirectly imply that a product was organically produced and handled.

Commenters favored use of "eco-label" and "green" terms and phrases on any product labels. The general consensus expressed in the comments is

that producers and handlers should be able to make claims about their product provided the claims are truthful.

While commenters did not oppose the use of eco-label terms or phrases on nonorganic products, they made it clear that the term, "organic," should only be used on products produced and handled in accordance with these regulations. Several commented that consumers respond favorably to the term, "organic," when used on a product label, and, therefore, proper use of the term must be closely protected.

We also received several comments regarding use of the terms, "biological" and "ecological," on product labels. A few comments indicated that the terms should be allowed on nonorganic products to truthfully describe an alternative agricultural system under which the product was produced or processed. However, most commenters opposed use of the terms as substitutes for the term "organic" on product labels.

We agree with the majority of comments received on this subject, and we, therefore, propose to regulate the term, "organic," and no other terms. We propose that the term, "organic," may only be used on labeling and market information of products that are produced and handled in accordance with these regulations. We understand that the terms, "ecological" and "biological," are a special case in that they are used synonymously with the term, "organic," in other countries. However, they cannot be used interchangeably with the term, "organic," in this country. These terms may be used as eco-labels at this time. However, we will proceed to restrict use of these or any other terms if we find that they are used on product packages in the United States to represent "organic" when the products are not produced to the requirements of this regulation.

(2) *100 percent organic category.* Our first proposal did not provide for a "100 percent organic" category because that level of organic composition is not specifically provided for in the Act. While the Act and the first proposal provide for a labeling category of 95 percent or higher organic content, commenters appealed for a labeling category for product that is 100 percent organic. Many suggested that being able to use the term, "100 percent," will give handlers added incentive to use only certified ingredients in multiingredient products. Some commenters suggested that if a product is composed only of organic ingredients, with no additives or other substances, it should be allowed to be labeled and represented in market information as 100 percent.

We agree that a "100 percent organic" labeling category may increase the effectiveness of marketing efforts and may provide incentives for handlers to use more certified organic ingredients in their multiingredient products. Therefore, this proposal will allow the term, "100 percent organic," to be used on labels affixed to or market information representing raw or processed organic products that are composed entirely of organically produced agricultural product.

(3) *Identification of private certifying agents.* Under the first proposal, identification of private certifying agents was not permitted on the principal display panel with the USDA Seal and the State organic seal. While a few commenters suggested that only the USDA Seal should be displayed on the principal display panel, the majority of those commenting on this topic requested that private certifying agent seals be displayed on an equal basis with a seal of the appropriate State's organic program. Although the number of State certifying agents is relatively small, private certifying agents believe that State organic programs and State certifying agents may implement measures in States that work against the interests of private certifying agents. The Department believes those concerns to be unfounded. Under the NOP, the Secretary will approve all State organic programs and accredit all State certifying agents. However, any of those programs or agents that might discriminate or work against the interests of private certifying agents in the State would not be approved by the Secretary.

Some commenters suggested that many private certifying agent seals are widely recognized and respected and their seals influence consumer choices in product purchases. It is appropriate that private certifying agents be afforded the same treatment with regard to labeling as the State certifying agent. We agree with commenters' requests for equal treatment of certifying agents and that certifier seals may have marketing potential in some areas. Therefore, we specify in this proposal that a private certifying agent's seal or logo can be displayed to the same extent as the seal of a State certifying agent. This change is reflected throughout this subpart.

(4) *Use of a certifying agent's seal or logo.* Many commenters believe that the certifying agent's seal, logo, or identifying mark shown on "100 percent organic" and "organic" products should be the seal or mark of the certifying agent that certifies the handler of finished product. Commenters also stated that labels should not be used to misrepresent one product as being more organic than another product, which might happen if multiple seals are displayed on one product package and only two are displayed on a competing product package. While we understand the commenters' points, we believe that display of certifying agent seals on products labeled "100 percent organic," "organic," and "made with organic (specified ingredients)" should remain optional for handlers. If two or more certifying agents are involved in certifying raw organic agricultural product and organic ingredients used in a finished product, the seals or marks of those certifying agents may be displayed, at the discretion of the handler. There should be only two restrictions to using multiple certifying agent seals: (1) The seal of the certifier of the handling operation producing the finished product should be displayed; and (2) only the seals of those certifying agents actually involved with certification of the product or ingredients may be displayed. For instance, a private certifying agent may certify a product assembled using organic ingredients produced in Texas and certified by the Texas State certifying agent. The product package may, at the handler's option, display the Texas State agent's seal in addition to the seal of the private certifying agent which certified the operation creating other organic ingredients and creating the finished product. Likewise, display of a seal of a foreign country's organic program or foreign certifying agent will be permitted only if the foreign agent certified the finished product or a product ingredient.

Some commenters say that display of two State agent seals may confuse consumers. However, we do not believe it is likely that handlers will choose to display multiple certifying agent seals to misrepresent a product. We also do not believe that possible consumer confusion from display of multiple seals should take precedence over the handler's right to provide product information. If multiple certifying agent seals or marks are displayed on a product package or in market information, the handler or retail food establishment must maintain appropriate records showing proof of all organic certifications.

(5) *Display of certifying agent name and business address.* Commenters also suggested that the certifying agent's name and business address be displayed adjacent to identification of the handler or distributor of products labeled "organic" and "made with organic

(specified ingredients)." The commenters stated that such information should be available for consumers who may have questions about the organic nature of a product or product ingredients. We agree that the name of the certifying agent should be included on a product package but believe that display of the business address or telephone number should be optional to the handler who assembles the finished product and affixes the label on the package. If a consumer wants to inquire about the organic nature of a purchased product, the consumer can obtain contact information through the certifying agent database listed on the NOP homepage. Finally, to clearly identify the information provided, the statement, "Certified organic by * * *" or "Ingredients certified as organically produced by * * *," may be used to distinguish the certifying agent from the manufacturer or distributor of the product.

The statement and agent identification is intended for information purposes only and is not to promote the organic nature of the product. The certifying agent identification may be placed below the manufacturer or distributor information and must not interfere with display of that information.

(6) *Size of certifying agent seal.* There was a general consensus among commenters that the seals of State and private certification agents should not be larger than the USDA Seal. To emphasize the market value of such a national organic seal and maintain some consistency of treatment with regard to the different organic content categories, we propose that State and private certifying agent seals can be the same size as but must not exceed the size of the USDA Seal on any package label or in market information. The size of the USDA Seal on a package is left to the discretion of the handler.

(7) *Displaying the percentage of organic ingredients.* The first proposal permitted use of the word, "organic," in the ingredient statements to modify those ingredients that were produced and handled pursuant to these regulations, but did not require the percentage of organic ingredients to be displayed on the label. Most all commenters responding to this labeling issue stated that identification of organic ingredients as "organic" will encourage handlers to increase the organic composition of multiingredient products. However, some commenters did not favor any use of the word, "organic," on packages of multiingredient products containing less than 50 percent organic ingredients. Some commenters also suggested that including the total percentage of organic content adjacent to the ingredient statement (in which the organic ingredients are identified) would give relevance to the ingredient statement. We concur with commenters' recommendations about the display of the total percentage of organic content and propose that the percentage of organic ingredients be placed on the information panel. The percentage statement and the ingredient statement should be shown in a way that indicates the relationship of the information. If a product is labeled "100 percent organic," all ingredients (except water and salt), by definition, would have to be certified organic ingredients, and each ingredient may be but would not have to be identified as "organic." Identification of organic ingredients would be required for products labeled "organic" and "made with organic (specified ingredients)," and for products containing less than 50 percent organic ingredients. We did not change the identification of organic ingredients for products containing less than 50 percent organic ingredients because we believe the uses of the term on the information panel and ingredient statement of such product packages do not imply that the product is organic.

(8) *Labeling of products containing 50–95 percent organic ingredients.* The first proposal specified that products with 50–95 percent organic content could use "made with certain organic ingredients" on the label. Many commenters suggested that the word, "certain," may appear confusing to consumers and that a stronger statement is needed to identify the organic nature of the product. One commenter sought clarification of whether the term, "certain," is a substitute for the name of the ingredient in a single-ingredient product. Many requested that the statement be changed to allow specific identification of the organic ingredients on the principal display panel. Because that is the panel first and most often observed by consumers, the commenters indicated that the information presented on the principal display panel should be clear and accurate to assist consumers in making their purchasing decisions.

After review of the comments, we believe that, if the statement is going to be displayed on the principal display panel, it should state the specified organic ingredient in the product; *e.g.*, "made with organic (specified ingredients)." Replacing the word, "certain," with the actual organic commodity name or organic ingredient will add the specificity sought by commenters and assist consumers in making more informed choices. Under this proposal, the statement, "made with organic (specified ingredients)," must be used on the principal display panel and on other package panels of a product containing between 50 and 95 percent organic ingredients.

Several commenters suggested that the size of the letters in the phrase be limited to a fraction of the size of the product name as it appears on the principal display panel. They stated that limiting the size of the letters will keep the statement from making the product appear more organic than products with 95 percent organic ingredients. For instance, if a product contains 55 percent organic ingredients and the statement, "made with organic (specified ingredients)," is displayed on the principal display panel in large, bold letters, the product may appear more organic than a 97-percent product simply labeled "organic." Commenters recommended letter sizes from one-half to three-fourths the size of the product name as it appears on the principal display panel.

We also believe that the labeling for these products should not use typeface or letter sizes which would mislead consumers. FDA labeling requirements in 21 CFR 101.3(d) specify that required statement of identity of the product shall be in a size most reasonably related to the largest printed matter on a panel. FDA enforces "reasonably related" as being one half the size of the largest printed matter, which is usually the product name. Therefore, to be consistent with FDA labeling requirements, we have established the print size of the statement, "made with organic (specified ingredients)," to be not more than 50 percent, or one half, of the largest print size appearing on the principal display panel. This print size is consistent with the recommendation of many commenters but is smaller than the 75 percent recommended by the NOSB. We propose that the statement, "made with organic (specified ingredients)," appear in only one print style and color, without highlighting.

We believe that these additional restrictions on display of the statement will enable the message to be delivered and yet provide some structure and consistency to display of the statement. It is our intention that the statement not be used to disproportionately dominate the principal display panel or other panels and not be used to misrepresent the organic nature of the product.

(9) *Limiting the number of organic ingredients listed.* Some commenters suggested limiting the number of organic ingredients that could be

included in the statement "made with organic ingredients." This topic was the subject of much NOSB deliberation and public discussion. Commenters reasoned that if the list of organic ingredients became too long, the product could appear to be more organic than "95 percent" products. For instance, a product could have 10 organic ingredients, but those 10 ingredients may comprise only 51 percent of the product. The consensus of comments suggested that the statement should be limited to three organic ingredients, which is the industry standard. We believe their recommendation has merit and, therefore, propose that up to three organic ingredients can be shown in the statement. We encourage additional comments on the maximum number of ingredients that should be allowed to appear in the statement on the principal display panel. Commenters should provide reasons for the number they recommend.

(10) *Qualifications for display of the USDA Seal.* In the first proposal, we permitted the display of the USDA seal on products with 50 percent or more organic ingredients. Commenters objected. They overwhelmingly endorsed a high organic content standard for a product to be labeled as "organic." They believe products containing less than 95 percent organic ingredients do not have sufficient organic content to justify an "organic" label on the principal display panel, and should not be so labeled under the NOP regulations. Commenters also stated that display of the USDA Seal will be very desirable. Many stated that a prohibition on display of the USDA Seal on 50-to-95-percent products would encourage handlers who assemble multiingredient products to use more organically produced ingredients and fewer nonorganic ingredients. They suggested that the USDA Seal and the certifying agent's seal or logo not be displayed on any package panel of products "made with organic (specified ingredients)" or on products with less than 50 percent organic ingredients.

We agree that some distinction should be made between 95 percent-plus organic products and the 50–95 percent organic products. Handlers of 95 percent-plus organic products may display both the USDA Seal and the certifying agent seal or logo on the principal display panel of the product. The commenters propose that handlers of 50–95 percent organic products not be allowed to display either seal on the principal display panel. However, we believe that, because handlers of 50–95 percent organic product are required to be certified under this program, it is appropriate that they should be allowed to display some evidence of that certification. We propose, therefore, that handlers of 50–95 percent organic product may display the seal or logo of the certifying agent which certified the finished product. Display of the USDA Seal will still be restricted to only 100 percent organic products and to 95 percent-plus products. We believe this provision will provide more equitable treatment for handlers of 50–95 percent products who are required under this regulation to obtain and maintain organic certification in order to label their organic product. It will also maintain a distinction between the two product levels by continuing the restriction on display of the USDA Seal. We believe that, while display of the USDA Seal is less likely to be an incentive for handlers of products at the lower end of the 50 to 95 percent range of organic content, handlers of products at the higher end of the 50 to 95 percent organic content range may be encouraged to increase the organic content in order to display the USDA Seal.

An organic product produced or handled by an exempt or excluded operation, including those with less than $5,000 annual organic sales, may not display the USDA Seal or the seal of a certified agent because the operation has not been certified. Even if the organic content of the product is 95 percent or higher, the product still cannot be labeled as "certified" organic or marketed using an organic seal or logo.

(11) *Design of the USDA Seal.* The final change prompted by comments is redesign of the USDA Seal. The Seal in the first proposal was a triangular shape behind a circle of recycling arrows around a globe figure with the word, "organic," printed diagonally across the globe. That proposed seal was opposed by hundreds of commenters. Comments included: The triangle resembles a radioactive warning symbol or fallout shelter sign; the diagonal line across the circle appears to be the universal "no" sign (such as "no walking," "no smoking"); the globe design doesn't show up; the globe design implies an international program; the design is too busy; simplify the design; use the words, "certified organic"; use a text logo; the seal will be too costly to produce; and the triangle points will puncture or tear plastic when printed.

Given the overwhelming negative response to the first seal, we propose a simplified design composed of the words, "USDA CERTIFIED ORGANIC," inside a shield or badge design. This design is consistent with comments requesting simplicity and use of the words, "certified organic." At the request of commenters, this proposal provides for labeling on transparent material. We believe the proposed basic dark on light or light on dark requirement is broad enough to allow handlers the flexibility needed to match color schemes compatible with their product packages. The alternative red, white, and blue color scheme offers handlers what consumers may identify as a more official or patriotic display of the Seal. We believe it is important that the Seal be displayed in a consistent manner, within general light/dark guidelines so that the Seal becomes easily recognizable to consumers.

Labeling—Changes Requested But Not Made

Comments reflecting different opinions on the same topic are covered above (*e.g.*, the number of organic ingredients listed on the principal display panel, the size of "organic" letters on the principal display panel, a recommended redesign of the USDA Seal, etc.). Obviously, not all such conflicting recommendations can be accepted. Two comments were received which are not accepted but which we believe warrant further consideration by the public and the organic community. We request additional comments regarding the following two recommendations. Commenters should specify their recommendation regarding each topic and provide reasons for their recommendation.

(1) *Changing the "organic" threshold for multiingredient products.* At least one commenter suggested that the 50–95 percent labeling category sets too low a threshold for organic labeling of multiingredient products. The commenter suggested that, for increased international acceptance of USDA standards, the lowest acceptable percentage for receiving an organic label should be 70 percent organic ingredients, based on the European Union (EU) standard which now requires a minimum of 70 percent organic ingredients for the product to be labeled as "organic" (or, "biological" or "ecological").

The EU standard allows products with a 70 percent organic content to be labeled as "organic," where our proposal will require at least 95 percent organic content before a product could be labled as "organic." This 95 percent standard is in the Act. Where the two standards differ is that the EU standard doe not have a "made with organic (specified ingredients)" category proposed in this rule.

While the Act establishes a 50-percent minimum ingredient content, that percentage can be adjusted upward if doing so would further the purposes of the Act. To do so, however, the Secretary must have good cause and justification for establishing a higher minimum organic ingredient content. In other words, we could raise the minimum organic ingredient content threshold to 70 percent, redefining two of our four categories. The four categories would be: less than 70 percent, 70–95 percent, greater than 95 percent, and 100 percent. Under this scenario, the prohibitions on excluded methods, irradiation, and sewage sludge would not apply to the nonorganic ingredients of products with less than 70 percent organic content. At the same time, these products would only be able to list the organic ingredients on the information panel. The "made with organic ingredients" category, to which the prohibition would apply, would be 70–95 percent organic content. The only products that would get the "organic" designation would still be those with at least 95 percent organic content.

Because we find no compelling reason to raise the 50-percent minimum ingredient content threshold established in the Act, we have not accepted the commentor's recommendation in this proposal. However, if comments on this proposal suggest an appropriate justification, the minimum ingredient content threshold could be raised in the final rule.

(2) *Minimum content requirements for organic ingredients.* One commenter suggested that a minimum percentage of the entire product weight be established to qualify for a single ingredient to be included in the statement, "made with organic (specified ingredients)." The commenter suggested that this would help prevent misrepresentation of the organic nature of a product. The commenter suggested that the minimum content for any ingredient should be 15 percent. The commenter did not justify the 15-percent minimum (as opposed to another minimum percentage). Because such a recommendation could prevent important ingredients from being specified on a product label, we have not incorporated the comment in this proposal. However, we believe the comment may have merit. One factor in establishing a minimum percentage for any individual ingredient listed on the principal display panel would be the established minimum percentage for all organic ingredients in a product, the question raised in the paragraph above. For instance, if the minimum percentage of all ingredients is established at 70 percent to conform to EU standards, should there be a minimum percentage for any individual organic ingredient that could be listed on the principal display panel as one of three organic ingredients in the product? Would such a labeling restriction prevent identification of an important organic ingredient from being displayed on the principal display panel?

Commenters on questions (1) and (2) should state whether they think the recommendations would further the marketing of organic products and, if so, clearly state the recommended percentage for each question and the reasons for their opinions regarding each issue.

(3) *Labeling requirements for small operations.* A majority of those who commented on the exemption for small operations (less than $5,000 organic sales) in the first proposal stated that such operations are not exempt from labeling requirements under the Act. In this proposal, we provide limited labeling provisions which prohibit exempt and excluded operations, including those with less than $5,000 in annual organic sales, from labeling their products in a way that indicates the operations or the products have been certified as organic. These provisions will not allow such operations to use labeling terms and organic seals and logos specified for certified operations. We believe those terms, logos and seals should be reserved for operations and products that are certified under these regulations.

Labeling—Additional Provisions

Upon further review of the label and market information provisions in the first proposal, we propose the following additions and changes.

(1) *Display of a State organic seal.* Under the first proposal, each State organic certification program would have been allowed to display a seal or logo of its State organic program. The first preamble stated that it was appropriate for a State to have a seal representing its organic program, thus allowing product produced under that program to bear the State's seal.

Currently, 13 State departments of agriculture (or other State agency) and approximately 40 private agents certify to a variety of private and State organic requirements. After establishing a policy which more clearly defines the criteria for approval of a State organic program, we believe that, in the interest of consistent and uniform national standards, product packages should not display the seal of a State organic program if the seal is different from the seal or mark used by the State's organic certifying agent.

This determination is based on a proposed change in State programs. A State organic program will be approved by the Secretary for specific, need-based reasons particular to that State (see State Programs under subpart G). To establish and maintain uniform national standards, States will not be authorized to implement more restrictive organic standards simply to promote State products that are "more organic" than products produced and handled in other States or under NOP requirements. Rather, the Secretary will approve only those State programs that need more restrictive requirements to protect or preserve unique environmental conditions or to accommodate product and handling practices unique to a State or portion of a State. In the absence of such environmental conditions or production practice needs, a State's organic program must have the same requirements as this NOP. If this is the case and if a relatively few State programs are approved to have more restrictive requirements, then no real purpose is served by permitting State organic programs to display a separate and distinct seal on a product label. Such a seal would not represent a "more organic" product.

In the place of a State organic program seal, this proposal provides for the seal or logo of a State certifying agent to be displayed on packages, if that certifying agent certifies the organic operation producing the product. Selection of a State or private certifying agent is the choice of the organic producer or handler being certified. A State's department of agriculture (or other equivalent State agency) may establish one or more State certifying agent offices as part of its governmental operations, or the State may license a private certifying agent to certify organic operations on behalf of the State. In either case, the certifying agent would certify these national requirements and not the particular requirements of a State organic program unless those requirements were approved by the Secretary. Therefore, the only organic seal or mark representing a State will be the seal or mark of a State's certifying agent or licensed certifying agent. Any certifying agent licensed by the State must be accredited by the Secretary pursuant to subpart F of this proposal.

(2) *Labeling for international markets.* We have added two paragraphs under section 205.300 to provide for labeling of products intended for international markets. Domestically produced organic products intended for export may be labeled to meet the requirements of the country of destination or any labeling

requirements specified by a particular foreign buyer.

If labeled to meet foreign labeling requirements, such packaged products cannot be sold in the United States. Pursuant to § 205.306, shipping containers and bills of lading for these products would have to be marked "for export only" to assure that the product was not distributed domestically. We are providing this exception to labeling requirements for the convenience of exporters only. If the foreign country or buyer does not require different product labeling, domestic product which has been produced, certified, and labeled pursuant to these regulations may be shipped without the statement, "for export only," on the containers and bills of lading.

Organic product produced in another country for export to the United States may be certified to the requirements of this regulation or to an approved foreign organic certification program that has been recognized as equivalent to the requirements of the NOP. Such products must be labeled pursuant to the requirements of this subpart.

(3) *Product composition.* Under new § 205.301, Product Composition, we have clarified the composition of organic and nonorganic ihgredients in products covered in the four labeling categories. All ingredients labeled as "organic" in the ingredient statement of the product package must be produced and handled pursuant to these requirements. No substances prohibited on the National List in subpart G and no production or handling practices prohibited in § 205.301(e) may be used in the production or handling of any ingredient labeled as "organic." Regulations covering the production and handling of nonorganic ingredients varies with the labeling category. The higher the percentage of a product's organic composition, the more restrictive the production and handling requirements of the nonorganic ingredients in the product. These requirements are found under § 205.301 and explained above under Proposal Description.

(4) *Prohibited practices.* Section 205.301(e) lists seven production and handling practices that are prohibited from being used to produce whole products or product ingredients that would be labeled as "organic" under the NOP. Some of these prohibited practices appear for the first time in this proposal, and others were specified in the first proposal and were supported by all those who addressed them in their comments.

The first proposal prohibited organic labeling of a product or ingredient produced using water that does not meet requirements of the Safe Drinking Water Act (42 U.S.C. 300(f) *et seq.*). We have not included that provision in this proposal because potable water is required in other FDA and FSIS processing regulations and does not need to be repeated as a requirement in this regulation.

The first three practices (use of excluded methods, sewage sludge, and irradiation) are discussed elsewhere in this proposal and are added as prohibited practices in this labeling section for consistency purposes.

Only processing aids and substances on the National List in subpart G of this regulation may be used in the production and handling of 95 percent-plus organic products and 50–95 percent organic products and in any ingredient labeled as organic on a product package.

The first proposal prohibited use of sulfites, nitrates, and nitrites in production or processing of organic products or ingredients. We have amended the wording of this provision to clarify that a handler cannot add any sulfites, nitrates, and nitrites to a product and still label the finished product or ingredient as "organic." We make this clarification because these substances are found naturally in many substances and may appear naturally in potable water used in processing.

The last two processing practices that would prohibit an "organic" label appeared in separate sections of the first proposal and are included in this proposal in § 205.301(e)(6) and (e)(7). The first is that products and organic ingredients assembled using organic or nonorganic forms of the same ingredient or component ingredients—depending on availability of the organic ingredients—cannot be labeled as "organic when available" or a similar phrase. Similarly, products and organic ingredients assembled using both organic and nonorganic forms of the same ingredient or component ingredients cannot be labeled as organic if that ingredient is identified as organic on the ingredient statement and included in the percentage of organic content on the information panel.

(5) *Calculating organic content.* Because labeling requirements are based on the amount of organic ingredients in a product, we have added new section 205.302, which addresses the calculation of organic percentages. Provisions in this new section were not included in the first proposal. While this should be a simple mathematical procedure, the section proposes certain guidelines for calculating and labeling organic percentages.

Only one percentage figure for total organic ingredients will be shown on a package. The percentage of individual organic ingredients will not be displayed.

An organic product may be constituted completely of organic liquid products. Therefore, this proposal adds the phrase, "or fluid volume," in several places in the proposal when referring to liquid products and ingredients. For ingredients in liquid form that are reconstituted with water from a concentrate, the calculation would be based on a single-strength solution of the liquid concentrate. For products that may contain both dry and liquid organic ingredients, the percentage calculation would be based on the combined weight of the organic ingredients, including the weight of the liquid ingredients, minus water and salt.

(6) *Labeling of nonretail containers.* We have added new § 205.306, covering labeling of nonretail containers—those used only for shipping and storage of agricultural products labeled as organic or containing organic ingredients. While the same containers are commonly used for both shipping and storage, the first proposal did not reference storage containers or specify labeling requirements for those containers. These provisions are proposed only for products labeled as "100 percent organic," "organic," and "made with organic (specified ingredients)." Some may believe that use of the USDA Seal on a shipping container of products "made with organic (specified ingredients)" may be inconsistent with other labeling provisions prohibiting display of the Seal on consumer packages of those products. However, in the case of shipping and storage containers, the display of seals is not intended for marketing purposes but would be used for easy identification of the product to help prevent commingling with nonorganic product or handling of the product which would destroy the organic nature of the product (fumigation, etc.). These provisions will not apply to shipping and storage containers of products containing less than 50 percent organic ingredients.

(7) *Retail Food Establishments.* The extent of the regulatory authority of this regulation has been the subject of intense discussions in comments received, NOSB deliberations, and AMS discussions. Commenters claimed that it makes no sense to regulate and certify the production and handling of organic product but not require certification and regulate retail food establishments where some fresh foods containing organic ingredients are processed and

assembled and where they can become adulterated or misrepresented to the consuming public.

Retail food establishments that market organic product, whether produced in-store, in a corporate commissary, or by others, will be subject to the labeling provisions of this subpart as that labeling applies to: (1) Point-of-purchase, in-store displays describing the organic nature of the product; and (2) other market information and media advertising regarding the product being marketed at the retail food establishment. Food retail establishments must describe the product in in-store retail displays, market information, and media advertising that is consistent with the organic content of the finished product. Any labeling of a product that is inconsistent with the percentage of organic content of the product will be considered a violation of truth in labeling and/or truth in advertising regulations of FDA and the FTC. Multiingredient products which are described as organic product in retail displays and market information must be assembled by a certified manufacturing facility, pursuant to the Applicability subpart of this regulation.

Packaged organic products, organic fresh produce, and organic bulk bin food items must be described in point-of-purchase displays, pricing information, and consumer information in terms consistent with the organic content of the product. For instance, an in-store retail display would describe an 87 percent organic product by specifying the percentage of organic content of the product and identifying the organic ingredients in the ingredient statement, as may be required by FDA. The market information for such a product must not, for instance, label the product as "organic" or "100 percent organic." This would be a violation of truth in labeling and advertising regulations of FDA and FTC. The USDA Seal and the seal of the certifying agent may be displayed at retail sales and in market information on products certified as containing 95 percent or more organic content. Multiingredient products containing 50–95 percent organic ingredients may display the seal or logo of the certifying agent of the organic handling operation.

We believe these labeling practices will help assure appropriate representation of bulk organic products at retail sale and will encourage handlers to use more organic ingredients.

Products containing less than 50 percent organic ingredients at the point of retail sale may not be identified in any way as "organic" or containing organic ingredients. In addition, the USDA Seal and seal, logo, or other identifying mark of the certifying agent is prohibited from being used in retail displays and market information.

(8) *Change in calculating the $5,000 exemption.* We are proposing a change in calculating the $5,000 exemption for producers and handlers. The $5,000 annual exemption will be calculated on sales of organically produced product and not on all agricultural products marketed by the exempt producer or handler, as provided in the first proposal. This exemption means that qualifying exempt organic producers and handlers may annually sell up to $5,000 of organically produced products and not be certified as an organic operation under this regulation. The exemption could apply to a large, conventional agricultural operation that also has a small amount of acreage designated for organic production—the products of which, for example, is sold at a roadside stand. Any sale of other, nonorganic products will not count against the $5,000 sales total. The labeling and market information requirements for organic products produced by such exempt operations are specified in § 205.309 of this regulation.

Subpart E—Certification

This subpart sets forth the requirements for a national program to certify production and handling operations as certified organic production or handling operations. The certification process proposed in this subpart will be carried out by accredited certifying agents.

Proposal Description

General Requirements. Production and handling operations seeking to receive or maintain organic certification must comply with the Act and applicable organic production and handling regulations. Such operations must establish, implement, and annually update an organic production or handling system plan that is submitted to an accredited certifying agent. They must permit on-site inspections by the certifying agent with complete access to the production or handling operation, including noncertified areas and structures.

As discussed in Subpart B, certified operations must maintain records concerning the production and handling of agricultural products that are sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)" sufficient to demonstrate compliance with the Act and regulations. Records applicable to the organic operation must be maintained for not less than 5 years beyond their creation. Authorized representatives of the Secretary, the applicable State program's governing State official, and the certifying agent must be allowed access to the operation's records during normal business hours. Access to the operation's records will be for the purpose of reviewing and copying the records to determine compliance with the Act and regulations.

Certified operations are required to immediately notify the certifying agent concerning any application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of the organic operation. They must also immediately notify the certifying agent concerning any change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and regulations.

Certification Process. To obtain certification, a producer or handler must submit a request for certification to an accredited certifying agent. The request must contain descriptive information about the applicant's business, an organic production and handling system plan, information concerning any previous business applications for certification, and any other information necessary to determine compliance with the Act.

Applicants for certification and certified operations must submit the applicable fees charged by the certifying agent. An applicant may withdraw its application at anytime. An applicant who withdraws its application will be liable for the costs of services provided up to the time of withdrawal of the application.

The certifying agent will decide whether to accept the applicant's application for certification. Certifying agents may decline to accept an application for certification but may not decline to accept an application on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status.

Upon acceptance of an application for certification, a certifying agent will review the application to ensure completeness and to determine whether the applicant appears to comply or may be able to comply with the applicable production or handling regulations. As part of its review, the certifying agent will verify that an applicant has submitted documentation to support the correction of any deficiencies identified in a previously received notification of noncompliance. The certifying agent

will also review any available U.S. Department of Agriculture (USDA) data on production and handling operations for information concerning the applicant.

We anticipate using data collected from certifying agents to establish and maintain a password-protected Internet database only available to accredited certifying agents and USDA. This database would include data on production and handling operations issued a notification of noncompliance, noncompliance correction, denial of certification, certification, proposed suspension or revocation of certification, and suspension or revocation of certification. Certifying agents would use this Internet database during their review of an application for certification. This data will not be available to the general public because much of the data would involve ongoing compliance issues inappropriate for release prior to a final determination.

After a complete review of the application, the certifying agent will communicate its findings to the applicant. If the review of the application reveals that the applicant may be in compliance with the applicable production or handling regulations, the certifying agent will schedule an on-site inspection of the applicant's operation to determine whether the applicant qualifies for certification. The initial on-site inspection must be conducted within a reasonable time following a determination that the applicant appears to comply or may be able to comply with the requirements for certification.

The certifying agent will conduct an initial on-site inspection of each production unit, facility, and site included in the applicant's operation. As a benchmark, certifying agents should follow auditing guidelines prescribed by the International Organization for Standardization Guide 10011–1, "Guidelines for auditing quality systems—Part 1: Auditing" (ISO Guide 10011–1).[1] The certifying agent will use the on-site inspection in determining whether to approve the request for certification and to verify the operation's compliance or capability to comply with the Act and regulations.

[1] ISO Guide 10011–1 is available for viewing at USDA–AMS, Transportation and Marketing Programs, Room 2945—South Building, 14th and Independence Ave., SW, Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday (except official Federal holidays). A copy may be obtained from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036; Website: www.ansi.org; E-mail: ansionline@ansi.org; Telephone: 212–642–4900; Facsimile: 212–398–0023.

Certifying agents will conduct on-site inspections when the applicant or an authorized representative of the applicant who is knowledgeable about the operation is present. An on-site inspection must also be conducted when land, facilities, and activities that demonstrate the operation's compliance with or capability to comply with the applicable production or handling regulations can be observed.

The on-site inspection must verify that the information provided to the certifying agent accurately reflects the practices used or to be used by the applicant or certified operation and that prohibited substances have not been and are not being applied to the operation. Certifying agents may use the collection and testing of soil; water; waste; plant tissue; and plant, animal, and processed products samples as tools in accomplishing this verification.

The inspector will conduct an exit interview with an authorized representative of the inspected operation to confirm the accuracy and completeness of inspection observations and information gathered during the on-site inspection. The main purpose of this exit interview is to present the inspection observations to those in charge of the firm in such a manner so as to ensure they clearly understand the results of the inspection. The firm is not required to volunteer any information during the exit interview but would be required to respond to questions or requests for additional information. The inspector will raise and discuss during the exit interview any known issues of concern, taking into account their perceived significance. As a general rule, the inspector will not make recommendations for improvements to the operation during the exit interview. However, the certifying agent will have the discretion to decide the extent to which an inspector may discuss any compliance issue.

Notification of Approval. A certifying agent will review the on-site inspection report, the results of any analyses for substances, and any additional information provided by the applicant within a reasonable time after completion of the initial on-site inspection. The certifying agent will approve certification upon making two determinations: (1) That the applicant's operation, including its organic system plan and all procedures and activities, is in compliance with the Act and regulations; and (2) that the applicant is able to conduct operations in accordance with its organic systems plan.

Upon determining the applicant's compliance and ability to comply, the agent will approve certification and issue a "certificate of organic operation." The approval may include restrictions regarding minor deficiencies that would not prevent certification as a condition of continued certification. A certificate of organic operation will specify the name and address of the certified operation; the effective date of certification; the categories of organic operation, including crops, wild crops, livestock, or processed products produced by the certified operation; and the name, address, and telephone number of the certifying agent. Once certified, a production or handling operation's organic certification continues in effect until surrendered by the organic operation or suspended or revoked by the certifying agent, the State program's governing State official, or the Administrator.

Denial of Certification. Should the certifying agent determine that the applicant is not able to comply or is not in compliance with the act, the certifying agent will issue a written notification of noncompliance to the applicant. Applicants who receive a notification of noncompliance may correct the deficiencies and submit, by the date specified, a description of correction and supporting documentation to the certifying agent. As an alternative, the applicant may submit a new application to another certifying agent, along with the notification of noncompliance and a description of correction of the deficiencies and supporting documentation. Applicants may also submit, by the date specified, written information to the certifying agent to rebut the noncompliance described in the notification of noncompliance. When a noncompliance cannot be corrected, a notification of noncompliance and a "notification of denial of certification" may be combined in one notification.

The certifying agent will evaluate the applicant's corrective actions taken and supporting documentation submitted or the written rebuttal. If necessary, the certifying agent will conduct a followup on-site inspection of the applicant's operation. When the corrective action or rebuttal is sufficient for the applicant to qualify for certification, the certifying agent will approve certification. When the corrective action or rebuttal is not sufficient for the applicant to qualify for certification, the certifying agent will issue the applicant a written notice of denial of certification. The certifying agent will also issue a written notice of denial of certification when an applicant fails to respond to the notification of noncompliance. The

notice of denial of certification will state the reasons for denial and the applicant's right to reapply for certification, request mediation, or file an appeal.

An applicant who has received a notification of noncompliance or notice of denial of certification may apply for certification again at any time with any certifying agent. When the applicant submits a new application to a different certifying agent, the application must include a copy of the notification of noncompliance or notice of denial of certification. The application must also include a description of the actions taken, with supporting documentation, to correct the deficiencies noted in the notification of noncompliance. When a certifying agent receives such an application, the certifying agent will treat the application as a new application and begin a new application process.

A certifying agent has limited authority to deny certification without first issuing a notification of noncompliance. This authority may be exercised when the certifying agent has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposefully misrepresented its operation or its compliance with the requirements for certification.

Continuation of Certification. Each year, the certified operation must update its organic production or handling system plan and submit the updated information to the certifying agent to continue certification. The updated organic system plan must include a summary statement, supported by documentation, detailing deviations from, changes to, modifications to, or other amendments to the previous year's organic system plan. The updated organic system plan must also include additions to or deletions from the previous year's organic system plan, intended to be undertaken in the coming year. The certified operation must update the descriptive information about its business and other information as deemed necessary by the certifying agent to determine compliance with the Act and regulations.

Following receipt of the certified operation's updated information, the certifying agent will arrange and conduct an on-site inspection of the certified operation. As a benchmark, certifying agents should follow auditing guidelines prescribed by ISO Guide 10011–1. Upon completion of the inspection and a review of updated information, the certifying agent will determine whether the operation continues to comply with the Act and regulations. If the certifying agent determines that the operation is in compliance, certification will continue. If any of the information specified on the certificate of organic operation has changed, the certifying agent will issue an updated certificate of organic operation. If the certifying agent finds that the operation is not complying with the Act and regulations, a written notification of noncompliance will be issued as described in § 205.662.

In addition to annual inspections, a certifying agent may conduct additional on-site inspections of certified operations to determine compliance with the Act and regulations. The Administrator or State program's governing State official may also require that additional inspections be performed by the certifying agent to determine compliance with the Act and regulations. Additional inspections may be announced or unannounced and would be conducted, as necessary, to obtain information needed to determine compliance with identified requirements.

Such on-site inspections would likely be precipitated by reasons to believe that the certified operation was operating in violation of one or more requirements of the Act or these regulations. The policies and procedures regarding additional inspections, including how the costs of such inspections are handled, would be the responsibility of each certifying agent. Misuse of such authority would be subject to review by the Department during its evaluation of a certifying agent for reaccreditation and at other times in response to complaints. Certified production and handling operations could file complaints with the Department at any time should they believe a certifying agent abuses its authority to perform additional inspections.

Certification After Suspension or Revocation of Certifying Agent's Accreditation. When the Administrator revokes or suspends a certifying agent's accreditation, affected certified operations will need to make application for certification with another accredited certifying agent. The certification of the production or handling operation remains in effect during this transfer of the certification. The certified production or handling operation may seek certification by any qualified certifying agent accredited by the Administrator. To minimize the burden of obtaining the new certification, the Administrator will oversee transfer of the original certifying agent's file on the certified operation to the operation's new certifying agent.

Upon initiation of suspension or revocation of a certifying agent's accreditation, or upon suspension or revocation of a certifying agent's accreditation, the Administrator may initiate proceedings to suspend or revoke the certification of operations certified by the certifying agent. The Administrator's decision to suspend or revoke a producer's or handler's certification in light of the loss of its certifying agent's accreditation would be made on a case-by-case basis. Actions such as fraud, bribery, or collusion by the certifying agent, which cause the Administrator to believe that the certifying agent's clients do not meet the standards of the Act or these regulations, might require the immediate initiation of procedures to suspend or revoke certification from some or all of its client base. Removal of accreditation, regardless of the reason, in no way affects the appeals rights of the certifying agent's clients. Further, a certified operation's certification will remain in effect pending the final resolution of any proceeding to suspend or revoke its certification.

A private-entity certifying agent must furnish reasonable security for the purpose of protecting the rights of operations certified by such certifying agent. This security is to ensure the performance of the certifying agent's contractual obligations. As noted elsewhere in this proposed rule, the specific amount and type of security that must be furnished by a private certifying agent will be the subject of future rulemaking by the Department. We anticipate that the amount of the security will be tied to the number of clients served by the certifying agent and the anticipated costs of certification that may be incurred by its clients in the event that the certifying agent's accreditation is suspended or revoked. We anticipate that the security may be in the form of cash, surety bonds, or other financial instrument (such as a letter of credit) administered in a manner comparable to cash or surety bonds held under the Perishable Agricultural Commodities Act.

Certification—Changes Based on Comments

This subpart differs from our first proposal in several respects as follows:

(1) *On-site Inspection Requirements.* We have amended the general requirements provision concerning on-site inspections. The first proposal required production and handling operations to permit an annual on-site

inspection by the certifying agent. A few commenters suggested that the term, "inspection," be made plural and that the section citations be amended to include the section on additional inspections. The section on additional inspections addressed the certifying agent's authority to perform on-site inspections in addition to the annual on-site inspection.

The commenters believe that "inspection" should apply to all situations when on-site inspections must be or could be performed, including the initial site inspection for a new certification as well as, for instance, compliance inspections. Commenters believe that these changes are needed to assure access to the certified operation and that an applicant's agreement to permit any and all necessary on-site inspections should be clearly stated as a general requirement for certification.

We had intended for the general requirements provision concerning on-site inspections to include all instances in which an on-site inspection might be appropriate. Accordingly, we have amended the requirement by replacing the phrase, "an annual on-site inspection," with the phrase, "on-site inspections." This terminology would cover initial, annual, and additional inspections needed for certification, continuation of certification, and to determine whether the operation is in compliance with program requirements. To ensure complete access to the production or handling operation for the purpose of conducting on-site inspections and determining compliance with the requirements of the National Organic Program (NOP), we have added a requirement that the operation permit complete access to the production or handling operation, including noncertified areas and structures. The general requirements provision on on-site inspections is found at § 205.400(c).

(2) *Providing Access to Records.* We have clarified the meaning of providing access to the records that the certified operation must maintain by adding "during normal business hours for review and copying" to the regulation. The first proposal required that certified organic operations maintain records for not less than 5 years from the date of their creation. It also required the certified operation to allow authorized representatives of the Secretary, the applicable governing State official, and the certifying agent access to such records to determine compliance with the Act and regulations.

Several comments were received regarding these recordkeeping requirements. Most of these comments were received from organic producer organizations and certifying agents. A few commenters questioned the necessity of maintaining records for 5 years, requested a different period for different records, and requested clarification on the meaning of providing access. Section 6511(d) of the Act requires organic production or handling operations to maintain records for 5 years. Accordingly, we have made no change to the retention period in this proposal. The clarification on the meaning of providing access to records is found at § 205.400(d).

(3) *Notification of Drift.* We have amended the requirement that production and handling operations immediately notify the certifying agent concerning any application of a prohibited substance by adding the phrase, "including drift." A few commenters suggested adding a requirement that the certified operation notify the certifying agent when an organically certified field is contaminated by drift. They stated that drift is the most common reason for prohibiting the organic label on otherwise organically produced product.

We agree that the certified operation should immediately report any drift of a prohibited substance onto an organic field to its certifying agent. Accordingly, § 205.400(f)(1) provides that an applicant seeking to receive or maintain organic certification must immediately notify the certifying agent concerning any application, including drift, of a prohibited substance. This provision applies to new applicants as well as to ongoing certified operations. Contamination by drift could occur during the time period between application for and approval of certification. Accordingly, an applicant for certification would be required to notify the certifying agent of any contact with a prohibited substance.

(4) *Applicant Requirements.* We have added the requirement that applicants for certification include other information necessary to determine compliance with the Act and regulations. Commenters suggested that the we add a provision to the application regulations requiring applicants for certification to submit other information deemed necessary by the certifying agent. They stated that this authority is needed to assure that applicants are fully cooperative and responsive throughout the certification process.

We believe the requested authority would be helpful to certifying agents. However, we believe the authority for certifying agents to request other information they deem necessary must be qualified by the requirement that the information be necessary to determine compliance with the Act and regulations. Accordingly, we have provided certifying agents with the authority to request other information necessary to determine compliance with the Act and regulations. This addition is found at § 205.401(d).

(5) *Requirement for Notification of Noncompliance.* We have replaced the first proposal's section on "preliminary evaluation of an applicant for certification" with a new section on "review of application." We have revised the section to clarify that certifying agents will issue notices of noncompliance only after the initial on-site inspection of an applicant's operations. We also allow applicants to voluntarily withdraw their application for certification at any time.

This change was in response to comments on the first proposal's requirement that applicants for certification report, to the certifying agent with whom they have applied, the receipt of a notice of noncompliance received from another certifying agent. A State organic growers association stated that this requirement places a stigma on applicants who, for example, applied for certification before the operation was ready to meet all requirements for certification. This commenter suggested that notification of previous denial only be required after an applicant has been denied certification. The commenter went on to say that, if the language in the original proposal is maintained, there should be a time limit of within the past 3 or 5 years of denial. Another commenter suggested that certifying agents have the option of recommending that noncompliant applicants withdraw their applications rather than be denied certification. As an alternative, one of the commenters suggested that denial of certification to an unprepared applicant should not have to be reported on a subsequent application to another certifying agent unless the first noncompliance notice led to a denial of certification.

We continue to believe that it is in the best interest of the program and consumers to require applicants to report the receipt of notices of noncompliance and denial of certification to any certifying agent to whom they make application. However, we also believe that operations should not be unnecessarily stigmatized because they applied for certification before the operation was ready to meet all requirements for certification.

Accordingly, this proposal requires that an applicant report the receipt of a notice of noncompliance or denial of certification to any certifying agent to whom application is made but allows applicants to voluntarily withdraw their application at any time.

An applicant that voluntarily withdrew its application prior to the issuance of a notice of noncompliance would not be issued a notice of noncompliance. Similarly, an applicant that voluntarily withdrew its application prior to the issuance of a notice of certification denial would not be issued a notice of certification denial.

(6) *Residue Testing.* We have revised the verification of information provisions to provide that the on-site inspection of an operation must verify that prohibited substances have not been and are not being applied to the operation. Verification would be through means which, at the discretion of the certifying agent, may include the collection and testing of soil; water; waste; seeds; plant tissue; and plant, animal, and processed products samples.

Comments from certifying agents suggested adding a provision that would allow a certifying agent to collect samples of substances from the operation for residue testing. They stated that such testing is necessary to detect unreported use or accumulation of prohibited substances. Section 6506(a)(6) of the Act requires periodic residue testing by certifying agents of products produced by certified organic operations. It is our intent that collection of samples for residue testing may be conducted as part of initial on-site inspections, as well as during on-site inspections of certified organic operations. The inspector could collect samples of soil; water; waste; seeds; plant tissues; and plant, animal, and processed products. Collection of such samples would be at the discretion of the certifying agent. To maintain the integrity of the inspection process, it is necessary that the certifying agent or inspector collect such samples first hand, rather than receive the samples from the applicant. We have made the requested addition at § 205.403(c)(3).

(7) *Postinspection Conference Requirements.* We have amended the postinspection conference requirements. We have changed all references to "postinspection conference" to "exit interview." We have removed the requirement that the inspector discuss his or her observations regarding the operation's compliance or ability to comply with the Act and regulations. This requirement has been replaced with the requirement that the inspector confirm the accuracy and completeness of inspection observations and information gathered during the on-site inspection. The inspector can use the exit interview to request any additional information necessary to establish eligibility for certification. Finally, this amendment requires the inspector to raise and discuss during the exit interview any known issues of concern.

Certifying agents commented that it would be inappropriate for an inspector to discuss observations and possible violations of compliance at an exit interview. They stated that requiring exit interviews places the inspector in the position of providing observations and feedback to the applicant before the inspector is able to confer with the certifying agent. Some certifying agents expressed concern that exit interviews could result in inspectors providing false or misleading information to the applicant. Some commenters requested that exit interviews be held only for the purpose of checking the accuracy and completeness of inspector observations made and the information obtained during the inspection. Other commenters requested that the exit interviews requirement be removed from these regulations.

We believe that qualified inspectors should be capable of competently discussing an applicant's compliance or ability to comply with these regulations. However, we also believe that a certifying agent should have the opportunity to decide whether to allow its inspectors to discuss issues of compliance at an exit interview. Accordingly, we have amended the exit interview requirements as noted above. These amended requirements are found at § 205.403(d).

(8) *Additional Inspections.* We have added a new provision that additional inspections may be announced or unannounced at the discretion of the certifying agent or as required by the Administrator or State program's governing State official. This change was made in response to commenters who requested the addition of a requirement that certifying agents conduct unannounced site visits in addition to the initial and annual inspections. We believe that unannounced on-site inspections are appropriate and valuable in both monitoring and investigating compliance with the Act and regulations. The requested addition is found at § 205.403(a)(2)(iii).

(9) *Requirements for Written Inspection Reports.* We have removed the requirement that the certifying agent require an inspector to prepare and submit to the certifying agent, within 30 days of completing an inspection, a written report that describes the inspector's observations and assessments of the inspected operation's compliance or ability to comply with the Act and regulations. A variety of comments, pro and con, were received on this requirement. Certifying agents questioned whether the 30-day timeframe was reasonable. Other commenters suggested that, rather than specifying a time period, the section should stress the need for timely reporting. A commenter suggested that an inspector's observations and assessments on the inspected operation include the inspector's recommendations on approval of certification. Other commenters stated that the requirement amounted to micro management of a certifying agent's business. This latter group of commenters believe that the setting of a time period for inspector reporting involves a policy matter that should be determined by the certifying agent. We agree with the commenters who stated that setting deadlines for the filing of inspection reports is an internal policy matter better left to certifying agents.

We believe that policies and procedures regarding inspector reporting are the purview of the certifying agent. Certifying agents would be expected to develop and implement inspector reporting requirements for on-site inspections internal to their own operations. Such policies and procedures and a certifying agent's performance in making timely certification decisions would be subject to review during accreditation and reaccreditation of the certifying agent. Accordingly, we have removed the provision.

Removal of this requirement does not eliminate the need for a written on-site inspection report or the importance of timely inspection reporting by an inspector to the certifying agent. Certifying agents are expected to make timely decisions regarding whether to certify an applicant and whether a certified operation is in compliance with the Act and regulations. Applicants with complaints regarding timeliness of service could forward their complaints to the Administrator.

(10) *Responsibilities of Certifier in the Application Process.* We have replaced the list of requirements to be reviewed by a certifying agent in determining an applicant's eligibility for certification with a general statement on determination of eligibility. Commenters requested the addition of a provision requiring certifying agents to verify implementation of the organic system plan. We agree that an on-site

inspection of an ongoing operation must include assessment of the operation's application of its organic system plan. Because an on-site inspection of a new applicant's operation would be conducted at a time when the operation can demonstrate its organic capabilities, the operation must be able to show that it is satisfactorily carrying out its organic system plan.

It was our intent that certifying agents would verify implementation of the applicant's organic system plan during the certifying agent's review of the on-site inspection report and application. However, our list of requirements to be reviewed by a certifying agent in determining an applicant's eligibility for certification did not specifically reference verification of implementation of the organic system plan. We have decided to replace the list of requirements to be reviewed with a general statement on determination of eligibility. This statement provides: "If the certifying agent determines that the organic system plan and all procedures and activities of the applicant's operation are in compliance with the requirements of this part and that the applicant is able to conduct operations in accordance with the plan, the agent shall approve certification." We believe this general statement, in combination with the requirement that the certifying agent review the application, the on-site inspection report, the results of any analyses for substances conducted, and any additional information requested from or supplied by the applicant, adequately addresses the commenters' concerns. This revision to the approval of certification requirements is found at § 205.404(a).

(11) *Information Included on the Certificate of Organic Operation.* We have amended the regulations specifying what information must be included on a certificate of organic operation. Comments received from organic operations, certifying agents, and consumers recommended that certifying agents provide additional information on certificates of organic operation. Specifically, they recommended that all certificates include: (1) The certifying agent's name and address; (2) an expiration date; (3) the physical location of certified operations, including separate fields and facilities; (4) the name of the certified operation's contact person responsible for compliance with program requirements; (5) the name and address of the certified operation; and (6) the crops and products certified. The commenters believe such information, especially a date on which the certificate expires, to be vital to assuring accountability and compliance with the program.

We believe it would be beneficial to persons with concerns regarding a certified production or handling operation to have ready access to information concerning the name, address, and telephone number of the certifying agent. Further, because the certificate of organic operation would be an official document of the certifying agent, it would be appropriate for this information to appear on every certificate. Accordingly, we have added the name, address, and telephone number of the certifying agent to the information which must be included on every certificate. This addition is found at § 205.404(b)(4).

We disagree with the commenters who requested that certificates of organic operation display an expiration date. We believe annual expiration of a certificate would place an unnecessary burden on certifying agents and certified operations. Annual expiration of certificates is also inconsistent with the fact that an operation's certification does not expire. In fact, once an operation is certified as an organic operation, its certification remains in effect until surrendered by the certified operation or suspended or revoked by the certifying agent, the State program's governing State official, or the Administrator. All certified operations are required to annually update their organic system plan. If the updated plan causes information on the certificate to be incorrect, the certifying agent will issue a new certificate with the correct information. This provides a mechanism for ensuring that certificates are updated as necessary on an annual bases. We have not included the recommended addition in this proposal.

For clarification, we have added § 205.404(c). This section provides that once certified a production or handling operation's organic certification continues in effect until surrendered by the organic operation or suspended or revoked by the certifying agent, the State program's governing State official, or the Administrator.

We disagree with the commenters who requested that certificates display the physical location of certified operations, including separate fields and facilities, and the name of the certified operation's contact person responsible for compliance with program requirements. We believe that the location of a certified operation's fields and facilities has no relationship to the operation's status as a certified organic operation. Therefore, such information should only be made available with the written consent of the certified operation. The name of the certified operation's contact person would be releasable information. We believe, however, that such detail is unnecessarily burdensome to the certifying agent and will only serve to clutter the certificate. By requiring the name, address, and telephone number of the certifying agent, as noted above, the certificate would provide interested persons with a contact for obtaining releasable information concerning the certified operation. Further, the certifying agent is the first line of compliance under this program and, as such, is the person to whom all questions and concerns should be addressed about certified operations.

We agree with the commenters who requested that certificates display the name and address of the certified operation because such information is potentially beneficial to consumers. Accordingly, we have added the name and address of the certified operation to the information which must be included on every certificate. This addition is found at § 205.404(b)(1).

The first proposal required that the certificate list the category(ies) and type(s) of products produced by the certified operation. Commenters were apparently confused about the meaning of category(ies) and type(s) of products. We have, therefore, revised the requirement to provide that a certificate of organic operation would specify the categories of organic operation, including, crops, wild crops, livestock, or processed products produced by the certified operation. This revision is found at § 205.404(b)(3).

(12) *Certifiers Authority to Deny Certification.* We have added authority for certifying agents to deny certification to applicants who do not meet the requirements for certification. The first proposal required certifying agents to forward their recommendations for denial of certification to the Administrator. Commenters stated that authority for denial of certification should rest with the certifying agents. They also contended that referral to the Administrator for denial of certification establishes a bureaucratic process, which would create unnecessary delays to the denial process and increased cost to applicants. Many commenters suggested the appeals process is sufficient to protect the interests of the Secretary.

We have determined that it is reasonable to authorize certifying agents to deny certification. Denial by the certifying agent would provide the applicant with a more timely decision on its eligibility for certification. A more timely decision would provide an

earlier opportunity for applicants to appeal a denial of certification. Authority for certifying agents to deny certification to applicants who do not meet the requirements for certification is found at section 205.405.

This proposal requires certifying agents to evaluate the applicant's corrective actions taken and supporting documentation or written rebuttal submitted in response to a notification of noncompliance. Certifying agents are authorized to perform on-site inspections to verify corrections to deficiencies or statements contained in a rebuttal, if necessary, to assure full compliance with the certification requirements. The certifying agent will issue the applicant a written notice of denial of certification if the corrective action or rebuttal is not sufficient for the applicant to qualify for certification.

We believe the denial of certification provisions should clearly state an applicant's options and rights upon receiving a notice of denial of certification. Accordingly, § 205.405(c)(1)(ii) provides that a notice of denial of certification must state the reasons for denial and the applicant's right to reapply for certification, request mediation, or file an appeal. An applicant who has received a written notice of denial of certification may apply for certification again at any time with any certifying agent, may request mediation to resolve a dispute with the certifying agent, or may file an appeal with the Administrator as outlined in § 205.663 for mediation and § 205.681 for appeals. Applicants subject to an approved State program would seek mediation or appeal in accordance with the rules of the approved State program.

(13) *Willful Misrepresentations or False Statements by Applicants.* We have included authority for certifying agents to deny certification if the agent has reason to believe that the applicant has willfully made a false statement or otherwise purposefully misrepresented its operation or compliance with the certification requirements. Such false statements would, in most cases, be verified during an on-site inspection. This authority was provided to certifying agents in the first proposal relative to certified operations. The first proposal, however, did not reference an applicant's willful making of a false statement or otherwise purposefully misrepresenting its operation or compliance with the certification requirements. Certifying agents commented that applicants for certification also may make false statements or misrepresent facts. They suggested that the regulations reflect a certifying agent's authority in such cases. We agree with the commenters and have added § 205.405(f). This section authorizes denial of certification without first issuing a notification of noncompliance when the certifying agent has reason to believe that the applicant has willfully made a false statement or otherwise purposefully misrepresented its operation or compliance with the certification requirements.

Certification—Changes Requested But Not Made

This subpart retains from our first proposal regulations on which we received comments as follows:

(1) *Timeliness of Applicant's Notification to Certifiers.* A commenter suggested that "immediately" in the requirement that production and handling operations immediately notify the certifying agent concerning any application of a prohibited substance be replaced with "within 2 days." No justification was given for the recommended change, and the change has not been made. "Immediately notify" means that the applicant or certified operation must at once notify its certifying agent upon learning that a prohibited substance has come in contact with any portion of its operation or production. The certifying agent will evaluate the circumstances surrounding the event and decide whether the certified operation acted within the intent of this requirement. This requirement is found at § 205.400(f)(1).

(2) *Notification of Changes to Certifying Agent.* Commenters questioned how the certified operation would know what changes in its certified operation or any portion of its operation would require reporting to its certifier. Certified operations are responsible for being familiar with the requirements of the Act and these regulations. Further, they have an obligation to contact their certifying agent when they have questions regarding compliance with this program. As a rule, certified operations should contact their certifying agent whenever the change is not covered under their approved organic system plan. The requirement that a certified operation notify its certifying agent concerning any change in its certified operation that may affect its compliance with the Act and regulations is found at § 205.400(f)(2).

(3) *Tests for Soil Fertility and Irrigation Water.* Certifying agents suggested that applicants for certification be required to submit test results for soil fertility and irrigation water quality to prove compliance with the NOP. We recognize that increasing soil fertility through organic production practices is a goal of the organic industry. However, soil fertility will not qualify or disqualify an applicant for organic certification. An applicant who has independently had such tests conducted may, but is not required to, include them with the application. While the Act requires that handlers only use in their products water that meets all Safe Drinking Water Act requirements, no similar requirements are placed on producers and the water they use to irrigate their crops. For these reasons, we are not requiring applicants for certification to submit soil fertility or irrigation water quality test results.

(4) *Timeliness of On-site Inspection.* The first proposal required a certifying agent to conduct an initial on-site inspection within a reasonable time following a favorable preliminary evaluation of an application for certification. Several commenters asked what constitutes reasonable time between submission of an application and an on-site inspection. Others stated that, when determining what constitutes reasonable time, consideration should be given to factors such as when the application was submitted relative to when activities demonstrating compliance can be observed and when the inspection can be scheduled to assure the presence of the applicant.

We stated in the first proposal that we did not specify a time within which an inspection must be conducted because the time would vary according to when the application was submitted and the type of operation to be inspected. Timely service will be in the best interest of certifying agents since applicants may forward complaints regarding service to the Administrator. Such complaints could have an impact on a certifying agent's reaccreditation or continued accreditation. Further, our original position is consistent with those commenters requesting flexibility in determining what constitutes reasonable time. Accordingly, we have made no changes in this proposal regarding what constitutes reasonable time. This requirement is found at § 205.403(b).

(5) *Additional On-site Inspections.* Some organic associations asked what would trigger a decision to conduct an additional on-site inspection. Commenters expressed the concern that certifying agents could conduct additional, unneeded inspections at the expense of operators who would have to pay the costs of the inspections. Other commenters asked who would pay for the additional on-site inspections. Some certifying agents suggested that guidelines need to be established under

which additional inspections must be conducted. A certifying agent suggested that additional inspections could be conducted based on the inspector's observations, the certifier's recommendation, and, possibly, third-party complaints.

The authority for on-site inspections is necessary for monitoring and compliance purposes at the discretion of the certifying agent, the Administrator, or a State program's governing State official. Such on-site inspections would likely be precipitated by reasons to believe that the certified operation was operating in violation of one or more requirements of the Act or these regulations. The on-site inspection would be conducted, as necessary, to obtain information needed to determine compliance with identified requirements.

We believe policies and procedures regarding additional inspections, including how the costs of such inspections are handled, are the responsibility of each certifying agent. Misuse of such authority would be subject to review by the Department during its evaluation of a certifying agent for reaccreditation and at other times in response to complaints. Certified production and handling operations could file complaints with the Department at any time should they believe a certifying agent abuses its authority to perform additional inspections. Accordingly, we have made no changes in this proposal based on these comments.

(6) *Annual Renewal of Certification.* Commenters requested annual renewal of certification rather than updates to a continuing certification program. Other commenters requested that the notice of certification have an ending date or be issued for an established period of time. An industry association commented that the proposed continuation of certification regulations requires a certified operation to annually certify that it is complying with the Act and these regulations. This commenter stated that the proposed continuation of certification procedures changes the process of recertification to one more closely resembling self-certification. Another industry association stated that certification until surrendered by the certified operation or suspended or revoked would make the assurance of compliance extremely difficult, if not impossible. This commenter further stated that certifying agents will be unable to effectively monitor applicants or gain needed information. This commenter recommended that renewal paperwork include the items specified in the continuation of certification regulations but that certifying agents use their own discretion as to the forms and information needed. Similarly, a certifying agent commented that certification must be renewed with an application on an annual basis and that no operation can be certified for life. This commenter recommended requiring a yearly application and other documentation deemed necessary by the certifying agent.

We disagree with the commenters. We prefer continuous certification due to the very real possibility that the renewal process might not always be completed before expiration of the certification period. Expiration of the certification period would result in termination of the operation's certification. Even a short period of interruption in an operation's organic status could have severe economic ramifications. Further, we believe that a regular schedule of expiration of certification is unnecessary inasmuch as all certified operations are required to annually update their organic system plan and submit any changes to their certifying agent. Accordingly, this proposal retains the provision for continuous certification.

(7) *Timing of On-site Inspections.* A State certifying agent and an industry organization stated that requiring an on-site inspection after receipt of the renewal application is not consistent with current practice. The State certifying agent stated that it moved the renewal date to January 1 of each year to make the renewal process less burdensome to its certified producers. This commenter went on to say that the annual inspection conducted during the appropriate growing or processing season is used to evaluate the organic operation in the renewal process. The State certifying agent further stated that an additional inspection at renewal time would not be useful if it was not an appropriate time to observe production practices at the organic operation. Both commenters requested elimination of the requirement that the certifying agent arrange and conduct an on-site inspection following receipt of the operation's annual submission of information. These commenters also requested that a determination of noncompliance be based on on-site inspections conducted during the previous certification year and a review of the information annually submitted by the certified operation.

We disagree with the commenters. Certifying agents are required to schedule on-site inspections for a time when land, facilities, and activities that demonstrate the operation's compliance or capability to comply with the applicable production or handling provisions of the NOP may be observed. Accordingly, the initial certification must have followed an on-site inspection performed when the operation was able to demonstrate its compliance or capability to comply. The certified operation, therefore, should be fulfilling its annual continuation of certification obligations at a time when it can demonstrate its compliance with the Act and regulations. The commenters' recommendations are not accepted.

Certification—Additional Provisions

Upon further review of the certification provisions in the first proposal, we have decided to propose the following additions and changes.

(1) *Requirements for Business Information.* We have revised the business information required of all applicants for certification as an organic operation. First, the application must include the name of the person who completed the application. Certifying agents will use this information when following up on information within the application. Second, we have removed the requirement that the application include the names of personnel responsible for maintaining compliance with the Act and regulations. We believe this information is unnecessary since the person responsible for overseeing compliance is the certifying agent. Third, we have added the requirement that when the applicant is a corporation, the application must include the name, address, and telephone number of the person authorized to act on the applicant's behalf. Fourth, we have removed the requirement that the applicant for certification submit a statement of compliance. We have also removed the "Statement of Compliance" section which required the submission of a statement of compliance with the application for certification. We have removed this requirement because we have determined that it creates an unnecessary burden upon applicants for certification. Section 205.400(a) requires that a person seeking to receive or maintain organic certification must comply with the Act and applicable production and handling regulations. Accordingly, it is unnecessary to require a separate document through which the applicant for certification agrees to comply with the Act and regulations. The requirements for the submission of business information with the request for certification are found at § 205.401(b).

(2) *Disclosure of Previous Applications.* The first proposal

required that the request for certification include the name(s) of any organic certifying agent(s) to which application had previously been made, the year(s) of application, and the outcome of the application(s) submission. We have amended this requirement by adding "including a copy of any notification of noncompliance or denial of certification issued to the applicant for certification and a description of the actions taken by the applicant to correct the deficiencies noted in the notification of noncompliance, including evidence of such correction." We have added this provision to clarify what we mean by "the outcome of the application(s) submitted." This provision is found at § 205.401(c).

(3) *On-site Inspections.* We have combined the arranging for inspection, verification of information, postinspection conference, and additional inspection regulations of the first proposal into a new on-site inspections section, § 205.403. We made this change for the purposes of clarification and the removal of redundancies.

(4) *Additional Inspections.* We have revised the on-site inspections requirements to provide that a State program's governing State official may require a certifying agent to conduct an additional inspection of a production or handling operation to determine the operation's compliance with the Act and these regulations. We have provided State program governing State officials with authority to require additional inspections because such officials will have compliance responsibilities under their State programs and will need such authority to carry out their responsibilities. These requirements are found at § 205.403(a).

(5) *Notifications of Noncompliance.* We have added at § 205.405(b) a provision which identifies for applicants for certification what their options are when they receive a notification of noncompliance. Such applicants may correct the deficiencies and submit a description and supporting documentation of correction to the certifying agent, correct the deficiencies and submit a new application to another certifying agent along with the notification of noncompliance and a description and supporting documentation of correction, or submit written information to the certifying agent to rebut the noncompliance described in the notification of noncompliance.

(6) *Reapplying After a Notice of Noncompliance or Denial of Certification.* We have added a new provision which requires a certifying agent to treat an application for certification as a new application when such application includes a notification of noncompliance or a notice of denial of certification. While the new application may contain the same organic system plan and other information provided in the unsuccessful application for certification, it must also provide any new information or changes in operations which may have occurred since the filing of the unsuccessful application. The updated information concerning the applicant's operation must include a description of actions taken, with supporting documentation, to correct the deficiencies identified in the notification of noncompliance. This new provision is found at § 205.405(e).

Subpart F—Accreditation of Certifying Agents

This subpart sets forth the requirements for a national program to accredit State and private entities as certifying agents to certify domestic or foreign organic production or handling operations. This subpart also provides that USDA will accept a foreign certifying agent's accreditation to certify organic production or handling operations if: (1) USDA determines, upon the request of a foreign government, that the standards under which the foreign government authority accredited the foreign certifying agent meet the requirements of this part; or (2) the foreign governmental authority that accredited the certifying agent acted under an equivalency agreement negotiated between the United States Government and the foreign government.

This National Organic Program (NOP) accreditation process will facilitate national and international acceptance of United States organically produced agricultural commodities. The accreditation requirements in these regulations will replace the organic assessment voluntary, fee-for-service program, established by AMS under the Agricultural Marketing Act of 1946. That assessment program verifies that State and private organic certifying agents comply with the requirements prescribed under the International Organization for Standardization/ International Electrotechnical Commission Guide 65, "General Requirements for Bodies Operating Product Certification Systems" (ISO Guide 65).[2] ISO Guide 65 provides the general requirements that a certifying agent would need to meet to be recognized as competent and reliable. That assessment program was originally established to enable organic certifying agents in the absence of a U.S. national organic program to comply with European Union (EU) requirements beginning on June 30, 1999. That assessment program verifies that State and private organic certifying agents are operating third-party certification systems in a consistent and reliable manner, thereby facilitating uninterrupted exports of U.S. organic agricultural commodities to the EU. ISO Guide 65 is used as a benchmark in developing the accreditation program described in this proposed rule. Certifying agents accredited under the NOP that maintain compliance with the Act and these regulations will meet or exceed the requirements of ISO Guide 65; therefore, the organic assessment program is no longer needed.

Participation in the NOP does not preclude the accredited certifying agent from conducting other business operations, including the certification of agricultural products, practices, and procedures. An accredited certifying agent may not, however, engage in any business operations or activities which would involve the agent in a violation of or a conflict of interest under the NOP.

Proposal Description

The Administrator will accredit qualified domestic and foreign applicants in the areas of crops, livestock, wild crops, or handling or any combination thereof to certify domestic or foreign production or handling operations as certified organic operations. Qualified applicants will be accredited for 5 years.

Application Process. Certifying agents will apply to the Administrator for accreditation to certify production or handling operations operating under the NOP. The certifying agent's application must include basic business information, must identify each area of operation for which accreditation is requested and the estimated number of each type of operation to be certified annually, and must include a list of each State or foreign country where it currently certifies production or handling operations and where it intends to certify such operations.

[2] ISO/IEC Guide 65 is available for viewing at USDA–AMS, Transportation and Marketing Programs, Room 2945-South Building, 14th and Independence Ave., SW, Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday (except official Federal holidays). A copy may be obtained from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036; Website: www.ansi.org; E-mail: ansionline@ansi.org; Telephone: 212–642–4900; Facsimile: 212–398–0023.

Certifying agents must also submit personnel, administrative, conflict of interest, current certification, and other documents and information to demonstrate their expertise in organic production or handling techniques, their ability to comply with and implement the organic certification program, and their ability to comply with the requirements for accreditation.

The administrative information submitted by the applicant should include copies of their procedures for certifying operations, for ensuring compliance of their certified operations with the Act and regulation, for complying with recordkeeping requirements, and for making information available to the public about certified operations. The procedures for certifying operations encompass the processes used by the certifying agent to evaluate applicants, make certification decisions, issue certification certificates, and maintain the confidentiality of any business information submitted by the certified operation. The procedures for ensuring compliance of the certified operations would include the methods used to review and investigate certified operations, for sampling and residue testing, and to report violations.

The personnel information submitted with the application should demonstrate that the applicant uses a sufficient number of adequately trained personnel to comply with and implement the organic certification program. The certifying agent will also have to provide evidence that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making responsibilities have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned. They must also show that these employees have revealed existing or potential conflicts of interest.

Applicants who currently certify production or handling operations must also submit a list of the production and handling operations currently certified by them. For each area in which the applicant requests accreditation, the applicant should furnish copies of inspection reports and certification evaluation documents for at least three operations. If the applicant underwent any other accrediting process in the year previous to the application, the applicant should also submit the results of the process.

Certifying agents are prohibited from providing advice concerning organic practices or techniques to any certification applicant or certified operation for a fee, other than as part of the fees under the certification program. The Administrator will provide oversight of the fees to ensure that the schedule of fees filed with the Administrator is applied uniformly and in a nondiscriminatory manner. The Administrator may inform a certifying agent that its fees appear to be unreasonable and require that the certifying agent justify the fees. The Administrator will investigate the level of fees charged by an accredited certifying agent upon receipt of a valid complaint or under compelling circumstances warranting such an investigation. Certifying agents are prohibited from providing advice concerning organic practices or techniques to any certification applicant or certified operation for a fee, other than as part of the fees under the certification program.

Statement of Agreement. Upon receipt of the certifying agent's application for accreditation, the Administrator will send a statement of agreement to the person responsible for the certifying agent's day-to-day operations for signature. The statement of agreement affirms that, if granted accreditation as a certifying agent under this subpart, the applicant will carry out the provisions of the Act and the regulations in this part. Accreditation will not be approved until this statement is signed and returned to the Administrator.

The statement of agreement will include the applicant's agreement to accept the certification decisions made by another U.S. Department of Agriculture (USDA)-accredited certifying agent as equivalent to its own and the applicant's agreement to refrain from making false or misleading claims about its accreditation status, the USDA accreditation program, or the nature or qualities of products labeled as organically produced. Further, the statement will include the applicant's agreement to pay and submit the fees charged by AMS and to comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary. Applicants are also required to affirm through this statement of agreement that they will: (1) Conduct an annual performance appraisal for each inspector used; (2) have an annual program evaluation conducted of their certification activities by their staff, an outside auditor, or a consultant who has expertise to conduct such evaluations; and (3) implement measures to correct any deficiencies in compliance with the Act and regulations identified in an inspector performance appraisal or program evaluation.

A private entity certifying agent must additionally agree to hold the Secretary harmless for any failure on the agent's part to carry out the provisions of the Act and regulations. A private entity certifying agent's statement will also include an agreement to furnish reasonable security for the purpose of protecting the rights of operations certified by such certifying agent. Such security will be in an amount and according to such terms as the Administrator may by regulation prescribe. A private entity certifying agent must agree to transfer all records or copies of records concerning its certification activities to the Administrator if it dissolves or loses its accreditation. A private entity certifying agent must also agree to make such records available to any applicable State program's governing State official.

Approval of Accreditation. Upon receiving all the required information, including the statement of agreement, and the required fee, the Administrator will determine if the applicant meets the requirements for accreditation. The Administrator's determination will be based on a review of the information submitted and, if necessary, a review of the information obtained from a site evaluation. The Administrator will notify the applicant of approval of accreditation in writing. The notice of accreditation will state the area(s) for which accreditation is given, the effective date of the accreditation, and, for a private-entity certifying agent, the amount and type of security that must be established.

Certifying agents who apply for accreditation and do not meet the requirements for accreditation will be provided, in accordance with § 205.665, with a notification of noncompliance and given an opportunity to come into compliance. After receipt of a notification of noncompliance, the applicant may submit a description of the actions taken to correct the noted deficiencies and evidence demonstrating such corrections or file an appeal with the Administrator. If the applicant is successful in its appeal or provides acceptable evidence demonstrating correction of the deficiencies, the Administrator will notify the applicant of accreditation. If the applicant fails to correct the deficiencies, fails to report the corrections by the date specified in the notification of noncompliance, fails to file an appeal by the date specified in the notification of noncompliance, or is unsuccessful in its appeal, the Administrator will issue a written notification of accreditation denial to the applicant. An applicant who has

received written notification of accreditation denial may apply for accreditation again at any time.

Once accredited, a certifying agent may establish a seal, logo, or other identifying mark to be used by certified production and handling operations. However, the certifying agent may not require use of its seal, logo, or other identifying mark on any product sold, labeled, or represented as organically produced as a condition of certification. The certifying agent also may not require compliance with any production or handling practices other than those provided for in the Act and regulations as a condition for use of its identifying mark. This provision does not apply to States with more restrictive requirements approved by the Administrator or private-entity certifying agents certifying operations within such States.

Site Evaluations. One or more representatives of the Administrator will perform site evaluations for each certifying agent in order to examine the certifying agent's operations and to evaluate compliance with the Act and regulations. Site evaluations will include an on-site review of the certifying agent's certification procedures, decisions, facilities, administrative and management systems, and production or handling operations certified by the certifying agent. A site evaluation of an accreditation applicant will be conducted before or within a reasonable time after issuance of the applicant's notification of accreditation. Certifying agents will be billed for each site evaluation conducted in association with an initial accreditation, amendments to an accreditation, and renewals of accreditation. Certifying agents will not be billed by USDA for USDA-initiated site evaluations conducted to determine compliance with the Act and regulations.

As noted above, a certifying agent may be accredited prior to a site evaluation. If the Administrator finds, following the site evaluation, that an accredited certifying agent is not in compliance with the Act or regulations, the Administrator will issue the certifying agent a written notification of noncompliance. If the certifying agent fails to correct the deficiencies, report the corrections by the date specified in the notification of noncompliance, or file an appeal by the date specified in the notification of noncompliance, the Administrator will begin proceedings to suspend or revoke the accreditation. A certifying agent that has had its accreditation suspended may apply for accreditation again at any time. A private-entity certifying agent whose accreditation is revoked will be ineligible for accreditation for a period of not less than 3 years following the date of such determination.

Peer Review Panels. The Administrator may establish a peer review panel to assist in evaluating applicants for accreditation. Peer review panels will be used at the discretion of the Administrator following the site evaluation of a certifying agent, but under no circumstances will the Administrator convene a peer review panel when the peer review pool does not contain sufficient persons qualified to peer review the certifying agent.

To be eligible to serve on a peer review panel, the applicant for membership in the peer review pool must provide the Administrator with a written description and, upon request, supporting documentation of its qualifications to conduct peer reviews. The applicant for membership in the peer review pool must address possible limitations on availability to serve and include information concerning commercial interests with any person who may seek to become or who is an accredited certifying agent. No person who has or has had a commercial interest, including an immediate family interest or the provision of consulting services, in an applicant for accreditation or renewal of accreditation will be appointed to a panel evaluating such applicant for accreditation or renewal of accreditation. Persons accepted to the pool may serve until notified that their appointment has been rescinded by the Administrator or until they are no longer qualified, whichever occurs first. Peer reviewers will serve without compensation.

Peer review panels will consist of at least three but no more than five members. A Department representative will preside over the panel. A peer review panel will include no fewer than two members who possess sufficient expertise in the certifying agent's areas of accreditation. Peer review panels may include up to two members with expertise in other disciplines, including organizational management and finance; member(s) from the approved State organic certification program when the applicant is a private entity that will operate within the State; and member(s) from a foreign government's organic program when the applicant is a private entity that will operate within the country.

Each person on a peer review panel must individually review the site evaluation report prepared by the Department's evaluator(s) and any other information that may be provided by the Administrator relevant to continuing or renewing the accreditation status of a certifying agent. Information about the certifying agent received as part of the review process is confidential information, and peer reviewers must not release, copy, quote, or otherwise use material from the information received other than in the report required to be submitted. Each peer reviewer must agree to treat the information received for review as confidential.

A peer review panel meeting will be held solely for the purposes of exchanging information. Any meeting or conference call will be conducted in a manner that will ensure the actions of panel members are carried out on an individual basis with any opinions and recommendations by a member being made individually. We do not believe that it is usual to have consensus in peer review or that it is the best use of USDA resources or the time of peer reviewers to seek consensus under a single report. Further, requiring a consensus report may make peer review panels subject to the Federal Advisory Committee Act, which might stifle meaningful dialog between reviewers, increase the cost and time required of peer reviewers for peer review service, and result in problems obtaining volunteers for service on peer review panels.

Peer review panel members will prepare and submit individual reports, including recommendations, to the Administrator regarding a certifying agent's ability to conduct and perform certification activities. The Administrator will consider the reports when determining whether to continue or renew the certifying agent's accreditation. Copies of the peer review panel reports will be provided, upon request, to the certifying agent, and written responses from the certifying agent may be submitted for consideration by the Administrator. Copies of peer review panel reports may be provided to any person requesting such reports under the Freedom of Information Act.

Continuing Accreditation. An accredited certifying agent must submit annually to the Administrator, on or before the anniversary date of the issuance of the notification of accreditation, the following reports and fees: (1) A complete and accurate update of its business information, including its fees, and information evidencing its expertise in organic production or handling and its ability to comply with these regulations; (2) information supporting any changes requested in the areas of accreditation; (3) a description of measures implemented in the

previous year and any measures to be implemented in the coming year to satisfy any terms and conditions specified in the most recent notification of accreditation or notice of renewal of accreditation; (4) the results of the most recent inspector performance appraisals and annual program evaluation and a description of adjustments to the certifying agent's operation and procedures implemented or to be implemented in response to the appraisals and evaluation; and (5) the required AMS fees.

Certifying agents will keep the Administrator informed of their certification activities by: (1) Providing the Administrator with a copy of any notice of denial of certification, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation issued simultaneously with its issuance; and (2) on a quarterly calendar basis, the name, address, and telephone number of each operation granted certification.

One or more site evaluations will occur during the 5-year period of accreditation to determine whether an accredited certifying agent is complying with the Act and regulations. USDA will establish an accredited certifying agent compliance monitoring program, which will involve no less than one randomly selected site evaluation of each certifying agent during its 5-year period of accreditation. Larger and more diverse operations, operations with clients marketing their products internationally, and operations with a history of problems should expect more frequent site evaluations by USDA. Operations with clients marketing their products internationally will be annually site evaluated to meet the ISO-Guide 61 [3] requirement for periodic surveillance of accredited certifying agents. USDA may also conduct site evaluations during investigations of alleged or suspected violations of the Act or regulations and in followup to such investigations. Such investigations will generally be the result of complaints filed with the Administrator alleging violations by the certifying agent. Compliance site evaluations may be announced or unannounced at the discretion of the Administrator. Certifying agents will not be billed by USDA for USDA-initiated site evaluations conducted to determine compliance with the Act and regulations.

An accredited certifying agent must provide sufficient information to persons seeking certification to enable them to comply with the applicable requirements of the Act and these regulations. The certifying agent must maintain strict confidentiality with respect to its clients and not disclose to third parties (with the exception of the Secretary or the applicable State program's governing State official or their authorized representatives) any business-related information concerning any client obtained while implementing these regulations except as authorized by regulation. A certifying agent must make the following information available to the public: (1) Certification certificates issued during the current and 3 preceding calender years; (2) a list of producers and handlers whose operations it has certified, including for each the name of the operation, type(s) of operation, and the effective date of the certification, during the current and 3 preceding calender years; and (3) the results of laboratory analyses for residues of pesticides and other prohibited substances conducted during the current and 3 preceding calender years. A certifying agent may make other business information available to the public if permitted in writing by the producer or handler. This information will be made available to the public at the public's expense.

An accredited certifying agent must maintain records according to the following schedule: (1) Records obtained from applicants for certification and certified operations must be maintained for not less than 5 years beyond their receipt; (2) records created by the certifying agent regarding applicants for certification and certified operations must be maintained for not less than 10 years beyond their creation; and (3) records created or received by the certifying agent pursuant to the accreditation requirements, excluding any records covered by the 10-year requirement must be maintained for not less than 5 years beyond their creation or receipt. Examples of records obtained from applicants for certification and certified operations include organic production system plans, organic handling system plans, application documents, and any documents submitted to the certifying agent by the applicant/certified operation. Examples of records created by the certifying agent regarding applicants for certification and certified operations include certification certificates, notice of denial of certification, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, notification of suspension or revocation, correspondence with applicants and certified operations, on-site inspection reports, documents concerning residue testing, and internal working papers and memoranda concerning applicants and certified operations. Examples of records created or received by the certifying agent pursuant to the accreditation requirements include operations manuals; policies and procedures documents (personnel, administrative); training records; annual performance appraisals and supporting documents; conflict of interest disclosure reports and supporting documents; annual program evaluation working papers, memoranda, letters, and reports; fee schedules; quarterly reports of operations granted certification; application materials submitted to the NOP; correspondence received from and sent to USDA; and annual reports to the Administrator.

The certifying agent must make all records available for inspection and copying during normal business hours by authorized representatives of the Secretary and the applicable State program's governing State official. In the event that the certifying agent dissolves or loses its accreditation, it must transfer to the Administrator and make available to any applicable State program's governing State official all records or copies of records concerning its certification activities.

Certifying agents are also required to prevent conflicts of interest and to require the completion of an annual conflict of interest disclosure report by all personnel designated to be used in the certification operation. Coverage of the conflict of interest provisions extends to immediate family members of the certifying agent; responsibly connected persons of the certifying agent; and any employee, inspector, contractor, or other personnel of the certifying agent. A certifying agent may not certify a production or handling operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the production or handling operation, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification. A certifying agent may certify a production or handling operation if any employee, inspector, contractor, or other personnel

[3] ISO/IEC Guide 61 is available for viewing at USDA–AMS, Transportation and Marketing Programs, Room 2945—South Building, 14th and Independence Ave., SW, Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday (except official Federal holidays). A copy may be obtained from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036; Website: www.ansi.org; E-mail: ansionline@ansi.org; Telephone: 212–642–4900; Facsimile: 212–398–0023.

of the certifying agent has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification. However, any such person must be excluded from work, discussions, and decisions in all stages of the certification process and the monitoring of the entity in which they have or have held a commercial interest. The acceptance of payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected is prohibited. However, a certifying agent that is a not-for-profit organization with an Internal Revenue Code tax exemption or, in the case of a foreign certifying agent, a comparable recognition of not-for-profit status from its government, may accept voluntary labor from certified operations. Certifying agents are also prohibited from providing advice concerning organic practices or techniques to any certification applicant or certified operation for a fee, other than as part of the fees under the certification program.

No accredited certifying agent may exclude from participation in or deny the benefits of the NOP to any person due to discrimination because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status.

Renewal of Accreditation. To avoid a lapse in accreditation, certifying agents must apply for renewal of accreditation 6 months prior to the fifth anniversary of issuance of the notification of accreditation and each subsequent renewal of accreditation. The accreditation of certifying agents who make timely application for renewal of accreditation will not expire during the renewal process. The accreditation of certifying agents who fail to make timely application for renewal of accreditation will expire as scheduled unless renewed prior to the scheduled expiration date. Certifying agents with an expired accreditation must not perform certification activities under the Act and these regulations.

Following receipt of the certifying agent's annual report and fees, the results of a site evaluation, and, when applicable, the reports submitted by a peer review panel, the Administrator will determine whether the certifying agent remains in compliance with the Act and regulations and should have its accreditation renewed. Upon a determination that the certifying agent is in compliance with the Act and regulations, the Administrator will issue a notice of renewal of accreditation. The notice of renewal will specify any terms and conditions that must be addressed by the certifying agent and the time within which those terms and conditions must be satisfied. Renewal of accreditation will be for 5 years. Upon a determination that the certifying agent is not in compliance with the Act and regulations, the Administrator will initiate proceedings to suspend or revoke the certifying agent's accreditation. Any certifying agent subject to a proceeding to suspend or revoke its accreditation may continue to perform certification activities pending resolution of the proceedings to suspend or revoke the accreditation.

Accreditation—Changes Based on Comments

This subpart differs from our first proposal in several respects as follows:

(1) *Equivalency of Imported Organic Products.* We have removed the regulations on equivalency of imported organic products included in the first proposal. In this proposal, we have added foreign certifying agents as entities eligible for accreditation as certifying agents qualified to certify domestic and foreign organic production and handling operations. We have also added to subpart A definitions for private entity and State entity. We have defined "private entity" as any domestic or foreign nongovernmental for-profit or not-for-profit organization providing certification services. We have defined "State entity" as any domestic or foreign governmental subdivision providing certification services.

In commenting on the first proposal, several commenters expressed confusion as to how the Secretary would determine equivalency of imported organic products. They also expressed confusion as to how the Secretary would ensure that imported products met the same requirements as those produced domestically. We have addressed these concerns by adding foreign certifying agents as private or state entities that may be accredited under the NOP. We have also provided that USDA will accept a foreign certifying agent's accreditation to certify organic production or handling operations if: (1) USDA determines, upon the request of a foreign government, that the standards under which the foreign government authority accredited the foreign certifying agent meet the requirements of this part; or (2) the foreign governmental authority that accredited the certifying agent acted under an equivalency agreement negotiated between the United States Government and the foreign government. These changes ensure that all certifying agents, including foreign private and state certifying agents, will be required to meet the same requirements to be recognized as qualified to certify organic production or handling operations. This change provides foreign private and state certifying agents with transparent standards for accreditation.

A commenter raised concerns that we acted in violation of international agreements and domestic policy by proposing rules that were contrary to internationally accepted organic standards and, thus, created an unacceptable barrier to trade. The Act directs the Secretary to establish national standards governing the marketing of certain agricultural products as organically produced products. In accordance with our international agreements, this proposal ensures that, with respect to accreditation under this subpart, products imported from the territory of any country are being accorded treatment no less favorable than that accorded to products of U.S. origin. However, in accordance with our international trade agreements and upon implementation of this program, the Administrator will give positive consideration to accepting as equivalent technical regulations of other countries, even if these regulations differ from our own, provided such regulations fulfil the objectives of this proposed program. Any such equivalency agreements will be negotiated on a case-by-case basis, and ample opportunity for public comment will be provided before and during the negotiation process.

Two commenters requested that the Secretary recognize international accreditation systems for foreign organic certification programs and establish the requirements for approval of such systems in this proposal. We have instead proposed for the purposes of this rule that all certifying agents, regardless of their country of origin, meet the same requirements for accreditation through the provisions of this subpart.

One commenter requested that all imported organic products be labeled by their respective country of origin. The purpose of this proposal is to provide the requirements for the marketing of agricultural products in the United States that are labeled or sold as organic. The issue of country-of-origin labeling of imported products is not related to this proposal or the Act. Further, regulations pertaining to the labeling of organic agricultural products should not be used to enforce country-of-origin labeling requirements.

Several commenters stated that the first proposal did not take into account

the use of equivalency to ensure the marketing of U.S. organic products in foreign markets. The Department will work to oppose other countries' organic regulations that would prohibit entry of U.S. organic product produced under the Act or these regulations. As appropriate, the U.S. Government may represent U.S. organic interests in international government-to-government bodies. However, neither of these objectives is intended to be achieved by this rule.

(2) *Accreditation Requirements Regarding Expertise of Employees.* We have added a new regulation to the general requirements for accreditation. This regulation requires that the certifying agent ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making responsibilities have sufficient expertise in organic production or handling techniques to sufficiently perform the duties assigned. Certifying agents were required under the first proposal to use a sufficient number of adequately trained personnel, including inspectors. They were also required to conduct an annual performance appraisal of each inspector.

Commenters felt that the proposed rule did not sufficiently ensure that certifying agents would employ qualified individuals. One of these commenters requested that we require organic certification inspectors to participate in an inspector accreditation program, such as that offered by the Independent Organic Inspectors Association. We believe that inspector participation in an inspector accreditation program should be left to the discretion of the inspector and certifying agent. However, we believe that the new requirement combined with the requirements from the first proposal should ensure that responsibly connected persons, employees, and contractors of an accredited certifying agent are qualified to perform their inspection, analysis, and decision-making duties. This new regulation is found at § 205.501(a)(5) of this proposal.

(3) *Recordkeeping Requirements.* We have proposed a new § 205.510(b), which identifies three categories of records and their retention periods. This new paragraph was added to address commenter concern that the requirement that an accredited certifying agent maintain records about all of its activities for 10 years was excessive and unnecessary. Commenters suggested a 5- to-7-year retention period. We agree that for some records, a retention period of 10 years may be excessive. Accordingly, in this proposal, we are proposing three retention periods. First, records created by the certifying agent regarding applicants for certification and certified operations would have to be maintained for not less than 10 years beyond their creation. We believe this retention period to be consistent with the Act's requirement that the certifying agent maintain all records concerning its activities for a period of not less than 10 years. Second, records obtained from applicants for certification and certified operations would have to be maintained for not less than 5 years beyond their receipt. This retention period is the same as that required by the Act for the retention of records by the certified operation. Since the certified operation can dispose of its records 5 years after their creation, the certifying agent should also be able to dispose of those records it receives from the certified operation 5 years after their receipt. Third, records created or received by the certifying agent for USDA accreditation would have to be maintained for not less than 5 years beyond their creation or receipt.

(4) *Conflict of Interest Provisions.* We have made three changes which we believe will strengthen the conflict of interest provisions. We have made these changes because we concur with the comment from a research foundation stating that the provisions for preventing conflicts of interest needed to be significantly strengthened. First, we have added a new § 205.501(a)(11)(v), which requires the completion of an annual conflict of interest disclosure report by all personnel designated to be used in the certification of an operation, including administrative staff, certification inspectors, members of any certification review and program evaluation committees, contractors, and all parties responsibly connected to the certifying agent. Second, coverage of the conflict of interest provisions has been extended to immediate family members of the certifying agent; responsibly connected persons of the certifying agent; and any employee, inspector, contractor (to be used in the certification of an operation), or other personnel of the certifying agent. Immediate family members would include the spouse; minor children, including legally adopted children; or blood relatives who reside in the immediate household of a certifying agent; responsibly connected person of the certifying agent; or any employee, inspector, contractor, or other personnel of the certifying agent. Third, this proposal lists contractors among those persons who are prohibited from accepting payment, gifts, or favors of any kind, other than regular fees from any business inspected by the certifying agent. This addition, which is found at § 205.501(a)(11), was made to clarify that contractors, including contract inspectors, are prohibited from accepting payment, gifts, or favors of any kind, other than regular fees.

(5) *Use of Voluntary Labor.* We have added an exception to the prohibition of the acceptance of payment, gifts, or favors of any kind. The exception provides that any certifying agent that is a not-for-profit organization with an Internal Revenue Code tax exemption or, in the case of a foreign certifying agent, a comparable recognition of not-for-profit status from its government may accept voluntary labor from certified operations. Internal Revenue Code tax exemption or, in the case of a foreign certifying agent, a comparable recognition from its government is required as verification of the certifying agent's status as a not-for-profit organization. This change was made to clarify our original intent that not-for-profit certifying agents would be allowed to accept volunteer labor from persons certified by the certifying agent.

In the preamble to the first proposal, we stated that we would not consider a volunteer who performs services for a not-for-profit certifying agent as providing favors to any particular individual in that agency and, therefore, would not consider the certifying agent as being in a conflict of interest situation by accepting such services from volunteers. We have made this clarification because a commenter expressed the belief that the certifying agent should be allowed to receive donations of time, food, and money beyond any mandatory fees from persons they certify. The Act prohibits certifying agents from accepting payments, gifts, or favors of any kind from a business inspected, other than prescribed fees. Accordingly, this exception is limited to acceptance of voluntary labor by not-for-profit certifying agents. While § 205.501(a)(11)(iii) prohibits the acceptance of payments, gifts, or favors of any kind, other than prescribed fees, from any business inspected for certification as a producer or handler of organic agricultural products, the paragraph does not prohibit the accredited certifying agent from accepting payments, gifts, or favors of any kind, including time, food, or money, from persons for whom they do not provide inspections for certification as a producer or handler of organic agricultural products.

(6) *Certification Fees.* We have removed the requirement that a certifying agent charge only such fees to applicants for certification and operations it certifies that the Secretary determines are reasonable. We have made this change because we concur with those commenters who expressed the belief that certifying agents should be permitted to set their own fees without the approval of the Secretary. However, we continue to believe that the Administrator should retain oversight of the fees, not for the purpose of setting the fees or of dictating the level of the fees, but for the purpose of determining if any certifying agent's fees are so high as to be unreasonable and to ensure that the schedule of fees filed with the Administrator are applied uniformly and in a nondiscriminatory manner. The Administrator should also retain the ability to inform a certifying agent that its fees appear to be unreasonable and to require a justification for the level of fees set by the certifying agent. We further believe that the Administrator should retain the ability to investigate the level of fees charged by an accredited certifying agent if a complaint is made or if compelling circumstances warrant such an investigation. Accordingly, we have proposed at § 205.501(a)(15) that a certifying agent must charge applicants for certification and certified production and handling operations only those fees and charges that it has filed with the Administrator. We have also included at § 205.642 regulations with respect to fees charged by certifying agents to producers and handlers. Section 205.642 is discussed under fees in subpart G of this preamble.

(7) *State Standards That Vary From the National Organic Program.* We have added an exception to the regulation which prohibited certifying agents from requiring, as a condition for use of the certifying agent's identifying mark, compliance with any farming or handling requirements other than those provided for in the Act and regulations. The exception provides that the requirement does not apply to States with more restrictive requirements approved by the Secretary or private entity certifying agents certifying production or handling operations within States with more restrictive requirements approved by the Secretary. This change was made because we agree with the State commenters who stated that the prohibition on requiring compliance with any farming or handling requirements other than those provided for in the Act and regulations would prohibit States from requiring that their more restrictive standards, approved by the USDA, be met as a requirement for use of the State's logo on organically produced products. We did not intend to prohibit States from requiring that their more restrictive standards be met as a requirement for use of the State's logo on organically produced products. Including this exception in § 205.501(b)(2) will permit States with more restrictive requirements approved by the Secretary and private entity certifying agents certifying production or handling operations within the borders of such States to require that the State's more restrictive standards be met as a requirement for use of their logo or other identifying mark on organically produced products.

Certifying agents may not require a certified operation to meet production or handling standards greater than those established by the Department or, when applicable, an approved State organic certification program as a condition for using its logo or other identifying mark. However, a certifying agent may verify, upon the request of a producer or handler certified by the certifying agent, that the producer or handler is meeting contractual specifications which include requirements in addition to those of the Act and regulations.

(8) *Time Period for Public Access to Information.* For the requirement that certifying agents describe the procedures they will use for making information available to the public, we have changed the time period from "during the 10-year period preceding the receipt of the request from the public" to "during the current and 3 preceding calendar years." Commenters stated that the required 10-year period was excessive and unnecessary. The Act requires public access to certification documents and laboratory analyses that pertain to certification. However, the Act does not specify that a certifying agent must provide access to its records throughout their 10-year retention period. We agree with the commenters that public access to the records the certifying agent is required to keep should be limited to a reasonable period short of the full retention period. Such a reasonable period, we believe, would be the current calendar year and the 3 calendar years preceding the calendar year of the request. Accordingly, § 205.504(b)(5) requires certifying agents to describe the procedures they will use for making information available to the public during the current and 3 preceding calendar years. This time period will lessen the burden on certifying agents while assuring reasonable public access to such records.

(9) *Scope of Information for Public Release.* We have expanded the scope of information for public release which must be included in the list of producers and handlers whose operations the certifying agent has certified. Specifically, certifying agents will have to include the name of the operation and type(s) of operation in its list of producers and handlers it has certified. This change is included in section § 205.504(b)(5)(ii). Commenters requested that the list be expanded to include the name of the operation, its physical location(s), certification history, type(s) of operation, acreage (when applicable), and person responsible for organic regulation compliance. While we agree that the name of the operation and type(s) of operation should be available to the public, we believe that the certified operation's physical location(s), certification history, and acreage are confidential information which has no relationship to the operation's status as a certified organic operation. Therefore, such information should only be made available with the written consent of the certified operation. We also believe that it is unnecessary to list a person responsible for organic regulation compliance since the applicant ultimately has that responsibility. Therefore, these requested additions have not been made. We have also removed the separate requirement that certifying agents identify for the public the organic agricultural products produced by each certified operation. We have taken this action because the information is available on the certificates and the list of producers and handlers required to be released by the certifying agent to the public. These requirements are found at § 205.504(b)(5)(i) and (ii).

(10) *Release of Nonconfidential Business Information.* We have removed the requirement that certifying agents provide a description of the procedures to be used to make nonconfidential business information, as permitted by the producer or handler and approved by the Secretary, available to the public. This requirement has been replaced with the requirement that the certifying agent provide a description of the procedures to be used to make other business information, as permitted in writing by the producer or handler, available to the public. Commenters objected to the requirement that the Secretary approve the release of nonconfidential business information that the producer or handler had authorized the certifying agent to

release. They believed that this requirement lacked justification and created unnecessary costs. We concur that this requirement is unnecessary. However, we believe that the producer's or handler's approval must be obtained in writing, which is reflected in this proposal at § 205.504(b)(5)(v).

(11) *Submission of Applicant's Financial Policies and Procedures.* We have removed the requirement that a certifying agent include with its application for accreditation a description of its policies and procedures for collection and disbursement of funds and documents that identify anticipated sources of income, including all fees to be collected from producers and handlers. Commenters stated that they did not believe the submission of applicant financial policies and procedures was necessary. We have decided that the information requested probably would not fully meet our needs in determining that certification decisions were not influenced by the certifying agent's concern for the certification decision's financial impact on the certifying agent or in determining compliance with the conflict of interest provisions of the Act and these regulations. Accordingly, this requirement is not included in this proposal.

(12) *Submission of Information Concerning Current Certification Activities.* We have changed the voluntary submission of information and documents concerning current certification activities to a required submission. Commenters stated that the submission of a list of all farms, wild-crop harvesting operations, and handling operations currently certified by the applicant should be required. They went on to say that the submission of copies of the inspection reports and certification evaluation documents for production or handling operations certified by the applicant during the previous year should remain optional. They also said the submission of results from any accreditation process of the applicant's operation by an accrediting body during the previous year for the purpose of evaluating its certification activities should remain optional.

We agree with the commenters that a list of all operations currently certified by the applicant should be a required submission. We also believe that copies of inspection reports, certification evaluation documents, and accreditation results should be a required submission from all applicants currently certifying production or handling operations. Accordingly, at § 205.504(d) we have made the submission of information and documents concerning current certification activities mandatory for certifying agents currently certifying production or handling operations.

This change has been made because of the value such information and documents would have in assisting the Department in evaluating an applicant for accreditation. However, we have limited the submission of inspection reports and certification evaluation documents for production and handling operations certified by the applicant. The applicant is required to submit copies of at least 3 different inspection reports and certification evaluation documents for production or handling operations certified by the applicant during the previous year for each area of operation for which accreditation is requested. We have limited the submission to reduce the reporting burden on certifying agents. The Administrator may, however, require that the certifying agent submit additional inspection reports and certification evaluation documents.

We recognize that a newly organized certifying agent with no experience would be unable to supply the information. An applicant's inability to provide the information and documentation required by the revised paragraph due to lack of experience would not be prejudicial to the Department's evaluation of the application.

(13) *Site Evaluations.* We have revised the site evaluation provisions to clarify the scope of an evaluation, to specify that the evaluation will be arranged and conducted by a representative of the Administrator, and to specify when evaluations shall or may be conducted. These changes are made in response to commenters who suggested adding details to the regulatory text regarding the nature of site evaluations. The revised section provides that site evaluations of accredited certifying agents shall: (1) Be conducted for the purpose of examining the certifying agent's operations and evaluating its compliance with the Act and regulations; (2) include an on-site review of the certifying agent's certification procedures, decisions, facilities, administrative and management systems, and production or handling operations certified by the certifying agent; (3) be conducted by a representative(s) of the Administrator; and (4) be conducted after application for renewal of accreditation but prior to the issuance of a notice of renewal of accreditation. This revised section provides that an initial site evaluation of an accreditation applicant would be conducted before or within a reasonable period of time after issuance of the applicant's notification of accreditation. Section 205.508 also provides that one or more site evaluations will be conducted during the period of accreditation to determine whether an accredited certifying agent is complying with the general requirements for accreditation.

(14) *Eligibility for Peer Review Panels.* We have added a new regulation addressing eligibility for peer review panels. Commenters expressed concern that peer review pool applicants be free of conflicts of interest and possess the necessary expertise in organic production or handling. The first proposal provided that candidates for membership in the peer review panel pool would be required to submit a letter to the Program Manager of the NOP requesting appointment, describing their qualifications, and identifying conflicts of interest. We believe that there is value to the applicants for membership in the peer review panel pool and the general public in addressing eligibility for peer review panels in the regulatory text. Accordingly, we have added a new regulation at § 205.509(b) which provides that applicants for membership in the peer review panel pool must provide the Administrator with a written description and, upon request, supporting documentation of their qualifications to conduct peer reviews. Such description must include information concerning the applicant's training and expertise in organic production or handling methods and in evaluating whether production or handling operations are using a system of organic production or handling. Applicants must also address their possible limitations on availability to serve. Further, applicants would be required to include information concerning their commercial interests and those of their immediate family members, within the 12-month period prior to application, with any person who may seek to become or who is an accredited certifying agent. No person who has or has had a commercial interest, including an immediate family interest or the provision of consulting services, in an applicant for accreditation or renewal of accreditation will be appointed to or accept appointment to a panel evaluating the applicant. This provision was added for the purpose of avoiding conflicts of interest by peer reviewers. This new regulation also provides that persons accepted to the pool may serve until notified that their appointment has been rescinded by the Administrator or until

they are no longer qualified, whichever occurs first.

(15) *Composition of Peer Review Panels.* We have revised the regulations concerning the composition of peer review panels. Commenters requested that the peer review panel consist of at least two members who are not USDA employees, rather than not AMS employees. We agree with this suggested change, which clarifies what had been our intent. This change is included in § 205.509(c). Section 205.509(c) provides that peer review panels shall consist of at least three but no more than five members. This section provides that peer review panels must include a Department representative who will preside over the panel and no fewer than two members from the peer review pool who possess sufficient expertise in the relevant areas of accreditation. Additionally, section 205.509(c) provides that peer review panels may include up to two members with expertise in other disciplines, including organizational management and finance; member(s) from the approved State organic certification program when the applicant is a private entity seeking accreditation within the State; and member(s) from a foreign government's organic program when the applicant is a private entity that will operate within the country. We have added authorization for these additional members to broaden the scope and depth of expertise available to peer review panels.

Commenters also expressed concern that the peer review panels consist of at least one member from a State organic certification program. We do not believe that the composition of peer review panels regulations needs to be amended to accommodate this concern. To the extent possible, accredited private certifying agents will peer review private certifying agents, and accredited State certifying agents will peer review State certifying agents.

(16) *Renewal of Accreditation.* We have revised the renewal of accreditation provisions to, among other things, require that an accredited certifying agent's application for accreditation renewal be received 6 months prior to the fifth anniversary of issuance of the notification of accreditation and each subsequent renewal of accreditation. The first proposal provided that an accredited certifying agent would request renewal of accreditation on or before the fifth anniversary of issuance of the notice of confirmation of accreditation and each subsequent renewal of accreditation. Commenters expressed concern about whether the accredited certifying agent's accreditation would lapse during the renewal process. They suggested that certifying agents should submit their application for renewal of accreditation 6 months prior to the fifth anniversary of issuance of the notice of confirmation.

We believe that clarification regarding the status of the certifying agent's accreditation during the renewal process is appropriate. We also concur with the commenters' suggestion that certifying agents should submit their applications for renewal of accreditation 6 months prior to the fifth anniversary of issuance of the notice of confirmation. We have replaced "notice of confirmation of accreditation," however, with "notification of accreditation" because this proposal eliminates the section on confirmation of accreditation. Accordingly, we have provided in this proposal at § 205.510(c) that: (1) An accredited certifying agent's application for accreditation renewal must be received 6 months prior to the fifth anniversary of issuance of the notification of accreditation and each subsequent renewal of accreditation; (2) the accreditation of certifying agents who make timely application for renewal of accreditation will not expire during the renewal process; (3) the accreditation of certifying agents who fail to make timely application for renewal of accreditation will expire as scheduled unless renewed prior to the scheduled expiration date; (4) certifying agents with an expired accreditation must not perform certification activities under the Act and regulations; and (5) following receipt of the information submitted by the certifying agent, the results of any site evaluation, and, when applicable, the reports submitted by a peer review panel, the Administrator will determine whether the certifying agent remains in compliance with the Act and regulations and should have its accreditation renewed.

These changes would provide the Department with sufficient time to fully process the certifying agent's application for accreditation renewal prior to the accreditation's scheduled date of expiration. This revised regulation also clarifies that a certifying agent's accreditation will not expire during the accreditation renewal process if the certifying agent has made timely application for renewal. It also makes clear that the accreditation of certifying agents who fail to make timely application for renewal of accreditation will expire as scheduled unless renewed prior to the scheduled expiration date. This regulation also provides that certifying agents with an expired accreditation must not perform certification activities under the Act and these regulations.

(17) *Denial of Accreditation.* We have revised the denial of accreditation regulations to clarify that after receipt of a notification of noncompliance, the applicant may submit a description of the actions taken to correct the noted deficiencies and evidence demonstrating such corrections, rather than submitting a new application. We have taken this action because commenters were confused by our reference to a new application in the denial of accreditation regulations. The denial of accreditation regulations are found at § 205.507 in this proposal.

Accreditation—Changes Requested But Not Made

This subpart retains from our first proposal regulations on which we received comments as follows:

(1) *Durations of Accreditation and Reporting Requirements.* Commenters expressed concern regarding the duration of accreditation and whether the interval of required reporting is adequate. An association expressed concern regarding the economic impact of accreditation on small certifying agents. This commenter stated that small certifying agents should not be accredited more often than every 5 years. An international organic federation expressed the belief that accreditation for 5 years is too long. The commenter went on to say that certification bodies are expanding rapidly and that annual reports cannot be relied upon to fully convey the consequent changes. This commenter believes that many of the conditions of accreditation may relate to operational aspects that cannot be addressed in an annual report.

Annual reporting by the certifying agent, under this proposal, would provide: (1) A complete and accurate update of applicant information and expertise and ability information previously submitted; (2) information supporting any changes being requested in the areas of accreditation; (3) the measures that were implemented in the previous year and any measures to be implemented in the coming year to satisfy any terms and conditions determined by the Administrator to be necessary as specified in the most recent notification of accreditation; and (4) the results of the most recent inspector performance appraisal and program evaluation and adjustments to the certifying agent's operation and procedures implemented and intended to be implemented in response to the appraisals and evaluations. This proposal includes a requirement at

§ 205.501(a)(14) that the certifying agent submit to the Administrator a copy of each notification of: (1) Denial of certification; (2) noncompliance; (3) noncompliance correction; (4) proposed suspension or revocation; and (5) suspension or revocation, simultaneously with its issuance.

We believe that these reporting requirements, coupled with feedback from applicants for certification, certified operations, and other interested parties, will provide the Department with sufficient information regarding the certifying agent and its operation to determine whether a site visit is necessary to evaluate the certifying agent's suitability to remain accredited. Under this proposal, the Department will conduct one or more site evaluations during the period of accreditation to determine whether the accredited certifying agent is complying with the requirements for accreditation. Accordingly, we believe the duration of accreditation period first proposed was correct, and we are, therefore, reproposing this time period at § 205.500(b).

(2) *Performance Appraisals and Program Evaluation.* Comments from State departments of agriculture and some certifiers indicated that the annual inspector performance appraisal and annual program evaluation requirements duplicated State requirements. The commenters asked what the required scope and depth of evaluations was expected to be, whether third party evaluators would be required to be used to assess the performance of the operation, and whether existing performance appraisal and program evaluation practices of a certifying agent would be used to meet the annual inspector performance appraisal and program evaluation requirements.

We do not intend for States to develop dual performance appraisal and program evaluation programs. We believe that performance appraisals and program evaluations conducted to meet State requirements will also meet the requirements of this proposal. State and private agency personnel performance appraisals and program evaluations would be expected to be consistent with good management practices and appropriate to the organization's size and structure. This could be different for different organizations. Therefore, we are not prescribing the specific performance appraisal system or instrument to be used to assess inspector performance, the specific program evaluation methods that must be used, or that third parties must conduct the required program evaluation. Accordingly, we have not changed the questioned provisions, which appear at § §205.501(a)(6) and (7). We have, however, revised § 205.501(a)(7) to clarify that the annual program evaluation can be conducted by the certifying agency staff, an auditing entity, or a consultant who has expertise to conduct program evaluations.

(3) *"Open Records" Requirements.* Commenters expressed the belief that confidentiality requirements for certifying agents might conflict with State requirements for "open records." We recognize this potential for conflicting requirements. Records collected and maintained under the NOP are subject to the confidentiality provisions of the Act and these regulations. However, a State-entity certifying agent will be subject to its State "open records" laws when such laws conflict with the confidentiality provisions of the Act and these regulations. Records collected and maintained under the NOP by a private entity certifying agent will always be subject to the confidentiality requirements of the Act and these regulations. Accordingly, pursuant to the Act, we are reproposing the confidentiality provisions at § 205.501(a)(10).

To clarify that authorized representatives of the Secretary or the applicable State program's governing State official may act on behalf of the Secretary or the State program's governing State official and must be given access to the records, we have added the phrase, "or their authorized representatives," to § 205.501(a)(10). Such representative could be a member of the NOP staff, a Department compliance officer, or other official. This provision is standard practice and is necessary for Government oversight of a regulatory program.

(4) *List of Confidential Records.* One commenter requested a definitive list of the records that had to be kept confidential. We cannot create such a list because it is not possible to describe every record that would be characterized as a business-related record. Such records would include, however, organic production and handling plans, records that are related to trade secrets and commercial or financial information obtained from applicants for certification, and records or information compiled for an investigation into alleged noncompliance with the Act and regulations.

(5) *Time Period for Prohibition of Commercial Interest.* We received many comments regarding the prohibition of commercial interest in an organic production or handling operation during the 12 months prior to certification. Several States and industry associations stated that the prohibition of commercial interest should apply to the 12 months after as well as the 12 months prior to certification. These commenters offered no reasoning for their position. A research foundation recommended that the prohibition of commercial interest should be for 3 years before and after the application for certification. This commenter stated that the conflict of interest provisions needed significant strengthening. A producer commenter stated that the prohibition of commercial interest should be for an indefinite period, not for 12 months. Some commenters recommended that certifying agents and responsible parties and employees of certifying agents be barred from accepting employment for 1 to 3 years from any certified production or handling operation in which they participated in any manner in the operation's certification. An accreditation service stated it believed there would be a conflict of interest should a consulting or business connection arise between an inspector and a production or handling operation following the site evaluation. This commenter presented the example of an inspector being offered employment during the site evaluation but not taking the position until 6 months after the site evaluation. Many commenters, however, supported our proposed prohibition of commercial interest in an organic operation during the 12 months prior to certification.

We disagree with the recommendations calling for a longer precertification conflict of interest prohibition period and with the recommendations for a postcertification prohibition period for those persons no longer associated with the certifying agent. Regarding the recommendations for a longer precertification prohibition period, we continue to believe that 12 months is a sufficient period to ensure that any previous commercial interest would not create a conflict of interest situation for two reasons. First, this time period is consistent with similar provisions governing conflicts of interest for government employees. Second, we have added a new section, 205.501(a)(11)(v), which requires the completion of an annual conflict of interest disclosure report by all personnel designated to be used in the certification operation, including administrative staff, certification inspectors, members of any certification review and program evaluation committees, contractors, and all parties

responsibly connected to the certification operation. This requirement will assist certifying agents in complying with the requirements to prevent conflicts of interest. We also continue to believe that a longer prohibition period would have the effect of severely curtailing most certifying agents' ability to comply with the Act's requirement that they employ persons with sufficient expertise to implement the applicable certification program. Accordingly, we have decided to repropose the prohibition on commercial interest in an applicant for certification for a 12-month period prior to the application for certification at section § 205.501(a)(11).

Regarding the recommendations for a postcertification prohibition period for those persons no longer associated with the certifying agent, we believe such a period is unnecessary. We take this position because certifying agents and their responsibly connected parties, employees, inspectors, contractors, and other personnel are prohibited from engaging in activities or associations at any time during their affiliation with the certifying agent which would result in a conflict of interest. While associated with the certifying agent, all employees, inspectors, contractors, and other personnel are expected to disclose to the certifying agent any offer of employment they have received and not immediately refused. They are also expected to disclose any employment they are seeking and any arrangement they have concerning future employment with an applicant for certification or a certified operation. The certifying agent would then have to exclude that person from work, discussions, and decisions in all stages of the certification or monitoring of the operation making the employment offer. If a certifying agent or a responsibly connected party of the certifying agent has received and not immediately refused an offer of employment, is seeking employment, or has an arrangement concerning future employment with an applicant for certification, the certifying agent may not accept or process the application. Further, certifying agents and responsibly connected parties may not seek employment or have an arrangement concerning future employment with an operation certified by the certifying agent while associated with that certifying agent. Certifying agents and responsibly connected parties must sever their association with the certifying agent when such person does not immediately refuse an offer of employment from a certified operation. Accordingly, we have decided not to include a postcertification prohibition period in this proposal.

(6) *Conflicts of Interest.* Some commenters stated that they understood the proposed conflict of interest provisions to prohibit certifying agents from certifying any organic operation owned or operated by a member of the certifying agent's board of directors or from certifying any organic operation owned or operated by an employee of the certifying agent. One commenter stated that because certification arose from the ranks of organic farmers, there are many certification personnel, including inspectors, who also farm or have family who farm. This commenter stated that it should be permissible for a certifying agent to review and certify an organic operation owned or operated by a responsibly connected person or employee, provided that the responsibly connected person or employee is excluded from the decision-making process with respect to the organic operation to be certified.

The commenters are correct in their interpretation that the first proposal prohibited certifying agents from certifying an operation when the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the operation. This prohibition is limited, however, to the 12-month period prior to the application for certification. The first proposal did not prohibit certifying agents from certifying an operation when an employee of the certifying agent has or has held a commercial interest in the operation. The first proposal prohibited a certifying agent from using an employee in any phase of the certification process when such employee has or has held a commercial interest in an operation making application for certification within the 12-month period prior to the application for certification. A responsibly connected party is any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant for or a recipient of certification or accreditation.

We believe that a certifying agent and a responsibly connected party of such certifying agent hold positions of power and authority which preclude the certification of an operation in which they have or have held a commercial interest during the 12-month period prior to an application for certification. The certifying agent's control over the employment of an agent's employee makes it unreasonable to expect an employee of a certifying agent to impartially carry out the employee's duties when the certifying agent or a responsibly connected party of such agent has an interest in the applicant. Such is not true of an employee who is subordinate to the certifying agent or a responsibly connected party of the certifying agent. Accordingly, we have reproposed the requirement that a certifying agent prevent conflicts of interest by: (1) Not certifying a production or handling operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest within the 12-month period prior to the application for certification and (2) excluding any person with a conflict of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or handling operations for all entities in which the person has or has held a commercial interest within the 12-month period prior to the application for certification. Both of these provisions are found in § 205.501(a)(11).

(7) *Defining Commercial Interest.* A research foundation recommended that the provisions for preventing conflicts, found in this proposal at § 205.501(a)(11), be strengthened by changing "a commercial interest in the operation" to "a commercial interest in the operation or the marketing or distribution of its products." We believe that the recommended addition is unnecessary because "commercial interest" covers all business transactions between the certifying agent or responsibly connected parties, employees, inspectors, contractors, or other personnel of the certifying agent and the applicant for certification or certified operation. This interpretation would not apply to voluntary labor provided, in accordance with § 205.501(a)(11)(iii), by a certified operation to a certifying agent that is a not-for-profit organization with an Internal Revenue Code tax exemption. Further, this interpretation would not apply to the providing of advice, in accordance with § 205.501(a)(11)(iv), concerning organic practices or techniques to any certification applicant or certified operation when such advice is covered by fees under the applicable certification program established under the Act.

(8) *Provision of Information to Producers and Conflicts of Interest.* Commenters were concerned about the effect that some of the conflict of interest provisions would have on certifying agents that provide producers with information on organic practices through forums such as in-house publications, conferences, workshops, informational meetings, and field days

for a fee. Specifically, they were concerned about the impact of the conflict of interest provision requiring that certifying agents prevent conflicts of interest by not providing advice concerning organic practices or techniques to any certification applicant or certified organic production or handling operation for a fee, other than as part of the fees established under the applicable certification program established under the Act. These commenters requested that the paragraph be rewritten to clarify that such activities would not be prohibited. We also received a comment stating that advice relating to improving production yields, market access, etc., is not the function of an inspector and can lead to a nonmonetary conflict of interest. This commenter stated that advice, where given, should be restricted to issues related to the understanding and implementation of the standards.

Certifying agents have historically provided advice concerning organic practices or techniques to any certification applicant or certified organic production or handling operation for a fee through forums such as in-house publications, conferences, workshops, informational meetings, and field days. Such activities and their fees would not be prohibited under the Act or these regulations, provided that such activities were not required as a condition for production or handling certification. Section 205.503(c) would require that the applicant for accreditation provide a copy of the applicant's schedule of fees for all services to be provided under these regulations by the applicant. We would consider such activities to be voluntary participation activities provided by the certifying agent to producers, handlers, and other interested persons under the NOP. We also believe that it is appropriate, as well as industry practice, during an on-site inspection for inspectors to provide advice on a wide range of issues related to an on-site inspection of a production or handling operation. Accordingly, the conflict of interest provisions found at § 205.501(a)(11) have not been rewritten as requested by the commenters.

(9) *Equivalency of Certification Decisions.* We received a variety of comments suggesting changes to the requirement that accredited certifying agents accept the certification decisions made by another USDA-accredited certifying agent as equivalent to its own. Several of these commenters asked whether States with more restrictive standards could challenge certification decisions made by any accredited certifying agents. A few commenters representing State programs stated that States should be able to maintain control over which certifying agents operate within their State. Other commenters suggested that the requirement be amended to: (1) Require that a certifying agent accept the certification decisions made by another USDA-accredited certifying agent as equivalent to its own only after the certifying agent's accreditation has been confirmed by the Department; (2) provide that if a certifying agent doubts the accuracy of another certifying agent's determination, the certifying agent questioning the accuracy can file a complaint with the Secretary; and (3) authorize an accredited certifying agent to request additional documentation from another certifying agent if questions arise regarding the other certifying agent's certification activities or the activities or product of a production or handling operation certified by the other certifying agent.

No organic product may be produced or handled to organic standards lower than the standards of the NOP. To certify organic production or handling operations to the national standards or to more restrictive State standards approved by the Secretary, the certifying agent must be accredited by the Administrator. While States may set more restrictive standards than the national organic standards for product produced or handled within their State, those requirements do not apply to organic product produced or handled outside of such State. Further, a State government may not prevent the marketing or sale in the State of organic product produced in another State to this program's national organic standards. State organic certification programs approved by the Secretary would be required to treat all accredited certifying agents equally. Likewise under this program, accredited certifying agents in one State cannot refuse to recognize another State's product which is certified to these national organic standards.

We disagree with the suggestion to allow certifying agents to challenge the decisions of certifying agents that have not yet had their accreditation confirmed by the Department. We believe that allowing a certifying agent to challenge the certification decisions made by a certifying agent that has not had its site evaluation would create an insurmountable barrier for persons wanting to become accredited under the NOP, especially persons establishing new operations. The proposed accreditation procedures are sufficiently rigorous to permit a well-founded assessment of the applicant's capabilities and qualifications and will allow all eligible certifying agents to receive timely accreditation. We will only accredit certifying agents that we believe possess the expertise and ability to implement the proposed certification program. This includes newly established certifying agents who might require a longer period of time between accreditation and a site evaluation to allow the certifying agent to perform sufficient certification activities for the Department to perform a meaningful site evaluation.

Should questions arise regarding a certifying agent's certification activities, a certified production or handling operation's activities, or the organic status of a certified production or handling operation's product, the questioning certifying agent could report a complaint or allegation of noncompliance, with the certification provisions of this part, to the State program's governing State official or the Administrator. As appropriate, the State program's governing State official or the Administrator will investigate such complaints or allegations. Certifying agents are not authorized to investigate allegations or suspicions of noncompliance by other certifying agents, nor are certifying agents allowed to take unilateral action against an accredited certifying agent, such as refusal to recognize the certification decisions made by another certifying agent.

For the above reasons, we have not changed the requirement that a certifying agent accept the certification decisions made by another USDA-accredited certifying agent as equivalent to its own. This requirement is located at § 205.501(a)(12).

(10) *False or Misleading Claims.* Commenters objected to the requirements that an accredited certifying agent must refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced. A few of these commenters stated that the requirements exceed the authority given by the Act by introducing claims other than those concerning representations of nonorganic product as organic. Additionally, a few commenters believed that the term, "misleading," is too broad and could be interpreted to mean that the certifying agent could make no negative claims about the USDA accreditation program. They suggested that the requirements be amended by removing the reference to misleading claims. Another commenter

believed that the phrase, "or the nature or qualities of products labeled as organically produced," should be deleted because it is vague and would unduly limit the freedom of certifying agents to share information with consumers, farmers, processors, and other interested parties regarding the attributes of organic food and organic production systems, including nutritional properties, freshness, taste, and less reliance on synthetic substances.

We disagree with the commenters who stated that the requirements exceed the authority given by the Act by introducing claims other than those concerning representations of nonorganic product as organic. Claims regarding accreditation status, the USDA accreditation program for certifying agents, and the nature and quality of products labeled as organically produced all fall under the authority of the Act. We believe that the requirements are needed to prevent the dissemination of inaccurate or misleading information to consumers about organically produced products. We further believe that the changes suggested by the commenters would undermine the goal of a uniform NOP by allowing certifying agents to make claims that would state or imply that organic products produced by operations that they certify are superior to those of operations certified by other certifying agents. These requirements would not prohibit certifying agents from sharing factual information with consumers, farmers, processors, and other interested parties regarding verifiable attributes of organic food and organic production systems. Accordingly, the requirements are reproposed in this proposal without change at § 205.501(a)(13).

(11) *Notification of Status of Certified Operations.* Comments received on the requirements addressing documentation to be submitted by certifying agents to the Department regarding the status of certified operations suggested that: (1) The public should have access to the notification of certification status documentation; (2) annual reporting by certifying agents of the name of each operation whose application for certification has been approved is sufficient; and (3) the required reporting should only include the name of those operations certified during the quarter being reported rather than a listing of all operations certified by the certifying agent. First, we believe that the Freedom of Information Act adequately provides for public access to information. Second, we need the required information to facilitate oversight and to ensure that we have relatively current data for responding to inquiries involving the granting of certifications by certifying agents. It was not our intent to have certifying agents update their list of certified entities quarterly. Our intent was to receive on a quarterly basis a listing of all certifications granted by the certifying agent during the quarter being reported. Accordingly, no changes have been made on the basis of these comments to the requirements found in this proposal at § 205.501(a)(14).

(12) *Certifier Compliance With Terms and Conditions Deemed Necessary.* Commenters objected to the requirement that certifying agents must comply with and implement other terms and conditions deemed necessary by the Secretary. This requirement is consistent with § 6515(d)(2) of the Act, which requires a certifying agent to enter into an agreement with the Secretary under which such agent shall agree to such other terms and conditions as the Secretary determines appropriate. Accordingly, this requirement, found at § 205.501(a)(17), is unchanged in this proposal except to change "Secretary" to "Administrator" since the Administrator will be responsible for administration of the NOP.

(13) *Limitations on the Use of Certifying Agent's Marks.* Private certifying agents disagreed with the provision that prohibited certifying agents from requiring, as a condition of use of the certifying agent's identifying mark, compliance with any production or handling requirements other than those provided for in the Act and regulations. Private certifying agents commented that they should be allowed to use their identifying mark to recognize additional achievements by producers and handlers that exceed the requirements proposed in the national organic standards. The commenters' position is the same as that suggested by public input prior to publication of the first proposal.

We believe that the private certifying agents' position advocating the use of their identifying mark to recognize additional achievements is inconsistent with § 6501(2) of the Act, which provides that a stated purpose of the Act is to assure consumers that organically produced products meet a consistent national standard. Accordingly, we are reproposing the provision prohibiting certifying agents from requiring, as a condition of use of the certifying agent's identifying mark, compliance with any production or handling requirements other than those provided for in the Act and regulations or under an approved State organic certification program. This reproposed provision is found at § 205.501(b).

(14) *Additional Requirements for Private Certifying Agents.* Commenters expressed concern regarding the three additional requirements for a certifying agent who is a private person. First, private certifying agents expressed concern regarding the requirement that private certifying agents hold the Secretary harmless for any failure on their part to carry out the provisions of the Act and regulations. Their concern focused on the fact that applicants for certification can appeal a certifying agent's refusal to certify to the Secretary and that a certifying agent's recommendation to suspend or revoke a certification can be appealed to the Secretary. They believe that, without the authority to independently deny, suspend, or revoke certification, the certifying agent becomes liable for the actions of the Secretary.

We disagree with the assertion that the certifying agent becomes liable for the actions of the Secretary. The provision clearly states that private certifying agents hold the Secretary harmless for any failure on their part. This in no way would make the certifying agent responsible for any failure on the part of the Department. Further, the wording of this provision is consistent with § 6515(e)(1) of the Act, which provides that private certifying agents shall agree to hold the Secretary harmless for any failure on the part of the certifying agent to carry out the provisions of the Act. Accordingly, we are reproposing this regulation at § 205.501(c)(1).

Second, commenters expressed concern regarding the requirement that certifying agents furnish reasonable security, in an amount and according to terms as the Secretary may by regulation prescribe, for the purpose of protecting the rights of production and handling operations certified by such certifying agent. The commenters expressed concern regarding what would be the dollar amount of the security, how the dollar amount of the security would be determined, and in what form the security might be furnished. Several commenters expressed concern over the availability of errors and omissions insurance. The commenters also expressed a belief that guidance on what reasonable security might entail will be needed by accreditation applicants to evaluate their costs for accreditation.

A private-entity certifying agent must furnish reasonable security for the purpose of protecting the rights of operations certified by such certifying agent. This security is to ensure the performance of the certifying agent's

contractual obligations. As noted elsewhere in this proposed rule, the specific amount and type of security that must be furnished by a private certifying agent will be the subject of future rulemaking by the Department. Such rulemaking will provide for public input and will occur prior to the call for applications for accreditation. We anticipate that the amount of the security will be tied to the number of clients served by the certifying agent and the anticipated costs of certification that may be incurred by its clients in the event that the certifying agent's accreditation is suspended or revoked. We anticipate that the security may be in the form of cash, surety bonds, or other financial instrument (such as a letter of credit) administered in a manner comparable to cash or surety bonds held under the Perishable Agricultural Commodities Act. Accordingly, we are reproposing this regulation at § 205.501(c)(2).

Third, commenters expressed concern regarding the requirement that a private person accredited as a certifying agent must transfer to the Secretary and make available to any applicable State program's governing State official all records or copies of records concerning the private certifying agent's certification activities in the event that the certifying agent dissolves or loses its accreditation. This requirement is consistent with § 6515(c)(3) of the Act, which provides that if any private person that was certified under the Act is dissolved or loses its accreditation, all records or copies of records concerning such person's activities under the Act shall be transferred to the Secretary and made available to the applicable State program's governing State official. In addition to being consistent with the Act, we believe that this regulation is necessary to ensure the continuity and integrity of the NOP. Accordingly, we are reproposing this regulation at § 205.501(c)(3).

(15) *Public Access to Applicant Information.* The first proposal included provisions regarding what information had to be submitted by an accreditation applicant. Commenters requested the addition of a paragraph addressing public access to this information about the applicant's organization and intended certification activities. We have not made this requested change because the proposed recordkeeping and availability requirements under this program, coupled with the Freedom of Information Act, adequately provide for public access to information. The regulations on applicant information are found at § 205.503 and include two additions to the provisions of the first proposal. This proposal requires the applicant to provide the name of the person responsible for the certifying agency's day-to-day operations and to submit a copy of its schedule of fees for all services to be provided under these regulations.

(16) *Application Requirements for States.* Commenters stated that State certifying agents should not be required to submit documents and information regarding personnel, administrative policies and procedures, and financial policies and procedures to demonstrate evidence of expertise and ability. They believe that the requirements should not apply to States that have established hiring procedures, standard qualifications for job descriptions, and statewide policies for training, evaluating, and supervising personnel. They also stated that administrative policy and procedure review should be limited to organic program administration, not to agencywide policies or procedures such as financial policies.

We acknowledge that States have established hiring procedures, standard qualifications for job descriptions, administrative procedures, and statewide policies for training, evaluating, and supervising personnel and that such policies and procedures would be applicable to State certifying agents. This fact, however, does not make States uniquely different from private accreditation applicants who would have similar policies and procedures in exercising good business practices. State certifying agents cannot be exempt from these requirements simply because they are a government agency.

We anticipate that a State will submit its established policies and procedures to meet the requirements for demonstrating its expertise in organic production and handling techniques and its ability to fully comply with and implement the national organic certification program. A stated purpose of the Act is the establishment of national standards. We believe such national standards extend to uniform requirements for State and private certifying agents unless otherwise provided by the Act. We further believe the required information is essential to enable the Administrator to make a determination concerning approval of an application for accreditation. Accordingly, the requirements for demonstrating expertise in organic production and handling techniques and an ability to fully comply with and implement the national organic certification program remain the same for private and State certifying agents. These requirements are found at § 205.504.

(17) *Public Access to Information on Certified Operations.* Commenters requested that the public be provided information about a certified operation's farming practices, use of pesticides, and livestock production practices. All production and handling operations must meet the requirements of the national organic certification program to be certified. An accredited certifying agent will determine whether an operation meets those requirements. Certified operations can be held to no other standards except, if applicable, the requirements of an approved State organic certification program. Accordingly, we believe access to the requested information is unnecessary. We also believe the information to be confidential business information that should not be released to the public. Therefore, we have made no changes to the proposed rule to accommodate the commenters' request.

(18) *Conflicts of Interest.* The first proposal required a description of procedures intended to be implemented to prevent the occurrence of conflicts of interest. It also required the identification of any food or agriculture-related business interests of all personnel intended to be used in the certification operation, including administrative staff, certification inspectors, members of any certification review and evaluation committees, all parties responsibly connected to the certification operation, and immediate family members, that may result in a conflict of interest. Commenters stated that existing State policies should be sufficient to prevent conflicts of interest. They also stated that lists of the business interests of all inspectors, program staff, and their families are unnecessary.

We agree with the commenters that existing State policies should be sufficient to prevent conflicts of interest. However, we disagree with the commenters' assertion that lists of the business interests of all inspectors, program staff, and their families are unnecessary. At § 6515(h), the Act places responsibility for the prevention of conflicts of interest with the certifying agent. We, however, have responsibility for ensuring that the certifying agent complies with that responsibility. We believe these requirements will provide the Administrator with information essential to the identification of conflicts of interest. A stated purpose of the Act is the establishment of national standards. We believe such national standards extend to uniform conflict of

interest requirements for State and private certifying agents. Further, for conflict of interest standards to achieve their intended effectiveness, they must be uniformly applied to both State and private certifying agents. The required information is also essential to the Administrator's determination of the applicant's suitability for accreditation. As the commenters point out, States have established conflict of interest policies and procedures. Thus, the required information should be readily available for submission to the Administrator with minimal inconvenience to the certifying agent. Accordingly, we have made no changes in this proposal based on these comments. Regulations concerning conflicts of interest are found at §§ 205.501(a)(11) and 205.504(c) in this proposal.

(19) *Accreditation Prior to Site Evaluation.* Commenters expressed concern that applicants could be accredited prior to a site evaluation of the applicant's facilities and operations. Most, however, recognized the need for accreditation decisions on written materials as opposed to further delay to program implementation. A few of the commenters urged USDA to complete the site evaluations during the implementation phase. The first proposal provided that an initial site evaluation of the operation of each certifying agent must be performed for the purpose of verifying its compliance with the Act and regulations. Two restrictions concerning timing were placed on the performance of an initial site evaluation. First, the site evaluation had to be performed within a reasonable period of time after the date on which the agent's notice of approval of accreditation was issued. Second, the site evaluation had to be performed after the agent had conducted sufficient certification activities for the Administrator to examine its operations and evaluate its compliance with the general requirements for accreditation.

We never intended that a site evaluation be required prior to accreditation. While site evaluations could be conducted before approval, we believe accreditation approval without a site evaluation is appropriate. We believe that the commenters' concerns are adequately addressed by the first proposal, which provided for a well-founded assessment of the applicant's qualifications and capabilities through a sufficiently rigorous review of the application and supporting documentation. In cases where the document review raises concerns regarding the applicant's qualifications and capabilities and the Administrator deems it necessary, a preapproval site evaluation would be conducted.

As noted above, a site evaluation to verify compliance with the Act and regulations would be conducted within a reasonable time period after the date on which the agent's notice of approval of accreditation was issued. Following the site evaluation, the certifying agent's accreditation would be continued provided the certifying agent is in compliance with the Act and regulations. Should it be found that the accredited certifying agent is not in compliance with the Act and regulations, the Administrator will issue the certifying agent a notification of noncompliance and afford the certifying agent an opportunity to correct the deficiencies. If the deficiencies are not corrected, the Administrator will begin proceedings to suspend or revoke the certifying agent's accreditation.

We also believe that: (1) Conducting a site evaluation of a newly established certifying agent before it had begun any certification activities might not contribute information that would be useful for the Department's evaluation; (2) previously existing certifying agents also would need time to make adjustments in their operations to comply with the NOP regulations; and (3) requiring full site evaluations and peer reviews to be conducted prior to granting accreditation would further delay implementation of the Act. Accordingly, we have made no changes to the application requirements found at § 205.502 or the site evaluation requirements found at § 205.508 on the basis of these comments.

(20) *Conditional Accreditation.* Commenters suggested that the rule provide for conditional accreditation of certifying agents. We disagree with the concept of conditional accreditation. We believe accreditation before a site evaluation to be the most effective means of providing new certifying agents with the opportunity to participate in the NOP. New certifying agents need to be unconditionally accredited to sell their services to potential organic clients. Such certifying agents need organic clients to demonstrate to the Administrator their compliance with the Act and regulations relative to the certification of organic producers or handlers. Furthermore, the Act does not provide for conditional accreditation. Accordingly, the proposed accreditation program for initial accreditation provides for: (1) Review and analysis of the applicant's application and evidence of expertise and ability, (2) approval of accreditation upon determination that the applicant meets the requirements for accreditation, and (3) site evaluation to determine compliance with the Act and regulations.

(21) *Application Fees Incurred From Notifications of Noncompliance.* Commenters questioned whether a new application for accreditation, following the correction of deficiencies identified in the notification of noncompliance, would require a second application fee. The commenters stated that fees paid for the initial application should cover timely resubmission of the application after correction of deficiencies. In this proposal, we have replaced the flat fee for accreditation with an hourly user fee system, which will involve billing for actual time used in the accreditation process. Accordingly, there will be additional costs to applicants who submit a description of the actions taken to correct the deficiencies noted in the notification of noncompliance.

(22) *Peer Review Panels.* Comments were received expressing various opinions regarding the peer review panel provisions of the first proposal. First, commenters stated that peer review panels should participate in site evaluations. Prior to publishing the first proposal, the Department received some public input which also suggested the use of peer reviewers in the site evaluation process. As noted in the first proposal, we did not provide for such participation because we believed that the use of peer reviewers could pose an excessive burden on the certifying agents, would increase the costs of conducting site evaluations, and could delay site evaluations and because AMS staff are well qualified to perform the site evaluations. We have made no change to our proposal as a result of this comment.

Second, commenters stated that peer review panels should participate in the initial review of an application for accreditation. We believe this would not be an effective use of panel members' talents and expertise and would not be cost effective. We have made no change to our proposal as a result of this comment.

Third, an industry association stated that section 6516(a) of the Act clearly states that the Secretary shall consider a report, not three to five individual reports, in determining whether to approve an applicant for accreditation. We do not agree that the Act requires a single report, nor do we believe that it is usual to have consensus in peer review. We also believe that it is impractical to bring peer reviewers together for the purpose of reviewing the information provided and drafting a single report. The Administrator could convene a peer review panel meeting or

conference call if necessary. Such meeting or conference call would be conducted in a manner that would ensure the actions of panel members are carried out on an individual basis with any opinions and recommendations by a member being made individually. A peer review panel meeting or conference call will be held solely to give and receive information. Such meeting or conference call will not be held for the purpose of achieving consensus by the peer review panel. The written report of each panel member would reflect the particular knowledge, expertise, and opinion that its author-member brings to the panel. The Administrator will consider all points in the individual reports in making a determination as to the continued operation of the accredited certifying agent. We have made no change to our proposal as a result of this comment.

Fourth, commenters stated that the peer review panel regulations should be revised to specify what situations, other than continuation or renewal of accreditation, would trigger a peer review; that a peer review panel should be used in determining noncompliance with accreditation requirements; and that a peer review panel should be convened to review any decision of noncompliance prior to initiation of proceedings to suspend or revoke a certifying agent's accreditation. The first proposal provided that the Administrator may convene a peer review panel at any time for the purpose of evaluating a certifying agent's activities under the Act and regulations. This provision would provide flexibility for the Administrator to seek recommendations from peer reviewers at other times when it may be necessary to evaluate a certifying agent's compliance with the Act and regulations. We do not believe that it is practical or necessary to require the use of peer review panels in determining noncompliance and decisions to suspend or revoke an accreditation. We have made no change to our proposal as a result of these comments.

(23) *Purpose of Annual Reporting Requirements.* At least one commenter was confused regarding the purpose for having certifying agents submit annual reports to the Administrator. The reports would update information and evidence of expertise and ability previously submitted by the certifying agent; support any changes being requested in the areas of accreditation; describe the measures that were implemented in the previous year and any measures to be implemented in the coming year to satisfy any terms and conditions determined by the Administrator to be necessary, as specified in the most recent notification of accreditation or notice of renewal of accreditation; and describe the results of the most recent inspector performance appraisals and program evaluation and adjustments to the certifying agent's operation and procedures implemented and intended to be implemented in response to the appraisals and program evaluation. The first proposal stated that this information would be reviewed by the Administrator to determine whether the certifying agent was maintaining its accreditation by satisfying the requirements of the Act and regulations and to assess the need for a site evaluation. We believe that an annual process of reviewing information submitted by certifying agents is necessary so that the Administrator can be informed of any changes in the procedures and personnel used by the certifying agents. We have made no change to our proposal as a result of this comment.

Accreditation—Additional Provisions

Upon further review of the accreditation provisions in the first proposal, we have decided to propose the following additions and changes.

(1) *Access to Records.* We have added the requirement that the records maintained by the certifying agent under the Act and regulations be made available for copying by authorized representatives of the Secretary and the applicable State program's governing State official. This addition is necessary to ensure that authorized representatives are able to obtain copies of records applicable to a review or an investigation regarding compliance with the Act and regulations. This addition, found at § 205.501(a)(9), is authorized under section 6506 of the Act.

(2) *Conflicts of Interest.* A conflict of interest regulation in the first proposal required that certifying agents prevent conflicts of interest by not certifying an operation through the use of any employee that has or has held a commercial interest in the operation, including the provision of consulting services, within the 12-month period prior to the application for certification. This regulation was closely related to a second regulation which required certifying agents to prevent conflicts of interest by not assigning an inspector to perform an inspection of an operation if the inspector has or has held a commercial interest in the operation, including the provision of consulting services, within the 12 months prior to conducting the inspection. For clarification, this proposal combines the regulations at § 205.501(a)(11)(ii). This new regulation provides for excluding any person, including contractors, with conflicts of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production and handling operations for all entities in which such person has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification. This regulation would permit a certifying agent to certify the operation of an employee or contractor or an employee's or contractor's immediate family member provided the employee or contractor was not used in certifying the production or handling operation.

(3) *Reporting Requirements for Certifying Agents.* The first proposal required a certifying agent to submit to the Administrator a copy of each notification of noncompliance issued simultaneously with its issuance to the certification applicant or the certified operation. It also required a certifying agent to submit to the Administrator on a quarterly calendar basis the name of each operation certified. In this proposal, we have expanded the provision to provide that certifying agents must submit to the Administrator: (1) A copy of any notice of denial of certification, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation issued simultaneously with its issuance; and (2) on a quarterly calendar basis, the name, address, and telephone number of each operation granted certification. This information is needed to facilitate oversight and to ensure that we have relatively current data for responding to inquiries involving the granting of certifications by certifying agents. These changes are included in § 205.501(a)(14).

We anticipate using the data collected under § 205.501(a)(14) to establish and maintain 2 Internet databases. The first Internet database would be accessible to the general public and would include the names and other appropriate data on certified organic production and handling operations. The second Internet database would be password protected and only available to accredited certifying agents and USDA. This second database would include data on production and handling operations issued a notification of noncompliance, noncompliance correction, denial of certification, certification, proposed suspension or revocation of certification, and

suspension or revocation of certification. Certifying agents would use the second Internet database during their review of an application for certification.

(4) *Requirements for Nondiscrimination.* We have included at § 205.501(d) the provision that no private or State entity accredited as a certifying agent under subpart F shall exclude from participation in or deny the benefits of the NOP to any person due to discrimination because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status. This regulation is consistent with USDA regulations which prohibit discrimination in its programs and activities.

(5) *Submission of Policies and Procedures.* The first proposal required an applicant for accreditation as a certifying agent to submit documents and information to demonstrate the applicant's expertise in organic farming or handling techniques, its ability to fully comply with and implement the organic certification program, and its ability to comply with the requirements for accreditation. Much of the documentation and information required involved submission of a description of a policy or procedure to be used by the certifying agent. In this proposal we have changed the requirement from submission of a description of the policy or procedure to submission of a copy of the actual policy or procedure. This will facilitate the Department's determination of an applicant's eligibility for accreditation by providing more complete information. By requiring a copy of each policy and procedure, which should already be in the possession of the applicant, rather than a description of each, we have lessened the burden on applicants for accreditation. This change is found in § 205.504 of this proposal.

(6) *Public Access to Certification Certificates.* In this proposal, we have added the requirement that certifying agents make copies of certification certificates issued during the current and 3 preceding calendar years available to the public. Such documents may be useful to consumers wishing to verify that an operation is certified to produce and label agricultural products as organic. Copies of certification certificates will be especially valuable in assisting handlers in assuring that the products they receive labeled as organic were produced and handled by certified organic operations. This requirement is found at § 205.504(b)(5)(i).

(7) *Submission of Residue Testing Procedures.* We believe that applicants for accreditation should provide evidence of expertise and ability in meeting the sampling and residue testing requirements of these regulations. Therefore, we have added the requirement that applicants for accreditation submit a copy of the procedures to be used for residue testing. This requirement is found at § 205.504(b)(6). Residue testing requirements are found at § 205.670.

(8) *Elimination of Section on Confirmation of Accreditation.* We have amended the section on approval of accreditation by adding the duration of accreditation provision formerly included in the first proposal's section on confirmation of accreditation. We have also eliminated the section on confirmation of accreditation. We have taken this action to eliminate the confusion created by having a section on approval of accreditation and a section on confirmation of accreditation.

(9) *Denial of Accreditation.* We have amended the denial of accreditation regulations and eliminated the section on denial of confirmation of accreditation. We have taken this action to eliminate the confusion created by having a section on denial of accreditation and a section on denial of confirmation of accreditation. We have added to the denial of accreditation regulations that a notification of noncompliance can be issued based on the findings of a site evaluation.

Under the first proposal's denial of accreditation regulations, the Administrator could institute proceedings to deny accreditation to an applicant who did not correct the deficiencies noted in a notification of noncompliance within the time specified. In this proposal, we have amended these regulations to provide that the Administrator will provide the applicant with a written notification of accreditation denial or begin proceedings to suspend or revoke the certifying agent's accreditation if accredited prior to a site evaluation. Such action will be taken when the applicant fails to correct the deficiencies, report the corrections by the date specified, or file an appeal by the date specified in the notification of noncompliance.

We have also clarified that an applicant who has received written notification of accreditation denial or had its accreditation suspended may apply for accreditation again at any time. Additionally, we have provided that a private certifying agent whose initial accreditation is revoked following an initial site evaluation will be ineligible for accreditation for a period of not less than 3 years following the date of such determination. This period of ineligibility is consistent with section 6519(e) of the Act. These changes are included in § 205.507.

A certifying agent accredited prior to an initial site evaluation whose site evaluation reveals that the certifying agent is not properly adhering to the provisions of the Act or these regulations will be subject to suspension of its accreditation. A private certifying agent accredited prior to an initial site evaluation who's site evaluation reveals that the certifying agent has violated the provisions of the Act and these regulations or that falsely or negligently certifies any production or handling operation that does not meet the terms and conditions of this national organic certification program as an organic operation will be subject to revocation of its accreditation. Section 205.660(b) of subpart G provides that the Secretary may initiate suspension or revocation proceedings against a certified operation upon initiation of suspension or revocation proceedings against or upon suspension or revocation of the certified operation's certifying agent's accreditation.

(10) *Peer Review Panels.* We have removed the provision which provided that the Administrator may convene a peer review panel at any time for the purpose of evaluating an applicant for accreditation or a certifying agent's activities under the Act and regulations. This change has been made because peer review panels will only be used to assist in the evaluation of applicants for accreditation, amendment to an accreditation, and renewal of accreditation.

Subpart G—Administrative

The National List of Allowed and Prohibited Substances

Proposal Description

This subpart contains criteria for determining which substances and ingredients are allowed or prohibited in products to be sold, labeled, or represented as "organic" or "made with organic (specified ingredients)." It establishes the National List of Allowed and Prohibited Substances (National List) and identifies specific substances which may or may not be used in organic production and handling operations. Sections 6504, 6510, 6517, and 6518 of the Organic Foods Production Act (OFPA) of 1990 provide the Secretary with the authority to develop the National List. The contents of the National List are based upon a Proposed National List, with

annotations, as recommended to the Secretary by the National Organic Standards Board (NOSB). The NOSB is established by the OFPA to advise the Secretary on all aspects of the National Organic Program (NOP). The OFPA prohibits synthetic substances in the production and handling of organically produced agricultural products unless such synthetic substances are placed on the National List.

The first category of the National List includes synthetic substances allowed for use in organic crop production. The second category includes nonsynthetic substances prohibited for use in organic crop production. The third category of the National List includes synthetic substances allowed for use in organic livestock production. The fourth category includes nonsynthetic substances prohibited for use in organic livestock production. The fifth category of the National List includes nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients)." The final category of the National List includes nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients)." This subpart also outlines procedures through which an individual may petition the Secretary to evaluate substances for developing proposed National List amendments and deletions.

National List (General)

The NOSB is responsible for making the recommendation of whether a substance is suitable for use in organic production and handling. The OFPA authorizes the NOSB to develop and forward to the Secretary a Proposed National List and any subsequent proposed amendments. In March 1995, the NOSB initiated a petition process to solicit public participation in identifying specific materials to be added to the National List. The NOSB convened a Technical Advisory Panel (TAP) to review substances identified in the petition process and made extensive recommendations on a Proposed National List during its meetings in 1995 and 1996. In 1999, the NOSB selected materials left from the original petition process to authorize a second round of TAP reviews. The NOSB used these updated TAP reviews to make additional recommendations on the Proposed National List at its October 1999 meeting. With the exception of four substances on which the Secretary did not concur with the NOSB recommendations and minor formatting changes, the National List in this proposal corresponds to the recommendations on allowed and prohibited substances made by the NOSB. The National List in this proposal has also been developed in consultation with the Food and Drug Administration (FDA), the Environmental Protection Agency (EPA), and the Food Safety Inspection Service (FSIS) of USDA. Additionally, we have made changes in response to public comment received on the first proposal.

Nothing in this subpart alters the authority of other Federal agencies to regulate substances appearing on the National List. FDA establishes safety regulations on approved and prohibited uses of substances in food production and processing. FSIS has the authority to determine efficacy and suitability regarding the production and processing of meat, poultry, and egg products. FDA and FSIS restrictions on use or combinations of food additives or ingredients take precedence over the approved and prohibited uses specified in this proposal. Any combinations of substances in food processing not already addressed in FDA and FSIS regulations must be approved by FDA and FSIS prior to use. Use-of-substance requirements are proposed by FDA and FSIS in rulemaking actions and are frequently updated with revised use requirements. It is important that certified organic producers and handlers of both crop and livestock products consult with FDA regulations in 21 CFR parts 170 through 199 and FSIS regulations in this regard. All feeds, feed ingredients, and additives for feeds used in the production of livestock in an organic operation must comply with the Federal Food, Drug, and Cosmetic Act (FFD&CA). Animal feed labeling requirements are published in 21 CFR part 501, and new animal drug requirements and a listing of approved animal drugs are published in 21 CFR parts 510–558. Food (feed) additive requirements, a list of approved food (feed) additives generally recognized as safe substances (GRAS), substances affirmed as GRAS, and substances prohibited from use in animal food or feed are published in 21 CFR parts 570–571, 21 CFR part 573, 21 CFR part 582, 21 CFR part 584, and 21 CFR part 589, respectively. Furthermore, the Food and Drug Administration has worked closely with the Association of American Feed Control Officials (AAFCO) and recognizes the list of additives and feedstuffs published in the AAFCO Official Publication, which is updated annually.

National List—Changes Based On Comments

This subpart differs from our first proposal in several respects as follows:

(1) *Genetically Engineered Organisms (GEO's).* To solicit public comment on the use of genetically engineered organisms in organic production and handling, we included two such materials on the National List in the first proposal. As discussed in Production and Handling—Subpart C, we received many thousands of comments opposing the use of substances or organisms produced through genetic engineering in organic production and handling. Many commenters expressed strong concerns that GEO's do not meet current consumer expectations of organic agriculture or an organically produced product. They stated that existing national and international organic certification standards clearly and consistently prohibit GEO's. Accordingly, this proposal prohibits GEO's and their derivatives and the products of GEO's and their derivatives in any product or ingredient that is sold, labeled, or represented as organic. As a result of the prohibition, the National List does not contain any materials derived from GEO's.

(2) *Inclusion of Substances not Recommended by the NOSB.* The first proposal allowed some synthetic substances in organic crop production and handling that the NOSB had not included on the proposed National List. Citing the statutory requirements of the OFPA, commenters were overwhelmingly opposed to adding substances to the National List that had not been recommended by the NOSB. Every substance on the National List in this proposal was favorably recommended by the NOSB.

With four exceptions, the National List included in this proposal contains every substance that the NOSB recommended to allow in organic production and handling. The Secretary has not accepted the NOSB recommendations to allow sulfur dioxide in the production of wine labeled as "made with organic grapes." Additionally, the Secretary has not concurred with the NOSB recommendation to allow the antibiotics, Streptomycin and Terramycin, in organic crop production or to allow livestock producers to administer synthetic Oxytocin for approved organic veterinary practices. The Secretary decided not to add sulfur dioxide to the National List because its use produces sulfites, which are

prohibited in the OFPA. Streptomycin and Terramycin were not added to the National List for use in crop production in order to be consistent with this proposal's prohibition on the use of all antibiotics in animal production. The Secretary's decision not to allow livestock producers to administer synthetic Oxytocin is based on extensive public comment that opposed the use of animal drugs including hormones in organic livestock operations. Many certifying agencies have allowed producers to administer Oxytocin to animals that experience severe complications resulting from labor. While most of the public comment strongly opposed the use of synthetic hormones in organic dairy production, Oxytocin has some uses that do not involve lactation but are instead related to an animal's postpartum survival. Not allowing Oxytocin in organic operations is responsive to the public comment opposing the use of synthetic hormones but does preclude the use of an animal medication that some producers have previously been able to use in emergency situations.

(3) *Prohibited Nonsynthetic Substances.* The National List in the first proposal contained no prohibited nonsynthetic (natural) substances. Many commenters requested that the four nonsynthetic substances which the NOSB proposed to prohibit be added to the National List. We agree with this position, and this proposal lists ash from manure burning, mined sodium fluoaluminate, strychnine, and tobacco dust as natural substances that are prohibited in organic crop production and handling. In addition, we have included arsenic and lead salts on the National List of prohibited natural substances in accordance with provisions of the OFPA.

(4) *Annotations on National List Substances.* The National List in the first proposal did not include all of the annotations originally developed by the NOSB for the materials it recommended to include on the National List. The OFPA stipulates that when basing the National List upon the NOSB's recommendations, the Secretary shall include "an itemization, by specific use or application," of each synthetic substance permitted or natural substance prohibited. This itemization, commonly known within the organic industry as an annotation, has been used by existing State and private certification agents to regulate the use of allowed materials. Annotations can establish allowable sources or procedures for obtaining a substance, specify the crops or conditions for which it may be applied, establish use restrictions based on environmental monitoring, or create other conditions to govern the use of a substance.

Many commenters stated that removing annotations diminished the NOSB's role in advising the Secretary on the content of the National List. Commenters also stated that annotations are essential for ensuring that substances are used in a manner which is consistent and compatible with a system of organic production and handling. Considering how annotations have been applied in regulating the use of allowed substances by State and private certifying agents, we have incorporated every feasible NOSB-proposed annotation in this proposal.

(5) *Incidental Additives.* The first proposal stated that a nonagricultural synthetic substance occurring as an incidental additive, including a processing aid, could be used in organic production and handling without having to be added to the National List. This position was based on FDA and FSIS regulations which require that active ingredients, but not incidental additives, appear on a product label. Because incidental additives were not active ingredients in organically processed food under these regulations, the first proposal maintained that they were not prohibited by the OFPA and would not need to be added to the National List.

Thousands of commenters responded with varying opinions on this subject. Many commenters approved of the proposed approach, generally stating that processing aids are essential and needed for most agricultural products. These commenters felt that eliminating their use entirely would greatly limit handlers' ability to produce a wide variety of organic products. However, other commenters strongly opposed allowing the use of any nonagricultural synthetic substance that had not been petitioned, reviewed, and recommended by the NOSB; published for comment in the **Federal Register**; and then added by the Secretary to the National List. Some commenters protested the use of any synthetic incidental additives in organic handling operations. They stated that their use is not consistent with the principles of organic agriculture and that consumers currently do not believe that such aids and additives are used in organically processed products.

Prior to the first proposal, the NOSB reviewed this issue and recommended allowing both synthetic and nonsynthetic incidental additives in processed organic products. The NOSB's 1995 recommendation stated that nonsynthetic, nonagricultural products used as ingredients, processing aids, or incidental food additives should be categorically allowed in organically processed products unless specifically prohibited and that synthetic, nonagricultural products should not be used as ingredients, processing aids, or incidental food additives unless specifically included on the National List. The NOSB applied these recommendations to processed foods labeled "organic" and "made with organic (specified ingredients)." However, the OFPA does not allow the categorical allowance for nonsynthetic, nonagricultural products. Section 6510(a)(4) of the OFPA requires that any nonorganically produced ingredient added to an organic product must be included on the National List.

The NOSB revisited this issue at its February 1999 meeting when it adopted criteria for accepting (adding to the National List) a synthetic processing aid or adjuvant. These criteria are an interpretation and application of the general evaluation criteria for synthetic substances contained in the OFPA that the NOSB will apply to processing aids and adjuvants. To review the adopted criteria, the public can visit the USDA NOP website: www.ams.usda.gov/nop/nosbfeb99.html or write Program Manager, Room 2945 South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing Programs, NOP, PO Box 96456, Washington, DC 20090–6456. The NOSB adopted these criteria as internal guidelines for evaluating processing aids and adjuvants. The adopted criteria do not supercede the criteria contained in the OFPA, or replace FDA's authority to regulate food additives.

We are proposing that to be used in or on a processed product labeled as "organic" or "made with organic (specified ingredients)," a nonagricultural substance, whether synthetic or nonsynthetic, must be included on the National List. This position supports the NOSB recommendation that synthetic substances be allowed in organic processed foods but incorporates the National List requirement reflected in public comment. We have divided the materials on this list (§ 205.605) in the current proposal to reflect the recommended distinction made by the NOSB between synthetic and nonsynthetic substances. This distinction does not affect how the substances may be used. We recognize that many commenters, basing their argument on the OFPA, objected to allowing any synthetic substances in processed organic products. However, we believe that the OFPA does allow

synthetic substances, when added to the National List, to be used in this manner. The criteria utilized by the NOSB for evaluating processing aids and adjuvants are very restrictive and, if applied to all incidental additives, should minimize the number of substances added to the National List.

(6) *Inert Ingredients in Formulated Products.* The first proposal addressed the presence of synthetic inert ingredients in formulated products used as production inputs in organic crop or livestock operations. Formulated products are multiingredient compounds including pesticides, fertilizers, and animal drugs and feeds. In accordance with the OFPA, we proposed that a formulated product containing an inert ingredient could be used, provided that the substance did not appear on EPA's List 1 as an Inert of Toxicological Concern. We also prohibited the use of synthetic inerts not on EPA List 1 if the substance was also used as an active ingredient that had not been added to the National List. To review or to receive the most current listing of the EPA Inerts, the public can visit EPA's Internet home page at http://www.epa.gov/opprd001/inerts/lists.html, or write to Registration Support Branch (Inerts), Registration Division (Mail Code 7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

The first proposal interpreted the statutory prohibition on EPA List 1 inerts as allowing the use of synthetic inert ingredients that were not specifically prohibited. This allowed the use of products containing synthetic inert substances (provided that they were not also used as active substances) included on the other EPA inert lists: List 2, Potentially Toxic Inerts; List 3, Inerts of Unknown Toxicity; and List 4, Inerts of Minimal Concern. We also applied the term, "inert," to all nonactive ingredients contained in any formulated product used in organic production. This meant that the nonactive ingredients in animal feeds (fillers or additives), animal drugs (excipients), and fertilizers (carriers or adjuvants) would only be prohibited if they were classified by the EPA as List 1 inerts.

We received many comments stating that our restrictions on inert ingredients were too permissive and would result in many traditionally prohibited materials being used in organic production. Commenters stated that the statutory prohibition on EPA List 1 inerts did not imply that all other inerts should be allowed and argued that the NOSB had the authority to prohibit additional substances. Citing the uncertainty associated with EPA List 2 (potentially toxic) and EPA List 3 (unknown toxicity) inert ingredients, they questioned how such substances could satisfy the criteria in OFPA for adding synthetic substances to the National List. Commenters also opposed expanding the definition of inert to include nonactive ingredients in all formulated products. They stated that the EPA classifies only those inerts used in pesticides, and that many of the substances routinely used in other types of formulated products were not subject to review. Therefore, substances not used in pesticides would not appear on any EPA list and would be allowed. Finally, commenters cited the disparity between the allowance for synthetic inert ingredients in the first proposal and the more restrictive substance review procedures used by existing organic certifying agents.

The NOSB responded to the provisions for inert ingredients contained in the first proposal. At its meeting in March 1998, the NOSB stated that synthetic compounds should not be allowed in production inputs unless they appear on the National List. In February 1999, the NOSB voted to prohibit EPA List 1 and 2 inerts, prohibit EPA List 3 inerts unless specifically allowed by the NOSB, and allow EPA List 4 inerts unless specifically prohibited. The NOSB also recommended full disclosure of all ingredients in formulated products, called for an expedited review of EPA List 3 inerts currently in common use in organic production, and endorsed an 18-month phase-out period for EPA List 3 inerts not ultimately allowed.

In this proposal, only EPA List 4 inerts are allowed as ingredients in formulated products used in organic production. This would not include varieties of EPA List 4 substances such as corn starch, lecithin, or citric acid that are the product of excluded methods. Additionally, the term inert is restricted to nonactive ingredients in pesticides. Synthetic nonactive ingredients in formulated products used as production inputs, including fertilizers, animal drugs, and feeds, must be included the National List. While the OFPA prohibits using a fertilizer containing synthetic ingredients or a commercially blended fertilizer containing prohibited materials, the requirement does not apply to synthetic substances included on the National List. The NOSB recommended and the Secretary concurs that certain synthetic substances used in fertilizer-formulated products should be included on the National List. We have retained the provision from the first proposal prohibiting the use of any formulated product containing a EPA List 1 Inert. Using the criteria established in the OFPA for evaluating synthetic substances, the NOSB may review inert ingredients on EPA List 2 or 3 as well as other synthetic, nonactive substances used in formulated products for inclusion on the Proposed National List it forwards to the Secretary.

We recognize that inert ingredients in pesticides and similar substances in other formulated products pose one of the most problematic examples of the use of synthetic materials in organic production. For example, verifying the use of inerts and similar substances such as fillers, carriers, additives, and excipients has been difficult because they are not required to appear on ingredient labels, and formulators typically treat product formulas as confidential information. At times, certifying agents have been unable to determine the exact composition of formulated products proposed for use in organic production. In other instances, organic producers have applied formulated products containing inert ingredients and similar substances that are not specifically allowed. We are challenged with balancing standard practice with the strict statutory requirement that producers and handlers apply only those synthetic substances added to the National List. As sanctioned by OFPA, synthetic substances can be used in organic production as long as they appear on the National List. The development and maintenance of the National List has been and will be designed to allow the use of a minimal number of synthetic substances that are acceptable to the organic industry and meet the OFPA criteria.

Two principles will be essential for responding to this challenge: greater disclosure of the contents of formulated products and an expedited review of inert ingredients and other nonactive substances. The OFPA recognized the need for disclosure by requiring the NOSB to work with formulators to obtain a complete list of ingredients in their products. The NOSB has initiated this work, and its effort is ongoing as of the date of this publication. It is our understanding from the comments, hearings, and information considered by the NOSB that the organic industry has made considerable progress on disclosure of inert ingredients since the passage of OFPA. Formulators have responded to the incentive to provide products using EPA List 4 inert ingredients, and certifying agents have

gained greater access to information on product composition. EPA has expressed its willingness to expedite the review of its List 2 and 3 inerts, which the NOSB identifies as particularly important in formulated products widely used in organic operations. The organic industry should clearly understand that NOSB evaluation of the wide variety of inert ingredients and other nonactive substances will require considerable coordination between the NOP, the NOSB, and industry. Materials review can be anticipated as the NOSB's primary activity during NOP implementation. Considering the critical nature of this task, the organic industry should make a collaborative effort to prioritize for NOSB review those substances which are essential to organic production and handling.

We recognize that more work is needed for this policy to satisfy the needs of organic producers and handlers, product formulators, and consumers. We are requesting comment on the proposed requirements for inert ingredients in formulated products. We are sensitive that an abrupt prohibition on synthetic substances which may have knowingly or unknowingly been used in the past but which are not added to the National List may disrupt many well-established and accepted production systems. However, our assessment is that the benefits of a clear policy consistent with the OFPA, NOSB recommendations, and public comment outweigh the costs. The net effect will be greater consumer confidence in USDA's organic label and more products that are tailored to the needs of organic producers.

(7) *Use of Veterinary Medicines.* The OFPA prohibits certain routine uses of veterinary medications (specifically subtherapeutic doses of antibiotics) but allows their administration in the presence of illness. The first proposal added antibiotics to the National List because their use had been evaluated and approved by applicable regulatory agencies, pursuant to FDA requirements, and because they had to be included on the National List to be used in organic livestock production.

We received many comments opposing the use of antibiotics in organic livestock production. Commenters expressed general concern over microbial resistance to antibiotics and expressed a desire to source food products without antibiotics. This proposal removes antibiotics from the National List of approved synthetic substances for livestock use.

(8) *Removal of Substances from the National List.* The first proposal outlined a petition process for amending the National List and included an extensive list of information to be provided for reviewing a substance. Some commenters recommended that this section be amended to include procedures for deleting substances from the National List. The OFPA and the first proposal indicated that the NOSB would review substances added to the National List at least on a 5-year basis and recommend to the Secretary any substances that should be removed. We concur with commenters that removal of a substance should not have to wait for such a review cycle. Thus, a petition to remove a substance from the National List may be filed at any time. The information contained in the petition for removal of a substance will be provided by AMS upon request. The NOSB will evaluate substance removal petitions and forward a recommendation to the Secretary. Commenters suggested that any changes to the National List be published in the **Federal Register** for public comment. All proposed changes to the National List will be published in the **Federal Register**.

(9) *Use of Sulfur Dioxide.* The first proposal allowed the use of sulfur dioxide in crop production and as an ingredient in or on organic processed products. The NOSB had recommended that sulfur dioxide be permitted in the processing of organic wine and for smoke bombs used underground to control rodents. Numerous commenters opposed the use of sulfur dioxide in organic wine because its use produces sulfites, which are prohibited in the OFPA, as a by-product. We concur with the commenters and further believe that the trend in the organic industry, as evidenced by the California Department of Food and Agriculture's Preliminary Organic Materials List of September 1998, is to prohibit all uses of sulfur dioxide except in underground rodent control. Therefore, we are proposing to allow sulfur dioxide for underground control of rodents and to prohibit its use as an ingredient in or processed food including the production of organic wine.

National List—Additional Provisions

Upon further review of the provisions in the first proposal, we have decided to propose the following additions and changes.

(1) *New Additions to the National List.* During the October 1999 meeting, the NOSB reviewed substances and made new recommendations to the Proposed National List. The Secretary concurs with the recommendations from that meeting and this proposal adds those substances with the applicable annotations to the National List. These substances are: Potassium Bicarbonate (205.601(d)), Glycerin (2005.603(a)), Phosphoric Acid (205.603(a) and 205.605(b)), Ivermectin (205.603(a)), Chlorhexidine (205.603(a)), and Ethylene (205.605(b)). This proposal establishes conditions that allow producers to administer the parasiticide Ivermectin to breeder stock and dairy stock in organic livestock operations. Treating organically managed slaughter stock with Ivermectin is prohibited. These provisions are based on the recommendations developed by the NOSB at its October 1999 meeting. The NOSB's recommendations from that meeting were derivative of many years of work addressing how to establish and enforce the conditions allowing use of synthetic parasiticides. The OFPA identifies livestock parasiticides as a category of substances which may be included on the National List and also prohibits the use of synthetic internal parasiticides on a routine basis. The determination of what constitutes a routine basis for parasiticide use has been challenging given the diversity of animals, production systems, and environmental factors which are covered by a national organic standard.

In this proposal, the conditions under which Ivermectin may be used apply to the health care history of the animal prior to treatment and the certification of products derived from the animal after treatment. The pretreatment conditions are designed to ensure that the producer is using a comprehensive management system to prevent the introduction and transmission of parasites among the animals in his or her care. Producers must document in their organic system plan preventative practices such as quarantine and fecal exams for all incoming stock, appropriate pasture rotation and management, culling of infested livestock, and vector and intermediate host control. A producer may administer an allowed synthetic parasiticide only after all applicable management practices and nonsynthetic treatments have been employed. A producer must receive the approval of their certifying agent before using a synthetic parasiticide. In collaboration with the NOSB, we will be developing program manuals detailing preventive management practices for specific livestock species to assist producers and certifying agents in determining when the use of synthetic parasiticides is allowable.

This proposal also contains provisions addressing the posttreatment condition of livestock which are administered Ivermectin. These conditions are included as an

annotation to Ivermectin on the National List and are consistent with the requirements contained in § 205.238(b)(1)(2) of the regulatory text for administering any allowed synthetic parasiticide. In compliance with the recommendations of the NOSB, we are proposing that a producer may not administer Ivermectin to breeder stock during the last third of gestation if the progeny is to be sold, labeled, or represented as organically produced. Additionally, a producer must observe a 90-day withdrawal period before selling milk or milk products produced from an animal treated with Ivermectin as organically produced. The Food and Drug Administration exercises responsibility for determining and enforcing the withdrawal intervals for animal drugs. No food safety arguments are used or implied to support the use of extended withdrawal periods. Rather, we determined that extended withdrawal periods are more compatible with consumer expectations of organically raised animals.

Ivermectin is the first synthetic parasiticide that the Secretary has proposed adding to the National List, and allowing its use could significantly affect organic management practices. The FDA has approved 18 animal drugs containing Ivermectin that are labeled for use on one or more animals including beef and dairy cattle, sheep, swine, and several minor species. A total of 11 of these drugs are not covered by this proposed rule: three have additional synthetic active ingredients not on the National List and eight others are labeled for nonfood uses. (They are used on horses not for food use, dogs, and cats.) While there are no approved uses of Ivermectin on lactating dairy animals, the remaining seven food-use products could be administered to breeder stock and dairy stock either prior to lactation or during a dry period.

Future NOSB meetings will consider new proposals of substances to be added to the National List.

(2) *Petition Process to Amend the National List.* We are modifying the contents of the petition for amending the National List that was contained in the first proposal. We are proposing that any person requesting a change in the National List should request a copy of the petition procedures from the NOP Program Manager. The procedures will include a list of information that has to be provided for consideration of a change in the National List. Under the provisions in the first proposal, the NOP would be required to go through rulemaking every time it sought to update contents of the petition. Under this proposal, the NOP will amend the requirements of the petition process and publish the changes in the **Federal Register**. This revised process will help to expedite amending the National List and keep the National List more current. We anticipate that amendments to the National List will be made on an annual basis, depending upon the number of substance petitions filed. Substances petitioned for inclusion onto the National List will be reviewed by the NOSB, which will forward a recommendation to the Secretary. All amendments to the National List will be published for comment in the **Federal Register**.

State Organic Certification Programs

The Act provides that each State may implement a certification program for producers and handlers of agricultural products that have been produced and handled within the State, using organic methods that meet the requirements of this regulation. Each State organic certification program must be approved by the Secretary. A State organic certification program's organic standards and requirements cannot exceed these National Organic Program (NOP) regulations unless the State petitions for, and the Secretary approves, more restrictive requirements. The sections covering State programs, beginning with § 205.620, establish: (1) The requirements for a State organic certification program and amending such a program; and (2) the process for initial approvals of programs and program amendments. A process for review and approval of a State's organic certification program every 5 years will be addressed in subsequent rulemaking.

Proposal Description

There are a wide variety of organic certification programs now operating in different States. Approximately 31 States currently have, or are developing, their own State organic certification programs. At least 13 of those use State government agencies or contracted private certifying agents to certify organic operations in the State. Thus, at least 19 States do not have State organic programs and approximately 37 States do not have State Government or State-designated private certifying agents. Under this proposal, States may utilize these NOP standards and requirements and not have State oversight or responsibility for administration of the NOP in the State. On the other hand, a State may petition the Secretary for approval to add its unique State requirements to the NOP and agree to administer the national program in the State.

Requirements of a State Organic Certification Program. Under the Act and the NOP, a State, through the State program's governing State official, must submit to the Secretary a copy of the proposed State organic certification program. The governing State official must submit an affidavit or memorandum of understanding agreeing to meet the 11 general requirements of an organic program, as specified in section 6506(a) of the Act. Specifically, the governing State official must agree to: (1) Require that product sold or represented as organic must be produced and handled only by certified organic operations; (2) require that participating organic producers and handlers establish organic plans for their operations; (3) allow certified producers and handlers to appeal adverse decisions under appeal provisions of these regulations; (4) require that certified operations certify annually that they have complied with the NOP; (5) provide for annual on-site inspections of certified operations by certifying agents; (6) require periodic residue testing by certifying agents; (7) provide for appropriate and adequate enforcement procedures which are consistent with the NOP; (8) protect against conflict of interests as specified in these regulations; (9) provide for public access to certification documents; (10) provide for collection of reasonable fees; and (11) require other terms and conditions as may be established by the Secretary. The NOP will assume these responsibilities in States that do not have an approved State organic certification program.

Supporting materials must be submitted addressing these general requirements, including such documentation as: authorizing State statutes, program goals and objectives, a description of the State's organic program office, codified compliance and appeals processes, and other information as may be requested by the Secretary. Written material must assess the State organic certification program's ability and willingness to administer the 11 general requirements for organic programs. Administration of these general requirements may require development of a unique working relationship between the State organic program and the NOP.

With the approval of its State organic certification program, the State must assume responsibility for administration of these 11 general requirements and any approved, more restrictive requirements in the State. For instance, a State's responsibilities will include oversight of certified organic production and handling operations to ensure that

products sold or represented as organic are produced and handled pursuant to these regulations. A State's organic certification program must include noncompliance and appeals procedures similar in force and effect to those outlined in the Compliance and Appeals provisions of this subpart. We expect that every State has in place official compliance procedures and formal appeal procedures which are used to enforce the State's regulatory programs. Those procedures should provide opportunity, as do the procedures in this subpart, for entities that may not be in compliance with State regulations, to come into compliance with those regulations. Such procedures should be clearly addressed in the State's organic certification application.

A proposed State organic certification program and any proposed amendment to such a program must be approved by the Secretary prior to being implemented by the State. A State may have other organic State sponsored projects, such as research and promotion programs, tax incentives, or transition assistance for organic producers within the State. Such programs would not be subject to the Secretary's approval, provided they do not conflict with the purposes of the Act.

Under certain circumstances, a State organic program may have more restrictive requirements in the State than corresponding NOP requirements for production and handling of organic product and certification of organic production and handling operations. These more restrictive requirements must be based on unique environmental conditions or specific production or handling practices particular to the State or portion of the State. Any environmental condition cited in the proposed amendment must be of a nature that implementation of these NOP regulations will be insufficient to correct the condition. The environmental condition must necessitate use of more restrictive practices or requirements rather than the corresponding practices and requirements provided in these regulations. Any such condition that is limited to a specific geographic area of the State will be required of organic production and handling operations active only in that geographic area. If approved by the Secretary, the more restrictive requirements will become the NOP regulations for appropriate organic producers and handlers in the State or area of the State.

We do not expect that a State's request for more restrictive requirements will cover a wide range of organic production and handling standards. Rather, the increased requirements are likely to be limited to a specific production or handling practice or a more restricted use of approved National List substances to address needs or critical conditions in a specified geographic area(s). For instance, to protect an endangered lake or estuary, a State may have more restrictive buffer zone requirements than are provided in this regulation. Such a State may request that its more restrictive buffer zone requirements be established as the minimum buffer zone requirements of this regulation.

A State's more restrictive standards will not be applied to production and handling activities outside the State or a specified geographic area in the State. Further, the more restrictive standards do not apply to marketing of organic product and, thus, will not be used to restrict access of organic product produced in other States.

Section 205.621 provides that a State program's governing State official will submit to the Secretary a copy of a proposed State organic program or request for approval of any substantive amendment to a State's approved program.

State Program Approval Process. We envision the request and approval process will occur during the period between publication of the final rule and the projected effective date of the this national program (which will be announced in the final rule). Because requirements of a State organic program cannot exceed the requirements of this program unless warranted by unique conditions in the State, some State organic programs currently in effect may elect to discontinue their programs when the NOP becomes effective. Those programs simply will not request approval of their programs and their State organic requirements, in effect under the State program, will be superseded on the effective date of the NOP. State organic certification programs which seek approval of their programs will submit the required material and continue operations until the effective date of the NOP. We envision that all approved State organic certification programs will become effective under the NOP on the day the program becomes effective. A State wishing to establish a new State organic certification program under the NOP may submit the State program request and supporting material at any time. New programs submitted after this program becomes effective will be subject to the same review and approval process.

The submitted copy of the State organic certification program must be in its final form and ready for implementation. It cannot be altered by the State during the review process unless the change is cleared with the Secretary.

Amendments to State Programs. For amendment of a State organic program, the State program's governing State official must submit a copy of the proposed amendments and justification for them. The supporting material must document the unique environmental or ecological conditions or production practices in the State that necessitate use of more restrictive organic requirements. The supporting material must also explain how the more restrictive requirements will address the environmental condition. Likewise, the supporting material must explain how the increased requirements are better suited to agricultural conditions in the State.

Because State organic certification program requirements cannot be less restrictive than NOP requirements, any amendment to lower such requirements could only entail a relaxation of a more restrictive requirement previously approved by the Secretary. Thus, an amendment to relax a State program's requirement also must be reviewed by the Secretary. A decrease in a State organic certification program's more restrictive requirements must be justified, based on documented changes in the unique conditions or practices which warranted the increase in requirements.

Written materials supporting an amendment must assess how the more restrictive requirements further the purposes of and are consistent with the Act and these regulations. The written material should acknowledge that the more restrictive State requirements will not be used to limit or restrict access of organic products produced in other States or foreign countries to markets in the State. Also, supporting materials must explain how the amended requirements would affect the State program's governing State official's ability to administer the 11 general requirements. A request to relax a requirement also must address these issues.

The Secretary will review each State's application based on how closely it complies with the purposes and intent of the Act and the provisions of the NOP and how well its administrative capabilities and processes match up with the needs of the State's program.

The Act provides that the Secretary's review and determination of a new State organic certification program or a

program amendment will take no more than 6 months. AMS will notify the public upon approval of each State program. The public information will be made available to national agricultural news media and to all news media in the State. AMS will identify, among other things, any more restrictive certification requirements that are included in the approved State program.

A denial of a new program or program amendment will include a written explanation of why the proposal is denied and what changes will be needed for the program to be approved. The State may implement needed changes and submit a new program or program amendment.

Section 205.622 establishes that State organic certification programs will be reviewed at least once every 5 years by the Secretary and that a determination will be made within 6 months of the anniversary date as to continuation of the State organic certification program. We will issue appropriate procedures regarding this requirement at a later date, after AMS and the States have had an opportunity to administer the NOP and State programs.

State Programs—Changes Based On Comments

There are no changes based on comments.

State Programs—Changes Requested But Not Made

(1) *Allowing more restrictive State standards.* About a third of those commenting on State organic certification program provisions complained that the first proposal gave USDA complete control over State organic standards. A few suggested that a State with higher organic requirements should be able to prohibit the in-State sale of products certified only to the NOP or other State organic program requirements. Another commented that the NOP should "defer" to other State organic certification programs with higher standards.

While paragraph (b)(1) of section 6507 of the Act provides that States may establish more restrictive organic certification requirements, paragraph (b)(2) establishes parameters for those requirements. More restrictive State organic program requirements must: Further the purposes of the Act; be consistent with the Act; not discriminate against other States' agricultural commodities; and be approved by the Secretary before becoming effective. As noted above, we expect that a State's more restrictive requirements are likely to cover specific production or handling practices such as more restricted use of approved National List substances or farming practices to address a State or area's particular environmental conditions.

The Secretary must employ some consistent and common criteria for approving States requests for more restrictive State organic programs. The criteria for establishing such requirements must be consistent with the purposes of the Act. We believe the need to preserve, protect, and enhance unique environmental or farming conditions is a common criterion for all States. We believe such criteria are consistent with the stated goals of most, if not all, State organic programs and organic trade and farming organizations.

The more restrictive standards will not be applied to production and handling activities outside the geographic area of the State. Further, the more restrictive standards do not apply to marketing of organic product and, thus, will not be used to restrict access of organic product produced in other States. Clearly, prohibiting the sale of other States' products is prohibited by the Act as well as other national laws covering interstate commerce in the United States. If some States were to restrict access to State markets, the purposes and the benefits of the national program would be lost.

Discriminatory marketing practices are prohibited under section 6507(b)(2)(c) of the Act. Thus, the purpose of more restrictive State organic requirements cannot be, as the commenters suggest, to allow claims of more organic or purer product. States will not be able to promote their products as being more organic because their products were produced under more restrictive State requirements. More restrictive State organic requirements will be authorized only as needed to respond to special environmental or production conditions in the State which necessitate more restrictive requirements. Any State's request for less restrictive or lower organic standards than are required under this program will not be approved by the Secretary.

(2) *Treatment of private and State certifying agents.* Some private certifying agents commented that the first proposal would permit accredited State certifying agents to establish more restrictive standards than these regulations but prohibit private certifying agents from establishing their own more restrictive requirements. Under this program, State certifying agents will not unilaterally establish organic standards or requirements in a State. A State program's governing State official may, upon approval of the Secretary, establish a State organic certification program as an entity of the State's department of agriculture or other similar State government agency. The Act provides this authority to the State government and does not provide similar authority to private certifying agents. Private certifying agents are not government entities and have no official regulatory or administrative authorities over agricultural activities in the State. State certifying agents as well as private certifying agents will act as service providers, certifying to national and, where applicable, to particular State organic requirements.

Again, commenters appear to miss an essential point of this national program. The only mandatory organic standards and requirements are those of the NOP and the unique requirements approved for a State organic certification program by the Secretary. A private certifying agent may believe its more restrictive requirements result in a more organic or purer product and may want to certify producers and handlers only to those requirements. However, neither State certifying agents nor private certifying agents will be able to require that client operations or organic product be certified to more restrictive standards than the standards of this program or approved State standards. The only other more restrictive requirements that may be certified to may be requirements made at the request of handlers or manufacturers who are purchasing the organic product or ingredient. For example, a producer could request a certifying agent to certify certain production practices required for export to a foreign manufacturer. Such certification can be made only at the request of the producer or handler being certified. Both State and private certifying agents may certify to the requested more restrictive contract requirements, provided those more restrictive requirements are consistent with these regulations and provided the certifying agents have the necessary technical qualifications to carry out the certification.

Similarly, one commenter stated that the NOP should not prevent a private certifying agent from having and advertising its own higher organic standards. While a private certifying agent may have the capability to certify to certain higher organic requirements, a handler certified by the certifying agent may not claim on product labels or in market information that its products are more organic, purer, or better than product certified by other certifying agents or State organic programs.

In this regard, certifying agents, whether they are State or private certifying agents, may not use different seals, logos, or other identifying marks to distinguish between organic operations certified to NOP requirements and a State's approved more restrictive requirements, the certifying agent's preferred requirements, or the client's requested higher requirements. We believe that if certifying agents were allowed to use more than one seal or identifying mark, based on various standards certified to, the marketplace would be inundated with a variety of different certifying agent seals, logos, and identifying marks. This would add to consumer confusion, complicate the marketplace, and jeopardize benefits of this program.

(3) *Private certifying agent concerns.* Several commenters expressed concern that private certifying agents are at a disadvantage vis-a-vis State certifying agents. They stated that a State organic program or a State certifying agent could initiate policies that would limit the activities or effectiveness of private certifying agents. However, this proposed program does not alter the current situation in that State and private certifying agents operate in the same States. If a requested State organic certification program proposes a requirement or procedure that will have a negative affect or discriminate against private certifying agents operating in the State, the Secretary will not approve the requirement or procedure.

Some commenters asked whether these national regulations will affect a State's accreditation of private certifying agents operating in the State. A few believe that States should be allowed to continue or establish separate accreditation programs for private certifying agents.

We believe accreditation of certifying agents is a core responsibility for USDA. Establishment of a single national accreditation program is an essential part of the NOP. States will not accredit private certifying agents. As stated elsewhere in this proposal, any accreditation responsibilities of a State's current organic certification program will cease with implementation of this program. Pursuant to the Compliance provisions of this subpart, the governing State official or designee charged with compliance oversight under the State program may investigate and notify the NOP of possible compliance violations on the part of certifying agents operating in the State. However, the State may not pursue compliance actions or remove accreditation of any certifying agent accredited by the Secretary. That authority is the sole responsibility of the Secretary.

If more restrictive State requirements are approved by the Secretary, we will review certifying agent qualifications in the State and determine whether they are able to certify to the approved, more restrictive requirements. Our accreditation responsibilities must include oversight of both State and private certifying agents, including any foreign certifying agents that may operate in a State, and to monitoring their compliance with accreditation requirements.

(4) *Public comment on State applications.* One commenter suggested that USDA publish for comment in the **Federal Register**, a summary of each State's proposed organic program and any requested program amendments. The commenter claimed that an approved State organic certification program will effectively substitute the State's program for the NOP in the State. Thus, the commenter contends, those proposed State programs and program amendments should be made available for public comment. After consideration of the implications of the comment, we do not believe that the **Federal Register** notification process is the proper venue for receiving comments on a proposed State program which is applicable only to residents and business entities in the State. We assume that the governing State official is submitting the request on behalf of the organic producers and handlers in the State. Further, the appropriateness of the State's requested more restrictive requirements should stand on the merits of each proposal and not on whether commenters in other States believe the proposed requirements are warranted. Certified organic producers and handlers outside the State will not be subject to the more restrictive standards or requirements of the State program. The more restrictive standards will not be used to restrict market access of organic product produced in other States or countries. Thus, there is no reason to receive public comment on requested State requirements from individuals not directly affected by the proposed requirements.

The commenter suggested that AMS also publish a summary of each proposed program and any amendments to a program in a newspaper of general circulation in the State. AMS will issue a public information notices which will announce each approved State organic certification program and any approved amendments of a State program. The notices will identify the unique characteristics of the approved State program that warranted the more restrictive organic production or handling requirements. We also will include a summary of the new program on the NOP homepage.

(5) *State program consistencies.* Several commenters asked for clarification of the first proposal's terms, "consistent" and "substantive amendments," used in regard to State programs operating under the NOP. Being "consistent" with the NOP means that a State program's written standards or requirements must be at least equal to the standards and requirements of the NOP. This is provided for in the Act. Further, in allowing State organic programs to have more restrictive or higher standards, the Act requires that those more restrictive standards and requirements be consistent with the purposes of the Act. To be "consistent" with the purposes of the Act means that the requested, more restrictive standards or requirements are of such a nature that they do not undermine the application of uniform national organic standards. Thus, if a request for more restrictive State organic standards is determined to not be consistent with uniform national organic standards, the State program will not be approved by the Secretary. The administrative procedures used by the State in administering the 11 general requirements of the State's organic program should have the same force and effect of the procedures use by AMS in administering this program.

The same commenters asked for clarification of the term, "substantive amendments," in obtaining USDA approval of more strict amendments for one State's organic certification program. "Substantive amendments" means changes that would increase the quantitative or qualitative standards or specific requirements for an operation's or a product's certification under the State organic program. Once this national program is operating, if a question arises as to whether a desired change in a State organic certification program is considered substantive or not, the State program's governing State official should raise the issue with the Secretary.

State Programs—Additional Provisions

(1) *State program responsibilities.* This subpart establishes that a State organic certification program which petitions for approval by the Secretary will have increased responsibilities under the NOP. Our first proposal did not suggest qualifying factors or other information that had to be submitted by the State program's governing State official. This proposal specifies the 11 general requirements, addressed above, and the needs-based environmental

conditions or special production practices for establishing more restrictive requirements. Those factors establish our revised position that a State must agree to incurring increased responsibilities and obligations to be approved as a State organic certification program under the NOP. For instance, as discussed above, a State with an approved organic certification program will oversee compliance and appeals procedures for certified organic operations in the State. Those procedures must provide due process opportunities such as rebuttal, mediation, and correction procedures in this proposal. Once approved by the Secretary, the State governing official or designee must effectively administer the State's organic certification program in a manner that is consistent and equitable for the certified parties involved in compliance actions.

A State's organic certification program may include other programs and projects which the State government may conduct to promote or increase organic production and handling in the State. Such programs may include organic promotion and research projects, transition assistance, a directory of organic production and handling operations in the State, a consumer referral program, or certifications given to retail operations which market organic foods. This proposal will not prohibit such State activities, provided those activities do not establish production or handling standards that work against the purposes of the NOP. Such programs may not advertise, promote, or otherwise infer that the State's organic products are more organic or better than organic product produced in other States. Such programs and projects should be beyond the scope of this national program and, if so, will not be subject to the Secretary's review.

(2) *Renewal of State program.* The final section provides that reviews of State organic certification programs will be conducted at least once every 5 years, as required in paragraph (c) of section 6507. The intent of the provision is not changed in this proposal. We will provide further information regarding reviews of State programs before the first 5-year period is completed. We expect that, with experiences gained from a few years of program operation, we will be able to propose more appropriate procedures, guidelines, and requirements to assure proper reviews of operating State organic programs.

Fees. This portion of subpart G sets forth the regulations on fees and other charges to be assessed for accreditation and certification services under the National Organic Program (NOP). These regulations address the kinds of fees and charges to be assessed by the Department for the accreditation of certifying agents, the level of such fees and charges, and the payment of such fees and charges. These regulations also address general requirements to be met by certifying agents in assessing fees and other charges for the certification of producers and handlers as certified organic operations. Finally, these regulations address the Secretary's oversight of a certifying agent's fees and charges for certification services.

Proposal Description

Fees and Other Charges for Accreditation. Fees and other charges will be assessed and collected from applicants for initial accreditation and accredited certifying agents submitting annual reports or seeking renewal of accreditation. Such fees will be equal as nearly as may be to the cost of the accreditation services rendered under these regulations. Fees-for-service will be based on the time required to render the service provided calculated to the nearest 15-minute period. Activities to be billed on the basis of time used include the review of applications and accompanying documents and information, evaluator travel, the conduct of on-site evaluations, review of annual reports and updated documents and information, and the preparation of reports and any other documents in connection with the performance of service. The hourly rate will be the same as that charged by the Agricultural Marketing Service (AMS), through its Quality System Certification Program, to certification bodies requesting conformity assessment to the International Organization for Standardization "General Requirements for Bodies Operating Product Certification Systems" (ISO Guide 65).

Applicants for initial accreditation and accredited certifying agents submitting annual reports or seeking renewal of accreditation during the first 18 months following the effective date of subpart F will receive service without incurring an hourly charge for such service.

Applicants for initial accreditation and renewal of accreditation must pay at the time of application, effective 18 months following the effective date of Subpart F, a nonrefundable fee of $500.00. This fee will be applied to the applicant's fees-for-service account.

When service is requested at a place so distant from the evaluator's headquarters that a total of one-half hour or more is required for the evaluator(s) to travel to such place and back to the headquarters, or at a place of prior assignment on circuitous routing requiring a total of one-half hour or more to travel to the next place of assignment on the circuitous routing, the charge for such service will include all applicable travel charges. Travel charges may include a mileage charge administratively determined by the Department, travel tolls, or, where the travel is made by public transportation (including hired vehicles), a fee equal to the actual cost thereof. If the service is provided on a circuitous routing the travel charges will be prorated among all the applicants and certifying agents furnished the service involved on an equitable basis. Travel charges will become effective for all applicants for initial accreditation and accredited certifying agents on the effective date of subpart F. The applicant or certifying agent will not be charged a new mileage rate without notification before the service is rendered.

When service is requested at a place away from the evaluator's headquarters, the fee for such service shall include a per diem charge if the employee(s) performing the service is paid per diem in accordance with existing travel regulations. Per diem charges to applicants and certifying agents will cover the same period of time for which the evaluator(s) receives per diem reimbursement. The per diem rate will be administratively determined by the Department. Per diem charges shall become effective for all applicants for initial accreditation and accredited certifying agents on the effective date of subpart F. The applicant or certifying agent will not be charged a new per diem rate without notification before the service is rendered.

When costs, other than fees-for-service, travel charges, and per diem charges are associated with providing the services, the applicant or certifying agent will be charged for these costs. Such costs include, but are not limited to, equipment rental, photocopying, delivery, facsimile, telephone, or translation charges incurred in association with accreditation services. The amount of the costs charged will be determined administratively by the Department. Such costs will become effective for all applicants for initial accreditation and accredited certifying agents on the effective date of subpart F.

Payment of Fees and Other Charges. Applicants for initial accreditation and renewal of accreditation must remit the nonrefundable fee along with their application. Remittance must be made payable to the Agricultural Marketing Service, USDA, and mailed to: Program Manager, USDA–AMS–TMP–NOP,

Room 2945-South Building, PO Box 96456, Washington, DC 20090–6456 or such other address as required by the Program Manager. All other payments for fees and other charges must be received by the due date shown on the bill for collection, made payable to the Agricultural Marketing Service, USDA, and mailed to the address provided on the bill for collection. The Administrator will assess interest, penalties, and administrative costs on debts not paid by the due date shown on a bill for collection and collect delinquent debts or refer such debts to the Department of Justice for litigation.

Fees and Other Charges for Certification. Fees charged by a certifying agent must be reasonable, and a certifying agent may charge applicants for certification and certified production and handling operations only those fees and charges that it has filed with the Administrator. The certifying agent must provide each applicant with an estimate of the total cost of certification and an estimate of the annual cost of updating the certification. The certifying agent may require applicants for certification to pay at the time of application a nonrefundable fee of no more than $250.00 which must be applied to the applicant's fees-for-service account. The certifying agent must provide all persons inquiring about the application process with a copy of its fee schedule.

Fees—Changes Based on Comments. This portion of subpart G differs from our first proposal in several respects as follows:

(1) *Application and Administrative Fees.* We have removed the provisions which required certifying agents to pay application and administrative fees. These fee provisions have been replaced with provisions for the assessment of fees for service equal as nearly as may be to the cost of the accreditation services rendered under these regulations. In other words, we will be assessing fees and charges only for activities related to accreditation. These fees and charges will be assessed and collected from applicants for initial accreditation and accredited certifying agents submitting annual reports or seeking renewal of accreditation. The balance of costs incurred by the NOP will be funded through appropriations. We have retained the requirement, with modification, that certifying agents reimburse the Department for travel, per diem, and related other costs associated with providing accreditation services. We have taken these actions in an attempt to minimize the cost of this program on certifying agents. Certifying agents will be charged for the actual time and travel expenses necessary for the NOP to perform accreditation services.

This proposed program is similar to the Quality Systems Certification Program (QSCP) established pursuant to 7 CFR part 54. The QSCP is an audit-based program administered by AMS through its Livestock and Seed Program, which provides meatpackers, processors, producers, and other businesses in the livestock and meat trade with the opportunity to have special processes or documented quality management systems verified. Since the procedures used for accrediting State and private entities as accredited organic certifying agents are similar to those used to certify other types of product or system certification programs under the QSCP, we have decided to use this existing program and its staff in examining certifying agents' operations and evaluating their compliance with the Act and these regulations. Using the QSCP and its staff will enable the NOP to provide the necessary services without creating a separate bureaucracy. Hourly fees to be charged for services under this program will be the same as those under the QSCP, currently estimated at $95.00 per hour.

This fee of approximately $95.00 is greater than the $42.20 base rate charged under the voluntary user-fee-funded program established by AMS to verify that State and private organic certifying agents in the United States comply with the requirements prescribed under ISO Guide 65. This program, administered by the AMS Livestock and Seed Program, applied the aggregate meat grading rate for services to this ISO Guide 65 verification program for State and private organic certificating agents. The grading rate of $42.20 was the only rate for which AMS was authorized to charge at the time that the program to assess ISO Guide 65 conformity by organic certifying agents was implemented. This was not the actual audit rate of approximately $95.00 for such services. The AMS Livestock and Seed Program will engage in rulemaking to establish audit fees for its QSCP. As noted above, those fees are expected to be approximately $95.00 per hour. The NOP will notify accredited certifying agents of proposed rate changes and final actions on such rates by AMS.

To minimize the economic impact of implementing the NOP on certifying agents, we have decided to provide services for accreditation during the first 18 months following the effective date of new subpart F without an hourly charge for all applicants for initial accreditation and accredited certifying agents. This represents full subsidization of the hourly costs for accreditation by the Department during the first 18 months of operation. This 18-month subsidization of the hourly costs will prove especially beneficial to any applicant for accreditation that submits a substandard application or has difficulty establishing eligibility for accreditation. Certifying agents will be charged for accreditation service at the published hourly rate on the first day of the nineteenth month following the effective date of subpart F.

Over 15,000 comments were received on fees, with all opposing the first proposal's fee provisions. In addition to comments from consumers, comments were received from State agencies, organic growers, grower associations, and certifying agents. Most of these commenters expressed the belief that the proposed fees would price small certifying agents out of the organic industry. Almost half of the over 15,000 comments suggested a sliding-scale fee system, rather than the flat fee system in the first proposal, to accommodate the economic needs of small certifying agents. We have not accepted the concept of a sliding-scale fee system. Rather, as noted above, we are proposing that certifying agents be charged for the actual time and travel expenses necessary for the NOP to perform accreditation services. Under this fee system, smaller certifying agents should pay less in hourly charges to obtain and maintain certification than larger certifying agents. This assumption, however, is contingent on the quality of all documentation submitted to the Department, certifying agent recordkeeping, and the efficiency of the certifying agent in meeting the requirements of this part. The fees and other charges for accreditation regulations are found in § 205.640.

(2) *Payment by Certified Check.* We have removed the requirement that the payment of fees and charges to the Department be by certified check or money order. We have made this change because we agree with commenters that this requirement is unnecessary and potentially burdensome.

Nearly all industry commenters opposed the form and method of payments stated throughout the original fee sections. Commenters stated that payment by certified check or money order was unnecessary and would create an additional burden on individual producers, handlers, and private certifiers. A few State commenters stated that it was insulting for the U.S. Department of Agriculture (USDA) to require a State government agency to pay for its accreditation with a certified check.

(3) *Producer and Handler Fees to the Department.* We have removed the provisions which required the payment of certification fees by producers and handlers to the Department. We have taken this action because we believe that the goal of recovering program costs through fees and other costs charged to producers and handlers for certification as certified organic operations should be balanced against the Act's purpose to facilitate interstate commerce in fresh and processed food.

We received over 15,000 comments all opposing the first proposal's fee provisions for producers and handlers. Comments were received from consumers, State agencies, organic growers, grower associations, and certifying agents. Most of these commenters stated that the proposed fees would price small producers and handlers out of the organic industry. Hundreds of these commenters stated that the proposed fees favor large production operations. Almost half of the over 15,000 comments suggested a sliding-scale fee system, rather than the flat fee system proposed in the first proposal, to accommodate the economic needs of small producers and handlers. Hundreds more suggested that small producers and processors be exempt from the payment of fees.

Most of the State agency, organic grower, grower association, and certifying agent (industry) commenters spoke to the very small size and family-farm nature of the average organic production operation and how those operations would be affected by the proposed fees. Commenters from this group who offered estimates suggested that one-third to over one-half of organic producers in their area or State are very small organic producers operating at or near the exemption level of $5,000 in annual sales. They said those operating just above the exemption level could be forced out of organic production by the extra fee and the increased certification charges passed down by certifying agents who would have to pay the proposed accreditation charges.

Commenters, industry and consumer, stated that, rather than encouraging growth and new participation in organic agriculture, the costs of certification would stifle growth and discourage small producer participation in organic agriculture. An industry commenter stated that exempt producers who might want to be certified so they could market their product as organic would be dissuaded from doing so because of the cost of certification. Industry commenters also stated that the additional USDA fee on small handlers would make small organic handling operations marginal. A few State agencies commented that many small organic producers also conduct their own on-farm handling and that these operations would be forced out of the organic industry by the excessive handler fee and reporting burdens.

The comment, that exempt producers who might want to be certified so they could market their product as organic would be dissuaded from doing so because of the cost of certification, requires clarification. It may be true that such producers would be dissuaded from seeking certification because of the cost of certification. It is not true, however, that exempt producers must be certified to sell or label their production as organic. The Act exempts small producers, those who produce no more than $5,000 in agricultural products, from the requirement that a person may sell or label an agricultural product as organically produced only if such product is produced and handled in accordance with the Act.

Industry commenters recommended complete changes to the proposed fee structure. Most, like the consumer commenters, suggested a sliding scale for fees based on either size or sales volume. Several industry commenters stated that the Act does not require that USDA recover all program costs from assessments on producers, handlers, and certifying agents. They cited section 6522 of the Act as authorizing the use of appropriated funds to carry out the program. Some industry commenters suggested that appropriated funds should be used to cover all administrative and overhead costs and that fees collected from the industry should only be used for specific program activities such as accreditation. A few industry commenters suggested that organic farmers not be charged an AMS fee but that each be required to sign an affidavit of compliance with program requirements.

After further discussions within the Department and review of the comments, we have determined that the fee structure for the NOP should be modified to reduce costs to all organic sectors. We acknowledge that the fees proposed in the first proposal might have discouraged industry growth and might not have facilitated interstate commerce of organic products. Because we believe that fees and other costs charged to producers and handlers for certification as certified organic operations should be kept to a minimum to encourage industry participation and growth, we have removed the regulations which provided for the payment of fees to the Department by certified production and handling operations.

(4) *Estimated Cost of Certification.* We have added, at § 205.642, the requirement that the certifying agent must provide each applicant with an estimate of the total cost of certification and an estimate of the annual cost of updating the certification. Additionally, the certifying agent must provide all persons inquiring about the application process with a copy of its fee schedule. We have added these provisions to ensure that producers and handlers have early and ready access to the information they need to consider cost in selecting an agent to certify their production or handling operation. We consider this to be especially important because, as noted in the preamble to subpart F, we have removed the requirement that the certifying agent charge only such fees to applicants for certification and operations it certifies that the Secretary determines are reasonable. We have removed this requirement because we concur with those commenters who expressed the belief that certifying agents should be permitted to set their own fees without the approval of the Secretary. We have also removed this requirement because we concur with the commenters' belief that production and handling operations are free to consider cost in selecting an agent to certify their production or handling operation.

Fees—Changes Requested But Not Made. This subpart retains from our first proposal regulations on which we received comments as follows:

(1) *Accreditation Charges Billed to State Certifying Agents.* Several State certifying agents stated that State certifying agents should not be assessed accreditation charges. Commenters stated that most State certifying agents could face large accreditation costs because they have many county or regional offices which would be considered subsidiaries of the headquarters office. They stated that these charges would have to be passed on to producers and handlers or paid with supplemental State funds. A few State certifying agents stated that USDA should pay the States, rather than vice versa, because of the State organic programs' contributions to the national program. At least one State representative commented that accreditation fees for State certifying agents should be less than for private certifying agents because State certifying agents should require less review and oversight by AMS.

We disagree with those commenters who recommended that State certifying agents not be assessed accreditation

charges, be charged less for accreditation, or be paid to certify production or handling operations. We view such actions as constituting unacceptable preferential treatment of State certifying agents to the detriment of private-entity certifying agents. Accordingly, under this proposal, State-entity certifying agents will be assessed fees for accreditation under the same fee structure as private-entity certifying agents.

(2) *Subsidization.* Some industry commenters stated that national governments in Europe provide direct subsidies and other economic incentives for their farmers to grow organic. A few questioned why the organic industry would be charged for services while some USDA programs are provided without cost to other agricultural sectors, and USDA actually pays some farmers not to grow some commodities. Industry commenters and many consumer commenters stated that it was unfair for this proposed program to charge all costs to a fledgling agricultural industry composed mostly of small, family farmers and marginal operations. Finally, a few industry commenters proposed the philosophical argument that program fees penalize those who protect the earth and that USDA should charge traditional producers who damage the earth with chemical applications and nonsustainable cultural practices.

AMS is primarily a user-fee-based Federal agency. The Act at section 6506(a)(10) requires the collection of fees from producers, handlers, and certifying agents. We are, therefore, unable to provide for the full subsidization of producers, handlers, and certifying agents as espoused by some commenters. Accordingly, this proposal provides for the payment of fees by producers, handlers, and certifying agents. We have, however, proposed regulations in this proposal which we believe will minimize the economic impact of the NOP on producers, handlers, and certifying agents.

Fees—Additional Provisions. Upon further review of the fee provisions in the first proposal, we have decided to propose the following additions.

(1) *Certification Fees Charged by Certifying Agents.* We have added, at § 205.642, regulations addressing general requirements to be met by certifying agents in assessing fees and other charges for the certification of producers and handlers as certified organic operations. First, fees charged by a certifying agent must be reasonable, and a certifying agent may charge applicants for certification and certified production and handling operations only those fees and charges that it has filed with the Administrator. This is a general requirement for accreditation and is also found at § 205.501(a)(15) in subpart F on accreditation. This regulation does not prohibit certifying agents from providing and charging for services outside the NOP. Services that certifying agents might provide outside the NOP include in-house publications, conferences, workshops, informational meetings, and field days. Certifying agents cannot require participation in such activities by certified operations or applicants for certification as a condition of certification.

Second, the certifying agent may require applicants for certification to pay at the time of application a nonrefundable fee of no more than $250.00 which must be applied to the applicant's fees-for-service account. We believe that this fee will help ensure that certifying agents are compensated for certification services provided to an applicant that is found to be not qualified to receive certification as an organic production or handling operation.

(2) *Fees Charged to Foreign Certifying Agents.* We have removed the provisions which required the payment of fees for import programs. We have taken this action because this proposal includes foreign State entities and foreign private entities which provide certification services under the accreditation requirements of this part. Accordingly, such entities are covered under the fees for accreditation provisions of § 205.640.

Compliance

This portion of subpart G sets forth the enforcement procedures for the National Organic Program (NOP). These procedures describe the compliance responsibilities of the Secretary, USDA, and Agricultural Marketing Service (AMS) officials acting on behalf of the Secretary. These procedures also describe responsibilities of State programs' governing State officials (governing State officials) and State and private certifying agents for compliance under the NOP. The NOP is the AMS office that reviews applications and initiates approvals of accreditation of new certifying agents, conducts oversight of accredited certifying agents, and reviews and recommends continuation of accreditation of certifying agents. These provisions also address the rights of certified production and handling operations and accredited certifying agents operating under the NOP. Approval or denial of applications for certification and accreditation are addressed under subparts E and F, respectively.

Proposal Description

The Secretary is required under the Act to review the operations of State organic certification programs, accredited certifying agents, and certified production or handling operations for compliance with the Act and these regulations. The Program Manager of the NOP may carry out oversight of compliance proceedings on behalf of the Secretary and the Administrator. However, most reviews and analyses of certification noncompliance will be conducted by the certifying agent which certified the operation. With regard to certifying agents, the Program Manager may initiate proceedings to suspend or revoke the accreditation of a certifying agent for failure to conduct accreditation activities or maintain accreditation requirements pursuant to subpart F of this regulation.

In States with an approved State organic certification program, the State program's governing State official is responsible for administration of the State's compliance program for certified operations. Governing State officials also may review and investigate complaints of certifying agents operating in the State who may not be in compliance with the accreditation requirements of the Act and these regulations. They must notify the Program Manager of such noncompliance activities and make information regarding the violation available to the NOP for appropriate action.

The Program Manager may initiate proceedings to suspend or revoke a certified operation's certification if a certifying agent or State program's governing State official fails to take appropriate enforcement action or if an operation is found to be erroneously certified by a certifying agent whose accreditation has been suspended or revoked.

The compliance provisions of the NOP are consistent with the requirements of the Administrative Procedure Act (APA) (5 U.S.C. 553–559) in that this program provides for due process including an opportunity for hearing, appeal procedures, written notifications of noncompliance, and opportunities to demonstrate or achieve compliance before any suspension or revocation of organic certification or accreditation is invoked. An exception to the initial due process steps under the APA is provided in instances of willful violations. However, willful violations may be appealed pursuant to

the Appeals procedure in this subpart. A compliance action regarding certification carried out under an approved State program's compliance procedures will have the same force and effect as a certification compliance action carried out under these NOP compliance procedures. The notification process for denying applications for certification and applications for accreditation is laid out in subparts E and F respectively.

Noncompliance Procedure for Certified Operations. The Act provides for the enforcement of certified operations. Statutory oversight of production and handling operations by certifying agents includes review of organic plans, residue and tissue testing, authority to conduct investigations, and responsibility to report violations. Applicants for certification must meet certification requirements of the NOP, as determined by certifying agents.

Notification of Noncompliance. As noted above, the Program Manager or the governing State official may review and investigate a certified operation based on complaints and may initiate noncompliance proceedings established in this subpart. However, we expect that most compliance procedures will begin with a certifying agent's inspection, review, or investigation of such certified operation. Thus, this noncompliance procedure is proposed based on that process.

A written notification of noncompliance will be sent to the certified operation if a certifying agent's inspection, review, or investigation reveals any noncompliance with the Act or these regulations. Noncompliance may include, among other things, production or handling practices or conditions, use of substances, or labeling which are not in compliance with subparts C, Production and Handling, or E, Certification, of this regulation. The results of a residue test may trigger a noncompliance notification. A noncompliance notification may encompass the entire operation or a portion of the operation. For instance, a violation at one farm may not warrant loss of certification at other farms of the certified operation not affected by the violation.

A notification of noncompliance will provide: (1) A description of each condition, action, or item of noncompliance; (2) the facts upon which the notification is based; and (3) the date by which the certified operation must rebut the notification or correct the noncompliance. A certified operation may continue to sell its product as organic upon receiving a notification of noncompliance and throughout the noncompliance proceeding and any appeal procedure which might follow the compliance proceeding.

All written notifications sent by certifying agents and governing State officials, as well as rebuttals, requests for mediation, and notices of correction of deficiencies sent by certified operations will be sent to the addressee's place of business by a delivery service which provides dated return receipts. This will help assure completed communications and timely compliance procedures.

If a certified operation believes the notification of noncompliance is incorrect or not well-founded, the operation may submit a rebuttal to the certifying agent, providing supporting data to refute the facts stated in the notification. Rebuttals are provided to allow certifying agents and certified operations to informally resolve noncompliance notices. Rebuttals should be helpful in resolving differences which may be the result of misinterpretation of requirements, misunderstandings, or incomplete information. Alternatively, the certified operation may correct the identified deficiencies and submit proof of such corrections. When the operation demonstrates that each noncompliance has been corrected or otherwise resolved, the certifying agent will send the certified operation a written notification of noncompliance resolution.

Proposed Suspension or Revocation of Certification. If the noncompliance is not resolved and is not in the process of being resolved by the date specified in the notification, the certifying agent will send the certified operation a written notification of proposed suspension or revocation of certification for the entire operation or a portion of the operation affected by the noncompliance. The notification will state: (1) The reasons for the proposed suspension or revocation; (2) the proposed effective date of the suspension or revocation; (3) the impact of the suspension or revocation on the certified operation's future eligibility for certification; and (4) that the certified operation has a right to request mediation or to file an appeal. The impact of a proposed suspension or revocation may include the suspension period or whether the suspension or revocation applies to the entire operation or to a portion or portions of the operation. A governing State official may not suspend or revoke certification of an entity's certified operations in other States. Likewise, a certifying agent may not suspend or revoke certification of an entity's operations which the certifying agent does not certify.

If a certifying agent determines that correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation of certification may be combined in one notification of proposed suspension or revocation. The certified operation will have an opportunity to appeal that suspension or revocation decision.

Mediation. A certified operation may request mediation of any dispute regarding denial of certification or proposed suspension or revocation of certification. Mediation is not required prior to filing an appeal but is offered as an option which may resolve the noncompliance more quickly than the next step, which is filing an appeal. If a State program is in effect, the mediation procedures established in the State program, as approved by the Secretary, must be followed. Mediation will be requested in writing to the applicable certifying agent. The dispute will be mediated by a qualified mediator mutually agreed upon by the parties to the mediation. The parties to the mediation will have no more than 30 days to reach an agreement following a mediation session. If mediation is unsuccessful, the certified operation will have 30 days from termination of mediation to appeal the proposed suspension or revocation to the Administrator.

Any agreement reached during or as a result of the mediation process must be in compliance with the Act and these regulations. Also, the Secretary reserves the right to review any mediated settlement to assure that the terms of the settlement conform with the requirements of the Act and the NOP.

Suspension or Revocation. The certifying agent will suspend or revoke the certified operation's certification when the operation fails to resolve the issue through rebuttal or mediation, fails to complete needed corrections, or does not file an appeal. The operation will be notified of the suspension or revocation by written notification. The certifying agent must not send a notification of suspension or revocation to a certified operation that has requested mediation or filed an appeal.

The decision to suspend or revoke certification will be based on the seriousness of the noncompliance and on whether the noncompliance is a willful action by the certified operation. Such decisions must be made on a case-by-case basis. Section 6519 of the Act establishes that willful violations include making a false statement, knowingly affixing a false label, or

otherwise violating the purposes of the Act. Certifying agents are responsible for investigating whether a violation is a willful act and advising the Program Manager or governing State official of the results of such investigation. However, only the Program Manager or governing State official may make the final determination that a violation is willful.

If a suspected willful noncompliance is not a serious violation, a proposed suspension rather than revocation may be issued. Revocation is reserved for serious instances of willful noncompliance and other serious violations.

The certifying agent may determine that a lesser penalty of suspension is warranted by the noncompliance. A proposal to suspend certification may be issued for violations that are inadvertent or cannot be proven to be willful. A suspension may be applicable only to one area of operation or one field or farm unit where the noncompliance occurred.

A certified operation that has had its certification revoked will not be eligible to receive certification for an operation in which such operation or person has an interest for 5 years following the date of revocation. If an individual is the owner of a certified operation or is the principal officer or director of operations who is fully responsible for complying with certification requirements of this part, a suspension or revocation could be issued in the individual's name. The effect would be that another operation would be ineligible for organic certification if that individual is listed as a principal in the operation. The Secretary may waive an ineligibility period when it is in the best interests of the certification program.

Noncompliance Procedure for Certifying Agents. The Program Manager, on behalf of the Secretary, may initiate a compliance action against an accredited certifying agent who fails to carry out responsibilities entrusted to the certifying agent or maintain resources sufficient to meet accreditation requirements in subpart F. Compliance proceedings may be initiated as a result of annual reviews for continuation of accreditation, as a result of site visits, or as a result of investigations initiated in response to complaints of noncompliant activities. Compliance proceedings also may be initiated on recommendation of a governing State official.

A written notification of noncompliance will be sent by the Program Manager to an accredited certifying agent when an inspection, review, or investigation of such person reveals any noncompliance with the Act or these regulations. A notification of noncompliance will provide a description of each noncompliance found and the facts upon which the notification is based. Additionally, the notification will provide the date by which the certifying agent must rebut the noncompliance notice or correct each noncompliance described.

When documentation received by the Program Manager demonstrates that each noncompliance has been resolved, the Program Manager will send the certifying agent a written notification of noncompliance resolution.

If a noncompliance is not resolved by rebuttal or correction of violations, the Program Manager will issue a proposed suspension or revocation of accreditation. The notification will state whether the certifying agent's entire business, field office, or offices in a geographic area or in a specified technical field of accreditation are to be suspended or revoked. For instance, if a private certifying agent with field offices in different geographic areas is cited for a compliance violation in one area, the Program Manager could determine that only the accreditation of the noncompliant operation should be suspended or revoked.

If the Program Manager determines that the noncompliance cannot be immediately or easily corrected, the Program Manager may combine the notification of noncompliance and the proposed suspension or revocation in one notification. The notification of proposed suspension or revocation of accreditation will state the reasons and effective date for the proposed suspension or revocation. Such notification will also state the impact of a suspension or revocation on future eligibility for accreditation and the certifying agent's right to file an appeal.

If the Program Manager has reason to believe that a certifying agent has willfully violated the Act or regulations, the Program Manager may issue a notification of proposed revocation of accreditation. The proposed revocation may be for the certifying agent's entire accreditation business, a particular field office, or a specified technical area of accreditation. This notification, because it involves a willful violation, will be sent without first issuing a notification of noncompliance.

The certifying agent may file an appeal of the Program Manager's determination, pursuant to § 205.681. If the certifying agent fails to file an appeal of the proposed suspension or revocation, the Program Manager will suspend or revoke the certifying agent's accreditation. The certifying agent will be notified of the suspension or revocation by written notification.

A certifying agent whose accreditation is suspended or revoked must cease all certification activities in each area of accreditation and in each State for which its accreditation is suspended or revoked. Any certifying agent whose accreditation has been suspended or revoked must transfer to the Secretary all records concerning its certification activities that were suspended or revoked. The certifying agent must also make such records available to any applicable governing State official. The records will be used to determine whether operations certified by the certifying agent may retain their organic certification.

A certifying agent whose accreditation is suspended by the Secretary may at any time submit a new request for accreditation. Such request must be accompanied by evidence demonstrating correction of each noncompliance and actions taken to comply with and remain in compliance with the Act and regulations. A certifying agent whose accreditation is revoked by the Secretary will be ineligible to be accredited as a certifying agent under the Act and regulations for a period of not less than 3 years following the date of revocation.

State Programs' Compliance Procedures. A State program's governing State official may initiate noncompliance proceedings of certified organic operations operating in the State. Such proceedings may be initiated for failure of a certified operation to meet the production or handling requirements of this part or the State's more restrictive requirements, as approved by the Secretary. The governing State official must attempt to resolve the compliance violations through State mediation and reviews of corrections to operations.

The governing State official must promptly notify the Program Manager of commencement of enforcement proceedings initiated against certified operations. An enforcement proceeding, brought by a governing State official against a certified operation may be appealed in accordance with the appeal procedures of the State organic certification program. There will be no subsequent rights of appeal to the Secretary.

Compliance—Changes Based On Comments

This portion of subpart G differs from our first proposal in several respects as follows:

(1) *Authority of certifying agents.* We have provided accredited certifying

agents with authority to initiate noncompliance proceedings which may result in suspension or revocation of producer and handler certifications. A certifying agent's notification of proposed suspension or revocation of certification provides an opportunity for the certified operation to file an appeal in accordance with the appeal provisions of § 205.681. If a noncompliance procedure initiated by a certifying agent is not corrected, remains unresolved, and is not appealed, the certified operation's certification will be suspended or revoked. If the certified operation files an appeal, the action is turned over to the Program Manager or applicable governing State official for further resolution. The suspension or revocation will not become effective unless upheld by a ruling on the appeal.

Commenters expressed opposition to the notification of noncompliance with certification requirements and termination of certification provisions of the first proposal. Those provisions required a certifying agent to submit to the Administrator a notice of its recommendation to terminate the certification of a certified operation or any portion of a certified operation if the certifying agent had reason to believe the operation had ceased to comply with the Act and regulations. The commenters were opposed to the Secretary assuming authority for suspension or revocation of certification. The commenters stated that such decisions are the duty and responsibility of certifying agents, with the Secretary providing for appeals. Some commenters expressed the belief that the certifying agent's position is undermined by not having authority to suspend or revoke a certification for cause. Many commenters stated that certifying agents must have such authority in order to: (1) Achieve producer and handler compliance with the regulations; and (2) expedite the enforcement process. They believe that providing certifying agents with the authority to suspend or revoke a certification will preserve the NOP's integrity and increase consumer confidence in the quality of the organic products they purchase. Commenters stressed that, in addition to providing procedures for producer and handler appeals, the Department provides a system of checks and balances through the accreditation program.

We agree that certifying agents should have an important role to play in the suspension or revocation of the certification of production or handling operation that they certify. This proposal will enhance the certifying agent's authority to ensure that any production or handling operation it certifies is in compliance with the Act and regulations. We also agree that providing certifying agents with a more direct role in suspension or revocation proceedings will shorten the compliance process.

Accordingly, as noted above, we have provided accredited certifying agents with increased authorities in enforcement proceedings. They will make determinations to accept or reject rebuttals submitted in response to notifications of noncompliance. They will be responsible for defending their determinations, which must be consistent with the position of the NOP, in mediation processes. Finally, their decisions to propose suspension or revocation of producer and handler certifications will become effective unless appealed by the certified operation. Authority for certifying agents to take enforcement actions against certified operations is found in § 205.662.

(2) *Mediation.* We have added a new section authorizing certified operations to request mediation of any dispute regarding denial of certification or proposed suspension or revocation of certification. This section addresses the request for mediation, selection of the mediator, the time period for reaching an agreement, requirements of an agreement, and appealing a noncompliance decision if mediation is unsuccessful. The parties in the procedure must make administrative arrangements for the mediation and arrange for payment of any costs involved in the mediation. The Department will not finance or participate in such mediation. This additional provision is found at § 205.663.

Commenters requested that the Department authorize the use of alternative dispute resolution procedures and mediation. We support the idea of using mediation to resolve disputes with respect to denial of certification or proposed suspension or revocation of certification. Some States use mediation as a component of their appeal process. We believe mediation could prove effective in resolving many of the possible disputes between applicants for certification or certified operations and certifying agents. Without mediation, such disputes would probably be referred to the Administrator in the form of appeals. Mediation in some cases, however, may be of limited value because all agreements reached during mediation or as a result of the mediation process must be in compliance with the Act, these regulations, and any policies or procedures governing the NOP. While we presume a mediated settlement will be in accordance with the Act, the Secretary has authority to review and overrule a mediated settlement if the Secretary determines the settlement is not in accordance with Act and these regulations.

(3) *State certification program.* Commenters generally requested that States administer and enforce their own organic certification programs. We have added regulations in these provisions addressing States' enforcement of their programs regarding certified producers and handlers operating in the State. These regulations clarify a State's responsibility to provide for enforcement and appeal proceedings which are consistent with these regulations and for keeping the Secretary informed of such proceedings. We have added these regulations because we believe that a State must have the authority to initiate compliance actions to enforce its organic certification program. The regulations are found at § 205.668.

Regarding accreditation authorities, commenters stated that a State program's governing State official should have authority to suspend or revoke the accreditation of private certifying agents operating within the State. Sections 6515(j) and 6519(e) of the Act address suspension and revocation of accreditation by the Secretary or governing State official. While the Act may provide for the possibility of such authority being used by governing State officials, it also requires the Secretary to establish a workable accreditation program and it grants sole authority to the Secretary to accredit certifying agents. Therefore, the Secretary must have sole authority to suspend or revoke that accreditation.

This does not mean that governing State officials are denied a role in oversight of certifying agents operating in their States. If a governing State official believes a certifying agent operating in the State is not in compliance with the accreditation requirements of the Act or is not properly certifying producers or handlers to NOP and the State's approved unique organic certification requirements, the governing State official must investigate the possible noncompliance. If evidence of noncompliance is found, the governing State official must notify the Program Manager of such noncompliance activities and document those activities. The Program Manager will investigate such complaints of noncompliance.

(4) *Right of appeal.* We have added the requirement that any notification of proposed suspension or revocation must include a notice to the certified operation's or certifying agent's of its right to file an appeal. Commenters requested that the notification of proposed suspension or revocation provisions for certifying agents reference the appeals section. We agree with the commenters' request and add that all recipients of a notification of proposed suspension or revocation should be made aware of their appeal rights. Notification of appeal rights is found in § 205.662 for certified operations and § 205.665 for certifying agents.

Compliance—Changes Requested But Not Made

This subpart retains from our first proposal regulations on which we received comments as follows:

(1) *Revocation period.* Commenters stated that a 5-year period of ineligibility for certification after revocation of certification is too harsh a punishment to apply in all cases. Some commenters suggested that "shall not be eligible" should be replaced with "may be deemed ineligible" so that the penalty provision would be available for flagrant violations of the Act but would not have to be applied to all violations. A commenter suggested a maximum period of ineligibility of 3 years be established for certified operations. The commenter's justification was that organically produced agricultural products must be produced on land to which no prohibited substances have been applied for 3 years prior to harvest. This commenter also stated that the ineligibility waiver should be a local decision with notice to the Administrator.

Section 6519(c) of the Act requires certification ineligibility for 5 years unless reduced or eliminated by the Secretary. Revocation of a certification is a serious action subject to due process for the accused certified producer or handler. We believe that any noncompliance action, combination of noncompliance actions, or history of noncompliance activities deemed to warrant the revocation of certification also warrants ineligibility from certification for 5 years unless reduced or eliminated by the Secretary. If the noncompliance is not significant enough to warrant revocation of the operation's certification, the certifying agent, State program's governing State official, or Secretary may choose to suspend the operation's certification for a period of time less than the 5-year revocation period. We disagree with the suggestion that ineligibility waivers should be decided at the local level. Actions which are finalized by the governing State official, Administrator, or Secretary cannot be subject to reversal or waivers by certifying agents. Additionally, a national program such as this must have uniformity in application, which would be less likely if individual certifying agents were permitted to establish their own criteria for ineligibility waivers. Accordingly, the ineligibility and waiver provisions are unchanged in this proposal.

(2) *Accreditation sanctions.* Commenters stated that suspension and revocation of accreditation should be applied fairly to both private and State certifying agents. Governing State officials do not have any accreditation authorities under this proposal—which may reduce private certifying agents' concerns of unfair or unequal treatment. Accreditation compliance actions by the Program Manager and the Administrator will be conducted impartially and in accordance with the Administrative Procedure Act and Department policies.

Revocation would be based on a determination that a private certifying agent willfully violated the Act or these regulations or falsely or negligently certified a production or handling operation as an organic operation. The Act does not authorize the revocation of a State certifying agent's accreditation. However, because suspension of such entity can be established for any period of time, a suspension can be effectively equivalent to a revocation of accreditation. Accordingly, this proposal retains the provisions for the suspension of accreditation for private and State certifying agents and the revocation of accreditation for private certifying agents.

Compliance—Additional Provisions

Upon further review of the accreditation provisions in the first proposal, we have decided to propose the following additions and changes.

(1) *Enforcement rights of the Secretary.* We have added a general section addressing specific enforcement rights of the Secretary. First, this section clarifies that the Program Manager on behalf of the Secretary and the Administrator may inspect and review State organic certification programs, accredited certifying agents, and certified production or handling operations for compliance with the Act or regulations. The Program Manager has this oversight authority in States with State organic certification programs as well as in States without such programs.

Second, this section provides that the Program Manager may initiate proceedings to suspend or revoke a certified operation's certification when a certifying agent or governing State official fails to take appropriate enforcement action against a certified operation that is not in compliance with the Act or these regulations. We have added this provision because this proposal provides certifying agents and governing State officials with enforcement authorities, including the suspension and revocation of certifications. However, we believe the Secretary, through the Program Manager, must have authority to take such actions if a certifying agent or governing State official fails to carry out its responsibilities.

Third, this section provides that the Program Manager may initiate proceedings to suspend or revoke a certified operation's certification upon suspension or revocation of the operation's certifying agent's accreditation. We have added this provision to enable the Program Manager to suspend or revoke certification of any operation that a certifying agent certified following procedures or practices that are not in compliance with the Act or these regulations. This addition is found at § 205.660.

(2) *Certifying agent investigations.* We have added a section to clarify that certifying agents may investigate complaints of noncompliance with the Act or regulations concerning operations that they have certified. This section does not authorize a certifying agent to investigate certified operations that the certifying agent has not certified. Such complaints should be reported to the certifying agent that certifies the operation in question. This addition is found at § 205.661.

(3) *Certified operation rebuttals.* We have added a certified operation's right to rebut any noncompliance described in a notice of noncompliance. We believe this provision is necessary to clarify that certified operations should be able to present facts or arguments refuting the certifying agent's findings. We see this as an informal process between the certified operation and the certifying agent to clarify possible misunderstandings or misinterpretation of requirements, data, or information. The APA requires such opportunities prior to suspension or revocation. Certified operations that successfully refute a finding of noncompliance will receive a notification of noncompliance resolution. Any certified operation unable to successfully refute a finding of noncompliance must correct the

noncompliance or face possible suspension or revocation of its certification. This addition is found at § 205.662(a)(3).

(4) *Certifying agent rebuttals.* We also have added a certifying agent's right to rebut any accreditation noncompliance described in a notice of noncompliance issued by the Program Manager. This also will be an informal process and is consistent with the intent of the APA. We believe this provision is necessary to clarify that certifying agents should be able to present facts or arguments refuting the Program Manager's findings. Certifying agents that successfully refute a finding of noncompliance will receive a notification of noncompliance resolution. Any certifying agent unable to successfully refute a finding of noncompliance must correct the noncompliance or face possible suspension or revocation of its accreditation. This addition is found at § 205.665(a)(3).

(5) *Willful noncompliance.* We have also added authority for certifying agents and governing State officials to move directly to a notice of proposed revocation if a certification noncompliance is a willful, serious violation of these regulations. This will allow expedited action in dealing with serious violations of certification. The due process provisions of the APA provide an exception in cases of willful violations. Even though a noncompliance may be a willful act, the certified operation maintains the right to file an appeal of a proposed suspension or revocation of certification. Revocation of certification is reserved for serious instances of willful noncompliance and other serious violations. If a suspected willful violation is deemed not serious, a proposed suspension of certification rather than revocation may be issued.

Inspection and Testing, Reporting, and Exclusion From Sale

This portion of subpart G sets forth the inspection and testing requirements for agricultural products that have been produced on organic production operations or handled through organic handling operations.

Based on comments received regarding the first proposal, we have modified and restructured our residue testing requirements. Commenters were concerned about the cost of residue testing to certified operations and certifying agents, the determination of detectable levels of prohibited substances, and the exclusion of contaminated products from sale as organically produced.

Residue testing plays an important role in organic certification by providing a means for monitoring compliance with the National Organic Program (NOP) and by discouraging the mislabeling of agricultural products. This testing program provides State programs' governing State officials and certifying agents with a tool for ensuring compliance with three areas for testing: (1) Preharvest residue testing, (2) postharvest residue testing, and (3) testing for unavoidable residual environmental contamination levels.

Proposal Description

Under the residue testing requirements of the NOP, we propose that all agricultural products sold, labeled, or represented as organically produced be available for inspection by the Administrator, State program's governing State official, or certifying agent. Organic farms and handling operations must be made available for inspection under proposed Subpart E, Certification. In addition, products from the aforementioned organic operations may be required by the State program's governing State official or certifying agent to undergo preharvest or postharvest testing when there is reason to believe that agricultural products to be sold or labeled as organically produced have come into contact with prohibited substances. *The cost of such testing will be borne by the applicable certifying party and is considered a cost of doing business. Accordingly, certifying agents should make provisions for the cost of preharvest or postharvest residue testing when structuring certification fees.*

Preharvest and Postharvest Residue Testing. The main objectives of the residue testing program are to: (1) Ensure that certified organic production and handling operations are in compliance with the requirements set forth in this proposal; and (2) serve as a means for monitoring drift and unavoidable residue contamination of agricultural products to be sold or labeled as organically produced. Any detectable residues of a prohibited substance found in or on samples during chemical analysis will serve as a warning indicator to the State program's governing State official or certifying agent.

The request for preharvest or postharvest residue testing is based on the Administrator's, State program's governing State official's, or certifying agent's belief that an agricultural product has come into contact with one or more prohibited substances. The "reason to believe" could be triggered by various situations, for example: (1) The applicable authority receiving formal written complaint regarding the practices of a certified organic operation; (2) an open container of a prohibited substance found on the premises of a certified organic operation; (3) the proximity of a certified organic operation to a potential source of drift; (4) suspected soil contamination by historically persistent substances; or (5) when the product from a certified organic operation is unaffected when neighboring fields or crops are infested with pests. These situations do not represent all of the possible occurrences that would trigger an investigation. Preharvest or postharvest residue testing will occur on a case-by-case basis.

In each case, an inspector representing the Administrator, certifying agent, or State program's governing State official will conduct sampling. Testing for chemical residues must be performed in an accredited laboratory, defined as a laboratory that has met and continues to meet the requirements specified in the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 138) (FACT Act) for pesticide residue analyses of fresh fruit and vegetables and/or pesticide analysis of products derived from livestock and fowl. AMS is currently developing a regulation for the National Laboratory Accreditation Program (NLAP), which will accredit laboratories under the FACT Act. We expect that the NLAP will be implemented before or at the same time as the NOP. When conducting chemical analyses, the laboratory must incorporate the analytical methods described in the 16th edition of the *Official Methods of Analysis of the AOAC International* or other applicable validated methodology for determining the presence of contaminants in agricultural products.

When testing indicates that an agricultural product to be sold or labeled as organically produced contains residues of prohibited substances, certifying agents will compare the level of detected residues with a national mean of detection for the specific commodity/pesticide combination generated by the U.S. Department of Agriculture's (USDA) Pesticide Data Program (PDP). This national mean is defined as the mean level of detected pesticide residues as described in certain pesticide/commodity pairs or combinations established by USDA's Pesticide Data Program. The national mean for specific commodity/pesticide combinations will serve as a standard for the Administrator, State programs' governing State officials, and certifying

agents to assist in monitoring for illegal use violations. This information will be made available by USDA to aid State programs' governing State officials and certifying agents in making sound evaluations and decisions regarding detected levels of prohibited substances.

In addition, levels of unavoidable residual environmental contamination will be determined for crop-and site-specific agricultural commodities to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)." These levels will represent limits at which the Department may take compliance action to suspend the use of the contaminated area for organic agricultural production. Initially, unavoidable residual environmental contamination levels will be set for persistent prohibited substances (aldrin, dieldrin, chlordane, DDE, etc.) in the environment. In time, they may become more inclusive of prohibited residues as additional information becomes available. Unavoidable residual environmental contamination levels will be based on the unavoidability of the chemical substances and do not represent permissible levels of contamination where it is avoidable. Historical residue data gathered from Federal and State monitoring and testing programs will be used to determine these levels. They will be set by the Administrator, in consultation with the Food and Drug Administration (FDA) and Environmental Protection Agency (EPA).

After all tests and analyses have been concluded, the results must be provided to the Administrator. The results of analyses and tests will be available, kept on record, and reviewed by the Department to evaluate concentration levels of prohibited substances for specific regions and agricultural crops. Analyses and test results will also be available for public access, unless the residue testing is part of an ongoing compliance investigation. Information relative to an ongoing compliance investigation will be confidential and restricted to the public.

Detection of Prohibited Substances. In the case of residue testing and the detection of prohibited substances in or on agricultural products to be sold, labeled, or represented "100 percent organic," "organic," or "made with organic (specified ingredients)," detectable residues of prohibited substances that exceed the national mean of detection for the respective commodity/pesticide combination or unavoidable residual contamination levels cannot be sold or labeled as organically produced. When such an agricultural crop is in violation of these requirements, the certification of that crop will be suspended for the period that the crop is in production. Certifying agents must follow the requirements specified in §§ 205.662 and 205.663 of Subpart G, Compliance. In addition, when a State program's governing State official or a certifying agent detects a prohibited substance in or on agricultural products to be sold or labeled as organically produced, the State program's governing State official or certifying agent may conduct an investigation to determine the cause of the prohibited substance.

If the investigation into the cause of a detectable residue level in a product indicates that the residue was the result of an intentional application of a prohibited substance, the Administrator is authorized to initiate proceedings to revoke or suspend the certification status of an operation or portion of that operation. When testing indicates that an agricultural product contains prohibited substances that exceed either the EPA tolerance level or FDA action level, as applicable, for the prohibited substance, the data revealing such information will be promptly reported to the appropriate regulatory health agencies.

Emergency Pest Eradication or Disease Treatment Programs. When a prohibited substance is applied to an organic production or handling operation due to a Federal or State emergency pest eradication or disease treatment program and the organic handling or production operation otherwise meets the requirements of this proposal, the certification status of the operation shall not be affected as a result of the application of the prohibited substance, provided that: (1) Any harvested crop or plant part to be harvested that has contact with a prohibited substance applied as the result of a Federal or State emergency pest eradication or disease treatment program cannot be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)'; and (2) any livestock that are treated with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program or product derived from such treated livestock cannot be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)."

However, milk or milk products may be labeled or sold as organically produced beginning 12 months following the last date that the dairy animal was treated with the prohibited substance. Additionally, the offspring of gestating mammalian breeder stock treated with a prohibited substance may be considered organic if the breeder stock was not in the last third of gestation on the date that the breeder stock was treated with the prohibited substance.

Residue Testing—Changes Based on Comments

This portion of subpart G differs from our first proposal in several respects as follows:

Residue Testing. (1) We have revised the first proposal's section on residue testing and repositioned it under § 205.670(b).

Commenters disagreed with the provisions in the first proposal which required certifying agents to conduct residue testing of products produced and handled on operations that they had certified not less frequently than every 5 years. They stated that the first proposal's requirements for residue testing: (1) Were in excess of what the Act actually requires; (2) were more stringent than that of the industry norm; (3) would create an unnecessary burden on certifying agents and organic production and handling operations; and (4) would increase costs for certified production and handling operations. The commenters stated that the NOP's residue testing requirements should utilize existing Federal and State testing programs for the detection of pesticide residues. They also stated that residue testing should only be required when it is known or suspected that prohibited substances have been applied to organic products.

We disagree with the commenters' assertions regarding the first proposal's requirements for residue testing. However, in an attempt to minimize the burdens of residue testing, we have proposed that State programs' governing State officials and certifying agents may test agricultural inputs used for organic production and require preharvest or postharvest testing of any agricultural product to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)" when there is reason to believe that the agricultural product has come into contact with prohibited substances. This change allows State programs' governing State officials and certifying agents to perform preharvest and postharvest residue testing on a case-by-case basis.

Commenters requested that the rule specify which laboratories are authorized to perform residue testing and what tests each laboratory would be accredited to perform. We have defined

an accredited laboratory as a laboratory that has met and continues to meet the requirements specified in the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 138) for pesticide residue analyses of fresh fruit and vegetables and/or pesticide residue analysis of products derived from livestock and fowl. Any laboratory that meets the specified requirements therein may be used in conducting residue tests. We have required that accredited laboratories be used to ensure consistency among data, testing methodology, reporting procedures, and other testing criteria needed to maintain analytical uniformity in the residue testing program. Validated analytical methodologies for determining the presence of contaminants in agricultural products, such as those described in the 16th edition of the *Official Methods of Analysis of the AOAC International,* may be used.

Tolerance Levels for Pesticide Residues. (2) We have prohibited the sale and labeling of agricultural products as organic when such products have been tested for prohibited substances and found to contain residues of prohibited substances at levels greater than the national mean of detection for the specific commodity/pesticide combination or levels greater than the unavoidable residual environmental contamination. Such agricultural products cannot be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)." The Administrator, State program's governing State official, or certifying agent may conduct an investigation of the applicable production or handling operation to determine the cause of the presence of any prohibited substance. If the investigation reveals that the presence of a prohibited substance was the result of intentional application of the prohibited substance, the Administrator may initiate proceedings to suspend or revoke the production or handling operation's certification.

(3) Commenters suggested that USDA adopt a uniform standard for the maximum allowable residue levels. Some commenters expressed the belief that it is impractical or too expensive to establish site-specific, unavoidable residual environmental contamination levels for every commodity/pesticide combination in every growing area. Others argued that the cause of contamination is irrelevant and that crops that exceed the maximum residue levels should not be allowed to be sold as organic. Finally, others argued that a single standard was needed because contaminated products would not be removed from the market immediately, pending determination of cause.

Organic standards, including provisions governing prohibited substances, are based on the method of production, not the content. The primary purpose of the residue testing approaches described in this proposal, then, is to provide an additional tool for State programs' governing State officials and certifying agents to use in monitoring and ensuring compliance with the NOP. We acknowledge that consumers have a reasonable expectation that organic products will contain minimal residues of prohibited substances. We are not allowing the use of prohibited substances. We are making provisions for the unavoidable occurrences of prohibited substances while ensuring that residue levels are consistent with consumer expectations.

This proposal adopts PDP's national means of detected residue for specific commodity/pesticide combinations and the unavoidable residual environmental contamination levels. Both standards have been adopted for the purpose of determining excessive prohibited substances on agricultural products to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)."

The national mean of detected residue for a specific commodity/pesticide combination is derived from detections in the PDP monitoring program. As a result of mean values being based on conventional substances, we believe that residue values that fall above this mean, then, would be beyond reasonable consumer expectations for minimal residues. The situation is very similar with respect to unavoidable residual environmental contamination levels. Even though the presence of residues of certain persistent substances may not be the result of intentional application, we believe that excessive residue levels would not be consistent with the intentions of the Act. Accordingly, when levels of a persistent substance are detected above the unavoidable residual environmental contamination level, the product cannot be sold or labeled as organically produced.

Some commenters suggested that we use a percentage of the EPA tolerance of FDA action level, such as 5 or 10 percent, as a uniform standard for the maximum allowable residue level. We considered the comments but decided not to adopt them for the following reasons. The EPA tolerances for pesticides are defined as the maximum legal level of a pesticide residue in or on a raw or processed agricultural commodity, as set by the Environmental Protection Agency under the Federal Food Drug and Cosmetic Act, section 408. FDA action levels represent limits, at or above which FDA will take legal action against a food product to prevent poisonous or deleterious substances from entering the food supply. Both EPA tolerances and FDA action levels are public health-based standards. Our rationale for residue testing, as a tool for State programs' governing State officials and certifying agents to monitor compliance with the NOP, is different from these public health programs.

Accepting a percentage of EPA tolerance or FDA action levels could also pose a significant problem for analytical laboratories trying to analyze for prohibited substances. In some cases, pesticides have tolerances that are set near their analytical method's Limit of Quantification (LOQ). The LOQ is defined as the lowest level where analytical measurement becomes quantitatively meaningful. If the EPA tolerances are near the analytical method LOQ's, accurate determination of the levels at 5 to 10 percent of the tolerance may not be attainable for analytical instrumentation currently employed. Therefore, the Department could be setting a level of concern below the LOQ for some substances if it adopted this recommendation. As a fundamental principle, we have chosen not to set an enforcement level that could be below detection limits for some substances. As an alternative, we are proposing to use the PDP national mean of detected residues for specific commodity/pesticide combinations.

Other commenters suggested that USDA adopt a "zero tolerance" for residues of prohibited substances. Under this suggestion, products containing any detectable residues of a prohibited substance would not be allowed to be labeled as organically produced. This proposal does not adopt this suggestion. While standards strictly prohibit use of any substance not found on the approved National List, we recognize that some minimal residues may still be found in organic foods. We believe our proposed residue testing system and compliance provisions should be adequate to protect the integrity of agricultural products sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)."

Several commenters expressed opposition to the first proposal not requiring residue testing in the event of drift. These commenters stated that organic producers should report all incidences of drift to their certifying agent. The commenters further stated that a crop should be tested for the

presence of prohibited substances when drift has or is suspected to have occurred. They also stated that when the test indicates levels of residues of prohibited substances that exceed 5 percent of the EPA tolerance level, the crop should be prohibited from being sold or labeled as organically produced.

In response to commenters' concern about contamination from drift, we have used some of their reasoning in the development of our residue testing program. Drift is defined as the physical movement of prohibited substances from the intended target site onto an organic production operation or any portion thereof. The National Organic Standards Board (NOSB or Board) recommended that agricultural products exposed to drift not be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)" or fed to livestock on organic operations. The NOSB also recommended that preharvest tissue testing of crops suspected of receiving drift be required to verify the presence or absence of prohibited substances. This proposal addresses the problem of drift through the use of preharvest testing of crops suspected of receiving drift of a prohibited substance. Although drift may occur, especially in those agricultural regions where pesticide use on nonorganic lands is routine and heavy, exposure to drift does not constitute use of a prohibited substance. Therefore, preharvest testing provisions have been established for State programs' governing State officials and certifying agents to test when there is a reason to believe that agricultural products intended to be sold or labeled as organically produced have come into contact with prohibited substances. This will allow a State program's governing State official or certifying agent to determine whether the integrity of the product has been affected. We believe our proposed residue testing program and compliance provisions should be adequate to protect the integrity of agricultural products.

Residue Testing—Changes Requested but Not Made

(1) The original proposal provided that land subject to a Federal or State emergency disease or pest treatment program should not lose its organic certification and should not be required to be withheld from organic production for a period of 3 years. A few commenters stated that a field treated under such emergency situations should lose its certification and should be restricted for organic use for 3 years following the emergency treatment. The commenters stated this is necessary to maintain consumer confidence in organically produced products. We believe the first proposal is consistent with the requirements of the Act. The proposal provided that crops and livestock that had contact or been treated with a prohibited substance under such an official emergency treatment program could not be sold or labeled as organic. This proposal retains that prohibition.

Commenters suggested that producers work with the Federal or State agency which requires an emergency treatment program and arrange for use of materials that are compatible with organic production. While this may be possible under certain emergency treatment situations, it cannot be relied on as a solution to every emergency treatment situation. Appropriate alternative treatments may not be available, or the jurisdiction requiring the emergency program may not grant alternative treatments. Commenters also suggested that producers avoid planting crops that might be subject to pests or diseases targeted by emergency treatment programs to avoid emergency treatments. We do not believe that is a reasonable solution for producers. Emergency treatment programs are used in response to unforeseen infestations and diseases. Only hindsight would help organic producers determine which crops to produce. Further, the possibilities of damaging insect infestations or plant or animal diseases warranting an emergency treatment program are so numerous that an organic producer could be left with few or no alternative crops or livestock to produce. Cultural conditions and market factors also would limit selection of alternative organic production. Accordingly, the commenters' recommendation that loss of organic certification and an automatic 3-year prohibition on organic production from land or livestock treated under an official emergency treatment program is not accepted.

Residue Testing. (2) Commenters suggested that some of the responsibility of residue testing be removed from certifying agent responsibilities. They also suggested that residue testing requirements take into account current Federal and State testing requirements already in place for the detection of pesticide residues.

We have not adopted language that the Department would use current Federal and State testing requirements for the detection of pesticide residues in the residue testing program. Although State and Federal testing provide good sources of data on pesticide residues, the data may reflect criteria developed for different sampling purposes, showing wide variations in sample selection and indicating different laboratory capabilities and different levels of quantification between and within laboratories.

Residue Testing—Additional Provisions

Section 205.670(a) has been added. It provides that the Administrator, the State program's governing State official, and the applicable certifying agent have access, for inspection purposes, to all agricultural products being sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)." In addition, the organic products must be made available for examination by said authorities in the manner that they prescribe.

Public comments did not suggest this action. However, we believe it is necessary to officially grant the Administrator, the State program's governing State official, and the applicable certifying agent the authority to access all agricultural products subject to inspection under this section. This authority will help resolve conflicts that may arise regarding product accessibility during inspection and testing.

Adverse Action Appeal Process. This portion of subpart G sets forth the general framework for an appeal process for persons subject to compliance determinations under the National Organic Program (NOP). In this proposal, we are empowering certifying agents with the authority to make decisions concerning denial of certification and the suspension or revocation of certified operations. This empowerment of certifying agents makes the appeal process very important.

We envision two kinds of appeals will be filed under these procedures: (1) Producers and handlers appealing denial of certification and proposed suspension and revocation of certification decisions by certifying agents; and (2) certifying agents appealing denial of accreditation and proposed suspension and revocation decisions by the NOP Program Manager. The Administrative Procedure Act (APA) (5 U.S.C. 553–559) provides that entities such as certified operations and accredited certifying agents have the right to appeal any adverse actions taken against their certification or accreditation, respectively. Applicants for certification and applicants for accreditation who receive a denial of certification or accreditation may appeal that denial following this appeal

procedure. The appeal process is the same for applicants as for certified operations and accredited certifying agents.

The informal appeal process described in this section is an extension of the noncompliance proceeding outlined in the Compliance section of this subpart.

For certification proceedings, the NOP and the Administrator will oversee compliance proceedings and handle certification appeals from operations in States that do not have an approved State organic certification program. The Administrator will issue decisions to sustain or deny appeals. If an appeal is denied, the Secretary will initiate a formal administrative review process, which includes a hearing before an administrative law judge and review by the Department's Judicial Officer. The formal administrative review process will be conducted pursuant to the Department's Uniform Rules of Practice, 7 CFR 1.130 through 1.151. The formal administrative review will be the Department's final determination on the noncompliance proceeding. That decision may be appealed to the District Courts. This section addresses the informal appeal process which is used to arrive at the Administrator's decision to sustain or deny an appeal.

In States with approved State organic certification programs, the governing State official or designee will oversee certification compliance proceedings and handle appeals from certified operations in the State. The governing State official or designated appeals official will rule on appeals filed under a State organic certification program. Further appeal of that decision may be made to the district court system.

Proposal Description

These appeal procedures provide that persons subject to the Act who believe that they are adversely affected by a noncompliance decision of a certifying agent, Program Manager, or governing State official may appeal such decision to the Administrator or to the applicable State's appeal process. Under Compliance provision in this subpart, accredited certifying agents initiate noncompliance proceedings. If an appeal of a certification decision is filed, the process is referred to the Administrator or governing State official or designee, as applicable, to the State where the applicant or certified operation resides.

Certification Appeals

Applicants for certification may appeal a certifying agent's denial of certification. Certified operations may appeal a certifying agent's notification of proposed suspension or revocation of the operation's certification. These appeals will be made to the Administrator or to the applicable governing State official or designated official in the approved State organic certification program.

Certification appeals may be filed only after an applicant or a certified operation has been given opportunity to come into compliance with these regulations or otherwise resolve the specified noncompliance. Prior to filing an appeal, the applicant or certified operation must have failed in rebuttal, refused to make specified corrections, or made corrections which the certifying agent subsequently determined to not meet certification requirements of the NOP.

If the Administrator or governing State official sustains an appeal, the applicant or certified operation will be granted certification or continued certification, as applicable to the operation's status. The applicant or certified operation will not be required to correct the actions or conditions cited in the noncompliance notification. The act of sustaining the appeal will not be considered an adverse action and may not be appealed by the certifying agent which issued the notification.

If the Administrator or governing State official denies an appeal, a formal administrative proceeding will be initiated to deny, suspend, or revoke the certification. Such proceeding will be conducted pursuant to the Department's Uniform Rules of Practice or pursuant to the State's formal appeal procedures. Certified operations may continue to operate throughout this informal appeals process and the formal administrative proceedings.

Accreditation Appeals

Pursuant to § 205.665 of this subpart, all accredited certifying agents are subject to the Program Manager's review of their operations and any noncompliance actions resulting from such reviews. As provided in § 205.668, a State program's governing State official must advise the Program Manager if an investigation of a certifying agent reveals that the certifying agent is not in compliance with the Act or these regulations. The appeal process for applicants is the same as for accredited certifying agents.

An appeal may be filed with the Administrator only after the certifying agent fails to rebut the noncompliance notice and fails to correct the noncompliance specified. If the Administrator sustains an appeal, the applicant or certified operation will be granted certification or continued certification, as applicable to the operation's status. The applicant or certified operation will not be required to correct the actions or conditions cited in the compliance notification. If the appeal is denied, a formal administrative proceeding will be initiated to deny, suspend, or revoke the accreditation.

The certifying agent may continue to operate as a certifying agent throughout the informal appeals process and the formal administrative proceeding.

All appeals to the Administrator must be filed in writing and sent to: Administrator, USDA–AMS, Room 3071–S, PO Box 96456, Washington, DC 20090–6456. An appeal must include a copy of the adverse decision to be reviewed and a statement of the appellant's reasons for believing that the decision was not proper and not made in accordance with applicable program regulations, policies, or procedures. A certified operation must send a copy of its appeal, to its certifying agent. All written communications between parties involved in appeal proceedings must be sent to the recipient's place of business by a delivery service which provides dated return receipts. Appeals under a State's procedure will be filed pursuant to the State's appeal process, which should include addresses and filing periods, etc.

An appeal must be filed within the time provided in the letter of notification or at least 30 days from the date of receipt of the notice to deny, suspend, or revoke certification or accreditation. The appeal will be considered "filed" on the date received by the Administrator or, when applicable, the State program's governing State official or such official's designee. The Administrator will notify the appellant and the appellant's certifying agent that the appeal was received. Unless appealed in a timely manner, a notification to deny, suspend, or revoke a certification or an accreditation will become final. The applicant, certified operation, or certifying agent that does not file an appeal in the time period provided waives the right to further appeal of the compliance proceeding.

Appeals—Changes Based On Comments

These appeal regulations differ from our first proposal as follows:

(1) *Decision-making.* We have clarified who will be making decisions that may be appealed to the Administrator. This proposal provides that persons subject to the Act who, during noncompliance proceedings described in this subpart, believe that

they are adversely affected by a noncompliance decision of a certifying agent, Program Manager, or governing State official may appeal such decision to the Administrator or the State's designated appeals official. This clarification is found in § 205.680.

Commenters stated that the proposed appeals procedures limited appeals to decisions of the NOP staff. Commenters requested that the appeals procedures be available for decisions by the Secretary, any representative of the Secretary, and decisions by any certifying agent. What we meant in the first proposal was that appeals would be filed on decisions made by the Program Manager and certifying agents.

As noted above, we are empowering certifying agents to make decisions concerning denials of certification and suspension or revocation of certified operations' certifications. Certifying agents accredited under this program act on behalf of the Secretary and the Administrator to carry out certification services, including noncompliance actions. The Administrator or designated governing State official will make decisions to either sustain or deny appeals by certification applicants and certified operations, as applicable to the State.

The Program Manager will make decisions to deny applications for accreditation and to suspend or revoke certifying agents' accreditations. The Administrator will make all decisions to either sustain or deny appeals by accreditation applicants and certifying agents.

(2) *Appeal procedures.* Commenters requested detailed appeal procedures or the use of citations to identify existing Departmental appeal procedures which would be used for appeals filed under this program. We acknowledge that the first proposal lacked detailed appeals provisions. However, we believe this explanation is more informative and helpful for the commenters. The formal administrative procedure following the Department's Uniform Rules of Practice is required under the APA. The rules of practice are not included in individual rulemaking actions but may be found under 7 CFR 1.130 through 1.151. The combination of this informal appeal procedure followed by the formal administrative proceeding assures applicants, certified operations, and accredited certifying agents that they will be given full opportunity to respond to any noncompliance proceeding brought against their application or operation. Individual State programs will have their own, approved appeal procedures.

Commenters also recommended that the Department should use an independent USDA appeals division to avoid conflict of interest by the Program Manager or the Administrator in the handling of appeals. We believe this proposed appeal procedure ensures that appeals will be administered by persons not involved in the decision being appealed. This appeals procedure is consistent with the requirements of the APA.

Paragraph (a)(1) of § 205.681 provides that if the Administrator sustains an applicant's or certified operation's appeal of a certifying agent's noncompliance decision, the act of sustaining the appeal shall not be an adverse action subject to appeal by the affected certifying agent. We have included this provision because, as noted above, certifying agents are accredited by the Secretary to provide certification services as agents of the Secretary and the Administrator. Therefore, if the Administrator overrules a decision of an accredited certifying agent, that certifying agent cannot request an appeal of the Administrator's decision.

Appeals—Changes Requested But Not Made

None.

Appeals—Additional Provisions

(1) *State appeals procedures.* We are proposing that appeal proceedings in States with organic certification programs approved by the Secretary will be carried out in accordance with the official administrative appeal proceedings in each State. A State's appeal process will be included as part of the State's organic certification program. Because a State's appeal procedure is approved by the Secretary, the final determination for a certification appeal arrived at under that procedure is considered to have the effect of a decision by the Secretary. Approved State appeal processes are unique to each State and are not included in this regulation.

Certification appeals are made to the State program's governing State official or such official's designee. The governing State official or designee will administer the appeal pursuant to appeal procedures which have been approved by the Secretary. Rulings on such appeals, as noted in § 205.668, may not be appealed to the Secretary. The certification applicant or certified operation may make subsequent appeal to the Court of Appeals of the United States for the circuit in which such applicant or certified operation carries on business or in the United States Court of Appeals for the District of Columbia Circuit.

(2) *Accreditation appeals.* This proposal provides that the Program Manager carries out all compliance proceedings on accredited certifying agents. The Secretary has sole authority for accrediting certifying agents and, therefore, must retain sole authority for suspending or revoking that accreditation. A State program's governing State official must investigate any complaints of noncompliance on the part of a certifying agent operating in the State. If noncompliance activities or conditions are found, the governing State official must notify the Program Manager of those compliance violations or suspected compliance violations.

Miscellaneous

Section 205.690 provisions the Office of Management and Budget control number assigned to the information collection requirements of these regulations. Sections 205.691 through 205.699 are reserved.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Foods, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter I of the Code of Federal Regulations be amended as follows:

1. Parts 205 through 209 which are currently reserved in subchapter K (Federal Seed Act), are removed.

2. A new subchapter M consisting of part 205 through 209 is added to read as follows:

SUBCHAPTER M—ORGANIC FOODS PRODUCTION ACT PROVISIONS

PART 205—NATIONAL ORGANIC PROGRAM

Subpart A—Definitions

Sec.

205.1 Meaning of words.
205.2 Terms defined.

Subpart B—Applicability

205.100 What has to be certified.
205.101 Exemptions and exclusions from certification.
205.102 Use of the term, "organic."
205.103 Recordkeeping by certified operations.
205.104 Foreign applicants.
205.105–205.199 [Reserved]

Subpart C—Organic Crop, Wild Crop, Livestock, and Handling Requirements

205.200 General.

205.201 Organic production and handling system plan.
205.202 Land requirements.
205.203 Soil fertility and crop nutrient management practice standard.
205.204 Seeds and planting stock practice standard.
205.205 Crop rotation practice standard.
205.206 Crop pest, weed, and disease management practice standard.
205.207 Wild-crop harvesting practice standard.
205.208–205.235 [Reserved]
205.236 Origin of livestock.
205.237 Livestock feed.
205.238 Livestock health care practice standard.
205.239 Livestock living conditions.
205.240–205.269 [Reserved]
205.270 Organic handling requirements.
205.271 Facility pest management practice standard.
205.272 Commingling and contact with prohibited substance prevention practice standard.
205.290 Temporary variances.

Subpart D—Labels, Labeling, and Market Information

205.300 Use of the term, "organic."
205.301 Product composition.
205.302 Calculating the percentage of organically produced ingredients.
205.303 Packaged products labeled "100 percent organic" or "organic."
205.304 Packaged products labeled "made with organic (specified ingredients)."
205.305 Multiingredient packaged products with less that 50 percent organic ingredients.
205.306 Labeling of nonretail containers used for only shipping or storage of raw or processed agricultural products labeled as "100 percent organic," "organic," or "made with organic (specified ingredients)."
205.307 Agricultural products in a form other than packages at the time of retail sale that are labeled or represented as "100 percent organic" or "organic."
205.308 Agricultural products in a form other than packages at the time of retail sale that are sold, labeled, or represented as "made with organic (specified ingredients)."
205.309 Agricultural products produced on an exempt production operation.
205.310 USDA Seal.

Subpart E—Certification

205.400 General requirements for certification.
205.401 Application for certification.
205.402 Review of application.
205.403 On-site inspections.
205.404 Approval of certification.
205.405 Denial of certification.
205.406 Continuation of certification.
205.407–205.499 [Reserved]

Subpart F—Accreditation of Certifying Agents

205.500 Areas and duration of accreditation.
205.501 General requirements for accreditation.
205.502 Applying for accreditation.
205.503 Applicant information.
205.504 Evidence of expertise and ability.
205.505 Statement of agreement.
205.506 Approval of accreditation.
205.507 Denial of accreditation.
205.508 Site evaluations.
205.509 Peer review panel.
205.510 Annual report, recordkeeping, and renewal of accredition.
205.511–205.599 [Reserved]

Subpart G—Administrative

The National List of Allowed and Prohibited Substances
205.600 Allowed and prohibited substances and ingredients in organic production and handling.
≤205.601 Synthetic substances allowed for use in organic crop production.
205.602 Nonsynthetic substances prohibited for use in organic crop production.
205.603 Synthetic substances allowed for use in organic livestock production.
205.604 Nonsynthetic substances prohibited for use in organic livestock production. [Reserved]
205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic," or "made with organic (specified ingredients)."
205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as "organic" or "made with organic ingredients."
205.607 Amending the National List.
State Programs
205.620 Requirements of State organic certification programs.
205.621 Submission and determination of proposed State organic certification programs and amendments to approved State organic certification programs.
205.622 Review of approved State organic certification programs.
Fees
205.640 Fees and other charges for accreditation.
205.641 Payment of fees and other charges.
205.642 Fees and other charges for certification.
205.643–205.649 [Reserved]
Compliance
205.660 General.
205.661 Investigations of certified operations.
205.662 Noncompliance procedure for certified operations.
205.663 Mediation.
205.664 [Reserved]
205.665 Noncompliance prodcedures for certifying agents.
205.666–205.667 [Reserved]
205.668 Noncompliance procudures under State organic certification programs.
205.699 [Reserved]
Inspection and Testing, Reporting, and Exclusion from Sale
205.670 Inspection and testing of agricultural product to be sold or labeled "organic".
205.671 Exclusion from organic sale.
205.672 Emergency pest or disease treatment.
205.673—205.679 [Reserved]
Adverse Action Appeal Process
205.680 General.
205.681 Appeals.
205.682—205.689 [Reserved]
Miscellaneous
205.690 OMB control number.
205.691—205.699 [Reserved]

Authority: 7 U.S.C. 6501–6522.

Subpart A—Definitions

205.1 Meaning of words.

For the purpose of the regulations in this subpart, words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand.

205.2 Terms defined.

Accredited laboratory. A laboratory that has met and continues to meet the requirements specified in the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 138) for pesticide residue analyses of fresh fruit and vegetables and/or pesticide residue analysis of products derived from livestock and fowl.

Accreditation. A determination made by the Secretary that authorizes a private, foreign, or State entity to conduct certification activities as a certifying agent under this part.

Act. The Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*).

Action level. The limit at or above which the Food and Drug Administration will take legal action against a product to remove it from the market. Action levels are based on unavoidability of the poisonous or deleterious substances and do not represent permissible levels of contamination where it is avoidable.

Administrator. The Administrator for the Agricultural Marketing Service (AMS), United States Departure of Agriculture, or the representative to whom authority has been delegated to act in the stead of the Administrator.

Agricultural inputs. All substances or materials used in the production or handling of organic agricultural products.

Agricultural product. Any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed in the United States for human or livestock consumption.

Allowed synthetic. A substance that is included on the National List of synthetic substances allowed for use in organic production, or handling.

Agricultural Marketing Service (AMS). The Agricultural Marketing Service of the United States Department of Agriculture.

Animal drug. Any drug as defined in section 201 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 321), that is intended for use in livestock, including any drug intended for use in livestock feed but not including such livestock feed.

Annual seedling. A plant grown from seed that will complete its life cycle or produce a harvestable yield within the same crop year or season in which it was planted.

Area of operation. The types of operations: Crops, livestock, wild-crop harvesting, handling, or any combination thereof that a certifying agent may be accredited to certify under this part.

Audit trail. Documentation that is sufficient to determine the source, transfer of ownership, and transportation of any agricultural product labeled as "100 percent organic," the organic ingredients of any agricultural product labeled as "organic" or "made with organic (specified ingredients)" or the organic ingredients of any agricultural product containing less than 50 percent organic ingredients identified as organic in an ingredients statement.

Biodegradable. Subject to biological decomposition into simpler biochemical or chemical components.

Biologics. All viruses, serums, toxins, and analogous products of natural or synthetic origin, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components of microorganisms intended for use in the diagnosis, treatment, or prevention of diseases of animals.

Breeder stock. Female livestock whose offspring may be incorporated into an organic operation at the time of their birth.

Buffer zone. An area located between a certified production operation or portion of a production operation and an adjacent land area that is not maintained under organic management. A buffer zone must be sufficient in size or other features (e.g., windbreaks or a diversion ditch) to prevent the possibility of unintended contact by prohibited substances applied to adjacent land areas with an area that is part of a certified operation.

Bulk. The presentation to consumers at retail sale of an agricultural product in unpackaged, loose form, enabling the consumer to determine the individual pieces, amount, or volume of the product purchased.

Certification or certified. A determination made by a certifying agent that a production or handling operation is in compliance with the Act and the regulations in this part, which is documented by a certificate of organic operation.

Certified operation. A crop or livestock production, wild-crop harvesting, or handling operation or portion of such operation that is certified by an accredited certifying agent as utilizing a system of organic production or handling as described by the Act and the regulations in this part.

Certifying agent. Any entity accredited by the Secretary as a certifying agent for the purpose of certifying a production or handling operation as a certified production or handling operation.

Certifying agent's operation. All sites, facilities, personnel, and records used by a certifying agent to conduct certification activities under the Act and the regulations in this part.

Claims. Oral, written, implied, or symbolic representations, statements, or advertising or other forms of communication presented to the public or buyers of agricultural products that relate to the organic certification process or the term, "100 percent organic," "organic," or "made with organic (specified ingredients)," or, in the case of agricultural products containing less than 50 percent organic ingredients, the term, "organic," on the ingredients panel.

Commercially available. The ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan.

Commingling. Physical contact between unpackaged organically produced and nonorganically produced agricultural products during production, transportation, storage or handling, other than during the manufacture of a multiingredient product containing both types of ingredients.

Compost. The product of a carefully managed process through which microorganisms break down plant and animal materials into more available forms suitable for application to the soil. Compost used in an organic operation must be produced in a facility in compliance with the Natural Resource Conservation Service's practice standard for a composting facility (Code 317) and must use methods to raise the temperature of the raw materials to the levels needed to stabilize nutrients and kill pathogens.

Control. Any method that reduces or limits damage by populations of pests, weeds, or diseases to levels that do not significantly reduce productivity.

Crop. A plant or part of a plant intended to be marketed as an agricultural product or fed to livestock.

Crop residues. The plant parts remaining in a field after the harvest of a crop, which include stalks, stems, leaves, roots, and weeds.

Crop rotation. The practice of alternating the annual crops grown on a specific field in a planned pattern or sequence in successive crop years, so that crops of the same species or family are not grown repeatedly without interruption on the same field. Perennial cropping systems employ means such as alley cropping, intercropping, and hedgerows to introduce biological diversity in lieu of crop sequencing.

Crop year. That normal growing season for a crop as determined by the Secretary.

Cultivation. Digging up or cutting the soil to prepare a seed bed; control weeds; aerate the soil; or work organic matter, crop residues, or fertilizers into the soil.

Cultural methods. Methods used to enhance crop health and prevent weed, pest, or disease problems without the use of substances; examples include the selection of appropriate varieties and planting sites; proper timing and density of plantings; irrigation; and extending a growing season by manipulating the microclimate with green houses, cold frames, or wind breaks.

Detectable residue. The amount or presence of chemical residue or sample component that can be reliably observed or found in the sample matrix by the current approved analytical methodology.

Disease vectors. Plants or animals that harbor or transmit disease organisms or pathogens which may attack crops or livestock.

Drift. The physical movement of prohibited substances from the intended target site onto an organic operation or portion thereof.

Emergency pest or disease treatment program. A mandatory program authorized by a Federal, State, or local agency for the purpose of controlling or eradicating a pest or disease.

Employee. Any person providing paid or volunteer services for a certifying agent.

Estimated National Mean. The mean level of detected pesticide residues as described in certain pesticide/commodity pairs or combinations established by USDA's Pesticide Data Program.

Excluded methods. Refers to a variety of methods used to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production. Such methods would include recombinant DNA, cell fusion, and micro- and macroencapsulation. Such methods would not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture.

Feed. Edible materials which are consumed by livestock for their nutritional value. Feed may be concentrates (grains) or roughages (hay, silage, fodder). The term, "feed," encompasses all agricultural commodities, including pasture ingested by livestock for nutritional purposes.

Feed Additive. A substance or combination of substances added to feed in micro quantities to fulfill a specific nutritional need, i.e., nutrients in the form of amino acids, vitamins, and minerals.

Feed Supplement. A feed used with another feed to improve the nutrient balance or performance of the total ration and intended to be:

(1) Diluted with other feeds when fed to livestock;

(2) Offered free choice with other parts of the ration if separately available; or

(3) Further diluted and mixed to produce a complete feed.

Fertilizer. A single or blended substance containing one or more recognized plant nutrient(s) which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.

Field. An area of land identified as a discrete unit within a production operation.

Forage. Vegetable material in a fresh, dried, or ensiled state (pasture, hay, or silage) which is fed to livestock.

Handle. To sell, process, or package agricultural products, except such term shall not include the sale, transportation, or delivery of crops or livestock by the producer thereof to a handler.

Handler. Any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products.

Handling operation. Any operation or portion of an operation (except final retailers of agricultural products that do not process agricultural products) that receives or otherwise acquires agricultural products and processes, packages, or stores such products.

Immediate family. The spouse, minor children, or blood relatives who reside in the immediate household of a certifying agent or an employee, inspector, contractor, or other personnel of the certifying agent. For the purpose of this part, the interest of a spouse, minor child, or blood relative who is a resident of the immediate household of a certifying agent or an employee, inspector, contractor, or other personnel of the certifying agent shall be considered to be an interest of the certifying agent or an employee, inspector, contractor, or other personnel of the certifying agent.

Inert ingredient. Any substance (or group of substances with similar chemical structures if designated by the Environmental Protection Agency) other than an active ingredient which is intentionally included in any pesticide product used in organic crop or livestock production and handling (40 CFR 152.3(m)).

Information panel. That part of the label of a packaged product that is immediately contiguous to and to the right of the principal display panel as observed by an individual facing the principal display panel, unless another section of the label is designated as the information panel because of package size or other package attributes (e.g., irregular shape with one usable surface).

Ingredient. Any substance used in the preparation of an agricultural product that is still present in the final commercial product as consumed.

Ingredients statement. The list of ingredients contained in a product shown in their common and usual names in the descending order of predominance.

Inspector. Any person retained or used by a certifying agent to conduct inspections of certification applicants or certified production or handling operations.

Inspection. The act of examining and evaluating the production or handling operation of an applicant for certification or certified operation to determine compliance with the Act and the regulations in this part.

Label. A display of written, printed, or graphic material on the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

Labeling. All written, printed, or graphic material accompanying an agricultural product at any time or written, printed, or graphic material about the agricultural product displayed at retail stores about the product.

Livestock. Any cattle, sheep, goat, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other nonplant life, except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products.

Lot. Any number of containers which contain an agricultural product of the same kind located in the same conveyance, warehouse, or packing house and which are available for inspection at the same time.

Market information. Any written, printed, audiovisual, or graphic information, including advertising, pamphlets, flyers, catalogues, posters, and signs, distributed, broadcasted, or made available outside of retail outlets that are used to assist in the sale or promotion of a product.

Mulch. Any material, such as wood chips, leaves, straw, paper, or plastic (on the National List), that serves to suppress weed growth, moderate soil temperature, or conserve soil moisture.

National List. A list of allowed and prohibited substances as provided for in section 6517 of the Act (7 U.S.C. 6517).

National Organic Program (NOP). The program authorized by the Act for the purpose of implementing its provisions.

National Organic Standards Board (NOSB). A Board established by the Secretary under 7 U.S.C. 6518 to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of the National Organic Program.

Natural resources of the operation. The physical, hydrological, and biological features of a production operation, including soil, water, wetlands, woodlands, and wildlife.

Nonagricultural substance. A substance that is not a product of agriculture, such as a mineral or a bacterial culture, that is used as an ingredient in an agricultural product. For the purposes of this part, a nonagricultural ingredient also includes any substance, such as gums, citric acid, or pectin, that is extracted from, isolated from, or a fraction of an agricultural product, so that the identity of the

agricultural product is unrecognizable in the extract, isolate, or fraction.

Nonsynthetic (natural). A substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic process as defined in section 6502(21) of the Act (7 U.S.C. 6502(21)). For the purposes of this part, nonsynthetic is used as a synonym for natural as the term is used in the Act.

Nontoxic. Not known to cause any adverse physiological effects in animals, plants, humans, or the environment.

Nonretail container. Any container used for shipping or storage of an agricultural product that is not used in the retail display or sale of the product.

Organic. A labeling term that refers to an agricultural product produced in accordance with the Act and the regulations in this part.

Organic matter. The remains, residues, or waste products of any organism.

Organic system plan. A plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in the Act and the regulations in subpart C of this part.

Peer review panel. A panel of individuals who have expertise in organic production and handling methods and certification procedures and who are appointed by the Administrator to assist in evaluating applicants for accreditation as certifying agents.

Person. An individual, group of individuals, contractor, corporation, association, organization, cooperative, or other entity.

Pesticide. Any substance which alone, in chemical combination, or in any formulation with one or more substances is defined as a pesticide in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u) *et seq*).

Petition. A request to amend the National List that is submitted by any person in accordance with this part.

Planting stock. Any plant or plant tissue, including rhizomes, shoots, leaf or stem cuttings, roots, or tubers, used in plant production or propagation.

Practice standard. The guidelines and requirements through which a production or handling operation implements a required component of its production or handling organic system plan. A practice standard integrates a series of allowed and prohibited actions, materials, and conditions to establish a minimum level performance for planning, conducting, and maintaining a function, such as livestock health care or facility pest management, essential to an organic operation.

Principal display panel. That part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for sale.

Private entity. Any domestic or foreign nongovernmental for-profit or not-for-profit organization providing certification services.

Processing. Cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing and includes the packaging, canning, jarring, or otherwise enclosing food in a container.

Producer. A person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products.

Production lot number/identifier. Identification of a product based on the production sequence of the product showing the date, time, and place of production used for quality control purposes.

Prohibited substance. A substance whose use in any aspect of organic production or handling is prohibited or not provided for in the Act or the regulations of this part.

Records. Any information in written, visual, or electronic form that documents the activities undertaken by a producer, handler, or certifying agent to comply with the Act and regulations in this part.

Residue testing. An official or validated analytical procedure that detects, identifies, and measures the presence of chemical substances, their metabolites, or degradations products in or on raw or processed agricultural products.

Responsibly connected. Any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant or a recipient of certification or accreditation.

Retail food establishment. A restaurant; delicatessen; bakery; grocery store; or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar, or other eat-in or carry-out service of processed or prepared raw and ready-to-eat-food.

Routine use of parasiticide. The regular, planned, or periodic use of parasiticides.

Secretary. The Secretary of Agriculture or a representative to whom authority has been delegated to act in the Secretary's stead.

Sewage sludge. A solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to: domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

Slaughter stock. Any animal that is intended to be slaughtered for consumption by humans or other animals.

Soil and water quality. Observable indicators of the physical, chemical, or biological condition of soil and water, including the presence of environmental contaminants.

State. Any of the several States of the United States of America, its territories, the District of Columbia, and the Commonwealth of Puerto Rico.

State certifying agent. A certifying agent accredited by the Secretary under the National Organic Program and operated by the State for the purposes of certifying organic production and handling operations in the State.

State entity. Any domestic, tribal government, or foreign governmental subdivision providing certification services.

State organic certification program. A State program that meets the requirements of section 6506 of the Act, is approved by the Secretary, and is designed to ensure that a product that is sold or labeled as organically produced under the Act is produced and handled using organic methods.

State program's governing State official. The chief executive official of a State or, in the case of a State that provides for the statewide election of an official to be responsible solely for the administration of the agricultural operations of the State, such official, who administers a State organic certification program.

Synthetic. A substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

System of organic production and handling. A system that is designed to produce agricultural products by the use of methods and substances that maintain the integrity of organic

agricultural products until they reach the consumer. This is accomplished by using, where possible, cultural, biological, and mechanical methods, as opposed to using substances, to fulfill any specific function within the system so as to: Maintain long-term soil fertility; increase soil biological activity; ensure effective pest management; recycle wastes to return nutrients to the land; provide attentive care for farm animals; and handle the agricultural products without the use of extraneous synthetic additives or processing in accordance with the Act and regulations in this part.

Transplant. A seedling which has been removed from its original place of production, transported, and replanted.

Tolerance. The maximum legal level of a pesticide residue in or on a raw or processed agricultural commodity as set by the Environmental Protection Agency under FFDCA, Section 408.

Unavoidable residual environmental contamination (UREC). Background levels of naturally occurring or synthetic chemicals that are present in the soil or present in organically produced agricultural products that are below established tolerances.

Wild crop. Any plant or portion of a plant that is collected or harvested from an area of land that is not maintained under cultivation or other agricultural management.

Subpart B—Applicability

§ 205.100 What has to be certified.

(a) Except for operations exempt or excluded in § 205.101, each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)" must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part.

(b) Any production or handling operation that has been certified by a certifying agent on the date that the certifying agent first receives its accreditation under this part shall be considered certified to the national standards until the operation's anniversary date of certification. Such recognition shall only be available to those operations certified by a certifying agent that receives its accreditation within 18 months from the date of publication of the final rule implementing this part.

§ 205.101 Exemptions and exclusions from certification.

(a) *Exemptions.*

(1) A production or handling operation that sells agricultural products as "organic" but whose gross agricultural income from organic sales totals $5,000 or less annually is exempt from certification under subpart E of this part and from submitting an organic system plan for acceptance or approval under § 205.201 but must comply with the applicable organic production and handling requirements of subpart C of this part and the labeling requirements of § 205.309.

(2) A handling operation that is a retail food establishment or portion of a retail food establishment that handles organically produced agricultural products but does not process them is exempt from the requirements in this part.

(3) A handling operation or portion of a handling operation that handles agricultural products that contain less than 50 percent organic ingredients by total weight of the finished product (excluding water and salt) is exempt from the requirements in this part, except:

(i) The provisions for prevention of contact of organic products with prohibited substances set forth in § 205.272 with respect to any organically produced ingredients used in an agricultural product;

(ii) The labeling provisions of § 205.309; and

(iii) The recordkeeping provisions in paragraph (c) of this section.

(4) A handling operation or portion of a handling operation that handles agricultural products that contain at least 50 percent organic ingredients by total weight of the finished product (excluding water and salt) that chooses to not use the word, "organic," on any panel other than the information panel is exempt from the requirements in this part, except:

(i) The provisions for prevention of contact of organic products with prohibited substances set forth in § 205.272 with respect to any organically produced ingredients used in an agricultural product;

(ii) The labeling provisions of § 205.309; and

(iii) The recordkeeping provisions in paragraph (c) of this section.

(b) *Exclusions.*

(1) A handling operation or portion of a handling operation is excluded from the requirements of this part, except for the requirements for the prevention of commingling and contact with prohibited substances as set forth in § 205.272 with respect to any organically produced products if such operation or portion of the operation only sells organic agricultural products labeled as "100 percent organic," "organic," or "made with organic (specified ingredients)" that:

(i) Are packaged or otherwise enclosed in a container prior to being received or acquired by the operation; and

(ii) Remain in the same package or container and are not otherwise processed while in the control of the handling operation.

(2) A handling operation that is a retail food establishment or portion of a retail food establishment that processes or prepares, on the premises of the retail food establishment, raw and ready-to-eat food from agricultural products that are previously labeled as "100 percent organic," "organic," or "made with organic (specified ingredients)" is excluded from the requirements in this part, except:

(i) The requirements for the prevention of contact with prohibited substances as set forth in § 205.272; and

(ii) The labeling provisions of § 205.309.

(c) *Records to be maintained by exempt operations.*

(1) Any handling operation exempt from certification pursuant to paragraph (a)(3) or (a)(4) of this section must maintain records sufficient to:

(i) Prove that ingredients identified as organic were organically produced and handled; and

(ii) Verify quanities produced from such ingredients.

(2) Records must be maintained for no less than 3 years beyond their creation and the operations must allow representatives of the Secretary and the applicable State program's governing State official access to these records for inspection and copying during normal business hours to determine compliance with the applicable regulations set forth in this part.

§ 205.102 Use of the term, "organic."

Any agricultural product that is sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)" must be:

(a) Produced in accordance with the requirements specified in § 205.101 or §§ 205.202 through 205.207 or §§ 205.236 through 205.239 and all other applicable requirements of part 205;

(b) Handled in accordance with the requirements specified in § 205.101 or §§ 205.270 through 205.272 and all other applicable requirements of this part 205; and

(c) Produced and handled in compliance with the Federal Meat

Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products; the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*); and any other applicable Federal statute and its implementing regulations.

§ 205.103 Recordkeeping by certified operations.

(a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)."

(b) Such records must:

(1) Be adapted to the particular business that the certified operation is conducting;

(2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited;

(3) Be maintained for not less than 5 years beyond their creation; and

(4) Be sufficient to demonstrate compliance with the Act and the regulations in this part.

(c) The certified operation must make such records available for inspection and copying during normal business hours by authorized representatives of the Secretary, the applicable State program's governing State official, and the certifying agent.

§ 205.104 Foreign applicants.

The regulations in this part, as applicable, apply equally to domestic and foreign applicants for accreditation, accredited certifying agents, domestic and foreign applicants for certification as organic production or handling operations, and certified organic production and handling operations unless otherwise specified.

§§ 205.105—205.199 [Reserved]

Subpart C—Organic Production and Handling Requirements

§ 205.200 General.

The producer or handler of a production or handling operation wishing to sell, label, or represent agricultural products as "100 percent organic," "organic," or "made with organic (specified ingredients)" must comply with the applicable provisions of this subpart. Practices implemented in accordance with this subpart must maintain or improve the natural resources of the operation, including soil and water quality.

§ 205.201 Organic production and handling system plan.

(a) The producer or handler of a production or handling operation, except as exempt or excluded under § 205.101, wishing to sell, label, or represent agricultural products as "100 percent organic," "organic," or "made with organic (specified ingredients)" must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent. An organic system plan must meet the requirements set forth in this section to establish a system of organic production or handling. An organic production or handling system plan must include:

(1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed;

(2) A list of each substance to be used as a production or handling input, indicating its composition, source, and location(s) where it will be used;

(3) A description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented;

(4) A description of the recordkeeping system implemented to comply with the requirements established in § 205.103;

(5) A description of practices and procedures to prevent commingling of organic and nonorganic products and to prevent contact of organic production and handling operations and products with prohibited substances; and

(6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations.

(b) A producer may substitute a plan prepared to meet the requirements of another Federal, State, or local government regulatory program for the organic system plan: *Provided,* That, the submitted plan meets all the requirements of this subpart.

§ 205.202 Land requirements.

Any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)" must:

(a) Have been managed in accordance with the provisions of §§ 205.203 through 205.206;

(b) Have had no prohibited substances, as listed in § 205.600, applied to it for a period of 3 years immediately preceding harvest of the crop; and

(c) Have distinct, defined boundaries and buffer zones such as runoff diversions to prevent the unintended application of a prohibited substance to the crop or contact with a prohibited substance applied to adjoining land that is not under organic management.

§ 205.203 Soil fertility and crop nutrient management practice standard.

(a) The producer must select and implement tillage and cultivation practices that maintain or improve the physical, chemical, and biological condition of soil and minimize soil erosion.

(b) The producer must budget and supply crop nutrients by properly utilizing manure or other animal and plant materials, mined mineral substances, and substances approved in § 205.601.

(c) The producer must manage animal and plant waste materials to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, pathogenic organisms, heavy metals, or residues of prohibited substances. Animal and plant waste materials include:

(1) Raw animal manure, which must be composted unless it is:

(i) Applied to land used for a crop not intended for human consumption;

(ii) Incorporated into the soil not less than 120 days prior to the harvest of a product whose edible portion has direct contact with the soil surface or soil particles; or

(iii) Incorporated into the soil not less than 90 days prior to the harvest of a product whose edible portion does not have direct contact with the soil surface or soil particles;

(2) Other uncomposted plant or animal wastes, such as aged, fully decomposed animal manure;

(3) A composted product produced in a facility in compliance with the Natural Resources Conservation Service's practice standard for a composting facility (Code 317); and

(4) A composted or uncomposted plant or animal waste material that has been chemically altered by a manufacturing process: *Provided,* That, the material is included on the National List of synthetic substances allowed for use in organic crop production established in § 205.601.

(d) In addition to crop rotations and plant and animal waste materials, a producer may supply soil and crop nutrients by applying:

(1) A mined substance of low solubility;

(2) A mined substance of high solubility, when justified by soil or crop tissue analysis;

(3) Ash obtained from the burning of a plant or animal material, except as prohibited in paragraph (e) of this section: *Provided,* That, the material burned has not been treated or combined with a prohibited substance or the ash is not included on the National List of nonsynthetic substances prohibited for use in organic crop production; and

(4) A crop nutrient supplement included on the National List of synthetic substances allowed for use in organic production, when justified by soil or crop tissue analysis.

(e) The producer must not use:

(1) Any fertilizer or commercially blended fertilizer or composted product that contains a synthetic substance not included on the National List of synthetic substances allowed for use in organic production;

(2) Sewage sludge (biosolids) as defined in 40 CFR part 503; and

(3) Burning as a means of disposal for crop residues produced on the operation: *Except,* That, prunings from perennial crops may be burned to suppress the spread of disease.

§ 205.204 Seeds and planting stock practice standard.

(a) The producer must use organically grown seeds, annual seedlings, and planting stock: *Except,* That,

(1) Nonorganically produced untreated seeds and planting stock may be used to produce an organic crop when an equivalent organically produced variety is not commercially available;

(2) Nonorganically produced seeds and planting stock that have been treated with a substance included on the National List of synthetic substances allowed for use in organic crop production may be used to produce an organic crop when an equivalent organically produced or untreated variety is not commercially available;

(3) Nonorganically produced annual seedlings may be used to produce an organic crop when a temporary variance has been granted in accordance with § 205.290(a)(2);

(4) Nonorganically produced planting stock to be used to produce a perennial crop may be sold, labeled, or represented as organically produced only after the planting stock has been maintained under a system of organic management for a period of no less than 1 year; and

(5) Seeds, annual seedlings, and planting stock treated with prohibited substances may be used to produce an organic crop when the application of the materials is a requirement of Federal or State phytosanitary regulations.

(b) The producer of an organic operation must not use seeds or planting stock produced with excluded methods.

§ 205.205 Crop rotation practice standard.

The producer must implement a crop rotation including, but not limited to, sod, cover crops, green manure crops, and catch crops that provide the following functions that are applicable to the operation:

(a) Maintain or improve soil organic matter content;

(b) Provide for pest management in annual and perennial crops;

(c) Manage deficient or excess plant nutrients; and

(d) Provide erosion control.

§ 205.206 Crop pest, weed, and disease management practice standard.

(a) The producer must use management practices to prevent crop pests, weeds, and diseases including, but not limited to:

(1) Crop rotation and soil and crop nutrient management practices, as provided for in §§ 205.203 and 205.205;

(2) Sanitation measures to remove disease vectors, weed seeds, and habitat for pest organisms; and

(3) Cultural practices that enhance crop health, including selection of plant species and varieties with regard to suitability to site-specific conditions and resistance to prevalent pests, weeds, and diseases.

(b) Pest problems may be controlled through mechanical or physical methods including, but not limited to:

(1) Augmentation or introduction of predators or parasites of the pest species;

(2) Development of habitat for natural enemies of pests;

(3) Nonsynthetic, nontoxic controls such as lures, traps, and repellents.

(c) Weed problems may be controlled through:

(1) Mulching with fully biodegradable materials;

(2) Mowing;

(3) Livestock grazing;

(4) Hand weeding and mechanical cultivation;

(5) Flame, heat, or electrical means; or

(6) Plastic or other synthetic mulches: *Provided,* That, they are removed from the field at the end of the growing or harvest season.

(d) Disease problems may be controlled through:

(1) Management practices which suppress the spread of disease organisms; or

(2) Application of nonsynthetic biological, botanical, or mineral inputs.

(e) When the practices provided for in paragraphs (a) through (d) of this section are insufficient to prevent or control crop pests, weeds, and diseases, a biological or botanical substance or a substance included on the National List of synthetic substances allowed for use in organic production may be applied to prevent, suppress, or control pests, weeds, or diseases: *Provided,* That, the producer implements measures to evaluate and mitigate the effects of repetitive use of the same or similar materials on pest resistance and shifts in pest, weed, or disease types, and the substance is used in compliance with the Federal Insecticide, Fungicide, and Rodenticide Act.

(f) The producer or handler of an organic operation must not use a pest, weed, or disease control substance produced through excluded methods.

§ 205.207 Wild-crop harvesting practice standard.

(a) Any area from which a wild crop that is intended to be sold, labeled, or represented as organic is harvested must have had no prohibited substance, as set forth in § 205.600, applied to it for a period of 3 years immediately preceding the harvest of the wild crop.

(b) A wild-crop must be harvested in a manner that ensures that such harvesting or gathering will not be destructive to the environment and will sustain the growth and production of the wild crop.

§§ 205.208—205.235 [Reserved]

§ 205.236 Origin of livestock.

(a) Livestock or edible livestock products that are to be sold, labeled, or represented as organic must be from livestock under continuous organic management from birth or hatching: *Except,* That,

(1) *Poultry.* Poultry or edible poultry products must be from poultry that has been under continuous organic management beginning no later than the second day of life;

(2) *Dairy Animals.* Milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to the production of the milk or milk products that are to be sold, labeled, or represented as organic.

(3) *Nonedible products.* Nonedible livestock products must be from animals that have been under continuous organic management not less than 1 year prior to harvest of the nonedible product.

(4) *Breeder stock.* Livestock used as breeder stock may be brought from a nonorganic operation onto an organic operation at any time: *Provided,* That, if such livestock are gestating and the offspring are to be raised as organic

livestock, the breeder stock must be brought onto the facility prior to the last third of pregnancy.

(b) The following are prohibited:

(1) Livestock or edible livestock products that are removed from an organic operation and subsequently managed on a nonorganic operation may be not sold, labeled, or represented as organically produced.

(2) Breeder or dairy stock that has not been under continuous organic management since birth may not be sold, labeled, or represented as organic slaughter stock; and

(3) No organism produced by excluded methods may be used for breeding purposes or for the production of livestock products intended to be sold, labeled, or represented as organic.

(c) The producer of an organic livestock operation must maintain records sufficient to preserve the identity of all organically managed animals and edible and nonedible animal products produced on the operation.

§ 205.237 Livestock feed.

(a) The producer of an organic livestock operation must provide livestock with a total feed ration composed of agricultural products, including pasture and forage, that is organically produced and, if applicable, organically handled: *Except,* That, nonagricultural products and synthetic substances allowed under § 205.603 may be used as feed additives and supplements.

(b) The producer of an organic operation must not:

(1) Use animal drugs, including hormones, to promote growth;

(2) Provide feed supplements or additives in amounts above those needed for adequate nutrition and health maintenance for the species at its specific stage of life;

(3) Feed plastic pellets for roughage;

(4) Feed formulas containing urea or manure;

(5) Feed mammalian or poultry slaughter by-products to mammals or poultry; or

(6) Use feed, feed additives, and feed supplements in violation of the Federal Food, Drug, and Cosmetic Act.

§ 205.238 Livestock health care practice standard.

(a) The producer must establish and maintain preventive livestock health care practices, including:

(1) Selection of species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites;

(2) Provision of feedstuffs sufficient to meet nutritional requirements, including vitamins, minerals, and other additives or supplements;

(3) Establishment of appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites;

(4) Provision of conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species;

(5) Performance of physical alterations as needed to promote the animal's welfare and in a manner that minimizes pain and stress; and

(6) Administration of vaccines and other veterinary biologics.

(b) When preventive practices and veterinary biologics are inadequate to prevent sickness, a producer may administer synthetic medications: *Provided,* That, such medications are allowed under § 205.603. Parasiticides allowed under § 205.603 may be used on

(1) Breeder stock, when used prior to the last third of gestation for progeny that are to be sold, labeled, or represented as organically produced; and

(2) Dairy stock, when used a minimum of 90 days prior to the production of milk or milk products that are to be sold, labeled, or represented as organic.

(c) The producer of an organic livestock operation must not:

(1) Sell, label, or represent as organic any animal or edible product derived from any animal treated with antibiotics, any substance that contains a synthetic substance not allowed under § 205.603, or any substance that contains a nonsynthetic substance prohibited in § 205.604.

(2) Administer any animal drug, other than vaccinations, in the absence of illness;

(3) Administer hormones;

(4) Administer synthetic parasiticides on a routine basis;

(5) Administer synthetic parasiticides to slaughter stock;

(6) Administer animal drugs in violation of the Federal Food, Drug, and Cosmetic Act; or

(7) Withhold medical treatment from a sick animal in an effort to preserve its organic status. All appropriate medications must be used to restore an animal to health when methods acceptable to organic production fail. Livestock treated with a prohibited substance must be clearly identified and shall not be sold, labeled, or represented as organically produced.

§ 205.239 Livestock living conditions.

(a) The producer of an organic livestock operation must establish and maintain livestock living conditions which accommodate the health and natural behavior of animals, including:

(1) Access to shade, shelter, exercise areas, fresh air, and direct sunlight suitable to the species, its stage of production, the climate, and the environment;

(2) Access to pasture for ruminants;

(3) Appropriate clean, dry bedding. If the bedding is typically consumed by the animal species, it must comply with the feed requirements of § 205.237;

(4) Shelter designed to allow for:

(i) Natural maintenance, comfort behaviors, and opportunity to exercise;

(ii) Temperature level, ventilation, and air circulation suitable to the species; and

(iii) Reduction of potential for livestock injury;

(b) The producer of an organic livestock operation may provide temporary confinement for an animal because of:

(1) Inclement weather;

(2) The animal's stage of production;

(3) Conditions under which the health, safety, or well being of the animal could be jeopardized; or

(4) Risk to soil or water quality.

(c) The producer of an organic livestock operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimizes recycling of nutrients.

§§ 205.240—205.269 [Reserved]

§ 205.270 Organic handling requirements.

(a) Mechanical or biological methods, including, but not limited to, cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing, and the packaging, canning, jarring, or otherwise enclosing food in a container may be used to process an agricultural product intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)" for the purpose of retarding spoilage or otherwise preparing the agricultural product for market.

(b) Nonagricultural substances allowed under § 205.605 and nonorganically produced agricultural products allowed under § 205.606 may be used in or on a processed agricultural product intended to be sold, labeled, or represented as "organic" or "made with organic (specified ingredients)."

(c) The handler of an organic handling operation must not use in or on an

agricultural product intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)":

(1) Ionizing radiation for any purpose;

(2) An ingredient produced with excluded methods; or

(3) A volatile synthetic solvent or any other synthetic processing aid not allowed under § 205.605 as ingredients in or on processed products labeled as organic or made with organic ingredients.

§ 205.271 Facility pest management practice standard.

(a) The producer or handler of an organic facility must use management practices to prevent pests, including, but not limited to:

(1) Removal of pest habitat, food sources, and breeding areas;

(2) Prevention of access to handling facilities; or

(3) Management of environmental factors, such as temperature, light, humidity, atmosphere, and air circulation to prevent pest reproduction.

(b) Pests may be controlled through:

(1) Augmentation or introduction of predators or parasites for the pest species;

(2) Mechanical or physical controls including, but not limited to, traps, light, or sound; or

(3) Nontoxic, nonsynthetic controls, such as lures and repellents.

(c) If the practices provided for in paragraphs (a) and (b) of this section are not effective to prevent or control facility pests, a nonsynthetic biological or botanical substance or a synthetic substance may be applied to prevent, suppress, or control pests: *Provided,* That, the substance is applied in the manner consistent with its label as approved by the Federal, State, and local regulatory authorities.

(d) The handler of an organic handling operation who applies a nonsynthetic biological or botanical substance or a synthetic substance for the prevention or control of a pest must include in the organic handling plan a list of all measures taken or intended to be taken to prevent contact between the substance and any ingredient or finished product intended to be sold, labeled, or represented as "organic" or "made with organic (specified ingredients)."

(e) The handler of an organic handling operation who applies a nonsynthetic biological or botanical substance or a synthetic substance for the prevention or control of a pest must include in the organic handling plan an evaluation of the effects of repetitive use of the same or similar materials on pest resistance and shifts in pest types.

§ 205.272 Commingling and contact with prohibited substance prevention practice standard.

(a) The handler of an organic handling operation must implement measures necessary to prevent the commingling of organic and nonorganic products and protect organic products from contact with prohibited substances.

(b) The following methods and substances are prohibited for use in the handling of any agricultural product intended to be sold, labeled, or represented as "100 per cent organic," "organic," or "made with organic (specified ingredients)":

(1) Packaging materials and storage containers or bins that contain a synthetic fungicide, preservative, or fumigant;

(2) The use or reuse of any bag or container that had previously been in contact with any substance in such a manner as to compromise the organic integrity of any products unless, after use for conventional products, the reusable bin or container has been thoroughly cleaned and poses no risk of prohibited materials contacting the organic product.

§§ 205.273—205.289 [Reserved]

§ 205.290 Temporary variances.

(a) Temporary variances from the requirements in §§ 205.203 through 205.207, 205.236 through 205.239, and 205.270 through 205.272 may be established by the Administrator for the following reasons:

(1) Natural disasters declared by the Secretary;

(2) Damage caused by wind, flood, excessive moisture, tornado, earthquake, fire, or other business interruption; and

(3) Practices used for the purpose of conducting research or trials of techniques, varieties, or ingredients used in organic production or handling.

(b) A certifying agent may recommend in writing to the Administrator a temporary variance from a standard set forth in subpart C of this part for organic production or handling operations: *Provided,* That, such variance may only be recommended for the reasons listed in paragraph (a) of this section.

(c) The Administrator will provide written notification to certifying agents upon establishment of a temporary variance applicable to the certifying agent's certified production or handling operations. When establishing a temporary variance, the Administrator shall specify the period of time it shall remain in effect, subject to extension as the Administrator deems necessary.

(d) A certifying agent, upon notification from the Administrator of the establishment of a temporary variance, must notify each production or handling operation it certifies within the affected geographical area or the individual organic production or handling operation(s) to which the temporary variance applies.

(e) Temporary variances may not be requested for any practice, material, or procedure otherwise prohibited in these regulations.

Subpart D—Labels, Labeling, and Market Information

§ 205.300 Use of the term, "organic."

(a) The term, "organic," may only be used on labels and in labeling of raw or processed agricultural products, including ingredients, that have been produced and handled in accordance with the regulations in this part.

(b) Products for export, produced and certified to foreign national organic standards or foreign contract buyer requirements, may be labeled in accordance with the organic labeling requirements of the receiving country or contract buyer: *Provided,* That, the shipping containers and shipping documents meet the labeling requirements specified in § 205.306(c).

(c) Products produced in a foreign country and exported for sale in the United States must be certified pursuant to subpart E of this part and labeled pursuant to this subpart D.

§ 205.301 Product composition.

(a) *Products sold, labeled, or represented as "100 percent organic."* A raw or processed agricultural product sold, labeled, or represented as "100 percent organic" must contain (by weight or fluid volume, excluding water and salt) not less than 100 percent organically produced raw or processed agricultural product. No such product or product ingredient may contain or be created using excluded methods or be produced using sewage sludge or ionizing radiation. If labeled as an organic food product, such product must be labeled pursuant to § 205.303.

(b) *Products sold, labeled, or represented as "organic."* A raw or processed agricultural product sold, labeled, or represented as "organic" must contain (by weight or fluid volume, excluding water and salt) not less than 95 percent organically produced raw or processed agricultural product. Any remaining product ingredients must consist of nonagricultural substances or nonorganically produced agricultural products approved in the National List of Allowed and Prohibited Substances in subpart G of this part and must not

contain or be created using excluded methods or be produced using sewage sludge or ionizing radiation. If labeled as an organic food product, such products must be labeled pursuant to § 205.303.

(c) *Products sold, labeled, or represented as "made with organic (specified ingredients)."* Multiingredient agricultural product sold, labeled, or represented as "made with organic (specified ingredients)" must contain (by weight or fluid volume, excluding water and salt) at least 50 percent organically produced agricultural products which are produced and handled pursuant to requirements in subpart C of this part. The nonorganic ingredients must not contain or be created using excluded methods or be produced using sewage sludge or ionizing radiation. If labeled as an organic food product, such products must be labeled pursuant to § 205.304.

(d) *Products with less than 50 percent organic ingredients.* The organic ingredients in multiingredient agricultural product containing less than 50 percent organic ingredients (by weight or fluid volume, excluding water and salt) must be produced and handled pursuant to requirements in subpart C of this part. The nonorganic ingredients may be produced and handled without regard to the requirements of this part. Multiingredient agricultural product containing less than 50 percent organically produced ingredients may represent the organic nature of the product only as provided in § 205.305.

(e) All ingredients identified as "organic" in the ingredient statement of any product must not:

(1) Be produced using excluded methods or products of excluded methods as ingredients or processing aids;

(2) Be produced using sewage sludge;

(3) Be processed using ionizing radiation;

(4) Be processed using processing aids not approved on the National List of Allowed and Prohibited Substances in subpart G of this part: *Except,* That, products labeled as "100 percent organic," if processed, must be processed using no processing aids;

(5) Contain sulfites, nitrates, or nitrites added during the production or handling process;

(6) Be produced using nonorganic ingredients when organic ingredients are not available; or

(7) Include organic and nonorganic forms of the same ingredient.

§ 205.302 Calculating the percentage of organically produced ingredients.

(a) The percentage of all organically produced ingredients in an agricultural product sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)," or that include organic ingredients must be calculated by:

(1) Dividing the total net weight (excluding water and salt) of combined organic ingredients by the total weight (excluding water and salt) of the finished product.

(2) Dividing the fluid volume of all organic ingredients (excluding water and salt) by the fluid volume of the finished product (excluding water and salt) if the product and ingredients are liquid. If the liquid product is identified on the principal display panel or information panel as being reconstituted from concentrates, the calculation should be made on the basis of single-strength concentrations of the ingredients and finished product.

(3) For products containing organic ingredients in both solid and liquid form, dividing the combined weight of the solid ingredients and the weight of the liquid ingredients (excluding water and salt) by the total weight (excluding water and salt) of the finished product.

(b) The percentage of all organically produced ingredients in an agricultural product must be rounded down to the nearest whole number and indicated on the information panel above the ingredient statement with the words, "contains X percent organic ingredients."

(c) The percentage must be calculated by the handler who affixes the label on the consumer package and verified by the certifying agent of the handler.

§ 205.303 Packaged products labeled "100 percent organic" or "organic."

(a) Agricultural products in packages described in § 205.301(a) and (b) may display, on the principal display panel, information panel, and any other panel of the package and on any labeling or market information concerning the product, the following terms:

(1) The term, "100 percent organic" or "organic," as applicable, to modify the name of the product;

(2) The USDA Seal;

(3) The seal, logo, or other identifying mark of the certifying agent which certified the production or handling operation producing the finished product and any other certifying agent which certified production or handling operations producing raw organic product or organic ingredients used in the finished product: *Provided,* That, the handler producing the finished product maintain records, pursuant to this part, verifying organic certification of the operations producing such ingredients, and: *Provided further,* That, such seals or marks are not, individually, displayed more prominently than the USDA Seal.

(b) Agricultural products in packages described in § 205.301(a) and (b) must:

(1) On the information panel of multiingredient products and consistent with the labeling requirements of the Food and Drug Administration, declare the total percentage of organic ingredients in the product.

(2) In the ingredient statement, modify each organic ingredient of multiingredient products with the word, "organic": *Except,* That, ingredients in multiingredient products labeled "100 percent organic" are not required to modified with the term "organic." Any water or salt included as an ingredient will not be identified as organic.

(3) On the information panel, below the information identifying the handler or distributor of the product and preceded by the statement, "Certified organic by * * *," or similar phrase, identify the name of the certifying agent that certified the handler of the finished product: *Except,* That, the business address or telephone number of the certifying agent may be included in such label.

§ 205.304 Packaged products labeled "made with organic (specified ingredients)."

(a) Agricultural products in packages described in § 205.301(c) may display on the principal display panel, information panel, and any other panel and on any labeling or market information concerning the product:

(1) The statement, "made with organic (specified ingredients)": *Provided,* That, display of the statement is consistent with labeling requirements of the Food and Drug Administration and:

(i) Does not list more than three organic ingredients;

(ii) Does not exceed one-half the size of the largest type size on the panel; and

(iii) Appears in its entirety in the same type size, style, and color without highlighting; and

(2) The seal, logo, or other identifying mark of the certifying agent that certified the handler of the finished product.

(b) Agricultural products in packages described in § 205.301(c) must:

(1) On the information panel and consistent with the labeling requirements of the Food and Drug Administration, declare the total percentage of organic ingredients in the product.

(2) In the ingredient statement, modify each organic ingredient with the word, "organic." Any water or salt included as an ingredient will not be identified as organic.

(3) On the information panel, below the information identifying the handler or distributor of the product and preceded by the statement, "Certified organic by * * *," or similar phrase, identify the name of the certifying agent that certified the handler of the finished product: *Except,* That, the business address or telephone number of the certifying agent may be included in such label.

(c) Agricultural products in packages described in § 205.301(c) must not display the USDA Seal.

§ 205.305 Multiingredient packaged products with less than 50 percent organic ingredients.

(a) Agricultural products with less than 50 percent organic ingredients must:

(1) On the information panel and consistent with the labeling requirements of the Food and Drug Administration, declare the total percentage of organic ingredients in the product.

(2) In the ingredient statement, modify each organic ingredient with the word, "organic."

(b) Agricultural products with less than 50 percent organic ingredients must not display:

(1) The USDA Seal and

(2) Any certifying agent's seal, logo, or other identifying mark.

§ 205.306 Labeling of nonretail containers used for only shipping or storage of raw or processed agricultural products labeled as "100 percent organic," "organic," or "made with organic (specified ingredients)."

(a) Nonretail containers used only to ship or store raw or processed agricultural product labeled as containing organic ingredients may display the following terms or marks:

(1) The name and contact information of the certifying agent which certified the handler which assembled the final product;

(2) Identification of the product as "organic product";

(3) Special handling instructions needed to maintain the organic integrity of the product;

(4) The USDA Seal;

(5) The seal, logo, or other identifying mark of the certifying agent that certified the organic production or handling operation that produced or handled the finished product.

(b) If not required under other Federal labeling regulations, nonretail containers used to ship or store raw or processed agricultural product labeled as containing organic ingredients must display the production lot number of the product, if applicable.

(c) Shipping containers of domestically produced product labeled as organic intended for export to international markets may be labeled consistent with any shipping container labeling requirements of the foreign country of destination or the container labeling specifications of a foreign contract buyer: *Provided,* That, the shipping containers and shipping documents accompanying such organic product be clearly marked "For export only" and: *Provided further,* That, proof of such container marking and export must be maintained by the handler, consistent with recordkeeping requirements for exempt and excluded operations under § 205.101.

§ 205.307 Agricultural products in other than packaged form at the point of retail sale that are sold, labeled, or represented as "100 percent organic" or "organic."

(a) Agricultural products labeled or represented as "100 percent organic" or "organic" in retail display, labeling, and display containers may use the term, "100 percent organic" or "organic," as applicable, to modify the name of the product: *Provided,* That, such products are assembled in a manufacturing facility certified in accordance with the requirements of this part; and, *Provided further,* Than, the word, "organic," is used to modify the organic ingredients listed in the ingredient statement of the products.

(b) The retail display, labeling, and display containers may use:

(1) The USDA Seal;

(2) The seal, logo, or other identifying mark of the certifying agent that certified the production or handling operation producing the finished product and any other certifying agent which certified operations producing raw organic product or organic ingredients used in the finished product: *Provided,* That, such seals or marks are not, individually, displayed more prominently than the USDA Seal.

§ 205.308 Agricultural products in other than packaged form at the point of retail sale that are sold, labeled, or represented as "made with organic (specified ingredients)."

(a) Retail displays, display containers, and market information of agricultural products containing between 50 and 95 percent organic ingredients may use the phrase, "made with organic (specified ingredients)" *Provided,* That, such products have been assembled at a manufacturing facility certified in accordance with the requirements of this part, and:

(1) Such statement does not list more than three organic ingredients, and

(2) In any such display of the product's ingredient statement, the organic ingredients must be modified as "organic."

(b) Such agricultural products labeled as "made with organic (specified ingredients)" in retail displays, display containers, and market information may display the certifying agent's seal, logo, or other identifying mark.

§ 205.309 Agricultural products produced on an exempt or excluded operation.

(a) An agricultural product organically produced or handled on an exempt or excluded operation must not:

(1) Display the USDA Seal or any certifying agent's seal or other identifying mark which represents that the production or handling operation as a certified organic operation, or

(2) Be represented as a certified organic product to any buyer.

(b) An agricultural product organically produced or handled on an exempt or excluded operation may be identified as an organic product or organic ingredient in a multiingredient product produced by the exempt or excluded operation. Such product or ingredient must not be identified as "organic" in a product processed by others.

(c) Such product is subject to labeling requirements specified in paragraph (a) of § 205.300, and paragraphs (e)(1) through (e)(7) of § 205.301.

§ 205.310 USDA Seal.

(a) The USDA Seal described in paragraphs (b) and (c) of this section may be used only for agricultural products (raw or processed) described in § 205.301(a) and (b).

(b) The USDA Seal must replicate the form and design of the example in figure 1 and must be printed legibly and conspicuously:

(1) On a white, light colored, or transparent background with contrasting dark color words and shield outline or on a dark colored background with contrasting white or light colored words and shield outline; or

(2) On a white background with dark blue colored words and red shield outline.

BILLING CODE 3410-02-P

Figure 1

BILLING CODE 3410-08-C

Subpart E—Certification

§ 205.400 General requirements for certification.

A person seeking to receive or maintain organic certification under the regulations in this part must:

(a) Comply with the Act and applicable organic production and handling regulations of this part;

(b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent as provided for in § 205.200;

(c) Permit on-site inspections with complete access to the production or handling operation, including noncertified areas and structures, by the certifying agent as provided for in § 205.403;

(d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow authorized representatives of the Secretary, the applicable State program's governing State official, and the certifying agent access to such records during normal business hours for review and copying to determine compliance with the Act and the regulations in this part, as provided for in § 205.104;

(e) Submit the applicable fees charged by the certifying agent; and

(f) Immediately notify the certifying agent concerning any:

(1) Application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation; and

(2) Change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations in this part.

§ 205.401 Application for Certification.

A person seeking certification of a production or handling operation under this subpart must submit a request for certification to a certifying agent. The request must include the following information:

(a) An organic production or handling system plan, as required in § 205.200;

(b) The name of the person completing the application; the applicant's business name, address, and telephone number; and, when the applicant is a corporation, the name, address, and telephone number of the person authorized to act on the applicant's behalf.

(c) The name(s) of any organic certifying agent(s) to which application has previously been made, the year(s) of application, and the outcome of the application(s) submission, including a copy of any notification of noncompliance or denial of certification issued to the applicant for certification and a description of the actions taken by the applicant to correct the deficiencies noted in the notification of noncompliance, including evidence of such correction and;

(d) Other information necessary to determine compliance with the Act and the regulations in this part.

§ 205.402 Review of application.

(a) Upon acceptance of an application for certification a certifying agent must:

(1) Review the application to ensure completeness pursuant to § 205.401;

(2) Determine by a review of the application materials whether the applicant appears to comply or may be able to comply with the applicable requirements of subpart C of this part;

(3) Verify that an applicant who previously applied to another certifying agent and received a notification of noncompliance, pursuant to § 205.405(a), has submitted documentation to support the correction of any deficiencies identified in such notification, as required in § 205.405(b); and

(4) Schedule an on-site inspection of the operation to determine whether the applicant qualifies for certification if the review of application materials reveals that the production or handling operation may be in compliance with the applicable requirements of subpart C of this part.

(b) The certifying agent shall communicate to the applicant its findings on the review of application materials specified in § 205.402(a).

(c) The applicant may withdraw its application at any time. An applicant who withdraws its application shall be liable for the costs of services provided up to the time of withdrawal of its application. An applicant that voluntarily withdrew its application prior to the issuance of a notice of noncompliance will not be issued a notice of noncompliance. Similarly, an applicant that voluntarily withdrew its application prior to the issuance of a notice of certification denial will not be issued a notice of certification denial.

§ 205.403 On-site inspections.

(a) *On-site inspections.*

(1) A certifying agent must conduct an initial on-site inspection of each production unit, facility, and site that is included in an operation for which certification is requested and an on-site inspection of each certified operation annually thereafter, for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue.

(2)(i) A certifying agent may conduct additional on-site inspections of applicants for certification and certified operations to determine compliance with the Act and the regulations in this part.

(ii) The Administrator or State program's governing State official may require that additional inspections be performed by the certifying agent for the purpose of determining compliance with the Act and the regulations in this part.

(iii) Additional inspections may be announced or unannounced at the discretion of the certifying agent or as required by the Administrator or State program's governing State official.

(b) *Scheduling.* The initial on-site inspection must be conducted within a reasonable time following a determination that the applicant appears to comply or may be able to comply with the requirements of subpart C of this part. On-site inspections must be conducted when the applicant or an authorized representative of the applicant who is knowledgeable about the operation is present and at a time when land, facilities, and activities that demonstrate the operation's compliance with or capability to comply with the applicable provisions of subpart C of this part can be observed, except that this requirement does not apply to unannounced on-site inspections.

(c) *Verification of information.* The on-site inspection of an operation must verify:

(1) The operation's compliance or capability to comply with the Act and the regulations in this part;

(2) That the information, including the organic production or handling system plan, provided in accordance with §§ 205.401, 205.406, and 205.200, accurately reflects the practices used or to be used by the applicant for

certification or by the certified operation;

(3) That prohibited substances have not been and are not being applied to the operation through means which, at the discretion of the certifying agent, may include the collection and testing of soil; water; waste; seeds; plant tissue; and plant, animal, and processed products samples.

(d) *Exit interview.* The inspector must conduct an exit interview with an authorized representative of the inspected operation to confirm the accuracy and completeness of inspection observations and information gathered during the on-site inspection. The inspector must also address the need for any additional information as well as any issues of concern.

§ 205.404 Approval of certification.

(a) Within a reasonable time after completion of the initial on-site inspection, a certifying agent must review the on-site inspection report, the results of any analyses for substances conducted, and any additional information requested from or supplied by the applicant. If the certifying agent determines that the organic system plan and all procedures and activities of the applicant's operation are in compliance with the requirements of this part and that the applicant is able to conduct operations in accordance with the plan, the agent shall approve certification. The approval may include restrictions as a condition of continued certification.

(b) The certifying agent must issue a certificate of organic operation which specifies the:

(1) Name and address of the certified operation;

(2) Effective date of certification;

(3) Categories of organic operation, including crops, wild crops, livestock, or processed products produced by the certified operation; and

(4) Name, address, and telephone number of the certifying agent.

(c) Once certified, a production or handling operation's organic certification continues in effect until surrendered by the organic operation or suspended or revoked by the certifying agent, the State program's governing State official, or the Administrator.

§ 205.405 Denial of certification.

(a) When the certifying agent has reason to believe, based on a review of the information specified in § 205.402 or § 205.404, that an applicant for certification is not able to comply or is not in compliance with the requirements of this part, the certifying agent must provide a written notification of noncompliance to the applicant pursuant to § 205.662(a). When correction of a noncompliance is not possible, a notification of noncompliance and a notification of denial of certification may be combined in one notification.

(b) Upon receipt of such notification of noncompliance, the applicant may:

(1) Correct deficiencies and submit a description of the corrective actions taken with supporting documentation to the certifying agent;

(2) Correct deficiencies and submit a new application to another certifying agent: *Provided*, That, the applicant must include a complete application, the notification of noncompliance received from the first certifying agent, and a description of the corrective actions taken with supporting documentation; or

(3) Submit written information to rebut the noncompliance described in the notification of noncompliance.

(c) After issuance of a notification of noncompliance, the certifying agent must:

(1) Evaluate the applicant's corrective actions taken and supporting documentation submitted or the written rebuttal, conduct an on-site inspection if necessary, and;

(i) When the corrective action or rebuttal is sufficient for the applicant to qualify for certification, issue the applicant an approval of certification pursuant to § 205.404; or

(ii) When the corrective action or rebuttal is not sufficient for the applicant to qualify for certification, issue the applicant a written notice of denial of certification.

(2) Issue a written notice of denial of certification to an applicant who fails to respond to the notification of noncompliance.

(3) Provide notice of approval or denial to the Administrator, pursuant to § 205.501(a)(14).

(d) A notice of denial of certification must state the reason(s) for denial and the applicant's right to:

(1) Reapply for certification pursuant to §§ 205.401 and 205.405(e);

(2) Request mediation pursuant to § 205.663 or, if applicable, pursuant to a State program; or

(3) File an appeal pursuant to § 205.681 or, if applicable, pursuant to a State program of the denial of certification.

(e) An applicant for certification who has received a written notification of noncompliance or a written notice of denial of certification may apply for certification again at any time with any certifying agent, in accordance with §§ 205.401 and 205.405(e). When such applicant submits a new application to a certifying agent other than the agent who issued the notification of noncompliance or notice of denial of certification, the applicant for certification must include a copy of the notification of noncompliance or notice of denial of certification and a description of the actions taken, with supporting documentation, to correct the deficiencies noted in the notification of noncompliance.

(f) A certifying agent who receives a new application for certification, which includes a notification of noncompliance or a notice of denial of certification, must treat the application as a new application and begin a new application process pursuant to § 205.402.

(g) Notwithstanding paragraph (a) of this section, if a certifying agent has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposefully misrepresented the applicant's operation or its compliance with the certification requirements pursuant to this part, the certifying agent may deny certification pursuant to paragraph (c)(1)(ii) of this section without first issuing a notification of noncompliance.

§ 205.406 Continuation of certification.

(a) To continue certification, a certified operation must annually submit the following information, as applicable, to the certifying agent:

(1) An updated organic production or handling system plan which includes:

(i) A summary statement, supported by documentation, detailing any deviations from, changes to, modifications to, or other amendments made to the previous year's organic system plan during the previous year; and

(ii) Any additions or deletions to the previous year's organic system plan, intended to be undertaken in the coming year, detailed pursuant to § 205.200;

(2) Any additions to or deletions from the information required pursuant to § 205.401(b); and (3) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.

(b) Following the receipt of the information specified in paragraph (a) of this section, the certifying agent shall arrange and conduct an on-site inspection of the certified operation, pursuant to § 205.403.

(c) If the certifying agent has reason to believe, based on the on-site inspection and a review of the information specified in § 205.404, that a certified operation is not complying with the requirements of the Act and the

regulations in this part, the certifying agent shall provide a written notification of noncompliance to the operation in accordance with § 205.662.

(d) If the certifying agent determines that the certified operation is complying with the Act and the regulations in this part and that any of the information specified on the certificate of organic operation has changed, the certifying agent must issue an updated certificate of organic operation pursuant to § 205.404(b).

§§ 205.407–205.499 [Reserved]

Subpart F—Accreditation of Certifying Agents

§ 205.500 Areas and duration of accreditation.

(a) The Administrator shall accredit a qualified domestic or foreign applicant in the areas of crops, livestock, wild crops, or handling or any combination thereof to certify a domestic or foreign production or handling operation as a certified operation.

(b) Accreditation shall be for a period of 5 years from the date of approval of accreditation pursuant to § 205.506.

(c) In lieu of accreditation under paragraph (a) of this section, USDA will accept a foreign certifying agent's accreditation to certify organic production or handling operations if:

(1) USDA determines, upon the request of a foreign government, that the standards under which the foreign government authority accredited the foreign certifying agent meet the requirements of this part; or

(2) The foreign government authority that accredited the foreign certifying agent acted under an equivalency agreement negotiated between the United States and the foreign government.

§ 205.501 General requirements for accreditation.

(a) A private or State entity accredited as a certifying agent under this subpart must:

(1) Have sufficient expertise in organic production or handling techniques to fully comply with and implement the terms and conditions of the organic certification program established under the Act and the regulations in this part;

(2) Demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart;

(3) Carry out the provisions of the Act and the regulations in this part, including the provisions of §§ 205.402 through 205.406 and § 205.670;

(4) Use a sufficient number of adequately trained personnel, including inspectors and certification review personnel, to comply with and implement the organic certification program established under the Act and the regulations in subpart E of this part;

(5) Ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making responsibilities have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned.

(6) Conduct an annual performance appraisal for each inspector used by the certifying agent and implement measures to correct any deficiencies in compliance with the Act and the regulations in this part that are identified in the appraisal;

(7) Have an annual program evaluation of its certification activities conducted by the certifying agent's staff, an outside auditor, or a consultant who has expertise to conduct such evaluations and implement measures to correct any deficiencies in compliance with the Act and the regulations in this part that are identified in the evaluation;

(8) Provide sufficient information to persons seeking certification to enable them to comply with the applicable requirements of the Act and the regulations in this part;

(9) Maintain all records pursuant to § 205.510(b) and make all such records available for inspection and copying during normal business hours by authorized representatives of the Secretary and the applicable State program's governing State official;

(10) Maintain strict confidentiality with respect to its clients under the applicable organic certification program and not disclose to third parties (with the exception of the Secretary or the applicable State program's governing State official or their authorized representatives) any business-related information concerning any client obtained while implementing the regulations in this part, except as provided for in § 205.504(b)(5);

(11) Prevent conflicts of interest by:

(i) Not certifying a production or handling operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the production or handling operation, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

(ii) Excluding any person, including contractors, with conflicts of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or handling operations for all entities in which such person has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

(iii) Not permitting any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected, except that a certifying agent that is a not-for-profit organization with an Internal Revenue Code tax exemption, or in the case of a foreign certifying agent a comparable recognition of not-for-profit status from its government, may accept voluntary labor from certified operations;

(iv) Not providing advice concerning organic practices or techniques to any certification applicant or certified operation for a fee, other than as part of the fees under the applicable certification program established under the Act; and

(v) Requiring all persons identified in § 205.504(a)(2) to complete an annual conflict of interest disclosure report.

(12) Accept the certification decisions made by another USDA-accredited certifying agent as equivalent to its own;

(13) Refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced;

(14) Submit to the Administrator:

(i) A copy of any notice of denial of certification issued pursuant to § 205.405, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation sent pursuant to § 205.662, simultaneously with its issuance and

(ii) On a quarterly calender basis, the name, address, and telephone number of each operation granted certification;

(15) Charge applicants for certification and certified production and handling operations only those fees and charges that it has filed with the Administrator;

(16) Pay and submit fees to AMS in accordance with § 205.640; and

(17) Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.

(b) A private or State entity accredited as a certifying agent under this subpart may establish a seal, logo, or other identifying mark to be used by production and handling operations certified by the certifying agent to indicate affiliation with the certifying

agent: *Provided,* That, the certifying agent:

(1) Does not require use of its seal, logo, or other identifying mark on any product sold, labeled, or represented as organically produced as a condition of certification and

(2) Does not require compliance with any production or handling practices other than those provided for in the Act and the regulations in this part as a condition of use of its identifying mark: *Provided,* That, this provision does not apply to States with more restrictive requirements approved by the Secretary or private entity certifying agents certifying production and handling operations within States with more restrictive requirements approved by the Secretary.

(c) A private entity accredited as a certifying agent must:

(1) Hold the Secretary harmless for any failure on the part of the certifying agent to carry out the provisions of the Act and the regulations in this part;

(2) Furnish reasonable security, in an amount and according to such terms as the Administrator may by regulation prescribe, for the purpose of protecting the rights of production and handling operations certified by such certifying agent under the Act and the regulations in this part; and

(3) Transfer to the Administrator and make available to any applicable State program's governing State official all records or copies of records concerning the person's certification activities in the event that the certifying agent dissolves or loses its accreditation.

(d) No private or State entity accredited as a certifying agent under this subpart shall exclude from participation in or deny the benefits of the National Organic Program to any person due to discrimination because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status.

§ 205.502 Applying for accreditation.

(a) A private or State entity seeking accreditation as a certifying agent under this subpart must submit an application for accreditation which contains the applicable information and documents set forth in §§ 205.503 through 205.505 and the fees required in § 205.640 to: Program Manager, USDA–AMS–TMP–NOP, Room 2945–South Building, PO Box 96456, Washington, DC 20090–6456.

(b) Following the receipt of the information and documents, the Administrator will determine, pursuant to § 205.506, whether the applicant for accreditation should be accredited as a certifying agent.

§ 205.503 Applicant information.

A private or State entity seeking accreditation as a certifying agent must submit the following information:

(a) The business name, primary office location, mailing address, name of the person(s) responsible for the certifying agent's day-to-day operations, contact numbers (telephone, facsimile, and Internet address) of the applicant, and, for an applicant who is a private person, the entity's taxpayer identification number;

(b) The name, office location, mailing address, and contact numbers (telephone, facsimile, and Internet address) for each of its organizational units, such as chapters or subsidiary offices, and the name of a contact person for each unit;

(c) Each area of operation (crops, wild crops, livestock, or handling) for which accreditation is requested and the estimated number of each type of operation anticipated to be certified annually by the applicant along with a copy of the applicant's schedule of fees for all services to be provided under these regulations by the applicant;

(d) The type of entity the applicant is (e.g., government agricultural office, for-profit business, not-for-profit membership association) and for:

(1) A State entity, a copy of the official's authority to conduct certification activities under the Act and the regulations in this part,

(2) A private entity, documentation showing the entity's status and organizational purpose, such as articles of incorporation and by-laws or ownership or membership provisions, and its date of establishment; and

(e) A list of each State or foreign country in which the applicant currently certifies production and handling operations and a list of each State or foreign country in which the applicant intends to certify production or handling operations.

§ 205.504 Evidence of expertise and ability.

A private or State entity seeking accreditation as a certifying agent must submit the following documents and information to demonstrate its expertise in organic production or handling techniques; its ability to fully comply with and implement the organic certification program established in §§ 205.100 and 205.101, §§ 205.201 through 205.203, §§ 205.300 through 205.303, §§ 205.400 through 205.406, and §§ 205.661 and 205.662; and its ability to comply with the requirements for accreditation set forth in § 205.501:

(a) *Personnel.*

(1) A copy of the applicant's policies and procedures for training, evaluating, and supervising personnel;

(2) The name and position description of all personnel to be used in the certification operation, including administrative staff, certification inspectors, members of any certification review and evaluation committees, contractors, and all parties responsibly connected to the certifying agent;

(3) A description of the qualifications, including experience, training, and education in agriculture, organic production, and organic handling, for:

(i) Each inspector to be used by the applicant and

(ii) Each person to be designated by the applicant to review or evaluate applications for certification; and

(4) A description of any training that the applicant has provided or intends to provide to personnel to ensure that they comply with and implement the requirements of the Act and the regulations in this part.

(b) *Administrative policies and procedures.*

(1) A copy of the procedures to be used to evaluate certification applicants, make certification decisions, and issue certification certificates;

(2) A copy of the procedures to be used for reviewing and investigating certified operation compliance with the Act and the regulations in this part and the reporting of violations of the Act and the regulations in this part to the Administrator;

(3) A copy of the procedures to be used for complying with the recordkeeping requirements set forth in § 205.501(a)(9);

(4) A copy of the procedures to be used for maintaining the confidentiality of any business-related information as set forth in § 205.501(a)(10);

(5) A copy of the procedures to be used for making the following information available to any member of the public upon request:

(i) Certification certificates issued during the current and 3 preceding calender years;

(ii) A list of producers and handlers whose operations it has certified, including for each the name of the operation, type(s) of operation, and the effective date of the certification, during the current and 3 preceding calender years;

(iii) The results of laboratory analyses for residues of pesticides and other prohibited substances conducted during the current and 3 preceding calender years; and

(iv) Other business information as permitted in writing by the producer or handler; and

(6) A copy of the procedures to be used for sampling and residue testing pursuant to § 205.670.

(c) *Conflicts of interest.*

(1) A copy of procedures intended to be implemented to prevent the occurrence of conflicts of interest, as described in § 205.501(a)(11).

(2) For each person identified in § 205.504(a)(2), a conflict of interest disclosure report, identifying any food- or agriculture-related business interests, including business interests of immediate family members, that cause a conflict of interest.

(d) *Current certification activities.* An applicant who currently certifies production or handling operations must submit:

(1) A list of all production and handling operations currently certified by the applicant;

(2) Copies of at least 3, the Administrator may require additional, different inspection reports and certification evaluation documents for production or handling operations certified by the applicant during the previous year for each area of operation for which accreditation is requested; and

(3) The results of any accreditation process of the applicant's operation by an accrediting body during the previous year for the purpose of evaluating its certification activities.

(e) *Other information.* Any other information the applicant believes may assist in the Administrator's evaluation of the applicant's expertise and ability.

§ 205.505 Statement of agreement.

(a) A private or State entity seeking accreditation under this subpart must sign and return a statement of agreement prepared by the Administrator which affirms that, if granted accreditation as a certifying agent under this subpart, the applicant will carry out the provisions of the Act and the regulations in this part, including:

(1) Accept the certification decisions made by another USDA accredited certifying agent as equivalent to its own;

(2) Refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced;

(3) Conduct an annual performance appraisal for each inspector to be used by the certifying agent and implement measures to correct any possible deficiencies identified in compliance with the Act and the regulations in this part;

(4) Have an annual internal program evaluation conducted of its certification activities by certifying agent staff, an outside auditor, or a consultant who has the expertise to conduct such evaluations and implement measures to correct any deficiencies identified in compliance with the Act and the regulations in this part;

(5) Pay and submit fees to AMS in accordance with § 205.640; and

(6) Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.

(b) A private entity seeking accreditation as a certifying agent under this subpart must additionally agree to:

(1) Hold the Secretary harmless for any failure on the part of the certifying agent to carry out the provisions of the Act and the regulations in this part;

(2) Furnish reasonable security, in an amount and according to such terms as the Administrator may by regulation prescribe, for the purpose of protecting the rights of production and handling operations certified by such certifying agent under the Act and the regulations in this part; and

(3) Transfer to the Administrator and make available to the applicable State program's governing State official all records or copies of records concerning the certifying agent's certification activities in the event that the certifying agent dissolves or loses its accreditation.

§ 205.506 Approval of accreditation.

(a) Accreditation will be approved when:

(1) The accreditation applicant has submitted the information required by §§ 205.503 through 205.505;

(2) The accreditation applicant pays the required fee in accordance with § 205.640(c); and

(3) The Administrator determines that the applicant for accreditation meets the requirements for accreditation as stated in § 205.501, as determined by a review of the information submitted in accordance with §§ 205.503 through 205.505 and, if necessary, a review of the information obtained from a site evaluation as provided for in § 205.508.

(b) On making a determination to approve an application for accreditation, the Administrator will notify the applicant of approval of accreditation in writing, stating:

(1) The area(s) for which accreditation is given;

(2) The effective date of the accreditation; and

(3) For a certifying agent who is a private entity, the amount and type of security that must be established to protect the rights of production and handling operations certified by such certifying agent.

(c) The accreditation of a certifying agent shall continue in effect until such time as the certifying agent fails to renew accreditation as provided in § 205.510(b), the certifying agent voluntarily ceases its certification activities, or accreditation is suspended or revoked pursuant to § 205.665.

§ 205.507 Denial of accreditation.

(a) If the Administrator has reason to believe, based on a review of the information specified in §§ 205.503 through 205.505 or after a site evaluation as specified in § 205.508, that an applicant for accreditation is not able to comply or is not in compliance with the requirements of the Act and the regulations in this part, the Administrator shall provide a written notification of noncompliance to the applicant in accordance with § 205.665(a).

(b) The applicant may:

(1) File, with the Administrator, an appeal of the deficiencies identified in the notification of noncompliance; or

(2) Submit to the Administrator a description of the actions taken to correct the deficiencies identified in the notification of noncompliance and evidence demonstrating such corrections.

(c) If an applicant fails to correct the deficiencies, fails to report the corrections by the date specified in the notification of noncompliance, fails to file an appeal of the notification of noncompliance by the date specified, or is unsuccessful in its appeal, the Administrator will provide the applicant with written notification of accreditation denial. An applicant who has received written notification of accreditation denial may apply for accreditation again at any time in accordance with § 205.502.

(d) If the certifying agent was accredited prior to the site evaluation and the certifying agent fails to correct the deficiencies, fails to report the corrections by the date specified in the notification of noncompliance, or fails to file an appeal of the notification of noncompliance by the date specified, the Administrator will begin proceedings to suspend or revoke the certifying agent's accreditation. An applicant who has had its accreditation suspended may apply for accreditation again at any time in accordance with § 205.502. A private entity certifying agent whose accreditation is revoked will be ineligible for accreditation for a period of not less than 3 years following the date of such determination.

§ 205.508 Site evaluations.

(a) Site evaluations of accredited certifying agents shall be conducted for the purpose of examining the certifying agent's operations and evaluating its compliance with the Act and the regulations of this part. Site evaluations shall include an on-site review of the certifying agent's certification procedures, decisions, facilities, administrative and management systems, and production or handling operations certified by the certifying agent. Site evaluations shall be conducted by a representative(s) of the Administrator.

(b) An initial site evaluation of an accreditation applicant shall be conducted before or within a reasonable period of time after issuance of the applicant's "notification of accreditation." A site evaluation shall be conducted after application for renewal of accreditation but prior to the issuance of a notice of renewal of accreditation. One or more site evaluations will be conducted during the period of accreditation to determine whether an accredited certifying agent is complying with the general requirements set forth in § 205.501.

§ 205.509 Peer review panel.

The Administrator may establish a peer review panel to assist in evaluating applicants for accreditation, amendment to an accreditation, and renewal of accreditation as certifying agents. Peer reviewers will serve without compensation.

(a) *Peer review panel(s).*

(1) A peer review panel shall review the documentation provided by the Administrator after any site evaluation performed pursuant to §§ 205.508 and 205.510.

(2) The Administrator shall consider the reports received from each individual member of a peer review panel when determining whether to continue or renew the accreditation of a certifying agent.

(3) A peer review panel meeting shall be held solely for the purposes of giving and receiving information. Any meeting or conference call shall be conducted in a manner that will ensure the actions of panel members are carried out on an individual basis with any opinions and recommendations by a member being made individually.

(b) *Eligibility for peer review panels.*

(1) Applicants for membership in the peer review panel pool must:

(i) Provide the Administrator with a written description and, upon request, supporting documentation of their qualifications to conduct peer reviews. Such description must include information concerning the applicant's training and expertise in organic production or handling methods and in evaluating whether production or handling operations are using a system of organic production or handling.

(ii) Address possible limitations on availability to serve.

(iii) Include information concerning their commercial interests and those of their immediate family members, within the 12-month period prior to application, with any person who may seek to become or who is an accredited certifying agent. No person who has or has had a commercial interest, including an immediate family interest or the provision of consulting services, in an applicant for accreditation or renewal of accreditation within the preceding 12-month period shall be appointed to or accept appointment to a panel evaluating such applicant for accreditation or renewal of accreditation.

(2) Persons accepted to the pool may serve until notified that their appointment has been rescinded by the Administrator or until they are no longer qualified, whichever occurs first.

(c) *Composition of peer review panels.*

(1) Peer review panels convened by the Administrator shall consist of at least three but no more than five members.

(2) Peer review panels must include:

(i) A Department representative who shall preside over the panel and

(ii) No fewer than two members, drawn from the peer review pool, who possess sufficient expertise, as determined by the Administrator, in the areas of accreditation described in the application for accreditation or the notice of approval of accreditation for each certifying agent whose operations and performance are to be reviewed.

(3) Peer review panels may include:

(i) Up to two members with expertise in other disciplines, including organizational management and finance;

(ii) Member(s) from the approved State organic certification program when the applicant is a private entity that will operate within the State; and

(iii) Member(s) from a foreign government's organic program when the applicant is a private entity that will operate within the country.

(d) *Duties and responsibilities of panel members.*

(1) Each person on a peer review panel must individually review the site evaluation report prepared by the Department's evaluator(s) and any other information that may be provided by the Administrator relevant to continuing or renewing the accreditation status of a certifying agent;

(2) Information about the certifying agent received as part of the review process is confidential information, and peer reviewers must not release, copy, quote, or otherwise use material from the information received, other than in the report required to be submitted;

(3) Each peer reviewer must agree to treat the information received for review as confidential; and

(4) Each person on a peer review panel must provide an individual written report, including recommendations, to the Administrator regarding a certifying agent's ability to conduct and perform certification activities.

(e) *Peer review panel reports.* Copies of the peer review panel reports will be provided upon request to the certifying agent, and written responses from the certifying agent may be submitted for consideration by the Administrator.

§ 205.510 Annual report, recordkeeping, and renewal of accreditation.

(a) *Annual report and fees.* An accredited certifying agent must submit annually to the Administrator, on or before the anniversary date of the issuance of the notification of accreditation, the following reports and fees:

(1) A complete and accurate update of information submitted pursuant to §§ 205.503 and 205.504;

(2) Information supporting any changes being requested in the areas of accreditation described in § 205.500;

(3) A description of the measures implemented in the previous year and any measures to be implemented in the coming year to satisfy any terms and conditions determined by the Administrator to be necessary, as specified in the most recent notification of accreditation or notice of renewal of accreditation;

(4) The results of the most recent inspector performance appraisals and annual program evaluation and a description of adjustments to the certifying agent's operation and procedures implemented or to be implemented in response to the appraisals and evaluation; and

(5) The fees required in § 205.640(a).

(b) *Recordkeeping.* Certifying agents must maintain records according to the following schedule:

(1) Records obtained from applicants for certification and certified operations must be maintained for not less than 5 years beyond their receipt;

(2) Records created by the certifying agent regarding applicants for certification and certified operations must be maintained for not less than 10 years beyond their creation; and

(3) Records created or received by the certifying agent pursuant to the accreditation requirements of this subpart F, excluding any records covered by §§ 205.510(b)(2), must be maintained for not less than 5 years beyond their creation or receipt.

(c) *Renewal of accreditation.*

(1) An accredited certifying agent's application for accreditation renewal must be received 6 months prior to the fifth anniversary of issuance of the notification of accreditation and each subsequent renewal of accreditation. The accreditation of certifying agents who make timely application for renewal of accreditation will not expire during the renewal process. The accreditation of certifying agents who fail to make timely application for renewal of accreditation will expire as scheduled unless renewed prior to the scheduled expiration date. Certifying agents with an expired accreditation must not perform certification activities under the Act and these regulations.

(2) Following receipt of the information submitted by the certifying agent in accordance with paragraph (a) of this section, the results of a site evaluation, and, if applicable, the reports submitted by a peer review panel, the Administrator will determine whether the certifying agent remains in compliance with the Act and the regulations of this part and should have its accreditation renewed.

(d) *Notice of renewal of accreditation.* Upon a determination that the certifying agent is in compliance with the Act and the regulations of this part, the Administrator will issue a notice of renewal of accreditation. The notice of renewal will specify any terms and conditions that must be addressed by the certifying agent and the time within which those terms and conditions must be satisfied.

(e) *Noncompliance.* Upon a determination that the certifying agent is not in compliance with the Act and the regulations of this part, the Administrator will initiate proceedings to suspend or revoke the certifying agent's accreditation.

§§ 205.511—205.599 [Reserved]

Subpart G—Administrative

The National List of Allowed and Prohibited Substances

§ 205.600 Allowed and prohibited substances and ingredients in organic production and handling.

To be sold or labeled as "organic," or "made with organic (specified ingredients)," the product must be produced and handled without the use of:

(a) Synthetic substances and ingredients, except as provided in § 205.601 and § 205.603.

(b) Nonagricultural substances used in or on processed products, except as otherwise provided in § 205.605;

(c) Nonsynthetic substances prohibited in § 205.602 or § 205.604; and

(d) Materials, processes, or techniques prohibited in § 205.301.

§ 205.601 Synthetic substances allowed for use in organic crop production.

In accordance with restrictions specified in this section and § 205.102 and § 205.200 through § 205.207, the following synthetic substances may be used:

(a) As algicides, disinfectants and sanitizers, including irrigation system cleaning systems

(1) Alcohols

(i) Ethanol

(ii) Isopropanol

(2) Chlorine Materials—*Except,* That, residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act.

(i) Calcium Hypochlorite

(ii) Chlorine Dioxide

(iii) Sodium Hypochlorite

(3) Hydrogen Peroxide

(4) Soap-Based Algicides/Demossers

(b) As herbicides, weed barriers, as applicable.

(1) Herbicides, Soap-Based—for use in farmstead maintenance (roadways, ditches, right of ways, building perimeters) and ornamental crops

(2) Mulches

(i) Newspaper or other recycled paper, without glossy or colored inks.

(ii) Plastic mulch and covers (petroleum-based other than polyvinyl chloride (PVC))

(c) As compost feedstocks—Newspapers or other recycled paper, without glossy or colored inks

(d) As animal repellents—Soaps, Ammonium—for use as a large animal repellant only, no contact with soil or edible portion of crop

(e) As insecticides (including acracides or mite control)

(1) Ammonium Carbonate—for use as bait in insect traps only, no direct contact with crop or soil

(2) Boric Acid—structural pest control, no direct contact with organic food or crops

(3) Elemental Sulfur

(4) Lime Sulfur—including calcium polysulfide, fungicides, or insecticides if no alternatives

(5) Oils, Horticultural—as dormant, suffocating, and summer oils

(6) Petroleum-Based Oils—on woody plants for dormant and summer pest control, *Except,* That, a petroleum-based material allowed as a pesticide is prohibited for use as a herbicide. Aromatic petroleum solvents as a subclass of petroleum-based oils are prohibited.

(7) Soaps, Insecticidal

(8) Sticky Traps/Barriers

(f) As insect attractants—Pheromones

(g) As rodenticides

(1) Sulfur Dioxide—underground rodent control only (smoke bombs)

(2) Vitamin D3

(h) As slug or snail bait—[Reserved]

(i) As plant disease control

(1) Coppers, Fixed—Copper Hydroxide, Copper Oxide, Copper Oxychloride, Includes products exempted from EPA tolerance, *Except,* That, copper-based materials shall be managed in a way that prevents excessive accumulation in the soil and shall not be used as herbicides.

(2) Copper Sulfate—Substance must be used in a manner that minimizes accumulation of copper in the soil.

(3) Hydrated Lime—not permitted for soil application or to cauterize mutilations or deodorize animal wastes

(4) Hydrogen Peroxide

(5) Oils, Horticultural, as dormant, suffocating, and summer oils, insecticides only

(6) Petroleum-Based Oils—*Except,* That, aromatic petroleum solvents as a subclass of petroleum-based oils are prohibited.

(7) Potassium Bicarbonate

(8) Elemental Sulfur

(j) As plant or soil amendments.

(1) Aquatic Plant Extracts (other than hydrolyzed)—Extraction process is limited to the use of Potassium Hydroxide or Sodium Hydroxide; solvent amount used is limited to that amount necessary for extraction.

(2) Humic Acids—naturally occurring deposits, water and alkali extracts only

(3) Lignin Sulfonate—chelating agent, dust suppressant, floatation agent

(4) Micronutrients—not to be used as a defoliant, herbicide, or desiccant. Those made from nitrates or chlorides are not allowed. Soil deficiency must be documented by soil or tissue test.

(i) Soluble Boron Products

(ii) Sulfates, carbonates, oxides, or silicates of zinc, iron, magnesium, manganese, molybdenum, selenium, and cobalt

(5) Liquid Fish Products—can be pH adjusted with sulfuric, citric or phosphoric acid. The amount of acid used shall not exceed the minimum needed to lower the pH to 3.5

(6) Vitamins, B1, C, and E

(k) As plant growth regulators—[Reserved]

(l) As floating agents in postharvest handling
(1) Lignin Sulfonate
(2) Sodium Silicate—for tree fruit and fiber processing
(m) As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with a synthetic substance listed in this section and used as an active ingredient in accordance with any limitations on the use of such synthetic substances—EPA List 4—Inerts of Minimal Concern
(n)–(z) [Reserved]

§ 205.602 Nonsynthetic substances prohibited for use in organic crop production.

(a) Ash from manure burning
(b) Arsenic
(c) Lead salts
(d) Sodium Fluoaluminate (Mined)
(e) Strychnine
(f) Tobacco Dust
(g)-(z) [Reserved]

§ 205.603 Synthetic substances allowed for use in organic livestock production.

Any substance in the following categories may be used in organic livestock production in accordance with any restrictions specified in this section and § 205.102 and § 205.236 through § 205.239.

(a) As disinfectants, sanitizers, and medical treatments as applicable
(1) Alcohols
(i) Ethanol—disinfectant and sanitizer only, prohibited as a feed additive
(ii) Isopropanol—disinfectant only
(2) Aspirin—approved for health care use to reduce inflammation
(3) Chlorine Materials—disinfecting and sanitizing facilities and equipment. Residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act
(i) Calcium Hypochlorite
(ii) Chlorine Dioxide
(iii) Sodium Hypochlorite
(4) Chlorohexidine—Allowed for surgical procedures conducted by a veterinarian. Allowed for use as a teat dip when alternative germicidal agents and/or physical barriers have lost their effectiveness
(5) Electrolytes—without antibiotics
(6) Glucose
(7) Glycerin—Allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils
(8) Iodine
(9) Hydrogen Peroxide
(10) Magnesium Sulfate
(11) Parasiticides—Ivermectin—Prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder stock when organic system plan-approved preventive management does not prevent infestation. Milk or milk products from a treated animal cannot be labeled as provided for in subpart D of this part for 90 days following treatment. In breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic
(12) Phosphoric Acid—allowed as an equipment cleaner
(13) Vaccines and Biologics
(b) As topical treatment, external parasiticide or local anesthetic as applicable.
(1) Iodine
(2) Lidocaine—as a local anesthetic. Use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals
(3) Lime, Hydrated—(Bordeaux mixes)
(4) Mineral Oil—for topical use and as a lubricant
(5) Procaine—as a local anesthetic, use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals
(6) Copper Sulfate
(c) As feed supplements—Milk Replacers—without antibiotics, as emergency use only, no nonmilk products or products from BST treated animals
(d) As feed additives
(1) Trace Minerals, including:
(i) Copper Sulfate
(ii) Magnesium Sulfate
(2) Vitamins—accepted for enrichment or fortification, limited to those approved by the FDA for livestock use
(e) As fillers and excipients
(f)–(z) [Reserved]

§ 205.604 Nonsynthetic substances prohibited for use in organic livestock production. [Reserved]

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients)."

The following nonagricultural substances may be used only in accordance with any restrictions specified in this section and § 205.102, § 205.270, and § 205.300 through § 205.310.

(a) *Nonsynthetics allowed:*
(1) Agar-agar
(2) Acids
(i) Alginic
(ii) Citric—produced by microbial fermentation of carbohydrate substances
(iii) Lactic
(3) Baking Powder—aluminum-free
(4) Bentonite
(5) Calcium Carbonate
(6) Calcium Chloride
(7) Carrageenan
(8) Cornstarch (Native)
(9) Dairy Cultures—non-EM
(10) Diatomaceous Earth—food filtering aid only
(11) Enzymes—must be derived from edible, nontoxic plants, nonpathogenic fungi, or nonpathogenic bacteria
(12) Gums—Water extracted only (arabic, guar, locust bean, carob bean)
(13) Kaolin
(14) Kelp—for use only as a thickener and dietary supplement
(15) Lecithin—unbleached
(16) Nitrogen—Oil-free grades
(17) Oxygen—Oil-free grades
(18) Pectin (high-methoxy)
(19) Perlite—for use only as a filter aid in food processing
(20) Potassium Chloride
(21) Potassium Iodide
(22) Sodium Bicarbonate
(23) Sodium Carbonate
(24) Yeast—Nonsynthetic, non-EM
(i) Autolysate
(ii) Bakers
(iii) Brewers
(iv) Nutritional
(v) Smoked—growth on petrochemical substrate and sulfite waste liquor prohibited. Nonsynthetic smoke flavoring process must be documented
(b) *Synthetics allowed:*
(1) Alginates
(2) Ammonium Bicarbonate—for use only as a leavening agent
(3) Ammonium Carbonate—for use only as a leavening agent
(4) Ascorbic Acid
(5) Calcium Citrate
(6) Calcium Hydroxide
(7) Calcium Phosphates (monobasic and dibasic)
(8) Carbon Dioxide
(9) Chlorine Materials—disinfecting and sanitizing food contact surfaces, *Except,* That, residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act.
(i) Calcium Hypochlorite
(ii) Chlorine Dioxide
(iii) Sodium Hypochlorite
(10) Ethylene—allowed for post harvest ripening of tropical fruit
(11) Ferrous Sulfate—for iron enrichment or fortification of foods when required by regulation or recommended (independent organization)
(12) Glycerides (mono and di)—for use only in drum drying of food
(13) Glycerin—produced by hydrolysis of fats and oils
(14) Hydrogen peroxide

(15) Lecithin—bleached
(16) Magnesium Carbonate—for use only in agricultural products labeled "made with organic (specified ingredients)," prohibited in agricultural products labeled "organic"
(17) Magnesium Chloride—derived from sea water
(18) Magnesium Stearate—for use only in agricultural products labeled "made with organic (specified ingredients)," prohibited in agricultural products labeled "organic"
(19) Magnesium Sulfate
(20) Nutrient vitamins and minerals, in accordance with 21 CFR 104.20, Nutritional Quality Guidelines For Foods
(21) Ozone
(22) Pectin (low-methoxy)
(23) Phosphoric Acid—cleaning of food-contact surfaces and equipment only
(24) Potassium Acid Tartrate
(25) Potassium Tartrate made from Tartaric acid
(26) Potassium Carbonate
(27) Potassium Citrate
(28) Potassium Hydroxide—prohibited for use in lye peeling of fruits and vegetables
(29) Potassium Iodide—for use only in agricultural products labeled "made with organic (specified ingredients)," prohibited in agricultural products labeled "organic"
(30) Potassium Phosphate—for use only in agricultural products labeled "made with organic (specific ingredients)," prohibited in agricultural products labeled "organic"
(31) Silicon Dioxide
(32) Sodium Citrate
(33) Sodium Hydroxide—prohibited for use in lye peeling of fruits and vegetables
(34) Sodium Phosphates—for use only in dairy foods
(35) Tocopherols—derived from vegetable oil when rosemary extracts are not a suitable alternative
(36) Xanthan gum
(c)–(z) [Reserved]

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as organic or made with organic ingredients.

Any nonorganically produced agricultural product may be used in accordance with any restrictions specified in this section and § 205.102, § 205.270, and § 205.300 through § 205.310.

§ 205.607 Amending the National List.

(a) Any person may petition the National Organic Standard Board for the purpose of having a substance evaluated for recommendation to the Secretary for inclusion on or deletion from the National List in accordance with section 6517 of the Act.

(b) A person petitioning for amendment of the National List should request a copy of the petition procedures from the USDA at the address in § 205.607(c).

(c) A petition to amend the National List must be submitted to: Program Manager, USDA/AMS/TM/NOP, Room 2945 South Building, PO Box 96456, Washington, DC 20090–6456.

(d) A substance may be added to the National List only in the following categories:

(1) Synthetic substances allowed for use in organic crop or livestock production;

(2) Nonsynthetic substances prohibited for use in organic crop or livestock production; or

(3) Nonagricultural substances allowed for use as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients)."

State Programs

§ 205.620 Requirements of State organic certification programs.

(a) A State may establish a State organic certification program for production and handling operations within the State which produces and handles organic agricultural products.

(b) A State organic certification program must meet the general requirements for organic programs specified in the Act and be at least equivalent to the regulations in this part.

(c) A State organic certification program may contain more restrictive requirements based on unique environmental conditions or specific production or handling practices particular to the State or region of the United States, which necessitates the more restrictive requirement. Such additional requirements must further the purposes and be consistent with the Act and regulations in this part.

(d) A State organic certification program must assume enforcement obligations in the State for the requirements of this part and any more restrictive requirements approved by the Secretary.

(e) A State organic certification program and any amendments to such program must be approved by the Secretary prior to being implemented by the State.

§ 205.621 Submission and determination of proposed State organic certification programs and amendments to approved State organic certification programs.

(a) A State program's governing State official must submit to the Secretary a proposed State organic certification program and any proposed amendments to such approved program.

(1) Such submission must contain supporting materials that include statutory authorities, program description, a statement of acceptance of the general requirements for organic programs specified in the Act, documentation of unique environmental or ecological conditions or specific production practices particular to the State which necessitate more restrictive requirements than the requirements of this part, and other information as may be required by the Secretary.

(2) Submission of a request for amendment of an approved State organic certification program must contain supporting material that includes an explanation and documentation of the unique environmental or ecological conditions or specific production practices particular to the State or region, which necessitates the proposed amendment. Supporting material also must explain how the proposed amendment furthers and is consistent with the purposes of the Act and the regulations of this part.

(b) Within 6 months of receipt of submission, the Secretary will:

(1) Publish in the **Federal Register** for public comment, a summary of a proposed State organic certification program, and a summary of any proposed amendment to such program.

(2) After review of materials and documentation accompanying the proposal and consideration of comments received, notify the State program's governing State official of approval or disapproval of the proposed program or amendment of an approved program and, if disapproved, the reasons for the disapproval.

(c) After receipt of a notice of disapproval, the State program's governing State official may resubmitt a revised State organic certification program or amendment of such a program at any time.

§ 205.622 Review of approved State organic certification programs.

The Secretary will review a State organic certification program not less than once during each 5-year period following the date of the initial program approval. The Secretary will notify the State program's governing State official of approval or disapproval of the

program within 6 months after initiation of the review.

Fees

§ 205.640 Fees and other charges for accreditation.

Fees and other charges equal as nearly as may be to the cost of the accreditation services rendered under the regulations, including initial accreditation, review of annual reports, and renewal of accreditation, shall be assessed and collected from applicants for initial accreditation and accredited certifying agents submitting annual reports or seeking renewal of accreditation in accordance with the following provisions.

(a) *Fees-for-Service.*

(1) Except as otherwise provided in this section, fees-for-service shall be based on the time required to render the service provided calculated to the nearest 15-minute period, including the review of applications and accompanying documents and information, evaluator travel, the conduct of on-site evaluations, review of annual reports and updated documents and information, and the time required to prepare reports and any other documents in connection with the performance of service. The hourly rate shall be the same as that charged by the Agricultural Marketing Service (AMS), through its Quality Systems Certification Program, to certification bodies requesting conformity assessment to the International Organization for Standardization "General Requirements for Bodies Operating Product Certification Systems" (ISO Guide 65).

(2) Applicants for initial accreditation and accredited certifying agents submitting annual reports or seeking renewal of accreditation during the first 18 months following the effective date of subpart F of this part shall receive service without incurring an hourly charge for service.

(3) Applicants for initial accreditation and renewal of accreditation must pay at the time of application, effective 18 months following the effective date of subpart F of this part, a nonrefundable fee of $500.00 which shall be applied to the applicant's fees-for-service account.

(b) *Travel charges.* When service is requested at a place so distant from the evaluator's headquarters that a total of one-half hour or more is required for the evaluator(s) to travel to such place and back to the headquarters or at a place of prior assignment on circuitous routing requiring a total of one-half hour or more to travel to the next place of assignment on the circuitous routing, the charge for such service shall include a mileage charge administratively determined by the Department and travel tolls, if applicable, or such travel prorated among all the applicants and certifying agents furnished the service involved on an equitable basis or, where the travel is made by public transportation (including hired vehicles), a fee equal to the actual cost thereof. Travel charges shall become effective for all applicants for initial accreditation and accredited certifying agents on the effective date of subpart F of this part. The applicant or certifying agent will not be charged a new mileage rate without notification before the service is rendered.

(c) *Per diem charges.* When service is requested at a place away from the evaluator's headquarters, the fee for such service shall include a per diem charge if the employee(s) performing the service is paid per diem in accordance with existing travel regulations. Per diem charges to applicants and certifying agents will cover the same period of time for which the evaluator(s) receives per diem reimbursement. The per diem rate will be administratively determined by the Department. Per diem charges shall become effective, for all applicants for initial accreditation and accredited certifying agents on the effective date of subpart F of this part. The applicant or certifying agent will not be charged a new per diem rate without notification before the service is rendered.

(d) *Other costs.* When costs, other than costs specified in paragraphs (a), (b), and (c) of this section are associated with providing the services, the applicant or certifying agent will be charged for these costs. Such costs include, but are not limited to, equipment rental, photocopying, delivery, facsimile, telephone, or translation charges incurred in association with accreditation services. The amount of the costs charged will be determined administratively by the Department. Such costs shall become effective for all applicants for initial accreditation and accredited certifying agents on the effective date of subpart F of this part.

§ 205.641 Payment of fees and other charges.

(a) Applicants for initial accreditation and renewal of accreditation must remit the nonrefundable fee, pursuant to § 205.640(a)(3), along with their application. Remittance must be made payable to the Agricultural Marketing Service, USDA, and mailed to: Program Manager, USDA–AMS–TMP–NOP, Room 2945–South Building, PO Box 96456, Washington, DC 20090–6456 or such other address as required by the Program Manager.

(b) Payments for fees and other charges not covered under paragraph (a) of this section must be:

(1) Received by the due date shown on the bill for collection;

(2) Made payable to the Agricultural Marketing Service, USDA; and

(3) Mailed to the address provided on the bill for collection.

(c) The Administrator shall assess interest, penalties, and administrative costs on debts not paid by the due date shown on a bill for collection and collect delinquent debts or refer such debts to the Department of Justice for litigation.

§ 205.642 Fees and other charges for certification.

Fees charged by a certifying agent must be reasonable, and a certifying agent shall charge applicants for certification and certified production and handling operations only those fees and charges that it has filed with the Administrator. The certifying agent shall provide each applicant with an estimate of the total cost of certification and an estimate of the annual cost of updating the certification. The certifying agent may require applicants for certification to pay at the time of application a nonrefundable fee of no more than $250.00, which shall be applied to the applicant's fees-for-service account. The certifying agent shall provide all persons inquiring about the application process with a copy of its fee schedule.

§§ 205.643—205.649 [Reserved]

Compliance

§ 205.660 General.

(a) The National Organic Program's Program Manager, on behalf of the Secretary, may inspect and review certified production and handling operations and accredited certifying agents for compliance with the Act or regulations in this part.

(b) The Program Manager may initiate suspension or revocation proceedings against a certified operation:

(1) When the Secretary has reason to believe that a certified operation has violated or is not in compliance with the Act or regulations in this part.

(2) When a certifying agent or a State program's governing State official fails to take appropriate action to enforce the Act or regulations in this part; or

(c) The Program Manager may initiate suspension or revocation of a certifying agent's accreditation if the certifying agent fails to meet, conduct, or maintain

accreditation requirements pursuant to the Act or this part.

§ 205.661 Investigation of certified operations.

(a) A certifying agent may investigate complaints of noncompliance with the Act or regulations of this part concerning production and handling operations certified as organic by the certifying agent. A certifying agent must notify the Program Manager of all compliance proceedings and actions taken pursuant to this part.

(b) A State program's governing State official may investigate complaints of noncompliance with the Act or regulations in this part concerning organic production or handling operations operating in the State.

§ 205.662 Noncompliance procedure for certified operations.

(a) *Notification.* When an inspection, review, or investigation of a certified operation by a certifying agent or a State program's governing State official reveals any noncompliance with the Act or regulations in this part, a written notification of noncompliance shall be sent to the certified operation. Such notification shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the certified operation must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) *Resolution.* When a certified operation demonstrates that each noncompliance has been resolved, the certifying agent or the State program's governing State official, as applicable, will send the certified operation a written notification of noncompliance resolution.

(c) *Proposed suspension or revocation.* When rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period or is not adequate to demonstrate that each noncompliance has been corrected, the certifying agent or State program's governing State official shall send the certified operation a written notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the noncompliance. When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation of certification may be combined in one notification. The notification of proposed suspension or revocation of certification shall state:

(1) The reasons for the proposed suspension or revocation;

(2) The proposed effective date of such suspension or revocation;

(3) The impact of a suspension or revocation on future eligibility for certification; and

(4) The right to request mediation pursuant to § 205.663 or to file an appeal pursuant to § 205.681.

(d) *Willfull violations.* Notwithstanding paragraph (a) of this section, if a certifying agent or State program's governing State official has reason to believe that a certified operation has willfully violated the Act or regulations in this part, the certifying agent or State program's governing State official shall send the certified operation a notification of proposed suspension or revocation of certification of the entire operation, or a portion of the operation, as applicable to the noncompliance.

(e) *Suspension or revocation.*

(1) If the certified operation fails to correct the noncompliance, to resolve the issue through rebuttal or mediation, or to file an appeal of the proposed suspension or revocation of certification, the certifying agent or State program's governing State official shall send the certified operation a written notification of suspension or revocation.

(2) A certifying agent or State program's governing State official must not send a notification of suspension or revocation to a certified operation that has requested mediation pursuant to § 205.663 or filed an appeal pursuant to § 205.681.

(f) *Ineligibility.* A certified operation or a person responsibly connected with an operation whose certification has been revoked will not be eligible to receive certification for a period of not more than 5 years following the date of such revocation, as determined by the Secretary.

§ 205.663 Mediation.

Any dispute with respect to proposed suspension or revocation of certification under this part shall, at the request of the applicant for certification or certified operation, be mediated by a qualified mediator mutually agreed upon by the parties to the mediation. If a State Program is in effect, the mediation procedures established in the State Program, as approved by the Secretary, will be followed. Mediation shall be requested in writing to the applicable certifying agent. The parties to the mediation shall have no more than 30 days to reach an agreement following a mediation session. If mediation is unsuccessful, the applicant for certification or certified operation shall have 30 days from termination of mediation to appeal the certifying agent's decision to the Administrator, pursuant to § 205.681. Any agreement reached during or as a result of the mediation process shall be in compliance with the Act and these regulations. The Secretary may review any mediated agreement for conformity to the Act and these regulations.

§ 205.664 [Reserved]

§ 205.665 Noncompliance procedure for certifying agents.

(a) *Noncompliance.* When an inspection, review, or investigation of an accredited certifying agent by the Program Manager reveals any noncompliance with the Act or regulations in this part, a written notification of noncompliance shall be sent to the certifying agent, as applicable. Such notification shall provide:

(1) A description of each noncompliance found;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the certifying agent must rebut or correct each noncompliance when correction is possible.

(b) *Resolution.* When each noncompliance has been resolved, the Program Manager shall send the certifying agent a written notification of noncompliance resolution.

(c) *Proposed suspension or revocation.* If rebuttal is unsuccessful or if correction of the noncompliance is not made within the prescribed time period or is not adequate to demonstrate that each noncompliance has been corrected, the Program Manager shall send a written notification of proposed suspension or revocation of accreditation to the certifying agent. The notification of proposed suspension or revocation shall state whether the certifying agent's accreditation or specified areas of accreditation are to be suspended or revoked. When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation may be combined in one notification. The notification of proposed suspension or revocation of accreditation shall state:

(1) The reasons for the proposed suspension or revocation;

(2) The proposed effective date of the suspension or revocation;

(3) The impact of a suspension or revocation on future eligibility for accreditation; and

(4) The right to file an appeal pursuant to § 205.681.

(d) *Willfull violations.* Notwithstanding paragraph (a) of this section, if the Program Manager has reason to believe that a certifying agent has willfully violated the Act or regulations in this part, the Program Manager shall send a written notification of proposed suspension or revocation of accreditation to the certifying agent.

(e) *Suspension or revocation.* When the accredited certifying agent fails to file an appeal of the proposed suspension or revocation of accreditation, the Program Manager shall send a written notice of suspension or revocation of accreditation to the certifying agent.

(f) *Cessation of certification activities.* A certifying agent whose accreditation is suspended or revoked must:

(1) Cease all certification activities in each area of accreditation which its accreditation is suspended or revoked.

(2) Transfer to the Secretary and make available to any applicable governing State official all records concerning its certification activities that were suspended or revoked.

(g) *Eligibility.*

(1) A certifying agent whose accreditation is suspended by the Secretary under this section may at any time submit a new request for accreditation, pursuant to § 205.502. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations in this part.

(2) A certifying agent whose accreditation is revoked by the Secretary shall be ineligible to be accredited as a certifying agent under the Act and the regulations in this part for a period of not less than 3 years following the date of such revocation.

§§ 205.666 and 205.667 [Reserved]

§ 205.668 Noncompliance procedures under State organic certification programs.

(a) A State program's governing State official must promptly notify the Secretary of commencement of any enforcement proceeding against a certified operation and forward to the Secretary a copy of each notice issued.

(b) A noncompliance proceeding, brought by a State program's governing State official against a certified operation, shall be appealable pursuant to the appeal procedures of the State organic certification program. There shall be no subsequent rights of appeal to the Secretary. Final decisions of a State may be appealed to the United States District Court for the district in which such certified operation is located.

(c) A State program's governing State official may review and investigate complaints of noncompliance with the Act or regulations concerning accreditation of certifying agents operating in the State. When such review or investigation reveals any noncompliance, the State program's governing State official shall send a written report of noncompliance to the Program Manager. The report shall provide a description of each noncompliance and the facts upon which the notification of noncompliance is based.

§ 205.669 [Reserved]

Inspection and Testing, Reporting, and Exclusion from Sale

§ 205.670 Inspection and testing of agricultural product to be sold or labeled organic.

(a) All agricultural products that are to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)" must be made accessible by certified organic production or handling operations for examination by the Administrator, the applicable State program's governing State official, or the certifying agent.

(b) The Administrator, applicable State program's governing State official, or the certifying agent may require preharvest or postharvest testing of any agricultural input used or agricultural product to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients)" when there is reasonable cause to believe that the agricultural input or product has come into contact with a prohibited substance. Such tests must be conducted by the applicable State program's governing State official or the certifying agent at the official's or certifying agent's own expense.

(c) The preharvest or postharvest tissue test sample collection pursuant to paragraph (b) of this section must be performed by an inspector representing the Administrator, certifying agent, or applicable State program's governing State official. Sample integrity must be maintained in transit, and residue testing must be performed in an accredited laboratory. Chemical analysis must be made in accordance with the methods described in the 16th edition of the *Official Methods of Analysis of the AOAC International* or other applicable validated methodology determining the presence of contaminants in agricultural products.

(d) Results of all analyses and tests performed under this section:

(1) Must be provided to the Administrator promptly upon receipt; and

(2) Will be available for public access, unless the testing is part of an ongoing compliance investigation.

§ 205.671 Exclusion from organic sale.

(a) When residue testing detects prohibited substances at levels that are greater than the estimated national mean of detected residues for specific commodity/pesticide pairs, as demonstrated by USDA's Pesticide Data Program, or unavoidable residual environmental contamination, as determined by the Administrator, the agricultural product must not be sold, labeled, or represented as organically produced. The Administrator, the applicable State program's governing State official, or the certifying agent may conduct an investigation of the certified operation to determine the cause of the prohibited substance residue.

(b) If test results indicate a specific agricultural product contains pesticide residues or environmental contaminants that exceed the Food and Drug Administration's or the Environmental Protection Agency's regulatory tolerances, the data must be reported promptly to the appropriate public health agencies.

§ 205.672 Emergency pest or disease treatment.

When a prohibited substance is applied to a certified operation due to Federal or State emergency pest eradication or disease treatment program and the certified operation otherwise meets the requirements of this part, the certification status of the operation shall not be affected as a result of the application of the prohibited synthetic substance: *Provided,* That:

(a) Any harvested crop or plant part to be harvested that has contact with a prohibited substance applied as the result of a Federal or State emergency pest eradication or disease treatment program cannot not be sold, labeled, or represented as organically produced; and

(b) Any livestock that are treated with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program or product derived from such treated livestock cannot be sold, labeled, or represented as organically produced: *Except,* That:

(1) Milk or milk products may be sold, labeled, or represented as organically

produced beginning 12 months following the last date that the dairy animal was treated with the prohibited substance; and

(2) The offspring of gestating mammalian breeder stock treated with a prohibited substance may be considered organic: *Provided,* That, the breeder stock was not in the last third of gestation on the date that the breeder stock was treated with the prohibited substance.

§§ 205.673—205.679 [Reserved]

Adverse Action Appeal Process

§ 205.680 General.

Persons subject to the Act who believe they are adversely affected by a noncompliance proceeding decision of the National Organic Program's Program Manager or a certifying agent may appeal such decision to the Administrator.

§ 205.681 Appeals.

(a) *Certification appeals.* An applicant for certification may appeal a certifying agent's notice of denial of certification, and a certified operation may appeal a certifying agent's notification of proposed suspension or revocation of certification to the Administrator: *Except,* That, when the applicant or certified operation is subject to an approved State organic certification program and the decision to deny, suspend, or revoke a certification is made by a certifying agent or a State program's governing State official, the appeal must be made to the State program's governing State official or such official's designee who will carry out the appeal pursuant to the State program's appeal procedures approved by the Secretary.

(1) If the Administrator sustains a certification applicant's or certified operation's appeal of a certifying agent's decision, the applicant will be issued organic certification, or a certified operation will continue its certification, as applicable to the operation. The act of sustaining the appeal shall not be an adverse action subject to appeal by the affected certifying agent.

(2) If the Administrator denies an appeal, a formal administrative proceeding will be initiated to deny, suspend, or revoke the certification. Such proceeding shall be conducted pursuant to the Department's Uniform Rules of Practice.

(b) *Accreditation appeals.* An applicant for accreditation and an accredited certifying agent may appeal a Program Manager's denial of accreditation or proposed suspension or revocation of accreditation to the Administrator.

(1) If the Administrator sustains an appeal, an applicant will be issued accreditation, or a certifying agent will continue its accreditation, as applicable to the operation.

(2) If the Administrator denies an appeal, a formal administrative proceeding to deny, suspend, or revoke the accreditation will be initiated. Such proceeding shall be conducted pursuant to the Department's Uniform Rules of Practice.

(c) An appeal of a noncompliance decision must be filed within the time period provided in the letter of notification or at least 30 days from the receipt of the notification. The appeal will be considered "filed" on the date received by the Administrator or by the State program's governing State official or such official's designee as provided in the State's approved appeal procedures. A decision to deny, suspend, or revoke certification or accreditation will become final and nonappealable unless the decision is appealed in a timely manner.

(d) All appeals to the Administrator must be filed in writing and addressed to Administrator, USDA–AMS, Room 3071–S, PO Box 96456, Washington, DC 20090–6456, and be copied to the certifying agent completely and simultaneously with submission to the Administrator. Appeals must include a copy of the adverse decision and a statement of the appellant's position that the decision was not made in accordance with applicable program regulations, policies, or procedures.

§§ 205.682—205.689 [Reserved].

Miscellaneous

§ 205.690 OMB control number.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511, is OMB number 0581–0181.

§§ 205.691—205.699 [Reserved]

PARTS 206–209—[RESERVED]

Dated: March 3, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

Appendices to the Preamble

Appendix A.—Regulatory Impact Assessment for Proposed Rules Implementing the Organic Foods Production Act of 1990 (Executive Order 12866)

The following regulatory assessment is provided to fulfill the requirements of Executive Order 12866. This assessment consists of a statement of the need for the proposed action, a description of the baseline for the analysis, an examination of alternative approaches, and an analysis of the benefits and costs. Much of the analysis is necessarily descriptive of the anticipated effects of the proposed rule. Because basic market data on the prices and quantities of organic goods and services and the costs of organic production are limited, it is not possible to provide quantitative estimates of all benefits and costs of the proposed rule. The cost of fees and recordkeeping proposed by U.S. Department of Agriculture (USDA) are quantified, but the anticipated benefits are not. Consequently, the analysis does not estimate the magnitude or the direction (positive or negative) of net benefits.

The Need for the Proposed Action

The Organic Foods Production Act of 1990, Title XXI of the Food, Agriculture, Conservation and Trade Act of 1990, U.S.C. Title 7, mandates that the Secretary of Agriculture develop a national organic program. The OFPA states that the Secretary shall establish an organic certification program for farmers, wild-crop harvesters, and handlers of agricultural products that have been produced using organic methods as provided for in the OFPA. In addition, section 6514 of the OFPA requires the Secretary to establish and implement a program to accredit a State program's governing State official or any private person, who meets the requirements of the Act, as a certifying agent to certify that farm, wild-crop harvesting, or handling operations are in compliance with the standards set out in the regulation. As stated by the OFPA in section 6501, the regulations are proposed for the following purposes: (1) to establish national standards governing the marketing of certain agricultural products as organically produced products; (2) to assure consumers that organically produced products meet a consistent standard; and (3) to facilitate interstate commerce in fresh and processed food that is organically produced.

The OFPA was introduced at the request of the organic community after it experienced a number of problems in the marketing of organic products. Many consumers are willing to pay price premiums for organic food; hence, producers (farmers, ranchers, and wild-crop harvesters) and handlers have an economic incentive to label their products

organic. Because organic products cannot be distinguished from conventionally produced products by sight inspection, consumers rely on verification methods, such as certification by private entities or verification by retailers to ensure that organic claims are true. Where there has been no mandatory certification, consumers have been unable to verify organic product claims on their own, and may have been vulnerable to fraud from the mislabeling of organic products.

As organic production became better established in the 1980's, new certifying agencies were formed, and some States passed laws establishing standards for organic production. However, the standards for organic production, processing, handling, and labeling were different to some degree, causing disagreements between certifying agents over whose standards would apply to ingredients used in multi-ingredient organic processed products. Disagreements about standards also created sourcing problems for handlers of these multiingredient products.

Certifying agents are able to negotiate and maintain reciprocity agreements at some cost. These reciprocity agreements specify the conditions under which certifying agents recognize each others' standards. The current system of variable standards has led the organic industry to take on costs of private accreditation or shipment-by-shipment certification, required to gain access to some foreign markets such as the European Union (EU). These costs would be avoided if a national program were in place.

Baseline

The organic industry is characterized by an array of production and handling practices, self regulation and state regulation, and consumer perceptions. However, there are commonalities throughout the industry.

Certification

The United States currently has 49 certifying agents. There are 36 private certifying agencies and 13 States which have certification programs. Private certifying agents range from small nonprofit associations that certify only a few growers to large for-profit businesses operating in numerous States and certifying hundreds of producers. Typically, certifying agents review producers' organic production plans, inspect the farm fields and facilities to be certified, periodically reinspect, and may conduct soil tests and tests for residues of prohibited substances. In some cases, certifying agents negotiate reciprocity agreements with other agents.

State laws vary widely on organic certification and registration. Some States require only that an organic producer register and make certification voluntary. California is an example. Other States require certification by the State's own agents, while others accept certification by a private certifying agent. The least stringent requirement among States with organic legislation is that products marketed as organic comply with their definition of organic but both registration and certification are voluntary. Approximately half of the States have laws which regulate organic production and processing. Thirteen States operate programs to certify organic production. In many States producers may claim their product is organic but operate without certification or well-defined standards. On the other hand, many organic producers operate in States with no program and voluntarily secure third party certification to well-defined standards. Certification costs vary with farm size and across certifying agents. Illustrative certification costs are presented in Tables 2A and 2B.

Very few certifying agents operate with an external accreditation. There is no law which requires them to be accredited: The price may be unacceptably high in relation to expected benefits; the certifying agent may be unable to find an accrediting party willing to accredit the particular organic program the certifying agent is marketing; and State programs may believe that their status as a government entity obviates the need for external accreditation.

In 1999 USDA began verifying certifying agents to International Organization for Standardization (ISO) Guide 65. It is a valuable recognition that the certifying entity satisfies the business capacity standards of ISO Guide 65. European Union authorities have accepted verification of certifying agents to ISO Guide 65 as an interim measure to facilitate exports pending the establishment of a national organic program.

Organic Food Production

Organic production occurs in all States. An estimated 12,000 organic producers are operating in the United States. Most organic producers are small both in terms of value of sales and acreage. Small producers do not necessarily farm full-time, and may not depend solely on farm income for a livelihood. Some organic production occurs as a distinct part of a larger operation that includes conventional production practices.

Key production practices followed by certified organic producers include: abstaining from use of certain crop chemicals and animal drugs; ecologically based pest and nutrient management; segregation of organic fields and animals from nonorganic fields and animals; following an organic production plan with multiple goals, including sustainability; and record keeping to document practices and progress toward the plan's goals. Specific elements of organic production will vary, but organic systems generally share a core set of practices. For example, the certification standards of virtually all State and private U.S. certifying agents prohibit the use synthetic chemical herbicides and insecticides or animal growth hormones. And most certification standards include a three year ban on the use of prohibited substances on cropland before production can be certified as organic.

On the other hand, certification standards for organic livestock production have been more variable, for pasture, feed, and other practices. Until 1999, the USDA Food Safety and Inspection Service (FSIS) withheld approval for the use of organic labels on meat and poultry products pending the outcome of this rulemaking. However, the Secretary announced a change in policy in January 1999. Meat and poultry products may be labeled "certified organic by (name of the certifying agent)" if processors obtain prior label approval from FSIS and the claim meets certain basic criteria. However, many private and State certifying programs have not developed standards for livestock production.

The provisions of the New Hampshire organic program are summarized below to illustrate key elements of current organic standards. The New Hampshire program provisions are not substantially different from provisions in some State programs, private programs, and mirror provisions of USDA's proposed national program. Soil tests are required for initial certification and every three years afterward. Soil testing measures the quality of the soil for agricultural production and is different from residue testing. New Hampshire requires residue testing "if the department believes that the produce or soil which certified produce was grown may have become contaminated with prohibited substances." (New Hampshire Rule AGR 906 Certification of Organically Grown Food, Agr 906.05 Laboratory Analysis) Other production standards include a written rotation plan, tillage systems that incorporate organic matter wastes into the topsoil, compliance with limits on the sources of manure and the timing of its application, prohibitions on the use of certain substances (*e.g.*, sewage sludge, synthetic sources of nitrates, synthetic growth regulators, and anhydrous ammonia), a list of accepted and prohibited weed and pest control practices, segregation of organic and nonorganic production, record keeping regarding fertilization, cropping, and pest management histories, separate sales records for organic and nonorganic production, and records of all laboratory analyses.

The New Hampshire program requires growers to pay a $100 annual inspection fee, and to provide a written description of their farm operation including the size of the farm, a field map, a three-year history of crop production, pest control, and fertilizer use, a crop rotation and a soil management plan, and a description of post-harvest storage and handling methods. Applicants for certification must also agree to comply with regulations controlling the use of the New Hampshire certified organic logo.

Organic Food Handling

In addition to growers, who actually produce and harvest products to be marketed as organic, there are handlers who transform and resell the organic products. Not all certifying agents have standards for handling organic products. Some have standards for parts of the food marketing system, such as retail food establishments, that are not explicitly covered by the OFPA or by the proposed regulation.

Definitions of processing and handling differ across certifying agents and State laws. Some States, such as Washington, distinguish between a processor and a handler, specifying 21 actions which constitute processing and defining a handler as anyone who sells, distributes, or packs organic products. Washington does not consider retail grocery stores and restaurants to be organic handlers or processors.

Marketing of Organic Food—Domestic and International

The marketing practices of organic producers range from roadside stands marketing directly to consumers, to marketing through wholesale markets, to direct marketing to restaurants and supermarkets. USDA does not have official national level statistics on organic retail sales. An industry trade publication reported estimates of retail sales of organic foods for a number of years in the 1990's (Table 1). The last published estimate was $3.5 billion in 1996 ($3.6 billion in 1998 dollars). To put this figure in context, total food expenditures by families and individuals were $606 billion in 1996 ($629 billion in 1998 dollars).

The United States is both an importer and an exporter of organic foods. The United States does not restrict imports of organic foods. In fact, U.S. Customs accounts do not distinguish between organic and conventional products. The largest markets for organic foods outside the United States are in Europe, Japan, and Canada. There is increasing pressure, particularly in Europe and Japan, for U.S. exports to demonstrate that they meet a national standard rather than a variety of private and State standards.

The EU is the largest market for organic food outside the United States. The organic food market in the EU was estimated to be worth $5.2 billion in 1997 (International Trade Centre UNCTAD/WTO 1999). The largest organic retail sales markets in the EU in 1997 were Germany ($1.8 billion), France ($720 million), and Italy ($750 million). Large organic markets outside the EU include Canada and Australia, with approximately $60 million and $68 million, respectively, in organic retail sales in 1997 (Lohr 1998). Import share of the organic food market in Europe ranged from 10 percent in France to 70 percent in the United Kingdom, was 80 percent in Canada, and varied from 0 to 13 percent in various Australian states.

Japan is another important market for U.S. organic products. Currently, Japan has voluntary labeling guidelines for 6 categories of non-conventional agricultural products: organic, transitional organic, no pesticide, reduced pesticide, no chemical fertilizer, and reduced chemical fertilizer. Total sales, including foods marketed as "no chemical," and "reduced chemical" are forecast to jump 15 percent in 1999 to almost $3 billion. Imports of organic agricultural products were valued at $90 million in 1998. Given Japan's limited agricultural acreage, imports will likely provide an increasingly significant share of Japan's organic food supply (USDA FAS 1999a).

Recently, these markets have adopted or are considering to adopt procedures that may impede the importing of organic food. The EU regulations establishing the basis for equivalency in organic production among EU members and for imports from outside the EU were adopted in 1991 (Council Regulation 2092/91). The EU regulations only allow imports from non-EU countries whose national standards have been recognized as equivalent to the EU standards (Commission Regulation 94/92).

The Ministry of Agriculture, Forestry, and Fisheries (MAFF) in Japan recently announced proposed standards and third-party certification requirements. Under Japan's proposed standards, certifying agents from countries without national organic standards administered by a federal government will have to be accredited (registered) with MAFF to obtain approval to certify products destined for the Japanese market. The Japanese proposal includes provisions for country-to-country equivalency recognition of other national programs.

The Proposed Rule

The proposed rule follows the structure established in the OFPA. By adopting this alternative, the Department would follow legislative direction in the OFPA. All products marketed as organic will have to be produced and handled as provided in the OFPA and the regulations. Compared to current organic practices, the proposed rule sets a more stringent system of requirements.

Accreditation and Certification

The rule specifies the accreditation and certification process. Persons providing certification of organic production and handling must be accredited by USDA through the NOP. Applicants for accreditation must document their abilities to certify according to the national standards and to oversee their clients' compliance with the requirements of the OFPA and NOP regulations. Producers and handlers of organic products must be certified by an accredited certifying agent. Producers and handlers are required to document their organic plans and procedures to ensure compliance with the OFPA.

All certifying agents would have to be accredited, and certification by producers and handlers would not be voluntary. The exceptions are: (1) Growers and handlers with gross organic sales of $5,000 or less would be exempt from certification; and (2) a handling operation may be exempt or excluded from certification according to provisions described in the rule's subpart B, Applicability. For example, a handling operation that is a retail food establishment or portion of a retail food establishment would be exempt if it handles organically produced agricultural products but does not process them, and would be excluded from the requirement to be certified if it processes or prepares, on the premises of the retail food establishment, raw and ready-to-eat-food from agricultural products that are previously labeled as "100 percent organic," "organic," or "made with organic (specified ingredients)." However, this exemption does not extend to other provisions of the proposed rule such as prevention of contact with prohibited substances.

USDA will charge applicants for accreditation a $500 fee at the time of application. USDA will also charge applicants for costs over $500 for site evaluation of the applicant's business. The applicant would be charged for travel costs, per diem expenses, and any miscellaneous costs incurred with a site evaluation. Review of documents for renewal of accreditation will be charged at an hourly rate.

Producers and handlers will not pay certification fees to USDA. Certification fees will be established by the accredited certifying agents. USDA will not set fees. The rule requires certifying agents to submit a copy of their fee schedules to USDA, post their fees, and provide applicants estimates of the costs for initial certification and for renewal of certification.

Production and Handling

The rule establishes standards for organic production of crops and livestock and handling of organic products. These standards were developed from specific requirements in the OFPA, recommendations from the National Organic Standards Board (NOSB), review of existing organic industry practices and standards, public comments received on the 1997 proposal and subsequent issue papers, and public meetings.

The proposed rule establishes a number of requirements for producers and handlers of organic food. These requirements will affect farming operations, packaging operations, processing operations and retailers. Some of the major provisions are: (1) Land requirements; (2) crop nutrient requirements; (3) crop rotation requirements; (4) pest management requirements; (5) livestock management requirements; (6) processing and handling requirements; and (7) commingling requirements.

National List

The National List lists allowed synthetic substances and prohibited non-synthetic substances that may or may not be used in organic production and handling operations. The list identifies those synthetic substances, which would otherwise be prohibited, that may be used in organic production based on the recommendations of the NOSB. Only those substances on the National List may be used. The National List also identifies those natural substances that may not be used in organic production, as determined by the Secretary based on the NOSB recommendations.

Testing

When certifying agents have reason to believe organic products contain a prohibited substance, they may conduct residue tests. The rule incorporates the national mean of detected residues for specific commodity/pesticide pairs and clarifies how unavoidable residual environmental contamination would be used in residue testing.

Labeling

The rule also states how organic products may be labeled and permitted uses of the USDA organic seal. In addition to the USDA seal and the certifying agent's seal, information on organic food content may be displayed. It is important to note that small businesses who are certified may use the USDA seal.

Recordkeeping

The rule will require certifying agents, producers, and handlers to keep certain records. Certifying agents will be required to file periodic reports with USDA. Producers and handlers will be required to notify and submit reports to their certifying agent. While recordkeeping is a standard practice in

conventional and organic farming, the proposal adds recordkeeping and reporting requirements which do not exist for growers and handlers operating without certification. Similarly, certifying agents would face additional recordkeeping and reporting requirements, particularly those certifying agents operating without external accreditation. State and private certifying agents regulate the use of organic seals and logos. The proposed rule permits certifying agent logos and requires the name of the certifying agent on processed organic foods.

Alternatives to the Proposed Rule

As required by E.O. 12866, alternatives to the proposed rule were considered. The identified alternatives were the Status Quo and Industry-Developed Standards. The costs and benefits of each alternative were assessed to the extent possible.

Status Quo: The Organic Market in the Absence of Federal Regulation

This is the no program alternative. There would be no national standard or national program of accreditation and certification. Certification would be voluntary and certifying agents would not have third party accreditation. Some producers and handlers would operate with certification provided by private organizations or State programs. Other producers and handlers would characterize their foods as organic but would not be certified.

A mix of State and private programs may continue to operate according to varying standards. In States without organic laws or States where certification is voluntary, goods would be marketed as organic without third party certification. Even under this scenario, organic food produced in States with production standards and certification may be produced using similar practices because most State standards follow similar requirements: A 3 year transition, prohibited use of certain substances (lists of substances tend to overlap), practices which prevent commingling with conventional products, and where livestock standards exist, organic feed.

In addition, at the time the OFPA was enacted, the industry had been unable to agree on organic standards. Recently, there has been movement toward shared standards partly in response to efforts to develop national organic standards including the 1997 proposal and the public NOSB process. The Organic Trade Association (OTA) has developed "American Organic Standards" which the OTA Board recently ratified. The OTA describes itself as " * * * a national association representing the organic industry in Canada, the United States and Mexico. Members include growers, shippers, processors, certifying agents, farmer associations, brokers, consultants, distributors and retailers. Established in 1985 as the Organic Foods Production Association of North America, the Organic Trade Association works to promote organic products in the marketplace and to protect the integrity of organic standards." (OTA website). Although there is substantial consensus on the draft standards, acceptance is not unanimous.

The draft standards developed through OTA correspond closely to many elements in the proposed national organic program. OTA envisions a system of accreditation and certification of producers and handlers but not restaurants and grocery stores. The list of allowed and prohibited substances mirrors the list developed by the NOSB. Production practices for crops and livestock include the common features in most State and private programs—a 3 year transition, no commingling, use of organic feed, limits on the use of antibiotics, requirements for an organic plan and recordkeeping. Hence, even in the absence of a national program, the organic industry may be moving toward a common standard.

Under the status quo-no national program alternative, producers and handlers who chose to be certified, or who are required by State laws to be certified, would pay fees that would vary depending on the market for the particular private certifying agent's service and whether a State certification program was operating with subsidized fees.

No federal funds would be used, there would be no transfer from federal taxpayers at large to organic market participants, and there would be no federal regulatory barriers to entry into organic production and handling.

International access for domestic organic products may be very influential on development of the organic industry in the United States. A food trade publication (The Natural Foods Merchandiser) tracked organic sales for a while in the 1990s showing annual growth in retail sales of 20–25 percent between 1990 and 1996 (Table 1). This growth took place in the absence of a national program.

In the absence of national standards, U.S. organic producers have been able to access European markets only by obtaining specific product permissions granted to individual importers by organic regulatory authorities in an EU member state (Byng, p. 27–28 1994). This process has required the importer to satisfy the authorities, through documentation and possible site inspection, that the product in question has been certified to and produced under equivalent standards of production and inspection. This case-by-case process of approving imports was intended as a temporary arrangement to accommodate non-EU countries that had not yet established government systems regulating organic production and certification. Another step State and private organic certifying agencies have taken to access international markets in the absence of a national program has been a voluntary, fee-for-service program to verify that they comply with the requirements prescribed under ISO Guide 65.

Governments in foreign markets and foreign private processors and retailers are expected to insist on additional verification that goods have been produced to acceptable organic standards. This would likely lead to an increased use of private accreditation services and of USDA's ISO Guide 65 verification service. USDA's ISO Guide 65 verification services are provided on a user fee basis with full cost recovery. These private accreditations and USDA's verifications would increase costs for certifying agents and producers and handlers. In addition, establishing reciprocity between certifying agents in the domestic organic market involves some cost and may stifle growth in trade of organic products, although the magnitude of these costs and their effects on growth is unknown.

Under the proposed national program, all applicants for accreditation will be assessed against ISO Guide 65, eliminating the need for a separate ISO Guide 65 assessment that exists for those exporting to the EU in the absence of a national program. Growth in the trade of organic products, particularly exports, may be jeopardized by a status quo-no program alternative because there would be no national program upon which to establish equivalency.

Industry-Developed Standards

As an alternative to the proposed national program, another national program could adopt industry-developed standards. For example, USDA could adopt the standards recently developed by the Organic Trade Association or other consensus standards and enforce those standards. Certification to these standards could be performed as it is currently, by private certifiers or by state programs. There could be variation among certifiers' standards, but producers and certifiers would not be able to prohibit use of a product meeting the national standard from the production of other "organic" products.

There are various enforcement mechanisms that are available under this alternative. The USDA could choose to enforce the adopted standards. Enforcement could be left to other federal agencies or State governments. For example, the Federal Trade Commission could regulate truth in advertising with respect to organic food; the USDA Food Safety Inspection Service could regulate labeling of organic meat and poultry products.

Adopting the industry standard as the USDA standard, the USDA could provide an acceptable national standard that would be necessary in establishing equivalency to access international organic markets, and eliminate the problems associated with establishing reciprocity in the domestic organic market.

It is important to note that it may be difficult to develop consensus industry standards. For example, while standards recently proposed by OTA were developed with significant industry input they may not represent the kind of consensus that is the result of this proposed rule.

Number of Affected Parties and Projections

In assessing the impacts of the rule, we have attempted to determine the number of certifying agents, private and State, that are currently operating, and considered the factors likely to affect the number of certifying agents after the rule is implemented. We have attempted to determine the number of currently operating producers and handlers that would be affected. And, we have considered the factors which might affect the number of producers and handlers after the program has been implemented.

For the analysis, the USDA assumes the following:

1. Forty-nine domestic certifying agents and ten foreign certifying agents will be affected by the proposed regulation.

2. Approximately 12,200 certified and non-certified organic producers will be affected by the proposed regulation. With the assumed growth rate of 14% for certified organic producers and approximately 8% for non-certified organic producers, the number of organic producers will grow to 17,150 in 2002.

3. Approximately 1,250 processors and handlers of organic food will be affected by the proposed action. This number will grow to 2,150 by 2002.

4. The number of retailers affected by the proposed action is not quantified.

Certifying Entities

We place the number of certifying agents currently operating at 49, including 13 State programs. The number of certifying agents has remained fairly stable, between 40 and 50, for some years, with entries and exits tending to offset each other. For purposes of estimating the paperwork burden described elsewhere, we assume no growth in the number of domestic certifying agents but project 10 foreign certifying agents in the first 3 years of the program.

Organic Producers

It is more difficult to establish the number of organic producers. Organic farming was not distinguished from conventional agriculture in the 1997 Census of Agriculture. Among the sources which give insight into the number of producers, the Organic Farming Research Foundation (OFRF) has conducted nationwide surveys of certified organic producers from lists provided by cooperating certifying agents (OFRF 1999). OFRF sent its 1997 survey to 4,638 organic producers.

Because OFRF did not obtain lists from all certifying organizations or their chapters (55 out of a total of 64 identified entities provided lists), its list count of 4,638 producers is likely an underestimate of the number of certified organic farms. If the average producer-to-certifying agent ratio (55 certifying agents to 4,638 producers) holds for the 9 certifying organizations that did not provide the list (9 certifying agents out of a 64 certifying agents), then the number of producer grows to 5,397 producers.

The different estimates of the number of certifying agents should be noted. The USDA estimates 49 certifying agents; the OFRF estimates 64 certifying agents. The difference stems from the USDA's not counting different chapters of certifying organizations separately.

The California Department of Food and Agriculture's organic registration program suggests that, at least for California, most organic producers are not certified. For the 1994–95 reporting period, CDFA reported that 1,372 farms registered as organic producers but only 517 of these farms were certified (Klonsky and Tourte, 1998a). Thus, one approach to projecting national totals from OFRF survey lists of certified producers would be to apply the 1994–95 ratio between producers registered and certified in California to the OFRF 1997 list count. This would suggest the number of non-certified producers to be 8,918, resulting in the total number of organic producers to be 14,315. However, it is important to note that California's structure of organic production may not be representative of the national profile. The number of non-certified producers may be higher or lower.

CDFA also reports the number of registered and certified producers by sales class. Many producers would likely be eligible for the small farm (sales less than $5,000) exemption provided for in the OFPA. Of 1,372 registered organic farms in California, 907 had sales of less than $10,000. Of the 517 certified farms, 188 had sales of under $10,000. If these ratios are applied to the number of producers calculated, then the number of certified producers with sales under $10,000 would be 1,962, and the number of organic producers in general with sales under $10,000 would be 9,463. Thus, there are potentially a large number of farms which could be exempt from certification requirements.

Dunn (1995a, 1995b, and 1997) has estimated the number of certified organic producers in the United States. Dunn (1995a, 1995b) estimated the number of certified producers at 4,060 in 1994. Dunn (1997) reported 4,856 certified organic farms in 1995. USDA's 1997 proposal relied on Dunn's 1995 estimate of 4,060 total certified producers. Dunn's numbers have been used because Dunn's 1995 work was an official USDA study. The methods used were reviewed by USDA and the resulting estimates are official USDA statistics. Although Dunn's 1997 estimates were not a USDA study, the 1997 study used the same approach as the 1995 study.

An adjustment is needed to account for the number of producers who are practicing organic agriculture but who are uncertified and would be affected by this proposed rule. We reject the idea of expanding by the certified-to-registered ratio reported in California for reasons previously stated. We assume that the number of organic-but-not-certified producers in 1999 is about 4,000. We adopt this figure recognizing that there may be 1,000 such farms in California, given that there were 855 in CDFA's report on 1995 registrations. The total number of organic farms for assessing the impact of the rule is 12,200 in 1999.

Data collected by AMS indicate that the number of certified organic farmers increased about 12 percent per year during the period 1990 to 1994. OFRF survey efforts indicate that growth has continued, though it is not clear whether the growth rate has changed. We use the average growth rate from Dunn's time series from 1991–1994, which was about 14 percent. The true rate of growth could be higher or lower. By applying the 14-percent growth rate to Dunn's (1995) estimate, the number of certified organic producer potentially affected in 1999 is 8,200 and 12,150 in 2002.

We have no national-level growth rates for not-certified organic farms. The limited times series from CDFA is of limited value in estimating a growth rate. We suspect it is less than the rate for certified farms because certification has value and organic producers would be expected to take advantage of the marketing advantages of certification. Furthermore, the emergence of State certification programs that appear to have lower certification fees than private certification entities may have encouraged more organic producers to be certified. Therefore, for purposes of analyzing the impacts of the rule for the Paperwork Reduction Act, we assume growth of non-certified organic producers from 4,000 in 1999 to 5,000 non-certified farms by 2002, making the total number of farms potentially affected by the rule, 17,150 farms. However, we request comment and/or data on the number and the growth of certified and non-certified organic farms.

Organic Handlers

Little information exists on the number of handlers. They include processors such as organic soup manufacturers, organic food packaging operations, and organic food wholesalers. USDA has estimated that there were 600 entities in this category in 1994 (Dunn 1995b). AMS estimated that the growth rate was 11 percent from 1990 through 1994 (Dunn 1995b). More recent data from CDFA registration records suggest a growth rate of about 28 percent (California Department of Health Services 1999). For projection purposes, we use a growth rate of 20 percent, which makes the number of handlers for 1999 1,250 and for 2002 2,150. Reasons for growth include the general increase in organic production and growth in the market for processed organic foods, including multiingredient products. Again, these projections are based on limited data from the early 1990's, and growth may have slowed or increased. We request comment and/or data on the number and the growth rate of processors and handlers in the organic industry.

Retail Food Establishments

Retailers of organic food are grocery stores, bakeries, restaurants and other establishments that process or prepare raw and ready-to-eat food. Most are not currently subject to either voluntary practices or mandatory standards of the organic industry. Although they are excluded from the certification requirements, they are subject to other processing, handling, and other production related requirements of the proposed rule. Hence, a new stratum of the organic industry will be regulated by the proposed rule.

Dunn's (1995a) estimates the number of certified retailers to be 31 in 1995. It is not clear whether Dunn's (1995a) definition of retailers and the proposed definition stated above are consistent. Hence, the total number of retailers that may be regulated remains unknown. USDA's Economic Research Service (ERS) reports there were 161,707 grocery stores in 1997 (ERS website). Many of these stores sell organic products and may be affected by the proposed rule. The effect of the proposed regulation on the growth of retailers remains unknown. We request comment and/or data on the number and the growth rate on the retailers of organic food.

Foreign Entities

The discussion of the number of affected parties has focused on domestic certifying agents, producers, and handlers. We recognize that foreign entities may apply for accreditation and foreign producers and handlers may be certified under the NOP. Furthermore, upon request of a foreign government, a foreign certifying agent may meet the requirements for accreditation when the Administrator determines that the certifying agent meets the requirements of the NOP.

At this time, we have no information regarding the number of foreign entities which may enter the NOP. We do not know how many foreign producers and handlers are marketing goods as organic, nor do we know how many will seek to be certified under the NOP. Accredited certifying agents will be able to certify operations outside the United States and foreign certifying agents may become accredited by USDA. It is likely that the costs for accreditation will be higher for foreign applicants for accreditation. Foreign applicants will face the same costs as domestic applicants but the levels of cost would reflect generally higher costs of foreign travel and per diem expenses for site evaluation and miscellaneous costs such as for translation of documents. For purposes of estimating the paperwork burden described elsewhere, we assume 10 foreign certifying agents in the first 3 years of the program. We request comment and/or data on the number and the growth rate of foreign entities that may export to the U.S. organic market.

Benefits of the Proposed Rule

The benefits from implementation of the proposed rule are: (1) Improved protection of buyers from misleading claims and more information on organic food; (2) reduced administrative costs; and (3) improved access to international organic markets. Not all benefits that may arise from the rule are quantifiable. Where economic data are available, they may relate to costs and are generally not adequate to quantify economic benefits.

Information

Potential benefits to consumers as a result of the proposed rule include more information on organic food, and protection from false and misleading organic food claims. Consumers may be misled by labels on processed and raw products claiming to be organic. In particular, with processed food, some of the ingredients may not be organically produced, or the product may contain less organic content than the consumer assumes. The USDA organic seal will provide consumers a quick tool to verify that goods offered for sale as organic are in fact organic. To the extent that consumers view the seal as an important information too, that is, product with the seal is perceived as more desirable, they may enhance the ability of producers to realize the price premiums associated with certified products.

There is anecdotal evidence to suggest that consumer fraud involving organic food does occur (Mergentime 1997). Criminal prosecutions involving felony pleas and fines have taken place (Mergentime 1997). However, we have no evidence to suggest that this problem is wide-spread (Mergentime 1995). Also, it is important to recognize that the organic industry's effort to police itself and the remedies provided by the judicial system may be adequate to address consumer fraud. Mergentime (1997) documents the effect of litigating fraud cases on the industry. However, we request comment and/or data on the extent and the severity of consumer fraud that may exist.

Some producers may have limited their organic livestock production because of uncertainty regarding the standards that would be used in the NOP. By removing the uncertainty, producers may increase production, thereby increasing the quantity of livestock products.

Reduced Administrative Costs

The proposed rule addresses the problem of existing certifying agents using different standards and not granting reciprocity to other certifying agents. By accrediting certifying agents, the rule would establish the requirements and enforcement mechanisms that would reduce inconsistent certification services and lack of reciprocity between certifying agents. In the current system, the certifying agent of a final product is not required to recognize the certification of an intermediate product. Both primary farmers and food handlers may face a risk of being unable to sell a certified organic product when more than one certifying agent is involved. By imposing a uniform standard of certification and production, costs associated with establishing reciprocity between certifying agents will be eliminated. However, the magnitude of this benefit cannot be gauged without quantification. In particular, with the increasing consensus within the organic industry, the benefit may not be large.

It is important to distinguish between consensus with respect to standards of production and consensus with respect to certifying agents practices. There is growing consensus regarding crop standards, livestock standards are more problematic. And, consensus is least evolved regarding standards of conduct and practice for certifying agents. There is no consensus regarding whether certifying agents should be accredited or who the accrediting body should be.

Industry-wide training costs may decrease. The proposed uniform standards of production, certification should enable organic inspectors to move more easily from one certifying agent to another than the current system.

In addition, USDA accreditation of certifying agents would present opportunities for sharing information about standards, practices, and the general requirements of the program through the NOP staff. USDA will undertake a number of outreach and education efforts in connection with the launch of the NOP. Compliance guides and other printed material will be prepared which will be more readily understood than the **Federal Register** document. NOP staff will participate at industry meetings and will likely host public information exchange meetings.

International Markets

The final national program rule is expected to lead to EU acceptance of NOP certified organic products. That is, it is anticipated that the EU would determine that the NOP is acceptable vis-a-vis EU regulation 2092/91. Article 11 of EU Reg. 2092/91 establishes the conditions under which organic products may be imported from third countries and addresses the framework for equivalency. The NOP is a national program that should be acceptable to the EU and other governments. The result would be the removal of trade restrictions, thereby possibly increasing the growth in exports of organic food products.

Currently, despite restricted access to the European market, the United States is the most important non-EU supplier of organic products to EU countries (Foreign Agriculture Service (FAS), 1995). Import authorizations have been granted for a number of raw and processed commodities, including sunflowers, buckwheat, beans, sugar, and apples. Demand is strong throughout the European market, and the organic market share was 1–2 percent of total food sales in 1997 (Collins).

Lohr (1998) cites several growth projections:

Annual growth rates of 25% to 30% have been experienced in the EU, the United States, and Japan for over five years, but growth is already slowing in some product categories (PSC, Scott) * * * Segger projects that the EU market will reach $58 billion and the U.S. market $47 billion by 2006. Ahmed suggests that the Australian market could grow to $571 million by 2000, whereas LaFond projects that the value of Canadian organics will reach $145 million by 2006. Mergentime forecasts the Japanese market will reach $2.6 billion by 2000 (Lohr, 1126).

Lohr further states that these projected future growth rates are based on straight-line extrapolations of current sales and growth rates without understanding the underlying market mechanisms and price elasticities (Lohr 1998).

Foreign acceptance of the U.S. national standard can be expected to expand the universe of consumers for U.S. producers and reduce costs of negotiating and documenting shipment by shipment.

Costs of the Proposed Rule

The costs of the proposed regulation are the direct costs of complying with the specific standards. It is important to note that while some costs associated with accreditation and certification are quantified, costs stemming from other provisions of the proposed regulations are not. In addition, this is a short-run analysis. The analysis examines the costs that may be incurred from 1999 to 2002. It is not possible at this time to conduct a longer-run analysis because we do not know enough about the fundamental supply and demand relationships to make economically sound long run projections.

Accreditation Costs

USDA has identified 36 private certifying agents and 13 State programs providing certification. These 49 entities are considered likely applicants during the first 18 months

during which USDA will not charge application fees or hourly fees for accreditation. An unknown number of new entrants to the certifying business may also apply. However, over the last 10 years, the number of certifying agents does not appear to have grown significantly, with the net effect of entries and exits maintaining a population of certifying agents at about 40–50.

The proposed rule would allow USDA to collect fees from certifying agents for USDA accreditation. Collecting fees from certifying agents only is administratively simpler and will enable State programs that want to keep client costs low to do so.

Applicants for accreditation will be required to submit a nonrefundable fee of $500 at the time of application, which is applied to the applicant's fees for service account. This means that the $500 fee paid at the time of application is credited against any subsequent costs of accreditation arising from the site evaluation. The $500 fee is the direct cost to applicants who are denied accreditation based on the initial review of the information submitted with their application. Charges for the site evaluation visit will cover travel costs from the USDA employees' duty station, per diem expenses for USDA employees performing the site evaluation, an hourly charge that we anticipate will not exceed $95 per hour (per each employee) for services during normal working hours (higher hourly rates will be charged for overtime and for work on holidays), and other costs associated with providing service to the applicant or certifying agent.

The anticipated hourly rate is the rate that USDA will charge for services under the Quality Systems Certification Program (QSCP). A separate rulemaking will establish the precise hourly rate that will be charged. Our preliminary estimate that the fee will be no more than $95 per hour is presented to give the public some indication of the rate that will be charged following the 18-month transition period. QSCP is an audit-based program administered by AMS, which provides meat packers, processors, producers, and other businesses in the livestock and meat trade with the opportunity to have special processes or documented quality management systems verified. The procedures for accreditation evaluation are similar to those used to certify other types of product or system certification programs under QSCP.

At present, the base per diem for places in the United States is $80 ($50 for lodging and $30 for meals and incidental expenses). Per diem rates are higher than $80 in most large cities and urbanized places. Travel costs will depend on where the certifying agent is located.

USDA estimates the costs of a site evaluation visit after the transition period will average $3,070–$4,850 depending on the characteristics of the applicant. This estimate is based on experience with the QSCP and more limited experience performing audits verifying that certifying agents meet ISO Guide 65. The cost of a site evaluation visit will vary with the cost of travel from the USDA reviewer's duty station to the applicant's place of business. In general, more distant and more remote locations will involve higher travel costs.

Accreditation will include verification of adherence to ISO Guide 65. Recent experience with USDA's program to verify organic certifying agents to ISO Guide 65 indicates that roughly 32 staff hours are required. Although much of the accreditation site evaluation will involve comparisons against ISO Guide 65, additional hours will be required because USDA will be evaluating additional aspects of the applicant's operation to determine if the applicant is qualified to perform as an accredited agent for the NOP. Based on experience with ISO Guide 65 verifications, we project that small applicants with a simple business structure will require 3 days and large applicants with more complex business structure will require 5 days. Thus, the total number of hours to be charged would range from 24 to 40 hours. At the base rate of $95.00, the charge for hours of service would be $2,280–$3,800.

Per diem costs would cover 3 to 5 days, totaling $240–$400. A review of domestic travel by USDA staff during fiscal year 1999, indicates that transportation costs ranging from $500–$600. Miscellaneous costs are estimated to add another $50 to each site visit. Thus, the total site visit cost would range from $3,070 to $4,850.

During the 18-month transition period, USDA intends to use 2 reviewers for site evaluation visits. One reviewer will come from the QSCP audit staff and will be familiar with the ISO Guide 65 verification; the other reviewer will come from the NOP staff and will be familiar with requirements of the organic program. The two will conduct the site evaluation jointly. We anticipate only one reviewer will be required after the transition period. During the 18 month transition period, applicants will be charged for travel and per diem costs for two persons, but not application fees or hourly fees. Thus, the estimated expenditures (travel and per diem) for these initial accreditations will be $1,530–$2,050. Table 3 estimates the total initial costs for an applicant to become accredited.

Currently few private certifying agents are operating with third party accreditation. Fetter (1999) reports that in a sample of 18 certification programs four programs were accredited and one had accreditation pending. All of these were large, private certifying agents. Those certifying agents currently accredited by third parties will likely pay less for USDA accreditation. In its first proposal, USDA stated at FR 62:65860, "We are aware that certifiers currently may pay in excess of $15,000 for accreditation by a private organization." Commenters thought this figure was too high. One commenter, which operates the International Federation of Organic Agriculture Movements (IFOAM) Accreditation Programme under license to IFOAM, stated "It is possible that the largest programme operating a chapter system with activities in many countries (which is included in their IFOAM evaluation) paid this amount in their first year. On the other hand the average cost to a medium sized certifier works out at around $3000 to $4000 per year." Another commenter stated "At the present time IFOAM accreditation costs less than $10,000/year for the largest certifier and $3–5,000 for smaller certifiers."

The direct costs of accreditation, if all currently operating certifying agents become accredited during the first 18 months following the final rule, is approximately $75,000 to $100,000. This figure is derived from the per firm costs in Table 3. After the first 18 months, the direct cost for accrediting 49 certifying agents would be approximately $150,000 to $238,000.

The 18 month period affects the distribution of program costs between the organic industry and the taxpayer. Some of the costs of accreditation would be absorbed by the NOP operation budget appropriated by Congress. In effect, the taxpayers are subsidizing the organic industry. Without this subsidy, the total cost of accreditation may approach $1 million.

Private certifying agents and state programs that do not mirror the proposed regulation may incur additional costs to change their programs to adopt the proposed national standards. The discussion on the effect of the proposed regulation on existing state programs is in "State Program Costs." The cost associated with changing existing private certifying programs is not quantified.

Also, certifying agents who have been operating without third party accreditation will face new costs. Compared to the direct costs of $3,000–$5,000 per year indicated by the commenters, the direct costs of USDA accreditation will be smaller. The direct costs for certifying agents obtaining accreditation during the first 18 months, when USDA will not impose an application fee or hourly charges, will be limited to travel and per diem costs. Furthermore, USDA's charges are imposed every 5 years, not annually.

A national accreditation program may shrink the market for a third-party accreditation. Certifying agents will have little incentive to maintain or seek a second accreditation by a private organization unless that accreditation sufficiently enhances the market value of the certifying agent's services. Thus, the market will determine whether other accrediting entities continue to have a U.S. market for their services.

Training programs are currently offered by the Independent Organic Inspectors Association (IOIA), an organization of approximately 165 organic certification inspectors, and by some of the larger certifying agents (IOIA, p. 1). Costs to existing certifying agents to provide additional training to other staff are difficult to measure in the absence of information on current staff skill levels or the existence of formal training other than inspector training. Some agencies rely on volunteer staff who may have had no formal training, but the extent of this practice is unknown. AMS intends to offer assistance to certifying agents, producers, and handlers by providing guide books and other printed material that would enable participants to better understand the regulations. In addition, AMS intends to continue open and frequent communication with certifying agents and inspectors to provide as much information as possible to aid them in fulfilling the requirements of the regulations.

The OFPA requires that private certifying agents furnish reasonable security, such as a bond, for the purpose of protecting the rights of participants in the organic certification program. Specifics requirements regarding reasonable security have not yet been established. It is expected that there will be costs to certifying agents from these requirements.

Certification Costs

State laws vary widely on organic certification and registration. Some States require only that an organic producer register and make certification voluntary. Other States require certification by the State's own agents, while others accept certification by a private certifying agent. The least stringent requirement among States with organic legislation is that products marketed as organic comply with their definition of organic but both registration and certification are voluntary. Thirteen States operate programs to certify organic production. In many States producers may claim their product is organic but operate without certification or well-defined standards. On the other hand, many organic producers operate in States with no program and voluntarily secure third party certification to well-defined standards.

Under the proposed rule, USDA will not impose any direct fees on producers and handlers. Certifying agents will establish a fee schedule for their certification services that will be filed with the Secretary. Certifying agents will provide all persons inquiring about the application process with a copy of their fees. The certifying agent will provide each applicant with an estimate of the total cost of certification and an estimate of the annual costs of updating the certification. However, the certifying agent may require applicants to pay at the time of application a nonrefundable fee of no more than $250 which must be applied to the applicants' fee-for-services account. The $250 limit is proposed as a reasonable figure considering the interests of certifying agents and applicants.

The proposed maximum nonrefundable fee protects certifying agents by ensuring that they receive some payment for their work for applicants should the applicant lose interest or be found unqualified for certification. For the purposes of estimating the cost of the paperwork burden on certifying agents, USDA has valued their time at $27 per hour. Thus, the $250 limit, if the certifying agent chooses to require it, would cover approximately 9 hours of work. The $250 limit protects applicants from paying large fees up front when their ultimate eligibility for certification is unknown. The $250 limit is believed to be low enough to ensure producers and handlers can afford to take the first steps for certification but high enough to ensure certifying agents will have an incentive to initiate certification when the prospects that the applicant will qualify are unknown.

Some States charge minimal fees for certification by subsidizing operating costs from general revenues. The majority of certifying agents structure their fee schedules on a sliding scale based on a measure of size, usually represented by the client's gross sales of organic products but sometimes based on the acres operated (Fetter 1999 and Graf and Lohr 1999). Some certifying agents charge an hourly rate for inspection and audit services.

Graf and Lohr have applied fee schedules provided by nine certifying agents to four hypothetical farms—small, medium, large, and a super farm. Tables 2A and 2B summarizes the fees that Graf and Lohr found by applying schedules of each certifying agent to hypothetical farms. Total first-year costs and subsequent (renewal) year costs for certification are shown. The average cost for each size class should be interpreted with care because the reported average is not weighted by the number of clients certified. In their study, the Texas Department of Agriculture program is the low-cost certifying agent for all-size operations. The high-cost certifying agent differs across farm sizes. None of these certification programs mentions costs for residue testing, which the NOP will require in the form of preharvest testing when there is reason to believe that agricultural products have come in contact with prohibited substances. Preharvest testing is expected to be infrequent. Some certifying agents currently require soil nutrient testing and water quality testing. The estimated total initial costs for a producer or handler to become certified are presented in Table 3.

We have not extended the average costs reported in Tables 2A and 2B to aggregate certification costs for all organic farms because the number of organic farms is not known with precision, nor is their geographic location and there are no data to distribute the population of organic farms across size classes. Like conventional agriculture, the largest percentage of farms would be expected to fall in the smallest sales class. Many of the smallest farms would qualify for the small farm exemption from certification.

In addition, organic producers and handlers would incur the costs associated with becoming familiar with the national program. We request comment and/or data on the certification costs that may be imposed on the organic producers, handlers, processors, and retailers.

Production and Handling Costs

Producers and handlers currently active in the organic industry may bear costs under the proposed national standards. We believe that while some provisions of the proposed program mirror current industry practices, others differ. In addition to the cost associated with becoming familiar with the national program, any adjustments stemming from these differences will result in costs. These costs are only qualitatively discussed. This assessment does not include a provision-by-provision analysis of possible alternatives.

Producers.

Producers of organic food will face numerous provisions that will regulate their production methods. As indicated in the Baseline section, many of the requirements are currently practiced by certified organic farmers. Farming operations that are not certified, but are registered with a State government such as California, receive copies of the State laws to which they must comply. Some organic producers are neither certified nor registered and therefore may not practice the requirements proposed. Major provisions are discussed to illustrate costs; other provisions may also impose additional costs. We request comment and/or data on the costs that may be imposed on the producers of organic products. In addition, we request comment and/or data on the similarities and differences between the current practices of private and State programs and the proposed requirements.

Land Requirement. The transition period, which would specify the time during which prohibited materials cannot be applied before a field can be certified as organic, is included in many private and State organic standards. The OFPA specifies a required transition period of 3 years before certifying a field. The effect of this provision on the currently certified organic farming operations may be minimal. Certifying agents currently enforce the 3 year transition period required by the OFPA. Producers who are registered in States requiring registration, receive copies of the State laws governing organic production which generally require a 3 year transition period.

The effect on small farming operations that are neither certified or registered may be significant. Small farming operations that have completed a 3 year transition period and can document the transition will not be affected by this requirement. To stay in the organic industry, those who have not completed the 3 year transition period must comply with the transition period requirement. They may incur the cost of organic production for a significant length of time, yet not be allowed to sell their products as organic. Hence, some small organic operations may exit the industry. We request comment and/or data on the magnitude of the cost associated with the provision. In addition, we request comment and/or data on the similarities and differences between the current practices of private and state programs and the proposed requirements.

Soil fertility and crop nutrients. Lacking information, we have not quantified the cost associated with this provision, but we assume that it may have costs Organic production historically rests on soil fertility management. Private and State certifying agents have well developed standards addressing care and treatment of the soil. The proposed rule includes requirements for the use of manure and a practice standard for composting which may impose additional costs to producers. However, not all organic farmers use manure for soil fertility and many farmers use composting practices that are consistent with the proposed rule. We believe that this requirement will have minimal impact on certified or registered organic producers. We request comment and/or data on the magnitude of the cost associated with the provision. In addition, we request comment and/or data on the similarities and differences between the current practices of private and State programs and the proposed requirements.

Materials list. Lists of approved synthetic materials, including soil amendments and

pesticides, vary from one State program to another. A detailed analysis of specific differences in the various existing materials lists shows them to be overlapping in most cases. The impact of the national program will be determined by how the national standards differ from current certification standards and from actual practice.

Farming operations, both certified and registered, may need to adjust their production methods to comply with the list. These adjustments will impose costs on these operations. However, most currently certified operations and those operating under a State program already adhere to a materials list. These lists overlap in most cases with each other and the National List in this proposal which should mitigate the costs for these operations. The magnitude of the costs resulting from these adjustments is not quantified. We request comment and/or data on the magnitude of the costs associated with the provision. In addition, we request comment and/or data on the similarities and differences between the current practices of private and state programs and the proposed requirements.

Animal drug use. Another common feature of organic standards is the restricted use of animal drugs for livestock. Where livestock standards have been adopted by existing State programs and by private certifying agents, most prohibit the use of animal drugs except for the treatment of a specific disease condition, and use of animal drugs is generally prohibited within 90 days prior to the sale of milk or eggs as organic. Some State and private certifiers allow the use of animal drugs in animals for slaughter if the producer extends the withholding period. Others prohibit the use of animal drugs. The standards in the proposed rule would prohibit the sale as organic of an edible products derived from an animal treated with antibiotics or other unapproved substances.

The proposed standards may not differ from existing State or private standards in prohibiting the use of drugs on healthy animals. However, the effect of this provision may differ among certified and registered organic farms. The effect on the certified farming operations is unknown. We assume that this provision may have costs, but the magnitude of these costs is not quantified. We request comment and/or data on the magnitude of the costs associated with the provision. In addition, we request comment and/or data on the similarities and differences between the current practices of private and state programs and the proposed requirements.

Other livestock requirements. Lacking information, we have not quantified the cost associated with this provision, but we assume that this provision may have costs due to the variability in current housing, feed and health care practices. We request comment and/or data on the magnitude of the costs associated with the provision. In addition, we request comment and/or data on the similarities and differences between the current practices of private and state programs and the proposed requirements.

Residue Testing. Lacking information, we have not quantified the cost associated with this provision, but we assume that this provision may have costs. We request comment and/or data on the magnitude of the costs associated with the provision. In addition, we request comment and/or data on the similarities and differences between the current practices of private and state programs and the proposed requirements.

Handling requirements. These requirements prohibit a handler from using ionizing radiation for any purpose, an ingredient produced with excluded methods, or a volatile synthetic solvent in or on a processed agricultural product intended to be sold, labeled, or represented as "100 percent organic", "organic" or "made with organic (specified ingredients)." We believe, however, that the additional costs associated with compliance may be small. We base this assumption on the thousands of comments on the first proposal, including comments from the organic industry, indicating that these practices are widely considered to be inconsistent with organic production and handling. Lacking information, we have not quantified the cost associated with this provision. We request comment and/or data on the magnitude of the costs associated with the provision In addition, we request comment and/or data on the similarities and differences between the current practices of private and state programs and the proposed requirements.

Handlers

Handlers of organic food may be defined and regulated differently across different certifying agents and States. Handlers may incur some cost associated with complying with the requirements of the proposed regulation. We request comment and/or data on the costs that may be imposed on the retailers of organic products. In particular, we request comment and/or data on costs associated with excluded methods, residue testing, and labeling. In addition, we request comment and/or data on the similarities and differences between the current practices of private and state programs and the proposed requirements.

Retail Food Establishments

Largely, retailers of organic food are not regulated. However, they are still subject to other requirements such as prevention of contamination of organic products with prohibited substances, and commingling organic with non organic products. Complying with these provisions may incur some cost. We request comment and/or data on the costs that may be imposed on the retailers of organic products.

Labeling Costs

Certified handlers will have to comply with requirements regarding the approved use of labels. The estimated annual cost for 1,977 certified handlers to determine the composition of 20 products to be reported on labels is $948,960. This figure is based on an average of 1 hour per product and an hourly cost of $27. Similarly, certified handlers will have to design their labels to comply with the regulation. This is expected to take 1 hour per label at $27 per hour for a compliance cost of $948,960. Total label costs for certified handlers are $1.9 million.

Any producers, processors, and retailers who are not currently certified but who package organic products are also subject to the labeling requirements. Any changes to existing labels and new labels that need to conform to the proposed regulation will incur a cost. The costs associated with these activities are not quantified. Hence, the lower bound on the labeling cost is approximately $2 million. We request comment and/or data on the extent the current labels will need to change to conform to the proposed regulation. In addition, we request comment and/or data on the similarities and differences between the current practices of private and state programs and the proposed requirements.

State Program Costs

A national program may impose additional costs on States by requiring changes in their existing programs. The proposed rule encompasses most of the principles of existing State programs. However, there are also departures.

Where State standards are below Federal standards or where elements of the Federal standards are missing from a State program, these States would be required to make changes in their programs that they might otherwise not make. Where State programs have standards in addition to the Federal standards and they are not approved by the Secretary, States also would be required to make changes in their programs. States without organic standards or whose current standards either would conform to those of the national program or would be approved by the Secretary would not incur additional costs resulting from required changes. Currently, USDA cannot predict which States may be required to adjust their existing programs.

States will be charged for accreditation, something none of them pay for now. The cost associated with this provision is discussed in the Accreditation Section.

Enforcement Costs

Enforcement costs will fall upon USDA's NOP, States operating State programs, and on certifying agents. Certifying agents will review clients' operations and will notify clients of deficiencies. Certifying agents can initiate suspension or revocation of certification. Certifying agents will be aware of these overhead costs and we assume that they will establish fee schedules that will cover these costs. Actual costs to certifying agents for enforcement activities will depend on the number of clients, how well informed clients are of their obligations, and client conduct. State programs will face the same obligations and types of costs as private certifying agents.

USDA's enforcement costs are costs associated with ensuring private certifying agents and State programs fulfill their obligations. USDA will bear costs of investigating complaints, monitoring use of the USDA organic seal and organic labeling, and taking corrective action when needed. USDA will bear costs related to reviewing an applicant's or certified operation's appeal and for administrative proceedings. We request comment on the costs of the

enforcement provisions of the proposed regulation.

Reporting and Recordkeeping Costs

The Paperwork Reduction Act of 1995 requires an estimate of the annual reporting and recordkeeping burden of the proposed NOP. Detailed descriptions of individual elements of that burden are presented in the proposal under the heading Paperwork Reduction Act of 1995. The estimated annual reporting and recordkeeping burden reported is approximately $6.8 million. This figure should be understood within the context of the requirements of the Paperwork Reduction Act. The Paperwork Reduction Act requires the estimation of the amount of time necessary for participants to comply with the proposed regulation in addition to the burden they currently have. Information gathered by AMS in auditing activities in conjunction with ISO Guide 65 verifications, leads us to believe that the paperwork burden on current certifying agents and certified operators will be 10 to 15 percent greater than their current business practices as a result of this proposal.

Certifying Agents. The regulation will impose administrative costs on certifying agents for reporting and recordkeeping. The actual amount of the additional administrative costs that would be imposed by the proposed rule is expected to be different for those entities which would begin their activities only after the national program is implemented. Certifying agents that currently are active in the organic industry already perform most of these administrative functions; therefore, the additional costs to them would depend upon the extent to which their current practices are different from the requirements of the proposed regulation. An estimate of the cost of compliance is the annual reporting and recordkeeping burden documented in the Paperwork Reduction Act of 1995 analysis. Table 4 shows the estimated annual costs for State certifying agents and for private or foreign certifying agents. Based on the projected number of States agents (13) and private or foreign agents (46) the total reporting and recordkeeping cost, which captures much of the compliance costs of the rule, is $1,113,192.

The following list describes several of the most significant proposed administrative requirements or optional submissions and the probable resources required for compliance. Details on the reporting and recordkeeping burdens estimated for each item are in the paperwork analysis.

1. A list of farmers, wild crop harvesters and handlers currently certified. This information can be compiled from existing records. After implementation, certifying agents will be required to submit on a quarterly basis a list of operations certified during that quarter.

2. A copy of procedures used for certification decisions, complying with recordkeeping requirements, maintaining confidentiality of clients' business-related information, preventing conflicts of interest, sampling and residue testing, training and supervising personnel, and public disclosure of prescribed information concerning operations they have certified and laboratory analyses. These policies may have to be created or modified to conform to the regulation.

3. Documentation on the qualifications of all personnel used in the certification operation, annual performance appraisals for each inspector and personnel involved in the certification, and an annual internal program evaluation. Existing certifying agents may already perform these operations. New certifying agents will have to establish procedures to achieve these things.

4. Documentation on the financial capacity and compliance with other administrative requirements (*e.g.*, fee structure, reasonable security to protect the rights of the certifying agents' clients as provided in the NOP, and business relationships showing absence of conflicts of interest). Some of this information can be compiled from existing records, *e.g.*, fee schedules, and some may be generated from other sources.

5. Copies, submitted to USDA, of notices issued involving denials of certification, noncompliance, and suspension or revocation of certification. This requirement will be fulfilled simultaneously with sending notices to applicants or clients.

6. An annual report to the Administrator including an update of previously submitted business information, information supporting any requested changes in the areas of accreditation, and steps taken to respond to previously identified concerns of the Administrator regarding the certifying agent's suitability for continued accreditation. The annual report requirement will draw on records created in the normal course of business.

7. Retention of records created by the certifying agent regarding applicants and certified operations for not less than 10 years, retention of records obtained from applicants and certified operations for not less than 5 years, and retention of other records created or received for USDA accreditation for not less than 5 years. This activity requires records and database management capabilities and resources (storage space, file cabinets, electronic storage, etc.). In an informal inquiry, AMS found that most existing certifying agents currently retain records for at least 10 years and use both electronic and paper storage. We believe that this requirement will not pose an additional burden on existing certifying agents.

8. Public access to certification records, such as a list of certified farmers and handlers, their dates of certification, products produced, and the results of pesticide residue tests. This requirement will have minimal impact given the requirements for retaining records.

9. Providing program information to certification applicants. To comply with this requirement, certifying agents may need to modify existing standards and practices. The criteria for qualified personnel in the proposed rule may likely result in an increase in labor costs for some existing certifying agents and, initially, an increase in training costs. The amount of additional costs to these certifying agents would depend on the level of expertise among current certification agency staff, the extent to which certifying agents currently rely on volunteers, and the current costs of training certification staff.

Producers and Handlers. The regulation will impose administrative costs on producers and handlers for reporting and recordkeeping. The actual amount of the additional administrative costs that would be imposed by the final rule is expected to be different for those entities that would begin their activities only after the national program is implemented. Producers and handlers who currently are active in the organic industry already perform most of these administrative functions; therefore, the additional costs to them would depend upon the extent to which their current practices are different from the requirements of the final regulation. An estimate of the cost of compliance is the annual reporting and recordkeeping burden documented in the Paperwork Reduction Act of 1995 analysis.

The following list describes several proposed administrative requirements or optional submissions and the probable resources required for compliance.

1. Establish, implement, and update annually an organic production or handling plan. Organic plans are a standard feature in the organic industry and are required by certifying agents. Thus, producers and handlers who are already involved in organics, can rely on their current plan with revisions as needed to meet elements of the national program which are new to them or differ from their current practice. Although producers and handlers are generally aware of the goals of organic plans, current practice may fall short of the rigor that will be required by the national program. New producers and handlers will have higher costs because they will have to prepare a plan from scratch.

2. Maintain records pertaining to their organic operation for at least 5 years and allow authorized representatives of the Secretary, the applicable State program's governing State official, and the certifying agent access to records. Existing organic producers and handlers maintain records. New producers and handlers will have to develop records systems. Access is expected to be infrequent, will require little time of the certified entity, and will not require buildings or equipment other than what is required for storing records.

3. Notify the certifying agent as required, *e.g.*, when drift of a prohibited substance may have occurred, and complete a statement of compliance with the provisions of the NOP. Notifications are expected to be infrequent.

The total reporting burden includes creation and submission of documents. It covers the greatest amount of reporting burden that might occur for any single creation or submission of a document during any one of the first 3 years following program implementation, *i.e.*, 2000, 2001, and 2002. The total estimated reporting burden reflects the average burden for each reporting activity that might occur in 1 year of this 3-year period.

The total recordkeeping burden is the amount of time needed to store and maintain records. For the purpose of measuring the recordkeeping burden, the year 2002 is used

as the reporting year for which the largest number of records might be stored and maintained. The annual reporting and recordkeeping burdens on producers, handlers, and certifying agents is summarized in Table 4.

Certified operations. The annual burden on certified producers is estimated at 10 hours and $229. Certified handlers have an estimated burden of 50 hours valued at $1,189. Certifying agencies have an estimated burden of 700 hours valued at roughly $18,900.

Exempt operations. The burden on small producers and handlers, who choose to operate as exempt entities, is minimal, 0.5 hour of recordkeeping valued at $12. Exempt operations are exempt from reporting and recordkeeping burdens. However, small producers and handlers will have to invest some time and review documents to determine whether they qualify for exemption or exclusion. Exempt operations that produce multiingredient products containing less than 50 percent organic ingredient will be required to maintain records documenting the organic ingredients purchased. Since records of purchases would be part of the normal recordkeeping for handlers, we do not consider this a recordkeeping burden.

Based on the projected number of producers (17,150) and handlers (2,150), the total reporting and recordkeeping cost, which captures much of the compliance costs of the rule for this group, is $5,200,721. We request comment and/or data on the costs that may be imposed by the recordkeeping requirements of the proposed regulation. In addition, we request comment and/or data on the similarities and differences between the current practices of private and state programs and the proposed requirements.

Barriers to Entry—Importers of Organic Products

Currently, there are no federal restrictions on importing organic products to the United States in addition to those regulations applying to conventional products. However, some States require organic products sold within the State to be produced according the State's standards. Thus, some State programs are barriers to importers. The proposed regulation imposes a national standard that these importers must meet, and may incur some cost. We request comment and/or data on the extent of the organic food imports and the costs that may be imposed on these importers to meet the proposed standards.

Small Business Ramifications

USDA has proposed an 18-month period during which applicants for accreditation would not be billed for hourly services. The rationale for this transition period is to reduce the costs to certifying agents and, thus, increase the prospect that certifying agents, producers, and handlers will be able to afford to participate in the national program. The choice of 18 months is intended to provide sufficient time for parties desiring accreditation to submit their application and prepare for a site evaluation.

USDA has proposed to operate the program partially with appropriated funds, in effect sharing the cost of the program between taxpayers and the organic industry, to respond to public concerns regarding the effects of the proposed regulation on small businesses. Thousands of comments were received opposing the first proposal's fee provisions with most focusing on the substantial impact on small certifying agents.

Congress has expressed public policy concern with the impacts of regulations on small entities generally and with the impacts on the NOP regulations on small entities particularly. The Small Business Regulatory Enforcement Fairness Act of 1996 and the Regulatory Flexibility Act express Congressional concern regarding regulatory burden on small businesses. The Report from the Committee on Appropriations regarding the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2000, includes the following language (U.S. Senate 1999):

"The Committee continues to recognize the importance of organic markets for small farmers and fishermen. The Committee expects the Secretary to construct a national organic program that takes into consideration the needs of small farmers and fishermen. * * * Furthermore, the Committee expects that of the funding available for the National Organic Program, necessary funds should be used to offset the initial costs of accreditation services, a subsidy necessary due to the lack of expertise in the Department of Agriculture in the areas of organic accreditation and insufficient data on the industry."

Certifying agents applying for accreditation during the first 18 months following the final regulation will face lower direct costs than subsequent applicants. The cost for later applicants for accreditation will be higher because they will have to pay a $500 application fee and hourly charges for completing their site evaluation. The requirement for accreditation was established in the OFPA in 1990 and the proposed accreditation program was part of the 1997 proposal. Because in this proposal USDA is using appropriated funds to cover some of the costs of initial accreditation during the first 18 months of the program, certifying agents may set lower fees initially benefitting the producers and handlers who are certified during this period.

It is important to note that many small organic operations may not be certified currently. In California, for example, many small farms are registered, but not certified. Even if certifying agents pass on the cost savings of the 18 month period provision to applicants for certification, the cost of certification may be higher than the cost of registration. Hence, becoming a certified operation for small organic producers and handlers may be more costly than the current practices.

The costs imposed on small operations may be mitigated by a $5000 certification exemption to aid the smallest organic operations. However, these operations are still subject to other requirements of the proposed regulation. To the extent that these requirements differ from their current practices, complying with the national standards may be costly for exempt operations.

In addition, the certification exemption allowed under the proposed regulation includes limits on what an exempt operation may do. Without the certification, small organic operations may not display the USDA seal and may not use a certifying agent's seal. However, we are asking for public comment on whether exempt operations should have the marketing option of selling their products to handlers who can claim the products as organic in multi-ingredient products. If the consumers of organic food view the seals as important information tools on organic food, that is, if consumers of organic products insist on only certified organic products, the inability of small operations to display these seals may prevent them from realizing the price premiums associated with certified organic products.

Industry Composition

The imposition of the national standards may change the composition of the organic industry. Even with the small business exemptions, some small organic operations may choose to exit the industry and small organic operations may also be discouraged from entering the industry, resulting in a higher concentration of larger firms. On the other hand, it may be easier for small operations to comply with certain NOP standards, such as the livestock standards which prohibit confinement production systems and require 100 percent organic feed.

Conclusion

Ideally, the net benefits of the proposed rule would be estimated by employing a welfare analysis. In a welfare model, the quantitative assessment of benefits would be represented by net changes in consumer and producer surplus, *i.e.*, the difference between the willingness to pay (or firm cost structure in the case of producers) and the market price of organic food. These net changes would be estimated using information about the cost structure of the industry, the demand for organic food, and projected shifts in supply and demand resulting from the various factors discussed in the assessment. Although researchers have conducted numerous small-scale studies to determine consumers' willingness to pay for certain organic products (primarily fresh produce) and to identify reasons why conventional food buyers do not choose organic food products (Hammitt, 1990 and 1993; Jolly; Misra *et al.*; Park and Lohr; Weaver *et al.*), the available data are insufficient to support a quantitative assessment of this type. A 1998 review of studies of consumer demand for organic foods concluded, "Attitudes, motives, and willingness to pay for organic products have been measured, but apparently no retail data have been available to estimate own-price, cross-price, and income elasticities." (Thompson 1998).

USDA has identified the entities that may be affected by the proposed rule and has analyzed the anticipated business-associated impacts on them of the rule based on our knowledge of the industry and limited data. We have drawn on industry studies, including studies completed since the 1997 proposed rule was published, and

information provided in comments on the 1997 proposed rule.

The primary benefits from implementation of the proposed rule are improved protection of buyers from a reduction in market confusion including protection from false and misleading claims, and improved access to markets from the reciprocity inherent in national standards. These benefits have not been quantified.

The costs of the proposed regulation are the direct costs for accreditation and the costs of complying with the specific standards in the proposal including the reporting and recordkeeping requirements. Other than accreditation fees, recordkeeping and reporting costs, we did not quantify the magnitude of the compliance costs or the costs of adhering to other provisions of this regulation. We have also not quantified the impact of all these provisions on small business but we believe there impact to be significant.

The direct costs of accreditation if all currently operating certifying agents become certified during the first 18 months following the final rule is approximately $75,000 to $100,000. After the first 18 months, the direct cost for accrediting would be approximately $150,000 to $238,000. During the 18-month period during which the NOP is not recovering the full costs of accreditation services, the organic industry is being subsidized with appropriated funded derived from the taxpayers. For existing certifying agents compliance costs include costs to become familiar with and adopt NOP standards. The aggregate cost of complying with reporting and recordkeeping requirements of the rule are approximately $6.8 million. Appropriated NOP funds used to operate the National Organic Program are transfers from the taxpayers to the participants in the organic sector.

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TABLE 1.—ORGANIC FOOD SALES

[$ billions]

Year	Sales	Sales (1998 dollars)
1990	1.000	1.25
1991	1.250	1.50
1992	1.540	1.79
1993	1.890	2.13
1994	2.310	2.54
1995	2.800	2.99
1996	3.500	3.64

Source: Mergentime and Emerich in *Natural Foods Merchandiser*.

TABLE 2A.—FIRST YEAR CERTIFICATION COSTS, FROM GRAF AND LOHR ANALYSIS

[In dollars]

Certifying agent	Small farm	Medium farm	Large farm	Super farm
CCOF	750	1,650	4,750	51,150
FVO	585	1,624	5,101	51,437
FOG	325	845	2,525	25,525
NOFA-VT	335	535	585	585
OTCO-In	608	1,766	2,517	11,518
OTCO-Out	568	1,498	2.352	11,353
OCIA-WI	315	1,590	6,090	75,090
OCIA-VA	258	320	495	1,745
TDA	90	155	200	515
WSDA	330	1,375	2,800	12,000
NC/SCS	n/a	n/a	n/a	n/a
Average cost	416	1,136	2,742	24,092

Notes:
CCOF—California Certified Organic Farmers
FVO—Farm Verified Organic
FOG—Florida Certified Organic Growers & Consumers
NOFA–VT—Northeast Organic Farming Association-Vermont
OTCO–In—Oregon Tilth Certified Organic, inside Oregon
OTCO–Out—Oregon Tilth Certified Organic, outside Oregon
OCIA–WI—Organic Crop Improvement Association, Wisconsin chapter
OCIA–VA—Organic Crop Improvement Association, Virginia chapter
TDA—Texas Department of Agriculture
WSDA—Washington State Department of Agriculture
NC/SCS—NutriClean/Scientific Certification Systems
Small farm—25 acres with annual sales of $30,000.
Medium farm—150 acres with annual sales of $200,000.
Large farm—500 acres with annual sales of $800,000.
Super farm—3,000 acres with annual sales of $10,000,000.

TABLE 2B.—SUBSEQUENT YEAR CERTIFICATION COSTS, FROM GRAF AND LOHR ANALYSIS

[In dollars]

Certifying agent	Small farm	Medium farm	Large farm	Super farm
CCOF	425	1,300	4,350	50,550
FVO	510	1,499	4,851	51,187
FOG	325	845	2,525	25,525
NOFA-VT	300	500	550	550
OTCO-In	454	1,611	2,362	11,363
OTCO-Out	424	1,353	2,207	11,208
OCIA-WI	290	1,565	6,065	75,065
OCIA-VA	233	295	470	1,720
TDA	90	155	200	515
WSDA	330	1,375	2,800	12,000
NC/SCS	700	900	1,000	2,000
Average cost	371	1,036	2,489	21,971

Notes:
CCOF—California Certified Organic Farmers
FVO—Farm Verified Organic
FOG—Florida Certified Organic Growers & Consumers
NOFA–VT—Northeast Organic Farming Association—Vermont
OTCO-In—Oregon Tilth Certified Organic, inside Oregon
OTCO-Out—Oregon Tilth Certified Organic, outside Oregon
OCIA–WI—Organic Crop Improvement Association, Wisconsin chapter
OCIA–VA—Organic Crop Improvement Association, Virginia chapter
TDA—Texas Department of Agriculture
WSDA—Washington State Department of Agriculture
NC/SCS—NutriClean/Scientific Certification Systems
Small farm—25 acres with annual sales of $30,000.
Medium farm—150 acres with annual sales of $200,000.
Large farm—500 acres with annual sales of $800,000.
Super farm—3,000 acres with annual sales of $10,000,000.

TABLE 3.—COSTS OF ACCREDITATION AND CERTIFICATION

Estimated costs to certifying agents during first 18 months	
Application fee [1]	$0
Site evaluation costs (two person team):.	
Per diem (3 to 5 days).	$480 to $800
Travel (domestic)	$1,000 to $1,200
Hourly charges (not billed).	$0
Miscellaneous charges (copying, phone, and similar costs).	$50
Total	$1,530 to $2,050
Estimated costs to certifying agents for initial accreditation after first 18 months	
Application fee [1]	$500
Site evaluation costs (one person):	
Per diem (3 to 5 days).	$240 to $400
Travel (domestic)	$500 to $600
Hourly charges (24 to 40 hours at $95/hour)).	$2,280 to $3,800
Miscellaneous charges (copying, phone, and similar costs).	$50
Total	$3,070 to $4,850
Annual review fees for certifying agents (2 to 8 hours at $95/hour) [2].	$190 to $760
Estimated costs to producers for certification [3]	
Certification fee (initial certification).	$800
Certification fee (renewals).	$730
Estimated costs to handlers for certification [4]	
Certification fee (initial certification).	$1,825
Certification fee (renewals).	$1,665

[1] Nonrefundable fee that will be applied to the applicant's fee for service account.

[2] Certifying agents are required to submit annual reports to USDA. Review of these reports is expected to range from 2 to 8 hours at an approximate rate of $95 per hour.

[3] Estimated certification fees are calculated from Graf and Lohr 1999 which, for a selection of certification agents, provides certification costs for four hypothetical farm sizes: (1) Small Farm ("Family Farm"): 25 acres, $30,000 annual sales, 5 hours to certify; (2) Medium Farm ("Cottage Industry"): 150 acres, $200,000 annual sales, 6 hours to certify; (3) Large Farm ("Commercial Farm"): 500 acres, $800,000 annual sales, 8 hours to certify; and (4) Super Farm: 3,000 acres, $10,000,000 annual sales, 16 hours to certify. Our estimated certification fees only include those charged for small and medium farms, because most organic producers fall into these categories as defined by Graf and Lohr. In the 1997 OFRF survey, 90 percent of respondents had gross organic farming income less than $250,000, with 82 percent less than $100,000.

The average current certification cost for most organic producers is about $775 for the first year of certification ($416 for small and $1,136 for medium farms) and about $705 for subsequent years ($371 for small and $1,036 for medium farms). Approximately $25 is added to cover the costs associated with the National Organic Program for an estimated first year certification fee of $800 and subsequent year certification fee of $730 for producers. Larger producers could expect higher fees.

[4] Because Graf and Lohr do not estimate certification fees for handlers, we estimate these fees by applying a ratio of handler-to-producer certification fees from the regulatory impact assessment from 1997. The ratio is 2.28 results in estimated fees of $1,825 and $1,665, respectively.

TABLE 4.—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Type of respondent	Annual hours per respondent	Hourly rate	Annual cost
Certified producer	10	$24	$229
Exempt producer	0.5	24	12
Certified handler	50	24	1,189
Exempt handler	0.5	24	12
State certifying agency	696	27	18,778
Private or foreign certifying agency	700	27	18,893

Note: Estimates derived from Paperwork Reduction Act of 1995 analysis.

Appendix B.—Unfunded Mandates Reform Act

This proposed rule has been reviewed under the Unfunded Mandates Reform Act (P.L.104–4). The Act requires that agencies prepare a qualitative and quantitative assessment of the anticipated costs and benefits before proposing any rule that may result in annual expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any one year. According to the Act, the term *Federal mandate* means any provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, except a duty arising from participation in a voluntary Federal program.

The National Organic Foods Production Act (OFPA) of 1990 mandates that the Secretary develop a National Organic Program (NOP) to accredit eligible governing State officials or private persons as certifying agents who would certify producers or handlers of agricultural products that have been produced using organic methods as provided for in the OFPA. The OFPA also permits a governing State official to voluntarily establish a State organic certification program if the program is approved by the Secretary and meets the requirements of the OFPA. The OFPA does not require that States establish their own organic certification programs or that State, local or tribal governments, or the private sector, become accredited; therefore, the OFPA is not subject to the Unfunded Mandates Reform Act because it is a voluntary program.

Although USDA has determined that this proposed rule is not subject to the Unfunded Mandates Reform Act, USDA has sought to consider the rule's impact on various entities. USDA prepared a Regulatory Impact Assessment (RIA) that is discussed in the section titled "Executive Order 12866" (also attached as an appendix to this proposed regulation). The RIA consists of a statement of the need for the proposed action, an examination of alternative approaches, and an analysis of the benefits and costs. Much of the analysis is necessarily descriptive of the anticipated impacts of the proposed rule. Because basic market data on the prices and quantities of organic goods and services and the costs of organic production is limited, it is not possible to provide quantitative estimates of all benefits and costs of the proposed rule. The cost of fees and recordkeeping proposed by the USDA are quantified, but the anticipated benefits are not. Consequently, the analysis does not contain an estimate of net benefits.

The analysis employed in reaching a determination that this proposed rule is the least costly and least burdensome to the regulated parties is discussed in the sections titled "The Regulatory Flexibility Act and the Effects on Small Businesses" and "Paperwork Reduction Act of 1995." The

proposed rule has been designed to be as consistent as possible with existing industry practices, while satisfying the specific requirements of the OFPA.

We have had numerous occasions to communicate with various entities during the development of the proposed rule; States, for example. Currently there are 27 States with some standards governing the production or handling of organic food and 13 States with organic certifying programs. Representatives of State governments have participated in public meetings with the NOSB, while the NOP staff has made presentations, received comments, and consulted with States and local and regional organic conferences, workshops, and trade shows. States have been actively involved in training sessions for organic inspectors; public hearings concerning standards for livestock products during 1994; a national Organic Certifiers meeting on July 21, 1995; a USDA-hosted meeting on February 26, 1996; a State certifiers meeting in February 1999; and an ISO 65 assessment training session for certifiers in April-May 1999. It is unknown at this time how many States, if any, might voluntarily establish their own organic certification programs pursuant to the OFPA and the regulations.

Appendix C.—The Regulatory Flexibility Act and the Effects on Small Businesses

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (Act) requires agencies to consider the economic impact of each proposed rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action.

In the first proposal published in December 1997, the initial Regulatory Flexibility Analysis (RFA), describing the impact of the National Organic Program and evaluating the alternatives, was written with guidance from the U.S. Small Business Administration (SBA). The RFA of this proposal was written following consideration of comments received in response to the first proposal, other information that has become available since the first proposal, the Regulatory Impact Assessment (RIA) that is discussed in the section entitled "Executive Order 12866" (also attached as an appendix to this proposal), and the information collection burden discussed in the section entitled "Paperwork Reduction Act of 1995" (PRA).

Reasons for Proposal

Currently, organic certification is voluntary and self-imposed. Members of organic industries across the U.S. have experienced numerous problems marketing their organically produced and handled agricultural products. Inconsistent and conflicting organic production standards may have been an obstacle to the effective marketing of organic products. There are currently 36 private and 13 State organic certification agencies (certifying agents) in the United States, each with its own standards and identifying marks.

Some existing private certifying agents are concerned that States might impose registration or licensing fees which would limit or prevent private certification activities in those States. Labeling problems have confronted manufacturers of multi ingredient organic food products containing ingredients certified by different certifying agents because reciprocity agreements have to be negotiated between certifying agents. Consumer confusion may exist because of the variety of seals, labels, and logos used by certifying agents and State programs. Also, there is no industry wide agreement on an accepted list of substances that should be permitted or prohibited for use in organic production and handling. Finally, a lack of national organic standards may inhibit organic producers and handlers in taking full advantage of international organic markets and may reduce consumer choices in the variety of organic products available in the marketplace.

To address these problems in the late 1980's, the organic industry attempted to establish a national voluntary organic certification program. At that time, the industry could not develop consensus on the standards that should be adopted, so Congress was petitioned by the Organic Trade Association to establish national standards for organic food and fiber products.

Recently, the Organic Trade Association published American Organic Standards, Guidelines for the Organic Industry (AOS). However, not all participants in the organic industry elected to participate in developing the AOS. Many certifying agents preferred to wait for implementation of the National standards, and some certifying agents disagree with portions of the AOS. For these reasons, the USDA is proposing a regulation for the National Organic Program.

Legal Basis for and Objectives of Proposal

In 1990, Congress enacted the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*) (OFPA). The OFPA requires all agricultural products labeled as "organically produced" to originate from farms or handling operations certified by a State or private agency that has been accredited by USDA.

The purposes of the OFPA, set forth in section 2102 (7 U.S.C. 6501), are to: (1) Establish national standards governing the marketing of certain agricultural products as organically produced products; (2) assure consumers that organically produced products meet a consistent standard; and (3) facilitate commerce in fresh and processed food that is organically produced. The National Organic Program, which this rule proposes, is the result of the OFPA.

Applicability of Proposal

This proposal will directly affect three sectors of the organic industry: certifying agents, producers, and handlers. The OFPA provides for the collection of reasonable fees by USDA from producers, handlers, and certifying agents who participate in the national program. This proposal will impose direct costs on certifying agents in the form of a fee paid to the Federal Government for USDA accreditation. This proposal does not impose direct costs in the form of fees on producers and handlers. Certifying agents will establish a fee schedule for their certification services for producers and handlers. All three sectors are subject to indirect costs of compliance.

The term, "certifying agent," means the chief executive officer of a State or, in the case of a State that provides for the statewide election of an official to be responsible solely for the administration of the agricultural operations of a State, such official and any person (including private entities) who is accredited by the Secretary as a certifying agent for the purpose of certifying a farm or handling operation as a certified organic farm or handling operation. The term, "producer," means a person who engages in the business of growing or producing food or feed. The term, "handler," means any person engaged in the business of handling agricultural products, excluding final retailers of agricultural products that do not process agricultural products. Subpart B, section 205.101 in the proposed regulation provides information about exemptions and exclusions from certification.

According to the most complete data available to USDA's Agricultural Marketing Service (AMS), there are 49 certifying agents (36 private and 13 State) in the U.S. Over half of the private and State certifying agents certify both producers and handlers, while the others certify only producers. Over three-fourths of private and State certifying agents each certify fewer than 150 producers and 20 handlers. The number of certifying agents has remained fairly stable between 40 and 50 for some years, with entries and exits tending to offset each other. The National Organic Program staff anticipates that, in addition to the 49 domestic certifying agents, 10 foreign certifying agents may seek accreditation during the initial phase of the program.

It is more difficult to establish the number of organic producers. Organic farming was not distinguished from conventional agriculture in the 1997 Census of Agriculture. There are sources which give insight into the number of producers. The Organic Farming Research Foundation (OFRF), a California-based nonprofit organization, has conducted three nationwide surveys of certified organic producers from lists provided by cooperating certifying agents. The most recent survey applies to the 1997 production year.[1] OFRF sent its 1997 survey to 4,638 names and received 1,192 responses. Because OFRF did not obtain lists from all certifying organizations or their chapters (55 out of a total of 64 identified entities provided lists), their list count is likely an understatement of the number of certified organic producers. Note that the estimated number of organic producers includes only certified organic farms. Comments filed in response to the first proposal and studies indicate that the total number of organic farms is higher.

[1] Organic Farming Research Foundation. 1999. Final Results of the Third Biennial National Organic Farmers' Survey. Santa Cruz, CA.

Dunn has estimated the number of certified organic producers in the U.S.[2 3] Dunn's 1995 work, a USDA study, estimated the number of certified producers at 4,060 in 1994; this estimate was used in the first proposal. Dunn's 1997 work reported 4,060 certified organic farms in 1994 and 4,856 in 1995.

Data collected by AMS indicate that the number of organic farmers increased about 12 percent per year and the number of organic handlers increased at about 11 percent per year during the period 1990 to 1994. OFRF survey efforts indicate that growth has continued, although it is not clear whether the growth rate has changed. Similarly, growth in retail sales, the addition of meat and poultry to organic production, and the possibility of increased exports suggest that the number of operations has continued to increase. Lacking an alternative estimate of the growth rate for the number of certified organic producers, we use the average growth rate of about 14 percent from Dunn's 1997 study. The true rate of growth could be higher or lower. Applying the 14-percent growth rate to Dunn's estimate of certified producers in 1995 gives an estimate of 8,200 organic producers for 1999.

An adjustment is needed to account for the number of producers who are practicing organic agriculture but who are not certified and who would be affected by this proposal. We assume that the number of organic but not certified producers in 1999 is about 4,000. This assumption is based on very limited information about the number of registered but not certified organic producers in California in 1995. Thus, the total number of organic producers used in assessing the impact of the rule is 12,176 in 1999.

Little information exists on the numbers of handlers and processors. USDA has estimated that there were 600 entities in this category in 1994. In California, there were 208 registered organic processed food firms in 1995 and 376 in 1999, a growth rate of 20 percent.[4] We assume that this growth rate is applicable to the U.S. and project 1,250 handlers in 1999. Again, the rate of growth could be higher or lower.

SBA Definitions of Small Entities

Small business size standards, Standard Industrial Code (SIC) (13 CFR part 121), are developed by an inter-agency group, published by the Office of Management and Budget, and used by SBA to identify small businesses. These standards represent the number of employees or annual receipts constituting the largest size that a for-profit enterprise (together with its affiliates) may be and remain eligible as a small business for various SBA and other Federal Government programs.

Small businesses in the agricultural services sector, such as certifying agents, include firms with average annual revenues of less than $5 million (SIC Division A Major Group 7). Producers with crop production (SIC Division A Major Group 1) and annual average revenues under $500,000 are small businesses. Producers with livestock or animal specialities are also considered small if annual average revenues are under $500,000 (SIC Division A Major Group 2), with the exception of custom beef cattle feedlots and chicken eggs, which are considered small if annual average revenues are under $1,500,000. In handling operations, a small business has fewer than 500 employees (SIC Division D Major Group 20).

Based on SBA's small business size standards for the agricultural services sector, it is not likely that many, if any, of the 49 domestic certifying agents have annual revenue greater than $5 million. Based on anecdotal information, only a few private, for-profit, certifying agents might be categorized as a large business. All private, non profit, and State certifying agents would be considered small by SBA's standards. Even if State certifying agents do not exceed the revenue threshold, they would not be considered to be small entities under the Act if the agents are an arm of state government. Only government jurisdictions with populations under 50,000 are considered to be small entities under section 601(5) of the Act.

Based on SBA's small business size standards for producers, it is likely that almost all organic producers would be considered small. The OFRF survey asked for the producer's total gross organic farming income during 1997. Only 35 (less than 3 percent) of the survey respondents reported gross income greater than $500,000, the SBA's cutoff between small and large businesses. Over 70 percent reported gross income of less than $50,000. The OFRF survey does caution readers about potential survey "errors." It is particularly important to emphasize potential "non-response error," that is, it is unknown if those who responded to the survey accurately represent the entire population of certified organic growers. Also, some producers combine organic and conventional production on the same operation, some with total sales that may exceed $500,000. However, it is likely that a majority of organic producers would be considered small.

It is also likely that the vast majority of handlers would be considered small, based on SBA's small business size standards for handlers. Based on informal conversations with organic certifying agents, about 25 (about 2 percent) of the estimated 1,250 organic handlers have more than 500 employees. This includes firms that handle or process both organic and conventional foods.

Costs of This Proposal

Several requirements to complete this RFA overlap with the RIA and the PRA. In order to avoid duplication, we combine some analyses as allowed in section 605(b) of the Act. This RFA provides information specific to small entities, while the RIA or PRA should be referred to for more detail. For example, the RFA requires an analysis of the proposed rule's costs to small entities. The RIA provides an analysis of the benefits and costs of this proposal. This RFA uses the RIA information to estimate the impact on small entities. Likewise, the RFA requires a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule. The PRA section estimates the reporting and recordkeeping (information collection) requirements that would be required by this proposal from individuals, businesses, other private institutions, and State and local governments. The burden of these requirements is measured in terms of the amount of time required of program participants and its cost. This RFA uses the PRA information to estimate the burden on small entities.

The estimated direct costs of accreditation for certifying agents and certification for producers and handlers under the first proposal issued in December 1997 and this proposal are shown in table 1 and discussed in the following sections. More specific details regarding these costs are found in the RIA.

TABLE 1.—ESTIMATED DIRECT COSTS OF ACCREDITATION AND CERTIFICATION

	First proposal .		This proposal	
	1st year cost	2nd year cost	1st year cost	2nd year cost
Certifying Agents:				
Accreditation application fee	$640	$640	$0	$0
USDA administrative fee	2,000	2,000	0	0
Estimated site evaluation fee	3,500	[1]	1,530 to [3] 2,050	[1]
Annual review fee		[2]		[2] 190 to 760

[2] Dunn, Julie Anton. 1995. Organic Food and Fiber: An Analysis of 1994 Certified Production in the United States. U.S. Department of Agriculture, Agricultural Marketing Service.

[3] Dunn, Julie Anton. 1997. AgriSystems International Reports Certified Organic Production in the United States: Half a Decade of Growth. AgriSystems International: Wind Gap, PA.

[4] California Department of Health Services (DHS). 1995. Report on the Registration of California Organic Processed Food Firms. Sacramento: State of California. September 1999 figures obtained via personal communication with California DHS.

TABLE 1.—ESTIMATED DIRECT COSTS OF ACCREDITATION AND CERTIFICATION—Continued

	First proposal		This proposal	
	1st year cost	2nd year cost	1st year cost	2nd year cost
Total Fees	6,140	min. 2,640	min. 1,530	min. 190
Producers:				
Estimated certification fee [4]	413	413	800	730
USDA fee	50	50	0	0
Total Fees	463	463	800	730
Handlers:				
Estimated certification fee [4]	943	943	1,825	1,665
USDA fee	500	500	0	0
Total Fees	1,443	1,443	1,825	1,665

[1] Should certifying agents wish to become accredited in additional areas for which they have not been accredited previously, site evaluation fees will be charged.

[2] First proposal: Included in application and administrative fees. This proposal: Certifying agents are required to submit annual reports to USDA. Review of these reports is expected to range from 2 to 8 hours at an approximate rate of $95 per hour.

[3] During the first 18 months, site evaluation for initial accreditation will involve two reviewers. One reviewer would come from the Quality Systems Certification Program audit staff and would be familiar with ISO Guide 65 verification; the other reviewer would come from the National Organic Program staff and would be familiar with requirements of the organic program. The two would conduct the site evaluation jointly. We anticipate only one reviewer would be required after the 18-month transition period. The estimated site evaluation fee shown here includes per diem and travel costs for two reviewers plus miscellaneous charges related to accreditation. Site evaluations for smaller certifying agents are estimated to take 3 days, with 5 days for larger certifying agents.

For the first 18 months after implementation of the NOP, hourly rates will not be charged to certifying agents for accreditation. The estimated fee shown here includes only travel and per diem expenses. At an approximate rate of $95 per hour, hourly charges would add an estimated $4,560 to $7,600 for 2 reviewers during the first 18 months, and $2,280 to $3,800 for 1 reviewer after the first 18 months or for renewal of accreditation.

[4] First proposal: Estimated certification fees at that time were based on the average of fees charged by a representative group of certifying agents (private non-profit, private for-profit and a State agency).

This proposal: Estimated certification fees are calculated from a 1999 study by Graf and Lohr[5] which, for a selection of certification agents, provides certification costs for four hypothetical farm sizes: (1) Small Farm ("Family Farm"): 25 acres, $30,000 annual sales, 5 hours to certify; (2) Medium Farm ("Cottage Industry"): 150 acres, $200,000 annual sales, 6 hours to certify; (3) Large Farm ("Commercial Farm"): 500 acres, $800,000 annual sales, 8 hours to certify; and (4) Super Farm: 3,000 acres, $10,000,000 annual sales, 16 hours to certify. Our estimated certification fees only include those charged for small and medium farms, because most organic producers fall into these categories as defined by Graf and Lohr. In the 1997 OFRF survey, 90 percent of respondents had gross organic farming income less than $250,000, with 82 percent less than $100,000.

The average current certification cost for most organic producers is about $775 for the first year of certification ($416 for small and $1,136 for medium farms) and about $705 for subsequent years ($371 for small and $1,036 for medium farms). An estimated $25 is added to cover the costs associated with the National Organic Program for an estimated first year certification fee of $800 and subsequent year certification fee of $730 for producers. Larger producers could expect higher fees.

Because Graf and Lohr do not estimate certification fees for handlers, we estimate these fees by applying the December 1997 ratio of handler-to-producer certification fees, 2.28, to the estimated first and subsequent year certification fees for producers, resulting in fees of $1,825 and $1,665, respectively.

Direct Costs to Certifying Agents

We have identified 36 private certifying agents and 13 State programs providing certification. These 49 domestic entities are considered likely applicants during the first 12 months, as are an estimated 10 foreign certifying agents. An unknown number of new entrants to the certifying business may also apply. However, over the last 10 years, the number of certifying agents does not appear to have grown significantly, with the net effect of entries and exits maintaining a population of U.S.-based certifying agents at about 40 to 50. Of the 49 domestic certifying agents, based on information discussed previously, we estimate that the 36 private certifying agents are small.

In order to identify the certifying agents that might be expected to face more significant impacts as a result of this proposal, we analyzed the amount of revenues from certification fees received by certifying agents. Total certification fees collected by the certifying agents in 1994 ranged from about $2,500 to about $400,000, with most certifying agents clustered around the low or high end of this range. This amount is based on information collected by AMS from a sample of 16 private and State certifying agents for certification fees collected in 1994. To determine a cutoff point for small certifying agents, the State certifying agents were eliminated from the sample because these agents are an arm of State government and are not considered small entities. Of the remaining 11 private certifying agents, 6 (or 55 percent) collected less than $25,000 each in total certification fees, and the other 5 (45 percent) each collected more than $200,000. Based on this information and knowledge of the organic industry, for purposes of analyzing the cost of accreditation, we estimate that about 55 percent of private certifying agents are small with total annual revenue from certification of less than $25,000.

Certification fees probably do not constitute total income for most private certifying agents and, thus, are not a complete measure of economic size. Some certifying agents also earn revenue from a number of other sources, such as sale of publications, membership dues, training workshop and conference fees, farmers markets, grants, or donations.

Certifying agents will be assessed for the actual time and travel expenses necessary for the National Organic Program to perform accreditation services. The National Organic Program will charge the same hourly fees as are charged for the voluntary, fee-for-service program provided by AMS to certification bodies requesting conformity assessment to the International Organization for Standardization (ISO) Guide 65, "General Requirements for Bodies Operating Product Certification Systems." We expect that at the time the National Organic Program's final rule is implemented, the fees will be approximately $95 per hour, with higher overtime and holiday rates. Certifying agents will be charged for travel, per diem, and other related costs associated with accreditation. Applicants for accreditation will be required to pay at the time of application a nonrefundable fee of $500, which is applied to the applicant's fee for services account. This fee is credited against

[5] Graf, Anita and Luanne Lohr. 1999. Analysis of certification program costs. Working Paper, Fund for Rural America project, Market Development for Organic Agriculture Projects, Grant No. 97–36200–5.

any subsequent costs of accreditation arising from the site evaluation.

During the first 18 months after the National Organic Program has been implemented, USDA will not impose hourly charges on certifying agents. The direct costs for certifying agents to obtain accreditation will be limited to per diem and transportation costs for the site evaluation, which is required every 5 years. We estimate these costs to be $1,530 for a small certifying agent and $2,050 for a larger certifying agent. These estimates are based on, for small and larger certifying agents, two reviewers with 3 and 5 days of per diem, $500 to $600 in transportation costs, and $50 in miscellaneous charges related to accreditation.[6] In subsequent years, certifying agents will be required to submit an annual report. Review of this report is anticipated to range from 2 to 8 hours at the ISO Guide 65 hourly rate. If certifying agents wish to become accredited in additional areas for which they were not accredited previously, site evaluation fees will be charged.

After the first 18 months of the National Organic Program, USDA estimates that the costs of a site evaluation visit, required every 5 years, could be $3,070 for small certifying agents and $4,850 for larger certifying agents. These estimates are based on, for small and larger certifying agents, one reviewer with 3 and 5 days of per diem, $500 to $600 in transportation costs, $50 in miscellaneous charges related to accreditation, and 24 to 40 hours (3 to 5 work days) at an anticipated maximum hourly rate under ISO Guide 65 of $95. Higher hourly rates will be charged for overtime and for work on holidays.

The cost of a site evaluation will vary with the cost of travel from the auditor's work station to the applicant's place of business. Auditors live in different parts of the country, and travel costs might be reduced when the distance traveled is reduced. The lowest cost airfare would be used whenever possible. In some cases, site evaluations might be grouped geographically in order to reduce travel expenses. The per diem rate will also vary depending on the rate set for the certifying agent's location as established by the General Services Administration.

Several factors will influence the amount of time needed to complete an accreditation audit. An operation in which documents are well organized and that has few nonconformities within the quality system will require less time for an audit than an organization in which documents are scattered and there are many nonconformities.[7] Similarly, in a follow up audit, operations that lack organization in their documents and that had a large number of nonconformities during previous audits will require a greater amount of time. The scope of a follow up audit is to verify the correction of nonconformities and to evaluate the effectiveness of the corrections. Certifying agents are able to control these cost factors by making certain that documents are well organized and by educating themselves about quality systems.

The complexity of an certification agency's organization also will affect the time needed to complete an audit. An agency with a central office in which all certification activities take place will require less time for document review and site evaluation than a chapter organization or a business structured so that responsibility for making certification decisions is delegated outside of the central office. In the latter cases, the auditors' document review would require additional time and site evaluation that would extend from the central office to one or more of the chapters or to the site to which the certification decision making is delegated.

Other factors determine the amount of time needed to complete an accreditation audit. For an agency with numerous clients, auditors may need to spend more time reviewing client files or examining business operations than they would have to spend for a smaller agency. Audit of an agency with a large number of processor clients may require an extended amount of time to follow audit trails, confirm that organic ingredients remain segregated from nonorganic ingredients, and establish that foreign-produced ingredients originate from approved entities. Finally, the complexity of the agricultural practices certified could influence the amount of time necessary to complete an accreditation audit. An agency whose certification covers only producers who grow and harvest one crop per field per year, such as wheat or sugar beets, could quickly be audited. An agency whose producers grow several different crops per field per year or an agency that certifies producers of crops and livestock as well as handlers would require a greater amount of time.

All of these factors will impact both small and large certifying agents. A small certifying agent could be assumed to have a less complex organization or have fewer clients, and, thus, potentially less time would be necessary for review. However, other factors, such as the degree of paperwork organization or the complexity of the agricultural practices certified, may influence the time needed for review for any size of business.

Comments from the first proposal indicate that the average accreditation cost for a certifying agent may range from $3,000 to $5,000 per year for small to medium-size certifying agents to less than $10,000 per year for the largest certifying agents.

Currently, relatively few certifying agents have third party accreditation because accreditation of certifying agents is voluntary. Fetter reports that in a sample of 18 certification programs, selected to include six large, private programs, six smaller private programs, and six State programs, four programs were accredited and one had accreditation pending.[8] All of these were large private certifying agents. Three of the certifying agents identified by Fetter as accredited requested ISO Guide 65 assessments by USDA and have been approved for selling organic products into the international market. Those certifying agents currently accredited by third parties will likely pay less for USDA accreditation because their documents are organized and they have fewer nonconformities.

Those certifying agents who have been operating without third party accreditation will face new costs—the costs of accreditation—under this proposal. Compared to the direct costs of $3,000 to $5,000 per year indicated by the commenters, the direct costs of USDA accreditation will be smaller, with estimated site evaluation fees (covering 5 years) ranging from $3,070 to $4,850 for the first year and an annual review fee ranging from $190 to $760 for subsequent years. Furthermore, the direct costs would be substantially less for those certifying agents obtaining accreditation during the first 18 months while USDA does not impose an application fee or hourly charges and limits direct costs to travel and per diem costs.

It is expected that all certifying agents will set their fee schedule to recover costs for their certification services, including the costs of accreditation. The larger the number of clients per certifying agent, the more fixed costs can be spread out. It is possible, however, that small certifying agents could be significantly impacted by this proposal and may not be able to continue in business from a financial standpoint.

Projected Reporting, Recordkeeping, and Other Compliance Requirements of Certifying Agents

In addition to the direct costs, the regulation will impose administrative costs on certifying agents for reporting, recordkeeping, residue testing, and other compliance requirements. The actual amount of the additional administrative costs that would be imposed by the final rule is expected to be different for those entities that would begin their activities only after the national program is implemented. Certifying agents that currently are active in the organic industry already perform most of these administrative functions; therefore, the additional costs to them would depend upon the extent to which their current practices are different from the requirements of the final regulation. Projected reporting, recordkeeping, and other compliance requirements of certifying agents are discussed in greater detail in the PRA and the RIA.

[6] During the first 18 months, site evaluation for initial accreditation will be conducted jointly by two reviewers. Two reviewers offers: (1) anticipated faster turn-around; (2) different areas of expertise—one reviewer would come from the Quality Systems Certification Program audit staff and would be familiar with ISO Guide 65 verification, while the other reviewer would come from the National Organic Program staff and would be familiar with the requirements of the program; and (3) consistency with the organic industry's desire to have reviewers from both areas of expertise during ISO Guide 65 assessments. AMS would consider sending one reviewer, rather than two, for the site evaluation of small certification agents if an individual possessing both reviewing skill and knowledged of the NOP is available. We anticipate only one reviewer would be required after the 18-month transition period.

[7] Adequate advance notice will be given to certifying agents to allow them the opportunity to organize their records prior to the audit and minimize the costs of accreditation.

[8] Fetter, Robert T. 1999. Economic Impacts of Alternative Scenarios of Organic Products Regulation. Senior Honors Thesis. University of Massachusetts, Amhearst, MA.

Costs to Producers and Handlers

Under this proposal, USDA will not impose any direct fees on producers and handlers. Certifying agents will establish a fee schedule for their certification services that will be filed with the Secretary and posted in a place accessible to the public. Certifying agents will provide all persons inquiring about the application process with a copy of their fees. The certifying agent may only charge those fees that it has filed with the Secretary. Furthermore, the certifying agent will provide each applicant with an estimate of the total cost of certification and an estimate of the annual costs of updating the certification. However, the certifying agent may require applicants to pay at the time of application a nonrefundable fee of no more than $250 which must be applied to the applicant's fee for services account.

Currently, supply and demand for certification services determine the fees charged in most areas. Some States charge minimal fees for certification and instead subsidize operating costs from general revenues. According to separate studies by Fetter, and Graf and Lohr, the majority of certifying agents structure their fee schedules on a sliding scale based on a measure of size, usually represented by the client's gross sales of organic products but sometimes based on the acres operated. Some certifying agents charge an hourly rate for inspection and audit services.

Graf and Lohr have applied fee schedules provided by nine certifying agents to four hypothetical farms—small, medium, large, and a super farm. They define "small" as a 25-acre farm with annual sales of $30,000 that would take 5 hours to certify. Note that our alternative definition of small (under $5,000) is different. Table 2 shows the total first-year cost and subsequent-year cost for certification for small farms; the RIA shows detail on other size farms.

TABLE 2.—CERTIFICATION COSTS AMONG A SELECTION OF CERTIFYING AGENTS

[For a small farm: 25 acres, $30,000 annual sales, 5 hours to certify]

Certifying agent	Total cost to certify in first year	Total cost to certify in subsequent years
California Certified Organic Farmers	$750	$425
Farm Verified Organic	585	510
Florida Certified Organic Growers and Consumers	325	325
Northeast Organic Farming Association—Vermont	335	300
Oregon Tilth Certified Organic:		
—Inside Oregon	608	454
—Outside Oregon	568	424
Organic Crop Improvement Association:		
—Wisconsin chapter	315	290
—Virginia chapter	258	233
Texas Department of Agriculture	90	90
Washington State Department of Agriculture	330	330
NutriClean/Scientific Certification Systems	n/a	700
Average cost	416	371

The Texas Department of Agriculture program is the low-cost certifying agent. The high-cost certifying agent differs from first-year to subsequent-year certification. Graf and Lohr's study indicates that even small farms require significant time for the certification process and this time does not increase proportionately as farm size increases. None of these certification programs mentions costs for residue testing which the National Organic Program will require in the form of preharvest testing when there is reason to believe that agricultural products have come in contact with prohibited substances. Preharvest testing is expected to be infrequent. Certifiers will recover the costs of preharvest testing through explicit charges to the producer whose crop is tested, or through a generally higher fee structure that spreads the expected costs of tests over all clients.

Certifying agents will continue to set their own fee schedules under the organic program. Certifying agents will have to set fees to cover any net additional costs of doing business under the National Organic Program. Accreditation and administrative costs are incremental costs to existing certifying agents' businesses. Some certifying agents might drop their third party accreditation saving perhaps $3,000 to $5,000 per year, but most certifying agents are not currently paying for accreditation.

This proposal imposes no requirements that would cause certifying agents that are presently using a sliding scale type fee schedule to abandon their current fee system. Certifying agents could recover their net additional costs by increasing their flat fee component, their incremental charges, or both. Because accreditations are renewed only every 5 years, certifying agents will have 5 years to recover their net new costs. Certifying agents who become accredited during the first year of the program would have fewer direct costs to recover, because they will not be charged the application fee and hourly charges for accreditation services.

The OFPA established a small farmer exemption from certification and submission of organic plans for small producers with a maximum of $5,000 in gross sales of organic products. For purposes of the exemption, the OFPA defines a "small farmer" as those who sell no more than $5,000 annually in value of agricultural products. In this proposal, we have clarified that the exemption applies to those who sell no more than $5,000 annually in value of organic products.[9] According to the OFRF survey, 27 percent of currently certified farms that responded to the survey would fall under this exemption. This percentage does not take into account those organic farms that are not currently certified by a private or State certifying agent. A study of California organic farms found that, of all organic farms[10] in 1994–95, about 66 percent have revenues less than $10,000.[11] If California is representative and the distribution within the sub-$10,000 category is uniform, then a third of the farms would be classified as small for purposes of the statutory exemption with annual sales less than $5,000. Based on the California study and the OFRF survey results, we estimate that between 25 and 33 percent of organic producers are small and would qualify for exemption from the certification requirements.

We have estimated that there are between 3,000 and 4,000 small organic producers that will be exempt from certification. These producers would be required to comply with

[9] We asked for comments on the first proposal as to whether the current statutory limitation of $5,000 for exemption from certification should be raised to $10,000 or to another amount and why such an increased monetary limitation for exemption from certification would be appropriate. Few commenters offered recommendations as to a maximum sales volume to exempt producers. Amounts ranged from $2,000 to $50,000, with a few suggesting $10,000 and $20,000 exemptions. These proposed exemption levels and justifications in comments received are not sufficiently consistent enough for us to recommend changing the statute requirement of the $5,000 maximum sales volume exemption.

[10] California State law requires organic farmers to register with the State. Certification is voluntary at the current time.

[11] Klonsky, Karen, and Laura Tourte. 1998. Statistical Review of California's Organic Agriculture, 1992–95. Report prepared for the California Department of Food and Agriculture Organic Program. Cooperative Extension, Department of Agricultural Economics, University of California, Davis.

the production and handling standards and labeling requirements set forth under the National Organic Program. We anticipate that this exemption will be used primarily by small market gardeners and hobbyists who sell produce and other agricultural products at farmers markets and roadside stands to consumers within their communities. By being exempt from certification, the current certification costs (table 2) estimated at an average $416 for the first year and an average $370 for subsequent years have been eliminated.

Exempt producers will be allowed to market their products as organically produced without being certified by a certifying agent. Products marketed by exempt producers cannot be represented as certified organic or display the USDA organic seal. Products produced or handled on an exempt operation may be identified as organic ingredients in a multiingredient product produced by the exempt operation, but they may not be identified as organic in a product processed by others. These limitations may discourage some small producers from seeking exemption, who instead may choose to become certified. In this case, the costs of certification would apply. The value associated with having organic certification may outweigh the costs of certification.

Those currently receiving voluntary certification will likely see a modest increase as the certifying agent passes on its cost incurred under the National Organic Program. Those not currently receiving certification and producing over $5,000 annually in organic products will be required to become certified, and they will incur the actual costs of certification.

We have estimated that there about 98 percent of the 1,250 organic handlers are small. A handling operation or a portion of a handling operation is exempt from certification requirements if it has annual gross sales of less than $5,000; is a retail food establishment that handles organically produced agricultural products but does not process them; handles agricultural products that contain less than 50 percent organic ingredients by weight of finished product; or does not use the word, "organic," on any package panel other than the information panel if the agricultural product contains at least 50 percent organic ingredients by weight of finished product. A handling operation or specific portion of a handling operation is excluded from certification if it handles packaged certified organic products that were enclosed in their packages or containers prior to being acquired and remain in the same package and are not otherwise processed by the handler, or it is a retail food establishment that processes or prepares on its own premises raw and ready-to-eat food from certified organic products. Otherwise, to be certified organic, handlers must pay for certification fees estimated at $1,800 per year and fulfill recordkeeping requirements.

In order to identify handlers that might be expected to face more significant impacts as a result of this proposal, we attempted to analyze handlers' revenue from organic sales. Sales data indicate that gross sales of organic production total less than $500,000 per firm for most certified handlers. Information from the California DHS, where State law requires organic processors to register, gives some indication of the size distribution. Of the 208 processors registered with the State in 1995, 80 firms (38 percent) reported gross sales of $50,000 or less, and 50 firms (24 percent) had gross sales exceeding $500,000. In mid-September 1999, 376 processors were registered with the State, with 107 firms (28 percent) reporting gross sales of $50,000 or less and 112 firms (30 percent) reporting gross sales exceeding $500,000. We use this California information to estimate that 25 to 30 percent of handlers have gross sales of $50,000 or less and could be significantly impacted by this proposal. Information needed to estimate the number of exempt or excluded handlers is not available.

Some States, such as Texas and Washington, charge producers and handlers nominal fees for certification, and it is possible that more States might provide certification services as the National Organic Program is implemented. Other States, such as Minnesota, have cost-share programs to help offset costs for organic producers.

Projected Reporting, Recordkeeping, and Other Compliance Requirements for Producers and Handlers

In addition to the fees for certification, the regulation will impose administrative costs on producers and handlers for reporting, recordkeeping, residue testing, and other compliance requirements. The actual amount of the additional administrative costs that would be imposed by the final rule is expected to be different for those entities that would begin their activities only after the national program is implemented. Producers and handlers who currently are active in the organic industry already perform most of these administrative functions; therefore, the additional costs to them would depend upon the extent to which their current practices are different from the requirements of the final regulation. Projected reporting, recordkeeping, and other compliance requirements of certifying agents are discussed in greater detail in the PRA and the RIA.

Federal Rules

No other burdens are expected to fall upon the organic industry as a result of overlapping Federal rules. This proposed regulation would not duplicate, overlap or conflict with any existing Federal rules. In preparing this proposed regulation, AMS consulted other Federal agencies such as the Food and Drug Administration (FDA), the Environmental Protection Agency (EPA), the Bureau of Alcohol, Tobacco and Firearms (ATF), and the USDA's Food Safety and Inspection Service (FSIS) to ensure that this proposed regulation would complement existing regulations.

Alternatives to This Proposal

We believe that our proposed regulation could have a significant impact on a substantial number of small businesses. However, we have considered several options with the intention of mitigating negative economic impacts of the fees. We did not consider alternatives, beyond the previously discussed exemptions, that would mitigate the indirect costs of this rule on small entities. The following options were considered by AMS prior to and during the development of this proposal:

Option 1: First Proposal Issued December 1997

The first proposal suggested a fee for direct services model which combined a fixed fee for all farmers, handlers, and certifying agents, with a variable fee for certain direct services provided by AMS in the accreditation of certifying agents.

Table 1 includes estimated direct costs of accreditation and certification for the first proposal and this proposal; the fees in this proposal are discussed in prior sections of this RFA. The fee provisions in this proposal have been changed significantly, due in large part to comments received regarding the first proposal.

In overall design, the first proposal is similar to this proposal. USDA would accredit certifying agents who would in turn certify producers and handlers. USDA proposed to charge certifying agents a $640 application fee, costs for a site evaluation fee that were estimated at $3,500, and a $2,000 administrative fee. Producers would be charged a $50 USDA fee in addition to the fees imposed by the certifying agent. Handlers would be charged a $500 USDA fee on top of the certifying agent's fees. The fee structure was intended to recover the full costs of operating the National Organic Program, which was estimated at $1 million annually. Producers with $5,000 or less in annual gross sales of agricultural products and handlers with annual gross sales of less than $5,000 were exempt from certification as provided for in the OFPA.

The OFPA permitted but did not obligate USDA to charge fees. The first proposal sought to set fees to recover the full costs of the National Organic Program. Public comment generally stressed that the fees were too high. Most certifying agents have operated without third party accreditation. Thus, USDA fees were a substantial increase in the costs of doing business for most certifiers. For producers the direct fee of $50 was a 12 percent increase over the estimated average fee paid for certification. For certifying agents the $500 fee would have been a 53 percent increase over estimated average certification fees. To the extent the program raised certifying agent costs, these costs would have been passed through to producers and handlers. Commenters stated that many certifying agents had few clients and to pass through the estimated direct costs of accreditation ($6,140) would make the costs of certification higher than producers could afford.

Comments were received opposing fee provisions in the first proposal. Most of these commenters expressed the belief that the proposed fees would price small farmers, handlers, and certifying agents out of the organic industry. Many commenters stated that the proposed fees favored large farming operations and suggested a sliding scale fee system, rather than the flat fee system discussed in the first proposal, to

accommodate the economic needs of small farmers, handlers, and certifying agents. Most suggested that small farmers and processors be exempt from the payment of fees. A more comprehensive review of the comments appears in subpart G entitled "Administrative" of this proposal.

Additional comments were received that specifically referred to the section entitled "Regulatory Flexibility Act and Effects on Small Businesses" in the first proposal. Most of these commenters expressed the belief that costs were understated and benefits were overstated. Commenters thought the proposed fees were excessive, unacceptable, and burdensome and would price many small farmers, handlers, and certifying agents out of the organic industry. Some thought that this appeared to be the actual intent of the first proposal. They also supported a sliding scale fee system, rather than the flat fee system originally proposed. Some stated that the $5,000 exemption level was much too low. Producers objected to having to pay the certification and inspection fees prior to knowing whether they would actually set a crop, if the crop would grow, or what percentage of the crop might be harvested.

Compared to this proposal, the first proposal would have been more costly to the organic industry in terms of direct costs for accreditation, and to producers and handlers in terms direct fees and the costs which certifying agents would have attempted to pass through. However, the current proposal has not set fees at levels to recover all program costs and during an 18 month transition period will not require application fees or charge for hourly services. Costs that are not recovered through fees will be covered by appropriated funds, meaning that taxpayers at large will bear some of the costs of the proposed organic program. Thus, in terms of fees and other direct costs, the first proposal was more burdensome on the organic industry.

The first proposal also contained new information collection requirements, a description of those requirements, and an estimate of the annual economic burden on the organic industry. We received responses specifically referring to the information collection requirements of the first proposal. Among the comments made were that the requirements would be unaffordable by small businesses and that paperwork requirements should be kept small, simple, and to a bare minimum, especially for small producers.

Recordkeeping requirements for certifying agents in the first proposal that required certifying agents to maintain all records concerning their activities for 10 years have been changed to reduce the burden. Commenters expressed concern that this requirement was excessive and unnecessary. We agree and are instead proposing that there be three categories of records with retention periods: (1) Records created by certifying agents regarding applicants for certification and certified operations to be maintained 10 years, consistent with OFPA requirement for maintaining all records concerning activities of certifying agents; (2) records obtained from applicants for certification and certified operations to be maintained 5 years, the same as OFPA requirement for the retention of records by certified operations; and (3) other records created or received by certifying agents to be maintained for five years.

Option 2: Fee per Certification Model

A fee per certification model was considered but not used. This model would have based accreditation fees on the numbers of farmers and handlers certified. Specifically, certifying agents would pay a fee to USDA for each certification performed. The smallest one-half of certifying agents, who certify about 10 percent of organic operations, would pay about 10 percent of the estimated costs associated with accreditation. The largest 10 percent of certifying agents, who certify about 45 percent of organic operations, would pay about 45 percent of accreditation costs. The remaining 40 percent of certifying agents in the middle would pay 45 percent of the costs. The fee per certification would be fixed, regardless of the size of the operation being certified. This feature has the potential to create a barrier to market access for the smaller operations. Certifying agents who charge farmers and handlers for certification based on size and scope of the operation would maximize their profits by certifying only the larger farmers and handlers from whom they would realize a higher return. If certifying agents were to discriminate in this manner in favor of larger operations, smaller farmers and handlers would find the certification services available to them to be relatively limited and possibly more expensive than under the fee for direct services model that includes a variable fee for site visits. A fixed fee per certification also would not take into account, in the distribution of costs, the large difference in size between processors and primary producers. Processors are generally much larger than primary producers in terms of both total output and total revenue.

Option 3: Exemption of Small Certifying Agents From Accreditation

Small certifying agents (those with annual revenues of $25,000 or less) may not have the resources to meet all of the requirements of the rule, such as accreditation fees, administrative and personnel requirements, and conflict of interest restrictions, based on their current structure and revenues. Therefore, exempting the smallest certifying agents from the accreditation requirement, similar to small producers being exempt from certification requirements, could mitigate any potential adverse impact of the rule on this group. This option, however, would require a legislative amendment to the OFPA.

The exemption of the smaller certifying agents from accreditation would carry with it many of the limitations resulting from the absence of Federal oversight. International trade would likely be limited to products certified by accredited certifying agents. Protecting domestic consumers from inappropriate organic claims on the labels of products certified by exempt certifying agents would likely lead to greater confusion over labels in the marketplace. Federal enforcement agencies such as the FDA, the ATF, and FSIS might wish to distinguish accredited certifying agents from those certifying agents who are exempt, perhaps by requiring accredited certifying agents' clients to include the USDA seal on their product labels.

One of the purposes of the OFPA described in the statute is to assure consumers that organically produced products meet a consistent standard. Without Federal oversight of certifying agents, it would be difficult to ensure that one national standard of production and handling for agricultural products would be employed. The result could be the continuation of reciprocity agreements between small, exempt certifying agents and large accredited ones. This could result in a cost for small entities, while providing less benefit to certified producers and handlers than would be provided them by accreditation of all certifying agents.

We request comments from all interested parties, particularly small businesses, as to whether a small certifier exemption would be beneficial or practical given the constraints explained in this option.

Option 4: This Proposal

The new proposal includes provisions that will mitigate the impact of the National Organic Program, especially for small businesses. Fixed administration fees for producers, handlers and certification agents have been eliminated. The fixed application fee for accreditation also has been eliminated. This will positively affect small producers and handlers because fixed fees expend a larger percentage of a smaller operation's total revenue.

As indicated earlier in this discussion, certifying agent evaluation fees would reflect actual costs for the time and travel required to do the evaluation. It is anticipated that smaller certification agents would benefit because they are small and less complex than larger certification agents. The proposed accreditation costs would be proportional to the actual time required to perform the service. Several small operations could be grouped by area to reduce travel expenses of the evaluators.

The new labeling requirements that allow the use of a certification agent's seal on the principal display panel and on the information panel of processed product labels also may benefit small operations. Certification agents that have an established consumer base may benefit by displaying their identifying seal. Small certification agents, whose clients more likely produce ingredients for processed products, could also be identified and thus share in this benefit. Certification agents also may wish to expand their operation by offering verification of truthful labeling claims which will be allowed under this proposal.

This proposal has three elements of flexibility that are advantageous to small entities: performance-based production and handling standards and certifying agent requirements; production and handling standards that contain a range of allowable practices; and temporary variances.

The standards in this proposal are performance standards based on the results of a management system, rather than prescriptive or design standards that prescribe specific technology or a precise

procedure for compliance. Performance standards allow for flexibility in compliance, which is especially important to organic farmers, handlers and certifying agents with limited resources. Performance standards promote innovation and the development of new technologies which would help the industry as a whole be more efficient. Finally, they provide a less costly means of compliance than design standards. Small entities, in particular, benefit because compliance with performance standards allows for the adaptation of existing systems without costly capital investment.

This proposal allows for flexibility by providing a range of production and handling practices that can be used to maintain the organic integrity of the operation. The use of an allowed practice or substance must be described in the organic plan as a record for consideration by the certifying agent during a certification review. The proposal provides temporary variances in the case of natural disasters, damage from wind, floods and the like, and for research trials. The benefit of variances is that a producer or handler would not lose its investment in an organic operation because of certain conditions that are beyond the producer or handler's control. Variances also enhance performance standards by allowing additional innovation and experimentation. This is especially important to producers and handlers who depend on the organic price premium.

Conclusion

USDA has identified the entities that may be affected by this proposal and has analyzed the anticipated impacts of the proposal on them based on our knowledge of the industry and limited data. We have drawn on industry studies, including studies completed since the first proposal was published in 1997, as well as information provided in comments on the first proposal. However, we lack data to thoroughly and quantitatively describe the existing organic industry and quantitatively analyze the effects of this proposal.

Whether using SBA's small business size standards by SIC or the alternative definitions created for this analysis, we believe that this proposal could have a significant impact on a substantial number of small businesses. Even with the flexibility proposed in the regulation and the expanded market opportunities brought about by implementation of the National Organic Program, some small certifying agents may choose not to become accredited to provide certifying services, and some small producers and handlers may choose not to continue being certified organic because the proposed fees would be passed down to them as certification fees. We invite comments about the expected benefits and costs to small entities as presented in this analysis. Specifically, we invite comments regarding the impact of the proposed National Organic Program on small certifying agents, producers, and handlers so that we might uncover potential unintended negative impacts on small entities.

The proposed structure of user fees outlined in this proposal attempts to minimize the burden of administrative costs which will be assumed by small-scale organic certifying agents and the producers and handlers who use these certification services. Certifying agents already performing organic certification services in a State or private capacity on the date that the proposed national accreditation program for organic certification is implemented will not be required to pay the administrative costs of applying for initial national accreditation status; the administrative costs involved in evaluating the accreditation status of these agents will be absorbed by a portion of the National Organic Program operating budget appropriated by Congress. They will be required to pay travel expenses for the reviewers. New applicants seeking national accreditation for organic certification services will be charged a fee to cover the administrative costs of evaluating their suitability for accreditation, their application fees will be structured to reflect the actual hourly costs of having an AMS evaluator conduct a site visit (including travel time to and from the evaluator's duty station and per diem travel expenses). The departures from the first proposal—which would have imposed a uniform flat fee on all applicants for national accreditation—along with the adoption of an application fee structure which attempts to relate the imposition of fees to the actual costs involved in administering the national accreditation program, should contribute to a less burdensome and more equitable distribution of administrative costs across all segments of the organic industry.

Appendix D—Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506 and 3507) is designed to minimize the burden of reporting and recordkeeping (information collection requirements) required by Federal regulations on individuals, businesses, other private institutions, and State and local governments. The burden is an estimate of the amount of time and the cost required of program participants to fulfill the information collection requirements.

Information collection requirements must have Office of Management and Budget (OMB) review and approval before they can become effective. They must also be made available for public comment, and the comments become part of the public record. This notice requests comments on the proposed information collection requirements of this proposal.

Title: National Organic Program.

OMB Number: New collection.

Expiration Date of Approval: Three years from date of approval.

Type of Request: New.

Abstract: The Organic Foods Production Act (OFPA) of 1990 mandates that the Secretary develop a National Organic Program (NOP) to accredit eligible State program's governing State officials or private persons as certifying agents who would certify producers or handlers of agricultural products that have been produced using organic methods as provided for in the OFPA. This regulation is proposed: (1) To establish national standards governing the marketing of certain agricultural products as organically produced products; (2) to assure consumers that organically produced products meet a consistent standard; and (3) to facilitate interstate commerce in fresh and processed food that is organically produced.

The OFPA was requested by the organic community because of problems encountered in the marketing of organic products. First, there was fraudulent use of the term, "organic," resulting in the mislabeling of products, caused in part because many consumers are willing to pay premium prices for organic foods. Second, there was a lack of uniformity in standards defining organic production, causing trade disruption and confusion among buyers, sellers, and users of organic products. Third, there was constraint on market growth due to the prohibition on labeling meat and poultry products as organic. After implementation of the NOP, any agricultural product labeled "organic" will have to be from a production or handling operation that is certified by a certifying agent who is accredited by the U.S. Department of Agriculture (USDA).

A proposed rule to implement the OFPA was published in December 1997. It contained information collection requirements, an estimate of the annual economic burden on the organic industry, and a request for comments about the burden. A few general comments were received about the burden and they were considered when this proposal was prepared. Also taken into account was other information about existing industry practices and documents, the Initial Regulatory Flexibility Analysis that is discussed in the section entitled "Regulatory Flexibility Act and the Effects on Small Businesses," and the Regulatory Impact Assessment (RIA) that is discussed in the section entitled "Executive Order 12866." The numbers of entities affected by this proposal are estimated in the RIA. The RIA is attached as an appendix to this proposal.

Reporting and recordkeeping are essential to the integrity of the organic certification system. They create a paper trail that is a critical element in carrying out the mandate of the OFPA. They serve the Agency mission, program objectives, and management needs by providing information on the efficiency and effectiveness of the program. The information affects decisions because it is the basis for evaluating compliance with the OFPA and the regulations, for administering the program, for management decisions and planning, and for establishing the cost of the program. It supports administrative and regulatory actions in response to noncompliance with the OFPA and the regulations.

In general, the information collected will be used by USDA, State program's governing State officials, and certifying agents. It will be created and submitted by State and foreign program officials, peer review panel members, accredited certifying agents, organic inspectors, certified organic producers and handlers, those seeking accreditation or certification, and parties interested in changing the National List. Additionally, it will necessitate that all of these entities have procedures and space for recordkeeping.

The burden on each entity is discussed below. One major estimate made about each entity is the number of entities likely to participate in the NOP. The information collection burden attempts to incorporate the burden that will be in addition to the burden that current organic marketers have with the burden required of new entrants into the field.

USDA. USDA will be the accrediting authority. USDA will accredit domestic and foreign certifying agents who will certify domestic and foreign organic producers and handlers, using information from the agents documenting their business operations and program expertise. USDA will also permit State program's governing State officials to establish their own organic certification programs after the programs are approved by the Secretary, using information from the States documenting their ability to operate such programs and showing that such programs meet the requirements of the OFPA and the regulations.

States. State program's governing State officials may operate their own organic certification programs. State officials will obtain the Secretary's approval of their programs by submitting information to USDA documenting their ability to operate such programs and showing that such programs meet the requirements of the OFPA and the regulations. More than half of the States currently have some standards governing the production, handling, or labeling of organic food and 13 States have organic certifying programs. These programs require reporting and recordkeeping burdens similar to those required by the NOP. It is unknown at this time how many States, if any, will establish their own organic certification programs pursuant to the OFPA and the regulations. *Estimates:* 13 States will operate their own certification programs. The annual burden for each State will be an average of 52.308 hours or if calculated at a rate of $27 per hour, (rounded up to the next dollar), it would be $1,413.

Peer review panels. Panels will assist the Agricultural Marketing Service (AMS) Administrator in evaluating applicants for accreditation as certifying agents. Individuals will apply to USDA for membership in a pool from which the panels are selected, submitting to USDA information documenting their qualifications to conduct such reviews. This will be a new burden for those serving on the panels. *Estimates:* 40 people will participate in peer review panels. The annual burden for each panel member will be an average of 10 hours or if calculated at and $27 per hour, it would be $270.

Certifying agents. Certifying agents may be State program's governing State officials, private entities, or foreign entities who are accredited by USDA to certify domestic and foreign producers and handlers as organic in accordance with the OFPA and the regulations. Each entity wanting to be an agent will seek accreditation from USDA, submitting information documenting its business operations and program expertise. Accredited agents will determine if a producer or handler meets organic requirements, using detailed information from the operation documenting its specific practices and on-site inspection reports from organic inspectors. *Estimates:* 59 entities are expected to apply for certification (13 State programs, 36 private entities, 10 foreign entities). The annual burden for each State program will be an average of 695.428 hours or if calculated at $18,778. The annual burden for each private or foreign entity will be 699.678 hours or $27 per hour (rounded up to the next dollar) it would be $18,893.

Administrative costs for reporting, disclosure of information, and recordkeeping are expected to vary among certifying agents. Entities which begin their activities only after the national program is implemented would be expected to incur the greatest cost as they set up an operation that conforms to the OFPA and the regulations. For agents who are currently active in the organic industry, follow ISO guidelines, and already perform many of these administrative functions, costs will vary depending upon the extent to which their current practices are different from requirements in the OFPA and the regulations. Agents will be expected to provide the public with information concerning their clients. Efforts were made to incorporate existing industry practices and documents into this proposal. A list of several proposed administrative requirements and the probable resources required for compliance is included in the Regulatory Impact Assessment.

When an entity applies for accreditation as a certifying agent, it must provide a copy of its procedures for complying with recordkeeping requirements (§ 205.504(b)(3)). Once certified, agents will have to make their records available for inspection and copying by authorized representatives of the Secretary (§ 205.501(a)(9)). USDA will charge certifying agents for the time required to do these document reviews. Audits will require less time if the documents are well organized and centrally located, than if they are in disarray and in several locations. Certifying agents will have control over these conditions, but making documents accessible to the public may bring about a substantial change in the way some agents currently operate.

Recordkeeping requirements for certifying agents in the first proposal were changed to reduce the burden. They required certifying agents to maintain all records concerning their activities for 10 years. Commenters expressed concern that this requirement was excessive and unnecessary. We agree and are instead proposing three categories of records with varying retention periods: (1) records created by certifying agents regarding applicants for certification and certified operations, maintain 10 years, consistent with OFPA's requirement for maintaining all records concerning activities of certifying agents; (2) records obtained from applicants for certification and certified operations, maintain 5 years, the same as OFPA's requirement for the retention of records by certified operations; and (3) records created or received by certifying agents regarding accreditation, maintain 5 years, consistent with OFPA's requirement for renewal of agent's accreditation (§ 205.510(b)).

Residue testing requirements in the first proposal were changed to reduce the burden. They required certifying agents to undertake residue testing every 5 years to determine if products from certified operations contained a detectable residue level of a prohibited substance and to report such findings to appropriate authorities. Commenters expressed concern that the requirement was too costly. We agree and are instead proposing that the State program's governing State officials or certifying agents may conduct testing at their own expense only if they suspect a crop has come into contact with a prohibited substance. Test results must be submitted to the Administrator (§ 205.672(b)).

Organic inspectors. Inspectors will conduct on-site inspections for the certifying agents of each applicant for certification and annually of each certified operation. They will determine whether or not certification should continue and will report this finding to the certifying agent. Inspectors will be the agents themselves, employees of the agents, or individual contractors. We estimate that about half will be certifying agents and their employees and half will be individual contractors. Individuals who apply for positions as inspectors will submit to the agents information documenting their qualifications to conduct such inspections. *Estimates:* 293 inspectors (147 certifying agents and their employees, 146 individual contractors) will be used. The annual burden for each inspector will be an average of 48.304 hours or if calculated at $27 per hour (rounded up to the next dollar), it would be $1,305.

Producers and handlers. Producers and handlers, domestic and foreign, will apply to certifying agents for organic certification, to renew their certification, or to report changes in their practices, submitting to the agents detailed information documenting their specific practices. Producers include farmers, livestock and poultry producers, and wild crop harvesters. Handlers include those who transport or transform food and may include millers, bulk distributors, food manufacturers, processors, repackagers, or packers. Some handlers may be part of a retail operation that processes organic products in a location other than the premises of the retail outlet.

The OFPA requires certified operators to maintain their records for 5 years. *Estimates:* 19,300 total operators (14,153 certified and 5,147 exempt), including 17,150 producers (12,176 certified and 4,974 exempt) and 2,150 handlers (1,977 certified and 173 exempt). We do not have an estimate of the number of foreign producers and handlers that will apply for organic certification. The annual burden for each domestic operator will be: certified producer—average of 9.521 hours or if calculated at $24 per hour, it would be $229; certified handler—average of 49.521 hours or if calculated at $24 per hour, it would be $1,189; exempt/excluded operator—average of 0.5 hour or if calculated at $24. per hour, it would be $12.

The proposed regulation exempts certain operations from certification: (1) Producers and handlers whose gross agricultural income from organic sales totals $5,000 or less annually; (2) handlers selling only agricultural products that contain less than 50 percent organic ingredients by total

weight of the finished product; (3) handlers that handle agricultural products that contain at least 50 percent organic ingredients and choose to use the word "organic" only on the information panel of a packaged product; and (4) handlers that are retail food establishments that handler organic food but do not process it. The proposed regulation also excludes certain operations from certification: (1) Handlers selling only agricultural products labeled as organic or made with organic ingredients that are enclosed in a container prior to being received, remain in the same container, and are not otherwise processed while in the control of the operation; and (2) handlers that are retail food establishments that process or prepare, on the premises, raw and ready-to-eat food from organic agricultural products.

Administrative costs for reporting and recordkeeping are expected to vary among certified operators. Entities which begin their activities only after the national program is implemented would be expected to incur the greatest cost as they set up an operation that conforms to the OFPA and the regulations. For operators who are currently active in the organic industry and already perform many of these administrative functions, costs would vary depending upon the extent to which their current practices are different from requirements in the OFPA and the regulations. Efforts were made to incorporate existing industry practices and documents into this proposal. A list of several proposed administrative requirements and the probable resources required for compliance is included in the Regulatory Impact Assessment.

Research studies have indicated that operations using product labels containing the term "organic" handle an average of 19.5 labels annually, that there are about 16,000 products with the term organic on the label, and that the number of such products increased by 250 annually from 1994 through 1996. We estimate that by the year 2001, 17,000 products will be marketed with the term "organic" on the label. This proposal includes an estimate of the time needed to develop labels for products sold, labeled, or represented as "100 percent organic," "organic," "made with organic (specified ingredients)," or which use the term organic to modify an ingredient in the ingredients statement. Also included is the time spent deciding about use of the USDA seal, a State emblem, or the seal, logo, or other identifying marks of a private certifying agent (§ 205.300–§ 205.310). Because the labeling requirements in this proposal are in addition to FDA and FSIS requirements, the burden measurement does not include the hours necessary to develop the entire label. For purposes of calculating the burden, it was estimated that each handler will develop 20 labels annually.

Interested parties. Any interested party may petition the NOSB for the purpose of having a substance evaluated for recommendation to the Secretary for inclusion on or deletion from the National List. *Estimates:* 25 interested parties may petition the NOSB. The annual burden for each interested party will be an average of 104 hours and $2,496 ($24 per hour).

Cost. The following table shows the salary rates used to calculate the cost of the burden. We believe the increased rates for this proposal over the first proposal are more realistic in terms of the responsibilities and requirements of each entity.

Estimated hourly rates	First proposal	This proposal
Certified and exempt operators, interested parties	$10	$24
State program's governing State officials, peer review panel members, certifying agents, organic inspectors	20	27

Annual Reporting and Recordkeeping Burden:

Estimated Number of Respondents: 19,730.

Total Annual Hours: 269,622.

Total Cost: $6,780,348.

Comments. Comments are requested on these proposed information collection requirements. Comments are specifically invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of USDA, including whether the information would have practical utility; (2) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should be submitted by the date stated in the section entitled **DATES** at the beginning of this proposal. However, they should be sent to (1) Office of Management and Budget, New Executive Office Building, 725 17th Street, NW, Room 725, Washington, D. C. 20503, Attention: Desk Officer, and to (2) Clearance Officer, USDA–OCIO, Room 404W, Jamie Whitten Building, STOP 7602, 1400 Independence Avenue, SW, Washington, D.C. 20250–7602. Additionally, comments may be sent by fax to (202) 690–4632 or submitted via the Internet through the National Organic Program's homepage at http://www.ams.usda.gov/nop.

Appendix E.—Executive Order 12988, Civil Justice Reform

Executive Order 12988, Civil Justice Reform, instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. The first proposal was reviewed under this Executive Order. No comments were received on that review and no additional related information has been obtained since then. This rule is not intended to have retroactive effect.

States and local jurisdictions are preempted under section 2115 of the OFPA (7 U.S.C. 6514) from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to the USDA to be accredited as a certifying agent, as described in section 2115(b) of the OFPA (7 U.S.C. 6514(b)). States also are preempted under sections 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State, and for the certification of organic farm and handling operations located within the State, under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA; (b) not be inconsistent with the OFPA; (c) not be discriminatory towards agricultural commodities organically produced in other States; and (d) not be effective until approved by the Secretary.

Pursuant to section 2120(f) of the OFPA (7 U.S.C. 6519(f)), this proposal would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*) or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The Act also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

Appendix—Executive Order 13132, Federalism

This proposal has been reviewed under Executive Order 13132, Federalism. This

Order requires that regulations that have federalism implications provide a federalism impact statement that: (1) Demonstrates the Agency consulted with the State and local officials before developing the proposed regulation, (2) summarizes State concerns, (3) provides the Agency's position supporting the need for the regulation, and, (4) describes how the concerns of State officials have been met. The Order indicates that where National standards are required by Federal statutes, Agencies shall consult with appropriate State and local officials in developing those standards. Further, Agencies are required to interpret Federal statutes to preempt State law only where the statute contains an express preemption provision. In such a case, any regulatory preemption of State law shall be restricted to the minimum necessary to meet the objectives of the statute.

The Organic Foods Production Act (OFPA) of 1990 (7 U.S.C. 6514) establishes national standards regarding the marketing of agricultural products as organically produced, assures consumers that organically produced products meet a consistent standard, and facilitates interstate commerce in fresh and processed food that is organically produced. In carrying out these purposes, the Act contemplates a significant role for the States and, in fact, envisions a partnership between the States and the Federal Government in meeting the requirements of the Statute. The Act specifies the State role and gives States recognition for their activities in organic agriculture in several ways. First, 7 CFR 6507 provides that States may establish a State organic certification program consistent with the national program. Second, these programs may contain more restrictive requirements than the National Organic Program established by the Secretary of Agriculture. To be more restrictive, State Organic programs are required to: further the purposes of the Act, be consistent with the Act, not discriminate against organic products of another State, and be approved by the Secretary. Third, States can choose to be accredited as certifying agents under the Act and carry out a State organic program. Fourth, the Act allows the States to determine the manner in which they choose to be involved in the organic program. States may choose to carry out the requirements of the Act by establishing a State program and becoming accredited as certifying agents, they may establish a State program and utilize private certifying agents to implement the program, or they may choose to utilize the national organic program as implemented by the Secretary.

In recognition of their role in carrying out the provisions of OFPA, the Department has reached out to States and actively sought their input throughout the entire process of developing the proposed organic rule. The Department drew extensively on the organic expertise of States and the organic industry by working closely with the National Organic Standards Board. The National Organic Standards Board, established under Section 2119 of the OFPA (7 CFR 6518), has provided a broad and inclusive forum for public participation in developing the recommendations and concepts that underpin the proposed organic rule. Section 2104(c) of the OFPA (7 CFR 6503(c)) requires the Secretary to consult with the National Organic Standards Board in developing the organic program and the National List set forth in Section 2118 of the OFPA (7 CFR 6517).

The Secretary has received extensive input from the Board, interested persons, and the States regarding the establishment of the National Organic Program and this reproposal. The Board met 12 times before publication of the proposed rule on December 16, 1997, and has met five times during 1998 and 1999. States were invited to attend each of these meetings, and official State certifier representatives participated in Board deliberations in meetings held in July 1998 and July 1999. Public input sessions were held at each meeting to gather information from all interested persons, including State and local jurisdictions.

Section 2110(g) of the OFPA (7 U.S.C. 6509(g)) requires the Secretary to hold public hearings to gather information to guide development of standards for livestock products. Four hearings were held during 1994 in Washington, D.C.; Rosemont, IL; Denver, CO; and, Sacramento, CA. States were invited to participate in each of these hearings.

National Organic Program staff also received comments and consulted with States at public events. They made presentations, received comments, and consulted with States at local and regional organic conferences and workshops and at national and international organic and natural food shows.

Further, States were provided the opportunity to comment specifically on State issues at a National Organic Certifiers meeting held on July 21, 1995, to discuss accreditation issues; a meeting held on February 26, 1996, to discuss the role of States in the National Organic Program; and a February 1999 State Certifiers meeting to discuss State issues. Further, States were consulted in training sessions held for organic inspectors, as well as numerous question and answer sessions at speaking engagements of the Agricultural Marketing Service Administrator, the National Organic Program Program Manager, and the staff.

On publication of the first proposal on December 16, 1997, an announcement and information packet summarizing the first proposal were sent to over 1,000 interested parties, including State governors and State department of agriculture secretaries, commissioners, or directors. Subsequent to publication of the first proposal, State and local jurisdictions had the opportunity to provide input at four listening sessions held in February–March 1998 on the first proposal in Austin, TX; Ames, IA; Seattle, WA; and New Brunswick, NJ.

Finally, States had the opportunity to comment on the first proposal. More than 275,000 comments were received on the first proposal, including State commenters.

Through this extensive outreach and consultation process, States identified a number of issues with the first proposal. States expressed several specific concerns regarding accreditation requirements as they affect State programs. These issues are described below, along with the Department's response in the reproposal.

(1) Under OPFA 2108 (7 CFR 6507), States may establish additional standards, approved by the Secretary. First, State commenters objected to the provision in the first proposal that would have prohibited States from requiring compliance with these additional standards as a condition for use of the organically produced State logo on products within the borders of such State. We agree with the commenters, as we did not intend to prohibit States from requiring that these more restrictive standards be met as a requirement to the State's logo on organically produced products. Accordingly, this proposal will permit States with more restrictive requirements approved by the Secretary and private certifiers certifying production and handling operations within these States to require that the State's more restrictive standards be met in order to use the State logo.

(2) The first proposal required annual organic inspector performance appraisal and annual program evaluations for certifying agents. State commenters objected that these requirements would duplicate State requirements. We do not intend for States to develop dual performance appraisal and program evaluation systems because we believe that programs already conducted by the States will meet the requirements of this proposal. These programs would be expected to conform with good management practices appropriate to an organization's size and structure. The questioned provisions have not been changed, but this proposal has been revised to clarify that the annual program evaluation can be conducted by the certifying agency staff, an auditing entity, or a consultant with appropriate expertise.

(3) The first proposal set forth confidentiality requirements for certifying agents. Commenters stated that these confidentiality requirements might conflict with State requirements for "open records." While we recognize this potential for conflicting requirements, records collected under the National Organic Program would be subject to the requirements of the Act. Where the Act and State requirements conflict, the Act would take precedence. There is no change to the confidentiality provision.

To clarify that authorized representatives of the Secretary or the applicable Stae program's governing State official may act on their behalf and must be given access to the records, this proposal adds the phrase "and their authorized representatives."

(4) This proposal will require that accredited certifying agents accept certification decisions made by another USDA-accredited certifying agent as equivalent. State commenters said that States should be able to control which certifying agents operate within their State.

The first proposal provided that accredited certifying agents accept the certification decisions made by another USDA-accredited certifying agent as equivalent to their own. Commenters representing State programs said that States should be able to control which certifying agents operate within their

State. Several commenters asked whether States with more restrictive standards could challenge certification decisions made by other accredited certifying agents. Under the Act, no organic product may be produced or handled to organic standards lower than the standards of the National Organic Program. A State Government may not prevent the marketing or sale within a given State of organic product produced in another State according to this proposal. While States may, with the approval of the Secretary, set more restrictive standards than the national organic standards for product produced or handled within their State, these requirements do not apply to products produced or handled in another State.

State programs approved by the Secretary will be required to treat all accredited certifying agents equally, and accredited certifying agents in one State cannot refuse to recognize another State's product certified to national standards. Accordingly, the requirement remains unchanged that a certifying agent accept certification decisions by another USDA-accredited certifying agent as equivalent.

(5) The first proposal required all certifying agents to submit documents and information on personnel, administrative, and financial policies and procedures to demonstrate organic expertise and ability to implement the National Organic Program. States commented that State certifying agents should not be required to submit such information, stating that these requirements should not apply to States with established personnel, administrative, and financial procedures. They also indicated that the review should be limited to organic program administration only, not to agencywide policies and procedures. We recognize that States have established personnel, administrative, and financial procedures and that these procedures would apply to State certifying agents. However, a stated purpose of the Act is establishment of national standards. Such standards should extend to uniform requirements for State and private certifying agents unless otherwise provided in the Act. Further, such information is necessary for the Administrator to make a determination on approval of an application for accreditation. Accordingly, the requirements for demonstrating organic expertise and ability to implement the National Organic Program remain the same for private and State certifying agents.

(6) The first proposal required a certifying agents to provide a description of procedures to prevent conflicts of interest and the identification of any food or agriculture-related business interests of all personnel intended to be used in the certifying operation. Commenters stated that existing State policies should be sufficient to prevent conflicts of interest for a State certifying agent and that lists of the business interests of all inspectors, program staff, and their families are not necessary.

We agree that existing State policies should be sufficient to prevent conflicts of interest but disagree that lists of the business interests of all inspectors, program staff, and their families are unnecessary. The Act (CFR 6515(h)) places responsibility for the prevention of conflicts of interest with the certifying agent. However, the Department is responsible for ensuring that the certifying agent complies with that responsibility. The requirement to provide such a listing provides the Administrator information essential to identifying conflicts of interest. In addition, a stated purpose of the Act is to establish uniform national standards. These uniform standards should extend to uniform conflict of interest requirements for State and private certifying agents. The commenters have said that most States already have established conflict of interest policies and procedures so that the required information should be easily available for submission to the Administrator. Accordingly, no change has been made in this proposal.

Certification, the process of qualifying a producer or handler to sell agricultural products labeled as organic, raised several issues for States.

(1) The first proposal required an applicant for certification to supply required documentation to provide information necessary to allow a certifying agent to evaluate the application. State commenters suggested a provision be added to allow a certifying agent to require documentation from applicants in addition to that required by the first proposal.

A certifying agent can, if necessary, follow up on an initial application with requests for additional information, provided that information is needed to evaluate the application and determine compliance with the Act and regulations. We did not make the suggested change, as the existing language already allows the certifying agent to request additional information necessary to determine compliance with the Act and regulations.

(2) The first proposal laid out a certification program that provided for updates to a continuous organic certification. To meet continuation of certification requirements, the first proposal required an on-site inspection after receipt of the update to the application. A State certifying agent objected, saying that an on-site inspection after receipt of a renewal application is not consistent with current practice. Currently, on-site inspections conducted during the prior year are used to determine compliance with certification requirements at the time of renewal, along with a review of information submitted by the certified operation. The State certifying agent stated that an additional inspection at renewal time would not be useful if it was not an appropriate time to observe the certified unit in operation.

We disagree with the commenters, since certifiers are required to schedule on-site inspections when the certified operation can be observed for its compliance or ability to comply with the provisions of the National Organic Program. The initial certification, therefore, should have been granted when the on-site inspection verified compliance with certification requirements. The certified operation should be fulfilling its annual continuation of certification at a time when it can demonstrate its compliance with the Act.

States commented on several compliance issues included in the first proposal.

(1) The Administrator had sole authority to suspend or revoke the accreditation of certifying agents in the first proposal. Commenters indicated that State program's governing State officials should have the authority to suspend or revoke the accreditation of private certifying agents.

We agree that in a State with a program approved by the Secretary, the State program's governing State official should be authorized to suspend or revoke an accreditation granted by the Secretary to certifying agents operating within the State. We concur because of the Department's role in providing oversight to the State program, including its enforcement procedures, and have made that change in this proposal.

(2) Many commenters stated that the first proposal lacked adequate enforcement provisions, including enforcement by States with an approved State program.

We agree with the commenters that additional enforcement provisions are necessary for the National Organic Program. The following changes have been made in this proposal.

(a) As noted above, the State program's governing State official will now be authorized to suspend or revoke accreditation granted by the Secretary to certifying agents operating in the State.

(b) An enforcement proceeding brought by a State program's governing State official against a certified operation or certifying agent shall be appealable pursuant to the appeal procedures of the State program with no subsequent appeal rights to the Secretary.

States commented on several fees provisions in the first proposal.

(1) The first proposal required that payment of fees and charges to the Department be by certified check or money order. State commenters objected, saying it was insulting for USDA to require a State government agency to pay for its accreditation with a certified check.

Accordingly, we have removed this requirement, simply requiring that payments for fees and other charges for accreditation must be made payable to the Agricultural Marketing Service.

(2) Several State agencies objected to the fee provisions in the first proposal, expressing the belief that the proposed fees would price small producers and handlers out of the organic industry. Some State agencies commented that those small organic producers conducting their own on-farm handling would be forced out of the organic industry by the excessive handler fee and reporting burdens.

After review of the comments, we acknowledge that the fees charged in the first proposal may have discouraged industry growth and may not have facilitated interstate commerce of organic product. We have thus, modified the fee structure to reduce costs to all organic sectors and have removed the requirement that provided for payment of fees to the Department by certified production and handling operations. Instead, the Department will charge certifying agents only for fees and charges related to accreditation, with the balance of the costs of the program to be funded through appropriations.

(3) Some State certifying agents commented that State certifying agents should not be assessed accreditation fees. They stated that most State certifying agents could face large accreditation costs because they have many county or regional offices which would be considered subsidiaries, adding that these costs would be passed on to producers and handlers or paid with supplemental State funds. A few State certifying agents asserted that USDA should pay the States because of the State's contribution to the national program. One State representative said that accreditation fees for State certifying agents should be less than for private certifying agents, as State certifying agents should involve less AMS review and oversight.

We disagree with those commenters who say that State certifying agents should not be assessed accreditation charges, be charged less, or be paid to certify production and handling operations. These actions would constitute unacceptable preferential treatment of State certifying agents to the detriment of private certifying agents. This proposal will assess State certifying agents the same fees for accreditation under the same fee structure as private certifying agents.

We invite States and local jurisdictions to comment on the issues raised in this Federalism impact statement. We also encourage States and local jurisdictions to review and comment on this proposal as it relates to the operation of State organic programs.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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ENVIRONMENTAL PROTECTION AGENCY

Air pollution standards of performance for new stationary sources:
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Air program:
- Accidental release prevention—
  - Flammable substances used as fuel or held for sale as fuel at retail facilities; published 3-13-00

Air quality implementation plans; approval and promulgation; various States:
- Kansas; published 1-11-00
- Missouri; published 1-12-00

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Wireline services—
  - Advanced telecommunications capability; deployment; published 2-11-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:
- Peripheral iridotomy; neodymium: yttrium: aluminum: garnet (Nd:YAG) laser; reclassification and codification; published 2-11-00

JUSTICE DEPARTMENT

Drug Enforcement Administration

Schedules of controlled substances:
- Gamma-hydroxybutyric Acid; placement into Schedule I; published 3-13-00

LABOR DEPARTMENT

Nationwide employment statistics system; election process for State agency representatives for DOL consultation; published 2-11-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Airbus; published 2-7-00
- Boeing; published 2-7-00
- Bombardier; published 2-7-00
- Cameron Ballons, Ltd.; published 2-22-00
- Eurocopter France; published 2-7-00
- General Electric Co.; published 2-7-00
- Raytheon; published 2-7-00

Airworthiness standards:
- Special conditions—
  - Cessna Aricraft Co. Model 525A airplane; published 2-14-00

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Anthropomorphic test devices; Occupant crash protection
- Hybrid III test dummies; 6-year-old child dummy; design and performance specifications; published 1-13-00

TREASURY DEPARTMENT

Internal Revenue Service

Procedure and administration:
- Tax exempt organizations; private foundation public disclosure requirements; published 1-13-00

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Hazelnuts grown in—
- Oregon and Washington; comments due by 3-20-00; published 1-19-00

Meats, prepared meats, and meat products; grading, certification, and standards:
- Federal meat grading and certification services; fee changes; comments due by 3-20-00; published 1-20-00

Olives grown in—
- California; comments due by 3-20-00; published 1-19-00

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Ports of entry—
  - Dayton, OH; port designated for exportation of horses; comments due by 3-20-00; published 2-17-00

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:
- Peanuts; comments due by 3-20-00; published 2-18-00

AGRICULTURE DEPARTMENT

Farm Service Agency

Farm marketing quotas, acreage allotments, and production adjustments:
- Peanuts; comments due by 3-20-00; published 2-18-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- West Coast States and Western Pacific fisheries—
  - Salmon; comments due by 3-20-00; published 3-3-00

CONSUMER PRODUCT SAFETY COMMISSION

Poison prevention packaging:
- Child-resistant packaging requirements—
  - Household products containing low-viscosity hydrocarbons; comments due by 3-20-00; published 1-3-00

DEFENSE DEPARTMENT

Defense Logistics Agency

Privacy Act; implementation; comments due by 3-20-00; published 1-20-00

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Time-and-materials or labor-hours; comments due by 3-24-00; published 1-24-00

Privacy Act; implementation:
- National Reconnaissance Office; comments due by 3-20-00; published 1-19-00

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
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- Dioxin and dioxin-like compounds; numeric concentration limits; comments due by 3-23-00; published 3-2-00

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- Municipal solid waste landfill permit programs; adequacy determinations—
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HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

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HEALTH AND HUMAN SERVICES DEPARTMENT

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Inpatient Disproportionate Share (DSH) Hospital adjustment calculation—

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HEALTH AND HUMAN SERVICES DEPARTMENT

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INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

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JUSTICE DEPARTMENT

Drug Enforcement Administration

Schedules of controlled substances:

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 1451/P.L. 106–173
Abraham Lincoln Bicentennial Commission Act (Feb. 25, 2000; 114 Stat. 14)

S. 632/P.L. 106–174
Poison Control Center Enhancement and Awareness Act (Feb. 25, 2000; 114 Stat. 18)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

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Rules and Regulations

Federal Register
Vol. 65, No. 50
Tuesday, March 14, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 792

RIN 3206–A193

Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations implementing legislation which was enacted September 29, 1999. The legislation permits agencies in the Executive branch to use appropriated funds to reduce child care costs for their lower income Federal employees. The intended effect of the law is to make child care more affordable for lower income Federal employees.

DATES: Effective March 14, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia Kinney, Office of Personnel Management, 1900 E St., NW., Room 7315, Washington, DC 20415–1300; Phone: (202) 606–1313; Fax: (202) 606–2091.

SUPPLEMENTARY INFORMATION: Section 643 of Public Law 106–58, September 29, 1999, requires the Office of Personnel Management to regulate Federal agency use of appropriated funds for child care costs for lower income employees. The Act allows Federal agencies in the Executive branch to assist their lower income employees with their costs of child care. The Act addresses the need for affordable child care for Federal employees. Child care is a labor-intensive service that requires adequate, trained staff to provide child care services that are safe and appropriate for children and their families. An increasing number of Federal families are finding that affordable child care is getting more difficult to find even when their own agencies sponsor on or near-site child care centers. Vacancy rates in Federally sponsored child care centers have steadily grown due to the affordability problem. Despite efforts of non-profit organizations to raise funds through charitable contributions, the affordability of child care for lower income Federal employees remains out-of-reach since child care costs can translate to up to 50 percent of a Federal family's total family income.

Reduced child care tuition, as a result of agency contributions permitted by this law, can have significant impact on employees' ability to utilize safe and reliable child care. Benefits to the agencies include better recruitment and retention of qualified personnel, lower absenteeism, and improved morale. Improved retention can result in significant recruitment and training cost savings to agencies. An added benefit for agencies that sponsor on-site child care centers at some of their locations is that they can expect to see improved Federal employee participation in their centers. For small agencies that have been unable to provide agency-sponsored on-site child care centers, this law permits them to assist their employees with a variety of other child care choices.

Sec. 643 of Public Law 106–58 authorizes the use of appropriated funds, otherwise available for salaries, to improve the affordability of child care for lower income Federal employees. This law, enacted by Congress, became effective on September 29, 1999, and remains in effect for one year. Funds can be obligated upon the promulgation of the regulations.

In summary, the rule authorizes Federal agencies to use appropriated funds, including revolving funds, that are otherwise available to the agencies for salaries, to assist their lower income Federal employees with the costs of child care in child care centers and family child care homes that are licensed. Agencies can choose from a number of models for determining employee eligibility and the amount of the tuition assistance subsidy. In light of the fact that agencies have differing needs from one location to another, the proposed rule allows for maximum flexibility so that agencies can take different approaches for making those determinations. OPM guidance materials provide agencies with a variety of models and approaches for determining tuition assistance eligibility and other components of their tuition assistance programs.

On December 23, 1999, OPM published proposed regulations (64 FR 72037) to establish the child care subsidy program. Under the proposed regulations, OPM would be responsible for providing agencies with guidance toward implementation of the law. OPM is responsible for providing Congress with a report on the results of the implementation no later than September 1, 2000.

OPM received comments from 12 agencies, 2 labor organizations, 1 child care provider, and 2 individuals. Following is summary of the comments:

Flexibility for Agency Implementation

Many agencies and 2 labor organizations supported the flexibility to choose their own model in defining "lower income employee." Two agencies felt that there should be a uniform definition of "lower income employee" because of concerns that there would be inequities across agencies and that some employees would not receive the benefit. We did not choose to provide a specific definition in the regulation because many agencies expressed the view that flexibility would enable them to tailor a program that best suits their needs and they pointed out that their needs could be different from one situation to another.

Definition of Child

One agency suggested that we modify the definition of "child" because our definition seemed to imply that an adopted, step or foster child did not have a "regular parent-child relationship," as did a natural child. We changed the definition to incorporate the suggestion. Based on other comments, we expanded the definition of "child" to include children who are supported by legal guardians as well as disabled children through age 18.

Time Frame

Many of the respondents were concerned about the short time frame for implementation and urged OPM to seek immediate legislative relief from the expiration date of the law. After the proposed regulations were published,

the President, in his FY2001 budget proposal, has requested a continuation of authorization from Congress.

Agencies Without Appropriations

Two agencies asked for clarification on whether the law applied to them. We have clarified the issue by stating that agencies may use appropriated funds, including revolving funds, that are otherwise available to the agency for salaries.

Effective Date and Notice to Congress and OPM

A few respondents requested that the agencies be able to provide tuition subsidies retroactively to the date of passage of the law. It was the intent of Congress that funds could be obligated only after final regulations were published by OPM in the **Federal Register** and after notification to Congress has occurred. One agency asked for clarification about notification and suggested a change that would specify that Congress be notified of intention to initiate a program. That change has been made.

Types of Programs to Which the Law Applies

Two agencies asked for clarification about program eligibility and whether school-type programs were included. Programs that are licensed and/or regulated are eligible regardless of where they are housed. This has been clarified in the regulation.

Using OPM's Models

One agency suggested the regulations be clear that agencies are not required to use one of the models suggested by OPM and that suggestion has been incorporated.

Pooling Funds in Multi-Tenant Buildings

Two agencies made comments about pooling funds in a multi-tenant building. One agency provided revised language which would result in more flexibility and the language has been adopted in the final rule.

Restricting Funds

A few agencies made suggestions about restricting funds to one group or another. For example, one agency suggested limiting the eligibility to full-time employees. The proposed rule was written to permit maximum flexibility by the agencies and, therefore, the language was not changed. The same principle applied to suggestions there be a statutory cap on the amount of subsidies awarded. Agencies have the flexibility to restrict funds and to choose eligibility models that meet their needs.

Child Care Boards of Directors

One agency suggested a section be added which would advise Government employees who sit on the board of directors of Federally sponsored child care centers. That guidance will appear, as suggested, in our guidance related to the law.

Executive Order 12866, Regulatory Review

The final rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

List of Subjects in 5 CFR Part 792

Alcohol abuse, Alcoholism, Day care, Drug abuse, Government employees.
U.S. Office of Personnel Management

Janice R. Lachance,
Director.

Accordingly, OPM is amending part 792 of title 5 of the Code of Federal Regulations as follows:

PART 792—FEDERAL EMPLOYEES' HEALTH AND COUNSELING PROGRAMS

1. The authority citation for part 792 is revised to read as follows:

Authority: Sec. 201 of Pub. L. 91–616, 84 Stat. 1849, as amended and transferred to sec. 520 of the Public Health Services Act by sec. 2 (b)(13) of Pub. L. 98-24 (42 U.S.C. 290dd-1) and sec. 413 of Pub. L. 92–255, 86 Stat. 84, as amended and transferred to sec. 525 of the Public Health Service Act by sec. 2(b)(16)(A) of Pub. L. 98-24 (42 U.S. C. 290ee-l); Sec. 643, Pub. L. 106–58, 113 Stat. 477.

2. Subpart B is added to read as follows:

Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees—What Is the New Child Care Legislation and to Whom Does It Apply?

Sec.
792.200 To whom do "we", "you", and their variants apply?
792.201 What does the new law permit?
792.202 What is the purpose of the new law?
792.203 Should we notify anyone of our intention to initiate a program and when can the obligation be made?
792.204 Are there sample memoranda and other documents available to assist us with this process?
792.205 Are there additional materials necessary for the implementation of this process and are there any special reporting and oversight requirements related to this law?
792.206 What are the benefits to an agency of providing such assistance to its lower income employees?
792.207 Which agency funds can be used for the purpose of this law?
792.208 Are agencies required to participate in this program?
792.209 How can agencies take advantage of this new law and when does this law become effective?
792.210 What is the definition of Executive agency?
792.211 What is the definition of tuition assistance program?
792.212 What is the definition of civilian employee?
792.213 What is the definition of a Federally sponsored child care center?
792.214 What is the definition of contractor?
792.215 What is the definition of a child?
792.216 What children are eligible for this subsidy?
792.217 What is a disabled child?
792.218 Are children enrolled in summer programs and part-time programs eligible?
792.219 Are part-time Federal employees eligible?
792.220 Does the law apply only to on-site Federal child care centers that are utilized by Federal families?
792.221 What is the process for helping lower income employees with child care tuition?
792.222 Are agencies required to negotiate with their Federal labor organizations about the provisions of this law?
792.223 Are there any conditions which the child care provider must meet in order to participate in this program?
792.224 Is there a statutory cap on the amount or the percentage of child care tuition that will be subsidized?
792.225 What is the definition of a lower income Federal employee and how is the amount of the tuition assistance subsidy determined?
792.226 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?
792.227 Are child care subsidies paid to the Federal employee using the child care?
792.228 May we disburse funds to a child care provider or to an organization that administers our program prior to the time the employee receiving tuition assistance has enrolled his or her child in the child care center or family child care home?
792.229 How will the disbursement covered by § 792.227 work where there is a Federally sponsored child care center in a multi-tenant building?
792.230 For how long will the tuition assistance be in effect for a Federal employee?
792.231 Can these funds be used for children of Federal employees who are already enrolled in child care?

792.232 Can we place special restrictions or requirements on the use of these funds, and can we restrict the disbursement of such funds to only one type of child care or to one location?
792.233 May we use the funds to improve the physical space of the family child care homes or child care centers?
792.234 For how long is the law effective?
792.235 Who will oversee the disbursement and use of these funds?

Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees—What Is the New Child Care Legislation and to Whom Does It Apply?

§ 792.200 To whom do "we", "you", and their variants apply?

Use of pronouns, "we," "you," and their variants throughout this part refers to the agency. OPM is always referred to as "OPM".

§ 792.201 What does the new law permit?

Public Law 106–58 (113 Stat. 477) permits agencies to use appropriated funds, including revolving funds, that are otherwise available to the agency for salaries, to improve the affordability of child care for lower income Federal employees. Employees can benefit from reduced tuition rates at Federal child care centers, non-Federal child care centers, and in family child care homes.

§ 792.202 What is the purpose of the new law?

The law is intended to make child care more affordable for lower income Federal employees through the use of agency appropriated funds.

§ 792.203 Should we notify anyone of our intention to initiate a program and when can the obligation be made?

Yes, you must provide notice to the House Subcommittee on Treasury, Postal Service and General Government and to the Senate Subcommittee on Treasury and General Government and to your appropriations subcommittees prior to the obligation of funds. This is a Congressional notification requirement. You must also notify OPM of your intention. Funds can be obligated immediately after notifications have occurred.

§ 792.204 Are there sample memoranda and other documents available to assist us with this process?

Yes, OPM will provide you with guidance that contains sample memoranda of understanding, sample marketing tools, sample tuition assistance applications, and models for determining tuition assistance eligibility. These materials can be found in "Guide for Implementing Child Care Legislation—Pub. L. 106–58, Sec. 643." The Guide is available on OPM's website, http://www.opm.gov/wrkfam. You may also obtain a copy by writing to OPM at: U.S. Office of Personnel Management, Family-Friendly Workplace Advocacy Office, 1900 E Street, NW., Room 7315, Washington, DC 20415.

§ 792.205 Are there additional materials necessary for the implementation of this process and are there any special reporting and oversight requirements related to this law?

Yes, you are responsible for tracking the utilization of your funds and reporting the results to OPM. OPM will provide you with a mandatory reporting form. OPM is required to provide a report to the appropriations committees no later than September 1, 2000. Therefore, you are required to report your results to OPM no later than August 1, 2000. OPM will provide you with guidance on this subpart.

§ 792.206 What are the benefits to an agency of providing such assistance to its lower income employees?

There are several benefits for the agencies beginning with improved recruitment and retention. Cost savings in recruitment and training can be significant. In addition, absenteeism rates related to child care problems can be reduced. Providing such subsidies can also increase morale, particularly among families who cannot afford the child care located at or near a child care center that is sponsored by their agency. The use of funds for lower income families who are enrolled or wish to enroll in Federal child care centers may help to increase the Federal participation rates where there is a regulatory requirement that at least 50 percent of the children enrolled have parents or guardians who are Federal employees.

§ 792.207 Which agency funds can be used for the purpose of this law?

You are permitted to use appropriated funds, including revolving funds, that are otherwise available to the agency for salaries.

§ 792.208 Are agencies required to participate in this program?

Agencies are not required to participate in this program. The decision to participate is left to the discretion of the agency. If an agency chooses to participate, it may not use funds other than those specified in § 792.207.

§ 792.209 How can agencies take advantage of this new law and when does this law become effective?

The law became effective as of September 29, 1999. Agencies are permitted to obligate funds beginning on March 14, 2000. Agencies can take advantage of this new law by notifying Congress and OPM of their intent.

§ 792.210 What is the definition of Executive agency?

The term *Executive agency* is defined by section 105 of title 5, United States Code, but does not include the General Accounting Office.

§ 792.211 What is the definition of tuition assistance program?

The term *tuition assistance program*, for the purposes of this subpart, means the program that results from the expenditure of agency funds to assist lower income Federal employees with child care costs, including, but not limited to, such activities as: determining which employees receive a subsidy, and the size of the subsidy each employee receives; distributing agency funds to participating providers; and tracking and reporting to OPM information such as total cost and employee utilization of the program.

§ 792.212 What is the definition of civilian employee?

The term *civilian employee*, for the purposes of this subpart, means all appointive positions in an Executive agency.

§ 792.213 What is the definition of a Federally sponsored child care center?

The term *Federally sponsored child care center*, for the purposes of this subpart, is a child care center that is located in a building or space that is owned or leased by the Federal government.

§ 792.214 What is the definition of contractor?

Sec. 643 of Public Law 106–58 says that child care services provided by contract are covered by this provision. The term *contractor* applies to an organization or individual who provides child care services for which Federal families are eligible. Child care *providers* that may provide services under contract include center-based child care and family child care homes. The term *provider* is typically used to denote contractor in the child care industry. For the purposes of this subpart, the term provider is used to denote both center-based child care and family child care homes.

§ 792.215 What is the definition of a child?

For the purposes of this subpart, a *child* is considered to be:

(a) A biological child who lives with the Federal employee;

(b) An adopted child;

(c) A stepchild;

(d) A foster child;

(e) A child for whom a judicial determination of support has been obtained; or

(f) A child to whose support the Federal employee who is a parent or legal guardian makes regular and substantial contributions.

§ 792.216 What children are eligible for this subsidy?

The law covers the children of Federal employees, excluding contract employees, from birth through age 13 and disabled children through age 18.

§ 792.217 What is a disabled child?

For the purposes of this subpart a disabled child is defined as one who is unable to care for himself or herself based on a physical or mental incapacity as determined by a physician or licensed or certified psychologist.

§ 792.218 Are children enrolled in summer programs and part-time programs eligible?

Yes, Federal employees with children (birth through age 13 and disabled children through age 18) who are enrolled in summer care programs and part-time programs are eligible.

§ 792.219 Are part-time Federal employees eligible?

Yes, Federal employees who work part-time are eligible.

§ 792.220 Does the law apply only to on-site Federal child care centers that are utilized by Federal families?

No, the bill is broad in scope and includes non-Federal center-based child care as well as care in family child care homes, as long as they are licensed and/or regulated by the State and/or local regulating authorities.

§ 792.221 What is the process for helping lower income employees with child care tuition?

OPM guidance includes further explanation, but the process for the tuition assistance program can be summarized in 8 steps:

(a) After completing your collective bargaining obligations, where applicable, notify the Congressional committees (see § 792.203) and OPM of your decision to use a specific amount of appropriated funds for this purpose;

(b) Determine how you will structure the program and which tuition assistance model you will use;

(c) Determine how you will administer the program;

(d) Advertise the program;

(e) Conduct the application process;

(f) Make the tuition assistance determinations and notify the employees (parents are then charged a reduced tuition rate by the provider);

(g) Provide the funds to the provider or to an organization that will administer the program for you; and

(h) Report the results to OPM on the mandatory reporting form.

§ 792.222 Are agencies required to negotiate with their Federal labor organizations about the provisions of this law?

You are reminded of your obligation to negotiate or consult, as appropriate, with the exclusive representatives of your employees on the implementation of the regulations in this subpart under 5 U.S.C. 7117.

§ 792.223 Are there any conditions which the child care provider must meet in order to participate in this program?

Yes, the provider, whether center-based or family child care, must be licensed and/or regulated by the State and/or local authorities where the child care service is delivered.

§ 792.224 Is there a statutory cap on the amount or the percentage of child care tuition that will be subsidized?

No, the law does not specify a cap.

§ 792.225 What is the definition of a lower income Federal employee and how is the amount of tuition assistance subsidy determined?

Each agency makes the determination of the definition of *lower income* Federal employee. *Lower income* Federal employee can be defined by an agency in a number of ways. The process for determining both eligibility and the amount of tuition assistance subsidy for each family will usually involve consideration of total family income along with other factors such as total child care costs, depending on the tuition assistance model(s) you use. Agencies are not required to use one of the models that OPM suggests. If an agency uses a model OPM has suggested in its guidance, you may wish to change the threshold amounts, or percentages of total family income or other factors. In their guidance to this subpart, OPM will provide examples of models with detailed explanations. OPM's guidance on this subpart is a supplement to this subpart.

(a) If the model or models you select includes a total family income threshold, you can use criteria such as those from:

(1) The Child Care Development Block Grant as defined (42 U.S.C. 9858);

(2) A formula based on a percentage of the State poverty level (as many States do for certain programs); or

(3) A set amount of total family income the agency chooses depending on the agency demographics and need to assist lower income Federal employees.

(b) Some models do not require a threshold amount, since eligibility is determined as a function of the relationship between total family income, actual child care tuition costs, and an amount or percentage the agency is willing to pay.

(c) In order to determine the amount of tuition assistance subsidy by which tuition will be reduced for a Federal employee, a number of approaches can be taken. The size of the subsidy is dependent on different income levels. It can be based on a tuition sliding scale such as that used in the military formula (10 U.S.C. 1791–1798); a formula based on a specific percentage of total family income the family is expected to pay with the agency paying the remaining amount; or a formula based on a specific percentage of child care tuition the family is expected to pay with the agency paying the remaining amount. Each of these approaches is based on different philosophical assumptions and it will be up to the agency to determine which model or models best fits its needs. The models are described in detail in OPM's guidance.

(d) Besides total family income, you may consider extraordinary financial situations to determine eligibility and the subsidy amount.

§ 792.226 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?

The agency or another appropriately identified organization determines eligibility using certain income and/or tuition criteria chosen by the agency. If the agency itself does not administer the program, it must select another organization to do so, using procedures that are in accordance with the Federal Acquisition Regulations. Regardless of what organization administers the program, the model for determining both the tuition assistance eligibility and the amount of the subsidy is always determined by the Federal agency.

§ 792.227 Are child care subsidies paid to the Federal employee using the child care?

No, the child care subsidy is paid to the child care provider. If you choose to have an organization administer your program (see § 792.226), the subsidy is

paid to the organization and they, in turn, pay the provider. In any case, the provider will invoice the organization that administers the program.

§ 792.228 May we disburse funds to a child care provider or to an organization that administers our program prior to the time the employee receiving tuition assistance has enrolled his or her child in the child care center or family child care home?

Yes, you may wish to disburse one lump sum to the organization administering the tuition assistance program and they will be responsible for tracking the utilization and providing you with regular reports. An agency contract should specify that any unexpended funds shall be returned to the agency after contract completion.

§ 792.229 How will the disbursement covered by § 792. 227 work where there is a Federally sponsored child care center in a multi-tenant building?

In a multi-tenant building, funds from the agencies could be pooled together for the benefit of the employees qualified for tuition assistance.

§ 792.230 For how long will the tuition assistance be in effect for a Federal employee?

The tuition assistance, in the form of a reduced tuition rate, will be in effect from the time the decision for a particular Federal employee is made and the child is enrolled in the program, until the child is no longer enrolled, but not later than September 30, 2000. These funds are not available to pay for services performed after September 30, 2000.

§ 792.231 Can these funds be used for children of Federal employees who are already enrolled in child care?

Yes, the funds can be used for children currently enrolled in child care as long as their families meet the tuition assistance eligibility requirements established by your agency.

§ 792.232 Can we place special restrictions or requirements on the use of these funds, and can we restrict the disbursement of such funds to only one type of child care or to one location?

(a) Yes, depending on your staffing needs and your employees' situations, including the local availability of child care, you may choose to place restrictions on the use of your funds in a number of ways including, but not limited to:

(1) Fund Federal employees using family child care homes;

(2) Fund Federal employees using your on-site child care center;

(3) Fund Federal families using community, non-Federal child care centers; or

(4) Restrict the use of such funds to one or more locations.

(b) It is up to you to determine whether there will be any restrictions on the use of your appropriated funds for child care tuition costs.

§ 792.233 May we use the funds to improve the physical space of the family child care homes or child care centers?

No, the legislation specifically addresses making the child care more affordable for lower income Federal employees.

§ 792.234 For how long is the law effective?

The law is effective for one year, ending September 30, 2000.

§ 792.235 Who will oversee the disbursement and use of these funds?

You will be responsible for tracking the utilization of these funds. OPM's guidance which was issued on December 23, 1999, and which was reissued with updates on March 14, 2000, contains details about the oversight of this program and the mandatory reporting requirements. The guidance contains sample marketing materials, sample tuition assistance documents, the OPM reporting form, as well as suggestions for determining eligibility.

[FR Doc. 00–6192 Filed 3–9–00; 3:45 pm]

BILLING CODE 6325–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Chapter IX

[No. 2000–09]

RIN 3069–AA–96

Devolution of Corporate Governance Responsibilities

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting as final, with several changes, the Interim Final Rule amending its regulations to devolve certain corporate governance responsibilities from the Finance Board to the Federal Home Loan Banks (Banks), pursuant to the requirements of the Federal Home Loan Bank System Modernization Act of 1999.

EFFECTIVE DATE: This final rule shall be effective on March 14, 2000.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director, (202) 408–2821, or Scott L. Smith, Deputy Director, (202) 408–2991, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Bank System and Finance Board Roles and Responsibilities; Regulatory Background

Under the Federal Home Loan Bank Act (Bank Act), the Finance Board is responsible for the supervision and regulation of the 12 Banks. *See* 12 U.S.C. 1422a(a)(3), 1422b(a)(1) (1994). Specifically, the Finance Board's primary duty is to ensure that the Banks operate in a financially safe and sound manner. Consistent with that primary duty, the Finance Board also is responsible for ensuring that the Banks carry out their housing finance and community lending mission, and that they remain adequately capitalized and able to raise funds in the capital markets. *See id.* § 1422a(a)(3).

Historically, the Bank Act has required the Finance Board to be involved in varying degrees in the corporate governance of the Banks, typically by requiring Finance Board approval for a host of Bank practices. However, the recently enacted Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act) [1] repealed most of those requirements, thereby removing most of the last vestiges of governance responsibilities from the Finance Board. *See* Pub. L. No. 106–102, §§ 604(a)(6); 606(d), (f), (g) (1999). Accordingly, the Finance Board adopted the Interim Final Rule, which amended its regulations to remove the corresponding Finance Board approval requirements for such corporate governance functions, consistent with the Modernization Act. *See* 64 FR 71275 (Dec. 21, 1999). The Interim Final Rule maintained or imposed standards or requirements on the Banks where deemed necessary for reasons of safety and soundness and sound corporate governance practice. *See id.*

The Interim Final Rule provided for a 30-day comment period, which closed on January 20, 2000. The Finance Board received a total of 8 comment letters on the Interim Final Rule. Commenters included six Banks, a trade association representing 10 of the 12 Banks, and a banking institutions trade association. The provisions of the Interim Final Rule on which significant comments were received are discussed below.

[1] The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 113 Stat. 1338, enacted into law on November 12, 1999.

II. Analysis of the Final Rule

A. Amendment of Bank Directors' Meeting and Compensation and Expenses Provisions—§§ 918.3, 918.7

1. Annual Directors' Compensation Limits—§ 918.3(a)(2)

The Modernization Act amended section 7(i) of the Bank Act by imposing specific limits on annual compensation for the Chairperson, Vice Chairperson and other members of a Bank's board of directors. *See* Modernization Act, § 606(b). The statutory limits on directors' annual compensation were implemented in revised § 932.17(c)(1) of the Interim Final Rule,[2] to be effective in 2000. Commenters requested clarification on the applicability of the annual compensation limits to the payment by the Banks of deferred compensation to Bank directors.[3] As § 918.3(a)(2) of the final rule now states, starting in 2000, the annual compensation limits would apply to the year in which the deferred compensation was accrued or earned, and not to the year in which it is paid. Thus, amounts accrued in 2000 but paid to the director in 2001 would be subject to the annual compensation limit applicable for 2000.

2. Maintenance of Effort Standard; Minimum Number of In-Person Bank Board Meetings Requirement—§ 918.7

Section 932.16(b)(1) of the Interim Final Rule (redesignated § 918.7(a)) required each Bank's board of directors to continue to maintain its level of oversight of the management of the Bank and, except as provided in paragraph (b)(2) (redesignated paragraph (b)), to hold no fewer in-person board meetings in any year than it has held on average over the immediately preceding three years. Redesignated paragraph (b) provided that a Bank may apply to the Finance Board for approval, upon a showing of good cause, to hold in any year fewer than the number of in-person board meetings required under paragraph (a).

Commenters generally opposed the minimum meetings requirement on the ground that such decisions are within the fiduciary corporate governance responsibilities of the Banks' boards and, therefore, should not be regulated by the Finance Board. One commenter stated that the requirement was unnecessary in light of the Finance Board's recently proposed regulation setting forth the responsibilities of Bank boards as a means of ensuring that they fulfill their duties to operate the Banks in a safe and sound manner. *See* 65 FR 81 (January 3, 2000). Another commenter stated that the three-year averaging requirement unnecessarily reduces the flexibility of the Banks to make decisions on the number of board meetings, which normally are based on a number of subjective factors, and may not be appropriate to meet current needs of the Bank. One commenter also stated that the Finance Board can address any concerns in this area through the examination and supervision process.

As discussed in the preamble to the Interim Final Rule, the minimum meetings requirement was adopted for safety and soundness reasons. *See* 64 FR 71275. The reduction in compensation to be paid to directors as a result of the new annual compensation limits has raised concerns that the Banks' boards will hold fewer meetings, thus reducing their level of oversight of the management of the Banks.

The Finance Board acknowledges that decisions on the number of Bank board meetings generally should be within the purview of the corporate governance responsibilities of the Banks' boards, and general corporate governance standards are set forth in the Finance Board's proposed corporate governance rule as a means of ensuring that the Banks' boards fulfill their duties to operate the Banks in a safe and sound manner. However, the Finance Board believes that, notwithstanding the Bank boards' fiduciary duties regarding safety and soundness, the Finance Board's safety and soundness concerns with respect to the Bank boards' level of oversight of Bank management warrant a regulatory response in this area. Accordingly, the Finance Board is retaining a minimum meetings requirement in the final rule.

However, based on the comments received, the Finance Board believes that the required minimum number of meetings per year should be reduced. Historically, the Banks held monthly board meetings. In recent years, the trend has been to operate with fewer board meetings at many of the Banks. For 2000, statistics indicate that the three-year averaging requirement in the Interim Final Rule would result in at least: (i) 12 in-person meetings for one Bank; (ii) 11 in-person meetings for one Bank, which has applied for Finance Board approval to hold 9 in-person meetings; (iii) 9 in-person meetings for 4 Banks; (iv) 8 in-person meetings for 1 Bank, which has applied for Finance Board approval to hold 6 in-person meetings; (v) 7 in-person meetings for 4 Banks; and (vi) 6 in-person meetings for 1 Bank. The Finance Board recognizes that a pure averaging requirement incorporates the vagaries of timing into the calculation of the minimum meetings requirement for a particular Bank. For example, in 2000, 2 Banks would be required to hold more than 9 in-person board meetings per year, while the other 10 Banks would be allowed to hold 9 or fewer such meetings. While the Finance Board still believes it is important to maintain a minimum meeting standard for all of the reasons discussed in the preamble to the Interim Final Rule, it is persuaded that it would be fair and reasonable to reduce the minimum meetings requirement to reflect the operational reality at the Banks. Accordingly, the final rule amends the Interim Final Rule to provide that a Bank's board of directors shall hold a minimum number of meetings per year equal to the lesser of: (i) The three-year averaging requirement for the Bank; or (ii) 9. *See* § 918.7(a).

In response to a request from one commenter, the final rule also revises the Interim Final Rule to clarify that if the three-year averaging number is a fraction, the Bank may, in its discretion, round down the number to the nearest whole number. *See* § 918.7(a)(2).

Several commenters urged that teleconference and videoconference meetings be allowed to count towards the minimum meetings requirement. The Finance Board believes that calling in-person board meetings is necessary to enable the directors to fulfill their responsibilities to operate the Banks in a safe and sound manner, and this requirement is maintained in the final rule. The final rule does not prohibit an individual director from participating in a meeting called as an in-person meeting by teleconferencing or videoconferencing.

The final rule also revises the Interim Final Rule to clarify that a Bank may apply to the Finance Board for a waiver of the minimum meetings requirement in paragraph (a) pursuant to the waiver procedures set forth in part 907 of the Finance Board's regulations. *See* 12 CFR part 907.

3. Prohibition on Payment of Retainer Fees—§ 918.3(b)

The Interim Final Rule revised § 932.17(c)(2) (redesignated § 918.3(b)) to provide that, starting in 2000, the total compensation received by each director in a year shall reflect the

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[2] The Finance Board recently reorganized and redesignated all of its regulations. *See* 65 FR 8253 (Feb. 18, 2000). Section 932.17(c)(1) of the Interim Final Rule was redesignated as § 918.3(a). *See* 65 FR 8253, 8260 (*to be codified* at 12 CFR 918.3(a)).

[3] The Finance Board has no regulation or policy prohibiting the Banks from adopting deferred compensation plans for Bank directors, and neither the Interim Final Rule nor this final rule prohibits the Banks from adopting such plans.

amount of time spent on official Bank business, such that greater or lesser attendance at board and committee meetings during a given year will be reflected in the compensation received by the director for that year. This section also provided that a Bank shall not pay fees to a director, such as retainer fees, that do not reflect the director's performance of official Bank business.

As discussed in the preamble to the Interim Final Rule, these provisions were intended to ensure that, consistent with Congressional intent, directors be compensated only for the performance of official Bank business and not simply for holding office. *See* 64 FR 71275. The preamble stated that a director who regularly fails to attend board or committee meetings may not be paid at all, and the Finance Board would consider such failure a dereliction of the director's fiduciary duties that would constitute cause for removal of the director, pursuant to section 2B(a)(2) of the Bank Act. *See id.*; 12 U.S.C. 1422b(a)(2) (1994).

Commenters objected to these provisions in the Interim Final Rule, apparently interpreting them as prohibiting the Banks from paying directors for official Bank business conducted by the directors outside of board or committee meetings, such as the time and effort expended in preparing for board and committee meetings, monitoring ongoing activities of the Bank, and staying informed on financial and other business developments relevant to the Bank. The revisions in the Interim Final Rule were not intended by the Finance Board to prohibit the Banks from paying directors for the performance of such official Bank business in between board or committee meetings, as long as the director also continues to regularly attend board or committee meetings and the fees are paid to the director after he or she has conducted the official Bank business. Accordingly, the final rule revises the language in the Interim Final Rule to clarify the Finance Board's intent in this regard. *See* § 918.3(b).

B. Clarification of Date of Applicability of Removal of Requirements Regarding Compensation of Bank Officers and Employees—§ 918.9

The Modernization Act amended section 12(a) of the Bank Act by removing the requirement for Finance Board approval in connection with the compensation of Bank officers and employees. *See* Modernization Act, § 606(d)(1)(B). In order to implement this provision, the Interim Final Rule removed § 932.19 of the Finance Board's regulations. Section 932.19 of the Finance Board's regulations had set forth requirements for the payment of compensation to Bank officers and employees. *See* 12 CFR 932.19 (1999). A number of Banks have raised questions regarding the effect of the Interim Final Rule on their ability to pay compensation to officers or employees for 1999 in excess of that which would have been allowed under § 932.19 of the Finance Board's regulations and the Banks' policies adopted thereunder. These questions actually translate into a question regarding the date of applicability of the removal of the compensation regulation. For the reasons discussed below, notwithstanding the December 21, 1999 overall effective date of the Interim Final Rule, the Finance Board believes that the removal of the requirements relating to compensation of Bank officers and employees in 12 CFR 932.19 (1999) should be applicable only to compensation years starting after December 21, 1999. Accordingly, a new § 918.9 is being added in the final rule to clarify this result.

The compensation regulation in effect in 1999 provided that the maximum incentive payment to a Bank president could not exceed the difference between that president's annual base salary approved by the Bank's board and 125 percent of a base salary cap established by the Finance Board. *Id.* § 932.19(c)(2)(i) (1999). The regulation further provided that, by January 31 of each year, the board of each Bank that intended to make any incentive payment to its president for such year was required to adopt a resolution establishing the performance measures and targets on which such incentive payment would be based. The Banks have operated, and the Bank presidents have performed, pursuant to the provisions of their incentive compensation plans and the Finance Board's compensation regulation for the entire 1999 year.

The Modernization Act, while deleting the requirement in section 12(a) of the Bank Act for Finance Board approval of Bank officer and employee compensation, did not affect in any way the ability of the Finance Board to continue to regulate Bank officer and employee compensation, nor did the enactment of the Modernization Act have the effect of suspending the Finance Board's existing compensation regulation.

Therefore, the controlling statutory, regulatory and corporate governance framework for Bank officer and employee compensation in 1999 should be that which was in place when, on January 31, each Bank established the base salary for its president, when each Bank adopted its incentive compensation plan for that year, and when, by January 31, each Bank's board established the performance measures and targets on which incentive payments to that Bank's president would be based. This view is consistent with that taken in § 932.17 of the Interim Final Rule (redesignated part 918), and finalized in this final rule, that the annual director compensation limits established in the Modernization Act apply only to compensation to be paid for services performed in 2000 and in subsequent years.

Thus, all compensation, both base salary and incentive compensation, to be paid to a president or other officer of a Bank for services performed during 1999 (or prior compensation years) must comply with the provisions of the 1999 compensation (or the compensation regulation in effect for that compensation year). *See* 12 CFR 932.19 (1999).

The Finance Board is aware that a number of Banks had a practice of adopting incentive compensation plans that permitted the Banks' presidents to earn incentive compensation in excess of the limits established in the compensation regulation, although to the Finance Board's knowledge, no Bank's plan provided for the payment of those excess amounts. Because the removal of the compensation requirements in 12 CFR 932.19 (1999) is applicable only to compensation years starting after December 21, 1999, Banks that had adopted such plans in 1999 and before may not pay incentive compensation earned under such plans in excess of the limits established by the Finance Board in the 1999 compensation regulation (or prior compensation regulations). *See id.* § 932.19(c)(2) (1999).

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply. Moreover, the final rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act. *See id.* § 601(6).

IV. Paperwork Reduction Act

This final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects 12 CFR Parts 917, 918 and 950

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Interim Final Rule amending 12 CFR chapter IX, which was published at 64 FR 71275 (Dec. 21, 1999), and amended at 65 FR 8253 (Feb. 18, 2000), is adopted as final with the following changes:

PART 918—BANK COMPENSATION, EXPENSES AND MEETINGS

1. The authority citation for part 918 continues to read as follows:

Authority: 12 U.S.C. 1422b(a), and 1427.

2. Revise the heading of § 918.2 to read as follows:

§ 918.2 Annual directors' compensation policy.

* * * * *

3. Amend § 918.3 by:

a. Revising the heading;

b. Redesignating paragraph (a) as paragraph (a)(1);

c. Adding paragraph (a)(2); and

d. Revising paragraph (b), to read as follows:

§ 918.3 Directors' compensation policy requirements.

* * * * *

(a) * * *

(1) * * *

(2) Starting in 2000, the annual compensation limits set forth in paragraph (a)(1) of this section shall apply to the year in which any deferred compensation was accrued or earned by a director, and not to the year in which it is paid to the director.

(b) *Compensation permitted only for performance of official Bank business.* The total compensation received by each director in a year shall reflect the amount of time spent on official Bank business, and greater or lesser attendance at board and committee meetings during a given year shall be reflected in the compensation received by the director for that year. A Bank shall not pay a director who regularly fails to attend board or committee meetings. A Bank shall not pay fees to a director, such as retainer fees, that do not reflect the director's performance of official Bank business conducted prior to the payment of such fees.

4. Revise the heading of § 918.4 to read as follows:

§ 918.4 Directors' expenses.

* * * * *

5. Revise § 918.7 to read as follows:

§ 918.7 Maintenance of effort.

(a) *General.* Notwithstanding the limits on annual directors' compensation established by section 7(i) of the Act, as amended, the board of directors of each Bank shall continue to maintain its level of oversight of the management of the Bank, and, except as provided in paragraph (b) of this section, the board of directors shall hold a minimum number of in-person meetings in any year equal to the lesser of:

(1) 9; or

(2) The number of in-person board of directors meetings held by the Bank on average over the immediately preceding three years (which number, if a fraction, may be rounded down to the nearest whole number, in the Bank's discretion).

(b) *Waiver of minimum meetings requirement.* A Bank may apply to the Finance Board for a waiver of paragraph (a) of this section pursuant to the procedures set forth in part 907 of this chapter.

6. Add § 918.9 to read as follows:

§ 918.9 Date of applicability of removal of requirements regarding compensation of bank officers and employees.

The removal of the requirements relating to compensation of Bank officers and employees in 12 CFR 932.19 (in the Code of Federal Regulations revised as of January 1, 1999), is applicable for all Bank officer and employee compensation years starting after December 21, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Dated: February 23, 2000.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–6201 Filed 3–13–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM169; Special Conditions No. 25–157–SC]

Special Conditions: Boeing Model 727–200 and 727–200F Series Airplanes; as Modified by Rockwell Collins; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 727–200 and 727–200F series airplanes modified by Rockwell Collins. These modified airplanes will have a novel or unusual design feature associated with the Rockwell Collins Multi-Mode Receiver (MMR) System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is March 6, 2000. Comments must be received on or before April 13, 2000.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM169, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM169. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include with those

comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM169." The postcard will be date stamped and returned to the commenter.

Background

On September 10, 1999, Rockwell Collins, Business and Regional Systems, 400 Collins Road NE., Cedar Rapids, Iowa, 52498, made application to the FAA for a Supplemental Type Certificate (STC) for the Boeing Model 727–200 and 727–200F series airplanes. These airplanes are low-wing, pressurized transport category airplanes with three fuselage-mounted jet engines. They are capable of seating between 170 and 189 passengers, depending upon the model and configuration (727–200F is not certificated to carry passengers). The proposed configuration of these modified airplanes will incorporate a Multi-Mode Receiver (MMR) system manufactured by Rockwell Collins. The affected aircraft are scheduled for delivery to the first customers in April 2000.

The Rockwell Collins MMR is a single integrated unit that enables approaches using instrument landing systems, microwave landing systems, and global navigation satellite system functions. These functions can be susceptible to disruption of both command and response signals as a result of electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. This disruption of signals could result in loss of critical flight displays and annunciations, or could present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Rockwell Collins must show that the Boeing Model 727–200 and 727–200F series airplanes, as modified to include the MMR installation, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The specific regulations included in the certification basis for the Boeing Model 727–200 and 727–200F series airplanes include Civil Air Regulations (CAR) 4b, as amended by amendment 4b–1 through 4b–11.

If the Administrator finds that the applicable airworthiness regulations (i.e., CAR 4b, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 727–200 and 727–200F series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29, and become part of the airplane's type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Rockwell Collins apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The modified Boeing Model 727–200 and 727–200F series airplanes will incorporate the Rockwell Collins MMR system, which performs critical functions. The MMR system contains electronic equipment for which the current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. This system may be vulnerable to high-intensity radiated fields external to the airplane. Accordingly, this system is considered to be a "novel or unusual design feature."

Discussion

There is no specific regulation that addresses requirements for protection of electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 727–200 and 727–200F series airplanes modified to include the Rockwell Collins MMR system. These special conditions will require that this system, which performs critical functions, must be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the computer modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization

Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 727–200 and 727–200F series airplanes modified by Rockwell Collins to include the MMR system. Should Rockwell Collins apply at a later date for a design change approval to modify any other model included on Type Certificate A3WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Boeing Model 727–200 and 727–200F series airplanes modified by Rockwell Collins to include the Rockwell Collins MMR system installation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 727–200 and 727–200F series airplanes as modified by Rockwell Collins.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on March 6, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 00–6125 Filed 3–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–319–AD; Amendment 39–11630; AD 2000–05–20]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Fan Jet Falcon Series Airplanes; Model Mystere-Falcon 20, 50, 200, and 900 Series Airplanes; and Model Falcon 10, 900EX, and 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Fan Jet Falcon series airplanes; Model Mystere-Falcon 20, 50, 200, and 900 series airplanes; and Model Falcon 10, 900EX, and 2000 series airplanes, that requires a functional test of the passenger oxygen masks, determination of the part number of the installed oxygen mask bags; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to ensure that proper plastic bags of the passenger oxygen masks are installed, and that the masks are functioning properly. Improper plastic bags that have cracks or improperly functioning masks could result in insufficient oxygen to passengers in the event of rapid depressurization of the airplane.

EFFECTIVE DATE: April 18, 2000.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Fan Jet Falcon series airplanes; Model Mystere-Falcon 20, 50, 200, and 900 series airplanes; and Model Falcon 10, 900EX, and 2000 series airplanes was published in the **Federal Register** on December 9, 1999 (64 FR 68963). That action proposed to require a functional test of the passenger oxygen masks, determination of the part number of the installed oxygen mask bags; and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to this AD or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that as many as 767 airplanes of U.S. registry will be affected by this AD; that it will take approximately 4 work hours per airplane to accomplish the required test and determination, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $184,080, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish those

actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–20 Dassault Aviation [Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)]: Amendment 39–11630. Docket 99–NM–319–AD.

Applicability: Model Fan Jet Falcon airplanes, Model Mystere-Falcon 20, 50, 200, and 900 series airplanes, and Model Falcon 10, 900EX, and 2000 series airplanes; equipped with EROS passenger oxygen masks, part number (P/N) MW 37–09, MW 37–11, MW 37–14, MW 37–18, MW 37–28, MW 37–31, or MW 37–36; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that proper plastic bags of the passenger oxygen masks are installed, and that the masks are functioning properly, accomplish the following:

(a) Within 10 flights after the effective date of this AD, perform a functional test of the passenger oxygen masks in accordance with Chapter 5 (ATA Code 35) of the airplane maintenance manual (AMM) for the affected airplanes, as applicable; and determine the P/N of the installed oxygen mask bags.

Corrective Actions

(b) If any Scott oxygen mask bag, P/N 289–801–235, is installed, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace the bag with a new bag, P/N 289–601–235, in accordance with Chapter 5 (ATA Code 35) of the AMM for the affected airplanes, as applicable.

(2) Render any affected seat inoperative, and within 30 days after rendering the affected seat inoperative, accomplish the action specified in paragraph (b)(1) of this AD.

(c) If any discrepancy is detected during the functional test required by paragraph (a) of this AD, prior to further flight, repair the discrepancy in accordance with Chapter 5 (ATA Code 35) of the AMM for the affected airplanes, as applicable.

Spares

(d) As of the effective date of this AD, no person shall install a SCOTT oxygen mask bag, P/N 289–801–235, on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 1999–270–025(B), dated June 30, 1999 (for Model Jet Falcon series airplanes, and Model Mystere-Falcon 20 and 200 series airplanes); 1999–271–026(B), dated June 30, 1999 (for Model Mystere-Falcon 50 and 900 series airplanes, and Model Falcon 900EX series airplanes); 1999–267–010(B), dated June 30, 1999 (for Model Falcon 2000 series airplanes); and 1999–269–024(B), dated June 30, 1999 (for Model Falcon 10 series airplanes).

(g) This amendment becomes effective on April 18, 2000.

Issued in Renton, Washington, on March 8, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6156 Filed 3–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29947; Amdt. No. 1980]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of change occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAP's mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air)

Issued in Washington, DC on March 3, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

§ 97.23, 97.27, 97.33, 97.35 [Amended]

. . . Effective April 20, 2000

The following entries on the 3rd docket of TL 00–06 are hereby rescinded:

Concord, CA, Buchanan Field, NDB or GPS RWY 19R, Amdt Orig-A, CANCELLED
Concord, CA, Buchanan Field, NDB RWY 19R, Amdt Orig-A

. . . Effective April 20, 2000

Denver, CO, Centennial, VOR/DME RNAV or GPS RWY 28, Orig, CANCELLED
Denver, CO, Centennial, VOR/DME RNAV RWY 28, Orig
Denver, CO, Centennial, NDB or GPS RWY 35R, Amdt 9, CANCELLED
Denver, CO, Centennial, NDB RWY 35R, Amdt 9
Westfield, MA, Barnes Muni, VOR or TACAN or GPS RWY 2. Amdt 3, CANCELLED
Westfield, MA, Barnes Muni, VOR or TACAN RWY 2. Amdt 3
Westfield, MA, Barnes Muni, VOR or GPS RWY 20, Amdt 19, CANCELLED
Westfield, MA, Barnes Muni, VOR RWY 20, Amdt 19

Coldwater, MI, Branch County Memorial, VOR or GPS RWY 6, Amdt 4A, CANCELLED
Coldwater, MI, Branch County Memorial, VOR RWY 6, Amdt 4A
Bemidji, MN, Bemidji-Beltrami County, VOR/DME or TACAN or GPS RWY 31, Amdt 12A, CANCELLED
Bemidji, MN, Bemidji-Beltrami County, VOR/DME or TACAN RWY 31, Amdt 12A
Sidney, NY, Sidney Muni, VOR or GPS RWY 25, Amdt 2, CANCELLED
Sidney, NY, Sidney Muni, VOR RWY 25, Amdt 2

[FR Doc. 00–6130 Filed 3–13–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29946; Amdt. No. 1979]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMS, the respective FDC/T NOTAMS have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments require making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on March 3, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC No.	SIAP
02/98/00	GA	EASTMAN	HEART OF GEORGIA REGIONAL	FDC 0/1268	VOR/DME RNAV OR GPS RWY 2, AMDT 2 REPLACES TL–06
02/08/00	GA	EASTMAN	HEART OF GEORGIA REGIONAL	FDC 0/1268	VOR/DME RNAV OR GPS RWY 2, AMDT 2 REPLACES TL–06
02/15/00	CA	BURBANK	BURBANK-GLENDALE-PASADENA	FDC 0/1534	VOR OR GPS RWY 8 AMDT 10 THIS CORRECTS 0/1534 in TL 00–06
02/16/00	VA	NORFOLK	NORFOLK INTL	FDC 0/1560	NDB RWY 5 ORIG–A THIS CORRECTS FDC 01/1126 IN TL 00–06
02/17/00	FL	TALLAHASSEE	TALLAHASSEE REGIONAL	FDC 0/1615	NDB OR GPS RWY 36, AMDT 18A
02/17/00	FL	TALLAHASSEE	TALLAHASSEE REGIONAL	FDC 0/1617	ILS RWY 36, AMDT 22A
02/18/00	MN	FAIRMONT	FAIRMONT MUNI	FDC 0/1631	ILS RWY 31, ORIG
02/18/00	OH	WILMINGTON	AIRBORNE AIRPARK	FDC 0/1636	NDB RWY 22R, AMDT 7B
02/22/00	NM	HOBBS	LEA COUNTY/HOBBS	FDC 0/1685	GPS RWY 30, ORIG THIS REPLACES FDC 01/1046
02/22/00	NM	RUIDOSO	SIERRA BLANCA REGIONAL	FDC 0/1683	GPS RWY 24, ORIG THIS REPLACES FDC 01/1094
02/23/00	AK	FORT YUKON	FORT YUKON	FDC 0/1725	VOR/DME OR TACAN RWY 3, AMDT 1A
02/23/00	AK	FORT YUKON	FORT YUKON	FDC 0/1726	VOR/DME OR TACAN RWY 21, AMDT 1A
02/23/00	AK	FORT YUKON	FORT YUKON	FDC 0/1729	NDB RWY 21, AMDT 7A
02/23/00	AK	FORT YUKON	FORT YUKON	FDC 0/1730	VOR RWY 3, AMDT 4A
02/23/00	AK	FORT YUKON	FORT YUKON	FDC 0/1731	VOR RWY 21, AMDT 4A
02/23/00	CA	TORRANCE	ZAMPERINI FIELD	FDC 0/1705	VOR OR GPS RWY 11L AMDT 14
02/23/00	NE	OMAHA	MILLARD	FDC 0/1732	GPS RWY 12, ORIG–A
02/23/00	NE	OMAHA	MILLARD	FDC 0/1733	NDB RWY 12, AMDT 10A
02/23/00	NE	PLATTSMOUTH	PLATTSMOUTH MUNI	FDC 0/1734	NDB RWY 34, AMDT 4
02/23/00	NE	PLATTSMOUTH	PLATTSMOUTH MUNI	FDC 0/1735	GPS RWY 16, ORIG
02/23/00	NE	PLATTSMOUTH	PLATTSMOUTH MUNI	FDC 0/1736	GPS RWY 34, ORIG
02/23/00	NE	WAHOO	WAHOO MUNI	FDC 0/1706	NDB RWY 20, ORIG
02/23/00	NE	WAHOO	WAHOO MUNI	FDC 0/1711	GPS RWY 20, ORIG
02/23/00	RI	PROVIDENCE	THEODORE FRANCIS GREEN STATE	FDC 0/1717	NDB RWY 5R AMDT 15
02/23/00	RI	PROVIDENCE	THEODORE FRANCIS GREEN STATE	FDC 0/1718	VOR RWY 5R AMDT 13A
02/23/00	RI	PROVIDENCE	THEODORE FRANCIS GREEN STATE	FDC 0/1719	ILS RWY 5R (CAT I, II) AMDT 16A
02/23/00	TX	ALPINE	ALPINE-CASPARIS MUNI	FDC 0/1742	NDB RWY 19, AMDT 5A
02/23/00	TX	HOUSTON	GEORGE BUSH INTERCONTINENTAL AIRPORT HOUSTON.	FDC 0/1713	ILS RWY 15, AMDT 11A
02/23/00	TX	HOUSTON	GEORGE BUSH INTERCONTINENTAL AIRPORT HOUSTON.	FDC 0/1723	VOR/DME RWY 15L, AMDT 15C
02/24/00	AZ	CHANDLER	STELLAR AIRPARK	FDC 0/1819	VOR OR GPS-A AMDT 1
02/24/00	CA	VICTORVILLE	SOUTHERN CALIFORNIA LOGISTICS	FDC 0/1835	ILS RWY 17 AMDT 1
02/24/00	DE	GEORGETOWN	SUSSEX COUNTY	FDC 0/1778	RNAV RWY 4 ORIG
02/24/00	DE	GEORGETOWN	SUSSEX COUNTY	FDC 0/1779	RNAV RWY 22 ORIG
02/24/00	GA	VIDALIA	VIDALIA MUNI	FDC 0/1825	LOC RWY 24 AMDT 2B
02/24/00	GA	VIDALIA	VIDALIA MUNI	FDC 0/1827	NDB OR GPS RWY 24 AMDT 2A
02/24/00	IL	BELLEVILLE	SCOTT AFB/MIDAMERICA	FDC 0/1765	ILS RWY 32L, ORIG
02/24/00	KS.	HUTCHINSON	HUTCHINSON MUNI	FDC 0/1758	VOR RWY 3, AMDT 19
02/24/00	KS	HUTCHINSON	HUTCHINSON MUNI	FDC 0/1759	LOC BC RWY 31, AMDT 14
02/24/00	MD	OCEAN CITY	OCEAN CITY MUNI	FDC 0/1777	RNAV RWY 14 ORIG
02/24/00	MN	MARSHALL	MARSHALL MUNI-RYAN FIELD	FDC 0/1847	ILS RWY 12, AMDT 1

FDC date	State	City	Airport	FDC No.	SIAP
02/24/00	NE	OMAHA	EPPLEY AIRFIELD	FDC 0/1841	NDB RWY 32L, AMDT 1
02/24/00	NE	OMAHA	EPPLEY AIRFIELD	FDC 0/1842	NDB OR GPS RWY 14R, AMDT 24
02/24/00	NE	OMAHA	EPPLEY AIRFIELD	FDC 0/1843	VOR RWY 32L, AMDT 10
02/24/00	NE	OMAHA	EPPLEY AIRFIELD	FDC 0/1844	ILS RWY 32L, ORIG
02/24/00	NE	OMAHA	EPPLEY AIRFIELD	FDC 0/1845	ILS RWY 14R, AMDT 2
02/24/00	NE	OMAHA	EPPLEY AIRFIELD	FDC 0/1846	ILS RWY 18, AMDT 6B
02/24/00	SC	COLUMBIA	COLUMBIA METROPOLITAN	FDC 0/1769	ILS RWY 5, AMDT 1
02/24/00	VA	WALLOPS ISLAND	WALLOPS FLIGHT FACILITY	FDC 0/1786	VOR OR TACAN OR GPS RWY 17 AMDT 6
02/24/00	VT	RUTLAND	RUTLAND STATE	FDC 0/1782	LOC RWY 19 ORIG
02/25/00	AZ	PARKER	AVI SUQUILLA	FDC 0/1884	VOR/DME OR GPS-A AMDT 2A
02/25/00	CO	GUNNISON	GUNNISON COUNTY	FDC 0/1861	ILS RWY 6 AMDT 3A
02/25/00	MO	MARSHALL	MARSHALL MEML MUNI	FDC 0/1886	NDB RWY 36, AMDT 1
02/25/00	NE	OMAHA	EPPLEY AIRFIELD	FDC 0/1875	GPS RWY 32L, ORIG
02/28/00	IN	RICHMOND	RICHMOND MUNI	FDC 0/1946	ILS RWY 24, ORIG
02/28/00	MO	SPRINGFIELD	SPRINGFIELD-BRANSON REGIONAL	FDC 0/1957	VOR/DME RNAV OR GPS RWY 14, AMDT 4
02/28/00	ND	MOHALL	MOHALL MUNI	FDC 0/1952	VOR/DME OR GPS RWY 31, AMDT 2A
02/29/00	CA	FRESNO	FRESNO YOSEMITE INTL	FDC 0/2000	VOR OR TACAN OR GPS RWY 11L AMDT 11
02/29/00	CA	FRESNO	FRESNO YOSEMITE INTL	FDC 0/2003	LOC BC RWY 11L AMDT 8
02/29/00	CO	MONTROSE	MONTROSE REGIONAL	FDC 0/2032	VOR/DME RWY 13 AMDT 8B
02/29/00	CO	MONTROSE	MONTROSE REGIONAL	FDC 0/2034	GPS RWY 35 ORIG
02/29/00	CO	TELLURIDE	TELLURIDE REGIONAL	FDC 0/2028	GPS RWY 9 AMDT 1
02/29/00	CO	TELLURIDE	TELLURIDE REGIONAL	FDC 0/2036	LOC/DME RWY 9 ORIG-A
02/29/00	IN	FORT WAYNE	FORT WAYNE INTL	FDC 0/1983	ILS RWY 5, AMDT 14 (CAT I AND II)
02/29/00	MA	BOSTON	GENERAL EDWARD LAWRENCE LOGAN INTL.	FDC 0/2006	RNAV RWY 4R ORIG
02/29/00	MO	MARSHALL	MARSHALL MEML MUNI	FDC 0/1990	RNAV RWY 36, ORIG
02/29/00	MO	MARSHALL	MARSHALL MEML MUNI	FDC 0/1991	RNAV RWY 18, ORIG
02/29/00	NJ	ATLANTIC CITY	ATLANTIC CITY INTL	FDC 0/2004	RNAV RWY 13 ORIG
02/29/00	NV	ELY	ELY AIRPORT-YELLAND FIELD	FDC 0/1982	GPS RWY 18 ORIG
02/29/00	OR	SALEM	MCNARY FIELD	FDC 0/1986	NDB OR GPS RWY 31 AMDT 18A
02/29/00	VA	CHARLOTTESVILLE	CHARLOTTESVILLE-ALBEMARLE	FDC 0/2001	RNAV RWY 3 ORIG
02/29/00	WA	YAKIMA	YAKIMA AIR TERMINAL	FDC 0/1980	ILS RWY 27 AMDT 26A
03/01/00	CA	MONTEREY	MONTEREY PENINSULA	FDC 0/2076	NDB RWY 10R AMDT 12A
03/01/00	CA	MONTEREY	MONTEREY PENINSULA	FDC 0/2079	GPS RWY 28R ORIG
03/01/00	CA	MONTEREY	MONTEREY PENINSULA	FDC 0/2080	GPS RWY 28L ORIG
03/01/00	CA	MONTEREY	MONTEREY PENINSULA	FDC 0/2082	GPS RWY 10L AMDT 1
03/01/00	MD	SALISBURY	SALISBURY-OCEAN CITY WICOMICO REGIONAL.	FDC 0/2103	VOR RWY 5 AMDT 9
03/01/00	MD	SALISBURY	SALISBURY-OCEAN CITY WICOMICO REGIONAL.	FDC 0/2104	VOR RWY 32 AMDT 9
03/01/00	MD	SALISBURY	SALISBURY-OCEAN CITY WICOMICO REGIONAL.	FDC 0/2105 FDC 0	VOR RWY 23 AMDT 9
03/01/00	PA	ERIE	ERIE INTL	FDC 0/2111	NDB RWY 6 ORIG
03/01/00	PA	MOUNT JOY/MARIETTA	DONEGAL SPRINGS AIRPARK	FDC 0/2083	VOR/DME OR GPS RWY 27 ORIG
03/01/00	WV	MORGANTOWN	MORGANTOWN MUNI-WALTER L BILL HART FIELD.	FDC 0/2109	RNAV RWY 18 ORIG

[FR Doc. 00–6129 Filed 3–13–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29945; Amdt. No. 1978]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to

promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedures Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 3, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . . Effective April 20, 2000

Nome, AK, Nome, ILS Z RWY 27, Amdt 1
Nome, AK, Nome, ILS Y RWY 27, Amdt 1
Russian Mission, AK, Russian Mission, GPS RWY 17, Orig
Russian Mission, AK, Russian Mission, GPS RWY 35, Orig
Big Bear City, CA, Big Bear City, GPS RWY 26, Orig
Denver, CO, Centennial, GPS RWY 28, Orig
Denver, CO, Centennial, GPS RWY 35R, Orig
Apalachicola, FL, Apalachicola Muni, GPS RWY 13, Orig, CANCELLED
Apalachicola, FL, Apalachicola Muni, GPS RWY 31, Orig, CANCELLED
Apalachicola, FL, Apalachicola Muni, RNAV RWY 13, Orig
Apalachicola, FL, Apalachicola Muni, RNAV RWY 31, Orig
Lake City, FL, Lake City Muni, GPS RWY 10, Orig, CANCELLED
Lake City, FL, Lake City Muni, GPS RWY 28, Orig, CANCELLED
Lake City, FL, Lake City Muni, RNAV RWY 10, Orig
Lake City, FL, Lake City Muni, RNAV RWY 28, Orig
Lakeland, FL, Lakeland Linder Regional, GPS RWY 23, Orig

Orlando, FL, Orlando Sanford, ILS RWY 9L, Amdt 1
Orlando, FL, Orlando Sanford, VOR/DME RNAV OR GPS RWY 9L, Orig, CANCELLED
Orlando, FL, Orlando Sanford, GPS RWY 27R, Orig, CANCELLED
Orlando, FL, Orlando Sanford, NDB RWY 9L, Amdt 1
Orlando, FL, Orlando Sanford, NDB RWY 27R, Amdt 1
Orlando, FL, Orlando Sanford, RNAV RWY 9L, Orig
Orlando, FL, Orlando Sanford, RNAV RWY 27R, Orig
St. Petersburg-Clearwater, FL, St. Petersburg-Clearwater Intl, LOC BC RWY 35R, Amdt 5
Belleville, IL, Scott AFB/Midamerica, RNAV RWY 14R, Orig
Belleville, IL, Scott AFB/Midamerica, RNAV RWY 32L, Orig
Nantucket, MA, Nantucket Memorial, LOC BC RWY 6, Amdt 10
Westfield, MA, Barnes Muni, GPS RWY 2, Orig
Westfield, MA, Barnes Muni, GPS RWY 20, Orig
Coldwater, MI, Branch County Memorial, RNAV RWY 6, Orig
Bemidji, MN, Bemidji-Beltrami County, RNAV RWY 31, Orig
Sidney, NY, Sidney Muni, RNAV RWY 25, Orig
Gastonia, NC, Gastonia Muni, GPS RWY 3, Orig, CANCELLED
Gastonia, NC, Gastonia Muni, RNAV RWY 3, Orig
Gastonia, NC, Gastonia Muni, VOR/DME OR GPS–A, Amdt 4
Gastonia, NC, Gastonia Muni, NDB RWY 3, Amdt 9
Bismarck, ND, Bismarck Muni, RNAV RWY 3, Orig
Bismarck, ND, Bismarck Muni, RNAV RWY 21, Orig
North Bend, OR, North Bend Muni, ILS RWY 4, Amdt 6
Pittsburgh, PA, Allegheny County, VOR RWY 5, Amdt 10
Pittsburgh, PA, Allegheny County, NDB RWY 28, Amdt 23
Pittsburgh, PA, Allegheny County, ILS RWY 10, Amdt 4
Pittsburgh, PA, Allegheny County, ILS RWY 28, Amdt 28
Pittsburgh, PA, Allegheny County, RNAV RWY 5, Orig
Pittsburgh, PA, Allegheny County, RNAV RWY 10, Orig
Pittsburgh, PA, Allegheny County, RNAV RWY 28, Orig
Pittsburgh, PA, Allegheny County, VOR/DME RNAV OR GPS RWY 10, Amdt 6, CANCELLED
Pittsburgh, PA, Pittsburgh Intl, ILS RWY 10R, Amdt 9
Pittsburgh, PA, Pittsburgh Intl, ILS RWY 10L, Amdt 24
Pittsburgh, PA, Pittsburgh Intl, ILS RWY 28R, Amdt 7
Pittsburgh, PA, Pittsburgh Intl, Converging ILS RWY 28R, Amdt 2
Pittsburgh, PA, Pittsburgh Intl, ILS RWY 28L, Amdt 7–
Pittsburgh, PA, Pittsburgh Intl, ILS RWY 32, Amdt 10
Pittsburgh, PA, Pittsburgh Intl, Converging ILS RWY 32 Amdt 3
Pittsburgh, PA, Pittsburgh Intl, VOR/DME RWY 14, Amdt 2
Pittsburgh, PA, Pittsburgh Intl, VOR OR GPS RWY 28L/C, Amdt 5, CANCELLED
Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 10R, Orig
Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 10L, Orig
Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 10C, Orig
Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 14, Orig
Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 28R, Orig
Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 28L, Orig
Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 28C, Orig
Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 32, Orig
Green Bay, WI, Austin Straubel Intl, ILS RWY 6, Amdt 21

. . . Effective June 15, 2000

Destin, FL, Destin-Fort Walton Beach, NDB RWY 32, Amdt 1

The FAA published an Amendment in Docket No. 29926, Amdt. No. 1975 to Part 97 of the Federal Aviation Regulations (Vol 65 FR No. 38 Page 10006; dated February 25, 2000) under section 97.33 effective April 20, 2000, which is hereby amended as follows:

Saipan Island. MO, Saipan Intl, GPS RWY 25, Amdt 1, should read Saipan Island, MP, Saipan Intl, GPS RWY 25, Amdt 1

The FAA published an amendment in Docket No. 29928, Amdt. No. 1977 to Part 97 of the Federal Aviation Regulations (Vol 65 FR No. 38 Page 10001; dated Friday, February 25, 2000) under sections 97.27 and 97.33 effective April 20, 2000, which is hereby rescinded:

Concord, CA, Buchanan Field, NDB RWY 19R, Amdt 1
Concord, CA, Buchanan Field, GPS RWY 19R, Orig

The FAA published an amendment in Docket No. 29927, Amdt. 1976 to Part 97 of the Federal Aviation Regulations (Vol 65 FR No. 38 Page 10005; dated Friday, February 25, 2000) under section 97.33 effective April 20, 2000, which is hereby rescinded:

Payson, AZ, Payson, GPS–A, Orig.

[FR Doc. 00–6128 Filed 3– 13–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 95F–0065]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyamidoamine-ethyleneimine-epichlorohydrin resin for use as a retention aid in the manufacture of paper and paperboard intended for use in contact with aqueous and fatty food. This action is in response to a petition filed by BASF Corp.

DATES: This rule is effective March 14, 2000. Submit written objections and requests for a hearing by April 13, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of April 13, 1995 (60 FR 18845), FDA announced that a food additive petition (FAP 5B4452) had been filed by BASF Corp., 1609 Biddle Ave., Wyandotte, MI 48192. The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of a polyamide-ethyleneimine-epichlorohydrin resin as a component of paper and paperboard in contact with aqueous and fatty food.

Subsequent to the filing of the petition, the petitioner obtained a new Chemical Abstracts Service (CAS) Registry number for the additive under the following name: Polyamidoamine-ethyleneimine-epichlorohydrin resin prepared by reacting hexanedioic acid, *N*-(2-aminoethyl)-1,2-ethanediamine, (chloromethyl)oxirane, ethyleneimine (aziridine), and polyethylene glycol, partly neutralized with sulfuric acid, CAS Reg. No. 167678–45–7. In this document, polyamidoamine-ethyleneimine-epichlorohydrin resin will be referred to as the additive.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted ethylene oxide, 1,4-dioxane,

epichlorohydrin, and ethyleneimine, which are carcinogenic impurities resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine are commonly found as contaminants in chemical products, including food additives.

II. Determination of Safety

Under the general safety standard of section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of section (409(c)(3)(A)) of the act provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive. (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).)

III. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, polyamidoamine-ethyleneimine-epichlorohydrin resin, will result in exposure to no greater than 650 parts per billion (ppb) of the additive in the daily diet (3 kilograms (kg)) or an estimated daily intake (EDI) of 2.0 milligrams per person per day (mg/p/d) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of the additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine, the carcinogenic chemicals that may be present as impurities in the additive. The risk evaluation of ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine has two aspects: (1) Assessment of the exposure to the impurities from the petitioned use of the additive; and (2) extrapolation of the risk observed in the animal bioassay to the conditions of exposure to humans.

A. Ethylene oxide

FDA has estimated the exposure to ethylene oxide from the petitioned use of the additive as a component of paper and paperboard to be no more than 0.7 parts per trillion (pptr) of the daily diet (3 kg), or 2 nanograms (ng)/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay, in female rats, on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas in situ of the glandular stomach.

Based on the agency's estimate that exposure to ethylene oxide will not exceed 2 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 3.7×10^{-9}, or 3.7 in a billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethylene oxide would result from the petitioned use of the additive.

B. 1,4-Dioxane

FDA has estimated the exposure to 1,4-dioxane from the petitioned use of the additive as a component of paper and paperboard to be no more than 31 pptr of the daily diet (3 kg), or 94 ng/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay, in mice and rats, on 1,4-dioxane, conducted by the National Cancer Institute (Ref. 5), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material induced squamous cell carcinomas of the nasal turbinates in male and female rats, hepatocellular adenomas in female rats, and hepatocellular carcinomas in male and female mice.

Based on the agency's estimate that exposure to 1,4-dioxane will not exceed 94 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 3.4×10^{-9}, or 3.4 in a billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to 1,4-dioxane would result from the petitioned use of the additive.

C. Epichlorohydrin

FDA has estimated the exposure to epichlorohydrin from the petitioned use of the additive as a component of paper and paperboard to be no more than 1.3 pptr of the daily diet (3 kg), or 4 ng/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay, in male rats, on epichlorohydrin conducted by Konishi et al. (Ref. 6), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused increased incidences of forestomach hyperplasia, papillomas, and carcinomas in the rats.

Based on the agency's estimate that exposure to epichlorohydrin will not exceed 4 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 1.9×10^{-10}, or 1.9 in 10 billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to epichlorohydrin is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to

epichlorohydrin would result from the petitioned use of the additive.

D. Ethyleneimine

FDA has estimated the exposure to ethyleneimine from the petitioned use of the additive as a component of paper and paperboard to be no more than 0.03 pptr of the daily diet (3 kg), or 0.1 ng/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay, in mice, on ethyleneimine conducted by Innes et al. (Ref. 7), to estimate the upper-bound limit of lifetime human risk from exposure to ethyleneimine resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence of lung and liver tumors in both male and female mice.

Based on the agency's estimate that exposure to ethyleneimine will not exceed 0.1 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 3.2×10^{-8}, or 32 in a billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethyleneimine is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethyleneimine would result from the petitioned use of the additive.

E. Need for Specifications

The agency also has considered whether specifications are necessary to control the amount of ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine as impurities in the polyamidoamine-ethyleneimine-epichlorohydrin resin. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine may be expected to remain as impurities following production of the additive, the agency would not expect the impurities to become components of food at other than extremely low levels; and (2) the upper-bound limits of lifetime human risk from exposure to ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine are very low, 3.7 in a billion, 3.4 in a billion, 1.9 in 10 billion, and 32 in a billion, respectively.

IV. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the petitioned use of the additive as a retention aid in the manufacture of paper and paperboard intended for use in contact with aqueous and fatty food is safe, and that the additive will achieve its intended technical effect. Therefore, the agency concludes that the regulations in § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by April 13, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Team (HFS–246) to the Division of Petition Control (HFS–215) entitled "FAP 5B4452, BASF Corp. Polyamide-ethyleneimine-epichlorohydrin resin, Polymin SKA, as a retention agent in the production of paper. Memorandum of correction," dated October 22, 1997.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J. K. Marquis, and published by S. Karger, New York, NY, pp. 24–33, 1985.

3. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide Upon Intragastric Administration to Rats," *British Journal of Cancer*, 46: pp. 924–933, 1982.

4. Memorandum from the Division of Petition Control (HFS–215) to the Executive Secretary, Quantitative Risk Assessment Committee (QRAC) (HFS–308) entitled "Estimation of upper-bound limit of lifetime risk from ethyleneimine (EI), epichlorohydrin (ECH), ethylene oxide (EO), and 1,4-dioxane (DX), FAP 5B4452 (BASF Corp.)," dated October 5, 1999.

5. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

6. Konishi, Y. et al., "Forestomach Tumors Induced by Orally Administered Epichlorohydrin in Male Wistar Rats," *Gann* 71:922–923, 1980.

7. Innes, J. R. M. et al., "Bioassay of Pesticide and Industrial Chemicals for Tumorigenicity in Mice: A Preliminary Note," *Journal of the National Cancer Institute*, 42, No. 6, 1101–14, 1969.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

2. Section 176.170 is amended in the table in paragraph (a)(5) by alphabetically adding an entry under the headings "List of Substances" and "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	Limitations
* * * *	* * * *
Polyamidoamine-ethyleneimine-epichlorohydrin resin prepared by reacting hexanedioic acid, *N*-(2-aminoethyl)-1,2-ethanediamine, (chloromethyl)oxirane, ethyleneimine (aziridine), and polyethylene glycol, partly neutralized with sulfuric acid (CAS Reg. No. 167678–45–7).	For use only as a retention aid employed prior to the sheet-forming operation in the manufacture of paper and paperboard at a level not to exceed 0.12 percent resin by weight of the finished dry paper or paperboard.
* * * *	* * * *

* * * * *

Dated: March 3, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–6116 Filed 3–13–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 640

[Docket No. 98N–0606]

Revision of Requirements Applicable to Albumin (Human), Plasma Protein Fraction (Human), and Immune Globulin (Human); Confirmation in Part and Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation in part and technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is confirming in part the direct final rule that appeared in the **Federal Register** of May 14, 1999 (64 FR 26282). The direct final rule amends the biologics regulations by removing, revising, or updating specific regulations applicable to blood derivative products to be more consistent with current practices and to remove unnecessary or outdated requirements. FDA is confirming the provisions for which no significant adverse comments were received. The agency received significant adverse comments on certain provisions and is hereby amending Title 21 Code of Federal Regulations to reinstate the former provisions. In addition, FDA is correcting the precision of the value for protein concentration that was inadvertently omitted from the codified section of the direct final rule.

DATES: The effective date for the amendments to the sections published in the **Federal Register** of May 14, 1999 (64 FR 26282), and listed in table 1 of this document, is confirmed as September 27, 1999. The amendments to §§ 640.81(e) and (f), 640.92(a), and 640.102(e) are effective March 14, 2000.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA solicited comments concerning the direct final rule for a 75-day period ending July 28, 1999. FDA stated that the effective date of the direct final rule would be September 27, 1999, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA also stated that if a significant adverse comment applies to an amendment, paragraph, or section of the rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not subjects of significant adverse comments.

Thus, FDA is confirming in part the direct final rule (sections listed in table 1 of this document) effective September 27, 1999.

TABLE 1

21 CFR	Action
640.80(a) and (b)	Revised
640.81(c)	Revised
640.82(a) and (c)	Revised heading
640.82(d) and (e)	Revised
640.84	Revised introductory paragraph
640.84(a)	Removed introductory text
640.84(b)	Removed
640.84(a)(1) through (a)(4)	Redesignated as paragraphs (a) through (d)
640.84 new paragraphs (a) and (d)	Revised
640.90(a) and (b)	Revised
640.91(b)(2), (c), (e), and (f)	Revised
640.92(a)	Revised
640.92(c)	Revised heading
640.92(d) and (e)	Revised

TABLE 1—Continued

21 CFR	Action
640.94(a)	Revised
640.100(a), (b), and (c)	Revised
640.101(b)	Revised heading
640.101(e)(3), (e)(4), and (f)	Removed
640.103(b)	Revised
640.104(b)(2), (b)(3), (c)(1), and (c)(2)	Revised

Secondly, FDA received significant adverse comments on three provisions of the rule, 21 CFR 640.81(e) and (f) and 640.102(e). Therefore, the agency is amending these sections to reinstate the former provisions. Comments received by the agency regarding the reinstated portions of the rule will be applied to the corresponding portion of the companion proposed rule (64 FR 26244, May 14, 1999), and will be considered in developing a final rule using the usual Administrative Procedure Act notice-and-comment procedures.

Finally, FDA is amending § 640.92(a) to include a revision of range for protein concentration. This change was discussed in the preamble to the Direct final rule (section III.G (64 FR 26282 at 26284)), but was inadvertently omitted from the codified section of the document.

List of Subjects in 21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, the direct final rule published on May 14, 1999 (64 FR 26282), is confirmed in part and 21 CFR part 640 is amended as follows:

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

1. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

2. Section 640.81 is amended by revising the last sentence in paragraph (e) and paragraph (f) to read as follows:

§ 640.81 Processing.

* * * * *

(e) * * * Heat treatment shall be conducted so that the solution is heated for not less than 10 or more than 11 hours at an attained temperature of 60;deg;±0.5 °C.

(f) *Stabilizer.* Either 0.16 millimole sodium acetyltryptophanate, or 0.08 millimole sodium acetyltryptophanate and 0.08 millimole sodium caprylate shall be added per gram of albumin as a stabilizer.

* * * * *

§ 640.92 [Amended]

3. Section 640.92 *Tests on final product* is amended in paragraph (a) by removing "5.0±0.3" and adding in its place "5.0±0.30".

4. Section 640.102 is amended by revising the last sentence of paragraph (e) to read as follows:

§ 640.102 Manufacture of Immune Globulin (Human).

* * * * *

(e) * * * At no time during processing shall the product be exposed to temperatures above 45 °C and after sterilization the product shall not be exposed to temperatures above 30 to 32 °C for more than 72 hours.

Dated: March 8, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–6170 Filed 3–13–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1340

[Docket No. NHTSA–98–4280]

RIN 2127–AH46

Uniform Criteria for State Observational Surveys of Seat Belt Use

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts uniform criteria for State seat belt use surveys, previously published as an interim final rule, with one clarifying change in response to a comment. The criteria are used by the States to determine their seat belt use rates under a new Federal grant program, which directs the Secretary of Transportation to allocate funds to States whose seat belt use rates meet certain requirements, based on measurement criteria established by the Secretary.

EFFECTIVE DATE: April 13, 2000.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590: For program issues, John F. Oates, Jr., State and Community Services, NSC–01, (202) 366–2121; For legal issues, John Donaldson, Office of the Chief Counsel, NCC–30, (202) 366–1834.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1403 of the Transportation Equity Act for the 21st Century (Pub. L.105–178) added a new Section 157 to Title 23 of the United States Code (replacing a predecessor Section 157). The new provision (hereafter, Section 157) authorizes a State seat belt incentive grant program covering fiscal years 1999 through 2003. Under this program, the Secretary of Transportation is directed to allocate funds to the States, beginning in fiscal year 1999, based on their seat belt use rates. Specifically, Section 157 requires the Secretary to allocate funds to States that achieve a seat belt use rate in the preceding two years that is higher than the national average use rate or, failing that, a seat belt use rate that is higher than the highest seat belt use rate achieved by the State during specified previous calendar years. (Section 157 contains another provision for allocation of grant funds, based on innovative projects, but that provision is not addressed in this rule.)

Beginning with calendar year 1998, Section 157 requires States to measure seat belt use rates following criteria established by the Secretary, to ensure that the measurements are "accurate and representative." In accordance with that mandate, NHTSA published an interim final rule on September 1, 1998, the Uniform Criteria for State Observational Surveys of Seat Belt Use, setting forth criteria for States to follow in determining their seat belt use rates under this program.

B. The Interim Final Rule

The interim final rule required States to conduct surveys of seat belt use each calendar year, starting with calendar year 1998, in order to be eligible for an allocation of funds under Section 157. The surveys were to meet certain minimum requirements, many of which are identical to those required under a predecessor document, the Guidelines for State Observational Surveys of Safety Belt and Motorcycle Helmet Use (57 FR 28899, June 29, 1992, now rescinded), in connection with the grant program authorized under 23 U.S.C. 153. For example, the interim final rule continued the requirement that surveys have a probability-based design; that data be collected from direct observation of seat belt use; that the relative error of the seat belt use estimate not exceed five percent; that counties or other primary sampling units totaling at least 85 percent of the State's population be eligible for inclusion in the sample; and that all daylight hours for all days of the week be eligible for inclusion in the sample. The interim final rule also continued the requirement that all sample design, data collection, and estimation procedures be well documented.

In addition to the survey requirements retained from the Section 153 grant program, the interim final rule imposed new requirements to ensure consistency with the statutory provisions of Section 157. For example, Section 157 requires the determination of seat belt use rate to be based on "passenger motor vehicles," a category that includes passenger cars, pickup trucks, vans, minivans, and sport utility vehicles. Consequently, the interim final rule required that measurements include the seat belt use rate of occupants of all of these types of vehicles. In addition, because Section 157 does not include child restraint devices within the definition of seat belts, the interim final rule excluded child restraints from the survey observation requirement. Finally, because Section 157 requires that measurements of seat belt use rates be "accurate and representative," the interim final rule imposed or clarified certain other requirements. For example, the interim final rule made clear that the surveys must include observation of both drivers and front seat outboard passengers, and that measurements of seat belt use must be taken completely within the calendar year for which the seat belt use rate is reported. Beginning with surveys conducted during calendar year 1999, the interim final rule required that both in-state and out-of-state vehicles be counted. This latter requirement was phased in to provide the States flexibility, in view of time constraints associated with the late enactment of TEA–21. The agency explained that each of these requirements was intended to ensure consistency and fairness in the allocation of funds. The first seat belt use surveys conducted in accordance with the procedures of the interim final rule took place in calendar year 1998.

On January 28, 1999, the agency held a meeting in Arlington, Texas, attended by State highway safety officials. The purpose of the meeting was to discuss day-to-day concerns related to State highway safety programs, including issues related to the seat belt use surveys the States had recently conducted under Section 157. During that meeting, States raised a variety of issues or concerns about the requirements and implementation of the seat belt survey criteria. For example, some States expressed concern that, in the course of implementing the survey criteria, the agency might limit survey observations to moving traffic, thereby impeding the States' ability to gather demographic information for successful problem identification. Other States were concerned that the agency might limit observations to stationary or slow-moving vehicles at controlled intersections, forcing some States to redesign survey sampling frames. Many States said that it would be desirable to include all roadway types in the survey sampling frame, but other States pointed out that some States might need considerable technical assistance to select an appropriate sample of local roads and properly weight the observations made on those roads. There was general support for allowing the exclusion of counties or other sampling units that comprise up to 15 percent of the State's population, but a few States preferred to include all geographic subdivisions in their sampling frames. All States were concerned about "fairness" in implementing the survey requirements and "comparability" of survey results among States, with some recommending a single uniform survey design or identical software for data analysis and others suggesting that absolute uniformity was too rigid, and that preserving State flexibility was important.

The public comment period for the interim final rule was due to expire on January 29, 1999, one day after the Texas meeting. However, in view of the discussions that arose during that meeting, the agency announced at the meeting that it would extend the comment period to allow States to express these concerns in writing. Thereafter, the agency extended the comment period until March 1, 1999 (64 FR 8714, February 23, 1999).

Today's final rule is limited in scope to the methodological requirements for State observational surveys. In a separate interim final rule published jointly by NHTSA and the Federal Highway Administration on October 29, 1998 (63 FR 57904), the agencies provided details concerning the procedures that would be followed in evaluating seat belt use rate information, determining the national average seat belt use rate, and allocating funds. We will address any comments to that interim final rule in a separate action, and publish a final rule in the near future.

C. Comments

The interim final rule solicited comments from interested parties, and noted that the agency would respond to all comments and, if appropriate, amend the provisions of the rule. The agency received comments from State agencies in Oregon, New York, Minnesota, and Michigan and from Advocates for Highway and Auto Safety.

1. In General

Commenters were already familiar and comfortable with many of the survey provisions, because they were continued from the old Section 153 grant program. Commenters were also generally supportive of the new survey provisions introduced as a result of the Section 157 program. These new survey provisions include the requirement to observe all passenger vehicles (including cars, pickup trucks, vans, and sport utility vehicles), count both the driver and the front seat outboard passenger, include out-of-state vehicles (beginning in 1999); conduct all survey observations within the calendar year; and count only seat belt use (not child seat use). Commenters differed most on the desirability of strict uniformity in designing and conducting the surveys and on sampling methods, issues that had arisen at the Texas meeting. Specific comments are addressed below.

2. Single Survey Design

Two commenters believed that uniformity of the surveys was of critical importance, to ensure comparability among States. The Michigan Department of State Police (Michigan) suggested that NHTSA contract to develop and administer a single survey design for use by all the States, adding that comparability would best be assured if the survey included all elements needed

by States for problem identification. Michigan also thought that a national contract for data collection would address the need for consistent training of the data collection observers. However, Michigan stopped short of endorsing the "suggestion" (presumably the suggestion advanced by some States at the Texas meeting) for all States to use the same software for data analysis, reasoning that the complexities of the analysis should be left to the discretion of the analysts. The Minnesota Department of Public Safety (Minnesota) recommended that NHTSA designate a single company or organization as the only entity approved to design a survey, to ensure exact uniformity. Minnesota further suggested that NHTSA or a contractor conduct all the State surveys. Alternatively, if the approach of a single entity were not adopted, Minnesota recommended that NHTSA expand the survey criteria to include the "specifics discussed at the Texas meeting" (presumably a reference to discussions about road-type sampling frames, geographic considerations, and the like), reasoning that the more "specific" and "detailed" the criteria, the more uniform the surveys would be.

In contrast, the New York Department of Motor Vehicles (New York) believed that the survey criteria were appropriate without change, affording the States the flexibility to accommodate differences in information systems and geography. New York stated that, just as there was no single "true or accurate" seat belt use rate, due to the dynamic nature of the highway system, there was also no "perfect or singular" statistical method to arrive at an estimate, and that survey methodologies should be determined based on whether they were appropriate for the situation and consistent with core guidelines, rather than part of a "one size fits all" philosophy. In New York's view, "any further attempts to 'level the playing field' were misguided," as "[n]ational consistency and comparability will come with time, regardless of further design changes."

The agency agrees with Michigan and Minnesota that it would be desirable for seat belt use surveys to be uniformly designed and conducted. However, we decline to adopt the suggestion for a NHTSA contractor to conduct the surveys, or for a single survey design for use by all the States. Section 157 requires seat belt use rates to be measured and submitted by the states, following published criteria to ensure that the measurements are accurate and representative. This statutory requirement is inconsistent with centralized Federal operation of the survey process, but recognizes the importance of providing guiding criteria to the States to improve the value of survey results. With the publication of the interim final rule, the agency sought to balance the need for reliable survey data with the need to afford States flexibility in the conduct of the surveys, in view of the significant geographic and demographic differences they face. The agency continues to believe that this careful balancing of reliable survey data and flexibility is important. Consequently, we have made no change to the rule. (Further discussion of the issue of survey uniformity appears under Sections C.3 and C.4 below.)

3. Major and Local Roads

Three commenters thought that a mix of major and local roads should be sampled in the State surveys. Advocates for Highway and Auto Safety (Advocates) recommended that the survey criteria specifically require a minimum number of observations to be conducted in rural, suburban, and urban areas, to ensure a representative sample based on geographic differences. Minnesota recommended requiring observations on both major and local roads, with the probability of selection based on vehicle miles traveled. Michigan noted that an accurate estimate of seat belt use on all roads in a State depends on sampling probabilities consistent with the distribution of road types, but interstate comparability of data depends on use by all States of the same criteria for selecting road segments for observation (rather than on the relative proportion of road miles or vehicle miles traveled on major and local roads).

NHTSA does not believe that requiring a specified minimum number of observations to be conducted in rural, suburban, and urban areas would result in a more "representative" sample, as Advocates suggests, as it would not take into account the actual distribution of these road types in a State. However, the alternative of basing sampling probabilities on the distribution of road types (or on vehicle miles traveled on different road types), as Minnesota and Michigan suggest, is problematic. Many States do not possess complete inventories of all roads or of vehicle miles traveled on residential streets or other local non-arterial roads, a point that was confirmed by participants at the January 28 meeting in Texas. In order to pursue a survey approach based on distribution of road types, States would need to develop such inventories, at significant cost, introducing another layer of procedures in an already complex process. Moreover, state-to-state variations in inventory methodologies could further detract from the goal of uniformity. In NHTSA's view, requiring specified road types to be included in the surveys would not substantially affect the final State estimate of seat belt use, and the added burden to the States is not justified. Therefore, we decline to modify the criteria to impose a requirement to specify the inclusion of road types. However, States may elect to conduct surveys that include a mix of road types under the existing procedures, as long as they adhere to the principles of random sampling required in the survey criteria.

4. Moving Traffic and Controlled Intersections

Michigan supported the observation of seat belt use at controlled intersections, to allow the collection of demographic data. Minnesota recommended that the criteria allow observation of moving traffic, and explained that if only controlled intersections were allowed, the majority of its rural roadway miles would not be eligible for observation. However, Minnesota also stated that it did not want its observers to guess the age-group, sex, or other demographic characteristics of vehicle occupants. (Presumably, although unstated in its comments, Minnesota was referring to the difficulty of making accurate demographic observations in moving vehicles, a subject of discussion at the Texas meeting. The agency concludes, from the totality of Minnesota's comments, that the State favors survey criteria that allow for observation of both moving traffic and stopped traffic at controlled intersections.)

The agency is aware that some States collect demographic data during their seat belt use surveys, to track the progress of state-wide traffic safety efforts. Procedures vary by State. Some States conduct their seat belt use surveys at randomly selected locations that include both controlled intersections and non-intersection segments, and collect limited demographic data during these surveys or obtain such data through a separate survey of intersection locations only. Other States conduct their surveys at randomly selected controlled intersections, and obtain seat belt use and demographic data from the same survey. While Section 157 does not require the States to collect or report demographic data, the agency was aware of this State practice when it published the interim final rule. Consequently, the interim final rule did not specify a mix of observation sites within road segments (i.e., moving and

stopped traffic sites) or otherwise restrict States from selecting the mix of observation sites that best accommodates State objectives. The agency does not believe that specification or restriction of observation sites would materially affect the observed seat belt use rate, assuming States follow proper random sampling techniques in selecting these sites. For this reason, and to accommodate the States' collection of demographic information without undue restrictions, the agency declines to amend the survey criteria to restrict or specify observation sites for the seat belt use surveys.

5. Nighttime Observation

Advocates recommended that the survey criteria include a requirement for nighttime observation of seat belt use. Advocates reasoned that a protocol that included only daylight observations would overestimate actual use rates if seat belt use drops at night. Advocates acknowledged that it had no direct evidence of day-night variability in seat belt use rates, but stated that such variability had been documented in other areas of driver and occupant behavior. Advocates recognized that nighttime observation is more difficult, and suggested that such observations could be made at well-lighted intersections or in shopping districts. Advocates further acknowledged that this might not provide a truly random sample, but suggested that this be balanced against the need to include some statistical representation of nighttime observations.

The agency believes that extending sampling requirements to include nighttime observations is impracticable. Successful nighttime observations would necessarily be limited to well-lighted areas and, as Advocates recognizes, a random sample would be impossible to obtain under such circumstances. Advocates suggests that the inability to obtain a "truly random sample" be balanced against the need to include some statistical representation of nighttime seat belt use. However, the extreme reduction in suitable observation sites would, in NHTSA's view, render any data from nighttime observations of negligible statistical validity. Under these circumstances, and in light of the increased danger to personnel that would be involved in nighttime observation, the agency has not adopted the recommendation to include nighttime observation.

6. Miscellaneous

The Oregon Department of Transportation (Oregon) suggested that motorhomes be included among the vehicles surveyed for seat belt use, in addition to the vehicles identified in the interim final rule. Oregon stated that it experiences a significant amount of motorhome travel during the summer months and along coastal corridors.

The agency appreciates Oregon's concern that motorhomes have a significant presence in the State. However, NHTSA did not include motorhomes in the interim final rule as among the categories of vehicles for observation for two reasons. First, motorhomes vary substantially in size, capacity, and construction and, as a result, not all of these vehicles fall within the statutory definition of "passenger motor vehicle" contained in Section 157. Without careful observation and specialized knowledge, it is difficult to distinguish those motorhomes that are covered by Section 157 from those that are not, and it would be impracticable to make the proper distinction when conducting the surveys. Second, due to the typically large size of these vehicles and the positioning of occupants well above road level, successful observation would present significant difficulties. Consequently, for reasons of practicability, we decline to adopt Oregon's suggestion.

New York requested that the interim final rule be modified to explicitly extend previous survey design approvals granted under the Section 153 grant program. New York stated that its survey design incorporated many elements promoted by NHTSA, and that it would be unable to compare results and measure progress from earlier years if it were not allowed to retain the same design.

New York's comment falls outside the scope of this rule, which is limited to describing new criteria governing surveys conducted under the Section 157 program, beginning with surveys conducted in 1998. A companion interim final rule, Safety Incentive Grants for Use of Seat Belts—Allocations Based on State Seat Belt Use Rates (October 29, 1998, 63 FR 57904), describes the circumstances under which surveys submitted by States will be approved or disapproved (including surveys whose designs were approved under the Section 153 program). We recommend that New York review that interim final rule, in particular section 1240.12(c) (23 CFR 1240.12(c)), for current guidance. The agency expects to publish a final rule for the companion interim final rule in the near future, and will specifically address New York's comment at that time.

Michigan expressed concern that the agency might interpret the Section 157 survey criteria more narrowly than the Section 153 guidelines. Michigan noted that its pseudorandom method for assigning day-of-week and time-of-day observations provided for "essentially equal probability of selection" for all days of the week and daylight hours, whereas the interim final rule requires that observation sites be "randomly assigned to the selected day-of-week/time-of-day time slots." Michigan requested that a method of appeal be established if its procedure were not acceptable under the new criteria.

In addition to the random selection provision cited by Michigan, above, the interim final rule requires that "[a]ll daylight hours for all days of the week must be eligible for inclusion in the sample." Taken together, these requirements were intended to ensure not only that observations are collected during all daylight hours and all days of the week, but also that a site is not scheduled for a specific day or time period based on a judgment bias (e.g., because of a belief that more observations were possible or that observed use would be different). However, the agency recognizes that a completely random allocation of sites to day-of-week/time-of-day slots would require the deployment of an inordinate amount of resources, and that a certain amount of "grouping" of sites is necessary for an efficient use of data collection resources. In the interim final rule, NHTSA did not intend to preclude the grouping of sites for administrative convenience (*e.g.*, for efficient deployment of observers, reduction of personnel travel expenses, etc.), provided such grouping is accomplished without the introduction of a judgment bias. In response to Michigan's concern, the agency has added appropriate language to Section 1340.4(c) for clarification.

Regulatory Analyses and Notices

Executive Order 13132 (Federalism): We have analyzed this action in accordance with the principles and criteria contained in Executive Order 13132, and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. While it concerns a new State grant program, this action does not impose any major new requirements on the States. Rather, it makes minor changes to survey procedures that have already been used by many States in a previously authorized grant program and for other purposes.

Executive Order 12778 (Civil Justice Reform): This rule does not have any preemptive or retroactive effect. It

merely revises existing requirements imposed on States to reflect the statutory requirements of a new grant program. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures: We have determined that this action is "significant" under Executive Order 12866 and under the Department of Transportation Regulatory Policies and Procedures because it is likely to result in significant economic impacts. A Final Economic Assessment (FEA) was prepared for the interim final rule and for a companion interim final rule that established the procedures for allocating funds under the grant program authorized by 23 U.S.C. 157. A copy of the FEA, describing the economic effects in detail, was placed in the docket for public inspection.

Following is a summary of the cost and benefit information for this rule. The total annual cost of conducting surveys following the procedures of this rule (if each State conducted one) is estimated to be $1.9 million. However, since many States have regularly conducted surveys prior to the promulgation of this rule, the actual survey costs attributable to this rule are estimated to be significantly less (consult the FEA for more detail). A State may be eligible for an allocation of funds during each of fiscal years 2000 through 2003 if it conducts a survey of seat belt use during each of calendar years 1998 through 2001, in accordance with the procedures under this rule. Allocations available to the States total $92,000,000 for fiscal year 2000, $102,000,000 for fiscal year 2001, and $112,000,000 for each of fiscal years 2002 and 2003. An allocation totaling $82,000,000 is available for fiscal year 1999, but that allocation is dependent on criteria other than the survey procedures required under this rule. Depending on the results of State surveys, some funds may remain unallocated, and will be allocated under other procedures that are unrelated to this action.

Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks): This rule is not subject to Executive Order 13045 because it does not concern an environmental, health, or safety risk that may have a disproportionate effect on children.

Regulatory Flexibility Act: In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we have evaluated the effects of this action on small entities. We hereby certify that this action will not have a significant economic impact on a substantial number of small entities. States are the recipients of any funds awarded under the Section 157 program, and they are not small entities.

Paperwork Reduction Act: This action, which describes surveys that States must conduct and submit to the agency in order to be considered for an allocation of funds under 23 U.S.C. 157, is considered to be an information collection requirement, as that term is defined by OMB. This information collection requirement has been submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The requirement has been approved through February 2, 2002; OMB Control No. 2127–0597.

National Environmental Policy Act: We have reviewed this action for the purpose of compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and have determined that it will not have a significant effect on the human environment.

Unfunded Mandates Reform Act: The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This action does not meet the definition of a Federal mandate, because the resulting annual expenditures will not exceed the $100 million threshold.

List of Subjects in 23 CFR Part 1340

Grant programs—transportation, Highway safety, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, the interim final rule adding 23 CFR part 1340, which was published at 63 FR 46389 on September 1, 1998, is adopted as a final rule with the following changes:

1. The authority citation for part 1340 continues to read as follows:

Authority: 23 U.S.C. 157; delegation of authority at 49 CFR 1.50.

2. In section 1340.4, paragraph (c) is revised to read as follows:

§ 1340.4 Population, demographic, and time/day requirements.

* * * * *

(c) Time of day and day of week. All daylight hours for all days of the week must be eligible for inclusion in the sample. Observation sites must be randomly assigned to the selected day-of-week/time-of-day time slots. If observation sites are grouped to reduce data collection burdens, a random process must be used to make the first assignment of a site within a group to an observational time period. Thereafter, assignment of other sites within the group to time periods may be made in a manner that promotes administrative efficiency and timely completion of the survey.

Issued on: March 8, 2000.

Rosalyn G. Millman,

Acting Administrator, National Highway Traffic Safety Administration.

[FR Doc. 00–6134 Filed 3–13–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA20

Financial Crimes Enforcement Network; Amendments to the Bank Secrecy Act Regulations—Requirement that Money Transmitters and Money Order and Traveler's Check Issuers, Sellers, and Redeemers Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Final rule.

SUMMARY: This document contains amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendments require money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks to report suspicious transactions to the Department of the Treasury. The amendments constitute a further step in the creation of a comprehensive system (to which banks are already subject) for the reporting of suspicious transactions by financial institutions. Such a system is a core component of the counter-money laundering strategy of the Department of the Treasury.

DATES: *Effective Date:* April 13, 2000.

Applicability Date: See § 103.20(f) of the final rule contained in this document.

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(703) 905–3930; Eileen C. Mayer, Special Assistant to the Director and MSB Project Manager, FinCEN, (202) 354–6400; Stephen R. Kroll, Chief Counsel, Cynthia L. Clark, Deputy Chief Counsel, and Albert R. Zarate and Christine L. Schuetz, Attorney-Advisors, Office of Chief Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Money Services Businesses Under the Bank Secrecy Act

The issuance of the final rule completes the second rulemaking, begun on May 21, 1997, relating to the application of the Bank Secrecy Act to money services businesses. *See* generally 62 FR 27890—27909 (the "MSB Rulemakings"). In conducting the MSB Rulemakings, FinCEN and the Department of the Treasury have followed the mandate of Congress in the Money Laundering Suppression Act, Title IV of the Reigle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, and the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102–550, and have more generally responded to the need to update and more carefully to tailor the application of the Bank Secrecy Act to a significant part of the financial sector in the United States.[1]

The term "money services business" refers to five distinct types of financial services providers: currency dealers or exchangers; check cashers; issuers of traveler's checks, money orders, or stored value; sellers or redeemers of traveler's checks, money orders, or stored value; and money transmitters. (The five types of financial services are complementary and are often provided together at a common location.) These businesses are quite numerous; based on a 1997 study performed for FinCEN by Coopers & Lybrand LLP (now a part of PriceWaterhouseCoopers LLP), they comprised at the date of the study approximately 158,000[2] outlets or selling locations, and provided financial services involving approximately $200 billion annually. To some significant extent, the customer base for such businesses lies in that part of the population that does not use traditional financial institutions, primarily banks.

Money services businesses, like banks, can be large or small. It is estimated that fewer than ten business enterprises account for the bulk of money services business financial products (that is, money transmissions, money orders, traveler's checks, and check cashing and currency exchange availability) sold within the United States, and also account, through systems of agents, for the bulk of locations at which these financial products are sold. Members of this first group include large firms, with significant capitalization, that are publicly traded on major securities exchanges.[3]

A far larger group of (on average) far smaller enterprises competes with the large firms in the first group, in a highly bifurcated market for money services. In some cases, these small enterprises are based in one location with two to four employees. Moreover, the members of this second group may provide both financial services and unrelated products or services to the same sets of customers.[4]

Money services businesses primarily serve individuals and have grown to provide a set of financial products that others look to banks to provide. For example, a money services business customer who receives a paycheck can take his or her check to a check casher to have it converted to cash. He or she can then purchase money orders to pay his or her bills. Finally, he or she may choose to send funds to relatives abroad, using the services of a money transmitter.

The publication of this final rule, concerning the reporting of suspicious transactions by money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks, follows the publication, on August 20, 1999, of a final rule, 64 FR 45438–45453, that (i) contained a set of revised definitions of various financial services businesses (and, in the case of stored value, added a new definition of a product whose issuers, sellers, or redeemers would be so treated) and grouped those definitions under the heading "money services businesses" as part of the Bank Secrecy Act regulatory definition of "financial institutions," (*see* new 31 CFR 103.11(c)(7), (n)(3), (uu), and (vv)), and (ii) adopted rules to implement the Bank Secrecy Act mandate, 31 U.S.C. 5330, that certain money services businesses register with the Department of the Treasury (*see* new 31 CFR 103.41).

Against this background, the reporting of suspicious transactions forms a second part of a coordinated approach to deal with abuse of money services businesses by criminals and to strengthen the application of general Bank Secrecy Act rules to this part of the nation's payments system. Thus, it may be helpful to recap briefly the terms of the final rule relating to the definition and registration of money services businesses under the Bank Secrecy Act, before turning specifically to suspicious transaction reporting under the terms of the final rule contained in this document.

A money services business includes, for purposes of the Bank Secrecy Act regulations, each agent, agency, branch, or office within the United States of any person (except a bank or person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission) doing business in one or more of the following capacities:

- Currency dealer or exchanger;
- Check casher;
- Issuer of traveler's checks, money orders, or stored value;
- Seller or redeemer of traveler's checks, money orders, or stored value;
- Money transmitter;[5] and
- The United States Postal Service (except with regard to the sale of postage or philatelic products).[6]

Generally, each money services business (other than the U.S. Postal

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[1] The Congress has long recognized the need generally to address problems of abuse by money launderers of "non-bank" financial institutions. *See, e.g.*, Permanent Subcommittee on Investigations, Senate Comm. on Governmental Affairs, Current Trends in Money Laundering, S. Rep. No. 123, 102d Cong., 2d Sess. (1992).

[2] The number does not include Post Offices (which sell money orders and other money services business financial products), participants in stored value product trials, or sellers of various stored value or smart cards in use in, for example, public transportation systems.

[3] For example, according to the Coopers & Lybrand study, at the time of that study two money transmitters and two traveler's check issuers made up approximately 97 per cent of their respective known markets for non-bank money services. Three enterprises made up approximately 88 per cent of the $100 billion in money orders sold annually (through approximately 146,000 locations). The retail foreign currency exchange sector was found by Coopers & Lybrand to be somewhat less concentrated, with the top two non-bank market participants accounting for 40 per cent of a known market that then accounted for $10 billion. Check cashing was the least concentrated of the business sectors; the two largest non-bank check cashing businesses made up approximately 20 per cent of the market, with a large number of competitors.

[4] Members of the second group may include, for example, travel agencies, courier services, convenience stores, and grocery or liquor stores.

[5] As set forth at 31 CFR 103.11(uu)(5), the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with the bona fide sale of securities) will generally not cause a person to be a money transmitter for purposes of the Bank Secrecy Act and its implementing regulations.

[6] Under the rule, persons who do not exchange currency, cash checks, or issue, sell, or redeem traveler's checks, money orders, or stored value in an amount greater than $1,000 to any person on any day in one or more transactions are not money services businesses for purposes of the Bank Secrecy Act.

Service, a federal, state, or local government agency, an issuer, seller, or redeemer of stored value, or a person that is a money services business solely because it is an agent of another money services business) must register with the Department of the Treasury by December 31, 2001, and maintain a current list of its agents for examination beginning January 1, 2002.[7] As indicated, agents of money services businesses generally are not required separately to register or keep a list of their own (sub) agents, to the extent that they engage in money services business activities solely as agents of others.

Thus, the registration requirements are to be implemented over an almost two and one half year period, beginning on August 20, 1999. The suspicious transaction reporting obligations created by this rule do not become effective, as noted below, until the initial registration period is complete, that is, on January 1, 2002.

II. Importance of Suspicious Transaction Reporting in the Treasury's Counter-Money Laundering Program

The Congressional authorization of the reporting of suspicious transactions by financial institutions recognizes two basic points that are central to Treasury's counter-money laundering and anti-financial crime programs. First, it is to financial institutions that money launderers must go, either initially or eventually. Second, the officials of those institutions are more likely than government officials to have a sense as to which transactions appear to lack commercial justification or otherwise cannot be explained as falling within the usual methods of legitimate commerce. Moreover, because money laundering transactions are designed to appear legitimate in order to avoid detection, the creation of a meaningful system for detection and prevention of money laundering is impossible without the cooperation of financial institutions. Indeed, many non-banks have already recognized the increased pressure that money launderers have come to place upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The National Money Laundering Strategy for 1999 (the "1999 Strategy")[8] commits the Department of the Treasury to "assur[ing] that all types of financial institutions are subject to effective Bank Secrecy Act requirements," and, to that end, to extending the requirement to report suspicious transactions to money services businesses.[9] (Related action items are (i) the issuance by the Department of the Treasury of a final rule for the reporting of suspicious activity by casinos, and (ii) work by the Department of the Treasury with the Securities and Exchange Commission to propose rules for the reporting of suspicious activity by brokers and dealers in securities.)[10] As explained in the Strategy:

> The attention given to the prevention of money laundering through banks reflects the central role of banking institutions in the global payments system and the global economy. But non-bank financial institutions require attention as well. Money launderers will move their operations to institutions in which their chances of successful evasion of enforcement and regulatory efforts is the highest. Moreover, it is unfair to impose costs arising from counter-money laundering requirements only on some institutions competing to service customers' financial needs.[11]

The reporting of suspicious transactions is also recognized as essential to an effective counter-money laundering program in the international consensus on the prevention of money laundering. One of the central recommendations of the Financial Action Task Force Against Money Laundering ("FATF") is that:

> If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

Financial Action Task Force Annual Report (June 28, 1996),[12] Annex 1 (Recommendation 15).[13] The recommendation applies equally to money services businesses as to banks.

Similarly, the European Community's *Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* calls for member states to

> ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering * * * by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord*, *the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States*, OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[14] All of these documents also recognize the importance of extending the counter-money laundering controls to "non-traditional" financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to recognize that non-bank providers of financial services, as well as depository institutions, are an attractive mechanism for, and are threatened by, money launderers. *See, e.g.*, *Financial Action Task Force Annual Report*, *supra*, Annex 1 (Recommendation 8).

III. Statutory Provisions

The Bank Secrecy Act, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330), appear at 31 CFR Part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

The provisions of 31 U.S.C. 5318(g)[15] deal with the reporting of suspicious

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[7] The information to be included in the agent list is set forth in 31 CFR 103.41(d)(2).

[8] The 1999 Strategy is the first in a series of five annual reports called for by the Money Laundering and Financial Crimes Strategy Act of 1998, Pub. L. 105–310 (October 30, 1998), codified at 31 U.S.C. 5340 *et seq.* Each annual report is to be submitted to Congress by the President, working through the Secretary of the Treasury in consultation with the Attorney General.

[9] 1999 Strategy, Goal 2 ("Enhancing Regulatory and Cooperative Public-Private Efforts to Prevent Money Laundering"), Objective 2, at 35.

[10] *Id.*

[11] *Id.* at 35–36.

[12] The FATF is an inter-governmental body whose purpose is development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council. In addition, Argentina, Brazil, and Mexico have been admitted this year as FATF Observer Members.

[13] The language adopted in 1996 revised FATF Recommendation 15 which, as adopted in 1990, had stated that financial institutions should be either "*permitted or* required" to make such reports. (Emphasis supplied.)

[14] The OAS reporting requirement is linked to the provision of the Model Regulations that institutions "shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose." OAS Model Regulation, Article 13, section 1.

[15] That subsection was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-

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transactions by financial institutions subject to the Bank Secrecy Act and with the protection from liability to customers of persons who make such reports. Subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2) provides further:

> A financial institution, and a director, officer, employee, or agent of any financial institution, who voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any other authority, may not notify any person involved in the transaction that the transaction has been reported.

Subsection (g)(3) provides that neither a financial institution, nor any director, officer, employee, or agent

> that makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, "to the extent practicable and appropriate," to designate "a single officer or agency of the United States to whom such reports shall be made." [16] The designated agency is in turn responsible for referring any report of a suspicious transaction to "any appropriate law enforcement or supervisory agency." *Id.*, at subsection (g)(4)(B).

IV. Notice of Proposed Rulemaking

As indicated above, the final rule contained in this document is based on the notice of proposed rulemaking published, at 62 FR 27900—27909 (May 21, 1997) (the "Notice"), as the second of the MSB Rulemakings. The Notice proposed to require money services businesses including money transmitters, businesses issuing, selling, or redeeming money orders, and businesses issuing, selling, or redeeming traveler's checks, to report suspicious transactions to the Department of the Treasury.

FinCEN held five public meetings in the summer of 1997 to provide interested parties with the opportunity to present their views with respect to the potential effects of the MSB Rulemakings, as well as to provide FinCEN with additional information and feedback useful in preparing final rules based on the MSB Rulemakings.[17] Transcripts of these meetings were then made available by FinCEN to requesting parties.

The comment period for the three MSB Rulemakings was originally due to end on August 19, 1997. The comment period was extended to September 30, 1997, by a notice, 62 FR 40779, published on July 30, 1997.

FinCEN received a total of 82 comment letters on the three notices of proposed rulemaking; 34 dealt in whole or in part with issues raised by the Notice. Of these, 12 were submitted by money services businesses and their affiliates, 5 by banks or bank holding companies, 8 by financial institution trade associations, 4 by law firms, 3 by agencies of the United States government, 1 by a credit union, and 1 by a private individual.

V. Summary of Comments and Revisions

A. Introduction

The format of the final rule is generally consistent with the format of the rule proposed in the Notice. The terms of the final rule, however, differ from the terms of the Notice in the following significant respects:

- The dollar threshold for reporting suspicious transactions has generally been raised from $500 to $2,000;
- The dollar threshold for reporting has been raised from $500 to $5,000 for issuers of money orders or traveler's checks to the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been previously sold or processed;
- The examples of particular potentially suspicious transactions have been removed from the text of the rule, and a discussion of examples of potentially suspicious transactions will be contained in a "Guidance Document" relating to suspicious transaction reporting by money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks that will be published in the near future;
- The language relating to the allocation of responsibility for reporting among various persons involved in the sale and completion of a money transmission or the sale and collection of a money order or traveler's check, has been revised; and
- Language has been added to clarify that only one report should be filed with respect to a reportable transaction, in order to avoid double reporting on the same transaction. It should be noted that filing of multiple reports by an issuer and its agent may be necessary if different facts are contained in the two reports.

B. Comments on the Notice—Overview and General Issues

Comments on the Notice concentrated on five matters: (i) the rationale for extending the suspicious activity reporting regime to money services businesses; (ii) the proposed $500 threshold for reporting suspicious transactions; (iii) the inclusion in the text of the rule of examples of potentially reportable transactions; (iv) the allocation of responsibility for reporting—and liability for non-reporting—among various persons involved in the sale and completion of a money transmission or the sale and collection of a money order or traveler's check; and (v) the exemption of certain businesses from the requirement to report suspicious transactions.

1. Application of Suspicious Transaction Reporting Requirement to Money Services Businesses

At least one commenter argued that requiring money services businesses to report suspicious transactions would be unduly burdensome to those businesses and would unjustifiably infringe upon the privacy interests of those persons conducting transactions with such businesses. A number of other commenters, although not challenging the need for suspicious activity reporting *per se*, asked FinCEN to consider carefully the appropriate scope of such reporting.

The importance of suspicious transaction reporting and its extension to all relevant financial institutions are generally discussed above. Money services businesses and other non-bank financial institutions have not in the past been given the same sort of

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Money Laundering Act; it was expanded by section 403 of the Money Laundering Suppression Act, to require designation of a single government recipient for reports of suspicious transactions.

[16] FinCEN is the designated agency. This designation is not to preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency "pursuant to any other applicable provision of law." 31 U.S.C. 5318(g)(4)(C).

[17] The public meetings were held in Vienna, Virginia, on July 22, 1997; New York, New York, on July 28, 1997; San Jose, California, on August 1, 1997; Chicago, Illinois, on August 15, 1997; and Vienna, Virginia, on September 3, 1997. Discussion at the New York and Chicago meetings focused particularly on issues, including suspicious transaction reporting, relating to money transmitters and issuers, sellers, and redeemers of traveler's checks and money orders.

attention in the administration of the Bank Secrecy Act as banks.[18] The concentrated attention given to banks, combined with the cooperation that banks have given to law enforcement agencies and banking regulators to root out money laundering, have made it far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed. As it has become increasingly difficult to launder large amounts of cash through banks, criminals have turned to non-bank financial institutions, including money services businesses, in attempts to launder funds.[19] Some of their efforts have unfortunately been successful.[20]

At the same time, as indicated in the Notice, the implementation of a comprehensive counter-money laundering strategy for money services businesses raises significant issues not present in devising counter-money laundering strategies for banks. These issues arise largely because of unique structural factors affecting money services businesses. First, most money services businesses operate through the medium of independent enterprises that agree to serve as agents for the businesses' products or services; thus the public often does not deal directly with the businesses that issue or back the instruments, or actually perform the services, purchased. Second, and as a corollary, money services businesses permit performance of a specific function—the conversion of money into a money order or traveler's check, or the sending of money to a distant location—but generally, at present, neither offer nor are capable of maintaining continuing account relationships to the same extent as banks. Third, money services businesses are not subject generally to federal regulation and are regulated, in differing degrees, by some, but not all, states. Finally, and perhaps most important, the rules of the Bank Secrecy Act have not previously been tailored to reflect the particular operating realities, problems, and potential for abuse of money services businesses. For all of these reasons, the assumptions that underlay design of a suspicious transaction reporting system for banks do not apply with equal force to the money services businesses with which this final rule deals.

There can be little doubt that a properly framed suspicious transaction reporting system will produce, as the Bank Secrecy Act requires, reports that possess a "high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." But Treasury recognizes that the compliance difficulties, and in some cases criminality, encountered in dealing with certain businesses in New York and elsewhere[21] cannot uncritically be taken as indicative of conditions throughout the industry. Balancing the costs and benefits of suspicious transaction reporting requires a realistic assessment of the condition of the industry as a whole and the risks of abuse of the products and services offered by the industry. The significant upward revision in the reporting thresholds contained in this rule, as well as other changes made to this rule and the rule relating to the definition and registration of MSBs published in August 1999 (discussed above) in response to comments on the MSB Rulemakings reflect the Department of the Treasury's judgment as to an appropriate balance.

The balance of the usefulness of reported information against the appropriate privacy interests of customers of money services businesses raises a second set of important concerns. The Treasury is keenly aware of the need to balance legitimate privacy concerns against the government's responsibility to combat aggressively the laundering of the proceeds of serious criminal activity. Several facts are noteworthy in this regard. First, both the statute authorizing the suspicious transaction reporting rule, and the rule itself (like its counterpart for banks), make clear that reported information is to be held and used by law enforcement and regulatory officials solely for permitted investigative and supervisory purposes and may not be shared with any person for any other reason. The levels of security and protection given to reported information and the secure computer systems in which it is held should serve to reassure the public. It is also relevant that the transaction reporting levels of $2,000 and $5,000 (up from a uniform $500 in the Notice) should exclude a substantial (if not overwhelming) majority of legitimate money services business transactions from the scope of suspicious transaction reporting altogether.

2. Dollar Threshold for Reporting

FinCEN received several comments concerning the establishment of the proper dollar threshold for reporting suspicious transactions. While at least one commenter suggested that FinCEN not establish any dollar threshold (assumedly to convey the message to the regulated industry that a transaction should be reported if it is at all indicative of a violation of law, regardless of the dollar amount involved), the majority of the commenters on this subject argued that the proposed $500 threshold was too low and urged that it be raised substantially. Several commenters argued that setting the threshold for reporting suspicious transactions at $500 would unduly burden the industry given the volume of perfectly legal transactions conducted at or near this dollar amount and would necessarily—given the volume of transactions involved—produce over-reporting. For example, some commenters pointed out that many people, particularly those in large metropolitan areas, frequently purchase money orders, well in excess of $500 on the same day, so that they can pay their monthly rent and utility bills.

In response to these comments, the final rule generally increases the dollar threshold for reporting suspicious transactions to $2,000. The increase in the reporting threshold to an amount four times the amount originally proposed should help alleviate the concern that the proposed $500 threshold would cause far too many legitimate transactions to be reported. The $2,000 threshold is set below the existing $3,000 identification and

[18] This document uses the term "bank" rather than "depository institution." As defined in 31 CFR 103.11(c), the term "bank" includes both commercial banks and other classes of depository institutions.

[19] In crafting the Annunzio-Wylie Anti-Money Laundering and Money Laundering Suppression Acts to provide the Department of the Treasury with additional enforcement tools, the Congress expressed its view that such businesses are "largely unregulated"—at least with respect to counter-money laundering issues—and are frequently used in sophisticated schemes to transfer large amounts of money that are the proceeds of unlawful activity. *See* section 408(a) of the Money Laundering Suppression Act (findings concerning "registration of money transmitting businesses to promote effective law enforcement").

[20] The Notice was issued against the back-drop of continuing enforcement operations directed at money transmitters in the New York City metropolitan area, based in part on geographic targeting orders ("GTOs"), issued under the Bank Secrecy Act. The GTOs required enhanced reporting and recordkeeping affecting remittances to Colombia and; later, the Dominican Republic. (The Dominican Republic GTO applied to money transmitters in Puerto Rico as well as to those in the New York metropolitan area). Those targeting orders and subsequent criminal enforcement activity have resulted in three of the covered remitters surrendering their licenses to the New York State Banking Department. One of these three remitters has been indicted for Title 31 violations. Two other remitters have ceased remitting funds to Colombia altogether. Another remitter has had its license revoked by the New York State Banking Department after pleading guilty to money laundering charges. Several years earlier, a Postal Inspection Service investigation of money orders in the late 1980s and early 1990s revealed a widespread money laundering scheme that resulted in the 1992 guilty plea of two individuals, and the 1993 forfeiture of approximately $2.1 million. *See* 62 FR 27903.

[21] *See* n. 20, *supra*.

recordkeeping requirements with respect to the purchase of money orders and traveler's checks, as well as the existing $3,000 recordkeeping requirement with respect to funds transfers conducted through money transmitters;[22] consequently, the $2,000 threshold brings within the scope of the reporting obligation those transactions that may appear to be structured to evade these other Bank Secrecy Act requirements.

Other commenters suggested that FinCEN establish a higher threshold for reporting suspicious transactions cleared or processed by issuers of traveler's checks or money orders. According to these commenters, the work, for example, of sorting and identifying sequential purchases is extensive and tedious, and compliance staffs would be faced with a burdensome obligation to comb records for small scale activity of this nature.

In response to these comments, the final rule establishes a $5,000 reporting threshold for issuers of money orders or traveler's checks to the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been previously sold or processed. Thus, for example, an issuer of money orders would be subject to a $5,000 reporting threshold with respect to transactions required to be reported that are identified at the clearance or processing stage. The $5,000 threshold is the same that applies to the nation's banks.

The final rule does not include a similar threshold increase for money transmissions. There are several reasons. First, money transmissions flow directly from selling agent to the offeror of the transmission service, and information about the transaction reaches the offeror before the transmission is completed; by way of contrast, patterns in which a particular money order or traveler's check may be involved will often not become apparent until after negotiation is completed (on the basis, for example, of negotiation information or clearance symbols). Second, law enforcement experience with certain segments of the money transmission industry indicates a potential for serious abuse at levels below $3,000 per transaction (in which, unfortunately, certain (relatively) smaller transmitters have been directly involved); given the relationship between transmitters and their agents, and the nature of the product involved, the $2,000 threshold is justified, and appropriate, at this time, for the money transmitter's central facilities, as well as its agents. (Of course, the lower threshold does not alter the fact that no reporting is required until the particular money services business in question "knows, suspects, or has reason to suspect" that the conditions for reporting are satisfied.)

[22] *See* 31 CFR 103.29 (requiring that financial institutions keep records and verify the identity of purchasers with respect to the cash sale of bank checks or drafts, cashiers checks, money orders, and traveler's checks in amounts between $3,000 and $10,000 inclusive); and 31 CFR 103.33(e) and (f) (requiring financial institutions to maintain records with respect to funds transfers in excess of $3,000).

3. Examples of Reportable Activity

The text of the Notice contained specific illustrations of the types of transactions that might require special attention and inquiry under the suspicious activity reporting obligations proposed by that document. FinCEN received a number of comments with respect to inclusion of examples of reportable activity in the final rule. Some commenters asked that FinCEN provide more specific examples and guidance in order to help money services businesses identify those transactions of interest to Treasury and avoid liability for failure to file a report in situations in which it is unclear whether a report is warranted. Other commenters argued that the inclusion of examples in the text of the rule itself could be misconstrued by the industry and misapplied by auditors and examiners. To balance the competing interests expressed by the comments—the need for guidance on the one hand and the need to avoid a rigid, automatic approach on the other—the examples do not appear in the text of the final rule, but FinCEN is working with interested parties, separately from the rulemaking itself, to prepare written guidance about particular patterns of suspicious activity of which money services businesses should be aware. As mentioned above, that guidance will be published in the near future.

4. Allocation of Liability for Non-reporting

A money services instrument (a money order or traveler's check) or service (a money transmission) is often offered to the public by a person other than the issuer of the instrument or the person providing the financial service. (The instrument or service may also be offered at branches of the issuer or service provider.) A recurrent theme raised by the comments is the allocation of liability between (or among) the two or more businesses generally involved in completing a money services business transaction.

Generally both the instrument issuer or service provider and the person offering the instrument or service for sale on behalf of such issuer or service provider will be treated as financial institutions for purposes of the Bank Secrecy Act. It has long been clear that an agent of a financial institution is itself a financial institution for purposes of the Bank Secrecy Act, *see* 31 CFR 103.11(n).

Two principles govern the allocation of liability for failure to satisfy the suspicious transaction reporting obligation created by the final rule with respect to a particular transaction or pattern of transactions. The first principle is that each money services business involved is responsible for filing a report with respect to a transaction based on the information reasonably available to it about the transactions it conducts and the customers with whom it deals. In the case of persons dealing directly with the public at the point of sale, that information may be different than that available to central issuer or processing facilities. At the same time, the relevant information, especially on the part of the issuer or processor, involves not only particular transactions but patterns (including overall volume) of transactions at particular points of sale.

The second principle is that the liability of an issuer or service provider for acts of persons at the point of sale of its financial products is based upon general legal principles governing allocation of liability as between principal and agent. As indicated in the final rule published in the **Federal Register** on August 20, 1999, relating to the definition and registration of money services businesses, FinCEN believes that the relationship between issuers or service providers and persons at the point of sale for particular products is governed by the law of agency, and that in most (if not all) cases the businesses at which these products or services are sold to the public are non-servant agents of the issuers or service providers involved. Congress' use of the term "agent" in 31 U.S.C. 5330, indicates a similar understanding on its part.[23] (Of

[23] Section 5330 contains two provisions directed explicitly at "agents" of money services businesses. First, a money services business must maintain a list containing the names and addresses of its agents and such other information about the agents as the Secretary may require, and the list must be made available upon request to any appropriate law enforcement agency. *See* 31 U.S.C. 5330(c)(1). Second, the Secretary is to establish by regulation, on the basis of such criteria as the Secretary deems appropriate, a threshold point for treating an agent of a money services business as itself a money services business for purposes of section 5330. *See* 31 U.S.C. 5330(c)(2).

course, in cases in which the products or services are offered at branches of the issuers or providers, the individuals involved are likely servants, rather than non-servant agents, of the issuers or providers.) This understanding, which is embodied in revised paragraph (a)(4) of the final rule, is based on the present state of the law of agency as well as FinCEN's determination that Congress believed that agency principles were the proper starting point for analysis of legal relationships in this area. *See* 31 U.S.C. 5318(g) (including "agents" of financial institutions as persons required to report suspicious transactions); *cf.* 31 U.S.C. 5330.

5. Exemption From Obligation To File Suspicious Transaction Reports

At least one commenter suggested that the suspicious transaction reporting requirement contained in the final rule should not apply to money services businesses that are affiliates or subsidiaries of banks or bank holding companies because such businesses are already subject to the suspicious transaction reporting requirements imposed by the Federal Reserve Board on banks and their non-bank affiliates or subsidiaries.[24] *See* 12 CFR 208.62 and 12 CFR 225.4(f).

FinCEN believes that to the extent that non-bank affiliates or subsidiaries of banks or bank holding companies offer the same kinds of services offered by reporting money services businesses, those non-bank affiliates or subsidiaries should be subject to the same suspicious transaction reporting requirement as other money services businesses. Not applying the suspicious transaction reporting regime contained in the final rule to those non-bank affiliates or subsidiaries of banks would ignore the significant differences between banks and money services businesses. *See supra*, discussion at Part V.B.1.[25] The reporting threshold applicable to "back-office" functions of issuers of traveler's checks and money orders has been increased from $500 to $5,000, the same reporting threshold as that for depository institutions.

VI. Section-by-Section Analysis

A. 103.11(ii)—Transaction

The final rule amends the definition of "transaction" in the Bank Secrecy Act regulations, 31 CFR 103.11(ii), explicitly to include the purchase of any money order and the payment or order for any money remittance or transfer. No similar amendment is necessary in the case of traveler's checks, which are already defined clearly as monetary instruments in that definition.

B. 103.15—Determination by the Secretary

As stated in the Notice, § 103.20 is redesignated as § 103.15 in order to make room in part 103 for the rule and to create space for future changes to the Bank Secrecy Act regulations.

C. 103.18—Reports by Banks of Suspicious Transactions

As stated in the Notice, § 103.21 is redesignated as § 103.18 to make room in subpart B, "Reports Required to be Made," for the suspicious transaction reporting requirement in this final rule.

D. 103.20(a)—General

1. Reporting Money Services Businesses

Paragraph 103.20(a)(1) obligates issuers of traveler's checks or money orders, sellers or redeemers (for monetary value) of traveler's checks or money orders, money transmitters, and the U.S. Postal Service to report suspicious transactions as required by § 103.20. The paragraph also permits, but does not require, the voluntary filing of a report by a money services business, in situations in which mandatory reporting is not required.[26]

2. Standard for Mandatory Reporting

The final rule continues to designate three classes of transactions as requiring reporting. The first class, described in paragraph (a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second class, described in paragraph (a)(2)(ii), involves transactions designed, whether through structuring or other means, to evade the requirements of the Bank Secrecy Act. The third class, described in paragraph (a)(2)(iii), involves transactions that appear to serve no business or apparent lawful purpose, and for which the money services business knows of no reasonable explanation after examining the available facts relating thereto.

Specific examples of reportable suspicious activity have been removed from the text of the rule. However it remains important that each money services business—whether it issues an instrument or performs a transmission function as principal, or whether it is an agent selling an instrument or service on behalf of another—be able to recognize the sorts of transactions that may require additional scrutiny and at the same time understand that not all such transactions are reportable if a reasonable explanation for the circumstances of a particular transaction arises upon such examination. It is a signal characteristic of money launderers that they seek to do for illegitimate purposes what others do for legitimate purposes.

Of course, determinations as to whether a report is required must be based on all the facts and circumstances relating to the transactions or pattern of transactions in question. Different fact patterns will require different types of judgments. In some cases, the circumstances of the transaction or pattern of transactions may clearly indicate the need to report. For example, an individual's seeking regularly to purchase or redeem instruments in bulk, or to purchase transmissions to multiple overseas locations, all to the same named beneficiary should, in the absence of specific qualifying circumstances, place the money services business on notice that a suspicious transaction is underway. Similarly, the fact that a customer (i) refuses to provide information necessary for the money services business to make reports or keep records required by 31 CFR 103 or other regulations, (ii) provides information that a money services business determines to be false, or (iii) seeks to change or cancel the transaction *after* such person is informed of currency transaction reporting or information verification or

[24] FinCEN also received comments requesting that the requirement to report suspicious transactions not apply to clearing houses with respect to funds transfers and futures commodities merchants. Those businesses have, for the most part, been carved out from the definition of a money services business, *see* 31 CFR 103.11(uu) and 64 FR 45438 at 45451, and are therefore not generally subject to the reporting requirement described in the final rule contained in this document.

[25] *See also* 64 FR 45446 (May 21, 1997), which explains that entities in an affiliated group must be analyzed separately to determine whether each such entity separately falls within the definition of money services business based upon that entity's operation.

[26] Check cashers and currency exchangers are not generally subject to the suspicious transaction reporting requirement contained in this document. Because the operations of those businesses generally involve disbursement rather than receipt of funds, the appropriate definition of suspicious activity involves issues not present to the same degree in the case of money transmitters and money order and traveler's check services. However, check cashing and currency exchange services are subject to the suspicious activity rules to the extent they redeem either money orders or traveler's checks for currency (U.S. or other) or other monetary or negotiable instruments and hence qualify as redeemers of money orders or traveler's checks, or to the extent that check cashers or currency exchangers also offer money transmission, money orders, or traveler's check products. FinCEN will continue to examine issues relating to the appropriate extension of suspicious transaction reporting to the full range of financial institutions subject to the Bank Secrecy Act.

recordkeeping requirements relevant to the transaction or of the money services business' intent to file a currency transaction report with respect to the transaction, would all indicate that a suspicious activity report should be filed. (Of course, as the rule makes clear, it is unlawful for the money services business to notify the customer that it intends to file or has filed a suspicious transaction report with respect to the customer's activity.)

At least one commenter questioned whether a customer's suspected status as an undocumented foreign national in the United States would, by itself, require the filing of a suspicious activity report. Paragraph (a)(2)(i) of the rule requires a suspicious activity report to be filed where the reporting money services business suspects or has reason to suspect that the customer's funds are "derived from illegal activity." In light of this language, the commenter requested that FinCEN clarify whether the funds with which a suspected undocumented foreign national conducts a transaction should be deemed as having been derived from illegal activity (*i.e.*, illegal employment in the United States).

If a reporting money services business suspects that one of its customers is an undocumented foreign national, it would be inappropriate to infer, without any additional facts, that any funds possessed by that customer necessarily derive from illegal employment in the United States. For example, the customer may have obtained the funds as a gift. Moreover, even if the money services business knows or suspects that the customer's funds were generated from the customer's employment, employment in the United States as an undocumented foreign national is not necessarily a violation of law.

For these reasons, FinCEN believes that a money services business would not have an obligation to file a suspicious activity report simply because a customer is an undocumented foreign national. This conclusion is consistent with the discussions FinCEN's Office of Chief Counsel has had regarding this matter with its counterpart at the Immigration and Naturalization Service of the U.S. Department of Justice.

3. Dollar Threshold for Reporting

Paragraphs 103.20(a)(2) and (3) establish the applicable dollar thresholds for reporting suspicious transactions. In the Notice, FinCEN proposed a single $500 dollar threshold for reporting suspicious transactions. The final rule adopts two different dollar thresholds, both markedly higher than the proposed $500 threshold.

The first threshold, of $2,000, as set forth in paragraph 103.20(a)(2), would apply generally to each transaction (other than one described in paragraph 103.20(a)(3)) conducted or attempted by, at, or through a money services business or its agent. The second threshold, of $5,000, would apply to transactions identified by issuers of money orders or traveler's checks from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed.

4. Obligation to Report Suspicious Transactions

31 U.S.C. 5318(g)(1) authorizes Treasury to require suspicious transaction reporting not only by financial institutions but by "any director, officer, employee, or agent of any financial institution." The authorization parallels the definition of financial institution itself in 31 U.S.C. 5312(a)(2) and (b), and 31 CFR 103.11(n). The operating realities of money services businesses place special importance on the relationships between the operators of the money services businesses involved and the otherwise unrelated businesses that, in many cases, serve as agents of the former to sell the financial products involved, in the case of money orders or traveler's checks, or that serve, in the case of money remissions, as receivers of the funds to be transmitted. One of those operating realities is that the information of a money services business that deals directly with a customer may differ from that information directly available to an issuer or service provider.

Paragraph (a)(4) places responsibility for reporting a suspicious transaction on each money services business involved in the transaction. As noted above, it is important to recognize that an agent of a money services business is itself a money services business for this purpose (whether or not it is required to register). Thus, an agent of a money transmitter may (indeed, usually will) itself be a money services business for purposes of the reporting rule (although not necessarily for purposes of the registration rule).

At least one commenter asked that FinCEN clarify that multiple suspicious transaction reports need not be filed by both a money services business and its agent with respect to the same reportable transaction. It should be noted that, with respect to reportable transactions conducted by the agent of a money services business, the final rule continues to place a dual obligation to file a suspicious transaction report on both a money services business and its agent as contemplated by 31 U.S.C. 5318(g)(1). However, only one report should be filed with FinCEN to avoid double-reporting on the same transaction. This notion is expressed by new language added to paragraph (a)(4) emphasizing that the dual obligation imposed does not mandate dual filing of reports with respect to the same transaction or pattern of transactions (although the filing of multiple reports may be necessary if different facts are contained in the two reports).

5. Exclusion of Stored Value

As noted in the preamble to the final rule on registration of money services businesses, Treasury believes that a business that issues or facilitates the digital transfer of electronically-stored value[27] is a money services business covered by the Bank Secrecy Act.[28] However, it is not appropriate, given the infancy of the use of stored value products in the United States, to finalize a rule specifically dealing with suspicious transaction reporting by non-banks with respect to stored value products at this time. Thus, paragraph (a)(5) continues to exempt transactions solely involving such products from the operation of the rule at present. Many commenters expressed their agreement with this approach.

E. 103.20(b)—Filing Procedures

Paragraph (b) continues to set forth the filing procedures to be followed by money services businesses making reports of suspicious transactions. Within 30 days after a money services business becomes aware of a suspicious transaction, the business must report the transaction by completing a Suspicious Activity Report-MSB[29] ("SAR–MSB") and filing it in a central location, to be determined by FinCEN. The SAR–MSB will resemble the suspicious activity reporting form now used by banks to report suspicious transactions; a draft

[27] *See* 31 CFR 103.11(vv), which defines stored value.

[28] It should be clearly understood that the treatment of stored value and similar products for purposes of the operation of 31 U.S.C. 5330 and the final rule relating to the registration of money services businesses is solely a matter of federal law and cannot be taken as the expression of any view by the Department of the Treasury on the issue whether particular money services businesses are (or, indeed, should be) within the scope of state laws requiring the registration of money transmitters, check cashers, currency exchange businesses, or issuers, sellers, or redeemers of money orders or traveler's checks.

[29] The term "MSB" is an abbreviation for "money services businesses" and is used to distinguish the form from forms for reporting by other non-bank financial institutions.

form will be made available for comment when ready.

Supporting documentation relating to each SAR–MSB is to be collected and maintained separately by the money services business and made available to law enforcement and regulatory agencies upon request. Special provision is made for situations requiring immediate attention, in which case money services businesses are to telephone the appropriate law enforcement authority in addition to filing a SAR–MSB.

Reports filed under the terms of the rule will be lodged in a central data base (on the model of the data base used to process, analyze, and retrieve bank suspicious activity reports). Information will be made available electronically to federal and state law enforcement and regulatory agencies, to enhance the ability of those agencies to carry out their mandates to fight financial crime.

F. 103.20(c)—Retention of Records

Paragraph (c) continues to provide that money services businesses must maintain copies of the SAR–MSBs they file and the original related documentation (or business record equivalent) for a period of five years from the date of filing. As indicated above, supporting documentation is to be made available to FinCEN and appropriate law enforcement authorities on request.

G. 103.20(d)—Confidentiality of Reports; Limitation of Liability

Paragraph 103.20(d) continues to incorporate the terms of 31 U.S.C. 5318(g)(2) and (g)(3). Thus, this paragraph specifically prohibits persons filing reports in compliance with the final rule from disclosing, except to law enforcement and regulatory agencies, that a report has been filed or providing any information that would disclose that a report has been prepared or filed. The paragraph also restates the broad protection from liability for making reports of suspicious transactions (whether such reports are required by the final rule or made voluntarily), and for failure to disclose the fact of such reporting, contained in the statute. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because Treasury recognizes the importance of these statutory provisions to the overall effort to encourage meaningful reports of suspicious transactions and to protect the legitimate privacy expectations of those who may be named in such reports, they are repeated in the rule to remind compliance officers and others of their existence. FinCEN received no substantive comments concerning this paragraph.

H. 103.20(e)—Compliance

Paragraph (e) continues to note that compliance with the obligation to report suspicious transactions will be audited, and provides that failure to comply with the rule may constitute a violation of the Bank Secrecy Act and the Bank Secrecy Act regulations, which may subject non-complying money services businesses to enforcement action under the Bank Secrecy Act.

I. 103.20(f)—Effective Date

At least one commenter asked that FinCEN postpone the effective date to allow the industry the necessary time to develop and implement adequate compliance programs. In response, the final rule provides that the new suspicious activity reporting rules are effective for transactions occurring after December 31, 2001.

VII. Executive Order 12866

The Department of the Treasury has determined that this rulemaking is not a significant regulatory action under Executive Order 12866.

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

IX. Regulatory Flexibility Act

FinCEN certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The average money order sold is approximately $102, and the average money transmission is approximately $240 within the United States and approximately $320 outside the United States. Both of these amounts are substantially below the general $2,000 threshold that triggers reporting under the rule. Thus, FinCEN believes that the threshold has been set at a level that will avoid a significant economic burden on small entities.

X. Paperwork Reduction Act Notices

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget ("OMB") in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1506–0015. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in 31 CFR 103.20(c). This information is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.20. This information will be used by law enforcement agencies in the enforcement of criminal and regulatory laws and to prevent money services businesses from engaging in illegal activities. The collection of information is mandatory. The likely recordkeepers are businesses.

The estimated average recordkeeping burden associated with the collection of information in this final rule is 20 minutes per recordkeeper (based on the filing an estimated 10,000 forms with an average recordkeeping burden of 20 minutes with respect to each form).

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182, and to OMB, Attention: Desk Officer for the Department of Treasury, FinCEN, Office of Information and Regulatory Affairs, Washington, DC 20503.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.11(ii)(1) is revised to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(ii) *Transaction.* (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, purchase or redemption of any money order, payment or order for any money remittance or transfer, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

* * * * *

3. In Subpart B, redesignate §§ 103.20 and 103.21 as §§ 103.15 and 103.18, respectively, and add new § 103.20 to read as follows:

§ 103.20 Reports by money services businesses of suspicious transactions.

(a) *General.* (1) Every money services business, described in § 103.11(uu) (3), (4), (5), or (6), shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. Any money services business may also file with the Treasury Department, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a money services business, involves or aggregates funds or other assets of at least $2,000 (except as provided in paragraph (a)(3) of this section), and the money services business knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330; or

(iii) Serves no business or apparent lawful purpose, and the reporting money services business knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(3) To the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed, an issuer of money orders or traveler's checks shall only be required to report a transaction or pattern of transactions that involves or aggregates funds or other assets of at least $5,000.

(4) The obligation to identify and properly and timely to report a suspicious transaction rests with each money services business involved in the transaction, provided that no more than one report is required to be filed by the money services businesses involved in a particular transaction (so long as the report filed contains all relevant facts). Whether, in addition to any liability on its own for failure to report, a money services business that issues the instrument or provides the funds transfer service involved in the transaction may be liable for the failure of another money services business involved in the transaction to report that transaction depends upon the nature of the contractual or other relationship between the businesses, and the legal effect of the facts and circumstances of the relationship and transaction involved, under general principles of the law of agency.

(5) Notwithstanding the provisions of this section, a transaction that involves solely the issuance, or facilitation of the transfer of stored value, or the issuance, sale, or redemption of stored value, shall not be subject to reporting under this paragraph (a), until the promulgation of rules specifically relating to such reporting.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report-MSB ("SAR–MSB"), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* The SAR–MSB shall be filed in a central location to be determined by FinCEN, as indicated in the instructions to the SAR–MSB.

(3) *When to file.* A money services business subject to this section is required to file each SAR–MSB no later than 30 calendar days after the date of the initial detection by the money services business of facts that may constitute a basis for filing a SAR–MSB under this section. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the money services business shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a SAR–MSB.

(c) *Retention of records.* A money services business shall maintain a copy of any SAR–MSB filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–MSB. Supporting documentation shall be identified as such and maintained by the money services business, and shall be deemed to have been filed with the SAR–MSB. A money services business shall make all supporting documentation available to FinCEN and any other appropriate law enforcement agencies or supervisory agencies upon request.

(d) *Confidentiality of reports; limitation of liability.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR–MSB or the information contained in a SAR–MSB, except where such disclosure is requested by FinCEN or an appropriate law enforcement or supervisory agency, shall decline to produce the SAR–MSB or to provide any information that would disclose that a SAR–MSB has been prepared or filed, citing this paragraph (d) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A reporting money services business, and any director, officer, employee, or agent of such reporting money services business, that

makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(e) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(f) *Effective date.* This section applies to transactions occurring after December 31, 2001.

Dated: March 7, 2000.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 00–5919 Filed 3–8–00; 3:25 pm]

BILLING CODE 4820–03–P

DEPARTMENT OF DEFENSE
DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ87

Veterans Education: Increased Allowances for the Educational Assistance Test Program

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 1999–2000 academic year should be increased by 4% over the rates payable for the 1998–99 academic year. The regulations dealing with these rates are amended accordingly.

DATES: *Effective Date:* This rule is effective March 14, 2000.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration, Department of Veterans Affairs (202) 273–7187.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education. The Department of Defense has concluded that these costs increased by 4% in the 1998–99 academic year. Accordingly, this final rule changes 38 CFR 21.5820 and 21.5822 to reflect a 4% increase in the rates payable in the 1999–2000 academic year. The changes to § 21.5820 include adding provisions for adjustments to compensate for rounding, which were not applicable last year because last year the resulting numerical values did not involve rounding. This final rule also makes nonsubstantive changes for the purpose of clarification.

Administrative Procedure Act

The rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program are determined based on a statutory formula and, in essence, the calculation of rates merely constitutes a non-discretionary ministerial act. The other changes made by this document are merely nonsubstantive changes for the purpose of clarification. Accordingly, there is a basis for dispensing with notice-and-comment and a delayed effective date under 5 U.S.C. 552 and 553.

Regulatory Flexibility Act

The Secretary of Veterans Affairs and the Secretary of Defense hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 18, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Approved: March 1, 2000.

Curtis B. Taylor,

Colonel, U.S. Army, Principle Director, (Military Personnel Policy) Department of Defense.

For the reasons set out above, 38 CFR part 21 (subpart H) is amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H is revised to read as follows:

Authority: 10 U.S.C. ch. 107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C. 2000; sec. 901, Pub. L. 96–342, 94 Stat. 1111–1114, unless otherwise noted.

2. Section 21.5820 is amended by:

A. In paragraph (b)(1), removing "1998–99" and adding, in its place, "1999–2000"; and by removing "$3,258" and adding, in its place, "$3,388".

B. In the introductory text of paragraph (b)(2)(ii), removing "1998–99" and adding, in its place, "1999–2000".

C. In paragraph (b)(2)(ii)(A), removing "$362" and adding, in its place, "$376.44"; and by removing "$181" and adding, in its place, "$188.22".

D. In paragraph (b)(2)(ii)(B), removing "$12.07" and adding, in its place, "$12.55"; and by removing "$6.03" and adding, in its place, "$6.27".

E. In the introductory text of paragraph (b)(3)(ii), removing "1998–99" and adding, in its place, "1999–2000".

F. In paragraph (b)(3)(ii)(A), removing "$362" and adding, in its place, "$376.44"; and by removing "$181" and adding, in its place, "$188.22".

G. In paragraph (b)(3)(ii)(B), removing "$12.07" and adding, in its place, "$12.55"; and by removing "$6.03" and adding, in its place, "$6.27".

H. Revising paragraphs (b)(2)(ii)(C) and (b)(3)(ii)(C).

I. Adding an authority citation at the end of paragraph (b).

The revisions and addition read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(C) Adding the two results. If the enrollment period is as long as or longer than a standard academic year, this amount will be increased by 4 for a full-time student and increased by 2 for a part-time student.

(3) * * *

(ii) * * *

(C) Adding the two results. If the enrollment period is as long as or longer than a standard academic year, this amount will be increased by 4¢ for a full-time student and increased by 2¢ for a part-time student; and

* * * * *

(Authority: 10 U.S.C. 2143, 2145)

* * * * *

3. Section 21.5822 is amended by:

A. In paragraph (b)(1)(i), removing "$812" and adding, in its place, "$844"; and by removing "1998–99" and adding, in its place, "1999–2000".

B. In paragraph (b)(1)(ii), removing "$406" and adding, in its place, "$422"; and by removing "1998–99" and adding, in its place, "1999–2000".

C. In paragraph (b)(2)(i), removing "1998–99" and adding, in its place, "1999–2000"; and by removing "$812" and adding, in its place, "$844".

D. In paragraph (b)(2)(ii), removing "1998–99" and adding, in its place, "1999–2000"; and by removing "$406" and adding, in its place, "$422".

E. Removing the authority citation at the end of paragraph (b)(1)(ii).

F. Revising the authority citation at the end of paragraph (b)(2)(ii).

The revision reads as follows:

§ 21.5822 Subsistence allowance.

* * * * *

(Authority: 10 U.S.C. 2144, 2145)

* * * * *

[FR Doc. 00–6216 Filed 3–13–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 200–0217; FRL–6550–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the South Coast Air Quality Management District (SCAQMD). These revisions concern the New Source Review requirements and the methodology for calculating facility allocations for oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) for sources subject to the Regional Clean Air Incentives Market (RECLAIM) program in the SCAQMD. This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate the construction and modification of stationary sources and the calculation of RECLAIM facility allocations in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for permitting in nonattainment areas.

DATES: This rule is effective on April 28, 2000 without further notice, unless EPA receives adverse comments by March 29, 2000. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and of EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812;

South Coast Air Quality Management District 21865 E. Copley Drive Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: South Coast Air Quality Management District (SCAQMD) Rule 2002—Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X), and Rule 2005—New Source Review for RECLAIM. These rules were submitted by the California Air Resources Board (CARB) to EPA on August 22, 1997, and July 23, 1999, respectively. Rule 2002 establishes the methodology for calculating initial facility allocations for NO_X and SO_X sources subject to the requirements of the RECLAIM program. Rule 2005 sets forth the preconstruction review requirements for new facilities subject to the requirements of the RECLAIM program, for modifications to RECLAIM facilities, and for facilities that increase their allocations to a level greater than their starting allocation plus non-tradable credits.

II. Background

Rule 2002 was initially adopted by the South Coast Air Quality Management District Board on October 15, 1993 and approved by EPA into the California SIP on November 8, 1996 (61 FR 57775). The SCAQMD Board amended Rule 2002 on December 7, 1995; July 12, 1996 and February 14, 1997. All of the above versions of Rule 2002 have been submitted to EPA for SIP approval. On June 15, 1998, EPA approved the December 7, 1995 version of Rule 2002 into the California SIP (63 FR 32621). Today EPA is taking action on the February 14, 1997 version of Rule 2002.

Rule 2005 was also initially adopted by the South Coast Air Quality Management District Board on October 15, 1993 and approved by EPA into the California SIP on November 8, 1996 (61 FR 57775). The SCAQMD Board adopted revisions to Rule 2005 on December 7, 1995; May 10, 1996; July 12, 1996; February 14, 1997 and most recently, April 9, 1999. All of the above versions of Rule 2005 have been submitted to EPA for SIP approval, except the December 7, 1995 version. On June 15, 1998, EPA approved the May 10, 1996 version of Rule 2005 into the California SIP (63 FR 32621). Today EPA is taking action on the April 9, 1999 version of Rule 2005.

We evaluated Rules 2002 and 2005 for consistency with the CAA, EPA regulations, and EPA policy. We have

found that the revisions made to Rules 2002 and 2005 meet the applicable EPA requirements.

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a proposed rule entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes the requirements of section 182(f). The NO_X supplement should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The South Coast Air Quality Management District is classified as extreme;[1] therefore this area was subject to the RACT requirements of section 182(b)(2), cited below, and the November 15, 1992 deadline.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control techniques guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

NO_X emissions contribute to the production of ground level ozone and smog. The subject rules were adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and final action for these rules.

[1] The South Coast Air Quality Management District retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

III. EPA Evaluation and Action

On June 15, 1998, EPA approved into the SIP a version of Rule 2002—Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X) that had been adopted by SCAQMD on December 7, 1995. Revisions to this rule were subsequently adopted by SCAQMD on July 12, 1996 and February 14, 1997 and submitted to EPA. While EPA can only act on the most recently submitted version, EPA reviewed relevant materials associated with superseded versions.

SCAQMD submitted Rule 2002—Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X) was revised to clarify that the SCAQMD is not required to print out the entire Facility Permit when the Facility Permit is reissued to reflect necessary updates. Only updated sections of the reissued Facility Permit need be printed out at the beginning of each compliance year. Language has also been added to Rule 2002 that stipulates that the annually reissued permit shall list a facility's initial starting allocation, starting Non-Tradable Credits (NTC), and the facility's allocations as well as any RECLAIM Trading Credits (RTCs) obtained pursuant to SCAQMD Rule 2007 for the next fifteen years. Rule 2002 language has also been modified to replace incorrect emissions factors or to add emissions factors for some source categories. These source categories include fluid catalytic cracking units (FCCUs), delacquering furnaces, pot furnaces, new and/or modified boilers, and exempted internal combustion engines (ICEs). Unnecessary emissions factors have been removed from Rule 2002 for the following categories: ICE Large Bore Engines, Reported Value, Waste Gas Flare, Facility Surveyed Emissions Inventory, Petroleum Refining, and Petroleum Refining Blowdown Systems. Finally, language has been added to Rule 2002 so that the year 2003 allocation level will continue for years subsequent to 2010. A more detailed discussion of these modifications to Rule 2002 can be found in the Technical Support Document (TSD) for Rule 2002 dated January 10, 2000.

On June 15, 1998, EPA approved into the SIP a version of Rule 2005—New Source Review for RECLAIM that had been adopted by SCAQMD on May 10, 1996. Revisions to this rule were subsequently adopted by the SCAQMD Board on July 12, 1996, February 14, 1997, and April 9, 1999 and submitted to EPA. While EPA can only act on the most recently submitted version, EPA reviewed relevant materials associated with superseded versions.

SCAQMD submitted Rule 2005—New Source Review for RECLAIM was revised to clarify New Source Review requirements for a change of operator, and to clarify that the current requirements for modifications to existing facilities include modifications to facilities that received all permits to construct after January 1, 1994. A more detailed discussion of these modifications to Rule 2005 can be found in the Technical Support Document (TSD) for Rule 2005 dated January 10, 2000.

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.[2] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble, cited above (57 FR 55620). In the NO_X Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

EPA has evaluated the submitted rules and has determined that the revisions made to these rules are consistent with the CAA, EPA regulations and EPA policy. Therefore, South Coast Air Quality Management District's Rules 2002 and 2005 are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble.

EPA is publishing these rules without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions should adverse comments be filed. These rules will be effective April 28, 2000 without further notice unless the Agency receives adverse comments by March 29, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rules commented on will not take effect. All public comments received will then be addressed in subsequent final rules based on the proposed rules. The EPA will not institute a second comment period on these rules. Any parties interested in commenting on these rules should do so at this time. If no such comments are received, the public is advised that these rules will be effective on April 28, 2000 and no further action will be taken on the proposed rules.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to

State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: January 21, 2000.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(268) and (271) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(268) New and amended regulations for the following agencies were submitted on July 23, 1999, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 2005 adopted on April 9, 1999.

* * * * *

(271) New and amended regulations for the following agencies were submitted on August 22, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 2002 adopted on February 14, 1997.

* * * * *

[FR Doc. 00–6094 Filed 3–13–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6560–3]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Jacksonville Municipal Landfill Superfund Site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency (EPA) Region 6 announces the deletion of the Jacksonville Municipal Landfill Superfund Site ("the Site") from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA and the State of Arkansas Department of Environmental Quality (ADEQ), have determined that the remedial action for the Site has been successfully completed and that no further action is warranted.

EFFECTIVE DATE: March 14, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Aisling, Remedial Project Manager, U.S. EPA (6SF–LT), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8509 or 1–800–533–3508, aisling.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Jacksonville Municipal Landfill Site, Jacksonville, Arkansas.

A Notice of Intent to Delete for this site was published in the **Federal Register** on November 9, 1999 (60 FR 15737). The closing date for comments on the Notice of Intent to Delete was January 9, 2000. EPA received no comments.

The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed remedial actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 28, 2000.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

For the reasons set out in the Preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended under Arkansas ("AR") by removing the site name "Jacksonville Municipal Landfill, Jacksonville, AR".

[FR Doc. 00–6218 Filed 3–13–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 030800A]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries by Vessels using Hook-and-Line Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for sablefish or demersal shelf rockfish. This action is necessary because the first seasonal bycatch mortality allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 9, 2000, until 1200 hrs, A.l.t., May 18, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch mortality allowance for groundfish included in the other hook-and-line fishery, which is defined at § 679.21(d)(4)(iii)(C), was established by the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000) for the first season, the period January 1, 2000, through May 17, 2000, as 250 metric tons. The other hook-and-line fishery includes all groundfish except sablefish or demersal shelf rockfish.

In accordance with § 679.21(d)(7)(ii), the Administrator, Alaska Region, NMFS, has determined that the first seasonal apportionment of the 2000 Pacific halibut bycatch mortality allowance specified for the hook-and-line groundfish fisheries other than sablefish or demersal shelf rockfish in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for groundfish other than sablefish or demersal shelf rockfish by vessels using hook-and-line gear in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the first seasonal apportionment of the 2000 Pacific halibut bycatch mortality allowance specified for the groundfish fisheries other than sablefish or demersal shelf rockfish by vessels using hook-and-line gear in the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest, which would disrupt the FMP's objective of apportioning Pacific halibut bycatch allowances throughout the year. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 9, 2000.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–6194 Filed 3–9–00; 2:34 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 030700B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Hook-and-line or Pot Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by vessels using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal allowance of the 2000 total allowable catch (TAC) of Pacific cod allocated for vessels using hook-and-line or pot gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 10, 2000, until 1200 hrs, A.l.t., September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The first seasonal allowance of the TAC of Pacific cod allocated to vessels using hook-and-line or pot gear in the BSAI during the time period January 1 to April 30 was established by the Final 2000 Harvest Specifications of Groundfish for the BSAI (65 FR 8282, February 18, 2000) as 65,000 metric tons (mt). The second seasonal allowance for the time period May 1 to August 31 was established as 0 mt. See § 679.20(c)(3)(iii) and § 679.20(a)(7)(i)(A).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal allowance of the TAC of Pacific cod

allocated to vessels using hook-and-line or pot gear in the BSAI will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 64,900 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is closing directed fishing for Pacific cod for vessels using hook-and-line or pot gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the first seasonal allowance of the 2000 TAC of Pacific cod allocated to vessels using hook-and-line or pot gear in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The Pacific cod directed fishing first seasonal allowance established for vessels using hook-and-line or pot gear will soon be reached. Further delay would only result in overharvest, which would disrupt the FMP's objective of providing sufficient Pacific cod to support bycatch needs in other anticipated groundfish fisheries throughout the year. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 8, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–6193 Filed 3–9–00; 2:33 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 50
Tuesday, March 14, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION

10 CFR Chapter XVIII

Northeast Low-Level Radioactive Waste Compact Proposed Rule for Declaration of Party State Eligibility

AGENCY: Northeast Interstate Low-Level Radioactive Waste Commission

ACTION: Notice of proposed rulemaking and invitation for comments

SUMMARY: The Northeast Interstate Low-level Radioactive Waste Commission (the "Commission") provides this notice of proposed rulemaking to establish the conditions under which a state not a party to the Northeast Interstate Low-Level Radioactive Waste Management Compact (the "Compact") may be declared eligible to become a party state. The Commission must declare a state eligible before it may become a party state to the Compact. The conditions established by the Commission through this rule are intended to protect the integrity of the Compact and the interests of both the existing party states and the state petitioning for a declaration of eligibility.

DATES: Written comments to the proposed rule may be submitted until April 13, 2000. Public hearings will be held on April 17 and 18, 2000.

ADDRESSES: Written comments should be submitted to Kevin McCarthy, Chairman, Northeast Interstate Low-Level Radioactive Waste Commission, 703 Hebron Avenue, Glastonbury, Connecticut 06033. Public hearings will be held at 1:00 p.m. on April 17, 2000, at 44 S. Clinton Avenue, Station Plaza III, Trenton, New Jersey, and at 1:00 p.m. on April 18, 2000, at 10 Middle Street, 1st Floor, Bridgeport, Connecticut. Requests to testify at the public hearing should be submitted to Mr. McCarthy.

FOR FURTHER INFORMATION CONTACT: Kevin McCarthy, Chairman, Northeast Interstate Low-Level Radioactive Waste Commission, 703 Hebron Avenue, Glastonbury, CT 06033, (860) 633–2060.

SUPPLEMENTARY INFORMATION:

Background

The Compact was established by "The Omnibus Low-Level Radioactive Waste Compact Consent Act of 1985," Public Law 99–240, Title II (the "Act"). The Act gave Congress" consent to agreements between and among states that were designed to facilitate the regional disposal of low-level radioactive waste ("waste"), thereby promoting the health and safety of the region. Connecticut and New Jersey are current members of the Compact. The Act also established the Commission and gave it authority, *inter alia,* to promulgate rules, conduct hearings, receive and act on applications to become eligible states, develop regional plans to ensure safe and effective management of waste within the region, designate a host state for siting of a regional disposal facility, enter agreements for the importation of waste into the region and export of waste from the region, impose sanctions, and establish criteria for disposal fees. The Commission consists of one voting member from Connecticut and one voting member from New Jersey.

Since the establishment of the Compact, there has been no regional disposal facility to receive waste generated within the Compact states. Nevertheless, at various times, regional generators have been able to dispose of their waste at other facilities (*e.g.*, at facilities located in Clive, Utah, and Barnwell, South Carolina). Those facilities have not always been available for disposal of all of the waste generated within the region, however, and the Commission has sought to make available more reliable access to waste disposal facilities. Current regional generators anticipate that they will need assured access to waste disposal facilities for the next 50 years until all of the currently licensed nuclear power stations are fully decommissioned and all spent nuclear fuel has been removed from the sites. With these needs in mind, the Commission seeks to ensure the long-term availability of approximately 800,000 cubic feet of disposal space to accommodate all classes of low-level waste. The Commission also seeks to stabilize fees for waste disposal.

The Commission has determined that it may be in the interests of the Compact states to declare another state eligible for membership in the Compact if (a) that state is willing to become the voluntary host state and (b) membership in the Compact would achieve important objectives for both the current member states and any petitioning state. Article VII.e. of the Compact permits the Commission to "establish such conditions as it deems necessary and appropriate to be met by a state requesting eligibility as a party state to this compact." The Commission has further determined that the identification and implementation of reasonable conditions to be applied when evaluating a petition for new party state eligibility are essential to the long-term health and safety of the region.

This rule is intended to establish the conditions for party state eligibility contemplated by Article VII.e. of the Compact and the criteria for fee and surcharge systems contemplated by Article IV.i.(15) of the Compact. The rule specifies the procedures that the Commission will follow for receiving petitions for party state eligibility. It then describes the essential conditions for declaring a state eligible for membership in the Compact. Those conditions include agreements (a) to be the sole host state until all currently licensed nuclear power stations in the region have been decommissioned, (b) to warrant the availability of 800,000 cubic feet of disposal capacity for Connecticut and New Jersey generators, (c) to assure stable, predictable disposal fees that are no greater than generators in Connecticut and New Jersey paid at the end of 1999, (d) to give flexibility for generators to dispose of waste elsewhere at their discretion, (e) to indemnify the existing party states for any potential environmental liability caused by their membership in the Compact and by operation of the regional disposal facility, and (f) to ensure an equitable schedule for return of a portion of any incentive payment made by the existing party states if the regional disposal facility ceases to be available for any reason.

The Commission believes that this rule will further promote health and safety within the region. It will provide a mechanism to consider a long-term resolution for disposal of low-level

radioactive waste generated within the region. It will establish the essential conditions that must be satisfied before declaring a state eligible for membership in the Compact. The rules are consistent with and will further the purposes of the Compact and the Low-Level Radioactive Waste Policy Act, as amended (Pub. L. 96–573; Pub. L. 99–240, Title I).

The Commission solicits comments on the proposed rule from any interested party. After the close of the comments period, the Commission will hold hearings to consider the comments and any other appropriate evidence. Upon adoption of final rules, the Commission will use those rules to evaluate any petition for eligibility to become a party state.

Statutory Authority

Authority for this rulemaking is provided to the Commission by The Omnibus Low-level Radioactive Waste Compact Consent Act of 1985, Public Law 99–240, section 227, Art. IV(i)(7), Art. VII(e) , 99 Stat. 1842, 1914, 1921–22.

Public Participation in Rulemaking Proceedings

The Commission seeks and encourages oral and written testimony and comments from all interested persons regarding this proposed rule. The Commission recognizes the benefit of the valuable insights and active participation of all segments of the affected community including consumers, utility and other generators, and governments in the development and administration of this rule.

Requests to provide oral testimony at the public hearing should be submitted to Kevin McCarthy, Chairman, Northeast Interstate Low-Level Radioactive Waste Commission, 703 Hebron Avenue, Glastonbury, CT 06033, and must be received by April 13, 2000, for the requestor to be placed on the speaker's list. The Commission may limit the time allotted to individual speakers as it deems necessary and appropriate. Persons who have not submitted requests in advance will be accommodated, time permitting, at the discretion of the Commission.

Request for Comments

Any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments to the Commission. Comments may be submitted at any time before April 13, 2000. Written comments received after this date (including at the hearings) will be considered if it is practical to do so.

Please note: Comments will be made part of the record of the rulemaking proceeding only if they identify the author's name, address, and occupation, and if they include a statement describing the factual basis for the comments.

List of Subjects in 10 CFR Part 1800

Administrative practice and procedure, Hazardous waste, Radioactive material.

Kevin McCarthy,

Chairman, Northeast Low-Level Radioactive Waste Commission.

For the reasons set out in the preamble, the Commission proposes to establish chapter XVIII, consisting of part 1800, in title 10 of the Code of Federal Regulations to read as follows:

CHAPTER XVIII—NORTHEAST LOW-LEVEL RADIOACTIVE WASTE COMMISSION

PART 1800—DECLARATION OF PARTY STATE ELIGIBILITY FOR NORTHEAST LOW-LEVEL RADIOACTIVE WASTE COMPACT

Sec.

1800.10 Purpose and scope.
1800.11 Definitions.
1800.12 Procedures for declaring a state eligible for membership in the Compact.
1800.13 Conditions for becoming an eligible party state.
1800.14 Modification to and enforcement of the rule in this part.

Authority: Sec. 227, Art. IV(i)(7), Art. VII(e), Pub. L. 99–240, 99 Stat. 1842, 1914, 1921–1922.

§ 1800.10 Purpose and scope.

Pursuant to Articles IV.i.(1), (7), (15), and VII.e. of the Northeast Low-Level Radioactive Waste Compact (enacted by the "Omnibus Low-Level Radioactive Waste Compact Consent Act of 1985," Public Law 99–240, 99 Stat. 1842, Title I) (the "Compact"), the Northeast Low-Level Waste Policy Commission (the "Commission") establishes through this part the conditions that it deems necessary and appropriate to be met by a state requesting eligibility to become a party state to this Compact. The Commission shall apply these conditions to evaluate the petition of any state seeking to be eligible to become a party state pursuant to Article VII of the Compact.

§ 1800.11 Definitions.

The definitions contained in Article II of the Compact and Article I.B. of the Commission's By Laws shall apply throughout this part. For the purposes of this part, additional terms are defined as follows:

(a) *By Laws* refers to the Commission's By Laws as adopted and amended by the Commission pursuant to Article IV.c. and Article IV.i.(7) of the Compact, most recently amended on December 10, 1998, and dated July 1999;

(b) *Person* means an individual, corporation, business enterprise or other legal entity, either public or private, and expressly includes states;

(c) *Nuclear power station* means any facility holding a license from the U.S. Nuclear Regulatory Commission under 10 CFR part 50.

(d) *Existing party states* means Connecticut and New Jersey collectively.

§ 1800.12 Procedures for declaring a state eligible for membership in the Compact.

(a) Any state seeking to become an eligible state under the Compact shall submit to the Chairman of the Commission six copies of a petition to become an eligible state. The petition shall discuss each of the conditions specified in § 1800.13 and shall:

(1) Affirm that the petitioning state fully satisfies each condition; or

(2) Explain why the petitioning state does not or cannot fully satisfy any particular condition.

(b) Upon receipt of a petition from any state seeking to become an eligible state under the Compact, the Commission shall publish a notice in accordance with Article I.F.1. of the By Laws and shall initiate an adjudicatory proceeding to act on the petition. Any person may submit written comments on a petition, and all such comments must be received by the Commission within 30 days of notice that a petition has been submitted.

(c) The Commission shall evaluate the petition against the conditions for declaration of an eligible state specified in § 1800.13. As part of the proceeding to evaluate a petition to become an eligible state, the Commission may, in its discretion, conduct a hearing pursuant to Article IV.i.(6) of the Compact and Article V.F.1. of the Commission's By-Laws. For good cause shown, the Commission may issue an order shortening the notice period for hearings provided in Article I.F.1. of the By Laws to a period of not less than ten days.

(d) After review of the petition and after any hearing, if held, the Commission shall issue an order accepting or rejecting the petition or accepting the petition with conditions. If the Commission accepts the petition without conditions, the petitioning state shall be declared an eligible state and shall become a new party state upon passage of the Compact by its state legislature, repeal of all statutes or statutory provisions that pose

unreasonable impediments to the capability of the state to satisfy the conditions for eligibility (as determined by the Commission) and payment of (or arrangement to pay) the fee specified in Article IV.j.(1). If the Commission accepts the petition with conditions, the petitioning state may become an eligible state by satisfying all of the conditions in the Commission's order and providing an amended petition incorporating its compliance with all of the conditions in this subpart and in the Commission's order. The Commission will consider the amended petition as part of the original adjudicatory proceeding and will issue a new order accepting or rejecting the amended petition.

(e) A state that submits a petition for declaration as an eligible state that is rejected by the Commission may submit a new petition at any time. The Commission will consider the new petition without reference to the prior petition but may use evidence obtained in any prior proceeding to evaluate the new petition.

(f) The Commission's consideration of a petition for declaration of an eligible state shall be governed by the Compact, the Commission's By Laws, and this part.

§ 1800.13 Conditions for becoming an eligible party state.

The Commission shall evaluate a petition to become an eligible party state on the basis of the following conditions and criteria:

(a) To be eligible for Compact membership, a state must agree that it will be the voluntary host state upon admission to the Compact and will continue to be the voluntary host state for a least that period of time until all currently licensed nuclear power stations within the region have been fully decommissioned and their licenses (including any licenses for storage of spent nuclear fuel under 10 CFR part 72) have been terminated.

(b) To be eligible for Compact membership, a state must agree that, so long as the petitioning state remains within the Compact, it will be the sole host state.

(c) To be eligible for Compact membership, a state must warrant the availability of a regional disposal facility that will accommodate 800,000 cubic feet of waste from generators located within the borders of the existing party states.

(d) To be eligible for Compact membership, a state must agree to establish a uniform fee schedule for waste disposal at the regional disposal facility that shall apply to all generators within the region. That uniform fee schedule, including all surcharges (except new surcharges imposed pursuant to Article V.f.3. of the Compact), shall not exceed the average fees that generators within the existing party states paid for disposal at the Barnwell, South Carolina, facility at the end of calendar year 1999, adjusted annually based on an acceptable inflation index.

(e) To be eligible for Compact membership, a state must agree with the existing states that regional generators shall be permitted to process or dispose of waste at sites outside the Compact boundaries based solely on the judgment and discretion of each regional generator.

(f) To be eligible for Compact membership, a state must agree with the existing states that the Commission may authorize importation of waste from non-regional generators for the purpose of disposal only if the host state approves and such importation does not jeopardize the warranted availability of 800,000 cubic feet of disposal capacity for waste produced by generators within the existing party states. A new party state must agree that regional generators shall not pay higher fees than non-regional generators and that all books and records related to the establishment or collection of fees shall be available for Commission review.

(g) To be eligible for Compact membership, in addition to the express limitations on non-host state and Commission liability provided in the Compact, a state must agree to indemnify the Commission or the existing party states for any damages incurred solely because of the new state's membership in the Compact and for any damages associated with any injury to persons or property during the institutional control period as a result of the radioactive waste and waste management operations of any regional facility. The petitioning state must agree that this indemnification obligation will survive the termination of the petitioning state's membership in the Compact.

(h) To be eligible for Compact membership, a state must agree that any incentive payments made by the existing party states as an inducement for a state to join the Compact will be returned to the existing party states, with interest, on a pro rata basis if, for any reason, the regional disposal facility ceases to be available to generators in the existing party states for a period of more than six months (other than periods that have been expressly approved and authorized by the Commission) or is unavailable for disposal of 800,000 cubic feet of waste from generators within the borders of the existing states. In the event of such unavailability, the new party state must agree to return the incentive payments based on the following schedule:

(1) 75% of the incentive payment if the regional facility becomes unavailable prior to December 31, 2001;

(2) 50% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2002, and prior to December 31, 2003;

(3) 30% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2003, and prior to December 31, 2005;

(4) 20% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2006, and prior to December 31, 2008;

(5) 10% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2009, and prior to the time when all currently licensed nuclear power stations within the region have been fully decommissioned and their licenses (including any licenses for storage of spent nuclear fuel under 10 CFR part 72) have been terminated.

(i) To be eligible for Compact membership, a state must agree with the existing states that once a new party state has been admitted to membership in the Compact pursuant to these rules, declaration of any other state as an eligible party state will require the unanimous consent of all members of the Commission.

§ 1800.14 Modification to and enforcement of the rule in this part.

(a) Because of the importance of the conditions for declaration of an eligible state under the Compact, the rule in this part may only be modified, amended, or rescinded after a public hearing held pursuant to Article IV.i.(6) of the Compact and Article V.F.1. of the Commission's By Laws and by a unanimous vote of all members of the Commission.

(b) Any party state may enforce the rules in this part by bringing an action against or on behalf of the Commission in the United States District Court for the District of Columbia pursuant to Article IV.n. of the Compact.

(c) If, for any reason, any portion of the rules in this part shall be declared invalid or unenforceable, the remainder of the rules in this part shall remain in full force and effect.

[FR Doc. 00–6228 Filed 3–13–00; 8:45 am]
BILLING CODE 7595–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM170; Notice No. 25–00–01-SC]

Special Conditions: Raytheon Aircraft Company Model 4000; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Raytheon Aircraft Company Model 4000 airplane. This airplane will utilize new avionics/electronics and electrical systems that will perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: Comments must be received on or before April 13, 2000.

ADDRESSES: Comments on these proposed special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–114), Docket No. NM170, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM170. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM170." The postcard will be date stamped and returned to the commenter.

Background

On May 3, 1996, Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085, submitted an application for a new type certificate for the Raytheon Model 4000. The significant aircraft design features include an 84 inch diameter graphite composite fuselage, new metal wing and a graphite composite skin on aluminum sub-structure empennage. The Model 4000 is 69 feet, 2 inches in length and 61 feet, 9 inches in width. It has a Primus Epic flightdeck, and two aft mounted PW308A engines. There are 12 forward-facing seats and a forward observer seat. The significant systems features include a new state of the art integrated avionics/electronics and electrical systems suite. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Raytheon Aircraft Company must show that the Model 4000 meets the applicable provisions of part 25, as amended by Amendment 25–1 through Amendment 25–87 thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Raytheon Aircraft Company Model 4000 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 4000 must comply with the part 25 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 25 noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Raytheon Aircraft Company Model 4000 airplanes will utilize new avionics/electronics and electrical systems that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The significant systems features include a new state of the art integrated avionics/electronics and electrical systems suite. The avionics/electronics and electrical systems installed in this aircraft have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon Aircraft Company Model 4000, which require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of

the airplane, and the use of composite material in the airplane structure, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1, OR 2 below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe for both of the following field strengths for the frequency ranges indicated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the computer modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Model 4000 airplane. Should Raytheon Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Raytheon Aircraft Company Model 4000 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

PART 25—[AMENDED]

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Raytheon Aircraft Company Model 4000 airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of this special condition, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on March 6, 2000.

Vi L. Lipski

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 00–6127 Filed 3–10–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–06]

Proposed modification of Class E Airspace; Holland, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Holland, MI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 26 has been developed for Tulip City Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the radius of the existing Class E airspace for Tulip City Airport.

DATES: Comments must be received on or before May 1, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–06, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decision on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposals. Communications should identify the airspace docket number and be

submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–AGL–06." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Holland, MI, by increasing the radius of the existing Class E airspace for Tulip City Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [AMENDED]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Holland, MI [Revised]

Holland, Park Township Airport, MI
(Lat. 42° 47′ 45″ N., long. 86° 09′ 43″ W.)
Holland, Tulip City Airport, MI
(Lat. 42° 44′ 35″ N., long. 86° 06′ 18″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Park Township Airport, and within 2.7 miles each side of the 037° bearing from Park Township Airport, extending from the 6.3-mile radius to 7.4 miles northeast of the airport, and within a 7.9-mile radius of the Tulip City Airport.

* * * * *

Issued in Des Plaines, Illinois on March 1, 2000.

Christopher R. Blum,

Manager, Air Traffic Division

[FR Doc. 00–6221 Filed 3–13–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANE–91]

RIN 2120–AA66

Proposed Modification of the East Coast Low Airspace Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the East Coast Low Airspace Area. Specifically, this action proposes to modify the East Coast Low airspace area by extending the boundaries further east, south, and southwest of the Nantucket Airport, MA, and lowering the controlled airspace floor in this new area to 2,000 feet mean sea level (MSL). The FAA is proposing this action to provide additional controlled airspace for aircraft operations arriving and departing the Nantucket Airport.

DATES: Comments must be received on or before April 24, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANE–500, Docket No. 99–ANE–91, Federal Aviation Administration, New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, ANE–500, Federal Aviation Administration, New England Regional Headquarters, 12 New England Executive Park, Burlington, MA 01803.

FOR FURTHER INFORMATION CONTACT: Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments providing supporting facts for the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ANE–91." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking also will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register's** electronic bulletin board service (telephone: 202–512–1661). Internet users may reach the **Federal Register's** web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice or docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing to amend 14 CFR part 71 to modify the East Coast Low airspace area by extending the present airspace boundaries further east, south, and southwest of the Nantucket Airport and lowering the controlled floor in this area to 2,000 feet MSL. This proposed modification would provide additional airspace to allow for more efficient control of Nantucket Airport arrivals and departures.

Offshore Airspace Area designations are published in paragraph 6007 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The offshore airspace area designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of Air Traffic Airspace Management, in areas outside U.S. domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention.

Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective

September 16, 1999, is amended as follows:

Paragraph 6007 Offshore Airspace Areas

* * * * *

East Coast Low [Revised]

That airspace extending upward from 2,000 feet MSL bounded on the west and north by a line 12 miles from and parallel to the U.S. shoreline and on the south and east by a line beginning at lat. 39°25′46″ N., long. 74°02′34″ W.; to lat. 39°02′05″ N., long. 73°39′30″ W.; to lat. 40°04′20″ N., long. 72°30′00″ W.; to lat. 40°37′14″ N., long. 72°30′00″ W.; and that airspace bounded on the west and north by a line 12 miles from and parallel to the U.S. shoreline and on the south and east by a line beginning at lat. 40°41′00″ N., long. 72°17′00″ W., thence along the northern boundary of Warning Areas W–106B and W–105A to lat. 40°58′33″ N., long. 70°59′00″ W.; to lat. 40°48′30″ N., long. 70°30′00″ W.; to lat. 40°59′00″ N., long. 69°40′00″ W.; to lat. 41°30′00″ N., long. 69°10′00″ W.; to lat. 42°05′00″ N., long. 69°30′00″ W.; to lat. 42°17′00″ N., long. 69°49′30″ W.; to lat. 42°17′00″ N., long. 70°00′00″ W.; to lat. 43°17′00″ N., long. 70°00′00″ W.; to lat. 43°33′56″ N., long. 69°29′12″ W.

* * * * *

Issued in Washington, DC, on March 2, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–6123 Filed 3–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–19]

RIN 2120–AA66

Proposed Modification of Jet Route J–41; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the notice of proposed rulemaking (NPRM) published in the **Federal Register** on August 8, 1998. The FAA proposed to modify Jet Route J–41 (J–41) by altering J–41 between the Lee County, FL, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Seminole, FL, VORTAC. Since the issuance of the NPRM, the FAA has taken other actions to enhance the management of aircraft operations in the west/central Florida area. Based on this latter action, the FAA is withdrawing the notice to modify J–41.

DATE: This withdrawal is made on March 14, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On August 8, 1998, an NPRM was published in the **Federal Register** proposing to amend 14 CFR part 71 to modify J–41 (63 FR 41485). Interested parties were invited to participate in the rulemaking process by submitting written data, views, or arguments regarding the proposal. No comments were received on the proposal.

The FAA originally proposed to modify J–41 to improve the management of aircraft operating in the west/central area of Florida and eliminate congestion in the area around the St. Petersburg VORTAC. Since the issuance of this NPRM, the FAA has expanded the service volume of the Seminole VORTAC which has eliminated congestion over the St. Petersburg VORTAC by allowing dual flows of aircraft into the west/central Florida area. In light of this recent improvement, the FAA has decided to withdraw its proposal to modify J–41 at this time.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 97–ASO–19, as published in the **Federal Register** on August 8, 1998 (63 FR 41485), is hereby withdrawn.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Washington, DC, on March 3, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–6124 Filed 3–13–00; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 952

Rules of Practice in Proceedings Relative to False Representation and Lottery Orders

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend the Rules of Practice in Proceedings Relative to False Representation and Lottery Orders to establish administrative procedures for issuing subpoenas and imposing the statutorily authorized civil penalties in proceedings conducted under 39 U.S.C. 3005(a).

DATES: Comments must be received on or before April 13, 2000.

ADDRESSES: Written comments should be mailed to Diane M. Mego, Staff Counsel, Judicial Officer Department, 2101 Wilson Blvd., Suite 600, Arlington, VA 22201–3078. Copies of all written comments will be available for inspection and photocopying between 8:15 a.m. and 4:45 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Diane M. Mego, Esq. 703–812–1905.

SUPPLEMENTARY INFORMATION: The Deceptive Mail Prevention and Enforcement Act, Pub. L. No. 106–168, 113 Stat. 1806, enacted on December 12, 1999, generally provides for the amendment of chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to sweepstakes, skill contests, and facsimile checks as well as amending provisions relating to administrative procedures and orders and adding civil penalties relating to such matters.

The Act grants the Judicial Officer authority to issue subpoenas requiring the attendance and testimony of witnesses and the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Judicial Officer considers relevant or material in any statutory proceeding conducted under 39 U.S.C. 3005(a). The Act also authorizes new administrative civil penalties.

The Postal Service is proposing to make the following amendments to 39 CFR Part 952 to authorize the Judicial Officer to issue subpoenas under 39 U.S.C. 3005(a) and impose civil penalties for purposes of the Deceptive Mail Prevention and Enforcement Act.

List of Subjects in 39 CFR Part 952

Administrative practice and procedure, Fraud, False Representations, Lotteries, Penalties, Postal Service.

PART 952—[AMENDED]

1. The authority citation for part 952 is revised to read as follows:

Authority: 39 U.S.C. 204, 401, 3005, 3012, 3016.

§ 952.5 [Amended]

2. Section 952.5 is amended by adding "and/or the assessment of civil penalties" to the end of the first sentence.

§ 952.7 [Amended]

3. Section 952.7(b) is amended by:

A. Adding "and/or the assessment of civil penalties authorized by 39 U.S.C. 3012" to the end of the first sentence; and

B. Inserting "tentatively assess such civil penalties as he considers appropriate under applicable law;" after the phrase "release of mail unrelated to the matter complained of;" in the third sentence.

§ 952.11 [Amended]

4. Section 952.11 is amended by:

A. Adding "and/or assess civil penalties" after "orders" in the second sentence of paragraph (a); and

B. Adding "and/or assess civil penalties" after "orders" in paragraph (b).

§ 952.17 [Amended]

5. Section 952.17(b)(10) is amended by adding "§ 952.19 and" before "§ 952.21".

6. Section 952.19 is revised to read as follows:

§ 952.19 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the presiding officer may issue a subpoena requiring:

(1) Testimony at a deposition. The deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the presiding officer;

(2) Testimony at a hearing. The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) Production of records. In addition to paragraphs (a)(1) and (a)(2) of this section, the production by the witness at the deposition or hearing of records designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected:

(1) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and

(2) To secure voluntary production of desired third-party records whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall to the extent practical be filed:

(i) At the same time a request for deposition is filed; or

(ii) 15 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any records sought.

(3) The presiding officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the presiding officer may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or

(2) Require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed records. Where circumstances require, the presiding officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the title of the proceeding, shall cite 39 U.S.C. 3016(a)(2) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified records at a time and place therein specified. In issuing a subpoena to a requesting party, the presiding officer shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the presiding officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) *Service within the United States.* A subpoena issued under this section may be served by a person designated under 18 U.S.C. 3061 or by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age at any place within the territorial jurisdiction of any court of the United States.

(3) *Foreign Service.* Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(4) *Service on Business Persons.* Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by:

(i) Delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(ii) Delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(iii) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(5) *Service on Natural Persons.* Service of any subpoena may be made upon any natural person by:

(i) Delivering a duly executed copy to the person to be served; or

(ii) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(6) *Verified Return.* A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(g) *Contumacy or refusal to obey a subpoena.* In the case of contumacy or refusal to obey a subpoena, the Judicial Officer may request the Attorney General to petition the district court for any district in which the person receiving the subpoena resides, is found, or conducts business (or in the case of a person outside the territorial jurisdiction of any district court, the district court for the District of

Columbia) to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–6093 Filed 3–13–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 200–0217; FRL–6550–5]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to the California State Implementation Plan (SIP). The revisions concern rules from the South Coast Air Quality Management District (SCAQMD). These revisions concern the New Source Review requirements and the methodology for calculating facility allocations for oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) for sources subject to the Regional Clean Air Incentives Market (RECLAIM) program in the SCAQMD. This proposed action will, if finalized, incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate the construction and modification of stationary sources and the calculation of RECLAIM facility allocations in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act).

The intended effect of this action is to regulate emissions of NO_X and SO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by March 29, 2000.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812;

South Coast Air Quality Management District 21865 E. Copley Drive Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District (SCAQMD) Rule 2002—Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X), and Rule 2005—New Source Review for RECLAIM. These rules were submitted by the California Air Resources Board (CARB) to EPA on August 22, 1997, and July 23, 1999, respectively. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: January 21, 2000.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 00–6095 Filed 3–13–00; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 65, No. 50
Tuesday, March 14, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Agricultural Biotechnology Meeting

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the Advisory Committee on Agricultural Biotechnology (ACAB).

SUPPLEMENTARY INFORMATION: The ACAB has scheduled its first meeting on March 29–30, 2000. The ACAB consists of 38 members representing the biotechnology industry, conventional, sustainable, and organic farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, along with academic researchers as well as experts on consumer attitudes, bioethics, and legal issues. In addition, representatives from the Departments of Commerce, Health and Human Services, Interior, and State, and the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative will serve as "ex officio" members. The Committee meeting will be held from 8:30 am to 5:30 pm on each day. The topics to be discussed will include: (1) Rules of procedure for the ACAB; (2) ongoing biotechnology-related activities at USDA; (3) assessment of informational needs of ACAB members; (4) priority issues for USDA for consideration by the ACAB; and (5) views of ACAB members regarding the work of the committee and appropriate topics for discussion by the ACAB.

Persons wishing to file written comments must do so by May 1, 2000. Comments should be sent to Dr. Michael Schechtman at the address indicated below. Members of the public who wish to make oral statements should also inform Dr. Schechtman in writing at the indicated address at least three business days before the meeting. On March 30, 2000, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration.

DATES: The meeting will be held in the Atrium Ballroom in the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC 20004 on March 29–30, 2000, from 8:30 am to 5 pm each day. The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720–4074, by fax at (202) 720–3191 or by E-mail at *dharmon@ars.usda.gov* at least 7 days prior to the meeting. Please provide your name, title, business affiliation, address, telephone, and fax number when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue, SW, Washington, DC 20250; Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *michael.g.schechtman@usda.gov*.

Dated: March 9, 2000.

Edward B. Knipling,

Associate Administrator.

[FR Doc. 00–6316 Filed 3–13–00; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Upper Deschutes National Wild and Scenic River, Deschutes National Forest, Deschutes County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The USDA Forest Service, Washington Office, is transmitting the final boundary of the Upper Deschutes National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Walt Miller, 1645 Hwy 20 East; Bend, OR 97701, 541–388–2715.

SUPPLEMENTARY INFORMATION: The Upper Deschutes Wild and Scenic River boundary is available for review at the following offices:

USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenue S.W., Washington, DC 20024

Pacific Northwest Regional Office, 333 SW, First Avenue, Portland, OR 97204

Deschutes National Forest, 1645 Hwy 20 East, Bend, OR 97701.

The Omnibus Oregon Wild and Scenic Rivers Act (Public Law 100–557) of October 28, 1988, designated the Upper Deschutes River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the Upper Deschutes Wild and Scenic River Record of Decision and final EIS dated July 25, 1996. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives this transmittal.

Dated: March 7, 2000.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 00–6145 Filed 3–13–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Metolius National Wild and Scenic River, Deschutes National Forest, Jefferson County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The USDA Forest Service, Washington Office, is transmitting the final boundary of the Metolius National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Walt Miller, 1645 Hwy 20 East, Bend, OR 97701.

SUPPLEMENTARY INFORMATION: The Metolius Wild and Scenic River boundary is available for review at the following offices:

USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenue SW, Washington, DC 20024

Pacific Northwest Regional Office, 333 SW First Avenue, Portland, OR 97204

Deschutes National Forest, 1645 Hwy 20 East, Bend, OR 97701.

The Omnibus Oregon Wild and Scenic Rivers Act (Pub. L. 100–557) of October 28, 1988, designated the Metolius River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the Metolius Wild and Scenic River Record of Decision and final EIS dated May 27, 1997. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives this transmittal.

Dated: March 7, 2000.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 00–6147 Filed 3–13–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Malheur National Wild and Scenic River, Malheur National Forest, Grant and Harney Counties, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The USDA Forest Service, Washington Office, is transmitting the final boundary of the Malheur National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Gary Lieuellen, 431 Patterson Bridge Road, John Day, OR 97845; 541-575-1731.

SUPPLEMENTARY INFORMATION: The Malheur Wild and Scenic River boundary is available for review at the following offices:

USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenue SW., Washington, DC 20024.

Pacific Northwest Regional Office, 333 SW First Avenue, Portland, OR 97204.

Malheur National Forest, 431 Patterson Bridge Road, John day, OR 97845.

The Omnibus Oregon Wild and Scenic Rivers Act (Pub. L. 100–557) of October 2, 1988, designated the Malheur River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the Malheur Wild and Scenic River Decision Notice and final EA dated August 7, 1992. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives this transmittal.

Dated: March 7, 2000.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 00–6144 Filed 3–13–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for North Fork Malheur National Wild and Scenic River, Malheur National Forest, Baker and Grant Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The USDA Forest Service, Washington Office, is transmitting the final boundary of the North Fork Malheur National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Gary Lieuallen, 431 Patterson Bridge Road, John Day, OR 97845; 541–575–1731.

SUPPLEMENTARY INFORMATION: The North Fork Malheur Wild and Scenic River boundary is available for review at the following offices:

USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenue SW., Washington, DC 20024.

Pacific Northwest Regional Office, 333 SW First Avenue, Portland, OR 97204.

Malheur National Forest, 431 Patterson Bridge Road, John Day, OR 97845.

The Omnibus Oregon Wild and Scenic Rivers Act (Pub. L. 100–557) of October 28, 1988, designated the North Fork Malheur River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the North Fork Malheur Wild and Scenic River Decision Notice and final EA dated July 15, 1992. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives this transmittal.

Dated: March 7, 2000.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 00–6146 Filed 3–13–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Chetco National Wild and Scenic River, Siskiyou National Forest, Curry County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The USDA Forest Service, Washington Office, is transmitting the final boundary of the Chetco National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Jim Heck, 200 N.E. Greenfield Road, Grants Pass, OR 97526 541–471–6500.

SUPPLEMENTARY INFORMATION: The Chetco National Wild and Scenic River boundary is available for review at the following offices: USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenue SW., Washington, DC 20024; Pacific Northwest Regional Office, 333 SW. First Avenue, Portland, OR 97204; Siskiyou National Forest, 200 NE. Greenfield Road, Grants Pass, OR 97526.

The Omnibus Oregon Wild and Scenic Rivers Act (Pub. L. 100–557) of October 28, 1988, designated the Chetco River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the Chetco National Wild and Scenic River Decision Notice and final EA dated July 23, 1993. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives this transmittal.

Dated: March 7, 2000.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 00–6148 Filed 3–13–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Elk National Wild and Scenic River, Siskiyou National Forest, Curry County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The USDA Forest Service, Washington Office, is transmitting the final boundary of the Elk National and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Jim Heck, 200 NE Greenfield Road, Grants Pass, OR 97526, 541–471–6500.

SUPPLEMENTARY INFORMATION: The Elk Wild and Scenic River boundary is available for review at the following offices: USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenue SW, Washington, DC 20024; Pacific Northwest Regional Office, 333 SW First Avenue, Portland, OR 97204; Siskiyou National Forest, 200 NE Greenfield Road, Grants Pass, OR 97526.

The Omnibus Oregon Wild and Scenic Rivers Act (Pub. L. 100–557) of October 28, 1988, designated the Elk River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the Elk Wild and Scenic River Decision Notice and final EA dated September 22, 1994. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives this transmittal.

Dated: March 7, 2000.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 00–6149 Filed 3–13–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Upper Tygart Valley River Watershed, Randolph and Pocahontas Counties, West Virginia

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for Upper Tygart Valley River Watershed, Randolph and Pocahontas Counties, West Virginia.

FOR FURTHER INFORMATION CONTACT: William J. Hartman, State Conservationist, USDA–NRCS, 75 High Street, Room 301, Morgantown, WV 26505; telephone: 304–284–7545.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, William J. Hartman, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The primary project concerns are water supply, water quality, and fish and wildlife habitat improvement. Alternatives under consideration to reach these objectives include reservoirs, conservation land treatment, and wetland enhancement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Meetings have been held with various resource agencies and organizations to determine the scope of the evaluation of the proposed action. Further information on the proposed action or planned meetings may be obtained from Wiliam J. Hartman, State Conservationist, at the above address or telephone number.

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

Dated: March 3, 2000.

William J. Hartman,

State Conservationist.

[FR Doc. 00–6219 Filed 3–13–00; 8:45 am]

BILLING CODE 3210–16–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of Sections 514, 515, 516, and 521 programs authorized under Title V of the Housing Act of 1949, as amended, regarding borrower supervision and servicing for Multi-Family Housing Loans and Grants.

DATES: Comments on this notice must be received by May 15, 2000 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: James E. Vollmer, Loan Specialist, Multi-Family Housing Portfolio Management, RHS, U.S. Department of Agriculture, Stop 0782, Washington, DC 20250, Telephone (202) 720–1060.

SUPPLEMENTARY INFORMATION: *Title:* Security Servicing for Multiple Family Housing Loans.

OMB Number: 0575–0100.

Expiration Date of Approval: April 30, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Loan and Grant programs under Sections 514, 515, 516, and 521 of Title V of the Housing Act of 1949, as amended, provide loans and grants to eligible recipients for the development and operation of rural rental housing projects. These programs are intended to meet the housing needs of very low-, low- and moderate-income rural persons or families including senior citizens, the handicapped or disabled, and domestic farm laborers.

In order to assist its borrowers to operate and maintain these properties to meet program objectives, improve the Agency's ability to assure the continued viability of the program information needs to be collected to process borrower initiated requests.

Estimate of Burden: Public reporting for this collection of information is estimated to average between 0.167 and 4.25 hours per response.

Estimated Number of Respondents: The estimated number of respondents for this collection of information is

estimated to range from 10 to 300 respondents per year per request.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 945.

Estimated Total Annual Burden on Respondents: 1,587 hours.

Copies of this information collection can be obtained from Jean Mosley, Regulations and Paperwork Management Division, at (202) 720–0041

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jean Mosley, Regulations and Paperwork Management Division, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW, Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 2, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

[FR Doc. 00–6209 Filed 3–13–00; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), we are giving notice of a meeting of the Census Advisory Committee of Professional Associations. The Committee is composed of 36 members appointed by the Presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairperson of the Board of the American Marketing Association. The Committee advises the Director, Bureau of the Census (U.S. Census Bureau), on the full range of U.S. Census Bureau programs and activities in relation to their areas of expertise.

DATES: The meeting will convene on April 13, 2000, and begin at 9 a.m. and adjourn at 5 p.m.

ADDRESSES: The meeting will take place at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: U.S. Census Bureau Committee Liaison Officer, Ms. Maxine Anderson-Brown, Room 1647, Federal Building 3, Washington, DC 20233. Her phone number is 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The following is the agenda for the meeting:

- Introductory Remarks by the Director and the Principal Associate Director for Programs, U.S. Census Bureau
- U.S. Census Bureau Responses to Committee Recommendations
- Planning for Census 2000 Ethnographic Research
- Chief Economist Update
- The Census 2000 Testing and Experimentation Program
- Collection of Household Data on E-Commerce
- Retail E-Commerce Sales Estimates—Methods and Results
- Census 2000 Products—Some Recent Developments
- Develop Recommendations and Special Interest Activities
- Closing Session

The meeting is open to the public, and a brief period is set aside, during the closing session, for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the U.S. Census Bureau Committee Liaison Officer. Individuals wishing additional information or minutes regarding this meeting may contact the Liaison Officer as well. Her address and phone number are identified above.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the U.S. Census Bureau Committee Liaison Officer.

Dated: March 8, 2000.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 00–6208 Filed 3–13–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–810, C–412–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews, Revocation of Orders, and Rescission of Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed-circumstances antidumping and countervailing duty administrative reviews, revocation of orders, and rescission of administrative reviews.

SUMMARY: On February 15, 2000, the Department of Commerce published a notice of initiation of a changed circumstances review and preliminary results of review with intent to revoke the antidumping and countervailing duty orders on certain hot-rolled carbon steel products from the United Kingdom and rescind the ongoing administrative reviews (65 FR 7490). We are now revoking this order, retroactive to January 1, 1995, based on the fact that domestic parties no longer have an interest in maintaining the antidumping and countervailing duty orders. We are also rescinding the ongoing antidumping and countervailing duty administrative reviews covering the periods March 1, 1998, through February 28, 1999, and January 1, 1998, through December 31, 1998, respectively.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson (Antidumping); or Jon Lyons (Countervailing), AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4007, (202) 482–4929, and (202) 482–0374, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (April 1999).

Background

On December 28, 1999, Ispat Inland Inc. and Republic Technologies International LLC (the petitioners) requested that the Department revoke the antidumping and countervailing duty orders on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom, retroactive to January 1, 1994, stating that they no longer have an interest in maintaining these orders. The petitioners represent domestic interested parties, and are successor companies to the petitioners in the less-than-fair-value and countervailing duty investigations. On January 5, 2000, the petitioners submitted a letter substantiating their claim that they represent more than 85 percent of domestic production and shipments of the subject merchandise. On February 2, 2000, petitioners amended their initial revocation request, and asked that revocation of the orders be retroactive to January 1, 1995, rather than to January 1, 1994. We preliminarily determined that the petitioner's statement of no interest constituted changed circumstances sufficient to warrant revocation of these orders. Consequently, on February 15, 2000, we published a notice of initiation of changed circumstances reviews and preliminary results of reviews with intent to revoke the orders and rescind the ongoing administrative reviews (65 FR 7490). We invited interested parties to comment on these preliminary results. We received no comments.

Scope of the Reviews

The products covered by these reviews are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in these reviews are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00; 7213.31.60.00; 7213.39.00.30; 7213.39.00.60; 7213.39.00.90; 7213.91.30.00; 7213.91.45.00; 7213.91.60.00; 7213.99.00; 7214.40.00.10, 7214.40.00.30, 7214.40.00.50; 7214.50.00.10; 7214.50.00.30; 7214.50.00.50; 7214.60.00.10; 7214.60.00.30; 7214.60.00.50; 7214.91.00; 7214.99.00; 7228.30.80.00; and 7228.30.80.50. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of these proceedings is dispositive.

Final Results of Changed-Circumstances Reviews and Intent To Revoke Orders

Pursuant to section 751(d)(1) of the Act, the Department may revoke, in whole or in part, a countervailing or antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed-circumstances review). The Department's regulations, at 19 CFR 351.216(d), require the Department to conduct a changed-circumstances review in accordance with 19 CFR 351.221 if it decides that changed circumstances sufficient to warrant a review exist. Section 782(h)(2) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part.

The petitioners are domestic interested parties as defined by section 771(9)(E) of the Act and 19 CFR 351.102(b) and represent substantially all of the production of the domestic like product. Based on the petitioners' statement of no interest in the continued application of the antidumping and countervailing duty orders and the fact that no interested parties objected to or otherwise commented on our preliminary results, we determine that there are changed circumstances sufficient to warrant revocation of the orders. Therefore, we are revoking the antidumping and countervailing duty orders on certain hot-rolled carbon steel products from the United Kingdom, retroactive to January 1, 1995. We are also rescinding the ongoing antidumping and countervailing duty administrative reviews covering the periods March 1, 1998, through February 28, 1999, and January 1, 1998, through December 31, 1998, respectively.

In accordance with 19 CFR 351.222(g)(4), we will instruct the Customs Service to end the suspension of liquidation and to refund any estimated antidumping and countervailing duties collected for all unliquidated entries of certain hot-rolled carbon steel products from the United Kingdom on or after January 1, 1998. We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act. We will issue liquidation instructions to the Customs Service for the year 1995, 1996, and 1997 when pending litigation of these CVD review periods is dismissed and the preliminary injunctions are lifted.

We are issuing and publishing these determinations and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.222 of the Department's regulations.

Dated: March 7, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–6265 Filed 3–13–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–814]

Certain Cut-to-Length Carbon Steel Plate From the United Kingdom: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 1, 1999, the Department of Commerce ("the Department") published in the **Federal Register** (64 FR 53318) the initiation of an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from the United Kingdom for the manufacturer/exporter, British Steel Limited (British Steel). This review was requested by the petitioners, and covered the period August 1, 1998, through July 31, 1999. The Department is now rescinding this review after receiving a withdrawal of its request for the review from the petitioners.

EFFECTIVE DATE: March 14, 2000.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0193 or (202) 482–3833, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended, by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations at 19 CFR part 351 (April 1999).

Scope of the Review

The products covered by this order constitute one "class or kind" of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the (HTSUS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. Excluded are grade X–70 plate and certain cut-to-length carbon steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2 (see, Certain Cut-to-Length Carbon Steel Plate from Finland, Germany, and the United Kingdom: Final Results of Changed Circumstances Antidumping and Countervailing Duty Reviews, and Revocation of Orders in Part, 64 FR 46343, 46344 (August 25, 1999)). These HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

SUPPLEMENTARY INFORMATION: On August 31, 1999, Bethlehem Steel Corporation and U.S. Steel Group, a unit of USX Corporation, collectively "petitioners", requested an administrative review of British Steel Limited (British Steel), a British producer and importer of the subject merchandise, with respect to the antidumping duty order published in the **Federal Register** on August 19, 1993 (58 FR 44168). We initiated this review on October 1, 1999 (64 FR 53318).

On February 24, 2000, the petitioners filed a letter with the Department requesting withdrawal of its request for the Department to conduct an administrative review. Ordinarily, parties have 90 days from the publication of the notice of initiation of review in which to withdraw a request for review. See CFR 351.213(d)(1). We did not receive petitioners' withdrawal request until after the 90-day period had elapsed. However, the review has not progressed substantially and there would be no undo burden on the parties or the Department, if the Department were to rescind the review on the basis of this request. Therefore, the Department has determined that it would be reasonable to grant the withdrawal at this time.

This notice is published pursuant to section 751 of the Tariff Act of 1930, as amended, (19 U.S.C. 1675 (1999)), and section 351.213 of the Department's regulations (19 CFR 351.213 (1999)).

Dated: March 8, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–6269 Filed 3–13–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–827]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 2000.

FOR FURTHER INFORMATION CONTACT: Russell Morris at (202) 482–1775, AD/CVD Enforcement, Office VI, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Amendment of Preliminary Determination

The Department of Commerce (the Department) is amending the preliminary determination in the antidumping duty investigation of certain large diameter carbon and alloy seamless standard, line, and pressure pipe from Mexico. This amended preliminary determination results in revised antidumping rates.

On January 28, 2000, the Department issued its affirmative preliminary determination in this proceeding. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico*, 65 FR 5587 (February 4, 2000).

On February 11, 2000, the petitioners [1] submitted allegations of certain ministerial errors. The petitioners alleged that the Department made ministerial errors when it deducted both U.S. dollar and Mexican Peso imputed credit expenses from its normal value (NV) calculation, and that it incorrectly made an exchange rate conversion on one of the imputed credit expenses. The petitioners claimed that another ministerial error occurred when the Department made a constructed export price (CEP) offset to sales matched at a comparable level of trade (LOT). The sole respondent in this investigation, Tubos de Acero de

[1] The petitioners in this investigation are Gulf States Tube, a Division of Vision Metals, Inc.; Koppel Steel Corporation; Sharon Tube Corporation; USS/Kobe Steel Corporation; U.S. Steel Group, a unit of USX Corporation; and the United Steelworkers of America.

Mexico S.A. (TAMSA), did not submit any ministerial error allegations.

The Department has reviewed its preliminary calculations and agrees with the petitioners, in part, that the Department made certain ministerial errors within the meaning of 19 CFR 351.224(f) and (g). The Department inadvertently deducted from the home market price two imputed credit expenses. We intended to deduct only one credit expense from each home market sale. Further, since we were able to match U.S. sales to NV at the same LOT, no CEP offset should have been made. However, we disagree with the petitioners' allegation concerning the currency conversion applied in one of the imputed credit expense calculations. *See* "Ministerial Error Allegations for the Preliminary Determination" memorandum to Holly A. Kuga, Acting Deputy Assistant Secretary, for Import Administration, Group II, dated February 24, 2000, on file in room B–099 of the Main Commerce building.

As a result of our analysis of the petitioners' allegations, we are amending our preliminary determination to revise the antidumping rate for TAMSA in accordance with 19 CFR 351.224(e), along with the corresponding correction to the "all others" rate, as listed below. Suspension of liquidation will be revised accordingly and parties shall be notified of this determination, in accordance with sections 733(d) and (f) of the Act.

The revised weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin percentage
TAMSA	14.20
All Others	14.20

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–6266 Filed 3–13–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Oil Country Tubular Goods from Mexico: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 2000.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall at (202) 482–1398 or Dena Aliadinov at (202) 482–2667, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On September 9, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on Oil Country Tubular Goods from Mexico, covering the period August 1, 1998 through July 31, 1999 (64 FR 48983). The preliminary results are currently due no later than May 2, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the preliminary results until no later than August 30, 2000. *See* Decision Memorandum from Richard Weible to Joseph A. Spetrini, dated March 8, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 8, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement, Group III.

[FR Doc. 00–6268 Filed 3–13–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit From Thailand: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 2000.

FOR FURTHER INFORMATION CONTACT: Constance Handley at (202) 482–0631, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On August 24, 1999, the Department of Commerce (the Department)

published a notice of initiation of administrative review of the antidumping duty order on canned pineapple fruit from Thailand, covering the period July 1, 1998, through June 30, 1999 (64 FR 47167). The preliminary results are currently due no later than April 3, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman to Holly Kuga, dated March 6, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2000. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 6, 2000.

Holly Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–6267 Filed 3–13–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–833]

Stainless Steel Bar From Japan: Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping administrative review.

SUMMARY: On November 8, 1999, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on stainless steel bar from Japan. This review covers one producer/exporter, Aichi Steel Corporation, during the period February 1, 1998, through January 31, 1999.

Based on our analysis of comments received, we have made changes in the margin calculations. Therefore the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: March 14, 2000.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Robin Gray, Office 3 AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1690 or (202) 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (1998).

Background

On November 9, 1999, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on stainless steel bar from Japan. *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar from Japan*, 64 FR 60788 (preliminary results). Al Tech Specialty Steel Corp., Dunkirk, NY; Carpenter Technology Corp., Reading, PA; Republic Engineered Steels, Inc., Massillon, OH; Slater Steels Corp., Fort Wayne, IN; Talley Metals Technology, Inc., Hartsville, SC; and the United Steel Workers of America, AFL–CIO/CLC, collectively petitioners in the less-than-fair-value (LTFV) investigation (hereafter petitioners), submitted their case brief on December 8, 1999. Aichi Steel Corporation (Aichi), respondent in this review, also submitted its case brief on December 8, 1999. The petitioners and Aichi submitted rebuttal briefs on December 13, 1999. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this review is stainless steel bar (SSB). For purposes of this review, the term "stainless steel bar" means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.*, cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by interested parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Robert S. La Russa, Assistant Secretary for Import Administration, dated March 6, 2000, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Sales Below Cost in the Home Market

The Department disregarded Aichi's home-market below-cost sales which failed the cost test in these final results of review.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. We discuss any alleged programming or clerical errors with which we do not agree in the relevant sections of the "Decision Memorandum," accessible in B–099 and on the Web at www.ita.doc.gov/import_admin/records/frn/.

Final Results of Review

As a result of our analysis of the comments received, we determine a final weighted-average margin of 1.24 percent for Aichi for the period February 1, 1998, through January 31, 1999.

The Customs Service will assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. We have calculated an exporter/customer-specific assessment value for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity sold.

Cash-Deposit Requirements

The following deposit requirement shall be effective upon publication of this notice of final results of review for all shipments of SSB from Japan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash-deposit rate for Aichi Steel Corporation will be 1.24 percent; (2) for previously investigated or reviewed companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous reviews or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash-deposit rate will continue to be 61.47 percent, the "all-others" rate established in the LTFV investigation (59 FR 66930, December 28, 1994).

The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 7, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix—List of Issues

1. U.S. Date of Sale
2. Model Match
3. Level of Trade
4. Duty Drawback
5. U.S. Credit Expenses
6. Home Market Credit Expense
7. Cost of Production and Constructed Value
   A. Losses on Scrap Inventory
   B. Understatement of Costs
   C. General, Selling and Administrative Expenses
   D. Interest Expense

[FR Doc. 00–6264 Filed 3–13–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000218045–0045–01]

RIN 0648–ZA80

Sea Grant Minority Serving Institutions Partnership Program; Request for Proposals for FY 2000

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The National Sea Grant College Program (Sea Grant) is soliciting proposals for innovative partnerships to strengthen the capacity of Minority Serving Institutions to foster student careers, research, and workforce competitiveness in marine and related sciences. Minority Serving Institutions (MSIs) include educational institutions identified by the Department of Education as (i) Historically Black Colleges and Universities, (ii) Hispanic-Serving Institutions, (iii) Tribal Colleges and Universities, and (iv) MSIs located in U.S. insular areas (see Section III. Eligibility.) Marine sciences are defined as those fields relevant to the protection, management, and development of the Nation's ocean, coastal, and Great Lakes resources.

Beginning in Fiscal Year 2000, Sea Grant expects to make available about $300,000 per year, depending on available funding, to support the Sea grant Minority Serving Institution (SG–MSI) Partnership Program. Up to $150,000 will be reserved for proposals related to acquaculture in a cooperative effort with Department of Commerce's Minority Business Development Agency. Sea Grant expects to fund four to six projects per year. Proposals may request up to $75,000 per year in federal funds and projects may run up to three years maximum. Matching funds from non-federal sources must provide at least one-third of the total project costs, or in other words, for every $2 in federal support, a minimum of $1 in non-federal matching funds is required to be committed to the project.

The SG–MSI Partnership Project projects are intended to provide additional access for MSI students and faculty to research opportunities, career-related experience, and work-study or internships that enhance career opportunities and career growth in the marine sciences and related marine fields. Projects should establish partnerships between the MSI and Sea Grant programs or other universities, research institutions, industry, or organizations (public, nonprofit, or private) engaged in the marine sciences or related marine fields. Proposals must be submitted by the MSI and must identify partner institutions by name in their applications.

DATES AND ADDRESSES: Applicants are encouraged to submit their proposals to their state's Sea Grant program (contact the appropriate state Sea Grant Program from the list below to obtain the mailing address or the address may be obtained on the web site http://www.nsgo.seagrant.org/SGDirectors.html); or, if your state does not have a Sea Grant program, to an adjacent state Sea Grant Program.

Proposals must be received before 5:00 p.m. (local time) on May 15, 2000.

Direct submission to the National Sea Grant College Program Office in Silver Spring, MD, while not encouraged, is acceptable. The address is: National Sea Grant College Program, Attn: Mrs. Geraldine Taylor, SG–MSI Competition, Room 11732, NOAA (R/SG), 1315 East-West Highway, Silver Spring, MD 20910. Proposals submitted to the National Sea Grant Office must be received by 5:00 p.m. (EST) on May 15, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Francis Schuler, Executive Director, National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713–2445 ext. 158; e-mail: *fritz.schuler@noaa.gov*.

Sea Grant Programs

Alaska, University of Alaska (907) 474–7086
California, University of California, San Diego (858) 534–4440
California, University of Southern California (213) 812–1335
Connecticut, University of Connecticut (860) 405–9128
Delaware, University of Delaware (302) 831–2841
Florida, University of Florida (352) 392–5870
Georgia, University of Georgia (706) 542–5954
Hawaii, University of Hawaii (808) 956–7031
Illinois-Indiana, Purdue University (765) 494–3593
Louisiana, Louisiana Sea Grant (225) 388–6710
Maine, University of Maine (207) 581–1435
Maryland, University of Maryland (301) 405–6371
Massachusetts, Massachusetts Institute of Technology (617) 253–7131
Massachusetts, Woods Hole Oceanographic Institution (508) 289–2557
Michigan, University of Michigan (734) 763–1437
Minnesota, University of Minnesota (218) 726–8710
Mississippi-Alabama, Mississippi-Alabama Sea Grant Consortium (228) 875-9368
New Hampshire, University of New Hampshire (603) 862-0122
New Jersey, New Jersey Marine Science Consortium (732) 872–1300, Ext. 21
New York, New York Sea Grant Institute, SUNY (631) 632–6905
North Carolina, North Carolina State University (919) 515–2454
Ohio, Ohio State University (614) 292–8949
Oregon, Oregon State University (541) 737–2714
Puerto Rico, University of Puerto Rico (787) 832–3585
Rhode Island, University of Rhode Island (401) 874–6800
South Carolina, South Carolina Sea Grant Consortium (843) 727–2078
Texas, Texas A&M University (409) 845–3854
Virginia, Virginia Graduate Marine Science Consortium (804) 924–5965
Washington, University of Washington (206) 543–6600
Wisconsin, University of Wisconsin-Madison (608) 262–0905

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 33 U.S.C. 1121–1131. Catalog of Federal Assistance Number: 11.417, Sea Grant Support.

II. Program Description

Background

In an effort to address the under-representation of minorities in the marine sciences, Sea Grant established a pilot program in the mid-1990s to enhance the capabilities of Historically Black Colleges and Universities (HBCU) nationwide in the coastal and marine sciences. The Federal investment in this program has been $750,000 over three years. Awards of $50,000 per year were made to HBCU institutions via Sea Grant College Programs in their states. The HBCU institutions were Clark-Atlanta University, Delaware State University, Hampton University, Savannah State University, and the University of Maryland Eastern Shore.

In accord with the Sea Grant mission and with the policy of the U.S. Department of Commerce and the National Oceanic and Atmospheric Administration to reach minority institutions, the goals of the SG–MSI Partnership Program are:

1. To significantly increase the exposure of undergraduate MSI students to the marine and coastal sciences and to increase the participation of under-represented minorities in the marine sciences.

2. To enhance the quality of undergraduate majors and graduate studies to facilitate entrance into existing marine science graduate programs or marine careers.

3. To accelerate the development of strong partnerships and to encourage graduate research, student experiential internships, and faculty development opportunities between MSIs and Sea Grant programs or other universities, research institutions, industry, or organizations (public, nonprofit, or private) engaged in the marine sciences or related marine fields.

4. To design and encourage the structuring and implementation of curricula and training opportunities for students interested in pursuing business careers as entrepreneurs in the field of acquaculture.

Rationale

The recruitment of minorities into the fields of science and engineering, and especially under-represented minorities, lags behind expectations. According to the National Science Foundation (Women, Minorities and Persons with Disabilities in Science and Engineering: 1996) the percentage of minority scientists and engineers in the workforce ranges from 0.2% for American Indians to 3.5% for African-Americans and Hispanics. Although data are not available for marine sciences in particular, they are included in the general heading of science and natural sciences, and there is every reason to expect the percentages to be similar if not lower.

The quality and nature of academic experience at each step of the educational pipeline are crucial to bringing more minorities into marine science and engineering fields. Bachelors, Master's and Doctoral degrees are the underpinnings of science career achievement and employment. In both undergraduate and graduate levels, Hispanics, African Americans, and Native Americans complete fewer degrees than majority ethnic groups. At the Bachelor's level, National Science Foundation (NSF) data show that African Americans and Hispanics each receive about 4.5% of the bachelor degrees in natural science and engineering; native Americans receive 0.4%. At the Master's level African-Americans and Hispanics receive about 3% of the degrees (NSF Science and Engineering Indicators, 1996). There is additional evidence to suggest that MSI's are underserved in the proportion of grants that they receive from the U.S. Department of Commerce. In FY 1998, MSIs received only 5.8% of Department grants to institutions of higher education. In FY 1999, NOAA's Office of Oceanic and Atmospheric Research provided 0.5% of its extramural grants to MSIs.

NOAA and Sea Grant share the commitment of the Department of Commerce to bring more under-represented minorities into marine science and engineering through working with MSIs. Sea Grant's authorizing legislation includes a strong educational mandate at institutions of higher learning.

SG–MSI Partnership Program

The intent of the SG–MSI Partnership Program is to increase the exposure of undergraduate and graduate students from MSIs to the marine and coastal sciences and, ultimately, to increase the capacity of MSIs to promote and launch more students into marine science careers. A SG–MSI Partnership project should develop strong partnerships between MSIs and Sea Grant programs or other universities, research institutions, industry, or organizations (public, nonprofit, or private) engaged in the marine sciences or related marine fields that will augment the capabilities of MSIs. Possible partnership mechanisms include: student research and/or experiential internship opportunities, faculty development opportunities, access to facilities and laboratories or field research, mentoring programs, or other enabling programs to increase interest and participation in marine sciences or related marine fields, including aquaculture. Projects using aquaculture as a tool to teach science, business and as a way to stimulate relationships between MSI's and industry or business are encouraged. These projects should aim at stimulating students' interest in and ability to enter the field of aquaculture as a business endeavor.

Proposals must be submitted from an eligible MSI and are expected to have a rigorous work plan, a strong rationale, and clearly identified and achievable goals. Roles, responsibilities and contributions of all partners must be clearly identified.

Proposals should emphasize innovative approaches to solving the problem of encouraging, preparing, and graduating MSI students into marine science career fields. Proposals should build creatively on existing expertise and research programs of academia, state and national efforts. Innovative, imaginative approaches to the issue are sought that take maximum advantage of the synergies of partnership.

Proposals may request up to $75,000 per year in federal funds and projects may run up to three years duration. Matching funds from non-federal sources must provide at least one-third of total project costs, or in other words, for every $2 in federal support, a minimum of $1 in non-federal matching funds in required to be committed to the project. The required non-federal matching funds may be contributed by the MSI, by the partners, or any other non-federal source. Awards are contingent on Federal funding availability.

III. Eligibility

Minority Serving Institutions eligible to submit proposals include institutions of higher education identified by the Department of Education as (i) Historically Black Colleges and Universities, (ii) Hispanic-Serving Institutions, (iii) Tribal Colleges and Universities, on the "1999 United States Department of Education Accredited Post-Secondary Minority Institutions" list: (http://www.ed.gov/offices/OCR/99minin.html). Also, because of their unique dependence on marine resources, (iv) institutions of higher education located in U.S. insular areas that are on the "1999 United States Department of Education Accredited Post-Secondary Minority Institutions" are eligible to submit proposals. (United States' insular areas include the territories of American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands, and the freely associated states of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.)

IV. Evaluation Criteria

The evaluation criteria for proposals submitted for support under the SG–MSI Partnership Program are weighted as follows:

(1) *Impact of Proposed Project* (40%): The contributions the project makes to enhancing the capability of the MSI to bring its student population, either undergraduate or graduate, into the marine sciences and related marine fields. The benefit accruing to a faculty from his/her participation in the SG–MSI Partnership Program, including exposure to research and opportunities for professional growth in the marine sciences and related marine fields.

(2) *Quality of Partnership Relationships* (30%): The strength, stability and quality of the proposed partnership. The demonstrated capabilities and interest in marine science or related marine field of the MSI and/or the partner. The degree to which the partners contribute time or in-kind match. Evidence that the partnership has been thought through carefully, with roles and responsibilities clearly identified. Evidence that the partnership can have long term sustainability and usefulness once established. The ability of the partnerships to provide enhanced career opportunities for faculty and students.

(3) *Innovativeness* (15%): The degree to which new approaches are developed to solve problems and exploit opportunities for student and faculty engagement in marine science and marine resource management.

(4) *Project Personnel* (15%): The caliber of the principal investigators including special skills, past experiences of institutions and investigators, or training that renders the project especially qualified for the SG–MSI Partnership Program.

V. Selection Procedures

Reviews of the proposals will be conducted by an independent peer review panel consisting of university educators, scientists, administrators, and senior level individuals with expertise in academic partnerships and/or familiarity with MSIs and their students. Proposals will be ranked in accordance with the above evaluation criteria (Section IV) by the panel members. The panel members will provide individual evaluations on proposals, but there will be no consensus advice. Their recommendations and evaluations will be considered by the National Sea Grant Office in the final selection of proposals to be funded. The National Sea Grant Office may also consider programmatic or geographic balance and budge availability in the final selection of proposals to be funded. Hence, awards may not necessarily be made to the peer review panel's highest-scored proposals. Investigators may be asked to modify objectives, work plans, budget levels, or project duration prior to final approval of an award.

VI. Instructions for Application

Proposal Preparation

The National See Grant Office, NOAA, encourages applicants to discuss their proposal concepts with a local Sea Grant program. The state Sea Grant programs are a valuable source of information about marine issues in their state and region, and can advise applicants new to Sea Grant on the preparation of NOAA and Sea Grant applications.

Timetable

May 15, 2000—Proposals are due 5 p.m., May 15, 2000. (See Section VII. How To Submit for further details.)

July, 2000—Successful applicants can expect to be notified at the beginning of July 2000. Successful applicants may be asked to provide revised narratives and/or budgets which would be due in mid-July.

October 1, 2000—Funds will be awarded through a grant with an expected start date of October 1, 2000. Multiple-year proposals will be funded in annual increments.

Proposal Guidelines

Each proposal should include the items listed below. All pages should be single- or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm × 297 mm) 8½″ × 11″ paper. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the proposals may not exceed 15 pages. Tables and visual materials, including charts, graphs, maps, photographs and other pictorial presentations are included in the 15-page limitation; literature citations are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices are permitted. The following information should be included:

(1) Signed title page: The title page should be signed by the Principal Investigator and the institutional representative and should clearly identify the program area being addressed by starting the project title with "SG–MSI Partnership Program." The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number, e-mail and mailing address. The total amount of Federal funds and matching funds being requested should be listed for each budget period.

(2) See Grant Project Summary Form (90–2): This information is very important. It is critical that the project summary accurately describe the essential elements of the project being proposed. The project summary should include: 1. Title: Use the exact title as it appears in the rest of the application. 2. Investigators: List the names and affiliations of each investigator who will significantly contribute to the project. Start with the Principal Investigator. 3. Funding request for each year of the project, including matching funds if appropriate. 4. Project Period: Start and completion dates. Proposals should request a start date of October 1, 2000. 5. Objectives, Methodology, and Rationale: This should include concise statement of the objectives of the project, the scientific or educational methodology to be used, and the rationale for the work proposed. (See below #10 Standard Application Forms.)

(3) Project Description (15-page limit).

(a) Introduction/Background/ Justification: What is the problem or opportunity being addressed and what is its scientific, educational, or economic importance to the region or nation?

(b) Technical Plan: What are the goals, objectives, and anticipated approach of the proposed project? While a detailed work plan is not expected, the proposal should present evidence that there has been thoughtful consideration of the approach to the problem under study. What capabilities does the partner possess that will benefit the project, faculty member and students?

(c) Output/Anticipated Benefits: Upon successful completion of the project, what are the anticipated benefits to the institutions, students, and the partner?

(d) Literature Cited: Should be included here, but does not count against the 15-page limit.

(4) Budget and Budget Justification: There should be a separate annual budget for each year of the project as well as a cumulative budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4 (see below #10 Standard Application Forms), but may use their own form as long as it provides the same information as the Sea Grant form. Subcontracts should have a separate budget page. Matching funds must be indicated; failure to provide adequate matching funds will result in the proposal being rejected without review. Each annual budget should include a separate budget justification page that itemizes all budget items in sufficient detail to enable reviewers to evaluate the appropriateness of the funding requested. Please pay special attention to any travel, supply or equipment budgets and provide details.

(5) Current and Pending Support: Applicants must provide information on all current and pending support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. All current project support from whatever source (e.g., Federal, State or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the principal investigator and other senior personnel should be included, even if they receive no Federal salary support from the project(s). The number of person-months per year to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals already submitted or submitted concurrently to other possible sponsors, including those within NOAA.

(6) Results from Prior Sea Grant Support.

If the Principal Investigator (or any co-PI identified on the proposal) has received Sea Grant funding in the past five years, the following information on the prior award(s) is required:

(a) The NOAA award number, amount and period of support;

(b) The title of the project;

(c) Brief summary of the results of the completed work;

(d) Brief description of the contribution the project has made.

(e) Publications resulting from the Sea Grant award.

Reviewers will be asked to comment on the quality of the prior work described in this section of the proposal. Please note that a PI with prior Sea Grant support may use up to two additional pages to describe the results.

(7) Vitae (2 pages maximum per investigator).

(8) Letter of commitment from the partnering organizations.

(9) A brief (less than one-page) description of the partnering organization.

(10) Standard Application Forms: Applicants may obtain all required application forms at website: http://www.nsgo.seagrant.org/research/rfp/index.html#3 or from a state Sea Grant program: http://www.nsgo.seagrant.org/SGDirectors. html, or from Dr. Francis Schuler at the National Sea Grant Office (phone: 301–713–2445 x158 or e-mail: fritz.schuler@noaa.gov). For proposals selected for funding, the following forms must also be submitted:

(a) Standard Forms 424, Application for Federal Assistance, 424B, Assurances—Non-Construction Programs, (Rev 4–88). Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424 or Section 10, applicants should enter "11.417" for the CFDA Number and "Sea Grant Support" for the title. The form must contain the original signature of an authorized representative of the applying institution.

(b) Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

(i) Non-Procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nnon-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(ii) Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(iii) Anti-Lobbying. Persons (as defined at 15 CFR part 28 section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(iv) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(c) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." ORM CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). F–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

VII. How To Submit

Proposals must be submitted according to the Timetable outlined in Section VI, Instructions for Application. Although investigators are not required to submit more than three copies of the proposal, the normal review process requires 10 copies. Applicants are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5″ × 11″), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed.

Applicants are encouraged to submit their proposals to their state Sea Grant program, (see: http://www.nsgo.seagrant.org/SGDirectors.html); or, if your state does not have a Sea Grant program, to a Sea Grant program in an adjacent state. Proposals must be received before 5 p.m. (local time) on May 15, 2000.

Direct submission to the National Sea Grant College Program Office in Silver Spring, MD, while not encouraged, is acceptable. The address is: National Sea Grant College Program, Attn: Mrs. Geraldine Taylor, SG–MSI Competition, Room 11732, NOAA (R/SG), 1315 East-West Highway, Silver Spring, MD 20910. Proposals submitted to the National Sea Grant Office must be received by 5 p.m. (EST) on May 15, 2000.

Applications received after the deadline and applications that deviate substantially from the format described above will be returned to the sender without review. Facsimile transmissions and electronic mail submission of applications will not be accepted.

VIII. Other Requirements

(A) Federal Policies and Procedures—Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce (DOC) policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) Pre-Award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

(D) No Obligation for Future Funding—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(E) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to DOC are made.

(F) Name Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(G) False Statements—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(H) Intergovernmental Review—Applications for support from the National Sea Grant College Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(I) Purchase of American-Made Equipment and Products—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(J) For awards receiving funding for the collection or production of geospatial data (*e.g.*, GIS data layers), the recipient will comply to the maximum extent practicable with E.O. 12906, Coordinating Geographic Data Acquisition and Access, The National Spatial Data Infrastructure, 59 Fed. Reg. 17671 (April 11, 1994). The award recipient shall document all new geospatial data collected or produced shall document all new geospatial data collected or produced using the standard developed by the Federal Geographic Data Center, and make that standardized documentation electronically accessible. The standard can be found at the following Internet website: (http://www.fgdc.gov/standards/standards/html).

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains collection of information requirements subject to the Paperwork Reduction Act. The Sea Grant budget Form, 90–4, Sea Grant Summary Form, 90–2, and Standard Forms 424, and 424b have been approved under control numbers 0648–0362, 0648–0362, 0348–0043, and 0348–0040 with average responses estimated to take 15, 20, 45, and 15 minutes,

respectively. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these estimates or any other aspect of these collections to National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (Attention: Francis S. Schuler). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 00–6230 Filed 3–13–00; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030700C]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of the joint New England Fishery Management Council/Mid-Atlantic Fishery Management Council Monkfish Oversight Committee and Monkfish Industry Advisory Panels to consider actions affecting New England and Mid-Atlantic fisheries in the exclusive economic zone (EEZ). Recommendations from the committee will be brought to the full Councils for formal consideration and action, if appropriate.

DATES: The meeting will be held on Wednesday, March 29, 2000, at 9:30 a.m.

ADDRESSES: The meeting will be held at The Yard Restaurant, 1121 South Mammoth Road, Manchester, NH 03109; telephone: (603) 623–3545.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review the current status of the fishery in the context of the fishery management plan implementation, including the partial-year implementation of Year 1 measures. The committee will identify problems and issues with the current plan and scheduled adjustments, including the plan's impact on the fishery in the deep-water canyons and the options for a Grand Banks fishery. The committee will also discuss the availability of scientific data and the timing of the assessment relative to the Year 3 fishery adjustments. At the end of the meeting, the committee will hold a closed session to review applications and select new industry advisors.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 8, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–6227 Filed 3–13–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030600B]

Marine Mammals; File No. 455–1445–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Waikiki Aquarium, 2777 Kalakaua Avenue, Honolulu, HI 96815, has requested an amendment to scientific research and enhancement Permit No. 455–1445.

DATES: Written or telefaxed comments must be received on or before April 13, 2000.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Pacific Area Office, Southwest Region, NMFS, 1601 Kapiolani Blvd., Honolulu, HI 96814–4700 (808/973–2935).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 455–1445, issued on May 26, 1998 (63 FR 30201) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species.

Permit No. 455–1445 authorizes the permit holder to continually hold three

Hawaiian monk seals (*Monachus schauinslandi*) for the purposes of enhancing the survival and recovery of the species, and for scientific research. The research seeks to assess the efficiency with which monk seals assimilate and metabolize amino acids and fatty acids from common prey types, and elucidate and monitor how reproductive and metabolic activity of male seals are related.

The permit holder requests authorization to train seals to accept a rectal temperature probe and to take daily temperature measurements on the three monk seals held at Waikiki Aquarium.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 7, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–6226 Filed 3–13–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: DOD, Office of the Assistant Secretary of Defense for Health Affairs/ TMA.

ACTION: Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs/TMA announces the revision of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology,

DATES: Consideration will be given to all comments received May 15, 2000.

ADDRESSES: Written comments and recommendations on the information collection should be sent to the Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, Office of Resource Management, Skyline Drive, Suite 810, 5111 Leesburg Pike, Falls Church, Virginia 22041–3206. ATTN: Major Rose Layman, (703) 681–8910.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call Major Rose Layman, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, (703) 681–8910.

Title; Associated Form; and OMB Number: Third Party Collection Program; DD Form 2569; OMB Control Number 0704–0323.

Needs and Uses: The information contained in the DD Form 2569 will be used to collect reimbursement from private insurers for medical care provided to family members of retirees and deceased Service members having health insurance. Such monetary benefits accruing to the Military Medical Treatment Facility (MTF) will be used to enhance healthcare delivery in the MTF. Information will also be used by MTS staff and CHAMPUS Fiscal Intermediaries to determine eligibility for care, deductibles, and copayments and by Health Affairs for program planning and management.

Affected Public: Family members of retirees and deceased Service members having health insurance.

Annual Burden Hours: 55,221.

Number of Respondents: 1,262,194.

Responses Per Respondent: 1.

Average Burden Per Response: 2.5 minutes.

Frequency: Yearly or on occasion when insurance information changes.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The DD Form 2569 is used to collect third party insurance information from family members of retirees and deceased Service members having health insurance. This information is collected either during the inpatient stay admission and/or discharge process or during the visit when a patient presents for an outpatient procedure.

Dated: March 8, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–6171 Filed 3–13–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–23]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pubic Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–23 with attached transmittal, policy justification and Sensitivity of Technology.

Dated: March 7, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

28 FEB 2000
In reply refer to:
I-00/001419

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-23, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $58 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-23

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Israel**

(ii) **Total Estimated Value:**

Major Defense Equipment*	**$ 42million**
Other	**$ 16 million**
TOTAL	**$ 58 million**

(iii) **Description of Articles or Services Offered: Forty- one AGM-142D air-to-ground missiles with data links (including 33 with Z-seeker heads and eight without seeker heads), containers, captive air training missile sets, spare and repair parts, publications and technical data, U.S. Government and contractor technical and logistics personnel services and other related elements of program support**

(iv) **Military Department: Air Force (YEP, Amendment 1)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(vii) **Date Report Delivered to Congress: 28 FEB 2000**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Israel - AGM-142D Air-to-ground Missiles

The Government of Israel has requested a possible sale of 41 AGM-142D air-to-ground missiles with data links (including 33 with Z-seeker heads and eight without seeker heads), containers, captive air training missile sets, spare and repair parts, publications and technical data, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $58 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

This proposed sale of the AGM-142D missile allows Israel to increase its capability to engage high value and hardened/buried targets. The proposed sale will contribute significantly to U.S. strategic and tactical objectives by strengthening the unity of the coalition forces throughout the region. Israel, which already has AGM-142D air-to-ground missiles in its inventory, will have no difficulty absorbing these missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed-Martin Electronics and Missiles of Orlando, Florida. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government representatives or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-23

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AGM-142 stand-off air-to-ground missile hardware and software contain the following sensitive technologies which are classified Confidential: missile seeker hardware, range capability, data link capabilities and launch software (guidance algorithms). The missile has a range of 40-50 NM and can utilize either electro-optical or infrared seekers, and has an 800 lb. warhead. Terminal guidance for the weapons is achieved through the use of data link from either the launch aircraft or another suitable platform.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software involved in this proposed sale, the information could be used to develop countermeasures or systems which could reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–6172 Filed 3–13–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–29]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–29 with attached transmittal and policy justification.

Dated: March 7, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

28 FEB 2000
In reply refer to:
I-00/001421

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-29 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $90 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-29

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Egypt**

(ii) **Total Estimated Value:**

Major Defense Equipment*	**$ 75 million**
Other	**$ 15 million**
TOTAL	**$ 90 million**

(iii) **Description of Articles or Services Offered: Fifteen LANTIRN Navigation pods, 15 Sharpshooter targeting pods, associated aircraft integration, support equipment, spare parts, technical orders, publications, training, and other related elements of logistics support**

(iv) **Military Department: Air Force (DBD)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover**

(vii) **Date Report Delivered to Congress: 28 FEB 2000**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Egypt - Navigation and Targeting Pods

The Government of Egypt has requested a possible sale of 15 LANTIRN Navigation pods, 15 Sharpshooter targeting pods, associated aircraft integration, support equipment, spare parts, technical orders, publications, training, and other related elements of logistics support. The estimated cost is $90 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The Egyptian Air Force is undergoing a modernization program that involves upgrading its weapon systems for the F-16 aircraft. The LANTIRN pods will provide the F-16 aircraft with a low altitude navigation and targeting system for night operations. Egypt, which already has LANTIRN pods in its inventory, will have no difficulty absorbing these pods.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed-Martin Electronics and Missiles Corporation of Orlando, Florida. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–6173 Filed 3–13–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between National Science Foundation (NSF)and DoD that records are being matched by computer. The record subjects are NSF delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are indebted and or delinquent in their repayment of debts owed to the United States Government under programs administered by NSF.

DATES: This proposed action will become effective April 13, 2000 and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202-4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at telephone (703) 607-2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and NSF have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that NSF can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures.

A copy of the computer matching agreement between the NSF and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Debt Management Officer, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Set forth below is a public notice of the establishment of the computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice were submitted on February 28, 2000, to the House Committee on Government Reform, the Senate Committee on Government Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 8, 2000.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program between the National Science Foundation, and the Department of Defense for Debt Collection.

A. *Participating agencies:* Participants in this computer matching program are the National Science Foundation (NSF) and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). The National Science Foundation is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the match is to identify and locate any matched Federal personnel, employed, serving, or retired, who owe delinquent debts to the Federal Government under certain programs administered by NSF. NSF will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982, as amended, when voluntary payment is not forthcoming. These collection efforts will include requests by NSF of the military service/employing agency in the case of military personnel (either active, reserve, or retired) and current non-postal civilian employees, to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Public Law 97-365), as amended by the Debt Collection Improvement Act of 1996 (Public Law 104-134, section 31001); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government); 31 U.S.C. 3711 Collection and Compromise; 31 U.S.C. 3716 Administrative Offset; 5 U.S.C. 5514, Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 135, Under Secretary of Defense (Comptroller); Section 101(1) of Executive Order 12731; 4 CFR 101.1-105.5, Federal Claims Collection Standards; 5 CFR 550.1101 - 550.1108, Collection by Offset from Indebted Government Employees (OPM); 45 CFR part 607 (NSF).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. NSF will use personal data from the following Privacy Act record systems for the match: NSF-57, 'NSF Delinquent Debtors File' which was published in the **Federal Register** at 62 FR 59903 on November 5, 1997.

2. DOD will use personal data from the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** at 64 FR 42101 on August 3, 1999.

E. *Description of computer matching program:* NSF, as the source agency, will provide DMDC with a file which contains information specified below. Upon receipt of the file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the NSF file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of personnel records of non-postal Federal civilian employees and military members, both active, and retired. The 'hits' or matches will be furnished to NSF. NSF is responsible for verifying and determining that the data on the DMDC reply file are consistent with NSF's source file and for resolving any discrepancies or inconsistencies on an individual basis. NSF will also be responsible for making final determinations as to positive

identification, amount of indebtedness and recovery efforts as a result of the match.

F. *Individual notice and opportunity to contest:* Due process procedures will be provided by NSF to those individuals matched (hits) consisting of the NSF's verification of debt; a minimum of 30-day written notice to the debtor explaining the debtor's rights; opportunity for the debtor to examine and copy NSF's documentation relating to the debt; provision for debtor to seek the NSF's review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); and opportunity for the individual to enter into a written agreement satisfactory to the NSF for repayment. Only when all of the steps have been taken will the NSF disclose, pursuant to a routine use, to effect an administrative or salary offset. Unless the individual notifies NSF within 30 days from the date of the notice, NSF will infer that the data provided the individual is accurate and correct and will take the next step, as authorized by law, to recoup the delinquent debt.

G. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If the mandatory 30 day period for public comment has expired and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange of data at a mutually agreeable time and will be repeated on an six month basis. By agreement between NSF and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920 Arlington, VA 22202-4502. Telephone (703) 607-2943.

[FR Doc. 00–6174 Filed 3–13–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 15, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 9, 2000.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Regular.
Title: Goals 2000, Parental Information and Resource Center's Annual/Final Performance Report.
Frequency: Annually.
Reporting and Recordkeeping Hour Burden: Responses: 58; Burden Hours: 226.

Abstract: Recipients of grants under the Parental Assistance Program must submit an annual performance report that establishes substantial progress toward meeting their project objective to receive a continuation award.

Written comments and requests for copies of the proposed information collection request should be addressed to VivianReese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian Reese@ed.gov,* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact, Jackie Montague at 202–708–5359. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–6252 Filed 3–13–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.265A]

State Vocational Rehabilitation Unit In-Service Training; Notice reopening the closing date for transmittal of applications for new awards for fiscal year (FY) 2000

Deadline for Transmittal of Applications: The deadline date for transmittal of applications is reopened from December 17, 1999 to March 28, 2000.

On October 21, 1999 we published in the **Federal Register** (64 CFR 56775) a notice inviting applications for new awards for FY 2000 under the State Vocational Rehabilitation Unit In-Service Training program. The regulations for this program state that each State agency is eligible to receive an award under the In-Service Training program. The purpose of this notice is to reopen the deadline date for transmittal of applications to allow all eligible applicants an opportunity to apply for funds under this program. Applicants who submitted applications under the prior notice need not submit a new application, unless they wish to do so.

Deadline for Intergovernmental Review: May 30, 2000.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398.

Telephone (toll free); 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.265A.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–9817. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Steburg, U.S. Department of Education, Region IV, 61 Forsyth Street, SW., Suite 18T91, Atlanta, Georgia 30303. Telephone: (404 562–6336. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office. (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 29 U.S.C. 772.

Dated: March 8, 2000.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–6139 Filed 3–13–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of General Counsel Federalism; Intergovernmental Consultation

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of statement of policy.

SUMMARY: The Department of Energy (DOE) is publishing a statement of policy on intergovernmental consultation in the development of regulations that have federalism implications. This statement of policy implements provisions in President Clinton's Executive Order on Federalism that require Federal agencies to consult with State and local governments in the development of regulatory policies that may have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

EFFECTIVE DATE: This policy is effective March 14, 2000.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Assistant General Counsel for Regulatory Law, U.S. Department of Energy, 1000 Independence Avenue, S.W., GC–74, Washington, D.C. 20585, (202) 586–2902.

SUPPLEMENTARY INFORMATION: The President issued Executive Order 13132, "Federalism," on August 4, 1999 (64 FR 43255, Aug.10, 1999). Section 6(a) of the Order requires each covered Federal agency to have "an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The term "State and local officials" is defined in section 1(d) of the Order to mean "elected officials of State and local governments or their representative national organizations." "Regulatory policies that have federalism implications" refers to actions that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." E.O. 13132, section 1(a).

On October 28, 1999, the Administrator, Office of Information and Regulatory Affairs, within the Office of Management and Budget (OMB), issued to heads of executive departments and agencies guidance for implementing Executive Order 13132. Pursuant to section 6 of the Order, the Administrator requested that each agency federalism official submit a description of the agency's consultation process to OMB by January 31, 2000. The General Counsel, who is the DOE federalism official, has submitted this statement of policy to OMB.

The intergovernmental consultation procedures required by Executive Order 13132 and by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) are similar. For that reason, DOE has modeled this statement of policy on its final policy statement on intergovernmental consultation under the Unfunded Mandates Reform Act of 1995, which DOE published on March 18, 1997 (62 FR 12820). This will permit DOE to use the same basic consultation process for development of a regulation that both contains a significant Federal intergovernmental mandate and has federalism implications.

The intergovernmental consultation process required by Executive Order 13132 expands and supersedes the consultation procedures under Executive Order 12875, "Enhancing the Intergovernmental Partnership" (58 FR 58093, Oct. 28, 1993). E.O. 13132 section 10(b). However, Executive Order 13132 supplements, but does not supersede, the requirements in Executive Order 12372, "Intergovernmental Review of Federal Programs" (3 CFR, 1982 Comp., p. 197). E.O. 13132 section 10(a). Executive Order 12372 directs Federal agencies, to the extent permitted by law, to rely on State and local processes for consultation with elected State and local government officials that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal assistance or direct Federal development.

Issued in Washington, D.C., on February 11, 2000.

Mary Anne Sullivan,

General Counsel.

DOE adopts the following Statement of Policy:

Statement of Policy on Intergovernmental Consultation in the Development of Regulations That Have Federalism Implications

I. Purpose

This Statement of Policy implements the requirement in section 6 of Executive Order 13132, "Federalism," (64 FR 43255, Aug. 10, 1999), that each agency have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. "State and local officials" means elected officials of State and local governments or their representative national organizations.

II. Applicability

This Statement of Policy applies to the development of any regulation that has federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

III. Intergovernmental Consultation

When to begin. As early as possible in the development of a notice of proposed rulemaking, the responsible Secretarial Officer, in consultation with the General Counsel and the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs, should determine whether a proposed regulation has federalism implications. Upon determining that a proposed regulation has federalism implications, the Secretarial Officer responsible for the rulemaking should provide adequate notice to pertinent State and local officials.

Content of notice. The notice from the responsible Secretarial Officer to State and local officials should: (1) describe the nature and authority for the rulemaking; (2) give DOE's estimate of the effects on State and local governments of the regulatory options being considered for proposal, including whether they would impose direct compliance costs not funded by the Federal Government or would preempt State law; and (3) invite them to participate in the development of the regulation by participating in meetings or workshops with DOE or by presenting their views in writing on the likely effects of regulatory options being considered by DOE staff or legally available policy alternatives that they wish DOE to consider.

How to notify State officials. With respect to State governments, the Secretarial Officer should give actual notice by letter, using a mailing list maintained by the DOE Office of Intergovernmental and External Affairs that includes elected chief executives, the National Governors Association, the National Conference of State Legislatures, and the Council of State Governments.

How to notify local officials. With respect to local governments, the Secretarial Officer should give notice through the **Federal Register** and by letter to the Executive Director of the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, the International City/County Management Association, and any State Municipal League not represented by a national association. If a draft proposed regulation might have federalism implications in a limited area of the United States, then the Secretarial Officer, in consultation with the Office of Intergovernmental and External Affairs, should give actual notice by letter to appropriate local officials and the appropriate State Municipal League(s), if practicable.

Consultation. The timing, nature, and detail of the consultation with State and local officials should be appropriate to the nature of the regulation involved. In consultation with State and local officials, staff in the office of the Secretarial Officer responsible for the rulemaking and the Office of Intergovernmental and External Affairs should seek comment, as appropriate, on: (1) The need for Federal regulation; (2) compliance costs of regulatory options DOE is considering for proposal; (3) legally available policy alternatives; and (4) ways to avoid or minimize conflict between State law and Federally protected interests. If a rulemaking would impose an unfunded mandate or preempt State law, staff in the office of the Secretarial Officer responsible for the rulemaking and the Office of Intergovernmental and External Affairs must consult, to the extent practicable and permitted by law, with State and local officials early in the process of developing a notice of proposed rulemaking. Under Executive Order 13132, a regulation would impose an unfunded mandate if it has federalism implications; would impose substantial direct compliance costs on State and local governments; and is not required by statute.

Exemption from the Federal Advisory Committee Act. Secretarial Officers are encouraged to meet with State and local elected officials to exchange views, information, and advice concerning the implementation of intergovernmental responsibilities or administration. Section 204(b) of the Unfunded Mandates Act of 1995 (2 U.S.C. 1534(b)) exempts from the Federal Advisory Committee Act (5 U.S.C. App.) meetings for this purpose that do not include other members of the public.

Documenting compliance. The **SUPPLEMENTARY INFORMATION** section of any notice of proposed and final rulemaking that has federalism implications should describe DOE's determinations and intergovernmental consultation activities under Executive Order 13132. The **SUPPLEMENTARY INFORMATION** section of a notice of final rulemaking must include: (1) in a separately identified section, a "federalism summary impact statement," and (2) the certification of compliance required by section 8(a) of Executive Order 13132. The federalism summary impact statement must include a description of DOE's prior consultation with State and local officials; a summary of the nature of State and local officials' concerns and DOE's position supporting the need to issue the regulation; and a statement of the extent to which the concerns of State and local officials have been met. If intergovernmental consultations precede the notice of proposed rulemaking, the **SUPPLEMENTARY INFORMATION** section of the notice of proposed rulemaking should include a preliminary federalism summary impact statement.

[FR Doc. 00–6206 Filed 3–13–00; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 00–11; Atmospheric Chemistry Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for participation in the Atmospheric Chemistry Program (ACP) Science Team. The research program supports the Department's Global Change Research Program, the U.S. Global Change Research Program, and the Administration's goals to understand atmospheric chemistry associated with air quality and climate change. Of particular interest are experimental and

theoretical studies of atmospheric chemistry processes affected by energy-related air pollutants, *e.g.*, sulfur oxides, nitrogen oxides, organic aerosols, and tropospheric ozone.

DATES: Formal applications in response to this Notice must be received by 4:30 p.m., E.D.T., May 3, 2000, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2001. Applications that are collaborative with or complementary to DOE laboratory proposals are strongly encouraged.

ADDRESSES: Formal applications referencing Program Notice 00–11 should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 00–11. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Peter Lunn, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–4819, E-mail: peter.lunn@science.doe.gov, fax: (301) 903–8519. The full text of Program Notice 00–11 is available via the Internet using the following web site address: http://www.sc.doe.gov/production/grants/grants.html

SUPPLEMENTARY INFORMATION:

Background

The goal of the overall Atmospheric Science Program of the Department of Energy (DOE) is to develop a comprehensive understanding of the atmospheric processes that control the transport, transformation, and fate of energy related chemicals and particulate matter. The drivers for the program include urban, regional, national, and global concerns for air quality, climate change (global warming), and other atmospheric issues related to energy policy. The current emphasis is upon urban and regional scales.

The objectives of the program are: (1) To improve understanding of the chemical and physical processes affecting energy related air pollutants such as sulfur and nitrogen oxides, and tropospheric ozone, including gas-to-particle conversion processes, and the deposition and resuspension of aerosols; (2) to improve understanding of the meteorological processes that control the dispersion and air chemistry of energy-related trace gases and particulate matter in or released to the atmosphere; and (3) to develop predictive models for the above processes and acquire the data to test them.

The overall Atmospheric Science Program consists of several closely-related science programs and facilities. Each program or activity includes scientist-participants from DOE laboratories, other federal laboratories, colleges and universities, and private industry. All research projects are fully peer reviewed.

The Atmospheric Chemistry Program (ACP)

This program focuses on regional, continental, and global scale research on energy related air pollutants, including: (a) Chemical transformations relating to tropospheric energy-related materials in the troposphere, (b) aerosol influences on air quality and climate forcing, and (c) origin, fate, and characterization of fine particles in the atmosphere. Activities include field measurement campaigns, laboratory studies, modeling, and instrument development. More information can be obtained via the ACP web site at http://www.atmos.anl.gov/ACP/.

The Environmental Meteorology Program (EMP)

This program focuses on the atmospheric transport of energy-related materials through specific and timely program components. Previous components include the Atmospheric Studies of Complex Terrain (ASCOT), the Mexico City Air Quality Study (MCAQS), and the Atmospheric Boundary Layer Experiment (ABLE). The current component and focus of EMP is the Vertical Transport and Mixing Program (VTMX). More information can be obtained via the VTMX web site at http://www.pnl.gov/VTMX/.

The NARSTO Program Office

The Atmospheric Science Program supports NARSTO (formerly known as the North American Research Strategy for Tropospheric Ozone). NARSTO is a public/private partnership, whose membership spans government, the utilities, industry, and academe throughout Mexico, the United States, and Canada. Recently the scope of interest has been broadened to include aerosols. More information can be obtained via the NARSTO web site at http://www.cgenv.com/Narsto.

The Research Aircraft Facility (RAF)

The Research Aircraft Facility consists of a Gulfstream 1 (G1) twin turboprop aircraft research facility, equipped by participating scientists for measurements in atmospheric chemistry, aerosols, turbulence, and radiant energy. The G1 is available to support ACP and EMP projects as well as related research endeavors by other agencies. More information can be obtained via the RAF web site at http://www.pnl.gov/atmos_sciences/as_g1.html.

The Tropospheric Aerosol Program (TAP)

This program is under development. More information can be obtained via the TAP web site at http://www.tap.bnl.gov.

This Announcement is specific to the Atmospheric Chemistry Program (ACP)

ACP is concerned primarily with the atmospheric chemistry of energy related pollutants. Collaborations are maintained with counterparts in other agencies, *e.g.*, EPA, NOAA, NSF, and NASA, as well as with other parts of DOE, *i.e.*, and programs concerned with environmental issues related to energy consumption and/or energy production.

Research applications are encouraged that demonstrate the continuity and progress of the DOE ACP during the 1997–2000 period (see research abstracts in http://www.atmos.anl.gov/ACP), *i.e.*, new work that builds upon on or complements previous ACP activities.

The objective of the ACP is to identify and understand the atmospheric processes that are key to anticipating and predicting the effects of energy-related emissions on air quality. This capability is needed by DOE for both short-range and long-range energy planning. Although ACP activities do not include research in human health or other biological sciences, those air quality issues that are related to human health and effects on ecosystems in the United States are currently of direct concern. Tropospheric processes are addressed that affect the amounts and geographic distribution of ozone, particulate matter, air toxics, and the associated precursors compounds near the surface of the Earth. Research is conducted by modeling, laboratory, and field studies. Analysis and publication of results, including those from past ACP field experiments, are an integral part of the ACP program.

Information on national issues that the DOE is addressing in coordination with other federal agencies can be found in several publications:

1. "Rethinking the Ozone Problem in Urban and Regional Air Pollution" by the Committee on Tropospheric Ozone Formation and Measurement of the National Research Council; "Air Quality Research Subcommittee Strategic Plan" by the Committee on Environment and Natural Resources of the National Science and Technology Council. http://www.nnic.noaa.gov/CENR/AQRS/Aqrs_sp.pdf.

2. "Research Priorities for Airborne Particulate Matter: I. Immediate Priorities and a Long-Range Research Portfolio" by the Committee on Research Priorities for Airborne Particulate Matter of the National Research Council.

3. "Research Priorities for Airborne Particulate Matter: II. Evaluating Research Progress and Updating the Portfolio" by the Committee on Research Priorities for Airborne Particulate Matter of the National Research Council.

4. "Global Environmental Change, Research Pathways for the Next Decade" by the Committee on Global Change Research of the National Research Council.

5. In addition, considerable information on current air quality issues involving ozone, aerosols, and volatile organic compounds can be found on the NARSTO web site http://www.cgenv.com/Narsto/.

Categories

This ACP Program Announcement consists of three categories. Prospective investigators should explicitly specify in the abstract what category or categories are addressed by the proposed research. Individuals or groups intending to participate in field experiments should describe what measurements they intend to make and what instruments will be used to make them, and what process information the measurements are intended to provide. Those intending to analyze data from one or more instruments or who will use data in numerical or conceptual modeling should specify what data are required for their purposes.

Category 1. *Oxidant Studies.* Research to evaluate the causes of spatial and temporal variations in tropospheric concentrations of ozone and other oxidants, especially for areas that experience non-attainment of U.S. ozone standards. Modeling, theoretical, and experimental efforts to address geographic regions having different mixes of atmospheric trace chemicals and atmospheric transport conditions are encouraged. Studies of nighttime as well as daytime chemistry involving oxidants are encouraged. Research may include the application and testing of numerical models to evaluate the causes of high ozone concentrations over regional and urban scales and to generalize findings.

Category 2. *Aerosol Studies.* Research in conjunction with ACP oxidant studies to evaluate causes of spatial and temporal variations of tropospheric aerosol chemical composition and concentrations, particularly with regard to national standards on particulate matter and visibility (and issues of concern to human health). Topics of interest include particle nucleation and growth, processes affecting chemical composition, interactions with water, and aerosol characterization emphasizing particle chemical composition as a function of particle size. Numerical models may be used to develop methods of estimating aerosol composition over regional and urban scales.

Category 3. *Heterogeneous Chemistry.* Research on heterogeneous processes that affect chemical rates of reactions involving oxidants, nitrogen oxides, volatile organic compounds, and sulfur oxides, and precursors in the troposphere and planetary boundary layer. Studies that lead to information important for evaluating, simulating, and predicting oxidant and particle concentrations and composition are particularly encouraged. Topics of interest include reactions of nitrogen oxides on organic aerosol surfaces, halogen atom-releasing surface reactions, interactions of gas-phase organic gases with aerosol surfaces, interactions of inorganic gases with organic surfaces, photochemistry at the surface and aqueous phase reactions.

Programmatic Issues

Experimental field campaigns may be carried out in collaboration with the DOE Atmospheric Radiation Measurement Program, the DOE Environmental Meteorology Program, and with other relevant programs supported by federal, state, and private agencies. Collaborative efforts contributing to NARSTO are encouraged. Collaborative use of the DOE Research Aircraft Facility is also encouraged.

Possible future field studies are listed at the ACP web site. A diversity of atmospheric conditions, some of which might exist outside the United States, needs to be addressed by ACP. In such studies, the dynamic atmospheric conditions that affect chemical reactions need to be considered. Air-surface exchange rates of gases and particles are sometimes an important component of the atmospheric budget of chemicals.

Modeling and laboratory experiments are important aspects of this research. Modeling studies devoted to interpretation and generalization of the experimental findings are particularly encouraged. Laboratory studies may include studies of the reactions of oxidant precursors, formation and distribution of product species, aerosol formation, and heterogeneous processes relevant to oxidant formation and loss in the atmosphere. Development and deployment of advanced field instrumentation to make surface and aircraft-based observations necessary for ACP field studies are encouraged.

Educational Opportunities

Opportunities exist for the financial support of undergraduate and graduate students wishing to participate in this program through the Department of Energy's Global Change Education Program. Information can be obtained at http://www.atmos.anl.gov/GCEP/.

Program Funding

It is anticipated that up to $2 million in first-year funding will be available for participation in the Atmospheric Chemistry Program. Multiple awards are expected to be made in Fiscal Year 2001 in the categories described above, contingent upon availability of appropriated funds. Applicants may request project support up to four years, with out-year support contingent on availability of appropriated funds, progress of the research, and programmatic needs. The number of awards and range of funding will depend on the number of applications received and selected for award. Typical annual budgets range from $60,000 to $200,000 in total costs. Some studies involving field measurements may have larger budgets.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,

2. Appropriateness of the Proposed Method or Approach,

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation process will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an

agency's programmatic needs. Note that external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at http://www.sc.doe.gov/production/grants/grants.html. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The research project description must be 20 pages or less, exclusive of attachments and must contain a 1 or 2-page abstract or summary of the proposed research and a 1 or 2-page statement of relevance to the DOE and national interest. On the SC grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number, and E-mail address. Attachments must include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Applications should include detailed and justified budgets for each year of support requested. Lengthy application appendices are discouraged. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9.

Although the required original and seven copies of the application must be submitted, researchers are asked to submit an electronic version of their abstract of the proposed research in ASCII format and their E-mail address to the Program Director for Atmospheric Sciences, Peter Lunn, by E-mail to peter.lunn@science.doe.gov.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on March 10, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–6205 Filed 3–13–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–210–000]

Cove Point LNG Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2000.

Take notice that on March 1, 2000, Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, First Revised volume No. 1 the following tariff sheet to become effective April 1, 2000.

Seventh Revised Sheet No. 7

Cove Point states that the listed tariff sheet sets forth the restatement and adjustment to its retainage percentages, pursuant to the Section 1.37 of the General Terms and Conditions of its FERC Gas Tariff, first Revised Volume No. 1.

Cove Point states that copies of the filing were served upon Cove Point's affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. this filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6187 Filed 3–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–104–000]

Distrigas of Massachusetts Corporation; Notice of Application

March 8, 2000.

Take notice that on February 28, 2000, Distrigas of Massachusetts Corporation (DOMAC), 75 State Street, 12th Floor, Boston, Massachusetts 02109, filed in Docket No. CP00–104–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity authorizing DOMAC to install, operate, and maintain facilities at its Everett, Massachusetts LNG Plant in order to recover natural gas vapor that is currently being vented to the atmosphere during LNG cargo transfer operations, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

DOMAC states that its existing vapor handling system adequately recovers the natural gas vapor that results from LNG storage. However, during cargo transfer, additional vapor is produced, causing approximately one percent of each LNG cargo to be vented to the atmosphere in order to maintain design pressure in the LNG tanks. DOMAC now seeks to recover this additional vapor by installing the proposed vapor recovery facilities, consisting of a turbo expander-driven compressor, a heat exchanger, a water pump, a meter, and associated interconnecting piping. DOMAC estimates that the proposed equipment will enable the yearly recovery of over 830,000 Mscf of vapor, which will be marketed. According to DOMAC, construction of the new facilities will conserve energy and reduce methane emissions. The estimated cost of the facilities is $7 million and will be financed from funds on hand.

DOMAC states that it is not proposing any cost-based recovery of the cost associated with this facility. therefore, its existing customers will not subsidize the project. Further, DOMAC asserts that its proposal will not have any adverse impacts on its existing customers, competing pipelines and their existing customers, third party landowners, or the surrounding community. Based on this, DOMAC states that its proposal is consistent with

the Commission's certificate policy statement.[1]

Any questions concerning this application should be directed to Robert A. Nailling, Senior Counsel, Distrigas of Massachusetts Corporation, 75 State Street, 12th Floor, Boston, Massachusetts 02109 at (617) 526–8300.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties of issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required hererin, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for DOMAC to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–6178 Filed 3–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–211–000]

East Tennessee Natural Gas Company; Notice of Cashout Report

March 8, 2000.

Take notice that on March 3, 2000, East Tennessee Natural Gas Company (East Tennessee) tendered for filing its sixth annual cashout report for the November 1998 through October 1999 period.

East Tennessee states that the cashout report reflects a net cashout gain during this period $276,406. As a result, East Tennessee's cumulative loss from its cashout mechanism is reduced to $540,288. East Tennessee will roll forward this loss into its next annual cashout report.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 15, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6188 Filed 3–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

[Docket No. GT00–20–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2000.

Take notice that on March 3, 2000, El Paso Natural Gas Company (El Paso) tendered for filing an interruptible Transportation Service Agreement (TSA) between El Paso and MGI Supply, Ltd. (MGI) and Seventeenth Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that it is submitting the TSA for Commission approval since the TSA contains provisions which differ from El Paso's Volume No. 1–A Tariff. The tariff sheet, which references the TSA, is proposed to become effective on April 3, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the

[1] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶61,227 (1999), *order clarifying*, 90 FERC ¶61,128 (2000).

web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6179 Filed 3–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–227–006]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

March 8, 2000.

Take notice that on March 3, 2000 High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets for filing, with an effective date of April 6, 1999:

First Revised Sheet No. 28
First Revised Sheet No. 29
First Revised Sheet No. 30
First Revised Sheet No. 31
First Revised Sheet No. 32

HIOS states that such tariff sheets are being submitted to comply with the Office of Markets, Tariffs and Rates February 25, 2000, Letter Order in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 00–6182 Filed 3–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–11–000]

Humble Gas Pipeline Company; Notice of Petition for Rate Approval

March 8, 2000.

Take notice that on February 29, 2000, Humble Gas Pipeline Company (HGPC) filed a petition for rate approval pursuant to section 284.123(b)(2) or the Commission's regulations. HGPC requests that the Commission approve a maximum rate of $0.04389 per MMBtu for gas transported on the Inlet System and a maximum rate of $0.01016 per MMBtu for gas transported on the Header System; both rates are subject to an additional one-percent (1%) retainage for fuel and unaccounted-for gas.

HGPC affirms that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA, with an intrastate pipeline which is located entirely within the state of Texas. HGPC's pipeline is comprised of an Inlet System and a Header System. Consistent with the Commission's approval of its Section 311 rates in Docket No. PR 97–5, HGPC proposes to make its new section 311 rates effective as of March 1, 2000.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation services. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 or the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before March 23, 2000. The petition for rate approval is on file with the Commission and is available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6181 Filed 3–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–205–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

March 8, 2000.

Take notice that on March 1, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following sheets, with an effective date of April 1, 2000.

Second Revised Sheet No. 81.01a
Fourth Revised Sheet No. 121
Third Revised Sheet No. 122
Fifth Revised Sheet No. 127
Third Revised Sheet No. 153
Third Revised Sheet No. 168

PG&E GT–NW asserts that the purpose of this filing is to eliminate its queue for scheduling interruptible capacity.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6186 Filed 3–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–199–000]

Reliant Energy Gas Transmission Company; Notice of Tariff Filing

March 8, 2000.

Take notice that on March 1, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective April 1, 2000:

First Revised Sheet No. 240
First Revised Sheet No. 456
First Revised Sheet No. 457

REGT states that the purpose of this filing is to add Section 29 to its General Terms and Conditions to provide that REGT may hold capacity in its own name on Mississippi River Transmission Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6184 Filed 3–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–201–000]

Reliant Energy Gas Transmission Company; Notice of Tariff Filing

March 8, 2000.

Take notice that on March 1, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to become effective April 1, 2000:

Second Revised Sheet No. 5
Second Revised Sheet No. 6
Third Revised Sheet No. 7

REGT states that the revised tariff sheets are filed in compliance with the Stipulation and Agreement (Settlement) approved by Commission order in Docket No. RP91–149 on March 31, 1992. Arkla Energy Resources, a division of Arkla, Inc. 58 FERC ¶ 61,359 (1992). REGT's March 1, 2000 filing is its eighth annual filing pursuant to the Settlement, and its proposes to continue the currently effective rate for the CSC Charge as provided in the settlement, at $0.03 per MMBtu.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6185 Filed 3–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2000.

Take notice that on February 29, 2000, Southern Natural Gas Company (Southern), filed a motion to place into effect on March 1, 2000 the tariff sheets suspended in this proceeding as revised by the substitute sheets included in the filing. Southern also requests the Secretary suspend the due date for filing updated statements and schedules pursuant to sections 154.311(c) and 375.302(j) of the Commission's regulations so Southern may devote its resources to a settlement expected to be filed in early March.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 15, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6183 Filed 3–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–536–000]

Southwestern Public Service Company; Notice of Informal Settlement Conference

March 8, 2000.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, March 27, 2000, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, for the purpose of exploring settlement in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact J. Carmen Gastilo at (202) 208–2182 or Anja M. Clark at (202) 208–2034.

David P. Boergers,

Secretary.

[FR Doc. 00–6189 Filed 3–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–54–000, et al.]

Duquesne Light Company and Orion Power Midwest, LLC , et al.; Electric Rate and Corporate Regulation Filings

March 7, 2000.

Take notice that the following filings have been made with the Commission:

1. Duquesne Light Company and Orion Power MidWest, LLC

[Docket No. EC00–54–000]

Take notice that on February 29, 2000, Duquesne Light Company and Orion Power MidWest, LLC (Orion Power MidWest) (collectively, Applicants) tendered for filing a clarification to their joint application (Application) requesting authorization under Section 203 of the Federal Power Act filed in the above-captioned docket on February 2, 2000. The Application requested authorization to transfer jurisdictional transmission facilities associated with the generation plants that Duquesne is selling to Orion Power MidWest. The Applicants clarified that they intended also to request Commission authorization for Duquesne to assign to Orion Power MidWest the Power Sales Contract, attached to the February 2, Application.

A copy of the filing was served upon the Pennsylvania Public Utility Commission and the Public Utilities Commission of Ohio.

Comment date: March 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1149–000]

Take notice that on March 2, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Amendment Nos. 2 and 3 to Supplement No. 69 to submit two complete service agreements to replace an agreement previously filed which added Engage Energy US, L.P., as a long term firm point-to-point transmission customer under Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective dates for Amendment Nos. 2 and 3 are March 1, 2000 and September 1, 2000, respectively, or other dates as ordered by the Commission.

Copies of the filing have been provided to the Public Utilites Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Company

[Docket No. ER00–1767–000]

Take notice that on March 2, 2000, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Statoil Energy Services, Inc. under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4.

This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Allegheny Energy Service Corporation on behalf of Monongahela Power Company and West Penn Power Company

[Docket No. ER00–1768–000]

Take notice that on March 2, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company (Monongahela) and West Penn Power Company (West Penn), tendered for filing Amendment No. 14 to the Interchange Agreement with Ohio Edison Company and Pennsylvania Power Company (collectively the Parties). Amendment No. 14 is being submitted to change the location of one metering point between the systems of the Parties.

Monongahela Power and West Penn propose that the Amendment become effective as of May 15, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. FirstEnergy Operating Companies

[Docket No. ER00–1769–000]

Take note that on March 2, 2000, the FirstEnergy Operating Companies (The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company) tendered for filing a Supplement adding new transmission customers to the Service Agreement and Operating Agreement for Network Integration Transmission Service provided by the FirstEnergy Operating Companies to American Municipal Power—Ohio, Inc. (AMP—Ohio) on behalf of certain designated municipal electric systems in Ohio and Pennsylvania. The Supplement does not modify the terms and conditions of the existing Network Agreements between the FirstEnergy Operating Companies and AMP—Ohio.

FirstEnergy Operating Companies request an effective date of March 1, 1999 for the Supplement. A revised Index of Network Customers is also submitted as part of this filing.

Copies of this filing have been served on the utility commissions in Ohio and Pennsylvania.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Consumers Energy Company

[Docket No. ER00–1773–000]

Take notice that on March 2, 2000, Consumers Energy Company (Consumers) tendered for filing Amendment No. 2 to the Power Sales Agreement between Consumers and Edison Sault Electric Company (Edison Sault) dated December 1, 1996 (the PSA), designated Consumers Energy Company Electric Rate Schedule FERC No. 94. The amendment changes the extent and duration of service under the PSA and reflects purchases made by Edison Sault under a new power sales service agreement.

Copies of the filing were served upon Edison Sault and the Michigan Public Service Commission.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER00–1774–000]

Take notice that on March 2, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing the following:

1. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Conectiv Energy Supply Inc.

2. Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Conectiv Energy Supply Inc.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. Virginia Power requests an effective date of March 2, 2000, the date of filing of the Service Agreements.

Copies of the filing were served upon Conectiv Energy Supply Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Peco Energy Company

[Docket No. ER00–1775–000]

Take notice that on March 2, 2000, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated March 1, 2000 with Consolidated Edison Energy, Inc. (CEEI) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of March 1, 2000 for the Agreement.

PECO states that copies of this filing have been supplied to Consolidated Edison Energy, Inc., and to the Pennsylvania Public Utility Commission.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Peco Energy Company

[Docket No. ER00–1776–000]

Take notice that on March 2, 2000, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated March 1, 2000 with Consolidated Edison Energy, Inc. (CEEI) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of March 1, 2000, for the Agreement.

PECO states that copies of this filing have been supplied to Utilimax.com, Inc. and to the Pennsylvania Public Utility Commission.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER00–1777–000]

Take notice that on March 2, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a notification indicating a name change for an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2) as requested by the customer.

Wisconsin Electric respectfully requests effective February 14, 2000, Service Agreement No. 58 with Pennsylvania Power & Light is changed to PPL Electric Utilities Corporation d/b/a PPL Utilities (PPL) .

Wisconsin Electric requests waiver of any applicable regulation to allow for the effective dates as requested above. Copies of the filing have been served on PPL, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER00–1778–000]

Take notice that on March 2, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Southern Company Energy Marketing L.P. Under the Service Agreement, Virginia Power will provide services to Southern Company Energy Marketing L.P., under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of February 9, 2000, the date service was first provided.

Copies of the filing were served upon Southern Company Energy Marketing L.P., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Union Power Partners, L.P.

[Docket No. ER00–1779–000]

Take notice that on March 2, 2000, Union Power Partners, L.P. (UPP), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, and for the purpose of permitting UPP to assign transmission capacity and to resell Firm Transmission Rights, to be effective no later than sixty (60) days from the date of its filing.

UPP intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where UPP sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither UPP nor any of its affiliates is in the business of transmitting or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Texas Electric Marketing, LLC

[Docket No. ER00–1780–000]

Take notice that on March 2, 2000, Texas Electric Marketing, LLC (TEM), tendered for filing, pursuant to Rules 205 and 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, and Section 35.12 of the Commission's Regulations, 18 CFR 35.12, an application for blanket authorizations and certain waivers under various regulations of the

Commission, and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective the earlier of May 1, 2000, or the date of a Commission order granting approval of this Rate Schedule.

TEM intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where TEM purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, TEM will be functioning as a marketer. In TEM's marketing transactions, TEM proposes to charge rates mutually agreed upon by the parties. In transactions where TEM does not take title to the electric power and/or energy, TEM will be limited to the role of a broker and will charge a fee for its services. TEM is not in the business of producing nor does it contemplate acquiring title to any electric power transmission facilities.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Marquette Energy, L.L.C.

[Docket No. ER00–1781–000]

Take notice that on March 2, 2000, Marquette Energy, L.L.C. (Marquette) petitioned the Commission for acceptance of Marquette Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Marquette intends to engage in wholesale electric power and energy purchases and sales as a marketer. Marquette is not in the business of generating or transmitting electric power. Marquette is a wholly-owned subsidiary of Marquette Partners, L.P., which, through its affiliates, trades derivatives on regulated futures exchanges for its own proprietary account.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Energy Trenton, LLC

[Docket No. ER00–1782–000]

Take notice that on March 2, 2000, Duke Energy Trenton, LLC (Duke Madison) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed Rate Schedules FERC Nos. 1, 2, and 3.

Duke Trenton seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Trenton also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities.

Duke Trenton seeks an effective date sixty (60) days from the date of filing for its proposed rate schedules.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Energy Vermillion, LLC

[Docket No. ER00–1783–000]

Take notice that on March 2, 2000, Duke Energy Vermillion, LLC (Duke Vermillion), tendered for filing pursuant to Section 205 of the Federal Power Act an application for an order accepting its rates for filing, determining rates to be just and reasonable, and granting certain waivers and preapprovals.

Duke Vermillion is developing an approximately 640 MW generation facility located in Cayuga, Vermillion County, Indiana. Under its proposed Rate Schedules FERC Nos. 1 and 2, Duke Vermillion seeks to sell energy and capacity, as well as ancillary services, at market-based rates. Under its proposed Rate Schedule FERC No. 3, Duke Vermillion seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Under its proposed Rate Schedule FERC No. 4, Duke Vermillion seeks authority to sell energy generated during the testing phase of construction of the Facility to Cinergy Services, Inc.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Duke Energy Madison, LLC

[Docket No. ER00–1784–000]

Take notice that on March 2, 2000, Duke Energy Madison, LLC (Duke Madison), tendered for filing pursuant to Section 205 of the Federal Power Act an application for an order accepting its rates for filing, determining rates to be just and reasonable, and granting certain waivers and preapprovals.

Duke Madison is developing an approximately 640 MW generation facility located in Madison Township, Butler County, Ohio. Under its proposed Rate Schedules FERC Nos. 1 and 2, Duke Madison seeks to sell energy and capacity, as well as ancillary services, at market-based rates. Under its proposed Rate Schedule FERC No. 3, Duke Madison seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Under its proposed Rate Schedule FERC No. 4, Duke Madison seeks authority to sell energy generated during the testing phase of construction of the Facility to Cinergy Services, Inc.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6176 Filed 3–13–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–59–001]

Petal Gas Storage, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Amended Petal Project and Request for Comments on Environmental Issues

March 8, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the amended Petal Project in Forrest County Mississippi. On February 24, 2000, Petal Gas Storage, L.L.C. (Petal) amended its application under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations to request authorization to construct and operate about 5.5 miles of pipeline and 20,000 horsepower (hp) of compression.[1] The EA will be used by

[1] The original application was filed with the Commission on December 28, 1999, by Petal Gas Storage Company (which converted to Petal Gas

Continued

the Commission in its decision-making process to determine whether the projects is in the public convenience and necessity.

If you are a landowner on Petal's proposed route and receive this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need to Know?" was attached to the project notice Petal provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

This Notice of Intent (NOI) is being sent to landowners crossed by Petal's amended project; landowners along the originally proposed pipeline route withdrawn from the amended project; Federal, state, and local government agencies; national elected officials; regional environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and the Commission's list of parties to the proceeding. Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally with this NOI we are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated Petal's proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described below.

Storage, L.L.C. on January 4, 2000) requesting authorization to construct and operate about 64.2 miles of pipeline and 35,590 ph of compression. Petal's amended application withdraws 58.7 miles pipeline and 15,000 hp of compression, and other related facilities.

Summary of the Amended Project

Petal's amended project proposes to build new pipeline and compression facilities to transport up to 700 million cubic feet per day of natural gas from its storage field to an interconnection with Tennessee Gas Pipeline Company (Tennessee). Petal requests Commission authorization to construct, own, operate, and maintain the following facilities.

- About 5.5 miles of bi-directional 36-inch-diameter loop[2] of Petal's existing storage header in Forrest County, Mississippi;
- A new compressor station with four electric-driven units totaling 20,000 hp adjacent to Petal's existing compressor station at its storage field near the town of Petal in Forrest County, Mississippi;
- A new station at the interconnection with Tennessee near the town of Macedonia in Forrest County, Mississippi; and
- Associated facilities, including mainline block values and pig traps at the Petal storage field and the Tennessee Meter Station.

With its amendment, Petal is withdrawing the following facilities proposed in its original application:

- 58.7 miles of 36-inch-diameter pipeline between the interconnection with Tennessee at milepost (MP) 5.5 and the formerly proposed interconnections with Southern Natural Gas Company (Sonat) and Destin Pipeline Company (Destin) at MP 64.2, crossing portions of Forrest, Jasper, Jones, and Clarke Counties, Mississippi;
- A compressor station totaling 15,590 hp near Heidelburg, in Jasper County, Mississippi; and
- Three meter stations at interconnections with Transcontinental Gas Pipe Line Corporation (Transco) in Jasper County, Mississippi, and with Sonat and Destin in Clarke County, Mississippi.

The purpose of this project is to provide natural gas to Southern County Services, Inc. (Southern). On January 5, 2000, Petal's parent company, Crystal Gas Storage, Inc., merged with El Paso Energy Corporation (El Paso). Petal then reach an agreement with Tennessee, an El Paso affiliate, to transport the volumes intended for Southern by utilizing incremental and interruptible capacity on Tennessee's existing 500 Line, replacing the need for Petal to construct its own transportation pipeline to the Transco, Sonat, and Destin interconnections. However, Petal indicated that Tennessee may file its own application with the Commission in the near future seeking authorization to add facilities along its 500 Line so that Petal would have capacity to move its volumes on a primary firm basis.

[2] A loop is a segment of pipeline that is installed adjacent to an existing pipeline and connected to it on both ends. The loop allows more gas to be moved through the pipeline system.

Tennessee is contemplating adding about 30 miles of pipeline in the general vicinity where Petal had originally proposed to build its 58.7 miles of pipeline.[3]

The general location of Petal's amended facilities is shown on the map attached as appendix 1.[4]

Land Requirements for Construction

Construction of Petal's amended facilities would affect about 64 acres of land. Following construction, about 24 acres would be retained as permanent right-of-way. The remaining 40 acres of temporary work space would be restored and allowed to revert to its former use.

Petal purposes to use a typical pipeline construction right-of-way width of 75 feet, consisting of 30 feet of permanent right-of-way and 45 feet of temporary extra work space. There also would be about 10 acres used as additional temporary extra work spaces at steam, utility, and road crossings. The new compressor station near Petal, Mississippi would occupy about 4 acres. The new meter station would be within an existing Tennessee facility.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate to Public Convenience and Necessity. NEPA also requires us[5] to discover and address concerns the public may have about proposals. We all this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are

[3] Tennessee has not yet filed its application with the FERC. Petal asserts that its amended application is for a stand alone project, not dependent on Tennessee's future expansion. Tennessee indicated to Petal that it currently has sufficient capacity on its 500 Line to transport gas to Petal's customers, including the volumes for Southern, on a primary firm, secondary firm, and interruptible basis. The FERC would conduct a separate environmental analysis of any future facilities proposed by Tennessee.

[4] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[5] "Us," "we" and "our" refer to the environment staff of the FERC's Office of Pipeline Regulation.

considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

The EA will discuss impacts that would occur as a result of construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Petal. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils
  - —Impacts on about 2 miles of prime farmland soils.
  - —Crossing about 1 mile of erosion prone soils.
- Water Resources and Wetlands
  - —Crossing one perennial stream.
  - —Crossing four wetlands.
- Biological Resources
  - —Impacts on about 47 acres of forest or woodlands.
  - —Impacts on the Gopher Tortoise, a federally listed threatened species.
- Cultural Resources
  - —Impacts on prehistoric and historic sites.
  - —Native American concerns.
- Land Use
  - —Impacts on crop production.
  - —Impacts on residential areas.
  - —Visual effect of the aboveground facilities on surrounding areas.
- Air and Noise Quality
  - —Impacts on local air quality and noise environment as a result of the operation of a new compressor station.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP00–59–001; and
- Mail your comments so that they will be received in Washington, DC on or before April 14, 2000.

[If you do not want to send comment at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be removed from the environmental mailing list.]

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notice, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and following the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–6177 Filed 3–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft License Surrender Application and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

March 8, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Surrender of License.

b. *Project No.:* 477.

c. *Applicant:* Portland General Electric.

d. *Name of Project:* Bull Run Project.

e. *Location:* On the Sandy, Little Sandy, and Bull run Rivers, in Clackamas County, Oregon. Of 606 acres of land within the project boundary, about 55 acres is managed by Bureau of Land Management and 18 acres is managed by U.S. Forest Service.

f. *Applicant Contact:* Julie Keil, Portland General Electric Company, 121 SW Salmon Street, 3WTC–BRHL, Portland, OR 97204, (503) 464–8864.

g. *FERC Contact:* Jim Hastreiter, (503) 944–6760, james.hastreiter@ferc.fed.us.

h. Portland General Electric mailed a copy of the Preliminary Draft Environmental Assessment and draft application to interested parties on March 3, 2000. The Commission received a copy of the PDEA and draft application on March 6, 2000.

i. With this notice we are soliciting preliminary terms, conditions, and recommendations on the PDEA and draft license application. All comments on the PDEA and draft license application should be sent to the address above in item (f) with one copy

filed with the Commission at the following address: Federal Energy Regulatory Commission, David P. Boergers, Secretary, 888 First St. NE, Washington, DC 20426. All comments must include the project name and number, and bear the heading "Preliminary Comments," "Preliminary Recommendations," "Preliminary Terms and Conditions," or "Preliminary Prescriptions." Any party interested in commenting must do so before May 5, 2000.

j. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, DC 20426, or by calling (202) 208–0371. The application may be viewed on the web at http://www.ferc.fed.us/online/rimes.htm. (Call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6180 Filed 3–13–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6548–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Evaluation of PrintSTEP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Evaluation of PrintSTEP, EPA ICR Number: 1941.01.

Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 15, 2000.

ADDRESSES: Interested persons may obtain a copy of the draft ICR by request from the Office of Compliance, by contacting Amy Porter at the contact information provided below. Details of the PrintSTEP evaluation is available on the Internet at http://www.epa.gov/ooaujeag/sectors/pdf/pgm__eval.pdf

FOR FURTHER INFORMATION CONTACT: Amy Porter, 2221A, 1200 Pennsylvania Avenue NW, Washington DC, 20460. Phone: (202) 564–2431, Fax: (202) 564–0027, E-mail: porter.amy@epa.gov

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are those which volunteer to participate in the PrintSTEP pilots including State officials in Missouri, New Hampshire, and Minnesota and printers in those 3 states who participate in the pilots or the evaluation control groups, and members of the communities where participating printers are located.

Title: Proposed Information Collection Request for the Evaluation of PrintSTEP.

Abstract: Information will be collected for evaluation of the PrintSTEP pilot program. The evaluation aims to systematically identify the impacts the program has had on three types of stakeholders: printers, community residents, and the state government agencies administering the program. Specifically, the evaluation will determine the extent to which the 7 goals of the pilot program are met. The goals are: enhanced environmental protection; increased use of pollution prevention practices; simplified regulatory process for printers; improved efficiency of administration for state governments; enhanced public involvement; participants' realize benefits and are motivated to participate in PrintSTEP; and, cost effectiveness for all stakeholders.

This broad set of expected outcomes will require a range of distinct data collection and analysis activities. Data will be gathered from printer's program applications, from telephone interviews, from in-person interviews and possibly from focus groups. Data will be collected before implementation, a short time after program implementation, and at the end of the pilot. Responses to the collection of information are voluntary. Names of persons providing information will be not recorded. More information is available in the final draft of the Evaluation Strategy which can be accessed at http://www.epa.gov/ooaujeag/sectors/pdf/pgm__eval.pdf

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement

Estimated Recordkeeping and Reporting Hour Burden on Respondents

The PrintSTEP evaluation includes a telephone interview with three types of respondents: (1) Printers who are voluntarily participating in the PrintSTEP program; (2) a comparison group of printers who are not participating in PrintSTEP; and (3) community members who have participated in the public involvement component of PrintSTEP. For both types of printers, written data will be collected on their costs associated with PrintSTEP and/or regulatory activities. For the comparison group of printers, additional written data will be collected on environmental releases. The written information requested is expected to take one hour for the printers participating in PrintSTEP and 2.75 hours for the comparison group printers. Comparison group printers will be asked to submit information on their environmental releases which the pilot participants provide in their PrintSTEP applications. It is anticipated that a total of 320 printers will be interviewed three times during the course of the evaluation and that they will be either an environmental professional, or a manager. It is expected that one interview will be conducted with each of 50 community members.

The telephone portion of the survey for printers is expected to take 15 minutes to complete. The telephone interview with community members is expected to take 15 minutes. The estimates of respondent burden are shown in the table below.

Respondent type	Estimated number of respondents [1]	Time to respond to telephone survey (hrs) [2]	Time to complete written response (hrs) [2]	Total respondent burden (hrs)	Estimated avg. hourly wage of respondent during the survey ($/hr) [3]	Total respondent burden in monetary terms ($)
Wave 1:						
PrintSTEP printer	160	0.25	1.00	200	25.00	5,000
Comparison printer	160	0.25	2.75	480	25.00	12,000
Wave 2:						
PrintSTEP printer	160	0.25	1.00	200	25.00	5,000
Comparison printer	160	0.25	2.75	480	25.00	12,000
Wave 3:						
PrintSTEP printer	160	0.25	1.00	200	25.00	5,000
Comparison printer	160	0.25	2.75	480	25.00	12,000
Community member	50	0.25	0.00	13	0.00	0
Total for all 3 waves				2053		51,000

[1] Based on estimated number of participants provided by pilot states with the breakdown as follows: 60, 60, and 40 participants expected in MO, NH, and MN, respectively.
[2] Based on preliminary testing of the survey instruments by Abt Associates.
[3] Based on Screenprinting and Graphic Imaging Association International's 1999 Wage Survey.

Estimated Recordkeeping and Reporting Cost Burden on Respondents

The PrintSTEP evaluation utilizes telephone interviews and written data collection forms to collect all the data necessary from the respondent. The only cost to the respondents resulting from this survey is their time, which is covered in the section above. There are no other costs to the respondents and this section, therefore, is not applicable.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 24, 2000.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 00–5627 Filed 3–13–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6561–2]

Danmark Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Danmark Site in Tampa, Hillsborough County, Florida. The settlement requires the 59 settling parties to pay $516,374.57 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for Past Response Costs. EPA will consider public comments on the proposed settlement for thirty (30) days. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. Copies of the settlement are available from: Ms. Paula V. Batchelor, U.S. EPA Region 4, Waste Management Division, 61 Forysth Street SW, Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor on or before April 13, 2000.

Dated: March 2, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch Waste Management Division.

[FR Doc. 00–6347 Filed 3–13–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–99–28–B (Auction No. 28); DA 99–2958]

Notice and Filing Requirements for Auction of Certain AM, FM, LPTV, and TV Broadcast Construction Permits Scheduled for March 21, 2000; Minimum Opening Bids and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction, procedures, reserve prices and minimum opening bids for the upcoming supplemental Closed Broadcast Auction (Auction No. 28) scheduled to commence on March 21, 2000.

DATES: Auction No. 28 is scheduled for March 21, 2000.

FOR FURTHER INFORMATION CONTACT: José Ochoa, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released December 23, 1999. The complete text of the public notice, including Attachments A through H, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may

also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

A. Introduction

1. This Public Notice announces the procedures, reserve prices and minimum opening bids for the upcoming supplemental Closed Broadcast Auction (Auction No. 28). On November 19, 1999, the Mass Media Bureau ("MMB") and the Wireless Telecommunications Bureau ("WTB") (collectively, the "Bureaus") released a *Public Notice (Comment Public Notice)* 64 FR 67569 (December 2, 1999). This *Comment Public Notice* sought comment on the establishment of reserve prices and minimum opening bids for the auction of AM, FM, LPTV, and TV Broadcast Construction Permits, in accordance with the Balanced Budget Act of 1997. In addition, the Bureaus sought comment on a number of procedures to be used in Auction No. 28. In response to the *Comment Public Notice*, the Bureaus received comments from two applicants and no replies to these comments.

(i) Background

2. All spectrum to be auctioned in Auction No. 28 is the subject of pending, mutually exclusive applications for referenced broadcast services for which the Federal Communications Commission ("FCC") has not approved settlement agreements. In Auctions No. 25 and No. 27, recently completed, the Commission auctioned similar groups of construction permits. This Auction No. 28 shall dispose of broadcast applications not included in those earlier Auctions. Auction No. 28 shall include mutually exclusive applications for full service FM, AM and television construction permits that were subject to the comparative hearing freeze pending resolution of the issues raised by Bechtel II (Bechtel v. FCC 10 F 3d 875 (D.C. Cir. 1993)). In addition, included in Auction No. 28 are certain mutually exclusive LPTV and TV translator displacement relief applications. Pursuant to the *Broadcast First Report and Order* 63 FR 48615 (September 11, 1998), participation in the auction will be limited to those applicants identified on Attachment A of this Public Notice. Applicants will be eligible to bid only on those construction permits for which they previously filed long-form applications (FCC Forms 301 or 349). Also pursuant to the *Broadcast First Report and Order*, the Bureaus will dismiss the previously-filed long-form application of any pending applicant failing to timely file a short-form application to participate in Auction No. 28.

(ii) Construction Permits Auctioned

3. A list of each of the groups of mutually exclusive applications ("MX Groups") in Auction No. 28, along with its reserve price or minimum opening bid and the upfront payment is included on Attachment A. Pursuant to the *Broadcast First Report and Order*, in those specific situations where both non-commercial and commercial applicants for full power stations filed mutually exclusive long-form applications for non-reserved band channels, auctions shall not be conducted at this time and these applications are not included on Attachment A.

4. In response to the *Comment Public Notice*, Valley Public Television, Inc. ("Valley"), an applicant for a secondary television facility in MX Group SST10, raises arguments similar to those raised prior to the Closed Broadcast Auction (Auction No. 25) concerning whether so-called "noncommercial educational" secondary television applicants should be included in this auction. Valley maintains that (i) under section 309(j)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. 309(j)(2)(C), noncommercial applicants are exempt from auction; (ii) non-profit organizations like itself cannot afford to participate in the auction; and (iii) the Commission should use a lottery to choose between the applicants in MX Group SST10. As we stated in the *Public Notice*, DA 99–1346, released July 9, 1999 ("*July 9 Public Notice*"), in Auction No. 25, only those broadcast stations that are "eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station" are exempt from auction under sections 309(j)(2)(C) and 397(6) of the Communications Act. See *July 9 Public Notice* at 36 through 39. Because applicants for the secondary television services are not "eligible to be licensed . . . as a noncommercial educational * * * television broadcast station" they are not exempt from the auction. *See* Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System, *Report and Order*, FCC 82–107, 47 FR 21468 (May 18, 1982), where the Commission stated that it would not license low power television and television translator stations on a noncommercial basis. Therefore, under the mandate of section 309(j)(1) of the Communications Act, the Commission has no discretion, as Valley suggests, to exempt these applications from auction or to use an alternative method to choose between mutually exclusive applicants in the secondary television services. *See* 47 U.S.C. 309(j)(1).

(iii) Daisy Chain MX Groups

5. In some, but not all, of the MX Groups listed on Attachment A, a "daisy chain" of mutual exclusivity exists whereby applications are directly mutually exclusive with certain applications in the MX Group but not others. A "daisy chain" occurs when two or more non-table, site-based applications propose service areas that do not directly overlap, but are linked together into a chain by the overlapping proposal(s) of other applicants. In such cases, the potential exists to grant more than one application and issue more than one construction permit per MX Group and remain consistent with the Commission's separation requirements relating to site-based services. The identification of "daisy chains" on Attachment A is provisional in nature, since the final configuration of groups cannot be ascertained until after the acceptance for filing of short-form (FCC Form 175) applications, at which point mutual exclusivity for auction purposes is determined. Further identification and enumeration of "Daisy Chain MX Groups" will be provided prior to the auction in the public notices announcing the status of the applications and listing qualified bidders. It is possible that some MX Groups provisionally identified here as constituting a daisy chain may, after the short-form filing deadline, become directly mutually exclusive. In such cases(s), the procedures set forth in this notice pertaining to "Direct" MX Groups become applicable.

B. Rules and Disclaimers

(i) Relevant Authority

6. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to broadcast auctions, contained in title 47, part 73 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice. *See also* the *Comment Public Notice*, the *Broadcast First Report and Order*, the *Broadcast Reconsideration Order* 64 FR 24523 (May 7, 1999), and the *New Entrant Bidding Credit Reconsideration Order* 64 FR 44856 (August 18, 1999). Potential bidders must also familiarize

themselves with part 1, subpart Q of the Commission's Rules concerning Competitive Bidding Proceedings.

7. The terms contained in the Commission's rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC World Wide Web site at http://*www.fcc.gov/wtb/auctions*. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314–3070. When ordering documents from ITS, please provide the appropriate FCC number (*e.g.*, FCC 98–194 for the *Broadcast First Report and Order* and FCC 99–74 for the *Broadcast Reconsideration Order*).

(ii) Prohibition of Collusion

8. To ensure the competitiveness and integrity of the auction process, the Commission's rules prohibit applicants from communicating with each other during the auction about bids, bidding strategies, or settlements. In Auction No. 28, for example, the rule applies to all applicants within a MX Group. This prohibition becomes effective at the short-form application deadline (February 18, 2000) and ends on the post-auction down payment due date (to be determined). Bidders competing for the same construction permit(s) are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or technical consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. *See Public Notice* 63 FR 3572 (January 23, 1998). The Bureaus, however, caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted. Applicants may enter into bidding agreements before filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their FCC Form 175 short-form applications. By electronically submitting their FCC Form 175 short-form applications, applicants are certifying their compliance with §§ 1.2105(c) and 73.5002. In addition, § 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission, as promptly as possible and in any event within 30 days, of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

(iii) Due Diligence

9. Potential bidders are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the facilities on which they intend to bid. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a FCC auction represents an opportunity to become a FCC permittee in these services, subject to certain conditions and regulations. A FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does a FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

10. Although applicants have had an extensive opportunity to conduct due diligence due to the length of time since the filing of their long-form applications, please remember that, as is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the broadcast spectrum to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.

The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.

The amount of the minimum investment is less than $25,000.

The sales representative makes verbal representations that: (a) The Internal Revenue Service, Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits.

In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

11. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals may also call the FCC Consumer Call Center at (888) CALL–FCC ((888) 225–5322).

(iv) Bidder Certification

12. All applicants must certify on their short-form FCC Form 175 applications under penalty of perjury that they are:

- legally, technically, financially and otherwise qualified to hold a license, and
- not in default on any payment for Commission construction permits or licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

Applicants should be aware that by filing their FCC Form 175 applications, they are certifying that they have long-form applications on file and that there has been no change of control of their long-form applications that would render them ineligible to participate in the auction under 47 U.S.C. 309(l) or any other applicable Commission rule.

13. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that

may result in severe penalties, including monetary forfeitures, construction permit or license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

(v) National Environmental Policy Act (NEPA) Requirements

14. The permitee must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast antenna facility is a federal action and the permitee must comply with the Commission's NEPA rules for each such facility. *See* 47 CFR 1.1305 through 1.1319. The Commission's NEPA rules require that, among other things, the permitee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permitee must prepare environmental assessments for broadcast facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permitee must also prepare environmental assessments for broadcast facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

(i) Auction Date

15. The auction will begin on March 21, 2000. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

(ii) Auction Title

16. Auction No. 28 (supplemental Closed Broadcast Auction).

(iii) Bidder Information

17. Information necessary to participate in Auction No. 28 is contained in this *Public Notice*, the *Comment Public Notice*, the *Broadcast First Report and Order*, the *Broadcast Reconsideration Order*, the *New Entrant Bidding Credit Reconsideration Order* and the Commission's rules. Since the notice and comment rulemaking proceeding looking toward implementation of this auction was initiated nearly two years ago and since all eligible applicants have had their long-form applications on file for an extensive period of time, no separate Bidder Information Package will be provided. Applicants may access updated information about Auction No. 28 at the following address on WTB's web site: *http://www.fcc.gov/wtb/auctions/auc28/auc28.html* Applicants are strongly encouraged to check this site regularly for updated information regarding Auction No. 28.

(iv) Bidding Methodology

18. The Commission will use two separate auction designs to award broadcast construction permits. For the Daisy Chain MX Groups, an electronic single round auction will be utilized. For the Direct MX Groups, an electronic simultaneous multiple round auction will be implemented. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

(v) Participation

19. Those wishing to participate in the auction must: Submit a short-form application (FCC Form 175) by 5:30 p.m. ET, February 18, 2000. Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, March 6, 2000.

Comply with all provisions outlined in this Public Notice and applicable Commission rules.

(vi) Future Releases

20. Further information regarding sequencing and length of bidding rounds and other procedural issues will be released in a future public notice.

(vii) Pre-Auction Dates and Deadlines

21. The following are important events and deadlines related to Auction No. 28:

Auction Seminar (free)—February 3, 2000.

Short-Form Application (FCC Form 175)—February 18, 2000; 5:30 p.m. ET.

Upfront Payments (via wire transfer)—March 6, 2000; 6:00 p.m. ET.

. Orders for Remote Bidding Software—March 7, 2000.

Mock Auction—March 17, 2000.

Auction Commencement—March 21, 2000.

(viii) List of Attachments to This Public Notice

22. The following is a list of attachments available at the FCC:

Attachment A: Summary of Construction Permits to be auctioned, Reserve Prices, or Minimum Opening Bids, and Upfront Payments
Attachment B: Guidelines for Completion of FCC Form 175 and Exhibits
Attachment C: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159)
Attachment D: Electronic Filing and Review of FCC Form 175
Attachment E: Accessing the FCC Network Using Windows 95/98
Attachment F: FCC Remote Bidding Software Order Form
Attachment G: Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing the Application of the Anti-Collusion Rules
Attachment H: Auction Seminar Registration Form

(ix) Contact Information

23. The following is general contact information relating to Auction No. 28:

General Auction Information. General auction questions seminar registration, orders for remote bidding software.FCC Auctions Hotline: (888) CALL–FCC (888–225–5322) or direct (717) 338–2888. Hours of service: 8 a.m.—5:30 p.m. ET.

Legal Auction Information. rules, policies, regulations. FCC Auctions Legal Branch: (202) 418–0660.

Licensing Information. Rules, policies, regulations, licensing issues, due diligence, incumbency issues. FCC Mass Media Bureau: Audio licenses: (202) 418–2700; video licenses: (202) 418–1600.

Technical Support. Electronic filing assistance, software downloading. FCC Auctions Technical Support Hotline: (202) 414–1250 (Voice); (202) 414–1255 (TTY). Hours of service: 8 a.m.—6:00 p.m. ET.

Payment Information. Wire transfers, refunds. FCC Auctions Accounting Branch: (202) 418–1995, (202) 418–2843 (Fax).

Telephonic Bidding. Will be furnished only to qualified bidders.

FCC Copy Contractor. Additional Copies of Commission Documents: International Transcription Services, Inc., 445 12th Street, SW Room CY–B400, Washington, DC 20554 (202) 314–3070.

Press Information. Meribeth McCarrick (202) 418–0654.

FCC Forms. (800) 418–3676 (outside Washington, DC) (202) 418–3676 (in the Washington Area) *http://www.fcc.gov/formpage*

FCC Internet Sites. *http://www.fcc.gov; ftp://ftp.fcc.gov; http://www.fcc.gov/wtb/auctions.*

D. Short-Form (FCC FORM 175) Application Requirements

24. Guidelines for completion of the short-form (FCC Form 175) are set forth on Attachment B to this Public Notice. The short-form application seeks the applicant's name and address, legal classification, status, bidding credit eligibility, identification of the

construction permit sought, the authorized bidders and contact persons.

(i) Ownership Disclosure Requirements (Form 175 Exhibit A)

25. All applicants must comply with the uniform Part 1, ownership disclosure standards and provide information required by § § 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing Form 175, applicants will be required to file an Exhibit A providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules. Bidders should note that, under § 1.2112 (a)(4), the short-form must list, *inter alia*, the names, addresses and citizenship of any party holding options permitting the acquisition of a ten percent or greater equity interest in the applicant, as well as the amount and percentage held.

(ii) Consortia and Joint Bidding Arrangements (Form 175 Exhibit B)

26. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. *See* 47 CFR 1.2105(a)(2)(viii), 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. *See* 47 CFR 1.2105(a)(2)(ix). In cases where applicants have entered into consortia or joint bidding arrangements, applicants must submit an Exhibit B to the FCC Form 175.

27. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same MX Group provided that (i) the attributable interest holder certify that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could broach on impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements and other transactional arrangements.

(iii) New Entrant Bidding Credit (Form 175 Exhibit C)

28. To fulfill its obligations under section 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

(a) Eligibility

29. The interests of the bidder, and of any individuals or entities with an attributable interest in the bidder, in other media of mass communications shall be considered when determining a bidder's eligibility for the New Entrant Bidding Credit. The bidder's attributable interests shall be determined as of the short-form (FCC Form 175) filing deadline—February 18, 2000. Bidders intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline

30. Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include:

- All officers and directors of a corporate bidder;
- Any owner of 5% or more of the voting stock of a corporate bidder;
- All partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and
- All members of a limited liability company, unless insulated.

Bidders should note that the mass media attribution rules were recently revised. *See Report and Order* 64 FR 50622 (September 17, 1999).

31. In cases where a bidder's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant. *See Clarification of Commission Policies Regarding Spousal Attribution* 57 FR 8845 (March 13, 1992)

32. Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, a bidder claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in a bidder shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33% of the total asset value of the bidder, even if such an interest is non-voting.

33. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidders' other mass media interests in determining its eligibility for a New Entrant Bidding Credit. A medium of mass communications is defined in 47 CFR 73.5008 (b).

(b) Application Requirements

34. In addition to the ownership information required on Exhibit A, applicants are required to file supporting documentation on Exhibit C to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. In addition, in those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be set forth in Exhibit C. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify under penalty of perjury that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify under penalty of perjury that neither it nor any of its attributable interest holders have any attributable interests in more that three media of mass

communications, and must identify and describe such media of mass communications.

(c) Bidding Credits

35. Applicants that qualify for the New Entrant Bidding Credit, as set forth in 47 CFR 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008;
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008;
- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 CFR 73.5007, or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

36. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and note 2 of that section. Bidders should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

E. Other Information (Form 175 Exhibits D & E)

37. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit D) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so in Exhibit E-Miscellaneous Information—to the FCC Form 175.

F. Minor Modifications to Short-Form FCC Form 175 Applications

38. After the short-form filing deadline (February 18, 2000), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections or proposed service areas, change the certifying official or change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4–A760 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Jose Ochoa of the FCC Auctions and Industry Analysis Division at (202) 418–0660.

G. Maintaining Current Information in Short-Form (FCC Form 175) Applications

39. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application. Applicants should also be aware that failure to report ownership changes rendering them ineligible to participate in the auction under section 309(l)(2) and applicable Commission rules, even if that failure is inadvertent, could result in serious financial penalties if they participate in competitive bidding and win a construction permit. These include default payments and revocation of construction permit(s) or license(s). § 1.65 amendments to pending long-form applications, however, should be filed after the auction and only by the winning bidder. The time for the filing of such amendments to the auction winners' long form applications will be announced by subsequent Public Notice.

H. Pre-Auction Procedures

(i) Short-Form Application (FCC Form 175)—Due February 18, 2000, 5:30 p.m. ET

40. In order to be eligible to bid in this auction, applicants must first electronically submit a FCC Form 175 application. This application must be received at the Commission by 5:30 p.m. ET on February 18, 2000. Late applications will not be accepted.

41. There is no application fee required when filing a FCC Form 175. However, to purchase bidding eligibility, an applicant must submit an upfront payment. *See* section 3.C, *infra*.

(a) Electronic Filing

42. As of January 1, 1999, applications to participate in FCC auctions must be filed electronically. *See Part 1 Third Report and Order* 63 FR 770 (January 7, 1998). For Auction No. 28, applicants may file applications electronically beginning February 3, 2000. The system will generally be open for filing on a 24-hour basis. The Form 175 filing window will remain open until 5:30 p.m. ET on February 18, 2000. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on February 18, 2000. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service are 8 a.m.—6 p.m. ET, Monday—Friday. Information about the electronic filing of the FCC Form 175 application is included as Attachment D to this Public Notice.

(b) Completion of the FCC Form 175

43. Applicants should carefully review 47 CFR 1.2105 and 73.5002 and must complete all items on the FCC Form 175. Applicants should not consider their form submitted to the FCC until they press the "Submit Form 175" button on the "Submit" page and receive confirmation from the filing system that the form has been received by the Commission. Instructions for completing the FCC Form 175 are on Attachment B of this Public Notice.

(c) Electronic Review of FCC Form 175

44. The FCC Form 175, review software may be used to review and print applicants' FCC Form 175 applications. Applicants may review their own completed FCC Form 175. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice

explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There are no fees for accessing this system or for submitting a FCC Form 175. Instructions for reviewing the FCC Form 175 are provided on Attachment D to this Public Notice.

(ii) Application Processing and Minor Corrections

45. After the deadline for filing FCC Form 175 applications has passed, the FCC will process all timely submitted short-form applications to determine which are acceptable for filing and which are mutually exclusive. The Commission will subsequently issue a public notice identifying: (i) Those short-form applications that are acceptable for filing and are mutually exclusive (including FCC file numbers and the construction permits for which they applied); (ii) those applications rejected; and (iii) those short-form applications that have minor defects that may be corrected, and the deadline for filing such corrected applications. In each MX Group, the construction permit(s) will be auctioned if two or more short-form applications are accepted for filing. In any MX Group for which only one short-form application is accepted for filing, the construction permit will be removed from the auction and the related long-form application (FCC Forms 301 and 349) will be processed, and, if acceptable, will be granted.

(iii) Upfront Payments—Due March 6, 2000

46. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by a FCC Remittance Advice Form (FCC Form 159). Applicants will have access to filling out an electronic version of the FCC Form 159 (July 1997 version) after completing the electronic FCC Form 175; however, the FCC Remittance Advice Form (FCC Form 159) must be printed and submitted by facsimile transmission to Mellon Bank in accordance with the instructions herein. Earlier versions of this form will not be accepted. All upfront payments must be received at Mellon Bank in Pittsburgh, Pennsylvania, by 6:00 p.m. ET on March 6, 2000.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 28 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the March 6, 2000 deadline will result in no bidding eligibility being accorded the applicant.

(a) Making Auction Payments by Wire Transfer

47. Wire transfer payments must be received by 6 p.m. ET on March 6, 2000. To avoid untimely payments, applicants should discuss arrangements (including bank-closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. As the Commission is not accountable for the acts of an applicant's bank, bidders are urged to confirm before the deadline that their wire transfer payments have been properly and timely transmitted by their bank to Mellon Bank. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/ACC 910–0198
OBI Field: (Skip one space between each information item)
"AUCTION PAY"
TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter "A28U")
FCC CODE 1 (same as FCC Form 159, block 23A: "28")
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO 358410

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

48. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 28." Bidders are strongly encouraged to confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

(b) FCC Form 159

49. A completed FCC Remittance Advice Form (FCC Form 159) must accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in this Public Notice as Attachment C.

(c) Amount of Upfront Payment

50. In the *Broadcast First Report and Order*, the Commission delegated to the Bureaus the authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned. *See Order, Memorandum Opinion and Order and Notice of Proposed Rule Making* 62 FR 13540 (March 21, 1997). In the *Comment Public Notice*, the Bureaus proposed certain upfront payments as set forth on Attachment A. No comments were received concerning such upfront payments. We therefore adopt our proposed upfront payment amounts for Auction No. 28.

51. In calculating the upfront payment amount, an applicant should determine the maximum number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

Note: An applicant potentially eligible to bid in more than one MX Group may, on its FCC Form 175, indicate an intent to bid on every construction permit for which an underlying long-form has been filed, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

I. Auction Registration

52. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for Auction No. 28. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which their application was accepted.

53. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

54. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Thursday, March 16, 2000 should contact the Auctions Hotline at (888) 225–5322

(888–CALL–FCC) (press option #2 at the prompt) or dial directly to (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

55. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing in person at the FCC Auction Headquarters located at 445—12th Street, SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Bidders needing replacement codes must call technical support at 202–414–1250 prior to arriving at the FCC.

J. Remote Electronic Bidding Software

56. Qualified bidders are strongly encouraged to bid electronically. Due to the fact that potential bidders have already paid substantial fees in connection with the filing of their long-form applications, the software packages required to participate in remote electronic bidding will be provided on request at no charge to the bidders in Auction No. 28. These software packages must be ordered by March 7, 2000. While bidders are free to copy the software for use by authorized bidders at different locations, the FCC auction system will accept electronic bids only from bidders who have requested the software. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 28.) A software order form is included as Attachment F to this Public Notice.

K. Mock Auction (March 17, 2000)

57. All qualified bidders will be eligible to participate in a mock auction on March 17, 2000. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by Public Notice.

L. Auction Event

58. The first round of the auction will begin on March 21, 2000. The initial round schedule will be announced in a Public Notice listing the qualified bidders to be released approximately 10 days before the start of the auction.

(i) Auction Structure

59. In the *Comment Public Notice*, the Commission proposed two separate auction designs to award these construction permits, one for the Daisy Chain MX Groups and one for the Direct MX Groups. The following auction designs will be utilized.

(a) Single Round Auction Design

60. For *Daisy Chain MX Groups*, we proposed a single round in which each bidder must place a bid that meets or exceeds the established reserve price, in whole dollar amounts. No comments were received concerning this proposed auction design.

61. We therefore conclude that utilizing an electronic single round auction will award the construction permits in Auction No. 28 that are in Daisy Chain MX Groups. The determination of the winning bidder in each of the Daisy Chain MX Groups shall be made by finding the set of bids on non-overlapping coverage areas that accrue to the greatest amount. For example, consider the case of an MX Group consisting of a "daisy chain" of three potential bidders (Bidders 1, 2 and 3) interested in three construction permits in the MX Group (respectively Construction Permits A, B and C) such that A is MX'ed with B and B is MX'ed with C. This means that either A and C can both be assigned or B can be assigned, but not A and B, B and C or A, B and C. In order for Bidder 2 to win construction permit B, its bid would have to exceed the combined bids of Bidders 1 and 3 on construction permits A and C, respectively. All bids will be time-stamped and in the case of tie bids, the first complete combination of bids placed first in time shall be considered the winning bid combination. We have concluded that the disposition of the permits for the Daisy Chain MX Groups in this manner is most appropriate because of the complexity of their overlapping nature.

(b) Simultaneous Multiple Round Auction Design

62. For *Direct MX Groups*, we proposed a single stage, simultaneous multiple round auction. No comments were received concerning this proposed auction design.

63. We therefore conclude that the construction permits in Auction No. 28 for the Direct MX Groups will be awarded through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on each of these construction permits in each round of this auction. This approach, we believe, allows for a more efficient auction process and, in cases where bidders are eligible to participate in multiple markets, allows them to take advantage of any synergies that exist among construction permits.

(c) Maximum Eligibility and Activity Rules

64. In the *Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. No comments were received concerning the eligibility rule.

65. We adopt the maximum eligibility proposal for Auction No. 28. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific construction permits, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid.

66. For *Direct MX Groups*, to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than waiting until the end to participate. Bidders are required to be active on 100 percent of their maximum eligibility during each round of the auction.

67. A bidder is considered active on a construction permit in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (*see* "Minimum Accepted Bids" in section 4.B. (3), *infra*). A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. Required minimum activity levels ensure that an auction will proceed expeditiously and efficiently. Because such procedures have proven successful in maintaining the pace of previous auctions, we adopt them for Auction No. 28.

68. For *Daisy Chain MX Groups*, because of the single round format, activity rules are not applicable.

(d) Activity Rule Waivers, Reducing Eligibility and Stopping Rules

69. For *Direct MX Groups*, in the *Comment Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the

course of the auction. We also proposed to employ a simultaneous stopping rule, meaning that all construction permits would remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals were received. We sought comment on a modified version of this rule, in which the auction would close for all construction permits after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any construction permit on which it is not the standing high bidder. We further proposed to retain the discretion to keep the auction open, even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. Finally, we proposed to reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"), meaning that the Bureaus would accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. No comments were received on this proposal.

70. Based upon our experience in previous auctions, we adopt our proposals and each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

71. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the "reduce eligibility" function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

72. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

73. Barring extraordinary circumstances, bidding will remain open on all construction permits until bidding stops on every construction permit. Thus, the auction will close for all construction permits when one round passes during which no bidder submits a new acceptable bid on any construction permit, applies a proactive waiver, or withdraws a previous high bid. In addition, however, the Bureaus retain the discretion to close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

74. The Bureaus retain the discretion however, to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

75. Further, in their discretion, the Bureaus reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity.

76. For *Daisy Chain MX Groups*, because of the single round format, activity rule waivers and reducing eligibility are not applicable. In the *Comment Public Notice*, we proposed to conduct a single round of bidding and declare the auction over at the conclusion of the two-hour bidding period. No comments were received on this issue.

(e) Auction Delay, Suspension, or Cancellation

77. In the *Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. We received no comments on this proposal.

78. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we will adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureaus may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

(ii) Bidding Procedures

(a) Round Structure

79. The initial bidding schedule will be announced in the Qualified Bidder Public Notice at least one week before the start of the auction, and will be included in the registration mailings.

80. For *Daisy Chain MX Groups*, a single two-hour bidding round will be conducted after which the auction will close.

81. For *Direct MX Groups*, the simultaneous multiple round formats will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the Qualified Bidder Public Notice.

82. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

(b) Reserve Price or Minimum Opening Bid

83. The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.*, because the applications are mutually exclusive), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureaus to seek comment on the use of minimum opening bids and/or reserve prices prior to the start of each broadcast auction. *See Part 1 Third Report and Order*, 63 FR 2315 (January 15, 1998). This is consistent with policy applied in earlier spectrum auctions, including the recently completed Closed Broadcast Auctions. The Commission has concluded that either or both of these mechanisms may be employed for auctions and has delegated the requisite authority to make determinations regarding the appropriateness of employing either or both.

84. The Bureaus proposed to establish reserve prices for the Daisy Chain MX Groups and minimum opening bids for Direct MX Groups. The Bureaus also sought comment on whether, consistent with the Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

85. A comment was received by Irene Rodriquez Diaz de McComas ("McComas") addressing the minimum opening bid for Channel 247A, Rio Grande, Puerto Rico, MX Group FM 1. McComas specifically objects to the minimum opening bid amount established for the Rio Grande construction permit in light of the potential conflict between the Channel 247A allotment at Rio Grande, Puerto Rico and a 100kw station operating on channel 247 in the British Virgin Islands, as noted in the *1990 Hearing Designation Order* setting the mutually exclusive Rio Grande applicants for comparative hearing. McComas contends that the uncertainty regarding interference forecloses a fair evaluation of the frequency. However, as discussed in the December 15, 1999 staff letter addressing the issue, the matter has since been resolved, and there remains neither a cloud over the Rio Grande allotment, nor a need for further Commission pronouncement on the matter.

86. Therefore, we adopt the reserve prices proposed for the construction permits in Daisy Chain MX Groups and reducible minimum opening bids proposed for construction permits in the Direct MX Groups as listed on Attachment A. Reducible minimum opening bids for the Direct MX Groups will allow the Bureaus flexibility to adjust the minimum opening bids if circumstances warrant. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction. During the course of the auction, the Bureaus will not entertain any bidder requests to reduce the reserve price or minimum opening bid on specific construction permits.

(c) Bidding

87. All bidding will take place either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 28.

88. A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) the construction permits applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those construction permits for which the bidder applied on its FCC Form 175.

89. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

90. *For both Daisy Chain MX Groups and Direct MX Groups*, a bidder may submit bids on any licenses for which it is eligible during a bidding round. Bidders also have the option of making multiple submissions and withdrawals in the bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round and the date- and time-stamp of that bid reflects the latest time the bid was submitted. For the Direct MX Groups only, a bidder may withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility.

91. For *Daisy Chain MX Groups*, the bid entry screen of the Automated Auction System software for the Auction No. 28 allows bidders to place a bid that is equal to or greater than the established reserve price in a whole dollar amount.

92. For *Direct MX Groups*, the bid entry screen of the Automated Auction System software for Auction No. 28 allows bidders to place multiple increment bids that will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for each construction permit.

93. To place a bid on a particular construction permit, the bidder must enter a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

Amount Bid = High Bid + (Bid Mult * Bid Increment)

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder

will enter "1" in the bid increment multiplier column and press submit.

94. For any construction permit on which the FCC is designated as the high bidder (*i.e.*, a construction permit that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists, and bidders should enter "1" in the Bid Mult field. Note that, in such cases, when the FCC is the designated high bidder any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

(d) High Bids

95. For *Direct MX Groups*, each bid will be date-and time-stamped when it is entered into the Auctions Automation System. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which the Commission, starting with the earliest bid receives bids. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date-and time-stamp than bids submitted later in a round.

96. For *Daisy Chain MX Groups*, the high bid will be determined as set forth herein in section 4.A.1 of this Public Notice.

(e) Bid Increments

97. For *Daisy Chain MX Groups*, because of the single round auction design, bid increments are not applicable.

98. For *Direct MX Groups*, in the *Comment Public Notice*, the Bureaus proposed to begin the bid level with established minimum opening bids and then apply a minimum bid increment of 10%, rounded to the nearest hundred dollars for high bids below $10,000.00 and rounded to the nearest thousand dollars for high bids of $10,000.00 or higher. No comments were received. We adopt the proposal contained in the *Comment Public Notice*.

99. The Bureaus retain the discretion to change the minimum bid increment if they determine those circumstances so dictate. For example, the Bureaus may raise the minimum bid increment towards the end of the auction to speed the pace at which bids reach their final values. The Bureaus will do so by announcement in the Automated Auction System. In addition, the Bureaus retain the discretion to implement a dollar floor for the bid increment to further facilitate a timely close of the auction.

100. Once there is a standing high bid on a construction permit, there will be a bid increment associated with that bid indicating the minimum amount by which the bid on that permit can be raised. For the Auction No. 28, we will use a flat, across-the-board increment of 10% to calculate minimum bid increments. The Bureaus retain the discretion to compute the minimum bid increment through other methodologies if it determines circumstances so dictate.

(f) Bid Removal and Bid Withdrawal

101. For *Daisy Chain MX Groups*, bidders have the option to remove any bids placed before the end of the bidding round. A bidder removing a bid is not subject to withdrawal payments. Bid withdrawals (*i.e.*, after the close of the single round), however, are not applicable to the single round auction.

(i) Procedures for Direct MX Groups.

102. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed. This procedure will enhance bidder flexibility and, we believe, may serve to expedite the course of the auction.

103. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109.

104. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various construction permits in combination, we conclude that, for Auction No. 28, adoption of a limit on their use to two rounds. By doing so, we believe we strike a reasonable compromise that will allow bidders to use withdrawals.

105. The Bureaus will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g), and 1.2109. Bidders are reminded that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a construction permit.

106. If a high bid is withdrawn, the construction permit will be offered in the next round at the second highest bid price, which may be less than, or equal to (in the case of tie bids), the amount of the withdrawn bid, without any bid increment. The FCC will serve as a "place holder" on the construction permit until a new acceptable bid is submitted on that permit.

(ii) Withdrawal Payment Calculations for Direct MX Groups.

107. Generally, a bidder that withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) The difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that construction permit. In the case of multiple withdrawals on a construction permit, the payment for the final withdrawer (*i.e.*, that bidder who is the last bidder to withdraw before the license is won in an auction) will be computed as described herein. The payment for all other withdrawers will be computed as the lower of: (i) Either the difference between the net withdrawn bid and the highest of the subsequent net withdrawn bids or the difference between the net withdrawn bid and the subsequent net winning bid, whichever is less; or (ii) either the difference between the gross withdrawn bid and the highest of the subsequent gross withdrawn bids or the difference between the gross withdrawn bid and the subsequent gross winning bid, whichever is less. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent gross or net winning bid or if any of the subsequent gross or net withdrawn bids exceed the gross or net amount of the withdrawn bid. In the event that a

construction permit for which there have been withdrawn bids is not won in the auction, then those bidders with outstanding withdrawals will have 3 percent of their withdrawn bid withheld until such time as the construction permit can be subject to competitive bidding in a subsequent auction and a final payment assigned. For further guidance, please refer to §§ 1.2104 and 1.2109 of the Commission's rules. We adopt the proposed procedures for bid removal and bid withdrawal.

(g) Round Results

108. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 28 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

109. For *Daisy Chain MX Groups,* the auction results will be published at the conclusion of the single bidding round. The FCC will compile reports, which will include a list of all bids placed and high bidders for the designated permits.

110. For *Direct MX Groups,* the bids placed during each bidding period are not published until the conclusion of that round. The FCC will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Instructions for accessing the Round Results will be included in the Qualified Bidder Public Notice.

(h) Auction Announcements

111. The FCC will use auction announcements to announce items such as schedule changes and round sequences and length. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet.

N. Post-Auction Procedures

(i) Down Payments and Withdrawn Bid Payments

112. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each permit, and listing withdrawn bid payments due, if any.

113. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part 4.B. (6), *supra.* (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

(ii) Default and Disqualification

114. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.,* fails to remit the required down payment within the prescribed period of time, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may offer the construction permit to the next highest bidder (in descending order) at their final bid, or offer the spectrum in a later auction. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing construction permits or licenses held by the applicant. *See* 47 CFR 1.2109(d).

(iii) Applicant's Wire Transfer Information for Purposes of Refunds

115. To ensure that refunds are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed herein be supplied to the FCC. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159. Refund processing generally takes up to two weeks to complete. Should the payor fail to submit the requested information, the refund will be returned automatically to the original payor by check after 45 days of the closing of the auction. The Commission will use wire transfers for all Auction No. 28 refunds, under the condition that we have received proper instructions by the designated date. Please fax wire transfer instructions to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Michelle Bennett or Gail Glasser at (202) 418–2843.

Please include the following information:

Applicant's Name & TIN #
Name and Address of Bank
ABA Number
Contact and Phone Number
Name of Account Holder
Address of Account Holder
Account Number to Credit
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicant's name, signature and date are required in order to process refund request. Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain an applicant's Taxpayer Identification Number (TIN) before it can disburse refunds.)

(iv) Partial Refund of Remaining Upfront Payment Balance

116. All applicants that submitted upfront payments but were not winning bidders for a construction permit in Auction No. 28 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

117. Direct MX Group bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions and a Taxpayer Identification Number ("TIN") to: Federal Communications Commission, Auctions Accounting Branch, Attn: Michelle Bennett and Gail Glasser, 445 12th Street, SW, Room 1–A824, Washington, DC 20554

118. Bidders can also fax their request to the Auctions Accounting Branch at (202) 418–2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159. Refund processing generally takes up to two weeks to complete.

O. Contacts

119. The following is a list of FCC contacts:

Media Contact: Meribeth McCarrick at (202) 418–0654.

Wireless Telecommunications Bureau: Auctions and Industry Analysis Division: José Ochoa, Legal Branch or Ruby Hough, Auctions Operations Branch, at (202) 418–0660, or Kathy

Garland or Bob Reagle, Auctions Operations Branch, at (717) 338–2888.

Mass Media Bureau: Video Services Division: Shaun Maher at (202) 418–2324 Audio Services Division: Lisa Scanlan at (202) 418–2700

Office of Managing Director: Financial Operations: Michelle Bennett or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions & Industry Analysis Division.

[FR Doc. 00–6323 Filed 3–13–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Procedures for Monitoring Bank Protection Act Compliance."

DATES: Comments must be submitted on or before May 15, 2000.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to "Procedures for Monitoring Bank Protection Act Compliance." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

Title: Procedures for Monitoring Bank Protection Act Compliance.

OMB Number: 3064–0095.

Frequency of Response: Annually.

Affected Public: All financial institutions.

Estimated Number of Respondents: 5,800.

Estimated Time per Response: ½ hour.

Estimated Total Annual Burden: 2,900 hours.

General Description of Collection: The collection requires insured state nonmember banks to comply with the Bank Protection Act and to review bank security programs.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 8th day of March, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–6232 Filed 3–13–00; 8:45 am]

BILLING CODE 6714–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Notification of Changes in Insured Status."

DATES: Comments must be submitted on or before May 15, 2000.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to "Notification of Changes in Insured Status." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

Title: Notification of Changes in Insured Status.

OMB Number: 3064–0124.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions.

Estimated Number of Respondents: 943.

Estimated Time per Response: ¼ hour.

Estimated Total Annual Burden: 236 hours.

General Description of Collection: 12 U.S.C. 1818(q) requires an insured depository institution to provide the FDIC with a certification when it partially or completely assumes deposit liabilities from another insured depository institution.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 8th day of March, 2000.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–6233 Filed 3–13–00; 8:45 am]

BILLING CODE 6714–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:44 p.m. on Thursday, March 9, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than March 6, 2000, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW, Washington, DC.

Dated: March 10, 2000.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 00–6386 Filed 3–10–00; 2:07 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1320–DR]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1320–DR), dated February 28, 2000, and related determinations.

EFFECTIVE DATE: February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 28, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from severe storms and flooding on February 18, 2000, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint A. Scott Wells of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster:

Bath, Boyd, Carter, Fleming, Greenup, Lewis, Mason, Nicholas, Robertson, and Rowan Counties for Individual Assistance.

Boyd, Fleming, Greenup, Harrison, Lewis, Nicholas, and Rowan Counties for Public Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–6213 Filed 3–13–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1318–DR]

Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA–1318–DR), dated February 28, 2000, and related determinations.

EFFECTIVE DATE: March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 2000:

Newport News City for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F) under Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–6212 Filed 3–13–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket No. 0–NG–2353]

Notice of Opportunity To Submit Amici Curiae Briefs in a Negotiability Proceeding Pending Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of the opportunity to file briefs as amici curiae in a proceeding before the Federal Labor Relations Authority in which the Authority has been asked to reconsider how management's statutory rights to direct employees and to assign work should be interpreted in relation to proposals that establish the number of performance rating levels for individual job elements and summary ratings.

SUMMARY: The Federal Labor Relations Authority is providing an opportunity for all interested parties to file briefs as amici curiae on significant issues arising in a case pending before the Authority. The Authority is considering the case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (the Statute) and its regulations set forth at 5 CFR part 2424. The issue concerns how management's rights to direct employees and assign work under section 7106(a)(2)(A) and (B) of the Statute should be interpreted in relation to proposals that establish the number of performance rating levels for individual job elements and summary ratings.

DATES: Briefs submitted in response to this notice will be considered if received by mail or by personal or commercial delivery in the Authority's Office of Case Control by 5 p.m. on April 13, 2000. Placing submissions in the mail by this deadline will not be sufficient. Extensions of time to submit briefs will not be granted.

FORMAT: All briefs shall be captioned *"National Association of Government Employees, Local R3–10 and U.S. Department of Transportation, Federal Aviation Administration, Washington, D.C.*, Case No. NG–2353." Briefs must contain separate, numbered topic headings corresponding to the four questions at the end of this notice. Parties must submit an original and four copies of each amicus brief, on 8½ by 11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's regulations showing service of one copy of the brief on all counsel of record or other designated representatives. 5 CFR 2429.27(a) and (c). The designated representatives are:

George L. Reaves, Jr., Union Representative, National Association of Government Employees, 36 Wine Street, Hampton, VA 23669;

Ron Frampton, Agency Representative, Federal Aviation Administration, 800 Independence Ave., SW, AHR–12, Washington, DC 20591.

ADDRESSES: Mail or deliver briefs to Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW, Room 415, Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, (202) 482–6540.

SUPPLEMENTARY INFORMATION: The case presenting the issues on which amicus briefs are being solicited is before the Authority on a petition for review of negotiability issues filed by the National Association of Government Employees, Local R3–10 (NAGE/Union) under section 7105(a)(2)(E) of the Statute. The Union requests that the Authority reconsider its precedent that proposals that establish the number of rating levels for individual performance elements and for summary performance ratings violate management's rights to direct employees and assign work under section 7106(a)(2)(A) and (B) of the Statute and are outside the duty to bargain. To assist interested persons in responding, the Authority offers the following background on the case, summary of the relevant precedent, and questions on which amicus views are being sought.

A. Background

The negotiability dispute in this case arose in the context of the parties' negotiations for an initial collective bargaining agreement that would cover a unit of the Federal Aviation Administration's (FAA/Agency's) Air Traffic Assistants. The Agency and the Union executed a Memorandum of Understanding (MOU) which served as an interim supplement to FAA Order 3500.7 regarding its Performance Management System.

The Agency established a new Performance Planning and Recognition System that recognized two rating levels of performance for individual job elements and summary ratings. In response, the Union submitted two proposals that specified three rating levels for individual job elements and summary ratings consistent with the former system and the parties' MOU. The Union filed a petition for review of negotiability issues with the Authority after the Agency declared these proposals nonnegotiable.

During the parties' negotiations, Congress enacted two pieces of legislation that are relevant to the Agency's personnel management activities. First, in November 1995, Congress enacted the Department of Transportation and Related Agencies Appropriation Act of 1996, Pub. L. No. 104–50, Title III, section 347, 109 Stat. 460 (1995), as amended by Pub. L. 104–

122, 110 Stat. 876 (1996) (codified at 49 U.S.C. 106 note) (Transportation Act) which gave the FAA Administrator broad discretion to institute a new personnel management system for the FAA. Section 347(a) of the Transportation Act provides that—

> notwithstanding the provisions of title 5, United States Code, and other Federal personnel laws, the Administrator of the [FAA] shall develop and implement * * * a personnel management system for the [FAA]. * * *

Section 347(b), as amended, made the Statute applicable to the new personnel management system instituted by the FAA, providing, in pertinent part, that—

> [t]he provisions of title 5, United States Code, shall not apply to the new personnel management system developed and implemented pursuant to subsection (a), with the exception of * * * (3) chapter 71, relating to labor-management relations.

Second, in early October 1996, Congress enacted the Air Traffic Management System Performance Improvement Act of 1996, Pub. L. No. 104–264, Title II, 110 Stat. 3213 (1996) (Improvement Act) at about the time the Union filed its petition for review with the Authority. Section 253 of the Improvement Act amended 49 U.S.C. Chapter 401 by adding section 40122. New section 40122(a) addresses the FAA's bargaining responsibilities with respect to "developments" or "changes" to the new personnel management system. Section 40122(a) provides in pertinent part—

> (1) CONSULTATION AND NEGOTIATION. In developing and making changes to the personnel management system initially implemented by the Administrator of the [FAA] on April 1, 1996, the Administrator shall negotiate with the exclusive bargaining representatives of employees of the [FAA] certified under section 7111 of title 5 and consult with other employees of the [FAA].

B. Summary of Selected Cases

The parties' submissions in the case before the Authority reference and rely on a number of Authority decisions. Some of these decisions are summarized below. This is not intended as a complete description of Authority precedent in this area, and amici are encouraged to address any precedent deemed applicable.

In *National Treasury Employees Union and Department of the Treasury, Bureau of the Public Debt*, 3 FLRA 769 (1980) (*BPD*), *aff'd sub nom. NTEU* v. *FLRA*, 691 F.2d 553 (D.C. Cir. 1982) (*NTEU I*), the Authority held that management's rights to assign work and direct employees encompassed the identification of critical elements and the establishment of job requirements in performance standards for such elements. The Authority reasoned, in line with the then relevant Office of Personnel Management (OPM) regulations, that the establishment of critical elements and performance standards are "among the ways in which management supervises and determines the quality, quantity, and timeliness of work required of employees." Id. at 776.

In affirming *BPD*, the D.C. Circuit ruled that "the right to determine what work will be done, and by whom and when it will be done, is at the very core of successful management of the * * * public service operations of a federal agency[,]" and that this right is crucial to management achieving optimum productivity and effectiveness. *NTEU I*, 691 F.2d at 563.

In *NTEU and U.S. Nuclear Regulatory Commission*, 13 FLRA 325 (1983) (*NRC*), the Authority held that the right to assign work and to direct employees included the right to identify non-critical elements and to establish performance standards for all rating levels, which "management will use to encourage and reward successful performance as well as to discourage performance which is unacceptable." *Id.* at 328.

Relying on *BPD*, *NRC* and *NTEU I*, the Authority, in *AFSCME, Council 26 and U.S. Department of Justice*, 13 FLRA 578 (1984) (*DOJ*), found that the number of performance levels for individual job elements and summary ratings were "essential aspects" of management's rights to assign work and to direct employees. *Id.* at 580. In doing so, the Authority relied upon the relationship of the number of levels to the setting of performance standards and to the establishment of rewards and sanctions for performance, which have been viewed as related to the identified management rights. The Authority noted that "[i]n short, the number of such levels is integrally related to the effectiveness of an agency's using performance standards to accomplish the work of the agency in a manner consistent with the exigencies of effective government." *Id.* at 581.

Relying on *DOJ*'s analytical framework, in *National Treasury Employees Union and Internal Revenue Service*, 14 FLRA 463 (1984) (*IRS*) (proposal 5)(Member Haughton dissenting), *vacated sub nom. NTEU* v. *FLRA*, 793 F.2d 371 (D.C. Cir. 1986) (*NTEU II*), the Authority held that management's rights to assign work and direct employees involve establishing rewards and sanctions for employee performance, including the use of incentives for superior performance to "accomplish [the agency's] work in a manner consistent with the exigencies of effective government." *IRS*, 14 FLRA at 470.

The D.C. Circuit in *NTEU II* overruled the Authority, and held that the level of incentive pay for "work that has been "assigned" or "directed" does not come within the nonbargainable management rights to assign work and direct employees." *NTEU II*, 793 F.2d at 375. The court ruled that the terms "assign work" and "direct employees" represent precise, defined management activity and were not meant to be so expansive as to include whatever is useful for getting the agency's work done. The court concluded that the Authority's reasoning, that incentive pay affected management's rights since incentives affected the priorities for accomplishing the agency's work, demonstrated a familiar defect in statutory construction of improperly substituting the ends for the means. Then Judge Scalia suggested that if this approach were allowed, it would be difficult to imagine any proposal concerning terms and conditions of work that would remain within the duty to bargain. *See id.* at 374–75.

In *National Treasury Employees Union and Internal Revenue Service*, 27 FLRA 132 (1987), the Authority adopted the court's holding in *NTEU II*, that management rights do not encompass the right to determine rewards for performance, and has consistently applied it to proposals concerning incentive awards. *See, e.g., National Association of Government Employees, Local R1–144, Federal Union of Scientists and Engineers and U.S. Department of the Navy, Naval Underwater Systems Center, Newport, Rhode Island*, 38 FLRA 456 (1990) (*U.S. Navy*) *decision on remand as to other matters*, 43 FLRA 47 (1991). However, the Authority has not discussed or applied the court's rationale in *NTEU II* in cases involving the number of performance rating levels.

A. Questions on Which Briefs Are Solicited

The Authority directed the parties in the instant case to file briefs addressing the following questions:

1. Notwithstanding current precedent, does the specification of the number of performance rating levels affect management's rights to direct employees and assign work? If so, how and why? If not, how is the analysis of *DOJ* incorrect?

2. In *NTEU II*, the D.C. Circuit rejected the Authority's determination in *IRS* that proposals establishing a system of

rewards and sanctions for employee performance affected management's rights to direct employees and assign work under section 7106(a)(2)(A) and (B) of the Statute. What application, if any, does the court's rejection of this determination have on whether the specification of the number of rating levels affects management's rights to direct employees and assign work?

3. In 1995, OPM deregulated performance management to give agencies greater flexibility. Is OPM's deregulation of performance management relevant to the determination of whether the specification of the number of rating levels affects management's rights to direct employees and assign work?

4. Under section 347(b) of the Transportation Act, the FAA's personnel management system is exempted from substantially all of title 5 of the U.S.C. and implementing regulations. Does this exemption prevent the Authority from addressing in this case the general question of whether the specification of the number of rating levels for individual performance elements and for summary performance ratings affects management's rights to direct employees and assign work under sections 7106(a)(2)(A) and (B) of the Statute?

As this matter is likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amicus briefs addressing these issues and any other relevant issues that amici want to address.

Dated: March 9, 2000.

For the Authority.

Peter Constantine,

Director of Case Control.

[FR Doc. 00–6211 Filed 3–13–00; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 28, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Angela Tinervia, Shelby Township, Michigan; to acquire voting shares of New Century Bancorp, Inc., Southfield, Michigan, and thereby indirectly acquire voting shares of New Century Bank, Southfield, Michigan.

Board of Governors of the Federal Reserve System, March 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6138 Filed 3–13–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 7, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. The Charles Schwab Corporation, Wilmington, Delaware; to become a bank holding company by acquiring U.S. Trust Corporation, New York, New York, and U.S.T.L.P.O. Corp., Wilmington, Delaware (a bank holding company with respect to U.S.T. Company of Texas, National Association, Dallas, Texas), and thereby indirectly acquire United States Trust Company of New York, New York, New York; U.S. Trust Company National Association, Los Angeles, California; U.S. Trust Company, Greenwich, Connecticut; U.S. Trust Company of New Jersey, Princeton, New Jersey; and U.S. Trust Company of Texas, National Association, Dallas, Texas.

In connection with this application, Applicant also has applied to acquire U.S. Trust Company of Florida Savings Bank, Palm Beach, Florida, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4)(ii) of Regulation Y; U.S. Trust Company of Delaware, Wilmington, Delaware, and U.S. Trust Company of North Carolina, Greensboro, North Carolina, and thereby engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y; and NCT Opportunities, Inc., Greensboro, North Carolina, and CTC Consulting, Inc., Portland, Oregon, and thereby engage in providing financial and investment advice, pursuant to § 225.28(b)(6) of Regulation Y.

In addition to the application, Applicant also has applied to retain voting shares of U.S. Trust Company of North Carolina, Greensboro, North Carolina, upon the nondepository trust company becoming a bank as defined by the Bank Holding Company Act, by accepting FDIC insured deposits and NCT Holdings, Inc., Greensboro, North Carolina, on becoming an intermediate bank holding company with respect to U.S. Trust Company of North Carolina. Applicant also has an option, subject to the terms of the stock option agreement, to exercise its option to purchase up to 19.9 percent of the outstanding common shares of U.S. Trust Corporation, New York, New York.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Anderson Bancshares, Inc., Hemingway, South Carolina; to merge with Anderson Brothers Bancshares,

Inc., Mullins, South Carolina, and thereby indirectly acquire Anderson Brothers Bank, Mullins, South Carolina.

C. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Futurus Financial Services, Inc., Roswell, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Futurus Bank, N.A. (in organization), Roswell, Georgia.

D. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Waumandee Bancshares, Ltd., Waumandee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Waumandee State Bank, Waumandee, Wisconsin.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Corpus Christi Bancshares, Inc., Corpus Christi, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The First State Bank, Bishop, Texas.

Board of Governors of the Federal Reserve System, March 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6136 Filed 3–13–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. SierraCities.com, Inc. (formerly known as First Sierra Financial, Inc.), Houston, Texas, and FSF of Delaware, Inc., Wilmington, Delaware, to retain all the voting shares of SierraCities Financial, Inc., First Sierra Receivables, Inc., First Sierra Receivables II, Inc., First Sierra Receivables III, Inc., First Sierra Receivables IV, Inc., all of Houston, Texas, and thereby engage in making, acquiring, brokering, or servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; and leasing personal or real property or acting as agent, broker, or adviser in leasing such property, pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, March 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6137 Filed 3–13–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 961 0050]

McCormick & Company Incorporated; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 7, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Willard Tom, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2786.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, have been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 8, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments on views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order from McCormick & Company, Incorporated ("McCormick"), the world's largest spice company, that is designed to resolve claims, set forth in the accompanying Complaint, that McCormick discriminated in the pricing of its products to certain competing supermarket purchasers in violation of Section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. 13(a). The Consent Order requires McCormick to refrain from unlawfully discriminating in the prices at which it sells its products to competing purchasers in the

supermarket channel. In addition, in those instances in which McCormick believes that its pricing is lawful because its prices were offered to meet competition from a competing supplier, the Consent Order requires McCormick, for a period of ten years, to contemporaneously document the information on which it bases its entitlement to the statutory meeting competition" defense.

The proposed Consent has been placed on the public record for 30 days so that the Commission may receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

McCormick's Business. McCormick, with its principal office and place of business in Sparks, Maryland, has been engaged for many years in the production, distribution and sale of spice and seasoning products for resale. Its products sold through supermarkets include core and gourmet spice lines, dry seasoning mixes, and so-called "competitive seasonings" such as meat tenderizers, monosodium glutamate (MSG), and garlic and other spice blends. Respondent sells these products under the brand names McCormick, Schilling, Fifth Seasons, Spice Classics, Select Seasons, Mojave, Spice Trend, Royal Trading, Crescent, McCormick Schilling, La Cochina De McCormick, McCormick Collection and Old Bay, among others. With 1998 retail sales of $623.7 million in the Americas, McCormick is the largest supplier of spice and seasoning products in the United States, and claims to be "the world's largest spice company."

Among those firms that supply core or gourmet spice lines for sale in supermarkets in the United States, McCormick is by far the leading firm, accounting for the majority of such sales nationally. Since the early 1990's, McCormick has faced competition in such sales from only one other national firm, Burns Philp Food Incorporated, and several much smaller independent regional or local firms. These circumstances, combined with the superior brand recognition of McCormick products, mean that supermarkets that purchase McCormick products have relatively few alternative sources for equivalent products from other suppliers at comparable prices and terms.

McCormick's Pricing. During the period pertinent to the Complaint, McCormick had a single national price list for its products sold to direct customers, whether retail supermarkets or wholesalers reselling to independent supermarkets. McCormick modified this price list from time to time, to reflect changes in McCormick's costs to manufacture particular products, among other reasons. However, relatively few McCormick customers paid the list price. Instead, McCormick commonly entered into written or unwritten supply agreements with customers that provided substantial discounts off the list prices. These discounts took a variety of forms, including cash payments at the commencement of the supply agreement, free goods, off-invoice discounts, cash rebates, performance funds and other financial benefits that effectively reduced the net price of McCormick's products. Typically, McCormick individually negotiated with particular customers the amount of discounts and payments; the aggregate percentage of discounts and benefits provided to a particular customer was commonly known as the "allowance offer" or the "deal rate." McCormick's aggregate discounts and financial benefits to some customers were substantially greater than to some other competing customers.

Frequently the McCormick discounts included up-front cash payments that resembled the payments sometimes called "slotting allowances" in the supermarket industry. However, the McCormick discounts and payments typically were for all or a substantial part of the existing McCormick product line and typically were not incentives to accept new McCormick products. McCormick's supply agreements with customers commonly include provisions that, as is sometimes seen with slotting allowances, restrict supermarket customers' ability to deal in the products of competing spice suppliers. Such provisions commonly require that the customer allocate to McCormick the large majority (as much as 90%) of the shelf space devoted to spice products.

Price Discrimination. The complaint alleges that in the period from at least 1994 to the present, McCormick has on no fewer than five instances discriminated in price by providing different deal rates consisting of preferential up-front "slotting"-type payments or allowances, discounts, rebates, deductions, free goods, or other financial benefits. Through such discriminatory terms of sale, McCormick sold its products to the favored purchasers at a lower net price than to the disfavored purchasers, in violation of section 2(a) of the Robinson–Patman Act amendments to the Clayton Act, 15 U.S.C. 13(a).

The Complaint alleges that, in each instance of discrimination, McCormick made contemporaneous sales of McCormick products of like grade and quality to a favored and a disfavored purchaser; the disfavored purchaser competed with the favored purchaser which resold respondent's products at the same level of distribution; and at least one of the discriminatory sales by McCormick involved commodities that crossed state lines. The Complaint also alleges that each of the spice and seasoning products that make up McCormick's product line is a commodity within the meaning of the statute.

The Complaint alleges that McCormick's price discrimination threatened injury at the "secondary line" level of competition, that is, at the level of the favored and disfavored purchasers. It alleges that each instance of discrimination involved a substantial price difference over a substantial period of time between competing purchasers in markets where profit margins are low and competition is keen. These circumstances give rise to an inference of competitive harm within the meaning of the statute, pursuant to the reasoning of the Supreme Court in *Federal Trade Commission* v. *Morton Salt Co.*, 334 U.S. 37, 50–51 (1948), and subsequent cases. While that inference may not be sufficient by itself in some circumstances to warrant bringing a case, in this instance the inference is strengthened by McCormick's position as the largest supplier of spice and seasoning products in the United States and by the fact that McCormick typically demanded that customers allocate to McCormick the large majority of the space devoted to spice products—in some cases 90% of all shelf space devoted to packaged spices, herbs, seasonings and flavorings of the kinds offered by McCormick. As alleged in the Complaint, disfavored purchasers consequently had few, if any, alternative sources from which to purchase comparable goods at prices and terms equivalent to those which McCormick provided to the favored purchasers.

The Complaint also alleges that the favorable prices and terms McCormick provided to the favored purchasers were not justified by good faith attempts to meet the equally low price of a competitor; nor were the favorable prices justified by cost savings associated with doing business with the

favored retailer. The instances of price discrimination were therefore not within the scope of either the statutory "meeting competition" or "cost justification" defenses established by sections 2(a) and (b) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. 13(a) and (b).

The Order Provisions. The Consent Order provides relief for the violations alleged in the Complaint. The Order applies to McCormick's sale of products, broadly defined to include spices, seasonings and other products used to season or flavor foods, packaged for sale to consumers. The Consent Order does not apply to products packaged for sale to food service or industrial customers, which are beyond the scope of the conduct at issue in the Complaint. Order, ¶ I.B. The Order applies to McCormick's sales to persons or entities that purchase McCormick products for resale. Order, ¶ I.C.

The principal relief is contained in Paragraph II of the Consent Order, which requires that McCormick cease and desist from price-discriminating, within the meaning of section 2(a) of the Robinson-Patman Act, by selling its products to any purchaser at a net price higher than that charged to any competing purchaser, where the discrimination may cause competitive harm as contemplated by the statutory language. "Net Price" is defined as the list price of McCormick Products less advances, allowances, discounts, rebates, deductions, free goods and other financial benefits provided by McCormick and related to such products. Order, ¶ I.D.

The inclusion of competitive harm language in Paragraph II ensures that the remedy established by the Consent Order is not over-broad and does not enjoin instances of price discrimination otherwise lawful under the statute. This paragraph also includes a proviso that makes applicable under the Order the statutory defenses set forth in sections 2(a) and (b) of the Robinson-Patman act, thus accomplishing explicitly what otherwise would be implicit pursuant to the Supreme Court's decision in *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470, 475–478 (1952).

As further relief, Paragraph III orders that for each instance in which McCormick wishes to avail itself of the "meeting competition" defense of section 2(b) of the Robinson Patman Act,[1] McCormick is required to contemporaneously document all information on which it bases its entitlement to the defense, and to retain such documentation in its files for five years after the lower price made to meet competition is no longer effective. This provision is "fencing-in" relief[2] that should ensure the existence of a reliable evidentiary basis in future instances where McCormick invokes the defense.

In addition to these principal relief provisions, the Consent Order requires that McCormick distribute a copy of the Order to all officers, employees, brokers, and agents of its operating divisions involved in the sale of products covered by the order, and in the future to new employees, brokers, and agents. Order, ¶ IV. McCormick is required to inform the Commission of corporate changes that may affect its compliance obligations under the Order (Order, ¶ V), and to file reports concerning its compliance under the Order (*id.*, ¶ VI.) The term of the Order is twenty years (*id.*, ¶ VII); the obligations under ¶ III to document the "meeting competition" defense and under ¶ VI to file annual compliance reports extend for ten and five years, respectively.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony and Mozelle W. Thompson

The Analysis to Aid Public Comment fully describes the Commission action in this matter. Some comments by our dissenting colleagues, however, require a brief response.

The Commission has accepted for public comment a consent order from McCormick & Company Inc. ("McCormick") in which the company has agreed to cease and desist granting discounts (partly in the form of up-front shelf-allocation payments) to large chains without making comparable payments available to other chains and independents that compete with the favored chains. Under the Supreme Court's controlling decision in *FTC* v. *Morton Salt Co.*,[1] injury to competition at the retailer (i.e., "secondary") level can be inferred where substantial and durable price discrimination exists between competing purchasers who operate in a market with low profit margins and keen competition.

McCormick is far and away the largest manufacturer and supplier of full lines of spices to grocery stores in the United States. In the early 1990s, it found itself in a price war with Burns-Philp Food Inc. ("Burns-Philp"), it only full-line competitor. Substantial discriminatory discounts were granted to favored chains, often accounting for many individual stores, and not to competing retailers.

In examining McCormick's discounts, the Commission did not simply apply the Morton Salt presumption in finding injury to competition, but examined other factors, including the market power of McCormick and the fact that discounts to favored chains were conditioned on an agreement to devote all or a substantial portion of shelf space to the McCormick line of products. Our dissenting colleagues applaud the fact that the Commission is willing to examine injury to competition by looking at factors beyond those narrowly described in the Morton Salt approach, but conclude that those factors do not justify a secondary-line price discrimination case here. We do not find their arguments persuasive.

1. The dissenting Commissioners observe that the discriminatory discounts were granted in the midst of, and possibly because of, a price war. But the Robinson-Patman Act limits on discriminatory pricing—including the rule that a seller can meet but not exceed prices offered by a competitor[2]—are not suspended during price wars.

2. Our colleagues suggest that this is a primary-line case (i.e., injury at the producer level) masquerading as a secondary line (injury at the retailer level) enforcement action. But that kind of distinction between primary-line and secondary-line anti-competitive effects is unduly rigid and mechanical—particularly in light of the facts of this matter. It is true that part of the injury at the secondary level occurred because McCormick's behavior injured its only full-line competitor. But that is just one part of the secondary-line case. The fact remains that favored chain store buyers received from a dominant seller substantially better discounts than disfavored buyers, and they were injured, and competition at the secondary line was injured, as a result. Moreover, with Burns-Philp out of the picture as an aggressive competitor,

[1] Section 2(b) of the Robinson-Patman Act permits a seller to rebut a prima-facie case of price discrimination by showing that his lower price "was made in good faith to meet an equally low price of a competitor." 15 U.S.C. 13(b).

[2] *See Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 419, 430 (1957).

[1] 334 U.S. 37 (1948) (Morton Salt).

[2] See *Falls City Indus.* v. *Vanco Beverage, Inc.*, 460 U.S. 428, 446 (1983) ("a seller's response must be defensive, in the sense that the lower price must be calculated and offered in good faith to 'meet not beat' the competitor's low price.")

chain stores and other retailers at the secondary level will be denied benefits of future competition.

3. The Commission was influenced in the decision to enforce the Robinson-Patman Act here because McCormick is a dominant seller. Our colleagues' conclusion—that market dominance by the discriminating seller should be irrelevant to secondary-line price discrimination—flies in the face of commentary by leading scholars such as Herbert Hovenkamp suggesting that the dominance of the seller is exactly the factor that should be examined in the exercise of prosecutorial discretion. [3]

The essential feature of Commission action here should not be lost in a quarrel over particular facts. As the Analysis to Aid Public Comment points out, there will be circumstances in which the Morton Salt presumption is appropriate and dispositive. There may be other market settings in which it makes sense for the Commission, as a matter of prosecutorial discretion, or the Commission and Courts, in the process of considering whether there has been a violation, to look past the Morton Salt factors to a broader range of market conditions to determine whether there has been real injury to competition. Taking those additional factors into account, the majority concluded that there was injury not just to the disfavored buyers, but to secondary-line competition generally.

Dissenting Statement of Commissioners Orson Swindle and Thomas B. Leary

We respectfully dissent from the Commission's decision to accept a consent agreement with McCormick & Company, Inc. ("McCormick") to resolve allegations that the company violated the Robinson-Patman Act. We recognize that the majority sincerely believes that this case will clarify a controversial statute and property circumscribe its application. We are concerned, however, that this case will have precisely the opposite effect.

McCormick is the largest American supplier of species to grocery stores, with more than 2,000 contracts [1] that account for a majority of spice sales in the United States. (Complaint ¶–1A5). During the past decade, McCormick's main competitor has been Burns Philp Food Incorporated ("Burns Philp"). In the early 1990s, Burns Philp commenced a price war in which both it and McCormick offered increased discounts and other payments to try to win the business of grocery stores.[2] When the price war ended, McCormick remained the dominant spice supplier in the United States, and Burns Philp's ability to compete may have been impaired.[3]

A supplier may violate section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. 13(a), if it engages in price discrimination that causes so-called "primary-line" injury. Primary-line injury under the statute occurs when a difference in price causes harm to competition between suppliers. A case predicated on primary-line injury to Burns Philp or other suppliers of spices would require proof that the discriminatory prices that McCormick charged grocery stores were below cost and that McCormick had a reasonable prospect of recouping its losses. See *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp*, 509 U.S. 209 (1993). In other words, primary-line injury to suppliers is actionable only when there is a threat of ultimate injury to buyers. The Commission's complaint does not allege that McCormick engaged in price discrimination that caused primary-line injury to suppliers such as Burns Philp.

Instead, after more than three years of investigation and the commitment of substantial resources, the majority of the Commission has alleged that McCormick engaged in price discrimination that caused "secondary-line" injury, *i.e.*, harm to competition between buyers. Specifically, out of McCormick's more than 2,000 contracts, the complaint alleges that in five instances McCormick charged higher prices to certain grocery stores than it charged to their competitors. (Complaint ¶ 12). The higher prices that the disfavored grocery stores paid McCormick for spices allegedly harmed their ability to compete against other grocery stores for customers. (Id. ¶ 19).

The majority statement conveys the impression that there was actual secondary-line injury in this case. But the Commission does not rely on direct evidence of secondary-line injury to the disfavored grocery stores. Rather, the Commission relies on the so-called "Morton Salt inference" of competitive harm. (Id. ¶ 17). for more than 50 years, courts have used the Morton Salt inference that "injury to competition is established prima facie by proof of a substantial price discrimination between competing purchasers over time." [4] In essence, the Morton Salt inference permits a court to infer injury to a disfavored purchaser from a persistent and substantial discriminatory price in a market where profit margins are low and competition is keen, and then to infer injury to competition from the injury to the disfavored purchaser.

We question whether the facts in this case support the application of the Morton Salt inference. The Robinson-Patman Act was primarily intended to prevent price discrimination in favor of large buyers at the expense of small buyers.[5] When a small buyers pay more than a large buyer for an item in an industry with low profit margins and keen competition, the Morton Salt inference may make sense. In such circumstances, it is reasonable to infer that the purchasing power of the large buyer will cause the price discrimination to be repeated across many items, with consequent competitive injury to the small buyer.

The complaint does not allege that the favored grocery stores were larger than the disfavored grocery stores [6] or that they purchased more spices from McCormick. Since the favored stores here were not necessarily purchasing larger quantities of spices than the disfavored stores, it is unlikely that McCormick granted lower prices to the favored grocery stores because of their buying power. In fact, the most plausible explanation for the lower prices granted in the five instances alleged in the complaint is that they were the almost fortuitous and incidental result of McCormick's responses during its price war with Burns Philp. If the favored stores were not accorded lower spice prices because

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[3] See, e.g., Herbert Hovenkamp, Market Power and Secondary-Line Differential Pricing, 71 Geo. L.J. 1157, 1170 (1983) ("Systematic, long-term price discrimination can be achieved only by a seller with market power. If the seller does not have market power, purchasers asked to pay the higher price will purchase from another seller willing to sell at a more competitive price.")

[1] See McCormick & Company, Inc., Press Release, McCormick Signs Settlement Agreement with the Federal Trade Commission at 2 (Feb. 3, 2000), (McCormick has "more than 2,200 customer contracts").

[2] Anthony Hughes, Burns Philp Was Inept, Says ASIC, The Age at 2 (Mar. 11, 1999).

[3] Id. "Inadequate financial reporting to the board of directors and its failure to question overstated valuations were largely behind the near-collapse of the food group Burns Philp & Co., a report by the Australian Securities and Investments Commission has found.").

[4] Falls City Indus., Inc. v. Vanco Beverage, Inc., 460 U.S. 428, 435 (1983) (citing Federal Trade Commission≤ v. Morton Salt Co., 334 U.S. 37, 46, 50–51 (1948)).

[5] In enacting the Robinson-Patman amendments, the Congress addressed the concern that large buyers could secure a competitive advantage over small buyers solely because of the large buyers' quantity purchasing ability. H.R. Rep. No. 2287, 74th Cong., 2d Sess. 7 (1936); S. Rep. No. 1502, 74th Cong., 2d Sess. 4–6 (1936).

[6] To the extent that the majority tries to suggest that the disfavored stores are "mom-and-pop" operations, in fact only one of the disfavored stores could be so characterized; the rest of the disfavored stores are all large or relatively large grocery store chains.

of their buying power, there is little reason to believe that the favored stores generally would receive lower prices from the suppliers of the thousands of products sold in the typical grocery store. It follows that it is unlikely that the ability of the disfavored grocery stores to compete with favored stores would be harmed—the underlying rationale for use of the Morton Salt inference.

The Analysis to Aid Public Comment emphasizes that the Commission is not relying on the Morton Salt inference by itself to support bringing a case. Analysis of Proposed Consent Order to Aid Public Comment at 4. The Analysis explains that the use of the Morton Salt inference in this case is particularly appropriate because McCormick is the largest supplier of spices in the United States and because the company typically demanded that grocery stores allocate to McCormick a large majority of the shelf space they devoted to spices. Id; see Complaint ¶¶ 6, 10, 18. Although we share the majority's apparent view that the public interest generally would be better served if the Commission did not bring Robinson-Patman cases based only on the Morton Salt inference, the majority has not identified additional facts that warranted bringing this case.

McCormick's alleged market power as a supplier and its alleged discriminatory prices may have harmed the ability of Burns Philp and other suppliers to compete with McCormick. But this does not make it any more plausible that McCormick's alleged discriminatory prices harmed the ability of the disfavored grocery stores to compete with the favored grocery stores. In the long run, if McCormick's pricing has harmed the ability of Burns Philp or other suppliers to compete, the loss of alternative suppliers would harm both the disfavored grocery stores and the favored grocery stores (once their present contracts with McCormick expire). A loss of alternative suppliers is a classic consequence of primary-line injury, but such a loss does not necessarily have a differential impact on buyers that will cause secondary-line injury—the relevant level of commerce in this case.[7]

We recognize that there has been much controversy over the years concerning the use of the Morton Salt inference and that the inference has not been uniformly applied.[8] Overall, the concern has been that the inference makes violations too easy to prove.[9] It is laudable that the majority has tried to limit the use of the Morton Salt inference. We do not believe, however, that evidence of supplier market power justifies bringing cases in which the Morton Salt inference is used as the basis to prove competitive harm among buyers.[10] Because the majority has no other basis on which to show secondary-line competitive injury in this case, we dissent.[11]

[FR Doc. 00–6231 Filed 3–13–00; 8:45 am]

BILLING CODE 6750–01–M

[7] We do not suggest that market power of the supplier is irrelevant in a Robinson-Patman Act case—in fact, it is likely to be present in all cases of economic price discrimination. However, supplier market power is not dispositive of whether secondary-line injury is likely to have occurred. Our agreement with the majority that McCormick is the dominant spice seller does not overcome the lack of proof of secondary-line injury in this case.

[8] See ABA Section of Antitrust Law, Antitrust Law Developments 450–51 (4th ed. 1997).

[9] See, *e.g.*, LaRue, Robinson-Patman Act in the Twenty-First Century: Will the Morton Salt Rule Be Retired?, 48 S.M.U.L. Rev. 1917 (1995).

[10] As noted above, McCormick's alleged discriminatory prices were offered during a price war with its main competitor. We assume without deciding that a "meeting competition" defense under the Robinson-Patman Act would not have insulated McCormick from liability.

[11] We do recognize that the proposed narrowly circumscribed order would be appropriate in a proper secondary-line case.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00C–0929]

Kraft Foods, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kraft Foods, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of sodium copper chlorophyllin to color citrus base dry beverage mixes.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 0C0270) has been filed by Kraft Foods, Inc., c/o Flamm Associates, 622 Beachland Blvd., Vero Beach, FL 32963. The petition proposes to amend the color additive regulations to provide for the safe use of sodium copper chlorophyllin to color citrus base dry beverage mixes.

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: February 29, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–6121 Filed 3–13–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93F–0331]

Hoechst Aktiengesellschaft; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) in announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 3B4397) proposing that the food additive regulations be amended to provide for the safe use of dioctadecyldisulfide as an antioxidant and/or stabilizer in propylene polymers and copolymers.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 15, 1993 (58 FR 53517), FDA announced that a food additive petition (FAP 3B4397) had been filed by Hoechst Aktiengesellschaft, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of dioctadecyldisulfide as an antioxidant and/or stabilizer in propylene polymers and copolymers. Hoechst Aktiengesellschaft has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: February 29, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–6118 Filed 3–13–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96G–0035]

Sankyo Co., Ltd.; Withdrawal of GRAS Affirmation Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 6G0420) proposing to affirm that the use of dextranase enzyme preparation derived from *Chaetomium gracile* is generally recognized as safe (GRAS) in cane and beet sugar processing.

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW.,Washington, DC 20204, 202–418–3077.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 14, 1996 (61 FR 5787), FDA announced that a petition (GRASP 6G0420) had been filed by Solvay Enzymes, Inc., c/o 1001 G St. NW., suite 500 West, Washington, DC 20001 (now, Sankyo Co., Ltd., No. 7–12, Ginza 2-chome, Chuo-ku, Tokyo 104–8113, Japan). This petition proposed that the use of dextranase enzyme preparation derived from *Chaetomium gracile* in cane and beet sugar processing be affirmed as GRAS. Sankyo has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 1, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–6120 Filed 3–13–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0046]

Quarterly List of Guidance Documents at the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing an update of all guidance documents issued and withdrawn since we compiled the annual comprehensive list of guidance documents that published on June 10, 1999. FDA committed to publishing quarterly updates in its February 1997 "Good Guidance Practices" (GGP's) final rule, which set forth the agency's policies and procedures for developing, issuing, and using guidance documents. This list is intended to inform the public of the existence and availability of guidance documents issued since the annual comprehensive list was compiled.

DATES: General comments on this list and on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. For information on where to obtain single copies of guidance documents listed here, see the specific center's list of guidance documents.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice announcing its "Good Guidance Practices" (GGP's), which set forth our policies and procedures for developing, issuing, and using guidance documents. The agency adopted the GGP's to ensure public involvement in the development of guidance documents and to enhance public understanding of the availability, nature, and legal effect of our guidance documents.

As part of FDA's effort to ensure meaningful interaction with the public regarding guidance documents, we committed to publishing an annual comprehensive list of guidance documents and quarterly **Federal Register** notices that list all guidance documents that were issued and withdrawn during that quarter, including "Level 2" guidance documents. The following list of guidance documents represents all guidances that we issued or withdrew since we published the annual comprehensive list on June 10,1999 (64 FR 31228). The guidance documents are organized by the issuing center or office within FDA, and are further grouped by the intended users or relevant regulatory activities. Dates provided in the following list refer to the date of the guidance was issued or, where applicable, the last date the document was revised. We provided document numbers where available.

II. Guidance Documents Issued by the Center for Biologics Evaluation and Research (CBER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry: Monoclonal Antibodies Used as Reagents in Drug Manufacturing	May 1999	FDA Regulated Industry	Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 800–835–4709 or 301–827–1800, FAX Information System: 1–888–CBER–FAX (within U.S.) or 301–827–3844 (outside U.S. and local to Rockville, MD). Internet access: http://www.fda.gov/cber
Guidance for Industry: Container Closure Systems for Packaging Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Documentation	May 1999	Do	Do
Draft Guidance for Industry: Establishing Pregnancy Registries	June 1999	Do	Do
Draft Reviewer Guidance: Evaluation of Human Pregnancy Outcome Data	June 1999	Do	Do
Draft Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Prior Collections from donors with Repeatedly Reactive Screening Tests for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of donor Test Results for Antibody to HCV (Anti–HCV)	June 1999	Do	Do
ICH Guidance on the Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)	June 25, 1999	Do	Do
Draft Guidance for Industry: Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA)	July 1999	Do	Do
Draft Guidance for Industry: Interpreting Sameness of Monoclonal Antibody Products Under the Orphan Drug Regulations	July 1999	Do	Do
Draft Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics	August 1999	Do	Do
Guidance for Industry: Consumer-Directed Broadcast Advertisements	August 1999	Do	Do
Draft Guidance for Industry: Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act	August 1999	Do	Do
ICH Guidance on Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	August 18, 1999	Do	Do
Guidance for Industry: Possible Dioxin/PCB Contamination of Drug and Biological Products	August 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry: Submission of Abbreviated Reports and Synopses in Support of Marketing Applications	August 1999	Do	Do
Draft Guidance for Industry: Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors	September 1999	Do	Do
International Conference on Harmonisation Draft Guidance; Choice of Control Group in Clinical Trials	September 24, 1999	Do	Do
Guidance for Industry: Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act	September 1999	Do	Do
Draft Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors	November 1999	Do	Do
Guidance for Industry: Providing Regulatory Submissions to the Center for Biologics Evaluation and Research (CBER) in Electronic Format—Biologics Marketing Applications [Biologics License Application (BLA), Product License Application (PLA) / Establishment License Application (ELA) and New Drug Application (NDA)]—Revised	November 1999	Do	Do
Guidance for Industry: Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and New Variant Creutzfeldt-Jakob Disease (nvCJD) by Blood and Blood Products	November 1999	Do	Do
Guidance for Industry: In Vivo Drug Metabolism / Drug Interaction Studies—Study Design, Data Analysis and Recommendations for Dosing and Labeling	November 1999	Do	Do
Draft Guidance for Industry: Application of Current Statutory Authority to Nucleic Acid Testing of Pooled Plasma	November 1999	Do	Do
Draft Guidance for Industry: Pharmacokinetics in Patients With Impaired Hepatic Function: Study Design, Data Analysis and Impact on Dosing and Labeling	November 1999	Do	Do
Guidance for Industry: In the Manufacture and Clinical Evaluation of *In Vitro* Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Viruses Types 1 and 2	December 1999	Do	Do
Draft Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products from Xenotransplantation Product Recipients and Their Contacts	December 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry: Changes to an Approved Application: Biological Products: Human Blood and Blood Components Intended for Transfusion or for Further Manufacture	January 2000	Do	Do

III. Guidance Documents Issued by the Center for Device and Radiological Health (CDRH)

Name of Document	Date of Issuance	Group by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry and FDA Staff—Guidance on Medical Device Tracking (FDAMA) (Replaces: Guidance for Industry and FDA Staff—Guidance on Medical Device Tracking (FDAMA) 2/12/99)	January 24, 2000	Office of Compliance (OC)	Division of Small Manufacturers Assistance, 1–800–638–2041 or 301–827–0111 or (FAX) Facts-on-Demand at 1–800–899–0381 or Internet: http://www.fda.gov/cdrh
Guidance for FDA Staff—Civil Money Penalty Policy	June 8, 1999	Do	Do
Alternative to Certain Prescription Device Labeling Requirements	January 21, 2000	Do	Do
Guidance for Industry—Guidance on Information Disclosure by Manufacturers to Assemblers for Diagnostic X-ray Systems	October 18, 1999	OC/Division of Enforcement I (DOEI)	Do
Guidance on Electrosurgical Devices and the Application of the Performance Standard for Electrode Lead Wires and Patient Cables	November 15, 1999	Do	Do
Guidance for Industry—Draft Guidance on Quality System Regulation Information for Various Premarket Submissions	August 3, 1999	OC/Division of Enforcement II (DOE II)	Do
Guidance for FDA Staff—Regulating In Vitro Diagnostic Device (IVD) Studies	December 17, 1999	OC/Division of Bioresearch Monitoring (DBM)	Do
Guidance for Industry on the Likelihood of Facilities Inspections When Modifying Devices Subject to Premarket Approval	August 5, 1999	OC/Division of Program Operations (DPO)	Do
The FDA Export Reform and Enhancement Act of 1996/Export Certification Package including "Instructions for Requests for Certificate to Foreign Governments" (Replaces: The FDA Export Reform and Enhancement Act of 1996/Export Certification 10/1/96)	June 22, 1999	Do	Do
Draft Compliance Program Guidance Manual: Inspection of Medical Devices	August 12, 1999	Do	Do
Guidance for Off-the-Shelf Software Use in Medical Devices—Draft Guidance (Replaces: Guidance for Off-the-Shelf Software Use in Medical Devices—Draft Guidance August 17, 1998)	September 9, 1999	Office of Device Evaluation (ODE)	Do

Name of Document	Date of Issuance	Group by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry and FDA Reviewers on Evidence Models for the Least Burdensome Means to Market	September 1, 1999	DO	Do
Guidance on the Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing	December 21, 1999	ODE/Division of Clinical Laboratory Devices (DCLD)	Do
Guidance on Labeling for Laboratory Tests	June 24, 1999	DO	Do
Draft Guidance on Premarket Approval Applications for Assays Pertaining to Hepatitis C Viruses (HCV) that Are Indicated for Diagnosis or Monitoring of HCV Infection or Associated Disease	October 8, 1999	Do	Do
Guidance and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Sterilants/High Level Disinfectants (Replaces: Draft Guidance on the Content and Format of Premarket Notification (510(k)) Submission for Liquid Chemical Sterilants and High Level Disinfectants (12/18/97)	January 3, 2000	ODE/Division of Dental, Infection Control and General Hospital Devices (DDIGD)	Do
Reprocessing and Reuse of Single-Use Devices—Risk Categorization Scheme	December 9, 1999	Do	Do
Guidance for Conducting Stability Testing To Support An Expiration Date Labeling Claim for Medical Gloves	November 16, 1999	Do	Do
Guidance for Cardiovascular Intravascular Filter 510(k) Submission	November 26, 1999	ODE/Division of Cardiovascular, Respiratory & Neurological Devices (DCRND)	Do
Guidance for Industry and for FDA Reviewers: Recommended Clinical Study Design for Ventricular Tachycardia Ablation	May 7, 1999	Do	Do
Guidance Document for Vascular Prostheses 510(k) Submissions	November 26, 1999	Do	Do
Guidance for Annuloplasty Rings 510(k) Submissions	November 26, 1999	Do	Do
Guidance for Cardiovascular Intravascular Filter 510(k) Submissions	November 26, 1999	Do	Do
Guidance for Cardiopulmonary Bypass Oxygenators 510(k) Submissions	January 17, 2000	Do	Do
Guidance for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads and for Pacemaker Lead Adaptor 510(k) Submissions (Replaces: Implantable Pacemaker Lead Testing Guidance for the Submission of a Section 510(k) Notification September 1, 1989)	January 14, 2000	Do	Do
Guidance for Industry and/or for FDA Reviewers/Staff and/or Compliance—Guidance for Spinal System 510(k)s	May 7, 1999	ODE/Division of General & Restorative Devices (DGRD)	Do

Name of Document	Date of Issuance	Group by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry—Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater (Replaces: Guidance for Industry—Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater July 31, 1999)	August 30, 1999	Do	Do
Guidance for Industry—Guidance Document for Neurological Embolization Devices	August 13, 1999	Do	Do
Guidance for Industry—Guidance Document for Dura Substitute Devices	August 13, 1999	DO	Do
Guidance for Industry—Guidance on Preclinical and Clinical Data and Labeling for Breast Prostheses	October 5, 1999	Do	Do
Guidance for Industry, FDA Reviewers/Staff and Compliance—Guidance Document for Powered Muscle Stimulator 510(k)s	June 9, 1999	Do	Do
Guidance for Resorbable Adhesion Barrier Devices for Use in Abdominal and/or Pelvic Surgery	December 16, 1999	Do	Do
Intraocular Lens (IOL) Guidance Document; Draft (Replaces Intraocular Lens (IOL) Guidance Document Draft, September 10, 1997)	October 14, 1999	ODE/Division of Ophthalmic Devices (DOD)	Do
Guidance for Industry and for FDA Reviewers—Accountability for Clinical Studies for Ophthalmic Devices	August 4, 1999	Do	Do
Guidance for Industry and for FDA Reviewers/Staff—Guidance on 510(k) Submissions for Keratoprostheses	—	ODE/DOD	Do
Home Uterine Activity Monitors: Guidance for the Submission of 510(k) Premarket Notifications (Replaces: Premarket Testing Guidelines for Home Uterine Activity Monitors March 31, 1993)	July 30, 1999	ODE/Division of Reproductive, Abdominal, ENT & Radiological Devices (DRAERD)	Do
Guidance for the Submission of 510(k)s for Solid State X-ray Imaging Devices	August 6, 1999	Do	Do
Guidance for Industry: Electro-optical Sensors for the In Vivo Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE/PMA; Draft	August 25, 1999	Do	Do
Announcement for FOD: Guidance for Industry and FDA—Medical Glove Guidance Manual; Draft FDA 99–4257	August 12, 1999	Office of Health and Industry Programs (OHIP)/Division of Small Manufacturers Assistance (DSMA)	Do
Guidance for Industry—Device Use Safety: Incorporating Human Factors in Risk Management	August 3, 1999	OHIP/Division of Device User Programs and Systems Analysis (DUPSA)	Do
Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #2	January 14, 2000	OHIP/Division of Mammography Quality and Radiation Programs (DMQRP)	

Name of Document	Date of Issuance	Group by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3	December 8, 1999	Do	Do
Compliance Guidance—Mammography Facility Survey and Medical Physicist Qualification Requirements Under MQSA	May 5, 1999	Do	Do
Compliance Guidance—The Mammography Quality Standards Act Final Regulations—Preparing for MQSA Inspections (Replaces: Compliance Guidance—Preparing for MQSA Inspections 6/30/95)	May 5, 1999	Do	Do
Guidance for Request and Issuance of Interim Notice Letters for Mammography Facilities Under the mammography Quality Standards Act, 42 U.S.C. Section 263(b)	May 4, 1999	Do	Do
Addendum to the Instructions for Completing FDA Form 3500A with Coding Manual (MEDWATCH) (MDR)	June 9, 1999	Office of Surveillance and Biometrics (OSB)	Do
Guidance for Industry and FDA Reviewers: Guidance on Immunotoxicity Testing	May 6, 1999	Office of Science and Technology (OST)/ Division of Life Science (DLS)	Do
Guidance for Industry—CDRH Standard Operating Procedures for the Identification and Evaluation of Candidate Consensus Standard for Recognition	August 6, 1999	OST/ODE	Do
Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket (Replaces: Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket—No Date Available)	February 22, 1999	OSB/Division of Postmarket Surveillance (DPS)	Do

Withdrawals

Name of Document	Date of Issuance	Group by Intended User or Regulatory Activity	Date Withdrawn
Guidance on Premarket Notification 510(k) for Sterilizers Intended for Use in Health Care Facilities March 3, 1993	March 3, 1993	OC	June 29, 1999
Global Harmonization Task Force Study Group 3—Draft Process Validation Guidance	1998	Do	June 22, 1999
Guidance for Industry and FDA Staff—Guidance on Medical Device Tracking (FDAMA) (Replaced by: Guidance for Industry and FDA Staff—Guidance on Medical Device Tracking (FDAMA) January 24, 2000)	February 12, 1999	Do	January 24, 2000
Regulatory Requirements for Medical Gloves—A Workshop Manual FDA Publication No 96.4257	September 1, 1996	OC/DOEII	July 7, 1999

Withdrawals

Name of Document	Date of Issuance	Group by Intended User or Regulatory Activity	Date Withdrawn
The FDA Export Reform and Enhancement Act of 1996/Export Certification	October 1, 1996	OC/DPO	September 29, 1999
Guidance Document for Abbreviated 510(k) Submissions for In Vitro Diagnostic Calibrators	1998	ODE	June 29, 1999
Freedom of Information/510(K) Process Changes	May 15, 1997	Do	May 26, 1999
Guidance for Off-the-Shelf Software Use in Medical Devices—Draft Guidance	August 17, 1998	Do	October 5, 1999
Reexamination of the Evaluation Process for Liquid Chemical Sterilants and High Level Disinfectants	May 19, 1997	Do	January 11, 2000
PMA Summaries of Safety and Effectiveness—Review by the Office of General Counsel (blue book memo #P85–1)	July 25, 1986	ODE/BlueBook	May 26, 1999
Guidance for the Submission of 510(k) Premarket Notifications for Cardiovascular Intravascular Filters—Version 1.0	February 11, 1997	ODE/DCRND	December 13, 1999
Guidance for Industry—Guidance For The Submission of Research and Marketing Applications for Permanent Pacemaker Leads	June 1, 1998	Do	October 18, 1999
Outline of Recommended Procedures for a Clinical Investigation of Endosseous Implants Under a 510(k)	1998	ODE/Division of Dental, Infection Control and General Hospital Devices (DDIGD)	May 5, 1999
Outline of Recommended Procedures for Animal Laboratory Studies of Endosseous Implants	1998	Do	May 5, 1999
510(k) Information Needed for Hydroxyapatite Coated Titanium Endosseous Implants	July 6, 1993	Do	Do
510(k) Information Needed for Ti-Powder Coated Titanium Endosseous Implants	July 13, 1993	Do	Do
510(k) Information Needed for Metallurgical Endosseous Implants	August 12, 1993	Do	Do
Guidance Document for the Preparation of Premarket Notifications [510(k)s] for Temporomandibular Joint Implants	January 23, 1995	Do	Do
Draft Guidance on the Content and Format of Premarket Notification (510(k)) Submission for Liquid Chemical Sterilants and High Level Disinfectants	December 18, 1997	Do	January 11, 2000
Draft Guideline for Reviewing Spinal Fixation Device Systems	January 9, 1997	ODE/DGRD	June 1, 1999
Guide for 510(k) Review of Processed Human Dura Mater	June 26, 1990	Do	August 9, 1999
Draft Guidance for Preparation of PMA Applications for Silicone Inflatable (Saline) Breast Prostheses	January 18, 1995	Do	August 16, 1999
Draft Guidance for Testing of Alternative Breast Prostheses (nonsilicone gel-filled)	September 1, 1994	Do	September 1, 1994

Withdrawals

Name of Document	Date of Issuance	Group by Intended User or Regulatory Activity	Date Withdrawn
Draft Guidance for Preparation of FDA Submissions of Silicone Gel-Filled Breast Prostheses	May 11, 1992	Do	August 16, 1999
Guidance for Industry—Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater	July 31, 1999	Do	September 7, 1999
Technological Reporting For Powered Muscle Stimulator 510(k) (EMS)	January 1, 1993	DO	June 29, 1999
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Powered Muscle Stimulators, and Ultrasound Diathermy and Muscle Stimulators	July 26, 1995	Do	June 29, 1999
Electrical Muscle Stimulator (EMS) Labeling Indications; Contraindications; Warnings; etc.	July 11, 1985	Do	June 29, 1999
Draft Intraocular Lens (IOL) Guidance Document	October 10, 1997	ODE/DOD	July 21, 1999
Guidance for the Content of Premarket Notifications for Metal Expandable Biliary Stents	February 5, 1998	ODE/DRAERD	June 29, 1999
In-vivo Devices for the Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE Draft Document	June 14, 1997	Do	May 26, 1999
Premarket Testing Guidelines for Home Uterine Activity Monitors	March 31, 1993	Do	June 2, 1999
Information for Manufacturers Seeking Marketing Clearance of Digital Mammography Systems	June 19, 1996	Do	June 29, 1999
Obtaining CDRH Guidance Documents	March 29, 1999	OHIP/DSMA	May 11, 1999
List of Current CDRH Addresses for Report Submission and Ordering of CDRH Forms	July 30, 1996	OHIP/DUPSA	October 20, 1999
Addendum to What a Mammography Facility Should do to Prepare for an MQSA Inspection	July 31, 1996	OHIP/DMQRP	May 12, 1999
Compliance Guidance—Preparing for MQSA Inspections	June 30, 1995	Do	May 13, 1999
Instructions for completing Semi-Annual Report, Form 3419 (MDR)	September 24, 1996	OSB	May 21, 1999
Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket	No date available	OSB/Division of Postmarket Surveillance (DPS)	January 7, 2000

IV. Guidance Documents Issued by the Center for Drug Evaluation and Research (CDER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
ANDAs: Blend Uniformity Analysis	August 26, 1999	Generic Drug Draft	Office of Training and Communication, Drug Information Branch, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md 20857, Internet: http://www.fda.gov/cder/guidance/index.htm
ANDAs: Impurities in Drug Substances	December 3, 1999	Generic Drug	Do
Applications Covered by Section 505(b)(2)	December 8, 1999	Procedural Draft	Do
Average, Population, and Individual Approaches to Establishing Bioequivalence	August 27, 1999	Biopharmaceutic Draft	Do
BA and BE Studies for Orally Administered Drug Products	August 27, 1999	Do	Do
Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action	June 2, 1999	Do	Do
Catheter-Related Bloodstream Infections - Developing Antimicrobial Drugs for Treatment	October 18, 99	Clinical Antimicrobial Draft	Do
Changes to an Approved NDA or ANDA	November 23, 1999	Chemistry	Do
Clinical Considerations for Accelerated and Traditional Approval of Antiretroviral Drugs Using Plasma HIV RNA Measurements	September 1, 1999	Clinical Medical Draft	Do
Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA)	July 15, 1999	Do	Do
Computerized Systems Used in Clinical Trials	May 10, 1999	Compliance	Do
Consumer-Directed Broadcast Advertisements	August 9, 1999	Advertising	Do
Disclosure of Materials Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Convened by the Center for Drug Evaluation and Research	November 30, 1999	Procedural	Do
Draft Guidance for Industry on Disclosing Information Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by CDER, Beginning January 1, 2000; Availability	December 22, 1999	Procedural Draft	Do
Drug Master Files for Bulk Antibiotic Drug Substances: Availability	November 29, 1999	Chemistry	Do
E10 - Choice of Control Group in Clinical Trials	September 24, 1999	ICH Draft - Efficacy	Do
Establishing Pregnancy Registries	June 4, 1999	Clinical Medical Draft	Do
Evaluation of Human Pregnancy Outcome Data	June 4, 1999	Do	Do
In Vivo Metabolism/Drug Interaction Studies - Study Design, Data Analysis, and Recommendations for Dosing and Labeling	November 24, 1999	Clinical Pharmacology	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
In Vivo Pharmacokinetics and Bioavailability Studies and In Vitro Dissolution Testing for Levothyroxine Sodium Tablets	June 10, 1999	Clinical Medical Draft	Do
Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act	August 17, 1999	Procedural Draft	Do
Labeling OTC Human Drug Products Using a Column Format	December 1, 1999	OTC Draft	Do
Levothyroxine Sodium	August 18, 1999	Clinical Medical Draft	Do
Major, Minor, Facsimile, and Telephone Amendments to Original Abbreviated New Drug Applications	August 11,1999	Generic Drug	Do
Monoclonal Antibodies Used as Reagents in Drug Manufacturing	June 24, 1999	Chemistry Draft	Do
Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products	June 2, 1999	Do	Do
Noncontraceptive Estrogen Class Labeling	September 27, 1999	Labeling Draft	Do
Pharmacokinetics in Patients With Impaired Hepatic Function: Study Design, Data Analysis, and Impact on Dosing and Labeling	December 7, 1999	Clinical Pharmacology	Do
Photosafety Testing	January 10, 2000	Pharmacology/Toxicology	Do
Possible Dioxin/PCB Contamination of Drug and Biological Products	August 23, 1999	Compliance	Do
Preparing Data for Electronic Submission in ANDAs	September 21, 1999	Generic Drug	Do
Q6B-Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	August 18, 1999	ICH-Quality	Do
Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act-Revised	October 1, 1999	Procedural	Do
S4A Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)	June 25, 1999	ICH-Safety	Do
Submission of Abbreviated Reports and Synopses in Support of Marketing Applications	September 13, 1999	Clinical Medical	Do
Submission of Documentation in Drug Applications for Container Closure Systems Used for the Packaging of Human Drugs and Biologics	July 7, 1999	Chemistry	Do

Withdrawals

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Alprazolam Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	November 27, 1992	Biopharmaceutic	July 8, 1999
Bumetanide Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Carbidopa and Levodopa Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	June 19, 1992	Do	Do
Cefaclor Capsules and Suspension In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do

Withdrawals			
Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Diflunisal Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Do
Diltiazem Hydrochloride Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Do
Flurbiprofen (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 8, 1995	Do	Do
Gemfibrozil Capsules or Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	June 16, 1992	Do	Do
Guanabenz Acetate Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Hydroxychloroquine Sulfate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 28, 1995	Do	Do
Indapamide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Ketoprofen (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	July 8, 1999
Leucovorin Calcium (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 4, 1988	Do	Do
Medroxyprogesterone Acetate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 17, 1987	Do	Do
Metoprolol Tartrate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1992	Do	Do
Nadolol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Do
Naproxen (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 8, 1995	Do	Do
Nortriptyline Hydrochloride (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1992	Do	Do
Pentoxifylline (extended-release tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 22, 1995	Do	Do
Pindolol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Piroxicam (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 15, 1999	Do	Do
Ranitidine Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Trazodone Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 30, 1988	Do	Do
Waiver Policy	March 29, 1993	Biopharmaceutic Draft	Do
Bioavailability Policies and Guidelines	N/A	Biopharmaceutic Draft	Do
SUPAC–IR: Immediate Release and Solid Oral Dosage Forms; Manufacturing Equipment Addendum	October 21, 1997	Chemistry Draft	February 26, 1999
Selegiline Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 22, 1995	Biopharmaceutic	December 27, 1999

V. Guidance Documents Issued by the Center for Food Safety and Applied Nutrition (CFSAN)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Antimicrobial Food Additives—Guidance	July 1999	Industry and Center for Food Safety and Applied Nutrition Staff	Mark Hepp, Ph.D., (HFS–215) OPA/CFSAN/FDA 200 C Street. S.W. Washington, DC 20204 202–418–3098 Internet: http://vm.cfsan.fda.gov/~dms/opa-antg.html
Guidance for Industry—Preparation of Premarket Notifications for Food Contact Substances—Chemistry Recommendations	Sept. 1999	Regulated Industry	Mitch Cheeseman, Ph.D., (HFS–215) OPA/CFSAN/FDA 200 C Street. S.W. Washington, DC 20204 202–418–3083 Internet: http://vm.cfsan.fda.gov/~dms/opa-pmnc.html
Guidance for Industry—Preparation of Premarket Notifications for Food Contact Substances—Toxicology Recommendations	Sept. 1999	Regulated Industry	Mitch Cheeseman, Ph.D., (HFS–215) OPA/CFSAN/FDA 200 C Street. S.W. Washington, DC 20204 202–418–3083 Internet: http://vm.cfsan.fda.gov/~dms/opa-pmnt.html

VI. Guidance Documents Issued by the Center for Veterinary Medicine (CVM)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry: Chemistry, Manufacturing and Controls Changes to an Approved NADA or ANADA: Draft Guidance	June 1999	Animal Drug Industry	Communications Staff (HFV–12), FDA/CVM, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755, FAX 301–594–1831 Internet: http://www.fda.gov/cvm
Draft Guidance for Industry: Good Clinical Practices	July 1999	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: General Recommendations: Draft Guidance	July 1999	Do	Do
Guidance for Industry: Stability Testing for Medicated Premixes Draft Guidance	July 1999	Do	Do
Guidance for Industry: Impurities in New Veterinary Drug Substances Draft Guidance	July 1999	Do	Do
Guidance for Industry: Impurities in New Veterinary Medical Products Draft Guidance	July 1999	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: Specific Recommendations for Bovines: Draft Guidance	July 1999	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: Specific Recommendations for Ovines: Draft Guidance	July 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry—Validation of Analytical Procedures: Definition and Terminology	July 1999	Do	Do
Guidance for Industry—Validation of Analytical Procedures: Methodology: Final Guidance	July 1999	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: Specific Recommendations for Caprines: Draft Guidance	July 1999	Do	Do
Guidance for Industry: Manufacture and Distribution of Unapproved Piperazine Products	August 1999	Do	Do
Guidance for Industry: Possible Dioxin/PCB Contamination of Drug and Biological Products	August 1999	Do	Do
Guidance for Industry—Consumer-Directed Broadcast Advertisements: Final Guidance	August 1999	Do	Do
Guidance for Industry: Stability Testing of New Veterinary Dosage Forms VICH GL4: Final Guidance	September 1999	Do	Do
Guidance for Industry: Stability Testing of New Veterinary Drug Substances and Medicinal Products VICH GL3: Final Guidance	September 1999	Do	Do
Guidance for Industry: Environmental Impact Assessments (EIA's) for Veterinary Medicinal Products (VMP's)—Phase I: Draft Guidance	September 1999	Do	Do
Guidance for Industry: Quality of Biotechnological Products in the Veterinary Field: Stability Testing of Biotechnological/ Biological Products VICH GL 17: Draft Guidance	September 1999	Do	Do
Guidance for Industry: Impurities: Residual Solvents VICH GL 18: Draft Guidance	September 1999	Do	Do
Guidance for Industry—Content and Format of Effectiveness and Target Animal Safety Technical Sections and Final Study Reports for Submission to the Division of Therapeutic Drugs for Non-Food Animals	September 1999	Do	Do
Guidance for Industry: Stability Testing: Photostability Testing of New Veterinary Drug Substances and Medicinal Products: Final Guidance	September 1999	Do	Do
Computerized Systems Used in Clinical Trials	October 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Dioxin in Anti-Caking Agents Used in Animal Feed and Feed Ingredients	October 1999	Do	Do
Guidance for Industry—Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals	December 1999	Do	Do

VII. Guidance Documents Issued by Office of Regulatory Affairs

Name of Document	Date of Issuance	Grouped by Intended User of Regulatory Activity	How to obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guide to Inspections of Quality Systems	August 1999	FDA Personnel	Division of Emergency and Investigational Operations (HFC–130), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5636 Internet: http://www.fda.gov/ora/inspect—ref/igs/qsit/QSITGUIDE.PDF
Import Alerts	Continuously	FDA Personnel	Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD Internet: http://www.fda.gov/ora/fiars/ora—import—alerts.html

Withdrawals	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Compliance Policy Guide (CPG), Chapter 3, Sec. 305.100, Accupuncture Devices and Accessories (CPG 7124.11) Revoked: December 23, 1999.		FDA Personnel	December 23, 1999

Dated: March 7, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–6117 Filed 3–13–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2249]

International Cooperation on Harmonisation of Technical Requirements for Approval of Veterinary Medicinal Products (VICH); Final Guidance on Stability Testing for Medicated Premixes (VICH GL8); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#91) entitled "Stability Testing for Medicated Premixes (VICH GL8)." This guidance document has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This final guidance document is an annex to the parent guidance VICH GL3 entitled "Stability Testing of New Veterinary Drug Substances and

Medicinal Products." This final guidance document is the annex and addresses the recommendations for stability testing of veterinary medicinal Type A medicated articles (referred to as medicated premix drug products in the final guidance) intended for submission for approval to the European Union, Japan, and the United States.

DATES: You may submit written comments at any time.

ADDRESSES: Copies of the final guidance document entitled "Stability Testing for Medicated Premixes (VICH GL8)" may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm/fda/mappgs/vich.html. Persons without Internet access may submit written requests for single copies of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

You may submit written comments at any time on the final guidance document to the Policy and Regulations Team (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding the VICH: Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail: sthompso@cvm.fda.gov, or Robert C. Livingston, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–5903, e-mail: rlivings@cvm.fda.gov.

Regarding the guidance document: William G. Marnane, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6966, e-mail: wmarnane@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically-based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary pharmaceutical products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Épizooties (OIE). During the initial phase of the VICH, an OIE representative chairs the VICH Steering Committee. The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the Committee on Veterinary Medicinal Products; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Conféderation Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Guidance on Stability Testing

In the **Federal Register** of July 22, 1999 (64 FR 39515), FDA published the draft guidance entitled "Stability Testing for Medicated Premixes (VICH GL8)," giving interested persons until August 23, 1999, to submit comments. After consideration of comments received the final draft guidance was submitted to the VICH Steering Committee. At a meeting held on November 16 through 19, 1999, the VICH Steering Committee endorsed the final draft guidance, VICH GL8, for industry.

VICH GL8 addresses the generation of acceptable stability information for submission in new animal drug applications (referred to as registration applications in the final guidance) for Type A medicated articles containing new molecular entities. This guidance will be implemented in May 2000.

This final guidance document represents the agency's current thinking on acceptable stability testing of Type A medicated articles. The document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternate approaches may be used if they satisfy the requirements of applicable statutes, regulations, or both.

III. Comments

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Dated: March 3, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–6119 Filed 3–13–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4567–N–01]

Notice of Proposed Information Collection: Comment Request; Customer Satisfaction Survey for Business Partners and Multiclass Program Participants

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 15, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Office of Policy, Planning and Risk Management, Department of Housing & Urban Development, 451—7th Street, SW, Room 6226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2772 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Customer Satisfaction Survey for Business Partners and Multiclass Program Participants.

OMB Control Number, if applicable:

Description of the need for the information and proposed use: The purpose of this information collection will be to evaluate existing Ginnie Mae services and programs. This request to conduct a Ginnie Mae Customer Satisfaction Survey is in response to Executive Order 12862 on setting customer driven standards. They survey will be used to evaluate what benefits would be needed to understand and satisfy Ginnie Mae customers, program participants, and business partners.

Agency form numbers, if applicable: Not applicable.

Members of affected public: For-profit business (mortgage industry trade associations, securities companies, accounting firms, law firms, service providers, etc.).

ESTIMATION OF THE TOTAL NUMBERS OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE

	Respondents	Frequency of response	Hours of response
Business Partners	50	15	750 minutes or 12.5 hours.
Multiclass Securities Program Participants	100	15	1500 minutes or 25 hours.

Status of the proposed information collection: This is a new collection of information from Ginnie Mae's Business Partners and Multiclass Program participants.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 1, 2000.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 00–6142 Filed 3–13–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–12]

Notice of Submission of Proposed Information Collection to OMB; Tenant Assessment Subsystem (TASS) Computer Matching Income Verification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 13, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice Also Lists the Following Information

Title of Proposal: Tenant Assessment Subsystem (TASS) computer matching income verification.

OMB Approval Number: 2507–XXXX.

Form Numbers: HUD–50073, HUD–50074.

Description of the Need for the Information and Its Proposed Use: Real Estate Assessment Center (REAC) has developed the Tenant Assessment Subsystem (TASS) to identify potential income discrepancies between income

reported tenants and that reported by POAs with Federal tax data provided by Internal Revenue Service and the Social Security Administration. The process of comparing these sources of income is referred to as computer matching income verification (CMIV). The information collection requested will assist REAC obtain accurate results.

Respondents: Business or Other-for-Profit, Non-for-Profit.

Frequency of Submission: Annually and three times per year on a quarterly basis.

Reporting Burden:

	Number of respondants	X	Frequency of response	X	Hours per response	=	Burden hours
Information collection	24,000		31		0.6		37,500

Total Estimated Burden Hours: 37,500.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 8, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–6143 Filed 3–13–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–10]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 14, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 2, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 00–5542 Filed 3–13–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE 023666–0

Applicant: Eric R. Britzke, Tennessee Technological University, Cookeville, Tennessee.

The applicant requests a permit to take (collect) the following endangered species throughout their entire ranges: Gray bat *(Myotis grisecens)*, Indiana bat *(Myotis sodalis)*, Ozark big-eared bat *(Corynhorhinus townsendii ingens)*, and the Virginia big-eared bat *(Corynhorhinus townsendii virginianus)*. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: March 8, 2000.

Stanley L. Smith,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 00–6153 Filed 3–13–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Decision and Availability of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: Between March 11, 1999 and February 11, 2000, Region 1 of the Fish and Wildlife Service issued 14 permits for incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. Of the 14 permits issued, 3 are associated with implementation of a Habitat Conservation Plan for the Delhi Sands Flower-loving Fly, in the City of Rialto, California, and one was for the City of Laguna Woods, California, in association with the Orange County Central/Coastal Natural Community Conservation Plan (Central/Coastal Plan). We also transferred two previously issued permits due to changes in land ownership. One transfer was associated with the Central/Coastal Plan and one was associated with The Bluffs Habitat Conservation Plan.

In addition, on March 1, 1999, we issued a permit to the Pacific Lumber Corporation. This permit notice was inadvertently left out of our last Notice on the issuance of permits for incidental take of threatened and endangered species.

Copies of the 14 permits, 2 transferred permits, and associated decision documents are available upon request.

ADDRESSES: If you would like copies of any of the above documents, please contact the Fish and Wildlife Service Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, telephone (800) 582–3421; or the Fish and Wildlife Service, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, 4th Floor East, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Heather Hollis, Fish and Wildlife Biologist, at the above Portland, Oregon address; telephone (503) 231–6241.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act and Federal regulation prohibit the take of wildlife species listed as endangered or threatened, respectively. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to authorize take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

Between March 11, 1999, and February 11, 2000, Region 1 of the Service issued the following permits for incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Act. Each permit was issued after the following determinations were made: the application had been submitted in good faith; all permit issuance criteria were met, including the requirement that granting the permit will not jeopardize the continued existence of the species; and the permit was consistent with the Act and applicable regulations, including a thorough review of the environmental effects of the action and alternatives, pursuant to the National Environmental Policy Act of 1969.

Copies of these permits and associated decision documents are available upon request. Decision documents for each permit include Findings and Recommendations; a Biological Opinion; and either a Finding of No Significant Impact, a Record of Decision, or an Environmental Action Statement.

Name of permittee	Permit No.	Issuance date
PALCO Headwaters	TE828950–0	03/01/99
North Peak Partners, LP	TE012768–0	06/07/99
City of The Dalles	TE004366–0	07/01/99
RMC Lonestar, Bonny Doon Quarries	TE844722–0	08/05/99
E–Z Mix, Inc	TE015985–0	08/27/99
Antoninni Trust	TE015986–0	08/27/99
Angelus Block Co., Inc	TE015987–0	08/27/99
Hanson Aggregates	TE013227–0	09/03/99
Hord	TE003250–0	09/30/99
Nuevo/Torch	TE019489–0	11/17/99
Teichart, Esparto Mining Project	TE019954–0	12/20/99
Plum Creek I–90 Permit Modification	PRT–808398	12/23/99
Ox Yoke Road Development	TE021326–0	02/11/00

Permit Transfer Associated With the Bluffs Habitat Conservation Plan

In addition to issuing the incidental take permits listed above, we approved an assumption agreement, dated May 21, 1999, to transfer incidental take permit TE003795–0 issued October 19, 1998. This agreement formally recognized the transfer of title from East County Investors and Greenbriar Land Company to Warmington Livermore Associates, LP. In signing the agreement, Warmington Livermore Associates, LP assumed the obligations of The Bluffs Habitat Conservation Plan and the Assumption Agreement with Respect to the Bluffs Habitat Conservation Plan. The assumption by Warmington Livermore Associates, LP did not result in a new analysis of effects or change the requirements of the original permit, habitat conservation plan, or implementing agreement. Copies of the executed assumption agreement and transferred permit are available upon request.

Incidental Take Permits Associated With the Central/Coastal Plan

On January 21, 2000, we approved an assumption agreement to transfer incidental take permit PRT–810581 (issued July 17, 1996) from Chandis Securities Company to the Headlands Reserve, LLC. This agreement formally recognized transfer of title of land and obligations of the two parties with respect to this permit pursuant to the Central/Coastal Plan.

In addition, on November 3, 1999 we issued an incidental take permit to the City of Laguna Woods in association with its participation in the Central/Coastal Plan. The Central/Coastal Plan fully anticipated that jurisdictions within the plan boundaries would sign the plan's Implementing Agreement as participating jurisdictions following approval of the plan and subsequently be issued an incidental take permit. Provided that no plan revisions or additional impacts were determined to be associated with permit issuance, no revision to the Service's permit decision documents for the Central/Coastal Plan would be necessary. The Service determined that no plan revisions or additional impacts were associated with issuance of the following permits pursuant to the Central/Coastal plan. Copies of these permits and assumption agreement are available upon request.

Name of permittee	Permit No.	Issuance date
City of Laguna Woods	TE019204–0	11/03/99
Permit Transfer from Chandis Securities to Headlands Reserve	TE810581–1	01/21/00

Dated: March 7, 2000.

Thomas Dwyer,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 00–6152 Filed 3–13–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Geological Survey

Application Notice Describing the Areas of Interest and Establishing the Closing Date for Receipt of Applications Under the National Earthquake Hazards Reduction Program (NEHRP) for Fiscal Year (FY) 2001

AGENCY: Department of the Interior, U.S. Geological Survey.

ACTION: Notice.

SUMMARY: Applications are invited for research projects under the NEHRP.

The purpose of this Program is to support the USGS Earthquake Hazards Program by providing products for earthquake loss reduction to the public and private sectors and by carrying out research on earthquake occurrence and effects.

Applications may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of state and local governments.

ADDRESSES: The program announcement is expected to be available on or about March 10, 2000. You may obtain a copy of Announcement No. O1HQPA0002 from the USGS Contracts and Grants Information Site at http://www.usgs.gov/contracts/nehrp/ or by writing Brian Heath, U.S. Geological Survey, Office of Acquisition and Federal Assistance—Mail Stop 205A. 12201 Sunrise Valley Drive, Reston, Virginia 20192, or by fax (702–648–7901).

DATES: The closing date for receipt of applications will be on or about May 10, 2000. The actual closing date will be specified in Announcement No. 01HQPA0002.

FOR FURTHER INFORMATION CONTACT: John Unger, Earthquake Hazards Reduction Program—U.S. Geological Survey, Mail Stop 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192. Telephone: (703) 648–6701.

SUPPLEMENTARY INFORMATION: Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977, Public Law 95–124 (42 U.S.C. 7701, *et. seq.*). The Office of Management and Budget Catalog of Federal Domestic Assistance number is 15.807.

Dated: March 8, 2000.

James C. Leupold,

Chief, Office of Program Support.

[FR Doc. 00–6169 Filed 3–13–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–020–1020–DE; G 0–0–147]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Burns District.

ACTION: Meeting Notice for the Southeast Oregon Resource Advisory Council.

SUMMARY: The Southeast Oregon Resource Advisory Council will meet at Treasure Valley Community College, Weese Building, Room W–10, 650 College Boulevard, Ontario, OR, from 8 a.m. to 5 p.m., Mountain Standard Time (MST), on Thursday, April 13, 2000, and sage grouse field tour from 4 a.m. to 12 p.m. on Friday, April 14, 2000. Topics to be discussed by the Council include Sage Grouse listing, Interim Sage Grouse Guidelines Update, Steens Legislation Update, Redband Trout Petition/Listing Update, Owyhee Litigation Update, Off-Highway Vehicle Strategy Presentation, Interior Columbia Basin Ecosystem Management Update, and such other matters as may reasonably come before the Council. The entire meeting is open to the public. Public comment is scheduled for 11 a.m. to 11:30 a.m. MST on Thursday, April 13, 2000.

The Southeast Oregon Resource Advisory Council will meet on the following dates in the year 2000.

7/20–21/2000: Burns District Office, BLM, Hines, OR

10/19–20/2000: Lakeview District Office, BLM, Lakeview, OR

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Southeast Oregon Resource Advisory Council may be obtained from Holly LaChapelle, Resource Assistant, Burns District Office, HC 74–12533 Highway 20 West, Hines, OR 97738; (541) 573–4501, or *Holly_LaChapelle@or.blm.gov or our web site at http://www.or.blm.gov/SEOR-RAC*

Dated: March 6, 2000.

Miles R. Brown,

Andrews Resource Area Field Manager.

[FR Doc. 00–6210 Filed 3–13–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–EU; WYW 139970]

Opening of National Forest System Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the temporary segregative effect as to 580.00 acres of National Forest System lands which were originally included in an application for exchange in the Targhee National Forest.

EFFECTIVE DATE: March 14, 2000.

FOR FURTHER INFORMATION CONTACT: Jimi Metzger, BLM Wyoming State Office, 5353 Yellowstone Rd., P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6250.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2091.3–2(b), at 9 a.m. on March 14, 2000, the following described lands will be relieved of the temporary segregative effect of exchange application WYW 139970.

Sixth Principal Meridian, Wyoming

T. 44 N., R. 118 W.,
Sec. 16, E½,E½W½;
Sec. 21, N½NE,N½SENE.

The area described contains 580.00 acres in Teton County.

At 9 a.m. on March 14, 2000, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988) shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The BLM will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: March 7, 2000.

Jim Paugh,

Acting Chief, Mineral & Lands Authorization Group.

[FR Doc. 00–6154 Filed 3–13–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Champlain Valley Heritage Corridor Project; Extension of Comment Period

The public review period for the draft special resource study of the Champlain Valley, including an environmental assessment, is extended for 30 days from the original closing date of March 1, 2000. It will now close on April 1, 2000. The National Park Service is extending the period of public review to allow interested parties more time to review the draft study.

In accordance with P.L. 103–332, the draft special resource study of the Champlain Valley is available for public review and comment. A special resource study is used by the National Park Service to evaluate a resource for national significance and to assess its suitability and feasibility for possible federal designation and for further National Park Service involvement. Based on the results of this assessment, the study presents a range of possible management alternatives.

The draft special resource study for the Champlain Valley is available for review at most local libraries throughout the Champlain region of New York and Vermont. Copies are also available from W. Douglas Lindsay, Superintendent, Saratoga National Historical Park, 648 Route 32, Stillwater, NY 12170: or from Philip B. Huffman, a National Park Service contractor, 82 Church Street, Burlington, VT 05401. For further information, call Saratoga National Historical Park at 518.664.9821, extension 206; or Mr. Huffman at 802.865.4523. Written comments will be accepted through April 1, 2000 at Boston Support Office, National Park Service, 15 State Street, Boston, MA 02109, Attn: Marjorie Smith.

Sandra Corbett,

Acting Superintendent.

[FR Doc. 00–6110 Filed 3–13–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 15, 2000 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open and closed to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–474–475 (Review)(Chrome-Plated Lug Nuts from China and Taiwan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on March 23, 2000.)
5. Inv. No. 731–TA–469 (Review) (Electroluminescent Flat-Panel Displays from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on March 27, 2000).
6. Outstanding action jackets: (1.) Document No. (E)GC–00–001: Administrative matters.

Pursuant to 5 U.S.C. 552b(c) and Commission rule 19 CFR 201.36(b), the Commission has unanimously determined to close agenda item 6 of the meeting of Wednesday, March 15, 2000, to public observation, in order to avoid disclosure of information of a personal nature which would constitute a clearly unwarranted invasion of personal privacy. The General Counsel has certified that a portion of the meeting is being properly closed to the public by the Commission. Persons permitted to attend this closed portion of the meeting include Commissioners, their staff, and other Commission personnel who need to be available for the discussion or to conduct the meeting.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 8, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6349 Filed 3–10–00; 1:50 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB Emergency Approval; National Center for Victims of Crime: Service Referral Questionnaire.

The Department of Justice, Office of Community Oriented Policing Services (COPS) has submitted the following information collection request utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by March 22, 2000. If granted, the emergency approval is only valid for 180 days.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. In addition to comments and/or questions pertaining to this pending request for emergency approval, written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register.** Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the emergency approval request, estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Ave, NW, Washington, DC 20530–0001; attn: Karen Beckman. Additionally, comments may be submitted to COPS via facsimile to 202–633–1386, attn: Karen Beckman. Comments may also be

submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* National Center for Victims of Crime: Service Referral Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS PPSE/02. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Approximately 10,000 victims' services organizations nationwide will be asked to respond. The Service Referral Questionnaire will allow the National Center for Victims of Crime (NCVC) to collect information on agency name, contact information, types of services provided to crime victims, types of crime victims primarily served by the organization, and to request permission to allow the NCVC to include the listing in its service database on its website.

NCVC will use the information collected to provide referral assistance to victims of crime who request information via the telephone through a toll-free number, e-mail, general mail and the NCVC website.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Surveys will be administered by telephone to approximately 10,000 victims' service organizations nationwide. The survey will also be available to respondents via the NCVC website to allow on-line completion. Administrative preparation and survey completion will take approximately 0.25 hours per respondent (there is no record keeping burden for this collection).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 2,500 hours. If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: March 8, 2000.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–6234 Filed 3–13–00; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Telecommunications Contracts and Audit Unit; Agency Information Collection Activities: Current Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Extension of a Currently Approved Collection; Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

The Department of Justice, Federal Bureau of Investigation, Communications Assistance for Law Enforcement Act (CALEA) Implementation Section, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. The proposed information collection was previously published in the **Federal Register** on December 28, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until April 13, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice, Justice Management Division, Information and Security Staff, Attention: Department Clearance Officer, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. This rule establishes the procedures whereby telecommunications carriers can recover the costs associated with complying with the Communications Assistance for Law Enforcement Act, which went into effect on October 25, 1994.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 3,000 respondents to provide the information requested is approximately four hours per telecommunications switch

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to provide the information necessary to file a claim under the Cost Recovery Regulation is approximately 46,000 annual burden hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Justice Management Division, Information Management and Security Staff, Suite

1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, D.C. 20530.

Dated: March 9, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–6235 Filed 3–13–00; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

CALEA Implementation Section; Agency Information Collection Activities: Current Collection; Comment Requested

ACTION: Notice of information collection under review; Extension of a currently approved collection, flexible deployment assistance guide.

The Department of Justice, Federal Bureau of Investigation, Communications Assistance for Law Enforcement Act (CALEA) Implementation Section, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. The proposed information collection was previously published in the **Federal Register** on December 28, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until April 13, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice, Justice Management Division, Information and Security Staff, Attention: Department Clearance Officer, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Flexible Deployment Assistance Guide.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: None. The Flexible Deployment Assistance Guide has been developed to assist the telecommunications industry in meeting its obligations under the Communications Assistance for Law Enforcement Act, 47 U.S.C. 1001–1010 (1994).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 5,000 respondents to provide the information requested is approximately four hours and fifteen minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to provide the information requested by the Flexible Deployment Assistance Guide is approximately 21,250 annual burden hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Justice Management Division, Information Management and Security Staff, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: March 9, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–6237 Filed 3–13–00; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Reinstatement, with change, of a previously approved collection for which approval has expired: Census of State and Federal Adult Correctional Facilities.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed collection was previously published in the Federal Register on August, 17, 1999, allowing for a 60-day public comment period. No comments were received by the Bureau of Justice Statistics.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 13, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points;

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of information Collection:* Reinstatement, with change, of a

previously approved collection for which approval has expired.

(2) *Title of the Form Collection:* 2000 Census of State and Federal Adult Correctional Facilities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection;* Forms: CJ–43. Corrections Statistics, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract* Federal and State Government. The Census of State and Federal Adult Correctional Facilities is the quinquennial Census of State and Federal Correctional Facilities is the only data collection effort that provides a comprehensive assessment of the characteristics of State correctional facilities, programs, and staffs throughout the United States. The data will be used by Department of Justice officials, together with prison administrators, researchers, and policy makers to assess the current trends and patterns in the Nation's correctional facilities and populations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond.* 1,750 respondents each taking an average 3.0 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,250 total annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruction, or additional information, please contact Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, Washington Center, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: March 3, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–6236 Filed 3–13–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1266]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the Coordinating Council on Juvenile Justice and Delinquency Prevention meeting.

DATES: A meeting of the advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will take place in the District of Columbia on Friday, March 31, 2000, beginning at 1 p.m. and ending at 3 p.m., ET.

ADDRESSES: The meeting will take place at the U.S. Department of Justice, Office of Justice Programs, Main Conference Room, 3rd Floor, 810 7th Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Bob Altman, Program Manager, Juvenile Justice Resource Center at (301) 519–5721. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION: The Coordinating Council, established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This meeting will be open to the public. Members of the public who wish to attend the meeting should notify the Juvenile Justice Resource Center at the number listed above by 5:00 p.m. on Tuesday, March 21, 2000. For security purposes, picture identification will be required.

Dated: March 8, 2000.

John Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–6135 Filed 3–13–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed collection; comment request

AGENCY: Employment Standards Administration, Department of Labor.

ACTION: Noice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of the reporting and recordkeeping requirements of Regulations 29 CFR, Part 520; the Application for Authorization to Employ a Student-Learner at Subminimum Wages, Form WH–205, and the Application for a Certificate to Employ Messengers/Learners at Subminimum Wages, Form WH–209. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATE: Written comments must be submitted to the office listed in the **ADDRESSES** section below within 60 days of the date of this Notice.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

Regulations 29 CFR Part 520 require the Secretary of Labor, to the extent necessary to prevent curtailment of employment opportunities, to provide "by regulations or by orders" for employment under special certificates of categories of workers who may be paid less than the statutory minimum wage. This section also authorizes the Secretary to set limitations on such employment as to time, number,

proportion and length of service. These workers include apprentices, messengers and learners, including student-learners, and student-workers. Form WH–209 is an application for a certificate authorizing an employer to employ learners and/or messengers at subminimum wage rates for a period up to one year. Form WH–205 is used by the employer to obtain certificates to employ student-learners at wages lower than the Federal minimum wage to prevent curtailment of opportunities for employment.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out it responsibility to administer subminimum wage programs in accordance with the Fair Labor Standards Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Employment Under Special Certificates for Apprentices, Messengers and Learners (Including Student-Learners).

OMB Number: 1215–0192.

Agency Number: WH–205; WH–209.

Affected Public: Businesses or other for-profit; Not-for-profit Institutions; State, Local or Tribal Government; Individuals or households.

	Total respondents	Frequency	Total responses	Average time per response	Burden hours
WH–209	1	Annually	0	20 minutes	0
WH–205	650	Annually	650	30 minutes	325

Estimated Total Burden Hours: 325.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 234.36.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 7, 2000.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 00–6207 Filed 3–13–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Medical Child Support Working Group; Meeting

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is given of the date of the eighth meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998. The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments.

DATES: The eighth meeting of the MCSWG will be held on Thursday, March 30th, 2000, from 1:00 p.m. to approximately 2:30 p.m.

ADDRESSES: The meeting will be held in the 6th Floor Auditorium, Aerospace Building, 901 D St. SW, Washington, DC. All interested parties are invited to attend this public meeting. Seating may be limited and will be available on a first-come, first-serve basis. Persons needing special assistance, such as sign language interpretation or other special accommodation, should contact the Executive Director of the Medical Child Support Working Group, Office of Child Support Enforcement at the address listed below.

FOR FURTHER INFORMATION CONTACT: Ms. Samara Weinstein, Executive Director, Medical Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447 (telephone (202) 401–6953; fax (202) 401–5559; e-mail: sweinstein@acf.dhhs.gov). These are not toll-free numbers. The date, location and time for subsequent MCSWG meetings will be announced in advance in the **Federal Register**. However, it is expected this will be the last meeting.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) (FACA), notice is given of a meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998 (Pub. L. 105–200).

The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments. This report will include: (1) Recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under proposed regulations; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's

portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677); (3) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program; (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's health plan, and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for services not covered under a child's existing health coverage; (5) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act ; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary.

The membership of the MCSWG was jointly appointed by the Secretaries of DOL and DHHS, and includes representatives of: (1) DOL; (2) DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1)); (7) children potentially eligible for medical support, such as child advocacy organizations; (8) State medical child support organizations; and (9) organizations representing State child support programs.

Agenda

The agenda for this meeting includes review and approval of the MCSWG's report to the Secretaries containing recommendations for appropriate measures to address the impediments to the effective enforcement of medical child support as listed above. At the May, 1999, meeting the MCSWG formed four (4) subcommittees to discuss barriers, issues, options, and recommendations in the interim between full MCSWG meetings. At the next three meetings (August, 1999, October, 1999, and November, 1999), the subcommittees presented their draft recommendations to the full MCSWG for further discussion and consideration. At the January, 2000, meeting the MCSWG discussed the recommendations to be contained in the report to the Secretaries. At this meeting, the MCSWG will review and approve the actual report.

Public Participation

Members of the public wishing to present oral statements to the MCSWG should forward their requests to Samara Weinstein, MCSWG Executive Director, as soon as possible and at least four days before the meeting. Such request should be made by telephone, fax machine, or mail, as shown above. Time permitting, the Chairs of the MCSWG will attempt to accommodate all such requests by reserving time for presentations. The order of persons making such presentations will be assigned in the order in which the requests are received. Members of the public are encouraged to limit oral statements to five minutes, but extended written statements may be submitted for the record. Members of the public also may submit written statements for distribution to the MCSWG membership and inclusion in the public record without presenting oral statements. Such written statements should be sent to the MCSWG Executive Director, as shown above, by mail or fax at least five business days before the meeting.

Minutes of all public meetings and other documents made available to the MCSWG will be available for public inspection and copying at both the DOL and DHHS. At DOL, these documents will be available at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 5:30 p.m. Questions regarding the availability of documents from DOL should be directed to Ms. Ellen Goodwin, Plan Benefits Security Division, Office of the Solicitor, Department of Labor (telephone (202) 219–4600, ext. 119). This is not a toll-free number. Any written comments on the minutes should be directed to Ms. Samara Weinstein, Executive Director of the Working Group, as shown above.

Signed at Washington, DC, this 9th day of March, 2000.

Leslie Kramerich,

Acting Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 00–6255 Filed 3–13–00; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings; Notice of Meetings

TIME AND DATE: 10 a.m., Thursday, March 16, 2000.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Corporate Federal Credit Union for a Regional Field of Membership Amendment.
2. Advance Notice of Proposed Rulemaking: Part 742, NCUA's Rules and Regulations, Regulatory Flexibility and Exemption Program.
3. Final Rule: Amendment to Part 701, NCUA's Rules and Regulations, Share Overdraft Accounts.
4. NCUA's "Results Act" 2000 Annual Performance Plan.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, March 16, 2000.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
2. Three (3) Personnel Actions. Closed pursuant to exemptions (2), (5), (6), (7) and (9)(B).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–6321 Filed 3–10–00; 11:26 am]

BILLING CODE 7535–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees.

DATES: The meeting will commence at 10:30 a.m. on Wednesday, April 5, 2000.

ADDRESSES: The meeting will be held at the Wayfarer Inn, 121 S. River Road, U.S. Route 3, Bedford, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: March 8, 2000.

Kenneth M. Becker,

Executive Director.

[FR Doc. 00–6155 Filed 3–13–00; 8:45 am]

BILLING CODE 1650–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its May 3, 1999, application for proposed amendments to Facility Operating License Nos. NPF–4 and NPF–7 for the North Anna Power Station, Unit Nos. 1 and 2, located in Louisa County, Virginia.

The proposed changes would have deleted and/or relocated the additional primary-to-secondary leak rate limits and enhanced leakage monitoring requirements imposed following the 1987 steam generator tube rupture event.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 2, 1999 (64 FR 29716). However, by letter dated February 23, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 3, 1999, and the licensee's letter dated February 23, 2000, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 7th day of March 2000.

For the Nuclear Regulatory Commission.

Gordon E. Edison,

Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–6196 Filed 3–13–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Intent To Prepare a Draft Supplement to the Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities and To Hold Public Meetings for the Purpose of Scoping and To Solicit Public Input Into the Process

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, the Commission) intends to prepare a draft supplement to the Final Generic Environmental Impact Statement (GEIS) on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988) and to hold public scoping meetings for the purpose of soliciting comments. Although NUREG–0586 covered all NRC-licensed facilities, this supplement will address only the decommissioning of nuclear power reactors.

The NRC plans to hold public scoping meetings in four regions of the U.S. on the following days to present an overview of the proposed supplement to the GEIS and to accept public comment on its proposal: Midwest (Chicago, Illinois, area) April 27, 2000, Northeast (Boston, Massachusetts, area) May 17, 2000, Southeast (Atlanta, Georgia, area) June 13, 2000, and West (San Francisco, California, area) June 21, 2000. The public scoping meetings will begin at 7:00 p.m. and continue to 10:00 p.m. The locations of these meetings and any changes to the dates, which are not expected to be more than one day different from the dates set forth in this notice, will be announced in the **Federal Register** and in local media nearer the actual dates of the meetings.

All meetings will be transcribed and will include (1) a presentation by the NRC staff on the reasons for preparing a supplement to the GEIS and the environmental issues related to power reactor decommissioning to be addressed in the GEIS, and (2) the opportunity for interested government agencies, private organizations, and individuals to provide comments. Anyone wishing to attend or present oral comments at the meetings may pre-register by contacting Mr. Dino C. Scaletti by telephone at 1–800–368–5642, extension 1104, or by Internet to the NRC at DGEIS@nrc.gov, 1 week prior to a specific meeting. Members of the public may also register to provide oral comments up to 15 minutes prior to the start of each meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Scaletti's attention no later than 1 week prior to a specific meeting, so that the NRC staff can determine whether the request can be accommodated.

Any interested party may submit comments related to the NRC's intent to supplement the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the intent to prepare the supplement must be received by July 15, 2000. Comments received after the due date will be considered if it is practical to do so. At this time, comments are being sought only on the intent to prepare the supplement. The NRC staff currently projects issuance of the draft supplement for comment in early 2001. Comments on the draft supplement will be solicited at that time. Written comments should be sent to

Chief, Rules and Directives Branch, Division of Administrative Services, Mail Stop T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Submittal of electronic comments may be sent by the Internet to the NRC at DGEIS@nrc.gov. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, in Washington, DC. Also, publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room).

FOR FURTHER INFORMATION CONTACT: Mr. Dino C. Scaletti, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Scaletti can be contacted at the aforementioned telephone number.

Dated at Rockville, Maryland, this 8th day of March, 2000.

For the Nuclear Regulatory Commission.

Dino C. Scaletti,

Senior Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–6198 Filed 3–13–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Experts' Meeting on High-Burnup Fuel Behavior Under Postulated Accident Conditions

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission will hold a meeting to further develop a Phenomena Identification and Ranking Table (PIRT) for a BWR accident. PIRTs have been used at NRC since 1988, and they provide a structured way to obtain a technical understanding that is needed to address certain issues. About twenty of the world's best technical experts are participating in this activity, and the experts represent a balance between industry, universities, foreign researchers, and regulatory organizations. The current PIRT activity is addressing a postulated BWR accident wherein power oscillations occur, the reactor fails to scram, and the oscillations then reach sufficient magnitude that fuel failure may occur before the emergency operating procedures are able to terminate the oscillations and shut the reactor down.

DATES: April 4–7, 2000, 8:30 am–5:30 pm.

ADDRESSES: Room T10A1 (TWFN) of the Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph Meyer, SMSAB, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Washington, DC 20555–0001, telephone (301) 415–6789.

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted on the NRC Web site at *www.nrc.gov/RES/meetings.html* by March 20, 2000. The meeting is open to the public. Attendees will need to obtain a visitor badge at the TWFN building lobby.

Dated at Rockville, Maryland, this 8th day of March 2000.

For the Nuclear Regulatory Commission.

Charles E. Rossi,

Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 00–6197 Filed 3–13–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

(NUREG–1555 and NUREG–1555, Supplement 1)

Updated Environmental Standard Review Plan: Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission has prepared an update to the Environmental Standard Review Plan for the review of environmental reports for nuclear power plants (ESRP). The draft version of this update of the ESRP was published in 1997. The updated ESRP is contained in two documents, NUREG–1555, "Environmental Standard Review Plan—Standard Review Plans for Environmental Reviews for Nuclear Power Plants" and its companion document for operating license renewal environmental reviews, NUREG–1555, Supplement 1, "Standard Review Plans for Environmental Reviews for Nuclear Power Plants—Supplement 1: Operating License Renewal." These documents replace the ESRP (NUREG–0555) originally issued in 1978.

ADDRESSES: The updated ESRP in printed paper, 3.5-inch disks and compact disks (CD) versions are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001, and can be found electronically at *http://www.nrc.gov/NRC/NUREGS/indexnum.html* on the NRC Web site. Additionally, publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

FOR FURTHER INFORMATION CONTACT: James Luehman, Office of Nuclear Reactor Regulation, Mail Stop O–11F1, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3150, or email *JGL@nrc.gov.*

SUPPLEMENTARY INFORMATION: In a Notice of Availability published in the **Federal Register** on October 3, 1997 (62 FR 51915), the NRC made available NUREG–1555, "Environmental Standard Review Plan—Standard Review Plan for Environmental Reviews for Nuclear Power Plants (Draft Report for Comment)." As stated in that Notice of Availability, the comment period for the draft report expired January 30, 1998. The NRC received seven letters providing comments on the draft report. Three letters were received from nuclear industry groups, two letters were received from nuclear power reactor licensees, one letter was submitted by a law firm, another by a federal agency, and one by an individual. All of the comments received were considered and dispositioned. One comment received concluded that the requirements for operating license renewal review requirements were difficult to extract from the draft document which contained review requirements for new applications as well as review requirements for operating license renewals. In response to that comment, the final ESRP was divided and now consists of NUREG–1555 and NUREG–1555, Supplement 1, which is specifically devoted to operating license renewal issues.

In addition to updating the draft ESRP to reflect the comments received, the NRC has done some additional updating to reflect recent rulemaking affecting the environmental reviews required for operating license renewal. On September 3, 1999 (64 FR 48495), the NRC published a final rule expanding the generic findings about the environmental impacts due to transportation of spent fuel and nuclear waste to and from a single nuclear power plant. That amendment to Part 51 changed the transportation of spent fuel and nuclear waste from a Category 2 issue (an issue for which the licensee would have to perform a plant-specific analysis of the impacts) to a Category 1 issue (an issue for which the licensee could adopt a generic analysis performed by the NRC staff). The appropriate ESRP sections have been changed to reflect the rule change.

The updated ESRP is not a generic communication that proposes new NRC staff positions or seeks additional licensee commitments. It does not impose new or revised requirements but simply compiles and documents NRC and other Federal requirements, and NRC staff positions. The ESRP does not explicitly incorporate State, regional or Native American tribal agency requirements that may also need to be addressed by applicants or licensees.

Work activities related to updating the ESRP were performed substantially in conformance with the guidance in NUREG–1447, "Standard Review Plan

Update and Development Program—Implementing Procedures Document," dated May 1992. NUREG–1447 documents the results of developing the major work assumptions and work processes for completing the standard review plan revision process. Information protocols and process modifications were made to account for changes that resulted requirements outside the Atomic Energy Act and NRC regulations including, but not limited to, the National Environmental Policy Act, the Endangered Species Act, the Presidential executive order on environmental justice, guidance from the Council on Environmental Quality, and regulations of the Environmental Protection Agency on non-radiological issues. The entire work effort and responsibility for updating the ESRP resides in the NRC Generic Issues, Environmental, Financial, and Rulemaking Branch, which coordinates with the appropriate technical review branches and essential technical specialists on particular issues.

Dated at Rockville, Maryland, this 8th day of March, 2000.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs.

[FR Doc. 00–6195 Filed 3–13–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITY AND EXCHANGE COMMISSION

[Extension: Rule 17a–6; SEC File No. 270–433; OMB Control No. 3235–0489]

Request Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17a–6 (17 CFR 240.17a–6) permits national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board (collectively, "SROs") to destroy or convert to microfilm or other recording media records maintained under Rule 17a–1 (17 CFR 240.17a–1), if they have filed with the Commission a plan to destroy or dispose of records and the Commission has declared such plan effective.

There are currently 23 SROs required under Rule 17a–1 to maintain certain records and that could receive relief under Rule 17a–6: 8 national securities exchanges, 1 national securities association, 13 registered clearing agencies, and the Municipal Securities Rulemaking Board. Assuming that one of these respondents might file a plan to destroy or dispose of records, or an amendment thereto, in a given year, such filing would require approximately 40 hours per respondent to complete. Thus, the total compliance burden is 40 hours. At an approximate cost per hour of $100, the resulting total related cost of compliance for these respondents is $4,000 per year (40 hours x $100/hour=$4,000).

Compliance with Rule 17a–6 is required only in order to obtain the relief it offers from records retention requirements. If an eligible SRO plan to destroy or dispose of records will employ conversion onto microfilm or other recording medium, the SRO shall (1) be ready at all times to provide, and immediately provide, easily readable projection of the microfilm or other recording medium and easily readable hardcopy thereof, (2) provide indexes permitting the immediate location of and such document on the microfilm or other recording medium, and (3) in the case of microfilm, store a duplicate copy of the microfilm separately from the original microfilm for the time required (17 CFR 240.17a–6(b)). Information collected under Rule 17a–6 shall not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (b) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: March 7, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–6202 Filed 3–13–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42500; File No. SR–CBOE–99–44]

Self-Regulatory Organiztions; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Revised the Limits on New Series of Index Options

March 7, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 22, 1999, the CBOE submitted to the Commission amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE seeks to revise Interpretations .01 and .05 of Exchange Rule 24.9, "Terms of Index Option Contracts" to revise the limits on new series of index options. Under the proposal, the requirement that new series of index options must be "reasonably related to the current index value of the underlying index" would be interpreted to permit the Exchange to introduce new series of index options if their strike prices are within 30% of the current index value. In addition, the proposal would permit the CBOE to introduce new series of index options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 revised the proposal to include OEX index options as well as non-OEX index options. Amendment No. 1 also proposes to permit the Exchange to introduce new series of index options whose strike prices are more than 30% away from the current index value, provided that demonstrated customer interest exists. *See* Letter from Christopher R. Hill, attorney, CBOE, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated November 16, 1999 ("Amendment No. 1").

whose strike prices are more than 30% away from the current index value, so long as demonstrated customer interest existed for those new series. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Interpretation .05 of CBOE Rule 24.9 currently allows the Exchange to open for trading additional series of the same class of index options, other than options based on the S&P 100 Index ("OEX"), when the current index value of the underlying index moves substantially from the exercise price of those index options previously opened for trading on the Exchange. Under the Exchange's rules, the exercise price of each new series of index of index options must be "reasonably related to the current index value of the udnerlying index to which the options relate at or about the time the series of options is first opened for trading on the Exchange."

For all index options, except for long term index options ("LEAPS") and OEX index options, Interpretation .05 presently defines "reasonably related" to be" (a) The lesser of 50 points of the current index value or 15% of the current index value; and (b) where demonstrated customer interest exists, the lesser of 100 points of the current index value or 30% of the current index value. For LEAPS, "reasonably related" is defined to be 25% of the current index value. For OEX options, which are governed by Interpretation.01 of Rule 24.9, "reasonably related" is defined to be 8% of the current index value, or 20% if unusual market conditions exist.

When the current limits on new series of index options were approved by the Commission, 100 index points generally represented about 30% of the index value for most indexes underlying Exchange-traded options. The exchange has represented that 100 index points currently represents about 7–8% of the current index value for many indexes underlying Exchange-traded options, and only about 4% for the NASDAQ 100 index.

In the order that first approved Interpretation .05 of CBOE Rule 24.9,[4] the Commission noted that the provision would:

> [E]nable the CBOE to respond to changing market conditions and list index options series that provide market participants with an effective means to transfer risk and implement their trading strategies. The Commission believes that the discretion to list additional series index options will help to ensure the consistent availability of index options series tailored to meet the needs of investors during periods of market volatility.

The CBOE believes that the current form of Exchange Rule 24.9 does not allow it to respond to changed market conditions or provide market participants with effective risk management strategies in rapidly rising markets. Moreover, the Exchange believes that CBOE Rule 24.9 limits the Exchange's ability to list strike prices that are reasonable and realistic in light of today's market values, and that it further prevents the Exchange from listing strike prices that would be attractive to customers.

To address these limitations, the Exchange proposes to amend Interpretations .01 and .05 of CBOE Rule 24.9 to define "reasonably related" to mean 30% of the current index value for *all* index options.[5] In addition, the proposal would permit the CBOE to introduce new series of index options whose strike prices are more than 30% away from the current index value, as long as demonstrated customer interest existed for those new series.

The CBOE believes that the proposal will benefit CBOE members and their customers. Specifically, the CBOE believes that the proposal will enhance the Exchange's flexibility by permitting the Exchange to introduce new series of index options as warranted by market conditions, and by eliminating an outdated formula that is tied to a fixed number of index points. In addition, changing the limits from a fixed number of index points to a percentage of the current index value will help to ensure that future market levels do not impede the Exchange from listing new strike prices that are in demand because of price changes. The CBOE believes that the revised limits will enable the Exchange to better respond to the trading needs of its members and their customers.

Additionally, in 1996, the Commission approved changes to Interpretation .01 of CBOE Rule 24.9 to revise the limits on new series of OEX index options. The revision changed the limits from flat numbers (in that case, the number of strike prices) to percentages of the current index value.[6] At that time, the Commission determined that the increased level of the OEX index made it appropriate to transition from flat numbers to percentage parameters.

The Exchange represents that the new series of index options that will result from this proposed rule change are within the Exchange's and OPRA's capacity.[7] The Exchange has indicated that it routinely monitors inactive option contracts and removes from listing those index option series that do not have open interest and have little chance of trading.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the act,[8] in general, and with Section 6(b)(5) of the Act, in particular,[9] in that it will promote just and equitable principles of trade, protect investors and the public interest, and remove impediments to and perfect the mechanisms of a free and open market. The Exchange further believes that the proposal will allow the Exchange to list strike prices in response to the historically high market prices in a manner that addresses the needs of its valued customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[4] *See* Securities Exchange Act Release No. 31683 (Dec. 31, 1992), 58 FR 3307 (Jan. 8, 1993).

[5] The Exchange's proposal would therefore eliminate the distinction between OEX index options, LEAPs, and non-OEX index options for purposes CBOE Rule 24.9 and limits on new series. The Exchange believes that the distinction between these types of index options does not serve any regulatory purpose because all new series of index options have the same capacity implications irrespective of their underlying index. *See* Amendment No. 1, *supra* note 3.

[6] *See* Securities Exchange Act Release No. 37815 (Oct. 11, 1996), 61 FR 54693 (Oct. 21, 1996).

[7] The Exchange has represented that it will obtain and submit a letter from the Options Price Reporting Authority ("OPRA") confirming that the new strike prices expected to be generated by the proposal are within the capacity of OPRA. *See* Amendment No. 1 *supra* note 3.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interests persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–99–44 and should be submitted by April 4, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–6204 Filed 3–13–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42501; File No. SR–NYSE–99–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rule 103A

March 7, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rule 103A (Specialist Stock Reallocation). The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries set forth in Section A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 103A (Specialist Stock Reallocation) to codify the Market Performance Committee's ("MPC") authority with respect to allocation freezes, stock assignments and reassignments, specialist unit organizational changes and Floor member qualification and continuing education requirements.

a. *Allocation Freezes.* Currently, Rule 103A provides the MPC the authority to establish and administer measures of specialist performance, conduct performance improvement actions when a specialist unit does not meet the performance standards in Rule 103A, and reallocate stocks if a unit does not achieve its specified goals when subject to a performance improvement action. These standards help to establish and maintain acceptable levels of specialist performance, thereby enhancing the competitiveness of the Exchange's specialist performance, thereby enhancing the competitiveness of the Exchange's specialist system. The purpose of a performance improvement action is to provide assistance and guidance to specialist units to enable them to enhance their performance. When a performance improvement action is initiated, a specialist unit is required to submit a performance improvement plan addressing how it intends to improve performance to the MPC. Based on the MPC's review of the performance improvement plan, the MPC has the authority to preclude a specialist unit subject to a performance improvement action, from applying to be allocated any newly-listing company (an "allocation freeze") if the MPC believes such action is appropriate.

The Exchange proposes to amend Rule 103 to allow the MPC to exercise its discretion in imposing allocation freezes. In certain instances, the Committee will determine that a unit's performance is not as strong as other units' performance, although the unit's performance fully meets the Rule 103A performance standards. For example, this may occur when a specialist unit's scores on the quarterly Specialist Performance Evaluation Questionnaire are above Rule 103A performance standards; however, the unit may have lower scores than other units over a period of several quarters, resulting in persistent lower rankings in the bottom quartile. In these instances, the Exchange believes the MPC should have the ability to provide an incentive to the specialist unit to ensure performance by using its professional judgment. Therefore, the Exchange proposes to add to Rule 103A authority for the Committee to initiate an allocation freeze for a unit, without initiating a formal performance improvement action.

b. *Receipt of New Listings During an Allocation Freeze.* Under the Exchange's Allocation Policy and Procedures (the "Allocation Policy") there are circumstances when a newly-listing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

company may choose its specialist unit. For example, a newly-listing company that is related to an already listed company may choose to stay with the current specialist for the listed company or choose to go through the Allocation Committee.[3] The newly-listing company may choose to stay with the current specialist for the related listed company even if such unit is under an allocation freeze imposed by the MPC as long as the unit is not subject to a performance improvement action.

Similarly, under the Allocation Policy, the newly-listing company may choose its specialist from among a group of specialist units chosen by the Allocation Committee. The Allocation Committee has the ability to exclude or include the current specialist for the related company in such a group. If the specialist unit was under an allocation freeze imposed by the MPC, it would not be precluded from being placed in the group or chosen by the newly-listing company as long as the allocation freeze was not the result of a performance improvement action.

c. *Floor Member Qualifications and Continuing Education.* The Exchange also proposes to amend Rule 103A to make mandatory: (i) Participation by proposed Floor members in an Exchange-sponsored educational program before such individuals would be permitted to act as members on the Floor; and (ii) participation by all Floor members in an Exchange-sponsored educational program, conducted semi-annually, and at such other times as may be appropriate in connection with any particular matter or matters. Rule 103A would also make it mandatory for Floor members to participate in any testing programs the Exchange may introduce from time to time in connection with the mandatory education program.

d. *Stock Assignments and Reassignments and Organizational Changes of Specialist Units.* The Exchange proposes to amend Rule 103A to codify the Committee's authority with respect to approving stock assignments and reassignments, assignments in special stock situations, and organizational changes to specialist units. Such situations typically involve: (i) Changes in a specialist unit's organizational structure effecting control of the specialist unit, such as split-ups and mergers; (ii) withdrawal of individual specialists from one specialist unit, where the specialists propose to register with another unit and transfer certain securities to such other unit; and (iii) assignments of newly-listed securities to a specialist unit already registered in a security with a trading relationship to the newly-listed securities (*e.g.*, a corporate restructuring of a listed company; stocks involved in mergers of listed companies; and immediate relisting of a listed company that delisted for technical reasons). In all of these situations, the MPC will review the proposal, and approve the matter if the Committee believes that market quality in the securities subject to the proposal will not be eroded.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(b)(5),[5] in particular, in that is it designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The amendments to Rule 103A are consistent with these objectives in that they facilitate high quality member performance through the reallocation of stocks by the MPC and the Floor member qualification and mandatory education program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–99–44 and should be submitted by April 4, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–6203 Filed 3–13–00; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 42487 (March 2, 2000).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.3–3(a)(12).

SELECTIVE SERVICE SYSTEM

Inquiries Regarding Security Classification Program

AGENCY: Selective Service System.

ACTION: Notice.

Pursuant to Executive Order 12958, Sec. 5.6(c)(2), notice is hereby given that any queries regarding Selective Service System (SSS) Security Information should be directed to the Readiness Division, Operations Directorate, Selective Service System.

Address for receipt of public comments or inquires regarding this notice: Justo Gonzalez, Jr., COL EN, Director of Operations, 1515 Wilson Boulevard, Arlington, VA 22209–2425.

Dated: March 8, 2000.
Gil Coronado,
Director.
[FR Doc. 00–6122 Filed 3–13–00; 8:45 am]
BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, these notices announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before May 15, 2000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Terri A. Dickerson, Associate Administrator , Office of Small Disadvantaged Business Certification & Eligibility, Small Business Administration, 409 3rd Street, SW, Suite 8000A.

FOR FURTHER INFORMATION CONTACT: Terri A. Dickerson, Associate Administrator, 202–619–1727 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION: *Title:* "8(a) Business Development and Small Disadvantaged Business Programs Application".

Form No: 1010.

Description of Respondents: Small Disadvantaged Businesses and 8(a) eligible Companies.

Annual Responses: 10,000.

Annual Burden: 30,000.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 00–6250 Filed 3–13–00; 8:45 am]
BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New System of Records; New Routine Use Disclosures; and Alterations to Existing Systems of Records

AGENCY: Social Security Administration (SSA).

ACTION: New System of Records, Proposed Routine Uses and Alterations to Existing Systems of Records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)) and (e)(11)), we are issuing public notice of our intent to:

(1) Establish a new system of records, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System, and routine uses applicable to this system, and

(2) Alter two existing systems of records entitled the Claims Folders System and the Supplemental Security Income Record.

The proposed new system of records and the two altered systems of records will maintain information collected for use in connection with SSA's implementation of title VIII of the Social Security Act (the Act), Special Veterans Benefits (SVB). We invite public comment on these proposals.

DATES: We filed a report of the proposed new system of records and proposed altered systems of records with the President of the Senate, the Speaker of the House of Representatives, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget on February 18, 2000. We also requested a waiver of the OMB 40-day advance notice requirements. If OMB does not grant the waiver we will not implement the proposal before March 29, 2000.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–F–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Peddicord (new system of records) or Ms. Hazel Brodie (alterations to the existing systems), Social Insurance Policy Specialists, Social Security Administration, Room 3–C–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 966–6491 or (410) 965–1744, respectively.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New System of Records, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System and Proposed Alterations to Existing Systems of Records, the Claims Folders System and the Supplemental Security Income Record

A. General Background

On December 14, 1999, Public Law 106–169, the Foster Care Independence Act of 1999, was enacted into law. Section 251 of this law added title VIII to the Act, providing a new benefit program, Special Benefits for Certain World War II Veterans. Under this title, veterans of the U.S. military and the organized military forces of the Philippines (while in the service of the U.S. Armed Forces) during World War II, who are age 65 or older on or before December 14, 1999, and who are eligible for supplemental security income (SSI) benefits in both the month of enactment and the month of application for the special benefit, and whose total benefit income is less than the title VIII benefit amount are entitled to a title VIII benefit for each month the individual resides outside the United States.

SSA is responsible for the administration of the SVB to eligible veterans under title VIII of the Act. In order to administer this program SSA must collect and maintain personally identifiable information about applicants for title VIII SVB and be able to retrieve specific information about each applicant's claim. Thus, SSA's maintenance of this information requires it to modify existing systems of records and to create a new system of records under the Privacy Act. Information about the applicants for SVB will be maintained in a new system of records, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System, and in two existing systems of records, the Claims Folders System and the Supplemental Security Income Record.

B. Proposed New System of Record, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System

1. Purpose

All information in this system of records will be maintained under the claimant/beneficiary's name and SSN. The system of records will be designed to permit electronic entry and retrieval of claims development and tracking and management information about title VIII SVB claims. This electronic record will

contain data applicable to the special veterans' eligibility to title VIII SVB and facilitate efforts to control and track this workload from the initial inquiry and application to further development. The system of records will also maintain information about the implementation of title VIII to permit allocation of resources, budget projection and workload management. The information contained in this system of records will be centralized on a website allowing access by the regional and field offices to nationally consolidated data.

2. Collection and Maintenance of Data for the Proposed New System of Records, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System

The information maintained in this system of records will be collected from the applicants for title VIII SVB, and other systems of records maintained by SSA. The information maintained will include: Identifying information such as the applicant's name, Social Security number (SSN) and date of birth (DOB); telephone number (if any); foreign and domestic addresses; the applicant's sex; and other information provided by the applicant relative to his or her entitlement for SVB.

In cases where an applicant's claim for SVB is denied, this system of records will include the denial reason and date and information relative to the appellate process.

There will also be a number of data elements in the proposed system pertinent to the beneficiary's continued eligibility. These include payment, foreign residence information and other elements that will help regional and local offices maintain the tracking and management information required to administer the title VIII program efficiently.

If the beneficiary has a representative payee, this system of records will include data about the representative payee such as the payee's SSN; employer identification number, if applicable; mailing address/residence address; DOB; and place of birth.

3. Proposed Routine Use Disclosure of Data Maintained in the Proposed New System of Records, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System

We are proposing to establish routine uses of information that will be maintained in the proposed system as discussed below.

1. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for or entitlement to benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(i) He/she is incapable or of questionable mental capability;

(ii) He/she cannot read or write;

(iii) He/she cannot afford the cost of obtaining the information;

(iv) He/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(v) A language barrier exists; or

(vi) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(i) His/her eligibility for benefits under the Social Security program;

(ii) The amount of his/her benefit payment; or

(iii) Any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement activities.

We will disclose information under this routine use only as necessary to enable SSA to obtain information that will assist in determining individuals' entitlement to title VIII SVB.

2. Disclosure to the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that office's assistance in an SSA matter on his or her behalf. Information would be disclosed when the Office of the President makes an inquiry and presents evidence that the office is acting on behalf of the individual whose record is requested.

3. Disclosure to a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his her congressional representative to intercede in an SSA matter on his or her behalf. Information would be disclosed when the congressional representative makes an inquiry and presents evidence that he or she is acting on behalf of the individual whose record is requested.

4. To DOJ, a court, or other tribunal (either foreign or domestic), or another party before such tribunal when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to the litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

We will disclose information under this routine use only as necessary to enable DOJ, a court, or other tribunal, to effectively defend SSA, its components or employees in litigation involving the proposed system of records.

5. Information may be disclosed to student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

Under certain Federal statutes, SSA is authorized to use the services of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs are: 5 U.S.C. 3111 regarding student volunteers; and 42 U.S.C. 2753 regarding the College Work Study Program.

We contemplate disclosing information under this routine use only when SSA uses the services of these individuals and they need access to information in this system to perform their assigned duties.

6. Disclosure to Federal, State, local, or foreign agencies (or agents acting on their behalf) for administrating Social Security affairs under the Act, including but not limited to the title VIII SVB.

We may disclose information under this routine use to Federal, State, local or foreign agencies where these agencies may provide assistance to SSA in the

administration of programs under the Social Security Act.

7. Disclosure to the Department of Veterans Affairs (DVA), Philippines Regional Office and its agents, for administering Social Security title VIII SVB for applicants residing in the Philippines.

The DVA, Philippines Regional Office, acts as SSA's agent in administering Social Security affairs on the Philippines. We contemplate disclosing to that agency as necessary to administer SVB benefits for individuals residing in the Philippines.

8. To the Department of State and its agents for administering the Act in foreign countries through services and facilities of that agency.

The Department of State acts as SSA's agent in administering Social Security affairs in foreign countries. We contemplate disclosing to the Department of State as necessary to administer SVB for individuals residing in foreign countries.

9. To the American Institute of Taiwan and its agents for administering the Act in Taiwan through services and facilities of that agency.

The American Institute of Taiwan acts as SSA's agent in administering Social Security affairs on Taiwan. We contemplate disclosing to the American Institute of Taiwan as necessary to administer SVB for individuals residing in Taiwan.

10. To the Department of Interior and its agents for administering the Act in the Northern Mariana Islands through services and facilities of that agency.

The Department of Interior acts as SSA's agent in administering Social Security affairs in the Northern Mariana Islands. We contemplate disclosing to the Department of Interior as necessary to administer SVB for individuals residing in the Northern Mariana Islands.

11. Disclosure to representative payees, when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under title VIII and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

Generally, a representative payee is appointed if SSA determines that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest. We will disclose information from this system to representative payees appointed to title VIII beneficiaries only to the extent necessary to administer the program and to assist the representative payee in performing their duties.

12. Disclosure to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs.

We will disclose information under this routine use only in situations in which SSA may enter into a contractual agreement or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

13. Nontax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. § 2904 and § 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. § 2904 with promulgating standards, procedures and guidelines regarding records management and conducting records management studies. Section 2906 of that law, also amended by the NARA Act of 1984, provides that GSA and NARA are to have access to federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

14. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

We will disclose information under this routine use only in situations in which SSA requires third party assistance to collect overpayments material to the title VII SVB program.

4. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3) and our disclosure regulations (20 CFR part 401) permit us to disclose information under a published routine use for a purpose which is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulations permits us to disclose information under a routine use where necessary to assist in carrying out SSA programs. Section 401.120 of the regulations provides that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1–14 above will ensure efficient administration of the title VIII program; the disclosures that would be made under routine use "13" are required by Federal law. Thus, all of the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

C. Proposed Alterations to the Existing Systems of Records, the Claims Folders System and the Supplemental Security Income Record

1. Purpose of Proposed Alterations

The Claims Folders System contains information that constitutes the basic record for payments and determinations made for title II Retirement, Survivors and Disability Insurance benefits and title XVI Supplemental Security Income (SSI) payments under the Social Security Act. Data from the Claims Folders System is used to produce and maintain various Social Security program benefit systems. The Supplemental Security Income Record is one of these specific systems and maintains data that are used internally to control and process SSI cases. Both systems of records also provide a historical record of information concerning the basis for payments and determinations as well as related activity on an individual's record. Since the title VIII provision is an additional entitlement that will be administered by SSA under its benefit programs and is directly related to the individual's SSI eligibility, we will maintain information about applicants for the title VIII SVB in both of these systems of records.

Specifically, we are altering the Claims Folders System and the Supplemental Security Income Record as follows:

- Expanding the categories of individuals covered by the systems of records to reflect that the systems cover applicants for Social Security title VIII SVB;
- Expanding the categories of records maintained in the systems of records to indicate that records about SVB payments are maintained in these systems;
- Expanding the "Purposes" of the systems of records to indicate that the data in the systems are used to process SVB claims; and *
- Making other corresponding changes throughout the **Federal Register** notices of these systems of records relative to our implementation of title VIII of the Act.

2. Collection And Maintenance Of Title VIII Data In The Claims Folders System and the Supplemental Security Income Record Systems of Records

We will collect the additional information that will be maintained in these systems of records from applicants for the Social Security title VIII SVB and from other government agencies and third party sources that maintain information pertinent to the applicant's claim for SVB. The information will consist of entitlement and payment information.

3. Routine Use Disclosure of Title VIII Information from the Claims Folders System and Supplemental Security Income Record Systems of Records

As necessary we will disclose information to other government agencies and other third party sources in order to obtain information we need to determine eligibility and continuing eligibility for SVB. We will make the disclosures under the authority of existing routine uses applicable to the Supplemental Security Income Record.

II. Records Storage Medium and Safeguards for the Proposed New System, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System and Proposed Alterations to Existing Systems of Records, the Claims Folders System and the Supplemental Security Income Record

We will maintain information about the title VIII SVB in the proposed new system of records and the altered systems of records in electronic form, computer data systems, and paper form. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information. Some authorized personnel in the VA Philippines Regional Office and foreign service posts will have limited access to the new system to assist SSA in administering the title VIII program. Access by authorized foreign site personnel will require strict adherence to systems security safeguards, access and use of the data and be monitored closely by the SSA systems support staff in the San Francisco regional office.

Security measures include the use of access codes to enter the computer systems that will maintain the data, and storage of the computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas. Also, all entrances and exits to SSA buildings and related foreign facilities are patrolled by security guards. Contractor personnel having access to data in the proposed and altered systems of records will be required to adhere to SSA rules concerning safeguards, access and use of the data. SSA and foreign personnel having access to the data on these systems will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in these systems. *See* 5 U.S.C. A7 552a(i)(1).

III. Effect of the Proposed New System of Records, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System and Proposed Alterations to Existing Systems of Records, the Claims Folders System and the Supplemental Security Income Record

The proposed new system and altered systems will maintain information to determine individuals' entitlement to SVB and their continued eligibility. The proposed new system will also maintain management information that will facilitate the efficient administration of the title VIII program. There are existing security standards that protect access to and disclosure of records in the existing systems as well as to the proposed new system. Thus, we do not anticipate that the proposed system of records and the alterations to the two existing systems will have any unwarranted adverse effect on individuals.

IV. General Housekeeping Changes to the Federal Notices of the Claims Folders System and Supplemental Security Income Systems of Records

We have made a number of editorial and general housekeeping changes throughout the notices of these two systems of records to make them accurate and up to date.

Dated: February 18, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

60–0273

SYSTEM NAME:

Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System, SSA/RO/San Francisco.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, San Francisco Regional Office, Center for Infrastructure, Systems Support Staff, Frank Hagel Federal Building, 1221 Nevin Ave., Richmond, California 94801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants and beneficiaries for SVB under title VIII of the Social Security Act (Act). Records also contain information on applicants whose claims have been denied.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information maintained in this system of records is collected from the applicants for title VIII SVB and other systems of records maintained by SSA. The information maintained includes: identifying information such as the applicant's name, Social Security number (SSN) and date of birth (DOB); telephone number (if any); foreign and domestic addresses; the applicant's sex; and other information provided by the applicant relative to his or her entitlement for SVB.

In cases where an applicant's claim for SVB is denied, this system of records includes the denial reason and date and information relative to the appellate process.

There are also a number of data elements in the proposed system pertinent to the beneficiary's continued eligibility. These include payment, foreign residence information and other elements that help regional and local offices maintain the tracking and management information required to administer the title VIII program efficiently.

If the beneficiary has a representative payee, this system of records includes data about the representative payee such as the payee's SSN; employer identification number, if applicable; mailing address/residence address; DOB; and place of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VIII of the Social Security Act, Special Benefits for Certain World War II Veterans.

PURPOSE(S):

All information in this system of records is maintained under the claimant/beneficiary's name and SSN. The system of records is designed to permit electronic entry and retrieval of claims development and tracking and management information about title VIII SVB claims. This electronic record contains data applicable to the special veterans' eligibility to title VIII SVB and facilitates efforts to control and track this workload from the initial inquiry and application to further development. The system of records also maintains

information about the implementation of title VIII to permit allocation of resources, budget projection and workload management. The information contained in this system of records will be centralized on a website allowing access by the regional and field offices to nationally consolidated data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for or entitlement to benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(i) He/she is incapable or of questionable mental capability;

(ii) He/she cannot read or write;

(iii) He/she cannot afford the cost of obtaining the information;

(iv) He/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(v) A language barrier exists; or

(vi) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(i) His/her eligibility for benefits under the Social Security program;

(ii) the amount of his/her benefit payment; or

(iii) any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement activities.

2. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

3. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

4. To DOJ, a court, or other tribunal (either foreign or domestic), or another party before such tribunal when,

(a) SSA, or any component thereof; or

(b) any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

5. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

6. Disclosure to Federal, State, local, or foreign agencies (or agents acting on their behalf) for administrating Social Security affairs under the Act, including but not limited to the title VIII SVB.

7. Disclosure to the Department of Veterans Affairs (DVA), Philippines Regional Office and its agents, for administering Social Security title VIII SVB for applicants residing in the Philippines.

8. To the Department of State and its agents for administering the Act in foreign countries through services and facilities of that agency.

9. To the American Institute of Taiwan and its agents for administering the Act in Taiwan through services and facilities of that agency.

10. To the Department of Interior and its agents for administering the Act in the Northern Mariana Islands through services and facilities of that agency.

11. To representative payees, when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under title VIII and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

12. Disclosure to contractors, as necessary, for the purpose of assisting SSA in the efficient administration of its programs.

13. Nontax return information which is not restricted from disclosure by federal law may be disclosed to GSA and NARA for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984.

14. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data are stored in electronic and paper form.

RETRIEVABILITY:

Records in this system are indexed and retrieved both numerically by SSN and alphabetically by name.

SAFEGUARDS:

This system of records is a data base that is accessible via an SSA intranet website. Security measures include the use of access codes to enter the data base, and storage of the electronic records in secured areas which are accessible only to employees who require the information in performing their official duties. The paper records that result from the electronic site are kept in locked cabinets or in otherwise secure areas. SSA, foreign site and contractor personnel having access to data in the system of records are required to adhere to SSA rules concerning safeguards, access, and use of the data. They also are informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system of records.

RETENTION AND DISPOSAL:

Claims development and tracking and management information maintained in this system are retained indefinitely or when it is determined that they are no longer needed. Means of disposal is appropriate to storage medium (e.g., deletion of individual records from the electronic site when appropriate or shredding of paper records that are produced from the system).

SYSTEM MANAGER(S) AND ADDRESSES:

Social Security Administration, San Francisco Regional Office, Center for Infrastructure, Manager, Systems Support Staff, Frank Hagel Federal Building, 1221 Nevin Ave., Richmond, California 94801.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by writing to the system manager at the above address and providing his/her name, address and SSN. An individual requesting notification of records in

person need not provide any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (*e.g.*, credit cards, drivers license, or voter registration card.) If an individual does not have identification papers sufficient to establish his/her identity, that individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person.

If a request for notification is submitted by mail, an individual must include a notarized request to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense.

These procedures are in accordance with SSA Regulations 20 CFR 401.50.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with SSA Regulations 20 CFR Section 401.50.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate, or irrelevant. These procedures are in accordance with SSA Regulations 20 CFR 401.65.

RECORD SOURCE CATEGORIES:

Data for the system are obtained primarily from individual claimants/beneficiaries (or their representative payees if applicable) who claim benefits under title VIII. Records in this system may also be derived in part from other SSA systems of records (*e.g.*, Claims Folders System, (09–60–0089) and the Supplemental Security Income Record, (09–60–0103)).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

60–0089

SYSTEM NAME:

Claims Folders Systems, HHS/SSA/ODP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The claims folders initially are established and maintained in Social Security field offices when claims for benefits are filed or a lead is expected to result in a claim. Telephone and address information for Social Security field offices may be found in local telephone directories under Social Security Administration (SSA). The claims folders are retained in field offices until all development has been completed, and then transferred to the appropriate processing center as set out below. In addition, the information provided by Social Security claimants on the application for benefits is maintained as a computerized record. The computerized records are maintained at the following address: Social Security Administration, Office of Systems Operations, 6401 Security Boulevard, Baltimore, MD 21235.

Supplemental Security Income (SSI) claims folders are held in Social Security field offices pending establishment of a payment record, or until the appeal period in a denied claim situation has expired. The folders are then transferred to a folder-staging facility (FSF) in Wilkes-Barre, Pennsylvania. The address is: Social Security Administration, SSI Folder Staging Operations, Wilkes-Barre Data Operations Center, P.O. Box 7000, Wilkes-Barre, PA 18703.

Retirement and Survivors Insurance (RSI) claims folders are maintained primarily in the SSA's PSCs (contact the system manager at the address below for PSC address information). If the individual to whom the claim pertains resides outside the United States or any of its possessions, the folder is maintained in the Office of Central Operations (OCO) Rolling Heights Building (Megasite). The address for the Megasite is: 2255 Rolling Road, Baltimore, MD 21244.

Disability Insurance (DI) claims folders for individuals under age 55 are maintained primarily in the OCO Megasite (see the address above).

DI claims folders for disabled individuals over age 54 are maintained in SSA's National Records Center (NRC). The address for the NRC is: 601 S. 291 Hwy., 6000 E. Geospace Dr., Independence, MO 64056.

If the individual resides outside the United States or any of its possessions, DI claims folders for individuals under age 55 are maintained in the OCO Megasite (see the address above).

Special Veterans Benefits (SVB) claims folders are held in Social Security field offices and the Veterans Affairs Regional Office (VARO), Philippines pending establishment of a payment record or until the appeal period in a denied claim situation has expired. Contact the system manager for address information for SVB claims folders maintained in the VARO, Philippines.

In addition, claims folders are transferred to the General Services Administration and on occasion may be temporarily transferred to other Federal agencies. The DI claims folders also are transferred to State agencies for disability and vocational rehabilitation determinations. Contact the system manager for address information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants, applicants, beneficiaries and potential claimants benefits and payments administered by the Social Security Administration (*e.g.*, title II RSI and DI benefits; and title VIII SVB title XVI SSI payments). Folders also are maintained on claims that have been denied.

Categories of records in the system: The claim folder contains the name and Social Security number of the claimant or potential claimant; the application for benefits; earnings record information established and maintained by SSA; documents supporting findings of fact regarding factors of entitlement and continuing eligibility; payment documentation; correspondence to and from claimants and/or representatives; information about representative payees; and leads information from third parties such as social service agencies, IRS, VA and mental institutions.

The claim folder also may contain data collected as a result of inquiries or complaints, and evaluation and measurement studies of the effectiveness of claims policies. Separate files may be maintained of certain actions which are entered directly into the computer processes. These relate to reports of changes of address, work status, and other post-adjudicative reports. Separate files also temporarily may be maintained for the purpose of resolving problem cases. Separate abstracts also are maintained for statistical purposes (*i.e.*,

disallowances, technical denials, and demographic and statistical information relating to disability decisions).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 202–205, 223, 226, 228, 1611, 1631, 1818, 1836, and 1840 and title VIII of the Social Security Act.

PURPOSE(S):

Each claim constitutes a basic record for payments and determinations under the Social Security Act. The information in the claim folder is used to produce and maintain the Master Beneficiary Record (60–0090) which is the automated payment system for RSI and DI benefits; the Supplemental Security Income Record (09–60–0103) which is the automated payment system for SSI payments for the aged, blind, disabled and SVB payments under title VIII of the Act; the Black Lung Payment System (09–60–0045) which is the payment system for BL claims; and the Health Insurance Billing and Collection Master Record system (09–70–0522) which is the payment system for HI and Supplementary Medical Insurance (Medicare) benefits.

Claims folders information is used throughout SSA for purposes of pursuing claims; determining, organizing and maintaining documents for making determinations of eligibility for benefits, the amount of benefits, the appropriate payee for benefits; reviewing continuing eligibility; holding hearings or administrative review processes; ensuring that proper adjustments are made based on events affecting entitlement; and answering inquiries.

Claims folders may be referred to State disability determination services agencies or vocational rehabilitation agencies in disability cases. They may also be used for quality review, evaluation, and measurement studies, and other statistical and research purposes. Extracts may be maintained as interviewing tools, activity logs, records of claims clearance, and records of type or nature of actions taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for or entitlement to benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(i) He/she is incapable or of questionable mental capability;

(ii) He/she cannot read or write;

(iii) He/she cannot afford the cost of obtaining the information;

(iv) He/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(v) A language barrier exists; or

(vi) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(i) His/her eligibility for benefits under the Social Security program;

(ii) The amount of his/her benefit payment; or

(iii) Any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement activities.

2. To third party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

3. To a person (or persons) on the rolls when a claim is filed by an individual which is adverse to the person on the rolls; *i.e.*:

(a) An award of benefits to a new claimant precludes an award to a prior claimant; or

(b) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the rolls;but only for information concerning the facts relevant to the interests of each party in a claim.

4. To employers or former employers for correcting or reconstructing earnings records and for Social Security tax purposes only.

5. To the Department of the Treasury for:

(a) Collecting Social Security taxes or as otherwise pertinent to tax and benefit payment provisions of the Act (including SSN verification services); or

(b) Investigating alleged theft, forgery, or unlawful negotiation of Social Security checks.

6. To the United States Postal Service for investigating the alleged forgery, theft or unlawful negotiation of Social Security checks.

7. To DOJ for:

(a) Investigating and prosecuting violations of the Act to which criminal penalties attach,

(b) Representing the Secretary, or

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

8. To the Department of State and its agents for administering the Act in foreign countries through facilities and services of that agency.

9. To the American Institute of Taiwan and its agents for administering the Act in Taiwan through facilities and services of that organization.

10. To the Department of Veterans Affairs, Philippines Regional Office and its agents for administering the Act in the Philippines through facilities and services of that agency.

11. To the Department of Interior and its agents for administering the Act in the Northern Mariana Islands through facilities and services of that agency.

12. To RRB for administering provisions of the Act relating to railroad employment.

13. To State Social Security Administrators for administration of agreements pursuant to section 218 of the Act.

14. To State audit agencies for:

(a) Auditing State supplementation payments and Medicaid eligibility considerations; and

(b) Expenditures of Federal funds by the State in support of the DDS.

15. To private medical and vocational consultants for use in making preparation for, or evaluating the results of, consultative medical examinations or vocational assessments which they were engaged to perform by SSA or a State agency acting in accord with sections 221 or 1633 of the Act.

16. To specified business and other community members and Federal, State, and local agencies for verification of eligibility for benefits under section 1631(e) of the Act.

17. To institutions or facilities approved for treatment of drug addicts or alcoholics as a condition of the individual's eligibility for payment under section 1611(e)(3) of the Act and as authorized by regulations issued by the Special Action Office for Drug Abuse Prevention.

18. To applicants, claimants, prospective applicants or claimants, other than the data subject, their authorized representatives or representative payees to the extent necessary to pursue Social Security claims and to representative payees when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Act and assisting the representative payees in performing

their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

19. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

20. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Act.

21. To Federal, State, or local agencies (or agents on their behalf) for administering cash or noncash income maintenance or health maintenance programs (including programs under the Act). Such disclosures include, but are not limited to, release of information to:

(a) RRB for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;

(b) The VA for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for or amount of VA benefits or verifying other information with respect thereto;

(c) The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;

(d) State welfare departments for administering sections 205(c)(B)(i)(II) and 402(a)(25) of the Act requiring information about assigned SSNs for AFDC program purposes only;

(e) State agencies for making determinations of Medicaid eligibility; and

(f) State agencies for making determinations of food stamp eligibility under the food stamp program.

22. To State welfare departments:

(a) Pursuant to agreements with SSA for administration of State supplementation payments;

(b) For enrollment of welfare recipients for medical insurance under section 1843 of the Act; and

(c) For conducting independent quality assurance reviews of SSI recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review.

23. To State vocational rehabilitation agencies or State crippled children's service agencies (or other agencies providing services to disabled children) for consideration of rehabilitation services per sections 222(a) and 1615 of the Act.

24. To the Social Security agency of a foreign country, to carry out the purpose of an international Social Security agreement entered into between the United States and the other country, pursuant to section 233 of the Act.

25. To IRS, Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the IRC of 1986, as amended.

26. To the Office of the President for responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

27. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

28. To DOJ (Immigration and Naturalization), upon request, to identify and locate aliens in the United States pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

29. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

30. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to GSA and NARA for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984.

31. To DOJ, a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which is subject to the disclosure provisions of the IRC (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

32. Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

33. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

34. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary.

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records generally are maintained manually in file folders. However, some records may be maintained in magnetic media (*e.g.*, on disk and microcomputer).

RETRIEVABILITY:

Claims folders are retrieved both numerically by SSN and alphabetically by name.

SAFEGUARDS:

Paper claims folders are protected through limited access to SSA records. Access to the records is limited to those employees who require such access in the performance of their official duties. All employees are instructed in SSA confidentiality rules as a part of their initial orientation training.

Safeguards for automated records have been established in accordance with the Systems Security Handbook. All magnetic tapes and disks are within an enclosure attended by security

guards. Anyone entering or leaving this enclosure must have special badges which are issued only to authorized personnel. All microfilm and paper files are accessible only by authorized personnel and are locked after working hours.

For computerized records, electronically transmitted between SSA's central office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and an audit trail.

RETENTION AND DISPOSAL:

The retention period for claims folders are as follows:

A. RSI Claims Folders

Folders for disallowed life and death claims, withdrawals, and lump-sum claims in which potential entitlements exist are transferred to the FRC after being so identified and then destroyed 10 years thereafter.

Folders for awarded claims where the last payment has been made and there is no future potential claimant indicated in the record are transferred to the FRC and then destroyed 5 years thereafter.

B. DI Claims Folders

Folders for DI denial claims are transferred to the FRC after expiration of the reconsideration period and then destroyed 10 years thereafter.

Folders for terminated DI claims are transferred to the FRC after being identified as eligible for transfer and then destroyed 10 years thereafter.

C. SSI Claims Folders and SVB Folders

Folders for SSI and SVB death termination claims are destroyed 2 years after resolution of possible outstanding overpayments or underpayments. Folders for other SSI and SVB terminations are transferred to the FRC after termination and destroyed after 6 years, 6 months.

When a subsequent claim is filed on the SSN the claim folder is recalled from the FRC. Similarly, claims folders may be recalled from the FRC at any time by SSA, as necessary, in the administration of Social Security programs. When this occurs, the folder will be temporarily maintained in a Social Security field, regional or central office.

Separate files of actions entered directly into the computer processes are shredded or destroyed by heat after 1 to 6 months. Claims leads that do not result in a filing of an application are destroyed 6 months after the inquirer is invited by letter to file a claim.

All paper claim files are disposed of by shredding or the application of heat when the retention periods have expired.

SYSTEM MANAGER(S) AND ADDRESS:

SSA Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by contacting any Social Security field office.

When requesting notification, the individual should provide his/her name, SSN, and the type of claim he or she filed (RSI, DI, HI, BL special minimum payments, SSI or SVB). If more than one claim is filed, each should be identified, whether he/she is or has been receiving benefits, whether payments are being received under his or her own SSN, and if not, the name and SSN under which received, if benefits have not been received, the approximate date and place the claim was filed, and his/her address and/or telephone number. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and prevent delay.)

An individual requesting notification of records in person need not furnish any special documents of identity. Documents, he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's license or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth and address in order to establish identity, plus any additional information specified in this section. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c).

An individual who requests access to a medical record shall, at the time he/she makes the request, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents. A parent or guardian who requests notification of or access to a minor's medical record shall at the time he/she makes the request designate a physician or other health professional (other than a family member) who will be willing to review the record and inform the parent or guardian of its contents. These procedures are in accordance with SSA Regulations (20 CFR 401.55).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the information they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c) and 401.55).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from claimants, beneficiaries, applicants and recipients; accumulated by SSA from reports of employers or self-employed individuals; various local, State, and Federal agencies; claimant representatives and other sources to support factors of entitlement and continuing eligibility or to provide leads information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

60–0103

SYSTEM NAME:

Supplemental Security Income Record and Special Veterans Benefits, SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Telecommunications and Systems Operations, 6401 Security Boulevard, Baltimore, MD 21235

Records also may be located in the Social Security Administration (SSA) Regional and field offices (individuals should consult their local telephone directories for address information).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This file contains a record for each individual who has applied for supplemental security income (SSI) payments, including individuals who have requested an advance payment; SSI recipients who have been overpaid; and ineligible persons associated with an SSI recipient. This file also covers those individuals who have applied for and who are entitled to the Special Veterans Benefits (SVB) under title VIII

of the Social Security Act. (This file does not cover applicants who do not have a Social Security number (SSN).)

CATEGORIES OF RECORDS IN THE SYSTEM:

This file contains data regarding SSI eligibility; citizenship; residence; Medicaid eligibility; eligibility for other benefits; alcoholism or drug addiction data, if applicable (disclosure of this information may be restricted by 21 U.S.C. 1175 and 42 U.S.C. 290dd–3 and ee–3); income data; resources; payment amounts, including overpayment amounts and date and amount of advance payments; living arrangements; case folder location data; appellate decisions, if applicable; SSN used to identify a particular individual, if applicable; information about representative payees, if applicable; and a history of changes to any of the persons who have applied for SSI payments. For eligible individuals, the file contains basic identifying information, income and resources (if any) and, in conversion cases, the State welfare number.

This file also contains information about applicants for SVB. The information maintained in this system of records is collected from the applicants for title VIII SVB, and other systems of records maintained by SSA. The information maintained includes a data element indicating this is a title VIII SVB claim. It will also include: identifying information such as the applicant's name, Social Security number (SSN) and date of birth (DOB); telephone number (if any); foreign and domestic addresses; the applicant's sex; income data, payment amounts (including overpayment amounts); and other information provided by the applicant relative to his or her entitlement for SVB.

If the beneficiary has a representative payee, this system of records includes data about the representative payee such as the payee's SSN; employer identification number, if applicable; and mailing address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1602, 1611, 1612, 1613, 1614, 1615, 1616, 1631, 1633, 1634 of title XVI and title VIII of the Social Security Act (the Act).

PURPOSE(S):

SSI records begin in Social Security field offices where an individual or couple files an application for SSI payments. SVB records begin in Social Security field offices and Veterans Affairs Regional Office (VARO) where an individual files an application for SVB payments. The SSI and SVB applications contain data which may be used to prove the identity of the applicant, to determine his/her eligibility for SSI or SVB payments and, in cases where eligibility is determined, to compute the amount of the payment. Information from the application, in addition to data used internally to control and process SSI and SVB cases, is used to create the Supplemental Security Income Record (SSR). The SSR also is used as a means of providing a historical record of all activity on a particular individual's or couple's record.

In addition, statistical data are derived from the SSR for actuarial and management information purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

(1) To the Department of the Treasury to prepare SSI, Energy Assistance, and SVB checks to be sent to claimants or beneficiaries.

(2) To the States to establish the minimum income level for computation of State supplements.

(3) To the following Federal and State agencies to prepare information for verification of benefit eligibility under section 1631(e) of the Act: Bureau of Indian Affairs; Office of Personnel Management; Department of Agriculture; Department of Labor; Immigration and Naturalization Service; Internal Revenue Service; Railroad Retirement Board; State Pension Funds; State Welfare Offices; State Worker's Compensation; Department of Defense; United States Coast Guard; and Department of Veterans Affairs.

(4) To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

(5) To the appropriate State agencies (or other agencies providing services to disabled children) to identify title XVI eligibles under the age of 16 for the consideration of rehabilitation services in accordance with section 1615 of the Act, 42 U.S.C. 1382d.

(6) To contractors under contract to SSA or under contract to another agency with funds provided by SSA for the performance of research and statistical activities directly relating to this system of records.

(7) To State audit agencies for auditing State supplementation payments and Medicaid eligibility consideration.

(8) To State agencies to effect and report the fact of Medicaid eligibility of title XVI recipients in the jurisdiction of those States which have elected Federal determinations of Medicaid eligibility of title XVI eligibles and to assist the States in administering the Medicaid program.

(9) To State agencies to identify title XVI eligibles in the jurisdiction of those States which have not elected Federal determinations of Medicaid eligibility in order to assist those States in establishing and maintaining Medicaid rolls and in administering the Medicaid program.

(10) To State agencies to enable those agencies which have elected Federal administration of their supplementation programs to monitor changes in applicant/recipient income, special needs, and circumstances.

(11) To State agencies to enable those agencies which have elected to administer their own supplementation programs to identify SSI eligibles in order to determine the amount of their monthly supplementary payments.

(12) To State agencies to enable them to assist in the effective and efficient administration of the SSI program.

(13) To State agencies to enable those which have an agreement with SSA to carry out their functions with respect to Interim Assistance Reimbursement pursuant to section 1631(g) of the Act.

(14) To State agencies to enable them to locate potentially eligible individuals and to make eligibility determinations for extensions of social services under the provisions of title XX of the Act.

(15) To State agencies to assist them in determining initial and continuing eligibility in their income maintenance programs and for investigation and prosecution of conduct subject to criminal sanctions under these programs.

(16) To the United States Postal Service for investigating the alleged theft, forgery or unlawful negotiation of SSI and SVB checks.

(17) To the Department of the Treasury for investigating the alleged theft, forgery or unlawful negotiation of SSI and SVB checks.

(18) To the Department of Education for determining the eligibility of applicants for Basic Educational Opportunity Grants.

(19) To Federal, State or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the Act). Such disclosures include, but are not limited to, release of information to:

(a) The Department of Veterans Affairs (DVA) upon request for determining eligibility for, or amount of, DVA benefits or verifying other information with respect thereto in accordance with 38 U.S.C. 5106;

(b) The RRB for administering the Railroad Unemployment Insurance Act;

(c) State agencies to determine eligibility for Medicaid;

(d) State agencies to locate potentially eligible individuals and to make determinations of eligibility for the food stamp program;

(e) State agencies to administer energy assistance to low income groups under programs for which the States are responsible; and

(f) Department of State and its agents to assist SSA in administering the Social Security Act in foreign countries, the American Institute on Taiwan and its agents to assist in administering the Social Security Act in Taiwan, the VA, Philippines Regional Office and its agents to assist in administering the Social Security Act in the Philippines, and the Department of Interior and its agents to assist in administering the Social Security Act in the Northern Mariana Islands.

(20) To IRS, Department of the Treasury, as necessary, for the purpose of auditing SSA's compliance with safeguard provisions of the Internal Revenue Code (IRC) of 1986, as amended.

(21) To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or a third party on his/her behalf.

(22) Upon request, information on the identity and location of aliens may be disclosed to the DOJ (Criminal Division, Office of Special Investigations) for the purpose of detecting, investigating and, where necessary, taking legal action against suspected Nazi war criminals in the United States.

(23) To third party contacts such as private collection agencies and credit reporting agencies under contract with SSA and State motor vehicle agencies for the purpose of their assisting SSA in recovering overpayments.

(24) Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

(25) Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to General Services Administration and National Archives and Records Administration (NARA) for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984.

(26) To the DOJ, a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court, or other tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which are subject to the disclosure provisions of the IRC (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

(27) To representative payees, when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Act and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

(28) To third party contacts (e.g., employers and private pension plans) in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for, or entitlement to, benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(i) he/she is incapable or of questionable mental capability;

(ii) he/she cannot read or write;

(iii) he/she cannot afford the cost of obtaining the information;

(iv) he/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(v) a language barrier exists; or

(vi) the custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(i) His/her eligibility for benefits under the Social Security program;

(ii) The amount of his/her benefit payment; or

(iii) Any case in which the evidence is being reviewed as a result of suspected fraud, concern for program integrity, quality appraisal, or evaluation and measurement activities.

(29) To Rehabilitation Services Administration (RSA) for use in its program studies of, and development of enhancements for, State vocational rehabilitation programs. These are programs to which applicants or beneficiaries under titles II and or XVI of the Act may be referred. Data released to RSA will not include any personally identifying information (such as names or SSNs).

(30) Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et. seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

(31) To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

(32) To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, if information is necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

(33) Corrections to information that resulted in erroneous inclusion of individuals in the Death Master File (DMF) may be disclosed to recipients of erroneous DMF information.

(34) Information as to whether an individual is alive or deceased may be disclosed pursuant to section 1106(d) of the Social Security Act (42 U.S.C. 1306(d)), upon request, for purposes of

an epidemiological or similar research project, provided that:

(a) SSA determines in consultation with the Department of Health and Human Services, that the research may reasonably be expected to contribute to a national health interest; and

(b) The requester agrees to reimburse SSA for the costs of providing the information; and

(c) The requester agrees to comply with any safeguards and limitations specified by SSA regarding rerelease or redisclosure of the information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in magnetic media (*e.g.*, magnetic tape) and in microform and microfiche form.

RETRIEVABILITY:

Records are indexed and retrieved by SSN.

SAFEGUARDS:

System security for automated records has been established in accordance with the Systems Security Handbook. This includes maintaining all magnetic tapes and magnetic disks within an enclosure attended by security guards. Anyone entering or leaving that enclosure must have special badges which are only issued to authorized personnel. All authorized personnel having access to the magnetic records are subject to the penalties of the Privacy Act. The microfiche are stored in locked cabinets, and are accessible to employees only on a need-to-know basis. All SSR State Data Exchange records are protected in accordance with agreements between SSA and the respective States regarding confidentiality, use, and redisclosure.

RETENTION AND DISPOSAL:

Original input transaction tapes received which contain initial claims and posteligibility actions are retained indefinitely although these are processed as received and incorporated into processing tapes which are updated to the master SSR tape file on a monthly basis. All magnetic tapes appropriate to SSI information furnished to specified Federal, State, and local agencies for verification of eligibility for benefits and under section 1631(e) are retained, in accordance with the PA accounting requirements, for at least 5 years or the life of the record, whichever is longer.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Supplemental Security Income Systems, Office of Systems Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by writing to or visiting any Social Security field office and providing his or her name and SSN. (Individuals should consult their local telephone directories for Social Security office address and telephone information.) Applicants for SVB who reside in the Philippines should contact VARO, Philippines. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and prevent delay.)

An individual requesting notification of records in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (*e.g.*, credit cards, driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth and address in order to establish identity, plus any additional information specified in this section. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual who requests notification of, or access to, a medical record shall, at the time he or she makes the request, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of, or access to, a minor's medical record shall at the time he or she makes the request designate a physician or other health professional (other than a family member) who will be willing to review the record and inform the parent or guardian of its contents at the physician's or health professional's discretion. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c) and 401.55).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Data contained in the SSR are obtained for the most part from the applicant for SSI and SVB payments and are derived from the Claims Folders System (60–0089) and the Modernized Supplemental Security Income Claims System. The States and other Federal agencies such as the Department of Veterans Affairs also provide data affecting the SSR.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 00–6229 Filed 3–13–00; 8:45 am]

BILLING CODE 4190–29–U

DEPARTMENT OF STATE

[Public Notice 3252]

Proposed Information Collection

AGENCY: Department of State.

ACTION: Notice of information collection under emergency review procedure and 60-day notice of proposed information collection under standard review procedure: Irish Peace Process Cultural and Training Program.

SUMMARY: The Department of State has submitted the information collection request described below to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. Additionally, the Department is seeking OMB approval for the subject information collection request under the standard review procedures of the 1995 Act.

The twofold purpose of this notice is to advise the public that (a) the Department's clearance request has been submitted to OMB for review pursuant to OMB's emergency clearance process; and (b) the Department additionally intends to submit the information collection to OMB for approval pursuant to OMB's standard approval process, after allowing the required 60 days for public comment in the **Federal Register**.

The following summarizes the information collection proposal submitted, and to be submitted, to OMB:

Type of Request: New Collection.

Originating Office: EUR.

Title of Information Collection: Irish Peace Process Cultural and Training Program ("IPPCTP").

Frequency: 1.

Form Number: N/A.

Respondents: Entities wishing to provide employment opportunities to IPPCTP participants as well as persons selected for participation in the IPPCTP.

Estimated Number of Respondents: 4200.

Average Hours Per Response: (a) Prospective Employers: up to 2 hours in providing employer background information and up to 1 hour in reporting on participants' work experience (for each participant hired by an employer). (b) Participants: up to 2 hours in providing background/resume information, a photograph, and tracking information. Where participation originates with an employer nomination, the increase of time required of an employer in providing employee-related information will be offset by a corresponding reduction in the time otherwise required of employees in providing this same information.

Total Estimated Burden: 12,400 hours.

The proposed information collection is being published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by March 1, 2000. If granted, the emergency approval will only be valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

During the first 60 days of this same period a regular review of this information collection will also be undertaken, pursuant to the OMB's standard review process. Comments are encouraged and will be accepted until the 60th day from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to the Officer for Ireland and Northern Ireland Affairs, Bureau of European Affairs (EUR/UBI), Room 4513, U.S. Department of State, Washington, DC 20520, (202) 647–6585.

Dated: March 1, 2000.

Catherine M. Smith,

Acting Executive Director Bureau of European Affairs, U.S. Department of State.

[FR Doc. 00–6215 Filed 3–13–00; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 3251]

Proposed Information Collection

AGENCY: Department of State.

ACTION: 60-day notice of proposed information collection; U.S. department of state, parking permit application, DS–1987.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Paperwork Reduction Act.

Originating Office: A/OPR/GSM/SS.

Title of Information Collection: Parking Permit Application.

Frequency: Year-round with one large collection done once a year.

Form Number: DS–1987.

Respondents: Department of State employees and contractors.

Estimated Number of Respondents: 4,050.

Average Hours Per Response: ¼ hour.

Total Estimated Burden: 1,012.50.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Ms. Lee Martinez, Room B258, 202/647–0305, U.S. Department of State, Washington, DC 20520.

Dated: February 24, 2000.

Robert B. Dickson,

Executive Director, Bureau of Administration, U.S. Department of State.

[FR Doc. 00–6214 Filed 3–13–00; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Correction to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Technical correction to the Harmonized Tariff Schedule of the United States.

SUMMARY: The United States Trade Representative (the USTR) is modifying the Harmonized Tariff Schedule of the United States (HTS) as set forth below, pursuant to authority granted by Congress to the President in section 604 of the Trade Act of 1974 (Trade Act) and delegated to the USTR in Presidential Proclamation No. 6969 of January 27, 1997 (62 FR 4415). This technical correction is to ensure that the intended tariff treatment is accorded to certain imported valve spring quality wire rod.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Gordana Earp, Acting Assistant United States Trade Representative, (202) 395–6160, or Audrey Winter, Associate General Counsel, (202) 395–7305.

Correction to HTS

Presidential Proclamation 7273 of February 16, 2000 (65 FR 8621) modified subchapter III of chapter 99 of the HTS in order to facilitate positive adjustment to competition from imports of certain steel wire rod. The proclamation inserted new U.S. note 9 in that subchapter; the note provides that various steel products are excluded from the new subheadings

implementing the adjustment action. However, new subdivision (b) of note 9, which describes the valve spring quality wire rod intended to be excluded from the new tariff subheading, inadvertently misstated the purchasers of the subject product. Accordingly, the HTS is modified as follows:

Subdivision (b) of U.S. note 9 to subchapter III of chapter 99 of the HTS is modified by deleting the phrase "order from an automotive valve spring or automotive brake spring manufacturer in" and by inserting in lieu thereof the phrase "order from an automotive valve spring manufacturer, automotive valve spring wire manufacturer, automotive brake spring manufacturer or automotive brake spring wire manufacturer in".

This modification to the HTS shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 1, 2000, and shall continue in effect as if this language had been contained in Proclamation 7273, under the terms provided for therein.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 00–6199 Filed 3–13–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice: Receipt of Noise Compatibility Program and Request for Review; Corpus Christi International Airport, Corpus Christi, Texas

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by City of Corpus Christi for Corpus Christi International Airport under the provisions of Title 49 U.S.C., Chapter 475 (hereinafter referred to as "Title 49") and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Corpus Christi International Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before August 1, 2000.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program are March 1, 2000. The public comment period ends May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Nan L. Terry, Department of transportation, Federal Aviation Administration, Fort Worth, Texas, 76193–0650, (817) 222–5607. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Corpus Christi International Airport are in compliance with applicable requirements of Part 150, effective March 1, 2000. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 1, 2000. This notice also announces the availability of this program for public review and comment.

Under Title 49, an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The City of Corpus Christi submitted to the FAA on January 10, 2000 noise exposure maps, descriptions and other documentation, which were produced during the Master Plan Update and the Federal Aviation Regulations (FAR) Part 150 Airport Noise Compatibility Planning Study for Corpus Christi International Airport beginning on July 18, 1995.

It was requested that the FAA review this material as the noise exposure maps, as described in Title 49, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Title 49.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Corpus Christi. The specific maps under consideration are Noise Exposure Map 1999, Figure 5–1, Noise Exposure Map 2004, Figure 5–2, and Noise Exposure Map Ultimate Airfield, Figure 5–3 in the submission.

The FAA has determined that these maps for Corpus Christi International Airport are in compliance with applicable requirements. This determination is effective on March 1, 2000. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, plans, a commitment to approve a noise compatibility program, or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Title 49.

These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Title 49. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Corpus Christi International Airport, also effective on March 1, 2000. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further

review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 1, 2000.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consisent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps. the FAA's evaluation for the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137

Department of Aviation, City of Corpus Christi, 1000 International Drive, Corpus Christi, Texas 78406–1801

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Forth Worth, Texas, March 1, 2000.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 00–6222 Filed 3–13–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee.

DATES: The meeting will be held April 4–6, 2000, beginning at 9 a.m. on April 4. Arrange for oral presentations by March 28.

ADDRESSES: The meeting will be at the FAA–AANC NDI Validation Center, Conference Room, 3260 University Blvd., SE., Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: Terry K. Stubblefield, Office of Rulemaking, ARM–208, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–7624, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of the Aging Transport Systems Rulemaking Advisory Committee in the Conference Room at the FAA–AANC NDI Validation Center, 3260 University Blvd., SE., Albuquerque, NM.

The agenda will include:

- Opening remarks.
- Working group reports.
- Discussion of potential problems related to mixing wire types in bundles.
- Developing an ATSRAC approach to nonelectrical systems.
- Status of arc fault circuit interrupter development.
- Reports on SDR data mining, maintenance processes, service bulletins and AD history.
- Tour of the FAA–AANC NDI Validation Center (FAA–Sandia facilities).

Attendance is open to the interested public will be limited to the space available. The public must make arrangements by March 28, 2000, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to him at the meeting. Public statements will only be considered if time permits. If you are in need of assistance or require a reasonable accommodation for this material or event, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. In addition, sign and oral interpretation as well as a listening device can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on March 8, 2000.

Ida Klepper,

Acting Director, Office of Rulemaking.

[FR Doc. 00–6133 Filed 3–13–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from April 3–6, 2000, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, Bessie Coleman Conference Center, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Harrell, Executive Director, ATPAC, Terminal and En Route Procedures Division, 800 Indpendence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held April 3 through April 6, 2000, at the Federal Aviation Administration, Bessie Coleman Conference Center, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than March 30, 2000. The next quarterly meeting of the FAA ATPAC is planned to be held from July 17–20, 2000, in Anchorage, AK.

Any member of the public may pesent a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on March 1, 20000.

Eric Harrell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 00–6131 Filed 3–13–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Modification of the Memphis Class B Airspace Area, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces two fact-finding informal airspace meetings. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the proposal to modify the Memphis Class B Airspace Area. All comments received during these meetings will be considered prior to any revision or issuance of a notice of proposed rulemaking.

TIMES AND DATES: *Meetings.* These informal airspace meetings will be held on Thursday, April 27, 2000, at 7:00 pm; and Thursday, May 4, 2000, at 7:00 pm. Comments must be received on or before March 30, 2000.

ADDRESSES: On April 27, 2000, the meeting will be held at the FedEx World Tech Center, 50 FedEx Parkway (off Bailey Station Road), Collierville, TN, On May 4, 2000, the meeting will be held at the Memphis Airport Traffic Control Tower, Memphis, International Airport, 2515 Winchester Road, Memphis, TN. There is limited space available at the May 4th meeting.

COMMENTS: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337.

FOR FURTHER INFORMATION CONTACT: Brigitte Lewkowicz, Airspace Specialist, Air Traffic Division, ASO–500, FAA, Southern Regional Office, telephone (404) 305–5559.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) These meetings will be informal in nature and will be conducted by a representative of the FAA, Southern Region. A representative from the FAA will present a formal briefing on the proposed changes to the Class B airspace area. Each participant will be given an opportunity to deliver comments or make a presentation at the meetings.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter.

(d) These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(e) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(f) These meetings will not be formally recorded.

Agenda for the Meetings

Opening Remarks and Discussion of Meeting Procedures.
Briefing on Background for Proposals.
Public Presentations.
Closing Comments.

Issued in Washington, DC, on March 8, 2000.

Paul Gallant,

Acting Manager, Airspace and Rules Division.

[FR Doc. 00–6220 Filed 3–13–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Columbus Metropolitan Airport, Columbus, Georgia; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Columbus Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 27, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Campus Building, Suite 2–260, College Park, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mark Oropeza, Airport Director of the Columbus Metropolitan Airport at the following address: Mr. Mark Oropeza, Airport Director, Columbus Metropolitan Airport, 3250 West Britt David Road, Columbus, GA 31909–5399.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Columbus Airport Commission under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Daniel Gaetan, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Campus Building, Suite 2–260, College Park, GA 30337–2747; telephone number (404) 305–7146. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Columbus Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 24, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Columbus Airport Commission was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 12, 2000.

The following is a brief overview of the application.

PFC Application No.: 99–03–C–00–CSG.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 2000.

Proposed charge expiration date: November 1, 2004.

Total estimated PFC revenue: $1,223,986.

Brief description of proposed project(s):

(1) North Terminal Access Road Rehabilitation;
(2) Obstruction approach clearing for Runway Ends 5, 23, 12, and 30;
(3) Passenger lift device;
(4) Taxiway "D" Rehabilitation;
(5) Runway 5/23 Rehabilitation;
(6) Runways 12/30 & 5/23 renumbering and signage;
(7) Aircraft Rescue & Fire Fighting Vehicle;

(8) Update Airport Master Plan; Taxiway "C" Relocation.

Class or classes of air carriers, which the public agency has requested not be required to collect PFCs: All classes of carriers that enplaned less that 1% of the total number of passengers enplaned annually at the airport.

An original notice was printed on February 25, 2000 Volume 65, Number 38 indicating a proposed charge expiration date of November 1, 2000. This corrected notification includes the accurate date of November 1, 2004.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Columbus Metropolitan Airport.

Issued in Atlanta, Georgia on January 24, 2000.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 00–6223 Filed 3–13–00; 8:45 am]

BILLING CODE

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tulsa International Airport, Tulsa, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tulsa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 13, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0611.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Brent A. Kitchen, Airports Director, Tulsa International Airport at the following address: P.O. Box 58183, Tulsa, OK 74158–1838.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tulsa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 29, 2000 the FAA determined that the application to impose and use the revenue from A PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 13, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date: June 1, 2000.
Proposed charge expiration date: June 1, 2003.
Total estimated PFC revenue: $13,500,000.
PFC application number: 00–04–C–00–TUL

Brief description of proposed project(s):

Projects to Impose and Use PFC'S
Terminal Security and Flight Information Display System Improvements
Conduct Noise Mitigation
Interior Terminal Improvements
Airfield Drainage Improvements
Airfield Snow Removal Equipment Building Improvements
Terminal Access Improvements

Proposed class or classes of air carriers to be exempted form collecting PFC's: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Tulsa International Airport.

Issued in Forth Worth, Texas on February 29, 2000.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 00–6132 Filed 3–13–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Grant Program for Research and Development in the Field of Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Announcement of grant program.

SUMMARY: The Bureau of Transportation Statistics announces a new Transportation Statistics Research Grants program to support its goal of advancing the field of transportation statistics. This notice solicits applications for projects that (1) support the development of the field of transportation statistics; and/or (2) involve research or development in transportation statistics. It outlines the purpose, goals, and general procedures for application and award. For FY 2000, BTS will make available up to $500,000 in grant funds to eligible organizations.

DATES: For BTS to consider your application, we must either receive it by April 27, 2000, at 5:00 P.M. Eastern Standard Time or it must be postmarked by the U.S. Postal Service by that date. Applications received or postmarked after April 27, 2000, will be processed at the next application date, which is anticipated to be every six to twelve months, unless you request in writing that your application be returned.

ADDRESSES: You must send six copies of the application package to the BTS Grants Program, K–20, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: David Banks, Office of Statistical Programs and Services, Bureau of

Transportation Statistics, 400 Seventh Street, SW, Washington, DC 20590; (202) 366–0963; fax: (202) 366–3640; e-mail: david.banks@bts.gov.

SUPPLEMENTARY INFORMATION:

I. Background—Advancing the Discipline of Transportation Statistics

The purpose of this grant program is to provide financial assistance to eligible organizations to help advance the discipline of transportation statistics. These grants are authorized by section 5109 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178 (1998), codified at 49 U.S.C. 111(g)). BTS anticipates awarding up to $500,000 per year in grants for projects that (1) support development of the field of transportation statistics; and/or (2) advance research or development in transportation statistics.

BTS is a separate operating administration within the Department of Transportation (DOT). Its mission is to lead in developing transportation data and information of high quality, and to advance their effective use in public and private transportation decisionmaking. In accomplishing this mission, BTS works to improve six key attributes of transportation data and analysis—quality, comparability, completeness, timeliness, relevance, and utility.

Our ultimate goal is to make transportation better—to enhance safety, mobility, economic growth, the human and natural environment, and national security (the five strategic goals of the Department of Transportation). BTS's role in this goal is to put together data and information that others need to make decisions concerning transportation. We collect data and compile, analyze, and publish statistics. Many others, both within and outside DOT, are involved in building this knowledge base and BTS could not do it alone.

While there are many excellent transportation data programs and many excellent statistics programs, few are devoted to the intersection of these two disciplines. Bringing a better understanding of statistics to transportation data will improve data quality, increase utility (*e.g.*, by improving measures of travel), and reduce costs (*e.g.*, by using techniques to make data collection, analysis, and dissemination more efficient). BTS wants to foster the transportation statistics discipline and increase its quality and usefulness to the transportation community. This grants program is one way BTS is working toward this goal.

II. Eligibility Requirements

What Organizations May Apply?

BTS invites applications from public and private non-profit institutions of higher education. We strongly encourage Minority Serving Institutions, which have been traditionally under represented in transportation statistics, to submit applications. If organizations partner on a project, the participants should submit a single application. You may submit more than one application as long as the applications are for separate and distinct projects.

What Projects Are Eligible for Funding?

Eligible projects must support the development of the field of transportation statistics and/or involve research or development in transportation statistics. Examples include, but are not limited to, research and development in the following areas:

(1) Visualizing and mining transportation databases;

(2) Aggregating and analyzing databases maintained by DOT agencies, especially where the research involves multiple modes of transportation;

(3) Improving the quality and usability of federal transportation statistics;

(4) Developing exposure measures (*e.g.*, vehicle miles traveled) for use in risk analyses;

(5) Improving the statistical use of geographic information systems to better understand and quantify travel behavior;

(6) Developing performance measures for the transportation system;

(7) Designing and analyzing transportation surveys; and

(8) Improving data quality and data collection.

What Are the Cost Sharing Requirements?

For awards of $100,000 or more, the recipient shall fund at least 50 percent of the project's costs. The nonfederal match must come from sources other than the project sponsor, and must be cash contributions rather than in-kind contributions. In reviewing all applications, even those requesting less than $100,000, the degree of cost-sharing will be considered, with more weight given to cash contributions than in-kind services.

III. Application Contents

For more information about sending your application, please refer to the **ADDRESSES** and **DATES** sections listed above. In order to be considered for funding under this program, your application package must include the following:

(1) A Project Narrative. This must not exceed five letter-size pages, single-sided and double-spaced. Use at least 12 point type and one inch margins. In general, the information you provide should be in sufficient detail so BTS understands the proposed work and its anticipated benefits and to demonstrate that you have the necessary experience and resources to accomplish it. The narrative must identify the organization; how it meets the eligibility criteria; its experience and accomplishments in collecting, analyzing, and/or disseminating transportation data; and the qualifications of the principals proposed to conduct the activities. The narrative must also describe the proposed activity, including how you would accomplish it, a time line listing major milestones associated with the project, and a list of specific products and/or services with the dates they will be delivered.

(2) An Application for Federal Assistance. Submit OMB SF–424 (Application for Federal Assistance), which is the official form required for all federal grants. It requests basic information about the grantee and the proposed project. Under Part 10 of this form, use 20.920 and Transportation Statistics Research Grants for the Catalog of Federal Domestic Assistance Number and Title. Also submit OMB SF–424A (Budget Information—Nonconstruction Programs). You can download these forms from the OMB Internet site at http://www.whitehouse.gov/omb/grants.

(3) An Evaluation Plan. Include a brief description of how you will evaluate and measure the success of the project, including the anticipated benefits and challenges in completing it. This can be part of the Project Narrative.

(4) Resumes. Include resumes from up to three key personnel who would be significantly involved in the project.

(5) Letters of Commitment. If your proposal includes the significant involvement of other eligible organizations, your application must include letters of commitment from them.

IV. Application Review Process and Selection Criteria

The Transportation Statistics Research Grants program uses a competitive process and applications will be evaluated based on the merit of the proposed project in relation to the other applications received. BTS anticipates making multiple awards based on this solicitation. While BTS will select the most meritorious proposals, we may choose to not award all available funds.

Upon receiving an application, BTS will conduct an initial review to determine if it meets the eligibility criteria and contains all of the items specified under the Application Contents section of this announcement. A BTS evaluation committee will then review each complete application from an eligible recipient using the evaluation criteria listed below (the order of criteria does not designate priority) and the BTS Director will select the final grants. The evaluation criteria are:

(1) How well does the proposal support BTS?s strategic goals of improving the quality, comparability, completeness, timeliness, relevance, and utility of transportation data? How well does the proposal serve the broad transportation interests of the United States?

(2) How innovative is the proposed activity? To what extent is the work being accomplished elsewhere?

(3) How much experience has the applicant demonstrated in one or more of the following areas—collecting, analyzing, storing, or disseminating transportation data, particularly data collected or disseminated by BTS, and working with theoretical statistical issues concerning transportation data?

(4) Does the applicant have the professional qualifications and team members necessary for satisfactory performance of the proposed activity?

(5) How well does the technical approach and proposed costs reflect an understanding of the procedures necessary to complete the required tasks?

(6) To what degree does the proposal include cost-sharing? More weight will be given to proposals with cash contributions than in-kind services. For awards of $100,000 or more, BTS requires cash contributions of 50 percent toward the total project's cost.

V. Amount of Funds Available and Period of Support

We anticipate that approximately $500,000 per year will be designated to support grants over the next five years, subject to the availability of appropriated funds. This estimate does not bind BTS to a specific number of offers or awards, nor to a specific amount of funding support for particular awards or awards in aggregate. It is anticipated that individual awards amounts, based upon demonstrated needs, will likely range from $50,000 to $200,000, though BTS has not established minimum or maximum funding levels.

Given the amount of funds available, applicants are strongly encouraged to seek other funding opportunities to supplement the federal funds. Preference will be given to applicants with cost sharing proposals from within or outside their organizations.

The period of time of awards will vary with the complexity of the project and it is possible that grants will be awarded for periods greater than one year.

VI. BTS Involvement

BTS involvement, if any, will vary by award. If you anticipate BTS involvement, you must note this in your project narrative and any support BTS provides will be specified in the award agreement. BTS will assign a liaison to serve as the primary contact regarding the grant.

VII. Terms and Conditions of Award

(1) Prior to award, each grantee will be required to complete additional government application forms, such as OMB SF–424B (Assurances—Nonconstruction Programs) and with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation Government-Wide Debarment and Suspension (Non-Procurement) and Government-Wide Requirements for Drug Free Workplace (Grants).

(2) Each grantee shall submit a program implementation plan no more than one month after award. The BTS liaison will review and comment, if necessary.

(3) Each grantee shall submit quarterly progress reports, a draft final report, and a final report that reflects the BTS liaison's comments.

Thank you for your interest in our Transportation Statistics Research Grants program.

Ashish Sen,

Director.

[FR Doc. 00–6254 Filed 3–13–00; 8:45 am]

BILLING CODE 4910–FF–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notices Relating to Payment of Firearms and Ammunition Excise Tax.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION: *Title:* Notices Relating to Payment of Firearms and Ammunition Excise Tax.

OMB Number: 1512–0512.

Abstract: Excise taxes are collected on the sale or use of firearms and ammunition by firearms or ammunition manufacturers, importers or producers. Taxpayers who elect to pay excise taxes by electronic fund transfer must furnish a written notice upon election and discontinuance. The tax revenue will be protected. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 1 hour.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the

quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–6238 Filed 3–13–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letterhead Applications and Notices Relating to Tax-Free Alcohol.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION: *Title:* Letterhead Applications and Notices Relating to Tax-Free Alcohol.

OMB Number: 1512–0335.

Recordkeeping Requirement ID Number: ATF REC 5150/4.

Abstract: Tax-free alcohol is used for nonbeverage purposes in scientific research and medicinal uses by educational organizations, hospitals, laboratories, etc. The use of alcohol free of tax is regulated to prevent illegal diverson to taxable beverage use. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 4,444.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,222.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–6239 Filed 3–13–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letterhead Applications and Notices Relating to Wine.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION: *Title:* Letterhead Applications and Notices Relating to Wine.

OMB Number: 1512–0292.

Recordkeeping Requirement ID Number: ATF REC 5120/2.

Abstract: Letterhead applications and notices relating to wine are required to ensure that the intended activity will not jeopardize the revenue or defraud consumers. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,650.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 825.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of

information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–6240 Filed 3–13–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachussetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Gary Thomas, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7770.

SUPPLEMENTARY INFORMATION:

Title: Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of:

OMB Number: 1512–0247

Recordkeeping Requirement ID Number: ATF REC 5000/2

Abstract: These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law. The record retention requirement for this information collection is 2 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 325.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–6241 Filed 3–13–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Records and Monthly Report of Production Operations.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Records and Monthly Report of Production Operations.

OMB Number: 1512–0205.

Form Number: ATF F 5110.40.

Recordkeeping Requirement ID Number: ATF REC 5110/01.

Abstract: The information collected is used to account for the proprietor's tax liability, adequacy of the bond coverage and protection of the revenue. The information also provides data to analyze trends in the industry, and plan efficient allocation of field resources, audit plant operations and compilation of statistics for government economic analysis. The record retention requirement for this information collection 4 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 150.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 3,600.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–6242 Filed 3–13–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Renewal of Explosives License or Permit.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joe Bradley, Arson and Explosives Programs Division, 650 Massachusetts Avenue, NW., Washington, DC (202) 927–8053.

SUPPLEMENTARY INFORMATION:

Title: Renewal of Explosives License or Permit.

OMB Number: 1512–0131.

Form Number: ATF F 5400.14/5400.15, Part III.

Abstract: This information collection is used for the renewal of explosives licenses and permits. This short renewal form is used in lieu of a more detailed application.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 825.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–6243 Filed 3–13–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Drawback on Wines Exported.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202) 927–8200.

SUPPLEMENTARY INFORMATION:

Title: Drawback on Wines Exported.

OMB Number: 1512–0082.

Form Number: ATF F 1582–A (5120.24).

Abstract: When proprietors export wines that have been produced, packaged, manufactured, or bottled in the U.S., they file a claim for drawback or refund for the taxes that have already been paid on the wine. This form notifies ATF that the wine was in fact exported and helps to protect the revenue and prevent fraudulent claims.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 900.

Estimated Time Per Respondent: 1 hour and 7 minutes.

Estimated Total Annual Burden Hours: 2,025.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.
William T. Earle,
Assistant Director (Management) CFO.
[FR Doc. 00–6244 Filed 3–13–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Bonded Wineries-Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Roberta Sanders, Product Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8116.

SUPPLEMENTARY INFORMATION:

Title: Bonded Wineries-Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.

OMB Number: 1512–0059.

Form Number: ATF F 5120.29.

Abstract: ATF F 5120.29 is used to determine the classification of wines for labeling and consumer protection. The form describes the person filing, type of product to be made and restrictions for the labeling and manufacturing. The form is also used to audit a product.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 1,200.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.
William T. Earle,
Assistant Director (Management) CFO.
[FR Doc. 00–6245 Filed 3–13–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Authorization to Furnish Financial Information and Certificate of Compliance.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION: *Title:* Authorization to Furnish Financial Information and Certificate of Compliance.

OMB Number: 1512–0038.

Form Number: ATF F 5030.6.

Abstract: The Right to Financial Privacy Act of 1978 limits access to records held by financial institutions and provides for certain procedures to gain access to the information. ATF F 5030.6 serves as both a customer authorization for ATF to receive information and as the required certification to the financial institution.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.
William T. Earle,
Assistant Director (Management) CFO.
[FR Doc. 00–6246 Filed 3–13–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Information Collected in Support of Small Producer's Wine Tax Credit.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie D. Ruhf, Regulations Division, 650 Massachussetts Avenue, NW., Washington, DC 20226, (202) 927–8320.

SUPPLEMENTARY INFORMATION:
Title: Information Collected in Support of Small Producer's Wine Tax Credit.
OMB Number: 1512–0540.
Recordkeeping Requirement ID Number: ATF REC 5120/11.
Abstract: ATF is responsible for the collection of the excise tax on wine. Certain small wine producers are eligible for a credit which may be taken to reduce the tax they pay on wines they remove from their own premises. The record retention period for all wine premises records is 3 years.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 280.
Estimated Time Per Respondent: None.
Estimated Total Annual Burden Hours: 1.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.
William T. Earle,
Assistant Director (Management) CFO.
[FR Doc. 00–6247 Filed 3–13–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the 2000 Floor Stocks Tax Return (Cigarettes) and Recordkeeping Requirements.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Ruhf, Revenue Division, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8188.

SUPPLEMENTARY INFORMATION:
Title: 2000 Floor Stocks Tax Return (Cigarettes) and Recordkeeping Requirements.
OMB Number: 1512–0554.
Form Number: ATF F 5000.28T.
Abstract: A floor stocks tax has been imposed on cigarettes. All persons who hold for sale any cigarettes on January 1, 2000, must take an inventory. Each person will be required to make either a record of the physical inventory or a book or record inventory supported by the appropriate source records.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 400,000.
Estimated Time Per Respondent: 3 hours (small establishment) and 12 hours (large establishment, 2 people inventorying) and 30 minutes to complete ATF F 5000.28T.
Estimated Total Annual Burden Hours: 1,532,000.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.
William T. Earle,
Assistant Director (Management) CFO.
[FR Doc. 00–6248 Filed 3–13–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–15]

Application of Producers' Good Versus Consumers' Good Test in Determining Country of Origin Marking

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretation.

SUMMARY: This notice advises the public that Customs does not intend to rely on the distinction between producers' goods and consumers' goods in making country of origin marking determinations. It is Customs' opinion that as demonstrated in a number of recent court decisions, the consumer-good-versus-producer-good distinction is not determinative that a substantial transformation, as it traditionally is defined, has occurred.

EFFECTIVE DATE: June 12, 2000.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Attorney, Special Classification and Marking Branch, Office of Regulations and Rulings (202–927–1254).

SUPPLEMENTARY INFORMATION:

Background

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

In *Midwood Industries Inc.* v. *United States*, 313 F. Supp. 951 (Cust. Ct. 1970), *appeal dismissed* 57 CCPA 141 (1970), the U.S. Customs Court considered whether an importer of steel forgings was the ultimate purchaser for purposes of the marking statute, 19 U.S.C. 1304. The court cited the principles set forth in *United States* v. *Gibson-Thomsen Co., Inc.*, 27 CCPA 267 (1940), in determining that the importer's manufacturing operations made it the ultimate purchaser, namely that the importer may be considered the ultimate purchaser for marking purposes if it subjects the article to further processing that results in the manufacture of a "new article with a new name, character and use." *Midwood*, 313 F. Supp. at 956. However, the *Midwood* court also found it relevant to that finding that the imported forgings at issue were transformed from producers' goods to consumers' goods, stating:

> While it may be true * * * that the imported forgings are made as close to the dimensions of ultimate finished form as is possible, they, nevertheless, remain forgings unless and until converted by some manufacturer into consumers' goods, i.e., flanges and fittings. And as producers' goods the forgings are a material of further manufacture, having, as such, a special value and appeal only for manufacturers of flanges and fittings. But, as consumers' goods and flanges and fittings produced from these forgings are end use products, having, as such, a special value and appeal for industrial users and for distributors of industrial products. *Id.* at 957.

It is Customs opinion that based on subsequent court decisions applying substantial transformation analysis, *Midwood* would be decided differently today. Accordingly, Customs proposed in a notice published in the **Federal Register** (63 FR 14751, March 26, 1998), to no longer rely on the distinction between producers' and consumers' goods.

Analysis of Comments

A total of 14 entities responded to the proposal (one untimely). Nine comments supported the proposal, three comments opposed the proposal, and two comments neither supported nor opposed the proposal.

Comment: Three commenters supporting and three commenters opposing the proposal provided detailed analyses of court decisions to support their respective positions. One commenter supporting the proposal states that recent court decisions, in particular *Superior Wire* v. *United States*, 669 F. Supp. 472 (CIT 1987), *aff'd*, 867 F.2d 1409 (Fed. Cir. 1989), did not use a producers' versus consumers' goods analysis. The court in *Superior Wire*, according to this commenter, made its decision based on an analysis of the effect on the metallurgical properties of wire rod, the fact that the wire rod specification is generally determined by reference to the end product for which the drawn wire will be used, the value added, and the amount of labor and capital investment. The commenter also claims that *Superior Wire* should control because the Federal Circuit rendered the decision.

Another commenter supporting the proposal points out that the court in *Superior Wire* noted that *Uniroyal* v. *United States*, 542 F. Supp. 1026 (CIT 1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983), did not find the producers' to consumers' goods distinction as determinative whether a substantial transformation occurred.

A commenter opposing the proposal states that the court in *Superior Wire* did look at the shift from producers' to consumers' goods. Two of the commenters opposing the proposal state that *Midwood* was cited with approval in *Superior Wire*.

Response: Customs believes that both the lower court and appellate court decisions in *Superior Wire* support the proposed interpretation. In *Superior Wire*, the parties agreed that the U.S. Court of International Trade (CIT) should make its determination of whether wire was a product of Spain or Canada on the basis of the substantial transformation test. *Superior Wire*, 669 F. Supp. at 478. The CIT in *Superior Wire* noted that recent cases cite the test used in *Anheuser-Busch Brewing Ass'n* v. *United States*, 207 U.S. 556, 568 (1908), but apply it differently. *Id.* The court also noted that the courts have concentrated on a change in use or character, along with certain cross-checks, including value added, and the amount of processing. *Id.* However, in making its decision, the court decided to examine cases, in particular *Torrington Co.* v. *United States*, 596 F. Supp. 1083 (CIT 1984), *aff'd*, 764 F.2d 1563 (Fed. Cir. 1985), that involved the processing of metal objects without combination or assembly operations. *Id.* at 479. The court noted that *Torrington*-cited *Midwood* with approval, but also noted that the "producer to consumer goods distinction drawn in *Midwood*, * * * was found not determinative as to substantial transformation" in *Uniroyal*. *Id.* The court then stated that "there is no clear change from producers' to consumers' goods." *Id.* The *Superior Wire* court, however, did not analyze the facts of *Midwood*, although *Midwood* also was a case involving the processing of metal objects. In contrast to the decision in *Midwood*, this court found that "wire rod and wire may be viewed as different stages of the same product." *Id.*

While the CIT in *Superior Wire* did state that there was a change in name, the court also found that there was no transformation from producers' to consumers' goods, no change from many uses to limited uses, no complicated processing, and that only a small percentage of value was added. The Federal Circuit held that the CIT's

conclusions were correct that the drawing of wire rod into wire was not the manufacture of a new and different product as required by *Anheuser-Busch. Superior Wire*, 867 F.2d at 1415. While the Federal Circuit in *Superior Wire* did acknowledge, without further comment, that the CIT cited other considerations, including no transformation from producers' to consumers' goods, it did not include this as a basis for its holding, and in its decision it only analyzed the changes in name, character and use.

Comment: One supporting commenter states that in *SDI Tech., Inc.* v. *United States*, 977 F. Supp. 1235 (CIT 1997), the court observed that the *Midwood* test exempts from marking virtually any product that was imported in unfinished form and finished prior to sale. Another supporting commenter states that while consumer electronics products changed from producers' to consumers' goods in *SDI*, the court determined that they did not undergo a substantial transformation. Two opposing commenters state that the court in *SDI* did look at the shift from producers' to consumers' goods.

Response: While Customs agrees that the court in *SDI* did look at the shift from producers' to consumers' goods as this was specifically raised by the plaintiff, the court also stated, citing *Uniroyal*, that it "has never held that the producer/consumer shift alone is dispositive." *SDI*, 977 F. Supp. at 1240. Furthermore, the court stated that by plaintiff's argument, "virtually any unfinished product that is finished by a producer before it is sold to a consumer would have undergone substantial transformation." *Id.* While the court recognized that the producer/consumer shift has some evidentiary value, the court found that the chassis could be used by a consumer, and found that the essence of the chassis remained the same. Also of relevance, is the court's statement that while a change in essence is not always a necessary prerequisite to a change in character, a lack of a change in essence evidences a lack of a change in character. *Id.* This does not hold true for the producer/consumer shift since even if there may be a producer/consumer good shift, this is not necessarily indicative of a change in character. Ultimately, the court in *SDI* decided that there was no change in character and use and the subject goods did not undergo a substantial transformation.

Comment: One supporting commenter states that in *National Juice Products Ass'n* v. *United States*, 628 F. Supp. 978 (CIT 1986), the court did not reach the result that *Midwood* would have dictated and expressly stated that it was not obligated to follow the producers' good/consumers' good test. One opposing commenter states that it was dicta in *National Juice* to say that *Uniroyal* diminished the value of the producers' versus consumers' goods test, and that *National Hand Tool Corp.* v. *United States*, 16 CIT 308 (1992), stated that the determination of substantial transformation must be based on the totality of evidence.

Response: It is Customs opinion that in both *Uniroyal* and *National Juice*, the imported materials could clearly be characterized as producers' goods and the finished articles could clearly be considered consumers' goods had the court wished to adopt the reasoning used in *Midwood*. In *National Juice*, the court stated that the significance of the producers' goods to consumers' goods transformation in marking cases is diminished in light of its decision in *Uniroyal*. The court also stated that "under recent precedents, the transition from producers' to consumers' goods is not determinative." *National Juice*, 628 F. Supp. at 989–990. Disregarding plaintiff's specific reliance on *Midwood*, the court in *National Juice* stated that the imported product was "the very essence" of the retail product and held that manufacturing juice concentrate was not substantially transformed when it was processed into retail orange juice. *Id.* at 991. We also note that in *National Hand Tool*, the court did not even mention *Midwood*.

Comment: One supporting and two opposing commenters state that *Uniroyal* distinguished the facts of *Midwood*. However, the supporting commenter states that the court could have applied the *Midwood* test and would have reached the opposite conclusion. The supporting commenter also points out that the only case that used *Midwood* was *Torrington*, which can be reconciled with the *Uniroyal* essence test, and that *Uniroyal* and its progeny establish that there cannot be a substantial transformation without changing the fundamental character, as exemplified in *National Juice* and *CPC Int'l, Inc.* v. *United States*, 971 F. Supp. 574 (CIT 1997), *appeal docketed*, No. 98–1069 (Fed. Cir. 1997).

Response: Customs agrees with the supporting commenter. In both *Midwood* and *Uniroyal*, the issue centered around the processes occurring after the articles were imported into the United States.

In *Midwood*, the court only looked at the operations occurring after importation. Witnesses also testified that as imported, the forgings had no commercial use as they did not meet any specifications. The court then found that the processes were manufacturing processes "irrespective of how performed, and albeit that these processes are representative of a successive stage of manufacture." *Midwood*, 313 F. Supp. at 957. The court found that the "end result of the manufacturing processes" was the transformation into "different articles having a new name, character and use." *Id.* The court noted that the imported articles were " 'forgings' of one kind or another," indicating a name change. However, as to providing an analysis of the change in use and character of the traditional substantial transformation test, there was none except for the court's statement that as producers' goods they are not used by the consumer and are not capable of use by the consumer in that state. Further, the court found that while the imported forgings are made as close to the dimensions of ultimate finished form as is possible, they still remain forgings unless and until converted by some manufacturer into consumers' goods. *Id.* Lastly, the court in *Midwood* stated that a country of origin marking for the benefit of the purchaser of flanges and fittings serves no purpose because the ASA specifications have their own marking requirements. *Id.* Accordingly, in effect the court concluded that because of ASA marking requirements no other markings were necessary. There was no mention of changes in character and use in terms of the actual physical characteristics or purpose of the imported and finished goods.

By contrast, the court in *Uniroyal* did not solely focus upon the attachment of the outsole to the imported upper, but also considered the processes that occurred in making the upper abroad. Furthermore, unlike *Midwood* where the court noted that the forgings' dimensions were close to their finished form, but nevertheless found a substantial transformation, the court in *Uniroyal* focused upon the imported upper's finished shape, form, and size in finding no change in either character or use when made into the finished shoe. The court in *Uniroyal* made this finding even though the upper was not marketable at retail as a complete shoe without the outsole.

In making distinctions with other court decisions, the court in *Uniroyal* could point to the fact that in *Gibson-Thomsen* the imported articles were materials that lost their identity when combined with other articles and were substantially transformed. In distinguishing *United States* v. *International Paint Co., Inc.*, 35 CCPA, C.A.D. 376 (1948), a case involving

drawback, the court in *Uniroyal* noted that the upper did not undergo any physical change whatever and did not change in use as the upper was intended to be attached to an outsole. In *International Paint*, however, the paint changed into an antifouling paint. In distinguishing *Grafton Spools Ltd.* v. *United States*, 45 Cust. Ct. 16, C.D. 2190 (1960), a case pertaining to the country of origin marking of ribbon spools, the court pointed to the fact that the ribbon, and not the spool, was what was important or the essence of the article. However in distinguishing *Midwood*, the court in *Uniroyal* had to emphasize *Midwood*'s analysis of the manufacturing processes, because the court in *Midwood* had not analyzed changes in the character and use of the forgings except to the extent that they changed from producers' to consumers' goods. Therefore, while Customs agrees that *Uniroyal* distinguished *Midwood*, as stated in *SDI*, "while a change in essence is not always a necessary prerequisite to a change in character, a lack of a change in essence evidences a lack of a change in character." *SDI*, 977 F. Supp. at 1240.

Comment: Two supporting commenters state that in *CPC*, the plaintiff relied on *Midwood* that peanut slurry was a producer good, and pointed out that the court dismissed the *Midwood* test, stating that *National Juice* had rejected the transformation from a producers' goods to consumers' goods as a determinative criterion in marking cases.

Response: Customs agrees that as in *SDI*, the court in *CPC* rejected plaintiff's reliance on *Midwood*.

Comment: One supporting commenter states that in *Madison Galleries, Ltd.* v. *United States*, 688 F. Supp. 1544 (CIT 1988), *aff'd*, 870 F.2d 627 (Fed Cir. 1989), the court in dicta stated that the post-*Midwood* cases may have diminished the significance of a producers' good-consumers' good approach. An opposing commenter states that *Midwood* has been cited with approval in *Madison Galleries*.

Response: Customs does not believe that the court in *Madison Galleries* either approved or disapproved of the *Midwood* decision. In *Madison Galleries*, a case pertaining to the Generalized System of Preferences (GSP), the court did not have to find that the article was a "product of" a GSP country, as the GSP at that time did not have such a requirement. While *Madison Galleries* cited *Midwood*, it was in response to the defendant's argument that it is not logical for an article to receive duty-free treatment under the GSP when that article would not have to be marked as a product of that GSP country. The court in *Madison Galleries* responded that, as exemplified in *Midwood*, analysis of the marking requirements "can include consideration of the nature of the intended, immediate recipient of a foreign article, *i.e.*, whether, for example that recipient is a producer or a consumer." *Madison Galleries*, 588 F. Supp. at 1547. Therefore, the court in *Madison Galleries* did not cite *Midwood* as support for the contention that the good was a "product of" the GSP country.

Comment: One supporting commenter states that in *Ferrostaal Metals Corp.* v. *United States*, 664 F. Supp. 535 (CIT 1987), where the result was consistent with the producers' good/consumers' good test, the court, while citing *Midwood*, did not rely on *Midwood*, but stated that the change was indicative of a substantial transformation. One opposing commenter states that *Ferrostaal* specifically rejected the essence test, and two opposing commenters state that *Midwood* was cited with approval in the *Ferrostaal* case.

Response: Customs does not believe that *Ferrostaal* supports the producers' goods versus consumers' goods test for determining substantial transformation. The court in *Ferrostaal* noted that while Uniroyal referred to an essence test, the test to be applied was whether the "imported article underwent a 'substantial transformation' which results in an article having a name, character or use differing from that of the imported article." *Ferrostaal*, 664 F. Supp. at 538, *citing Uniroyal*, 542 F. Supp. at 1029–30. Therefore, the court in *Ferrostaal* specifically rejected defendant's argument that an "essence" test displaced the change in name, character, and use test. *Id.*

Customs, by this notice, is not suggesting that the essence test replace the substantial transformation test. To the contrary, Customs adheres to the position stated in *CPC, supra*, that the essence test is "embraced by and aids in applying the traditional change of name, character or use test." *CPC*, 971 F. Supp. at 583. As Customs noted in the notice of proposed interpretation, the court in *Ferrostaal* also cited *Midwood* for its conclusion that a transition from producers' goods to consumers' goods was indicative of a change in use. *Id.* at 541. However, the court extensively considered the changes in character as result of the annealing and galvanizing processes as evidence of a substantial transformation. *Id.* at 539.

Comment: One supporting commenter states that *Midwood* is legally unnecessary as courts have completely disregarded the producers' versus consumers' goods test or given it little to no weight. As support, the commenter cites *Zuniga* v. *United States*, 996 F.2d 1203 (Fed. Cir. 1993), where a casting slip was not substantially transformed by minor processes; *Aztec Milling Co.* v. *United States*, 890 F.2d 1150 (Fed. Cir. 1989), where dry corn flour was not substantially transformed and intermediate products did not lose identifying characteristics of constituent material; *United States* v. *Murray*, 621 F.2d 1163 (1st Cir. 1980), *cert denied*, 449 U.S. 837 (1980), where glue blend was not substantially transformed because it did not undergo a fundamental change; and *Grafton Spools, Ltd.* v. *United States*, 45 Cust. Ct. 16 (1960), where imported empty spools were not substantially transformed when wound with thread.

Response: Customs agrees that the courts generally have disregarded or given little weight to the producers' versus consumers' goods test.

Comment: One commenter states that Customs incorrectly cited *Gibson Thomsen, supra*, as support for the position that the substantial transformation test requires a change in name, character, "and" use, as opposed to a change in name, character "or" use.

Response: Customs disagrees. The Court of Customs and Patent Appeals in *Gibson-Thomsen* cited the criteria, "a new name, character, *and* use", five times in its decision. 27 CCPA 267, 270, 271, 272, 273 (1940) (emphasis added).

Comment: The proposal violates the Congressional request not to undertake changes to the country of origin rules while the World Trade Organization (WTO) continues to develop international harmonized country of origin rules.

Response: In the letter dated September 30, 1996, referred to in the comment, members of the Senate and the House of Representatives requested that any changes in policy with regard to country of origin marking requirements be deferred. The letter particularly requested deferring any changes in policy with regard to the country of origin marking requirements of metal forgings for hand tools. In fact, Customs has not made any policy changes with regard to hand tools, and also has not finalized its proposed regulations governing rules of origin for non-preferential trade even though the original deadline for completing the WTO process has passed. Moreover, in a September 30th letter, the Chairmen of the Senate Finance Committee and the Committee on Ways and Means

expressly recognized that such deferment in no way would affect the right of private parties to contest existing Treasury rulings. The subject notice of proposed interpretation was specifically initiated as a result of a private party's request to make the NAFTA and non-NAFTA rules for the country of origin marking of fittings and flanges uniform.

Comment: Two opposing commenters state that Customs lacks authority to limit *Midwood* and that 19 U.S.C. 1625(d) and 19 CFR 177.10(d) does not give Customs authority to disregard a court decision without first seeking appellate review, citing *Nestle Refrigerated Food Co.* v. *United States*, 18 CIT 661 (1994), *Orlando Food Corp.* v. *United States*, Slip Op. 97–19 (CIT 1997), and *Volkswagenwerk Aktiengesellschaft* v. *Federal Maritime Commission*, 390 U.S. 261, 272 (1968). They state that in *Orlando Food*, the CIT criticized Customs for limiting the application of a CIT decision after publication in the **Federal Register**. In *Orlando Food*, the court stated that Customs application of the section 1625(d) process circumvented judicial process. These commenters also cite *CPC Int'l, Inc.* v. *United States*, 933 F. Supp. 1093, 1101–02, 1104 (CIT 1996), *appeal pending*, where the court stated that Custom may not encroach on the judicial function by abrogating binding case law.

Response: Customs disagrees. Congress specifically codified 19 CFR 177.10 as part of Title VI, Customs Modernization, of the North American Free Trade Agreement implementation Act, Pub. L. 103–182, 103d Congress, 107 Stat. 2057 (1993), by adding 19 U.S.C. 1625(d) which states that "a decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision." The legislative history, House Report No. 103–361(I), reflects that Congress specifically recognizes that section 623 of H.R. 3450 (which became section 623 of Pub. L. 103–182 amending 19 U.S.C. 1625) requires only that "a decision that limits the application of a court decision * * * be published for notice and comment in the Customs Bulletin." In this instance, Customs not only published the notice of proposed interpretation in the Customs Bulletin, but also in the **Federal Register** soliciting comments. Congress explained that the reason for the change was to provide "assurances of transparency concerning Customs rulings and policy directives through publication in the Customs Bulletin or other easily accessible sources." House Report at 2674.

The CIT reference in *Orlando Food* that Customs application of 19 U.S.C. 1625(d) circumvents the judicial process is dicta. However, it is Customs opinion that considering all of the industry and trading pattern changes with which it has been faced and challenged within the last 28 years since the *Midwood* decision, Customs action under this notice is justified. Customs has acted in direct response to a private party's inquiry and in the absence of Customs action pursuant to 19 U.S.C. 1625(d), the country of origin marking requirements for fittings and flanges would remain unchanged and not uniform.

Comment: Seven commenters state that the Midwood decision has caused artificial distinctions within the pipe fitting industry, confusion, or does not accurately indicate the origin to consumers, which is the purpose of the marking statute, citing *Globemaster Inc.* v. *United States*, 340 F. Supp. 974, 976 (Cust. Ct. 1972), as support. One supporting commenter states that it is a GATT violation if the proposal is not adopted since the NAFTA Marking Rules are different. One opposing commenter states that it is unclear why Customs wants to eliminate the producers' versus consumers' good test.

Response: In response to the opposing commenter, the comments in support of the proposal illustrate why Customs has responded to the private party's request to address the situation concerning the marking of fittings and flanges. As one commenter puts it: "this whole issue has been a thorn of incredible proportion in the side of industry in general and the pipe fitting industry in particular." Because Customs believes that the issue presented in *Midwood* would be decided differently today, and because the NAFTA Marking Rules and *Midwood* decision render different results, it is Customs position that this action is necessary in order to provide equitable treatment to all importers of pipe fittings and flanges.

Comment: Three commenters supporting the proposal request that it be applied immediately or as expeditiously as possible. One commenter states that any marking required by the change can be accomplished through inexpensive means, in a short time frame, and without substantial economic loss. The commenter states that any further delay will continue to cause economic injury to certain industry members who have suffered lost sales and price suppression because of unmarked foreign flanges. One commenter opposing the proposal states that Customs in the past has delayed the effective date of a rule change for 12 months. The commenter states that if Customs adopts the proposal, it would represent a drastic change to the rules under which fitting and flange producers operate. This commenter states that if the proposal is adopted, marking pipe fittings and flanges would entail far more than printing new labels; it would also require the purchase and installation of new machinery.

Response: Customs understands the concerns of both opposing and supporting parties. However, the fact remains that the rules for the country of origin marking for importations from NAFTA and non-NAFTA countries are not uniform. The change in treatment proposed by Customs will place all importers of pipe fittings and flanges on an equal footing. Customs notes that when the NAFTA Marking Rules were adopted, importations from NAFTA countries that were previously not subject to marking became subject to a marking requirement and those importers were able to make these changes in far less than a one-year period. Because the current country of origin marking requirement for pipe fittings and flanges is based on administrative treatment, rather than a specific ruling, Customs will require that all pipe fittings and flanges produced in the United States from imported forgings be marked with the country of origin of the imported forging. As specified in 19 CFR 177.10, Customs will make the change effective 90 days after publication of this notice in the **Federal Register**, except in the case of a ruling subject to the procedure specified in 19 U.S.C. 1625.

Conclusion

In *Superior Wire* v. *United States*, *supra*, while the Federal Circuit acknowledged the lower court's reference to the producers' to consumers' goods shift, the Federal Circuit only analyzed the changes in name, character and use. The Federal Circuit also relied on *Uniroyal*, *supra*, where that distinction was not found to be determinative as to substantial transformation. The lower court in *Superior Wire* also did not analyze the facts of *Midwood*, *supra*, although it was a metal objects case. The court in *Ferrostaal*, *supra*, did not advocate the dilution of the traditional substantial transformation test in not finding the producers' to consumers' goods distinction to be particularly determinative. In *SDI*, *National Juice*, *Uniroyal*, and *CPC*, *supra*, the *Midwood* argument was rejected and the courts

examined the "essence" of the articles at issue. The court in *National Hand Tool, Aztec Milling, Murray,* and *Zuniga, supra,* did not even mention the *Midwood* decision. The only cases that really did not outright reject or diminish the application of the producers' to consumers' good shift are *Torrington* and *Madison Galleries, supra,* but the citation to *Midwood in Madison Galleries* does not even stand for the position that the article became a "product of" the GSP country.

Customs has provided notice in the Customs Bulletin (and **Federal Register**) as required by 19 U.S.C. 1625(d) of its intention not to rely on the producers' to consumers' good test. The opposing commenters have not cited a single decision (not even the favorable *Torrington* decision) where a court decided the substantial transformation test solely based on the producers' to consumers' good transition.

Furthermore, since the transition from producers' to consumers' good is not necessarily indicative of a substantial transformation, unlike a change in "essence", the purpose of the producers' to consumers' goods analysis does not aid in the determination of whether an article underwent a substantial transformation. Therefore, Customs will no longer rely on the distinction between producers' goods and consumers' goods in making country of origin determinations.

Inasmuch as the question of whether a good has been substantially transformed is based on specific facts, parties who have received rulings based on the producers' goods-consumers' goods analysis articulated in *Midwood* can continue to rely on those rulings unless and until Customs modifies or revokes them pursuant to 19 U.S.C. 1625, or they are specifically overruled by a court.

Approved: February 11, 2000.

Raymond W. Kelly,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–6115 Filed 3–13–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of 1999 Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMARY: The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552b, the Government in the Sunshine Act: A report summarizing the closed meeting activities of the Art Advisory Panel during 1999, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue, NW, Washington, DC 20224.

Requests for copies should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20224. Telephone (202) 622–5164 (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS, Internal Revenue Service/Appeals, 1099 14th Street, NW, Washington, DC 20005. Telephone (202) 694–1861 (Not a toll free telephone number).

Charles Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 00–6259 Filed 3–13–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held April 12 and 13, 2000.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on April 12 and 13, 2000 in Room 4600E beginning at 9:30 am, Franklin Court Building, 1099 14th Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS 1099 14th Street, NW, Washington, DC 20005. Telephone (202) 694–1861, (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on April 12 and 13, 2000 in Room 4600E beginning at 9:30 am, Franklin Court Building, 1099 14th Street, NW, Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a significant regulatory action as defined in Executive Order 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Bob Wenzel,

Acting Commissioner of Internal Revenue.

[FR Doc. 00–6262 Filed 3–13–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, So. Fla District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the So. Fla Citizen Advocacy Panel will be held in Sunrise, Florida.

DATES: The meeting will be held Friday, March 24, 2000 and Saturday, March 25, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7973.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday, March 24, 2000 from 6 p.m. to 9 p.m. and Saturday, March 25, 2000 from 9 a.m. to 1 p.m., in Room 225, CAP Office, 7771 W. Oakland Park Blvd., Sunrise, Florida 33351. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954–423–7973, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351. Due to limited conference space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973. The agenda will include the following: Various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 7, 2000.

Nancy Ferree, Citizen Advocacy Panel Manager.

[FR Doc. 00–6260 Filed 3–13–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Friday April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Friday April 14, 2000, 6:00 p.m. to 9:00 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9:00 p.m. on Friday April 14, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 1, 2000.

Eileen Cain,

Citizen Advocacy Panel Manager.

[FR Doc. 00–6261 Filed 3–13–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances (Polyether Polyols); Filing of Petitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, of petitions requesting that nine polyether polyol substances be added to the list of taxable substances in section 4672(a)(3). Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Submissions must be received by May 15, 2000. Any modification of the list of taxable substances based upon these petitions would be effective October 1, 1992.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (Petition), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (Petition), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions electronically to the IRS at Sharon.Y.Horn @m1.irscounsel.treas.gov.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on November 21, 1991. The petitioner is Dow Chemical Company, a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

The nine polyether polyol substances are liquids. They are produced predominantly by the base-catalyzed reaction of cyclic ethers, usually ethylene oxide and propylene oxide, with active hydrogen-containing compounds (initiators) such as water, glycols, polyols, and amines. The reaction is carried out by a discontinuous batch process at elevated temperatures and pressures and under an inert atmosphere. The particular substance produced depends upon the oxides, initiators, reaction conditions, and catalysts used. The stoichiometric amounts of oxide reacted on the initiator determine the chain lengths and thus the molecular weights. HTS number: 3907.20.00

Poly(propylene)glycol

CAS number: 025322–69–4.

Poly(propylene)glycol is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is: n+1(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) + H_2O (water) → $C_3H_8O_2(C_3H_6O)_n$ (poly(propylene)glycol) + n+1(2 NaCl (sodium chloride) + H_2O (water))

According to the petition, taxable chemicals constitute at least 90 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $7.74 per ton. This is based upon a conversion factor for propylene of 0.781, a conversion factor for chlorine of 1.31, and a conversion factor for sodium hydroxide of 1.43.

Poly(propylene/ethylene)glycol

CAS number: 053637–25–5.

Poly(propylene/ethylene)glycol is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is: n+1(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) + H_2O (water) + m/2(2 C_2H_4 (ethylene) + O_2 (oxygen)) → $C_3H_8O_2(C_3H_6O)_n(C_2H_4O)_m$ (poly(propylene/ethylene)glycol) + n+1(2 NaCl (sodium chloride) + H_2O (water))

According to the petition, taxable chemicals constitute at least 90 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $7.16 per ton. This is based upon a conversion factor for propylene of 0.663, a conversion factor for chlorine of 1.11, a conversion factor for sodium hydroxide of 1.21, and a conversion factor for ethylene of 0.123.

Poly(propyleneoxy)glycerol

CAS number: 025791–96–2.

Poly(propyleneoxy)glycerol is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is: $C_3H_8O_3$ (glycerine) + n(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) →$C_3H_8O_3(C_3H_6O)_n$ (poly(propyleneoxy)glycerol) + n(2 NaCl (sodium chloride) + H_2O (water))

According to the petition, taxable chemicals constitute at least 85 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $6.38 per ton. This is based upon a conversion factor for propylene of 0.645, a conversion factor for chlorine of 1.08, and a conversion factor for sodium hydroxide of 1.18.

Poly(ethyleneoxy)glycerol

CAS number: 031694–55–0.

Poly(ethyleneoxy)glycerol is derived from the taxable chemical ethylene.

The stoichiometric material consumption formula for this substance is: $C_3H_8O_3$ (glycerine) + m/2(2 C_2H_4 (ethylene) + O_2 (oxygen)) →$C_3H_8O_3(C_2H_4O)_m$ (poly(ethyleneoxy)glycerol)

According to the petition, taxable chemicals constitute more than 50 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $3.31 per ton. This is based upon a conversion factor for ethylene of 0.681.

Poly(propyleneoxy/ethyleneoxy)glycerol

CAS number: 009082–00–2.

Poly(propyleneoxy/ethyleneoxy)glycerol is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is: $C_3H_8O_3$ (glycerine) +n(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) + m/2(2 C_2H_4 (ethylene) + O_2 (oxygen)) →$C_3H_8O_3(C_3H_6O)_n(C_2H_4O)_m$ (poly(propyleneoxy/ethyleneoxy)glycerol) + n(2 NaCl (sodium chloride) + H_2O (water))

According to the petition, taxable chemicals constitute at least 85 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $7.20 per ton. This is based upon a conversion factor for propylene of 0.71, a conversion factor for chlorine of 1.05, a conversion factor for sodium hydroxide of 1.05, and a conversion factor for ethylene of 0.126.

Poly(propyleneoxy)sucrose

CAS number: 009049–71–2.

Poly(propyleneoxy)sucrose is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is: $C_{12}H_{22}O_{11}$(sucrose) + n(C_3H_6 (propylene) +Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) > $C_{12}H_{22}O_{11}(C_3H_6O)_n$ (poly(propyleneoxy)sucrose) + n(2 NaCl (sodium chloride) + H_2O (water))

According to the petition, taxable chemicals constitute at least 65 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.18 per ton. This is based upon a conversion factor for propylene of 0.423, a conversion factor for chlorine of 0.707, and a conversion factor for sodium hydroxide of 0.773.

Poly(propyleneoxy/ethyleneoxy)sucrose

CAS number: 026301–10–0.

Poly(propyleneoxy/ethyleneoxy)sucrose is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is: $C_{12}H_{22}O_{11}$ (sucrose) + n(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) →m/2(2 C_2H_4 (ethylene) + O_2 (oxygen)) →$C_{12}H_{22}O_{11}(C_3H_6O)_n(C_2H_4O)_m$ (poly(propyleneoxy/ethyleneoxy)sucrose) + n(2 NaCl (sodium chloride) + H_2O (water))

According to the petition, taxable chemicals constitute at least 75 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $6.11 per ton. This is based upon a conversion factor for propylene of 0.549, a conversion factor for chlorine of 0.918, a conversion factor for sodium hydroxide of 1.0, and a conversion factor for ethylene of 0.14.

Poly(propyleneoxy/ethyleneoxy)diamine

CAS number: 031568–06–6.

Poly(propyleneoxy/ethyleneoxy)diamine is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is: $C_4H_{12}N_2O$ (aminoethylethanolamine) + n(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) →$C_4H_{12}N_2O(C_3H_6O)_n$ (poly(propyleneoxy/ethyleneoxy)diamine) + n(2 NaCl (sodium chloride) + H_2O (water))

According to the petition, taxable chemicals constitute at least 60 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.92 per ton. This is based upon a conversion factor for propylene of 0.498, a conversion factor for chlorine of 0.833, and a conversion factor for sodium hydroxide of 0.91.

Poly(propyleneoxy/ethyleneoxy)benzenediamine

CAS number: 067800–94–6.

Poly(propyleneoxy/ethyleneoxy)benzenediamine is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is: $C_7H_{10}N_2$ (ortho-toluenediamine) + n(C_3H_6 (propylene) + Cl_2 (chlorine) + 2 NaOH (sodium hydroxide)) + m/2(2 C_2H_4 (ethylene) + O_2 (oxygen)) →$C_7H_{10}N_2(C_3H_6O)_n(C_2H_4O)_m$ (poly(propyleneoxy/ethyleneoxy)benzenediamine) + n(2 NaCl (sodium chloride) + H_2O (water))

According to the petition, taxable chemicals constitute at least 60 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $5.25 per ton. This is based upon a conversion factor for propylene of 0.491, a conversion factor for chlorine of 0.821, a conversion factor for sodium hydroxide of 0.897, and a conversion factor for ethylene of 0.081.

Comments and Requests for a Public Hearing

Before a determination is made, consideration will be given to any written and electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 00–6258 Filed 3–13–00; 8:45 am]

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Federal Register

Tuesday,
March 14, 2000

Part II

Department of Labor

Pension and Welfare Benefits Administration

Proposed Exemptions; Barclays Bank PLC and its Affiliates (Collectively, Barclays); Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10188, et al.]

Proposed Exemptions; Barclays Bank PLC and its Affiliates (Collectively, Barclays)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Barclays Bank PLC and its Affiliates (collectively, Barclays)

Located in London, England
[Application No. D–10188]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act, section 4975(c)(2) of the Code, and section 8477(c)(3) of FERSA, in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Retroactive Exemption for thE Acquisition, Holding and Disposition of Barclays PLC Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply, as of December 31, 1995 until the date this proposed exemption is granted, to the acquisition, holding and disposition of the common stock of Barclays PLC (the Barclays PLC Stock) by Index and Model-Driven Funds managed by Barclays, provided that the following conditions and the general conditions in Section III are met:

(a) The acquisition or disposition of the Barclays PLC Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Barclays PLC Stock which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) All aggregate daily purchases of Barclays PLC Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the Barclays PLC Stock occurring on the applicable exchange or automated trading system (as described in paragraph (c) below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for Barclays PLC Stock occurring on the applicable exchange or automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date.

(c) All purchases and sales of Barclays PLC Stock occur either (i) on the London Stock Exchange, a recognized securities exchange as defined in Section IV(k) below, (ii) through an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is subject to regulation and supervision by the Securities and Futures Authority of the United Kingdom (pursuant to the applicable securities laws) that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arms-length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Barclays and is either registered under the Securities Exchange Act of 1934 (the '34 Act), and thereby subject to regulation by the U.S. Securities and Exchange Commission (SEC), or subject to regulation and supervision by the Securities and Futures Authority of the United Kingdom (UK).

(d) No transactions by a Fund involve purchases from, or sales to, Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund.

(e) No more than five (5) percent of the total amount of Barclays PLC Stock issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by Barclays.

(f) Barclays PLC Stock constitutes no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(g) A plan fiduciary independent of Barclays authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays PLC Stock, pursuant to the procedures described herein (see Paragraph 11 of the Summary of Facts and Representations below regarding portfolio management services provided for particular plans).

(h) A fiduciary independent of Barclays directs the voting of the Barclays PLC Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Barclays PLC Stock are required or permitted to vote.

Section II—Prospective Exemption for the Acquisition, Holding and Disposition of Barclays Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding and disposition of Barclays PLC Stock or the common stock of an Affiliate of Barclays PLC (Barclays PLC Affiliate Stock) by Index and Model-Driven Funds managed by Barclays, provided that the following conditions and the general conditions in Section III are met:

(a) The acquisition or disposition of Barclays PLC Stock or Barclays PLC Affiliate Stock (collectively, Barclays Stock) is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Barclays Stock which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) Whenever Barclays Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of Barclays Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange or automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange or automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of Barclays Stock occur either (i) on a recognized securities exchange (as defined in Section IV(k) below), (ii) through an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is either registered under the "34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the Securities and Futures Authority of the UK, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(j) below) that is operated by a recognized securities exchange (as defined in Section IV(k) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of Barclays Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Barclays Stock, Barclays appoints a fiduciary which is independent of Barclays to design acquisition procedures and monitor Barclays' compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of Barclays Stock to its specified weighting in the index or model pursuant to the restrictions described in paragraph (b) above, all aggregate daily purchases of Barclays Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the Barclays Stock occurring on the applicable exchange or automated trading system (as defined below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for Barclays Stock occurring on the applicable exchange or automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in Barclays Stock not otherwise described in paragraph (b) above are either: (i) Entered into on a principal basis in a direct, arms-length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Barclays and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the Securities and Futures Authority of the UK (SFA–UK), (ii) effected on an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is subject to regulation by either the SEC or SFA–UK, or an automated trading system operated by a recognized securities exchange (as defined in Section IV(k) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange (as defined in Section IV(k) below) so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund.

(f) No more than five (5) percent of the total amount of either Barclays PLC Stock or any Barclays PLC Affiliate Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by Barclays.

(g) Barclays Stock constitutes no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A plan fiduciary independent of Barclays authorizes the investment of

such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays Stock, pursuant to the procedures described herein (see Paragraph 11 of the Summary of Facts and Representations below regarding portfolio management services provided for particular plans).

(i) A fiduciary independent of Barclays directs the voting of the Barclays Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Barclays Stock are required or permitted to vote.

Section III—General Conditions

(a) Barclays maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Barclays, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Barclays shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of Barclays or commercial or financial information which is considered confidential.

Section IV—Definitions

(a) The term "Index Fund" means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Barclays, in which one or more investors invest, and—

(1) which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section IV(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) for which Barclays does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) that contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of "plan assets"—plan investments); and,

(4) that involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) The term "Model-Driven Fund" means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Barclays, in which one or more investors invest, and—

(1) which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of Barclays, to transform an independently maintained Index, as described in Section IV(c) below;

(2) which contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of "plan assets"—plan investments); and

(3) that involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit Barclays or any party in which Barclays may have an interest.

(c) The term *Index* means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) the organization creating and maintaining the index is—

(A) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) a publisher of financial news or information, or

(C) a public stock exchange or association of securities dealers; and,

(2) the index is created and maintained by an organization independent of Barclays; and,

(3) the index is a generally accepted standardized index of securities which is not specifically tailored for the use of Barclays.

(d) The term *opening date* means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term *Buy-up* means an acquisition of Barclays Stock by an Index or Model-Driven Fund in connection with the initial addition of such Stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such Stock.

(f) The term *Barclays* refers to Barclays PLC and its Affiliates, as defined below in paragraph (g), including BZW Barclays Global Investors, N.A., BZW Barclays Global Fund Advisors, BZW Barclays Global Investors Services, BZW Investment Management, Inc., Barclays Bank PLC (London), Barclays Bank of Canada, Barclays Bank Zimbabwe, Barclays Bank of Kenya, and Barclays Bank of Botswana, Ltd.

(g) The term *Affiliate* means, with respect to Barclays PLC, an entity which, directly or indirectly, through one or more intermediaries, is controlled by Barclays PLC;

(h) An *affiliate* of Barclays includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(i) The term *control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(j) The term *automated trading system* means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an "alternative trading system" within the meaning of the SEC's Reg. ATS [17 CFR part 242.300], as such definition may be amended from time to time, or an "automated

quotation system" as described in Section 3(a)(51)(A)(ii) of the '34 Act [15 U.S.C. 78c(a)(51)(A)(ii)].

(k) The term *recognized securities exchange* means a U.S. securities exchange that is registered as a "national securities exchange" under Section 6 of the '34 Act (15 U.S.C. 78f), or a designated offshore securities market, as defined in Regulation S of the SEC [17 CFR part 230.902(b)], as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (*e.g.*, 17 CFR part 240.3b–16).

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of December 31, 1995, for those transactions described in Section I above, and as of the date the final grant is published in the **Federal Register** for those transactions described in Section II above.

Summary of Facts And Representations

1. Barclays Global Investors, N.A. ("BGI") is a national banking association which provides investment advisory, trust and related services to employee benefit plans and other fiduciary clients. BGI is an indirect subsidiary of Barclays PLC, a bank holding company incorporated under the laws of England and Wales, and Barclays Bank PLC (Barclays Bank), a bank incorporated under the laws of England and Wales and a subsidiary of Barclays PLC. BGI currently has two subsidiaries, both of which are California corporations and investment advisers registered under the Investment Advisers Act of 1940 (the "Advisers Act"). The first subsidiary, BZW Barclays Global Fund Advisers, provides investment advice to accounts and funds, including as an investment adviser or sub-adviser to certain mutual funds. The second subsidiary, BZW Barclays Global Investors Services, is registered as a broker-dealer and provides services to BGI and certain of its affiliates. In addition to BGI and its subsidiaries, Barclays Bank and certain of its affiliates may act as fiduciaries to ERISA-covered accounts and funds. BZW Investment Management, Inc., a Delaware corporation, is an investment adviser under the Advisers Act. BZW Asset Risk Management Limited, a corporation organized under the laws of England and Wales, is also registered as an investment adviser under the Advisers Act. The "Applicants" are BGI and those other Affiliates of Barclays PLC that act or may act in the future as fiduciaries to ERISA-covered plans.

2. On December 31, 1995, Barclays Bank and certain of its affiliates acquired Wells Fargo Nikko Investment Advisors (WFNIA) and Wells Fargo Institutional Trust Company, N.A. (WFITC). WFITC became BZW Barclays Global Investors, N.A. (*i.e.* BGI) and WFNIA became BZW Barclays Global Fund Advisors (BZW Advisors).

Prior to January 1, 1996, WFITC and WFNIA maintained and managed Index and Model-Driven Funds which held assets of ERISA-covered employee benefit plans. Cross-trades of securities occurred among these Funds, as well as between the Funds and certain large pension plans, pursuant to Prohibited Transaction Exemption (PTE) 92–11 (56 FR 7800, March 4, 1992), an exemption issued to Wells Fargo Bank, N.A. and its affiliates (including at such time WFNIA and WFITC).[1] Part II of PTE 92–11 permitted Index and Model-Driven Funds maintained by Wells Fargo to acquire, hold and dispose of the common stock of Wells Fargo & Co. (WFC Stock).

The Applicants represent that as a result of the sale of WFNIA and WFITC to Barclays Bank, an individual exemption similar to that granted to Wells Fargo (*i.e.*, Part II of PTE 92–11) for the acquisition, holding and disposition of WFC Stock is necessary, after December 31, 1995, to enable certain Index and Model-Driven Funds maintained by Barclays Bank and its Affiliates to acquire, hold and dispose of the common stock of Barclays PLC (*i.e.*, Barclays PLC Stock). In this regard, there have been seven (7) Funds that, since December 31, 1995, have acquired, held and/or disposed of Barclays PLC Stock.[2] The Applicants request a retroactive exemption, effective as of December 31, 1995, to the date this proposed exemption is granted to permit such transactions by these Funds. The Applicants are not requesting any retroactive relief for the acquisition, holding or disposition of the common stock of any Affiliates of Barclays PLC (*i.e.*, Barclays PLC Affiliate Stock). The Applicants represent that no Index or Model-Driven Funds containing "plan assets" covered by the Act[3] have held such Stock. The Applicants also request that any further exemptive relief for cross-trades of securities by Index and Model-Driven Funds maintained by Barclays be considered separately.[4]

3. The Applicants represent that they provide investment advisory and management services to ERISA-covered plans through separately managed accounts and through collective investment vehicles. The Applicants' investment management services include indexed, quantitative, and structured investment strategies. In addition to ERISA-covered plans, the Applicants' clients include retirement plans with non-U.S. participants, governmental entities, governmental plans, church plans, mutual funds, and other institutional investors.

One of BGI's clients is the Federal Employees' Thrift Savings Plan (the Federal Thrift Plan) established pursuant to the provisions of the Federal Employees Retirement System Act of 1986 (FERSA) with respect to which BGI manages the assets of the Common Stock Index Investment Fund (the C Fund) and Fixed Income Investment Fund (the F Fund) through investing such assets in collective investment funds maintained by BGI. The Applicants state that the Federal Retirement Thrift Investment Board is planning to begin investing the Federal Thrift Plan in an Index Fund consisting of international equity securities, and such Fund is anticipated to include Barclays PLC Stock. Thus, the Applicants request that this proposed exemption provide prospective relief

[1] PTE 92–11 superseded PTE 87–51 (52 FR 22558, June 12, 1987). Currently, Wells Fargo has an exemption application before the Department which seeks to amend PTE 92–11 (see Exemption Application No. D–9584).

[2] The Applicants state that acquisitions of Barclays PLC Stock have been made only by Funds that already held such Stock in their portfolios as of December 31, 1995. Thus, there have been no new acquisitions of Barclays PLC Stock by any Funds as a result of an initial addition of such Stock to their portfolios since that time. Such initial additions of Barclays PLC Stock will only be made by a Fund once this proposed exemption is granted, under the conditions required herein for a "buy-up" period (see Section II(b) above).

[3] See 29 CFR 2510.3–101; Definition of "plan assets"—plan investments.

[4] In this regard, the Department directs interested persons to the Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (the Cross-Trading Proposal) which was published in the **Federal Register** on December 15, 1999 (64 FR 70057). The Department notes that Section II(h) of the Cross-Trading Proposal states that the cross-trading of securities by an Index or Model-Driven Fund may not involve any security issued by the investment manager for the Fund unless such manager has obtained a separate prohibited transaction exemption for the acquisition of such security. Thus, the Cross-Trading Proposal would, if granted, permit Index and Model-Driven Funds maintained by Barclays to cross-trade Barclays Stock, pursuant to the conditions to be contained therein, if this proposed exemption is granted. The Applicants represent that currently cross-trades of Barclays PLC Stock by the Funds which hold such Stock are covered by PTE 92–11. However, the Department is providing no opinion in this proposed exemption as to whether any cross-trades of stocks, including Barclays PLC Stock, by such Funds meet the conditions necessary for relief under PTE 92–11.

under FERSA to acquire, hold and dispose of Barclays Stock.

4. In their capacity as fiduciary of an employee benefit plan, the Applicants may be directed by an independent plan fiduciary or a plan participant that has the ability to direct investments for his/her plan account under the plan document. Alternatively, in those cases in which the Applicants manage investments made for the plan, the Applicants represent that their discretionary authority over whether the plan invests in particular Funds is restricted by an independent plan fiduciary, unless the plan subscribes to Applicants' Portfolio Management in Funds (PMF) services (as discussed below).

5. The Applicants request that Index and Model-Driven Funds be permitted to invest in Barclays Stock if such Stock is included among the securities listed in the index utilized by the Fund. The Applicants have identified over twenty (20) indices that currently include either Barclays PLC Stock or Barclays PLC Affiliate Stock. Indexes which include Barclays PLC Stock are the FT-SE All Share Index, the MSCI UK Index, the FT–SE 100 Index, the FTSE Eurotop 100 Index, the FTSE Eurotop 300 Index, the FTSE E300 Financial Index, and the Bloomberg Europe Index. These indexes are compiled by financial information agencies, such as Standard & Poor's, Financial Times Ltd., and Morgan Stanley & Company International. These agencies are engaged in the provision of financial information or securities brokerage services to institutional investors and/or are publishers of financial information. In each instance, the indexes are compiled by organizations that are independent of Barclays and are generally accepted standardized indices of securities that are not tailored for the use of Barclays. While many of these indexes are not currently utilized by BGI for its Index and Model-Driven Funds, there is a possibility that Funds holding assets of ERISA-covered plans will be established in the future that are based on these indexes.

The Applicants represent that there were at least seven (7) different Index Funds maintained by BGI that included Barclays PLC Stock in their portfolios as of December 31, 1995. These Funds were the BGI MSCI Equity Index Fund—UK; the BGI MSCI Equity Index Fund B—UK; the BGI EAFE Equity Index Fund P; the BGI Exxon UK Alpha Tilts Fund; the BGI UK Equity Index Fund; the BGI UK Alpha Tilts Fund; and the BGI UK Alpha Tilts Fund B.

However, since December 31, 1995, BGI has excluded Barclays Stock from the portfolios of any new Index and Model-Driven Funds even though such Stock is included in independently maintained indexes upon which such Funds are based. For those Index Funds whose goal is to replicate the rate of return of the index by tracking the capitalization-weighted composition of securities listed in the index, such exclusions of Barclays Stock create tracking errors which must be accounted for by re-weighting other securities in the index. For Model-Driven Funds that transform an index in a model-prescribed way, such exclusions of Barclays Stock create operational inefficiencies and strategic uncertainties that affect the criteria and data necessary to achieve the desired rates of return.

6. The Applicants state that the proposed exemption is necessary to allow Funds holding "plan assets" to purchase and hold Barclays Stock in order to replicate the capitalization-weighted or other specified composition of Barclays Stock in an independently maintained third party index used by an Index Fund or to achieve the desired transformation of an index used to create a portfolio for a Model-Driven Fund.[5]

In addition, the Applicants represent that there will be instances, once this proposed exemption is granted, when Barclays Stock will be added to an index on which a Fund is based or will be added to the portfolio of a Fund which seeks to track an index that includes such Stock. These instances will be referred to hereafter as a "Buy-up".[6] In such instances, acquisitions of Barclays Stock will be necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the index, as determined by the independent organization maintaining such index, or to the correct weighting for such Stock as determined by the computer model which has been used to transform the index. If the Index or Model-Driven Fund holds "plan assets," the Applicants represent that all acquisitions of Barclays Stock by such Fund will comply with the "Buy-up" conditions of this proposed exemption. These conditions are as follows:

(A) Purchases will be from or through only one broker or dealer on a single trading day;

(B) Based on the best available information, purchases will not be the opening transaction for the trading day;

(C) Purchases will not be effected in the last half hour before the scheduled close of the trading day;

(D) Purchases will be at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(E) Purchases will not exceed 15 percent of the daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange or automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange or automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(F) All purchases and sales of Barclays Stock will occur either (i) on a recognized securities exchange (as defined in Section IV(k)), (ii) through an automated trading system (as defined in Section IV(j)) operated by a broker-dealer that is either registered under the Securities Exchange Act of 1934 (the '34 Act) and thereby subject to regulation by the SEC, or subject to regulation and supervision by the SFA–UK, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(j) above) that is operated by a recognized securities exchange (as defined in Section IV(k)), pursuant to the applicable securities laws which provide a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(G) If the necessary number of shares of Barclays Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Barclays Stock, Barclays

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[5] The Applicants are not requesting any relief from sections 406 or 407(a) of the Act in connection with the acquisition and holding of Barclays Stock by any employee benefit plans established and maintained by Barclays for its own employees (the Barclays Plans) which invest in the Applicants' Index Funds. In this regard, such transactions may be covered by the statutory exemption under section 408(e) of the Act, if the conditions of that exemption are met. However, the Department is not providing an opinion in this proposed exemption as to whether the conditions of section 408(e) of the Act are met.

[6] The Applicants anticipate that generally acquisitions of Barclays Stock by an Index or Model-Driven Fund in a "Buy-up" will occur within 10 business days from the date of the event which causes the particular Fund to require Barclays Stock. Barclays does not anticipate that the amounts of Barclays Stock acquired by any Fund in a "Buy-up" will be significant. In this regard, the Department notes that the conditions required herein are designed to minimize the market impact of purchases made by the Funds in any "Buy-up" of Barclays Stock.

will appoint a fiduciary which is independent of Barclays to design acquisition procedures and monitor Barclays' compliance with such procedures.[7]

The independent fiduciary and its principals will be completely independent from the Applicants. The independent fiduciary will also be experienced in developing and operating investment strategies for individual and collective investment vehicles that track third-party indices. Furthermore, the independent fiduciary will not act as the broker for any purchases or sales of Barclays Stock and will not receive any commissions as a result of this initial acquisition program.

The independent fiduciary will have as its primary goal the development of trading procedures that minimize the market impact of purchases made pursuant to the initial acquisition program by the Funds. The Applicants would expect that, under the trading procedures established by the independent fiduciary, the trading activities will be conducted in a low-profile, mechanical, non-discretionary manner and would involve a number of small purchases over the course of each day, randomly timed. The Applicants further expect that such a program will allow the Applicants to acquire the necessary shares of Barclays Stock for the Funds with minimum impact on the market and in a manner that will be in the best interests of any employee benefit plans that participate in such Funds.

The independent fiduciary will also be required to monitor the Applicants' compliance with the trading program and procedures developed for the initial acquisition of Barclays Stock. During the course of any initial acquisition program, the independent fiduciary will be required to review the activities weekly to determine compliance with the trading procedures and notify the Applicants should any non-compliance be detected. Should the trading procedures need modifications due to unforeseen events or consequences, the independent fiduciary will be required to consult with the Applicants and must approve in advance any alteration of the trading procedures.

[7] In this regard, all Funds holding Barclays Stock as of December 31, 1995, which have continued to acquire, hold and dispose of Barclays Stock in order to track indexes including Barclays Stock will not need to have daily transactions involving such Stock directed by an independent fiduciary. Barclays states that the amount of Barclays Stock involved in such transactions has been and continues to be determined by the independent organization which created and maintains the relevant index, and all other conditions required under this proposed exemption have been met.

7. Subsequent to initial acquisitions necessary to bring a Fund's holdings of Barclays Stock to its specified weighting in the index or model pursuant to the restrictions described above, all aggregate daily purchases of Barclays Stock by the Funds will not exceed on any particular day the greater of:

(i) 15 percent of the average daily trading volume for the Barclays Stock occurring on the applicable exchange or automated trading system (as described herein) for the previous five (5) business days, or

(ii) 15 percent of the trading volume for Barclays Stock occurring on the applicable exchange or automated trading system (as described herein) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

The Applicants state that recent changes in the London Stock Exchange (LSE) have made that exchange more transparent for trading in Barclays PLC Stock by the Index and Model-Driven Funds. In late 1997, the LSE adopted the Stock Exchange Electronic Trading Service (SETS) for all stocks listed in the FTSE Indexes, which include Barclays PLC Stock. SETS is an order-driven system on which members post bids and offers, permitting trading on an agency basis. Prior to the use of SETS, trading on the LSE was a quote-driven principal market.

The Applicants state further that the advent of SETS has improved the availability of volume information about stocks traded on the LSE. Currently, all trades in stocks included in the SETS (whether executed through SETS or not) are reported to SETS within minutes of the trade and this data is available through various data providers, such as Reuters. Thus, the Applicants represent that the volume limitations imposed under this proposed exemption for transactions by the Funds involving Barclays PLC Stock will be effectively monitored by Barclays.

8. Barclays represents that as of December 31, 1995 until the date this proposed exemption is granted, all purchases and sales of Barclays PLC Stock by the Funds have occurred and will continue to occur in one of the following ways: (i) Through the London Stock Exchange, a recognized securities exchange as defined in Section IV(k) above; (ii) through an automated trading system (as defined in Section IV(j) above) operated by a broker-dealer that is subject to regulation by the SFA–UK (pursuant to the applicable securities laws), that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or (iii) through a direct, arms-length transaction entered into on a principal basis with a broker-dealer[8] that is either registered under the "34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the SFA–UK. In addition, Barclays states that as of the date this proposed exemption is granted, all future transactions by the Funds involving Barclays Stock which do not occur in connection with a Buy-up of such Stock by a Fund, as described above, will be either: (i) Entered into on a principal basis with a broker-dealer that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the SFA–UK; (ii) effected on an automated trading system (as defined in Section IV(j) above) operated by a broker-dealer subject to regulation by either the SEC or SFA–UK, or on an automated trading system operated by a recognized securities exchange (as defined in Section IV(k) above) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or (iii) effected through a recognized securities exchange (as defined in Section IV(k) above) so long as the broker is acting on an agency basis.

9. With respect to all acquisitions and dispositions of Barclays PLC Stock by the Funds since December 31, 1995, the Applicants state that no such transactions have involved purchases from or sales to Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund. The Applicants represent that all future acquisitions and dispositions of Barclays Stock by any Index or Model-Driven Funds maintained by Barclays will also not involve any purchases from or sales to Barclays (including officers, directors, or employees thereof), or any party in interest that is

[8] The Department notes that no relief is being provided herein for purchases and sales of securities between a Fund and a broker-dealer, acting as a principal, which may be considered prohibited transactions as a result of such broker-dealer being a party in interest, under section 3(14) of the Act, with respect to any plans that are investors in the Fund. However, such transactions may be covered by one or more of the Department's existing class exemptions. For example, PTE 84–14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are invested in an investment fund managed by a "qualified professional asset manager" (QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards.

a fiduciary with discretion to invest plan assets into the Fund.

10. The Applicants state that no more than five (5) percent of the total amount of either Barclays PLC Stock or Barclays PLC Affiliate Stock, that is issued and outstanding at any time, will be held in the aggregate by Index and Model-Driven Funds managed by Barclays.

For purposes of the acquisition and holding of Barclays PLC Stock by Funds from December 31, 1995 until the date this proposed exemption is granted, such Stock will constitute no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based. For example, Barclays PLC Stock currently represents only 2.03% of the MSCI UK Index and 1.86% of the FTSE 100 Index. Although some indexes include Barclays PLC Stock in percentages that exceed three (3) percent of the index, Barclays does not currently utilize such indices for its Index and Model-Driven Funds with "plan assets" subject to the Act.

For purposes of future acquisitions and holdings of Barclays Stock by such Funds once this proposed exemption is granted, neither the Barclays PLC Stock nor the Barclays PLC Affiliate Stock will constitute no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based. In this regard, the Applicants have identified at least seven (7) indexes which include Barclays Stock where the current approximate capitalization weight of the index represented by Barclays Stock exceeds three (3) percent. The Applicants request that the proposed exemption allow Barclays to design a passive investment strategy for an Index or Model-Driven Fund which seeks to track an index that contains Barclays Stock, or which transforms such an index in a model-prescribed way, as long as the Barclays Stock does not constitute more than five (5) percent of the index.[9]

With respect to an index's specified composition of particular stocks in its portfolio, the Applicants state that future Funds may track an index where the appropriate weighting for stocks listed in the index is not capitalization-weighted. In this regard, the Applicants note that the exemption received by WFITC and WFNIA (now BGI and BZW Advisors, respectively) from the Department in 1992 (*i.e.* PTE 92–11) covered transactions by index and model-driven funds that were designed to replicate the capitalization-weighted composition of an independently maintained stock index. However, the Applicants state that Funds maintained by BGI and other Affiliates of Barclays PLC may track indexes where the selection of a particular stock by the index, and the amount of stock to be included in the index, is not established based on the market capitalization of the corporation issuing such stock. Therefore, since an independent organization may choose to create an index where there are other index weightings for stocks composing the index, the Applicants request that the proposed exemption allow for Barclays Stock to be acquired by a Fund in the amounts which are specified by the particular index, subject to the other restrictions imposed under this proposed exemption. The Applicants represent that, in all instances, acquisitions or dispositions of Barclays Stock by a Fund will be for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Fund is based or, in the case of a Model-Driven Fund, a modified version of such an index as created by a computer model based on prescribed objective criteria and third-party data.

11. The Applicants state that plan fiduciaries independent of Barclays have authorized and will continue to authorize the investment of any plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays Stock.

With respect to transactions involving Barclays Stock, the Applicants state that they may provide portfolio management services (*i.e.*, PMF services) to a particular plan (a PMF Plan). In this regard, the Applicants may exercise some discretion in allocating and reallocating the plan's assets among various collective investment funds, including Funds which may hold Barclays Stock. These allocations are based on a plan's investment objectives, risk profile and market conditions. However, the Applicants make the following representations with respect to the purchase, directly or indirectly, of Barclays Stock by such plans:

(a) The Applicants represent that any prohibited transactions which might occur as a result of the discretionary allocation and reallocation of plan assets among collective investment funds will be exempt from the prohibitions of section 406 of the Act by reason of section 408(b)(8).[10]

(b) Before Barclays Stock is purchased by a Fund, the appropriate independent fiduciary for each PMF Plan which is currently invested or could be invested in such Fund will be furnished an explanation and a simple form to return to Barclays for the purpose of indicating either approval or disapproval of investments in the Fund including Barclays Stock, together with a postage-paid return envelope. If the form is not returned to the Applicants, the Applicants may obtain a verbal response by telephone. If a verbal response is obtained by telephone, the Applicants will confirm the fiduciary's decision in writing within five (5) business days. In the event no response is obtained from a plan fiduciary, the assets of the plan will not be invested in any Fund which invests in Barclays Stock and any plan assets currently invested in such Fund at that time would be withdrawn.

(c) Each new management agreement with such a plan will contain language specifically approving or disapproving the investment in any Fund which holds or might hold Barclays Stock. The fiduciary for each such plan will be informed that the existing management agreement could be modified in the same way. However, if the fiduciary does not specifically approve language in the agreement allowing the investment of plan assets in Funds which hold or might hold Barclays Stock, then no such investment will be made by the Applicants.

(d) Each such plan will be informed on a quarterly basis of any investment in, or withdrawal from, any Fund holding Barclays Stock. The plan would be granted the election to override the Applicants discretionary decision to invest in, or withdraw from, such Funds. If the plan overrides the Applicants' decision to invest in, or withdraw from, the Funds, then the Applicants will carry out the plan's election as soon as possible after being notified of such election.

12. The Applicants will appoint an independent fiduciary which will direct the voting of Barclays Stock held by the Funds. Currently, the independent fiduciary that directs the voting of Barclays PLC Stock held by the Funds is Institutional Shareholders Services, Inc.

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[9] The Applicants have identified certain independent third party indexes where the current approximate capitalization weight of the index represented by Barclays Stock exceeds five (5) percent. However, the Applicants have agreed to limit the prospective relief that would be provided by this proposed exemption to Index and Model-Driven Funds which track indexes where the specified composition of Barclays Stock in the index does not exceed five (5) percent of such index.

[10] The Department is expressing no opinion in this proposed exemption as to whether Applicants' discretionary allocation and reallocation services for any collective investment funds maintained by the Applicants satisfy the requirements of section 408(b)(8) of the Act and is not proposing any exemptive relief beyond that offered by section 408(b)(8).

Barclays states that in all instances the independent fiduciary chosen to vote Barclays Stock for the Funds will be a consulting firm specializing in corporate governance issues and proxy voting on behalf of institutional investors with large equity portfolios. The fiduciary will develop and follow standard guidelines and procedures for the voting of proxies by institutional fiduciaries. The Applicants will provide the independent fiduciary with all necessary information regarding the Funds that hold Barclays Stock, the amount of Barclays Stock held by the Funds on the record date for shareholder meetings of the Applicants, and all proxy and consent materials with respect to Barclays Stock. The independent fiduciary will maintain records with respect to its activities as an independent fiduciary on behalf of the Funds, including the number of shares of Barclays Stock voted, the manner in which they were voted, and the rationale for the vote if the vote was not consistent with the independent fiduciary's procedures and current voting guidelines in effect at the time of the vote. The independent fiduciary will supply the Applicants with such information after each shareholder meeting. The independent fiduciary will be required to acknowledge that it will be acting as a fiduciary with respect to the plans which invest in the Funds which own Barclays Stock, when voting such stock.

16. In summary, with respect to all acquisitions, holdings, and dispositions of Barclays PLC Stock by the Funds since December 31, 1995, the Applicants represent that such transactions meet the criteria of section 408(a) of the Act for the following reasons:

(a) Each Index or Model-Driven Fund involved is based on an Index, as defined in Section IV(c) above;

(b) The acquisition, holding and disposition of the Barclays PLC Stock by the Index or Model-Driven Fund is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Barclays PLC Stock which is intended to benefit Barclays or any party in which Barclays may have an interest;

(c) All aggregate daily purchases of Barclays PLC Stock by the Funds do not exceed, on any particular day, 15 percent of the average daily trading volume for such Stock occurring on the applicable exchange or automated trading system, as determined by the best available information for the trades occurring on that date;

(d) All purchases and sales of Barclays PLC Stock occur either (i) on the London Stock Exchange, a recognized securities exchange as defined herein, (ii) through an automated trading system (as defined herein) operated by a broker-dealer that is subject to regulation by the SFA–UK (pursuant to the applicable securities laws) that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arms-length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Barclays and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the SFA–UK;

(e) No transactions by a Fund involve purchases from or sales to Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund;

(f) No more than five (5) percent of the total amount of Barclays PLC Stock issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by Barclays;

(g) Barclays PLC Stock constitutes no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based;

(h) A plan fiduciary independent of Barclays authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays PLC Stock; and

(i) A fiduciary independent of Barclays (*i.e.* Institutional Shareholders Services, Inc.) directs the voting of the Barclays PLC Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Barclays PLC Stock are required or permitted to vote.

With respect to all acquisitions, holdings, and dispositions of Barclays PLC Stock or Barclays PLC Affiliate Stock by the Funds after this proposed exemption is granted, the Applicants represent that such transactions will meet the criteria of section 408(a) of the Act for the following reasons:

(a) Each Index or Model-Driven Fund involved will be based on an Index, as defined in Section IV(c) above;

(b) The acquisition or disposition of Barclays Stock will be for the sole purpose of maintaining strict quantitative conformity with the relevant Index upon which the Index or Model-Driven Fund is based, and will not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Barclays Stock which is intended to benefit Barclays or any party in which Barclays may have an interest;

(c) Whenever Barclays Stock is initially added to an index on which a Fund is based, or initially added to the portfolio of a Fund (*i.e.*, a Buy-up), all acquisitions of Barclays Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the computer model which has been used to transform the index, will be restricted by conditions which are designed to prevent possible market price manipulations;

(d) Subsequent to acquisitions necessary to bring a Fund's holdings of Barclays Stock to its specified weighting in the index or model, pursuant to the restrictions noted in paragraph (c) above, all aggregate daily purchases of Barclays Stock by the Funds will not exceed, on any particular day, 15 percent of the average daily trading volume for such Stock occurring on the applicable exchange or automated trading system, as determined by the best available information for the trades that occurred on such date;

(e) All transactions in Barclays Stock, other than acquisitions of such Stock in a Buy-up described in paragraph (c) above, will be either: (i) Entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Barclays and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the SFA–UK, (ii) effected on an automated trading system operated by a broker-dealer subject to regulation by either the SEC or SFA–UK, or by a recognized securities exchange which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange (as defined herein) so long as the broker is acting on an agency basis.

(f) No transactions by a Fund will involve purchases from or sales to Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund;

(g) No more than five (5) percent of the total amount of either Barclays PLC Stock or Barclays PLC Affiliate Stock, that is issued and outstanding at any time, will be held in the aggregate by Index and Model-Driven Funds managed by Barclays;

(h) Barclays Stock will constitute no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based;

(i) A plan fiduciary independent of Barclays will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays Stock pursuant to the procedures described herein, including those which relate to portfolio management services provided to certain plans (see Paragraph 11 of the Summary of Facts and Representations above); and

(k) A fiduciary independent of Barclays will direct the voting of the Barclays Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Barclays Stock are required or permitted to vote.

NOTICE TO INTERESTED PERSONS: Notice of the proposed exemption should be mailed by first class mail to interested persons, including the appropriate fiduciaries for employee benefit plans currently invested in the Index and/or Model-Driven Funds that acquire and hold Barclays Stock. The notice should contain a copy of the proposed exemption as published in the **Federal Register** and an explanation of the rights of interested parties to comment on or request a hearing regarding the proposed exemption. All notices should be sent to interested persons within 15 days of the publication of this proposed exemption in the **Federal Register**. Any written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

In addition, Barclays shall provide a copy of the proposed exemption and, if granted, a copy of the final exemption upon request to all ERISA-covered plans that invest in any Index or Model-Driven Fund that will include Barclays PLC Stock or Barclays PLC Affiliate Stock in its portfolio after the date the final exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

BOSC, Inc. (BOSC)

Located in Tulsa, Oklahoma
[Application No. D–10834]

Proposed Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[11]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[12] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[13]

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[11] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[12] For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[13] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a rating agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency.

Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a rating agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will be either monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance

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Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this proposed exemption:

A. Certificate means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Internal Revenue Code of 1986; and

(b) That is issued by, and is an obligation of, a trust; with respect to certificates defined in (1) and (2) above for which BOSC or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this proposed exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. Trust means an investment pool, the corpus of which is held in trust and consists solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) Are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)-(g) of subsection II.A.(7) are met and/or;

(ii) Are credited to a capitalized interest account (as defined in section III.X.); and

(iii) Are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term "permitted investments" means investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a rating agency for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption.

C. *Underwriter* means:

(1) BOSC;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with BOSC; or

(3) Any member of an underwriting syndicate or selling group of which BOSC or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services obligations contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services obligations contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the

trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)-(6) above.

M. Affiliate of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. Sale includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this proposed exemption (if granted) applicable to sales are met.

Q. Forward delivery commitment means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. Qualified Administrative Fee means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer

T. *Qualified Equipment Note Secured by a Lease* means an equipment note:

(1) which is secured by equipment which is leased;

(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(1) the trust owns or holds a security interest in the lease;

(2) the trust owns or holds a security interest in the leased motor vehicle; and

(3) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *Rating Agency* means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D & P) or Fitch IBCA, Inc. (Fitch), or their successors.

X. *Capitalized Interest Account* means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. *Closing Date* means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. *Pre-Funding Account* means a trust account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. *Pre-Funding Limit* means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. *Pre-Funding Period* means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. *BOSC* means BOSC, Inc. an Oklahoma corporation, and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts (see 60 FR at 35932).

Summary Of Facts and Representations

1. BOSC is a broker-dealer registered with the Securities and Exchange Commission (SEC) and is a member of

the National Association of Securities Dealers, Inc. As of June 30, 1999, it had total assets of $15.1 million.

BOSC is a wholly-owned subsidiary of BOK Financial Corporation (BOK Financial), a bank holding with its principal offices located in Tulsa, Oklahoma. BOSC was established as a broker-dealer subsidiary of BOK Financial pursuant to an order of the Board of Governors of the U.S. Federal Reserve System (the Federal Reserve Board) effective April 29, 1997 (the Tier 1 Order). The Federal Reserve Board regulates BOK Financial as a bank holding company and restricts activities of BOSC and its affiliates under the Glass-Steagall Act.

Under the Tier 1 Order, BOSC is authorized to engage, subject to certain prudential limitations established by the Federal Reserve Board, in underwriting and dealing in certain mortgage-related securities, municipal revenue bonds, commercial paper and consumer receivables-related securities (Tier 1 Activities). In addition, BOSC is authorized to act as agent in the private placement of all types of securities, including providing related advisory services, and to buy and sell securities on the order of investors. The Tier 1 Order is subject to the condition that BOSC does not derive more than a limited percentage of its total gross revenues over any two-year period from underwriting and dealing in certain categories of securities, including asset-backed securities of the type described herein.

BOSC has also been authorized by the Federal Reserve Board to engage, subject to certain prudential limitations established by the Federal Reserve Board dated December 2, 1998, in certain additional securities activities, including underwriting and dealing in corporate debt and equity securities (Tier 2 Activities).

BOSC has been involved in the structuring and placement of asset-backed securities transactions since July 1998. In March, 1999, BOSC has served as lead underwriter in public offerings of trust certificates of the BOK Auto Grantor Trust 1999–A. BOSC is developing additional offerings of asset backed securities.

BOK Financial, the parent of BOSC, is the largest financial institution headquatertered in Oklahoma, with total assets of approximately $8.2 billion as of June 30, 1999 and approximately $15.5 billion in assets under management and administration. BOK Financial's subsidiaries include Bank of Oklahoma, National Association (the largest national bank headquartered in Oklahoma), Bank of Texas, National Association (headquartered in the Dallas-Ft. Worth Metropolitan Area), Bank of Arkansas, National Association (headquartered in Fayetteville, Arkansas), and Bank of Albuquerque, National Association (headquartered in Albuquerque, New Mexico). BOK Financial, through its subsidiary banks, provides a full range of consumer and commercial banking services, trust services, mortgage origination and servicing, and investment advisory services. The Bank of Oklahoma Trust Division serves as the investment advisor for the American Performance Funds Group of Mutual Funds.

Trust Assets

2. BOSC seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; [14] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[15]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mort gages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[16]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee.[17] The sponsor or servicer of a trust selects assets to be included in the trust.[18] These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.[19]

Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Typically, all receivables to be held in the trust are transferred as of the closing date, but in some transactions, as described more fully below, a limited percentage of the receivables to be held in the trust may

[14] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–I are met. BOSC requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, BOSC has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[15] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of "plan assets" (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[16] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[17] The Department is of the view that the term "trust" includes a trust: (a) The assets of which, although all specifically identified by the sponsor or the originator as of the closing date, are not all transferred to the trust on the closing date for administrative or other reasons but will be transferred to the trust shortly after the closing date, or (b) with respect to which certificates are not purchased by plans until after the end of the pre-funding period at which time all receivables are contained in the trust.

[18] It is the Department's view that the definition of "trust" contained in section III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

[19] It is the view of the Department that section III.B.(4) includes within the definition of the term "trust" rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreements or other notional principal contracts.

be transferred during a limited period of time following the closing date, through the use of a pre-funding account.

BOSC, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by BOSC on a firm commitment basis. In addition, BOSC anticipates that it may privately place certificates on both a firm commitment and an agency basis. BOSC may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive distributions of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable. These distributions will be made monthly, quarterly, semi-annually, or at such other intervals and dates as specified in the related prospectus or private placement memorandum.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. BOSC requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[20]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[21]

6. The trust will be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

In some cases the trust will be maintained as a Financial Asset Securitization Investment Trust ("FASIT"), a statutory entity created by the Small Business Job Protection Act of 1996, adding sections 860H, 860J, 860K and 860L to the Code. In general, a FASIT is designed to facilitate the securitization of debt obligations, such as credit card receivables, home equity loans, and auto loans, and thus, allows certain features such as revolving pools of assets, trusts containing unsecured receivables and certain hedging types of investments. A FASIT is not a taxable entity and debt instruments issued by such trusts, which might otherwise be recharacterized as equity, will be treated as debt in the hands of the holder for tax purposes. However, a trust which is the subject of the proposed exemption will be maintained as a FASIT only where the assets held by the FASIT will be comprised of secured debt; revolving pools of assets or hedging investments will not be allowed unless specifically authorized by the exemption, if granted, so that a trust maintained as a FASIT will be maintained as an essentially passive entity.

Trust Structure With Pre-Funding Account

Pre-Funding Accounts

7. As described briefly above, some transactions may be structured using a pre-funding account or a capitalized interest account. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the closing date will be transferred to the trust by the sponsor or originator on the closing date. During the pre-funding period, such cash and temporary investments, if any, made therewith will be held in a pre-funding account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the

[20] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this proposed exemption.

[21] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the proposed exemption does not provide relief for plan investment in such subordinated certificates.

characteristics of the receivables transferred to the trust on the closing date. The pre-funding period for any trust will be defined as the period beginning on the closing date and ending on the earliest to occur of (i) the date on which the amount on deposit in the pre-funding account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related pooling and servicing agreement or (iii) the date which is the later of three months or ninety (90) days after the closing date. Certain specificity and monitoring requirements described below will be met and will be disclosed in the pooling and servicing agreement and/or the prospectus or private placement memorandum.

For transactions involving a trust using pre-funding, on the closing date, a portion of the offering proceeds will be allocated to the pre-funding account generally in an amount equal to the excess of (i) the principal amount of certificates being issued over (ii) the principal balance of the receivables being transferred to the trust on such closing date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the trust may be larger than the total principal balance of the certificates being issued. In these cases, the cash deposited in the pre-funding account will equal the excess of the principal balance of the total receivables intended to be transferred to the trust over the principal balance of the receivables being transferred on the closing date.

On the closing date, the sponsor transfers the assets to the trust in exchange for the certificates. The certificates are then sold to an underwriter for cash or to the certificateholders directly if the certificates are sold through a placement agent. The cash received by the sponsor from the certificateholders (or the underwriter) from the sale of the certificates issued by the trust in excess of the purchase price for the receivables and certain other trust expenses, such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the pre-funding account. Such funds are either held in the trust and accounted for separately, or are held in a sub-trust. In either event, these funds are not part of assets of the sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the certificates and the transaction fees (*i.e.*, servicing fees, trustee fees and fees to credit support providers). In such cases, the receivables are sold to the trust at a discount, based on an objective, written, mechanical formula which is set forth in the pooling and servicing agreement and agreed upon in advance between the sponsor, the rating agency and any credit support provider or other insurer. The proceeds payable to the sponsor from the sale of the receivables transferred to the trust may also be reduced to the extent they are used to pay transaction costs (which typically include underwriting or placement agent fees and legal and accounting fees). In addition, in certain cases, the sponsor may be required by the rating agencies or credit support providers to set up trust reserve accounts to protect the certificateholders against credit losses.

The pre-funding account of any trust will be limited so that the percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered (the pre-funding limit) will not exceed 25%. The pre-funding limit (which may be expressed as a ratio or as a stated percentage or a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the pre-funding account are used solely to purchase receivables and to support the certificate pass-through rate (as explained below). Amounts used to support the pass-through rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the trust, any funds remain in the pre-funding account, such funds will be paid to the certificateholders as principal prepayments. Upon termination of the trust, if no receivables remain in the trust and all amounts payable to certificateholders have been distributed, any amounts remaining in the trust would be returned to the sponsor.

A dramatic change in interest rates on the receivables held in a trust using a pre-funding account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the closing date, no action would be required as the fluctuations in the market interest rates would not affect the receivables transferred to the trust after the closing date. In contrast, if interest rates fall after the closing date, loans originated after the closing date will tend to be originated at lower rates, with the possible result that the receivables will not support the certificate pass-through rate. In such situations, the sponsor could sell the receivables into the trust at a discount, and more receivables would be used to fund the trust in order to support the pass-through rate. In a situation where interest rates drop dramatically and the sponsor is unable to provide sufficient receivables at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the pooling and servicing agreement, the certificateholders would receive a repayment of principal from the unused cash held in the pre-funding account. In transactions where the certificate pass-through rates are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivable affect the pass-through rate for fixed rate certificates.

The cash deposited into the trust and allocated to the pre-funding account is invested in certain permitted investments (see below), which may be commingled with other accounts of the trust. The allocation of investment earnings to each trust account is made periodically as earned in proportion to each account's allocable share of the investment returns. As pre-funding account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the pass-through amounts payable to the certificateholders with respect to a periodic distribution date, the trustee is necessarily required to make periodic, separate allocations of the trust's earning to each trust account, thus ensuring that all allocable commingled investment earnings are properly credited to the pre-funding account on a timely basis.

The Capitalized Interest Account

8. In certain transactions where a pre-funding account is used, the sponsor and/or originator may also transfer to the trust additional cash on the closing date, which is deposited in a capitalized interest account and used during the pre-funding period to compensate the certificateholders for any shortfall between the investment earnings on the pre-funding account and the pass-through interest rate payable under the certificates.

The capitalized interest account is needed in certain transactions since the certificates are supported by the receivables and the earnings on the pre-funding account, and it is unlikely that the investment earnings on the pre-funding account will equal the interest rates on the certificates (although such investment earnings will be available to pay interest on the certificates). The

capitalized interest account funds are paid out periodically to the certificateholders as needed on distribution dates to support the pass-through rate. In addition, a portion of such funds may be returned to the sponsor from time to time as the receivables are transferred into the trust and the need for the capitalized interest account diminishes. Any amounts held in the capitalized interest account generally will be returned to the sponsor and/or originator either at the end of the pre-funding period or periodically as receivables are transferred and the proportionate amount of funds in the capitalized interest account can be reduced. Generally, the capitalized interest account terminates no later than the end of the pre-funding period. However, there may be some cases where the capitalized interest account remains open until the first date distributions are made to certificateholders following the end of the pre-funding period.

In other transactions, a capitalized interest account is not necessary because the interest paid on the receivables exceeds the interest payable on the certificates at the applicable pass-through rate and the fees of the trust. Such excess is sufficient to make up any shortfall resulting from the pre-funding account earning less than the certificate pass-through rate. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of certificates.

Pre-Funding Account and Capitalized Interest Account Payments and Investments

9. Pending the acquisition of additional receivables during the pre-funding period, it is expected that amounts in the pre-funding account and the capitalized interest account will be invested in certain permitted investments or will be held uninvested. Pursuant to the pooling and servicing agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the pre-funding account and capitalized interest account are investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency, as set forth in the pooling and servicing agreement and as required by the rating agencies. The credit grade quality of the permitted investments is generally no lower than that of the certificates. The types of permitted investments will be described in the pooling and servicing agreement.

The ordering of interest payments to be made from the pre-funding and capitalized interest accounts is pre-established and set forth in the pooling and servicing agreement. The only principal payments which will be made from the pre-funding account are those made to acquire the receivables during the pre-funding period and those distributed to the certificateholders in the event that the entire amount in the pre-funding account is not used to acquire receivables. The only principal payments which will be made from the capitalized interest account are those made to certificateholders if necessary to support the certificate pass-through rate or those made to the sponsor either periodically as they are no longer needed or at the end of the pre-funding period when the capitalized interest account is no longer necessary.

The Characteristics of the Receivables Transferred During the Pre-Funding Period

10. In order to ensure that there is sufficient specificity as to the representations and warranties of the sponsor regarding the characteristics of the receivables to be transferred after the closing date:

(i) All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by a rating agency;

(ii) The transfer to the trust of the receivables acquired during the pre-funding period will not result in the certificates receiving a lower credit rating from the rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(iii) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(iv) The trustee of the trust (or any agency with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to receivables that were acquired as of the closing date, the characteristics of the additional obligations subsequently acquired will be either: (i) Monitored by a credit support provider or other insurance provider which is independent of the sponsor; or (ii) an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, BOSC and the trustee) stating whether or not the characteristics of the additional obligations acquired after the closing date conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date.

Each prospectus, private placement memorandum and/or pooling and servicing agreement will set forth the terms and conditions for eligibility of the receivables to be included in the trust as of the related closing date, as well as those to be acquired during the pre-funding period, which terms and conditions will have been agreed to by the rating agencies which are rating the applicable certificates as of the closing date. Also included among these conditions is the requirement that the trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the pre-funding account and will describe the pre-funding period for the trust.

Parties to Transactions

11. The *originator* of a receivable is the entity that initially lends money to

a borrower (obligor), such as a home owner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their businesses, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer. The originator may be an affiliate of BOSC.

12. The *sponsor* will be one of three entities: (i) A special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

13. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to BOSC, the trust sponsor, the servicer or any other member of the Restricted Group (as defined in section III.L.). BOSC represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor or out of the trust assets. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

14. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be "subserviced" by their respective originators and a single entity may "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this "sold flag" will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* (*i.e.*, BOSC, its affiliate, or a member of an underwriting syndicate or selling group of which BOSC or its affiliate is a manager or co-manager) will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to BOSC. In other cases, however, affiliates of BOSC may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

15. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

16. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[22] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate

[22] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

17. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

18. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

19. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

20. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

21. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

22. The certificates will have received one of the three highest ratings available from a rating agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

23. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (*i.e.*, act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the

trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

24. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets, including the terms and conditions for eligibility of any receivables transferred during the pre-funding period and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; a description of permitted investments for any pre-funding account or capitalized interest account; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors;

(j) Information about the scope and nature of the secondary market, if any, for the certificates; and

(k) A statement as to the duration of any pre-funding period and the pre-funding limit for the trust.

25. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

26. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the SEC, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates and copies of the statements sent to certificateholders. While the SEC's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the

extent required under the Securities Exchange Act of 1934.

27. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets (including those purchased by the trust from any pre-funding account), payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

28. BOSC may contemplate entering into forward delivery commitments in connection with the offering of pass-through certificates. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and BOSC may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

29. BOSC may attempt to make a market for securities for which it is lead or co-managing underwriter, although it is under no obligation to do so. At times, BOSC will facilitate sales by investors who purchase certificates if BOSC has acted as agent or principal in the original private placement of the certificates and if such investors request BOSC's assistance.

Summary

30. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) In the case where a pre-funding account is used, the characteristics of the receivables to be transferred to the trust during the pre-funding period will be substantially similar to the characteristics of those transferred to the trust on the closing date, thereby giving the sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the proposed exemption. In addition, certain cash accounts will be established to support the certificate pass-through rate and such cash accounts will be invested in short-term, conservative investments; the pre-funding period will be of a reasonably short duration; a pre-funding limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the trust will be met. The fiduciary of the plans making the decision to invest in certificates is thus fully apprised of the nature of the receivables which will be held in the trust and has sufficient information to make a prudent investment decision.

(c) Certificates in which plans invest will have been rated in one of the three highest rating categories by a rating agency. Credit support will be obtained to the extent necessary to attain the desired rating;

(d) All transactions for which BOSC seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(e) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(f) BOSC anticipates that it will make a secondary market in certificates (although it is under no obligation to do so).

NOTICE TO INTERESTED PERSONS: The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. J. Martin Jara of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Bankers Trust Company (BTC)

Located in New York, New York
[Application Nos. D–10838]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The proposed granting to BTC (a) by the Cheslock-Bakker Opportunity Fund, L.P. (the LP) of security interests in (i) the capital commitments (the Capital Commitments) and capital contributions (Capital Contributions) of certain employee benefit plans (the Plans) investing in the LP and (ii) a borrower collateral account to which all Capital Contributions will be deposited when paid (Borrower Collateral Account) and (b) by the LP and by CBA Real Estate Partners, LLC, a Delaware limited liability company (the General Partner) of the right to make calls for cash contributions (Contribution Calls) under the Cheslock-Bakker Opportunity Fund, L.P. Limited Partnership Agreement (the Agreement), where BTC is the representative of certain lenders (the Lenders) that will fund a so-called "credit facility" (the Credit Facility) providing credit to the LP, and where the Lenders are parties in interest with respect to the Plans; and (2) the execution of a partner agreement and estoppel (the Estoppel) under which the Plans agree to honor the Contribution Calls; provided that (a) the proposed grants and Estoppels are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (b) the decisions on behalf of each Plan to invest in the LP and to execute such Estoppels in favor of BTC are made by a fiduciary which is not included among, and is independent of and unaffiliated with, the Lenders and BTC; (c) with respect to Plans that have invested or may invest in the LP in the future, such Plans have or will have assets of not less than $100 million and

not more than 5% of the assets of any such Plan are or will be invested in the LP. For purposes of this condition (c), in the case of multiple plans maintained by a single employer or single controlled group of employers, the assets of which are invested on a commingled basis, (e.g., through a master trust), this $100 million threshold will be applied to the aggregate assets of all such plans; and (d) the general partner of the LP must be independent of BTC, the Lenders and the Plans.

Summary of Facts and Representations

1. The LP was formed by the General Partner (as sole general partner and sponsor) with the intent of seeking Capital Commitments from a limited number of prospective investors who would become limited partners (the Partners) of the LP. The General Partner (i.e., CBA Real Estate Partners, LLC) is an entity unrelated to BTC, the Lenders and the Plans. Under the terms of the Agreement, the LP is expected to dissolve in the year 2008. There are three current and prospective Partners having, in the aggregate, irrevocable, unconditional capital commitments of approximately $140 million.

2. The LP is designed to invest in real estate-related assets including portfolios, individual assets, privately-held operating companies, commercial mortgage-backed securities, mezzanine financing and other forms of real estate related debt, limited partnerships, and other joint ventures. As described in the Private Placement Memorandum, the LP believes that significant opportunities exist to achieve superior risk-adjusted returns on its investments in excess of 20% per annum.

3. Proceeds from investments may be reinvested to the extent they represent a return of capital invested by the LP. To the extent they are not reinvested, net proceeds will be distributed to the Partners on a quarterly basis or more frequently at the General Partner's discretion.

4. The Agreement requires each Partner to execute a subscription agreement that obligates the Partner to make contributions of capital up to a specified maximum. The Agreement requires Partners to make Capital Contributions to fulfill this obligation upon receipt of notice from the General Partner. Under the Agreement, the General Partner may make Contribution Calls up to the total amount of a Partner's Capital Commitment upon 10 business days' notice, subject to certain limitations. The Partners' Capital Commitments are structured as unconditional, binding commitments to contribute capital when Contribution Calls are made by the General Partner. In the event of a default by a Partner, the LP may exercise any of a number of specific remedies.

The Partners constituting over 90% of the equity interests and their investments in the LP are:

Name of partner	Capital commitment
General Motors Hourly Rate Employees Pension Trust, by Chase Manhattan Bank, as Trustee	$65,000,000.01
General Motors Salaried Employees Pension Trust, by Chase Manhattan Bank, as Trustee	$34,999,999.99
Kodak Income Retirement Plan, by Boston Safe Trust and Deposit Company, as Trustee	$30,000,000

5. The applicant states that the LP will incur indebtedness in connection with many of its investments. In addition to mortgage indebtedness, the LP will incur short-term indebtedness for the acquisition of particular investments. This indebtedness will take the form of the Credit Facility, described in representation 6 below, secured by, among other things, a pledge and assignment of each Partner's Capital Commitment. This type of facility will allow the LP to consummate investments quickly without having to finalize the debt/equity structure for an investment or having to arrange for interim or permanent financing prior to making an investment, and will have additional advantages to the Partners and the LP. Under the Agreement, the General Partner may encumber Partners' Capital Commitments and Capital Contributions, including the right to make Contribution Calls, to one or more financial institutions as security for the Credit Facility. Each of the Partners has appointed the General Partner as its attorney-in-fact to execute all documents and instruments of transfer necessary to implement the provisions of the Agreement. In connection with this Credit Facility, each of the Partners is required to execute documents customarily required in secured financings, including an agreement to honor Contribution Calls unconditionally.

6. BTC will become agent for a group of Lenders providing a $25 million revolving Credit Facility to the LP. BTC will also be a participating Lender. Some of the Lenders may be parties in interest with respect to some of the Plans that invest in the LP by virtue of such Lenders' (or their affiliates') provisions of fiduciary or other services to such Plans with respect to assets other than the Plans' interests in the LP. BTC is requesting an exemption to permit the Plans to enter into security agreements with BTC, as the representative of the Lenders, whereby such Plans' Capital Commitments and Capital Contributions to the LP will be used as collateral for loans made under the Credit Facility to the LP, when such loans are funded by Lenders who are parties in interest to one or more of the Plans. However, BTC represents that neither it nor any Lender will act in any fiduciary capacity for the decision made by any of the Plans to invest in the LP (as discussed in Paragraph 13, below).

The Credit Facility will be used to provide immediate funds for real estate acquisitions made by the LP, as well as for the payment of LP expenses. Repayments will be secured generally by the LP from the Partners' Capital Contributions and Contribution Calls on the Partners' Capital Commitments. The Credit Facility is intended to be available until May 31, 2002. The LP can use its credit under the Credit Facility either by direct or indirect borrowings, by requesting guaranties, or by requesting that letters of credit be issued. All Lenders will participate on a pro rata basis with respect to all cash loans, guaranties or letters of credit up to the maximum of the Lenders' respective commitments. All such loans, guaranties and letters of credit will be issued to the LP, or an entity in which the LP owns a direct or indirect interest (a Qualified Borrower), and not to any individual Partner. All payments of principal and interest made by the LP or a Qualified Borrower will be allocated pro rata among all Lenders.

7. The Credit Facility will be a recourse obligation of the LP, the repayment of which is secured primarily by the grant of a security interest to BTC, as agent under the Credit Facility for the benefit of the Lenders, from the LP, in (a) the Partners' Capital Commitments and Capital Contributions; and (b) the Borrower Collateral Account. In addition, the LP and the General Partner will grant BTC, as agent under the Credit Facility for the

benefit of the Lenders, a security interest in the right to Contribution Calls under the Agreement. The Borrower Collateral Account will be assigned to BTC to secure repayment of the indebtedness incurred under the Credit Facility. BTC has the right to apply any or all funds in the Borrower Collateral Account toward payment of the indebtedness in any manner it may elect. The Capital Commitments are fully recourse to all the Partners and to the General Partner. In the event of default under the Credit Facility, the agent (*i.e.*, BTC) has the right to make Contribution Calls unilaterally on the Partners to pay their unfunded Capital Commitments, and will apply cash received from such Contribution Calls to any outstanding debt.

8. Under the Credit Facility, each Partner that is a Plan will execute an acknowledgment (the Estoppel) pursuant to which it acknowledges that the LP and the General Partner have pledged and assigned to BTC, for the benefit of each Lender which may be a party in interest (as defined in Act section 3(14)) of such Partner, all of their rights under the Agreement relating to Capital Commitments and Contribution Calls. The Estoppel will include an acknowledgment and covenant by the Plan that, if an event of default exists, such Plan will unconditionally honor any Contribution Call made by BTC in accordance with the Agreement up to the unfunded Capital Commitment of such Plan to the LP.

9. The applicant represents that at the present time the Kodak Retirement Income Trust (the Kodak Trust) holds the assets of one defined benefit plan, the Kodak Retirement Income Plan (the Kodak Plan), which owns an interest in the LP. The Kodak Trust has made a capital commitment of $30 million to the LP. The applicant states that some of the Lenders may be parties in interest with respect to the Kodak Plan by virtue of such Lenders' (or their affiliates') provision of fiduciary services to the Kodak Plan with respect to Kodak Trust assets other than its limited partnership interests in the LP. The total number of participants in the Kodak Plan is approximately 99,000, and the approximate fair market value of the total assets of the Kodak Plan held in the Kodak Trust as of December 31, 1997 is $7 billion.

The applicant represents that the fiduciary generally responsible for investment decisions in real estate matters on behalf of the Kodak Plan is the Kodak Retirement Income Plan Committee (the Kodak Plan Committee), which was responsible for reviewing and authorizing the investment in the LP. The Kodak Plan Committee is composed of individuals who are officers of Eastman Kodak Company, and such individuals are independent of BTC and the other Lenders (as discussed in Paragraph 13, below).

10. The applicant represents that the Kodak Plan is currently the only employee benefit plan subject to the Act that is a Partner of the LP which requires the relief to be provided by the exemption proposed herein. Two other Partners, the General Motors Hourly Rate Employees Pension Trust and the General Motors Salaried Employees Pension Trust (the GM Trusts), are master trusts for certain qualified plans sponsored by the General Motors Corporation and its affiliates, which are covered by the Act. However, the applicant has received a representation from the relevant independent fiduciary for the GM Trusts that the investment in the LP by the GM Trusts qualifies for the protections set forth in Prohibited Transaction Exemption 96–23 (PTE 96–23, 61 FR 15975, April 10, 1996), the class exemption for transactions by a plan with certain parties in interest where such plan's assets are managed by an in-house asset manager.[23] The applicant states that it is possible that one or more other Plans will become Partners of the LP in the future. Thus, the applicant requests relief for any such Plan under this proposed exemption, provided the Plan meets the standards and conditions set forth herein. In this regard, such Plan must be represented by a fiduciary independent of the General Partner, the Lenders and BTC. Furthermore, the General Partner, who also must be independent of the Lenders and BTC, must receive from the Plan one of the following:

(1) a representation letter from the applicable fiduciary with respect to such Plan substantially identical to the representation letter submitted by the fiduciary of the Kodak Plan, in which case this proposed exemption, if granted, will apply to the investments made by such Plan if the conditions required herein are met; or

(2) evidence that such Plan is eligible for a class exemption[24] or has obtained an individual exemption from the Department covering the potential prohibited transactions which are the subject of this proposed exemption.

11. BTC represents that the LP has obtained an opinion of counsel as of June 8, 1999 that the LP constitutes an "operating company" under the Department's plan asset regulations [see 29 CFR 2510.3–101(c)] and further states that the General Partner is required under the Agreement to use its best efforts to cause the LP to conduct its affairs so as to constitute an "operating company."[25]

12. BTC represents that the Estoppel constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships or limited liability companies, wherein the financing institutions do not obtain security interests in the real property assets of the partnership or limited liability companies. BTC also represents that the obligatory execution of the Estoppel by the Partners for the benefit of the Lenders was fully disclosed in the Private Placement Memorandum as a requisite condition of investment in the LP during the private placement of the partnership interests. BTC represents that the only direct relationship with respect to the LP between any of the Partners and any of the Lenders is the execution of the Estoppel. All other aspects of the transaction, including the negotiation of all terms of the Credit Facility, are exclusively between the Lenders and the LP. BTC represents that the proposed execution of the Estoppel will not affect the ability of the Kodak Trust to withdraw from investment and participation in the LP.[26] The only Plan

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[23] In this regard, the Department is providing no opinion in this proposed exemption as to whether the investment in the LP by the GM Trusts meets all of the conditions required for relief under PTE 96–23.

[24] For example, in addition to the relief provided by PTE 96–23 noted above, PTE 84–14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are managed by a "qualified professional asset manager" (QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards.

[25] The Department notes that the term "operating company" as used in the Department's plan asset regulation cited above includes an entity that is considered a "real estate operating company" as described therein (see 29 CFR 2510.3–101(e)). However, the Department expresses no opinion in this proposed exemption regarding whether the LP would be considered either an operating company or a real estate operating company under such regulations. In this regard, the Department notes that it is providing no relief for either internal transactions involving the operation of the LP or for transactions involving third parties other than the specific relief proposed herein. In addition, the Department encourages potential Plan investors and their independent fiduciaries to carefully examine all aspects of the LP's proposed real estate investment program in order to determine whether the requirements of the Department's regulations will be met.

[26] In this regard, the Department cautions Plan fiduciaries to fully understand all aspects of the Agreement, including the terms of the Estoppel, prior to making any capital commitments to the LP. The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a

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assets to be affected by the proposed transactions are any funds which must be contributed to the LP in accordance with requirements under the Agreement to make Contribution Calls to honor a Partner's Capital Commitments.

13. BTC represents that neither it nor any Lender acts or has acted in any fiduciary capacity with respect to the Kodak Trust's investment in the LP and that BTC is independent of and unrelated to the fiduciary responsible for authorizing and overseeing the Kodak Trust's investment in the LP (the Kodak Trust Fiduciary). The Kodak Trust Fiduciary is the Kodak Plan Committee. The Kodak Trust Fiduciary represents that its authorization of Kodak Trust investments in the LP was free of any influence, authority or control by the Lenders, including BTC. The Kodak Trust Fiduciary states that the Kodak Trust's investments in, and Capital Commitments to, the LP were made with the knowledge that each Partner would be required subsequently to grant a security interest in Contribution Calls and Capital Commitments to the Lenders and to honor unconditionally Contribution Calls made on behalf of the Lenders without recourse to any defenses against the General Partner. The Kodak Trust Fiduciary represents that it is independent of and unrelated to BTC and the Lenders and that the investment by the Kodak Trust for which the Kodak Trust Fiduciary is responsible continues to constitute a favorable investment for the Kodak Plan participating in the Kodak Trust. The Kodak Trust Fiduciary represents further that the execution of the Estoppel is in the best interests and protective of the participants and beneficiaries of the Kodak Plan.

In the event another Plan proposes to become a Partner, the applicant represents that it will require representations to be made by such Plan's independent fiduciary that are similar to those that have been made by the Kodak Trust Fiduciary on behalf of the Kodak Plan. In addition, any Plan proposing to become a Partner in the future and needing to avail itself of the exemption proposed herein will have assets of not less than $100 million,[27] and not more than 5% of the assets of such Plan will be invested in the LP. As noted in paragraph 9 above, the Kodak Plan has total assets which exceed $100 million and has committed amounts to the LP which are less than 5% of its total assets.

14. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Kodak Plan's investment in the LP was authorized and is overseen by the Kodak Trust Fiduciary, which is independent of the Lenders and BTC, and other Plan investments in the LP from other employee benefit plans subject to the Act will be authorized and monitored by independent Plan fiduciaries; (2) none of the Lenders (including BTC) had any influence, authority or control with respect to the Kodak Trust's investment in the LP or the Kodak Trust's execution of the Estoppel; (3) the Kodak Trust Fiduciary invested in the LP on behalf of the Kodak Plan with the knowledge that the Estoppel is required of all Partners investing in the LP, and all other Plan fiduciaries that invest their Plan's assets in the LP will be treated the same as other Partners are currently treated with regard to the Estoppel; (4) any Plan which has invested or may invest in the LP in the future, which needs to avail itself of the exemption proposed herein, has or will have assets of not less than $100 million,[28] and not more than 5% of the assets of any such Plan are or will be invested in the LP; and (5) the General Partner of the LP is independent of BTC, the Lenders and the Plans.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Bay Internists, Inc. Profit Sharing Plan (the Plan)

Located in Kilmarnock, Virginia
[Application No. D–10847]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain unimproved real property (the Property) located in Kilmarnock, Virginia, to Bay-Med, a general partnership which is a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) the proposed sale is a one-time cash transaction;

(b) the Plan receives the current fair market value for Property, as established at the time of the sale by an independent, qualified appraiser; and

(c) the Plan pays no commissions or other expenses associated with the sale.

Summary of Facts and Representations

1. The Plan was established on April 30, 1980, and was amended and restated effective July 1, 1989. The Plan is a defined contribution plan. As of June 30, 1998, the Plan had 19 participants. As of June 30, 1999, the Plan had $822,451 in total assets. Bay Internists Inc. (Bay) is the sponsor of the Plan. The Plan's trustees are Dr. Charles D. Price (Dr. Price) and Steven F. Glessner. Bay was established on July 10, 1978, and is a professional subchapter "C" State of Virginia medical corporation specializing in internal medicine.

Bay-Med was established on May 23, 1985, for the purpose of building and maintaining the building in which Bay now conducts its medical practice (the Bay Office). Bay-Med is a State of Virginia general partnership comprised of the physician-stockholders in Bay, the Plan sponsor. Four physician partners in Bay-Med have a 16.67% partnership share, and Dr. Price has a 33.32% partnership share in Bay-Med.

2. On May 2, 1986, the Plan purchased the Property from the Town of Kilmarnock, Virginia, an unrelated third party, for $15,000 in cash. The Property is an approximately 1.5 acre parcel of unimproved real property located on DMV Drive in Kilmarnock, Virginia. The Property is adjacent to the Bay's corporate offices (*i.e.*, the Bay Office).[29] It is represented that the Plan trustees made the decision to purchase the Property as a investment for the Plan. The Plan trustees thought that the Property would be a good investment for the Plan because it could be developed in the future and would be marketable to third parties. At the time of purchase, the Property represented approximately 25% of the Plan's total assets. The applicant represents that as of June 30, 1998, the Property represented less than 6% of the total value of the Plan's assets.

3. The applicant represents that since it was originally acquired by the Plan,

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plan act prudently when making investment decisions for the plan.

[27] In the case of multiple plans maintained by a single employer or single controlled group of employers, the assets of which are invested on a commingled basis, (*e.g.*, through a master trust), this $100 million threshold will be applied to the aggregate assets of all such plans.

[28] See footnote 4, *ibid.*

[29] The Department is not providing any opinion in this proposed exemption as to whether the acquisition and holding of the Property by the Plan violated any of the provisions of Part 4 of Title I of the Act.

the Property has not been used or leased by anyone, including any parties in interest described herein. Since it was originally acquired by the Plan in 1986, the Property has not been an income-producing asset.

4. The Property was appraised on November 1, 1999 (the Appraisal). The Appraisal was prepared by Sandra Hargett (Ms. Hargett), who is an independent Virginia state certified appraiser. Ms. Hargett was assisted by George W. Yeatman (Mr. Yeatman, collectively; the Appraisers). Ms. Hargett and Mr. Yeatman are with Bay Appraisal Co., located at 111 N. Main Street in Kilmarnock, Virginia.

The Appraisers relied primarily on the market approach, with an analysis of recent sales of similar properties in the local geographic area, to value the Property. The Appraisers determined that the fair market value of the Property was $48,000, as of November 1, 1999.[30] Because the Property is adjacent to the Bay Office, the Appraisers considered whether this adjacency factor merits a premium above the Property's fair market value for a sale of the Property to Bay-Med. In this regard, the Appraisers state that the Bay Office has vacant sites on each side. Further, due to the large amount of land available in the vicinity and because the Bay Office currently is very large, the Appraisers represent that there is no data which supports adding a premium to the fair market value of the Property because of the adjacency to the Bay Office.

5. The applicant proposes that Bay-Med purchase the Property from the Plan in a one-time cash transaction. The applicant represents that the proposed transaction would be in the best interest and protective of the Plan because the Plan will pay no expenses or commissions associated with the sale.

Bay-Med will pay the Plan the current fair market value for the Property, as established by an independent qualified appraiser at the time of the transaction. The proposed sale of the Property to Bay-Med will increase the liquidity of the Plan's portfolio, will enable the trustees to diversify the assets of the Plan, and will enable the Plan to sell an illiquid, non-income producing asset. The applicant maintains that Bay-Med does not have any specific plans for the development or future sale of the Property at this time.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) the Plan will receive the current fair market value for each Property established at the time of the sale by an independent, qualified appraiser;

(c) the Plan will pay no expenses or commissions associated with the sale; and

(d) the sale will provide the Plan with liquidity and enable the Plan to reinvest the proceeds of the sale in financial instruments that will provide greater returns.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of March, 2000.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–6047 Filed 3–13–00; 8:45 am]

BILLING CODE 4510–29–P

[30] The Appraisers state that the Property is currently zoned for commercial use and the Appraisal is contingent on the Property meeting all relevant local, state and federal regulations for a suitable business site. The Appraisers also state that the valuation conclusions of the Appraisal are based on the highest and best use of the land.

Federal Register

Tuesday,
March 14, 2000

Part III

The President

Notice of March 13, 2000—Continuation of Iran Emergency

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Federal Register
Vol. 65, No. 50
Tuesday, March 14, 2000

Presidential Documents

Title 3—

The President

Notice of March 13, 2000

Continuation of Iran Emergency

On March 15, 1995, by Executive Order 12957, I declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran, including its support for international terrorism, efforts to undermine the Middle East peace process, and acquisition of weapons of mass destruction and the means to deliver them. On May 6, 1995, I issued Executive Order 12959 imposing more comprehensive sanctions to further respond to this threat, and on August 19, 1997, I issued Executive Order 13059 consolidating and clarifying these previous orders. The last notice of continuation was published in the **Federal Register** on March 12, 1999.

Because the actions and policies of the Government of Iran continue to threaten the national security, foreign policy, and economy of the United States, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 2000. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. Because the emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170, this renewal is distinct from the emergency renewal of November 1999. This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
March 13, 2000.

[FR Doc. 00–6510
Filed 3–13–00; 12:18 pm]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 1451/P.L. 106–173

Abraham Lincoln Bicentennial Commission Act (Feb. 25, 2000; 114 Stat. 14)

S. 632/P.L. 106–174

Poison Control Center Enhancement and Awareness Act (Feb. 25, 2000; 114 Stat. 18)

Last List February 23, 2000

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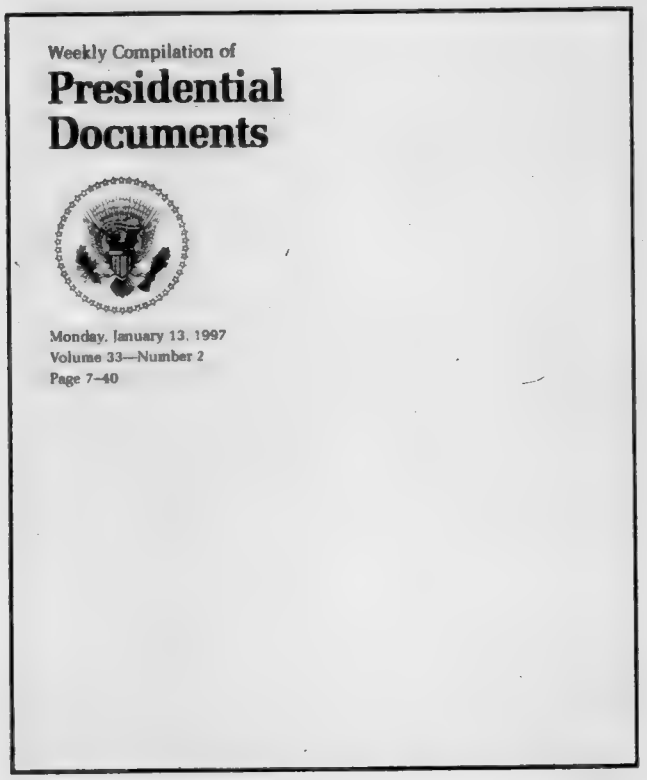

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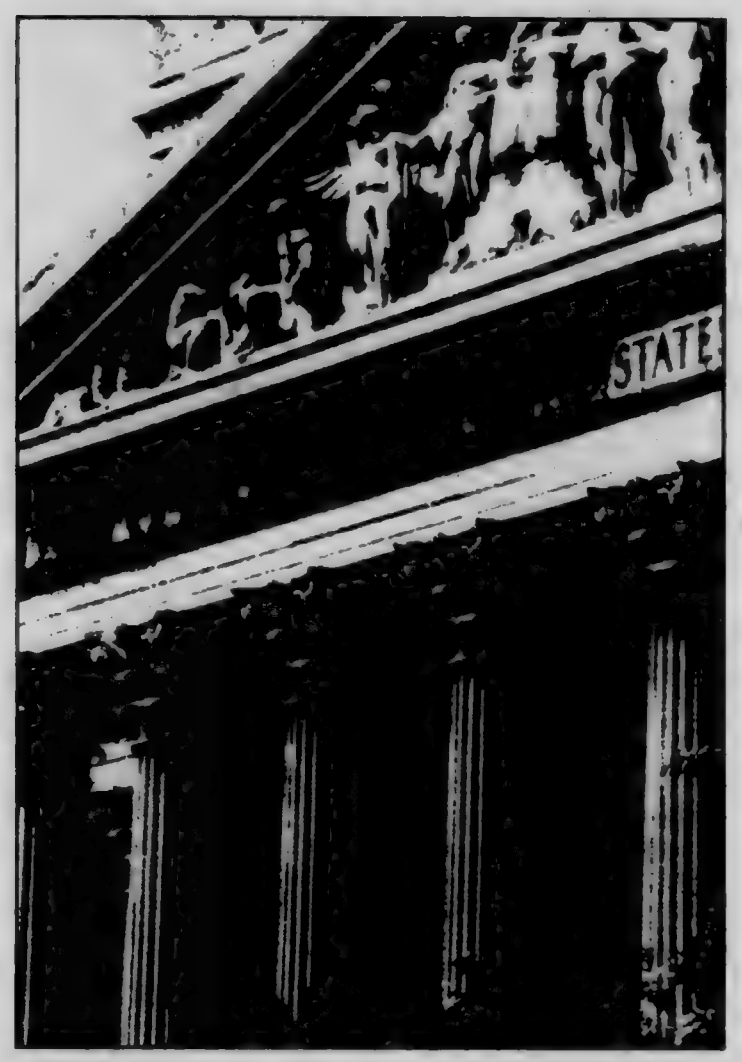

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Wednesday, March 15, 2000

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1421 and 1427

RIN 0560–AG13

1999 Crop and Market Loss Assistance; Correction

AGENCIES: Commodity Credit Corporation; USDA.

ACTION: Final Rule; Correction.

SUMMARY: The Commodity Credit Corporation published in the **Federal Register** of February 16, 2000, a final rule promulgating regulations for crop and market loss programs. Inadvertently, one portion of the rule was incorrectly set out concerning the eligibility of producers for loan deficiency payments and marketing loan gains for commodities already marketed. This document corrects that error.

EFFECTIVE DATE: February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, FSA, USDA, STOP 0540, 1400 Independence Avenue, SW, Washington, DC 20250–0540, Telephone: (202) 205–5851.

SUPPLEMENTARY INFORMATION: The Commodity Credit Corporation published in the **Federal Register** of February 16, 2000, (65 FR 7942) a final rule promulgating regulations for crop and market loss programs. As correctly set out in the preamble for that rule, amendments were to be made by that rule to 7 CFR parts 1421 and 1427 to implement provisions of new legislation that changed the payment limitations for certain commodity activities and that allowed farmers who had already marketed a commodity, but had not received a marketing loan gain or loan deficiency payments for that commodity, to receive such payments. Normally, such payment is available only if the crop has not yet been marketed.

That is, the preamble to the rule stated that, subject to certain conditions, the new regulations adopted in that rule would allow a producer who was otherwise eligible to receive a gain or payment to receive a marketing loan gain or loan deficiency payment even though the producer marketed the commodity. The preamble stated that this would only apply for commodities marketed on or before the date of publication of the and to otherwise eligible producers on commodities for which no such gain or payment had been paid.

Those changes were to be incorporated into the regulations at 7 CFR 1421.1 and 1427.1. However, the February 16, 2000 rule inadvertently left out the conditions referred to in the preamble and used language that suggested that these new payments would be available only if the request for such relief was made prior to the date of publication of the rule a condition that would have been impossible to meet.

This correction provides regulatory language that reflects the intent of the February 16, 2000, rule, as expressed in the Preamble to that rule.

In rule FR Doc. 00–3406, published on February 16, 2000, (65 FR 7942) make the following corrections:

1. On page 7954, in the second column, amendatory instruction 18 and the amendment to § 1421.1 are corrected to read as follows:

18. Amend § 1421.1 by adding paragraph (e) to read as follows:

§ 1421.1 Applicability.

* * * * *

(e) Notwithstanding provisions of this subpart and subchapter:

(1) For commodities produced during the 1999 crop year, the $75,000 per person total limitation on all commodities together on the sum of marketing loan gains on loan made under this part and on loan deficiency payments with respect to loans under this part, shall not apply, but, rather, such limit shall be $150,000 per person.

(2) For eligible crops produced in the 1999 crop year, a producer may receive with respect to a commodity, a marketing loan gain in connection with loans made under this part or loan deficiency payments in connection with the administration of loans under this part even though the crop has already been marketed, so long as:

(i) Neither the producer nor anyone else has received a marketing loan gain or loan deficiency payment on the commodity;

(ii) The person seeking the payment is the actual producer of the commodity and had beneficial interest in the commodity at the time of the operative marketing, for commodities to which paragraph (e)(2)(iii) of this section applies, or the time at which the commodity was redeemed in the case of commodities to which paragraph (e)(2)(iv) of this section applies;

(iii) For those commodities that were previously placed under loan, the payment is made solely as marketing loan gain in which case the rate to be paid will be determined as of the date of the redemption;

(iv) For commodities not covered by paragraph (e)(2)(iii) of this section, the producer will receive the payment as a loan deficiency payment in which case the amount to be paid will be determined as of the date that the producer marketed or lost beneficial interest in the commodity;

(v) Unless otherwise allowed by the Deputy Administrator, the producer marketed the commodity prior to February 16, 2000.

2. On page 7954, in the second column, amendatory instruction 20 and the amendment to § 1427.1 are corrected to read as follows:

20. Amend § 1427 by adding paragraph (d) to read as follows:

§ 1427.1 Applicability

* * * * *

(d) Notwithstanding provisions of this subpart and subchapter:

(1) For commodities produced during the 1999 crop year, the $75,000 per person total limitation on all commodities together on the sum of marketing loan gains on loan made under this part and on loan deficiency payments with respect to loans under this part, shall not apply, but, rather, such limit shall be $150,000 per person.

(2) For eligible cotton produced in the 1999 crop year, a producer may receive with respect to cotton, a marketing loan gain in connection with loans made under this part or loan deficiency payments in connection with the

administration of loans under this part even though the cotton has already been marketed, so long as:

(i) Neither the producer nor anyone else has received a marketing loan gain or loan deficiency payment on the cotton;

(ii) The person seeking the payment is the actual producer of the cotton and had beneficial interest in the cotton at the time of the operative marketing, for cotton to which paragraph (d)(2)(iii) of this section applies, or the time at which the cotton was redeemed in the case of cotton to which paragraph (d)(2)(iv) of this section applies;

(iii) For cotton that was previously placed under loan, the payment is made solely as marketing loan gain in which case the rate to be paid will be determined as of the date of the redemption;

(iv) For cotton not covered by paragraph (d)(2)(iii) of this section, the producer will receive the payment as a loan deficiency payment in which case the amount to be paid will be determined as of the date that the producer marketed or lost beneficial interest in the cotton;

(v) Unless otherwise allowed by the Deputy Administrator, the producer marketed the cotton prior to February 16, 2000.

Signed at Washington, DC, on March 10, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–6424 Filed 3–13–00; 8:54 am]

BILLING CODE 3410–05–p

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 925 and 950

[No. 2000–10]

RIN 3069–AA94

Amendment of Membership Regulation and Advances Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its Membership Regulation and Advances Regulation to conform certain provisions to the requirements of the Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act), and is making certain technical revisions to the Membership Regulation that are not related to the Modernization Act, in order to clarify the treatment of *de novo* members that fail to meet the 10 percent residential mortgage loans requirement within the required one-year time frame.

DATES: This interim final rule shall be effective on March 15, 2000. The Finance Board will accept written comments on the interim final rule on or before April 14, 2000.

ADDRESSES: Send comments to: Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director, (202) 408–2821, Janet M. Fronckowiak, Acting Deputy Director, (202) 408–2575, Jennifer R. Salamon, Program Analyst, (202) 408–2974, or Patricia L. Sweeney, Program Analyst, (202) 408–2872, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Under the Federal Home Loan Bank Act (Bank Act), the Finance Board is responsible for the supervision and regulation of the 12 Federal Home Loan Banks (Banks), which provide advances and other financial services to their member institutions. *See* 12 U.S.C. 1422a(a) (1994). Institutions, including those not meeting the Qualified Thrift Lender (QTL) test,[1] may become members of a Bank if they meet certain membership eligibility and minimum stock purchase criteria set forth in the Bank Act and the Finance Board's implementing Membership Regulation *See id.* sections 1424, 1426, 1430(e)(3) (1994); 12 CFR part 925.[2] Members may obtain advances from a Bank subject to certain statutory and regulatory requirements. *See* 12 U.S.C. 1430(a) (1994). Prior to recent amendments to the Bank Act, discussed further below, access to advances by non-QTL members was restricted in various ways. *See id.* section 1430(e).

The recently enacted Modernization Act[3] amended certain membership eligibility provisions, and repealed certain stock purchase and non-QTL advances provisions, in the Bank Act. *See* Pub. L. 106–102, sections 602, 603, 604(c), (d)(1), 605, 608 (1999). Accordingly, the Finance Board is amending its regulations to conform them to the Modernization Act amendments. The Finance Board also is taking this opportunity to make certain technical revisions to the Membership Regulation that are not related to the Modernization Act, in order to clarify the treatment of *de novo* members that fail to meet the 10 percent residential mortgage loans requirement within the required one-year time frame.

II. Analysis of the Interim Final Rule

A. Removal of the Automatic Membership Provision For Mandatory Members—§ 925.4(a)

Section 5(f) of the Home Owners' Loan Act (HOLA) formerly provided that "[e]ach Federal savings association, upon receiving its charter, shall become automatically a member" of its district Bank. *See* 12 U.S.C. 1424(f) (1994). Consistent with section 5(f), section 925.4(a) of the Finance Board's Membership Regulation provides that any institution required by law to become a member of a Bank automatically shall become a member of the Bank of the district in which its principal place of business is located upon the purchase of stock in that Bank pursuant to § 925.20(b)(1). *See* 12 CFR 925.4(a). The Modernization Act amended section 5(f) of the HOLA to provide that "[a]fter the end of the 6-month period beginning on [Nov. 12, 1999], a Federal savings association may become a member of the [Bank] System, and shall qualify for such membership in the manner provided in the [Bank Act] * * * with respect to other members." *See* Modernization Act, section 603. Staff of the Office of Thrift Supervision (OTS), the agency that charters federal savings associations and administers the HOLA, has interpreted this amended language to mean that, as of November 12, 1999, a federal savings association is eligible to become a member, but no longer automatically becomes a member, of the Bank System, and federal savings associations that were members of the Bank System prior to November 12, 1999 may not withdraw from the Bank System and redeem their Bank capital stock until the 6-month period has expired (May

[1] *See* discussion QTL test in II.E. below.

[2] The Finance Board recently reorganized and redesignated all of its regulations. *See* 65 FR 8253 (Feb. 18, 2000). The Membership Regulation, which formerly was part 933 of the Finance Board's regulations, 12 CFR part 933 (1999), was redesignated as part 925. *See* 65 FR 8253, 8260 (to be codified at 12 CFR part 925).

[3] The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. 106–102, 113 Stat. 1338, enacted into law on November 12, 1999.

12, 2000). As the HOLA is administered by the OTS and not the Finance Board, the Finance Board defers to the OTS for interpretations of the HOLA.

In deference to and consistent with the OTS interpretation of the HOLA, the Finance Board is removing section 925.4(a) of the Finance Board's Membership Regulation, which provides for automatic Bank membership for federal savings associations. No change is required to the provision of section 925.26(a) of the Finance Board's Membership Regulation stating that any member "that is eligible under applicable law" to withdraw from Bank membership may do so after providing the Finance Board and its Bank at least six months written notice of the member's intention to withdraw from membership. *See* 12 CFR 925.26(a). The language "that is eligible under applicable law" requires that a federal savings association meet the amended HOLA requirement that it may not withdraw from Bank membership until after May 12, 2000. The interim final rule amends section 925.26 to provide that Federal savings association members may submit notices of intention to withdraw from Bank membership prior to May 13, 2000.

B. Removal of the 10 Percent Residential Mortgage Loans Requirement For Community Financial Institution Applicants For Membership—Sections 925.6(b), 925.10, 925.14(a)(3)

Section 4(a)(2(A) of the Bank Act formerly provided that an insured depository institution may become a member of a Bank only if it has at least 10 percent of its total assets in residential mortgage loans (10 percent requirement). *See* 12 U.S.C. 1424(a)(2)(A) (1994). Section 4(a)(2) also provided that an insured depository institution commencing business operations after January 1, 1989 (*de novo* institution), may become a member of a Bank if at least 10 percent of its total assets are in residential mortgage loans, within one year after the commencement of its operations. *See id.* section 1424(a)(2). Section 4(a)(2) is implemented by sections 925.6(b), 925.10 and 925.14(a)(3) of the Finance Board's Membership Regulation. *See* 12 CFR 925.6(b), 925.10, 925.14(a)(3).

The Modernization Act amended section 4(a)(2) of the Bank Act to exempt from the 10 percent requirement any applicants, including *de novo* institutions, that qualify as "community financial institutions." *See* Modernization Act, section 605 (*to be codified at* 12 U.S.C. 1424(a)(2)(A)(4)). The Modernization Act defines a "community financial institution" to mean, generally, an institution whose deposits are insured under the Federal Deposit Insurance Act (FDIA) and that has less than $500 million in average total assets, based on an average of total assets over the three preceding years. *See id.* section 602 (*to be codified at* 12 U.S.C. 1422(13)). Accordingly, the Finance Board is amending sections 925.6(b), 925.10 and 925.14(a)(3) of its Membership Regulation to include an exemption from the 10 percent requirement for community financial institutions, and is adding a definition of "community financial institution" in new section 925.1(ff). A definition of "community financial institution," which predates the Modernization Act, in section 925.1(n)(1)(iii), also is being removed. The Finance Board requests comments on what source of data should be used in calculating the average of total assets over the three preceding years.

C. Amendment of the Conditional Approval Provision For De Novo Insured Depository Institution Applicants Sections 925.14(a)(3), 925.29(a)(1)

As discussed above, section 4(a)(2) of the Bank Act formerly provided that an insured depository institution commencing business operations after January 1, 1989, may become a member of a Bank if at least 10 percent of its total assets are in residential mortgage loans, within one year after the commencement of its operations. *See id.* section 1424(a)(2) (1994). The Modernization Act amended this provision to provide an exemption for *de novo* community financial institutions. *See* Modernization Act, section 605. Thus, a *de novo* institution's membership is conditioned on the timely satisfaction of the 10 percent requirement. If an institution fails to satisfy this condition within the one-year period, it would not have met one of the statutory criteria for membership and the conditional approval (as well as the institution's membership) would be deemed null and void by operation of law. Thus, although the Membership Regulation is silent as to the consequences of a *de novo* institution's failure to meet the 10 percent requirement, compliance is required by statute no later than one year after commencing operations.

Notwithstanding the statutory conditional approval language, there has been some confusion at a number of Banks as to how they should deal with *de novo* members that would fail to satisfy the 10 percent requirement within the one-year time frame. To provide regulatory clarity, the Finance Board is amending section 925.14(a)(3) of the Membership Regulation to reinforce the conditional nature of the *de novo* membership application approval, as required by the statute. This regulatory amendment is consistent with the conditional approval requirements applicable to the home financing policy eligibility requirement in section 925.14(a)(4) of the Membership Regulation. *See id.* section 925.14(a)(4). The provisions of section 925.29(a)(1) of the Membership Regulation dealing with orderly liquidation of advances and redemption of stock in the event an institution ceases to be a member also are amended to include references to sections 925.14(a)(3) and (a)(4).

D. Amendment of the Provision on Reacquisition of Membership After 10 Years— § 925.30

Former section 6(h) of the Bank Act provided:

> Notwithstanding any other provision of this chapter, an institution which withdraws from membership may acquire membership in any Federal Home Loan Bank only after the expiration of a period of 10 years thereafter, except where such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between banks or in connection with obtaining a charter as a Federal savings association * * *.

12 U.S.C. 1426(h) (1994). Former section 6(h) is implemented by section 925.30 of the Finance Board's Membership Regulation in virtually identical form. *See* 12 CFR 925.30.

The Modernization Act repealed section 6(h) of the Bank Act and replaced it with new section 6(g), which provides that:

> (1) IN GENERAL—Except as provided in paragraph (2), and notwithstanding any other provision of this Act, an institution that divests all shares of stock in a Federal home loan bank may not, after such divestiture, acquire shares of any Federal home loan bank before the end of the 5-year period beginning on the date of the completion of such divestiture, unless the divestiture is a consequence of a transfer of membership on an uninterrupted basis between banks.
>
> (2) EXCEPTION FOR WITHDRAWALS FROM MEMBERSHIP BEFORE 1998.—Any institution that withdrew from membership in any Federal home loan bank before December 31, 1997, may acquire shares of a Federal home loan bank at any time after that date, subject to the approval of the Finance Board and the requirements of this Act.

Public Law 106–102, section 608. This amendment, which took effect upon enactment, reduced the statutory period for readmission from 10 years to 5 years. The result of the amendment is that an institution that withdraws or withdrew from membership may reacquire

membership, *i.e.*, purchase shares of Bank capital stock, after the expiration of a period of 5 years from the date of completion of divestiture of all shares of the institution's capital stock in the Bank. An institution that withdrew from membership before December 31, 1997 that does not meet the 5-year requirement may reacquire membership in a Bank subject to Finance Board approval. Any applicant for membership in a Bank is still required, of course, to meet all of the applicable eligibility requirements in order to be approved for membership.

The Finance Board is amending section 925.30 of its Membership Regulation to reflect the above-described statutory changes in the waiting period for readmission to membership.

The Finance Board has not received any requests from former members seeking readmission under section 6(g)(2) and, thus, has not determined what factors it would consider in such a proceeding. The Finance Board does anticipate that any requests for readmission would be submitted pursuant to the Finance Board's Procedures in 12 CFR part 907.

E. Removal of the Additional Capital Stock Purchase Requirements and Restrictions on Advances Applicable to Non-QTL Members—Sections 925.20, 925.22(c), 950.1, 950.13, 950.15

Section 604(c) of the Modernization Act repealed section 10(e) of the Bank Act, which had imposed a number of restrictions on members that did not meet the QTL test.[4] Section 10(e) limited the purposes for which a non-QTL member could obtain an advance, limited Bank System-wide advances to non-QTL members to 30 percent of total Bank System advances outstanding, and gave QTL members a priority over non-QTL members in obtaining advances. *See* 12 U.S.C. 1430(e) (1), (2) (1994). Section 10(e) also limited the dollar amount of advances that a non-QTL member could obtain by progressively reducing its ability to leverage its investment in the capital stock of the Bank. In practice, a non-QTL member with a QTL ratio of 50 percent could obtain only half the amount of advances that a QTL member with the same amount of Bank capital stock could borrow. If the member's QTL ratio decreased further, its ability to borrow against its capital stock would be reduced further. *See id.* section 1430(e).

Separately, section 10(e)(3) of the Bank Act established a statutory presumption that each member has at least 30 percent of its assets in home mortgage loans, which presumption was used in determining the minimum amount of Bank capital stock that a member must purchase pursuant to section 6(b) of the Bank Act. *See id.* section 1430(e)(3). Section 6(b) requires all members to subscribe to a minimum amount of Bank capital stock, which must equal at least one percent of the member's aggregate unpaid loan principal (home mortgage loans, home purchase contracts and similar obligations). As a practical matter, this provision would have applied only to non-QTL members, as QTL members (which have at least 65 percent of their assets in housing-related investments) likely would have had more than 30 percent of their assets in home mortgage loans.

Section 10(e) was added to the Bank Act in 1987 by the Competitive Equality Banking Act of 1987, Public Law 100–86, section 105, 101 Stat. 552 (Aug. 10, 1987) (CEBA), which also established the QTL test. Congress established the QTL test principally as a means of encouraging unitary savings and loan holding companies to ensure that their subsidiary savings associations maintained at least 60 percent of their assets in housing-related investments. If the savings association failed the QTL test, the business activities of the holding company would be sharply curtailed. Similarly, section 10(e) reduced the ability of the non-QTL savings association to obtain advances from its Bank; *i.e.*, an association with a QTL ratio of 59 percent could obtain only 59 percent of the amount of advances that it could obtain were it to meet the QTL test.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73, section 714(b), 103 Stat. 418 (Aug. 9, 1989) (FIRREA), amended section 10(e) by revising the sanctions imposed on non-QTL members, which were, with only minor exceptions, the same as those described earlier that the Modernization Act repealed. Congress described its amendments to section 10(e), referring to both the housing finance purposes restriction and the reduced leverage on Bank capital stock, as "special eligibility requirements for advances to members that are not qualified thrift lenders." *See* FIRREA Conference Report, No. 101–222, at 428 (August 4, 1989). Congress did not describe any of FIRREA's QTL amendments to section 10(e) as amendments to the capital structure of the Banks. Indeed, Congress chose to locate the QTL provisions in section 10(e), which relates solely to Bank advances, rather than in section 6, which establishes the capital structure for the Banks.

Section 604(c) of the Modernization Act repealed section 10(e) in its entirety. There is little legislative history for the amendment. The Managers' Statement accompanying the bill as reported by the Conference Committee refers specifically to each of the QTL provisions in section 10(e) and states simply that each such provision is "eliminated" or "removed." Because section 604(c) of the Modernization Act does not provide a separate effective date for the QTL repeal, the amendments are to take effect upon enactment, unless they are preserved by some other provision of the Modernization Act.

The only provision in the Modernization Act that could even arguably be read to preserve the QTL provisions of section 10(e) would be the transition provision for the amendments to section 6 of the Bank Act, relating to the capital structure of the Banks. *See* Modernization Act, section 608 (*to be codified at* 12 U.S.C. 1426(a)(6)). That section provides that:

> Notwithstanding any other provisions of [the Modernization Act], the requirements relating to the purchase and retention of capital stock of a [Bank] by any member thereof in effect on [November 11, 1999], shall continue in effect * * * until the [capital] regulations required by [the Modernization Act] have taken effect and the capital structure plan * * * has been approved by the Finance Board and implemented by such [B]ank.

Although certain provisions of section 10(e) bear some relation to the capital stock of a Bank, such as the reduced leverage and the 30 percent presumption of home mortgage loans, they do not appear to have been intended by Congress to function as capital provisions *per se*, nor do they appear to be so closely linked to the capital provisions in section 6 of the Bank Act that they must necessarily be preserved by the transition provisions in the Modernization Act.

As originally enacted in CEBA, section 10(e) was simply a limitation on the amount of advances that a non-QTL member could obtain; it included no reference to Bank capital. Though

[4] The "Qualified Thrift Lender" test is set forth in section 10(m) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1467a(m), and applies directly only to savings associations. Originally enacted in 1987, the QTL test was intended to ensure that savings associations remained committed to the business of providing housing-related loans. Failure to meet the test subjected both the savings association and its holding company to certain statutory penalties, including reduced access to Bank advances for the association. In 1989, Congress revised the QTL test and the penalties for failing to meet it, including more severe restrictions on access to Bank advances for savings associations or commercial banks that did not meet the test.

FIRREA reduced the borrowing leverage on Bank capital stock for non-QTL members and established the 30 percent presumption of home mortgage loans, the Congress did not refer to either provision as an amendment to the capital structure of the Bank System. Instead, Congress expressly described both of those provisions as "special eligibility requirements for advances to" non-QTL members. That characterization suggests an intent that section 10(e) continue to function primarily as a limitation on the ability of a non-QTL member to obtain advances, albeit using the provisions relating to capital as one of the means of implementing that limitation.

The repeal of section 10(e) is one of several provisions of the Modernization Act that were intended to equalize access to the Bank System for all members. The explanation by the Conferees' Managers Statement that the QTL provisions are "removed" and "eliminated" by the Modernization Act suggests strongly that the Congress intended that those amendments would take effect upon enactment. To read the Modernization Act otherwise would require an inference that Congress intended the QTL provisions to remain in effect for another 3 to 5 years, which is at odds with the language used in the Managers' Statement. Moreover, the history of the legislation, in which the amendments to section 6 (including the transition provision) were adopted at an earlier time than the repeal of section 10(e), would counsel against applying the transition provision so broadly as to preserve the QTL limitations.[5] Given that history, the Finance Board believes that the transition provision in section 608 of the Modernization Act should not be read as applying to the QTL provisions in section 10(e) of the Bank Act, and that the QTL provisions are not preserved beyond the date of enactment.

[5] As passed by the House of Representatives, H.R. 10 would have amended section 6 of the Bank Act, the capital structure provision, in its entirety, and would have included within the amended section 6 a transition provision preserving the existing capital structure until the new capital structures could be implemented. That transition provision is identical to the provision included in the so-called "Chairmen's Mark" that was considered by the Conference Committee and later was enacted in the Modernization Act. The repeal of section 10(e), however, was not included in the original Chairmen's Mark and had not been in either H.R. 10 or S. 900, as those bills were passed by their respective houses. The language repealing section 10(e) was adopted later in the Conference and was included among the amendments made by section 604 of the Modernization Act, which related to advances, rather than those made by section 608 of the Modernization Act, which includes all of the amended capital provisions, including the transition provision.

Accordingly, the Finance Board is removing sections 925.20(a)(2), 950.13 and 950.15(a)(2) of its regulations, which contain the additional capital stock purchase requirements and limitations on advances applicable to non-QTL members. Section 925.20(a)(1) is revised to set forth the new minimum stock purchase requirement for all members as the greater of:

(i) $500;

(ii) 1 percent of the member's aggregate unpaid loan principal; or

(iii) 5 percent of the member's aggregate amount of outstanding advances.

The Finance Board is aware that the repeal of the QTL limitations could result in excess capital stock positions for as much as 40 percent of the members of the Banks and that this will necessitate serious, thoughtful and active management of capital and business operations by the Banks during the transition period until final capital regulations and Bank capital plans are in place, as required by the Modernization Act. *See* Modernization Act, section 608. This will also require the Finance Board to monitor the Banks closely during this period. Any safety and soundness concerns raised during this transitional period as a result of the repeal of the QTL limitations will be addressed by the Finance Board through the supervisory process.

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

IV. Notice and Public Participation

The Finance Board for good cause finds that the notice and public comment procedure required by the Administrative Procedure Act is impracticable, unnecessary or contrary to the public interest in this instance, because the changes made by this interim final rule implement recently enacted statutory amendments that rendered obsolete certain provisions of the Finance Board's regulations. *See* 5 U.S.C. 553(b)(3)(B).

V. Paperwork Reduction Act

For the reasons stated in IV. above, the Finance Board is adopting this interim final rule on an expedited basis to conform provisions of its regulations to the recently enacted statutory amendments to the Bank Act. Due to the expedited nature of this rulemaking, the Finance Board has not completed its analysis of the information collection requirements contained in the interim final rule. The amendments in the interim final rule may result in a reduction in the information collection burden for institutions that qualify as community financial institutions, and an increase in the number of respondents that apply for Bank membership. The Finance Board intends to submit to the Office of Management and Budget the information collection requirements contained in this interim final rule in accordance with the requirements of section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d).

List of Subjects 12 CFR Parts 925 and 950

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends title 12, chapter IX, parts 925 and 950, Code of Federal Regulations, as follows:

PART 925—MEMBERS OF THE BANKS

1. The authority citation for part 925 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

2. Amend section 925.1 by:

a. In paragraph (n)(1)(iii), removing the second and third sentences; and

b. Adding paragraphs (ff) and (gg) to read as follows:

§ 925.1 Definitions.

* * * * *

(ff) *Community financial institution* means an institution—

(1) The deposits of which are insured under the Federal Deposit Insurance Act; and

(2) That has, as of the date of the transaction at issue, less than the community financial institution asset cap in average total assets, based on an average of total assets over the three years preceding that date.

(gg) *Community financial institution asset cap* means, for 2000, $500 million. Beginning in 2001 and for subsequent years, the cap shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted cap.

§ 925.4 [Amended]

3. Amend section 925.4 by:

a. Removing paragraph (a); and

b. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c), respectively.

4. Amend § 925.6 by revising paragraph (b) to read as follows:

§ 925.6 General eligibility requirements.

* * * * *

(b) *Additional eligibility requirement for insured depository institutions other than community financial institutions.* In order to be eligible to become a member of a Bank, an insured depository institution applicant other than a community financial institution also must have at least 10 percent of its total assets in residential mortgage loans.

* * * * *

5. Revise § 925.10 to read as follows:

§ 925.10 10 percent requirement for certain insured depository institution applicants.

An insured depository institution applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Act and section 925.6(b) of this part, shall be deemed to be in compliance with such requirement if, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant has at least 10 percent of its total assets in residential mortgage loans, except that any assets used to secure mortgage debt securities as described in § 925.1(bb)(6) of this part shall not be used to meet this requirement.

6. Amend section 925.14 by revising paragraph (a)(3) to read as follows:

§ 925.14 De novo insured depository institution applicants.

(a) * * *

(3) *10 percent requirement*—(i) *One-year requirement.* An applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Act and section 925.6(b) of this part, shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 925.10 of this part.

(ii) *Conditional approval.* The applicant shall be conditionally deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Act and section 925.6(b) of this part. An applicant that receives such conditional membership approval is subject to the stock purchase requirements of § 925.20 of this part and the advances provisions of part 950 of this chapter.

(iii) *Approval.* The applicant shall be deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Bank Act and section 925.6(b) of this part upon receipt by the Bank from the applicant, within one year after commencement of the applicant's initial business operations, of evidence acceptable to the Bank that the applicant satisfies the 10 percent requirement.

(iv) *Conditional approval deemed null and void.* If the requirements of paragraph (a)(3)(iii) of this section are not satisfied, the applicant shall be deemed to be in noncompliance with the 10 percent requirement of section 4(a)(2)(A) of the Act and § 925.6(b) of this part, and its conditional membership approval is deemed null and void.

(v) *Treatment of outstanding advances and Bank stock.* If the applicant's conditional membership approval is deemed null and void pursuant to paragraph (a)(3)(iv) of this section, the liquidation of any outstanding indebtedness owed by the applicant to the Bank and redemption of stock of such Bank shall be carried out in accordance with § 925.29 of this part.

* * * * *

§ 925.18 [Amended]

7. Amend § 925.18(e) by removing the phrase "within 10 years".

8. Amend § 925.20 by:

a. Revising paragraph (a); and

b. In paragraphs (b)(1) and (b)(2), removing "§ 925.4(a) or (d)" and adding "§ 925.4(c)" in its place, to read as follows:

§ 925.20 Stock purchase.

(a) *Minimum stock purchase.* Each member shall purchase stock in the Bank in which it is a member in an amount equal to the greater of:

(1) $500;

(2) 1 percent of the member's aggregate unpaid loan principal; or

(3) 5 percent of the member's aggregate amount of outstanding advances.

* * * * *

9. Amend § 925.26 by revising paragraph (a) to read as follows:

§ 925.26 Procedure for withdrawal.

(a) *Notice of withdrawal.* (1) Any member that is eligible under applicable law to withdraw from Bank membership may do so after providing the Finance Board and its Bank at least six months written notice of the member's intention to withdraw from membership.

(2) Federal savings association members may submit notices of intention to withdraw from Bank membership under paragraph (a)(1) of this section prior to May 13, 2000, but may not withdraw from membership prior to May 13, 2000.

* * * * *

§ 925.29 [Amended]

10. Amend the first sentence of § 925.29(a)(1) by adding "925.14(a)(3), 925.14(a)(4)," before "925.26".

11. Revise § 925.30 to read as follows:

§ 925.30 Reacquisition of membership.

An institution that withdraws or withdrew from membership pursuant to § 925.26 of this part may acquire membership in a Bank only after the expiration of a period of 5 years from the date of completion of divestiture of all shares of the institution's capital stock in the Bank, except:

(a) Such institution may acquire membership in a Bank if such divestiture is a consequence of a transfer of membership on a non-interrupted basis between Banks pursuant to § 925.18 of this part; and

(b) An institution that withdrew from membership pursuant to § 925.26 of this part before December 31, 1997 that does not meet the 5-year requirement in this section may acquire membership in a Bank subject to Finance Board approval.

PART 950—ADVANCES

1. The authority citation for part 950 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b and 1431.

§ 950.13 [Removed]

2. Remove § 950.13.

3. Amend § 950.15 by:

a. Redesignating paragraph (a)(1) as paragraph (a);

b. Removing paragraph (a)(2); and

c. Revising the first sentence of paragraph (b)(1) to read as follows:

§ 950.15 Capital stock requirements; unilateral redemption of excess stock.

* * * * *

(b) *Unilateral redemption of excess capital stock; fee in lieu prohibited.* (1) A Bank, after providing 15 calendar days advance written notice to a member, may require the redemption of that amount of the member's Bank capital stock that exceeds the capital stock requirements set forth in paragraph (a) of this section, provided the minimum amount required in section 6(b)(1) of the Act is maintained.

* * *

* * * * *

Dated: February 23, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–6200 Filed 3–14–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–57–AD; Amendment 39–11623; AD 2000–05–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that requires a one-time inspection of the main landing gear (MLG) axle flange to detect cracking, and follow-on corrective actions. For certain airplanes, this amendment also requires replacement of the original brake mounting gasket with a more durable aluminum-nickel-bronze gasket, and installation of new shear studs, if necessary. For certain airplanes, this amendment requires modification of the mounting flange holes of the brake torque tube. This amendment is prompted by reports of cracking in the axle flange and by reports of deterioration of the brake mounting gasket. The actions specified by this AD are intended to prevent fracture of the MLG axle and separation of the wheel from the MLG, and consequent reduced controllability of the airplane.

DATES: Effective April 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes was published in the **Federal Register** on October 29, 1998 (63 FR 57953). That action proposed to require a one-time inspection of the main landing gear (MLG) axle flange to detect cracking, and follow-on corrective actions. For certain airplanes, that action proposed to require replacement of the original brake mounting gasket with a more durable aluminum-nickel-bronze gasket, and installation of new shear studs, if necessary. For certain airplanes, that action proposed to require modification of the mounting flange holes of the brake torque tube.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Requests to Extend Compliance Time

Several commenters request that the FAA extend the compliance time (i.e., within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later) for accomplishing the requirements of the proposed AD.

One commenter states that the proposed AD should be carried out within 250 days or 2,500 aircraft cycles, whichever occurs later. The commenter supports this request by stating that its standard practice is to clean and visually inspect all landing gear axle flanges each time the brake assemblies and wheel assemblies are removed from the axle. The commenter further states that it has never experienced loss of a MLG wheel with BFGoodrich brake assemblies, and that BFGoodrich is not aware of the loss of a wheel on aircraft equipped with BFGoodrich brake assemblies.

Another commenter, the airplane manufacturer, states that the inspection of axle flanges that have been repaired with nickel sulfamate or bushings would require removal of the repair. The commenter notes that this will have a significant impact on the cost and time required to perform the proposed inspection. Therefore, consideration should be given to increasing the compliance time or modifying the inspection requirements.

One commenter states that the inspection schedule specified in paragraphs (b) and (c) of the proposed AD should be increased to at least 1 year or 4,000 cycles, whichever is later. The commenter states that the currently proposed inspection schedule for most of the operators will fall during a line maintenance check. The commenter points out that the inspection and repair specified in Boeing All Operators Telex (AOT) M–7272–96–1442, dated March 29, 1996 [which is referenced in the proposed AD the appropriate source for accomplishing the proposed inspection in paragraphs (b)(1) and (c)(1) and the proposed repair in paragraphs (b)(2) and (c)(2)], involves repairs that should be accomplished at a heavy check or overhaul facility.

One commenter states that the inspection should be accomplished during a heavy maintenance visit where equipment and trained personnel are more readily available.

The FAA concurs with the commenters' requests. The FAA concurs that the magnetic particle inspection, high frequency eddy current (HFEC) inspection, modification, and repair, if necessary, required by this AD should be accomplished at an overhaul facility. The FAA has determined that an extension of the compliance time to within 1 year or 4,500 flight cycles after the effective date of this AD, whichever occurs later, will not compromise safety provided that an interim detailed visual inspection to detect fretting and corrosion of the axle flange bolt holes is accomplished within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later. The FAA has added a new paragraph (d) to the final rule to include such an option. The FAA also has added a note to the final rule to clarify the definition of the detailed visual inspection.

One commenter states that, if the FAA mandates modifications to the ten or eleven bolt configuration, it requests that the compliance time for paragraph (c) of the proposed AD be extended to 5 years. (This comment is discussed in more detail below under the heading "Requests to Exclude Actions on the Basis of Configuration").

The FAA does not concur with the commenter's request. Although the two stud/ten bolt configuration provides better clamp-up between the brake

assembly and the MLG axle flange, the FAA has determined that improved clamp-up by itself does not justify a 5-year compliance time.

Requests to Exclude Actions on the Basis of Configuration

One commenter requests that operators utilizing ten or eleven bolt configurations regardless of gasket material not be subject to the requirements of the proposed AD. One commenter states that, according to Boeing AOT M–7272–96–1442, dated March 29, 1996, previous failures are primarily due to poor maintenance of finish, improper plating repairs, and installation of incorrect wheel bearings, rather than design deficiencies. The commenter suggests that no evidence exists which shows that a ten or eleven bolt brake mounting configuration with phenolic gaskets is unsafe or susceptible to cracking, and subsequent axle failure.

The FAA does not concur with the commenter's request. Although the two stud/ten bolt configuration provides better clamp-up between the brake assembly and the MLG axle flange, the FAA has determined that an improved clamp-up by itself will not prevent fretting. Furthermore, Boeing AOT M–7272–96–1442 lists deterioration of the phenolic gasket as another of the basic causes of reported axle fractures. Brake heat and vibration can lead to deterioration of the phenolic gasket. The FAA finds that an increase in clamp-up with the two stud/ten bolt configuration will help decrease the magnitude of vibration, but will not alleviate the gasket deterioration brake heat caused by the gasket. The FAA has determined that the aluminum-nickel-bronze (Al-Ni-Br) gasket used in conjunction with brake mounting hardware, which includes two studs and ten bolts, will ensure proper clamp-up and resistance to brake heat and vibration.

Another commenter requests that operators with a one stud/eleven bolt brake mounting configuration be required to add one stud and one nickel bronze gasket to comply with the intent of the proposed rule. No justification was provided.

The FAA does not concur with the commenter's request. The FAA has determined that the existing shear studs used with the phenolic gasket will not properly mate with the aluminum-nickel-bronze gasket. Therefore, two new studs will be required. Furthermore, prior to installing the gasket, magnetic particle or HFEC inspections are required to evaluate the existing integrity of the axle flange and bolt holes.

Requests for Credit for Previous Incorporation of Certain Service Information

One commenter requests that the FAA give credit for airplanes on which MLG assemblies with an Al-Ni-Br gasket have been installed in accordance with Boeing Service Bulletin 737–32–1253, and that have been inspected/reworked/overhauled in accordance with Boeing AOT M–7272–96–1442 and/or original equipment manufacturer/FAA-approved operator designed rework procedures.

The FAA concurs with the commenter's request provided that the inspection has been accomplished concurrent with or after installation of the Al-Ni-Br gasket. The FAA has determined that accomplishment of the magnetic particle or HFEC inspections in accordance with Boeing AOT M–7272–96–1442, dated March 29, 1996, concurrent with or after installation of an aluminum-nickel-bronze gasket and shear studs, is considered acceptable for compliance with the requirements of paragraphs (a)(1) and (c)(1) of this final rule. Therefore, the FAA has added a new note after paragraph (a) of this AD to provide credit for accomplishing the required inspection concurrently with or after accomplishment of the subject installation.

Two commenters request that the inspection required by paragraph (a)(1) of the proposed AD be deleted. One of these commenters requests that the inspection required by paragraph (b)(1) also be deleted. One commenter states that the inspection should not be required because a new aluminum-nickel-bronze gasket has been installed in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991, and the torque tube mounting holes on the mounting flange have been modified in accordance with AlliedSignal Service Bulletin 2601042–32–003, dated March 15, 1997. If operators installed this new gasket along with the modification on the axle flange and brake flange, the commenter contends that they have already accomplished the initial inspection in accordance with Boeing Service Bulletin 737–32–1253. One commenter states that there have been no reported axle failures on airplanes that have incorporated Boeing Service Bulletin 737–32–1253. The commenter further states that the inspection of these airplanes will impose an unreasonable financial burden on the operators.

Another commenter states that paragraph (c) of the proposed AD contains no requirement for repetitive inspections after incorporation of Boeing Service Bulletin 737–32–1253. Therefore, the commenter requests that no further action be required, if the magnetic particle inspection and modification specified in that service bulletin were already accomplished during the previous landing gear overhaul or at a maintenance opportunity.

Another commenter requests that, if an MLG has been inspected, overhauled, and modified in accordance with Boeing Service Bulletins 737–32–1253, dated November 7, 1991, and 737–32–1235, dated April 12, 1990, affected airplanes should not be subject to the requirements of the proposed AD. The commenter also states that In Service Report (ISR) #95–03–3210–20, dated February 16, 1995, states that incorporation of these service bulletins is the recommended action according to Boeing.

The FAA does not concur with the commenters' requests. The FAA has determined that, for airplanes on which the installation of the brake mounting hardware in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991, and Boeing Service Bulletin 737–32–1235, dated April 12, 1990, has been accomplished, the magnetic particle or HFEC inspection required by this AD must be accomplished because these service bulletins do not contain inspection procedures. These service bulletins only describe procedures for installing the improved brake mounting hardware and an additional shear stud. The FAA points out that there is a possibility that some of the aluminum-nickel-bronze gaskets could have been installed on axle flanges that already had cracks or fretting damage. A magnetic particle or HFEC inspection of this area will ensure detection of cracks in the axle flange and brake attach bolt holes.

One commenter further requests that airplanes on which the shear stud replacement in accordance with Boeing Service Bulletin 737–32–1253 has been incorporated not be required to install new studs, as required in paragraph (a)(4) of the proposed AD. The commenter believes this to be unnecessary since Service Bulletin 737–32–1253 already requires replacement of the shear studs.

The FAA concurs with the commenter's request. The FAA finds that accomplishment of the gasket replacement in accordance with the subject service bulletin includes replacing the shear studs. The FAA notes that paragraph (a) of the AD applies to certain airplanes "on which the original gaskets have been replaced with aluminum-nickel-bronze gaskets in accordance with Boeing Service Bulletin

737–32–1253, dated November 7, 1991." The FAA finds it unnecessary for those airplanes to accomplish the replacement of the shear studs a second time. Therefore, the FAA has deleted paragraph (a)(4) of the proposed AD from the final rule.

Requests to Allow Flight with Cracks

Two commenters request that repair of cracks, prior to further flight, as required by paragraphs (a)(1), (b)(1), and (c)(1) of the proposed AD, apply only to those axle flange cracks found progressing inward from the brake attach holes towards the MLG axle. The commenters suggest that operations should be allowed to continue on airplanes with axle flanges that have cracks on up to four bolt holes, as long as they progress towards the outer edge of the flange. One of the commenters states that this type of cracking is sufficiently covered under the current Boeing Overhaul Manual 32–11–11. One commenter further states that if repair is deemed necessary, then the FAA should develop and include an approved repair scheme in the final rule.

The FAA partially concurs with the commenter's request. The FAA does not concur that operations should be allowed to continue on airplanes with axle flanges that have any crack. While outwardly progressing cracks should not affect axle integrity, if such cracks are completely ignored, they could change direction and begin progressing inwards towards the MLG axle. Therefore, the FAA has determined that any subject axle flange that is found to be cracked must be repaired prior to further flight in accordance with a method approved by the FAA.

However, the FAA does concur that accomplishment of the repair in accordance with Boeing Overhaul Manual 32–11–11 is considered acceptable for compliance with the repair requirements of paragraphs (a)(1), (b)(1), and (c)(1) of the AD. Therefore, the FAA has revised the final rule to include as new note to clarify this point. In addition, operators may request approval of an alternative method of compliance if data are provided to substantiate that such a method would provide an acceptable level of safety.

Request to Change Terminology

Two commenters request that the term "brake assemblies" in paragraphs (b)(4) and (c)(3) of the proposed AD be changed. One commenter suggests "brake mounting hardware," and the other commenter suggests "axle flange assemblies" as alternative terms.

One commenter further suggests that the term "torque tube" be changed to "brake torque tube" in paragraphs (a)(3) and (b)(3) of the proposed AD; delete "on the mounting flange" from paragraph (a)(3) of the proposed AD; and change "brake modification" to "brake mounting hardware modification" in the Cost Impact section of the proposed AD.

The FAA concurs with the commenters' requests. The FAA has revised paragraphs (b)(4) and (c)(3) of the final rule to read "brake mounting hardware." The FAA also has revised the term "torque tube" to "brake torque tube" in the Summary, Supplementary Information, and Cost Impact sections of the AD; and deleted the phrase "of the mounting flange" from paragraph (b)(3) of this AD to be consistent with the changes noted previously.

Other Changes Made to the Proposed AD

The FAA inadvertently omitted information from paragraphs (b)(1) and (c)(1) of the proposed rule for HFEC inspections of axle flanges that have not been repaired previously and coated with a nickel sulfamate finish. As stated in paragraph (a)(1) of the proposed rule, an HFEC inspection may only be accomplished if the axle flange has not been repaired previously and coated with a nickel sulfamate finish. However, the FAA inadvertently omitted this clarification in paragraphs (b)(1) and (c)(1) of the proposed AD, which applies to airplanes equipped with certain AlliedSignal brake assemblies on which the original gaskets have not been replaced and on all other affected airplanes, respectively. The clarification regarding HFEC inspections applies to all repaired axle flanges, independent of gasket replacement and independent of whether the airplanes are equipped with certain AlligedSignal brake assemblies. Therefore, the FAA has revised paragraphs (b)(1) and (c)(1) of the final rule to include the clarification that an HFEC inspection is not appropriate for repaired axle flanges.

As published, the NPRM contains a typographical error in paragraph (a)(1). It references Boeing All Operators Telex (AOT) "M–7272–76–1442," dated "Mach 29, 1996," as the appropriate source of service information for accomplishment of the magnetic particle or HFEC inspection. However, as indicated throughout the rest of the proposed AD, the correct reference is "Boeing All Operators Telex (AOT) "M–7272–96–1442, dated March 29, 1996."

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,015 airplanes of the affected design in the worldwide fleet. The FAA estimates that 893 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that it will take approximately 4 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $214,320, or $240 per airplane.

It will take approximately 32 work hours per airplane at an average labor rate of $60 per work hour should an operator be required to accomplish the required brake mounting hardware modification. Required parts will cost approximately $2,052 per airplane. Based on these figures, the cost impact of the brake mounting hardware modification required by this AD on U.S. operators is estimated to be $3,972 per airplane.

Additionally, the FAA estimates that it will take approximately 5 work hours per airplane to accomplish the required brake torque tube modification, and that the average labor rate is $60 per work hour. The FAA estimates that this action will be required to be accomplished on approximately 400 U.S.-registered airplanes. Based on these figures, the cost impact of this modification required by this AD on U.S. operators is estimated to be $120,000, or $300 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to

warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–13–Boeing: *Amendment 39–11623.* Docket 98-NM–57–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes; line positions 1 through 2135 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the main landing gear (MLG) axle and the separation of the wheel from the MLG, and consequent reduced controllability of the airplane, accomplish the following:

Inspection, Modification, and Corrective Action

(a) For Model 737–100 and –200 series airplanes equipped with AlliedSignal (ALS/Bendix) brake assembly installations having Boeing part numbers (P/N) 10–61063–14, –18, or –21, on which the original gaskets have been replaced with aluminum-nickel-bronze gaskets in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991: Except as provided by paragraph (d) of this AD, within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Perform either a one-time magnetic particle inspection or a one-time high frequency eddy current inspection of the MLG axle flange to detect cracking, except that a high frequency eddy current inspection may only be accomplished if the axle flange has not been repaired previously and coated with a nickel sulfamate finish. The magnetic particle inspection or high frequency eddy current inspection is to be accomplished in accordance with procedures specified in paragraph B. of the "Recommended Operator Action" section of Boeing All Operators Telex (AOT) M–7272–96–1442, dated March 29, 1996. If any cracking is detected, prior to further flight, repair the MLG flange, in accordance with Boeing Overhaul Manual 32–11–11, or other method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If any corrosion or fretting is found during accomplishment of the inspection required by paragraph (a)(1) of this AD: Prior to further flight, accomplish the repair procedures specified in the "Recommended Operator Action" section of Boeing AOT M–7272–96–1442, dated March 29, 1996.

(3) Accomplish the modification of the brake torque tube mounting holes, in accordance with AlliedSignal Service Bulletin 2601042–32–003, dated March 15, 1997.

Inspection, Modification, and Corrective Action

(b) For Model 737–100 and –200 series airplanes equipped with AlliedSignal (ALS/Bendix) brake assembly installations having Boeing P/N 10–61063–14, –18, or –21, on which the original gaskets have not been replaced with new aluminum-nickel-bronze gaskets in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991: Except as provided by paragraph (d) of this AD, within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD.

(1) Perform either a one-time magnetic particle inspection or a one-time high frequency eddy current inspection of the MLG axle flange to detect cracking, except that a high frequency eddy current inspection may only be accomplished if the axle flange has not been repaired previously and coated with a nickel sulfamate finish. The magnetic particle inspection or high frequency eddy current inspection is to be accomplished in accordance with procedures specified in paragraph B. of the "Recommended Operator Action" section of Boeing AOT M–7272–96–1442, dated March 29, 1996. If any cracking is detected, prior to further flight, repair the MLG flange, in accordance with Boeing Overhaul Manual 32–11–11, or other method approved by the Manager, Seattle ACO.

(2) If any corrosion or fretting is found during accomplishment of the inspection required by paragraph (b)(1) of this AD: Prior to further flight, accomplish the repair procedures specified in the "Recommended Operator Action" section of Boeing AOT M–7272–96–1442, dated March 29, 1996.

(3) Accomplish the modification of the brake torque tube mounting holes, in accordance with AlliedSignal Service Bulletin 2601042–32–003, dated March 15, 1997.

(4) Accomplish the modification of the affected brake mounting hardware in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991.

Inspection, Modification, and Corrective Action

(c) For Model 737–100, –200, –300, –400, and –500 series airplanes other than those identified in paragraphs (a) and (b) of this AD: Except as provided by paragraph (d) of this AD, within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Perform either a one-time magnetic particle inspection or a one-time high frequency eddy current inspection of the MLG axle flange to detect cracking, except that a high frequency eddy current inspection may only be accomplished if the axle flange has not been repaired previously and coated with a nickel sulfamate finish. The magnetic particle inspection or high frequency eddy current inspection is to be accomplished in accordance with procedures specified in paragraph B. of the "Recommended Operator Action" section of Boeing AOT M–7272–96–1442, dated March 29, 1996. If any cracking is detected, prior to further flight, repair the MLG flange, in accordance with Boeing Overhaul Manual 32–11–11, or other method approved by the Manager, Seattle ACO.

(2) If any corrosion or fretting is found during accomplishment of the inspection required by paragraph (c)(1) of this AD: Prior to further flight, accomplish the repair procedures specified in the "Recommended Operator Action" section of Boeing AOT M–7272–96–1442, dated March 29, 1996.

(3) Accomplish the modification of the affected brake mounting hardware in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991.

Note 2: Accomplishment of the magnetic particle or HFEC inspections of unrepaired axle flanges in accordance with Boeing Telex M–7272–96–1442, dated March 29, 1996, concurrent with or after installation of an aluminum-nickel-bronze gasket and shear studs, is considered acceptable for compliance with the requirements of paragraphs (a)(1) and (c)(1) of this AD.

Optional Visual Inspection

(d) The actions required by paragraphs (a), (b), and (c) of this AD may be accomplished at the time specified in paragraph (d)(1) of this AD, provided that the action specified in paragraph (d)(2) is accomplished.

(1) Within 1 year or 4,500 flight cycles after the effective date of this AD, whichever occurs later, accomplish the actions specified in paragraph (a), (b), or (c) of this AD, as applicable; and

(2) Within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect fretting or corrosion of the axle flange bolt holes. If any fretting or corrosion is detected, prior to further flight, accomplish the repair procedures specified in the "Recommended Operator Action" section of Boeing AOT M–7272–96–1442, dated March 29, 1996.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraphs (a)(1), (b)(1), and (c)(1) of this AD, the actions shall be done in accordance with Boeing All Operators Telex (AOT) M–7272–96–1442, dated March 29, 1996; AlliedSignal Service Bulletin 2601042–32–003, dated March 15, 1997; and Boeing Service Bulletin 737–32–1253, dated November 7, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) This amendment becomes effective on April 19, 2000.

Issued in Renton, Washington, on March 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5890 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–85–AD; Amendment 39–11627; AD 2000–05–17]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 120B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Eurocopter France Model EC 120B helicopters, that currently requires, at specified time intervals, inspecting the engine coupling tube for cracks and replacing any cracked engine coupling tube with an airworthy engine coupling tube. This amendment requires, at specified time intervals, visually inspecting and dye-penetrant inspecting the coupling tube for any crack and replacing any cracked coupling tube with a reinforced, airworthy coupling tube. Replacing all coupling tubes and certain engine support fitting components is required on or before March 31, 2000. This amendment is prompted by the discovery of cracks in several coupling tubes. The actions specified by this AD are intended to prevent coupling failure, loss of engine drive, and a subsequent forced landing.

DATES: Effective March 27, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 27, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–85–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, Regulations Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On September 2, 1999, the FAA issued Emergency Priority Letter AD 99–19–23 and on September 22, 1999, issued the final rule; request for comments for AD 99–19–23, Amendment 39–11343 (64 FR 53623, October 4, 1999), to require within 10 hours time-in-service (TIS), and thereafter, at intervals not to exceed 10 hours TIS, inspecting a specified engine coupling tube for cracks and replacing any cracked engine coupling tube with an airworthy engine coupling tube. That action was prompted by the discovery, during routine maintenance inspections, of three cracked engine coupling tubes caused by structural resonance. That condition, if not corrected, could result in coupling failure, loss of engine drive, and a subsequent forced landing.

Since the issuance of that AD, the manufacturer has issued Eurocopter Service Bulletin No. 05–001, dated September 23, 1999, which introduces a new alternative check procedure. The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this service bulletin as mandatory and issued AD 1999–349–002(A) R2, dated November 3, 1999, to ensure the continued airworthiness of these helicopters in France. The manufacturer has also issued Eurocopter Service Bulletin No. 63–001, dated November 10, 1999, which recommends installing a reinforced coupling tube and disassembling the engine mount fitting assembly. The manufacturer then issued Eurocopter Service Bulletin No. 01–002, dated December 23, 1999, which declares that coupling tubes, P/N C631A1002101, and certain engine support fitting components are unfit for flight after March 31, 2000. The DGAC classified this service bulletin as mandatory and issued AD 2000–058–

003(A), dated February 9, 2000, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provision of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operations in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model EC 120B helicopters of the same type design, this AD supersedes AD 99–19–23 to require periodic visual and dye-penetrant inspections on each coupling tube, replacement of any cracked coupling tube, and replacement of the coupling tube and certain engine mount fitting components on or before March 31, 2000. The actions must be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, the actions stated previously must be accomplished at the specified time intervals, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 12 helicopters will be affected by this proposed AD, that it will take approximately 1 work hour to visually inspect each coupling tube and 6.5 work hours to dye-penetrant inspect each coupling tube. Replacing each coupling tube and installing the engine mount fitting components will take approximately 12 work hours per helicopter. The average labor rate is $60. The manufacturer states that they will provide the components necessary for replacing the coupling tubes free of charge. Based on these figures and the manufacturer's representation that it will provide the repair parts free of charge, the total cost impact of the AD on U.S. operators is estimated to be $19,400, assuming 2 visual inspections, 2 dye-penetrant inspections, 1 coupling tube replacement, and 1 installation of the engine support fitting components on each helicopter.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–85–09AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11343 (64 FR 53623, October 4, 1999), and by adding a new airworthiness directive (AD), Amendment 39–11627, to read as follows:

AD 2000–05–17 Eurocopter France: Amendment 39–11627. Docket No. 99–SW–85–AD. Supersedes AD 99–19–23, Amendment 39–11343, Docket No. 99–SW–53–AD.

Applicability: Model EC 120B helicopters with engine coupling tube (coupling tube), part number (P/N) C631A1002101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent coupling failure, loss of engine drive, and a subsequent forced landing, accomplish the following:

(a) Within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 10 hours TIS except when required to perform the inspection required by paragraph (b) of this AD while each coupling tube, P/N C631A1002101, is installed, inspect for any crack in accordance with the Accomplishment Instructions, paragraph 2.B.1., of Eurocopter Service Bulletin No. 05–001, dated September 23, 1999 (SB 05–001).

(b) Within 10 hours TIS, and thereafter at intervals not to exceed 30 hours TIS, after each coupling tube, P/N C631A1002101, has been removed, inspect for any crack in accordance with paragraph 2.B.2. of SB 05–001.

Note 2: Operators are not required to inform the manufacturer when a crack is found.

(c) When a crack is found as a result of the inspections conducted in accordance with either paragraph (a) or (b) of this AD, or by March 31, 2000, whichever occurs first, replace the coupling tube with a reinforced, airworthy coupling tube, P/N C631A1101101, and replace the engine mount fittings in accordance with Eurocopter Service Bulletin No. SB 63–001, dated November 10, 1999, using new, airworthy, engine mount fitting components to replace the following:

- Teflon spacer, P/N C714A1010208;
- Black-colored spring washers, 10.2 x 28 Type-C;
- Blue-colored hinge yoke, P/N C714A1010212; and
- Special washer, P/N C714A1010213.

Note 3: Eurocopter Service Bulletin No. 01–002 pertains to unairworthiness of the four engine mount fitting components listed in paragraph (c) of this AD.

(d) Installing the reinforced, airworthy coupling tubes, P/N C631A1101101, and replacing the engine mount fitting components using new, airworthy, engine mount fitting components, as specified in paragraph (c) of this AD, constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The inspections and modifications shall be done in accordance with the Accomplishment Instructions, paragraph 2.B.1., of Eurocopter Service Bulletin No. 05–001, dated September 23, 1999; Eurocopter Service Bulletin No. 63–001, dated November 10, 1999; and Eurocopter Service Bulletin No. 01–002, dated December 23, 1999. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 27, 2000.

Note 5: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (France) AD 1999–349–002(A) R2, dated November 3, 1999 and AD 2000–058–003(A), dated February 9, 2000.

Issued in Fort Worth, Texas, on March 6, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–6034 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–61–AD; Amendment 39–11626; AD 2000–05–16]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Model S–61 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Sikorsky Model S–61 helicopters. This action requires inspecting certain pylon upper and lower hinge web fittings (web fittings) for corrosion or a crack and either repairing certain web fittings or replacing any unairworthy web fittings with airworthy web fittings. The AD also requires creating a log card or equivalent record and implementing a recurring inspection of the web fittings. This amendment is prompted by the discovery of extensive cracking in the area of the web fittings. The actions specified in this AD are intended to prevent structural failure of the tail boom due to a crack or corrosion of certain web fittings and subsequent loss of control of the helicopter.

DATES: Effective March 30, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–61–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P. O. Box 9729, Stratford, Connecticut 06497–9129, phone (203) 386–7860, fax (203) 386–4703. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brian K. Murphy, Aerospace Engineer, ANE–150, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7739, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD applicable to Sikorsky Model S–61 helicopters with pylon, part number, (P/N) S6120–76265–001 or S6120–76266–507, installed. The AD requires inspecting and repairing or, if necessary, replacing certain web fittings and the fitting faying surfaces. The AD also requires making an entry on the log card or equivalent record.

This amendment is prompted by the discovery of extensive cracking in the area of the web fitting. The actions specified in this AD are intended to prevent structural failure of certain web fittings due to stress corrosion and subsequent structural failure of the tailboom. This condition, if not corrected, could result in loss of control of the helicopter.

The FAA has reviewed Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B20–33, dated September 3, 1999 (ASB), which describes procedures for inspecting and repairing or, if necessary, replacing certain web fittings having a crack or corrosion.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky Model S61 helicopters of the same type design, this AD is being issued to prevent structural failure of certain web fittings due to a crack or corrosion. This AD requires

inspecting and repairing or replacing the web fittings as necessary. The actions are required to be accomplished in accordance with the ASB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, inspecting for a crack or corrosion in the web fittings and repairing or replacing, if necessary, an unairworthy web fitting with an airworthy web fitting is required prior to further flight and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 125 helicopters will be affected by this AD, that it will take approximately 115 work hours to accomplish the inspection and replacement of parts, and that the average labor rate is $60 per work hour. Required parts will cost approximately $75,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,237,500 if the parts have to be replaced on the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–61–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–05–16 Sikorsky Aircraft Corporation: Amendment 39–11626. Docket No. 99–SW–61–AD.

Applicability: Model S–61 helicopters with pylon, part number (P/N) S6120–76265–001 or S6120–76266–507, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure due to a crack or corrosion of pylon upper and lower hinge web fittings (web fittings), P/N S6120–76261–012, –013 (upper) or S6120–76262–012, –013 (lower), and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS),

(1) Determine the alloy-temper of the web fittings in accordance with Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B20–33, dated September 3, 1999 (ASB), Accomplishment Instructions, paragraph 3.A.

(2) Prepare the web fittings for inspection in accordance with the ASB Accomplishment Instructions, paragraph 3.B.

(3) Inspect the web fitting in accordance with the ASB Inspection Plan, Chart A, and the Accomplishment Instructions, paragraphs 3.C., 3.D, and 3.E. Nicks, scratches, corrosion pitting or prior rework beyond the limits specified in paragraph 3.C.(5) require approval by the FAA.

(4) Repair or replace web fittings, as necessary, in accordance with the ASB Accomplishment Instructions, paragraph 3.C.(3) through (6). Nicks, scratches, corrosion pitting, or prior rework beyond the limits specified in paragraph 3.C.(5) require approval by the FAA.

(5) If replacing an unairworthy web fitting with an airworthy web fitting, replace it in accordance with the ASB Accomplishment Instructions, paragraph 3.F., prior to further flight.

(6) Create a log card for the pylon, if none exists. Make an entry on the log card or equivalent record implementing recurring inspection intervals in accordance with Chart A of the ASB.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The inspection, repair, and replacement shall be done in accordance with the Inspection Plan, Chart A, and the Accomplishment Instructions of Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B20–33, dated September 3, 1999. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P. O. Box 9729, Stratford, Connecticut 06497–9129, phone (203) 386–7860, fax (203) 386–4703. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 30, 2000.

Issued in Fort Worth, Texas, on March 6, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–6036 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 000204027–0027–01]

RIN 0694–AC14

Correction to Revisions to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On March 10, 2000 the Bureau of Export Administration published a final rule (65 FR 12919) revising License Exception CTP and revising the Commerce Control List to liberalize the national security thresholds for digital computers to conform with recently agreed changes in the Wassenaar List of Dual-Use Goods and Technologies. This rule corrects an inadvertent error that appeared in the March 10 rule by inserting the word "not" which was inadvertently omitted from the note to the License Requirements section of Export Control Classification Number 4A003.

DATES: This rule is effective March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Kirsten Mortimer, Regulatory Policy Division, Bureau of Export Administration, at (202) 482–2440.

SUPPLEMENTARY INFORMATION: Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 13, 1999 (64 FR 44101).

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is issued in final form.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade.

Accordingly, part 774 of the Export Administration Regulations (15 CFR Parts 730–799) is amended to read as follows:

1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 774—CORRECTED

2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers is amended by revising the License Requirements section of Export Control Classification Number (ECCN) 4A003, to read as follows:

4A003 "Digital computers", "electronic assemblies", and related equipment therefor, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)	Country chart
NS applies to 4A003.b and .c.	NS Column 1.
NS applies to 4A003.a, .d, .e, and .g.	NS Column 2.
MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006.	MT Column 1.
CC applies to digital computers for computerized finger-print equipment.	CC Column 1.
AT applies to entire entry (refer to 4A994 for controls on digital computers with a CTP ≥ 6 but ≤ to 6,500 Mtops).	AT Column 1.

NP applies to digital computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to digital computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.

Note: For all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria, no license is required (NLR) for computers with a CTP not greater than 6,500 Mtops, and for assemblies described in

4A003.c that are not capable of exceeding a CTP greater than 6.500 Mtops in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

Dated: March 10, 2000.

Iain S. Baird,

Deputy Assistant Secretary for Export Admininistration.

[FR Doc. 00–6348 Filed 3–10–00; 1:12 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24, 111 and 178

[T.D. 00–17]

RIN 1515–AC34

Customs Brokers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, a proposed revision of part 111 of the Customs Regulations, which governs the licensing and conduct of customs brokers in the performance of customs business on behalf of others. The revision includes changes to the regulatory texts to reflect amendments to the underlying statutory authority enacted as part of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act and also includes changes to reflect the recent reorganization of Customs as well as changes to improve the content, layout and clarity of the regulatory texts. The document also includes conforming changes to parts 24 and 178 of the Customs Regulations.

EFFECTIVE DATE: April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Mike Craig, Office of Field Operations (202–927–1684). Legal Aspects: Gina Grier, Office of Regulations and Rulings (202–927–2320).

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, provides for disciplinary action against brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties, and provides for the assessment of monetary penalties against other persons for conducting customs business without the required broker's license. Section 641 also authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641.

The regulations issued under the authority of section 641 are set forth in Part 111 of the Customs Regulations (19 CFR part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants and the procedures for applying for licenses and permits. Part 111 also prescribes recordkeeping and other duties and responsibilities of brokers, sets forth in detail the grounds and procedures for the revocation or suspension of broker licenses and permits and for the assessment of monetary penalties, and sets forth fee payment requirements applicable to brokers under section 641 and 19 U.S.C. 58c(a)(7).

On December 8, 1993, amendments to certain Customs and navigation laws became effective as the result of enactment of the North American Free Trade Agreement Implementation Act ("the Act"), Public Law 103–182, 107 Stat. 2057. Title VI of the Act set forth Customs Modernization provisions that included, in section 648, certain amendments to section 641 of the Tariff Act of 1930. The substantive amendments to section 641 were as follows:

1. In the definition of "customs business" in section 641(a)(2), a second sentence was added that provides that customs business "also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of (the customs business activities listed in the first sentence), whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs."

2. Section 641(c)(1) was amended by adding a provision for the issuance of a national permit for the conduct of such customs business as the Secretary of the Treasury prescribes by regulation.

3. A new subsection (c)(4) was added to provide that when electronic filing (including remote location filing) of entry information with Customs at any location is implemented by the Secretary of the Treasury pursuant to the provisions of the National Customs Automation Program ("the NCAP," which was established by section 631 of the Act and is codified at 19 U.S.C. 1411–1414), a licensed broker may appoint another licensed broker who holds a permit in a Customs district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted to be filed electronically. New subsection (c)(4) also provides that the broker who appoints a subagent remains liable for all obligations arising under bond and for all duties, taxes and fees, and for any other liabilities imposed by law, and cannot delegate such liability to the subagent.

4. Section 641(d)(2)(B), which sets forth the procedures for the suspension or revocation of a broker's license or permit, was amended to increase to 30 days the period within which a hearing is to be held after written notice of a hearing is provided to the broker.

5. Finally, section 641(f) was amended to provide: That the Secretary of the Treasury may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business; that for purposes of any provision of the Tariff Act of 1930 pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium; and that, pursuant to such regulations as the Secretary of the Treasury shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system.

On September 27, 1995, Customs published the following documents in the **Federal Register** as a result of changes in the Customs Headquarters and field organizational structure:

1. T.D. 95–77 (60 FR 50008) amended the Customs Regulations on an interim basis. The amendments included extensive changes to §§ 101.1, 101.3 and 101.4 (19 CFR 101.1, 101.3 and 101.4) to reflect the changes to the basic Customs field organization, involving the elimination of regions and districts for most purposes so that ports of entry would constitute the foundation of the

Customs field structure and would be empowered with most of the functions and authority that had been held in the district and regional offices and also involving the designation of some ports as service ports having a full range of cargo processing functions, including inspection, entry, collection, and verification. T.D. 95–77 also included amendments to parts 4, 19, 24, 103, 111, 112, 113, 118, 122, 127, 141, 142, 146 and 174 of the Customs Regulations (19 CFR parts 4, 19, 24, 103, 111, 112, 113, 118, 122, 127, 141, 142, 146 and 174) to reflect these organizational changes. The background portion of T.D. 95–77 pointed out that districts and regions would still exist as geographical descriptions for limited purposes such as for broker permits and certain cartage and lighterage purposes, and T.D. 95–77 therefore set forth certain additional regulatory changes in order to reflect this fact; these changes included the addition of definitions for "district," "district director" and "region" in § 111.1 (19 CFR 111.1) to enable the current statutory broker licensing and permitting schemes to operate. (The background portion of T.D. 95–77 also noted that the Customs reorganization included the creation of twenty Customs Management Centers and five Strategic Trade Centers for which no regulatory changes were being made because these new organizational entities will not have direct contact with the public.)

2. T.D. 95–78 (60 FR 50020) also amended the Customs Regulations on an interim basis and involved nomenclature changes. The T.D. 95–78 changes were set forth in a table format in numerical order by section affected and in most cases involved the replacement of outdated references with new references to reflect the new Customs Headquarters and field organizational structure. The majority of these changes involved replacing "district" with "port" and replacing "district director" with "port director," or some variation thereof. The T.D. 95–78 changes involved almost every part within Chapter I of the Customs Regulations (19 CFR Chapter I) and included a large number of changes to part 111.

3. A general notice (60 FR 49971) informed the public of the geographic areas covered for purposes of Customs broker permits and for certain cartage and lighterage purposes where the word "district" appears in the Customs Regulations. The notice was a consequence of the publication of T.D. 95–77 and T.D. 95–78 and, in particular, of the T.D. 95–77 regulatory changes made in order to retain the concept of a "district" for certain Customs broker and cartage and lighterage purposes. The information contained in that notice is republished in a general notice also appearing in this issue of the **Federal Register**.

Based on a review of the changes to section 641 made by section 648 of the Act, Customs determined that the part 111 regulatory texts should be amended as follows: (1) To reflect the change to the section 641(a)(2) definition of "customs business;" (2) to provide for the issuance of national permits as authorized under amended section 641(c)(1); (3) to reflect the 30-day period within which a suspension or revocation hearing is to be held under amended section 641(d)(2)(B); (4) to implement the amended section 641(f) proscription against prohibiting a broker from limiting its liability to other persons; and (5) to reflect the amended section 641(f) recordkeeping provisions. With regard to the appointment of subagents as authorized under amended section 641(c)(4), Customs determined that it would be premature to amend part 111 at this time; rather, Customs concluded that it would be preferable to address this issue at such time as related NCAP test procedures have been concluded, appropriate programming enhancements have become operational, and appropriate regulatory proposals have been formulated.

Customs also performed a general review of Part 111 to determine whether other regulatory changes should be made. Based on that review, Customs identified a number of other areas where significant improvement could be made to the existing regulatory texts. These improvements included: (1) The elimination of obsolete or otherwise unnecessary provisions; (2) the addition of new provisions where the regulations appeared to be incomplete or were otherwise in need of clarification; (3) further textual changes arising out of the reorganization of Customs that were not fully addressed in the district/port terminology changes made by T.D. 95–77 and T.D. 95–78, including some changes to those previously-published changes and particularly in order to clarify certain procedural aspects of the regulations (for example, where to file permit applications and broker status reports and where to pay permit user fees); and (4) a large number of nonsubstantive, editorial changes to improve the precision and clarity of the regulations, ranging from the reorganization or complete redrafting of existing texts to minor word changes within a particular regulatory provision.

Based on the above considerations, on April 27, 1999, Customs published in the **Federal Register** (64 FR 22726) a notice of proposed rulemaking setting forth a complete revision of part 111. The notice of proposed rulemaking included a detailed section-by-section discussion of the proposed amendments (other than those of a minor wording or other editorial nature) and provided a 60-day period for the submission of public comments on the proposed changes. On June 29, 1999, a notice was published in the **Federal Register** (64 FR 34748) to extend the public comment period to July 28, 1999.

Discussion of Comments

A total of 20 commenters responded to the solicitation of comments in the April 27, 1999, notice of proposed rulemaking. A discussion of those comments follows.

Section 111.1

Comment:

The following two comments addressed the proposed definition of "customs business":

1. The first comment stated that the definition of "customs business" should specify which activities constitute the "preparation and activities related to the preparation of documents".

2. The second comment asserted that the language in § 111.1 expands the definition in a manner not authorized by statute, by inserting the phrase "in furtherance of *any other customs business activity*" (emphasis added) in place of the statutory language "in furtherance of *such activities*" (emphasis added) in the second sentence of the definition.

Customs response: 1. In determining how to define "customs business" in part 111, Customs concluded that the range of activities which potentially could be categorized as "customs business" was too broad for individual activities to be listed in the regulatory text. Questions on which activities constitute "customs business" will be answered through the prospective ruling and internal advice procedures and through the issuance of informed compliance publications. Consequently, the new definition of "customs business" in part 111 does not include specific exemplars or otherwise go beyond the general approach of the definition in 19 U.S.C. 1641.

2. Customs disagrees with the second comment. The language used in the second sentence of the regulatory text was intended to ensure that those "other" activities refer to the customs business activities listed in the first sentence in the definition, and not to the document preparation and transmission activities mentioned in that second sentence. Given that what is

defined is "customs business," this textual clarification simply avoids the appearance of a tautology or circularity. No expansion of the statutory definition was intended or will result from the proposed regulatory text.

Comment: A commenter suggested that the interchangeable use of the terms "customs broker" and "broker" throughout the regulations is confusing.

Customs response: Both terms are defined for purposes of part 111, and it is clear from those definitions that both have the same meaning. Accordingly, Customs does not believe that any change to the regulatory texts should be made in response to this comment.

Comment: A commenter recommended that the term "port director" be used consistently throughout the regulations, instead of being used interchangeably with the term "director of the port". This commenter also asked that the terms "port director" and "port" be defined in part 111.

Customs response: As regards the first point, the term "director of the port" is used as a substitute for "port director" purely for reasons of sentence structure, and Customs believes it is clear that the two terms have the same meaning. On the second point, Customs believes that the suggestion is unnecessary, because "port" is already defined for general Customs Regulations purposes in 19 CFR part 101, and the meaning of "port director" can be logically inferred when it appears in conjunction with the word "port'.

Section 111.2

Comment: A commenter questioned the need for district permits, now that districts and regions have been eliminated for other Customs purposes and Customs has the ability to monitor a broker's activities through automation.

Customs response: Until such time as Congress repeals the permit system required by 19 U.S.C. 1641(c), brokers must have, as appropriate, either a national permit or a district permit, or both, to transact customs business for others.

Comment: A commenter stated that § 111.2(a)(2)(i) is contrary to law because it precludes persons other than the importer, his or her authorized regular employees or officers, or a customs broker from transacting customs business on behalf of the importer. The commenter asserted that this regulation conflicts with section 484(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1484(a)(1)).

Customs response: Customs disagrees. Section 484(a)(1) authorizes one of the parties qualifying as "importer of record," either in person or by an agent authorized by the party in writing, to make entry. An "importer of record" can be the owner or purchaser of imported merchandise, or a licensed customs broker appropriately designated by the owner, purchaser, or consignee of the merchandise. (19 U.S.C. 1484(a)(2)(B)). The statute governing brokers further restricts who may make entry. Section 641(b)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(1)) states that "no person may conduct customs business (other than solely on behalf of that person) unless that person holds a valid customs broker's license * * *" The filing of entry documentation qualifies as "customs business" (19 U.S.C. 1641(a)(2)). It follows that the only "agents" eligible to make entry on behalf of the owner or purchaser of imported merchandise are either persons from within the owner or purchaser's own organization, such as an employee or officer, or alternatively, a licensed customs broker.

Comment: A commenter recommended amendment of § 111.2(a)(2)(i) to allow corporations under common ownership or control to be considered a single entity. This would enable companies with subsidiaries and incorporated divisions to centralize their personnel with customs knowledge under one unit and to have that unit provide comprehensive customs services to all subsidiaries and divisions.

Customs response: Parent corporations and their subsidiaries and incorporated divisions are precluded by their separate legal status from providing customs business assistance to each other, unless they have a broker's license and the necessary district permits and powers of attorney. Customs cannot agree to amend § 111.2(a)(2)(i) as suggested, because to do so would have the effect of denying the reality of the separate legal status of these entities. Affected parties should keep in mind, however, that a licensed entity with a national permit may be able to offer comprehensive customs business assistance to related subsidiaries, divisions, and parents, without having to obtain multiple district permits, by taking advantage of the employee implant and post-entry representation exceptions to the district permit rule.

Comment: One commenter questioned the requirement in § 111.2(a)(2)(ii)(A)(*1*) that employees of brokers who are authorized to sign customs business documents be U.S. residents. This commenter pointed out the inconsistency of imposing a residency requirement on employees of brokers but not on licensed and permitted brokers, who, if they are individuals, may also be signing customs documents.

Customs response: Customs agrees that the restriction lacks logic. Accordingly, the regulatory text in question has been modified in this final rule by removing the residency requirement for employees with signature authority.

Comment: A commenter asked whether § 111.2(a)(2)(iv), which allows carriers without a broker license to make in-bond transportation entries for others, applies to agents of carriers and to all types of in-bond transportation entries.

Customs response: Yes. Agents of carriers may make in-bond transportation entries for all types of in-bond transportation entries.

Comment: A commenter suggested that § 111.2(a)(2)(v) would be an appropriate vehicle for amending the Customs Regulations to clarify that a broker must obtain a power of attorney to file a commercial informal entry for a client. Section 111.2(a)(2)(v) authorizes an unlicensed person to enter a noncommercial shipment for another.

Customs response: Customs believes that the suggested change is not necessary, because § 141.46 of the Customs Regulations already requires a broker to obtain a valid power of attorney before transacting customs business for a client. The fact that an entry is "commercial informal" does not remove the activity from designation as "customs business."

Comment: A commenter suggested insertion of the word "rule" after "General" in the heading to § 111.2(b)(1), to make it clear that this is the "general rule" to which § 111.2(b)(2) refers.

Customs response: It is the opinion of Customs that the proposed layout and terminology are sufficiently clear in this regard and that the suggested change is therefore unnecessary.

Comment: Several commenters submitted observations on the proposed § 111.2(b)(2)(i) provision regarding an employee working in a client's facility (the "employee implant" rule). This new provision is an exception to the general rule that a broker must have a district permit to conduct customs business for another in that district. It allows a broker to place an employee in the facility of a client for whom the broker is filing entries at one or more other locations covered by a district permit issued to the broker, even though the broker has no district permit in the broker district in which the facility is

located. The points made by these commenters were as follows:

1. One commenter objected to the requirement that the broker must be filing entries for the client elsewhere; instead, this commenter suggested that brokers should be allowed to place implants if they are conducting "customs business" for the client elsewhere. The commenter argued that the adoption of this change would eliminate the exclusivity of this particular district permit exception, which currently would only benefit customs brokers who file entries.

2. Another commenter stated that a broker with an implanted employee should not be subject to penalties if errors are discovered in documentation filed by the client in the broker district in which the client's facility is located. The stated rationale for this comment is the fact that broker implants are precluded by the regulatory text from filing the client's entries or other documents with Customs in the broker district servicing that location.

3. A commenter stated that proposed § 111.2(b)(2)(i) should specify the activities that an implanted employee may perform at the client's facility.

4. Another commenter expressed concern that the implant exception to the district permit diminishes the importance of both the permit system and the requirement for responsible supervision and control.

Customs response: 1. Customs agrees with the suggestion of the commenter, and the regulatory text has been modified in this final rule by inserting the words "conducting customs business" in place of "filing entries." It is noted that proposed § 111.2(b)(2)(i) has been redesignated as § 111.2(b)(2)(i)(A) in this final rule.

2. Customs disagrees with the general principle stated by this commenter that brokers should not be held liable in the described circumstances. The broker employee, by virtue of working with the client, may be involved in customs business activities relating to the preparation of the documents which the client files. The law imposes sanctions on brokers who perform customs business activities improperly. Customs will examine each situation on a case-by-case basis to determine if sanctions are warranted.

3. It was the intent of Customs that the broker implant would confine his customs business activities to those matters that can be accomplished on-site. Since the range of activities which could potentially fall under the definition of "customs business" is so broad, it would more appropriate to specify qualifying activities on a case-by-case basis through the binding rulings process.

4. Customs agrees that the proposed regulation is inconsistent with the statutory requirement that a broker have a national permit or a district permit, or both, to conduct customs business for another: Under the proposed text, a broker could use employee implants to conduct customs business in a broker district without coverage of either a local district permit or a national permit. (The concept of a "regional waiver", authorized by 19 U.S.C. 1641(c)(2) and reflected in proposed § 111.19(d)(2), would not apply, because a client facility may be located outside of the borders of the "broker region" in which the broker has a district permit.) To ensure consistency with the statutory standard, and in consideration of the fact that an employee implant situation represents an exception to the statutory district permit rule, the regulatory text has been modified in this final rule to require that brokers obtain a national permit before using employee implants (see also the discussion below regarding the reorganization of proposed § 111.2(b)(2)). Finally, in response to the concern expressed by this commenter regarding the potential lack of responsible supervision and control in the implant environment, Customs will continue to expect that any work performed by an employee of a broker will be reviewed by an individually licensed permit qualifier of the broker (see 19 U.S.C. 1641(c)(1)(B) and § 111.19(b)(4) as set forth below), regardless of where the work is performed.

Comment: A commenter objected to the decision reflected in § 111.2(b)(2)(ii) to restrict the district permit waiver to the filing of manual, but not electronic, drawback claims in the designated drawback office located in a district in which the broker does not have a district permit.

Customs response: Customs has reconsidered this matter and agrees with the commenter that brokers should be allowed to file both manual and electronic drawback claims in the drawback office designated by Customs for their broker district, without having to obtain an additional district permit if the designated drawback office is physically located in a broker district in which the broker is not permitted. The first sentence of the regulatory text as proposed has been modified in this final rule to reflect this point. However, the requirement in the second sentence of the proposed text, that a broker must have a national permit to file electronic drawback claims at designated drawback offices covering geographical areas in which the broker does not have a district permit, remains but is set forth in this final rule as § 111.2(b)(2)(i)(B) and with some wording changes to clarify its intended filing context (that is, part 143 electronic filing in a not-designated-drawback office). See also the discussion below regarding the reorganization of proposed § 111.2(b)(2).

Comment: A commenter stated that it would be consistent with the Customs policy of "nationalizing" drawback to allow brokers to file notices of intent to export in districts in which they are not permitted.

Customs response: Customs disagrees. The filing of a notice of intent to export is a customs business activity. As already emphasized in this document, brokers are required to have a permit to transact customs business for others.

Comment: A commenter recommended that § 111.2(b)(2)(ii) be amended to allow brokers to file electronic and manual drawback entries, and to represent their drawback clients before Customs, at all locations without having to have district or national permits until the drawback component of the National Customs Automation Program ("NCAP") becomes operational.

Customs response: Customs cannot adopt this recommendation, because it runs counter to a broker's statutory obligation to conduct customs business under cover of a permit.

Comment: Customs received a relatively large number of comments on the representation after entry acceptance provision of § 111.2(b)(2)(iv). Before proceeding to a discussion of those comments, it is necessary to clarify that this district permit exception provision was intended to apply to representations made after entry summary acceptance, and the regulatory text in this final rule has been modified to reflect that intent and redesignated as § 111.2(b)(2)(i)(D) (see also the discussion below regarding the reorganization of proposed § 111.2(b)(2)).

The points made by the various commenters on the provision regarding representation after entry acceptance were as follows:

1. One commenter requested clarification of the meaning of the term "representations before Customs."

2. The same commenter also asked how "representing a client before Customs" differs from the "performing of customs business." This commenter also expressed confusion over the "different permit requirement(s)" for the performing of customs business and the making of post-entry summary representations.

3. One commenter claimed that the standard set forth in proposed § 111.2(b)(2)(iv), under which a broker must have a national permit in order to represent an importer on post-entry matters in situations where the broker did not file the entry and entry summary and does not have a district permit in the broker district in which the representations are made, is in conflict with a broker's right under § 111.5 to represent a client before government agencies.

4. Two commenters supported the concept of post-entry representation by another broker who had no connection to the filing of the entry, but they questioned the connection between post-entry representation and national permits. These commenters stated that the purpose behind national permits is to allow the implementation of remote location filing and of the other components under NCAP.

5. Another commenter in support of choice in post-entry representation stated that Customs should require brokers to formally establish their authority to represent an importer on any given matter.

6. One commenter objected to the proposed § 111.2(b)(2)(iv) post-entry representation provision, stating that brokers who file an entry for a client should not be in the position of being replaced.

7. A commenter requested that proposed § 111.2(b)(2)(iv) be eliminated, for the reason that a broker should be allowed to represent an importer in a district for which the broker does not have a permit irrespective of whether the broker has been issued a national permit. This commenter stated that many importers will want their "primary broker" to handle post-entry work, even in situations when an outport broker selected by the primary broker filed the entries.

8. Another commenter suggested that since the issuance of national permits will likely be tied to the implementation of the ACE system, the requirement for a national permit for post-entry representations when the broker does not have a district permit should be put on hold or abolished entirely.

9. A commenter stated that proposed § 111.2(b)(2)(iv) should allow the "actual importer" to select a broker to make post-entry representations when another broker served as the importer of record on the entry.

Customs response: 1. Customs intends the term "representations before Customs" to encompass any post-entry-summary activity that arises out of the entry or that concerns the merchandise covered by the entry, for example, responding to requests for information or preparing and filing protests or meeting with Customs officials to explain the client's position.

2. "Representing a client before Customs" and the "performing of customs business" are related in that an importer hires a broker to represent its interests before Customs on matters concerning the transaction of customs business. Thus, the "representations" made by the broker to Customs will involve issues falling within the definition of "customs business." As regards the second point regarding permit requirements, the general rule is that a broker must have a district permit to conduct customs business in the broker district in which the transaction occurs. Usually this general rule would apply to brokers who perform post-entry-summary customs business activities for clients. However, brokers may conduct post-entry-summary work for clients under a national permit when the provisions of proposed § 111.2(b)(2)(iv) apply, that is, the entry was filed by the owner or purchaser or by another broker, and the owner or purchaser has elected to hire a second broker to handle its post-entry-summary matters.

3. Customs disagrees. Section 111.5 contemplates that the broker making the representations has already been involved in some aspect of the importation or exportation of the merchandise, such as the filing of the consumption or drawback entry, and thus will have the requisite district permit. Proposed § 111.2(b)(2)(iv), on the other hand, allows brokers to represent clients even though they played no part in the original entry. The latter provision was included in the proposed regulations to give importers the choice of engaging one broker to file the entry and entry summary and another to handle any ensuing post-entry matters. It is conceivable that the second broker may be located outside of the broker district in which the entry and entry summary were filed. The proposed § 111.2(b)(2)(iv) exception to the district permit rule simply enables the second broker who has a national permit to represent the client without having to obtain a district permit in the broker district where the entry was filed and where, presumably, the post-entry representations will be made.

This comment has, however, prompted Customs to reevaluate the position reflected in proposed § 111.2(b)(2)(iv) that the post-entry representation provision will only apply if a broker files the entry and entry summary. Upon further reflection, Customs has concluded that the benefits of this provision should also extend to those situations in which the owner or purchaser files the entry and entry summary. Consequently, Customs has amended the regulatory text in this final rule to refer to representation by "a broker" (rather than "another broker") who did not file the entry, in order to allow post-entry representation by brokers holding a national permit when the entry was filed either by the owner or purchaser or by another broker who was not acting as importer of record. See also the discussion below regarding the reorganization of proposed § 111.2(b)(2).

4. Customs agrees with the assessment that NCAP is a major reason for the establishment of national permits. This opinion is supported by the legislative history discussing national permits. However, it is the position of Customs that their use is by no means restricted to NCAP, and it is noted in this regard that 19 U.S.C. 1641(c)(1)(A) provides for the issuance of national permits to licensed customs brokers "for the conduct of such customs business as the Secretary (of the Treasury) prescribes by regulation." Clearly, there is agency discretion to determine the purposes for which national permits will be used.

5. The broker would still have to have in his files a valid power of attorney from a client as provided in § 141.46 of the Customs Regulations to establish his authority to represent the client. Customs believes that this requirement (rather than also requiring that the broker establish his authority on a case-by-case basis) is sufficient for purposes of post-entry representations.

6. It is the position of Customs that the selection—or replacement—of a broker by an importer is a matter solely between those two private parties.

7. The observation of this commenter regarding the use of a "primary broker" may be correct, but an importer's preference to have a particular broker perform post-entry functions does not override the statutory requirement that a broker have a district or national permit, or both, to transact customs business. Accordingly, Customs does not agree that this regulatory provision should be eliminated.

8. Customs disagrees. The issuance of national permits is not contingent upon ACE being operational. Further, as already noted above, current law does not allow Customs to abolish or ignore the permit requirement.

9. Customs does not agree with this suggestion. The proposed regulation was specifically drafted in order to, among other things, preclude the application of this district permit exception in cases where a broker is named as the importer of record on the

entry. This is because being designated as "importer of record" automatically imposes obligations on the person acting in that capacity. For example, the importer of record is responsible for the payment of estimated duties (and will also be liable for any increased and additional duties if an actual owner's declaration and superseding bond are not filed). Given this assumption of obligations, the importer of record must be allowed to retain the right to represent himself, or to select his own representative, in post-entry matters.

Reorganization of Proposed § 111.2(b)(2)

Finally, in the light of the various comments on § 111.2(b) as summarized above and as a consequence of the substantive changes Customs has agreed to make to the regulatory texts as indicated above, Customs has concluded that some restructuring of the regulatory text should also be made. The general rule, that a broker is required to have a separate district permit for each broker district in which the broker conducts customs business for clients, remains as § 111.2(b)(1). However, the "exceptions" to the statutory district permit rule listed in § 111.2(b)(2) as set forth below have been reorganized into two basic groups, the first consisting of a "national permit" exception (which would no longer be limited to NCAP participants and transactions—see also the comment discussion below regarding § 111.19(f)) with subparagraphs covering employee implants, electronic filing of drawback claims outside the designated drawback office, electronic transactions performed under an existing NCAP component, and post-entry-summary representations, and the second consisting of the filing of manual and electronic drawback claims in the designated drawback office.

Section 111.5

Comment: One commenter objected to § 111.5(b), which provides that, in order to represent a client before any agency not within the Treasury Department, a broker shall comply with any regulations of such agency governing the appearance of representatives before it. The basis of the objection was that Customs has no statutory authority to regulate a broker's interactions with other government agencies.

Customs response: Customs disagrees with the rationale presented by this commenter. The statutory authority for the regulatory provision in question is section 641(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(f)), which gives the Secretary of the Treasury broad authority to prescribe rules and regulations relating to the customs business of customs brokers. Many import transactions involve compliance with the laws and regulations of other government agencies. The involvement of regulations of another agency besides Customs in an import transaction does not take away from the fact that the broker is conducting "customs business." Since the regulation is directed only to the actions of brokers while conducting customs business, it is entirely consistent with the authority conferred by section 641(f).

Section 111.11

Comment: Two commenters requested that the process of qualifying for an individual broker's license be made more stringent, to reflect brokers' status as "experts" under the Customs Modernization Act's reasonable care standards. One method suggested was to require applicants to possess a college degree, preferably in a business discipline; another was to require a person to have a 3-year employment history in the customs brokerage business prior to submitting the application.

Customs response: While Customs agrees with the expressed aim of these comments, the imposition of the suggested additional standards does not appear to be necessary because the same goal can be reached at least as well, if not more effectively, through the present individual written examination process which is specifically designed to test an applicant's knowledge of customs requirements and procedures.

Comment: One commenter objected to the new requirement in § 111.11(a)(4) "to pass the written examination within three years of applying for a broker's license." A second commenter addressed a related concern, questioning how the new 3-year rule would affect Customs employees who have passed the examination but whose license issuance has been delayed pending their separation from government service.

Customs response: With regard to the first comment, this commenter misinterpreted the new provision. Instead of requiring an applicant to pass the broker's examination within three years of applying for a license, a person will now have three years in which to apply for a license after passing the examination. This arrangement reflects the newly-instituted separation of the examination and license application processes as discussed in the preamble portion of the April 27, 1999, notice of proposed rulemaking. As regards the second comment, that issue is currently under review and will be the subject of a separate policy determination.

Comment: Another commenter stated that the proposed regulation on the basic requirements for a corporate broker license, contained in § 111.11(c), would allow a corporate license to be issued in a district in which the corporation has neither a licensed officer nor a licensed employee resident within the district.

Customs response: Although the comment incorrectly implies that licenses are issued on a district basis (licenses are only issued on a national basis), it has prompted Customs to reevaluate certain aspects of § 111.11. As a result, proposed §§ 111.11(b)(2) and 111.11(c)(3) have been removed because the substance of their intended message—that is, that the holder of a partnership or association or corporate license will establish an office and will employ a licensed individual in the broker district in which the partnership or association or corporation operates as a broker—is adequately addressed in § 111.19 which concerns broker permits. Customs believes that these changes are necessary because it is clear that the proposed §§ 111.11(b)(2) and 111.11(c)(3) relate more logically to the district permit issuance process (which concerns the actual place where a licensee's brokerage activities are carried out) than to the national license issuance process. In addition, §§ 111.11(b) and 111.11(c)(2) have been modified in this final rule to clarify that a partnership, association or corporation must have a licensed member or officer for the partnership, association or corporation to qualify for a broker license. See also the comment discussion below regarding § 111.19 for other related changes made to that section.

Section 111.12

Comment: One commenter suggested that notice of the filing of an application for a broker's license should be posted on the Customs Electronic Bulletin Board or in some other electronic fashion in addition to being posted at the customhouse.

Customs response: Customs agrees. Accordingly, § 111.12(b) has been modified in this final rule by the inclusion of a reference to the posting of this information by appropriate electronic means.

Section 111.13

Comment: One commenter questioned the legality of the provision in § 111.13(c) which authorizes an individual to take a special written examination for the purpose of

continuing the business of a sole proprietorship broker, on the ground that a license issued to an individual is non-transferrable. This same commenter also recommended the inclusion of an appeal process for the denial of a request for a special written examination.

Customs response: Customs agrees with the statement that licenses are non-transferrable. However, Customs notes that the provision in question exists solely to allow the continuation of the business infrastructure, and not of the license, of a sole proprietorship in the event of the proprietor's incapacity or death. The regulation contemplates that the person taking the special examination will place the business in his or her own name upon receipt of the license, or that a corporation, association, or partnership will be formed with the newly-licensed individual serving as the qualifying officer or member. Disruption of jobs and client services will thus be minimized. As regards appeals, Customs does not believe that an appeal procedure would be appropriate in this context. The special examination provisions were put in the regulations as an accommodation to brokers. Allowing a person to take a special examination is purely discretionary on Customs part, as is denying a special examination request and directing the prospective broker to take the next regularly scheduled examination.

Section 111.14

Comment: Several commenters requested that Customs establish a maximum length of time after receipt of an application for a license during which background investigations on applicants will be completed.

Customs response: Customs has for some time been aware of concerns over this issue, and Customs is currently exploring ways to expedite the investigative process. However, this issue is an administrative, operational matter that should be addressed outside the Part 111 regulatory framework.

Section 111.16

Comment: A commenter proposed that Customs, in its investigation of a license applicant, be limited to reviewing derogatory information that occurred within 15 years of the date of the submission of the license application. The use of older convictions or proof of other unacceptable conduct as grounds for denial of a license when the applicant has had an otherwise clean record since that time would be, in this commenter's view, unfair.

Customs response: Customs does not believe that this suggestion should be adopted because Customs must have the most complete information possible on each applicant.

Section 111.19

As a consequence of the comments on proposed § 111.11 as discussed above, Customs also performed a general review of proposed § 111.19 which concerns permits. As a result of that review, some wording changes have been made to the § 111.19 text in this final rule to improve its clarity. These changes involve: (1) In § 111.19(b), removal of the references to an "additional" district in the application information provisions in order to clarify that those requirements apply to all permit applications (including an application for an initial permit); (2) in § 111.19(d)(1), changing the first sentence to refer to an applicant for a "district permit" to make it clear that the obligation of a broker regarding a place of business and regarding the exercise of responsible supervision and control over the customs business conducted in each broker district extends to all broker districts (rather than just to those broker districts in which the broker has received an additional permit); and (3) in the introductory text of § 111.19(f), inclusion of a specific statement to clarify what was only implied in § 111.19(a), that is, that a broker must have a district permit in order to obtain a national permit (see also the comment discussion below regarding § 111.19(f) for other changes to this introductory text).

Comment: Two commenters addressed § 111.19(b)(6), which requires applicants for additional district permits to include the place of storage of brokerage records and the names of the applicant's recordkeeping officer and back-up recordkeeping officer in the application. One of the commenters questioned the need for brokers to have a recordkeeping officer at all, and both commenters challenged the back-up recordkeeping officer requirement. Finally, one of these commenters asked why the designated recordkeeper has to be an officer of the broker.

Customs response: Customs notes that the proposed text in question was not consistent with the cross-referenced substantive regulatory provision (that is, § 111.21 which, in paragraph (c), contains no mention of a recordkeeping officer and back-up recordkeeping officer but instead simply requires the existence of a knowledgeable company employee recordkeeping contact). Accordingly, § 111.19(b)(6) has been modified in this final rule to more accurately reflect the terms of § 111.21(c) in this regard. As regards the need for a recordkeeping contact, this requirement was adopted in connection with the revision of the Customs recordkeeping regulations (see T.D. 98–56 which was published in the **Federal Register** at 63 FR 32916 on June 16, 1998) and should be retained.

Comment: One commenter raised a specific issue with regard to the national permit requirements of § 111.19(f) and then posed a more general question on the entire permit system, as follows:

1. The commenter first asked why national permits would be issued only to NCAP participants.

2. The commenter then asked why individuals who are licensed brokers and who serve as "licensed consultants" need permits at all.

Customs response: 1. Although Customs originally envisioned that applicants for a national permit would have to have NCAP capabilities and therefore included that requirement in proposed § 111.19(f), as indicated in the comment discussion above regarding proposed § 111.2(b)(2), it has since become apparent that the existence of other customs business activities outside of NCAP, for which national permits would be necessary, renders making the application contingent upon NCAP capability impractical. Accordingly, Customs now believes that an applicant for a national permit should simply have to meet certain basic requirements for the permit. Once the national permit has been secured, the national permit holder might then have to separately qualify for a specific program under which the national permit would be used, such as the filing of entries from a remote location, but that would be a function of the specific program at issue rather that a requirement under § 111.19(f). Accordingly, § 111.19(f) has been modified in this final rule by removing all references to NCAP from the introductory text and by removing paragraph (f)(4).

2. A similar question was raised earlier in this document, to which Customs simply responded that permits are required by law. However, "licensed consultants" will be able to represent clients on post-entry matters under § 111.2(b)(2) as modified in this final rule without having to obtain numerous district permits, provided they have a national permit secured by one district permit.

Section 111.23

Comment: One commenter noted that the word "papers" (rather than

"records") is used in the last sentence of § 111.23(a)(2).

Customs response: Customs agrees that "records" is the proper term to be used in this context. Accordingly, the text in question has been modified in this final rule by replacing the words "copies of papers" with "records."

Comment: Two commenters addressed the provision in § 111.23(b)(1) which states that "the option of maintaining records on a consolidated basis is generally available to brokers who have been granted permits to do business in more than one district." They stated that the use of the word "generally" undermines brokers" absolute right to consolidate their records.

Customs response: Although in connection with the revision of the Customs recordkeeping regulations (see T.D. 98–56 mentioned above) it was decided to dispense with the requirement that brokers obtain approval from Customs before consolidating records, Customs does not agree with these commenters that the consolidation of broker records is an absolute right. This is because, if the consolidation involves going to an alternative method of storage and any of the records to be consolidated are required to be maintained under 19 U.S.C. 1508, some restrictions on the right to consolidate may apply under 19 CFR 163.5(b). Since use of the word "generally" does not adequately clarify this point, § 111.23(b)(1) has been modified in this final rule by removing "generally" and adding an exception clause regarding the application of a restriction under § 163.5(b).

Comment: A commenter stated that brokers should be allowed to retain records of their customs transactions at sites that are accessible to the broker business locations that created them, instead of within the broker districts that cover the Customs ports to which they relate. This commenter argued that brokers holding permits in multiple broker districts may prepare the customs documents at different locations than the ports or even the districts in which the transactions occur, and that it would serve no beneficial purpose to create duplicate sets of records.

Customs response: Customs believes that the consolidation provisions of § 111.23 as proposed would afford brokers the necessary flexibility to store their records at locations that are most convenient to their business operations. Therefore, no further amendment to § 111.23 appears necessary.

Section 111.24

Comment: Two commenters expressed general support for the proposed amendment which allows brokers to disclose client information to sureties. One of these commenters, however, expressed concern over the statement in the preamble portion of the April 27, 1999, document that disclosure to a surety "will not automatically constitute a violation," because the statement implied that in some instances disclosure might constitute a violation. Both of these commenters also objected to the fact that disclosure would be discretionary on the part of the broker.

Customs response: As regards the first point, use of the word "automatically" was not intended to imply that a broker may be subject to sanction if client records are turned over to a surety. Rather, the intent was simply to point out that, in contrast to the former provision, disclosure would no longer constitute a violation. With regard to the second issue, the Customs position continues to be that, absent a subpoena, the disclosure of client records to a surety is at the option of the broker.

Comment: One commenter urged Customs to publish a "positive statement encouraging brokers to provide information to sureties, and for Customs to develop guidelines indicating the situations in which disclosure is most clearly appropriate."

Customs response: Customs has no intention of taking the suggested actions at this time. Customs remains of the view that these are matters to be worked out between sureties and brokers.

Comment: A commenter stated that the term "or other duly accredited officers or agents of the United States" should be more clearly defined, or eliminated entirely. This commenter asserted that, in the absence of a subpoena, brokers should only be required to turn over client records to officers under the jurisdiction of the Commissioner of Customs. By way of explanation, the commenter related an incident in which there was confusion when state tax authorities requested importer records from a broker.

Customs response: Customs believes that it is commonly understood that "an officer or agent of the United States" refers to employees of the federal government, and not to state or local authorities. Consequently, no change to the regulatory text is necessary in this regard.

Section 111.25

Comment: One commenter stated that part 111 should advise brokers of their right to refuse access to records unless served with an administrative summons. This commenter stated that this right is conferred by the general recordkeeping regulations of 19 CFR part 163.

Customs response: Customs disagrees with the observations of this commenter for two basic reasons. First, part 163 does not give a broker an unconditional right to refuse access to records unless served with an administrative summons. In the case of entry records required to be maintained and made available by a broker under 19 U.S.C. 1508 and 1509 and under part 163, if the broker fails to timely produce any of those records following receipt of a written, oral or electronic demand for the records from Customs pursuant to § 163.6(a), the broker may be subject to monetary penalties as provided in § 163.6(b). In addition, in the case of records of a broker that are not entry records but that are nevertheless subject to the retention and examination requirements of 19 U.S.C. 1508 and 1509 and part 163 (see § 163.6(c)), or if a broker fails to produce demanded entry records but no monetary penalty action is taken under part 163, the broker may be subject to disciplinary action under part 111. In both cases the sanctions that may be applied do not depend on the issuance of a Customs summons which is a separate procedure having its own enforcement mechanism (see §§ 163.7 through 163.10). Second, whereas the provisions of part 163 apply specifically to records (including those of brokers) that relate to activities listed in 19 U.S.C. 1508, there are other records that brokers must maintain outside the part 163 context, that is, records that are unique to the conduct of a brokerage business under 19 U.S.C. 1641 and part 111 (for example, powers of attorney and financial records regarding clients' accounts). This distinction is noted in § 163.2(d), which provides that "(e)ach customs broker must also make and maintain records and make such records available in accordance with part 111 of this chapter," and in the last sentence of § 111.25 which states that "(r)ecords subject to the requirements of part 163 of this chapter shall be made available to Customs in accordance with the provisions of that part." Section 111.25, the substance of which relates to records that arise in a part 111 context, provides that the records be made available "upon reasonable notice" but does not require the issuance of a summons, and a failure to make those records available to Customs could result in disciplinary action under part 111.

Section 111.28

Comment: The following comments were made regarding the employee information reporting provisions of § 111.28(b):

1. A commenter stated that the lists of current and new employees required by § 111.28(b) should be provided to the port director at the "lead" port, and not at every port within the broker district where the broker does business.

2. Several commenters questioned the requirement in proposed § 111.28(b)(1)(i) for an updated list of current employees to be submitted with the triennial status report. If Customs decides to retain the requirement, it was suggested that the list should only contain information on name, current address, date and place of birth, and social security number. One of these commenters argued that it would be administratively burdensome for brokers to have to keep track of their employees' last prior home addresses and of which employees had been employed for 3 years or less. Since that information would have been reported initially to Customs, it was suggested that it would be unnecessary to do so again.

3. A commenter questioned why updated lists should be sent to the port director of the port where the license was issued, instead of to the ports in which the broker is permitted to conduct customs business.

4. Another commenter observed that § 111.28 makes no provision for the reporting of transferred employees of brokers.

Customs response: 1. Customs disagrees. One of the main purposes behind this requirement is for the local customs officers to be familiar with the local brokerage community. This can best be accomplished by notification at the port at which the employee of the broker will be working.

2. Customs agrees in part with the concerns expressed by these commenters. While it remains the position of Customs that updated employee lists are necessary, upon reconsideration Customs now believes that some of the information proposed to be required in the updated reports is superfluous. Accordingly, the last sentence of § 111.28(b)(1)(i) has been modified in this final rule to list the specific information that must be included in the updated employee list (which does not include the last prior home address or the prior employment information on an employee employed by the broker for less than 3 years).

3. Updated employee lists are sent to the port through which the license was delivered simply because they are submitted with the triennial status report (see also the comment discussion regarding § 111.30(d) below). Customs will then route the lists to the various ports identified in the updated lists as being the ports in which the broker employees are working.

4. While there is no specific reference to the reporting of a transfer of an employee, Customs believes that a broker employee who is transferred from one port to another would have to be reported under § 111.28(b)(1)(i) either upon the opening of a new office or as an inclusion in the update list submitted with the triennial report.

Comment: The following comments were submitted regarding § 111.28(d), which requires the reporting of ownership changes in a broker to Customs:

1. Several commenters asked why brokers are required to send a copy of the notice of change in ownership to the directors of each port through which a permit has been granted. They stated that notice to Customs headquarters should suffice.

2. Another commenter stated that § 111.28(d) would require a broker to notify Customs whenever there is a five percent or greater change in ownership of a broker and the ownership shares are not publicly traded. This commenter then went on to say that it would be very difficult for a broker whose shares are not publicly traded and are owned by another publicly traded firm, to keep track of and report changes of ownership in the parent firm. The commenter asked that an exception to the reporting requirement be made if the owner of the not-publicly-traded shares of the brokerage is a large publicly traded company.

3. Another commenter questioned the statutory authority of Customs to force a broker to divest itself of a new principal who does not pass a background investigation. This commenter also claimed that applying this rule only to non-publicly-traded brokers is discriminatory.

Customs response: 1. Customs disagrees. One of the purposes behind this regulation is to enable Customs to better monitor who participates in the customs brokerage industry. Local Customs officials will in some instances have a greater familiarity than their counterparts at Customs headquarters with the reputations of persons acquiring all or part of an established brokerage firm. Therefore, the notification requirement at both the port and headquarters levels must remain in place.

2. Customs would first point out that this comment appears to read the regulatory text as providing that at least a five percent interest must change hands before the reporting requirement is triggered. This reading of the text is incorrect. The proposed regulation states that a broker shall immediately provide written notice to Customs "(i)f the ownership of a broker changes and ownership shares in the broker are not publicly traded." It does not attach a percentage threshold below which an ownership change is not required to be reported. The five percent figure comes into play in identifying whether a change of ownership results in the addition of a new principal. This is because a principal is defined as "any person having at least a 5 percent capital, beneficiary or other direct or indirect interest in a broker or in the business of a broker." The addition of a principal is significant for purposes of § 111.28(d) because Customs reserves the right to conduct background investigations of new principals and to require their removal if the results of the investigation are unsatisfactory. However, the five percent figure does not directly relate to the change of ownership reporting requirement. With respect to the concern expressed that it will be difficult to monitor and report trades in the shares of the parent firm, when such a firm exists, it is Customs intent that only changes in the ownership of the broker, and not of the broker's parent firm, be reported to Customs.

3. The authority to force a broker to divest itself of a new principal who does not pass a background investigation stems from 19 U.S.C. 1641(f), which permits the Secretary of the Treasury to prescribe such rules and regulations relating to the customs business of customs brokers as the Secretary "considers necessary to protect importers and the revenue of the United States * * *." As regards the issue of discrimination, it is not the intent of Customs to discriminate among classes of brokers because of their business structure. Indeed, Customs wants to reserve the right to investigate all new principals, regardless of how they obtained their ownership interest in the broker. The reporting onus falls on non-publicly-traded companies simply because information about publicly-traded corporations is widely available from other sources. However, Customs agrees that the proposed regulation could be read to restrict investigation and removal to new principals of non-publicly-traded companies. Therefore, § 111.28(d) has been modified in this

final rule to ensure that the investigation and removal processes apply equally to new principals of publicly-traded brokers and to new principals of non-publicly-traded brokers.

Section 111.29

Comment: A commenter requested that proposed § 111.29(a) be changed to require the broker to remit overdue payments received from a client within 5 working days from the funds being confirmed as paid by the client's bank, instead of within 5 working days from receipt by the broker. This request was made to protect brokers in situations where there are insufficient funds to cover the client's check.

Customs response: Customs does not believe that an amendment to the regulatory text is required to accommodate this commenter's concern because, under a proper interpretation of § 111.29(a), "receipt" by a broker would mean actual receipt of the funds following their clearance from the client's bank.

Comment: One commenter referred to the requirement in § 111.29(b)(2)(i) that importers must be provided with written notification that payment to a broker will not relieve the importer of liability for Customs charges if the charges are not paid by the broker and that the notification must be on, or attached to, any power of attorney provided by the broker to a client for execution on or after September 27, 1982. This commenter stated that the "September 27, 1982" effective date must be removed and replaced with "the effective date of these regulations;" otherwise, any power of attorney issued after September 27, 1982, would be invalid if it did not have the required notification.

Customs response: The commenter's observation about powers of attorney without the notification being invalid is correct. This is because this regulation, and its notification requirement, have been in effect since the effective date of Treasury Decision 82–134 (September 27, 1982). The current revision of part 111 does not nullify the notification requirement that has been in place since that date, nor does it render post-1982 powers of attorney without the requisite notification suddenly valid. Consequently, Customs declines to adopt the change suggested by this commenter.

Section 111.30

Comment: One commenter requested clarification of the requirement in proposed § 111.30(b)(2) that an organization report any other change in the legal nature of the organization, particularly as regards the meaning of "change in the legal nature." Absent clarification, this commenter argued, Customs could be inundated with irrelevant paperwork, and brokers could unwittingly be sanctioned for lack of compliance.

Customs response: Customs agrees that some clarification would be useful. Although it is not possible to come up with an all-inclusive list of potential changes in legal nature, the § 111.30(b)(2) text has been modified in this final rule by the inclusion of several illustrative examples.

Comment: Another commenter referred to the triennial status report of § 111.30(d). This commenter first stated that Customs should devise a specific form to be used as a status report. The commenter then questioned the need in § 111.30(d)(2)(iii) for individual brokers to have to make a statement that they continue to meet the requirements of § 111.11 and § 111.19 and have not engaged in any conduct that could constitute grounds for suspension or revocation.

Customs response: Regarding the first point, Customs already provides a specific form to be used as a status report; Customs sends this form to license holders at their last known address prior to the filing date of the report. With regard to the second issue, Congress has vested Customs with authority to protect importers and the revenue through regulation of customs brokers. Requiring the statement is an exercise of that authority. Customs considers this to be far less onerous on brokers than requiring them to submit to periodic background reinvestigations. Therefore, Customs believes that the requirement is appropriate and should be retained in the regulations.

Comment: One commenter suggested that proposed § 111.30(d)(1) be amended to require submission of the triennial status report to the port director through which the application for the broker's license was made, instead of to the director of the port through which the broker's license was issued. Two reasons were given for this request. First, the actual license, printed on Customs Form 3131, states that licenses are issued in Washington, D.C. Second, there has been confusion when individuals have applied for a license in one port and have received their license at another following a job transfer or move.

Customs response: While a broker's license is always issued out of Customs Headquarters, § 111.15 provides for delivery of the license to the broker through a port director's office (normally the port where the license application was filed and processed). In order to avoid any confusion on the points raised by this commenter, § 111.30(d)(1) has been modified in this final rule to provide that the status report must be addressed to the director of the port "through which the license was delivered to the licensee (see § 111.15)." For purposes of consistency, similar language has been included in § 111.19(a) as set forth below regarding concurrent issuance of an initial district permit.

Section 111.36

Comment: The following comments were submitted on § 111.36(a) which concerns obligations of a broker when the broker is employed by an unlicensed person other than the importer:

1. Two commenters stated that the broker should be required to send a copy of the entry to the actual importer in situations where the broker has been hired by another person (the proposed regulatory text requires the broker to send a copy of the entry or of his bill for services rendered but allows the importer to waive transmittal of both in writing). One of these commenters asserted that the importer needs to see the entry to satisfy "reasonable care" requirements. This commenter also urged that the provision be structured to require that the "actual importer" be notified in advance of the entry being filed of who the broker will be.

2. A commenter stated that the issue of fee sharing remains vague. This commenter asked for clarification regarding how this rule would apply to several specific factual situations.

Customs response: 1. Customs disagrees. Giving the broker the option of sending either a copy of his bill for services rendered or a copy of the entry (rather than specifying only a copy of the entry) is intended to strike an appropriate balance between the important principles of disclosure and confidentiality. As regards reasonable care, if the broker is hired by a party other than the actual importer, no obligation to exercise reasonable care devolves upon the actual importer. Moreover, the entry law allows the nominal consignee to appoint a broker, so Customs has no right to interfere in that choice. The primary function of the regulation is to enable the actual importer to have access to information which can be used to protect the actual importer's rights in the importation process, such as by filing a protest.

2. The questions presented by this commenter raise issues that are not proper for resolution in the regulations but rather would be more appropriately

addressed through the issuance of either a binding ruling or a response to an internal advice request. Consequently, Customs invites the commenter to write in for a binding ruling or to request internal advice on the matters in question in accordance with the requirements and procedures set forth in 19 CFR part 177.

Modification of § 111.36(a)

Upon further internal review of the proposed § 111.36(a) text, Customs has determined that the words "purchased for delivery on an all-free basis (duty and brokerage charges paid by the unlicensed person)" should be replaced by the words "purchased on a delivered duty-paid basis," to bring the text in line with modern terms of sale phraseology. The text in this final rule has been modified accordingly.

Comment: A commenter questioned the need for the special rules governing a broker's relations with freight forwarders in § 111.36(c). The commenter expressed the view that the prohibition against brokers sharing fees with unlicensed persons should apply to all unlicensed persons, including freight forwarders. This same commenter also stated that the definition of "freight forwarder" contained in § 111.1 is out-of-date and should be changed to take into account new entities such as ocean transport intermediaries, consolidators, and freight brokers.

Customs response: While these comments raise some new and interesting points, these issues are not appropriate for this final rule document but rather should be the subject of separate consideration with a view to possible further regulatory changes at a later date.

Section 111.42

Comment: One commenter requested that the term "notoriously disreputable" be more clearly defined in the regulations.

Customs response: Customs is of the view that the term is self-explanatory and therefore requires no further elaboration.

Section 111.96

Comment: One commenter objected to the requirement that the permit user fee be collected by Customs on an annual basis, stating that it places an unnecessary administrative burden on brokers and on Customs. A suggested alternative would be to pay the fee in advance every three years, at the same time as the submission of the triennial status report and the status report fee.

Customs response: For two reasons, it would be inappropriate for Customs to adopt this suggestion. First, it would in effect create a triennial fee when the statute (19 U.S.C. 58c(a)(7)) refers to an annual fee and this, in turn, would lead to potential complications in complying with the mandate of the statute (19 U.S.C. 58c(d)(4)(A)) regarding publication of notice of the permit fee 60 days before the due date. Second, even if the permit fee statute were no bar to this suggestion, Customs believes that adoption of this change would create new administrative burdens, such as having to set up a refund system to reimburse brokers who close operations in a particular broker district within the three-year period.

Additional Changes to the Regulations

In addition to the changes to the proposed regulatory texts identified and discussed above in connection with the public comments, Customs has included the following regulatory changes in this document:

1. Some minor, editorial wording or punctuation changes have been made to the Part 111 texts to enhance their clarity, readability and application but without the intention of substantively affecting the texts. In addition, throughout the part 111 texts, an attempt has been made, wherever practicable, to replace legalistic wording with simple or more direct phraseology, consistent with prevailing plain English drafting principles. Thus, for example, the word "shall" has been replaced with either "must" or "will" depending on the context, the word "such" has been either removed or replaced, and, except where it forms part of a defined term, the word "thereof" has been removed in favor of repeating the actual words to which it relates.

2. In § 24.1(a)(3)(i) of the Customs Regulations (19 CFR 24.1(a)(3)(i)), the third sentence refers to "* * * a customhouse broker, not licensed in the district (see definition of "district" at § 111.1) where an entry is filed * * *." This text is outdated in that it uses the old "customhouse" (rather than "customs") broker terminology and in that it does not reflect the fact that under the present statute and regulations brokers are licensed on a national, rather than district, basis. The regulatory text has been modified as set forth below to address these points.

3. Finally, this document includes an appropriate update of the list of information collection approvals (see the Paperwork Reduction Act portion of this document below) contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, Customs believes that the proposed regulatory amendments should be adopted as a final rule with certain changes as discussed above and as set forth below.

Executive order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. The regulatory amendments primarily represent a clarification of existing statutory and regulatory requirements. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control numbers 1515–0076 and 1515–0100. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collections of information reviewed and approved under control number 1515–0076 are in §§ 111.12, 111.13, 111.17, 111.19, and 111.28. The information to be collected is necessary for the issuance of customs broker licenses and permits and for monitoring the performance of brokers in the conduct of customs business. The collections of information reviewed and approved under control number 1515–0100 are in §§ 111.30, 111.36, 111.60, and 111.76. The information to be collected is necessary for monitoring the performance of brokers in the conduct of customs business and in connection with the institution of disciplinary actions against brokers. The likely respondents to the collections of information in this final rule are individuals, partnerships, associations, and corporations, including individuals and organizations that are licensed brokers.

The estimated average annual burden associated with the collections of information reviewed and approved

under control number 1515–0076 is 1 hour per respondent or recordkeeper. The estimated average annual burden associated with the collections of information reviewed and approved under control number 1515–0100 is 1 hour per respondent or recordkeeper. Comments concerning the accuracy of these burden estimates and suggestions for reducing these burdens should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting information. The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 24

Accounting, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, for the reasons stated in the preamble, 19 CFR Ch. I is amended, as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for Part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

Section 24.1 also issued under 19 U.S.C. 197, 198, 1648;

* * * * *

2. In § 24.1(a)(3)(i), the third sentence is amended by removing the words "a customhouse broker, not licensed in the district (see definition of "district" at § 111.1) where an entry is filed," and adding, in their place, the words "a customs broker who does not have a permit for the district (see the definition of "district" in § 111.1 of this chapter) where the entry is filed".

3. Part 111 is revised to read as follows:

PART 111—CUSTOMS BROKERS

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111.0 Scope.

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111.1 Definitions.
111.2 License and district permit required.
111.3 [Reserved]
111.4 Transacting customs business without a license.
111.5 Representation before Government agencies.

Subpart B—Procedure To Obtain License or Permit

111.11 Basic requirements for a license.
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Subpart C—Duties and Responsibilities of Customs Brokers

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111.37 Misuse of license or permit.
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111.43 [Reserved]
111.44 [Reserved]
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111.50 General.
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111.74 Decision and notice of suspension or revocation or monetary penalty.
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111.79 Employment of broker who has lost license.
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Subpart E—Monetary Penalty and Payment of Fees

111.91 Grounds for imposition of a monetary penalty; maximum penalty.
111.92 Notice of monetary penalty.
111.93 Petition for relief from monetary penalty.
111.94 Decision on monetary penalty.
111.95 Supplemental petition for relief from monetary penalty.
111.96 Fees.

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 1641.

Section 111.3 also issued under 19 U.S.C. 1484, 1498;

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

§ 111.0 Scope.

This part sets forth regulations providing for the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants, and the procedures for applying for licenses and permits. This part also prescribes the duties and responsibilities of brokers, the grounds and procedures for disciplining brokers, including the

assessment of monetary penalties, and the revocation or suspension of licenses and permits.

Subpart A—General Provisions

§ 111.1 Definitions.

When used in this part, the following terms have the meanings indicated:

Assistant Commissioner. "Assistant Commissioner" means the Assistant Commissioner, Office of Field Operations, United States Customs Service, Washington, DC.

Broker. "Broker" means a customs broker.

Customs broker. "Customs broker" means a person who is licensed under this part to transact customs business on behalf of others.

Customs business. "Customs business" means those activities involving transactions with Customs concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by Customs on merchandise by reason of its importation, and the refund, rebate, or drawback of those duties, taxes, or other charges. "Customs business" also includes the preparation, and activities relating to the preparation, of documents in any format and the electronic transmission of documents and parts of documents intended to be filed with Customs in furtherance of any other customs business activity, whether or not signed or filed by the preparer. However, "customs business" does not include the mere electronic transmission of data received for transmission to Customs.

District. "District" means the geographic area covered by a customs broker permit other than a national permit. A listing of each district, and the ports thereunder, will be published periodically.

Employee. "Employee" means a person who meets the common law definition of employee and is in the service of a customs broker.

Freight forwarder. "Freight forwarder" means a person engaged in the business of dispatching shipments in foreign commerce between the United States, its territories or possessions, and foreign countries, and handling the formalities incident to such shipments, on behalf of other persons.

Officer. "Officer", when used in the context of an association or corporation, means a person who has been elected, appointed, or designated as an officer of an association or corporation in accordance with statute and the articles of incorporation, articles of agreement, charter, or bylaws of the association or corporation.

Permit. "Permit" means any permit issued to a broker under § 111.19.

Person. "Person" includes individuals, partnerships, associations, and corporations.

Records. "Records" means documents, data and information referred to in, and required to be made or maintained under, this part and any other records, as defined in § 163.1(a) of this chapter, that are required to be maintained by a broker under part 163 of this chapter.

Region. "Region" means the geographic area covered by a waiver issued pursuant to § 111.19(d).

Responsible supervision and control. "Responsible supervision and control" means that degree of supervision and control necessary to ensure the proper transaction of the customs business of a broker, including actions necessary to ensure that an employee of a broker provides substantially the same quality of service in handling customs transactions that the broker is required to provide. While the determination of what is necessary to perform and maintain responsible supervision and control will vary depending upon the circumstances in each instance, factors which Customs will consider include, but are not limited to: The training required of employees of the broker; the issuance of written instructions and guidelines to employees of the broker; the volume and type of business of the broker; the reject rate for the various customs transactions; the maintenance of current editions of the Customs Regulations, the Harmonized Tariff Schedule of the United States, and Customs issuances; the availability of an individually licensed broker for necessary consultation with employees of the broker; the frequency of supervisory visits of an individually licensed broker to another office of the broker that does not have a resident individually licensed broker; the frequency of audits and reviews by an individually licensed broker of the customs transactions handled by employees of the broker; the extent to which the individually licensed broker who qualifies the district permit is involved in the operation of the brokerage; and any circumstance which indicates that an individually licensed broker has a real interest in the operations of a broker.

Treasury Department or any representative of the Treasury Department. "Treasury Department or any representative of the Treasury Department" means any office, officer, or employee of the U.S. Department of the Treasury, wherever located.

§ 111.2 License and district permit required.

(a) *License*—(1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, a person must obtain the license provided for in this part in order to transact customs business as a broker.

(2) *Transactions for which license is not required*—(i) *For one's own account.* An importer or exporter transacting customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.

(ii) *As employee of broker*—(A) *General.* An employee of a broker, acting solely for his employer, is not required to be licensed where:

(*1*) *Authorized to sign documents.* The broker has authorized the employee to sign documents pertaining to customs business on his behalf, and has executed a power of attorney for that purpose. The broker is not required to file the power of attorney with the port director, but must provide proof of its existence to Customs upon request; or

(*2*) *Authorized to transact other business.* The broker has filed with the port director a statement identifying the employee as authorized to transact customs business on his behalf. However, no statement will be necessary when the broker is transacting customs business under an exception to the district permit rule.

(*B*) *Broker supervision; withdrawal of authority.* Where an employee has been given authority under paragraph (a)(2)(ii) of this section, the broker must exercise sufficient supervision of the employee to ensure proper conduct on the part of the employee in the transaction of customs business, and the broker will be held strictly responsible for the acts or omissions of the employee within the scope of his employment and for any other acts or omissions of the employee which, through the exercise of reasonable care and diligence, the broker should have foreseen. The broker must promptly notify the port director if authority granted to an employee under paragraph (a)(2)(ii) of this section is withdrawn. The withdrawal of authority will be effective upon receipt by the port director.

(iii) *Marine transactions.* A person transacting business in connection with entry or clearance of vessels or other regulation of vessels under the navigation laws is not required to be licensed as a broker.

(iv) *Transportation in bond.* Any carrier bringing merchandise to the port of arrival or any bonded carrier transporting merchandise for another may make entry for that merchandise for transportation in bond without being a broker.

(v) *Noncommercial shipments.* An individual entering noncommercial merchandise for another party is not required to be a broker, provided that the requirements of § 141.33 of this chapter are met.

(vi) *Foreign trade zone activities.* A foreign trade zone operator or user need not be licensed as a broker in order to engage in activities within a zone that do not involve the transfer of merchandise to the customs territory of the United States.

(b) *District permit*—(1) *General.* Except as otherwise provided in paragraph (b)(2) of this section, a separate permit (see § 111.19) is required for each district in which a broker conducts customs business.

(2) *Exceptions to district permit rule*—(i) *National permits.* A national permit issued to a broker under § 111.19(f) will constitute sufficient permit authority for the broker to act in any of the following circumstances:

(A) *Employee working in client's facility (employee implant).* When a broker places an employee in the facility of a client for whom the broker is conducting customs business at one or more other locations covered by a district permit issued to the broker, and provided that the employee's activities are limited to customs business in support of that broker and on behalf of that client but do not involve the filing of entries or other documents with Customs, the broker need not obtain a permit for the district within which the client's facility is located;

(B) *Electronic drawback claims.* A broker may file electronic drawback claims in accordance with the electronic filing procedures set forth in part 143 of this chapter even though the broker does not have a permit for the district in which the filing is made;

(C) *NCAP participation.* A broker who is a participant in the National Customs Automation Program (NCAP) may electronically file entries for merchandise from a remote location and may electronically transact other customs business that is provided for and operational under the NCAP even though the entry is filed, or the other customs business is transacted, within a district for which the broker does not have a district permit; and

(D) *Representations after entry summary acceptance.* After the entry summary has been accepted by Customs, and except when a broker filed the entry as importer of record, a broker who did not file the entry, but who has been appointed by the importer of record, may orally or in person or in writing or electronically represent the importer of record before Customs on any issue arising out of that entry or concerning the merchandise covered by that entry even though the broker does not have a permit for the district within which those representations are made, provided that, if requested by Customs, the broker submits appropriate evidence of his right to represent the client on the matter at issue.

(ii) *Filing of drawback claims.* A broker granted a permit for one district may file drawback claims manually or electronically at the drawback office that has been designated by Customs for the purpose of filing those claims, and may represent his client before that office in matters concerning those claims, even though the broker does not have a permit for the district in which that drawback office is located.

§ 111.3 [Reserved]

§ 111.4 Transacting customs business without a license.

Any person who intentionally transacts customs business, other than as provided in § 111.2(a)(2), without holding a valid broker's license, will be liable for a monetary penalty for each such transaction as well as for each violation of any other provision of 19 U.S.C. 1641. The penalty will be assessed in accordance with subpart E of this part.

§ 111.5 Representation before Government agencies.

(a) *Agencies within the Treasury Department.* A broker who represents a client in the importation or exportation of merchandise may represent the client before the Treasury Department or any representative of the Treasury Department on any matter concerning that merchandise.

(b) *Agencies not within the Treasury Department.* In order to represent a client before any agency not within the Treasury Department, a broker must comply with any regulations of that agency governing the appearance of representatives before it.

Subpart B—Procedure To Obtain License or Permit

§ 111.11 Basic requirements for a license.

(a) *Individual.* In order to obtain a broker's license, an individual must:

(1) Be a citizen of the United States on the date of submission of the application referred to in § 111.12(a) and not an officer or employee of the United States Government;

(2) Attain the age of 21 prior to the date of submission of the application referred to in § 111.12(a);

(3) Be of good moral character; and

(4) Have established, by attaining a passing (75 percent or higher) grade on a written examination taken within the 3-year period before submission of the application referred to in § 111.12(a), that he has sufficient knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters to render valuable service to importers and exporters.

(b) *Partnership.* In order to qualify for a broker's license, a partnership must have at least one member of the partnership who is a broker.

(c) *Association or corporation.* In order to qualify for a broker's license, an association or corporation must:

(1) Be empowered under its articles of association or articles of incorporation to transact customs business as a broker; and

(2) Have at least one officer who is a broker.

§ 111.12 Application for license.

(a) *Submission of application and fee.* An application for a broker's license must be submitted in duplicate to the director of the port where the applicant intends to do business. The application must be under oath and executed on Customs Form 3124. The application must be accompanied by the $200 application fee prescribed in § 111.96(a) and one copy of the appropriate attachment required by the application form (Articles of Agreement or an affidavit signed by all partners, Articles of Agreement of the association, or the Articles of Incorporation). If the applicant proposes to operate under a trade or fictitious name in one or more States, evidence of the applicant's authority to use the name in each of those States must accompany the application. An application for an individual license must be submitted within the 3-year period after the applicant took and passed the written examination referred to in §§ 111.11(a)(4) and 111.13. The port director may require an individual applicant to provide a copy of the notification that he passed the written examination (see § 111.13(e)) and will require the applicant to submit fingerprints on Standard Form 87 at the time of filing the application. The port director may reject an application as improperly filed if the application, on its face, demonstrates that one or more of the basic requirements set forth in

§ 111.11 have not been met at the time of filing, in which case the application and fee will be returned to the filer without further action.

(b) *Posting notice of application.* Following receipt of the application, the port director will post a notice that the application has been filed. The notice will be posted conspicuously for at least 2 consecutive weeks in the customhouse at the port and similarly at any other port where the applicant also proposes to maintain an office. The notice also will be posted by appropriate electronic means. The notice will give the name and address of the applicant and, if the applicant is a partnership, association, or corporation, will state the names of all members or officers who are licensed as brokers. The notice will invite written comments or information regarding the issuance of the license.

(c) *Withdrawal of application.* An applicant for a broker's license may withdraw the application at any time prior to issuance of the license by providing written notice of the withdrawal to the port director. However, withdrawal of the application does not entitle the applicant to a refund of the $200 application fee.

§ 111.13 Written examination for individual license.

(a) *Scope of examination.* The written examination for an individual broker's license will be designed to determine the individual's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and exporters. The examination will be prepared and graded at Customs Headquarters, Washington, DC.

(b) *Date and place of examination.* Written examinations will be given on the first Monday in April and October. An individual who intends to take the written examination must so advise the port director in writing at least 30 calendar days prior to the scheduled examination date and must remit the $200 examination fee prescribed in § 111.96(a) at that time. The port director will give notice of the exact time and place for the examination.

(c) *Special examination.* If a partnership, association, or corporation loses the required member or officer having an individual broker's license (see §§ 111.11(b) and (c)(2)) and its license would be revoked by operation of law under the provisions of 19 U.S.C. 1641(b)(5) and § 111.45(a) before the next scheduled written examination, Customs may authorize a special written examination for a prospective applicant for an individual license who would serve as the required licensed member or officer. Customs may also authorize a special written examination for an individual for purposes of continuing the business of a sole proprietorship broker. A special written examination for an individual may also be authorized by Customs if a brokerage firm loses the individual broker who was exercising responsible supervision and control over an office in another district (see § 111.19(d)) and the permit for that additional district would be revoked by operation of law under the provisions of 19 U.S.C. 1641(c)(3) and § 111.45(b) before the next scheduled written examination. A request for a special written examination must be submitted to the port director in writing and must describe the circumstances giving rise to the need for the examination. If the request is granted, the port director will notify the prospective examinee of the exact time and place for the examination. If the individual attains a passing grade on the special written examination, the application for the license may be submitted in accordance with § 111.12. The examinee will be responsible for all additional costs incurred by Customs in preparing and administering the special examination that exceed the $200 examination fee prescribed in § 111.96(a), and those additional costs must be reimbursed to Customs before the examination is given.

(d) *Failure to appear for examination.* If a prospective examinee advises the port director at least 2 working days prior to the date of a regularly scheduled written examination that he will not appear for the examination, the port director will refund the $200 examination fee referred to in paragraph (b) of this section. No refund of the examination fee or additional reimbursed costs will be made in the case of a special written examination provided for under paragraph (c) of this section.

(e) *Notice of examination result.* Customs will provide to each examinee written notice of the result of the examination taken under this section. A failure of an examinee to attain a passing grade on the examination will preclude the submission of an application under § 111.12 but will not preclude the examinee from taking an examination again at a later date in accordance with paragraph (b) of this section.

(f) *Appeal of failing grade on examination.* If an examinee fails to attain a passing grade on the examination taken under this section, the examinee may challenge that result by filing a written appeal with Trade Programs, Office of Field Operations, U.S. Customs Service, Washington, DC 20229 within 60 calendar days after the date of the written notice provided for in paragraph (e) of this section. Customs will provide to the examinee written notice of the decision on the appeal. If the Customs decision on the appeal affirms the result of the examination, the examinee may request review of the decision on the appeal by writing to the Secretary of the Treasury within 60 calendar days after the date of the notice of that decision.

§ 111.14 Investigation of the license applicant.

(a) *Referral of application for investigation.* The port director will immediately refer an application for an individual, partnership, association, or corporation license to the special agent in charge or other entity designated by Headquarters for investigation and report.

(b) *Scope of investigation.* An investigation under this section will ascertain facts relevant to the question of whether the applicant is qualified and will cover, but need not be limited to:

(1) The accuracy of the statements made in the application;

(2) The business integrity of the applicant; and

(3) When the applicant is an individual (including a member of a partnership or an officer of an association or corporation), the character and reputation of the applicant.

(c) *Referral to Headquarters.* The port director will forward the originals of the application and the report of investigation to the Assistant Commissioner. The port director will also submit his recommendation for action on the application.

(d) *Additional investigation or inquiry.* The Assistant Commissioner may require further investigation to be conducted if additional facts are deemed necessary to pass upon the application. The Assistant Commissioner may also require the applicant (or in the case of a partnership, association, or corporation, one or more of its members or officers) to appear in person before him or before one or more representatives of the Assistant Commissioner for the purpose of undergoing further written or oral inquiry into the applicant's qualifications for a license.

§ 111.15 Issuance of license.

If the Assistant Commissioner finds that the applicant is qualified and has

paid all applicable fees prescribed in § 111.96(a), he will issue a license. A license for an individual who is a member of a partnership or an officer of an association or corporation will be issued in the name of the individual licensee and not in his capacity as a member or officer of the organization with which he is connected. The license will be forwarded to the port director, who will deliver it to the licensee.

§ 111.16 Denial of license.

(a) *Notice of denial.* If the Assistant Commissioner determines that the application for a license should be denied for any reason, notice of denial will be given by him to the applicant and to the director of the port at which the application was filed. The notice of denial will state the reasons why the license was not issued.

(b) *Grounds for denial.* The grounds sufficient to justify denial of an application for a license include, but need not be limited to:

(1) Any cause which would justify suspension or revocation of the license of a broker under the provisions of § 111.53;

(2) The failure to meet any requirement set forth in § 111.11;

(3) A failure to establish the business integrity and good character of the applicant;

(4) Any willful misstatement of pertinent facts in the application for the license;

(5) Any conduct which would be deemed unfair in commercial transactions by accepted standards; or

(6) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of that conduct.

§ 111.17 Review of the denial of a license.

(a) *By the Assistant Commissioner.* Upon the denial of an application for a license, the applicant may file with the Assistant Commissioner, in writing, a request that further opportunity be given for the presentation of information or arguments in support of the application by personal appearance, or in writing, or both. This request must be received by the Assistant Commissioner within 60 calendar days of the denial.

(b) *By the Secretary.* Upon the decision of the Assistant Commissioner affirming the denial of an application for a license, the applicant may file with the Secretary of the Treasury, in writing, a request for any additional review that the Secretary deems appropriate. This request must be received by the Secretary within 60 calendar days of the Assistant Commissioner's affirmation of the denial of the application for a license.

(c) *By the Court of International Trade.* Upon a decision of the Secretary of the Treasury affirming the denial of an application for a license, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within 60 calendar days after the date of entry of the Secretary's decision.

§ 111.18 Reapplication for license.

An applicant who has been denied a license may reapply at any time by complying with the provisions of § 111.12.

§ 111.19 Permits.

(a) *General.* Each person granted a broker's license under this part will be concurrently issued a permit for the district in which the port through which the license was delivered to the licensee (see § 111.15) is located and without the payment of the $100 fee required by § 111.96(b), if it is shown to the satisfaction of the port director that the person intends to transact customs business within that district and the person otherwise complies with the requirements of this part.

(b) *Submission of application for initial or additional district permit.* A broker who intends to conduct customs business at a port within another district for which he does not have a permit, or a broker who was not concurrently granted a permit with the broker's license under paragraph (a) of this section, and except as otherwise provided in paragraph (f) of this section, must submit an application for a permit in a letter to the director of the port at which he intends to conduct customs business. Each application for a permit must set forth or attach the following:

(1) The applicant's broker license number and date of issuance;

(2) The address where the applicant's office will be located within the district and the telephone number of that office;

(3) A copy of a document which reserves the applicant's business name with the state or local government;

(4) The name of the individual broker who will exercise responsible supervision and control over the customs business transacted in the district;

(5) A list of all other districts for which the applicant has a permit to transact customs business;

(6) The place where the applicant's brokerage records will be retained and the name of the applicant's designated recordkeeping contact (see §§ 111.21 and 111.23); and

(7) A list of all persons who the applicant knows will be employed in the district, together with the specific employee information prescribed in § 111.28(b)(1)(i) for each of those prospective employees.

(c) *Fees.* Each application for a permit under paragraph (b) or (f) of this section must be accompanied by the $100 and $125 fees specified in §§ 111.96(b) and (c). The $125 fee specified in § 111.96(c) also must be paid in connection with the issuance of an initial permit concurrently with a license under paragraph (a) of this section.

(d) *Responsible supervision and control*—(1) *General.* The applicant for a district permit must have a place of business at the port where the application is filed, or must have made firm arrangements satisfactory to the port director to establish a place of business, and must exercise responsible supervision and control over that place of business once the permit is granted. Except as otherwise provided in paragraph (d)(2) of this section, the applicant must employ in each district for which a permit is granted at least one individual broker to exercise responsible supervision and control over the customs business conducted in the district.

(2) *Exception to district rule.* If the applicant can demonstrate to the satisfaction of Customs that he regularly employs at least one individual broker in a larger geographical area in which the district is located and that adequate procedures exist for that individual broker to exercise responsible supervision and control over the customs business conducted in the district, Customs may waive the requirement for an individual broker in that district. A request for a waiver under this paragraph, supported by information on the volume and type of customs business conducted, or planned to be conducted, and supported by evidence demonstrating that the applicant is able to exercise responsible supervision and control through the individual broker employed in the larger geographical area, must be sent to the port director in the district in which the waiver is sought. The port director will review the request for a waiver and make recommendations which will be sent to the Office of Field Operations, Customs Headquarters, for review and decision. A written decision on the waiver request will be issued by the Office of Field Operations and, if the waiver is granted, the decision letter will specify the region covered by the waiver.

(e) *Action on application; list of permitted brokers.* The port director who receives the application will issue a written decision on the permit

application and will issue the permit if the applicant meets the requirements of paragraphs (b), (c), and (d) of this section. If the port director is of the opinion that the permit should not be issued, he will submit his written reasons for that opinion to the Office of Field Operations, Customs Headquarters, for appropriate instructions on whether to grant or deny the permit. Each port director will maintain and make available to the public an alphabetical list of brokers permitted through his port.

(f) *National permit.* A broker who has a district permit issued under paragraph (a) or paragraph (e) of this section may apply for a national permit for the purpose of transacting customs business in any circumstance described in § 111.2(b)(2)(i). An application for a national permit under this paragraph must be in the form of a letter addressed to the Office of Field Operations, U.S. Customs Service, Washington, DC 20229, and must:

(1) Identify the applicant's broker license number and date of issuance;

(2) Set forth the address and telephone number of the office designated by the applicant as the office of record for purposes of administration of the provisions of this part regarding all activities of the applicant conducted under the national permit. That office will be noted in the national permit when issued;

(3) Set forth the name, broker license number, office address, and telephone number of the individual broker who will exercise responsible supervision and control over the activities of the applicant conducted under the national permit; and

(4) Attach a receipt or other evidence showing that the fees specified in §§ 111.96(b) and (c) have been paid at the port through which the applicant's broker license was delivered (see § 111.15).

(g) *Review of the denial of a permit—*(1) *By the Assistant Commissioner.* Upon the denial of an application for a permit under this section, the applicant may file with the Assistant Commissioner, in writing, a request that further opportunity be given for the presentation of information or arguments in support of the application by personal appearance, or in writing, or both. This request must be received by the Assistant Commissioner within 60 calendar days of the denial.

(2) *By the Court of International Trade.* Upon a decision of the Assistant Commissioner affirming the denial of an application for a permit under this section, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within 60 calendar days after the date of entry of the Assistant Commissioner's decision.

Subpart C—Duties and Responsibilities of Customs Brokers

§ 111.21 Record of transactions.

(a) Each broker must keep current in a correct, orderly, and itemized manner records of account reflecting all his financial transactions as a broker. He must keep and maintain on file copies of all his correspondence and other records relating to his customs business.

(b) Each broker must comply with the provisions of this part and part 163 of this chapter when maintaining records that reflect on his transactions as a broker.

(c) Each broker must designate a knowledgeable company employee to be the contact for Customs for broker-wide customs business and financial recordkeeping requirements.

§ 111.22 [Reserved]

§ 111.23 Retention of records.

(a) *Place and period of retention—*(1) *Place.* Records must be retained by a broker in accordance with the provisions of this part and part 163 of this chapter within the broker district that covers the Customs port to which they relate unless the broker chooses to consolidate records at one or more other locations, and provides advance notice of that consolidation to Customs, in accordance with paragraph (b) of this section.

(2) *Period.* The records described in paragraph (a)(1) of this section, other than powers of attorney, must be retained for at least 5 years after the date of entry. Powers of attorney must be retained until revoked, and revoked powers of attorney and letters of revocation must be retained for 5 years after the date of revocation or for 5 years after the date the client ceases to be an "active client" as defined in § 111.29(b)(2)(ii), whichever period is later. When merchandise is withdrawn from a bonded warehouse, records relating to the withdrawal must be retained for 5 years from the date of withdrawal of the last merchandise withdrawn under the entry.

(b) *Notification of consolidated records—*(1) *Applicability.* Subject to the requirements of paragraph (b)(2) of this section and except when a restriction applies under § 163.5(b) of this chapter, the option of maintaining records on a consolidated system basis is available to brokers who have been granted permits to do business in more than one district.

(2) *Form and content of notice.* If consolidated storage is desired by the broker, he must submit a written notice addressed to the Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131. The written notice must include:

(i) Each address at which the broker intends to maintain the consolidated records. Each such location must be within a district where the broker has been granted a permit;

(ii) A detailed statement describing all the records to be maintained at each consolidated location, the methodology of record maintenance, a description of any automated data processing to be applied, and a list of all the broker's customs business activity locations; and

(iii) An agreement that there will be no change in the records, the manner of recordkeeping, or the location at which they will be maintained, unless the Director, Regulatory Audit Division, in Miami is first notified.

§ 111.24 Records confidential.

The records referred to in this part and pertaining to the business of the clients serviced by the broker are to be considered confidential, and the broker must not disclose their contents or any information connected with the records to any persons other than those clients, their surety on a particular entry, and the Field Director, Regulatory Audit Division, the special agent in charge, the port director, or other duly accredited officers or agents of the United States, except on subpoena by a court of competent jurisdiction.

§ 111.25 Records must be available.

During the period of retention, the broker must maintain the records referred to in this part in such a manner that they may readily be examined. Records required to be made or maintained under the provisions of this part must be made available upon reasonable notice for inspection, copying, reproduction or other official use by Customs regulatory auditors or special agents or other authorized Customs officers within the prescribed period of retention or within any longer period of time during which they remain in the possession of the broker. Records subject to the requirements of part 163 of this chapter must be made available to Customs in accordance with the provisions of that part.

§ 111.26 Interference with examination of records.

Except in accordance with the provisions of part 163 of this chapter, a broker must not refuse access to, conceal, remove, or destroy the whole or

any part of any record relating to his transactions as a broker which is being sought, or which the broker has reasonable grounds to believe may be sought, by the Treasury Department or any representative of the Treasury Department, nor may he otherwise interfere, or attempt to interfere, with any proper and lawful efforts to procure or reproduce information contained in those records.

§ 111.27 Audit or inspection of records.

The Field Director, Regulatory Audit Division, will make any audit or inspection of the records required by this subpart to be kept and maintained by a broker as may be necessary to enable the port director and other proper officials of the Treasury Department to determine whether or not the broker is complying with the requirements of this part.

§ 111.28 Responsible supervision.

(a) *General.* Every individual broker operating as a sole proprietor and every licensed member of a partnership that is a broker and every licensed officer of an association or corporation that is a broker must exercise responsible supervision and control (see § 111.1) over the transaction of the customs business of the sole proprietorship, partnership, association, or corporation.

(b) *Employee information.*

(1) *Current employees*—(i) *General.* Each broker must submit, in writing, to the director of each port at which the broker intends to transact customs business, a list of the names of persons currently employed by the broker at that port. The list of employees must be submitted upon issuance of a permit for an additional district under § 111.19, or upon the opening of an office at a port within a district for which the broker already has a permit, and before the broker begins to transact customs business as a broker at the port. For each employee, the broker also must provide the social security number, date and place of birth, current home address, last prior home address, and, if the employee has been employed by the broker for less than 3 years, the name and address of each former employer and dates of employment for the 3-year period preceding current employment with the broker. After the initial submission, an updated list, setting forth the name, social security number, date and place of birth, and current home address of each current employee, must be submitted with the status report required by § 111.30(d).

(ii) *New employees.* In the case of a new employee, the broker must submit to the port director the written information required under paragraph (b)(1)(i) of this section within 10 calendar days after the new employee has been employed by the broker for 30 consecutive days.

(2) *Terminated employees.* Within 30 calendar days after the termination of employment of any person employed longer than 30 consecutive days, the broker must submit the name of the terminated employee, in writing, to the director of the port at which the person was employed.

(3) *Broker's responsibility.* Notwithstanding a broker's responsibility for providing the information required in paragraph (b)(1) of this section, in the absence of culpability by the broker, Customs will not hold him responsible for the accuracy of any information that is provided to the broker by the employee.

(c) *Termination of qualifying member or officer.* In the case of an individual broker who is a qualifying member of a partnership for purposes of § 111.11(b) or who is a qualifying officer of an association or corporation for purposes of § 111.11(c)(2), that individual broker must immediately provide written notice to the Assistant Commissioner when his employment as a qualifying member or officer terminates and must send a copy of the written notice to the director of each port through which a permit has been granted to the partnership, association, or corporation.

(d) *Change in ownership.* If the ownership of a broker changes and ownership shares in the broker are not publicly traded, the broker must immediately provide written notice of that fact to the Assistant Commissioner and must send a copy of the written notice to the director of each port through which a permit has been granted to the broker. When a change in ownership results in the addition of a new principal to the organization, and whether or not ownership shares in the broker are publicly traded, Customs reserves the right to conduct a background investigation on the new principal. The port director will notify the broker if Customs objects to the new principal, and the broker will be given a reasonable period of time to remedy the situation. If the investigation uncovers information which would have been the basis for a denial of an application for a broker's license and the principal's interest in the broker is not terminated to the satisfaction of the port director, suspension or revocation proceedings may be initiated under subpart D of this part. For purposes of this paragraph, a "principal" means any person having at least a 5 percent capital, beneficiary or other direct or indirect interest in the business of a broker.

§ 111.29 Diligence in correspondence and paying monies.

(a) *Due diligence by broker.* Each broker must exercise due diligence in making financial settlements, in answering correspondence, and in preparing or assisting in the preparation and filing of records relating to any customs business matter handled by him as a broker. Payment of duty, tax, or other debt or obligation owing to the Government for which the broker is responsible, or for which the broker has received payment from a client, must be made to the Government on or before the date that payment is due. Payments received by a broker from a client after the due date must be transmitted to the Government within 5 working days from receipt by the broker. Each broker must provide a written statement to a client accounting for funds received for the client from the Government, or received from a client where no payment to the Government has been made, or received from a client in excess of the Governmental or other charges properly payable as part of the client's customs business, within 60 calendar days of receipt. No written statement is required if there is actual payment of the funds by a broker.

(b) *Notice to client of method of payment*—(1) All brokers must provide their clients with the following written notification:

> If you are the importer of record, payment to the broker will not relieve you of liability for Customs charges (duties, taxes, or other debts owed Customs) in the event the charges are not paid by the broker. Therefore, if you pay by check, Customs charges may be paid with a separate check payable to the "U.S. Customs Service" which will be delivered to Customs by the broker.

(2) The written notification set forth in paragraph (b)(1) of this section must be provided by brokers as follows:

(i) On, or attached to, any power of attorney provided by the broker to a client for execution on or after September 27, 1982; and

(ii) To each active client no later than February 28, 1983, and at least once at any time within each 12-month period after that date. An active client means a client from whom a broker has obtained a power of attorney and for whom the broker has transacted customs business on at least two occasions within the 12-month period preceding notification.

§ 111.30 Notification of change of business address, organization, name, or location of business records; status report; termination of brokerage business.

(a) *Change of address.* When a broker changes his business address, he must immediately give written notice of his new address to each director of a port that is affected by the change of address. In addition, if an individual broker is not actively engaged in transacting business as a broker and changes his non-business mailing address, he must give written notice of the new address in the status report required by paragraph (d) of this section.

(b) *Change in an organization.* A partnership, association, or corporation broker must immediately provide written notice of any of the following to the director of each port through which it has been granted a permit:

(1) The date on which a licensed member or officer ceases to be the qualifying member or officer for purposes of § 111.11(b) or (c)(2), and the name of the broker who will succeed as the qualifying member or officer; and

(2) Any change in the Articles of Agreement, Charter, or Articles of Incorporation relating to the transaction of customs business, or any other change in the legal nature of the organization (for example, conversion of a general partnership to a limited partnership, merger with another organization, divestiture of a part of the organization, or entry into bankruptcy protection).

(c) *Change in name.* A broker who changes his name, or who proposes to operate under a trade or fictitious name in one or more States within the district in which he has been granted a permit and is authorized by State law to do so, must submit to the Office of Field Operations, U.S. Customs Service, Washington, DC 20229, evidence of his authority to use that name. The name must not be used until the approval of Headquarters has been received. In the case of a trade or fictitious name, the broker must affix his own name in conjunction with each signature of the trade or fictitious name when signing customs documents.

(d) *Status report*—(1) *General.* Each broker must file a written status report with Customs on February 1, 1985, and on February 1 of each third year after that date. The report must be accompanied by the fee prescribed in § 111.96(d) and must be addressed to the director of the port through which the license was delivered to the licensee (see § 111.15). A report received during the month of February will be considered filed timely. No form or particular format is required.

(2) *Individual.* Each individual broker must state in the report required under paragraph (d)(1) of this section whether he is actively engaged in transacting business as a broker. If he is so actively engaged, he must also:

(i) State the name under which, and the address at which, his business is conducted if he is a sole proprietor;

(ii) State the name and address of his employer if he is employed by another broker, unless his employer is a partnership, association or corporation broker for which he is a qualifying member or officer for purposes of § 111.11(b) or (c)(2); and

(iii) State whether or not he still meets the applicable requirements of § 111.11 and § 111.19 and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53.

(3) *Partnership, association or corporation.* Each corporation, partnership or association broker must state in the report required under paragraph (d)(1) of this section the name under which its business as a broker is being transacted, its business address, the name and address of each licensed member of the partnership or licensed officer of the association or corporation who qualifies it for a license under § 111.11(b) or (c)(2), and whether it is actively engaged in transacting business as a broker, and the report must be signed by a licensed member or officer.

(4) *Failure to file timely.* If a broker fails to file the report required under paragraph (d)(1) of this section by March 1 of the reporting year, the broker's license is suspended by operation of law on that date. By March 31 of the reporting year, the port director will transmit written notice of the suspension to the broker by certified mail, return receipt requested, at the address reflected in Customs records. If the broker files the required report and pays the required fee within 60 calendar days of the date of the notice of suspension, the license will be reinstated. If the broker does not file the required report within that 60-day period, the broker's license is revoked by operation of law without prejudice to the filing of an application for a new license. Notice of the revocation will be published in the Customs Bulletin.

(e) *Custody of records.* Upon the permanent termination of a brokerage business, written notification of the name and address of the party having legal custody of the brokerage business records must be provided to the director of each port where the broker was transacting business within each district for which a permit has been issued to the broker. That notification will be the responsibility of:

(1) The individual broker, upon the permanent termination of his brokerage business;

(2) Each member of a partnership who holds an individual broker's license, upon the permanent termination of a partnership brokerage business; or

(3) Each association or corporate officer who holds an individual broker's license, upon the permanent termination of an association or corporate brokerage business.

§ 111.31 Conflict of interest.

(a) *Former officer or employee of U.S. Government.* A broker who was formerly an officer or employee in U.S. Government service must not represent a client before the Treasury Department or any representative of the Treasury Department in any matter to which the broker gave personal consideration or gained knowledge of the facts while in U.S. Government service, except as provided in 18 U.S.C. 207.

(b) *Relations with former officer or employee of U.S. Government.* A broker must not knowingly assist, accept assistance from, or share fees with a person who has been employed by a client in a matter pending before the Treasury Department or any representative of the Treasury Department to which matter that person gave personal consideration or gained personal knowledge of the facts or issues of the matter while in U.S. Government service.

(c) *Importations by broker or employee.* A broker who is an importer himself must not act as broker for an importer who imports merchandise of the same general character as that imported by the broker unless the client has full knowledge of the facts. The same restriction will apply if a broker's employee is an importer.

§ 111.32 False information.

A broker must not file or procure or assist in the filing of any claim, or of any document, affidavit, or other papers, known by such broker to be false. In addition, a broker must not knowingly give, or solicit or procure the giving of, any false or misleading information or testimony in any matter pending before the Treasury Department or any representative of the Treasury Department.

§ 111.33 Government records.

A broker must not procure or attempt to procure, directly or indirectly, information from Government records or other Government sources of any kind to which access is not granted by proper authority.

§ 111.34 Undue influence upon Treasury Department employees.

A broker must not influence or attempt to influence the conduct of any representative of the Treasury Department in any matter pending before the Treasury Department or any representative of the Treasury Department by the use of duress or a threat or false accusation, or by the offer of any special inducement or promise of advantage, or by bestowing any gift or favor or other thing of value.

§ 111.35 Acceptance of fees from attorneys.

With respect to customs transactions, a broker must not demand or accept from any attorney (whether directly or indirectly, including, for example, from a client as a part of any arrangement with an attorney) on account of any case litigated in any court of law or on account of any other legal service rendered by an attorney any fee or remuneration in excess of an amount measured by or commensurate with the time, effort and skill expended by the broker in performing his services.

§ 111.36 Relations with unlicensed persons.

(a) *Employment by unlicensed person other than importer.* When a broker is employed for the transaction of customs business by an unlicensed person who is not the actual importer, the broker must transmit to the actual importer either a copy of his bill for services rendered or a copy of the entry, unless the merchandise was purchased on a delivered duty-paid basis or unless the importer has in writing waived transmittal of the copy of the entry or bill for services rendered.

(b) *Service to others not to benefit unlicensed person.* Except as otherwise provided in paragraph (c) of this section, a broker must not enter into any agreement with an unlicensed person to transact customs business for others in such manner that the fees or other benefits resulting from the services rendered for others inure to the benefit of the unlicensed person.

(c) *Relations with a freight forwarder.* A broker may compensate a freight forwarder for referring brokerage business, subject to the following conditions:

(1) The importer or other party in interest is notified in advance by the forwarder or broker of the name of the broker selected by the forwarder for the handling of his Customs transactions;

(2) The broker transmits directly to the importer or other party in interest:

(i) A true copy of his brokerage charges if the fees and charges are to be collected by or through the forwarder, unless this requirement is waived in writing by the importer or other party in interest; or

(ii) A statement of his brokerage charges and an itemized list of any charges to be collected for the account of the freight forwarder if the fees and charges are to be collected by or through the broker;

(3) No part of the agreement of compensation between the broker and the forwarder, nor any action taken pursuant to the agreement, forbids or prevents direct communication between the importer or other party in interest and the broker; and

(4) In making the agreement and in all actions taken pursuant to the agreement, the broker remains subject to all other provisions of this part.

§ 111.37 Misuse of license or permit.

A broker must not allow his license, permit or name to be used by or for any unlicensed person (including a broker whose license or permit is under suspension), other than his own employees authorized to act for him, in the solicitation, promotion or performance of any customs business or transaction.

§ 111.38 False representation to procure employment.

A broker must not knowingly use false or misleading representations to procure employment in any customs matter. In addition, a broker must not represent to a client or prospective client that he can obtain any favors from the Treasury Department or any representative of the Treasury Department.

§ 111.39 Advice to client.

(a) *Withheld or false information.* A broker must not withhold information relative to any customs business from a client who is entitled to the information. Moreover, a broker must exercise due diligence to ascertain the correctness of any information which he imparts to a client, and he must not knowingly impart to a client false information relative to any customs business.

(b) *Error or omission by client.* If a broker knows that a client has not complied with the law or has made an error in, or omission from, any document, affidavit, or other paper which the law requires the client to execute, he must advise the client promptly of that noncompliance, error, or omission.

(c) *Illegal plans.* A broker must not knowingly suggest to a client or prospective client any illegal plan for evading payment of any duty, tax, or other debt or obligation owing to the U.S. Government.

§ 111.40 Protests.

A broker must not act on behalf of any person, or attempt to represent any person, regarding any protest unless he is authorized to do so in accordance with part 174 of this chapter.

§ 111.41 Endorsement of checks.

A broker must not endorse or accept, without authority of his client, any U.S. Government draft, check, or warrant drawn to the order of the client.

§ 111.42 Relations with person who is notoriously disreputable or whose license is under suspension, canceled "with prejudice," or revoked.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, a broker must not knowingly and directly or indirectly:

(1) Accept employment to effect a Customs transaction as associate, correspondent, officer, employee, agent, or subagent from any person who is notoriously disreputable or whose broker license was revoked for any cause or is under suspension or was cancelled "with prejudice;"

(2) Assist in the furtherance of any customs business or transactions of any person described in paragraph (a)(1) of this section;

(3) Employ, or accept assistance in the furtherance of any customs business or transactions from, any person described in paragraph (a)(1) of this section, without the approval of the Assistant Commissioner (see § 111.79);

(4) Share fees with any person described in paragraph (a)(1) of this section; or

(5) Permit any person described in paragraph (a)(1) of this section to participate, directly or indirectly and whether through ownership or otherwise, in the promotion, control, or direction of the business of the broker.

(b) *Client exception.* Nothing in this section will prohibit a broker from transacting customs business on behalf of a bona fide importer or exporter who may be notoriously disreputable or whose broker license is under suspension or was cancelled "with prejudice" or revoked.

§ 111.43 [Reserved]

§ 111.44 [Reserved]

§ 111.45 Revocation by operation of law.

(a) *License.* If a broker that is a partnership, association, or corporation fails to have, during any continuous period of 120 days, at least one member of the partnership or at least one officer of the association or corporation who

holds a valid individual broker's license, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation by operation of law of the license and any permits issued to the partnership, association, or corporation. The Assistant Commissioner or his designee will notify the broker in writing of an impending revocation by operation of law under this section 30 calendar days before the revocation is due to occur.

(b) *Permit.* If a broker who has been granted a permit for an additional district fails, for any continuous period of 180 days, to employ within that district (or region, as defined in § 111.1, if an exception has been granted pursuant to § 111.19(d)) at least one person who holds a valid individual broker's license, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation of the permit by operation of law.

(c) *Notification.* If the license or an additional permit of a partnership, association, or corporation is revoked by operation of law under paragraph (a) or (b) of this section, the Assistant Commissioner or his designee will notify the organization of the revocation. If an additional permit of an individual broker is revoked by operation of law under paragraph (b) of this section, the Assistant Commissioner or his designee will notify the broker. Notice of any revocation under this section will be published in the Customs Bulletin.

(d) *Applicability of other sanctions.* Notwithstanding the operation of paragraph (a) or (b) of this section, each broker still has a continuing obligation to exercise responsible supervision and control over the conduct of its brokerage business and to otherwise comply with the provisions of this part. Any failure on the part of a broker to meet that continuing obligation during the 120 or 180-day period referred to in paragraph (a) or (b) of this section, or during any shorter period of time, may result in the initiation of suspension or revocation proceedings or the assessment of a monetary penalty under subpart D or subpart E of this part.

Subpart D—Cancellation, Suspension, or Revocation of License or Permit, and Monetary Penalty in Lieu of Suspension or Revocation

§ 111.50 General.

This subpart sets forth provisions relating to cancellation, suspension, or revocation of a license or a permit, or assessment of a monetary penalty in lieu of suspension or revocation, under section 641(d)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1641(d)(2)(B)). The provisions relating to assessment of a monetary penalty under sections 641(b)(6) and (d)(2)(A), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(6) and (d)(2)(A)), are set forth in subpart E of this part.

§ 111.51 Cancellation of license or permit.

(a) *Without prejudice.* The Assistant Commissioner may cancel a broker's license or permit "without prejudice" upon written application by the broker if the Assistant Commissioner determines that the application for cancellation was not made in order to avoid proceedings for the suspension or revocation of the license or permit. If the Assistant Commissioner determines that the application for cancellation was made in order to avoid those proceedings, he may cancel the license or permit "without prejudice" only with authorization from the Secretary of the Treasury.

(b) *With prejudice.* The Assistant Commissioner may cancel a broker's license or permit "with prejudice" when specifically requested to do so by the broker. The effect of a cancellation "with prejudice" is in all respects the same as if the license or permit had been revoked for cause by the Secretary except that it will not give rise to a right of appeal.

§ 111.52 Voluntary suspension of license or permit.

The Assistant Commissioner may accept a broker's written voluntary offer of suspension of the broker's license or permit for a specific period of time under any terms and conditions to which the parties may agree.

§ 111.53 Grounds for suspension or revocation of license or permit.

The appropriate Customs officer may initiate proceedings for the suspension, for a specific period of time, or revocation of the license or permit of any broker for any of the following reasons:

(a) The broker has made or caused to be made in any application for any license or permit under this part, or report filed with Customs, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any application or report any material fact which was required;

(b) The broker has been convicted, at any time after the filing of an application for a license under § 111.12, of any felony or misdemeanor which:

(1) Involved the importation or exportation of merchandise;

(2) Arose out of the conduct of customs business; or

(3) Involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(c) The broker has violated any provision of any law enforced by Customs or the rules or regulations issued under any provision of any law enforced by Customs;

(d) The broker has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by Customs or the rules or regulations issued under any provision of any law enforced by Customs;

(e) The broker has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of that employment from the Assistant Commissioner;

(f) The broker has, in the course of customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client; or

(g) The broker no longer meets the applicable requirements of § 111.11 and § 111.19.

§ 111.54 [Reserved]

§ 111.55 Investigation of complaints.

Every complaint or charge against a broker which may be the basis for disciplinary action will be forwarded for investigation to the special agent in charge of the area in which the broker is located. The special agent in charge will submit a report on the investigation to the director of the port and send a copy of it to the Assistant Commissioner.

§ 111.56 Review of report on investigation.

The port director will review the report of investigation to determine if there is sufficient basis to recommend that charges be preferred against the broker. He will then submit his recommendation with supporting reasons to the Assistant Commissioner for final determination together with a proposed statement of charges when recommending that charges be preferred.

§ 111.57 Determination by Assistant Commissioner.

The Assistant Commissioner will make a determination on whether or not

charges should be preferred, and he will notify the port director of his decision.

§ 111.58 Content of statement of charges.

Any statement of charges referred to in this subpart must give a plain and concise, but not necessarily detailed, description of the facts claimed to constitute grounds for suspension or revocation of the license or permit. The statement of charges also must specify the sanction being proposed (that is, suspension of the license or permit or revocation of the license or permit), but if a suspension is proposed the charges need not state a specific period of time for which suspension is proposed. A statement of charges which fairly informs the broker of the charges against him so that he is able to prepare his response will be deemed sufficient. Different means by which a purpose might have been accomplished, or different intents with which acts might have been done, so as to constitute grounds for suspension or revocation of the license may be alleged in the alternative under a single count in the statement of charges.

§ 111.59 Preliminary proceedings.

(a) *Opportunity to participate.* The port director will advise the broker of his opportunity to participate in preliminary proceedings with an opportunity to avoid formal proceedings against his license or permit.

(b) *Notice of preliminary proceedings.* The port director will serve upon the broker, in the manner set forth in § 111.63, written notice that:

(1) Transmits a copy of the proposed statement of charges;

(2) Informs the broker that formal proceedings are available to him;

(3) Informs the broker that sections 554 and 558, Title 5, United States Code, will be applicable if formal proceedings are necessary;

(4) Invites the broker to show cause why formal proceedings should not be instituted;

(5) Informs the broker that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(6) Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;

(7) Advises the broker of his right to be represented by counsel;

(8) Specifies the place where the broker may respond in writing; and

(9) Advises the broker that the response must be received within 30 calendar days of the date of the notice.

§ 111.60 Request for additional information.

If, in order to prepare his response, the broker desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may request that information in writing. The broker's request must set forth in what respect the proposed statement of charges leaves him in doubt and must describe the particular language of the proposed statement of charges as to which additional information is needed. If in the opinion of the port director that information is reasonably necessary to enable the broker to prepare his response, he will furnish the broker with that information.

§ 111.61 Decision on preliminary proceedings.

The port director will prepare a summary of any oral presentations made by the broker or his attorney and forward it to the Assistant Commissioner together with a copy of each paper filed by the broker. The port director will also give to the Assistant Commissioner his recommendation on action to be taken as a result of the preliminary proceedings. If the Assistant Commissioner determines that the broker has satisfactorily responded to the proposed charges and that further proceedings are not warranted, he will so inform the port director who will notify the broker. If no response is filed by the broker or if the Assistant Commissioner determines that the broker has not satisfactorily responded to all of the proposed charges, he will advise the port director of that fact and instruct him to prepare, sign, and serve a notice of charges and the statement of charges. If one or more of the charges in the proposed statement of charges was satisfactorily answered by the broker in the preliminary proceedings, the Assistant Commissioner will instruct the port director to omit those charges from the statement of charges.

§ 111.62 Contents of notice of charges.

The notice of charges must inform the broker that:

(a) Sections 554 and 558, Title 5, United States Code, are applicable to the formal proceedings;

(b) The broker may be represented by counsel;

(c) The broker will have the right to cross-examine witnesses;

(d) Within 10 calendar days after service of this notice, the broker will be notified of the time and place of a hearing on the charges; and

(e) Prior to the hearing on the charges, the broker may file, in duplicate with the port director, a verified answer to the charges.

§ 111.63 Service of notice and statement of charges.

(a) *Individual.* The port director will serve the notice of charges and the statement of charges against an individual broker as follows:

(1) By delivery to the broker personally;

(2) By certified mail addressed to the broker, with demand for a return card signed solely by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the port director; or

(4) If attempts to serve the broker by the methods prescribed in paragraphs (a)(1) through (a)(3) of this section are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(b) *Partnership, association or corporation.* The port director will serve the notice of charges and the statement of charges against a partnership, association, or corporation broker as follows:

(1) By delivery to any member of the partnership personally or to any officer of the association or corporation personally;

(2) By certified mail addressed to any member of the partnership or to any officer of the association or corporation, with demand for a return card signed solely by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the port director; or

(4) If attempts to serve the broker by the methods prescribed in paragraphs (b)(1) through (b)(3) of this section are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(c) *Certified mail; evidence of service.* When the service under this section is by certified mail, the receipt of the return card duly signed will be satisfactory evidence of service.

§ 111.64 Service of notice of hearing and other papers.

(a) *Notice of hearing.* After service of the notice and statement of charges, the port director will serve upon the broker and his attorney if known, by one of the methods set forth in § 111.63 or by ordinary mail, a written notice of the time and place of the hearing. The hearing will be scheduled to take place within 30 calendar days after service of the notice of hearing.

(b) *Other papers.* Other papers relating to the hearing may be served by one of the methods set forth in § 111.63 or by ordinary mail or upon the broker's attorney.

§ 111.65 Extension of time for hearing.

If the broker or his attorney requests in writing a delay in the hearing for good cause, the hearing officer designated pursuant to § 111.67(a) may reschedule the hearing and in that case will notify the broker or his attorney in writing of the extension and the new time for the hearing.

§ 111.66 Failure to appear.

If the broker or his attorney fails to appear for a scheduled hearing, the hearing officer designated pursuant to § 111.67(a) will proceed with the hearing as scheduled and will hear evidence submitted by the parties. The provisions of this part will apply as though the broker were present, and the Secretary of the Treasury may issue an order of suspension of the license or permit for a specified period of time or revocation of the license or permit, or assessment of a monetary penalty in lieu of suspension or revocation, in accordance with § 111.74 if he finds that action to be in order.

§ 111.67 Hearing.

(a) *Hearing officer.* The hearing officer must be an administrative law judge appointed pursuant to 5 U.S.C. 3105.

(b) *Rights of the broker.* The broker or his attorney will have the right to examine all exhibits offered at the hearing and will have the right to cross-examine witnesses and to present witnesses who will be subject to cross-examination by the Government representatives.

(c) *Interrogatories.* Upon the written request of either party, the hearing officer may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in customs matters. The other party to the hearing will be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, will be permitted to cross-examine the witness. The deposition will become part of the hearing record.

(d) *Transcript of record.* The port director will provide a competent reporter to make a record of the hearing. When the record of the hearing has been transcribed by the reporter, the port director will deliver a copy of the transcript of record to the hearing officer, the broker and the Government representative without charge.

(e) *Government representatives.* The Assistant Commissioner will designate one or more persons to represent the Government at the hearing.

§ 111.68 Proposed findings and conclusions.

The hearing officer will allow the parties a reasonable period of time after delivery of the transcript of record in which to submit proposed findings and conclusions and supporting reasons for the findings as contemplated by 5 U.S.C. 557(c).

§ 111.69 Recommended decision by hearing officer.

After review of the proposed findings and conclusions submitted by the parties pursuant to § 111.68, the hearing officer will make his recommended decision in the case and certify the entire record to the Secretary of the Treasury. The hearing officer's recommended decision must conform to the requirements of 5 U.S.C. 557.

§ 111.70 Additional submissions.

Upon receipt of the record, the Secretary of the Treasury will afford the parties a reasonable opportunity to make any additional submissions that are permitted under 5 U.S.C. 557(c) or otherwise required by the circumstances of the case.

§ 111.71 Immaterial mistakes.

The Secretary of the Treasury will disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place, or ownership of any property, any other immaterial mistake in the statement of charges, or a failure to prove immaterial allegations in the description of the broker's conduct.

§ 111.72 Dismissal subject to new proceedings.

If the Secretary of the Treasury finds that the evidence produced at the hearing indicates that a proper disposition of the case cannot be made on the basis of the charges preferred, he may instruct the port director to serve appropriate charges as a basis for new proceedings to be conducted in accordance with the procedures set forth in this subpart.

§ 111.73 [Reserved]

§ 111.74 Decision and notice of suspension or revocation or monetary penalty.

If the Secretary of the Treasury finds that one or more of the charges in the statement of charges is not sufficiently proved, he may base a suspension, revocation, or monetary penalty action on any remaining charges if the facts alleged in the charges are established by the evidence. If the Secretary of the Treasury, in the exercise of his discretion and based solely on the record, issues an order suspending a broker's license or permit for a specified period of time or revoking a broker's license or permit or, except in a case described in § 111.53(b)(3), assessing a monetary penalty in lieu of suspension or revocation, the Assistant Commissioner will promptly provide written notification of the order to the broker and, unless an appeal from the Secretary's order is filed by the broker (see § 111.75), the Assistant Commissioner will publish a notice of the suspension or revocation, or the assessment of a monetary penalty, in the **Federal Register** and in the Customs Bulletin. If no appeal from the Secretary's order is filed, an order of suspension or revocation or assessment of a monetary penalty will become effective 60 calendar days after issuance of written notification of the order unless the Secretary finds that a more immediate effective date is in the national or public interest. If a monetary penalty is assessed and no appeal from the Secretary's order is filed, payment of the penalty must be tendered within 60 calendar days after the effective date of the order, and, if payment is not tendered within that 60-day period, the license or permit of the broker will immediately be suspended until payment is made.

§ 111.75 Appeal from the Secretary's decision.

An appeal from the order of the Secretary of the Treasury suspending or revoking a license or permit, or assessing a monetary penalty, may be filed by the broker in the Court of International Trade as provided in section 641(e), Tariff Act of 1930, as amended (19 U.S.C. 1641(e)). The commencement of those proceedings will, unless specifically ordered by the Court, operate as a stay of the Secretary's order.

§ 111.76 Reopening the case.

(a) *Grounds for reopening.* Provided that no appeal is filed in accordance with § 111.75, a person whose license or permit has been suspended or revoked, or against whom a monetary penalty has been assessed in lieu of suspension or revocation, may make written application in duplicate to the Assistant Commissioner to reopen the case and have the order of suspension or revocation or monetary penalty assessment set aside or modified on the ground that new evidence has been discovered or on the ground that

important evidence is now available which could not be produced at the original hearing by the exercise of due diligence. The application must set forth the precise character of the evidence to be relied upon and must state the reasons why the applicant was unable to produce it when the original charges were heard.

(b) *Procedure.* The Assistant Commissioner will forward the application, together with his recommendation for action thereon, to the Secretary of the Treasury. The Secretary may grant or deny the application to reopen the case and may order the taking of additional testimony before the Assistant Commissioner. The Assistant Commissioner will notify the applicant of the Secretary's decision. If the Secretary grants the application and orders a hearing, the Assistant Commissioner will set a time and place for the hearing and give due written notice of the hearing to the applicant. The procedures governing the new hearing and recommended decision of the hearing officer will be the same as those governing the original proceeding. The original order of the Secretary will remain in effect pending conclusion of the new proceedings and issuance of a new order under § 111.77.

§ 111.77 Notice of vacated or modified order.

If, pursuant to § 111.76 or for any other reason, the Secretary of the Treasury issues an order vacating or modifying an earlier order under § 111.74 suspending or revoking a broker's license or permit, or assessing a monetary penalty, the Assistant Commissioner will notify the broker in writing and will publish a notice of the new order in the **Federal Register** and in the Customs Bulletin.

§ 111.78 Reprimands.

If a broker fails to observe and fulfill the duties and responsibilities of a broker as set forth in this part but that failure is not sufficiently serious to warrant initiation of suspension or revocation proceedings, Headquarters, or the port director with the approval of Headquarters, may serve the broker with a written reprimand. The reprimand, and the facts on which it is based, may be considered in connection with any future disciplinary proceeding that may be instituted against the broker in question.

§ 111.79 Employment of broker who has lost license.

Five years after the revocation or cancellation "with prejudice" of a license, the ex-broker may petition the Assistant Commissioner for authorization to assist, or accept employment with, a broker. The petition will not be approved unless the Assistant Commissioner is satisfied that the petitioner has refrained from all activities described in § 111.42 and that the petitioner's conduct has been exemplary during the period of disability. The Assistant Commissioner will also give consideration to the gravity of the misconduct which gave rise to the petitioner's disability. In any case in which the misconduct led to pecuniary loss to the Government or to any person, the Assistant Commissioner will also take into account whether the petitioner has made restitution of that loss.

§ 111.80 [Reserved]

§ 111.81 Settlement and compromise.

The Assistant Commissioner, with the approval of the Secretary of the Treasury, may settle and compromise any disciplinary proceeding which has been instituted under this subpart according to the terms and conditions agreed to by the parties including, but not limited to, the assessment of a monetary penalty in lieu of any proposed suspension or revocation of a broker's license or permit.

Subpart E—Monetary Penalty and Payment of Fees

§ 111.91 Grounds for imposition of a monetary penalty; maximum penalty.

Customs may assess a monetary penalty or penalties as follows:

(a) In the case of a broker, in an amount not to exceed an aggregate of $30,000 for one or more of the reasons set forth in §§ 111.53 (a) through (f) other than those listed in § 111.53(b)(3), and provided that no license or permit suspension or revocation proceeding has been instituted against the broker under subpart D of this part for any of the same reasons; or

(b) In the case of a person who is not a broker, in an amount not to exceed $10,000 for each transaction or violation referred to in § 111.4 and in an amount not to exceed an aggregate of $30,000 for all those transactions or violations.

§ 111.92 Notice of monetary penalty.

If assessment of a monetary penalty under § 111.91 is contemplated, Customs will issue a written notice which advises the broker or other person of the allegations or complaints against him and explains that the broker or other person has a right to respond to the allegations or complaints in writing within 30 calendar days of the date of mailing of the notice. The port director has discretion to provide additional time for good cause.

§ 111.93 Petition for relief from monetary penalty.

A broker or other person who receives a notice issued under § 111.92 may file a petition for relief from the monetary penalty in accordance with the procedures set forth in part 171 of this chapter.

§ 111.94 Decision on monetary penalty.

Customs will follow the procedures set forth in part 171 of this chapter in considering any petition for relief filed under § 111.93. After Customs has considered the allegations or complaints set forth in the notice issued under § 111.92 and any timely response made to the notice by the broker or other person, the Fines, Penalties, and Forfeitures Officer will issue a written decision to the broker or other person setting forth the final determination and the findings of fact and conclusions of law on which the determination is based. If the final determination is that the broker or other person is liable for a monetary penalty, the broker or other person must pay the monetary penalty, or make arrangements for payment of the monetary penalty, within 60 calendar days of the date of the written decision. If payment or arrangements for payment are not timely made, Customs will refer the matter to the Department of Justice for institution of appropriate judicial proceedings.

§ 111.95 Supplemental petition for relief from monetary penalty.

A decision of the Fines, Penalties, and Forfeitures Officer with regard to any petition filed in accordance with part 171 of this chapter may be the subject of a supplemental petition for relief. Any supplemental petition also must be filed in accordance with the provisions of part 171 of this chapter.

§ 111.96 Fees.

(a) *License fee; examination fee; fingerprint fee.* Each applicant for a broker's license pursuant to § 111.12 must pay a fee of $200 to defray the costs to Customs in processing the application. Each individual who intends to take the written examination provided for in § 111.13 must pay a $200 examination fee before taking the examination. An individual who submits an application for a license must also pay a fingerprint check and processing fee; the port director will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks and the Customs fingerprint processing fee, the total of which must be paid to Customs

before further processing of the application will occur.

(b) *Permit fee.* Each application for a permit pursuant to § 111.19, including an application for reinstatement of a permit that was revoked by operation of law or otherwise, must be accompanied by a fee of $100 to defray the costs of processing the application.

(c) *User fee.* Payment of an annual user fee of $125 is required for each permit, including a national permit under § 111.19(f), granted to an individual, partnership, association, or corporate broker. The user fee is payable when an initial district permit is issued concurrently with a license under § 111.19(a), or upon filing the application for the permit under § 111.19 (b) or (f), and for each subsequent calendar year at the port through which the broker was granted the permit or at the port referred to in § 111.19(f)(4) in the case of a national permit. The user fee must be paid by the due date as published annually in the **Federal Register**, and must be remitted in accordance with the procedures set forth in § 24.22(i) of this chapter. When a broker submits an application for a permit or is issued an initial district permit under § 111.19, the full $125 user fee must be remitted with the application or when the initial district permit is issued, regardless of the point during the calendar year at which the application is submitted or the initial district permit is issued. If a broker fails to pay the annual user fee by the published due date, the appropriate port director will notify the broker in writing of the failure to pay and will revoke the permit to operate. The notice will constitute revocation of the permit.

(d) *Status report fee.* The status report required under § 111.30(d) must be accompanied by a fee of $100 to defray the costs of administering the reporting requirement.

(e) *Method of payment.* All fees prescribed under this section must be paid by check or money order payable to the United States Customs Service.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

4. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

5. In § 178.2, the table is amended by revising the listing for Part 111 to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
* * * * * * *		
Part 111	Issuance of customs broker licenses and permits, monitoring performance of brokers in conducting customs business, and institution of disciplinary action against brokers.	1515–0076 and 1515–0100.
* * * * * * *		

Raymond W. Kelly,
Commissioner of Customs.
Approved: March 6, 2000.
John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 00–6175 Filed 3–14–00; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Milbemycin Oxime Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The NADA provides for veterinary prescription use of milbemycin oxime solution to treat ear mite infestations in cats and kittens 8 weeks of age and older.

DATES: This rule is effective March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., P.O. Box 18300, Greensboro, NC 27419–8300, filed NADA 141–163 that provides for veterinary prescription use of MILBEMITE™ Otic Solution (0.1 percent milbemycin oxime) for the treatment of ear mite (*Otodectes cynotis*) infestations in cats and kittens 8 weeks of age and older. Effectiveness is maintained throughout the life cycle of the ear mite. The NADA provides for use of one 0.25-milliliter tube per ear as a single treatment. NADA 141–163 is approved as of February 2, 2000, and the regulations are amended in 21 CFR part 524 by adding new § 524.1446 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for non-food-producing animals qualifies for 3 years of marketing exclusivity beginning February 2, 2000, because the application contains substantial evidence of effectiveness of the drug involved or any studies of animal safety required for approval of the application and conducted or sponsored by the applicant.

FDA has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 524.1446 is added to read as follows:

§ 524.1446 Milbemycin oxime solution.

(a) *Specifications.* Each tube contains 0.25 milliliter of a 0.1 percent solution of milbemycin oxime.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* One tube administered topically into each external ear canal as a single treatment.

(2) *Indications for use.* For the treatment of ear mite (*Otodectes cynotis*) infestations in cats and kittens 8 weeks of age and older. Effectiveness is maintained throughout the life cycle of the ear mite.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: March 2, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–6284 Filed 3–14–00; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in April 2000. Interest assumptions are also published on the PBGC's web site (http://www.pbgc.gov).

EFFECTIVE DATE: April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during April 2000.

For annuity benefits, the interest assumptions will be 7.10 percent for the first 25 years following the valuation date and 6.25 percent thereafter. The annuity interest assumptions are unchanged from those in effect for March 2000.

For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.25 percent for the period during which a benefit is in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The lump sum interest assumptions are unchanged from those in effect for March 2000.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during April 2000, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 78 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*	*	*	*		
April 2000	.0710	1–25	.0625	>25	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of y—n_1 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of y—n_1—n_2 years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *	*	*	*	*	*	*	*	*
78	4–1–00	5–1–00	5.25	4.50	4.00	4.00	7	8

Issued in Washington, DC, on this 3rd day of March 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–6312 Filed 3–14–00; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 668

Report On Use of Employees of Non-Federal Entities to Provide Services to Department of the Army

AGENCY: Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), and Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology, Department of the Army, DoD.

ACTION: Interim rule.

SUMMARY: The Department of the Army requests agency and public comments on its implementation of the recently enacted Section 343 of the FY 2000 Department of Defense Authorization Act. Section 343 directs the Department of Defense to provide to Congress not later than March 1, 2001, a report summarizing the number of direct labor and indirect labor work year equivalents performed by contractors providing services to the Department of Defense in the prior fiscal year (FY 2000), categorized by federal supply class or service code, appropriation supporting the services and major organizational element of the Department procuring the services. Since the Fiscal Year to be reported upon to Congress has already commenced, it is critical that this guidance be issued effective immediately to avoid extraordinary efforts by Government and contractor personnel attempting to collect significant reliable data retroactively.

Section 2461(g) of title 10, United States Code, requires DoD to provide an annual report to Congress on the percentage of commercial functions performed by contractors as compared to in-house employees. Section 343 provides the data collection framework for the Army to improve the accuracy and credibility of its reporting under section 2461(g) of title 10.

DATES: The effective date for this interim rule is March 15, 2000. Written comments on this interim rule must be submitted not later than May 15, 2000 to ensure consideration.

ADDRESSES: Comments concerning this interim rule should be submitted to the Office of the Assistant Secretary of the Army for Manpower & Reserve Affairs (ASA (M&RA), Attention SAMR–FMMR, Rm. 2A672, Washington, DC 20310, or contact the following persons by e-mail or phone as indicated below.

FOR FURTHER INFORMATION CONTACT: Dr. John Anderson, SAMR-FMMR, Phone 703–614–8247, email: *John.Anderson@hqda.army.mil;* or John R. Conklin, SAAL–ZP, e-mail: John.Conklin@sarda.army.mil.

SUPPLEMENTARY INFORMATION:

1. Background: This interim rule implements section 343 of the FY 2000 Department of Defense Authorization Act, Public Law 106–65 and 10 U.S.C. 2461(g). In February 1997, the Assistant Secretary of the Army (Manpower and Reserve Affairs) included the reporting of contractor manpower as a milestone required to remedy a finding by the Secretary of Defense of material weakness in manpower requirements determination within the Army under the Federal Manager's Financial Integrity Act.

2. From May to December, 1997, the Assistant Secretary of the Army (Manpower and Reserve Affairs) and the Assistant Secretary of the Army (Research, Development, and Acquisition) participated in a joint study to identify and estimate the work-year equivalents performed by contractors providing services to the Department of the Army during fiscal year 1996. The study used existing contract reporting systems, manually accessible data, and some queries to contractors, to identify expenditures on service contracts by Federal Supply Class (FSC) Service code function, organizational name and unit identification code of the Army element contracting for the services, and the

appropriations from which the contracted services were funded.

3. The study sampled approximately 12.8 percent of the service contracts awarded in fiscal year 1996 for the purposes of obtaining direct and indirect man-hours, which were used to develop a planning factor for converting contract expenditures for specific groupings of FSC Service code functions into work-year equivalents for those functions. A commitment was made to not release the information provided by contractors for use in any governmental audits of the contractor or any other governmental purpose, since the information was being used solely for the purposes of improving Army manpower requirements planning and the accuracy of the report required by section 2461(g) of title 10. (i.e., the information provided by contractors on a voluntary basis was treated as proprietary information).

4. The contractor manpower equivalent model developed from this study was presented to the Chief of Staff of the Army in July 1998, and a decision was made to use this information in the Total Army Analysis, the Army's planning process for determining and prioritizing its manpower requirements for its force structure and infrastructure. The estimated level of contract support of an Army organization within a function was used as an offset for purposes of allocating in-house resources to meet that organization's requirements. The estimated level of contract support of an Army organization also provided, for planning purposes, a gross estimate of the organization's total capabilities in various war-fighting and non-war-fighting scenarios.

5. The contractor work year equivalents estimated from this model were also used to assist in establishing equitable competition targets among different Army organizations for purposes of implementing Defense Reform Initiative Directive 20, "Review of Inherently Governmental Functions". Army organizations were credited with the estimated contractor support work-year equivalents for purposes of determining the percentage of the in-house workforce in that organization that would be potentially subject to competition relative to the same function in other Army organizations.

In January 1998 the Army compared Army contractor expenditures reflected in the Defense budget with the level of contract manpower used as the basis for estimating the contractor percentage required by section 2461(g) of title 10. The fiscal year 1997 section 2461(g) report for the Army reported 44,000 contract manpower equivalents (CMEs), as compared with over $21 billion in service contracts awarded by Army contracting offices during the same period. While recognizing that a small percentage of those services may not have been reportable under the CME report, the Army leadership determined to use the more comprehensive and credible Contractor Manpower Equivalent model developed for its Total Army Analysis as a basis for the FY 1998 2461(g) report as an interim measure until a more accurate data collection methodology was established. (As a result, the Army reported 269,000 CMEs in its fiscal year 1998 report, as compared to $24 billion service contract expenditures, thereby reducing the questionable disparity between contract expenditures and CMEs reported in the fiscal year 1997 report.)

6. Implementation: It has been determined, after a review of numerous alternatives and Army lessons-learned, that the only way to collect the required information economically, in a timely way, accurately and credibly, with the least burden on the public and expense to the Government, is to request contemporaneous submission directly from affected contractors. Accordingly, the Army will direct Army contracting officers to include in new solicitations and contracts, and any existing contract bilaterally modified, a requirement that contractors providing services to the Army identify, itemize and report their direct labor hours of support and provide a related composite indirect labor rate so that we might estimate the relevant indirect hours. This submission is expected to be coincident with requests for payment (e.g., contract vouchers, invoices, or requests for progress payments). The information obtained will be transmitted directly to the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs). For security and convenience, a secure web site will be established for this purpose. This reporting requirement is not viewed as violating the objectives of performance based contracting since the reported labor hours are neither being requested for, nor viewed as a basis for, payment under the contract, but rather, are to be provided to meet Congressional reporting requirements and for internal Governmental manpower planning and management uses only.

7. The reporting requirement has been tailored as narrowly as possible to comply with the law, allow the acquisition of useful data, and minimize any undue workload on respondents. It will be applied prospectively (i.e., to solicitations issued and contracts awarded (or modified, in the case of existing contracts) after the effective date of this interim rule); for reporting contemporaneous with normal billings by the contractor (and consistent with contractor accrual and allocation practices and systems), so as to minimize the impact on contractor operations and administrative costs, and to allow uniform reporting. However respondents under preexisting contracts modified during this period, will be asked to report from October 1, 1999, or the date the contract action began, whichever is later.

8. Reporting will not be required if a contractor does not have an internal system for aggregating billable hours in the direct and indirect pools and does not otherwise have to provide this information to the Government. We believe that a global requirement to identify, collect, validate and report this information after the fact (e.g., at the end of the fiscal year) would necessitate burdensome additional record keeping and administrative efforts by contractors and Government personnel and would significantly degrade the quality and usefulness of the information collected. On the other hand, it is reasonable and not an undue burden on a contractor to provide labor hour information at the time that the contractor has readily available the labor hour records used, as a basis for meeting its payroll or charging the government for its services (or for tax purposes, or cost allocation in accordance with Generally Accepted Accounting Principles and practices).

9. Consistent with the above, the reporting requirement will not be mandated under the following categories of contracts and situations:

a. Contracts awarded under the authority of Part 12 of the Federal Acquisition Regulations (FAR).

b. Contracts valued at $100,000 or below.

c. When a contractor does not have an internal system for aggregating billable hours in the direct and indirect pools, or an internal payroll accounting system, and does not otherwise have to provide this information to the Government.

d. Contracts awarded by the Army contracting office solely as a contracting agent in support of non-Army customer(s). (We are interested in labor hour data in support of Army at this time. (If the name and address of the organization receiving the benefit of the services is an Army organization, then the labor hour data is reportable as an Army requirement, even though the appropriations funding all or part of the requirement are not Army appropriations).

10. The intent of the reporting requirement is to obtain direct and indirect labor hour data for services in support of the Army under contracts not covered by the above exclusions.

11. The labor hour information provided will be protected as company proprietary data (when associated with contract number and contractor name) and will be required at a level of detail not greater than required for the intended use. The reports will include: the Federal Supply Class or Service Code pertinent to the services reported (this can be identified by the respondent from the lists found in the Procurement Coding Manual on the internet at *http://web1.whs.osd.mil/peidhome/guide/mn02/mn02.htm*); the complete appropriations data for the appropriations funding the line item(s)/contract/order; the name, complete address and location of the Army contracting office; the name and address of the Army organization receiving the benefit of the services (*i.e.*, the most proximate Army customer reviewing and receiving work); the time period covered by the report; and the contract/order number and the associated (estimated) value. Information provided should be consistent with the contract terms and requirements and with other data provided to the Government by the reporting contractor (*e.g.*, vouchers, invoices, requests for progress payment, or other reports to the Army).

Procedural Requirements

A. Information Collection Requirements

This interim rule contains collection of information requirements. Information collection is required to provide documentation of various support services from contractors in compliance with Section 343 of Public Law 106–65 (FY 2000 National Defense Authorization Act), and Section 2461(g) of Title 10 United States Code (10 U.S.C. 2461(g)). The Paperwork Reduction Act of 1995, 44 U.S.C. 3507 (d) and 5 CFR 1320.11, require Federal agencies to submit collections of information contained in rules to the Office of Management and Budget (OMB) for review. To request more details pertaining to the collection of information requirements or to obtain a copy of the associated collection instruments, please write to the above address or call Department of the Army Reports Clearance Officer at (703) 614–0454.

Title: Report required by National Defense Authorization Act for Fiscal Year 2000, Section 343; and to comply fully with the reporting requirements at 10 U.S.C. 2461(g).

Needs and Uses: Section 343 of the FY2000 National Defense Authorization Act; Section 2461(g) of Title 10; and the Total Army Analysis. Army requires contract manpower data to remedy its declared material weakness in manpower requirements determinations and to improve the accuracy of related reports to Congress. Data will be used in the Total Army Analysis force structure planning, Functional Area Assessments, and to support HQDA decision-making. Data will also provide a more complete picture of organizations, functions and capabilities in war fighting and non-war fighting scenarios.

Affected Public: Primarily business or other for profit.

Annual Burden Hours: 33,928.

Number of Respondents: 7,400.

Responses Per Respondent: 55.24.

Average Per Respondent: .083 hours.

Frequency: Contemporaneous with submission of requests for payment (vouchers, invoices or requests for progress payment), usually monthly (dependent on contractor's internal systems for allocating costs and contract requirements).

B. Regulatory Flexibility Act

The rule does not require the preparation of a regulatory flexibility analysis since it is not expected to have a significant economic impact on a substantial number of small entities (i.e. small and small disadvantaged businesses).

C. Unfunded Mandates Act

The rule does not impose an enforceable duty among small governments (i.e. States and local governments).

D. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the reporting provisions of this rule have been approved by the Office of Management and Budget (OMB) and assigned OMB control Number 0702–0112, with an expiration date of August 31, 2000.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act, the Office of the Assistant Secretary of the Army for Manpower & Reserve Affairs (ASA (M&RA)) announces a public information collection requirement as described in this rule and seeks public comment on the provisions thereof. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimates of burden of the information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments on these requirements should be submitted to the Office of the Assistant Secretary of the Army for Manpower & Reserve Affairs (ASA (M&RA)), Attention: SAMR–FMMR, Rm. 2A672, Washington, DC 20310–0111. When the Department of the Army promulgates the Final Rule, the Department will also respond to comments or the public regarding the information collection provision requirements of the rule.

E. Executive Order 12866 (Regulatory Planning and Review

This is not a significant regulatory action in that it is not likely to result in a rule that will have an annual effect on the economy of $100 million or more or adversely affect productivity, the environment, public health or safety.

F. Executive Order 13132 (Federalism)

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will have little or no direct effect on States or local governments.

G. Submission to Congress and the General Accounting Office (GAO)

Pursuant to 5 U.S.C., Chapter 8, the rule will be forwarded to both Houses of Congress and the GAO in the final rule announcement together with the GAO prescribed special reporting form for this purpose.

List of Subjects in 32 CFR Part 668

Government contracts, Reporting and recordkeeping requirements.

Accordingly, Subchapter L consisting of part 668 is added to 32 CFR chapter V to read as follows:

SUBCHAPTER L—ARMY CONTRACTING

PART 668—CONTRACTOR MANHOUR REPORTING REQUIREMENT

Sec.
668.1 General.
668.2 Contract administration data.

Authority: Sec. 343 of Pub. L. 106–65, 113 Stat. 569 (10 U.S.C. 2461(g)).

§ 668.1 General.

(a) *Purpose.* This part sets forth policies and procedures for reporting

requirements on labor work year equivalents performed by contractors in support of the Army.

(b) *Applicability.* This requirement applies to all Department of the Army agencies, commands, and activities.

(1) The following applies to all Army solicitations issued and contracts awarded, and to all bilateral modifications of existing Army contracts, after March 15, 2000 except the following:

(i) Contracts awarded under the authority of Part 12 of the Federal Acquisition Regulation (48 CFR part 12).

(ii) Contracts valued at $100,000 or below.

(iii) When the contractor does not have an internal system for aggregating billable hours in the direct and indirect pools, or an internal payroll accounting system, and does not otherwise have to provide this information to the Government.

(iv) Contracts awarded by the Army contracting office solely as a contracting agent in support of non-Army customer(s).

(2) We are interested in labor hour data in support of Army at this time. For this purpose, if the name and address of the organization receiving the benefit of the services is an Army organization, then the labor hour data is reportable as an Army requirement, even though the appropriations funding all or part of the requirement are not Army appropriations.

§ 668.2 Contract administration data.

The requirement in this section will be cited in Part I—The Schedule, in Section G, Contract Administration Data, or its equivalent, in solicitations or contracts not employing the standard contract format:

(a) Report on Use of Employees of Non-Federal Entities to Provide Services to Department of the Army. The contractor is required to submit direct labor hours and a relevant composite indirect labor rate associated with the reporting period (generally contemporaneous with submission of a request for payment (e.g., voucher, invoice or request for progress payment)). The composite indirect labor rate will be used to grossly calculate the number of indirect hours associated with services reported in each period.

(b) The information submitted will be treated as contractor proprietary information when associated with a contractor name or contract number. The Assistant Secretary of the Army (Manpower and Reserve Affairs) will oversee the aggregation of this information and will exclude contract number and contractor name from any use of this data. The planning factor(s) derived from this data by ASA (M&RA) and its contract support (if any) will be used solely for manpower planning purposes and will not be applied to specific acquisitions. Detailed data by contract number and name will not be released to any other governmental entity other than ASA (M&RA) and will only be used for the stated purposes (reporting and planning).

(c) Reporting format: The information required should be reported electronically to the M&RA data collection point. The following information, per contract and/or task/delivery order, will be needed to complete all of the data fields under this data collection program:

BILLING CODE 3710-08-P

CONTRACTOR NAME AND ADDRESS _____.
CONTRACT NUMBER (INCLUDE TASK/DELIVERY ORDER NUMBER) _____.
TOTAL ESTIMATED CONTRACT OR TASK/DELIVERY ORDER VALUE _____.
DIRECT LABOR HOURS EXPENDED DURING REPORTING PERIOD: (ALSO INCLUDE ESTIMATED VALUE, INCLUDING ALL LOADINGS (needed for final data reconciliation by Army)) _____ Est'd. Value _____.
CONTRACT LINE ITEM NUMBER (S) (CLIN) (S) _____ (as applicable).
FEDERAL SUPPLY CLASS OR SERVICE CODE relevant to the services reported (if you do not have this information, it can be found at: http://web1.whs.osd.mil/peidhome/guide/mn02/SECT1.HTM; The entire Procurement Coding Manual is at: http://web1.whs.osd.mil/peidhome/guide/mn02/mn02.htm; select the most appropriate code for the predominant services reported per contract or order, and CLIN when applicable). If you are supporting an R&D organization, as opposed to performing R&D, please use the "Other Services and Construction Codes". Please do not use the "Supplies and Equipment Codes" but find the closest fit in Part B, "Other Services and Construction".
ARMY/DOD/PURCHASE REQUEST/PROCUREMENT REQUISITION NUMBER/PROCUREMENT WORK DIRECTIVE NUMBER (PR&C, PWD, etc.) (from Contract or Task/Delivery Order award document _____.
APPROPRIATION DATA PERTAINING TO THE SPECIFIC CONTRACT OR TASK/DELIVERY ORDER (if multiple appropriation, by CLIN, when applicable) _____ and ESTIMATED VALUE FOR EACH APPROPRIATION _____ (needed for final data reconciliation with Defense Finance and Accounting System data).
PERIOD FOR WHICH THIS DATA PERTAINS (e.g., from 01 Nov 1999 to 30 Nov 1999).
FROM: Mo/Day/Year
TO: Mo/Day/Year
[NOTE: For preexisting contracts, the first report should start 01 Oct 1999, or start of the contract, whichever is later]
RELEVANT COMPOSITE INDIRECT LABOR RATES FOR THE SERVICES AND PERIOD REPORTED (One composite indirect labor rate will be used to estimate the number of indirect hours and a second composite indirect labor rate will be used to estimate the value of indirect hours (needed for data quality control and rationalization)
NAME AND ADDRESS OF ARMY ORGANIZATION SUPPORTED (immediate Army customer receiving/reviewing work).
NAME AND ADDRESS OF CONTRACTING OFFICE (office that issued the Contract or Task/Delivery Order) _____.
CONTRACTOR POC, PHONE NUMBER, E-MAIL ADDRESS (will only be used to contact the respondent for clarification regarding data submission) _____.

BILLING CODE 3710-08-C

(d) The information required shall be reported electronically to the ASA (M&RA) data collection point at the following secure web site drawing on the relevant data elements cited in paragraph (c) of this section: http://contractormanpower.us.army.mil

Robert Bartholomew III,

Acting Deputy Assistant Secretary (Force Management, Manpower and Resources).

Kenneth J. Oscar,

Deputy Assistant Secretary of the Army (Procurement).

[FR Doc. 00–6336 Filed 3–14–00; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 410

[HCFA–1813–F]

RIN 0938–AJ87

Medicare Program; Coverage of, and Payment for, Paramedic Intercept Ambulance Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to public comments received on a final rule with comment period published on January 25, 1999 that implemented section 4531(c) of the Balanced Budget Act of 1997 concerning Medicare coverage of, and payment for, paramedic intercept ambulance services in rural communities. It also implements section 412 of the Medicare, Medicaid, and State Children's Health Insurance Programs Balanced Budget Refinement Act of 1999 by adding a new definition of a rural area.

EFFECTIVE DATE: These regulations are effective on April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Niemann, (410) 786–4569.

SUPPLEMENTARY INFORMATION:

I. Background

In general, Medicare payment for ambulance services provided in accordance with section 1861(s)(7) of the Social Security Act (the Act) may be made only to the ambulance supplier furnishing the ambulance transport. Paramedic intercept services are advanced life support (ALS) services delivered by paramedics who furnish services separately from the agency that furnishes the ambulance transport. Except in the very limited circumstances described below, Medicare program payment for these services may be made only to the ambulance company furnishing the ambulance transport. Paramedic intercept services are most often furnished for an emergency ambulance transport in which a local volunteer ambulance that can furnish only basic life support (BLS) services is dispatched to transport a beneficiary. If the beneficiary needs ALS services (such as EKG monitoring, chest decompression, or IV therapy), another agency (typically a hospital or proprietary emergency medical service) dispatches a paramedic to meet the BLS ambulance at the scene or enroute to the hospital. The ALS paramedics then furnish the ALS services to the beneficiary. This tiered approach to life-saving may be cost effective in some areas because most volunteer ambulances do not charge for their services, and one paramedic service can cover many communities.

A. Balanced Budget Act of 1997

Section 4531(c) of the Balanced Budget Act of 1997 (BBA) provided that the Secretary could include limited coverage of these intercept services furnished in a rural area: that is, payment may be made directly to the agency furnishing the paramedic service in a rural area. The services, however, are covered only if they are furnished under contract with one or more volunteer ambulance services and they are medically necessary based on the condition of the beneficiary receiving the ambulance service. In addition, by law, the volunteer ambulance service involved must meet all of the following requirements:

- Furnish only BLS services at the time of the intercept.
- Be prohibited by State law from billing for any service.

Finally, the entity furnishing the ALS paramedic intercept service must meet the following requirements:

- Be certified as qualified to furnish the ambulance services under the Medicare program (including compliance with State laws and regulations).
- Bill all recipients who receive ALS paramedic intercept services from the entity, regardless of whether or not those recipients are Medicare beneficiaries.

B. The Final Rule with Comment Period

On January 25, 1999, we published a final rule with comment period in the **Federal Register** (64 FR 3637), which, in part, revised 42 CFR 410.40 to implement section 4531(c) of the BBA. In implementing the law, we defined "rural area" in the same way it is defined for purposes of the Medicare hospital inpatient prospective payment system under section 1886(d)(2)(D) of the Act and in regulations at § 412.62(f). That is, a rural area is any area outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area as defined by the Office of Management and Budget.

Although it provided the Secretary with the authority to cover paramedic intercept services under certain conditions, section 4531(c) of the BBA did not specify what the payment should be for those services. After considering several options, we decided to pay for paramedic intercept services based on the difference between the ALS payment rate and the BLS payment rate for each carrier's geographic pricing locality. We believed that this option balanced considerations for access to care and consistency with current ambulance payment policy. We would be providing the intercept company with a reasonable payment while not providing the same amount of payment that we generally would provide to an ambulance company that furnishes both the transport and the paramedic service. We reasoned that if we paid the difference between the ALS and BLS rates to the intercept company, we would be acknowledging the BLS rate that would have been paid to the volunteer company had it been permitted by the State to bill the program for the transport.

C. Balanced Budget Refinement Act of 1999

Section 412 of the Medicare, Medicaid, and State Children's Health Insurance Programs Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), enacted on November 29, 1999, amends section 4531(c) of the BBA. Section 412 states "* * * an area shall be treated as a rural area if it is designated as a rural area by any law or regulation of the State or if it is located in a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith Modification, originally published in the **Federal Register** on February 27, 1992, (57 FR 6725))." (The Goldsmith Modification is a methodology to identify small towns and rural areas within large metropolitan counties that are isolated from central areas by distance or other features. This Modification has been useful for expanding the eligibility for Federal programs that assist rural populations to include isolated rural populations of large metropolitan counties).

II. Discussion of Public Comments

In response to the final rule with comment period published on January 25, 1999, we received approximately 175 comments from ambulance suppliers and their employees, Medicare beneficiaries, and two members of the Congress. The majority of the comments were identical or nearly identical. The comments and responses are set forth below:

A. Definition of Rural Area

Comment: Commenters stated that using a rural definition based on MSAs and non-MSAs was not appropriate in the context of ambulance services. The commenters pointed out that, in large urban counties, many areas are very rural in nature. Because of the distance between these "rural" areas in an MSA and the nearest appropriate hospital, paramedic intercept services delivered in these rural areas are just as worthy of being recognized as those delivered in a rural county.

The commenters suggested alternatives that included: (1) the area where services are furnished meets either the non-MSA criterion or is located in a rural area as defined by the Census Bureau; (2) setting some other population density criterion; or (3) considering driving distance.

Some commenters stated that the paramedic intercept provision should not be limited to rural areas because this service is needed everywhere, not just in rural areas.

Response: Section 4531(c) of the BBA, as amended by section 412 of the BBRA, specifically limits coverage of this service to rural areas; therefore, we cannot extend the paramedic intercept provision to all areas. In accordance with the provisions of section 412 of the BBRA, we are revising the definition of "rural area" in § 410.40(c)(1). For this purpose, an area will be treated as a rural area if it is designated as a rural area by any law or regulation of the State or if it is located in a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith Modification, originally published in the **Federal Register** on February 27, 1992 (57 FR 6725)).

Comment: Some commenters inquired whether the rural criteria would be applied to the location from which the beneficiary is transported (that is, pick-up point) or the location of the garage for the intercept services vehicle. One commenter suggested that coverage be limited to a service furnished in whole or in part in a rural area regardless of the location of the garage housing the vehicle used by the paramedic.

Response: We are applying the rural area criteria to the location from which the beneficiary is transported, that is, the location of the beneficiary at the time the ambulance or the paramedic intercept encounters the beneficiary, whichever occurs first.

Comment: Some commenters stated that the paramedic intercept provision in the BBA is not fair because it requires that the volunteer BLS ambulance be prohibited by State law from billing anyone for its services and that the only State with such a law is New York. Therefore, no suppliers in States other than New York can qualify for this benefit. The commenters stated that we should implement this provision everywhere in the country equitably or not implement it at all.

Response: The statute clearly defines the conditions under which Medicare may cover paramedic intercept services. Section 4531(c) of the BBA states that the volunteer ambulance service involved in the intercept service must be prohibited by State law from billing for any services. Therefore, we have no discretion to broaden its application. The Congress gave the Secretary authority to implement the paramedic intercept provision only under the conditions set forth in the law. Thus, we believe our implementation of the provision is appropriate.

B. Payment for Paramedic Intercept Services

Comment: We received numerous comments on the payment rate that we established for paramedic intercept services. Some commenters believed that we should pay the cost or reasonable charge of the service. Others suggested we pay the full ALS rate. In addition, commenters suggested we pay for paramedic intercept mileage. Finally, one commenter believed that we should pay on a State-wide basis rather than on an individual carrier locality basis.

Response: Based on the comments, we are revising the payment methodology for paramedic intercept services (§ 405.502). Rather than basing the payment on the ALS rate minus the BLS rate, we will use the ALS rate minus 40 percent of the BLS rate. In the case of ALS intercept services, a full ALS service is being furnished except that the BLS ambulance cannot charge for the portion of the service it furnishes. In particular, the paramedic drives a "flycar" to the scene where the BLS crew is waiting with the beneficiary. (A "flycar" is the special vehicle that a paramedic drives to the BLS ambulance and that contains necessary medical supplies with which a BLS ambulance is not equipped.) The paramedic transfers supplies and equipment from the flycar to the BLS ambulance and treats the beneficiary while the BLS ambulance crew drives the ambulance to the hospital. Because the BLS ambulance service is volunteer and cannot charge, we need to estimate the percentage of the service that is nonreimbursable. We estimate that the amount of the service that is furnished by the BLS volunteer ambulance is the nonlabor portion of the BLS ambulance service, which is about 40 percent of the total BLS payment allowance. The difference between the ALS payment rate and the BLS payment rate that we are paying is our estimate of the reimbursable costs of the equipment and supplies furnished by the paramedic as well as the labor portion that we are attributing to the paramedic intercept services. In addition, for administrative simplicity and equity of payment, we are establishing the rate on a carrier-wide basis, by using the median allowance from all localities within the individual carrier's jurisdiction. We are not paying mileage for the paramedic intercept because the intercept vehicle is not used to transport the beneficiary and Medicare covers only the mileage incurred to transport the beneficiary.

Comment: A commenter stated that the statute requires mandatory assignment of benefits for ambulance services effective January 1, 2000. This mandatory assignment would not allow the ALS intercept provider to recoup its cost from the beneficiary if the payment allowance remained less than the cost of furnishing the service.

Response: The mandatory assignment provision in the statute coincides with implementation of the ambulance fee schedule, which is currently being developed by a negotiated rulemaking committee. Mandatory assignment will not be implemented until payment under the fee schedule is implemented.

We note that, while this final rule sets forth a payment rate for paramedic intercept services in accordance with the authority in section 4531(c) of the BBA, section 4531(b) of the BBA requires the establishment of a fee schedule for Medicare ambulance services by negotiated rulemaking. This negotiated rulemaking process is currently underway and may result in a different payment rate from that provided in this final rule. We will set forth any new payment rate in the proposed rule that includes other provisions for the ambulance fee schedule. The subsequent final rule would supercede the provisions of this paramedic intercept final rule.

Finally, this rule affects only those paramedic intercept services that may be billed, and paid, by Medicare directly to the intercept provider. This rule will not affect any private arrangements between any BLS ambulance suppliers and providers of ALS services.

III. Provisions of the Final Rule for Paramedic Intercept Ambulance Services

Currently, under § 410.40(c), Medicare covers paramedic intercept services if they are furnished in a rural area as defined in § 412.62(f). We are revising § 410.40(c) to state that to qualify for Medicare coverage, paramedic intercept services must be furnished in an area that is designated as a rural area by any law or regulation of the State or that is located in a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith Modification, originally published in the **Federal Register** on Friday, February 27, 1992 (57 FR 6725)).

Additionally, we are revising the methodology for determining the payment rate. We are establishing the payment allowance on a carrier-wide basis, by using the median allowance from all localities within the individual carrier's jurisdiction. We chose the median because it is the most accurate statistical measure of central tendency of an array of numbers. We are also changing the formula. Rather than using the ALS rate minus the BLS rate, we are using the ALS rate minus 40 percent of the BLS rate. We will base Medicare payment for paramedic intercept services on the lower of the actual charge or the ALS rate minus 40 percent of the BLS rate. We are adding these payment rules as new paragraph (i) in § 405.502.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all suppliers of ambulance services are considered to be small entities. Individuals, carriers, and States are not considered to be "small entities."

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As illustrated below, the impact of this regulation does not meet the criteria under Executive Order 12866 to require a regulatory impact analysis; however, the following information, together with information provided elsewhere in this preamble, constitutes a voluntary analysis and meets the requirements of the RFA.

Effective with services furnished on February 24, 1999, Medicare began paying for paramedic intercept services that meet the conditions for coverage. When these services have been furnished to a Medicare beneficiary, the ALS paramedic intercept company has had an incentive to bill the beneficiary for the difference between its full charge for the intercept service and 80 percent of the Medicare payment rate if it believed that the Medicare payment rate was inadequate to cover the cost of the service. Now that the payment rate will be increased, we anticipate that the paramedic intercept suppliers will accept Medicare's rate and bill the beneficiary for only the applicable deductible and coinsurance amounts. This will benefit both the company and the beneficiary.

As we stated in the January 25, 1999 final rule with comment period, we believe that the only State in which the conditions described in section 4531(c) of the BBA exist is New York. After consultations with the ambulance industry in New York and examination of the Medicare program data, we estimate the volume of services that will be covered under this provision in a year will be between 2,000 and 4,000. The current payment rates for these services range from about $88 to about $162 depending upon the location of the service. A payment allowance of approximately $262 per service (the difference between the carrier-wide payment allowance for ALS and 40 percent of the carrier-wide allowance for BLS) in western New York State, and approximately $223 for the rest of the State yields a negligible cost compared to the current rates paid for these services. For paramedic intercept services that meet the conditions for Medicare coverage, we estimate the total cost for the first year of implementation of this rule to be between $200,000 to $400,000. Because the Medicare Part B coinsurance and deductible provisions apply, the program portion of this cost is estimated to be between $160,000 and $320,000. The remainder of the cost will be the responsibility of beneficiaries.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any final rule that may result in an expenditure in any one year by State, local or tribal government, in the aggregate, or by the private sector of $100 million. This final rule will not have an effect on the governments mentioned, and private sector costs will be less than the $100 million threshold.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that it does not significantly affect the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405, subpart E is amended as follows:

1. The authority citation for part 405, subpart E continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 405.502, we are adding a new paragraph (i) to read as follows:

§ 405.502 Criteria for determining reasonable charges.

* * * * *

(i) Paramedic intercept ambulance services. (1) HCFA establishes its

payment allowance on a carrier-wide basis by using the median allowance from all localities within an individual carrier's jurisdiction.

(2) HCFA's payment allowance is equal to the advanced life support rate minus 40 percent of the basic life support rate.

(3) HCFA bases payment on the lower of the actual charge or the amount described in paragraph (i)(1) and (i)(2) of this section.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

B. Part 410 is amended to read as follows:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 410.40, the introductory text to paragraph (c) is republished, and paragraph (c)(1) is revised to read as follows:

§ 410.40 Coverage of ambulance services.

* * * * *

(c) Paramedic ALS intercept services. Paramedic ALS intercept services must meet the following requirements:

(1) Be furnished in an area that is designated as a rural area by any law or regulation of the State or that is located in a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith Modification). (The Goldsmith Modification is a methodology to identify small towns and rural areas within large metropolitan counties that are isolated from central areas by distance or other features.)

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 31, 2000.

Nancy Ann-Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 9, 2000.

Donna E. Shalala

Secretary.

[FR Doc. 00–6420 Filed 3–14–00; 8:45 am]

BILLING CODE 4120–01–P

Proposed Rules

Federal Register
Vol. 65, No. 51
Wednesday, March 15, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–99–02]

Tobacco Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department is proposing to revise the regulations for flue-cured tobacco to more accurately describe tobacco as it presently appears at the marketplace. The revision would add a new provision to the official grade standards for flue-cured tobacco to denote that any lot of baled tobacco that has not been opened for inspection would be graded by the exterior only. Additional bale dimensions and space requirements would be established for uniform marketing display in the warehouses. To take into account the marketing of bales, a revision would also be necessary in the poundage adjustment for a warehouse selling in excess of the sales schedule and for undesignated producer tobacco.

DATES: Comments are due on or before May 15, 2000.

ADDRESSES: Send comments to John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456. Comments will be made available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456; Telephone (202) 205–0567; Fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend regulations under Subpart B, Regulations; Subpart C, Standards, and Subpart G, Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

This proposal was based on a research project conducted by AMS and recommendations made by the industry to revise the regulations to better adapt flue-cured bale inspection into the current marketing system. On January 20, 2000, the Flue-Cured Tobacco Advisory Committee (FCTAC) met and reviewed recommendations from the tobacco industry on the flue-cured bale as an alternative packaging method. The recommendations made by the FCTAC have been included in this proposal for regulatory action. The proposed revision would add a new provision to the official standards for flue-cured tobacco to denote that any lot of baled tobacco that has not been opened for inspection would be graded by the exterior only, establish dimension and spacing requirements for marketing display of bales, and revise the poundage adjustment for a warehouse selling in excess of the sales schedule. An earlier proposed rule concerning bale inspection was issued on May 12, 1999 (64 FR 25462) and was withdrawn on July 22, 1999 (64 FR 39432). The notice of the withdrawal stated that we intended to publish an advance notice of proposed rulemaking to solicit additional input. However, the FCTAC advised that the proposal be published promptly, and we agree that the issues have already been considered within the industry. Therefore, an advance notice of proposed rulemaking would no longer be necessary.

Flue-cured tobacco has been traditionally marketed in a sheet with a maximum weight of 275 pounds. The dimensions of the sheet is 8 feet x 8 feet and is composed of burlap or other synthetic materials. The tobacco is arranged in a circular pattern on the sheet and the corners are tied diagonally for handling purposes. The lot of sheeted tobacco is approximately 4 feet in diameter.

The tobacco industry has experimented with the bale as an alternative packaging method for marketing flue-cured tobacco during the past 4 years. This alternative package is a 42-inch wide x 42-inch high x 40-inch long bale weighing approximately 750 pounds. The bale is compressed together and bound by metal wires. The FCTAC recommended bale dimensions of 42 inches x 42 inches x 40 inches. Because uniformity in the size of bales is an important aspect of the acceptability of baled tobacco, bales which are not approximately these dimensions would be designated "No-G."

The current regulations under the Tobacco Inspection Act do not specifically restrict baling as a packaging method for flue-cured tobacco. However, the current regulations do require that an official grade determination be based on a thorough examination of a lot of tobacco. A minimum of three locations within a lot is required to be sampled to show the range of the entire lot. However, the buying segment of the tobacco industry has opposed opening bales citing integrity issues.

During the 1998 flue-cured marketing season, Tobacco Programs conducted a research project on marketing flue-cured tobacco in bales. The research focused on the grade and condition of flue-cured baled tobacco from the beginning to the end of the marketing process. Research data was collected at the farm level as the tobacco was compressed into a bale, at the auction warehouse before and during the day of sale, and at the processing facility as the bale was disassembled.

The purpose of the research project was to determine if significant variations existed between the exterior and interior of the flue-cured bale that would impact the official grade standards. The findings indicated there was no significant variation in grade and condition observed.

Accordingly, this proposal would revise the current tobacco regulations to allow the inspection of bales of flue-cured tobacco without the bale being opened for inspection. All lots of tobacco that are subject to mandatory inspection on a designated market should be made accessible to perform grading activities. The recommendation was made that each lot of baled flue-cured tobacco displayed for sale on auction warehouse floors be placed in rows end to end so the open side of the

bales are facing the aisles. Also, a minimum space of 30 inches between the rows with the distance between lots of tobacco within the row shall be no less than 18 inches between immediately adjacent lots was recommended. These two spacing proposals would promote the orderly marketing of baled tobacco by providing a uniform marketing display in the warehouse. This would also provide accessibility for inspection of the bales.

An additional proposed revision would increase the poundage adjustment of 2,500 pounds by doubling the poundage amount for a warehouse selling in excess of the daily sales schedule. For example, 2,500 pounds would become 5,000 pounds and 5,000 pounds would become 10,000 pounds. The same would be applicable to undesignated producer tobacco, with 500 pounds becoming 1,000 pounds and 1,000 pounds becoming 2,000 pounds. This action is being proposed because the bale weight is approximately three times as much as tobacco marketed in sheets. This would give the farmers a chance to complete selling their lots of tobacco when the daily sales schedule has been depleted. This proposal should meet industry needs for marketing tobacco in bales.

This rule has been determined to be "non significant" for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. There are approximately 190 tobacco warehouses and approximately 30,000 producers. The Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposal would add a new rule to the official standards for flue-cured tobacco to denote that any lot of baled tobacco that has not been opened for inspection would be graded by the exterior only. Accordingly, this change would allow grading of a closed package from the exterior only, and would assist in maintaining program integrity. Additional bale dimensions and space requirements would be established for uniform marketing display in the warehouses and would provide accessibility for inspection of the bales. A revision would also be made to the poundage adjustment for a warehouse selling in excess of the sales schedule and for undesignated producer tobacco in order to take into account the marketing of bales. These changes would apply equally to both small and large entities and they would take into account the marketing of flue-cured tobacco as it presently appears in the marketplace.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P. O. Box 96456, Washington, DC 20090–6456. A 60 day comment period is provided for comments.

List of Subjects 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, it is proposed that the regulations at 7 CFR Part 29 be amended as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for Part 29, Subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. A new § 29.75b is added to read as follows:

§ 29.75b Display of baled flue-cured tobacco on auction warehouse floors in designated markets.

Each lot of baled flue-cured tobacco displayed for sale on auction warehouse floors shall have a minimum of 30 inches from side to side between the rows with open side of the bale facing the aisles. Distance between lots of baled tobacco within the row shall be no less than 18 inches between immediately adjacent lots.

Subpart C—Standards

3. The authority citation for Part 29, Subpart C continues to read as follows:

Authority: 7 U.S.C. 511b, 511m, and 511r.

§ 29.1059 [Amended]

4. Section 29.1059 is amended by removing the words "and 29.)" and add in the place thereof the words "29, and 30.)"

5. Section 29.1109 is revised to read as follows:

§ 29.1109 Rule 3.

In drawing an official sample from a hogshead or other package of tobacco, three or more breaks shall be made at such points and in such manner as the inspector or sampler may find necessary to determine the kinds of tobacco and the percentage of each kind contained in the lot. All breaks shall be made so that the tobacco contained in the center of the package is visible to the sampler, except for baled tobacco that is not opened for inspection (see Rule 30). Tobacco shall be drawn from at least three breaks from which a representative sample shall be selected. The sample shall include tobacco of each different group, quality, color, length, and kind found in the lot in proportion to the quantities of each contained in the lot.

6. Section 29.1129 is revised to read as follows:

§ 29.1129 Rule 23.

Tobacco shall be designated by the grademark "No-G," when it is offtype, semicured, fire-killed, smoked, oxidized over 10 percent, has an odor foreign to the type, or is packed in bales which are not approximately 42 inches wide x 42 inches high x 40 inches long .

7. A new § 29.1136 is added to read as follows:

§ 29.1136 Rule 30.

Any lot of baled tobacco that is not opened for inspection but which otherwise meets the specifications of a grade shall be graded by the exterior only.

Subpart G—Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets

8. The authority citation for part 29, subpart G continues to read as follows:

Authority: Tobacco Inspection Act, 49 Stat. 731 (7 U.S.C. 511 *et seq.*); Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended (15 U.S.C. 714 *et seq.*); sec. 213, Pub. L. 98–180, 97 Stat. 1149 (7 U.S.C. 1421); 49 Stat. 731 (7 U.S.C. 511 *et seq.*), unless otherwise noted.

9. Section 29.9406 is amended by revising paragraphs (c)(1), (c)(2), (c)(3) and (d) to read as follows:

§ 29.9406 Failure of warehouse to comply with opening and selling schedule.

* * * * *

(c) * * *

(1) If the excess is 5,000 pounds or less of designated producer tobacco, the adjustment in producer sales opportunity shall be one pound for each pound of excess; sales in excess of 5,000 pounds shall be a violation of the sales schedule and the adjustment for the first violation shall be 5,000 pounds plus the larger of 3 pounds for each pound in excess of 5,000 pounds or 5,000 pounds; for the second violation, the adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 or 15,000 pounds; and for the third and subsequent violations, the adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 pounds or 50 percent of a schedule day's sales opportunity.

(2) If the excess is 1,000 pounds or less of undesignated producer tobacco, the adjustment in producers sales opportunity is one pound for each pound of excess; if the excess is larger than 1,000 pounds, the adjustment is 1,000 pounds plus the larger of 3 pounds for each pound in excess of 1,000 or 2,000 pounds.

(3) If the excess is designated producer tobacco that is not eligible for sales at the warehouse on the day of the sale, the adjustment in producers sales opportunity for the first violation is the larger of 3 pounds for each pound in excess or 5,000 pounds, and for the second and succeeding violations, the larger of 5 pounds for each pound in excess or 10,000 pounds.

(d) If, on any sales day, a warehouse does not sell the full quantity of designated or undesignated tobacco authorized to be sold at such warehouse, the designated or undesignated sales opportunity at such warehouse on the next immediate sales day shall automatically be increased by the unsold quantity except that no such increase in sales opportunity shall exceed 5,000 pounds for designated tobacco or 500 pounds for undesignated tobacco.

Dated: March 8, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–6318 Filed 3–14–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR PART 97

[Docket Number: ST 99–006]

RIN 0581–AB71

Revision of Plant Variety Protection Office Fees

AGENCY: Agricultural Marketing Agency, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase Plant Variety Protection Office application, search, and certificate issuance fees by approximately 10 percent. Due to operating cost increases, the last fee increase in 1995 is no longer adequate to cover costs for this fully user-fee funded program. Also, the information symbol used by the Plant Variety Protection Office on the seal on certificates of Plant Variety Protection is added to the USDA/AMS inventory of symbols and would appear in the regulations.

DATES: Comments must be received on or before April 14, 2000.

ADDRESSES: Interested persons are invited to submit comments concerning this proposed rule. Comments should be sent in triplicate to Commissioner, Plant Variety Protection Office (PVPO), Rm. 500 N.A.L. Building, 10301 Baltimore Blvd. Beltsville MD 20705, telephone 1–301–504–7475; fax 1–301–504–5291, and should refer to the docket title and number located in the heading of this document. Comments received will be available for public inspection at the same location, between the hours of 10 am and 4 p.m. Eastern Standard Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ann Marie Thro, Commissioner, PVPO; telephone 1–301–504–7475 or fax 1–301–504–5291.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12866 and the Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be "not significant" for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of AMS has considered the economic impact of this action on small entities. There are more than 800 users of the PVPO's variety protection service, of whom about 100 may file applications in a given year. Some of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). The Administrator of AMS determined that this action would not have a significant economic impact on a substantial number of these small entities.

This rule has also been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provision of this rule.

The Plant Variety Protection Office (PVPO) administers the Plant Variety Protection Act by issuing Certificates of Protection which provide legal intellectual property rights to developers of new varieties of plants. A Certificate of Protection is awarded to an owner of a variety after an examination shows that it is new, distinct from other varieties, and genetically uniform and stable through successive generations.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover programs costs while maintain an adequate reserve balance. Without a fee increase, fiscal year (FY) 2000 revenues are projected at $1,100,000; costs are projected at $1,300,000, and trust fund balances would be $1,500,000. With a fee increase, FY 2000 revenues are projected at $1,200,000 and costs are projected at $1,300,000. With the increase in revenue, the trust fund balance would be maintained at $1,600,000, its level at the end of FY1999.

This action would raise the fee charged to users of plant variety protection. The AMS estimates that this proposed rule would yield an additional $100,000 during FY 2000. The fee for plant variety protection would increase by approximately 10 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual users would be approximately $275.00 per Plant Variety Protection Certificate issued. Plant Variety Protection is

sought on a voluntary basis. Any decision on their part to discontinue the use of plant variety protection would not hinder these entities from marketing their varieties. Finally, the addition of the information symbol to the USDA/AMS inventory of symbols and its inclusion in the regulations would not add further costs to users of the variety protection services.

III. Paperwork Reduction Act

This proposed rule does not contain any information collection or record keeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

IV. Background information

The Plant Variety Protection Program is a voluntary, user fee-funded service, conducted under the Authority of the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*) (PVPA) of 1970, as amended. The Act authorizes the Secretary of Agriculture to provide intellectual property rights that facilitate marketing of new varieties of seed-propagated crops and potatoes. The act also requires that reasonable fees be collected from the users of the services to cover the costs of maintaining the program.

On April 4, 1995, AMS published a rule in the **Federal Register** (60 FR 17188) that increased Plant Variety Protection Office fees pursuant to amendments to the Plant Variety Protection Act that became effective April 4, 1995. In its analysis of projected costs for fiscal year 2000, AMS has identified increases in the costs of providing plant variety protection. Anticipated revenue will not cover increased program costs. Without a fee increase, FY 2000 revenues are projected at $1,100,000; costs are projected at $1,300,000, and trust fund balances would be $1,500,000. With a fee increase, FY 2000 revenues are projected at $1,200,000 and costs are projected at $1,300,000. Due to the increase in revenue, the trust fund balance would be maintained at $1,600,000, its value at the end of FY 1999. The AMS estimates that this proposed rule would yield an additional $100,000 during FY 2000.

Program operating costs include salaries and benefits of examining staff, supervision, training, and all administrative costs of operating the program. Cost increases are attributed mainly (80 percent of total operating budget) to national and locality pay raises and increased benefit costs for Federal employees. A general and locality salary increase for Federal employees, totaling approximately 4.4 percent for the Washington, D.C. area, will materially affect the costs of plant variety protection. Increases are expected to continue in following years. Administrative costs, including salary increases, increases in rent, increases in costs of supplies and replacement equipment, and training have increased, in amounts ranging from 3.1 to 22 percent per item. Due to these operating cost increases, the last fee increase in 1995 is no longer adequate to cover obligations and maintain an adequate reserve balance.

The fees set forth in § 97.175 would be increased. The application fee will be increased from $300 to $320, the search fee from $2,150 to $2,385, and the issuance fee from $300 to $320. The fees for reviving an abandoned application, correcting or reissuance of a certificate are increased from $300 to $320. The charge for granting an extension for responding to a request is increased from $50 to $55. The hourly charge for any other service not specified is increased from $60 to $66. The fee for appeal to the Secretary (refundable if appeal overturns the Commissioner's decision) is increased from $2,750 to $3,050. These fee increases are necessary to cover costs of this fee-funded program.

The Plant Variety Protection Advisory Board has been informed of cost increases, including anticipated salary increases, and consulted on a fee increase on March 24, 1999. The Board recommended that fees be increased. This proposed rule makes the minimum changes in the regulations to implement the recommended increased fees to maintain the program as a fee-funded program.

The form of the official identification symbol, an umbrella over plant reproductive organs (a pistil with four stamens) illustrates the concept of intellectual property rights protection for sexually-reproduced crops.

A 30-day comment period is provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impact of this action on small businesses. Thirty days is deemed appropriate because present fees are inadequate to properly cover program costs and additional revenues need to be generated to effectively operate the program.

List of Subjects in 7 CFR Part 97

Plants, seeds.

For reasons set forth in the preamble, it is proposed that 7 CFR part 97 be amended as follows.

PART 97—PLANT VARIETY AND PROTECTION

1. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2321 *et seq.*

2. Section 97.175 is revised to read as follows:

§ 97.175 Fees and charges.

The following fees and charges apply to the services and actions specified below:

(a) Filing the application and notifying the public of filing: $320.00
(b) Search or examination: $2,385.00
(c) Allowance and issuance of certificate and notifying public of issuance: $320.00
(d) Revive an abandoned application: $320.00
(e) Reproduction of records, drawings, certificates, exhibits, or pointed material (copy per page of material): $1.10
(f) Authentication (each page): $1.10
(g) Correcting or re-issuance of a certificate: $320.00
(h) Recording assignments (per certificate/application): $28.00
(i) Copies of 8 x 10 photographs in color: $28.00
(j) Additional fee for reconsideration: $320.00
(k) Additional fee for late payment: $28.00
(l) Additional fee for late replenishment of seed: $28.00
(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision): $3,050.00
(n) Granting of extensions for responding to a request: $55.00
(o) Field inspections by a representative of the Plant Variety Protection Office, made at the request of the applicant, shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulation.

3. Section 97.900 is added to read as follows:

§ 97.900 Form of official identification symbol.

The symbol set forth in Figure 1, containing the words "Plant Variety Protection Office" and "U.S. Department of Agriculture", shall be the official identification symbol of the Plant Variety Protection Office. This information symbol, used by the Plant Variety Protection Office on the seal on certificates of Plant Variety Protection, has been approved by the Office of Communications to be added to the USDA/AMS inventory of symbols. It is approved for use with AMS materials.

Figure 1. Official identification symbol of the Plant Variety Protection Office.

Dated: March 8, 2000.

William J. Franks, Jr.,

Deputy Administrator, Science and Technology.

[FR Doc. 00—6317 Filed 3–14–0; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–320–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100 and–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100 and –200 series airplanes, that currently requires inspections to detect cracking of the support fittings of the Krueger flap actuator; and, if necessary, replacement of existing fittings with new steel fittings and modification of the aft attachment of the actuator. That AD also provides for an optional terminating modification that constitutes terminating action for the repetitive inspections. This action would mandate accomplishment of the previously optional terminating action. This proposal is prompted by reports of cracking due to fatigue and stress corrosion of the support fittings of the Krueger flap actuator. The actions specified by the proposed AD are intended to prevent such cracking, which could result in fracturing of the actuator attach lugs, separation of the actuator from the support fitting, severing of the hydraulic lines, and resultant loss of hydraulic fluids. These conditions, if not corrected, could result in possible failure of one or more hydraulic systems, and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 1, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–320–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Schneider, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2028; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–320–AD." The

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–320–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 6, 1996, the FAA issued AD 96–17–04, amendment 39–9712 (61 FR 41957, August 13, 1996), applicable to certain Boeing Model 737–100 and –200 series airplanes, to require inspections to detect cracking of the support fittings of the Krueger flap actuator; and, if necessary, replacement of existing fittings with new steel fittings and modification of the aft attachment of the actuator. That action was prompted by reports of cracking due to fatigue and stress corrosion of the support fittings of the Krueger flap actuator. The requirements of that AD are intended to prevent such cracking, which could result in fracturing of the actuator attach lugs, separation of the actuator from the support fitting, severing of the hydraulic lines, and resultant loss of hydraulic fluids. These conditions, if not corrected, could result in possible failure of one or more hydraulic systems, and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

When AD 96–17–04 was issued, it contained a provision for an optional replacement of the aluminum support fitting of the Krueger flap actuator with a steel fitting, and modification of the actuator aft attachment, which, if accomplished, would constitute terminating action for the required repetitive inspections. That optional modification was to be accomplished in accordance with Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981, as revised by Notices of Status Change 737–57–1129NSC1, dated July 23, 1982; 737–57–1129 NSC2, dated April 14, 1983; and 737–57–1129 NSC 3, dated May 18, 1995. Revision 1 of the service bulletin contained a provision for operators to replace the existing aluminum support fitting of the Krueger flap actuator with a new aluminum support fitting. This action would mandate replacement of the aluminum support fitting with a steel fitting in accordance with Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998. Revision 2 of the service bulletin specifies replacement of the aluminum support fitting with a steel fitting only, all references to replacement with an aluminum support fitting have been removed from the service bulletin.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–17–04 to continue to require inspections to detect cracking of the support fittings of the Krueger flap actuator on each wing; and replacement of any existing aluminum fitting with a new steel fitting and modification of the actuator aft attachment.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin recommends that the initial inspection be performed using a visual method and subsequent repetitive inspections be performed at regular maintenance intervals using an eddy current technique, this proposed AD would require that both the initial and repetitive inspections be accomplished using the eddy current method. The support fittings of the Krueger flap actuator on each wing are susceptible to stress corrosion cracking, and the crack growth rate for such cracking is unknown. The FAA finds that, if a visual inspection is accomplished to detect cracking of the support fittings, such cracking may not be detected in a timely manner to adequately address the unsafe condition. Therefore, the FAA has determined that an adequate level of safety for the affected fleet requires that both the initial and repetitive inspections of these fittings be performed at intervals not to exceed 3,000 hours time-in-service using an eddy current technique, which is a more reliable method for detection of cracking.

Operators also should note that this AD proposes to mandate, within 5 years after the effective date of this AD, replacement of any existing aluminum support fitting of the Krueger flap actuator on each wing with a new steel fitting; and modification of the actuator aft attachment, as described in Boeing Service Bulletin 737–57–1129, Revision 2, as terminating action for the repetitive inspections. Incorporation of this terminating action is described as optional in the service bulletin.

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is in consonance with these conditions.

Cost Impact

There are approximately 727 Model 737–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 270 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 96–17–04, and retained in this proposed AD, take approximately 12 work hours per airplane (6 work hours per wing) to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $194,400, or $720 per airplane, per inspection.

The replacement and modification that is proposed in this new AD action would take approximately 88 work hours per airplane (44 work hours per wing) to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $12,226 per airplane. Based on these figures, the cost impact of the replacement and modification proposed by this AD on U.S. operators is estimated to be $4,726,620, or $17,506 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant

economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9712 (61 FR 41957, August 13, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–320–AD. Supersedes AD 96–17–04, Amendment 39–9712.

Applicability: Model 737–100 and –200 series airplanes, line numbers 001 through 813 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible failure of one or more hydraulic systems and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 96–17–04:

Repetitive Inspections

(a) Within one year after September 17, 1996 (the effective date of AD 96–17–04, amendment 39–9712), perform an eddy current inspection to detect cracking of the support fitting of the Krueger flap actuator on each wing, in accordance with Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981, as revised by Notices of Status Change 737–57–1129NSC1, dated July 23, 1982; 737–57–1129 NSC2, dated April 14, 1983; and 737–57–1129 NSC 3, dated May 18, 1995; or Revision 2, dated May 28, 1998.

(1) If no cracking is detected, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3,000 hours time-in-service.

(2) If any cracking is detected, prior to further flight, accomplish the replacement and modification specified in paragraph (b) of this AD.

New Requirements of This AD:

Terminating Action

(b) Within 5 years after the effective date of this AD: Replace any existing aluminum support fitting of the Krueger flap actuator on each wing with a steel fitting, and modify the actuator aft attachment, in accordance with Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998. Accomplishment of this replacement and modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Note 2: Replacement of the existing aluminum support fitting of the Krueger flap actuator on each wing with a steel fitting, and modification of the actuator aft attachment, prior to the effective date of this AD, in accordance with Boeing Service Bulletin 737–57–1129, Revision 1, dated October 30, 1981, as revised by Notices of Status Change 737–57–1129NSC1, dated July 23, 1982; 737–57–1129 NSC2, dated April 14, 1983; and 737–57–1129 NSC 3, dated May 18, 1995; is considered acceptable for compliance with the modification required by paragraph (b) of this AD.

Spares

(c) As of the effective date of this AD, no person shall install on any airplane any aluminum support fitting identified in the "Existing Part Number" column of Paragraph 2.D. of Boeing Service Bulletin 737–57–1129, Revision 2, dated May 28, 1998.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6333 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–13–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 340B series airplanes. This proposal would require a one-time inspection to detect discrepancies of the flight idle stop override mechanism, and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent increased braking distance for landings that require the flight idle stop override, resulting from the combination of failure of the override mechanism and inability of the power levers to be moved below the flight idle position after touchdown.

DATES: Comments must be received by April 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–13–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–13–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–13–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 340B series airplanes. The LFV advises that it received a report of an incident in which a flight crew, when attempting to use the automatic flight idle stop override that was required during landing, discovered that the override knob was stuck in position in the control quadrant. Subsequent inspection of the override knob mechanism revealed that cablewire was stuck in its conduit between the knob and the uplock mechanism. It appeared that the cablewire may have become stuck during modification of the control quadrant for installation of the automatic flight idle stop. Similar sticking may occur on other airplanes that have been modified in a similar manner. This condition, if not corrected, could result in inability to move the power levers below the flight idle position after touchdown, which could result in increased braking distance.

Other Related Rulemaking

On April 6, 1998, the FAA issued AD 98–08–16, amendment 39–10465 (63 FR 5902, April 14, 1998), applicable to certain Saab Model SAAB SF340A and 340B series airplanes, which currently requires a one-time inspection to detect discrepancies of the flight idle stop override mechanism, and corrective action, if necessary. That AD was prompted by issuance of mandatory continuing airworthiness information by the LFV (Swedish airworthiness directive 1–116, dated June 9, 1997). The actions required by that AD are intended to prevent increased braking distance for landings that require the flight idle stop override, resulting from the combination of failure of the override mechanism and inability of the power levers to be moved below the flight idle position after touchdown.

Since issuance of that AD, the FAA has determined that the same unsafe condition addressed in that AD may exist on certain additional Saab Model SAAB 340B series airplanes. Those airplanes (identified as serial numbers –380 through –404 inclusive, –406 through –408 inclusive, and –410 through –413 inclusive) were omitted inadvertently from the applicability of AD 98–08–16 (those airplanes had also been excluded inadvertently from the effectivity of Swedish airworthiness directive 1–116). Therefore, those additional airplanes are also subject to the same unsafe condition addressed in AD 98–08–16.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–76–041, dated May 29, 1997, and Revision 01, dated July 2, 1997, which describe procedures for a one-time inspection to detect whether the override knob moves freely without scratching or jamming in the control quadrant. For any discrepant mechanism, this service bulletin describes procedures for replacement of the control quadrant with a new or serviceable control quadrant. The procedures in the original version and Revision 01 of the service bulletin are the same; Revision 01 was issued to incorporate certain minor clarifications of the procedures. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD 1–148, dated November 18, 1999, in order to ensure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 31 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S.

operators is estimated to be $1,860, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab Aircraft AB: Docket 2000–NM–13–AD.

Applicability: Model SAAB 340B series airplanes, certificated in any category; serial numbers –380 through –404 inclusive, –406 through –408 inclusive, and –410 through –413 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent increased braking distance for landings that require the flight idle stop override, resulting from the combination of failure of the override mechanism and inability of the power levers to be moved below the flight idle position after touchdown, accomplish the following:

Inspection

(a) Within 30 days after the effective date of this AD, perform a one-time inspection of the flight idle stop override mechanism to detect any discrepancy, in accordance with Saab Service Bulletin 340–76–041, dated May 29, 1997, or Revision 01, dated July 2, 1997. If any discrepancy is found, prior to further flight, replace the control quadrant with a new or serviceable control quadrant in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–148, dated November 18, 1999.

Issued in Renton, Washington, on March 9, 2000.

Franklin Tiangsing,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6332 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–02–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 0100 series airplanes, that currently requires a one-time visual inspection and a one-time eddy current and/or dye penetrant inspection of the nose landing gear (NLG) main fitting to detect cracking; and rework of the NLG main fitting, if necessary. This action would require new inspections (one-time detailed visual inspection and repetitive eddy current or dye penetrant inspections) to detect cracking of the NLG main fitting subassembly, and corrective actions, if necessary. This action also would revise the applicability of the existing AD. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent cracking of the NLG main fitting, which could lead to collapse of the NLG during takeoff and landing, and possible injury to the flightcrew and passengers.

DATES: Comments must be received by April 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–02–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from

Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–02–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–02–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 13, 1998, the FAA issued AD 98–22–01, amendment 39–10847 (63 FR 58625, November 2, 1998), applicable to certain Fokker Model F.28 Mark 0100 series airplanes, to require a one-time visual inspection and a one-time eddy current and/or dye penetrant inspection of the nose landing gear (NLG) main fitting to detect cracking; and rework of the NLG main fitting, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent cracking of the NLG main fitting, which could lead to collapse of the NLG during takeoff and landing, and possible injury to the flightcrew and passengers.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has advised the FAA that, during maintenance, several additional occurrences of cracking of the main fitting subassembly (MFSA) of the downlock plunger support webs of the NLG were found. The cracks initiated on the inner side of both the left-hand and right-hand support webs of the downlock plunger. In light of the recent events, the manufacturer has released new service information and the FAA has determined that it is necessary to perform a new, one-time detailed visual inspection and repetitive eddy current or dye penetrant inspections to enable early detection of cracking in the affected area.

Issuance of New Service Information

The manufacturer has issued Fokker Service Bulletin SBF100–32–118, dated October 8, 1999, which describes procedures for a one-time detailed visual inspection and repetitive eddy current or dye penetrant inspections of the NLG main fitting subassembly to detect cracking, and rework of the main fitting, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 1997–116/2 (A), dated October 29, 1999, in order to assure the continued airworthiness of these airplanes in the Netherlands.

The Fokker service bulletin references Messier-Dowty Service Bulletin F100–32–92, Revision 1, dated October 8, 1999, as an additional source of service information for accomplishing the inspections and rework of the NLG main fitting subassembly.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede the requirements of AD 98–22–01. This proposed AD would require a new, one-time detailed visual inspection, and a new eddy current or dye penetrant inspection to be accomplished repetitively. This proposed AD would revise the applicability of the existing AD to include airplanes on which a certain main fitting subassembly is installed. The actions would be required to be accomplished in accordance with the Fokker service bulletin described previously, except as described below. The proposed AD also would require that operators report all findings of the one-time detailed visual inspection and the initial eddy current or dye penetrant inspection to Fokker Services.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the Fokker service bulletin specifies that the manufacturer may be contacted for disposition of certain cracking conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the RLD (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the RLD would be acceptable for compliance with this proposed AD.

Cost Impact

There are approximately 87 airplanes of U.S. registry that would be affected by this proposed AD.

The one-time detailed visual inspection proposed by this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact

of the one-time inspection proposed by this AD on U.S. operators is estimated to be $5,220, or $60 per airplane.

The repetitive eddy current or dye penetrant inspections proposed by this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the repetitive inspection proposed by this AD on U.S. operators is estimated to be $5,220, or $60 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10847 (63 FR 58625, November 2, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Fokker Services B.V.: Docket 2000–NM–02–AD. Supersedes AD 98–22–01, Amendment 39–10847.

Applicability: Model F.28 Mark 0100 series airplanes, certificated in any category; equipped with Messier-Dowty nose landing gear (NLG) having part number (P/N) 201071001 or 201071002, on which a main fitting subassembly (MFSA) having P/N 201071200, 201071228, 201071248, or 201071249 is installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the NLG main fitting, which could lead to collapse of the NLG during takeoff and landing, and possible injury to the flightcrew and passengers, accomplish the following:

One-time Detailed Visual Inspection

(a) Prior to the accumulation of 7,500 total flight cycles or within 50 flight cycles after the effective date of this AD, whichever occurs later: Perform a one-time detailed visual inspection of the NLG main fitting subassembly to detect cracking, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–118, dated October 8, 1999.

(1) If no cracking is detected, no further action is required by this paragraph.

(2) If any cracking is detected, prior to further flight, accomplish the actions required by paragraph (b) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Actions accomplished prior to the effective date of this AD, in accordance with Fokker Service Bulletin SBF100–32–112, dated November 14, 1997, which was cited in AD 98–22–01, amendment 39–10847, are not considered acceptable for compliance with any requirements of this AD.

Repetitive Eddy Current and/or Dye Penetrant Inspections

(b) Except as required by paragraph (a)(2) of this AD: Prior to the accumulation of 7,875 total flight cycles or within 375 flight cycles after the effective date of this AD, whichever occurs later, perform an eddy current or dye penetrant inspection of the NLG main fitting subassembly to detect cracking, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–118, dated October 8, 1999. Such inspection within the compliance time required by paragraph (a) of this AD terminates the requirements of paragraph (a) of this AD. Repeat the inspection thereafter, using an eddy current or dye penetrant technique, at intervals not to exceed 750 flight cycles.

(c) If any cracking is detected during any inspection required by paragraph (b) of this AD: Prior to further flight, rework the main fitting of the NLG, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–118, dated October 8, 1999. If, after rework, any cracking remains that exceeds the limits specified in the service bulletin, prior to further flight, accomplish the actions specified by either paragraph (c)(1) or (c)(2) of this AD.

(1) Replace the NLG in accordance with the service bulletin; and within 7,875 flight cycles after such replacement, perform the inspection as specified in paragraph (b) of this AD, and repeat the inspection thereafter at intervals not to exceed 750 flight cycles.
Or

(2) Repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Rijksluchtvaartdienst (RLD) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Note 4: The Fokker service bulletin references Messier-Dowty Service Bulletin F100–32–92, Revision 1, dated October 8, 1999, as an additional source of service information for accomplishing the inspections and rework of the NLG main fitting subassembly.

Reporting Requirements

(d) Submit a report of the detailed visual inspection findings (positive and negative) required by paragraph (a) and a report of the initial eddy current or dye penetrant inspection findings (positive and negative) required by paragraph (b) to Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; at the applicable time specified in paragraph (d)(1) or (d)(2). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMP) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C.

3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the detailed visual inspection specified by paragraph (a) of this AD and the initial repetitive eddy current or dye penetrant inspection specified by paragraph (b) of this AD are accomplished after the effective date of this AD: Submit each report within 7 days after performing the applicable inspection.

(2) For airplanes on which the detailed visual inspection specified by paragraph (a) of this AD and the initial repetitive eddy current or dye penetrant inspection specified in paragraph (b) of this AD have been accomplished prior to the effective date of this AD: Submit the reports within 7 days after the effective date of this AD.

Spares

(e) As of the effective date of this AD, no person shall install a NLG having P/N 201071001 or 201071002 unless the installed MFSA has been inspected, by means of an eddy current or dye penetrant inspection, in accordance with paragraph (b) of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 6: The subject of this AD is addressed in Dutch airworthiness directive BLA 1997–116/2 (A), dated October 29, 1999.

Issued in Renton, Washington, on March 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6331 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110, and 165

[CGD01–99–191]

RIN 2115–AA97, AA98, AE46

Temporary Regulations: SAIL BOSTON 2000, Port of Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish several temporary regulated areas, safety and security zones, and spectator anchorages before, during, and after Sail Boston 2000 events in the Port of Boston, Massachusetts, to be held between July 10–16, 2000. These regulations are necessary to promote the safe navigation of vessels and the safety of life and property during the heavy volume of vessel traffic expected during this event.

DATES: Comments and related material must reach the Coast Guard on or before May 1, 2000.

ADDRESSES: Comments should be mailed to: Commanding Officer, U.S. Coast Guard Marine Safety Office Boston, Attn: Waterways Management Division, 455 Commercial Street, Boston, MA 02109. The Waterways Management Division of Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents, will become part of this docket and will be available for inspection and copying at the Coast Guard Marine Safety Office.

FOR FURTHER INFORMATION CONTACT: Lieutenant Brian Downey, Marine Safety Office Boston, Boston, MA 02109; (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting comments and related material. Each person submitting comments should include their name and address, identify this notice (CGD01–99–191), the specific section of the proposal to which each comment applies, and give the reason for each comment. Comments and attachments should be submitted on 8½″ × 11″ unbound paper in a format suitable for copying and electronic filing. Persons requesting acknowledgement of receipt of comments should include a stamped, self-addressed postcard or envelope. All comments submitted during the comment period will be considered by the Coast Guard and may change this proposal. The comment period for this regulation is 45 days. This time period is adequate to allow public comment because this event is highly publicized and coordinated with other Coast Guard Districts. The shortened comment period will allow the full 30 day publication requirement prior to the final rule becoming effective. Copies of this proposal will also be placed in the local notice to mariners.

Public Hearing

The Coast Guard has no plans to hold a public hearing. Informal public meetings were held December 1 and 7, 1999, and comments raised have been incorporated into this document. Persons may request a public hearing by writing to Commander, First Coast Guard District (m) via Marine Safety Office Boston, at the address listed under **ADDRESSES.** The request should include reasons why a public hearing would be beneficial. If the Coast Guard determines that oral presentations will aid in this rulemaking, it will hold a public hearing at a time and place to be announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed temporary regulations are for Sail Boston 2000 events held in Boston Harbor. These events will be held from July 10 through 16, 2000. This rule is proposed to provide for the safety of life on navigable waters and to protect U.S. Navy vessels, tall ships, spectators, and the Port of Boston during these events. At the time of this notice, Sail Boston 2000 events are expected to include the following:

1. July 10–11: Tall Ship Rally
2. July 11: Grand Parade of Sail
3. July 11–16: Safety and Security Zones
4. July 11–16: USS JOHN F. KENNEDY and Support Vessel Visits
5. July 12–15: Public Boarding of Tall Ships
6. July 15: Boston 2000 Fireworks Extravaganza
7. July 16: Salute to USS CONSTITUTION Parade
8. July 16: Tall Ships 2000 Race Restart

Discussion of Proposed Rule

Sail Boston 2000, Inc. is sponsoring Sail Boston 2000. The scheduled events will occur between July 10 and 16, 2000 in the Port of Boston and surrounding waters. The events will consist of a July 10 and 11, 2000 Tall Ship Rally in Broad Sound, and a July 11, 2000 Parade of Sail from Broad Sound into Boston Harbor. The parade route will originate in Broad Sound and follow

Boston North Channel southwesterly, passing between Deer Island and Long Island through President Roads and continue inbound through the Boston Main Channel to various berths throughout the Port of Boston using the Main Ship Channel. The USS CONSTITUTION will lead the Grand Parade of Sail. The festivities also include a July 15, 2000 fireworks display and a July 16, 2000 Salute to the USS CONSTITUTION. The Salute to the USS CONSTITUTION consists of a tall ship parade. The parade route will begin from various mooring sites in Boston Inner Harbor, transiting outbound through the Main Channel, Boston North Channel to Broad Sound. The USS CONSTITUTION will anchor in Spectator Anchorage K. No other vessels will be permitted in Spectator Anchorage K without permission of the Captain of the Port.

During this same period it is expected that U.S. Navy aircraft carrier USS JOHN F. KENNEDY will be in port joining this celebration. The USS JOHN F. KENNEDY will be berthed at the North Jetty in the Marine Industrial Park, South Boston, MA.

The Coast Guard estimates 10,000 spectator craft will attend the events. The proposed regulations would create temporary anchorage regulations, vessel movement controls through regulated areas, and safety and security zones. The proposed regulations would be in effect at various times in Boston Harbor between July 10 and 16, 2000. Vessel congestion, due to the anticipated large number of participating and spectator vessels, poses a significant threat to the safety of life. This proposed rulemaking is necessary to ensure the safety of life on the navigable waters of the United States.

All coordinates are North American Datum (NAD) 1983.

Regulated Areas

The Coast Guard proposes to establish three regulated areas in Boston Harbor that will be in effect during Sail Boston 2000 events. These proposed regulated areas are needed to permit unrestricted law enforcement vessel access to support facilities. Additionally, the regulated areas will protect the maritime public and participating vessels from possible hazards to navigation associated with the dense vessel traffic.

Regulated Area A covers all waters of Broad Sound and Boston Outer Harbor bounded by 070°52′00″ W, 070°57′13″ W, 42°17′30″ N, and 42°24′42″ N including the following waterways: Nahant Bay, Broad Sound, Boston North Channel, Boston South Channel, Nubble Channel, Hull Bay, and Nantasket Roads. The area includes also all temporary spectator anchorages established in 33 CFR 110.T01–135–191. Regulated Area A would be applicable from 8 am until 6 pm on July 11, 2000 and 8 am until 6 pm on July 16, 2000.

Regulated Area B covers all waters of Boston Inner Harbor westward from a line drawn between Deer Island at position 42°20′38″ N, 070°57′13″ W and Long Island at position 42°19′51″ N, 070°57′13″ W including President Roads, Sculpin Ledge Channel, Dorchester Bay, Western Way, the Boston Main Channel, the Reserved Channel to the Summer Street retractile bridge, the Fort Point Channel to the Congress Street Bridge, the Charles River to the Gridley Locks at the Charles River Dam, the Mystic River to the Alford Street Bridge, and the Chelsea River to the McArdle Bridge. The area also includes all temporary spectator anchorages established in 33 CFR 110.T01–135–191. Regulated Area B would be applicable from 8 am on July 11, 2000 until 6 pm on July 16, 2000.

A fifty (50) foot safety zone around all moored tall ships is proposed. Regulated Area B will ensure the safety of moored tall ships and spectator craft.

On July 11, 2000, following the Grand Parade of Sail, Boston Harbor will reopen in sequence with the movement and mooring of the final flotilla of tall ships. After the final flotilla of tall ships has passed Castle Island, vessel operators anchored in spectator anchorages east of Castle Island may depart for locations outside Boston Harbor. After the final flotilla of tall ships has safely moored, vessel operators may depart from the remaining established spectator anchorages. Vessels transiting through Boston Harbor must proceed as directed by on-scene Coast Guard personnel.

On July 16, 2000, following the Salute to USS CONSTITUTION, Boston Harbor will reopen in sequence with the movement of the last outbound tall ship. After the last outbound tall ship has passed Castle Island, vessel operators may depart established spectator anchorages west of Castle Island and transit to locations within Boston Harbor, but west of Castle Island.

After the last outbound tall ship has passed the Boston North Channel Entrance Lighted Gong Buoy "NC", vessel operators anchored in established spectator anchorages may depart for locations outside Boston Harbor.

Regulated Area C is proposed as an Emergency Transit Lane from Boston Main Channel Light "5" to Charlestown Navy Yard Pier "1" extending fifty (50) yards into the outbound lane of the Boston Main Channel. The lane is proposed to allow unlimited access to emergency and law enforcement vessels.

Regulated Area C, implementing emergency lane restrictions, would be enforced from 8 am until 6 pm on July 11, 2000 and from 8 am until 6 pm, on July 16, 2000.

Anchorage Regulations

The Coast Guard proposes to establish temporary anchorage regulations for participating Sail Boston 2000 ships and spectator craft. 33 CFR 110.134 is temporarily suspended by this regulation and new spectator anchorages and regulations are temporarily established.

The proposed anchorage regulations temporarily establish spectator anchorages for spectator craft or Sail Boston 2000 participant vessel use only. They restrict all other vessels from using these spectator anchorages during Sail Boston 2000 events.

The Coast Guard proposes to establish temporary spectator anchorages in the vicinity of Boston North Channel, Long Island, President Roads, and Boston Inner Harbor. Additionally, the Coast Guard proposes to establish a temporary anchorage for the exclusive use of tall ships in Broad Sound and Mystic River. The applicable dates for the proposed temporary spectator anchorages are July 10 and 11, 2000 and July 15 and 16, 2000.

Safety and Security Zones

The Coast Guard proposes to establish temporary safety and security zones throughout Broad Sound and Boston Inner and Outer Harbors. During the July 10 and 11, 2000 Tall Ship Rally in Broad Sound, a safety zone encompassing all waters within a five hundred (500) yard radius from approximate position 42°23′06″ N, 070°53′26″ W and all tall ship anchorages established in 33 CFR 110.T01–135–191 is proposed.

On July 11, 2000 from 8 am until 6 pm a three hundred (300) yard moving safety zone around participating tall ships is proposed for Broad Sound and Boston Harbor. The safety zone will ensure the safety of participating tall ships and spectator craft during the Grand Parade of Sail. On July 15, 2000 a four hundred (400) yard safety zone surrounding fireworks barges in Boston Inner Harbor is proposed from 8 pm until 11 pm The safety zone will ensure the safety of spectator craft during the scheduled fireworks display. Fireworks will be fired from barges anchored northeast of Pier "2" in South Boston. From 8 am until 6 pm on July 16, 2000, a three hundred (300) yard moving

safety zone around each participating tall ship is proposed for Boston Harbor and Broad Sound. The safety zone will ensure the safety of participating tall ships and spectator craft during the Salute to the USS CONSTITUTION Parade. On July 16, 2000 a three (3) square mile safety zone is proposed for Massachusetts Bay off of Nahant from 10 am until 6 pm. This three (3) square mile area will serve as the staging area for the Tall Ships 2000 Race Restart. The safety zone will ensure the safety of participating tall ships and spectator craft during the Tall Ships 2000 Race Restart. A three hundred (300) yard moving safety zone around each participating tall ship is also proposed for the Tall Ships 2000 Race Restart as each proceeds from its respective berth to the staging area.

From 6 pm July 10, 2000 until 6 pm July 16, 2000, a five hundred (500) yard security zone is proposed for Boston Inner Harbor's North Jetty, in South Boston. The security zone will protect the moored U.S. naval aircraft carrier USS JOHN F. KENNEDY. All safety and security zones will be easily identifiable by patrolling Coast Guard and law enforcement craft.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policy and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The economic impact of this proposed rule is expected to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation imposes traffic restrictions in portions of Boston Harbor during the events, the effect of this regulation will not be significant for the following reasons: The regulated areas, spectator anchorages, and safety and security zones, will be limited in duration; and extensive advance notice will be made to the maritime community via Local Notice to Mariners, facsimile, marine safety information broadcasts, local Port Operators Group meetings, the Internet, and Boston area newspapers and media. The advance notice will permit mariners to adjust their plans accordingly. Additionally, these regulated areas are tailored to impose the least impact on maritime interests without compromising safety.

Similar regulated areas and safety and security zones were established for Sail Boston 1992 events. Based upon the Coast Guard's experiences from that previous similar magnitude event, these proposed regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the necessary level of safety.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), an initial review was conducted to determine whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in portions of Broad Sound and Boston Inner and Outer Harbors during various times from July 10 until 16, 2000. These regulations would not have a significant economic impact on a substantial number of small entities because the Coast Guard will notify the public via mailings, facsimiles, Local Notice to Mariners, marine safety information broadcasts, local Port Operators Group meetings, the media, the Internet, and Boston area newspapers. In addition, the sponsoring organization, Sail Boston 2000, Inc., plans to announce event information in local newspapers, pamphlets, and television and radio broadcasts. The advance notice will permit mariners to adjust their plans accordingly. Although these regulations would apply to a substantial portion of the Port of Boston, areas for viewing the Parade of Sail, Boston 2000 Fireworks Extravaganza, Salute to USS CONSTITUTION, and Tall Ships 2000 Race Restart are being established to maximize the use of the waterways by commercial vessels that usually operate in the affected areas.

Businesses, organizations, or governmental jurisdictions that qualify as a small entity and believe that this rule would significantly impact them may submit a comment (see ADDRESSES) explaining why they think they qualify and how and to what degree this rule would economically affect them.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard aims to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Brian Downey, Marine Safety Office, Boston, at (617) 223–3000.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

An analysis of this proposed rule under E.O. 13132 has determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

An analysis of this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks has determined that this rule is not an economically significant rule and does not concern an environmental risk to health or risk to

safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraphs 34 (f, g, and h) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 100, 110, and 165 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR § 100.35.

2. Add temporary § 100.TO1–191 to read as follows:

§ 100.TO1–191 Regulated area, Broad Sound, Boston Outer Harbor, and Boston Inner Harbor.

(a) Regulated Areas: All regulated area coordinates are NAD 1983.

(1) *Regulated Area A*—(i) *Location.* The following is Regulated Area A: All waters of Broad Sound and Boston Outer Harbor bounded by 070°52′00″ W, 070°57′13″ W, 42°17′30″ N, and 42°24′42″ N including the following waterways: Nahant Bay, Broad Sound, Boston North Channel, Boston South Channel, Nubble Channel, Hingham Bay, Hull Bay, and Nantasket Roads.

(ii) *Enforcement period.* Paragraph (a)(1)(i) of this section is enforced from 8 am until 6 pm on July 11, 2000 and from 8 am until 6 pm on July 16, 2000.

(2) *Regulated Area B*—(i) *Location.* The following is Regulated Area B: Boston Inner Harbor westward from a line drawn between Deer Island at position 42°20′38″ N, 070°57′13″ W and Long Island at position 42°191′51″ N, 070°57′13″ W including President Roads, Sculpin Ledge Channel, Dorchester Bay, Western Way, the Boston Main Channel, the Reserved Channel to the Summer Street retractile bridge, the Fort Point Channel to the Congress Street Bridge, the Charles River to the Gridley Locks at the Charles River Dam, the Mystic River to the Alford Street Bridge, and the Chelsea River to the McArdle Bridge.

(ii) *Enforcement period.* Paragraph (a)(2)(i) of this section is enforced from 8 am on July 11, 2000 until 6 pm on July 16, 2000.

(3) *Regulated Area C*—(i) *Location.* The following is Regulated Area C: All waters from Boston Main Channel Light "5" to Charlestown Navy Yard Pier "1" extending fifty (50) yards into the outbound lane of the Boston Main Channel.

(ii) *Enforcement period.* Paragraph (a)(3)(i) of this section is enforced from 8 am until 6 pm on July 11, 2000 and from 8 am until 6 pm on July 16, 2000.

(b) *Special local regulation.* (1) During the effective period, vessel operators transiting through regulated areas A and B shall proceed at no wake speeds not to exceed five miles per hour, unless otherwise authorized by the Captain of the Port.

(2) Vessel operators shall comply with the instructions of on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, local, state, and federal law enforcement vessels.

(3) After completion of the fireworks display on July 15, 2000, vessel operators within Regulated Area B are prohibited from passing outbound patrol vessels showing blue lights.

(4) Vessel operators must remain in established spectator anchorages established in 33 CFR 110.T01.135–191, from 8 am, until 6 pm on July 11 and 16, 2000 except as authorized by the Captain of the Port.

(5) Vessel operators anchored in Spectator Anchorages N, P, or Q established in 33 CFR 110.T01–135–191 may depart those anchorages to view offshore activities following the Salute to USS CONSTITUTION on July 16, 2000, provided they observe enforced safety zones and transit outside main channels. Vessel operators who cannot safely navigate outside of established channels must remain anchored until the channels are reopened to routine navigation.

(6) Vessels, except for those participating in the Grand Parade of Sail and Salute to the USS CONSTITUTION or duly authorized patrol craft, may not enter or remain in the Reserved Channel or block access to any tall ship mooring sites in Regulated Area B from 8 am until 6 pm on July 11 and July 16, 2000 except as authorized by the Captain of the Port.

(7) Vessel operators transiting the Reserved Channel during authorized times, not mentioned in (b)(6) of this section, must enter and keep to the starboard side of the channel, proceeding as directed by on-scene Coast Guard patrol personnel. Vessel traffic shall move in a counterclockwise direction around the turning point established off the Sithe New England power plant, as marked by an appropriate on-scene patrol vessel. Vessel operators shall exit the Reserved Channel keeping to the starboard side of the channel.

(8) Vessel operators transiting the regulated areas must maintain at least fifty (50) feet safe distance from all moored tall ships and make way for all deep draft vessel traffic underway in the regulated areas.

(9) Vessels, except emergency, law enforcement, and those authorized by the Captain of the Port, may not transit through Regulated Area C, which has been designated as an Emergency Transit Lane.

(c) *Effective dates.* This section is effective from 8 am on July 11, 2000 until 6 pm on July 16, 2000.

PART 110—ANCHORAGE GROUNDS

3. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

4. From July 10, 2000 through July 16, 2000, § 110.134 is temporarily suspended and § 110.T01–135–191 is temporarily added as follows:

§ 110.T01–135–191 Boston Harbor, Mass.

Note: Mariners are cautioned that the areas established as spectator anchorages in this section have not been subject to any special survey or inspection and that charts may not show all seabed obstructions or the shallowest depths. In addition, the anchorages are in areas of substantial currents, and not all anchorages are over good holding ground. Mariners are advised to take appropriate precautions when using these temporary anchorages. These are not special anchorage areas. Vessels must display anchor lights, as required by the Inland Navigation rules.

(a) *The anchorages.* All anchorages in this paragraph are applicable as specified. Vessel operators using the anchorages in this paragraph must comply with the general operational

requirements specified in paragraph (b) of this section. All coordinates are NAD 1983.

(1) *Long Island Anchorage.* (i) All bearings are reflected as true. East of Long Island, bounded as follows: Beginning at the southwestern most point of Gallups Island; then 270° to Long Island; then southerly along the eastern shore line of Long Island to Bass Point; then to the northernmost point of Rainsford Island; then to Georges Island Gong Buoy "6"; and then to the point of beginning.

(ii) This anchorage ground is designated for the exclusive use of recreational vessels.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(2) *Castle Island Anchorage.* (i) Bounded on the north by Castle Island and adjacent land; on the east by a line between Castle Rocks Fog Signal Light and Old Harbor Shoal Buoy "2"; on the southeast by a line between Old Harbor Shoal Buoy "2" and Old Harbor Buoy "4"; and on the west by a line running due north from Old Harbor Buoy "4" to the shore line at City Point.

(ii) This anchorage ground is designated for the exclusive use of recreational vessels.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(3) *Explosives Anchorage.* (i) In the lower harbor, bounded on the northeast by a line between the northeast end of Peddocks Island and the northeast end of Rainsford Island; on the northwest by Rainsford Island; on the southwest by a line between the western extremity of Rainsford Island and the westernmost point of Peddocks Island; and on the southeast by Peddocks Island.

(ii) This anchorage ground is designated for the exclusive use of recreational vessels.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(4) *Tall Ship Anchorage.* (i) All bearings are reflected as true. In the outer harbor in Broad Sound and Nahant Bay, bounded as follows: On the east by a line connecting Boston North Channel Lighted Bell Buoy "2" on Finns Ledge to Off Rock, Littles Point, Swampscott, MA and bounded on the west by a line connecting approximate position 42°22′11″ N, 070°56′17″ W and approximate position 42°24′05″ N, 070°57′05″ W; then running from approximate position 42°24′05″ N, 070°57′05″ W to Bailey's Hill Nahant, MA then north to include Nahant Harbor and Nahant Bay.

(ii) This anchorage is designated for the exclusive use of tall ships participating in the Sail Boston 2000 activities. Vessel movements through these areas during the periods specified, shall be directed by on-scene Coast Guard patrol personnel.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 16, 2000.

(5) *Mystic Anchorage.* (i) All bearings are reflected as true. All waters in the inner harbor in the Mystic River off Charlestown, in the vicinity of the old Amstar and Revere Sugar docks, bounded as follows: By a line running along 071°04′00″ W extending into the river four hundred (400) feet from shore; then turning 100° and running to the approximate position 071°03′44″ N, then running east along 071°03′44″ W for four hundred (400) feet back to shore; and then running to the point of beginning.

(ii) This anchorage is designated for the exclusive use of tall ships participating in the Sail Boston 2000 activities. Vessel movements through these areas during the periods specified, shall be directed by on-scene Coast Guard patrol personnel.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 16, 2000.

(6) *Spectator Anchorage B.* (i) All bearings are reflected as true. All waters in the inner harbor along the shoreline of East Boston, east of the Boston Main Channel, bounded as follows: By a line from Boston Main Channel Light "14", extending northwesterly to the Main Channel's edge at approximate position 42°22′19″ N, 071°02′47″ W, then southeasterly, along Boston Main Channel's eastern edge to 42°22′39″ N, 071°02′33″ W, and then to the southwest corner of Massport Pier "1", East Boston.

(ii) This anchorage is designated for the exclusive use of recreational vessels 45 feet or less in length with superstructures not to exceed ten (10) feet in height.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(7) *Spectator Anchorage C.* (i) All bearings are reflected as true. All waters in the inner harbor along the southern edge of Cashman's shipyard, East Boston eastward of the Main Channel, situated to provide a channel between it and Spectator Anchorage D, allowing access to Bird Island Flats, bounded as follows: beginning at 42°21′32.7″ N, 071°01′53″ W; then 210° to the northern edge of the Boston Main Channel; then northwesterly along Boston Main Channel's edge to approximate position 42°21′42″ N, 71°02′28.4″ W; then running to approximate position 42°21′48″ N, 071°02′23″ W; and then running to the point of beginning.

(ii) This anchorage is designated for the exclusive use of inspected small passenger vessels (certificated by the Coast Guard under Subchapter T and K of Title 46, Code of Federal Regulations).

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(8) *Spectator Anchorage D.* (i) All bearings are reflected as true. All waters in the inner harbor along the southwestern edge of Logan International Airport, East Boston, east of the Main Channel, situated to provide a channel between it and Spectator Anchorage C, allowing access to Bird Island Flats, bounded as follows: Beginning at Bird Island Flats Buoy "2"; then running 224° to the northern edge of the Boston Main Channel; then to 42°21′03″ N, 071°01′18″ W; then turning 024° and running to the shore; and then running to the point of beginning at Bird Island Flats Buoy "2."

(ii) This anchorage is designated for the exclusive use of recreational vessels forty-five (45) feet or less in length. Spectator Anchorage D may not be used as an overnight anchorage from 6 pm until 6 am for any vessels during the Sail Boston 2000 events.

(iii) This paragraph is applicable on July 11, 2000 and July 16, 2000.

(9) *Spectator Anchorage E.* (i) All bearings are reflected as true. All waters in the inner harbor along the southeastern edge of Logan International Airport, bounded as follows: Beginning at Boston Main Channel Lighted Buoy "12"; then 030° and running to shore; then along the shore to approximate position 42°20′48″ N, 071°00′27.5″ W; then running to approximate position 42°20′38.3″ N, 071°00′35.6″ W; then running along the northern edge of the Boston Main Channel to the point of beginning.

(ii) This anchorage is designated for the exclusive use of recreational vessels with a height above water at any point not to exceed fifty (50) feet.

(iii) This anchorage may not be used as an overnight anchorage between 6 pm and 6 am for any vessels during the Sail Boston 2000 events.

(iv) This paragraph is applicable July 11, 2000 and July 16, 2000.

(10) *Spectator Anchorage F.* (i) All bearings are reflected as true. All waters in the inner harbor along the Massport

North Jetty, South Boston, bounded as follows: Beginning at approximate position 42°21′05″ N, 071°01′54″ W; then running to approximate position 42°20′59″ N, 071°01′39″ W; then running to 42°20′56″ N, 071°01′41″ W; then running northwesterly along the face of the Massport North Jetty to the corner of the Jetty; and then to the point of beginning.

(ii) This anchorage is designated for the exclusive use of recreational vessels forty-five (45) feet or less in length with superstructures not to exceed ten (10) feet in height.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(11) *Spectator Anchorage G.* (i) All waters in the inner harbor along the Fan Pier, South Boston, situated to provide a channel between it and Boston Special Anchorage, allowing access to the Fort Point Channel, bounded and described as follows: beginning at 42°21′22″ N, 071°02′50″ W; then to 42°21′24″ N, 071°02′38″ W; then to 42°21′04″ N, 071°02′31″ W; then to 42°21′20″ N, 071°02′26″ W; then to Pier "4" Wreck Buoy (white and orange can, privately maintained); and then to the point of beginning.

(ii) This anchorage is designated as a special use anchorage, as deemed appropriate by the Captain of the Port. No vessel may anchor in this Anchorage without the permission of the Captain of the Port.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(12) *Spectator Anchorage H.* (i) All waters in the inner harbor bounded as follows: Beginning at the Boston Main Channel Lighted Buoy "6"; then to 42°20′12″ N, 070°59′14.5″ W; then to Boston Main Channel Lighted Buoy "4"; and then to the point of beginning.

(ii) This anchorage is designated for the exclusive use of recreational vessels of any size.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(13) *Spectator Anchorage J.* (i) All waters in the inner harbor to include the waters between the Main Channel and Governor's Island Flats, bounded as follows: Beginning at 42°20′12″ N, 070°59′14.5″ W; then to 42°20′30″ N, 70°59′14.5″ W; then to President Roads Anchorage Lighted Buoy "D", located at approximate position 42°20′33″ N, 70°58′52″ W then to 42°20′05″ N, 070°58′43.5″ W; then to Boston Main Channel Lighted Bell Buoy "4", located at approximate position 42°20′04″ N, 070°59′26″ W; and then to the point of beginning.

(ii) This anchorage is designated for the exclusive use of commercial fishing vessels.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(14) *Spectator Anchorage K.* (i) All bearings are reflected as true. All waters in the inner harbor between the Main Channel and Deer Island Flats as follows: Beginning at a point bearing 237°, 522 yards from Deer Island Light; thence to a point bearing 254°, 2,280 yards from Deer Island Light; thence to a point bearing 261°, 2,290 yards from Deer Island Light; thence to a point bearing 278°, 2,438 yards from Deer Island Light; thence to a point bearing 319°, 933 yards from Deer Island Light; thence to a point bearing 319°, 666 yards from Deer Island Light; and thence to the point of beginning.

(ii) This anchorage is a special use anchorage, as deemed appropriate by the Captain of the Port. No vessel may anchor in this Anchorage without the permission of the Captain of the Port

(iii) This paragraph is effective from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(15) *Spectator Anchorage L.* (i) In the inner harbor off the northwestern edge of Long Island into the entrance to Sculpin Ledge Channel, bounded as follows: Beginning at Boston Main Channel Lighted Buoy "17"; then to 42°19′40.5″ N, 070°57′50″ W; then to 42°19′40.5″ N, 070°58′43.8″ W; then to Boston Main Channel Lighted Buoy "1"; and then to the point of beginning.

(ii) This anchorage is designated for the exclusive use of inspected small passenger vessels (certificated by the Coast Guard under Subchapter T and K of Title 46, Code of Federal Regulations), sailing school vessels, uninspected passenger vessels, and bareboat charter vessels.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(16) *Spectator Anchorage M.* (i) All waters in the inner harbor along the northern edge of Spectacle Island, bounded as follows: Beginning at 42°20′00″ N, 071°00′00″ W; then to Boston Main Channel Lighted Buoy "3"; then to Boston Main Channel Lighted Buoy "1"; then to 42°19′40″ N, 070°59′57″ W; and then to the point of beginning.

(ii) This anchorage is designated for the exclusive use of recreational vessels of any size.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(17) *Spectator Anchorage N.* (i) All waters in the outer harbor along the western edge of the Boston North Channel bounded as follows: Beginning at Boston North Channel Lighted Bell Buoy "10"; then to Boston North Channel Lighted Buoy "4"; then to 42°22′00″ N, 070°56′24″ W; then to 42°21′40″ N, 070°56′17.5″ W; then to 42°21′20.5″ N, 070°56′10″ W; then to 42°20′39″ N, 070°56′38.5″ W; and then to the point of beginning.

(ii) This anchorage is designated for any latecoming spectator craft on hand to view the Grand Parade of Sail and Salute to USS CONSTITUTION Parade.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(18) *Spectator Anchorage P.* (i) All bearings are reflected as true. All waters in the outer harbor between the eastern edge of the Boston North Channel and Boston South Channel, bounded as follows: Beginning at Boston North Channel Lighted Buoy "3"; then southeast to Boston South Channel Lighted Buoy "6"; then along the northern edge of Boston South Channel to Boston South Channel Lighted Buoy "10"; then to Boston North Channel Lighted Buoy "PR"; then along the eastern edge of the Boston North Channel to the point of beginning.

(ii) This anchorage is designated for any latecoming spectator craft on hand to view the Grand Parade of Sail and Salute to USS CONSTITUTION Parade.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(19) *Spectator Anchorage Q.* (i) All waters in the outer harbor at the entrance to the Boston South Channel, bounded as follows: Beginning at Boston North Channel Lighted Buoy "PR"; then to Boston South Channel Lighted Buoy "10"; then to Boston South Channel Buoy "11" then to 42°20′15″ N, 070°56′23″ W; and then to the point of beginning.

(ii) This anchorage is designated for the exclusive use of inspected small passenger vessels (certificated by the Coast Guard under subchapter T and K of title 46, Code of Federal Regulations), sailing school vessels, uninspected passenger vessels, and bareboat charter vessels. Spectator Anchorage Q has one localized ledge eight feet deep.

(iii) This paragraph is applicable from 12 noon on July 10, 2000 until 6 pm on July 11, 2000 and from 12 noon on July 15, 2000 until 6 pm on July 16, 2000.

(b) *The regulations.* The anchorages designated in paragraphs (a)(1) through (19) of this section are subject to the following regulations:

(1) General Operational Requirements for all anchorages. Vessel operators using any of the anchorages established in this section shall:

(i) Ensure their vessels are properly anchored and remain safely in position at anchor during marine events;

(ii) Comply as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, local, state, and federal law enforcement vessels;

(iii) Vacate anchorages after termination of their effective periods;

(iv) Mark with an identifiable bouy any anchors which have been fouled on lobster trap lines or other obstructions if such anchors cannot be freed or raised.

(v) Use only Spectator Anchorages N, P, or Q if going offshore to view the tall ship events occurring in Massachusetts Bay on July 11, 2000 and July 16, 2000;

(vi) Display anchor lights when anchoring at night in any anchorage;

(vii) Not leave vessels unattended in any anchorage at any time; (viii) Not tie off to any buoy;

(ix) Maintain at least twenty (20) feet of clearance if maneuvering between anchored vessels;

(x) Not nest or tie off to other vessels in that anchorage;

(xi) Not block access to designated emergency medical evacuation areas.

(c) *Effective dates.* This section is effective from July 10, 2000 until July 16, 2000.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(G), 6.04–1, 6.04–6, and 160.5.

5. Add § 165.TO1–191 to read as follows:

§ 165.TO1–191 Safety Zone: Tall Ship Rally and Grand Parade of Sail, Broad Sound and Boston Harbor, Boston, MA.

(a) *Location.* The following are safety zones (all coordinates are NAD 1983): (1) All waters within a three hundred (300) yard radius of each vessel participating in the Grand Parade of Sail as it proceeds from approximate position 42°24′00″ N, 070°52′00″ W in Broad Sound, following the Boston North Channel and Boston Main Channel to various mooring sites throughout Boston Inner Harbor.

(2) All waters within a five hundred (500) yard radius from approximate position 42°23′06″ N, 070°53′26″ W; and

(3) All tall ship anchorages established in 33 CFR § 110.T01–135–191.

(b) *Effective dates.* This section is effective from 6 pm on July 10, 2000 until 6 p.m. on July 11, 2000.

(c) *Regulations.* The following special regulation applies: Vessels, except those participating in the Grand Parade of Sail, and duly authorized patrol craft, may not transit the safety zone except as authorized by the Captain of the Port.

6.Add § 165.TO1–192 to read as follows:

§ 165.TO1–192 Safety Zone: Boston 2000 Fireworks Extravaganza, Boston Inner Harbor, Boston, MA.

(a) *Location.* The following is a safety zone (all coordinates are NAD 1983): All waters within a four hundred (400) yard radius of Boston 2000 Fireworks Extravaganza barges and attending tug boats moored at approximate position 42°21′30″ N, 071°02′30″ W.

(b) *Effective date.* This section is effective from 8 pm until 11 p.m. on July 15, 2000.

(c) *Regulations.* The following special regulation applies: Vessels may not transit through the safety zone unless authorized by the Captain of the Port.

7. Add new § 165.TO1–193 to read as follows:

§ 165.TO1–193 Safety Zone: Salute to USS CONSTITUTION Parade, Boston Harbor, Boston, MA.

(a) *Location.* The following are safety zones (all coordinates are NAD 1983): (1) all waters within a three hundred (300) yard radius of the USS CONSTITUTION anchored at approximate position 42°20′24″ N, 071°58′14″ W.

(2) A moving safety zone within a three hundred (300) yard radius of all vessels participating in the Salute to the USS CONSTITUTION as they proceed from their various Boston Inner Harbor mooring sites transiting outbound using the Boston Main Channel and Boston North Channel to the Tall Ship 2000 Restart in Broad Sound established in 33 CFR 165.T01–194. The zone also includes all temporary spectator anchorages established in 33 CFR 110.T01–135–191.

(b) *Effective period.* This section is effective from 8 am until 6 pm on July 16, 2000.

(c) *Regulations.* The following special regulation applies: Vessels, except for those participating in the Salute to USS CONSTITUTION and duly authorized patrol craft, may not enter or remain in the safety zone except as authorized by the Captain of the Port.

8. Add § 165.TO1–194 to read as follows:

§ 165.TO1–194 Safety Zone: Tall Ships 2000 Race Restart, Massachusetts Bay, Boston, MA.

(a) *Location.* The following is a safety zone (all coordinates are NAD 1983): All waters in a three (3) square mile area in Massachusetts Bay bounded as follows: Beginning at 42°27′12″ N, 070°40′00″ W; thence to 42°27′12″ N, 070°36′00″ W; thence to 42°24′06″ N, 070°36′00″ W; thence to 42°24′06″ N, 070°40′00″ W; and thence to the point of beginning.

(b) *Effective period.* This section is effective from 10 am on until 6 pm on July 16, 2000.

(c) *Regulations.* The following regulation applies: Vessels, except for those participating in the Tall Ships 2000 Race Restart, and duly authorized patrol craft, may not enter or remain in the safety zone from 10 a.m. to 6 p.m. except as authorized by the Captain of the Port.

9. Add § 165.TO1–195 to read as follows:

§ 165.TO1–195 Security Zone: USS JOHN F. KENNEDY, North Jetty, Boston Harbor, Boston, MA.

(a) *Location.* The following is a security zone (all coordinates are NAD 1983): All waters of Boston inner harbor at the North Jetty, South Boston, bounded as follows: Beginning at 42°20′53″ N, 071°01′34″ W; thence to 42°20′56″ N, 071°01′32″ W; along the western edge of Boston Harbor South Channel thence to 42°20′51″ N, 071°01′23″ W; thence to 42°20′49″ N, 071°01′24″ W; then running along the pier face to the point of beginning.

(b) *Effective dates.* This section is effective from 6 pm on July 10, 2000 until 6 pm on July 16, 2000.

(c) *Regulations.* The following special regualtion applies: Vessels may not enter the security zone except unless authorized by the Captain of the Port.

Dated: February 29, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 00–6249 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 54, 61, and 69

[CC Docket Nos. 96–262; 94–1; 99–249; 96–45; FCC 99–235]

Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, and Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule: comments requested.

SUMMARY: The Federal Communications Commission (FCC) issued a notice of proposed rulemaking regarding the modified integrated universal service and access charge reform proposal (modified proposal) submitted by the Coalition for Affordable Local and Long Distance Service (CALLS). After *inter alia* reviewing the comments and reply comments in response to the original integrated universal service and access charge reform proposal, the CALLS members submitted a modified proposal. As indicated in this proposed rule, interested parties may file comments and reply comments regarding the modified proposal.

DATES: Submit comments on or before March 30, 2000. Submit reply comments on or before April 13, 2000.

ADDRESSES: Submit electronic comments and other data to http://www.fcc.gov.e-file/ecfs.html. *See* **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

Submit paper copies to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th, S.W., TW–A325, Washington, D.C. 20554. *See* **SUPPLEMENTARY INFORMATION** for information on additional instructions for filing paper copies.

FOR FURTHER INFORMATION CONTACT: Joi Roberson Nolen, 202–418–1537.

SUPPLEMENTARY INFORMATION: By this Notice the Commission invites supplemental comment on the proposal of the Coalition for Affordable Local and Long Distance Service (CALLS) for universal service and interstate access charge reform. CALLS submitted its original proposal on July 29, 1999. On September 15, 1999, the Commission released a Notice of Proposed Rulemaking (NPRM) seeking comment on whether the Commission should adopt all or some portion of the CALLS proposal, or an alternative plan. *See* Access Charge Reform, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service, CC Docket Nos. 96–262, 94–1, 99–249 and 96–45, Notice of Proposed Rulemaking, FCC 99–235 (rel. Sept. 15, 1999) 64 FR 53648, Oct. 4, 1999. On March 8, 2000, the CALLS members filed a written *ex parte* submission containing a modified version of the proposal (modified proposal). A copy of the submission is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 12th St. S.W., Room CY–A257, Washington, D.C. or copies may be purchased from the Commission's duplicating contractor, ITS Inc. 1231 20th St. N.W., Washington D.C. 20036; (202) 857–3088. The complete text of the Notice including the modified proposal also may be obtained through the Worldwide Web, at http://www.fcc.gov. The Commission seeks comment on whether it should adopt all or some portion of the modified proposal.

In separate letters, the CALLS long-distance signatories have made a number of commitments to consumers with respect to the ways in which they would pass on the benefits they would receive if CALLS were adopted. Copies of the AT&T and Sprint letters, which were filed as written *ex parte* submissions on February 25, 2000, are available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 12th St. S.W., Room CY–A257, Washington, D.C. or copies may be purchased from the Commission's duplicating contractor, ITS Inc. 1231 20th St. N.W., Washington D.C. 20036; (202) 857–3088. As noted, the complete text of the Notice including the letters also may be obtained through the Worldwide Web, at http://www.fcc.gov. The Commission seeks comment on the commitments made in these letters, and how the Commission should enforce them.

Regulatory Flexibility Analysis

The NPRM in this proceeding contained an Initial Regulatory Flexibility Analysis (IRFA) as required by the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 603; *see* also 5 U.S.C. 601 *et seq.*, as amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). This Notice sets forth substitute rules for those contained in the NPRM. The IRFA is therefore revised as follows.

As required by the RFA, this IRFA of the possible significant economic impact on small entities by the proposals in this Notice has been prepared. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Notice, and should have a separate and distinct heading designating them as responses to the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA. *See* 5 U.S.C. 603(a).

Legal Basis

This rulemaking action is supported by sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 254, and 403.

Description and Estimate of the Number of Small Entities to Which the Notice will Apply

The RFA generally defines the term "small entity" as having the same meaning as the term "small business." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities. *See* 5 U.S.C. 601 (3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity that has no more than 1500 employees. *See* 13 CFR 121.201.

Total Number of Telephone Companies Affected

Price Cap Local Exchange Carriers

The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of price cap LECs that would qualify as small business concerns under the SBA's definition. However, there are only 13 price cap LECs. Consequently, significantly fewer than 13 providers of local exchange service are estimated to be small entities

or small price cap LECs that may be affected by these proposals. Although small price cap LECs have been included in this RFA analysis, this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts. In particular, treatment here of small price cap LECs as "non-dominant" for SBA size standards has no effect on Commission determinations of "dominance" in other, common carrier, contexts.

Competitive Local Exchange Carriers

Neither the Commission nor the SBA has developed a definition of small providers of local exchange service. The closest applicable definition under SBA rules is for telephone telecommunications companies other than radiotelephone (wireless) companies. *See* Standard Industrial Classification (SIC) Code 4813. The most reliable source of information regarding the number of competitive LECs nationwide of which the Commission is aware appears to be the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to the Commission's most recent data, 129 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. *See* FCC, Common Carrier Bureau, *Carrier Locator: Interstate Service Providers,* Figure 1 (number of carriers paying into the TRS Fund by type of carrier) (Jan. 1999). The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of competitive LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 129 providers of local exchange service are small entities or small competitive LECs that may be affected by these proposals.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The revised CALLS proposal would require price cap LECs to file with the Universal Service Administration Corporation (USAC) additional information pertaining to line counts by zone and customer class, revenue data, and information regarding zone boundaries. Competitive LECs would also have to file with USAC line counts by zone and customer class. The filings are on a quarterly basis. Otherwise, it is not clear whether, on balance, the proposals will increase or decrease price cap LECs' administrative burdens.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The proposals made by CALLS could have varying positive or negative impacts on price cap LECs, including any such small carriers. The alternative to consideration of adopting the CALLS proposal at this time would be to continue in effect the existing access charge and universal service fund rules. Public comments is welcomed on modifications of the CALLS proposal rules that would reduce any potential impacts on small entities. Specifically, suggestions are sought on different compliance or reporting requirements that take into account the resources of small entities; clarification, consolidation, or simplification of compliance and reporting requirements for small entities subject to the rules; and whether waiver or forbearance from the rules for small entities is feasible or appropriate. Comments should be supported by specific economic analysis.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Paperwork Reduction Act

The NPRM released September 15, 1999 contained either a proposed or modified information collection. As part of its continuing effort to reduce the paperwork burden, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the following information collections contained in the proposal published in the NPRM as modified by the modified proposal herein, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on the Notice; OMB comments are due 60 days from the date of publication of the Notice in the **Federal Register**. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) estimates of the collection burden; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Filing Comments

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 30, 2000. Interested parties may file reply comments on or before April 13, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing Documents in Rulemaking Proceedings, 63 FR 24,121 (May 1,1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov.e-file/ecfs.html>. Commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW–A325, Washington, D.C. 20554.

Parties also must send three paper copies of their filing to Wanda Harris, Competitive Pricing Division, 445 12th Street S.W., Fifth Floor, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, ITS, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Telecommunications.

47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 61

Access charges, Communications common carriers, Telephone.

47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

Carol Mattey,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 00–6425 Filed 3–14–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

RIN 0648–XA39

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[I.D. 102299A]

RIN 1018–AF80

Endangered and Threatened Wildlife; Extension of Comment Period on Proposed Endangered Status for a Distinct Population Segment of Anadromous Atlantic Salmon (*Salmo salar*) in the Gulf of Maine

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: NMFS and FWS (the Services) provide notice to extend the public comment period on the proposed determination of endangered status for a distinct population segment (DPS) of Atlantic salmon (*Salmo salar*) in the Gulf of Maine.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00 p.m., eastern daylight time, on April 14, 2000.

ADDRESSES: Written comments and materials regarding the proposed rule should be sent to the Endangered Species Program Coordinator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930 (fax 978–281–9394), or to the Chief, Division of Endangered Species, FWS, 300 Westgate Center Drive, Hadley, MA 01035 (fax 413–253–8308). Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Mary Colligan, NMFS, 978–281–9116, fax 978–281–9394, e-mail mary.colligan@noaa.gov, or Paul_Nickerson, FWS, 413–253–8615, fax 413–253–8308, e-mail Paul Nickerson@fws.gov.

SUPPLEMENTARY INFORMATION: The Gulf of Maine DPS includes all naturally reproducing wild populations of Atlantic salmon having historical, river-specific characteristics found in a range north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix River at the US-Canada border. The DPS includes both early and late run Atlantic salmon. Threats to the species include low marine survival, disease, the use of non-North American strains of Atlantic salmon in the U.S. aquaculture industry, aquaculture escapees, water withdrawal and sedimentation.

On November 17, 1999, the Services published a proposed rule (64 FR 62627) to list the Gulf of Maine DPS of Atlantic salmon as endangered under the Endangered Species Act of 1973, as amended (ESA). The public comment period originally was announced to close on February 15, 2000. On January 7, 2000 (65 FR 1082) the Services extended the public comment period to March 15, 2000. Because of several requests for additional time, the Services are extending the public comment period to 5:00 P.M. Eastern Daylight Time, April 14, 2000.

Electronic Access

The 1999 Status Review may be downloaded from the following site: http://news.fws.gov/salmon/asalmon.html.

Dated: March 9, 2000.

Art Jeffers,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

Dated: March 9, 2000.

Ronald E. Lambertson,

Regional Director, Region 5, U.S. Fish & Wildlife Service.

[FR Doc. 00–6414 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 51
Wednesday, March 15, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COMMISSION ON ELECTRONIC COMMERCE

Meetings

The Advisory Commission on Electronic Commerce was established by Public Law 105–277 to conduct a thorough study of federal, state, local and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities. The Commission is to report its findings and recommendations to Congress no later than April 21, 2000. Notice is hereby given, that the Advisory Commission on Electronic Commerce will hold a meeting by telephone conference call on Thursday, March 30, 2000, at a time to be determined. Meetings of the Commission shall be open to the public. This meeting will be audiocast live on the World Wide Web. The audiocast will be accessible from"Calendar/ Meetings" page of the Commission's Web site, *www.ecommercecommission.org/ calendar.htm*. The time for the meeting will be posted on the Web site no later than March 29, 2000. A verbatim transcript of this meeting will be posted on the Web site no later than April 7, 2000.

Oral comments from the public will be excluded at this meeting.

A listing of the members of the Commission and details concerning their appointment were published in the **Federal Register** on June 9, 1999, at 64 FR 30958.

Heather Rosenker,

Executive Director.

[FR Doc. 00–6325 Filed 3–14–00; 8:45 am]

BILLING CODE 0000–00–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Extension of Comment Period for the Technical Guidance for Developing Comprehensive Nutrient Management Plans (CNMPs)

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: This Public Notice announces an extension of the comment period deadline for the Technical Guidance for Developing Comprehensive Nutrient Management Plans.

DATES: Comments will be received until April 14, 2000.

ADDRESSES: Address all requests and comments to: Francine A. Gordon, Management Assistant, Natural Resources Conservation Service, ATTN: CNMP, 5601 Sunnyside Avenue, Stop Code 5473, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: Obie Ashford, Natural Resources Conservation Service, 301–504–2197; fax 301–504–2264, e-mail obie.ashford@usda.gov

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice, released December 9, 1999. The complete text of the Public Notice is available on the NRCS website at http://www.nhq.nrcs.usda.gov/PROGRAMS/ahcwpd/ahCNMP.html.

The "Technical Guidance for Developing Comprehensive Nutrient Management Plans" is a document intended for use by Natural Resources Conservation Service (NRCS) and conservation partner State and local field staffs, private consultants, landowners/operators, and others that will be developing or assisting in the development of Comprehensive Nutrient Management Plans (CNMP). The purpose of this document is to provide technical guidance, not to establish regulatory requirements, for local, tribal, State, or Federal programs. This technical guidance is not intended as a sole source or reference for developing CNMPs. CNMP is a subset of a conservation plan unique to animal feeding operations. A CNMP is a group of conservation practices and management activities which, when combined into a system, will help to ensure that both production and natural resource goals are achieved. It incorporates practices to utilize animal manure and organic by-products as a beneficial resource. A CNMP addresses natural resource concerns dealing with nutrient and organic by-products and their adverse impacts on water quality. The objective of a CNMP is to combine management activities and conservation practices into a system that, when implemented, will minimize the adverse impacts of animal feeding operations on water quality.

USDA prohibits discrimination in their programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination with USDA, write USDA Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, D.C. 20250–9410, or call (202) 720–5964 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed at Washington, D.C., on March 8, 2000

Pearlie S. Reed,

Chie, Natural Resources Conservation Service

[FR Doc. 00–6411 Filed 3–14–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the Second Quarter of 2000

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the second quarter of 2000.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for

advances on municipal rate loans with interest rate terms beginning during the second calendar quarter of 2000.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning April 1, 2000, and ending June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Gail P. Salgado, Management Analyst, Office of the Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, Room 4024–S, Stop 1560, 1400 Independence Avenue, SW, Washington, DC 20250–1560. Telephone: 202–205–3660. FAX: 202–690–0717. E-mail: GSalgado@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the second calendar quarter of 2000 for municipal rate electric loans. RUS regulations at § 1714.4 state that each advance of funds on a municipal rate loan shall bear interest at a single rate for each interest rate term. Pursuant to § 1714.5, the interest rates on these advances are based on indexes published in the "Bond Buyer" for the four weeks prior to the fourth Friday of the last month before the beginning of the quarter. The rate for interest rate terms of 20 years or longer is the average of the 20 year rates published in the Bond Buyer in the four weeks specified in § 1714.5(d). The rate for terms of less than 20 years is the average of the rates published in the Bond Buyer for the same four weeks in the table of "Municipal Market Data—General Obligation Yields" or the successor to this table. No interest rate may exceed the interest rate for Water and Waste Disposal loans.

The table of Municipal Market Data includes only rates for securities maturing in 2000 and at 5 year intervals thereafter. The rates published by RUS reflect the average rates for the years shown in the Municipal Market Data table. Rates for interest rate terms ending in intervening years are a linear interpolation based on the average of the rates published in the Bond Buyer. All rates are adjusted to the nearest one eighth of one percent (0.125 percent) as required under § 1714.5(a). The market interest rate on Water and Waste Disposal loans for this quarter is 5.875 percent.

In accordance with § 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the second calendar quarter of 2000.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2021 or later	5.875
2020	5.875
2019	5.875
2018	5.875
2017	5.750
2016	5.750
2015	5.750
2014	5.625
2013	5.625
2012	5.500
2011	5.375
2010	5.375
2009	5.250
2008	5.250
2007	5.125
2006	5.125
2005	5.000
2004	4.875
2003	4.625
2002	4.375
2001	4.125

Dated: March 8, 2000.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 00–6387 Filed 3–14–00; 8:45 am]

BILLING CODE 3410–15–P

AMTRAK REFORM COUNCIL

Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of Special Public Outreach Hearing for the Mountain States and a Public Business Meeting.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of a special public outreach meeting of the Council with representatives from the Mountain States. At the Outreach Hearing, the Council has invited, among others, representatives from the states of Arizona, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Utah, and Wyoming, and from Amtrak as well, to discuss all aspects of current and future intercity railroad passenger service. The Mountain States are served almost exclusively by the long-haul trains that Amtrak operates from the Midwest and Southeast Regions to the West Coast.

DATES: The Special Public Outreach Hearing will be held on Thursday, March 30, 2000 from 9:00 a.m. to 5:00 p.m. and the Business Meeting will be held on Friday, March 31, 2000 from 8:30 a.m. to 12:30 p.m. Both the Hearing and Business Meeting are opened to the general public.

ADDRESSES: Both the Outreach Hearing and Business Meeting will take place at the University of Denver, 2nd Floor-Ballroom, Driscoll Center, 2300 S. York Street, Denver, Colorado 80208. (The Driscoll Center is located North of the campus.) Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, S.W., Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061. You can also visit the ARC's website at *www.amtrakreformcouncil.gov*, for information regarding ARC's upcoming events, the agenda for upcoming events, the ARC's First Annual Report, information about the ARC Staff and the Council Members and much more.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after two years, the ARC has the authority to determine whether Amtrak can meet certain financial goals specified under the ARAA and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and Congressional leaders. Each member is to serve a five-year term.

Issued in Washington, DC, March 10, 2000.

Thomas A. Till,

Executive Director.

[FR Doc. 00–6415 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Population Survey, June 2000 Fertility Supplement.

Form Number(s): This automated instrument has no form number.

Agency Approval Number: 0607–0610.

Type of Request: Reinstatement, with change, of a previously approved collection.

Burden: 250 hours.

Number of Respondents: 30,000.

Avg Hours Per Response: 30 seconds.

Needs and Uses: The Census Bureau is requesting clearance for the collection of data concerning fertility to be conducted in conjunction with the June 2000 Current Population Survey (CPS). The Census Bureau sponsors the supplement questions, which have been asked periodically since 1971. The June 2000 Supplement differs from previously conducted supplements in that it only includes fertility items. The most recent supplement, conducted in 1998, contained both fertility items and birth expectations items.

This survey provides information used mainly by government and private analysts to project future population growth, to analyze child spacing, and to aid policymakers in their decisions affected by changes in family size and composition. Past studies have discovered noticeable changes in the patterns of fertility rates and the timing of the first birth. Potential needs for government assistance, such as aid to families with dependent children, child care, and maternal health care for single parent households, can be estimated using CPS characteristics matched with fertility data.

The fertility information will be collected by both personal visit and telephone interviews in conjunction with the regular June 2000 CPS interviewing. All interviews are conducted using computer-assisted interviewing.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 9, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–6320 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 8–2000]

Proposed Foreign-Trade Zone—Waco, Texas; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Waco, Texas, to establish a general-purpose foreign-trade zone at sites in Waco, Texas, adjacent to the Dallas/Fort Worth Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 6, 2000. The applicant is authorized to make the proposal under Texas Revised Civil Statute Article 1446.01.

The proposed zone would be the sixth general-purpose zone in the Dallas/Fort Worth Customs port of entry area. The existing zones are FTZ 39 in Dallas/Ft. Worth (site also in Grayson County) (Grantee: Dallas/Fort Worth International Airport Board, Board Order 133, 43 FR 37478, 8/23/78); FTZ 113 in Ellis County (Grantee: Midlothian Trade Zone Corporation, Board Order 283, 50 FR 300, 1/3/85); FTZ 168 in the Dallas/Ft. Worth, Texas, area (Grantee: Dallas/Fort Worth Maquila Trade Development Corporation, Board Order 491, 55 FR 46974, 11/8/90); FTZ 196 in the Fort Worth area Grantee: Alliance Corridor, Inc., Board Order 651, 58 FR 48826, 9/20/93); and, FTZ 227 in Durant, Oklahoma (Grantee: Rural Enterprises of Oklahoma, Inc., Board Order 947, 63 FR 5929, 2/5/98).

The proposed new zone would consist of 3 sites (409 acres) in Waco: *Site 1* (200 acres)—Aviation Parkway East, within the 1,000-acre Texas Aeroplex Industrial Park, adjacent to Highway 84 and within 5 miles of Interstate 35, Waco; *Site 2* (139 acres)—Bagby Avenue/MK&T Railroad site, within the 3,000-acre Texas Central Industrial Park, adjacent to Highway 6 and within 1 mile of Interstate 35, Waco; and, *Site 3* (70 acres)—Madison-Cooper Airport site, which is part of the 100-acre Regional Airport Industrial Park, on and adjacent to the Waco Regional Airport, Waco. Site 1 is a State Enterprise Zone. Sites 1 and 2 are owned by the Waco Industrial Foundation, and Site 3 is owned by the applicant.

The application indicates a need for foreign-trade zone services in Waco. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on April 19, 2000, at 1:00 p.m., at the City of Waco Civic Center, 100 Washington, Cameron Room, Waco, Texas 76701.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 15, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 30, 2000).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Greater Waco Chamber of Commerce, 101 South University Parks Drive, Waco, TX 76701.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: March 9, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–6402 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of New Shipper Antidumping Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to a request by a PRC exporter of subject merchandise, Yancheng Haiteng Aquatic Products & Foods Co., Ltd. (Yancheng Haiteng). This review covers shipments of this merchandise to the United States during the period of September 1, 1998 through February 28, 1999.

We have preliminarily determined that sales have not been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service not to assess antidumping duties on entries subject to this review.

EFFECTIVE DATE: March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Sarah Ellerman, Thomas Gilgunn or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4106, (202) 482–0648 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments' regulations are to the current regulations, codified at 19 CFR Part 351 (April, 1999).

Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the PRC on September 15, 1997 (62 FR 48218). On March 30, 1999, the Department received a request from Yancheng Haiteng for a new shipper review pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations. These provisions state that, if the Department receives a request for review from an exporter or producer of the subject merchandise which states that it did not export the merchandise to the United States during the period covered by the original less-than-fair-value (LTFV) investigation (the POI) and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer who exported, if the Department has not previously established such a margin for the exporter or producer. The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (1) The date on which the merchandise was first entered, or withdrawn from the warehouse, for consumption, or, if it cannot certify as to the date of the first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (2) a list of the firms with which it is affiliated; (3) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI, and (4) in an antidumping proceeding involving inputs from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government. See 19 CFR 351.214(b)(2)(ii), (iii), and (iv). Yancheng Haiteng's request was accompanied by information and certifications establishing the date on which it first shipped freshwater crawfish tail meat. Yancheng Haiteng also claimed it had no affiliated companies which exported crawfish tail meat from the PRC during the POI. In addition, Yancheng Haiteng certified that its export activities are not controlled by the central government. Based on the above information, the Department initiated a new shipper review covering Yancheng Haiteng. (See Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation of New Shipper Administrative Review, 64 FR 24328, May 6, 1999.)

Due to extraordinarily complicated issues in this case, the Department extended the deadline for completion of the new shipper review on November 3, 1999. (See Notice of Extension of Time Limit for Preliminary Results of New Shipper Antidumping Review: Freshwater Crawfish Tail Meat from the People's Republic of China, 64 FR 59739, November 3, 1999.)

Scope of Review

The product covered by this review is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 0306.19.10 and 0306.29.00.00. The HTSUS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

This review covers the period September 1, 1998 through February 28, 1999.

Issues of Relationships to Other Exporters

The Department will be further analyzing the implications of relationships between Yancheng Haiteng and other crawfish exporters for the final results. This process will entail the collection of additional data, contacting of parties, and possible verifications. For example, we will further consider whether Yancheng Haiteng should receive a rate different from that of another PRC exporter of subject merchandise that is an indirect parent of Yancheng Haiteng. This determination may affect whether it is appropriate to continue to treat Yancheng Haiteng as a new shipper. For further information, see the Memorandum to the File through Maureen Flannery from Thomas Gilgunn and Sarah Ellerman; New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China (A–570–848): Sales and Factors Verification Report for Yancheng Haiteng Aquatic Products and Foods Co., Ltd., dated February 24, 2000.

Verification

As provided in section 782(i) of the Act, we verified information provided

by Yancheng Haiteng, which is both the producer and exporter of the subject merchandise, using standard procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public version of the verification reports.

Separate Rates

Yancheng Haiteng has requested a separate, company-specific rate. In its questionnaire response, Yancheng Haiteng states that it is an independent legal entity and a PRC-foreign joint venture.

To establish whether a company operating in a nonmarket economy country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), as amplified by the Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994).

Under this policy, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over its export activities, evidence on the record indicates that Yancheng Haiteng is not controlled by the government. Yancheng Haiteng submitted evidence of its legal right to set prices independent of all government oversight. Yancheng Haiteng's business license and certificate of approval indicate that it is a Sino-U.S. joint venture. We find no evidence of *de jure* government control restricting Yancheng Haiteng from the exportation of crawfish. (*See Section A Response,* pages A–2 through A–8, and exhibits 2–4, June 22, 1999.)

No export quotas apply to crawfish and an export license is not required for exports of the subject merchandise to the United States. (*See Section A Response,* page A–5, June 22, 1999.) Prior verifications have confirmed that there are no export licenses required and no quotas for the seafood category "Other," which includes crawfish, in China's Tariff and Non-Tariff Handbook for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled Temporary Provisions for Administration of Export Commodities. (See Freshwater Crawfish Tail Meat From the People's Republic of China; Preliminary Results of New Shipper Review, 64 FR 8543, February 22, 1999.) The Department also checked the PRC's Export License Issued Categories and Quota List at verification, and found that neither crawfish tail meat nor crawfish shells were listed as products requiring a special export license or with a quota imposed by the government.

The PRC's Enterprise Legal Person Registration Administrative Regulations (Legal Person Regulations), issued on June 13, 1988, by the State's Industrial and Commercial Bureau, and placed on the record of this review, provide that, to qualify as legal persons, companies must have the "ability to bear civil liability independently" and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. (*See* Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China, 60 FR 56046 (November 6, 1995) (Manganese Metal) and Yancheng Haiteng's Section A response, June 22, 1999.)

Yancheng Haiteng submitted the Foreign Trade Law of the People's Republic of China, adopted by the government of the People's Republic of China in 1994, which grants autonomy to businesses involved in the importation and exportation of merchandise in their management decisions and establishes accountability for their own profits and losses. The business license of Yancheng Haiteng allows Yancheng Haiteng to enter into contracts and conduct business activities without the direction of a government ministry or agency. Yancheng Haiteng also submitted its Certificate of Approval for Establishment of Enterprises with Foreign Investment in the PRC, which documents its status as an enterprise with foreign investment. Therefore, with respect to the absence of *de jure* control over export activity, we determine that these firms are independent legal entities.

De Facto Control

With respect to the absence of *de facto* control over export activities, the information presented indicates that the management of Yancheng Haiteng is responsible for all decisions such as the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or selection of management for Yancheng Haiteng. (See Section A Response, pages A–5 through A–7, and exhibit 6; see also Separate Rate Analysis in the New Shipper Review of Yancheng Haiteng; Freshwater Crawfish Tail Meat from the People's Republic of China, dated February 24, 2000 (Separate Rates Memorandum), which is on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over Yancheng Haiteng's export activities, we preliminarily determine that this exporter is entitled to a separate rate. For further discussion of the Department's preliminary determination that these exporters are entitled to separate rates, see the Separate Rates Memorandum.

Normal Value Comparisons

To determine whether respondent's sales of the subject merchandise to the United States were made at NV, we compared its United Sates price to NV, as described in the "United States Price" and "Normal Value" sections of this notice.

United States Price

We based United States price on EP in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and CEP was not

otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. We deducted domestic inland freight and brokerage and handling expenses in the home market from the starting price (gross unit price) in accordance with 772(c) of the Act. Consistent with the original investigation and Freshwater Crawfish Tail Meat From the People's Republic of China; Preliminary Results of New Shipper Review, 64 FR 8543 (February 22, 1999) (Ningbo New Shipper Review), we used India as a surrogate country for valuing all expenses. We valued movement expenses as follows:

- To value truck freight, we used the rates reported in an April 20, 1994 newspaper article in the "Times of India" and submitted for the Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China, 60 FR 52647 (October 10,1995). We adjusted the rates to reflect inflation through the POR using WPI for India in the International Financial Statistics published by the International Monetary Fund (IMF).
- To value brokerage and handling in the home market, we used information reported in the antidumping administrative review of Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews, 63 FR 48184 (September 9, 1998) (Stainless Steel Wire Rod from India), and also used in Ningbo New Shipper Review.

Normal Value

For companies located in NME countries, section 773(c)(1) of Act provides that the Department shall determine NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Yancheng Haiteng has not contested such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation, we determined that India: (1) Is comparable with the PRC in terms of level of economic development, and (2) is a significant producer of comparable merchandise. With the exception of the crawfish input, we valued the factors of production using publicly available information from India. (*See* Memorandum to Edward Yang through Maureen Flannery from the Crawfish Team, Antidumping Investigation of Freshwater Crawfish Tail Meat from the People's Republic of China: Factor Values and Preliminary Margin Calculations, dated March 19, 1997.) For crawfish input, we used Spanish import statistics for crawfish imported from Portugal. (See Memorandum to Joseph Spetrini from Edward Yang, New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Determination of Surrogate Country Selection for Crawfish Input, dated February 16, 1999 and Memorandum to Barbara Tillman through Maureen Flannery from Sarah Ellerman, New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Factor Values Memorandum (Factors Memorandum), dated February 24, 2000. We used import prices to value many factors. As appropriate, we adjusted import prices by adding freight expenses to make them delivered prices. For a complete analysis of surrogate values, *see* Factors Memorandum. We valued the factors of production as follows:

- To value whole crawfish, we used the average Spanish import price for fresh (not frozen) crawfish imported from Portugal. In order to factor out seasonal fluctuations in the price of the Spanish import data, we valued whole crawfish using data from the calender year 1997, the most recent period for which data is available. Spanish import data show insignificant amounts of crawfish from other countries at aberrational prices and, therefore, it would not be appropriate to include these data in the calculation of the crawfish cost. These data are publicly available and are published by the Spanish Ministry of Customs in Madrid. Since our valuation of the crawfish input was for a period which did not coincide with the factors of production reporting period, we had to adjust this factor value. *See* Factor Values Memorandum for further discussion.
- To value the by-product of shells in the investigation and the Ningbo New Shipper Review, we used Indian import data for HTSUS category 0508.00.05, "shells of mollusks, crustaceans, and echinoderms." The petitioner has argued in this review, as it did in the Ningbo New Shipper Review, that Indian import prices are aberrational. In the Ningbo New Shipper Review, we found that no other tariff classifications for comparable merchandise are as detailed as the Indian HTSUS category under which we valued the crawfish shells. In this review, the petitioner has argued that the Indian tariff category under which we valued the crawfish shells is overbroad and includes different items with much higher values. HTSUS category 0508.00.05 includes echinoderms. Petitioner has maintained that echinoderms, such as starfish, which do not have shells and do not contain chitin (the chemical that makes crustacean shells valuable), are traded only for decorative purposes, thereby inflating the overall value of this tariff category. To substantiate its argument for this review, petitioner has placed on the record information demonstrating that the resulting Indian import price of 55 cents per pound for crawfish shells is highly exaggerated, including: (1) An offer to sell dried, crushed crab shells from an electronic bulletin board; (2) a delivered price for wet crustacean shells reported in a study on marine biopolymers; and (3) a price for crustacean scrap sold in India, calculated from a report detailing chitin and chitosan exports using established yields from crawfish shells for the production of chitosan. All of these items show significantly lower prices for shells of crustaceans than the 55 cents per pound used in the Ningbo New Shipper Review. In addition, we know that the price of the Spanish whole, live crawfish is 59 cents per pound. Finally, we received from the U.S. Embassy in Sri Lanka information indicating that Sri Lankan exports consist of conch shells and chanks for decorative purposes. *See* Notice of Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews, Partial Rescission of the Antidumping Duty Administrative Review, and Rescission of the New Shipper Review for Yancheng Baolong Biochemical Products, Co., Ltd.: Freshwater Crawfish Tail Meat from the People's Republic of China, 64 FR 55236, October 12, 1999 (Preliminary Results of the First Administrative Review). Based on this information taken as a whole, we determined in the Preliminary Results of the First Administrative Review that the Indian import statistics are an inappropriate surrogate value for crawfish shells.

Some of the alternate information currently on the record is internally

inconsistent, quite old, or possibly includes items other than crawfish shells. For these preliminary results, we applied a surrogate value based on a free-on-board (FOB) factory price quote for crab and shrimp shells from a Canadian seller of crustacean shells. We chose this price from any available alternatives because it is an actual price for crustacean scrap that is reasonably contemporaneous with the POR. We adjusted this price to reflect deflation to Yancheng Haiteng's crawfish processing season. (*See* Factor Value Memorandum.)

• To value coal and electricity, we used data reported as the average Indian domestic prices within the categories of "Steam Coal for Industry" and "Electricity for Industry," published in the International Energy Agency's publication, Energy Prices and Taxes, First Quarter, 1998. We adjusted the cost of coal to include an amount for transportation. For water, we relied upon public information from the November 1993 Water Utilities Data Book: Asian and Pacific Region, published by the Asian Development Bank. To achieve comparability of the energy and water prices to the factors reported for the crawfish processing period applicable to Yancheng Haiteng, we adjusted these factor values using the WPI for India, as published in the *IFS*, to reflect inflation through the applicable periods.

• To value plastic bags, cardboard boxes and adhesive tape, we relied upon Indian import data from the April 1997 through March 1998 issues of Monthly Statistics of the Foreign Trade of India (Monthly Statistics). We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory. For transportation distances used for the calculation of freight expenses on raw materials, we added to surrogate values from India a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. (See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China (Roofing Nails), 62 FR 51410 (October 1, 1997). We adjusted the reported factor values to reflect inflation through the POR.

• To value factory overhead, selling, and general and administrative expenses (SG&A), and profit, we calculated simple average rates using publicly available financial statements of three Indian seafood processing companies submitted in the original investigation for which more current data is now available, and applied these rates to the calculated cost of manufacture. (*See* Factor Values Memorandum.)

• For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 1999. (*See* http://www.ita.doc.gov/import_admin/records/wages.) Because of the variability of wage rates in countries with similar per capita Gross Domestic Products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of the wage rate data on the Import Administration's Web site can be found in the 1998 Year Book of Labour Statistics, International Labor Office (Geneva: 1998), Chapter 5: Wages in Manufacturing.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Yancheng Haiteng Aquatic Products and Foods, Co., Ltd..	09/01/98–02/28/99.	0

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication in accordance with 19 CFR 351.310(c). Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC, 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filled not later than 35 days after the date of publication. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from issuance of these preliminary results, unless this time limit is extended.

Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. For assessment purposes, we intend to calculate importer-specific assessment rates for freshwater crawfish tail meat from the PRC. We will divide the total dumping margins (calculated as the difference between NV and EP) for each importer by the entered value of the merchandise. Upon the completion of this review, we will direct Customs to assess the resulting *ad valorem* rates against the entered value of each entry of the subject merchandise by the importer during the POR.

Furthermore, the following deposit rate will be effective upon publication of the final results of this new shipper review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from the warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate indicated above; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will the company-specific

rate established in the most recent period; (3) for all other PRC exporters, the rate will be the PRC-wide rate, which is 201.63 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 24, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–6400 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 8, 1999, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V. (CEMEX), and its affiliate, Cementos de Chihuahua, S.A. de C.V. (CDC). The period of review is August 1, 1997, through July 31, 1998.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi or George Callen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5760 and (202) 482–0180, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

Background

On September 8, 1999, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. Preliminary Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico, 64 FR 48778 (1999) (preliminary results). We invited parties to comment on our preliminary results of review. The Department has conducted this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and customs purposes only. The Department's written description remains dispositive as to the scope of the product coverage.

Verification

Pursuant to section 782(i) of the Act, we verified information provided by CEMEX and CDC using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records, as well as the selection of original documentation containing relevant information. Our verification results are outlined in public versions of the verification reports, dated July 23, 1999, July 26, 1999, August 6, 1999, and January 6, 2000, and located in the public file in Room B–099 of the Department's main building.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by interested parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 6, 2000, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099. In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "Mexico". The paper copy and electronic version of the Decision Memo are identical in content.

Duty Absorption

We have determined that duty absorption has occurred with respect to CEMEX and CDC (collectively "CEMEX") with respect to 99.96% of sales which this firm made through its U.S. affiliated parties. For a discussion of our determination with respect to this matter, see the "Duty Absorption" section of the Decision Memo, accessible in B–099 and on the Web at www.ita.doc.gov/import_admin/records/frn/.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with

which we do not agree are discussed in the relevant sections of the Decision Memo, accessible in B–099 and on the Web at www.ita.doc.gov/import_admin/records/frn/.

Final Results of Review

We determine that the following weighted-average margin exists for the period August 1, 1997, through July 31, 1998:

Company	Margin
CEMEX/CDC	45.98%

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an exporter/importer assessment value. With respect to both export-price and constructed-export-price sales, we calculated a unit duty per metric ton by dividing the total margins for the reviewed sales by the total entered quantity of those reviewed sales for each importer. For a discussion concerning our calculation of a unit duty per metric ton rather than an assessment rate, see the notice of preliminary results, dated September 8, 1999, and the preliminary calculation memorandum, dated September 2, 1999. We will instruct Customs to assess the resulting unit duty against the entered quantities of for the subject merchandise on each of the importer's entries made during the review period.

Cash Deposit Requirements

The following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of gray portland cement and clinker from Mexico, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for CEMEX/CDC will be the rate shown above; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous reviews or the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 61.85 percent, which was the "all others" rate in the LTFV investigation. See Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Mexico, 55 FR 29244 (July 18, 1990).

The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 6, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix—List of Issues

1. Revocation
2. As Invoiced vs. as Produced
3. Ordinary Course of Trade
4. Level of Trade
5. Constructed Export Price Calculation
6. Regional Assessment
7. Bag vs. Bulk
8. Difference-in-Merchandise Calculation
9. Sales-Below-Cost Test
10. Special Cement
11. Assessment-Rate Calculation
12. Adjustments
    a. Rebates
    b. Freight
    c. Advertising
    d. Early-Payment Discounts
    e. Credit Expenses
    f. Other Adjustments
13. Financing of Cash Deposits
14. Duty Absorption
15. PROMEXMA Sales
16. Contrucentro's Employee Sales
17. Further-Manufactured Sales
18. Ministerial Errors
    a. Model Matching
    b. CDC's Employee Sales
    c. U.S. Direct Selling Expenses

[FR Doc. 00–6399 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on natural bristle paintbrushes and brush heads (paintbrushes) from the People's Republic of China ("PRC") in response to requests by petitioner, the Paint Applicator Division of the American Brush Manufacturers Association ("the Paint Applicator Division"), and one of the respondents, Hebei Animal By-Products Import and Export Corporation ("HACO"). This review covers the period February 1, 1998, through January 31, 1999 (POR).

We have preliminarily determined that sales have been made below normal value ("NV") by one of the companies subject to this review. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between export price ("EP") and NV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Sarah Ellerman, Mark Hoadley, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4106, (202) 482–0666, and (202) 482–3020, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Background

On February 14, 1986, the Department published in the **Federal Register** (51 FR 5580) an antidumping duty order on paintbrushes from the PRC. On February 11, 1999, the Department published in the **Federal Register** (64 FR 6878) a notice of opportunity to request an administrative review of the antidumping duty order on paintbrushes from the PRC covering the period February 1, 1998, through January 31, 1999.

On February 26, 1999, in accordance with 19 CFR 351.213(b)(1), petitioner, the Paint Applicator Division, requested that we conduct an administrative review of Hunan Provincial Native Produce and Animal By-Products Import and Export Corporation ("Hunan"). HACO submitted a request on February 23, 1999, that its entries be reviewed. Accordingly, we published a notice of initiation of this antidumping duty administrative review on March 29, 1999 (64 FR 14860). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of natural bristle paint brushes and brush heads from the PRC. Excluded from the review are paint brushes and brush heads with a blend of 40% natural bristles and 60% synthetic filaments. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by HACO, Hunan, and their suppliers by using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in public and proprietary versions of the verification reports.

Successorship to HACO

The record indicates that HACO has merged with two other companies to form Hebei Founder Import and Export Company (Founder). In determining whether one company is the successor to another for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in: (1) Management, (2) production facilities, (3) suppliers, and (4) customer base. *See, e.g.*, Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, 57 FR 20460 (May 13, 1992); Steel Wire Strand for Prestressed Concrete from Japan; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, 55 FR 7759 (March 5, 1990); and Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review, 59 FR 6944 (February 14, 1994).

While examining these factors alone will not necessarily provide a dispositive indication of succession, the Department will generally consider one company to have succeeded another if its operations are essentially inclusive of the alleged predecessor's. *See* Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, 55 FR 20460, 20461 (May 13, 1992). Thus, if the evidence demonstrates, with respect to the production and sale of the subject merchandise, that the new company operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

At verification, we confirmed that HACO had been combined with two other Chinese companies in December 1998 to form Founder. HACO no longer exists as a separate entity, and is now a department within Founder. We verified this fact by examining Founder's financial statements and paintbrush catalogs, and by discussing the matter with Founder personnel and former personnel of HACO. (For a more complete discussion, *see* the Memorandum to the File from Mark Hoadley and Sarah Ellerman; 1998–1999 Administrative Review of Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China (A–570–501) Sales Verification Report of Founder Import and Export Company, dated February 28, 2000. These former employees of HACO are now employed by Founder, which can be seen by comparing the verified organizational charts from the current review period with those of the previous review period. Furthermore, Founder's supplier and U.S. purchasers of subject merchandise are the same as HACO's, which can be seen by comparing the verified response of the current review with the verification report from the previous review period. For more information, see the proprietary version of Memorandum to the File from Sarah Ellerman; Inclusion Memo, dated February 28, 2000. Therefore, we preliminarily determine that Founder is the successor to HACO for purposes of this proceeding, and refer to the former HACO as Founder for the remainder of this notice.

Separate Rates

To establish whether a respondent operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each respondent under the test established in Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), and further defined in Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). Under this test, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes the following: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

De facto absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

With respect to the absence of de jure government control over export activities, evidence on the record indicates that both Founder and Hunan operate under the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People" ("WPE Law"). The WPE Law gives qualifying enterprises such rights as the right to act on their own behalf, adopt independent accounting methods, assume the sole responsibility for their

profits and losses, make their own managerial decisions, negotiate and set their own prices, and elect their own management. (*See* Exhibit 6B of Founder's July 14, 1999, questionnaire response and Exhibit 3 of Hunan's May 12, 1999, questionnaire response.)

With respect to the absence of *de facto* control over export activities, the management of both Founder and Hunan is elected by company personnel, and we found no evidence at verification that either company made operating decisions under government constraint, but substantial evidence that the two companies make operating decisions regarding prices, products, and customers independently of government interference. *See* Separate Rates Analysis in the Administrative Review of Hebei Animal By-Products Import and Export Corporation; Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China (Separate Rates Memorandum Founder) regarding Founder, and Separate Rates Analysis in the Administrative Review of Hunan Provincial Import and Export Corporation; Natual Bristle Paintbrushes and Brush Heads from the People's Republic of China (Separate Rates Memorandum Hunan) regarding Hunan, both dated February 28, 2000, and public versions of the verification reports, on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Because evidence on the record demonstrates an absence of government control, both in law and in fact, over respondents' export activities, the Department preliminarily grants Founder and Hunan separate rates.

Date of Sale

Hunan reported the invoice date as the date of sale. We have selected a date of sale other than the invoice date for Hunan. For more information, see Memorandum to the File from Sarah Ellerman; Analysis of Hunan Provincial Product & Animal By-Product Import & Export Corp. (Hunan) for the Preliminary Results of Review of Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China, dated February 28, 2000.

United States Price

For sales made by Founder and Hunan, we based United States price on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States, and constructed export price was not otherwise warranted by the facts on the record.

We calculated export price based on the price to these unrelated purchasers. For Founder, we deducted amounts for domestic inland freight because we were unable to verify that the U.S. customer paid for this expense. For Hunan, we also deducted amounts for inland freight.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Accordingly, we have applied surrogate values to factors of production to determine NV in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations.

We have determined that Indonesia is: (1) Comparable to the PRC in terms of level of economic development; and (2) is a significant producer of comparable merchandise. *See* Memorandum to the File, Natural Bristle Paint Brushes from the People's Republic of China—icant Production in Indonesia of Comparable Merchandise and Memorandum to Ed Yang from Jeff May, Director, Office of Policy, Natural Bristle Paintbrushes and Brush Heads: Nonmarket Economy Status and Surrogate Country Selection, dated March 26, 1999. Therefore, for this review, we have used publicly available information relating to Indonesia to value the various factors of production.

We valued the factors of production as follows:

For brush handles, bristles, epoxy, wood, nails, tin plate, and packing materials, we used per kilogram values, given in U.S. dollars, obtained from Indonesia's Foreign Trade Statistical Bulletin (Biro Pusat Statistik). Because statistics were not available for the entire POR, we adjusted these values for inflation. We calculated surrogate freight costs for these factors using the shorter of (a) the distance between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *See* Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China, 62 FR 51410 (October 1, 1997) (Roofing Nails). For Founder, we used a publicly available rate for wooden core submitted in the current review. For more information, *see* Memorandum to Maureen Flannery from Sarah Ellerman; 1998–1999 Antidumping Administrative Review of Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China: Factors Values Memorandum, dated February 28, 2000.

For labor, we used the PRC regression-based wage rate at Import Administration's homepage, Import Library, Expected Wages of Selected NME Countries, revised on June 2, 1997. *See* http://www.ita.doc.gov/import__admin/records/wages. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web page is found in the 1996 Year Book of Labour Statistics, International Labour Office (Geneva: 1996), Chapter 5B: Wages in Manufacturing.

For factory overhead, selling, general and administrative expenses (SG&A), and profit, we used data provided by respondent Hunan, in a previous review, from the Large and Medium Manufacturing Statistics: 1995, Vol. II, published by the Indonesian Bureau of Statistics. *See* Hunan's submission dated July 28, 1997, which was placed on the record of this review. This source provides a cost breakdown for large and medium sized manufacturers of hand tools and cutlery, and was also used in Roofing Nails. *See* 62 FR at 51410. We calculated factory overhead as a percentage of the total cost of manufacture. We calculated an SG&A rate by dividing SG&A expenses by the cost of manufacture. Lastly, we calculated a profit rate by dividing profit by the cost of production.

To value electricity, we used a value from A Brief Guide for Investors: 1995, published by the Indonesian Government's Investment Coordinating Board. We adjusted this value to reflect inflation through the end of the POR using the Indonesian wholesale price index (WPI) published by the International Monetary Fund (IMF). We then converted this figure to dollars using the Federal Reserve Bank's certified exchange rate on the date of sale.

To value truck freight, we used the rates reported in a September 1991 cable from the U.S. Consulate in Indonesia submitted for the Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, 58 FR 47859 (Sep. 20, 1993), which was placed on the record of this review. We adjusted these rates to reflect inflation through the end of the POR using Indonesian WPI published by the IMF.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Hebei Founder Import and Export Corp., also known as: Hebei Animal By-Products Import and Export Corporation.	02/01/98–01/31/99	4.18
Hunan Provincial Native Produce & Animal By-Products I/E Corp	02/01/98–01/31/99	0.00

Parties to the proceeding may request disclosure within 10 days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(b)(2)(ii). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we calculated importer-specific duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to quantity of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer for that class or kind of merchandise made during the POR. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit rate will be effective upon publication of the final results of this administrative review for all shipments of paintbrushes from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firms will be the rates established in the final results of this review (except that no deposit will be required for firms with *de minimis* margins, *i.e.*, margins less than 0.5 percent); (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC-wide rate, which is 351.92 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213 and 351.221.

Dated: February 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–6401 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 011300C]

Extension of Public Comment Period for Draft Environmental Impact Statement and Application for an Incidental Take Permit for the Tacoma Water Department, Green River Watershed, Habitat Conservation Plan, King County, Washington

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of extended public comment period.

SUMMARY: This notice announces a 17-day extension of the public comment period for the Draft Environmental Impact Statement and application for an Incidental Take Permit (Permit) for the Tacoma Water Department, Green River Watershed, Habitat Conservation Plan, King County, Washington. The Permit application includes: (1) the proposed Habitat Conservation Plan; (2) the proposed Implementing Agreement; and, (3) Draft Environmental Impact Statement. Direct mailings have been sent to affected State and local agencies, Federal agencies, Tribes, Federal and State legislators, public interest groups, and other interested parties, informing them of this extension.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00pm, Pacific standard time, on March 31, 2000.

ADDRESSES: Requests for documents on CD ROM should be made by calling FWS at (360)534–9330. Hardbound

copies are also available for viewing, and partial or complete duplication, at the following libraries: Olympia Timberland Library, Reference Desk, 313 8th Avenue SE, Olympia, WA, (360)352–0595; Tacoma Main Public Library, 1102 Tacoma Avenue South, Tacoma, WA, (253)591–5666; Enumclaw City Library, 1700 1st Street, Enumclaw, WA, (360)825–2938; Auburn Public Library, 808 9th Street SE, Auburn, WA, (253)931–3918; and, Seattle Public Library, Government Publications Desk, 1000 4th Avenue, Seattle, WA, (206)386–4636. The documents are also available electronically on the World Wide Web at http://www.r1.fws.gov/.

Written comments on the permit application, Environmental Impact Statement, Plan, and Implementing Agreement should be sent to Tim Romanski, Project Biologist, FWS, 510 Desmond Drive, SE., Suite 102, Lacey, WA, 98503–1273, (telephone: 360/753–5823; facsimile: 360/534–9331), or Mike Grady, Project Biologist, NMFS, 510 Desmond Drive, SE., Suite 103, Lacey, Washington, 98503–1273 (telephone: 360/753–6052; facsimile: 360/753–9517). Comments will not be accepted if submitted via e-mail or the internet. Comments and materials received will also be available for public inspection, by appointment, during normal business hours by calling (360)534–9330.

FOR FURTHER INFORMATION CONTACT: Tim Romanski, FWS, (phone: 360/753–5823, fax: 360/534–9331, e-mail: Tim__Romanski@r1.fws.gov), or Mike Grady, NMFS, (phone: 360/753–6052, fax: 360/753–9517, e-mail: Michael__Grady__AT–NMFS–OFO.1PO–OLES.FWCC__1POHUB@fws.gov).

SUPPLEMENTARY INFORMATION: The original **Federal Register** publication announcing the public comment period for this project was announced on January 14, 2000 (65 FR 2390). That notice stated that comments would be accepted through March 14, 2000. The purpose of this extension is to provide additional review and comment time in response to requests from several parties.

Dated: March 7, 2000.

Thomas J. Dwyer,

Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

Dated: March 10, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–6413 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–22–F, 4310–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021000D]

International Whaling Commission; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: NOAA makes use of a public Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice defines guidelines for participating on the Committee, provides a tentative schedule of meetings and of important dates, and describes the procedure for submitting nominations for the U.S. Delegation to the July IWC meetings.

DATES: The March 21, 2000, Interagency Meeting will be held at 2:00 p.m. Nominations for the U.S. Delegation to the July IWC meetings are due on April 1, 2000. See **SUPPLEMENTARY INFORMATION** for tentative 2000 meeting schedules.

ADDRESSES: The March 21, 2000, meeting will be held in Room B841–A, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Copies of nominations for the U.S. Delegation to the July IWC meetings should be sent to Cathy Campbell, Office of International Affairs, 14th Street and Constitution Avenue, Room 6228, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Cathy Campbell, (202) 482–2652.

SUPPLEMENTARY INFORMATION: The March 21, 2000, Interagency Committee meeting will review recent events relating to the IWC and issues that will arise at the 2000 IWC annual meeting.

The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary for Oceans and Atmosphere, who is also the U.S. Commissioner to the IWC. The U.S. Commissioner has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other interested agencies.

Each year, NOAA conducts meetings and other activities to prepare for the annual meeting of the IWC. The major purpose of the preparatory meetings is to provide input in the development of policy by individuals and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling. Any person with an identifiable interest in United States whale conservation policy may participate in the meetings, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Foreign nationals and persons who represent foreign governments may not attend. These stringent measures are necessary to promote the candid exchange of information and to establish the necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practices.

Tentative Meeting Schedule

The tentative schedule of additional meetings and deadlines, including those of the IWC, during 2000 follows. Specific locations and times will be published in the **Federal Register**.

March 21, 2000 (Rm B841–A, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C.): Interagency Committee meeting to review recent events relating to the IWC and to review U.S. positions for the 2000 IWC annual meeting.

April 1, 2000: Nominations for the U.S. Delegation to the July IWC meetings are due to the U.S. Commissioner, with a copy to Cathy Campbell (see **ADDRESSES**). All persons wishing to be considered for the U.S. Commissioner's recommendation to the Department of State concerning the composition of the delegation should ensure that nominations are received by this date. Prospective Congressional advisors to the Delegation should contact the Department of State directly.

May 17, 2000 (Rm 4830, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C.): Interagency Committee meeting to review recent events relating to the IWC and to review U.S. positions for the 2000 IWC annual meeting.

June 12–13, 2000 (Adelaide, Australia): IWC Scientific Committee Working Groups and Sub-committees.

June 14–26, 2000 (Adelaide, Australia): IWC Scientific Committee.

June 28 - July 1, 2000 (Adelaide, Australia): IWC Commission Committees, Sub-committees and Working Groups.

July 3–6, 2000 (Adelaide, Australia): IWC 52nd Annual Meeting.

Special Accommodations

Department of Commerce meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cathy Campbell (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Dated: March 2, 2000.

Art Jeffers,

Deputy Director, Office of Protected Resourses, National Marine Fisheries Services.

[FR Doc. 00–6346 Filed 3–10–00; 3:05 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021100C]

Marine Mammals; Scientific Research Permit (PHF# 642–1536–00)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Permit.

SUMMARY: Notice is hereby given that Joseph R. Mobley, Jr., Ph.D., University of Hawaii - West Oahu, 96–129 to take (*i.e.*, harass) several species of cetaceans in Hawaiian waters for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Protected Species Program Manager, Pacific Islands Area Office, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700;

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On December 3, 1999, notice was published in the Federal Register (64 FR 67882) that a request for a scientific research permit to take several species of cetaceans for purposes of scientific research had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 3, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–6354 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0007]

Tacoma Electric, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1115.20(4). Published below is a provisionally-accepted Settlement Agreement with Tacoma Electric Supply, Inc., containing monetary payments totalling between $205,000 and $375,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comments on its contents by filing a written request with the Office of the Secretary by March 30, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comment to the Comment 00–C0007, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Margaret H. Plank, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, 1450.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: March 9, 2000.

Sadye E. Dunn,

Secretary.

Consent Agreement

This Consent Agreement is made by and between the staff of the Consumer Product Safety Commission, and Tacoma Electric Supply, Inc. ("Tacoma"), a domestic corporation, to settle the staff's allegations that Tacoma distributed in commerce certain allegedly defective in-wall electric heaters manufactured by Cadet Manufacturing Company ("Cadet"), a domestic corporation, with its principal place of business located at 2500 West Fourth Plain Boulevard, Vancouver, Washington 98660.

Parties

1. The "staff" is the staff of the Consumer Product Safety Commission ("the CPSC" or "the Commission"), an independent regulatory agency of the United States of America, established by Congress pursuant to Section 4 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2053, as amended.

2. Respondent Tacoma is a corporation organized and existing under the laws of the State of Washington, with its principal place of business located at 1311 South Tacoma Way, Tacoma, WA 98409. Tacoma is a distributor of electrical materials and products.

Subject Matter

3. Since approximately 1978, Cadet has allegedly manufactured, sold and/or distributed in commerce in-wall electric heaters for use in homes and residences under the brand names "Cadet" and "Encore." These include all models and variants within each model of the series FW (including models FW–051, FW–101, FW–122, FW–202, and FW–751), manufactured between 1978 and 1987, series FX (including models FX–051, FX–052, FX–071, FX–072, FX–101, FX–102, FX–122, FX–151, FX–152, FX–202, and FX–242), manufactured between

1985 and 1994; series LX (including models LX–242, LX–302, LX–402, and LX–482), manufactured between 1985 and 1994; series TK (including models TK–051, TK–071, TK–072, TK–101, TK–102, TK–151, and TK–152), manufactured between 1984 and 1998; series ZA (including models ZA–051, ZA–052, ZA–071, ZA–072, ZA–101, ZA–102, ZA–122, ZA–151, ZA–152, ZA–202, and ZA–242), manufactured between 1985 and 1994; series Z (including models Z–072, Z–101, Z–102, Z–151, Z–152, Z–202, and Z–208), manufactured between 1993 and 1999; and all series and models of the same or functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX (including models RX–072, RX–101, RX–102, RX–151, RX–152, RX–202, and RX–242), manufactured between 1985 and 1994; series RLX (including models RLX–302, RLX–402, and RLX–482) manufactured between 1985 and 1994; series RK (including models RK–101 and RK–102), manufactured between 1984 and 1998; series RA (including models RA–101, RA–102, RA–151, RA–152, and RA–202), manufactured between 1985 and 1994, and series ZC (including models ZC–072, ZC–101, ZC–102, ZC–151, ZC–152, ZC–202, and ZC–208) manufacture between 1993 and 1999. For each of these heaters, the variants signified by the suffix T (with thermostat), W (white color), and TW (with thermostat and white color) found after the model number are included. All the heaters and variants referred to in this paragraph shall hereinafter be collectively referred to as "the Heaters." The Heaters were sold and/or distributed to consumers principally in the States of California, Idaho, Montana, Oregon, and Washington. Since approximately 1982, Tacoma has allegedly sold and/or distributed certain of the Heaters in commerce.

4. On January 14, 1999, the staff filed an Administrative Complaint ("Complaint") against Cadet, seeking a determination that certain of the Heaters present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), and public notice and a recall of certain of the Heaters pursuant to Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d). The Complaint alleged that certain of the Heaters are defective and present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), because their design and/or manufacture causes them to overheat, fail, and catch fire, and/or allows lint, dirt, or debris to build up within the heaters and catch fire. The Complaint also alleged that the design of certain of the Heaters can cause the Heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence, or energize the Heaters creating a risk of electric shock. On July 30, 1999, the CPSC approved a Consent Agreement and Order ("the Cadet Order") between the Staff and Cadet which, *inter alia*, required Cadet to undertake a remediation program for notification to consumers and for the replacement of the Heaters ("the Cadet Corrective Action Plan" or "the Plan"), upon final approval of the Plan by the United States Bankruptcy Court for the Western District of Washington at Tacoma (the date of final approval being referred to herein as the "Effective Date" of the Cadet Order).

Agreement of the Parties

5. It is the express purpose of the parties entering this Consent Agreement to protect the public safety by assisting Cadet's recall and replacement of the Heaters.

6. Fulfillment of the terms of this Consent Agreement and the attached Order (hereinafter "Order" or "the Order"), which is hereby incorporated by reference, shall resolve all potential obligations of Tacoma (and each of Tacoma's predecessors, successors, assigns, parents, subsidiaries, affiliated entities, agents, representatives, attorneys, employees, officers, directors, stockholders, and principals) (collectively "the Tacoma Releasees") under Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d), to give public notice of the alleged hazard presented by the Heaters, and to repair, replace, or refund the purchase price of the Heaters. Fulfillment of the terms of this Consent Agreement and Order shall also resolve all potential obligations and liabilities of the Tacoma Releasees for all other claims and causes of action which could have been alleged by the CPSC against the Tacoma Releasees relating to the Heaters, based upon information known to the CPSC, or otherwise in the CPSC's possession, at the time the CPSC staff signs this Consent Agreement. Nothing in this Paragraph 6 is intended to limit the CPSC's rights under Paragraph 20 of this Consent Agreement.

7. The staff believes that this Consent Agreement and Order is an equitable resolution of consumer claims against Tacoma for replacement heaters, and the staff has concluded that the Cadet Corrective Action Plan, and Tacoma's participation in that Plan, will provide an effective, fair, reasonable and adequate remedy for consumers throughout the United States who own or are otherwise exposed to the Heaters by notifying consumers of the alleged hazard and providing replacement heaters to them, and that this Agreement is, therefore, in the best interests of consumers.

8. This Consent Agreement and Order shall not be deemed or construed as an admission by Tacoma or as evidence: (a) Of any violation of law or regulation by Tacoma; (b) of other wrongdoing by Tacoma; (c) that the Heaters are defective, create a substantial product hazard, or are unreasonably dangerous; or (d) of the truth of any claims or other matters alleged or otherwise stated by the CPSC or any other person either against Tacoma or with respect to the Heaters.

9. The Heaters are "consumer products" within the meaning of Section 3(a)(1) of the CPSA, 15 U.S.C.. 2052(a)(1).

10. Tacoma is a "distributor" of "consumer product[s]," which are "distributed in commerce," as those terms are defined in Sections 3(a)(1), (5), and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (5), and (11).

11. The CPSC has jurisdiction over Tacoma and the Heaters under Sections 3(a)(1), (5), and (11) and Section 15 of the CPSA, 15 U.S.C. 2052(a)(1), (5), and (11) and 2064.

12. For purposes of this settlement only, Tacoma agrees not to contest the staff's allegation, which Tacoma denies, that the Heaters contain a "defect which creates a substantial product hazard," as those terms are defined in Section 15(a) of the CPSA, 15 U.S.C. 2064(a).

13. Upon final acceptance by the CPSC of this Consent Agreement and Order, Tacoma knowingly, voluntarily, and completely waives and relinquishes any past, present, and/or future right or rights in this matter: (a) To the issuance of a proposed complaint in accordance with 16 CFR 1115.20(6), to an administrative or judicial hearing, and to all further procedural steps—including findings of fact and conclusions of law—to determine whether the Heaters contain a defect which creates a substantial product hazard within the meaning of Section 15 of the CPSA; (b) to seek judicial review or otherwise challenge or contest the validity of this Consent Agreement and Order as issued and entered; (c) to seek judicial review of this or any past orders, findings, and/or determinations of the CPSC in this matter, except as set forth in Paragraphs 21 and 24 of this Consent Agreement, and (d) to file any

claim or to seek any remedy under the Equal Access to Justice Act.

14. The Order is issued under Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d), and a violation of this Consent Agreement and Order is a prohibited act within the meaning of Section 19(a)(5) of the CPSA, 15 U.S.C. 2068(a)(5), and may subject Tacoma to civil and/or criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. 2069 and 2070.

15. Tacoma agrees to fulfill all requirements of this Consent Agreement and Order.

16. For all purposes, this Consent Agreement and Order shall constitute an enforceable judgment obtained in an action or proceeding by a governmental unit to enforce its police and regulatory power. Tacoma acknowledges and agrees that this Consent Agreement and Order are pursuant to the CPSC's police and regulatory power to remedy the alleged risk created by the Heaters, and that, once Tacoma signs the Consent Agreement and Order, the Consent Agreement and Order will not be subject to an automatic stay in any bankruptcy proceeding involving Tacoma.

17. Tacoma acknowledges that any interested person may bring an action pursuant to Section 24 of the CPSA, 15 U.S.C. 2073, in any United States District Court in which Tacoma is found or transacts business, to enforce the Order and to obtain appropriate injunctive relief.

18. This Consent Agreement and Order shall be binding upon and inure to the benefit of the parties hereto and their successors, assigns, and any operating bankruptcy trustees or receivers. If, prior to the termination of this Consent Agreement and Order, Tacoma merges with any other business entity or sells, assigns, or otherwise transfers substantially all of its assets, Tacoma shall provide reasonable prior notice to the surviving corporation or to the purchaser, assignee, or transferee of substantially all of Tacoma's assets, of this Consent Agreement and Order, and of its binding effect upon said surviving corporation, purchaser, assignee, or transferee. The existence of this Consent Agreement and Order and its binding effect shall be noted in any agreement between Tacoma and such surviving corporation, purchaser, assignee, or transferee. It shall be a condition of any such merger, sale, assignment, or transfer that the surviving corporation or the purchaser, assignee, or transferee shall execute a document agreeing to be bound by the provisions of this Consent Agreement and Order and shall submit to the jurisdiction of the CPSC for purposes of enforcement of this Consent Agreement and Order. In the event of any merger, sale, assignment, or transfer of substantially all of Tacoma's assets, Tacoma shall provide written notice to the staff at least sixty (60) days prior to any such merger, asset sale, assignment, or transfer.

19. The CPSC, the staff, and/or Tacoma may disclose terms of this Consent Agreement and Order to the public.

20. The CPSC, at its sole discretion and upon reasonable notice to the staff and Tacoma, may void, suspend, or rescind this Consent Agreement and Order if, in Tacoma's submissions to the staff dated March 4, 1999 and June 18, 1999, Tacoma materially misrepresented the quantity of Heaters is sold. Notwithstanding the provision of Paragraph 28 of this Consent Agreement, the CPSC may exercise its rights under this Paragraph 20 within, and not later than, three (3) years after the date on which the CPSC finally accepts this Consent agreement and enters the Order.

21. If any provisions of this Consent Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Consent Agreement and Order, such provision shall be fully severable. In such event, there shall be added as part of this Consent Agreement and Order a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. The effective date of this added provision shall be the date upon which the prior provision was held to be invalid, illegal, or unenforceable. The rest of the Consent Agreement and Order shall remain in full effect, unless the CPSC determines, after providing Tacoma with notice and a reasonable opportunity to comment, that severing the provision materially impacts the Cadet Corrective Action Plan. The CPSC determination shall constitute the final agency decision and shall be subject to judicial review, such review to be based upon the record of any such CPSC proceeding and according to law.

22. This Consent Agreement and Order have been negotiated by the parties. Tacoma is not relying on the advice of the staff, nor anyone associated with the staff, as to legal, tax, or other consequences of any kind arising out of this Consent Agreement and Order, and Tacoma specifically assumes the risk of all legal, tax, and other consequences.

23. Tacoma acknowledges that this Consent Agreement and Order have been negotiated between unrelated, sophisticated, and knowledgeable parties acting in their own self-interest and represented by counsel, and the provisions of this Consent Agreement and Order shall not be interpreted or construed against any person or entity because that person or entity or any of its attorneys or representatives drafted or participated in drafting this Consent Agreement and Order.

24. The provisions of this Consent Agreement and Order shall be interpreted in a reasonable manner to effect its purpose to remedy the alleged hazard that the Heaters pose and to resolve potential claims by the CPSC against Tacoma with respect to the Heaters. In the event of a dispute between the parties arising under this Consent Agreement and Order, the parties agree to submit the dispute to non-binding arbitration by a panel of three arbitrators, according to the rules of the American Arbitration Association then in effect. The CPSC and Tacoma shall each have the right to select one arbitrator, and shall jointly select the third arbitrator. If the CPSC and Tacoma are unable to agree on the selection of the third arbitrator, that arbitrator shall be selected by the American Arbitrator Association. Either party may institute an action arising under this Consent Agreement and order, following the non-binding decision rendered by the arbitration panel, in the United States District Court for the District of Columbia.

25. The existence of a dispute between the staff and Tacoma over any provision of this Consent Agreement and Order shall not excuse, toll, or suspend any obligation of deadline imposed upon Tacoma under this Consent Agreement and Order, other than the specific provision in dispute.

26. This Consent Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the parties and approved by the CPSC.

27. This Consent Agreement and Order contain the entire agreement, understanding, representation, and interpretation of the parties herein, and nothing else may be used to vary or contradict its terms.

28. Tacoma's obligations under this Consent Agreement and Order shall terminate when Tacoma makes the final payment required under Paragraphs 4 and 5 of the Order.

29. Tacoma makes the monetary payments described in Paragraphs 4 and 5 of the Order solely as restitution to fund the Cadet Corrective Action Plan and thereby to settle claims arising out of its alleged distribution of the Heaters. No payment made pursuant to or referred to in this Consent Agreement

and Order is a fine or other penalty paid with respect to any violation of any law or regulation. Payment hereunder does not constitute, nor shall it be construed or treated as, payment in lieu of a fine or other penalty, punitive recovery, or forfeiture.

30. Tacoma may request appropriate verification from the staff, including record review, of the number of replacement heaters ordered from Cadet under the Cadet Corrective Action Plan. Upon receipt of a request from Tacoma, the staff shall provide such verification, subject to appropriate protective orders preserving the confidentiality of business records obtained from Cadet. In the event that such verification demonstrates the number of replacement heaters represented by the CPSC to Tacoma pursuant to Paragraph 5 of the Order to be incorrect, thus rendering Tacoma's payment into the escrow account incorrect, the staff shall direct the Escrow Agent to refund the overpayment to Tacoma in the amount of $0.85 per heater. A dispute as to the proper amount of contingent contribution shall be resolved in accordance with Paragraph 24 of this Consent Agreement.

31. Tacoma and the staff consent to the entry of the Order attached hereto.

32. Upon provisional acceptance of this Consent Agreement and Order by the CPSC, this Consent Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1115.20(b)(4). If the CPSC does not receive any written request not to accept this Consent Agreement and Order within fifteen (15) calendar days, this Consent Agreement and Order shall be deemed finally accepted on the twentieth (20th) calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1115.20(b)(5).

33. Upon final acceptance by the CPSC of this Consent Agreement and Order, the CPSC shall issue the incorporated Order. This Consent Agreement and Order shall become effective upon service of the signed Order upon Tacoma.

34. The parties have executed two (2) identical copies of this Consent Agreement and the two copies shall be treated as one and the same executed Consent Agreement.

Dated: February 7, 2000. Original fax transmission signed and dated February 3, 2000.

Howard N. Tarnoff,

Trial Attorney.

Margaret H. Plank,

Trial Attorney.

Eric L. Stone,

Director, Legal Division.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, Telephone: (301) 504–0626, Facsimile: (301) 504–0359.

Dated: February 2, 2000.

Randy Mauerman,

President, Tacoma Electric Supply, Inc., 1311 South Tacoma Way, Tacoma, WA 98409, Telephone: (253) 627–3982, Facsimile: (253) 383–7122.

Order

Upon consideration of the Consent Agreement entered into between Respondent Tacoma Electric Supply, Inc. ("Tacoma") and the staff of the Consumer Product Safety Commission ("the staff") (Collectively "the parties"); and

The Consumer Product Safety Commission ("the CPSC" or "the Commission") having jurisdiction over the subject matter and Tacoma;

It is hereby ordered that:

1. The Consent Agreement between Tacoma and the staff is incorporated herein by reference and accepted, and Tacoma shall comply with all obligations of the Consent Agreement and this Order.

2. Based on the Consent Agreement, the CPSC finds that the Consent Agreement and this Order are necessary to protect the public from the alleged hazard presented by Cadet's series FW, FX, LX, TK, ZA, and Z in-wall electric heaters, and the functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX, RLX, RK, RA, and ZC. These heaters shall hereinafter be collectively referred to as "the Heaters."

3. Tacoma shall immediately cease and desist offering for sale and/or distributing in commerce any of the Heaters, whether by itself or through its subsidiaries, affiliates, Tacoma-owned distribution centers, or any other persons or entities over whom Tacoma has control.

4. Tacoma shall pay into an escrow account (Chase Manhattan Trust Company, National Association, Account #76609060682) established by the staff and Cadet for the purpose of remedying the alleged hazard posed by the heaters ("Escrow Account") the sum of two hundred and five thousand dollars ($205,000) upon the CPSC's final acceptance of this Order.

5. Tacoma shall pay into the Escrow Account contingent contribution(s) of an additional ($0.85) for every heater in excess of two hundred and fifty thousand (250,000) heaters ordered by consumers under the Cadet Consent Agreement and Order, which was approved by the CPSC on July 30, 1999 ("the Cadet Order"); provided that the sum total of all of Tacoma's contingent contribution(s) shall be capped at one hundred and seventy thousand dollars ($170,000). Tacoma shall pay contingent contributions quarterly within fifteen (15) days of Tacoma's receipt of written notice form the staff of the number of replacement heaters over 250,000 ordered by consumers during each quarter within twenty-four months of the Effective Date of the Cadet Order issued by the CPSC on July 30, 1999.

6. The CPSC may authorize the distribution of the monetary payments referred to in Paragraphs 4 and 5 above: (a) To offset expenses directly related to Cadet's CPSC-approved Corrective Action Plan; and/or (b) to otherwise remedy the alleged hazard posed by the Heaters.

7. In addition to any penalty it may incur pursuant to Paragraph 14 of the Consent Agreement, if Tacoma fails to make timely contributions to the Escrow Account, as required by Paragraphs 4 and 5 of this Order, Tacoma shall be liable for additional contributions to the Escrow Account. Such additional contributions shall consist of the follows:

a. Interest at the percentage rate established by the Department of the Treasury pursuant to 31 U.S.C. 3717, for any period after the due date; and

b. A five percent (5%) per month penalty charge if the deposit is not made within thirty (30) days after the due date.

In no event shall a failure by Tacoma to make timely contributions to the Escrow Account result in an increase in the $170,000 cap on total contingent contributions by Tacoma to the Escrow Account.

Provisionally accepted and Provisional Order issued on the 9th day of March, 2000.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–6280 Filed 3–14–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of 20 Department of Defense Federal Advisory Committees

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the following 20 advisory committees have been determined to be in the public interest and have been renewed:

A. Board of Visitors, National Defense University.

B. Strategic Advisory Group for the U.S. Strategic Command.

C. Advisory Group on Electron Devices.

D. Defense Science Board.

E. Defense Advisory Committee on Military Personnel Testing.

F. Defense Advisory Committee on Women in the Services.

G. DoD Wage Committee.

H. National Security Agency Advisory Board.

I. Armed Forces Epidemiological Board.

J. Army Science Board.

K. Army Education Advisory Committee.

L. Chief of Engineers Environmental Advisory Board.

M. Scientific Advisory Board of the Armed Forces Institute of Pathology.

N. Board of Advisors to the President, Naval War College.

O. Board of Advisors to the Superintendent, Naval Postgraduate School.

P. Chief of Naval Operations Executive Panel Advisory Committee.

Q. Naval Research Advisory Committee.

R. Air University Board of Visitors.

S. Community College of the Air Force Board of Visitors.

T. U.S. Air Force Scientific Advisory Board.

These committees provide necessary and valuable advice to the Secretary of Defense and other senior officials in the DoD in their respective areas of expertise. They make important contributions to DoD efforts in research and development, education, and training, and various technical program areas. Some of them are authorized by statute.

It is a continuing DoD policy to make every effort to achieve a balanced membership on all DoD advisory committees. Each committee is evaluation in terms of the functional disciplines, levels of experience, professional diversity, public and private association, and similar characteristics required to ensure a high degree of balance is obtained.

FOR FURTHER INFORMATION CONTACT: Contact Jennifer Spaeth, DoD Committee Management Officer, 703–695–4281.

Dated: March 9, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–6289 Filed 3–14–00; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0150]

Proposed Collection; Comment Request Entitled Small Disadvantaged Business Procurement Credits

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0150).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Small Business Procurement Credit Programs. This OMB clearance expires on June 30, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before May 15, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Federal Acquisition Policy Division, GSA, 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

This FAR requirement concerning small disadvantaged procurement credit programs implements the Department of Justice proposal to reform affirmative action in Federal procurement, which was designed to ensure compliance with the constitutional standards established by the Supreme Court. The credits include price evaluation factor targets and certifications.

B. Annual Reporting Burden

Number of Respondents: 20,340.

Responses Per Respondent: 8.97.

Total Responses: 183,257.

Average Burden Hours Per Response: 2.09.

Total Burden Hours: 383,007.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0150, Small Disadvantaged Business Procurement Credit Programs, in all correspondence.

Dated: March 9, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–6294 Filed 3–14–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0152]

Proposed Collection; Comment Request Entitled Service Contracting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0152).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Service Contracting. This OMB clearance expires on June 30, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before May 15, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA, 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

This FAR requirement implements the statutory requirements of Section 834, Public Law 101–510, concerning uncompensated overtime. The coverage requires that offerors identify uncompensated overtime hours and the uncompensated overtime rate for procurements valued at $100,000 or more. This permits Government contracting officers to ascertain cost realism of proposed labor rates for professional employees.

B. Annual Reporting Burden

Number of Respondents: 19,906.
Responses Per Respondent: 1.
Total Responses: 19,906.
Average Burden Per Response: 30 minutes.
Total Burden Hours: 9,953.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0152, Service Contracting, in all correspondence.

Dated: March 9, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–6295 Filed 3–14–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Impact of DoD Acquisition Policies and Practices on the Health and Competitiveness of US Defense Companies will meet in closed session on February 22, 2000; March 7, March 20–21, April 4 and April 10. All meetings will be held at Strategic Analysis Inc., One Virginia Square, 3601 Wilson Blvd., Suite 600, Arlington, VA 22201.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will review the Department of Defense's acquisition policies and regulations governing the primary vendors of military equipment; determine whether these acquisition policies, processes and regulations have supported or weakened rational and economical business practices within the primary vendors of military equipment; and assess the impact of those policies, practices and regulations on the health and competitiveness of US defense companies. The Task Force plans to hold sensitive programmatic discussions with the primary vendors during the course of this effort.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c) (1) and (4) (1994), and that accordingly these meetings will be closed to the public.

Dated: March 9, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–6290 Filed 3–14–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DoD Healthcare Quality Initiatives Review Panel

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the ongoing schedule and for the next two meetings of the DoD Healthcare Quality Initiatives Review Panel. Meetings will be open to the public. Notice of these meetings are required under the Federal Advisory Committee (FAC) Act (Pub. L. 92–463).

DATES: March 23, 2000; April 27, 2000.

ADDRESSES: Sheraton Crystal City, 1800 Jefferson Davis Hwy, Arlington, VA 22202.

PROPOSED SCHEDULE AND AGENDA: Agenda will be posted on the homepage located *@www.hqirp.org.* The DoD Healthcare Quality Initiatives Review Panel (HQIRP) will meet in open session from approximately 8:30 am to 5:30 pm. There will be 20 minutes provided for Public Commentary beginning at approximately 4:30 pm. Public seating for this meeting is limited and is available on a first-come, first-served basis.

FOR FURTHER INFORMATION: Please contact Gia Edmonds at (703) 933–8325.

Dated: March 9, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–6291 Filed 3–14–00; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Spring 2000 Conference Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense, Advisory Committee on Women in the Services.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming semi-annual conference of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the Spring 2000 DACOWITS Conference is to assist the Secretary of Defense on matters relating to women in the Services. Conference sessions will be held daily and will be open to the public, unless otherwise noted below.

DATES: April 26–30, 2000.

ADDRESSES: Washington Dulles Airport Hotel, 13869 Park Center Road, Herndon, VA 20171; telephone: (703) 478–2900.

FOR FURTHER INFORMATION CONTACT: Major Susan E. Kolb, ARNG, or Sergeant First Class Verena Sander, USA, DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122 or E-Mail: *SANDERV@PR.OSD.MIL.*

SUPPLEMENTARY INFORMATION: The following rules will govern the participation by members of the public at the conference:

(1) Members of the public will not be permitted to attend the DoD Luncheon, DoD Reception and Dinner and Conference Field Trip.

(2) The Opening Session, General Session, all Subcommittee Sessions, Tri-Committee Review, and the Voting Session will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or to submit a written statement to the Committee must notify the point of contact listed above no later than April 10, 2000.

(5) Length and number of oral presentations to be made will depend on the number of requests received from members of the public.

(6) Oral presentations by members of the public will be permitted only on Sunday, April 30, 2000, before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office with one (1) copy of the presentation by April 10, 2000 and bring 175 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one (1) copy of the statement by the close of the conference on Sunday, April 30, 2000.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chair or Military Director, DACOWITS and Military Women Matters, for consideration.

(10) Members of the public will not be permitted to enter oral discussions conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) After the official participants have asked questions and/or made comment to the scheduled speakers, members of the public will be permitted to ask questions if recognized by the Chair and if time allows.

(12) Non-social agenda events that are not open to the public are for administrative matters unrelated to substantive advice provided to the Department of Defense and do not involve DACOWITS deliberations or decision-making issues before the Committee. Conference sessions will be conducted according to the following agenda:

Tuesday, April 25, 2000

New Member Orientation (DACOWITS Members Only).

Wednesday, April 26, 2000

Conference Registration, New Member Orientation (DACOWITS Members Only), Military Representatives Meeting (Senior Military Representatives Only), Executive Committee Rules and Procedures Meeting (DACOWITS Members Only).

Thursday, April 27, 2000

Opening Session and General Session (Open to public), DoD Luncheon (Invited Guests Only), Subcommittee Sessions (Open to Public).

Friday, April 28, 2000

Subcommittee Sessions (Open to Public), Luncheon (Paid Registered Conference Participants Only), Subcommittee Session (Open to Public), Executive Committee Rules and Procedures Meeting (DACOWITS Members Only), DoD Reception and Dinner (Invited Guests Only).

Saturday, April 29, 2000

Tri-Committee Session (Open to Public), Subcommittee Sessions (Open to Public), Field Trip (DACOWITS Members and Senior Military Representatives Only), Executive Committee Rules and Procedures Meeting (DACOWITS Members Only).

Sunday, April 30, 2000

Voting Session (Open to Public).

Dated: March 9, 2000.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 00–6292 Filed 3–14–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), U.S. Army, DoD.

ACTION: Notice.

In compliance with Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will given to all comments received by May 15, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to U.S. Army Corps of Engineers Waterborne Commerce Statistics Center, P.O. Box 61280, New Orleans, LA 70161 ATTN: CEWRC–NDC–C (J. Alexander Wieriman). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title, Associated Form, and OMB Number: Vessel Operation Report, ENG Forms 3925, 3925B, 3925P, 3925C, 0710–0016.

Needs and Uses: The Corps of Engineers uses ENG Forms 3925, 3925B, and 3925P as the basic instruments to collect waterborne commerce statistics. This data constitutes the sole source for domestic vessel movements of freight and passengers on U.S. navigable waterways and harbors. The data is collected from vessel operating companies, and are essential in maintaining U.S. navigable waterways. The data is also critical to the enforcement of the Harbor Maintenance Tax authorized under Section 1402 of Public Law 99–662.

Affected Public: Business or other for profit.

Annual Burden Hours: 44,479.

Number of Respondents: 1,321.

Responses Per Respondent: 228,752.

Average Burden Per Response: 5 minutes.

Frequency: Monthly.

SUPPLEMENTARY INFORMATION: The information collected is the basic data from which the Corps of Engineers compiles and publishes waterborne commerce statistics. The data is used not only to report to Congress, but also to perform cost benefit studies for new projects, rehabilitation projects, and operations and maintenance of existing projects. The WCSC is the sole authorized collector of data on domestic waterborne commerce and provides same to maritime Administration (MARAD), Department of Energy, Tennessee Valley Authority, Interstate Commerce Commission, the Coast Guard, State taxing agencies, U.S. Customs Service, Department of Treasury, and the Internal Revenue Service.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–6342 Filed 3–14–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), U.S. Army, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATE: Consideration will be given to all comments received by May 15, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to U.S. Army Corps of Engineers Waterborne Commerce Statistics Center, P.O. Box 61280, New Orleans, LA 70161 ATTN: CEWRC–NDC–C (J. Alexander Wieriman). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title, Associated Form, and OMB Number: Record of Arrivals and Departures of Vessels at Marine Terminals, ENG Form 3926, OMB Number 0710–0005.

Needs and Uses: The Corps of Engineers uses ENG Form 3926, as a quality control instrument by comparing the data collected on the Corps' Vessel Operation Report (OMB Control Number 0710–0006) with that collected on the ENG Form 3926. The information is voluntarily submitted by the respondents to assist the Waterborne commerce Statistics Center (WCSC) in the identification of vessel operators who fail to report significant vessel moves and tonnage.

Affected Public: Business or other for profit.

Annual Burden Hours: 2,500.

Number of Respondents: 450.

Responses Per Respondent: 12.

Average Burden Per Response: 5 minutes.

Frequency: Voluntary.

SUPPLEMENTARY INFORMATION: The information is invaluable in documenting the movement of petroleum products out of Valdez, Alaska. Without the information furnished on the ENG Form 3926 at least 50,000,000 tons of petroleum products would got unreported each year. This situation exists because there are many vessel operating companies moving crude petroleum from Valdez to points south.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–6343 Filed 3–14–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF THE DEFENSE

Department of the Army, Corps of Engineers

Cancellation of the Notice of Intent To Prepare a Draft Supplement to the Environmental Impact Statement (D–SEIS) for the Kennedy Bechara Segment of the Rio Puerto Nuevo Flood Control Project in Guaynabo and San Juan, Puerto Rico

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Cancellation notice.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers hereby cancels its Notice of Intent to prepare a Draft Supplement to the Environmental Impact Statement for the Rio Puerto Nuevo Flood Control Project, Kennedy-Bechara segment, as published in the **Federal Register** (Vol. 64, No. 174), Thursday, September 9, 1999, page 48995. Additional information concerning the cancellation is contained in the Supplementary Information paragraph indicated below.

FOR FURTHER INFORMATION CONTACT: Questions can be forwarded to Mr. Elmar G. Kurzbach, Environmental Branch, Planning Division, Jacksonville District, Corps of Engineers, Post Office Box 4970, Jacksonville, Florida 32232–0019, Phone: (904)–232–2325.

SUPPLEMENTARY INFORMATION: The Notice is cancelled because, after scoping for the proposed Supplement was completed, no new issues were raised; no request was received for public meetings, and comments were received only from environmental and resource agencies. All substantive comments made reference primarily to adverse impacts on wetlands of the flood mitigation alternatives then under consideration, all of which would have used a wetland (mangrove) parcel for disposal of excavated material to a greater or lesser degree. Federal and Commonwealth of Puerto Rico resource agencies, including the project co-sponsor, Department of Natural and Environmental Resources, stated that using remnant wetlands for disposal of excavated material was unacceptable. Consequently, the preferred alternative

has been revised to allow excavated material to be deposited upon uplands. With the resolution of this issue, the remaining wetlands footprint of the preferred alternative is less than that of the base plan previously coordinated under the National Environmental Policy Act in 1984 and 1993.

An Environmental Assessment will be prepared and coordinated for the proposed action. This document is expected to be available in approximately one month.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–6341 Filed 3–14–00; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law (92–463) announcement is made of the next meeting of the Inland Waterways Users Board. The meeting will be held on April 13, 2000, in St. Louis, Missouri, at the Regal Riverfront Hotel, 200 South 4th Street, St. Louis, Missouri 63102–1804, (Tel. 1–800–325–7353 or (314) 241–9500). Registration will begin at 9:00 AM and the meeting is scheduled to adjourn at 4:00 PM. The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CEW–PF, Washington, D.C. 20314–1000.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–6344 Filed 3–14–00; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 14, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 9, 2000.

William Burrow,

Leader Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Application for the Field-Initiated Studies Educational Research Grant Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses 750, Burden Hours: 11,250.

Abstract: This information collection allows institutions of higher education; state and local education agencies; public and private organizations; institutions and agencies; and individuals to apply for grants under the Field-Initiated Studies Education Research Grant Program supported by OERI's five National Research Institutes. Funds will support education research that will improve American education.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 (fax). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–6324 Filed 3–14–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Regulatory Commission

[Docket No. RP00–30–004]

ANR Pipeline Company; Notice of Compliance Filing

March 9, 2000.

Take notice that on March 6, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, a motion to place rate schedule ITS–3 into effect and the revised tariff sheets listed in Appendix A to the filing, to be effective March 1, 2000.

ANR states that this filing is made in compliance with the Commission's Order dated February 28, 2000 in the captioned proceeding.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6305 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Regulatory Commission

[Docket No. RP00–203–001]

ANR Pipeline Company; Notice of Proposed Change In FERC Gas Tariff

March 9, 2000.

Take notice that, on March 6, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No 1, following revised tariff sheet to be effective April 1, 2000:

Fourteenth Revised Sheet No. 19

ANR states that this filing is made to correct an error in pagination in the tariff sheet previously submitted on March 1, 2000 in Docket No. RP00–203–000.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6306 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–100–000]

National Fuel Gas Supply Corporation; Notice of Application for Abandonment Authorization

March 9, 2000.

Take notice that on February 25, 2000, National Fuel Gas Supply Corporation (National Fuel) 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP00–100–000 an application pursuant to Section 7(b) of the National Gas Act and Part 157 of the Commission's Regulations, for authority to abandon an inactive storage field and appurtenant facilities, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

In its filing, National Fuel proposes to abandon by sale to its affiliate, Seneca Resources Corporation (Seneca), its Duhring Storage Field (Duhring), located in Forest County, Pennsylvania. National Fuel indicates that Duhring consists of 12 wells and 30,016 feet of various size well pipelines. It is indicated that following the conveyance of the storage field, Seneca plans to produce the native gas. National Fuel further states that the abandonment of Duhring will have no effect on existing services.

National Fuel's application states it is also seeking any required authorization to abandon by sale to Seneca the adjacent gathering facilities which include approximately 10 miles of 2-inch to 4-inch diameter gathering pipelines and five receipt points where National Fuel receives gas from three independent producers, including Seneca.

National Fuel states that the storage facilities and the gathering facilities will be used for production and gathering purposes following conveyance and requests that the Commission determine that such facilities will not be subject to the Commission's jurisdiction after the sale.

Any questions regarding this application should be directed to David W. Reitz, Assistant General Counsel for National Fuel, 10 Lafayette Square, Buffalo, New York 14203 at (716) 857–7949.

Any person desiring to be heard or to make a protest with reference to said application should on or before March 30, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant a party to the proceeding. Any person wishing to become a party to a proceeding or to participate, as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required further notice of such hearing will be duly given.

Under the procedures herein provide for, unless otherwise advised, it will be unnecessary for National Fuel to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–6309 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–103–000]

Northern Natural Gas Company; Notice of Application

March 9, 2000.

Take notice that on February 28, 2000, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP00–103–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon an individually certificated transportation agreement between Northern and Southern Union Gas Company (Southern Union) under its Rate Schedule X–25 contained in its FERC Gas Tariff, Original Volume No. 2, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Northern states that the agreement provided for Northern to make firm deliveries of up to 14 Mcf of natural gas per day on any day of the year and interruptible deliveries of up to 151 Mcf per day of Off Peak volumes between April 1 and October 1 to Southern Union. According to Northern, the contract underlying this arrangement has been terminated by mutual agreement between the parties, and no service has been provided for several years. No facilities will be abandoned as a result of the proposed abandonment of service. Northern contends that it will file the appropriately revised tariff sheets upon approval by the Commission of the requested abandonment.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 Southern 103rd Street, Omaha, Nebraska 68124, at (402) 398–7421, or Laura L. Lantefield, Regulatory Analyst, at (402) 398–7080.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 2000, file with the Federal Energy Regulatory Commission (888 First Street, NE, Washington, DC 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its on review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–6310 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2342–011]

PacifiCorp; Notice Clarifying Comment Deadline for Offer of Settlement and Application for Amendment of License

The Commission's Notice of Offer of Settlement and Application for Amendment of License, issued February 2, 2000, in this proceeding, set a deadline for filing comments and or motions in Project No. P–2342–011 of March 15, 2000, or 45 days after the filing of the PacifiCorp's Removal Plan with the Commission, whichever occurs later. On February 11, 2000, PacifiCorp filed the Removal Plan. Accordingly, the deadline for filing comments and or motions in Project No. P–2342–011 is now March 27, 2000.

David P. Boergers,

Secretary

[FR Doc. 00–6302 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–205–001]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

March 9, 2000.

Take notice that on March 6, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1–A, Third Revised Sheet No. 122. PG&E GT–NW requests that the above-referenced tariff sheet become effective April 1, 2000.

PG&E GT–NW asserts that the purpose of this filing is to correct the pagination designation for this sheet, as directed by the Commission's March 3, 2000 Letter Order.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6308 Filed 3–14–00; 8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–109–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

March 9, 2000.

Take notice that on March 6, 2000, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP00–67–000 a request pursuant to Sections 157.205, 157.208, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208, 157.216) for authorization to construct, operate, and maintain certain replacement facilities on Texas Eastern's existing 30-inch Line No. 16 located in Harris County, Texas as a miscellaneous rearrangement of existing facilities and to abandon by removal that segment of facilities being replaced under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that in on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Texas Eastern requests authorization to: (i) construct, install, own, operate, and maintain approximately 3,112 feet of 30-inch pipeline on Texas Eastern's Line 16 in the Houston Ship Channel (HSC) from approximately milepost (MP) 341.68 to MP 342.05; (ii) install a 30-inch valve at MP 340.68 upstream of the rearrangement segment; (iii) remove and abandon approximately 3,176 feet of the existing 30-inch Line No. 16 mainline of which approximately 2,342 feet will be removed and 834 feet will be abandoned in place; and (iv) remove approximately 1,989 fee of the existing 30-inch auxiliary Line No. 16. Texas Eastern declares that the replacement of the facilities is necessary to accommodate the deepening and widening of the HSC as proposed by the Port of Houston.

Texas Eastern states that the estimated cost of the HSC pipeline replacement and removals is approximately $8,662,000.

Texas Eastern declares that its proposal herein will be accomplished without detriment or disadvantage to Texas Eastern's customers.

Any questions regarding the application should be directed to Steven E. Tillman at (713) 627–5113, Texas Eastern Transmission Corporation, P.O. Box 1642, Houston, Texas 77251–1642.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 00–6311 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–204–001]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 9, 2000.

Take notice that on March 6, 2000 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Sixteenth Revised Tariff Sheet No. 27. The proposed effective date of the enclosed tariff sheet is April 1, 2000.

Transco states that the purpose of the instant filing is to supplement Transco's Transmission Electric Power Cost Adjustment Filing of March 1, 2000 (March 1 Filing), which filing inadvertently neglected to revise the Rate Schedule GSS Excess Delivery Charge. In order to reflect the correct rate, Transco is submitting Substitute Sixteenth Revised Tariff Sheet No. 27 to replace the tariff sheet effective April 1, 2000 in the March 1 Filing.

Transco states that it is serving copies of the instant filing to its affected customers, State Commissions and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6307 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2731–020 & 2737–002 Vermont]

Central Vermont Public Service Corporation; Notice of Availability of Draft Environmental Assessment

March 9, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for new license for the continued operation of the Weybridge and Middlebury Lower Hydroelectric Projects located on Otter Creek, in the towns of Middlebury and Weybridge, Addison County, Vermont, and has prepared a Draft Environmental Assessment (DEA) for the projects. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the projects and has concluded that approval of the projects, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426. The DEA may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm*. Please call (202) 208–2222 for assistance.

Any comments should be filed within 30 days from the date of this notice and

should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1–A, Washington, D.C. 20426. Please affix "Weybridge and Middlebury Lower Hydroelectric Projects No. 2731–020 and 2737–002" to all comments. For further information, contact Jack Duckworth at (202) 219–2818 or by E-mail at jack.duckworth@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 00–6304 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2611–038 Maine]

Kimberly-Clark Tissue Company, UAH-Hydro-Kennebec Limited Partnership and Madison Paper Industries; Notice of Availability of Environmental Assessment

March 9, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing has prepared an environmental assessment (EA) for Kimberly-Clark Tissue Company, UAH-Hydro-Kennebec Limited Partnership, and Madison Paper Industries' (licensees) application to amend the license for the Hydro-Kennebec Project. Specifically, the licensees propose to delete from the license in inoperable old powerhouse and related facilities. The old powerhouse has been inoperable since 1998 and has an authorized capacity of 3,730 kilowatts. The changes would reduce the project's authorized capacity from 19,163 kilowatts to 15,433 kilowatts. The Hydro-Kennebec Project is located on the Kennebec River in Kennebec and Somerset Counties, Maine.

In the EA, staff concludes that approval of the licensee's application would not constitute a major Federal action significantly affecting the quality of the human environment. The EA is attached to a Commission order issued on March 6, 2000 for the above application. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371, or through the Commission's homepage at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6303 Filed 3–14–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6560–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Recordkeeping and Reporting for 40 CFR Part 258—Solid Waste Disposal Facilities and Practices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Recordkeeping and Reporting for 40 CFR Part 258—Solid Waste Disposal Facilities and Practices, OMB Control No. 2050–0122, expires April 30, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at *farmer.sandy@epamail.epa.gov*, or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1381.06. For technical information about the collection, contact Dwight Hlustick at (703) 308–8647.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping and Reporting Requirements for 40 CFR Part 258—Solid Waste Disposal Facilities and Practices, OMB Control No. 2050–0122, expiring April 30, 2000. This information collection is an extension of a currently approved collection.

Abstract: In order to effectively implement and enforce final changes to 40 CFR part 258 on a State level, owners/operators of municipal solid waste landfills have to comply with the final reporting and recordkeeping requirements. Respondents include owners or operators of new municipal solid waste landfills (MSWLFs), existing MSWLFs, and lateral expansions of existing MSWLFs. These owners or operators could include Federal, State, and local governments, and private waste management companies. Facilities in SIC codes 922, 495, 282, 281, and 287 may be affected by this rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 10, 1999 (64 FR 31216); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 97 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Municipal Solid Waste Landfills.

Estimated Number of Respondents: 2300.

Frequency of Response: On Occasion.

Estimated Total Annual Hour Burden: 239,858 Hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following address. Please refer to EPA ICR No. 1381.05 and OMB Control No. 2050–0122 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information,

Collection Strategies Division (2822), 1200 Pennsylvania Ave., N.W., Washington, DC 20460; and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 1, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–6392 Filed 3–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6560–9]

Agency Information Collection Activities: Continuing Collection; Comment Request; Request for Information for the Bioremediation Field Initiative Database System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Request for Information for the Bioremediation Field Initiative Database Systems, EPA ICR No. 1672.03, OMB Control No. 2080–0048, expires 05/31/2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 15, 2000.

ADDRESSES: Office of Research and Development, Technology Transfer and Support Division, National Risk Management Research Laboratory, 26 West Martin Luther King Drive (Mailstop G75), Cincinnati, OH 45268.

FOR FURTHER INFORMATION CONTACT: Fran Kremer, ph: 513–569–7346, fax: 513–569-7620, email: *kremer.fran@epa.gov.*

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are those that are involved in the use of innovative technologies at Superfund sites, such as state and local governments, businesses, and nonprofit institutions.

Title: Request for Information for the Bioremediation Field Initiative Database System, OMB Control No. 2080–0048, expires 05/31/2000.

Abstract: This is an ICR renewal for gathering information on the design, operation, and performance of biological treatment technologies from remediation experts and managers working at sites where biological treatment technologies are being tested or implemented. The authority for collecting information on innovative treatment technologies is described at Section 311 of the Superfund Amendments and Reauthorization Act, Section 8003 of the Resource Conservation and Recovery Act, Section 7001 of the Oil Pollution Act, and Section 10 of the Toxic Substance Control Act. Response to the collection of information is voluntary. The information will help the EPA to deploy innovative technologies more quickly at Superfund and other sites.

Selected respondents are asked to complete and return, via mail, a two-part questionnaire. The first part requests general site information, such as location, contacts, contaminants, and legislative authority under which the site is being remediated. The second part requests site-specific biotechnology information, such as the stage of the operation, wastes and media being treated, cleanup level goals, and the performance and cost of the treatment. Again, all responses are strictly voluntary. Following the initial questionnaire, respondents receive followup questionnaires on a semi-annual basis to update the information already provided. EPA has developed an easy-to-use PC-based version of the questionnaire that is currently in use. To run the electronic questionnaire, the user must have access to a Windows-capable IBM-compatible PC, preferably 486-class or better. The PC questionnaire has several benefits:

- Questions that apply only under particular circumstances (i.e., are dependent on previous responses) are only presented to the user as necessary.
- Data validations are performed optionally as the user is filling out the questionnaire and are required when a respondent is ready to submit the data to EPA. Data validation conditions are reported with an explanation of the problem/situation and recommended corrective action(s).
- Pick lists are provided for several questions, so that users may choose an item from a list rather than enter the full text using the keyboard.

Respondents may utilize either the paper- or the PC-based questionnaire, which ever they prefer. In each case, when respondents are updating the site records for sites that are already in the Bioremediation Field Initiative database, the questionnaire shows the site's complete responses from past questionnaires, so that information that has not changed need not be reentered. Respondents with access to the Internet may express comments or request assistance using an e-mail account that is identified in each questionnaire mailing. Each form of the questionnaire is updated occasionally between data collection cycles to include prominent new technologies and contaminants as they are identified in prior collection efforts. A Web-based version of the questionnaire with essentially the same features as the PC-based version is in development.

EPA compiles information from completed questionnaires into the Bioremediation Field Initiative computer database. EPA developed a software program called the Bioremediation in the Field Search System (BFSS) to search, view, and report information in the database. Recently, EPA re-engineered this software into a Web-enabled application, making the BFSS data available to the public for online searching.

Each site in the database includes contact information for one or more individuals associated with the regulatory authority or application of bioremediation technology at the site. Remediation professionals may contact individuals with common site conditions to share information. Summary statistics may be drawn from the database to elucidate trends in bioremediation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of

information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The following burden figures are taken from the currently approved ICR:

Respondent type	Burden hours
First-time respondents	5.0
Update respondents	1.0
No-change respondents	0.5
Nonrespondents	0.25
Total	6.75

Respondent type	Respondents		
	Period one	Period two	Yearly
First-time respondents	50	50	100
Update respondents	449	482	931
No-change respondents	129	139	268
Nonrespondents	102	110	212
Total	730	781	1511

(First-time respondents fill out a questionnaire for the first time, entering data for a site not previously included in the Bioremediation Field Initiative database. Update respondents receive a questionnaire containing the current record of site data in the Bioremediation Field Initiative database and enter information to make the information current. No-change respondents receive a questionnaire containing the current record of site data in the Bioremediation Field Initiative database, review the information and find that it is current; therefore, they need not modify information to make the site current. Nonrespondents receive the questionnaire, review it, and elect not to respond.)

The cost per hour of respondent time is estimated as $52 for management personnel, $45 for technical personnel, and $32 for clerical personnel, based on recent labor rates.

Annual respondent burdens are calculated as follows:

• In period one, up to 730 respondents will be sent questionnaires. Of these, 50 first-time respondents will take 5 hours each to complete the questionnaire. All of the 578 previously submitted questionnaires will be mailed out for updates, 449 respondents will update the questionnaire (1 hour), 129 respondents will review their data and return the questionnaire indicating that the data have not changed (0.5 hour), and 102 respondents will not return the questionnaire (0.25 hour).

PERIOD ONE HOURS:					
Hours Total * No. of Respondents					
First-time Respondents	5.00	*	50	=	250
No. Updating Respondents	1.00	*	449	=	449
No. No Change Respondents	0.50	*	129	=	D65
Nonrespondents	0.25	*	102	=	26
Total Period Burden (Hours)					790
PERIOD ONE COSTS:					
Cost Total * No. of Respondents					
First-time Respondents	$210.75	*	50	=	$10,538
No. Updating Respondents	43.38	*	449	=	19,478
No. No-Change Respondents	20.88	*	129	=	2,694
Nonrespondents	12.13	*	102	=	1,237
Total Period Cost					33,947

• In period two, up to 781 respondents will be sent questionnaires. Of these, 50 first-time respondents will take 5 hours each to complete the questionnaire. All of the 628 previously submitted questionnaires will be mailed out for updates, 482 respondents will update the questionnaire (1 hour), 139 respondents will review their data and return the questionnaire indicating that the data have not changed (0.5 hour), and 110 respondents will not return the questionnaire (0.25 hour).

PERIOD TWO HOURS:					
Hours Total * No. of Respondents					
First-time Respondents	5.00	*	50	=	250
Updating Respondents	1.00	*	482	=	482
No-Change Respondents	0.50	*	139	=	70
Nonrespondents	0.25	*	110	=	28
Total Period Burden (Hours)					830
PERIOD TWO COSTS:					
Cost Total * No. of Respondents					
First-time Respondents	$210.00	*	50	=	$10,538
Updating Respondents	43.38	*	482	=	20,909

No-Change Respondents	20.88	*	139	=	2,902
Nonrespondents	12.13	*	110	=	1,334
Total Period Cost					35,683

Based on these estimates, the annual respondents' burden is projected as follows:

	Hours	Cost
Period One	790	$33,947
Period Two	830	35,683
Total	1,620	69,630

EPA's experience to this point indicates that, in most cases, the paperwork burden associated with completing the questionnaire is essentially the same regardless of whether the respondent is using the paper or the electronic version. A general, indirect efficiency advantage for respondents using the electronic version is that the software application's data validation function (described above) is likely to reduce the need for callbacks from EPA concerning incomplete or nonstandard data. (This also will be true for the Web-based version of the questionnaire when it is deployed.) The most significant efficiencies associated with use of the electronic version would accrue to the relatively small percentage of respondents who provide information for numerous sites. An important benefit of the electronic version not related to the respondents' paperwork burden is that collected site data can be more efficiently added to the computer database.

Each year, the burden figures increase somewhat, as first-time respondents are added to the database. In subsequent years, first-time respondents will be divided among the other respondent types. This growth is offset slightly as sites are removed from the data collection cycle—most typically if the site activity is completed, but for other reasons as well.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 29, 2000.

Robert A. Olexsey,

Director, Land Remediation and Pollution Control Division.

[FR Doc. 00–6394 Filed 3–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6561–3]

Investigator-Initiated Grants: Requests for Applications

AGENCY: Environmental Protection Agency.

ACTION: Notice of Requests for Applications.

SUMMARY: This notice provides information on the availability of fiscal year 2000 investigator-initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research area within the solicitation and are listed below.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703R), 1200 Pennsylvania Avenue, NW., Washington DC 20460, telephone (800) 490–9194. The complete announcement can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa under "announcements."

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Assessing the Consequences of Interactions between Human Activities and a Changing Climate; (2) Development of National Aquatic Ecosystem Classifications and Reference Conditions; (3) Valuation of Children's Health Effects; (4) Recreational Water Quality: Indicators and Interstitial Zones; and (5) Exploratory Research to Anticipate Future Environmental Issues. Applications must be received as follows: April 26, 2000, for topic (1); April 17, 2000, for topic (2); June 6, 2000, for topics (3) and (4); and July 6, 2000, for topic (5).

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contact persons for the "Assessing the Consequences of Interactions between Human Activities and a Changing Climate" RFA is Bernice L. Smith (smith.bernicel@epa.gov), telephone 202–564–6934. Contact person for the "Development of National Aquatic Ecosystem Classifications and Reference Conditions" RFA is Barbara Levinson (*levinson.barbara@epa.gov*), telephone 202–564–6911. Contact person for the "Valuation of Children's Health Effects" RFA is Matthew Clark (clark.matthew@epa.gov), telephone 202–564–6842. Contact person for the "Recreational Water Quality: Indicators and Interstitial Zones" RFA is Cynthia Nolt-Helms (nolt-helms.cynthia@epa.gov), telephone 202–564–6763. Contact persons for the "Exploratory Research to Anticipate Future Environmental Issues" RFA are David Kleffman (*kleffman.david@epa.gov*), telephone 202–564–6903, Roger Cortesi (*cortesi.roger@epa.gov*), telephone 202–564–6852, and Barbara Levinson (*levinson.barbara@epa.gov*), telephone 202–564–6911.

Dated: February 29, 2000.

Approved for publication.

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 00–6396 Filed 3–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6560–6]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held March 28–30, 2000 at the Wyndham Hotel, 1400 M Street, NW, Washington, D.C. The CHPAC was created to advise the Environmental Protection Agency in the development of regulations, guidance and policies to address children's environmental health.

DATES: Tuesday, March 28, 2000 Work Group meetings only; plenary sessions Wednesday, March 29, 2000 and Thursday, March 31, 2000.

ADDRESSES: Wyndham Hotel, 1400 M Street, NW, Washington, D.C. 20005; 202–429–1700.

AGENDA ITEMS: The meetings of the CHPAC are open to the public. The Science and Research Work Group, the Legacy Work Group, and the Data Needs Work Group will meet from 9:30 a.m. to 5:00 p.m. on Tuesday, March 28, 2000. The plenary CHPAC will meet on Wednesday, March 29, 2000 from 9:00 a.m. to 5:30 p.m. with a public comment period at 5:00 p.m. and on Thursday, March 30, 2000 from 9:00 a.m. to 12:00 noon.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include discussion of the status of the CHPAC recommendations on the five standards selected for reevaluation in 1999 and reports from the other Work Groups.

FOR FURTHER INFORMATION CONTACT: Contact Paula R. Goode, Office of Children's Health Protection, USEPA, MC 1107, 401 M Street, SW, Washington, D.C. 20460, (202) 260–7778, goode.paula@epa.gov.

Dated: March 8, 2000.

Paula R. Goode,

Designated Federal Officer, Children's Health Protection Advisory Committee.

[FR Doc. 00–6390 Filed 3–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181075; FRL–6495–9]

Fluazinam; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Virginia Department of Agriculture and Consumer Services and the Oklahoma Department of Agriculture to use the pesticide fluazinam (CAS No. 79622–59–6) to treat up to 45,000 acres in Virginia and 33,000 acres in Oklahoma of peanuts to control sclerotinia blight. The Applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket control number OPP–181075, must be received on or before March 30, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181075 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; fax number: (703) 308–5433; e-mail address: Madden.Barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
State government	9241	State agencies that petition EPA for section 18 pesticide exemption

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–181075. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy.,

Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181075 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–181075. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Virginia Department of Agriculture and Consumer Services and the Oklahoma Department of Agriculture has requested the Administrator to issue a specific exemption for the use of fluazinam on peanuts to control sclerotinia blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that in Virginia since 1992, several events have impacted the peanut crop and resulted in an overall decline in its value. Major factors responsible for this decline have been the steady spread of sclerotinia blight, the absence of effective control measures, and the unchanging market prices that farmers receive for peanuts under provisions of the 1996 farm bill. Emergency exemptions for use of dicloran to control sclerotinia blight were granted to the Virginia Department of Agriculture and Consumer Services from 1978 through 1983. The state claims that disease control with dicloran was erratic. In 1985, iprodione was registered to control sclerotinia blight in peanuts. Acording to the state, sclerotinia blight has developed resistance to iprodione and therefore does not provide effective disease control. In Virginia epidemics of sclerotinia blight occur in peanuts each year once the crop develops a complete canopy that covers the soil surface. Cool-to-moderate temperatures and moist conditions under the plant canopy are a triggering factor for germination of sclerotia and subsequent infection of plant parts. Yield losses without the use of fluazinam are expected to exceed 10% for 60% of the total acres planted in 2000.

Sclerotinia blight of peanuts was first discovered in Oklahoma in 1972 and became endemic since its discovery. Disease outbreaks may occur in early July or soon after peanut plants have formed a foliar canopy that shades the soil surface. The disease is favored by high humidity and cool to warm temperatures. The disease is expected to be most severe in the late summer when the prevailing temperatures are cooler and the peanut plant canopy shades the soil and cools soil temperatures. A favorable microclimate is present in irrigated fields because of a dense plant canopy, vegetative wetness, and cool moist soils. The majority (80%) of the peanut acreage in Oklahoma is irrigated. The state contends that registered fungicides such as iprodione and Tenncop (Cu-based) do not adequately control sclerotinia blight. Although a peanut variety (Tamspan 90) resistant to sclerotinia blight is available, it is a Spanish type variety and growers are reluctant to plant this type of peanut because the nut processing industry prefers runner-type peanut varieties. The Oklahoma Department of Agriculture has been granted emergency exemptions for use of dicloran to control sclerotinia blight for the past 3 years (1997, 1998, and 1999). EPA denied an exemption request for dicloran on peanuts in Oklahoma in 1991 due to insufficient progress toward a section 3 registration. Previously, exemptions were granted for this use from 1978 through 1984 and from 1987 through 1990. The state claims that

growers have reported efficacy problems with the use of dicloran.

The Virginia Department of Agriculture and Consumer Services proposes to make no more than three applications of an end-use product containing 40% fluazinam on 45,000 acres of peanuts. A total of 3 pints of product (three applications at 1 pint each) or a total of 1.56 lb active ingredient may be applied per acre for a total of 70,200 pounds active ingredient. Treatments are proposed for use from June 15, 2000 to October 1, 2000. Fields requiring treatments are located in the city of Suffolk, and the counties of Southampton, Isle of Wight, Greensville, Sussex, Dinwiddie, Prince George, Surry, Accomack and Northampton.

The Oklahoma Department of Agriculture proposes to make no more than three applications of an end-use product containing 40% fluazinam on 33,000 acres of peanuts. A total of 4 pints of product or a total of 2.1 lb active ingredient may be applied per acre for a total of 70,200 pounds active ingredient. Treatments are proposed for use from July 15, 2000 to October 15, 2000. Fields requiring treatments are located in Atoka, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Choctaw, Cleveland, Comanche, Creek, Custer, Dewey, Garvin, Grady, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Johnston, Kiowa, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Marshall, Muskogee, Okfuskee, Oklahoma, Okmulgee, Payne, Pittsburg, Pontotoc, Pottawatomie, Seminole, Stephens, Tillman, and Washita.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing "use of a new chemical (i.e., an active ingredient which has not been registered by the EPA." The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Virginia Department of Agriculture and Consumer Services, and the Oklahoma Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 3, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–5926 Filed 3–14–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6539–3]

Casmalia Disposal Site; Notice of Proposed CERCLA Administrative De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), the Environmental Protection Agency ("EPA") is hereby providing notice of a proposed administrative *de minimis* settlement concerning the Casmalia Disposal Site in Santa Barbara County, California ("the Casmalia Disposal Site"). Section 122(g) of CERCLA, 42 U.S.C. 9622(g), provides EPA with the authority to enter into administrative *de minimis* settlements. This settlement is intended to resolve the liabilities of 433 settling parties for the Casmalia Disposal Site under CERCLA and section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973. For most of the settling parties, the settlement will also resolve their Casmalia Disposal Site-related liability for the response costs for the federal Natural Resources Trustees' (the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the United States Department of the Air Force), and potential natural resource damages. The settling parties will pay a total of $27.6 million toward Casmalia Disposal Site response costs.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area. EPA will consider all comments it receives during this period, and may modify or withdraw its consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before April 14, 2000.

ADDRESSES: Comments and requests for a public meeting should be addressed to the Regional Hearing Clerk, U.S. EPA Region IX (ORC–1), 75 Hawthorne Street, San Francisco, CA 94105–3901, and should refer to: Casmalia Disposal Site, Santa Barbara County, CA, U.S. EPA Docket No. 99–02(a). The proposed settlement and additional background information relating to the settlement are available for inspection, and EPA's response to any comments received will be available for inspection, at the U. S. EPA Region IX Superfund Records Center (415–536–2000), 95 Hawthorne Street, Suite 403 S, San Francisco, CA 94105–3901 and at the Santa Maria Library (805–925–0994), 420 South Broadway, Santa Maria, CA 93454. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above.

SUPPLEMENTARY INFORMATION: The following are parties to this *de minimis* settlement:

A & H Plating, Inc.; Accuride International; Acme Metals Inc.; Action Computer Products Sales Inc.; Air Industries Corp.; Air Logistics Corporation; Air Products and Chemicals, Inc.; AJ Daw Printing Ink Co.; Akzo Nobel Coatings; Alflex Corp.; Allan Hancock Joint Community College; Allergan Inc.; Alliant Foodservice, Inc.; Alma Pistons Co./ Tomadur Engine Co.; Al's Plating Company Inc.; Alvord Unified School District; Alyeska Pipeline Service; American Broadcasting Company; American Honda Motor Co.; Ameron International Corp.; Amico West; Amtrak—National Railroad Passenger Corp; A.O. Smith; Angelus Sanitary Can Machine Co.; Anheuser-Busch Companies; Applied Power Inc.; Arcadia Unified School District; Armtec Defense Products; Ashland Specialty Chemical Company, a Division of Ashland Inc.; Asphalt Products Oil Corp.; Associates Insectary; Astech/MCI Manufacturing; Astro Pak Corporation; Atlas Galvanizing; Avery Dennison; Aviall Service Inc.; Baker Petrolite; Ball Corp.; Bandag Incorporated; Bank America; BASF Corp.; Basic Vegetable Products; Baxter Healthcare; Benjamin Moore & Co.; Bently Nevada Corp.; Berkshire Hathaway; Bethlehem Steel Corp.; Beylik Drilling Inc.; BFI Waste Systems of North America; BHP Coated Steel Corporation; Bio-Rad Laboratories; BMC Industries Inc.; BOC Gases; Borg-Warner Automotive, Inc. (including Borg-Warner Security Corporation, f/k/a Borg-Warner Corporation, n/k/a Burns

International Services Corporation, and Flowserve Corporation, f/k/a BW/IP International, Inc.); Bregin, Inc.; Brown Pacific Inc.; Brush Wellman Inc.; Cabrillo Community College District; California Finished Metals; California Highway Patrol; California Institue of Technology; California Office of State Printing; California Regional Water Quality Control Board, North Coast Region; California State Compensation Insurance Fund; California Steel Industries; California Technical Plating Inc.; Camco International Inc.; Camsco Residential; Carrier Corp.; Case Corporation; Central Santa Clara County Regional; Ceradyne Inc.; Cerritos Community College; Chabot-Las Positas Community College District; Chaffey Community College District; Champion Technologies, Inc.; Charter Community Hospital; Chemron Corp.; CHW Central Coast-Marian Hospital; CIPCO Inc.; Citrus Community College; City of Azusa; City of Carlsbad; City of Guadalupe; City of Monrovia; City of Mountain View; City of Norwalk; City of Richmond; City of Riverside; City of San Marino; City of Santa Paula; City of Sunnyvale; City of Thousand Oaks; City of Torrance; City of Vernon; Clougherty Packing Co.; CNF Transportation Inc.; Coast Community College District; Coca-Cola Enterprises; Coherent Incorporated; Cohu Inc. Electronics; Colonial Heights Packaging Inc., on behalf of Milprint and Bemis Company, Inc.; Cominer Corporation; Commonwealth Aluminum Concast, Inc.; Conejo Circuits Inc.; Consolidated Drum Reconditioning; Consolidated Fabricators Corp.; Construction Specialties (California), Inc.; Continental Materials Corp.; Contra Costa Community College District; Conway Oil Company; Cooper Industries; Cosmotronic Company; County of Contra Costa; County of Marin; County of Riverside; County of Sacramento; County of San Benito; County of San Joaquin; County of Santa Barbara; County of Santa Clara; County of Ventura; CoxCom Inc.; Crane Company (including Hydro Aire, Inc., Barksdale, Inc., and Pacific Valves); Crowley Maritime Corporation; Cubic Corp; Culligan Industrial Water Purification; Culligan International & Culligan Water Conditioning; Cytec Industries; D & S Industries; Daimler Chrysler; Decalta International; Delta Airlines; Deluxe Packages; Diagnostic Products; Diversey Corp. (n/k/a Raython Corp.); Don E. Keith Transportation; Downey Glass; Dunn Edwards Corporation; Dura-Bond Bearing Co./ SKF USA, Inc.; E & T LLC; Eastman Kodak; Eaton Corporation; EDO Corporation; El Camino Community College; Electromatic Inc.; Electronic Plating Services; Elf Atochem North America Inc.; Elixir Industries Corp.; Embee Inc.; Emerson Electric Co.; Energy Factors Inc; Enthone OMI Inc.; Ernest Carlson; ESCO Electronics Corporation; Estate of Elfrida Hanchett and Hanchett Family Corp.; EXAR Corporation; Exide Corporation; Facet Energy (Gammaloy Ltd.); Fansteel Corp.; Far Best Corporation; Farr Co.; Fedco Inc.; Federal Bureau of Prisons; Federal Express Corporation; Federal Mogul; Federal Reserve Bank of San Francisco; Finegood Holdings Inc.; Fleetwood Enterprises Inc.; FMC Corp.; Foothill-DeAnza Community College District; Frazee Industries; Fremont Newark Community College District; GATX Corp.; Genentech Inc; Genlyte Thomas Group; George Industries; Gillette SMMC; Glendale Community College District; Glendale Development Corporation (f/k/a Glenfed Development Corporation); Goleta Union School District; Great Lakes Chemical Corp.; Great Spring Waters of America, Inc.; Great Western Chemical; Grossmont Cuyamaca Community College; H & H Paramount, Ltd.; Hanson Permanente Cement Inc.; Hartnell Community College District; Hawthorne/Stone Real Estate; Holmes Tuttle Ford Inc.; Hooker Industries; Hurst Chemical; ICN Pharmaceuticals Inc.; Industrial Wire Products Corp.; Ingersoll-Rand Company; Intel Corporation; Intermetro; International Extrusion Corporation; International Paint HD & Marine; International Paper Company; JASCO Chemical Corp.; Jensen General Contractors; Johns Manville International Inc.; Joslyn Manufacturing Corp.; J.R. Simplot Company; Julius L. Zelman Co.; Jurupa Unified School District; Kaiser Aerospace and Electronics Corporation; Kalex Chemical Products (including Ellay, Inc.); Kamei International Corp.; Kern Community College; Kern County; Kern Industries; Kimball International Inc.; Kinder Morgan Energy Partners; Kinsbursky Brothers Supply Inc.; Koch Industries; Koppers Industries (n/k/a Beazer East Inc.); Leggett & Platt, Incorporated (including Bedline Manufacturing, a division of Leggett & Platt Inc., and L & P Property Management Company dba L & P PMC, Inc.); Levin-Richmond Terminal Corp. (a/k/a Levin Enterprises Inc.); Lindberg Corporation; Lindberg Heat Treating Co. (including Industrial Steel Treating); Lodi Door-Overhead Door Corp.; Long Beach Community Medical Center; Long Beach Memorial Hospital; Long Beach Unified School District; Longview Fibre Company; Los Angeles Chemical Co.; Los Angeles Community College District; Los Angeles County Metropolitan Transit Authority; Los Angeles Galvanizing Co.; Los Angeles Office of Education (Long Beach Community College); Los Angeles Times, Division of Times Mirror; Los Rios Community College District; Lubeco Inc.; Magna Plating Co. Inc.; Mandalay Properties; Marin Community College District; Master Halco Inc.; Matheson Tri-Gas Inc., (f/k/a Matheson Gas Products); Matlack Inc.; Matson Navigation Co.; Mattel Inc.; Maytag Corp.; Mazda Motors of America; M.C. Gill Corporation; McKesson HBOC Inc.; McKesson Water Products Company; Mechanical Metal Finishing Co.; Merced Community College; Mercy Healthcare Sacramento; Mesa Center Automotive; Metal Container Corporation of California; Methodist Hospital of Arcadia; MGF Industries; Milard Group; Minnesota Mining and Manufacturing (including Imation Corporation); Mission Industries (f/k/a Mission Linen Supply); Mission Valley Ford Trucks; Modesto City Schools; Modine Manufacturing Company; Monrovia Unified School District; Montrose Chemical Corp.; Motorola Inc. Semiconductor; Mt. San Antonio Community College District; Mt. San Jacinto Community College District; Mountain View-Los Altos High School District; NAPP Systems Inc.; NASA Ames Research Center; NASA Jet Propulsion Laboratory; National Steel and Shipbuilding; National Supply Company; Neville Chemical Co.; North Orange Community College District; Northwest Pipe Company (f/k/a Northwest Pipe and Casing); Norwalk-La Mirada Unified School District; O'Connor Hospital; Oakdale Memorial Park Inc.; Occidental Chemical Corporation (successor to Diamond Shamrock Chemicals Company); Ogden Food Products (including Ogden Corporation); Olin Corporation; Olocco Agricultural Services; ORC Technologies Inc. (f/k/a Optical Radiation Corporation); Osbourne United; OSCA Inc.; Oxnard Pest Control Association; PAC Foundry; Pacific Coast Drum Company; Pacific Refining; Pacific Tube Company; Palomar Community College District; Parker Hannifin Corp.; Pasadena Area Community College; Pennzoil-Quaker State Company (including PennzEnergy Exploration and Production, L.L.C.); Pentrate Metal Processing, Inc.; Petrolite Corporation; Pilot Chemical; Pioneer North America Inc. (including Pioneer Video Manufacturing Inc. and DiscoVision Associates); Plastic Materials Inc.; Pool California Energy Services; Pool Energy Services; Port of

San Diego; Poway Unified School District; PQ Corp.; PRC-DeSoto International Inc.; Prime Alloy Steel Castings; Primex Technologies Inc.; Printronix; Products Engineering Corp.; Prudential General Real Estate; Prudential Lighting Corporation; Public Storage Inc.; Ralston Purina Company; Rancho Santiago Community College District; Revlon Inc.; Rheem Manufacturing Co.; Riverside Cement Co.; Riverside Community Hopsital; Riverside Superintendent of Schools; Riverside Unified School District; Rogers Corporation; RR Donnelley & Sons; Sacramento County Sanitation District 1; Sacramento Municipal Utilities District; Sage Energy Company; San Bernadino Community College District; San Diego Community College District; Sandia National Laboratory; San Diego Metropolitan Transit Development Board; San Francisco Community College; San Joaquin Refining; San Jose Evergreen Community College District; San Luis Obispo County Community College District; Santa Barbara Community College District; Santa Clara County Transit; Santa Monica Community College District; Sanyo E & E Corp.; Schmid Insulation Contractors, Inc.; Scripps Clinic and Research Foundation; Sears, Roebuck & Co.; Sequa Corporation; Shasta-Tehama-Trinity Community College District; Siebe Inc.; Sierracin Corp.; Sigma Circuits Inc.; Sigma Plating Co., Inc.; Signetics Corp.; Siliconix, Inc.; Smith International; Sonoma County Community College District; Sony Technology; Soule Steel—Arnon Liquidating Agency; South Orange Community College District; Spectra-Physics Lasers, Inc.; SRI International; ST & I; Standex International Corp.; Stanford University; State Center Community College District; Steelcase, Inc.; Stepan Company; STI Properties Inc. c/o Hemisphere Corporation; St. Mary's Medical Center; Sunnyvale School District; Superior Industries International Inc.; Supra Alloys Inc.; Taormina Industries; Technicolor Film Service; Ted Levine Drum Co.; Tesoro Petroleum Companies; Texas Instruments; The Archdiocese of Los Angeles; The Bekins Company; The Interlake Corporation; The Marmon Corporation; The Mead Corporation; The Okonite Co.; The Valspar Corp.; Three Bond International Inc.; Time Warner Inc.; Torrance Unified School District; Transtechnology Corp.; Treasure Chest Advertising; Tree Island Industries Ltd.; Tricast, Inc.; Tri Valley Growers; Tucson Electric Power Co.; TWA Airlines; Tyco Printed Circuit Group; Union Bank of California; Union Carbide; United Air Lines; United States Sales Corporation; University of Southern California; US Army; US Borax; US Border Patrol; US Bureau of Indian Affairs; US Bureau of Land Management; US Bureau of Reclamation; US Customs Service; US Department of Agriculture; US Department of Defense; US Department of Energy; US Department of Health and Human Services; US Department of Immigration and Naturalization Services; US Department of Transportation/FAA; US Drug Enforcement Administration; US Federal Bureau of Investigation; US Fish and Wildlife Service; US General Services Administration; US Geological Survey; US Marshall Service; US Mint; US Park Service; US Small Business Administration; Ventura County Community College District; Verdugo Hill Golf Course; Vesper Corp.; Virco Manufacturing Corp.; VWR Corporation; WAISCO (Marwais Steel Co.); Walt Disney Co.; Walt Disney Pictures & Television; Watkins-Johnson Co.; Weber Metals Inc.; West Valley-Mission Community College District; Western Fuel Oil Company; Western Tube & Conduit Corp.; Westminster Ceramics, Inc.; Wheaton USA Inc.; Xerox Corporation; Yosemite Community College District; Zero Corporation.

FOR FURTHER INFORMATION CONTACT: Karen Goldberg, Assistant Regional Counsel, U.S. EPA Region IX (ORC–3), 75 Hawthorne Street, San Francisco, CA 94105–3901; E-Mail: goldberg.karen@epa.gov; Tel: (415) 744–1382.

Dated: March 8, 2000.

Julie Anderson,

Director, Waste Management Division, Region IX.

[FR Doc. 00–6395 Filed 3–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6561–1]

Rutledge Property/Rock Hill Chemical Company Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with BASF (Inmont) Corporation; Burlington Industries, Inc.; Chase Packaging, Inc.; CTS Corporation; Engraph, Inc.; FMC Corporation, Lithium Division; CNA Holdings, Inc. successor to Hoechst Celanese Corporation; Homelite Division of Textron; Rexam Inc.; and W.R. Grace and Company for response costs pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Rutledge Property/Rock Hill Chemical Company Site located in Rock Hill, York County, South Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–CPSB), 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: February 29, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–6389 Filed 3–14–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 8, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the

information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 15, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Application for a Multipoint Distribution Service or Instructional Television Fixed Service Booster Station, Response Station Hub or 125 kHz (I Channels) Point to Multipoint Transmissions.

Form Number: FCC 331.

Type of Review: New collection.

Respondents: Business or other for-profit, and not-for-profit institutions.

Number of Respondents: 4,000.

Estimated Time per Response: 32 hours (2 hours applicant, 6 hours contract attorney, 24 hours contract consulting engineer).

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 8,000.

Total Annual Costs: $19,200,000.

Needs and Uses: On September 17, 1998, the Commission adopted a Report and Order ("Two-Way Order") in MM Docket No. 97–217 in the matter of Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") Licensees to Engage in Fixed Two-Way Transmissions. These rule changes enhance the flexibility of MDS and ITFS operations through facilitated use of response stations, use of cellular configurations, use of signal booster stations with program origination capability, and use of variable bandwidth (subchanneling or superchanneling). As a result of these rule changes, MDS and ITFS frequencies in the 2 GHz band may be used by licensees, or leased to operators, for broadband data, video or voice transmissions to and/or from subscribers' premises, promoting the competitive position of the relevant industry, augmenting the educational uses of these frequencies by ITFS entities, and increasing services to consumers. The Commission has adopted an initial one-week filing window, in which it will accept FCC Form 331 applications from MDS and ITFS licensees. Following the initial one-week filing window, the Commission will accept FCC Form 331 applications via a rolling, one-day filing window.

The Commission has developed an FCC Form 331 to be used by the licensees of MDS, Multichannel Multipoint Distribution Service (MMDS), ITFS or Commercial ITFS to apply for modification to main station, response station hub, high-power signal booster station, notification of low-power signal booster station or 125 kHz (I channel(s)) point-to-multipoint transmissions.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6338 Filed 3–14–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 6, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 15, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0059.

Title: Statement Regarding the Importation of Radio Frequency Devices Capable of Causing Harmful Interference.

Form No.: FCC Form 740.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents: 5,077.

Estimated Time Per Response: 0.84 hours (5 minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 28,030 hours.

Total Annual Cost: N/A.

Needs and Uses: The Federal Communications Commission (FCC), working in conjunction with the U.S. Customs Service, is responsible for the regulations of both authorized radio services and devices that can cause interference. FCC Form 740 must be completed for each radio frequency device that is imported into the United States. Examples of radio frequency (RF) devices include: Microwave ovens, computer microprocessors, computers, computer peripherals, telephones with memory or other advanced features, video cameras, recorders, transmitters, electronic musical instruments, video games, radio remote control toys, etc. The purpose of the information collection is to keep non-compliant devices from being distributed to the general public thereby reducing the potential for harmful interference being caused to authorized communications.

In addition to completing this form in paper, the FCC Form 740 can now be filed electronically.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6340 Filed 3–14–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 7, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 14, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0912.
Title: Cable Attribution Rates.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Individuals or households, business or other for-profit.
Number of Respondents: 20.
Estimated Time Per Response: 4 hours.
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 80 hours.
Total Annual Cost: $3,200.
Needs and Uses: Filings will be used by the Commission to determine the nature of the corporate, financial, partnership, ownership and other business relationships that confer on their holders a degree of ownership or other economic interest, or influence or control over an entity engaged in the provision of communications services such that the holders are subject to the Commission's regulations.

The Commission requested emergency clearance for this submission. The request was approved by OMB on February 9, 2000. We are now requesting an extension of the emergency approval to obtain the full three-year OMB approval.

OMB Control No.: 3060–0466.
Title: Section 74.1283, Station Identification.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 650.
Estimated Time Per Response: .166 hours (10 minutes).
Frequency of Response: Recordkeeping requirement and on occasion reporting requirement.
Total Annual Burden: 108 hours.
Total Annual Cost: N/A.
Needs and Uses: Section 74.1283(c)(1) requires FM translator stations whose station identification is made by the primary station to furnish current information on the translator's call letters and location. The information is kept in the primary station's files. The information is used to contact the translator licensee in the event of a malfunction of the translator.
OMB Control No.: 3060–0249.
Title: Section 74.781, Station Records.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.
Number of Respondents: 7,100.
Estimated Time Per Response: 1 hour.
Frequency of Response: Recordkeeping requirement.
Total Annual Burden: 5,503 hours.
Total Annual Cost: $639,000.
Needs and Uses: Section 74.781 requires licensees of low power television, TV translator and TV booster stations to maintain adequate records. The records are used by FCC staff in field inspections to assure that reasonable measures are taken to maintain proper station operations and to assure compliance with the Commission's Rules.
OMB Control No.: 3060–0208.
Title: Section 73.1870, Chief Operators.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit, not-for-profit institutions.
Number of Respondents: 14,500.
Estimated Time Per Response: .166 hours (10 minutes).
Frequency of Response: Recordkeeping requirement.
Total Annual Burden: 379,407 hours.
Total Annual Cost: N/A.
Needs and Uses: Section 73.1870 requires licensees of radio and television stations to designate chief operators and post designation with operator license. This rule section also requires chief operators to review station records weekly. The data is used by the chief operator, and FCC staff in investigations, to assure that the station is operating in accordance with the station authorization.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6339 Filed 3–14–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–010776–116.
Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd., APL Co. Pte Ltd., Hapag-Lloyd Container Linie GmbH, Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk SeaLand, Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Orient Overseas Container Line, P&O Nedlloyd B.V., P&O Nedlloyd Limited.

Synopsis: The modification extends the suspension of the conference through November 1, 2000.

Agreement No.: 203–011681–001.

Title: Amazon River Discussion Agreement.

Parties: Amazon Line Ltd., APL Co. Pte. Ltd., American Transport Line, Mitsui O.S.K. Lines Ltd., P&O Nedlloyd B.V.

Synopsis: The proposed amendment would remove language excluding states bordering on the U.S. Pacific Coast from those U.S. states which the parties might serve via U.S. Atlantic and Gulf ports. In Brazil, it would delete previous restrictive language and would allow service to all inland and coastal points served via Belem, Manaus, and Amazon River ports North of Manaus.

Agreement No.: 217–011696.

Title: The KL/YML Asia/U.S. East and Gulf Coast Slot Exchange Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd., Yang Ming Transport Corporation.

Synopsis: The proposed Agreement would permit the parties to charter space to one another aboard their own vessels or on vessels on which they have chartered space in the trade between United States Atlantic and Gulf ports, and inland U.S. points via such ports, and ports and points in Japan, Korea, China, and Taiwan.

Agreement No.: 202–011697.

Title: North East Independent Carrier Agreement.

Parties: NPR Inc., Tecmarine Liner Inc., Kent Line.

Synopsis: The proposed agreement authorizes the parties to establish a conference in the trade between ports and points in the United States North Atlantic, Puerto Rico, and the U.S. Virgin Islands, and ports and points in the Dominican Republic, Haiti, Trinidad, Jamaica, Venezuela, Leeward and Windward Islands, Guyana, and Suriname.

Dated: March 10, 2000.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–6417 Filed 3–14–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Consolidated Powers Ltd., Cargo Building 80 JFK International Airport, #202, Jamaica, NY 11430. Officers: Michael Bodack, President (Qualifying Individual), Martin Weisblatt, Vice President

KS Logix, Inc., 500 Carson Plaza Drive, Suite #118, Carson, CA 90746. Officers: Ok Bae Park, CFO (Qualifying Individual), Kil Soo Hur, President.

Kinitetsu Flexipak, Inc., 3414 Yale Street, Houston, TX 77018. Officer: Roger Goose, President (Qualifying Individual)

SITC Logistics Co., Ltd., 754 S. Glasgow Avenue, Inglewood, CA 90301. Officers: Jia-Ming Shi, CEO (Qualifying Individual), Danny Chen, Director

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Multimodal International Shipping, Inc. d/b/a Masterpiece Ocean Freight Ltd., 185 S. Douglas Street, 1st Floor, El Segundo, CA 90245. Officers: William Robert Wratschko, Secretary (Qualifying Individual), David R. Epstein, President

Courtney International Forwarding Inc., 372 Doughty Blvd., Inwood, NY 11096. Officers: Ruth Cardace, Export Manager (Qualifying Individual), Trevor R. Hume, President

Rahebo International Freight Systems Corp., 8232 N.W. 68th Street, Miami, FL 33166. Officers: Alejandro Orsini, Director (Qualifying Individual), Juan Vicente Ramirez, President

Inter-Trade Liner Shipping Co., Inc., 451 E. Carson Plaza Dr., #201, Carson, CA 90746. Officer: Kyung Hwan Oh, President (Qualifying Individual)

Int'l Network Trans., Inc., 9841 Airport Blvd., Suite #1002, Los Angeles, CA 90045. Officer: Hwa H. Lee, President (Qualifying Individual)

HR Services, Inc. d/b/a HR Shipping Services, 211 North Union Street, Suite 100, Alexandria, VA 22314. Officers: Nigel J. McCallum, Vice President

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

Candice K. Blankenship, 1025 Wynngate Drive, Chesapeake, VA 23320, Sole Proprietor

NTD Shipping, Inc., 12110 Oak Park Drive, Houston, TX 77070. Officers: Casie McCorquodale, President (Qualifying Individual), Diana Atchison, Secretary

Nasser Massry d/b/a Maromax Industries, 417 Pisgah Church Road, Greensboro, NC 27455. Nasser Massry, Owner (Qualifying Individual)

Worldwide Express, Inc., 20200 First Avenue, Middleburg Heights, OH 44130. Officers: Serop S. Demirjian, President (Qualifying Individual), Lousie Demirjian, Vice President

Dated: March 10, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–6418 Filed 3–14–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in

the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 7, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. First Business Bancshares, Inc., Madison, Wisconsin; to acquire 51 percent of the voting shares of The Business Banc Group, Ltd. (in formation), Brookfield, Wisconsin, and thereby indirectly acquire First Business Bank-Milwaukee, Brookfield, Wisconsin.

In connection with this application, The Business Banc Group, Ltd., Brookfield, Wisconsin, also has applied to become a bank holding company.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. National Penn Bancshares, Inc., Boyertown, Pennsylvania; to acquire indirectly through its wholly owned subsidiary, NPB New Jersey, Inc., Morristown, New Jersey, 100 percent of the voting shares of Panasia Bank, Fort Lee, New Jersey. In connection with this application, NPB New Jersey, Inc., has applied to become a bank holding company.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. NBM Corp Employee Stock Ownership Plan, McAlester, Oklahoma; to become a bank holding company by acquiring 30.48 percent of the voting shares of NBM Corp, McAlester, Oklahoma, and thereby indirectly acquire Bank N.A., McAlester, Oklahoma.

Board of Governors of the Federal Reserve System, March 9, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6300 Filed 3–15–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or to Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 7, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. BancFirst Ohio Corp., Zanesville, Ohio; to acquire Milton Federal Financial Corporation, West Milton, Ohio, and its subsidiary, Milton Federal Savings Bank, West Milton, Ohio, and thereby engage in permissible savings association activities, pursuant to § 225.28(b)(4) of Regulation Y. Applicant would merge Milton Federal Savings Bank, West Milton, Ohio, with and into the applicant's banking subsidiary, The First National Bank of Zanesville, Zanesville, Ohio.

Board of Governors of the Federal Reserve System, March 9, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6301 Filed 3–14–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, March 20, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 10, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6470 Filed 3–13–00; 11:10 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01001]

Grants for Education Programs in Occupational Safety and Health; Notice of Availability of Funds for Fiscal Year 2001

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for training grants in occupational safety and health. This program addresses the "Healthy People 2010" priority area of occupational safety and health. The goal of the program is to provide an adequate supply of qualified personnel to carry out the purposes of

the Occupational Safety and Health Act. The specific program objective is to provide financial assistance to eligible institutions or agencies to assist in providing an adequate supply of qualified professional occupational safety and health personnel. Projects are supported for Occupational Safety and Health Education and Research Center Training Grants (ERCs) and for Long-Term Training Project Grants (TPGs). In FY 2001, a total of approximately $13,900,000 is available for award. Of this total, approximately $2,510,000 is available for competing continuation or new awards. The balance of approximately $11,390,000 is available for non-competing continuation awards.

B. Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, or U.S. Territory is eligible to apply for an institutional training grant.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds and Types of Training Awards

In total, approximately $2,510,000 is expected to be available in FY 2001 to fund ERC and TPG programs as described below:

1. For ERCs: Approximately $1,960,000 of the total funds available will be utilized as follows:

a. Approximately $600,000 is available to award one competing continuation or new ERC grant. Awards range from $400,000 to $800,000 with the average award being $600,000.

b. Approximately $300,000 is available to award supplemental funds to five competing continuation or new training grants; three of the awards are planned for $180,000 for Hazardous Substance Academic Training Programs and two of the awards are planned for $120,000 for Hazardous Substance Training Programs. The awards are to support the development and presentation of continuing education and short courses and academic curricula for trainees and professionals engaged in the management of hazardous substances. Program support is available for faculty and staff salaries, trainee costs, and other costs to provide training and education for occupational safety and health and other professional personnel engaged in the evaluation, management, and handling of hazardous substances. This program is supported with funds transferred from NIEHS to NIOSH through the Interagency Agreement entitled "Development and Implementation of a Training Program for Hazardous Substances".

c. Approximately $60,000 is available to award supplemental funds to one competing continuation or new training grant. These awards will support the development of specialized educational programs in agricultural safety and health within the existing core disciplines of industrial hygiene, occupational medicine, occupational health nursing, and occupational safety.

d. Approximately $1,000,000 is available to award supplemental funds to fifteen competing continuation or new grants to support the enhancement of the ERC research training mission through the support of pilot project research training programs. The pilot projects should be related to the National Occupational Research Agenda (NORA).

2. For TPGs: Approximately $550,000 of the total funds available will be utilized as follows:

a. To award approximately ten competing continuation or new TPG grants. Awards will range from approximately $20,000 to $100,000, with the average award being $55,000. These awards will support academic programs in the core disciplines (i.e., industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety and ergonomics) and relevant components (*e.g.*, occupational injury prevention, industrial toxicology, ergonomics). These awards are intended to augment the scope, enrollment, and quality of training programs rather than to replace funds already available for current operations.

3. It is expected that awards will begin on or about July 1, 2001 and will be made for a 12-month budget period within a project period of up to five years. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

The following are intended to serve as applicant requirements:

1. An ERC shall be an identifiable organizational unit within the sponsoring organization. Applicants must meet the following characteristics in order to be considered responsive. If the characteristics are not met, the application will be considered non-responsive and will not be reviewed.

a. Cooperative arrangements with a: medical school or teaching hospital (with an established program in preventive or occupational medicine); school of nursing or its equivalent; school of public health or its equivalent; or school of engineering or its equivalent. It is expected that other schools or departments with relevant disciplines and resources shall be represented and shall contribute as appropriate to the conduct of the total program, *e.g.*, epidemiology, toxicology, biostatistics, environmental health, law, business administration, and education. Specific mechanisms to implement the cooperative arrangements between departments, schools/colleges, universities, etc., shall be demonstrated in order to assure that the intended multidisciplinary training and education will be engendered.

b. An ERC Director who possesses a demonstrated capacity for sustained productivity and leadership in occupational health and safety education and training. The Director shall oversee the general operation of the ERC Program and shall, to the extent possible, directly participate in training activities. A Deputy Director shall be responsible for managing the daily administrative duties of the ERC and to increase the ERC Director's availability to ERC staff and to the public.

c. Program Directors who are full-time faculty and professional staff representing various disciplines and qualifications relevant to occupational safety and health who are capable of planning, establishing, and carrying out or administering training projects undertaken by the ERC. Each academic program, as well as the continuing education and outreach program, shall have a Program Director.

d. Faculty and staff with demonstrated training and research expertise, appropriate facilities and ongoing training and research activities in occupational safety and health areas.

e. A program for conducting education and training in four core disciplines: occupational physicians, occupational health nurses, industrial hygienists, and occupational safety personnel. There shall be a minimum of five full-time students or full-time equivalent students in each of the core programs, with a goal of a minimum of 30 full-time students (total in all of core and component programs together). ERCs are encouraged to recruit and train minority students to help address the under-representation of minorities among the occupational safety and health professional workforce. Although it is desirable for an ERC to have the full range of core programs, an ERC with a

minimum of three academic programs of which two are in the core disciplines is eligible for support providing it is demonstrated that students will be exposed to the principles and issues of all four core disciplines. In order to maximize the unique strengths and capabilities of institutions, consideration will be given to the development of: new and innovative academic programs that are relevant to the occupational safety and health field, *e.g.*, ergonomics, industrial toxicology, occupational injury prevention, and occupational epidemiology; and to innovative technological approaches to training and education. ERCs must also document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. Each core program curriculum shall include courses from non-core categories as well as appropriate clinical rotations and field experiences with public health and safety agencies and with labor-management health and safety groups. Where possible, field experience shall involve students representing other disciplines in a manner similar to that used in team surveys and other team approaches. ERCs should address the importance of providing training and education content related to special populations at risk, including minority workers and other sub-populations specified in the National Occupational Research Agenda (NORA) special populations at risk category.

f. A specific plan describing how trainees in core and component academic programs will be exposed to the principles of all other occupational safety and health core and allied disciplines. Consortium ERCs generally have geographic, policy and other barriers to achieving this ERC characteristic and, therefore, must give special, innovative, attention to thoroughly describing the approach for fulfilling the multidisciplinary interaction between students.

g. Demonstrated impact of the ERC on the curriculum taught by relevant medical specialties, including family practice, internal medicine, dermatology, orthopedics, pathology, radiology, neurology, perinatal medicine, psychiatry, etc., and on the curriculum of undergraduate, graduate and continuing education of primary core disciplines as well as relevant medical specialities and the curriculum of other schools such as engineering, business, and law.

h. An outreach program to interact with and help other institutions or agencies located within the region. Programs shall be designed to address regional needs and implement innovative strategies for meeting those needs. Partnerships and collaborative relationships shall be encouraged between ERCs and TPGs. Programs to address the under-representation of minorities among occupational safety and health professionals shall be encouraged. Specific efforts should be made to conduct outreach activities to develop collaborative training programs with academic institutions serving minority and other special populations, such as Tribal Colleges and Universities, Historically Black Colleges and Universities, and Hispanic-Serving Institutions. Examples of outreach activities might include activities such as: Interaction with other colleges and schools within the ERC and with other universities or institutions in the region to integrate occupational safety and health principles and concepts within existing curricula (*e.g.*, Colleges of Business Administration, Engineering, Architecture, Law, and Arts and Sciences); exchange of occupational safety and health faculty among regional educational institutions; providing curriculum materials and consultation for curriculum/course development in other institutions; use of a visiting faculty program to involve labor and management leaders; cooperative and collaborative arrangements with professional societies, scientific associations, and boards of accreditation, certification, or licensure; and presentation of awareness seminars to undergraduate and secondary educational institutions (*e.g.*, high school science fairs and career days) as well as to labor, management and community associations.

i. A specific plan for preparing, distributing and conducting courses, seminars and workshops to provide short-term and continuing education training courses for physicians, nurses, industrial hygienists, safety engineers and other occupational safety and health professionals, paraprofessionals and technicians, including personnel from labor-management health and safety committees, in the geographical region in which the ERC is located. The goal shall be that the training be made available to a minimum of 400 trainees per year representing all of the above categories of personnel, on an approximate proportional basis with emphasis given to providing occupational safety and health training to physicians in family practice, as well as industrial practice, industrial nurses, and safety engineers. Priority shall be given to establishing new and innovative training technologies, including distance learning programs and to short-term programs designed to prepare a cadre of practitioners in occupational safety and health. Where appropriate, it shall be professionally acceptable that Continuing Education Units (as approved by appropriate professional associations) may be awarded. These courses should be structured so that higher educational institutions, public health and safety agencies, professional societies or other appropriate agencies can utilize them to provide training at the local level to occupational health and safety personnel working in the workplace. Further, the ERC shall conduct periodic training needs assessments, shall develop a specific plan to meet these needs, and shall have demonstrated capability for implementing such training directly and through other institutions or agencies in the region. The ERC should establish and maintain cooperative efforts with labor unions, government agencies, and industry trade associations, where appropriate, thus serving as a regional resource for addressing the problems of occupational safety and health that are faced by State and local governments, labor and management.

j. A Board of Advisors or Consultants representing the user and affected population, including representatives of labor, industry, government agencies, academic institutions and professional associations, shall be established by the ERC. The Board should meet at least annually to advise an ERC Executive Committee and to provide periodic evaluation of ERC activities. The Executive Committee shall be composed of the ERC Director and Deputy Director, academic Program Directors, the Directors for Continuing Education and Outreach and others whom the ERC Director may appoint to assist in governing the internal affairs of the ERC.

k. A plan to incorporate research training into all aspects of training and, in research institutions, as documented by on-going funded research and faculty publications, a defined research training plan for training doctoral-level researchers in the occupational safety and health field. The plan will include how the ERC intends to strengthen existing research training efforts, how it will integrate research training activities into the curriculum, field and clinical experiences, how it will expand these research activities to have an impact on other primarily clinically-oriented disciplines, such as nursing and medicine, and how it will build on and utilize existing research opportunities in the institution. Each ERC is required to identify or develop a minimum of one,

preferably more, areas of research focus related to work environment problems. Consideration shall be given to the CDC/NIOSH priority research areas identified in the National Occupational Health Research Agenda (NORA). Further information regarding NORA may be found at the CDC/NIOSH home page: <http://www.cdc.gov/niosh>). The research training plan will address how students will be instructed and instilled with critical research perspectives and skills. This training will emphasize the importance of developing and working on interdisciplinary teams appropriate for addressing a research issue. It should also prepare students with the skill necessary for developing research protocols, pilot studies, outreach efforts to transfer research findings into practice, and successful research proposals. Such components of research training will require the ERCs to strive toward developing the faculty composition and administrative infrastructure essential to being Centers of Excellence in Occupational Safety and Health Research Training that are required to train research leaders of the future. The plan should address the incremental growth of such elements and evaluation of the plan commensurate with funds available. In addition to the research training components, the plan will also include such items as specific strategies for obtaining student and faculty funding, plans for acquiring equipment, if appropriate, and a plan for developing research-oriented faculty.

1. Evidence in obtaining support from other sources, including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

2. TPG applicants must document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. There shall be a minimum of three full-time students or full-time equivalent students in each academic program. Applicants should address the importance of providing training and education content related to special populations at risk, including minority and disadvantaged workers. The types of training currently eligible for support are:

a. Graduate training for practice, teaching, and research careers in occupational safety and health. Priority will be given to programs producing graduates in areas of greatest occupational safety and health need. Strong consideration will be given to the establishment of innovative training technologies including distance learning programs.

b. Undergraduate and other pre-baccalaureate training providing trainees with capabilities for positions in occupational safety and health professions.

c. Special technical or other programs for long-term training of occupational safety and health technicians or specialists.

E. Application Content

Competing Applications

Use the information in the Program Requirements and Other Requirements sections to develop the application content.

Applications will be evaluated on the basis of the Program Requirements, Other Requirements, and Evaluation Criteria sections listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 15 single-spaced pages per program, printed on one side, with one inch margins, and unreduced font.

Note: Please consult the detailed Recommended Outline for Preparation of Competing New/Renewal Training Grant Applications provided in each application kit (CDC 2.145 A).

F. Submission and Deadline

Applications should be clearly identified as an application for an ERC Training Grant or TPG Training Grant.

Application

Submit the original and two copies of CDC 2.145 A—ERC or TPG (OMB Number 0920–00261). Forms are in the application kit. Forms and instructions are also available on the CDC home page <http://www.cdc.gov>. On or before July 3, 2000, Submit the application to:

Sonia Phelix, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office.

Announcement 01001

Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2724, Email address: svp1@cdc.gov.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria. The initial peer review will be conducted by Special Training Review Committees by means of a panel meeting or site visit. The purpose of the initial review is to obtain basic information regarding elements of the proposed training grant program and to provide a technical report as input to the Special Emphasis Panel. The final official peer review will be conducted by a Special Emphasis Panel appointed by CDC.

In reviewing ERC grant applications, the evaluation criteria are as follows:

1. Plans to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. Special consideration should be given to the development of programs addressing the under-representation of minorities among occupational safety and health professionals. Indicators of regional need should include measures utilized by the ERC such as previous record of training and placement of graduates. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

2. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve the "Characteristics of an Education and Research Center".

3. The establishment of new and innovative programs and approaches to training and education relevant to the occupational safety and health field and based on documentation that the program meets specific regional workforce needs. In reviewing such proposed programs, consideration shall be given to the developing nature of the program and its capability to produce graduates who will meet such workforce needs.

4. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of

specific field and clinical experiences including their relationships with didactic programs in the educational process.

5. Academic training including the number of full-time and part-time students and graduates for each core and component program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous continuing education training in each discipline and outreach activity and assistance to groups within the ERC region.

6. Methods in use or proposed methods for evaluating the effectiveness of training and outreach including the use of placement services and feedback mechanisms from graduates as well as employers, innovative strategies for meeting regional needs, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

7. Competence, experience and training of the ERC Director, the Deputy ERC Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

8. Institutional commitment to ERC goals.

9. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

10. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

11. Evidence of the integration of research experience into the curriculum, and field and clinical experiences. In institutions seeking funds for doctoral and post-doctoral (physician training) level research training, evidence of a plan describing the research and research training the ERC proposes. This shall include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

12. Evidence of success in attaining outside support to supplement the ERC grant funds including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

13. Evidence of a strategy to evaluate the impact that the ERC and its programs have had on the DHHS Region. Examples could include a continuing education needs assessment, a workforce needs survey, consultation and research programs provided to address regional occupational safety and health problems, the impact on primary care practice and training, a program graduate data base to track the contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

14. Past performance based on evaluation of the most recent CDC/NIOSH Objective Review Summary Statement and the grant application Progress Report (Competing Continuation applications only).

In reviewing supplements to ERC grants, consideration will be given to:

1. *Hazardous Substance Training Program in Education and Research Centers*—The evaluation criteria are as follows:

a. Relevance of the proposed project to each element of the characteristics of a hazardous substance training program.

b. Comprehensiveness and soundness of the training plan developed to carry out the proposed activities required under the NIOSH/NIEHS Interagency Agreement. This is based on a documented need for the training and evidence to support the approach used to provide the required training. It includes descriptions of the scope and magnitude of the hazardous substance problem in the applicable DHHS Region and current activities and training efforts.

c. Education and experience of the Project Director, faculty, and staff assigned to this project with respect to handling, managing or evaluating hazardous substance sites and to the training of professionals in this field.

d. Creativity and innovation of the project leadership with respect to marketing the courses, structure in attracting trainees and/or providing incentives for training.

e. Extent to which the applicant considered the work of relevant agencies involved in hazardous substance activities, including EPA, and cooperated with these agencies in developing and implementing this training program.

f. Suitability of facilities and equipment available for this project.

g. Appropriateness of the budget to carry out the planned activities.

2. *Agricultural Safety and Health Education Programs in Education and Research Centers*—The evaluation criteria are as follows:

a. Evidence of a needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970. The needs assessment should consider the regional requirements for outreach, continuing education, information dissemination and special industrial or community training needs that may be peculiar to the region.

b. Evidence of a plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

c. The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve characteristics of an ERC.

d. The extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

e. Previous record of academic training in agricultural safety and health including the number of full-time and part-time students and graduates, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous record of continuing education training in agricultural safety and health and record of outreach activity and assistance to agricultural groups within the ERC region.

f. Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback. mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

g. The competence, experience and training of the Program Director and other professional staff in relation to the type and scope of training and education involved.

h. Institutional commitment to Center goals.

i. Academic and physical environment in which the training will be conducted, including access to appropriate occupational agricultural settings.

j. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

k. Evidence of a plan describing the agricultural safety and health training the Center proposes. This shall include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

l. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

3. *Hazardous Substance Academic Training Program in Education and Research Centers*—The evaluation criteria are as follows:

a. Evidence of a needs assessment directed to the overall contribution of the proposed training program toward meeting the needs of the job market, especially within the applicant's region. The needs assessment should consider the regional requirements for hazardous substance training, information dissemination and special industrial, labor or community training needs that may be peculiar to the region.

b. Evidence of a plan to satisfy regional needs for training in the areas outlined by the application, including Program projected enrollment and recruitment and current workforce populations.

c. The extent to which the HSAT curriculum content and design includes: Formalized training objectives; minimal course content to achieve a degree or successful completion of the specialty area requirements; course descriptions; course sequence; additional related courses open to occupational safety and health students; time devoted to lecture, laboratory, and field experience; and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

d. Previous record of academic and/or short course training delivered in the hazardous substances field, including the number and type of students trained. Previous record of hazardous substances outreach activity and assistance to hazardous substance groups within the ERC's region.

e. Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, student evaluations from academic and continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

f. The competence, experience and training of the Program Director and other professional staff in relation to the type and scope of training and education involved.

g. Institutional commitment to HSAT Program goals.

h. Academic and physical environment in which the training will be conducted.

i. Appropriateness of the budget required to support the training courses developed, including accounting for the academic staff's time.

j. Evidence of a plan describing the hazardous substances academic training the Center proposes. This shall include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

k. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

4. *ERC Supplemental Pilot Project Research Training Programs*—The evaluation criteria are as follows:

a. Relevance of the proposed program, including objectives that are specific and consistent.

b. Adequacy of the plan proposed to conduct the pilot projects program, including procedures for reviewing and funding projects, the scientific review mechanism, program quality assurance. Human Subjects—Are the procedures proposed adequate for the protection of human subjects and are they fully documented? Are all procedures in compliance with applicable published regulations?

c. Extent to which the applicant demonstrates collaboration with other research training institutions in the region, including NIOSH Training Project Grantees.

d. Education and experience of the proposed Research Training Program Director and faculty in the occupational safety and health field, including the utilization of pilot projects as a research training mechanism.

e. Appropriateness of the proposed budget to carry out the planned activities.

f. Adequacy of the plan to evaluate the effectiveness of the proposed pilot projects program.

g. Gender and minority issues—Are plans to include both sexes and minorities and their subgroups adequately developed (as appropriate for the scientific goals of the project)? Are strategies included for the recruitment and retention of human subjects? (See Attachment 1, AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.)

In reviewing TPG applications, the evaluation criteria are as follows:

1. Need for training in the program area outlined by the application. This should include documentation of a plan for student recruitment, projected enrollment, job opportunities, regional need both in quality and quantity, and for programs addressing the under-representation of minorities in the profession of occupational safety and health.

2. Potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

3. Curriculum content and design which should include formalized program objectives, minimal course content to achieve certificate or degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches. There should also be evidence of integration of research experience into the curriculum, and field and clinical experiences.

4. Previous records of training in this or related areas, including placement of graduates.

5. Methods proposed to evaluate effectiveness of the training.

6. Degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?

7. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

8. Competence, experience, training, time commitment to the program and availability of faculty to advise students, faculty/student ratio, and teaching loads of the program director and teaching faculty in relation to the type and scope

of training involved. The program director must be a full-time faculty member.

9. Admission Requirements: Student selection standards and procedures, student performance standards and student counseling services.

10. Advisory Committee: Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need. The Committee should meet at least annually to provide advice and periodic evaluation of TPG activities.

11. Evidence of a strategy to evaluate the impact that the program has had on the region. Examples could include a workforce needs survey, consultation and research programs provided to address regional occupational safety and health problems, a program graduate data base to track the contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

12. Past performance based on evaluation of the most recent CDC/NIOSH Objective Review Summary Statement and the grant application Progress Report (Competing Continuation applications only).

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. progress reports (annual and may be incorporated as component of non-competing continuation applications);

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status and progress reports, no more than 90 days after the end of the project period.

Send all reports to: Sonia Phelix, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office.

Announcement 01001

Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1* Human Subjects Requirements
AR–2* Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3* Animal Subjects Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
* =Applies to ERC Supplemental Pilot Project Research Training Program applications only.

Data collection initiated under this training grant program has been approved by the Office of Management and Budget under Number 0920–0261. "Training Grants, Application and Regulations—42 CFR Part 86," Expiration Date 11/30/2000.

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 21(a) of the Occupational Safety and Health Act [29 U.S.C. 670 (a)]. The Catalog of Federal Domestic Assistance number is 93.263.

J. Where to Obtain Additional Information

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC home page is: *<http://www.cdc.gov>*.

Please refer to Program Announcement 01001 and specify ERC or TPG when you request information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sonia Phelix, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office.

Announcement 01001

Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2724, E-mail address: svp1@cdc.gov.

For program technical assistance, contact: John T. Talty, Principal Engineer, Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mailstop C–7, Cincinnati, OH 45226–1998, telephone (513) 533–8241, E-mail address: jtt2@cdc.gov.

Dated: March 9, 2000.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–6326 Filed 3–14–00; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–CC–2000–01A]

Fiscal Year 2000 Discretionary Announcement of the Availability of Funds and Request for Applications for Field Initiated Child Care Research Projects, Child Care Policy Research Partnerships, Child Care Research Scholars, and the Child Care Research Fellowship Program, Correction

AGENCY: Administration for Children, Youth, and Families, ACF, DHHS.

ACTION: Correction.

SUMMARY: This document contains a correction to the Notice that was published in the **Federal Register** on Thursday, January 27, 2000, Part III (65 FR 4495). On page 4500, first column, the mailing address for submission of applications is incorrect. The correct address for applicants who intend to apply, and for the submission and delivery of applications, should be changed to the following: ACYF Operations Center, Laurel Consulting Group, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: The ACYF Operation Center at 1–800–351–2293 or send an email to *ccb@lcg.com*. You can also contact Dr. Patricia L. Divine, Program Specialist, Child Care Bureau, by email at *pdivine@acf.dhhs.gov* or by phone at (202) 690–6705.

Dated: March 7, 2000.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 00–6108 Filed 3–14–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Medical Child Support Working Group

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is given of the date for the eighth meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group

was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998. The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments.

DATES: The eighth meeting of the MCSWG will be held on Thursday, March 30, 2000, from 1:00 p.m. to approximately 2:30 p.m.

ADDRESSES: The meeting will be held at the Office of Child Support Enforcement, in the 6th floor Auditorium, Aerospace Building, 901 D Street SW, Washington, DC 20447. All interested parties are invited to attend this public meeting. Seating may be limited and will be available on a first-come, first-served basis. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact the Executive Director of the Medical Child Support Working Group, Office of Child Support Enforcement, at the address listed below.

FOR FURTHER INFORMATION CONTACT: Ms. Samara Weinstein, Executive Director, Medical Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447 (telephone (202) 401–6953; fax (202 401–5559; e-mail: sweinstein@acf.dhhs.gov). These are not toll-free numbers. The date, location and time for subsequent MCSWG meetings will be announced in advance in the **Federal Register.** However, it is expected this will be the last meeting.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), (FACA), notice is given of meetings of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998 (Pub. L. 105–200). The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments. This report will include: (1) Recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under proposed regulation; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677); (3) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program; (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's health plan, and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payment, deductibles, or payments for services not covered under a child's existing health coverage; (5) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary. The membership of the MCSWG was jointly appointed by the Secretaries of DOL and DHHS, and includes representatives of (1) DOL; (2) DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1)); children potentially eligible for medical support such as child advocacy organizations; (8) State Medical child support organizations; and (9) organizations representing State child support programs.

Agenda

The agenda for this meeting includes review and approval of the MCSWG's report to the Secretaries continuing recommendations for appropriate measures to address the impediments to the effective enforcement of medical child support as listed above. At the May, 1999, meeting, the MCSWG formed four (4) sub-committees to discuss barriers, issues, options, and recommendations in the interim between full MCSWG meetings. At the next three meetings (August, 1999, October, 1999, and November, 1999), the sub-committees presented their draft recommmendations to the full MCSWG for further discussion and consideration. At the January, 2000, meeting, the MCSWG discussed the recommendations to be contained in the report to the Secretaries. At this meeting, the MCSWG will review and approve the actual report.

Public Participation

Members of the public wishing to present oral statements to the MCSWG should forward their requests to Samara Weinstein, MCSWG Executive Director, as soon as possible and at least four days before the meeting. Such request should be made by telephone, fax machine, or mail, as shown above. Time permitting, the Chairs of the MCSWG will attempt to accommodate all such requests by reserving time for presentations. The order of persons making such presentations will be assigned in the order in which the requests are received. Members of the public are encouraged to limit oral statements to five minutes, but extended written statements may be submitted for the record. Members of the public also may submit written statements for distribution to the MCSWG membership and inclusion in the public record without presenting oral statements. Such written statements should be sent to the MCSWG Executive Director, as shown above, by mail or fax at least five business days before the meeting.

Minutes of all public meetings and other documents made available to the MCSWG will be available for public inspection and copying at both the DOL and DHHS. At DHHS, these documents will be available at the MCSWG Executive Director's Office, Office of Child Support Enforcement (OCSE), Administration for Children and Families, U.S. Department of Health and Human Services, Aerospace Building, Fourth Floor—East, 370 L'Enfant Promenade, SW, Washington, DC from 8:30 am to 5:30 pm. Questions regarding the availability of documents from DHHS should be directed to Andrew J. Hagan, OCSE (telephone (202) 401–5375). This is not a toll-free number. Any written comments on the minutes should be directed to Ms. Samara

Weinstein, Executive Director of the Working Group, as shown above.

Dated: March 8, 2000.

David Gray Ross,

Commissioner, Office of Child Support Enforcement.

[FR Doc. 00–6407 Filed 3–14–00; 8:45 am]

BILLING CODE 4184–01–U–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Neurological Devices Panel Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 31, 2000, 9:30 a.m. to 5:30 p.m.

Location: DoubleTree Hotel, Grand Ballroom, 1750 Rockville Pike, Rockville, MD.

Contact Person: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, ext. 176, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12513. Please call the Information Line or access the Internet at http://www.fda.gov/cdrh/panelmtg.html for up-to-date information on this meeting.

Agenda: There will be a brief FDA presentation of the least burdensome provisions of the FDA Modernization Act of 1997. The committee will discuss, make recommendations, and vote on a premarket approval application for a deep brain stimulator for the treatment of Parkinson's disease.

Procedure: On March 31, 2000, from 10 a.m. to 5:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 13, 2000. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11:30 a.m. and between approximately 3:30 p.m. and 4 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 13, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On March 31, 2000, from 9:30 a.m. to 10 a.m., the meeting will be closed to permit FDA to present to the committee trade secret and/or confidential commercial information regarding pending applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 6, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–6282 Filed 3–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Board to the Food and Drug Administration; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration.

General Function of the Committee: The board shall provide advice primarily to the agency's Senior Advisor for Science, and as needed, to the Commissioner of Food and Drugs and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science, formulating an appropriate research agenda, and upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency-sponsored intramural and extramural scientific research programs.

Date and Time: The meeting will be held on April 21, 2000, from 8:30 a.m. to 5 p.m.

Location: 5630 Fishers Lane, Rockville, MD 20852, Center for Drug Evaluation and Research Advisory Committee conference room 1066.

Contact Person: Susan M. Bond, Office of the Senior Advisor for Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12603. Please call the Information Line for up-to-date information on this meeting.

Agenda: Open committee discussion, 8:30 a.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m. The board will discuss their review of research at FDA's Center for Food Safety and Applied Nutrition (CFSAN). The board will also hear and discuss CFSAN's Dietary Supplement Strategic Plan, the Office of Women's Health research plan, joint FDA and industry training, and strategies for maintaining the quality of science at FDA.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Written submissions may be made to the contact person by April 7, 2000. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 7, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. Each presenter will be limited in time and not all who request to speak may be accommodated.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 8, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–6285 Filed 3–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1218]

Blood Standards; Pilot Program for Licensing Gamma Irradiated Blood and Blood Components and "Guidance for Industry: Gamma Irradiation of Blood and Blood Components;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program For Licensing," dated February 2000. FDA is also announcing the establishment of a pilot program for licensed blood product manufacturers seeking to market irradiated blood components in interstate commerce. The pilot program is intended to allow self-certification in lieu of the submission of a detailed biologics licence application (BLA) supplement. FDA is initiating the pilot program to determine if streamlining the process of licensing will be more efficient and effective for both the manufacturer and FDA without compromising product safety, purity, and potency.

DATES: Written comments may be submitted at any time. The effective date for implementation of the pilot program is April 14, 2000.

ADDRESSES: Submit written requests for single copies of the guidance entitled "Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing," to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Submit requests for participation in the pilot program to Mary Ann Denham at the address below.

FOR FURTHER INFORMATION CONTACT: About participation in the pilot program:

Mary Ann Denham, Center for Biologics Evaluation and Research (HFM–375), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–2861.

About this notice:

Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled "Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program For Licensing," dated February 2000. This guidance document is intended to assist manufacturers of gamma irradiated blood and blood components to self-certify conformance to specific criteria as part of a pilot program in lieu of the submission of a detailed BLA supplement filing. Instead of submitting a BLA supplement with supporting operating procedures and data derived from validation and quality control testing, the manufacturer may submit an application form (Form FDA 356h), a self-certification statement that provides that the manufacturer is in compliance with all applicable FDA regulations and meets the criteria for gamma irradiated blood and blood components set forth in the guidance document entitled "Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program For Licensing," dated February 2000, as well as written request to the CBER Director for an exception to filing a detailed supplement. The pilot program provides that FDA will review for completeness Form FDA 356h, the self-certification, and written request for an exception to filing a detailed supplement, and at FDA discretion, will schedule a prelicense inspection within 90 days of receipt of the self-certification to confirm conformance with applicable Federal regulations and the recommended criteria contained in the guidance document.

This guidance document finalizes the draft guidance entitled "Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program For Licensing" that was announced in the **Federal Register** of January 27, 1999 (64 FR 4118).

To participate in the program a manufacturer should already be licensed for nonirradiated blood components and should be ready for a prelicense inspection at the time it forwards Form FDA 356h, self-certification, and request for exception to FDA. If, during the prelicense inspection, FDA finds significant deficiencies in quality assurance, manufacturing facilities, or product safety, purity, potency, or effectiveness, FDA may withdraw the manufacturer from the pilot program, and the manufacturer will be required to submit a BLA supplement with complete supporting documentation prior to marketing irradiated blood components in interstate commerce.

FDA intends the pilot program to span approximately 1 year, but the actual length of the program depends on the number of manufacturers participating in the program. FDA will begin the pilot program on April 14, 2000. At the end of the pilot program, FDA will evaluate the program for efficiency and effectiveness and will make this evaluation available to the public. If the program proves to be efficient and effective, FDA will consider extending the program to other blood products.

This guidance document represents the agency's current thinking on gamma irradiation of blood and blood components intended for transfusion or for further manufacturing. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. If a manufacturer chooses to participate in this voluntary program, it should conform to the specific criteria set forth in this guidance. Manufacturers who want to use an alternative approach must submit a detailed BLA supplement under 21 CFR 601.12 or otherwise satisfy FDA that an exemption from that requirement is justified under 21 CFR 640.120. As with other guidance documents, FDA does not intend this guidance document to be all-inclusive and cautions that not all information may be applicable to all situations.

II. Comments

Interested persons, may at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be

identified with the docket number found in the brackets in the heading of this guidance document. A copy of the guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance document using the Internet. For Internet access, connect to CBER at http://www.fda.gov/cber/guidelines.htm.

Dated: March 1, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–6283 Filed 3–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3032–N]

Medicare Program; Meeting of the Medical and Surgical Procedures Panel of the Medicare Coverage Advisory Committee—April 12 and 13, 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Medical and Surgical Procedures Panel of the Medicare Coverage Advisory Committee (MCAC). The panel provides advice and recommendations to the agency about clinical coverage issues. The panel will hear and discuss presentations from interested persons regarding the treatment of non-neurogenic urinary incontinence in adults. The meeting will focus on two treatment options: biofeedback and pelvic floor electrical stimulation. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES: *The Meeting:* The meeting will be held on April 12, 2000 from 8:00 a.m. until 5:15 p.m. and on April 13, 2000, from 8:00 a.m. until 3:00 p.m. E.S.T.

Deadline for Presentations and Comments: March 22, 2000, 5 p.m.

Special Accommodations: Persons attending the meeting who are hearing impaired and require sign language interpretation, or have a condition that requires other special assistance or accommodations, are asked to notify the Executive Secretary by March 31, 2000.

ADDRESSES:

The Meeting: The meeting will be held at The Baltimore Convention Center, One West Pratt Street, Baltimore, MD 21201.

Presentations and Comments: Submit formal presentations and written comments to Constance A. Conrad, Executive Secretary; Office of Clinical Standards and Quality; Health Care Financing Administration; 7500 Security Boulevard; Mail Stop S3–02–01; Baltimore, MD 21244.

Website: You may access up-to-date information on this meeting at www.hcfa.gov/quality/8b.htm.

Hotline: You may access up-to-date information on this meeting on the HCFA Advisory Committee Information Hotline, 1–877–449–5699 (toll free) or in the Baltimore area (410) 786–9379.

FOR FURTHER INFORMATION CONTACT: Constance A. Conrad, Executive Secretary, 410–786–4631.

SUPPLEMENTARY INFORMATION: On August 13, 1999, we published a notice (64 FR 44231) to describe the MCAC, which provides advice and recommendations to us about clinical issues. This notice announces the following public meeting of the MCAC:

Current Panel Members:

Alan M. Garber, M.D.; Michael D. Maves, M.D.; Angus M. McBryde, M.D.; H. Logan Holtgrewe, M.D.; Kenneth P. Brin, M.D.; Les J. Zendle, M.D.; Bruce Sigsbee, M.D.; Linda D. Bradley, M.D.; James P. Rathmell, M.D.; Arnold M. Epstein, M.D.; Phyllis E. Greenberger, M.S.W.; Marshall S. Stanton, M.D.

Meeting Topic:

The Panel will hear and discuss presentations from interested persons regarding the treatment of non-neurogenic urinary incontinence in adults. The meeting will focus on two treatment options: biofeedback the first day and pelvic floor electrical stimulation the second day.

Procedure and Agenda:

This meeting is open to the public. The panel will hear oral presentations from the public for approximately 2 hours and 30 minutes on each day of the meeting. The Panel may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations you must notify the For Further Information Contact person, and submit the following by the Deadline for Presentations and Comments date listed in the **DATES** section of this notice: a brief statement of the general nature of the evidence or arguments you wish to present, the names and addresses of proposed participants, and an estimate of the time required to make the presentation. We will request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public presentation, we will make a presentation to the Panel. After our presentation, the Panel will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear further comments during this time except at the request of the chairperson. At the end of the Panel deliberations each day, the Panel will allow approximately a 30-minute open public session for any attendee to address issues specific to the topic. After which, the members will vote and the Panel will make its recommendation.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 29, 2000.

Jeffrey L. Kang,

Director, Office of Clinical Standards and Quality, Health Care Financing Administration.

[FR Doc. 00–6421 Filed 3–14–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice Regarding the Section 340B Drug Pricing Program—Program Guidance Clarification

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: Section 602 of Public Law 102–585, the "Veterans Health Care Act of 1992," enacted section 340B of the Public Health Service Act, "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible (covered) entities must sign a pharmaceutical pricing agreement with the Secretary of HHS in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula.

The purpose of this notice is to clarify section 340B program guidance related to the mechanism to prevent duplicate discounts (i.e., the generation of a

Medicaid rebate on a section 340B discounted drug). Any covered entity that purchases its non-Medicaid drugs through the 340B program but its Medicaid drugs through other avenues must provide the Office of Drug Pricing (ODP) notice of this type of dual purchasing activity. The ODP will place a notation "non-applicable" (N/A) by the covered entity name on the eligibility list so that any reimbursement requests for its Medicaid drugs will continue to generate manufacturer rebates. For appropriate Medicaid drug reimbursement procedures, the Health Resources and Services Administration (HRSA) refers the covered entity to its respective State Medicaid agency for guidance.

FOR FURTHER INFORMATION CONTACT: Captain Robert Staley, Office of Drug Pricing, Bureau of Primary Health Care, Health Resources and Services Administration, 10th Floor, East-West Towers, 4350 East-West Highway, Bethesda, MD 20814; Phone (800) 628–6297; Fax (301) 594–4982.

SUPPLEMENTARY INFORMATION: Section 340B(a)(5)(A) required HHS to develop a mechanism to prevent a section 340B drug discount and a Medicaid rebate on the same drug (*i.e.*, prevention of double discounting). HRSA, together with the Medicaid Rebate Program, Health Care Financing Administration, developed a process to prevent this potential double price reduction and published the final notice of this mechanism on June 23, 1993, at 58 FR 34058. The mechanism, which focuses only on 340B covered outpatient drugs, requires a covered entity that bills Medicaid on a cost basis (e.g., community health centers using fee for service and not all inclusive rates) to submit to ODP its Pharmacy Medicaid Number (*i.e.*, the number used to bill Medicaid for the drugs). This information is placed by the name of the covered entity on the master electronic eligibility list. Using this Medicaid number, the State Medicaid agency creates a separate provider file for claims from that covered entity. This computer file then excludes data from this provider file when generating the rebate bills to the manufacturers. In this way, the mechanism prevents double discounting.

An entity which utilizes a Medicaid billing system that includes pharmacy in an all-inclusive rate or does not submit Medicaid claims for covered outpatient drugs would not generate Medicaid rebates. Consequently, these entities do not have to provide their pharmacy numbers (58 FR 34059). However, such entities were instructed to provide ODP with notice of such purchasing practices so that this information could be provided to participating manufacturers and appropriate State Medicaid agencies (59 FR 25112, May 13, 1994).

It has come to our attention that there may be some confusion concerning the appropriate reporting procedures for an entity not participating in the 340B Program for its Medicaid drugs (i.e., purchasing its non-Medicaid drugs through the 340B Program and its Medicaid drugs outside the Program). Because drugs purchased outside of the 340B Program are not considered covered 340B outpatient drugs, an entity that only purchases non-Medicaid drugs through the 340B Program would not request Medicaid reimbursement for its covered outpatient drugs (i.e., non-Medicaid drugs discounted through the 340B program). Consequently, the covered entity would not provide ODP its Medicaid Pharmacy number. However, this entity still must notify ODP of this type of purchasing practice. ODP will place N/A by the name of the covered entity, signaling no Medicaid reimbursement requests on drugs purchased with discounts under section 340B. In this way, Medicaid rebates will continue to be generated on its Medicaid drugs purchased outside the 340B program.

Covered entities that have submitted Medicaid Pharmacy provider numbers now included in the covered entity database but are purchasing drugs for their Medicaid patients on the open market should contact ODP as soon as possible to request that their Medicaid Pharmacy numbers be replaced by N/A in the covered entity database. An entity that has purchased Medicaid drugs outside of the 340B Program but submitted its Medicaid provider number to ODP should attempt to preserve any documentation of such purchasing activity. The entity should contact its State Medicaid agency about these past drug purchases so that the agency can bill manufacturers for rebates that were excluded from past rebate claims.

On behalf of the Medicaid Drug Rebate Program, HRSA provided notice to covered entities regarding appropriate procedures for requesting Medicaid reimbursement for covered outpatient drugs (58 FR 27293 and 59 FR 25112 regarding "actual acquisition cost"). Currently, HRSA is reviewing that portion of the guidance and recommends that covered entities refer to their respective Medicaid State agency drug reimbursement guidelines for applicable billing limits.

Dated: March 9, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–6287 Filed 3–14–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 2000.

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry.

Date and Time: April 20, 2000; 8 a.m.–5:30 p.m.; April 21, 2000; 8 a.m.–3:00 p.m.

Place: Hilton Washington and Towers, 1919 Connecticut Avenue, NW, Washington, DC 20009.

The meeting is open to the public.

Purpose: The Advisory Committee shall (1) Provide advice and recommendations to the Secretary concerning policy and program development and other matters of significance concerning activities under section 747 of the Public Health Service (PHS) Act; and (2) Prepare and submit to the Secretary, the Committee on Labor and Human Resources of the Senate, and the Committee on Commerce of the House of Representatives, a report describing the activities of the Advisory Committee, including findings and recommendations made by the Committee concerning the activities under section 747 of the PHS Act. The Advisory Committee will meet twice each year and submit its first report to the Secretary and the Congress by November 2001.

Agenda: Discussion of the focus of the programs and activities authorized under section 747 of the PHS Act; responses to questions on the programs under section 747 of the PHS Act; project requirements; funding priorities; outcomes data; and the peer review process. Strategic planning for the Committee.

Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Barbara Brookmyer, Deputy Executive Secretary, Advisory Committee on Training in Primary Care Medicine and Dentistry,

Parklawn Building, Room 9A–27, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1468, e-mail bbrookmyer@hrsa.gov. The web address for the Advisory Committee is http://158.72.83.3/bhpr/dm/new__advisory__committee__on__primar.htm.

Dated: March 9, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–6286 Filed 3–14–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (Bufo houstonensis) During Construction of One Single Family Residence on Each of 2 Lots in the Circle D Country Acres Subdivision and One Single Family Residence on 0.5 Acres (Lots 953 and 954) in the Tahitian Village Subdivision, Bastrop County, Texas

SUMMARY: CHR Real Estate Venture/Cook Classic Homes (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–023593–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of a single family residence on 0.5 acres on each of 2 lots [Lot 9, Section 8 (1.03 acres) and Lot 50, Section 5(1.02 acres)] and one single family residence on 0.5 acres [Lots 953 and 954 (0.25 acres each) Block 10, Unit 2] in the Tahitian Village Subdivision in Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before April 14, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Englehard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas, at the above address. Please refer to permit number TE–023593–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Englehard at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

CHR Real Estate Venture/Cook Classic Homes plans to construct a single family residence on 0.5 acres on each of 2 lots [Lot 9, Section 8 (1.03 acres) and Lot 50, Section 5 (1.02 acres)] in the Circle D Country Acres Subdivision and a single family residence on 0.5 acres [Lots 953 and 954 (0.25 acres each) Block 10, Unit 2] in the Tahitian Village Subdivision in Bastrop County, Texas. This action will eliminate less than 1.5 acres of habitat (0.5 acres or less per homesite) and result in indirect impacts within the lot. The applicant proposes to compensate for this incidental take of the Houston toad by providing $4,000 ($1,500 for each of the 2 homesites in Circle D Country Acres and $1,000 for one homesite in Tahitian Village) to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–6327 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Burns-Paiute Tribe Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983). I certify that by Resolution No. 99–12, the Burns-Paiute Liquor Ordinance, was duly adopted by the Burns-Paiute Tribe on September 25, 1999. The Ordinance regulates the control of, the possession of, and the sale of liquor on Burns-Paiute tribal trust lands, and is in conformity with the State of Oregon.

DATES: This Ordinance is effective as of March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Jim D. James, Office of Tribal Services, 1849 C Street NW, MS 4631–MIB, Washington, D.C. 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Burns-Paiute Tribe Liquor Ordinance, Resolution No. 99–12, is to read as follows:

Burns-Paiute Tribal Liquor Ordinance

Section 1—Title

This Ordinance shall be the Liquor Ordinance of the Burns-Paiute Indian Tribe and shall be referenced as the Tribal Liquor Ordinance.

Section 2—Findings and Purpose

1. The introduction, possession, and sale of liquor on Indian reservations has historically been recognized as a matter of special concern to Indian tribes and to the United States. The control of liquor on reservations remains exclusively subject to their legislative enactments.

2. Federal law currently prohibits the introduction of liquor into Indian Country (18 U.S.C. 1154), leaving tribes the decision regarding when and to

what extent liquor transactions, sales, possession and service shall be permitted on their reservation (18 U.S.C. 1161).

3. The Burns-Paiute General Council discussed and approved a resolution to permit the sale and service of liquor at the Old Camp Casino, but at no other location, at the General Council meeting held in June 1999.

4. The enactment of this Tribal Ordinance to govern liquor sales and service on the Burns-Paiute Reservation, and the limitation of such liquor sales and service at the Old Camp Casino, will increase the ability of the tribal government to control reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation of tribal government and the delivery of governmental services, as well as provide an amenity to customers at the Old Camp Casino.

5. In order to authorize limited liquor sales and service at the Old Camp Casino, to facilitate increased tribal control over liquor distribution on the Burns-Paiute Reservation, and to provide for urgently needed additional revenues for the Burns-Paiute tribal government, the Burns-Paiute Tribal Council adopts this Liquor Ordinance.

6. The Burns-Paiute Tribe has entered a Memorandum of Understanding (MOU) with the Oregon Liquor Control Commission to deal with governmental issues associated with the licensing and regulation of liquor sales on the Burns-Paiute Indian Reservation.

Section 3—Definitions

Unless otherwise required by the context, the following words and phrases shall have the designated meanings:

Alcohol: Is that substance known as ethyl alcohol, hydrated oxide or ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of those substances.

Casino Manager: That person appointed by the Tribal Council to manage the Old Camp Casino.

Liquor or Liquor Products: Includes the four varieties of liquor herein defined (alcohol, spirits, wine, and beer) and all fermented, spirituous, vinous, or malt liquor, or a combination thereof, and mixed liquor, a part of which is fermented, spirituous, vinous, or malt liquor or otherwise intoxicating in every liquid or solid or semi-solid or other substance patented or not containing alcohol, spirits, wine, or beer, and all drinks of potable liquids and all preparations or mixtures capable of human consumption, and any liquid, semi-solid, solid, or other substance, which contains more than 1 percent (1%) of alcohol by weight shall be conclusively deemed to be intoxicating.

Old Camp Casino: Shall be the gaming facility located on the 10-acre Old Camp site located on the Burns-Paiute Indian Reservation which is more specifically described in Exhibit 1 to the Tribal-State Compact between the Burns-Paiute Tribe and the State of Oregon.

Sale and Sell: Includes exchange, barter, and traffic; and also the supplying or distribution by any means whatsoever, of liquor or any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or wine, by any person to any other person; and also includes the supply and distribution to any other person.

Spirits: Any beverage which contains alcohol obtained by distillation, including wines exceeding 17 percent (17%) of alcohol by weight.

Wine: Any alcoholic beverage obtained by fermentation of fruits, grapes, berries, or any other agricultural product containing sugar, to which any saccharin substances may have been added before, during, or after fermentation, and containing not more than 17 percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding 17 percent (17%) of alcohol by weight.

Section 4—Relation to Other Tribal Laws

All prior Ordinances and Resolutions of the Burns-Paiute Indian Tribe regulating, authorizing, prohibiting, or in any way dealing with the sale or service of liquor are hereby repealed and are of no further force or effect to the extent they are inconsistent or conflict with the provisions of this Ordinance. No tribal business licensing law or other tribal law shall be applied in a manner inconsistent with the provisions of this Ordinance.

Section 5—Authorized Sale and Service of Liquor

Liquor may be offered for sale and may be served on the Burns-Paiute Indian Reservation only in the Old Camp Casino. The sales and service of liquor in the Old Camp Casino may only be permitted in the following areas: liquor lounge, restaurant, and bingo hall when used for entertainment, food service, or convention/meeting purposes. All such sales and service of liquor in the Old Camp Casino shall be consistent with the Tribal-State Compact and applicable Federal and state law.

The Burns-Paiute Tribal Council hereby authorizes the Manager of the Old Camp Casino to apply for a Dispenser Class A License from the Oregon Liquor Control Commission (OLCC) for the sales and service of liquor at the Old Camp Casino as provided in this Ordinance. The casino Manager is further authorized to treat as a casino expense any license fees associated with the OLCC Liquor License.

Section 6—Prohibitions

A. General Prohibitions

The introduction of liquor, other than by the Burns-Paiute Tribe through its Old Camp Casino is prohibited within the Burns-Paiute Indian Reservation, and is hereby declared an offense under tribal law. Possession, sales, and service of liquor by any person prohibited by Federal law at 18 U.S.C. 1154 shall be lawful so long as the possession is in conformity with this Ordinance.

Federal Indian liquor laws shall remain applicable to any person, act, or transaction which is not authorized by this Ordinance and violators of this Ordinance shall be subject to Federal prosecution as well as to legal action in accordance with tribal law.

B. Age Restrictions

No person shall be authorized to serve liquor to casino patrons unless they are at least 21 years of age. No person may be served liquor unless they are 21 years of age.

C. No Consumption of Liquor Outside of Casino Premises

All liquor sales and service permitted by this Ordinance shall be fully consumed within the lounge or restaurant area within the Old Camp Casino. No open containers of liquor, or unopened containers of liquor in bottles, cans, or otherwise may be permitted outside of the casino premises.

D. No Credit Liquor Sales

The sales and service of liquor authorized by this Ordinance shall be upon a cash basis only. Payment for liquor shall be by cash, credit card, or check.

Section 7—Conformity With State Law

Authorized liquor sales and service on the Burns-Paiute Indian Reservation shall comply with Oregon State liquor law standards to the extent required by 18 U.S.C. 1161. The casino Manager shall be responsible for insuring that all

OLCC license requirements are satisfied, that the license is renewed on an annual basis, and that all reasonable and necessary actions are taken to sell and serve liquor to casino patrons in a manner consistent with this Ordinance, applicable state law, and the Tribal-State Compact. The casino Manager shall also be authorized to purchase liquor from the State or other source for sale and service within the Old Camp Casino.

Section 8—Penalty

Any person or entity possessing, selling, serving, bartering, or manufacturing liquor products in violation of any part of this Ordinance shall be subject to a civil fine of not more than $500 for each violation involving possession, but up to $5,000 for each violation involving selling, bartering, or manufacturing liquor products in violation of this Ordinance, and violators may be subject to exclusion from the Burns-Paiute Indian Reservation. In addition, persons or entities subject to the criminal jurisdiction of the Burns-Paiute Tribe who violate this Ordinance shall be subject to criminal punishment as provided in the Burns-Paiute Law and Order Code. All contraband liquor shall be confiscated by the Burns-Paiute Police Department.

Section 9—Sovereign Immunity Preserved

Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Burns-Paiute Indian Tribe. No Manager or employee of the Old Camp Casino shall be authorized, nor shall they attempt, to waive the sovereign immunity of the tribe.

Section 10—Effective Date.

This Ordinance was passed at a duly held, noticed, and convened meeting of the Burns-Paiute Tribal Council by a vote of 4 to 0, which vote constitutes a quorum held on the 25th day of September 1999, as attested to and certified by Cecil Dick, Acting Secretary of the Burns-Paiute Tribal Council and Wanda Johnson, Burns-Paiute Tribal Chairperson and shall be effective upon approval by the Secretary of Interior or his designee as provided by Federal law.

Dated: March 3, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–6288 Filed 3–14–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–110–1060–DC]

Notice of Public Hearing

AGENCY: White River Field Office, Bureau of Land Management, Department of the Interior.

SUMMARY: A public hearing regarding the use of motorized vehicles and helicopters; and the removal of wild horses from the Oil Springs Mountain Wilderness Study Area will be held at the White River Field Office, Bureau of Land Management.

DATES AND ADDRESSES: Hearing will be held in Meeker, Colorado at the White River Field Office, 73544 HWY 64, on April 20, 2000 at 7:00 P.M.

FOR FURTHER INFORMATION CONTACT: Robert Fowler; White River Field Office; 73544 HWY 64, Meeker, Colorado, 81641; Telephone (970) 878–3601.

John J. Mehlhoff,

White River Field Manager.

[FR Doc. 00–4793 Filed 3–14–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–65656]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Non-Competitive Sale of Public Lands in Lincoln County, Nevada.

SUMMARY: The below listed public land near Hiko, Lincoln County, Nevada has been examined and found suitable for sale utilizing direct non-competitive procedures, at not less than the fair market value. In accordance with Section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6910, the described lands are hereby classified as suitable for disposal under the authority of Section 203 and Section 209 of the Act of October 21, 1976; 43 U.S.C. 1713 and U.S.C. 1719.

DATES: On or before May 1, 2000, interested parties may submit comments to the Assistant Field Manager, Nonrenewable Resources.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Gene L. Drais, Assistant Field Manager, Nonrenewable Resources, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Brenda Linnell, Realty Specialist, at the above address or telephone (775) 289–1808.

SUPPLEMENTARY INFORMATION: The following described parcel of land situated in Lincoln County is being offered as a direct sale to Mr. Ramon Schmutz.

Mount Diablo Meridian, Nevada

T. 4 S., R. 60 E.,
Section 23, W½W½NE¼,
W½SE¼SW¼NE¼,
SW¼NE¼SW¼NE¼.
Containing 47.5 acres more or less.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for the conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All the sodium, potassium, oil and gas mineral deposits, and geothermal resources in the land subject to this conveyance, including without limitation, the disposition of these substances under the mineral leasing laws. Its permittees, licensees and lessees, the right to prospect for, mine and remove the mineral owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mineral leasing laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, or surface mining operation, storage and transportation facilities deemed necessary and authorized under law and implementing regulations. Unless otherwise provided by separate agreement with surface owner, permittee, licensees and lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior. All cause of action brought to enforce the rights of the surface

owner under the regulations above referred to shall be instituted against permittee, licensees and lessees of the United States; and the United States shall not be liable for the acts or omissions of its permittee, licensees and lessees.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except leasing under the mineral leasing laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

On or before May 1, 2000, interested parties may submit comments regarding this action to the Assistant Field Manager, Nonrenewable Resources at the address listed above. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least May 15, 2000.

Dated: March 2, 2000.

James M. Perkins,

Assistant Field Manager, Renewable Resources.

[FR Doc. 00–6412 Filed 3–14–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 4, 2000. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by March 30, 2000.

Carol D. Shull,

Keeper of the National Register.

ALASKA

Valdez-Cordova Borough-Census Area, Million Dollar Bridge, Mile 48, Copper River Highway, Cordova, 00000293

ARKANSAS

Garland County, Joplin, Peter, Commercial Block, 426–432 Ouachita Ave., Hot Springs, 00000294

CALIFORNIA

Santa Barbara County, Virginia Hotel, 17 and 23 W. Haley St., Santa Barbara, 00000295

CONNECTICUT

Fairfield County, Huntington Center Historic District, Roughly along Church and Huntington Sts., from Ripton Rd. to the Farmill River, Shelton, 00000296
Middlesex County, Hartlands, 50 Hartlands Dr., Old Saybrook, 00000298
New Haven County, Castle, Dr. Andrew, House, 555 Amity Rd., Woodbridge, 00000299
Wolcott Green Historic District, Roughly bounding Wolcott Green, Wolcott, 00000297

GEORGIA

De Kalb County, Emory Grove Historic District, Centered on N. Decatur Rd. bet. the CSX RR and the University Park-Emory Highlands-Emory Estates HD, Decatur, 00000300
Jackson County, Hoschton Depot, 4276 GA 53, Hoschton, 00000304
Putnam County, Terrell—Sadler House, 122 Harmony Rd., Harmony, 00000303
Stephens County, Eastanollee Auditorium, NE corner of Eastanolle School Rd. and Red Hollow Rd., Eastanollee, 00000301
Walton County, Briscoe House and Mill Site, 1109 New Hope Church Rd., Between, 00000302

INDIANA

Marion County, Town of Crows Nest Historic District, Roughly bounded by Kessler Blvd., White R., and Questover Circle, Indianapolis, 00000305

IOWA

Woodbury County, Florence Crittenton Home and Maternity Hospital, 1105–1111 28th St., Sioux City, 00000306

LOUISIANA

Natchitoches Parish Fredericks Site, Address Restricted, Clarence, 00000307

MISSOURI

Jackson County, Keith, Charles S., House, 1214 W. 55th ST., Kansas City, 00000308
Pike County, Barnard, Capt. George and Attella, House, 2009/2109 Georgia St., Louisiana, 00000309

NEW YORK

Westchester County, Asbury United Methodist Church and Bethel Chapel and Cemetery, 19 Old Post Rd. and Old Post Rd. S, Croton-on-Hudson, 00000310

VIRGINIA

Bedford County, New Prospect Church, 4445 Sheep Creek Rd., Bedford, 00000312
Brunswick County, Lawrenceville Historic District, Roughly bounded by W. Sixth Ave., Maria St., Lawrenceville townline, Rose Creek, and Thomas St., Lawrenceville, 00000313
Franklin County, Bowman Farm, 1605 Cahas Mountain Rd., Boones Mill, 00000314
Goochland County, Ben Dover, 661 River Rd. W #36, Manakin-Sabot, 00000311
Norfolk Independent City John T. West School, 1435 Bolton St., Norfolk, 00000315

WISCONSIN

Jefferson County, Telfer Site, Address Restricted, Milford, 00000316
Marathon County, Edgar Village Hall, 107 W. Beech St., Edgar, 00000317

After meeting all the requirements, a waving of the fifteen day comment period has been made for the following resource:

NEW YORK

Cayuga County, Schines Auburn Theatre, 12–14 South St., Auburn, 94001333

[FR Doc. 00–6296 Filed 3–14–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–652 (Review)]

Aramid Fiber From The Netherlands

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on aramid fiber from the Netherlands.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on aramid fiber from the Netherlands would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission will exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B), if necessary. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 3, 2000.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), Office

of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: On March 3, 2000, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (64 FR 67302, December 1, 1999) were adequate.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 9, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6404 Filed 3–14–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–683 (Review)]

Fresh Garlic From China

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on fresh garlic from China.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission will exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B), if necessary. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 3, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On March 3, 2000, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent [1] interested party group responses to its notice of institution (64 FR 67315, December 1, 1999) were adequate.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 9, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6406 Filed 3–14–00; 8:45 am]

BILLING CODE 7020–02–U

[1] Commissioner Hillman dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–355 (Review) and 731–TA–659–660 (Review)]

Grain-Oriented Silicon Electrical Steel From Italy and Japan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty and antidumping duty orders on grain-oriented silicon electrical steel from Italy and Japan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty and antidumping duty orders on grain-oriented silicon electrical steel from Italy and Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission will exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B), if necessary. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 3, 2000.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On March 3, 2000, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of

institution (64 FR 67318, December 1, 1999) were adequate.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 9, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6405 Filed 3–14–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 17, 2000 at 11:00 a.m.

STATUS: Open and closed to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv Nos. 701–TA–267–268 and 731–TA–297–299 and 304–305 (Review) (Porcelain-on-Steel Cooking Ware from China, Mexico, and Taiwan; and Top-of-the-Stove Stainless Steel Cooking Ware from Korea and Taiwan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on March 30, 2000.)
5. Outstanding action jackets:

(1) Document No. (E)GC–00–001: Administrative matters.

Pursuant to 5 U.S.C. 552b(c) and Commission rule 19 CFR 201.36(b), the Commission has unanimously determined to close agenda item 5 of the meeting of Friday, March 17, 2000, to public observation, in order to avoid disclosure of information of a personal nature which would constitute a clearly unwarranted invasion of personal privacy. The General Counsel has certified that a portion of the meeting is being properly closed to the public by the Commission. Persons permitted to attend this closed portion of the meeting include Commissioners, their staff, and other Commission personnel who need to be available for the discussion or to conduct the meeting. The Commission determined that earlier announcement of this meeting was not possible

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 13, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6531 Filed 3–13–00; 2:08 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Application to Register permanent Residence or Adjust Status.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 15, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–485. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information will be used to request and determine eligibility for adjustment of permanent residence status. This application allows an applicant to determine whether he or she must file under section 245 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* I–485 Adult respondents is 265,097 at 5.25 hours per response; I–485 Children respondents is 208,291 at 4.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Form I–485 annual burden hours are 2,329,069.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 16, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–6416 Filed 3–14–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,000 and NAFTA–3402]

Barry Callebaut USA, Incorporated, Van Leer Division, Jersey City, NJ; Notice of Negative Determination on Reconsideration

On January 24, 2000, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioners presented information regarding company imports of chocolate products and related ingredients and a shift in production of certain articles from Jersey City, New Jersey to Canada. The notice was published in the **Federal Register** on February 4, 2000 (65 FR 5690).

The Department initially denied TAA to the workers of Barry Callebaut USA, Incorporated, Van Leer Division, Jersey City, New Jersey, because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that the layoffs at the Jersey City plant were attributable to a consolidation of operations and transfer of plant production to other domestic affiliated plants. Company wide domestic sales and production increased during the relevant time period.

The Department initially denied NAFTA–TAA for the workers of Barry Callebaut USA, Incorporated, Van Leer Division, Jersey City, New Jersey, because criteria (3) and (4) of paragraph (a)(1) of Section 250 of the Trade Act were not met. Layoffs at the Jersey City plant were attributable to a consolidation of operations and transfer of plant production to other domestic affiliated plants. Company wide domestic sales and production increased during the relevant time period. There was no shift of production from Jersey City, New Jersey to Canada or Mexico, nor any significant company imports of chocolate products from Canada or Mexico.

The petitioners claim that more than 30 percent of production and sales have been lost to Belgium and to the Canadian Barry Callebaut plants. On reconsideration, the Department contacted the company official to address petitioners' claims. The company has responded that it expects to shift some production from Jersey City to Canada in the near future, but to date, no shift has occurred. None of the production at the Jersey City plant has been shifted to Belgium. As found in the TAA petition investigation for workers of Barry Callebaut USA, Pennsauken, New Jersey (TA–W–35,971), the company does import cocoa powder. The Jersey City plant, however, is not impacted by increased imports of cocoa powder because workers rely on cocoa (raw material) to make their products. Cocoa powder production at the subject firm plant in Jersey City was relatively low in relation to total production at the subject plant and therefore, the Jersey City, New Jersey workers cannot be linked to the Pennsauken, New Jersey certification.

Since there was no decline in sales in the time period relevant to the investigation, a customer survey would serve no purpose.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance and NAFTA–TAA for workers and former workers of Barry Callebaut USA, Incorporated, Van Leer Division, Jersey City, New Jersey.

Signed at Washington, D.C., this 6th day of March 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6381 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,568]

The Boeing Company, Commercial Aircraft Production, Long Beach, CA; Notice of Revised Determination on Reconsideration

On October 20, 1999 the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance with respect to workers producing commercial aircraft at The Boeing Company, Long Beach, California. Based upon its review of information regarding subject facility production through mid-1999 and a survey of the facility's domestic customers, the Department concluded that the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, had not been met.

Following receipt of a request for reconsideration from United Aerospace Workers Local 148 and in recognition of an ongoing investigation on behalf of workers producing commercial aircraft at other Boeing locations, the Department determined that a comprehensive review of all production and scheduled deliveries of commercial aircraft by the Boeing Company, including aircraft produced at Long Beach, was warranted. On January 6, 2000, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of the Long Beach facility. The notice was published in the **Federal Register** on January 14, 2000 (65 FR 2435).

The Department's investigation revealed that employment declines have occurred at the Long Beach facility and that scheduled deliveries of aircraft produced at Long Beach have declined in the year 2000 compared to actual deliveries in 1999. The investigation further revealed that, although a decline in the total commercial aircraft market in the year 2000, as well as increased production efficiencies being experienced by the subject firm, are significant contributing factors to reduced employment levels at the subject facility, imports of commercial aircraft—as measured by scheduled deliveries to U.S. carriers by the subject firm's foreign competitor—are increasing in the year 2000 both absolutely and relative to scheduled deliveries to U.S. carriers by the subject firm. Although not necessarily the most significant factor contributing to the separations of workers, for purposes of the certification of such workers for trade adjustment assistance, this increase in domestic market share for the year 2000 by the firm's foreign competitor is an important factor contributing to worker separations.

A certification applicable to workers of McDonnell Douglas Corporation, Douglas Aircraft Company, Long Beach, California was issued on August 14, 1997 and remained in effect for two years from its date of issuance (TA–W–33, 300). That certification, which expired on August 14, 1999, applied to all employees producing aircraft at Long Beach for The Boeing Company following the acquisition of McDonnell Douglas Corporation by the Boeing Company.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with commercial aircraft contributed importantly to the declines in sales or production and to the total or partial separation of workers of the Boeing

Company, Long Beach, California. In accordance with the provisions of the Act, I make the following certification:

All workers of The Boeing Company, Long Beach, California who became totally or partially separated from employment on or after August 15, 1999 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 24th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6368 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,704]

Centrilift, Division of Baker Hughes; Denver, CO; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at the Centrilift, Division of Baker Hughes, Denver, Colorado. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,407; Centrilift Division of Baker Hughes Denver, Colorado (February 22, 2000)

Signed at Washington, D.C. this 28th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6379 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,732 and NAFTA–3418]

F.G. Montabert, Midland Park, NJ; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at the F.G. Montabert, Midland Park, New Jersey. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,732 and NAFTA–3418; F.G. Montabert, Midland Park, New Jersey (March 1, 2000).

Signed at Washington, D.C. this 2nd day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6374 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,087]

Gaudette Leather Goods, Incorporated, North Attleboro, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 22, 1999, in response to a worker petition which was filed on behalf of former workers at Gaudette Leather Goods, Incorporated, located in North Attleboro, Massachusetts (TA–W–37,087).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 28th day of February 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6369 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,262]

London International Group, LLC, Centre Plant, Dothan, AL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 24, 2000, in response to a petition filed by a company official on the same date on behalf of workers at London International Group, LLC, Centre Plant, Dothan, Alabama

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 29th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6370 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,247]

On Semiconductor Phoenix, AZ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 18, 2000, in response to a worker petition which was filed on behalf of workers at ON Semiconductor, Phoenix, Arizona.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 2nd day of March 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6376 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,988 and NAFTA–3521]

Siebe Automotive, Robertshaw Division, Carthage, Tennessee; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at the Siebe Automotive, Robertshaw Division, Carthage, Tennessee. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,988 and NAFTA–3521; Siebe Automotive, Robertshaw Division, Carthage, Tennessee (February 23, 2000)

Signed at Washington, DC, this 28th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6378 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,143]

The William Carter Co., Brownsville, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 6, 1999, in response to a worker petition which was filed on the same date on behalf of workers at The William Carter Co., Brownsville, Texas.

A certification applicable to this group of workers was issued on December 16, 1999, and remains in effect (TA–W–37,122). The certification is currently being amended to include "Employees of William Carter Co., employed at Williams Cutting Service." Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6384 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting; Federal Committee on Registered Apprenticeship

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (Pub. Laws 92–463; 5 U.S.C. APP. 1), notice is hereby given of a meeting of the Federal Committee on Registered Apprenticeship (FCRA).

TIME AND DATE: The meeting will begin a 9 a.m. on Thursday, March 30, 2000 and continue until approximately 5 p.m. The meeting will reconvene at 9 a.m. on Friday, March 31, 2000, and continue until approximately 12 noon.

PLACE: The Federal North Ballroom of the Holiday Inn on the Hill, DC, 415 New Jersey Avenue, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4649, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–5921 (this is not a toll-free number)

MATTERS TO BE CONSIDERED: The agenda will focus on the following topics:

(1) Reports on the FCRA Work Groups; Marketing, Quality, Diversity, Resources/Data, Legislative.

(2) National Military Apprenticeship Program Update.

(3) New Areas for Apprenticeship.

(4) Update Report on Apprenticeship Impact Project.

(5) Draft of White Paper.

(6) Report of National Association of State and Territorial Apprenticeship Directors (NASTAD) and Report of National Association of Government Labor Officials.

(7) Update on BAT Activities.

(8) Next Meeting Dates and Location.

(9) Public Comment.

STATUS: Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Marion Winters at (202) 219–5921 no later than March 23, 2000, if special accommodations are needed.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending it to Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4649, 200 Constitution Avenue, NW., Washington, DC 20210. Such submissions should be sent by March 24, 2000, to be included in the record for the meeting.

Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal official by March 24. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 9th Day of March 2000.

Raymond L. Bramucci,

Assistant Secretary for Employment and Training.

[FR Doc. 00–6385 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03315]

Justin Boot Company, Justin Management Company, Fort Worth, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on September 21, 1999, applicable to workers of Justin Boot Company, Fort Worth, Texas. The notice was published in the **Federal Register** on October 14, 1999 (64 FR 55753).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of western boots. New information received from the company shows that some workers separated from employment at Justin Boot Company had their wages reported under a separate unemployment insurance (UI) tax account for Justin Management Company.

The intent of the Department's certification is to include all workers of Justin Boot Company who were adversely affected by increased imports from Mexico.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to NAFTA–03315 is hereby issued as follows:

All workers of Justin Boot Company, Justin Management Company, For Worth, Texas who became totally or partially separated from employment on or after July 21, 1998 through September 21, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6373 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3554]

Marathon Ashland Pipe Line LLC, Bridgeport, IL; Notice of Negative Determination Regarding Application for Reconsideration

By applications dated December 22, 1999 and January 3, 2000 Petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers of the subject firm to apply for North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA—TAA). The denial notice applicable to workers of Marathon Ashland Pipe Line LLC, transporting crude oil and petroleum products via pipeline in Bridgeport, Illinois, was signed on December 2, 1999 and published in the **Federal Register** on December 28, 1999 (64 FR 72693).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners assert that the workers in Bridgeport were gaugers for the subject firm and tested the oil before it could be transported into the pipeline. The petitioners also assert that the crude oil acquisition department of Marathon Oil Company (the parent company of the subject firm) worked directly with and set the perimeters for the acceptance or rejection of the crude oil. The petitioner also states that layoffs at the subject firm were caused by a reduced demand for services by the parent company.

The denial of NAFTA–TAA for workers of Marathon Ashland Pipe Line LLC, Bridgeport, Illinois, was based on the finding that the workers provided a service and did not produce an article within the meaning of Section 250(a) of the Trade Act of 1974, as amended. The petition investigation revealed that the primary reason for the worker layoffs was attributable to the asset sale to another company.

Service workers may be certified for NAFTA–TAA only if there is a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control. There are no NAFTA–TAA certifications for Marathon Oil Company workers.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 16th day of February 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6380 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03741]

McMoran Exploration Company Culberson Mine, Pecos, Texas; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA-TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on February 15, 2000 in response to a petition filed on behalf of workers and former workers at the Culberson Mine of McMoRan Exploration Company, located in Pecos, Texas (NAFTA–03741).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of February 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6377 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—03476]

Smurfit-Stone Container Corp.; a/k/a Stone Container Corp.; El Paso, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on January 18, 2000, applicable to workers of Smurfit-Stone Container Corp., El Paso, Texas. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of non-corrugated folding boxes, a.k.a. paperboard. New information provided by the State shows that some of the claimants' wages are being reported under the Unemployment Insurance (UI) tax account for Stone Container Corp., El Paso, Texas.

The intent of the Department's certification is to include all workers of Smurfit-Stone Container Corp., who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to cover the workers of Smurfit-Stone Corp., also known as Stone Container Corp., El Paso, Texas.

The amended notice applicable to NAFTA—03476 is hereby issued as follows:

"All workers of Smurfit-Stone Container Corp., also known as Stone Container Corp., El Paso, Texas who became totally or partially separated from employment on or after September 27, 1998 through January 18, 2002 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, D.C. this 7th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6382 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3690]

Tweco Products, Thermadyne Industries, Inc., Wichita, KS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 31, 2000, in response to a worker petition which was filed by a company official on behalf of workers at Tweco Products, Thermadyne Industries, Inc., Wichita, Kansas.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 7th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6371 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3570]

The William Carter Co., Brownsville, TX; Notice of Termination of Investigation

Pursuant to Section 250 of the Trade Act of 1974, an investigation was initiated on November 18, 1999, in response to a worker petition filed on the same date on behalf of workers at The William Carter Co., Brownsville, Texas.

A certification applicable to this group of workers was issued on December 16, 1999, and is currently in effect (NAFTA–3588). That certification is currently being amended to include "Employees of William Carter Co., employed at Williams Cutting Service." Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 22nd day of February 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6375 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03588]

Williams Cutting Service, Inc., Brownsville, TX; Including Workers of William Carter Co. Employed at Williams Cutting Service, Inc., Brownsville, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 16, 1999, applicable to workers of Williams Cutting Service, Inc., Brownsville, Texas. The notice was published in the **Federal Register** on January 14, 2000 (65 FR 2433).

Upon receipt of a petition from workers of Williams Carter Company who were employed at Williams Cutting Service, Inc., the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of William Carter Company, Harlingen, Texas were employed by Williams Cutting Service, Inc. to perform quality control for infants' apparel produced at the Brownsville Texas location of Williams Cutting Service, Inc. Separations of workers of William Carter Company employed at Williams Cutting Service, Inc. occurred for the same reasons as separations of workers employed by Williams Cutting Service, Inc.

Based on these findings, the Department is amending the certification to include workers of William Carter Company, Harlingen, Texas employed at Williams Cutting Service, Inc., Brownsville, Texas.

The intent of the Department's certification is to include all workers of Williams Cutting Service, Inc. adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–03588 is hereby issued as follows:

All workers of Williams Cutting Service, Inc., Brownsville, Texas including workers of William Carter Company employed at Williams Cutting Service, Inc., Brownsville, Texas who became totally or partially separated from employment on or after November 16, 1998 through December 16, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 28th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6372 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,122]

Williams Cutting Service, Inc., Brownsville, TX; Including Workers of William Carter Company Employed at Williams Cutting Service, Inc.; Brownsville, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 16, 1999, applicable to workers of Williams Cutting Service, Inc., Brownsville, Texas. The notice was published in the **Federal Register** on January 14, 2000 (65 FR 2432).

Upon receipt of a petition from workers of William Carter Company who were employed at Williams Cutting Service, Inc., the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of William Carter Company, Harlingen, Texas were employed by Williams Cutting Service, Inc. to perform quality control for infants' apparel produced at the Brownsville, Texas location of Williams Cutting Service, Inc. Separations of workers of William Carter Company employed at Williams Cutting Service, Inc. occurred for the same reasons as separations of workers employed by Williams Cutting Service, Inc.

Based on these findings, the Department is amending the certification to include workers of William Carter Company, Harlingen, Texas employed at Williams Cutting Service, Inc., Brownsville, Texas.

The amended notice applicable to TA–W–37,122 is hereby issued as follows:

All workers of Williams Cutting Service, Inc., Brownsville, Texas including workers of William Carter Company employed at Williams Cutting Service, Inc., Brownsville, Texas who became totally or partially separated from employment on or after November 16, 1998 through December 16,

2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 28th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–6383 Filed 3–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Federal Mine Safety and Health Review Commission

Sunshine Act Meeting; Meeting Cancellation Notice

The following Commission meeting has been canceled. No earlier announcement of the cancellation was possible.

Time and Date: 10:00 a.m., Thursday, March 9, 2000.

Place: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

Status: Open.

Matters to be Considered: Proposed Settlement Judge Rule (Notice of proposed rulemaking was published at 64 FR 61236 (Nov. 10, 1999)).

Contact Person for More Info: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

[FR Doc. 00–6511 Filed 3–13–00; 2:08 pm]

BILLING CODE 6735–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date/Time: April 6, 2000; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 310, Arlington, VA.

Type of Meeting: Closed.

Contact Person: A. Frederick Thompson, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation; 4201 Wilson Boulevard; Arlington, Virginia 22230; Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSF for Environmental Technology Engineering POWRE & SBIR/STTR Phase II as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6357 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date/Time: April 6, 2000; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 310, Arlington, VA.

Type of Meeting: Closed.

Contact Person: A. Frederick Thompson, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation; 4201 Wilson Boulevard; Arlington, VA; Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSF for Environmental Technology Engineering CAREER Panel as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6358 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date & Time: March 22–24, 2000.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Jane Silverthorne, Program Director, Plant Genome Research Program, Room 615, Division of Biological Infrastructure, NSF, 4201 Wilson Boulevard, VA 22230, Telephone: (703) 306–1470.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Plant Genome Research Program proposals submitted in response to the program announcement (NSF 99–171).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6355 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences, Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting:

Name: Division of Biological Infrastructure Committee of Visitors Meeting (1754).

Date/Time: March 28–30, 2000, 9:00 a.m.–6:00 a.m.

Place: Room 680, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Machi F. Dilworth, Division Director, Division of Biological Infrastructure, Room 615, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1470.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial.

Agenda: To review and evaluate proposals submitted to the NSF for the Division of Biological Infrastructure.

Reason of Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6359 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport System; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis panel in Chemical and Transport Systems (1190).

Date and Time: April 24, 2000, 8 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Stefan T. Thynell, Program Director for Thermal Transport & Thermal Processing, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY 2000 POWRE Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6356 Filed 3–14–00 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacturing, and Industrial Innovation; Notice of Cancellation of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the following meetings have been cancelled:

Name: Special Emphasis Panel in Design, Manufacturing, and Industrial Innovation (61).

Date/Time; March 15, 16, 24, & 31, 2000; 8:30 a.m.–5:00 p.m.

Contact Person: Joseph Hennessey, Program Manager, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacturing, and Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, VA 22230. Telephone (703) 306–1395, extension 5283.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6360 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463; as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59).

Date and Time: Wednesday, March 29, 2000, 7:00 p.m. to 10:00 p.m., Thursday, March 30, 2000, 8:00 a.m. to 5:00 p.m., Friday, March 31, 2000, 8:00 a.m. to 5:00 p.m.

Place: The Government House, 1615 Rhode Island Avenue, NW, Washington, DC 20036

Type of Meeting: Closed.

Contact Person: George Bright, Program Officer, Centers for Teaching and Learning, Teacher Enhancement Program, Education and Human Resources Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703/306–1613.

Purpose of Meeting: To provide advice and recommendations concerning proposals for the Centers for Teaching and Learning, Teacher Enhancement Program, submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6362 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59).

Date and Time: Wednesday, March 22, 2000, 7:00 p.m. to 10:00 p.m., Thursday, March 23, 2000, 8:00 a.m. to 5:00 p.m.

Place: Arlington Hilton and Towers, 950 North Stafford Street, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. George Bright, Program Officer, Centers for Teaching and Learning, Teacher Enhancement Program, Education and Human Resources Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703/ 306–1613.

Purpose of Meeting: To provide advice and recommendations concerning proposals for the Centers for Teaching and Learning, Teacher Enhancement Program, submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of ■ proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6363 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences (66).

Date and Time: April 13, 2000—8:20 AM–5:00 PM; April 14, 2000—8:30 AM–2:00 PM.

Place: 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Adriaan de Graaf, Executive Officer, MPS, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1800.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations on the development of MPS education themes; provide advice on building the MPS intellectual core; advise on methods of achieving overall program excellence in MPS; opportunities for collaboration with the Education and Human Resources (EHR) Directorate, and evaluate the Division of Physics Committee of Visitors' Report.

Agenda:

April 13, 2000

AM—
Introductory Remarks
Review and Approval of Division of Physics Committee of Visitors' Report
MPS Education Themes

PM—
MPS Education Themes
Opportunities for Collaboration with EHR

April 14, 2000

AM—
Building the Intellectual Core of MPS

PM—
Meeting Wrap-up/Future Business

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6361 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date/Time: May 11–12, 2000; 8:00 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Alvin I Thaler, Program Director, Infrastructure Program, Room 1025, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning Scientific Computing Research Environments for the Mathematical Sciences as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6364 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Social and Political Science; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meetings of the Advisory Panel for Social and Political Science (#1761), Committee of Visitors;

Date/Time: April 2, 3, and 4, 2000; 8:00 am to 6:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 130, 340, 365, 920, and 970, Arlington, VA 22230.

Contact Person: Dr. Frank Scioli and Dr. Marianne Stewart, Program Directors for Political Science, National Science Foundation. (703) 306–1761.

Agenda: To review and evaluate the political science proposals as part of the selection process for awards.

Date/Time: April 2, 3, and 4, 2000; 8:00 am to 6:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 130, 340, 365, 920, and 970, Arlington, VA 22230.

Contact Person: D. Marie Provine, Program Director, Law and Social Science, National Science Foundation. (703) 306–1762.

Agenda: To review and evaluate the Law and Social Science Proposals as a part of the selection process for awards.

Date/Time: April 2, 3, and 4, 2000; 8:00 am to 6:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 130, 340, 365, 920, and 970, Arlington, VA 22230.

Contact Person: Patricia White and Murray Webster, National Science Foundation. (703) 306–1756.

Agenda: To review and evaluate the Sociology proposals as a part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6365 Filed 3–14–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 4, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, April 4, 2000—1:30 P.M. Until the Conclusion of Business

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: March 9, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–6337 Filed 3–14–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of March 13, 20, 27, April 3, 10, and 17, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 13

There are no meetings scheduled for the Week of March 13.

Week of March 20—Tentative

Wednesday, March 22

9:25 a.m. Affirmative Session (Public Meeting) (if needed).

Friday, March 24

9:30 a.m. Briefing on Evaluation of the Requirement for Licensee to Update Their Inservice Inspection and Inservice Testing Program Every 120 Months (Public Meeting) (Contact: Tom Scarbrough, 301–415–2794).

Week of March 27—Tentative

Thursday, March 30

8:55 a.m. Affirmation/Discussion and Vote (Public Meeting) (If needed).

9:00 a.m. Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380).

Friday, March 31

9:30 a.m. Briefing on Risk-Informed Regulation Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790).

Week of April 3—Tentative

There are no meetings scheduled for the Week of April 3.

Week of April 10—Tentative

There are not meetings scheduled for the Week of April 10.

Week of April 17—Tentative

There are no meetings scheduled for the Week of April 17.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

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ADDITIONAL INFORMATION: By a vote of 5–0 on March 8, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of the Intragovernmental Issues" (Closed-Ex. 9) be held on March 8, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: March 10, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–6496 Filed 3–13–00; 11:10 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in March 2000. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in April 2000.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in March 2000 is 5.30 percent (*i.e.*, 85 percent of the 6.23 percent yield figure for February 2000).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between April 1999 and March 2000.

For premium payment years beginning in	The assumed interest rate is
April 1999	4.74
May 1999	4.72
June 1999	4.94
July 1999	5.13
August 1999	5.08
September 1999	5.16
October 1999	5.16
November 1999	5.32
December 1999	5.23
January 2000	5.40
February 2000	5.64

For premium payment years beginning in	The assumed interest rate is
March 2000	5.30

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in April 2000 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 3rd day of March 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–6313 Filed 3–14–00; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24335; 812–11442]

Nations Fund Trust, et al.; Notice of Application

March 9, 2000.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain common trust funds and a collective investment fund to transfer their assets to certain series of registered open-end management investment companies in exchange for shares of the series.

APPLICANTS: Nations Fund Trust, Nations Fund, Inc., Nations Reserves, Bank of America, N.A. ("Bank of America") and Banc of America Advisors, Inc. ("BAAI").

FILING DATES: The application was filed on December 23, 1998, and amended on December 23, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 30, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, One Bank of America Plaza, 101 South Tryon Street, Charlotte, NC 28255.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney at (202) 942–0634, or George J. Zornada, Branch Chief at (202) 942–0564; Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Nations Fund Trust, Nations Fund, Inc., and Nations Reserves (the "Nations Funds") are registered under the Act as open-end management investment companies. BAAI is an investment adviser registered under the Investment Advisers Act of 1940, and serves as the investment adviser to each series of the Nations Funds. BAAI is a wholly-owned subsidiary of Bank of America, which is in turn a wholly-owned subsidiary of Bank of America Corporation ("BAC"), a publicly-held bank holding company. Certain employee benefit plans maintained for the benefit of employees of BAC and entities controlling, controlled by, or under common control with BAC (collectively, "Bank of America Group") (the "Benefit Plans") hold five percent or more of the outstanding voting shares of certain series of the Nations Funds.

2. Bank of America acts as trustee for a number of common trust funds, as defined in section 584(a) of the Internal Revenue Code of 1986, as amended ("Code") (the "CTFs"). Bank of America also acts as trustee for a collective investment fund sponsored by Bank of America as an investment vehicle for employment benefit retirement plans qualified under section 401 of the Code (the "CIF," and together with the CTFs, the "Common/Collective Funds"). The CTFs and the CIF are excluded from the definition of "investment company" under section 3(c)(3) and section 3(c)(11), respectively, of the Act.[1]

3. Applicants propose that substantially all of the assets of each Common/Collective Fund be transferred in-kind to a designated series of the Nations Funds in exchange for Primary A Shares of that series, which will have at the time of the transfer an aggregate net asset value equal to the value of the assets transferred by the corresponding Common/Collective Fund (the "CF Conversion").[2] The investment objectives and policies of each of the Common/Collective Funds and its corresponding series of the Nations Funds are generally similar. The Common/Collective Fund assets to be transferred will be valued in accordance with the provisions of rule 17a–7(b) and the shares of the Nations Funds exchanged in the CF conversion will be credited to the account of each participant in the Common/Collective Funds ("Participant"), pro rata, according to the Participant's interest in the relevant Common/Collective Fund immediately prior to the CF Conversion. Following the CF Conversion, the CTFs will be terminated. The CIF may be terminated following the conversion. Applicants state that the CF Conversion is expected to commence on or about March 31, 2000. BAAI will pay all expenses incurred in connection with the CF Conversion.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or any

[1] Applicants also request that the relief apply to future transactions in which a terminating Common/Collective Fund for which Bank of America Group, acting as trustee or in another fiduciary capacity, transfers it assets to a registered open-end management investment company advised by BAAI, or Bank of America Group, which investment company has 5% or more ot its outstanding voting securities owned by a defined benefit pension plan or other employee benefit plans (qualified or non-qualified) sponsored by Bank of America Group, or which employee benefit plan sponsored by Bank of America Group has a 5% or more participation in the terminating Common/Collective Fund ("Future Relief"). Applicants state that they will rely on the Future Relief only in accordance with the terms and conditions in the application.

[2] In the CF Conversion, the assets of the following Common/Collective Funds will be transferred to designated series of the Nations Funds: BCA Retail Fund, Equity Value Fund, Kansas Stock Fund, Equity Index Fund, Managed Small Cap Fund, International Equity Fund, and LargeCap Index Fund.

affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act, in relevant part, defines "affiliated person" to include: (a) Any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, such other person; and (c) if such other person is an investment company, any investment adviser of the investment company. Applicants state that, because the Common/Collective Funds may viewed as acting as principals in the CF Conversion and because the Common/Collective Funds and the Nations Funds may be viewed as being under the common control of Bank of America within the meaning of section 2(a)(3)(C) of the Act, the CF Conversion may be subject to the prohibitions contained in section 17(a).

2. Rule 17a–7 under the Act exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of the security. Applicants may not rely on rule 17a–7 for the CF Conversion because the ownership of more than five percent of the outstanding voting shares of the Nations Funds by the Benefit Plans may be deemed to create an affiliation "not solely by reason of" having a common investment adviser, directors, and/or common officers.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) certain mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied. Although applicants state that the CF Conversion will be a sale of substantially all of the assets of the Common/Collective funds, applicants may not rely on rule 17a–8 for the CF Conversion because the Common/Collective Funds are not registered investment companies, and because the Common/Collective Funds and the Nations Funds have affiliations other than those covered by the rule.

4. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) provides that the SEC may exempt any person or transaction from any provision of the Act or any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants seek an order under section 17(b) of the Act to permit the CF Conversion and under sections 6(c) and 17(b) to permit the Future Relief. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the securities to be acquired by the Nations Funds are consistent with the investment policies of the participating Nations Funds. With respect to the Nations Funds, the CF Conversions will be executed in accordance with procedures previously adopted by the Nations Funds' respective boards of directors/trustees (the "Boards") in accordance with 17a–7(e) of the Act, and the provisions of rule 17a–7(b), (c), and (d), and (f) also will be satisfied with respect to the Nations Funds. The Boards, including a majority of the directors/trustees who are not interested persons are defined in section 2(a)(19) of the Act ("Disinterested Members"), have determined that participation by each series of the Nations Funds in the CF Conversion is in the best interests of each series and that the interests of existing shareholders of each series will not be diluted as a result of the CF Conversion. These findings, and the basis upon which they were made, will be recorded in the books of the Nations Funds. With respect to the Common/Collective Funds, Bank of America will have determined in accordance with its fiduciary duty as trustee and fiduciary for the Common/Collective Funds and the Participants that the CF Conversion is in the best interest of the Participants in each of the Common/Collective Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The CF Conversion will comply with the terms of rule 17a–7(b) through (f).

2. The CF Conversion will not occur unless and until each relevant Board, including a majority of such Board's Disinterested Members, finds that participation by each individual series of the Nations Funds in the CF Conversion is in the best interests of each such series of the Nations Funds and that the interests of existing shareholders of such series of the Nations Funds will not be diluted as a result of the CF Conversion. These findings, and the bases upon which they are made, will be recorded in the minute books of the Nations Funds.

3. The CF Conversion will not occur unless and until Bank of America, as trustee and fiduciary in accordance with its fiduciary duties as trustee and fiduciary for each of the Common/Collective Funds and the Participants thereof, has determined that the CF Conversion is in the best interests of Participants in each of the Common/Collective Funds.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6366 Filed 3–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

eConnect; Order of Suspension of Trading

March 13, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current, adequate and accurate information concerning the securities of eConnect, a Nevada corporation. Questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, a purported licensing agreement with Palm, Inc., a strategic alliance with a registered broker-dealer and certain Internet referrals and revenue.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, March 13,

2000, through 11:59 p.m. EST, on March 24, 2000.

By the Commission.

Johnathan G. Katz,

Secretary.

[FR Doc. 00–6507 Filed 3–13–00; 12:02 pm]

BILLING CODE 8010–N–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

U.N. Dollars Corporation; Order of Suspension of Trading

March 13, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of U.N. Dollars Corporation ("UNDR") because of questions regarding the accuracy of assertions made by UNDR, and by others, in documents sent to and statements made to market makers of the stock of UNDR, other broker dealers, and to investors concerning among other things: (1) Contracts entered into by UNDR, (2) sources of financing claimed by UNDR, and (3) possible artificial manipulation of the market for the stock of UNDR.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, March 13, 2000 through 11:59 p.m. EST, on March 24, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6508 Filed 3–13–00; 12:02 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42503; File No. SR–CHX–99–11]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Specialist Retention Periods for Nasdaq National Market Securities Traded on the Exchange Pursuant to Unlisted Trading Privileges

March 8, 2000.

I. Introduction

On August 19, 1999, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify co-specialist retention periods for securities listed on the Exchange and to eliminate co-specialist retention periods for Nasdaq National Market ("Nasdaq/NM") securities traded on the Exchange pursuant to unlisted trading privileges.[3] The **Federal Register** published the proposed rule change for comment on October 12, 1999, and the portion related to listed securities was approved, on an accelerated basis, at that time.[4] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of Proposal

The Exchange proposes eliminating retention periods for co-specialists in Nasdaq/NM securities provided that at least five calendar days notice is given to order sending firms. Because the number of Nasdaq/NM securities that the Exchange can trade pursuant to unlisted trading privileges ("UTP") is limited,[5] stock allocation issues relating to Nasdaq/NM securities that are distinct from allocation issues relating to other securities traded on the Exchange have developed. Specifically, because the existing 1,000 security limit on the total number of Nasdaq/NM securities that can be traded UTP on an Exchange-wide basis has been largely filled, co-specialists in Nasdaq/NM securities cannot acquire a new Nasdaq/NM issue until they deregister in an issue they currently trade and that security is removed from the list of Nasdaq/NM securities traded on the Exchange. The current specialist deregistration rules, however, do not provide the flexibility to quickly complete this procedure.[6] In addition, the current rules do not provide Nasdaq/NM specialist firms sufficient flexibility to reallocate stocks awarded in competition between co-specialists within the same specialist unit when a co-specialist's stocks become active and volatile.[7]

To address these concerns, the Exchange is proposing to eliminate the retention restrictions on co-specialists for Nasdaq/NM securities governed by Interpretation and Policy .01 to Rule 1. The amended interpretation will permit co-specialists in Nasdaq/NM issues to deregister in an issue more quickly, to allow them to respond to market developments. In addition, and, subject to the continuing authority of the Exchange's Committee on Specialist Assignments and Evaluation, the proposal permits co-specialists in Nasdaq/NM securities to deregister at any time after providing at least five calendar days notice to order sending firms, and allows intra-firm transfers of Nasdaq/NM securities awarded in competition without a mandatory retention period.[8]

The Exchange will ensure that there will be no disruption to the marketplace as a result of relaxed stock retention requirements.[9] The Exchange believes

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41922 (Sept. 26, 1999), 64 FR 55324 (Oct. 12, 1999).

[4] *Id.* The order permanently approved a pilot program relating to the time periods for which a co-specialist must trade a security listed on the Exchange prior to deregistering as the specialist for that security as set forth in CHX Rules, Article XXX, Rule 1, Interpretation and Policy .01.

[5] Securities Exchange Act Rel. No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999).

[6] Interpretation and Policy .01 to Article XXX, Rule 1 of the CHX Rules requires two years to elapse before an intra-firm transfer of an issue awarded in competition (*i.e.*, transfer of the issue to another co-specialist within the same specialist unit) is permitted without posting. No time period is required before an intra-firm transfer of an issue awarded without competition is allowed. Before a co-specialist is able to deregister in a security if no other specialist would be assigned to the security after posting and deregistration, a co-specialist was required to trade the security for three months for securities awarded without competition, and one year for securities awarded in competition.

[7] In such a situation, a specialist unit might deem it to be in the best interests of customers and the Exchange to transfer the stock to another co-specialist within the same specialist unit that is assigned to a fewer number of issues or is more experienced.

[8] There is currently no minimum retention period for intra-firm transfers of securities awarded without competition. *See* Article XXX, Rule 1, Interpretation and Policy .01.

[9] The Exchange represents that the proposed rule change will have no ramifications on the UTP Plan governing the collection, consolidation and dissemination of quotation and transaction information for NASDAQ/NM securities. Telephone call between Paul O'Kelly, Executive Vice President, CHX, and Sonia Patton, Attorney, Division, Commission, on March 8, 2000.

that the $2,000 fee it charges for such transfers will prevent disruptive serial transfers and deregistrations that have not been carefully contemplated by the specialist.[10]

The proposed amendments relating to Nasdaq/NM securities will only be effective for as long as the number of Nasdaq/NM issues that can be traded UTP on the Exchange is limited. If the Commission eliminates this limitation, Nasdaq/NM issues and the co-specialist maintaining Nasdaq/NM issues will be subject to the regular retention periods applicable to all other issues traded on the Exchange.

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6 of the Act [11] and the rules and regulations thereunder [12] applicable to a national securities exchange. Section 6(b) of the Act [13] states that the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market. The Commission believes that eliminating retention periods for co-specialists in Nasdaq/NM securities will enable the Exchange and specialist firms to more quickly respond to market developments. The Commission believes the proposed rule change will serve the public interest by allowing the transfer of a security to a co-specialist that is more experienced or is assigned to a fewer number of issues if trading in one or more of the securities handled by another co-specialist becomes unusually high or volatile. Finally, in approving the proposed rule change, the Commission notes that the Exchange, through its Committee on Specialist Assignments and Evaluation, will monitor the turnover of co-specialist assignments to avoid possible abuses.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[14] that the portion of the proposed rule change relating to specialist retention periods for Nasdaq/NM securities (File No. SR–CHX–99–11) is approved.

[10] *See* Securities Exchange Act Release No. 41569 (June 26, 1999), 64 FR 36726 (July 7, 1999).

[11] 15 U.S.C. 78f.

[12] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6367 Filed 3–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42504; SR–DTC–00–04]

Self-Regulatory Organizations; The Depository Trust Corporation; Notice of Filing of Proposed Rule Change Relating to Profile Modification Feature of the Direct Registration System

March 8, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 28, 2000, The Depository Trust Corporation ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will establish the Profile Modification System ("Profile") feature of the Direct Registration System ("DRS") facility administered by DTC.[2] As described more fully below, Profile will allow a DTC participant to electronically submit to a transfer agent who is a DRS limited participant an investor's instruction that its share positions be moved from the investor's DRS account with the DRS limited participant to the investor's broker-dealer's participant account a DTC. Using Profile, a DRS limited participant may also submit an investor's instruction for the movement of its share position from the investor's broker-dealer's participant account at DTC to an account maintained by the DRS limited participant. Profile may also be used to append information to DRS limited participant's records. Profile will be governed by DTC procedures [3] substantially in the form attached as Exhibits 3 and 4 to DTC's filing. The fees connected with Profile are specified below.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments if received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1996, the New York Stock Exchange, Inc. ("NYSE") and the National Association of Securities Dealers, Inc. modified their listing criteria to permit listed companies to issue securities in book-entry using DRS in lieu of certificates (*i.e.*, securities are registered in the name of the investor on the books of the issuer but no certificate is issued). Since then there has been a steady growth of securities issued in DRS, primarily through corporate actions and initial public offerings. By completing the appropriate information on the transaction advice and submitting the hard copy paper instructions to a DRS limited participant, and investor may update broker-dealer information with a DRS limited participant and may instruct the DRS limited participant to move the investor's share positions to the investor's broker-dealer's participant account at DTC. In 1999, the volume of DRS free delivery order activity moving positions from DRS limited participants to DTC participants exceeded 183,000 transactions. DTC believes that these free deliver order transactions are the

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] For a description of DRS, see Securities Exchange Act Release No. 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999) [File No. SR–DTC–99–16].

[3] In addition, DTC understands that certain DRS limited participants are developing guidelines relating to their use of DRS. Once such guidelines have been approved by the Guidelines Subcommittee of the DRS Committee and the DRS Committee, DTC will work with the Guidelines Subcommittee to ensure that the guidelines are distributed to the appropriate parties. The DRS Committee is an industry committee responsible to designing DRS. Its members include the Securities Transfer Association, the Securities Industry Association, the Corporate Transfer Association, the American Society of Corporate Secretaries, and DTC. The staff of the SEC attends meetings of the DRS Committee.

[4] A copy of DTC's proposed rule change and the attached exhibits is available at the Commission's Public Reference Section or through DTC.

[5] The Commission has modified the text of the summaries prepared by DTC.

direct result of DRS limited participants processing thousands of hard copy transaction advises based on investors' instructions.

DTC believes that there is substantial evidence to currently indicate that the transfer of DRS positions, which is presently a multistep, paper-based process, is labor intensive and slow. For an investor to move a DRS position from a DRS limited participant to a participant, the investors must have its transaction advice (i) medallion signature guaranteed and (ii) physically delivered to the DRS limited participant. When the transaction advice is received, the DRS limited participant enters the information into its system to process the instructions. Only after the DRS limited participant completes its processing is the investor's DRS position moved to the participant's account at DTC. In addition, because the information required to be supplied on the transaction advises is not standardized throughout the industry, investors (or participants sending the transaction advises on behalf of their customers) do not always provide the correct or complete information necessary to process the instructions.

The DRS Committee, the industry committee responsible for designing DRS,[6] has been working through the various legal and processing issues to reduce if not eliminate the handling of hard copy transaction advises. In January, 1999, the DRS Committee approved Profile's system specifications and authorized DTC to proceed with the development of Profile. DTC completed production of Profile on June 15, 1999, and it has been available for use since then.

Under the proposed rule change, participants using Profile will send standardized information, which, DTC believes, will reduce the possibility that the instruction will be rejected due to errors or incomplete information. Because Profile is an electronic system that eliminates the need for the information to be physically delivered, it should make the processing of DRS instructions more efficient and should give investors the ability to execute transactions using their DRS positions in a time frame that is at least as fast as when using certificates. In short, Profile should reduce the time it takes for the DRS limited participant to receive and process DRS instructions.

As proposed, Profile will satisfy all of the hard copy requirements listed on the transaction advice and will allow a participant to submit the investor's instructions electronically to the DRS limited participant via DTC's Participant Terminal System ("PTS") or via the Computer-to-Computer Facility ("CCF"). The required information will include the investor's account registration, tax identification number, the DRS account number assigned by the DRS limited participant, a CUSIP number, and the number of shares to be transferred. The account registration and the account number must be entered exactly as they appear on the investor's transaction advice or statement. DRS limited participants and participants will use the information provided in Profile to help ensure that beneficial ownership does not change when there is a share movement.

Profile will accommodate an electronic medallion indemnification if such a program is ever established. The electronic medallion numbers will be assigned by the administrators of the electronic medallion programs. DTC will perform an automated review to ensure that the participant is entering its correct electronic medallion number. The DRS limited participant, however, will remain responsible for the verification of the medallion and it surety limits for each transaction.

The electronic medallion program described in the preceding paragraph will not be in effect as part of DRS until such time as the NYSE, the Securities Transfer Association Medallion Program ("STAMP"), or the Securities Exchange Medallion Program ("SEMP") adopts such a program and the DRS Committee approves the program, and the program is in effect. Until that time, a participant submitting a Profile instruction to a DRS limited participant must agree to a PTS screen indemnity substantially in the following form:

(1) Participant represents that it has the authority and consent for the request appearing on the following screen from either (a) the registered owner on the participant's records or (b) a third party who has actual authority to act on behalf of the registered owner on the participant's records, and that all information shown is accurate and complete, except that, with respect to the taxpayer identification number included in such information, to the best knowledge of participant, such information is accurate and complete; and

(2) Participant indemnifies the issuer, its transfer agent and their respective officers, directors, shareholders, employees, agents, representatives, subsidiaries, parents, affiliates, successors and assigns against any breach of such representations in connection with the transaction that is the subject of such request.

If an electronic medallion program administered by NYSE, STAMP, or SEMP is not in effect or it has not been approved by the DRS Committee, references in DTC's procedures will be modified to reflect the existence of the screen indemnity rather than an electronic medallion.

Participants will be able to access Profile via PTS by CUSIP number to view the status of all Profile instructions submitted to DRS limited participants for processing. DRS limited participants will indicate whether a transaction is approved or rejected. Profile will provide an aging status of up to thirty business days for all unapproved instructions in an effort to avoid duplicate submissions.

If a participant submits an instruction for the movement of an investor's share position and the DRS limited participant approves the move, the DRS limited participant will process the instruction through the DRS limited participant's Limited Participant Account utilizing the DRS deliver order with a designated reason code. Similarly, all rejected instructions will have reject reason codes that will indicate the reason for the project.

Under the proposed rule change, a DRS limited participant may also submit a Profile instruction requesting the movement of an investor's DRS position from the investor's broker-dealer's participant account at DTC to a DRS limited participant's Limited Account. If the participant approves the move, then a withdrawal by transfer ("WT") must be submitted using the "S" indicator for a DRS withdrawal.[7] This withdrawal will move the share position from the participant's account at DTC to the DRS limited participant's Limited Participant Account at DTC. DTC contemplates that these Profile instructions will be covered by an electronic medallion indemnification analogous to the electronic medallion program described above.

The electronic medallion program described in the preceding paragraph will not be in effect as part of DRS until such time as the NYSE, STAMP, or SEMP adopts such a program, the DRS Committee approves the program, and the program is in effect. Until that time, a DRS limited participant submitting a Profile instruction to a participant will agree to a PTS screen indemnity substantially in the following form:

[6] *Supra* note 3.

[7] An "S" indicator is a code that instructs the DRS limited participant to establish a DRS account for the investor.

(1) Transfer agent represents that it has the authority and consent for the request appearing on the following screen from either (a) the registered owner on the transfer agent's records or (b) a third party who has actual authority to act on behalf of the registered owner on the transfer agent's records, and that all information shown is accurate and complete, except that, with respect to the taxpayer identification number included in such information, to the best knowledge of transfer agent, such information is accurate and complete; and

(2) Transfer agent indemnifies the participant and its respective officers, directors, shareholders, employees, agents, representatives, subsidiaries, parents, affiliates, successors and assigns against any breach of such representations in connection with the transaction that is the subject of such request.

If the electronic medallion program administered by NYSE, STAMP, or SEMP is not in effect or it has not been approved by the DRS Committee, references in DTC's procedures will be modified to reflect the existence of the screen indemnity rather than an electronic medallion.

DTC proposes to charge participants a fee of 31 cents for each instruction submitted through Profile initiating a DRS share movement or appending information to an investor's DRS account, and charge the DRS limited participant receiving the instruction a fee of 9 cents for that transactions.[8] DTC also proposes to charge DRS limited participants a fee of 40 cents for each instruction submitted through Profile initiating a DRS share movement.[9]

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will provide participants more efficient use of DRS. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the operation of DRS, as modified by the proposed rule change, will be similar to the current operation of the function.

[8] The STA representatives on the DRS Committee requested that DTC develop CCF capability in DRS for transfer agents. The DRS Committee approved the 9 cent fee to reimburse DTC for the cost of systems development to accommodate the STA request.

[9] In this type of transaction, there is no CCF development fee, as no CCF development was requested. Participants bear a fee for WT instructions when a share position is moved to a DRS limited participant's Limited Participant Account.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been developed through discussions with several participants and DRS limited participants. Written comments from participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve the proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. section 553, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of DTC. All submissions should refer to File No. SR–DTC–99–04 and should be submitted by April 5, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6314 Filed 3–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42497; File No. SR–Phlx–00–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Registration and Annual Fees for Off-Floor Traders

March 6, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 7, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to require all current and future off-floor traders to pay an initial registration fee and an annual fee thereafter of $1,000.00 for all off-floor traders registered as of April 1 of each year.[4]

Specifically, the Exchange seeks to require associated persons of member organizations for which the Exchange is the Designated Examining Authority

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] The Phlx states that their Examinations Department checks the member firms on a monthly basis to determine the number of traders to whom these fees apply. The Phlx, in turn, bills the member firm an amount based on the number of traders who are new registrants. *See* telephone conversation of March 6, 2000, between Richard S. Rudolph, Counsel, Phlx, and Joseph P. Morra, Attorney, SEC.

("DEA"), but who are not themselves Exchange members, who engage in proprietary trading of equities and options, including, but not limited to, persons who execute such trades or make trading decisions with respect to such trades, to pay an increased $1,000.00 registration fee and thereafter an increased annual fee of $1,000.00. The proposed increases would apply to those persons who are not Exchange members registered in a trading capacity on the floor of the Exchange. The proposed increases in the registration and annual fee are to be effective as of March 1, 2000.

The text of the proposed change to the Phlx fee schedule is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the Phlx's fee schedule to increase the annual fee to $1,000.00 for registered proprietary traders, *i.e.*, persons who are currently associated with member organizations for which the Exchange is the DEA, but who are not themselves Exchange members, who engage in proprietary trading of equities and options from off-the-floor of the Exchange by filing a Form U–4 and a fingerpint card as well as provide proof of successful completion of the Uniform Registered Representative Examination, Series 7. At this time, the Exchange charges such traders an initial registration fee of $200.00 and an annual fee of $200.00. The initial registration fee applies to persons currently trading from off-the-floor and to persons who register to trade from off-the-floor in the future. The payment of the increased initial registration fee of $1,000.00 will be prerequisite to engaging in trading from off-the-floor of the Exchange.

All such persons who are registered with the Exchange as of April 1st, of each year will be assessed an annual fee of $1,000.00. The fees are proposed to be increased from $200.00 in recognition of the increased costs of administration that the Exchange has been and will be incurring. The Exchange has experienced increased administration costs incurred in conducting background checks on the individuals to whom the fees apply; processing of forms; fingerprint charges; requests for disciplinary history of all current and future off-floor traders to the Central Registration Depository; as well as conducting on-site examinations of the home and branch offices of the various member firms with which off-floor traders associate. During the course of 1999, the Exchange experienced an increase in the number of member organizations utilizing off-floor traders who would be subject to the increased annual charge. Additionally, the Exchange undertook increased administrative and regulatory responsibilities associated with such member organizations and their off-floor traders, including scheduling more frequent compliance inspections.

2. Statutory Basis.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(4), in that it provides for the equitable allocation of resasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [5] and subparagraph (f)(2) of Rule 19b–4 thereunder,[6] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR-Phlx 00–09, and should be submitted by April 5, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–6315 Filed 3–14–00; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3246 (Amendment #1)]

Commonwealth of Kentucky

In accordance with a notice received from the Federal Emergency Management Agency dated March 2, 2000, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on February 18, 2000 and continuing through March 2, 2000.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is

April 28, 2000 and for economic injury the deadline is November 28, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 7, 2000.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 00–6351 Filed 3–14–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3246]

Commonwealth of Kentucky

As a result of the President's major disaster declaration on February 28, 2000, I find that Bath, Boyd, Carter, Fleming, Greenup, Lewis, Mason, Nicholas, Robertson, and Rowan Counties in the Commonwealth of Kentucky constitute a disaster area due to damages caused by severe storms and flooding beginning on February 18, 2000 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 28, 2000 and for economic injury until the close of business on November 28, 2000 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bourbon, Bracken, Elliott, Harrison, Lawrence, Menifee, Montgomery, and Morgan Counties in Kentucky and Adams, Brown, Lawrence, and Scioto Counties in Ohio.

Any counties contiguous to the above-named primary counties and not listed herein have been covered under a separate declaration for the same occurrence.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.625
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.812
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	6.750
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 324606. For economic injury the numbers are 9G8300 for Kentucky and 9G8400 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 2, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–6352 Filed 3–14–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3245]

State of West Virginia

As a result of the President's major disaster declaration on February 28, 2000, and an amendment thereto on the same date, I find that the following counties in the State of West Virginia constitute a disaster area due to damages caused by flooding, severe storms, and landslides beginning on February 18, 2000 and continuing: Barbour, Braxton, Cabell, Calhoun, Doddridge, Gilmer, Harrison, Jackson, Kanawha, Lewis, Lincoln, Marion, Mason, Monongalia, Putnam, Ritchie, Roane, Tyler, Upshur, Wetzel, and Wirt. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 28, 2000, and for loans for economic injury until the close of business on November 28, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Boone, Clay, Fayette, Logan, Marshall, Mingo, Nicholas, Pleasants, Preston, Raleigh, Randolph, Taylor, Tucker, Wayne, Webster, and Wood Counties in West Virginia; Gallia, Lawrence, Meigs, Monroe, and Washington Counties in Ohio; and Fayette and Greene Counties in Pennsylvania.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.625
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.812
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	6.750
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 324506. For economic injury the numbers are 9G8000 for West Virginia, 9G8100 for Ohio, and 9G8200 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 2, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–6350 Filed 3–14–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3255]

Bureau of Economic and Business Affairs; Finding of No Significant Impact: Dakota Gasification Company at Bismarck, North Dakota

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to an application to construct, operate and maintain a pipeline to transport carbon dioxide across the U.S.-Canada border.

SUMMARY: The Department of State has conducted an environmental assessment of the proposed construction by Dakota Gasification Company of a pipeline for the transport of carbon dioxide crossing the international boundary near Crosby, North Dakota. In the course of the Department of State's review of the Environmental Assessment, the

applicant was requested to provide additional information on the issues of environmental justice and alternative pipeline routes. A number of the other U.S. Government agencies involved in the approval process also requested additional information. Dakota Gasification Company provided this information which has been included in the environmental assessment package. This information may be viewed upon request in the Office of International Energy and Commodity Policy at the Department of State.

Based on this information, the Department of State has concluded that issuance of a Presidential Permit authorizing construction of the pipeline will not have a significant effect on the existing vegetation and wildlife, water resources, land use, air quality and human population within the United States. In reaching this conclusion, the Department of State considered several alternatives, including a no-action alternative. In accordance with the National Environmental Policy Act, 42 U.S.C. section 4321 *et seq.*, Council on Environmental Quality Regulations, 40 CFR 1501.4 and 1508.13 and Department of State Regulations, 22 CFR 161.8 (C), an environmental impact statement will not be prepared.

FOR FURTHER INFORMATION ON THE PIPELINE PERMIT APPLICATION, CONTACT: Bill Memler, Office of International Energy Policy, Room 3535, U.S. Department of State, Washington, DC, 20520, (202) 647–4557.

SUPPLEMENTARY INFORMATION: Dakota Gasification Company is a corporation formed under the laws of the State of North Dakota, with its principal place of business in Bismarck, North Dakota. On July 7, 1999, the Department of State published a Notice of Application for a Presidential Permit in the **Federal Register**. No public comments were received and concerned agencies expressed no opposition to issuing the permit. A finding of no significant impact is adopted, and an environmental impact statement will not be prepared.

Dated: March 7, 2000.

Peter E. Bass,

Deputy Assistant Secretary of State for Energy, and Commodities.

[FR Doc. 00–6410 Filed 3–14–00; 8:45 am]

BILLING CODE 4710–07–U

DEPARTMENT OF STATE

[Public Notice 3253]

Universal Postal Union Reform Survey

AGENCY: Department of State.

ACTION: Notice of briefing.

The Department of State will host a briefing on Wednesday, April 19, 2000, to discuss matters related to its on-going participation in the work of the Universal Postal Union (UPU).

Within the UPU, a "High Level Group on the Future Development of the UPU" is reviewing various reform initiatives. The Group has created a questionnaire to solicit the individual opinions of "stakeholders" in UPU operations. This questionnaire was sent to about 30 government and private sector agencies in the United States, with the request that the responses be returned to the UPU by March 30, 2000.

The central purpose of this briefing will be to discuss with the U.S. stakeholders the variety of opinions of the UPU that have been expressed, especially in the context of responses to the UPU questionnaire. This briefing will also provide information on other aspects of the High Level Group's work, the March 9 Congressional hearing on international postal policy, and the recent GAO report on this issue. The briefing will be chaired by Ambassador E. Michael Southwick of the Department of State.

The briefing will be held from 2:00 pm until approximately 4:00 pm, on April 19, 2000, in Room 1207 of the Department of State, 2201 C Street, NW, Washington, DC. The briefing will be open to the public up to the capacity of the meeting room.

Entry to the Department of State building is controlled and will be facilitated by advance arrangements. In order to arrange admittance, persons desiring to attend the briefing should, no later than noon on April 18, 2000, notify the Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State, preferably by fax, providing the name of the meeting and the individual's name, Social Security number, date of birth, professional affiliation, address and telephone number. The fax number to use is (202) 647–8902. Voice telephone is (202) 647–2752. This request applies to both government and non-government individuals.

All attendees must use the Department of State diplomatic entrance at 22nd and C Streets, NW. One of the following means of identification will be required for admittance: any U.S. driver's license with photo, a passport, or any U.S. Government agency identification card. Questions concerning the briefing may be directed to Mr. Neil Boyer at (202) 647–2752.

Dated: March 7, 2000.

Lynne Lambert,

Director, Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State.

[FR Doc. 00–6408 Filed 3–14–00; 8:45 am]

BILLING CODE 4710–19–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Pike County, KY and Mingo County, WV

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Pike County, Kentucky and Mingo County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Jesse Story, Division Administrator, Federal Highway Administration, 330 West Broadway, Frankfort, Kentucky, 40601, (502) 223–6721, e-mail: jesse.story@fhwa.dot.gov; or John Bowlin, Project Manager, Kentucky Transportation Cabinet, District 12 Pikeville, P.O. Box 2468, Pikeville, Kentucky, 41502, (606) 785–9466, e-mail: jbowlin@mail.kytc.state.ky.us.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov.nara.*

Background

The FHWA, in cooperation with the Kentucky Transportation Cabinet (KYTC) and the West Virginia Division of Highways (WVDOH), will prepare an environmental impact statement (EIS) on a proposed highway project to construct a segment of Interstate Highway I–66 (Transamerica Transportation Corridor) between western Pike County, Kentucky and eastern Mingo County, West Virginia. The proposed project would involve the construction of a 4-line, controlled access highway on new location between US 23/119 southwest of Pikeville, Kentucky to the proposed

Interstate Highway I–73 (King Coal Highway) in Mingo County, West Virginia. The proposed project is approximately 30 miles (48 kilometers) in length. This Interstate highway construction project is considered necessary to improve and promote economic development opportunities in a severely depressed area of Appalachia, improve regional accessibility and east-west National Highway System connectivity, reduce travel time and distance, improve highway safety for the traveling public, increase tourism, and provide for National defense objectives throughout the region.

Alternatives under consideration include: (1) Taking no action; (2) using alternate travel modes; and (3) constructing a 4-lane, controlled access highway on new location. Incorporated into and studied with the various build alternatives will be design variations of grade, typical sections, and alignments.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal during the previous project planning phase. Project scoping meetings will be held in the project area in the Spring of 2000 and a series of public meetings and public hearings will be held in conjunction with preliminary design and EIS phase activities. Public notice of the time and place of all public meetings and hearings will be given in accordance with FHWA, KYTC, and WVDOH policies and regulations. The draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided under the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.) (23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 9, 2000.

Jesse A. Story,

Kentucky Division Administrator, Frankfort.

[FR Doc. 00–6334 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6269; Notice 2]

IMPCO Technologies; Grant of Application for Decision of Inconsequential Noncompliance

IMPCO Technologies (IMPCO), of Irvine, California, has determined that a number of model year (MY) 1997 and (MY) 1998 bi-fueled compressed natural gas (CNG) Chevrolet/GMC C2500 and Sierra model pickup trucks that it altered do not meet the requirements of S5.3 and S5.4 of 49 CFR 571.303, Federal Motor Vehicle Safety Standard (FMVSS) No. 303, "Fuel System Integrity of Compressed Natural Gas Vehicles." and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Notice of receipt of the application was published, with a 30-day comment period, on October 7, 1999, in the **Federal Register** (64 FR 54726). NHTSA received one comment from General Motors Corporation (GM) during the 30-day comment period. GM agreed with IMPCO that the labels and owner's manual supplement information provided with the vehicles were responsive to and consistent with the rationale and intent of FMVSS No. 303.

FMVSS No. 303, S5.3, requires that CNG vehicles shall be permanently labeled, near the vehicle refueling connection, with the information specified in S5.3.1 and S5.3.2.

S5.3.1 requires the statement: "Service pressure _____ kPa (_____ psig)," and S5.3.2 requires the statement "See instructions on fuel container for inspection and service life."

S5.4 requires that, when a motor vehicle is delivered to the first purchaser, for purposes other than resale, the manufacturer shall provide the purchaser with a written statement of the information in S5.3.1 and S5.3.2 in the owner's manual, or, if there is no owner's manual, on a one-page document.

IMPCO notified the National Highway Traffic Safety Administration that it altered 400 MY 1997 and 285 MY 1998 Chevrolet/GMC C2500 and Sierra model pickup trucks that did not fully comply with the labeling requirements specified in 49 CFR 571.303. IMPCO stated that, as altered, the noncompliance consists of deviations from the wording required on the CNG vehicle label and in the owner's manual.

IMPCO explained that an out-of-date version of FMVSS No. 303, which did not contain specific requirements, was used by the supplier that prepared the label and owner's manual supplement. As a result, the CNG vehicle label applied near the refueling connection, and the owner's manual for the subject vehicles, did not contain the exact statements required by FMVSS No. 303, S5.3 and S5.4.

The required words and actual words used by IMPCO are shown as follows:

FMVSS paragraph	Required label wording	1997 and 1998 bi-fuel truck label wording
S5.3.1	SERVICE PRESSURE 24820 kPa (3600 psig)	3600 PSI SYSTEM OPERATING PRESSURE
S5.3.2	SEE INSTRUCTIONS ON FUEL CONTAINER FOR INSPECTION AND SERVICE LIFE.	SEE CNG OWNERS MANUAL SUPPLEMENT FOR FUEL TANK SERVICE LIFE.

FMVSS paragraph	Required owner's manual wording	CNG truck owner's manual wording	1997 manual	1998 manual
S5.4	SERVICE PRESSURE 24820 kPa (3600 psig).	This system operates at pressures up to 3600 PSI (24.8 MPa). (p. iv).	X	X
		The CNG fuel system is designed to use a fill pressure of 3,600 psi (24.8 Mpa) at 70°F (21°C) (P. 6–3).	.....	X
		13.2 gallons (equivalent) (50 L) at 3600 psi (24.8 Mpa) and 70°F (21°C) (page 6–6).	X	.....
		13 GGE (Gasoline Gallon Equivalent) (49 L) at 3600 psi (24.8 Mpa) and 70°F (21°C). (page 6–6).	.....	X
		3600 PSI SYSTEM PRESSURE (page 7–7)	X	X

FMVSS Paragraph		Required owner's manual wording	CNG truck owner's manual wording	1997 manual	1998 manual
S5.4	SEE	INSTRUCTIONS ON FUEL CONTAINER FOR INSPECTION AND SERVICE LIFE.	A trained technician must remove the tank cover and perfrom a CNG fuel tank and mounting bracket inspection every three years or 36,000 miles (60,000 km) whichever comes first. (Page 7–6).	X	X
			The CNG fuel tank has a service life of 15 years. After the tank expiration date, the tank must be replaced by an authorized GM dealer. (Page 7–7).	X	X
			This (expiration) date is listed on the fuel tank and the fuel tank cover label. (Page 7–7).	X	.....
			This (expiration) date is listed on the fuel tank and the fuel tank, the fuel fill door label and the under-hood bi-fuel information label. (Page 7–7).	.....	X
			CNG Fuel Tank Inspection Record (page 7–8)	X	X

IMPCO supported its application with the following arguments:

IMPCO believes that the labels and owner's manual supplement information provided with these vehicles are responsive and consistent with the rationale and intent of the requirements, even though the exact words required by the standard are not used. The actual labels and the owner's manual supplement provide equivalent information required by FMVSS 303, S5.3 and S5.4. The CNG refueling valve label clearly states the operating pressure and refers the user to the owner's manual for information about tank service life. Both the refueling valve and the under-hood labels include the service expiration date and the owners manual indicates the service life, inspection information, and provide a form to record the expiration date.

Virtually all CNG refueling stations incorporate an overfill protection system. Granted, a few CNG fill stations exist that are capable of providing a fill greater than 3,000 psi, however, the vehicle fill valve is designed to be incompatible with fill stations that have a fill pressure greater than the vehicle's rated service pressure. For example, a vehicle with a fill valve rated at 3,600 psi would be capable of filling at a 3,600, 3,000 or 2,400 psi fill station. However, it would be incapable of filling at a 5,000 psi fill station.

Also, the subject vehicles are equipped with a CNG container validated up to 200 percent of the service pressure without leakage as required by FMVSS 304, S7.2.2 for such containers. Thus, even in the unlikely event of an overfill, the CNG containers are designed to provide adequate protection. IMPCO has not received any reports of injuries or property damage associated with overfilling of these vehicles and believes it is extremely remote that these deviations from FMVSS 303 label and owner's manual requirements could contribute to an injury or property damage incident.

For all of these reasons, IMPCO believes that this noncompliance is inconsequential to motor vehicle safety. Accordingly, IMPCO petitions that it be exempted from the remedy and recall provisions of the Motor Vehicle Safety Act in this case.

We have reviewed IMPCO's arguments. The primary safety purpose of labeling requirements in FMVSS No. 303 is to ensure that the vehicle owner is aware (1) of the service pressure during refueling operations and (2) that the CNG fuel container has a recommended inspection period and a service life. NHTSA concludes that the labels and owner's manual supplement information provided with these vehicles are consistent with the rationale and intent of the labeling requirements in FMVSS No. 303, even though the exact words required by the standard are not used.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance described above is inconsequential to motor vehicle safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120, with delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: March 7, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–6061 Filed 3–14–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20962]

Tedesco Family ESB Trust–Control–Funaway Tours of New Jersey, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice Tentatively Approving Finance Application.

SUMMARY: Tedesco Family ESB Trust, Francis Tedesco and Mark Tedesco, settlers, of Hoboken, NJ (Tedesco Trust), a noncarrier, and Franmar Logistics, Inc., of Hoboken, NJ (Franmar), its noncarrier subsidiary, seek approval under 49 U.S.C. 14303(a) for their control of Franmar's noncarrier subsidiary, Consolidated Bus Service, Inc. (Consolidated), upon Consolidated's acquisition of the operating authority and other property of Funaway Tours of New Jersey, Inc., of New York, NY (Funaway), a motor carrier of passengers. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by May 1, 2000. Applicants may file a reply by May 16, 2000. If no comments are filed by May 1, 2000, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20962 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of any comments to applicants' representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD

for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Tedesco Trust is a noncarrier, which directly controls Academy Bus Tours, Inc. (MC–165004) and Academy Lines, Inc. (MC–106207), and which, through Franmar, controls Academy Bus Tours, Inc. (PA) (MC–215354), Academy Express, Inc. (MC–228481), Commuter Bus Line, Inc. (MC–162133), and No. 22 Hillside Corp. (MC–182453). The six carriers controlled directly or indirectly by Tedesco Trust (which include the four carriers controlled by Franmar) provide either local commuter bus service and other regular-route service or conduct special or charter operations, or a combination of both. Collectively, these carriers operate between New York, NY, and various points in New Jersey and Pennsylvania.

Franmar also controls Consolidated, a noncarrier, which is proposing to acquire the property of Funaway, including its operating authority. Funaway holds federally issued operating authority in Docket No. MC–174942 authorizing it to provide regular-route service between New York, NY, and Atlantic City, NJ, and to conduct special and charter operations. Funaway also holds New York intrastate authority to conduct special and charter operations.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted the information required by 49 CFR 1182.2 to demonstrate that the proposed acquisition of control is consistent with the public interest under 49 U.S.C. 14303(b). Applicants state that the proposed transaction will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges, or adversely impact the interests of the employees. *See* 49 CFR 1182.2(a)(7). Additional information may be obtained from the applicants' representative.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on May 1, 2000, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration—HMCE–20, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

Decided: March 6, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–5918 Filed 3–14–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–18]

Geographic Boundaries of Customs Brokerage, Cartage, and Lighterage Districts

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document informs the public of the geographic areas covered for purposes of customs broker permits and for certain cartage and lighterage purposes where the word "district" appears in the Customs Regulations.

FOR FURTHER INFORMATION CONTACT: Gina Grier, Office of Regulations and Rulings (202) 927–2320.

SUPPLEMENTARY INFORMATION:

Background

In Treasury Decisions 95–77 and 95–78 published in the **Federal Register** on September 27, 1995, at 60 FR 50008 and 60 FR 50020, respectively, Customs amended its regulations to reflect its new organizational structure. Concerning this reorganization, Customs pointed out that, although the concepts of districts and regions would, for the most part, be eliminated, they would still exist for certain limited purposes concerning customs broker permits and cartage and lighterage licensing. In addition, in the same issue of the **Federal Register** Customs published a general notice (60 FR 49971) that informed the public of the geographic areas covered for purposes of those customs broker permit and cartage and lighterage licensing purposes where the word "district" appears in the Customs Regulations. This document republishes the information contained in that 1995 notice.

In the table set forth below, which is arranged alphabetically by State or other geographic location, each of the service ports listed in the left column represents a "district" for purposes of §§ 111.1 and 112.1 of the Customs Regulations (19 CFR 111.1 and 112.1), and the ports of entry listed to the right of each service port represent the ports within that "district."

Service ports	Ports of entry
Alabama	
Mobile	Birmingham. Gulfport, MS. Huntsville. Mobile. Pascagoula, MS.
Alaska	
Anchorage	Alcan. Anchorage. Dalton Cache. Fairbanks. Juneau. Ketchikan. Sitka. Skagway. Valdez. Wrangell.
Arizona	
Nogales	Douglas. Lukeville. Naco. Nogales. Phoenix. San Luis. Sasabe.

Service ports	Ports of entry
	Tucson.
California	
Los Angeles	Los Angeles-Long Beach. LAX. Las Vegas, NV. Port Hueneme. Port San Luis.
San Diego. Andrade. Calexico. Tecate..	
San Francisco. Eureka. Fresno. Reno, NV. San Francisco-Oakland..	
District of Columbia	
Dulles	Alexandria, VA. Dulles, VA.
Florida	
Miami	Key West. Miami. Port Everglades. West Palm Beach.
	Tampa. Boca Grande. Fernandina Beach. Jacksonville. Orlando. Panama City. Pensacola. Port Canaveral. Port Manatee. St. Petersburg. Tampa.
Georgia	
Savannah	Atlanta. Brunswick. Savannah.
Hawaii	
Honolulu	Hilo. Honolulu. Kahului Nawilliwili-Port Allen.
Illinois	
Chicago	Chicago. Davenport, IA-Moline and Rock Island. Des Moines, IA. Omaha NE. Peoria. Rockford.
Louisiana	
New Orleans	Baton Rouge. Chattanooga, TN. Gramercy. Greenville, MS. Knoxville, TN. Lake Charles. Little Rock-North Little Rock, AR. Memphis, TN. Morgan City. Nashville, TN. New Orleans. Shreveport-Bossier City. Vicksburg, MS.
Maine	
Portland	Bangor. Bar Harbor. Bath. Belfast. Bridgewater. Calais. Eastport. Fort Fairfield. Fort Kent. Houlton. Jackman. Jonesport. Limestone. Madawaska. Portland. Portsmouth, NH. Rockland. Van Buren. Vanceboro.
Maryland	
Baltimore	Annapolis.
	Baltimore. Cambridge.
Massachusetts	
Boston	Boston.
	Bridgeport, CT. Fall River. Gloucester. Hartford, CT. Lawrence. New Bedford. New Haven, CT. New London, CT. Plymouth. Salem. Springfield. Worcester.
Michigan	
Detroit	Battle Creek.
	Detroit. Grand Rapids. Muskegon. Port Huron. Saginaw-Bay City-Flint. Sault Ste. Marie.
Minnesota	
Duluth	Ashland, WI. Duluth and Superior, WI. Grand Portage. International Falls-Ranier.
Minneapolis.	Minneapolis-St. Paul.
Missouri	
St. Louis	Kansas, City St. Joseph. St. Louis. St. Wichita.
Montana	
Great Falls	Butte. Del Bonita. Denver, CO. Eastport, ID. Great Falls. Morgan. Opheim. Piegan. Porthill, ID. Raymond. Roosville. Salt Lake City, UT. Scobey. Sweetgrass. Turner. Whitetail. Whitlash.
New York	
Buffalo	Buffalo-Niagara Falls. Oswego. Rochester. Sodus Point. Syracuse. Utica.
Champlain	Alexandria Bay. Cape Vincent. Champlain-Rouses Point. Clayton. Massena. Ogdensburg. Trout River.
JFK/New York/Newark.	Albany.
	New York/Newark, NJ. JFK. Perth Amboy, NJ.
North Carolina	
Charlotte	Beaufort-Morehead City.

Service ports	Ports of entry
	Charlotte.
	Durham.
	Reidsville.
	Wilmington.
	Winston-Salem.
North Dakota	
Pembina	Ambrose.
	Antler.
	Baudette, MN.
	Carbury.
	Dunseith.
	Fortuna.
	Hannah.
	Hansboro.
	Maida.
	Neche.
	Noonan.
	Northgate.
	Noyes, MN.
	Pembina.
	Pinecreek, MN.
	Portal.
	Roseau, MN.
	Sarles.
	Sherwood.
	St. John.
	Walhalla.
	Warroad, MN.
	Westhope.
Ohio	
Cleveland	Ashtabula/Conneaut.
	Cincinnati-Lawrenceburg, IN.
	Cleveland.
	Columbus.
	Dayton.
	Erie, PA.
	Indianapolis, IN.
	Louisville, KY.
	Owensboro, KY-Evansville, IN.
	Toledo-Sandusky.
Oregon	
Portland	Astoria.
	Boise, ID.
	Coos Bay.
	Longview.
	Newport.
	Portland
Pennsylvania	
Philadelphia	Harrisburg.
	Lehigh Valley.
	Philadelphia-Chester, PA and Wilmington, DE.
	Pittsburgh.
	Wilkes-Barre/Scranton.
Puerto Rico	
San Juan	Aquadilla.
	Fajardo.
	Guanica.
	Humacao.
	Jobos.
	Mayaguez.
	Ponce.
	San Juan.
Rhode Island	
Providence	Newport.
	Providence.
South Carolina	
Charleston	Charleston.
	Columbia.
	Georgetown.
	Greenville-Spartenburg.
Texas	
Dallas	Amarillo.
	Austin.
	Dallas/Fort Worth.
	Lubbock.
	Oklahoma City, OK.
	San Antonio.
	Tulsa, OK.
El Paso	Albuquerque, NM.
	Columbus, NM.
	El Paso.
	Fabens.
	Presidio.
	Santa Teresa, NM.
Houston	Houston-Galveston.
Port Arthur*	Port Arthur.
Laredo	Brownsville.
	Del Rio.
	Eagle Pass.
	Hidalgo.
	Laredo.
	Progreso.
	Rio Grande City.
	Roma.
Vermont	
St. Albans	Beecher Falls.
	Burlington.
	Derby Line.
	Highgate Springs-Alburg.
	Norton.
	Richford.
	St. Albans.
Virginia	
Norfolk	Charleston, WV.
	Front Royal.
	Norfolk-Newport News.
	Richmond-Petersburg.
Virgin Islands, U.S.	
Charlotte Amalie	Charlotte Amalie, St. Thomas.
	Christiansted, St. Croix.
	Coral Bay, St. John.
	Cruz Bay, St. John.
	Frederiksted, St. Croix.
Washington	
Seattle	Aberdeen.
	Blaine.
	Boundary.
	Danville.
	Ferry.
	Frontier.
	Laurier.
	Lynden.
	Metaline Falls.
	Nighthawk.
	Oroville.
	Point Roberts.
	Puget Sound.
	Spokane.
	Sumas.
Wisconsin	
Milwaukee	Green Bay.
	Manitowoc.
	Marinette.
	Milwaukee.
	Racine.
	Sheboygan.

*Not a Service Port

Dated: March 9, 2000.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 00–6263 Filed 3–14–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds-Terminations: Arkwright Mutual Insurance Company and Protection Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 15 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7102.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Companies, under the United States Code, Title 31, Sections 9304—9308, to qualify as acceptable

sureties on Federal bonds are terminated effective today.

The Companies were last listed as acceptable sureties on Federal bonds at 64 FR on pages 35868 and 35886, July 1, 1999.

With respect to any bonds currently in force with above listed companies, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from these Companies.

In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: March 3, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–6299 Filed 3–14–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds-Name Change: Allendale Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 14 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7102.

SUPPLEMENTARY INFORMATION: Allendale Mutual Insurance Company, a Rhode Island corporation, has formally changed its name to Factory Mutual Insurance Company, effective July 1, 1999. The Company was last listed as an acceptable surety on Federal bonds at 64 FR 35865, July 1, 1999.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to Factory Mutual Insurance Company, Johnston, Rhode Island. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $114,720,000 established for the Company as of July 1, 1999, remains unchanged until June 30, 2000.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, at page 35874 to reflect this change.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: March 3, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–6298 Filed 3–14–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal; Western Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 13 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6696.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 and 9308. Federal Bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, on page 35893 to reflect this addition:

Western Insurance Company. Business Address: P.O. Box 21030, Reno, NV 89515. Phone: (775) 829–6650.
Underwriting Limitation b/: $291,000. Surety Licenses *c/*: NV. Incorporated in: Nevada.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: March 3, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–6297 Filed 3–14–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8288–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.

OMB Number: 1545–1060.

Form Number: 8288–B.

Abstract: Section 1445 of the Internal Revenue Code requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Code sections 1445(b) and (c) allow the withholding to be reduced or eliminated under certain circumstances. Form 8288–B is used to apply for a withholding certificate from IRS to reduce or eliminate the withholding required by Code section 1445.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 5,079.

Estimated Time Per Respondent: 5 hr., 5 min.

Estimated Total Annual Burden Hours: 25,852.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 2, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6270 Filed 3–14–00; 8: 45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8288 and 8288–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests, and Form 8288–A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.

DATES: Written comments should be received on or before May 15, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288) and Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288–A).

OMB Number: 1545–0902

Form Number: 8288 and 8288–A

Abstract: Internal Revenue Code section 1445 requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Form 8288 is used to report and transmit the amount withheld to the IRS. Form 8288–A is used by the IRS to validate the withholding, and a copy is returned to the transferor for his or her use in filing a tax return.

Current Actions: An optional box for the phone number of the buyer or other transferee was added in Part I and Part II at the request of the FIRPTA Unit in Philadelphia.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 4,918.

Estimated Time Per Respondent: 22 hr., 36 min.

Estimated Total Annual Burden Hours: 111,161.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a

matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6271 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4797

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4797, Sales of Business Property.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Sales of Business Property.

OMB Number: 1545–0184.

Form Number: 4797.

Abstract: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversions of assets used in a trade or business. It is also used to compute ordinary income from recapture and the recapture of prior year losses under section 1231 of the Internal Revenue Code.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 1,396,388.

Estimated Time Per Respondent: 59 hr., 46 min.

Estimated Total Annual Burden Hours: 83,462,111.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 6, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6272 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–p

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8582

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8582, Passive Activity Loss Limitations.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Passive Activity Loss Limitations.

OMB Number: 1545–1008.

Form Number: 8582.

Abstract: Under Internal Revenue Code section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 4,500,000.

Estimated Time Per Respondent: 4 hr., 49 min.

Estimated Total Annual Burden Hours: 21,660,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 6, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6273 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4506–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4506–A, Request for Public Inspection or Copy of Exempt Organization Tax Form.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Public Inspection or Copy of Exempt Organization Tax Form.

OMB Number: 1545–0495

Form Number: 4506–A

Abstract: Internal Revenue Code section 6104 states that if an organization described in section 501(c) or (d) is exempt from taxation under section 501(a) for any taxable year, the application for exemption is open for public inspection. This includes all supporting documents, any letter or other documents issued by the IRS concerning the application, and certain annual returns of the organization. Form 4506–A is used to request public inspection or a copy of these documents.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 36 min.

Estimated Total Annual Burden Hours: 12,000

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6274 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5452

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5452, Corporate Report of Nondividend Distributions.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Corporate Report of Nondividend Distributions.

OMB Number: 1545–0205.

Form Number: 5452.

Abstract: Form 5452 is used by corporations to report their nontaxable distributions as required by Internal Revenue Code section 6042(d)(2). The information is used by IRS to verify that the distributions are nontaxable as claimed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Responses: 1,700.

Estimated Time Per Response: 31 hrs., 51 min.

Estimated Total Annual Burden Hours: 54,145.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 7, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6275 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8271

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8271, Investor Reporting of Tax Shelter Registration Number.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Investor Reporting of Tax Shelter Registration Number.

OMB Number: 1545–0881.

Form Number: 8271.

Abstract: All persons who are claiming a deduction, loss, credit, or other tax benefit, or reporting any income on their tax return from a tax shelter required to be registered under Internal Revenue Code section 6111 must report the tax shelter registration number to the IRS. Form 8271 is used for this purpose. The IRS uses the information provided on Form 8271 to identify the tax shelter from which the benefits are claimed and to determine if any compliance actions are needed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Responses: 297,500.

Estimated Time Per Respondent: 41 minutes.

Estimated Total Annual Burden Hours: 205,275.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6276 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5213

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5213, Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.

OMB Number: 1545–0195.

Form Number: 5213.

Abstract: Section 183 of the Internal Revenue Code allows taxpayers to elect to postpone a determination as to whether an activity is entered into for profit or is in the nature of a nondeductible hobby. The election is made on Form 5213 and allows taxpayers 5 years (7 years for breeding, training, showing, or racing horses) to show a profit from an activity.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 10,730.

Estimated Time Per Respondent: 46 minutes.

Estimated Total Annual Burden Hours: 8,262.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 6, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6277 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8264

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8264, Application for Registration of a Tax Shelter.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Registration of a Tax Shelter.

OMB Number: 1545–0865.

Form Numbers: 8264.

Abstract: Under section 6111 of the Internal Revenue Code, organizers of certain tax shelters are required to register them with the IRS. Organizers filing a properly completed Form 8264 will receive a tax shelter registration number from the IRS. They must furnish the tax shelter registration number to investors in the tax shelter, who must provide the number to the IRS when they report any income or claim a deduction, loss, credit, or other tax benefit derived from the tax shelter on their tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Numbered Time Per Respondent: 34 hours, 58 minutes.

Estimated Total Annual Burden Hours: 34,960.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 7, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6278 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8827

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8827, Credit for Prior Year Minimum Tax—Corporations.

DATES: Written comments should be received on or before May 15, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Prior Year Minimum Tax—Corporations.

OMB Number: 1545–1257.

Form Number: 8827.

Abstract: Internal Revenue Code Section 53(d), as revised, allows corporations a minimum tax credit based on the full amount of alternative minimum tax incurred in tax years beginning after 1989, or a carryforward for use in a future year. Form 8827 is used by corporations to compute the minimum tax credit, if any, for alternative minimum tax incurred in prior tax years and to compute any minimum tax credit carryforward.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

ESTIMATED NUMBER OF RESPONDENTS: 25,000.

Estimated Time Per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 25,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 1, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6279 Filed 3–14–00; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
March 15, 2000

Part II

Department of the Interior

Minerals Management Service

30 CFR Part 206

Establishing Oil Value for Royalty Due on Federal Leases; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations regarding valuation, for royalty purposes, of crude oil produced from Federal leases. MMS is changing the way that oil not sold under an arm's-length contract is valued; providing optional ways for lessees to value their crude oil production if they sell it at arm's length following one or more arm's-length exchanges or one or more transfers between affiliates; changing the way that actual transportation costs are calculated; changing the definition of "affiliate" because of a recent judicial decision; clarifying that it will issue binding value determinations; and adding specific regulatory language regarding the issue of "second-guessing" a sale under an arm's-length contract. These amendments are intended to assure that royalties on Federal oil production are based on a fair value and to otherwise simplify and improve the rule.

EFFECTIVE DATE: This rule is effective June 1, 2000.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief. Rules and Publications Staff, Royalty Management Program, Minerals Management Service, phone (303) 231–3432, FAX (303) 231–3385, e-Mail david.guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this final rule are David A. Hubbard and Deborah Gibbs Tschudy of the Royalty Management Program (RMP) and Peter Schaumberg and Geoffrey Heath of the Office of the Solicitor in Washington, DC.

I. Background

This final rule establishes new royalty valuation procedures for crude oil produced from Federal onshore and offshore leases. This rule does not apply to oil produced from Indian leases. It replaces valuation rules in 30 CFR part 206 that have been in effect since March 1, 1988 (the 1988 rules).

The 1988 rules were developed based on the concept that gross proceeds received under an arm's-length contract represented the best measure of the value of production for royalty purposes. Further, those rules implicitly assumed the existence of a competitive and transparent market at the lease (or in the field or area) that could be used to determine the value of production not sold at arm's length.

Based on our research, we believe the main general characteristics of competitive markets include: (1) A large number of sellers, no one of whom commands a large share of the total market; (2) functional identity of different sellers' products; (3) a large enough number of buyers that sellers and buyers do not establish personal relationships with one another and no one buyer commands a large share of the total market; and (4) buyers who are well informed about the prices of different sellers. In fact, the Federal crude oil market today is dominated by large integrated producers/refiners who do command a large share of the total market. Further, because of the proprietary nature of individual contract sales of crude oil, clearly there is no sharing of price data at the lease, and none of the other conditions for a competitive domestic oil market may exist. The comments submitted throughout this 4-plus-year rulemaking effort did not demonstrate that as a general rule a competitive market exists at the lease.

The overall lack of a truly competitive market at the lease has been compounded by the significant changes that occurred in the domestic industry during the 1980's and early 1990's, which had a profound effect on how crude oil is marketed today. These changes included: (1) The major oil companies' creation of separate affiliates for production, marketing and refining; (2) overall decline in domestic production and increased dependence on foreign imports and influence of international trading practices on domestic supply; (3) sharply increased volatility of oil prices marked by the price collapse in early 1986 (the last year in which posted prices exceeded spot market prices), and the rapid rise and decline in prices in late 1990 and early 1991 in response to the Gulf War; (4) entry and expansion of resellers, traders, and brokers who bought, transported, and sold domestic crude oil, taking advantage of pricing and location discrepancies in much the same way such entities operated on the international market; and (5) development of a futures market for crude oil which alleviated many of the risks of spot trading. While many of these factors may be seen as increasing the level of competition, none of them served to increase the level of price transparency (*i.e.*, the ability to discern the prices actually paid) at the lease or field or to simplify application of the existing oil valuation rules.

The 1988 rules placed heavy emphasis on posted prices as a measure of royalty value, particularly when valuing oil disposed of non-arm's-length and under no-sales conditions. Posted prices historically were the primary mechanism for pricing domestic crude oil before the 1980's. However, with the disruption of global petroleum supplies in the 1970's and decontrol of domestic crude oil prices in 1981, the domestic petroleum industry began moving away from posted prices and towards the spot and futures markets to buy and sell crude oil. In fact, studies commissioned by States and advice from MMS consultants (Innovation & Information Consultants, Inc.; Micronomics, Inc.; Reed Consulting Group; and Summit Resource Management, Inc.) found that: (1) Sales prices often are above posted prices and are linked, in some form, to market prices, such as spot or futures prices, or represent premiums over posted prices; (2) major producers have few truly outright sales; (3) most major producers use buy/sell exchanges; (4) there are regional differences in the domestic crude oil market, particularly on the West Coast and in the Rocky Mountain Region (RMR), owing to differences in market concentration and availability of transportation options; and (5) posted prices have become a progressively less reliable indicator of the market value of crude oil since the late 1980s.

Development of the futures market and comprehensive publication of spot prices increased the market transparency of crude oil clearing prices. As a result, market participants became less willing to accept long-term sales contracts at fixed prices and instead negotiated short-term contracts with sales prices linked to spot or futures prices or to premia over posted prices. Major oil companies, however, generally continued to pay royalties on their production transferred non-arm's-length based on posted prices.

Recognizing that posted prices no longer reflected market value, State and private royalty owners in Alaska, California, Louisiana, New Mexico, and Texas brought lawsuits against several major oil companies over improper oil valuation and underpaid royalties. These lawsuits resulted in several oil companies paying additional royalties and some adjusting their posted prices to better reflect market value.

The majority of Federal lease oil production is not sold at arm's length at or near the lease. Most oil production

from Federal leases is either moved directly to a refinery without a sale or disposed of under an exchange agreement (*e.g.*, buy/sell agreements) in which the lessee exchanges oil at one location for oil at another location. Exchange agreements frequently do not reference a price, but rather only the relative difference in the value of crude oils exchanged and thereby obscure the oil's actual market value. When the agreement does state a price but is conditioned upon the lessee's purchase of crude oil at a subsequent exchange point, the price specified in the exchange agreement does not necessarily represent the value of the oil. In a buy-sell exchange, the parties may state any base price they wish, because their primary concern is the difference in value between the oil sold and the oil purchased.

This rulemaking amends the current regulations by eliminating posted prices as a measure of value and relying instead on arm's-length sales prices and spot market prices as market value indicators. Today, spot prices are readily available to industry participants via price reporting services, and these and similar indicators play a significant role in crude oil marketing in terms of negotiating deals and prices.

Comments received during the rulemaking process made it apparent that regional differences exist in the domestic crude oil market. These differences are due in large part to geographic isolation of markets. Accordingly, the new rules establish different valuation procedures for three different regions: California and Alaska, the RMR, and the rest of the country.

MMS is adopting large portions of the February 1998 proposal, with certain modifications arising from:

(1) The outline published in the March 12, 1999 notice of reopening of public comment period and notice of workshops;

(2) The supplementary proposed rule published on December 30, 1999; and

(3) Our responses to public comment.

II. History of This Rulemaking

MMS published an advance notice of its intent to amend the 1988 rules on December 20, 1995 (60 FR 65610). The purpose of that notice was to solicit comments on new methodologies to establish the royalty value of Federal (and Indian) crude oil production in view of the changes in the domestic petroleum market and particularly the market's move away from posted prices as an indicator of market value. The comment period on this advance notice closed on March 19, 1996.

Based on comments received on the advance notice, together with information gained from a number of presentations by experts in the oil marketing business, MMS published its initial notice of proposed rulemaking on January 24, 1997 (62 FR 3742). That proposal, applicable both to Federal and Indian leases, set out specific valuation procedures that focused on New York Mercantile Exchange (NYMEX) prices and Alaska North Slope (ANS) spot prices as value indicators, depending on the location of the production. It also clarified the lessee's duty to market the production at no cost to the Federal Government and required the lessee to use actual transportation costs instead of FERC tariffs for transportation allowances. The comment period for that proposal was to expire March 25, 1997, but was twice extended—first to April 28, 1997 (62 FR 7189), and then to May 28, 1997 (62 FR 19966). MMS held public meetings in Lakewood, Colorado, on April 15, 1997, and Houston, Texas, on April 17, 1997, to hear comments on the proposal.

In response to the variety of comments received on the initial proposal, MMS published a supplementary proposed rule on July 3, 1997 (62 FR 36030). That proposal expanded the eligibility requirements for valuing oil disposed of under arm's-length transactions. The comment period on that proposal closed August 4, 1997.

Because of the substantial comments received on both proposals, MMS reopened the rulemaking to public comment on September 22, 1997 (62 FR 49460). MMS specifically requested comments on five valuation alternatives arising from the public comments. The initial comment period for that request was to close October 22, 1997, but was extended to November 5, 1997 (62 FR 55198). During the comment period MMS held seven public workshops to discuss valuation alternatives: in Lakewood, Colorado on September 30 and October 1, 1997 (62 FR 50544); Houston, Texas, on October 7 and 8, 1997, and again on October 14, 1997 (62 FR 50544); Bakersfield, California, on October 16, 1997 (62 FR 52518); Casper, Wyoming, on October 16, 1997 (62 FR 52518); Roswell, New Mexico, on October 21, 1997 (62 FR 55198); and Washington, DC on October 27, 1997 (62 FR 52518).

As a result of comments received on the proposed alternatives and comments made at the public workshops, MMS published a second supplementary proposed rule on February 6, 1998 (63 FR 6113), applicable to Federal leases only. The comment period for this second supplementary proposed rule was to close on March 23, 1998, but was extended to April 7, 1998 (63 FR 14057). MMS held five public workshops (63 FR 6887) on the second supplementary proposed rule, as follows: Houston, Texas, on February 18, 1998; Washington, DC on February 25, 1998; Lakewood,Colorado on March 2, 1998; Bakersfield, California, on March 11, 1998; and Casper, Wyoming, on March 12, 1998. In April 1998, before MMS could fully consider comments on the revised proposal and publish a final rule, Congress added a rider to a Fiscal Year 1998 emergency supplemental spending measure that barred MMS from implementing the rule until October 1, 1998.

Based on a request by Senator Breaux (Louisiana) to hold a meeting between industry and the Department of the Interior (DOI) to explain the direction DOI was going in the final rule, MMS once again opened the public comment period, from July 9 through July 24, 1998 (63 FR 36868). MMS participated in an initial meeting with various Senators and oil industry representatives on July 9, 1998.

On July 16, 1998, as a result of comments during the prior comment period and feedback from the July 9 meeting, MMS published a further supplementary proposed rule (63 FR 38355) that clarified some of the changes MMS intended to make when the proposed rule became final.

On July 21, 1998, Representatives Miller (California) and Maloney (New York) sponsored a meeting between DOI, States, the Indian community, and multiple special interest groups. In that meeting DOI received a variety of comments in support of its efforts to move forward with the rule and against some of the changes promoted by industry.

On July 22, 1998, MMS participated in a second meeting with U.S. Senators and oil industry representatives. That meeting involved further discussion of industry's issues and recommendations regarding the proposed rule. MMS immediately developed written responses to each industry issue and recommendation based on its published statements in prior proposed rules. MMS also extended the comment period for the proposed rule from July 24 until July 31, 1998 (63 FR 40073), to permit comment on the industry recommendations and MMS's responses.

On July 28, 1998, MMS and Departmental officials met with Senate staff members to further explain the content and rationale of the proposed rule. The notes from all of these

meetings were posted on MMS's Internet Homepage for interested parties to review during the comment period.

On August 31, 1998, the Assistant Secretary for Land and Minerals Management wrote a letter to members of the Senate outlining the direction the final rule might take on several of the major issues. On October 8, 1998, the President signed the FY 1999 Department of the Interior Appropriations Act that contained language extending the moratorium prohibiting MMS from publishing a final rule until June 1, 1999. On March 4, 1999, the Secretary announced a reopening of the comment period in response to requests by members of Congress and parties interested in moving the process forward to publish a final rule. The MMS published a **Federal Register** Notice on March 12, 1999 (64 FR 12267), reopening the comment period through April 12, 1999 (64 FR 17990), and announced that it would hold public workshops in Houston, Texas; Albuquerque, New Mexico; and Washington, DC to discuss specific areas of the rule. The MMS extended the comment period through April 27, 1999, to provide commenters adequate time to provide comments following the workshops.

In a supplemental appropriations bill in May 1999, Congress extended the moratorium on publishing a final rule until October 1, 1999. In the FY 2000 Department of the Interior Appropriations Act, Congress further extended the moratorium until March 15, 2000. On December 30, 1999, MMS published a further supplemental proposed rulemaking (64 FR 73820) that proposed changes and otherwise addressed comments received during the comment period that ended April 27, 1999. The comment period for the further supplemental proposed rule closed January 31, 2000. During this comment period, MMS held three public workshops on the new proposal: in Denver, Colorado on January 18, 2000; Houston, Texas on January 19, 2000; and Washington, DC on January 20, 2000. Comments received during this latest comment period are addressed in this preamble.

The February 6, 1998, proposal, as modified by the July 16, 1998, further supplementary proposed rule, the December 30, 1999 further supplementary proposed rule, and through consideration of all comments received during the rulemaking process, led to the rule adopted here.

In the following discussion, we use the conventions shown in the following table:

When we say—	We mean—
The January 1997 proposal.	The January 24, 1997, proposed rule.
The July 1997 proposal.	The July 3, 1997, supplementary proposed rule.
The September 1997 notice.	The September 22, 1997, notice reopening the public comment period.
The February 1998 proposal.	The February 6, 1998, supplementary proposed rule.
The July 1998 proposal.	The July 16, 1998, supplementary proposed rule.
The March 1999 notice.	The March 12, 1999, notice of reopening of public comment and notice of workshops.
The December 1999 proposal.	The December 30, 1999, supplementary proposed rule.

III. Responses to Public Comments on January 1997 Proposal

Summary of Proposed Rule

The January 1997 proposal retained the concept of using gross proceeds as a valid measure of royalty value, but limited the application of gross proceeds valuation to those producers who sell their production at arm's length and otherwise do not purchase crude oil. Where oil is not disposed of at arm's length, new methods would apply. For sales to non-refiner affiliates, the valuation method would be the affiliate's arm's-length resale. Alternatively, the lessee could base value on NYMEX prices or, in California, ANS spot prices. For affiliated refiners for oil not produced in California, value would be based on a monthly average of daily NYMEX settle prices adjusted for location and quality differences. For affiliated refiners in California, value would be the ANS spot price less appropriate location/quality differentials. Differentials would be derived from published data and information collected by MMS. All oil subject to exchange agreements or crude oil calls would be valued under the non-arm's-length and no-sales procedures.

The January 1997 proposal also:

- Reiterated the lessee's duty to market the produced oil at no cost to the Federal Government consistent with implied lease covenants.
- Eliminated the specific language permitting lessees to apply for use of FERC- or State-approved tariffs for transportation allowances in lieu of their actual costs.
- Required the submittal of a new Form MMS–4415, Oil Location Differential Report, to support location and quality differentials when valuing oil under the index price (NYMEX and ANS) methods.

MMS received more than 2,000 pages of comments on this initial proposed rule. The comments fell into 18 topical categories (a through r below). Each topic begins with a description of the issue and is followed by a summary of comments and MMS's response.

(a) MMS's Rationale for Proposed Rule

Summary of Comments: Twenty-seven respondents, mostly from industry, commented on MMS's premises for the proposed rules. All except one challenged the proposed rule's rationale and concepts to one degree or another. Comments were lengthy, with several commenters making similar observations. The comments had the following themes:

- MMS does not show a need to depart from existing rules or disclose any material foundation for the proposed rule. Nor does MMS show that lease markets no longer exist or that wellhead sales don't represent market value. Reciprocal or other oil-purchase transactions do not indicate that lessees are manipulating contract prices; MMS offers no proof of lessee misconduct or price collusion. MMS's consultants were allied on one side of a vigorous debate over lease market pricing.
- Index prices are not comparable to transactions in the lease market and do not reflect the same supply and demand factors. There is an active and viable lease market with many arm's-length sales to establish value.
- The limitation on arm's-length valuation is too severe and unfounded. Almost all producers buy oil for reasons unconnected with pricing schemes (*e.g.*, for lease use or blending purposes).
- It is still feasible to value non-arm's-length sales by comparison to arm's-length sales. The existing valuation rules remain workable; they provide adequate safeguards for cases where gross proceeds don't reflect total consideration.

MMS Response: MMS's reasons for issuing new rules are given in the Background section of this preamble. The need for new rules arises not only from changes in the petroleum industry's marketing practices, but also from the facts that: (1) The old rules were developed on the premise that posted prices fairly represented market value and that there were competitive local markets; (2) exchange agreements and other oil disposal transactions have become more and more problematic to use as the basis of royalty value; and (3) transactions based on spot prices, premiums above posted prices, and other index prices dominate the manner in which crude oil is sold today. For all of these reasons, the old rules were

becoming less effective in determining fair value for royalty purposes. The new rules attempt to bring the valuation procedure in step with actual market practices.

MMS does not assert that no local markets exist. Rather, due to the frequent lack of competitive local markets, there often are insufficient local arm's-length transactions to reliably determine the value of production not disposed of at arm's length. Also, the actual proceeds to the lessee often are difficult to determine due to the prevalence of exchange agreements or reciprocal purchases. In many cases, the apparent arm's-length transactions in a field or area are so limited as to be of no use in establishing royalty value. There is no need for MMS to offer proof of lessee misconduct or price collusion, because the rule's intent is simply to obtain fair, reasonable royalty values that have been difficult to obtain under the existing regulations.

(b) Use of Posted Prices

Summary of Comments:

Eighteen respondents commented on MMS's abandonment of oil postings as a measure of value. Proponents of posted prices, mainly industry commenters, maintained that oil postings were still indicative of market value because: (1) The majority of pricing provisions in oil sales contracts remain postings-related; (2) a relationship exists between NYMEX and posted prices; and (3) oil postings are used as a starting point in negotiating prices and premiums. Few commenters argued that MMS hadn't supported its claim that posted prices no longer reflect value of production at the lease. Some commenters, while still advocating posted prices, suggested that MMS resolve the problem by eliminating reference to postings in the benchmarks in its current regulations.

Opponents of posted prices, primarily State and local governmental agencies, maintained that oil postings are not a valid measure of value. To support their position, they pointed to the common payment of bonuses, or premiums, over posted prices (sometimes called the "postings-plus" market), to litigation settlements paid to make up for low postings, to actual sales of oil above posted prices, and to spot prices higher than postings.

MMS Response: By all accounts, the domestic petroleum industry generally no longer relies on posted prices to set arm's-length contract prices unless premiums are attached. Commissioned studies indicate that posted prices are artificially low and are used by oil companies largely for accounting purposes in effecting crude oil exchanges between themselves.

Continuing changes in oil market pricing further demonstrate the need for moving away from posted prices as a value determinant. For example, industry recently began to use a new pricing tool called Calendar MERC. It is calculated much like the "P-plus" price quoted in trade periodicals, and factors in assessments for both the prompt (nearest) month and the second-forward month. It is quoted as a differential off the New York Mercantile Exchange price. Although it is not clear how widely the Calendar MERC price is used at present, its development is further evidence of industry's move not only away from the direct use of posted prices in their trades, but also away from developing prices that build on posted prices in some fashion.

Further, MMS auditors have found that sales prices often are pegged to spot or futures prices. To maintain valuation procedures based on posted prices would understate the true market value of oil and diminish royalties. Consistent with the stated purposes of the proposed rule, the final rule eliminates posted prices as a measure of value.

(c) Definitions (Proposed § 206.101)

Marketing Affiliate—Summary of Comments: Two commenters recommended MMS retain the definition of "marketing affiliate" until the numerous administrative and legal actions concerning the affiliate issue are resolved.

MMS Response: MMS removed this definition because it is not used in the final rule. Under the 1988 rules, a "marketing affiliate" was defined as an affiliate of the lessee whose function was to acquire only the lessee's production and market that production. The royalty value of oil transferred non-arm's-length to the marketing affiliate then became the affiliate's gross proceeds, provided the marketing affiliate sold the oil at arm's length. Very few, if any, marketers met the strict definition of a marketing affiliate, thus making this provision of the 1988 rules almost inconsequential. The final rule adopted here does not distinguish between "marketing affiliates," as defined in 1988, and other affiliates, because the value of oil transferred to any affiliate is determined by the affiliate's ultimate disposition of that oil (or, at the lessee's option, at an index price or benchmark value as discussed later). Therefore, the term "marketing affiliate" is no longer needed.

Gross Proceeds—Summary of Comments: Two commenters recommended changing the word "must," in reference to services that must be performed at no cost to the lessor, to a more neutral term, because "must" implies that there never will be a situation where the costs of these services would be deductible. One commenter recommended that the definition include gross proceeds accruing to an entity affiliated with the lessee.

MMS Response: MMS maintains that the lessee must place production in marketable condition and market the production at no cost to the Federal Government. Legal decisions have long held that such costs are not deductible from royalty value. With respect to marketing costs, see, e.g., Walter Oil and Gas Corp., 111 IBLA 260 (1989); ARCO Oil and Gas Co., 112 IBLA 8 (1989); Taylor Energy Co., 143 IBLA 80 (1998) (motion for reconsideration pending); Yates Petroleum Corp., 148 IBLA 33 (1999); Amerac Energy Corp., 148 IBLA 82 (1999) (motion for reconsideration pending); Texaco Exploration and Production Inc., No. MMS–92–0306–O&G (1999) (concurrence by the Secretary)(action for judicial review pending, *Texaco Exploration and Production, Inc.* v. *Babbitt*, No. 1:99CV01670 (D.D.C.)). (The lessee's duty to market is discussed further below.) With respect to the costs of putting production into marketable condition, see, e.g., *Mesa Operating Limited Partnership* v. *Department of the Interior*, 931 F.2d 318 (5th Cir. 1991), cert. denied, 502 U.S. 1058 (1992); Texaco, Inc. v. Quarterman, Civil No. 96-CV–08–J (D. Wyo. 1997). It follows that any payments the lessee receives for performing such services are part of the value of the production and are royalty bearing.

The final rule extends gross proceeds valuation to any oil disposed of under an arm's-length contract, regardless of whether the seller is the lessee or its affiliate. Accordingly, there is no need to include gross proceeds accruing to an entity affiliated with the lessee in the definition.

Index Pricing—Summary of Comments: Two commenters recommended using more generic language in case the NYMEX or ANS index prices become unusable. One commenter suggested the definition specifically refer to the monthly average spot prices for ANS crude oil delivered in California.

MMS Response: The final rule modifies the index price definition to include spot prices for ANS, West Texas Intermediate (WTI) at Cushing, Oklahoma, and other appropriate spot prices. We also included a provision that if MMS determines that any of the

index prices is unavailable or no longer represents reasonable royalty value, MMS may establish value based on other relevant matters. The final rule does not use NYMEX futures prices. For applying ANS prices in California and Alaska, the valuation rules specify the daily mean spot prices published during the production month, as explained more fully below. This method does use monthly spot prices for ANS crude.

Exchange Agreement—Summary of Comments: Three commenters believed the definition of exchange agreement was too narrow. They recommended the definition be broadened to include exchanges in which the receipt and delivery take place at the same location, multi-party exchanges, transportation exchanges, net-out and other overall balancing agreements, and exchanges involving crude for products. On the other hand, one commenter believed the definition was overly broad and should be restricted to exchanges occurring at the lease.

MMS Response: MMS modified the exchange agreement definition from that originally proposed by deleting the statement that exchange agreements do not include agreements whose principal purpose is transportation (63 FR 6116, February 6, 1998). For further clarification, the definition in the final rule also includes examples of several specific types of exchange agreements. However, in the final rule we removed the examples included in the December 1999 proposal of exchanges of produced oil for futures contracts (Exchanges for Physical, or EFP) and exchanges of produced oil for similar oil produced in different months (Time Trades). These trades or exchanges involve different time periods and may not reflect reliable location/quality differentials applicable to royalty payment for a particular production month. We believe the definition in the final rule is sufficient to implement the valuation rules.

Field—Summary of Comments: One commenter pointed out that "field" has no relevance under the proposed rule and should be deleted.

MMS Response: "Field" remains a term used in the second benchmark for valuing production not disposed of under an arm's-length contract in the RMR.

(d) Gross Proceeds Valuation (Proposed Paragraph 206.102(a))

The January 1997 proposal retained the concept of using a lessee's gross proceeds to value oil sold under an arm's-length contract. However, there were five exceptions to this provision: (1) A sales contract that does not reflect the total consideration for the value of the oil; (2) a breach of the duty to market for the mutual benefit of the lessee and the lessor; (3) oil disposed of under an exchange agreement; (4) oil subject to a call; and (5) when a lessee or its affiliate purchased crude oil from a third party in the United States within a 2-year period preceding the production month. If any of these exceptions applied, value would be determined under the index pricing methods.

Summary of Comments: Forty persons commented on arm's-length gross proceeds valuation. Most commenters (primarily industry but including the States of Louisiana and Wyoming) believed the exceptions were too restrictive. Industry argued that there are active, competitive crude oil markets at the wellhead. Accordingly, arm's-length sales at the lease properly determine value. Any application of the exceptions (*i.e.*, valuation under the index price methods) would derive a different, likely higher, value. Many objected to the requirement to use the index pricing methods when oil is purchased within the 2-year period, indicating that most producers routinely buy oil for lease operations.

Two commenters indicated that gross proceeds should not be a valuation factor for any production in California, because gross proceeds have never reflected the true value of oil in that State. They also recommended that if the arm's-length gross proceeds provision remains, it be limited to non-integrated, independent producers. Another commenter believed that the gross proceeds provision should be limited to: (1) Sales by independent producers to third parties without repurchase agreements, and (2) sales by independent producers to major oil companies without repurchase or buy/sell agreements.

MMS Response: In response to the general theme of these comments, MMS modified the eligibility requirements for oil valuation under arm's-length transactions in the July 1997 proposal. Changes included: (1) The expansion of gross proceeds valuation to situations involving competitive crude oil calls; (2) the addition of the option to use gross proceeds or index pricing if the lessee exchanges its oil at arm's length and sells the oil received in exchange at arm's length; and (3) elimination of the "two-year rule" (*i.e.*, the requirement to value oil using index prices for lessees who purchase oil within a 2-year period).

To address the concern about reciprocal purchasing that MMS previously handled in the "two-year purchase provision," the July 1997 proposal added a provision that if the buyer and seller maintained an overall balance, the corresponding production would be valued under index pricing. MMS removed the language regarding overall balances as a separate, specific provision in the February 1998 proposal and in the final rule. However, oil subject to overall balance situations will be subject to audit and examined in view of paragraphs 206.102(c)(1) and (c)(2) to determine whether the prices received represent market value. The value of oil involved in overall balancing agreements thus ultimately will be the lessee's total consideration or the value determined by the non-arm's-length methods in § 206.103.

In the final rule, there are two exceptions to gross proceeds valuation, both of which are contained in the existing rule: a sales contract that does not reflect the total consideration for the value of production and a breach of the lessee's duty to market for the mutual benefit of the lessee and the lessor. (The final rule also provides the lessee the option of using the index value after one or more arm's-length exchanges, or one or more inter-affiliate transfers, even when the oil is then sold at arm's length, as discussed further below.) MMS maintains that gross proceeds under truly arm's-length sales are a reliable measure of market value. MMS does not believe that California production warrants a different valuation philosophy for arm's-length transactions.

(e) Valuing Oil Disposed of Under Exchange Agreements (Proposed Paragraph 206.102(a)(4))

In the January 1997 proposal, MMS excluded exchange agreements from arm's-length transactions because such agreements may or may not specify prices for the oil involved. Instead, they frequently specify dollar amounts only for location, quality, or other differentials. Where exchange agreements do specify prices, those prices may be meaningless because the contracting parties' concern is the relative parity in the value of oil production traded. MMS included buy/sell agreements in its definition of exchange agreements.

Summary of Comments: Thirteen respondents commented on the exchange agreement issue. Industry commenters generally objected to the inclusion of buy/sell agreements with exchange agreements, arguing instead that buy/sell agreements should be treated as arm's-length sales contracts or transportation contracts. They argued that there is often no real distinction between a buy/sell agreement, which is

treated as an exchange agreement, and a transportation agreement, which is not treated as an exchange agreement. They argued that this is particularly so in California where companies owning proprietary pipelines require independent producers to enter into a transportation agreement that looks exactly like a buy/sell agreement.

With regard to exchanges in general, State and local government agencies supported MMS's proposed exclusion of exchange agreements from arm's-length valuation, but recommended broadening the definition of exchange agreement (discussed above). Several industry commenters recommended valuing oil transferred under exchange agreements by reference to comparable sales.

MMS Response: Buy/sell agreements are vulnerable to the same flaws as other exchange agreements in which the exchange terms involve only relative differentials rather than stated unit prices. Work done by the MMS-sponsored Interagency Task Force investigating California oil undervaluation, advice from several consultants, and ongoing work by MMS auditors, led MMS to its conclusion that exchange agreements, including buy/sells, may not be reliable as value indicators. However, in the July 1997 proposal, MMS modified the valuation procedures for oil involved in exchanges. This modification permitted a choice of using either the gross proceeds from the sale of the acquired oil (provided the acquired oil is sold at arm's length) or an index price to value the exchanged oil. This option applied only to single exchanges before the arm's-length sale of the acquired oil. As discussed below in Section VI at (b), in the February 1998 proposal, MMS extended the concept of applying the gross proceeds after a single exchange to multiple exchanges, but without the option to use an index price. The final rule offers the option of using the arm's-length gross proceeds after one or multiple arm's-length exchanges, or applying the index price or benchmarks appropriate to the region where the production occurs.

MMS is not relying on a comparable sales approach, except in limited circumstances in the RMR as discussed below, primarily because of the lack of transparent markets at the lease.

(f) Crude Oil Calls (Proposed Paragraphs 206.102(a)(4) and (c)(2))

Under the January 1997 proposal, MMS did not recognize oil disposed of under a crude oil call as sold at arm's length, regardless of whether the buyer and seller are affiliated; such oil would be valued under proposed 30 CFR 206.102(c), using the index price method.

Summary of Comments: Twelve respondents commented on crude oil calls. Most commenters believed that the proposed rule was too restrictive, claiming that crude oil call agreements usually include the best price and therefore should be considered arm's-length. Commenters indicated that when calls are not exercised, the oil is sold at arm's length anyway. Two State respondents suggested that oil subject to crude oil calls should be valued as non arm's length only when the call is actually exercised.

MMS Response: MMS recognized in the July 1997 proposal that not all crude oil calls are exercised and that some calls are subject to competitive bid. In the February 1998 proposal, MMS modified the rules regarding competitive crude oil calls to accept arm's-length gross proceeds as value in these situations. In the final rule, MMS removed the language regarding noncompetitive crude oil calls as a separate, specific provision. However, oil subject to a noncompetitive crude oil call will be examined in view of paragraphs 206.102(c)(1) and (c)(2) to determine whether the prices received represent market value. The value of oil involved in a noncompetitive crude oil call thus ultimately will be the lessee's total consideration or the value determined by the non-arm's-length methods in § 206.103.

(g) NYMEX Pricing (Proposed Paragraph 206.102(c)(2)(i))

For oil produced outside California and Alaska and not sold by the lessee or its affiliate under an arm's-length contract, MMS proposed in January 1997 that value be determined as the average of the daily NYMEX futures settle prices for WTI crude oil at Cushing, Oklahoma, for the prompt month (the month following the month of production). MMS proposed NYMEX prices because they were perceived to best reflect the current domestic crude oil market value on any given day, and there is minimal likelihood that any one party could influence them. To establish royalty value, the NYMEX prices would be reduced by location and quality differentials. (See also Form MMS–4415 at m below.)

Summary of Comments: A total of 54 respondents commented on the NYMEX pricing proposal. Industry commenters unanimously opposed the idea, whereas States and other governmental agencies were divided, with some supporting the proposal and others opposing it. Opposing comments generally revolved around the asserted difference between the NYMEX market and the lease market. Comments included:

- NYMEX is a futures market that bears little relation to the market at the lease. Lease prices are driven by local supply and demand factors, not by NYMEX pricing; the NYMEX market is not synchronized with lease-market factors. NYMEX is not influenced by factors present at the lease, such as operational and transportation costs; the ease of oil futures trading gives the oil more value than it has at the lease.
- NYMEX prices are speculative and artificial. Those purchasing oil futures in the NYMEX market buy a right to obtain certain types of oil in the future at specified prices; NYMEX does not represent current sales. NYMEX is used to hedge against financial risks; only 30 percent of participants are industry, and 70 percent are speculators. Trade volumes are 10 to 20 times actual U.S. production, but only 3.1 percent of trades are carried out. NYMEX is mainly a paper market. Profits are made in successfully guessing the optimal timing of trades. Prices can be distorted by changing perceptions of risk, activities of speculators, and world events, such as wars and natural catastrophes. The settlement price is computed from transactions that occur only in the last few minutes of each day's trading.
- NYMEX-based valuation is contrary to the royalty provisions of the leasing statutes and lease terms, which require valuation at the lease at the time of production; NYMEX pricing does not provide contemporaneous valuation because the prompt month does not coincide with the production month.
- NYMEX does not represent the crude oil market in the RMR, which is driven by refinery-product prices, not the NYMEX.

One commenter suggested using adjusted spot prices instead of the NYMEX method to value production, particularly for the Gulf of Mexico.

Proponents of NYMEX pricing believed it is a valid measure of the market value of crude oil. Reasons included (1) the large volume of oil traded; (2) invulnerability to manipulation or control (however, a few of the opponents of NYMEX pricing indicated that the NYMEX market is indeed vulnerable to manipulation); and (3) the opportunity for arbitrage to mediate the differences between the values of paper barrels and actual barrels of oil.

MMS Response: The final rule does not use NYMEX as a measure of value. However, the body of evidence regarding actual marketing practices indicates that index prices play a significant role in setting contract

prices. In considering the numerous comments, MMS dropped its NYMEX pricing approach in the February 1998 proposal except for the third benchmark in valuation of crude oil produced in the newly-defined RMR and not disposed of at arm's length. In the final rule, MMS also dropped NYMEX as a valuation basis in the RMR.

For leases outside California, Alaska, and the RMR, in February 1998 MMS proposed to use spot, rather than NYMEX, prices to value oil not disposed of at arm's length. We made this change because spot prices nearly duplicate NYMEX prices when NYMEX prices are properly adjusted for location and quality differentials. Moving to spot prices at the market center thus saves one step in the adjustment of NYMEX prices back to the lease, namely the adjustment between Cushing, Oklahoma, and the market center. Spot prices are valid indicators of market value because they and similar prices play a significant role in sales contracts and they are readily available to lessees via commercial price reporting services.

For the RMR, the final rule uses the WTI spot price at Cushing, Oklahoma, adjusted for location and quality, as the third valuation benchmark for oil not disposed of at arm's length. We believe that this valuation mechanism is appropriate for the RMR because the only published spot price for this region at this point in time—at Guernsey, Wyoming—is derived from a survey of the few trades occurring at that location. The price, therefore, is not a reliable measure of value.

(h) ANS Spot Prices (Proposed Paragraph 206.102(c)(2)(ii))

For oil produced in California and Alaska and not sold by the lessee or its affiliate under an arm's-length contract, MMS proposed, in January 1997, that value be the average of the daily mean ANS spot prices for the month of production published in an MMS-approved publication. MMS chose ANS spot prices because they represent large volumes of oil delivered into the California market and used as refinery feedstock. In contrast, the other spot prices published for local California crude oil (including, for example, Kern River and Line 63), like those published for Guernsey, Wyoming, do not involve large enough volumes to justify their use for royalty valuation. To establish royalty value, the ANS spot prices would be adjusted for location and quality differentials.

Summary of Comments: Fifteen industry commenters opposed the ANS pricing proposal, while two California governmental agencies supported it. Opposing arguments included:

- The reported ANS spot prices are unreliable because transaction volumes are small; only 10 percent of ANS production is sold on the spot market, all of it by only one company.
- The ANS price quotes are indicative of the value of ANS crude delivered in waterborne cargo volumes and not of the value of California crude oils delivered by pipeline.
- The method used by the trade press to determine spot prices is unclear, and many of the transactions reported to the trade press involve buy/sell exchanges which MMS believes to be unreliable.
- The quality of ANS crude is very different from California crude. ANS crude is relatively light compared to crude oil produced in California. Much of California crude is heavy and contains heavy metals and other impurities that cause refining difficulties. Accordingly, California crude prices are discounted relative to ANS crude.

In summary, industry believed that the ANS method would not reflect the value of California crude oil. A few commenters asserted that the calculated values would be much higher than those realized in actual sales or through local spot prices.

California governmental agencies (the State and one municipality) endorsed the ANS method. They stated that ANS crude directly competes with California crude as refinery feedstock—often accounting for more than one-third of the oil refined in California—and thus should form the basis for a competitive price for California crude. In support of this, one commenter indicated that the major California oil companies evaluated the actual value of California crudes by comparing them to the ANS spot prices; this commenter concluded that the major oil companies viewed the ANS price as the market value of California crudes. The other commenter was concerned that the published ANS prices might become unavailable or fail to yield a reasonable value. This commenter recommended a safety net for ANS pricing at no less than 20 percent below the NYMEX price to guard against these situations.

MMS Response: California, and the West Coast in general, has long been recognized as a separate crude oil market isolated from the rest of the country. ANS crude is competitive with California crudes. While it may be true that only 10 percent of ANS crude is sold on the spot market, over 30 percent of the oil refined in California is ANS oil. An interagency study has found that companies engaged in buying and selling California crude oil commonly use ANS spot prices as the benchmark for determining California crude values (Final Interagency Report on the Valuation of Oil Produced from Federal Leases in California, May 16, 1996; Long Beach litigation). These companies apparently have no difficulty in adjusting the ANS prices for quality differences to derive the prices, including premia over postings, they are willing to pay for California crude oils. MMS believes ANS spot prices are a recognized benchmark for valuing California crudes and a reliable indicator of the market value of California crude oils.

Comments alleging that ANS spot prices are unreliable because ANS crude is thinly traded were analyzed for MMS by Innovation & Information Consultants, Inc. (Memorandum to MMS file, September 25, 1997). They report that it is the spot market for local California crude oils, not ANS crude, that is thinly traded and thus leads to unreliable price indices. They also report that there is a high degree of correlation between ANS spot prices and prices actually paid for California crudes. They indicate that the major oil companies in California regularly make comparisons between California crude oils and ANS with the understanding and expectation that a California crude should equate to ANS in value after accounting for location and quality differences.

(i) Duty to Market (Proposed Paragraph 206.102(e)(1))

The January 1997 proposal restated the lessee's duty to market the oil for the mutual benefit of the lessee and lessor at no cost to the Federal Government, consistent with longstanding Departmental practice and implied lease covenants.

Summary of Comments: Nineteen respondents, all representing industry, commented on the duty-to-market provision. They all opposed the provision on the following grounds:

- Downstream marketing costs enhance the value of the oil. MMS is not entitled to claim royalties on the value added by those expenses and risks incidental to downstream activities, particularly when value is determined at a marketing center downstream of the lease.
- The lessor does not share mutually in the risks inherent in downstream marketing activities; accordingly, there is no mutual benefit when one party bears all the costs and risks.
- There is no legal foundation supporting a no-cost duty to market when the point of royalty determination

is moved to a downstream market center.

• Placing production in marketable condition (physically conditioning the production for market) is separate from a duty to market; lease terms do not require the lessee to market the production at no cost to the lessor.

MMS Response: It is a well-established principle of oil and gas law that lessees have the obligation to market lease production for the mutual benefit of the lessee and lessor, without deduction for the costs of marketing. See, e.g., Walter Oil and Gas Corp., 111 IBLA 260 (1989); Arco Oil and Gas Co., 112 IBLA 8 (1989); Taylor Energy Co., 143 IBLA 80 (1998) (motion for reconsideration pending); Yates Petroleum Corp., 148 IBLA 33 (1999); Amerac Energy Corp., 148 IBLA 82 (1999) (motion for reconsideration pending); Texaco Exploration and Production Inc., No. MMS–92–0306–O&G (1999) (concurrence by the Secretary) (action for judicial review pending, *Texaco Exploration and Production Inc.* v. *Babbitt*, No. 1:99CV01670 (D.D.C.)).

In the context of Federal leases, the D.C. Circuit referred to this implied lease covenant many years ago in *California Co.* v. *Udall*, 296 F.2d 384, 387 (D.C. Cir. 1961), stating that "the lessee was obliged to market the product." The duty to market at no cost to the lessor is not unique to Federal leases. See, e.g., Merrill, Covenants Implied in Oil and Gas Leases (2d Ed. 1940), section 84–86 (Noting "[n]o part of the costs of marketing or of preparation for sale is chargeable to the lessor"); "Direct Gas Sales: Royalty Problems for the Producer," 46 Okla. L. Rev. 235 (1993); *Amoco Production Co.* v. *First Baptist Church of* Pyote, 579 S.W.2d 280 (Tex. Civ. App. 1979), writ ref'd n.r.e., 611 S.W.2d 610 (Tex. 1981), and cases cited in these authorities.

This duty to market means that the lessee must act as a prudent marketer. The duty to market is an implied covenant of virtually all oil and gas leases, whether the leases are private, Federal, or State leases. MMS as lessor has never shared in the "risks" of marketing and has never allowed deductions from royalty value for marketing costs. This rulemaking makes no change to the lessee's duty to market.

The decisions cited above establish several principles. First, the lessee has an implied duty to prudently market the production at the highest price obtainable for the mutual benefit of both the lessee and the lessor. The creation and development of markets is the essence of that obligation, as the IBLA expressed it ten years ago in Arco Oil and Gas Co., supra:

> The creation and development of markets for production is the very essence of the lessee's implied obligation to prudently market production from the lease at the highest price obtainable for the mutual benefit of the lessee and lessor. Traditionally, Federal gas lessees have borne 100 percent of the costs of developing a market for gas. Appellant has cited no authority, nor do we find any, which supports an allowance for creation and development of markets for the royalty share of production.

112 IBLA at 11.

Because of industry's repeatedly-expressed concerns in the comments and workshops, MMS emphasizes that this does not imply that lessees are somehow prohibited from marketing at the lease and must market production "downstream." Lessees may market at the lease without breaching the duty to market. However, if a lessee chooses to market downstream, the choice to do so is for the mutual benefit of itself and the lessor, and does not affect the lessee's relationship to the lessor. The choice to market downstream does not make marketing costs deductible or permit the lessee to disregard part of the sales price obtained at a downstream market.

In addition, lessees have always borne all of the marketing costs. The Department has not knowingly permitted an allowance or deduction from royalty value for marketing costs. As the Board held a decade ago in Walter Oil and Gas Corp., supra:

> The only allowances recognized as proper deductions in determining royalty value are transportation allowances for the cost of transporting production from the leasehold to the first available market, which has been considered a relevant factor pursuant to 30 C.F.R. 206.150(e) * * * and processing allowances for processed gas authorized by 30 C.F.R. 206.152(a)(2) (1987). * * * Walter's unsupported assumption that it is somehow entitled to deduct its marketing costs from royalty value fails in the face of contrary regulatory requirements * * *.

111 IBLA at 265.

Lessees may deduct from value only those costs allowed by the regulations, especially in light of the gross proceeds minimum value requirement. The only deductible costs are transportation costs and, in the case of "wet" gas with heavier entrained liquid hydrocarbons, processing costs.

Further, marketing costs are not deductible, regardless of whether the lessee bears them directly or transfers the marketing function or costs to a contractor or an affiliate.

Moreover, the fact that marketing arrangements enhance the lessee's ability to obtain a higher price does not imply that marketing costs are deductible. It also follows that a lessee may not deduct or disregard for royalty purposes the additional benefits it gains or value it receives through obtaining a higher price through its marketing skill or expertise. If the lessee manages to obtain a higher price for its oil through skillful marketing efforts, that higher price is the minimum royalty value under the gross proceeds rule.

At the same time, the location of the market at which the lessee chooses to sell its production does not change the lessee's obligation. Much of industry's opposition to the duty-to-market provision in the proposed and final rules revolves around the argument that when royalty value is based on the sale of production at a downstream location, the downstream transportation, risks, and related services add more value to the oil than is reflected in the transportation allowances (or location differentials) MMS permits.

The industry commenters' argument is contrary to established principles and uniform longstanding practice. Valuation based upon a "downstream" sale or disposition of production has been commonplace for many years. For sales at distant markets, the lessee is entitled to an allowance for transportation costs, but not for marketing costs. Sales away from (or "downstream" from) the lease often are the starting point for determining royalty value, and the costs of transportation always have been allowed in order to ascertain value at or near the lease. A lessee who transports production to sell it at a market remote from the lease or field is entitled to an allowance for the costs of transportation. See 30 C.F.R. 206.104, 206.105 (crude oil), 206.156 and 206.157 (gas) (1988–1997). Before the 1988 regulations, transportation costs were allowed under judicial and administrative cases. See, e.g., *United States* v. *General Petroleum Corp.*, 73 F. Supp 225 (S.D. Cal. 1946), aff'd, *Continental Oil Co.* v. *United States*, 184 F.2d 802 (9th Cir. 1950); *Arco Oil and Gas Co.*, 109 IBLA 34 (1989); *Shell Oil Co.*, 52 IBLA 15 (1981); *Shell Oil Co.*, 70 I.D. 393, 396 (1963).

An illustrative example is *Marathon Oil Co.* v. *United States*, 604 F. Supp.. 1375 (D. Alaska 1985), aff'd, 807 F.2d 759 (9th Cir. 1986), cert. denied, 480 U.S. 940 (1987). In that case, Marathon produced natural gas from Federal leases in Alaska, and sold it in Japan after overseas transportation in liquid form by tanker. The court held that MMS properly deducted Marathon's costs of transportation (including liquefaction) from the sales price in

Japan to derive the royalty value (gross proceeds) at the lease.

Indeed, transportation allowances have been common for decades precisely because the initial basis for establishing value often is a "downstream" sales price. Industry's argument that MMS is somehow improperly trying to "tap into" the benefits industry derives from its marketing expertise clouds the real issue. If a lessee can obtain a better price by selling away from the lease, then it will do so. How the lessee markets its production is its decision. The lessor is entitled to its royalty share of the total value derived from the production regardless of how the lessee chooses to dispose of it. The United States as lessor always has shared in the "benefit" of "downstream" marketing away from the lease, and has allowed deductions for the cost of transportation accordingly.

Moreover, these principles do not change in the event that a wholly-owned or wholly-commonly-owned affiliated marketing entity buys other production at arm's length from other working interest holders in the field at the same price it pays to its affiliated producer. The industry wants to limit royalty value to supposedly "comparable" sales at the lease even when the lessee receives a higher price for its production. In effect, industry wants to force MMS to adopt a "lowest common denominator" theory of valuation—*i.e.*, the price at which any production is sold at arm's length at the lease will be the value of production initially transferred non-arm's-length, even if the latter production nets a higher price in the open market. That position is incorrect for several reasons.

First, it would enable a lessee whose enterprise realizes more proceeds or greater value for its production than some other producers in the field to avoid paying royalty on part of those proceeds. If the lessee sells downstream, its gross proceeds are the higher price realized on the sale downstream, minus the lessee's transportation costs, regardless of the fact that other producers sold for less. The industry's position is directly contrary to *Marathon Oil Co.* v. *United States, supra.* If the lessee first transfers to a wholly-owned or wholly-commonly-owned affiliate who then resells at arm's length downstream, it is still true that the producing entity could have sold its production at the point and at the price its affiliate did, instead of using the wholly-owned affiliate arrangement. It is perfectly proper to value the production of a producer who markets through a wholly-owned affiliate at a higher level than the production that other producers sell at arm's length in the first instance, when the production marketed through the wholly-owned affiliate commands a higher price. Indeed, this is the very situation which the Third Circuit correctly anticipated in *Shell Oil Co.* v. *Babbitt,* 125 F.3d 172 (3d Cir. 1997).

Further, the industry's position would create an incentive for a lessee to sell some small percentage of its production at the lease at arm's-length for a lower price so that it can pay royalty on the rest of its production at that price. Such a result is contrary to the intent and meaning of the gross proceeds rule.

MMS agrees that the duty to market production for the mutual benefit of the lessee and the lessor at no cost to the lessor is not the same as the lessee's duty to put production into marketable condition at no cost to the lessor. However, the fact that the two duties are not identical does not support the industry commenters' position. The decision of the Secretary and the Assistant Secretary for Land and Minerals Management in Texaco Exploration and Production Inc., supra (at pp. 16–19), discusses the relationship of the two duties, and MMS adopts the reasoning of that decision in response to the commenters' argument.

(j) Differentials (Proposed Paragraph 206.105(c))

When value is based on index pricing, certain location and quality differentials are required to adjust the value of the oil at the index pricing point to obtain royalty value of the oil produced from the lease. The January 1997 proposal applied location and quality differentials to adjust the value between (1) the index pricing point and the appropriate market center and (2) the market center and the aggregation point. The first differential was the difference between the average spot prices for the respective crude oils at the index pricing point and at the market center. The second differential was either an express differential under an arm's-length exchange agreement relative to the market center/aggregation point pair or a differential calculated and published by MMS for the market center/aggregation point pair. MMS would have determined the latter differential from information reported on Form MMS–4415.

The location differentials reflect the relative differences in the value of crude oil delivered at different locations; they are not transportation cost allowances. Under the January 1997 proposal, the lessee would use transportation allowances to adjust the value of the crude oil from the aggregation point (or market center) to the lease. Comments on transportation allowances are addressed elsewhere in this preamble.

Summary of Comments: Thirty-one respondents commented on differentials. Comments generally fell into two categories:

(1) The differentials would be 1 year out of date and would not reflect market conditions at the time of production. They particularly ignore the dynamic supply and demand processes that operate on daily and seasonal bases.

(2) The differentials would not adequately adjust for quality differences between the lease and the index pricing point because of commingling. There is no gravity adjustment between the lease and the aggregation point.

In sum, many commenters believed that the differentials would not capture the value of oil produced at the lease. Other comments included:

- Differentials do not recognize all transportation costs or value added from blending, aggregation, storage, and other marketing services.
- Aggregation points with limited transactions will give statistically invalid differentials.
- Exchange agreements may not provide all the needed data or specify which lease(s) the oil came from.
- Differentials might be calculated from inaccurate and unreliable data, particularly with regard to selecting "alternative disposal points."
- Gathering is not adequately addressed in the calculation of differentials.
- Spot prices represent marginal barrels (small volume) to make up for refinery needs; they do not reflect the price differences between the market centers and index pricing points.
- For California, a comparison of ANS spot prices and field spot prices captures more than the price difference attributable to location. Furthermore, where spot prices are reported for a field rather than an aggregation point, and the exchange reflects a transfer at the lease or field, the differential would permit a lessee to recover the cost of transporting to an "aggregation point" twice.

MMS Response: In the final rule, in response to the various comments, MMS modified the previous proposals governing differentials by:

(1) Eliminating MMS-published differentials because MMS believes that lessees that would be subject to index pricing generally will have sufficient information to accurately determine location/quality differentials, with relatively rare exceptions. As a result of eliminating MMS-published differentials, the proposed Form MMS–4415 is not part of the final rule.

Because MMS is not requiring the proposed form, it is not necessary to address the extensive comments MMS received regarding the content and timing of the form.

(2) Eliminating the location differential between the index pricing point and the market center because using spot market prices has made the index pricing point and market center the same.

(3) Recognizing separate quality adjustments to reflect the differences between the oil produced from the lease and the oil at the market center or refinery or other alternate disposal point, or between intermediate exchange points. Those quality adjustments specified in exchange agreements will automatically account for those differences in quality.

Other appropriate quality adjustments would be based on pipeline quality bank specifications and related premia and penalties. MMS believes these changes will permit determination of reasonable and proper differentials.

(k) Requiring Use of Actual Transportation Costs (Amended Paragraphs 206.105 (b) and (g))

Aside from new rules at proposed paragraph 206.105(c) addressing differentials and transportation allowances under the proposed index pricing methodology, MMS's other change to the transportation allowance rules in the January 1997 proposal was the proposed deletion of existing paragraph 206.105(b)(5). That paragraph allows those lessees with non-arm's-length or no transportation agreements to apply for an exception from the requirement to compute their actual transportation costs and instead use a FERC- or State-approved tariff. Deleting this paragraph would remove the exception and require lessees to use actual transportation costs in all cases.

MMS also proposed to amend existing paragraph 206.105(f) (proposed to be redesignated as paragraph 206.105(g)), which disallows deductions for actual or theoretical losses. MMS made this change to be consistent with the deletion of paragraph 206.105(b)(5). In the final rule, the language addressing actual or theoretical losses appears at new § 206.118.

Summary of Comments: Sixteen respondents commented on the proposed change. Three commenters supported removing the exception, stating that actual costs better reflect a netted back value and that tariffs are not reviewed to determine their reasonableness.

The remaining commenters contended that FERC tariffs remain a viable measure of transportation costs in non-arm's-length movements. They argued that it is discriminatory to treat affiliated producers, who would have to use their transporting affiliate's actual costs, differently from non-affiliated producers, who may pay a FERC tariff as their arm's-length transportation cost. They particularly asserted that line losses should be an allowable cost to be comparable with costs included in FERC tariffs.

MMS Response: MMS has deleted this provision in the final rule because it continues to believe that doing so results in allowances better reflecting lessees' actual transportation costs. There is no discrimination between producers with transportation affiliates who must use their calculated actual transportation costs and non-affiliates who may apply a FERC tariff as their arm's-length transportation cost. In both instances the parties would be deducting their actual, reasonable transportation costs. Consistent with this concept, the final rule permits a deduction for oil transportation resulting from payments (either volumetric or for value) for actual or theoretical losses only under an arm's-length contract.

(l) Transportation Cost Allowances for California and Alaska (Proposed Paragraph 206.105(c)(3)(ii))

As initially proposed in January 1997, the determination of differentials and transportation allowances depends on whether the oil is (1) disposed of under an arm's-length exchange agreement with an express location differential; (2) moved directly to an alternate disposal point, such as a refinery; or (3) moved directly to a market center. For oil moved directly to an alternate disposal point, proposed paragraph 206.105(c)(3)(ii), and, similarly, proposed paragraph 206.105(c)(2)(ii), permitted deduction of a transportation allowance based on the actual costs of transporting the oil between the lease and the alternate disposal point. In addition, this section permitted deduction of a location differential, calculated as the difference between the average published spot price at the aggregation point nearest the lease and the spot prices for ANS crude at the associated market center/index pricing point.

Summary of Comments: Two commenters noted that this provision may allow for substantial "double dipping" of transportation cost deductions. They indicated that spot prices reflect in part the cost of moving the crude from the aggregation point to the market center. If transportation to the alternate disposal point bypasses an aggregation point, the lessee is allowed to deduct its actual transportation costs plus a location differential, which, having been computed from spot prices, has imbedded transportation costs. The transportation allowance thus will double the deduction for the location differential between the lease and the market center.

They also asserted that the proposed rule did not restrict the location of the alternate disposal point relative to the lease, meaning that crude could be shipped cross country and have a substantial transportation deduction. They recommended that MMS limit the maximum transportation cost deduction to no more than the cost of moving the crude by pipeline from the lease to the nearest market center.

MMS Response: Sections 206.105(c)(2)(ii) and (c)(3)(ii) of the January 1997 proposal were modified and reproposed as §§ 206.112 and 206.113 in the February 1998 proposal, which are now adopted as § 206.112 in the final rule with changes discussed below. In the final rule, if a lessee or its affiliate transports lease production directly to an alternate disposal point, it may adjust the index price for the actual costs of transportation under § 206.110 or § 206.111. The lessee must also adjust the index price for quality based on premia or penalties determined by pipeline quality bank specifications. This will not result in the "double-dipping" with which the commenter was concerned. The final rule also includes a provision at § 206.112(g) that prohibits a lessee from using any transportation or quality adjustment that duplicates all or part of any other adjustment, thus eliminating any possibility of double deduction for the location differential between the lease and the alternate disposal point or market center. MMS believes that as a practical matter, alternate disposal points will be reasonable distances from the lease and that no cost limits (beyond the 50 percent limit contained in this final rule at § 206.109(c)) are necessary.

(m) Form MMS–4415 (Proposed Paragraph 206.105(d)(3))

Under the January 1997 proposal, all lessees and their affiliates annually would have to submit proposed Form MMS–4415, Oil Location Differential Report, to enable MMS to calculate location and quality differentials under the index pricing methods. As originally proposed, information would be collected for all leases—Federal, State, private, and Indian. MMS would use the reported data to calculate and publish

acceptable differentials between market centers and aggregation points.

Summary of Comments: Twenty-eight respondents commented on the proposed form. Most comments were negative and revolved around the added cost and administrative burden of preparing the reports; many comments questioned the accuracy of the calculated differentials. Comments included:

- Data collection is time consuming, burdensome, and costly.
- The reporting requirement violates the Paperwork Reduction Act.
- MMS's cost and time estimates are inadequate. They do not reflect the actual time needed to acquire the data and complete the report; nor do they reflect the costs of systems or accounting changes needed to comply with the reporting requirement.
- Annual differentials do not reflect daily or seasonal market changes (*i.e.*, current market conditions); therefore, the differentials will be inaccurate and constantly out of date.
- Multiple crude oil grades exchanged at a given aggregation point, and other factors, mask the true value in exchange agreements.
- Transporting crude oil from the lease to a market center may involve multiple transportation segments and exchanges, thus compounding the data collection and reporting burden.
- MMS does not have the authority to collect information on non-Federal leases.
- Instructions are ambiguous or incomplete; for example, who completes the form when the payor is not the lessee, what 12-month period is used, and when is a report required when different exchange agreements apply to a lease in different months?
- The method of calculating the differentials is not clear, and industry will not be able to verify results because the information is proprietary.
- The information does not reflect exchanges that occur at the wellhead.
- The information may be duplicative and misrepresentative, such as when two payors report the same exchange.
- Determining what contracts contain crude oil calls might require considerable research, since reporting parties may not know when a call provision has been exercised.

One State recommended that instead of requiring Form MMS–4415 to calculate a transportation differential, MMS should publish a rate based on the lowest FERC tariff for which a significant amount of crude oil moves from the aggregation point to the market center. This State also recommended that information collection be limited to exchanges at the lease and market center, thus eliminating the need to calculate differentials to and from the aggregation point.

MMS Response: In the final rule, MMS will not publish location/quality differentials because MMS believes that lessees generally will have sufficient information to accurately determine them, with relatively rare exceptions. If a lessee disposes of its oil through one or more exchange agreements, it ordinarily should have the information necessary to determine adjustments to the index price. As a result of eliminating MMS-published differentials, the proposed Form MMS–4415 is not part of the final rule. Because MMS is not requiring the proposed form, it is not necessary to address the extensive comments MMS received regarding the content and timing of the form.

If the oil is not disposed of through exchange agreements, then the lessee is physically transporting the oil either to a market center or to an alternate disposal point (such as a refinery.) In that event, the lessee will have the necessary information regarding actual transportation costs to claim the appropriate transportation allowance.

(n) Sale of Federal Royalty Oil (Proposed Paragraph 208.4(b)(2))

In the January 1997 proposal, MMS proposed to tie the royalty-in-kind (RIK) valuation to the index pricing provisions of 30 CFR 206.102(c)(2). MMS believed this change would provide certainty in pricing for buyers and simplify reporting for producers.

Summary of Comments: Aside from the numerous commenters that recommended MMS take all its royalty in kind and market it, five respondents provided comments relevant to the proposed regulatory change. Comments included:

- The rules should allow RIK refiners to opt in and out of contracts without terminating the contracts.
- Index pricing does not provide an incentive to RIK refiners because they can buy cheaper crude under long-term contracts. Arm's-length prices should be used for royalty value.
- RIK refiners need assurance they will not be liable for retroactive price provisions, and that the price invoiced is final and not subject to later revision; producers should be liable for any adjustments.
- RIK refiners should be billed for actual volumes delivered, not produced; MMS should penalize the producer for not delivering the RIK volume.
- RIK refiners should receive value and volume information at the same time as MMS.

One commenter recommended scrapping the RIK program because it is too difficult and costly to administer.

MMS Response: In the February 1998 proposal, MMS decided not to proceed with the proposal to modify the RIK valuation procedures. Instead, MMS decided to establish future RIK pricing terms directly within the RIK contracts. Therefore, this issue is not part of this rulemaking.

(o) Added Administrative and Economic Burdens

Summary of Comments: Twenty-five commenters thought the proposed rules would create a considerable administrative burden and add additional costs for both industry and MMS. Many comments were on the preparation of Form MMS–4415. They indicated that acquiring and compiling the needed information would take much longer than MMS's estimate of 15 minutes. (One commenter estimated 2 hours per form.) Other comments indicated there would be additional costs due to new accounting systems, new software, and additional personnel needed to administer the new rules, both for industry and MMS. A few commenters speculated that the added costs to producers, particularly small producers, might force abandonment of marginal wells or investment in other areas.

MMS Response: As discussed previously, MMS eliminated Form MMS–4415 in the final rule. We discuss other administrative costs in Section XI of this preamble.

(p) Fairness, Procedural Conduct, and Workability

Summary of Comments: Thirty-three industry respondents opposed as inequitable the valuation methods of the January 1997 proposal for oil not sold at arm's length. Their comments revolved around the index pricing method and had the following themes:

- The leasing acts and lease terms require valuation at the lease. MMS exceeds its statutory authority by implementing a valuation method away from the lease without recognizing all the downstream value-added costs and risks (such as marketing costs) as deductions. This overstates the value of production at the lease and creates "phantom income" to which MMS is not entitled. (Some commenters believed the index pricing method was tantamount to price fixing.)
- The proposed rule has dual standards. It discriminates between

similarly-situated lessees by requiring the integrated lessee to base value on a different methodology. It disqualifies many producers from using their gross proceeds as value when they engage in exchanges or oil purchases.

• The proposed rule is contrary to the deepwater royalty reduction program.

• The index-pricing method might force RIK refiners into paying higher prices.

Some commenters believed that MMS failed to articulate a factual basis for its conclusion that arm's-length transaction prices are no longer valid indicators of value. They also argued that MMS had not provided sufficient time for industry to analyze and comment on the proposed rule and claimed that MMS had not complied with the Unfunded Mandates Reform Act, the Paperwork Reduction Act, Executive Order 12630, or Executive Order 12866. Some commenters believed that the proposed rule is extremely complex and difficult to implement.

MMS Response: As indicated in the Background section of this preamble, the reason for this rulemaking is to assure that royalties are based on market values. The modifications adopted in this final rule strengthen the market value concept for royalty valuation.

The final rule maintains the concept of using a lessee's gross proceeds to value production sold at arm's-length. However, most Federal oil is disposed of under other than arm's-length conditions. Different standards historically have existed for dispositions not at arm's length, because such transactions are not reliable indicators of what parties will do in a competitive market. Contract prices between affiliated entities may be influenced by many factors other than market forces.

MMS also notes that the governing statutes and lease terms give the Secretary the authority to establish royalty value. The Mineral Leasing Act of 1920 (MLA), as amended numerous times, authorizes the Secretary to prescribe necessary and proper rules and regulations to carry out the purposes of the MLA. The Outer Continental Shelf Lands Act of 1953 (OCSLA), as amended, requires the Secretary to administer the provisions of the OCSLA relating to the leasing of the OCS, and authorizes the Secretary to prescribe such rules and regulations as may be necessary to carry out such provisions. Further, the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) reemphasized the Secretary's royalty management authorities and responsibilities for Federal, OCS, and Indian oil and gas leases. Section 301(a) of FOGRMA, 30 U.S.C. 1751(a), says "The Secretary shall prescribe such rules and regulations as he deems reasonably necessary to carry out this Act."

Also, the royalty clauses of Federal oil and gas leases say that the Secretary of the Interior may establish reasonable minimum royalty values (considering highest prices paid for part or a majority of like-quality production in the same field, prices received by the lessee, posted prices, and other relevant matters, and, whenever appropriate, after notice and opportunity to be heard). Thus, MMS believes this rulemaking effort complies with both the letter and spirit of the statutes and lease terms.

MMS addressed the Unfunded Mandates Reform Act, the Paperwork Reduction Act, Executive Order 12630, and Executive Order 12866 in the February 1998 proposal and does so again in Section XI of this preamble.

(q) Interim Final Rule

MMS indicated that it might publish an Interim Final Rule while it evaluated the methodology in the proposed rule. This approach would provide the flexibility to do a revision after the first year without a new rulemaking.

Summary of Comments: Twenty respondents commented on this approach. All commenters opposed the issuance of an Interim Final Rule, indicating that such a rule would be overly costly and burdensome to both industry and MMS, especially if MMS later changed the valuation standards.

MMS Response: MMS has abandoned the notion of an Interim Final Rule for this rulemaking and is publishing a Final Rule instead.

(r) Alternatives

Summary of Comments: Fifty commenters suggested one or more alternatives to the proposed rules. The leading alternative by far was the recommendation that MMS take and market its royalty share in kind. Other alternatives revolved around modifying the existing non-arm's-length valuation benchmarks.

Almost all industry commenters and some State commenters recommended that MMS expand its current RIK program. Two industry trade organizations indicated that MMS would benefit from an RIK program thus ending valuation controversies. MMS would further benefit by earning the higher rewards that the market holds for successful risk-takers. Several commenters recommended that MMS model its RIK program after that of Alberta, Canada. One State suggested using RIK sales to determine marketing/location differentials and to obtain comparable sales information to value oil not disposed of at arm's length. Commenters generally believed that an RIK program would be less burdensome on industry, would reduce MMS's administrative costs, and would ensure proper valuation. Some suggested that MMS auction the RIK oil at the lease to gain the best price.

Several commenters suggested revising the existing non-arm's-length valuation benchmarks to eliminate reliance on posted prices but still maintain benchmarks. Besides deleting references to posted prices, suggestions included arranging the benchmarks as follows:

• Prices received by the lessee under other comparable arm's-length transactions in the same field or area, including prices bid in response to tendering programs.

• Arm's-length prices received by others in the field.

• Prices from nearby fields within an area acceptable to MMS.

• Prices received by MMS, adjusted to the lease, from its sales of RIK oil from the field.

• A netback method, perhaps based on index prices, adjusted back to the lease.

One industry commenter suggested using the average of posted prices to establish the benchmark value. One State commenter indicated that netting back is the only valid indicator of market value for integrated companies.

MMS Response: MMS does not believe that taking all Federal oil in kind is in the best interests of the American public or that such a program would enhance royalties. MMS already has the authority under existing law and lease agreements to take royalty in kind when it would be beneficial to the taxpayer. We believe it would be a mistake to require all Federal oil to be taken in kind. For example, the taking of de minimus production in remote areas could lead to substantial revenue losses. MMS intends to continue its existing royalty-in-kind programs to determine where and how it can most effectively use its authority to take royalties in kind. This will result in the best overall return to the American public.

Several of the suggested revisions to the non-arm's-length valuation benchmarks revolve around finding comparable sales transactions. But commenters have not demonstrated the consistent existence or availability of such transactions for volumes sufficient to use for royalty valuation. To the contrary, MMS believes that nationwide about two-thirds of crude oil production

is disposed of non-arm's-length. As previously mentioned, the general lack of competitive and transparent markets at the lease makes the attempt to find comparable sales transactions far inferior to the use of index prices. The RMR, where reliable spot prices are not readily available, is an exception—about two-thirds of crude oil produced there is sold at arm's length. In addition, this proposal has substantial practical difficulties since companies are not privy to comparable sales transactions and such information available to MMS is unaudited for current periods. The final rule thus primarily uses index prices, adjusted for location and quality, to establish value for oil not sold at arm's length. As indicated above, MMS has concluded that posted prices no longer reflect market value, so any scheme using posted prices would not accomplish the goal of this rulemaking.

General Comment—MMS Consultants. Aside from the topical categories discussed above, we received several comments throughout the rulemaking process that MMS relied too heavily on reports by consultants with predisposed positions. However, in developing this rule, MMS sought out the best experts available to advise it on the petroleum market. These experts provided MMS with valuable information on current and past marketing practices. Further, analyses of the industry consultants' comments by MMS's consultants (Review of Selected Technical Reports on MMS's Proposed Federal Oil Rule and Supplemental Rule, Innovation & Information Consultants, Inc., September 25, 1997) suggest that many arguments have multiple perspectives and are equivocal. MMS appreciates these different viewpoints and considered them in deliberating on this rulemaking.

IV. Responses to Public Comments on July 1997 Proposal

Summary of Proposed Rule

The primary purpose of the July 1997 proposal was to revise the eligibility requirements for oil valuation under arm's-length transactions. (See (b) below.) Specifically, the supplementary proposal:

- Expanded gross proceeds valuation to dispositions involving competitive crude oil calls,
- Extended index pricing valuation to "overall balance" situations,
- Deleted the requirement to value oil using index prices for lessees who purchased oil in the last 2 years, and
- Added language to value oil subject to a single exchange agreement under either the arm's-length gross proceeds accruing after the exchange or the index pricing method.

MMS also asked for further comments on collecting information on proposed Form MMS–4415 and reopened the comment period on the January 1997 proposal.

We received over 270 pages of written comments from 27 entities, including independent oil and gas producers, major oil and gas companies, petroleum industry trade associations, States, a municipality, consultants, and futures market representatives. Comments fell into 11 topical categories ((a) through (k) below). Many of the respondents reiterated or expanded on the same comments made on the January 1997 proposal.

(a) Posted Prices

Summary of Comments: Two respondents submitted further comments on posted prices. Both agreed that posted prices no longer reflect market value. One commenter cautioned, however, that any use of gross proceeds to establish value (specifically in California) will result in royalties being paid on posted prices, since most outright sales contracts are tied to posted prices.

MMS Response: For the reasons expressed in sections I and III(b), the final rule eliminates posted prices as an indicator of crude oil value for royalty purposes. However, MMS still believes that, even in California, proceeds received by a lessee or its affiliate under an arm's-length contract represent market value. Only when oil is not sold at arm's length is it necessary to look to other reliable indicators to determine value.

(b) Revisions to Arm's-length Valuation Criteria (Revised Proposed Paragraphs 206.102(a)(4) and (a)(6))

Based on comments that the proposed rule overly restricted the use of arm's-length gross proceeds as royalty value, the July 1997 proposal expanded the arm's-length valuation criteria in proposed paragraph 206.102(a)(4) by reducing the exclusions to only those situations involving (1) a sales contract that does not reflect the total consideration for the value of production, (2) a breach in the duty of the lessee to market production for the mutual benefit of the lessee and the lessor, (3) certain exchange agreements, (4) non-competitive crude oil calls, and (5) maintenance of overall balances between buyer and seller. For oil disposed of under a single arm's-length exchange agreement, MMS offered two options (revised proposed paragraph 206.102(a)(6)): (1) the index pricing method, or (2) the gross proceeds received in an arm's-length sale of the oil acquired in the exchange. MMS also deleted the requirement that lessees use the index pricing method if they purchase oil within 2 years preceding the production month, commonly referred to as the "two-year rule" which was initially proposed as paragraph 206.102(a)(6).

Summary of Comments—MMS Assumptions and Rationale: Sixteen respondents commented on MMS's underlying assumptions and rationale leading to the proposed revisions. Some thought the changes were in the right direction but, along with other commenters, believed the overall concept of index pricing and valuation away from the lease remained flawed because of the prevalence of active lease markets. A few commenters noted that the index pricing method is not applicable to Rocky Mountain oil because this oil stays in the RMR and its prices are not influenced by NYMEX trades.

MMS Response: As discussed in Section III(g) and (h), index prices are often used in the negotiation of sales and settlement prices. They provide a reliable indicator of market value when oil is not sold at arm's length. For the RMR, however, the final rule contains a series of benchmarks for valuing oil not sold at arm's length. The first two of these benchmarks are not related to index prices. The third of these benchmarks is an index price—the Cushing, Oklahoma, spot price for WTI (adjusted for quality and location). MMS selected that price because it is closest to most of the RMR and is used in some exchange agreements involving oil produced in that region. However, under paragraph 206.103(b)(5) of the final rule, if the lessee believes that the first three benchmarks do not result in a reasonable value for its production, the MMS Director will establish an alternate valuation method.

Summary of Comments—Overall Balance: One commenter believed the restriction on "overall balances" (proposed paragraph 206.102(a)(4)(ii)) is based upon an unproven and faulty assumption that reciprocal dealings are anti-competitive. Three commenters questioned the meaning of "market value in the field or area" regarding the limitation on overall balances. They believed the inclusion of this phrase would create confusion and litigation because despite the requirements to use index pricing in overall balance situations, companies might reason that the contract price nonetheless represents market value. Two commenters feared that MMS's use of

this phrase would open the door to the use of a comparable sales methodology, which they opposed. One commenter recommended that MMS modify the regulatory language on overall balance situations to provide:

1. That index-based value be used where the arm's-length contract is subject to an informal or formal overall balance agreement maintained between the buyer and seller.

2. That there is a rebuttable presumption that an overall balance arrangement exists where the lessee has purchased oil (or gas or other gas or petroleum-related products) from its buyer within the last 2 years.

3. That the rule does not apply for oil purchased to meet production shortfalls or for lease operations.

Four commenters thought that a new certification to verify that a lessee is not maintaining an "overall balance" with its purchaser is unnecessary because Form MMS–2014 already certifies that values are true and accurate. They also suggested that "overall balance" be defined.

MMS Response: MMS removed the language regarding overall balances as a separate, specific provision in the February 1998 proposal and in the final rule. However, oil subject to overall balance situations will be examined in view of paragraphs 206.102(c)(1) and (c)(2) to determine whether the prices received represent market value. The value of oil involved in overall balancing agreements thus ultimately will be the lessee's total consideration or the value determined by the non-arm's-length methods in § 206.103.

Several commenters said in response to the February 1998 proposal that removing the overall balance provision and relying on MMS to find such agreements put an undue burden on MMS. They further stated that MMS would have great difficulty verifying the existence of such agreements. We continue to believe, however, that verification of overall balancing arrangements, and appropriate follow up, is best left to audit and the provisions of paragraphs 206.102(c)(1) and (c)(2).

Summary of Comments—Two-Year Rule: Two commenters opposed MMS's deletion of the "two-year rule." One commenter argued that deleting this rule will cause difficult compliance problems because of the difficulty in tracing all two-party transactions and in determining the existence of overall balancing arrangements, many of which may be informal. To address the concerns of independent producers, two commenters recommended the 2-year rule be modified to exclude purchases of minimal amounts of crude oil for lease operations or to make up production shortfalls.

MMS Response: As discussed in Section III(d) above, MMS removed the 2-year rule because it was overly restrictive.

(c) Crude Oil Calls (Revised Paragraph 206.102(a)(4)(iii))

For oil disposed of under a crude oil call, the July 1997 proposal would recognize gross proceeds as value only if the price paid is the same as what other parties are willing to competitively bid to purchase the oil (the so-called "Most Favored Nations" clause). Otherwise, oil disposed of under a non-competitive crude oil call would be valued by index pricing methods.

Summary of Comments: Nine respondents commented on the crude oil call issue. There was general agreement to allow arm's-length sales of oil subject to unexercised crude oil calls to be valued based on gross proceeds. However, several commenters representing both State and industry interests expressed concern about the Most Favored Nations (MFN) clause. Four industry commenters disagreed that a crude oil call must contain a MFN clause for the sale of oil under the call to be considered arm's length. Commenters representing States, on the other hand, opposed treating contracts with crude oil calls with MFN or other escalation clauses as arm's-length, arguing that:

- The existence of an MFN clause in a contract does not mean the associated price was derived from a true arm's-length interaction.
- Acceptance of prices under MFN or other escalation clauses increases the potential to use oil postings as the basis for value.
- MMS will have difficulty in monitoring MFN transactions.

Industry commenters recommended deleting reference to MFN altogether because such clauses are more common to gas contracts and rarely, if ever, are used in oil transactions. Industry commenters also generally opposed any exclusion of crude oil calls from arm's-length consideration, arguing that calls are legitimate business transactions and that MMS has the option to use benchmarks if call prices are suspect.

MMS Response: MMS recognized in the July 1997 proposal that not all crude oil calls are exercised and that some calls are subject to competitive bid. In the February 1998 proposal, MMS modified the rules regarding competitive crude oil calls to accept arm's-length gross proceeds as value in these situations. In the final rule, MMS removed the language regarding noncompetitive crude oil calls as a separate, specific provision. However, oil subject to a noncompetitive crude oil call will be examined in view of paragraphs 206.102(c)(1) and (c)(2) to determine whether the prices received represent market value. The value of oil involved in a noncompetitive crude oil call thus ultimately will be the lessee's total consideration or the value determined by the non-arm's-length methods in § 206.103.

(d) Valuing Oil Disposed of Under Exchange Agreements (Revised Proposed Paragraph 206.102(a)(6))

The July 1997 proposal extended the use of gross proceeds valuation to oil exchanged and sold at arm's length after a single exchange. In those cases where a lessee disposes of the produced oil under an exchange agreement with a non-affiliated person, and after the exchange the lessee sells at arm's length the oil acquired in the exchange, the lessee would have the option of using either its gross proceeds under the arm's-length sale or the index pricing method to value the lease production (proposed paragraph 206.102(a)(6)(i)). If the lessee chose gross proceeds under this option, the lessee would have to value oil production disposed of under all other arm's-length exchange agreements in the same manner (proposed paragraph 206.102(a)(6)(iii)). For any oil exchanged or transferred to affiliates, or subject to multiple exchanges, the lessee would have to use the index pricing method to value the lease production (proposed paragraph 206.102(a)(6)(ii)).

Summary of Comments: Ten respondents commented on the rules governing the valuation of oil disposed of under exchange agreements. Commenters supporting the amended proposal did so with reluctance. They believed the option to use gross proceeds would create compliance problems resulting from the necessity to trace and verify the nature of the exchange. One commenter suggested that MMS expand the gross proceeds option to apply to a single exchange by the lessee or its affiliate where all the oil received under that exchange is sold at arm's length. Two commenters suggested giving the lessee an option of valuing exchanged oil by using either lease-market benchmarks (rather than index prices) or the lessee's resale price less an exchange differential, regardless of the number of exchanges needed to reposition the crude oil for sale. Some commenters recommended excluding all exchange agreements from gross

proceeds valuation, as MMS initially proposed.

MMS Response: In the February 1998 proposal, MMS expanded gross proceeds valuation to include situations where the oil received in exchange is ultimately sold at arm's length, regardless of the number of exchanges involved. However, many industry comments claimed that tracing multiple exchanges would be overly burdensome, while others wanted the ability to use the ultimate arm's-length gross proceeds. As a result, and as explained in more detail in Section VI(e) of this preamble, in the final rule MMS is providing an option to use either the arm's-length gross proceeds following one or more arm's-length exchanges, or the provisions of § 206.103. The chosen option will apply for at least 2 years. The lessee must use this method to value all of its crude oil produced on a property basis—that is, from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that the lessee or its affiliate sells at arm's length following one or more exchanges. (See Section IX (i) of this preamble for the reasons why the final rule changes to a property basis for this exception.) The provisions of § 206.103 will apply for oil that is not sold at arm's length after the exchange and for oil subject to non-arm's-length exchanges regardless of whether an arm's-length sale follows such an exchange.

(e) NYMEX Pricing (Initial Proposed Paragraph 206.102(c)(2)(i))

Summary of Comments: Nine respondents submitted further comments on the NYMEX pricing methodology proposed in the January 1997 proposal. Industry commenters reiterated their opposition to the methodology. Two commenters noted that NYMEX did not represent the market in California or Wyoming. However, one commenter defended the NYMEX market as a useful pricing reference for the oil industry. Contrary to industry's allegations that the NYMEX market is dominated by speculators, this commenter indicated that commercial oil entities account for 75 to 80 percent of market participation.

MMS Response: As discussed in Section III(g), MMS has abandoned the use of NYMEX prices as an indicator of crude oil value.

(f) ANS Spot Prices (Initial Proposed Paragraph 206.102(c)(2)(ii))

Summary of Comments: Three industry commenters reiterated industry's general opposition to using ANS spot prices as the basis for crude oil valuation in California and Alaska. They argued that ANS spot prices are an invalid measure of California crude oil value because:

- The quality differences between ANS and California crudes are too great;
- ANS is a thinly-traded market; and
- ANS crude commands a higher price not only because of its superior quality but also because of its consistent availability to California refiners to satisfy marginal demands.

Commenters representing the State of California continued to support the ANS valuation method for that State.

MMS Response: For the reasons expressed in Section III(h), MMS maintains that the ANS spot price is a valid indicator of value for crude oil produced in California.

(g) Duty To Market (Initial Proposed Paragraph 206.102(e)(1))

Summary of Comments: Seven respondents, five representing industry and two representing States, submitted further comments on the rule requiring lessees to market crude oil production at no cost to the Federal Government. Industry commenters repeated their opposition to this rule using the same reasons summarized for the January 1997 proposal. However, State representatives supported the rule. One State commenter indicated that industry does not include marketing costs in determining location and quality differentials; therefore, industry should not be allowed to include marketing costs in determining the differentials for royalty purposes.

MMS Response: For the reasons expressed in Section III(i), MMS maintains its position that lessees have a duty to market production without cost to the Government.

(h) Requiring Use of Actual Transportation Costs (Amended § 206.105)

Summary of Comments: Four respondents submitted further comments on the proposed removal of the exception regarding transportation allowance calculations based on actual costs. Industry commenters reiterated their opposition, while State commenters supported the proposal.

MMS Response: As explained in Section III, in the final rule MMS has deleted the provision for a lessee to apply for an exception to use FERC tariffs in lieu of actual costs.

(i) Form MMS–4415 (Proposed Paragraph 206.105(d)(3)) and Differentials

The July 1997 proposal clarified MMS's intended use of Form MMS–4415 in two respects: (1) MMS will calculate specific differentials as the volume-weighted average of the individual differentials derived from the information reported on the form and (2) MMS will collect only information about exchanges where delivery occurs at an aggregation point and a market center (*i.e.*, lessees will not be required to report information for exchanges occurring at the lease). MMS requested comments on the usefulness of collecting information about exchanges between two aggregation points. MMS also requested comments on how lessees would allocate to Federal leases differentials from aggregation points to market centers when non-Federal production is commingled with Federal production at aggregation points.

Summary of Comments: Six respondents, five representing industry and one a local government, gave additional commentary on Form MMS–4415. Few commenters responded directly to MMS's specific requests for comments on collecting information about exchanges between two aggregation points and allocating differentials when non-Federal production is commingled with Federal production at aggregation points. None gave substantive suggestions. Comments essentially duplicated those provided in response to the January 1997 proposal. Comments ranged from outright opposition to the form (and its data collection requirement) to complaints about its administrative burden and lack of clear instructions.

MMS Response: As discussed in Section III(m), MMS eliminated Form MMS–4415 in the final rule.

(j) Fairness, Procedural Conduct, and Workability

Summary of Comments: Ten respondents commented on this topic. Industry commenters continued to oppose any valuation scheme that they assert moves the point of royalty valuation away from the lease, reiterating their arguments that the index pricing methodology would not reflect market value at the time of production, would be costly and difficult to administer, and is contrary to lease terms and statutory mandates. They maintained their position that the value of oil disposed of under non-arm's-length conditions should be based on comparable transactions in the same field or area. Two commenters representing a State's interests criticized MMS for expanding the arm's-length gross-proceeds valuation criteria.

MMS Response: We responded to these comments throughout other sections of this preamble.

(k) Alternatives

Summary of Comments: Eleven respondents (ten industry and one governmental advisory group) gave further comments on alternatives to the proposed rule. Industry commenters reiterated their position that MMS should either take its oil in kind (the most prevalent comment), modify the current benchmarks to eliminate reference to posted prices, or base value on some form of comparable sales from the same field or geographic area. However, related to an idea discussed in earlier public workshops, commenters said that a comparable sales valuation method based on data reported to MMS would be unworkable because of the limitations of MMS's computer system (MMS cannot sort the data by field nor determine significant quantities) and because much of the sales data reflects posted prices.

MMS Response: We responded to these comments in detail in Section X and in Section III(r).

V. Responses to Public Comments on September 1997 Notice

Summary of Proposed Alternatives

The September 1997 notice reopened the public comment period on the January 1997 proposal and requested comments on five alternatives to value oil disposed of under non-arm's-length conditions: (1) A value based on prices received under bid-out or tendering programs; (2) a value determined from benchmarks using arm's-length transactions, RIK sales, or a netback method; (3) a value based on geographic indexing using MMS's own system data, but excluding posted prices; (4) a value based on index (NYMEX and ANS) prices but using fixed-rate differentials; and (5) a value using published spot prices instead of NYMEX prices. With regard to Alternatives 1, 2, and 3, we asked whether the RMR should have separate and specific valuation standards.

We received written comments from 28 entities, including independent oil and gas producers, major oil and gas companies, petroleum industry trade associations, States, a municipality, a government oversight group, and a royalty owner. Numerous individuals provided commentary at the public workshops. We summarized the comments on the proposed alternatives in the February 1998 proposal. We repeat the comment summaries here and give our responses.

(a) Alternative 1—Bid-Out or Tendering Program

Summary of Comments: Industry and some States supported tendering as a viable method to determine royalty value. They reasoned that the prices received under tendering transactions were evidence of market value at or near the lease, which satisfies the rulemaking objective. However, industry cautioned that tendering would not be applicable in every situation (it would be too expensive for some companies to develop and administer) and should be one of the other alternatives available for valuation. In fact, two commenters noted that tendering-based valuation was not feasible in California because no one is presently engaged in tendering programs in that State. To be acceptable for valuing the lessee's non-arm's-length production, one commenter recommended that the minimum tendered volume should be MMS's royalty share plus 2 percent, or if transported by a truck or tank car, a volume equal to a full load; another commenter recommended 10 to 20 percent as the minimum volume, with a minimum of three bids.

MMS Response: MMS did not adopt this alternative as there are meaningful spot prices applicable to production in all areas other than the Rocky Mountains. Further, tendering occurs in relatively few cases now and thus generally does not reflect true market value.

With the exception of the RMR, spot and spot-related prices drive the manner in which crude oil is bought and traded in the U.S. Spot prices play a major role in crude oil marketing and are readily available to lessees through price reporting services. We believe spot prices are the best indicator of the value of production. Thus, with the exception of the Rocky Mountains, we don't believe it is necessary to use other less accurate and more administratively burdensome means of valuing production not sold at arm's length (e.g., tendering).

MMS adopted a particular tendering alternative designed with what MMS intends as safeguards against manipulation as a benchmark for the RMR for production not sold at arm's length because of the lack of a reliable spot price in that region. One of the Rocky Mountain State commenters recommended this method as the initial benchmark in that region. MMS has acquiesced in that recommendation but nevertheless has substantial concerns about the potential for manipulation of tendering programs. MMS intends to closely monitor the reliability and workability of this benchmark.

MMS's response to the comments regarding minimum volume and bid requirements is provided in Section VI below.

(b) Alternative 2—Benchmarks

Summary of Comments: Industry and some States generally supported some form of benchmark system based on actual arm's-length sales, RIK prices, or a netback method using an index price or affiliate's resale price to value oil not disposed of at arm's length. (Nonetheless, many commenters remained opposed to NYMEX- and ANS-based pricing.) Industry, however, advocated that lessees be permitted to select the valuation method best suited to their situation; in other words, they wanted the benchmarks to be a menu, rather than a hierarchy. States objected to this selection concept. Industry also urged MMS to abandon the requirement that royalty value is the greater of the lessee's gross proceeds or the benchmark value.

One State recommended separate valuation standards for lessees with affiliated refiners and those without. For lessees with affiliated refiners, value would be determined by benchmarks using tendered prices, lease-based comparable sales, and netback from spot price. (This suggestion was directed to the RMR only.) For lessees without affiliated refiners, but who have a marketing affiliate that sells the lessee's oil outright or in a buy/sell exchange, royalty would be due on the resale value less appropriate allowances. Industry objected to this affiliated-refiners distinction because not all producers in integrated companies sell or transfer their oil production to their affiliated refiner.

For netback valuation, industry urged MMS to recognize all costs associated with midstream marketing as allowable deductions from the index or resale price. However, one State commenter argued that industry has failed to demonstrate any entitlement to a marketing deduction as a matter of law or fact, citing, for example, that midstream marketing costs are already factored into transportation tariffs and location differentials.

Two commenters representing State of California interests objected to any benchmark valuation scheme for that State. They argued that the California crude oil market is not competitive. Thus, they believed that any non-arm's-length valuation scheme based on arm's-length prices would not reflect true market value. They maintained that

ANS prices are the only viable method of valuing crude oil in California.

MMS Response: In the final rule, MMS adopted a series of benchmarks for valuing RMR production not sold at arm's length. However, for the reasons explained above, the final rule does not use those benchmarks for the rest of the country; we apply spot prices in those regions. The Rocky Mountain benchmarks prescribe a first benchmark, but if it does not apply, the lessee has the choice of two other benchmarks. A lessee must use the first benchmark if it applies to the lessee's situation—that is, tendering—and if tendering does not apply, then it may choose between a weighted average of arm's-length sales and purchases, or Cushing, Oklahoma, adjusted spot prices. If the lessee demonstrates that none of the three benchmarks establish a reasonable value, MMS may establish an alternative valuation method.

MMS agreed with the industry comment that we should not require royalty value to be the higher of gross proceeds or the benchmark value. Hence, the final rule does not require royalty value to be the higher of gross proceeds or index price.

While the final rule does not make a distinction between lessees with affiliated refiners and those without, it does establish different valuation methods for oil that is sold at arm's length versus oil that is not. The distinction is based on the disposition of the oil and not a lessee's ownership of a refinery.

Comments regarding costs of midstream marketing are addressed in Section III(i).

(c) Alternative 3—Geographic Indexing

Summary of Comments: Most commenters believed a geographic fixed index method would be unworkable. They mainly objected to the time difference between the production month and publication of the index price. They argued that the published indices would always be out-of-date and require unnecessary adjustments for prior reporting months.

MMS Response: MMS agrees with commenters that a geographic fixed index would be unworkable and, therefore, the final rule does not use this method. Additional MMS responses to this alternative are contained in our detailed responses to comments in Section XI, Executive Order 12866, later in this preamble.

(d) Alternative 4—Differentials

Summary of Comments: In concert with their objections to basing value on index (NYMEX and ANS) prices away from the lease, industry commenters opposed the use of any fixed (or other) differentials that don't permit deductions for midstream marketing activities. Specifically for California, two commenters representing State interests urged MMS to use the gravity factor in the Four Corners and All American Pipeline tariffs to adjust for quality differences between ANS and California crude oils. For location differentials, they reiterated their position that the only relevant information is from "in/out" exchanges. As an alternative to determining separate location differentials for the various California aggregation point/market center pairs, they proposed fixed-rate differentials for given geographic zones.

MMS Response: MMS agrees with industry and most State commenters that the proposed fixed differentials would be unworkable and, therefore, the final rule does not use this method. The February 1998 proposal and the final rule added paragraph 206.112(e) allowing for the use of quality banks including the gravity factor suggested by one State commenter. The final rule uses the location and quality differentials contained in arm's-length exchange agreements (including "in/out" exchanges) to adjust index prices for location and quality. Additional MMS responses to this alternative are contained in our detailed responses to comments in Section XI, Executive Order 12866, later in this preamble.

(e) Alternative 5—Spot Prices

Summary of Comments: Comments on the proposed spot price methodology were mixed. Some commenters thought it was a workable approach, but indicated that the net result would be the same as starting with a NYMEX price and adjusting back to the lease. A few commenters noted that spot prices are published only for a limited number of domestic crude oils, and no spot prices are published for the RMR. One commenter questioned the accuracy of the reported prices. Industry commenters remained concerned with the disallowance of marketing costs in any netback scheme.

MMS Response: For regions other than the Rocky Mountains, the final rule uses spot prices to establish value for production not sold at arm's length. In the RMR, spot prices are used as a third benchmark. Additional MMS responses regarding use of spot prices are contained in detail in Section VI(e).

(f) Rocky Mountain Region

Summary of Comments: There was general consensus that the RMR exhibited particular oil marketing characteristics that would justify different royalty valuation standards. Some commenters, both industry and State, supported the notion of separate valuation standards for the region. Others, however, disagreed with any regional separation, preferring instead a single, nationwide valuation scheme or menu of benchmarks.

MMS Response: We agree with the general consensus that a separate valuation method is needed for the RMR. The final rule incorporates this change.

VI. Responses to Public Comments on February 1998 Proposal

Summary of Proposed Rule

In response to comments received on the prior proposed rules and comments made at the public workshops, the February 1998 proposal contained substantive changes to the valuation procedures included in the January 1997 proposal. For oil that ultimately is sold in an arm's-length transaction, the royalty value would be the gross proceeds accruing to the seller under the arm's-length sale. This procedure would apply to arm's-length exchanges where the oil received in exchange is ultimately sold at arm's length. It would also apply to oil sold in the exercise of competitive crude oil calls.

For oil (or oil received in exchange) that is refined without being sold at arm's length, for oil disposed of under non-arm's-length exchange agreements and non-competitive crude oil calls, and for all other oil not sold at arm's-length, the royalty value would be determined by measures prescribed for three geographic regions. For oil produced in California and Alaska, value would be based on ANS spot prices, adjusted for location and quality. For oil produced in the RMR, value would be determined by the first applicable of four benchmarks: (1) The highest price bid for tendered volumes, (2) the volume-weighted average of gross proceeds accruing under the lessee's or its affiliate's arm's-length contracts for the purchase or sale of crude oil from the field or area, (3) the average NYMEX futures prices, with location and quality adjustments, and (4) an MMS-established method. For oil produced outside of California, Alaska, and the Rocky Mountain Area, value would be the average of the daily mean spot prices published for the nearest market center, adjusted for location and quality differentials.

The February 1998 proposal also contained specific instructions for reporting on Form MMS–4415, modified

certain definitions, and added others. It reiterated the lessee's duty to put the production in marketable condition and to market the production at no cost to the lessor. Rules addressing transportation allowances were recodified in new sections and modified to reflect the newly-proposed valuation rules.

We received almost 700 pages of written comments from 35 entities, including independent oil and gas producers, major oil and gas companies, petroleum industry trade associations, States, a municipality, small refiners, and consultants. Consistent with its past comments, industry generally opposed the proposed rules, arguing that they do not offer certainty, do not reduce administrative costs, and particularly do not derive a reasonable value of production at the lease. Industry particularly maintained its advocacy of using so-called "lease markets" (arm's-length sales of like-quality production in the same field or area) to set value of production not disposed of at arm's length. States generally supported the rule but had suggestions for changes.

Several commenters continued to address many of the same issues. They include:

- Duty to market,
- Restrictions on gross proceeds valuation,
- Using NYMEX index prices and ANS spot prices for non-arm's-length valuation,
- Treatment of non-competitive crude oil calls,
- Eliminating the exception allowing requests to use FERC tariffs instead of actual transportation costs, and
- Use of differentials to calculate royalty value.

Comments on these issues were not substantively different from those previously summarized. Rather than repeating the issues and comments here, we refer the reader to Sections I, III, IV, and V above. Instead, we only address comments on those provisions that are new to or revised from the previous proposals. Comments are grouped into seven topical categories ((a) through (g) below).

(a) Definitions (Proposed § 206.101)

Affiliate—Summary of Comments: Eleven respondents, all representing industry, objected to the 10 percent ownership threshold for defining control and thus requiring non-arm's-length valuation. They argued that 10 percent was too low because affiliates with this small amount of ownership actually have no control over the affiliated entity. Accordingly, they believed that too many lessees would be excluded from using their gross proceeds in bona fide arm's-length transactions as value. Others suggested retaining the current definition of affiliate, as defined by the term "arm's-length contract," where ownership of 10 percent through 50 percent creates a presumption of control. One commenter suggested 20 percent to 50 percent ownership as the criteria for creating a presumption of control, consistent with the definition used by the Bureau of Land Management. One commenter suggested deleting reference to partnerships and joint ventures because lessees might not have access to records of these entities and these terms could create confusion as to whether the affiliate test applies to the property, field, or corporate level.

MMS Response: In this final rule, we have made "affiliate" a separate definition from "arm's length." We believe this clarifies and simplifies the definitions and should promote better understanding of both "arm's length" and "affiliate."

In the final rule, MMS is revising the definition of "affiliate." The July 1998 proposal (63 FR at 38356) retained the criteria for determining affiliation that are contained in the existing rule. The March 1999 notice that included the August 31, 1998 letter from the Assistant Secretary for Land and Minerals Management to the Senate (64 FR at 12268) also indicated that MMS likely would retain the same criteria that are in the existing rule.

In response to the March 1999 notice, industry commenters proposed a set of criteria which lessees could use to rebut the presumption of control that arises from ownership or common ownership of between 10 and 50 percent. While MMS does not agree with the industry proposal, a judicial decision in a case decided after the close of the comment period for the March 1999 notice affects the criteria for determining control and the associated presumption in the existing rule.

In *National Mining Association* v. *Department of the Interior*, 177 F.3d 1 (D.C. Cir. 1999) (decided May 28, 1999), the United States Court of Appeals for the District of Columbia Circuit addressed the Office of Surface Mining Reclamation and Enforcement's (OSM's) so-called "ownership and control" rule at 30 CFR 773.5(b). That rule presumed ownership or control under six identified circumstances. One of those circumstances was where one entity owned between 10 and 50 percent of another entity. The court found that OSM had not offered any basis to support the rule's presumption "that an owner of as little as ten per cent of a company's stock controls it." 177 F.3d at 5. The court continued, "While ten percent ownership may, under specific circumstances, confer control, OSM has cited no authority for the proposition that it is ordinarily likely to do so." *Id.* (Emphasis added.) In a footnote, the court referred to the existing MMS rule:

> In its brief OSM referred the court to several regulations promulgated by other agencies but none of them presumes control based simply on a ten percent ownership stake, although another Department of Interior regulation does so. See 30 C.F.R. 206.101(b) [sic] ("based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership: * * * (b) Ownership of 10 through 50 percent creates a presumption of control"). We do not consider the validity of section 206.101 here.

Id. The United States did not file a petition for rehearing. Nor did the United States seek Supreme Court review.

In the final rule, MMS is revising the definition of "affiliate" in light of the National Mining Association decision. In the event of ownership or common ownership of between 10 and 50 percent, paragraph (2) of the definition in the final rule, instead of creating a presumption of control, identifies a number of factors that MMS will consider in determining whether there is control under the circumstances of a particular case.

With respect to ownership or common ownership, the new definition identifies such factors as the percentage of ownership, the relative percentage of ownership as compared with other owners, whether a person is the greatest single owner, and whether there is an opposing voting bloc of greater ownership. All of these are relevant factors in determining whether there is control in a particular case.

For example, company A could own one third of the voting stock of company B, while no other owner owns any percentage close to that. A is the greatest single owner, and it is very likely that A has control of B. If, in addition, A manages the day-to-day operations of B and the other owners effectively are passive investors, it would be very clear that A controls B and that they are affiliates.

A different example would be if A owns 20 percent of B, at the same time that C and D each own 35 percent of B. In such a case, it would be much harder to demonstrate that A controls B, and doing so would depend on additional facts that would show that A has effective control.

Yet another example would be if A owns 12 percent of B and other owners

own roughly equivalent percentages of B. A may or may not control B, again depending on what additional circumstances are present.

We emphasize that simply because one entity is found not to control another on the basis of stock ownership and other factors, and therefore that the entities are not affiliates, that does not always mean that the relationship between the two entities is at arm's length. The entities may be engaged in a cooperative venture and therefore not have opposing economic interests. (An example is the situation in Xeno, Inc., 134 IBLA 172 (1995), in which a number of lessees in a large field combined to form another entity to purchase their gas, then gather, compress, and treat it, and then resell it to another purchaser.)

Paragraph (2) of the definition also identifies other factors in addition to ownership interests that are relevant to determining control. These include the extent of common officers or directors, operation by one entity of a lease or a facility, the extent of participation by different owners in operations and day-to-day management of an entity, and other evidence of power to exercise control or common control. These factors will be evaluated on a case-by-case basis.

Paragraphs (1) and (3) of the definition continue the existing provisions that ownership of more than 50 percent constitutes control, that ownership of less than ten percent constitutes a presumption of noncontrol, and that relatives, either by blood or marriage, are affiliates regardless of any percentage of ownership or common ownership. The National Mining Association decision does not affect these provisions.

Gross proceeds—Summary of Comments: Two industry commenters opposed the inclusion of payments made to reduce or "buy down" the purchase price of oil to be produced in later periods in the revised definition of "gross proceeds." One commenter argued that the collection of royalty on buydowns was contrary to the decision in *IPAA* v. *Babbitt*, 92 F.3d 1248 (D.C. Cir. 1996).

MMS Response: The implications of the D.C. Circuit's ruling in the IPAA case, as well as the Sixth Circuit's decision in *United States* v. *Century Offshore Management Corp.*, 111 F.3d 443 (6th Cir. 1997), cert. denied, 522 U.S. 1090 (1998), and other subsequent court decisions regarding "buydown" payments (which in recent years have been part of contract settlement arrangements) are analyzed in two recent decisions of the Assistant Secretary for Land and Minerals Management in Mobil Oil Corp., Docket Nos. MMS–94–0151-OCS, 94–0668-O&G, 94–0669-O&G, 95–0063-O&G, and 95-0065-O&G (consolidated) (May 4, 1998), and Antelope Production Co., Docket No. MMS–96–0068-O&G (May 4, 1998). For the reasons explained in those decisions, the definition of "gross proceeds" contained in the February 1998 proposal and in the final rule is fully in accordance with law.

Rocky Mountain Area—Summary of Comments: Six respondents (five industry and one State) commented on the definition of "Rocky Mountain Area." Industry commenters believed the word "Area" should be changed to "Region" to avoid confusion with the definition of "area." They also suggested including northwest New Mexico (*i.e.*, the San Juan Basin) in the Rocky Mountain Area. The State commenter, however, opposed including northwest New Mexico in the definition because crudes from the San Juan Basin are regularly exchanged in midcontinent markets.

MMS Response: MMS agrees with the comment that the term Rocky Mountain "Area" should be changed to Rocky Mountain "Region." We made this change in the final rule. We concur with the commenter from the State of New Mexico that northwest New Mexico should not be part of the RMR because crude oil from the San Juan Basin is regularly exchanged or sold in midcontinent markets. For the same reasons, the final rule excludes from the RMR definition those portions of the San Juan Basin, and other oil-producing fields in the "Four Corners" area (*i.e.*, near the convergence of the boundaries of New Mexico, Arizona, Utah, and Colorado) that lie within the States of Colorado and Utah. Crude oil produced from these areas typically is exchanged or sold in midcontinent markets for which dependable index prices are published. MMS therefore believes it is appropriate that the index values from those markets be used in valuing production not sold at arm's length or for which the lessee opts to use index values under other provisions of the final rule, as explained below.

Suggested "Operating Allowance" Definition—Summary of Comments: We received a comment that "operating allowance" needs to be included in the definitions section. The commenter said it is still unclear what is meant by an operating allowance, both in this section and its predecessor section.

MMS Response: The operating allowance language was added to 30 CFR 206.106 in 1996 as part of a new rule on bidding systems for leases on the OCS. Operating allowances are to be predetermined and defined at the time of a lease sale. They may be used either to effectively replace the valuation regulations to calculate net receipts subject to the nominal royalty rate, or to reduce net receipts after the valuation regulations are applied to determine receipts subject to the nominal royalty rate. In either case, the approach used would be specified in the lease sale notice. Such allowances would be in lieu of any allowances that otherwise might have applied under the valuation rules. We chose not to define "operating allowance" so as not to confuse the application of allowances otherwise permitted under 30 CFR part 206 with the operating allowance concept. Any lessee with an operating allowance will be fully aware of its specifics regarding the applicable lease, because it will be defined explicitly in the notice of lease sale.

(b) Tracing Exchange Transactions (Proposed Paragraph 206.102(c)(3))

The February 1998 proposal expanded gross proceeds valuation to oil that is sold at arm's length after being involved in one or more arm's-length exchanges. This provision would have required the lessee to trace the oil through all such exchanges to assure they are all arm's length and to capture all location and quality differentials. If the lessee then sold at arm's length the oil it ultimately received, the value of the oil produced from the lease would have been the gross proceeds for the oil ultimately sold after the exchanges, adjusted for any location and quality differentials incurred in the course of the arm's-length exchanges.

Summary of Comments: Seventeen respondents (fourteen industry, two States, and one municipality) commented on the tracing aspect of the rule. They all agreed that tracing oil through multiple exchanges would be impractical, if not physically impossible, because of aggregation and commingling of Federal and non-Federal crudes of different qualities and the magnitude of administering a program to track individual exchange transactions. A few commenters asserted that the sharing of information about oil exchanges might violate United States antitrust laws.

One State commenter recommended confining gross proceeds valuation to an arm's-length first sale. Another commenter was concerned that Federal royalty oil could be valued at the lowest price received when there are multiple sales at the end of a series of exchanges.

As an alternative to tracing, one company suggested that the value of oil

disposed of through arm's-length exchanges be based on the spot market price of the crude oil received, adjusted for location and quality differentials received or paid. An industry trade organization recommended replacing the tracing method with either: (1) Royalty valuation procedures (RVP's) based on arm's-length sales from nearby wells, or (2) a netback procedure. Some industry commenters were concerned that the proposed rule gave MMS too much latitude to disallow transactions under arm's-length exchange agreements, which would create uncertainty by allowing auditors to second-guess a company's marketing decisions.

MMS Response: The July 1997 proposal extended the use of gross proceeds valuation to oil exchanged and then sold at arm's length. In those cases where a lessee disposed of the produced oil under an exchange agreement with a non-affiliated person, and after the exchange the lessee sold at arm's length the oil acquired in the exchange, the lessee would have had the option of using either its gross proceeds under the arm's-length sale or the index pricing method to value the lease production (proposed paragraph 206.102(a)(6)(i)). This option would have applied only when there was a single exchange. If the lessee chose gross proceeds under this option, the lessee would have valued all oil production disposed of under all other arm's-length exchange agreements in the same manner (proposed paragraph 206.102(a)(6)(iii)). For any oil exchanged or transferred to affiliates, or subject to multiple exchanges, the lessee would have used the index pricing method to value the lease production (proposed paragraph 206.102(a)(6)(ii)).

Participants in MMS's workshops held in October 1997 indicated that they often use several exchanges to transport their production from offshore leases to market centers onshore. They believed that MMS should give the lessee an option of valuing exchanged oil either by using so-called "lease-market" benchmarks (rather than index prices) or by using the lessee's resale price less an exchange differential, regardless of the number of exchanges needed to reposition the crude oil for sale.

In response to those comments, in the February 1998 proposal MMS expanded gross proceeds valuation to include situations where the oil received in exchange is ultimately sold arm's length, regardless of the number of arm's-length exchanges involved. However, because many industry comments claimed that tracing multiple exchanges would be overly burdensome, while others wanted the ability to use the ultimate arm's-length gross proceeds, in the final rule, MMS is providing an option to use either the arm's-length gross proceeds following one or more arm's-length exchanges, or the provisions of § 206.103. The chosen option will apply for at least 2 years, and the lessee must use this method to value all of its crude oil produced from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that the lessee or its affiliate sells at arm's length following one or more exchanges. The provisions of § 206.103 will apply for oil that is not sold at arm's length after the exchange, as well as to oil subject to non-arm's-length exchanges. We included these qualifications to assure that lessees will not abuse the system by choosing case-specific options or time periods that best suit their situations, or by using non-arm's-length exchange differentials to determine royalty value.

As discussed elsewhere in this preamble, the final rule does not use the industry's suggested "RVP's." In the RMR, however, the final rule uses a prescribed series of benchmarks similar to the suggested "RVP's," for reasons explained elsewhere in this preamble. Also, as discussed elsewhere in the preamble, MMS believes that except for the RMR, spot prices are the best indicators of value.

The lessee's duty to market does not mean that MMS will second-guess a company's marketing decisions. Lessees may structure their business arrangements however they wish, and, absent misconduct or breach of the lessee's duty to market to the benefit of itself and the lessor, MMS will look to the ultimate arm's-length disposition in the open market as the best measure of value.

(c) Different Geographic Regions (Proposed § 206.103)

Based on the isolation of the West Coast petroleum market and its distinctive market conditions, the previous rulemaking proposals recognized two geographic regions for valuation: (1) California and Alaska and (2) the remainder of the country. However, from the comments received on these proposals, it became apparent that oil marketing in the RMR is significantly different. Accordingly, the February 1998 proposal recognized three regions for royalty valuation: (1) California and Alaska, (2) the RMR, and (3) the rest of the country.

Summary of Comments: Four respondents representing industry commented on the three-region approach; all opposed it. They claimed that the geographically different valuation standards will require companies to install additional computer systems or systems software and hire corresponding additional staff. One respondent recommended revising the existing non-arm's-length valuation benchmarks to provide universal valuation procedures that would determine value at the lease.

State participants at MMS's October 1997 workshops supported different valuation methods for different regions of the country.

MMS Response: There was general consensus among commenters that the RMR exhibited particular oil marketing characteristics that would justify different royalty valuation standards. Production is controlled by relatively few companies in the RMR; the number of buyers is also more limited than in the Gulf Coast and midcontinent regions; and there are limited third-party shippers, resulting in less competition for transportation services in this region. There is less spot market activity and trading in this region as a result of the control over production and refining. Finally, crude oil production in the RMR typically involves much smaller volumes and is more scattered than in the Gulf Coast and midcontinent regions.

Beginning with the January 1997 proposal, MMS has maintained a separate valuation methodology for production in California and Alaska. As explained thoroughly in previous proposals, the California and Alaska markets are unique and warrant different valuation methods. The final rule maintains this difference and thus establishes three regions including (1) California and Alaska, (2) the RMR, and (3) the rest of the country.

Industry stated that new computer systems are needed, with the possibility of three separate systems for the three regions of the country with separate valuation requirements. However, they did not provide any rationale as to why, or any specifics on how those computer systems would be different than what they need under the current regulations. The majority of payors will continue to pay on the gross proceeds received under an arm's-length sale just as they always have. This means that they will not incur any additional computer costs or time in complying with the arm's-length provisions of the new rule. For those not paying on gross proceeds, industry has not shown that the methods applicable to the three different regions of the country will require unduly complicated or costly computer systems overhaul or substantial additional staff. We

recognize, however, that the changes in valuation methodology will require some systems changes. For that reason the final rule includes a "grace period" for royalty adjustments necessitated by system changes. The grace period includes the first three production months following the effective date of the rule. There will be no liability for late payment interest during this period. The final rule includes three geographic regions as contained in the February 1998 proposal.

(d) Restrictions on Rocky Mountain Region Benchmarks (Proposed Paragraph 206.103(b))

Under the February 1998 proposal, the value of crude oil produced in the RMR and not sold at arm's length would be determined by the first applicable of the following benchmarks:

(1) For lessees with an MMS-approved tendering program, value of production from leases in the area covered by the tendering program would be the highest price bid for the tendered volumes. To exercise this benchmark, the lessee would have to offer and sell at least 33⅓ percent of its total Federal and non-Federal production from that area under the tendering program and would have to receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

(2) A value calculated as the volume-weighted average of the gross proceeds accruing to the lessee or its affiliate for arm's-length purchases or sales of production from the field or area during the month. The total volume purchased or sold under the arm's-length transactions must exceed 50 percent of the lessee's or its affiliate's Federal and non-Federal production from the same field or area during that month.

(3) A value calculated as the average of the daily mean spot prices published in any MMS-approved publication for WTI crude at Cushing, Oklahoma, for deliveries during the production month, adjusted for location and quality differentials.

(4) If the lessee demonstrates to MMS's satisfaction that the first three benchmarks result in an unreasonable value for its production, the MMS Director may establish an alternative valuation method.

Summary of Comments—Tendering: Six respondents, all representing industry, commented on benchmark 1 (tendering). They all opposed the restrictions, claiming they were excessive and would all but eliminate tendering as a measure of value. Comments included:

- The method MMS used to arrive at the one-third volume requirement is flawed because if the lease is Federal, there is no State royalty or tax interest involved. Likewise, if the lease is a State lease, there is no Federal interest involved. Requiring one-third of the lessee's total production is onerous as a practical matter; a more reasonable volume would be 15 or 20 percent.
- Lessees have no control over the number of bids received. Together with the limited number of producers in the Rocky Mountain Area, the three-bid restriction would negate tendering as a viable benchmark in many cases.
- The use of the highest bid is unreasonable unless all the bids happen to be for the full tendered volume.
- If the lessee has a refining affiliate, that affiliate would be disqualified from bidding on oil tendered by others, while at the same time being excluded from buying at least one-third of its affiliated lessee's own production.

A few commenters thought that tendering, without the restrictions, would offer a viable valuation tool, not only for the RMR but nationwide.

MMS Response: MMS added the several qualifications stated above to ensure receipt of market value under tendering programs. First, royalty value must be the highest price winning bid rather than some other individual or average value. We believe this is necessary to assure receipt of market value.

Second, MMS acknowledges that the minimum tendered volume could be less than 33 ⅓ percent, but only by a small amount. In the final rule, you must offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area. MMS wants to ensure that the portion put up for tendering at least covers the Federal royalty interest and the composite State effective tax rate on oil production. That combination typically ranges from about 17 percent to about 27 percent. These percentages do not include State royalty rates, which did not enter into the calculation. The rationale for this minimum percentage is to ensure that the lessee puts a sufficient volume of its own production share up for bid to minimize the possibility that it could "game" the system for Federal royalty or State tax payment purposes. In this final rule, we thus chose 30 percent as the minimum percentage the lessee would have to tender for sale to assure that some of the lessee's equity share of production generally was involved. Likewise, the tendering program must include non-Federal lease production volumes in the 30 percent determination to ensure that the program isn't aimed at limiting Federal royalty value.

In our February 1998 proposal, we stipulated a minimum of three bids. However, we received several comments that requiring three bidders was too stringent and that in many cases there simply would not be that many qualified bidders. We have reviewed this criterion and continue to believe that a minimum number of bidders is essential to ensure receipt of market value. We believe that at least three bidders are needed to provide an adequate measure of market value and have retained this provision in the final rule. Further, MMS is concerned about the possibility of companies cross-bidding at below-market prices. That is why in the final rule we have retained the stipulation that the minimum of three bids must come from bidders who do not also have their own tendering programs in the area.

Summary of Comments—Weighted Average Gross Proceeds: Five respondents, four industry and one State, commented on benchmark two (weighted-average gross proceeds). Comments included:

- The 50-percent arm's-length-sales threshold is too high. There is no reasonable justification for this percentage. Twenty to 25 percent is a sufficient statistical percentage to establish value.
- Where oils of different qualities are produced in the same field or area, the weighted-average method could lead to undervaluing of high-quality oils. Lessees can game the system by buying low-quality crudes and reporting their weighted-average value for high-quality crudes.
- Any discounting of prices for certain volumes would lead to inaccurate weighted averages.
- MMS received several industry comments that the proposed rule would cause hardships for producers who have marketing, but not refining, affiliates. The marketing affiliate takes the producing affiliate's production and also buys production from various other sources before reselling or otherwise disposing of the combined volumes. Section 206.102 requires the producer to base royalty value on its marketing affiliate's various arm's-length sales and allocate the proper values back to the Federal lease production. The commenters said this "tracing" would be difficult at best. One commenter suggested that as an alternative the lessee should be permitted to base the value of its production on the prices its marketing affiliate pays for crude oil it buys at arm's length in the same field or area.

MMS Response: MMS developed this method as the next alternative if a qualified tendering program does not exist. (One of the Rocky Mountain State commenters recommended that the alternatives be given in this order). This method is an effort to establish value based on actual transactions by the lessee and its affiliate(s). Just as for the tendering program, MMS believes a floor percentage of the lessee's and its affiliates' production should be set to prevent any "gaming." Although we received several comments that the 50 percent minimum figure is too high, it is not intended to be a more stringent standard than the 30 percent floor associated with the tendering program. That is because the 50 percent floor applies to the lessee's and its affiliates' sales *and* purchases in the field or area, rather than just sales. (The tendering program involves only sales.)

We also received a comment expressing concern that lessees would have to perform additional work each month to determine whether they met the 50 percent threshold. In response to this concern, the final rule permits the option that if the first benchmark does not apply, the lessee may apply either the second or third benchmarks. Thus, if the lessee believes the continuing work involved in determining whether they meet the 50 percent threshold is too great, they may apply the third benchmark (spot prices at Cushing, Oklahoma, adjusted for transportation and quality differences).

This final rule requires using a gravity-adjusted volume-weighted average gross proceeds accruing to the seller in all of the lessee's and its affiliates' arm's-length sales or purchases, not just those that may be considered comparable by quality or volume. We received several comments that the method in the February 1998 proposal would result in improper valuation of some oil that was significantly different in quality than that associated with the "average" oil. In general, we believe that production in the same field or area will be similar in quality. However, in response to comments, in the final rule we require that before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliate's arm's-length purchases or sales to the same gravity as that of the oil produced from the lease. Further, given that these sales and purchases must be greater than 50 percent of all of the lessee's production in the field or area, we believe that it is not necessary to distinguish comparable-volume contracts.

We cannot agree with the comment that oil resold by a marketing affiliate of the producer should be valued using this benchmark. An overriding general premise of this rulemaking is that where oil ultimately is sold at arm's length before refining, it should be valued based on the gross proceeds accruing to the seller under the arm's-length sale. To do otherwise would be inconsistent with the way arm's-length resales are treated elsewhere in this rule. However, this final rule offers the option that where the production is sold or transferred to an affiliate who then resells it, the lessee could value its production using § 206.103 rather than the affiliate resale price. This does not mean that MMS believes the affiliate's arm's-length resale price should not form the valuation basis; rather, we are accommodating those who say "tracing" production is a problem by offering an alternative that should ease their administrative burden while still providing a fair royalty value. MMS is willing to permit this option because it anticipates that overall the index prices used under § 206.103 will approximately reflect what affiliated marketing entities are able to obtain under most circumstances.

Summary of Comments—NYMEX Futures Prices: Nine respondents, all representing industry, commented on benchmark three, NYMEX futures prices. Consistent with industry's previous position on NYMEX prices (*i.e.*, the futures market bears little relation to lease markets; see Sections III and IV), they all opposed NYMEX pricing as a measure of value for the RMR. One commenter pointed out the difficulty of applying NYMEX sweet prices to Wyoming sour crude.

MMS Response: As discussed in Section III(g) of this preamble, the final rule does not use NYMEX futures prices as a measure of value. Instead, MMS chose to use spot prices because studies indicated that when NYMEX prices, properly adjusted for location and quality differences, are compared to spot prices, they nearly duplicate those spot prices. Further, except for the RMR, application of spot prices removes one portion of the adjustments to the NYMEX price that would have been needed—the leg between Cushing, Oklahoma, and the market center location.

(e) Spot Prices (Proposed Paragraph 206.103(c))

Under the February 1998 proposal, the value of crude oil produced outside California, Alaska, and the RMR and not sold at arm's length was the average of the daily mean spot prices for deliveries during the production month:

—For the market center nearest the lease where spot prices are published in an MMS-approved publication and

—For the crude oil most similar in quality to the lease crude.

The average spot prices would be adjusted for location and quality differentials and for transportation costs to derive the royalty value.

Summary of Comments: Thirteen respondents—twelve industry and one State—commented on spot prices as a measure of value. One industry respondent supported the change from NYMEX-based pricing to spot prices, stating that the change bases valuation on a crude oil more similar in quality and at a location closer to the lease while eliminating an adjustment step in the valuation process that is prone to error.

The remaining eleven industry respondents opposed the use of spot prices (along with any other index pricing method) to value crude oil production. Their arguments included:

- Spot prices do not accurately reflect lease values. Spot prices represent the cost of obtaining crude oil for delivery within 30 days. By contrast, a great deal of market activity is accounted for by longer-term arrangements.
- Spot prices do not move in lock-step with local markets; they do not reflect the influence of local supply and demand.
- Spot prices capture downstream value enhancements; differential adjustments are inadequate to compensate for the value added by moving the production from the lease to a market center.
- Spot prices published by commercial news services are based on limited polling of traders; there is no uniform calculation method and accuracy is dependent on the reporter's judgment.

The State commenter disagreed with abandoning NYMEX prices for spot prices. This commenter contended that NYMEX prices better reflect market value because NYMEX transactions constitute a much larger volume of trades than spot markets and because the NYMEX market is less subject to manipulation than spot markets.

MMS Response: The body of evidence regarding actual marketing practices indicates that index prices, including spot prices, play a significant role in setting contract prices. The final rule maintains the use of ANS spot prices in California for oil not sold at arm's length. Location- and quality-adjusted spot prices, rather than NYMEX futures

prices, also are used for oil not sold at arm's length for oil produced elsewhere. (For the RMR, spot prices at Cushing, Oklahoma, are used as the third benchmark.) We believe that the location and quality adjustments together with the transportation allowances specified in the final rule effectively result in market value at the lease. Similarly, even though spot prices are not established directly for all local markets, we believe that the location and quality adjustments do result in reasonable measures of value in the local markets.

However, we believe that in some cases the use of spot prices determined before the production month, as proposed in February 1998, could affect lessees' production decisions and, ultimately, royalties paid. Therefore, in the final rule, we have adopted the procedure for applying spot prices proposed in January 1997, rather than the procedure proposed in February 1998, for the following reasons.

Assume the average daily spot price in an MMS-approved publication is determined April 26–May 25 for the delivery month of June. Further assume that the lessee transfers its production to an affiliated marketing entity who then resells at arm's length and that the lessee has opted to value the production at the index price. The lessee responsible for reporting June production volumes and values would then know the June spot price (and therefore the royalty value) by the end of May, before its production for the month of June even begins. If the daily spot price then rose through the rest of May and the early part of June, the lessee might decide to increase production over at least a short period and thereby realize more per barrel than the royalty value. Conversely, if the daily spot price fell after May 25 and into early June, the lessee might decide to decrease production so as to be impacted minimally by realizing less per barrel than the index price it must use for royalty payments. To prevent such potential problems, the final rule applies the spot price effectively determined during the production month so that the price determination is concurrent with production. So, for example, for May production in the Gulf of Mexico you would use the spot price determined from April 26 through May 25 for June delivery.

Several commenters said that use of a spot price improperly captures downstream value enhancements and that the differentials specified by MMS are inadequate. We covered this issue thoroughly in Section III(i) earlier in this preamble. We point out again here that MMS has never allowed deductions from royalty value for marketing costs. This rulemaking makes no change to the lessee's duty to market. Valuation based on a "downstream" sale or disposition of production has been commonplace for many years, because the initial basis for establishing value often is a "downstream" sales price. The United States as lessor always has shared in the "benefit" of "downstream" marketing away from the lease, and has allowed deductions for the cost of transportation accordingly.

One of the real issues between industry and MMS is what costs should be allowed as part of the transportation function. The industry would like more costs included as part of transportation than MMS is willing to allow. MMS has prescribed by rule what transportation costs are deductible, and believes that the allowed costs are proper.

Finally, MMS believes the available spot prices represent accurate assessments of day-to-day oil market value. MMS has reviewed the procedures used by the major price reporting services. While it is true that spot prices result from surveys done by individuals, we believe their procedures and safeguards produce meaningful value assessments. Further, comparisons of spot prices with NYMEX futures prices show a direct correlation between the two when appropriate location and quality adjustments are made. We did find some spot price locations—for example, Guernsey, Wyoming, and Kern River and Line 63 in California—where the volumes traded were so limited that we didn't believe we should rely on the resulting spot price. We did not use those spot prices in the final rule.

(f) Nonbinding Valuation Guidance (Proposed § 206.107)

This section of the February 1998 proposal provided that lessees may ask MMS for valuation guidance or propose a valuation method to MMS. It stated that MMS will promptly review the proposal and provide the requestor with a nonbinding determination.

Summary of Comments: Three industry commenters were concerned with the nonbinding nature of the guidance. As stated by one of the commenters:

- MMS offers no explanation for abandoning the current regulations, which don't specify that value determinations are nonbinding.
- As a practical matter, a lessee would not seek a nonbinding value determination.
- If the guidance is favorable to the lessee, MMS would not be bound by it. (In other words, MMS could change its mind at a future date.)
- If the guidance is unfavorable to the lessee, it might be at risk for civil penalties for willfully and knowingly not complying if it disregards the guidance; yet the lessee has no recourse to appeal the guidance.

MMS Response: In the final rule, in response to comments, we are providing a procedure for valuation determinations that is more than simply non-binding guidance. Under § 206.107 of the final rule, you may request a value determination from MMS regarding any Federal lease oil production. (Your request must identify all leases involved, the record title or operating rights owners, and the designees for those leases, and explain all relevant facts.) MMS may either:

(1) Issue a value determination signed by the Assistant Secretary, Land and Minerals Management; or

(2) Issue a value determination by MMS; or

(3) Decline to provide a value determination.

A value determination signed by the Assistant Secretary, Land and Minerals Management, is binding on both you and MMS until the Assistant Secretary modifies or rescinds it. It is also the final action of the Department and is subject to judicial review under the Administrative Procedure Act, 5 U.S.C. 701–706.

In contrast, a value determination issued by MMS is binding on MMS and delegated States with respect to the specific situation addressed in the determination, unless the MMS or the Assistant Secretary modifies or rescinds it. In the December 1999 proposal, we used the term "MMS Director" instead of "MMS". We changed the reference to "MMS" so that it was clear that the Director could delegate this authority, for example, to the Associate Director for Royalty Management.

Further discussion of States' concerns on their input to value determinations is provided at Section IX (u) of this preamble.

A value determination by MMS is not an appealable decision or order under 30 CFR part 290 subpart B. If you receive an order requiring you to pay royalty on the same basis as the value determination, you may appeal that order under 30 CFR part 290 subpart B.

A few commenters at the January 2000 public workshops asked MMS to specify that if a lessee chooses not to follow a value determination by MMS, it will not be subject to civil penalties under FOGRMA section 109(c), 30 U.S.C. 1719(c), for knowing or willful underpayment of royalties. A decision

not to follow an MMS value determination will not, in and of itself, result in a civil penalty assessment for knowing or willful underpayment. However, it does not immunize the lessee from penalties for knowing or willful violations if the lessee's conduct constitutes a knowing or willful underpayment independent of the MMS value determination.

Importantly, a change in an applicable statute or regulation on which any value determination is based takes precedence over the value determination. It is not necessary for the MMS or the Assistant Secretary to modify or rescind the value determination for the new statute or rule to take precedence.

With certain exceptions, a value determination may be modified only prospectively. However, the MMS or the Assistant Secretary may modify or rescind a value determination retroactively if there was a misstatement or omission of material facts in your request, or if the facts subsequently developed are materially different from the facts on which the guidance was based. In situations such as these, the agency should not be bound by a value determination.

Situations in which MMS typically will not provide any value determination include, but are not limited to, requests for guidance on hypothetical situations and matters that are the subject of pending litigation or administrative appeals. MMS also typically will not use a value determination to resolve factual disputes either between MMS and the lessee, or between the lessee and third parties (for example, a purchaser) where those disputes are relevant to royalty value. While MMS will respond to requests for value determinations, it is not obligated to issue a value determination.

Value determinations are issued only under § 206.107, in response to a specific request for a value determination. Under other provisions of the rule, lessees may ask MMS to make certain other determinations—for example, to establish a location/quality adjustment under § 206.112, or even (as the fourth benchmark for non-arm's-length dispositions in the RMR under § 206.103(b)) to establish a valuation method.

(g) Adjustments and Transportation Allowances (Proposed §§ 206.109 through 206.112)

Summary of Comments: Twenty respondents, including sixteen representing industry, three representing States, and one representing a municipality, commented on various aspects of location and quality adjustments and transportation allowances. Industry continued to oppose: (1) Differentials that do not allow all post-production marketing costs and services; (2) the elimination of the exception permitting requests to use FERC tariffs instead of actual costs for determining transportation allowances; and (3) limits on transportation allowances. Several industry commenters believed the proposed rules discriminate against lessees with affiliated transporters by requiring them to use a regulatory cost calculation to determine their transportation allowances, whereas third parties are permitted to use tariffs.

MMS Response: In Section III(*i*) of this preamble, we responded in detail to comments about not allowing marketing costs.

In the final rule, we have eliminated the option for lessees to request the use of a FERC tariff in lieu of calculating its actual transportation costs in non-arm's-length transportation arrangements. Since the 1988 rules were promulgated, FERC has renounced jurisdiction over many, if not most, pipelines on the OCS. Oxy Pipeline, Inc., 61 FERC ¶ 61,051 (1992); Bonito Pipeline Co., 61 FERC ¶ 61,050 (1992), aff'd sub nom., *Shell Oil Co.* v. *FERC,* 46 F.3d 1186 (D.C. Cir. 1995); *Ultramar, Inc.* v. *Gaviota Terminal Co.,* 80 FERC ¶ 61,021 (1997). Those FERC decisions resulted in MMS rejecting use of FERC tariffs under the existing rule because FERC cannot "approve" a tariff over which it has no jurisdiction. This in turn has resulted in litigation between several lessees and the Department over the applicability and meaning of the existing rule. *Shell Offshore, Inc.* v. *Babbitt,* No. CV98–0853 (W.D. La. Mar. 17, 1999), appeal pending, Nos. 99–30532 and 99–30745 (5th Cir.); *Torch Operating Co. et al.* v. *Babbitt,* Nos. 1:98CV00884 ES and consolidated cases (D.D.C.).

Absent any possibility of review or check by FERC over the reasonableness of the rates filed with FERC for such pipelines, MMS has no avenue to assure that the "tariff" filed by a pipeline affiliated with the lessee is reasonable. The potential for lessees to claim excessive transportation allowances in non-arm's-length situations is clear. Indeed, in many cases, MMS auditors have found that the FERC tariff the lessee has used is considerably higher than the actual costs that otherwise would be allowed under the existing rule.

This contrasts with the situation where a lessee pays an unaffiliated pipeline the rate that the pipeline had filed with FERC. In that event, the "tariff" represents the lessee's actual transportation costs because that was what it in fact was charged. Thus, in eliminating the FERC tariff exception, lessees are allowed to deduct their actual costs in both cases.

Further, in this final rule MMS has retained the provision that if the lessee's actual transportation costs exceed 50 percent of the value of the product, the lessee may apply for, and MMS may approve, an allowance greater than that amount.

Summary of Comment—Duplicate Quality Adjustments: One State commenter believed that proposed paragraph 206.113(a) permitted "double-dipping" for quality adjustments, since paragraphs 206.112(a) and (e) both provide for quality adjustments, thus allowing a double deduction for quality for crude oil at the lease and the market center. This commenter also noted that because paragraph 206.112(a) allows for deduction of a location differential between the lease and the market center, and paragraph 206.112(c) allows for deduction of transportation costs between the lease and the aggregation point, paragraph 206.113(a) will allow the lessee to deduct its transportation costs from the lease to the aggregation point twice.

MMS Response: In this final rule, we added a new paragraph (g) to § 206.112 to clarify that you may not use any transportation or quality adjustment that duplicates all or part of any other adjustment that you use under § 206.112. Moreover, the structure of the final rule is not susceptible to the problem the commenter describes. Under the final rule, for example, if you dispose of your production under an arm's-length exchange agreement, but transport the oil away from the lease to an intermediate point before giving it in exchange, you cannot claim a transportation allowance between the point where you give the oil in exchange and the point you receive oil back in exchange if you use a location differential for the segment between those two points. This same principle applies for all adjustments addressed in § 206.112. That is, any time a lessee takes one of the listed adjustments, it cannot duplicate any portion of that adjustment as part or all of any other adjustment that otherwise would be allowable.

Summary of Comment—No Quality Adjustment in Absence of Quality Bank: One commenter noted that, in the absence of a quality bank, the rule does not provide for any adjustments for quality differences between the indexed

crude oil and the oil produced at the lease.

MMS Response: In the final rule, MMS intentionally did not include a specific quality differential unless there is a quality bank that applies to the lessee's production. MMS does not want to be in a position of permitting quality adjustments where they may not be warranted. Further, quality adjustments will be reflected in the location differentials applied by lessees from their arm's-length exchange agreements. Finally, MMS has provided, in § 206.112 of the final rule, that if the lessee believes it does not have the information necessary to calculate a location/quality differential or transportation allowance, the lessee may request approval from MMS for the location/quality differential or transportation allowance. This may provide an opportunity to reflect quality differences the lessee believes are not otherwise accounted for.

VII. Responses to Public Comments on July 1998 Proposal

MMS's July 1998 proposal included several additional proposed changes based on comments received on the February 1998 proposal:

(1) The definition of "affiliate" was changed back to its meaning under the current rule, but made separate from the "arm's-length" definition;

(2) Specific regulatory language was inserted stating that MMS would not "second guess" lessees' marketing decisions by disallowing arm's-length gross proceeds as royalty value; and

(3) The procedure for valuing production subject to arm's-length sale following exchanges was modified. Value would be the arm's-length sale price following a single exchange, but where more than one exchange is involved, the lessee would have to use index pricing.

MMS also requested comments on the definition of "gathering" as related to deepwater leases involving subsea production without a platform but with long-distance movement of bulk production.

We received approximately 200 pages of comments within 25 separate submissions. Commenters included 3 States (6 submissions), 4 industry trade groups, 12 producers (13 submissions), 1 watchdog group, 1 concerned citizen, and two members of Congress (1 submission).

Although MMS asked for specific comments relating to particular issues (63 FR 38355), and reiterated that previous comments need not be resubmitted because they are already part of the record, there were many comments similar to previous submissions. Rather than repeating all such issues and comments here, we refer the reader to Sections I, III, IV, V, and VI. Instead, with a few exceptions, we address only those comments on provisions that are new or revised from the previous proposals. The comments fall into 11 topical categories ((a) through (k) below). Each topic begins with a description of the issue and is followed by a summary of comments and MMS's response.

(a) General Comment

The issue relates to the overall changes in MMS's July 1998 proposal.

Summary of Comments: One commenter believes the latest proposal provides numerous concessions to industry and thus amounts to a weaker rule.

MMS Response: We disagree with this comment. None of the changes in the July proposal should result in a weaker rule. Rather, they clarify the specifics of the rule and make it more usable for all involved. The changes result from a reasoned analysis of comments made by all parties over this extended rulemaking process. Rather than trying to give a specific response to this general comment, we address the proposed changes in the July 1988 proposal one-by-one below.

(b) MMS's Proposed Definition of Affiliate

MMS proposed retaining the meaning of "affiliate" embodied in the current rules at § 206.101, but removing it from the "arm's length" definition.

Summary of Comments: One commenter believed that the 10 percent threshold which constitutes no controlling interest in an affiliate is too low; at least 20 percent should be used, because this is the standard used by the Bureau of Land Management. Most commenters believed that the definition of affiliate was too vague, and specific criteria for rebutting the presumption of control were needed. One commenter believed the burden should be on the lessee to prove that the presumption of control is incorrect. One commenter stated that transactions between affiliates with any common ownership should not be considered arm's length. One commenter believed that by retaining the current definition of affiliate, it becomes easier for a company to pay on gross proceeds rather than index, which is the proper value.

MMS Response: See MMS's response in Section VI(a).

Summary of Comments: One group presented a scenario in which a small group of producers bands together to build a pipeline, but if one member of the group owns more than a 10 percent interest in the pipeline, they may be penalized under the affiliate definition.

MMS Response: This scenario is unlikely to play out as portrayed. Moreover, the definition of "arm's length" goes beyond ownership and affiliation. The owners also must have opposing economic interests in the pipeline to claim arm's-length status. Under this common ownership scenario all the owners likely would be deemed non-arm's-length as related to the pipeline.

(c) Breach of Duty To Market

In the July 1998 proposal, MMS tried to allay industry concerns about potential additional royalty assessments by adding specific language to § 206.102(c)(2)(ii) that MMS would not use the "breach of duty" provision to second-guess industry marketing decisions.

Summary of Comments: Industry and their representative organizations were not reassured that MMS will not "second-guess" their marketing decisions. Many believed the terms "substantially below" and "market value" were not easily defined and could lead to MMS questioning legitimate transactions. One commenter said that MMS has in the past rejected legitimate, at-the-lease prices in favor of higher, downstream prices. One commenter believed that as long as a company is acting in good faith, they have nothing to fear with MMS "second-guessing" their decisions. One commenter offered alternate "breach of duty to market" language.

MMS Response: The provision MMS was attempting to clarify with its proposed additional language is identical to the provision in the existing rules (see 30 CFR 206.102(b)(1)(iii)). It has resided in those rules for over a decade and has not been used to second-guess a lessee's marketing decisions to try to impose the benchmarks at § 206.102(c) on arm's-length transactions.

We agree with the commenter who said lessees have nothing to fear if they are acting in good faith. This provision is simply meant to protect royalty value if, for example, a lessee were to inappropriately enter into a substantially below-market-value transaction for the purpose of reducing royalty.

In § 206.102(c)(2)(ii) of the final rule, in response to comments, we specifically state that MMS will not use this provision to simply substitute its judgment of the market value of the oil

for the proceeds received by the seller under an arm's-length sales contract. The fact that the price received by the seller in an arm's length transaction is less than other measures of market price, such as index prices, is insufficient to establish breach of the duty to market unless MMS finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil from the lease. Likewise, the fact that one co-lessee sells production at the lease while another lessee sells its production downstream does not imply that the co-lessee who sells at the lease has breached its duty to market.

Some commenters have argued that adding to the lessee's gross proceeds the marketing costs that a purchaser of oil, rather than the lessee, incurred constitutes "second guessing" of an arm's-length contract. They cite as a purported example of such "second guessing" the IBLA's decision in Amerac Energy Corp., 148 IBLA 82 (1999) (motion for reconsideration pending). MMS strongly disagrees with this argument. The Amerac case is not an example of "second-guessing." Lessees may not avoid the obligation to market production at no cost to the lessor by transferring the function to the purchaser and accepting a lower price in return. In the Amerac case, neither MMS nor the IBLA "second guessed" the contract at all.

(d) Marketing Fees

MMS has maintained its "duty to market" provision with no additional deductions allowed for marketing or other associated costs.

Summary of Comments: One commenter believes the administrative fee that is charged under MMS's existing Small Refiner Royalty-In-Kind program is analogous to a marketing fee. Consequently, lessees who use index prices should be allowed to deduct marketing fees from these prices.

MMS Response: The fee charged to the small refiners for participation in the RIK program covers MMS's additional costs in administering the program and does not relate to a marketing fee. The MMS fee does not parallel marketing costs incurred by the producers.

(e) Exchanges

In response to earlier industry comments, MMS proposed in its July 1998 proposal that where oil was involved in a single exchange before an arm's-length sale, its value should be based on the arm's-length gross proceeds under that sale. But if there were two or more exchanges, the oil would be valued under § 206.103.

Summary of Comments: Most industry commenters and their representative groups still stressed the problem of tracing the oil through an exchange to determine proper value. In many cases, the oil is commingled with non-Federal oil and sold in bulk, creating difficulty in determining the true value of the Federal portion. Additionally, there can be a significant workload if any corrections need to be made to previously-reported values. The producer should at least be given the option of using: (1) the arm's-length sales price after the exchange, or (2) index value. One commenter believed that any exchange between affiliates should not be considered arm's length, that the definition of exchange should be modified to include only exchanges that are truly at arm's length, and that the definition of exchange should be expanded to include other specific types of exchange agreements. Two commenters believe that if a lessee is to use gross proceeds after an exchange, then it must report all balancing agreements for that lease to the MMS.

MMS Response: MMS understands the potential administrative burden of tracing. We are also well aware of the desire of other producers, as expressed in the meetings sponsored by Senator Breaux on July 9 and July 22, 1998, to be able to use prices received in arm's-length sales following multiple exchanges. As a result, in this final rule, MMS allows lessees the option of using either their arm's-length gross proceeds regardless of the number of arm's-length exchanges preceding the arm's-length sale, or the provisions of § 206.103 (index prices or, in the RMR, benchmarks). The selected option, once chosen, cannot be changed for 2 years and must be applied to all of the lessee's oil produced from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that is sold at arm's length following one or more exchanges. This process preserves the integrity of the rule's underlying principle of applying arm's-length gross proceeds where appropriate, but still allowing use of index/benchmark values that fairly represent market value where "tracing" would be too burdensome.

Also, we acknowledge that exchanges between affiliates are not at arm's length. Because there is potential for inflated differentials in such exchanges, production so transferred and followed by an arm's-length sale must be valued at the appropriate index/benchmark value under this final rule. We also agree that the definition could be clarified by specifying several other types of exchange agreements. We have done this in the final rule. We do not believe, however, that it is to the lessee's or MMS's benefit for all balancing agreements to be reported to MMS. Such agreements should be made available on audit or as otherwise requested by MMS.

(f) Binding Guidance

MMS did not request comment on this issue in its July 1998 proposal, but drew several comments. The February 1998 proposal stated that lessees could petition MMS for non-binding guidance.

Summary of Comments: MMS received five comments stressing the importance of MMS issuing binding guidance. They believed that the nature of a business relationship requires it. One commenter believed that guidance should not be binding because all of the facts may not be available at the time the guidance is issued.

MMS Response: See Section VI(f) of this preamble for a complete discussion of this issue.

(g) Gathering versus Transportation

MMS asked for comment on whether the definition of transportation should include subsea movement of bulk, untreated production over distances of 50 miles or more. This typically involves a subsea completion and subsequent movement to a platform where the production first surfaces and is treated. If this movement is considered transportation, the associated costs may be allowable deductions from royalty. If the movement is considered gathering, the costs would not be allowed.

Summary of Comments: MMS received mixed comments on this issue. The majority of the producers commented that movement away from the lease should be considered transportation. Other comments centered on the fact that many deepwater leases are already receiving some type of royalty relief, and additional deductions are not warranted.

MMS Response: This issue arose in the public comments for the first time in the meetings of July 9 and 22, 1998, sponsored by Senator Breaux. In the past, MMS has consistently held that movement of production to a central accumulation or treatment point prior to the royalty measurement point is considered gathering, rather than transportation of marketable production eligible for a deduction from royalty. In this final rule, MMS has not changed the existing regulatory language. (However, we further note that on May 20, 1999, the MMS Associate Director for Royalty Management issued

guidance regarding movement of production from deepwater leases).

(h) MMS Use of BBB Bond Rate

The existing rule uses the Standard and Poor's Industrial BBB bond rate as an allowable rate of return on capital investment for producers who transport oil through their own pipelines (see 30 CFR 206.157(b)(2)(v)).

Summary of Comments: Two commenters from affiliated companies said the use of the BBB bond rate as an allowable return within the calculation of actual costs of transportation is arbitrary and would be considered unacceptable by any court. The actual rate should be much higher, reflecting the real rates of return seen in the Gulf of Mexico, and particularly in deep waters to recognize additional risk.

MMS Response: We have continued the use of the Standard and Poor's BBB industrial bond rate in this final rule. MMS did not propose specific provisions regarding the rate of return, but received numerous comments on those issues. This issue is discussed more fully below in the responses to the comments on the December 1999 proposal in paragraph IX(a).

(i) Quality and Transportation Adjustments

In its February 1998 proposal, MMS allowed quality adjustments in § 206.112 based on premia or penalties determined by pipeline quality bank specifications at intermediate commingling points, at the aggregation point, or at the market center applicable to the lease. Allowable transportation deductions were based on actual costs of movement, consistent with the rules currently in effect.

Summary of Comments: Two commenters believe that only gravity and sulfur banks should be used for quality adjustments. One commenter believes the rule should allow transportation costs only to the nearest market center and by the cheapest means to move it there.

MMS Response: In this final rule, MMS intentionally did not include specific quality differentials unless a quality bank applies to the lessee's production. MMS does not want to permit quality adjustments where they may not be warranted. Further, quality adjustments will be reflected in the location differentials applied by lessees from their arm's-length exchange agreements and in location differentials that MMS provides to lessees upon request under § 206.112(f). In this way, MMS is allowing only additional pipeline-specific adjustments where they exist.

Consistent with the current rules, transportation allowances in this final rule are based on actual transportation costs. MMS historically has not questioned whether the transportation was to the nearest market center or whether it was by the cheapest means available. We presume that lessees will act prudently to market their oil at the appropriate point and use the most efficient means of transportation available. Once again, MMS does not intend to "second-guess" marketing decisions to which these factors apply.

(j) Tendering and Other Alternatives

In its various proposals, MMS generally has not incorporated industry-proposed valuation alternatives. An exception is application of tendering programs in the RMR.

Summary of Comments: Many comments from industry and their trade groups criticized MMS for not permitting use of viable alternatives such as tendering programs in all parts of the U.S. Additionally, MMS ignored many lease-based alternatives and the option of taking royalty in kind.

MMS Response: MMS believes it has adequately responded to all alternatives presented by industry above. For example, see Section VI(d) for detailed comments and responses regarding tendering programs and Section III(r) for a discussion of royalty in kind.

(k) Gross Proceeds Valuation

The various MMS proposals have allowed lessees to use their gross proceeds received under arm's-length sales as their royalty value basis.

Summary of Comments: One commenter believes the use of gross proceeds as a method of valuation is flawed because it does not always represent the full value of the oil. Two commenters state that only independents should be allowed to use gross proceeds, while all major integrated producers should use index prices.

MMS Response: MMS's valuation rules have always followed the general premise that arm's-length gross proceeds represent market value and hence royalty value. However, the various MMS proposals and this final rule all include provisions that where an arm's-length sales contract does not reflect the total consideration received for the oil, MMS may require that the lessee value the oil under the appropriate index or benchmark value or at the total consideration received. For example, if in return for its oil the lessee received the contract sales price plus some other valuable goods or benefits—for example, a new car—the total consideration would include the contract price and the car's value. Also, we do not believe it is appropriate to apply different valuation methodologies based solely on whether the lessee is an independent producer or a major integrated company.

VIII. Responses to Public Comments on March 1999 Notice

On March 4, 1999, in response to requests by Members of Congress and parties interested in moving the process forward to publish a final rule, the Secretary announced he would reopen the comment period. MMS reopened the comment period from March 12, 1999, through April 12, 1999 (and later extended the comment period through April 27, 1999). The **Federal Register** notice announcing the reopening of the comment period (64 FR 12267 (March 12, 1999)) provided the contents of the August 31, 1998, letter from the Assistant Secretary for Land and Minerals Management, to the Senate outlining the direction the final rule might take on certain issues. The letter identified seven areas where MMS was considering changes in response to commenters' concerns: (1) Definitions; (2) valuation of oil sold by the lessee at arm's length; (3) valuation of oil sold after arm's-length exchange agreements or sold by an affiliate at arm's length; (4) valuation of oil not sold at arm's length; (5) location/quality adjustments to index prices; (6) transportation allowances; and (7) non-binding valuation guidance.

The MMS also scheduled three workshops during the comment period (Houston, Texas, March 24, 1999; Albuquerque, New Mexico, March 25, 1999; and Washington, DC, April 7, 1999) to obtain public input on specific issues that remained to be resolved.

MMS received 117 pages of comments from 16 commenters (three State agencies, two industry trade associations, eight oil and gas producers, two public interest groups, and one congressional office).

In response to the positions outlined in the August 31, 1998, letter to the Senate, industry participants at the workshops submitted a set of six unified industry proposals for discussion. These proposals were supported by both the major trade associations and the independent trade associations and became the primary focus of the workshops. Industry's written comments basically reiterated its support for these proposals. The States and public interest groups' comments were more general in nature and stated an overall objection to the reopening of the comment period and discussion of

the "same old" issues. They objected to the continual delays in publishing a final rule and recommended that MMS proceed posthaste to a final rule based on index pricing. Specific comments by States and interest groups are included in the discussion of industry proposals.

(a) Use of Comparable Sales in Non-arm's-length Situations

Summary of Comments: For non-arm's-length sales, industry commenters proposed adoption of a menu of valuation alternatives that would center on using a weighted average of comparable arm's-length sales transactions at the lease. Under their proposal, a minimum of 20 percent of the lessee's production must be sold or purchased at arm's-length, including tendering programs. Other value benchmarks, including index, could be used in situations where comparable sales were not adequate. Industry advanced this proposal on the theory that it reflects the value of production "at the lease." Industry commenters also maintained that using comparable sales would be a more accurate method of capturing the quality characteristics of lease production and it would avoid the complexity of calculating differentials between the lease and market center. Companies that tender their production under a competitive bidding process expressed strong support for using such programs to establish value for royalty purposes.

States continue to oppose lease-based benchmarks, because they believe arm's-length sales at the lease are limited, and they have concerns about the use of tendering programs. One State commenter stated that the comparable sales approach does not address the problem of undervalued field prices. That commenter plus an interest group recommended that MMS consider going forward with a rule specific to majors.

MMS Response: In the final rule, MMS did not adopt the industry-proposed comparable sales model to value production not sold at arm's-length. We continue to believe that there are meaningful spot prices applicable to production in all areas other than the Rocky Mountains. With the exception of the RMR, spot and spot-related prices drive the manner in which crude oil is bought and traded in the U.S. Spot prices play a major role in crude oil marketing and are readily available to lessees through price reporting services.

We believe spot prices are a better indicator of the value of production and are preferable to attempting to use comparable arm's-length sales in the field or area. Commenters have not demonstrated the consistent existence or availability of such transactions for volumes sufficient to use for royalty valuation. Contrary to the industry commenters, MMS believes that nationwide about two-thirds of crude oil production is disposed of non-arm's length. As previously mentioned, the general lack of competitive and transparent markets at the lease makes the attempt to find comparable sales transactions far inferior to the use of index prices.

The RMR, where reliable spot prices are not readily available, is an exception. About two-thirds of crude oil produced there is sold at arm's length, and there is not a reliable index price in that region. In addition, industry's proposal has substantial practical difficulties since companies are not privy to other companies' "comparable" sales transactions, and to the extent that such information may be available to MMS, it is unaudited for current periods. The final rule thus primarily uses index prices, adjusted for location and quality, to establish value for oil not sold at arm's length.

(b) Binding Valuation Determinations

Summary of Comments: Industry commenters proposed a provision under which MMS would provide binding valuation determinations on a case-by-case basis. Among other provisions, the determination would have no precedential value beyond the facts in the case. The MMS would have 180 days from the date the lessee submitted the request to make a decision, otherwise the request would be deemed approved. An MMS decision on a request would be subject to the existing appeals process. Industry commenters cited the need for obtaining timely valuation determinations that can be relied on for satisfying royalty obligations.

State commenters expressed general opposition to binding determinations, stating that information could be inaccurate, incomplete, or dated and that MMS should have discretion over issuing any binding determinations. A public interest group indicated it would support a binding determination as long as all of the information submitted is correct and verifiable and that the determination only applies to the requestor. A congressional commenter stated that this issue remains of concern and needs to be developed further.

MMS Response: See Section VI(f) above and the explanation of § 206.107 of the final rule in Section X below.

(c) Transportation Allowances in Non-Arm's-length Situations

Summary of Comments: Industry commenters proposed that transportation allowances in non-arm's-length situations should be based principally on the value of the service. That is, the allowance should be based on what companies pay under arm's-length contracts. Under the proposal, where more than 20 percent of the pipeline volume is transported at arm's length, an annualized volume-weighted average of the arm's-length rates would be used. Where less than 20 percent of the volume is arm's-length, the current MMS actual-cost method would apply; however, the rate of return would increase from the current level to twice Standard & Poor's BBB bond rate. Undepreciated capital investment would never be less than 10 percent of the original capital cost.

Industry commenters argued that they only agreed to the MMS actual-cost method under the 1988 regulations because of the provision to use FERC tariffs. They oppose MMS proposing to revoke use of tariffs without allowing an adequate transportation allowance rate that reflects the value of the production at the market centers. They also assert that the transportation allowance rate should recognize the risk associated with building pipelines. Furthermore, they point out that the current rate of return based on one times BBB is too low to accurately reflect a company's cost of capital.

State commenters agreed with MMS's position under the latest proposed rule. One congressional commenter stated that MMS should confer with FERC and develop a proposal that is more consistent with accepted public rate setting practices.

MMS Response: As explained elsewhere in this preamble, in the final rule MMS has deleted the FERC tariff exception. However, we note that independently of eliminating the FERC tariff exception, MMS has modified several provisions related to non-arm's-length transportation allowances, including new depreciation schedules if a transportation facility is sold, and a "base" investment level to which the rate of return could always be applied, as discussed further below. In the final rule, we have continued the use of the Standard and Poor's BBB industrial bond rate, for reasons discussed more fully below in the responses to the comments on the December 1999 proposal at paragraph IX(a).

(d) Adjustments to Downstream Values

Summary of Comments: Industry commenters stated that they would not be properly compensated for location and quality adjustments under the proposed rule. They contended that, with valuation being set downstream of the lease (*i.e.*, index prices), the prescribed location and quality adjustments do not arrive at a proper value at the lease, and they do not adequately compensate the lessee for the costs and risks associated with those midstream and downstream activities. They claimed that use of Form MMS–4415 would be unduly burdensome and too out-of-date for providing accurate location and quality adjustments to current index prices. They proposed alternatively that industry and MMS jointly develop a uniform monthly report or contemporaneous tables by region incorporating differentials reflective of actual recent market conditions. They also proposed adjustments for marketing activities.

MMS Response: MMS has always proposed that all reasonable location and quality adjustments be applied to the appropriate index, and believes this final rule permits those adjustments. Under § 206.112, the lessee may request approval from MMS for additional or alternative adjustments if necessary. However, for reasons explained in Section III(i), MMS maintains that marketing costs are not a proper deduction from royalty value and has retained this provision in the final rule.

Under the final rule, MMS will not publish location/quality differentials because MMS believes that lessees generally will have sufficient information to accurately determine location/quality differentials, with relatively rare exceptions. If a lessee disposes of its oil through one or more exchange agreements, it ordinarily should have the information necessary to determine adjustments to the index price. As a result of eliminating MMS-published differentials, the proposed Form MMS–4415 is not part of the final rule. Because MMS is not requiring the proposed form, it is not necessary to address the extensive comments MMS received regarding the content and timing of the form.

If the oil is not disposed of through exchange agreements, then the lessee is physically transporting the oil either to a market center or to an alternate disposal point (such as a refinery.) In that event, the lessee will have the necessary information regarding actual transportation costs to claim the appropriate transportation allowance.

(e) Definition of Affiliate

Summary of Comments: Industry commenters did not object to having separate definitions for "affiliate" and "arm's-length," and in general, did not oppose the provision that ownership of 10 through 50 percent creates a presumption of control, as reinstituted in the July 1998 proposal. However, they recommended certain guidelines for lessees to rebut the presumption of control. If the lessee meets any of the following four criteria, they would be deemed to have no control over the affiliate: (1) The affiliated entity can take any relevant action without an affirmative vote of the lessee; (2) the lessee is not a general partner of a partnership; (3) the lessee is a natural person not related within the fourth degree to the affiliated natural person; and (4) the lessee's directors on the board of the affiliated company cannot block any relevant action of the affiliated company. Industry commenters also asserted that a lack of opposing economic interests cannot be assumed. However, they believe that if noncontrol is demonstrated, the existence of "opposing economic interests" has been established. One industry commenter indicated that MMS should bear the burden of proof in demonstrating a lack of opposing economic interest.

A public interest group commenter suggested that any economic interest in the other company should require index-based valuation. A State commenter suggested that ownership percentages should be only one of many factors to determine whether a contract is arm's-length and that any list of control rebuttal factors should be illustrative only.

MMS Response: See MMS response in Section VI(a).

(f) "Second-guessing"

Summary of Comments: As stated above, industry commenters expressed significant concern that the additional regulatory language proposed in the July 1998 proposal at paragraph 206.102(c)(2)(ii) would lead to further uncertainty and misunderstanding regarding the lessee's duty to market production in arm's-length situations. Industry reiterated these concerns at the workshops. Particularly, they expressed concern that if a company sold production at the lease under an arm's-length arrangement, MMS might later "second-guess" the transaction and determine that the royalty should have been paid on a higher price than the company actually received, such as index. They proposed specific language to be added to the rule and preamble.

One State commenter also proposed specific regulatory language regarding "second-guessing." A public interest group commented that it would support language that MMS will not second-guess arm's-length contract prices received, provided that lessees disclose balancing arrangements between themselves and the unaffiliated companies.

MMS Response: See Section VII(c) above.

IX. Responses to Public Comments on December 1999 Proposal

On December 30, 1999, MMS published a reproposal of the entire rule. The December 1999 proposal modified the prior proposals in a few respects, specifically:

- MMS proposed to eliminate MMS-published location/quality differentials, and, as a consequence, proposed to eliminate the previously-proposed Form MMS–4415.
- MMS proposed to permit a continuing return on investment component of the transportation allowance, even after a pipeline is fully depreciated, and to permit a new depreciation schedule when a lessee buys a pipeline at arm's length under certain conditions.
- MMS asked for comments on alternative rates of return, including multiples of the Standard & Poor's BBB bond rate and weighted average cost of capital methods.
- MMS proposed to change the definition of "affiliate" in light of the D.C. Circuit's decision in *National Mining Association* v. *Department of the Interior,* 177 F.3d 1 (D.C. Cir. 1999).
- MMS proposed value determinations issued by the Assistant Secretary for Land and Minerals Management that would be binding on both MMS and the lessee, and value determinations issued by MMS that would be binding on MMS and not the lessee.
- MMS proposed specific regulatory language regarding so-called "second guessing" of arm's-length sale prices.

MMS received approximately 700 pages of comments on the December 1999 proposal. In addition, MMS conducted public workshops in Denver, Colorado, on January 18, 2000, in Houston, Texas, on January 19, 2000, and in Washington, D.C. on January 20, 2000. The comments divide into 41 categories, addressed in (a) through (aj) below.

(a) MMS Should Modify the Rate of Return in Calculating Actual

Transportation Costs Allowances and Involve FERC.

Summary of Comments: Many industry comments favored increasing the rate of return in some fashion. Some suggested increasing the rate used in calculating the allowance to twice the Standard and Poor's BBB industrial bond rate. In some cases, industry provided detailed reports and analyses to support their claims.

Three States and an individual commented that increasing the rate of return above the BBB rate is unnecessary. They favor maintaining the provisions in the current regulations. The individual stated that the BBB rate already is for marginal credit risks and already is enhanced, hence a higher return is unneeded.

Several U.S. Senators encouraged MMS to utilize the expertise of FERC staff to develop costs of debt and equity applicable to pipeline investments for use in establishing a rate of return for lessees to use in calculating actual transportation costs for non-arm's-length transportation arrangements.

MMS Response: The fact that a lessee's overall operations are funded historically by some proportion of debt and equity does not imply that the resulting aggregate weighted average cost is appropriate for determining a proper transportation allowance for royalty purposes. Different projects and investments will be expected to involve very different levels of risk and generate different levels of returns. They also may be funded in different ways. For example, a pipeline investment likely would be much less risky than investment in a wildcat drilling operation and thereby command a lower rate of return.

MMS expects that lessees will finance pipeline investments in the least costly manner available. MMS's research indicates that most recent pipeline investments are financed largely through debt rather than equity. For those pipelines financed entirely by debt, the BBB bond rate is a very favorable rate to claim as a cost for the lessee, because most large operators can borrow money at lower rates. Also, equity financing is typically more costly than debt financing.

The Standard & Poor's BBB industrial bond rate (BBB rate) that MMS currently uses typically falls between the cost of borrowing for large integrated oil and gas companies and the return that these firms are expected to earn on their capital investments. Therefore, given the predominance of debt financing for pipeline investments, MMS believes the choice of the BBB rate for the cost of capital is entirely reasonable.

The industry proposes using a weighted average cost of capital. Industry states that this weighted average cost is approximately 2.2 times the BBB bond rate. That is the basis of industry's proposal to use 2 times the BBB rate in transportation allowance calculations.

However, MMS believes that the companies used in industry's weighted average cost of capital calculation (those in Standard Industrial Classification (SIC) code 131) are less representative of lessees that typically build or own pipelines (including through affiliate arrangements) than those listed in SIC code 291. We believe code 291 is more appropriate because it includes major integrated firms, and therefore more closely represents the body of companies that typically would be involved in owning or constructing pipelines.

Also, we agree with industry's proposal to calculate a before-tax rate of return. Royalties are calculated before tax, so the rate of return used should be a before-tax rate as well. However, in adjusting certain after-tax information to obtain before-tax estimates, we did not use the 35 percent marginal tax rate used by industry. Instead, we used the 19 percent average tax rate that we find find is more appropriate for SIC code 291 firms.

Industry's calculation of weighted cost of capital is further exaggerated because it uses the BBB rate as the debt rate. As explained above, we believe that the BBB rate generally is higher than these companies' actual borrowing rates would be.

Further, we believe the equity rate used in industry's calculations was not appropriate because the equity rate applicable to companies in SIC code 131 is higher than the equity rate for companies in SIC code 291.

Even if, arguendo, we accepted the premise of using a weighted average cost of capital as the rate of return, MMS has found, using more appropriate SIC codes, tax rates, debt rates, and equity rates, that the average cost of capital is much lower than the 2.2 times BBB that industry calculated. MMS therefore concluded that industry's proposal is not well founded. MMS concludes that the BBB bond rate is an appropriate rate of return, and we have retained it in the final rule. We also conclude that since the BBB bond rate is adequate as a rate of return used in calculating actual transportation costs for royalty purposes, there is no need for MMS to utilize the expertise of FERC staff to develop costs of debt and equity.

(b) Rulemaking Process

Summary of Comments: One State commented that it would like to be involved in valuation requirements that affect it. Further, the rule should include a provision that the affected State may review valuation determinations.

A private organization questioned the rulemaking process in light of certain payments made to Department officials from proceeds paid to relators as a result of settling certain litigation brought under the qui tam provisions of the False Claims Act. It urges a delay in the rule until all matters associated with these payments are fully examined.

MMS Response: We understand the importance of the royalty income for each State and the fact that valuation decisions affect royalty revenues that are shared with States. States already have a major role in the process, through delegations of audit authority under 30 U.S.C. 1735, many informal consultations, and comments on proposed rules such as the comments submitted in this instance. We intend to continue this cooperative relationship. However, valuation determinations ultimately are MMS's responsibility.

The payments made to a Department employee from litigation settlement proceeds are the subject of a pending investigation. In that respect, MMS knows of no grounds for delaying this rulemaking.

(c) "Second Guessing"

Summary of Comments: An industry comment stressed support for the concept of MMS not "second guessing" industry's decisions in disposing of crude oil production. However, the commenter would like to see the concept expanded in the preamble and the associated sections within the rule itself.

MMS Response: MMS continues to reiterate that it will not "second guess" a company's decision on how it disposes of production. We have emphasized this at several points, both in the text of the rule and in the preambles to this rule and previous proposals. We do not believe that additional discussion would be helpful. As discussed above, MMS has rarely, if ever, "second guessed" the value received in an arm's-length sale of oil, so we cannot use actual experience that would provide a basis for elaboration.

(d) Spot Prices as a Marker of Value

Summary of Comments: Several industry commenters reiterated the assertion that spot prices do not reflect lease values even after adjusting for

quality and location. MMS fails to provide any analysis showing that spot prices do reflect lease value. The use of these prices inflates the actual value of the production at the lease, in violation of the lease terms.

Further, some industry commenters questioned the use of the Alaska North Slope (ANS) spot price as a marker for west coast oil. The State of California reiterated its belief that ANS prices are a valid measure of value.

MMS Response: MMS addressed the use of spot prices previously. The comment here was a prominent theme of the comments on the February 1998 proposal. See Section VI(e) above.

MMS continues to believe ANS is a valid measure of value for west coast production. However, there is language in the rule allowing review and changes should an index price become invalid.

(e) Nearest Spot Prices

Summary of Comments: Some comments from industry urged that if MMS is going to use index pricing, lessees should have the option of using a more distant index price if that index better reflects sales of oil more similar in quality to the lessee's Federal production, or if that index better reflects the location specified in the lessee's exchange agreements.

MMS Response: MMS's intent in the December 1999 proposal and this final rule in requiring lessees to use index prices at the market center nearest the lease is to correlate both proximity to the lease and quality similarity. If lessees could choose other market centers, the rule would become ambiguous and more vulnerable to manipulation.

(f) Unclear Whether Spot Price Applies to Trading Month or Calendar Month

Summary of Comments: Several industry commenters were not sure if the spot price to be used under the rule means the price that applies to the trading month or to the production month. They would like to see a clarifying example.

MMS Response: The final rule and this preamble clarify that the spot prices to be used in index value calculations are the prices for the trading month concurrent with the production month. The term "trading month" is a defined term in the final rule, and means the period during which crude oil trading occurs and spot prices are determined, generally for deliveries of production in the following calendar month.

In effect, the spot prices used will be the prices published during the production month for ANS crude, and prices published principally during the production month for other indexes. For example, a publication may publish prices between approximately the 26th day of month one and the 25th day of month two. That period will be the trading month, and the spot prices published in that trading month will be used to value, for royalty purposes, production from a Federal lease in month two).

Thus, continuing the example, if the production month is June and the oil is produced outside California/Alaska, and the trading month is May 26–June 25, you would compute the average of the daily mean prices using the daily spot prices published in the appropriate MMS-approved publication for all the business days between May 26 and June 25 (for delivery in July).

As indicated previously in this preamble, in the final rule we have adopted the index timing method proposed in the January 1997 proposal and not the method proposed in February 1998 and December 1999.

(g) Tendering Should Be an Option for Oil Not Traded at Arm's Length

Summary of Comments: Several comments from both industry and a group of U.S. Senators indicated that tendering should be used as a valuation methodology in all areas of the country, not just as a benchmark in the RMR. Further, MMS restrictions on tendering in the RMR are too severe. MMS can ease its restrictions and still prevent "gaming".

MMS Response: MMS addressed the overall appropriateness of tendering programs when similar comments were raised in response to the February 1998 proposal.

(h) Use of FERC tariffs in Lieu of Actual Costs

Summary of Comments: Again, industry submitted numerous comments supporting the position that FERC tariffs should be permitted as allowances because they recognize the real cost structure of pipeline investments; MMS allowances do not recognize these costs. Several State comments indicated that FERC tariffs are not appropriate and should not be used as allowances.

MMS Response: MMS addressed the appropriateness of FERC tariffs as allowances in the February 1998 responses to public comments.

(i) The Two-Year Election Requirement

Summary of Comments: Several comments from industry expressed concern that the requirement that a lessee declare for a 2-year period whether it will use gross proceeds or index pricing is too severe. Further, MMS should allow the election on a lease-by-lease basis rather than for all production and in intervals less than 2 years.

A State commented that it generally favors the 2-year valuation election as a method to ensure that industry does not "game" the valuation methods.

MMS Response: MMS agrees with the State comment that 2 years is needed to ensure that lessees do not have any incentive to "game" valuation methods. However, MMS acknowledges that it may be problematic for a lessee to have to declare an overall valuation method for all of its properties when circumstances may dictate different approaches for properties that are widely geographically separated or from which production is marketed in different ways. Therefore, in the final rule, MMS is requiring lessees to make the 2-year election on a property-by-property basis, *i.e.*, for a unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement).

(j) MMS Ignores Alternative Valuation Methodologies for Non-Arm's-Length Transactions

Summary of Comments: A consultant hired by industry claims that MMS has not addressed all of the alternatives that can arrive at lease value. It has not explained why RIK will not work in all circumstances. Other comments asserted that MMS would be able to eliminate valuation problems if it were to take its royalty in kind. Most States favor the approach of using index prices. One State is open to tendering if a lessee can demonstrate that its program will establish competitive prices.

MMS Response: MMS consulted with crude oil experts in economics, marketing, and related areas in the formulation of these rules. It has consulted with industry, States, and other interested parties for more than 4 years. During this time MMS held workshops addressing alternate proposals from these parties and made numerous refinements and revisions to its proposals. MMS has addressed alternate valuation proposals in the sections addressing comments received on earlier proposals before the December 30, 1999 proposal.

It is not incumbent on MMS to prove that RIK will not work in all circumstances before issuing a final rulemaking on oil valuation. The statutes and lease terms give MMS the option of taking royalty in value or in kind. As a steward of publicly owned resources, MMS is responsible for

receiving fair value for development of publicly-owned resources.

(k) MMS Has Not Fully Considered the Advantages of a Lease-Based Comparable Sales Valuation Methodology

Summary of Comments: Industry commenters still embrace comparable lease-based arm's-length sales to value production not sold at arm's length and claim that their consultants' work demonstrates that there are viable markets at the lease.

MMS Response: MMS has addressed the concept of comparable sales in multiple workshops attended by State and industry representatives and in sections containing responses to previously submitted comments in this rulemaking process. In support of their position, industry commenters offer the analyses prepared by Joseph Kalt (Kalt) and Kenneth Grant (Grant). For the west coast market, industry includes the comments of Samual Van Vactor. In support of their position, Kalt and Grant cite an extensive data base of lease-based arm's-length transactions that they say demonstrate that a market exists at the lease. We are aware that this database apparently exists because Kalt cited it in support of industry's position in a presentation to a congressional subcommittee reviewing this rulemaking process.

MMS also understands that this same database has been cited in several judicial proceedings where royalty payments were valued at posted prices. MMS has not seen the database containing these transactions because it was not provided with the comments submitted by Kalt and Grant. MMS has no way of verifying whether this database is accurate or whether or to what extent it supports Kalt's and Grant's thesis. We have no way of knowing whether the database includes transactions that MMS would not regard as arm's-length sales, whether it includes buy/sell exchanges within arm's-length sales, or whether it may involve other possible problems. It is also unclear whether any double counting of information may have occurred, since multiple parties' sales and purchase information apparently are contained in the database.

MMS cannot rely on data it has not seen and has not examined. MMS does not believe that industry has provided convincing evidence or analysis to show that a competitive market exists at the lease throughout the domain of Federal leases.

Another consultant hired by industry, Samuel Van Vactor (Van Vactor), claims that ANS spot prices are poor indicators for the market value of California crude oil. In support of his position, Van Vactor cites several difficulties in comparing ANS crude to California crude oils.

- ANS is of better physical quality than most California crude oil.
- Line 63 spot prices of California crude yield lower values than ANS.
- Gravity schedules on posted price bulletins and pipeline gravity banks are not intended to make comparisons between crude oils from different fields.
- MMS's method is more cumbersome than industry's comparable sales method.
- MMS disagrees with Van Vactor's position and reasons. While the quality of ANS is clearly different than most Federal California crude oil, after adjustments are made for gravity, sulfur, and location, it is a good proxy in valuing oil not sold at arm's length. ANS spot prices have the advantage of regular transactions of sufficient liquidity to establish a fair market price. Spot prices for Kern River crude and Line 63 are suspect indicators of market value because they reflect only thinly traded volumes. Additionally, Line 63 is a blend of heavy and lighter crude oil and, when refined, yields a different product slate than ANS and other California crude oils.

Van Vactor's criticism of the use of posted price gravity schedules and pipeline gravity banks for making adjustments between different fields ignores their common use by industry in exchange contracts involving different quality crude oils from distant locations. See Review of Selected Technical Reports on MMS's Proposed Federal Oil Rule and Supplemental Rule, prepared by Innovation and Information Consultants, Inc., dated September 25, 1997, p. 5. That review observes:

> Finally, Van Vactor argues that one cannot apply the California gravity price differential as a quality adjustment to ANS. He claims such adjustments are only meant to measure small deviations around the gravity actually being delivered and are not intended to be applied across crude fields or to compare with different crude oils. He also claims that when comparing ANS with California crudes of identical quality, ANS sells for $0.50 to $1.00 per barrel more. We disagree with his reasoning and its factual basis. First, it can be demonstrated that the interfield (the gravity adjustment factor across different fields) and the intrafield (the adjustment factor used in posted price bulletins to adjust for gravity variations within a field) gravity price differential are very nearly the same. [Citing "West Coast Crude Oil Pricing," Department of Energy, 1988.] Second, the oil companies regularly apply the gravity price differential (GPD) on exchange agreements covering many different crude oil types, gravity levels and fields within and outside California. Indeed even when companies are trading ANS for California crude oils, they often apply the California gravity price differential (or something lower) to adjust for differences in quality. Third, pipelines such as the All America pipeline which transports both ANS and California crude oils (heavy and light) utilizes a gravity bank that is very similar to the California posted price gravity differential. Furthermore, this bank can be applied to widely varying gravities (10–30° API).

Id.

On at least one occasion involving a gravity bank dispute between producers of ANS crude oil, an integrated company argued for the use of California posted price gravity schedules in making adjustments between different grades of ANS crude that was shipped via the Trans-Alaska Pipeline. See, Prepared Direct Testimony of Karl Richard Pavlovic, dated January 11, 1998, in *Exxon USA, Inc.* v. *Amerada Hess Pipeline Corp.*, Docket No. OR96–14–000 before the Federal Energy Regulatory Commission. In short, Van Vactor's arguments against the use of ANS for valuing California Federal crude oil are at odds with actual industry practices. Additionally, ANS prices are transparent and adjustments for location and quality can be made that will provide a value at Federal leases for royalty purposes.

Finally, MMS disagrees with Van Vactor's claim that the ANS methodology is more cumbersome than a comparable sales method. A comparable sales method would be burdensome for both MMS and industry. In many instances companies would not have sufficient transaction information to arrive at a reasoned calculation of value. Under the current regulations, comparable sales methods (i.e., the benchmarks) lead to a significant audit burden for both industry and MMS. Moreover, MMS does not believe that in most instances in California there are sufficient arm's-length sales at the lease to derive an accurate comparable sales value.

(l) Posted Prices are Valid Indicators of Value for Non-Arm's-Length Transactions

Summary of Comments: Some industry commenters continue to assert that postings represent market value at the lease. They cite the recent jury decision in the Long Beach II trial [i.e., the Exxon case] as evidence for this position.

MMS Response: In the various proposals that have resulted in this final rule, MMS has discussed at great length the reasons why we believe posted prices no longer represent market value. The reasons why the jury's decision in

the Exxon matter does not imply that posted prices are a valid indicator of value, and why it is not contrary to this rule, are covered in detail in Section X of this preamble in the discussion of the provisions of § 206.103.

(m) MMS Treats Producers Inequitably by Not Allowing Arm's-Length Production To Be Valued at Index

Summary of Comments: MMS received several comments that lessees should be allowed to use index pricing where tracing of arm's-length dispositions would prove overly burdensome. Others commented that MMS should provide the option to value all arm's-length production under index pricing.

MMS Response: The principle that gross proceeds is the primary measure of value in arm's-length transactions has been retained under these regulations. This means that a lessee must be able to account for actual receipts under an arm's-length contract. This is consistent with the principle that arm's-length contracts should be the basis for valuation whenever possible.

In the final rule, as in the December 1999 proposal, and for the reasons explained in that proposal, MMS has provided the option for lessees to choose to report and pay on index values only after one or more arm's-length exchanges or after sales to an affiliate. We do not believe that use of index prices when production initially has been sold at arm's length should be expanded.

(n) Use of Alternate Index Prices

Summary of Comments: There were some industry comments suggesting that MMS use Line 63 and Kern River Spot prices in place of ANS. Several comments suggest using index prices from more distant markets if the crude oil indexed better approximates quality parameters than a nearby indexed crude oil.

MMS Response: MMS does not believe that the Line 63 and Kern River spot prices are dependable indicators of market value for reasons explained elsewhere in this preamble. We also have explained elsewhere why we do not believe that as a general rule lessees should be allowed to use index prices from more distant markets.

(o) Use of Benchmarks Outside the Rocky Mountain Region

Summary of Comments: Industry commented that the benchmarks applicable to the RMR should apply everywhere. The RMR benchmarks should be a menu and not a hierarchy, and MMS should modify them to allow lessees to use either tracing or index pricing where tendering programs do not meet MMS standards. The RMR benchmark that uses a volume-weighted average of sales prices must also include adjustments for gravity. Also, MMS has not explained why comparable sales are used in the proposed Indian rule but not in the Federal rule.

MMS Response: MMS has addressed the need for a series of benchmarks for the RMR in earlier parts of this preamble and in earlier versions of this rulemaking. The reasons for prescribing in the final rule an initial benchmark, followed by a choice between two other benchmarks if the first does not apply, have been explained elsewhere in this preamble. In other parts of the country, reliable index prices exist. MMS has addressed the concern about gravity differences in the RMR comparable sales methodology by requiring that gravity be normalized before a volume-weighted average of prices is considered.

The proposed Indian oil value rule does not include comparable sales as the commenters here imply. The "major portion" provisions in Indian leases are not what the commenters in this rulemaking have suggested.

(p) Binding Value Determinations

Summary of Comments: Several U.S. Senators stated that MMS should issue binding value determinations that are appealable administratively. (In light of the text of the December 1999 proposal, it appears that the congressional commenters are suggesting that MMS, and not just the Assistant Secretary, should issue value determinations that are binding on the lessee as well as on MMS.) Industry wants MMS to broaden the kinds of binding determinations it provides, and then only prospectively. These determinations should be issued expeditiously and be appealable. The limits on determinations are overly restrictive. Fact-specific determinations should be issued. The uncertainty surrounding determinations makes the rule unworkable. MMS should expand the circumstances in which lessees may receive determinations.

MMS Response: The final rule provides that MMS will be bound by MMS determinations, and that both MMS and the lessee will be bound by Assistant Secretary determinations. MMS disagrees with the suggestion that value determinations by MMS should be appealable administratively, because they are not binding on lessees. We see no need to expand the number of potential administrative appeals when enforcement of the measure of value in an MMS determination (should the lessee disagree with and not follow it) depends on whether MMS later issues an order to pay.

We disagree that the scope of value determinations is overly restrictive and we do not agree that MMS should be required to issue value determinations in every case in which a lessee asks for one. Issuing value determinations is not always appropriate, and MMS must retain discretion in this respect. We also do not believe that there is "uncertainty" surrounding determinations or that the procedure in the December 1999 proposal and this final rule is "unworkable."

(q) Binding Determinations—Allegedly "Penalizing" Lessees

Summary of Comments: Some commenters argued that the provision about not penalizing a lessee for failing to follow a value determination by MMS is illusory and amounts to a form of "Hobson's choice." The commenters say that to require lessees to subject themselves to penalties in order to challenge determinations they disagree with is unsound policy. MMS should apply the principle that the mere existence of a higher selling price does not mean that MMS will question the validity of the proceeds in any transaction.

MMS Response: MMS does not agree with this characterization of the value determination process. If a lessee disagrees with a determination by MMS, it has the option of not following the determination. The burden will lie with MMS to issue an order to pay on the value basis contained in the determination. The lessee is not in any different position than in any other circumstance in which it may disagree with MMS's position on a valuation issue. We are unable to see how this in any way "penalizes" the lessee or imposes on it a "Hobson's choice."

Finally, as explained elsewhere in this preamble, the existence of a higher selling price does not in itself imply that the lessee has breached its duty to market or that the arm's-length gross proceeds would not be accepted as royalty value.

(r) Requirement To Identify Other Lessees When Requesting a Value Determination.

Summary of Comments: At least one commenter argued that the requirement in the December 1999 proposal that a lessee must identify record title or operating rights owners when requesting a valuation determination is unnecessary.

MMS Response: MMS believes it is appropriate to require lessees to identify

other operating rights owners or record title owners to the extent that the lessee knows who they are because they may be affected by the analysis or conclusions of a value determination in a manner similar to the lessee who requested it. If production for which those other parties may be liable for royalty payments is affected by the results of a value determination, MMS needs to have this information to proceed expeditiously.

(s) Clarification of Value Determination Procedures

Summary of Comments: At least one commenter suggested that MMS should issue guidelines in the rule to help lessees determine if their transactions are at arm's length. The commenter argued that the final rule should better clarify what decisions do and do not come under the valuation determination process.

MMS Response: With the change made in the definition of affiliate, we believe the final rule provides sufficient criteria to determine what transactions are at arm's length in the vast majority of situations. The final rule at § 206.107 explains that MMS will not provide valuation determinations in response to requests for guidance on hypothetical situations or matters that are the subject of pending litigation or administrative appeals.

We also removed the provision in the December 1999 proposal that we would not provide valuation determinations where the request dealt with matters "inherently factual" in nature. We proposed not to address such requests because the purpose of providing valuation determinations is to take given facts and render an interpretation of how they should be applied in a given situation, not to interpret what the actual facts are. But since the term "inherently factual" may mean different things to different people and cannot be precisely defined for purposes of this rule, we removed this provision in the final rule. We still do not intend, however, that valuation determinations would be given just to determine the facts involved in a given situation.

Further, we did not include in this final rule the provision in the current rule at § 206.102(g) that the lessee may use its proposed value for royalty payment purposes until MMS provides a value determination. MMS does not want to be in the position of having to accept royalty payment on a value it may find unacceptable, no matter how short the period may be between the lessee's request for a value determination and MMS's response. MMS will act as expeditiously as possible on such requests, but sometimes policy interpretations may be required or other complications may arise.

This preamble at Section VI(f) also explains some types of situations where value determinations may or may not be appropriate. Value determinations are issued only under § 206.107, in response to a specific request for a value determination. An example might be where the lessee operates in the RMR and approaches MMS for approval to use results from its tendering program to value its production that is not sold at arm's length. Or, if the lessee has no tendering program, it might ask MMS to determine whether purchases and sales by it and its affiliate are at arm's length and of sufficient quantities to permit use of the second RMR benchmark. Requests not covered under § 206.107 include, for example, those under the fourth benchmark for the RMR where the Director establishes an alternative valuation method (§ 206.103(b)(5)), calculation of a value at the refinery when the adjusted index price yields an unreasonable value (§ 206.103(e)), and calculation of a location/quality differential when the lessee does not have its own information to calculate the differential (§ 206.112(f)). MMS will respond to these requests, but they will not be handled under the value determination procedures.

(t) Timely Value Determinations

Summary of Comments: Some commenters express a lack of confidence that MMS will be able to issue timely determinations. They say that MMS should rule on all issues and provide timely answers, even if a negative decision results. The States are concerned about MMS making decisions based on incomplete information.

MMS Response: MMS has identified some types of matters for which value determinations probably are not appropriate, such as hypothetical situations or matters that are the subject of pending litigation or administrative appeals. It is in MMS's interest to expedite value determinations so as to resolve as many matters as possible and avoid a backlog. (See also our response at (s) immediately above.) As for the States' concern that MMS will make decisions based on incomplete information, MMS does not intend to make a determination until the lessee provides all the pertinent facts, documents, and analysis. In the rare event that a misstatement or omission of the material facts occurs, or the facts ultimately developed are materially different from the facts on which the guidance was based, MMS could change the determination retroactively.

(u) State Involvement in MMS Value Determinations

Summary of Comments: State commenters said they would like to be involved in the decision-making process when binding determinations affect their revenue. California is concerned with lessees possibly requesting valuation determinations on no more grounds than an asserted belief that a methodology required under the rule is not applicable. The State commenters argued that prospective valuation determinations should "sunset" after 2 years, within which time the lessee must demonstrate that the circumstances continue to apply.

MMS Response: MMS is mindful of States' concerns in valuation issues. As a general practice, MMS consults with States in preparing valuation determinations, but the ultimate decisions with respect to value determination requests rest with MMS and the Assistant Secretary. MMS does not believe that lessees have any incentive to file spurious or unsupported requests for value determinations. If MMS receives a spurious or frivolous request, it will be rejected. (Such a situation would be another example of an appropriate circumstance in which MMS would decline to issue a determination.) MMS does not believe it is appropriate to include a "sunset" provision in every determination as a matter of course. However, MMS may include such a provision where circumstances indicate that the situation addressed in the determination is likely to change, or that the matter should be reexamined after some interval.

(v) Location and Quality Differentials

Summary of Comments: Industry commenters uniformly favor removing the requirement to submit Form MMS–4415, as proposed in the December 1999 proposal, but many express doubts that MMS will accept the location and quality differentials they derive and use in reporting royalties due. Industry commenters also do not believe that MMS can determine meaningful differentials for them when they are required to pay on an index value, but do not have actual information from their own contracts to determine these differentials. These commenters question how a company would challenge an MMS determination. Industry wants to be able to appeal determinations of differentials.

MMS Response: If a lessee can document the differentials it uses from

its arm's-length exchange agreements or other reliable evidence, MMS will have little reason to dispute the lessee's use of those differentials. If MMS determines a location/quality differential, it will do so on the basis of the best information available to it. If the lessee disagrees with MMS's determination and the lessee and MMS are unable to resolve the disagreement, MMS would issue an order to the lessee to use MMS's differential. That order would be appealable.

(w) Elimination of Form MMS–4415 and Validity of Location/ Quality Differentials

Summary of Comments: One State commenter supports keeping the Form MMS–4415 for now, with the provision that MMS can always eliminate the form in the future. That State asserts that it is better to collect the information now and realize later that the form is not needed rather than to be forced to work without it. One State believes that using location differentials to alternate disposal points (such as a refinery) is not appropriate, and that location differentials should be between the lease and the index pricing point.

This commenter also asserts that exchange differentials will not accurately reflect the difference in value between the lease and the index pricing point. It proposes using gravity and sulfur banks in the pipeline tariffs for quality differentials. A public interest group recommends standardized location differentials.

MMS Response: One of the most contentious issues arising from prior proposals in this rulemaking process has been the requirement for lessees to submit information about their exchange agreements on Form MMS–4415. These lessees correctly point out that the information is not for their benefit, but would be used only in a small number of cases where a lessee must pay on an index value, but does not have access to actual location/ quality differential information. While it would be preferable to have comparable exchange differential information, MMS must weigh this benefit against the burden and cost that it would impose on industry and MMS. After considerable discussions with all interested parties, MMS has determined that the burdens and costs would outweigh the potential benefits. MMS anticipates that it will have to determine differentials for lessees in only a limited number of circumstances.

(x) Economic Analysis of Lease Markets

Summary of Comments: On behalf of industry, one commenter asserts that MMS has ignored basic economic principles in arriving at the conclusion that lease markets are not competitive. MMS's conclusions, this commenter says, are based on contradictory statements, unsubstantiated claims, and misinterpretation of economic principles and significant facts about the domestic crude oil market. He states that the lease market contains significant and recurring volumes of crude oil sales moving in outright sales between unrelated, well-informed buyers and sellers with access to information. Competition allows each party to protect its interests.

MMS Response: MMS does not agree with this commenter and does not believe that his analysis of the lease market is complete. First, the commenter's analysis ignores the principle that the lessor is entitled to share in gains derived from the lessee's marketing activities. Second, relying on supposed comparable sales at the lease results in relying on prices paid to captive sellers in many instances. Those prices will tend to be below the true market value of the oil. Third, the commenter equates posted prices to "price transparency." This assumption contradicts statements that companies with tendering programs have made during the rulemaking process, and cannot be defended under any concept of "price transparency" that we have been able to find. The fact that prices paid in arm's-length transactions frequently include a premium over the posted price refutes the commenter's assumption. The principles of competitive markets that this commenter outlines in fact occur at market centers with spot prices. Therefore, MMS believes it is appropriate to establish value for non-arm's-length transactions by using spot prices, with adjustments for location and quality.

(y) Alleged Different Treatment of Integrated and Non-Integrated Producers

Summary of Comments: Some industry commenters assert that integrated producers should not be treated differently than non-integrated producers. Also, producers in the RMR have more options than producers in other regions. MMS should allow the same standards for all Federal leases, including tendering and comparable sales.

MMS Response: MMS disagrees that integrated producers are treated differently than non-integrated producers under either the previous proposals or this final rule. How producers value production and pay royalties under this final rule depends in large measure on how they choose to market their production. If a producer sells its production outright at arm's length, it pays based on gross proceeds. If not, it pays royalties using either the index pricing methodology, an applicable benchmark (for production in the RMR), or on the basis of an arm's-length sale price following either inter-affiliate transfers or arm's-length exchanges. These principles apply to both integrated and non-integrated producers.

(z) Final Rule Implementation Date

Summary of Comments: Industry commenters assert that MMS should allow for adequate time for industry to completely update its systems before the final rule becomes effective. (According to some industry commenters, it will require at least until the beginning of next year to update their systems.) A number of public interest groups stated that they expect a final rule in March 2000. A citizen and the State of New Mexico also favor immediate implementation of this rule.

MMS Response: MMS understands that this rule will require some adjustments to many lessees' systems. It has extended its earlier proposed effective date to June 1, 2000, the first day of the first month more than 60 days after the publication date of this rule to allow lessees to make needed adjustments. MMS further has provided for a "grace period" in § 206.121 that allows lessees to make adjustments to royalty payments for production in the first 3 months after the effective date of the rule without liability for late payment interest if the adjustment results from a system change necessary to comply with this rule. Lessees may get interest bills, but if they demonstrate that the adjustment generating the bill resulted from system changes necessitated by the rule, MMS will credit the bill. MMS believes that the "grace period" should allow adequate time for lessees to make necessary adjustments.

(aa) The Lessee's Duty to Market Production at No Cost to the Lessor

Summary of Comments: Some industry commenters provided extensive comments on MMS's analysis in the December 1999 proposal of the lessee's duty to market production at no cost to the lessor and related issues (e.g., the commenters' view of valuing production "at the lease" and gain realized from "downstream" sales). (The analysis in the December 1999 proposal is reiterated with some additional explanation in Section III(i) above.) The industry commenters cite numerous

State court decisions, discuss IBLA precedents and various Federal court decisions at great length, and dispute the existence, scope and implications of the lessee's implied covenant to market the production for the mutual benefit of the lessee and the lessor. The State commenters support the MMS's position on the lessee's duty to market as reflected in the December 1999 proposal.

MMS Response: The lessee's duty to market at no cost to the lessor is the subject of pending litigation. Industry has challenged a provision in the Department's December 16, 1997, gas transportation allowance rule that is virtually identical to the provision in the several proposals in this rulemaking and in this final rule (62 FR 65753). See, *American Petroleum Institute* v. *Babbitt*, Civil No. 98–631 and *Independent Petroleum Association of America* v. *Armstrong*, Civil No. 98–531 (D.D.C.) (consolidated). The ultimate resolution of this issue likely will lie with the courts. MMS believes the final rule is well within the agency's authority and reflects existing law governing Federal leases.

(ab) Affiliation and Control

Summary of Comments: Some industry commenters believe that tests to determine control (and, consequently, affiliation in the event one person owns less than 50 percent of the voting securities of another) are too subjective.

MMS Response: As explained elsewhere in this preamble, after the D.C. Circuit's decision in *National Mining Association* v. *Department of the Interior*, 177 F.3d 1 (D.C. Cir. 1999), MMS has no alternative but to conduct a fact-specific inquiry in cases where one person owns less than 50 percent of the voting securities of another. The situations vary widely. This rule identifies some of the key factors which MMS will examine in evaluating whether one person controls another. These factors are objective, not subjective, indicators. Their application depends on the facts of a particular case.

(ac) Production "Tracing" Issues

Summary of Comments: Some industry commenters claim that tracing will involve multiple valuation determinations where none were needed before, and may make implementation of the rule impossible.

MMS Response: The facts that oil produced from any particular lease or unit may be commingled with oil produced from other properties, and that the combined quantities may be disposed of through multiple transactions at more than one location, are not new. In many circumstances, the MMS valuation rules that hitherto have been in force require allocation of production from multiple sources and multiple dispositions if lessees are to pay royalty correctly. In fact, this rule provides the option to use index-based valuation, in which no "tracing" would be required, in certain circumstances.

(ad) Tracing in Relation to Exchange Agreements

Summary of Comments: Some States are concerned about the issue of tracing production after multiple exchanges. They assert that value can be masked in this process due to commingling and other factors. They favor limiting the number of exchanges or using a weighted average price if only one exchange exists. One public interest group favors limiting the number of exchanges to two.

MMS Response: In cases where lessees have multiple exchanges involving production from a Federal lease, they will have to be able to account for adjustments due to location/quality differentials or transportation costs. These adjustments will be subject to audit. Lessees who dispose of production through arm's-length exchanges followed by an arm's-length sale have the option of valuing the production under either gross proceeds or index (§ 206.102(a) or § 206.103, respectively). (Lessees who dispose of production through non-arm's-length exchanges or who refine their production must use the index value under § 206.103.) If the lessee uses the index value under § 206.103, the considerations the commenters raise are irrelevant. If the lessee values the production according to the arm's-length gross proceeds following one or more arm's-length exchanges, it must be able to support its adjustments.

(ae) Treatment of and Effect on Affiliated Pipelines

Summary of Comments: One pipeline commenter who is affiliated with producers said that the December 1999 proposal improperly affects affiliates negatively in several respects. This commenter said that MMS is trying to control the affiliate's pricing, transportation, and contracting behavior even though it is not a party to the lease. It also said that requiring production of an affiliate's pricing information could expose the affiliated pipeline to "unreasonable allegations of antitrust violations." This commenter also says that the rule discriminates against affiliated transportation arrangements. The commenter further asserts that the rule imposes "enormous" administrative costs on affiliates and designees, which, it says, MMS "grossly underestimated." The commenter says that the rule would require multiple valuation methodologies, which in turn require new accounting systems and additional manpower. Finally, this commenter asserts that MMS lacks the statutory authority to require affiliates to make their records available.

MMS Response: MMS disagrees with this commenter's characterizations. This rule does not control an affiliate's behavior. The fact that transactions with an affiliate may affect how production is valued for royalty purposes does not imply that the rule somehow "controls" the affiliate's behavior.

MMS does not believe that requiring production of an affiliate's information would create any exposure under the antitrust laws. In the commenter's own words, it fears that "[p]laintiffs lawyers might try to concoct" a Sherman Act theory. The commenter apparently does not believe that any such concocted theory would have any merit, and neither do we.

As explained elsewhere in this preamble, the rule does not discriminate against affiliated transportation arrangements. In both arm's-length and non-arm's-length arrangements, the lessee may deduct its actual costs of transportation.

We do not believe that the commenter has justified its assertion of "enormous" administrative costs resulting from this rule. Although the rule does require changes in valuation methodology in some respects, no one has demonstrated that it requires lessees to construct completely new systems. Indeed, although companies have asserted repeatedly that the rule will result in large costs, none has attempted to quantify such costs.

MMS believes that the commenter's assertion that the new rule requires "multiple valuation methodologies" is misplaced. We doubt that any lessee with more than a few leases valued all of its production for all of its leases in the same way under the previous rules. Under the prior rules, some dispositions resulted in using arm's-length gross proceeds as royalty value, while others resulted in using the "benchmarks." MMS does not believe this rule is more difficult to apply than the earlier provisions; indeed, we expect that the opposite is true.

Finally, the commenter's argument that MMS does not have statutory authority to require affiliates to produce their records is wrong. The commenter relies on the provisions of FOGRMA Section 103(a), 30 U.S.C. 1713(a), for the proposition that MMS may require

production of records only through the first non-arm's-length transfer. This position was expressly rejected in *Shell Oil Co.* v. *Babbitt,* 125 F.3d 172 (3d Cir. 1997). Contrary to the commenter's assertion, the affiliate is a person "directly involved in . . . purchasing, or selling oil or gas subject to [FOGRMA] through the point of first sale or the point of royalty computation, whichever is later . . ."

(af) Pipeline Residual Return on Investment

Summary of Comments: Many industry comments favored the proposed changes regarding a continued return on investment after a pipeline has been fully depreciated. Companies favored continuing to apply a rate of return against a minimum base value even after the pipeline has been fully depreciated. A few industry commenters were concerned as to how the calculation would be performed if original cost records no longer exist. States expressed concern that allowing a rate of return on some base value after the pipeline is fully depreciated amounts to an unnecessary gift to industry. One citizen also commented that the current regulations should remain, with no additional return on investment allowed beyond the normal life of a pipeline.

MMS Response: MMS believes that, to cover factors such as the ongoing risk of operating a pipeline, it is reasonable to permit a residual return on investment component within the allowance calculation even after the pipeline has been almost completely depreciated. To account for such factors, this final rule, at § 206.111(j), permits the allowance calculation to include an annual return on investment component of ten percent of the total capital investment in the pipeline, even after the pipeline has been depreciated to a level at or below 10 percent of the total capital investment.

Under the final rule, we also added a provision at paragraph (j)(2) clarifying that you may apply this paragraph to a transportation system that before the effective date of the final rule is depreciated to a level at or below a value equal to ten percent of your total capital investment.

(ag) Definitions

Summary of Comments: MMS received many comments that suggested various clarifications and modifications to definitions and terms used throughout the rule. Some groups offered specific suggestions. Others simply asked for additional clarification of some terms. Many comments focused on the definition of "area" and asserted that further clarification is warranted. One commenter noted that the rule as proposed would value some crude from the San Juan Basin one way if it were produced from surface wells in New Mexico or Arizona and another way if produced from surface wells in Utah or Colorado. The commenter recommended that the Four Corners area be treated consistently for valuation purposes because all production from the area generally is sold into the same market.

MMS Response: Many of these terms used and defined in this rule were used in the previous rule, and further changes are not necessary. MMS agrees that the terms "exchange for physicals" and "time trades" can be removed from the definition of exchange agreement, and removed them in this final rule.

MMS believes the defined term "area" requires no additional modification. This definition is similar to the definition in the 1988 regulations. Moreover, this rule relies less on "area" than the 1988 regulations did.

However, we agree with the commenter who said production from the Four Corners area should be valued consistently. As a result we have modified the Rocky Mountain Region definition to mean the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming, except for those portions of the San Juan Basin and, more generally, the "Four Corners" area that lie within Colorado and Utah.

(ah) Alleged Illegal Information Transfers for Transportation Allowance Calculations

Summary of Comments: Some producers and industry groups commented that in order for them to calculate "actual costs" under the proposed rule, they need pipeline data from their affiliate. These commenters assert that the Interstate Commerce Act (ICA) prohibits the disclosure of this information. Even if this data was available and could be legally disclosed, they say MMS ignores the burden it now places on companies to compute this "actual cost".

MMS Response: MMS believes that disclosure of pipeline cost information between affiliates is legal, the information is readily available, and affiliates have the right to exchange information and often do.

The estimate of the cost burden related to calculation of "actual transportation costs" is embedded in the cost estimate for completing the Form MMS–2014, on which the allowance is reported, and is discussed in the "Procedural Matters" section of this preamble.

(ai) Cushing Spot Prices as a Benchmark in the Rocky Mountain Region

Summary of Comments: A State commented, and some industry groups agreed, that using the Cushing, Oklahoma WTI spot price is not an appropriate measure of value for Wyoming crude oil. There may be only a few trades from Wyoming to Oklahoma, which means an accurate differential may be impossible to obtain.

MMS Response: Valuation of oil produced in the RMR and not sold at arm's length is determined under a series of benchmarks. If the first benchmark does not apply, the lessee may select either the second or the third. The third is the WTI spot price at Cushing, Oklahoma. The lack of a dependable published spot price within the RMR prompted MMS to refer to the Cushing price. If the first two benchmarks cannot be applied, and the lessee believes the use of WTI in the third benchmark is not properly adjustable back to its property in Wyoming, the MMS Director may establish an alternate value under the fourth benchmark.

X. Summary and Discussion of Adopted Rules

This final rule incorporates changes made in response to comments on the January 1997 proposal, the July 1997 proposal, the September 1997 notice, the February 1998 proposal, the July 1998 proposal, the March 1999 notice, and the December 1999 proposal. As in the February 1998 proposal, we also added and renumbered sections and further reorganized the rule for readability.

This summary of adopted rules builds on the above summary of, and MMS's responses to, comments received on the January 1997, July 1997, September 1997, February 1998, July 1998, March 1999, and December 1999 proposals and notices. Because this final rule is a product of changes made in response to comments received throughout this rulemaking, the preambles of each of the previous proposals and notices may be consulted in conjunction with this preamble to trace the evolution of the final rule.

Note that the renumbering and reorganization for the final rule resulted in the following modifications to the existing rule at 30 CFR Subpart C-Federal Oil:

Section	Modification
§§ 206.100 and 206.101	Revised.
§§ 206.102	Revised and redesignated as §§ 206.102, 206.103, 206.104, 206.105, 206.106, 206.107, and 206.108.
§§ 206.103 and 206.104	Redesignated as §§ 206.119 and 206.109, respectively.
§§ 206.105	Revised and redesignated as §§ 206.110, 206.111, 206.114, 206.115, 206.116, 206.117, and 206.118.
§§ 206.106	Revised and redesignated as §§ 206.120.
	New §§ 206.112, 206.113, and 206.121 added.

In addition, we rewrote all sections of the existing rule in plain English so the entire rule would read consistently.

Before proceeding with the summary and discussion of adopted rule, it is appropriate to reiterate the conceptual framework of the final rule. When crude oil is produced, it is either sold at arm's length or is refined without ever being sold at arm's length. If crude oil is exchanged for other crude oil at arm's length, the oil received in the exchange is either sold at arm's length or is refined without ever being sold at arm's length. Under this final rule, oil that ultimately is sold at arm's length before refining generally will be valued based on the gross proceeds accruing to the seller under the arm's-length sale. This includes oil that is exchanged at arm's length where the oil received in exchange is ultimately sold at arm's length. (The exceptions reflect particular circumstances in which MMS believes the arm's-length sale does not or may not reliably reflect the real value.) However, the final rule also provides the option for the lessee to apply index prices or benchmark values because of the difficulty of "tracing" production in some exchanges and affiliate resales. If oil (or oil received in exchange) is refined without being sold at arm's length, then the value will be based on appropriate index prices or other methods, as explained below.

These principles apply regardless of whether oil is sold or transferred to one or more affiliates or other persons in non-arm's-length transactions before the arm's-length sale, and regardless of the number of those non-arm's-length transactions. They also apply if an arm's-length exchange occurs before an arm's-length sale. (However, MMS believes that if there are multiple exchanges prior to an arm's-length sale, using the ultimate arm's-length sales price may in some cases require too much "tracing" of the oil to be cost-efficient for lessee and lessor alike. Consequently, under such circumstances, MMS has provided the option to determine value based either on the arm's-length gross proceeds or on an index or benchmark basis. The same option is provided for valuing production that is first sold or transferred to an affiliate and then resold at arm's length.)

Lessees and producers may structure their business arrangements however they wish, but MMS generally will look to the ultimate arm's-length disposition in the open market as the best measure of value. This means that MMS will not be "second-guessing" industry business decisions. Where a true arm's-length sale occurs that has not been preceded by non-arm's-length exchanges, the gross proceeds from that sale will represent royalty value, absent misconduct on the part of the lessee or breach of express or implied lease covenants, unless the lessee opts to apply index or benchmark values in appropriate situations.

Nor does the express language regarding the lessee's obligation to market production for the mutual benefit of the lessee and the lessor give MMS a license to "second-guess" marketing decisions. As discussed above, that obligation has always been an implied covenant of the lease.

Similarly, if oil is refined without being sold at arm's length, MMS believes that the valuation methods prescribed in this final rule are the best measures of value regardless of internal, inter-affiliate, or other non-arm's-length transfers.

Another important feature of the final rule is separate valuation procedures for California and Alaska, the RMR, and the rest of the country. In California and Alaska, if oil is not sold under an arm's-length contract, value would be based on ANS spot prices, adjusted for location and quality. MMS chose this indicator because it believes that ANS is the best measure of market value in that area when oil is not sold at arm's length.

In the RMR, if oil is not sold under an arm's-length contract, market value is more difficult to measure because of the isolated nature of the RMR from the major oil market centers. Therefore, MMS will accept values established by a company-administered tendering program as the first benchmark.

If the company does not have an approved tendering program, it may choose either the second or third benchmark. The second benchmark is a volume-weighted average of the gravity-normalized prices at which the lessee and its affiliates purchase or sell production from both Federal and non-Federal leases in the field or area at arm's length, if those arm's-length sales and purchases exceed 50 percent of the lessee's and its affiliates' production.

The third benchmark is the spot price for WTI crude at Cushing, Oklahoma, with location and quality adjustments. MMS chose the Cushing spot price because no acceptable published spot price exists in the RMR. If none of the first three benchmarks results in a reasonable value, the MMS Director may establish an alternative valuation method.

For other areas of the country, value would be based on the nearest spot price for oil of similar quality to your production, adjusted for quality and location. MMS believes that because the spot market is so active in areas other than the RMR, it is the best indicator of value in those other areas.

Section 206.100 What Is the Purpose of This Subpart?

As proposed in December 1999, this section includes the content of the existing section except for minor wording changes to improve clarity, additional language in new § 206.100(b) clarifying the respective roles of lessees and designees, and additional wording in § 206.100(d)(3) regarding written valuation agreements between the lessee and the MMS Director. ("Lessees" and "designees" are defined in § 206.101, and those definitions follow the definitions contained in Section 3 of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1702, as amended by Section 2 of the Federal Oil and Gas Royalty Simplification and Fairness Act, Pub. L. No. 104–185, 110 Stat. 1700.)

Specifically, if you are a designee and you or your affiliate dispose of production on behalf of a lessee, references to "you" and "your" in the rule refer to you and not to the lessee. In this event, you must report and pay royalty by applying the rule to your and your affiliate's disposition of the lessee's oil. If you are a designee and you report and pay royalties for a lessee but do not dispose of the lessee's production, the references to "you" and "your" refer to the lessee and not the designee. In that

case, you as a designee would have to determine royalty value and report and pay royalty by applying the rule to the lessee's disposition of its oil. Some examples will illustrate the principle.

Assume that the designee is the unit operator, and that the operator sells all of the production of the respective working interest owners on their behalf and is the designee for each of them. For each of those working interest owners, the operator, as designee, would report and pay royalties on the basis of the operator's disposition of the production. For example, if the operator transferred the oil to its affiliate, who then resold the oil at arm's length, the royalty value would be the gross proceeds accruing to the designee's affiliate in the arm's-length resale under § 206.102, or the appropriate index or benchmark value under § 206.103, as explained further below.

Alternatively, assume the operator is the designee but a lessee disposes of its own production. Assume the lessee transfers its oil to an affiliate, who then resells the oil at arm's length. In this case, the operator would have to obtain the information from the lessee, and report and pay royalties on the basis of the gross proceeds accruing to the lessee's affiliate in the arm's-length resale under § 206.102, or, at the lessee's option, on the basis of the appropriate index or benchmark value under § 206.103.

In some cases, the designee is the purchaser of the oil. Assume the operator disposes of the lessee's oil and that the operator is not affiliated with the designee-purchaser. Because the sale to the designee is an arm's-length transaction, then under § 206.102 the designee would report and pay royalty on the total consideration (the gross proceeds) realized on the sale to the purchaser.

In some cases, a lessee sells its production directly to a designee. (In such cases, the designee frequently is the operator but it does not have to be.) Questions may arise regarding whether such an arrangement is actually a sale or is an arrangement for the designee to dispose of the production on behalf of the lessee. These questions were raised during the January 2000 public workshops.

Several scenarios are possible, and each case will have to be considered on its facts. Nevertheless, there are some indicators MMS will examine in determining whether a designee is disposing of production on behalf of a lessee or is purchasing the production from the lessee. These indicators include but are not limited to the following:

- If a lessee sells to an unaffiliated designee where there is no joint operating agreement and the designee or its affiliate refines the oil rather than selling it, MMS ordinarily would regard this arrangement as an arm's-length sale and accept the price as royalty value.
- If a lessee sells to a co-lessee/designee under a joint operating agreement, MMS ordinarily will regard that arrangement as the designee disposing of production on the lessee's behalf and not as an actual sale to the designee.
- If the price paid to the lessee by the designee is dependent on the designee's receipts on resale of the production (*e.g.*, a specified percentage of the co-lessee's receipts), MMS ordinarily will regard that arrangement as the designee disposing of the production on the lessee's behalf and not as a sale. (In this situation, even if the transaction were regarded as an arm's-length sale, the designee is most likely the lessee's marketing agent in any event. Thus, the difference in price between the designee's receipts and what it pays the lessee would reflect the lessee's marketing costs, which it may not deduct from royalty value.)

We also note that the question of whether a lessee is selling to a designee (as opposed to the designee disposing of production on the lessee's behalf) is related to the larger question of whether a sale to a co-lessee (including one who is not a designee) is an arm's-length sale as opposed to an arrangement where the co-lessee is the lessee's marketing agent. MMS acknowledges that there are many cases in which a lessee sells to a co-lessee (whether a designee or not) at arm's length. But there are also many cases in which a co-lessee effectively acts as the marketing agent for the lessee. We will discuss this question further below in connection with arm's-length sales under § 206.102(a).

Revised § 206.100(a) is the same as the corresponding paragraph in the existing rule, rewritten for clarity. New § 206.100(b) clarifies the respective roles of lessees and designees.

New § 206.100(d) is essentially the same as existing § 206.100(b). That provision says that if any Federal statute, settlement agreement between the United States and a lessee resulting from administrative or judicial litigation, or oil and gas lease subject to the requirements of this subpart is inconsistent with any regulation in this subpart, then the statute, lease provision, or settlement agreement governs to the extent of the inconsistency. However, we added a separate provision at new § 206.100(d)(3). It says that if a written agreement between the lessee and the MMS Director establishes a production valuation method for any lease that MMS expects at least would approximate the value otherwise established under this subpart, the written agreement will govern to the extent of any inconsistency with the regulations. This provision is intended to provide flexibility to both MMS and the lessee in those few unusual circumstances where a separate written agreement is reached, while at the same time maintaining the integrity of the regulations. As noted, any such agreement also must at least approximate the royalty value that would apply under these regulations for the production.

The content of new § 206.100(e) is the same as in existing paragraph (c), but rewritten for clarity. It says MMS may audit and adjust all royalty payments.

Section 206.100 also reflects the principle that this rule constitutes the Secretary's exercise of his authority reserved under the statutes and lease terms to establish the reasonable value of production for royalty purposes. MMS will not look to other possible measures of value that may be referenced in the lease terms (for example, the so-called "major portion" value) to supersede these rules, except in those few unusual circumstances where MMS and the lessee establish a written royalty valuation agreement under § 206.100(d)(3).

We removed existing paragraph (d). It said the regulations in this subpart are intended to ensure that the United States discharges its trust responsibilities concerning Indian oil and gas leases. Since Indian leases are subject to a separate set of valuation regulations at 30 CFR § 206.50 that include the same language as existing paragraph (d), the existing language at paragraph 206.100(d) is not needed.

Section 206.101 What Definitions Apply to This Subpart?

The definitions section in the final rule remains virtually the same as in the December 1999 proposal. The preamble to that proposal explains thoroughly each of the changes to definitions previously proposed (64 FR at 73825–73827). Several of these definitions also have been discussed at various points earlier in this preamble. The only changes in the final rule to the definitions proposed in December 1999 are:

- *Affiliate*—We changed one detail of the definition proposed in December 1999. That definition said that if there is ownership or common ownership of between 10 and 50 percent of another

person, MMS will consider various factors in determining whether control exists. One of those factors involves forms of ownership, including percentage of ownership or common ownership, the relative percentage of such ownership compared to percentages of ownership by other persons, whether a person is the greatest single owner, and whether there is an opposing voting bloc of greater ownership. We changed the *and* preceding the final clause to *or* in the final rule. We did this to avoid the implication that all of the listed factors carry equal weight in all situations or that if one factor does not apply, then none of them does. MMS may consider any one of the factors in subparagraph (2) of the definition to establish control.

• *Exchange agreement*—We have removed the examples included in the December 1999 proposal of exchanges of produced oil for futures contracts (Exchanges for Physical, or EFP) and exchanges of produced oil for similar oil produced in different months (Time Trades) because these trades or exchanges involve different time periods and may not reflect reliable location/quality differentials applicable to royalty payment for a particular production month.

• *Location differential*—We added language clarifying that the amount paid or received as a location differential under an exchange agreement may be expressed in terms of either money or barrels of oil.

• *Quality Differential*—We added language clarifying that the amount paid or received as a quality differential under an exchange agreement may be expressed in terms of either money or barrels of oil.

• *Trading Month*—We added this definition to clarify the changes we made in the final rule regarding the timing and application of spot prices under § 206.103. We also believe use of this term will help in understanding the general concepts of spot price formulation and application. *Trading month* means the span of time during which crude oil trading occurs and spot prices are determined, generally for deliveries of corresponding production in the following month. (We use the term "generally" only because for West Texas Intermediate at Cushing, Oklahoma, spot prices are published for deliveries both in the following month and the second-following month.) For Alaska North Slope (ANS) spot prices, the trading month includes the entire calendar month. For other domestic spot prices, the trading month includes the span of time from the 26th of the previous month through the 25th of the current month.

Section 206.102 How do I Calculate Royalty Value for Oil That I or My Affiliate Sell Under an Arm's-Length Contract?

In the December 1999 proposal, we revised and reorganized § 206.102 as written in the several previous proposed rules. We revised § 206.102 to specifically address valuation of oil ultimately sold under arm's-length contracts. We have adopted § 206.102 as proposed in December 1999 with only a few minor changes in wording for clarification.

An arm's-length sale may occur immediately, or may follow one or more non-arm's-length transfers or sales of the oil or one or more arm's-length exchanges.

Paragraph (a) states that value is the gross proceeds accruing to you or your affiliate under an arm's-length contract, less applicable allowances. Similarly, if you sell or transfer your Federal oil production to some other person at less than arm's length, and that person or its affiliate then sells the oil at arm's length, royalty value is the other person's (or its affiliate's) gross proceeds under the arm's-length contract.

For example, a lessee might sell its Federal oil production to a person who is not an "affiliate" as defined, but with whom its relationship is not one of "opposing economic interests" and therefore is not at arm's length. An illustrative example would be a number of working interest owners in a large field forming a cooperative venture that purchases all of the working interest owners' production and resells the combined volumes to a purchaser at arm's length. Xeno, Inc., 134 IBLA 172 (1995), involved a similar situation for a gas field. If no single working interest owner owned 10 percent or more of the new entity, the new entity would not be an "affiliate" of any of them. Nevertheless, the relationship between the new entity and the respective working interest owners would not be at arm's length. In this instance, it would be appropriate to value the production based on the arm's-length sale price the cooperative venture received for the oil.

Paragraph 206.102(a)(3) of the February 1998 proposal was meant to be specific to those cases, such as Xeno, where the transfer is not between affiliates but the sale is not at arm's length because the parties do not have opposing economic interests. However, several commenters could not see the difference between (a)(3) and (a)(2); the latter applied only to sales or transfers to an affiliate who then sells the oil at arm's length. Because the result of both paragraphs would be the same, and to stem this confusion, the December 1999 proposal eliminated previous paragraph (a)(3) and included its intent in revised paragraph (a)(2), which we adopt in the final rule. That paragraph now says value is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances, where you sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person or another affiliate of either of them then sells the oil under an arm's-length contract unless you exercise the option provided in paragraph (d)(2) of this section. As a result of this change, paragraph (a)(4) of the February 1998 proposal now becomes § 206.102(c).

In all these circumstances, you must value the production based on the gross proceeds accruing to you, your affiliate, or other person to whom you transferred the oil (or its affiliate) when the oil ultimately was sold at arm's length unless you elect to use index pricing or benchmarks under § 206.102(d).

Because a lessee may sell oil to a co-lessee, questions arise regarding whether a sale to an unaffiliated co-lessee (particularly a co-lessee who is an operator) is an arm's-length sale or is really a marketing arrangement (with the purchasing co-lessee acting as the lessee's marketing agent). As noted in the discussion of § 206.100 above, these questions are closely related to the question of whether a co-lessee who is also a designee is disposing of production on the lessee's behalf or whether it is buying the lessee's production, which was raised in the January 2000 public workshops. MMS acknowledges that there are cases in which a lessee sells to a co-lessee at arm's length and in which the arm's-length sales price is the royalty value. But there are also many cases in which a co-lessee effectively acts as the marketing agent for the lessee.

Possible factual scenarios may vary widely, and each case must be evaluated on its facts. MMS may look to a number of factors. These include, but are not limited to, the following:

• If the purchasing co-lessee or its affiliate refines the oil rather than reselling it, MMS ordinarily will regard the sale as an arm's-length sale.

• If the sales price under the contract with the co-lessee is dependent on the co-lessee's resale receipts, MMS ordinarily will regard the co-lessee as the lessee's marketing agent.

• If the co-lessee disposes of production under a joint operating agreement, MMS ordinarily will regard

the co-lessee as the lessee's marketing agent.

Paragraph (a)(5) of the January 1997 proposal dealt with inclusion in gross proceeds of payments made to reduce or buy down the price of oil to be produced in later periods. We removed this paragraph in the February 1998 proposal but added the concept within the definition of *gross proceeds* as discussed above. This remained unchanged in the December 1999 proposal. The final rule reflects the February 1998 proposal and the December 1999 proposal in this regard without change.

Paragraph (b) clarifies how to value the oil produced from your lease when you sell or transfer it to your affiliate or to another person under a non-arm's-length contract, and your affiliate, the other person, or an affiliate of either of them sells the oil at arm's-length under multiple arm's-length contracts. In this case, value is the volume-weighted average of the values established under paragraph (a) for each contract for the sale of oil produced from that lease.

A number of commenters said that calculating this volume-weighted average value would be extremely problematic because it often would be difficult to tie specific contracts to specific Federal oil production, especially where commingling of various production is involved. MMS acknowledges that proper royalty calculations can be complicated in such situations, but that does not diminish the lessee's duty to pay proper royalties on its Federal production. Even under the existing rules, circumstances similar to those described by the commenters often require that the lessee allocate values and volumes. We believe this provision is consistent with ongoing practice.

Paragraph (c) specifies two exceptions to the use of arm's-length gross proceeds. It also requires you to apply the exceptions to each of your contracts separately.

Paragraphs (c)(1) and (c)(2) remain essentially unchanged from paragraphs (a)(2) and (a)(3) in the January 1997 proposal. Note, however, that paragraph (a)(4)(ii) of the July 1997 proposal said that where an arm's-length contract price does not represent market value because an overall balance between volumes bought and sold is maintained between the buyer and seller, royalty value would be calculated as if the sale were not at arm's length.

In the February 1998 proposal, MMS decided to remove that language as a specific, separate provision. Rather, in considering whether an arm's-length contract reflects your or your affiliates' total consideration or market value (proposed paragraphs (c)(1) and (c)(2)), MMS would examine whether the buyer and seller maintain an overall balance between volumes they bought from and sold to each other. Under these paragraphs, if an overall balance agreement were found to exist, MMS would require you to value your production under § 206.103 or the total consideration received.

Several commenters said that removal of the overall balance provision and relying on MMS to find such agreements put an undue burden on MMS. They further stated that MMS would have great difficulty verifying the existence of such agreements. As explained in the December 1999 proposal, we continue to believe, however, that verification of overall balancing arrangements, and appropriate follow up, is best left to audit in conjunction with the provisions of paragraphs 206.102(c)(1) and (c)(2). There were no comments in response to the December 1999 proposal that added any new informative analysis on this question. Thus, the final rule does not contain any specific language regarding balancing agreements.

Likewise, the final rule does not contain any specific language regarding crude oil calls. In response to the July 1997 and February 1998 proposals and in MMS's public workshops, several commenters asserted that producers often negotiate competitive prices even if a non-competitive call provision exists and a call on production is exercised. We agreed with this point in the December 1999 proposal. In the final rule, oil subject to a noncompetitive crude oil call will be examined in view of paragraphs 206.102(c)(1) and (c)(2) to determine whether the prices received represent market value. The value of oil involved in a noncompetitive crude oil call thus ultimately will be the lessee's total consideration or the value determined by the non-arm's-length methods in § 206.103.

In the July 1997 proposal, MMS modified paragraph (a)(4) of the January 1997 proposal regarding exchange agreements and crude oil calls. It also proposed a new paragraph (a)(6) regarding exchange agreements. See the preamble to the July 1997 proposal at 62 FR 36031 for a complete explanation of the changes proposed. In the February 1998 proposal, we further modified the exchange agreement language at paragraphs (a)(4)(i) and (a)(6) of the July 1997 proposal and combined it in paragraph (c)(3). That paragraph required use of § 206.103 to value oil you dispose of under an exchange agreement. But if you entered into one or more arm's-length exchange agreements, and after these exchanges you or your affiliate disposed of the oil in an arm's-length sale, you would value the oil under paragraph (a) on the basis of the gross proceeds received under the arm's-length contract for the sale of the oil received in exchange. You would adjust the value determined under paragraph (a) for location or quality differentials or any other adjustments you received or paid under the arm's-length exchange agreement(s). However, if MMS found that any such differentials or adjustments weren't reasonable, it could require you to value the oil under § 206.103.

This concept was similar to paragraph (a)(6)(i) of the July 1997 proposal, but with three differences. First, the July 1997 language referred to exchange agreements with a person not affiliated with you. The February 1998 proposal clarified that this covered arm's-length exchange agreements. This meant that not only must you be unaffiliated with your exchange partner, but there must be opposing economic interests regarding the exchange agreement. MMS believed this would limit instances where inappropriate or unreasonable location, quality, or other adjustments would be applied. MMS proposed to limit this provision to arm's-length exchanges because it believed transportation, location, and quality differentials stated in non-arm's-length exchange agreements are not reliable.

Second, MMS clarified that the same valuation procedure would apply if there is more than one arm's-length exchange. For example, if you entered into two sequential arm's-length exchanges for your Federal oil production and then you or an affiliate sold the reacquired oil at arm's length, you would value your production under paragraph (a) under the February 1998 proposal. MMS believed that as long as the integrity of the differentials and adjustments was maintained, there was no reason not to look to the ultimate arm's-length sale proceeds.

Third, under paragraph (a)(6)(i) of the July 1997 proposal, if you disposed of your oil under an exchange agreement with a non-affiliate and after the exchange you sold the acquired oil at arm's length, you could have elected to value your oil either at your gross proceeds or under index pricing. MMS eliminated this option in the February 1998 proposal, believing that the actual arm's-length disposition should govern valuation. That is, the provisions of §§ 206.102 or 206.103 would have been applied according to your actual circumstances. This change also led to the deletion of the previously-proposed paragraph (a)(6)(iii), which related to

the election we eliminated in the February 1998 proposal.

As a result of the changes discussed previously, MMS also eliminated paragraph (a)(6)(ii) of the July 1997 proposal. This paragraph would have required you to use index pricing if you either transferred your oil to an affiliate before the exchange occurred, transferred the oil you received in the exchange to an affiliate, or entered into a second exchange for the oil you received back under the first exchange. MMS believes that if you transfer your production to an affiliate and the affiliate then enters into an arm's-length exchange and sells the oil received in the exchange at arm's length, the arm's-length proceeds should be the measure of value. Likewise, if you enter an arm's-length exchange but then transfer the oil received to an affiliate who resells the oil at arm's length, the arm's-length proceeds should be the measure of value. For any exchanges where the oil received in return is not resold but instead is refined, index prices would apply as discussed under § 206.103.

However, we received numerous comments about the problems of tracing value back to the lease where an arm's-length sale follows multiple arm's-length exchanges. Commenters insisted it would be a monumental task for lessees to track, and for MMS to verify, the multiple transactions involved. Further, the problems involved in such "tracing" are aggravated when the necessary records are in the possession of independent third parties who are not affiliates of the lessee.

As a result, in our July 1998 proposal we modified paragraph 206.102(c)(3) of the February 1998 proposal to require valuation under paragraph 206.102(a) only if you enter into a single arm's-length exchange agreement and following that exchange you dispose of the oil in a transaction to which paragraph (a) applies. If you entered into multiple exchanges to dispose of your production, you would have used § 206.103 to value that production. However, some commenters on the July 1998 proposal believed they also should be able to use their arm's-length gross proceeds following multiple arm's-length exchanges.

Therefore, the December 1999 proposal, at paragraph 206.102(d)(1), provided the option, where arm's-length sales follow one or more arm's-length exchanges, to apply either the arm's-length gross proceeds or the index or benchmark value appropriate to the region of production. To prevent potential abuses of this option, paragraph 206.102(d)(1)(ii) provides that you must apply the option you select for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) sold at arm's length following arm's-length exchange agreements. You may not change this election more often than once every 2 years. We believe this process achieves the best balance of valuing production based on arm's-length gross proceeds and minimizing the administrative problems for all involved, and have adopted it in the final rule.

We reiterate that you must use § 206.103 to value oil disposed of under an arm's-length contract following one or more non-arm's-length exchanges. MMS does not believe it is appropriate to use the terms of non-arm's-length exchange agreements to adjust the arm's-length gross proceeds because the differentials in such agreements may not accurately reflect market rates.

Paragraph (d)(2) of this final rule was proposed in December 1999, and results from comments received throughout the rulemaking process. Some commenters believe that where lessees sell or transfer production to an affiliate and the affiliate resells the oil at arm's length, they should be able to apply an alternative valuation method other than tracing the production to its final disposition. In the final rule, similar to the option for sales following arm's-length exchange agreements, we provide the option to use either the ultimate arm's-length gross proceeds or the appropriate index or benchmark value. Also, paragraph (d)(2)(ii) states that you must apply the option you select for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) disposed of through affiliate resales at arm's length. You may not change this election more often than once every 2 years. Again, we believe this achieves the best balance of valuing production based on arm's-length gross proceeds and limiting administrative burdens.

Paragraph (e) is the same as the December 1999 proposal, and is essentially the same as paragraphs (b)(2) and (3) of § 206.102 in the January 1997 proposal and paragraphs (d)(2) and (3) of the February 1998 proposal and comes directly from existing § 206.102. We have eliminated proposed paragraph (b)(1) of the January 1997 proposal (paragraph (d)(1) of the February 1998 proposal) in connection with the change to the definition of "affiliate" explained previously in this preamble. Also, since this final rule generally requires arm's-length gross proceeds as royalty value regardless of whether the lessee, an affiliate, or another person to whom the lessee has sold or transferred production under a non-arm's-length contract is the person who ultimately sells at arm's length, all of these persons come within the term "seller."

Section 206.103 How Do I Value Oil That I Cannot Value Under § 206.102?

In the February 1998 proposal, this section replaced paragraph 206.102(c) of the January 1997 proposal. The December 1999 proposal included a few changes to this section. The final rule makes a few further changes in this section as explained below.

This section deals specifically with valuation of oil you cannot value under § 206.102 because the oil is not ultimately sold at arm's length or is otherwise excepted under § 206.102. It also applies where you have elected one of the options available at § 206.102(d)(1) or (2).

The February 1998 proposal made a change (continued in the December 1999 proposal) from the January 1997 proposal for value based on index prices. In MMS's initial proposal, where either NYMEX or spot prices were applied in valuation, the prices for the month following the lease production month were used. This was meant to reflect the fact that spot prices and NYMEX futures prices for the following month are determined during the month of production. MMS believed this best reflected market value at the time of production. However, various commenters asserted that, for application of spot or futures prices, the lease production month should coincide with the spot or futures delivery month. They said this would effectively match production to index prices for deliveries in the same month. In the February 1998 and December 1999 proposals, we accordingly changed the timing of application of index prices so that the lease production month and the spot delivery month would coincide.

However, as explained above, further examination has led us to believe that in some cases the use of spot prices determined before the production month could affect lessees' production decisions and, ultimately, royalties paid. See Section VI(e) above. For the reasons stated there, the final rule applies the spot price effectively determined during the production month so that price determination is concurrent with production.

Also, paragraph 206.102(c)(1) of the January 1997 proposal would have permitted you an option if you first transferred your oil production to an affiliate and that affiliate or another affiliate disposed of the oil under an

arm's-length contract. The option was to value your oil at either the gross proceeds accruing to your affiliate under its arm's-length contract or the appropriate index price. For the reasons discussed earlier, we have reinserted that option in this final rule under paragraph 206.102(d)(2). MMS believes that where arm's-length transactions satisfying the provisions of § 206.102 occur, royalty value generally should be the arm's-length gross proceeds. However, providing this option should afford some administrative relief to lessors while assuring receipt of fair royalty values.

Another change from the January 1997 proposal is an additional geographic breakdown for valuation purposes. The original proposed rule included separate valuation procedures for California and Alaska separately from the rest of the country. But based on the various written comments MMS received in response to its January 1997, July 1997, September 1997, February 1998, July 1998, March 1999, and December 1999 proposals and notices, and comments made at the various valuation workshops and hearings, it became apparent that oil marketing and valuation in the RMR is significantly different from other areas. Also, the only published spot price in the RMR is at Guernsey, Wyoming. Most commenters consistently maintained that the spot price there is based on thinly-traded volumes. The combination of geographical remoteness from midcontinent markets, unique marketing situations, and the lack of a meaningful published spot price led MMS to add the RMR as a third royalty valuation region.

Paragraph 206.103(a) applies to production from leases in California or Alaska. It replaces paragraph 206.102(c)(2)(ii) of the January 1997 proposal and includes a change from the December 1999 proposal. Under the final rule, value is the average of the daily mean ANS spot prices, published in any MMS-approved publication, that apply to the month following the production month (instead of those published during the calendar month preceding the production month). You must adjust the value for applicable location and quality differentials, and you may adjust the value for transportation costs, as described at § 206.112. The only change in this final rule is a more detailed explanation of how to calculate the spot prices.

To calculate the daily mean spot prices, average the published daily high and low prices published during the production month, only using the days and corresponding prices for which spot prices are published. Do not include weekends, holidays, or any other days when spot prices are not published. For example, assume the production month has 31 days, including 8 weekend days and a holiday, and the publication publishes spot prices for all other days. You would average together the published high and low spot prices for each of the 22 remaining days.

An example of the index pricing method utilizing ANS spot prices for California production follows. Assume that the production month is December 1999 and that we take data from an MMS-approved publication. To reflect the market's assessment of value during the production month, use the spot prices published during December 1999 (for the January 2000 spot sales delivery month). The daily mean spot price assessments during December 1999 are averaged to arrive at the ANS price basis, in this case $24.5469 per barrel. This price would be adjusted for location/quality differentials and transportation (as discussed elsewhere in this preamble) in determining the proper value of your oil. The following table illustrates the calculation in this example:

ALASKA NORTH SLOPE SPOT PRICES—DECEMBER 1999

[Prices for January 2000 Delivery, December 1999 Production]

Date	Low ($/bbl)	High($/bbl)	Average
12/01/99	23.3300	23.4000	23.3650
12/02/99	24.0500	24.1200	24.0850
12/03/99	24.0900	24.1500	24.1200
12/06/99	24.9500	25.0600	25.0050
12/07/99	24.6000	24.6800	24.6400
12/08/99	24.9000	24.9500	24.9250
12/09/99	24.6000	24.6500	24.6250
12/10/99	23.9500	24.0100	23.9800
12/13/99	23.8500	23.9100	23.8800
12/14/99	24.3300	24.4000	24.3650
12/15/99	24.8300	24.9100	24.8700
12/16/99	25.3500	25.4100	25.3800
12/17/99	25.2500	25.2800	25.2650
12/20/99	24.9000	25.0300	24.9650
12/21/99	24.7100	24.7500	24.7300
12/22/99	23.9400	24.0000	23.9700
12/23/99	24.4100	24.4400	24.4250
12/27/99	24.7500	24.8400	24.7950
12/28/99	25.2400	25.3100	25.2750
12/29/99	24.6000	24.6500	24.6250
12/30/99	24.1700	24.2200	24.1950
Average	24.5143	24.5795	24.5469

We received various comments about use of ANS spot prices. Most industry commenters said that because there are significant differences between ANS and California crudes in terms of quality, product yield, transportation modes and distances, and timing of production versus delivery, the ANS spot price is not a good value indicator for California crude oil production. The State of California and City of Long Beach, on the other hand, continue to endorse the use of ANS spot prices. They indicate that ANS spot prices are used in many arm's-length transactions and that ANS crude constitutes a large percentage of California refinery feedstock. MMS's own experience,

including participation in the interagency task force investigating California oil undervaluation, shows that ANS crude frequently has been used by industry as a valuation benchmark for valuing California crudes. Also, because of the control of the pipeline transportation network in California by a few companies who also act as purchasers of a large portion of California crude oil production, the use of posted prices or contracts based on postings as a basis for valuing crude disposed of at other than arm's-length is questionable. We believe that, with proper adjustments for location and quality differences, the ANS spot price is the best available measure of royalty value for Federal oil production in California that is not sold at arm's length.

MMS has received comments to the effect that a court decision in favor of Exxon in California demonstrates that adjusted ANS prices do not reflect reasonable values for California crude oil. MMS disagrees because the facts in the Exxon case are different and the leases involved are not Federal leases.

The State of California and the City of Long Beach first sued Exxon in the mid-1970s alleging that Exxon (along with other major producers) had conspired to keep posted prices low and that the State and City had been damaged because their oil revenues depended on posted prices. The contracts with the City required oil value at the higher of posted prices or prices paid at Wilmington or three nearby fields. The City and State contended that true value was higher and should be tied to ANS prices. The State and City ultimately took the case against Exxon to a jury trial before the Los Angeles County Superior Court on a breach-of-contract claim. On August 30, 1999, the jury found that Exxon did not act in bad faith or manipulate prices for oil produced from the Wilmington field from 1981–1989, and had conformed to its contract requirements.

A jury verdict does not constitute a legal ruling on Federal leases or on Federal royalty issues. The contract terms were very specifically tied to posted prices or prices received in the immediate area. Federal oil leases require royalty payments based on different principles than those used by the jury. Rather than a contract price agreed on in advance, Federal oil royalties are tied to regulations that require different valuation procedures depending on how the oil is sold.

The lands at issue in the Exxon case were State-owned and not leased. The companies participating in their development bought most of the oil produced. This situation is much different from a Federal lessee paying a royalty on the value of production. For all of these reasons, the Exxon State court decision has no applicability here.

Paragraph 206.103(b) applies to production from leases in the Rocky Mountain Region, a defined term. As discussed above, production in the RMR is controlled by relatively few companies, and the number of buyers is more limited than in the Texas, Gulf Coast, or Midcontinent areas. As a result, there is less spot market activity and trading in this area due to the control over production and refining. The majority of written comments we received, as well as oral comments in our public meetings, agreed that a separate valuation procedure is needed for the RMR.

As noted above, all of the previous proposals defined the Rocky Mountain Region as the States of Wyoming, Montana, North Dakota, South Dakota, Colorado, and Utah. However, portions of southern Colorado and southern Utah encompass parts of the San Juan Basin and, more generally, the "Four Corners" area. (The "Four Corners" is the convergence of the boundaries of New Mexico, Arizona, Utah, and Colorado.) New Mexico and Arizona are not part of the RMR. Parts of the San Juan Basin and the Four Corners area are within the boundaries of those States. Oil produced from the San Juan Basin and the Four Corners area typically is sold or exchanged to midcontinent markets (such as Midland, Texas), where dependable spot prices are published.

One commenter on the December 1999 proposal noted that the rule as proposed would value some crude from the San Juan Basin one way if it were produced from surface wells in New Mexico or Arizona and another way if produced from surface wells in Utah or Colorado. The commenter recommended that the Four Corners area be treated consistently for valuation purposes because all production from the area generally is sold into the same market.

There was no logical reason to treat those portions of the San Juan Basin or the Four Corners area that lie within Colorado or Utah any differently than those parts that lie within New Mexico or Arizona. Accordingly, we have excluded them from the definition of Rocky Mountain Region. Consequently, you must value oil produced from leases in these areas under the standards applicable to the remainder of the country.

For the reasons explained above, we derived a series of valuation benchmarks for the RMR. The final rule makes one change from the December 1999 proposal, as discussed below.

The first benchmark applies if you have an MMS-approved tendering program (a defined term). The value of production from leases in the area the tendering program covers is the highest price bid for tendered volumes. Under your tendering program you must offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area. You also must receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

MMS added the several qualifications stated above to ensure receipt of market value under tendering programs. First, royalty value must be the highest winning bid price rather than some other individual or average value. Several commenters said this is inappropriate because it is possible that a single bidder may only bid on some small portion of the tendered volumes at a high price, but this price would then apply to all tendered volumes. We continue to believe, however, that to assure receipt of market value, value must be based on the highest winning bid received.

Second, you must offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area. The rationale for this minimum percentage is to ensure that the lessee puts a sufficient volume of its own production share up for bid to minimize the possibility that it could abuse the system for Federal royalty or State tax payment purposes. MMS originally chose 33⅓ percent as the minimum because it exceeded the typical combined Federal royalty rate and effective composite State tax and royalty rates for onshore oil leases by roughly 10 percent. We received various comments that this figure was too high and that it was not appropriate to consider State royalties, since they would not be payable on Federal leases. MMS recognizes this fact but also notes that for the oil-producing States in the RMR the combined Federal royalty rate and State composite effective tax rate on Federal oil production typically ranges from about 17 percent to about 27 percent. These percentages do not include State royalty rates. In the December 1999 proposal, we therefore chose 30 percent, or just above the high end of the royalty/tax range, as the minimum percentage the lessee would have to tender for sale to assure that some of the lessee's equity share of production generally was involved. Likewise, the tendering program would be required to include non-Federal lease

production volumes in the 30 percent determination to ensure that the program isn't aimed at limiting Federal royalty value. Nothing in the comments in response to the December 1999 proposal persuasively rebutted this analysis. We have adopted the December 1999 proposal in the final rule.

Third, to ensure receipt of competitive bids, your tendering program must result in at least three bids from bidders who do not have their own tendering programs covering some or all of the same area. MMS believes that requiring a minimum number of bidders is needed to ensure receipt of market value. In our February 1998 proposal we stipulated a minimum of three bids. However, we received several comments that requiring three bidders was too stringent and that in many cases there simply would not be that many qualified bidders. The December 1999 proposal reviewed this criterion, and maintained the view that a minimum number of bidders is essential to ensure receipt of market value. We believe that at least three bidders are needed and have retained this provision in the final rule. (A lessee may receive more bids, including from bidders who have tendering programs of their own, but at least three bids must be from bidders who do not have their own tendering programs.) Further, MMS is concerned about the possibility of cross-bidding between companies at below-market prices, which could otherwise satisfy the minimum number of bidders requirement. That is why we have retained the stipulation that three bids must come from bidders who do not also have their own tendering programs in the area.

Under the final rule, if the first benchmark (an approved tendering program) does not apply, you may choose between the second and third benchmarks. In the February 1998 and December 1999 proposals, the benchmarks were strictly hierarchical. We have changed to permitting a choice between the second and third benchmarks in response to comments received in the January 2000 public workshops. However, consistent with other options provided in the final rule, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that you cannot value under § 206.102 or that you elect under § 206.102(d) to value under this section. After you select either paragraph (2) or (3), you may not change to the other method more often than every 2 years, unless the method you have been using is no longer applicable and you must apply the other paragraph. If you change methods, you must begin a new 2-year period.

Under the second benchmark, value is the volume-weighted average gross proceeds accruing to the seller under your and your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month. The benchmark itself is not changed from the December 1999 proposal. The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month.

MMS developed this method as one alternative if you do not have an approved tendering program, and as an effort to establish value based on actual transactions by the lessee and its affiliate(s). We received a number of comments during the rulemaking process that MMS should look not only to sales by the lessee, but also purchases a lessee and its affiliates make in the field or area. Just as for the tendering program, MMS believes a floor percentage of the lessee's and its affiliates' production should be set to prevent any abuse. Although we received several comments that the 50 percent minimum figure is too high, it is not intended to be a more stringent standard than the 30 percent floor associated with the tendering program. As we explained in the December 1999 proposal, that is because the 50 percent floor applies to the lessee's and its affiliates' sales and purchases in the field or area, rather than just sales as in the tendering program. For example, Company A produces 10,000 barrels of crude oil in a given field during the production month. It sells 1,000 barrels under an arm's-length contract. Company A also has a refining affiliate, Company B, that purchases the remaining 9,000 barrels of Company A's production and 5,000 barrels of oil under arm's-length purchase contracts with other producers in the same field. Together the arm's-length sales by Company A and the arm's-length purchases by Company B are 6,000 barrels, or 60 percent of the lessee's and its affiliates' production in the field that month. The volume-weighted arm's-length gross proceeds accruing to Company A and paid by Company B for these 6,000 barrels represents royalty value for the 9,000 barrels of Company A's Federal lease production in the field that cannot be valued under § 206.102.

This final rule requires using the unadjusted volume-weighted average gross proceeds accruing to the seller in all of the lessee's and its affiliates' arm's-length sales or purchases, not just those that may be considered comparable by quality or volume. We received several comments that this would result in improper valuation of some oil that was significantly different in quality than that associated with the "average" oil. As explained in the December 1999 proposal, we believe that production in the same field or area generally will be similar in quality. However, in the final rule, based on comments received in the January 2000 workshops, we have included a requirement that before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliate's arms-length purchases or sales to the same gravity as that of the oil produced from the lease. Further, given that these sales and purchases must be greater than 50 percent of all of the lessee's production in the field or area, we believe that it is not necessary to distinguish comparable-volume contracts.

MMS received several industry comments that the proposed rule would cause hardships for producers who have marketing, but not refining, affiliates. The marketing affiliate takes the producing affiliate's production and also buys production from various other sources before reselling or otherwise disposing of the combined volumes. Section 206.102 of the February 1998 proposal would have required the producer to base royalty value on its marketing affiliate's various arm's-length sales and allocate the proper values back to the Federal lease production. Many commenters said this "tracing" would be difficult at best, but others wanted the opportunity to do so. One commenter suggested that as an alternative the lessee should be permitted to base the value of its production on the prices its marketing affiliate pays for crude oil it buys at arm's length in the same field or area.

As explained in the December 1999 proposal, we do not agree with this proposal because an overriding general premise of this rulemaking is that where oil ultimately is sold at arm's length before refining, it will be valued based on the gross proceeds accruing to the seller under the arm's-length sale (with the option to use index or benchmark values under some circumstances as discussed earlier). This means the marketing affiliate's arm's-length resale should form the basis for valuing the producing affiliate's production. To do otherwise would be inconsistent with the way arm's-length resales are treated elsewhere in this rule.

The third benchmark value is the average of the daily mean spot prices published in any MMS-approved publication for WTI crude at Cushing, Oklahoma, applicable to deliveries during the month following the production month. You must calculate the daily mean spot price by averaging the daily high and low prices for the month in the selected publication. Use only the days and corresponding spot prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112 of this subpart. An illustration of how the spot price value is calculated is given below in the discussion of spot price values for areas other than California and Alaska and the RMR.

This paragraph is very similar to paragraph 206.102(c)(2)(i) of the January 1997 proposal. The main difference is that rather than using NYMEX futures prices, we apply Cushing spot prices in the final rule. This was due to an industry comment that since Cushing spot and NYMEX futures prices track closely over time and that we use spot prices in the other two-valuation regions, using the spot price in the RMR would lend consistency with no downside effects. As noted earlier, in the final rule we correlated the spot price determination period with the trade month, rather than the delivery month. As provided in the previous proposals, the final rule provides that if you demonstrate to MMS's satisfaction that paragraphs (b)(1) through (b)(3) result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.

This method is the last alternative and is intended to be used only in very limited and highly unusual circumstances. We believe there should be very few such alternative valuation methods.

We received several comments that this option should be offered nationwide. However, as we explained in the December 1999 proposal, we believe this is inappropriate because valid spot prices for which reasonable location and quality adjustments may be made are available throughout the rest of the country. While the Cushing spot price likewise is valid, the remoteness of the RMR may in some cases cause such severe difficulties in making reasonable location/quality adjustments that an alternative method may be warranted.

Paragraph 206.103(c) applies to production from leases not located in California, Alaska, or the RMR. As proposed in December 1999, MMS has modified paragraph 206.102(c)(2)(i) of the January 1997 proposal that applied to locations other than California and Alaska. That paragraph would have required you to value your oil at the average daily NYMEX futures settle prices. In this final rule, value is the average of the daily mean spot prices:

(1) For the market center nearest your lease where spot prices for crude oil similar in quality to that of your production are published in an MMS-approved publication. (There may be cases where the nearest market center may not be the appropriate one for you to use because the quality of your production better matches that typically traded at another, more distant market center. In such cases, you may use this alternate market center to value your production.);

(2) For that similar quality crude oil. (For example, at the St. James, Louisiana, market center, spot prices are published for both Light Louisiana Sweet and Eugene Island crude oils. Their quality specifications differ significantly, and you must use the spot price for the oil that is most similar to your production.); and

(3) That are applicable to the month following the production month.

An example of the index pricing method utilizing Empire, Louisiana spot prices for Heavy Louisiana Sweet production follows. Assume that the production month is December 1999 and that we take data from an MMS-approved publication. To reflect the market's assessment of value during the production month, use the spot price published for each business day beginning with November 26, 1999, and ending with December 25, 1999 (for the January 2000 spot sales delivery month). The daily mean spot price assessments during the period November 26, 1999—December 25, 1999 are averaged to arrive at the Empire spot price basis, in this case $26.3089 per barrel. This price would be adjusted for location/quality differentials and transportation (as discussed elsewhere in this preamble) in determining the proper value of your oil for December 1999 production. The following table illustrates the calculation in this example:

HEAVY LOUISIANA SWEET (EMPIRE, LOUISIANA) SPOT PRICES.—DECEMBER 1999

[Prices for January 2000 Delivery, December 1999 Production]

Date	Low ($/bbl)	High($/bbl)	Average
11/29/99	26.2000	26.2400	26.2200
11/30/99	25.0400	25.0900	25.0650
12/01/99	25.4400	25.4800	25.4600
12/02/99	26.2000	26.3000	26.2500
12/03/99	26.5500	26.6000	26.5750
12/06/99	27.5000	27.5200	27.5100
12/07/99	26.9500	27.0000	26.9750
12/08/99	27.2000	27.2500	27.2250
12/09/99	26.7500	26.7900	26.7700
12/10/99	25.9000	26.0300	25.9650
12/13/99	25.7700	25.8000	25.7850
12/14/99	26.2000	26.2500	26.2250
12/15/99	26.8000	26.9500	26.8750
12/16/99	27.2500	27.3300	27.2900
12/17/99	26.3900	26.4500	26.4200
12/20/99	25.9000	26.0200	25.9600
12/21/99	25.7500	25.8500	25.8000
12/22/99	25.5000	25.5500	25.5250
12/23/99	25.9500	26.0000	25.9750
Average	26.2758	26.3421	26.3089

At the January 2000 workshops, one commenter suggested that MMS offer an option to use the market center where exchanges of the lessee's oil typically take place, rather than the market center nearest the lease. As explained above, we have not adopted this suggestion because our intent is to correlate both proximity to the lease and quality similarity. The commenter's suggestion would introduce unwarranted ambiguity and susceptibility to manipulation into the rule.

You must calculate the daily mean spot price by averaging the daily high and low prices for the month in the selected publication. You must use only the days and corresponding spot prices for which such prices are published. You *must* adjust the value for applicable location and quality differentials, and you *may* adjust it for transportation costs, under § 206.112 of this subpart.

As explained in the December 1999 proposal, MMS changed the valuation procedure to use spot, rather than NYMEX, prices, for several reasons. First, we believe that when the NYMEX futures price, properly adjusted for location and quality differences, is compared to spot prices, it nearly duplicates those spot prices. Second, application of spot prices removes one portion of the necessary adjustments to the NYMEX price—the leg between Cushing, Oklahoma, and the market center location. Although industry continued to object to any form of valuation that begins with values away from the lease, we received several comments that using the spot price rather than NYMEX futures prices would improve administration of the rule with no apparent adverse effects.

MMS did not adopt any of the alternatives here (or for California and Alaska) that it did for the RMR where oil cannot be valued under § 206.102. That is because, unlike the RMR, there are meaningful published spot prices applicable to production in the other regions (Cushing, Oklahoma; St. James, Louisiana; Empire, Louisiana; Midland, Texas; Los Angeles/San Francisco, California). In the United States, with the exception of the RMR, spot and related index-type prices drive the manner in which crude oil is bought and traded. Spot prices play a significant role in crude oil marketing. They form a basis on which deals are negotiated and priced and are readily available to lessees via price reporting services. We believe spot prices are the best indicator of value for production from leases outside the RMR. Therefore, it is not necessary to consider other, less accurate means of valuing production not sold at arm's length for regions outside the Rocky Mountains.

We received numerous comments about MMS inappropriately moving the value of production away from the lease without permitting deduction of marketing costs or the value added by the lessee and its affiliates. MMS is not allowing the costs of marketing production as a deduction from value based on index prices or value based on gross proceeds. The requirement to market production for the mutual benefit of the lessee and the lessor at no cost to the lessor is an implied covenant of the lease, and is not unique to Federal leases. *See* Section III(i) for more detail. With respect to the costs of putting production into marketable condition, see, *e.g., Mesa Operating Limited Partnership* v. *Department of the Interior,* 931 F.2d 318 (5th Cir. 1991), cert. denied, 502 U.S. 1058 (1992); *Texaco, Inc.* v. *Quarterman,* Civil No. 96-CV–08-J (D. Wyo. 1997). It follows that any payments the lessee receives for performing such services are part of the value of the production and are royalty bearing. MMS is not altering this principle in this final rule. The rule, in § 206.106 discussed below, simply makes the longstanding implied obligation express.

Paragraph 206.103(d) is paragraph 206.102(c)(3) of the January 1997 proposal with minor clarifying word changes proposed in December 1999. It states that if MMS determines that any of the index (spot) prices are no longer available or no longer represent reasonable royalty value, then MMS will exercise the Secretary's authority to establish value based on other relevant matters. These could include, for example, well-established market basket price formulas.

Paragraph 206.103(e) addresses situations where you transport your oil directly to your or your affiliate's refinery and believe that use of a particular index price is unreasonable. In that event, you may apply to the MMS Director for approval to use a value representing the market at the refinery. Based on the lack of persuasive contrary comments on this provision, which was included in the February 1998 proposal, we included it in the December 1999 proposal and in this final rule with only minor clarifying changes.

Section 206.104 What Index Price Publications Are Acceptable to MMS?

Section 206.104 in the December 1999 proposal and in the final rule is paragraphs (c)(4), (c)(5), and (c)(6) of § 206.102 from the January 1997 proposal with an added reference to spot prices for crude oil other than ANS. The few comments that MMS received on this section simply said that industry should have some input into which publications MMS accepts. We have included this section in this final rule unchanged. MMS will consult with industry groups as appropriate in deciding which publications should be used for index pricing.

Section 206.105 What Records Must I Keep To Support My Calculations of Value Under This Subpart?

Section 206.105 specifies that you must be able to show how you calculated the value you reported, including all adjustments. This is important because if you are unable to demonstrate on audit how you calculated the value you reported to MMS, you could be subjected to sanctions for false reporting.

Section 206.106 What Are My Responsibilities To Place Production Into Marketable Condition and To Market Production?

Section 206.106 is paragraph 206.102(e)(1) of the January 1997 proposal with minor clarifying word changes proposed in December 1999. It says you must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal Government unless otherwise provided in the lease agreement. As explained previously, we received many comments from industry that MMS is inappropriately trying to force industry to bear all marketing costs and that MMS should share in these costs. MMS disagrees with those arguments and is not altering the lessee's obligation to market production at no cost to the lessor in this final rule.

The January 1997 proposal also included, at paragraph 206.102(e)(2), a provision regarding the lessee's general responsibility to pay interest if the lessee reports value improperly and underpays royalties, or to take a credit for overpaid royalties. We deleted this provision in the December 1999 proposal and have left it out of the final rule because these matters are already covered in other parts of MMS's regulations.

Section 206.107 How Do I Request a Value Determination?

Section 206.107 of the February 1998 proposal included the substance of paragraph 206.102(f) of the January 1997 proposal in shortened and simplified terms. It said you may ask MMS for guidance in determining value, and you may propose a valuation method to

MMS. MMS would then review your proposal and provide you with a non-binding determination of the guidance you request. We received a variety of comments that guidance alone is insufficient and that something much more substantial is needed to provide certainty and protection in case of audit.

The final rule provides for value determinations issued by the Assistant Secretary for Land and Minerals Management that are binding on the lessee and MMS. It also provides for value determinations issued by MMS that are binding on MMS only and not the lessee, and that are not administratively appealable. See MMS's response to comments on the earlier proposals in Sections VI(f), VII(f), VIII(b), and IX(p) above.

Also, we deleted paragraph 206.102(g) of the January 1997 proposal. It discussed audit procedures related to value determinations, and these are covered sufficiently in other parts of MMS's regulations.

Section 206.108 Does MMS Protect Information I Provide?

Section 206.108 is paragraph 206.102(h) of the January 1997 proposal, but with minor wording changes for clarity that we proposed in December 1999.

Section 206.109 When May I Take a Transportation Allowance in Determining Value?

Section 206.109 includes the substance of § 206.104 of the January 1997 proposal with only minor wording changes proposed in December 1999. In the December 1999 proposal and in this final rule, we removed the last two sentences of paragraph (a) of the January 1997 proposal regarding transportation of oil that MMS takes as royalty in kind. These provisions were unnecessary because this issue is addressed in the royalty-in-kind regulations in § 208.8.

This section also includes the provision that you may not take a transportation allowance greater than 50 percent of the value of the oil determined under this subpart. We received several comments that MMS should relax this limitation. However, paragraph 206.109(c)(2) continues the existing practice that you may ask MMS to approve a larger transportation allowance by demonstrating that your reasonable, actual, and necessary costs exceed the 50 percent limitation.

Sections 2206.110 and 206.111 How Do I Determine a Transportation Allowance Under an Arm's-Length Transportation Contract, and How Do I Determine a Transportation Allowance Under a Non-Arm's-Length Transportation Contract?

Sections 206.110 and 206.111 of the December 1999 proposal were paragraphs 206.105(a) and (b), respectively, of the existing rule, rewritten to reflect plain English, with three proposed changes. MMS also requested comments on two other issues. Based on comments received and further analysis, we are making further changes in the final rule.

The December 1999 proposal included two changes to the calculation of actual transportation costs under § 206.111(g). First, under the current regulations, a change in ownership does not alter the depreciation schedule. That is, a transportation system cannot be depreciated more than once by one or more owners. Section 206.111(g)(2) proposed in December 1999 stated that an arm's-length change in ownership of a transportation system would result in a new depreciation schedule for purposes of the allowance calculation. Under the proposed provision, if you or your affiliate purchased an existing transportation system at arm's length, your initial capital investment would have been equal to your purchase price of the transportation system.

The final rule does not adopt the provision as proposed in December 1999. As written, the December 1999 proposal gave rise to serious difficulties because of potential inflated allowances due to the original owner's ability to recover or "recapture" its actual costs by selling the pipeline at a value greater than the depreciable balance.

For example, assume that an original owner had paid $20 million to construct a pipeline. Further assume that the original owner used a 20-year straight-line depreciation and made no subsequent reinvestment. Further assume that in year 15, the original owner sold the pipeline at arm's length for $10 million to another person who also transported oil through the pipeline under a non-arm's-length arrangement. Under the December 1999 proposal, the purchaser would have begun a new depreciation schedule based on the $10 million purchase price. But the consequence of this transaction is that the original owner's actual transportation costs effectively were reduced because it recovered $5 million of the $15 million it had taken as depreciation. Thus, if the actual transportation costs it originally reported were not recalculated, more transportation costs than were actually incurred would be deducted from royalty value.

The December 1999 proposal thus gave rise to serious questions of how to "recapture" the royalties owed as a result of the reduced costs. One possible solution would have been to require the lessee who sold the transportation system to recalculate all of its transportation allowances for a retrospective period of several years. That would have been an extraordinarily complex calculation, because the difference between the transportation costs reported and the costs actually incurred is not equal to the amount of depreciation the selling lessee recaptured. If the depreciation element of the cost calculation were reduced retroactively, that also would change the calculation of return on undepreciated investment. Thus, the selling lessee would have to recalculate both elements of actual transportation costs for every report month. Further, this recalculation in most cases would involve a number of leases.

In view of the complex and costly burdens that would be imposed on lessees, MMS has not provided for a detailed "recapture" procedure in the final rule. Instead, MMS adopted a simpler approach that still addresses much of the concern that led to the provision in the December 1999 proposal.

Under the final rule, if you or your affiliate own a transportation system on the effective date of the rule, you must base your depreciation schedule used in calculating actual transportation costs for royalties paid on production after the effective date of the rule on your total capital investment in the system. Total capital investment includes your original purchase price or construction cost and any subsequent reinvestment.

If you or your affiliate were not the original owner of the system, but purchased the transportation system at arm's length before the effective date of the final rule, you must incorporate depreciation on the schedule based on your purchase price (and subsequent reinvestment) into your transportation allowance calculations in paying royalty on production after the effective date of the rule. However, you would begin at the point on the depreciation schedule corresponding to the effective date of the rule. You must prorate your depreciation for the year 2000 by claiming part-year depreciation for the period from the effective date of the rule until December 31, 2000.

Under this provision, you may not adjust your transportation costs for

royalties paid on production before the effective date of the rule using the depreciation schedule based on your purchase price. The final rule does not permit recalculation of allowances for prior periods on that basis. Your calculation of actual transportation costs for periods before the effective date of the rule presumably was based on the original owner's depreciation schedule, and that will remain unchanged.

For example, if you purchased a system at arm's length on January 1, 1995, you would be in the sixth year of the depreciation schedule based on your purchase price. Assume that you had no subsequent reinvestment. You would incorporate into your calculation of actual transportation costs the depreciation applicable to the sixth year from the schedule based on your purchase price. However, you must prorate your claimed depreciation for calendar year 2000 by claiming part-year depreciation for the period from the effective date of the rule until December 31, 2000. If your calculation of actual transportation costs for the period before the effective date of the rule was based on the original owner's depreciation schedule, you may not adjust the calculation of costs for the period before the effective date of the rule using the schedule based on your purchase price.

Under the final rule, if you are the original owner of the transportation system on the effective date of this rule, you must continue to use your existing depreciation schedule in calculating actual transportation costs for production in periods after the effective date of this section. In other words, your depreciation calculation does not change.

However, if you or your affiliate purchase a transportation system at arm's length from the original owner after the effective date of the rule, you thereafter must base your depreciation schedule used in calculating actual transportation costs on your total capital investment in the system (including your original purchase price and subsequent reinvestment). You must prorate your depreciation for the year in which you or your affiliate purchased the system to reflect the portion of that year for which you or your affiliate own the system.

If you or your affiliate purchase a transportation system at arm's length after the effective date of the rule from anyone other than the original owner, you must assume the depreciation schedule of the person who owned the system on the effective date of the rule.

Thus, under the final rule, if you purchased a pipeline before the effective date of this rule (whether from the original owner or a subsequent owner), you now may calculate depreciation based on your purchase price. From now on, you may use your purchase price as your basis only if you purchase the pipeline from the original owner. If you purchase a pipeline from anyone other than the original owner, you will assume the seller's depreciation schedule. MMS believes that these provisions balance the competing considerations arising from the December 1999 proposal and minimize the burdens on both the lessees and the agency.

The second change proposed in December 1999, at § 206.111(g)(3) and adopted in the final rule as § 206.111(j), provides that even after a transportation system has been depreciated below a value equal to ten percent of your original capital investment, you may continue to include in the allowance calculation a cost equal to ten percent of your total capital investment in the transportation system multiplied by a rate of return under paragraph (h) of this section, regardless of the pipeline's depreciation status. (Under the current regulations a lessee is not allowed to claim any depreciation or return on capital once a pipeline is fully depreciated.) This is only to calculate the return component of the transportation allowance; you still must follow the depreciation schedule for calculating the depreciation component of the allowance. So while you are permitted to take a return component equal to the allowable rate of return times ten percent of the total capital investment each year after you have depreciated your facility to the ten percent level, you may claim only the actual depreciation according to the depreciation schedule. Thus, you will be eligible for a return component even when you can no longer claim depreciation.

In the final rule, we also have added a clarifying paragraph (2) to specify that in calculating royalties paid on production after the effective date of the rule, you may apply this paragraph to a transportation system that before the effective date of this rule is depreciated at or below a value equal to ten percent of your total capital investment. You may not adjust royalties paid for production in periods before the effective date of the rule incorporating this additional return on investment component.

Section 206.111(g)(4) of the December 1999 proposal (paragraph 206.105(b)(2)(B) of the current regulations) provides an alternative for transportation facilities first placed in service after March 1, 1988. In the December 1999 proposal, we asked for comments on whether this provision should be continued. In the final rule, we are deleting this paragraph. This paragraph is unnecessary in light of the changes we are making to the calculation of actual transportation costs and because it is our understanding that this paragraph has been used in few, if any, situations.

The existing rule uses the Standard and Poor's Industrial BBB bond rate as an allowable rate of return on capital investment for producers who transport oil through their own pipelines (see 30 CFR § 206.157(b)(2)(v)). In the December 1999 proposal, we asked for comments on whether the existing rate of return should be changed. As noted above, some commenters suggested increasing the rate used in calculating the allowance to twice the Standard and Poor's BBB industrial bond rate. Two States and an individual commented that increasing the rate of return above the BBB rate is unnecessary and urged MMS to maintain the current rate of return.

As explained above in Section IX(a), MMS believes the BBB bond rate is a very appropriate rate of return and is retaining it in the final rule.

Section 206.112 What adjustments and transportation allowances apply when I value oil using index pricing?

Section 206.112 describes how to adjust the index price for location differentials, quality differentials, and transportation allowances depending on how you dispose of your oil.

In the February 1998 proposal, § 206.112 contained a "menu" of possible adjustments that could apply in different circumstances, and § 206.113 prescribed which of the adjustments from the "menu" applied to specific circumstances. The December 1999 proposal eliminated the "menu" and instead combined the previously proposed §§ 206.112 and 206.113 into one section that describes what adjustments apply when using index pricing. We have adopted that approach in the final rule. The "menu" of options is no longer necessary with the elimination of aggregation points and MMS-published differentials. This new paragraph covers all situations regardless of lease location, so there is no need for geographical breakdown of adjustments and allowances.

As proposed in December 1999, we eliminated the location differential between the index pricing point and the market center. This is because under the valuation procedures proposed under the February 1998 and December 1999

proposals and adopted in this final rule, the index pricing point and market center are synonymous.

Paragraph 206.112(a) covers situations where you dispose of your production under one or more arm's-length exchange agreements. In this case, you must adjust the index price for any location/quality differentials that reflect the difference in value of crude oil between the point(s) where your production is given in exchange and the point(s) where oil is received in exchange. You may also adjust the index price to reflect any actual transportation costs between the lease and the first point where you give your oil in exchange, and between any intermediate point where you receive oil in exchange to another point where you give the oil in exchange again, and between the last point you receive oil in exchange and a market center or refinery that is not at a market center. These costs are determined under §§ 206.110 or 206.111, depending on whether your transportation arrangement is at arm's length or not. (Note again, that if the transportation costs from the lease to the market center or alternate disposal point are already reflected in the location differential between the lease and the market center, you may not claim duplicate transportation costs.) A third adjustment (paragraph (d)) may be warranted if the quality of your lease production differs from that of the oil you exchanged at any intermediate point (for example, due to commingling at intermediate locations). This last adjustment would be based on pipeline quality bank premia or penalties, but only if such quality banks exist at intermediate commingling points before your oil reaches the market center or alternate disposal point.

For example, Company A transports its production from a platform in the Gulf of Mexico to an intermediate point under an arm's-length transportation contract for $0.50 per barrel. Company A then enters into an arm's-length exchange agreement between the intermediate point and the market center at St. James, Louisiana. Company A then refines the oil it receives at the market center, so it must determine value using an index price under § 206.103. The arm's-length exchange agreement between the intermediate point and St. James contains a location/quality differential of $0.10 per barrel. The average of the daily mean spot prices for St. James (the market center nearest the lease with crude oil most similar in quality to Company A's oil) is $20.00 per barrel for the production month. The value of Company A's production at the lease is $19.40 ($20.00—$0.10—$0.50) per barrel.

Under paragraph 206.112(a), you must determine the differentials from each of your arm's-length exchange agreements applicable to the exchanged oil. Therefore, for example, if you exchange 100 barrels of production under two separate arm's-length exchange agreements for 60 barrels and 40 barrels respectively, separately determine the location/quality differential under each of those exchange agreements, and apply each differential to the corresponding index price. As another example, if you produce 100 barrels and exchange that 100 barrels three successive times under arm's-length agreements to obtain oil at a final destination, total the three adjustments from those exchanges to determine the adjustment under this subparagraph. (If one of the three exchanges were not at arm's length, you must request MMS approval under paragraph (b) for the location/quality adjustment for that exchange to determine the total location/quality adjustment for the three exchanges.) You also could have a combination of these examples.

Paragraph 206.112(b) addresses cases where your exchange agreement is not at arm's-length. In that event, you must request approval from MMS for any location/quality adjustment.

Paragraph 206.112(c) addresses cases where you transport your production directly to a market center or to an alternate disposal point (for example, your refinery), and establish value based on index prices under § 206.103.

In the case of transportation directly to a refinery, you would deduct from the index price your actual costs of transporting production from the lease to the refinery with the costs determined under §§ 206.110 or 206.111 and any quality adjustments determined by pipeline quality banks under paragraph 206.112(d). The index pricing point is the one nearest the lease.

For example, a lessee or its affiliate in the Gulf of Mexico might transport its production directly to a refinery on the eastern coast of Texas and not to an index pricing point. Because that production is not sold at arm's length, the lessee must base value on the average of the daily mean spot prices for St. James, less actual costs of transporting the oil to the refinery and any quality adjustments from the lease to the refinery.

Likewise, if a lessee or its affiliate transports Wyoming sour crude oil directly to its refinery in Salt Lake City, Utah, and values the oil based on paragraph 206.103(b)(3), the lessee must base value on the average of the daily Cushing spot prices, less the actual cost of transporting the oil to Salt Lake City and any quality adjustments between the lease and the refinery.

When production is moved directly to a refinery and value must be established using an index, issues arise because the refinery generally is not located at an index pricing point. Consequently, the lessee does not incur actual costs to transport production to an index pricing point, and in any event, the production is not sold at arm's length at that point. The principle underlying the rules and cases granting allowances for transportation costs is that the lessee is not required to transport production to a market remote from the lease or field at its own expense. When the lessee sells production at a remote market, the costs of transporting to that market are deductible from value at that market to determine the value of the production at or near the lease. Where sales occur only at or near the lease, the question of a transportation allowance, as that term always has been understood, does not arise. However, because the lease and the index pricing point may be distant from one another, there is a difference in the value of the production between the index pricing point and the location of the lease. The question becomes how to determine or how best to approximate that difference in value.

In theory, one solution would be for MMS to try to derive what it would cost a lessee to move production from the lease to the index pricing point. There are, in MMS's view, several problems with such an approach. First, it would require a burdensome information collection from industry and impose substantial information collection costs on many parties to whom the resulting calculation may never be relevant. Second, in many cases it may well not be possible to obtain information on which to base such a calculation. In many instances, it is likely that no production from the lease or field is transported to the index pricing point that applies under § 206.103. Consequently, in such cases there would be no useful data on which such a cost derivation could be based.

Another possible solution, in theory, would be for MMS to derive a location adjustment between the index pricing point and the refinery. This might be possible if, for example, there are arm's-length exchanges of significant volumes of oil between the index pricing point and the refinery, and if the exchange agreements provide for location adjustments that can be separated from quality adjustments. But establishing such location adjustments on any scale again would require a burdensome

information collection effort. MMS also anticipates that in many cases there would be no useful data from which to derive a location adjustment.

As we explained in the December 1999 proposal, MMS therefore believes that the best and most practical proxy method for determining the difference in value between the lease and the index pricing point is to use the index price as value at the refinery, and then allow the lessee to deduct the actual costs of moving the production from the lease to the refinery. This is not a "transportation allowance" as that term is commonly understood, but rather is part of the methodology for determining the difference in value due to the location difference between the lease and the index pricing point. Nevertheless, it is appropriate to include this deduction for situations in which index pricing is used.

MMS included this same method in the January 1997 proposal and did not receive any suggestions for alternative methods. We received few comments on this issue in response to the February 1998 proposal. However, one State commented that this method could result in calculation of inappropriate differentials. Absent better alternatives, MMS believes this method is the best and most reasonable way to calculate the differences in value due to location when production is not actually moved from the lease to an index pricing point.

However, if a lessee believes that applying the index price nearest the lease to production moved directly to a refinery results in an unreasonable value based on circumstances of the lessee's production, paragraph 206.103(e) allows MMS to approve an alternative method if the lessee can demonstrate the market value at the refinery. Although we received a few comments that MMS should not allow such requests, MMS believes it should leave this opportunity open for those limited cases where the procedure discussed above may be shown to be inappropriate, as we explained in the December 1999 proposal. MMS will do a thorough review and analysis of any such requests and will only approve them where the proper alternative value or procedure has been clearly demonstrated.

It is the lessee's burden to provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence may include, but is not limited to: (1) costs of acquiring other crude oil at or for the refinery; (2) how adjustments for quality, location, and transportation were factored into the price paid for the other oil; (3) the volumes acquired for the refinery; and (4) other appropriate evidence or documentation that MMS requires. If MMS approves an alternative value representing market value at the refinery, there will be no deduction for the costs of transporting the oil to the refinery unless it is specifically identified in the Director's approval. Whether any quality adjustment is available depends on whether the oil passes through a pipeline quality bank or if an arm's-length exchange agreement used to get oil to the refinery contains a separately-identifiable quality adjustment.

Paragraph 206.112(c) also covers situations where you transport your oil directly to an MMS-identified market center. To arrive at the royalty value, you would adjust the index price by your actual costs of transportation under §§ 206.110 and 206.111. A second adjustment (paragraph (d)) may be warranted if the quality of your lease production differs from the quality of the oil at the market center. This adjustment would be based on pipeline quality bank premia or penalties, but only if such quality banks exist at the aggregation point or intermediate commingling points before your oil reaches the market center.

For example, Company A transports its production from a platform in the Gulf of Mexico to St. James, Louisiana, under a non-arm's-length transportation contract with its affiliate. The actual cost of transporting production under § 206.111 is $0.50 per barrel. The average of the daily spot prices at St. James is $20.00 per barrel for the production month. The value of Company A's production at the lease is $19.50 ($20.00–$0.50) per barrel.

As discussed earlier in this preamble, MMS received a variety of comments, pro and con, about the differentials used in § 206.112. MMS believes the criteria laid out in this final rule are fair and reasonable and best represent a balanced response to the comments received.

In this final rule, paragraph 206.112(e) contains language from proposed paragraph 206.112(f) of the February 1998. It states that the term "market center" means Cushing, Oklahoma, when determining location/quality differentials and transportation allowances for production from leases in the RMR.

In the February 1998 proposal at paragraph 206.112(e), and in the December 1999 proposal and the final rule at paragraph 206.112(d), MMS added a separate adjustment to reflect quality differences based on quality banks between your lease and an alternate disposal point or market center applicable to your lease. You would make these quality adjustments according to the pipeline quality bank specifications and related premia or penalties that may apply in your specific situation. If no pipeline quality bank applies to your production, then you would not take this quality adjustment. Likewise, if a quality adjustment is already contained in an arm's-length exchange agreement from the lease to the market center, you could not also claim a pipeline quality bank adjustment from the lease to the aggregation point or market center. MMS believes this additional adjustment would more accurately reflect actual quality adjustments made by buyers and sellers.

In this final rule we added a new paragraph 206.112(g) to clarify that regardless of how you dispose of your production and which adjustments might otherwise apply, you cannot include separate transportation or quality adjustments that duplicate one another. That is, any time you take one of the listed adjustments, you cannot duplicate any portion of that adjustment in part or all of any other adjustment that otherwise would be allowable.

Paragraph 206.112(f) of the December 1999 proposal and of this final rule addresses situations where you may not have access to differentials between the lease and the alternate disposal point or market, or you may not have access to the actual transportation costs from the lease alternate disposal point or market center. In such cases, which should be infrequent, MMS will permit you to request approval for a transportation allowance or quality adjustment. In determining the allowance for transportation from the lease to the alternate disposal point or market center, MMS will look to transportation costs and quality adjustments reported for other oil production in the same field or area, or to available information for similar transportation situations. Under paragraph 206.112(b), you must also request approval from MMS for any location/quality adjustments when you have a non-arm's-length exchange agreement.

As discussed above, paragraph (g) of § 206.112 of the December 1999 proposal and the final rule clarifies that you may not use any transportation or quality adjustment that duplicates all or any part of any adjustment that you use under this section.

Section 206.113 How will MMS identify market centers?

Section 206.113 of the December 1999 proposal and the final rule is paragraph 206.105(c)(8) of the 1997 proposal and

§ 206.115 of the February 1998 proposal, except that we have eliminated the identification of aggregation points and we have made minor wording changes. MMS has eliminated the list of aggregation points identified in the January 1997 proposal in conjunction with the elimination of Form MMS–4415.

In the preamble to the January 1997 proposal, MMS listed market centers for purposes of the rule. That list included Guernsey, Wyoming. MMS has eliminated Guernsey as a market center for the reasons given earlier. Also, we received comments that simply using Los Angeles and San Francisco as market centers for ANS pricing purposes was too broad and that multiple, local delivery points in and near these two cities should be included in the market center definition. So, for purposes of this rulemaking, the Los Angeles market center includes Hines Station, GATX Terminal, and any of the refineries located in Los Angeles County. The San Francisco market center includes Avon, or any of the refineries located in Contra Costa or Solano Counties.

Section 206.114 What are my reporting requirements under an arm's-length transportation contract?

Section 206.114 of the December 1999 proposal and the final rule is paragraph 206.105(c)(1) of the existing rule rewritten in plain English.

Section 206.115 What are my reporting requirements under a non-arm's-length transportation contract?

Section 206.115 of the December 1999 proposal and the final rule is paragraph 206.105(c)(2) of the existing rule rewritten in plain English, except paragraph 206.105(c)(2)(iv) is deleted as described in the preamble to the January 1997 proposal. We also added a sentence clarifying that when you adjust your estimated allowance to an actual allowance, § 206.117 will apply.

Section 206.116 What interest and assessments apply if I improperly report a transportation allowance?

Section 206.116 of the December 1999 proposal and the final rule is paragraph 206.105(d) of the existing rule rewritten in plain English.

Section 206.117 What reporting adjustments must I make for transportation allowances?

Section 206.117 of the December 1999 proposal and the final rule is paragraph 206.105(e) of the existing rule rewritten in plain English.

Section 206.118 Are costs allowed for actual or theoretical losses?

Section 206.118 of the December 1999 proposal and the final rule is paragraph 206.105(f) of the existing rule rewritten in plain English. Reference to the FERC- or State regulatory agency-approved tariffs was deleted in the January 1997 proposal, and since this final rule does not provide the option for lessees who own pipelines to request use of such tariffs in lieu of their actual costs, the tariff reference is not in this final rule. Although we received a comment that actual or theoretical losses are real costs of transportation, this section is simply a continuation of longstanding policy.

Section 206.119 How are the royalty quantity and quality determined?

Section 206.119 of the December 1999 proposal and the final rule is § 206.103 of the existing rule rewritten in plain English.

Section 206.120 How are operating allowances determined?

Section 206.120 of the December 1999 proposal and the final rule is § 206.106 of the existing rule rewritten in plain English.

Section 206.121. Is there any grace period for reporting and paying royalties after this subpart becomes effective?

In the January 2000 public workshops, some commenters discussed the need for systems changes in their companies to comply with certain provisions of the December 1999 proposal. In the final rule, we have added a new § 206.121 in an effort to facilitate that transition. Under this section, you may adjust royalties reported and paid for the first three production months after the effective date of this rule without liability for late payment interest if the adjustment results from systems changes needed to comply with new requirements imposed under this subpart that were not requirements under the predecessor rule. This is not a blanket exemption from late payment charges. The lessee will bear the burden of being able to demonstrate that the adjustment resulted from a systems change necessitated by the final rule. While the lessee may be billed for interest, it will be credited only if MMS is satisfied that the adjustment that caused the interest bill was due to systems changes needed as a result of this rule.

Decision to delete proposed change to royalty-in-kind procedures at 30 CFR 208.4(b)(2)

In the January 1997 proposal, MMS proposed to modify the procedures for determining the sales price billed to the RIK purchaser. The proposal would have used the index price less a location/quality differential specified in the RIK contract. MMS has decided not to proceed with this approach. Instead, MMS will establish future RIK pricing terms directly within the contracts it writes with RIK program participants. MMS's goal still is to achieve pricing certainty in RIK transactions. But because of its revised plans, MMS has dropped its proposed January 1997 change to 30 CFR 208.4(b)(2).

XI. Procedural Matters

General Comments Relating to Procedural Matters for the December 1999 Proposal

With respect to the procedural matters of this proposed rule, MMS received comments from several parties, including U.S. Senators, with the most detailed comments coming from one entity (the Barents Group). Many industry groups endorsed the Barents Group's comments. We received no comments related to procedural matters from States, watchdog groups, or private citizens.

The comments generally were focused on the burden estimates associated with implementing the rule. We will address the comments in the sections that discuss the respective requirements.

General Comments Relating to Procedural Matters for the February 1998 Proposal

MMS received comments regarding various procedural matters involved in the February 1998 proposed rule from one entity (The Barents Group) that were endorsed by several companies and industry organizations. One comment centered on overall procedure, while two other comments specifically addressed Executive Order (E.O.) 12866 and the Regulatory Flexibility Act. We will address the overall procedure comment here, and we will address the specific comments in the sections that discuss the respective requirements.

Issue: Procedures not followed with the latest publication and re-opening of the comment period

Summary of Comments: The commenter believes that the Administrative Procedure Act (APA) requires any comment period to remain open for at least 60 days. Furthermore, an advance copy of the rule (in this case the July 1998 proposal) should be sent to the Office of Management and Budget (OMB) for review prior to any publication. The comment period for this rule was much less than 60 days

and OMB never received a copy of the rule.

MMS Response: The APA does not specify a minimum time period for accepting comments. The APA only requires a "reasonable" comment period depending on the particular facts of the rule. Generally, the comment period is 60 days for proposed rules, and shorter periods for supplementary proposed rules. The July 1998 proposal was not an initial proposed rule; it was a further supplementary proposed rule representing the fifth in a series of proposed and supplementary proposed rules. Given the numerous times this rule has been published for comment and the many meetings held over the last three-plus years, MMS believes the brief comment period (July 9 through July 31) for the July 1998 proposal, which merely addressed issues that had been commented on before, was more than adequate. The July 1998 proposal included few changes to previous versions of the rule; the major substance of the rule had been addressed several times in great detail. Additionally, MMS provided OMB a copy of the February 1998 proposal, and OMB approved the rule for publication. MMS made only minor modifications to the February 1998 proposal in its July 1998 proposal, and MMS provided a copy of the July 1998 proposal to OMB.

The Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule establishes the methodology royalty payors are to use in calculating royalty payments owed the Federal Government for oil produced on Federal leases, both onshore and offshore. There are approximately 800 such royalty payors.

The majority of royalty payors operate onshore and are smaller companies that sell the oil they produce to third parties in arm's-length transactions. They generally do not engage in downstream petroleum businesses. Larger companies usually operate offshore as well as onshore and have the resources needed to meet the technical and financial challenges associated with producing oil on the Outer Continental Shelf, especially in deep water. Many of these larger firms are integrated companies that produce crude oil, operate refineries, or market petroleum products at the wholesale and retail levels.

This rule provides that lessees that sell their oil under arm's-length transactions will continue to report and pay royalties based on their gross proceeds. Consequently, this rule will not affect the amount of royalties they pay, nor the manner in which they calculate the royalty. Generally, only integrated payors who do not trade oil at arm's-length will be required to pay royalties based on the rule's non-arm's-length provisions.

According to the Small Business Administration (SBA), drilling companies and companies that extract oil, gas or natural gas liquids having fewer than 500 employees are defined as small businesses. SBA defines refining companies as small if they employ less than 1,500 people. Based on the 500-employee standard for oil extraction companies, we estimate that over 90 percent (or about 740) of the 800 royalty payors, are small businesses.

MMS's analysis of 1998 data shows that a total of 45 royalty payors would have been required to value their production as less than arm's-length for royalty purposes. The other 755 companies sold the oil they produced under arm's length transactions and would not be affected by this rule. In comparison to their actual royalty payments, MMS estimates that the 45 affected payors would have paid additional royalties totaling $67.3 million.

Using company employment data, we determined that nine of the 45 companies are small businesses. (Since these companies are refiners as well as producers, we used the SBA standard of 1,500 or fewer employees for determining which companies were small.) Consequently, the nine small businesses who will be affected by the rule represent only 1.2 percent of the 740 small businesses who pay royalties on Federal oil. Our analysis of these nine companies' 1998 royalty payment data indicates that they would have paid additional royalties of approximately $280,000 or an average of about $31,100 each in 1998.

In addition to the impact on royalty payments, the rule will impose certain paperwork burdens as discussed in the Paperwork Reduction Act section of this preamble. Our analysis of the additional reporting burden for small companies required by this rule is 31.25 hours per company. Based on a cost of $50 per hour, the total cost to the nine affected small companies is about $14,000, or an average of about $1,600 per company.

In summary, nine small businesses will be affected economically by this rule. Their costs will include about $280,000 in additional royalties and $14,000 in reporting burdens for a total cost of $294,000. On average, the cost per company is about $32,700 annually ($31,100 in additional royalties and $1,600 in reporting burden).

Given the small number of companies and the costs involved, this rule will have minimal impact on companies producing oil on Federal lands, including the 45 royalty payors most directly affected. As noted, most of these companies are large integrated oil companies with very substantial technical, financial and real property resources. The additional costs that may result from the rule are small when compared to the revenues the companies earn from the oil they produce from Federal leases and upon which royalties are paid. As discussed in the economic analysis, the benefits of pricing simplification and the savings associated with transportation allowance changes would outweigh any additional administrative costs associated with this proposed rule. This analysis is available upon request.

Because of the lack of a substantial direct impact on the producing companies, the rule will have no secondary impacts on small businesses, such as oil field service companies, supply boat operators, etc., that conduct business with the producing companies.

Consequently, MMS concludes that this rule will not have a significant impact on a substantial number of small business entities.

Summary of Comments Related to the December 1999 Proposal:

One party commented that all small businesses will be affected by the rule, not just the nine businesses MMS identifies. Many independents have marketing affiliates and also act as designees on behalf of other lessees. These aspects were not considered in MMS's analysis.

MMS Response: MMS has maintained throughout this rulemaking that lessees who sell their oil at arm's length will continue to report and pay on their gross proceeds. Almost all of the identified small businesses dispose of their production through arm's-length contracts. Further, small businesses who market through an affiliate may report and pay on the affiliate's arm's-length gross proceeds.

Lessees that have designees reporting for them will incur no additional burden, while the designees themselves likely will not either. In the majority of cases, lessees who have designees reporting on their behalf are smaller firms whose gross proceeds from arm's-length sales will be the reported royalty value. In these cases, small companies with interests in Federal leases would rather dispose of production at arm's length and allow a designee to report for them. The rule imposes no additional

burden in these cases. MMS therefore does not believe that the rule will impose significant burdens on all small businesses.

Summary of Comments Related to the July 1998 Proposal: MMS received one comment on the July 1998 proposal. The comment and MMS's response follow.

Summary of Comments: MMS has not met the requirements of the Regulatory Flexibility Act because the rule does significantly impact small businesses.

MMS Response: As stated below, our analysis concludes that the requirements of this final rule will not significantly impact a substantial number of small businesses. In general, only integrated payors with either a refinery, a separate marketing entity, or both will pay additional royalties. Such lessees are typically larger in size and able to absorb any additional burden (however small) the rule may impose. In the few cases where small businesses may be affected, the impact will be minimal.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of $100 million or more;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

See the Executive Order 12866 analysis later in this preamble for specific estimated effects of the rule.

Unfunded Mandates Reform Act of 1995

The Department of the Interior has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. § 1531 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, tribal, or State governments, or the private sector. This rule will not change the relationship between MMS and State, local, or tribal governments. The historical relationship between MMS and State and local governments will not change in any way. The rule will, in fact, increase State royalty revenues without imposing additional costs. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

See the Executive Order 12866 analysis later in this preamble for specific estimated effects of the rule.

Fairness Board and National Ombudsman Program

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 regional fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small businesses. If you wish to comment on the enforcement actions of MMS, call 1–888–734–3247.

Executive Order 13132 (Federalism)

In accordance with Executive Order 13132, this final rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. This final rule does not negatively affect the States' prerogatives regarding oil valuation or their share of oil royalty receipts. The affected States were heavily involved in the rulemaking process through their continued participation in MMS's numerous public workshops and submission of detailed comments at every stage of this lengthy rulemaking process.

The management of Federal leases is the responsibility of the Secretary of the Interior. Royalties collected from Federal leases are shared with State governments on a percentage basis as prescribed by law. This final rule does not alter any lease management or royalty sharing provisions. It determines the value of production for royalty computation purposes only. This final rule does not impose costs on States or localities. Costs associated with the management, collection and distribution of royalties to States and localities are currently shared on a revenue receipt basis. This final rule does not alter that relationship.

Executive Order 12630

The Department certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Summary of Comments Related to the February 1998 and December 1999 Proposals: The proposed rule deprives lessees of their constitutionally protected property rights when royalties are paid based on a higher than actual lease sales price. This is a price that the lessee would find impossible to actually realize because it includes returns on investments and on downstream marketing profits. The commenter asserted that because such a taking will occur if the rule is approved, MMS must prepare a Takings Implication Assessment pursuant to Executive Order 12630.

MMS Response: Executive Order 12630 requires a Federal agency to justly compensate a private property owner if private property is taken for public use. Disagreements over methods of valuing production for royalty purposes do not change the property relationship between a lessee and the Federal lessor, and do not operate to deprive the lessee of any property interest. Even if a particular valuation method is held to be unlawful or unauthorized, the remedy is to overturn the unauthorized agency action. This does not have constitutional takings implications.

Executive Order 12866

The Office of Management and Budget (OMB) determined that this rule is a significant rule under Executive Order 12866 Section 3(f)(4). Although we estimate that the rule will have an effect less than $100 million on the economy, this order states that a rule is considered a significant regulatory action if it "raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order." OMB determined that this rule raises novel legal or policy issues.

MMS met the Executive Order 12866 regulatory compliance and review requirements when it developed its February 1998 proposal. MMS's analysis of the revisions it made to the February 1998 proposal indicated those changes would not have a significant economic effect, as defined by Section 3(f)(1) of this Executive Order.

This rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. In its February 1998 proposal, MMS's analysis of 1996 data estimated that the rule would have had an economic impact of approximately $66 million in increased royalty collections annually. Because a substantial period of time elapsed since the initial analysis, MMS has performed a similar analysis comparing actual 1998 royalties paid with those we estimate would have been required had

this rule been in effect. This recent analysis showed the rule would have had an economic impact of approximately $67 million in increased royalty collections annually, or about the same impact estimated earlier.

MMS completed a Record of Compliance (ROC), an internal document that was not published in the **Federal Register**, in conjunction with the December 1999 proposed rule. The conclusions that we reached in the ROC continue to apply to this final rule. The ROC contains the detailed analysis required under Executive Order 12866. Also, we present the economic analysis of this rule's impacts later in this section.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. We are not aware of any actions taken or planned by other agencies, State or Federal, that are similar to this one or that this rule would interfere with.

This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

As part of the procedural matters associated with the December 1999, July 1998, and February 1998 proposals, MMS accepted comments on the specific approach, assumptions, and methodology used in the Executive Order 12866 analysis. For the December 1999 proposal, MMS received detailed comments from groups representing industry, producing companies and a Senate group. For the February 1998 proposal, MMS received a detailed report from one commenter and comments from two other organizations regarding the analysis. For the July 1998 proposal, MMS received one comment (from the Barents Group). MMS's responses to all of those comments follow. MMS did not receive any additional comments on the Procedural Matters in response to the March 1999 notice.

Comments Related to the December 1999 Proposal:

(a) Necessity of E.O. 12866 Analysis

Summary of Comments: One party commented that MMS is required to perform an analysis under Executive Order 12866 because this rule raises novel legal requirements. Further, this analysis requires a complete examination of all feasible alternatives. MMS has not completed this required analysis.

MMS Response: MMS completed a ROC, an internal document that was not published in the **Federal Register**, in conjunction with the December 1999 proposed rule. The conclusions that we reached in the ROC continue to apply to this final rule. The ROC contains the same detailed analysis required under Executive Order 12866. Additionally, we examined alternatives in detail over the entirety of this four-plus year rulemaking process. See the discussion of alternatives after the same comment was presented in response to the February 1998 proposed rulemaking.

The Office of Management and Budget determined this rule is a significant rule under Executive Order 12866 Section 3(f)(4). This order states that a rule is considered a significant regulatory action if it "raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order." MMS met the Executive Order 12866 regulatory compliance and review requirements when it developed its February 1998 proposal.

MMS's analysis of the revisions it made to the February 1998 proposal indicated those changes would not have a significant economic effect, as defined by Section 3(f)(1) of this Executive Order.

In its February 1998 proposal, MMS's analysis of 1996 data showed the rule would have had an economic impact of approximately $66 million in increased royalty collections annually. This estimate was based on a comparison of Federal oil royalties received in 1996 for both onshore and offshore production to those we would have expected under the provisions of the February 1998 proposal. Since the proposal used separate valuation methodologies for three geographic areas, so did the analysis. Because a substantial period of time elapsed since the initial analysis, MMS has performed a similar analysis comparing actual 1998 royalties paid with those we estimate would have been required had this rule been in effect.

(b) The Analysis Does Not Account for Designee Payors

Summary of Comments: Payors who pay on behalf of lessees will pass the incremental cost of a royalty increase on to their lessees. This cost is not accounted for.

MMS Response: MMS does not anticipate significant additional costs associated with payors who pay on behalf of lessees. See discussion above in the *Regulatory Flexibility Act* section.

(c) General Compliance with and Understanding of Rule

Summary of Comments: The rule is not clear in some respects. Companies will have to incur additional expense for training on how to comply with the rule.

MMS Response: Although the rule departs from the current royalty valuation methods for oil not sold at arm's length, MMS believes the rule is actually easier to understand and comply with. The rule reflects the way oil is bought and sold in the marketplace today. MMS believes that many industry professionals are familiar with the terms and methodology used in this rule. We agree that as with any new rule, there will be an adjustment period as lessees review the rule, analyze its application to their business, and implement its requirements. However, we do not believe this will be a significant cost.

MMS also intends to provide payor training in several locations after the publication of the final rule. Additionally, MMS will revise the Payor Handbook.

(d) Revision of Lessees' Computer Systems

Summary of Comments: Several parties are concerned that the proposed rule will necessitate a change in the computer systems already in place for paying royalty under the current regulations.

MMS Response: We received this comment in response to the February 1998 proposal. See our response below. None of these comments have explained how any necessary computer systems changes cause the rule to be inconsistent with Executive Order 12866.

(e) Burden Associated With Two-Year Election Requirement

Summary of Comments: We received a comment that there are significant internal evaluation costs associated with electing valuation methods every 2 years.

MMS Response: Internal economic decisions regarding the disposition of oil and what alternatives are financially beneficial to a lessee are a necessary part of a lessee's business. We do not believe that evaluating whether to value oil on the basis of gross proceeds or index for a property once every 2 years, in cases to which § 206.102(d) applies, is an onerous or difficult decision. Moreover, a lessee does not have to undertake the analysis to decide which method to elect if it does not want to; arm's-length gross proceeds is the primary measure of value in these cases.

(f) Differentials

Summary of Comments: One commenter asserted that additional costs will be incurred that MMS did not

estimate for "choosing and maintaining the acceptable recommendations for quality, location, and transportation differentials, and indexing methodology."

MMS Response: Although we do not fully understand the comment, we did address the costs a company will incur to compute its own differentials.

(g) Affiliation Determinations

Summary of Comments: MMS did not account for the costs associated with companies asking MMS to determine if they are affiliated.

MMS Response: MMS believes that submitting facts relevant to determining if two persons are affiliated within the meaning of this rule is a straightforward and uncomplicated process and does not entail significant costs. MMS does not believe that submission of facts or documents for this purpose creates any inconsistency with Executive Order 12866.

(h) Audit Costs

Summary of Comments: MMS claims that the current audit burden will be reduced because the rule is simpler to comply with. All MMS is doing is replacing one audit cost for another because there is so much uncertainty in the rule. MMS does not provide enough specifics in the rule for a complete level of understanding.

MMS Response: MMS believes that the rule is understandable and that lessees should have all the elements necessary for proper valuation at its disposal. MMS believes this rule is more objective than some provisions in the predecessor rule. While any rule involves audit costs, MMS believes that this rule will reduce the overall audit burden.

(i) Requests for Valuation Determinations

Summary of Comments: MMS underestimates the number of determinations industry will request. The rule is so complex and uncertain that many companies will be requesting determinations.

MMS Response: MMS believes that the number of value determinations under § 206.107 of the final rule should be about the same as under the current rule, and they should be no more complex. We also believe that the number of other requests related to location and quality differentials should be less than or equal to the number we receive under the existing provisions concerning exceptions to computing actual costs of transportation. Additionally, MMS intends to provide ample payor training sessions and a revision of the Payor Handbook. We also added more examples to the preamble at industry's request to clarify how various provisions apply.

(j) Actual Transportation Cost Calculations

Summary of Comments: MMS does not address the burden of requiring a computation of "actual costs" as a result of disallowing FERC tariffs in non-arm's-length transportation arrangements. One industry commenter expressed concern about providing records to MMS.

MMS Response: We believe the burden estimates associated with the current approved Information Collection Request for Form MMS–2014 (OMB Control Number 1010–0022) already account for the task of computing non-arm's length transportation allowances as provided in the 1988 regulations. This allowance is based on a company's (or its affiliated pipeline's) actual costs of capital investment and operating and maintenance expenses.

That allowance calculation is based on the formula (D+R+E)/T, where D=annual depreciation of the pipeline's capital investment, R=return on undepreciated capital investment (the amount left each year after that year's depreciation has been deducted), E=annual operating and maintenance expenses, and T=the throughput volume of the pipeline.

While companies in the past may have been using FERC tariffs in lieu of this formula, we believe this cost information is readily available to the companies even in situations where an affiliate is involved. Additionally, we believe this calculation is relatively straightforward. While more lessees will have to calculate actual costs under this rule because it disallows FERC tariffs, the burden of calculating actual costs in each case has not changed substantially. Moreover, under the existing rules MMS has disallowed use of many FERC tariffs because FERC no longer "approves" tariffs for pipelines over which it has no jurisdiction.

The comment that these records must be sent to MMS is not accurate. We do not require lessees to submit this information initially for review (except in cases where lessees ask to exceed the presumptive allowance limits). We do, however, require that all information be available for audit. This is no different than the records maintenance requirement under the current regulations.

(k) MMS's Economic Analysis Understates Overall Costs

Summary of Comments: Several companies and industry groups expressed concern that MMS has underestimated the full impact of the rule. Many costs such as compliance, training, and the filing of additional guidance requests are not addressed. MMS claims of legal savings associated with the rule are not accurate because additional legal costs will be incurred in other areas.

MMS Response: MMS has attempted to categorize and accurately estimate all costs associated with the proposed rulemaking. Specific types of costs that commenters alleged that MMS did not take into account are discussed in other paragraphs of this section.

For the analysis associated with the December 1999 proposed rule, we did address and estimate the costs associated with compliance and filing of guidance requests. Determining the exact impact of these costs is very difficult and will vary for every organization affected by the rule. Our estimates attempt to categorize the average impact on an average payor affected by the rule. Some companies will spend more than others. Our estimates were intended to provide a general impact of the proposed rule.

Further, we have had discussions with OMB about our estimated impacts of the rule. OMB believes that our estimated impact analysis is sufficient and conforms with OMB requirements.

(l) MMS Fails to Account for Significant Costs to Small Businesses

Summary of Comments: Some commenters believe MMS fails to adequately address the impact on small businesses. The rule will affect all payors, not just a handful of major producers as MMS claims. Many small businesses have affiliates who will be forced to pay on the proposed index methodology.

MMS Response: MMS continues to believe this rule will not affect a substantial number of small businesses because we anticipate that most small businesses will continue to pay royalties based on their arm's-length gross proceeds, as they do under the current regulations. Approximately 800 businesses pay royalties to MMS on oil produced from Federal leases. MMS believes approximately 45 of the 800 total payors are likely to pay significant additional royalties under this rule. (We believe that most small businesses with affiliate sales will report the affiliate's arm's-length gross proceeds as value. Only small businesses with refinery

capability that do not sell oil at arm's length will be affected substantially by the rule.) We further believe that only nine of those 45 payors are small businesses as defined by the U.S. Small Business Administration (companies with less than 1,500 employees). MMS further estimates that 97 percent of the remaining 755 payors, or 732, would be considered small businesses. The nine payors that we consider small businesses that we anticipate would be affected substantially by the rule make up less than 1.15 percent of all the payors reporting to MMS on oil produced from Federal leases and less than 1.25 percent of all the small businesses reporting to MMS on oil produced from Federal leases.

Our internal economic analysis of impacts on small businesses shows that benefits of pricing simplification and the savings associated with transportation allowance changes are likely to outweigh any additional administrative costs associated with this rule.

(m) Burden Associated With Compliance, Information Requirements, and the Rule in General

Summary of Comments: Congressional comments stressed the point that an overly burdensome rule will discourage further domestic oil exploration and development, and that any further burden on industry for information should be limited to establishing the value at the lease—not downstream of the lease.

Several groups from industry commented that the rule will increase administrative burden on both MMS and the producer. For example, MMS will have many requests from industry about value and quality determinations whenever companies believe that index pricing overstates the real value of their Federal oil production. MMS will not be able to timely respond. Thus, industry will have less certainty than before. Ignoring the FERC tariff methodology requires a double burden on lessees, *i.e.*, having to apply two different sets of rules (FERC's and MMS's). The rule will drive producers to revamp business practices—especially in the mid-stream marketing arena.

On the other hand, a State commented that the December 1999 proposal puts too much trust in the industry to supply information. Industry should be required to tell MMS when a balancing agreement is in place or when oil is subject to a call. This State stressed that MMS needs this information up front, not just in an audit. Effectively, the burden is on MMS for collecting this information. A watchdog organization agrees that it is imperative that industry inform MMS of balancing agreements.

MMS Response: MMS acknowledges that the rule will change the current valuation procedures for some integrated producers. However, we believe the rule actually results in simpler methodologies that are less burdensome than the current regulations.

We anticipate that the overall impact of the rule will be to significantly reduce the time involved in the royalty calculation process. Under the rule, in most cases lessees without arm's-length sales would report the adjusted spot price applicable to their production. For other than production in the RMR, the need to work through and apply the current benchmarks for non-arm's-length transactions would be eliminated. Many of the variables in royalty calculation under the previous rule have been eliminated. This should lead to additional savings in audit costs.

The comments regarding "value at the lease" have been addressed elsewhere in this preamble. The substance of these comments actually relates to downstream sales and what deductions are or are not proper in light of the lessee's duty to market.

The comments regarding having to apply different sets of rules between FERC and MMS are, in our view, misplaced. FERC is not charged with determining lessees' actual transportation costs for royalty purposes. Indeed, many of the pipelines for which lessees may have to calculate actual transportation costs are not even within FERC's jurisdiction, as explained above.

The comments regarding the timing of information on balancing agreements do not appear to warrant a change from the December 1999 proposal. Balancing agreements are relevant to the question of whether a particular contract reflects the total consideration for disposition of the oil. This is typically a matter addressed in the audit context.

(n) MMS's Economic Analysis Fails to Analyze Alternatives as Required by Law

Summary of Comments: A group representing industry believes MMS fails to adequately analyze alternatives such as taking royalty in kind or tendering. The commenter says that the Administrative Procedure Act requires a full economic analysis of all feasible alternatives.

MMS Response: See response in paragraphs (b), (c), and (d) below in the discussion of MMS's responses to the comments on the February 1998 proposal.

Comments Related to the July 1998 Proposal

Summary of Comments: Since MMS has significantly changed the rule since the February 1998 proposal, a new and revised analysis should be performed.

MMS Response: We revised our analysis using 1998 data. The procedures followed in the latest analysis are basically the same as those followed with the original analysis.

Comments Related to the February 1998 Proposal: (a) Marketing Costs

Summary of Comments: Some commenters asserted that the proposed valuation methodology will not arrive at the value of oil at the lease. They said the adjustments MMS proposes will not account for all costs associated with assessing value downstream and away from the lease. They argued that for computing value in situations not involving arm's-length sales, the rule imposes the equivalent of a tax by not allowing marketing cost deductions.

MMS Response: MMS's detailed responses to the obligation of the lessee to market production free of cost to the Federal Government are discussed in detail in Section III(i).

(b) Alternatives

Summary of Comments: MMS has not considered the appropriateness of non-regulatory alternatives such as taking royalty in kind (RIK) instead of in value.

MMS Response: The MMS has in fact considered several non-regulatory alternatives to the rule including RIK. In 1995, MMS undertook an RIK pilot project for gas produced from the Gulf OCS and is currently operating RIK projects in Wyoming (crude oil in-kind), offshore Texas in the zone governed by section 8(g) of the OCSLA (natural gas in kind), and in the Gulf of Mexico (natural gas in kind). The objective of these pilots is to test the administrative and economic feasibility of a variety of methods and conditions of RIK programs. But until MMS completes these pilots and analyzes the results, revisions to the valuation regulations are needed to assure receipt of market value. Also, unless *all* Federal oil is taken in kind in the future—an occurrence we do not foresee—valuation regulations still will be needed.

Furthermore, MMS published a **Federal Register** notice on September 22, 1997 (62 FR 49460), requesting comments on alternatives before proceeding with the rulemaking. While these are not "non-regulatory" alternatives, they demonstrate MMS's attempts to involve the public in

suggesting different valuation methodologies. These alternatives were discussed above in Section V of this preamble.

In short, MMS has considered many alternatives to the rule and received numerous comments from interested parties along the way. The MMS believes the rule is a practical solution to establishing royalty valuation methods that capture the true market value of crude oil produced from Federal leases. MMS is considering non-regulatory alternatives such as RIK, but is not prepared to take a more significant portion of its oil in kind until or unless the results of its pilots so dictate. The other valuation alternatives mentioned above were deemed to be less desirable and more costly to implement than the final rule. For these reasons, MMS determined that they are not feasible alternatives or effective means to achieve the same results as the rule.

(c) Tendering Programs

Summary of Comments: Commenters on E.O. 12866 asserted that MMS is incorrect in assuming that a tendering program is costly and is only valid if a nearby index measure of value does not exist.

MMS Response: For areas other than the RMR, MMS views index prices as the most accurate measure of value for oil not sold at arm's length. As mentioned above, the costs of monitoring and establishing a workable tendering program, with adequate safeguards to prevent abuse, make it a less desirable alternative than index pricing. Because tendering is company-specific, information transfer costs and recordkeeping costs would be higher than the costs associated with using a transparent, reliable indicator of value, such as an index.

The reason that the final rule includes tendering as a valuation benchmark for the RMR is that there is no reliable spot or index price specific to that region.

(d) Industry-Proposed Benchmarks

Summary of Comments: Some commenters stated that MMS rejected an industry-proposed benchmark system based on the assumption that it was too costly and difficult to administer. It is not clear that the costs associated with the new rule are any less severe than the costs associated with this proposed benchmark system.

MMS Response: The Independent Petroleum Association of America (IPAA) originally submitted the proposed benchmark system referenced by this comment and has since submitted a modified valuation proposal they termed "royalty valuation procedures" (RVP's). MMS asked for comment on IPAA's original proposed benchmark system in a **Federal Register** notice on September 22, 1997 (62 FR 49460) (see above for specifics on the proposal and the responses we received). IPAA's modified proposal for sales not at arm's length allows the lessee to elect one of the following RVP's for a given period of time:

- Outright sales of significant quantities of like-quality crude in the field or area, including sales under "tendering" programs.
- Arm's-length purchases of significant quantities of like-quality crude in the field or area.
- Netback methodology using an index price or an affiliate's resale price minus all actual costs for transportation and value added by midstream activities.
- Potential use of outright arm's-length sales by third parties in the field or area once the trade press begins routinely to publish price data for a given field (this is something that the trade press currently does not do; nor are we aware of any trade press plans to publish such data).
- Potential use of prices published by MMS based on its RIK sales (this idea assumes that a RIK program is feasible and that data gathered from it would be applicable and in a usable form).

State commenters on the February 1998 proposal objected to IPAA's menu selection concept.

As discussed elsewhere in this preamble, the final rule uses index prices to value oil not sold at arm's length everywhere except in the RMR. While the final rule does not use RVP's for that region, it does use a set of benchmarks with some similarities to the RVP's. Also as discussed elsewhere in the preamble, MMS believes that except for the RMR, spot prices are the best indicators of value.

In the public workshops, MMS explained in detail the numerous problems associated with using area or regional sales and purchases as a measure of value. The potential for uncertainty in the terms "significant quantities," "like-quality," and "field or area," leads to significant audit burdens on lessees and MMS. Likewise, the first and second RVP's require the lessee to timely obtain access to arm's-length contracts in the field or area. The final rule adopts part of the third RVP, with deductions limited to the actual costs of transportation as prescribed in the rule, as the single valuation method for all production not sold at arm's-length, except in the RMR, where an index price is used as the third benchmark. However, as discussed in Section III(i) of the preamble, the final rule does not allow a deduction for midstream marketing activities.

The last two of IPAA's proposed benchmarks are offered only as potential measures, and IPAA admits they cannot be implemented currently. MMS is open to studying these proposals in the future if they become viable.

Finally, MMS does not believe that lessees should be permitted to select a valuation method simply because it would be to the lessee's monetary benefit. Value should be based on uniform standards applicable to all lessees similarly situated. In other words, valuation should not be based on a menu, but rather on a hierarchy of established standards.

(e) Spot Prices

Summary of Comments: In their comments on E.O. 12866, commenters disagreed with MMS's assertion that spot and spot-related prices drive the manner in which crude oil is bought and sold today in the United States.

MMS Response: MMS's detailed response to the adequacy of spot prices is contained in Section VI(e).

(f) Cost-benefit Analysis of Alternatives

Summary of Comments: Commenters stated that MMS fails to meet the requirements of E.O. 12866 by not performing a cost-benefit analysis of any of the alternatives. They say MMS simply presents a few unsubstantiated reasons for not using alternatives, which does not allow MMS to choose the most efficient alternative. Further, according to the commenters, MMS has not investigated which, if any, alternatives arrive at value at the lease.

MMS Response: The final rule is the culmination of a four-plus year rulemaking effort. Throughout this process MMS explored and discussed numerous valuation alternatives with States, consultants, interest groups, industry groups, and congressional staff. MMS has adopted, at least partially, many of the alternatives suggested by commenters. However, several suggested alternatives were based on propositions for which no data exists for conducting a cost-benefit analysis. Furthermore, expert consultant feedback and State support substantiated our reasons for not using alternative valuation methods.

As mentioned previously, MMS is in the process of implementing several RIK pilot programs in order to determine the feasibility of such an approach. Regardless of the outcome of these pilots, it is still necessary to have oil

valuation regulations in place for the areas where RIK is not feasible.

(g) MMS's Costs Related to Form MMS–4415

Summary of Comments: Commenters stated that by MMS's own calculations, MMS assumes that it will receive approximately 1,750 Form MMS–4415 reports annually. The MMS assumes that its team of GS–9 employees would take only two minutes per form to collect, sort, and file the documents. It is likely that this cost is understated.

MMS Response: MMS has eliminated Form MMS–4415 in the final rule.

(h) Form MMS–4415 Data

Summary of Comments: Commenters asserted that MMS does not know what it is going to do with the collected data from the Form MMS–4415, so how can it accurately estimate the time required to analyze and publish the data?

MMS Response:

MMS has eliminated Form MMS–4415 in the final rule.

(i) Additional Industry Costs

Summary of Comments: Commenters on the E.O. 12866 asserted that MMS failed to estimate the additional costs that industry would be forced to incur under this rule. They include:

- The time required to calculate value under the rule.
- The cost of replacing or upgrading computer systems (the commenters say the proposed rule may require some companies to operate three different computer systems).
- The increased recordkeeping burden.
- The additional time required to complete other currently-approved MMS forms.

MMS Response: Industry stated that new computer systems are needed, with the possibility of three separate systems for the three regions of the country with separate valuation requirements. However, they did not provide any specifics on the costs of system modifications. While some payors will have to make some changes to comply with the final rule, as is the case with any new rule for a system involving automated reports and payments, industry has not shown that these costs will be excessive. Further, MMS believes that the majority of payors will continue to pay on the gross proceeds received under an arm's-length sale. This means that they will not incur any additional computer costs in complying with the arm's-length provisions of the new rule. For those not paying on gross proceeds, industry has not shown that the methods applicable to the three different regions of the country will require extensive computer systems overhaul or substantial additional staff. Therefore, the final rule includes three geographic regions as contained in the February 1998 proposal.

The new rule does not change statutory document retention requirements. There are no additional requirements associated with the rule that would result in additional information collection on any of MMS's current required forms.

(j) Lessees' Costs of Completing Form MMS–4415

Summary of Comments: Commenters asserted that MMS was correct in including the cost of completing proposed Form MMS–4415, but they said that MMS underestimated these costs.

MMS Response: MMS has eliminated Form MMS–4415 in the final rule.

(k) Sensitivity Analysis

Summary of Comments: Commenters assert that MMS has not used any sensitivity analysis in testing their assumptions.

MMS Response: The MMS believes that the assumptions made in formulating this rule are broad and basic enough that no sensitivity analysis is necessary.

(l) Market Distortions and Distributional Impacts

Summary of Comments: In their comments on E.O. 12866, commenters state that MMS has not considered the costs of market distortions or distributional impacts that would result from this rule. They say that MMS using an average of index prices to arrive at a market price in a month is not the same as arriving at a true market price for one particular individual. They assert that MMS ignores these distributional consequences under the apparent assumption that a single average market value concept is an adequate substitute for the range of market valuations that are established in the marketplace.

MMS Response: MMS believes that the index market price—adjusted for location, quality, and transportation costs—will approximate market values received for individual lease production.

(m) Lessees Will Avoid Filing Requirements

Summary of Comments: Commenters asserted that the costly filing requirements associated with Form MMS–4415 could cause lessees to restructure their transactions in such a way as to avoid triggering a filing requirement. They claim this is not a free-market outcome.

MMS Response: MMS has eliminated Form MMS–4415 in the final rule.

(n) FERC-Approved Tariffs

Summary of Comments: Commenters on the E.O. 12866 state that MMS requires the lessee to use "actual costs" of transportation rather than a FERC-approved tariff. They say this amounts to an additional cost or tax that the lessee must pay.

MMS Response: As explained above in the response to the comments received on the December 1999 proposed rule, this does not result in an extra cost or tax. All lessees claiming transportation allowances may deduct their actual costs of transportation. Those who pay others to transport their crude still may deduct a FERC tariff if that is the rate they pay at arm's length for the transportation.

(o) Baseline Years

Summary of Comments: Commenters assert that the choice of baseline years from which to calculate the benefits in MMS's impact analysis is very important. For example, in 1996, the average price per barrel of crude oil from Federal lands was $18.37, whereas recently oil prices have been as low as $13 per barrel. At lower prices, the relative differences become smaller.

MMS Response: MMS chose 1996 as a baseline year because that was the most recent year for which the normal corrections in royalty reporting were complete at the time the February 1998 proposal was published, and it represented a year with no market interruptions or anomalies. The implication that a lower oil price such as $13 per barrel could make MMS's estimates inaccurate, or the relative value differences smaller, is misplaced. It is expected that oil prices will vary over time, but the effect of a change in prices on the difference in royalty value between this rule and the existing rule is unknowable without a great deal of additional information. MMS therefore believes that there is no basis on which to argue that 1996 is an improper baseline year because prices supposedly were too high to be used in estimating the impact of the new rule.

Further, and not as a result of the comment above, we have updated the analysis using 1998 royalty data because a significant period of time had elapsed since our initial analysis. The results of the revised analysis are very similar to those of the study using 1996 data and reinforce its validity.

As stated earlier, 1996 was selected not because of absolute price levels but because it was the most recent year for which reasonably complete and corrected data were available. In any event, the relative difference in royalty collections at different price levels is irrelevant to the central purpose of the rule—ensuring payment of royalty on the market value of Federal crude oil.

(p) Assumptions Regarding Benefit Analysis

Summary of Comments: Commenters on the E.O. 12866 analysis believe that MMS's assumption that payors with no refining capacity would continue to pay on gross proceeds from arm's-length sales at the lease is incorrect. By the same token, producers/ marketers with refinery capacity will not always dispose of production at other than arm's length, and as a result may be forced to use the index methodology for all their oil.

MMS Response: MMS concedes that there may be cases where integrated lessees with refinery capacity sell their oil under true outright arm's-length sales. Contrary to the comments, they would be able to use their arm's-length proceeds in such cases. However, our audit work and the advice of various crude oil consultants indicate that most integrated producers are net purchasers of crude oil and either exchange their produced oil for oil closer to their refineries or directly transport their production to supply their refineries. In either case there is not an arm's-length sale of crude oil.

In contrast, lessees without refinery capacity generally either sell their oil at arm's-length or transfer their oil to an affiliate who subsequently sells the oil to an unaffiliated refiner. In either case, payors without refining capacity generally would value their production based on the gross proceeds received under an arm's-length contract. This is not a change from how they value production under the current rules. For purposes of estimating the revenue impacts of this final rule, MMS believes these assumptions are valid.

(q) Proprietary Data

Summary of Comments: Commenters assert that MMS used proprietary data in calculating its estimates, and disclosure was a problem with data used in the onshore analysis.

MMS Response: The Barents Group filed a Freedom of Information Act request to obtain all of the data supporting the E.O. 12866 analysis. MMS was able to provide all of the data for OCS leases. However, the data from onshore leases involves questions of proprietary information because of the limited number of payors on those leases, which would enable those who review that data to associate a price with an individual payor. MMS believes that the only way to accurately estimate the revenue impact of the rule is to use actual, company-submitted data.

(r) MMS's Spreadsheets

Summary of Comments: Commenters assert that MMS's spreadsheets are not easy to interpret or well documented. In many cases the steps have been aggregated into one, and as a result, it is difficult to determine how and why MMS proceeded as it did. Further, what MMS describes as its methodology is inconsistent with what the spreadsheets present.

MMS Response: MMS believes that the spreadsheets are adequate and the documentation is clear. From the detail of the comments provided it appears that the main ideas presented in the analysis were well understood.

(s) Analysis for Refiners Versus Non-Refiners

Summary of Comments: In its comments on the portion of the E.O. 12866 analysis for offshore California leases, one commenter asserted that producers without refinery capacity (*i.e.*, those who normally would be expected to pay on arm's-length gross proceeds) now pay royalty on a value that is 17.8 percent less than what they would pay if value were based on the index price. Further, they say that producers with refinery capacity (*i.e.*, those who normally do not have arm's-length gross proceeds) now pay royalty on a value that is 10.4 percent below an index price-based value. They implicitly accuse MMS of being contradictory in requiring producers with refinery capacity (who do not sell at arm's length) to pay on a higher index-based value, while at the same time accepting arm's-length gross proceeds that are lower than the value already reported by the producers who do not sell at arm's length.

MMS Response: First, MMS has no basis on which to evaluate the accuracy of the commenter's assertions, which amounted to summary figures in a table of the commenter's own making. The commenter did not submit the underlying documents on which its asserted figures were based or explain how it performed its calculations.

Second, even assuming arguendo that the commenter's calculations are accurate, the commenter tries to infer far too much from what may have occurred in 1 year in one area. While non-arm's-length reported values can be higher than some arm's-length gross proceeds in some circumstances, nothing in MMS's experience or the commenter's figures indicates that non-arm's-length transfer prices either are or could be expected to be consistently higher than arm's-length market prices.

Indeed, in most instances where oil is first transferred to an affiliated marketing entity and then resold at arm's length, the arm's-length resale price is higher than the inter-affiliate transfer price. As explained above, non-arm's-length transfer prices are not reliable indicators of what price production will bear in the market. Therefore, as discussed in detail throughout this preamble, MMS must look to other reliable indicators of value such as index prices to establish value in those cases.

(t) Transportation Adjustments in the Analysis

Summary of Comments: Commenters assert that MMS states that for its comparison, it used prices reported on the Form MMS–2014 less any reported transportation allowances. Yet they say that when the spreadsheets are examined, it appears that transportation adjustments are not included.

MMS Response: MMS compared the price reported on Form MMS–2014 to the location, quality- (if applicable) and gravity-adjusted spot price at the first onshore delivery point, assuming that all payors reported a royalty due line (Transaction Code 01) representing the value at the onshore delivery point and a separate transportation allowance line (Transaction Code 11) representing the costs of transporting the oil to shore. That is, MMS compared (1) the onshore spot price, adjusted for the actual reported gravity at the least or a weighted average gravity for a unit, to (2) the price reported by the payor for the royalty due line without deducting any reported transportation allowance for that line. This allows an "apples to apples" comparison rather than comparing values at two different points.

If a payor incorrectly netted its transportation allowance from the reported royalty due instead of reporting the transportation allowance on a separate line, or if the payor sold its oil at the lease and incurred no transportation to move the oil to shore, MMS acknowledges that the revenue impact estimate for offshore California and the Gulf of Mexico may be overstated to that extent. However, if a payor does not report a separate transportation allowance on Form MMS–2014, MMS has no way of knowing the costs of transporting the

production to shore to equate the reported price to the onshore spot price. Absent any other reasonable alternatives, MMS chose this methodology recognizing that the revenue impact could be slightly overstated, assuming at the same time that very few payors reported incorrectly. MMS correctly used the reported value on the Form MMS–2014 without including the reported adjustments for transportation.

(u) Gravity Adjustments

Summary of Comments: In their comments on the E.O. 12866 analysis, commenters stated that it is not clear why MMS does not use actual gravities in its offshore California analysis, but rather uses a weighted average gravity value within a unit and applies that value to all the leases in the unit. Commenters also believe that MMS does not account for gravity adjustments for oil in the range of 34° to 40° API and makes mistakes in calculating the gravity adjustments in several months.

MMS Response: MMS used the weighted average gravity for an entire unit because there were many cases where gravity was missing or reported incorrectly by royalty payors. In those cases, MMS believes that using a weighted average gravity is appropriate. However, the revised analysis that accompanied the December 1999 proposed rule used actual reported lease gravity. After an examination of the data, it appeared the reported gravity values were complete and accurate in 1998. Using a weighted average was not necessary.

MMS adjusted California crude oil production values using Chevron's posted price adjustment scale in effect for the month of production. The scale does indeed include adjustment values for the range of 34° to 40°; however, none of the weighted average gravities fell into this range. As a result, it was not necessary to include this adjustment in the calculations.

Additionally, there were months where the adjustment scale changed mid-month. As a result, some adjustments were based on a value that approximated the value in effect for the full month. For example, if the adjustment scale in effect for the first half of the month was $.15 per degree API gravity and for the last half of the month it changed to $.20 per degree, MMS used a value of $.17 per degree to approximate the value of the deduction for the entire month. So, although in such cases the commenters may have believed a mistake occurred, it did not.

(v) Use of Pipeline Tariffs in the Analysis

Summary of Comments: MMS uses pipeline tariffs in its estimates, yet the rule does not allow tariffs for payors with affiliated pipelines.

MMS Response: Absent other publicly-available information regarding transportation costs, MMS used tariffs in the analysis as a general proxy for location differentials between (1) the lease and (2) market centers for which spot prices are published. MMS has found that tariff rates generally exceed the actual costs of transportation, so using them in the analysis, if anything, would understate the revenue impact of the final rule.

(w) Analysis for New Mexico

Summary of Comments: Commenters assert that for MMS's onshore New Mexico estimates, a charge of $.25 per barrel is assessed for movement from aggregation points to Midland, Texas. The basis for this charge is never substantiated.

MMS Response: MMS based the $0.25 per barrel differential between aggregation points in New Mexico and the market center at Midland, Texas, on information it obtained from an industry contact who trades oil in that area.

(x) Differential Timing

Summary of Comments: Commenters said that lessees who are required to use differentials that are set once a year by MMS may overvalue or undervalue production because of the many changes in the market and oil quality over a year's time.

MMS Response: MMS has eliminated Form MMS–4415 in the final rule.

(y) Use of Unaudited Data

Summary of Comments: We received comments that MMS uses unaudited data for 1996, yet normal audit collections result in an average 3% revenue gain. This expected audit collection, the commenters allege, equals 71 percent of the MMS estimate of $66 million.

MMS Response: We do not know how much additional money will be collected through audit for any given period until audits are completed and money is collected. Nor do we know in advance exactly what the difference in royalty liability between this rule and the existing rule will be. Of necessity, our estimate of the revenue effects of this rule is just that—an estimate. But the objective in developing these regulations is to obtain a better measure of the real value of oil produced from Federal leases. We acknowledge that in many cases—arm's-length sales being a prominent example—royalty value will not change under this rule. In other cases, it will.

(z) Location Differentials, Rocky Mountain Region

Summary of Comments: Commenters asked if, as reported in its analysis, MMS could not calculate a differential for the RMR between Cushing, Oklahoma, and the fields of each State, how is industry expected to report this differential?

MMS Response: When MMS did its analysis, it did not have the necessary contracts in hand to calculate such differentials. Regardless, MMS believes that lessees that will be subject to index pricing generally will have sufficient information to accurately determine location/quality differentials, with relatively rare exceptions. Only lessees who sell their oil to affiliates who then either move the oil to market for sale at arm's-length or move the oil to a refinery are required (or can elect) to use index pricing. In those cases, MMS believes that lessees will either physically transport or exchange their oil to either a market center or a refinery and will therefore have the information necessary to determine location/quality and transportation adjustments from the index price. As a result, MMS has eliminated Form MMS–4415 in the final rule.

(aa) Quality Adjustments, Rocky Mountain Region

Summary of Comments: The MMS analysis for the RMR does not account for crude oil quality. This may invalidate the results of the analysis.

MMS Response: For the analysis that accompanied the December 1999 proposed rule, we had more complete information; we were able to isolate production to specific areas within some States. This better accounts for quality differences that may be found by commingling all production within a State.

(ab) Federal Administrative Savings

Summary of Comments: Commenters asked, if the rule will result in administrative savings to the Federal government, why are these savings not quantified?

MMS Response: The MMS is confident that administrative costs will be reduced. In our latest analysis, we make reference to administrative savings for both industry and the government. However, specifically quantifying these benefits is difficult. Audit costs are expected to fall as higher, correctly-reported royalties are realized initially when royalty is due.

MMS verification still will be needed, but we expect that the process will be more efficient.

(ac) MMS's Onshore California Analysis

Summary of Comments: Commenters stated that when MMS analyzed the onshore California impact, they only analyzed the Midway-Sunset field because the majority of Federal onshore oil production in California comes from this field. According to the commenters, MMS does not say whether the results are for the Midway-Sunset field only or somehow extrapolated to all fields onshore.

MMS Response: This analysis is a refinement of our earlier analysis (that used 1996 data) and contains several significant differences. The earlier analysis treated all onshore California Federal oil production as if it were produced in the San Joaquin Valley (from the Midway Sunset field). The current analysis used 1998 data and matches production to the area produced.

Following is a summary of MMS's revised economic analysis, which provides additional details for onshore California as well as the rest of the country.

Economic Analysis—Royalty Impact on Federal Lessees

Note: The complete analysis is not reproduced here, only the sections that generated the most comment. The entire analysis is available upon request.

We are revising our original estimate of approximately $66 million in increased royalty revenue that accompanied previous proposals of this rule. We used the same general approach to estimate the impact of the December 1999 proposal, except with updated 1998 data.

To estimate the impact and additional royalties collected under the December 1999 proposal, we divided the analysis of quantifiable benefits into three sections, consistent with the three geographic divisions of the proposal:

- California (both onshore and offshore)
- Offshore Gulf of Mexico (this also includes onshore New Mexico, Texas, and Louisiana)
- Rocky Mountain Region

For each of the geographic areas, we compared the royalty paid in 1998 for oil and condensate either directly to MMS or through the small refiner royalty-in-kind program to what would have been required under the valuation requirements of the December 1999 proposal. We examined each month of 1998 separately. We chose the year 1998 because it:

- Is the last complete year in which all months of data were available.
- Includes wide variations in prices over the 12-month span.
- Reflects data incorporating most of the edits and corrections performed by the exception processing modules in MMS's Auditing and Financial System/Production and Accounting and Auditing System.

We focused on the onshore leases in California, Colorado, Montana, North Dakota, New Mexico, Utah, and Wyoming because together they account for about 95 percent of total onshore Federal oil production. For offshore California and the Gulf of Mexico, we used 100 percent of the oil volumes and values for this analysis.

When examining the payments received from Federal onshore and offshore leases, we grouped all the royalty reporters into five separate categories:

1. Major integrated producers with refinery capacity;
2. Large, independent producers/marketers with refinery capacity;
3. Large, independent producers/marketers with no refinery capacity;
4. Small, independent producers with refinery capacity (this category is different than small businesses as defined by the Small Business Administration); and
5. Small, independent producers with no refinery capacity.

Offshore California

Under the December 1999 proposal, the value of production sold under an arm's-length contract would be the gross proceeds received under that contract. Oil not sold at arm's length would be valued on either (1) the average of the daily mean Alaska North Slope (ANS) spot prices published in an MMS-approved publication during the calendar month preceding the production month, or (2) the gross proceeds received by the affiliate under an arm's-length contract. The lessee would have to adjust the value for applicable location and quality differentials, and may adjust it for transportation costs. We believe that all large, independent producers/marketers with no refinery capacity (Category 3) and small independent producers (Category 5) would value crude on the basis of arm's-length gross proceeds. Therefore, we did not include them in the analysis. We examined the other three categories of royalty payors using the following procedure:

- We grouped all production by unit (*i.e.* Beta, Santa Ynez, etc.).
- We determined an average gravity for each lease in the unit.
- We made gravity adjustments to equate the unit oil to the 26.5° API ANS oil, using Chevron's California posted price gravity adjustment scale in effect during the month of production.
- We subtracted a location differential from the ANS value in Los Angeles to arrive at a value at the first onshore delivery point, which coincides with the value reported on Form MMS–2014. We used the following per-barrel location differentials relying on several sources, but primarily tariff schedules:

Beta: $0.10
Pitas Point: $0.50
Point Hueneme: $0.50
Point Pedernales: $0.50
Rocky Point: $2.20
Santa Clara: $0.50
Santa Ynez: $2.20

- We subtracted sulfur penalties from the ANS price where appropriate. These penalties were based on All-American Pipeline sulfur bank adjustments and consultant reports. We used a value of $0.56 for each percent sulfur above the benchmark ANS sulfur content of 1.1 percent. The per-barrel sulfur adjustments are:

Beta: $1.46
Point Pedernales: $1.62
Rocky Point: $1.79
Santa Ynez: $1.74
Santa Clara $1.46

- We then compared, for each month in 1998, (1) the location and quality-adjusted ANS price to (2) the actual price reported by each royalty reporter on Form MMS–2014. We then multiplied this incremental value by the royalty quantities reported on Form MMS–2014 to arrive at an overall net gain or loss associated with the rulemaking.

Our earlier analysis (using 1996 data) involved several factual differences. For example, the unadjusted average ANS price for 1996 was $20.45, versus $12.55 in 1998. (We wouldn't have expected different relative prices, in and of themselves, to cause a major difference in the results of the revised study, and that observation is borne out here.) Also, oil production from Federal Offshore California leases declined from 67,804,200 to 40,636,231 barrels—a drop of approximately 40 percent from 1996 to 1998. Further, the effective royalty rate for offshore California crude oil dropped by 1.6 percent (largely due to MMS-approved royalty rate reductions).

We updated the sulfur content related to various offshore fields and added a sulfur adjustment for the Santa Clara Unit. We made further revisions to the transportation rates from the onshore delivery points to the refining centers

for offshore California production. While we recognize that not all payors will pay the same transportation rates, we used rates that we believe capture a reasonable representation on average of the rates paid by lessees.

Estimated 1998 revenue gains under this final rule are:

• Category (1)	$4,363,837
• Category (2)	241,247
• Category (4)	126,429
Total	$4,731,513

In 1998, California received about 4 percent of the Federal oil royalties from the California OCS—$1.96 million of $48.5 million total—under OCSLA section 8(g), 43 U.S.C. 1337(g), which provides for coastal States to share in royalties from Federal leases lying wholly or partially within three miles from the State's seaward boundary. Applying the same 4 percent to the above estimate equates to $189,261 in additional revenue for the State of California.

Onshore California

To determine the impact of the December 1999 proposal on onshore payors in California, we aggregated the production for Categories (1) and (4). This comprised over 80 percent of the Federal onshore California production. We assumed that Category (5) payors would pay royalties based on their gross proceeds. There was no Federal onshore California production for Categories (2) and (3) in 1998.

We arrived at a monthly price at the lease by taking the ANS spot price adjusted for:

1. Gravity (using Chevron's posted price gravity adjustment scales in effect during production year 1998 to reflect differences in ANS and onshore field reported gravity from Form MMS–2014).
2. Transportation charges:

San Joaquin Valley to Los Angeles—$1.00 per barrel
North San Joaquin Valley to Bay Area—$0.50 per barrel
Ventura Basin to Los Angeles—$.50 per barrel
Salinas Basin to Santa Maria—$1.50 per barrel

These four production areas represent over 80 percent of all Federal onshore California production.

We then compared, for each month in 1998, (1) the location and quality-adjusted ANS price to (2) the actual price reported by each category 1 and 4 royalty reporter on Form MMS–2014. We then multiplied this incremental value by the royalty quantities reported on Form MMS–2014 to arrive at an overall net gain or loss associated with the rulemaking.

As noted above, this analysis is a refinement of our earlier analysis (but using 1996 data) and contains some significant differences. The earlier analysis treated all onshore California Federal oil production as if it were produced from the Midway Sunset field. The current analysis used 1998 data and matches production to the area produced. Also, transportation rates are more reflective of lease locations than in the previous analysis. The rate for Salinas Basin crude assumes that all Federal oil produced there is transported by truck.

Oil production increased from onshore Federal California leases by about 8 percent from 1996 to 1998 although the effective royalty rate declined by 2.5 percent (largely due to stripper well royalty rate reductions). Again, while we recognize that not all payors will pay the same transportation rates, we used rates that we believe capture a reasonable representation, on average, of the rates paid by lessees.

Using the procedures in the December 1999 proposal, we estimate a 1998 revenue impact of:

• Category (1)	$1,638,053
• Category (2)	0
• Category (4)	9,277
Total	1,647,330

This revenue is shared 50% with the State of California.

Offshore Gulf of Mexico

The December 1999 proposal established the value of oil not sold at arm's length as either:

(1) The average of the daily mean spot price published in an MMS-approved publication—

(a) For the market center nearest the lease for crude oil similar in quality to the lessee's production, and

(b) For deliveries during the production month, or

(2) the gross proceeds received by the affiliate under an arm's-length contract.

The lessee would have to adjust the value for applicable location and quality differentials, and may adjust it for transportation costs.

There were three different spot prices published for Gulf of Mexico oil in 1998: Eugene Island (30° API, 1.61 percent sulfur), Heavy Louisiana Sweet (32° API, .3 percent sulfur), and Light Louisiana Sweet (37–38° API, .3 percent sulfur).

We believe that all large, independent producers/ marketers with no refinery capacity (Category 3) and small independent producers with no refinery capacity (Category 5) would value crude oil on the basis of arm's-length gross proceeds. Therefore, they were not included in the analysis. We examined the other three categories using the following procedure:

- We identified each individual area and block for each Federal offshore Gulf of Mexico lease.
- We assigned an oil type that most closely represented the oil and condensate specific to each area and block.
- The assigned oil type typically translated directly to the same spot price (e.g., Eugene Island Oil translates directly to the Eugene Island spot price), but in some limited cases, there was no spot price published for the identified oil type (e.g. Mars grade crude). In these cases, we used the spot oil with the characteristics that most closely matched the identified oil (e.g., we used the Eugene Island spot price for Mars oil).
- We calculated the average gravities by payor reported for each lease.
- We made gravity adjustments to the spot price using Equilon Oil Company's (Shell Oil Company in January 1998) offshore oil posted price adjustment scale in effect at the time of production.
- We deducted location differentials from the spot price for the actual movement of the oil from its first onshore location to the spot market. This value was based on FERC tariffs in effect for transport from major onshore gathering points to the spot market centers.
- We then compared the location- and quality-adjusted spot price to the value reported on Form MMS–2014 for each month in 1998. We then multiplied any difference by the royalty quantity for each lease and aggregated the differences.

Under the December 1999 proposal, we estimate a 1998 revenue gain of:

• Category (1)	$52,450,062
• Category (2):	4,658,893
• Category (4):	2,076,900
Total	59,185,855

In 1998, Texas and Louisiana received about 0.5 percent of the Federal oil royalties from the Gulf OCS—$4.9 million of $860 million total—under OCSLA section 8(g). Applying the same 0.5 percent to the above estimate equates to $295,929 in additional revenue for Texas and Louisiana.

Onshore New Mexico

For New Mexico, we split production into two subgroups: the Permian Basin and San Juan Basin. Since the production from New Mexico is roughly 60 percent sweet and 40 percent sour, we used the same 60/40 proportion to calculate a weighted average of the spot prices for West Texas Intermediate (at

Midland, Texas) and West Texas Sour. We then arrived at a monthly price at the lease by taking this weighted average spot value at Midland, Texas, less a charge for transportation specific to the production basin ($0.36 for Permian Basin Crude and $0.59 for San Juan Basin), and a gravity deduction based on 1998 Form MMS–2014 data. The transportation deductions came from the actual per-barrel tariff rates charged by pipelines in the area.

We compared (1) the monthly spot price at the lease to (2) the Category 1, 2, and 4 unit prices less any transportation allowances reported on Form MMS–2014. We multiplied this per-barrel incremental difference by the reported royalty quantity to compute the theoretical royalty gain or loss. We assumed there would be no revenue impact for the large independent producers/marketers without refinery capacity (Category 3) or the small independent producers without refinery capacity (Category 5) because they would pay on gross proceeds accruing from arm's-length sales.

Estimated 1998 revenue gains under the December 1999 proposal for onshore New Mexico are:

• Category (1)	$343,354
• Category (2)	185,883
• Category (4)	240,283
Total	769,520

This additional revenue would be shared 50% with New Mexico.

Rocky Mountain Region

We determined that calculating royalty value differences by State under the benchmark criteria for the RMR would not be meaningful due to lack of information. It is difficult to estimate what unit value a tendering program would have yielded, and we could not reasonably estimate how much production would be offered for sale. It is also difficult to determine the volume-weighted average price of a lessee's arm's-length sales and purchases from a field/area or whether that volume met the 50-percent threshold since we could not determine what sales or purchases were at arm's length. Also, we could not determine a location/quality differential from Cushing, Oklahoma, to the relevant fields/areas in each State due to lack of such transaction information.

In order to arrive at a fair market price that approximated arm's-length sales (i.e., attempting to mirror the valuation criteria), we utilized the monthly weighted average unit value per barrel for the large and small independent producers/marketers with no refining capacity (Categories 3 and 5). Those prices usually were higher than any of the three refiners' categories (1, 2, and 4) unit prices. We decided that this calculated arm's-length price would be a conservative, yet reasonable proxy for unit value payable under this final rule.

For Montana, North Dakota, and Utah we were unable to split the oil volumes into sweet and sour crudes (or Yellow and Black Wax for Utah), so we assumed that the lessees grouped into the five categories produced proportional volumes of the various crude types. Since we utilized unit prices that had already been adjusted for quality, we did not make any further quality adjustments.

For Wyoming, we split production into three distinct areas for review: Big Horn Basin, Green River Basin, and Powder River Basin (including the Wind River, Hanna, Laramie, and Denver-Julesberg Basins). The Powder River Basin contains roughly proportionate volumes of sweet and sour production. For Colorado, we split the analysis into the two dominant areas of production: Rangely and Denver-Julesburg.

Once we grouped the production into areas, we took the monthly weighted average unit price for the large and small independent producers/marketers with no refining capacity (Categories 3 and 5) and compared that price to unit prices of leases in the refiner categories (1, 2, and 4) as reported on Form MMS–2014. We multiplied the price difference per barrel by the royalty quantity to compute the royalty gains or losses. We assumed there would be no revenue impact for the large independent producers/marketers (Category 3) or the small independent producers (Category 5), because they would continue to pay on gross proceeds.

Estimated 1998 revenue gains under this final rule for the RMR (see Appendix A for actual State-by-State breakdown) are:

• Category (1)	$880,417
• Category (2)	196,127
• Category (4)	384,316
Total	$1,460,860

This amount would be shared 50% with the States.

Overall Increase in Revenue:

In summary, based on the 1998 comparison, we estimate the following additional revenues:

• Category 1, major integrated producers with refiner capacity	$59,675,723
• Category 2, large, independent producers with refiner capacity	5,282,150
• Category 4, small, independent producers with refiner capacity	2,837,205
• Grand Total	67,795,078

This estimate does not include estimated benefits to industry which bring the net increase in cost to industry to approximately $67.3 million.

Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and meets the civil justice reform requirements of sections 3(a) and 3(b)(2) of this Executive Order.

Paperwork Reduction Act

The collections of information associated with this final rule were approved by OMB on February 22, 2000 (OMB Control Number 1010–0136, expiration date February 28, 2003). We estimate that there will be 45 respondents who will submit 85 responses. The frequency of response varies by rulemaking section. We estimate that the total annual burden is 17,711.5 hours, and, using a cost of $50 per hour, the total annual cost is $885,575.

For estimating the burden on industry, we divided the information collection requirements of the rule into the five areas which are summarized below in table format with specific supporting details following each table.

a. Proper valuation of oil not sold at arm's-length.

30 CFR 206 subpart C	Reporting and recordkeeping requirements	Frequency	Number of respondents	Burden (in hours)	Annual burden hours
206.103	Calculate value of oil not sold at arm's-length..	Annually	45	Category 1–222.5 Category 2–116 Category 3–31.25	4,231.5

For the reporting requirements associated with Section 206.103, we estimate that there are 45 respondents (lessees of Federal oil leases) that will be required to perform certain calculations and adjustments. We estimate that the total initial burden for all lessees without arm's-length transactions is 4,231.5 hours at a cost of $211,575.

We anticipate that companies would have to sort through their exchange agreement contracts before the relevant ones can be compiled and the required information extracted and used in their royalty computations. We believe the final rule would impact approximately 45 Federal oil lessees that would be required to use index pricing. For purposes of estimating the burden impact of this rule, we have categorized these lessees into three categories:

Category 1 lessees are companies with over 30 million barrels of annual production (this included 13 Federal lessees from our impact analysis).

Category 2 lessees are companies with annual domestic production between 10 and 30 million barrels (this included four Federal lessees from our impact analysis).

Category 3 lessees are companies with less than 10 million barrels of annual domestic production (this included 28 Federal lessees from our impact analysis).

We estimate that Category 1 lessees each would have approximately 1,000 exchange agreement contracts to review annually to identify the relevant contracts needed for proper valuation under this final rule. Of those contracts, we estimate that each company would have to use 250 exchange agreements in its royalty reporting. We estimate that the reporting burden for a Category 1 company is 222.5 hours, including 80 hours to aggregate the exchange agreement contracts to a central location, 80 hours to sort and identify the relevant ones, and 62.5 additional hours to extract the relevant information and apply it in reporting royalties. We estimate the total reporting burden for the 13 Category 1 companies would be 2,892.5 hours (222.5 hours × 13 companies), including recordkeeping; using a per-hour cost of $50, the total cost would be $144,625.

We estimate that Category 2 lessees each would have approximately 250 exchange agreement contracts to review annually to identify the relevant contracts needed for valuation under this rule. Of those contracts, we estimate that each Category 2 company would have to use 63 exchange agreements. We estimate that the reporting burden for a Category 2 company would be 116 hours, including 60 hours to aggregate the exchange agreement contracts to a central location, 40 hours to sort them, and 16 additional hours to extract the relevant information and apply it in reporting royalties. For the four Category 2 companies, we estimate the total burden would be 464 hours (116 hours × 4 companies), including recordkeeping; using a per-hour cost of $50, the total cost would be $23,200.

We estimate that Category 3 lessees each would have approximately 50 exchange agreements to review annually to identify the relevant contracts needed for valuation under this rule. Of those contracts, we estimate that each Category 3 company would have to use 13 exchange agreements. We estimate that the burden for each Category 3 company would be 31.25 hours, including 20 hours to aggregate the exchange agreement contracts to a central location, eight hours to sort them, and 3.25 additional hours to extract the relevant information and apply it in reporting royalties. For the 28 Category 3 companies, we estimate that the burden would be 875 hours (31.25 hours × 28 companies), including recordkeeping; using a per-hour cost of $50, the total cost would be $43,750.

We expect the annual burden to decline somewhat as industry becomes more familiar with the proposed valuation requirements.

b. *Approval of benchmarks in the Rocky Mountain Region.*

30 CFR 206 subpart C	Reporting and recordkeeping requirements	Frequency	Number of responses	Burden (in hours)	Annual burden hours
206.103(b)(1)	Obtain MMS approval for tendering program ..	1–2 annually	2	400	800
206.103(b)(4)	Obtain MMS approval for alternative valuation methodology.	1–2 annually	2	400	800

For the reporting requirements related to MMS approval of using the benchmarks, we estimate that there will be two responses for each of the two reporting requirements. On occasion, they will be required to submit requests to us in writing.

We anticipate that a lessee will undertake the following four steps in the formulation of specifics surrounding a tendering program or alternate valuation strategy: (1) formulation of valuation methodology: 100 hours, (2) economic evaluation of methodology: 100 hours, (3) legal review of methodology: 150 hours, and (4) presentation to MMS: 50 hours, for a total of 400 hours.

We anticipate four requests a year for an annual burden of 1,600 hours, including recordkeeping. Based on a per-hour cost of $50, we estimate that the cost to industry is $80,000.

c. *Requirements related to requested valuation determinations and approval of location/quality adjustments from MMS.*

30 CFR 206 subpart C	Reporting and recordkeeping requirements	Frequency	Number of responses	Burden (in hours)	Annual burden hours
206.107(a)(1)–(6)	Request a value determination from MMS	1–2 monthly	8	330	2,640
206.112(b)	Request MMS approval for location/quality adjustment under non-arm's-length exchange agreements.	1–2 monthly	8	330	2,640

30 CFR 206 subpart C	Reporting and recordkeeping requirements	Frequency	Number of responses	Burden (in hours)	Annual burden hours
206.112(f)	Request MMS for location/quality adjustment when information is not available.	1–2 monthly	8	330	2,640

We anticipate that companies may request value determinations on how royalty statutes, regulations, administrative decisions, and policies apply to a specific set of facts. Their requests would have to: (1) Be in writing; (2) identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases; (3) completely explain all relevant facts. They must inform MMS of any changes to relevant facts that occur before MMS responds to their request; (4) include copies of all relevant documents; (5) provide their analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and (6) suggest their proposed valuation method.

For the above written requests, we estimate that there will be eight responses annually for each of the reporting requirements. We estimate the annual burden for each of these is 2,640 hours, including recordkeeping. Based on a per-hour cost of $50, we estimate the cost to industry is $132,000. The total burden is estimated at 7,920 hours and $396,000.

d. *Requirements related to special requests due to unique circumstances.*

30 CFR 206 subpart C	Reporting and recordkeeping requirements	Frequency	Number of responses	Burden (in hours)	Annual burden hours
206.103(e)(1) and (2)(i)–(iv).	Obtain MMS approval to use value determined at refinery.	1–2 annually	2	330	660
206.110(b)(2)	Propose transportation cost allocation method to MMS when transporting more than one liquid product under an arm's-length contract.	1–2 annually	2	330	660
206.110(c)(1) and (3)	Propose transportation cost allocation method to MMS when transporting gaseous and liquid products under an arm's-length contract.	1–2 annually	2	330	660
206.111(g) and (g)(1)	Elect actual transportation cost method and depreciation method for non-arm's-length transportation allowances.	1–2 annually	2	330	660
206.111(i)(2)	Propose transportation cost allocation method to MMS when transporting more than one liquid product under a non-arm's-length contract.	1–2 annually	2	330	660
206.111(j)(1) and (3)	Propose transportation cost allocation method to MMS when transporting gaseous and liquid product under a non-arm's-length contract..	1–2 annually	2	330	660

There are several provisions in the rule that allow the lessee to propose some special consideration because the existing provisions of the rule may not precisely fit their situation. Like the written requests outlined above, their requests would have to: (1) Be in writing; (2) identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases; (3) completely explain all relevant facts. They must inform MMS of any changes to relevant facts that occur before MMS responds to their request; (4) include copies of all relevant documents; (5) provide their analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and (6) suggest their proposed valuation method.

For the reporting requirements related to special requests because of unique circumstances, we estimate that there will be two responses for each of the six situations above. We estimate the annual burden for each of these is 660 hours, including recordkeeping. Based on a per-hour cost of $50, we estimate the cost to industry is $33,000. The total burden is estimated to be 3,960 hours and $198,000.

e. *Currently-approved information collections.*

30 CFR 206 Subpart D	Reporting and recordkeeping requirements	Frequency	Number of responses	Burden	Annual burden hours
206.105	Retain all records showing how value was determined.	Burden covered under OMB Control No. 1010–0061			
206.109(c)(2)	Request to exceed regulatory limit—Form MMS–4393.	Burden covered under OMB Control No. 1010–0095			
206.114 and 115(a)	Report a separate line for transportation allowances—Form MMS–2014.	Burden covered under OMB Control No. 1010–0022			
206.114 and 115(c)	Submit transportation documents upon MMS request.	Burden covered under OMB Control No. 1010–0061			

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332(2)(C)) is not required.

List of Subjects 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: March 6, 2000.

Sylvia V. Baca,

Acting Assistant Secretary for Land and Minerals Management.

For the reasons given in the preamble, 30 CFR part 206 is amended as set forth below:

Part 206—Product Valuation

1. The authority citation for Part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*; 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. Subpart C—Federal Oil is revised to read as follows:

Subpart C—Federal Oil

Sec.

206.100 What is the purpose of this subpart?
206.101 What definitions apply to this subpart?
206.102 How do I calculate royalty value for oil that I or my affiliate sell(s) under an arm's-length contract?
206.103 How do I value oil that is not sold under an arm's-length contract?
206.104 What index price publications are acceptable to MMS?
206.105 What records must I keep to support my calculations of value under this subpart?
206.106 What are my responsibilities to place production into marketable condition and to market production?
206.107 How do I request a value determination?
206.108 Does MMS protect information I provide?
206.109 When may I take a transportation allowance in determining value?
206.110 How do I determine a transportation allowance under an arm's-length transportation contract?
206.111 How do I determine a transportation allowance under a non-arm's-length transportation arrangement?
206.112 What adjustments and transportation allowances apply when I value oil using index pricing?
206.113 How will MMS identify market centers?
206.114 What are my reporting requirements under an arm's-length transportation contract?
206.115 What are my reporting requirements under a non-arm's-length transportation arrangement?
206.116 What interest and assessments apply if I improperly report a transportation allowance?
206.117 What reporting adjustments must I make for transportation allowances?
206.118 Are actual or theoretical losses permitted as part of a transportation allowance?
206.119 How are the royalty quantity and quality determined?
206.120 How are operating allowances determined?
206.121 Is there any grace period for reporting and paying royalties after this subpart becomes effective?

§ 206.100 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Federal oil and gas leases onshore and on the Outer Continental Shelf (OCS). It explains how you as a lessee must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms.

(b) If you are a designee and if you dispose of production on behalf of a lessee, the terms "you" and "your" in this subpart refer to you and not to the lessee. In this circumstance, you must determine and report royalty value for the lessee's oil by applying the rules in this subpart to your disposition of the lessee's oil.

(c) If you are a designee and only report for a lessee, and do not dispose of the lessee's production, references to "you" and "your" in this subpart refer to the lessee and not the designee. In this circumstance, you as a designee must determine and report royalty value for the lessee's oil by applying the rules in this subpart to the lessee's disposition of its oil.

(d) If the regulations in this subpart are inconsistent with:

(1) A Federal statute;

(2) A settlement agreement between the United States and a lessee resulting from administrative or judicial litigation;

(3) A written agreement between the lessee and the MMS Director establishing a method to determine the value of production from any lease that MMS expects at least would approximate the value established under this subpart; or

(4) An express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(e) MMS may audit and adjust all royalty payments.

§ 206.101 What definitions apply to this subpart?

The following definitions apply to this subpart:

Affiliate means a person who controls, is controlled by, or is under common control with another person. For purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of noncontrol that MMS may rebut.

(2) If there is ownership or common ownership of between 10 and 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, MMS will consider the following factors in determining whether there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership: the percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons, whether a person is the greatest single owner, or whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

ANS means Alaska North Slope (ANS).

Area means a geographic region at least as large as the limits of an oil field, in which oil has similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract must satisfy this definition for that

month, as well as when the contract was executed.

Audit means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees, designees or other persons who pay royalties, rents, or bonuses on Federal leases.

BLM means the Bureau of Land Management of the Department of the Interior.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that with due consideration creates an obligation.

Designee means the person the lessee designates to report and pay the lessee's royalties for a lease.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement. Examples of other types of exchange agreements include, but are not limited to, exchanges of produced oil for specific types of crude oil (e.g., West Texas Intermediate); exchanges of produced oil for other crude oil at other locations (Location Trades); exchanges of produced oil for other grades of oil (Grade Trades); and multi-party exchanges.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries. MMS names and designates boundaries of OCS fields.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area that BLM or MMS approves for onshore and offshore leases, respectively.

Gross proceeds means the total monies and other consideration accruing for the disposition of oil produced. Gross proceeds also include, but are not limited to, the following examples:

(1) Payments for services such as dehydration, marketing, measurement, or gathering which the lessee must perform at no cost to the Federal Government;

(2) The value of services, such as salt water disposal, that the producer normally performs but that the buyer performs on the producer's behalf;

(3) Reimbursements for harboring or terminaling fees;

(4) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation;

(5) Payments made to reduce or buy down the purchase price of oil to be produced in later periods, by allocating such payments over the production whose price the payment reduces and including the allocated amounts as proceeds for the production as it occurs; and

(6) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts.

Index pricing means using ANS crude oil spot prices, West Texas Intermediate (WTI) crude oil spot prices at Cushing, Oklahoma, or other appropriate crude oil spot prices for royalty valuation.

Index pricing point means the physical location where an index price is established in an MMS-approved publication.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of oil or gas—or the land area covered by that authorization, whichever the context requires.

Lessee means any person to whom the United States issues an oil and gas lease, an assignee of all or a part of the record title interest, or any person to whom operating rights in a lease have been assigned.

Location differential means an amount paid or received (whether in money or in barrels of oil) under an exchange agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

Market center means a major point MMS recognizes for oil sales, refining, or transshipment. Market centers generally are locations where MMS-approved publications publish oil spot prices.

Marketable condition means oil sufficiently free from impurities and otherwise in a condition a purchaser will accept under a sales contract typical for the field or area.

MMS-approved publication means a publication MMS approves for determining ANS spot prices, other spot prices, or location differentials.

Netting means reducing the reported sales value to account for transportation instead of reporting a transportation allowance as a separate entry on Form MMS–2014.

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is oil.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Quality differential means an amount paid or received under an exchange agreement (whether in money or in barrels of oil) that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

Rocky Mountain Region means the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming, except for those portions of the San Juan Basin and other oil-producing fields in the "Four Corners" area that lie within Colorado and Utah.

Sale means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil to the buyer and does not retain any related rights such

as the right to buy back similar quantities of oil from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil; and

(3) The parties' intent is for a sale of the oil to occur.

Spot price means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration;

(2) No cancellation notice is required to terminate the sales agreement; and

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

Tendering program means a producer's offer of a portion of its crude oil produced from a field or area for competitive bidding, regardless of whether the production is offered or sold at or near the lease or unit or away from the lease or unit.

Trading month means the span of time during which crude oil trading occurs and spot prices are determined, generally for deliveries of production in the following calendar month. For example, for ANS spot prices, the trading month includes all business days in the calendar month. For other spot prices, for example, the trading month may include the span of time from the 26th of the previous month through the 25th of the current month.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs of moving oil to a point of sale or delivery off the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

§ 206.102 How do I calculate royalty value for oil that I or my affiliate sell(s) under an arm's-length contract?

(a) The value of oil under this section is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances determined under §§ 206.110 or 206.111. This value does not apply if you exercise an option to use a different value provided in paragraph (d)(1) or (d)(2)(i) of this section, or if one of the exceptions in paragraph (c) of this section applies. Use this paragraph (a) to value oil that:

(1) You sell under an arm's-length sales contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract, unless you exercise the option provided in paragraph (d)(2)(i) of this section.

(b) If you have multiple arm's-length contracts to sell oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the volume-weighted average of the values established under this section for each contract for the sale of oil produced from that lease.

(c) This paragraph contains exceptions to the valuation rule in paragraph (a) of this section. Apply these exceptions on an individual contract basis.

(1) In conducting reviews and audits, if MMS determines that any arm's-length sales contract does not reflect the total consideration actually transferred either directly or indirectly from the buyer to the seller, MMS may require that you value the oil sold under that contract either under § 206.103 or at the total consideration received.

(2) You must value the oil under § 206.103 if MMS determines that the value under paragraph (a) of this section does not reflect the reasonable value of the production due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

(A) MMS will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract.

(B) The fact that the price received by the seller under an arm's length contract is less than other measures of market price, such as index prices, is insufficient to establish breach of the duty to market unless MMS finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil from the lease.

(d)(1) If you enter into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, and following the exchange(s) you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you may use either § 206.102(a) or § 206.103 to value your production for royalty purposes.

(i) If you use § 206.102(a), your gross proceeds are the gross proceeds under your or your affiliate's arm's-length sales contract after the exchange(s) occur(s). You must adjust your gross proceeds for any location or quality differential, or other adjustments, you received or paid under the arm's-length exchange agreement(s). If MMS determines that any arm's-length exchange agreement does not reflect reasonable location or quality differentials, MMS may require you to value the oil under § 206.103. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(ii) When you elect under § 206.102(d)(1) to use § 206.102(a) or § 206.103, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) sold under arm's-length contracts following arm's-length exchange agreements. You may not change your election more often than once every 2 years.

(2)(i) If you sell or transfer your oil production to your affiliate and that affiliate or another affiliate then sells the oil under an arm's-length contract, you may use either § 206.102(a) or § 206.103 to value your production for royalty purposes.

(ii) When you elect under § 206.102(d)(2)(i) to use § 206.102(a) or § 206.103, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that your affiliates resell at arm's length. You may not change your election more often than once every 2 years.

(e) If you value oil under paragraph (a) of this section:

(1) MMS may require you to certify that your or your affiliate's arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

(2) You must base value on the highest price the seller can receive through legally enforceable claims under the contract.

(i) If the seller fails to take proper or timely action to receive prices or benefits it is entitled to, you must pay royalty at a value based upon that obtainable price or benefit. But you will owe no additional royalties unless or until the seller receives monies or consideration resulting from the price increase or additional benefits, if:

(A) The seller makes timely application for a price increase or benefit allowed under the contract;

(B) The purchaser refuses to comply; and (C) The seller takes reasonable documented measures to force purchaser compliance.

(ii) Paragraph (e)(2)(i) of this section will not permit you to avoid your royalty payment obligation where a purchaser fails to pay, pays only in part, or pays late. Any contract revisions or amendments that reduce prices or benefits to which the seller is entitled

must be in writing and signed by all parties to the arm's-length contract.

§ 206.103 How do I value oil that is not sold under an arm's-length contract?

This section explains how to value oil that you may not value under § 206.102 or that you elect under § 206.102(d) to value under this section. First determine whether paragraph (a), (b), or (c) of this section applies to production from your lease, or whether you may apply paragraph (d) or (e) with MMS approval.

(a) *Production from leases in California or Alaska.* Value is the average of the daily mean ANS spot prices published in any MMS-approved publication during the trading month most concurrent with the production month. (For example, if the production month is June, compute the average of the daily mean prices using the daily ANS spot prices published in the MMS-approved publication for all the business days in June.)

(1) To calculate the daily mean spot price, average the daily high and low prices for the month in the selected publication.

(2) Use only the days and corresponding spot prices for which such prices are published.

(3) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(4) After you select an MMS-approved publication, you may not select a different publication more often than once every 2 years, unless the publication you use is no longer published or MMS revokes its approval of the publication. If you are required to change publications, you must begin a new 2-year period.

(b) *Production from leases in the Rocky Mountain Region.* This paragraph provides methods and options for valuing your production under different factual situations.

(1) If you have an MMS-approved tendering program, value your oil under paragraph (b)(2) of this section. If you do not have an MMS-approved tendering program, you may value your oil under either paragraph (b)(3) or paragraph (b)(4) of this section.

(i) You must apply the same subparagraph of this section to value all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that you cannot value under § 206.102 or that you elect under § 206.102(d) to value under this section.

(ii) After you select either paragraph (b)(3) or (b)(4) of this section, you may not change to the other method more often than once every 2 years, unless the method you have been using is no longer applicable and you must apply one of the other paragraphs. If you change methods, you must begin a new 2-year period.

(2) If you have an MMS-approved tendering program, the value of production from leases in the area the tendering program covers is the highest winning bid price for tendered volumes.

(i) You must offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area under your tendering program.

(ii) You also must receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

(iii) MMS will provide additional criteria for approval of a tendering program in its "Oil and Gas Payor Handbook."

(3) Value is the volume-weighted average gross proceeds accruing to the seller under your and your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month. The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month. Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliates' arms-length purchases or sales to the same gravity as that of the oil produced from the lease.

(4) Value is the average of the daily mean spot prices published in any MMS-approved publication for WTI crude at Cushing, Oklahoma, during the trading month most concurrent with the production month. (For example, if the production month is June and the trading month is May 26—June 25, compute the average of the daily mean prices using the daily Cushing spot prices published in the MMS-approved publication for all the business days between and including May 26 and June 25.)

(i) Calculate the daily mean spot price by averaging the daily high and low prices for the period in the selected publication.

(ii) Use only the days and corresponding spot prices for which such prices are published.

(iii) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(iv) After you select an MMS-approved publication, you may not select a different publication more often than once every 2 years, unless the publication you use is no longer published or MMS revokes its approval of the publication. If you are required to change publications, you must begin a new 2-year period.

(5) If you demonstrate to MMS's satisfaction that paragraphs (b)(2) through (b)(4) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.

(c) *Production from leases not located in California, Alaska, or the Rocky Mountain Region.*

(1) Value is the average of the daily mean spot prices published in any MMS-approved publication:

(i) For the market center nearest your lease for crude oil similar in quality to that of your production (for example, at the St. James, Louisiana, market center, spot prices are published for both Light Louisiana Sweet and Eugene Island crude oils—their quality specifications differ significantly); and

(ii) During the trading month most concurrent with the production month. (For example, if the production month is June and the trading month is May 26–June 25, compute the average of the daily mean prices using the daily spot prices published in the MMS-approved publication for all the business days between and including May 26 and June 25 for the applicable market center.)

(2) Calculate the daily mean spot price by averaging the daily high and low prices for the period in the selected publication. Use only the days and corresponding spot prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(3) After you select an MMS-approved publication, you may not select a different publication more often than once every 2 years, unless the publication you use is no longer published or MMS revokes its approval of the publication. If you are required to change publications, you must begin a new 2-year period.

(d) *Unavailable or unreasonable index prices.* If MMS determines that any of the index prices referenced in paragraphs (a), (b), and (c) of this section are unavailable or no longer represent reasonable royalty value, in any particular case, MMS may establish reasonable royalty value based on other relevant matters.

(e) *Production delivered to your refinery and index price is unreasonable.*

(1) Instead of valuing your production under paragraph (a), (b), or (c) of this section, you may apply to the MMS Director to establish a value representing the market at the refinery if:

(i) You transport your oil directly to your or your affiliate's refinery, or exchange your oil for oil delivered to your or your affiliate's refinery; and

(ii) You must value your oil under this section at an index price; and

(iii) You believe that use of the index price is unreasonable.

(2) You must provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence may include, but is not limited to:

(i) Costs of acquiring other crude oil at or for the refinery;

(ii) How adjustments for quality, location, and transportation were factored into the price paid for other oil;

(iii) Volumes acquired for and refined at the refinery; and

(iv) Any other appropriate evidence or documentation that MMS requires.

(3) If the MMS Director establishes a value representing market value at the refinery, you may not take an allowance against that value under § 206.112(b) unless it is included in the Director's approval.

§ 206.104 What index price publications are acceptable to MMS?

(a) MMS periodically will publish in the **Federal Register** a list of acceptable index price publications based on certain criteria, including but not limited to:

(1) Publications buyers and sellers frequently use;

(2) Publications frequently mentioned in purchase or sales contracts;

(3) Publications that use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of ANS and other crude oil; and

(4) Publications independent from MMS, other lessors, and lessees.

(b) Any publication may petition MMS to be added to the list of acceptable publications.

(c) MMS will reference the tables you must use in the publications to determine the associated index prices.

(d) MMS may revoke its approval of a particular publication if it determines that the prices published in the publication do not accurately represent spot market values.

§ 206.105 What records must I keep to support my calculations of value under this subpart?

If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value.

(a) You must be able to show:

(1) How you calculated the value you reported, including all adjustments for location, quality, and transportation, and

(2) How you complied with these rules.

(b) Recordkeeping requirements are found at part 207 of this chapter.

(c) MMS may review and audit your data, and MMS will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this subpart.

§ 206.106 What are my responsibilities to place production into marketable condition and to market production?

You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. If you use gross proceeds under an arm's-length contract in determining value, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform to place the oil in marketable condition or to market the oil.

§ 206.107 How do I request a value determination?

(a) You may request a value determination from MMS regarding any Federal lease oil production. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases;

(3) Completely explain all relevant facts. You must inform MMS of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest your proposed valuation method.

(b) MMS will reply to requests expeditiously. MMS may either:

(1) Issue a value determination signed by the Assistant Secretary, Land and Minerals Management; or

(2) Issue a value determination by MMS; or

(3) Inform you in writing that MMS will not provide a value determination. Situations in which MMS typically will not provide any value determination include, but are not limited to:

(i) Requests for guidance on hypothetical situations; and

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A value determination signed by the Assistant Secretary, Land and Minerals Management, is binding on both you and MMS until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a value determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, pay late payment interest under 30 CFR 218.54.

(3) A value determination signed by the Assistant Secretary is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d) A value determination issued by MMS is binding on MMS and delegated States with respect to the specific situation addressed in the determination unless the MMS (for MMS-issued value determinations) or the Assistant Secretary modifies or rescinds it.

(1) A value determination by MMS is not an appealable decision or order under 30 CFR part 290 subpart B.

(2) If you receive an order requiring you to pay royalty on the same basis as the value determination, you may appeal that order under 30 CFR part 290 subpart B.

(e) In making a value determination, MMS or the Assistant Secretary may use any of the applicable valuation criteria in this subpart.

(f) A change in an applicable statute or regulation on which any value determination is based takes precedence over the value determination, regardless of whether the MMS or the Assistant Secretary modifies or rescinds the value determination.

(g) The MMS or the Assistant Secretary generally will not retroactively modify or rescind a value determination issued under paragraph (d) of this section, unless:

(1) There was a misstatement or omission of material facts; or

(2) The facts subsequently developed are materially different from the facts on which the guidance was based.

(h) MMS may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 206.108.

§ 206.108 Does MMS protect information I provide?

Certain information you submit to MMS regarding valuation of oil, including transportation allowances, may be exempt from disclosure. To the extent applicable laws and regulations

permit, MMS will keep confidential any data you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 206.109 When may I take a transportation allowance in determining value?

(a) *Transportation allowances permitted when value is based on gross proceeds.* MMS will allow a deduction for the reasonable, actual costs to transport oil from the lease to the point off the lease under §§ 206.110 or 206.111, as applicable. This paragraph applies when:

(1) You value oil under § 206.102 based on gross proceeds from a sale at a point off the lease, unit, or communitized area where the oil is produced, and

(2) The movement to the sales point is not gathering.

(b) *Transportation allowances and other adjustments that apply when value is based on index pricing.*

If you value oil using an index price under § 206.103, MMS will allow a deduction for certain location/quality adjustments and certain costs associated with transporting oil as provided under § 206.112.

(c) *Limits on transportation allowances.*

(1) Except as provided in paragraph (c)(2) of this section, your transportation allowance may not exceed 50 percent of the value of the oil as determined under § 206.102 or § 206.103 of this subpart. You may not use transportation costs incurred to move a particular volume of production to reduce royalties owed on production for which those costs were not incurred.

(2) You may ask MMS to approve a transportation allowance in excess of the limitation in paragraph (c)(1) of this section. You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. You may never reduce the royalty value of any production to zero.

(d) *Allocation of transportation costs.* You must allocate transportation costs among all products produced and transported as provided in §§ 206.110 and 206.111. You must express transportation allowances for oil as dollars per barrel.

(e) *Liability for additional payments.* If MMS determines that you took an excessive transportation allowance, then you must pay any additional royalties due, plus interest under 30 CFR 218.54. You also could be entitled to a credit with interest under applicable rules if you understated your transportation allowance. If you take a deduction for transportation on Form MMS–2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate entry, MMS may assess you an amount under § 206.116.

§ 206.110 How do I determine a transportation allowance under an arm's-length transportation contract?

(a) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred for transporting oil under that contract, except as provided in paragraphs (a)(1) and (a)(2) of this section and subject to the limitation in § 206.109(c). You must be able to demonstrate that your contract is arm's length. You do not need MMS approval before reporting a transportation allowance for costs incurred under an arm's-length transportation contract.

(1) If MMS determines that the contract reflects more than the consideration actually transferred either directly or indirectly from you or your affiliate to the transporter for the transportation, MMS may require that you calculate the transportation allowance under § 206.111.

(2) You must calculate the transportation allowance under § 206.111 if MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the reasonable value of the transportation due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

(A) MMS will not use this provision to simply substitute its judgment of the reasonable oil transportation costs incurred by you or your affiliate under an arm's-length transportation contract.

(B) The fact that the cost you or your affiliate incur in an arm's length transaction is higher than other measures of transportation costs, such as rates paid by others in the field or area, is insufficient to establish breach of the duty to market unless MMS finds additional evidence that you or your affiliate acted unreasonably or in bad faith in transporting oil from the lease.

(b) If your arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then you must allocate the total transportation costs to each of the liquid products transported.

(1) Your allocation must use the same proportion as the ratio of the volume of each product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(2) You may not claim an allowance for the costs of transporting lease production that is not royalty-bearing.

(3) You may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method unless it is not consistent with the purposes of the regulations in this subpart.

(c) If your arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, then you must propose an allocation procedure to MMS.

(1) You may use your proposed procedure to calculate a transportation allowance until MMS accepts or rejects your cost allocation. If MMS rejects your cost allocation, you must amend your Form MMS–2014 for the months that you used the rejected method and pay any additional royalty and interest due.

(2) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on Form MMS–2014.

(d) If your payments for transportation under an arm's-length contract are not on a dollar-per-unit basis, you must convert whatever consideration is paid to a dollar-value equivalent.

(e) If your arm's-length sales contract includes a provision reducing the contract price by a transportation factor, do not separately report the transportation factor as a transportation allowance on Form MMS–2014.

(1) You may use the transportation factor in determining your gross proceeds for the sale of the product.

(2) You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product.

§ 206.111 How do I determine a transportation allowance under a non-arm's-length transportation arrangement?

(a) If you or your affiliate have a non-arm's-length transportation contract or no contract, including those situations where you or your affiliate perform your

own transportation services, calculate your transportation allowance based on your or your affiliate's reasonable, actual transportation costs using the procedures provided in this section.

(b) Base your transportation allowance for non-arm's-length or no-contract situations on your or your affiliate's actual costs for transportation during the reporting period, including:

(1) Operating and maintenance expenses under paragraphs (d) and (e) of this section;

(2) Overhead under paragraph (f) of this section;

(3) Depreciation under paragraphs (g) and (h) of this section;

(4) A return on undepreciated capital investment under paragraph (i) of this section; and

(5) Once the transportation system has been depreciated below ten percent of total capital investment, a return on ten percent of total capital investment under paragraph (j) of this section.

(c) Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(d) Allowable operating expenses include:

(i) Operations supervision and engineering;

(ii) Operations labor;

(iii) Fuel;

(iv) Utilities;

(v) Materials;

(vi) Ad valorem property taxes;

(vii) Rent;

(viii) Supplies; and

(ix) Any other directly allocable and attributable operating expense which you can document.

(e) Allowable maintenance expenses include:

(i) Maintenance of the transportation system;

(ii) Maintenance of equipment;

(iii) Maintenance labor; and

(iv) Other directly allocable and attributable maintenance expenses which you can document.

(f) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(g) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, or a unit-of-production method. After you make an election, you may not change methods without MMS approval. You may not depreciate equipment below a reasonable salvage value.

(h) This paragraph describes the basis for your depreciation schedule.

(1) If you or your affiliate own a transportation system on June 1, 2000, you must base your depreciation schedule used in calculating actual transportation costs for production after June 1, 2000, on your total capital investment in the system (including your original purchase price or construction cost and subsequent reinvestment).

(2) If you or your affiliate purchased the transportation system at arm's length before June 1, 2000, you must incorporate depreciation on the schedule based on your purchase price (and subsequent reinvestment) into your transportation allowance calculations for production after June 1, 2000, beginning at the point on the depreciation schedule corresponding to that date. You must prorate your depreciation for calendar year 2000 by claiming part-year depreciation for the period from June 1, 2000 until December 31, 2000. You may not adjust your transportation costs for production before June 1, 2000, using the depreciation schedule based on your purchase price.

(3) If you are the original owner of the transportation system on June 1, 2000, or if you purchased your transportation system before March 1, 1988, you must continue to use your existing depreciation schedule in calculating actual transportation costs for production in periods after June 1, 2000.

(4) If you or your affiliate purchase a transportation system at arm's length from the original owner after June 1, 2000, you must base your depreciation schedule used in calculating actual transportation costs on your total capital investment in the system (including your original purchase price and subsequent reinvestment). You must prorate your depreciation for the year in which you or your affiliate purchased the system to reflect the portion of that year for which you or your affiliate own the system.

(5) If you or your affiliate purchase a transportation system at arm's length after June 1, 2000, from anyone other than the original owner, you must assume the depreciation schedule of the person who owned the system on June 1, 2000.

(i)(1) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the transportation allowance by the rate of return provided in paragraph (i)(2) of this section.

(2) The rate of return is the industrial bond yield index for Standard and Poor's BBB rating. Use the monthly average rate published in "Standard and Poor's Bond Guide" for the first month of the reporting period for which the allowance applies. Calculate the rate at the beginning of each subsequent transportation allowance reporting period.

(j)(1) After a transportation system has been depreciated at or below a value equal to ten percent of your total capital investment, you may continue to include in the allowance calculation a cost equal to ten percent of your total capital investment in the transportation system multiplied by a rate of return under paragraph (i)(2) of this section.

(2) You may apply this paragraph to a transportation system that before June 1, 2000, was depreciated at or below a value equal to ten percent of your total capital investment.

(k) Calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, allocate costs consistently and equitably to each of the liquid products transported. Your allocation must use the same proportion as the ratio of the volume of each liquid product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(1) You may not take an allowance for transporting lease production that is not royalty-bearing.

(2) You may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method if it is consistent with the purposes of the regulations in this subpart.

(l)(1) Where you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to MMS.

(2) You may use your proposed procedure to calculate a transportation allowance until MMS accepts or rejects your cost allocation. If MMS rejects your cost allocation, you must amend your Form MMS–2014 for the months that you used the rejected method and pay any additional royalty and interest due.

(3) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on Form MMS–2014.

§ 206.112 What adjustments and transportation allowances apply when I value oil using index pricing?

When you use index pricing to calculate the value of production under § 206.103, you must adjust the index price for location and quality differentials and you may adjust it for certain transportation costs, as specified in this section.

(a) If you dispose of your production under one or more arm's-length exchange agreements, then each of the conditions in this paragraph applies.

(1) You must adjust the index price for location/quality differentials. You must determine those differentials from each of your arm's-length exchange agreements applicable to the exchanged oil.

(i) Therefore, for example, if you exchange 100 barrels of production from a given lease under two separate arm's-length exchange agreements for 60 barrels and 40 barrels respectively, separately determine the location/quality differential under each of those exchange agreements, and apply each differential to the corresponding index price.

(ii) As another example, if you produce 100 barrels and exchange that 100 barrels three successive times under arm's-length agreements to obtain oil at a final destination, total the three adjustments from those exchanges to determine the adjustment under this subparagraph. (If one of the three exchanges was not at arm's length, you must request MMS approval under paragraph (b) of this section for the location/quality adjustment for that exchange to determine the total location/quality adjustment for the three exchanges.) You also could have a combination of these examples.

(2) You may adjust the index price for actual transportation costs, determined under § 206.110 or § 206.111:

(i) From the lease to the first point where you give your oil in exchange; and

(ii) From any intermediate point where you receive oil in exchange to another intermediate point where you give the oil in exchange again; and

(iii) From the point where you receive oil in exchange and transport it without further exchange to a market center, or to a refinery that is not at a market center.

(b) For non-arm's-length exchange agreements, you must request approval from MMS for any location/quality adjustment.

(c) If you transport lease production directly to a market center or to an alternate disposal point (for example, your refinery), you may adjust the index price for your actual transportation costs, determined under § 206.110 or § 206.111.

(d) If you adjust for location/quality or transportation costs under paragraphs (a), (b), or (c) of this section, also adjust the index price for quality based on premia or penalties determined by pipeline quality bank specifications at intermediate commingling points or at the market center. Make this adjustment only if and to the extent that such adjustments were not already included in the location/quality differentials determined from your arm's-length exchange agreements.

(e) For leases in the Rocky Mountain Region, for purposes of this section, the term "market center" means Cushing, Oklahoma, unless MMS specifies otherwise through notice published in the **Federal Register**.

(f) If you cannot determine your location/quality adjustment under paragraph (a) or (c) of this section, you must request approval from MMS for any location/quality adjustment.

(g) You may not use any transportation or quality adjustment that duplicates all or part of any other adjustment that you use under this section.

§ 206.113 How will MMS identify market centers?

MMS periodically will publish in the **Federal Register** a list of market centers. MMS will monitor market activity and, if necessary, add to or modify the list of market centers and will publish such modifications in the **Federal Register**. MMS will consider the following factors and conditions in specifying market centers:

(a) Points where MMS-approved publications publish prices useful for index purposes;

(b) Markets served;

(c) Input from industry and others knowledgeable in crude oil marketing and transportation;

(d) Simplification; and

(e) Other relevant matters.

§ 206.114 What are my reporting requirements under an arm's-length transportation contract?

You or your affiliate must use a separate entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur. MMS may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Recordkeeping requirements are found at part 207 of this chapter.

§ 206.115 What are my reporting requirements under a non-arm's-length transportation arrangement?

(a) You or your affiliate must use a separate entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur.

(b) For new transportation facilities or arrangements, base your initial deduction on estimates of allowable oil transportation costs for the applicable period. Use the most recently available operations data for the transportation system or, if such data are not available, use estimates based on data for similar transportation systems. Section 206.117 will apply when you amend your report based on your actual costs.

(c) MMS may require you or your affiliate to submit all data used to calculate the allowance deduction. Recordkeeping requirements are found at part 207 of this chapter.

§ 206.116 What interest and assessments apply if I improperly report a transportation allowance?

(a) If you or your affiliate net a transportation allowance rather than report it as a separate entry against the royalty value on Form MMS–2014, you will be assessed an amount up to 10 percent of the netted allowance, not to exceed $250 per lease selling arrangement per sales period.

(b) If you or your affiliate deduct a transportation allowance on Form MMS–2014 that exceeds 50 percent of the value of the oil transported without obtaining MMS's prior approval under § 206.109, you must pay interest on the excess allowance amount taken from the date that amount is taken to the date you or your affiliate file an exception request that MMS approves. If you do not file an exception request, or if MMS does not approve your request, you must pay interest on the excess allowance amount taken from the date that amount is taken until the date you pay the additional royalties owed.

§ 206.117 What reporting adjustments must I make for transportation allowances?

(a) If your or your affiliate's actual transportation allowance is less than the amount you claimed on Form MMS–2014 for each month during the allowance reporting period, you must pay additional royalties plus interest computed under 30 CFR 218.54 from the date you took the deduction to the date you repay the difference.

(b) If the actual transportation allowance is greater than the amount you claimed on Form MMS–2014 for any month during the allowance form reporting period, you are entitled to a

credit plus interest under applicable rules.

§ 206.118 Are actual or theoretical losses permitted as part of a transportation allowance?

You are allowed a deduction for oil transportation which results from payments that you make (either volumetric or for value) for actual or theoretical losses only under an arm's-length contract. You may not take such a deduction under a non-arm's-length contract.

§ 206.119 How are royalty quantity and quality determined?

(a) Compute royalties based on the quantity and quality of oil as measured at the point of settlement approved by BLM for onshore leases or MMS for offshore leases.

(b) If the value of oil determined under this subpart is based upon a quantity or quality different from the quantity or quality at the point of royalty settlement approved by the BLM for onshore leases or MMS for offshore leases, adjust the value for those differences in quantity or quality.

(c) You may not claim a deduction from the royalty volume or royalty value for actual or theoretical losses except as provided in § 206.118. Any actual loss that you may incur before the royalty settlement metering or measurement point is not subject to royalty if BLM or MMS, as appropriate, determines that the loss is unavoidable.

(d) Except as provided in paragraph (b) of this section, royalties are due on 100 percent of the volume measured at the approved point of royalty settlement. You may not claim a reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either before or after the approved point of royalty settlement.

§ 206.120 How are operating allowances determined?

MMS may use an operating allowance for the purpose of computing payment obligations when specified in the notice of sale and the lease. MMS will specify the allowance amount or formula in the notice of sale and in the lease agreement.

§ 206.121 Is there any grace period for reporting and paying royalties after this subpart becomes effective?

You may adjust royalties reported and paid for the three production months beginning June 1, 2000, without liability for late payment interest. This section applies only if the adjustment results from systems changes needed to comply with new requirements imposed under this subpart that were not requirements under the predecessor rule.

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Wednesday,
March 15, 2000

Part III

Department of Energy

Bonneville Power Administration

Proposed Open Access Transmission Tariff; Public Hearing and Opportunities for Public Review and Comment; Notice

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Open Access Transmission Tariff; Public Hearing and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Hearing on Proposed Open Access Transmission Tariff.

SUMMARY: BPA File No.: TC–02. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file designation number TC–02.

BPA's Transmission Business Line (TBL) is proposing open access non-rate terms and conditions for transmission services over the Federal Columbia River Transmission System (FCRTS). Such terms and conditions are proposed to be effective October 1, 2001. By this notice, the TBL is announcing commencement of a formal administrative proceeding, procedures for intervention, and a comment period for non-party participants.

DATES: Persons wishing to become formal parties to the proceeding must notify BPA's TBL in writing of their intention to do so in accordance with the requirements stated in this Notice. Petitions to intervene must be received by 4:30 p.m. on March 27, 2000.

The formal administrative proceeding will begin with a pre-hearing conference at 9:00 a.m. on March 29, 2000. The Initial Proposal will be available to parties at that time.

Persons wishing to comment on the proposed transmission terms and conditions who are not formal parties to the proceeding ("participants") must submit written comments on the proposal by June 15, 2000, to be considered in the Record of Decision (ROD).

ADDRESSES:

1. Petitions to intervene should be addressed as follows: Todd Miller, Hearing Clerk–LT–7, Bonneville Power Administration, 905 NE 11th Ave., Portland, Oregon 97232. In addition, a copy of the petition must be served concurrently on and directed to BPA's General Counsel, Attention Mr. Stephen R. Larson LT–7, Office of General Counsel, 905 NE 11th Ave., Portland, Oregon 97232.

2. Written comments by participants should be submitted to the Corporate Communication Manager-KC–7, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. You may also e-mail your comments to: comment@bpa.gov. Comments from participants are incorporated into the Official Record and will be considered by the Hearing Officer and the Administrator.

3. The pre-hearing conference will be held in the BPA Rates Hearing Room, 2nd floor, 911 NE 11th Ave., Portland, Oregon, on March 29, 2000.

FOR FURTHER INFORMATION CONTACT: Information may also be obtained from Mr. Michael Hansen-KC–7, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621; by phone (503) 230–4328, toll free at 1–800–622–4519; or via e-mail to mshansen@bpa.gov.

Responsible Official: Mr. Dennis Metcalf, Transmission Rate Case Manager, is the official responsible for the development of BPA's Open Access Tariff.

SUPPLEMENTARY INFORMATION:

Electronic Access and Copies

The proposed Open Access Tariff may be obtained from the TBL website at www.transmission.bpa.gov/ratecase.httm. To receive a hard copy, contact BPA's Public Information Office at 905 NE 11th Ave., 1st floor, Portland, Oregon 97232; by phone to (503) 230–4328 or toll-free 1–800–622–4519.

Concurrent Transmission Rate Adjustment Proceeding

BPA will hold a Transmission Rate Adjustment proceeding concurrently with this proceeding. BPA is also publishing in the **Federal Register** a separate notice regarding the proposed 2002–2003 transmission and ancillary services rates.

Issued in Portland, Oregon, on February 28, 2000.

Judith A. Johansen,

Administrator and Chief Executive Officer.

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Part I—Introduction and Procedural Background

BPA's existing Open Access Tariff was approved by the Federal Energy Regulatory Commission (Commission) as an acceptable reciprocity open access tariff. BPA's TBL is now proposing to establish revised terms and conditions of general applicability for transmission services over the FCRTS. The Federal Power Act amendments, passed by Congress in the Energy Policy Act of 1992, provide that BPA may institute a formal regional hearing on transmission terms and conditions which it proposes to establish for general applicability, 16 U.S.C. 824k(i)(2). If the BPA Administrator determines to hold such a hearing, notice of the hearing is to be provided in the **Federal Register** with a written explanation of the reasons why the terms and conditions are being proposed. The hearing must adhere to the procedural requirements of paragraphs (1) through (3) of section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(i), except that the Hearing Officer shall make a recommended decision to the Administrator, including the reasons and bases for such recommendations, on all material issues of fact, law, or discretion presented on the record. The BPA Administrator shall then make a determination based on the record, setting forth the reasons for reaching any findings and conclusions which may differ from those of the Hearing Officer. At the conclusion of this hearing, BPA intends to again file the Administrator's decision with the Commission for approval as a reciprocity tariff.

This proceeding will be governed by Section 1010.9 of BPA's Procedures Governing Bonneville Power Administration Rate Hearings (Procedures), 51 FR 7611 (1986), as modified by the Hearing Officer at the pre-hearing conference. Section 1010.7 of the Procedures prohibits *ex parte* communications. *Ex parte* limitations were imposed beginning January 24, 2000. Because it is the TBL's largest customer, BPA's Power Business Line (PBL) is expected to intervene as a party to this proceeding. Consequently, the *ex parte* rules will apply to communications between the PBL and the TBL.

A proposed Schedule for the formal hearing is stated below. A final Schedule will be established by the Hearing Officer at the pre-hearing conference.

March 27, 2000—Petitions to Intervene
March 29, 2000—Pre-hearing Conference and Filing of BPA Direct Case
May 22, 2000—Parties File Direct Cases
June 15, 2000—Close of Participant Comments
June 19, 2000—Litigants File Rebuttal Testimony
July 11, 2000—Cross-Examination Begins
August 14, 2000—Initial Briefs Filed
August 18, 2000—Oral Argument Before the Administrator

September 11, 2000—Hearing Officer's Recommendations
September 29, 2000—Draft ROD issued
October 13, 2000—Briefs on Exceptions
November 3, 2000—Final ROD—Final Studies

Part II—Scope and Purpose of Hearing

These revised terms and conditions are being proposed to (1) incorporate more of the wording of the Commission's *pro forma* open access tariff than is the case with BPA existing Open Access Tariff; (2) implement a Network Contract Demand transmission service in addition to the *pro forma* Point-to-Point and Network Integration Transmission services; and (3) implement various other modifications to the *pro forma* tariff, including a congestion management mechanism, which BPA believes will provide more reliable and efficient transmission services to its customers. The proposed revised Open Access Tariff is proposed to be effective October 1, 2001.

One non-rate term and condition issue is being decided in BPA's current 2002 power rate proceeding. That issue is whether BPA's TBL will pay for the acquisition of transmission service over intervening network equivalent non-Federal transmission facilities for delivery of non-Federal power to certain of its customers ("GTA customers"). This issue will not be revisited in this proceeding. The Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing regarding this issue.

Part III—Public Participation

A. Distinguishing Between "Participants" and "Parties"

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participant's written comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the pre-hearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. Additional information may be obtained from the TBL website at www.transmission.bpa.gov/ratecase.httm.

Written comments by participants will be included in the record if they are received by June 15, 2000. This date follows the anticipated submission of BPA's and all other parties' direct cases. Written views, supporting information, questions, and arguments should be submitted to BPA's Manager of Corporate Communications at the address listed in the **ADDRESSES** section.

Persons wishing to become a party to this Open Access Transmission Terms and Conditions proceeding must notify BPA in writing. Petitioners may designate no more than two (2) representatives upon whom service of documents will be made. Petitions to intervene shall state the name and address of the person requesting party status, and the person's interest in the hearing.

Petitions to intervene as parties in the rate proceeding are due to the Hearing Officer by 4:30 p.m. on March 27, 2000. The petitions should be directed to: Todd Miller, Hearing Clerk—LT–7, Bonneville Power Administration, 905 NE 11th Ave., Portland, Oregon 97232.

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the pre-hearing conference. Any opposition to an intervention petition may instead be made at the pre-hearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to a late petition to intervene filed after the pre-hearing conference shall be filed and received by BPA within two (2) days after service of the petition.

B. Developing the Record

The hearing record will include, among other things, the transcripts of the hearing, written material submitted entered into the record by BPA and the parties, written comments from participants, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop Final Open Access Transmission terms and conditions based on the entire record, including the hearing record certified by the Hearing Officer, the recommendations of the Hearing Officer, and comments received from participants. The Administrator will then issue a Draft Record of Decision. Parties will have an opportunity to respond to the Draft Record of Decision as provided in BPA's Procedures. The Administrator will then issue a Final Record of Decision with the Final Open Access Tariff and will serve copies of the Final Record of Decision on all parties. At the conclusion of the proceeding, BPA will file its Open Access Tariff with the Commission for review and approval as an acceptable reciprocity tariff.

BPA must continue to meet with customers in the ordinary course of business during this proceeding. To comport with the procedural rule prohibiting *ex parte* communications, BPA will provide necessary notice of meetings involving issues raised in the proceeding to allow for participation by all parties to the proceeding. Parties should be aware, however, that such meetings may be held on very short notice and they should be prepared to devote the necessary resources to participate fully in every aspect of the proceeding.

Part IV—Summary of Proposal

BPA is proposing an Open Access Tariff based on the *pro forma* tariff contained in the Commission's Order 888–A. The following is a brief summary of the major modifications being proposed to the *pro forma* tariff:

- Addition of a third Open Access Transmission service, Network Contract Demand service, which combines flexible use of Network Resources with the ability either to serve native load or to make third party sales; the flexibility to use Network Resources at Points of Receipt is matched by the flexibility at Points of Delivery to take firm service at Secondary Points of Delivery, if capacity is available.
- Addition of a redispatch congestion management mechanism based on incremental and decremental bids from resource owners.
- Change from a first-come, first-served approach to a first-to-confirm approach.
- Addition of an option for customers requesting Long-Term Firm Point-to-Point or Network Contract Demand service to maintain priority access prior to executing a service agreement by paying a Capacity Holding Fee which will be credited towards the customer's first month's bill if the customer executes a Service Agreement.

- Addition of the right of applicants for Short-Term Firm Point-to-Point service to pre-confirm their requests.
- The ability of Point-to-Point customers to request Daily Firm service with a term ranging from one (1) day to 364 days.
- The addition of Hourly Firm service.
- The elimination of any reference to BPA native load.
- The elimination of the BPA Power Business Line's obligation to redispatch its generation to provide transmission capacity in response to service requests.
- The elimination of "bumping" rights among requests for Firm Point-to-Point service.
- Clarification of the mechanism for postponing the commencement of firm transmission service.
- The elimination of any application deposit or processing fee.
- Addition of an explicit obligation to transfer service under the Open Access Tariff to the tariff of a Regional Transmission Organization (RTO), when formed.
- Elimination of the Load Ratio Share concept from Network Integration Service.
- Addition of a right of Network Integration Customers to deduct Customer-Served Load from the base charge applied to Network Load.
- Addition of a definition for dynamic scheduling.
- Elimination of the reservation priority for existing customers when their contracts expire.
- Losses—Consistent with the pro forma tariff, TBL is including loss percentages in the tariffs. Because of time constraints, TBL has not rerun the loss studies, so the loss percentages have not changed from the current ones in place since October 1, 1996. These losses are based on average losses by segment. TBL believes a methodology based on incremental losses (perhaps constrained to just recover total losses) would provide a more accurate price signal concerning the impact of resource and load location and their shape over time. This could result in more efficient resource location, more efficient generation dispatch, and a more equitable assignment of the cost of losses. TBL is considering developing such a loss recovery methodology after the conclusion of this Terms and Condition proceeding. TBL requests comments on this idea from customers and other interested parties.

[FR Doc. 00–6104 Filed 3–14–00; 8:45 am]

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Federal Register

Wednesday,
March 15, 2000

Part IV

Department of Energy

Bonneville Power Administration

2002–2003 Proposed Transmission Rate Adjustment Public Hearing and Opportunities for Public Review and Comment; Notice

DEPARTMENT OF ENERGY

Bonneville Power Administration

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of 2002–2003 Proposed Transmission Rate Adjustment.

SUMMARY: BPA Files No. TR–02. BPA requests that all comments and documents intended to become part of the Official Record in this proceeding contain the file number designation TR–02.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise its transmission rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the transmission of electric power, the Federal investment in the Federal Columbia River Transmission System (FCRTS), and other costs and expenses incurred by BPA. The Northwest Power Act also requires that BPA's rates be established based on the record of a formal hearing. The Federal Columbia Transmission System Act requires that transmission costs be equitably allocated between Federal and non-Federal power using the system. The Federal Power Act requires that no BPA transmission rate applicable to transmission service ordered by the Federal Energy Regulatory Commission shall be unjust, unreasonable, or unduly discriminatory or preferential as determined by the Commission. By this notice, BPA announces its proposed transmission and ancillary service rates to be effective on October 1, 2001, and the commencement of a transmission rate adjustment proceeding.

DATES: Persons wishing to become formal parties to the proceeding must notify BPA in writing of their intention to do so by the requirements stated in this Notice. Petitions to intervene must be received by BPA no later than 4:30 pm on March 27, 2000.

The rate adjustment proceeding will begin with a pre-hearing conference at 9:00 am on March 29, 2000, in Portland, Oregon.

Written comments by non-party participants must be received by June 15, 2000, to be considered in the Record of Decision (ROD).

ADDRESSES: 1. Petitions to intervene should be directed to Todd Miller, Hearing Clerk—LT–7, Bonneville Power Administration, 905 NE 11th Ave., Portland, Oregon, 97232. In addition, a copy of the petition must be served concurrently on BPA's General Counsel and directed to Stephen R. Larson—LT–7, Office of General Counsel, 905 NE 11th Ave., Portland, Oregon 97232 (see Part III, A for more information).

2. Written comments by participants should be submitted to the Manager, Corporate Communication—KC–7, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon, 97212. You may also e-mail your comments to: comment@bpa.gov.

3. The pre-hearing conference will be held in the BPA Rates Hearing Room, 2nd floor, 911 NE 11th Ave., Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Information may also be obtained from Mr. Michael Hansen—KC–7, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621; by phone at (503) 230–4328 or toll free at 1–800–622–4519; or via e-mail to mshansen@bpa.gov.

Responsible Official: Mr. Dennis Metcalf, Transmission Rate Case Manager, is the official responsible for the development of BPA's transmission and ancillary service rates.

SUPPLEMENTARY INFORMATION: BPA will be holding a formal proceeding to establish its Open Access Transmission terms and conditions concurrently with this transmission rate adjustment proceeding. BPA is also publishing a separate notice in the **Federal Register** regarding the Open Access terms and conditions proceeding.

Issued in Portland, Oregon, on February 28, 2000.

Judith A. Johansen,

Administrator and Chief Executive Officer.

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Part I—Introduction and Procedural Background

Section 7(i) of the Northwest Power Act, 16 U.S.C. § 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things, publication of notice of the proposed rates in the **Federal Register**; one or more hearings conducted as expeditiously as practicable by a Hearing Officer; opportunity for both oral presentation and written submission of views, data, questions, and arguments related to the proposed rates; and a decision by the Administrator based on the record. BPA's rate proceedings are governed by BPA's Procedures Governing Bonneville Power Administration Rate Hearings, 51 FR 7611 (1986) (Procedures). These Procedures implement the statutory Section 7(i) requirements. This rate proceeding will be governed by section 1010.9 of the Procedures providing for a general rate proceeding, as modified by the Hearing Officer at the pre-hearing conference. BPA, however, will not hold any field hearings to provide for non-party participant oral comments. Section 1010.7 of the Procedures prohibits *ex parte* communications. BPA imposed *ex parte* limitations beginning January 24, 2000.

The Bonneville Project Act, 16 U.S.C. 832; the Flood Control Act of 1944, 16 U.S.C. section 825s; the Federal Columbia River Transmission System Act, 16 U.S.C. 838; the Northwest Power Act, 16 U.S.C. 839; and the Federal Power Act, 16 U.S.C. 212(i)(1)(B)(ii) provide guidance regarding BPA's ratemaking. With regard to transmission rates, the Northwest Power Act requires BPA to set rates that are sufficient to recover, in accordance with sound business principles, the cost of transmitting electric power, including amortization of the Federal investment over a reasonable period of years, and the other costs and expenses incurred by the Administrator. The Federal Columbia Transmission System Act requires that the costs of the Federal Columbia River Transmission System be equitably allocated between Federal and non-Federal power utilizing the system. In addition, rates for Commission-ordered transmission service shall be at rates and charges that permit the recovery of all costs incurred in connection with the transmission service and necessary associated services. BPA must satisfy section 212(i) of the Federal Power Act, 16 U.S.C. 824k(i), which requires that no BPA transmission rate applicable to transmission service ordered by the Commission shall be unjust, unreasonable, or unduly discriminatory or preferential as determined by the Commission.

BPA's proposed 2002 Transmission Rate Schedules are published in Part V below. Rate studies and documentation listed in Part IV will be provided to parties at the pre-hearing conference to be held on March 29, 2000, from 9:00 am to 12:00 pm, BPA Rates Hearing Room, 2nd floor, 911 NE 11th Ave., Portland, Oregon.

To request any of the studies by telephone, call BPA's document request line, (503) 230–4328 or call toll-free 1–800–622–4519. Please request the document by its listed title. Also state whether you require the accompanying documentation (these can be quite lengthy), otherwise the study alone will be provided. The studies and documentation will also be available on BPA's website at http://www.transmission.bpa.gov/ratecase.

A proposed schedule for the formal hearing is stated below. A final schedule will be established by the Hearing Officer at the pre-hearing conference.

March 27, 2000: Petitions to Intervene

March 29, 2000: Pre-hearing Conference and Filing of BPA Direct Case

May 22, 2000: Parties File Direct Cases

June 15, 2000: Close of Participant Comments

June 19, 2000: Litigants File Rebuttal Testimony

July 11, 2000: Cross-Examination Begins

August 14, 2000: Initial Briefs Filed

August 18, 2000: Oral Argument Before the Administrator

September 11, 2000: Hearing Officer's Recommendations

September 29, 2000: Draft ROD Issued

October 13, 2000: Briefs on Exceptions

November 3, 2000: Final ROD—Final Studies

Part II—Purpose and Scope of Hearing

A. Key Components

1. Overview

BPA is committed to marketing its power and transmission services separately in a manner that is modeled after the regulatory initiatives to promote competition in wholesale power markets that were adopted by the Commission in 1996. The Commission's initiatives in Orders 888 [1] and 889 [2] directed public utilities regulated under the Federal Power Act to separate their power merchant functions from their transmission reliability functions; unbundle transmission and ancillary services from wholesale power services; and set separate rates for wholesale generation, transmission, and ancillary services. Although BPA is not required by statute to follow the Commission's regulatory directives promoting competition and open access transmission service, BPA has elected to separate its power and transmission operations and unbundle its rates in a manner consistent with the directives to the extent permitted by law. Accordingly, in 1996 BPA established separate business lines: BPA's Power Business Line (PBL) which performs BPA's wholesale merchant functions, and BPA's Transmission Business Line (TBL) which performs BPA's transmission system operations and reliability functions.

2. Bifurcated Rate Case

In setting rates for the period beginning October 1, 2001, BPA decided to bifurcate its general rate proceeding into separate power and transmission rate proceedings. Establishing BPA's power rates and transmission and ancillary services rates in separate rate cases is consistent with the Commission's functional separation and unbundling paradigm because it permits BPA to resolve power and transmission issues in separate rate proceedings. The proceeding to establish BPA's wholesale power rates was noticed in the **Federal Register** on August 13, 1999, and a formal proceeding began on August 24, 1999.

This notice announces a proceeding to establish BPA's transmission and ancillary services rates for the period October 1, 2001, to September 30, 2003.

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[1] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Pubic Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, FERC Stats & Regs ¶ 31,036 (1996).

[2] Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, FERC Stats & Regs ¶ 31,035 (1996).

BPA's Standards of Conduct do not permit preferential access by the PBL to information about BPA's transmission or ancillary service pricing. The PBL will therefore be a party to the transmission rate proceeding. The PBL will file its own testimony and briefs, and will be subject to the rules regarding *ex parte* communications.

3. Two-Year Transmission Rate Period

Based on customer input in BPA's transmission workshops, the rate period for the rates proposed in this transmission rate adjustment proceeding will be two years (FY2002–2003). The two-year rate period was adopted in anticipation of the formation of a Regional Transmission Organization (RTO). BPA considers that setting rates for this interim period will bridge a gap between the expiration of its current rates on September 30, 2001, and the formation of an RTO which could incorporate BPA's transmission facilities.

B. Cost Increases

In the 1996 Rate proceeding, BPA originally proposed a 36 percent transmission rate increase to cover forecasted costs over the five-year rate period (FY1997–2001). As part of the global settlement of power and transmission issues, the 1996 transmission rate increase was limited to 13.5 percent for the five-year rate period. The TBL implemented cost cuts and efficiencies in its transmission operation and maintenance programs over the last few years, and deferred transmission system improvements in an attempt to stay within the cost levels forecasted for the FY1997–2001 rate period. A number of factors have caused costs to be greater than levels forecasted in the 1996 case and BPA expects further increases in the next rate period. These factors include:

- Business line separation costs including the implementation of separate systems for scheduling, billing, contracting and marketing functions.
- TBL's obligation to fully fund payments to the Civil Service Retirement System (an additional $27.6 million in FY02 and $17.6 million in FY03), and negotiated wage and benefits increases for the 50 percent of all TBL positions covered by the Columbia Power Trades Council (CPTC) Agreement.
- Increased capital investments that are needed due to load growth, reactive needs, new generation reinforcements, constrained paths, changes in reliability criteria, and system replacements.
- Increased investments in technology and personnel to address significantly higher and more complex uses of BPA's transmission system.
- Planning for replacements of an aging TBL workforce, one-half of which is eligible to retire within five (5) years.
- The costs of generation inputs needed to provide ancillary services which are now the responsibility of the TBL as a result of functional unbundling. A portion of these costs were previously bundled in the power rates.

C. Overview of the Public Process

1. Transmission Rate Case Customer Workshops

In preparation for the formal rate hearing, 17 customer workshops were held during 1999. TBL held 12 rate case workshops in early 1999 with individual customer and constituent groups to solicit feedback on broad alternatives for the transmission and ancillary services rates and the transmission terms and conditions proposals, the timing of the formal proceedings, and the term of the rate period. In an August 1999 workshop, TBL discussed how it had incorporated customer input regarding the timing of the proceeding, the length of the rate period, proposed transmission terms and conditions and key rate issues. Four additional workshops were held in the fall of 1999 to discuss specific rate and terms and conditions issues. Two final workshops were held in January 2000 to present preliminary transmission and ancillary service rates, and proposed open access terms and conditions to interested parties.

2. Program Level Funding Workshops

Issues concerning future capital investments in the transmission system and transmission expense levels for transmission system development, operation and reliability are being addressed in a public process separate from the transmission rate adjustment proceeding announced in this notice. The public process consists of numerous regional workshops to solicit public comment on BPA's proposed spending levels for transmission system operations and reliability. Oral and written comments are provided by workshop participants regarding the planned transmission capital spending and expenses associated with supporting a reliable and safe transmission system. Notices of the workshops were widely distributed to TBL's customers and interested parties and were published on BPA's Transmission external website. Five public workshops were held in November 1999 and two in February 2000. Written comments on the planned transmission capital spending and expenses were accepted through February 25, 2000. The workshops explored customer and constituent views on:

- Maintaining system reliability commensurate with national and regional guidelines.
- Meeting local load growth.
- Improving areas where the transmission system is constrained.
- Upgrading communications systems with fiber optics.
- Replacing aging equipment.
- Succession planning for the aging workforce, specifically in critical positions.

BPA will close out the public process by issuing a decision by the Administrator on transmission spending levels. The results of the Administrator's decision on transmission program spending levels will be reflected in the revenue requirement study in the final rate proposal.

D. Scope of the Transmission Rate Proceeding

Many of the decisions that determine TBL's costs have been or will be made in public review processes other than the transmission rate proceeding. This section provides guidance to the Hearing Officer as to those matters that are within the scope of the transmission rate proceeding and those that are outside the scope.

1. Spending Levels

As described above, Program Level Funding workshops were held throughout the region to clarify, discuss, and provide the public the opportunity to comment orally and in writing on the proposed capital expenditures and expenses for transmission. BPA will consider the comments. The Administrator will close out the public process by issuing a final decision on the spending levels. The results of that decision will serve as the basis for the transmission capital and expense levels that will be reflected in the revenue requirements study in the final rate proposal. In addition, decisions may be made by Congress during this proceeding regarding spending levels for transmission investments and expenses including fiber optic communication equipment on federal transmission facilities. Pursuant to section 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek in any way to

challenge the appropriateness or reasonableness of the Administrator's decision on transmission spending levels, including capital and expense budgets currently under review in the Program Level Funding public process. If, and to the extent, any re-examination of spending levels is necessary, that re-examination will occur outside of the rate proceeding. Excluded from this direction are matters such as sources of capital for investments, interest rate forecasts, scheduled amortization, forecasted depreciation, forecasts of system replacements for repayment studies, and interest expense. Also excluded are expense and revenue uncertainties and risks included in the risk analysis.

2. Issues Decided in Power Rate Proceeding

As BPA's August 13, 1999, **Federal Register** notice indicates, a number of issues that affect BPA's transmission and ancillary service rates are addressed in BPA's wholesale power rate proceeding. In the Power rate proceeding, BPA proposed the following: A methodology for functionalizing generation and transmission costs, including a methodology for functionalizing corporate overhead costs to the business lines; unit costs for generation inputs for operating reserves and regulation ancillary services; the generation input cost for reactive supply and voltage control from generation resources; the generation costs of station service and remedial action schemes; and the allocation of generation integration and generator step-up transformers costs to the business lines. BPA also proposed in that proceeding a treatment for costs over third party transmission systems (General Transfer Agreements or their replacement) for the delivery of Federal and non-Federal power.

A decision in the Power rate proceeding is expected before the conclusion of the Transmission rate proceeding. Therefore, the initial proposal in the Transmission rate proceeding reflects BPA's proposals in the Power rate proceeding. It is BPA's intent that the Administrator's final decision on these issues in the Power rate proceeding will be reflected and implemented in the final studies in the final transmission rate proposal. The Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek in any way to address final decisions in the Power rate proceeding.

The National Environmental Policy Act. BPA's initial rate proposal falls within the scope of the final Business Plan Environmental Impact Statement (DOE/EIS–0183, June 1995), completed in June 1995. The analysis in the EIS includes an evaluation of the environmental impacts of rate design issues for BPA's transmission products and services. Comments on the Business Plan EIS were received outside the formal rate hearing process and were included in the 1996 rate case record and considered by the Administrator in the final rate proposal. BPA will review the Business Plan EIS to ensure the impacts of BPA's 2002 Transmission rate proposal is within the range of alternatives. If a supplemental analysis is needed, BPA will seek comments outside of the formal rate proceeding. Comments, if received, will be included in the rate case record and considered by the Administrator in making a final decision establishing BPA's 2002 transmission and ancillary services rates.

Part III—Public Participation

A. Distinguishing Between "Participants" and "Parties"

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive written comments, views, opinions, and information from "participants," who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the pre-hearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are received by June 15, 2000. This date follows the anticipated submission of BPA's and all other parties' direct cases. Written views, supporting information, questions, and arguments should be submitted to BPA's Manager of Corporate Communications at the address listed in the **ADDRESSES** section of this Notice.

Persons wishing to become a party to this transmission rate adjustment proceeding must notify BPA in writing. Petitioners may designate no more than two (2) representatives upon whom service of documents will be made. Petitions to intervene shall state the name and address of the person requesting party status, and the person's interest in the hearing.

Petitions to intervene as parties in the rate proceeding are due to the Hearing Officer by 4:30 pm on March 27, 2000. The petition should be directed to: Todd Miller, Hearing Clerk—LT–7, Bonneville Power Administration, 905 NE 11th Avenue, Portland, Oregon 97232.

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the pre-hearing conference. Any opposition to an intervention petition may instead be made at the pre-hearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to a petition to intervene filed after the pre-hearing conference shall be filed and received by BPA within two (2) days after service of the petition.

B. Developing the Record

The hearing record will include, among other things, the transcripts of the hearing, written material entered into the record by BPA and the parties, written comments from participants and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement, if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop final proposed rates based on the record, information from the program level funding workshops, documents prepared pursuant to the National Environmental Policy Act and other environmental statutes and such other material or information as may have been submitted to or developed by the Administrator. The basis for the final proposed rates first will be expressed in the Administrator's Draft Record of Decision. Parties will have an opportunity to respond to the Draft Record of Decision as provided in BPA's Procedures. The Administrator will serve copies of the Final Record of Decision on all parties. BPA will file its rates with the Commission for

confirmation and approval after issuance of the Final Record of Decision.

BPA must continue to meet with customers in the ordinary course of business during the rate proceeding. To comport with the rate case procedural rule prohibiting ex parte communications, BPA will provide necessary notice of meetings involving rate proceeding issues to provide an opportunity for participation by all rate proceeding parties. Parties should be aware, however, that such meetings may be held on very short notice and should be prepared to devote the necessary resources to participate fully in every aspect of the rate proceeding.

Part IV—Major Studies and Summary of Proposal

A. Major Studies

1. Revenue Requirement—Calculates transmission revenue requirements for the FY 2002–2003 rate period and assigns revenue requirements to transmission segments and ancillary services. The Revenue Requirement Study also demonstrates cost recovery for the transmission function.

2. Segmentation—Assigns the transmission facilities to segments according to the types of services they provide. Six transmission segments are identified: Generation Integration, Integrated Network, Southern Intertie, Eastern Intertie, Utility Delivery, and DSI Delivery. In addition, a new Ancillary Services segment is identified which is subdivided into the specific ancillary services.

3. Transmission Rate Study—Forecasts sales, allocates costs to the various services, and designs rates to recover allocated costs.

B. Summary of Proposal

1. Transmission Rates

TBL is proposing five different rates for the use of its Integrated Network segment:

- Formula Power Transmission (FPT–02) rate—The FPT rate is based on the cost of using specific types of facilities, including a distance component for the use of transmission lines, and is charged on a contract demand basis. FPT customers are not subject to charges for the two required ancillary services, Reactive Supply and Voltage Control from Generation Sources, and Scheduling, System Control and Dispatch. Although TBL is not offering new FPT contracts, a number of FPT contracts continue in place during the rate period.
- Integration of Resources (IR–02) rate—The IR rate is a postage stamp, contract demand rate for the use of the Integrated Network, similar to the PTP service. It includes a Short Distance discount. Although TBL is not offering new IR contracts, a number of IR contracts remain in place during the rate period.
- Network Integration Transmission (NT–02) rate—The NT rate applies to customers taking service under the NT open access tariff, which allows customers to flexibly serve their retail load. It includes a Load Shaping Charge applied to the customer's total load, and a Base Charge applied to the total load less Customer Served Load, if any. Customer Served Load is the amount of load that the customer agrees to serve without using its NT service. NT customers also must participate in redispatch protocols and pay a share of redispatch costs.
- Point to Point (PTP–02) rate—The PTP rate is a contract demand rate that applies to customers taking service on BPA's network facilities under the PTP open access tariff, which provides customers with flexible service from identified Points of Receipt (PORs) to identified Points of Delivery (PODs). There are separate PTP rates for long-term firm service; daily firm and non-firm service; and hourly firm and non-firm service. The rate for long-term firm service contains a Short Distance discount. All daily and hourly PTP rates are downwardly flexible.
- Network Contract Demand (NCD–02) rate—The NCD rate is a contract demand rate that applies to service under the NCD open access tariff, which provides customers with flexible long term service from Network Resources to identified Points of Delivery. The flexibility that NCD customers have to utilize Network Resources is matched by the flexibility to receive firm service at secondary PODs. NCD customers also must participate in redispatch protocols and pay a share of redispatch costs.

In addition to the five rates for network use, other proposed transmission rates include:

- Southern Intertie (IS–02) and the Montana Intertie (IM–02) rates are contract demand rates that apply to customers taking service under the PTP open access tariff on the Southern Intertie and Montana Intertie. These rates are structured similarly to the PTP rate for service on network facilities.
- The Townsend-Garrison Transmission (TGT–02) rate and the Eastern Intertie rate (IE–02) are developed pursuant to the Montana Intertie agreement.
- The Use-of-Facilities (UFT–02) rate establishes a formula for charging for the use of a specific facility based on the annual cost of that facility.
- The Advance Funding (AF–02) rate allows TBL to collect the capital and related costs of specific facilities through an advance-funding mechanism.

Other charges that may apply include a Delivery Charge for the use of low-voltage delivery substations, a Power Factor Penalty Charge, a Reservation Fee for customers who delay start of requested long-term firm service, a redispatch charge to NT and NCD customers for the net cost of redispatch, Incremental Rates for transmission requests that require new facilities, a penalty charge for failure to comply with TBL's curtailment, redispatch or load shedding orders, and an Unauthorized Increase Charge for customers who exceed their contracted amounts.

2. Ancillary Services Rates

TBL is proposing rates for the six (6) ancillary services that FERC Order 888 requires transmission providers to offer:

- Scheduling, System Control, and Dispatch Service is required to schedule and secure the movement of power through, out of, within, or into the BPA Control Area. All transmission contract holders, except FPT customers, are required to purchase this service from BPA. The billing factor is the same as the billing factor for the transmission service being provided. For NT customers, the billing factor is the same as for the NT Base charge.
- Reactive Supply and Voltage Control from Generation Sources Service provides reactive support to the transmission system, and is required to maintain transmission system voltages within acceptable limits. All transmission contract holders, except FPT customers, are required to purchase this service from BPA. The billing factor is the same as the billing factor for the transmission service being provided. For NT customers, the billing factor will be the same as for the NT Base charge.
- Regulation and Frequency Response Service provides the continuous balancing of resources (generation and interchange) with load and maintains frequency at 60 Hz. This service is accomplished by committing on-line generation (predominantly through the use of automatic generation control equipment) whose output is raised or lowered to follow the moment to moment changes in load. Rates for this service will be applied to load in the BPA control area.
- Energy Imbalance Service is delivered when a difference occurs between the scheduled and actual

delivery of energy to a load located within the control area over a single hour. The rate for energy imbalance differs based on whether the imbalance is inside or outside tolerance limits.

• Operating Reserve-Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. The billing factor for this service is the customer's share of the reserve obligation of the control area, as defined by the Western Systems Coordinating Council and the Northwest Power Pool.

• Operating Reserve-Supplemental Reserve Service is available within a short period of time to serve load in the event of a system contingency. This service may be provided by units that are on-line but unloaded, quick-start generation, or by interruptible load. The billing factor for this service is the customer's share of the reserve obligation of the control area, as defined by the WSCC and the Northwest Power Pool.

In addition to the rates for Ancillary Services, the TBL is proposing rates for four (4) Control Area services.

3. Issues

Risk Analysis: For the first time, BPA will include an independent risk analysis performed for the transmission function. The Risk Analysis is used to ensure that BPA has sufficient end-of-year cash reserves to meet its U.S. Treasury payment obligations on time and in full during the two-year rate period with a 95 percent probability of success. In prior rate cases, the Risk Analysis was performed at the agency level and focused on power-related risks. The Risk Analysis for this transmission rate proposal evaluates uncertainty in transmission costs and revenues to estimate the amount of planned net revenue for risk needed to achieve the BPA Treasury payment probability standard associated with transmission cost recovery.

Segmentation: TBL proposes to divide its transmission system into segments in order to assign the costs of the Federal transmission system to the users of those segments. Those segments include the Generation Integration, Integrated Network, Southern Intertie, Eastern Intertie, Utility Delivery, and DSI Delivery segments. BPA also proposes a new segment in this rate proceeding to determine the revenue requirement for Ancillary Services.

Transmission Rate Development: The Transmission Rate Study forecasts sales and calculates the transmission rates based on the segmented revenue requirement. Revenues from various rates and charges that will not be adjusted or revised in this rate case are forecasted and revenue credited against the segmented revenue requirements. The FPT rate, which includes many separate charges for the use of specific types of transmission facilities, is then calculated. For the 2002 rate case, TBL proposes that all the FPT–96 component charges be scaled up by the overall increase in unit Network costs. Unit Network costs are calculated by adding the Network component of required ancillary services to Network costs and dividing by annual peak usage as determined in a power flow analysis.

Rates for Contract Demand service on the Network (PTP, NCD, and IR) are calculated by dividing the remaining Network costs after crediting revenues from FPT by total peak load. Peak load for the contract demand services is equal to the forecasted contract demands; for NT service, the peak load used in the divisor is the NT load on the hour of the annual transmission system peak. TBL proposes to use a 1CP (one coincidental peak) method for calculating rates in this rate period.

The rates for short-term PTP use are developed from the annual rates. The TBL is proposing to eliminate monthly and weekly PTP service and instead allow customers to purchase any number of consecutive days, providing the total is less than one year. Transmission system loads are higher during weekdays than weekends, so TBL is proposing a higher rate for the first five (5) days of any daily block than for all remaining days. Similarly, the transmission system usage is higher during the 16 daily peak hours, so the hourly rate is set by dividing the daily rate by only 16 hours. All of the short-term PTP rates can be discounted.

The NT base charge, applied to the Network Load (i.e., total retail load), minus Customer-Served Load, on the hour of the transmission system's monthly peak, is set equal to the PTP rate. The NT load-shaping charge, applied to the total Network Load, is calculated to recover the remaining NT revenue requirement.

The rates for the use of the Southern Intertie are calculated from the segmented costs and forecasted use in a manner similar to the PTP calculations on the Network. Usage of the Southern Intertie tends to be higher during the summer, when more power from hydro is available in the PNW and power usage and prices are higher in California. To reflect this fact, the TBL is proposing higher rates for North-to-South use in the summer months and lower prices for North-to-South use in the winter. Rates for South-to-North use are not seasonally differentiated.

At some of the workshops the TBL has conducted, a number of customers suggested that the TBL should sell Southern Intertie capacity using an auction. The TBL believes that the idea of an auction has considerable merit, but has not developed a specific proposal for an auction. The TBL invites parties that favor the use of an auction to make specific proposals in their testimony in the rate case.

The proposed 2002 rates include charges for the use of the Utility Delivery Segment and DSI Delivery segment. The Utility Delivery charge is a uniform charge applied to all use of the segment. The DSI Delivery charge is a Use-of-Facility charge based on the cost of the individual delivery substation being used. The TBL is proposing some changes to the charge and how it is applied to insure that the charge fully recovers the cost of the segment.

The TBL is changing the name of the Reactive Power Charge to the Power Factor Penalty charge to avoid confusion with the Ancillary Service, Reactive Supply and Voltage Control from Generation Sources service. The Charge is increased due to the "penalty" nature of the charge and BPA's desire to send an appropriate price signal to customers to install equipment and manage their reactive requirements.

Part V—2002 Transmission and Ancillary Service Rate Schedules

Bonneville Power Administration Transmission Business Line; 2002 Transmission and Ancillary Service Rate Schedules and General Rate Schedule Provisions

Schedule FPT–02.1 Formula Power Transmission Rate

Section I. Availability

This schedule supersedes Schedule FPT–96.1 for all firm transmission agreements which provide for application of FPT rates that may be adjusted not more frequently than once a year. This schedule is applicable only to such transmission agreements executed prior to October 1, 1996. It is available for firm transmission of non-Federal power using the Main Grid and/or Secondary System of the Federal Columbia River Transmission System. This schedule is for full-year and partial-year service and for either continuous or intermittent service when firm transmission service is required. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to TBL's

General Rate Schedule Provisions (GRSPs).

Section II. Rate

The monthly charge per kilowatt shall be one-twelfth of the sum of the Main Grid Charge and the Secondary System Charge, as applicable and as specified in the agreement.

A. Main Grid Charge

The Main Grid Charge per kilowatt shall be the sum of one or more of the following annual charges as specified in the agreement:

1. Main Grid Distance: $0.0557 per mile.
2. Main Grid Interconnection Terminal: $0.58.
3. Main Grid Terminal: $0.65.
4. Main Grid Miscellaneous Facilities: $3.18.

B. Secondary System Charge

The Secondary System Charge per kilowatt shall be the sum of one or more of the following annual charges as specified in the agreement:

1. Secondary System Distance: $0.5478 per mile.
2. Secondary System Transformation: $5.99.
3. Secondary System Intermediate Terminal: $2.31.
4. Secondary System Interconnection Terminal: $1.64.

Section III. Billing Factors

Unless otherwise stated in the agreement, the Billing Factor for the rates specified in section II shall be the largest of:

1. The Transmission Demand;
2. The highest hourly Scheduled Demand for the month; or
3. The Ratchet Demand.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Ancillary Services that may be required to support FPT transmission service are available under the ACS rate schedule. FPT customers do not pay the ACS charges for Scheduling, System Control and Dispatch Service and Reactive Supply and Voltage Control from Generation Sources Service, because these services are included in FPT service.

B. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C. of the GRSPs.

C. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

Schedule FPT–02.3 Formula Power Transmission Rate

Section I. Availability

This schedule supersedes Schedule FPT–96.3 for all firm transmission agreements which provide for application of FPT rates that may be adjusted not more frequently than once every three years. This schedule is applicable only to such transmission agreements executed prior to October 1, 1996. It is available for firm transmission of non-Federal power using the Main Grid and/or Secondary System of the Federal Columbia River Transmission System. This schedule is for full-year and partial-year service and for either continuous or intermittent service when firm transmission service is required. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The monthly charge per kilowatt shall be one-twelfth of the sum of the Main Grid Charge and the Secondary System Charge, as applicable and as specified in the agreement.

A. Main Grid Charge

The Main Grid Charge per kilowatt shall be the sum of one or more of the following annual charges as specified in the agreement:

1. Main Grid Distance: $0.0557 per mile.
2. Main Grid Interconnection Terminal: $0.58.
3. Main Grid Terminal: $0.65.
4. Main Grid Miscellaneous Facilities: $3.18.

B. Secondary System Charge

The Secondary System Charge per kilowatt shall be the sum of one or more of the following annual charges as specified in the agreement:

1. Secondary System Distance: $0.5478 per mile.
2. Secondary System Transformation: $5.99.
3. Secondary System Intermediate Terminal: $2.31.
4. Secondary System Interconnection Terminal: $1.64.

Section III. Billing Factors

Unless otherwise stated in the agreement, the Billing Factor for the rates specified in section II shall be the largest of:

1. The Transmission Demand;
2. The highest hourly Scheduled Demand for the month; or
3. The Ratchet Demand.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Ancillary Services that may be required to support FPT transmission service are available under the APS rate schedule. FPT customers do not pay the ACS charges for Scheduling, System Control and Dispatch Service and Reactive Supply and Voltage Control from Generation Sources Service, because these services are included in FPT service.

B. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C. of the GRSPs.

C. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty specified in section II.B of the GRSPs.

Schedule IR–02 Integration of Resources Rate

Section I. Availability

This schedule supersedes Schedule IR–96 and is available for transmission of non-Federal power for full-year firm transmission service and nonfirm transmission service in amounts not to exceed the customer's total Transmission Demand using Federal Columbia River Transmission System Network and Delivery facilities. This schedule is applicable only to Integration of Resource (IR) agreements executed prior to October 1, 1996. Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The monthly charge shall be A or B.

A. Base Rate

$1.132 per kilowatt.

B. Short Distance Discount (SDD) Rate

For Points of Integration (POI) specified in the IR agreement as being short-distance POIs, for which Network facilities are used for a distance of less than 75 circuit miles, the monthly rate shall be:

$[0.6 + (0.4 \times \text{transmission distance}/75)]$ * $1.132 per kilowatt

Where:

The transmission distance is the circuit miles between the POI for a generating resource of the customer and

a designated Point of Delivery serving load of the customer. Short-distance POIs are determined by BPA after considering factors in addition to transmission distance.

Section III. Billing Factors

To the extent that the agreement provides for the customer to be billed for transmission in excess of the Transmission Demand or Total Transmission Demand, as defined in the agreement, at the Point-to-Point Hourly Nonfirm Rate, such transmission service shall not contribute to the Billing Factor for the IR rate provided that the customer requests such treatment and TBL approves in accordance with the prescribed provisions in the agreement.

The Billing Factor for rates specified in section II shall be the largest of:

1. The annual Transmission Demand, or, if defined in the agreement, the annual Total Transmission Demand;

2. The highest hourly Scheduled Demand for the month; or

3. The Ratchet Demand.

When the Scheduled Demand or Ratchet Demand is the Billing Factor, short-distance POIs shall be charged the Base Rate specified in section II.A for the amount in excess of Transmission Demand.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ACS–02 Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that may be required to support IR transmission service are available under the ACS rate schedule.

B. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

C. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

D. Delivery Charge

Customers taking service under this rate schedule are subject to the Delivery Charge specified in section II.A. of the GRSPs.

Schedule NT–02 Network Integration Rate

Section I. Availability

This schedule supersedes Schedule NT–96. It is available to Transmission Customers taking Network Integration Transmission (NT) Service over Federal Columbia River Transmission System Network and Delivery facilities. Terms and conditions of service are specified in the Open Access Transmission Tariff. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. §§ 824j and 824k). Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The monthly charge will be the sum of A and B.

A. Base Charge

$1.132 per kilowatt per month.

B. Transmission Load Shaping Charge

$0.326 per kilowatt per month.

Section III. Billing Factors

A. Base Charge

1. If no Declared Customer-Served Load (CSL) is specified in the customer's NT Service Agreement, the monthly Billing Factor for the Base Charge specified in section II.A shall be the customer's Network Load on the hour of the Monthly Transmission Peak Load.

2. If an amount of Declared CSL is specified in the customer's NT Service Agreement, the monthly Billing Factor for the Base Charge specified in section II.A shall be a or b:

a. For the billing month, if the sum of the Actual CSLs occurring during Heavy Load Hours (HLH) is greater than or equal to 60 percent of the Declared CSL multiplied by the number of HLHs in the billing month, the monthly Billing Factor shall be the customer's Network Load on the hour of the Monthly Transmission Peak Load, less Declared CSL.

b. For the billing month, if the sum of the Actual CSLs occurring during HLH is less than 60 percent of the Declared CSL multiplied by the number of HLHs in the billing month, the monthly Billing Factor shall be the customer's Network Load on the hour of the Monthly Transmission Peak Load. The Billing Factor will be reduced by any megawatts charged the NT Unauthorized Increase Charge under section IV.D. for the month.

Where:

"Declared Customer-Served Load (CSL)" is the monthly amount of the Transmission Customer's Network Load in megawatts that the Transmission Customer elects to serve on a firm basis from sources internal to its system or over non-Federal transmission facilities or pursuant to contracts other than the Network Integration Service Agreement. The customer's Declared CSL is contractually specified for each month.

"Actual Customer-Served Load (CSL)" is the actual hourly amount of the Network Load in megawatts that the customer serves on a firm basis from sources internal to its system or over non-Federal transmission facilities or pursuant to contracts other than the Network Integration Service Agreement.

B. Transmission Load Shaping Charge

The monthly Billing Factor for the Transmission Load Shaping Charge specified in section II.B shall be the Network Load on the hour of the Monthly Transmission Peak Load.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ACS Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that are required to support NT transmission service are also available under the ACS rate schedule.

B. Delivery Charge

Customers taking service under this rate schedule are subject to the Delivery Charge specified in section II.A of the GRSPs.

C. Metering Adjustment

At those Points of Delivery that do not have meters capable of determining the demand on the hour of the Monthly Transmission Peak Load, the Billing Demand shall be calculated by substituting (1) the sum of the highest hourly demand that occurs during the billing month at all Points of Delivery multiplied by 0.66 for (2) Network Load on the hour of the Monthly Transmission Peak Load.

D. NT Unauthorized Increase Charge

If the customer's Actual Customer-Served Load (CSL) is less than its Declared CSL, the NT Unauthorized Increase Charge shall be assessed.

1. Rate: $6.79 per kilowatt per month.

2. Billing Factor: In each billing month on the hour of the Monthly

Transmission Peak Load, the Billing Factor shall equal the Declared CSL minus the Actual CSL.

E. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

F. Redispatch

For each hour that TBL implements redispatch procedures pursuant to the Open Access Transmission Tariff, NT and NCD Transmission Customers shall be subject to:

1. The Redispatch Adjustment for Accepted Bids specified in section II.E of the GRSPs, and

2. The Redispatch Charge specified in section II.F of the GRSPs.

G. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty specified in section II.B of the GRSPs.

H. Direct Assignment Facilities

TBL shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Other associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Network Integration Transmission customer under an applicable rate schedule.

I. Incremental Cost Rates

The rates specified in section II are applicable to service over available transmission capacity. NT customers that integrate new Network Resources, new Member Systems, or new native load customers that would require TBL to construct Network Upgrades shall be subject to the higher of the rates specified in section II. or incremental cost rates for service over such facilities. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

J. Rate Adjustment Due to FERC Order Under FPA § 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA § 212 specified in section II.D of the GRSPs.

Schedule NCD–02 Network Contract Demand Rate

Section I. Availability

This schedule is available to Transmission Customers taking Network Contract Demand (NCD) Transmission Service over Federal Columbia River Transmission System (FCRTS) Network and Delivery facilities. Terms and conditions of service are specified in the Open Access Transmission Tariff. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. §§ 824j and 824k). Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

$1.132 per kilowatt per month.

Section III. Billing Factor

The Billing Factor shall be the sum of the Point of Delivery Transmission Demands.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ASC–02 Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that are required to support NCD Transmission Service are available under the ASC rate schedule.

B. Delivery Charge

Customers taking service under this rate schedule are subject to the Delivery Charge specified in section II.A of the GRSPs.

C. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

D. NCD Unauthorized Increase Charge

Customers who exceed their Point of Delivery (POD) Transmission Demand at their PODs or at their Network Resources shall be subject to the NCD Unauthorized Increase Charge.

1. Rate: $6.79 per kilowatt per month.

2. Billing Factor: The billing factor shall be the higher of a or b.

a. POD Unauthorized Increase. For each hour of the monthly billing period, BPA shall determine the amount by which the Transmission Customer exceeds its Transmission Demands at each POD, to the extent practicable. BPA shall use hourly measurements based on a 10-minute moving average to calculate actual demands at PODs associated with loads that are one-way dynamically scheduled. Actual demands at all other PODs will be based on 60-minute integrated demands or transmission schedules.

For each hour, BPA will sum these amounts that exceed Transmission Demands for all PODs. The POD unauthorized increase for the monthly billing period shall be the highest one-hour POD sum.

b. Network Resource Unauthorized Increase. For each hour of the monthly billing period, BPA shall determine the amount by which the sum of the actual demands at Network Resources exceeds the total Transmission Demand, to the extent practicable. BPA shall use hourly measurements based on a 10-minute moving average to calculate actual demands at Network Resources that are one-way dynamically scheduled. Actual demands at all other Network Resources will be based on 60-minute integrated demands or transmission schedules.

For each hour, BPA will determine the amount that the demand at Network Resources exceeds the total Transmission Demand. The Network Resource unauthorized increase for the monthly billing period shall be the highest hourly amount.

E. Redispatch

For each hour that TBL implements redispatch procedures pursuant to the Open Access Transmission Tariff, NT and NCD Transmission Customers shall be subject to:

1. The Redispatch Adjustment for Accepted Bids specified in section II.E of the GRSPs, and

2. The Redispatch Charge specified in section II.F of the GRSPs.

F. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

G. Reservation Fee

Customers who request new or increased firm transmission service under this rate schedule and want to reserve transmission capacity to accommodate such service are subject to the Reservation Fee specified in section II.G of the GRSPs.

H. Direct Assignment Facilities

TBL shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Other associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Network Contract Demand

Transmission customer under an applicable rate schedule.

I. Incremental Cost Rates

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require TBL to construct Network Upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

J. Rate Adjustment Due to FERC Order Under FPA § 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA § 212 specified in section II.D of the GRSPs.

Schedule PTP–02 Point-to-Point Rate

Section I. Availability

This schedule supersedes Schedules PTP–96, RNF–96, and ET–96. It is available to Transmission Customers taking Point-to-Point (PTP) Transmission Service over Federal Columbia River Transmission System (FCRTS) Network and Delivery facilities. Terms and conditions of service are specified in the Open Access Transmission Tariff. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. §§ 824j and 824k). Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

A. Long-Term Firm Service

$1.132 per kilowatt per month.

B. Short-Term Firm and Nonfirm Service

The charges for Short-Term Firm and Nonfirm Service shall not exceed:

1. Daily: For each reservation:

a. Days 1 to 5: $0.052 per kilowatt per day.

b. Day 6 and beyond: $0.037 per kilowatt per day.

2. Hourly: 3.26 mills per kilowatthour.

Section III. Billing Factors

A. The Billing Factor for Long-Term Firm Service, Short-Term Firm Service, and Daily Nonfirm Service shall be the greater of:

1. The sum of the Point of Receipt Transmission Demands, or

2. The sum of the Point of Delivery Transmission Demands.

B. The Billing Factor for Hourly Nonfirm Service shall be the monthly sum of scheduled kilowatthours.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ACS–02 Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that are required to support PTP transmission service on the Network are available under the ACS rate schedule.

B. Delivery Charge

Customers taking service under this rate schedule are subject to the Delivery Charge specified in section II.A of the GRSPs.

C. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

D. Short-Distance Discount (SDD)

When a Point of Receipt (POR) and Point of Delivery (POD) use FCRTS facilities for a distance of less than 75 circuit miles and are designated as being short distance in the PTP Service Agreement, the monthly Transmission Demands for the relevant POI and POD shall be adjusted, for the purpose of computing the monthly bill for annual service, by the following factor:

$0.6 + (0.4 \times \text{transmission distance}/75)$

Such adjusted monthly POR and POD Transmission Demands shall be used to compute the billing factors in section III.A.1. to calculate the monthly bill for Long-Term Firm PTP service. The POD Transmission Demand eligible for the SDD may be no larger than the POR Transmission Demand. The distance used to calculate the SDD will be contractually specified and based upon path(s) identified in power flow studies.

E. Unauthorized Increase Charge

Customers who exceed their Transmission Demand at any Point of Receipt (POR) or Point of Delivery (POD) shall be subject to the Unauthorized Increase Charge.

1. Rate: $6.79 per kilowatt per month.

2. Billing Factor: For each hour of the monthly billing period, BPA shall determine the amount by which the Transmission Customer exceeds its Transmission Demands at each POD and POR, to the extent practicable. BPA shall use hourly measurements based on a 10-minute moving average to calculate actual demands at PODs associated with loads that are one-way dynamically scheduled and at PORs associated with resources that are one-way dynamically scheduled. Actual demands at all other PODs and PORs will be based on 60-minute integrated demands or transmission schedules.

For each hour, BPA will sum these amounts that exceed Transmission Demands: (a) For all PODs, and (b) for all PORs. The Billing Factor for the monthly billing period shall be the greater of the highest one-hour POD sum or highest one-hour POR sum.

F. Reservation Fee

Customers who request new or increased firm transmission service under this rate schedule and want to reserve transmission capacity to accommodate such service are subject to the Reservation Fee specified in section II.G of the GRSPs.

G. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

H. Direct Assignment Facilities

TBL shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Other associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Point-to-Point Customer under an applicable rate schedule.

I. Incremental Cost Rates

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require TBL to construct Network Upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

J. Interruption of Daily Nonfirm Service

If Daily Nonfirm Service is interrupted, the rates charged under section II.B.1 shall be prorated over the total hours in the day to give credit for the hours of such interruption.

K. Rate Adjustment Due to FERC Order Under FPA § 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA § 212 specified in section II.D of the GRSPs.

Schedule IS–02 Southern Intertie Rate

Section I. Availability

This schedule supersedes Schedule IS–96. It is available to Transmission Customers taking Point-to-Point Transmission Service over Federal Columbia River Transmission System (FCRTS) Southern Intertie facilities. Terms and conditions of service are specified in the Open Access Transmission Tariff or, for customers who executed Southern Intertie agreements with BPA before October 1, 1996, will be as provided in the customer's agreement with BPA. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. §§ 824j and 824k). Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rates

A. Long-Term Firm Service

1. North to South:
a. April–September: $1.299 per kilowatt per month.
b. October–March $0.974 per kilowatt per month.
2. South to North: $1.157 per kilowatt per month.

B. Short-Term Firm and Nonfirm Service—North to South

The charges for Short-Term Firm and Nonfirm Service shall not exceed:
1. Daily: For each reservation:
a. April–September:
(1) Days 1 to 5: $0.060 per kilowatt per day.
(2) Day 6 and beyond: $0.043 per kilowatt per day.
b. October–March:
(1) Days 1 to 5: $0.045 per kilowatt per day.
(2) Day 6 and beyond: $0.032 per kilowatt per day.
2. Hourly
a. April–September: 3.74 mills per kilowatthour.
b. October–March: 2.81 mills per kilowatthour.

C. Short-Term Firm and Nonfirm Service—South to North

The charges for Short-Term Firm and Nonfirm Service shall not exceed:
1. Daily: For each reservation:
a. Days 1 to 5: $0.053 per kilowatt per day.
b. Day 6 and beyond: $0.038 per kilowatt per day.
2. Hourly: 3.33 mills per kilowatthour.

Section III. Billing Factors

A. The Billing Factor for Long-Term Firm Service, Short-Term Firm Service, and Daily Nonfirm Service, shall be the greater of:
1. The sum of the Point of Receipt Transmission Demands, or
2. The sum of the Point of Delivery Transmission Demands. For Southern Intertie transmission agreements executed prior to October 1, 1996, the Billing Factor shall be as specified in the agreement.
B. The Billing Factor for Hourly Nonfirm Service shall be the monthly sum of scheduled kilowatthours.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ACS–02 Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that are required to support PTP Transmission Service on the Southern Intertie are available under the ACS rate schedule.

B. Interruption of Daily Nonfirm Service

If Daily Nonfirm Service is interrupted, the rates charged under sections II.B.1. and II.C.1. shall be prorated over the total hours in the day to give credit for the hours of such interruption.

C. Reservation Fee

Customers who request new or increased firm transmission service under this rate schedule and want to reserve transmission capacity to accommodate such service will be subject to the Reservation Fee specified in section II.G of the GRSPs.

D. Power Factor Penalty

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs

E. Unauthorized Increase Charge

Customers who exceed their Transmission Demand at any Point of Receipt (POR) or Point of Delivery (POD) shall be subject to the Unauthorized Increase Charge.
1. Rate: $6.79 per kilowatt per month.
2. Billing Factor: For each hour of the monthly billing period, BPA shall determine the amount by which the Transmission Customer exceeds its Transmission Demands at each POD and POR, to the extent practicable. BPA shall use hourly measurements based on a 10-minute moving average to calculate actual demands at PODs associated with loads that are one-way dynamically scheduled and at PORs associated with resources that are one-way dynamically scheduled. Actual demands at all other PODs and PORs will be based on 60-minute integrated demands or transmission schedules.
For each hour, BPA will sum these amounts that exceed Transmission Demands: (a) For all PODs, and (b) for all PORs. The Billing Factor for the monthly billing period shall be the greater of the highest one-hour POD sum or highest one-hour POR sum.

F. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

G. Direct Assignment Facilities

TBL shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Other associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Transmission Customer under an applicable rate schedule.

H. Incremental Cost Rates

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require TBL to construct new facilities or upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

I. Rate Adjustment Due to FERC Order Under FPA § 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA § 212 specified in section II.D of the GRSPs.

Schedule IM–02 Montana Intertie Rate

Section I. Availability

This schedule supersedes Schedule IM–96. It is available to Transmission

Customers taking Point-to-Point (PTP) Transmission Service on BPA's share of Montana Intertie transmission capacity. Terms and conditions of service are specified in the Open Access Transmission Tariff. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. §§ 824j and 824k). Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

A. Long-Term Firm Service

$1.239 per kilowatt per month.

B. Short-Term Firm and Nonfirm Service

The charges for Short-Term Firm and Nonfirm Service shall not exceed:

1. Daily: For each reservation:

a. Days 1 to 5: $0.057 per kilowatt per day.

b. Day 6 and beyond: $0.041 per kilowatt per day.

2. Hourly: 3.56 mills per kilowatthour.

Section III. Billing Factors

A. The Billing Factor for Long-Term Firm Service, Short-Term Firm Service, and Daily Nonfirm Service shall be the greater of:

1. the sum of the Point of Receipt Transmission Demands, or

2. the sum of the Point of Delivery Transmission Demand.

B. The Billing Factor for Hourly Nonfirm Service shall be the monthly sum of scheduled kilowatthours.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Customers taking service under this rate schedule are subject to the ACS–02 Scheduling, System Control and Dispatch Service Rate and the Reactive Supply and Voltage Control from Generation Sources Service Rate. Other Ancillary Services that are required to support PTP Transmission Service on the Montana Intertie are available under the ACS rate schedule.

B. Unauthorized Increase Charge

Customers who exceed their Transmission Demand at any Point of Receipt (POR) or Point of Delivery (POD) shall be subject to the Unauthorized Increase Charge.

1. Rate: $6.79 per kilowatt per month.

2. Billing Factor: For each hour of the monthly billing period, TBL shall determine the amount by which the Transmission Customer exceeds its Transmission Demands at each POD and POR, to the extent practicable. TBL shall use hourly measurements based on a 10-minute moving average to calculate actual demands at PODs associated with loads that are one-way dynamically scheduled and at PORs associated with resources that are one-way dynamically scheduled. Actual demands at all other PODs and PORs will be based on 60-minute integrated demands or transmission schedules.

For each hour, TBL will sum these amounts that exceed Transmission Demands: a) for all PODs, and b) for all PORs. The Billing Factor for the monthly billing period shall be the greater of the highest one-hour POD sum or highest one-hour POR sum.

C. Interruption of Daily Nonfirm Service

If Daily Nonfirm Service is interrupted, the rates charged under section II.B.1. shall be prorated over the total hours in the day to give credit for the hours of such interruption.

D. Reservation Fee

Customers who request new or increased firm transmission service under this rate schedule and want to reserve transmission capacity to accommodate such service will be subject to the Reservation Fee specified in section II.G of the GRSPs.

E. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty Charge specified in section II.B of the GRSPs.

F. Direct Assignment Facilities

TBL shall collect the capital and related costs of a Direct Assignment Facility under the Advance Funding (AF) rate or the Use-of-Facilities (UFT) rate. Other associated costs, including but not limited to operations, maintenance, and general plant costs, also shall be recovered from the Transmission Customer under an applicable rate schedule.

G. Incremental Cost Rates

The rates specified in section II are applicable to service over available transmission capacity. Customers requesting new or increased firm service that would require TBL to construct new facilities or upgrades to alleviate a capacity constraint may be subject to incremental cost rates for such service if incremental cost is higher than embedded cost. Incremental cost rates would be developed pursuant to section 7(i) of the Northwest Power Act.

H. Rate Adjustment Due to FERC Order Under EPA § 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA § 212 specified in section II.D of the GRSPs.

Schedule UFT–02 Use-of-Facilities Transmission Rate

Section I. Availability

This schedule supersedes Schedule UFT–96 unless otherwise provided in the agreement, and is available for firm transmission over specified Federal Columbia River Transmission System (FCRTS) facilities. Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The monthly charge per kilowatt of Transmission Demand specified in the agreement shall be one-twelfth of the annual cost of capacity of the specified facilities divided by the sum of Transmission Demands (in kilowatts) using such facilities. Such annual cost shall be determined in accordance with section III.

Section III. Determination of Transmission Rate

A. From time to time, but not more often than once a year, TBL shall determine the following data for the facilities which have been constructed or otherwise acquired by TBL and which are used to transmit electric power:

1. The annual cost of the specified FCRTS facilities, as determined from the capital cost of such facilities and annual cost ratios developed from the Federal Columbia River Power System financial statement, including interest and amortization, operation and maintenance, administrative and general, and general plant costs.

The annual cost per kilowatt of facilities listed in the agreement, which are owned by another entity, and used by TBL for making deliveries to the transferee, shall be determined from the costs specified in the agreement between TBL and such other entity.

2. The yearly noncoincident peak demands of all users of such facilities or other reasonable measurement of the facilities' peak use.

B. The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the annual cost of the FCRTS facilities used divided by the sum of Transmission Demands. The annual cost per kilowatt of Transmission Demand for a facility constructed or otherwise

acquired by TBL shall be determined in accordance with the following formula:

$$\frac{A}{D}$$

Where:

A = The annual cost of such facility as determined in accordance with A.1. above.

D = The sum of the yearly noncoincident demands on the facility as determined in accordance with A.2. above.

1. For facilities used solely by one customer, TBL may charge a monthly amount equal to the annual cost of such sole-use facilities, determined in accordance with section III.A.1, divided by 12.

2. For facilities used by more than one customer, TBL may charge a monthly amount equal to the annual cost of such facilities prorated based on relative use of the facilities, divided by 12.

Section IV. Determination of Billing Factor

Unless otherwise stated in the agreement, the factor to be used in determining the kilowatts of Billing Factor shall be the largest of:

A. The Transmission Demand in kilowatts specified in the agreement;

B. The highest hourly Measured or Scheduled Demand for the month; or

C. The Ratchet Demand.

Section V. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Ancillary services that are required to support UFT transmission service are available under the ACS rate schedule.

B. Power Factor Penalty Charge

Customers taking service under this rate schedule are subject to the Power Factor Penalty Charge specified in section II.C of the GRSPs.

Schedule AF–02 Advance Funding Rate

Section I. Availability

This schedule supersedes Schedule AF–96 and is available to customers who execute an agreement that provides for TBL to collect capital and related costs through advance funding or other financial arrangement for specified BPA-owned Federal Columbia River Transmission System (FCRTS) facilities used for:

A. Interconnection or integration of resources and loads to the FCRTS;

B. Upgrades, replacements, or reinforcements of the FCRTS for transmission service; or

C. Other transmission service arrangements, as determined by TBL.

Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The charge is the sum of the actual capital and related costs for specified FCRTS facilities, as provided in the agreement. Such actual capital and related costs include, but are not limited to, costs of design, materials, construction, overhead, spare parts, and all incidental costs necessary to provide service as identified in the agreement.

Section III. Payment

A. Advance Payment

Payment to TBL shall be specified in the agreement as either:

1. A lump sum advance payment;

2. Advance payments pursuant to a schedule of progress payments; or

3. Other payment arrangement, as determined by TBL.

Such advance payment or payments shall be based on an estimate of the capital and related costs for the specified FCRTS facilities as provided in the agreement.

B. Adjustment to Advance Payment

TBL shall determine the actual capital and related costs of the specified FCRTS facilities as soon as practicable after the date of commercial operation, as determined by TBL. The customer will either receive a refund from TBL or be billed for additional payment for the difference between the advance payment and the actual capital and related costs.

Schedule TGT–02 Townsend-Garrison Transmission Rate

Section I. Availability

This schedule supersedes Schedule TGT–96 and is available to Companies that are parties to the Montana Intertie Agreement (Contract No. DE–MS79–81BP90210, as amended) which provides for firm transmission over TBL's section (Garrison to Townsend) of the Montana Intertie. Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The monthly charge shall be one-twelfth of the sum of the annual charges listed below, as applicable and as specified in the agreements for firm transmission. The Townsend-Garrison 500-kV lines and associated terminal, line compensation, and communication facilities are a separately identified portion of the Federal Transmission System. Annual revenues plus credits for government use should equal annual costs of the facilities, but in any given year there may be either a surplus or a deficit. Such surpluses or deficits for any year shall be accounted for in the computation of annual costs for succeeding years. Revenue requirements for firm transmission use will be decreased by any revenues received from nonfirm use and credits for all government use. The general methodology for determining the firm rate is to divide the revenue requirement by the total firm capacity requirements. Therefore, the higher the total capacity requirements, the lower will be the unit rate.

If the government provides firm transmission service in its section of the Montana [Eastern] Intertie in exchange for firm transmission service in a customer's section of the Montana Intertie, the payment by the government for such transmission services provided by such customer will be made in the form of a credit in the calculation of the Intertie Charge for such customer. During an estimated 1-to 3-year period following the commercial operation of the third generating unit at the Colstrip Thermal Generating Plant at Colstrip, Montana, the capability of the Federal Transmission System west of Garrison Substation may be different from the long-term situation. It may not be possible to complete the extension of the 500-kV portion of the Federal Transmission System to Garrison by such commercial operation date. In such event, the 500/230 kV transformer will be an essential extension of the Townsend-Garrison Intertie facilities, and the annual costs of such transformer will be included in the calculation of the Intertie Charge.

However, starting 1 month after extension to Garrison of the 500-kV portion of the Federal Transmission System, the annual costs of such

transformer will no longer be included in the calculation of the Intertie Charge.

A. Nonfirm Transmission Charge

This charge will be filed as a separate rate schedule, the Eastern Intertie (IE) rate, and revenues received thereunder will reduce the amount of revenue to be collected under the Intertie Charge below.

B. Intertie Charge for Firm Transmission Service

Intertie Charge = [((TAC/12)–NFR) × (CR–EC)] TCR

Section III. Definitions

A. *TAC* = Total Annual Costs of facilities associated with the Townsend-Garrison 500-kV Transmission line including terminals, and prior to extension of the 500-kV portion of the Federal Transmission System to Garrison, the 500/230 kV transformer at Garrison. Such annual costs are the total of: (1) Interest and amortization of associated Federal investment and the appropriate allocation of general plant costs; (2) operation and maintenance costs; (3) allowance for BPA's general administrative costs which are appropriately allocable to such facilities, and (4) payments made pursuant to section 7(m) of Public Law 96–501 with respect to these facilities. Total Annual Costs shall be adjusted to reflect reductions to unpaid total costs as a result of any amounts received, under agreements for firm transmission service over the Montana Intertie, by the government on account of any reduction in Transmission Demand, termination or partial termination of any such agreement or otherwise to compensate BPA for the unamortized investment, annual cost, removal, salvage, or other cost related to such facilities.

B. *NFR* = Nonfirm Revenues, which are equal to: (1) The product of the Nonfirm Transmission Charge described in II(A) above, and the total nonfirm energy transmitted over the Townsend-Garrison line segment under such charge for such month; plus (2) the product of the Nonfirm Transmission Charge and the total nonfirm energy transmitted in either direction by the Government over the Townsend-Garrison line segment for such month.

C. *CR* = Capacity Requirement of a customer on the Townsend-Garrison 500-kV transmission facilities as specified in its firm transmission agreement.

D. *TCR* = Total Capacity Requirement on the Townsend-Garrison 500-kV transmission facilities as calculated by adding (1) the sum of all Capacity Requirements (CR) specified in transmission agreements described in section I; and (2) the Government's firm capacity requirement. The Government's firm capacity requirement shall be no less than the total of the amounts, if any, specified in firm transmission agreements for use of the Montana Intertie.

E. *EC* = Exchange Credit for each customer which is the product of: (1) the ratio of investment in the Townsend-Broadview 500-kV transmission line to the investment in the Townsend-Garrison 500-kV transmission line; and (2) the capacity which the Government obtains in the Townsend-Broadview 500-kV transmission line through exchange with such customer. If no exchange is in effect with a customer, the value of EC for such customer shall be zero.

Schedule IE–02 Eastern Intertie Rate

Section I. Availability

This schedule supersedes IE–96 and is available to Companies that are parties to the Montana Intertie Agreement (Contract No. DE–MS79–81BP90210, as amended), for nonfirm transmission service on the portion of Eastern Intertie capacity above TBL's firm transmission rights. Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Section II. Rate

The charge shall not exceed 1.38 mills per kilowatthour.

Section III. Billing Factors

The Billing Factor shall be the monthly sum of the scheduled kilowatthours, unless otherwise specified in the agreement.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Ancillary Services

Ancillary services that may be required to support IE transmission service are available under the ACS rate schedule.

B. Failure To Comply Penalty

Customers taking service under this rate schedule are subject to the Failure to Comply Penalty specified in section II.B of the GRSPs.

Schedule ACS–02 Ancillary Services and Control Area Services Rate

Section I. Availability

This schedule supersedes Schedule APS–96. It is available to all Transmission Customers taking service under the Open Access Transmission Tariff and other contractual arrangements. This schedule is available also for transmission service of a similar nature ordered by the Federal Energy Regulatory Commission (FERC) pursuant to sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k). Service under this schedule is subject to TBL's General Rate Schedule Provisions (GRSPs).

Ancillary Services are needed with transmission service to maintain reliability within and among the Control Areas affected by the transmission service. The Transmission Provider is required to provide, and the Transmission Customer is required to purchase, the following Ancillary Services: (a) Scheduling, System Control and Dispatch, and (b) Reactive Supply and Voltage Control from Generation Sources.

The Transmission Provider is required to offer to provide the following Ancillary Services to Transmission Customers serving load or integrating generation within the Transmission Provider's Control Area: (a) Regulation and Frequency Response, (b) Energy Imbalance, (c) Operating Reserve—Spinning, and (d) Operating Reserve—Supplemental. The Transmission Customer serving load or integrating generation within the Transmission Provider's Control Area is required to acquire these Ancillary Services, whether from the Transmission Provider, from a third party, or by self-supply. The Transmission Customer may not decline the Transmission Provider's offer of Ancillary Services unless it demonstrates that it has acquired the Ancillary Services from another source in a manner that is technically achievable, which conforms to the criteria and standards established by the Transmission Provider for the provision of the specific Ancillary Services including the relevant North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WSCC) and Northwest Power Pool (NWPP), criteria. Any such self-supply or third-party supply arrangements shall be specified in the Transmission Customer's Service Agreement.

Ancillary Service rates available under this rate schedule are:

1. Scheduling, System Control, and Dispatch Service.
2. Reactive Supply and Voltage Control from Generation Sources Service.
3. Regulation and Frequency Response Service.
4. Energy Imbalance Service.
5. Operating Reserve—Spinning Reserve Service.
6. Operating Reserve—Supplemental Reserve Service.

Control Area Services are available to meet the Reliability Obligations of a party with resources or loads in the BPA Control Area. A party that is not satisfying all of its Reliability Obligations through the purchase or self-provision of Ancillary Services must purchase Control Area Services to meet its Reliability Obligations. Control Area Services are also available to parties with resources or loads in the BPA Control Area that have Reliability Obligations, but do not have a transmission agreement with BPA. Reliability Obligations for resources or loads in the BPA Control Area shall be determined consistent with the applicable NERC, WSCC, and NWPP criteria.

Control Area Service rates available under this rate schedule are:

1. Load Regulation and Frequency Response Service.
2. Generation Imbalance Service.
3. Operating Reserve—Spinning Reserve Service.
4. Operating Reserve—Supplemental Reserve Service.

Section II. Ancillary Service Rates

A. Scheduling, System Control and Dispatch Service

The rates below apply to Transmission Customers taking Scheduling, System Control and Dispatch Service from TBL. These rates apply to both firm and non-firm transmission transactions. Transmission on the Network, on the Southern Intertie, and on the Montana Intertie are each charged separately for Scheduling, System Control and Dispatch Service.

1. Rate:

a. Long-Term Firm Service.

The rate shall not exceed $0.170 per kilowatt per month.

b. Short Term Firm and Nonfirm Service.

The rates for Short-Term Firm and Nonfirm Service shall not exceed:

(1) Daily: For each reservation:

Days 1 through 5 $0.008 per kilowatt per day.

Day 6 and beyond $0.005 per kilowatt per day.

(2) Hourly: 0.49 mills per kilowatthour.

2. Billing Factors: For Transmission Customers taking Point-to-Point Transmission Service (PTP, IS, and IM rates), Network Contract Demand Transmission Service (NCD rate), and Integration of Resources service (IR rate), the Billing Factor is Transmission Demand. Transmission Demands on the Network, on the Southern Intertie, and on the Montana Intertie are each charged separately.

For Transmission Customers taking Network Integration Transmission Service, the Billing Factor shall equal the NT Base Charge Billing Factor determined pursuant to section III.A of the Network Integration Rate Schedule (NT–02).

B. Reactive Supply and Voltage Control From Generation Sources Service

The rates below apply to Transmission Customers taking Reactive Supply and Voltage Control from Generation Sources Service from TBL. These rates apply to both firm and non-firm transmission transactions. Transmission on the Network, on the Southern Intertie, and on the Montana Intertie are each charged separately for Reactive Supply and Voltage Control from Generation Sources Service.

1. Rate: a. Long Term Firm Service.

The rate shall not exceed $0.080 per kilowatt per month.

b. Short Term Firm and Nonfirm Service.

The rates for Short-Term Firm and Nonfirm Service shall not exceed:

(1) Daily: For each reservation:

Days 1 through 5: $0.004 per kilowatt per day.

Day 6 and beyond: $0.003 per kilowatt per day.

(2) Hourly: 0.23 mills per kilowatt per hour.

2. Billing Factors: a. For Transmission Customers taking Point-to-Point Transmission Service (PTP, IS, and IM rates), Network Contract Demand Transmission Service (NCD rate), and Integration of Resources service (IR rate), the Billing Factor is Transmission Demand. Transmission Demands on the Network, on the Southern Intertie, and on the Montana Intertie are each charged separately.

For Transmission Customers taking Network Integration Transmission Service, the Billing Factor shall equal the NT Base Charge Billing Factor determined pursuant to section III.A of the Network Integration Rate Schedule (NT–02).

b. The Billing Factor in section 2.a. above may be reduced as specified in the Transmission Customer's Service Agreement to the extent the Transmission Customer demonstrates to TBL's satisfaction that it can self-provide Reactive Supply and Voltage Control from Generation Sources Service.

C. Regulation and Frequency Response Service

The rate below for Regulation and Frequency Response Service applies to Transmission Customers serving loads in the BPA Control Area. Regulation and Frequency Response Service provides the generation capability to follow the moment-to-moment variations of loads in the BPA Control Area and maintain the power system frequency at 60 Hz in conformance with NERC and WSCC reliability standards.

1. Rate: The rate shall not exceed 0.30 mills per kilowatthour.

2. Billing Factor: The Billing Factor is the customer's total load in the BPA Control Area, in kilowatthours.

D. Energy Imbalance Service

The rates below apply to Transmission Customers taking Energy Imbalance Service from TBL. Energy Imbalance Service is taken when there is a difference between scheduled and actual energy delivered to a load in the BPA Control Area during a schedule hour. The rates for this service differ depending upon whether the Energy Imbalance occurs within the Energy Imbalance Deviation Band or outside the Energy Imbalance Deviation Band. The Energy Imbalance Deviation Band is + or − 1.5% of the schedule amount of energy or 2 MW, whichever is larger (absolute value).

1. Rate: a. For Energy Imbalance Within the Energy Imbalance Deviation Band.

TBL will maintain a deviation account showing the net Energy Imbalance (the sum of positive and negative deviations from schedule for each hour). Return energy must be scheduled to bring the deviation account balance to zero each month. TBL will designate the hours and amounts of return energy for each hour that will be scheduled. The customer shall make the arrangements and submit the schedule for the balancing transaction.

b. For Energy Imbalance Outside the Energy Imbalance Deviation Band.

(1) When energy taken in a schedule hour by the Transmission Customer exceeds the energy scheduled, the charge will be the greater of (i) BPA's incremental cost plus 10%, or (ii) 100 mills per kilowatthour.

BPA's incremental cost will be based on an hourly energy index in the PNW, if one exists. If one does not exist, an alternative index will be used based on: the Dow-Jones Mid-Columbia, California PX, or NYMEX Mid-Columbia index prices. On September 30 of each year, TBL will post on the OASIS the index to be used for the ensuing fiscal year.

(2) When energy taken by the Transmission Customer is less than the scheduled amount, a credit equal to 90% of BPA's decremental cost may be given for deviations.

2. Billing Factors: For each hour an Energy Imbalance occurs, the Billing Factor for the rates specified in section 1.b., Energy Imbalance Outside the Energy Imbalance Deviation Band, is:

a. the amount of energy that the Transmission Customer takes, in kilowatthours, in excess of the Energy Imbalance Deviation Band, or

b. the Transmission Customer's qualifying energy difference, in kilowatthours, between the energy taken and the lower limit of the Energy Imbalance Deviation Band (a negative balance).

No credit will be given for an energy difference if: (a) The imbalance was an Intentional Deviation (as determined by TBL); or (b) the Federal System was in a Spill Condition at any time during the month.

E. Operating Reserve—Spinning Reserve Service

The rates below apply to Transmission Customers taking Operating Reserve—Spinning Reserve Service from TBL. Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. For a Transmission Customer's load served by generation located in the BPA Control Area, the Transmission Customer's Spinning Reserve Requirement shall be determined consistent with applicable NERC, WSCC and NWPP standards.

1. Rate:

a. The rate shall not exceed 8.27 mills per kilowatthour of Spinning Reserve Requirement.

b. For energy delivered, the Transmission Customer may:

(i) Purchase the energy at the hourly market index price applicable at the time of occurrence, or

(ii) Return the energy at the times specified by TBL.

2. Billing Factors:

a. The Billing Factor for Spinning Reserve Service is determined in accordance with applicable WSCC and NWPP standards. Application of current standards establish a minimum Spinning Reserve Requirement equal to the sum of:

(i) Two and a half percent (2½%) of the hydroelectric generation dedicated to the Transmission Customer's firm load responsibility; and

(ii) Three and a half percent (3½%) of non-hydroelectric generation dedicated the Transmission Customer's firm load responsibility.

b. The Billing Factor for energy delivered when Spinning Reserve Service is called upon is the energy delivered, in kilowatthours.

F. Operating Reserve—Supplemental Reserve Service

The rates below apply to Transmission Customers taking Operating Reserve—Supplemental Reserve Service from TBL. Supplemental Reserve Service is available within a short period of time to serve load in the event of a system contingency. For a Transmission Customer's load served by generation located in the BPA Control Area, the Transmission Customer's Supplemental Reserve Requirement shall be determined consistent with applicable NERC, WSCC and NWPP standards.

1. Rate:

a. The rate shall not exceed 8.27 mills per kilowatthour of Supplemental Reserve Requirement.

b. For energy delivered, the Transmission Customer may:

(i) Purchase the energy at the hourly market index price applicable at the time of occurrence, or

(ii) Return the energy at the times specified by TBL.

2. Billing Factors:

a. The Billing Factor for Supplemental Reserve Service is determined in accordance with applicable WSCC and NWPP standards. Application of current standards establish a minimum Supplemental Reserve Requirement equal to the sum of:

(i) Two and one half percent (2½%) of the hydroelectric generation dedicated to the Transmission Customer's firm load responsibility, plus

(ii) Three and one half percent (3½%) of non-hydroelectric generation dedicated the Transmission Customer's firm load responsibility, plus

(i) Any power scheduled into the BPA Control Area that can be interrupted on ten (10) minutes' notice.

b. The Billing Factor for energy delivered when Supplemental Reserve Service is called upon is the energy delivered, in kilowatthours.

Section III. Control Area Service Rates

A. Regulation and Frequency Response Service

The rate below applies to all loads in the BPA Control Area that are receiving Regulation and Frequency Response Service from the BPA Control Area, and such Regulation and Frequency Response Service is not provided for under a TBL transmission agreement. Regulation and Frequency Response Service provides the generation capability to follow the moment-to-moment variations of loads in the BPA Control Area and maintain the power system frequency at 60 Hz in conformance with NERC and WSCC reliability standards.

1. Rate: The rate shall not exceed 0.30 mills per kilowatthour.

2. Billing Factor: The Billing Factor is the customer's total load in the BPA Control Area, in kilowatthours.

B. Generation Imbalance Service

The rates below apply to all generation resources in the BPA Control Area. Generation Imbalance Service is taken when there is a difference between scheduled and actual energy delivered from generation resources in the BPA Control Area during a schedule hour. The rates for this service differ depending upon whether the Generation Imbalance occurs within the Generation Imbalance Deviation Band or outside the Generation Imbalance Deviation Band. The Generation Imbalance Deviation Band is + or −1.5% of the scheduled amount of energy, or 2 MW, whichever is larger (absolute value).

1. Rates:

a. For Imbalance Within the Generation Imbalance Deviation Band: TBL will maintain a deviation account showing the net Generation Imbalance (the sum of positive and negative deviations from schedule for each hour). Return energy must be scheduled to bring the deviation account balance to zero each month. TBL will designate the hours and amounts of return energy for each hour that will be scheduled. The customer shall make the arrangements and submit the schedule for the balancing transaction.

b. For Imbalance Outside the Generation Imbalance Deviation Band: i. When energy delivered in a schedule hour by the generation resource is less than the energy scheduled, the charge will be the greater of (i) BPA's incremental cost plus 10%, or (ii) 100 mills per kilowatthour.

BPA's incremental cost will be based on an hourly energy index in the PNW, if one exists. If one does not exist, an alternative index will be based on: the Dow-Jones Mid-Columbia, California PX, or NYMEX Mid-Columbia index prices. On September 30 each year, TBL will post on the OASIS the index to be used for the ensuing fiscal year.

ii. When energy delivered by the generation resource is greater than the scheduled amount, a credit equal to 90% of BPA's decremental cost may be given for deviations.

2. Billing Factor: For each hour a Generation Imbalance occurs, the Billing Factor for the rates specified in section 1.b., Imbalance Outside the Generation Imbalance Deviation Band, is:

a. the amount of energy that the customer delivers, in kilowatthours, less than the lower limit of the Generation Imbalance Deviation Band, or

b. the amount of energy the customer delivers, in kilowatthours, in excess of the upper limit of the Generation Imbalance Deviation Band.

No credit will be given for an energy difference if: (a) The imbalance was an Intentional Deviation (as determined by TBL); or (b) the Federal System was in a Spill Condition at any time during the month.

C. Operating Reserve—Spinning Reserve Service

Operating Reserve—Spinning Reserve Service must be purchased by a party with generation in the BPA Control Area that is receiving this service from TBL, and such Spinning Reserve Service is not provided for under a TBL transmission agreement. Service is being received if there are no other qualifying resources providing this required reserve service in conformance with NERC, WSCC and NWPP standards.

1. Rate:

a. The rate shall not exceed 8.27 mills per kilowatthour of Spinning Reserve Requirement

b. For energy delivered, the customer may:

(i) Purchase the energy at the hourly market index price applicable at the time of occurrence, or

(ii) Return the energy at the times specified by BPA.

2. Billing Factors:

a. The Billing Factor for Spinning Reserve Service is determined in accordance with applicable WSCC and NWPP standards. Application of current standards establish a minimum Spinning Reserve Requirement equal to the sum of:

(i) Two and one half percent (2½%) of the hydroelectric generation dedicated to the customer's firm load responsibility, plus

(ii) Three and one half percent (3½%) of non-hydroelectric generation dedicated the customer's firm load responsibility.

b. The Billing Factor for energy delivered when Spinning Reserve Service is called upon is the energy delivered, in kilowatthours.

D. Operating Reserve—Supplemental Reserve Service

Operating Reserve—Supplemental Reserve Service must be purchased by a party with generation in the BPA Control Area that is receiving this service from TBL, and such Supplemental Reserve Service is not provided for under a TBL transmission agreement. Service is being received if there are no other qualifying resources providing this required reserve service in conformance with NERC, WSCC and NWPP standards.

1. Rates:

a. The rate shall not exceed 8.27 mills per kilowatthour of Supplemental Reserve Requirement.

b. For energy delivered, the customer may:

(i) Purchase the energy at the hourly market index price applicable at the time of occurrence, or

(ii) Return the energy at the times specified by BPA.

2. Billing Factors:

a. The Billing Factor for Supplemental Reserve Service is determined in accordance with applicable WSCC and NWPP guidelines. Application of current guidelines establish a minimum Supplemental Reserve Requirement equal to the sum of:

(i) Two and one half percent (2½%) of the hydroelectric generation dedicated to the customer's firm load Responsibility, plus

(ii) Three and one half percent (3½%) of non-hydroelectric generation dedicated the customer's firm load responsibility, plus

(iii) Any power scheduled into the BPA Control Area that can be interrupted on ten (10) minutes' notice.

b. The Billing Factor for energy delivered when Supplemental Reserve Service is called upon is the energy delivered, in kilowatthours.

Section IV. Adjustments, Charges, and Other Rate Provisions

A. Rate Adjustment Due to FERC Order Under FPA § 212

Customers taking service under this rate schedule are subject to the Rate Adjustment Due to FERC Order under FPA § 212 specified in section II.D of the GRSPs.

General Rate Schedule Provisions for Transmission and Ancillary Service Rates

Section I. Generally Applicable Provisions

A. Approval of Rates

These 2002 rate schedules and General Rate Schedule Provisions for Transmission and Ancillary Service Rates (GRSPs) shall become effective upon interim approval or upon final confirmation and approval by the Federal Energy Regulatory Commission (FERC). Bonneville Power Administration (BPA) has requested that FERC make these rates and GRSPs effective on October 1, 2001. All rate schedules shall remain in effect until they are replaced or expire on their own terms.

B. General Provisions

These 2002 rate schedules and the GRSPs associated with these schedules supersede BPA's 1996 rate schedules (which became effective October 1, 1996) to the extent stated in the Availability section of each rate schedule. These schedules and GRSPs shall be applicable to all TBL contracts, including contracts executed both prior to, and subsequent to, enactment of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). All sales under these rate schedules are subject to the following acts as amended: the Bonneville Project Act (Pub. L. 75–329), the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act (Pub. L. 93–454), the Northwest Power Act (Pub. L. 96–501), and the Energy Policy Act of 1992 (Pub. L. 102–486).

These 2002 rate schedules do not supersede any previously established rate schedule that is required, by agreement, to remain in effect.

If a provision in an executed agreement is in conflict with a provision contained herein, the former shall prevail.

C. Notices

For the purpose of determining elapsed time from receipt of a notice applicable to rate schedule and GRSP administration, a notice shall be deemed to have been received at 0000 hours on the first calendar day following actual receipt of the notice.

D. Billing and Payment

1. Billing: BPA's Transmission Business Line (TBL) shall render monthly bills to the Transmission Customer for transmission services. Failure to receive a bill shall not release the Transmission Customer from liability for payment. If requested by the Transmission Customer, the TBL shall electronically transmit the Transmission Customer's monthly bill to the Transmission Customer on the issue date of the bill, provided the parties have compatible electronic equipment. The TBL may elect to electronically transmit only that portion of the bill showing the amount owed. If the entire bill is not provided by electronic means, the TBL shall also send the Transmission Customer a complete copy of its monthly bill by mail.

(a) Due Date:

Payment shall be due by close of business on the twentieth (20th) day

after the issue date of the bill (Due Date). If the 20th day is a Saturday, Sunday, or Federal holiday, the Due Date shall be the next Business Day.

(b) Payments:

(1) The Transmission Customer must pay by electronic funds transfer using procedures established by the TBL. However, exceptions to the method of payment may be made on a case by case basis according to the criteria listed below. All payment amounts are due and payable on the Due Date.

(2) The Transmission Customer may pay its bill by an alternate method, provided the following criteria can be met:

(A) The Transmission Customer requests to pay by an alternate method at least thirty (30) days in advance of the billing date; and

(B) The Transmission Customer ensures that the TBL receives full payment by the above-stated Due Date; and

(C) The Transmission Customer has not previously incurred late payment charges while paying its bills by an alternate method; and

(D) The TBL approves the alternate payment method requested by the Transmission Customer.

(c) Payments by Mail:

If the Transmission Customer requests to pay its bill by mail as an alternate payment method, meets the requirements of section D.1(b)(2) above, and the TBL approves such request, payments shall be mailed to: Bonneville Power Administration, PO Box 6040, Portland, OR 97228–6040.

The TBL must receive payment for such bills by the Due Date.

(d) Pre-authorized Debit:

The Transmission Customer may elect, with the TBL's concurrence, to pay through the use of a pre-authorized debit which is an electronic payment option authorizing the TBL to automatically withdraw a Transmission Customer's payments from its bank account.

(e) Computation of Bills:

Bills for products and services may be rounded to whole dollar amounts, by eliminating any amount which is less than 50 cents, and increasing any amount from 50 cents through 99 cents to the next higher dollar.

(f) Estimated Bills:

At its option, the TBL may elect to render an estimated bill for a month to be followed at a subsequent billing date by a final bill for that month. Such estimated bill shall have the validity of, and is subject to, the same payment provisions as a final bill.

(g) Late Payment:

Bills not paid in full with payment received by the TBL before close of business on the Due Date shall be subject to a late payment charge of one-twentieth percent (0.05 percent) applied each day to the unpaid balance. This late payment charge shall be assessed on a daily basis until such time as the TBL receives the unpaid amount.

(h) Revised Bills:

As necessary, the TBL may render revised bills. The date of a revised bill shall be its issue date.

(1) If the amount of the revised bill is more than the amount of the previous bill, the previous bill remains due on its Due Date, and the additional amount is due on the Due Date of the revised bill.

(2) If the amount of the revised bill is less than the amount of the previous bill, the obligation to pay the previous bill is satisfied by payment of the revised bill on the Due Date of the previous bill.

(3) If the revised bill changes the party to whom money is due prior to payment of the previous bill, the previous bill is canceled and the amount owed the other party is due on the Due Date of the revised bill.

(4) If payment of the previous bill results in an overpayment, a refund is due on the later of (a) the Due Date of the revised bill, or (b) twenty (20) days from the receipt of the payment for the original bill. Should refund not be made by the TBL by the above date, late payment interest shall accrue and be paid by the TBL pursuant to the Prompt Payment Act.

(i) Disputed Bills:

(1) In the event of a billing dispute between the TBL and the Transmission Customer, the TBL will continue to provide service under the Service Agreement as long as the Transmission Customer: (1) Continues to make all payments not in dispute; and (2) pays into an escrow account the portion of the invoice in dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the TBL may provide notice of its intent to suspend service to the Transmission Customer in sixty (60) days.

(2) If it is determined that the Transmission Customer is entitled to a refund of any portion of the disputed amount, then TBL will make such refund with interest computed from the date of receipt of the disputed payment to the date the refund is made. The TBL shall make such refund with simple interest. The daily interest rate used to determine the interest is calculated by dividing the Prompt Payment Act Interest by 365. The applicable Prompt Payment Act Interest Rate shall be the rate that is in effect on the date in which the TBL receives payment. Should a third party escrow account service be necessary, the escrow fees will be split evenly between the TBL and the Transmission Customer and interest on the disputed funds will be the interest paid by the institution providing the escrow service.

2. Customer Default: In the event the Transmission Customer fails, for any reason other than a billing dispute as described above, to make payment to the TBL on or before the Due Date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the TBL notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Upon the occurrence of default the TBL may notify the Transmission Customer that it plans to terminate service in sixty (60) days. The Transmission Customer may use dispute resolution procedures in its agreement to contest such termination.

3. Records: The TBL and the Transmission Customer shall keep such records as may be needed to afford a clear history of all transactions. The originals of all such records shall be retained for a minimum of two (2) years plus the current year (or such longer period as may be required by any regulatory commission having jurisdiction), and copies shall be delivered to the other party on request.

Section II. Adjustments, Charges, and Special Rate Provisions

A. Delivery Charge

Transmission Customers shall pay a Delivery Charge for service over DSI Delivery facilities, Utility Delivery facilities.

1. Rates:

a. DSI Delivery:

i. Use-of-Facilities (UFT–02) Rate, section III.B.1 or III.B.2, multiplied by

ii. 1.197.

b. Utility Delivery:

$1.299 per kilowatt per month.

2. Billing Factors:

a. Utility Delivery:

The monthly Billing Factor for the Utility Delivery rate in section 1.b. shall be the total load on the hour of the Monthly Transmission Peak Load at the Points of Delivery specified as Utility Delivery facilities.

b. Metering Adjustment:

At those Points of Delivery that do not have meters capable of determining the demand on the hour of the Monthly Transmission Peak Load, the Billing Factor under section 2.a. shall equal the highest hourly demand that occurs during the billing month at the Point of Delivery multiplied by 0.66.

c. Utility Delivery Charge Billing Factor Adjustment:

The monthly Utility Delivery Billing Factor in section 2.a shall be adjusted for customers who pay for Utility Delivery facilities under the Use-of-Facilities (UFT) rate schedule. The kilowatt credit shall equal the transmission service over the Delivery facilities used to calculate the UFT charge. This adjustment shall not reduce the Utility Delivery Charge billing factor below zero.

B. Failure To Comply Penalty

If a party fails to comply with the TBL's curtailment, redispatch, or load shedding orders, the party will be assessed the Failure to Comply Penalty charge.

Parties who are unable to comply with a curtailment, load shedding, or redispatch order due to a force majeure on their system will not be subject to this penalty provided that they immediately notify the TBL of the situation upon occurrence of the force majeure.

1. Rate:

a. 100 mills per kilowatthour;

b. any costs incurred by the TBL in order to manage the reliability of the FCRTS due to the failure to comply;

c. an hourly market price index plus 10%.

The hourly market price index will be the larger of the California ISO Ex-Post Supplemental Energy Price or the Dow Jones Mid-Columbia Firm Index Price for the hour(s) when the failure to comply occurred.

2. Billing Factor: The Billing Factor shall be the kilowatthours that were not curtailed or redispatched in any of the following situations:

a. Failure to raise generation if chosen as an incremental bidder for redispatch.

b. Failure to lower generation if chosen as a decremental bidder for redispatch.

c. Failure to shed load when required as specified by the Load Shedding provisions of the Tariff or any other applicable agreement between the parties. This includes failure to respond within the time period specified by NERC, WSCC, or NWPP criteria.

d. Failure of a generator in the BPA Control Area or which directly interconnects to the FCRTS to change generation levels when directed to do so by the TBL. This includes failure to respond within the time period specified by NERC, WSCC, or NWPP criteria.

e. Failure to curtail a schedule in the time period specified by NERC, WSCC, or NWPP criteria when directed to do so by the TBL.

C. Power Factor Penalty Charge

1. Description of the Power Factor Penalty Charge: Any party that is interconnected with the Federal Columbia River Transmission System (FCRTS) shall be charged for its reactive power requirements as described in this section, unless otherwise specified in an agreement existing prior to October 1, 1995. Each point of interconnection or point of delivery shall be monitored and billed independently for determining the party's total reactive power requirements and all associated billing factors, including the Reactive Deadband. If a party is taking transmission service under multiple rate schedules, the party will pay for its reactive power requirements as if it is taking delivery under only one rate schedule.

2. Conditions for Application of the Power Factor Penalty Charge

a. Measured Data:

The Power Factor Penalty Charge will apply to only the party's reactive power requirements for which measured data exist.

b. Party's Generating Resource Connected to the FCRTS:

Irrespective of the direction of real power flow, the Power Factor Penalty Charge shall apply to points of interconnection where a party's generating resource is directly connected to the FCRTS, unless the party's generating resource is either:

i. a synchronous generator equipped with a voltage regulator, or

ii. equipped with reactive power control devices that comply with TBL's applicable interconnection standards.

Such resource must actively support the voltage schedule at the point of integration at all times when the resource is in service, as determined by BPA Transmission Business Line, for this exemption to apply. Generating resources that do not satisfy the above criteria shall not be exempt from the Power Factor Penalty Charge.

c. Bi-directional Real Power Flow:

For points other than those specified in section 2(b), the Power Factor Penalty Charge will not be applied, and no new Ratchet Demand for reactive power will be established, at a specific point if the metered real power (on an hourly integrated basis) flows from the party's system to the FCRTS at that point for as little as one hour during the billing period. However, the party will still pay any previously incurred demand ratchet charges. The direction of the real power flow will be determined based on metered quantities, not on scheduled quantities.

d. Service by Transfer:

Points of delivery that are served by transfer over another utility's transmission system will not be subject to the Power Factor Penalty Charge unless there are significant TBL Network facilities between the party's points of delivery and the transferor's system.

e. Specific Points Exempt from the Power Factor Penalty Charge:

The Power Factor Penalty Charge will not apply to the following points: Nevada-Oregon Border (NOB), Big Eddy 500 kV, Big Eddy 230 kV, John Day 500 kV, Malin 500 kV, Captain Jack 500 kV, Garrison 500 kV, Townsend 500 kV.

f. Special Circumstances:

The party may submit requests to BPA Transmission Business Line for consideration of unique circumstances. BPA Transmission Business Line will evaluate the request and may make arrangements with the party to address the special circumstances.

3. Rate: TBL will bill the party for reactive power at each point each month as follows:

Reactive Demand:

$0.28 per kVAr of lagging reactive demand in excess of the Reactive Deadband during HLH in all months of the year.

$0.24 per kVAr of leading reactive demand in excess of the Reactive Deadband during LLH in all months of the year.

No charge for leading reactive demand during HLH.

No charge for lagging reactive demand during LLH.

4. Billing Factors:

a. Reactive Deadband:

The Reactive Deadband (measured in kVAr) is used to determine the Reactive Billing Demand and Ratchet Demand for the Power Factor Penalty Charge.

The Reactive Deadband for each billing period is the maximum hourly integrated metered real power demand (measured in kW) at each point during the billing period multiplied by 25 percent.

The Reactive Deadband for either HLH or LLH:

i. is computed once per billing period (the same quantity is used for both HLH and LLH),

ii. does not vary during the billing period, and

iii. is based on the maximum hourly integrated metered real power demand during that billing period.

b. Reactive Billing Demand:

The party's Reactive Billing Demand shall be calculated independently for lagging reactive power and leading reactive power at each point for which a Power Factor Penalty Charge is assessed.

All reactive demands shall be established in the particular HLH or LLH at each point during which the party's maximum applicable reactive demand is placed on TBL, regardless of the time of the real power peak at each point.

All reactive demand at each point shall be established on a non-coincidental basis, regardless of whether the party is billed for real power or transmission at such point on a coincidental or non-coincidental basis, unless otherwise specified in the agreement between TBL and the party, or coincidental billing is, in TBL's sole determination, more practical for TBL.

There will be separate reactive demands for lagging (HLH) and leading (LLH) demands. The party's Reactive Billing Demand for each point for the billing month shall be the larger of:

i. the largest measured reactive demand in excess of the Reactive Deadband during the billing period, or

ii. the Ratchet Demand for reactive power.

The Ratchet Demand for reactive power is equal to 100 percent of the largest measured reactive demand in excess of the Reactive Deadband during the preceding 11-month period. Each point shall have a separate Ratchet Demand for lagging (HLH) and leading (LLH) reactive demand.

5. Adjustments for Reactive Losses: Measured data shall be adjusted for reactive losses, if applicable, before determination of the Reactive Billing Demand.

D. Rate Adjustment Due to FERC Order Under FPA § 212

If, after review by FERC, the NT, NCD, PTP, IS, IM or ACS rate schedule, as initially submitted to FERC, is modified to satisfy the standards of section 212(i)(1)(B)(ii) of the Federal Power Act (16 U.S.C. § 824k(i)(1)(B)(ii)) for FERC-ordered transmission service, then such modifications shall automatically apply to the rate schedule for non-section 212(i)(1)(B)(ii) transmission service. The modifications for non-section 212(i)(1)(B)(ii) transmission service, as described above, shall be effective, however, only prospectively from the date of the final FERC order granting final approval of the rate schedule for FERC-ordered transmission service pursuant to section 212(i)(1)(B)(ii). No refunds shall be made or additional costs charged as a consequence of this prospective modification for any non-section 212(i)(1)(B)(ii) transmission service that occurred under the rate schedule prior to the effective date of such prospective modification.

E. Redispatch Adjustment for Accepted Bids

When the TBL implements redispatch procedures pursuant to the Open Access Transmission Tariff, the party submitting a bid that is accepted for redispatch shall receive a credit or charge for such accepted bid. The amount of the credit or charge shall be based on the incremental or decremental bid, respectively, submitted by the party and the amount of power redispatched. The credit or charge shall appear on the party's monthly transmission bill. If a credit is due to a party not taking other transmission services, TBL will pay the party for such redispatch within 30 days following the end of the month that the redispatch occurred.

F. Redispatch Charge

For each hour that TBL implements redispatch procedures pursuant to the Open Access Transmission Tariff (Tariff), all NT and NCD Transmission Customers using the congested path during the hour(s) that redispatch is implemented shall be subject to the Redispatch Charge.

1. Rate: For each hour and each congested transmission path that TBL implements redispatch procedures pursuant to the Open Access Transmission Tariff, the rate shall be:

$$\frac{\text{Redispatch Cost}}{\text{Total NT / NCD Transmission Usage of Congested Path}}$$

where:

"Redispatch Cost" is the hourly net cost in dollars incurred by TBL to implement redispatch procedures.

"Total NT/NCD Customer Usage of Congested Path" is the total NT and NCD Transmission Customers' hourly use in megawatts of the congested transmission path.

2. Billing Factor: For each hour and constrained transmission path that redispatch procedures are implemented, the Billing Factor shall be the NT or NCD Transmission Customer's use in megawatts of the congested path.

G. Reservation Fee

The Reservation Fee shall be charged to PTP and NCD customers electing to postpone the commencement of service pursuant to sections 29.5 or 38.7 of the Open Access Transmission Tariff.

The Reservation Fee shall be a nonrefundable fee equal to one month's charge for the requested firm transmission service for each year or fraction of a year for which the customer chooses to postpone service. The Reservation Fee for the first year shall be paid in a lump sum within 30 days of the date the agreement is executed, and, for subsequent years, within 30 days of the anniversary date of execution of the agreement. The Reservation Fee shall be assessed annually until transmission service begins or the reservation period ends, whichever occurs first. The Reservation Fee shall be specified in the executed agreement for transmission service.

H. Transmission and Ancillary Services Rate Discounts

TBL may offer discounted rates for transmission and ancillary services available under the Open Access Transmission Tariff and to the extent provided for in the specific rate schedule. Any offer of a discount for transmission services or for ancillary services in support of basic transmission services must be announced to all potential customers solely by posting on the OASIS. Any customer-initiated requests for such discounts must occur solely by posting on the OASIS. Once TBL and a Transmission Customer agree to a discounted transaction, the details shall be immediately posted on the OASIS. If TBL offers a transmission service discount on a particular path, it shall offer the same discount for the same time period on all unconstrained paths that go to the same point(s) of delivery on TBL's system. If TBL offers an ancillary service discount, it shall offer the same discount for the same time period to all eligible customers on TBL's system.

Section III. Definitions

1. Ancillary Services

Ancillary Services are those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of TBL's Transmission System in accordance with Good Utility Practice. Ancillary Services include: Scheduling, System

Control and Dispatch; Reactive Supply and Voltage Control from Generation Sources; Regulation and Frequency Response; Energy Imbalance; Operating Reserve—Spinning; and Operating Reserve—Supplemental. Ancillary Services are available under the ACS–02 rate schedule.

2. Billing Factor

The Billing Factor is the quantity to which the charge specified in the rate schedule is applied. When the rate schedule includes charges for several products, there may be a Billing Factor for each product.

3. Control Area

A Control Area is an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (1) Match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s); (2) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice; (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (4) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

4. Control Area Services

Control Area Services are available to meet the Reliability Obligations of a party with resources or loads in the BPA Control Area. A party that is not satisfying all of its Reliability Obligations through the purchase or self-provision of Ancillary Services may purchase Control Area Services to meet its Reliability Obligations. Control Area Services are also available to parties with resources or loads in the BPA Control Area that have Reliability Obligations, but do not have a transmission agreement with TBL. Reliability Obligations for resources or loads in the BPA Control Area are determined by applying the North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WSCC), and the Northwest Power Pool (NWPP) reliability criteria. Control Area Services, include, without limitation:

a. Regulation and Frequency Response Service
b. Generation Imbalance Service
c. Operating Reserve—Spinning Reserve Service
d. Operating Reserve—Supplemental Reserve Service
e. Other Control Area services.

5. Daily Firm Service

Daily Firm Service is firm transmission service under Part II of the Open Access Transmission Tariff in consecutive daily increments of one day or greater but less than one year.

6. Daily Nonfirm Service

Daily Nonfirm Service is nonfirm transmission service under Part II of the Open Access Transmission Tariff in consecutive daily increments of one day or greater but less than or equal to 31 days.

7. Direct Assignment Facilities

Facilities or portions of facilities that have been or are constructed by the TBL for the sole use and benefit of a particular Transmission Customer requesting service under the Open Access Transmission Tariff, the costs of which may be directly assigned to the Transmission Customer in accordance with applicable Federal Energy Regulatory Commission policy. Direct Assignment Facilities shall be specified in the agreement that governs service to the Transmission Customer.

8. Direct Service Industry (DSI) Delivery

The DSI Delivery segment is the segment of the FCRTS that provides service to DSI customers at voltages of 34.5 kV and below.

9. Dynamic Schedule

A Dynamic Schedule is a telemeter reading or value which is updated in real time and which is used as a schedule in the Automatic Generation Control (AGC) and Area Control Error (ACE) equation of the TBL and the integrated value of which is treated as a schedule for interchange accounting purposes. One way Dynamic Schedules are commonly used for scheduling remote generation or remote load to or from another Control Area. Two-way Dynamic Schedules are commonly used to provide supplemental regulation or operating reserve support from one entity to another, usually between Control Areas. The Receiving Party sends the Delivering Party a requested Dynamic Schedule (the first part of the two-way schedule). The Delivering Party then responds with the official Dynamic Schedule of what actually is delivered to the Receiving Party (the second part of the two-way schedule).

10. Eastern Intertie

The Eastern Intertie is the segment of the Federal Columbia River Transmission System (FCRTS) for which the transmission facilities consist of the Townsend-Garrison double-circuit 500 kV transmission line segment, including related terminals at Garrison.

11. Energy Imbalance Service

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy over a single hour to a load located within the BPA Control Area. The TBL must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the TBL or make alternative comparable arrangements specified in the Transmission Customer's Service Agreement to satisfy its Energy Imbalance Service obligation.

12. Federal Columbia River Transmission System

The Federal Columbia River Transmission System (FCRTS) is the transmission facilities of the Federal Columbia River Power System, which include all transmission facilities owned by the government and operated by TBL, and other facilities over which TBL has obtained transmission rights.

13. Federal System

The Federal System is the generating facilities of the Federal Columbia River Power System, including the Federal generating facilities for which BPA is designated as marketing agent; the Federal facilities under the jurisdiction of BPA; and any other facilities:

a. from which BPA receives all or a portion of the generating capability (other than station service) for use in meeting BPA's loads to the extent BPA has the right to receive such capability. "BPA's loads" do not include any of the loads of any BPA customer that are served by a non-Federal generating resource purchased or owned directly by such customer which may be scheduled by BPA;

b. which BPA may use under contract or license; or

c. to the extent of the rights acquired by BPA pursuant to the 1961 U.S.-Canada Treaty relating to the cooperative development of water resources of the Columbia River Basin.

14. Generation Imbalance

Generation Imbalance is the difference between the hourly scheduled amount and actual delivered amount of energy from a generation resource in the BPA Control Area.

15. Generation Imbalance Service

Generation Imbalance Service is taken when there is a difference between scheduled and actual energy delivered from generation resources in the BPA Control Area during a schedule hour.

16. Heavy Load Hours (HLH)

Heavy Load Hours (HLH) are all those hours in the peak period: Hour ending 7:00 a.m. to the hour ending 10:00 p.m., Monday through Saturday, Pacific Prevailing Time (Pacific Standard Time or Pacific Daylight Time, as applicable). There are no exceptions to this definition; that is, it does not matter whether the day is a normal working day or a holiday.

17. Hourly Firm Service

Hourly Firm Service is firm transmission service under Part II of the Open Access Transmission Tariff in consecutive hourly increments.

18. Hourly Nonfirm Service

Hourly Nonfirm Service is nonfirm transmission service under Part II of the Open Access Transmission Tariff in hourly increments.

19. Integrated Demand

Integrated Demand is the quantity derived by mathematically "integrating" kilowatthour deliveries over a 60-minute period. For one-way dynamic schedules, demand is integrated on a rolling ten-minute basis.

20. Intentional Deviation

BPA, in its sole determination, may find that an Intentional Deviation exists if:

(a) a deviation is persistent during multiple consecutive hours or at specific times of the day;

(b) a pattern of under-delivery or over-use of energy occurs; or

(c) persistent over-generation or under-use during LLH, particularly when the customer does not respond by adjusting schedules for future days to correct these patterns.

21. Light Load Hours (LLH)

Light Load Hours (LLH) are all those hours in the offpeak period: hour ending 11:00 p.m. to hour ending 6:00 a.m. Monday through Saturday and all hours Sunday, Pacific Prevailing Time (Pacific Standard Time or Pacific Daylight Time, as applicable).

22. Long-Term Firm Service

Long-Term Firm Service is Firm Transmission service under Part II of the Open Access Transmission Tariff with a term of one year or more.

23. Main Grid

As used in the FPT rate schedule, the Main Grid is that portion of the Network facilities with an operating voltage of 230 kV or more.

24. Main Grid Distance

As used in the FPT rate schedules, Main Grid Distance is the distance in airline miles on the Main Grid between the Point of Integration (POI) and the Point of Delivery (POD), multiplied by 1.15.

25. Main Grid Interconnection Terminal

As used in the FPT rate schedules, Main Grid Interconnection Terminal refers to Main Grid terminal facilities that interconnect the FCRTS with non-TBL facilities.

26. Main Grid Miscellaneous Facilities

As used in the FPT rate schedules, Main Grid Miscellaneous Facilities refers to switching, transformation, and other facilities of the Main Grid not included in other components.

27. Main Grid Terminal

As used in the FPT rate schedules, Main Grid Terminal refers to the Main Grid terminal facilities located at the sending and/or receiving end of a line, exclusive of the Interconnection terminals.

28. Measured Demand

The Measured Demand is that portion of the customer's Metered or Scheduled Demand for transmission service from TBL under the applicable transmission rate schedule. If transmission service to a point of delivery, or from a point of receipt, is provided under more than one rate schedule, the portion of the measured quantities assigned to any rate schedule shall be as specified by contract. The portion of the total Measured Demand so assigned shall be the Measured Demand for transmission service for each transmission rate schedule.

29. Metered Demand

Except for dynamic schedules, the Metered Demand in kilowatts shall be the largest of the 60-minute clock-hour Integrated Demands at which electric energy is delivered (received) for a transmission customer:

a. at each point of delivery (receipt) for which the Metered Demand is the basis for the determination of the Measured Demand;

b. during each time period specified in the applicable rate schedule; and

c. during any billing period.

Such largest Integrated Demand shall be determined from measurements made in accord with the provisions of the applicable contract and these GRSPs. This amount shall be adjusted as provided herein and in the applicable agreement between TBL and the customer.

For dynamic schedules, the Metered Demand in kilowatts shall be the largest 10 minute moving average of the load (generation) at the point of delivery (receipt). The 10 minute moving average shall be assigned to the hour in which the 10 minute period ends.

30. Montana Intertie

The Montana Intertie is the double-circuit 500 kV transmission line and associated substation facilities from Broadview Substation to Garrison Substation.

31. Monthly Transmission Peak Load

Monthly Transmission Peak Load is the peak loading on the Federal transmission system during any hour of the designated billing month, determined by the largest hourly integrated demand produced from the sum of Federal and non-Federal generating plants in BPA's Control Area and metered flow into BPA's Control Area.

32. Network (or Integrated Network)

The Network is the segment of the Federal Columbia River Transmission System (FCRTS) which provides the bulk of transmission of electric power within the Pacific Northwest.

33. Network Load

Network Load is the load that a Network Integration Customer designates for Network Integration Transmission Service under Part III of the Open Access Transmission Tariff (Tariff). The Network Integration Customer's Network Load shall include all Network Load served by the output of any Network Resources designated by the Network Integration Customer. A Network Integration Customer may elect to designate less than its total load as Network Load but may not designate only part of the load as Network Load at a discrete Point of Delivery. Where a Network Integration Customer has elected not to designate a particular load at discrete Points of Delivery as Network Load, the Network Integration Customer is responsible for making separate arrangements under Part II or Part IV of the Tariff that may be necessary for such non-designated load.

34. Network Upgrades

Network Upgrades are modifications or additions to transmission-related facilities that are integrated with and

support the TBL's overall Transmission System for the general benefit of all users of such Transmission System.

35. Nonfirm Service

Nonfirm Service is Daily Nonfirm and Hourly Nonfirm Service under Part II of the Open Access Transmission Tariff.

36. Operating Reserve—Spinning Reserve Service

Operating Reserve—Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output. The TBL must offer this service when the transmission service is provided to load served by generation located in the BPA Control Area. The Transmission or Control Area Service Customer must either purchase this service from the TBL or make alternative comparable arrangements to satisfy its Spinning Reserve Service obligation. The Transmission or Control Area Service Customer's obligation is determined consistent with North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WSCC) and Northwest Power Pool (NWPP) criteria.

37. Operating Reserve—Supplemental Reserve Service

Operating Reserve—Supplemental Reserve Service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load. The TBL must offer this service when the transmission service is provided to load served by generation located in the BPA Control Area. The Transmission or Control Area Service Customer must either purchase this service from the TBL or make alternative comparable arrangements to satisfy its Supplemental Reserve Service obligation. The Transmission Customer's obligation is determined consistent with North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WSCC) and Northwest Power Pool criteria.

38. Operating Reserve Requirement

Operating Reserve Requirement is a party's total reserve obligation to the BPA Control Area. A party is responsible for purchasing or otherwise providing Operating Reserves associated with its transactions which impose a reserve obligation on the BPA Control Area. Operating Reserve Requirement is composed of two parts: regulating reserve obligation and contingency reserve obligation.

A party's regulating reserve obligation is met by purchasing Regulation and Frequency Response Service. The contingency reserve obligation is satisfied by purchasing or otherwise providing operating Reserve—Spinning Reserve Service and Operating Reserve—Supplemental Reserve Service.

The specific amounts required are determined consistent with North American Electric Reliability Council (NERC) policies, the Northwest Power Pool (NWPP) Operating Manual, "Contingency Reserve Sharing Procedure," and the Western Systems Coordinating Council (WSCC) "Minimum Operating Reliability Criteria" (MORC).

39. Point of Delivery (POD)

Point(s) on the TBL's Transmission System, or transfer points on other utility systems pursuant to Section 15.3 of the Open Access Transmission Tariff (Tariff), where capacity and energy transmitted by the TBL will be made available to the Receiving Party under Parts II, III, or IV of the Tariff or to the Transmission Customer under other BPA transmission service agreements.

40. Point of Integration (POI)

A Point of Integration is the contractual interconnection point where power is received from the customer. Typically, a point of integration is located at a resource site, but it could be located at some other interconnection point.

41. Point of Interconnection (POI)

A Point of Interconnection is a point where the facilities of two entities are interconnected. This term has the same meaning as "Point of Integration" and "Point of Receipt" in certain pre-Open Access Transmission Tariff service agreements.

42. Point of Receipt (POR)

Point(s) of Receipt are the point(s) of interconnection on the TBL's Transmission System where capacity and energy will be made available to the TBL by the Delivering Party under Parts II, III, or IV of the Open Access Transmission Tariff. The Point(s) of Receipt shall be specified in the Service Agreement.

43. Ratchet Demand

The Ratchet Demand in kilowatts or kilovars is the maximum demand established during a specified period of time either during, or prior to, the current billing period. The Ratchet Demand shall be the maximum demand established during the previous 11 billing months. If a Transmission Demand has been decreased pursuant to the terms of the transmission agreement during the previous 11 billing months, such decrease will be reflected in determining the Ratchet Demand. The Ratchet Demand for reactive power is defined in the Power Factor Penalty Charge at section II.C of these GRSPs.

44. Reactive Power

Reactive Power is the out-of-phase component of the total voltamperes in an electric circuit. Reactive Power has two components: reactive demand (expressed in kilovars or kVAr) and reactive energy (expressed in kilovarhours or kVArh).

45. Reactive Supply and Voltage Control from Generation Sources Service

Reactive Supply and Voltage Control from Generation Sources Service is required to maintain voltage levels on the TBL's transmission facilities within acceptable limits. In order to maintain transmission voltages on the TBL's transmission facilities within acceptable limits, generation facilities (in the Control Area where the TBL's transmission facilities are located) are operated to produce (or absorb) reactive power. Thus, Reactive Supply and Voltage Control from Generation Sources Service must be provided for each transaction on the TBL's transmission facilities. The amount of Reactive Supply and Voltage Control from Generation Sources Service that must be supplied with respect to the Transmission Customer's transaction will be determined based on the reactive power support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by the TBL. The Transmission Customer must purchase this service from the TBL.

46. Regulation and Frequency Response Service

Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources (generation and interchange) with load and for maintaining scheduled Interconnection frequency at sixty cycles per second (60 Hz). Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered (predominantly through the use of automatic generating control equipment) as necessary to follow the moment-by-moment changes in load.

The obligation to maintain this balance between resources and load lies with the TBL. The TBL must offer this service when the transmission service is used to serve load within the BPA Control Area. The Transmission Customer must either purchase this service from the TBL or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation.

47. Reliability Obligations

Reliability Obligations are the obligations for reliability-based services that a party with resources or loads in the BPA Control Area must provide in order to meet minimum reliability standards. Reliability Obligations shall be determined consistent with applicable North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WSCC), and Northwest Power Pool (NWPP) standards. TBL offers Ancillary Services and Control Area Services to allow resources or loads to meet their Reliability Obligations.

48. Scheduled Demand

Scheduled Demand is the hourly demand at which electric energy is scheduled for transmission on the FCRTS.

49. Scheduling, System Control and Dispatch Service

Scheduling, System Control and Dispatch Service is required to schedule the movement of power through, out of, within, or into a Control Area. This service can be provided only by the operator of the Control Area in which the transmission facilities used for transmission service are located. Scheduling, System Control and Dispatch Service is to be provided directly by the TBL (if the TBL is the Control Area operator) or indirectly by the TBL making arrangements with the Control Area operator that performs this service for the TBL's Transmission System. The Transmission Customer must purchase this service from the TBL or the Control Area operator.

50. Secondary System

As used in the FPT rate schedules, Secondary System is that portion of the Network facilities with an operating voltage between 69 kV to less than 230 kV.

51. Secondary System Distance

As used in the FPT rate schedules, Secondary System Distance is the number of circuit miles of Secondary System transmission lines between the secondary Point of Integration and either the Main Grid or the secondary Point of Delivery (POD), or between the Main Grid and the secondary POD.

52. Secondary System Interconnection Terminal

As used in the FPT rate schedules, Secondary System Interconnection Terminal refers to the terminal facilities on the Secondary System that interconnect the FCRTS with non-TBL facilities.

53. Secondary System Intermediate Terminal

As used in the FPT rate schedules, Secondary System Intermediate Terminal refers to the first and final terminal facilities in the Secondary System transmission path, exclusive of the Secondary System Interconnection terminals.

54. Secondary Transformation

As used in the FPT rate schedules, Secondary Transformation refers to transformation from Main Grid to Secondary System facilities.

55. Short-Term Firm Service

Short-Term Firm Service is Daily Firm and Hourly Firm Transmission Service under Part II of the Open Access Transmission Tariff.

56. Southern Intertie

The Southern Intertie is the segment of the FCRTS that includes, but is not limited to, the major transmission facilities consisting of two 500 kV AC lines from John Day Substation to the Oregon-California border; a portion of the 500 kV AC line from Buckley Substation to Summer Lake Substation; and the 500 kV AC Intertie facilities, which include Captain Jack Substation, the Alvey-Meridian AC line, one 1,000 kV DC line between the Celilo Substation and the Oregon-Nevada border, and associated substation facilities.

57. Spill Condition

Spill Condition, for the purpose of determining credit or payment for Deviations under the Energy Imbalance and Generation Imbalance rates, exists when any one or more of the following conditions exist or events occur on the BPA system: high flows and full reservoirs; flood control implementation; spill priority implementation procedures; spill due to lack of Federal load; spill past unloaded turbines; minimum generation requirements; increased spill due to storage; BPA is not accepting Coordination storage due to lack of storage or a specified flow requirement. Discretionary spill, where BPA may choose whether to spill does not constitute a Spill Condition.

58. Spinning Reserve Requirement

Spinning Reserve Requirement is a portion of a party's Operating Reserve Requirement to the BPA Control Area. A party is responsible for purchasing or otherwise providing Operating Reserve—Spinning Reserve Service associated with its transactions which impose a reserve obligation on the BPA Control Area.

The specific amounts required are determined consistent with North American Electric Reliability Council (NERC) policies, the Northwest Power Pool (NWPP) Operating Manual, "Contingency Reserve Sharing Procedure," and the Western Systems Coordinating Council (WSCC) "Minimum Operating Reliability Criteria" (MORC).

59. Supplemental Reserve Requirement

Supplemental Reserve Requirement is a portion of a party's Operating Reserve Requirement to the BPA Control Area. A party is responsible for purchasing or otherwise providing Operating Reserve—Supplemental Reserve Service associated with its transactions which impose a reserve obligation on the BPA Control Area.

The specific amounts required are determined consistent with North American Electric Reliability Council (NERC) policies, the Northwest Power Pool (NWPP) Operating Manual, "Contingency Reserve Sharing Procedure," and the Western Systems Coordinating Council (WSCC) "Minimum Operating Reliability Criteria" (MORC).

60. Total Transmission Demand

Total Transmission Demand is the sum of all the transmission demands as defined in the applicable agreement.

61. Transmission Customer

A Transmission Customer is an entity that (a) has executed a Service Agreement under the Open Access Transmission Tariff; (b) receives transmission service under section 17.2 of the Open Access Transmission Tariff; or (c) has executed any other transmission agreement with the TBL.

62. Transmission Demand

Transmission Demand is the maximum amount of capacity, energy, and/or required Ancillary Services that the TBL agrees to transmit for the Transmission Customer over the TBL's Transmission System between the Point(s) of Receipt or Network

Resources and the Point(s) of Delivery under Parts II or IV of the Open Access Transmission Tariff. The Transmission Demand shall be expressed in terms of: (a) a demand in whole megawatts on a sixty-minute (60) interval (commencing on the clock hour) basis except in cases where Dynamic Schedules are involved; (b) a demand equal to the largest ten-minute (10) moving average of the load or generation expected to occur during the contract period for one-way Dynamic Schedules used to transfer generation or load from one Control Area to another Control Area; or (c) a demand equal to the instantaneous peak demand, for each direction, of the supplemental Control Area service request expected to occur during the contract period for two-way Dynamic Transfers, used to provide supplemental Control Area services. The supplemental Control Area service response shall always be the lesser of the Control Area service request or the Transmission Demand associated with the supplemental Control Area service.

63. Transmission Provider

The Bonneville Power Administration's Transmission Business Line (TBL) that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce and provides transmission service under the Open Access Transmission Tariff and other agreements. This excludes the Merchant Function.

64. Utility Delivery

The Utility Delivery segment is that segment of the FCRTS that provides service to utility customers at voltages below 34.5 kV.

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Part V

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Fluorescent Lamp Ballast Energy Conservation Standards; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–RM–97–500]

RIN 1904–AA75

Energy Conservation Program for Consumer Products: Fluorescent Lamp Ballasts Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended, prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE, Department, or we) to administer an energy conservation program for these products. The National Appliance Energy Conservation Amendments of 1988 require DOE to consider amending the energy conservation standards for fluorescent lamp ballasts. The Department conducted several analyses regarding the energy savings, benefits and burdens of amended energy conservation standards for fluorescent lamp ballasts and has shared the results of these analyses with all stakeholders. Based on these analyses, several of the major stakeholders, including manufacturers and energy efficiency advocates, submitted to the Department a joint proposal for the highest standard level which they believe to be technically feasible and economically justified. Based on our review of this proposal and our analyses, we believe the standards they proposed are technically feasible and economically justified. Therefore, today we propose to amend the energy conservation standard for fluorescent lamp ballasts for commercial and industrial applications as recommended in the joint proposal and announce a public hearing.

DATES: Comments must be received on or before May 29, 2000. The Department requests 10 copies of the written comments and, if possible, a computer disk. Oral views, data, and arguments may be presented at the public hearing to be held in Washington, D.C., beginning at 9:00 a.m. on April 18, 2000.

Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., April 3, 2000. Copies of statements to be given at the public hearing must be received by the Department no later than 4:00 p.m., April 6, 2000. The DOE panel will read the statements in advance of the hearing and would appreciate the oral presentations to be limited to a summary of the statement. The length of each oral presentation is limited to 15 minutes.

ADDRESSES: The hearing will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC. Written comments, oral statements, and requests to speak at the hearing are to be submitted to Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Fluorescent Lamp Ballasts, Docket No. EE–RM–97–500, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0121.

Copies of the public comments received, the Technical Support Document (TSD) and the transcript of the public hearing may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Copies of the TSD may be obtained from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, SW, Washington, DC 20585. (202) 586–9127. Copies of the analysis can also be found on the Codes and Standards Internet site at: http://www.eren.doe.gov/buildings/codes_standards/applbrf/ballast.html.

For more information concerning public participation in this rulemaking proceeding see Section VII, "Public Comment Procedures," of this Notice.

FOR FURTHER INFORMATION CONTACT: Carl Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9127, or Eugene Margolis, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507.

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I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94–163, as amended by the National Energy Conservation Policy Act, Public Law

95–619, by the National Appliance Energy Conservation Act, Public Law 100–12, by the National Appliance Energy Conservation Amendments of 1988, Public Law 100–357, and the Energy Policy Act of 1992, Public Law 102–486 [1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") include fluorescent lamp ballasts.

Under the Act, the program consists essentially of three parts: Testing, labeling, and Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology, amends or establishes new test procedures for each of the covered products. Section 323. The test procedures measure the energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. They must not be unduly burdensome to conduct. Section 323 (b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). Test procedures appear at 10 CFR part 430, subpart B.

The Federal Trade Commission (FTC) prescribes rules governing the labeling of covered products after DOE publishes test procedures. Section 324(a). The FTC labels indicate the annual operating cost for the particular model and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). Disclosure of estimated operating cost is not required if the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions, or is not economically feasible. In such a case, the FTC must require a different useful measure of energy consumption. Section 324(c). At the present time, there are Federal Trade Commission rules requiring labels for the following products: Room air conditioners, furnaces, clothes washers, dishwashers, water heaters, refrigerators, refrigerator-freezers and freezers, central air conditioners and central air conditioning heat pumps, and fluorescent lamp ballasts.

The National Appliance Energy Conservation Amendments of 1988 prescribed Federal energy conservation standards for ballasts. Section 325(g). The Act specifies that the standards are to be reviewed by the Department no later than January 1, 1992. Section 325(g)(7)(A).

Any new or amended standard must be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(o)(2)(A).

Section 325(o)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(I) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(II) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(III) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(IV) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(V) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) The need for national energy conservation; and

(VII) Other factors the Secretary considers relevant.

In addition, section 325(o)(2)(B)(iii) establishes a rebuttable presumption of economic justification in instances where the Secretary determines that "the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure * * *" The rebuttable presumption test is an alternative path to establishing economic justification.

Section 327 of the Act addresses the effect of Federal rules on State laws or regulations concerning testing, labeling, and standards. Generally, all such State laws or regulations are superseded by the Act. Section 327(a)–(c). Exemptions to this general rule include: (1) State standards prescribed or enacted before January 8, 1987, and applicable to appliances produced before January 3, 1988 (section 327(b)(1)); (2) State procurement standards which are more stringent than the applicable Federal standard (Section 327(b)(3) and (f)(1)–(4)); (3) State regulations banning constant burning pilot lights in pool heaters (Section 327(b)(4)); and (4) State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such product (Section 327(b)(6) and 327(c)).

b. Background

The National Energy Conservation Policy Act,[2] which amended the Energy Policy and Conservation Act, required DOE to establish mandatory energy efficiency standards for each of the 13 covered products. These standards were to be designed to achieve the maximum improvement in energy efficiency that was technologically feasible and economically justified.

The National Energy Conservation Policy Act provided, however, that no standard for a product be established if there were no test procedure for the product, or if DOE determined by rule either that a standard would not result in significant conservation of energy, or that a standard was not technologically feasible or economically justified. In determining whether a standard was economically justified, the Department was directed to determine whether the benefits of the standard exceeded its burdens by weighing the seven factors discussed above.

The National Appliance Energy Conservation Act, which became law on March 17, 1987, amended the Energy Policy and Conservation Act in part by: Redefining "covered products" (specifically, refrigerators, refrigerator-freezers, and freezers were combined into one product type from two; humidifiers and dehumidifiers were deleted; and pool heaters were added); establishing Federal energy conservation standards for 11 of the 12 covered products; and creating a schedule, according to which each standard is to be reviewed to determine

[1] Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 *et seq.* Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to in this notice as the National Energy Conservation Policy Act.

[2] The consumer products covered by the National Energy Conservation Policy Act included: Refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces.

if an amended standard is required. It also established the rebuttable presumption test of economic justification.

The National Appliance Energy Conservation Amendments of 1988, which became law on June 28, 1988, established Federal energy conservation standards for fluorescent lamp ballasts. These amendments also created a review schedule for DOE to determine if any amended standard for fluorescent lamp ballasts is required.

The Energy Policy Act of 1992, which became law on October 24, 1992, addressed various commercial appliances and equipment.

As directed by the Act, DOE published an advance notice of proposed rulemaking for fluorescent lamp ballasts, as well as a variety of other consumer products. (55 FR 39624, September 28, 1990). The advance notice presented the product classes that DOE planned to analyze, and provided a detailed discussion of the analytical methodology and analytical models that the Department expected to use in performing the analysis to support this rulemaking.

Pursuant to section 325 of the Act, DOE proposed to revise the energy conservation standards applicable to fluorescent lamp ballasts, as well as a variety of other consumer products. 59 FR 10464 (March 4, 1994). On January 31, 1995, the Department published a Rulemaking Determination that, based on comments received, it would issue a revised notice of proposed rulemaking for fluorescent lamp ballasts. 60 FR 5880 (January 31, 1995).

A moratorium was placed on publication of proposed or final rules for appliance efficiency standards as part of the FY 1996 appropriations legislation. Pub. L. 104–134. That moratorium expired on September 30, 1996.

On July 15, 1996, the Department published a Process Improvement Rule establishing procedures, interpretations and policies to guide the Department in the consideration of new or revised appliance efficiency standards (Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products). 61 FR 36974.

The Department conducted numerous meetings, workshops and discussions regarding energy efficiency standards for fluorescent lamp ballasts resulting in the publication of a Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts, July, 1997; a Summary of Inputs for the Technical Support Document: Energy Efficiency Standards for Fluorescent Lamp Ballasts, April 20, 1998; and a Ballast Manufacturer Impact Analysis Analytical Approach, April 10, 1998. 62 FR 38222 (July 17, 1997) and 63 FR 16706 (April 6, 1998). A workshop was conducted on these analyses and documents on April 28, 1998. 63 FR 16706 (April 6, 1998). Based on comments and the growing popularity of electronic ballasts with T8 lamps, the Department solicited further comments specifically on the issue of whether market shifts (*e.g.*, from T12 to T8 lamps) should be considered in determining the impact of an energy conservation standard on commercial and industrial consumers, manufacturers and the nation. 63 FR 58330 (October 30, 1998). Further comments on the above analyses, and modifications resulting from those comments, culminated in publishing a revised analysis on the Codes and Standards Internet site (http://www.eren.doe.gov/buildings/codes_standards/applbrf/ballast.html) in April of 1999. We also conducted a workshop reviewing this analysis on June 1, 1999. 64 FR 24634 (May 7, 1999). On the basis of comments received on these documents, DOE reviewed its analysis and prepared a TSD.

On October 12 and 13, 1999, the National Electrical Manufacturers Association convened a meeting where its members negotiated with representatives of the American Council for an Energy Efficient Economy, the Natural Resources Defense Council, the Alliance to Save Energy and the Oregon Energy Office to produce a joint comment proposal for amended fluorescent lamp ballast standards. (Hereafter referred to as the Joint Comment.) We have evaluated the impacts of the joint comment proposal and those results are presented in Appendix E of the TSD.

II. General Discussion

a. Test Procedures

The Act provides that no standard for a product be established if there is no test procedure for the product. The Amendments of 1988 set forth test procedures and energy conservation standards for fluorescent lamp ballasts. Based upon the Amendments of 1988, the Department established Federal test procedures for fluorescent lamp ballasts. 56 FR 18682 (April 24, 1991). As of the effective date of the energy conservation standards (ballasts manufactured on or after January 1, 1990; sold by the manufacturer on or after April 1, 1990; or incorporated into a luminaire by a luminaire manufacturer on or after April 1, 1991), all ballasts, be they energy efficient magnetic, cathode cutout or electronic, for use in connection with F40T12, F96T12 or F96T12HO lamps, are required to meet a ballast efficacy factor as measured by the Federal test procedures. No one has petitioned DOE indicating the Department's test procedures were inadequate for testing fluorescent lamp ballasts using the above technologies. Since these are the same technologies considered in today's proposed rule, the Department considers the current Federal test procedures applicable and appropriate for today's proposed rule. Furthermore, stakeholders commenting in the Joint Comments stated that they consider the current Federal test procedures applicable and appropriate for the new recommended ballast standards. (Joint Comment, No. 91 at 6).

b. Technological Feasibility

1. General

There are lamp ballasts in the market at all of the efficiency levels analyzed in today's notice. The Department, therefore, believes all of the efficiency levels discussed in today's notice are technologically feasible.

2. Maximum Technologically Feasible Levels

The Act requires the Department, in considering any new or amended standards, to consider those that "shall be designed to achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified." (Section 325 (o)(2)(A)). Accordingly, for each class of product under consideration in this rulemaking, a maximum technologically feasible (max tech) design option was identified.

Ballast efficiency is expressed as a ballast efficacy factor, BEF. It is equal to BF/W, where BF is the ballast factor expressed as a percentage (*e.g.*, 90, not 0.90) and W is the input power to the ballast in ANSI (American National Standards Institute) C82.2–1984 in Watts. The most efficient technology presently available is a high frequency electronic ballast; this is considered the maximum technologically feasible (MTF) design for this analysis. The operation at high frequency (20 Kilohertz (kHz) or more) increases the lamp efficacy and also allows for lower ballast losses.

For each product class and technology that we analyzed, there is a range of efficiencies in the marketplace. In consideration of this range, we used a different approach to selecting BEF level for the purposes of today's analysis than

for the setting of the trial standard levels. The analysis represents the probable average savings from a movement from the base case to the MTF option (electronic ballast), which itself has a range of BEFs. In contrast, the proposed trial standards set BEF levels that allow the large majority of electronic ballasts to meet the standard. The following paragraph explains the two approaches in more detail.

For the analysis of electronic ballasts, we chose the median (50 percentile) BEF as the value to use from the electronic ballast product data supplied by the National Electrical Manufacturers Association (NEMA). These data are found in Appendix A of the TSD. For each product class, about half of the ballasts on the market have efficiencies greater and half lower than the level chosen for the analysis. Therefore, the unit energy consumption calculated for a ballast at the median efficiency will result in an energy use close to the average for that product class. The Department believes this median approach properly reflects the energy savings impact from using electronic ballasts rather than magnetic ballasts.

For the purpose of setting efficiency standards, the Department chose not to differentiate within a technology (such as electronic high frequency ballasts) and decided to choose BEF levels that the vast majority of models would be able to meet. Therefore, for electronic ballasts in each product class, we chose the 10 percentile BEF level of efficiency. This means that 90 percent of the existing electronic ballast models can meet the standard being considered. In order to clearly show the differences in these BEFs, we report in the table below both the proposed standard level BEF (10th percentile) and the corresponding analysis level BEF (50th percentile) for each product class analyzed.

ELECTRONIC FLUORESCENT LAMP BALLAST EFFICACY FACTORS [3]

Application for operation of	Analysis BEF (50th percentile)	Standards BEF (10th percentile)
One F40 T12/40-watt lamp	2.34	2.29
Two F40 T12/40-watt lamps	1.19	1.17
Three F40 T12/40-watt lamps	0.78	0.76
Two F96 T12/40-watt lamps	0.65	0.63
Two F96 T12HO/40-watt lamps	0.43	0.39

Another consideration in choosing MTF levels is that experience shows that there is some variation in the BEFs of "identically" manufactured electronic ballasts of any product class. As indicated in Table A.3, Appendix A of the TSD, there is sometimes only a small spread between the 10 and 50 percentile BEFs. By choosing the standard level at the 10th percentile rather than the 50 percentile level, the Department is allowing manufacturing tolerance to the ballast manufacturers.

c. Energy Savings

1. Determination of Savings

The Department forecasted energy savings through the use of a national energy savings (NES) spreadsheet, which forecasted energy savings over the period of analysis for candidate standards relative to the base case. The Department quantified the energy savings that would be attributable to a standard as the difference in energy consumption between the candidate standards case and the base case. The base case represents the forecast of energy consumption in the absence of amended mandatory efficiency standards.

The NES spreadsheet model is described in section III.b of this notice, *infra*, and also in Appendix B of the TSD. One of the very important inputs to the model is the forecast of magnetic ballast shipments in the absence of amended mandatory standards. Two shipments scenarios (shipments of magnetic ballasts decline until 2015 and shipments decline until 2027) were examined to attempt to cover the range of possibilities for market shares of electronic and magnetic ballasts (see Chapter 5 of the TSD). Additionally, in evaluating the joint comment proposal, the Department used a third shipment scenario (flat magnetic ballast shipment forecast) as the upper bound as described in Appendix E of the TSD.

The NES spreadsheet model first calculates the energy savings in site energy or kilowatt-hours (kWh). Site energy is the energy directly consumed at building sites by the lamp/ballast systems of interest. The energy savings to the nation is expressed in quads, that is, quadrillions of British thermal units (Btus). This is the source energy needed to generate and transmit the electricity consumed. A time series of conversion factors is used to convert site energy (kWh) to source energy (Btu). Chapter 5 of the TSD contains a table of these conversion factors, which are derived from DOE/EIA's Annual Energy Outlook 1999.

2. Significance of Savings

Under section 325(o)(3)(B) of the Act, the Department is prohibited from adopting a standard for a product if that standard would not result in "significant" energy savings. While the term "significant" has never been defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1373 (D.C. Cir. 1985), concluded that Congressional intent in using the word "significant" was to mean "non-trivial."

d. Rebuttable Presumption

The National Appliance Energy Conservation Act established new criteria for determining whether a standard level is economically justified. Section 325(o)(2)(B)(iii) states:

> If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.

If the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than three years, then we presume that such standard is economically justified.[4] This

[3] It should be noted the analyses were performed assuming energy saver lamps and the values in the table below are for full-wattage T12 lamps. Table 3.5 in the TSD contains both watts and BEF values for various ballast types operating T12 energy saver lamps.

[4] For this calculation, the Department calculated cost-of-operation based on the DOE test procedures with assumed usage shown in Table 3.5 of the TSD. Commercial and industrial consumers that use the ballasts less hours will experience a longer payback

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presumption of economic justification can be rebutted upon a proper showing.

e. Economic Justification

As noted earlier, Section 325(o)(2)(B)(i) of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

1. Economic Impact on Manufacturers and Consumers

The July 1996 Process Improvement Rule established procedures, interpretations and policies to guide the Department in the consideration of new or revised appliance efficiency standards (Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer products). 61 FR 36974 (July 15, 1996). Key objectives of the rule have direct bearing on the implementation of manufacturer impact analyses. First, the Department will utilize an annual cash flow approach in determining the quantitative impacts on manufacturers. This includes a short-term assessment based on the cost and capital requirements during the period between the announcement of a regulation and the time when the regulation comes into effect, and a long-term assessment. Impacts analyzed include industry net present value, cash flows by year, changes in revenue and income, and other measures of impact, as appropriate. Secondly, the Department will analyze and report the impacts on different types of manufacturers, with particular attention to impacts on small manufacturers. Thirdly, the Department will consider the impact of standards on domestic manufacturer employment, manufacturing capacity, plant closures and loss of capital investment. Finally, the Department will take into account cumulative impacts of different DOE regulations on manufacturers.

For consumers, measures of economic impact are the changes in purchase price and annual energy expense. The purchase price and annual energy expense, *i.e.*, life-cycle cost, of each standard level are presented in Chapter 4 of the Technical Support Document (TSD). Under section 325 of the Act, the life-cycle cost analysis is a separate factor to be considered in determining economic justification. Additionally, the Department has decided to consider, under factor seven, "other factors the Secretary considers relevant," the life-cycle cost impacts on those subgroups of commercial and industrial consumers who, if forced by standards to purchase electronic ballasts, would choose to switch from T12 to T8 lighting systems.

2. Life-Cycle Costs

One measure of the effect of proposed standards on consumers is the change in operating expense as compared to the change in purchase price, both resulting from standards. This is quantified by the difference in the life-cycle costs between the baseline and the more efficient technologies for the lamp/ballast combinations analyzed. The life-cycle cost is the sum of the purchase price and the operating expense, including installation and maintenance expenditures, discounted over the lifetime of the appliance.

For each lamp/ballast combination, we calculated the life-cycle costs for three technologies: energy efficient magnetic, cathode cutout and electronic ballasts. We used real discount rates of 4, 8 and 15 percent for the calculations. The assumption is that the consumer purchases the ballast in 2003. Price forecasts are taken from the 1999 *Annual Energy Outlook* of the Energy Information Administration (DOE/EIA–0383). For the probability-based life-cycle cost analysis, we used a distribution of marginal electricity prices for a data base of commercial buildings (see Chapter 4 and Appendix B of the TSD). The life-cycle cost calculations include ballast and lamp costs (purchase prices and installation costs for both and replacement costs for lamps only) and annual electricity costs of the lamp/ballast system operation over the lifetime of the ballast. Chapter 4 of the TSD contains the details of the life-cycle cost calculations including those considered under factor seven below, *infra*.

3. Energy Savings

While significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from revised standards. The Department used the NES spreadsheet results, discussed earlier, in its consideration of total projected savings. The savings are provided in Section V of this notice.

4. Lessening of Utility or Performance of Products

This factor cannot be quantified. In establishing classes of products and design options and by providing exemptions, the Department tried to eliminate any degradation of utility or performance in the products under consideration in this rulemaking.

An issue of utility that was considered was the possibility of interference with certain equipment, such as medical monitoring equipment, caused by the high frequency of electronic ballasts. To prevent any interference that cannot be solved by electronic ballast designers, the Department is not establishing a standard for T8 ballasts, thereby allowing magnetic T8 ballasts for such applications.

5. Impact of Lessening of Competition

It is important to note that this factor has two parts; on the one hand, it assumes that there could be some lessening of competition as a result of standards; and on the other hand, it directs the Attorney General to gauge the impact, if any, of that effect.

In order to assist the Attorney General in making such a determination, the Department has provided the Attorney General with copies of this notice and the Technical Support Document for review.

6. Need of the Nation To Conserve Energy

We report the environmental effects from each standard level for each product under this factor in Section V of this notice.

7. Other Factors

This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. Under this factor, the Secretary has decided to consider the life-cycle cost impacts on those subgroups of consumers who, if forced by standards to purchase electronic ballasts, would choose to switch from T12 to T8 lighting systems. This analysis is part of the Department's continuing effort to study the economic impact of standards on consumers. While the Department does not believe it can set standard levels based on consumer purchasing behavior given the findings of the court in *Natural Resources Defense Council* v. *Herrington*, 768 F. 2d 1355, 1406–07 (D.C. Cir. 1985), where the court stated that "the entire point of a mandatory program was to change consumer behavior" and "the fact that consumers demand short payback periods was itself a major cause of the market failure that Congress hoped to correct," the Department will consider and evaluate the impact of likely consumer actions.

The Secretary has also decided to consider the Joint Comment. This

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while those that use them more will have a shorter payback.

proposal segments the ballast market by defining replacement ballasts and proposes extended implementation dates for all segments of the ballast market to comply with the new standards. The proposal also includes certain exemptions. All of these proposals are oriented toward mitigating financial impacts on manufacturers and ensuring a minimal level of disruption to the ballast replacement marketplace.

III. Methodology

The Process Rule outlines the procedural improvements identified by the interested parties. 61 FR 36974. The process improvement effort also included a review of the: (1) Economic models; (2) analytical tools; (3) methodologies; (4) non-regulatory approaches; and (5) prioritization of future rules.

The Department developed two new spreadsheet tools to meet the objectives of the Process Rule. The first spreadsheet calculates Life-Cycle-Cost (LCC) and Payback. The second calculates national energy savings (NES). We tailored versions of these two spreadsheets for the ballast analyses. The Department also completely revised the methodology used in assessing manufacturer impacts including the adoption of the Government Regulatory Impact Model (GRIM).

Additionally, DOE has developed a new approach using the National Energy Modeling System (NEMS) to estimate impacts of ballast energy efficiency standards on electric utilities and the environment. The Department used a version of Energy Information Administration's (EIA) NEMS for the utility and environmental analyses. NEMS simulates the energy economy of the U.S. and has been developed over several years by the EIA primarily for the purpose of preparing the Annual Energy Outlook (AEO). NEMS produces a widely-known baseline forecast for the U.S. through 2020 that is available in the public domain. The version of NEMS used for appliance standards analysis is called NEMS–BRS [5], and is based on the AEO99 version with minor modifications. NEMS offers a sophisticated picture of the effect of standards since its scope allows it to measure the interactions between the various energy supply and demand sectors and the economy as a whole.

[5] EIA approves use of the name NEMS to describe only an AEO version of the model without any modification to code or data. Because our analysis entails some minor code modifications and the model is run under various policy scenarios that deviate from AEO assumptions, the name NEMS–BRS refers to the model as used here.

a. Life-Cycle-Cost Spreadsheet

This section describes the LCC spreadsheet model used for analyzing the economic impacts of possible standards on individual commercial and industrial consumers. Details of the spreadsheet model can be found in Appendix A. We conduct the LCC analysis with a spreadsheet model developed in Microsoft Excel for Windows 95. When combined with Crystal Ball (a commercially available software program), the LCC model can use a Monte Carlo simulation to perform the analysis by incorporating uncertainty and variability considerations. The spreadsheet is organized so that ranges (distributions) can be entered for each input variable needed to perform the calculations. The LCC output can be either a point value when we use the average value of the inputs or a distribution when we use distributions for some or all of the inputs. In the analyses described in this notice, we used distributions for the most important input variables.

The life-cycle cost calculations include ballast and lamp costs (purchase price and installation cost for both and replacement cost for lamps only) and annual electricity costs of the lamp/ballast system operation over the lifetime of the ballast. The inputs to the life-cycle cost analysis include: The year standards take effect, the discount rate, the electricity price projections, ballast prices, annual lighting hours, ballast life, ballast input power, and initial and lamp replacement costs. Chapter 4 of the TSD contains the details of the life-cycle cost calculations.

In certain cases (when a T8 lamp/ballast system is considered as replacing a T12 lamp/ballast system), an additional input (mean lamp lumens) was required. We used this input to normalize the unequal light outputs for the two lamp types.

b. National Energy Savings Spreadsheet

In order to make the analysis more accessible and transparent to all stakeholders, we developed a spreadsheet model that uses Excel in Windows 95 to calculate the national energy savings (NES) and the national economic costs and savings from new standards. We can change input quantities within the spreadsheet. For example, one can easily change the ballast prices. Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs. We conduct sensitivities by running different scenarios.

DOE uses the NES spreadsheet to perform calculations of national energy savings based on user inputs similar to those for the LCC spreadsheet. The national energy savings, energy cost savings, equipment costs and net present value of benefits for several product classes are forecast from the chosen start year through 2030. The forecasts provide annual and cumulative values for all four output parameters.

The Department calculates the national energy savings by subtracting energy use under a standards scenario from energy use in a base case (no standards scenario). Energy use is reduced when an energy efficient magnetic (EEM) ballast is replaced by either a cathode cutout (CC) or an electronic ballast. For CC standards, the user can specify what percent of EEM ballasts are converted to electronic and what percent to CC. For an electronic standard, the user can specify what percent of EEM ballasts are converted to T12 or T8 electronic. Unit energy savings for each product class are the same as calculated in the LCC spreadsheet. Additional information about the NES spreadsheet can be found in Chapter 5 and Appendix B of the TSD.

User inputs include: (1) A choice from among several electricity price projections; (2) effective date of the ballast standard; (3) discount rate and discount year; (4) a shipments forecast; and (5) ballast assumptions. Ballast assumptions include inputs such as annual lighting hours and ballast prices. Additionally, we use a time series of conversion factors to change from site to source energy.

One of the more important components of any estimate of future impact is shipments. Forecasts of shipments for the base case and standards case were used as inputs to the NES spreadsheet. The shipments portion of the spreadsheet forecasts EEM ballast shipments from 1997 to 2030. One base case scenario assumes decreasing shipments of EEM ballasts until the year 2015. Another base case scenario assumes decreasing shipments until the year 2027. The decreasing shipments scenarios are determined by one user input: The year by which EEM ballast shipments decrease to 10 percent of the 1997 value. The decrease in EEM shipments is linear. Once that 10 percent value is reached, shipments remain at that value through 2030. Additional details on the various shipments forecasts are provided in Chapter 5 of the TSD.

c. Manufacturer Impact Analysis and Government Regulatory Impact Model (GRIM)

The manufacturer analysis estimates the financial impact of standards on manufacturers and calculates impacts on employment and manufacturing capacity.

Prior to initiating the detailed manufacturing impact analysis for the ballast rulemaking, the Department prepared a document titled "Ballast Manufacturer Impact Analysis Analytical Approach." This document was presented at a public workshop held on April 28, 1998. We developed the approach from the general framework for Manufacturing Impact Analyses presented by the Department in March 1997 and modified for its application to the ballast rule. The document outlined procedural steps and identified issues for consideration.

As proposed in the Approach document, the manufacturer impact analyses (MIA) was conducted in four phases. Phase 1, Industry Profile and Issue Definition, consisted of two activities, namely, preparation of an industry characterization and the conduct of an issue identification workshop. The second phase, "Strawman" Industry Cash Flow, had as its focus the larger industry. In this phase, the GRIM was used to prepare a "strawman" industry cash flow analysis. Here the Department used publicly available information developed in Phase 1 to adapt the GRIM model structure to facilitate the analysis of new ballast standards. In the Phase 3, Sub-Group Impact Analysis, individual manufacturers used the strawman cash flow as a template from which individual company level cashflows were developed from GRIM. Phase 3 also entailed the documentation of additional impacts on employment and manufacturing capacity through an interview process. Finally in Phase 4, Industry Cash Flow, individual cash flows were aggregated into three groups, one including all manufacturers, a second including full line manufacturers of magnetic and electronic ballasts, and a third including manufacturers producing only electronic ballasts.

1. Phase 1, Industry Profile and Issue Definition

Phase 1 of the Manufacturer Impact Analysis consisted of two activities, namely, preparation of an Industry Characterization and the conduct of an issue analysis workshop. Prior to initiating the detailed impact studies, the Department received input on the present and past structure and market characteristics of the ballast industry. This activity involved both quantitative and qualitative efforts to assess the industry and products to be analyzed. Issues addressed included manufacturer market shares and characteristics; trends in number of firms; the financial situation of manufacturers; and trends in ballast characteristics and markets.

We presented publicly available quantitative data published by U.S. Bureau of Census with regards to the ballast industry at the April 28, 1998, workshop. These reports include such statistics as the number of companies, manufacturing establishments, employment, payroll, value added, cost of materials consumed, capital expenditures, product shipments, and concentration ratios.

To further assist in performing the Industry Profile and to define key issues, the Department conducted a series of interviews with ballast manufacturers in late 1996 and early 1997. DOE distributed summaries of these interviews at the "Public Workshop on the Revised Life Cycle Cost and Engineering Analysis of Fluorescent Lamp Ballasts," held on March 18, 1997.

The interviews and review of public literature suggested that the following guidelines be followed to assess the impacts of a new ballast standard. First, the Manufacturer Impact Analysis should be performed on a company-by-company basis and the industry impact constructed from an aggregation of impacts on individual companies. Second, the analysis should recognize the increasingly global nature of the ballast industry. Gains or losses in U.S. sales will have consequences for manufacturers regardless of where their production facilities are located. Where possible, the analysis should be structured to assess impacts at U.S. National, North American, and Global levels. Finally, the Manufacturer Impact Analysis should include consideration of direct industry suppliers and luminaire and lamp manufacturers. The Department recognized that manufacturers do not operate in isolation and that changes in production levels or economic health of a manufacturer can have significant impacts on its suppliers and other trade allies.

2. Phase 2, "Strawman" Industry Cash Flow

Phase 2 of the manufacturer analyses has as its focus the "larger" industry. As such, this phase resembles the Department's past practice of modeling a "prototypical" firm with average industry values. The analytical tool used for calculating the financial impacts of standards on manufacturers is the GRIM. In phase 2, we used GRIM to perform a "strawman" industry cash flow analysis. Section III.c below, describes briefly the GRIM's operating principles.

Given the relatively small number of firms in the industry, the Department proposed to create an Industry Cash Flow Analysis using a "bottom-up" approach. Essentially, each manufacturer was asked to provide its own cash flow analysis to be aggregated with all other manufacturer submittals.

In order to facilitate individual manufacturer analysis, the Department prepared "strawman" scenarios for a "prototypical" manufacturer from publicly available financial information. Manufacturers then performed their individual cash flows by modifying relevant parameters in the strawman to meet their own situation (price, cost, financial, shipments, *etc.*).

For the strawman, the Department prepared a list of financial values to be used in the GRIM industry analysis. We estimated these by studying publicly available financial statements of fluorescent lamp ballast manufacturers. A detailed definition of financial inputs and their values for a "prototypical" ballast manufacturer is contained in Attachment C of the document, entitled "Financial Inputs to GRIM for the Ballast Rulemaking Analysis." We derived strawman values for prices from the Bureau of Census' Current Industrial Reports (CIRs). The dollar value of ballast shipments from factories is divided by the quantity of ballasts shipped to arrive at the per unit manufacturer price. In order to estimate manufacturing costs-labor, materials, depreciation/tooling, *etc.*—from the average manufacturer prices obtained from CIRs, we developed a typical ballast industry cost structure from publicly available information from the Census of Manufacturers (CMs) and from transformer industry statistics (SIC# 3612), and which we obtained from Robert Morris Associates (RMA) reports. Finally in preparing the draft industry cash flow analysis, the Department used the same ballast shipment scenarios developed for the NES spreadsheet.

3. Phase 3, Sub-Group Impact Analysis

The Department conducted detailed interviews with ballast manufacturers representing over 95 percent of domestic ballast sales to gain insight into the potential impacts of standards. During these interviews, the Department solicited the information necessary to

evaluate cashflows and to assess employment and capacity impacts.

The interview process had a key role in the manufacturer impact analyses, since it provided an opportunity for manufacturers to express privately their views on important issues and provide confidential information needed to assess financial, employment and other business impacts. To support the development of company cashflows, the interview guide solicited information on the possible impacts of new standards on manufacturing costs, product prices, and sales. The evaluation of the possible impacts on direct employment, and assets also drew heavily on the information gathered during the interviews. The interview guide solicited both qualitative and quantitative information. We requested supporting information whenever applicable.

DOE asked interview participants to identify all confidential information provided in writing or orally. Approximately two weeks following the interview, we provided an interview summary to give manufacturers the opportunity to confirm the accuracy and protect the confidentiality of all collected information.

4. Phase 4, Industry Cash Flow

As previously described, we used the GRIM spreadsheet and an interview guide to perform the ballast Manufacturer Impact Analysis on a company-by-company basis. This process has the benefit of enabling the impacts of standards to be evaluated at multiple levels of aggregation. The total industry impact was constructed from an aggregation of impacts on individual companies. The Department aggregated the individual cash flows into three groups, one including all manufacturers, a second including full line manufactures of magnetic and electronic ballasts only, and a third group including manufacturers producing only electronic ballasts. This aggregation scheme was selected as the most representative of the range of impacts on individual manufactures compared to the industry aggregate values.

5. GRIM Spreadsheet

A change in standards affects a manufacturer's cashflow in three distinct ways. Increased levels of standards will: (1) Require additional investment; (2) raise production costs; and (3) affect revenue through higher prices and, possibly, lower quantities sold. To quantify these changes, the Department performs an industry and manufacturer cashflow analyses using the GRIM.

The GRIM analysis uses a number of inputs—annual ballast shipments; ballast prices; manufacturer costs such as materials and labor, selling and general administration costs, taxes, and capital expenditures—to arrive at a series of annual cash flows beginning from before implementation of standards and continuing explicitly for several years after implementation. The measure of industry net present values are calculated by discounting the annual cash flows from the period before implementation of standards to some future point in time. Additional information about the GRIM spreadsheet can be found in Chapter 6 of the TSD.

d. NEMS Environmental Analysis

The environmental analysis provides estimates of changes in emissions of nitrogen oxides (NO_X) and carbon from carbon dioxide (CO_2). The Department used NEMS–BRS for the fluorescent ballast environmental analyses (as well as the utility analyses). NEMS–BRS is run similar to the AEO99 NEMS except that commercial lighting energy usage is reduced by the amount of energy (electricity) saved due to proposed ballast standards. The input of energy savings are obtained from the NES spreadsheet. For the environmental analysis, the output is the forecasted physical emissions. The net benefits of the standard is the difference between emissions estimated by NEMS–BRS and the AEO99 Reference Case.

The environmental analysis is relatively straightforward from NEMS–BRS. Carbon emissions are tracked in NEMS–BRS using a detailed carbon module that provides robust results because of its broad coverage of all sectors and inclusion of interactive effects. The only form of carbon tracked by NEMS–BRS is CO_2. However, in this report the carbon savings are reported as elemental carbon.

The two airborne pollutant emissions that have been reported in past analyses, SO_2 and NO_X, are reported by NEMS–BRS. NO_X results are based on forecasts of compliance with existing legislation. In the case of SO_2, the Clean Air Act Amendments of 1990 set an emissions cap on all power generation. The attainment of this target, however, is flexible among generators and is enforced by applying market forces, through the use of emissions allowances and tradable permits. As a result, accurate simulation of SO_2 trading tends to imply that physical emissions effects will be zero because emissions will always be at, or near, the ceiling. This fact has caused considerable confusion in the past. There is virtually no real possible SO_2 environmental benefit from electricity savings as long as there is enforcement of the emission ceilings. Please see Appendix D of the TSD for a discussion of this issue.

Alternative price forecasts corresponding to the high and low economic growth side cases found in AEO99 have also been generated for use by NES and will be explored in a similar fashion with NEMS–BRS runs.

IV. Discussion of Comments

As noted above, the DOE proposed to revise the energy conservation standards applicable to fluorescent lamp ballasts on March 4, 1994. On January 31, 1995, the Department published a rulemaking determination that, based on comments received, it would issue a revised notice of proposed rulemaking for fluorescent lamp ballasts. Since that time, the Department conducted numerous meetings, workshops and discussions regarding energy efficiency standards for fluorescent lamp ballasts, resulting in a Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts, July, 1997; Summary of Inputs for the Technical Support Document: Energy Efficiency Standards for Fluorescent Lamp Ballasts, April 20, 1998; and Ballast Manufacturer Impact Analysis Analytical Approach, April 10, 1998. 62 FR 38222 (July 17, 1997) and 63 FR 16706 (April 6, 1998). A workshop was conducted on these analyses and documents on April 28, 1998. 63 FR 16706 (April 6, 1998). Based on comments and the growing popularity of electronic ballasts with T8 lamps, the Department solicited further comments specifically on the issue of whether market shifts (*e.g.*, from T12 to T8 lamps) should be considered in determining the impact of an energy conservation standard on commercial and industrial consumers, manufacturers and the nation. 63 FR 58330 (October 30, 1998). Further comments on the above analyses, and modifications resulting from those comments, culminated in publishing an analysis on the Codes and Standards Internet site (http://www.eren.doe.gov/buildings/codes_standards/applbrf/ballast.html) in April of 1999. We also conducted a workshop on that analysis on June 1, 1999. 64 FR 24634 (May 7, 1999). These analyses presented the impacts of standards on consumers, the nation and manufacturers. The Department considers all comments regarding this rulemaking made prior to the three documents and posted revised analyses listed above, to have been resolved or contained within comments pertaining to those documents. Therefore, in today's notice of proposed

rulemaking, the Department is only addressing comments made relative to those documents. Additionally, the National Electrical Manufacturers Association (NEMA), the American Council for an Energy Efficient Economy (ACEEE), the Natural Resources Defense Council (NRDC), the Alliance to Save Energy (Alliance) and the Oregon Energy Office (Oregon) submitted a joint comment for amended fluorescent lamp ballast standards. (Joint Comment, No. 91). While these stakeholders had previously commented on the above three documents and the web posting, the Department assumes, based on their joint comment, that it supercedes their previous comments. Therefore, their previous comments are not addressed in today's notice.

Life Cycle Cost Parameters

Electricity price: The Edison Electric Institute and Mr. Glenn Schleede raised questions about the electricity prices used in the 1997 Report, particularly about the possible effects of increased competition in the utility industry on prices. (EEI, No. 12 at 2–3 and Schleede, No. 15 at 4–8 and 13–20 and No. 21 at 2–4).

To reflect increased competition in the electricity industry due to restructured markets, the AEO99 reference case assumes a transition to competitive retail pricing in five regions—California, New York, New England, the Mid-Atlantic Area Council (consisting of Pennsylvania, Delaware, New Jersey, and Maryland), and the Mid-America Interconnected Network (consisting of Illinois and parts of Wisconsin and Missouri).[6] The specific restructuring plans differ from State to State and utility to utility, but most call for a transition period during which customer access will be phased in.

The transition period reflects the time needed for the establishment of competitive market institutions and the recovery of stranded costs as permitted by regulators. The region-wide 10 percent rate reduction required in California is represented. For the other regions it is assumed that competition will be phased in between 1999 and 2007, with fully competitive prices beginning in 2008. In all the competitively priced regions, the generation price (the price for the energy alone) is set by the marginal cost of generation. Transmission and distribution prices are assumed to remain regulated.

Several comments, including EEI and Mr. Schleede suggested marginal electricity rates should be used instead of average values. (EEI, No. 12 at 2, Schleede, No. 15 at 6 and No. 21 at 3, CDA, No. 25 at 2 and NEMA, No. 27 at 20–21). Mr. Schleede also suggested that instead of using one electricity price for all years of the analysis, a projection of future electricity prices should be used. (Schleede, No. 15 at 5).

In response to comments on marginal energy prices, we performed a separate analysis, whose goal was to generate marginal electricity prices for the commercial sector. Because of the large number of electric utilities in the U.S., we chose a small subset of electric utilities for this analysis. We analyzed the electric bills (with and without standards) of a large number of commercial buildings in each of these utility districts. In the TSD (see Chapter 4), we show how a distribution of marginal electricity prices was obtained from this analysis of rate schedules for 24 utilities for the year 1997. We projected these marginal prices for each future year of the analysis by using the rate of decrease in the EIA Annual Energy Outlook 1999, as shown in Table 4.2 in Chapter 4 of the TSD. Alternative electricity price scenarios shown in Table 4.2 are also available to users of the Life Cycle Cost and National Energy Savings spreadsheets.

Mr. Schleede indicated that the sensitivity analysis, which considered the full distribution of U.S. commercial electricity prices, was an improvement over the previous practice of just using a point estimate. (Schleede, No. 21 at 1).

Additional comments on marginal electricity prices were received after the posting of analysis results on the DOE web site in April of 1999.

Mr. Schleede stated DOE and its contractors have continued their ambivalence about removing fixed costs from the life cycle cost calculations. (Schleede, No. 76 at 1).

Mr. Schleede is incorrect. We have used marginal electricity prices for all life-cycle cost savings calculations and there are no fixed costs in the marginal electricity prices used as described in Appendix B of the TSD.

EEI does not agree with the calculations of "epsilon" values as shown in the April 1999 text report entitled Life Cycle Cost Results. EEI would like to see how DOE handled the issues of lighting load factors (*e.g.*, the amount of lighting actually used during the day, such as 90 percent of the fixtures) which affect kWh energy reductions, and coincidence and diversity factors which will affect the kW demand reductions (and their economic impact). (EEI, No.48 at 2).

The Department describes the method in Appendix B of the TSD, Marginal Energy Prices report: Demand Decrement Due to Standards—The Role of Lighting Coincidence and Diversity.

EEI commented that a line in the LCC results writeup reads "the change in the bill divided by the change in energy usage yields the marginal electricity price." EEI stated that this is not analytically correct. For commercial (and industrial) customers, there is a marginal kWh price and a marginal kW price that should not be "blended" for a cost analysis. The change in the kWh energy portion cost of the bill divided by the change in energy usage yields the marginal kWh energy price, and the change in the kW demand cost of the bill divided by the change in the peak kW demand (monthly and/or on-peak) yields the marginal kW demand price. These two marginal costs are separate and calculated differently. (EEI, No. 48 at 4).

The bill is a combination of the kWh (energy) and kW (demand) components, and the Department calculated them separately in order to derive the marginal electricity prices. The use of a proportional demand decrement (calculated as explained in Appendix B of the TSD, Marginal Energy Prices) enabled DOE to calculate each of the contributions to bill savings associated with kWh savings and kW savings.

Published sources for average commercial prices (defined as revenues from energy and demand charges combined, divided by energy sales) are expressed on a per kWh basis, "blending" the energy and demand charges. For consistency with those sources of projected commercial energy prices, the Department sees no practical alternative to including the kW (demand) savings component, expressed on a per kWh basis, in the derivation of marginal commercial prices.

EEI stated it is not sure how DOE performed the calculation of epsilons for industrial customers, as only the procedure for commercial customers was outlined in the text report (DOE web posting of April, 1999). (EEI, No. 48 at 4).

The epsilon distribution calculated for the commercial sector was also used for calculating the industrial marginal electricity prices from the industrial average electricity prices.

EEI stated that DOE used the "average" electric price, rather than the marginal electricity price, on the spreadsheet under the "Results" tab. This has the result of showing more favorable results for life cycle cost savings, paybacks, and the globalized

[6] For more information on restructuring assumptions, please see pp. 14–15 of the AEO99.

percentage of winners and losers. (EEI, No. 48 at 4).

The results (life-cycle cost savings, payback and percent winners and losers) are calculated using marginal prices applied to electricity savings. The sheet titled "Results" in the LCC version 4 spreadsheet does use average values for the purpose of calculating a life-cycle cost for each technology. However, this sheet was only provided as a check to allow the user to estimate LCC and payback periods using average values and then compare them to the results obtained with distributions (in Crystal Ball) for the main inputs. We will relabel the "Results" sheet to "LCC and Payback Periods Using Average Values for All Inputs" to avoid confusion in any future analysis.

Mr. Schleede stated that electricity prices are falling faster than the EIA forecast in Annual Energy Outlook, 1998 and 1999 Reference cases. (Schleede, No. 76 at 1).

DOE used the EIA forecast over the period 2003–2030. The rate of decrease over the last few years is influenced by electricity deregulation and seems unlikely to translate into a 27 year trend.

Mr. Schleede stated that there is a wide variation in electricity prices and many people and organizations would be forced to incur higher life cycle costs if DOE proceeds with ballast standards. (Schleede, No. 76 at 1).

The Department uses a distribution of electricity prices as input to its LCC analysis and reports the percentage of end-users with higher and lower LCC from ballast standards.

Annual Lighting Hours: The values we used for annual lighting hours in the 1997 Report were based on average values from energy audits performed by Xenergy, Inc. on over 25,000 buildings between 1990 and 1994, as described in Section A.4 of the 1997 Report.

EEI asked that a +/− range be given for the average annual operating hours. (EEI, No. 12 at 3).

We are using ranges of annual lighting operation hours, as shown in Figures 4.4 through 4.9 of the TSD, in calculating consumer life cycle costs. These distributions range from less than 200 hours of use to over 8,000 hours.

Other LCC Inputs: EEI asked if U-tube lamps were included. (EEI, No. 12 at 3).

U-tube lamps are driven by the same ballasts as straight-tube lamps; therefore, we did not conduct separate LCC analyses for them (the wattages and lamp prices are only slightly different). Ballasts that drive U-tube lamps are included in the NEMA data to generate shipments data for the NES (see National Energy Savings below).

EEI suggested that F96T8 lamp ballasts be included in the analysis. (EEI, No. 12 at 3). Other comments, on the limited re-opening of the record, also suggested including 8-foot T8 ballasts. (Osram Sylvania Inc, No. 34 at 3 and Motorola Lighting Inc., No. 33 at 2 and ACEEE, No. 77 at 3).

Since F96T8 lamp/ballast systems have small market shares, the Department did not collect data and analyze them separately or include them in today's proposed rule.

International Consulting Services (ICS) asked that the faster lumen depreciation of T8s be taken into account. (ICS, No. 17 at 5).

The *Lighting Upgrade Manual* published by EPA's Green Lights Program (EPA–430–B–95–009), February 1997 edition, Lighting Maintenance section, page 3, has a graph of lamp lumen depreciations. The four-foot T8 lamps have a flatter lamp lumen depreciation curve than do the four-foot T12 lamps, showing that T8s have slower lumen depreciation than T12. The same is true for the eight-foot T12 and T8 lamps. However, we did not consider this effect in the LCC analysis, as it does not generally impact lamp lifetime or relamping times, and, therefore, does not affect the result of the analysis.

National Energy Impacts

In the 1997 Report, we used the COMMEND model to project ballast sales and National Energy Impacts. In response to comments that COMMEND was difficult to understand and use, we developed a spreadsheet calculation tool for use in the TSD analyses as was previously discussed under Methodology. We used the NES spreadsheet to estimate national energy savings and economic parameters.

We divided the comments received on national energy impacts into five categories: COMMEND-related comments, the NES model and approach, shipments and market shares, lighting/HVAC (heating, ventilating, and air conditioning) interactions, and non-regulatory programs.

COMMEND-Related Comments

Several issues on COMMEND (*e.g.*, ballast sales) were raised by comments. Since today's analysis uses the NES spreadsheet model instead of COMMEND, these issues are no longer relevant and are not addressed.

Non-Regulatory Programs

EEI suggested that the impacts of voluntary efficiency programs should be more adequately taken into account. It also observed that although the dollar amount spent on Demand Side Management (DSM) programs has declined in recent years, the numbers of ballasts installed because of DSM programs may still have remained the same or even increased, since the price differential between magnetic and electronic ballasts has gone down (EEI, No. 12 at 1).

Since the NES spreadsheet that we used to calculate energy savings requires projections of future ballast shipments as an input, we must make some assumptions concerning the annual shipments of energy efficient magnetic (EEM) ballasts under a scenario of no amended standards. Since it is not possible to know how these shipments will change in the future, the Department decided to analyze several possible future scenarios. The influence of non-regulatory programs on magnetic ballast shipments is implicitly accounted for in these shipment scenarios (described in Chapter 5 of the TSD and also later in this proposed rule). Scenarios in which magnetic ballast shipments continue to decline over time, reflect some level of continued impact of non-regulatory incentive programs. See section V below for a more detailed description of the assumptions of these scenarios.

Since the release of the 1997 Report, the Department has undertaken a more detailed analysis of non-regulatory program impacts on the ballast market by studying utility DSM program impacts, ASHRAE/IES building code impacts, EPA Green Lights/EPA–DOE Energy Star Buildings, and DOE FEMP programs. We conducted a study [7] to estimate the number of fluorescent ballasts affected by DSM rebates from 1992 to 1997. We combined detailed analysis of data on spending amounts and units receiving rebates from several major utilities, accounting for up to 30 percent of the national total, with EIA estimates of national energy efficiency spending to produce estimates of ballasts rebated. Results indicate that the number of rebates and the percentage of the ballast market affected by rebates have both declined since 1995, at the same time that the magnetic ballast market began to level off. Under EPACT, the states are upgrading their building codes to match the lighting provisions in ASHRAE/IES Standard 90.1–1989. When revised as Standard 90.1–1999, the code's lower lighting power density limits will be an incentive for increasing use of electronic

[7] Busch, Chris, Turiel, I., Atkinson, B.A., McMahon, J.E., Eto, J.H. 1999. "DSM Rebates for Electronic Ballasts: National Estimates (1992–1997) and Assessment of Market Impact." Lawrence Berkeley National Laboratory.

ballasts. DOE is preparing a new code for Federal buildings that will also encourage the use of electronic ballasts. The EPA programs (first Green Lights and now the EPA–DOE Energy Star Buildings) provide voluntary incentives for lighting upgrades that include electronic ballasts. The DOE FEMP Procurement Challenge and Federal Relighting Initiative are having modest but important impacts increasing the market share for electronic ballasts purchased for Federal buildings. Other programs such as the Voluntary Luminaire Program created by the National Lighting Collaborative under EPACT, NEMA's Energy Cost Savings Council, DOE's Rebuild America, and DOE's Lighting Technology Roadmap also provide incentives to move the market toward more efficient fluorescent ballasts.

Utility and Environmental Analyses

The NEMS has been used to estimate impacts of ballast energy efficiency standards on electric utilities. The Department used a version of EIA's NEMS, called NEMS–BRS, for the utility and environmental analyses. NEMS simulates the energy economy of the U.S. and has been developed over several years by the EIA primarily for the purpose of preparing the Annual Energy Outlook (AEO). NEMS produces a widely-known baseline forecast for the U.S. through 2020 that is available in the public domain. NEMS–BRS offers a picture of the effect of standards since its scope allows it to measure the interactions between the various energy supply and demand sectors and the economy as a whole.

Fuels for Electricity Generation: EEI pointed out that projections for oil and gas generation after 1995 are available from GRI, EPRI, and EIA, and DOE could use them in its analysis (EEI, No. 12 at 3).

Most analyses use EIA data such as electric utility fuel prices as a starting point. The important result for estimating the effect of standards on utility costs is not the overall fuel mix, but the marginal effect on fuel consumption and power plant construction.

EEI stated that the values used for the heat rate (for conversion of electricity from site to source energy) are overstated. It indicated that the analysis is using the total U.S. generation capacity (not a marginal capacity type of analysis) and is using EIA methodology. EEI asserts the values are overstated for the following reason: EIA assigns the same heat rate of fossil-fuel power plants to renewable power plants. This assumption creates an artificial heat rate for hydroelectric, wind, solar, biomass, and other forms of renewable energy. For the approximately 10 percent (and growing) portion of renewable electricity generation, EIA assigns a value of over 10,000 Btu/kWh to generation that has 0 Btu/kWh or 3,412 Btu/kWh. EEI states this factor alone leads to an overstatement of primary energy savings. In addition, EEI asserts that with the advent of restructuring, there are many new technologies that could lower the overall heat rate at a much quicker rate than shown in the 1999 Annual Energy Outlook (AEO). EEI proposes that the lower end of the ranges for national energy savings should be significantly lower to account for this possibility. (EEI, No. 48 at 3).

Table 5.3 in the TSD shows the site-to-source heat rates used in our analysis for the period 2003–2030. They are average rates for the commercial sector obtained from AEO99. We have compared these values to marginal values we obtained from a NEMS analysis. The marginal heat rate is the change in fuel delivered to generating stations divided by the change in electricity sales. For the NEMS analysis, we only considered thermal generation. For most years in the analysis period, the marginal heat rate was lower than the average heat rate. Overall, if we had used a marginal heat rate rather than the average heat rate, source quads would be reduced by about 4 percent.

EEI is in agreement with the analysis showing a declining heat rate over the analysis period. However, it asserts the values shown in AEO 1999 should be considered to be the high end of the range of inputs for the analysis period. (EEI, No. 48 at 3).

Other scenarios will show a faster rate of decline in heat rates over the next 20–30 years. The Department executed its analysis using the AEO99 Reference Case. The average heat rate extracted from AEO99 and used in the analysis declines from 10,871 Btu/kWh in year 2001 to 9,196 Btu/kWh in year 2030. This is equivalent to increasing the energy conversion efficiency of thermal power generation from 31 percent to almost 37 percent. This is a major assumed improvement, especially given that many generating assets in place today will still be serving marginal duty cycles during most of the forecast period.

Conservation Load Factor: EEI also stated that it was not clear how the Conservation Load Factor (CLF) was calculated, and asked if it was calculated on a regional level first and then aggregated, or at the national level only. (EEI, No. 12 at 3).

The CLF is not used in the NEMS analysis so this question is no longer relevant.

SO_2 and NO_X emissions: EEI suggested that because SO_2 and NO^x emissions have declined over the past several years, marginal emissions due to energy savings will be lower than average emissions. (EEI, No. 12 at 3).

Total emissions of SO_2 are unlikely to be affected by any policy, such as efficiency standards, because emissions are capped by legislation. The actual reduction in NO_X emissions will be determined by which marginal thermal generation is reduced through lower electricity sales. Most new capacity is likely to be both efficient and clean, and therefore operate at low marginal cost high in the dispatch order (*i.e.*, utilities will dispatch the newer, cleaner sources before going to the older, more expensive sources). Generation from these new resources is therefore unlikely to be reduced by a reduction in electricity sales. On the contrary, it is likely that the displaced generation will be from older, dirtier plants low in the dispatch order.

Appliance Standards Environmental and Utility Model (ASEUM): EEI and Mr. Schleede concurred that the ASEUM model's methodology may be outdated in an era of deregulated utilities that are unlikely to remain vertically integrated. (EEI, No. 12 at 4 and Schleede, No. 15 at 7–8).

It is true that the electric utility industry is undergoing a radical restructuring, and the assumptions of cost recovery underlying ASEUM are becoming dated. We agree that we needed other methodologies to carry out the utility analysis, and we used the NEMS–NAECA for this purpose.

Ballast Market Shift (From T12 Magnetic to T8 Electronic)

The 1997 Report, and all previous analyses, analyzed the impact of an electronic ballast standard by essentially assuming that users of magnetic ballasts with T12 lamps would switch to electronic ballasts with T12 lamps if the former ballast type became obsolete. As described in the Notice of Limited Reopening of the Record and Opportunity for Public Comment, the Department solicited comments on consideration of consumers who might choose electronic ballast T8 systems over electronic ballast T12 systems and consumers who might choose electronic ballasts over cathode cutout ballasts. 63 FR 58330 (October 30, 1998). DOE asked for comments on certain aspects of both the electronic ballast and the cathode cutout ballast standard levels: Whether a market shift from magnetic T12

ballasts to electronic T8 ballasts is likely, the extent of such a shift, and whether the impacts of these shifts should be considered.

In the Joint Comment, the stakeholders stated that they assumed 95 percent of consumers of electronic ballasts would switch from T12 to T8 lamps. (Joint Comment, No. 91 at 8).

Northwest Energy Efficiency Alliance (NEEA) stated that in its region with a mature market for electronic ballasts, the standard practice in new construction/renovation is a fixture with an electronic T8 ballast; this results partially from building codes as well as from economics. Cathode cutout systems are rare, with customers selecting electronic ballasts instead because of energy-efficiency, light quality, and the ability to drive multiple lamps. (NEEA, No. 38 at 1–2).

The Tennessee Valley Authority (TVA) explained that its procedure is to replace failed magnetic T12 ballasts with electronic T12 ballasts because of availability, cost (when the lighting hours are too short for a good payback with a T8 system); and maintenance (if only part of the ballasts in a space need replacement, the T12 lamps are retained). For major system replacement, electronic T8 systems were considered the first option. (TVA, No. 36 at 1).

The statute requires the Department to establish different classes where appropriate, and today's proposed rule would prescribe separate ballast efficacy factors for each lamp-ballast combination. To determine economic impact on manufacturers and consumers, DOE looks to reasonably predict likely market impacts. That is, some consumers with T12 lamps and magnetic ballasts would switch to T8 lamps with electronic ballasts if the magnetic T12 ballast was eliminated. Furthermore, the Secretary has determined to examine the impact of this consumer sub-group under economic factor 7.

Mr. Glenn Schleede comments that DOE has continued its long-standing practice of giving little consideration to the interests of real consumers who end up bearing the burden of energy efficiency standards. (Schleede, No. 76 at 2).

The Department believes it has considered the interests of real consumers, and any burdens on them, by including the full range of electric prices, ballasts prices, operating life and ballast life that consumers will experience and calculating the full range of impacts on consumers. Furthermore, we studied the economic impact of the standard on consumers by considering and evaluating likely consumer actions. As a result, we are presenting impacts on consumers moving from T12 lamps with magnetic ballasts to T12 lamps with electronic ballasts and also consumers moving from T12 lamps with magnetic ballasts to T8 lamps with electronic ballasts. Both of these likely occurrences arise from the consumer not being able to buy a T12 magnetic ballast under the standard being proposed. However, while modeling and giving consideration to consumer actions, the Department does not believe it can set standard levels based on consumer purchasing behavior given the conclusions of the court in *Natural Resources Defense Council* v. *Herrington*, 768 F. 2d 1355, 1406–07 (D.C. Cir. 1985), where the court stated that "the entire point of a mandatory program was to change consumer behavior" and "the fact that consumers demand short payback periods was itself a major cause of the market failure that Congress hoped to correct."

Manufacturer Impact Analysis

The general MIA methodology presented by the Department in March 1997, was developed with substantive input from ballast manufacturers on issues relevant to the ballast rulemaking. Ballast manufacturers provided very useful insights that resulted in the incorporation of new factors for consideration in the analysis of manufacturer impacts, namely impacts on domestic manufacturer employment, manufacturing capacity, plant closures and loss of capital investment. Cooperation from ballast manufacturers also helped DOE in proposing the interview guide approach as a critical MIA tool for identifying issues relevant to each individual manufacturer. The ballast rulemaking was the first for which DOE conducted one-on-one interviews with the manufacturers. This process helped DOE appreciate the usefulness of this methodology for assessing qualitative impacts.

The Department of Energy held a public workshop on April 28, 1998, to present information and invite comment on several topics relating to energy-efficiency standards for fluorescent lamp ballasts. One major topic for discussion was the Manufacturer Impact Analysis (MIA). In developing the Manufacturer Impact Analysis document for the April 28, 1998, workshop, DOE tried to address the concerns that ballast manufacturers raised with the Department in previous meetings or through personal interviews. In addition to tailoring the GRIM spreadsheet to the ballast rulemaking, DOE developed a revised questionnaire to capture all issues relevant specifically to the ballast industry and its suppliers.

Subsequent to the April 28 workshop, the Department met with industry representatives to discuss the rationale for using the cash flow analysis methodology to measure financial impacts. The Department also reviewed details of the spreadsheet calculations at this meeting. The discounted cash flow approach is a widely used technique for evaluating a company's value (Net Present Value (NPV)), and is frequently used in capital budgeting decisions for evaluating capital spending proposals. It is also used for evaluating financial impacts of plant closures and business restructuring. The Department agreed to revise GRIM to add features that explicitly provide the capability to include one-time charges such as plant closures and asset write-offs.

The Department believes that the modified GRIM accurately captured the financial impacts of a step change in technology. In contrast to other appliance rulemakings that make only incremental changes to standard levels, this rulemaking would result in standards based on a completely new technology. To comply with final standards, manufacturers would be required to make significantly higher capital investments (*e.g.*, new plants, equipment and production processes). The capital investment numbers input into GRIM reflect this step change in technology and produce negative impacts on the manufacturer's cash flows. Furthermore, the Subgroup Impact Analysis proposed in the MIA methodology and carried out in part through interviews with manufacturer representatives considered impacts on employment, manufacturing capacity and competitive effects due to an electronic ballast standard.

To ensure that the manufacturer impact analysis captured the potential impacts of a radically transformed ballast market, the Department and NEMA members developed a scenario analysis methodology to be included in the ballast MIA. In creating their projections for future revenues and profit margins, manufacturers were asked to consider two different competition scenarios. In the first scenario, it was assumed that manufacturers would maintain their current market share. In the second scenario, we asked manufacturers to consider the impact of a new entrant in the industry which would capture a 15 percent share. Under the new entrant scenario, we redistributed market shares

and manufacturers were able to define new prices and costs (gross margins). The competition scenario analysis is described in greater detail in the TSD. Additional scenarios were constructed assuming a status quo in profit margins, the "existing dynamics" scenario, and a new entrant in the magnetic ballast market, or "magnetic new entrant" scenario.

We conducted the GRIM analysis and other elements of the MIA separately for each manufacturer. To report a representative variation in impacts between manufacturer sub groups while maintaining the confidentiality of individual manufacturers, DOE constructed three different cashflows: One for manufacturers of both magnetic and electronic ballasts, a second for manufacturers producing electronic ballasts only, and a third that combines both sub groups of manufacturers. Likewise, we evaluated employment and manufacturing capacity effects from an electronic ballast standard on a company-by-company basis and reported them for both subgroups. To the extent consistent with the confidentiality concerns of individual manufacturers, we reported important variations between manufacturers within subgroups qualitatively. The analysis results include a discussion of the impacts of the cashflow results on the business prospects of manufacturers in each subgroup, with reference to specific manufacturers where permitted by these manufacturers.

For the participating manufacturers, the GRIM analysis did not distinguish plants located outside the United States from United States' plants. We calculated employment impacts for these same firms and reported separate results for domestic and Mexican plants.

We performed a detailed analysis of the impacts of an electronic ballast standard on ballast manufacturer suppliers. This analysis included a quantitative evaluation of manufacturer cashflows and jobs. In total, 30 firms were invited to participate in interviews. Seventeen of these suppliers served magnetic ballast production, eleven electronic ballast production, and six served both magnetic and electronic markets. Nineteen organizations that serve magnetic ballast applications participated in interviews. Eight organizations that serve electronic ballast applications participated in interviews. In total, nine plant tours were held, five of which were at suppliers of magnetic products and four of which were tours of electronic supplier plants. The analysis demonstrated that the organizations interviewed provided a representative group of supplier industries, which we used to evaluate the impacts on supplier industries as a whole.

Additionally we visited one lamp manufacturer's fluorescent lamp plant and interviewed plant and corporate representatives. The Department decided to gather and analyze information on manufacturer impacts from other lamp manufacturers as well, and an analysis of this information is presented in Section V.

NEMA commented that the manufacturer impacts reported for a standard that began in the year 2003 were too severe and that standards that produced such impacts could not be economically justified. (NEMA, No. 85). NEMA, as a part of the Joint Comment, commented that their proposed staggered implementation dates mitigate such adverse impacts. (Joint Comment, No. 91 at 7).

Standards Proposals

NEMA described new market data on ballasts, as well as percentage of lamps driven by magnetic and electronic ballasts. This shows that electronic ballast penetration of the total commercial and industrial lighting market has increased to 55 percent of total ballast shipments in 1998. Electronic ballast market penetration has increased from 44 percent to 62 percent in 1998, when measured by the more relevant criteria of the number of lamps operated. For ballasts used only in commercial and industrial new construction, renovations and retrofits in 1998, electronic ballast penetration has increased to 63 percent, measured by ballast shipments, and to 70 percent measured by the number of lamps operated. (NEMA, No. 50 at 26 and Attachment B and NEMA, No. 85 at 44). ACEEE agreed with NEMA that the percentage of lamps ballasted electronically is the most important figure; however, the growth rate during 1993–1995 of 9 percent was larger than the growth rate of 2.8 percent from 1995 to 1998, supporting the "Decreasing Shipments to 2027" base case. (ACEEE, No. 77 at 9–10). Oregon Office of Energy noted that the magnetic ballast shipments increased in 1997 and remained stable in 1998, casting doubt on the base case scenarios that show steady decline of magnetic ballasts (Oregon, No. 81 at 5 and 7). The CEC also stated that a national standard would complement California's Title 24 building code policies by ensuring that savings are realized in retrofit applications as well as new construction. (CEC, No. 82 at 1).

Additionally, the Department received comments from the Vermont Residential Energy Efficiency Program, Conservation and Renewable Energy Systems, Broward County Florida, Alto Manufacturing Company, Rocky Mountain Chapter of the Sierra Club, State of Vermont, California Energy Commission, Northeast Energy Efficiency Partnerships, Pacific Gas and Electric, Northwest Energy Efficiency Alliance, Sacramento Municipal Utility District, Boston Edison, Eastern Utilities, Green Mountain Power, New York Power Authority, Eugene Water and Electric Board and 35 private citizens urging the Department to establish standards requiring electronic ballasts citing the delay in promulgating this rulemaking, the phasing out of utility incentive programs for ballasts, the energy savings and environmental and economic benefits.

In commenting on the possibility of a market shift, Osram Sylvania (OSI) proposed that the Department separately consider each of the three major ballast market segments: OEM (fixtures for new construction/renovation), Retrofit (early replacement of systems) and Replacement (existing ballast replacement at failure). The first two markets are appropriate for electronic T8 systems, while the third has existing reduced-wattage lamps that are incompatible with electronic ballasts.

OSI commented that 34-Watt lamps are incompatible with electronic ballasts because of their conductive coating that facilitates starting with magnetic ballasts. It stated that technical solutions were possible but impractical: "Smart" ballasts that overcome the problem for the 34-Watt lamp would not be compatible with 40-Watt high CRI lamps that meet the EPACT lamp standards and would be expensive; design of 34-Watt lamps without the conductive coating would be expensive; controlling the resistance of the conductive coating to allow compatibility with both ballast types would be unreliable over the range of lamps and over their normal lives, since the coating varies widely for any manufacturer and between manufacturers. The expenditure of resources by lamp manufacturers to design a lamp to meet this need would promote an obsolete system when the market should be moving toward T8 systems. OSI also stated that the lamp industry has the capacity to handle a market transition from a mixture of T12 to T8 lamps toward T8 lamps over a 3-year period, but would require a multi-million dollar capital investment and additional time to handle a more widespread transition for all market sectors. (OSI, No. 34 at 2–5).

A rapid shift to electronic ballasts would require lamp companies to make special adjustments to the lamps, or would drive end-users to purchase full-wattage T12 lamps. (OSI, No. 34 at 2 and OSI, No. 84 at 1). OSI recommended that BEFs be developed for 4-foot and 8-foot systems that disallow magnetic and cathode cutout ballasts (with several exemptions listed below) and that a standard with these BEFs be applied to OEM and retrofit ballasts 3 years after the standards publication date. Application of the standard BEFs to the replacement market would be delayed for 5 years beyond the effective date (a total of 8 years from publication), allowing development of retrofit incentive programs for building owners and allowing lamp manufacturers greater transition time for T8 lamp manufacture. Proposed exemptions include residential luminaires for T8 or smaller diameter lamps, dimming ballasts, 8-foot High Output, low-temperature, outdoor, magnetic ballasts, non-lighting applications, and ballasts with unresolved or unanticipated interference issues per application to the Department by a manufacturer or trade association. (OSI, No. 34 at 1–3).

Five comments supported the proposal by OSI to varying degrees. (Motorola Lighting Inc (MLI), No. 33 at 1–2, Holophane, No. 39 at 1–2, Lightolier, No. 40 at 1, and ASE No. 41 at 3, and Peerless Lighting, No. 52 at 1–3).

Motorola supported the proposal by OSI and recommended the application of new BEFs to the OEM and retrofit market at the earliest possible date. (MLI, No. 33 at 1). Motorola agreed with delaying the application of BEFs to the replacement market, but recommended a delay of two years rather than five years from the effective date. Further, it urged that BEFs for T8 magnetic ballasts be developed, and that all of the BEF levels be achievable by major ballast manufacturers. (MLI, No. 33 at 2). Holophane supported the OSI proposal, particularly the approach recognizing systems rather than components. It proposed that exemptions include dimming ballasts, 8-foot High Output outdoor ballasts, and special ballasts addressing interference issues. The luminaire manufacturers will be able to incorporate electronic ballasts as long as the ballast manufacturers can meet the demand; the only impact on their market will be the adjustment of lighting levels from fixtures with the new systems. Holophane recommended a delay of application of BEFs for the replacement market for "a reasonable period of time." (Holophane, No. 39 at 1). Lightolier noted that 80 percent of its fixtures use electronic ballasts for T8 or T5 lamps; of the remainder, intended for the distributor/contractor market, less than half use electronic ballasts. Lightolier recommended that the Department give serious consideration to the OSI proposal. (Lightolier, No. 40 at 1). Peerless agreed with the analysis of the two market segments, stated that disallowing magnetic ballasts would have short-term repercussion including the development of T12 electronic ballasts for a short-term market, and that a delay period would allow the lamp manufacturing industry to adjust to the increased T8 market. (Peerless, No. 53 at 1–3). ASE urged that the analysis consider the separate effects on the 3 different market channels, and supported OSI's proposal for a time-limited exemption for replacement ballasts if such an approach is administratively feasible. (ASE, No. 41 at 2–3).

The Department decided to analyze the five and two year delay standards proposal suggested above. The description and results of this analysis are shown in section V of this notice.

The Joint Comment presented the Department with a proposal for segmenting the market and extending the implementation dates to mitigate the burdens to acceptable levels while maintaining most of the benefits of standards. For example, the phase-in period for the standards proposed in the Joint Comment is approximately five years, until April 1, 2005. This allows the manufacturers and the marketplace additional time to make an orderly transition from energy efficient magnetic ballasts to the more efficient ballasts that would be required if today's proposal were adopted. In addition, the Joint Comment proposed an additional five-year phase in for standards for ballasts intended for replacement market. While it is generally impossible to distinguish a ballast for the replacement market from one used in new construction or renovation, the Joint Comment recommends that replacement ballasts be labeled for replacement use, have output leads which, when fully extended, are less than the length of the lamp it is intended to operate and they are shipped in packages of ten or less. DOE agrees replacement ballasts, as proposed by the Joint Comment would not likely be used other than to replace an existing ballast. In addition to the above, the Joint Comment also proposed limiting the exemptions relative to the extant standards. For example, the standards found in the National Appliance Energy Conservation Amendments of 1988 provided exemptions for cold temperature and dimming ballasts. The Joint Comment proposed limiting the exemption for cold temperature ballasts to those capable of being dimmed to 50 percent or less of its maximum output and the cold temperature ballast exemption would be limited to ballasts for use with two F96T12HO lamps at an ambient temperature of −20°F and which is for use with outdoor signs. The recommended changes to the dimming and cold temperature exemptions will result in the standards being applied to products previously not subject to the standards. The standard for two F96T12HO lamps has not been modified, however, since it would apply to more products, the changes proposed by the Joint Comment will result in higher energy savings for this product class than if the standards were raised, but applied with the extant exemption. (Joint Comment, No. 91 at 5).

V. Analytical Results

a. Efficiency Levels Analyzed

The Department utilized two base case forecasts of shipments of magnetic ballasts without standards as follows:

Base Case: Decreasing Shipments to 2015 (5 percent reduction)

In this base case, we assumed magnetic ballast shipments after 1997 decrease at the rate at which most magnetic ballasts declined from 1993 through 1997, reaching a base level by 2015. This rate of decreasing magnetic ballasts shipments represents a reduction of approximately 5 percent per year relative to 1997 shipments. The base level represents 10 percent of the magnetic ballast shipments in 1997 for each ballast class, and is carried out to 2030. This base case assumes that non-regulatory programs as well as market forces result in the same rate of transition to electronic ballasts as observed from 1993 through 1997.

Base Case: Decreasing Shipments to 2027 (3 percent reduction)

In this base case, we assumed magnetic ballast shipments decrease at a slower rate, reaching the same base level by 2027. This rate of decreasing magnetic ballasts shipments roughly represents a reduction of 3 percent per year relative to 1997 shipments. The base level represents 10 percent of the magnetic ballast shipments in 1997 for each ballast class, and is carried out to 2030. This base case assumes that non-regulatory programs and market forces affect a slower rate of transition to electronic ballasts than observed in recent years.

The Department also analyzed the impact of two trial standard levels; one was for electronic ballasts and the other for cathode cutout ballasts.

Electronic Ballast Standards Scenarios

We also evaluated the following scenarios to capture the range of national impacts from likely consumer choices (scenarios 1 and 2) and to evaluate suggested implementation schemes presented in comments (scenarios 3 and 4) for electronic ballast standards:

Scenario 1. This scenario assumes that 100 percent of magnetic T12 ballasts are converted to electronic T12 ballasts. This scenario is intended to model the impacts of minimal compliance with the standard in regard to commercial and industrial consumer choice.

Scenario 2. This scenario assumes that all magnetic T12 ballasts are converted to electronic ballasts, with 5 percent becoming T12 ballasts and 95 percent becoming T8 ERS ballasts. This scenario is intended to model the trends in the current market where nearly all (95 percent) of electronic ballasts purchased from 1993—1997 have been T8 ballasts.

Scenario 3. This scenario assumes that the new/renovation luminaire market segment converts all magnetic T12 ballasts to electronic T8 ballasts starting on the effective date. We assume that this segment comprises 70 percent of the total magnetic T12 ballast market, based on the current luminaire market. The remaining 30 percent assumed replacement market has an additional delay of 5 years, after which these ballasts are converted to electronic ballasts, with 5 percent becoming T12 ballasts and 95 percent becoming T8 ballasts. This scenario allows a differing impact of the standards on these two market segments by providing an additional adjustment period for the replacement market for users in existing buildings and on lamp manufacturers to prepare for the new ballast type and market shift.

Scenario 4. This scenario has identical assumptions to scenario 3, except that the additional delay period for the replacement market is 2 years.

We compared each of the above four standard level forecasts with that of the two different base cases. We denoted forecasts under the "Decreasing Shipments to 2015" base case as scenarios 1A, 2A, 3A, and 4A. We called forecasts runs with the "Decreasing Shipments to 2027" base case scenarios 1B, 2B, 3B, and 4B.

Cathode Cutout Trial Standards

For cathode cutout standards, we also evaluated the following scenarios to capture the range of national impacts from likely consumer choices for a possible cathode cutout standard:

Scenario 5. This scenario assumes that 100 percent of magnetic T12 ballasts are converted to cathode cutout T12 ballasts. The exception is the F96T12 ballast class, for which there is no cathode cutout option. These ballasts are assumed to remain as magnetic ballasts under the standards. This scenario is intended to model the impacts of minimal compliance with the standard in regard to commercial and industrial consumer choice.

Scenario 6. This scenario assumes that the 30 percent replacement market T12 ballasts are converted to cathode cutout T12 ballasts, and the 70 percent new/renovation market T12 ballasts are converted to electronic ballasts, with 5 percent of the electronic ballasts becoming T12 ballasts and 95 percent becoming T8 ballasts.

We denoted forecasts run with the Decreasing Shipments to 2015 base case as 5A and 6A. We called forecasts run with the Decreasing Shipments to 2027 base case Scenario 5B and 6B.

Joint Comment

In addition, we evaluated two scenarios based on the standards recommended by the Joint Comment: Decreasing magnetic ballast shipments to 2015 and decreasing magnetic ballast shipments to 2027. In evaluating the joint comment proposal, the Department also used a third shipment scenario (flat magnetic ballast shipment forecast) as the upper bound as described in Appendix E of the TSD.

b. Significance of Energy Savings

To estimate the energy savings through the year 2030 due to revised standards, we compared the energy consumption of ballasts under the base case to the energy consumption of ballasts complying with the standard. As discussed above, there are eight electronic ballast standards scenarios and four cathode cutout standards scenarios.

The results presented in Tables V.1a and V.1b use the AEO Reference Case forecast. (The TSD shows the results for the AEO High and Low cases, with total benefits respectively higher and lower than those for the Reference Case.) The tables show the energy savings for each of the standards scenarios.

TABLE V.1A.—ENERGY SAVINGS FROM ELECTRONIC STANDARDS

	Electronic standards for units sold from 2003 to 2030							
Scenario	Scen 1A T12 Decr2015	Scen 1B T12 Decr2027	Scen 2A T12/T8 Decr2015	Scen 2B T12/T8 Decr2027	Scen 3A Decr2015	Scen 3B Decr2027	Scen 4A Decr2015	Scen 4B Decr2027
Total Quads Saved	1.01	1.79	1.66	2.93	1.43	2.66	1.57	2.84
Total Quads Saved w/ HVAC	1.08	1.9	1.76	3.12	1.52	2.82	1.67	3.02

TABLE V.1B.—ENERGY SAVINGS FROM CATHODE CUTOUT STANDARDS

	Cathode cutout standards for units sold from 2003 to 2030			
Scenario	Scen 5A 100% CC Decr2015	Scen 5B 100% CC Decr2027	Scen 6A 37% CC Decr2015	Scen 6B 37% CC Decr2027
Total Quads Saved	0.48	0.85	1.12	1.98
Total Quads Saved w/HVAC	0.51	0.91	1.19	2.11

The Department finds that each of the standards scenarios considered above would result in a significant conservation of energy. Energy savings from the electronic ballast standards scenarios range from 1.01 Quads to 2.93 Quads of source energy without considering HVAC savings. The energy savings are larger for the slower decreasing shipments forecast to 2027 compared to those with the faster decreasing shipments forecast to 2015. Energy savings for scenario 2 with T8 electronic ballasts are almost 65 percent greater than those for scenario 1 with T12 electronic ballasts. For scenario 3, the five-year phase-in period causes a savings reduction of around 10 to 15 percent from that of scenario 2. For scenario 4, the 2-year phase-in period results in a savings reduction of about 5 percent from scenario 2. For the cathode cutout standards scenarios, energy savings range from 0.48 Quads to 1.98 Quads without considering HVAC savings. The scenario 6 savings from partial conversion to electronic ballasts are about 2.3 times higher than those of scenario 5. The additional HVAC savings increase the total energy savings for all levels by 6.25 percent.

In Table V.2, we present the energy savings of the Joint Comment. The results use the AEO Reference Case forecast with the energy savings from 2005 to 2030. The energy savings of the Joint Comment range from 1.20 Quads to 2.32 Quads without considering HVAC savings.

TABLE V.2.—ENERGY SAVINGS, RESULTING FROM JOINT COMMENT

Energy savings, resulting from joint comment, for units sold from 2005 to 2030		
Scenario	Dec 2015	Dec 2027
Total Quads Saved	1.20	2.32
Total Quads Saved w/ HVAC	1.27	2.46

c. Payback Period

The Act requires the Department to examine payback periods to determine if the three year rebuttable presumption of economic justification applies. In Table V.3, we list the median payback periods for product classes and design options. While we did not analyze the effect of a two-year delay in the effective date of the comments as found in the Joint Comment, because the cost of energy varies little between the two years (2003 and 2005), we believe the paybacks shown below are representative of a 2005-effective standard as well.

TABLE V.3.—SUMMARY OF PAYBACK PERIOD

Product class	Design option	Sector	Median payback (yrs)
1F40	T12 CC	Commercial	24.8
	T12 ERS	Commercial	6.4
2F40	T12 CC	Commercial	10.7
	T12 ERS	Commercial	5.4
3F40	T12 CC	Commercial	9.9
Tandem-Wired	T12 ERS	Commercial	6.4
3F40	T12 CC	Commercial	11.5
Not Tandem-Wired	T12 ERS	Commercial	3.3
4F40	T12 CC	Commercial	9.3
	T12 ERS	Commercial	4.8
2F96	T12 EIS	Commercial	5.9
	T12 EIS	Industrial	8.8
2F96HO	T12 CC	Commercial	2.1
	T12 ERS	Commercial	2.4
	T12 CC	Industrial	5.4
	T12 ERS	Industrial	3.1

d. Economic Justification

1. Economic Impact on Manufacturers and Consumers

We performed a Manufacturer Impact Analysis (MIA) to determine the impact of standards on manufacturers. The complete analysis is Chapter 6 of the TSD. In general, manufacturers of "affected" magnetic ballasts and their suppliers would be negatively impacted. Also, most ballast manufacturers reported that they would add additional electronic ballast capacity to meet a new standard. None of the manufacturers stated that they would leave the industry or go out of business as a result of an electronic ballast standard. Commercial and industrial consumers will also be affected by increased ballast standards in that they will experience higher purchase prices for ballasts and lower operating costs for lighting systems. These impacts are best captured by changes in life cycle costs which are discussed in section V.d.2.

Ballast Manufacturer Analysis

In conducting the analysis, we conducted detailed interviews with seven ballast manufacturers that together supply more than 95 percent of the domestic magnetic and electronic ballast markets. The interviews provided valuable information used to evaluate the impacts of a new standard on manufacturers' cash flows, manufacturing capacities and employment levels. The MIA was performed on a company-by-company basis. We elected to group manufacturers exhibiting similar product mix characteristics, as this represents the most comprehensive way of reporting the variation of impacts on different manufacturers while ensuring the confidentiality of individual manufacturers' positions. Based on

information obtained from manufacturer interviews, we divided the manufacturers into two sub-groups:

TABLE V.4.—BALLAST MANUFACTURER

Sub-group 1 Manufacturers of both magnetic and electronic ballasts	Sub-group 2 Manufacturers that produce only electronic ballasts
Advance Transformer Company MagneTek, Inc. Robertson Worldwide SLi Lighting/PowerLighting Products	Howard Industries. Motorola Lighting, Inc. Osram Sylvania Products Inc.

Impacts on the entire industry were obtained by aggregating the impacts on the two sub-groups.

Impacts on Ballast Manufacturer Cash Flows

As summarized, four cash flows were calculated for each shipment forecast. Manufacturers worked with us to develop their most likely cash flow impacts for both the 2015 and 2027 Industry shipment scenarios. These cash flows are identified by the name "Manufacturer Submittal." In developing cash flow estimates under the Manufacturer Submittal scenario it is assumed that manufacturers retain their 1997 shares of the electronic market in the new electronic market. The "Electronic Ballast New Entrant" scenario was devised in order to capture the likely cash flow impacts resulting from the redistribution of market shares among the existing manufacturers as a new entrant gains a 15 percent market share of the new electronic market. A "Magnetic Ballast New Entrant" Scenario was also developed to analyze the potential impact of a new entrant(s) in the magnetic ballast industry. This scenario captures possible cash flow impacts resulting from the redistribution of market shares among the existing manufacturers as a new entrant gains a 15 percent share of the magnetic ballast market. Finally, in order to evaluate how assumptions concerning future market dynamics contributed to the impacts reported in the Manufacturer Submittal scenario, we prepared a separate cash flow that assumes no change in magnetic and electronic ballast profit margins before and after standard: the "Existing Dynamics" scenario. The four scenarios are summarized below:

Manufacturer Submittal: Cash flows and net present value (NPV) were calculated using manufacturer prices, manufacturing costs, operating margins, capital investment estimates, and other financial parameters as provided by the individual manufacturers. This scenario reflects each manufacturer's expectation of its "most likely" future profitability under new standards with the constraint that it assumes that its electronic ballast market share remains at the 1997 level.

Electronic Ballast New Entrant: This scenario assumes that one or more new entrants will capture 15 percent of the new electronic ballast market. Manufacturer market shares in the 1997 electronic market are redistributed to accommodate the new market entrant(s).

Magnetic Ballast New Entrant: This scenario assumes that one or more new entrants will capture 15 percent of the magnetic ballast market beginning in the year 2000, both in the Base Case and the Standards Case. This assumption is supported by the fact that a few of the existing electronic ballast manufacturers have publicly announced plans to manufacture and/or source magnetic ballasts in the U.S., irrespective of a DOE standard. Existing manufacturer market shares in the 1997 magnetic ballast market are redistributed to accommodate the new market entrant(s). Furthermore, this scenario assumes that the new entrant(s) will result in increased competition, which will reduce the profitability of the magnetic ballast business from its current levels to those seen in the more competitive electronic ballast business post-standards.

Existing Dynamics: This scenario assumes that there will be no change in competitive dynamics when an electronic ballast standard comes into effect, and hence electronic ballast manufacturer market shares and profit margins in the case of a standard will remain similar to their values in the absence of a standard.

Tables V.5 and V.6 summarize the financial impacts for the four scenarios under the two base case forecasts of shipments. The impacts reported are the change in NPV and this change as a percentage of the industry value represented by the cash flow generated by all (magnetic and electronic) ballast shipments in the regulated product classes. Note that for the industry results, the Electronic Ballast New Entrant scenario is the same as the Manufacturer Submittal scenario because the new entrant(s) cash flow was modeled using shipment weighted average financial parameters of all existing electronic ballast manufacturers.

TABLE V.5.—CASH FLOW IMPACTS OF AN ELECTRONIC BALLAST STANDARD UNDER THE 2015 (5% DECLINE) SHIPMENT SCENARIO

Scenarios	Base case NPV ($mil)	Standard case NPV ($mil)	Change in NPV ($mil)	Change in NPV (%)
Cash flow impacts on business represented by all regulated product classes—Magnetic and Electronic				
Sub-group 1 (magnetic and electronic producers)				
Manufacturer Submittal	288.9	198.9	–90.0	–31
Electronic Ballast, New Entrant	288.9	199.1	–89.8	–31
Magnetic Ballast, New Entrant	216.2	161.6	–54.6	–25
Existing Dynamics	288.9	219.0	–69.9	–24
Sub-group 2 (electronic only producers)				
Manufacturer Submittal	131.7	152.0	20.3	15
Electronic Ballast, New Entrant	131.7	145.8	14.1	11

TABLE V.5.—CASH FLOW IMPACTS OF AN ELECTRONIC BALLAST STANDARD UNDER THE 2015 (5% DECLINE) SHIPMENT SCENARIO—Continued

Scenarios	Base case NPV ($mil)	Standard case NPV ($mil)	Change in NPV ($mil)	Change in NPV (%)
Magnetic Ballast, New Entrant	131.7	152.0	20.3	15
Existing Dynamics	131.7	141.0	9.3	7
Electronic Ballast New Entrant				
Electronic Ballast, New Entrant	0.0	6.0	6.0	–
Magnetic Ballast New Entrant				
Magnetic Ballast, New Entrant	4.5	2.0	–2.5	–55
Industry (Sub-group 1 + Sub-group 2)				
Manufacturer Submittal	420.6	350.9	–69.7	–17
Electronic Ballast, New Entrant	420.6	350.9	–69.7	–17
Magnetic Ballast, New Entrant	352.4	315.6	–36.8	–10
Existing Dynamics	420.6	359.9	–60.7	–14

TABLE V.6.—CASH FLOW IMPACTS OF AN ELECTRONIC BALLAST STANDARD UNDER THE 2027 (3% DECLINE) SHIPMENT SCENARIO

Scenarios	Base case NPV ($mil)	Standard case NPV ($mil)	Change in NPV ($mil)	Change in NPV(%)
Cash flow impacts on business represented by all regulated product classes—Magnetic and Electronic				
Sub-group 1 (magnetic and electronic producers)				
Manufacturer Submittal	318.3	204.6	–113.7	–36
Electronic Ballast, New Entrant	318.3	204.9	–113.4	–36
Magnetic Ballast, New Entrant	220.9	161.7	–59.2	–27
Existing Dynamics	318.3	224.7	–93.6	–29
Sub-group 2 (electronic only producers)				
Manufacturer Submittal	123.0	150.5	27.5	22
Electronic Ballast, New Entrant	123.0	144.3	21.3	17
Magnetic Ballast, New Entrant	123.0	150.5	27.5	22
Existing Dynamics	123.0	139.5	16.5	13
Electronic Ballast New Entrant				
Electronic Ballast, New Entrant	0.0	6.0	6.0	–
Magnetic Ballast New Entrant				
Magnetic Ballast, New Entrant	6.2	2.2	–4.0	–65
Industry (Sub-group 1 + Sub-group 2)				
Manufacturer Submittal	441.3	355.1	–86.2	–20
Electronic Ballast, New Entrant	441.3	355.1	–86.2	–20
Magnetic Ballast, New Entrant	350.1	314.4	–35.7	–10
Existing Dynamics	441.3	364.2	–77.1	–17

Uncertainty Analysis of Cash Flows

The NPV values presented in the above tables incorporate significant restructuring costs primarily associated with plant closures in the U.S. and Mexico. The large majority of these costs are directly associated with the closure of the remaining large U.S.-based ballast plant. In consideration of the past trend towards consolidation of magnetic ballast production to Mexico, a sensitivity analysis was conducted on the cash flows assuming that the restructuring costs associated with the plant closures would occur in the base case (in absence of standards). It was found that these costs contribute approximately $14 million to the negative impacts under all scenarios.

A sensitivity analysis was also conducted to analyze the impact of certain business risks. Specifically, a scenario was developed whereby changes in market demand would cause magnetic ballast shipments to decline at twice the rate, *i.e.*, 10 percent per year between 1999 and 2002, remain constant through 2005 and then continue declining at 5 percent per year

beginning 2006. It was further assumed that these abrupt changes in shipments impact the magnetic ballast industry competitive dynamics by reducing profit margins in the 2000 through 2005 time frame, to levels observed in the electronic ballast market.

The cash flow impacts with the 2003 plant closure assumption and the business risks as outlined above are presented in the Table V.7.

TABLE V.7.—CASH FLOW IMPACTS OF AN ELECTRONIC BALLAST STANDARD UNDER THE 2015 (5% DECLINE) SHIPMENT SCENARIO WITH PLANT CLOSURES IN THE BASE CASE IN 2003

Scenarios	Base case NPV ($mil)	Standard case NPV ($mil)	Change in NPV ($mil)	Change in NPV (%)
Cash flow impacts on business represented by all regulated product classes—Magnetic and Electronic Sub-group 1				
Manufacturer Submittal	288.9	198.9	–90.0	–31
Manufacturer Submittal with plant closure in 2003	275.2	198.9	–76.3	–28
Business risk: abrupt change in shipments	263.7	179.5	–84.2	–32
Sub-group 2				
Manufacturer Submittal	131.7	152.0	20.3	15
Manufacturer Submittal with plant closure in 2003	131.7	152.0	20.3	15
Business risk: abrupt change in shipments	131.7	152.0	20.3	15
Industry (Sub-group 1 + Sub-group 2)				
Manufacturer Submittal	420.6	350.9	–69.7	–17
Manufacturer Submittal with plant closure in 2003	406.9	350.9	–56.0	–14
Business risk: abrupt change in shipments	395.4	331.5	–63.9	–16

Impacts on Ballast Manufacturer Employment

Employment impacts are reported in two categories:

Direct employment impacts: These impacts consider jobs directly involved with the production of "affected" magnetic or electronic ballasts. In facilities producing "affected" and other types of ballasts, only direct and overhead jobs related to "affected" ballasts are considered in this category. In situations where ballast companies own component manufacturing operations, such as capacitor plants or magnet wire operations, job impacts on these plants are reported within this category. Impacts on other component suppliers are presented in a separate section titled "Impact on Suppliers to the Fluorescent Lamp Ballast Industry."

Associated employment impacts: These impacts consider jobs impacted by business decisions driven by the "direct" employment impacts. For example, if in a manufacturing plant with 100 employees, 50 are producing "affected" magnetic ballasts and the remaining 50 are producing "unaffected" magnetic ballasts, such as residential ballasts, then an electronic ballast standard would result in the loss of 50 direct jobs. Faced with this situation the company might decide to close operations in its plant due to the dramatically reduced capacity utilization. Such a decision would result in the loss of the remaining 50 jobs. These 50 jobs would then be reported as "associated" employment impacts.

Manufacturers in Sub-group 1 anticipate that absent standards, direct employment associated with manufacturing "affected" magnetic ballasts will decrease approximately in the same proportion as shipments. Faced with this decline, manufacturers in Sub-group 1 intend to maintain high plant capacity utilization by replacing the loss in direct jobs with new associated jobs. These new associated jobs may be the result of new product introductions, plant consolidations or decisions to make in-house, parts currently sourced from suppliers.

The uncertainty with regards to the timing of any plant closures in the base case—after the year 2003—results from the difficulty in anticipating how many associated jobs can be maintained in the long run. Gains in associated jobs will not necessarily maintain plant capacity utilization in the long run and a threshold may be reached that requires the plant to be closed. For example, one manufacturer suggested that for its supplier plant a drop of 30 percent in capacity could lead to closure.

Table V.8 summarizes the employment impacts of an electronic ballast standard under the two shipment scenarios. The table assumes a standards effective date of 2003.

TABLE V.8.—INDUSTRY-WIDE EMPLOYMENT IMPACTS OF AN ELECTRONIC BALLAST STANDARD (ORDERLY DECLINE IN U.S. MANUFACTURING)

Country of manufacture	Direct jobs lost in magnetic ballast manufacturing	Associated jobs at risk in magnetic ballast manufacturing	Direct jobs gained in electronic ballast manufacturing [4 5]	Net direct jobs lost
2015 (5% decline) shipment scenario				
USA	[1] 666	[2] 406	500	166
Mexico	1570	[3] 190	700	870

TABLE V.8.—INDUSTRY-WIDE EMPLOYMENT IMPACTS OF AN ELECTRONIC BALLAST STANDARD (ORDERLY DECLINE IN U.S. MANUFACTURING)—Continued

Country of manufacture	Direct jobs lost in magnetic ballast manufacturing	Associated jobs at risk in magnetic ballast manufacturing	Direct jobs [4 5] gained in electronic ballast manufacturing	Net direct jobs lost
2027 (3% decline) shipment scenario				
USA	717	[2] 363	557	160
Mexico	1727	[3] 161	769	958

[1] Includes both factory and non-factory jobs supporting magnetic ballast production.
[2] These "associated" jobs are assumed relocated to Mexico.
[3] These "associated" jobs will be relocated to other plants in Mexico or elsewhere.
[4] Includes jobs from Sub-groups 1 and 2.
[5] Does not include potential associated jobs added in these plants.

Uncertainty in Ballast Manufacturer Employment Impacts

As previously discussed, there exists some uncertainty relative to the closure date of current magnetic ballast production facilities in the base case. The employment impacts presented in Table V.8 assume a base case with an orderly decline in the U.S. magnetic ballast employment until 2015 or 2027. The large majority of these employment impacts are directly associated with the closure of the remaining large U.S.-based magnetic ballast plant.

In consideration of the past trend towards consolidation of magnetic ballast production to Mexico, a sensitivity analysis was conducted on the employment impacts assuming that the employment impacts associated with the plant closures would occur in the base case (in absence of standards). These impacts are detailed in the Table V.9. The scenario assumes that the lost U.S. jobs would be picked up by increased manufacturing activity in the Mexican plants, thereby increasing the employment impact of a standard on Mexican jobs.

TABLE V.9.—INDUSTRY-WIDE EMPLOYMENT IMPACTS OF AN ELECTRONIC BALLAST STANDARD UNDER THE SCENARIO WHERE (U.S. MAGNETIC BALLAST PLANTS CLOSE IN 2003 IN THE BASE CASE)

Country of manufacture	Direct jobs lost in magnetic ballast manufacturing	Associated jobs at risk in magnetic ballast manufacturing	Direct jobs [4 5] gained in electronic ballast manufacturing	Net direct jobs lost/ gained
2015 (5% decline) shipment scenario				
U.S.A	[1] 0	[2] 0	500	500 jobs gained
Mexico	2236	[3] 596	700	1536 jobs lost
2027 (3% decline) shipment scenario				
U.S.A	0	0	557	557 jobs gained
Mexico	2444	[3] 524	769	1675 jobs lost

[1] Includes both factory and non-factory jobs supporting magnetic ballast production.
[2] These "associated" jobs are assumed relocated to Mexico.
[3] These "associated" jobs will be relocated to other plants in Mexico or elsewhere.
[4] Includes jobs from Sub-groups 1 and 2.
[5] Does not include potential associated jobs added in these plants.

Impacts on Ballast Manufacturing Capacity

It is likely that an electronic ballast standard would negatively impact magnetic ballast production capacity in the U.S. and Mexico. As mentioned previously, there is evidence to suggest that magnetic ballast production facilities in the U.S. may be closed regardless of a standard, and a sensitivity analysis was conducted to examine the impacts of this scenario. While there is a degree of uncertainty over what will happen to domestic magnetic ballast production facilities in the absence of a standard, in all likelihood, the imposition of a new electronic ballast standard will result in the closure of one magnetic ballast production facility in the U.S., and in the partial closure of another in Mexico. Additionally two manufacturer-owned (captive) ballast supplier facilities would most likely be impacted: A capacitor plant in Mexico could close and a magnet wire plant, located in the U.S., could also close.

Although the scenario whereby magnetic ballast production facilities are closed in 2003 in the base case was examined, all manufacturers in Sub-group 1 suggested that in the absence of a standard they would continue to manufacture "affected" magnetic ballasts in their current manufacturing plants. They did not anticipate any plant closures or shifting of production

of "affected" magnetic ballasts from one plant to another before the year 2010.

Table V.10 summarizes the possible impact of a new electronic ballast standard on existing manufacturing plants in the U.S. and Mexico, assuming plants remain open in the base case as manufacturers predict.

TABLE V.10.—IMPACTS ON MANUFACTURING CAPACITY DUE TO AN ELECTRONIC BALLAST STANDARD

Plant	Location	Description	Action
Plant 1	U.S.A	Magnetic ballast	Closure.
Plant 2	U.S.A	Magnet Wire	Possible Closure.
Plant 3	Mexico	Magnetic ballast	Partial Closure.
Plant 4	Mexico	Capacitors	Closure.
Plant 5	U.S.A	Electronic ballast	Expansion.
Plant 6	U.S.A	Electronic ballast	Expansion.
Plant 7	Mexico	Electronic ballast	Expansion.
Plant 8	Mexico	Electronic ballast	Expansion.

An electronic ballast standard would lead to increased electronic ballast manufacturing capacity in the U.S. and Mexico. In order to meet increased sales resulting from a new electronic ballast standard, two of the four manufacturers in Sub-group 1 plan to develop additional electronic ballast manufacturing capacities in Mexico. The smaller manufacturers in Sub-group 1 plan no major plant closures or expansions and will accommodate the new product mix requirements within their existing facilities. In Sub-group 2, two manufacturers stated that they would add significant electronic ballast manufacturing capacity in the U.S. to meet the new standard.

Impact on Small Ballast Manufacturers

Two relatively small manufacturers currently produce both "affected" magnetic and electronic ballasts. One of these manufacturers would be a "small business" as defined in the Regulatory Flexibility Act (See discussion in the Procedural Issues and Regulatory Reviews section of this preamble). Both the small manufacturers had their respective electronic and magnetic ballast manufacturing operations in the same plants. It seems their smaller size and less automated operations provides them with the flexibility to adapt to a new electronic ballast standard without significant asset write-offs or plant closures. However, the negative impacts on the small manufacturers' cash flows from operations were similar in proportion to those reported by the two large manufacturers in Sub-group 1. As a result, in the 5% scenario, we estimate that small manufacturers will experience a 16 percent loss in their NPV compared to a 34 percent loss in NPV for the two large manufacturers.

As with other Sub-group 1 manufacturers, neither of these manufacturers stated that an electronic ballast standard would force them to leave the industry or go out of business.

Impact on Ballast Industry Suppliers

New energy-efficiency standards for fluorescent lamp ballasts will also affect ballast industry suppliers. To estimate this impact, we performed a detailed analysis of the impacts of an electronic ballast standard on suppliers to the ballast industry. We invited 31 supplier firms to participate in interviews. These firms were identified by manufacturers to represent the key components contained in the bills of materials for "affected" magnetic and electronic ballasts. Eleven of these suppliers served magnetic ballast production, eleven electronic ballast production, and nine supplier plants served both magnetic and electronic production. Sixteen of the 20 organizations serving magnetic ballast production participated in interviews and/or provided plant tours. Eleven of the 20 organizations serving electronic ballast production participated in interviews and/or provided plant tours.

Table V.11 shows an average (weighted by shipment levels) distribution of materials and components cost for "affected" magnetic ballasts. Interviews and literature sources provided information needed to estimate financial and employment impacts of a new energy efficiency standard for ballasts on suppliers responsible for approximately 91 percent of the cost of materials.

TABLE V.11.—COST OF MATERIALS FOR "AFFECTED" MAGNETIC BALLASTS

Material type	Contribution to total cost of materials (%)
Magnet and Lead Wire	40
Steel case and CRML	23
Capacitors	16
Thermal protectors, clamps, potting	12
Other	9

The industries analyzed and represented are:

- Cold rolled steel finished for ballast cases
- Cold rolled motor laminate (CRML) steel for use primarily in transformers
- Magnet wire
- Lead wire
- Thermal protectors
- Clamps to secure the stack of CRML stamped sections making up the ballast transformer to the proper size
- Potting and impregnation compounds
- Capacitors

With the exception of a very small fraction of metallized film capacitors produced outside the U.S. and materials produced in plants owned and operated by the ballast manufacturers themselves, all of these components are produced domestically in the United States. Except for the clamps, all these industries (not necessarily the same plants) also serve the production of electronic ballasts. The analyses for financial and employment impacts considered materials supplied to magnetic and electronic ballasts together for those industries which serve both markets.

Table V.12 exhibits a similar distribution of materials and components costs for an electronic ballast alternative to the "affected" magnetic ballast. The table shows a higher number of components for electronic ballasts. The cost of materials for electronic ballasts is approximately 30 percent higher than that for "affected" magnetic ballasts.

TABLE V.12.—BENCHMARK COSTS FOR ELECTRONIC BALLASTS

Item	Contribution to total cost of materials (%)
Film Capacitors	17
PC Board, Thermal Protectors, Potting	15

TABLE V.12.—BENCHMARK COSTS FOR ELECTRONIC BALLASTS—Continued

Item	Contribution to total cost of materials (%)
Steel case and CRML	12
Magnet and lead wire, connectors	12
Transistors	10
Ceramic and Electrolytic capacitors	7
Bobbins	6
Diodes	6
Ferrite Cores	5
Others	10

The analysis of supplier impacts focuses on domestic (production facilities within the United States) suppliers. A substantial portion of the components that go into producing electronic ballasts is produced in foreign plants. We estimated the fraction of each component produced domestically in 1997. To the extent that domestic suppliers can maintain this market share, they could recover some of the "affected" magnetic ballast revenue and associated employment level that they would lose if an electronic ballast energy efficiency standard were to go into effect. The industries analyzed were producers of printed circuit boards and bobbins. No first hand financial or employment information was collected from industry representatives for transistors, diodes, or ferrite cores. We combined these three industries with a half dozen other smaller contributors to the cost of materials and assumed pro-rated values for net income, depreciation, and capital expenditure levels to estimate cash flow for this group. This "other" group of suppliers represents approximately 27 percent of supplier revenue, meaning about 73 percent of electronic ballast supplier financial values is based on direct contact with industry representatives. The comparable figure for the magnetic ballast supplier side is 9 percent "other" and 91 percent based on interviews with suppliers.

The analysis considers a reference case wherein domestic suppliers maintain their 1997 market shares in the electronic ballast component market. Through discussions with supplier industries it became apparent that there existed some uncertainty as to the probability that ballast manufacturers would continue to source their components domestically in the event of an electronic standard. To bracket the uncertainty, separate cash flows were performed for the extreme case where all components for electronic ballasts were purchased from foreign sources. The financial impacts associated with the reference and "worst" cases are summarized in the following Tables.

TABLE V.13.—ESTIMATED NPV IN $MILLIONS FOR SUPPLIER INDUSTRIES, ASSUMING DOMESTIC SUPPLIER INDUSTRIES MAINTAIN THEIR 1997 MARKET SHARES (REFERENCE CASE)

Industry	5% Scenario, 1998–2015			3% Scenario, 1998–2027		
	Base case	Standard case	Change $mil	Base case	Standard case	Change $mil
Capacitor	1.28	1.59	0.31	1.34	1.74	0.41
Magnet, Lead Wire, Connectors	11.40	8.83	−2.57	12.39	9.27	−3.13
TP, Metal Clamps, Potting & Impregnating	8.55	7.05	−1.51	10.24	7.59	−2.65
Steel	16.59	12.45	−4.14	18.74	14.21	−4.53
Other Mag/Electronic Suppliers	6.11	4.87	−1.23	6.81	5.18	−1.63
PC Board, Bobbins	1.87	2.81	0.94	1.45	2.69	1.24
Other Electronic Suppliers	.79	1.44	0.65	1.04	1.88	0.84
Total	46.59	39.04	−7.55	52.01	42.56	−9.45

TABLE V.14.—ESTIMATED NPV IN $MILLIONS FOR SUPPLIER INDUSTRIES, ASSUMING FOREIGN SUPPLIERS CAPTURE ALL THE NEW ELECTRONIC BALLAST MARKET (WORST CASE).

Industry	5% Scenario, 1998–2015			3% Scenario, 1998–2027		
	Base case	Standard case	Change $mil	Base case	Standard case	Change $mil
Capacitor	1.28	.89	−.39	1.34	.92	−0.41
Magnet, Lead Wire, Connectors	11.40	8.06	−3.34	12.39	8.37	−4.03
TP, Metal Clamps, Potting & Impregnating	8.55	5.69	−2.86	10.24	5.92	−4.31
Steel	16.59	11.05	−5.54	18.74	11.54	−7.20
Other	6.11	4.13	−1.97	6.81	4.31	−2.50
PC Board, Bobbins	1.87	0.25	−1.62	1.45	0.15	−1.3
Other Electronic Suppliers	0.79	0.16	−0.64	1.04	0.09	−0.94
Total	46.59	30.23	−16.36	52.01	31.3	−20.69

The financial impact ranges from a reference case $7.55 million decline in NPV cash flow under the 5% scenario to a "worst" case $20.69 million decline under the 3% scenario.

Impacts on Supplier Employment

The reference-case employment impacts under the 3% and 5% scenarios are summarized in Table V.15 and indicate a range of 313–340 jobs lost and potential for 129–144 to be gained back. If all the new electronic ballast market were to go to foreign firms, no jobs would be gained back, and thus in the worst case about 313–340 domestic jobs would be lost.

TABLE V.15.—ESTIMATED EMPLOYMENT IMPACTS FOR SUPPLIER INDUSTRIES ASSUMING DOMESTIC SUPPLIERS MAINTAIN THEIR 1997 MARKET SHARES.

Industry	5% Scenario, 1998–2015			3% Scenario, 1998–2027		
	Jobs lost	Potential jobs gained	Net jobs lost [gained]	Jobs lost	Potential jobs gained	Net jobs lost [gained]
Capacitor	27	34	[7]	29	37	[8]
Magnet & Lead	69	10	59	76	11	65
TP, Metal Clamp,	52	14	38	57	15	42
Steel	58	13	45	63	14	49
Metallized Film	44	1	43	48	1	47
Other Magnetic/Electronic	40	8	32	44	9	35
PC Board, Bobbins	0	23	[23]	0	27	[27]
Other Electronic	0	26	[26]	0	30	[30]
Associated Plant Closure	23	.....	23	23	.....	23
Total	313	129	184	340	144	196

Impacts on Luminaire Manufacturers

The Department interviewed eight luminaire manufactures with a combined market share approaching 85 percent of the market segments affected by a new ballast standard. The Department specifically investigated how a new energy efficiency standard for ballasts might change luminaire manufacturer profitability and cash flow. Of the eight manufacturers interviewed, two reported they will suffer no impacts and two others believe their impacts would be minimal. The four other manufacturers believe they will suffer varying levels of decreased company value.

From the information obtained in the interviews, estimates of reductions in NPV were prepared for each of the four manufacturers reporting negative impacts. These projections incorporated the financial figures and rationale provided by the manufacturers. Three different rationales were presented in support of diminished profitability and value.

One or more manufacturers are experiencing greater profitability with electronic ballasts. The NPV reduction assumes that a standard which eliminates magnetics as the commodity product would render electronic ballasts the commodity product and competition would eliminate the premium for electronic ballasts.

One or more manufacturers are experiencing greater profitability with magnetic ballasts. The NPV reduction is a direct consequence of replacing sales of higher margin products by lower margin sales.

The third view presented concerns the high price sensitivity of low-end luminaires, particularly one and two lamp strip lights. It was assumed for that analysis that not all incremental costs for electronic ballasts could be passed on to consumers with a corresponding reduction in profit margin.

For both shipment scenarios, the aggregated reduction in NPV for the four firms totals approximately 13.5 million dollars assuming the current difference in margins for luminaires incorporating magnetic or electronic ballasts would continue absent standards. This appears to be a very speculative assumption given the trend towards convergence of magnetic and electronic luminaire margins reported by most luminaire manufacturers. If in fact margins do converge by the implementation date of a new standard, the impacts attributed to price margin differences disappear and the total impacts are reduced to a value of approximately 4.5 million dollars.

In addition to the previous financial impacts, manufacturers reported significant other costs and business disruptions associated with potential new ballast standards. There were concerns expressed that a standard would divert resources from new product and technology introduction and result in lost opportunities. Large efforts would also be needed to revise product literature and perform photometric tests. Further, many business processes and information systems relative to materials management and other systems would need to be revised. The costs associated with these issues, not including lost opportunities were reported to be approximately one million dollars.

Impacts on Luminaire Manufacturer Employment

Of the eight luminaire manufacturers interviewed, six stated that employment impacts from an electronic ballast standard would be be minimal, if any, within their companies. Two manufacturers, however, believe a new standard would probably reduce employment levels in their U.S. facilities. This reduction is assumed to be caused by reductions in export sales and a loss of flourescent luminaire sales in favor of incandescent luminaires. Based on its analysis of these issues and in agreement with the majority view of interview participants, the Department believes the employment impacts of a ballast standard would be minimal.

Two manufacturers expressed a concern that since their export markets are primariliy magnetic, a drop in domestic ballast manufacturing volumes would cause upward pressure on magnetic luminaire prices and compel them to raise export prices for luminaires. Local luminaire manufacturers, they believe, could find less costly sources for magnetic ballasts resulting in decreased export sales for U.S. companies. Furthermore, these manufactures fear that given the importance of linear flourscent fixtures in most customer orders, winning or losing a project can depend heavily on price levels of the these luminaires. If flourecscent luminaire sales are lost to local competitors then, they believe, U.S. companies could also lose sales of HID luminaires, emergency lighting, exit signs and various other products. The Department believes these employment impacts would be very small for two reasons. First economic theory and real world experience suggests that in competitive markets, overcapacity leads to increased—not decreased—price competition. Second the export market is concentrated in the Canadian and Mexican markets where U.S. ballast manufacturers are major participants and could compete with local ballasts manufacturers.

Another stated potential cause of reduced U.S. luminaire manufacturing jobs is the possible movement away from flourescent luminaires in favor of incandescent luminaires in the more

first cost sensitive commercial market segments. However, there was considerable differences of opinion as to the significance of any such movement in lighting systems. The general view was that there is already a significant cost premium for fluorescent lighting and this premium is not likely to greatly increase given ballast pricing trends. Therefore the Department has not included any employment reductions for luminaire manufacturers because of this potential effect.

Impacts on Lamp Manufacturers

Three major manufacturers, GE Lighting, OSI, and Philips Lighting Company dominate the domestic market for linear fluorescent lamps. Together these three manufacturers serve approximately 90 percent of the U.S. market. As trade allies of the fluorescent ballast manufacturing industry, they may experience an impact from a new energy-efficiency standard applied to fluorescent lamp ballasts. Some ballast and lamp industry sources and others have speculated that a new energy-efficiency standard for ballasts would substantially accelerate the transition from T12 lamps to T8, thus having an impact on lamp manufacturers as well as ballast manufacturers.

As discussed previously, OSI commented that the lamp industry had the capacity to handle the transition from T12 lamps to T8 lamps in the OEM market resulting from an electronic ballast rule over a period of three years. OSI believes, however, it doubtful the lamp industry could handle, in addition, any significant transition to T8 lamps of the installed base of T12 lamps in less than 8 years following an electronic ballast rule. OSI commented that if magnetic ballasts were no longer available, large resources would be diverted to the development of energy saving T12 lamps compatible with electronic ballasts or electronic ballasts compatible with energy saving T12 lamps.

The Department invited representatives from each of the three major lamp manufacturers to estimate the impact that a new ballast standard might have on them. One manufacturer chose not to participate in the discussions, so the following results are based on talks with two major manufacturers.

There was agreement that a new standard would accelerate the shift in market share from T12 to T8 lamps. The manufacturers further agreed the current transition to T8 lamps is being handled well and that any acceleration in the transition must be served while retaining enough T12 capacity to serve the replacement market. The replacement market for T12 lamps is large, over 85 percent of the 1998 market of 340 million lamps were T12 lamps. The lamp manufacturing industry can gear up to serve the increase in OEM demand for T8 lamps with a 3–4 year lead-time. However, to serve any increased replacement market at the same time would require an acceleration in capacity expansion for T8 production and early retirement of T12 capacity which would have financial impacts.

The Department is uncertain as to how the replacement market might respond to today's proposed standard. Consumers might make spot replacements, as suggested by ACEEE earlier, or ballast manufacturers may develop electronic T12 ballasts compatible with T12 energy saver lamps or there could be an acceleration to T8 lamps in the replacement market. Given this uncertainty, we did not attempt to quantify the impact on lamp manufacturers of an electronic ballast standard applied to the replacement ballast market before the 8 year implementation date suggested by OSI.

2. Life-Cycle Cost

More efficient ballasts would affect commercial and industrial consumers in two ways: operating expense would probably decrease and purchase price would probably increase. We analyzed the net effect by calculating the LCC. Inputs required for calculating LCC include end-user prices for ballasts and lamps, electricity rates (cents/kiloWatthour), energy savings, annual lighting operating hours, labor rates, installation times, period of the analysis, ballast lifetimes, lamp lifetimes, and discount rates. A detailed discussion of the sources and methods used for arriving at an estimate of these parameters is in the TSD. Briefly, we obtained end-user prices for ballasts from a survey of ballast distributors from various parts of the country; we estimated marginal electricity rates as described later in this section; we based operating hours upon Xenergy building energy audit data; we derived installation costs from journeyman wages listed in the National Electrical Estimator 1995; the period of analysis is the ratio of ballast life to the annual operating hours; lamp life is the average of lamp life under spot and group replacement where spot replacement lamp life is the lamp rated life from manufacturer's catalog and group replacement is 75 percent of the rated life; and the discount rate is 8 percent.

We estimated the marginal electricity rates by first calculating the marginal rate faced by a sample of commercial customers in buildings throughout the U.S. This was compared with the average electricity rates for the same customers. The percent difference between the average and marginal rates (Epsilon) was calculated for each customer. We then used this Epsilon distribution to convert the average electricity price from a specific United States utility into marginal electricity price by using the formula:

Marginal Electricity Price = Average Electricity Price x (1 + Epsilon)

We performed a probability-based LCC analysis with a computer program called Crystal Ball. For each of four inputs (ballast price, electricity price, ballast lifetime, and annual lighting hours) to the LCC model, we defined a probability-based distribution of the input to account for the variability of the input. Instead of using a single "average" value to represent the input in its entirety, we used the whole distribution to calculate the LCC. The output of the LCC model is a mean LCC savings for each product class as well as a probability distribution or likelihood of LCC reduction or increase.

We present a summary of the results in Table V.16. The column titled "Delta LCC" gives the change in LCC when switching from the baseline option of EEM ballast to the listed design option. "% Winners" represents the probability of the design option resulting in reduced LCC. Table 4.4 of the TSD also shows the life cycle cost impacts when starting from an energy efficient magnetic T8 ballast.

TABLE V.16.—SUMMARY OF DELTA LCC* RESULTS

Product class	% Market	Design option	Sector	Delta LCC	
				Mean (1997$)	%Winners**
1F40	5	T12 CC	Commercial	−4	7

TABLE V.16.—SUMMARY OF DELTA LCC* RESULTS—Continued

Product class	% Market	Design option	Sector	Delta LCC	
				Mean (1997$)	%Winners**
		T12 ERS	Commercial	4	68
2F40	36	T12 CC	Commercial	−2	31
		T12 ERS	Commercial	6	80
3F40	1	T12 CC	Commercial	−2	33
Tandem-Wired		T12 ERS	Commercial	5	68
3F40 Not	10	T12 CC	Commercial	−4	23
Tandem-Wired		T12 ERS	Commercial	18	98
4F40	22	T12CC	Commercial	−2	36
		T12 ERS	Commercial	12	87
2F96	23	T12 EIS	Commercial	7	75
		T12 EIS	Industrial	−2	35
2F96HO	2	T12 CC	Commercial	11	90
		T12 ERS	Commercial	28	98
		T12 CC	Industrial	1	50
		T12 ERS	Industrial	15	94

*A positive Delta LCC implies a LCC savings whereas a negative number implies an increase in LCC
**% ballasts with reduced life cycle cost (winners), noted as "certainty level" by Crystal Ball.

3. Energy Savings, Net Present Value and Net National Employment

As indicated, we conclude that standards will result in significant savings of electricity by ballasts for each standards scenario. These energy savings have value to society, as measured by the net present value analysis. The net present value analysis is a measure of the net savings to society from standards and are summarized in the following tables.

TABLE V.17A.—NET PRESENT VALUE FROM ELECTRONIC STANDARDS

Scenario	Electronic standards for units sold from 2003 to 2030 discounted at 7% to 1997 (in billion 1997 $)*							
	Scen 1A T12 Decr2015	Scen 1B T12 Decr2027	Scen 2A T12/T8 Decr2015	Scen 2B T12/T8 Decr2027	Scen 3A Decr2015	Scen 3B Decr2027	Scen 4A Decr2015	Scen 4B Decr2027
Total Benefit	1.97	3.13	3.22	5.13	2.68	4.46	2.98	4.85
Total Equipment Cost	1.01	1.62	0.8	1.27	0.64	1.08	0.72	1.18
Net Present Value	0.96	1.51	2.43	3.86	2.03	3.38	2.26	3.68

*Total Benefit and Net Present Value do not include HVAC savings.

TABLE V.17B.—NET PRESENT VALUE FROM CATHODE CUTOUT STANDARDS

Scenario	Cathode cutout standards for units sold from 2003 to 2030 discounted at 7% to 1997 (in billion 1997 $)			
	Scen 5A 100% CC Decr2015	Scen 5B 100% CC Decr2027	Scen 6A 37% CC Decr2015	Scen 6B 37% CC Decr2027
Total Benefit	0.94	1.49	2.18	3.47
Total Equipment Cost	0.78	1.26	0.58	0.93
Net Present Value	0.16	0.23	1.60	2.54

Since the covered lamp ballasts are commercial products, these net savings apply to American business and industry. NPV is the difference between additional equipment costs and electricity cost savings. The NPV for the electronic ballast standards scenarios ranges from about 0.96 billion to 3.86 billion dollars (1997 dollars). NPV increases under the slower decreasing shipments forecast to 2027. NPVs for scenario 2 with T8 electronic ballasts are about 2.5 times those for scenario 1 with T12 electronic ballasts. For scenario 3, the five-year phase-in period causes an NPV reduction of around 15 percent over scenario 2. For scenario 4, the 2-year phase-in period results in an NPV reduction of about 5 percent over Scenario 2.

For the cathode cutout standards scenarios, NPV ranges from 0.16 to 2.54 billion dollars. For scenario 6, the NPV is 10 to 11 times greater than that of scenario 5. Note that we did not include HVAC energy cost savings in any of the NPV calculations.

The net present value analysis from the standards in the Joint Comments is summarized in Table V.18.

TABLE V.18.—NET PRESENT VALUE RESULTING FROM JOINT COMMENT

Scenario	Joint comment standards for units sold from 2005 to 2030 discounted at 7% to 1997 (in billion 1997 $)	
	Dec2015	Dec2027
Total Benefit	1.95	3.51
Total Equipment Cost	0.53	0.91
Net Present Value	1.42	2.60

The Department committed in its 1996 Process Improvement Rule to develop estimates of the employment

impacts of proposed standards in the economy in general. 61 FR 36983.

As discussed above, energy efficiency standards for ballasts are expected to reduce electricity bills for commercial and industrial consumers, although these savings are likely to be partially offset by increased costs for lighting equipment. The resulting net savings are expected to be redirected to other forms of economic activity. These shifts in spending and economic activity are expected to affect the demand for labor, but there is no generally accepted method for estimating these effects.

One method to assess the possible effects on the demand for labor of such shifts in economic activity is to compare sectoral employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). The BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. BLS data indicate that expenditures in the electric sector generally are associated with fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy. There are many reasons for these differences, including the capital-intensity of the utility sector and wage differences. Based on the BLS data alone, we believe the increase in the demand for labor resulting from shifts in economic activity would offset any reduced demand in the domestic ballast industry as a result of a ballast standard.

In developing this proposed rule, the Department attempted a more precise analysis of the impacts on national labor demand using an input/output model of the U.S. economy. The model characterizes the interconnections among 35 economic sectors using the data from the Bureau of Labor Statistics. Since the electric utility sector is more capital-intensive and less labor-intensive than other sectors (see Bureau of Economic Analysis, Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II), Washington, D.C., U.S. Department of Commerce, 1992), a shift in spending away from energy bills into other sectors would be expected to increase overall employment. The results of the Department's analysis are shown in Appendix E of the TSD. This analysis also concluded that the shifts in sectoral expenditures likely to result from the proposed ballast standard would likely increase the net national demand for labor.

While both this input/output model and the direct use of BLS employment data suggest the proposed ballast standards are likely to increase the net demand for labor in the economy, the gains would most likely be very small relative to total national employment. For several reasons, however, even these modest benefits are in doubt:

- Unemployment is now at the lowest rate in 30 years. If unemployment remains very low during the period when the proposed standards are put into effect, it is unlikely that the standards could result in any net increase in national employment levels.
- Neither the BLS data nor the input-output model used by DOE include the quality or wage level of the jobs. One reason that the demand for labor increases in the model may be that the jobs expected to be created pay less than the jobs being lost. The benefits from any potential employment gains would be reduced if job quality and pay are reduced.
- The net benefits from potential employment changes are a result of the estimated net present value of benefits or losses likely to result from the proposed standards, it may not be appropriate to separately identify and consider any employment impacts beyond the calculation of net present value.

Taking into consideration these legitimate concerns regarding the interpretation and use of the employment impacts analysis, the Department concludes only that the proposed ballast standards are likely to produce employment benefits that are sufficient to offset fully the expected adverse impacts on employment in the domestic ballast industry.

Because this is the first time DOE has performed such an analysis for an efficiency standards rulemakings, public comments are solicited on the validity of the analytical methods used and the appropriate interpretation and use of the results of this analysis.

4. Lessening of Utility or Performance of Products

An issue of utility that was considered was the possibility of interference with certain equipment, such as medical monitoring equipment, caused by the high frequency of electronic ballasts. To prevent any interference that cannot be solved by electronic ballast designers, the Department is not establishing a standard for T8 ballasts, thereby allowing magnetic T8 ballasts for such applications.

5. Impact of Lessening of Competition

The determination of this factor must be made by the Attorney General.

6. Need of the Nation to Save Energy

Enhanced energy efficiency improves the Nation's energy security, strengthens the economy and reduces the environmental impacts of energy production. The energy savings from ballast standards result in reduced emissions of carbon and NO_X. Cumulative emissions savings over the 18-year period modeled are shown in Table V.19.

TABLE V.19.—CUMULATIVE EMISSIONS REDUCTIONS (2003–2020)

Emission	Range for Electronic Standards (standards 1–4)	Range for Cathode Cut-out Standards (standards 5 and 6)	Range Resulting from Joint Comments
Carbon (Mt)	12–30	6–20	11–19
NO_X (kt)	41–97	20–65	34–60

The annual carbon emission reductions range up to 2.3 Mt in 2020 and the NO_X emissions reductions up to 5.7 kt in 2015.[8,9] Total carbon and NO_X emissions for each of the 12 studied standards are reported in Tables D–1a and D–1b, Appendix D, of the TSD. In addition, equivalent results for the high and low economic growth cases for standards level 2b are reported in Table D–2 of the TSD. The outcome of the analysis for each case is shown as both

[8] million metric tons (Mt).

[9] thousand metric tons (kt).

emissions and deviations from the AEO99 Reference Case result. Emissions for the Joint Comment are presented in Appendix E of the TSD.

7. Other Factors

We present in Table V.20 a summary of the life-cycle cost results for those subgroups of commercial and industrial consumers who, if forced by standards to purchase electronic ballasts, would choose to switch from T12 to T8 lighting systems. The column titled "Delta LCC" gives the change in LCC when switching from the baseline option of EEM ballast to the listed design option. "% Winners" represents the probability of the design option resulting in reduced LCC.

TABLE V.20.—SUMMARY OF DELTA LCC* RESULTS

Product Class	Design Option	Sector	Delta LCC	
			Mean (1997$)	%Winners**
1F40	T8 ERS	Commercial	17	98
2F40	T8 ERS	Commercial	18	98
3F40 Tandem-Wired	T8 ERS	Commercial	27	98
3F40 Not Tandem-Wired	T8 ERS	Commercial	56	100
4F40 w/o Dual Switching	T8 ERS	Commercial	54	100
4F40 Dual Switching	T8 ERS	Commercial	44	99

*A positive Delta LCC implies a LCC savings whereas a negative number implies an increase in LCC
** % ballasts with reduced life cycle cost (winners), noted as "certainty level" by Crystal Ball.

For commercial and industrial consumers that choose four foot T8 lamps with their electronic ballasts, who in the current market represent 95 percent of purchasers of electronic ballasts, 98 to 100 percent will have life cycle cost savings which average 17 to 54 dollars. We did not evaluate commercial and industrial consumers of eight foot lamps, but we expect them to have similarly robust positive results.

As stated, the Department analyzed the Joint Comment in terms of national energy savings, net present value, national employment impacts and emission reductions. These results are also shown in Appendix E of the TSD. For the common scenario between the Department's analysis and the Joint Comment proposal of a market transformation by 2027 and a shift to T8 lamps, the above benefits are approximately 24 percent less than the Department's analysis which started the standards in the year 2003. However, the burdens on the manufacturers are also reduced to lower levels. The manufacturers have commented that their proposed staggered implementation dates mitigate the adverse impacts.

e. Conclusion

Section 325(l) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified" and which will "result in significant conservation of energy." Accordingly, the Department first considered the benefits and burdens of the max tech level of efficiency, *i.e.*, electronic ballast standards. Furthermore, in considering this standard level, the Department considered the staggered implementation scheme recommended in the Joint Comments.

Significant Conservation of Energy

The Department concludes that an electronic ballast standard saves a significant amount of energy. The energy savings reported for an electronic ballast standard in the Department's analysis ranged between 1.20 to 2.32 Quads of energy, not including the HVAC effects. The Department considers energy savings within this range to be significant.

Technological Feasibility

The Department concludes that an electronic ballast standard is technologically feasible as these products are currently available and comprise roughly half of the market.

Summary of Economic Impacts

In determining economic justification, the Department considered the burdens and benefits of an electronic ballast standard. The burdens accrue to the manufacturers of magnetic ballasts, some of their suppliers and employees, and to some commercial and industrial consumers who, because of factors such as lower than average electric costs or hours of operation, will experience increased life cycle costs. On the other hand, most commercial and industrial consumers will benefit from lower life cycle costs due to energy savings. These lower costs to the nation's businesses and industries produce increased jobs in the economy at large and the energy savings result in reduced atmospheric emissions. The Department gave considerable weight to the recommendations of the Joint Comment which attempts to balance these burdens and benefits. The proposal reduces energy savings by approximately 24 percent compared to the Department's analysis for the common scenario of a market transformation by 2027 and a shift to T8 lamps. These reductions come mainly from delaying the effective dates of the standards from the year 2003 to 2005 and later for replacement ballasts. However, these same extensions also reduce the impacts of the standards on manufacturers from what the Department estimated to levels which the manufacturers state are mitigated. While the Department did not revise the MIA, we believe the manufacturers' statement in the Joint Comment that the impacts on them from the proposal are mitigated is sufficient to conclude that, given the benefits, today's proposed standards are economically justified.

Economic Impact on Manufacturers

Over the range of cash flow scenarios and shipment forecasts that the Department studied for standards starting for all classes in 2003, we estimated that manufacturers that produce both magnetic and electronic ballasts would loose between 54.6 and 113.7 millions of dollars of NPV as a result of electronic standards. Manufacturers that currently produce electronic ballasts only were estimated to gain 9.3 to 27.5 millions of dollars of NPV. Domestic suppliers to the ballast industry were expected to loose between 7.55 and 20.69 millions of dollars of NPV. Luminaire manufacturers were expected to loose between 5.5 and 14.5 millions of dollars

of NPV. Cumulatively, the Department estimates that businesses involved in the ballast industry would have net losses of between 47.4 and 121.4 millions of dollars of NPV as a result of electronic standards starting in the year 2003. This loss of value comes mainly from the lower profitability of the electronic ballast market compared to the magnetic ballast market. Additionally, restructuring costs associated with plant closures and expansions and changes in capacity utilization make up the rest of the loss in value.

Manufacturers report that a domestic magnetic ballast manufacturing plant, and possibly a domestic magnet wire plant, would close if an electronic ballast standard became effective in 2003. It was also reported that a capacitor plant and part of a magnetic ballast manufacturing plant, both located in Mexico, would also close. Additionally, it was reported that two domestic electronic ballast manufacturing plants, and two located in Mexico, would expand. The Department has included these assumptions in the above NPV values.

However, given the downward trend in magnetic ballast shipments, statements by manufacturers that the market is transitioning away from magnetic ballasts and the movement of domestic magnetic ballast manufacturing facilities to Mexico in recent years, it certainly seems possible that the plants associated with magnetic ballasts might be closed, or moved to Mexico, even in the absence of standards. Therefore, the Department also considered a scenario where the domestic magnetic ballast manufacturing facilities close in the base case. Under this assumption the losses to manufacturers that produce both magnetic and electronic ballasts, and to the total industry, would be reduced by 13.7 million dollars from the previous figures to a range of 33.7 to 107.7 millions of dollars of NPV.

Employment Impacts

Given the manufacturer reported plant closure and expansion assumptions, the Department estimated that between 666 and 717 direct domestic magnetic ballast manufacturing jobs, along with 313 to 340 domestic supplier jobs, would be lost. The Department also estimated that between 500 and 557 direct domestic electronic ballast manufacturing jobs, along with zero to 144 supplier jobs would be created. Thus, the Department estimated that the impact on direct domestic employment in the ballast industry would be a net loss of between 350 and 500 jobs.

However, given the movement of domestic magnetic ballast manufacturing facilities to Mexico in recent years, it certainly seems possible that many of these jobs would be moved to Mexico in the absence of an electronic ballast standard. Therefore, the Department also considered a scenario where the domestic magnetic ballast manufacturing facility closes in the base case. Under this scenario, no direct domestic magnetic ballast manufacturing jobs would be lost and the impact on direct domestic employment in the ballast industry would be a net gain of between 500 and 557 jobs.

In addition to the direct domestic jobs, the Department also estimated that there are between 363 and 406 associated domestic jobs in the ballast industry that, while not being eliminated, are at risk of being moved to Mexico as a result of business decisions. Additionally, the Department estimated that between 1,570 and 1,727 direct magnetic ballast manufacturing jobs in Mexico would be lost while 700 to 769 direct electronic ballast manufacturing jobs would be created in Mexico. Under the scenario where the domestic magnetic ballast manufacturing facility closes in the base case, no associated domestic jobs are at risk of being moved to Mexico as result of standards, while the direct magnetic ballast manufacturing jobs lost in Mexico grows to between 2,236 and 2,444 jobs.

Consumer Impacts

As a result of the Department's analysis, we believe most commercial and industrial consumers will save money. In total, we estimated the energy savings to have a net present value to American business and industry of 1.42 to 2.60 billion dollars, depending on the forecast of switching from magnetic ballasts to electronic ballasts in the absence of standards, and the rate of switching from T12 to T8 lamps in the face of standards.

Commercial consumers will experience lower life cycle costs which range from an average savings of 4 dollars for a 1F40T12 ballast to an average savings of 18 dollars for a 3F40T12 not tandem-wired ballast. Within these respective averages, 68 to 98 percent of the consumers will have lower life cycle costs while 32 to 2 percent will have higher life cycle costs. Those commercial consumers who also switch to T8 lamps will experience even lower life cycle costs which range from an average savings of 17 dollars for a 1F40T8 ballast to an average savings of 56 dollars for a 3F40T8 ballast. Within these respective averages 98 to 100 percent of the consumers will have lower life cycle costs. The Department believes almost every commercial consumer who switches to an electronic ballast for T8 lamps will save money.

Industrial consumers using F96T12 lamps, who represent 26 percent of F96T12 lamps, will experience higher life cycle costs with average costs of 2 dollars per ballast. Within that average, 35 percent will have lower life cycle costs while 65 percent will have higher life cycle costs. The above industrial consumer impacts are for T12 lamps and, while we did not evaluate industrial consumers of eight foot T8 lamps, we expect them to have a much larger proportion with lower life cycle costs as was the case for all consumers of four foot lamps who switch from T12 to T8 lamps.

National Impacts

As stated earlier, the energy savings reported for an electronic ballast standard in the Department's analysis ranged from 1.20 to 2.32 Quads of energy. These energy savings would result in carbon emission reductions of 11 to 19 million metric tons and NO_x emission reductions of 34 to 60 thousand metric tons.

Net Benefits of Proposed Standard

After carefully considering the analysis, comments and benefits versus burdens, the Department proposes to amend the energy conservation standards for fluorescent lamp ballasts as proposed by the Joint Comment. The Department concludes this standard saves a significant amount of energy and is technologically feasible and economically justified. In determining economic justification, the Department finds that the benefits of energy savings, consumer life cycle cost savings, national net present value increase, job creation and emission reductions resulting from the standard outweigh the burdens of the loss of manufacturer net present value, possible plant closings and job loss and consumer life cycle cost increases for some users of fluorescent lamp ballasts covered by today's notice.

VI. Procedural Issues and Regulatory Review

a. Review Under the National Environmental Policy Act

In issuing the March 4, 1994 Proposed Rule for energy efficiency standards for eight products, one of which was fluorescent lamp ballasts, the Department prepared an Environmental

Assessment (EA) (DOE/EA–0819) that was published within the Technical Support Document for that Proposed Rule. (DOE/EE–0009, November 1993.) We found the environmental effects associated with various standard levels for fluorescent lamp ballasts, as well as the other seven products, to be not significant, and we published a Finding of No Significant Impact (FONSI). 59 FR 15868 (April 5, 1994).

In conducting the analysis for today's Proposed Rule, the Department evaluated design options as suggested in comments. As a result, the energy savings estimates and resulting environmental effects from revised energy efficiency standards for fluorescent lamp ballasts in today's proposal differ somewhat from those that we presented for fluorescent lamp ballasts in the 1994 Proposed Rule. Nevertheless, the environmental effects expected from today's Proposed Rule would fall within ranges of environmental impacts from the revised energy efficiency standards for fluorescent lamp ballasts that DOE found in the FONSI not to be significant.

b. Review Under Executive Order 12866, 'Regulatory Planning and Review'

Today's regulatory action has been determined to be an "economically significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review." (58 FR 51735, October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

The draft submitted to OIRA and other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review in the Department's Freedom of Information Reading Room, 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, telephone (202) 586–3142.

The following summary of the Regulatory Analysis focuses on the major alternatives considered in arriving at the proposed approach to improving the energy efficiency of consumer products. The reader is referred to the complete draft "Regulatory Impact Analysis," which is contained in the TSD, available as indicated at the beginning of this NOPR. It consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the national economic impacts of the proposed standard.

DOE identified the following eight major policy alternatives for achieving consumer product energy efficiency. These alternatives include:

- No New Regulatory Action
- Informational Action
  - —Product Labeling
  - —Consumer Education
- Financial Incentives
  - —Tax Credits
  - —Rebates
- Voluntary Energy Efficiency Targets
- Mass Government Purchases
- Lighting Research and Development
- Building Codes
- The Proposed Approach (Performance Standards)

Each alternative has been evaluated in terms of its ability to achieve significant energy savings at reasonable costs, and has been compared to the effectiveness of the proposed rule. These alternatives were analyzed with the NES model, as explained in the RIA section and Appendix B of the TSD. The results are reported for lighting energy savings only (HVAC interactive impacts would increase the savings by 6.25 percent). Many alternatives assume a conversion rate, which means the percentage of ballasts that would be magnetic for any year in the base case that are T8 electronic in the alternative case; the base case already assumes that some ballasts would be electronic without policy action. The performance standards case has a 100 percent conversion rate to electronic ballasts.

If no new regulatory action were taken, then no new standards would be implemented for these products. This is essentially the "base case." For this analysis, we considered two base cases (the "Decreasing shipments to 2015" case and the "Decreasing shipments to 2027" case). In this section, we report two values for the base cases and policy alternatives, corresponding to each base case respectively. For the base cases, between the years 2003 and 2030, there would be expected energy use of 83.3–90.6 Quads (87.9–96.6 EJ) of primary energy, with no energy savings and a zero net present value (see Appendix B of the TSD for the derivation of these estimates).

Several alternatives to the base cases can be grouped under the heading of informational action. They include consumer product labeling and DOE public education and information programs. Both of these alternatives are already mandated by, and are being implemented under the Act. In addition, there are other programs that promote currently-efficient technologies. These include the National Electrical Manufacturers Association's Energy Cost Savings Council, the Environmental Protection Agency's Energy Star Buildings/Green Lights Program, and the Energy Policy Act's Voluntary Luminaire Program. One base case alternative would be to estimate the energy conservation potential of enhancing these programs. To model this possibility, we assumed that the market impacts of these programs resulted in a 3 percent annual conversion rate to electronic ballasts. This resulted in energy savings equal to 0.05–0.09 Quad (0.05–0.09 EJ), with net present value estimated to be $0.08–0.12 billion.

Another base case alternative would be to assume that enhanced labeling and consumer education promote advanced technologies, such as daylighting. To model this possibility, we assumed that some consumers influenced by the policy would select electronic dimming ballasts, while others would select regular electronic ballasts. For those using dimming ballasts, we assumed that the fluorescent lamp ballast kiloWatthour savings were 40 percent higher for F40 and F96 fluorescent lamp ballasts, that there was no daylighting potential for industrial sector F96HO, that incremental prices for dimming fluorescent lamp ballasts were seven dollars higher than for regular electronic ballasts, and that there was an annual 0.6 percent conversion rate to dimming fluorescent lamp ballasts. The annual conversion rate for the remaining consumers affected by the policy who selected regular electronic ballasts was 2.4 percent. This possibility resulted in energy savings of 0.05–0.10 Quad (0.06–0.10 EJ), with a net present value of $0.08–0.13 billion.

Various financial incentive alternatives were tested. These included tax credits and rebates to consumers, as well as tax credits to manufacturers. Both the tax credits to consumers and the consumer rebates were assumed to reduce the incremental ballast expense for electronic ballasts by 50 percent. We assumed that the tax credits caused a conversion rate to electronic ballasts of 7 percent. The tax credits to consumers showed a change from the base case, saving 0.12–0.21 Quad (0.12–0.22 EJ) with a net present value of $0.20–0.31 billion. Consumer rebates were assumed to result in a conversion rate of 12 percent. Consumer rebates showed slightly higher energy savings; they would save 0.20–0.36 Quad (0.21–0.38 EJ), with a net present value of $0.34–0.53 billion.

Another financial incentive that was considered was a tax credit to manufacturers for the additional costs of producing electronic ballasts. In this scenario, we assumed a tax credit of 20 percent of the increased costs to manufacturers for retooling in the years 2001–2003 (when these costs would be incurred).[10] These costs depreciated over a ballast lifetime resulted in a $0.04 reduction in the incremental purchase price. The tax credits to manufacturers had an insignificant effect, with no energy savings and a zero net present value.

Two scenarios of voluntary energy-efficiency targets were examined. In the first one, the proposed energy conservation standards were assumed to be voluntarily adopted by all the relevant manufacturers 5 years later than mandatory standards. In the second scenario, the proposed standards were assumed to be adopted 10 years later. In these scenarios, voluntary improvements having a 5-year delay, compared to implementation of mandatory standards, would result in energy savings of 0.84–1.91 Quads (0.88–2.02 EJ), and a net present value of $0.96–2.04 billion; voluntary improvements having a 10-year delay would result in 0.34–1.05 Quads (0.36–1.1 EJ) being saved, and a net present value of $0.33–0.96 billion. These scenarios assume that there would be universal voluntary adoption of the energy conservation standards by fluorescent lamp ballast manufacturers, an assumption for which there is no reasonable assurance.

Another policy option that we reviewed was that of massive purchases of electronic ballasts by Federal, State, and local governments. We modeled this policy by assuming that all ballasts purchased by these government entities were electronic ballasts, which, coupled with a modest impact on the remaining market, resulted in a 10 percent national conversion rate. This policy option resulted in energy savings of 0.17–0.30 Quad (0.18–0.32 EJ) and a net present value of $0.25–0.40 billion.

We also reviewed a policy of lighting research that could [there is no cost reduction in this policy] add more efficient alternatives to fluorescent electronic T–12 and T–8 ballasts. To analyze this option, we assumed that the conversion rate to controls, such as dimming fluorescent lamp ballasts, was 1.6 percent, that there was a time delay of 5 years for new technology options to reach the market, that the incremental kiloWatthour savings was 40 percent, and the increase in the incremental electronic ballast cost was seven dollars. This resulted in energy savings of 0.01–0.04 Quad (0.01–0.05 EJ), with a net present value that we estimated to be $0.01–0.04 billion.

Still another policy option that we reviewed was one of aggressive promotion of state adoption and enforcement of commercial building codes, including those for major lighting system renovations. To analyze this option, we assumed a one percent to three percent electronic ballast conversion, for each base case, respectively. This resulted in energy savings of 0.05–0.15 Quad (0.05–0.16 EJ), and a net present value of $0.06–0.18 billion.

Lastly, all of these alternatives must be gauged against the performance standards that are being proposed in this NOPR. Such performance standards would result in energy savings of 1.20–4.90 Quads (1.27–5.17 EJ) (without HVAC savings) and the net present value would be an expected $1.42–5.41 billion. (These estimates represent the lower and upper bounds of the results of all scenarios analyzed). As indicated in the paragraphs above, none of the alternatives that were examined for these products saved as much energy as the proposed rule. Also, most of the alternatives would require that enabling legislation be enacted, since authority to carry out those alternatives does not presently exist.

c. Review under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires an assessment of the impact of regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

The Standard Industrial Classification (SIC) Code for fluorescent lamp ballast manufacturers is 36124. To be categorized as a "small" fluorescent lamp ballast manufacturer, a firm must employ no more than 750 employees.

In the fluorescent lamp ballast industry, there is one "small" manufacturer who produces both "affected" magnetic and electronic ballasts. The "small" manufacturer has its electronic and magnetic ballast manufacturing operations in the same plant. Its smaller size and less automated operations would seem to provide it with the flexibility to adapt to a new electronic ballast standard without significant asset write-offs or plant closures.

The negative impacts on the "small" manufacturer's cash flows from operations, however, would likely be similar in proportion to those of the larger manufacturers.

Since only one of the seven manufacturers of fluorescent lamp ballasts is "small," the Department concludes that its proposed energy-efficiency standards rulemaking would not affect a "substantial" number of "small" manufacturers. In addition, the firm's flexible manufacturing operations, along with the expected proportional financial impacts, strongly suggests that the proposed energy-efficiency standards would not produce "significant" economic impacts on that one manufacturer.

In view of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that, for this particular industry, the proposed standard levels in today's Proposed Rule will not "have a significant economic impact on a substantial number of small entities," and it is not necessary to prepare a regulatory flexibility analysis.

d. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

e. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines

[10] Manufacturer Impact Analysis, conversion capital expenditures (see the TSD, chapter 6).

issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's proposed rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, the final regulations meet the relevant standards.

f. "Takings" Assessment Review

It has been determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

g. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. State regulations that may have existed on the products that are the subject of today's proposed rule were preempted by the Federal standards established in the NAECA Amendments of 1988. States can petition the Department for exemption from such preemption based on criteria set forth in EPCA.

h. Review Under the Unfunded Mandates Reform Act

With respect to a proposed regulatory action that may result in the expenditure by the private sector of $100 million or more (adjusted annually for inflation), section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires a Federal agency to publish estimates of the resulting costs, benefits and other effects on the national economy. 2 U.S.C. 1532(a), (b). Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c).

The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The Supplementary Information section of the Notice of Proposed Rulemaking and "Regulatory Impact Analysis" section of the TSD for this Proposed Rule responds to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law. As required by section 325(o) of the Energy Policy and Conservation Act (42 U.S.C. 6295(o)), this Proposed Rule would establish energy conservation standards for fluorescent lamp ballasts that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the "Regulatory Impact Analysis" section of the TSD for this Proposed Rule.

i. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

j. Review Under the Plain Language Directives

Section 1(b)(12) of Executive Order 12866 requires that each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty. Similarly, the Presidential memorandum of June 1, 1998 (63 FR 31883) directs the heads of executive departments and agencies to use, by January 1, 1999, plain language in all proposed and final rulemaking documents published in the **Federal Register**, unless the rule was proposed before that date.

Today's proposed rule uses the following general techniques to abide by Section 1(b)(12) of Executive Order 12866 and the Presidential memorandum of June 1, 1998 (63 FR 31883):

- Organization of the material to serve the needs of the readers (stakeholders).
- Use of common, everyday words in short sentences.
- Shorter sentences and sections.

We invite your comments on how to make this proposed rule easier to understand.

VII. Public Comment Procedures

a. Participation in Rulemaking

The Department encourages the maximum level of public participation possible in this rulemaking. Individual commercial and industrial consumers, representatives of consumer groups, manufacturers, associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, DC, at the time and place indicated at the beginning of this notice.

The DOE has established a comment period of 75 days following publication of this notice for persons to comment on this proposal. We will make available for review in the DOE Freedom of Information Reading Room all public comments received and the transcript of the public hearing.

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. We provided instructions for submitting written comments at the beginning of this notice and below.

You should label comments both on the envelope and on the documents, "Fluorescent Lamp Ballast Rulemaking (Docket No. EE–RM–97–500)," and submit them for DOE receipt by the date specified at the beginning of this notice. Please submit one signed copy and a computer diskette (WordPerfect 8) or ten (10) copies (no telefacsimiles) to:

U.S. Department of Energy, Attn: Brenda Edwards-Jones, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–2945, e-mail: Brenda.Edwards-Jones@ee.doe.gov.

The Department will also accept electronically-mailed comments, but you must supplement such comments with a signed hard copy.

All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed regulation.

All written comments received on the proposed rule will be available for public inspection at the DOE Freedom of Information Reading Room, as provided at the beginning of this notice.

If you submit information or data that you believe is confidential, and should not be publicly disclosed, you should submit one complete copy of your document and ten (10) copies or one electronic copy from which the information believed to be confidential has been deleted. We will make our own determination regarding the confidentiality of the information or data according to our regulations at 10 CFR 1004.11.

Factors of interest to DOE, when evaluating requests to treat information as confidential, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearing

1. Procedure for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice. The Department invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, "Fluorescent Lamp Ballast Rulemaking (Docket No. EE–RM–97–500)," and should be sent to the address, and must be received by the time specified, at the beginning of this notice. Requests may be hand-delivered or telephoned between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Each person selected to be heard will be so notified by DOE as to the approximate time they will be speaking.

Each person selected to be heard is requested to submit an advance copy of his or her statement prior to the hearing as indicated at the beginning of this notice. In the event any persons wishing to testify cannot meet this requirement, that person may make alternative arrangements in advance by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

The Department reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 15 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit, to the presiding official, written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question other interested persons who made oral presentations, and employees of the United States who have made written or oral presentations with respect to disputed issues of material fact relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of such issues. If the time provided is insufficient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C., on January 18, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble Part 430 of Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.32 of subpart C is amended by revising paragraph (m) to read as follows:

§ 430.32 Energy conservation standards and effective dates.

* * * * *

(m) *Fluorescent lamp ballasts.*

(1) Except as provided in paragraphs (m)(2), (m)(3), and (m)(4) of this section, each fluorescent lamp ballast—

(i) (A) Manufactured on or after January 1, 1990;

(B) Sold by the manufacturer on or after April 1, 1990; or

(C) Incorporated into a luminaire by a luminaire manufacturer on or after April 1, 1991; and

(ii) Designed —

(A) To operate at nominal input voltages of 120 or 277 volts;

(B) To operate with an input current frequency of 60 Hertz; and

(C) For use in connection with an F40T12, F96T12, or F96T12HO lamps shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor not less than the following:

Application for operation of	Ballast input voltage	Total nominal lamp watts	Ballast efficacy factor
One F40 T12 lamp	120	40	1.805
	277	40	1.805
Two F40 T12 lamps	120	80	1.060
	277	80	1.050
Two F96T12 lamps	120	150	0.570
	277	150	0.570
Two F96T12HO lamps	120	220	0.390
	277	220	0.390

(2) The standards described in paragraph (m)(1) of this section do not apply to:

(i) a ballast that is designed for dimming or for use in ambient temperatures of 0° F or less, or

(ii) A ballast that has a power factor of less than 0.90 and is designed for use only in residential building applications.

(3) Except as provided in paragraph (m)(4) of this section, each fluorescent lamp ballast—

(i) (A) Manufactured on or after April 1, 2005;

(B) Sold by the manufacturer on or after July 1, 2005; or

(C) Incorporated into a luminaire by a luminaire manufacturer on or after April 1, 2006; and

(ii) Designed—

(A) To operate at nominal input voltages of 120 or 277 volts;

(B) To operate with an input current frequency of 60 Hertz; and

(C) For use in connection with an F40T12, F96T12, or F96T12HO lamps; shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor not less than the following:

Application for operation of	Ballast Input voltage	Total nominal lamp watts	Ballast efficacy factor
One F40 T12 lamp	120	40	2.29
	277	40	2.29
Two F40 T12 lamps	120	80	1.17
	277	80	1.17
Two F96T12 lamps	120	150	0.63
	277	150	0.63
Two F96T12HO lamps	120	220	0.39
	277	220	0.39

(4) (i) The standards described in paragraph (m)(3) of this section do not apply to:

(A) A ballast that is designed for dimming to 50 percent or less of its maximum output;

(B) A ballast that is designed for use with two F96T12HO lamps at ambient temperatures of −20° F or less and for use in an outdoor sign;

(C) A ballast that has a power factor of less than 0.90 and is designed and labeled for use only in residential building applications; or

(D) A replacement ballast as defined in subparagraph (ii).

(ii) For purposes of this paragraph (m), a replacement ballast is defined as a ballast that:

(A) Is manufactured on or before June 30, 2010;

(B) Is designed for use to replace an existing ballast in a previously installed luminaire;

(C) Is marked "FOR REPLACEMENT USE ONLY";

(D) Is shipped by the manufacturer in packages containing not more than 10 ballasts;

(E) Has output leads that when fully extended are a total length that is less than the length of the lamp with which it is intended to be operated; and

(F) Meets or exceeds the ballast efficacy factor in the following table:

Application for operation of	Ballast input voltage	Total nominal lamp watts	Ballast efficacy factor
One F40 T12 lamp	120	40	1.805
	277	40	1.805
Two F40 T12 lamps	120	80	1.060
	277	80	1.050
Two F96T12 lamps	120	150	0.570
	277	150	0.570
Two F96T12HO lamps	120	220	0.390
	277	220	0.390

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Federal Register

Wednesday,
March 15, 2000

Part VI

Department of Labor

Pension and Welfare Benefits Administration

Voluntary Fiduciary Correction Program; Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

RIN 1210–AA76

Voluntary Fiduciary Correction Program

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Voluntary Fiduciary Correction Program.

SUMMARY: The Department of Labor adopts a Voluntary Fiduciary Correction Program (VFC Program) by the Department of Labor's Pension and Welfare Benefits Administration (PWBA). The VFC Program allows certain persons to avoid potential Employee Retirement Income Security Act (ERISA) civil actions initiated by the Department of Labor, and the assessment of civil penalties under section 502(l) of ERISA in connection with investigation or civil action by the Department. The VFC Program is designed to benefit workers by encouraging the voluntary and timely correction of possible fiduciary breaches of Part 4 of Title I of ERISA. Although the VFC Program is being put into effect 30 days after publication in the **Federal Register**, the Department is seeking comments from the public on all aspects of the program.

DATES: Written comments must be received by the Department by May 15, 2000.

Effective Date: April 14, 2000.

ADDRESSES: Address questions regarding specific applications for relief under the VFC Program to the appropriate PWBA Regional Office listed in Appendix C.

Address comments on the VFC Program in writing to: VFC Program, Office of Enforcement, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N5702, 200 Constitution Ave., NW, Washington, DC 20210. Written comments may also be sent by Internet to: vfc-program@pwba.dol.gov.

Address comments that concern information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration.

FOR FURTHER INFORMATION CONTACT:

For Specific Applications Under the VFC Program: Contact the appropriate PWBA Regional Office listed in Appendix C.

For General Questions Regarding the VFC Program: Contact the appropriate PWBA Regional Office listed in Appendix C or Jeffrey A. Monhart, Investigator, Office of Enforcement, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC (202) 219–8820.

For Comments on the VFC Program: Contact Elizabeth A. Goodman, Pension Law Specialist, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC (202) 219–8671. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Title I of ERISA, 29 USC section 1001 *et seq.*, establishes certain standards with which officials of employee benefit plans covered by ERISA must comply. PWBA helps the public to understand the requirements of Title I of ERISA. In addition, PWBA conducts investigations to deter and correct violations of ERISA.

Based on PWBA's experience with the Pension Payback Program, 61 FR 9203 (March 7, 1996) (Pension Payback Program), and continued interest in such programs, PWBA has decided to establish the VFC Program. The project will be administered out of each of PWBA's ten regional offices. The VFC Program is designed to assist Plan Officials (as defined in Section 3) by specifying the steps necessary to correct certain potential violations of Title I of ERISA.

Section 409 of ERISA provides that a fiduciary who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by Part 4 of Title I of ERISA shall be personally liable to make good to a plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through the use of assets of the plan by the fiduciary. Where more than one fiduciary is liable for a breach, liability is joint and several. The Secretary of Labor has the authority, under sections 502(a)(2) and 502(a)(5), to bring civil actions to enforce the provisions of Title I of ERISA. Section 502(l) of ERISA requires the assessment of a civil penalty in an amount equal to 20 percent of the amount recovered under any settlement agreement with the Secretary or ordered by a court in an action initiated by the Secretary under section 502(a)(2) or 502(a)(5) with respect to any breach of fiduciary responsibility under (or other violation of) Part 4 by a fiduciary. Under ERISA section 502(l)(1)(B), this civil penalty may also be assessed against knowing participants in a breach.

PWBA believes that the possibility of investigation, commencement of a civil action, and imposition of a civil penalty under section 502(l) of ERISA may constrain persons who have engaged in a possible breach of fiduciary responsibility under Part 4 of Title I of ERISA from identifying themselves and working with PWBA to correct the breach fully and make the plan whole. To encourage the full correction of certain breaches of fiduciary responsibility and the restoration to participants and beneficiaries of losses resulting from those breaches, PWBA has decided to implement the VFC Program. Under this Program, persons who are potentially liable for a breach will be relieved of the possibility of civil investigation of that breach and/or civil action by the Secretary with respect to that breach, and imposition of civil penalties under ERISA section 502(l), if they satisfy the conditions for correcting the breach, as described in the VFC Program.

If a person files an application under the VFC Program, but the corrective action falls short of a complete and acceptable correction, PWBA may reject the application and pursue enforcement, including assessment of a section 502(l) penalty. However, no section 502(l) penalty would be imposed on the basis of any amounts restored to the plan prior to filing the VFC Program application. The penalty would only apply to the additional recovery amount, if any, paid to the plan pursuant to a court order or a settlement agreement with the Department.

Description of Voluntary Fiduciary Correction Program

The VFC Program is set forth in seven sections and three appendices. The VFC Program has been structured to maximize the ability of Plan Officials to identify and correct possible breaches that are within the scope of the Program without the need to consult with PWBA. As noted in Section 1, Purpose and Overview of the Voluntary Fiduciary Correction Program, PWBA believes that the VFC Program will assist Plan Officials in understanding the requirements of Part 4 of Title I of ERISA and will facilitate the correction of transactions and the restoration of losses to employee benefit plans resulting from fiduciary breaches.

Section 2, Effect of the VFC Program, makes clear that the applicant must be careful to ensure that the eligibility requirements are met and the corrections specified for individual transactions are performed before an application is filed under the VFC Program. Generally, if an applicant is in

full compliance with all of the terms and procedures set forth in the VFC Program, PWBA will issue a "no action letter" in the format shown in Appendix A with respect to the breach described in the application. We note, however, that relief under the VFC Program is limited to the transactions identified in the application and the persons who corrected those transactions. In certain cases, such as where PWBA becomes aware of possible criminal behavior, any material misrepresentations or omissions in the VFC application, or other abuse of the VFC Program, relief will not be available under the VFC Program and the Department may initiate an investigation which may lead to enforcement action. PWBA expects that such cases will be unusual. Full correction under the VFC Program does not preclude any other governmental agency, including the Internal Revenue Service (IRS), from exercising any rights it may have with respect to the transactions that are the subject of the application. The Department seeks comments on possible areas of coordination between PWBA and the IRS that would facilitate voluntary correction of breaches of Title I of ERISA. The Department notes that based on its preliminary review of the VFC Program, the IRS has indicated that except in those instances where the fiduciary breach or its correction result in a tax abuse situation or a plan qualification failure, a correction under this program generally will be acceptable under the Internal Revenue Code.

The VFC Program is designed to address a wide variety of situations where plans have been harmed as a result of possible breaches of fiduciary duty. Section 3, Definitions, makes clear that a transaction may be corrected without a determination that there is an actual breach; there need only be a possible breach. In addition, persons who may correct a fiduciary breach include not only the breaching fiduciary, but also plan sponsors, parties in interest or other persons who are in a position to correct a breach. However, the definition of Under Investigation, along with the criteria set forth in Section 4, Program Eligibility, provides that persons or plans who are the subject of pending investigations for violations of Title I of ERISA, or who appear to have engaged in criminal violations, may not take advantage of the VFC Program. Further, PWBA reserves the right to reject an application when warranted by the facts and circumstances of a particular case.

PWBA believes that it must assess a penalty under section 502(l) of ERISA to the extent that it negotiates relief owed to the plan as a result of a transaction in exchange for a no action letter to the potentially liable persons. Accordingly, the VFC Program is structured so that applicants have the maximum information available to identify eligible transactions and make complete and fully acceptable corrections without discussion or negotiation with the Department.

Section 5, General Rules for Acceptable Correction, sets forth issues that are likely to be present with regard to any transaction described in Section 7. For example, Section 5 describes how fair market value determinations must be made, how correction amounts must be determined, and what documentation is required for all applications. Section 5 also makes clear that the cost of correction must be borne by the applicant and not the plan. In addition, Section 5 states when notice must be provided to participants and when former employees who have already been cashed out of a plan must also be included in any amount restored to a plan.

Section 6, Application Procedures, specifies the requirements for the application, including the required documentation and the penalty of perjury statement that must be signed by a plan fiduciary with knowledge of the transaction and the authorized representative, if any. Section 6 is supplemented by Appendix B, the VFC Program Checklist, that helps the applicant to determine whether he or she has met all of the application requirements, including all documentation, prior to submission to PWBA.

Section 7, Description of Eligible Transactions and Methods of Correction sets forth five types of transactions which may be corrected pursuant to the VFC Program. The first, "delinquent participant contributions to pension plans," is included in the Program based on PWBA's experience with the Pension Payback Program. PWBA notes that, unlike the Pension Payback Program, the VFC Program does not exempt from excise taxes any violations of section 4975 of the Internal Revenue Code (the Code). PWBA included the other types of transactions based on its enforcement experience. For the current stage of the VFC Program, PWBA has taken a conservative approach and has limited the eligible transactions to those where the nature of the transaction and the required correction could be described accurately without reference to a specific situation, and thus could be corrected satisfactorily without consultation and negotiation with PWBA.

Request for Notice and Comments

Although the Department is not required to seek public comments on an enforcement policy, the Department solicits comments from the public on all aspects of this Program, including whether there are different ways in which the transactions included in the VFC Program could be corrected in accordance with the goals of the Program, as well as whether there are additional transactions involving fiduciary breaches that could be included in the VFC Program. At the same time, the Department has determined that the relief afforded by the VFC Program should be made available during and after the comment period. Delaying implementation of this Program until after the end of the comment period would serve no useful purpose and is unnecessary. Even without publication of this notice, the Department would have the authority to decline to investigate a potential breach of Title I of ERISA in a situation where it has received evidence of adequate correction. Delay in implementing the VFC Program would only deprive persons of the ability to use the clearly set forth procedural aspects of the Program during the comment period. The purpose of the VFC Program is to permit persons who may have violated certain provisions of Title I of ERISA to correct the violations and obtain assurance that the Department will take no further action with respect to the matter, including the assessment of a civil money penalty. Participation in the VFC Program is entirely voluntary and is favorable to those fiduciaries who meet the requirements. Implementation of the VFC Program does not foreclose resolution of fiduciary breaches by other means including entering into settlement agreements with the Department. Immediate implementation also favors participants of plans for which violations are corrected pursuant to the Program. Moreover, as explained above, the Department expects that the availability of the VFC Program will encourage fiduciaries, who otherwise might not do so, to correct violations and reimburse plan losses. As a result, the Department has determined that the VFC Program shall be implemented 30 days after publication in the **Federal Register**.

Although the Department is implementing the VFC Program effective 30 days after publication in the **Federal Register**, it believes that rapid implementation of a final version of the VFC Program would benefit the public.

Accordingly, the Department plans to implement a final version of the VFC Program within 180 days following the close of the 60 day period for comments on the VFC Program.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is "significant" and subject to OMB review under section 3(f)(4) of the Executive Order.

In the Department's view, the benefits of the VFC Program will substantially outweigh its costs, because participation is voluntary, the administrative cost of correcting a potential fiduciary breach through voluntary participation in the VFC Program will be lower than the cost of a correction resulting from investigation and litigation, and the value and security of the assets of plans participating in the VFC Program will be increased.

No costs will be imposed by the VFC Program unless Plan Officials choose to avail themselves of the opportunity to correct a potential fiduciary breach under the terms of the Program. Participation is expected to occur only when the projected benefit outweighs the anticipated cost for the Plan Official. The costs of electing to correct potential breaches of fiduciary responsibility under terms of the VFC Program are expected to arise from fair market value determinations; computations of losses or profits on the use of plan assets; the administrative costs of supplemental distributions, recomputation of account balances and distribution of notices to participants concerning recomputation; transaction costs for disposal of assets; and the description and documentation of the correction for purposes of the application to the Department.

The value of assets or losses restored to employee benefit plans as a result of Plan Officials' participation in the VFC Program is not viewed as a cost to Plan Officials, but rather as a transfer from a fiduciary or other party in interest to the participants and beneficiaries of the plan. Plan Officials may not transfer the costs of compliance with the terms of the VFC Program to participants and beneficiaries.

The principal benefit of the VFC Program will accrue to participants and beneficiaries through restoration of losses to the plan or reversal of impermissible transactions involving the assets of the plan, resulting in greater security of their plan assets. Benefits will also accrue to plan fiduciaries through both risk reduction and the savings of civil penalties that would otherwise be payable on the amount of assets recovered by plans following a civil investigation or litigation. Where the Department determines that it will take no civil enforcement action and recommend no legal action in response to a complete application under the VFC Program, the fiduciary will be relieved of potential demands on its resources that might be represented by a civil investigation and any subsequent litigation.

The VFC Program will also allow the Department to encourage compliance with Part 4 of Title I of ERISA while making even more effective use of its limited enforcement resources. The Department believes that the correction of violations through the VFC Program will be less costly than correction through active intervention, and that VFC Program applicants have a high likelihood of accomplishing an appropriate correction of a potential violation. To the extent that Plan Officials who wish to correct potential violations do so voluntarily and appropriately, the Department may direct its resources toward other areas where active intervention is more likely to be necessary.

More generally, publication of the specific examples of transactions which may violate ERISA and the activities required to correct those violations will serve to better inform plan fiduciaries and assist them in satisfying their fiduciary obligations in future transactions involving plan assets.

The Department estimates the cost of the VFC Program for the number of Plan Officials estimated to choose to make use of it will total $1,877,400. The total benefit to participants and beneficiaries is estimated at approximately $80 million, while the benefit to Plan Officials, to the extent it can be quantified, is estimated at $5.4 million. These figures do not include an estimate of the potential benefit to Plan Officials of the reduced risk of investigation and litigation, or the benefit to the Department, to participants and beneficiaries, and to the public in general of realizing efficiencies in the use of enforcement resources, because these elements of the Program's benefit are not readily quantifiable. Because the VFC Program is voluntary, the Department assumes that Plan Officials will in no event make use of the Program unless the projected benefit outweighs the estimated cost of participation.

A discussion of the elements of the costs and benefits of the VFC Program and estimates of their magnitude where they can be specifically quantified follows. The Department projects that Plan Officials of approximately 700 plans will apply for and use the VFC Program. This estimate is based on the Department's previous experience with the Pension Payback Program in which approximately 0.1 percent of plans which permitted employee contributions elected to participate during the six month period in which the Pension Payback Program was in effect.

The Department expects a similar rate of participation among the approximately 200,000 plans which currently permit employee contributions. However, it assumes this participation by Plan Officials of 200 plans will occur over an annual period in the absence of the six-month time limitation included in the Pension Payback Program.

Because the VFC Program permits correction of several other types of transactions in addition to the repayment of delinquent employee contributions, the Department has assumed that the annual rate of participation in the VFC Program by Plan Officials of plans other than those which permit employee contributions will be comparable to the 0.1 percent assumed for those which permit employee contributions, resulting in participation by Plan Officials of about 500 additional plans, and total participation of 700 plans. The Department views this estimate as an upper bound; actual participation may be somewhat smaller depending on the cost effectiveness of correcting the actual transactions involved, the complexity of the legal and factual

issues involved in a given transaction, and the degree of similarity between an actual transaction and a transaction and correction described by the terms of the VFC Program. The Department recognizes that Plan Officials may not view the VFC Program as offering a cost effective means of correcting all potential violations.

The Department also estimates that $79,870,000, or an average of $114,300 per plan, will be recovered by plans annually as a result of participation in the VFC Program. Based on its enforcement experience, the Department estimates that about 70 percent of this total, or $56 million, will consist of restored principal and earnings losses, and restored profits on the use of plan assets by fiduciaries or parties in interest. The total estimated recovery represents the midpoint between the average monetary recovery (excluding assets recovered through litigation) per plan that resulted from civil investigations completed by the Department in the year ended September 30, 1998, and the average per plan monetary recovery which arose from the Pension Payback Program, as applied to the 700 plans assumed to elect to participate in the VFC Program. The Department believes this estimate is reasonable in light of the range of transactions which may be corrected under the VFC Program. It is estimated that approximately 88,000 participants, or an average of 126 participants per plan, will be affected annually by corrections under the VFC Program.

Based on its recent experience with the collection of civil penalties under section 502(l), the Department estimates that Plan Officials will be relieved of approximately $5.4 million in civil penalties as a result of correction of transactions through the VFC Program. This estimate is based on the 700 plans assumed to participate, and the average section 502(l) penalty actually collected per plan subject to the penalty in the last two fiscal years. Actual collections take into account the offset of any excise tax payable as a result of a violation of section 4975 of the Code, which is also consistent with the terms of the VFC Program.

The costs to Plan Officials to participate in the VFC Program will arise from a range of possible required activities depending on the nature of the transaction to be corrected, including evaluation by Plan Officials and their professionals of the need and usefulness of participation in the VFC Program, obtaining market value determinations, executing asset transactions, adjusting account balances and benefit distributions, documenting the correction, and completing and mailing the application to participate in the Program. The Department anticipates that Plan Officials will in most cases seek the services of a professional (typically an attorney, accountant, or professional administrator) to conduct the applicable activities, although the resources of Plan Officials are expected to be needed as well to gather information, and prepare, sign, and photocopy the application. It is estimated that the entire correction will require approximately 40 hours to complete, including 8 hours of the Plan Official's time, and 32 hours of professional time.

At the assumed rate of participation, the total cost of these activities is estimated to amount to $1,877,400 (or an average of $2,700 per Plan Official), assuming an average cost of $55 per hour for work performed in house by Plan Officials and their employees, and a rate of $70 per hour for purchased services. This estimate also includes application materials and mailing costs.

Paperwork Reduction Act

The Department of Labor has submitted the information collection request (ICR) included in the Voluntary Fiduciary Correction Program to OMB using emergency review procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. Chapter 35). OMB approval has been requested by April 14, 2000. The Department and OMB are particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through May 15, 2000, OMB requests that comments be received within 10 days of publication of this Voluntary Fiduciary Correction Program to ensure their consideration.

The Department, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with PRA 95. This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, PWBA is soliciting comments concerning the ICR included in the Voluntary Fiduciary Correction Program.

Requests for copies of the ICR may be addressed to: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745 (these are not toll-free numbers).

The VFC Program will permit Plan Officials to correct voluntarily certain potential violations of Part 4 of Title I of ERISA, and to avoid the possibility of civil action and the assessment of civil penalties, provided specific conditions are met. The ICR included in the VFC Program would require the Plan Official to describe the correction of the potential breach of fiduciary duty and provide supporting documentation with respect to the correction. The type of supporting documentation will vary with the nature of the transaction involved, but is described in the VFC Program in as specific a manner as deemed feasible. The Plan Official is also required to complete an application which includes identification of the employee benefit plan and the Plan Official or representative, relevant plan documents including a fidelity bond, a statement under penalty of perjury that must be signed by a plan fiduciary with knowledge of the transaction and the authorized representative, if any, and signature. Under certain circumstances a Plan Official may also be required to prepare and distribute notices informing participants and beneficiaries of changes in their account balances. The information submitted to the Department will permit the Department

to verify the correction of potential fiduciary breaches and restoration of losses, to evaluate the adequacy of actions taken by a Plan Official pursuant to the VFC Program, and to determine whether further action is necessary to protect the rights of participants and beneficiaries.

It is estimated that Plan Officials of 700 employee benefit plans will avail themselves of the opportunity to correct potential violations pursuant to the VFC Program annually. The Department estimates that approximately 8 hours of Plan Officials' time will be required to assemble documents and complete and sign the application to participate in the VFC Program. It is further assumed that evaluation, correction and documentation of transactions under the VFC Program will require approximately 32 hours, and that Plan Officials will generally elect to hire service providers to complete this work. Only 6 hours of this total is expected to be associated with the information collection requirements of the VFC Program (including descriptions and documentation, copying relevant supporting statements, preparing notices, etc.) The assumed hourly rate for purchased services related to fulfilling information collection requirements is estimated to be $70 per hour, for a total cost to the 700 Plan Officials of $295,400. This includes an allowance of $2 per application for materials and mailing costs.

Type of Review: New.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Voluntary Fiduciary Correction Program.

OMB Number: 1210-NEW.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency of Response: On occasion.

Total Respondents: 700.

Total Responses: 700.

Estimated Burden Hours: 5,600.

Estimated Annual Costs (Operating and Maintenance): $295,400.

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Regulatory Flexibility Act

This document reflects an enforcement policy of the Department and is not being issued as a general notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) does not apply. However, PWBA has considered the potential costs and benefits of this action for small plans and small Plan Officials in the development of the VFC Program. The Department is interested in comments which would suggest alternatives to the provisions of the VFC Program which would accomplish the stated purpose of the Program while minimizing the impact on small entities.

PWBA generally considers a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. However, because the VFC Program specifically prohibits the cost of participation from being borne by the plan and participants, this program will impose no costs on the plans which realize the benefits of the correction of potential violations. Costs will be borne instead by the Plan Officials of an estimated 700 employee benefit plans each year. Plan Officials may include both individual fiduciaries, plan sponsors, or parties in interest, and businesses in their roles as fiduciaries, plan sponsors, or parties in interest.

Although the number of Plan Officials of small plans that will elect to avail themselves of the opportunity to correct potential breaches of fiduciary duty under the terms of the VFC Program is not known, the potential costs and benefits to each Plan Official is summarized below, on the basis of the assumption that each of the participating Plan Officials will itself be a small entity.

Participation in the VFC Program is entirely voluntary, and as such, it is assumed that Plan Officials will elect to participate only when the potential benefits to a Plan Official are expected to exceed the cost of participation. Benefits may include the reduction of exposure to the risk of investigation and subsequent litigation, the potential cost of which cannot be specifically quantified, and the savings of penalties under section 502(l) of ERISA which would otherwise be payable on amounts required to be restored to plans by fiduciaries pursuant to a settlement agreement with the Department or court order.

As described in detail above, to the extent that the per small Plan Official costs and benefits of participation in the VFC Program can be quantified, assuming all participating Plan Officials are small entities, administrative costs of participation are estimated to amount to an average of $2,700 per Plan Official, while savings of section 502(l) penalties are estimated at $7,754 per Plan Official. While the average value of assets estimated to be restored to plans as a result of participation in the VFC Program, or $114,300 per plan, may be viewed as an expense by Plan Officials, in the Department's view, this expense arises from a potential breach of fiduciary duty rather than from participation in the VFC Program. The fiduciary's potential liability for a breach of fiduciary duty and the cost of remedial relief are expected to be comparable, regardless of whether a violation is corrected under the terms of the VFC Program, or as a result of an investigation and any subsequent litigation.

On this basis, small Plan Officials electing to correct potential fiduciary breaches through participation in the VFC Program are expected to derive a net benefit, even without consideration of the potential savings associated with the reduction of risk and exposure to the use of its resources in connection with an investigation or litigation. Because penalties and additional resource demands are often relatively more burdensome for small entities than large, the Department views the VFC Program as offering a flexible and economically advantageous alternative to currently available methods of correcting potential breaches of fiduciary duty which recognizes the special circumstances of small entities. The Department invites comments on this analysis, and on alternatives which further reduce the potential burden of participation in the VFC Program for small Plan Officials.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this regulatory action does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Voluntary Fiduciary Correction Program

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Appendix A. Sample VFC Program No Action Letter
Appendix B. VFC Program Checklist
Appendix C. List of PWBA Regional Offices

Section 1. Purpose and Overview of the VFC Program

The purpose of the VFC Program is to protect the financial security of workers by encouraging identification and correction of transactions that violate Part 4 of Title I of ERISA. Part 4 of Title I of ERISA sets out the responsibilities of employee benefit plan fiduciaries. Section 409 of ERISA provides that a fiduciary who breaches any of these responsibilities shall be personally liable to make good to the plan any losses to the plan resulting from each breach and to restore to the plan any profits the fiduciary made through the use of the plan's assets. Section 405 of ERISA provides that a fiduciary may, under certain circumstances, be liable for a co-fiduciary's breach of his or her fiduciary responsibilities. In addition, under certain circumstances, there may be liability for knowing participation in a fiduciary breach. In order to assist all affected persons in understanding the requirements of ERISA and meeting their legal responsibilities, PWBA is providing guidance on what constitutes adequate correction under Title I of ERISA for the breaches described in this Program.

Section 2. Effect of the VFC Program

(a) *In general.* PWBA generally will issue to the applicant a no action letter [1] with respect to a breach identified in the application if the eligibility requirements of section 4 are satisfied and a Plan Official corrects a breach, as defined in section 3, in accordance with the requirements of sections 5, 6 and 7. Pursuant to the no action letter it issues, PWBA will not initiate a civil investigation under Title I of ERISA regarding the applicant's responsibility for any transaction described in the no action letter, or assess a civil penalty under section 502(l) of ERISA on the correction amount paid to the plan or its participants.

(b) *Verification.* PWBA reserves the right to conduct an investigation at any time to determine (1) the truthfulness and completeness of the factual statements set forth in the application and (2) that the corrective action was, in fact, taken.

(c) *Limits on the effect of the VFC Program.* (1) *In general.* Any no action letter issued under the VFC Program is limited to the breach and persons identified therein. Moreover, the method of calculating the correction amount described in this Program is only intended to correct the specific breach described in the application. Other methods of calculating losses may be more appropriate, depending on the facts and circumstances. This Program assumes that the transaction is otherwise an appropriate investment decision for the plan. If a transaction gave rise to violations not addressed in the Program, such as imprudence not addressed in the Program or a failure to diversify plan assets, the relief afforded by the Program would not extend to such additional violations.

(2) *No implied approval of other matters.* A no action letter does not imply Departmental approval of matters not included therein, including steps that the fiduciaries take to prevent recurrence of the breach described in the application and to ensure the plan's future compliance with Title I of ERISA.

(3) *Material misrepresentation.* Any no action letter issued under the VFC Program is conditioned on the truthfulness, completeness and accuracy of the statements made in the application and of any subsequent oral and written statements or submissions. Any material misrepresentations or omissions will void the no action letter, retroactive to the date that the letter was issued by PWBA, with respect to the transaction that was materially misrepresented.

(4) *Applicant fails to satisfy terms of the VFC Program.* If an application fails to satisfy the terms of the VFC Program, as determined by PWBA, PWBA reserves the right to investigate and take any other action with respect to the transaction and/or plan that is the subject of the application, including refusing to issue a no action letter.

(5) *Criminal investigations not precluded.* Compliance with the terms of the VFC Program will not preclude:

(i) PWBA or any other governmental agency from conducting a criminal investigation of the transaction identified in the application;

(ii) PWBA's assistance to such other agency; or

(iii) PWBA making the appropriate referrals of criminal violations as required by section 506(b) of ERISA.[2]

(6) *Other actions not precluded.* Compliance with the terms of the VFC Program will not preclude PWBA from taking any of the following actions:

(i) Seeking removal from positions of responsibility with respect to a plan or other non-monetary injunctive relief against any person responsible for the transaction at issue;

(ii) referring information regarding the transaction to the IRS as required by section 3003(c) of ERISA; [3] or

(iii) imposing civil penalties under section 502(c)(2) of ERISA based on the failure or refusal to file a timely, complete and accurate annual report Form 5500. Applicants should be aware that amended annual report filings may be required if possible breaches of ERISA have been identified, or if action is taken to correct possible breaches in accordance with the VFC Program.

(7) *Not binding on others.* The issuance of a no action letter does not affect the ability of any other government agency, or any other person, to enforce any rights or carry out any authority they may have, with respect to matters described in the no action letter.

[1] See Appendix A.

[2] Section 506(b) provides that the Secretary of Labor shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of Title I of ERISA and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of Title 18 of the United States Code.

[3] Section 3003(c) provides that, whenever the Secretary of Labor obtains information indicating that a party in interest or disqualified person is violating section 406 of ERISA, she shall transmit such information to the Secretary of the Treasury.

(8) *Example.* A plan fiduciary causes the plan to purchase real estate from the plan sponsor under circumstances to which no prohibited transaction exemption applies. In connection with this transaction, the purchase causes the plan assets to be no longer diversified, in violation of ERISA section 404(a)(1)(C). If the application reflects full compliance with the requirements of the Program, the Department's no action letter would apply to the violation of ERISA section 406(a)(1)(A), but would not apply to the violation of section 404(a)(1)(C).

(d) *Correction.* The correction criteria listed in the VFC Program represent PWBA enforcement policy and are provided for informational purposes to the public, but are not intended to confer enforceable rights on any person who purports to correct a violation. Applicants are advised that the term "correction" as used in the VFC Program is not necessarily the same as "correction" pursuant to section 4975 of the Code.[4] Correction may not be achieved under the Program by engaging in a new prohibited transaction.

(e) *PWBA's authority to investigate.* PWBA reserves the right to conduct an investigation and take any other enforcement action relating to the transaction identified in a VFC Program application in certain circumstances, such as prejudice to the Department that may be caused by the expiration of the statute of limitations period, material misrepresentations, or significant harm to the plan or its participants that is not cured by the correction provided under the VFC Program. PWBA may also conduct a civil investigation and take any other enforcement action relating to matters not covered by the VFC Program application, or relating to other plans sponsored by the same plan sponsor, while a VFC Program application involving the plan or the plan sponsor is pending.

(f) *Confidentiality.* PWBA will maintain the confidentiality of any documents submitted under the VFC Program, to the extent permitted by law. However, as noted in (c)(5) and (6) of this section, PWBA has an obligation to make referrals to the IRS and to refer to other agencies evidence of criminality and other information for law enforcement purposes.

[4] See section 4975(f)(5) of the Internal Revenue Code (IRC); section 141.4975–13 of the temporary Treasury Regulations and section 53.4941(e)–1(c) of the Treasury Regulations. The Internal Revenue Service has indicated that except in those instances where the fiduciary breach or its correction result in a tax abuse situation or a plan qualification failure, a correction under this program generally will be acceptable under the Internal Revenue Code.

Section 3. Definitions

(a) The terms used in this document have the same meaning as provided in section 3 of ERISA, 29 USC section 1002, unless separately defined herein.

(b) The following definitions apply for purposes of the VFC Program:

(1) *Breach.* The term "Breach" means any transaction which is or may be a breach of the fiduciary responsibilities contained in Part 4 of Title I of ERISA.

(2) *Plan Official.* The term "Plan Official" means a plan fiduciary, plan sponsor, party in interest with respect to a plan, or other person who is in a position to correct a Breach.

(3) *Under Investigation.* The term "Under Investigation" means a plan or person that is being investigated pursuant to ERISA section 504(a) or any criminal statute affecting a transaction which involves an employee benefit plan. A plan that is Under Investigation by PWBA includes any plan for which a Plan Official, or a representative, has received oral or written notification from PWBA of an investigation of the plan. A plan is not considered to be Under Investigation by PWBA merely because PWBA staff have contacted a Plan Official or representative in connection with a complaint, unless the complaint concerns the transaction described in the application.

Section 4. VFC Program Eligibility

Eligibility for the VFC Program is conditioned on the following:

(a) Neither the plan nor the applicant is Under Investigation.

(b) The application contains no evidence of potential criminal violations as determined by PWBA.

Section 5. General Rules for Acceptable Corrections

(a) *Fair Market Value Determinations.* Many corrections require that the current or fair market value of an asset be determined as of a particular date, usually either the date the plan originally acquired the asset or the date of the correction, or both. In order to be acceptable as part of a VFC Program correction, the valuation must meet the following conditions:

(1) If there is a generally recognized market for the property (*e.g.*, the New York Stock Exchange), the fair market value of the asset is the average value of the asset on such market on the applicable date, unless the plan document specifies another objectively determined value (*e.g.*, the closing price).

(2) If there is no generally recognized market for the asset, the fair market value of that asset must be determined in accordance with generally accepted appraisal standards by a qualified, independent appraiser and reflected in a written appraisal report signed by the appraiser.

(3) An appraiser is "qualified" if he or she has met the education, experience, and licensing requirements that are generally recognized for appraisal of the type of asset being appraised.

(4) An appraiser is "independent" if he or she is not one of the following, does not own or control any of the following, and is not owned or controlled by, or affiliated with, any of the following:

(i) The prior owner of the asset, if the asset was purchased by the plan;

(ii) The purchaser of the asset, if the asset was or is now being sold by the plan;

(iii) Any other owner of the asset, if the plan is not the sole owner;

(iv) A fiduciary of the plan;

(v) A party in interest with respect to the plan (except to the extent the appraiser becomes a party in interest when retained to perform this appraisal for the plan); or

(vi) The VFC Program applicant.

(b) *Correction Amount.* (1) *In general.* Many of the transactions described in the VFC Program result in a loss to the plan or a profit to some party to the transaction. Determining the amount of the loss to the plan requires calculating how much money the plan would have now if a particular transaction had not occurred. In general, the VFC Program requires the fiduciary or other Plan Official to restore to the employee benefit plan the Principal Amount, plus the greater of (i) Lost Earnings from the Loss Date to the Recovery Date or (ii) Restoration of Profits resulting from the use of the Principal Amount for the same period.

(2) *Principal Amount.* "Principal Amount" is the amount that would have been available to the plan for investment or distribution on the date of the Breach, had the Breach not occurred. What constitutes the Principal Amount is identified for each transaction set forth in section 7 of the VFC Program. The generic term "Principal Amount" is the base on which Lost Earnings are calculated.

(3) *Loss Date.* "Loss Date" is the date that the plan lost the use of the Principal Amount.

(4) *Recovery Date.* "Recovery Date" is the date that the Principal Amount is restored to the plan.

(5) *Lost Earnings.* For purposes of the VFC Program, Lost Earnings to be restored to a plan is the greater of (i) the amount that otherwise would have been earned on the Principal Amount from

the Loss Date to the Recovery Date had the Principal Amount been invested during such period in accordance with applicable plan provisions and Title I of ERISA, less actual net earnings or realized net appreciation (or, if applicable, plus any net loss to the plan as a result of the transaction), or (ii) the amount that would have been earned on the Principal Amount at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code, less actual net earnings or realized net appreciation (or, if applicable, plus any net loss to the plan as a result of the transaction). In addition, if the date on which the Lost Earnings is paid to the plan is a date after the Recovery Date, payment must include an additional amount that is the greater of (i) the amount that would have been earned by the plan on the Lost Earnings if it had been paid on the Recovery Date, or (ii) the amount that would have been earned on the Lost Earnings at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code. For a participant-directed defined contribution plan, the Lost Earnings to be restored to the plan is the amount that each participant would have earned on the Principal Amount from the Loss Date to the Recovery Date. However, for administrative convenience, the Lost Earnings amount for a participant-directed defined contribution plan may be calculated using the rate of return of the investment alternative that earned the highest rate of return among the designated broad range of investment alternatives available under the plan during the applicable period.

(6) *Restoration of Profits.* "Restoration of Profits" is the amount of profit made on the use of the Principal Amount, or the property purchased with the Principal Amount, by the fiduciary or party in interest who engaged in the Breach, or by a knowing participant in the Breach. If the Principal Amount was used for a specific purpose such that the actual profit can be determined, that actual profit must be calculated from the Loss Date to the Recovery Date and returned to the plan. If the Principal Amount was commingled with other funds so that the actual profit cannot be determined, the Restoration of Profits will be calculated as interest on the Principal Amount at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code. In addition, if the date on which the Restoration of Profits is paid to the plan is a date after the Recovery Date, payment must include an additional amount that is the greater of (i) the amount that would have been earned by the plan on the Restoration of Profits if it had been paid on the Recovery Date, or (ii) the amount that would have been earned on the Restoration of Profits at an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code.

(7) The principles of this paragraph (b) are illustrated by the following examples:

Example 1. An employer who sponsors a plan with a qualified cash or deferred arrangement within the meaning of section 401(k)(2) of the Code ("401(k) plan") normally deposits participant contributions in the plan's trust account within two business days of each pay day. For this employer, the second business day after pay day is the date on which the participant contributions become plan assets, because it is the earliest date on which this employer can reasonably segregate the participant contributions from the employer's general assets.[5] However, for the pay period ending January 31, a Monday, participant contributions totaling $10,000 were not deposited until March 2.

The Principal Amount is $10,000. The Loss Date is February 2, the date on which the participant contributions became plan assets and should have been deposited in the plan's trust account. The Recovery Date is March 2, the date that the participant contributions were deposited in the plan's trust account.

The 401(k) plan offers five investment alternatives. During the month of February, one of the plan's mutual funds had a 12% annualized yield, including all reinvestment earnings. This was the highest return earned by any of the five investment alternatives in this period. The employer elects to use this rate of return for the loss calculations. Accordingly, the Lost Earnings amount is $100 ($10,000 times 12% annual yield times one-twelfth of a year).

The employer had the use of $10,000 of the 401(k) plan's assets between February 2 and March 2, while the participant contributions remained commingled with the employer's general assets. The employer's cost of funds (the actual profit from the use of the participant contributions) cannot readily be determined; therefore, the Restoration of Profits amount is calculated using the underpayment rate defined in Code section 6621(a)(2). Assuming the section 6621 rate was 9%, the Restoration of Profits amount is $75 ($10,000 times 9% per annum times one-twelfth of a year).

In this example, the Lost Earnings amount ($100) is greater than the Restoration of Profits amount ($75). Since the Principal Amount of $10,000 was paid to the plan on March 2, the total correction amount to be paid to the plan is the Lost Earnings of $100.

Assume further, in this example, that although the Principal Amount of $10,000 was paid to the plan on March 2, the Lost Earnings of $100 were not paid to the plan until a year later. Accordingly, an additional $12 ($100 times 12 percent—the plan's annual yield), must be paid to the Plan along with the $100 Lost Earnings amount.

[5] *See* 29 CFR 2510.3–102.

Example 2. On March 15, a plan's trustees authorized the purchase of 1,000 shares of stock. The plan paid $75 per share when the fair market value was $70 per share.[6] The Principal Amount is $5,000 (1,000 shares times the $5 per share overpayment). The Loss Date is March 15, the date of the overpayment. The Recovery Date will be the date on which the fiduciary or other person repays to the plan the correction amount.

Assume that the plan recoups the $5,000 overpayment a year after the original purchase. During this year, the plan's other investments earned 9%, including all reinvestment earnings. The Lost Earnings amount is $450 ($5,000 times 9% annual yield times one year). If the Restoration of Profit amount is less than $450, the total amount to be paid to the plan is $5,450 (the Principal Amount of $5,000 plus Lost Earnings of $450).

Example 3. Assume the same facts as in Example 2, except that the proceeds of the sale were used to make another investment which yielded a 15% annual rate of return, the Restoration of Profits amount is $750 ($5,000 times 15% per annum times one year). In this example, the Restoration of Profits amount ($750) is greater than the Lost Earnings amount ($450). The total amount to be paid to the plan is $5,750 (the Principal Amount of $5,000 plus Restoration of Profits of $750).

Example 4. On April 20, a plan paid $6,000 in legal fees for legal services that the plan sponsor, not the plan, was obligated to pay. The Principal Amount is $6,000. The Loss Date is April 20, the date the plan improperly paid the plan sponsor's legal expenses. The Recovery Date will be the date on which the plan sponsor reimburses the plan $6,000. Assume that the plan sponsor reimburses the plan on October 20, six months after the Loss Date. During this period, the plan's investments earned 10% per annum, including all reinvestment earnings. The Lost Earnings amount is $300 ($6,000 times 10% annual yield multiplied by one-half).

The plan sponsor had constructive use of $6,000 from April 20 until October 20. The plan sponsor's cost of funds (the actual profit from the use of the money) cannot readily be determined; therefore, the Restoration of Profits amount is calculated using the underpayment rate defined in Code section 6621(a)(2). Assuming the section 6621 rate was 8% during the whole period, the Restoration of Profits amount is $240 ($6,000 times 8% per annum multiplied by one-half).

In this example, the Lost Earnings amount ($300) is greater than the Restoration of Profits amount ($240). The total amount to be paid to the plan is $6,300 (the Principal Amount of $6,000 plus Lost Earnings of $300).

(c) *Costs of Correction.* (1) The fiduciary, plan sponsor or other Plan

[6] If a plan's fiduciaries authorized the purchase of a specific dollar amount of stock rather than the purchase of a specific number of shares, and the plan acquired fewer shares than it should have as a result of paying too much per share, the amount lost equals the number of additional shares that the plan should have acquired, plus any appreciation, dividends, or stock splits associated with those additional shares.

Official, not the plan, shall pay the costs of correction.

(2) The principle of paragraph (c)(1) is illustrated in the following example and in (d) below:

Example: The plan fiduciaries did not obtain a required independent appraisal in connection with a transaction described in Section 7. In connection with correcting the transaction, the plan fiduciaries now propose to have the appraisal performed as of the date of purchase. The plan document permits the plan to pay reasonable and necessary expenses; the fiduciaries have objectively determined that the cost of the proposed appraisal is reasonable and is not more expensive than the cost of an appraisal contemporaneous with the purchase. The plan may therefore pay for this appraisal. However, the plan may not pay any costs associated with recalculating participant account balances to take into account the new valuation. There would be no need for these additional calculations or any increased appraisal cost if the plan's assets had been valued properly at the time of the purchase. Therefore, the cost of recalculating the plan participants' account balances is not a reasonable plan expense, but is part of the Costs of Correction.

(d) *Distributions.* Some plans will have to make supplemental distributions to former employees, beneficiaries receiving benefits, or alternate payees, if the original distributions were too low because of the Breach. In these situations, the Plan Official or plan administrator must determine who received distributions from the plan during the time period affected by the Breach, recalculate the account balances, and determine the amount of the underpayment to each affected individual. The applicant must demonstrate in writing to PWBA that the plan has used best efforts to locate and pay any former employee, beneficiary, or alternate payee who has received a lump sum distribution but is due an additional distribution as a result of the correction of the transaction. The costs of such efforts would be part of the Costs of Correction.

(e) *Notice.* (1) *In general.* The applicant or the plan administrator must provide written notice of the correction to all plan participants. The notice shall state that the correction was made pursuant to the applicant's participation in the VFC Program, and that the individuals receiving notice may obtain a copy of the application, including all supporting documentation, from the plan administrator upon written request. The notification must also state that the application has been submitted to the VFC Program Coordinator at the appropriate Regional Office of the United States Department of Labor, Pension and Welfare Benefits Administration and include the address and phone number of such Regional Office. Generally, notice must be provided no later than the date required for distribution of the Summary Annual Report. Notice may be accomplished by posting, regular mail, or electronic mail. The notice must be distributed or posted in a manner reasonably calculated to inform participants in the affected plan of the applicant's participation in the VFC Program.

(2) *Special Notice Requirements.* (i) *Supplemental distributions.* When the correction involves a supplemental distribution, a notice explaining the distribution must also be sent to each individual entitled to the supplemental distribution at the same time as the supplemental distribution.

(ii) *Adjustment of plan account balances.* When the correction involves an adjustment to the account balance of a participant, beneficiary receiving benefits, or alternate payee, a notice explaining the adjustment must be provided at the same time that the individual is furnished with the benefit statement that includes the adjustment. This provision does not require the creation of additional benefit statements. The notice is provided whenever the benefit statement is ordinarily provided.

Section 6. Application Procedures

(a) *In general.* Each application must adhere to the requirements set forth below. Failure to do so may render the application invalid.

(b) *Preparer.* The application must be prepared by a Plan Official or his or her authorized representative (*e.g.*, attorney, accountant, or other service provider). If a representative of the Plan Official is submitting the application, the application must include a statement signed by the Plan Official that the representative is authorized to represent the Plan Official.

(c) *Contact person.* Each application must include the name, address and telephone number of a contact person. The contact person must be familiar with the contents of the application, and have authority to respond to inquiries from PWBA.

(d) *Detailed narrative.* The applicant must provide to PWBA a detailed narrative describing the Breach and the corrective action. The narrative must include:

(i) a list of all persons materially involved in the Breach and its correction (*e.g.*, fiduciaries, service providers, borrowers);

(ii) the EIN number and address of the plan sponsor and administrator;

(iii) the date the plan's most recent Form 5500 was filed;

(iv) an explanation of the Breach, including the date it occurred;

(v) an explanation of how the Breach was corrected, by whom and when; and

(vi) specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were computed and an explanation of why payment of Lost Earnings or Restoration of Profits was chosen to correct the Breach.

(e) *Supporting documentation.* The applicant must also include:

(i) the current fidelity bond for the plan;

(ii) a copy of the plan document, and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract) with the relevant sections identified;

(iii) documentation that supports the narrative description of the transaction and correction;

(iv) documentation establishing the Lost Earnings amount, including documentation of the return on the plan's other investments during the time period on which the Lost Earnings is calculated with respect to the transaction described in the VFC Program application;

(v) documentation establishing the amount of Restoration of Profits;

(vi) all documents described in Section 7 with respect to the transaction involved;

(vii) proof of payment of Principal Amount and Lost Earnings or Restoration of Profits; and

(viii) a copy of the sample notification to all affected participants.

(5) *Examples of supporting documentation.* (i) Examples of documentation supporting the description of the transaction and correction are leases, appraisals, notes and loan documents, service provider contracts, invoices, settlement documents, deeds, perfected security interests, and amended annual reports.

(ii) Examples of acceptable proof of payment include copies of canceled checks, executed wire transfers, a signed, dated receipt from the recipient of funds transferred to the plan (such as a financial institution), and bank statements for the plan's account.

(g) *Penalty of Perjury Statement.* Each application must also include a Penalty of Perjury statement. The statement shall be signed and dated by a plan fiduciary with knowledge of the transaction that is the subject of the application and the authorized representative, if any. The statement must accompany the application and any subsequent additions to the

application. The statement shall read as follows:

I certify under penalty of perjury that I have reviewed this application and all supporting documents and that to the best of my belief the contents are true and complete and comply with all terms and conditions of the VFC Program. I further certify under penalty of perjury that at the date of this certification neither the Department nor any other Federal agency has informed me of an intention to investigate or examine the plan or otherwise made inquiry with respect to the transaction described in this application. I further certify under penalty of perjury that neither I nor any person acting under my supervision or control with respect to the operation of an ERISA-covered employee benefit plan:

(1) is the subject of any criminal investigation or prosecution involving any offense against the United States; [7]

(2) has been convicted of a criminal offense involving employee benefit plans at any time or any other offense involving financial misconduct which was punishable by imprisonment exceeding one year for which sentence was imposed during the preceding thirteen years or which resulted in actual imprisonment ending within the last thirteen years, nor has such person entered into a consent decree with the Department or been found by a court of competent jurisdiction to have violated any fiduciary responsibility provisions of ERISA during such period; or

(3) has sought to assist or conceal the transaction described in this application by means of bribery, graft payments to persons with fiduciary responsibility for this plan or with the knowing assistance of persons engaged in ongoing criminal activity.

(h) *Checklist.* The checklist in Appendix B must be completed, signed, and submitted with the application.

(i) *Where to apply.* The application shall be mailed to the appropriate Regional PWBA office listed in Appendix C.

(j) *Record keeping.* The applicant must maintain copies of the application and any subsequent correspondence with PWBA for the period required by section 107 of ERISA.

[7] For purposes of this paragraph, an "offense" includes criminal activity for which the Department of Justice may seek civil injunctive relief under the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1964(b)). A "subject" is any individual or entity whose conduct is within the scope of any ongoing inquiry being conducted by a Federal investigator(s) who is authorized to investigate criminal offenses against the United States.

Section 7. Description of Eligible Transactions and Corrections Under the VFC Program

PWBA has identified certain Breaches and methods of correction that are suitable for the VFC Program. Any Plan Official may correct a Breach listed in this Section in accordance with the applicable correction method. The correction methods set forth are strictly construed and are the only acceptable correction methods under the VFC Program for the transactions described in this Section. PWBA will not accept applications concerning correction of breaches not described in this Section.

A. Contributions

1. Delinquent Participant Contributions to Pension Plans

(a) *Description of Transaction.* An employer receives directly from participants, or withholds from employees' paychecks, certain amounts for contribution to a pension plan. Instead of forwarding the contributions for investment in accordance with the provisions of the plan and within the time frames described in the Department's regulation at 29 CFR 2510.3–102, the employer retains the contributions for a longer period of time.

(b) *Correction of Transaction.* (1) *Unpaid contributions.* For participant contributions not yet paid to the plan, pay to the plan the Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount, as described in Section 5(b). The Principal Amount is the amount of the unpaid participant contributions. The Loss Date for each participant contribution is the earliest date on which it could reasonably have been segregated from the employer's general assets. In no event shall the Loss Date be later than the applicable maximum time period described in the Department's regulation at 29 CFR 2510.3–102.

(2) *Late contributions.* If the participant contributions were remitted to the plan outside the time period required by the regulation, the only correction required is to pay to the plan the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the employer's use of the Principal Amount, as described in Section 5(b).

(3) *Examples.* The principles of this paragraph (b) are illustrated in the following examples:

Example 1. See Example 1 under Section 5(b).

Example 2. Employer X is a large national corporation which sponsors a section 401(k) plan. X is able to segregate participant contributions no later than 10 business days after the end of the month in which participant contributions were withheld from employees' paychecks. For the pay period ending June 15, participant contributions totaling $900,000 were not deposited until August 14.

The Principal Amount is $900,000. The Loss Date is July 14 (the tenth business day in July), the date on which the participant contributions became plan assets and should have been deposited in the plan's trust account. The Recovery Date is August 14, the date that the participant contributions were deposited in the plan's trust account.

The 401(k) plan offers eight investment alternatives with daily asset valuation. From July 14 through August 14, most of the plan participants experienced a decline in their account balances due to a decline in the stock market; however, some participants had a net investment gain. The Code section 6621(a)(2) rate during this period was 8% and was greater than the profit to the employer from the use of the funds during the pertinent time period.

For the participants whose account balances declined, the employer pays the Principal Amount plus the Restoration of Profits amount, calculated at 8%. For the other participants, the employer pays the Principal Amount plus the higher of each participant's actual investment earnings between July 14 and August 14 or the Restoration of Profits amount calculated at 8%. Since the Principal Amount of $900,000 has already been paid to the plan, the correction amount to be paid to the plan is no less than the Restoration of Profits of $6,000 ($900,000 times 8% per annum times one-twelfth of a year).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) for participant contributions received from participants, a copy of the accounting records which identify the date and amount of each contribution received;

(2) for participant contributions withheld from employees' paychecks, a copy of the payroll documents showing the date and amount of each withholding;

(3) a statement from a Plan Official identifying the earliest date on which the participant contributions reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the Plan Official relied in reaching this conclusion; and

(4) a sample notice to participants, including any former employee, beneficiary receiving benefits, or alternate payee who is entitled to a supplemental distribution.

B. Loans

1. Loan at Fair Market Interest Rate to a Party in Interest with Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a party in interest at an interest rate no less than that for loans with similar terms (for example, the amount of the loan, amount and type of security, repayment schedule, and duration of loan) to a borrower of similar creditworthiness. The loan was not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* Pay off the loan in full, including any prepayment penalties. An independent commercial lender must also confirm in writing that the loan was made at a fair market interest rate for a loan with similar terms to a borrower of similar creditworthiness.

(c) *Documentation.* In addition to the documentation required by Section 6, submit a narrative describing the process used to determine the fair market interest rate at the time the loan was made, validated in writing by an independent commercial lender.

2. Loan at Below-Market Interest Rate to a Party in Interest with Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a party in interest with respect to the plan at an interest rate which, at the time the loan was made, was less than the fair market interest rate for loans with similar terms (for example, the amount of loan, amount and type of security, repayment schedule, and duration of the loan) to a borrower of similar creditworthiness. The loan was not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* Pay off the loan in full, including any prepayment penalties. (1) Pay to the plan the Principal Amount, plus the greater of (i) the Lost Earnings as described in Section 5(b), or (ii) the Restoration of Profits, if any, as described in Section 5(b).

(2) For purposes of this transaction, the Principal Amount is equal to the excess of the interest payments that would have been received if the loan had been made at the fair market interest rate (from the beginning of the loan until the Recovery Date) over interest payments actually received under the loan terms during such period. For purposes of the VFC Program, the fair market interest rate must be determined by an independent commercial lender.

(3) Pay any supplemental distributions that are due, as described in Section 5(d).

Example: The plan made to a party in interest a $150,000 mortgage loan, secured by a first Deed of Trust, at a fixed interest rate of 4% per annum. The loan was to be fully amortized over 30 years. The fair market interest rate for comparable loans, at the time this loan was made, was 7% per annum. The party in interest or Plan Official must repay the loan in full plus any applicable prepayment penalties. The party in interest or Plan Official also must pay the difference between what the plan would have received through the Recovery Date had the loan been made at 7% and what, in fact, the plan did receive from the commencement of the loan to the Recovery Date, plus lost earnings on that amount as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) a narrative describing the process used to determine the fair market interest rate at the time the loan was made;

(2) a copy of the independent commercial lender's fair market interest rate determination(s);

(3) a copy of the independent fiduciary's dated, written approval of the fair market interest rate determination(s); and

(4) a sample notice to participants, including any former employee, beneficiary receiving benefits, or alternate payee who is entitled to a supplemental distribution.

3. Loan at Below-Market Interest Rate to a Person Who is Not a Party in Interest with Respect to the Plan

(a) *Description of Transaction.* A plan made a loan to a person who is not a party in interest with respect to the plan at an interest rate which, at the time the loan was made, was less than the fair market interest rate for loans with similar terms (for example, the amount of loan, amount and type of security, repayment schedule, and duration of the loan) to a borrower of similar creditworthiness.

(b) *Correction of Transaction.* (1) Pay to the plan the Principal Amount, plus Lost Earnings through the Recovery Date, as described in Section 5(b).

(2) Each loan payment has a Principal Amount equal to the excess of (a) interest payments that would have been received until the Recovery Date if the loan had been made at the fair market interest rate over (b) the interest actually received under the loan terms. The fair market interest rate must be determined by an independent commercial lender.

(3) From the inception of the loan to the Recovery Date, the amount to be paid to the plan is the Lost Earnings on the series of Principal Amounts, calculated in accordance with Section 5(b).

(4) From the Recovery Date to the maturity date of the loan, the amount to be paid to the plan is the present value of the remaining Principal Amounts, as determined by an independent commercial lender. Instead of calculating the present value, it is acceptable for administrative convenience to pay the sum of the remaining Principal Amounts.

(5) The principles of this paragraph (b) are illustrated in the following example:

Example: The plan made a $150,000 mortgage loan, secured by a first Deed of Trust, at a fixed interest rate of 4% per annum. The loan was to be fully amortized over 30 years. The fair market interest rate for comparable loans, at the time this loan was made, was 7% per annum. The borrower or the Plan Official must pay the excess of what the Plan would have received through the Recovery Date had the loan been made at 7% over what, in fact, the plan did receive from the commencement of the loan to the Recovery Date, plus Lost Earnings on that amount as calculated in Section 5(b). The Plan Official must also pay on the Recovery Date the difference in the value of the remaining payments on the loan between the 7% and the 4% for the duration of the time the plan is owed repayments on the loan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) a narrative describing the process used to determine the fair market interest rate at the time the loan was made;

(2) a copy of the independent commercial lender's fair market interest rate determination(s); and

(3) a copy of the supplemental distribution notice, if applicable.

4. Loan at Below-Market Interest Rate Solely Due to a Delay in Perfecting the Plan's Security Interest

(a) *Description of Transaction.* For purposes of the VFC Program, if a plan made a purportedly secured loan to a person who is not a party in interest with respect to the plan, but there was a delay in recording or otherwise perfecting the plan's interest in the loan collateral, the loan will be treated as an unsecured loan until the plan's security interest was perfected.

(b) *Correction of Transaction.* (1) Pay to the plan the Principal Amount, plus Lost Earnings as described in Section 5(b), through the date the loan is fully secured.

(2) The Principal Amount is equal to the difference between (a) interest payments actually received under the loan terms and (b) the interest payments

that would have been received if the loan had been made at the fair market interest rate for an unsecured loan. The fair market interest rate must be determined by an independent commercial lender.

(3) In addition, if the delay in perfecting the loan's security caused a permanent change in the risk characteristics of the loan, the fair market interest rate for the remaining term of the loan must be determined by an independent commercial lender. In that case, the correction amount includes an additional payment to the plan. The amount to be paid to the plan is the present value of the remaining Principal Amounts from the date the loan is fully secured to the maturity date of the loan. Instead of calculating the present value, it is acceptable for administrative convenience to pay the sum of the remaining Principal Amounts.

(4) The principles of this paragraph (b) are illustrated in the following examples:

Example 1: The plan made a mortgage loan, which was supposed to be secured by a Deed of Trust. The plan's Deed was not recorded for six months, but, when it was recorded, the Deed was in first position. The interest rate on the loan was the fair market interest rate for a mortgage loan secured by a first-position Deed of Trust. The loan is treated as an unsecured, below-market loan for the six months prior to the recording of the Deed of Trust.

Example 2: Assume the same facts as in Example 1, except that, as a result of the delay in recording the Deed, the plan ended up in second position behind another lender. The risk to the plan is higher and the interest rate on the note is no longer commensurate with that risk. The loan is treated as a below-market loan (based on the lack of security) for the six months prior to the recording of the Deed of Trust and as a below-market loan (based on secondary status security) from the time the Deed is recorded until the end of the loan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) a narrative describing the process used to determine the fair market interest rate for the period that the loan was unsecured and, if applicable, for the remaining term of the loan;

(2) a copy of the independent commercial lender's fair market interest rate determination(s); and

(3) a copy of the supplemental distribution notice, if applicable.

C. Purchases, Sales and Exchanges

1. Purchase of an Asset (Including Real Property) by a Plan From a Party in Interest

(a) *Description of Transaction.* A plan purchased an asset with cash from a party in interest with respect to the plan, and under the circumstances, no prohibited transaction exemption applies.

(b) *Correction of Transaction.* (1) The transaction must be corrected by the sale of the property back to the party in interest who originally sold the asset to the plan or to a person who is not a party in interest. Whether the asset is sold to a person who is not a party in interest with respect to the plan or is sold back to the original seller, the plan must receive the higher of (i) the fair market value (FMV) of the asset at the time of resale, without a reduction for the costs of sale; or (ii) the Principal Amount, plus the greater of (A) Lost Earnings on the Principal Amount as described in Section 5(b), or (B) the Restoration of Profits, if any, as described in Section 5(b).

(2) For this transaction, the Principal Amount is the plan's original purchase price.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan purchased from the plan sponsor a parcel of real property. The plan does not lease the property to any person. Instead, the plan uses the property as an office. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property at the time of purchase. The appraiser values the property at $100,000, although the plan paid the plan sponsor $120,000 for the property. As of the Recovery Date the property is valued at $110,000. To correct the transaction, the plan sponsor repurchases the property for $120,000 with no reduction for the costs of sale and reimburses the plan for the initial costs of sale. The plan sponsor also must pay the plan the greater of the plan's Lost Earnings and the price the plan paid the plan sponsor or the sponsor's profits on this amount. This example assumes that the plan sponsor did not make a profit on the $120,000 proceeds from the original sale of the property to the plan.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) documentation of the plan's purchase of the real property, including the date of the purchase, the plan's purchase price, and the identity of the seller;

(2) a narrative describing the relationship between the original seller of the asset and the plan; and

(3) the qualified, independent appraiser's report addressing the FMV of the asset purchased by the plan, both at the time of the original purchase and at the recovery date.

2. Sale of an Asset (Including Real Property) by a Plan to a Party in Interest

(a) *Description of Transaction.* A plan sold an asset for cash to a party in interest with respect to the plan, in a transaction that is not exempt from the prohibited transaction provisions of Title I of ERISA.

(b) *Correction of Transaction.* (1) The plan must receive the Principal Amount plus the greater of (i) Lost Earnings as described in Section 5(b), or (ii) the Restoration of Profits, if any, as described in Section 5(b). As an alternative to repayment of the Principal Amount, if it is determined that the plan will realize a greater benefit by repurchasing the property, the plan may repurchase the asset from the party in interest [8] at the lower of the price for which it sold the property or the FMV of the property as of the Recovery Date plus restoration of the party in interest's net profits from owning the property, to the extent they exceed the plan's investment return from the proceeds of the sale. The determination as to which correction alternative the plan chooses must be made by an independent fiduciary.

(2) For this transaction, the Principal Amount is the amount by which the FMV of the asset (at the time of the original sale) exceeds the sale price.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan sold a parcel of unimproved real property to the plan sponsor. The sponsor did not make any profit on the use of the property. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property as of the date of sale. The appraiser valued the property at $130,000, although the plan sold the property to the plan sponsor for $120,000. However, the plan fiduciaries have reason to believe that the property will substantially increase in the near future based on the anticipated building of a shopping mall adjacent to the property in question and, as of the Recovery Date, the appraiser values the property at $140,000. An independent fiduciary determines that the property is a prudent investment for the plan, and will not result in any liquidity or diversification problems. The plan corrects by repurchasing the property at the original

[8] The repurchase of the same property from the party in interest to whom the asset was sold is a reversal of the original prohibited transaction. The sale is not a new prohibited transaction and therefore does not require an exemption.

sale price, with the party in interest assuming the costs of the reversal of the sale transaction.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) documentation of the plan's sale of the asset, including the date of the sale, the sales price, and the identity of the original purchaser;

(2) a narrative describing the relationship of the purchaser to the asset and the relationship of the purchaser to the plan;

(3) the qualified, independent appraiser's report addressing the FMV of the property at the time of the sale from the plan and as of the Recovery Date; and

(4) the independent fiduciary's report that the property is a prudent investment for the plan.

3. Sale and Leaseback of Real Property to Employer

(a) *Description of Transaction.* The plan sponsor sold a parcel of real property to the plan, which then was leased back to the sponsor, in a transaction that is not otherwise exempt.

(b) *Correction of Transaction.* (1) The transaction must be corrected by the sale of the parcel of real property back to the plan sponsor or to a person who is not a party in interest with respect to the plan.[9] The plan must receive the higher of (i) FMV of the asset at the time of resale, without a reduction for the costs of sale; or (ii) the Principal Amount, plus the greater of (A) Lost Earnings on the Principal Amount as described in Section 5(b), or (B) the Restoration of Profits, if any, as described in Section 5(b).

(2) If the plan has not been receiving rent at FMV, as determined by a qualified, independent appraisal, the sale price of the real property should not be based on the historic below-market rent that was paid to the plan.

(3) In addition to the correction amount in subparagraph (1), if the plan was not receiving rent at FMV, as determined by a qualified, independent appraiser, the Principal Amount also includes the difference between the rent actually paid and the rent that should have been paid at FMV. The plan sponsor must pay to the plan this additional Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the plan sponsor's use of the Principal Amount, as described in Section 5(b).

(4) The principles of this paragraph (b) are illustrated in the following example:

Example: The plan purchased at FMV from the plan sponsor an office building that served as the sponsor's primary business site. Simultaneously, the plan sponsor leased the building from the plan at below the market rental rate. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property and rent. To correct the transaction, the plan sponsor purchases the property from the plan at the higher of the appraised value at the time of the resale or the original sales price and also pays the Lost Earnings. Because the rent paid to the plan was below the market rate, the sponsor must also make up the difference between the rent paid under the terms of the lease and the amount that should have been paid, plus Lost Earnings on this amount, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) documentation of the plan's purchase of the real property, including the date of the purchase, the plan's purchase price, and the identity of the original seller;

(2) documentation of the plan's sale of the asset, including the date of sale, the sales price, and the identity of the purchaser;

(3) a narrative describing the relationship of the original seller to the plan and the relationship of the purchaser to the plan;

(4) a copy of the lease;

(5) documentation of the date and amount of each lease payment received by the plan; and

(6) the qualified, independent appraiser's report addressing both the FMV of the property at the time of the original sale and at the Recovery Date, and the FMV of the lease payments.

4. Purchase of an Asset (Including Real Property) By a Plan From a Person Who Is Not a Party in Interest With Respect to the Plan at a Price Other Than Fair Market Value

(a) *Description of Transaction.* A plan acquired an asset from a person who is not a party in interest with respect to the plan, without determining the asset's FMV. As a result, the plan paid more than it should have for the asset.

(b) *Correction of Transaction.* The Principal Amount is the difference between the actual purchase price and the asset's FMV at the time of purchase. The plan must receive the Principal Amount plus the Lost Earnings, as described in Section 5(b).

(1) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan bought unimproved land without obtaining a qualified, independent appraisal. Upon discovering that the purchase price was $10,000 more than the appraised FMV, the Plan Official pays the plan the Principal Amount of $10,000, plus Lost Earnings as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's original purchase of the asset, including the date of the purchase, the purchase price, and the identity of the seller;

(2) A narrative describing the relationship of the seller to the plan; and

(3) A copy of the qualified, independent appraiser's report addressing the FMV at the time of the plan's purchase.

5. Sale of an Asset (Including Real Property) By a Plan to a Person who is not a Party in Interest with Respect to the Plan at a Price Less Than Fair Market Value

(a) *Description of Transaction.* A plan sold an asset to a person who is not a party in interest with respect to the plan, without determining the asset's FMV. As a result, the plan received less than it should have from the sale.

(b) *Correction of Transaction.* The Principal Amount is the amount by which the FMV of the asset as of the Recovery Date exceeds the price at which the plan sold the property. The plan must receive the Principal Amount plus Lost Earnings as described in Section 5(b).

(1) The principles of this paragraph (b) are illustrated in the following example:

Example: A plan sold unimproved land without taking steps to ensure that the plan received FMV. Upon discovering that the sale price was $10,000 less than the FMV, the Plan Official pays the plan the Principal Amount of $10,000 plus Lost Earnings as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) Documentation of the plan's original sale of the asset, including the date of the sale, the sale price, and the identity of the buyer;

(2) A narrative describing the relationship of the buyer to the plan; and

(3) A copy of the qualified, independent appraiser's report addressing the FMV at the time of the plan's sale.

[9] If the plan purchased the property from the plan sponsor, the sale of the same property back to the plan sponsor is a reversal of the prohibited transaction. The sale is not a new prohibited transaction and therefore does not require an individual prohibited transaction exemption, as long as the plan did not make improvements while it owned the property.

D. Benefits

1. Payment of Benefits Without Properly Valuing Plan Assets on Which Payment is Based

(a) *Description of Transaction.* A defined contribution pension plan pays benefits based on the value of the plan's assets. If one or more of the plan's assets are not valued at current value, the benefit payments are not correct. If the plan's assets are overvalued, the current benefit payments will be too high. If the plan's assets are undervalued, the current benefit payments will be too low.

(b) *Correction of Transaction.* (1) Establish the correct value of the improperly valued asset for each plan year, starting with the first plan year in which the asset was improperly valued. Restore to the plan for distribution to the affected plan participants, or restore directly to the plan participants, the amount by which all affected participants were underpaid distributions to which they were entitled under the terms of the plan, plus the higher of Lost Earnings or the underpayment rate defined in section 6621(a)(2) of the Code on the underpaid distributions. File amended Annual Report Forms 5500, as detailed below.

(2) To correct the valuation defect, a Plan Official must determine the FMV of the improperly valued asset per Section 5(a), for each year in which the asset was valued improperly.

(3) Once the FMV has been determined, the participant account balances for each year must be adjusted accordingly.

(4) The annual report Forms 5500 must be amended and refiled for (i) the last three plan years or (ii) all plan years in which the value of the asset was reported improperly, whichever is less.

(5) The Plan Official or plan administrator must determine who received distributions from the plan during the time the asset was valued improperly. For distributions that were too low, the amount of the underpayment is treated as a Principal Amount for each individual who received a distribution. The Principal Amount and Lost Earnings must be paid to the affected individuals. For distributions that were too high, the total of the overpayments constitutes the Principal Amount for the plan. The Principal Amount plus the Lost Earnings, as described in Section 5(b), must be restored to the plan or to the participants.

(6) The principles of this paragraph (b) are illustrated in the following examples:

Example 1. On December 31, 1995, a profit sharing plan purchased a 20-acre parcel of real property for $500,000, which represented a portion of the plan's assets. The plan has carried the property on its books at cost, rather than at FMV. One participant left the company on January 1, 1997, and received a distribution, which included her portion of the value of the property. The separated participant's account balance represented 2% of the plan's assets. As part of correction for the VFC Program, a qualified, independent appraiser has determined the FMV of the property for 1996, 1997, and 1998. The FMV as of December 31, 1996, was $400,000. Therefore, this participant was overpaid by $2,000 (($500,000–$400,000) times 2%). The Plan Officials corrected the transaction by paying to the plan $2,500, consisting of $2,000 Principal Amount and $500 Lost Earnings. The Lost Earnings were based on a return of 25%, which represents the total return on the plan's investments from the date of the distribution to the participant until the date of correction.

The plan administrator also filed an amended Form 5500 for plan years 1996 and 1997, to reflect the proper values. The plan administrator will include the correct asset valuation in the 1998 Form 5500 when that form is filed.

Example 2. Assume the same facts as in Example 1, except that the property had appreciated in value to $600,000 as of December 31, 1996. The separated participant would have been underpaid by $2,000. The correction consists of locating the participant and distributing $2,500 to her ($2,000 Principal Amount and $500 Lost Earnings), as well as filing the amended Forms 5500 C/R.

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) A copy of the qualified, independent appraiser's report for each plan year in which the asset was revalued;

(2) A written statement confirming the date that amended Annual Report Forms 5500 with correct valuation data were filed;

(3) If losses are restored to the plan, proof of payment to the plan and copies of the adjusted participant account balances;

(4) if supplemental distributions are made, proof of payment to the individuals entitled to receive the supplemental distributions; and

(5) a sample notice to participants.

E. Plan Expenses

1. Duplicative, Excessive, or Unnecessary Compensation Paid by a Plan

(a) *Description of Transaction.* A plan paid excessive compensation, including commissions or fees, to a service provider (such as an attorney, accountant, actuary, financial advisor, or insurance agent); a plan paid two or more persons to provide the same services to the plan; or a plan paid a service provider for services that were not necessary for the operation of the plan.

(b) *Correction of Transaction.* (1) Restore to the plan the Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits resulting from the use of the Principal Amount, as described in Section 5(b).

(2) The Principal Amount is the difference between (a) the amount actually paid by the plan to the service provider during the six years prior to the discontinuation of the payment of the excessive, duplicative, or unnecessary compensation and (b) the reasonable market value of the non-duplicative services.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example. Excessive compensation. A plan hired an investment advisor who advised the plan's trustees about how to invest the plan's entire portfolio. In accordance with the plan document, the trustees instructed the advisor to limit the plan's investments to equities and bonds. In exchange for his services, the plan paid the investment advisor 3% of the value of the portfolio's assets. If the trustees had inquired they would have learned that comparable investment advisors charged 1% of the value of the assets for the type of portfolio that the plan maintained. To correct the transaction, the plan must be paid the Principal Amount of 2% of the value of the plan's assets, plus Lost Earnings, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) a written estimate of the reasonable market value of the services;

(2) the estimator's qualifications; and

(3) the cost of the services at issue during the period that such services were provided to the plan.

2. Payment of Dual Compensation to a Plan Fiduciary

(a) *Description of Transaction.* A plan pays a fiduciary for services rendered to the plan when the fiduciary already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in the plan. The plan's payments to the plan fiduciary are not mere reimbursements of expenses properly and actually incurred by the fiduciary.

(b) *Correction of Transaction.* (1) Restore to the plan the Principal Amount, plus the greater of (i) Lost Earnings or (ii) Restoration of Profits

resulting from the fiduciary's use of the Principal Amount for the same period.

(2) The Principal Amount is the difference between (a) the amount actually paid by the plan during the six years prior to the discontinuation of the payments to the fiduciary and (b) the amount that represents reimbursements of expenses properly and actually incurred by the fiduciary.

(3) The principles of this paragraph (b) are illustrated in the following example:

Example. A union sponsored a health plan funded through contributions by employers. The union president receives $50,000 per year from the union in compensation for his services as union president. He is appointed as a trustee of the health plan while retaining his position as union president. In exchange for acting as plan trustee, the union president is paid a salary of $200 per week by the plan while still receiving the $50,000 salary from the union. Since $50,000 is full-time pay, the plan's weekly salary payments are improper. To correct the transaction, the plan must be paid the Principal Amount, which is the $200 weekly salary amount for each week that the salary was paid, plus the higher of Lost Earnings or Restoration of Profits, as described in Section 5(b).

(c) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(1) copies of the plan's accounting records which show the date and amount of compensation paid by the plan to the identified fiduciary; and

(2) if any of the amounts paid by the plan to the fiduciary represent reimbursements of expenses properly and actually incurred by the fiduciary, include copies of the plan records which indicate the date, amount, and character of these payments.

Signed at Washington, DC this 9th day of March, 2000.

Leslie Kramerich,

Acting Assistant Secretary for Pension and Welfare Benefits Administration, Department of Labor.

Appendix A—Sample VFC Program No Action Letter

Applicant (Plan Official)
Address
Dear Applicant (Plan Official):
Re: VFC Program Application No. xx-xxxxxx

The Department of Labor, Pension and Welfare Benefits Administration (PWBA), has responsibility for administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). PWBA has established a Voluntary Fiduciary Correction Program to encourage the correction of breaches of fiduciary responsibility and the restoration of losses to the plan participants and beneficiaries.

In accordance with the requirements of the VFC Program, you have identified the following transactions as breaches, or potential breaches, of Part 4 of Title I of ERISA, and you have submitted documentation to PWBA that demonstrates that you have taken the corrective action indicated.

[Briefly recap the violation and correction. *Example:* Failure to deposit participant contributions to the XYZ Corp. 401(k) plan within the time frames required by ERISA, from *date* to *date*. All participant contributions were deposited by *date* and lost earnings on the delinquent contributions were deposited and allocated to participants' plan accounts on *date*.]

Because you have taken the above-described corrective action, which is consistent with the requirements of the VFC Program, PWBA will take no civil enforcement action against you with respect to this breach. Specifically, PWBA will not recommend that the Solicitor of Labor initiate legal action against you, and PWBA will not impose the penalty in section 502(l) of ERISA on the amount you have repaid to the plan.

PWBA's decision to take no further action is conditioned on the completeness and accuracy of the representations made in your application. You should note that this decision will not preclude PWBA from conducting an investigation of any potential violations of criminal law in connection with the transaction identified in the application or investigating the transaction identified in the application with a view toward seeking appropriate relief from any other person. [*If the transaction is a prohibited transaction, add the following language: Please also be advised that pursuant to section 3003(c) of ERISA, 29 U.S.C. section 1203(c), the Secretary of Labor is required to transmit to the Secretary of the Treasury information indicating that a prohibited transaction has occurred. Accordingly, this matter will be referred to the Internal Revenue Service.*]

In addition, you are cautioned that PWBA's decision to take no further action is binding on PWBA only. Any other governmental agency, and participants and beneficiaries, remain free to take whatever action they deem necessary.

If you have any questions about this letter, you may contact the Regional VFC Program Coordinator at *applicable address and telephone number.*

Appendix B—VFC Program Checklist

Use this checklist to ensure that you are submitting a complete application. The applicant must sign and date the checklist and include it with the application. Indicate "Yes", "No" or "N/A" next to each item. A "No" answer or the failure to include a completed checklist will delay review of the application until all required items are received.

_____1. Have you reviewed the eligibility, definitions, transaction and correction, and documentation sections of the VFC Program?

_____2. Have you included the name, address and telephone number of a contact person familiar with the contents of the application?

_____3. Have you provided the EIN # and address of the plan sponsor and plan administrator?

_____ 4. Have you provided the date that the most recent Form 5500 was filed by the plan?

_____5. Have you enclosed a signed and dated certification under penalty of perjury?

_____6. Have you enclosed a copy of the plan document, and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract) with the relevant sections identified?

_____7. Have you enclosed a copy of the current fidelity bond for the plan?

_____8. Where applicable, have you enclosed a copy of an appraiser's report?

_____9. Have you enclosed other documents as specified by the individual transactions and corrections?

_____a. a detailed narrative of the Breach, including the date it occurred;

_____b. documentation that supports the narrative description of the transaction;

_____c. an explanation of how the Breach was corrected, by whom and when, with supporting documentation;

_____d. a list of all persons materially involved in the Breach and its correction (*e.g.*, fiduciaries, service providers, borrowers);

_____e. documentation establishing the return on the plan's other investments during the time period the plan engaged in the transaction described in the VFC Program application;

_____f. specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were computed; and

_____g. proof of payment of Principal Amount and Lost Earnings or Restoration of Profits.

_____10. Have you made proper arrangements to provide notice to the plan participants?

_____11. Where applicable, have you enclosed a description of how the plan has used its best efforts to locate and pay former employees who have received lump sum distributions or rollovers but are due an additional distribution as a result of the correction of the transaction?

_____12. Has the plan implemented measures to ensure that the transactions specified in the application do not recur? (Do not include this with the application. The Department will not opine on the adequacy of these measures.)

Signature of Applicant and Date Signed
Name of Applicant (Typed):
Title/Relationship to the Plan (Typed):
Name of Plan, EIN and Plan Number (Typed):

Appendix C—List of PWBA Regional Offices

Atlanta Regional Office, 61 Forsyth Street, SW, Suite 7B54, Atlanta, GA 30303, telephone (404) 562–2156, fax (404) 562–2168; jurisdiction: Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico.

Boston Regional Office, J.F.K. Building, Room 575, Boston, MA 02203, telephone: (617) 565–9600, fax: (617) 565–9666; jurisdiction: Connecticut, Maine, Massachusetts, New Hampshire, central and western New York, Rhode Island, Vermont.

Chicago Regional Office, 200 West Adams Street, Suite 1600, Chicago, IL 60606, telephone (312) 353–0900, fax (312) 353–1023; jurisdiction: northern Illinois, northern Indiana, Wisconsin.

Cincinnati Regional Office, 1885 Dixie Highway, Suite 210, Ft. Wright, KY 41011–2664, telephone (606) 578–4680, fax (606) 578–4688; jurisdiction: southern Indiana, Kentucky, Michigan, Ohio.

Dallas Regional Office, 525 Griffin Street, Rm. 707, Dallas, TX 75202–5025, telephone (214) 767–6831, fax (214) 767–1055; jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Kansas City Regional Office, 1100 Main Street, Suite 1200, Kansas City, MO 64105–2112, telephone (816) 426–5131, fax (816) 426–5511; jurisdiction: Colorado, southern Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wyoming.

Los Angeles Regional Office, 790 E. Colorado Boulevard, Suite 514, Pasadena, CA 91101, telephone (626) 583–7862, fax (626) 583–7845; jurisdiction: 10 southern counties of California, Arizona, Hawaii, American Sámoa, Guam, Wake Island.

New York Regional Office, 6 World Trade Center, Room 625, New York, NY 10048, telephone (212) 637–0600, fax (212) 637–0512; jurisdiction: southeastern New York, northern New Jersey.

Philadelphia Regional Office, 3535 Market St., Room 12400, Philadelphia, PA 19104, telephone (215) 596–1134, fax (215) 596–4475; jurisdiction: Delaware, Maryland, southern New Jersey, Pennsylvania, Virginia, Washington, D.C., West Virginia.

San Francisco Regional Office, 71 Stevenson St., Suite 915, San Francisco, CA 94105, telephone (415) 975–4600, fax (415) 975–4589; jurisdiction: Alaska, 48 northern counties of California, Idaho, Nevada, Oregon, Utah, Washington.

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Federal Register

Wednesday,
March 15, 2000

Part VII

Department of Commerce

Economic Development Administration

National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 991215337–0047–02]

RIN 0610–ZA13

National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Request for Grant Proposals (RFP) Upon Availability of Funds.

SUMMARY: A total of $360,550,000 is available to EDA for all its programs in FY 2000, of which approximately $500,000 will be available for National Technical Assistance, Training, Research, and Evaluation. EDA is soliciting proposals to describe and critically analyze the role of EDA in efforts to alleviate domestic economic distress through programs funded under the Public Works and Economic Development Act of 1965, as amended. This project will be funded if acceptable proposals are received. EDA issues this Notice to describe the conditions under which an eligible application for this National Technical Assistance, Training, Research, and Evaluation project under 13 CFR part 307, subpart C (64 FR 5347, 5428–5429; 64 FR 69868, 69878–69879) will be accepted and selected for funding.

DATES: Proposals for funding under this program will be accepted through April 14, 2000, at the address provided below. Proposals received after 5:00 p.m. EDT, on April 14, 2000, will not be considered for funding.

By April 21, 2000, EDA will advise the successful proponent to submit a full application. OMB has assigned application forms Control Number 0610–0094.

A completed application must be submitted to EDA by May 8, 2000, at the address below. EDA anticipates that this project will be funded about June 15, 2000.

ADDRESSES: Send proposals to John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 7019, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John J. McNamee (202) 482–4085.

SUPPLEMENTARY INFORMATION:

I. Areas of Special Emphasis

- Impact of Programs Funded under the Public Works and Economic Development Act of 1965.

EDA invites proposals to describe and critically analyze the role of EDA in efforts to alleviate domestic economic distress since 1965.

Background: In the Public Works and Economic Development Act of 1965 (PWEDA) (Pub.L. 89–136), Congress declared that maintaining the national economy at a high level was vital to the best interests of the United States, that some areas suffered substantial and persistent unemployment and underemployment, and that the Federal Government, in cooperation with the States, should help such areas take effective steps in planning and financing their public works and economic development. To carry out this mandate, Congress authorized the establishment of the Economic Development Administration (EDA). Since 1965, PWEDA has been reauthorized on several occasions, most recently under the Economic Development Administration Reform Act of 1998 (Pub.L. 105–393). Overall funding levels have varied throughout the years.

As part of its ongoing mission to assist economically distressed areas, EDA periodically revisits the role of the Federal Government in economic development. The agency also undertakes periodic independent evaluations of its specific programs. However, in the 35 years since its inception, EDA has never documented in a single place the history of PWEDA and EDA activities as important federal policies. Given the large scale of public investment in this area, there is an important public interest in documenting these policies and determining the extent to which EDA has developed and implemented programs that respond to the actual economic development needs of the nation's distressed communities. In issuing this request for proposals, EDA hopes to document the agency's policies, examine how the policy focus of EDA has evolved over time in response to changing economic conditions, and identify emerging policy issues in economic development that the agency and economic development practitioners (including other governmental entities) must be responsive to now and in the future. The agency also hopes to examine, critically, changes in EDA's (and PWEDA's) role in overall federal economic development efforts.

Scope of Work: The successful applicant will, for the period since 1965:

(1) Describe the context of EDA's economic development efforts, possibly including (but not necessarily restricted to):

A. the level, location, and character of distress throughout the United States;

B. changing national and regional economic conditions;

C. the legislative history of PWEDA;

D. policies towards economic development and EDA of each administration, including the proposed presidential budget submissions for EDA; and

E. the level and type of Congressional support, including funding levels appropriated and special initiatives funded by Congress, such as the Local Public Works Program (1976–1977).

(2) describe the evolution of EDA activities and policies, including (but not necessarily limited to):

A. the type, level and impact of EDA's investments;

B. the agency's funding priorities, program design, forms of assistance, regulations and other economic development policies; and

C. the agency's administrative policies, including organizational structure, staffing levels, and methods of oversight and evaluation.

(3) analyze critically how the changes in the context of economic development and EDA policies described in Tasks 1 and 2 above have affected the agency's ability to fulfill its mission under PWEDA, and the future impact these changes may have on the agency and on economic development in general;

(4) prepare and submit 200 copies of a report and an electronic version of the report (in formats acceptable to EDA) that document the research and findings of Tasks 1, 2, and 3 above;

(5) conduct up to three briefings for individuals and organizations interested in the results of this project. Specific locations and dates of the briefings are at EDA's discretion.

EDA anticipates that the successful applicant will rely heavily on secondary data, including past EDA program evaluations and policy documents, other federal documents, and general economic development literature. To the extent feasible, current EDA staff will be available to assist in collection of necessary data that are not available elsewhere.

Cost: The total EDA share of the cost of this project many not exceed $125,000.

Timing: The project must be completed and the final project report submitted by December 31, 2000. Potential applicants should be aware that this completion date is for completion of the project and submission of the final written report documenting the research and findings.

Briefings (workshops) will take place no later than one year after submission of the final report.

II. How To Apply

A. Eligible Applicants

See EDA's interim final rule and final rule at 13 CFR 300.2 (64 FR 5347, 5352; 64 FR 69868). Eligible applicants are as follows: institutions of higher education, consortiums of institutions of higher education; public or private nonprofit organizations or associations acting in cooperation with officials of a political subdivision of a state, for-profit organizations, and private individuals; areas meeting requirements under 13 CFR 301.2; Economic Development Districts; Indian tribes; consortiums of Indian Tribes; states, cities or other political subdivisions of a state; consortiums of political subdivisions of states.

B. Proposal Submission Procedures

Proposals submitted should include: (1) A description of how the researcher(s) intend(s) to carry out the scope of work (not to exceed 10 pages in length); (2) a proposed budget and accompanying explanation; (3) resumes/qualifications of key staff (not to exceed two pages per individual or organization), and (4) a proposed time line for completion of the project. EDA will not accept proposals submitted by FAX or E-mail. Proposals received after 5:00 p.m. EDT on April 14, 2000, will not be considered.

III. Selection Process and Evaluation Criteria

All proposals must meet EDA's statutory and regulatory requirements. Proposals will receive initial review by EDA to assure that they meet all requirements of this announcement and EDA's interim final rule and final rule at 13 CFR Chapter III (64 FR 5347, 5357; 64 FR 69868, 69874), including eligibility and relevance to the specified project as described herein. EDA's general selection process and criteria are set out in 13 CFR 304.1, 304.2, (64 FR 5347, 5357; 64 FR 68968, 68974–69875), and current § 307.10 (§ 307.8 in the interim rule) (64 FR 5347, 5429; 64 FR 69868, 69878). Proposals that meet these requirements will then be evaluated by a review panel composed of at least three members using the following criteria:

- The quality of a proposal's response to the scope of work proposed; and
- The ability of the prospective applicant to successfully carry out the proposed activities.
- If a proposal is selected, EDA will provide the proponent with an Application for Federal Assistance (OMB Control Number 0610–0094). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

IV. Additional Information and Requirements

A. Authority

The Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), including the comprehensive amendments by the Economic Development Administration Reform Act of 1998 (Pub.L. 105–393) (PWEDA) authorizes EDA to make grants for training, research, and technical assistance, including grants for program evaluation and project impact analyses, that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment (42 U.S.C. 3147, section 207). This RFP is dependent upon the availability of funds in FY 2000 for this program. Public Law 106–113 makes funds available for this program.

B. Catalog of Federal Domestic Assistance

11.312 Research and Evaluation

C. Program Description

For a description of this program see PWEDA and 13 CFR Chapter III, Part 307 (64 FR 5347; 64 FR 69868).

EDA assistance is focused on areas experiencing significant economic distress, defined principally as per capita income of 80 percent or less of the national average, or an unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average, or a special need, as determined by EDA.

D. Costs

Ordinarily, the applicant is expected to provide a 50 percent non-federal share of project costs. However, the Assistant Secretary may waive the required 50 percent matching share of the total project costs, provided the applicant can demonstrate: (1) The project is not feasible without, and the project merits such a waiver, or (2) the project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate if it must provide all or part of a 50 percent non-federal share, or (3) the project is for the benefit of local, state, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient (See 13 CFR 307.11; 64 FR 69878).

E. Briefings and Reports

This award includes a requirement that the applicant conduct a total of up to three briefings and/or training workshops for individuals and organizations interested in the results of this project. Potential applicants should be aware that the completion dates set forth above are for completion of the project and submission of the final written report. Briefings/workshops will take place no later than one year after submission of the final report. Locations and dates of the briefings/workshops are at EDA's discretion. Usually, these consist of at least one briefing in Washington, DC, with the other briefings held in conjunction with EDA's regional conferences.

This award includes a requirement that the applicant submit an electronic version and 200 hard copies of the final report in formats acceptable to EDA.

F. Website

See 65 FR 3763–3769, Part III for additional information and requirements (available on the Internet at http://www.doc.gov/eda/html/notice.htm, under the heading "Economic Development Assistance Programs—Availability of Funds Under the Public Works and Economic Development Act of 1965 and Trade Act of 1974; Notice").

Dated: March 8, 2000.

Chester J. Straub, Jr.,

Acting Assistant Secretary for Economic Development.

[FR Doc. 00–6319 Filed 3–14–00; 8:45 am]

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Federal Register

Wednesday,
March 15, 2000

Part VIII

Environmental Protection Agency

National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances, Proposed AEGL Values; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00289; FRL–6492–4]

National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances; Proposed AEGL Values

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is developing AEGL values on an ongoing basis to provide Federal, State, and local agencies with information on short-term exposures to hazardous chemicals. This notice provides "Proposed" AEGL values and Executive Summaries for 10 chemicals for public review and comment. Comments are welcome on both the "Proposed" AEGL values in this notice and the Technical Support Documents placed in the public version of the official record in the TSCA Docket for these 10 chemicals.

DATES: Comments, identified by the docket control number OPPTS–00289, must be received by EPA on or before April 14, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00289 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Joseph S. Carra, Deputy Director, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–055; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Pollution Prevention and Toxics (7406), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1736; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the general public to provide an opportunity for review and comment on "Proposed" AEGL values and their supporting scientific rationale. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State and local agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00289. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

3. *Fax-on-Demand.* Using a faxphone call (202) 401–0527 and select item 4800 for an index of items in this category. For a more specific item number, see the table in Unit III.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00289 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS-00289. Electronic comments may also be filed online at many Federal Depository Libraries

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be

submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Since its first meeting on June 19–21, 1996, the NAC/AEGL Committee has been evaluating scientific data and developing "Proposed" AEGLs for 76 of the first 85 priority chemicals initially scheduled for development of AEGL values. This first list of 85 chemicals was published in the **Federal Register** of May 21, 1997 (62 FR 27733–27734) (FRL–5718–9). EPA published the first "Proposed" AEGL values for 12 chemicals from the initial priority list in the **Federal Register** of October 30, 1997 (62 FR 58839–58851) (FRL–5737–3) in order to provide an opportunity for public review and comment. That **Federal Register** notice also provides the AEGL Program's history and development process. Since then, the NAC/AEGL Committee continues to develop AEGL values for other chemicals from the initial priority list and continues to establish greater consistency in the procedures and methodologies used in their development. Additionally, the NAC/AEGL Committee has expanded the number of exposure periods to include AEGL values for 10 minute exposure periods to cover a wider range of potential exposures to hazarous chemicals. The NAC/AEGL Committee plans to publish "Proposed" AEGL values for 10 minute exposure periods for other chemicals on the priority list of 85 in groups of approximately 10 to 20 chemicals in future **Federal Register** notices.

The NAC/AEGL Committee will review and consider all public comments received on this notice, with revisions to the "Proposed" AEGL values, as appropriate. The resulting AEGL values will be established as "Interim" AEGL values and will be forwarded to the National Research Council, National Academy of Sciences (NRC/NAS), for review and comment. The "Final" AEGL values will be published under the auspices of the NRC/NAS following concurrence on the values and the scientific rationale used in their development.

III. 10 Chemicals for Public Notice and Comment

A. Fax-On-Demand Table

CAS No.	Chemical name	Fax-On-Demand item no.
71–55–6	1,1,1-Trichloroethane	4937
74–90–8	Hydrogen cyanide	4858
156–59–2	*Cis-1,2-Dichloroethylene*	4895
156–60–5	*Trans-1,2-Dichloroethylene*	4895
505–60–2	Agent HD (sulfur mustard)	4936
811–97–2	HFC–134a (1,1,1,2-tetrafluoroethane)	4899
1717–00–6	HCFC–141b (1,1-dichloro-1-fluoroethane)	4902
7664–39–3	Hydrogen fluoride	4909
7783–06–4	Hydrogen sulfide	4917
106602–80–6	Otto Fuel II (main component propylene glycol dinitrate; CAS No. 6423–43–4)	4935

B. Executive Summaries

1. *Cis-1,2-Dichloroethylene* and 2. *Trans-1,2-Dichloroethylene*—i. *Description.* 1,2-Dichloroethylene is a flammable, colorless liquid existing in both *cis-* and *trans-*forms and as a mixture of these two isomers. It has been used as an intermediate in the production of chlorinated solvents and as a low-temperature extraction solvent for decaffeinated coffee, dyes, perfumes, lacquers, and thermoplastics. The compound is a narcotic. Data on narcosis in humans, cats, rats, and mice, and systemic effects in cats, rats, and mice were available for development of AEGLs. The data were considered adequate for derivation of the three AEGL classifications.

The AEGL-1 was based on a human exposure concentration of 825 parts per million (ppm) *trans*-1,2-dichloroethene for 5 minutes (Lehmann and Schmidt-Kehl 1936). This concentration is a no-effect-level for eye irritation. Because the mechanism of irritation is not expected to differ greatly among individuals (including sensitive individuals), this value was divided by an uncertainty factor (UF) of 3 to protect sensitive individuals. This UF of 3 was applied for AEGL-1 values for both the *cis-* and *trans*-isomers. Since animal data suggest that the *cis*-isomer is approximately twice as toxic as the *trans*-isomer, a modifying factor of 2 was applied in the derivation of the *cis*-isomer values only. The same value was applied across the 10- and 30-minute and 1-, 4-, and 8-hour exposure time points since mild irritantancy is a threshold effect and generally does not vary greatly over time. Thus, prolonged exposure will not result in an enhanced effect.

The AEGL-2 for the 4- and 8-hour time points was based on narcosis observed in pregnant rats exposed to 6,000 ppm of the *trans*-isomer for 6 hours (Hurtt et al., 1993). Uncertainty factors of 3 each (total UF = 10) were applied for both inter- and intraspecies differences because the endpoint,

narcosis, is unlikely to vary greatly among individuals or species. This total UF of 10 was applied for AEGL-2 values for both the *cis*- and *trans*-isomers. The concentration-exposure time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$, where the exponent, n, ranges from 0.8 to 3.5 (ten Berge et al., 1986). To obtain protective AEGL values in the absence of an empirically derived chemical-specific scaling exponent, a conservative approach to temporal scaling was performed using n = 3 when extrapolating to shorter time points and n = 1 when extrapolating to longer time points using the $C^n \times t = k$ equation. The AEGL-2 for the 10- and 30-minute and 1-hour time points was set as a ceiling based on a plateau for anesthetic effects in humans (Lehman and Schmidt-Kehl, 1936). Since data suggest that the *cis*-isomer is approximately twice as toxic as the *trans*-isomer, a modifying factor of 2 was applied in the derivation of the *cis*-isomer values only.

The AEGL-3 for the 4- and 8-hour time points was based on a 4-hour no-effect-level for death in rats of 12,300 ppm *trans*-1,2-dichloroethene (Kelly, 1999). Uncertainty factors of 3 each (total UF = 10) were applied for both inter- and intraspecies differences. Rat and mouse lethality data indicate little species variability with regard to death. This total UF of 10 was applied for AEGL-3 values for both the *cis*- and *trans*-isomers. The concentration-exposure time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$, where the exponent, n, ranges from 0.8 to 3.5 (ten Berge et al., 1986). To obtain protective AEGL values in the absence of an empirically derived chemical-specific scaling exponent, a conservative approach to temporal scaling was performed using n = 3 when extrapolating to shorter time points and n = 1 when extrapolating to longer time points using the $C^n \times t = k$ equation. The AEGL-3 for the 10- and 30-minute and 1-hour time points was set as a ceiling based on a plateau for intracranial pressure, nausea, and severe dizziness in humans (Lehman and Schmidt-Kehl, 1936). Since data suggest that the *cis*-isomer is approximately twice as toxic as the *trans*-isomer, a modifying factor of 2 was applied in the derivation of the *cis*-isomer values only.

The calculated values are listed in the tables below.

SUMMARY OF PROPOSED AEGL VALUES FOR TRANS-1,2-DICHLOROETHENE [PPM (MG/M^3 (MILLIGRAM/METER^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	280 (1,109)	280 (1,109]	280 (1,109)	280 (1,109)	280 (1,109)	Ocular irritation in humans (Lehman and Schmidt-Kehl, 1936)
AEGL-2 (Disabling)	1,000 (3,960)	1,000 (3,960)	1,000 (3,960)	690 (2,724)	450 (1,782)	Narcosis in rats: 4- and 8-hour (Hurtt et al., 1993); Anesthetic effects in humans (Lehman and Schmidt-Kehl, 1936)
AEG L-3 (Lethality)	1,700 (6,732)	1,700 (6,732)	1,700 (6,732)	1,200 (4,752)	620 (2,455)	No-effect-level for death in rats: 4- and 8-hour (Kelly, 1999); Nausea, intracranial pressure, and dizziness in humans (Lehman and Schmidt-Kehl, 1936)

SUMMARY OF PROPOSED AEGL VALUES FOR CIS-1,2-DICHLOROETHENE [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	140 (554)	140 (554)	140 (554)	140 (554)	140 (554)	Ocular irritation in humans (Lehman and Schmidt-Kehl, 1936)
AEGL-2 (Disabling)	500 (1,980)	500 (1,980)	500 (1,980)	340 (1,346)	230 (911)	Narcosis in rats: 4- and 8-hour (Hurtt et al., 1993); Anesthetic effects in humans (Lehman and Schmidt-Kehl, 1936)
AEGL-3 (Lethality)	850 (3,366)	850 (3,366)	850 (3,366)	620 (2,455)	310 (1,228)	No-effect-level for death in rats: 4- and 8-hour (Kelly, 1999); Nausea, intracranial pressure, and dizziness in humans (Lehman and Schmidt-Kehl, 1936)

ii. *References*

Hurtt, M.E., Valentine, R., and Alvarez, L. 1993. Developmental toxicity of inhaled *trans*-1,2-dichloroethylene in the rat. *Fundamental and Applied Toxicology*. 20:225–230.

Kelly, D. P. 1999. *Trans*-1,2-dichloroethylene and *cis*-1,2-dichloroethylene: Inhalation median lethal concentration (LC_{50}) study in rats. E.I. du Pont de Nemours and Company, Haskell Laboratory for Toxicology and Industrial Medicine, Newark, DE. Laboratory Project ID: DuPont–2806.

Lehman, K.B. and Schmidt-Kehl, L. 1936. The thirteen most important chlorinated aliphatic hydrocarbons from the standpoint of industrial hygiene. *Archiv Fuer Hygiene und Bakteriologie*. 116:9–268.

ten Berge, W.F., Zwart, A., and Appelman, L.M. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal of Hazardous Materials*. 13:301–309.

3. *Agent HD (sulfur mustard)*—i. *Description*. Sulfur mustard (Agent HD) is an alkylating chemical vesicant developed as a warfare agent that affects any epithelial surface it contacts. The active component is *bis*(2-chloroethyl)sulfide (CAS No. 505–60–2). Although the chemical is a liquid at ordinary ambient temperatures, its volatility results in rapid generation of vapors with a garlic-like odor. Due to its low aqueous solubility, it is persistent in the environment. Odor thresholds of 1 mg-min/m^3 (milligram-minute/meter) and 0.6 mg/m^3 have been reported.

Exposure to sulfur mustard vapor may result in irritation and damage to the eyes, respiratory tract, and skin. The toxic effects of sulfur mustard are temperature and humidity dependent; for a given exposure, the effects may be greater with increasing temperature and humidity. An exposure-dependent latency period of hours to days is documented for the toxic effects of sulfur mustard and is relevant for all routes of exposure but may be less for

ocular and upper respiratory tract effects than for dermal and systemic responses. Both human and animal data indicate that the eyes are the most sensitive organ/tissue although deaths resulting from sulfur mustard exposure are likely the result of respiratory tract involvement. Because the toxic effects of sulfur mustard (at least for short-time periods) appear to be a linear function of exposure duration and exposure concentration, most of the available exposure-response data are expressed as cumulative exposures (Ct).

Minor ocular irritation (conjunctival injection in the absence of irritation) is reported to occur in humans following exposures to 12–30 mg-min/m^3 and more severe effects at 60–75 mg-min/m^3 (conjunctivitis, irritation, photophobia) and 100 mg-min/m^3 (severe ocular irritation). Exposure estimates for human lethality range from 900–1,500 mg-min/m^3.

Animal lethality following acute exposure to sulfur mustard occurs at cumulative exposures ranging from approximately 600–1,500 mg-min/m^3. Nonlethal effects were similar to those observed in humans and included effects on the eyes, respiratory tract, and skin. Long-term exposure of dogs, rats, and guinea pigs to concentrations of 0.03 mg/m^3 produced only minor signs of ocular and respiratory tract irritation. 1-hour exposure of mice to concentrations up to 16.9 mg/m^3 resulted in notable but not serious effects on respiratory parameters and acute exposures of rabbits (20 minutes to 12 hours) to concentrations ranging from 58–389 mg/m^3 (Ct ≥2,300 mg-min/m^3) resulted in severe respiratory tract damage.

Because exposure-response data were unavailable for all of the AEGL-specific exposure durations, temporal extrapolation was used in the development of AEGL values for the AEGL-specific time periods. The concentration-exposure time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$, where the exponent n ranges from 0.8 to 3.5 (ten Berge, 1986). Analysis of available data regarding AEGL-1 type effects reported by Reed (1918), Reed et al. (1918), Guild et al. (1941), and Anderson (1942) indicate that, for exposure periods up to several hours, the concentration-exposure time relationship is a near-linear function (i.e., Haber's Law where n = 1 for $C^n \times t = k$) as shown by n values of 1.11 and 0.96 for various data sets analyzed that were consistent with AEGL-1 effects. Therefore, an empirically derived, chemical-specific estimate of n = 1 was used for derivation of most of the AEGL values rather than a default value based upon the ten Berge (1986) analysis. Due to uncertainty regarding linear extrapolation to a time duration notably shorter than that for which empirically derived lethality data were available, the 10-minute AEGL-3 values utilized exponential time scaling where n was 3.

The AEGL-1 values were based upon data from Anderson (1942) who found that an exposure concentration-time product of 12 mg-min/m^3 represented a threshold for ocular effects (conjunctival injection and minor discomfort with no functional decrement) in human volunteers acutely exposed to sulfur mustard. An UF adjustment was limited to a factor of 3 for protection of sensitive individuals. This adjustment was considered appropriate for acute exposures to chemicals whose mechanism of action primarily involves surface contact irritation of ocular and/or respiratory tract tissue rather than systemic activity that involves absorption and distribution of the parent chemical or a biotransformation product to a target tissue. Anderson (1942) noted that there was little variability in the ocular responses among the subjects in his study, thereby providing additional justification for the intraspecies UF of 3.

The AEGL-2 values for sulfur mustard were also developed using the data from Anderson (1942). Anderson reported that a Ct value of approximately 60 mg-min/m^3 represented the lowest concentration-time product for which ocular effects could be characterized as military casualties. The 60 mg-min/m^3 exposure was used as the basis for developing the AEGL-2 values because it represented an acute exposure causing an effect severe enough to impair escape and, although not irreversible, would certainly result in potential for additional injury. Anderson (1942) characterized the 60 mg-min/m^3 Ct as representing the lower margin of the concentration-effect zone that would result in ineffective military performance (necessary to complete a mission), and that may require treatment for up to 1 week. The ocular irritation and damage were also considered appropriate as a threshold estimate for AEGL-2 effects because the eyes are generally considered the most sensitive indicator of sulfur mustard exposure and would likely occur in the absence of vesication effects and severe pulmonary effects. The fact that the AEGL-2 is based upon human data precludes the use of an interspecies UF. A factor of 3 was applied for intraspecies variability (protection of sensitive populations). This factor was limited to three under the assumption that the primary mechanism of action of sulfur mustard involves a direct effect on the ocular surface and that this response will not vary greatly among individuals. Anderson also noted little variability in the ocular responses among the subjects in his study. A modifying factor of 3 was applied to accommodate potential onset of long-term ocular or respiratory effects. This was justified by the fact that there was no long-term follow-up reported by Anderson with which to confirm or deny the development of permanent ocular or respiratory tract damage. The total uncertainty/modifying factor adjustment was 10 [The total adjustment is 10 because the factors of 3 each represent a logarithmic mean (3.16) of 10, therefore 3.16 x 3.16 = 10].

For development of the AEGL-3, a 1-hour exposure of mice to 21.2 mg/m^3 was used as an estimated lethality threshold (Kumar and Vijayaraghavan, 1998). This value is also near the lower bound of the 95% confidence interval for the 1-hour mouse LC_{50} of 42.5 mg/m^3 reported by Vijayaraghavan (1997). An UF for intraspecies variability of 3 was used because the lethality resulting from acute inhalation exposure to sulfur mustard appears to be a function of pulmonary damage resulting from direct contact of the agent with epithelial surfaces and would not likely exhibit an order-of-magnitude variability among individuals. An UF of 3 was also applied to account for possible interspecies variability in the lethal response to sulfur mustard. The resulting total UF adjustment was 10. The modifying factor of 3 utilized for AEGL-2 development to account for uncertainties regarding the latency and persistence of the irritant effects of low-level exposure to sulfur mustard was not applied for AEGL-3 because lethality of the mice was assessed at 14 days post exposure in a study by Vijayaraghavan (1997). Application of any additional UFs or modifying factors was not warranted because the proposed AEGL-3 values are equivalent to exposures in humans that are known to produce only ocular and respiratory tract irritation.

The AEGL values for sulfur mustard are based upon noncancer endpoints. Sulfur mustard is genotoxic and has induced carcinogenic responses in humans following single high exposures and following multiple exposures that were sufficient to produce adverse effects. Carcinogenic responses, however, are not known to occur with asymptomatic exposures. Limitations on the currently available data do not allow for a definitive quantitative cancer risk

assessment, especially for an acute, once-in-a-lifetime, exposure.

The AEGL-1 and AEGL-2 values are based upon human exposure data and are considered to be defensible estimates for exposures representing thresholds for the respective AEGL effect levels. The ocular irritation upon which the AEGL-1 and AEGL-2 values are based is the most sensitive response to sulfur mustard vapor. The AEGL-3 values provide Ct products (approximately 60–130 mg-min/m^3) that are known to cause only moderate to severe ocular irritation and possible respiratory tract irritation in human subjects but not life- threatening health effects or death. Although, the overall database for acute inhalation exposure to sulfur mustard is not extensive, the AEGL values appear to be supported by the available data and in some cases, similar values obtained using somewhat differing approaches.

SUMMARY OF PROPOSED AEGL VALUES FOR SULFUR MUSTARD [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	0.06 (0.40)	0.02 (0.13)	0.01 (0.067)	0.003 (0.017)	0.001 (0.008)	Conjunctival injection and minor discomfort with no functional decrement in human volunteers (Anderson, 1942)
AEGL-2 (Disabling)	0.09 (0.60)	0.03 (0.20)	0.02 (0.10)	0.004 (0.025)	0.002 (0.013)	Well marked, generalized conjunctivitis, edema, photophobia, and eye irritation in human volunteers (Anderson, 1942)
AEGL-3 (Lethality)	0.91 (6.1)	0.63 (4.2)	0.32 (2.1)	0.08 (0.53)	0.04 (0.27)	Lethality estimate in mice (Kumar and Vijayaraghavan, 1998)

ii. *References.*

Anderson, J.S. 1942. The effect of mustard gas vapour on eyes under Indian hot weather conditions. CDRE Report No. 241. Chemical Defense Research Establishment (India).

Guild, W.J., Harrison, K.P., Fairly, A., and Childs, A.E. 1941. The effect of mustard gas vapour on the eyes. Porton Report No. 2297, Serial No. 12. November 8, 1941.

Kumar, O. and Vjayaraghavan, R. 1998. Effect of sulphur mustard inhalation exposure on some urinary variables in mice. *Journal of Applied Toxicology*. 18:257–259.

Reed, C.I. 1918. The minimum concentration of mustard gas effective for man. Preliminary Report. Report 318. War Department, Medical Division, Chemical Warfare Section, Pharmacological Research Section, American University Experiment Station. October 26, 1918.

Reed, C.I., Hopkins, E.F., and Weyand, C.F. 1918. The minimum concentration of mustard gas effective for man. Final Report. Report 329. War Department, Medical Division, Chemical Warfare Section, Pharmacological Research Section, American University Experiment Station. December 2, 1918.

ten Berge, W.F. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal of Hazardous Materials*. 13:301–309.

Vijayaraghavan, R. 1997. Modifications of breathing pattern induced by inhaled sulphur mustard in mice. *Archives of Toxicology*. 71:157–164.

4. *HCFC-141b (1,1-dichloro-1-fluoroethane) or hydrochlorofluorocarbon-141b*—i. *Description.* 1,1-Dichloro-1-fluoroethane has been developed as a replacement for fully halogenated chlorofluorocarbons as its residence time in the atmosphere is shorter and its ozone depleting potential is lower than that of presently used chlorofluorocarbons. HCFC-141b may be used in the production of rigid polyurethane and polyisocyanurate or phenolic insulation foams for residential and commercial buildings. It may also be used as a solvent in electronic and other precision cleaning applications.

HCFC-141b is of low inhalation toxicity. Its effects have been studied with human subjects and several animal species including the monkey, dog, rat, mouse, and rabbit. In addition, studies addressing repeated and chronic exposures, genotoxicity, carcinogenicity, neurotoxicity, and cardiac sensitization were also available. At high concentrations, halogenated hydrocarbons may produce cardiac arrhythmias; this sensitive endpoint was considered in development of AEGL values.

Adequate data were available for development of the three AEGL classifications. Inadequate data were available for determination of the relationship between concentration and exposure duration for a fixed effect. However, based on the rapidity with which blood concentrations in humans approached equilibrium, the similarity in lethality values in rats exposed for 4 or 6 hours, and the fact that the cardiac sensitization effect is based on a concentration threshold rather than exposure duration, all AEGL values were flat-lined across time. The fact that some experimental exposure durations in both human and animal studies were generally long, 4 to 6 hours, lends confidence to flat-lining the values for the shorter exposure durations.

The AEGL-1 value was based on the observation that exercising human subjects could tolerate exposure to concentrations of 500 or 1,000 ppm for 4 hours with no effects on lung functions, respiratory symptoms, irritation of the eyes, or cardiac symptoms (Utell et al., 1997). Results of exposures of two subjects for an additional 2 hours to the 500 ppm concentration and one of the subjects to the 1,000 ppm concentration for an additional 2 hours did not indicate a clear effect on neurobehavioral parameters. Because the 4- or 6-hour 1,000 ppm concentration is a no-observed-effect-level (NOEL), there were no indications of response differences among tested subjects, and animal studies indicate that adverse effects occur only at considerably higher concentrations, the value was not adjusted by an UF to protect sensitive individuals. Because blood concentrations of HCFC-141b rapidly approached equilibrium and did not greatly increase after 55 minutes of exposure, the value of 1,000 ppm was used for all time periods.

The AEGL-2 value was based on the lowest concentration that caused cardiac sensitization in dogs exposed to HCFC-141b for 10 minutes (Mullin, 1977). This value of 5,200 ppm is far below the lowest concentrations that caused death from cardiac fibrillation (10,000 ppm in this study and 20,000 ppm in a similar study [Hardy et al., 1989a]). Because the cardiac sensitization test is supersensitive as the response to epinephrine is optimized (the epinephrine dose is greater than the physiological level in stressed animals by up to a factor of 10), a single

intraspecies UF of 3 was applied to protect sensitive individuals. Cardiac sensitization is concentration dependent; duration of exposure did not influence the concentration at which this effect occurred. Using the reasoning that the concentration is the determining factor in cardiac sensitization and exposure duration is of lesser importance, the resulting value of 1,700 ppm is proposed for all time periods.

The AEGL-3 values were based on the concentration of 9,000 ppm, the highest value that resulted in mild to marked cardiac responses but did not cause death in a cardiac sensitization study with the dog (Hardy et al., 1989a). Because the cardiac sensitization test is supersensitive as the response to epinephrine is optimized, a single intraspecies UF of 3 was applied to protect sensitive individuals. Using the reasoning that the concentration is the determining factor in cardiac sensitization and exposure duration is of lesser importance, the resulting value of 3,000 ppm is proposed for all time periods.

Based on the extensive database involving both human and animal exposures and use of the most sensitive endpoint in the studies, confidence in the AEGL values is high. Values are summarized in the table below.

SUMMARY TABLE OF PROPOSED AEGL VALUES FOR HCFC-141[b] (1,1-DICHLORO-1-FLUOROETHANE) [PPM (MG/M[3])]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	1,000 (4,850)	1,000 (4,850)	1,000 (4,850)	1,000 (4,850)	1,000 (4,850)	No effect-humans (Utell et al., 1997)
AEGL-2 (Disabling)	1,700 (8,245)	1,700 (8,245)	1,700 (8,245)	1,700 (8,245)	1,700 (8,245)	Threshold for cardiac arrhythmia—dog[1] (Mullin, 1977)
AEGL-3 (Lethality)	3,000 (14,550)	3,000 (14,550)	3,000 (14,550)	3,000 (14,550)	3,000 (14,550)	Threshold for severe cardiac response—dog[1] (Hardy et al., 1989a)

[1] Response to challenge dose of epinephrine (cardiac sensitization test).

ii. *References.*

Hardy, J.C., Sharman, I.J., and Chanter, D.O. 1989a. Assessment of cardiac sensitization potential in dogs and monkeys. Comparison of I–141b and F11. PWT 86/89437, Huntingdon Research Centre Ltd., Huntingdon, Cambridgeshire, England.

Mullin, L.S. 1977. Cardiac sensitisation. Haskell Laboratory Report 957–77, E.I. du Pont de Nemours and Co., Newark, DE.

Utell, M.J., Anders, M.W., and Morrow, P.E. 1997. Clinical inhalation studies with HCFC-141b. Final Report: December 4, 1997. MA–RR–97–2406, Departments of Medicine, Environmental Medicine, and Pharmacology and Physiology, University of Rochester Medical Center, Rochester, NY.

5. *HFC-134a (1,1,1,2-tetrafluoroethane) or hydrofluorocarbon-134a*—i. *Description.* 1,1,1,2-Tetrafluoroethane has been developed as a replacement for fully halogenated chlorofluorocarbons because its residence time in the atmosphere is shorter and its ozone depleting potential is insignificant. HFC-134a may be used in refrigeration and air conditioning systems, as a blowing agent for polyurethane foams, and as a propellant for medical aerosols. Yearly production is estimated at 175,000 tons.

HFC-134a has a very low acute inhalation toxicity. Its acute inhalation effects have been studied with human subjects and several animal species including the monkey, dog, rat, and mouse. In addition, studies addressing repeated and chronic exposures, genotoxicity, carcinogenicity, neurotoxicity, and cardiac sensitization were also available. At high concentrations, halogenated hydrocarbons may produce cardiac arrhythmias; this sensitive endpoint was considered in development of AEGL values.

Adequate data were available for development of the three AEGL classifications. Inadequate data were available for determination of the relationship between concentration and time for a fixed effect. Based on the observations that:

a. Blood concentrations in humans rapidly approach equilibrium with negligible metabolism and tissue uptake.

b. The endpoint of cardiac sensitization is a blood concentration-related threshold phenomenon, derived values for each AEGL classification were flat-lined across time.

The AEGL-1 concentration was based on a 1-hour no-effect concentration of 8,000 ppm in human subjects (Emmen and Hoogendijk, 1998). This concentration was without effects on lung functions, respiratory parameters, the eyes (irritation), or the heart (cardiac symptoms). Because this concentration is considerably below that causing any effect in animal studies, no intraspecies UF was applied. Based on the fact that blood concentrations in this study appeared to be approaching equilibrium following 55 minutes of exposure and effects are determined by blood concentrations, the value of 8,000 ppm was used across all time periods.

The AEGL-2 concentration was based on the no-effect concentration of 40,000 ppm for cardiac sensitization in dogs (Hardy et al., 1991). Because the cardiac sensitization test is supersensitive as the response to epinephrine is optimized (the epinephrine dose is greater than the physiological level in stressed animals by up to a factor of 10), a single intraspecies UF of 3 was applied to protect sensitive individuals. Cardiac sensitization is concentration dependent; duration of exposure does not influence the concentration at which this effect occurs. Using the reasoning that the concentration is the determining factor in cardiac sensitization and exposure duration is of lesser importance, the resulting value of 13,000 ppm is proposed for all time periods.

The AEGL-3 concentration was based on the concentration of 80,000 which caused marked cardiac effects but no deaths in dogs (Hardy et al., 1991). Because the cardiac sensitization test is supersensitive as the response to epinephrine is optimized (the epinephrine dose is greater than the physiological level in stressed animals by up to a factor of 10), a single intraspecies UF of 3 was applied to protect sensitive individuals. Cardiac sensitization is concentration dependent; duration of exposure does not influence the concentration at which this effect occurs. Using the reasoning that the concentration is the determining factor in cardiac sensitization and exposure duration is of lesser importance, the resulting value of 27,000 ppm is proposed for all time periods.

Based on the extensive database involving both human and animal

exposures and use of the most sensitive endpoint in the studies, confidence in the AEGL values is high. Values are summarized in the table below.

SUMMARY TABLE OF PROPOSED AEGL VALUES FOR HFC-134[a] (1,1,1,2-TETRAFLUOROETHANE) [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	8,000 (34,000)	8,000 (34,000)	8,000 (34,000)	8,000 (34,000)	8,000 (34,000)	No effects—humans (Emmen and Hoogendijk, 1998)
AEGL-2 (Disabling)	13,000 (55,250)	13,000 (55,250)	13,000 (55,250)	13,000 (55,250)	13,000 (55,250)	No effect, cardiac sensitization—dogs (Hardy et al., 1991)
AEGL-3 (Lethality)	27,000 (114,750)	27,000 (114,750)	27,000 (114,750)	27,000 (114,750)	27,000 (114,750)	Marked effect, cardiac sensitization—dogs (Hardy et al., 1991)

ii. *References.*

Emmen, H.H. and Hoogendijk, E.M.G. 1998. Report on an ascending dose safety study comparing HFA-134a with CFC-12 and air administered by whole-body exposure to healthy volunteers. MA–250B–82–306, TNO Report V98.754, The Netherlands Organization Nutrition and Food Research Institute, Zeist, The Netherlands.

Hardy, C.J., Sharman, I.J., and Clark, G.C. 1991. Assessment of cardiac sensitisation potential in dogs: Comparison of HFA 134a and A12. Report No. CTL/C/2521. Huntingdon Research Centre, Huntingdon, Cambridgeshire, U.K.

6. *Hydrogen cyanide (HCN)*—i. *Description.* Hydrogen cyanide is a colorless, rapidly acting, highly poisonous gas or liquid having an odor of bitter almonds. Most HCN is used as an intermediate at the site of production. Major uses include the manufacture of nylons, plastics, and fumigants; it is also used in electroplating and mining. Exposures to HCN may occur in industrial situations as well as from cigarette smoke, combustion products, and naturally occurring cyanide compounds in foods.

HCN is a systemic poison; toxicity is due to inhibition of cytochrome oxidase which prevents cellular utilization of oxygen. Lack of oxygen supply to the brain results in loss of consciousness, respiratory arrest, and, ultimately, death. Stimulation of the chemoreceptors of the carotid and aortic bodies produces a brief period of hyperpnea; cardiac irregularities may also occur. These mechanisms of action are the same for all species.

Inhalation studies resulting in sublethal effects such as incapacitation and changes in respiratory and cardiac parameters were described for the monkey, rat, and mouse; lethality studies were available for the rat, mouse, and rabbit. Exposure durations ranged from a few seconds to 24 hours. Regression analyses of the exposure duration-concentration relationships for both incapacitation and lethality for the monkey determined that the relationship is $C^2 \times t = k$ and that the relationship for lethality (based on rat data) is $C^{2.6} \times t = k$. Although human exposures have occurred, no reliable data on exposure concentrations were available.

The AEGL-1 was not determined because serious effects may occur at concentrations below those causing irritation or notable discomfort. In addition, the onset of serious effects is very rapid.

The AEGL-2 was based on a concentration of 60 ppm for 30 minutes which resulted in a slight depressive effect on the central nervous system of monkeys as evidenced by changes in electroencephalograms; there was no physiological response (Purser, 1984; Purser et al., 1984). The mechanism of action of HCN is the same for all mammalian species, but the rapidity of the toxic effect may be related to relative respiration rates as well as pharmacokinetic considerations. The monkey is an appropriate model for extrapolation to humans as the respiratory systems of monkeys and humans are similar. Because the monkey is an appropriate model and the mechanism of action of HCN is the same for all species, an interspecies UF of 2 was applied. Humans may differ in their sensitivity to HCN but no data regarding specific differences were located in the available literature. Therefore, an intraspecies UF of 3 was applied. The 30-minute concentration of 60 ppm was divided by a combined interspecies and intraspecies UF of 6 and scaled across time for the AEGL specified exposure periods using the relationship $C^2 \times t = k$. The safety of the 10- and 30-minute values are supported by monitoring studies in which concentrations of 10–15 ppm produced central nervous system effects in some workers.

The rat provided the only data set for calculation of LC_{01} values for different time periods (E.I. du Pont de Nemours and Company, 1981). The LC_{01} values were considered the threshold for lethality and were used as the basis for deriving AEGL-3 values. The mouse, rat, and rabbit were equally sensitive to the lethal effects of HCN as determined by similar LC_{50} values for the same time periods. In an earlier study, times to death for several animal species showed that mice and rats may be slightly more sensitive to HCN than monkeys (and presumably humans). The differences in sensitivity were attributed, at least partially, to the more rapid respiratory rate of the rodent species. Because LC_{50} values for several species were within a factor of 1.5 of each other, an interspecies UF of 2 was applied. Humans may differ in their sensitivity to HCN but no data regarding specific differences were located in the available literature. Therefore, an intraspecies UF of 3 was applied to protect sensitive individuals. The 15- and 30-minute and 1-hour LC_{01} values, 138, 127, and 88 ppm, respectively, were divided by a total UF of 6. The 15-minute value was time scaled to 10 minutes to derive the 10-minute AEGL-3, the 30-minute LC_{01} was used for the 30-minute AEGL-3 value, and the 60-minute LC_{01} was used to calculate the 1-, 4-, and 8-hour AEGL-3 concentrations. For the AEGL-3 values, scaling across time utilized the lethal concentration-exposure duration relationship for the rat, $C^{2.6} \times t = k$.

The proposed values appear in the table below.

SUMMARY OF PROPOSED AEGL VALUES FOR HYDROGEN CYANIDE [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	NA[1]	NA	NA	NA	NA	Serious effects may occur below detectable concentrations or concentrations causing discomfort
AEGL-2 (Disabling)	17 (19)	10 (11)	7.1 (7.8)	3.5 (3.9)	2.5 (2.8)	Slight central nervous system depression—monkey (Purser, 1984)
AEGL-3 (Lethality)	27 (30)	21 (23)	15 (17)	8.6 (9.7)	6.6 (7.3)	Lethality (LC_{01})—rat (E.I. du Pont de Nemours, 1981)

[1] Not appropriate.

ii. *References.*

E.I. du Pont de Nemours and Company. 1981. Inhalation Toxicity of Common Combustion Gases. Haskell Laboratory Report No. 238–81. Haskell Laboratory, Newark, DE.

Purser, D.A. 1984. A bioassay model for testing the incapacitating effects of exposure to combustion product atmospheres using cynomolgus monkeys. *Journal of Fire Sciences.* 2:20–36.

Purser, D.A., Grimshaw, P., and Berrill, K.R. 1984. Intoxication by cyanide in fires: A study in monkeys using polyacrylonitrile. *Archives of Environmental Health.* 39:394–400.

7. *Hydrogen fluoride (HF)*—i. *Description.* Hydrogen fluoride is a colorless, highly irritating and corrosive gas. Reaction with water is rapid, producing heat and hydrofluoric acid. Hydrogen fluoride is used in the manufacture of artificial cryolite; in the production of aluminum, fluorocarbons, and uranium hexafluoride; as a catalyst in alkylation processes in petroleum refining; in the manufacture of fluoride salts; and in stainless steel pickling operations. It is also used to etch glass and as a cleaner in metal finishing processes.

Hydrogen fluoride is a severe irritant to the eyes, skin, and nasal passages; high concentrations may penetrate to the lungs resulting in edema and hemorrhage. Data on irritant effects in humans and lethal and sublethal effects in six species of mammals (monkey, dog, rat, mouse, guinea pig, and rabbit) were available for development of AEGLs. The data were considered adequate for derivation of the three AEGL classifications for five exposure periods. Regression analyses of the reported concentration-exposure durations for lethality for the animal species determined that the relationship between concentration and time is $C^2 \times t = k$.

The AEGL-1 values were based on the observation that human volunteers could tolerate exposure to a concentration of 2 ppm for 6 hours with only mild irritation of the eyes, skin, and upper respiratory tract (Largent, 1960, 1961). This concentration was adjusted by an UF of 3 to protect sensitive individuals and scaled to the 30-minute and 1-, 4-, and 8-hour exposure durations using $C^2 \times t = k$. The factor of 3 was selected because hydrogen fluoride reacts chemically with the tissues of the respiratory tract; the adverse effects are unlikely to differ among individuals. The resulting derived values, 2.3, 1.6, 0.82, and 0.58 ppm, were rounded to the nearest whole integers of 2.0, 2.0, 1.0, and 1.0, respectively, by the NAC/AEGL Committee. Because irritant properties would not change greatly between the 10-minute and 30-minute time frames, the 10-minute AEGL-1 was set at the same value of 2.0 ppm as the 30-minute AEGL-1.

The 10-minute AEGL-2 value was based on an absence of serious pulmonary or other adverse effects in rats during direct delivery of HF to the trachea for an exposure period of 10 minutes (Dalbey, 1996; Dalbey et al., 1998). This reported concentration-exposure value of 950 ppm for 10 minutes was adjusted by a combined UF of 10: 3 for interspecies variation since the rat was not the most sensitive species in other studies (but direct delivery to the trachea is a sensitive model) and an intraspecies UF of 3 since HF reacts chemically and indiscriminately with the tissues of the respiratory tract and adverse effects are unlikely to differ among individuals.

The 30-minute and the 1-, 4- and 8-hour AEGL-2 values were based on a study in which dogs exposed to 243 ppm for 1 hour showed signs of more than mild irritation, including blinking, sneezing, and coughing (Rosenholtz et al., 1963). The 1-hour value of 243 ppm was adjusted by a total UF of 10: 3 for intraspecies variation since the dog is a sensitive species for sensory irritation and 3 for intraspecies variation since HF reacts chemically and indiscriminately with the tissues of the respiratory tract and effects are unlikely to differ among individuals. The values were scaled across time using $C^2 \times t = k$ where the value of $n = 2$ was derived from concentration: Exposure duration relationships based on lethality.

The 10-minute AEGL-3 value was based on the reported 10-minute lethal threshold in orally cannulated rats of 1,764 ppm (Dalbey, 1996; Dalbey et al., 1998). This value was rounded down to 1,700 ppm and adjusted by UFs of 3 for interspecies differences (LC_{50} values differ by a factor of approximately 2–4 between the mouse and rat) and 3 for intraspecies differences since HF reacts chemically and indiscriminately with tissues of the respiratory tract and effects are unlikely to differ among individuals. The total adjustment for UFs for the 10-minute AEGL-3 value was 10.

The 30-minute and the 1-, 4-, and 8-hour AEGL-3 values were derived from a reported 1-hour exposure resulting in no deaths in mice (Wohlslagel et al., 1976). The data indicated that the value of 263 ppm was the threshold for lethality. A comparison of LC_{50} values among species in several studies determined that the mouse was the most sensitive species in lethality studies. The 1-hour value of 263 ppm was adjusted by an interspecies UF of 1 since the mouse was the most sensitive species and intraspecies UF of 3 since HF reacts chemically and indiscriminately with tissues of the respiratory tract and effects are unlikely to differ among individuals. A modifying factor of 2 was applied to account for the steepness of the lethal dose-response curve and the value was scaled to the other AEGL-specified exposure periods using a value of $n = 2$.

Based on the extensive database involving both human and animal exposures (six species of mammals) for various exposure durations, confidence in the AEGL values is high. Values are summarized in the table below.

SUMMARY OF PROPOSED AEGL VALUES FOR HYDROGEN FLUORIDE (HF) [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	2 (1.6)	2 (1.6)	2 (1.6)	1 (0.8)	1 (0.8)	Irritation in humans (Largent, 1960; 1961)
AEGL-2 (Disabling)	95 (78)	34 (28)	24 (20)	12 (9.8)	8.6 (7.0)	NOAEL for lung effects in cannulated rats (Dalbey, 1996; Dalbey et al., 1998);[1] sensory irritation in dogs (Rosenholtz et al., 1963)[2]
AEGL-3 (Lethality)	170 (139)	62 (51)	44 (36)	22 (18)	15 (12)	Lethality threshold in cannulated rats (Dalbey, 1996; Dalbey et al., 1998);[3] Lethality threshold in mice (Wohlslagel et al., 1976)[4]

[1] 10-minute AEGL-2 value.
[2] 30-minute and 1-, 4-, and 8-hour AEGL-2 values.
[3] 10-minute AEGL-3 value.
[4] 30-minute and 1-, 4-, and 8-hour AEGL-3 values.

ii. *References.*

Dalbey, W. 1996. Evaluation of the toxicity of hydrogen fluoride at short exposure times. Petroleum Environmental Research Forum Project 92–09, performed at Stonybrook Laboratories Inc., Pennington, NJ.

Dalbey, W., Dunn, B., Bannister, R., Daughtrey, W., Kirwin, C., Reitman, F., Steiner, A., and Bruce, J. 1998. Acute effects of 10-minute exposure to hydrogen fluoride in rats and derivation of a short-term exposure limit for humans. *Regulatory Toxicology and Pharmacology*. 27:207–216.

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Rosenholtz, M.J., Carson, T.R., Weeks, M.H., Wilinski, F., Ford, D.F., and Oberst, F.W. 1963. A toxicopathologic study in animals after brief single exposures to hydrogen fluoride. *American Industrial Hygiene Association Journal*. 24:253–261.

Wohlslagel, J., DiPasquale, L.C., and Vernot, E.H. 1976. Toxicity of solid rocket motor exhaust: Effects of HCl, HF, and alumina on rodents. *Journal of Combustion Toxicology*. 3:61–69.

8. *Hydrogen sulfide* (H_2S)—i. *Description.* The AEGL-1 was based on persistent odors, eye and throat irritation, headache, and nausea in six workers exposed to a mean concentration of 0.09 ppm H_2S for approximately 5 hours in a monitoring van downwind from an oil refinery (TNRCC, 1998). An UF of 3 was applied to account for intraspecies variability since minor irritation is not likely to vary greatly between individuals. The value was flat-lined across the 10- and 30-minute and 1-, 4-, and 8-hour exposure time points. The flat-lining approach was considered appropriate since mild irritant effects generally do not vary greatly over time.

The AEGL-2 was based on focal areas of perivascular edema and an increase in protein and lactic acid dehydrogenase (LDH) in bronchioalveolar lavage fluid in rats exposed to 200 ppm hydrogen sulfide for 4 hours (Green et al., 1991; Khan et al., 1991). An UF of 3 was used to extrapolate from animals to humans since rat and mouse data suggest little interspecies variability. An UF of 3 was also applied to account for sensitive individuals since data suggest little strain variability of hydrogen sulfide toxicity among rats (total UF = 10). The 4-hour experimental value was then scaled to the 10- and 30-minutes and 1- and 8-hour time points, using $C^{4.36} \times t = k$. The exponent of 4.36 was derived from rat lethality data ranging from 10-minutes to 6-hour exposure duration.

The AEGL-3 was based on a 1-hour no-effect-level for death in rats (504 ppm) (MacEwen and Vernot, 1972). An UF of 3 was used to extrapolate from animals to humans since rat and mouse data suggest little interspecies variability. An UF of 3 was also applied to account for sensitive individuals since data suggest little strain variability of hydrogen sulfide toxicity among rats (total UF = 10). The value was then scaled to the 10- and 30-minutes and 1-, 4-, and 8-hour time points, using $C^{4.36} \times t = k$. The exponent of 4.36 was derived from rat lethality data ranging from 10 minutes to 6 hours exposure duration.

The calculated values are listed in the table below.

SUMMARY OF PROPOSED AEGL VALUES FOR HYDROGEN SULFIDE [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	0.03 (0.04)	0.03 (0.04)	0.03 (0.04)	0.03 (0.04)	0.03 (0.04)	Persistent odor, eye, and throat irritation, headache, nausea (TNRCC, 1998)
AEGL-2 (Disabling)	42 (59)	32 (45)	28 (39)	20 (28)	17 (24)	Perivascular edema, increased protein, and LDH in lavage fluid in rats (Green et al., 1991; Khan et al., 1991)
AEGL-3 (Lethality)	76 (106)	60 (85)	50 (71)	37 (52)	31 (44)	1 hour no-effect-level for death in rats (MacEwen and Vernot, 1972)

ii. *References.*

Green, F. H. Y., Schurch, S., and DeSanctis, G. T., et al. 1991. Effects of hydrogen sulfide exposure on surface properties of lung surfactant. *Journal of Applied Physiology*. 70:1943–1949.

Khan, A. A., Yong, S., and Prior, M. G., et al. 1991. Cytotoxic effects of hydrogen sulfide on pulmonary alveolar macrophages in rats. *Journal of Toxicology and Environmental Health*. 33:57–64.

MacEwen, J. D. and Vernot, E. H. 1972. Toxic Hazards Research Unit Annual Report. Aerospace Medical Research Laboratory, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio. Report No. ARML–TR–72–62. pp. 66–69.

TNRCC (Texas Natural Resources Conservation Commission). 1998. Memo from Tim Doty to JoAnn Wiersma. Corpus Christi Mobile Laboratory Trip, January 31–February 6, 1998; Real-Time Gas Chromatography and Composite Sampling, Sulfur Dioxide, Hydrogen Sulfide, and Impinger Sampling. April 20, 1998.

9. *Otto Fuel II (main component propylene glycol dinitrate; CAS No. 6423–43–4)*—i. *Description.* Otto Fuel II, a liquid propellant used exclusively by the U.S. Navy in torpedoes and other weapon systems, is a mixture of three synthetic compounds: 1,2-Propylene glycol dinitrate (PGDN), which is a nitrate ester explosive, dibutyl sebacate (a desensitizer), and 2-nitrodiphenylamine (a stabilizer). The primary component and the one responsible for the toxicity of Otto Fuel II is PGDN, a volatile liquid with a disagreeable odor. Because PGDN is the primary and most toxic component of Otto Fuel II and because only PGDN is relatively volatile compared with the other components, AEGLs have been derived in terms of PGDN with the notation that the values are appropriate for Otto Fuel II.

PGDN is a systemic toxicant with effects on the cardiovascular and central nervous systems. Its vasodilatory action results in headaches during human exposures. Symptoms of dizziness, loss of balance, nasal congestion, eye irritation, palpitations, and chest pains have also been reported. Methemoglobinemia has been reported at the high concentrations used in studies with animals.

Few data were available that met the definitions of AEGL endpoints. One inhalation study with 20 human subjects described effects of headaches and slight loss of balance at exposure concentrations of 0.1 to 1.5 ppm for exposure durations up to 8 hours (Stewart et al., 1974). Acute exposure of monkeys to concentrations of 70–100 ppm for 6 hours resulted in severe signs of toxicity including convulsions but no deaths (Jones et al., 1972). In the same study, exposure of rats to a higher concentration (#199 ppm for 4 hours) resulted in no toxic signs. Examination of the relationship between exposure duration and concentration for both mild and severe headaches in humans over periods of time of 1 to 8 hours determined that the relationship is $C^1 \times t = k$.

The AEGL-1 values were based on concentrations of 0.5 ppm and 0.1 ppm which were the thresholds for mild headaches at exposure durations of 1 and 6 hours, respectively (Stewart et al., 1974). This effect can be considered the threshold for mild discomfort (only one subject was affected at each exposure) which falls within the definition of an AEGL-1. The 0.5 ppm concentration was used to derive the 30-minutes and 1-hour AEGL-1 values and the 0.1 ppm concentration was used for the 4- and 8-hour values. Because the time and concentration values were based on the most sensitive subject, these concentrations were adjusted by an UF of 3 to account for additional differences in human sensitivity and scaled to the appropriate time periods using the $C^1 \times t = k$ relationship. An UF of 3 was considered sufficient as no susceptible populations were identified (the headache effect is the same as that experienced by heart patients medicated with nitroglycerin for angina and these concentrations are far below those inducing methemoglobinemia in infants); the vasodilatory effects of PGDN, responsible for the headaches, are not expected to vary greatly among individuals. The 10-minute AEGL-1 value was made equal to the 30-minute value.

The AEGL-2 values were based on a concentration of 0.5 ppm which caused severe headaches accompanied by dizziness in one subject and slight loss of equilibrium in two subjects in one of several sensitive equilibrium tests after 6 hours of exposure (Stewart et al., 1974). This concentration-exposure duration was considered the threshold for impaired inability to escape as defined by the AEGL-2. The 0.5 ppm concentration was adjusted by an intraspecies UF of 3 to protect sensitive individuals and scaled across time using the $C^1 \times t = k$ relationship as for the AEGL-1 in Unit III.B.9.

The AEGL-3 values were based on the exposure of squirrel monkeys to concentrations of 70–100 ppm for 6 hours which resulted in vomiting, pallor, cold extremities, semiconscousness, and clonic convulsions; these signs disappeared upon removal from the exposure chamber (Jones et al., 1972). The lower concentration, 70 ppm, was adjusted by a total UF of 10. An interspecies UF of 3 was chosen because both the monkey and human subjects showed changes in electrical activity of the brain at similar PGDN concentrations, the threshold for central nervous system depressants does not vary widely among mammalian species, and the monkey is an appropriate model for extrapolation to humans. An intraspecies UF of 3 was chosen because the threshold for central nervous system depression also does not vary greatly among individuals. Because the endpoint for the AEGL-3 values is different than the endpoint for the AEGLs-1 and -2 and no data on the relationship between concentration and exposure duration is available for the endpoint of central nervous system depression, the more conservative values of $n = 3$ and $n = 1$ were used to scale from 6 hours to the shorter- and longer-time periods, respectively.

The proposed values appear in the table below.

SUMMARY OF PROPOSED AEGL VALUES FOR OTTO FUEL II [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1[a] (Nondisabling)	0.33 (2.3)	0.33 (2.3)	0.17 (1.1)	0.05 (0.34)	0.03 (0.17)	Mild headaches in humans (Stewart et al., 1974)
AEGL-2 (Disabling)	6.0 (43)	2.0 (14)	1.0 (6.8)	0.25 (1.7)	0.13 (0.8)	Severe headaches and slight imbalance in humans (Stewart et al., 1974)
AEGL-3 (Lethality)	23 (165)	16 (114)	13 (93)	8.0 (57)	5.3 (38)	Convulsions in monkeys (Jones et al., 1972)

[a] The distinctive odor of PGDN will be noticeable to most individuals at the 0.33 and 0.17 ppm concentrations.

ii. *References.*

Jones, R.A., Strickland, J.A., and Siegel, J. 1972. Toxicity of propylene glycol 1,2-dinitrate in experimental animals. *Toxicology and Applied Pharmacology*. 22:128–137.

Stewart, R.D., Peterson, J.E., Newton, P.E., Hake, C.L., Hosko, M.J., Lebrun, A. J., and Lawton, G.M. 1974. Experimental human exposure to propylene glycol dinitrate. *Toxicology and Applied Pharmacology*. 30:377–395.

10. *1,1,1-Trichloroethane*—i. *Description.* 1,1,1-Trichloroethane is a colorless, nonflammable liquid used primarily as an industrial metal degreasing agent. It is also used as a solvent for adhesives, inks, and coatings

and as an aerosol propellant (Nolan et al., 1984). Solvent vapor is readily absorbed from the respiratory tract and distributed throughout the body, accumulating in tissues with high lipid content. In both humans and animals, the primary response to acute inhalation exposures involve effects on the central nervous system (CNS). This chemical is arrhythmogenic and there is some evidence that it produces transient hepatotoxicity (Mcleod et al., 1987; Stahl et al., 1969; Hodgson et al., 1989). It has little effect on other organs and does not seem to be a developmental toxin although reliable epidemiological data for humans are unavailable. 1,1,1-Trichloroethane does not seem to have carcinogenic activity based on the available animal studies. A considerable amount of human and animal data are available for derivation of AEGLs. Rat ataxia and lethality data were used for the regression analyses of the concentration-exposure durations. The relationship between time and concentration was $C^n \times t = k$, where n = 3.3 or 3.

The AEGL-1 was based on consistent complaints of eye irritation and slight dizziness experienced by humans in an atmosphere controlled setting with exposures of 450 ppm for two 4-hour sessions separated by a 1.5-hour interval (Salvini et al., 1971). Stewart et al., 1969, exposed human subjects to time-weighted average (TWA) concentration of 500 ppm for 7 hour repeatedly for 5 days, the only consistent complaint was mild sleepiness and failure of the Romberg test by two of the subjects which had trouble with this test initially. Torkelson et al. (1958) reported a NOAEL for the Romberg test in humans after exposure to a TWA of 506 ppm for 7.5 hour. For derivation of the AEGL-1, the observations of Salvini et al. (1971) were used as the starting point for the threshold of eye irritation and very subtle CNS effects in humans at a concentration of 450 ppm for 4 hour . An UF of 2 was chosen based on the observation that the severity of the eye irritation did not increase with time and the threshold for mild CNS effects does not vary by more than two-three fold which should be protective of sensitive individuals. The resulting figure of 230 ppm was used at all time points based on the information reported by Salvini et al. (1971) indicating that this exposure represented a threshold for these effects and the severity did not increase with duration of exposure.

The AEGL-2 was based on more serious CNS effects which might impede escape. Mullin and Krivanek (1982) calculated EC_{50} values for ataxia in rats at 30-minute and 1-, 2-, and 4-hour exposures to be 6,740; 6,000; 4,240; and 3,780 ppm. These values were used as the basis for AEGL-2 derivation using an UF of 10 and extrapolations were made to the 10-minute and 8-hour time points using the equation $C^n \times t = k$, where n = 3.3 based on the data presented by Mullin and Krivanek (1982). An UF of 10 was applied which includes a factor of 3 to account for sensitive individuals and a factor of 3 for interspecies extrapolation. These UFs were based on the two-three fold variation of minimum alveolar concentration for anesthesia (MAC) values among humans and the similarities in toxicity, metabolism, and excretion of 1,1,1-trichloroethane in rats compared to humans. The resulting concentrations are similar to the concentration exposure durations applied in experimental human studies which resulting in effects that could impede escape, i.e., CNS intoxication.

The AEGL-3 values were derived from a lethality concentration-effect curve in the rat for a 6-hour exposure duration (Bonnet et al., 1980). The LC_0 was conservatively estimated from this curve as a concentration of about 7,000 ppm for a 6-hour exposure duration. An extrapolation was made to the 30-minute and 1-, 4-, and 8-hour time points using the equation $C^n \times t = k$, where n = 3 based on the rat lethality data. An UF of 10 was applied. An intraspecies factor of 3 was used to account for sensitive individuals based on the two-three fold variation of MAC values observed among humans and an interspecies factor of 3 was used because of the similarities in toxicity, metabolism, and excretion of 1,1,1-trichloroethane in rats compared to humans. The resulting concentrations were multiplied by a modifying factor of 3 in order to achieve a reasonable concentration at which humans might experience life-threatening toxic effects. This factor is justified by the existence of a higher blood: Air partition coefficient for rats compared to humans. This principle determines the relative blood concentration for a vapor and because it is higher for rats, a higher blood concentration is achieved.

The proposed values appear in the table below.

SUMMARY OF PROPOSED AEGL VALUES FOR 1,1,1-TRICHLOROETHANE [PPM (MG/M^3)]

Classification	10-min.	30-min.	1-hour	4-hour	8-hour	Endpoint (Reference)
AEGL-1 (Nondisabling)	230 (1,252)	230 (1,252)	230 (1,252)	230 (1,252)	230 (1,252)	Eye irritation and slight dizziness in humans observed (Salvini et al., 1971)
AEGL-2 (Disabling)	930 (5,064)	670 (3,650)	600 (3,270)	380 (2,070)	310 (1,688)	EC_{50} for ataxia in rats (Mullin and Krivanek, 1982)
AEGL-3 (Lethality)	4,800[1] (26,135)	4,800 (26,135)	3,800 (20,690)	2,400 (13,067)	1,900 (10,345)	LC_0 extrapolated (Bonnet et al., 1980)

[1]The 30-minute value was used as the 10-minute value so as not to exceed the threshold for cardiac sensitization observed in dogs (Reinhardt et al., 1973).

ii. References.

Bonnet, P., Francin, J.M., Gradiski, D., Raoult, G., and Zissu, D. 1980. Determination of the median lethal concentration of principle chlorinated aliphatic hydrocarbons in the rat *Archives des Maladies Professionelles.* 41:317–321.

Mullin, L.S. and Krivanek, N.D. 1982. Comparison of unconditioned avoidance tests in rats exposed by inhalation to carbon monoxide, 1,1,1-trichloroethane, and toluene or ethanol. *Neurotoxicology.* 1:126–137.

Reinhardt, C.F., Mullin, L.S., and Maxfield, M.E. 1973. Epinephrine-induced cardiac arrhythmia potential of some common industrial solvents. *Journal of Occupational Medicine.* 15(12):953–955.

Salvini, M. S. and Binaschi, M. Riva. 1971. Evaluation of the psychophysiological functions in humans exposed to the threshold limit value of 1,1,1-trichloroethane. *British Journal of Industrial Medicine.* 28(3):286–292.

List of Subjects

Environmental protection, Hazardous substances.

Dated: March 8, 2000.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–6397 Filed 3–14–00; 8:45 am]

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Federal Register

Wednesday,
March 15, 2000

Part IX

Environmental Protection Agency

Pesticide Tolerance Reassessment and Reregistration; Proposed Public Participation Process; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00645; FRL–6496–2]

Pesticide Tolerance Reassessment and Reregistration; Proposed Public Participation Process

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces EPA's proposal for a public participation process for pesticide tolerance reassessment and reregistration. This proposal is in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency and stakeholder involvement in the development of pesticide risk assessments and risk management documents and decisions. EPA and USDA have been actively employing a pilot public participation process for tolerance reassessment and reregistration of organophosphate pesticides for over 1 year (since August 1998), which was developed in consultation with the Tolerance Reassessment Advisory Committee (TRAC). Consideration must now be given as to whether this public participation process or some modification of it should be adopted as the final process, and whether it should be used for tolerance reassessment and reregistration of all pesticides.

DATES: Comments, identified by docket control number OPP–00645, must be received by EPA on or before April 14, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00645 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general; however, a wide range of stakeholders will be interested in submitting comments on the public participation process that EPA is proposing for tolerance reassessment and reregistration, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. Electronically. You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about the pilot public participation process that is now being used for the organophosphate pesticides, you can also go directly to the Office of Pesticide Programs' (OPP) organophosphate pesticide web page at http://www.epa.gov/pesticides/op/.

B. In Person. The Agency has established an official record for this action under docket control number OPP–00645. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00645 in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvannia Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–00645. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential

will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1.Explain your views as clearly as possible.

2.Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve this notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

IV. What Action is EPA Taking in this Notice?

EPA is making available for public comment a proposal for a public participation process for pesticide tolerance reassessment and reregistration. This proposed public participation process was developed with USDA.

Public comment received as a result of this notice will be considered by EPA and USDA and a final public participation process will be developed and released to the public in a notice published in the **Federal Register**. Implementation of the final public participation process will begin according to a schedule established and published in the final notice.

This notice discusses 3 public participation processes: Pilot, modified, and final. The pilot public participation process refers to the process that EPA and USDA are now using for organophosphate pesticide tolerance reassessment and reregistration. The modified public participation process refers to the process that EPA and USDA proposed to the Tolerance Reassessment Advisory Committee (TRAC) during their October 20–21, 1999, meeting. The final public participation process refers to the process that is being proposed in this notice. In addition, for the purposes of this notice the words "public" and "stakeholders" are used interchangeably.

V. Background

A. Food Quality Protection Act—Process Improvements for Tolerance Reassessment and Reregistration

The Food Quality Protection Act (FQPA) of 1996 amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). These amendments fundamentally changed the way EPA regulates pesticides. The many new FQPA requirements included a new safety standard (i.e., reasonable certainty of no harm) that must be applied to all pesticides used on foods. EPA recognized that FQPA implementation would require changes to the Agency's existing risk assessment processes and its approach to communication with the public (stakeholders). The process improvements would be responsive to Vice President Gore's directive to increase transparency and opportunities for stakeholder consultation.

B. Inception of TRAC

TRAC was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology (NACEPT). TRAC provided a forum for a diverse group of individuals representing a broad range of interests and backgrounds from across the country to consult with and make recommendations to the Administrator of EPA and the Secretary of USDA on an approach for pesticide tolerance reassessment and reregistration, including those for organophosphate pesticides, as required by FQPA. The Committee held seven public meetings: May 28–29; June 22–23; July 13–14; July 28–29; September 15–16, 1998; and April 27–28 and October 20–21, 1999. TRAC membership included approximately 45 members approved by the Deputy Administrator of EPA and the Deputy Secretary of USDA. Members were selected based on their relevant experience and diversity of perspectives on organophosphate pesticide and food safety issues, including those from the following sectors: Environmental and public interest groups; pesticide industry and trade associations; user, grower and commodity organizations; pediatric and public health organizations; Federal agencies; Tribal, State, and local governments; academia; and consumer groups. The Deputy Administrator of EPA and the Deputy Secretary of USDA served as TRAC Co-Chairs.

C. Development of the Pilot Public Participation Process

In the summer of 1998, EPA, USDA, and TRAC set out to design a process that would increase transparency of regulatory processes and consultation with affected stakeholders; expand public access to risk assessment and risk management processes; and find more effective ways for the public to participate at critical times in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. At the July 14, 1998, meeting of the TRAC, EPA, and USDA announced that one of the public participation process options considered by TRAC would be implemented as a pilot. By piloting a public participation process, EPA, USDA, and TRAC could test whether the process achieved the goals of increasing transparency and stakeholder consultation. A pilot effort would provide an opportunity to identify issues associated with public release of risk assessments and management documents, and to evaluate how best to obtain public input into the risk assessment and risk management development processes.

D. Need for a Final Public Participation Process

EPA and USDA have been actively employing the pilot public participation process for tolerance reassessment and reregistration of organophosphate pesticides for over 1 year (since August 1998). Consideration must now be given as to whether this process or some modification of it should be adopted as the final process, and whether it should be used beyond the tolerance reassessment and reregistration for organophosphate pesticides and be applied to all pesticides.

In addition, EPA and USDA will soon begin to consider the stakeholder involvement that will be needed for the cumulative assessment stage. FQPA requires the assessment of cumulative effects of pesticides that share a common mechanism of toxicity. Once the individual pesticide risk assessments are complete and the Agency has a cumulative assessment methodology, EPA and USDA will encourage the public to participate in the cumulative assessment process.

VI. The Pilot Public Participation Process

A. Description of the Pilot Public Participation Process

The following provides a brief overview of the pilot public participation process:

Phase 1—Registrant "Error Only" Review (30 days). EPA sends its preliminary human health and ecological risk assessments to registrant(s) of the pesticide for a 30-day error correction review, and to USDA. They are asked to identify any computational or other errors that EPA has made in developing its preliminary assessment of the pesticide's risks.

Phase 2—EPA Considers Registrants' Error Comments (up to 30 days). EPA summarizes and considers comments from registrants and USDA. EPA incorporates comments or makes changes in the preliminary risk assessments to correct any errors identified. By the end of this phase, EPA opens a public docket for the pesticide.

Phase 3—Public Comment on Preliminary Risk Assessments (60 days). EPA publishes a **Federal Register** (FR) Notice of Availability announcing its preliminary risk assessments, and opening a 60-day public review and comment period. Registrants, grower groups, other stakeholders, and the public are encouraged to submit data and other information to refine EPA's preliminary risk assessments. They also may begin submitting risk management proposals to address any risk concerns identified in the document. EPA may meet with registrants and other stakeholders to discuss risk related data, use information, and risk assessment/risk management alternatives.

Phase 4—EPA Revises Risk Assessments (up to 90 days). EPA summarizes and considers comments, data, and risk mitigation proposals received during the Phase 3 public comment period. EPA develops the revised risk assessments and sends them to USDA for review. EPA and USDA may host public meetings to share the revised risk assessments with interested stakeholders and discuss risk management ideas.

Phase 5—EPA Solicits Risk Management Ideas (60 days). EPA releases the revised risk assessments to the public for viewing in the public docket. EPA publishes an FR Notice of Availability opening a 60-day public consultation period during which risk management proposals are solicited. Registrants, grower groups, other stakeholders, and the public are encouraged to participate and submit their risk management proposals. EPA and USDA may meet with registrants and other stakeholders to discuss risk management alternatives and strategies. Meeting minutes will be included in the public docket.

Phase 6—EPA Develops Risk Management Strategies (up to 60 days). EPA considers all risk management proposals received. With input from USDA, EPA develops risk management strategies that ultimately will contribute to the Agency's risk management decisions for this and other organophosphate pesticides.

B. Success of the Pilot Public Participation Process

To date, the pilot public participation process has provided EPA and USDA with a great deal of information for use in refining the risk assessments and in developing risk management options. Stakeholder participation has risen substantially. In the fall of 1999, EPA and USDA took a qualitative look at the strengths and challenges of the pilot public participation process. The following provides a qualitative look at the comments EPA received from registrants and other stakeholders during the phases of the pilot public participation process, and how these comments affected the risk assessments and process schedules.

Registrants were given an opportunity in Phase 1 to identify computational errors as well as grammatical and spelling errors in the preliminary risk assessments. In this way, if the Agency agreed with the registrant's error identification, EPA could correct the errors in Phase 2 prior to the release of the preliminary risk assessments to the public docket (Phase 3). EPA would inform the public of the registrant's error comments and the corrective actions taken by the Agency. However, the large majority of comments received from registrants during their error-identification period were considered to be non-error comments. In the cases where errors were identified, only a few resulted in a substantial change to the preliminary risk assessments and a delay in the release of the assessments to the public. The majority of non-error comments received were general comments about the preliminary risk assessments and promises to submit new studies. New studies were submitted in a few instances.

Comments received during the public comment period on the preliminary risk assessments (Phase 3) substantially affected approximately one-third of the organophosphate preliminary risk assessments, typically because of the submission of information on the pesticide's use and usage, studies, or other technical information. In several cases, registrants submitted new studies and studies to confirm or upgrade existing, submitted studies.

The Agency and USDA used Phase 4 to revise the preliminary risk assessments based on public comment. EPA released the revised risk assessments and related documents to the public in Phase 5 and initiated a public participation period for risk management. Risk management comments and ideas were usually received by EPA during meetings and conference calls rather than through written submissions. Minutes of meetings and conference calls were recorded and placed in the public docket.

C. A Proposal for a Final Public Participation Process was Made at the October 20–21, 1999, TRAC Meeting

EPA and USDA proposed a modified public participation process to TRAC during their October 20–21, 1999, meeting. EPA and USDA approached TRAC with a proposal because the pilot public participation process had been tested for over 1 year and it was time to consider a final public participation process. The proposed modified public participation process was based on USDA's and EPA's experiences using the pilot public participation process. The proposed modified public participation process included several stakeholder participation enhancements. A special emphasis was placed on the public involvement activities that take place prior to Phase 1—before the start of the public participation process—to ensure that the most complete and accurate set of information was being used in the risk assessments. In addition, stakeholders would be much more informed of the schedule of pesticides that EPA and USDA would be working on in the next year, and would know when EPA and USDA needed information. Conference calls and public meetings (technical briefings that describe the revised risk assessments in general, and stakeholder meetings where the description of the risk assessments is focused on a particular pesticide user group's area of concern) would be used to initiate the public comment period on the risk assessments, engage the public in a discussion of the risk assessments, and begin the discussion of risk management.

The proposed modified public participation process would have eliminated a public comment period on the preliminary risk assessments. This modification was a result of the recognition that the risk assessments

now under development contain many more refinements than previous preliminary risk assessments. In the past, the preliminary risk assessments that were released to the public did not usually have refinements, such as probabilistic dietary risk assessment tools or the data needed for the use of these tools. The Agency saw the benefit of releasing these unrefined, preliminary risk assessments to the public as a means of encouraging the submission of data that could be used for refinement purposes. The risk assessments being developed now typically contain these refinements, therefore, the Agency proposed that 2 comment periods on the refined risk assessments were not necessary. Even though the proposed modified public participation process would have eliminated a public comment period on the preliminary risk assessments, EPA and USDA would continue to encourage and organize stakeholder communications throughout the modified public participation process through a series of meetings and conference calls.

In addition, EPA and USDA asked TRAC members if the modified public participation process should be applied to pesticides other than the organophosphates, which currently are the only class of pesticides in the pilot public participation process.

D. Summary of TRAC's Feedback

During the October 20–21, 1999, TRAC meeting, TRAC members verbally responded to the proposed modified public participation process that EPA and USDA presented. Many TRAC members voiced strong support for increased and enhanced EPA and USDA activities in the months prior to formal start of the public participation process (i.e., Pre-Phase 1), including stakeholder meetings and conference calls, the release to the public at the beginning of the process of a general pesticide use and usage description and the schedule of pesticides entering the process, and discussions with pesticide registrants and stakeholders about the submission of data and the data submission schedule.

Several TRAC members voiced concern over their perceived reduction in public participation opportunities resulting from the elimination of one risk assessment comment period, and also objected to the proposed plan for having public comment on the risk assessments and risk management options occur during the same phase. Certain TRAC members voiced concern that the risk management options issued for public comment would be perceived as the Agency's final risk management decision, giving stakeholders no real opportunity to weigh-in before the final decisions were made. Concern was also raised about issuing risk management decisions on any uses of a pesticide before the conclusion of the public participation process; however, the Agency has always reserved this authority if certain uses of a pesticide warranted action because of the risk levels identified in the risk assessments.

TRAC members expressed support for EPA issuing only highly refined risk assessments for public comment, and for longer public comment periods. Support was also expressed for technical briefings and stakeholder meetings at the time the risk assessments are released for public comment, and for an enhanced public role for USDA at that time, including the organization of stakeholder conference calls and meetings. In addition, TRAC members supported the application of the final public participation process to all other pesticides scheduled for tolerance reassessment and reregistration.

VII. Proposal for the Final Tolerance Reassessment and Reregistration Process

A. EPA and USDA's Consideration of a New Public Participation Process

EPA and USDA have considered the comments received from TRAC during their October 20–21, 1999, meeting, and are releasing in this notice a proposal for a final public participation process. EPA and USDA reconsidered the process approach presented to TRAC, and have developed a new public participation process proposal. The new proposed public participation process melds together the pilot public participation process and the modified public participation process that was proposed to TRAC. The new proposed public participation process retains the 6 phases and much of the structure of the pilot public participation process currently used for the organophosphate pesticides, and it incorporates the considerable enhancements to public participation found in the modified public participation process that was presented to TRAC. These enhancements include increasing the communication with stakeholders prior to the initiation of the public participation process, the addition of conference calls with stakeholders throughout the process, the lengthening of a public participation phase, and the release of risk management proposals to the public at the beginning of Phase 5. In addition, the proposed public participation process emphasizes increased communication among those Federal government agencies concerned with pesticides.

EPA is also proposing that this public participation process be applied to all pesticides scheduled for tolerance reassessment and reregistration. Interim planning for bringing non-organophosphate pesticides under a formal public participation process is discussed at the end of this notice.

The Agency anticipates that modifications to the public participation process will be appropriate for pesticides with limited use and usage, low risk concerns, small numbers of pesticide users, or other factors. EPA will inform the public of modifications to the public participation process that are warranted for a pesticide. For pesticides meeting these criteria, alterations to the public participation process will most typically include a tailoring of the stakeholder communication opportunities. For example, the public participation process could be modified for a pesticide with a small number of users by the substitution of a stakeholder meeting(s) for a technical briefing upon release of the risk assessments for public comment (Phase 3) (stakeholder meetings are opportunities for stakeholder groups to meet with EPA, USDA, and other appropriate Federal government agencies to discuss specific uses of the pesticide that are of significant concern to them, whereas technical briefings provide a general overview of the pesticide's risk assessments). In another example, a pesticide with limited use and usage, low risk concerns, and highly refined risk assessments may only need one public comment period on the risk assessments as long as ample public consultation opportunities are utilized. EPA will inform the public of pesticides that will have modified public participation processes.

EPA will continue to issue risk management decisions on certain uses of a pesticide at any time before or during the public participation process if such action is warranted by high risk levels identified in the risk assessments. While EPA may exercise this authority at anytime during this process, the Agency will ensure that stakeholders and other Federal government agencies will be informed and involved in the decisionmaking process through meetings and conference calls.

B. Proposed Public Participation Process

The proposed final public participation process contains many of the same elements of the Pilot Public

Participation Process and enhances public participation at important stages. It must be noted that the proposed final public participation process does not use the word "preliminary" to describe the risk assessments that are released to the public in the early phases of the public participation process. This is because the risk assessments now under development contain many more refinements than previous preliminary risk assessments.

Pre-Phase 1—Public Engagement. A significant focus of the process is to engage stakeholders as early as possible to ensure that risk assessments reflect actual use and usage, available data, current labeling, and other information on use practices that stakeholders can provide. In the months prior to the formal initiation of the public participation process (which starts with release of the risk assessments to the registrants for error correction), USDA, EPA, and other Federal government agencies (e.g., the Department of Health and Human Services (HHS), and the Food and Drug Agency (FDA)) will work cooperatively to organize meetings with interested stakeholders to discuss pesticide use and usage, and to encourage them to share their information with the agencies.

In addition, EPA will inform the public well in advance about pesticides that are scheduled for the public participation process. Registrants will be asked to identify any ongoing studies and analyses that are relevant to the risk assessments, and EPA will announce for each pesticide the due dates for the submission of data, information, and analyses. In this way, the public will be able to prepare for the initiation of the public participation process for pesticides that they may be interested in, including the preparation of data and information for consideration by the agencies.

Phase 1—Risk Assessment Registrant Error-Only Review, Chemical Use and Usage Description, and Federal Government Agency Engagement (30 Days). Phase 1 of the proposed public participation process is the same as the pilot public participation process, in that the risk assessments are sent to the pesticide's registrant(s) for error correction, but an increased effort at disseminating information to the public has been added as well as enhanced Federal agency communication. EPA initiates the public participation process by transmitting its human health and ecological risk assessments to registrant(s) of the pesticide for a 30-day error correction review. They are asked to identify and correct any computational or other errors that EPA has made in developing its assessment of the pesticide's risks. Registrants will be asked again about due dates for the submission of data and information to EPA, and for an indication of how the study or analysis may change the risk assessments. EPA will not delay its work in assessing the potential risks associated with the use of the pesticide when a study submission date is beyond the timeframe for the public participation process.

In addition, EPA recognizes that the public would find useful for their planning purposes a description of the pesticide that has started the public participation process. The Agency will publish a FR Notice of Availability announcing the release of the pesticide's use and usage description to the public docket and internet website for 30-day public comment. The pesticide's use and usage description would characterize the use, usage, and types of data and information used in the risk assessments.

At the same time that the risk assessments are sent to registrants, EPA transmits the risk assessments and related documents (including the pesticide's overview that summarizes the risk assessments, the Qualitative Usage Analysis, and the pesticide's use and usage description) to USDA and other appropriate Federal government agencies for review and comment.

Phase 2—Agency Considers Registrant Error Comments (Up to 30 Days). In Phase 2, EPA summarizes and considers the errors that have been identified by the registrant(s) and makes changes in the risk assessments to correct any errors, as appropriate. EPA will also address risk assessment comments received from other Federal government agencies. By the end of this phase, the risk assessments are prepared for public release. Discussions with other Federal government agencies on comments and issues will continue throughout the public participation process, as needed.

Phase 3—Public Participation Period: Public Comment on Risk Assessments and Risk Characterization (60–90 Days). Phase 3 provides the public with an opportunity to comment on the pesticide's risk assessments. The phase begins when EPA publishes a FR Notice of Availability of the risk assessments and related documents (e.g., overview, summary, table summarizing risk assessment information, registrant's error comments, and EPA's response to comments, etc.) for a 60 to 90-day public review and comment period. The summary documents will clearly characterize the risks associated with each use of the pesticide and include a use impact discussion that identifies possible pesticide alternatives for significant uses, thereby allowing the public to discern the Agency's level of concern (if any) for each use at this stage in the development of the risk assessments. All of the documents will be made available in the public docket and EPA's internet website. The length of the public comment period will be set according to the complexity of the risk issues associated with the pesticide in order to give stakeholders adequate time for review and comment.

In addition, an effort will be initiated among Federal government agencies to engage stakeholders in a dialogue on the risk assessments and risk characterization, and will continue through Phase 5 of the public participation process.

Phase 4—EPA Revises Risk Assessments and Develops Risk Management Proposal (up to 90 days). EPA considers stakeholders comments received during Phase 3's public comment period, and develops the revised risk assessments and a risk management proposal. An inter-Federal government agency senior management briefing will be held to discuss the revised risk assessments and risk management proposal.

USDA may organize conference calls with stakeholders to review and discuss the revised risk assessments and risk management proposal. Minutes from all meetings and conference calls will be included in the public docket. EPA and USDA will work to summarize and address the comments and ideas received during the stakeholder conference calls. In addition, an effort will be initiated among Federal government agencies to engage stakeholders in a dialogue on the risk assessments and risk characterization, and this effort will continue through Phase 5 of the public participation process.

A technical briefing and/or stakeholder meeting(s) (as appropriate for pesticides with limited use and usage, low risk concerns, small numbers of stakeholders, or other factors) will be held at the end of Phase 4 in order to share with the public the revised risk assessments and the range of possible risk management options.

Phase 5—EPA Solicits Comments on Risk Management Proposal (60 days). EPA publishes a FR Notice of Availability announcing the release to the public of the revised risk assessments and the Agency's response to public comments. This FR notice will also release EPA's risk management proposal, a use impact discussion that identifies possible pesticide alternatives for significant uses, and a transition

strategy, and open a 60-day comment period during which the public is encouraged to comment on the risk management proposal.

The effort among Federal government agencies to engage stakeholders in a dialogue on the risk management proposal will continue throughout Phase 5.

Phase 6—Develop Final Risk Management (up to 60 Days). In Phase 6, EPA summaries, reviews, and considers the comments, data, and risk management ideas and proposals received during the Phase 5 public comment period, and during stakeholder dialogue and the meetings that have occurred during Phases 3–5. With input from USDA and other Federal government agencies, EPA develops the risk management documents. EPA releases to the public the risk assessments, the response to public comments, and the risk management decisions for the pesticide.

VIII. Interim Public Participation Process

EPA and USDA are now considering how to accomplish the movement from the public participation process that was tested as a pilot (i.e., the pilot public participation process now used exclusively for organophosphate pesticides) to the public participation process that will be adopted for future pesticide tolerance reassessment and reregistration. The majority of organophosphate pesticides have made significant progress through the pilot public participation's phases, and many are nearing completion, therefore, the pilot public participation process will continue to be applied to those organophosphates. The public participation process that will be finalized after the notice and comment period described in this FR notice will be fully applied to pesticide tolerance reassessment and reregistration by 2001. An interim policy must be developed for the non-organophosphate pesticides scheduled for tolerance reassessment and reregistration development work in 2000.

The interim policy must take into account that the risk assessments are substantially complete for many of the non-organophosphate pesticides scheduled for 2000. An example of the public participation process that EPA is considering as an interim policy for pesticides that already have significant risk assessment work underway would involve: A registrant error correction period; a period for the Agency to respond to the registrant's error comments; the release of the refined risk assessments and risk characterizations to the public via the docket and internet without a formal public comment period; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management document to the public after the consideration of issues and discussions with stakeholders.

EPA and USDA are in the process of identifying the development status of each pesticide scheduled for tolerance reassessment and reregistration. EPA will inform stakeholders of the interim plan for each pesticide once a final public participation process is selected.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 9, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

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Abraham Lincoln Bicentennial Commission Act (Feb. 25, 2000; 114 Stat. 14)

S. 632/P.L. 106–174

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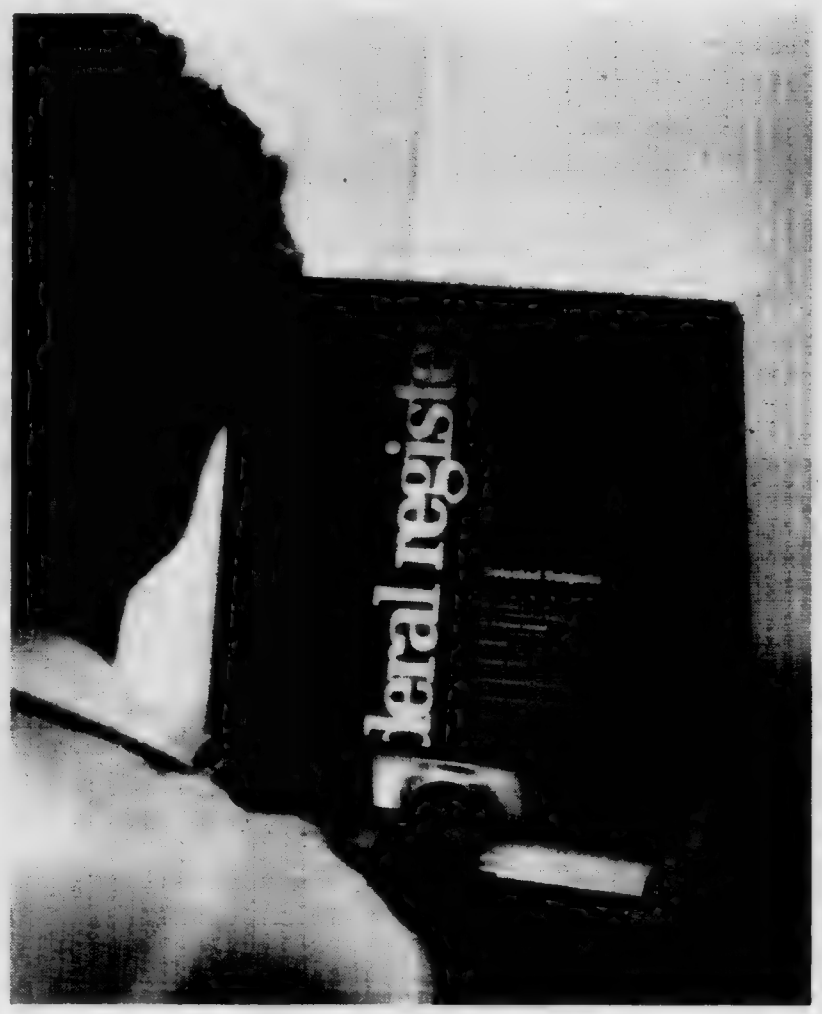

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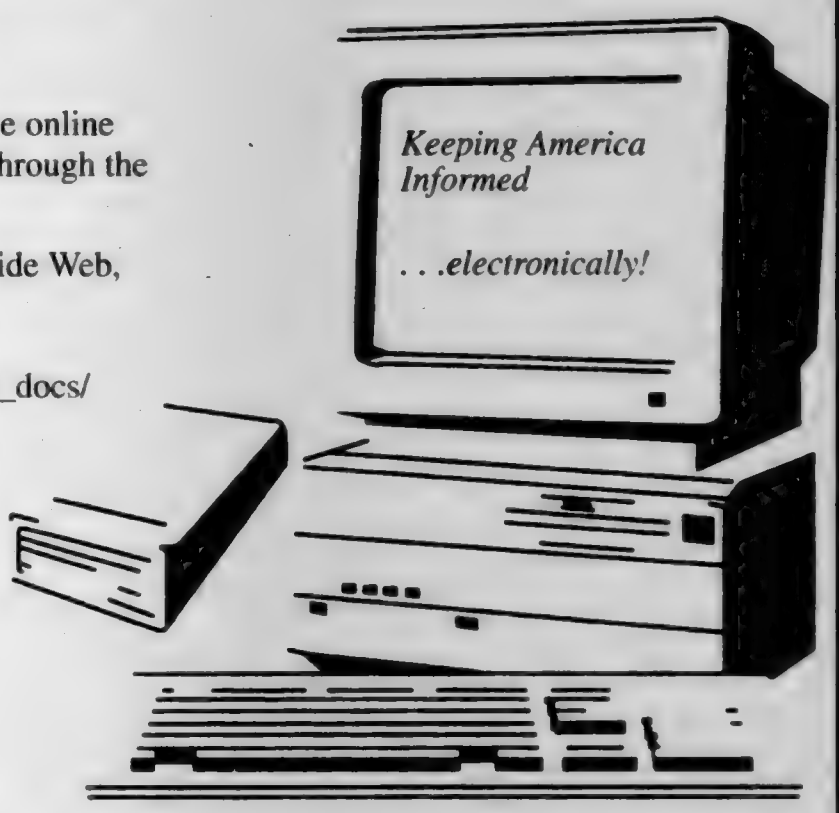

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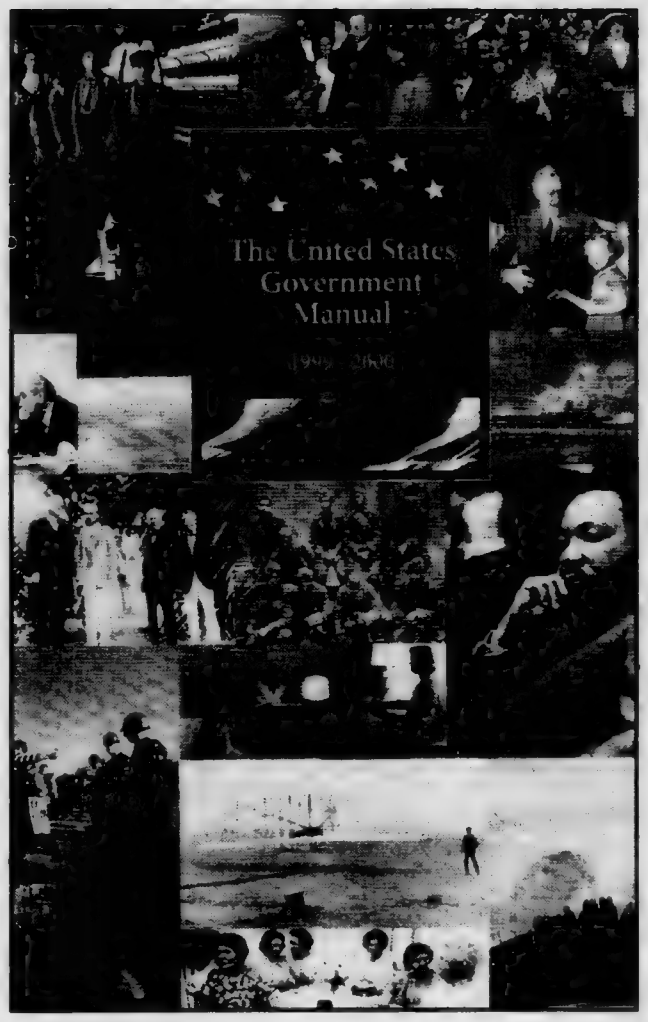

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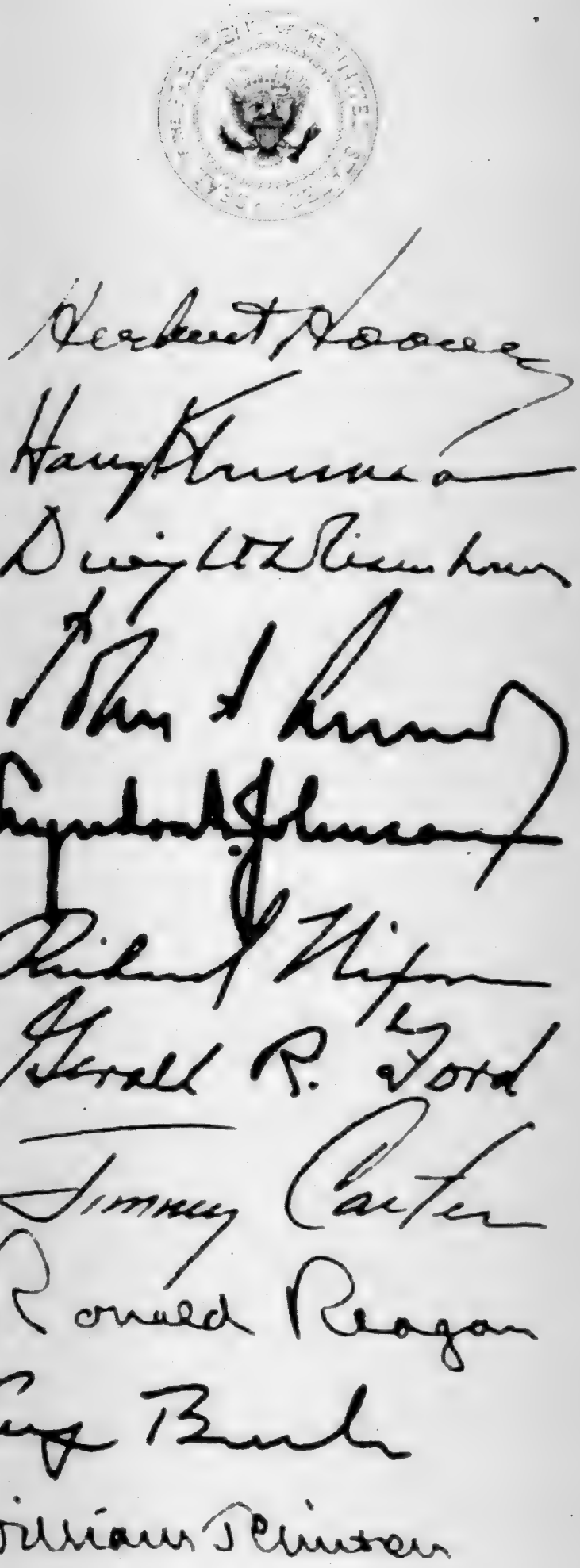

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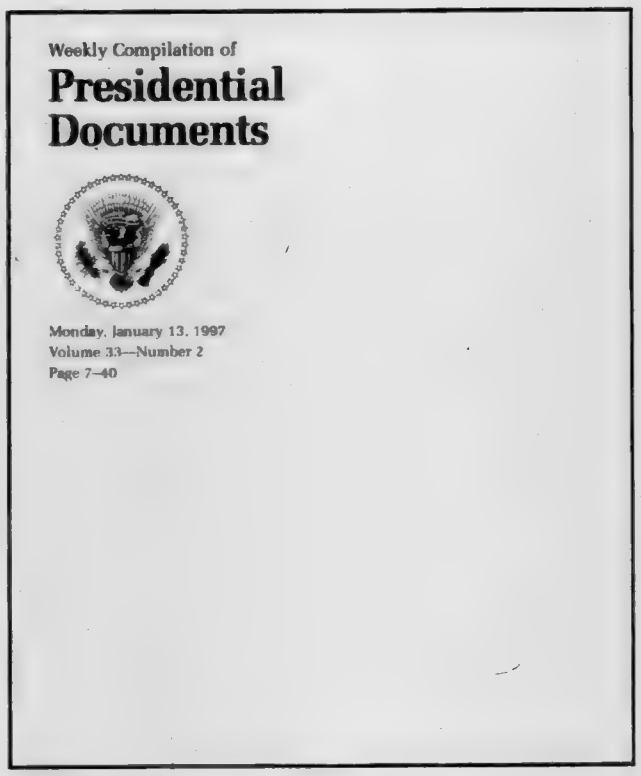

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Rules and Regulations

Federal Register
Vol. 65, No. 52
Thursday, March 16, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of confirmation of effective date.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice that no adverse comments were received regarding the direct final rule on the General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, published in the **Federal Register**, June 22, 1999, at 64 FR 33176, and confirms the effective date of the direct final rule.

DATE: The direct final rule, which published at 64 FR 33176, was effective August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Blaine D. Stockton, Jr., Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560. Telephone: (202) 720–9545. FAX: (202) 690–0717. E-mail: bstockto@rus.usda.gov.

Confirmation of Effective Date

This is to confirm the effective date of the direct final rule, 7 CFR Part 1710, General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, published June 22, 1999, at 64 FR 33176, and is to advise that RUS did not receive any written adverse comments and no written notice of intent to submit adverse comments on this rule.

Dated: March 9, 2000.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 00–6388 Filed 3–15–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–02–AD; Amendment 39–11622; AD 2000–05–12]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–524 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Rolls-Royce plc RB211–524 series turbofan engines. This action requires initial and repetitive ultrasonic inspections for cracks in fan blade dovetail roots, and, if necessary, replacement with serviceable parts. This action also provides the options of installing improved design fan blades or reworking current fan blades to the improved configuration as terminating action for the inspections. This amendment is prompted by reports of fan blade failures due to dovetail root cracks. The actions specified in this AD are intended to prevent possible multiple fan blade failures, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective March 31, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–02–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax International Access Code 011, Country Code 44, 1332–249223. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7176, fax 781–238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on certain Rolls-Royce plc (R–R) RB211–524 series turbofan engines. The CAA received reports of three fan blade failures to date. Subsequent inspections of the dovetail root area on other fan blades revealed the existence of dovetail root cracks in the same region as the failed blades. This condition, if not corrected, could result in possible multiple fan blade failures, which could result in an uncontained engine failure and damage to the aircraft

Service Information

R–R has issued Mandatory Service Bulletin (SB) No. RB.211–72–C818, Revision 2, dated October 8, 1999, that specifies procedures for ultrasonic inspections for cracks in fan blade dovetail roots and provides rejection criteria. The CAA classified this SB as mandatory and issued airworthiness directive (AD) 007–10–99 in order to assure the airworthiness of these engines in the UK.

In addition, R–R has issued SB RB.211–72–C891, dated February 2, 2000, that describes procedures for installing improved design fan blades or

reworking current fan blades to the improved configuration.

Bilateral Airworthiness Agreement

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD requires initial and repetitive ultrasonic inspections for cracks in fan blade dovetail roots, and, if necessary, replacement of cracked fan blades with serviceable parts. This AD also provides the options of installing improved design fan blades or reworking current fan blades to the improved configuration as terminating action for the inspections. The improved design fan blades are undercut along the entire length of the blade root block and the blade root flanks are now grit blasted. In addition, the dry film lubricant is applied in an improved adhesive manner and the thickness of both the front and rear chocking pads and stop lug pin assembly has been reduced.

Immediate Adoption

There are currently no domestic operators of this engine model. Accordingly, a situation exists that allows the immediate adoption of this regulation. Notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–02–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–12 Rolls-Royce plc: Amendment 39–11622. Docket 2000–NE–02–AD.

Applicability: Rolls-Royce plc (R–R) Models RB211–524G2–19, RB211–524G3–19, RB211–524H2–19, RB211–524G2–T–19, RB211–524G3–T–19, RB211–524H2–T–19, and RB211–524H–36 turbofan engines, with fan blades, part numbers (P/Ns) UL36245, UL38009, UL38052, or UL38628, installed. These engines are installed on but not limited to Boeing 747–400 series and 767 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible multiple fan blade failures, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

Ultrasonic Inspections

(a) Ultrasonically inspect the dovetail roots of fan blades, P/Ns UL36245, UL38009, UL38052, and UL38628, for cracks as follows:

Initial Inspection

(1) Initially inspect at the latest of:

(i) before accumulating 2,050 total fan blade part cycles-since-new.

(ii) 50 fan blade cycles-in-service (CIS) after the effective date of this AD.

(iii) 200 fan blade CIS since last inspection.

Service Bulletin

(2) Inspect and determine rejection status in accordance with the following paragraphs

of R–R Mandatory Service Bulletin (SB) RB.211–72–C818, Revision 2, dated October 8, 1999:

(i) Compliance section C, page 2.

(ii) Accomplishment Instructions section, items A through and including B(6), pages 5 and 6.

(iii) Acceptance criteria section, Appendix 1 (4), items A and B, page 9.

Earlier Versions of Service Bulletin

(3) Initial inspections accomplished using the original issue of R–R SB RB.211–72–C818, dated August 6, 1999, or Revision 1, dated August 20, 1999, are acceptable.

Repetitive Inspections

(4) Thereafter, inspect at intervals not to exceed 200 CIS since last inspection in accordance with R–R Mandatory RB.211–72–C818, Revision 2, dated October 8, 1999.

Cracked Parts

(5) Prior to further flight, remove from service cracked fan blades and replace with serviceable parts in accordance with R–R Mandatory RB.211–72–C818, Revision 2, dated October 8, 1999.

Optional Terminating Action

(b) Accomplishment of either of the following actions constitutes terminating action to the inspections required by paragraph (a) of this AD:

(1) Remove from service fan blades, P/Ns UL36245, UL38009, UL38052, and UL38628, and replace with serviceable fan blades with P/Ns other than P/Ns UL36245, UL38009, UL38052, and UL38628, or

(2) Rework fan blades to the improved configuration and mark the reworked fan blades with P/Ns FW12018, FW12019, FW12020, or FW12021, in accordance with the Accomplishment Instructions of R–R SB RB.211–72–C891, dated February 2, 2000.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Engine Certification Office.

Ferry Flights

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions required by this AD shall be performed in accordance with the R–R Mandatory SB RB.211–72–C818, Revision 2, dated October 8, 1999, and SB RB.211–72–C891, dated February 2, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax International Access Code 011, Country Code 44, 1332–249223. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on March 31, 2000.

Issued in Burlington, Massachusetts, on March 6, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–5891 Filed 3–15–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–87–AD; Amendment 39–11625; AD 2000–05–15]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS355N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS355N helicopters. This action requires inspecting the: 4 engine exhaust pipe ejector attachment lugs (lugs) for cracks; starter-generator (S–G) shaft for radial play; S–G attachment flange for cracks; and S–G attachment half-clamps for cracks.

This amendment is prompted by 9 reports of S–G damage; 3 reports of the discovery of cracks in the lugs; and 1 report of an in-flight loss of the exhaust pipe ejector. The actions specified in this AD are intended to prevent separation of an engine exhaust pipe ejector from the helicopter, which could result in a tail rotor strike and subsequent loss of control of the helicopter.

DATES: Effective March 31, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–87–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS355N helicopters. The DGAC advises that starter-generator deterioration may lead to failure of the engine exhaust pipe ejector attachment lugs and subsequent loss of the ejector.

Eurocopter France has issued Eurocopter France Service Telex No. 01.00.45, dated October 27, 1999, which requests that the following items must be inspected within 10 hours time-in-service (TIS) and then at intervals of 100 hours TIS: 4 lugs for cracks; S–G shaft for significant radial play; S–G attachment flange for cracks; and S–G attachment half-clamps for cracks.

The DGAC classified this telex as mandatory and issued AD 1999–469–058(A), dated December 1, 1999, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and

determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS355N helicopters of the same type design registered in the United States, this AD is being issued to prevent separation of an engine exhaust pipe ejector from the helicopter, which could result in a tail rotor strike and subsequent loss of control of the helicopter. This AD requires, within 10 hours TIS and then at intervals not to exceed 100 hours TIS, inspecting the: 4 lugs for any crack; S–G shaft for radial play; S–G attachment flange for any crack; and S–G attachment half-clamps for any crack.

The actions are required to be accomplished in accordance with the telex described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 13 helicopters will be affected by this AD and that it will take approximately 3 work hours to accomplish the inspections. The work hours required to replace the parts will be: 2 work hours to replace the S–G; 1 work hour to replace the clamp and flange; and 2 work hours to replace the exhaust pipe.

The average labor rate is estimated to be $60 per work hour. Required parts, per helicopter, will cost approximately: $6,346 for each S–G; $12,148 for each exhaust pipe; $500 for each flange; and $175 for each clamp.

Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $180 per helicopter to accomplish each inspection and $19,469 per helicopter to replace the S–G, the exhaust pipe, the flange, and the clamp.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–87–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–05–15 Eurocopter France: Amendment 39–11625. Docket No. 99–SW–87–AD.

Applicability: Model AS355N helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 10 hours time-in-service (TIS) and thereafter at intervals not to exceed 100 hours TIS, unless accomplished previously.

To prevent separation of an engine exhaust pipe ejector from the helicopter, which could result in a tail rotor strike and subsequent loss of control of the helicopter, accomplish the following:

(a) In accordance with paragraph BB of Eurocopter France Service Telex No. 00095, dated October 27, 1999 (Telex) that references Service Telex No. 01.00.45, visually inspect the:

(1) 4 engine exhaust pipe ejector attachment lugs (lugs) for any crack;

(2) starter-generator (S–G) shaft for radial play;

(3) S–G attachment flange for any crack; and

(4) S–G attachment half-clamps for any crack.

(b) If a crack is found in either the lugs, the S–G attachment flange, or the S–G attachment half-clamps, repair or replace the cracked part with an airworthy part prior to further flight.

(c) If radial play is discovered in the S–G, replace it with an airworthy S–G prior to further flight.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The inspections and replacements, if necessary, shall be done in accordance with Eurocopter France Service Telex No. 00095, dated October 27, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 31, 2000.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 1999–469–058(A), dated December 1, 1999.

Issued in Fort Worth, Texas, on March 6, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–6035 Filed 3–15–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF STATE

22 CFR Parts 22, 23 and 51

[Public Notice 3254]

Schedule of Fees for Consular Services; Finance and Accounting; and Passports and Visas

AGENCY: Bureau of Consular Affairs, State Department.

ACTION: Direct final rule.

SUMMARY: This direct final rule replaces the existing fee charged for each passport issued, that is refunded when a passport is not issued, with a non-refundable fee charged for each application filed for a passport. Accordingly, the Department of State will refund the passport application fee only when the fee has been collected in error. The Department will not refund the fee paid for a passport application when, after processing, it is determined that the applicant will not be issued a passport. Nor will the Department refund a passport application fee to the executor or administrator of the estate of the deceased bearer of an unused passport, or refund a passport application fee to any person issued a passport who has been refused a visa by a foreign government. The rule provides, however, that a person, whose passport application is denied, may have the application reconsidered without being required to pay an additional application fee by submitting adequate documentation that overcomes the reason for denial within 90 days from the date of the denial notice.

DATES: This rule is effective May 15, 2000 without further action, unless adverse comment is received by April 17, 2000. If adverse comment is received and is well-taken, the Department of State will publish a timely withdrawal of the rule in the **Federal Register**, and it will not take effect.

ADDRESSES: Written comments should be addressed to: Chief, Legal Division, Office of Passport Policy, Planning and Advisory Services, 1111 19th Street, N.W., Suite 260, Washington, D.C. 20524.

FOR FURTHER INFORMATION CONTACT: Sharon Palmer-Royston, Office of Passport Policy, Planning and Advisory Services, Bureau of Consular Affairs, Department of State (202) 955–0231; telefax (202) 955–0230.

SUPPLEMENTARY INFORMATION:

Background

Section 1 of the Passport Act of June 4, 1920 (22 U.S.C. 214) previously provided for payment into the Treasury of a fee, prescribed by the Secretary of State by regulation, for "each passport issued", and a fee for executing "each application for a passport". Congress enacted Section 233 of Pub.L. 106–113, November 29, 1999, which amended Section 1 of the Passport Act by striking those provisions and inserting in their place the requirement for payment of a fee for "the filing of each application for a passport (including the cost of passport issuance and use)" and a fee for executing "each such application" for a passport. Section 233 further provides that "such fees shall not be refundable, except as the Secretary may by regulation prescribe". Section 233 also repealed Section 4 of the Passport Act of 1920 (22 U.S.C. 216), which authorized the refund of the fees paid by the person to whom a passport was issued, whenever the appropriate officer within the United States of any foreign country refuses to issue a visa in a passport issued by the United States, upon request in writing and return of an unused passport within six months from the date of issue.

This direct final rule implements Section 233 of Pub.L. 106–113 by amending the existing Schedule of Fees for Consular Services in the list of Passport and Citizenship Services under 22 CFR 22.1, to change "issuance" to "application", and amends 22 CFR 22.6 by deleting the provision for the refund of the passport fee pursuant to 22 U.S.C. 216. This rule also amends the regulations governing passport fees in 22 CFR 51.61(a), by changing the "fee for each passport issued" to a "fee for each passport application filed", and amends 22 CFR 51.63 by changing "passport fee" to "passport application fee" and by deleting paragraphs (b), (c) and (d).

The effect of this rule is that the Department of State will not refund the fee paid for a passport application when the Department determines, after processing, that a passport may not be issued pursuant to the regulations governing passports. Nor will the Department refund a passport application fee to any person who, after a passport has been issued to them, has been refused a visa by a foreign government. Further, the Department will not refund a passport application fee to the executor or administrator of the estate of the deceased bearer of an unused passport. A refund will not be made in those cases, because the application for a passport will have been processed in accordance with the fee paid for the application.

However, the Department recognizes that there are cases where an application for issuance of a passport will be denied on the sole ground of inadequate documentation or for a reason that can be cured by the provision of further documentation. In those cases, a new application fee should not be required when the applicant provides acceptable documentation in a timely manner so that a passport is issued. A person whose application for a passport has been denied, moreover, is informed in writing of the specific reason(s) for the denial, as provided by regulation. Therefore, this rule also provides that a person, whose passport application has been denied, may have the denied application reconsidered without payment of an additional passport

application fee by submitting adequate documentation within 90 days from the date of the notice of denial. The term "adequate documentation" includes evidence that the applicant is in the process of obtaining the necessary documents, which may have been missing or lost and may require considerable time to obtain or replace. The denial becomes final, however, if adequate documentation is not submitted before the elapse of 90 days after the date of the denial notice. The Department's passport regulations do not preclude a person, whose passport application has been denied, from subsequently submitting a new passport application with payment of a new application fee.

This rule does not affect the fee for executing an application for a passport, which cannot be refunded pursuant to the existing regulation in 22 CFR 51.65. Therefore, the Department will refund the passport application fee and the fee for executing an application for a passport only in cases when the fee was collected in error from persons exempted from payment by law, or the fee collected was in excess of the prescribed fee, as is currently provided by regulation.

This rule is effective May 15, 2000. If adverse comment is received and is well-taken, the Department of State will publish a timely withdrawal of the rule in the **Federal Register**. If an adverse comment applies to an amendment, paragraph, or section of this rule and that provision may be addressed separately from the remainder of the rule, the Department may adopt as final those provisions of the rule that are not the subject of an adverse comment.

The Department does not consider this rule to be a major rule for purposes of E.O. 12291. These changes to the regulations are hereby certified as not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35. Nor does the rule have federalism implications warranting the application of Executive Order No. 12372 and No. 13132. This rule is exempt from E.O. 12866, but the Department has reviewed the rule to ensure consistency with the objectives of the Executive Order, as well as with E.O. 12988, and the Office of Management and Budget has determined this rule would not constitute a significant regulatory action under E.O. 12866.

List of Subjects

22 CFR Part 22

Foreign Service, Fees, Passports and visas.

22 CFR Part 23

Foreign Service.

22 CFR Part 51

Administrative practice and procedure, Drug traffic control, Passports and visas.

Accordingly, this rule amends 22 CFR Chapter I as follows:

PART 22—[AMENDED]

1. The authority citation for Part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note. 1351, 1351 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. Section 22.1 is amended by revising the introductory text of paragraphs (b) and (c) at item 1. to read as follows:

§ 22.1 Schedule of fees.

Item No.	Fee
Passport and Citizenship Services	
1. Passport Services:	
* * * * *	
(b) First-time application:	
* * * * *	
(c) Subsequent application (renewal):	
* * * * *	

3. Section 22.6 is amended by revising the word "refunded" to read "refund" both times it appears in paragraph (a)(3) and by revising paragraph (a)(1) to read as follows:

§ 22.6 Refund of fees.

(a) * * *

(1) As specifically authorized by law (See 22 U.S.C. 214a concerning passport fees erroneously charged persons excused from payment and 46 U.S.C. 8 concerning fees improperly imposed on vessels and seamen);

* * * * *

PART 23—[AMENDED]

1. The authority citation for Part 23 is revised to read as follows:

Authority: 22 U.S.C. 2651a.

2. Section 23.3 is amended by revising paragraph (a) to read as follows:

§ 23.3 Refunds.

(a) *Rectifications and readjustments.* See § 22.6 of this chapter for outline of circumstances under which fees which have been collected for deposit in the Treasury may be refunded.

* * * * *

PART 51—[AMENDED]

1. The authority citation for Part 51 is revised to read as follows:

Authority: 22 U.S.C. 211a; 22 U.S.C. 2651a, 2671(d)(3), 2714 and 3926; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp., p 570; sec. 129, Pub. L. 102–138, 105 Stat. 661; 8 U.S.C. 1504.

2. Section 51.61 is amended by revising paragraph (a) to read as follows:

§ 51.61 Passport fees.

* * * * *

(a) A fee for each passport application filed, which fee shall vary depending on whether the passport applicant is a first-time applicant or a renewal applicant and on the age of the applicant. The passport application fee shall be paid by all applicants at the time of application, except as provided in § 51.62(a), and is not refundable, except as provided in § 51.63. However, an applicant's denied application for a passport may be reconsidered without the payment of an additional passport application fee by the submission of adequate documentation within 90 days after the date of a notice of denial.

* * * * *

3. Section 51.63 is amended by removing paragraphs (b) through (d), by redesignating paragraphs (e) and (f) as paragraphs (b) and (c), respectively, and by revising the introductory text to read as follows:

§ 51.63 Refunds.

A collected passport application fee shall be refunded:

* * * * *

Dated: February 23, 2000.

Bonnie R. Cohen,

Under Secretary for Management, Department of State.

[FR Doc. 00–6409 Filed 3–15–00; 8:45 am]

BILLING CODE 4710–06–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NZ001; FRL–6561–8]

Prevention of Significant Deterioration Delegation of Authority to Mendocino County Air Pollution Control District to Administer Permits Issued by EPA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: The Regional Administrator for EPA Region 9 has delegated full authority to the Mendocino County Air Pollution Control District (District) to administer three Prevention of Significant Deterioration (PSD) permits issued by EPA.

EFFECTIVE DATE: The effective date of the delegation is February 23, 2000.

ADDRESSES: Mendocino County Air Pollution Control District, 306 E. Gobbi Street, Ukiah, CA 95482.

FOR FURTHER INFORMATION CONTACT: Nahid Zoueshtiagh, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1261, E-mail: Zoueshtiagh.nahid@epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 40 CFR 52.21(u), "Delegation of authority," the EPA has delegated authority to the District to administer the following three PSD permits issued by EPA to:

- Masonite Corporation (EPA, PSD No. NC–77–06, issued in 1977)
- Masonite Corporation (EPA, PSD No. NC–92–01, issued in 1992)
- Georgia Pacific West Inc. (EPA, PSD No. NC–79–07, issued in 1979)

In 1985, EPA approved the District's PSD program into the California State Implementation Plan (SIP) (50 FR 30943, July 31, 1985). However, the above three permits which were issued by EPA, continued to be administered by EPA. To date, administering these permits has consisted of actions on modification requests by the Permittees. While the District has now been delegated the authority to administer these permits, nothing in the delegation agreement prohibits EPA from enforcing the PSD provisions of the Clean Air Act, the PSD regulations, or future permit conditions issued by the District.

A copy of the delegation agreement between EPA and the District is available from Nahid Zoueshtiagh, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: March 9, 2000.

David P. Howekamp,

Director, Air Division, Region IX.

[FR Doc. 00–6565 Filed 3–15–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[WT Docket No. 97–82; FCC 00–54]

Installment Payment Financing for Personal Communications Services (PCS) Licenses

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission dismisses or denies petitions for reconsideration of its Fourth Report and Order in which it modified the rules governing auctions of licenses for C block broadband Personal Communications Services ("PCS") spectrum. Some of the issues raised by petitioners are specific to Auction No. 22 and have been rendered moot by the occurrence of that auction. Other issues will be decided in separate proceedings. By this document the Commission declines to extend the two year "grandfather" exception to the entrepreneur eligibility requirement for C block auctions and also declines to "grandfather" in future C and F block auctions the bidding credit eligibility of participants in earlier C block auctions.

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin, Auctions & Industry Analysis Division, Wireless Telecommunications Bureau, at 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of an Order on Reconsideration of the Fourth Report & Order (Order on Reconsideration) adopted February 15, 2000 and released February 29, 2000. The complete text of the Order on Reconsideration, including the attachment, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20035, (202) 857–3800. It is also available on the Commission's web site at http://www.fcc.gov/wtb/auctions.

I. Introduction and Background

1. In this Order on Reconsideration, we address petitions for reconsideration of our Fourth Report and Order, released August 19, 1998 ("*C Block Fourth Report and Order*"), 63 FR 50791 (September 23, 1998), in which we modified the rules governing auctions of C block broadband Personal Communications Services ("PCS") spectrum. To date, there have been three auctions of licenses for C block spectrum. Auctions No. 5 and 10, which ended on May 6, 1996, and July 16, 1996, respectively, preceded the C Block Fourth Report and Order. Auction No. 22, which followed the C Block Fourth Report and Order, concluded on April 15, 1999, and also included licenses for E and F block spectrum. An earlier auction of licenses for D, E, and F block spectrum, Auction No. 11, concluded on January 14, 1997. One or more additional auctions of C and F block spectrum are expected.

2. In response to the C Block Fourth Report and Order, we received five petitions for reconsideration, one opposition, and one set of comments. Within the time frame for filing oppositions, we also received related correspondence. Some of the issues raised by petitioners are specific to Auction No. 22 and have been rendered moot by the occurrence of that auction. Other issues will be decided in separate proceedings. The remaining issues concern entrepreneur and bidding credit eligibility. In this order, we decline to extend the two year "grandfather" exception to the entrepreneur eligibility requirement for C block auctions and also decline to "grandfather" in future C and F block auctions the bidding credit eligibility of participants in earlier C block auctions.

II. Auction Inventory

3. *Background.* In the C Block Fourth Report and Order, we decided not to delay the next C block auction pending resolution of bankruptcy proceedings affecting the availability for auction of certain C block spectrum.

4. *Discussion.* Both Conestoga and DiGiPH ask that we reconsider this decision. Because Auction No. 22 has already been held, these requests have become moot. As we stated in the C Block Fourth Report and Order, spectrum made available for licensing as a result of any bankruptcy proceeding will be included in the next appropriate auction of C block spectrum.

III. Entrepreneur Eligibility

5. *Background.* Consistent with Congress' mandate to promote the

participation of small businesses and other "designated entities" in the provision of spectrum-based services, the Commission limited eligibility for C and F block broadband PCS licenses in Auctions No. 5, 10, and 11 to "entrepreneurs." The Commission considers entrepreneurs, with regard to the C and F blocks, to be those entities that can meet the auction and licensing eligibility requirements of § 24.709 of the Commission's rules. The principal requirement is as follows:

> No application is acceptable for filing and no license shall be granted for frequency block C or frequency block F, unless the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, have gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million at the time the applicant's short-form application (Form 175) is filed. 47 CFR 24.709(a)(1); *see id.* 24.720; *Competitive Bidding Fifth Report and Order*, 65 FR 37566 (July 22, 1994), *Fifth Memorandum Opinion and Order*, 59 FR 63210 (December 7, 1994) and *Sixth Report and Order*, 60 FR 37786 (July 21, 1995).

6. In the C Block Fourth Report and Order, we decided that entities that had been eligible for and had participated in Auction No. 5 or 10 would also be eligible to bid on C block spectrum in Auction No. 22 and in any C block auction beginning within two years of the start date of Auction No. 22, even if such entities had become too large to qualify as entrepreneurs.

7. *Discussion.* In its petition, Omnipoint argues that, because a "number of C [b]lock licenses [are] currently tied up in bankruptcy and not slated for the upcoming C [b]lock reauction [Auction No. 22], entrepreneurs will again see a shift in the market result of all prior C block auctions during all upcoming reauctions." Omnipoint maintains that, pursuant to "notions of fairness and auction integrity," the Commission should allow all "original C block applicants" to compete in any subsequent auction of C block licenses, regardless of when such auction occurs.

8. We disagree. The two-year "grandfather" exception to the entrepreneur eligibility requirement was part of a package of financial restructuring options offered by the Commission to C block licensees experiencing financial difficulties in the wake of the first two C block auctions. *See C Block Reconsideration Order*, 63 FR 17111 (April 8, 1998), *C Block Second Report and Order*, 62 FR 55375 (October 24, 1997) and *Second C Block Reconsideration Order*, 64 FR 26887 (May 18, 1999). When making these options available, the Commission explained that they were intended to provide "limited relief," limited in both scope and time. We recognized that not all licenses involved in bankruptcy proceedings would likely be available for inclusion in the Auction No. 22 license inventory; nevertheless, we decided to permit the grandfather exception for only two years. We believe, as we explained in the *C Block Fourth Report and Order*, that fairness to other future bidders prevents our providing the eligibility exception indefinitely. Therefore, as to the issue of entrepreneur eligibility, we will deny Omnipoint's petition.

IV. Bidding Credit Eligibility

9. *Background.* Bidding credits are available to C block auction winners that qualify as small or very small businesses or consortia thereof. Under current C (and F) blocks rules, which were in effect for Auction No. 22, small businesses and small business consortia receive a 15 percent bidding credit and very small businesses and very small business consortia receive a 25 percent bidding credit. In the C Block Fourth Report and Order, we expressly declined to "grandfather" eligibility for bidding credits, deciding that bidding credit eligibility in upcoming C block auctions would be determined according to an applicant's size at the deadline for filing short-form applications and not the applicant's size when it applied to participate in Auction No. 5 or 10. We concluded that it would not be in the best interests of the public and, in particular, of competing small business bidders and licensees to provide a discount to applicants that no longer meets the small business size standards.

10. *Discussion.* Omnipoint urges us to reconsider this decision, contending that our refusal to "grandfather" bidding credit eligibility is unfair to those existing entrepreneur licensees that have generated PCS revenues since the initial C block auction. We disagree. Bidding credits function as a discount on a winning bidder's high bid, thereby substantially reducing the licensee's payment obligation to the Federal government. The purpose of such credits is to allow small entities with limited access to capital to compete effectively against larger businesses in auctions. Were we to allow large businesses to qualify for bidding credits, by virtue of their past participation as small businesses in earlier C block auctions, we would undermine the effectiveness of such credits in aiding entities that currently qualify as small businesses. We cannot justify such a result, nor can we envision a convincing public policy rationale for providing larger businesses with a 15 or 25 percent discount off their Federal obligation. Accordingly, we deny Omnipoint's petition as to the issue of bidding credits.

V. Controlling Interest Rule

11. *Background.* In the C Block Reconsideration Order, we deferred to other phases of WT Docket No. 97–82 the decision whether to use a "controlling interest" approach to determine financial attribution for future C block auctions rather than to continue using "control group" structures.

12. *Discussion.* In its petition, Leap asks that we apply the controlling interest concept to the C and F blocks. Cook opposes this request. Leap's petition and Cook's opposition are moot insofar as they concern Auction No. 22, for which control group structures applied.

VI. Minimum Opening Bids

13. *Background.* In the C Block Fourth Report and Order, we established that the minimum opening bid for each market in Auction No. 22 would be ten percent of the corresponding net high bid for the market in the first C block auction; however, we stated that the Wireless Telecommunications Bureau ("Bureau") could exercise its discretion to set smaller minimum opening bids if the Bureau believed they were warranted.

14. *Discussion.* While disagreeing on specifics, Conestoga and Omnipoint both suggest that we reduce the minimum opening bids. Because Auction No. 22, has already taken place, these requests are moot. We note that the Bureau, after considering comments, including one filed by Omnipoint, reduced the Auction No. 22 minimum opening bids for C block licenses to five percent (for 30 MHz C block licenses) and 2.5 percent (for 15 MHz C block licenses) of the most recent net high bid for C block licenses in the same market. For each future C block auction, the Bureau will continue its current practice under the Balanced Budget Act of 1997 to establish minimum opening bids and/or reserve prices after notice and comment. *See Part 1 Third Report and Order* 63 FR 770 (January 7, 1998).

VII. Bid Increment Methodology

15. In a December 10, 1998 meeting with Bureau and Division staff, Omnipoint outlined a proposal for a bid increment methodology to be employed in Auction No. 22. The fact that Auction No. 22 has already occurred renders

Omnipoint's suggestion moot; however, we note that, in advance of Auction No. 22, the Bureau considered and rejected essentially the same proposal by Omnipoint. For each future C block auction, the Bureau will, after notice and comment, establish an appropriate bid increment methodology.

VIII. Default Payment Rules

16. Mountain Solutions argues that our decision to eliminate installment payment financing in Auction No. 22 and to exclude from the auction spectrum involved in bankruptcy proceedings, along with other factors, will decrease auction prices and thereby increase the payment owed by Mountain Solutions for defaults on second down payments for C block licenses Mountain Solutions had previously won. Mountain Solutions argues further that it would be inequitable for the Commission strictly to apply its default payment rule against Mountain Solutions. Because Auction No. 22 has already occurred, Mountain Solutions' petition, insofar as it seeks modification of our rules for that auction, is moot. The remaining issue—the extent to which Mountain Solutions will be held liable for its default payment obligations—is before us in a separate proceeding and will be considered there.

IX. Other Filing

17. In a letter related to this proceeding, McBride asks that we assist Representative W. J. "Billy" Tauzin, Chairman of the U.S. House of Representatives Subcommittee on Telecommunications, Trade, and Consumer Protection, in Chairman Tauzin's efforts with regard to the C block auction. Specifically, McBride requests that we help promote competition and encourage the participation of designated entities in the wireless telecommunications industry and that we make sure that all C block licensees are treated in a fair and equitable manner. We believe that, with the C Block Fourth Report and Order and Auction No. 22, we have furthered the goals articulated in McBride's letter; however, because the letter does not request specific reconsideration of the C Block Fourth Report and Order, we neither grant nor deny it.

X. Ordering Clauses

18. Accordingly, it is ordered that, pursuant to sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 155(b), 156(c)(1), 303(r), and 309(j), the petition for reconsideration filed in response to the C Block Fourth Report and Order by Omnipoint Corporation is denied. The petition for reconsideration filed in response to the C Block Fourth Report and Order by Mountain Solutions, Ltd., Inc., is dismissed in part as moot and denied in all other respects. The remaining petitions for reconsideration filed in response to the C Block Fourth Report and Order are dismissed as moot. This Order on Reconsideration is hereby adopted.

List of Subjects in 47 CFR Part 24

Personal communications services.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–6637 Filed 3–15–00; 8:45 am]

BILLING CODE 6712–01–U

Proposed Rules

Federal Register
Vol. 65, No. 52
Thursday, March 16, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–24–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 and 767 Series Airplanes Equipped with General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 and 767 series airplanes. This proposal would require repetitive functional tests of the directional pilot valve (DPV) of the thrust reversers to detect pneumatic leakage, and corrective action, if necessary. This proposal is prompted by a report of a latent failure mode of the fail-safe features of the thrust reverser system identified as possible leakage of the DPV that is due to a poppet being jammed slightly open or a leaking o-ring. The actions specified by the proposed AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 1, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–24–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–24–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–24–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA received a report from the manufacturer indicating a new latent failure mode of the fail-safe features of the thrust reverser system. This failure mode was identified as possible leakage of the directional pilot valve (DPV) of the thrust reversers due to a poppet being jammed slightly open or a leaking o-ring. Such undetected leakage past the DPV could result in sufficient pnuematic pressure developing downstream of the DPV at takeoff thrust to actuate the directional control valve to the deploy position. This failure mode, in combination with another thrust reverser failure condition or component failure, could result in the following:

- Significant degradation of the features intended to ensure that the thrust reverser remains stowed during all anticipated operating conditions for airplanes that have incorporated the thrust reverser actuation system brake. Or
- A potential in-flight thrust reverser deployment for airplanes that have not incorporated the thrust reverser actuation system brake.

Such conditions, if not corrected, could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–78A2170, and Boeing Service Bulletin 767–78–0084, both dated October 21, 1999, which describe procedures for repetitive functional tests of the DPV of the thrust reversers to detect pneumatic leakage, and correction of any discrepancies. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive functional tests of the DPV of the thrust reversers to detect pneumatic leakage, and corrective

action, if necessary. The actions are required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Correction of any discrepancy detected is required to be accomplished in accordance with the procedures described in the applicable Boeing 747 or 767 Airplane Maintenance Manual.

Cost Impact

There are approximately 331 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 108 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours (5 work hours per engine) per airplane to accomplish the proposed functional test, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the functional test proposed by this AD on U.S. operators is estimated to be $64,800, or $600 per airplane, per test cycle.

None of the Model 747 series airplanes affected by this action are on the U.S. Register. All Model 747 series airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected Model 747 series airplane be imported and placed on the U.S. Register in the future, it would require approximately 20 work hours (5 work hours per engine) to accomplish the proposed functional test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the functional test proposed by this AD would be approximately $1,200 per airplane, per test cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–24–AD.

Applicability: Model 747 and 767 series airplanes equipped with General Electric CF6–80C2 series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane, accomplish the following:

(a) For Model 747 and 767 series airplanes equipped with thrust reversers that HAVE NOT been modified in accordance with Boeing Service Bulletin 747–78–2151 or 767–78–0063, as applicable, or a production equivalent: Within 60 days after the effective date of this AD, perform a functional test of the directional pilot valve (DPV) of the thrust reversers to detect pneumatic leakage in accordance with Boeing Alert Service Bulletin 747–78A2170, or Boeing Service Bulletin 767–78–0084, as applicable, both dated October 21, 1999. Repeat the functional test thereafter at intervals not to exceed 1,000 flight hours.

(b) For Model 747 and 767 series airplanes equipped with thrust reversers that have been modified in accordance with Boeing Service Bulletin 747–78–2151 or 767–78–0063, as applicable, or a production equivalent: Within 180 days after the effective date of this AD, perform a functional test of the DPV of the thrust reversers to detect pneumatic leakage in accordance with Boeing Alert Service Bulletin 747–78A2170, or Boeing Service Bulletin 767–78–0084, as applicable, both dated October 21, 1999. Repeat the functional test thereafter at intervals not to exceed 5,000 flight hours.

(c) If any functional test required by paragraph (a) or (b) of this AD cannot be successfully performed as specified in Boeing Alert Service Bulletin 747–78A2170, or Boeing Service Bulletin 767–78–0084, as applicable, both dated October 21, 1999; or if any discrepancy is detected during any functional test required by paragraph (a) or (b) of this AD: Prior to further flight, correct the discrepancy in accordance with the procedures specified in the applicable Boeing Model 747 or 767 Airplane Maintenance Manual. Additionally, prior to further flight, any failed functional test required by paragraph (a) or (b) of this AD must be repeated and successfully accomplished. Repeat the functional test thereafter at the intervals required by paragraph (a) or (b) of this AD, as applicable.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 10, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6492 Filed 3–15–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–55–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require modifying the fuel pipe couplings and installing bonding leads in specified locations within the fuel tank. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent ignition sources and consequent fire/explosion in the fuel tank.

DATES: Comments must be received by April 17, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–55–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA,

Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. During a scheduled inspection of an Airbus Model A300 series airplane's fuel tanks, an electrical discharge mark was found on the left-hand inner fuel tank. The design of the fuel tanks on all four models is similar. The DGAC advises that improvement of the tanks' grounding efficiency between specific pipe couplings can prevent electrical arcing within the fuel tanks on these airplanes. Such electrical arcing within the fuel tank, if not corrected, could result in fuel ignition and consequent fire/explosion in the fuel tank.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–28–1077, dated July 9, 1999. This service bulletin describes procedures for modification (including removal, cleaning, and reinstallation of affected nuts, bolts, and washers) of the fuel pipe couplings; installation of certain bonding leads in specified locations; and cleaning surface areas at specified locations, including oversealing the coupling locknuts.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2000–006–144(B), dated January 12, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Relevant Service Information

Operators should note that, although the service bulletin and French airworthiness directive recommend that the modification be accomplished within 5 years (after the release of the service bulletin), the FAA has determined that an interval of 5 years would not address the identified unsafe condition in a timely manner.

An electrical discharge in a fuel tank can create a spark that could ignite the fuel vapors inside the tank. The spark energy required to ignite fuel depends on the type of fuel, the fuel temperature, and the air pressure (altitude) inside a fuel tank. Under certain conditions, fuel can be ignited with spark energy levels much lower than the energy required to create a visible mark. Therefore, a spark that has enough energy to cause a mark can ignite fuel vapor under a wider range of fuel tank conditions.

In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification. In light of all of these factors, the FAA finds a 36-month compliance time for accomplishing the modification to be warranted, in that 36 months represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 227 airplanes of U.S. registry would be affected by this proposed AD.

It would take between 20 and 100 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. The cost of required parts would be negligible. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be between $272,400 and $1,362,000; or between $1,200 and $6,000 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–55–AD.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; excluding those on which Modifications 27150 and 27955 have been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ignition sources and consequent fire/explosion in the fuel tank, accomplish the following:

Modification and Installation

(a) Within 36 months after the effective date of this AD, modify the fuel pipe couplings and install bonding leads in the specified locations of the fuel tank, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1077, dated July 9, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–006–144(B), dated January 12, 2000.

Issued in Renton, Washington, on March 10, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6493 Filed 3–15–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 00N–0598]

Food Labeling; Dietary Supplement Health Claims; Public Meeting Concerning Implementation of Pearson Court Decision and Whether Claims of Effects on Existing Diseases May Be Made as Health Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Announcement of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to solicit comments on two topics pertaining to health claims in dietary supplement labeling. The first topic concerns implementation of the recent court of appeals decision in *Pearson* v. *Shalala* (*Pearson*). In *Pearson*, the U.S. Court of Appeals for the D.C. Circuit held that FDA's decision not to authorize four health claims for dietary supplements violated the First Amendment because the agency did not

consider whether the claims, which failed to meet the "significant scientific agreement" standard of evidence by which the health claims regulations require FDA to evaluate the scientific validity of claims, could be rendered nonmisleading by adding qualifying language. The second topic on which we are requesting comments is whether claims about an effect on an existing disease may be made as health claims, or whether such claims should subject the product to regulation as a drug. We are holding this meeting to give the public an opportunity to provide information and views on these topics.

DATES: The meeting will be held on April 4, 2000, from 10 a.m. to 6 p.m. Please register by close of business, March 28, 2000. Late registrations will be accepted contingent on space availability. Submit written comments by April 19, 2000.

ADDRESSES: The meeting will be held at Department of Education, Barnard Auditorium (Federal Building 6), 400 Maryland Ave., SW., Washington, DC. Building entrances are located on the Maryland Ave., SW. and C Street, SW. between 4th and 6th Streets, SW. Federal Building 6 is one block east of the L'Enfant METRO Subway Station's Maryland Ave. exit.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. You may also send comments to the Dockets Management Branch at the following e-mail address: FDADockets@oc.fda.gov or via the FDA Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm.

FOR FURTHER INFORMATION CONTACT:

To register for the public meeting contact: Carole A. Williams, Office of Consumer Affairs (HFE–88), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4421, FAX 301–827–3052, e-mail pubmtg@oc.fda.gov.

For general information: Jeanne Latham, Center for Food Safety and Applied Nutrition (HFS–800), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4697, FAX 202–205–4594, e-mail JLatham@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA published a number of regulations to implement the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), which amended the Federal Food, Drug, and Cosmetic Act (the act). We set forth general requirements for health claims in the labeling of conventional foods (58 FR 2478, January 6, 1993); authorized the use of seven health claims (58 FR 2665, 58 FR 2787, 58 FR 2820, 58 FR 2739, 58 FR 2537, 58 FR 2552, and 58 FR 2622); and denied the use of five other claims (58 FR 2537 [dietary fiber and cancer], 58 FR 2552 [dietary fiber and coronary heart disease], 58 FR 2622 [antioxidant vitamins and cancer], 58 FR 2661 [zinc and immune function in the elderly], and 58 FR 2682 [omega-3 fatty acids and coronary heart disease]). We also initially denied one claim (58 FR 2606 [folic acid and neural tube defects]) that was later authorized (59 FR 433, January 4, 1994) and then modified (61 FR 8750, March 5, 1996). In response to the 1990 amendments and the Dietary Supplement Act of 1992, we issued regulations applying the general requirements for health claims for conventional foods to dietary supplements (59 FR 395, January 4, 1994). The general health claims regulations for both conventional foods and dietary supplements are in 21 CFR 101.14 and 101.70. The regulations on individual health claims are in 21 CFR 101.71 through 101.82.

Our general health claim regulations for dietary supplements and our decision not to authorize health claims for four specific substance/disease relationships were challenged in *Pearson* v. *Shalala* (*Pearson*). These four substance/disease relationships include: Dietary fiber and cancer, antioxidant vitamins and cancer, omega-3 fatty acids and coronary heart disease, and the claim that 0.8 milligram of folic acid in dietary supplement form is more effective in reducing the risk of neural tube defect than a lower amount in conventional food form.

In 1998, the district court ruled for FDA in all respects (14 F. Supp. 2d 10 (D.D.C. 1998)). In January 1999, however, the U.S. Court of Appeals for the D.C. Circuit reversed the lower court's decision (164 F.3d 650 (D.C. Cir. 1999)). The appeals court held that, based on the administrative record compiled in the challenged rulemakings, the First Amendment does not permit FDA to reject health claims that we determine to be potentially misleading unless we also reasonably determine that no disclaimer would eliminate the potential deception. As a result of the decision, we must reconsider our approach to authorizing health claims for dietary supplements. The court further held that the Administrative Procedure Act (the APA) requires FDA to clarify the "significant scientific agreement" standard for authorizing health claims, either by issuing a regulatory definition of significant scientific agreement or by defining it on a case-by-case basis.

On March 1, 1999, the Government filed a petition for rehearing *en banc* (reconsideration by the full court of appeals). The U.S. Court of Appeals for the D.C. Circuit denied the petition for rehearing on April 2, 1999 (172 F.3d 72 (D.C. Cir. 1999)). We announced in the **Federal Register** of December 22, 1999 (64 FR 71794), the availability of a guidance clarifying the significant scientific agreement standard. The guidance is available on the Internet at http://vm.cfsan.fda.gov/dms/ssaguide.html.

In the **Federal Register** of December 1, 1999 (64 FR 67289), we published a notice informing the public of the steps we plan to follow to carry out the *Pearson* decision. This notice announced plans to hold a public meeting before initiating rulemaking to consider what changes to the general health claims regulations for dietary supplements may be warranted in light of *Pearson* (64 FR 67289 at 67290). We believe that our reevaluation of these regulations will benefit from a public meeting and an open discussion of all possible approaches to implementing the court's decision.

Also in December 1999, we declined to issue a proposed rule for a health claim relating dietary supplements containing saw palmetto extracts and symptoms associated with benign prostatic hyperplasia (BPH). The petition requesting authorization for the claim was denied by operation of law on December 1, 1999, and we issued a letter explaining our decision on the same day. Our basis for not proposing a rule was that we were unable to resolve, within the timeframe required, the novel policy issue, which the petition entailed. This issue is whether a health claim may include claims about mitigation or treatment of disease. To date, the health claims that we have authorized have been for reducing the risk of a disease. While this issue was not considered in *Pearson*, as a topic that also relates to the regulation of health claims, it is being included for discussion in this public meeting.

On December 7, 1999, the agency was sued by the petitioners who had requested FDA to authorize a health claim for saw palmetto extract and BPH (*Whitaker* v. *Shalala*, No. 1:99CV0247 (D.D.C. December 7, 1999)). The plaintiffs alleged that our denial of the petition violated the First Amendment to the Constitution, the 1990 amendments, and the APA. The plaintiffs asked the court to order the

agency to evaluate their petition under the health claims regulations. The case is stayed through May 26, 2000, while we consider whether claims of effects on an existing disease may be made as health claims rather than drug claims.

II. Scope of Discussion

We are holding the public meeting on April 4, 2000, in part to identify and discuss possible changes, in light of the *Pearson* decision, to our general health claim regulations as they apply to dietary supplements. Unlike the statutory provision for the use of health claims on dietary supplements (section 403(r)(5)(D) of the act (21 U.S.C. 343(r)(s)(D))), section 403(r)(3)(B)(i) of the act provides that FDA may authorize health claims on conventional foods only when there is significant scientific agreement among qualified experts that the totality of publicly available scientific evidence supports the claim. As a result of this statutory requirement for conventional foods and because the *Pearson* case involved only dietary supplements, this portion of the public meeting will be restricted to health claims on dietary supplements.

A second topic open for discussion is whether claims about mitigation or treatment of diseases and their symptoms may be appropriately made as health claims.

We anticipate that both discussions will include presentations from people whom we invite to participate as well as from members of the public.

A. Implementation of the Pearson Court Decision

We are requesting comment on how to implement the element of the *Pearson* decision addressing the use of qualified health claims on dietary supplements when the evidence supporting the claim does not meet the "significant scientific agreement" standard. In general, we request public comment on whether qualified health claim statements for dietary supplements can be made that would not mislead consumers, and, if so, what types of disclaimers or other qualifying language would be appropriate. We would specifically request that persons commenting in person and in writing consider and provide input on the questions listed below. Comments recommending a particular regulatory approach should explain how that approach is consistent with the constitutional and statutory requirements to which FDA is subject.

1. What is the best regulatory approach for protecting and promoting the public health? Specifically, what approach to regulating health claims will: (a) Protect consumers from fraudulent and misleading claims; and (b) provide reliable, understandable information that will allow consumers to evaluate claims intelligently and identify products that will in fact reduce the incidence of diseases? By what criteria should implementation options be judged?

2. Can qualifying language (including disclaimers) be effective in preventing consumers from being misled by health claims based on preliminary or conflicting evidence? If so, what are the characteristics of effective qualifying language? How should the agency determine what constitutes an appropriately qualified claim? If the available information is not sufficient to answer these questions, what research needs to be done, and who should be responsible for doing it? The agency encourages those commenting to submit empirical data on the effectiveness of qualifying language.

3. Is there a way to preserve the existing regulatory framework for health claims consistent with the First Amendment?

4. If health claims are permitted based on a standard less rigorous than significant scientific agreement, what is the best way to distinguish among claims supported by different levels of evidence so that consumers are not misled? Does the word "may" in existing health claims accurately communicate the strength of the evidence supporting claims that meet the significant scientific agreement standard, or should other language be used?

5. If health claims are permitted based on a less rigorous standard, what actions can be taken to provide incentives to manufacturers to conduct further research on emerging substance-disease relationships?

6. The *Pearson* opinion mentions circumstances in which FDA might be justified in banning certain health claims outright (e.g., where the evidence in support of the claim is outweighed by evidence against the claim, or where the evidence supporting it is qualitatively weaker than the evidence against it) (*Pearson*, 164 F.3d at 659 and n.10).

a. How should FDA determine when evidence supporting a health claim is outweighed by evidence against the claim?

b. How should FDA determine when evidence supporting a health claim is qualitatively weaker than the evidence against the claim?

c. Are there other circumstances in which health claims are inevitably misleading and cannot be made nondeceptive by qualifying language?

7. What safety information is necessary to prevent a health claim from being misleading? For example, such information might include side effects, drug and food interactions, and segments of the population who should not use the product or should consult a physician before doing so. When a product may have adverse effects unrelated to the subject of a scientifically valid health claim, is the claim misleading? Under what circumstances, if any, should the product be allowed to bear the claim?

8. What actions should the agency take to ensure that consumers receive all relevant information about the safety of products that bear health claims and about research on product safety?

B. Whether Claims of Effects on Existing Diseases May Be Made as Health Claims

All health claims that we have authorized since passage of the 1990 amendments have been claims about reducing the risk of a disease. However, the saw palmetto extract health claim petition (Docket Number 99P–3030) requests authorization to make a claim about effects on an existing disease. Thus, the petition proposes a significant expansion of the scope of health claims beyond those that are currently authorized.

The issue of whether health claims may be about effects on an existing disease arose in the context of a petition for a dietary supplement health claim. For this reason and because the other issue to be discussed at the public meeting concerns health claims for dietary supplements, the focus of discussion will be the use of claims on labels or labeling of dietary supplements about effects on an existing disease. However, we recognize that this issue is likely to arise in the context of health claims for conventional foods as well. Any decision we make on this issue with respect to dietary supplements, therefore, will also affect the use of such claims for conventional foods.

The health claims provisions of the act were enacted as part of a statutory scheme that already included extensive regulatory requirements for drugs. Before the 1990 amendments, the drug provisions had been applied to foods, including dietary supplements, that made claims about effects on disease. Arguably, if Congress had intended to permit any kind of disease claim for foods, it could have exempted all foods bearing authorized health claims from the drug definition in section 201(g)(1)(B) of the act (21 U.S.C. 321(g)(1)(B)), which provides that an article "intended for use in the diagnosis, cure, mitigation, treatment, or

prevention of disease" is a drug. Instead, Congress provided that a product that bears an authorized health claim shall not be classified as a drug solely because of the presence of the claim (21 U.S.C. 321(g)(1)(B)). Congress' decision to proceed in this manner, rather than by creating an unconditional exemption, suggests that it may have wanted the drug provisions to continue to apply to foods in certain circumstances. Similarly when the Dietary Supplement Health and Education Act (DSHEA) was enacted in 1994, Congress did not provide that dietary supplements are deemed to be foods in all circumstances; rather, it provided that dietary supplements are deemed to be foods "except for purposes of section 201(g)" of the act, the drug definition.

In interpreting the health claim provisions of the act and their relationship to the drug provisions of the act, FDA has tried to strike a balance between recognizing that foods, including dietary supplements, can influence disease outcomes without ceasing to be foods, and honoring the statutory distinction between drugs and foods. To that end, we included in our health claims regulations the requirement that a product that bears a health claim must establish that it is a food by demonstrating nutritive value (21 CFR 101.14(b)(3)). Moreover, in the preambles to the regulations, we distinguished between nutritional effects of food substances, which we said would be an appropriate subject for a health claim, and effects that are therapeutic, medicinal, or pharmacological, which would not. (See, e.g., 56 FR 60537 at 60545 to 60546, November 27, 1991; 58 FR 2478 at 2501, January 6, 1993; and 59 FR 395 at 408, January 4, 1994.) FDA also emphasized that the relationship of a food or a food component to a disease is different from that of a drug because of genetic, environmental, and behavioral factors that affect the development of chronic diseases in addition to diet, and because of the complexity of foods themselves (58 FR 2478 at 2501). Therefore, we explained, some claims that would be appropriate as drug claims under section 201(g)(1)(B) would not be appropriate as health claims for foods because they "imply a degree of association between the substance and the disease that is not supportable for any food" (56 FR 60537 at 60552).

Further, we commented that it would be necessary for a health claim petitioner to "show that the claimed effect on disease is associated with the normal functioning of the human body" and that claims to "correct an abnormal physiological function caused by a disease or health-related condition" would be drug claims rather than health claims (59 FR 395 at 407 to 408). With respect to claims about effects on symptoms of a disease, we said:

> [T]here is no provision in the act for the agency to exempt statements about symptoms of disease from causing products to be regulated as drugs. Although such statements may not be claims that the product will treat the disease that causes the symptoms, the statements clearly pertain to the mitigation of disease by addressing the symptoms caused by the disease. Section 201(g)(1)(B) of the act provides, in part, that articles intended for use in the mitigation of disease are drugs.

(59 FR 395 at 413)

Another relevant part of the statutory scheme is the medical foods definition, enacted as part of the Orphan Drug Amendments of 1988. The statutory definition of a medical food is "a food which is formulated to be consumed or administered enterally under the supervision of a physician and which is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation" (21 U.S.C. 360ee(b)(3)). Thus, medical foods are a category of foods intended for dietary management of disease through a nutritional mechanism.

By their very nature, claims about effects on an existing disease are aimed at people who are ill. To date, authorized health claims have been aimed either at the general population or at a population subgroup whose members are at risk for a particular disease but are not yet sick. Since there are already two categories of ingested products that bear claims targeted to people suffering from a disease, drugs and medical foods, the agency believes there is reason to question whether Congress also intended health claims to encompass such claims.

FDA is open to reexamining its past statements on this issue in light of subsequent developments, such as advances in science and technology, changes in the marketplace, and the passage of DSHEA. In considering the scope of the health claims provisions of the act, we will seek an interpretation that is consistent with the statutory provisions governing drugs and medical foods and that gives effect to each part of the statute.

We are inviting public comment on this issue, and in particular we are seeking input on the following questions. Comments recommending a particular regulatory approach should explain how that approach is consistent with the legal requirements to which FDA is subject.

1. Does the language and structure of the act restrict the permissible types of substance-disease relationships that can be described in a health claim? How should FDA interpret the health claim and drug provisions of the act and the medical food provision of the Orphan Drug Amendments in relationship to each other?

2. If FDA were to permit at least some claims about effects on an existing disease as health claims, what criteria should be used to determine when a claim is a permissible health claim and when it is a drug claim under section 201(g)(1)(B) of the act?

3. If FDA were to permit at least some disease treatment or mitigation claims as health claims, what about claims that are covered by an existing over-the-counter (OTC) drug monograph? For example, if there is an existing drug monograph on the use of a dietary ingredient in an OTC drug product to treat or mitigate disease, and the monograph concludes that the substance is not safe and effective for the intended use, should FDA still consider authorizing a health claim for the substance-disease relationship?

III. Registration and Requests to Make Oral Presentations

If you would like to attend the meeting, we request that you register in writing with the contact person by March 28, 2000, by providing your name, title, business affiliation, address, telephone and fax number. To expedite processing, this registration information also may be sent to the contact person by fax to 301–827–3052, or sent by e-mail to pubmtg@oc.fda.gov. If you need special accommodations due to disability, please inform the contact person when you register. A permanent assistive listening device (ALD) is installed in Barnard Auditorium. The ALD can be used with either a hearing aid T-coil or a headset/receiver available at the auditorium. If, in addition to attending, you wish to make an oral presentation during the meeting, you must so inform the contact person when you register and submit: (1) A brief written statement of the general nature of the views you wish to present; (2) the names and addresses of all persons who will participate in the presentation; and (3) an indication of the approximate time that you request to make your presentation. Depending upon the number of people who register to make presentations, we may have to limit the time allotted for each presentation. We anticipate that, if time permits, those

attending the meeting will have the opportunity to ask questions during the meeting.

IV. Comments

You may submit, on or before April 19, 2000, written comments to the Dockets Management Branch (address above). You may also send comments to the Dockets Management Branch via e-mail to FDADockets@oc.fda.gov or via the FDA Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. You should annotate and organize your comments to identify the specific issues to which they refer. Please address your comment to the docket number given at the beginning of this notice. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document, except that you may submit one copy if you are an individual. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m. Monday through Friday.

V. Transcripts

You may request a transcript of the meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. You may also examine the transcript of the meeting after April 14, 2000, at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA Internet at http://www.fda.gov.

VI. Reference

We have placed the following reference on display in the Dockets Management Branch. You may see it at that office between 9 a.m. and 4 p.m., Monday through Friday.

1. *Pearson* v. *Shalala*, 164 F.3d 650 (D.C. Cir. 1999).

REGISTRATION FORM

Public Meeting on Implementation of *Pearson* Court Decision and Expansion of Health Claims to Cover Claims of Effects on Existing Diseases

Instructions: To register, complete this form and mail or fax it to 301–827–3052 by March 28, 2000.

Name _____

Title _____

Company _____

Address _____

Telephone _____

Fax _____

E-mail _____

Please indicate the type or organization that you represent:

Industry _____

Government _____

Consumer Organization _____

Media _____

Healthcare Professional _____

Law Firm _____

Educational Organization _____

Other (specify)____

Do you wish to make an oral presentation?

Yes____

No____

If yes, you also must submit the following:

1. A brief statement of the general nature of the views you wish to present,
2. The names and addressed of all persons who will participate in the presentation, and
3. An indication of the approximate time that you request to make your presentation.

Dated: March 10, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–6509 Filed 3–13–00; 2:34 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 95 and 177

[USCG–1998–4593]

RIN 2115–AF72

Revision to Federal Blood Alcohol Concentration (BAC) Standard for Recreational Vessel Operators

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the Federal Blood Alcohol Concentration (BAC) standard under which a recreational vessel operator would be considered operating while "intoxicated." For recreational vessel operators, the proposed rule would lower the current Federal BAC threshold from .10 BAC to .08 BAC. This change is appropriate because boating accident statistics show that alcohol use remains a significant cause of recreational boating deaths and because we support a trend in State recreational boating laws toward the .08 BAC standard. Further, the proposed Federal BAC standard will not supercede or preempt any enacted State BAC standard. Additionally, the proposed rule would replace the term "intoxicated" with the phrase "under the influence of alcohol or a dangerous drug." This change would bring the regulations into conformance with current statutory language. The proposed rule is expected to reduce the number of recreational boating deaths and injuries resulting from accidents caused by operators under the influence of alcohol or a dangerous drug.

DATES: Comments and related material must reach the Docket Management Facility on or before July 14, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand-delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Internet Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, at the address listed above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact

Carlton Perry, Project Manager, Office of Boating Safety, U.S. Coast Guard, by telephone at 202–267–0979 or by e-mail at *cperry@comdt.uscg.mil*. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or by accessing either the Web Site for the Office of Boating Safety at *http://www.uscgboating.org*, or the Internet Site for the Docket Management Facility at *http://dms.dot.gov*.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1998–4593), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand-delivery, fax, or electronically to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand-delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and want to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. You may ask for one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

(a) Regulatory History. On December 14, 1987, we published a final rule in the **Federal Register** (52 FR 47526), in which we set a Federal standard for intoxication applicable to recreational vessel operators using a .10 blood alcohol concentration (BAC). The rule adopted any enacted State BAC standard of intoxication as the Federal BAC standard, and applied the State BAC standard to recreational vessel operators within that State. If a State did not have an enacted BAC standard for "intoxication," a provision allowed us to adopt a State BAC standard for "under the influence" or "while impaired," instead of "intoxicated." In that final rule, we noted that we would consider revising the Federal BAC standard if the States developed a trend toward adopting the .08 BAC standard for operating a vessel on the water.

(b) Reasons for this rulemaking. We drafted the changes proposed in this rulemaking in response to recommendations from the National Boating Safety Advisory Council (NBSAC), as a way to update the existing regulations, and to ensure that terminology in our regulations conforms with current statutory authorities.

Although the number of boating deaths dropped from 1100 in 1986 to 821 in 1997, the number of incidents where alcohol was positively identified as a factor remained stable at about 110. A review of statistics on recreational boating accidents during 1997 showed that there was evidence, or a reasonable likelihood, that alcohol was consumed by the vessel's occupants in 27 percent of all boating accidents involving a fatality.

The Oil Pollution Act of 1990 revised 46 U.S.C. 2302(c) by substituting the term "under the influence of alcohol, or a dangerous drug in violation of a law of the United States" for the term "intoxicated." The terms "intoxication" and "intoxicated" as used in 33 CFR parts 95 and 177, no longer conform to the current statutory authority and should be revised accordingly.

After studying recreational boating safety regulations in October 1997, NBSAC recommended that the Coast Guard track State BAC levels. They suggested that if we found a trend toward revising State standards to .08 BAC, then we should support that effort by revising the Federal standard, found in 33 CFR 95.020, to .08 BAC as well.

In 1987 only 21 States had enacted statutes using a BAC to define "intoxication" or "under the influence" for recreational vessel operation. Nineteen States used a .10 BAC and two States used a .08 BAC. Today 54 State jurisdictions, as defined in 46 U.S.C. 2101(36), have a BAC standard. Thirty-four use .10 BAC, nineteen use .08 BAC, and one uses .08 only when there has been an injury. Also, nine of the original twenty-one States revised their standard from .10 BAC to .08 BAC. We acknowledge that the trend among States is toward using a .08 BAC standard and we are proposing to revise the Federal BAC standard accordingly.

In a memorandum dated March 3, 1998, the President directed the Secretary of Transportation to develop an Action Plan to promote adoption of the .08 BAC standard for operating a vehicle on "Federal property, including areas in national parks, and on Department of Defense installations, and ensuring strong enforcement and publicity of this standard." The Secretary's Action Plan includes the proposed revision of the Federal BAC standard for operator's of recreational vessels, providing support for the DOT effort on water as well as on land. The Federal BAC standard for operators of vessels that are inspected, or subject to inspection under Chapter 33 of Title 46, United States Code, will remain at .04 BAC.

Discussion of Proposed Rule

1. The headings for 33 CFR part 95 and § 95.020, as well as the text for §§ 95.001, 95.030, 95.040, and 177.07 would be revised by substituting the phrase "under the influence of alcohol or a dangerous drug" for "intoxication" or "intoxicated." This would bring the text into conformance with current statutory authority.

2. Section 95.010 would be revised by adding definitions required to bring this part in line with the new terminology and standards.

3. Section 95.020 would be revised to adopt the .08 BAC standard as the Federal standard.

4. Section 95.025 would be revised to address adoption of State BAC standards that are considered comparable to the Federal BAC standard of "under the influence" of alcohol.

The current regulations adopt State enacted BAC standards for "intoxication." If a State does not have a BAC standard for "intoxication," the regulations adopt State BAC standards for "under the influence," "impairment," or any comparable BAC standard.

The proposed rule would similarly adopt enacted State BAC standards for "under the influence." (typically .10 BAC or .08 BAC). However, if a State has not enacted a BAC standard for "under the influence," the proposed rule would adopt an enacted State BAC standard for "intoxication," "impairment," or a comparable BAC standard.

In States that have enacted multiple BAC standards for "under the influence," which are applicable to specific segments of the boating community—*e.g.* .02 BAC for operators under 21 years of age, the proposed rule

would adopt only the State BAC standard that applies to the general boating population.

Under the proposed rule, the revised Federal .08 BAC standard would only apply directly to recreational vessels operated in Iowa and New Mexico, which have not enacted a BAC standard; in South Carolina when its limited statute involving injury is not applicable; and, as defined in 33 CFR 2.05, on the navigable waters of the U.S. beyond State boundaries and on the high seas, for recreational vessels owned in the United States.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

1. Cost of Proposed Rule

This rulemaking would impose no costs for the boating public. Costs to the government would be non-existent as well because the Coast Guard already trains its Boarding Officer personnel on use of the .08 BAC level to properly prepare them for working in those States with such a BAC level.

2. Benefit of Proposed Rule

This proposed rule is appropriate because boating accident statistics show that alcohol use remains a significant cause of recreational boating deaths and because we support a trend in State boating law toward the .08 BAC standard. The proposed rule is expected to reduce the number of recreational boating deaths and injuries resulting from accidents caused by operators under the influence of alcohol or a dangerous drug.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic effect on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed revision of the Federal BAC standard applies to operators of recreational vessels on waters subject to the jurisdiction of the United States. These waters include navigable waters of the United States (as defined in 33 CFR 2.05), waters on lands owned by the United States (under 33 U.S.C. 733 by an authorized Federal Officer or over which the United States retains concurrent or exclusive jurisdiction), and waters within the territories and possessions of the United States and the Trust Territories of the Pacific Islands. This proposed revision of the Federal BAC standard will continue to apply to recreational vessels owned in the United States, while operating on the high seas (as defined in 33 CFR 2.05). Further, since this proposed rule would continue to adopt State enacted BAC standards, recreational vessel operators in States with enacted BAC standards would not be subject to a new BAC standard unless a State revises its own enacted BAC standard. Only those recreational vessel operators in States without enacted BAC standards and on navigable waters of the U.S. beyond State boundaries would be subject to a new BAC standard.

Because the provisions of the Regulatory Flexibility Act do not apply to individuals, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic effect on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effect on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Carlton Perry, Project Manager, Office of Boating Safety, by telephone at 202–267–0979, or by e-mail at cperry@comdt.uscg.mil.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that, because the Federal BAC standard will not supercede or preempt any enacted State BAC standard, this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local or tribal government, or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. The proposed rule makes a minor revision to the Federal BAC standard for the level at which an operator of a recreational vessel is deemed to be impaired. A "Categorical Exclusion Determination" is available in the

docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 95

Alcohol and alcoholic beverages, Drugs, Marine safety, Vessels.

33 CFR Part 177

Alcohol and alcoholic beverages, Drugs, Marine safety, Recreational vessels, Unsafe conditions.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 95 and 177 as follows:

SUBCHAPTER F—[AMENDED]

PART 95—OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL OR A DANGEROUS DRUG

1. The authority citation for part 95 continues to read as follows:

Authority: 33 U.S.C. 2071; 46 U.S.C. 2302; 49 CFR 1.46.

2. Revise the part heading to read as shown above.

§ 95.001 [Amended]

3. In § 95.001(a), remove the words "intoxication." and "intoxicated" and add, in their place, the words "under the influence of alcohol or a dangerous drug."

4. Amend § 95.010 by adding the following undesignated paragraphs in alphabetical order with the rest of the section as follows:

§ 95.010 Definition of terms as used in this part.

* * * * *

Blood Alcohol Concentration Level means a certain percentage of alcohol in the blood.

* * * * *

State means a State or Territory of the United States of America including but not limited to a State of the United States, American Samoa, the Commonwealth of the Northern Marianas Islands, District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands.

* * * * *

Under the Influence means impaired or intoxicated by a drug or alcohol as a matter of law.

* * * * *

5. Amend § 95.020 by revising the section heading, the introductory text, and paragraph (a) to read as follows:

§ 95.020 Standard for under the influence of alcohol or a dangerous drug.

An individual is under the influence of alcohol or a dangerous drug when:

(a) The individual is operating a recreational vessel and has a blood alcohol concentration (BAC) level of .08 percent or more, by weight, in their blood;

* * * * *

6. Amend § 95.025 by revising the section heading, and paragraphs (a) and (b) to read as follows:

§ 95.025 Adoption of State blood alcohol concentration levels.

(a) This section applies to operators of recreational vessels on waters within the geographical boundaries of any State that has established by statute a blood alcohol concentration level for purposes of determining whether a person is operating a vessel under the influence of alcohol.

(b) If the applicable State statute establishes a blood alcohol concentration level at which a person is considered or presumed to be under the influence of alcohol, then that level applies within the geographical boundaries of that State instead of the level provided in § 95.020(a) of this part.

* * * * *

§ 95.030 [Amended]

7. Amend § 95.030 by revising the section heading and the introductory text to read as follows:

§ 95.030 Evidence of under the influence of alcohol or a dangerous drug.

Acceptable evidence of when a vessel operator is under the influence of alcohol or a dangerous drug includes, but is not limited to:

* * * * *

§ 95.040 [Amended]

8. In § 95.040, paragraph (a), remove the word "intoxicated" and add, in its place, the words "under the influence of alcohol or a dangerous drug."

PART 177—CORRECTION OF ESPECIALLY HAZARDOUS CONDITIONS

9. The authority citation for part 177 continues to read as follows:

Authority: 46 U.S.C. 4302, 4311; 49 CFR 1.45, and 1.46.

§ 177.07 [Amended]

10. In § 177.07(b), remove the word "intoxicated" and add, in its place, the words "under the influence of alcohol or a dangerous drug."

* * * * *

Dated: March 8, 2000.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 00–6224 Filed 3–15–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 140, 141, 142, 143, 144, 145, 146, and 147

[USCG–1998–3868]

RIN 2115–AF39

Outer Continental Shelf Activities

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Coast Guard is extending the periods for public comment on its notice of proposed rulemaking on Outer Continental Shelf Activities. We received several requests to extend the comment period for an additional 90 days because of the length and complexity of the proposed rulemaking. We are changing the deadline for receipt of comments from April 5, 2000, to July 5, 2000. Also, due to requests submitted both to the Docket Management Facility and to the Office of Management and Budget (OMB), we are changing the deadline for receipt of comments by OMB on the proposed collection-of-information requirements from February 7, 2000, to July 5, 2000.

DATES: Comments and related material must reach the Docket Management Facility on or before July 5, 2000. Comments sent to OMB on collection of information must reach OMB on or before July 5, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following methods:

(1) By mail to the Docket Management Facility, (USCG–1998–3868), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

You may also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, call Mr. James M. Magill, Vessel and Facility Operating Standards Division (G–MSO–2), telephone 202–267–1082 or fax 202–267–4570. For questions on viewing or submitting material to the docket, call Ms. Dorothy Walker, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The NPRM, published on December 7, 1999 [64 FR 68416], encouraged interested persons to participate in this rulemaking by submitting written data, views, or arguments by April 5, 2000. It also invited comments on collection of information to be submitted by February 7, 2000. This request does the same, except that it invites their submitting them by July 5, 2000.

Persons submitting comments should include their names and addresses, identify this docket [USCG–1998–3868] and the specific section of the NPRM to which each comment applies, and give the reason for each comment. Please submit one copy of each comment and attachment in an unbound format, no larger that 8½ by 11 inches, suitable for copying and electronic filing, to the DOT Docket Management Facility at the address under **ADDRESSES.** If you want acknowledgement of receipt of your comment, enclose a stamped self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this NPRM in view of them.

Dated: March 13, 2000.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–6546 Filed 3–15–00; 8:45 am]

BILLING CODE 4910–15–U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2000–3]

Public Performance of Sound Recordings: Definition of a Service

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is seeking comment on whether to amend its regulation that defines a "Service" for purposes of the statutory license governing the public performance of sound recordings by means of digital audio transmissions, in order to clarify that transmissions of a broadcast signal over a digital communications network, such as the Internet, are not exempt from copyright liability under section 114(d)(1)(A) of the Copyright Act.

DATES: Written comments are due April 17, 2000. Reply comments are due May 1, 2000.

ADDRESSES: If sent by mail, an original and ten copies of comments and reply comments should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If hand delivered, they should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, S.E., Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 ("DPRA"), Public Law 104–39, which created an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly sound recordings by means of certain digital audio transmissions. Among the limitations on the performance was the creation of a new compulsory license for nonexempt, noninteractive, digital subscription transmissions, 17 U.S.C. 114(f), and an exemption for certain nonsubscription transmissions, 17 U.S.C. 114(d)(1)(A)(i)–(iii) (1995).

The scope of the exemption, however, has been debated since the passage of the DPRA. Broadcasters have taken the position that any broadcast, whether made over the air or over the Internet, falls within the scope of the section 114(d)(1)(A) exemptions. *See* Reply Comments of National Association of Broadcasters at 9–12 (dated June 20, 1997), submitted in Docket No. RM 97–1. On the other hand, copyright owners of the sound recordings have interpreted the scope of the exemption more narrowly. The Recording Industry Association of America ("RIAA"), on behalf of these copyright owners, has argued that transmissions over the Internet, generally known as webcasts, do not fall within the scope of the statutory exemptions and, instead, are subject to the copyright owners' exclusive rights under section 106(6). *See, e.g.*, RIAA Petition and Comments of RIAA at 9–12 (dated April 28, 1997), submitted in Docket No. RM 97–1.

Congress, however, did not consider this question when it first addressed the problems associated with the emergence of digital audio technology and its effects on the music industry because, at the time, it had insufficient information on which to act. It did not understand how nonsubscription services were utilizing the Internet to bring music to the public or how to license such enterprises. Therefore, it focused the initial legislation on the digital subscription services and the interactive services that were in operation at the time.

The result was the DPRA, a law which created a licensing scheme for the subscription services and the interactive digital audio services. 17 U.S.C. 114(d)(3) and (f) (1995). It soon became apparent, however, that with the rapid proliferation of the use of the Internet as a transmission medium and the confusion surrounding the question of how the DPRA applied to some nonsubscription digital audio services, further legislation was needed to achieve the dual purposes of the DPRA.[1] Staff of the House of Representatives Comm. on the Judiciary, 105th Cong., 2d Sess., Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998 at 50–51 (Comm. Print, Serial No. 6, 1998).

These changes were part of the Digital Millennium Copyright Act of 1998 ("DMCA"), Public Law 105–304, which, among other things, amended sections 112 and 114 of the Copyright Act to clarify that "the digital sound recording performance right applies to nonsubscription digital audio services such as webcasting" and to address the licensing issues raised by the webcasters. *Id.* at 50. Specifically, Congress amended section 114 by creating a new statutory license for nonexempt eligible nonsubscription

[1] Congress had a two-fold purpose for enacting the DPRA: "first, * * * to ensure that recording artists and record companies will be protected as new technologies affect the ways in which their creative works are used; and second, to create fair and efficient licensing mechanisms that address the complex issues facing copyright owners and copyright users as a result of the rapid growth of digital audio services." Staff of the House of Representatives Comm. on the Judiciary, 105th Cong., 2d Sess., Section-by-Section Analysis of H.R. 2281 as passed by the United States House of Representatives on August 4, 1998 at 49 (Comm. Print, Serial No. 6, 1998).

transmissions (*e.g.*, webcasting) and nonexempt transmissions by preexisting satellite digital audio radio services to perform publicly sound recordings in accordance with the terms and rates of the statutory license. 17 U.S.C. 114(f). The DMCA also amended section 114(d)(1)(A) to "delete two exemptions that were either the cause of confusion as to the application of the DPRA to certain nonsubscription services (especially webcasters) or which overlapped with other exemptions." H.R. Rep. No. 105–796, at 80 (1998).

On March 1, 2000, RIAA filed a petition for a rulemaking with the Copyright Office asking that the Office determine the scope of the section 114(d)(1)(A) exemptions. Specifically, RIAA has requested that the Office adopt a rule "clarifying that a broadcaster's transmissions of its AM or FM radio station over the Internet * * * is not exempt from copyright liability under section 114(d)(1)(A) of the Copyright Act." RIAA petition at 1 (filed March 1, 2000). RIAA states in its petition that it has attempted to negotiate voluntary agreements with broadcasters who stream their over-the-air AM or FM radio broadcast via the Internet or who have authorized a third party "aggregator" to retransmit an over-the-air radio broadcast via the Internet. It asserts that these discussions have not progressed beyond the initial stages because the parties cannot agree whether transmission of a broadcast over the Internet is subject to the digital performance right. Consequently, it has asked the Office to interpret section 114(d)(1)(A) and determine whether a broadcast transmission made via the Internet is exempt from copyright liability.

The Office agrees with RIAA that the resolution of this question has implications for both the section 112 [2] and the section 114 statutory licenses. For example, if it is ultimately decided that a broadcast transmission over the Internet falls outside the safe harbor carved out by the section 114(d)(1) exemptions, the webcaster must decide whether to make use of the statutory license under section 114(f) or whether to negotiate a private license with the copyright owners of the sound recordings. Alternatively, if the Office decides that a broadcast transmission which is streamed over the Internet is exempt under section 114(d)(1)(A), parties can avoid further negotiations over rates and terms for use of the sound recordings in those situations.

RIAA's Initial Arguments in Support of Its Petition

RIAA argues that the amendments to sections 112 and 114 support its view that broadcasters who engage in transmissions over the Internet are not exempt from copyright liability for these transmissions. First, RIAA notes that Congress had no intention of creating any new exemptions when it amended section 114(d)(1)(A), but merely sought to remove those exemptions that were the source of the confusion, either because it was unclear how the exemption applied to nonsubscription services or because the exemption was redundant. These changes were in no way intended to affect the provision that exempts nonsubscription broadcast transmissions. H.R. Rep. No. 105–796, at 80 (1998).

While RIAA does not dispute that there is a recognized exemption for over-the-air broadcast transmissions, it continues its analysis by noting that the definition of an "eligible nonsubscription service,"—the entity which, by statute, may make use of the statutory license—specifically includes retransmissions of broadcast transmissions. Consequently, it argues that Congress never intended that broadcasts over the Internet be exempt under the provisions of section 114(d)(1)(B). Instead, Congress carved out specific exemptions for retransmissions of a nonsubscription broadcast transmission, and none of these directly address a retransmission over the Internet. 17 U.S.C. 114(d)(1)(B)(i)–(iv). Therefore, a retransmission of a nonsubscription broadcast transmission over the Internet would have to meet the requirements set forth in subsection (B) of section 114(d)(1) or be subject to the section 106(6) right of public performance.

In further support of its interpretation of the statutory license, RIAA observes that a webcaster who utilizes the section 114(d)(2) license is also eligible for a statutory license pursuant to section 112(e)(1)—a license which allows transmitting organizations to make one or more ephemeral recordings, depending upon the terms of the license. The section 112 license, however, allows only two different types of transmitting organizations to make use of the license: (1) A transmitting organization entitled to make a transmission of a sound recording under the section 114(f) license; or (2) A transmitting organization that makes use of the exemption specified in section 114(d)(1)(C)(iv). These limitations on the section 112 license thus appear to present a dilemma for the broadcasters. Namely, how do they make the necessary ephemeral recordings incident to streaming nonsubscription broadcast transmissions over the Internet if they cannot take advantage of the statutory license in section 112? For this reason, RIAA suggests that Congress did not intend to exempt nonsubscription broadcast transmissions that are retransmitted over the Internet under the general exemption for broadcast transmissions set forth in section 114(d)(1)(A). Otherwise, Congress would have made provisions for the making of the necessary ephemeral recordings used in these transmissions.

Proposed Rule and Comments

The foregoing discussion has been presented solely for the purpose of stating the arguments that have been made to the Office in support of the request to conduct this rulemaking. While the Office has made no determination on the merits of the arguments put forth by RIAA in its petition, the Office acknowledges that there appears to be a need to resolve the questions surrounding the applicability of the section 114(d)(1)(A) exemption to the activities of a broadcaster when it makes a public performance of a sound recording by means of a digital audio transmission.

The Copyright Office does not foresee any need to amend its current rule defining the term "Service," 37 CFR 201.35(b)(2), in the event that a broadcast transmission is found to fall within the scope of the section 114(d)(1) exemptions. On the other hand, if the Office decides that transmissions of broadcast signals over a digital communications network, such as the Internet, are not exempt from copyright liability under section 114(d)(1)(A) of the Copyright Act, then it proposes amending the rule as set forth in this notice.

All interested parties are requested to file comments and replies with the Copyright Office in accordance with the information set forth in this document. Comments are invited, first, on whether the Office should address this issue in a rulemaking and, second, on whether the Office should adopt the regulatory language set forth in the notice or some other regulatory language in its place. The Copyright Office has posted the RIAA petition to its website (http://www.loc.gov/copyright/CARP/RIAApetition.pdf) in order to facilitate the dissemination of the information presented by RIAA in its petition.

[2] A transmitting organization that makes transmissions under the section 114(f) license may also make an ephemeral recording, under a separate statutory license, for the purpose of making the digital audio transmissions. 17 U.S.C. 112(e).

Statutory Authority

The Copyright Office initiates this proceeding under its authority to establish regulations for the administration of its functions and duties under title 17. 17 U.S.C. 702. The Office exercises its authority under section 702 when it is necessary "to interpret the statute in accordance with Congress' intentions and framework and, where Congress is silent, to provide reasonable and permissible interpretations of the statute." 57 FR 3284, 3292 (January 29, 1992); *see also* 63 FR 3685, 3686 (January 26, 1998) (invoking section 702 authority to determine whether a local over-the-air broadcast signal may be retransmitted into the local market area under the provisions of the section 119 statutory license).

List of Subjects in 37 CFR Part 201

Copyright.

In consideration of the foregoing, it is proposed that part 201 of 37 CFR be amended as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.35(b)(2) is revised to read as follows:

§ 201.35 Initial Notice of Digital Transmission of Sound Recordings under Statutory License.

* * * * *

(b) * * *

(1) * * *

(2) A *Service* is an entity engaged in the digital transmission of sound recordings, pursuant to section 114(f) of title 17 of the United States Code, including, but not limited to, any entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, and provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2).

* * * * *

Dated: March 10, 2000.

David O. Carson,

General Counsel.

[FR Doc. 00–6419 Filed 3–15–00; 8:45 am]

BILLING CODE 1410–31–P

POSTAL SERVICE

39 CFR Part 913

Procedures for the Issuance of Administrative Subpoenas Under 39 U.S.C. 3016

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to establish procedures for the issuance of administrative subpoenas in investigations of false representations and lotteries under 39 U.S.C. 3005(a). These subpoenas will require the production of records which contain evidence considered relevant or material in such investigations.

DATES: Comments must be received on or before April 17, 2000.

ADDRESSES: Written comments should be mailed to Civil Practice Section, U.S. Postal Service Law Department, 475 L'Enfant Plaza, SW, Washington, DC 20260–1135. Copies of all written comments will be available for inspection and photocopying between 8:15 a.m. and 4:45 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Elizabeth P. Martin, (202) 268–3022.

SUPPLEMENTARY INFORMATION: The Deceptive Mail Prevention and Enforcement Act, Pub. L. No. 106–168, 113 Stat. 1806, enacted on December 12, 1999, generally provides for the amendment of chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to sweepstakes, skill contests, and facsimile checks as well as amending provisions relating to administrative procedures and orders and adding civil penalties relating to such matters.

The Deceptive Mail Prevention and Enforcement Act enacted new 39 U.S.C. 3016 to grant the Postmaster General authority to issue administrative subpoenas requiring the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Postmaster General considers relevant or material in any investigation conducted under 39 U.S.C. 3005(a), dealing with false representations and lotteries. The Act also authorizes new administrative civil penalties.

The Postal Service is proposing to add a new Part 913 to title 39 of the Code of Federal Regulations to establish the procedures to be used for the issuance of the administrative subpoenas authorized under 39 U.S.C. 3016. The proposed rules set forth the conditions under which subpoenas may be issued, the methods of service of subpoenas, the means by which subpoenas may be enforced, and the restrictions on the disclosure of subpoenaed information.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (39 U.S.C. 410(a)), the Postal Service invites comments on the proposed new Part 913 of title 39, Code of Federal Regulations.

List of Subjects in 39 CFR Part 913

Administrative practice and procedure, False representations, Lotteries.

For the reasons set out in the preamble, the Postal Service proposes to add Part 913 to title 39 of the Code of Federal Regulations as set forth below:

PART 913—PROCEDURES FOR THE ISSUANCE OF ADMINISTRATIVE SUBPOENAS UNDER 39 U.S.C. 3016

Sec.

913.1 Subpoena authority.
913.2 Service.
913.3 Enforcement.
913.4 Disclosure.

Authority: 39 U.S.C. 204, 401, 404, 3005, 3016.

§ 913.1 Subpoena authority.

(a) *General.* The General Counsel is responsible for the issuance of subpoenas in investigations conducted under 39 U.S.C. 3005(a), with authority to delegate that function to a Deputy General Counsel.

(b) *Production of records.* A subpoena issued by the General Counsel may require the production of any records (including computer records, books, papers, documents, and other tangible things which constitute or contain evidence) which the General Counsel considers relevant or material to an investigation.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall be submitted to the Office of the General Counsel by a Postal Inspector, Inspector Attorney, or other individual specifically authorized by the Postal Inspection Service to submit such a request, after appropriate review by an Inspector In Charge or that person's designee.

(2) A request for a subpoena shall state the specific case, with an individual or entity identified as the subject, in which the subpoena is requested.

(3) A request for a subpoena shall contain a description of the records requested, and shall state how they are relevant or material to the investigation.

(4) The General Counsel, in his or her discretion, may require the requesting

individual to provide additional information, and honor requests to amend or supplement a request for a subpoena.

(d) *Form and issuance.* Every subpoena shall cite 39 U.S.C. 3016 as the authority under which it is issued, and shall command each person to whom it is directed to produce specified records at a time and place therein specified. The General Counsel shall sign the subpoena and enter the name of the individual or entity to whom it is directed.

§ 913.2 Service.

(a) *Service within the United States.* A subpoena issued under this section may be served by a person designated under 18 U.S.C. 3061 at any place within the territorial jurisdiction of any court of the United States.

(b) *Foreign service.* Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure describe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(c) *Service on business persons.* Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by—

(1) Delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(2) Delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(3) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(d) *Service on natural persons.* Service of any subpoena may be made upon any natural person by—

(1) Delivering a duly executed copy to the person to be served; or

(2) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(e) *Verified return.* A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

§ 913.3 Enforcement.

(a) *In general.* Whenever any person, partnership, corporation, association, or entity fails to comply with any subpoena duly served upon him, the General Counsel may request that the Attorney General seek enforcement of the subpoena in the district court of the United States for any judicial district in which such person resides, is found, or transacts business (or in the case of a person outside the territorial jurisdiction of any district court, the district court for the District of Columbia), and serve upon such person a petition for an order of such court for the enforcement of this part.

(b) *Jurisdiction.* Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order entered shall be subject to appeal under 28 U.S.C. 1291. Any disobedience of any final order entered under this section by any court may be punished as contempt.

§ 913.4 Disclosure.

Any documentary material provided pursuant to any subpoena issued under this section shall be exempt from disclosure under 5 U.S.C. 552.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–6092 Filed 3–15–00; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 26, and 27

[WT Docket No. 00–32; FCC 00–63]

Transfer of 4.9 GHz Band From Federal Government Use

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to allocate and establish licensing and service rules for the 4940–4990 MHz band that has recently been transferred from Federal Government to private sector use as substitute spectrum for the 4635–4685 MHz band reclaimed for Federal Government use. This document also grants in part a Petition for Rulemaking filed by Global Frontiers, Inc. (Global) to revise, among other requests, the Commission's rules relating to this band. The action taken in this document is necessary to comply with Congressional mandate to transfer spectrum from the Federal government to the private sector, to permit and encourage the introduction of new services and the enhancement of existing services.

DATES: Submit comments on or before April 26, 2000; submit reply comments on or before May 17, 2000. Written comments by the public on the proposed information collections are due April 26, 2000. Written comments must be submitted by the Office Management and Budget (OMB) on the proposed information collections on or before May 15, 2000.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Ed Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Elias Johnson; 202–418–1310. For additional information concerning the information collections contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making (NPRM) in WT Docket No. 00–32, FCC 00–63, adopted February 23, 2000, and released February 29, 2000. The complete text of the NPRM and Initial Regulatory Flexibility Analysis is available on the Commission's Internet site, at www.fcc.gov. It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level,

445 12th Street, SW, Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., CY-B400, 445 12th Street SW, Washington, DC Comments may be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html, or by e-mail to ecfs@fcc.gov.

Synopsis of the NPRM

1. In this NPRM, the Commission proposes to allocate and establish licensing and service rules for the 4940–4990 MHz (4.9GHz) band that has recently been transferred from Federal Government to private sector use as a substitute spectrum for the 4635–4685 MHz band reclaimed for Federal Government use. The Commission proposes to allocate the 4.9 GHz band for fixed and mobile services, except aeronautical mobile service, on a primary basis and seeks comment on the geographic area and spectrum blocks that should be used to license this spectrum. In addition, the Commission also proposes to license the 4.9 GHz band under part 27 of the Commission's Rules, except to the extent the Commission, in this NPRM, proposes to modify those rules to reflect the particular characteristics of this spectrum and the services that will be permitted to operate in this band. The Commission proposes to delete part 26 of the Rules (regarding General Wireless Communications Service) because it applies only to the 4660–4685 MHz band. The Commission also proposes that initial licenses for the 4.9 GHz band be acquired through competitive bidding under part I of the Commission's Rules. Furthermore, in a few instances, the Commission proposes to codify and conform certain rules for the 2.3 GHz band to provide for consistent regulation of part 27 services. Finally, the Commission grants in part a Petition for Rulemaking filed by Global Frontiers, Inc. (Global) to revise, among other requests, the Commission's rules relating to this band.

2. Briefly, the Omnibus Budget Reconciliation Act of 1993 (OBRA, Public Law 103–66 107 Stat. 312) required that the Secretary of Commerce identify at least 200 megahertz of spectrum then allocated for use by Federal Government agencies to be transferred to private sector use. The Commission, in the GWCS First Report and Order (60 FR 13071, March 10, 1995) among other things allocated the 4660–4685 MHz band on a primary basis to fixed and mobile services and proposed to designate this band for the new GWCS service. The subsequent Second GWCS Report and Order (60 FR 40712, August 9, 1995) established GWCS and adopted Part 26 of the Commission's Rules setting out licensing and operating rules for the service in the 4660–4685 MHz band. However, due to an evident lack of interest in this spectrum and certain concerns expressed by the United States Navy regarding the effect that transferring this spectrum to commercial use could have on its Cooperative Engagement Capability (CEC) system, the Department of Commerce, on March 30, 1999, notified the Commission that the Federal Government was reclaiming the 4635–4685 MHz band and identifying, as substitute spectrum, the 4.9 GHz band.

3. Global, in its Petition for Rulemaking (filed on November 24, 1999) requested that the Commission: (1) Designate the 4.9 GHz band for GWCS in lieu of the reclaimed 4660–4685 MHz band; (2) make the service more attractive to applicants that require broadband capability in order to serve the public; (3) speed the process of licensing applicants that are not mutually exclusive; and (4) allow mutually exclusive applicants to consult and negotiate solutions to their mutual exclusivity. Global asked that the Commission make available for GWCS the entire 4.9 GHz band, that the band be broken down into five 10 megahertz wide bands, and apparently that the band be licensed using Economic Areas (EAs). Global also requested that the 15 MHz aggregation limit contained in § 26.101(a) be increased, and that GWCS licensees be able to partition their service territories to entities other than just rural telephone companies. In addition, Global asked that the Commission clarify how applications are to be filed and that the Commission promptly process GWCS applications. Finally, Global requested that the Commission encourage the avoidance of mutual exclusivity through negotiated engineering solutions.

4. The NPRM proposes that licensees in the 4.9 GHz band be authorized to provide any fixed, mobile, or maritime mobile service, but not aeronautical mobile service. The NPRM seeks comment on this proposal. Further, the NPRM tentatively concludes that allocating the 4940–4990 MHz band to fixed and mobile services, except aeronautical mobile service, is consistent with section 303(y)(2) of the Communications Act (Act), 47 U.S.C. 303(y)(2), as amended by the Balanced Budget Act 1997, Public Law 105–33, 111 Stat. 251. The NPRM also invites comment on whether allocating the 4940–4990 MHz band to fixed and mobile services is in the public interest, and on whether a flexible spectrum allocation in this band would deter investment in communications and systems, or technology development. Further, the NPRM seeks comment regarding the extent to which significant flexibility in service rules may encourage such investments. Finally, the NPRM solicits comment on its tentative finding that the technical rules proposed in the NPRM satisfy the requirements of section 303(y)(2)(C).

5. The NPRM seeks comment on its tentative conclusion that the action taken in the Public Safety Reallocation Order, 63 FR 06669, February 10, 2000, allocating the 764 MHz band on a primary basis to fixed and mobile services, and designating this spectrum solely for public safety use, and in the First Report and Order WT Docket No. 96–86, 63 FR 58645, November 2, 1998, which adopted rules for licensing and operation for public safety in those bands, there is no need to set aside spectrum in the 4.9 GHz band for public safety use.

6. The NPRM next seeks comment on the Commission's proposals that the 4.9 GHz band be governed, in general, by part 27 of the Commission's Rules and that part 26 no longer serves a function and should be deleted from the Commission's Rules.

7. The NPRM does not propose to restrict the types of fixed and mobile services that can be provided in the 4.9 GHz band (other than aeronautical mobile). Consistent with this approach, the Commission notes that licensees may be required to comply with rules contained in other parts of the Commission's Rules. The Commission seeks comment generally on any provisions in existing, service-specific rules that may require specific recognition or adjustment to comport with the supervening application of part 27, as well as any provisions that may be necessary in part 27 to fully describe the scope of covered services and technologies.

8. The NPRM notes that the 4.9 GHz service will be subject to the Universal Licensing System (ULS). All 4.9 GHz licensees filing applications and other filings using FCC forms 601 through 605 or associated schedules must make these filings electronically in accordance with the electronic filing instructions provided by ULS, 47 CFR 1.913(b).

9. The NPRM next proposes that, similar to licensees in other Commission services, applicants in the 4.9 GHz band be allowed to request common carrier and non-common carrier status for authorization in a single license rather than require the

applicant to choose between common carrier and non-carrier services. This would enable 4.9 GHz licensees to provide all allowable services anywhere within its licensed area at any time, consistent with its regulatory status. In this regard, the NPRM proposes that applicants and licensees in the 4.9 GHz band be required to indicate a regulatory status based on any service they choose to provide, but not be required to describe their proposed services. The NPRM also proposes that if licensees change the service or services they offer, such that it would change their regulatory status, they must notify the Commission, within 30 days of the change although such change would not require prior Commission authorization. In addition to making these procedures applicable to the 4.9 GHz band, the NPRM also proposes to codify these procedures for the 2.3 GHz band, and seeks comment on these proposals.

10. The NPRM proposes that there be no additional restrictions on eligibility, other than the foreign ownership restrictions set forth in section 310 of the Commission's Act, and as indicated in this decision. In addition, consistent with Global's request, the NPRM tentatively concludes that licensees in the 4.9 GHz band should be permitted to obtain all of the 4.9 GHz licenses in a given geographic area, and that a spectrum cap is not necessary to prevent a 4.9 GHz licensee from exercising market power. The NPRM seeks comment on these issues.

11. Applicants in the 4.9 GHz band would be subject to section 27.12 of the Act, which implements the foreign ownership and citizenship requirements that restrict the issuance of licenses to certain applicants. An applicant requesting authorization only for non-common carrier services would be subject to section 310(a) but not to the additional prohibitions of section 310(b). An applicant requesting authorization for common carrier services (or for both common carrier and non-common carrier services) would be subject to both sections 310(a) and 310(b). Like common carriers, non-common carriers would be required to file the information whenever there are changes to their foreign ownership information. However, under the Commission's proposed rules, applicants requesting authorization exclusively to provide non-common carrier services would not be disqualified if its citizenship information reflects that it would be disqualified from a common carrier license or required to file a waiver. The NPRM solicits comment on these proposals.

12. The NPRM seeks comment on the appropriate geographic area to use for licensing the 4.9 GHz band. (*See* paras 41–43 of the full text of the NPRM.) Additionally, the NPRM invites comment on the appropriate size spectrum block or blocks that should be used to license the 4.9 GHz band. Global requests that the spectrum be divided into five 10 megahertz wide spectrum block. Alternatively, the NPRM seeks comment on whether this spectrum should be auctioned in two 25 MHz licenses. The NPRM requests comment on whether larger or smaller blocks would provide more options for services provided by licensees in the band, on whether the spectrum should be auctioned in paired spectrum blocks, on whether the Commission should license unpaired spectrum in the 4.9 GHz band, and on whether the Commission should make changes to its bidding rules to promote bidder flexibility

13. The NPRM seeks comment on whether to provide for license terms not to exceed 10 years from the date of original issuance and whether to provide a right to a renewal expectancy. (*See* paras. 48 through 50 of the full NPRM.) Further, the NPRM invites comments on the Commission's tentative conclusion that, in order to claim a renewal expectancy, a 4.9 GHz licensee involved in a comparative renewal proceeding must include at a minimum a showing including: (1) A description of current service in terms of geographic coverage and population served or links installed; (2) an explanation of the licensee's record of expansion, including a timetable for the construction of new base sites or links to meet changes in demand for service; (3) a description of the licensee's investments in its system; and (4) copies of any Commission Orders finding the licensee to have violated the Communications Act or any Commission rule or policy, and a list of any pending proceedings that relate to any matter described by the requirements for the renewal expectancy.

14. On December 20, 1996, the Commission released a Further Notice of Proposed Rulemaking in WT Docket No. 96–148, 62 FR 696, January 6, 1997, proposing, among other actions, to revise the partitioning rules for the band 4660–4685 MHz and to establish disaggregation rules for this band. The proposals contained in that document are superseded by the proposals discussed in the NPRM, and that proceeding is terminated to the extent that it addressed partitioning and disaggregation rules for the band 4660–4685 MHz.

15. The NPRM tentatively concludes, consistent with Global's request, to allow all 4.9 GHz licensees the flexibility to partition their service areas without any restriction, and to disaggregate their spectrum. Section 27.15 of the Commission's Rules permits licensees seeking approval for partitioning and disaggregation arrangements to request authorization from the Commission for partial assignment of a license, and provides that licensees may apply to partition their licensed geographic service areas or disaggregate their licensed spectrum at any time following the grant of their licenses. In the Report and Order adopting the rule, 62 FR 653, January 6, 1997, the Commission decided to permit geographic partitioning of any service area defined by the partitioner and partitionee, to permit spectrum disaggregation without restriction on the amount of spectrum to be disaggregated, and to permit combined partitioning and disaggregation. The NPRM requests comment on the Commission's proposal that licensees in the 4.9 GHz band be eligible to the same extent to partition service areas and disaggregate spectrum, and also on what limits, if any, should be placed on the ability of licensees to partition service areas and disaggregate spectrum.

16. The NPRM also requests comment on its proposal that 4.9 GHz applicants and licensees be required to, in the case of partitioning, file FCC form 603 and list the partitioned service area on a schedule to the application. Further, the NPRM proposes that licensees in the 4.9 GHZ band follow § 27.15(c) provisions against unjust enrichment and the remaining provisions governing partitioning and disaggregation in § 27.15 of the Commission's Rules.

17. The NPRM also seeks comment on the Commission's proposal regarding construction requirements for parties to partitioning, disaggregation, or combined partitioning and disaggregation agreements. The NPRM proposes to allow parties to partitioning agreements to choose between two options for satisfying the construction requirements. The first option provides that the partitioner and partitionee would each certify that it would independently satisfy the substantial service requirement for its respective partitioned area. If a licensee fails to meet this requirement during the relevant license term, that licensee's authorization would be subject to cancellation at the end of the license term. Under the second option, the partitioner would certify that it has met or will meet the substantial service requirement for the entire market. If the

partitioner fails to meet this standard during the relevant license term, however, only its license would be subject to cancellation at the end of the license term. The partitionee's license would not be affected by that failure.

18. The NPRM additionally proposes to allow parties to disaggregation agreements to choose between two options for satisfying the construction requirements. Under the first option, the disaggregator and disaggregatee would certify that they each would share responsibility for meeting the substantial service requirement for the geographic service area. If parties choose this option, both parties' performance will be evaluated at the end of the relevant license term and both licenses could be subject to cancellation. The second option would allow the parties to agree that either the disaggregator or the disaggregatee would be responsible for meeting the substantial service requirement for the geographic service area. If parties choose 'his option, and the party responsible for meeting the construction requirement fails to do so, only the license of the non-performing party would be subject to cancellation.

19. The NPRM proposes construction standards and safe harbor provisions for 4.9 GHz licensees. As mandated by § 27.14(a) of the Commission's Rules, licensees would be required to provide "substantial service" in their service areas within 10 years of being licensed. A failure to meet this requirement would result in forfeiture of the license and the licensee's ineligibility to regain it. As proposed, licensees would be required to submit an acceptable showing to the Commission at the end of the license period demonstrating that they have provided substantial service during the license term or are providing substantial service at the end of the term. In addition, the NPRM proposes the safe harbors that would be applicable to 2.3 GHz licensee, as well as to 4.9 GHz licensees. The first safe harbor proposal states that for a licensee who chooses to offer fixed, point-to-point service, the construction of four permanent links per one million people in its licensed service area during its license term or the license-renewal mark would constitute substantial service. The second safe harbor proposal provides that, for a licensee who chooses to offer mobile services or point-to-point multipoint services, a demonstration of coverage to 20 percent of the population of its licensed service area during its licensed term or at the license-renewal mark would constitute substantial service.

20. Under the proposed approach, the Commission intends to reserve the right to review these construction requirements in the future if complaints are received related to section 309(j)(4)(B) of the Act, or if a reassessment is warranted because spectrum is being warehoused or is otherwise not being used despite demand. The Commission will also reserve the right to impose additional, more stringent construction requirements on licenses in the future in the event that actual anticompetitive or universal service problems develop. The NPRM seeks comment on these proposals.

21. The NPRM seeks comment on its tentative proposal that, for applicants in the 4.9 GHz band, providing common carrier or non-common carrier service, the Commission provide for a five-day period for filing petitions to deny applications, and a seven-day notice period for all auctionable services, as mandated for auctionable services in §§ 1.2108(b) and 1.2108(c) of the Commission's Rules.

22. The NPRM considers general common carrier obligations. The NPRM first invites comment on its proposal that the Commission exercise its authority to forbear from enforcing the same Title II of the Act requirements that the Commission has determined not to apply to CMRS licensees, for 4.9 GHz and 2.3 GHz licensees that provide common carrier fixed services. Title II of the Act imposes a variety of obligations on the operations of common carriers that are not otherwise imposed on wireless communications services. These operational requirements include the filing of tariffs, maintaining of records, liabilities, and discontinuance of service. The 1996 Act provides the Commission with the authority to forbear from Title II requirements. (*See* 47 U.S.C. 160, as added by the 1996 Act.) The statute requires that, before forbearing from applying any section of Title II, the Commission must find that each of the following applies:

(a) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory.

(b) Enforcement of such regulation or provision is not necessary for the protection of consumer; and

(c) Forbearance from applying such provision or regulation is consistent with the public interest.

The NPRM seek comment on the application of these criteria to the 4.9 and 2.3 GHz band.

23. The NPRM seeks comment regarding whether to include an Equal Employment Opportunity (EEO) provision in the Commission's rules applicable to services in the 4.9 GHz band, and if so, which of the Commission's EEO rules should be adopted. The NPRM also seek comment on whether the Commission's EEO rules should be applied to licensees at 2.3 GHz.

24. The NPRM next proposes to apply the technical standards of part 27, including power limits, equipment authorization, radiofrequency safety standards, emission limits, frequency stability, antenna structures and air navigation safety, international coordination and disturbance of AM station antenna patterns, as well as technical standards contained in other sections of the Commission's Rules, to 4.9 GHz licensees.

25. The NPRM offers two approaches to in-band interference control. Parties are asked to provide their analysis of both a general coordination requirement, in which the Commission would rely principally upon the use of coordination procedures to avoid harmful interference between the operation of licensees in adjacent service areas, and establishment of a field strength limit. Comments are particularly sought on issues such as coordination procedures and criteria, and on what the boundary limit should be. Comment is also sought on whether to modify § 27.64 of the Commission's Rules, which states that part 27 stations operating in full accordance with applicable Commission rules and the terms and conditions of their authorizations are normally considered to be non-interfering, and provides for Commission action to require modification to eliminate significant interference. The NPRM further invites comment on whether power limits and coordination procedures should be imposed to adequately protect radio astronomy operation.

26. The NPRM notes that the U.S. Navy's CEC system operates on multiple frequencies in the bands below the 4.9 GHz, and invites comment on what measures should be taken to protect the 4.9 GHz licensees from interference from Federal Government use of the adjacent band. For example, should certain technical standards be imposed on 4.9 GHz licensees?

27. The NPRM proposes to use the part 1 auction rules to initially license the 4.9 GHz band, and to move the remaining part 26 auction rules for the

band 4660–4685 MHz to the 4.9 GHz band. The NPRM also tentatively concludes that mutually exclusive initial applications for the 4.9 GHz band must be resolved through competitive bidding and that the Commission's previous determinations of auctionability is dispositive with regard to the substituted 4.9 GHz spectrum. (*See* para. 94 of the NPRM). The NPRM solicits comment on these tentative conclusions.

28. The NPRM proposes to conduct the auction for initial licenses in the 4.9 GHz band in conformity with the general competitive bidding rules set forth in part 1, subpart Q of the Commission's Rules, and consistent with the bidding procedures that have been employed in previous Commission auctions. The NPRM invites comment on this proposal and on whether any of the Commission's part 1 rules would be inappropriate in an auction for this service.

29. The NPRM considers the definition of small business in the context of the 4.9 GHz band. Specifically, the NPRM proposes to define a small business as any firm with annual average gross revenues for the three preceding years not in excess of $40 million. For entities that qualify as small businesses, the NPRM proposes to provide a bidding credit of 15 percent. The NPRM also proposes to define a very small business as one with average annual gross revenues for the three preceding years not in excess of $15 million. For entities that qualify as very small businesses, the NPRM proposes a bidding credit of 25 percent. The NPRM invites comment on the appropriateness of these standards and on related issues. (*See* paragraphs 101 through 103.) In calculating gross revenues for purposes of small business eligibility in 4.9 GHz auction, the NPRM proposes to attribute the gross revenues of the applicant, its controlling interests, and its affiliates.

Initial Regulatory Flexibility Analysis

30. As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the NPRM. The Commission requests written public comment on the analysis. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, the Commission asks a number of questions in the IRFA regarding the prevalence of small businesses in the affected industries.

31. Comments must be filed in accordance with the same filing deadlines as comments filed in this rulemaking proceeding, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

***Ex Parte* Presentations**

32. For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission's Rules. (*See generally* 47 CFR 1.1202, 1.1203, 1.1206(a).)

Pleading Dates

33. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before April 26, 2000, and reply comments on or before May 17, 2000. Comments and reply comments should be filed in WT Docket No. 00–32. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street, SW, Washington, DC 20554, with a copy to Eli Johnson, Policy Division, Wireless Telecommunications Bureau, 445 Twelfth Street, SW, Washington, DC 20554.

34. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your E-Mail address>." A sample form and directions will be sent in reply.

35. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Center, Room CY–A257, at the Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc.), CY–B400, 445 12th Street, SW, Washington, DC 20054, (202) 857–3800.

Ordering Clauses

36. These actions are taken pursuant to sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), 310.

37. Notice is hereby given of the proposed regulatory changes described in the NPRM, and that comment is sought on these proposals.

38. The Petition for Rulemaking of Global Frontiers, Inc. To Revise Title 47, CFR, parts 2 and 26 in Order To Reallocate Frequencies to GWCS and Make Related Changes, is granted to the extent indicated.

39. Pursuant to sections 1, 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and 332, the rulemaking proceeding captioned Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, WT Docket No. 96–148, is terminated to the extent indicated.

40. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Ghief Counsel for Advocacy of the Small Business Administration

Initial Regulatory Flexibility Analysis

41. This is a synopsis of the Initial Regulatory Flexibility Act Statement in this Notice of Proposed Rulemaking (NPRM). The full text of Initial Regulatory Flexibility Act Statement may be found in Appendix A of the full NPRM.

42. As required by the Regulatory Flexibility Act (RFA) the Commission has prepared this Initial Regulatory

Flexibility Analysis (IRFA)[1] of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM), WT Docket No. 00–32. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Need for, and Objectives of, the Proposed Rules

43. The Commission's objectives in the NPRM are to: (1) Accommodate the introduction of new uses of spectrum and the enhancement of existing uses; (2) encourage commercial development of equipment that can operate in the 4.9 GHz band; (3) facilitate the awarding of licenses to entities who value them the most; and (4) create new jobs, foster economic growth and improve access to communications by industry and the American public. The Commission also seeks to ensure a regulatory plan for the 4.9 GHz band that will allow for the efficient licensing and use of the band, eliminate unnecessary regulatory burdens, enhance the competitive potential of the band, and provide a wide variety of radio services to the public.

Legal Basis for Proposed Rules

44. The proposed action is authorized under sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), 310.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

45. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations.

46. The definition of "small governmental entity" is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, the Commission estimates that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

47. The proposals in the NPRM affect applicants who wish to provide services in the 4.9 GHz band. The Commission notes that we have previously defined "small entity" for Blocks C and F broadband PCS licensees as firms that had average gross revenues of less that $40 million in the three previous calendar years. This regulation defining "small entity" in the context of broadband PCS auctions has been approved by the SBA. We also note that the Commission has adopted this same definition for 2.3 GHz and 39 GHz applicants, as well as for the band 4660–4685 MHz. With respect to prospective 4.9 GHz license applicants, the Commission proposes to use the small entity definition adopted in the Broadband PCS proceeding.

48. In addition, the Commission notes that if the proposed special small business definition were not to be used, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.

49. The NPRM observes that the capital costs of operational facilities in the 4.9 GHz band are likely to vary widely. Accordingly, the NPRM seeks to adopt small business size standards that afford licensees substantial flexibility. Thus, in addition to its proposal to adopt the general small business standard the Commission used in the case of broadband PCS, 2.3 GHz, 39 GHz, and 4660–4685 MHz licenses, the NPRM also proposes to adopt the definition for very small businesses, businesses with average annual gross revenues for the three preceding years not in excess of $15 million.

50. While the NPRM proposes to use these definitions, the Commission has not yet determined or proposed how many licenses will be awarded, nor will it know how many licensees will be small businesses until the auction, if required, is held. In addition, at this point in the proceeding, the Commission does not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed. The Commission assumes that, for purposes of our evaluations and conclusions in the IRFA, all of the prospective licensees are small entities, as that term is defined by the SBA or our proposed definitions for the 4.9 GHz band. We invite comment on this analysis.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

51. Entities interested in acquiring spectrum in the 4.9 GHz band will be required to submit license applications and high bidders will be required to apply for their individual licenses. The proposals under consideration in this item also include requiring commercial licensees to make showings that they are in compliance with construction requirements, file applications for license renewals and make certain other filings as required by the Communications Act. The Commission requests comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

52. The NPRM seeks data demonstrating build-out and other capital requirements for services in the 4.9 GHz band, as well as the anticipated start-up costs for providing service, and how these costs compare with costs for

[1] 5 U.S.C. 603, The RFA, 5 U.S.C. 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

other services. Commenters are invited to use comparisons with other services for which the Commission has already established auction procedures as a basis for their comments regarding the appropriate definitions for small and very small businesses. Commenters are asked to address to what extent the proposed size standards will impact the ability of small businesses to acquire financing. In addition, the Commission seeks comment on whether the proposed designated entity provisions would be sufficient to promote participation by businesses owned by minorities and by women, and participation by rural telephone companies.

53. The Commission has reduced burdens wherever possible. To minimize any negative impact, however, the NPRM proposes certain incentives for small entities which will redound to their benefit. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The Commission seeks comment on significant alternatives commenters believe should be adopted.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

54. None

Paperwork Reduction Analysis

55. This NPRM contains proposed and modified information collections. As part of our continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM. OMB comments are due 60 days from the date of publication of this NPRM in the **Federal Register**. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: The Transfer of the 4.9 GHz Band from Federal Government Use: Notice of Proposed Rulemaking.

Form No.: FCC Forms 601, 602, 603, 604, 605.

Type of Review: New information collection.

Respondents: Business or other for profit.

Number of Respondents: 100.

Estimated Time Per Response: 113 hours.

Total Annual Cost Burden: 0.

Total Annual Burden: 11,300 hours.

Needs and Uses: The various information reporting and verification requirements, and the prospective coordination requirement will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934. Such information has been used in the past and will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission Rules.

List of Subjects

47 CFR Part 2

Radio.

47 CFR Parts 26 and 27

Communications common carriers, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6605 Filed 3–14–00; 12:08 pm]

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Notices

Federal Register
Vol. 65, No. 52
Thursday, March 16, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 10, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal & Plant Health Inspection Service

Title: Animal Welfare.
OMB Control Number: 0579–0036.
Summary of Collection: The Laboratory Animal Welfare Act (AWA) (Public Law 890544) enacted August 24, 1966, required the U.S. Department of Agriculture, (USDA), to regulate the humane care and handling of dog, cats, guinea pigs, hamster, rabbits, and nonhuman primates. The legislation was the result of extensive demand by organized animal welfare groups and private citizens requesting a Federal law covering the transportation, care, and handling of laboratory animals. The Animal and Plant Health Inspection Service (APHIS), Regulatory Enforcement and Animal Care (AC) has the responsibility to enforce the Animal Welfare Act (7 U.S.C. 2131–2156) and the provisions of 9 CFR, Subchapter A, which implements the Animal Welfare Act. The purpose of the AWA is to insure that animal use in research facilities or exhibition purposes are provided humane care and treatment. To assure humane treatment of the animal during transportation in commerce and to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen. APHIS will collect information using several forms.
Need and Use of the Information: APHIS will collect health certificates, program of veterinary care, application for license and record of acquisition, disposition and transportation of animals. The information is used to ensure those dealers, exhibitors, research facilities, carriers, etc., are in compliance with the Animal Welfare Act and regulations and standards promulgated under this authority of the Act.
Description of Respondents: Business or other for-profit.
Number of Respondents: 8,231.
Frequency of Responses: Recordkeeping; reporting: On occasion; weekly; semi-annually; annually.
Total Burden Hours: 95,720.

Food and Nutrition Service

Title: Supplemental Form for Collecting Taxpayer Identifying Numbers.
OMB Control Number: 0584-NEW.
Summary of Collection: Section 3100(y) of the Debt Collection Improvement Act of 1996 (Public Law 104–134) requires all Federal agencies to obtain taxpayer identifying numbers (TINs) from all individuals and entities they do business with, and to furnish the TIN whenever a request for payment is submitted to Federal payment officials. A taxpayer identifying number can be either a Social Security Number or an Employer Identification Number. The Food and Nutrition Service will collect information using form FNS–711.
Need and Use of the Information: FNS will collect taxpayer identify numbers from individuals and entities receiving payments directly from the agency under any of the various nutrition and nutrition education programs. The information will be collected at the time of program application, and will only be collected once unless an entity renews its application or reapplies for program participation. If the information is not collected, FNS would be unable to include taxpayer identifying numbers with each certified request for payment.
Description of Respondents: Business or other for-profit; individuals or households; not-for-profit institutions.
Number of Respondents: 800.
Frequency of Responses: Reporting: On occasion; other (at time of app.).
Total Burden Hours: 66.

Food and Nutrition Service

Title: WIC Financial Management and Participation Report with Addendum.
OMB Control Number: 0584–0045.
Summary of Collection: The Women, Infants and Children Program (WIC) is authorized by Section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786), as amended. The Food and Nutrition Service (FNS) of USDA administers the WIC Program by awarding cash grants to State agencies. The State agencies award subgrants to local agencies to deliver program benefits and services to eligible participants. To streamline and reduce the reporting burden, the FNS–498 is revised and named FNS–798 with Addendum (FNS–798A) to allow a State agency's final monthly report for the report year (expanded to include closeout data) to serve as its closeout report in place of the FNS–227 with addendum (the FNS–227A). The addendum (FNS–798A) is needed by FNS in order to determine if each state

agency has met its statutory nutrition education and breastfeeding promotion and support minimum expenditure requirements found in 42 U.S.C. 1786(h)(3).

Need and Use of the Information: FNS will use the information reported each month for program monitoring, funds allocation and management, budget projections, monitoring caseload, policy development, and responding to requests from Congress and the interested public. FNS also uses the data to determine if the State has met the 97 percent performance standard for food and 10 percent performance standard for NSA.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 88.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 4,638.

Animal and Plant Health Inspection Service

Title: Importation of Animal & Poultry, Animal Poultry Products, Certain Animal Embryos, Semen, and Zoological Animals.

OMB Control Number: 0579–0040.

Summary of Collection: Title 21 U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134f, and 134g of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as brucellosis and tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as foot-and-mouth disease and rinderpest. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products. To fulfill this mission APHIS must collect pertinent information from those individuals who import animals and poultry, animal and poultry products, zoological animals, or animal germplasm into the United States. APHIS will collect information using several forms.

Need and Use of the Information: APHIS will collect information on the origin of the animal or product to be imported, the health status of the animal to be imported and whether the animal or product was temporarily offloaded in another country during its journey to the United States. This vital information helps APHIS to ensure that these imports pose a negligible risk of introducing exotic animal diseases into the United States. If the information was not collected it would cripple or destroy APHIS ability to protect the United States from exotic animal disease incursions.

Description of Respondents: Farms.

Number of Respondents: 107,849.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total burden hours: 64,200.

Natural Resource Conservation Service

Title: Agriculture and Urban Flood Damage Surveys.

OMB Control Number: 0578–0007.

Summary of Collection: The Watershed Protection and Flood Prevention Act (P.L. 83–566) authorizes the Secretary of Agriculture to provide technical and financial help to local organizations in planning and carrying out watershed improvements. Section 3 of the law directs the Secretary to determine whether benefits anticipated from the improvements will exceed cost. The Natural Resources Conservation Service (NRCS) has been delegated the responsibility to carry out the intent of the law. NRCS primary objective is to work in partnership with the American people to conserve and sustain our natural resources. NRCS provides technical and financial assistance to flood damaged communities to control flooding. NRCS personnel collect specific data about flood damages in order to assess the cost of floods to individuals, farms, communities, governments, and others who own or control property affected by floods. NRCS will collect information using surveys forms.

Needs and Use of The Information: NRCS will collect information on the types of damage, ownership patterns, tenure, number of properties affected, and the shape and slope of the flood plain. The information collected is used to determine damages incurred as a result of the flooding. Information is collected directly from the landowners on a voluntary basis. If the landowner is unavailable or unwilling to provide the information, NRCS will make visual estimates and use secondary data.

Description of Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 768.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 936.

Food and Nutrition Service

Title: WIC Federal and State Agreement.

OMB Control Number: 0584–0332.

Summary of Collection: Section 17 of the Child Nutrition Act (CNA) of 1966, as amended, Form FNS–399 is the agreement between USDA and the State agency. The agreement empowers USDA to release funds to the State agency to operate the Women, Infants and Children (WIC) Program or the Farmers' Market Nutrition Program (FMNP). The Food and Nutrition Service (FNS) will collect information using form FNS–339.

Needs and Use of the Information: FNS will collect information to authorize payment of cash grants to State agencies, which operate the program locally through nonprofit organizations and must ensure coordination of the Program among the appropriate agencies and organizations. Each FMNP or WIC State agency desiring to administer the program shall annually enter into a written agreement with USDA for administration of the program in the jurisdiction of the State agency. If the information is not collected Federal funds cannot be provided to the State agency without a signed agreement.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 25.

William McAndrew,

Departmental Clearance Officer.

[FR Doc. 00–6539 Filed 3–15–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Regional Supplement for Water Uses and Development

AGENCY: Forest Service, USDA

ACTION: Availability of regional supplement for comment under 36 CFR part 216.5.

SUMMARY: The Southwestern Region proposes to update the Region 3 Supplement to Forest Service Manual Chapter 2540—Water Uses and Development. This action is necessary to provide guidance for the analysis of groundwater development proposals under 36 CFR 251.5. The intended effect of this directive is to provide specific guidance for the protection of ground and surface water resources when water development is proposed for National Forest System lands.

DATES: The public is invited to comment for 30 days beginning March 16, 2000.

ADDRESSES: Southwestern Region, ATTN: Water Rights and Uses

Specialist, 517 Gold Avenue SW, Room 5439, Albuquerque, NM 87102

FOR FURTHER INFORMATION CONTACT: Lori Osterstock, 505–842–3254

SUPPLEMENTARY INFORMATION:

FSM 2500—WATERSHED AND AIR MANAGEMENT

R3 SUPPLEMENT 2500–2000–1

EFFECTIVE—DRAFT ONLY

CHAPTER 2540—WATER USES AND DEVELOPMENT

2541.03—Policy. Include high priority instream flows and standing waters when determining National Forest Water needs. Quantify and pursue State water rights for flows and standing waters not covered by the reservation doctrine after considering all strategic options. Strategy options include, but are not limited to;

1. Rely on senior and stable downstream appropriators to protect needed instream flows on the National Forest System.

2. Rely on constraints contained in special use permits as a means of maintaining instream flows or standing waters.

3. Protect instream flows or standing water through land acquisition.

4. Negotiate agreements or adjudication settlement stipulations that protect instream flows or standing waters.

2541.04c—Forest Supervisors.

Maintain and update annually the Forest's water uses, requirements, and rights inventory.

2541.35—Special Use Authorization for Water Developments. The following is guidance that specifically addresses the management of ground water resources. (See also Forest Service Manual (FSM) 2729).

Ground water beneath National Forest System (NFS) lands in the Region is a valuable resource that requires thoughtful and prudent management. Ground waters and surface waters are interconnected. Ground water discharge sustains base flows in NFS streams and is the source of water for springs and seeps. This ground water discharge is critical for sustaining aquatic and riparian ecosystems along with the numerous resources and activities dependent upon them.

Special use authorizations for removal of ground water from NFS lands shall be approved only when the long-term protection and enhancement of NFS streams, springs, seeps, and associated riparian and aquatic ecosystems can be assured unless such removal is documented in an Environmental Impact Statement.

Ground water removal on non-NFS lands adjacent to NFS lands may impact streams, springs, seeps and associated riparian and aquatic ecosystems on NFS lands. When a project proponent proposes to transport ground water across NFS lands, it is appropriate to analyze the potential impacts of the water removal as well as the impacts of the facilities to transport it. The extent to which each proposal to remove or transport ground water is analyzed depends on the scope and potential impact of the proposed action.

1. *Initial Screening for Development and Use of Ground Water.* As provided for in Title 36 of the Code of Federal Regulations (CFR) Part 251.54(b), initial proposals for ground water development may be presented to the Forest Service either verbally or in writing. When such presentation is made to the Forest Service, it should be explained to the project proponent that the permitting process for ground water use or transport is a discretionary activity, and that a permit for water use or transport may be denied if analysis indicates that NFS resources or adjacent water supplies will not be adequately protected. It should also be explained that the CFR provides for two levels of screening prior to initiating environmental analysis documentation. To pass the initial screening requirements, proposals to develop and use ground water derived from NFS lands, or derived from non-NFS lands and transported across NFS lands, must meet the following conditions:

a. The proposal to use or transport water must be consistent with applicable laws, regulations, policies, rules, and NFS land and resource management plans (FSM 2702 & 2703). Proposals shall be evaluated as specified in 36 CFR 251.54(e) and as follows:

b. The proposal to use or transport water must adequately protect NFS resources (FSM 2702.1 & 2541.34).

c. The proposal must be consistent with national policy not to encumber NFS lands just because it affords a proponent a lower cost when compared with alternatives located on non-NFS lands (FSM 2703.2)

d. Proposal to use ground water derived from NFS lands must include the use of appropriate water conservation measures (FSM 2541.21h).

e. When considering proposals to use water on non-NFS lands, preference should be given to those requests made by communities or other entities that best serve the public interest.

Proposals that do not meet the minimal requirements of the initial screening process shall be returned to the proponent as insufficient. The authorizing officer shall reply in writing if the proposal was presented in writing, or reply verbally if the proposal was presented verbally (36 CFR 251.54(e)(2)).

2. *Second-level Screening.* Additional information is required for proposals that pass initial screening. In second-level screening, the proposal is evaluated as described in 36 CFR 251.54(e)(5) and as follows.

a. If the intent of the proposal is to use ground water derived from NFS lands for a non-NFS purpose, the proponent must demonstrate that alternative water sources do not exist (FSM 2703.2). This would include documentation of the actions taken to secure water from other than NFS sources or the rationale explaining why is not feasible to do so. This may include a record of wells drilled, attempts to purchase water, hydrologic and geologic studies, or other similar information.

b. The quantity of water the proponent is currently seeking from NFS lands and the purpose of use of such water must be identified. If the proponent anticipates increased water needs in the future, such needs shall also be quantified.

c. Drilling activities themselves can negatively impact NFS resources. In instances where considerable disturbance may result from the drilling process itself, the proponent must demonstrate that there is reasonable likelihood of successfully completing any water wells and adequately mitigating any resource damage. Information that might support a proponent's rationale could include an inventory of all existing wells in the vicinity along with any available information such as driller's logs, well depths, well yields, water quality information, geophysical logs, and well construction details. In addition, information regarding favorable geologic conditions such as known water bearing formations (including location, aerial extent, lithology, and hydrologic characteristics) or favorable structural features. The proponent may be required to provide information describing current resource conditions to facilitate estimates of potential damage and/or potentially effective mitigation.

d. All anticipated facilities such as roads, power lines, pipelines, water storage tanks, and pumps that could ultimately be needed to produce and convey water across NFS lands must be identified. Proposals that involve construction and/or use of roads shall conform to the requirements of the Federal Land Policy and Management

Act (FLPMA) of 1976, specifically FLPMA Sections 502 and 505.

e. To assist in evaluating the potential for the proposal to affect NFS resources and adjacent water supplies, key resources and existing water supplies should be identified. The quantity, location, and/or thing of the proposed use of water will determine to what extent the following information needs are addressed. Typically, the greatest amount of information will be required of each proposal that contemplates the withdrawal of large quantities or water, building in or transiting environmentally sensitive locations, and/or withdrawal of water during peak periods of usage by others, sensitive periods of needs for fish and wildlife, or sensitive periods of needs for riparian and wetlands flora and fauna.

Information that may be required to assess potential impacts to neighboring water users and/or to resources both on and adjacent to NFS lands includes:

(1) The location and characteristics of all potentially affected surface and ground water resources including wells, streams, springs, seeps, and aquifers.

(2) Pertinent social information, including the identification of any potentially impacted individuals or groups and their water uses. Social impacts and environmental justice will be evaluated through the National Environmental Policy Act of 1969 process (NEPA) and through any applicable State process designed to protect the holders of water rights.

(3) The location and description of riparian vegetation.

(4) Any known Threatened, Endangered, or Sensitive species.

(5) Pertinent geologic information. This should include a map of the area identifying surface geology and any known subsurface formations and structural features. Hydrologic characteristics of the target aquifers such as transmissivity and storativity should also be included, if known.

(6) Pertinent hydrologic information. Provide any available information regarding water table or piezometric surface elevations including known seasonal fluctuations, direction and rate of ground water flow, recharge and discharge areas, surface water flow characteristics including volumes and peaks throughout the year, location of gaining and losing reaches of streams, and water quality.

(f) If the proposal does not pass second-level screening, it should be returned to the proponent with a written reason for rejection (36 CFR 251.54(g)(1)). NEPA analysis is not required to make this determination (36 CFR 251.54(e)(6)). If the proposal passes second-level screening, the proponent shall be notified that the Forest Service is prepared to accept a written formal application for a special use authorization. The Forest Service should begin the appropriate environmental analysis upon receipt of the formal application (36 CFR 251.54(g)(2)(ii)). The proponent should be advised that any information provided is likely to become public information once the formal application is received and a NEPA process initiated.

When for formal application is received, the proponent is referred to as the applicant.

3. *Environmental Analysis.* When screening indicates that the proposal includes high ground water production rates and/or potentially high impact well(s) or transmission facilities, substantial additional analysis may be necessary. An application may be approved in two phases, the first for exploration and the second for construction and/or production. Each phase requires NEPA documentation. When the application is to use existing wells, the evaluation procedures describe din paragraphs (a)–(c) may still apply.

Project applicants should be advised that obtaining approval for exploratory drilling and/or evaluation does not guarantee that construction of production phase facilities will be authorized. They should also be advised that there may be substantial mitigation measures required by the terms of a production authorization and that the scope of those measures may not be identified until the conclusion of the appropriate environmental analysis.

a. *Exploratory Drilling Procedures.* When screening indicates a reasonable likelihood of producing ground water without negative impacts to NFS resources or adjacent water supplies, NEPA documentation appropriate to the scale of exploration shall be completed. At this phase, a Categorical Exclusion (FSH 1909.15 Sec. 31.1(b)(8) or 31.2(8)) may be sufficient. If the responsible official decides to allow exploration on NFS lands, a temporary permit may be issued for the exploration and impact evaluation phase of the proposal. This temporary permit shall contain any conditions necessary to minimize impacts to Forest resources.

b. *Impact Evaluation Procedures.* If water supplies in sufficient quantities to meet the applicant's needs are located in existing wells or found through exploration, a detailed plan to determine impacts should be required. This plan will be site specific and designed to identify potential impacts to Forest resources and adjacent water supplies, and must be approved by the Forest Service prior to testing for impacts.

In considering requests to use water from a known aquifer underlying NFS lands, modeling drawdown and resultant impacts may be sufficient. Any modeling will be conducted using a ground water flow model approved by the Forest Service.

In the absence of sufficient information to model impacts, an aquifer test such as long-term pumping of existing and/or exploratory well(s) may be required. The purpose of the test is to evaluate the potential impacts of removing water at production levels from the well(s) under consideration. As testing occurs, there should be simultaneous measurements of water levels and/or pressures in other wells within the vicinity and of flows in adjacent surface waters. Any aquifer test(s) should be conducted during periods of appropriate flows in adjacent surface waters so that impacts can be identified and used to support modeling of drawdown characteristics and/or impacts to surface water resources over time. Chemical characterization may be necessary to further evaluate the potential connection between ground and surface water resources.

If the proposal involves the transport of ground water pumped from nearby non-NFS lands across NFS lands, the above testing may still be required to evaluate impacts of the ground water withdrawal on NFS resources and adjacent water supplies. (40 CFR, 1508.25 Scope).

c. The results of testing, monitoring, and/or modeling shall be analyzed to determine potential impacts to National Forest resources and adjacent water supplies. A decision to allow ground water production and/or conveyance shall be considered through the appropriate NEPA analysis and documentation. Refer to FSH 1909.15, chapters 30 and 40.

4. *Construction and Production Permitting.* The construction phase includes the construction of all infrastructures needed to pump, store, and convey water from its source to the place of use. Once a NEPA decision is in place, a special use authorization is needed to occupy and use NFS lands for the purposes of constructing and operating facilities designed to produce and convey ground water (36 CFR 251.54 (g)(5)). Refer to FSM 2711 for guidance on the type of permit and/or easement to issue. Refer to 36 CFR 251.56 for Terms and Conditions for permit issuance. Construction may be permitted separately from production.

Once a permit is issued, the applicant is referred to as the holder. Regardless of the length of time for which a permit is issued, it is important to note that the Forest Service may amend the permit at any time when it is in the public interest to do so (FSM 2711.2). Continued monitoring of water developments is necessary to verify that their operation remains in the public interest.

5. *Monitoring and Mitigation.* All monitoring or mitigation measures necessary to ensure protection of Forest resources during the construction of water pumping, storage, or transport facilities, and during the long-term removal of ground water, should be included in annual plans of operation attached to and made a part of the permit(s). Mitigation measures such as the cessation of pumping during critical times of the year or replacing water to streams and springs will be considered only if Forest resources can be protected over a long-term period.

a. The holder should be required to bear the costs of monitoring and mitigation either directly through permit language or indirectly through the use of a collection agreement that funds the Forest Service to accomplish the work.

b. If long term monitoring detects additional or unforeseen adverse impacts to Forest resources, or if mitigation measures do not adequately protect Forest resources, the permit shall be suspended or revoked as appropriate (36 CFR 251.60 (a)(2)(D). To reverse or prevent a suspension, the holder shall undertake such efforts as are necessary to eliminate adverse impacts not previously documented in an Environmental Impact Statement.

6. *Other Considerations.* Applicable laws and regulations governing wells and water rights shall be adhered to for all proposals. This includes State requirements for notifications, drilling permits, well abandonment procedures, and water rights, and federal (for example, Environmental Protection Agency) requirements and recommendations for monitoring wells, construction, sampling, and abandonment.

In the event that testing, modeling, or monitoring indicates a possibility that appropriable waters are or may be impacted, the Forest Service shall follow the procedures appropriate for the State(s) in which the development is located. If an appropriate State remedy is not available, the Forest Service may seek remedy in any court of jurisdiction. The Forest Service shall not issue a permit for construction or issue/reissue a permit for production unless the applicable State authorization has been granted for the proposed development.

In the event that a State unreasonably withholds authorization, the Forest Service shall consult with the Office of General Counsel regarding remedy.

Permits issued for exploration, evaluation, construction, and/or production do not convey a water right to the holder.

2541.4—Managing Water Rights. Decide if water rights appurtenant to acquired lands can and should continue to be used on the acquired lands. Make a decision within 1 year of acquisition on how and where acquired water rights will be used.

If it is determined that all or part of an acquired water right is not needed by the acquiring Forest, then such water rights will be made available to other Forests. Distribution of surplus water rights will be made by the Regional Forester in accordance with State laws and river basin compacts.

Dated: March 7, 2000.

James T. Gladen,

Deputy Regional Forester, Resources.

[FR Doc. 00–6520 Filed 3–15–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on Wednesday, March 15, 2000, at the Sacramento River Discovery Center, Sale Lane, and the Training Center, Red Bluff Community Center, 1015 Kimball Road, Red Bluff, California. The meeting will start with a field trip to view the Sacramento River Discovery Center from 8:30 a.m. to 10:00 a.m. The meeting will reconvene at the Training Center, Red Bluff Community Center, at 10:30 a.m. and adjourn at 4:30 p.m. Topics for the meeting are: (1) Discussion on the Draft Fire Management Plan for the Shasta-Trinity National Forest; (2) research and monitoring of the Northwest Forest Plan; (3) updates on the Little Stony Creek Watershed Fuels and Clear Creek/ Resource Conservation District proposal; and (4) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamah National Forest, 11263 N. Highway 3, Fort Jones, California 96032; telephone 530–468–1281; TDD (530) 468–2783; email:chendryx@fs.fed.us.

Dated: March 8, 2000.

Constance J. Henderyx,

PAC Support Staff.

[FR Doc. 00–6495 Filed 3–15–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Practitioner Records Maintenance and Disclosure Before the Patent and Trademark Office.

Form Number(s): None.

OMB Approval Number: 0651–0017.

Type of Request: Extension of a currently approved collection.

Burden Hours: 2,270.

Number of Respondents: 230 for record keeping maintenance, and 100 for violation reporting.

Average Hours Per Response: Based on PTO time and motion studies, the agency estimates the burden hours required by practitioners to maintain client files to be 9 hours annually. The burden hours required to gather, prepare and submit a response to one violation report is estimated to be 2 hours.

Need and Uses: The information in this collection is necessary for the Patent and Trademark Office (PTO) to comply with Federal regulations 35 U.S.C. 6(a) and 35 U.S.C. 31. The Office of Enrollment and Discipline (OED) collects this information to insure compliance with the PTO Code of Professional Responsibility, 37 CFR 10.20–10.112. This Code requires that registered practitioners maintain complete records of clients, including all funds, securities, and other properties of clients coming into his/her possession, and render appropriate accounts to the client regarding such records, as well as report violations of the Code to the PTO. The registered practitioners are mandated by the Code to maintain proper documentation so they can fully cooperate with an investigation in the event of a report of an alleged violation and that violations are prosecuted as appropriate.

Affected Public: Individuals or households, businesses or other for-profit organizations, Federal Government, and State, Local or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Peter Weiss, (202) 395–3630.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Peter Weiss, OMB Desk Officer, Room 10236, New Executive Office building, 725 17th Street, NW, Washington, DC 20503.

Dated: March 13, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–6494 Filed 3–15–00; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Census Advisory Committees

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Act 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), we are giving notice of a joint meeting involving the 2000 Census Advisory Committee (CAC), the CAC of Professional Associations, the CAC on the African American Populations, the CAC on the American Indian and Alaska Native Populations, the CAC on the Asian Population, the CAC on the Native Hawaiian and Other Pacific Islander Populations, and the CAC on the Hispanic Population. This meeting will be primarily an informational meeting focusing on Census 2000 operations and activities.

DATES: On Friday, April 14, 2000, the meeting will begin at 8:45 a.m. and adjourn at approximately 5 p.m.

ADDRESSES: The meeting will take place at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 1647, Federal Building 3, Washington, DC 20233, telephone: 301–457–2308.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Native Hawaiian and Other Pacific Islander Populations, and the Hispanic Population are composed of nine members each, appointed by the Secretary of Commerce. The Committees provide an organized and continuing channel of communication between the communities they represent and the U.S. Census Bureau on its effort to reduce the differential undercount for Census 2000 and on ways that census data can be disseminated to maximum usefulness to their communities and other users.

The CAC of Professional Associations is composed of thirty-six members appointed by the Presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairman of the Board of the American Marketing Association. The Committee advises the Director, U.S. Census Bureau, on the full range of U.S. Census Bureau programs and activities in relation to its areas of expertise.

The 2000 Census Advisory Committee is composed of a Chair, Vice Chair, and up to forty member organizations. There are also sixteen ex-officio members, all appointed by the Secretary of Commerce. The Advisory Committee considers the goals of Census 2000 and user needs for information provided by that census. The Committee provides an outside user perspective about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Advisory Committee considers all aspects of the conduct of the 2000 Census of Population and Housing and makes recommendations to the Secretary of Commerce for improving that census.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the U.S. Census Bureau Committee Liaison Officer on 301–457–2308, TDD 301–457–2540.

Dated: March 8, 2000.

Robert J. Shapiro,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 00–6444 Filed 3–15–00; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or Suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of March 2000, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

	Period
Antidumping Duty Proceeding:	
AUSTRALIA: Canned Bartlett Pears A–602–039	3/1/99–12/31/99

	Period
BANGLADESH: Shop Towels	
A–538–802	3/1/99–2/29/00
BRAZIL: Ferrosilicon	
A–351–820	3/1/99–2/29/00
BRAZIL: Lead & Bismuth Steel	
A–351–811	3/1/99–12/31/99
CANADA: Iron Construction Castings	
A–122–503	3/1/99–2/29/00
CHILE: Standard Carnations	
A–337–602	3/1/99–12/31/99
COLOMBIA: Certain Fresh Cut Flowers	
A–301–602	3/1/99–12/31/99
ECUADOR: Certain Fresh Cut Flowers	
A–331–602	3/1/99–12/31/99
FINLAND: Viscose Rayon Staple Fiber	
A–405–071	3/1/99–12/31/99
FRANCE: Brass Sheet & Strip	
A–427–602	3/1/99–2/29/00
FRANCE: Lead & Bismuth Steel	
A–427–804	3/1/99–12/31/99
GERMANY: Brass Sheet & Strip	
A–428–602	3/1/99–2/29/00
GERMANY: Lead & Bismuth Steel	
A–428–811	3/1/99–12/31/99
INDIA: Sulfanilic Acid	
A–533–806	3/1/99–2/29/00
ISRAEL: Oil Country Tubular Goods	
A–508–602	3/1/99–12/31/99
ITALY: Certain Valves and Connections of Brass, for Use in Fire Protection Equipment	
A–475–401	3/1/99–12/31/99
ITALY: Brass Sheet & Strip	
A–475–601	3/1/99–2/29/00
JAPAN: Defrost Timers	
A–588–829	3/1/99–2/29/00
JAPAN; Stainless Steel Butt-Weld Pipe Fittings	
A–588–702	3/1/99–2/29/00
JAPAN: Television Receivers, Monochrome and Color	
A–588–015	3/1/99–12/31/99
MEXICO: Steel Wire Rope	
A–201–806	3/1/99–12/31/99
REPUBLIC OF KOREA: Steel Wire Rope	
A–580–811	3/1/99–12/31/99
SPAIN: Stainless Steel Bar	
A–469–805	3/1/99–2/29/00
SWEDEN: Brass Sheet & Strip	
A–401–601	3/1/99–2/29/00
TAIWAN: Light-Walled Welded Rectangular Carbon Steel Tubing	
A–583–803	3/1/99–2/29/00
THAILAND: Circular Welded Pipes & Tubes	
A–549–502	3/1/99–2/29/00
THE PEOPLE'S REPUBLIC OF CHINA: Chloropicrin	
A–570–002	3/1/99–2/29/00
THE PEOPLE'S REPUBLIC OF CHINA: Ferrosilicon	
A–570–819	3/1/99–2/29/00
THE PEOPLE'S REPUBLIC OF CHINA: Glycine	
A–570–836	3/1/99–2/29/00
THE UNITED KINGDOM: Lead & Bismuth Steel	
A–412–810	3/1/99–12/31/99
Countervailing Duty Proceeding:	
BRAZIL: Cotton Yarn	
C–351–037	1/1/99–12/31/99
BRAZIL: Certain Castor Oil Products	
C–351–029	1/1/99–12/31/99
BRAZIL: Lead & Bismuth Steel	
C–351–812	1/1/99–12/31/99
CHILE: Standard Carnations	
C–337–601	1/1/99–12/31/99
FRANCE: Brass Sheet and Strip	
C–427–603	1/1/99–12/31/99
FRANCE: Lead & Bismuth Steel	
C–427–805	1/1/99–12/31/99
GERMANY: Lead & Bismuth Steel	
C–428–812	1/1/99–12/31/99
INDIA: Sulfanilic Acid	
C–533–807	1/1/99–12/31/99

	Period
IRAN: In-Shell Pistachios	
C–507–501	1/1/99–12/31/99
ISRAEL: Oil Country Tubular Goods	
C–508–601	1/1/99–12/31/99
NETHERLANDS: Standards Chrysanthemums	
C–421–601	1/1/99–12/31/99
PAKISTAN: Shop Towels	
C–535–001	1/1/99–12/31/99
TURKEY: Certain Welded Carbon Steel Pipe and Tube	
C–489–502	1/1/99–12/31/99
TURKEY: Welded Carbon Steel Line Pipe	
C–489–502	1/1/99–12/31/99
THE UNITED KINGDOM: Lead & Bismuth Steel	
C–412–811	1/1/99–12/31/99
Suspension Agreements: None.	

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of March 2000. If the Department does not receive, by the last day of March 2000, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 8, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 00–6551 Filed 3–15–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Department of Agriculture; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 00–001.

Applicant: U.S. Department of Agriculture, Albany, CA 94710.

Instrument: Picking and Gridding Q-Bot System.

Manufacturer: Genetix Ltd., United Kingdom.

Intended Use: See notice at 65 FR 3666.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a unique multi-tasking robot for selecting recombinant DNA inserts with: (1) a pneumatic picking head for sampling 3500 colonies per hour, (2) replication of plates (96 or 384 wells) to distribute clones, (3) ability to create high density arrays of bacteria on nylon filters and (4) a rearraying package. The National Institutes of Health advises in its memorandum of February 11, 2000 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–6549 Filed 3–15–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 00–005.

Applicant: Ohio State University, OARDC, 1680 Madison Avenue, Wooster, OH 44691.

Instrument: Electron Microscope, Model H–7500–1.

Manufacturer: Hitachi Ltd., Japan.

Intended Use: The instrument is intended to be used for the study of agriculturally important pathogens in animals and various crops. The objectives of these experiments are to understand the molecular mechanisms underlying pathogenicity in agriculturally important animals and plants and improve yields. In addition, the instrument will be used for training students in electron microscopy techniques such as sample preparations and viewing as part of their graduate program. Application accepted by Commissioner of Customs: February 28, 2000.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–6550 Filed 3–15–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

AGENCY: International Trade Administration.

ACTION: Trade Event Notice.

SUMMARY: The U.S. Department of Commerce's International Trade Administration will announce its Clean Energy Trade Promotion Initiative at a White House Conference Center industry briefing on Tuesday, March 28, 2000, 2–4 PM. This initiative is designed to realize President Clinton's vision for enhanced exports of advanced U.S. company clean energy technology. It is composed of a series of trade missions designed to support U.S. energy industry exports to Brazil, China, India, Indonesia, Mexico, Qatar, Saudi Arabia, the United Arab Emirates and other select markets.

U.S. companies are invited to attend this briefing. The briefing will be held in the Truman Room of the White House Conference Center, 726 Jackson Place, NW (west side of Lafayette Park), on Tuesday, March 28, 2–4 PM.

FOR FURTHER INFORMATION CONTACT: Sam Beatty, International Trade Specialist, Office of Energy, Infrastructure and Machinery, 202–482–4179 or E-mail at *Samuel__Beatty@ita.doc.gov.*

Dated: March 10, 2000.

Sam Beatty,

Office of Energy, Infrastructure and Machinery.

[FR Doc. 00–6426 Filed 3–15–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Joint Recruiting Advertising Program (JRAP); OMB Number 0704–0351.

Type of Request: Reinstatement.

Number of Respondents: 141,497.

Responses Per Respondent: 1.

Annual Responses: 141,497.

Average Burden Per Response: 6 minutes.

Annual Burden Hours: 13,239.

Needs and Uses: Title 10, U.S. Code, Section 503, directs the Secretary of Defense to conduct intensive recruiting campaigns for the Armed Forces. In addition, the Secretary of Defense commissioned an independent review of military advertising. The results stress that the U.S. Armed Forces must find innovative ways to quickly capture and respond to the changing opinions and attitudes of military-eligible youth. The U.S. Armed Forces must continually refocus its advertising in this turbulent environment in order to ensure its message in timely and effective.

The Joint Market Research Program (JMRP) supports recruitment efforts by providing quick response, short duration, polling and surveying of youth in the United States. The primary goal of the JMRP is to obtain and disseminate timely information on the attitudes, opinions, trends, expectations, and aspirations held by today's youth. This information will become the foundation from which advertising messages will be crafted.

The Joint Recruiting Advertising Program (JRAP) supports Armed Forces recruitment efforts with cost-effective advertising. The JRAP ROTC Scholarship Folder, recruiting print advertisements, *www.myfuture.com,* Selective Service System Direct Mail brochures, and other direct mail brochures provide individuals with information about opportunities available in the Armed Forces. Individuals are provided with Business Reply Cards (BRCs) that they may voluntarily fill out to request additional information about the Armed Forces. When one branch of the Armed Forces receives a BRC, the information is promptly sent to the BRC respondent. The name of the BRC respondent is then added to mailing lists used by the Services for future mailings of Service-related enlistment, officer, and scholarship information brochures.

Additionally, Bates World Wide, JRAP's contracted advertising agency conducts short duration focus groups to obtain feedback from targeted populations (e.g. pre-teens, parents, teenagers, and young adults) concerning the marketability of television commercials and print advertisements. Questions are specifically targeted at the advertisement and no intrusive questions are asked.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligations: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 10, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–6431 Filed 3–15–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing, and the Clause at DFARS 252.232–7002, Progress Payments for Foreign Military Sales Acquisition; OMB Number 0704–0321.

Type of Request: Extension.

Number of Respondents: 430.

Responses Per Respondent: 12.

Annual Responses: 5,160.

Average Burden Per Response: 1.5 hours.

Annual Burden Hours: 7,740 (2,580 response hours and 5,160 recordkeeping hours).

Needs and Uses: Section 22 of the Arms Export Control Act (22 U.S.C. 2762) requires the U.S. Government to use foreign funds, rather than U.S. appropriated funds, to purchase military equipment for foreign governments. To comply with this requirement, the government needs to know how much to charge each country. The clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, requires each contractor whose contract includes foreign military sales (FMS) requirements to submit a separate progress payment request for each progress payment rate, and to submit a supporting schedule that clearly distinguishes the contract's FMS requirements from U.S. requirements. The Government uses this information to determine how much of each country's funds to disburse to the contractor.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On occasion.

Respondents Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Lewis W. Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD (Acquisition), Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–6432 Filed 3–15–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of Secretary

[Transmittal No. 00–22]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, transmittal 00–22 with attached transmittal and policy justification.

Dated: March 10, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

2 MAR 2000
In reply refer to:
I-00/002053

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-22, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $96 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-22

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States pursuant to P. L. 96-8**

(ii) **Total Estimated Value:**

Major Defense Equipment*	**$ 56 million**
Other	**$ 40 million**
TOTAL	**$ 96 million**

(iii) **Description of Articles or Services Offered: A conversion of TPS-43F air surveillance radar to TPS-75V configuration, support equipment, spare and repair parts, modification kits, publications, U.S. Government and contractor engineering and logistics support services, personnel training and equipment and other related elements of logistic support**

(iv) **Military Department: Air Force (NHO)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(vii) **Date Report Delivered to Congress: 2 MAR 2000**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - Conversion of TPS-43F Air Surveillance Radar

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested a possible sale for the conversion of TPS-43F air surveillance radar to TPS-75V configuration, support equipment, spare and repair parts, modification kits, publications, U.S. Government and contractor engineering and logistics support services, personnel training and equipment and other related elements of logistic support. The estimated cost is $96 million.

This proposed sale is consistent with United States law and policy, as expressed in Public Law 96-8.

The proposed sale of radar will provide more responsive and timely information for air defense operations. The conversion of the AN/TPS-43 radar would significantly contribute to the modernization of its forces as well as allow modernization of obsolete radar. This radar is becoming unsupportable due to obsolescence.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Northrop Grumman Corporation, Bethpage, New York. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government representatives; however, it is estimated that approximately three months of contractor technical support will be required following delivery of the radar.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–6433 Filed 3–15–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–28]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–28 with attached transmittal, policy justification and Sensitivity of Technology.

Dated: March 10, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

2 MAR 2000
In reply refer to:
I-00/002054

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-28, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office for defense articles and services estimated to cost $106 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-28

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 8 million
Other	$ 98 million
TOTAL	$ 106 million

(iii) **Description of Articles or Services Offered: One hundred sixty-two HAWK Intercept Aerial guided missiles, containers, modification kits, support equipment, testing, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support**

(iv) **Military Department: Army (YVQ, JBE, and IAB)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(vii) **Date Report Delivered to Congress: 2 MAR 2000**

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office - HAWK Intercept Aerial Missiles

The Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 162 HAWK Intercept Aerial guided missiles, containers, modification kits, support equipment, testing, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $106 million.

This proposed sale is consistent with United States law and policy, as expressed to Public Law 96-8.

This proposed sale will support the recipient's continued effort to modernize and enhance its air defense capabilities. Under the Missile Reliability Restoration program, the recipient operational inventory of HAWK missiles will be modified to the HAWK Intercept Aerial guided missiles. The recipient will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor is Raytheon Company of Andover, Massachusetts. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of up to four U.S. Government representatives for one-week intervals over a six-year timeframe for logistic technical assistance. One contractor representative will be required for six years to perform technical assistance to the recipient.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-28

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The MIM-23E and MIM-23L HAWK missile system contains more than 500 components which are Classified as well as components that are sensitive but not Classified. These items are so identified to protect the system from being defeated by exploiting specific system characteristics. Technology which must be protected is in the missile, radars, and control elements of the system. Continuous wave low noise Radio Frequency technology has been unique to HAWK for many years. The techniques for isolation of transmitter and receiver elements are difficult and sensitive.

2. If a technologically capable adversary were to obtain knowledge of these sensitive technologies, the possibility exists that countermeasures might be developed which could reduce weapon system effectiveness.

3. A determination has been made that the recipient can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–6434 Filed 3–15–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Appointment to Selected Non-Federal Entity Boards

AGENCY: Office of The Judge Advocate General, USAF; DoD.

ACTION: Notification of appointment of Air Force officials to selected non-Federal entity boards.

SUMMARY: The Office of The Judge Advocate General, in accordance with 10 U.S.C. 1033 and 10 U.S.C. 1589, announces the appointment of certain Air Force officials to provide limited management support to certain non-Federal entities authorized by statute and by DoD regulation (DoD 5500.7–R, Standards of Conduct, section 3–202). Federal statutes (10 U.S.C. 1033 and 10 U.S.C. 1589) authorize the Service Secretaries to authorize a member of the armed forces or an employee under the Secretary's jurisdiction to serve without compensation as a director, officer, or trustee, or to otherwise participate in the management of certain military welfare societies. In the Air Force, the designated military welfare society is the Air Force Aid Society, Inc. Additionally, 10 U.S.C. 1033 and 10 U.S.C. 1589 permit the Service Secretaries to make appointments to other non-profit non-Federal entities that fall within certain categories. Those categories include entities that regulate and support the athletic programs of the service academies (including athletic conferences) and entities that accredit service academies and other schools of the armed forces (including regional accrediting agencies.) Non-Federal entities in these categories must be predesignated by the Secretary of Defense. The Secretary of Defense's authority for such designations was delegated to the Department of Defense General Counsel, who has designated all of the organizations, and concurred in all of the appointments, listed below. Appointments made under this authority extend to the named officials, as well as to their successors. The authority granted pursuant to these appointments is limited to providing oversight, advice to, and coordination with, the designated entity. Authorization does not extend to participation in day-to-day operations of the entity, nor to the expenditure of appropriated funds (except in direct support of the employee). Expenditures will not include travel and transportation allowances incurred by the employee in a travel status. Finally, participation in the management of the non-Federal entity may not constitute the employee's primary duty.

The Secretary of the Air Force has made the following appointments with the concurrence of the Department of Defense General Counsel:

(1) To the Board of Trustees of the Air Force Aid Society, Inc.: Secretary of the Air Force, F. Whitten Peters; Chief of Staff of the Air Force, General Michael E. Ryan; Deputy Chief of Staff, Personnel, Lieutenant General Donald L. Peterson, The Surgeon General of the Air Force, Lieutenant General Paul K. Carlton, Jr.; The Judge Advocate General of the Air Force, Major General William A. Moorman; Deputy Assistant Secretary of the Air Force (Budget), Major General Larry Northington; and Chief Master Sergeant of the Air Force, Chief Master Sergeant Frederick J. Finch.

(2) To the Mountain West Conference Board of Directors: The United States Air Force Academy Superintendent, Tad J. Oelstrom.

(3) To the Southern Association of Colleges and Schools: Division Chief for Academic Affairs, Air University, Dr. Dorothy Reed; Commandant, School of Advanced Airpower Studies, Colonel Steve Chiabotti; Commander, Community College of the Air Force, Colonel James McBride.

(4) To the Middle States Association of Colleges and Schools: Commander, Air Force Institute of Technology, Colonel George Haritos.

FOR FURTHER INFORMATION, CONTACT: Questions should be mailed to HQ USAF/JAG, 1420 Air Force Pentagon, Washington DC 20330–1420, Attn: Jane Love. Ms Love can be reached by telephone at 703–614–4075, by fax at 703–614–2205, or by e-mail to jane.love@af.pentagon.mil.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–6521 Filed 3–15–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Final Notice of Issuance and Modification of Nationwide Permits

AGENCY: Army Corps of Engineers, DoD.

ACTION: Correction.

SUMMARY: This document contains corrections to the final notice of issuance and modification of Nationwide Permits (NWPs) which was published in the **Federal Register** on Thursday, March 9, 2000 (65 FR 12818–12899). On pages 12818, 12819, 12822, 12841, and 12861 the date "June 5, 2000" is to be replaced with "June 7, 2000." June 7, 2000, is the correct effective date for the new and modified NWPs, as well as the correct expiration date for NWP 26.

In summary, NWP 26 will expire on June 7, 2000. The new and modified NWPs, including the new and modified NWP general conditions, will become effective on June 7, 2000. States and Tribes must make their Section 401 Water Quality Certification and Coastal Zone Management Act consistency determinations by June 7, 2000.

In addition, there were some inconsistencies concerning the economic and workload cost estimates in the March 9, 2000, **Federal Register** notice. The ½ acre alternate replacement NWP package in the Institute for Water Resources (IWR) report is similar to the new NWPs published in the March 9, 2000, **Federal Register** notice. We have concluded that the economic impacts and costs are approximately the same for both. On page 12820, we correctly stated that the IWR report indicated that the ½ acre alternative replacement NWP package would result in direct compliance costs that are approximately 30% less than the $46 million in direct compliance costs that would be incurred by permit applicants due to the July 21, 1999, proposal. Based on these assumptions, the alternate replacement NWP package would result in approximately $32 million in direct compliance costs incurred by permit applicants. However, on page 12819 we incorrectly indicated an increase in direct costs to permit applicants of approximately $20 million; the correct amount is approximately $32 million.

Dated: March 10, 2000.

Approved by:

Charles M. Hess,

Chief, Operations Division, Office of Deputy Commanding General for Civil Works.

[FR Doc. 00–6498 Filed 3–15–00; 8:45 am]

BILLING CODE 3710–92–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2000–2]

Configuration Management, Vital Safety Systems

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a

recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a(a)(5) concerning configuration management, vital safety systems.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before April 17, 2000.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Andrew L. Thibadeau at the address above or telephone (202) 694–7000.

Dated: March 13, 2000.

John T. Conway,

Chairman.

Recommendation 2000–2

The Defense Nuclear Facilities Safety Board (Board) continues a strong interest in safety systems and their effectiveness at defense nuclear facilities. These systems are at the heart of safety at the facilities. Department of Energy (DOE) Standards 3009 and 3016 provide guidance for the identification of safety systems and associated Technical Specifications as important elements of maintaining safety of facilities and operations. In addition, the implementation guide to DOE Order 420.1, Facility Safety, provides guidance on design and procurement of safety systems to attain and sustain reliability in performance.

Most of the facilities of interest to the Board were constructed many years ago, and are undergoing the deterioration attached to aging. It is important that their protective features be maintained serviceable and effective. In the following, the Board recommends measures necessary to ensure reliable performance of the safety systems of both the older facilities and the ones that are relatively new, and in particular stresses the actions required to ensure viability of confinement ventilation systems. Confinement ventilation systems are relied on almost everywhere by DOE as the principal system to protect the public and collocated workers at its more hazardous facilities.

Previous Issuances by the Board on Safety Systems

In May 1995, the Board issued DNFSB/TECH–5, Fundamentals for Understanding Standards-Based Safety Management of Department of Energy Defense Nuclear Facilities, which stressed the importance, among other things, of functions that preserve those structures, systems, and components that are relied upon to protect the public, workers, and the environment (e.g., configuration management, training, and maintenance). In October 1995, the Board issued DNFSB/TECH–6, Safety Management and Conduct of Operations at the Department of Energy's Defense Nuclear Facilities. The report underscored the importance of conduct of operations as the body of practice, or operational formality, that implements the Safety Management System for a defense nuclear facility. Operational formality includes "Supervision by highly competent personnel who are knowledgeable as to the results of the safety analysis and operating limits for the facility or activity." Key aspects of facility Safety Management Systems discussed in these two reports are central to the issues addressed herein.

In 1996, in response to Recommendation 95–2, Safety Management, DOE provided the Board a plan for upgrading safety management of its defense nuclear facilities. DOE Orders 5480.22, Technical Safety Requirements, and 5480.23, Nuclear Safety Analysis Reports, established requirements for identifying design features important to safety and the conditions/controls to ensure safe operation. DOE authorized its contractors to grade facilities by hazard category and to tailor the comprehensive safety assessments according to hazard potential and operational future. This upgrade effort has reaffirmed the important safety role played by confinement ventilation systems. (See enclosed Appendix B of DNFSB/TECH–26). In general, these systems have been designated as important to safety, making them subject to more stringent quality assurance, maintenance, surveillance, and configuration management programs in recognition of their safety functions. Commitments to such programs are typically made in the Authorization Agreements that capture the contractor-DOE agreed upon conditions for performing the work.

Issuances Concerning Confinement Ventilation Systems

Some of the Board's analyses concerning safety systems focused on confinement ventilation systems in particular. In March 1995, the Board issued DNFSB/TECH–3, Overview of Ventilation Systems at Selected DOE Plutonium Processing and Handling Facilities, which addressed the design of confinement ventilation systems. In its June 15, 1995, letter forwarding that report, and in subsequent correspondence in July 1995, the Board requested that DOE evaluate the design, construction, operation, and maintenance of ventilation safety systems in terms of applicable DOE and industry standards.

In a letter dated October 30, 1997, the Board pointed out the problem of wetting high efficiency particulate air (HEPA) filters during tests of fire sprinkler systems, and the need for complex-wide guidance from DOE concerning the relationship between maintaining filter integrity and fire fighting strategies. HEPA filters are key components of confinement ventilation systems. In its June 8, 1999, letter concerning HEPA filters installed in confinement ventilation systems, the Board requested a report outlining the steps DOE plans to take to resolve those issues. In recent weeks, individual Board members and the Board's staff have met informally with DOE representatives to resolve differences concerning DOE's proposed response to the Board's request.

Current Status of Ventilation Systems

As a part of its continuing oversight of these vital safety systems, the Board's staff has recently completed a review of the operational data on confinement ventilation systems as reported in DOE's Operational Reporting and Processing System (ORPS). The data reviewed covered the period July 1998 to December 1999. An analysis of these data is documented in report DNFSB/TECH–26. This review indicates that the reliability of these systems, for reasons not readily evident, may not be adequate, given the vital safety function they serve.

The operational data reveal deficiencies in areas of test and surveillance, quality assurance (replacement components), maintenance, configuration management, training and qualification, and conduct of operations. One can reasonably deduce from such observations that there exists no single entity assigned responsibility for the configuration and operational state of these systems as a whole.

The Board recognizes that many confinement ventilation systems now require less air flow and permit more particulate loading than in original designs. This allows for more extended useful life than might otherwise be tolerable, particularly with adequate preventive care. However, the operational data suggest that less than optimum care is being given to these systems, considering their age.

Status of Safety Systems in General

Many of DOE's nuclear facilities were constructed years ago and are approaching end-of-life status. Under these circumstances, some degradation of reliability and operability of systems designed to ensure safety can reasonably be expected. To some extent, the effects of aging can be offset by increased surveillance and maintenance. A point occurs, however, where costs for upkeep justify major upgrades or replacement, particularly where mission needs are projected well into the future. While a considerable number of high-hazard defense nuclear facilities have such long-term missions (greater than 10 years, for example), others undergoing phase-outs and decommissioning do not. Some facilities must continue to rely on operational safety systems, such as ventilation systems, to serve a safety function even after their operational mission has ended and well into the decommissioning process. Long-term or short-term, however, the performance required for safety must be ensured.

It has been a long-standing practice in the nuclear business to designate a "system engineer" for each major system vital to successful operation of hazardous processes. Some DOE contractors have done so on occasions (*e.g.*, the Defense Waste Processing Facility at the Savannah River Site), but this practice is not as prevalent as it should be. The Board believes that having specific individuals outside the operational forum, tasked with the configuration management (design and operational constraints) of systems designated as important to safety, would go a long way to ensuring the dependable service such systems must provide.

Recommendation

Considerable upgrading of programs for ensuring reliable and effective performance of confinement ventilation systems has occurred during the years 1995–1999. However, the frequency and variety of off-normal occurrences that continue to be reported clearly indicate that more attention to these vital systems is needed. Likewise, other systems serving equally vital safety functions might well benefit from similar attention. Towards such an end, the Board recommends that the Department of Energy:

1. Establish a team, expert in confinement ventilation systems, to survey the operational records during the past 3 years and the current operational condition of all confinement ventilation systems now designated or that should be designated as important to safety in defense nuclear facilities (i.e., safety class, safety significant, defense-in-depth). In so doing:

a. Assess the root cause or causes for less than satisfactory operational history of these systems and recommend an action plan to address the causes. In so doing evaluate such programs as may exist to ensure reliable system performance. These should include surveillance, maintenance (including quality assured inventory of replacement parts), configuration management (system descriptions, drawings and specifications), and requisite training and qualification of operators.

b. Estimate the remaining system lifetime with and without refurbishing as a function of reliability; (e.g., 1 year—95%, 10 years—50%) and recommend such upgrades or compensating measures as may be appropriate to ensure reliability, current or future, commensurate with the safety functions being served.

2. Include key elements of the plan for addressing the HEPA filters issues identified in the Board's June 8, 1999, letter in any plan developed in response to this recommendation.

3. Amend appropriate directives and associated contract requirements documents (e.g., DOE Order 430.1A, Life Cycle Asset Management, DOE Order 420.1, Facility Safety), to require for the confinement ventilation system and every other major system designated as important to safety:

a. The development and maintenance of documentation that captures key design features, specifications, and operational constraints to facilitate configuration management throughout the life cycle.

b. The designation of a "system engineer" during each facility life cycle—design, construction, operation and decommissioning with:

(1) The requisite knowledge of the system safety design basis and operating limits from the safety analysis; and

(2) The lead responsibility for the configuration management of the design.

c. The education and training of successor "system engineers" as may be required because of contractor organizational changes, facility life cycle change, or other causes for reassignments.

4. Task the Federal Technical Capability Panel established in response to Board Recommendation 93–3 to:

a. Survey the availability and sufficiency of personnel in DOE with expertise in these vital safety systems.

b. Recommend to DOE senior management such actions as may be appropriate to augment, redeploy or otherwise bring such expertise more effectively to bear in the life-cycle-management of vital safety systems.

c. Add to DOE's technical staff qualification program the requisites for qualifying as subject matter experts for these vital systems.

d. Develop descriptions of functions and responsibilities for inclusion in the Function and Responsibilities Authorities Manual for individuals serving as subject matter experts on vital safety systems.

5. Make the scrutiny of the status of all systems serving to protect the public, workers and the environment a regularized part of the assessments performed as required by DOE P 450.5, Line Environment, Safety and Health Oversight. Include in such review the programs, such as quality assurance, maintenance, configuration management and conduct of operations, that contribute much to ensuring these systems will operate as intended.

John T. Conway,

Chairman.

Appendix—Transmittal Letter to the Secretary of Energy, Defense Nuclear Facilities Safety Board

March 8, 2000

The Honorable Bill Richardson
Secretary of Energy
1000 Independence Avenue, SW
Washington, DC 20585–1000

Dear Secretary Richardson: Designs of the Department of Energy's (DOE's) high hazard defense nuclear facilities typically include systems whose reliable operation is vital to the protection of the public, workers and the environment. Operations are constrained by technical safety requirements and operational limits established by analyzing the hazards of the operations and the capability of design features to prevent or mitigate consequences of potential mishaps or operational disruptions caused by either man or natural phenomena. The availability and operability of such systems and the conditions specifying operational limits are included in the written agreements established by DOE with its contractors as conditions for authorizing performance of work.

Ventilation systems installed in many defense nuclear facilities are among those that provide vital safety functions. Such systems contribute much to the safe environment for workers and serve a vital confinement function should work process upsets and mishaps result in airborne releases of hazardous materials.

The Defense Nuclear Facilities Safety Board (Board) has advised DOE in various ways during the past several years of the need to increase attention to ventilation systems and of the steps we believe would lead to more certain performance of their important safety functions. Although DOE has responded to some extent, the upgrade

efforts to date have been less comprehensive and effective than the matter merits.

The Board further believes that DOE's upgrades of ventilation systems could well serve as a model for implementing similar programs for other vital safety systems that may be needed in defense nuclear facilities.

The Board believes this matter requires additional DOE attention. More explicitly, the Board recommends for your consideration an action plan structured to address the elements set forth in the enclosed Recommendation 2000–2, Configuration Management, Vital Safety Systems.

The Board's recommendation is directed explicitly at systems for ensuring nuclear safety. This is in keeping with the Board's enabling legislation. However, the concepts advocated could be applied to good advantage to systems designed for safety management of hazardous material and processes of non-nuclear nature as well. In the spirit of Integrated Safety Management (ISM) to which DOE is committed, DOE is encouraged to do so.

Recommendation 2000–2, Configuration Management, Vital Safety Systems, was unanimously approved by the Board, and is submitted to you pursuant to 42 U.S.C. § 2286a(a)(5), which requires the Board, after receipt by you, to promptly make this recommendation available to the public. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by the Department of Energy under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,

Chairman.

[FR Doc. 00–6571 Filed 3–15–00; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board. The Federal Advisory Committee Act (Pub. Law No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 13, 2000 and Friday, April 14, 2000.

ADDRESSES: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW, (Room 1E–245), Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director of the Environmental Management Advisory Board, (EM–10), 1000 Independence Avenue SW, (Room 5B–161), Washington, DC 20585. The telephone number is 202–586–4400. The Internet address is *james.melillo@em.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management Program from the perspective of affected groups, as well as state, local, and tribal governments. The Board will contribute to the effective operation of the Environmental Management Program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing the Office of Environmental Management and by helping to secure consensus recommendations on those issues.

Tentative Agenda

Thursday, April 13, 2000

Public Meeting Opens (1:00 P.M.)
—Approve Minutes of September 22–23, 1999 Meeting
Opening Remarks
Budget Update
Worker Health & Safety Committee Report
—Integrated Safety Management Implementation*
—Environment, Safety and Health in Technology Development*
Contracting and Management Committee Report
—Shared Savings*
—Project Management*
Long-Term Stewardship Committee Report
—Institutional Controls*
—Next Steps for Stewardship
Technology Development & Transfer Committee Report
—Environmental Management Science & Technology Performance Measures*
Science Committee Report
Integration and Transportation Committee Report
Public Comment Period and Adjournment (5:15 P.M.)

Friday, April 14, 2000

Opening Remarks (8:30 A.M.)
Board Discussion
Public Comment Period
Board Business
—Votes on EMAB Findings & Resolutions
—New Business
—Set Date for Next Board Meeting (October 2000)
Public Comment Period
Meeting Adjourns (12:00 P.M.)
*The Board anticipates recommendations to be presented on this topic.

Public Participation: This meeting is open to the public. If you would like to file a written statement with the Board, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, please contact Mr. Melillo at the address or telephone number listed above, or call the Environmental Management Advisory Board office at 202–586–4400, and we will reserve time for you on the agenda. You may also register to speak at the meeting on April 13–14, 2000, or ask to speak during the public comment period. Those who call in and or register in advance will be given the opportunity to speak first. Others will be accommodated as time permits. The Board Chairs will conduct the meeting in an orderly manner.

Transcript and Minutes: We will make the minutes of the meeting available for public review and copying by approximately May 13, 2000. The minutes and transcript of the meeting will be available for viewing on the Internet at *http://www.em.doe.gov/emab/products.html* and at the Freedom of Information Public Reading Room (1E–190) in the Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. The Room is open Monday through Friday from 9:00 a.m.–4:00 p.m. except on Federal holidays.

Issued in Washington, D.C. on March 10, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–6503 Filed 3–15–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of Meeting.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on March 23, 2000, at the headquarters of the IEA in Paris, France in connection with a meeting of the IEA's Standing Group on Emergency Questions (SEQ).

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation

Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on March 23, 2000, beginning at approximately 8:45 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA on March 23, including a preparatory encounter among company representatives from approximately 8:45 a..m. to 9 am.

The Agenda for the preparatory encounter among company representatives is to elicit views regarding items on the SEQ's Agenda. The Agenda for the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following Agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 97th Meeting
3. SEQ Work Program
   —The Year 2000 Work Program of the SEQ
   —The Year 2001 Work Program of the SEQ
4. Special Session on Tanker Market Developments and Oil Security Issues
5. Policy and Legislative Developments in Member Countries
   —Recent Developments in the EPCA
   —Developments in other IEA Countries
6. Follow-up to the Seminar on Oil Stock Strategy and the Disruption Simulation Exercise
7. Emergency Response Reviews
   —Review of Poland
   —Publication: The Emergency Response Potential of IEA Countries in 2000
   —Draft Report to the Governing Board on the Completed Emergency Response Review Cycle
   —Schedule of Reviews
8. Report on IEA'S Y2K Response Activities
9. Current IAB Activities
10. Report to the SEQ by the Working Group on Petroleum Coke
11. Emergency Reserve Issues
   —Emergency Reserve and Net Import Situation of IEA Countries on October 1, 1999
   —Emergency Reserve and Net Import Situation of IEA Countries on January 1, 2000
   —Draft Report to the Governing Board
   —Emergency Reserve Situation of IEA Candidate Countries
   —Unavailable Stocks
12. Emergency Data System and Related Questions
   —Monthly Oil Statistics October 1999
   —Monthly Oil Statistics November 1999
   —Monthly Oil Statistics December 1999
   —Base Period Final Consumption Q498/Q399
   —Base Period Final Consumption Q199/Q499
   —Quarterly Oil Forecast—Current Quarter Q12000
13. Emergency Reference Guide
   —Update of Emergency Contact Points List
14. Other Business
   —IEA/ASCOPE Seminar on Oil Security Issues
   —Dates of September and November Meetings
   —Website version of Emergency Response Guide

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, D.C., March 10, 2000.

Mary Anne Sullivan,

General Counsel.

[FR Doc. 00–6636 Filed 3–15–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 00–10–NG]

Office of Fossil Energy; RDO Foods Co.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it issued an Order granting RDO Foods Co. (RDO) authorization to import up to 1,423 Mcf of natural gas per day from Canada and gas required for pipeline transportation from April 1, 2000, through October 31, 2008. RDO is the owner and operator of a food processing plant in North Dakota. The natural gas will be imported near Noyes, Minnesota, under a supply arrangement between RDO and ProGas Limited.

The Order may be found on the FE web site at http://www.fe.doe.gov, or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8:00 am and 4:30 pm, Monday through Friday, except Federal holidays.

Issued in Washington, D.C., March 9, 2000.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 00–6506 Filed 3–15–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Regarding Bonneville Power Administration's Subscription Power Sales to Customers and Customer's Sales of Firm Resources

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of final policy.

SUMMARY: BPA is publishing a final policy regarding the amount of Federal power a customer may purchase under a BPA subscription power sales contract under sections 5(b) and 9(c) of the Northwest Electric Power Planning and Conservation Act, (the Northwest Power Act), P.L. 96–501, and section 3(d) of the Act of August 31, 1964, (the Northwest Preference Act), P.L. 88–552. This final policy modifies BPA's 1994 Non-Federal Participation Capacity Ownership Contracts and Section 9(c) Policy. *See* Section IV.B, Modifications to 1994 Non-Federal Participation Capacity Ownership Contracts and Section 9(c) Policy.

EFFECTIVE DATE: This policy is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, telephone (503) 230–4328 or 1–800–622–4519.

Information can also be obtained from your BPA Account Executive or from:

- Mr. Allen Burns, Vice President, Requirements Marketing, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97208, telephone (503) 230–7640
- Mr. Rick Itami, Manager, Eastern Power Business Area, 707 W. Main Street, Suite 500, Spokane, WA 99201, telephone (509) 358–7410
- Mr. John Elizalde, Manager, Western Power Business Area, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97232, telephone (503) 230–5371
- Mr. Steve Oliver, Vice President, Bulk Marketing and Transmission Services,

905 N.E. 11th, P.O. Box 3621, Portland, OR 97208, telephone (503) 230–3295

SUPPLEMENTARY INFORMATION: On December 21, 1998, BPA published its Power Subscription Strategy and accompanying Record of Decision for selling Federal power under new contracts with its publicly and cooperatively owned utility, investor-owned utility and direct service industrial customers. The Power Subscription Strategy stated overall policies for determining the amount of Federal power to be offered to Pacific Northwest public utility and investor-owned utility customers under section 5(b)(1) of the Northwest Power Act.

On May 6, 1999, BPA published a **Federal Register** Notice (64 FR 24376) with a draft proposed policy for determining the net requirements of publicly and cooperatively owned utility and investor-owned utility customers. BPA sought public comment on its proposed polices for determining utility customer net requirements under section 5(b)(1) of the Northwest Power Act. Adoption of a final policy is important to a successful implementation of BPA's post-2001 power sales contracts under BPA's Power Subscription Strategy.

On October 28, 1999, BPA published a **Federal Register** Notice (64 FR 58099) with a revised draft policy proposal based upon comments received on the earlier proposal and requested additional comment on this revised draft policy. After having reviewed and considered the additional comment, the Administrator has decided to adopt this final policy. Review and analysis of public comment will be published in the Administrator's Record of Decision (ROD) that is related to this final policy. This ROD is expected to be available in March.

This final policy provides guidance on implementation of the Power Subscription Strategy under applicable statutes and describes how certain factual determinations will be made regarding the amount of Federal power publicly and cooperatively owned utilities, or investor-owned utilities may purchase from BPA under section 5(b)(1) of the Northwest Power Act. BPA's determination of this amount, as described in this policy, is affected by a customer's export of hydroelectric resources and non-hydroelectric resources out of the Pacific Northwest in accordance with section 9(c) of the Northwest Power and section 3(d) of the Northwest Preference Act. BPA will review a customer's export of power or output from resources under BPA's Section 9(c) Policy as set forth in Section IV.B.

Environmental Compliance: This final policy is consistent with BPA's Business Plan Final Environmental Impact Statement (DOE/EIS–0183, June 1995), the Business Plan Record of Decision (ROD), signed August 15, 1995, and the subsequent tiered Power Subscription Strategy ROD, signed December 21, 1998.

I. Relevant Statutory Provisions

The Northwest Power Act provisions are:

5(b)(1) Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 [16 U.S.C. 832 *et seq.*] and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the region to the extent that such firm power load exceeds—

(A). The capability of such entity's firm peaking and energy resources used in the year prior to December 5, 1980, to serve its firm load in the region, and

(B) Such other resources as such entity determines, pursuant to contracts under this chapter, will be used to serve its firm load in the region.

5(b)(1) In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights. 16 U.S.C. 839c(b)(1)

9(c) Any contract of the Administrator for the sale or exchange of electric power for use outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 23, 1964 (16 U.S.C 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term "surplus energy" shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy, and the term "surplus peaking capacity" shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties imposed upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837d and 837f) [16 U.S.C. 837d and 837f] shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this chapter. *The Administrator shall, in making any determination, under any contract executed pursuant to section 839c of this title, of the electric power requirements of any Pacific Northwest customer, which is a non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus.* 16 U.S.C. 839f(c) (emphasis supplied).

The Northwest Preference Act provision is:

3(d) The Secretary, in making any determination of the energy requirements of any Pacific Northwest customer which is a non-Federal utility having hydroelectric generating facilities, shall exclude any amounts of hydroelectric energy generated in the Pacific Northwest and disposed of outside the Pacific Northwest by the utility which, through reasonable measures, could have been conserved or otherwise kept available for the utility's own needs in the Pacific Northwest. The Secretary may sell the utility as a replacement therefor only what would otherwise be surplus energy. 16 U.S.C. 837b(d).

II. Scope of the Policy

The Policy on Determining Net Requirements as described in section III addresses the amount of Federal power that BPA is obligated to offer to customers requesting contracts to serve firm power loads under section 5(b)(1) of the Northwest Power Act. Purchasers eligible to request a contract under section 5(b)(1) include public body, cooperative, or investor-owned utilities in the region.[1] BPA has a corresponding statutory duty when determining the net requirements of a requesting purchaser to apply the provisions of section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act. BPA's modification to its 1994 Non-Federal Participation Section 9(c) Policy (1994 NFP Policy) is contained in section IV. Such provisions direct the Administrator to determine whether an export or proposed export of a

[1] The policy also addresses any sales of Federal power BPA makes under section 5(b) in settlement of a customer's right to service under the residential exchange program created under section 5(c) of the Northwest Power Act. While recognizing that this is a settlement, it does not affect the application of, or change, the policy regarding the net requirements of any customer.

requesting purchaser's non-hydroelectric or hydroelectric resource(s) would result in an increase in the firm energy requirements of any of BPA's customers. Findings by BPA that the export of such resources are likely to increase BPA's firm obligations, and that the resource could have been conserved, or otherwise retained to serve regional loads, will result in a reduction (decrement) [2] of the amount of Federal power and energy available for purchase under section 5(b)(1) equal to the amount of power and energy, and for the duration, of the export. Determinations under the policy will be made by BPA based on demonstrations made by the customer and other available information.

III. Policy on Determining Net Requirements

A. Determination of the Amount of Federal Power for Sale Under Section 5(b)(1)

1. BPA will determine the amount of Federal power for sale under section 5(b)(1) in the manner described below. In making this determination BPA will reduce the amount of Federal power a customer may purchase in accordance with section 9(c) of the Northwest Power Act and section 3(d) of the Northwest Preference Act.

(a) BPA will offer an amount of Federal power for sale to a customer under section 5(b)(1) based upon such customer's actual retail firm power loads in the region. To establish the customer's actual retail firm power loads in the region, BPA shall use either the actual measured load of the customer, or the customer's own actual load forecast. However, if BPA finds the customer's forecast unreasonable, or the customer has not produced such a forecast, BPA will substitute its own forecast. (Any actual or forecast loads of the customer shall exclude any wholesale loads served by the customer. Wholesale loads means power sales made by the customer using its own resources to serve its own wholesale customers who are purchasing to resell the power at wholesale or retail.)

(b) For purposes of determining the amount of Federal power BPA will offer to existing customers in the post-2001 period, BPA will require an existing customer to continue to use all generating and contractual resources included in the Firm Resource Exhibit (FRE) of such customer's current 1981 or 1996 power sales contracts for the 1998–1999 operating year.[3] BPA will not, however, require customers to continue the use of resources identified in their 1998–99 FREs under any one of the following conditions: (1) The customer's contractual resource(s) expires prior to October 1, 2001; (2) the customer's generating resource(s) is determined by BPA to be lost due to obsolescence, retirement, or loss of resource in accordance with section III.B.1 (loss of generating resources); or (3) the customer's contractual resource(s) is determined to be lost in accordance with section III.B.2 (loss of contractual resources). In addition, customers who were given express written consent by the Administrator to permanently remove a resource from use in serving regional firm power loads are not required to return such resources to use.

(c) BPA will require that all Federal surplus firm power contracts or excess Federal power contracts with terms which specify that such power be used to serve the customer's retail firm power load in the region be so applied.

(d) Under a section 5(b)(1) contract customers may elect to dedicate other generating resources or contractual resources, in addition to generating resources or contractual resources customers must use to serve load under section III.A.1.(b), to serve their consumer load. Customers can also agree to contractually commit power purchases from the market (market purchases) to serve any remaining amounts of their retail firm power load in the region which is not served by (1) generating resources or contractual resources that a customer must use to serve load under section III.A.1.(b); and (2) additional generating resources or contractual resources that a customer elects to use under this section. Application of additional generating resources, contractual resources, or market purchases by a customer under a section 5(b)(1) contract shall be as follows:

(i) All additional generating resources or contractual resources shall be used for their remaining useful life except for (1) the customer's generating or contractual resources added pursuant to section III.C (renewable resources), (2) the customer's generating resources determined by BPA to be lost during the term of the contract due to obsolescence, retirement, or loss of resource in accordance with section III.B.1 (loss of generating resources), (3) the customer's contractual resources determined by BPA to be lost during the term of the contract in accordance with section III.B.2 (loss of contractual resources), or (4) the customer's generating or contractual resources where BPA has provided express written consent to permanently remove the resource. The remaining useful life of new contractual resources shall not be less than the term of the customer's section 5(b)(1) contract.

(ii) Market purchases used to serve retail firm power load in the region shall be used for the entire 5 year rate period for which BPA establishes rates of general application, except as provided in section III.D.2.

(iii) Consistent with the customer's section 5(b)(1) contract and the customer's product selection, a customer who elects to use market purchases to serve load that does not match the customer's existing resources and delivery of Federal power from time to time shall make such market purchases to serve that portion of load that does not match such customer's existing resources and delivery of Federal power under all such circumstances.

(e) BPA will apply the Declaration Parameters included in the Power Products Catalog to establish the amount of power available from the customer's generating and contractual resources under the Subscription contract. Because the Declaration Parameters are subject to revision, BPA will use the Declaration Parameters in effect at the time of BPA's contract offer to determine the amount of Federal power offered. The customer may declare a reduction in the amount of power that would otherwise be available from its own generating and contractual resources by the amount of power the customer uses from such resources to serve its wholesale loads, defined above, which were served prior to December 5, 1980, and which continue to be served by such resources.

2. In addition to subsections III.A.1.(a) through (e), BPA shall reduce the amount of Federal power offered to a customer under section 5(b)(1) when such reductions are consistent with the application of BPA's Section 9(c) Policy as modified, and resultant findings made under section 9(c) of the Northwest Power Act and section 3(d) of the Northwest Preference Act.

[2] The 1994 Section 9(c) Policy BPA published uses the term "decrement" to mean a decrease or reduction in BPA's obligations to sell power to a customer under its section 5 power sales contract with BPA. When used in this Policy and modification of that Policy the terms "decrement," "reduce" or "reduction" have the same meaning.

[3] BPA's requirement that the customer continue using the customer's resources listed in its FRE for the 1998–1999 operating year is based upon a decision made in BPA's Power Subscription Strategy. The decision was to establish a baseline for determining the customer's resources expected to continue serving regional firm power loads in the post-2000 period.

B. Statutory Discontinuance for a Customer's Generating and Contractual Resource

1. A customer's non-Federal generating resource is considered no longer used to serve regional retail firm power load under a section 5(b)(1) contract if the resource's use is permanently discontinued due to obsolescence, retirement, or loss.

(a) Obsolescence is a permanent discontinuance of a generating resource resulting from the inability to continue to operate such resource at the end of its useful life due to lack of available replacement parts, deterioration of the physical facility, or lack of sources of fuel supply.

(b) Retirement is a permanent discontinuance of a generating resource for which the customer can demonstrate that the cost of replacements, improvements, or additions necessary to continue to operate the resource, combined with the resource's variable operating costs, exceed the reasonable economic return over the remaining life of the resource. The customer will demonstrate the reasonable economic return of the resource by comparing the costs to the customer of replacing the resource with market purchases plus the cost to permanently shut down the resource to the cost of continuing to operate the resource.

(c) Loss of a resource is a permanent discontinuance caused by factors beyond the reasonable control of the customer and which the best efforts of the customer are unable to remedy. Such factors include, but are not limited to, complete destruction of the resource, complete loss of the Federal or State license to own or operate the resource, or complete and/or partial reduction of the capability of a resource to the extent of the loss resulting from requested operations or orders of a cognizant State or Federal agency directly or indirectly affecting the operation of the resource and changing its planned capability.

2. A customer's contractual resource is considered no longer used to serve regional firm power load if the customer experiences a permanent loss of contract rights. Loss of contract rights must result from expiration of the term of the contract, after any extensions of the contract unilaterally available to the customer, or from factors beyond the reasonable control of the customer and which the best effort of the customer are unable to remedy. The Administrator may grant consent to a customer's permanent discontinuance of a contract resource upon expiration of such contract notwithstanding a customer's right to renew or extend such contract if the customer demonstrates that substantial and material changes in the terms of a successor contract, such as price, will deny the basic benefit of the bargain to the customer which effectively results in the loss of existing contract rights.

C. Use of New Renewable Resources To Serve Retail Firm Power Loads

1. A customer may elect to use a new renewable resource to serve its regional retail firm power load for a specified period which is less than the term of its section 5(b)(1) contract; provided, however, that such new renewable resource is part of the first 200 aMW of all new renewable resources requested by all BPA customers under this section to serve regional retail firm power load each year or, once that 200 aMW limit has been reached, a new renewable resource that BPA has agreed in writing can be so used without regard to the 200 aMW limit. A customer may choose to elect to use a new renewable resource at the time of contract execution and during an annual review of such customer's net load requirements under its section 5(b)(1) contract.

2. Only new renewable resources that meet the standards established to qualify for BPA's conservation and renewable resource discount may be used under this section.

3. Application of a new renewable resource under section III.C.1 shall reduce the customer's net requirements load.

D. Changes in the Amount of Federal Power Purchased During the Term of a Contract

1. Under a section 5(b)(1) contract BPA will require a customer to submit annual reports that track and forecast the customer's retail firm power loads in the region, except for customers who purchase the full service product and for whom BPA meters their total retail load. The purpose for the annual report is to provide information that shows any increase or reduction in the amount of the customer's retail firm power loads in the region from the amount served when the contract was executed. Based on such load information, or BPA's forecast of the customer's load if BPA finds the customer's load forecast is unreasonable, BPA shall make an annual determination of the net firm requirement load of the customer under a section 5(b)(1) contract as follows.[4] First, BPA will account for:

(a) The generating and contractual resources a customer is required to use to serve firm power load in the region under section III.A.1.(b) (1998–99 FRE firm resources);

(b) Additional resources a customer has elected to use under section III.A.1.(d) (additional generating and contractual dedicated resources); and

(c) Power purchases from the market that a customer has contractually committed to purchase in their 5(b)(1) contract, consistent with section III.A.1.(d) (market purchases).

Second, BPA will make adjustments for:

(d) Changes in a customer's new renewable resources used to serve retail firm power load in the region, as provided for in section III.C.1 (renewable resources);

(e) Changes in the customer resources serving its load pursuant to III.A.1.(b) and III.A.1.(d) based on BPA's determination of a statutory discontinuance under section III.B.

(f) Any reductions in the amount of power a customer may purchase under a section 5(b)(1) contract due to the annual export review under section III.D.3; and,

(g) Changes in the customer's hydroelectric resource capability declarations due to changes in coordinated planning allowed under section III.A.1(e).

2. If BPA's annual determination of a customer's net firm requirement load results in a finding that the amount of Federal power a customer can purchase is less than the contracted amount of power to be purchased for the next contract year, then the customer shall first remove from use for its regional firm load, for a period of one year, any market purchases the customer has agreed to use under its BPA contract. Such removal shall be in an amount and shape equal to the difference between the amount of Federal power a customer can purchase for the next year and the amount and shape of Federal power a customer has contracted to purchase for the next contract year.

If the amount of Federal power a customer can purchase after the removal of the market purchases is still less than the amount of power the customer has contracted to purchase for the next contract year, then BPA will implement the mitigation measure for load loss specified in the customer's section 5(b)(1) contract and reduce the amount of Federal power a customer is obligated to purchase. Alternatively, BPA will

[4] Such reports may be in addition to other load or resource information the customer is required to provide BPA on its loads or resources for contract administration and planning purposes. Such determinations may be in addition to other determinations of net firm power requirements loads made more frequently under the terms of the customer's contract.

consent to the customer's removal of a generating resource or contractual resource from use for its regional firm load, for a period of one year. The portion of a customer's generating resource or contractual resource removed shall be equal to the difference between the amount and shape of Federal power a customer can purchase and the amount and shape of Federal power the customer has contracted to purchase for the next contract year. Any customer resources, other than market purchases, which are removed from use in serving the customer's regional firm load service under this section, are subject to BPA's determinations made under sections 9(c) of the Northwest Power Act and 3(d) of the Northwest Preference Act. If the customer's use of that resource results in a reduction or decrease in BPA's obligation to provide power under section III.D.3, then BPA will recalculate the amount of power a customer may purchase for the upcoming year as provided under this section (III.D.2).

3. On an annual basis as provided under a section 5(b)(1) contract BPA will review the export of power from a customer's regional non-Federal generating and contractual resources and, if required, will reduce the amount of Federal power a customer may purchase in accordance with section IV of this policy. BPA shall reduce the amount of power a customer may purchase for the longer of the remainder of the year or the duration of the export during the period between annual reviews based on a determination by BPA in accordance with section IV.

4. BPA shall make available additional amounts of power to a customer under a section 5(b)(1) contract to serve the customer's regional loads which were formerly available by a customer's generating resources or contractual resources but are no longer required to be used to serve the customer's retail firm power loads in the region, in accordance with section III.B (statutory discontinuance). Such service shall be on 6 months notice that such an event has occurred or as mutually agreed.

IV. Scope of the Section 9(c) Policy

A. Modification to BPA's Non-Federal Participation Section 9(c) Policy

BPA's modification to its 1994 Non-Federal Participation Section 9(c) Policy (1994 NFP Policy) is set forth in section B. BPA's 1994 NFP, as modified, is retitled: BPA's Section 9(c) Policy.

BPA reaffirms the application of its 1994 section 9(c) policy and legal interpretation published in July of 1994. The context for some of the determinations made in the 1994 NFP policy was, in part, prior exports and new exports of firm power from customer resources out of the region by participation in the new, Third AC Intertie. The interpretation has been of general application since 1994 to customer exports. BPA is now modifying the policy to address certain issues which were not previously addressed. Prior determinations made under the 1994 NFP Policy remain in effect for the duration of the export sale.

In the 1994 NFP Policy, BPA did not address the export of firm power from Investor-Owned Utility (IOU) resources because the IOUs were not placing any firm power loads on BPA under their section 5(b)(1) power sales contracts with BPA. *See* footnote 3, page B–10, BPA's 1994 NFP Policy. Since the IOUs were not taking any power service from BPA, reductions pursuant to a section 9(c) determination in their service under those section 5(b)(1) contracts would not have affected their BPA service. Presently, BPA is preparing new section 5(b)(1) power sales contracts for the post-2001 period to be offered to customers eligible to purchase Federal power. BPA anticipates that IOUs will take firm power service from BPA under new 5(b)(1) contracts. BPA will require that the export of firm power from resources of IOUs be accounted for, in setting BPA's net firm load obligations under those contracts. Additionally, the 1994 NFP Policy is modified to update the technical provisions as discussed in section B.

B. Section 9(c) Policy

Section 1. Northwest Power Act Section 9(c) Determinations

As required by the Northwest Power Act, BPA shall make its Section 9(c) determinations for the exports of its customers. Export for purposes of this policy means the sale of the firm power output of a generating or contractual resource in a manner that such output is not planned to be used solely to serve firm consumer load in the Region as the term "Region" is defined in section 3(14) of the Northwest Power Act.

Section 2. Finding Required

In examining the export of Pacific Northwest resources, BPA shall make its finding based on the following requirements of Section 9(c):

(a) BPA shall analyze whether the customer's exports would result in an increase in the electric power requirements of any of its customers in the region. BPA shall do this by examining its load/resource forecasting and planning documents to determine the impact the exports will have on BPA's and its customers' ability to meet Pacific Northwest load presently and in the future. BPA shall also analyze the information available from other sources including least-cost plans and load/resource information of Pacific Northwest utilities which do not currently place any load on BPA.

(b) BPA shall review the specific resources being exported on an annual basis unless the customer requests review for a longer period to determine if the resources being exported are hydroelectric resources and if not, whether they are conservable. BPA shall review categories of resources eligible for export for a period selected by BPA. If the resources are not hydroelectric resources and BPA determines the resource is not conservable (see section 6.(b) for a description of those resources BPA has determined are conservable), BPA shall determine if such exports will result in an increase in the firm energy requirements of its customers and if so, determine whether the resource could be otherwise retained for service to regional loads by using reasonable means. If BPA finds in its analysis that the fully allocated nominal cost of the resource a customer is proposing to export exceeds the fully allocated nominal cost of the region's marginal resource, BPA will conclude that such resource can be exported without having to decrement the customer's section 5(b) utility power sales contract.

Section 3. Scope of Section 9(c) Policy

This Section 9(c) Policy addresses a customer's exports of power from Pacific Northwest resources out of the region. BPA shall make its Section 9(c) determinations based on a factual determination using information about the specific resource the customer intends to export.

Section 4. Data on Specific Resources

BPA shall base its Section 9(c) determination on specific information BPA has obtained from the customer on the resources it intends to export. The customer shall provide this information when it notifies BPA that it intends to export a resource or when BPA requests information regarding a possible export. This includes, but is not limited to, the following information:

(a) Name of the resource to be exported;

(b) Location of the resource;

(c) Type of resource;

(d) Whether the resource is currently in any Pacific Northwest utility's firm resource exhibit;

(e) Whether the resource is planned or existing;

(f) Type of transaction or sale, and if it is a seasonal exchange, the terms of the exchange, and

(g) The cost of the resource (including reasonable rate of return) included in the customer's retail rates and a forecast of such costs for each year of the proposed export.

BPA will also consider any prior history of the resource including prior efforts to market it to BPA or other Pacific Northwest utilities.

Section 5. Prior Case-by-Case Section 9(c) Interpretations

BPA will not modify its existing determinations on Pacific Northwest utility exports including its 1994 NFP Policy determinations and will apply its prior case-by-case interpretations of Section 9(c), and Section 3(d) of the Regional Preference Act to such decisions without modification. Therefore, BPA incorporates by reference in this Policy these prior interpretations of Sections 9(c) and 3(d) and the determinations made thereunder for the duration of the export sale.

Section 6. Categories of Resources

(a) *Exports That Will Not be Decremented by BPA:* Under this Section 9(c) Policy determination, BPA will determine based on the finding in section 2 of this policy whether the export of certain resources will not result in an increase in the electric power requirements of any of its customers. If the export of a resource does not increase the firm energy requirements of BPA's customers or could not otherwise be retained for service to regional loads, the resource may be exported without a reduction in BPA's firm load obligation under the customer's Section 5(b) utility power sales contract.

(b) *Exports That Will be Decremented by BPA:* BPA has determined based on its prior policy interpretations of Northwest Power Act Section 9(c) that the following categories of resources are conservable and if they are exported BPA shall decrement the customer's Section 5(b) power sales contract:

(1) All Pacific Northwest hydroelectric resources owned or purchased by a Pacific Northwest utility, whether or not dedicated in any Pacific Northwest utility's firm resource exhibit; and

(2) All Section 5(b)(1)(A) and 5(b)(1)(B) thermal resources that are currently dedicated by a utility in any customer's firm resource exhibit.

Section 7. System Sales

BPA shall utilize a case-by-case approach to system sales. BPA shall require the exporting utility to submit an operating plan for the duration of the export, identifying these specific resources or categories of resources supporting the system sale. If the export is a system sale made up solely of a customer's resources that individually would not result in a decrement if each resource were exported standing alone, then BPA would not decrement a customer's firm power purchase under section 5(b) for such a system sale. BPA shall decrement the customer's section 5(b) utility power sales contract in the amount and to the extent the system sale involves the export of the planned capability of hydroelectric resources to support a power sale (whether or not in a firm resource exhibit); the planned capability of a non-hydroelectric resource that is in a firm resource exhibit, or if not, that could otherwise be retained to serve regional load; or any portion of the sale that is a prohibited resale of Federal power.

Any customer that was previously a Contracted Requirements customer of BPA, and which is currently purchasing power and energy from BPA under its power sales contract, shall have BPA's firm power obligation under its section 5(b)(1) contract reduced in the amount and to the extent a system sale involves the resources described above for the duration of the export sale. If the customer was not placing load on BPA under its section 5(b) utility power sales contract at the time of the export sale, then at such time as the customer requests to place a firm load obligation on BPA, BPA shall make an appropriate determination and may reduce its energy sales to such customer in the amount and to the extent the export sale involves the resources described above and for any remaining duration of the export sale.

If the exporting utility does not provide an operating plan identifying the resources supporting the system sale, BPA will treat the system sale as made up of resources that would result in a decrement of the customer's section 5(b) utility power sales contract.

Section 8. Seasonal Exchange

Any seasonal exchange between a customer and an out of region entity which results in no net regional energy deficit during any Operating Year shall not result in a decrement by BPA of the customer's Section 5(b) utility power sales contract.

Section 9. Resource Offer

A customer may offer a resource to BPA or to all other Pacific Northwest customers. If neither BPA, nor any Pacific Northwest customer, purchases the offered resource (offered at the customer's cost including a reasonable rate of return), the resource may then be exported without a decrement of the customer's Northwest Power Act section 5(b) power sales contract. If offered for sale to BPA, the resource shall be treated as an unsolicited proposal. If BPA proposes to acquire the resource, and if it is greater than 50 aMW or offered for longer than 5 years, it will be subject to the Northwest Power Act Section 6(c) process, which can take more than 12 months.

Section 10. Consumer-Owned and Independent Power Producer-Owned Resources

If a customer contracts to purchase and then export any consumer-owned resource or any resource developed by an independent power producer, such resource shall be subject to this Policy as a generating or contract resource of the purchasing customer as appropriate.

Section 11. BPA Notification

BPA shall notify in writing any customer which has exported a resource or proposes to export a resource of the outcome of BPA's Section 9(c) determination. The BPA notification shall be made within 30 working days from the date BPA receives the information specified in Section 4 about a specific resource.

C. Scope of the Section 9(c) Policy

BPA's Section 9(c) Policy addresses the effect of exports of resources by any public body, cooperative, or investor-owned utility purchasing power under a section 5(b) contract for service after October 1, 2001. The findings and interpretations of this Section 9(c) Policy shall be applied to all exports occurring after publication of this Section 9(c) Policy. Customers that have exported resources prior to publication of the Section 9(c) Policy may face a reduction in the amount of Federal power that BPA will offer at the time they request a contract under section 5(b)(1) for service after September 30, 2001. A reduction in BPA's obligation to provide firm power requirements to a customer under its section 5(b)(1) contract will be based on a case-by-case factual determination regarding the export of a resource by a BPA customer, and may be based on the regional load resource balance at the time of the export and other factors. BPA shall address the effect of exports of resources

by a customer purchasing power under a contract pursuant to section 5(c), section 5(d)(1), or section 5(f) of the Northwest Power Act on a case-by-case basis.

D. Subscription 9(c) Study

BPA will perform a Subscription 9(c) Study. The study will provide part of the factual basis for determining whether an export of a resource during the period from October 1, 2001, through September 30, 2006, is likely to result in an increase in the firm energy requirements of BPA customers, and if so, whether the resource could be otherwise retained to serve regional loads.

Responsible Official: Mr. Sydney Berwager, Subscription Policy Manager, is the official responsible for the development of the final policy for addressing issues under section 5(b) of the Northwest Power Act regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts, and the Section 9(c) Policy which modifies the 1994 NFP Section 9(c) Policy.

Issued in Portland, Oregon, on February 22, 2000.

Judith A. Johansen,

Administrator and Chief Executive Officer.

[FR Doc. 00–6505 Filed 3–15–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC00–505–001, FERC–505]

Information Collection Submitted for Review and Request for Comments

March 10, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission did not receive any comments in response to an earlier **Federal Register** notice of November 16, 1999 (64 FR 62183).

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before April 17, 2000.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, N.W. Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–505 "Application for License/Relicense for Water Projects 5MW or Less Capacity."

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0115. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory information collection requirement.

4. *Necessity of Collection of Information:* Submission of the information is necessary to fulfill the requirements of Sections 9 and 10(a) of the Federal Power Act (FPA) in order for the Commission to make a required finding that the proposal for a hydropower project is economically feasible, technically, and environmentally sound, and is best adapted to the comprehensive plan of development of the water resources of the region. Under Section 405(c) of the public Utilities Regulatory policies Act of 1978, the Commission may in its discretion (by rule or order) grant an exemption in whole or in part from the requirements of Part 1 of the FPA to small hydropower projects having a proposed installed capacity of 5,000 kilowatts or less. The information collected in the form of a written application for a license and used by commission staff to determine the broad impact of a hydropower license application.

Respondent Description: The respondent universe currently comprises on average, 12 applicants subject to the Commission's jurisdiction.

6. *Estimated Burden:* 4,512 total burden hours, 12 respondents, 1 response annually, 376 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 4,512 hours ÷ 2,080 hours per year × $111,545 per year = $241,966, average cost per respondent = $20,168.

Statutory Authority: Sections 4(e), 9, 10, 14 and 15 of the Federal Power Act (FPA), 16 U.S.C. 791A *et seq.*

David P. Boergers,

Secretary.

[FR Doc. 00–6448 Filed 3–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–612–000]

Ameren Operating Companies; Notice of Informal Settlement Conference

March 10, 2000.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 9:00 a.m. on Friday, March 24, 2000, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Thomas J. Burgess at (202) 208–2058, or Dawn K. Martin at (202) 208–0661.

David P. Boergers,

Secretary.

[FR Doc. 00–6454 Filed 3–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1787–000]

Cabrillo Power II LLC; Notice of Filing

March 8, 2000.

Take notice that on March 1, 2000, Cabrillo Power II LLC filed a quarterly report for the quarter ending December 31, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 28, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6458 Filed 3–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–213–000]

Colorado Interstate Gas Company, Colorado Springs Utilities, Public Service Company of Colorado, and Cheyenne Light, Fuel and Power Company v. Amoco Production Company, Antares Oil Corporation/ Oxford Consolidated, Inc., Atlantic Richfield Company, Banks Oil Company, Beymer and Beymer, Inc., Calvin Exploration, Inc., Colony Energy Corporation, Edwin L. & Berry R. Cox, Ensource Inc., W.L. Hartman, W.L. Hartman Trust, Inter-American Energy Corp., K&E Drilling Company, Inc., Kimbark Oil & Gas Co., Jay Kornfeld, La Jolla Properties, Inc., R.W. Lange, Mapco Oil & Gas Company, Northern Pump Company, Osborn Heirs Company, Resource Tax Group, Shannon Energy Corporation, Sunburst Exploration Company, Thompson Cattle Co., Albert A. Thornbrough, Union Pacific Resources Company (formerly Champlin Petroleum Company), Walter Kuhn Drilling Company, White & Johnson, L.L.P., Edgar J. White, and Woods Petroleum Corporation; Notice of Complaint

March 10, 2000.

Take notice that on March 8, 2000, Colorado Interstate Gas Company, Colorado Springs Utilities, Public Service Company of Colorado, and Cheyenne Light, Fuel, and Power Company (collectively Complainants) filed with the Federal Energy Regulatory Commission (Commission) a complaint against Amoco Production Company, et al. (Amoco et al.) pursuant to 18 CFR 385.206. According to Complainants, Amoco et al. were operators of natural gas wells to whom CIG paid reimbursements of the Kansas ad valorem tax after October 4, 1983, a tax that the Commission and the United States Court of Appeals have held not to be an eligible add-on under Section 110 of the Natural Gas Policy Act. Complainants allege that Amoco et al. have not complied with Commission orders requiring Amoco et al. to furnish CIG with working interest owner data necessary to allow CIG to prepare invoices for refunds of the Kansas ad valorem tax. Some of the operators that comprise Amoco et al. have provided no working interest owner data at all; others have provided only partial data. According to Complainants, efforts by the Commission and efforts by CIG have failed to prompt Amoco et al. to provide the necessary data. According to Complainants, the lack of the needed data has severely hindered CIG's ability to recover and flow back to its former sales customers the illegal collections.

Complainants ask the Commission to use whatever enforcement tools are available to the Commission to ensure that Amoco et al. provide CIG with the necessary data. These tools include holding non-complying operators responsible for the full amount of the refund as reflected in CIG's November 1997 Statement of Refunds Due in Docket No. RP98–54.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 28, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before March 28, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–6453 Filed 3–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 588–000 and 2683–003]

James River II, Inc.; Notice Terminating Proceedings

March 10, 2000.

The above-captioned dockets involve licensing proceedings for the Glines Canyon Project No. 588 and the Elwha Project No. 2683, located on or near the Olympic National Park in Washington State. The Elwha River Ecosystem and Fisheries Restoration Act, Pub. L. No. 102–495, 106 Stat. 3173 (1992), removed the Commission's jurisdiction to process the applications in these dockets, but left a residual jurisdiction to preserve the status quo. Pursuant to

appropriations legislation enacted by Congress in 1999, and a statutory warranty deed dated February 29, 2000, title to the two projects has been transferred to the U.S. Department of the Interior, which now owns and manages the projects. Accordingly, the Commission's jurisdiction over these projects having been fully extinguished, the above-captioned dockets are closed and the proceedings therein are terminated.

David P. Boergers,

Secretary.

[FR Doc. 00–6456 Filed 3–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG00–96–000, EG00–95–000 and EG00–97–000]

Mexican Business Trust No. 111014–6, et al; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

March 10, 2000.

Take notice that on March 8, 2000, Mexican Business Trust No. 111014–6 (the Trust); Banco Nacional de México, S.A., Institución de Banca Múltiple División Fiduciaria, Grupo Financiero Banamex-Accival (the "Trustee" under Mexican Business Trust No. 111014–6); and Termoeléctrica del Golfo, S. de R.L. de C.V. (TEG and together with the Trust and Trustee, Applicants), tendered for filing with the Federal Energy Regulatory Commission an amendment to their application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy of the amended application. All such motions and comments should be filed on or before March 31, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6452 Filed 3–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–50–000]

Northeast Energy Associates, a Limited Partnership v. Boston Edison Company; Notice of Filing

March 10, 2000.

Take notice that on March 8, 2000, Northeast Energy Associates, a Limited Partnership, tendered for filing a complaint against Boston Edison Company alleging violations of the Interconnection Agreement between those parties.

Any person desiring to be heard or protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 20, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Answers to the complaint shall also be due on or before March 20, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–6450 Filed 3–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–49–000]

NRG Power Marketing, Inc. v. New York Independent System Operator, Inc.; Notice of Complaint

March 10, 2000.

Please take notice that on March 8, 2000, NRG Power Marketing, Inc. (NRG) tendered for filing a Complaint against the New York Independent System Operator, Inc. (NYISO) objecting to the NYISO's retroactive reductions of the market clearing prices for power provided during particular hours on December 11 and 12, 2000.

A copy of this filing was served upon Respondent, the NYSIO.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 28, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before March 28, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–6457 Filed 3–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–212–000]

NUI Corporation (City Gas Company of Florida, Division) v. Florida Gas Transmission Company; Notice of Complaint

March 10, 2000.

Take notice that on March 9, 2000, NUI Corporation (City Gas Company of Florida Division) (NUI/City Gas) filed a

complaint against Florida Gas Transmission Company (FGT) stating that FGT has filed to afford NUI/City Gas the full rights it holds under the regulatory Right of First Refusal (ROFR), in direct contravention of Commission policy and precedent as well as FGT's relevant tariff provisions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be field on or before March 28, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before March 28, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–6451 Filed 3–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1618–003]

PJM Interconnection, L.L.C.; Notice of Filing

March 8, 2000.

Take notice that on March 1, 2000, PJM Interconnection. L.L.C. (PJM), tendered for filing revised pages to the PJM Open Access Transmission Tariff reflecting Atlantic City Electric Company's settlement point-to-point transmission service rates approved in the January 31, 2000, Letter Order issued in this Docket.

Copies of this filing were served upon all members of PJM, the official service list compiled by the Secretary in this docket and the state commissions within the PJM control area.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 22, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–6459 Filed 3–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1259–000, et al.]

Louisiana Generating LLC., et al.; Electric Rate and Corporate Regulation Filings

March 8, 2000.

Take notice that the following filings have been made with the Commission:

1. Louisiana Generating LLC, Cajun Electric Power Cooperative, Inc., Louisiana Generating LLC

[Docket Nos. ER00–1259–000, EL00–38–000 and EC00–48–000]

Take notice that on March 3, 2000, Louisiana Generating LLC (Generating) filed a response to the requests for clarification filed by Southwestern Electric Power Company (SWEPCO) in the above-referenced proceedings.

Comment date: March 20, 2000, in accordance with Standard paragraph E at the end of this notice.

2. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. EC00–60–000]

Take notice that on March 1, 2000, Northern States Power Company (Minnesota) and Northern States Power (Wisconsin) (jointly NSP) tendered for filing pursuant to Section 203 of the Federal Power Act (the FPA) and Part 33 of the Commission's Regulations, an application for the transfer of operational control over substantial portions of the jurisdictional transmission facilities of NSP to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO or MISO) to be effective on the Transfer Date as defined in the Midwest ISO Agreement.

NSP states it has served a copy of the filing on the utility commissions in Minnesota, Michigan, North Dakota, South Dakota and Wisconsin.

Comment date: March 31, 2000, in accordance with Standard paragraph E at the end of this notice.

3. Sithe Northeast Generating Company, Inc., Sithe Maryland Holdings LLC, Sithe New Jersey Holdings LLC, Sithe Pennsylvania Holdings LLC, Sithe Power Marketing, L.P., Reliant Energy Power Generation, Inc.

[Docket No. EC00–61–000]

Take notice that on March 1, 2000, Sithe Maryland Holdings LLC, Sithe New Jersey Holdings LLC, Sithe Pennsylvania Holdings LLC (collectively, the Sithe PJM Companies), Sithe Power Marketing, L.P., their corporate parent, Sithe Northeast Generating Company, Inc., and Reliant Energy Power Generation, Inc. (collectively, the Applicants) submitted for filing, pursuant to Section 203 of the Federal Power Act, and Part 33 of the Commission's regulations, an application seeking authorization from the Commission for assignment of interests in certain wholesale power agreements from Sithe Power Marketing to the Sithe PJM Companies and the sale of the equity interests in the Sithe PJM Companies to Reliant Energy Power Generation, Inc., and the transfer of control over associated jurisdictional facilities of the Sithe PJM Companies as part of the transaction.

Comment date: March 31, 2000, in accordance with Standard paragraph E at the end of this notice.

4. Statoil Energy Trading, Inc., Statoil Energy Services, Inc. and Amerada Hess Corporation

[Docket No. EC00–62–000]

Take notice that on March 1, 2000, Statoil Energy Trading, Inc. (SETI), Statoil Energy Services, Inc. (SESI) and Amerada Hess Corporation (AHC) filed an application under Section 203 of the Federal Power Act for approval of the transfer from SETI to SESI of certain wholesale electric power sales agreements currently held by SETI, and the transfer of control over the jurisdictional facilities of SESI to AHC through AHC's acquisition of SESI's common stock.

Comment date: March 31, 2000, in accordance with Standard paragraph E at the end of this notice.

5. Sierra Pacific Power Company, Nevada Power Company, Portland General Electric Company

[Docket No. EC00–63–000]

Take notice that on March 3, 2000, Sierra Pacific Power Company (Sierra), Nevada Power Company (Nevada Power), and Portland General Electric Company (PGE) tendered for filing pursuant to Section 203 of the Federal Power Act a Joint Application for Authorization and Approval of Acquisition and Indirect Merger. This Application requests authorization and approval of (i) the acquisition of PGE by Sierra Pacific Resources (SPR), the parent of Sierra and Nevada Power, and (ii) the indirect merger of the jurisdictional facilties of PGE with those of Sierra and Nevada Power (collectively, the Transaction).

Comment date: March 31, 2000, in accordance with Standard paragraph E at the end of this notice.

6. Duke Energy Vermillion, LLC.

[Docket No. EG00–108–000]

Take notice that on March 2, 2000, Duke Energy Vermillion, LLC (Duke Vermillion) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's Regulations.

Duke Vermillion is a Delaware limited liability company that will be engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities to be located in Cayuga, Vermillion County, Indiana. The eligible facilities will consist of an approximately 640 MW gas-fired single cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: March 29, 2000, in accordance with Standard paragraph E at the end of this notice.

7. Duke Energy Madison, LLC

[Docket No. EG00–109–000]

Take notice that on March 2, 2000, Duke Energy Madison, LLC (Duke Madison) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's Regulations.

Duke Madison is a Delaware limited liability company that will be engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities to be located in Madison Township, Butler County, Ohio. The eligible facilities will consist of an approximately 640 MW gas-fired single cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: March 29, 2000, in accordance with Standard paragraph E at the end of this notice.

8. Liberty Generating Company, LLC

[Docket No. EG00–110–000]

Take notice that on March 3, 2000, Liberty Generating Company, LLC (Liberty), a limited liability company with its principal place of business at 7500 Old Georgetown Road, Bethesda, Maryland 20814, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Liberty proposes to construct, own or lease and operate a nominally rated 1090 MW natural gas-fired, combined cycle power plant in the city of Linden, Union County, New Jersey. The proposed power plant is expected to commence commercial operation in the second quarter of 2003. All output from the plant will be sold by Liberty exclusively at wholesale.

Comment date: March 29, 2000, in accordance with Standard paragraph E at the end of this notice.

9. South Eastern Generating Corporation

[Docket No. EG00–111–000]

Take notice that on March 3, 2000, South Eastern Generating Corporation (Applicant), 1585 Broadway, New York, NY 10036–8293, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, a Delaware corporation, intends to own and/or operate an eligible facility in Georgia. The facility will consist of a 100–MW combustion turbine generating unit, as well as interconnecting transmission facilities necessary to effect sales of electric energy at wholesale.

Comment date: March 29, 2000, in accordance with Standard paragraph E at the end of this notice.

10. XENERGY, Inc.

[Docket No. ER97–2517–007]

Take notice that on March 3, 2000, XENERGY, Inc. (XENERGY), tendered for filing a notice of status change with the Commission in connection with the pending merger between Energy East Corporation and Central Maine Power Company (CMP). The filing includes an amendment to XENERGY's power sales tariff and code of conduct to incorporate CMP as an affiliate.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. NYSEG Solutions, Inc.

[Docket No. ER99–220–005]

Take notice that on March 3, 2000, NYSEG Solutions, Inc., tendered for filing a notice of status change with the Commission in connection with the pending merger between Energy East Corporation and Central Maine Power Company (CMP). The filing includes an amendment to NYSEG Solutions, Inc.'s power sales tariff and code of conduct to incorporate CMP as an affiliate.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corporation

[Docket No. ER99–221–002]

Take notice that on March 3, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing a notice of status change with the Commission in connection with the pending merger between Energy East Corporation and Central Maine Power Company (CMP). The filing includes an amendment to NYSEG's power sales tariff and code of conduct to incorporate CMP as an affiliate.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Carthage Energy, LLC

[Docket No. ER99–2541–001]

Take notice that on March 3, 2000, Carthage Energy, LLC (Carthage), tendered for filing a notice of status change with the Commission in connection with the pending merger between Energy East Corporation and Central Maine Power Company ("CMP"). The filing includes an amendment to Carthage's power sales tariff and code of conduct to incorporate CMP as an affiliate.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. South Glens Falls LLC

[Docket No. ER00–262–001]

Take notice that on March 3, 2000, South Glens Falls LLC (South Glens Falls), tendered for filing a notice of

status change with the Commission in connection with the pending merger between Energy East Corporation and Central Maine Power Company (CMP). The filing includes an amendment to South Glens Falls' power sales tariff and code of conduct to incorporate CMP as an affiliate.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1788–000]

Take notice that on March 2, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing a Notice of Cancellation for Engelhard Power Marketing, Inc., a customer under Allegheny Power's Open Access Transmission Service Tariff, Standard Generation Service Rate Schedule and Point-to-Point Transmission Service Tariff.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Energy Corporation

[Docket No. ER00–1789–000]

Take notice that on March 2, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing revisions to its FERC Rate Schedule Nos. 81 and 82. The agreements are being modified to bring them into compliance with the Commission's Order No. 888. Service contemplated by those agreements will be conducted pursuant to Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Original Volume No. 1.

Wisconsin Electric respectfully requests an effective date coincident with the commercial service date of the Central Upper Peninsula Transmission Project. The CUPT Project is expected to be completed in late March. Wisconsin Electric will inform the Commission of the exact in-service date. Wisconsin Electric is authorized to state that Edison Sault Electric Company joins in the requested effective date.

Copies of the filing have been served on Upper Peninsula Power Company, Edison Sault Electric Company, Cloverland Electric Cooperative, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Idaho Power Company

[Docket No. ER00–1790–000]

Take notice that on March 2, 2000, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Firm Point-to-Point Transmission Service between Idaho Power Company and Coral Power, L.L.C.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Public Service Corporation

[Docket No. ER00–1791–000]

Take notice that on March 3, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with El Paso Energy Merchant, L.P., providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Liberty Generating Company, LLC

[Docket No. ER00–1792–000]

Take notice that on March 3, 2000, Liberty Generating Company, LLC (Liberty), submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates and to reassign transmission capacity. Liberty proposes to construct a nominally rated 1090 MW natural gas-fired, combined cycle power plant in the City of Linden, Union County, New Jersey.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. New York State Electric & Gas Corporation

[Docket No. ER00–1793–000]

Take notice that on March 3, 2000 New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, a service agreement (the Service Agreement) under which NYSEG is providing capacity and/or energy to 3M Company in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG requests an effective date for the Service Agreement of November 1, 1999.

NYSEG has served copies of the filing upon the New York State Public Service Commission and 3M.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. PJM Interconnection, L.L.C.

[Docket No. ER00–1794–000]

Take notice that on March 3, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing revised pages to the PJM Open Access Transmission Tariff to reflect new PJM Border rates for point-to-point transmission service and Non-Zone Network Load rates for Network Integration Service.

PJM requests an effective date of June 1, 2000.

Copies of this filing were served upon all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Indianapolis Power & Light Company

[Docket No. ER00–1795–000]

Take notice that on March 3, 2000, Indianapolis Power & Light Company filed an Interconnection, Operation and Maintenance Agreement between West Fork Land Development Company, L.L.C., and Indianapolis Power & Light Company in the above-captioned docket.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Roswell Energy, Inc.

[Docket No. ER00–1796–000]

Take notice that on March 3, 2000, Roswell Energy, Inc. (Roswell), petitioned the Commission for acceptance of Roswell Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Roswell intends to engage in wholesale electric power and energy purchases and sales as a marketer. Roswell is not in the business of generating or transmitting electric power. Roswell is neither an affiliate

nor owns or is associated with any affiliate.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Consumers Energy Company

[Docket No. ER00–1798–000]

Take notice that on March 3, 2000, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Firm Point-to-Point Transmission Service to the Commonwealth Edison Company pursuant to Consumers' Open Access Transmission Service Tariff filed on July 9, 1996.

The agreement has an effective date of February 21, 2000.

Copies of the filed agreements were served upon the Michigan Public Service Commission and the transmission customer.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Northeast Utilities Service Company

[Docket No. ER00–1799–000]

Take notice that on March 3, 2000, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Entergy Power Marketing Corporation (EPMC) under the NU System Companies' Sale for Resale Tariff No. 7.

NUSCO requests that the Service Agreement become effective February 7, 2000.

NUSCO states that a copy of this filing has been mailed to EPMC.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Wisconsin Public Service Corporation Docket No.

[Docket No. ER00–1800–000]

Take notice that on March 3, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with El Paso Energy Merchant, L.P., providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Sierra Pacific Power Company, Nevada Power Company, Portland General Electric Company

[Docket No.ER00–1801–00]

Take notice that on March 3, 2000, Sierra Pacific Power Company (Sierra), Nevada Power Company (Nevada Power), and Portland General Electric Company (PGE) (collectively, the Applicants), tendered for filing pursuant to Section 205 of the Federal Power Act a Joint Open Access Transmission Tariff (the Joint OATT). The Applicants' filing of the Joint OATT is in connection with the proposed acquisition of Portland General Electric Company by Sierra Pacific Resources, the holding company parent of Sierra Pacific Power Company and Nevada Power Company (the Transaction). The Joint OATT will apply to the transmission service provided by the Applicants subsequent to the Transaction.

28. Rochester Gas and Electric Corporation

[Docket No. ER00–1802–000]

Take notice that on March 2, 2000, Rochester Gas and Electric Corporation (RG&E), tendered for filing an Application in the above-referenced proceeding docket requesting that the Commission extend the authorization previously granted to RG&E to make sales to an affiliate in conjunction with the Retail Access Program and the Retail Access Pilot Program.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. South Eastern Generating Corporation

[Docket No. ER00–1803–000]

Take notice that on March 3, 2000, South Eastern Generating Corporation petitioned the Commission for acceptance of its Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain of the Commission's Regulations.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Panda Leesburg Power Partners, L.P.

[Docket No. ER00–1804–000]

Take notice that on March 3, 2000, Panda Leesburg Power Partners, L.P. (Panda Leesburg), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, and for the purpose of permitting Panda Leesburg to assign transmission capacity and to resell Firm Transmission Rights, to be effective no later than sixty (60) days from the date of its filing.

Panda Leesburg intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Panda Leesburg sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Panda Leesburg nor any of its affiliates is in the business of transmitting or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Panda Midway Power Partners, L.P.

[Docket No. ER00–1805–000]

Take notice that on March 3, 2000, Panda Midway Power Partners, L.P. (Panda Midway), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, and for the purpose of permitting Panda Midway to assign transmission capacity and to resell Firm Transmission Rights, to be effective no later than sixty (60) days from the date of its filing.

Panda Midway intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Panda Midway sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Panda Midway nor any of its affiliates is in the business of transmitting or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. AmerGen Vermont, LLC

[Docket No. ER00–1806–000]

Take notice that on March 3, 2000, AmerGen Vermont, LLC (AmerGen), tendered for filing a power sales agreement for wholesale power sales transactions between AmerGen and PECO Energy Company.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Western Resources, Inc.

[Docket No. ER00–1813–000]

Take notice that on March 3, 2000, Western Resources, Inc. (Western), tendered for filing First Revised Sheet No. 1 superseding Original Sheet No. 1 of Western's FERC Rate Schedule No. 6,

Market Based Power Sales Tariff. Western states that the purpose of the filing is to remove Kansas City Power & Light Company from the definition of "affiliate" contained in the Market Based Power Sales Tariff, in light of the termination of the companies' proposed merger.

Comment date: March 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6447 Filed 3–15–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

March 10, 2000.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Minor License.

b. *Project No.:* P–2694–002.

c. *Date filed:* September 27, 1999.

d. *Applicant:* Nantahala Power and Light.

e. *Name of Project:* Queens Creek Hydroelectric Project.

f. *Location:* On Queens Creek, near the town of Topton, in Macon County, North Carolina. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. John Wishon; Nantahala Power and Light; 301 NP&L Loop Road; Franklin, NC 28734; (828) 369–4604.

i. *FERC Contact:* Kevin Whalen (202) 219–2790, kevin.whalen@ferc.fed.us.

j. *Deadline for filing scoping comments:* May 12, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary; Federal Energy Regulatory Commission; 888 First Street, NE; Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 78-foot-high, 382-foot-long earth-faced rock fill dam; (2) a 4-foot-wide by 4-foot-high horizontal intake structure, having a trashrack with 1.0-inch clear bar spacing; (3) a 6,250-foot-long steel penstock leading to a concrete and steel powerhouse containing a single generating unit, having an installed capacity of 1,440 kilowatts; (4) a 37-acre impoundment that extends approximately 0.7 miles upstream; and (5) appurtenant facilities. The applicant estimates the total average annual generation would be approximately 5,000 megawatt hours.

m. *Location of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

n. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime meeting	Evening meeting
Date: April 12, 2000 .. Time: 2:00 pm ..... Place: NP&L Corporate Headquarters located at 301 NP&L Loop Road, Franklin, NC.	Date: April 12, 2000. Time: 7:00 pm. Place: NP&L Corporate Headquarters located at 301 NP&L Loop Road, Franklin, NC.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meeting.

Site Visit

The applicant and Commission staff will conduct a project site visit on Wednesday, April 12, 2000. We will meet at 10:00 am at the NP&L substation located adjacent to the Queens Creek powerhouse. If you would like to attend, please call Mr. John Wishon, NP&L, at (828) 369–4604, no later than April 10, 2000.

Objectives

At the scoping meetings, staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including view points in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission

proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist staff in defining and clarifying the issues to be addressed in the EA.

David P. Boergers,

Secretary.

[FR Doc. 00–6455 Filed 3–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

March 10, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt:		
1. CP00–14–000, CP00–15–000 and CP00–16–000	2–7–00	Sneed Collard.
2. CP00–14–000, CP00–15–000 and CP00–16–000	2–7–00	Sneed Collard.
3. CP00–14–000, CP00–15–000 and CP00–16–000	2–7–00	Sneed Collard.
4. CP00–14–000, CP00–15–000 and CP00–16–000	2–8–00	Sneed Collard.
5. CP00–14–000, CP00–15–000 and CP00–16–000	2–9–00	Sneed Collard.
6. CP00–14–000, CP00–15–000 and CP00–16–000	2–9–00	Sneed Collard.
7. CP00–14–000, CP00–15–000 and CP00–16–000	2–10–00	Sneed Collard.
8. CP00–14–000, CP00–15–000 and CP00–16–000	2–10–00	Sneed Collard.
9. CP00–14–000, CP00–15–000 and CP00–16–000	2–14–00	Janet Rowe.
10. CP00–14–000, CP00–15–000 and CP00–16–000	2–14–00	Sneed Collard.
11. CP00–14–000, CP00–15–000 and CP00–16–000	2–14–00	Todd Mattson.
12. CP00–14–000, CP00–15–000 and CP00–16–000	2–23–00	Mark Cline.
13. CP00–14–000, CP00–15–000 and CP00–16–000	2–25–00	Mark Cline.
14. CP00–14–000, CP00–15–000 and CP00–16–000	2–28–00	Mark Cline.
15. CP00–14–000, CP00–15–000 and CP00–16–000	2–29–00	Mark Cline.
16. CP99–599–000,	3–2–00	Paul Friedman, FERC.
17. Project No. 2188–032	2–28–00	Kemper M. McMaster.
18. Project No. 11541–001	2–4–00	Sergiu Serban, FERC.
19. CP98–150–000	3–2–00	Matthew J. Brower.

David P. Boergers,

Secretary.

[FR Doc. 00–6449 Filed 3–15–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6560–7]

Brownfields Showcase Communities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; solicitation of statements of interest from communities interested in being designated as Brownfields Showcase Communities.

SUMMARY: Programs within the following Federal agencies are participating in the selection of Brownfields Showcase Communities: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Appalachian Regional Commission, Federal Housing Finance Board, General Services Administration, and Small Business Administration.

DATES: Submit Statements of Interest on or before April 17, 2000. All proposals must be postmarked or sent to EPA via registered or tracked mail by the deadline cited above.

ADDRESSES: Address Statements of Interest to Gayle Rice or Sven-Erik Kaiser, U.S. EPA (5105), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gayle Rice, 202–260–8431 or Sven-Erik Kaiser, 202–260–5138. Additional information, if any, will be updated on the Internet Worldwide Web at the

Universal Resource Location address of "http://www.epa.gov/brownfields." Persons lacking Internet access can communicate with the contact persons listed above.

SUPPLEMENTARY INFORMATION:

Background

Brownfields are abandoned, idled or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived contamination. The Brownfields Initiative was launched to empower States, communities, Tribes, and other stakeholders in economic redevelopment to work together to prevent, assess, clean up, and sustainably reuse brownfields. Communities have asked for more interaction among all levels of government, the private sector, and non-governmental organizations. In response, Federal agencies have joined together to strengthen and improve their collaborative efforts to clean up and reuse contaminated property.

A partnership of Federal agencies with interests in brownfields redevelopment has been formed to offer special technical, financial and other assistance to selected communities. These communities are called Brownfields Showcases Communities and are models demonstrating the benefits of focused attention on brownfields. To date, the Federal partners have designated 16 Brownfields Showcase Communities. The Federal partners plan to designate ten additional Brownfields Showcase Communities, distributed across the country, varying by size, resources and community background.

Goals

The goals of the Brownfields Showcase Communities project are to:

- Promote environmental protection, restoration to the land, air and water, economic redevelopment, job creation, community revitalization, greenspace development, energy efficiency and public health protection, through the assessment, cleanup, and sustainable reuse of brownfields;
- Link Federal, State, tribal, and local public, private and non-governmental action supporting community efforts to restore and reuse brownfields; and
- Develop national models demonstrating the positive results of public, private and non-governmental collaboration in addressing brownfields challenges.

The Federal partners intend to select a broad array of Showcase Communities that will serve as models for other communities across the nation. The Federal partners seek proposals that link brownfields activities with other community empowerment, sustainable development and community livability efforts. Special consideration will be given to Federal Empowerment Zones and Enterprise Communities (EZ/ECs), communities with populations of under 100,000, Federally recognized Indian tribes and Base Realignment and Closure communities seeking early transfer of property. The Federal partners will also look for opportunities to link brownfields cleanup with related air and water quality efforts.

Benefits

A community will receive the following benefits from being designated as a Brownfields Showcase Community:

- National visibility for a community's brownfields efforts;
- Coordinated delivery of technical and financial support from participating Federal agencies. Participating agencies and programs will vary for each Showcase Community depending upon the particular Showcase's needs and plans. For example, an urban Showcase Community might be served by different programs and resources than a rural community;
- Financial assistance, grants and cooperative agreements from participating agency programs subject to the requirements of those programs and the availability of funds; and
- Staff support in the form of a Federal employee assigned to each Showcase Community to assist with coordination and implementation activities.

Structure of the Statement of Interest

To be considered for selection as a Brownfields Showcase Community, interested communities should submit a Statement of Interest that includes the following information:

- Project title;
- Location: city, county, and state or reservation, tribally-owned lands, etc., of the Showcase area;
- Project contact, organization, phone, fax and e-mail address;
- Name and contact information of the representative of the appropriate governmental subdivision (Mayor, County Executive, Tribal President) if different from the project director;
- Date submitted: the date when the proposal is postmarked or sent to EPA via registered or tracked mail;
- Project Summary: explain how designation as a Brownfields Showcase Community will help the community meet its objectives and the goals of the Brownfields Showcase Community project; and
- Related Designations: identify whether the applicant or the area for the proposed Showcase Community project is designated as a Federal or State Brownfields pilot, Federal or State Empowerment Zone, Enterprise Community, Economic Development Administration designated Economic Development District or other special economic area.

Statements of Interest are limited to *two pages*. Supplemental materials such as appendices, maps, records, etc., will not be considered during the initial screening phase of the selection process. All communities, or regional groupings of communities, are eligible for consideration as a Brownfields Showcase Community. Previous designation as an EPA brownfields pilot is not a requirement for consideration, nor are such communities precluded from applying. Statements of Interest will be accepted from any party, but must be submitted in partnership with a governmental entity to be eligible for consideration.

Selection Process

Selection of the Brownfields Showcase Communities will be done in two phases. During Phase I, interested communities are invited to submit two-page Statements of Interest which describe how the community's designation as a Showcase Community will advance the goals of the Showcase Communities project as described above. For example:

- A community with well-defined brownfields problems that can be addressed effectively through environmental cleanup and sustainable reuse is more likely to be considered as a candidate community than a community that suspects that there are brownfields problems in their jurisdiction that may require attention.
- A community with an established network of working relationships among Federal, State, and local governments, and other public and private stakeholders is more likely to be considered as a candidate community than a community which is just beginning to create these types of relationships;
- A community that has begun preliminary work such as cleanup and redevelopment planning, securing private investors, and exploring public financial opportunities is more likely to be considered as a candidate community than a community that has just started to address its brownfields issues. Within two years after designation, a Brownfields Showcase

Community should be able to demonstrate success in dealing with cleanup and reuse issues.

The Showcase Communities Selection Board, which represents the participating Federal agencies, will evaluate the Statements of Interest. It will screen the applications to create a list of about 25 candidate communities which will then be invited to move into Phase II of the selection process.

During Phase II, the candidate communities will be invited to submit more detailed proposals which more fully describe their brownfields efforts. At that stage, communities will be encouraged to submit supporting materials which demonstrate the breadth of support for their application within the community. The Showcase Communities Selection Board will then evaluate and select the ten Brownfields Showcase Communities, using the detailed criteria listed below.

1. BROWNFIELDS POTENTIAL: Describe the brownfields that exist, or are perceived to exist, in the community. Discuss the potential for environmental restoration and the type of reuse anticipated in the near-term.

2. COMMUNITY NEED: Describe how this is an area with social and economic conditions that would benefit from Federal assistance for brownfields cleanup and redevelopment.

3. LOCAL COMMITMENT: Describe the degree of local commitment to brownfields cleanup and redevelopment including existing community efforts and investment of community resources.

4. FEDERAL, STATE, AND LOCAL PARTNERSHIPS: Describe the Federal, State, and local agencies and organizations participating in the community's brownfields activities, including other programs and funds available for brownfields activities.

5. STRATEGIC PLANNING: Describe the community's brownfields plan and how the brownfields plan is linked to broader strategies of economic redevelopment, job creation, increased environmental protection including improved air and water quality, green development, livability and sustainability.

6. MANAGEMENT CAPABILITY: Describe prior experience or knowledge in managing similar redevelopment, cleanup, and community participation activities. Also describe what specific planning and programmatic requirements have been met for Federal financing programs anticipated for use.

7. ENVIRONMENTAL JUSTICE: Describe the extent to which low-income, minority, and other disadvantaged communities will participate in the development of community brownfields redevelopment activities, including this application and the proposed Showcase Community project.

8. NATIONAL REPLICABILITY: Describe how the community will serve as a model for other similarly situated communities in addressing brownfields redevelopment.

Communities that are invited to submit Phase II proposals should respond directly to these criteria in their proposals. Further application requirements and guidelines will be provided to the candidate communities to assist them in preparing their application. Note that in Phase I (the initial Statement of Interest) of the selection process, interested communities should consider the detailed criteria, but do not have to respond to each criterion.

Dated: March 3, 2000.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00–6391 Filed 3–15–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00647; FRL–6497–5]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review the following sets of scientific issues being considered by the Agency pertaining to: Insect Repellent Product Performance Testing Guideline Evaluation and Implementing Probabilistic Ecological Assessments: A Consultation.

The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Paul Lewis or Laura Morris at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on Wednesday, April 5, through Friday, April 7, 2000, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton hotel is: (703) 486-1111.

Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00647 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis or Laura Morris, Designated Federal Officials, FIFRA SAP (7101C), Office of Science Coordination and Policy, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW. Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: lewis.paul or morris.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

A meeting agenda and copies of EPA background documents for the meeting will be available by mid March, 2000. The meeting agenda and EPA primary background documents will be available on the FIFRA SAP web site at http://www.epa.gov/scipoly/sap.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00647. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall ι2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in this Meeting?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00647 in the subject line on the first page of your response. Members of the public wishing to submit comments should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** to confirm that the meeting date and the agenda have not been modified or changed.

Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advanced written request to the persons listed under **FOR FURTHER INFORMATION CONTACT** interested persons may be permitted by the Chair of the FIFRA Scientific Advisory Panel to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc). There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the persons listed under **FOR FURTHER INFORMATION CONTACT** and submit 40 copies of the summary information. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW. Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM ι2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00647. Electronic comments may also be filed online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting?

This 3–day meeting concerns several scientific issues undergoing consideration within the EPA/Office of Pesticide Programs (OPP). The 2 session topics to be addressed during the 3–day meeting are indicated as follows:

The first session will focus on an evaluation of the insect repellent product performance testing guideline. Inconsistencies have developed in product performance testing and labeling of insect repellents. In order to minimize this variance, EPA has developed draft product performance testing guidelines and appropriate label language. This guideline recommends specific methods for conducting product performance testing of insect repellents. As a guideline, it does not impose mandatory requirements. It does, however, reflect the Agency's considered recommendations for minimum steps necessary to develop reliable data on repellent product performance. In addition, the product performance testing guidelines are intended to supercede EPA, Pesticide Assessment Guidelines, Subdivision G: 95–9, "Treatments to control pests of humans and pests" and 95–10, "Mosquito, black fly, nonbiting midge, and biting midge."

A performance standard represents the minimum level of product performance which would normally be acceptable for protecting the public health, when required, or for economic control of a pest or pest combination at a specific site. These guidelines are concerned with product performance testing for evaluation of pesticides used to repel mosquitos, biting flies, fleas, chiggers and ticks from human skin and outdoor premises. EPA intends to use the data form guidelines studies to help determine the adequacy of the labeling of insect repellant products. The label language proposed by the Agency is intended to standardize and improve the information provided by the consumer. The Agency will be asking the Panel's advice on the adequacy of the proposed testing guidelines and protocols for human insect repellants.

The second session will entail a consultation on implementing probabilistic ecological assessments. The purpose of this consultation is to provide the FIFRA SAP with a progress report regarding the EPA/OPP/ Environmental Fate and Effect Division's (EFED) initiative to revise the ecological assessment process. Following the recommendations of the May, 1996 FIFRA SAP and building on previous efforts within the Division, EFED began a new initiative in 1997 to revise the ecological assessment process. The main focus on this initiative is to identify, develop, and validate tools and methodologies to conduct probabilistic ecological assessments and improve risk characterization.

A key component of this initiative has been the Ecological Committee on FIFRA Risk Assessment Methods (ECOFRAM), which refers to the workgroups who have been developing recommendations for revising the assessment process. ECOFRAM completed their draft reports in May, which were reviewed by a peer input panel in June, 1999.

Another key component is EFED's Probabilistic Risk Assessment Implementation Team (Implementation Team), which is charged with developing an implementation plan to

incorporate probabilistic tools and methods to evaluate the ecological risk from pesticides. They are responsible for the technical evaluation and review of the ECOFRAM reports and workshop comments, which were used as a starting point for developing an approach for implementing changes to the current deterministic assessment process.

Thus, EFED will provide the Panel with an update regarding the progress of this initiative and seeks the Panel's comments and recommendations. EFED's presentation will include a summary of the ECOFRAM draft reports, the peer input panel comments, and an overview of the conceptual risk assessment model being proposed by the Implementation Team. This model is based on a tiered approach for implementing aquatic and terrestrial probabilistic assessments in OPP.

B. Panel Report

Copies of the Panel's report of their recommendations will be available approximately 45 working days after the meeting, and will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit III. of this document.

List of Subjects

Environmental protection.

Dated: March 7, 2000.

Steven Galson,

Director, Office of Science Coordination and Policy.

[FR Doc. 00–6513 Filed 3–13–00; 2:22 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00439A; FRL–6498–9]

Pesticide Program Dialogue Committee (PPDC); Inert Disclosure Stakeholder Workgroup; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the Inert Disclosure Stakeholder Workgroup. The workgroup was established to advise the Pesticide Program Dialogue Committee (PPDC) on ways of making information on inert ingredients more available to the public while working within the mandates of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and related Confidential Business Information (CBI) concerns.

DATES: The meeting will be held on Monday, March 20, 2000, from 10 a.m. to 5:30 p.m. and Tuesday March 21, 2000, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Hotel, 625 First St., Alexandria, VA 22314; Telephone number (703) 548–6300.

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Field and External Affairs Division, Office of Pesticide Programs (7506C), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone: (703) 305–5454; e-mail address: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

The Inert Disclosure Stakeholder Workgroup is composed of participants from the following sectors: environmental/public interest and consumer groups; industry and trade associations; pesticide users; Federal, State and local governments; the general public; academia and public health organizations.

The Inert Disclosure Stakeholder Workgroup will advise the United States Environmental Protection Agency, through the Pesticide Program Dialogue Committee (PPDC), on potential measures to increase the availability to the public of information about inert ingredients (also called "other ingredients") under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Among the factors the workgroup will be asked to consider in preparing its recommendations are: existing law regarding inert ingredients and Confidential Business Information (CBI); current Agency processes and policies for disseminating inert ingredient information to the public, including procedures for the protection of CBI; the informational needs for a variety of stakeholders; and business reasons for limiting the disclosure of inert ingredient information.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. Additional information about the activities of the Pesticide Program Dialogue Committee can be found at http://www.epa.gov/pesticides/ppdc/.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00439A. The administrative record consists of the documents specifically referenced in this notice, any public comments received and other information related to the Inert Disclosure Stakeholder Workgroup Meeting, including any information claimed as CBI. This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Participate in this Meeting?

The Inert Disclosure Stakeholder Workgroup meeting is open to the public. Outside statements are welcome. Oral statements will be limited to 5 minutes per individual or group. Oral statements will be accepted in the afternoon of Monday, March 20th only. Any person who wishes to file a written statement can do so before or after the Workgroup meeting. These statements will become part of the permanent file in the administrative record referenced above in Section II (2) and will be provided to the Workgroup members for their information. The Agency requests that participants limit their use of fragranced products on behalf of persons attending who have expressed a concern about chemical sensitivity.

1. *By mail.* You may submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please reference docket control number OPP–00439A on all comments submitted.

2. *In person or by courier.* PIRIB, Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request electronically by e-mail to: "opp-docket@epa.gov." Do not submit any information electronically that you consider to be Confidential Business Information (CBI). Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify your comments by docket control number OPP–00439A. You may also file a request online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Pesticides, Inerts, PPDC.

Dated: March 10, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–6512 Filed 3–13–00; 2:22 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–922; FRL–6494–9]

Notice of Filing a Pesticide Petition To Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–922, must be received on or before April 17, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–922 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Minor Use, Inerts, and Emergency Response Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register** Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–922. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–922 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–922. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 8, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Rohm and Haas Company

8E4957

EPA has received a pesticide petition (8E4957) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.1001(c) and (e) to establish an exemption from the requirement of a tolerance for butyl acrylate/vinyl acetate/acrylic acid copolymer when used in accordance with good agricultural practices as an inert ingredient in pesticide formulations applied to growing crops in or on the raw agricultural commodity (RAC) after harvest or to animals. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Analytical method. Rohm and Haas is petitioning that butyl acrylate/vinyl acetate/acrylic acid copolymer be exempt from the requirement of a tolerance based upon the low risk polymer as per 40 CFR 723.250. Therefore, an analytical method to determine residues of butyl acrylate/vinyl acetate/acrylic acid copolymer in RACs has not been proposed.

B. Toxicological Profile

Acute toxicity. In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identifies categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compounds compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Butyl acrylate/vinyl acetate/acrylic acid copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low risk polymers.

1. Butyl acrylate/vinyl acetate/acrylic acid copolymer is not a cationic polymer, nor is it capable of becoming a cationic polymer in the natural aquatic environment.
2. Butyl acrylate/vinyl acetate/acrylic acid copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, oxygen and less than 0.10% sulfur.
3. Butyl acrylate/vinyl acetate/acrylic acid copolymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250 (d)(2)(iii).
4. Butyl acrylate/vinyl acetate/acrylic acid copolymer is not designed, nor is it reasonably anticipated to substantially degrade, decompose or depolymerize.
5. Butyl acrylate/vinyl acetate/acrylic acid copolymer is not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.
6. Butyl acrylate/vinyl acetate/acrylic acid copolymer is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,000 daltons.
7. The minimum number average molecular weight of butyl acrylate/vinyl acetate/acrylic acid copolymer is 18,500 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights

greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

8. Butyl acrylate/vinyl acetate/acrylic acid copolymer has a minimum number average molecular weight of 18,500 and contains less than 2% oligomeric material below molecular weight 500 and less than 5% oligomeric material below 1,000 molecular weight.

9. Butyl acrylate/vinyl acetate/acrylic acid copolymer does contain aliphatic ester groups as reactive functional groups. However, these reactive groups are not intended or reasonably anticipated to undergo further reactions under usual environmental conditions.

10. In addition, butyl acrylate/vinyl acetate/acrylic acid copolymer is compliant with the Food and Drug Administration (FDA) regulations under 21 CFR for contact with food as a component in adhesives (21 CFR 175.105), as a component of paper and paperboard in contact with dry foods (21 CFR 176.180) and aqueous and fatty foods (21 CFR 176.170) with limitations as set forth in 21 CFR 176.170(c).

C. Metabolite Toxicology

Endocrine disruption. There is no evidence that butyl acrylate/vinyl acetate/acrylic acid copolymer is an endocrine disrupter, where as substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

D. Aggregate Exposure

1. *Dietary exposure.* Butyl acrylate/vinyl acetate/acrylic acid copolymer is not absorbed through the intact GI tract and is considered incapable of eliciting a toxic response.

Drinking water. Based upon the aqueous insolubility of butyl acrylate/vinyl acetate/acrylic acid copolymer, there is no reason to expect human exposure to residues in drinking water.

2. *Non-dietary exposure.* Butyl acrylate/vinyl acetate/acrylic acid copolymer is widely used in multilayer paper packaging production, as a component in box and packaging sealant, and to a lesser extent in the "casing" found on books for protection. Although there may be exposures to the compound through dietary, non-occupational and most likely not through drinking water, the chemical characteristics of this compound are such that there is reasonable certainty of no harm from aggregate exposure.

E. Cumulative Effects

There are data to support cumulative risk from butyl acrylate/vinyl acetate/acrylic acid copolymer, since polymers with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response. Therefore, there is no reasonable expectations of increased risk due to cumulative exposure.

F. Safety Determination

1. *U.S. population.* Butyl acrylate/vinyl acetate/acrylic acid copolymer causes no safety concerns because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b) and as such is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where there would be additional risk.

2. *Infants and children.* Butyl acrylate/vinyl acetate/acrylic acid copolymer causes no additional concern to infants and children because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b) and as such is considered incapable of eliciting a toxic response. Also there are no additional pathways of exposure (non-occupational, drinking water, etc.) where infants and children would be at additional risk.

G. International Tolerances

We are not aware of any country requiring a tolerance for butyl acrylate/vinyl acetate/acrylic acid copolymer. Nor have there been any CODEX Maximum Residue Levels established for any food crops at this time.

[FR Doc. 00–6567 Filed 3–15–00; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATION COMMISSION

Sunshine Act Meeting

March 10, 2000; FCC To Hold Open Commission Meeting Friday, March 17, 2000

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, March 17, 2000, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, S.W., Washington, D.C.

Item No.	Bureau	Subject
1	Common Carrier and Wireless Telecommunications.	Title: Numbering Resource Optimization (CC Docket No. 99–200). Summary: The Commission will consider a Report and Order and Further Notice of Proposed Rule Making concerning strategies for numbering resource optimization.
2	Office of Engineering and Technology ..	Title: Inquiry Regarding Software Defined Radios. Summary: The Commission will consider a Notice of Inquiry concerning issues related to software defined radio technology, including the current state of software defined radio technology, interoperability between radio services, the efficiency of spectrum use, and the equipment approval process.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http:/

/www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6609 Filed 3–13–00; 4:57 pm]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 16, 2000 10:00 a.m., MEETING OPEN TO THE PUBLIC

The following items were added to the agenda:

Revised Draft Advisory Opinion 1999–40: National Rural Electric Cooperative Association.

Revised Draft Advisory Opinion 2000–03: American Society of Anesthesiologists.

DATE AND TIME: Tuesday, March 21, 2000, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, March 23, 2000, at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–6720 Filed 3–14–00; 3:33 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1320–DR]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA–1320–DR), dated February 28, 2000, and related determinations.

EFFECTIVE DATE: March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective March 2, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–6544 Filed 3–15–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1318–DR]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1318–DR), dated February 28, 2000, and related determinations.

EFFECTIVE DATE: February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 28, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia, resulting from a severe winter storm on January 25–30, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended ("the Stafford Act").

I, therefore, declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F) under Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Stephen Emory of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Virginia to have been affected adversely by this declared major disaster:

The City of Alexandria, City of Colonial Heights, City of Emporia, City of Fairfax, City of Franklin, City of Fredericksburg, City of Hopewell, City of Petersburg, City of Richmond, City of Suffolk, City of Williamsburg, and the counties of Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dickenson, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Goochland, Grayson, Greene, Greensville, Halifax, Hanover, Henrico, Henry, Highland, Isle of Wight, James City, King George, King William, King and Queen, Lancaster, Lee, Loudoun, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery,

Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Southampton, Spotsylvania, Stafford, Surry, Sussex, Tazewell, Warren, Washington, Westmoreland, Wise, Wythe, and York.

All counties within the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–6541 Filed 3–15–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1319–DR]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1319–DR), dated February 28, 2000, and related determinations.

EFFECTIVE DATE: February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 28, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of West Virginia, resulting from flooding, severe storms, and landslides beginning on February 18, 2000, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is determined to be warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Justo Hernandez of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared major disaster:

Barbour, Braxton, Cabell, Calhoun, Doddridge, Gilmer, Harrison, Jackson, Kanawha, Lewis, Marion, Mason, Monongalia, Putnam, Ritchie, Roane, Tyler, Upshur, Wetzel, and Wirt Counties for Individual Assistance.

All counties within the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–6542 Filed 3–15–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1319–DR]

West Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1319–DR), dated February 28, 2000, and related determinations.

EFFECTIVE DATE: February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of West Virginia is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 2000:

Barbour, Braxton, Cabell, Calhoun, Doddridge, Gilmer, Harrison, Jackson, Kanawha, Lewis, Marion, Mason, Monongalia, Putnam, Roane, Tyler, Upshur, Wetzel, and Wirt Counties for Public Assistance (already designated for Individual Assistance).

Lincoln, Pocohontas, Preston, Randolph, Taylor, and Tucker Counties for Public Assistance.

Lincoln County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–6543 Filed 3–16–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL TRADE COMMISSION

Advisory Committee on Online Access and Security

AGENCY: Federal Trade Commission.

ACTION: Notice of meeting on March 31, 2000.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. § 10(a)(2), and 16 CFR 16.9(a), notice is hereby given that the Federal Trade Commission Advisory Committee on Online Access and Security will hold a meeting on Friday, March 31, 2000, from 8:00 a.m. to 4:00 p.m. in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The meeting is open to the public and will include a period for public comment. The purpose of the Advisory Committee is to provide advice and recommendations to the Commission regarding implementation of certain fair information practices by domestic commercial Web sites—specifically, providing online consumers reasonable access to personal information collected from and about them, and maintaining adequate security for that information. Interested parties may submit comments concerning any matter to be considered at the meeting by following the procedures described below.

DATES: The Advisory Committee will meet on Friday, March 31, 2000, from 8:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will take place in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Allison Brown, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Mail Stop 4429, Washington, DC 20580, telephone (202) 326–3079, email aibrown@ftc.gov.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. § 41 *et seq.;* 5 U.S.C. App. §§ 1–15; 16 CFR Part 16.

The third meeting of the Federal Trade Commission Advisory Committee on Online Access and Security will be held on Friday, March 31, 2000, in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC from 8:00 a.m. to 4:00 p.m.

The Advisory Committee will continue to consider the costs and benefits, to both consumers and businesses, of implementing the fair information practices of access and security with respect to personal information collected for and about consumers online. The Advisory Committee will also continue consideration of the parameters of reasonable access to personal information and adequate security and will present options for implementation of these information practices in a report to the Commission.

The tentative agenda for the third meeting is as follows:

1. Administrative matters
2. Discussion of option papers submitted by subgroups on issues relating to "reasonable access"
3. Discussion of option papers submitted by subgroup on issues relating to "adequate security"
4. Public Comment
5. Discussion of tasks and assignments

The meeting is open to the public.

Submission of Documents

Interested parties who wish to submit comments on the meeting agenda or questions for consideration by the Advisory Committee should send an original and two copies in advance of the meeting to the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. All comments and questions should be captioned "Advisory Committee on Online Access and Security—Comment, P004807." To enable prompt review and public access, paper submissions should be accompanied by a version on diskette in ASCII, WordPerfect (please specify version) or Microsoft Word (please specify version) format. Diskettes should be labeled with the name of the submitter, the Advisory Committee caption, and the name and version of the word processing program used to create the document.

Alternatively, comments or questions may be submitted to the following email address: *advisorycommittee@ftc.gov;* if submitted by email, only one copy of the comment or question is required. The email should contain the name of the submitter, the Advisory Committee caption, and, if a document is attached, the name and version of the word processing program used to create the document.

To ensure that comments are processed properly, individuals submitting comments should be sure to use the above addresses. All comments will be posted on the Advisory Committee's Web page at www.ftc.gov/acoas as soon as reasonably possible, and likely within 5 business days of receipt.

By direction of the Commission.

Donald S. Clark,

Secretary of the Commission.

[FR Doc. 00–6497 Filed 3–15–00; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Office of Communications, Standard and Optional Forms Management Office; Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage, the following Optional Form is cancelled:

OF 10, U.S. Government Memorandum.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams (202) 501–0581.

DATES: Effective March 16, 2000.

Dated:February 29, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–6467 Filed 3–15–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on Tuesday, April 25, 2000, from 9 a.m. to 5 p.m. and on Wednesday, April 26, 2000 from 9 a.m. to 3 p.m. The meeting will take place at the Hyatt Regency Capitol Hill Hotel, 400 New Jersey Ave., NW., Washington, DC 20001. The meeting will be entirely open to the public.

On April 25 the Committee will consider how strategies to reduce errors and accidents in transfusion medicine can reconcile the right of the patient to know the consequences of any treatment received, the need of regulatory agencies for information necessary for them to fulfill their statutory oversight responsibilities, and the interest of society in perfecting mechanisms that identify and correct latent, life-threatening flaws in critical health care systems.

On April 26 the Committee will consider incremental reimbursement

policies for blood and blood products in response to the introduction of new safety measures.

Public comment will be solicited both days. Public comment will be limited to three minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Servcies, Office of Public Health and Safety, 200 Independence Avenue SW., Rm 736E, Washington, DC 20201. Phone (202) 690–5560 FAX (202) 690–7560 e-mail stephendnightingale@osophs.dhhs.gov.

Dated: March 9, 2000.

Stephen D. Nightingale,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 00–6430 Filed 3–15–00; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–27]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. Workplace Exacerbation of Asthma—NEW—The National Institute of Occupational Safety and Health (NIOSH)—Work-related asthma is the most common lung disease seen in occupational health clinics in the United States based on data from the Association of Occupational and Environmental Clinics for 1991–1996. Work-related asthma includes both new onset asthma initiated by workplace exposures and preexisting asthma exacerbated by workplace environments, because in both types of cases repeated exposure to asthmatic agents can lead to chronic pulmonary impairment. Also, the 1985 American Thoracic Society statement "What Constitutes an Adverse Health Effect of Air Pollution" identified exacerbation of asthma as one of the serious effects of environmental air pollution. While anecdotal evidence suggests that as many as one-half of work-related asthma patients treated in occupational medicine clinics had pre-existing asthma that was exacerbated by workplace conditions, there is little data from studies in the United States to support this claim.

This study will investigate the frequency, causes, and consequences of workplace exacerbation of asthma (WEA). Given the diversity of workplace agents and processes associated with asthma, a population-based, rather than industry-based, study is needed to ascertain the full extent of the problem. This will be achieved by surveying adults with asthma. The Specific Aims are: (1) To determine the frequency of workplace exacerbation of asthma. (2) To determine the circumstances at work associated with exacerbation of asthma. (3) To determine the social and economic costs associated with workplace exacerbation of asthma. (4) To determine the sensitivity and specificity of self-reported workplace exacerbation of asthma. (5) To determine whether workplace exacerbation of asthma contributes to progression of disease. The design is a prospective cohort study with a nested validation study. A questionnaire will be completed in the baseline study to address Specific Aims 1–3. Also, patient care records will be used to ascertain cost of asthma care for each participant (Specific Aim 3). A subset of employed subjects with and without workplace exacerbation will be requested to conduct serial spirometry, and the findings will serve as the "gold standard" to determine the sensitivity and specificity of a self-report of workplace exacerbation of asthma (Specific Aim 4). All subjects from the baseline study will be asked to complete a follow-up questionnaire approximately two years later to investigate whether workplace exacerbation at baseline predicts an increase in asthma severity (Specific Aim 5).

The data collected in this study will be used to further current understanding of the frequency of workplace-exacerbated asthma, the social and economic impacts of this problem, and the implication of a report of WEA for subsequent asthma severity. This information can be used to prioritize resources for addressing this problem. The data collected in this study will also identify which jobs and exposures are likely to exacerbate existing asthma, thus providing guidance on where to focus preventive efforts. The data collected in this study on the validity of a self-report of WEA will be useful to both clinicians and researchers who attempt to treat or study individuals with this problem.

Based on an average hourly wage of $15 among all occupational groups combined, the total cost to respondents is $37,500.

Respondents (adults with asthma)	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Baseline Study	800	1	0.5	400
Validation Study	240	1	7.5	1800
Follow-up Study	600	1	0.5	300
Total				2500

2. Jail STD Prevalence Monitoring System—New—National Center for HIV, STD, and TB Prevention (NCHSTP)—Proposes a 3-year clearance for data collection of the standardized record layout for the Jail STD Prevalence Monitoring System. This system consists of test data compiled for persons entering corrections facilities. The standard data elements were created in response to the need to systematically assess morbidity in persons entering corrections facilities who are at high risk for STDs and who often do not seek medical care in mainstream medical settings. Use of these standard data elements will improve surveillance of STDs by allowing for systematic assessment of a high risk population, taking advantage of already computerized data. States that compile data from corrections facilities are encouraged to participate in the system.

In most places, STD test results for persons in corrections facilities are computerized by the laboratory or by the health department. The burden of compiling data in the standardized format involves running a computer program to convert the data to the specified format. This involves an initial investment of time by a programmer but afterwards involves only running the program once a quarter (average of 3 hours/quarter). Therefore, the respondent burden is approximately 12 hours/year.

If a respondent does not already have computerized test results for persons in corrections facilities and must enter the data, the burden of data entry is approximately 1.5 minute per record, and on average respondent enter approximately 1250 records per quarter for a total burden of 1500 minutes/quarter (31 hours/quarter). During the next 3 years, we expect approximately 20 project areas per year to participate. Approximately 15 will have already computerized data for a burden of 180 hours (15×12hrs) per year and five will enter data for a burden of 620 hours (5×124 hrs) per year. The total burden to respondents is approximately 800 hours per year.

Total estimated cost to respondents is $13,800 per year. This is calculated by the above burden of 180 hours of computer programming time at $25/hr (180–0A$25=$4,500) plus 620 hours of data entry time at $15/hr (620–0A$15=$9,300) for a total of $13,800. The estimated cost to the Federal Government is $55,000 per year which includes the cost of staff time in providing technical assistance, managing and analyzing data, and preparing reports.

Respondents	Number of respondents	Number of responses/respondent	Average burden per response (in hrs.)	Total burden
State/local health departments.	Up to 65 STD project areas.	4 datasets/yr (approx 5000 total records).	3 hrs/dataset (if data entry needed, 31 hrs per dataset).	12 hrs/yr (if data entry needed, 124 hours/yr).
Total				124

3. AIDS Prevention and Surveillance Project Reports, 0920–0208. The National Center for HIV, STD, and TB Prevention (NCHSTP)—proposes to continue data collection for the AIDS Prevention and Surveillance Project Reports, previously approved under OMB No. 0920–0208. This request is for a 3-year extension of clearance.

CDC funds cooperative agreements for 65 HIV Prevention Projects (50 states, 6 cities, 7 territories, Washington, D.C., and Puerto Rico). The cooperative agreements support counseling, testing, referral, and partner notification programs conducted by official public health agencies of states, territories, and localities (project areas). HIV counseling and testing in STD clinics, Women's Health Centers, Drug Treatment Centers, and other health agencies has been described as a primary prevention strategy of the national HIV Prevention Program. These project areas have increased HIV counseling and testing activities to specifically reach more minorities and women of child bearing age.

CDC is responsible for monitoring and evaluating HIV prevention activities conducted under the cooperative agreement. Counseling and testing programs are a major component of the HIV Prevention Program. Without data to measure the impact of counseling and testing programs, priorities cannot be assessed and redirected to prevent further spread of the virus in the general population. CDC needs information from all project areas on the number of at-risk persons tested and the number positive for HIV. The HIV Counseling and Testing Report Form provides a simple yet complete means to collect this information.

Respondents will be able to use either a manual or an electronic scan form. Seventeen respondents (project areas) will use the manual data collection tool. It takes approximately 2 hours to complete the form. The respondents will complete the form 4 times each year for a total burden of 8 hours per year per project area. Forty-eight (48) respondents (project areas) will use the scan form or client record format. It will take approximately 15 minutes for each project area to transfer data electronically on a quarterly basis for a total burden per project area of 1 hour per year. Therefore, the total burden hours for collecting this data will be 184 hours.

CDC will support costs to respondents for data collection and analysis in areas using the manual and scan form out of funds budgeted for these purposes. CDC will spend an estimated 650 hours entering, uploading, and analyzing the data. Using an estimated cost of $40 per hour, this cost would be $26,000 annually (650 hours ×$40). Using an estimated cost of $30.00 per hour, the total burden to the manual form respondent will be $240 annually (8 hours ×$30). ($4,080 total) Using an estimated cost of $30.00 per hour, the total burden to the scan form respondent will be $120 annually (4 hours ×$30) ($5,760 total).

The total cost to the Federal government will be approximately $26,000/year. The total cost to respondents will be approximately $9,840/year. The total burden hours are expected to be 184 burden hours per year.

Respondents	Number of respondents	Number of responses per respondent	Average burden response/ (in hrs.)	Total burden (in hrs.)
Manual form project areas	17	4	2	136
Scan form project areas	48	4	.25	48
Total	65			184

Dated: March 9, 2000.

Charles Gollmar,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–6486 Filed 3–15–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0222]

Decision in Washington Legal Foundation v. Henney

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: In the **Federal Register** of August 12, 1999 (64 FR 44025), the Food and Drug Administration (FDA) published in its entirety an order entitled "Final Amended Order Granting Summary Judgment and Permanent Injunction." The order was entered by the United States District Court for the District of Columbia in *Washington Legal Foundation* v. *Henney*, 56 F. Supp. 2d 81 (1999). The Court of Appeals subsequently vacated the district court decision and injunction (and earlier decisions and injunctions) insofar as they declared unconstitutional (1) Statutory provisions concerning the dissemination by manufacturers of certain written materials concerning new uses of approved products (21 U.S.C. 360aaa *et seq.*), and (2) an FDA guidance document concerning certain industry-supported scientific and educational activities known generally as industry-supported continuing medical education or "CME." *Washington Legal Foundation* v. *Henney*, No. 99–5304, 2000 WL 122099, slip op. (D.C. Cir. Feb. 11, 2000). Consequently, these statutory provisions now constitute a "safe harbor" for manufacturers that comply with them; the CME guidance document details how the agency intends to exercise its enforcement discretion. FDA, consistent with its longstanding interpretation of the laws it administers, may proceed, in the context of case-by-case enforcement, to determine from a manufacturer's written materials and activities how it intends that its products be used. The Court of Appeals also recognized that if the agency brings an enforcement action, a manufacturer may raise a First Amendment defense.

FOR FURTHER INFORMATION CONTACT:

Regarding biological products and devices regulated by the Center for Biologics Evaluation and Research: Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–600), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–6190.

Regarding human drug products: Laurie B. Burke, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2828.

Regarding medical devices: Byron L. Tart, Center for Devices and Radiological Health (HFZ–302), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4639.

SUPPLEMENTARY INFORMATION: The Federal Food, Drug, and Cosmetic Act of 1938 (FDCA), as amended, generally prohibits the manufacturer of a new drug or medical device [1] from distributing a product in interstate commerce for any intended use that FDA has not approved as safe and effective. The intended use or uses of a drug or device may be set forth in, among other things, its label or "labeling," which includes written, printed, or graphic matter affixed to or "accompanying" the product. See 21 U.S.C. 321(m); 21 CFR 202.1(l)(2); see also 21 CFR 201.128, 801.4. The intended use or uses of a drug or device may also be determined from advertisements, promotional material, oral statements by the product's manufacturer or its representatives, and any other relevant source. *Action on Smoking and Health v. Harris*, 655 F.2d 236, 239 (D.C. Cir. 1980); see also 21 CFR 201.128 and 801.4.

When FDA approves a drug or medical device, the agency approves the product for each use set out in the product's approved labeling. A use that FDA approves is thus sometimes referred to as an "approved" or "labeled" use. A use that does not appear in the labeling is not approved as safe and effective by FDA and is known as an "unapproved" or "off-label" use. In this notice, such a use is referred to as a "new use."

A central feature of the FDCA is that it generally prohibits interstate commerce in new drugs and devices for "new uses." In particular, the statute provides that "[n]o person shall introduce or deliver for introduction into interstate commerce any new drug, unless an approval of an application filed pursuant to [21 U.S.C. § 355(b) or (j)] is effective with respect to such drug." 21 U.S.C. 355(a); see 21 U.S.C. 331(d). Such an application must identify the particular use or uses to which the new drug will be put, and an approval of such an application for interstate distribution can become effective only with respect to such use(s). See 21 U.S.C. 355(b), (d), (j). Thus, an approved new drug that is marketed for a "new use" becomes an unapproved new drug with respect to that use.

An approved new drug that is marketed for a "new use" is also "misbranded" under the FDCA, because the labeling of such a drug would not include "adequate directions for use." 21 U.S.C. 352(f); see *United States* v. *Articles of Drug * * * Rucker Pharmacal Co.*, 625 F.2d 665, 673 (5th Cir. 1980). Similarly, a medical device that is distributed for a "new use" is "adulterated," see 21 U.S.C. 351(f), and "misbranded," see 21 U.S.C. 352(f). An adulterated or misbranded product is prohibited from distribution in interstate commerce (21 U.S.C. 331(a), (k)), as is a drug that is marketed for a "new use" (21 U.S.C. 331(d)).

An approved new drug that is marketed for a "new use" may be seized (because it is an unapproved new drug with respect to that use), as may an adulterated or misbranded new drug or device (21 U.S.C. 334), and the government may seek an injunction against, or criminal prosecution of,

[1] For purposes of this notice, the terms "drug or medical device" include biologic products regulated under section 351(a) of the Pubic Health Service Act.

those responsible for introducing such a product into commerce (21 U.S.C. 332, 333).

Section 401 of the Food and Drug Administration Modernization Act of 1997 (FDAMA or section 401), 21 U.S.C. 360aaa *et seq.*, amended the FDCA. It describes certain conditions under which a drug or device manufacturer may choose to disseminate to physicians and other health care practitioners certain written materials discussing a "new use" of its product. If those conditions are met, the government may not use that dissemination as evidence of the manufacturer's intent that its product be used for a new use. See 21 U.S.C. 360aaa-6(b). If section 401 did not exist, the government could use such dissemination as evidence in establishing a manufacturer's illegal distribution of a new drug or device for a "new use," and in establishing that the product is misbranded or, in the case of a device, adulterated as well as misbranded.

Prior to FDAMA, FDA articulated its policy concerning the promotion of "new uses" in three guidance documents. FDAMA and its implementing regulations superseded the two guidance documents that addressed the dissemination of written "new use" information (reprints and reference texts) by drug and medical device manufacturers. See 61 FR 52800–52801 (October 8, 1996). FDAMA does not affect the third guidance document (the CME guidance document), which identifies 12 factors that the agency will consider in determining whether a manufacturer, through its support of scientific and educational activities, evidenced a "new use" of its drugs or devices. See 62 FR 64093–64100 (December 3, 1997).

Washington Legal Foundation presented a First Amendment challenge to section 401 and the three guidance documents. The district court issued orders declaring FDAMA, its implementing regulations, and the guidance documents unconstitutional. Among other things, the district court, with a number of qualifications, enjoined FDA from "in any way * * * limit[ing] any pharmaceutical or medical device manufacturer" from "disseminating" specified journal articles or medical texts and from "suggesting content or speakers" to an "independent program provider" in connection with a seminar or symposium funded by the manufacturer. See *Washington Legal Foundation* v. *Henney*, 56 F. Supp. 2d 81, 88–89 (D.D.C. 1999); *Washington Legal Foundation* v. *Friedman*, 36 F. Supp. 2d 16, 18–19 (D.D.C. 1999); *Washington Legal Foundation* v. *Friedman*, 13 F. Supp. 2d 51, 74–75 (D.D.C. 1998).

On February 11, 2000, the Court of Appeals for the District of Columbia Circuit vacated the district court's decisions and injunctions insofar as they declared section 401 and the CME guidance document unconstitutional. See slip op. at 10. (The other two guidance documents, pertaining to the dissemination of certain written materials about "new uses," had been superseded by FDAMA and its implementing regulations and were not at issue in the Court of Appeals.)

The D.C. Circuit's decision was based on its conclusion that there is no case or controversy to provide a basis for WLF's facial First Amendment challenge. In reaching that conclusion, the court relied on the government's interpretation that (1) Section 401 provides a "'safe harbor' ensuring that certain forms of conduct [will] not be used against manufacturers in misbranding and 'intended use' enforcement actions" based on pre-FDAMA enforcement authority (slip op. at 8), discussed above, and (2) neither FDAMA nor the CME Guidance Document "independently authorizes the FDA to prohibit or sanction speech" (id.). Put another way, if a manufacturer follows the provisions of FDAMA and its implementing regulations (21 CFR part 99), including, but not limited to, its provision concerning the submission of a supplemental application for FDA approval of a "new use," FDA may not use the information disseminated by the manufacturer as evidence that the product is intended to be used for a "new use." If a manufacturer proceeds under section 401 and its implementing regulations but does not comply, FDA may seek to enforce compliance through an injunction action under the FDCA to halt a violation of section 301(z). If a manufacturer does not proceed under section 401, that failure does not constitute an independent violation of law.

FDA traditionally has recognized the important public policy reasons to permit industry support for the full exchange of views in scientific and educational discussions, including discussions of "new uses." FDA has distinguished between those activities supported by manufacturers that are nonpromotional and otherwise independent from the substantive influence of the supporting manufacturer and those that are not. Those activities that have been deemed by the agency to be independent from influence by the supporting manufacturer and nonpromotional have not been treated as labeling or advertising, and have not been subjected to the agency's regulatory scrutiny. Under the CME guidance document, FDA does not expect to treat industry-supported CME any differently than it traditionally has done. If a manufacturer does not follow the CME guidance document, that, by itself, is not an independent violation of law. Slip op. at 8.

Plaintiff Washington Legal Foundation (WLF) expressly agreed that FDA may proceed on a case-by-case basis under pre-FDAMA enforcement authority. See e.g., *Washington Legal Foundation* v. *Henney*, No. 99–5304, Transcript of Oral Argument, January 10, 2000 (TR.) at 43, 58, 75; see *Washington Legal Foundation* v. *Henney*, slip op. at 7, 8, and 9. Nonetheless, WLF urged the D.C. Circuit to reach the merits of the district court's decisions and injunctions on the ground that FDA "will prosecute manufacturers for violating a normative standard" set forth in FDAMA or the CME Guidance Document. Slip op. at 9. The appellate court declined, finding that there was no constitutional controversy between the parties that remained to be resolved and that ruling on the constitutionality of a hypothetical interpretation of the statute would be inappropriate. Id. at 10. In vacating the district court's decisions and injunctions insofar as they declared FDAMA and the CME Guidance Document unconstitutional, the D.C. Circuit noted that a manufacturer may, of course, argue that FDA's use of the manufacturer's promotion of a "new use" as evidence in a particular enforcement action violates the First Amendment. Slip op. at 9, n. 6.

In sum, then, FDAMA and its implementing regulations constitute a "safe harbor" for a manufacturer that complies with them before and while disseminating journal articles and reference texts about "new uses" of approved products. If a manufacturer does not comply, FDA may bring an enforcement action under the FDCA, and seek to use journal articles and reference texts disseminated by the manufacturer as evidence that an approved product is intended for a "new use." Manufacturers that support CME may wish to become familiar with the CME guidance document, which details the factors FDA intends to take into account in exercising its enforcement discretion in relation to industry-supported scientific and educational activities. The CME guidance document, however, does not itself have the force and effect of law.

References

The following references are on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. *Washington Legal Foundation* v. *Henney*, No. 99–5304, 2000 WL 122099, slip op. (D.C. Cir. February 11, 2000).
2. *Washington Legal Foundation* v. *Henney*, No. 99–5304, transcript of oral argument, January 10, 2000.

Dated: March 11, 2000.

Jane E. Henney,

Commissioner of Food and Drugs.

[FR Doc. 00–6422 Filed 3–10–00; 4:15 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–3427]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Application and Survey and Certification Report and Supporting Regulations in 42 CFR 405.2100—405.2184; *Form No.;* HCFA–3427 (OMB# 0938–0360); *Use;* Part I of this form is a facility identification and screening measurement used to initiate the certification and recertification of ESRD facilities, Part II is completed by the Medicare/Medicaid State survey agency to determine facility compliance with ESRD conditions for coverage; *Frequency:* Annually; *Affected Public:* State, local or tribal government; *Number of Respondents:* 3740; *Total Annual Responses:* 675; *Total Annual Hours:* 1626.25.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 28, 2000.

John P. Burke III,

Reports Clearance Officer, HCFA Office of Information Services Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–6523 Filed 3–15–00; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Study Regarding Shortages of Licensed Pharmacists

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The "Healthcare Research and Quality Act of 1999", enacted on December 6, 1999, requires the Department of Health and Human Services (HHS) to "conduct a study to determine whether and to what extent there is a shortage of licensed pharmacists." The Department will include in this study a summary of comments from interested public and private entities. The Department invites all interested public and private entities to submit comments on specific issues, including data and studies supporting their comments.

DATES: Comments must be submitted by May 1, 2000.

ADDRESSES: Address all comments concerning this notice to Vincent C. Rogers, D.D.S., M.P.H., Associate Administrator, Bureau of Health Professions, Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: On December 6, 1999, Congress enacted the Healthcare Research and Quality Act of 1999, Pub. L. 106–129, to amend title IX of the Public Health Service Act by revising and extending the Agency for Healthcare Policy and Research (now referred to as the Agency for Healthcare Research and Quality). Section 5 of Pub. L. 106–129 requires the Secretary of Health and Human Services (HHS), through the appropriate agencies of the Public Health Service, to conduct a study "to determine whether and to what extent there is a shortage of licensed pharmacists' and to report back to Congress in one year after the date of enactment of the Act on its findings.

A number of associations, such as the National Association of Chain Drug Stores, have been voicing concerns that a shortage of pharmacists in some areas of the country might create a major health crisis. HHS invites comments from public and private sources on the following topics related to pharmacy shortages. Please address your comments by number as indicated below. You need not address all topics.

1. Shortage of pharmacists; for example, vacancy rates for pharmacists' jobs over time, existing documentation of delayed store openings or reduction in store hours, existing documentation of signing bonuses and other hiring incentives, and increases in wages;

2. Difficulties that communities may be experiencing in accessing pharmacy services. HHS is particularly interested in difficulties confronting those in rural or underserved areas, services for the elderly, and other evidence of unmet needs due to a shortage of pharmacists;

3. How pharmacies and employers are addressing a shortage of pharmacists;.

4. The use of technicians, and State laws governing ratios of pharmacists to technicians, and limitations on the functions technicians are permitted to perform, and any requirements for technician certification;

5. The impact of the growth of managed care and third-party coverage of prescriptions on pharmacy practice;

6. Problems or adverse events connected with a shortage of pharmacists, *e.g.*, medication errors;

7. The impact a drug benefit for the Medicare population might have on prescription volume and the demand for pharmacists;

8. Uses of automation or technology to assist pharmacists, such as the use of electronic transmission of prescriptions, methods of streamlining dispensing processes, and technologies that may be under development to improve efficiency of pharmacists in their duties;

9. The impact of Internet and mail order pharmacies on the demand for pharmacists; and

10. Existing information on the current pharmacist education process; in particular, applications to pharmacy programs, the impact that the shift to the doctor of pharmacy as the first professional degree may have on pharmacy supply, trends in graduates taking residencies, and students' job preferences.

Dated: March 9, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–6427 Filed 3–15–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of the OIG Compliance Program Guidance for Nursing Facilities

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth the recently issued Compliance Program Guidance for Nursing Facilities developed by the Office of Inspector General (OIG). The OIG has previously developed and published compliance program guidance focused on several other areas and aspects of the health care industry. We believe that the development and issuance of this compliance program guidance for nursing facilities will continue to serve as a positive step toward promoting a higher level of ethical and lawful conduct throughout the entire health care industry.

FOR FURTHER INFORMATION CONTACT: Nicole C. Hall, Office of Counsel to the Inspector General, (202) 619–2078.

SUPPLEMENTARY INFORMATION:

Background

The creation of compliance program guidances is a major initiative of the OIG in its effort to engage the private health care community in combating fraud and abuse. In the last several years, the OIG has developed and issued compliance program guidances directed at the following segments of the health care industry: the hospital industry; home health agencies; clinical laboratories; third-party medical billing companies; the durable medical equipment, prosthetics, orthotics and supply industry; hospices; and Medicare+Choice organizations offering coordinated care plans. The development of these types of compliance program guidances is based on our belief that a health care provider can use internal controls to more efficiently monitor adherence to applicable statutes, regulations and program requirements.

Copies of these compliance program guidances can be found on the OIG web site at http://www.hhs.gov/oig.

Developing Compliance Program Guidance for Nursing Facilities

On December 18, 1998, the OIG published a solicitation notice seeking information and recommendations for developing formal guidance for nursing facilities (63 FR 70137). In response to that solicitation notice, the OIG received 16 comments from various outside sources. We carefully considered those comments, as well as previous OIG publications, such as other compliance program guidances and Special Fraud Alerts, in developing a compliance program guidance for nursing facilities. In addition, we have taken into account past and recent fraud investigations conducted by the OIG's Office of Investigations and the Department of Justice, and have consulted with the Health Care Financing Administration. In an effort to ensure that all parties had a reasonable opportunity to provide input into a final product, the draft guidance for nursing facilities was published in the **Federal Register** on October 29, 1999 (64 FR 58419) for further comments and recommendations.

Elements for an Effective Compliance Program

This compliance guidance for nursing facilities contains seven elements that the OIG has determined to be fundamental to an effective compliance program:

- implementing written policies, procedures and standards of conduct;
- designating a compliance officer and compliance committee;
- conducting effective training and education;
- developing effective lines of communication;
- enforcing standards through well-publicized disciplinary guidelines;
- conducting internal monitoring and auditing; and
- responding promptly to detected offenses and developing corrective action.

These elements are contained in previous guidances issued by the OIG. As with previously-issued guidances, this compliance program guidance represents the OIG's suggestions on how nursing facilities can best establish internal controls and prevent fraudulent activities. The contents of this guidance should not be viewed as mandatory or as an exclusive discussion of the advisable elements of a compliance program; the document is intended to present voluntary guidance to the industry and not represent binding standards for nursing facilities.

Office of Inspector General's Compliance Program Guidance for Nursing Facilities

I. Introduction

The Office of Inspector General (OIG) of the Department of Health and Human Services (DHHS) continues in its efforts to promote voluntarily implemented compliance programs for the health care industry.[1] This compliance guidance is intended to assist nursing facilities[2] develop and implement internal controls and procedures that promote adherence to applicable statutes and regulations of the Federal health care programs[3] and private insurance

[1] The OIG1 has issued compliance program guidances for the following seven industry sectors: hospitals, clinical laboratories, home health agencies, durable medical equipment suppliers, third-party medical billing companies, hospices, and Medicare+Choice organizations offering coordinated care plans. Over the next year, the OIG plans to issue compliance guidances for ambulance companies and individual and small group physician practices.

[2] For the purpose of this guidance, the term "nursing facility" includes a skilled nursing facility (SNF) and a nursing facility (NF) that meet the requirements of sections 1819 and 1919 of the Social Security Act (Act), respectively, 42 U.S.C. 1395i–3 and 42 U.S.C. 1396r. Where appropriate, we distinguish between SNFs and other nursing facilities.

[3] The term "Federal health care programs" includes any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (*i.e.*, via programs such as Medicare, Federal Employees Health Benefits Act, Federal Employees' Compensation Act, Black Lung, or the Longshore and Harbor Worker's Compensation Act) or any State health plan (*e.g.*, Medicaid, or a program receiving funds from block grants for social services

Continued

program requirements. Compliance programs strengthen Government efforts to prevent and reduce fraud and abuse, as well as further the mission of all nursing facilities to provide quality care to their residents.

Through this document, the OIG provides its views on the fundamental elements of nursing facility compliance programs, as well as the principles that each nursing facility should consider when developing and implementing an effective compliance program. While this document presents basic procedural and structural guidance for designing a compliance program, it is not in and of itself a compliance program. Rather, it is a set of guidelines that nursing facilities should consider when developing and implementing a compliance program. For those nursing facilities that have an existing program or are already in the process of implementing a compliance program, these guidelines may serve as a benchmark against which to measure their ongoing efforts.

Implementing an effective compliance program in a nursing facility may require a significant commitment of time and resources by all parts of the organization. However, superficial efforts or programs that are hastily constructed and implemented without a long term commitment to a culture of compliance likely will be ineffective and may expose the nursing facility to greater liability than if it had no program at all.[4] Although an effective compliance program may require a reallocation of existing resources, the long term benefits of establishing a compliance program significantly outweigh the initial costs. In short, compliance measures are an investment that advance the goals of the nursing facility, the solvency of the Federal health care programs, and the quality of care provided to the nursing home resident.

In a continuing effort to collaborate closely with health care providers and the private sector, the OIG placed a notice in the **Federal Register** soliciting comments and recommendations on what should be included in this compliance program guidance.[5] In addition to considering these comments in drafting this guidance, we reviewed previous OIG publications, including OIG Special Fraud Alerts and OIG Medicare Advisory Bulletins, as well as reports issued by OIG's Office of Audit Services (OAS) and Office of Evaluation and Inspections (OEI) affecting the nursing home industry.[6] In addition, we relied on the experience gained from fraud investigations of nursing home operators conducted by OIG's Office of Investigations, the Department of Justice, and the Medicaid Fraud Control Units.

A. Benefits of a Compliance Program

The OIG believes a comprehensive compliance program provides a mechanism that brings the public and private sectors together to reach mutual goals of reducing fraud and abuse, enhancing operational functions, improving the quality of health care services, and decreasing the cost of health care. Attaining these goals provides positive results to the nursing facility, the Government, and individual citizens alike. In addition to fulfilling its legal duty to ensure that it is not submitting false or inaccurate claims to Government and private payors, a nursing facility may gain numerous other benefits by voluntarily implementing a compliance program. The benefits may include:

- the formulation of effective internal controls to ensure compliance with statutes, regulations and rules;
- a concrete demonstration to employees and the community at large of the nursing facility's commitment to responsible corporate conduct;
- the ability to obtain an accurate assessment of employee and contractor behavior;
- an increased likelihood of identifying and preventing unlawful and unethical behavior;
- the ability to quickly react to employees' operational compliance concerns and effectively target resources to address those concerns;
- an improvement in the quality, efficiency, and consistency of providing services;
- a mechanism to encourage employees to report potential problems and allow for appropriate internal inquiry and corrective action;
- a centralized source for distributing information on health care statutes, regulations and other program directives;[7]
- a mechanism to improve internal communications;
- procedures that allow prompt and thorough investigation of alleged misconduct; and
- through early detection and reporting, minimizing loss to the Government from false claims, and thereby reducing the nursing facility's exposure to civil damages and penalties, criminal sanctions, and administrative remedies.[8]

The OIG recognizes that the implementation of a compliance program may not entirely eliminate fraud and abuse from the operations of a nursing facility. However, a sincere effort by the nursing facility to comply with applicable statutes and regulations as well as Government and private payer health care program requirements, through the establishment of a compliance program, significantly reduces the risk of unlawful or improper conduct.

B. Application of Compliance Program Guidance

Given the diversity within the long term care industry, there is no single "best" nursing facility compliance program. The OIG recognizes the complexities of this industry and is sensitive to the differences among large national chains, regional multi-facility operators, and small independent homes. However, the elements of this guidance can be used by all nursing facilities to establish a compliance program, regardless of size (in terms of employees and gross revenues), number of locations, or corporate structure.

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or child health services). *See* 42 U.S.C. 1320a–7b(f). In this document, the term "Federal health care program requirements" refers to the statutes, regulations and other written directives governing Medicare, Medicaid, and all other Federal health care programs.

[4] Recent case law suggests that the failure of a corporate director to attempt in good faith to institute a compliance program in certain situations may be a breach of a director's fiduciary obligation. *See, e.g., In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959, 970 (Ct. Chanc. Del. 1996).

[5] *See* 63 FR 70137 (December 12, 1998), Notice for Solicitation of Information and Recommendations for Developing OIG Compliance Program Guidance for the Nursing Home Industry.

[6] The OIG periodically issues advisory opinions responding to specific inquires concerning the application of the OIG's authorities and Special Fraud Alerts, setting forth activities that raise legal and enforcement issues. These documents, as well as reports from OAS and OEI can be obtained on the Internet at: http://www.hhs.gov/oig. We also recommend that nursing home providers regularly review the Health Care Financing Administration (HCFA) website on the Internet at: http://www.hcfa.gov, for up-to-date regulations, manuals, and program memoranda related to the Medicare and Medicaid programs.

[7] Counsel to the nursing facility should be consulted as appropriate regarding interpretation and legal analysis of laws related to the Federal health care programs and laws related to fraud, abuse and other legal requirements.

[8] For example, the OIG will consider the existence of an effective compliance program that pre-dated any governmental investigation when addressing the appropriateness of administrative sanctions. However, the burden is on the nursing facility to demonstrate the operational effectiveness of the compliance program. Further, the False Claims Act, 31 U.S.C. 3729–3733, provides that a person who has violated the Act, but who voluntarily discloses the violation to the Government within 30 days of detection, in certain circumstances will be subject to not less than double, as opposed to treble, damages. *See* 31 U.S.C. 3729(a). In addition, criminal sanctions may be mitigated by an effective compliance program that was in place at the time of the criminal offense. *See* note 11.

Similarly, a corporation that provides long term care as part of an integrated health care delivery system may incorporate these elements into its structure.[9]

We recognize that some nursing facilities may not be able to adopt certain elements to the same degree as others with more extensive resources. At the end of several sections of this document, the OIG has offered suggestions to assist these smaller nursing facility providers in implementing the principles expressed in this guidance. Regardless of size, structure or available resources, the OIG recommends that every nursing facility should strive to accomplish the objectives and principles underlying all of the compliance polices and procedures in this guidance.

By no means should the contents of this guidance be viewed as an exclusive or complete discussion of the advisable elements of a compliance program. On the contrary, the OIG strongly encourages nursing facilities to develop and implement compliance elements that uniquely address the areas of potential problems, common concerns, or high risk areas that apply to their own facilities. Furthermore, this guidance may be modified and expanded as more information and knowledge is obtained by the OIG, and as changes occur in the statutes, regulations and rules of the Federal health care programs and private health plans. New compliance practices also may be incorporated into this guidance if the OIG discovers enhancements that promote effective compliance.

II. Compliance Program Elements

A. The Seven Basic Compliance Elements

The OIG believes that every effective compliance program must begin with a formal commitment[10] by the nursing facility's governing body to address *all* of the applicable elements listed below, which are based on the seven steps of the Federal Sentencing Guidelines.[11]

The OIG recognizes that full implementation of all elements may not be immediately feasible for all nursing facilities. However, as a first step, a good faith and meaningful commitment on the part of nursing facility management will substantially contribute to the program's successful implementation. As the compliance program is effectuated, that commitment should cascade down through management to every employee and contractor of the nursing facility.

At a minimum, a comprehensive compliance program should include the following seven elements:

(1) The development and distribution of written standards of conduct, as well as written policies, procedures and protocols that promote the nursing facility's commitment to compliance (*e.g.*, including adherence to the compliance program as an element in evaluating managers and employees) and address specific areas of potential fraud and abuse, such as claims development and submission processes, quality of care issues, and financial arrangements with physicians and outside contractors;

(2) The designation of a compliance officer and other appropriate bodies (*e.g.*, a corporate compliance committee) charged with the responsibility for developing, operating and monitoring the compliance program, and who reports directly to the owner(s), governing body and/or CEO;[12]

(3) The development and implementation of regular, effective education and training programs for all affected employees;[13]

(4) The creation and maintenance of an effective line of communication between the compliance officer and all employees, including a process, such as a hotline or other reporting system, to receive complaints, and the adoption of procedures to protect the anonymity of complainants and to protect whistle blowers from retaliation;

(5) The use of audits and/or other risk evaluation techniques to monitor compliance, identify problem areas, and assist in the reduction of identified problems;[14]

(6) The development of policies and procedures addressing the non-employment or retention of excluded individuals or entities and the enforcement of appropriate disciplinary action against employees or contractors who have violated corporate or compliance policies and procedures, applicable statutes, regulations, or Federal, State, or private payor health care program requirements; and

(7) The development of policies and procedures with respect to the investigation of identified systemic problems, which include direction regarding the prompt and proper response to detected offenses, such as the initiation of appropriate corrective action, repayments, and preventive measures.

B. Written Policies and Procedures

Every compliance program should develop and distribute written compliance standards, procedures, and practices that guide the nursing facility and the conduct of its employees throughout day-to-day operations. These policies and procedures should be developed under the direction and supervision of the compliance officer, the compliance committee, and operational managers. At a minimum, they should be provided to all employees who are affected by these policies, as well as physicians, suppliers, nursing facility agents, and contractors, as applicable to those entities.[15] In addition to general corporate policies and procedures, an effective compliance program should include specific policies and procedures for the different clinical, financial, and administrative functions of a nursing facility.

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[9] For example, this would include providers that own hospitals, skilled nursing facilities, long term care facilities and hospices.

[10] A formal commitment may include a resolution by the board of directors, owner(s), or president, where applicable. Evidence of that commitment should include the allocation of adequate resources, a timetable, and the identification of an individual to serve as a compliance officer or coordinator to ensure that each of the recommended and adopted elements is addressed. Once a commitment has been established, a compliance officer should immediately be chosen to oversee the implementation and ongoing operation of the compliance program.

[11] *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(k). The Federal Sentencing Guidelines are detailed policies and practices for the Federal criminal justice system that prescribe the appropriate sanctions for offenders convicted of Federal crimes.

[12] The roles of the compliance officer and the corporate compliance committee in implementing an effective compliance program are discussed throughout this guidance. However, the OIG recognizes that differences in the sizes and structures of nursing facilities may result in differences in the ways in which compliance programs function.

[13] Training and educational programs for nursing facilities should be detailed, comprehensive and at the same time targeted to address the needs of specific employees based on their responsibilities within the facility. Existing in-service training programs can be expanded to address general compliance issues, as well as the risk areas identified in that part of nursing home operations.

[14] For example, periodically spot-checking the work of coding and billing personnel should be part of a compliance program. In addition, procedures to regularly monitor the care provided to nursing facility residents and to ensure that deficiencies identified by surveyors are corrected should be incorporated into the compliance program's evaluation and monitoring functions.

[15] According to the Federal Sentencing Guidelines, an organization must have established compliance standards and procedures to be followed by its employees and other agents in order to receive sentencing credit for an "effective" compliance program. The Federal Sentencing Guidelines define "agent" as "any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization." *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(d).

1. Code of Conduct

While a clear statement of policies and procedures is at the core of a compliance program, the OIG recommends that nursing facilities start the process with the development of a corporate statement of principles that will guide the operations of the provider. One common expression of this statement of principles is the code of conduct.[16] The code should function in the same fashion as a constitution, *i.e.*, as a foundational document that details the fundamental principles, values, and framework for action within an organization. The code of conduct for a nursing facility should articulate the organization's expectations of employees, as well as summarize the basic legal principles under which the organization must operate. Unlike the more detailed policies and procedures, the code of conduct should be brief, easily readable and cover general principles applicable to all employees.

The code of conduct should be distributed to, and comprehensible by, all affected employees.[17] Depending on the facility's work force, this may mean that the code should be translated into other languages when necessary and written at appropriate reading levels. Further, any employee handbook delineating the standards of conduct should be regularly updated to reflect developments in applicable Government and private health care program requirements. Finally, the OIG recommends that current employees, as well as those newly hired, should certify that they have received, read, and will abide by the organization's code of conduct. These certifications, updated any time the code is revised or amended by the organization, should be retained in the employee's personnel file and made available for review.[18]

The OIG believes that *all* nursing facilities should operate under the guidance of a code of conduct. While the OIG recognizes that some nursing facilities may not have the resources to establish a comprehensive compliance program, we believe that every nursing facility can design a program that addresses the seven elements set out in this guidance, albeit at different levels of sophistication and complexity. In its most fundamental form, a facility's code of conduct is a basic set of standards that articulate the organization's philosophy, summarize basic legal principles, and teach employees how to respond to practices that may violate the code of conduct. These standards should be posted and distributed to every employee. Further, even a small nursing facility should obtain written attestation from its employees to confirm their understanding and commitment to the nursing facility's code of conduct.

2. Specific Risk Areas

As part of their commitment to a compliance program, nursing facilities should prepare a comprehensive set of written policies and procedures that are in place to prevent fraud and abuse in facility operations and to ensure the appropriate care of their residents. These policies and procedures should educate and alert all affected managers and employees of the Federal health care program and private payor requirements, the consequences of noncompliance, and the specific procedures that nursing facility employees should follow to report problems, to ensure compliance, and to rectify any prior noncompliance.

The OIG recognizes that many States require nursing facilities to have a policies and procedures manual and that most facilities have in place procedures to prevent fraud and abuse in their institutions. These providers may not need to develop a new, comprehensive set of policies as part of their compliance program if existing policies effectively encompass the provider's operations and relevant rules. However, the nursing home industry is subject to numerous Federal and State statutes, rules, regulations and manual instructions.[19] Because these program requirements are frequently modified, the OIG recommends that all nursing facilities evaluate their current compliance policies and procedures by conducting a baseline assessment of risk areas, as well as subsequent reevaluations.[20] The OIG also recommends that these internal compliance reviews be undertaken on a regular basis to ensure compliance with current program requirements.

To assist nursing facilities in performing this internal assessment, the OIG has developed a list of potential risk areas affecting nursing facility providers. These risk areas include quality of care and residents' rights, employee screening, vendor relationships, billing and cost reporting, and record keeping and documentation. This list of risk areas is not exhaustive, nor all encompassing. Rather, it should be viewed as a starting point for an internal review of potential vulnerabilities within the nursing facility.[21] The objective of this assessment should be to ensure that the employees, managers and directors are aware of these risk areas and that steps are taken to minimize, to the extent possible, the types of problems identified. While there are many ways to accomplish this objective, comprehensive written policies and procedures that are communicated to all appropriate employees and contractors are the first step in an effective compliance program.

The OIG believes that sound operating compliance policies are essential to all nursing facilities, regardless of size and capability. If a lack of resources to develop such policies is genuinely an issue, the OIG recommends that those nursing facilities focus first on those risk areas most likely to arise in their business operations. At a *minimum*, resources should be directed to analyze the results of annual surveys,[22] and to verify that the facility has effectively addressed any deficiencies cited by the surveyors. An effective and low-cost means to accomplish this is through the use of the facility's Quality Assessment and Assurance Committee. The committee should consist of facility staff members, including the Director of

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[16] The OIG strongly encourages the participation and involvement of the nursing facility's owner(s), governing board, CEO, as well as other personnel from various levels of the organizational structure in the development of all aspects of the compliance program, especially the standards of conduct. Management and employee involvement in this process communicates a strong and explicit commitment to all employees of the need to comply with the organization's standards of conduct.

[17] The code also should be distributed, or at least available, to the residents and their families, as well as the physicians and contractors associated with the facility.

[18] Documentation of employee training and other compliance efforts is important in conducting internal assessments of the compliance program, as well as during any third-party evaluation of the facility's efforts to comply with Federal health care program requirements. *See* section II.F.

[19] *See* http://www.hcfa.gov for information on obtaining a set of all Medicare and Medicaid manuals.

[20] In addition, all providers should be aware of the enforcement priorities of Federal and State regulators and law enforcement agencies. OIG periodically issues Special Fraud Alerts and Special Advisory Bulletins that identify activities believed to raise enforcement concerns. These documents and other materials that provide insight into the nursing home enforcement priorities of the OIG are referenced throughout this guidance.

[21] The OIG recommends that, in addition to the list set forth below, the provider review the OIG's Work Plan to identify vulnerabilities and risk areas on which the OIG will focus during the following year. In addition, it is recommended that the nursing facility routinely review the OIG's semiannual reports, which identify program vulnerabilities and risk areas that the OIG has targeted during the preceding six months. All of these documents are available on the OIG's webpage at http://www.hhs.gov/oig.

[22] State and local agegncies enter into agreements with DHHS under which they survey and make recommendations regarding whether providers meet the Medicare participation requirements or other requirements for SNFs and NFs. *See* 42 CFR 488.10, 488.12.

Nursing and the medical director. Inclusion and participation of direct care staff (*e.g.*, nurses and nurses' aides who provide direct resident care) should be encouraged. This committee is best suited to establish measurable, outcome-based criteria that focus on vulnerabilities that adversely affect the care of residents. On a periodic basis, the committee should meet to identify issues affecting the quality of care provided to the residents and to develop and implement appropriate corrective actions. The time commitment required for this collaborative effort will vary according to the magnitude of the facility's quality assessment and assurance issues.

Creating a resource manual from publicly available information may be a cost-effective approach for developing policies and procedures to improve the quality of each resident's life. For example, a simple binder that contains a facility's written policies and procedures, the most recent survey findings and plan of correction, relevant HCFA instructions and bulletins, and summaries of key OIG documents (*e.g.*, Special Fraud Alerts, Advisory Bulletins, inspection and audit reports) can be regularly updated and made accessible to all employees. Particularly in the case of more technical materials, it may be advisable to provide summaries in the handbook and make the source documents available upon request. If individualized copies of this handbook are not made available to all employees, then a reference copy should be available in a readily accessible location, as well as from the designated compliance officer.

a. Quality of Care

The OIG believes that a nursing facility's compliance policies should start with a statement that affirms the facility's commitment to providing the care and services necessary to attain or maintain the resident's "highest practicable physical, mental and psychosocial well-being." [23] To achieve the goal of providing quality care, nursing facilities should continually measure their performance against comprehensive standards that, at a minimum, must include Medicare requirements.[24] In addition to these regulations, a facility should develop its own quality of care protocols and implement mechanisms for evaluating compliance with those protocols. As part of its ongoing commitment to quality care, the facility should implement a system that reviews each resident's outcomes and improves on those outcomes through analysis and modification of the delivery of care. After the care delivery protocols have been modified, the facility should re-analyze the residents' outcomes to assure that the modification had the desired result and has actually improved care. Although resident care protocols are a useful tool for maintaining or improving the quality of care, facilities should ensure that measurable resident outcomes are used to determine the adequacy of the care actually rendered.

As noted above, current and past surveys are a good place to begin to identify specific risk areas and regulatory vulnerabilities at the individual facility. Any deficiencies discovered by an annual State agency survey, Federal validation survey or complaint survey reflect noncompliance with the program requirements for nursing homes and can be the basis for enforcement actions.[25] Those deficiencies identified by the State agency survey instrument must be addressed and, where appropriate, the corrective action should be incorporated into the facility's policies and procedures as well as reflected in its training and educational programs. In addition to responding promptly to deficiencies identified through the survey and certification process, nursing facilities should take proactive measures to identify, anticipate, and respond to quality of care risk areas identified by the nursing home ombudsman or other sources.

As noted throughout this guidance, each provider must assess its vulnerability to particular abusive practices in light of its unique circumstances. However, the OIG, HCFA, the Department of Justice, and State enforcement agencies have substantial experience in identifying quality of care risk areas. Some of the special areas of concern include:

- absence of a comprehensive, accurate assessment of each resident's functional capacity and a comprehensive care plan that includes measurable objectives and timetables to meet the resident's medical, nursing, and mental and psychosocial needs; [26]
- inappropriate or insufficient treatment and services to address residents' clinical conditions, including pressure ulcers, dehydration, malnutrition, incontinence of the bladder, and mental or psychosocial problems; [27]
- failure to accommodate individual resident needs and preferences; [28]
- failure to properly prescribe, administer and monitor prescription drug usage; [29]
- inadequate staffing levels or insufficiently trained or supervised staff to provide medical, nursing, and related services; [30]

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[23] 42 CFR 483.25. *See* OIG report OEI–02–98–00060 "Quality of Care in Nursing Homes: An Overview," in which the OIG found that, although the overall number of deficiencies identified through the survey and certification process was decreasing, the number of "quality of care" and other serious deficiencies was increasing.

[24] *See* 42 CFR part 483, which establishes requirements for long term care facilities. HCFA's regulations establish requirements that must be met for a nursing facility to qualify to participate in the Medicare and Medicaid programs. State licensure laws may impose additional requirements for the establishment and certification of a nursing facility.

[25] *See* 42 CFR part 488, subparts A, B, C, E, and F. The survey instrument is used to identify deficiencies, such as: failure to notify residents of their rights; improper use of restraints for discipline purposes; lack of a clean and safe environment; failure to provide care for basic living activities, including failing to prevent and/or treat pressure ulcers, urinary incontinence and hydration; and failing to properly feed residents.

[26] As stated above, each resident must receive the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the resident's assessment and plan of care. *See* 42 CFR 483.25. The OIG recognizes that this standard does not always lend itself to easy, objective evaluation. The matter is further complicated by the right of the resident, or his or her legal representative, to decide on a course of treatment that may be contraindicated. The Patient Self-Determination Act (Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, sec. 4206 and 4751) requires health care institutions to educate patients about advance directives and to document their decision on life-sustaining treatments.

[27] HCFA has created a repository of best practice guidelines for the care of residents at risk of pressure ulcers, dehydration, malnutrition, and other clinical conditions. *See* http://www.hcfa.gov/medicaid/siq/siqhmpg.htm.

[28] 42 CFR 483.15(e)(1).

[29] The OIG has conducted a series of reviews that focused on prescription drug use in nursing homes. *See* OIG reports OEI–06–96–00080, OEI–06–96–00081, OEI–06–96–00082—"Prescription Drug Use in Nursing Homes—Reports 1, 2 and 3." The OIG found that patients experienced adverse reactions to various drugs as a result of inappropriate prescribing and inadequate monitoring of medication usage. The reviews revealed serious concerns, including residents receiving drugs for which their medical records lacked evidence of a prescription and the prescription of drugs judged inappropriate for use by elderly persons. The studies also found that medication records were often incomplete and not readily accessible, making it difficult for a pharmacist to identify or confirm drug regimens or problems.

[30] For example, Federal regulations require that the medical care of each resident be supervised by a physician, who must see the resident at least once every 30 days for the first 90 days after admission and at least once every 60 days thereafter. *See* 42 CFR 483.40(c). The facility also must retain the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week (42 CFR 483.30), as well as a qualified dietitian (42 CFR 483.35). In addition to these basic Federal requirements, the OIG strongly believes that the facility should conform to State-mandated staffing levels where they exist and, in addition, adopt its own minimum "hours per patient" (or acuity) staffing standards. A facility should ensure that it

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• failure to provide appropriate therapy services; [31]

• failure to provide appropriate services to assist residents with activities of daily living (*e.g.*, feeding, dressing, bathing, etc.);

• failure to provide an ongoing activities program to meet the individual needs of all residents; and

• failure to report incidents of mistreatment, neglect, or abuse to the administrator of the facility and other officials as required by law.[32]

As noted previously, a nursing facility that has a history of serious deficiencies should use those survey results as a starting point for implementing a comprehensive plan to improve its quality of care. The quality of life for nursing home residents can be improved most directly by effectively addressing these risk areas with written policies and procedures, which are then implemented through effective training programs and supervision.

b. Residents' Rights

The Budget Reconciliation Act (OBRA) of 1987, Public Law 100–203, established a number of requirements to protect and promote the rights of each resident.[33] In addition, many States have adopted specific lists of residents' rights.[34] The nursing facility's policies should address the residents' right to a dignified existence that promotes freedom of choice, self-determination, and reasonable accommodation of individual needs. To protect the rights of each resident, the OIG recommends that a provider address the following risk areas as part of its compliance policies:

• discriminatory admission or improper denial of access to care; [35]

• verbal, mental or physical abuse, corporal punishment and involuntary seclusion; [36]

• inappropriate use of physical or chemical restraints; [37]

• failure to ensure that residents have personal privacy and access to their personal records upon request and that the privacy and confidentiality of those records are protected; [38]

• denial of a resident's right to participate in care and treatment decisions; [39] and

• failure to safeguard residents' financial affairs.[40]

c. Billing and Cost Reporting

Abusive and fraudulent billing practices in the Federal health care programs drain the public fisc of the funds needed to provide program beneficiaries medically necessary items and services. These types of abusive practices also have had an adverse financial impact on private health insurance plans and their subscribers. Over the last twenty years, the OIG has identified patterns of improper and fraudulent activities that cover the spectrum of health care services and have cost taxpayers billions of dollars.[41] These fraudulent billing practices, as well as abuses in other risk areas that are described in this compliance program guidance, have resulted in criminal, civil and administrative enforcement actions. Because the consequences of these enforcement actions can have a profound adverse impact on a provider, the identification of risk areas associated with billing and cost reporting should be a major component of a nursing facility's compliance program.

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has a sufficient number of staff, including registered nurses (RNs), Licensed Practical Nurses (LPNs,) Certified Nurses Assistants (CNAs) and Nursing Assistants (collectively "Nursing Staff") and other health care professionals to fully meet the needs of all of its residents. Sufficient staff should be provided to ensure that residents receive nursing and other health care services on a 24-hour basis that allows each resident to attain or maintain the highest practicable physical, mental and psychosocial well-being as determined by individual resident assessments and plans of care. A facility should establish staffing standards on a facility-specific (or, often more appropriately, a unit-specific) basis that reflect the acuity level and needs of the residents. The use of an acuity level/staffing ratio model gives the facility the ability to adjust staffing levels as resident needs fluctuate, as well as a basis for conducting compliance audits. On an ongoing basis, the compliance officer should monitor the facility's compliance with the staffing ratios established by the quality assurance committee, to ensure that the facility maintains staffing levels sufficient to serve resident needs. At the heart of many quality of care deficiencies is a lack of adequate staff needed to provide basic nursing services.

[31] *See* OIG report OEI–09–97–00120 "Medical Necessity of Physical and Occupational Therapy in Skilled Nursing Facilities," which found a high rate of medically unnecessary therapies in a number of nursing facilities; such unnecessary services may lead to inappropriate care. *See also* OAS Report A–06–99–00058 "Infusion Therapy Services Provided in Skilled Nursing Facilities," which found similar problems with unnecessary infusion therapy services. With the introduction of the prospective payment system, nursing facilities should ensure that financial pressures do not create incentives to *underutilize* medically necessary therapeutic services.

[32] In addition to providing the facility's management important information about the state of care in the facility, the self-reporting of resident abuse, including injuries of unknown sources, is a condition of participation. *See* 42 CFR 483.13(c)(2). Although State surveyors conduct complaint surveys when they receive a complaint, these surveys can only occur if the surveyors are aware of the problem.

[33] *See generally*, 42 U.S.C. 1395i–3 and 42 CFR part 483.

[34] In OIG report OEI–02–98–00350 "Long Term Ombudsman Program: Complaint Trends," the OIG points out that complaints about resident care and resident rights have been increasing. Resident care concerns included complaints about personal care, such as pressure ulcers and hygiene, lack of rehabilitation, the inappropriate use of restraints, abuse and neglect, problems with admissions and eviction, and the exercise of personal rights. Some ombudsmen observed that the increasing number of complaints could be due to a greater presence of ombudsmen staff in nursing homes. However, a comparison of each State's staffing ratio and visitation rate to their complaint ratio found that States with more staff and more frequent visits did not necessarily have more complaints.

[35] Nursing facilities must offer care to all residents who are eligible in accordance with Federal and State laws governing admissions. *See* 42 CFR 483.12(d). The provider also must maintain identical policies regarding "transfer, discharge, and provision of services under the State plan" for all residents, regardless of payment source. *See* 42 CFR 483.12(c). *See also* OIG report OEI–02–99–00401 "Early Effects of the Prospective Payment System on Access to Skilled Nursing Facilities." It also is inappropriate to condition admission on a prospective resident's agreement to hold the facility harmless for injuries or poor care provided to the individual.

[36] *See California Nursing Homes: Care Problems Persist Despite Federal and State Oversight*, GAO/HEHS–98–202 (July 1998). As noted previously, the facility must establish a process by which the facility administrator and other officials in accordance with State law (including the State survey and certification agency) are informed of incidents of abuse and an investigation is conducted within 5 days of the incident. *See* 42 CFR 483.13(c)(4).

[37] *See* OIG report OEI–01–91–00840 "Minimizing Restraints in Nursing Homes: A Guide to Action."

[38] It is a violation of the Medicare participation requirements to make unauthorized disclosures from the resident's medical records. *See* 42 CFR 483.10(e). The facility also must establish policies that respect each resident's right to privacy in personal communications, including the right to receive mail that is unopened and to the use of a telephone where calls can be made in privacy. *See* 42 CFR 483.10(i) and (k).

[39] The right of self-determination includes the resident's right to choose a personal physician, to be fully informed of his or her health status, and participate in advance in treatment decisions, including the right to refuse treatment, unless adjudged incompetent or incapacitated. *See* 42 CFR 483.10(d).

[40] This includes preserving the resident's right to manage his or her financial affairs or permit the facility to hold and manage personal funds. The resident must receive a full and complete accounting of personal funds held by the facility. *See* 42 CFR 483.10(c). If misappropriation of a resident's property is uncovered, the facility administrator and other officials, in accordance with State law, must be notified immediately and an investigation conducted. Finally, the provider must take measures to ensure that personal funds have not been used to pay for items or services paid for by Medicare or Medicaid. *Id.*

[41] *See* OIG report A–17–99–00099 "Improper Fiscal Year 1998 Fee-for-Service Payments," in which the OIG estimated that improper Medicare benefit payments made during fiscal year 1998 totaled $12.6 billion in processed fee-for-service payments. SNF payment errors were a result of claims for services lacking medical necessity and represented 7 percent of the total estimated improper payments. The OIG could not and did not quantify what percentage of the improper payments was the result of fraud. Significantly, it was only through a review of medical records that the majority of these billing errors were detected, since when the claims were submitted to the Medicare contractor, they contained no visible errors.

The introduction of a prospective payments system (PPS) for Medicare SNFs, consolidated billing of all services furnished to a resident in a covered Part A stay and the forthcoming implementation of consolidated billing for SNF residents in a Part B stay create additional issues to be addressed when designing billing and cost reporting compliance policies and procedures.[42] In the following discussion of billing risk areas, the OIG has attempted to identify issues that pose concerns under the current systems of reimbursement and the transition period to consolidated billing, as well as anticipate potential compliance issues stemming from these program changes. As is the case with all aspects of compliance, the nursing facility must continually reassess its billing procedures and policies to ensure that unanticipated problems are promptly identified and corrected. Listed below are some of the reimbursement risk areas a nursing facility should consider addressing as part of its written compliance policies and procedures:

- billing for items or services not rendered or provided as claimed;[43]
- submitting claims for equipment, medical supplies and services that are medically unnecessary; [44]
- submitting claims to Medicare Part A for residents who are not eligible for Part A coverage; [45]
- duplicate billing; [46]
- failing to identify and refund credit balances; [47]
- submitting claims for items or services not ordered; [48]
- knowingly billing for inadequate or substandard care; [49]
- providing misleading information about a resident's medical condition on the MDS or otherwise providing inaccurate information used to determine the RUG assigned to the resident;
- upcoding the level of service provided; [50]
- billing for individual items or services when they either are included in the facility's per diem rate or are of the type of item or service that must be billed as a unit and may not be unbundled; [51]
- billing residents for items or services that are included in the per diem rate or otherwise covered by the third-party payor;
- altering documentation or forging a physician signature on documents used to verify that services were ordered and/or provided; [52]

[42] The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), established PPS for SNFs. Under PPS, all costs (routine, ancillary, and capital) related to services furnished to beneficiaries covered under Part A, including certain Part B services, are paid a predetermined per diem amount. This amount is based on the medical condition and needs of the resident, as reflected in the Resource Utilization Group (RUG) code assigned to that resident. The BBA also required consolidated billing for SNFs. Under consolidated billing, all services provided by the SNF, including those furnished under arrangements with an outside supplier, for a resident of a SNF in a covered Part A stay are included in the SNF's Part A bill. If a resident is *not* in a covered Part A stay, under consolidated billing, the SNF still bills for all services furnished to the resident (except for those services specifically excluded from consolidated billing). However, the implementation of consolidated billing with respect to services furnished to residents in a Part B stay has been delayed indefinitely, and various ancillary services continue to be reimbursed separately to outside suppliers until further notice. *See* HCFA Program Memorandum (PM) Transmittal No. AB–98–35 (July 1998); PM Transmittal No. AB–98–45 (August 1998); and PM Transmittal No. AB–99–90 (Dec. 1999).

[43] For example, the OIG has investigated suppliers of ancillary services that improperly bill for an hour of therapy when only a few minutes were provided. Similarly, vendors that knowingly submit a claim for an expensive prosthetic device when the resident only received non-covered adult diapers have been the subject of enforcement actions. When consolidated billing is implemented, vendors will not submit bills directly to Medicare for such services. As the entity submitting the claim, the nursing facility will need to have any certifications or orders necessary to provide the service, as well as any required supporting documentation, to receive payment.

[44] Billing for medically unnecessary services, supplies and equipment involves seeking reimbursement for a service that is not warranted by a resident's documented medical condition. *See* 42 U.S.C. 1395y(a)(1)(A) ("no payment may be made under part A or part B [of Medicare] for any expenses incurred for items or services which * * * are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of the malformed body member"). At the same time, nursing facilities are required to provide the services necessary to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident. *See* 42 U.S.C. 1395i–3(b)(2) and 1396r(b)(2). In order to meet these obligations, nursing homes should formulate policies and procedures that include periodic clinical reviews, both prior and subsequent to billing for services, as a means of verifying that patients receive appropriate services.

In the Special Fraud Alert "Fraud and Abuse in the Provision of Services in Nursing Facilities" (June 1996), the OIG identified several types of fraudulent arrangements through which health care providers inappropriately billed Medicare and Medicaid for unnecessary or non-rendered items and services. Under PPS, the provision of unnecessary services may take a different form. As discussed below, manipulation of the Minimum Data Set (MDS) to fit a resident into a higher RUG can result in the provision of medically unnecessary services. In addition, a nursing facility may not enter into arrangements with providers of ancillary services through which the facility overutilizes services reimbursed under Part B in return for an offset in the cost of items or services covered under Part A.

[45] In order for a SNF stay to be covered by Medicare, the beneficiary must have a preceding three-day inpatient hospital stay. Observational stays and emergency room care do not qualify towards the 3-day hospital stay requirement. In addition, Medicare Part A benefits in skilled nursing facilities are limited to beneficiaries who require skilled services rendered by technical or professional personnel in a skilled nursing setting. *See* 42 CFR 409.31. Knowingly misrepresenting the nature or level of services provided to a Medicare beneficiary to circumvent the program's limitation is fraudulent.

[46] Duplicate billing occurs when the nursing facility bills for the same item or service more than once or when a vendor bills the Federal health care program for an item or service also billed by the facility. Although duplicate billing can occur due to simple error, the knowing submission of duplicate claims—which is sometimes evidenced by systematic or repeated double billing—can create liability under criminal, civil, or administrative law. A recent OIG survey of SNF PPS claims found a significant number of erroneous payments made by the Medicare carrier for services for which payments were already included in the SNF's PPS payment. As Medicare continues the implementation of consolidated billing, facilities should modify all agreements with vendors to require that the vendor bill the facility for those services covered under consolidated billing requirements and not submit bills directly to Medicare for such services. Communication mechanisms also should be established to ensure duplicative billings do not occur. For example, a facility may wish to flag a referral to an outpatient provider as a "PPS resident" and inform the provider that the nursing home will be responsible for billing Medicare for the ancillary services.

[47] A credit balance is an excess payment made to a health care provider as a result of patient billing or claims processing error. Nursing facilities should institute procedures to provide for the timely identification, accurate reporting and repayment of credit balances. In addition, the provider should promptly repay if a resident is also entitled to a credit. See OIG reports OEI–07–09–00910 "Medicare Credit Balances in Skilled Nursing Facility Patient Accounts" and OEI–07–09–00911 "Medicaid Credit Balances in Skilled Nursing Facility Patient Accounts," in which the OIG found that skilled nursing facilities were not accurately or completely adjusting and reporting credit balance amounts due to the Medicare and Medicaid programs. Significantly, the intentional concealment of a known overpayment may expose a provider to criminal sanctions (see 42 U.S.C. 1320a–7b(a)(3)), and civil liability under the False Claims Act.

[48] Billing for services or items not ordered involves seeking reimbursement for services provided but not ordered by the treating physician or other authorized person.

[49] See discussion on quality of care standards in nursing facilities in section II.B.2.a above and the accompanying notes. Although the OIG is not suggesting that each and every survey citation or failure to meet the applicable standard of care is a *per se* violation of the False Claims Act (or a criminal, other civil, or administrative violation), knowingly billing for nonexistent or substandard care, items, or services may give rise to criminal, civil, and/or administrative liability.

[50] Upcoding involves the selection of a billing code that is not the most appropriate descriptor of the service or condition, in order to maximize reimbursement. Under PPS, upcoding may take the form of "RUG creep." RUG creep occurs when a provider falsely or fraudulently completes the MDS, which results in assigning a resident to a higher RUG category.

[51] A related risk area involves bill splitting schemes. This billing abuse usually takes the form of manipulating the billing for procedures to create the appearance that the services were rendered over a period of days when, in fact, all treatment occurred during one visit.

[52] The OIG has investigated a number of cases where signatures were forged, either to fabricate evidence that a physician ordered equipment or services or to create a paper trail in support of items or services that were never provided.

- failing to maintain sufficient documentation to support the diagnosis, justify treatment, document the course of treatment and results, and promote continuity of care; and
- false cost reports.[53]

The OIG recommends that a nursing facility, through its policies and procedures, take all reasonable steps to ensure compliance with the Federal health care programs when submitting information that affects reimbursement decisions. A key component of ensuring accurate information is the proper and ongoing training and evaluation of the staff responsible for coding diagnoses and regular internal audits of coding policies and procedures. With the arrival of consolidated billing and the next edition of the coding manuals, it will be even more critical that knowledgeable individuals are performing these coding tasks.

The risk areas associated with billing and cost reporting have been among the most frequent subjects of investigations and audits by the OIG. In addition to facing criminal sanctions and significant monetary penalties, providers that have failed to adequately ensure the accuracy of their claims and cost report submissions can have their Medicare payments suspended (42 CFR 405.371), be excluded from program participation (42 U.S.C. 1320a–7(b)), or, in lieu of exclusion, be required by the OIG to execute a corporate integrity agreement (CIA). [54]

[53] Nursing homes are required to submit various reports to Federal and State agencies in connection with facility operations and to receive reimbursement for the care provided to program beneficiaries. Because program payments are in part based on self-reported operating costs, providers must implement procedures to ensure that these reports are prepared as accurately as possible. This should include measures to ensure that adequate documentation exists to support information provided in the report, non-allowable costs are appropriately identified and removed, and related party transactions are treated consistent with program requirements. *See* 42 CFR part 413. If the provider intends to claim costs in non-conformity with program rules, those items should be flagged in a letter accompanying the cost report.

Prior enforcement actions involving nursing home cost reports have focused on nursing facilities that claimed salary expenses for employees who did not exist, inflated the number of residents served, included non-reimbursable costs with nursing home-related expenses, inappropriately shifted costs to cost centers that were below the reimbursement cap, and shifted non-Medicare related costs to Medicare cost centers.

[54] The CIA imposes reporting requirements, independent audits, and other procedures on providers who have demonstrated an inability or unwillingness to independently adopt these measures. It is clearly in a provider's best interest to avoid the implementation of a CIA by instituting its own prevention, detection, and disclosure mechanisms.

d. Employee Screening

Nursing facilities are required by Federal, and in some cases State, law to investigate the background of certain employees.[55] Nursing facilities should conduct a reasonable and prudent background investigation and reference check before hiring those employees who have access to patients or their possessions, or who have discretionary authority to make decisions that may involve compliance with the law. The employment application should specifically require the applicant to disclose any criminal conviction, as defined by 42 U.S.C. 1320a–7(i); or exclusion from participation in the Federal health care programs. Because many of the services provided in nursing facilities are furnished under arrangement with non-employee personnel, including registry and personnel agency staff, the nursing facility also should require these individuals to be subject to the same scrutiny by their agency prior to placement in the facility.

This pre-employment screening is critical to ensuring the integrity of the facility's work force and safeguarding the welfare of its residents. Because providers of nursing care have frequent, relatively unsupervised access to vulnerable people and their property, a nursing facility also should seriously consider whether to employ individuals who have been convicted of crimes of neglect, violence, theft or dishonesty, financial misconduct, or other offenses related to the particular job.[56]

Nursing facility policies should prohibit the continued employment of individuals who have been convicted of a criminal offense related to health care or who are debarred, excluded, or otherwise become ineligible for participation in Federal health care programs. [57] In addition, if the facility has notice that an employee or contractor is currently charged with a criminal offense related to the delivery of health care services or is proposed for exclusion during his or her employment or contract, the facility should take all appropriate actions to ensure that the responsibilities of that employee or contractor do not adversely affect the quality of care rendered to any patient or resident, or the accuracy of any claims submitted to any Federal health care program.[58] If resolution of the matter results in conviction, debarment, or exclusion, the nursing facility should terminate its employment or contract arrangement with the individual.

In order to ensure that nursing facilities undertake background checks of all employees to the extent required by law, the OIG recommends that the following measures be incorporated into the compliance program's policies and procedures:

- investigate the background of employees by checking with all applicable licensing and certification authorities to verify that requisite licenses and certifications are in order; [59]
- require all potential employees to certify (*e.g.*, on the employment application) that they have not been convicted of an offense that would preclude employment in a nursing facility and that they are not excluded from participation in the Federal health care programs;
- require temporary employment agencies to ensure that temporary staff assigned to the facility have undergone background checks that verify that they have not been convicted of an offense

[55] 42 CFR 483.13(c)(1).

[56] In OIG report A–12–97–0003 "Safeguarding Long Term Care Residents," it was noted that, although no Federal requirement exists for criminal background checks on nursing home staff, 33 States currently require that such checks occur. However, there appears to be great diversity in the way States identify, investigate, and report suspected abuse of nursing home residents.

[57] The effect of an OIG exclusion from Federal health care programs is that no Federal health care program payment may be made for any items or services: (1) furnished by an excluded individual or entity; or (2) directed or prescribed by an excluded physician. *See* 42 CFR 1001.1901. An excluded individual or entity that submits a claim for reimbursement to a Federal health care program, or causes such a claim to be submitted, may be subject to a civil money penalty of $10,000 for each item or service furnished during the period that the person or entity was excluded. *See* 42 U.S.C. 1320a–7a(a)(1)(D). The individual or entity also may be subject to treble damages for the amount claimed for each item or service. *See* 42 U.S.C. 1320a–7a(a). *See also* OIG Special Advisory Bulletin "The Effect of Exclusion From Participation in Federal Health Care Programs" (September 1999).

[58] Likewise, the facility should establish standards prohibiting the execution of contracts with companies that recently have been convicted of a criminal offense related to health care or that are listed by a Federal agency as debarred, excluded, or otherwise ineligible for participation in Federal health care programs. Prospective employees or contractors that have been officially reinstated into the Medicare and Medicaid programs by the OIG may be considered for employment upon proof of such reinstatement.

[59] Among the sources of information on prospective employees are the State registry of nurses' aides, which provides a list of nurse aides that have successfully completed training and competency evaluations and the National Practitioner Data Bank (NPDB). The NPDB is a database that contains information about physicians subject to medical malpractice payments, sanctions by boards of medical examiners or State licensing boards, adverse clinical privilege actions, and adverse professional society membership actions. Health care entities can have access to this database to seek information about their own medical or clinical staff, as well as prospective employees or physician contractors.

that would preclude employment in the facility;

• check the OIG's List of Excluded Individuals/Entities and the GSA's list of debarred contractors to verify that employees are not excluded from participating in the Federal health care programs; [60]

• require current employees to report to the nursing facility if, subsequent to their employment, they are convicted of an offense that would preclude employment in a nursing facility or are excluded from participation in any Federal health care program; and

• periodically check the OIG and GSA web sites to verify the participation/exclusion status of independent contractors and retain on file the results of that query. [61]

Regardless of the size or resources of the nursing facility, employee screening is critical. Nursing facilities, like all corporations, must act through their employees and are held accountable for their actions. One of the best ways to ensure that the organization will act in conformance with the law is to hire employees and contractors who can be trusted to embrace a culture of compliance. While the resources required to check the OIG List of Excluded Individuals/Entities are minimal, the absence of an accessible centralized site for criminal background checks may result in inefficiencies and expense. While large providers may elect to outsource the screening process, this may not be a realistic option for smaller nursing facilities. Nevertheless, the OIG recommends that all nursing facilities implement a policy to undertake background checks of all employees.

e. Kickbacks, Inducements and Self-Referrals

A nursing facility should have policies and procedures to ensure compliance with the anti-kickback statute,[62] the Stark physician self-referral law [63] and other relevant Federal and State laws by providing guidance in situations that could lead to a violation of these laws.[64] In particular, arrangements with hospitals, hospices, physicians and vendors are vulnerable to abuse. For example, in the case of hospitals, physicians and hospital staff exert influence over the patient and can influence the choice of a nursing facility. In addition, in his or her roles as medical director and/or attending physician, a physician frequently can influence the utilization of ancillary services.[65] Moreover, by contrast, a nursing facility operator can influence the selection of which hospices will provide hospice services and which vendors will deliver equipment and services to the facility's residents. In addition to developing policies to address arrangements with other health care providers and suppliers, nursing facilities also should implement measures to avoid offering inappropriate inducements to residents. Possible risk areas that should be addressed in the policies and procedures include:

• routinely waiving coinsurance or deductible amounts without a good faith determination that the resident is in financial need, or absent reasonable efforts to collect the cost-sharing amount; [66]

• agreements between the facility and a hospital, home health agency, or hospice that involve the referral or transfer of any resident to or by the nursing home; [67]

• soliciting, accepting or offering any gift or gratuity of more than nominal value to or from residents, potential referral sources, and other individuals and entities with which the nursing facility has a business relationship; [68]

• conditioning admission or continued stay at a facility on a third-party guarantee of payment, or soliciting payment for services covered by Medicaid, in addition to any amount required to be paid under the State Medicaid plan; [69]

• arrangements between a nursing facility and a hospital under which the facility will only accept a Medicare beneficiary on the condition that the hospital pays the facility an amount over and above what the facility would receive through PPS; [70]

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[60] The OIG "List of Excluded Individuals/Entities" provides information to health care providers, patients, and others regarding individuals and entities that are excluded from participation in Medicare, Medicaid, and other Federal health care programs. This report, in both an on-line searchable and downloadable database, can be located on the Internet at http://www.hhs.gov/oig. In addition, the General Services Administration maintains a monthly listing of debarred contractors, "List of Parties Excluded From Federal Procurement and Nonprocurement Programs," at http://epls.arnet.gov.

The OIG sanction information is readily available to users in two formats on over 15,000 individuals and entities currently excluded from program participation through action taken by the OIG. The on-line searchable database allows users to obtain information regarding excluded individuals and entities sorted by: (1) the legal bases for exclusions; (2) the types of individuals and entities excluded by the OIG; and (3) the States where excluded individuals reside or entities do business.

[61] The introduction of PPS and consolidated billing for Medicare Part B services means that vendors and their subcontractors no longer submit bills directly to Medicare for their services. Instead, the nursing facility will be submitting consolidated bills for certain services provided to residents. Because of the new responsibilities that are imposed on nursing facilities under these reimbursement schemes, the facility may be held responsible if it claims reimbursement for items or services provided by a contractor that has been excluded.

[62] The anti-kickback statute provides criminal penalties for individuals and entities that knowingly offer, pay, solicit or receive bribes, kickbacks, or other remuneration in order to induce business reimbursable by Federal health care programs. *See* 42 U.S.C. 1320a–7b(b). Civil penalties and exclusion from participation in the Federal health care programs may also result from a violation of the prohibition. *See* 42 U.S.C. 1320a–7a(a)(5) and 1320a–7(b)(7).

[63] The Stark physician self-referral law prohibits a physician from making a referral to an entity with which the physician or any member of the physician's immediate family has a financial relationship, if the referral is for the furnishing of designated health services. *See* 42 U.S.C. 1395nn.

[64] The OIG has issued several advisory opinions applying the anti-kickback statute to arrangements that affect nursing facilities. The opinions are available on the Internet at http://www.hhs.gov/oig.

[65] Contracts between the facility and any entity in which the facility's medical director has a financial interest may be subject to the Stark law and should be reviewed and approved by legal counsel.

[66] In the OIG Special Fraud Alert "Routine Waiver of Part B Co-payments/Deductibles" (May 1991), the OIG describes several reasons why routine waivers of these cost-sharing amounts pose abuse concerns. The Alert sets forth the circumstances under which it may be appropriate to waive these amounts.

[67] In the Special Fraud Alert "Fraud and Abuse in Nursing Home Arrangements with Hospices" (March 1998), the OIG sets out the vulnerabilities in nursing home arrangements with hospices. The Alert provides several examples of questionable arrangements between hospices and nursing homes that could inappropriately influence the referral of patients. Examples include the offering of free goods or goods at below fair market value to induce a nursing home to refer patients to the hospice. Other examples demonstrating vulnerability to fraud and abuse include: (1) a hospice paying for room and board in excess of the amounts the nursing home would normally charge or receive from Medicaid; (2) a hospice paying for additional services that should be already included in the room and board payment; and (3) a hospice referring patients to the nursing home in return for the nursing home's referral to the hospice. While the Special Fraud Alert focused on arrangements with hospices, nursing facilities should adopt policies that prohibit similar questionable arrangements with all health care providers.

[68] Providers should establish clear policies governing gift-giving, because such exchanges may be viewed as inducements to influence business decisions. Offering or providing any gift of more than nominal value to any beneficiary may be done with the intent to inappropriately influence health care decisions of the beneficiary or his or her family. Similarly, accepting gifts, hospitality, or entertainment from a source that is in a position to benefit from the referral of business, raises concerns that the gift may influence the employee's independent judgment. If the provider decides to allow employees to accept gifts or other gratuities below a certain nominal value or in an aggregate amount below an established amount per year, the provider should consider requiring employees to report those gifts.

[69] *See* 42 U.S.C. 1320a–7b(d)(2), which prescribes criminal penalties for knowingly and willfully charging for services provided to a Medicaid patient in excess of the rates established by the State. *See also* 42 CFR 483.12(d).

[70] Under PPS, the payment rates represent payment in full, subject to applicable coinsurance.

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- financial arrangements with physicians, including the facility's medical director;[71]
- arrangements with vendors that result in the nursing facility receiving non-covered items (such as disposable adult diapers) at below market prices or no charge, provided the facility orders Medicare-reimbursed products;[72]
- soliciting or receiving items of value in exchange for providing the supplier access to residents' medical records and other information needed to bill Medicare;[73]
- joint ventures with entities supplying goods or services;[74] and
- swapping.[75]

In order to keep current with this area of the law, a nursing facility should obtain copies of all relevant OIG and HCFA regulations, Special Fraud Alerts, and Advisory Opinions that address the application of the anti-kickback and Stark self-referral laws to ensure that the policies reflect current positions and opinions. Most of these documents are readily available on the Internet. Further, nursing facility policies should provide that all nursing facility contracts and arrangements with actual or potential sources of referrals are reviewed by counsel and comply with applicable statutes and requirements.

3. Creation and Retention of Records

When implementing a compliance program, nursing facilities should provide for the development and implementation of a records system that ensures complete and accurate medical record documentation. This system should establish policies and procedures regarding the creation, distribution, retention, and destruction of documents. Policies should provide for the complete, accurate, and timely documentation of all nursing and therapy services, including subcontracted services, as well as MDS information. In designing a records systems, privacy concerns and regulatory requirements also should be taken into consideration.

In addition to maintaining appropriate and thorough medical records on each resident, the OIG recommends that the system should include the following types of documents:

- all records and documentation (*e.g.*, billing and claims documentation) required for participation in Federal, State, and private health care programs, including the resident assessment instrument, the comprehensive plan of care and all corrective actions taken in response to surveys;[76]
- all records, documentation, and audit data that support and explain cost reports and other financial activity, including any internal or external compliance monitoring activities; and
- all records necessary to demonstrate the integrity of the nursing facility compliance process and to confirm the effectiveness of the program.[77]

While conducting its compliance activities, as well as its daily operations, a nursing facility should document its efforts to comply with applicable statutes, regulations, and Federal health care program requirements. For example, where a nursing facility requests advice from a Government agency (including a Medicare fiscal intermediary or carrier) charged with administering a Federal health care program, the nursing facility should document and retain a record of the request and any written or oral response. This step is extremely important if the nursing facility intends to rely on that response to guide it in future decisions, actions, or claim reimbursement requests or appeals. A log of oral inquiries between the nursing facility and third parties will help the organization document its attempts at compliance. In addition, these records may become relevant in a subsequent investigation to the issue of whether the facility's reliance was "reasonable" and whether it exercised due diligence in developing procedures and practices to implement the advice.

In short, all nursing facilities, regardless of size, must retain appropriate documentation. Further, the OIG recommends that the nursing facility:

- secure this information in a safe place;
- maintain hard copies of all electronic or database documentation;
- limit access to such documentation to avoid accidental or intentional fabrication or destruction of records;[78] and
- conform document retention and destruction policies to applicable laws.

As the Government increases its reliance on electronic data interchange to conduct business and gather information more quickly and efficiently, it is important that the nursing facility work toward the goal of developing the capacity to ensure that all informational systems maintained by the facility are in working order, secured, and capable of accessing Federal and State databases.

4. Compliance as an Element of Employee Performance

Compliance programs should require the promotion of, and adherence to, the elements of the compliance program to be a factor in evaluating the performance of all employees. Employees should be periodically trained in new compliance policies and procedures. In addition, policies should require that managers, especially those

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This includes payment for all costs associated with furnishing covered SNF services to Medicare beneficiaries. It is impermissible for a hospital to pay for SNF services if it were to do so only for those residents who are Medicare beneficiaries discharged from that hospital. However, it would be permissible for a hospital to provide or pay for items or services that are furnished to SNF residents generally, if such payments are made without regard to the payment source for the individual resident. In addition, a hospital and a SNF can enter into a permissible bed reservation agreement. *See Provider Reimbursement Manual*, Part I, section 2105.3.

[71] All physician contracts and agreements should be reviewed to avoid violation of the anti-kickback, self-referral, and other relevant Federal and State laws. The OIG has published safe harbors that define practices not subject to the anti-kickback statute, because such arrangements would be unlikely to result in fraud or abuse. Failure to comply with a safe harbor provision does not make an arrangement per se illegal. Rather, the safe harbors set forth specific conditions that, if fully met, would assure the entities involved of not being prosecuted or sanctioned for the arrangement qualifying for the safe harbor. One such safe harbor applies to personal services contracts. *See* 42 CFR 1001.952(d).

[72] *See* OIG Special Fraud Alert "Fraud and Abuse in the Provision of Medical Supplies to Nursing Facilities" (August 1995). As well as violating the anti-kickback statute, both the supplier and the nursing facility may be liable for false claims if the medically unnecessary items are billed to Federal health care programs. *See also* OIG Advisory Opinion 99–2 (February 1999).

[73] In addition to raising concerns related to the anti-kickback statute, the unauthorized disclosure of confidential records violates the resident's rights. *See* 42 CFR 483.10(e).

[74] *See* OIG Special Fraud Alert "Joint Venture Arrangements" (August 1989); OIG Special Fraud Alert "Fraud and Abuse in the Provision of Services in Nursing Facilities" (May 1996).

[75] "Swapping" occurs when a supplier gives a nursing facility discounts on Medicare Part A items and services in return for the referrals of Medicare Part B business. With swapping, there is a risk that suppliers may offer a SNF an excessively low price for items or services reimbursed under PPS in return for the ability to service and bill nursing facility residents with Part B coverage. *See* OIG Advisory Opinion 99–2 (February 1999).

[76] Medical record documentation should support the medical necessity of the services provided as well as the level of service billed.

[77] Among the materials useful in documenting the compliance program are employee certifications relating to training and other compliance initiatives, copies of compliance training materials, and hotline logs and any corresponding reports of investigation, outcomes, and employee disciplinary actions. In addition, the facility should keep all relevant correspondence with carriers, fiscal intermediaries, private health insurers, HCFA, and State survey and certification agencies.

[78] In addition to prohibiting the falsification and backdating of records, the provider should have clear guidelines, consistent with applicable professional and legal standards, that set out those individuals with authority to make entries in the medical record and the circumstances when late entries may be made in a record.

involved in the direct care of residents and in claims development and submission:

- discuss with all supervised employees and relevant contractors the compliance policies and legal requirements applicable to their function;
- inform all supervised personnel that strict compliance with these policies and procedures is a condition of employment; and
- disclose to all supervised personnel that the nursing facility will take disciplinary action, up to and including termination, for violation of these policies or requirements.

Managers and supervisors should be disciplined for failing to adequately instruct their subordinates or for failing to detect noncompliance with applicable policies and legal requirements, where reasonable diligence would have led to the discovery of any problems or violations and given the nursing facility the opportunity to correct them earlier. Conversely, those supervisors who have demonstrated leadership in the advancement of the company's code of conduct and compliance objectives should be singled out for recognition.

The OIG believes that all nursing facilities, regardless of resources or size, should ensure that its employees understand the importance of compliance with program requirements and the value the company places on its compliance program. If the small nursing facility does not have a formal employee evaluation system, it should informally convey to employees their compliance responsibilities whenever the opportunity arises. Positive reenforcement is generally more effective than sanctions in conditioning behavior and managers should be given mechanisms to reward employees who promote compliance.

C. Designation of a Compliance Officer and a Compliance Committee

1. Compliance Officer

Every nursing home provider should designate a compliance officer to serve as the focal point for compliance activities.[79] This responsibility may be the individual's sole duty or added to other management responsibilities, depending upon the size and resources of the nursing facility and the complexity of the task. Designating a compliance officer with the appropriate authority is critical to the success of the program, necessitating the appointment of a high-level official with direct access to the nursing facility's president or CEO, governing body, all other senior management, and legal counsel.[80] The officer should have sufficient funding and staff to perform his or her responsibilities fully.

Coordination and communication are the key functions of the compliance officer with regard to planning, implementing, and monitoring the compliance program. Particularly in a small facility, the compliance officer may need to rely on the expertise of several professionals within the facility to carry out all of his or her responsibilities. For example, the compliance officer may need the payment specialist to help with billing issues, the director of nursing to address quality of care issues, etc. At the same time, the compliance officer must retain the integrity and objectivity not to compromise the program in deference to one or more disciplines or departments.

The compliance officer's primary responsibilities should include:

- overseeing and monitoring implementation of the compliance program;
- reporting on a regular basis to the nursing facility's governing body, CEO, and compliance committee (if applicable) on the progress of implementation, and assisting these components in establishing methods to improve the nursing facility's efficiency and quality of services, and to reduce the facility's vulnerability to fraud, abuse, and waste;
- periodically revising the program in light of changes in the organization's needs, and in the law and policies of Government and private payor health plans;
- developing, coordinating, and participating in a multifaceted educational and training program that focuses on the elements of the compliance program, and seeking to ensure that all relevant employees and management understand and comply with pertinent Federal and State standards;
- ensuring that independent contractors and agents who furnish physician, nursing, or other health care services to the residents of the nursing facility are aware of the residents' rights as well as requirements of the nursing facility's compliance program applicable to the services they provide;
- coordinating personnel issues with the nursing facility's Human Resources/Personnel office (or its equivalent) to ensure that (i) the National Practitioner Data Bank[81] has been checked with respect to all medical staff and independent contractors (as appropriate) and (ii) the OIG's List of Excluded Individuals/Entities[82] has been checked with respect to all employees, medical staff, and independent contractors;[83]
- assisting the nursing facility's financial management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of departments;
- independently investigating and acting on matters related to compliance, including the flexibility to design and coordinate internal investigations (*e.g.*, responding to reports of problems or suspected violations) and any resulting corrective action (*e.g.*, making necessary improvements to nursing facility policies and practices, taking appropriate disciplinary action, etc.) with all nursing facility departments, subcontracted providers, and health care professionals under the nursing facility's control;
- participating with facility's counsel in the appropriate reporting of self-discovered violations of program requirements; and
- continuing the momentum of the compliance program after the initial years of implementation.[84]

The compliance officer must have the authority to review all documents and other information that are relevant to compliance activities, including, but not limited to, medical and billing records, and documents concerning the marketing efforts of the nursing facility and its arrangements with other health

[79] For multi-facility organizations, the OIG encourages coordination with each facility owned by the corporation through the use of a headquarter's compliance officer, communicating with parallel positions or compliance liaison in each facility or regional office, as appropriate.

[80] The OIG believes it is not advisable for the compliance function to be subordinate to the nursing facility's general counsel, or comptroller or similar financial officer. Free-standing compliance functions help to ensure independent and objective legal reviews and financial analysis of the institution's compliance efforts and activities. By separating the compliance function from the key management positions of general counsel or chief financial officer (where the size and structure of the nursing facility make this a feasible option), a system of checks and balances is established to more effectively achieve the goals of the compliance program.

[81] *See* note 59.

[82] *See* note 60.

[83] The compliance officer may also have to ensure that the criminal backgrounds of employees have been checked depending upon State requirements or nursing facility policy.

[84] There are many approaches the compliance officer may enlist to maintain the vitality of the compliance program. Periodic on-site visits of nursing facility operations, bulletins with compliance updates and reminders, distribution of audiotapes or videotapes on different risk areas, lectures at management and employee meetings, and circulation of recent health care articles covering fraud and abuse are some examples of approaches the compliance officer can employ.

care providers, including physicians and independent contractors. This review authority enables the compliance officer to examine contracts and obligations (seeking the advice of legal counsel, where appropriate) that may contain referral and payment provisions that could violate the anti-kickback statute or regulatory requirements.

A small nursing facility may not have the resources to hire or appoint a full time compliance officer. Multi-facility providers also may consider appointing one compliance officer at the corporate level and designating compliance liaisons at each facility. In any event, each facility should have a person in its organization (this person may have other functional responsibilities) who can oversee the nursing facility's compliance with applicable statutes, rules, regulations, and policies. The structure and comprehensiveness of the facility's compliance program will help determine the responsibilities of each individual compliance officer.

2. Compliance Committee

The OIG recommends that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.[85] When developing an appropriate team of people to serve as the nursing facility's compliance committee, a facility should consider a variety of skills and personality traits that are expected from those in such positions.[86] Once a nursing facility chooses the people that will accept the responsibilities vested in members of the compliance committee, the nursing facility needs to train these individuals on the policies and procedures of the compliance program, as well as how to discharge their duties.

The committee's functions may include:

- analyzing the legal requirements with which the nursing facility must comply, and specific risk areas;
- assessing existing policies and procedures that address these risk areas for possible incorporation into the compliance program;
- working with appropriate departments to develop standards of conduct and policies and procedures to promote compliance with legal and ethical requirements;
- recommending and monitoring, in conjunction with the relevant departments, the development of internal systems and controls to carry out the organization's policies;
- determining the appropriate strategies and approaches to promote compliance with program requirements and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms;
- developing a system to solicit, evaluate, and respond to complaints and problems; and
- monitoring internal and external audits and investigations for the purpose of identifying deficiencies, and implementing corrective action.

The committee also may undertake other functions as the compliance concept becomes part of the overall nursing facility operating structure and daily routine. The compliance committee is an extension of the compliance officer and provides the organization with increased oversight. The OIG recognizes that some nursing facilities may not have the resources or the need to establish a compliance committee. However, when potential problems are identified, the OIG recommends these nursing facilities create a "task force" to address the particular problem. The members of the task force may vary depending upon the issue.

D. Conducting Effective Training and Education

The proper education and training of corporate officers, managers, and health care professionals, and the continual retraining of current personnel at all levels, are critical elements of an effective compliance program. These training programs should include sessions summarizing the organization's compliance program, fraud and abuse laws, and Federal health care program and private payor requirements. More specific training on issues such as claims development and submission processes, residents' rights, and marketing practices should be targeted at those employees and contractors whose job requirements make the information relevant.[87]

The organization must take steps to communicate effectively its standards and procedures to all affected employees, physicians, independent contractors, and other significant agents by requiring participation in such training programs or by other means, such as disseminating publications that explain specific requirements in a practical manner.[88]

Managers of specific departments or groups can assist in identifying areas that require training and in carrying out such training.[89] Training instructors may come from outside or inside the organization, but must be qualified to present the subject matter involved and sufficiently experienced in the issues presented to adequately field questions and coordinate discussions among those being trained.

The nursing facility should train new employees soon after they have started working.[90] Appropriate training for temporary employees should be provided by the facility before they are assigned responsibility for resident care. Training programs and materials should be designed to take into account the skills, experience, and knowledge of the individual trainees. The compliance officer should document any formal training undertaken by the nursing facility as part of the compliance program.

A variety of teaching methods, such as interactive training and, where a nursing facility has a culturally diverse staff, training in different languages, should be implemented so that all affected employees (including temporary employees) understand the institution's standards of conduct and procedures for alerting senior management to problems and concerns.[91]

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[85] The compliance committee benefits from having the perspectives of individuals with varying responsibilities in the organization, such as operations, finance, audit, human resources, and clinical management (*e.g.*, the medical director), as well as employees and managers of key operating units. The compliance officer should be an integral member of the committee as well. All committee members should have the requisite seniority and comprehensive experience within their respective departments to implement any necessary changes to policies and procedures as recommended by the committee.

[86] A health care provider should expect its compliance committee members and compliance officer to demonstrate high integrity, good judgment, assertiveness, and an approachable demeanor, while eliciting the respect and trust of employees of the nursing facility. These interpersonal skills are as important as the professional experience of each member of the compliance committee.

[87] Specific compliance training should complement any "in-service" training sessions that a nursing facility may regularly schedule to provide an ongoing program for the training of employees as required by the Medicare program.

[88] Some publications, such as OIG's special Fraud Alerts, audit and inspection reports, and advisory opinions are readily available from the OIG and can provide a basis for educational courses and programs for appropriate nursing facility employees.

[89] Significant variations in the functions and responsibilities of different departments or groups may create the need for training materials that are tailored to compliance concerns associated with particular operations and duties.

[90] Certain positions, such as those that involve billing, coding and the submission of reimbursement data, create greater organizational legal exposure, and therefore require specialized training. Those hired to treat residents should undergo specialized training in residents' rights.

[91] Post-training tests can be used to assess the success of training provided and employee

In addition to specific training in the risk areas identified in section II.B.2, primary training for appropriate corporate officers, managers, and facility staff should include such topics as:

- compliance with Medicare participation requirements relevant to their respective duties and responsibilities;
- appropriate and sufficient documentation;
- prohibitions on paying or receiving remuneration to induce referrals;
- proper documentation in clinical or financial records;
- residents' rights; and
- the duty to report misconduct.

The OIG suggests that all relevant personnel participate in the various educational and training programs of the nursing facility.[92] Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities.[93] For example, for certain employees involved in the nursing facility admission functions, periodic training in applicable reimbursement coverage and eligibility requirements should be required. In nursing facilities with high employee turnover, periodic training updates are critical.

The OIG recognizes that the format of the training program will vary depending upon the resources of the nursing facility. For example, a nursing facility with limited resources may want to create a videotape for each type of training session so new employees can receive training in a timely manner. If videos are used for compliance training, the OIG suggests that a nursing facility make a knowledgeable individual available to field questions from video trainees.

The OIG recommends that participation in training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action, when such failure is serious. Adherence to the training requirements as well as other provisions of the compliance program should be a factor in the annual evaluation of each employee. The nursing facility should retain adequate records of its training of employees, including attendance logs and material distributed at training sessions.

E. Developing Effective Lines of Communication

1. Access to the Compliance Officer

In order for a compliance program to work, employees must be able to ask questions and report problems. The first line supervisors play a key role in responding to employee concerns and it is appropriate that they serve as a first line of communications. In order to encourage communications, confidentiality and non-retaliation policies should be developed and distributed to all employees.[94]

Open lines of communication between the compliance officer and nursing facility employees is equally important to the successful implementation of a compliance program and the reduction of any potential for fraud and abuse. In addition to serving as a contact point for reporting problems, the compliance officer should be viewed as someone to whom personnel can go to get clarification on the facility's policies. Questions and responses should be documented and dated and, if appropriate, shared with other staff so that standards can be updated and improved to reflect any necessary changes or clarifications.[95]

2. Hotlines and Other Forms of Communication

The OIG encourages the use of hotlines,[96] e-mails, newsletters, suggestion boxes, and other forms of information exchange to maintain open lines of communication.[97] If the nursing facility establishes a hotline, the telephone number should be made readily available to all employees, independent contractors, residents, and family members by circulating the number on wallet cards or conspicuously posting the telephone number in common work areas. Nursing facilities also are required to post the names, addresses and telephone numbers of all pertinent State client advocacy groups such as the State survey and certification agency, State licensure office, State ombudsman program, the protection and advocacy network, and the State Medicaid Fraud Control Unit.[98]

Employees should be permitted to report matters on an anonymous basis. Matters reported through the hotline or other communication sources that suggest substantial violations of compliance policies or Federal health care program statutes and regulations should be documented and investigated promptly to determine their veracity. The compliance officer should maintain a log that records such calls, including the nature of any investigation and its results.[99] Such information, redacted of individual identifiers, should be included in reports to the governing body, the CEO, and compliance committee.[100] While the nursing facility should always strive to maintain the confidentiality of an employee's identity, it also should make clear that there may be a point where the individual's identity may become known or may have to be revealed in certain instances. The OIG recognizes that protecting anonymity may be infeasible for small nursing facilities. However, the OIG believes all facility employees, when seeking answers to questions or reporting potential instances of fraud and abuse, should know to whom to turn for attention and

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comprehension of the nursing facility's policies and procedures.

[92] In addition, where feasible, the OIG recommends that a nursing facility give vendors and outside contractors the opportunity to participate in the nursing facility's compliance training and educational programs. Such training is particularly important for facilities that rely on agencies to provide temporary direct care staff. The introduction of consolidated billing gives added importance to educating vendors about the facility's compliance policies and procedures.

[93] Currently, the OIG is monitoring a significant number of corporate integrity agreements that require many of these training elements. The OIG usually requires a minimum of one to three hours annually for basic training in compliance areas. Additional training is required for specialty fields such as claims development and billing.

[94] In some cases, employees sue their employers under the False Claims Act's *qui tam* provisions out of frustration because of the company?s failure to take action when the employee brought a questionable, fraudulent, or abusive situation to the attention of senior corporate officials. Whistle blowers must be protected against retaliation, a concept embodied in the provisions of the False Claims Act. *See* 31 U.S.C. 3730(h).

[95] Nursing facilities also may wish to consider rewarding employees for appropriate use of established reporting systems. After all, the employee who identifies and helps stop an abusive practice can benefit the corporation as much as one who identifies cost-savings measures or increases corporate revenues.

[96] The OIG recognizes that it may not be financially feasible for a smaller nursing facility to maintain a telephone hotline dedicated to receiving calls about compliance issues. These companies may want to explore alternative methods, *e.g.*, outsourcing the hotline or establishing a written method of confidential disclosure.

[97] In addition, an effective employee exit interview program could be designed to solicit information from departing employees regarding potential misconduct and suspected violations of nursing facility policy and procedures.

[98] 42 CFR 483.10(b)(7)(iii). Nursing facilities also should post in a prominent area the HHS–OIG Hotline telephone number, 1–800–447–8477 (1–800–HHS–TIPS).

[99] To efficiently and accurately fulfill such an obligation, the nursing facility should create an intake form for all compliance issues identified through reporting mechanisms. The form could include information concerning the date that the potential problem was reported, the results of the internal investigation, and, as appropriate, the corrective action implemented, the disciplinary measures imposed, and any identified overpayments returned.

[100] Information obtained over the hotline may provide valuable insight into management practices and operations, whether reported problems are actual or perceived.

should be able to do so without fear of retribution.

F. Auditing and Monitoring

The OIG believes that an effective program should incorporate thorough monitoring of its implementation and an ongoing evaluation process. The compliance officer should document this ongoing monitoring, including reports of suspected noncompliance, and share these assessments with the nursing facility's senior management and the compliance committee. The extent and frequency of the compliance audits may vary depending on variables such as the nursing facility's available resources, prior history of noncompliance, and the risk factors particular to the facility.[101]

Although many assessment techniques are available, one effective tool is the performance of regular, periodic compliance audits by internal or external evaluators who have expertise in Federal and State health care statutes, regulations, and program requirements, as well as private payor rules. These assessments should focus both on the nursing facility's day-to-day operations, as well as its adherence to the rules governing claims development, billing and cost reports, and relationships with third parties. The reviews also should address the nursing facility's compliance with Medicare requirements and the specific rules and policies that have been the focus of particular attention by the Medicare fiscal intermediaries or carriers, survey agencies, and law enforcement.[102]

Monitoring techniques may include sampling protocols that permit the compliance officer to identify and review variations from an established performance baseline.[103] This performance baseline should include measurable patient outcomes, such as resident weight maintenance and pressure ulcers, established by the facility's Quality Assessment and Assurance Committee. Significant variations from the baseline should trigger an inquiry to determine the cause of the deviation. If the inquiry determines that the deviation occurred for legitimate reasons, the compliance officer and nursing facility management may want to take no action. If it is determined that the deviation was caused by a departure from or misunderstanding of the facility's policies, the nursing facility should take prompt steps to correct the problem. Any overpayments discovered as a result of such deviations should be returned promptly to the affected payor,[104] with appropriate documentation and a sufficiently detailed explanation of the reason for the refund.[105]

In addition to evaluating the facility's conformance with program rules, an effective compliance program also should incorporate periodic (at least annual) reviews of whether the program's compliance elements have been satisfied, e.g., whether there has been appropriate dissemination of the program's standards, ongoing educational programs, and internal investigations of alleged non-compliance. This process will assess actual conformance by all departments with the compliance program and may identify areas for improvements in the program, as well as the nursing facility's general operations.

The OIG requires a provider operating under a CIA to conduct an annual assessment of its compliance with the elements of the CIA. A compliance officer may want to review several CIAs in designing the facility's self-audit protocol.[106]

As part of the review process, the compliance officer or reviewers should consider techniques such as:

- on-site visits to all facilities owned and/or operated by the nursing home owner;
- testing the billing and claims reimbursement staff on its knowledge of applicable program requirements and claims and billing criteria;
- unannounced mock surveys and audits;
- examination of the organization's complaint logs and investigative files;
- legal assessment of all contractual relationships with contractors, consultants and potential referral sources;
- reevaluation of deficiencies cited in past surveys for State requirements and Medicare participation requirements;
- checking personnel records to determine whether individuals who previously have been reprimanded for compliance issues are now conforming to facility policies;
- questionnaires developed to solicit impressions of a broad cross-section of the nursing facility's employees and staff concerning adherence to the code of conduct and policies and procedures, as well as their work loads and ability to address the residents' activities of daily living;
- validation of qualifications of nursing facility physicians and other staff, including verification of applicable State license renewals;
- trend analysis, or longitudinal studies, that uncover deviations in specific areas over a given period; and
- analyzing past survey reports for patterns of deficiencies to determine if the proposed corrective plan of action identified and corrected the underlying problem.

The reviewers should:

- have the qualifications and experience necessary to adequately identify potential issues with the subject matter that is reviewed;
- be objective and independent of line management to the extent reasonably possible;[107]
- have access to existing audit and health care resources, relevant personnel, and all relevant areas of operation;
- present written evaluative reports on compliance activities to the CEO, governing body, and members of the compliance committee on a regular basis, but no less often than annually; and
- specifically identify areas where corrective actions are needed.

The extent and scope of a nursing facility's compliance self-audits will depend on the facility's identified risk areas, past history of deficiencies and

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[101] Even when a nursing facility or group of facilities is owned by a larger corporate entity, the regular auditing and monitoring of the compliance activities of an individual facility must be a key feature in any annual review. Appropriate reports on audit findings should be periodically provided and explained to a parent organization's senior staff and officers.

[102] See also section II.B.2.

[103] The OIG recommends that when a compliance program is established in a nursing facility, the compliance officer, with the assistance of department managers, should take a "snapshot" of their operations from a compliance perspective. This assessment can be undertaken by outside consultants or internal staff, provided they have knowledge of health care program requirements. This "snapshot" can serve as a baseline for the compliance officer and other managers to judge the nursing facility's progress in reducing potential areas of vulnerability.

[104] See Provider Reimbursement Manual Part I, section 2836(D)(3), which sets out the MDS correction policy.

[105] In addition, when appropriate, as referenced in section II.H.2, below, reports of fraud or systemic problems also should be made to the appropriate governmental authority.

[106] Examples of CIA audit protocols can be obtained from the OIG by submitting a request pursuant to the Freedom of Information Act. The OIG recently has entered into CIAs with a number of nursing home providers that may be of particular relevance. In addition, the American Institute of Certified Public Accountants (AICPA) has issued a detailed guide for conducting an independent assessment of a health care provider's conformance to a CIA. *See* AICPA Statement of Position 99–1, "Guidance to Practitioners in Conducting and Reporting on an Agreed-Upon Procedures Engagement to Assist in Evaluating Compliance with a Corporate Integrity Agreement" (May 1999).

[107] The OIG recognizes that nursing facilities that have limited resources may not be able to use internal reviewers who are not part of line management or hire outside reviewers.

enforcement actions, and resources. If the facility comes under Government scrutiny in the future, the Government will assess whether the facility developed a reasonable audit plan based upon identified risk areas and resources. If the Government determines that the nursing facility failed to develop an adequate audit program, the Government will be less likely to afford the nursing facility favorable treatment under the Federal Sentencing Guidelines.

G. Enforcing Standards Through Well-Publicized Disciplinary Guidelines

1. Disciplinary Policy and Enforcement

An effective compliance program should include disciplinary policies that set out the consequences of violating the nursing facility's standards of conduct, policies, and procedures. Intentional noncompliance should subject transgressors to significant sanctions. Such sanctions could range from oral warnings to suspension, termination, or financial penalties, as appropriate. Disciplinary action may be appropriate where a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. Each situation must be considered on a case-by-case basis to determine the appropriate response.

The written standards of conduct should elaborate on the procedures for handling disciplinary problems and those who will be responsible for taking appropriate action. Some disciplinary actions can be handled by department or agency managers, while others may have to be resolved by a senior administrator. The nursing facility should advise personnel that disciplinary action will be taken on a fair and equitable basis. Managers and supervisors should be made aware that they have a responsibility to discipline employees in an appropriate and consistent manner.

It is vital to publish and disseminate the range of disciplinary standards for improper conduct and to educate employees regarding these standards. The consequences of noncompliance should be consistently applied and enforced, in order for the disciplinary policy to have the required deterrent effect. All levels of employees should be potentially subject to the same types of disciplinary action for the commission of similar offenses, because the commitment to compliance applies to all personnel within a nursing facility. This means that corporate officers, managers, and supervisors should be held accountable for failing to comply with, or for the foreseeable failure of their subordinates to adhere to, the applicable standards, laws, and procedures.

H. Responding to Detected Offenses and Developing Corrective Action Initiatives

Violations of a nursing facility's compliance program, failures to comply with applicable Federal or State law, and other types of misconduct threaten a facility's status as a reliable, honest and trustworthy provider of health care. Detected but uncorrected deficiencies can seriously endanger the reputation and legal status of the nursing facility. Consequently, upon receipt of reports or reasonable indications of suspected noncompliance, it is important that the compliance officer or other management officials immediately investigate the allegations to determine whether a material violation of applicable law or the requirements of the compliance program has occurred and, if so, take decisive steps to correct the problem.[108] As appropriate, such steps may include a corrective action plan,[109] the return of any overpayments, a report to the Government,[110] and/or a referral to criminal and/or civil law enforcement authorities.

Where potential fraud is not involved, the OIG recommends that the nursing facility use normal repayment channels to return overpayments as they are discovered. However, even if the nursing facility's billing department is effectively using the overpayment detection and return process, the OIG believes that the facility needs to alert the compliance officer to those overpayments that may reveal trends or patterns indicative of a systemic problem.

Where there are indications of potential fraud, an internal investigation may be warranted and will probably include interviews and a review of relevant documents. Under some circumstances, the facility may need to consider engaging outside counsel, auditors, or health care experts to assist in an investigation. The investigative file should contain documentation of the alleged violation, a description of the investigative process (including the objectivity of the investigators and methodologies utilized), copies of interview notes and key documents, a log of the witnesses interviewed and the documents reviewed, the results of the investigation, *e.g.*, any disciplinary action taken, and the corrective action implemented. While any action taken as the result of an investigation will necessarily vary depending upon the situation, nursing facilities should strive for some consistency by using sound practices and disciplinary protocols.[111] Further, the compliance officer should review the circumstances that formed the basis for the investigation to determine whether similar problems have been uncovered or modifications of the compliance program are necessary to prevent and detect other inappropriate conduct or violations.

If the nursing facility undertakes an investigation of an alleged violation and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, the facility should remove those individuals from their current responsibilities until the investigation is completed (unless there is an ongoing internal or Government-led undercover operation known to the nursing facility). In addition, the compliance officer should take appropriate steps to secure or prevent the destruction of documents or other evidence relevant to the investigation. If the nursing facility determines that disciplinary action is warranted, it should be promptly imposed in accordance with the facility's written standards of disciplinary action.

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[108] Instances of noncompliance must be determined on a case-by-case basis. The existence or amount of a *monetary* loss to a health care program is not solely determinative of whether the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss, but corrective actions are still necessary to protect the integrity of the applicable program and its beneficiaries, *e.g.*, where failure to comply with the facility's policies and procedures results in inadequate or inappropriate care being furnished to a facility resident.

[109] The nursing facility may seek advice from its in-house counsel or an outside law firm to determine the extent of the facility's liability and to plan the appropriate course of action.

[110] Nursing facilities are required to immediately report all alleged incidents of mistreatment, neglect, abuse (including injuries of unknown source), and misappropriation of resident property to both the facility administrator and other officials in accordance with State law. *See* 42 CFR 483.13(c)(2). This is the appropriate channel for reporting quality of care issues. The OIG also has established a provider self-disclosure protocol that encourages providers voluntarily to report suspected fraud. The concept of voluntary self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems, and work with the Government to resolve these matters. The self-disclosure protocol can be located on the OIG's web site at: http://www.hhs.gov/oig.

[111] The parameters of a claims review subject to an internal investigation will depend on the circumstances surrounding the issues identified. By limiting the scope of an internal audit to current billing, a nursing facility may fail to discover major problems and deficiencies in operations, and may subject itself to liability.

1. Reporting

Where the compliance officer, compliance committee, or a management official discovers credible evidence of misconduct from any source and, after a reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil or administrative law, the facility should promptly report the existence of misconduct to the appropriate Federal and State authorities [112] within a reasonable period, but not more than 60 days [113] after determining that there is credible evidence of a violation.[114] Prompt voluntary reporting will demonstrate the nursing facility's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (*e.g.*, penalties, assessments, and exclusion), if the reporting provider becomes the target of an OIG investigation.[115]

When reporting to the Government, a nursing facility should provide all evidence relevant to the alleged violation of applicable Federal or State law(s) and potential cost impact. The compliance officer, under advice of counsel and with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer should notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately reveals that criminal, civil or administrative violations have occurred, the nursing facility should immediately notify appropriate Federal and State authorities.

As previously stated, the nursing facility should take appropriate corrective action, including prompt identification and return of any overpayment to the affected payor. If potential fraud is involved, the nursing facility should return any overpayment during the course of its disclosure to the Government. Otherwise, the nursing facility should use normal repayment channels for reimbursing identified overpayments.[116] A knowing and willful failure to disclose overpayments within a reasonable period of time could be interpreted as an attempt to conceal the overpayment from the Government, thereby establishing an independent basis for a criminal violation with respect to the nursing facility, as well as any individual who may have been involved.[117] For this reason, nursing facility compliance programs should emphasize that overpayments should be promptly disclosed and returned to the entity that made the erroneous payment.

III. Assessing the Effectiveness of a Compliance Program

Considering the financial and human resources needed to establish an effective compliance program, sound business principles dictate that the nursing home's management evaluate the return on that investment. In addition, a compliance program must be "effective" for the Government to view its existence as a mitigating factor when assessing culpability. How a nursing facility assesses its compliance program performance is therefore integral to its success. The attributes of each individual element of a compliance program must be evaluated in order to assess the program's "effectiveness" as a whole. Examining the comprehensiveness of policies and procedures implemented to satisfy these elements is merely the first step. Evaluating how a compliance program performs during the provider's day-to-day operations becomes the critical indicator.[118]

As previously stated, a compliance program should require the development and distribution of written compliance policies, standards, and practices that identify specific areas of risk and vulnerability. One way to judge whether these policies, standards, and practices measure up is to observe how an organization's employees react to them. Do employees experience recurring pitfalls because the guidance on certain issues is not adequately covered in company policies? Do employees flagrantly disobey an organization's standards of conduct because they observe no sincere buy-in from senior management? Do employees have trouble understanding policies and procedures because they are written in legalese or at difficult reading levels? Does an organization routinely experience systematic billing failures because of poor instructions to employees on how to implement written policies and practices? Written compliance policies, standards, and practices are only as good as an organization's commitment to apply them in practice.

Every nursing facility needs to seriously consider whoever fills the integral roles of compliance officer and compliance committee members, and periodically monitor how the individuals chosen satisfy their responsibilities. Does a compliance officer have sufficient professional experience working with billing, clinical records, documentation, and auditing principles to perform assigned responsibilities fully? Has a compliance officer or compliance committee been unsuccessful in fulfilling their duties because of inadequate funding, staff, and authority necessary to carry out their jobs? Did the addition of the compliance officer function to a key management position with other significant duties compromise the goals of the compliance program (*e.g.*, chief financial officer who discounts certain overpayments identified to improve the company's bottom line profits)? Since a

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[112] Appropriate Federal and State authorities include the OIG, the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorney in relevant districts, the Federal Bureau of Investigation, and the other investigative arms for the agencies administering the affected Federal or State health care programs, such as the State Survey Agency, the State Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, the Department of Veterans Affairs, and the Office of Personnel Management (which administers the Federal Employee Health Benefits Program). State law may further specify types of misconduct and to whom a facility must report its findings. See note 110.

[113] In contrast, to qualify for the "not less than double damages" provision of the False Claims Act, the provider must provide the report to the Government within 30 days after the date when the provider first obtained the information. See 31 U.S.C. 3729(a).

[114] Some violations may be so serious that they warrant immediate notification to governmental authorities prior to, or simultaneous with, commencing an internal investigation. By way of example, the OIG believes a provider should report misconduct that: (1) is a clear violation of OIG administrative authorities, or civil or criminal fraud laws; (2) has a significant adverse effect on the quality of care provided to residents (in addition to any other legal obligations regarding quality of care); or (3) indicates evidence of a systemic failure to comply with applicable laws or an existing corporate integrity agreement, regardless of the financial impact on Federal health care programs.

[115] The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude a health care provider from program participation pursuant to 42 U.S.C. 1320a–7(b)(7) for violations of various fraud and abuse laws. See 62 FR 67392 (December 24, 1997).

[116] A nursing facility should consult with its Medicare fiscal intermediary (FI) and the appropriate sections of the Provider Reimbursement Manual for additional guidance regarding refunds under Medicare Part A. *See* note 104. The FI may require certain information (*e.g.*, alleged violation or issue causing overpayment, description of the internal investigative process with methodologies used to determine any overpayments, and corrective actions taken, etc.) to be submitted with the return of any overpayments, and that such repayment information be submitted to a specific department or individual. When appropriate, interest may be assessed on the overpayment. *See* 42 CFR 405.378.

[117] *See* 42 U.S.C. 1320a–7b(a)(3) and 18 U.S.C. 669.

compliance officer and a compliance committee can have a significant impact on how effectively a compliance program is implemented, those functions should not be taken for granted.

As evidenced throughout this guidance, the proper education and training of corporate officers, managers, health care professionals, and other applicable employees of a provider, and the continual retraining of current personnel at all levels, are significant elements of an effective compliance program. Accordingly, such efforts should be routinely evaluated. How frequently are employees trained? Are employees tested after training? Do the training sessions and materials adequately summarize the important aspects of the organization's compliance program? Are training instructors qualified to present the subject matter and field questions? When thorough compliance training is periodically conducted, employees receive the reinforcement they need to ensure an effective compliance program.

An open line of communication between the compliance officer and a provider's employees is equally important to the success of a compliance program. In today's intensive regulatory environment, the OIG believes that a provider cannot possibly have an effective compliance program if it does not receive feedback from its employees regarding compliance matters. For instance, if a compliance officer does not receive appropriate inquiries from employees: Do policies and procedures adequately guide employees to whom and when they should be communicating compliance matters? Are employees confident that they can report compliance matters to management without fear of retaliation? Are employees reporting issues through the proper channels? Do employees have the proper motives for reporting compliance matters? Regardless of the means that a provider uses, whether it is telephone hotline, email, or suggestion boxes, employees should seek clarification from compliance staff in the event of any confusion or question dealing with compliance policies, practices, or procedures.

An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers, health care professionals, and other employees who have failed to adhere to an organization's standards of conduct, Federal health care program requirements, or Federal or State laws. The number and caliber of disciplinary actions taken by an organization can be insightful. Have appropriate sanctions been applied to compliance misconduct? Are sanctions applied to all employees consistently, regardless of an employee's level in the corporate hierarchy? Have double-standards in discipline bred cynicism among employees? When disciplinary action is not taken seriously or applied haphazardly, such practices reflect poorly on senior management's commitment to foster compliance as well as the effectiveness of an organization's compliance program in general.

Another critical component of a successful compliance program is an ongoing monitoring and auditing process. The extent and frequency of the audit function may vary depending on factors such as the size and available resources, prior history of noncompliance, and risk factors of a particular nursing facility. The hallmark of effective monitoring and auditing efforts is how an organization determines the parameters of its reviews. Do audits focus on all pertinent departments of an organization? Does an audit cover compliance with all applicable laws, as well as Federal and private payor requirements? Are results of past audits, pre-established baselines, or prior deficiencies reevaluated? Are the elements of the compliance program monitored? Are auditing techniques valid and conducted by objective reviewers? The extent and sincerity of an organization's efforts to confirm its compliance often proves to be a revealing determinant of a compliance program's effectiveness.

It is essential that the compliance officer or other management officials immediately investigate reports or reasonable indications of suspected noncompliance. If a material violation of applicable law or compliance program requirements has occurred, a provider must take decisive steps to correct the problem. Nursing facilities that do not thoroughly investigate misconduct leave themselves open to undiscovered problems. When a provider learns of certain issues, it should evaluate how it assesses its legal exposure. What is the correlation between the deficiency identified and the corrective action necessary to remedy? Are isolated overpayment matters properly resolved through normal repayment channels? Is credible evidence of misconduct that may violate criminal, civil or administrative law promptly reported to the appropriate Federal and State authorities? If the process of responding to detected offenses is circumvented, such conduct would indicate an ineffective compliance program.

Documentation is the key to demonstrating the effectiveness of a nursing facility's compliance program. For example, documentation of the following should be maintained: audit results; logs of hotline calls and their resolution; corrective action plans; due diligence efforts regarding business transactions; records of employee training, including the number of training hours; disciplinary action; and modification and distribution of policies and procedures. Because the OIG encourages self-disclosure of overpayments and billing irregularities, maintaining a record of disclosures and refunds to the Federal health care programs and private insurers is strongly endorsed. A documented practice of refunding of overpayments and self-disclosing incidents of non-compliance with Federal and private payor health care program requirements is powerful evidence of a meaningful compliance effort.

IV. Conclusion

Through this document, the OIG has attempted to provide a foundation for the process necessary to develop an effective and cost-efficient nursing facility compliance program. However, each program must be tailored to fit the needs and resources of a particular facility, depending upon its unique corporate structure, mission, and employee composition. The statutes, regulations, and guidelines of the Federal health care programs, as well as the policies and procedures of private health plans, should be integrated into every nursing facility's compliance program.

The OIG recognizes that the health care industry in this country, which reaches millions of beneficiaries and expends about a trillion dollars annually, is constantly evolving. The time is right for nursing facilities to implement a strong voluntary health care compliance program. Compliance is a dynamic process that helps to ensure that nursing facilities and other health care providers are better able to fulfill their commitment to ethical behavior, as well as meet the changes and challenges being placed upon them by Congress and private insurers. Ultimately, it is the OIG's hope that a voluntarily created compliance program will enable nursing facilities to meet their goals, improve the quality of resident care, and substantially reduce fraud, waste, and abuse, as well as the cost of health care to Federal, State, and private health insurers.

Dated: March 9, 2000.

June Gibbs Brown,

Inspector General.

[FR Doc. 00–6423 Filed 3–15–00; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee H—Clinical Groups.

Date: March 23–24, 2000.

Time: 6:30 PM to 1 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Deborah R. Jaffe, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 7, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6476 Filed 3–15–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)—(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary & Alternative Medicine Special Emphasis Panel.

Date: March 21, 2000.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: 9000 Rockville Pike, Bldg. 31, Room 5B50, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sheryl K. Brining, National Center for Complementary and Alternative Medicine, National Institutes of Health, 31 Center Drive, Room 5B50, Bethesda, MD 20892–2182, (301) 496–7498, sb44k@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: March 9, 2000.

Ann Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6473 Filed 3–15–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: April 5, 2000.

Time: 1 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Stanley C. Oaks, Jr., Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd. Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: March 9, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6474 Filed 3–15–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel R13 Conference Grants

Date: April 5, 2000.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, 79 TW Alexander Dr., Bldg. 4401, Rm EC–122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: J. Patrick Mastin, Scientific Review Administrator, SRB/DERT, NIEHS, P.O. Box 12233 MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: March 9, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6475 Filed 3–15–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panels.

Date: April 5–7, 2000.

Time: 7 PM to 11 AM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Express Hotel & Suites, SE 1990 Bishop Blvd., Pullman, WA 99163.

Contact Person: Linda K. Bass, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93,114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: March 8, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6477 Filed 3–15–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notices of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, NIH ES 00–23.

Date: April 4, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS—East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709; (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and fund cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel.

Date: April 12–14, 2000.

Time: 7 a.m. to 11 a.m.

Agenda: To review and evaluate contract grant applications.

Place: Wilmington Courtyard, 151 Van Camden Blvd, Wilmington, NC 28403.

Contact Person: Linda K. Bass, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709; (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and fund cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental exposures; 93.142 NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHs Superfund Hazardous Substances—Basic Research and Education; 93.894 Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: March 8, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6478 Filed 3–15–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel

Date: March 28, 2000.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 8, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6479 Filed 3–15–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: April 4, 2000.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hameed Khan, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal domestic Assistance Program Nos. 92.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 8, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6480 Filed 3–15–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 31, 2000.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington circle, N.W., Washington, D.C., DC 20037.

Contact Person: Asikiya Walcourt, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 31, 2000.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Houmam H. Araj, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 932.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 8, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6482 Filed 3–15–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 27, 2000.

Time: 1 pm to 4 pm

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892,(Telephone Conference Call).

Contact Person: Asikiya Walcourt, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: March 8, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6483 Filed 7–15–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 22, 2000.

Time: 4 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 24, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 24, 2000.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 8, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6484 Filed 3–15–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the PubMed Central National Advisory Committee.

The meeting will be closed to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such a a sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: PubMed Central National Advisory Committee.

Date: March 27, 2000.

Time: 8:30 a.m. to 1: p.m.

Agenda: Review and analysis of system including program objectives and directives.

Place: National Library of Medicine, Board Room, Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: David J. Lipman, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 8, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6481 Filed 3–15–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(4) and 552b(c)(4) and 55b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 15, 2000.

Time: 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 21, 2000.
Time: 1:00 p.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 22, 2000.
Time: 2:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Camilla E. Day, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1037, dayc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 24, 2000.
Time: 8:00 am to 8:00 pm.
Agenda: To review and evaluate grant applications.
Place: Bethesda Ramada Hotel and Conference Center, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jean D. Sipe, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1743, sipej@scr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 24, 2000.
Time: 8:00 am to 5:30 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 24, 2000.
Time: 1:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Eugene Vigil, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 24, 2000.
Time: 2:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexander D. Politis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 24, 2000.
Time: 3:00 pm to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20982, (301) 435–0677

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 24, 2000.
Time: 4:30 pm to 5:30 pm
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Cheri Wiggs, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20982, (301) 435–8367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 27, 2000.
Time: 8:00 am to 6:00 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, Fortune Room, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.
Contact Person: Eugene Vigil, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20982, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel
Date: March 27–28, 2000.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.
Contact Person: Eileen W. Bradley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20982, (301) 435–1179, bradleye@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 27, 2000.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Robert T. Su, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7840, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphphasis Panel.
Date: March 27–28, 2000.
Time: 8:00 am to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Ann A. Jerkins, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphphasis Panel.
Date: March 27–27, 2000.
Time: 9:00 am to 12:00 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.
Contact Person: Teresa Nesbitt, Scientific Review Administrator, Center for Scientific

Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphphasis Panel.

Date: March 27, 2000.

Time: 11:00 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphphasis Panel.

Date: March 27–27, 2000.

Time: 3:30 pm to 5:30 pm.

Agenda: To review and evalute grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Harold M. Davidson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 27–28, 2000.

Time: 7:30 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn. 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Cheryl M. Corsaro, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301–435–1045, corsaroc@csr.nih.gov.

This notice is published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 28, 2000.

Time: 11:00 am. to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 28, 2000.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael H. Sayre, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 28, 2000.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gertrude K. McFarland, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784, mcfarlag@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 8, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6485 Filed 7–15–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Prairie City Crossing Project, Folsom, Sacramento County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Regency Realty has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service proposes to issue a 2-year permit to Regency Realty that would authorize take of the threatened valley elderberry longhorn beetle (Desmocerus californicus dimorphus; beetle) incidental to otherwise lawful activities. Such take would occur as a result of development of a supermarket, parking lot, and service station on the Prairie City Crossing Project site in Folsom, Sacramento County, California.

The application includes a Habitat Conservation Plan (Plan). The Plan describes the proposed project and the measures that Regency Realty would undertake to minimize and mitigate take of the beetle, as required in section 10(a)(2)(B) of the Act. Development would result in the loss of 1 elderberry plant with 4 stems that provide habitat for the beetle. We request comments on the Plan.

We also request comments on our preliminary determination that the Plan qualifies as a "low-effect" Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in an Environmental Action Statement, which is also available for public review.

This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). The Plan and the Environmental Action Statement are available for review and comment by other agencies and the public. All comments received, including names and addresses, will become part of the public record and will be available for review pursuant to section 10(c) of the Act.

DATES: Written comments must be received no later than April 17, 2000.

ADDRESSES: Send written comments to Mr. Wayne White, Field Supervisor, Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825–1846. Comments may be sent by facsimile to 916–414–6610.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Campbell, Chief of Conservation Planning Division, at the above address or call (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Document Availability

Please contact the above office if you would like copies of the application, Plan, and Environmental Action Statement. Documents also will be available for review by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibit the "take" of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. However, the Service may, under limited circumstances, issue permits to authorize incidental take; i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

The proposed Prairie City Crossing Project is located at the northwest corner of Prairie City and Iron Point roads in the City of Folsom, Sacramento County, California, which corresponds to Township 9 North, Range 7 East of the "Folsom, California" topographic quadrangle (United States Geological Survey, Photorevised 1980). Regency Realty is requesting a 2-year incidental take permit to authorize take of the beetle on the project site.

The Prairie City Crossing Project consists of the proposed construction of a Safeway supermarket, parking lot, and service station on an 11-acre parcel. The entire project area has been disturbed by prior mining activities that occurred during the early 1900s. The existing habitat on the site consists of dredger tailings, annual grassland, and pockets of foothill pine/oak woodland within the tailings.

One elderberry shrub, containing three stems that are between 1 and 3 inches in diameter and one stem that is greater than 5 inches in diameter at ground level, occurs on the project site within the impact area as potential habitat for the federally-threatened beetle. A single adult beetle exit hole was found in this shrub. Construction of the proposed project would result in the removal of the elderberry shrub. The project site does not contain any riparian habitat. The project site does not contain any other rare, threatened, or endangered species or habitat. No critical habitat for any listed species occurs on the project site.

Under the HCP, mitigation for impacts to the beetle would conform to the Fish and Wildlife Service's 1999 Mitigation Guidelines. The single elderberry shrub affected by the proposed project would not be transplanted because it is located at the bottom of a cobble ravine, surrounded by dredger tailings, and access by heavy equipment is extremely difficult. Prior to undertaking transplantation, considerable grading would have to be completed in order to construct an access road that could be used by heavy equipment. A vermeer spade could not be used because of the rocky nature of the site. In addition, if this elderberry shrub were to be transplanted, its survival would be questionable because much of the rootball probably would be destroyed during the transplanting process. Therefore, Regency Realty proposes to purchase 5 beetle mitigation credits at the Wildlands Mitigation Bank, a Service-approved mitigation site. Purchase of these credits would result in the planting of 24 elderberry plants and 16 associated native tree species to mitigate for impacts to 4 stems.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the Plan, which includes measures to minimize and mitigate impacts of the project on the beetle. One alternative to the taking of listed species under the Proposed Action is considered in the Plan. Under the No Action Alternative, no permit would be issued. However, the No Action Alternative is inconsistent with local development goals and would result in the undisturbed elderberry shrub being left on the site in an isolated patch of open space with little habitat value.

The Service has made a preliminary determination that the Plan qualifies as a "low-effect" plan as defined by its Habitat Conservation Planning Handbook (November 1996). Determination of low-effect Habitat Conservation Plans is based on the following three criteria: (1) Implementation of the Plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the Plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the Plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in the Service's Environmental Action Statement, the Prairie City Crossing Project Plan qualifies as a "low-effect" plan for the following reasons:

1. Approval of the Plan would result in minor or negligible effects on the beetle and its habitat. The Service does not anticipate significant direct or cumulative effects to the beetle resulting from development of the Prairie City Crossing Project area.

2. Approval of the Plan would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the Plan would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has preliminarily determined that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Act. We will evaluate the permit application, the Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit to Regency Realty for the incidental take of the beetle from development of the Prairie City Crossing Project site. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: March 8, 2000.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 00–6487 Filed 3–15–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: U.S. Fish and Wildlife Service.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration, development, and production activities have been issued to the following companies:

Company	Activity	Date issued
BP Exploration (Prudhoe Bay Unit	Production	February 8, 2000.
BP Exploration (Kuparuk Unit)	Production	February 8, 2000.
ARCO Alaska, Inc. (NW Eileen)	Exploration	February 14, 2000.
ARCO Alaska, Inc. (Alpine)	Development	February 14, 2000.
ARCO Alaska, Inc. (Nanuk #2 & #3)	Exploration	February 14, 2000.
BP Exploration (Alaska), Inc. (Northstar)	Development	February 23, 2000.
Western Geophysical (Anadarko)	Exploration	February 23, 2000.
Western Geophysical (ARCO)	Exploration	February 23, 2000.
ARCO Alaska, Inc. (Meltwater North)	Exploration	February 23, 2000.
ARCO Alaska, Inc. (Spark #1)	Exploration	February 23, 2000.
ARCO Alaska, Inc. (Rendezvous A&B)	Exploration	February 23, 2000.
ARCO Alaska, Inc. (Lookout A)	Exploration	February 23, 2000.
ARCO Alaska, Inc. (Moose's Tooth A&C)	Exploration	February 23, 2000.
ARCO Alaska, Inc. (Clover A&B)	Exploration	February 23, 2000.
ARCO Alaska, Inc. (Cairn)	Exploration	February 23, 2000.
Western Geophysical (ARCO)	Exploration	February 23, 2000.
Western Geophysical (BP Exploration)	Exploration	February 23, 2000.
Kuukpik/Fairweather Geophysical	Exploration	February 23, 2000.
BP Exploration (Point Thomson)	Exploration	February 23, 2000.
BP Exploration (West Gwydyr Bay)	Exploration	February 29, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities (65 FR 5275; February 3, 2000)."

Dated: March 3, 2000.

Gary Edwards,

Deputy Regional Director.

[FR Doc. 00–6524 Filed 3–15–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a field trip and meeting of the Aquatic Nuisance Species Task Force. The focus of the field trip and meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The field trip will take place from 12:30 p.m. to 6 p.m., Monday, April 3, 2000. The Aquatic Nuisance Species Task Force will meet from 8:30 a.m. to 5 p.m., Tuesday, April 4, 2000 and 8:30 a.m. to 12 p.m., Wednesday, April 5, 2000.

ADDRESSES: The field trip will begin at the Doubletree Inn, 2649 South Bayshore Drive, Miami, Florida. The meeting will be held at the Rosenstiel School of Marine and Atmospheric Science, Virginia Key, Miami, Florida in the auditorium.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: sharon_gross@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a field trip and meeting of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The field trip will consist of a visit to an area where the Asian Swamp Eel is present and causing impacts as well as other areas where invasive plant and animal species have caused significant impacts. Topics to be covered during the ANS Task Force meeting on Tuesday and Wednesday include the following: briefings about regional nonindigenous species problems and initiatives; updates of activities from the Task Force's regional panels; discussion of the Coast Guard's ballast water management program; discussion of the Asian Swamp Eel and other invasive aquatic species of concern; overview of the activities of the Invasive Species Council; discussion of the guidance for the State ANS Management Plans; and overview of an outreach and education initiative.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: March 13, 2000.

Hannibal Bolton,

Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries.

[FR Doc. 00–6561 Filed 3–15–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Announcement of Vacancy on the Osage Tribal Education Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs is announcing that a vacancy has occurred on the Osage Tribal Education Committee. This vacancy is the Member at Large Representative. The purpose of this notice is to solicit nominations from individuals or Osage organizations who would nominate persons for the vacancy.

DATES: Applications and nominations must be received on or before April 17, 2000.

ADDRESSES: You may send applications and nominations to: Osage Tribal Education Committee, c/o Oklahoma Area Education Office, 4149 Highline Blvd., Oklahoma City, OK 73108.

FOR FURTHER INFORMATION CONTACT: Joy Martin, Education Line Officer, at 405–605–6051.

SUPPLEMENTARY INFORMATION: Pursuant to 25 CFR 122.5 and the Overall Plan of Operation for the Osage Tribal Education Committee, the Bureau is seeking nominations from individuals or Osage organizations who would nominate persons for the vacancy. The requirements of the Member at Large are:

(a) Must be an adult person of Osage Indian blood who is an allottee or a descendant of an allottee; and

(b) May include residents who are living anywhere in the United States.

The nominee or his/her representative organization should submit a brief statement requesting that he/she be considered as a candidate for the vacancy and the reason for desiring to serve on the committee. If nominated by an Osage organization, a written statement from the nominee stating his/her willingness to serve on the committee must be included with the Osage organization nomination.

Applications and nominations must be received no later than April 17, 2000. Nominations shall be delivered by registered mail to the address listed in the **ADDRESSES** section.

This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: March 3, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–6525 Filed 3–15–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. ID–080–1220–PA]

Upper Columbia-Salmon Clearwater Districts, Idaho; Notice of Closure and Restriction Order for BLM Lands in Fiddle Creek Area

AGENCY: Bureau of Land Management, Upper Columbia-Salmon Clearwater Districts, Idaho.

ACTION: Notice of Closure and Restriction Order for BLM Lands in Fiddle Creek Area, Order No. ID–080–23.

SUMMARY: By order, the following closures and restrictions apply to the area known as "Fiddle Creek," described as all public land administered by the Bureau of Land Management in T.25N., R.1E., sections 22, 23, and 27, Idaho County, Idaho.

(1) Camping is prohibited.

(2) The possession or consumption of alcoholic beverages by persons under the age of 21 is prohibited.

(3) The area is closed to all use from 8:00 p.m. to 6:00 a.m.

For the purpose of this closure, camping is defined as erecting a tent or shelter, preparing a sleeping bag or other bedding material for use, parking a motor vehicle, motor home or trailer for the apparent purpose of overnight occupancy.

The authority for establishing these closures and restrictions is Title 43, Code of Federal Regulations, Section 8364.1.

The closures and restrictions are in effect from April 14, 2000 through April 17, 2000.

The closures and restrictions do not apply to:

(1) Any Federal, State, or local law enforcement, rescue or the fire fighting force while in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, or contractor while in the performance of an official duty.

The closures and restrictions are necessary to protect persons, property, public lands and resources. Persons abusing alcohol cause a public disturbance, particularly at night, and create a risk to other persons on public lands.

Violation of this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed one year.

FOR FURTHER INFORMATION CONTACT: Greg Yuncevich, Area Manager, Bureau of Land Management, Cottonwood Field Office, Route 3, Box 181, Cottonwood, ID 83522.

Dated: March 2, 2000.

Ted Graf,

Acting District Manager.

[FR Doc. 00–6527 Filed 3–15–00; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–1430–ER/G010–G0–0252]

Emergency Road Closure, Sandoval County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Road closure of access.

SUMMARY: Notice is hereby given that effective March 16, 2000, a road located within the NW¼ SW¼ of section 3, and continues in a southwesterly direction to SW¼ NW¼ section 9, T. 20 N., R. 1 W., NMPM, is closed to all forms of access except as specifically authorized by the Bureau of Land Management. The closed area is commonly known as the Sawmill Area south of Cuba. The purpose of this road closure is to prevent unnecessary degradation of resources, undue environmental damage and to ensure resource protection on public lands.

The emergency access closure is in accordance with the provisions of 43 CFR 8364.1. This designation remains in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Joe Jaramillo, Realty Specialist at Bureau of Land Management, Albuquerque Field Office, 435 Montano NE, Albuquerque, New Mexico 87107, (505) 761–8779.

Dated: February 28, 2000.

S.W. Anderson,

Assistant Field Manager, Division of Lands & Minerals.

[FR Doc. 00–6528 Filed 3–15–00; 8:45 am]

BILLING CODE 4310–AG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–00–1040–AE]

Notice of Meeting

AGENCY: Bureau of Land Management.

ACTION: Gila Box Riparian National Conservation Area Advisory Committee Meeting.

SUMMARY: The purpose of this notice is to announce the next meeting of the Gila Box Riparian National Conservation Area Advisory Committee Meeting. The purpose of the Advisory Committee is to provide informed advice to the Safford Field Manager on management of public lands in the Gila Box Riparian National Conservation Area. The committee meets as needed, generally between two and four times a year.

The meeting will begin at the Bureau of Land Management (BLM), Safford Field Office on April 7, 2000, commencing at 8:00 a.m. The meeting will consist of a two-day float trip down the Gila River within the Gila Box RNCA boundary to observe the compliance on vehicle closures within the Gila River corridor, livestock management, and discuss management of the recently acquired property at the confluence of Eagle Creek and the Gila River. A public comment period will be provided from 9:30 a.m. to 9:45 a.m. at the Old Safford Bridge boat put in site prior to departing for the float trip. The public is invited to participate on the float trip but must provide their own transportation to and from the field, rafting equipment, and personal gear. The field trip will depart at 8:00 a.m. on April 7, 2000 from the BLM Safford Field Office and arrive back at the BLM Safford Field Office at 4:00 p.m. on April 8, 2000.

DATE: Meeting will be held on April 7, 2000 starting at 8:00 a.m.

FOR FURTHER INFORMATION CONTACT: Jon Collins, Gila Box NCA Project Coordinator, Safford Field Office, 711 14th Ave., Safford AZ 85546, Telephone (520) 348–4400.

Dated: February 29, 2000.

Frank L. Rowley,

Acting Safford Field Manager.

[FR Doc. 00–6526 Filed 3–15–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–00–1220–00: GPO–0146]

Notice of Meeting of the Oregon Train Interpretive Center Advisory Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Thursday, April 6, 2000 from 8:00 a.m. to 4:00 p.m. at the Best Western Sunridge Inn, One Sunridge Lane, Baker City, Oregon. At an appropriate time, the Board will recess for approximately one hour for lunch. Public comments will be received from 12:00 p.m. to 12:15 p.m., April 6, 2000. Topics to be discussed are the Fee Demonstration Program Recommendations, Strategic Plan Update and reports from Coordinators of Subcommittees.

DATES: The meeting will begin at 8:00 a.m. and run to 4:00 p.m. April 6, 2000.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, P.O. Box 987, Baker City, OR 97814, (Telephone 541–523–1845).

Juan Palma,

Vale District Manager.

[FR Doc. 00–6529 Filed 3–15–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–00–1430–EU; AZA 29964, AZA 29970–AZA 29975, AZA 29977, AZA 29979–AZA 29983, AZA 29985–AZA 29989]

Arizona: Notice of Realty Action; Competitive Sale of Public Land In Quartzsite, La Paz County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of time notice; Correction.

SUMMARY: The Bureau of Land Management published an extension of time to complete a public land competitive sale in the **Federal Register** on October 15, 1999. The legal description inadvertently omitted parcels available for sale, and two case file numbers were omitted from the above description.

FOR FURTHER INFORMATION CONTACT: Debbie DeBock, Realty Specialist at (520) 317–3208.

Correction:

In the **Federal Register** dated October 15, 1999 (64FR55956), insert the following legal descriptions:

T. 4 N., R. 19 W.,
Sec. 22, NE¼NE¼SE¼;
Sec. 23, N½SW¼, S½ NE¼SW¼W¼, NW¼SW¼, N½SW¼SW¼,N½SE¼SW¼,SW¼ SE¼W¼;
Sec. 29, W½NE¼ NE¼ NE¼, W½NW¼NE¼NE¼, NW¼NE¼, W½NE¼NW¼, SE¼NE¼ NW¼,NW¼NW¼.
Aggregating 225.00 acres, more or less.

The following describes the corrected case file number error: AZA 29964, AZA 29970–AZA 29975, AZA 29977, AZA 29979–AZA 29983, AZA 29985–AZA 29989.

Dated: March 8, 2000.

Gail Acheson,

Field Manager.

[FR Doc. 00–6530 Filed 3–15–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES–N–62871, N–65749 and N–63203]

Notice of Realty Action: Lease/ Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and Public Purpose Lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land for elementary and middle schools.

Mount Diablo Meridian, Nevada

N–62871—T. 20 S., R. 59 E.,
Section 12,
SW¼NE¼NE¼,SE¼NW¼NE¼,
Containing 20.00 acres, more or less.
Elementary school site
N–65749—T. 22 S., R. 61 E.,
Section 28, lots 106, 115, 124, 132.
Containing 10.00 acres, more or less.
Roberta Cartwright Elementary School
N–63203—T. 19 S., R. 61 E.,
Section 21, lot 10 (Currently shown as the S½ lot 5 prior to resurvey), Containing 20.29 acres, more or less. Middle school site

The land is not required for any federal purpose. The leases/ conveyances are consistent with current Bureau planning for this area and would be in the public interest. The leases/ patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

3. Easements in favor of Clark County for roads, public utilities and flood control purposes in accordance with the Clark County Transportation Plan.

4. All valid and existing rights, which are identified in the respective case files.

The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (PL 105-263).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada. 89108 Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for school sites. Comments on the classifications are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for two elementary and a middle school site.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: February 28, 2000.

Rex Wells,

Assistant Field Manager, Las Vegas Field Office.

[FR Doc. 00–6462 Filed 3–15–00; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services, FY 2000 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services ("COPS") announces the Visiting Fellowship Program (VFP) designed to support training, technical assistance, research, program development and policy analysis to contribute to the use and enhancement of community policing to address crime and related problems in communities across the country.

The VFP is intended to offer researchers, policing professionals, community leaders, and policy analysts an opportunity to undertake independent research, problem development activities, and policy analysis designed to advance community policing in a variety of ways.

Two types of fellowships are available: Community Policing Training and Technical Assistance Fellowships, and Program/Policy Support and Evaluation (PPSE) Fellowships.

Community Policing Training and Technical Assistance Fellowships will offer police practitioners and community leaders the opportunity to participate in a community policing training program that is national in scope. PPSE Fellowships will offer police practitioners, researchers, and policy analysts the opportunity to support innovative community policing programs, to engage in activities to assess the effectiveness of community policing approaches, and to apply policy analysis skills to support the advancement of community policing nationwide.

Visiting fellows will study a topic of mutual interest to the Fellow and the COPS Office for up to 12 months. Residency in Washington, DC, is not required, but visits to the COPS Office are encouraged.

DATES: The application deadline is April 17, 2000. Application kits will be available by mid-March.

ADDRESSES: To obtain a copy of an application or for more information, call the U.S. Department of Justice Response Center at 1–800–421–6770. Application kits will be available mid-March and will also be posted on the COPS Office web site at http://www.usdoj.gov/cops.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center at 1–800–421–6770, or the COPS web site at: http://www.usdoj.gov/cops.

SUPPLEMENTARY INFORMATION:

Overview

The United States Department of Justice, Office of Community Oriented Policing Services (COPS) has been charged with the implementation of the Public Safety Partnerships and Community Policing Act of 1994 (42 U.S.C. 3796dd). Under this law, the COPS Office provides grants, cooperative agreements, and technical assistance to increase police presence, improve police and community partnerships designed to address crime and disorder, and enhance public safety. The VFP, which complements the COPS Office's efforts to add 100,000 officers to our nation's streets and support innovative community policing, is one of a wide variety of policing programs supported under this law.

The VFP is intended to offer researchers, policing professionals, community leaders, and policy analysts an opportunity to undertake independent research, problem development activities, and policy analysis designed to advance community policing in a variety of ways.

Two types of fellowships are available: Community Policing Training and Technical Assistance Fellowships and Program/Policy Support and Evaluation (PPSE) Fellowships.

Community Policing Training and Technical Assistance Fellowships will offer police practitioners and community leaders the opportunity to participate in a community policing training program that is national in scope. Fellows will work to broaden their knowledge of a training area that is directly related to community policing. The experience is intended to encourage the further development, enhancement, or renewed exploration of a particular training expertise that supports community policing. Fellows will deliver this expertise innovatively as well as provide technical assistance

to others. Under Community Policing Training and Technical Assistance Fellowships, Fellows may pursue initiatives designed to: (1) improve police-citizen cooperation and communication; (2) enhance police relationships within the criminal justice system, as well as at all levels of local government; (3) increase police and citizens' ability to innovatively solve community problems; (4) facilitate the restructuring of agencies to allow the fullest use of departmental and community resources; (5) promote the effective flow and use of information both within and outside of an agency; and/or (6) improve law enforcement responsiveness to members of the community.

PPSE Fellowships will offer police practitioners, researchers, and policy analysts the opportunity to support innovative community policing programs, to engage in activities to assess the effectiveness of community policing approaches, and to apply policy analysis skills to support the advancement of community policing nationwide. The experience is intended to encourage the further development, enhancement, or renewed exploration of program, policy, and evaluation issues that support community policing. This work will be shared with policy makers and practitioners through a variety of forums. Under PPSE Fellowships, Fellows may pursue a wide variety of initiatives. Topic areas of particular interest to the PPSE Division include, but are not limited to, the following goals: (1) improve the ability of policing agencies and community organizations to collect different types of information that will aid in collaborative problem solving efforts; (2) enhance current knowledge of how policing agencies evolve while implementing community policing; (3) enhance current knowledge about how various policing agencies utilize information technology to support crime reduction and community policing efforts; and/or (4) enhance current knowledge of or improve the ability of policing agencies to implement community policing and problem solving in other ways.

Visiting Fellows will study a topic of mutual interest to the Fellow and the COPS Office for up to 12 months. Residency in Washington, DC, is not required, but visits to the COPS Office are encouraged.

Grants or cooperative agreements under the VFP may support salary, fringe benefits, travel essential to the project, and miscellaneous supplies or equipment in support of the project. Reasonable costs for research assistants or support staff will also be considered. Reasonable relocation expenses and the cost of temporary housing also may be permitted in cases of relocation from a Fellow's permanent address.

Under the VFP, the COPS Office may award grants or enter into cooperative agreements with individuals, public agencies, colleges or universities, nonprofit organizations, and profit-making organizations willing to waive their fees.

Receiving a grant or cooperative agreement under the VFP will not affect the eligibility of an agency to receive awards under other COPS programs.

The selection process is expected to be highly competitive.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: March 6, 2000.

Thomas Frazier,

Director.

[FR Doc. 00–6533 Filed 3–15–00; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 2000 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services ("COPS") announces the availability of funds under the Tribal Resources Grant Program, a program designed to meet the most serious needs of law enforcement in Indian communities through a broadened, comprehensive hiring program that will offer a "menu of options" from salary and benefits for new police personnel to funding for law enforcement training and equipment for new and existing officers. This program, which complements the COPS Office's efforts to fund 100,000 additional community policing officers and to support innovative community policing, will enhance law enforcement infrastructures and community policing efforts in tribal communities which have limited resources and are affected by high rates of crime and violence. Applications should reflect the department's most serious law enforcement needs and must link these needs to the implementation or enhancement of community policing. In addition, a written plan to retain COPS-funded officer positions after federal funding has ended must be submitted with the grant application.

All Federally Recognized Tribes with established police departments or existing police efforts are eligible to apply. Tribes that wish to establish police departments and meet specific criteria are eligible to apply. Tribes or villages may also apply as a consortium with a written partnership agreement that names a lead agency and describes how requested resources will serve the consortium's population. In addition, tribes that are currently served by Bureau of Indian Affairs (BIA) law enforcement may request funding under this grant program to supplement their existing police services. Tribes whose law enforcement services are provided by local policing agencies through a contract agreement are not eligible under the COPS program, but may apply to the COPS Universal Hiring Program for police officer positions only.

DATES: Applications will be sent to all Federally Recognized Tribes with existing law enforcement efforts by early March 2000. Tribes or villages that wish to apply as a start-up or consortium may request an application kit from the COPS Office. The deadline for the submission of applications is May 5, 2000. Applications must be postmarked by May 5, 2000, to be eligible.

ADDRESSES: To obtain an application or for more information, call the U.S. Department of Justice Response Center at 1–800–421–6770. A copy of the application kit will be available in early March on the COPS Office web site at:http://www.usdoj.gov/cops.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, 1–800–421–6770 or your grant advisor.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. As part of the Clinton Administration's commitment to combat and prevent crime in America's Tribal communities, the Justice Department's Office of Community Oriented Policing Services (COPS) has made funding available through the Tribal Resource Grant Program, a program developed to meet the most serious needs of law enforcement in Indian communities through a broadened, comprehensive hiring program that will offer a "menu of options" from salary and benefits for new police personnel to funding for law

enforcement training and equipment for new and existing officers. This program, which complements the COPS Office's efforts to fund 100,000 additional community policing officers and support innovative community policing, will enhance law enforcement infrastructures and community policing efforts in these Tribal communities, many of which have limited resources and are affected by high rates of crime and violence.,

The Tribal Resources Grant Program is part of a larger federal initiative which over the last three years, has resulted in the Department of Interior and Justice working in collaboration to improve law enforcement in tribal communities. A total of $91.5 million has been appropriated to several DOJ agencies including the FBI, the Bureau of Justice Assistance (BJA), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Corrections Program Office (CPO), and the COPS Office. COPS is coordinating with these agencies as well as with the Office of Law Enforcement Services of the Bureau of Indian Affairs to ensure that limited resources are not spent on duplicative efforts.

The Tribal Resources Grant will provide tribal communities with the resources to: hire new police officers; train new and existing officers in community policing, grants management and computer training as well as basic police training at a state academy or the Indian Police Academy in Artesia, NM; and provide basic standard issue equipment, ranging from bullet-proof vests and uniforms, to firearms and portable radios.

The Tribal Resources Grant Program emphasizes deployment of officers and resources into communities that are affected by high rates of crime and violence. Applicants must submit a written plan to retain their COPS-funded officer positions after federal funding has ended. This plan must be submitted to the COPS Office with the Tribal Resource Grant Program application.

A total of $40,000,000 in funding will be available under the Tribal Resources Grant Program. The grant will cover a maximum federal Share of 75% of total project costs, including approved salary and benefits of entry-level police officers (up to a maximum of $75,000 per officer over three years), basic law enforcement training and equipment, vehicles, and technology. A local match requirement of 25% of the total project costs is included in this program. A waiver of the local match requirement may be requested but will be granted only on the basis of documented demonstrated fiscal hardship. Requests for waivers must be submitted with the application.

Tribes whose law enforcement services are provided by local policing agencies through contract arrangements are not eligible under this COPS program. However, tribes that do not meet the eligibility requirements for this program may apply to the COPS Office Universal Hiring Program for police officer positions only.

Receiving an award under the Tribal Resources Grant Program will not preclude grantees from future consideration under other COPS grant programs for which they are eligible.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16,710.

Dated: March 6, 2000.

Thomas Frazier,

Director.

[FR Doc. 00–6534 Filed 3–15–00; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Public Meeting; Concerning Heavy Duty Diesel Engine Consent Decrees

The Department of Justice and the Environmental Protection Agency announce a public meeting to be held on March 21, 2000 from 10:00 a.m. to 12:00 p.m. at 1425 New York Ave., N.W., 13th Floor Conference Room, Washington, DC. The subject of the meeting will be implementation of the provisions of seven consent decrees signed by the United States and diesel engine manufacturers and entered by the United States District Court for the District of Columbia on July 1, 1999. In supporting entry by the Court of the decrees, the United States committed to meet with states, industry groups, environmental groups, and concerned citizens to discuss consent decree implementation issues. This will be the third of a series of public meetings to be held quarterly during the first year of implementation of the consent decrees and at least annually thereafter. Future meetings will be announced in the **Federal Register** and/or on EPA's Diesel Engine Settlement web page at: www.epa.gov/oeca/ore/aed/diesel.

Topics covered will likely include the manufacturers' progress toward meeting the emission standards in the Consent Decrees and EPA's recent approval of the manufacturers' Project proposals. Interested parties may contract the Environmental Protection Agency prior to the meeting at the address listed below with questions or suggestions for other topics of discussion.

For further information, please contact: Anne Wick, EPA Diesel Engine Consent Decree Coordinator, U.S. Environmental Protection Agency (Mail Code 2242A), EPA Headquarters, Washington, DC 20460, e-mail: WICK.ANNE@EPA.GOV.

Joel M. Gross,

Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 00–6532 Filed 3–15–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq.

Under 28 CFR 50.7, notice is hereby given that on March 2, 2000, a proposed partial consent decree ("consent decree") in *United States* v. *Excel Corp.*, Civil Action No. 3:93CV119RM, was lodged with the United States District Court for the Northern District of Indiana.

In this action the United States sought recovery, under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), of response costs incurred in connection with the Main Street Well Field Site in Elkhart, Indiana ("Site"). The proposed consent decree provides for the payment by American Electronic Components, Inc., successor by statutory merger to defendant Durakool, Inc. ("AEC/Durakool"), of $2,700,000 of the United States' unrecovered response costs at the Site, plus interest.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Excel Corp.*, D.J. Ref. No. 90–11–3–799.

The proposed consent decree may be examined at the Office of the United States Attorney, 301 Federal Building, 204 South Main Street, South Bend, Indiana; and at the Region 5 Office of EPA, 77 West Jackson Blvd., Illinois 60604. A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a

copy, please enclose a check in the amount of $9.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–6536 Filed 3–15–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Pursuant to Section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 966(d)(2), and 28 CFR 50.7, notice is hereby given that on March 1, 2000, a proposed Consent Decree in *United States* v. *James E. Nichols, et al.* Civil Action No. IP97–2007 C, was lodged with the United States District Court for the Southern District of Indiana for a period of thirty days to facilitate public comment.

This Consent Decree represents a settlement of claims of the United States against Denver Smith and Rex A. Warthen ("Settling Defendants"), for reimbursement of response costs in connection with the Custom Finishing Site ("Site") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq*. Under this settlement with the United States, the Settling Defendants will pay $160,000, plus interest, for reimbursement of past response costs in connection with the Custom Finishing Site ("Site") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq*.

The Department of Justice will receive for a period of Thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resource Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *James E. Nichols, et al.*, DOJ No,. 90–11–3–1766.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Indiana, U.S. Courthouse, Fifth Floor, 46 East Ohio Street, Indianapolis, IN 46204 (317/226–6333), and at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard (312/886–6630).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–6535 Filed 3–15–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on March 3, 2000, a proposed Consent Decree in *United States of America and County of Allegheny, Pennsylvania* v. *Shenango Incorporated,* Civil Action 80–1172, was lodged with the United States District Court for the Western District of Pennsylvania.

In this action the United States sought civil contempt for violations of a Consent Decree between the same parties that resolved a prior civil contempt action in the same case (1993 Decree). The newly lodged Consent Decree is proposed to resolve Shenango's alleged violations of the 1993 Decree, which incorporates Allegheny County regulations enforceable under the Clean Air Act, 42 U.S.C. 7401, *et seq*.

The site of the alleged violations is Shenango's coke oven battery on Neville Island, located in the Ohio River approximately five miles from Pittsburgh, Pennsylvania. In settlement, Shenango will pay a civil penalty of $2,100,000 and accept a mandatory injunction. Under the injunction, Shenango is required to continue with major renovations to its desulfurization system and to make formal and improve a program designed to reduce or eliminate violations of Allegheny County's visible emission standard for coke oven combustion stacks. Further, Shenango has agreed to substantial stipulated penalties for any future violations of Allegheny County's desulfurization and combustion stack visible emission standards.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 2004–7611, and should refer to *United States et al.* v. *Shenango Incorporated,* DOJ Ref. #90–5–2–3–1099/1.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, 7th and Grant Streets, Pittsburgh, Pennsylvania 15219, the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Allegheny County Health Department Library, Building #7, 301 39th Street, Pittsburgh, Pennsylvania 15201–1891 (between the hours of 8:30 a.m. and 4:30 p.m.) A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. The proposed Consent Decree contains 119 pages, including attachments. To obtain the Consent Decree without attachments, please enclose a check for $19.00 (25 cents per page reproduction cost) payable to the Consent Decree Library. To obtain the entire Decree, including attachments, please enclose a check to the Consent Decree Library in the amount of $29.75. In all correspondence, please refer to the case by its title and DOJ Ref. #90–5–2–3–1099/1.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–6537 Filed 3–15–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

109th Full Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 109th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held Monday, April 3, 2000, in Room S–2508, U.S. Department of Labor Building, Third and Constitution Avenue, NW, Washington, DC 20210.

The purpose of the meeting, which will begin at 1:30 p.m. and end at approximately 3:00 p.m., is to consider the items listed below:

I. Welcome and Introduction and Swearing In of New Council Members
II. Report from the Acting Assistant Secretary of Labor for the Pension and Welfare Benefits Administration (PWBA)
  A. PWBA Priorities for 1999
  B. Announcement of Council Chair

and Vice Chair
III. Introduction of PWBA Senior Staff
IV. Summary of the Final Reports Made by Advisory Council Working Groups for the 1999 Term
V. Determination of Topics to Be Addressed by council Working Groups for 2000
VI. Statements from the General Public
VII. Adjournment

Members of the public are encouraged to file a written statement pertaining to any topics the Council may wish to study for the year concerning ERISA by submitting 20 copies on or before March 28, 2000 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by March 28 at the address indicated.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before March 28, 2000.

Signed at Washington, DC this 10th day of March 2000.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 00–6515 Filed 3–15–00; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection of: Blanket Justification for NEA Funding Application Guidelines FY 2000–FY 2004. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before May 15, 2000. The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

ADDRESSES: A.B. Spellman, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 516, Washington, DC 20506–0001, telephone (202) 682–5421 (this is not a toll-free number), fax (202) 682–5049.

Murray Welsh,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 00–6519 Filed 3–15–00; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Extend an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received by May 15, 2000, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125 x 2017; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Request for Proposals.

OMB Approval Number: 3145–0080.

Expiration Date of Approval: July 31, 2000.

Type of Request: Intent to seek approval to extend an information collection for three years.

Proposed Project: The Federal Acquisition Regulations (FAR) Subpart 15.4—"Solicitation and Receipt of Proposals" prescribes polices and procedures for preparing and issuing Requests for Proposals. The FAR System has been developed in accordance with the requirement of the Office of Federal Procurement Policy Act of 1974, as amended. The NSF Act of 1950, as amended, 42 U.S.C. 1870, Sec. II, states that NSF has the authority to:

(c) Enter into contracts or other arrangements, or modifications thereof,

for the carrying on, by organizations or individuals in the United States and foreign countries, including other government agencies of the United States and of foreign countries, of such scientific or engineering activities as the Foundation deems necessary to carry out the purposes of this Act, and, at the request of the Secretary of Defense, specific scientific or engineering activities in connection with matters relating to international cooperation or national security, and, when deemed appropriate by the Foundation, such contracts or other arrangements or modifications thereof, may be entered into without legal consideration, without performance or other bonds and without regard to section 5 of title 41, U.S.C.

Use of the Information: Request for Proposals (RFP) is used to competitively solicit proposals in response to NSF need for services. Impact will be on those individuals or organizations who elect to submit proposals in response to the RFP. Information gathered will be evaluated in light of NSF procurement requirements to determine who will be awarded a contract.

Estimate of Burden: The Foundation estimates that, on average, 558 hours per respondent will be required to complete the RFP.

Respondents: Individuals; business or other for-profit; not-for-profit institutions; Federal government; state, local, or tribal governments.

Estimate Number of Responses: 75.

Estimated Total Annual Burden on Respondents: 41,580 hours.

Dated: March 13, 2000.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 00–6562 Filed 3–15–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation et al. (Crystal River Unit 3); Exemption

I

Florida Power Corporation et al. (FPC or the licensee) is the holder of Facility Operating License No. DPR–72, which authorizes the operation of Crystal River Unit 3 (CR–3). The license states that the licensee is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

The facility consists of a pressurized-water reactor at the licensee's site located in Citrus County, Florida.

II

Title 10 of the Code of Federal Regulations (10 CFR), Part 70, Section 70.51, "Material balance, inventory, and records requirements," in sub-section (c) states that "Each licensee who is authorized to possess at any one time special nuclear material in a quantity exceeding one effective kilogram of special nuclear material shall establish, maintain, and follow written material control and accounting procedures that are sufficient to enable the licensee to account for the special nuclear material in the licensee's possession under license." Sub-section (d) states that "Except as required by paragraph (e) of this section, each licensee who is authorized to possess at any one time and location special nuclear material in a quantity totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall conduct a physical inventory of all special nuclear material in his possession under license at intervals not to exceed twelve months."

By letter dated July 14, 1999, the licensee requested an exemption from the requirement of 10 CFR 70.51(d) that requires a 12-month physical inventory of the fuel in the spent fuel pool (SFP) due to the positioning of missile shields over the pool. The proposed exemption would allow the physical inventory of the special nuclear material (SNM) located in the CR–3 SFP to be performed each refueling outage, when the missile shields are removed for fuel movement, without having to perform physical inventories between outages if the missile shields have not been removed for other reasons. In order to perform the physical inventory, the licensee must remove four of the missile shields, which weigh approximately 6200 pounds each. Approximately two-man weeks of labor are required to perform the physical inventory if shield removal and re-installation are necessary. An exemption from this requirement would reduce the burden associated with the physical inventories as well as the personal safety risks associated with movement of the missile shields.

III

Pursuant to 10 CFR 70.14, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

The underlying purpose of the physical inventory required by 10 CFR 70.51(d) is to verify that the material control and accounting procedures are sufficient to enable the licensee to account for the SNM in the licensee's possession under license. The CR–3 SFP has missile shields installed directly over the SFP to provide protection from tornado generated missiles. These shields are required to be installed at all times except when performing activities associated with handling fuel or pool maintenance. The missile shields weigh approximately 6200 pounds each and each is secured in place by four bolts. Movement of the missile shields requires the use of shield-handling devices and auxiliary building cranes.

The missile shields provide a physical barrier over the entire SFP, preventing access to the fuel in the SFP without first removing the shields. In addition, when the missile shields are in place, the Fuel Handling Bridge is immobilized. Thus, the missile shields serve to restrict access to the fuel in the SFP and protect the SNM from inadvertent and unauthorized movements or damage. Therefore, while the missile shields are installed, the inventory of SNM in the SFP cannot change.

Removal and installation of the SFP missile shields are administratively controlled by Refueling Procedure FP–434, "Spent Fuel Pool Missile Shields." Prior to movement of any missile shield, the Nuclear Shift Manager must be notified. Thus, required adherence to the refueling procedures will control access to the SFP by controlling movement of the missile shields.

Instead of performing the physical inventory of SNM in the SFP every 12 months, FPC will perform a physical inventory of the SFP within 90 days of removing the missile shields over the fuel in the SFP, if a physical inventory has not been performed within the preceding 12 months. This will allow the physical inventory to be performed each refueling outage without having to remove the SFP missile shields solely to perform physical inventories between outages.

Based on the above, the staff finds that an exemption from the requirement to perform a physical inventory of the SNM in the SFP every 12 months is acceptable, in that the missile shields, in conjunction with the administrative controls governing their movement, ensure proper accountability of the SNM in the SFP between periods when the shields are removed.

IV

For the foregoing reasons, the NRC staff has determined that the proposed alternative measures for physical inventories of SNM in the CR–3 spent fuel pool continue to meet the requirements of 10 CFR 70.51 when the missile shields, which represent a physical barrier, are in place. A specific exemption is granted to the requirements in 10 CFR 70.51(d) for conducting a twelve-month physical inventory of SNM located in the CR–3 spent fuel pool.

Accordingly, the Commission has determined that the proposed change: (1) is authorized by law; (2) will not endanger life or property; (3) will not endanger the common defense and security; and (4) is otherwise in the public interest. Therefore, the Commission hereby grants Florida Power Corporation the following exemption:

The Florida Power Corporation, et al., is exempt from the requirements of 10 CFR 70.51(d) with respect to performing a physical inventory of the special nuclear material in the Crystal River Unit 3 spent fuel pool every 12 months. A physical inventory of the special nuclear material in the spent fuel pool will be conducted within 90 days of removal of the missile shields over the fuel in the spent fuel pool, if a physical inventory has not been performed within the preceding 12 months. This exemption only applies to the special nuclear material located in the Crystal River Unit 3 spent fuel pool.

Pursuant to 10 CFR 51.32, the Commission has determined that this exemption will not have a significant effect on the quality of the human environment (65 FR 12592).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 9th day of March 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–6499 Filed 3–15–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Company; Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–63, issued to Carolina Power & Light Company (CP&L, the licensee), for operation of the Shearon Harris Nuclear Power Plant, Unit 1, (HNP) located in Wake and Chatham Counties, North Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action is a one time exemption from the requirements of Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix E, Items IV.F.2.b and c regarding conduct of a full participation exercise of the onsite and offsite emergency plans every 2 years. Under the proposed exemption, the licensee would reschedule the exercise originally scheduled for September 21, 1999, and complete the onsite and offsite exercise requirements in two parts. The licensee would use the onsite exercise conducted on January 11, 2000, without the participation of the State of North Carolina and local government response agencies, to meet the onsite requirement. The offsite portion of the exercise would be conducted on June 27, 2000, with the participation of the State of North Carolina and local government response agencies.

The proposed action is in accordance with the licensee's application for an exemption dated December 7, 1999.

The Need for the Proposed Action

10 CFR Part 50, Appendix E, Items IV.F.2.b and c requires each licensee at each site to conduct an exercise of its onsite and offsite emergency plan every 2 years. Federal agencies (the Nuclear Regulatory Commission for the onsite exercise portion and the Federal Emergency Management Agency for the offsite exercise portion) observe these exercises and evaluate the performance of the licensee, State and local authorities having a role under the emergency plan.

The licensee had initially planned to conduct an exercise of its onsite and offsite emergency plan on September 21, 1999, within the required 2-year required interval. However, due to the significant impact and damage from hurricane "Floyd," the State of North Carolina and the local emergency response agencies were occupied with responding to the natural disaster and were unable to participate in and could not support the exercise.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action involves an administrative activity (a schedular change in conducting an exercise) unrelated to plant operations.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Shearon Harris Nuclear Power Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on February 22, 2000, the staff consulted with the North Carolina State official, Mr. Johnny James of the North Carolina Department of Environment and Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments. In addition, by letter dated January 19, 2000, from Ms. Vanessa Quinn, the Federal Emergency Management Agency indicated support for rescheduling the exercise.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 7, 2000, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 9th day of March 2000.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Project Manager, Secton 2 Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–6500 Filed 3–15–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Workshop on Prioritizing Nuclear Materials Regulatory Applications for New Risk-Informed Approaches

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff is in the initial stage of developing an approach for using risk information in the nuclear materials regulatory process. As a first step, the NRC staff has developed draft screening criteria for new regulatory applications to meet to be candidates for expanded use of risk information. The NRC staff has scheduled a workshop to (1) solicit public input in the development of these screening criteria and their applications, and (2) solicit public input in the process for developing appropriate nuclear materials safety goals. The meeting is open to the public and all interested parties may attend and provide comments.

DATES: The workshop will be held on April 25, 2000 from 9:00 a.m. to 5:00 p.m. and April 26, 2000 from 8:30 a.m. to 12:00 noon. Submit comments by May 19, 2000.

ADDRESSES: Exact location of the workshop has yet to be determined, but will be in the Washington, D.C. metropolitan area. When available, the location will be posted on the NRC website (*www.nrc.gov*) under meeting notices. Mail written comments to David L. Meyer, Chief, Rules and Directives Branch, T6–D59, Washington, D.C., 20555–0001.

FOR FURTHER INFORMATION, CONTACT: Stacey Rosenberg, Mail Stop T–8–K10, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–8117; Internet: SLR1@NRC.GOV. An agenda will be available to the public and will be distributed to participants prior to the workshop. Contact the workshop facilitator, Chip Cameron, regarding the agenda and workshop location. Telephone: 301–415–1642; Internet: FXC@NRC.GOV.

SUPPLEMENTARY INFORMATION: In SECY–99–100, "Framework for Risk-informed Regulation in the Office of Nuclear Material Safety and Safeguards", dated March 31, 1999, the NRC staff proposed a framework for risk-informed regulation in the Office of Nuclear Material Safety and Safeguards (NMSS). On June 28, 1999, the Commission approved the staff's proposal. In the associated staff requirements memorandum (SRM), the Commission approved the staff's recommendation to implement a five-step process consisting of:

(1) Identifying candidate regulatory applications that are amenable to expanded use of risk assessment information;

(2) Making a decision on how to modify a regulation or regulated activity;

(3) Changing current regulatory approaches;

(4) Implementing risk-informed approaches; and

(5) Developing or adapting existing tools and techniques of risk analysis to the regulation of nuclear materials safety and safeguards.

The focus of this workshop will be on (1) The process for identifying the specific regulatory applications that are amenable to expanded use of risk assessment information—step 1 of the five-step process—and (2) the process for developing appropriate nuclear materials safety goals. Step one of the five-step process will be accomplished by first defining screening criteria and then identifying regulatory application areas (e.g., licensing, inspection, rulemaking) that would be amenable to risk-informed approaches. These could, for example, include rulemaking activities, licensee performance assessment, or enforcement of regulatory requirements. Because of limited resources, the NRC staff is proposing a step-by-step approach, rather than a comprehensive reevaluation in all areas. The NRC staff's work to implement subsequent steps, namely steps 2 through 5 of the five-step process, will be prioritized based on safety, efficiency and effectiveness, and burden reduction.

The NRC staff proposes the following approach for step 1. A new regulatory application should meet the following draft screening criteria to be a candidate for expanded use of risk information:

1. A proposed risk-informed regulatory approach to a new licensing or inspection activity will resolve a question with respect to maintaining or improving the activity's safety basis, will improve the efficiency or the effectiveness of NRC processes, or will reduce unnecessary regulatory burden for the applicant or licensee;

2. Sufficient information (data), and analytical methods exist or can be developed to support risk-informing a regulation or regulatory activity;

3. Startup and implementation can be realized at a reasonable cost to the NRC and the applicant or licensee, and provide a net benefit. The net benefit will be considered to apply to the public, the applicant or licensee, and the NRC staff.

The NRC staff requests public comments on these draft criteria.

Related to the criteria, the NRC staff is also soliciting comments on the following items and questions. The intent of publishing these questions is to foster discussion about the issues at the workshop.

1. What specific applications or general areas of nuclear materials regulation do you believe NRC should focus its efforts in applying risk information to its regulatory framework, and why?

2. Will the various segments of the regulated community accept more risk-informed approaches in regulatory applications?

3. What factors should be considered in prioritizing NRC's efforts to systematically review regulatory activities for application of risk information?

4. How can data collection and processing information be enhanced without significant additional burden to licensees and applicants?

5. Could measures be made available under a more risk-informed approach which would allow the agency and the licensees to judge performance, recognize weaknesses, and provide opportunities for correction before significant safety issues or events occur?

6. What are the costs and benefits of risk-informing NMSS licensing and inspection activities?

In addition, in its SRM on SECY–99–100, the Commission directed the NRC staff to develop appropriate material safety goals analogous to the reactor safety goals and include, as a goal, the

avoidance of property damage. The NRC staff will open a discussion on a process for developing material safety goals during this workshop with the following questions and considerations:

1. What are your perceptions of a safety goal for nuclear materials?
2. What would be an effective process for developing nuclear materials safety goals?
3. How can the safety goal development process contribute to improving the regulatory process by helping to identify and articulate the underlying safety philosophy and safety principles currently driving the spectrum of NMSS programs?
4. What factors should be considered in the development of nuclear materials safety goals?
5. What aspects of future nuclear material safety goals can or should be analogous to the reactor safety goals?
6. Should separate safety goals for each activity regulated under each program area be contemplated?
7. What areas will have the greatest impact as a result of having a safety goal or goals?
8. How resource intensive will it be to develop a safety goal or goals?
9. What would change as a result of having safety goals (lives saved, costs savings, increased public confidence)?

The workshop will be conducted in a "roundtable" format. In order to have a manageable discussion, the number of participants around the table will, of necessity, be limited. NRC, through the facilitator for the meeting, will attempt to ensure broad participation by the broad spectrum of interests at the meeting, including citizen and environmental groups, nuclear industry interests, state, tribal, and local governments, experts from academia, or other agencies. Other members of the public are welcome to attend, and the public will have the opportunity to comment on each agenda item to be discussed by the roundtable participants.

Dated at Rockville, MD, this 9th day of March, 2000.

For the Nuclear Regulatory Commission

Donald A. Cool,

Director, Division of Industrial and Medical.

Nuclear Safety, NMSS

[FR Doc. 00–6501 Filed 3–15–00; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) publishes periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility,and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Hospital Insurance Benefits; OMB 3220–0082. Under Section 7(d) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the railroad retirement system. The RRB currently uses Form AA–6, Employee Application for Medicare; Form AA–7, Spouse/Divorced Spouse Application For Medicare; and Form AA–8, Widow/Widower Application for Medicare; to obtain the information needed to determine whether individuals who have not yet filed for benefits under the RRA are qualified for Medicare payments provided under Title XVIII of the Social Security Act. Completion is required to obtain a benefit. One response is requested of each respondent. The RRB proposes minor editorial changes to Forms AA–6, AA–7 and AA–8. The RRB estimates that 180 Form AA–6's, 50 Form AA–7's, and 10 Form AA–8's are completed annually. The completion time for each form is estimated at 8 minutes.

The renewal of this information collection will begin the RRB's initiative to consolidate information collections by major functional areas. The purpose of the initiative is to bring related collection instruments together in one collection, better manage the instruments, and prepare for the electronic collection of this information. (A collection instrument can be an individual form, electronic collection, interview, or any other method that collects specific information from the public.)

As part of the OMB renewal process, the RRB also proposes that this collection (OMB 3220–0082), Application for Hospital Insurance Benefits, be renamed Medicare. Upon approval by OMB, the RRB intends to merge the following OMB approved Medicare-related collections into this collection by the expected expiration date(s).

OMB Collection No.	Title	RRB forms	Expected expiration date
3220–0189	Evidence of Coverage Under an Employer Group Health Plan	RL–311–F	9/30/2001
3220–0185	Report of Medicaid State Office on Beneficiary's Buy-In Status	RL–380F	7/31/2002
3220–0086	Application for Reimbursement for Hospital Insurance Services in Canada	AA–104	7/31/2002
3220–0131	Request for Medicare Payment	G–740S	8/31/2002
3220–0100	Request for Review of Part B Medicare Claim	HCFA–1500 G–790 G–791	11/30/2002.

Revisions to existing collection instruments and, occasionally, a new instrument related to this program function may be required during the three-year cycle of this information collection.

The RRB currently estimates the completion time for Form RL–311–F, Evidence of Coverage Under an Employer Group Health Plan at 10 minutes, Form RL–380F, Report of Problem to State Welfare Agency on Enrollees Medicare Status at 10 minutes, Form AA–104, Application for Reimbursement for Hospital Insurance Services in Canada at 10 minutes, Form G–740S, Patient's Request for Medicare Payment at 15 minutes, Form G–790, Request for Review of Part B Medicare Claim at 15 minutes, and Form G–791, Request for Hearing, Part B Medicare Claim at 15 minutes. After the last information collection is merged and other necessary adjustments are made,

the resultant information collection is expected to total approximately 1,500 annual burden hours.

A justification for each action described above (merge collection, revised collection instrument, new collection instrument) will be provided to OMB with a correction Change Worksheet (OMB Form 83–C) at the time the action occurs. With the next renewal of this collection, the RRB will update the information collection package to account for the consolidation and other interim adjustments.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–6538 Filed 3–15–00; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on March 22, 2000, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Proposed Legislation.

(2) Medicare Contract.

Portion Closed to the Public

(A) Guidance of the Executive Committee.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: March 13, 2000.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–6612 Filed 3–14–00; 10:37 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15g–3, SEC File No. 270–346, OMB Control No. 3235–0392; Rule 15g–6, SEC File No. 270–349, OMB Control No. 3235–0395.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension on the following rules:

Rule 15g–3 requires that brokers and dealers disclose to customers current quotation prices or similar market information in connection with transactions in penny stocks. It is estimated that approximately 270 respondents incur an average burden of 100 hours annually to comply with the rule.

Rule 15g–6 requires brokers and dealers that sell penny stocks to their customers to provide monthly account statements containing information with regard to the penny stocks held in customer accounts. It is estimated that approximately 270 respondents incur an average burden of 90 hours annually to comply with the rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Dated: March 9, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6517 Filed 3–15–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–7808, File No. S7–08–00]

Securities Uniformity; Annual Conference on Uniformity of Securities Laws

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Conference; Request for Comments.

SUMMARY: The Commission and the North American Securities Administrators Association, Inc. today announced a request for comments on the proposed agenda for their annual conference to be held on April 3, 2000. This meeting seeks to carry out the policies and purposes of Section 19(c) of the Securities Act of 1933, which are to increase cooperation between the Commission and state securities regulatory authorities in order to maximize the effectiveness and efficiency of securities regulation.

DATES: The conference will be held on April 3, 2000. We must receive your written comments by March 30, 2000 in order to be considered by conference participants.

ADDRESSES: Please send three copies of written comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0609. Comments also can be sent electronically to the following E-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–08–00; if E-mail is used, please include this file number on the subject line. Anyone can inspect and copy the comment letters at our Public Reference Room, 450 5th Street, N.W., Washington, D.C. 20549–0102. All electronic comment letters will be posted on the Commission's internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: John Reynolds, Office of Small Business Review, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0304, (202) 942–2950.

SUPPLEMENTARY INFORMATION:

I. Discussion

The federal government and the states have jointly regulated securities offerings and the securities industry since the adoption of the federal regulatory structure in the Securities Act of 1933 (the "Securities Act").[1] Issuers trying to raise capital through securities offerings, as well as participants in the secondary trading markets, must comply with the federal securities laws as well as all applicable state laws and regulations. Parties involved in this process have long recognized the need to increase uniformity and cooperation between the federal and state regulatory systems so that capital formation can be made

[1] 15 U.S.C. 77a *et seq.*

easier while investor protections are retained.

Congress endorsed greater uniformity in securities regulation with the enactment of Section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980.[2] Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out that Section's policy and purpose. Section 19(c) mandates greater federal and state cooperation in securities matters in order to:

- Maximize effectiveness of regulation;
- Maximize uniformity in federal and state standards;
- Minimize interference with the business of capital formation; and
- Reduce the costs, paperwork and burdens of raising investment capital, particularly by small business, and also reduce the costs of the government programs involved.

The Commission is required to conduct an annual conference to establish ways to achieve these goals. The 2000 meeting will be the seventeenth conference.

During 1996, Congress again examined the system of dual federal and state securities regulation. It considered the need for regulatory changes to promote capital formation, eliminate duplicative regulation, decrease the cost of capital and encourage competition, while at the same time promoting investor protection. Congress passed The National Securities Markets Improvement Act of 1996[3] (the "1996 Act") as a result. The 1996 Act contains significant provisions that realign the partnership between federal and state regulators. The legislation reallocates responsibility for regulation of the nation's securities markets between the federal government and the states in order to eliminate duplicative costs and burdens and improve efficiency, while preserving investor protections.

II. 2000 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA")[4] are planning the 2000 Conference on Federal-State Securities Regulation to be held April 3, 2000 in Washington, D.C. At the conference, Commission and NASAA representatives will divide into working groups in the areas of corporation finance, market regulation and oversight, investment management, investor education, and enforcement. Each group will discuss methods to enhance cooperation in securities matters and improve the efficiency and effectiveness of federal and state securities regulation. Generally, only Commission and NASAA representatives may attend the conference to encourage open and frank discussion. However, each working group in its discretion may invite specific self-regulatory organizations to attend and participate in certain sessions.

The Commission and NASAA are preparing the conference agenda. We invite the public, securities associations, self-regulatory organizations, agencies, and private organizations to participate by submitting written comments on the issues set forth below. In addition, we request comment on other appropriate subjects. Conference attendees will consider all comments.

III. Tentative Agenda and Request for Comments

The tentative agenda for the conference consists of the following topics in the areas of corporation finance, market regulation, investment management, investor education, and enforcement.

(1) Corporation Finance Issues

The 1996 Act amended section 18 of the Securities Act[5] to preempt state blue-sky registration and review of offerings of covered securities.[6] Covered securities, as defined by Section 18, include several types of securities. One class of covered securities are securities traded on the national markets like the New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange LLC ("Amex") and the Nasdaq National Market System ("Nasdaq/NMS"). Covered securities also include registered investment company securities and some exempt securities and offerings.

The states retain some authority over offerings of covered securities despite this preemption. Except for nationally-traded securities, the states have the right to require fee payments and notice filings. The states also retain anti-fraud authority over all securities offerings, including offerings of covered securities.

Securities that are not covered securities remain subject to state registration requirements. These securities generally include the securities of smaller companies, like those quoted on the Nasdaq SmallCap market or the over-the-counter Bulletin Board, or in the "pink sheets." Securities issued under some federal exemptions from registration are not covered securities; the states retain authority to register or exempt those securities. These include securities issued in unregistered offerings under the following exemptions:

- Section 4(2) of the Securities Act where the offering does not meet the safe harbor requirements of Rule 506 of Regulation D;[7]
- Regulation A;[8] and
- Rules 504 and 505 of Regulation D.[9]

The states' authority over securities offerings, particularly their ability to register and review offerings of non-covered securities, continues the need for uniformity between the federal and state registration systems, where consistent with investor protection. Staff from the Commission's Division of Corporation Finance and state representatives will discuss ways to increase uniformity between the systems. The group will focus primarily on the following topics:

A. State Small Business Initiatives

The group will discuss several state initiatives designed to facilitate offerings by smaller issuers. These include:

- The Small Company Offering Registration ("SCOR") form and state Regional Review Programs;
- The NASAA model state accredited investor exemption; and
- The Coordinated Equity Review ("CER") program.

1. Small corporate offering registration; Regional review

NASAA adopted the SCOR form in 1989 to help small businesses raise seed capital to expand their operations through small securities offerings. The SCOR form is a simplified question and answer format used for the registration of securities offerings. Virtually all the states permit offerings on this form. It is used to register securities offerings exempt from federal registration under Rule 504 of Regulation D or Regulation A. More than 1,100 companies across the country have issued securities under the SCOR form. In September, 1999,

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[2] Pub. L. 96–477, 94 Stat. 2275 (October 21, 1980).

[3] Pub. L. 104–290, 110 Stat. 3416 (October 11, 1996).

[4] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and twelve Canadian Provinces and Territories.

[5] 15 U.S.C. 77r.

[6] 15 U.S.C. 77r(a) and (b).

[7] 17 CFR 230.501 through 230.508.

[8] 17 CFR 230.251 through 230.263.

[9] 17 CFR 230.504 and 230.505. Besides the listed securities, other securities also are not considered covered securities. These include securities traded on regional exchanges and asset-backed and mortgage-backed securities.

NASAA approved changes to simplify and improve the SCOR form.

The SCOR form disclosure requirements are the basis for one disclosure format for securities offerings exempt from federal registration under Regulation A. The Regulation A exemption allows companies that do not file reports with the Commission to offer and sell up to $5 million of securities within any twelve-month period without federal registration. An issuer seeking to rely on Regulation A must file an offering statement with the Commission, including, among other things, a disclosure document called an offering circular. Issuers may provide non-financial disclosure in their offering circulars based on one of three formats. One format includes the disclosure requirements of the state SCOR form. The group will discuss steps to address the revised SCOR form at the federal level, such as plans to amend Regulation A to incorporate the revised form.

Many states use a coordinated program to review state registrations using the SCOR form, the "Regional Review Program." Under this program, states in certain regions of the country elect one state to lead the review and issue comments on the filing. Four regional programs have been started to date and include about 33 of the states requiring registration of these offerings.

NASAA's representatives will discuss their experiences with the SCOR form and the state coordinated review programs, including issues which have arisen in their use. Participants will consider how these programs may be improved to increase uniformity between the federal and state levels.

2. NASAA model state accredited investor exemption

The group also will discuss NASAA's Model Accredited Investor Exemption which was adopted in 1997. Generally, the model rule exempts offers and sales of securities from state registration requirements if, among other things, the securities are sold only to persons who are, or are reasonably believed to be, accredited investors.[10] Although the model exemption permits public offers to accredited investors, it limits the manner of the solicitation. State representatives will share their experiences with the exemption, and the group will discuss issues and concerns.

3. Coordinated Equity Review

The CER program provides for a coordinated state review process for some offerings of equity securities registered at the federal level. Under CER, the participating states coordinate with each other to produce one comment letter to an issuer which addresses both substantive and disclosure matters. To date, 43 states have agreed to participate in the program. The states have reviewed a number of registration statements under this program.

B. Federal small business initiatives

1. Rule 504 exemption

Rule 504 of Regulation D provides an exemption from the Securities Act registration requirements for offerings up to $1 million in any 12-month period, if certain conditions are met. Rule 504 is available only to the companies that do not report under the Exchange Act. The Commission amended Rule 504 in April 1999 to limit the circumstances where general solicitation is permitted and freely tradeable securities are issued under the rule.[11] Specifically, issuers may generally solicit and advertise and issue freely tradeable securities only in transactions that are either:

- Registered under state law requiring public filing and delivery of a substantive disclosure document to investors before sale; or
- Exempted under state law as long as sales are made to "accredited investors" only.

The group will discuss various matters that have arisen under the revised rule. One issue relates to some state accredited investor exemptions that do not impose a holding period requirement on purchasers. Although NASAA's model exemption generally restricts resales within 12 months of sale, some states have adopted unique exemptions that do not impose those transfer restrictions. The group will consider matters of common interest under revised Rule 504 and state accredited investor exemptions.

2. Securities of blank check companies

A blank check issuer or company is one in the development stage with no specific business plan or purpose, or one that indicates its plan is to engage in a merger or acquisition with an unidentified company or companies.[12] In 1990, the U.S. Congress found that offerings by these kinds of issuers were common vehicles for fraud and manipulation in the market for penny stocks. The Commission has adopted several rules, as Congress directed, to deter fraud in connection with these offerings.

Although blank check issuers are prohibited from relying on certain exemptions from federal registration, they may issue securities without federal registration under some exemptions including, for instance, the section 4(2) private offering exemption and the Rule 506 safe harbor. In many cases, the securities are issued for little or no consideration. Often, the promoters of the blank check company "gift" part of their securities to various donees.

The group will discuss matters of mutual concern relating to these offerings, including, for instance, issues raised by resales of restricted blank check securities.

3. Federal coordinating exemption for offerings exempt under state law

The Commission in 1996 adopted an exemption from federal registration for offerings up to $5 million made in compliance with one of California's exemptions from state securities qualification requirements. The California exemption—Section 25102(n) of the California Corporation Code—permits some forms of general solicitation and limits sales to persons called qualified purchasers.[13] The federal exemption applies only to offers and sales that satisfy the conditions of the California exemption. The Division understands that some issuers are misusing the exemption by making offers and sales to qualified purchasers in states other than California and claiming the federal coordinating exemption for those transactions. The staff believes those offers and sales are not exempt federally and may violate state securities laws as well.

The Division and state representatives will discuss ways to prevent misuse of this exemption and consider other issues of mutual interest.

4. Small business town hall meetings

During 1999, the Commission continued to meet with small businesses in town hall meetings conducted throughout the United States. These meetings—started in 1996—are intended to provide basic information

[10] 17 CFR 230.501(a). The term "accredited investor," as defined by the Securities Act and the Commission's rules under the Act, is intended to encompass those persons whose financial sophistication render the protections of the Securities Act registration process unnecessary. Offers and sales to these investors are afforded special treatment under the federal securities laws.

[11] Securities Act Release No. 7644 (February 25, 1999) [64 FR 11090].

[12] *See* Section 7(b)(3) of the Securities Act. 15 U.S.C. 77g(b)(3).

[13] 17 CFR 230.1001.

about the securities offering process to small business issuers and educate the Commission about the concerns and problems facing small businesses in raising capital. Fifteen town hall meetings have been held to date. The group will discuss the results and prospects of this program.

C. Electronic distribution procedures in offerings of securities

Many underwriters have begun using the Internet to offer and sell securities in public offerings. These "e-brokers" are posting preliminary prospectuses and sometimes other materials on their websites. They also have set procedures that relate to prospectus access, account funding and the timing of offers and sales of the securities. Different firms have established diverse procedures.

The Division addressed the procedures of one e-broker in July, 1999.[14] The staff, without concurring in counsel's analysis, agreed not to recommend enforcement action to the Commission against the e-broker for its conduct of initial public offerings using the procedures described in the no-action letter request. The request described many procedures; one of which involved the solicitation of conditional electronic offers to buy the securities before effectiveness of the registration statement. The staff also has considered the transmission of "road shows" over the Internet.[15] Road shows generally are meetings between an issuer's senior management, brokers involved in the offering and a limited audience of select prospective investors that occur after the registration statement is filed with the Commission.

The group will discuss the various issues raised by offerings that are made electronically.

D. Plain English

Beginning October 1, 1998, issuers filing Securities Act registration statements must use plain English writing principles when drafting the front part of prospectuses, *i.e.*, the cover page and the summary and risk factors sections.[16] These plain English principles include: active voice; short sentences; everyday language; tabular presentation or "bullet lists" for complex material, if possible; no legal jargon or highly technical business terms; and, no multiple negatives.

The Division's staff, in its full review of a registration statement, examines the prospectus for compliance with the plain English requirements. If appropriate, the Division staff will issue comments to obtain improved plain English disclosures. Some states also review and issue comments on prospectus disclosures. The concurrent comment process from different regulators raises the prospect of inconsistent comments. For instance, the Division may ask for changes to conform to plain English requirements which seem contrary to state disclosure standards. The group will consider issues that have arisen in this area and ways to facilitate federal and state coordination in the comment process.

E. Uniform Securities Act

A committee of the National Conference of Commissioners on Uniform State Laws is in the process of drafting a new version of the Uniform Securities Act. The Uniform Securities Act is a uniform state securities law statute. Two versions are currently in force—The Uniform Securities Act of 1956 and the Revised Uniform Securities Act of 1985. The new version will modernize and update the law for many changes including, for example, NSMIA, technology advances, and internationalization of securities trading. The group will discuss the status of this redrafting effort and related matters.

(2) Market Regulation Issues

A. Books and Records

Section 103 of the 1996 Act prohibits any state from imposing broker-dealer books and records requirements that differ from, or are in addition to, the Commission's requirements. In addition, the same section directs the Commission to consult periodically with the state securities authorities concerning the adequacy of the Commission's books and records requirements.

On October 2, 1998, the Commission reproposed amendments to the books and records rules to clarify and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. The reproposed amendments also specified the books and records that broker-dealers would make available at their local offices. The Commission modified the reproposed amendments to reduce the burden on broker-dealers without substantially detracting from the original objective of establishing rules that would facilitate examinations and enforcement activities of the Commission, self regulatory organizations (SROs), and state securities regulators.[17] Among other changes in the reproposed amendments, the Commission redefined the term local office to include a place where two or more associated persons regularly conduct a securities business. The original proposal[18] defined the term local office to include a place where one associated person conducted a securities business. As reproposed, a broker-dealer would be required to update its customer account records at least once every three years. The original proposal required broker-dealers to update the customer account records annually.

The comment period closed December 9, 1998. The Commission received approximately 120 comment letters in response to the release re-proposing the amendments. The Commission staff has been reviewing the comments that have been submitted. The participants will discuss these efforts to amend Rules 17a–3 and 17a–4.

B. Capacity

The participants will discuss broker-dealer systems capacity issues in light of the increasing number of online brokerage accounts being opened by investors (9.7 million online accounts opened by the end of the second quarter of 1999, as compared to 7.3 million in 1998 and 3.7 million in 1997), and the instances of systems problems at broker-dealers.

C. Significant SEC and SRO Rule Proposals

On January 28, 2000, the Commission issued an order directing SROs to develop a plan to implement decimal pricing in the equities and options markets beginning no later than July 3, 2000.[19] The SROs are required to submit their decimalization implementation plan by March 13, 2000, and rule changes necessary to implement the plan by March 28, 2000. The participants intend to discuss the issues associated with the decimalization implementation plan submitted, as well as any comment letters submitted in response to proposed rule changes necessary to implement the plan.

Day trading practices continue to be the focus of media attention. Presently, the Commission is carefully considering the various issues relating to day trading activities. In particular, the Commission has been considering proposed rule

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[14] *See* Wit Capital no-action letter (July 14, 1999).

[15] *See*, for example, the no-action letter to Charles Schwab & Co., Inc. (November 15, 1999 and February 9, 2000).

[16] Securities Act Release No. 7497 (January 28, 1998) [63 FR 6370].

[17] Exchange Act Rel. No. 40518 (October 2, 1998) [63 FR 54404].

[18] Exchange Act Rel. No. 37850 (October 22, 1996) [61 FR 55593].

[19] Exchange Act Release No. 42360 (January 28, 2000) [65 FR 5003].

changes by the NYSE and the National Association of Securities Dealers, Inc. (NASD) to amend margin requirements for day trading customers of member firms.

On January 14, 2000, the Commission published the NYSE's proposal raising margin requirements for day traders. The NASD filed a similar proposal on January 13, 2000, which was published on February 11, 2000. The Commission has received numerous comment letters, which are under review. Both the NYSE and NASD proposals are available on the Commission's web site.

D. Financial Modernization Legislation

After over twenty years of debate, on November 22, 1999, the President signed S. 900—the Gramm-Leach-Bliley Act of 1999—into law. S. 900 permits securities, insurance, and banking firms to enter each other's lines of business. In the coming years, the Commission staff will continue to work with other financial regulators and the financial services industry to implement the various provisions of S. 900. One early project will be to implement regulations regarding the privacy of customer financial information. The participants will discuss this legislation.

E. Central Registration Depository

The Central Registration Depository (CRD) system is operated and maintained by the NASD and is used by the Commission, the SROs, and state securities regulators in connection with registering and licensing broker-dealers and their registered personnel. On August 16, 1999, the old "Legacy" CRD system was replaced by Web CRD, a new Internet-based system. The ability to file electronically through Web CRD is expected to further streamline and lower the costs associated with the one-stop registration process for broker-dealers and their associated persons. In connection with this transition, the Commission adopted technical amendments to Forms BD and BDW, the uniform forms for broker-dealer registration and withdrawal from registration, and related rules under the Exchange Act.[20] The Commission also issued an order approving changes proposed by NASD Regulation, Inc. to Form U–4 (the Uniform Application for Securities Industry Registration or Transfer) and Form U–5 (the Uniform Termination Notice for Securities Industry Registration). These changes were also needed to conform to the Web CRD environment.[21] The participants may discuss issues related to Web CRD.

F. Examination Issues

State and federal regulators also will discuss various examination-related issues of mutual interest, including: summits and examination coordination; branch office examinations; micro-cap issues; and day trading.

(3) Investment Management Issues

A. Division of Regulatory Authority

In the 1996 Act, Congress amended the Investment Advisers Act of 1940 ("Advisers Act")[22] to divide regulatory responsibility for investment advisers between the Commission and state securities regulators. Advisers that have assets under management of $25 million or more, or that advise registered investment companies, generally register with the Commission while advisers that have assets under management of less than $25 million must register with the appropriate state securities authorities.[23] Approximately 8,500 investment advisers are currently registered with the Commission.

The conferees will discuss cooperation between Commission and state adviser programs, including sharing information about examinations of advisers, advisers switching between federal and state registration, advisers that may no longer qualify for SEC registration, advisers whose registration has been canceled by the SEC, and advisers located in the state of Wyoming—the only state that does not have an investment adviser statute. The conferees also will discuss advisers that provide advice over the Internet and best execution reviews.

B. Electronic Filing System

Congress also amended the Advisers Act to require the Commission to establish and maintain a "readily accessible telephonic or other electronic process" to receive public inquiries about the disciplinary histories of investment advisers and persons associated with investment advisers.[24]

To satisfy this mandate, the Commission, in cooperation with NASAA and the state securities authorities, has been working with NASD Regulation, Inc. to design, build, and operate the Investment Adviser Registration Depository (IARD) system. The IARD will be a one-stop electronic filing system that investment advisers will use to apply for registration with the Commission or the appropriate state securities authorities, to update their registration, and to make notice filings with the states. The Commission and state authorities will have access to the resulting database to review adviser registration materials and the database will be available to the public on an Internet web site. Clients and prospective clients of investment advisers will be able to quickly obtain disciplinary and other information about investment advisers and persons associated with investment advisers.

The conferees will discuss the transition to electronic filing by investment advisers on the IARD, which is expected to begin receiving investment adviser submissions later this year.

C. Revised Registration and Disclosure Forms

The Commission and NASAA are revising the investment adviser registration and disclosure forms. The revised registration form would provide more useful information to the Commission and the state securities regulators. The new disclosure form would require advisers to provide clear and complete disclosures in plain English to clients and prospective clients.

The conferees will discuss the revised forms, which the Commission staff expects soon to recommend that the Commission propose for comment.

(4) Investor Education and Assistance Issues

The Commission currently pursues a number of programs to educate investors on how to invest wisely and to protect themselves from fraud and abuse. The states and NASAA have a long-standing commitment to investor education, and the SEC intends to complement those efforts to the greatest extent possible. The investor education working group will discuss the following investor education initiatives and potential joint projects:

A. Online Investor Protection

The SEC's staff will brief NASAA on the steps it has taken to fight Internet fraud and to educate investors on how to use the Internet to invest wisely.

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[20] Release No. 34–41594 (July 2, 1999) [64 FR 37586]; Release No. 34–41356 (April 30, 1999) [64 FR 25143].

[21] Release No. 34–41560 (June 25, 1999) [64 FR 36059].

[22] 15 U.S.C. 80b–1.

[23] Advisers Act Section 203A(a), 15 U.S.C. 80b–3a. The Advisers Act also provides for registration with the Commission of advisers that have their principal office and place of business in a state that has not enacted an investment adviser statute (currently, Wyoming), or that have their principal office and place of business outside the United States. In addition, the Commission has adopted rules exempting five categories of investment advisers from the prohibition on registration with the Commission. See Rule 203A–2, 17 CFR 275.203A–2.

[24] 1996 Act section 306.

Similarly, NASAA will discuss state initiatives to enhance online investor protection.

B. Financial Literacy 2001

In the spring of 1998, NASAA, the NASD, and the Investor Protection Trust (IPT) joined forces to launch "Financial Literacy 2001" (FL2001), an unprecedented $1 million campaign targeting 25,000 high school teachers across America. The goal of FL2001 is to encourage—and make it easier for—teachers in every state to teach the basics on saving and investing. Working together, NASAA, the NASD, and the IPT have developed a state-by-state customized classroom guide and have begun to provide aggressive distribution and teacher training. During the working group session, the states will brief the SEC on the progress of FL2001 and plans for dissemination of the FL2001 program in the coming year.

C. Facts on Saving and Investing Campaign

In the spring of 1998, NASAA and the SEC, in conjunction with the Council of Securities Regulators of the Americas (COSRA), launched the Facts on Saving and Investing Campaign. The campaign is an ongoing, grassroots effort to educate individuals about saving, investing, and avoiding financial fraud. Twenty-one countries throughout the Western Hemisphere participated in the campaign's enormously successful kick-off week. In the U.S., campaign partners—including more than thirty government agencies, consumer organizations, and financial industry associations—held educational events and distributed information on saving and investing throughout the country. During the working group session, participants will discuss the campaign and future campaign initiatives. They'll also discuss other initiatives for international investor education.

D. New Investor Education Programs

Participants will brainstorm ideas for new investor education programs, including joint NASAA and SEC initiatives.

E. Investor Education Resources

The group will assess existing resources for investor education—including brochures, videotapes, online materials, and other media—and identify gaps. They will further discuss the most efficient and effective ways to provide educational resources to individuals at the grassroots level.

(5) Enforcement Issues

In addition to the above topics, state and federal regulators will discuss various enforcement-related issues of mutual interest.

(6) General

There are a number of matters which are applicable to all, or a number, of the areas noted above. These include EDGAR—the Commission's electronic disclosure system, rulemaking procedures, training and education of staff examiners and analysts, and information sharing.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other proposals which would enhance uniformity in the existing scheme of state and federal regulation, while helping to maintain high standards of investor protection.

Dated: Dated: March 10, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6516 Filed 3–15–00; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42514; File No. SR–CBOE–00–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Trading of Options on Biotech HOLDRs

March 9, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the CBOE as a "non-controversial" rule change under Rule 19b–4(f)(6)[3] under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to trade standardized and FLEX equity options on Biotechnology Holding Company Depositary Receipts ("Biotech HOLDRs" or "HOLDRs"). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide for the trading of standardized equity options and FLEX[4] equity options on Biotech HOLDRs. Biotech HOLDRs are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the HOLDRs. They are negotiable receipts issued by a trust representing securities of issuers that have been deposited and are held on behalf of investors in HOLDRs. Biotech HOLDRs, which trade in round lots of 100, and multiples thereof, may be issued after their initial offering through a deposit of the required number of shares of common stock of the underlying issuers with the trustee. The trust will only issue HOLDRs upon the deposit of the shares of underlying securities that are represented by a round-lot of 100 HOLDRs. Likewise, the trust will cancel, and an investor may obtain, hold, trade or surrender HOLDRs in a round-lot and round lot multiples of 100 HOLDRs. Biotech HOLDRs are currently traded on the Exchange like other equity securities, subject to the Exchange's equity trading rules.

[4] Flex equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

The Exchange believes trading options on Biotech HOLDRs is appropriate because Biotech HOLDRs currently exceed the minimum eligibility criteria for equities set forth in CBOE Rule 5.3 Interpretation .01, as do each of the underlying securities. Specifically, there are a minimum of 7,000,000 shares of each of the underlying securities owned by persons other than those required to report their security holdings under Section 16(a) of the Act; there are a minimum of 2000 shareholders of each of the underlying securities; trading volume (in all markets in which the underlying securities are traded) has been at least 2,400,000 shares in the preceding twelve months; the market price share of each of the underlying securities has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection as measured by the lowest closing price reported in any market in which the underlying securities traded on each of the subject days and the issuers are in compliance with any applicable requirements of the Act. The Biotech HOLDRs themselves also satisfy these same eligibility criteria.

Options on Biotech HOLDRs will be traded on the Exchange pursuant to the same rules and procedures that apply to trading in options on equity securities. However, the Exchange is also proposing to list FLEX Equity options on Biotech HOLDRs. The Exchange will list option contracts covering 100 HOLDRs, the minimum required round lot trading size for HOLDRs. Strike prices for the contracts will be set to bracket the trust issued receipts at the same intervals that apply to standardized equity options (*i.e.*, 2½ point intervals for underlying equity values up to $25, 5 point intervals for underlying equity values greater than $25 up to $200, and 10 point intervals for underlying equity values greater than $200). The proposed position and exercise limits for options on Biotech HOLDRs will be the same as those established for stock options as set forth in CBOE Rule 4.11. The Exchange anticipates that options on Biotech HOLDRs will initially qualify for a position limit of 13,500 contracts. However, as with standardized equity options, applicable position limits will be increased for options on Biotech HOLDRs if the volume of trading in HOLDRs increases to meet the requirements of a higher limit. As is currently the case for all FLEX Equity options, no position and exercise limits will be applicable to FLEX Equity options overlying the HOLDRs. Options on Biotech HOLDRs will be subject to the listing and maintenance standards set forth in CBOE Rule 5.3.[5] FLEX options will be subject to the standards set forth in the CBOE Chapter 24A.

Should Biotech HOLDRs cease to trade on an exchange or as national market securities in the over-the counter market, there will be no opening transactions in the options on the HOLDRs, and all such options will trade on a liquidation-only basis (*i.e.*, only transactions to permit the closing of outstanding open options positions will be permitted). In addition, the CBOE will consider the suspension of opening transactions in any series of options of the class covering Biotech HOLDRs if: (1) The options fail to meet the uniform equity option maintenance standards in Interpretation .01 to CBOE Rule 5.4;[6] (2) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Biotech HOLDRs for 30 or more consecutive trading days; (3) there are fewer than 50,000 HOLDRs issued and outstanding; (4) the market value of all Biotech HOLDRs issued and outstanding is less than $1,000,000; or (5) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on Biotech HOLDRs will be physically-settled and will have the American-style exercise feature used on all standardized equity options, and not the European-style feature. The Exchange, however, also proposes to trade FLEX Equity options which will be available with both the American-style and European-style exercise feature, as well as other FLEX Equity features.[7] Lastly, the proposed margin requirements for options on Biotech HOLDRs will be at the same levels that apply to options generally under CBOE Rule 12.3.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[8] of the Act in general and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder[11] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[13]

The Exchange has requested that the rule change be accelerated to become operative immediately upon filing of the proposal, because such proposal

[5] The CBOE intends to file in the near future listing standards that will specifically govern trust issued receipts.

[6] Specifically, Interpretation .01 to CBOE Rule 5.4 provides that an underlying security will not meet the Exchange's requirements for continued listing when, among other things: (i) There are fewer than 6,300,000 publicly-held shares; (ii) there are fewer than 1,600 holders; (iii) trading volume was less than 1,800,000 shares in the preceding twelve months; and (iv) the share price of the underlying security closed below $5 on a majority of the business days during the preceding 6 months.

[7] An American-style option may be exercised at any time prior to its expiration. A European-style option, however, may be exercised only on its expiration date.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] Because CBOE and Commission staff have had a number of discussions concerning the proposed trading of Biotech HOLDRS, the Commission has determined to waive the requirement that CBOE provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[13] 15 U.S.C. 78s(b)(3)(C).

contemplates trading options on a product in which both the product and each of the underlying component securities exceed the minimum eligibility requirements for trading options on equities as set forth in CBOE Rule 5.3. Because both the securities underlying Biotech HOLDRs and Biotech HOLDRs themselves meet the eligibility requirements for trading options on equity securities, the Commission finds that accelerating the operative date of the rule change is consistent with the protection of investors and the public interest, and thus designates March 9, 2000 as the operative date of this filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–00–03 and should be submitted by April 6, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6518 Filed 3–15–00; 8:45 am]

BILLING CODE 8010–01–M

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3256]

Determination Under Section 508 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2000 (Public Law 106–113)

Pursuant to Section 508 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2000 (Pub. L. 106–113), and comparable provisions of law, and Section 1–201 of Executive Order 12163, as amended, I hereby determine that, subsequent to the military coup against the democratically elected Government of Niger on January 27, 1996, a new democratically elected government has assumed office, such that assistance for Niger is not prohibited by the aforementioned provision of law.

This Determination shall be reported to the Congress immediately and published in the **Federal Register**.

Dated: February 23, 2000.

Madeleine K. Albright,

Secretary of State, Department of State.

[FR Doc. 00–6540 Filed 3–15–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–6942]

Commercial Fishing Vessel Safety Listening Sessions

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Coast Guard will hold five more regional listening sessions to present, and receive feedback on, the Coast Guard's Commercial Fishing Vessel Safety Action Plan (CFVSAP). The Coast Guard created the CFVSAP to help fishermen improve the level of safety in the fishing industry. The information gathered during these listening sessions will be presented to the Commercial Fishing Industry Vessel Advisory Committee and used to further refine the CFVSAP. The first two listening sessions took place in Rockport, ME, and Kodiak, AK. The remaining listening sessions are scheduled for Norfolk, VA; Charleston, SC; Galveston, TX; Los Angeles, CA; and Seattle, WA.

DATES: The listening session in Norfolk, VA, will be on April 5, 2000, from 12:30 p.m. to 4:00 p.m.; the one in Charleston, SC, will be on April 13, 2000, from 1:00 p.m. to 5:00 p.m.; the one in Galveston, TX, will be on May 5, 2000, from 9:00 a.m. to 12:00 p.m.; the one in Los Angeles, CA, will be on May 20, 2000, from 10:00 a.m. to 2:00 p.m.; and the one in Seattle, WA, will be on June 13, 2000, from 9:00 a.m. to 12:00 p.m. The comment period will close on July 30, 2000.

ADDRESSES:

Norfolk Airport Hilton, 1500 North Military Hwy, Norfolk, VA 23502, Tel. (757) 466–8000

Maritime Center, 10 Wharfside St., Charleston, SC 29401, P.O.C.: Victor Smith at Tel. (843) 853–3625, Fax (843) 577–6673

Texas Shrimpers' Association Convention, Moody Gardens Hotel, 7 Hope Boulevard, Galveston, TX 77551, Tel. (361) 758–5024—Texas Shrimpers' Assoc.; Tel. (409) 741–8484—Moody Gardens Hotel

Italian American Club, 1903 Cabrillo Avenue, San Pedro, CA 90831, Tel. (510) 437–2947

National Oceanic and Atmospheric Association, Building 9 Auditorium, 7600 Sand Point Way N.E., Seattle, WA 98115

To make sure your comments and related material do not enter the docket more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2000–6942), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) In person to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection on the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except federal holidays. You may also electronically access the public docket for this notice on the internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, call Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329; for

information concerning the notice of meeting reach Lieutenant Joe Paitl or Ensign Chris O'Neal, (G–MOC–3), 2100 Second St, SW, Washington, DC 20593–0001, telephone 202–267–0507 or 202–267–2008, or electronic mail Gpaitl@comdt.uscg.mil or Co'neal@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage interested persons to participate in this information-gathering initiative by submitting written data, views, or other relevant documents. Persons submitting comments should include their names and addresses, and identify this notice (USCG–2000–6942) by the date and give the reasons for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**, but please submit your comments and material by only one means. Please submit all comments and attachments in an unbound format, no larger than 8½ x 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgement of receipt of your comments, please enclose a stamped, self-addressed post card or envelope. Comments received, whether submitted in writing to the docket or presented during the regional listening sessions, will be considered in refining the CFVSAP.

Background

In response to the alarming number of deaths in the fishing industry, the Coast Guard chartered a Task Force to identify ways to improve safety. The Task Force examined fishing vessel casualties in the context of historical data, reviewed the Coast Guard's existing Commercial Fishing Vessel Safety Program, reviewed past safety recommendations, and provided quick feedback to the fishing industry by recommending measures believed to have the greatest potential for reducing loss of life and property. The Task Force completed a report containing safety recommendations in March 1999 and presented the report to the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) and Coast Guard District Fishing Vessel Safety Coordinators. The Task Force report is available at http://www.get.to/thefishingreport or from Commandant (G–MOA), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, 202–267–1430. The Coast Guard consolidated the Task Force recommendations commonly supported by both the CFIVAC and the District Fishing Vessel Safety Coordinators and subsequently developed the CFVSAP. The CFVSAP was presented at the October 4–5, 1999, meeting of the CFIVAC. The CFIVAC agreed with the concepts presented in the CFVSAP. Also, the CFIVAC agreed with the Coast Guard that holding regional listening sessions would result in valuable input from a larger segment of the fishing industry. By publication of this notice, the Coast Guard is seeking further feedback from fisherman on the CFVSAP. The CFVSAP is available at http://www.uscg.mil/hq/g-m/advisory/cfivac/fishexpo99.pdf or from Commandant (G–MOC), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, 202–267–2008.

Objective and Issues

The objective of the regional listening sessions and the request for comments is to receive information from the general public and the fishing industry pertaining to the CFVSAP and other possible safety issues affecting the fishing industry. The Coast Guard wishes to identify ways to improve safety in the fishing industry.

The Coast Guard is specifically interested in information pertaining to the following:

The most critical safety issues in your region.

Ways the Coast Guard might better communicate with the fishing industry.

Ways the Coast Guard might assist in improving safety in the fishing industry.

Ways the fishing industry might improve its safety record without Coast Guard or other government involvement.

The minimum level of training that should be considered in a training-based certificate program.

The most safety-beneficial composition of a vessel examination program.

Whether the Territorial Sea Baseline is the best reference parameter for setting certain safety equipment carriage requirements.

Format of Regional Listening Sessions

Each listening session will follow a presentation by the Coast Guard on the CFVSAP. After the presentation the audience will have an opportunity to comment on the specifics of the CFVSAP. The Coast Guard will then present a list of standardized issues similar to those contained in Objectives and Issues and then open the listening session to general comments from the audience.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, reach LT Paitl or ENS O'Neal where noted in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: March 10, 2000.

R.C. North,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–6545 Filed 3–15–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–09]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 3, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket

and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on March 13, 2000.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29883.
Petitioner: Embry-Riddle Aeronautical University.
Section of the FAR Affected: 14 CFR 61.65(a)(1).
Description of Relief Sought: To permit students enrolled in ERAUs Advanced General Aviation Transport Experiments (AGATE) Modified Intergrated Curriculum (AGATE III) to take concurrently the private pilot practical test and the instrument rating practical test.

Dispositions of Petitions

Docket No.: 29103.
Petitioner: Era Helicopters.
Sections of the FAR Affected: 14 CFR 135.152(a).
Description of Relief Sought/ Disposition: To permit Era to operate three Sikorsky S–61N helicopters (Registration Nos. N561EH, N562EH, and N563EH; Serial Nos. 61471, 61257, and 61808, respectively) without an approved digital flight data recorder installed on each helicopter.
GRANT, 1/31/00, Exemption No. 6712B.

Docket No.: 29109.
Petitioner: Mobil Business Resources Corporation.
Sections of the FAR Affected: 14 CFR 135.152(a).
Description of Relief Sought/ Disposition: To permit MBRC to operate its Sikorsky S–76A helicopters under part 135 without an approved digital flight data recorder installed on each helicopter.
GRANT, 1/31/00, Exemption No. 6788A.

Docket No.: 28855.
Petitioner: Offshore Logistics, Inc.
Sections of the FAR Affected: 14 CFR 135.152(a).
Description of Relief Sought/ Disposition: To permit Offshore to operate 10 Bell 212 helicopters, 2 Bell 214ST helicopters, 7 Bell 412 helicopters, and 7 Sikorsky S–76A helicopters under part 135 without an approved digital flight data recorder installed on each helicopter.
GRANT, 1/31/00, Exemption No. 6714B.

Docket No.: 28905.
Petitioner: Petroleum Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.152(a).
Description of Relief Sought/ Disposition: To permit PHI to operate three Bell 212 helicopters (Registration Nos. N1074C, N5009N, and N5736D; Serial Nos. 30989, 30915, and 31135, respectively), two Bell 214ST helicopters (Registration Nos. N59805 and N59806, Serial Nos. 28141 and 28140, respectively), three Bell 412 helicopters (Registration Nos. N2014K, N2258f, and N3893L; Serial Nos. 33020, 33073, and 33006, respectively), and one Bell 412SP helicopter (Registration No. N142PH, Serial No. 33150) under part 135 without an approved digital flight data recorder installed on each helicopter.
GRANT, 1/31/00, Exemption No. 6713D.

Docket No.: 29142.
Petitioner: Geo-Seis Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.152(a).
Description of Relief Sought/ Disposition: To permit Geo-Seis to operate one Bell 212 helicopter (Registration No. N49678, Serial No. 30743) under part 135 without an approved digital flight data recorder installed on the helicopter.
GRANT, 1/31/00, Exemption No. 6785A.

Docket No.: 29174.
Petitioner: Hawaii Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.152(a).
Description of Relief Sought/ Disposition: To permit HHI to operate its Sikorsky S–61N helicopter (U.S. Registration No. N29111, Serial No. 61711) and its Sikorsky S–76A helicopter (Canadian Registration No. C–CHJG, Serial No. 760015) under part 135 without an approved digital flight data recorder installed on each helicopter.
GRANT, 1/31/00, Exemption No. 6789.

Docket No.: 29172.
Petitioner: Heli-Jet Corporation.
Sections of the FAR Affected: 14 CFR 135.152(a).
Description of Relief Sought/ Disposition: To permit Heli-Jet to operate five Bell 212 helicopters under part 135 without an approved digital flight data recorder installed on each helicopter.
GRANT, 1/31/00, Exemption No. 6796A.

Docket No.: 27867.
Petitioner: Department of the Navy, United States Marine Corps.
Sections of the FAR Affected: 14 CFR 91.209 (a) and (b).
Description of Relief Sought/ Disposition: To continue to permit USMC to conduct helicopter night-vision flight device training operations without lighted aircraft position lights.
GRANT, 1/31/00, Exemption No. 5978C.

Docket No.: 29759.
Petitioner: Aviation Ventures, Inc., doing business as Vision Air.
Sections of the FAR Affected: 14 CFR 135.152(a).
Description of Relief Sought/ Disposition: To permit Vision Air to operate up to 10 Dornier 228 (DO228) airplanes under part 135 without the required digital flight data recorder (DFDR) until the FAA can amend § 135.152(k) to permanently except the DO229 airplane from the requirements of § 135.152.
GRANT, 1/31/00, Exemption No. 7009A.

Docket No.: 29820.
Petitioner: Bombardier Completion Centre, Inc.
Sections of the FAR Affected: 14 CFR 25.785(b).
Description of Relief Sought/ Disposition: To exempt Bombardier from the requirements of § 25,785(b), for the general occupant protection requirements for occupants of multiple place side-facing seats that are occupied during takeoff and landing for Bombardier Global Model BD–7001A10 airplanes manufactured prior to January 1, 2004.
GRANT, 1/31/00, Exemption No. 7120.

[FR Doc. 00–6557 Filed 3–15–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss emergency evacuation (EE) issues.

DATES: The meeting is scheduled for March 30, 2000, beginning at 8:30 a.m. Arrange for oral presentations by March 24.

ADDRESSES: Renton, WA. You may contact the person identified under the

heading **FOR FURTHER INFORMATION CONTACT** after March 21 for the exact location of the meeting.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held March 30, in Renton, WA.

The agenda will include:

- Opening Remarks.
- FAA Report.
- Joint Aviation Authorities Report.
- Harmonization Management Team Report.
- Performance Standards Working Group Report.
- Cabin Safety Harmonization Working Group Report.
- Proposal to re-charter the Emergency Evacuation issues group.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by March 24 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency or by providing copies at the meeting.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on March 10, 2000.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking, Advisory Committee.

[FR Doc. 00–6558 Filed 3–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for March 28–29, 2000, beginning at 8:30 a.m. on March 28. Arrange for oral presentations by March 23.

ADDRESSES: Renton, WA. You may contact the person identified under the heading **FOR FURTHER INFORMATION CONTACT** after March 21 for the exact location of the meeting.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting ARAC meeting to be held March 28–29, 2000, in Renton, WA.

The agenda will include:

Tuesday, March 28, 2000

- Opening Remarks.
- FAA Report.
- Joint Aviation Authorities Report.
- Transport Canada Report.
- Executive Committee Meeting Report.
- Harmonization Management Team Report.
- Human Factors Harmonization Working Group (HWG) Report.
- Engine HWG Report and Vote.
- Flight Guidance System HWG Report.
- Systems Design and Analysis HWG Report.
- Ice Protection HWG Report.
- Powerplant Installation HWG Report and Vote.
- Seat Test HWG Report and Vote.
- Avionics System HWG Report and Vote.
- Design for Security HWG Report.
- Braking System HWG Report and vote.

Wednesday, March 29

- General Structures HWG Report and Vote.
- Airworthiness Assurance HWG Report.
- Flight Test Report and Vote.
- Electromagnetic Effects HWG Report and Vote.
- Loads & Dynamics HWG Report and Vote.
- Flight Control HWG Report.
- Mechanical Systems HWG Report and Vote.
- Electrical Systems HWG Report and Vote.

Ten HWG's-Engine, Powerplant Installation, Seat Test, Avionics Systems, General Structures, Flight Test, Electromagnetic Effects, Loads and Dynamics, Mechanical Systems, and Electrical Systems—plan to request approval of reports completed to address tasking statements.

Two HWG's-Braking Systems and Loads & Dynamics—plan to request a vote to submit dispositions of comments to the FAA. The Braking Systems HWG's request addresses comments relating to documents that were published in the **Federal Register** on August 10, 1999, on brakes and braking systems certification and analysis; the comment period closed November 8, 1999. The Loads and Dynamics HWG's request addresses comments relating to documents that were published in the **Federal Register** on June 18, 1999, on revised landing gear shock absorption test requirements; the comment period closed October 18, 1999.

The Engine HWG plans to request a vote for formal FAA legal and economic reviews for proposed rules addressing safety analysis and one-engine inoperative procedures.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by March 23 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on March 10, 2000.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–6559 Filed 3–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: York & Lancaster Counties, South Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway facility from the intersection of S.C. 122 (Dave Lyle Boulevard) and S.C. Route 161 Extension east of Rock Hill in York County to near U.S. Route 521 in

Lancaster County, South Carolina. An earlier notice had been published in 1992 but the EIS was not completed due to insufficient project funding.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Myers, Planning & Environmental Engineer, Federal Highway Administration, 1835 Assembly Street, Suite 1270, Strom Thurmond Federal Building, Columbia, South Carolina 29201, Telephone: (803) 253–3881.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the South Carolina Department of Transportation (SCDOT), will prepare an environmental impact statement on the proposed extension of Dave Lyle Boulevard (S.C. route 122) from the S.C. route 161 Extension east of Rock Hill in York County to U.S. route 521 in Lancaster County, South Carolina. The proposed route would be approximately 10 miles in length and would consist of two travel lanes for each direction of traffic with an earth median. Alternatives under consideration include: (1) taking no action (no-build); (2) Transportation System Management (improvement of existing routes); and (3) several alternative corridor alignment build alternatives.

The FHWA and SCDOT are seeking input as a part of the scoping process to assist in determining and clarifying issues relative to this project. Letters describing the proposed action and soliciting comments have been sent by the SCDOT to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. No formal scoping meeting is planned at this time. Early coordination with State and Federal permit and resource agencies will be completed in the development of the draft EIS. The U.S. Corps of Engineers is being requested to be a cooperating agency due to the likely involvement of the proposal with wetlands in the Catawba River flood plain area. Two public informational meetings have been held to inform the public and solicit their input. At least one location public hearing will be held for which public notice will be given of the time and place of the hearings. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 7, 2000.

Robert L. Lee,

Division Administrator, Columbia, South Carolina.

[FR Doc. 00–6463 Filed 3–15–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7054]

Petition for Grandfathering of Non-Compliant Equipment, Maryland Mass Transit Administration

In accordance with 49 CFR 238.203(f), notice is hereby given that the Maryland Mass Transit Administration (MTA) has petitioned the Federal Railroad Administration (FRA) for grandfathering of non-compliant equipment for use on MTA's Central Light Rail Line.

Section 238.203 of title 49 of the Code of Federal Regulations addresses static end strength requirements for passenger rail equipment. Paragraph (a)(1) provides that all passenger equipment (subject to limited exceptions) shall resist a minimum static end load of 800,000 pounds applied on the line of draft without permanent deformation of the body structure. Paragraph (d)(2) provides that "[a]ny passenger equipment placed in service on a rail line or lines before November 8, 1999 that does not comply with the requirements of paragraph (a)(1) may continue to be operated on that particular line or (those particular lines) if the operator of the equipment files a petition seeking grandfathering approval under paragraph (d)(3) before November 8, 1999. Such usage may continue while the petition is being processed, but in no event later than May 8, 2000, unless the petition is approved."

MTA requests that all conventional light rail vehicles operating on the Central Light Rail Line (extending from Baltimore, Maryland, north to Timonium, south to Cromwell, southwest to BWI Airport, east to Penn Station and north to Hunt Valley) be grandfathered to permit usage pursuant to 49 CFR 238.203(d).

Interested parties are invited to participate in this proceeding by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding, however, if any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should be identified with Docket Number FRA–2000–7054 and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Communications received within 30 days of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered to the extent possible. MTA's petition and all written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m. to 5:00 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on March 10, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–6446 Filed 3–15–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 27, 1999 [64 FR 57924–57925].

DATES: Comments must be submitted on or before April 17, 2000.

FOR FURTHER INFORMATION CONTACT: George Entwistle at the National Highway Traffic Safety Administration, Office of Safety Assurance (NSA–32.2), 202–366–5306, 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: National Highway Traffic Safety Administration.

Title: Motor Vehicle Information.

OMB Number: 2127—0002.

Type of Request: Extension of a currently approved collection.

Abstract: The National Highway Traffic Safety Administration's (NHTSA's) statute at 49 U.S.C. Subchapter III *Importing Noncomplying Motor Vehicles and Equipment* (49 U.S.C. section 30141 *et seq.*) Requires that a motor vehicle which does not conform to applicable Federal Motor vehicle Safety Standards (FMVSS) be refused admission into the United States. NHTSA may authorize importation of nonconforming vehicles upon specified terms and conditions to insure that any such vehicle or equipment will be brought into conformity with all applicable FMVSS or will be exported out of or abandoned to the United States at no cost.

Affected Public: Those businesses or persons requesting to import a motor vehicle into the United States.

Estimated Total Annual Burden: 77,500.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, D.C. 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, D.C., on March 10, 2000.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–6560 Filed 3–15–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Foreign Assembler's Declaration (With Endorsement by Importer)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Foreign Assembler's Declaration (with Endorsement by Importer). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 15, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Foreign Assembler's Declaration (with Endorsement by Importer).

OMB Number: 1515–0088.

Form Number: N/A.

Abstract: The Foreign Assembler's Declaration with Importer's Endorsement is used by Customs to substantiate a claim for duty free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the United States.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals.

Estimated Number of Respondents: 2,730.

Estimated Time Per Respondent: 50 minutes.

Estimated Total Annual Burden Hours: 302,402.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 8, 2000.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 00–6435 Filed 3–15–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Protest

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Protest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 15, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Protest.

OMB Number: 1515–0056.

Form Number: Customs Form 19.

Abstract: This collection is used by an importer, filer, or any party at interest to petition the Customs Service, or Protest, any action or charge, made by the port director on or against any; imported merchandise, merchandise excluded from entry, or merchandise entered into or withdrawn from a Customs bonded warehouse.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 3,750.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 41,250.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 8, 2000.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 00–6436 Filed 3–15–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Declaration of Free Entry of Returned American Products (Customs Form 3311)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of Free entry of Returned American Products. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 15, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration of Free entry of Returned American Products.

OMB Number: 1515–0043.

Form Number: Customs Form 3311.

Abstract: This collection of information is used as a supporting documents which substantiates the claim for duty free status for returning American products.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 51,000.

Estimated Total Annualized Cost on the Public: $198,000.

Dated: March 8, 2000.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 00–6437 Filed 3–15–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Certificate of Registration

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Certificate of Registration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 15, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300

Pennsylvania Avenue, NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Certificate of Registration.

OMB Number: 1515–0014.

Form Number: Customs Forms 4455 and 4457.

Abstract: The Certificate of Registration is used to expedite free entry or entry at a reduced rate on foreign made personal articles which are taken abroad. There articles are dutiable each time they are brought into the United States unless there is acceptable proof of prior possession.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, travelers.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 10,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 8, 2000.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 00–6438 Filed 3–15–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Importers ID Input Record

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Importers ID Input Record. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 15, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Importers ID Input Record.

OMB Number: 1515–0191.

Form Number: Customs Form 5106.

Abstract: This document is filed with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses/ Institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 8, 2000.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 00–6439 Filed 3–15–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Free Admittance Under Conditions of Emergency

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Free Admittance Under Conditions of Emergency. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 15, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300

Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Free Admittance Under Conditions of Emergency.

OMB Number: 1515–0130.

Form Number: N/A.

Abstract: This collection of information will be used in the event of emergency or catastrophic event to monitor goods temporarily admitted for the purpose of rescue or relief.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Nonprofit Assistance Organizations.

Estimated Number of Respondents: 1.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 8, 2000.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 00–6440 Filed 3–15–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Harbor Maintenance Fee

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Harbor Maintenance Fee. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 15, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Harbor Maintenance Fee.

OMB Number: 1515–0158.

Form Number: Customs Forms 349 and 350.

Abstract: This collection of information will be used to verify that the Harbor Maintenance Fee paid is accurate and current for each individual, importer, exporter, shipper, or cruise line.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 18,095.

Estimated Time Per Respondent: 26 minutes.

Estimated Total Annual Burden Hours: 32,245.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 8, 2000.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 00–6441 Filed 3–15–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Crew Members Declaration

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Crew Members Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 15, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Crew Members Declaration.

OMB Number: 1515–0063.

Form Number: Customs Form 5129.

Abstract: This document is used to accept and record importations of merchandise by crew members, and to enforce agricultural quarantines, the currency reporting laws, and the revenue collection laws.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 5,968,351.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 298,418.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 13, 2000.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 00–6442 Filed 3–15–00; 8:45 am]

BILLING CODE 4820–02–U

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Importers Declaration/ Shippers Declaration

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Importers Declaration/Shippers Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 15, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Importers Declaration/Shippers Declaration.

OMB Number: 1515–0200.

Form Number: N/A.

Abstract: These declarations are related to the legal requirements and procedures which must be followed in order to obtain duty-free treatment on articles imported into the Customs territory of the United States from the insular possession.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 310.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 31.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 8, 2000.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 00–6443 Filed 3–15–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Mutual Holding Company information collection package.

DATES: Submit written comments on or before May 15, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0072. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW, from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Nadine Y. Washington, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Mutual Holding Company.

OMB Number: 1550–0072.

Form Number: MHC–1 and MHC–2.

Abstract: The information collections apply to mutual holding companies and to their subsidiaries. The collections are necessary to (1) fulfill statutory requirements; and (2) facilitate review of transactions presenting risks.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 16.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 4,213 hours.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 10, 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–6465 Filed 3–15–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Holding Company Reports information collection package.

DATES: Submit written comments on or before May 15, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0060. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW, from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Nadine Y. Washington, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Holding Company Reports.

OMB Number: 1550–0060.

Form Number: H(b)11.

Abstract: The H(b)11 report is used to determine a savings association holding company's adherence to the statutes, regulations and conditions of approval to acquire an insured institution and whether any of the company's activities would be injurious to the operation of any subsidiary savings association.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 932.

Estimated Time Per Respondent: 15.5 hours.

Estimated Total Annual Burden Hours: 57,784 hours.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 10. 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–6466 Filed 3–15–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Order No.: 2000–26]

Appointment of a Receiver; Mutual Federal Savings Bank of Atlanta, Atlanta, GA

March 10, 2000.

Issued Under Delegated Authority

The Director of the Office of Thrift Supervision (OTS) has determined to appoint the Federal Deposit Insurance Corporation (FDIC) as receiver for Mutual Federal Savings Bank of Atlanta, Atlanta, Georgia (the Association).

I. Grounds for Actions Taken in This Order

Receivership: Grounds for Appointment of FDIC as Receiver

The Director, upon consideration of the administrative record, and for the reasons set forth in the supporting legal and supervisory memoranda contained in the administrative record from offices within the OTS, finds and determines that:

(a) The Association's assets are less than its obligations to its creditors and others, including members of the Association;

(b) The Association has substantially depleted its assets or earnings due to unsafe or unsound practices;

(c) The Association is in an unsafe or unsound condition to transact business;

(d) The Association has incurred losses that have depleted all of its capital, and there is no reasonable prospect for the Association to become adequately capitalized without Federal assistance;

(e) The Association's unsafe and unsound practices and condition are likely to seriously prejudice the interests of its depositors and the deposit insurance fund;

(f) The Association is undercapitalized as defined in 12 U.S.C. 1831o(b), and has no reasonable prospect of becoming adequately capitalized, has failed to become adequately capitalized when required to do so under 12 U.S.C. 1831o(f)(2)(A), and failed to submit an acceptable capital restoration plan within the time prescribed under 12 U.S.C. 1831o(e)(2)(D); and

(g) The Association is critically undercapitalized, as defined in 12 U.S.C. 1831o(b) and otherwise has substantially insufficient capital.

The Director, therefore, has determined that each of the above grounds for the appointment of a receiver for the Association exist under section 5(d)(2) of the Home Owners' Loan Act ("HOLA") (12 U.S.C. 1464(d)(2)) and section 11(c)(5) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1821(c)(5)).

II. Actions Ordered or Approved: Appointment of a Receiver

The Director hereby appoints the FDIC as Receiver for the Association for the purpose of liquidation, pursuant to section 5(d)(2) of the HOLA and section 11(c)(6)(B) of the FDIA (12 U.S.C. 1821(c)(6)(B)).

Delegation of Authority To Act for the OTS

The Director hereby authorizes the Regional Director, or his designee, and the Deputy Chief Counsel for Business Transactions, or his successors or designees, to: (1) certify Orders; (2) sign, execute, attest or certify other documents of the OTS issued or authorized by this Order; (3) deliver or accept delivery of any notice from or to the OTS regarding the Association; and (4) perform other functions of the OTS necessary or appropriate for the implementation of such Orders. All documents to be issued under the authority of this Order must be first approved, in form and content, by the Chief Counsel's Office. In addition, the Director hereby authorizes the Deputy Chief Counsel for Business Transactions, or his successors or designees, to make any subsequent technical corrections, that might be necessary, to this Order, or any documents issued under the authority of this Order.

By Order of the Director of the OTS effective March 10, 2000.

Richard M. Riccobono,

Deputy Director, Office of Supervision.

[FR Doc. 00–6464 Filed 3–15–00; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 65, No. 52

Wednesday, March 16, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136 and 445

[FRL–6503–5]

RIN 2040–AC23

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Landfills Point Source Category

Correction

In rule document 00–1037 beginning on page 3008 in the issue of Wednesday, January 19, 2000, make the following corrections:

1. On page 3050, in the first table, the heading "Maximum daily[1]" should head the table's second column, and "Regulated parameter" should head the table's first column.

2. On the same page, in the second table, the first column, in the fourth line, "a-Terpineol" should read "α-Terpineol".

3. On the same page, the same table, the same column, in the sixth line, "p-Cresol" should read "*p*-Cresol".

4. On the same page, the same table, the second column, in the last line, "2)" should read "[2]".

5. On the same page, the same table, the third column, the last line should also read "[2]".

[FR Doc. C0–1037 Filed 3–15–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42426; File No. SR–NASD–99–54]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Creating a Voluntary Single Arbitrator Pilot Program

Correction

In notice document 00–4150 beginning on page 8753, in the issue of Tuesday, February 22, 2000, make the following correction:

On page 8753, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C0–4150 Filed 3–15–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6586; Notice 01]

RIN 2127–AH76

Preliminary Theft Date; Motor Vehicle Theft Prevention Standard

Correction

In notice document 00–2723 beginning on page 6250 in the issue of Tuesday, February 8, 2000, make the following corrections:

1. On page 6252, in the first line of the table, in the last column, "3.533" should read "3.5334".

2. On the same page, in the line beginning with "88", in the second column, "Jeep WRangler" should read "Jeep Wrangler".

3. On page 6254, in the sixth line of the table, in the second column, "Ferrari" should read "Ferrari 456", and in the third column, "456" should read "0".

[FR Doc. C0–2723 Filed 3–15–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00-ASO-7]

Amendment of Class E. Airspace; Lexington, NC

Correction

In final rule document 00–4227 beginning on page 10386 in the issue of Monday, February 28, 2000, make the following correction:

§71.1 [Corrected]

On page 10387, in the second column, in the third paragraph under the heading **ASO NC E5 Lexington, NC [Revised]**, in the third line, "long. 89°18'14" W. " should read, " long. 80°18' 14" W.".

[FR Doc. C0–4227 Filed 3–15–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
March 16, 2000

Part II

Department of Education

National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Fiscal Years 2000–2001; Invitation for Applications for Model Spinal Cord Injury Centers and Research Centers; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priorities for Fiscal Years 2000–2001 for Certain Centers.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces final funding priorities for fifteen Model Spinal Cord Injury Centers and two Rehabilitation Engineering Research Centers (RERCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 2000–2001. The Assistant Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: These priorities take effect on April 17, 2000.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Donna—Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains final priorities under the Special Projects and Demonstrations for Spinal Cord Injuries (SCI) Program and two RERCs related to Low Vision and Blindness and Children with Orthopedic Disabilities. The final priorities refer to NIDRR's Long-Range Plan (the Plan). The Plan can be accessed on the World Wide Web at: http://www.ed.gov/legislation/FedRegister/other/1999–12/68576.html.

These final priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764).

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications is published elsewhere in this issue of the **Federal Register**.

Analysis of Comments and Changes

On December 9, 1999 the Assistant Secretary published a notice of proposed priorities for the Model Spinal Cord Injury Centers in the **Federal Register** (64 FR 69154). The Department of Education received 25 letters commenting on the notice of proposed priorities by the deadline date. On December 17, 1999 the Assistant Secretary published a notice of proposed priorities for two Rehabilitation Engineering Research Centers in the **Federal Register** (64 FR 70956). The Department of Education received 8 letters commenting on the notice of proposed priorities by the deadline date. Technical and other minor changes—and suggested changes the Assistant Secretary is not legally authorized to make under statutory authority—are not addressed.

Model Spinal Cord Injury Centers

Priority 1: Model Spinal Cord Injury Centers

Comment: Several commenters discussed the issue of the national database, with a range of questions and recommendations. Some asked whether it was a given that the national database would be continued as is, or whether the requirement might be to contribute to a national database not yet configured. Many commenters asked whether the number or type of variables in the current database (MSCIS) would be maintained or altered for the next five-year period. One commenter suggested that only large Centers should be required to contribute to the database. Several commenters asked whether there would be changes in the selection criteria or funding levels related to database participation.

Discussion: All Centers will be required to contribute to the national database as designated by the Secretary. The database has evolved over its entire existence, and will continue to evolve to meet current needs. NIDRR intends to evaluate the existing database within the next twelve months, and prescribe modifications as necessary. These modifications may include changes in the number and type of variables or limits on follow-up samples. However, for the purpose of responding to this notice, prospective applicants should base their proposals on the database as currently configured. If those modifications require changes to the proposed scope of work or budget of any funded Center, these changes can be negotiated with the funding agency.

Changes: None.

Comment: A number of commenters stated that the proposed research priority areas were either unclear or too limiting. Several questioned whether the Centers were to be limited to one area or topic. Some questioned why the Associated Research Areas section of the Plan, as well as other specific priorities in the Plan, were not referenced, and others proposed that each Center be encouraged to undertake one research project addressing Health and Function and one project addressing a second chapter of the Plan.

Discussion: This priority encourages focused, cohesive, and integrated research programs that will make a substantial contribution to the knowledge base in SCI rehabilitation, while simultaneously discouraging fragmented programs with numerous discrete and disparate projects. The Plan presents an integrated approach to research. NIDRR recognizes that disability and rehabilitation are both holistic phenomena. Investigations of major issues in one area, for example Health and Function, may involve issues of technology or independent living. Applicants have the freedom to investigate any issues prioritized in the Plan, including those in the associated areas chapter and issues that cut across areas of the Plan. The priority encourages studies that will capitalize on each Center's population and programmatic characteristics to make significant contributions to SCI rehabilitation. Applicants should carefully justify the likelihood of achieving the proposed research objectives.

Changes: The list of priorities for the research projects has been modified to include the associated areas chapter of the Plan, and to incorporate investigation of any long-range plan priority areas, including cross-cutting issues.

Comment: Several commenters discussed the mechanism of running a separate competition for collaborative research projects. Most commenters supported this idea, although one contended that large Centers should be funded to do site-specific research, while Centers with smaller patient loads could collaborate on research projects.

Discussion: A major advantage of supporting a Model Systems program is the ability to conduct studies with large samples on populations that are geographically, ethnically, culturally, and otherwise diverse. This is an important justification for the common data collection system. In the past, Centers have been required to propose both collaborative and site-specific research. This was an administrative problem, because applicants would have to propose collaborations with

other applicants who might not be chosen for funding. After the Centers were funded, many had to drop or alter proposed collaborative studies because some of the partners did not receive funding. Also, the peer review process in the past did not give adequate attention to the research proposals, as they were focused on evaluating the comprehensiveness and quality of the systems of care. A separate competition for collaborative research projects in Fiscal Year 1998 for the NIDRR Traumatic Brain Injury program led to awards of substantial and meaningful research projects. It should be noted that collaboration is not precluded in the current competition. Applicants can form collaborative relationships with any appropriate entity as required to address their particular research.

NIDRR acknowledges the concerns of Centers that are tracking large patient populations. Projects will be funded at varying amounts up to the maximum allowed based on individual factors in proposals. Proposed budgets should reflect costs associated with data collection, proposed research, and administration. Funding will be determined individually for each successful applicant up to the maximum allowed based upon documented workload, the peer review process, and the overall budgetary limits of the program.

Changes: None.

Comment: Many practitioners and researchers in SCI rehabilitation point out that the individuals with SCI of non-traumatic origins now comprise a large portion of the individuals treated in rehabilitation units. There have been strong arguments for expanding the scope of the SCI Model Systems beyond traumatic SCI.

Discussion: This is an important change to consider. However, there has not been sufficient examination of the ramifications of changing the inclusion criteria of the database. NIDRR requires more data concerning the populations to be considered, proposed inclusion criteria such as time of onset and extent of lesion, and comparison of characteristics of traumatic vs. the non-traumatic SCI populations, including natural course, coexisting conditions, and socio-demographic variables. Applicants remain free to treat non-traumatic SCI in clinical settings and to include these patients in research projects. However, the parameters of the MSCIS will not be expanded at this time to include these non-traumatic patients. The peer review process will evaluate the merits of each proposal.

Changes: None.

Comment: Some respondents were concerned that there were too few points being awarded to adequacy of facilities, as the new selection criteria award a large number of points for project design. Respondents were unclear as to whether project design refers only to the design of the research portion. Other commenters objected to the inclusion of additional points for employment of individuals with disabilities on the project, arguing that applicants would tend to give pro forma responses, that the requirement is antithetical to the direction of current affirmative action practices, or that institutions may be forced into a bidding war for the relatively few qualified disabled researchers.

Discussion: The new thrust of the model systems program is to emphasize research. NIDRR believes there are sufficient points allowed for a comprehensive, integrated system of care to supplement the importance of high quality facilities. The Project Design criteria refer to the research project, and the Service Comprehensiveness criteria refer to the model demonstration.

NIDRR encourages employment of persons with disabilities on research projects not only as a measure of equal opportunity, but because individuals with disabilities bring important perspectives and concerns to research. The disability research field is also encouraged to find innovative ways to build research capacity among persons with disabilities.

Changes: The Project Design criteria section has been renamed Research Project Design.

Comment: Several commenters discussed the need for a specified minimum number of new injuries to be considered for inclusion in this program.

Discussion: NIDRR agrees that a "critical mass" of new injuries is important for an SCI Center of Excellence. This is important for maintaining a high level of clinical skill and for having enough subjects to perform meaningful research. However, NIDRR views this requirement as contextual. It is expected that applicants will document their history of new patients, and the likelihood of obtaining sufficient numbers to maintain a center of excellence for SCI care and to conduct research. It is the responsibility of the applicants to demonstrate that they have sufficient admissions to maintain a clinical Center of excellence and to conduct significant research.

Changes: None.

Comments: Two commenters were concerned that the priority did not discuss the geographic distribution of the Centers.

Discussion: When making funding determination, both the legislation (Section 204(b)(4) of Rehabilitation Act of 1973, as amended (29 USC 764(b)(4)) and the regulations (34 CFR Part 359) specify that the Director must take into account the location of any proposed SCI Center and the appropriate geographical and regional allocation of such Centers. This geographic distribution is considered in making the final determination of the awards.

Changes: None.

Rehabilitation Engineering Research Centers—General .

Comment: What criteria does NIDRR use for selection of RERCs?

Discussion: NIDRR publishes selection criteria in the Notice Inviting Applications. The selection criteria are used by peer reviewers to evaluate the proposals submitted to NIDRR under this competition.

Changes: None.

Comment: Do RERCs have the authority to establish linkages with other agencies in order to achieve the necessary outcomes?

Discussion: RERCs are required to collaborate with specific RERCs and RRTCs as identified in each priority. In addition to these requirements, an applicant could propose to coordinate with other agencies or organizations. The peer review process will evaluate the merits of each applicant's proposed activities.

Changes: None.

Comment: Are the proposed RERCs required to establish partnerships between product manufacturers and practitioners to design and implement innovative technologies?

Discussion: NIDRR encourages applicants to include manufacturers, practitioners and consumers, as appropriate, in the design process. Each RERC is required to develop and implement, in consultation with the NIDRR-funded RERC on Technology Transfer, a utilization plan to ensure that all new and improved technologies developed by the RERC are successfully transferred to the marketplace. The peer review process will evaluate the merits of each application.

Changes: None.

Priority 2: Low Vision and Blindness

Comment: Four commenters suggested that a new activity should be added that requires the RERC to research and develop technologies that address jobsite adaptation, employment and daily living problems among the target population.

Discussion: NIDRR agrees that unemployment for persons who are blind or visually impaired is a very serious problem, as referenced in the first paragraph of the background statement.

Changes: A new activity has been added requiring the RERC to investigate, develop, and evaluate new vocational and daily living technologies and approaches.

Comment: Two commenters expressed concern that the word "screening" in the first required activity may be interpreted to imply merely the detection of a problem, whereas the real need is for more detailed assessment and analysis of the complex problems. Substituting "assessment", "analysis" or "evaluation" for "screening" would clarify and focus this priority.

Discussion: NIDRR agrees that "assessment" is a more appropriate term.

Changes: The first required activity has been revised by substituting the word "assessment" for "screening."

Comment: One individual commented that the main mandate of RERCs, as stated in the Rehabilitation Act, as amended, is to focus on research and development "to produce new scientific knowledge, and new or improved methods, equipment, and devices." This theme is very well represented in the third required activity, which refers to "technologies and approaches," but the other activities may be somewhat limiting in their focus. This would easily be remedied by inserting "technologies and approaches" or "technologies and methods" in each activity where the word "technologies" appears.

Discussion: NIDRR agrees that the priority would be strengthened by replacing "technologies" with "technologies and approaches" where applicable.

Changes: Required activities 1, 2, and 4 have been revised by replacing "technologies" with "technologies and approaches."

Comment: The third required activity does not accurately reflect the background statement and the broad language used might suggest that any and all studies of vision and aging apply.

Discussion: NIDRR believes that the background statement adequately supports each activity. However, while NIDRR agrees with the commenter that the third required activity would be strengthened by limiting the number of potential vision screening and assessment technologies investigated, NIDRR does not agree that the commenter's specific language recommendations accomplish this purpose.

Changes: The third required activity 3 has been revised by adding the words "and practical" after the word "simple."

Priority 3: Technologies for Children with Orthopedic Disabilities

Comment: Two goals for this RERC are to enable children to negotiate their environment and to enhance interactive play and social skill development. To accomplish these goals, the RERC must include typically developing peers.

Discussion: An applicant could propose research methodologies that include the use typically developing peers. NIDRR elects to leave the choice of research methodologies to be proposed to the applicants. The peer review process will evaluate the merits of each proposal.

Changes: None.

Comment: Parental involvement should be a requirement in the design and use of technologies developed by this RERC.

Discussion: NIDRR agrees that parental involvement is necessary for an RERC such as this one. There is mention of parental expectations in the first paragraph of the background statement. Furthermore, there is a general requirement that all RERCs involve persons with disabilities and their family representatives in planning and implementing their research and development activities. The peer review process will evaluate the merits of each applicant's proposed activities.

Changes: None.

Model Spinal Cord Injury Centers

The authority for Model Spinal Cord Injury Centers is contained in section 204(b)(4) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(b)(4)). The Secretary may make awards for up to 60 months through grants or cooperative agreements. This program provides assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with spinal cord injuries.

Description of Special Projects and Demonstrations for Spinal Cord Injuries

This program provides assistance for projects that provide comprehensive rehabilitation services to individuals with Spinal Cord Injury (SCI) and conduct spinal cord research, including clinical research and the analysis of standardized data in collaboration with other related projects.

Each SCI Center funded under this program establishes a multidisciplinary system of providing rehabilitation services, specifically designed to meet the special needs of individuals with spinal cord injuries. This includes acute care as well as periodic inpatient or outpatient follow up and vocational services. Centers demonstrate and evaluate the benefits and cost effectiveness of such a system for the care of individuals with SCI and demonstrate and evaluate existing, new, and improved methods and equipment essential to the care, management, and rehabilitation of individuals with SCI. Grantees demonstrate and evaluate methods of community outreach and education for individuals with SCI in connection with the problems of such individuals in areas such as housing, transportation, recreation, employment, and community activities.

Projects funded under this program ensure widespread dissemination of research findings to all SCI Centers, and to rehabilitation practitioners, individuals with SCI, and the parents, family members, guardians, advocates, or authorized representatives of such individuals. They engage in initiatives and new approaches and maintain close working relationships with other governmental and voluntary institutions and organizations to unify and coordinate scientific efforts, encourage joint planning, and promote the interchange of data and reports among SCI researchers.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any Center, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Priority

Under 34 CFR 75.105(c)(3) the Assistant Secretary gives an absolute preference to applications that meet the following priority. The Assistant Secretary will fund under this competition only applications that meet this absolute priority.

Priority 1: Model Spinal Cord Injury Centers

Background

Estimates of the number of people living with traumatic spinal cord injury (SCI) range from 183,000 to 230,000, with an incidence of approximately 10,000 new cases each year ("Spinal Cord Injury Facts and Figures at a Glance," National Spinal Cord Injury Statistical Center (NSCISC), University of Alabama at Birmingham). Although SCI predominately affects young adults (56% of SCIs occur among people aged 16–30 years), there is an increasing proportion of new SCI cases in the population over 60 years of age (NSCISC, ibid.). The true significance of traumatic SCI lies not primarily in the numbers affected, but in the substantial impact on individuals' lives and the associated substantial health care costs and living expenses. A traumatic SCI has far-reaching repercussions on the lives of the injured persons and their families that can be devastating if not addressed effectively. According to a report from the Agency for Health Care Policy and Research (Hospital Inpatient Statistics, 1996, AHCPR Publication No. 99–0034), SCI is the most expensive condition or diagnosis treated in U.S. hospitals. The estimated lifetime costs for an individual injured at the age of 25 range from $365,000 for an incomplete injury to more than $1.7 million for an individual with a high cervical injury (NSCISC, op cit).

The Model SCI program was developed in 1970 to demonstrate the value of a comprehensive integrated continuum of care for SCI. Twenty-six sites have been designated, at various times, as Model SCI Centers through funding initially from the Rehabilitation Services Administration, and subsequently from the National Institute on Handicapped Research, and its successor, the National Institute on Disability and Rehabilitation Research (NIDRR). For the period 1995–2000 there are 18 funded Model SCI Centers. (Additional information is available on the World Wide Web at *http://www.ncddr.org/mscis/).* The clinical components of the Model Centers are specified in the program regulations, and include "* * * emergency medical services, acute care, vocational and other rehabilitation services, community and job placement, and long-term community follow up and health maintenance" (34 CFR 359.11). In addition to demonstrating and evaluating the benefits of such a system the centers are required to contribute data on their patients to the National Spinal Cord Injury Database (NSCID), and engage in research both within the center, and in collaboration with other centers.

During the past 30 years, there have been substantial improvements in outcomes following SCI (Stover, S.L., et al., *Spinal Cord Injury: Clinical Outcomes From the Model Systems,* and Special Issue, Spinal Cord Injury: Current Research Outcomes from the Model Spinal Cord Injury Care Systems, *Archives of Physical Medicine and Rehabilitation,* Vol. 80, No. 11, November, 1999). Enhanced emergency medical services have led to increased preservation of neurologic function. Mortality during the first year following injury has continuously declined. Life expectancy, while still below that for those without SCI, has significantly increased for all levels of injury. The ideal of a comprehensive multi-disciplinary system of care for SCI has gained widespread acceptance.

However, significant challenges and opportunities remain for SCI rehabilitation. Recent statistics from the National Spinal Cord Injury Statistical Center (NSCISC) suggest that as the length of stay in rehabilitation settings has progressively decreased (1993–1998), there has been an increase in re-hospitalization during the first year after injury. In addition, mortality after the first anniversary of injury declined continuously from 1973–1992, but now has increased for the period 1993–1998. Secondary medical complications, including, but not limited to, respiratory complications, pressure ulcers and autonomic dysreflexia, continue to be significant problems. Injuries due to interpersonal violence have increased as a proportion of the total SCI incidence and are more likely to be neurologically complete injuries.

There is a need to identify, evaluate, and eliminate barriers in the natural, built, cultural, and social environments to enable people with SCI to achieve the goal of fully reintegrating into their community. Particular focus is required to address the needs of minority and underserved populations. Although employment for the U.S. population is at historically high levels, employment for the SCI population remains low. Individuals with SCI due to inter-personal violence have an employment rate approximately half of the average for all individuals with SCI (NSCISC, op cit).

NIDRR shares the concerns of the rehabilitation community about the impact of changes in health care delivery and financing upon the continuum of care for SCI. People with SCI often have more difficulty in obtaining adequate primary health care than non-disabled individuals. The unique needs of women with SCI in cardiac rehabilitation, reproductive health, and early cancer screening are special issues that need to be addressed.

There are also new and developing opportunities for improving SCI care. Medical and pharmacological therapies show promise for preserving and enhancing function. There is a need to identify and evaluate therapeutic interventions, including prevention and wellness programs, and complementary and alternative therapies using evidence-based evaluation protocols.

Advancing technology has the potential to enhance access and function for individuals with SCI. There is a need to develop and evaluate service delivery models incorporating telerehabilitation strategies and technologies to provide services for people with SCI. Assistive technologies may reduce the likelihood of secondary complications in SCI. For example, improved wheelchair and seating systems may reduce musculoskeletal trauma associated with long term wheelchair use. Technological advancement has the promise of providing greater accessibility to information, telecommunications, and employment. The adoption of universal design methodologies will enhance access to the built environment as well as rapidly developing electronic and information technologies.

The development of strong collaborations by SCI centers with community and social support organizations has the potential to impact positively the independence and community integration for individuals with SCI. Peer support beginning early in the rehabilitation process may enhance return to participation in the community. The causes of unemployment in SCI include lack of education and skills, lack of prior work experience, and policy disincentives. Pending changes in legislation and policy to permit retention of some medical insurance during employment, together with the high demand for skilled individuals in the workforce, represents an opportunity to foster education and employment of individuals with SCI.

NIDRR has published the Plan that is based upon a new paradigm for rehabilitation that identifies disability in terms of the relationship between the individual and the natural, built, cultural, and social environments (63 FR 57189–57219). The Plan focuses on both individual and systemic factors that have an impact on the ability of people to function. The elements of the Plan include employment outcomes,

health and function, technology for access and function, and independent living and community integration. As part of the Plan to attain the goals in these areas, NIDRR is committed to capacity building for research and training, and to ensure knowledge dissemination and utilization. Each area of the Plan includes objectives at both the individual and system levels. For example, the health and function objectives include research to improve medical rehabilitation interventions, as well as research to ensure access to an integrated continuum of quality health care services that address the unique needs of persons with disabilities. It is clear that the challenges and opportunities for SCI care reflect all of the priority areas of the Plan.

NIDRR has recently completed Program Reviews of all current Model SCI Centers. Based upon presentations by the Centers, and discussion with the external reviewers, NIDRR has concluded that the value of a comprehensive integrated system of care for SCI has been demonstrated. Because this conclusion is widely accepted, NIDRR is shifting the focus of the program from demonstration, to place a greater emphasis upon research. Participants in the Program Reviews observed that the comprehensive continuum of quality care should continue to be a requirement for participation in the Model SCI Centers Program. There is significant diversity among the Centers, however, in research interests and capacities. This diversity extends across the priority areas of the Plan, and represents a strength of the program.

Reviewers noted that uniformly comprehensive, high quality care, together with a common data collection system and administrative infrastructure makes the Model SCI Centers Program a valuable platform for various collaborative studies, including multi-center trials of therapies and technologies. To further the enhancement of the research mission, participants recommended a separate competition for the collaborative research portion of the program. A separate competition will facilitate focused, considered proposals, a higher level of scientific review, and the development of significant research projects in the Model SCI Centers. The competition for collaborative research projects will be conducted subsequent to the identification of the Model SCI Centers, and funds will be reserved for that purpose.

During the Program Reviews, there was considerable discussion of the NSCID. It is clear that the database is a valuable resource and that participation in the NSCID is an essential element for the Model SCI Centers. For the purpose of the present competition, the data collection activities will be maintained without change. NIDRR expects that applicants will include historical documentation of numbers of patients as well as expected new patients and expected annual follow-up submissions based on current eligibility criteria for the NSCID. However, it is anticipated that, through discussion among the newly identified Model SCI Centers, NIDRR staff, and external reviewers, details of data collection may be modified following the award. This process should not result in increased data collection workloads above current levels.

Priority 1

The Assistant Secretary will establish Model Spinal Cord Injury Centers for the purpose of generating new knowledge through research, development, or demonstration to improve outcomes for SCI through improved interventions and service delivery models. A Model SCI Center must:

(1) Establish a multidisciplinary system of providing rehabilitation services specifically designed to meet the special needs of individuals with SCI, including emergency medical services, acute care, vocational and other rehabilitation services, community and job placement, and long-term community follow up and health maintenance;

(2) Participate as directed by the Assistant Secretary in national studies of SCI by contributing to a national database and by other means as required by the Assistant Secretary; and

(3) Conduct a significant and substantial research program in SCI that will contribute to the advancement of knowledge in accordance with the Plan. Applicants may select from the following examples of research objectives related to specific areas of the Plan or other research objectives, including those that cut across areas of the Plan:

- (Chapter 3, Employment Outcomes): Either (1) Assess the impact of legislative and policy changes on employment outcomes; or (2) test direct intervention strategies for improving employment outcomes.
- (Chapter 4, Maintaining Health and Function): Either (1) Study interventions to improve outcomes in the preservation or restoration of function or the prevention and treatment of secondary conditions; or (2) Design and test service delivery models that provide quality care under constraints imposed by recent changes in the health care financing system.
- (Chapter 5, Technology for Access and Function): Either (1) Evaluate the impact of selected innovations in technology and rehabilitation engineering on service delivery; or (2) Evaluate the impact of selected innovations in technology and rehabilitation engineering on outcomes such as function, independence, and employment.
- (Chapter 6, Independent Living and Community Integration): Assess the value of peer support and early onset of services from community and social support organizations to improve outcomes such as independence and community integration, employment function, and health maintenance.
- (Chapter 7, Associated): Either (1) Refine measures of medical rehabilitation effectiveness in SCI to incorporate environmental factors in the assessment function; or (2) Investigation of the impact of national telecommunications and information policy on the access of persons with SCI to related education, work, and other opportunities.

(4) Provide for the widespread dissemination of research and demonstration findings to other SCI centers, rehabilitation practitioners, researchers, individuals with SCI and their families and representatives, and other public and private organizations involved in SCI care and rehabilitation. In carrying out these purposes, the SCI center must:

- Incorporate culturally appropriate methods of community outreach and education in areas such as health and wellness, housing, transportation, recreation, employment, and other community activities for individuals with diverse backgrounds with SCI;
- Demonstrate the research and clinical capacity to participate in collaborative projects, clinical trials, or technology transfer with other model SCI centers, other NIDRR grantees, and similar programs of other public and private agencies and institutions; and
- Demonstrate the likelihood of having a sufficient number of individuals with SCI, including newly injured persons, to conduct statistically significant research.

Final Selection Criteria

The Assistant Secretary will use these selection criteria to evaluate applications under this program. The maximum score for all the criteria is 100 points. The new emphasis on research and NIDRR's Plan, plus the importance of the NSCID, require some

modifications to the selection criteria for this program. The Secretary will redistribute points to reflect the increased emphasis on research, and to add references to the Plan and NSCID.

(a) *Research Project design* (30 points). The Secretary reviews each application to determine to what degree—

(1) There is a clear description of how the objectives of the project relate to the purpose of the program and the Plan;

(2) The research is likely to produce new and useful information;

(3) The need and target population are adequately defined and are sufficient for meaningful research and demonstration;

(4) The outcomes are likely to benefit the defined target population;

(5) The research hypotheses are sound; and

(6) The research methodology is sound in the sample design and selection, the data collection plan, the measurement instruments, and the data analysis plan.

(b) *Service comprehensiveness* (20 points). The Secretary reviews each application to determine to what degree—

(1) The services to be provided within the project are comprehensive in scope, and include emergency medical services, intensive and acute medical care, rehabilitation management, psychosocial and community reintegration, and follow up;

(2) A broad range of vocational and other rehabilitation services will be available to individuals with severe disabilities within the project; and

(3) Services will be coordinated with those services provided by other appropriate community resources.

(c) *Plan of operation* (10 points). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective;

(4) Participation in the National Spinal Cord Injury Database is clearly and adequately described; and

(5) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Individuals with disabilities; and

(iv) The elderly.

(d) *Quality of key personnel* (10 points). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training or experience, or both, in spinal cord injury care and rehabilitation and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature or methods, or both;

(3) All the disciplines necessary to establish the multidisciplinary system described in § 359.11(a) are effectively represented;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Individuals with disabilities; and

(iv) The elderly.

(e) *Adequacy of resources* (5 points). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative and other necessary support is evident.

(f) *Budget/cost effectiveness* (5 points). The Secretary reviews each application to determine to what degree—

(1) The budget for the project is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project; and

(3) The budget for subcontracts (if required) is detailed and appropriate.

(g) *Dissemination/utilization* (10 points). The Secretary reviews each application to determine to what degree—

(1) There is a clearly defined plan for dissemination and utilization of project findings;

(2) The research results are likely to become available to others working in the field;

(3) The means to disseminate and promote utilization by others are defined; and

(4) The utilization approach is likely to address the defined need.

(h) *Evaluation plan* (10 points). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress, and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

Final Additional Selection Criterion

The Assistant Secretary also will use the following criterion so that up to an additional ten points may be earned by an applicant for a total possible score of 110 points:

Within this absolute priority, we will give the following competitive preference to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under these absolute priorities. In determining the effectiveness of those strategies, we will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Rehabilitation Engineering Research Centers

The authority for RERCs is contained in section 204(b)(3) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(b)(3)). The Secretary may make awards for up to 60 months through grants or cooperative agreements to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. An RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

Description of Rehabilitation Engineering Research Centers

RERCs carry out research or demonstration activities by:

(a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers, and (2) study new or emerging technologies, products, or environments;

(b) Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas, and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services, and (2) other scientific research to assist in meeting the employment and independent needs of individuals with severe disabilities.

Each RERC must provide training opportunities to individuals, including individuals with disabilities, to become researchers of rehabilitation technology and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organizations.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RERC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General RERC Requirements

The following requirements apply to these RERCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these requirements will be assessed using applicable selection criteria in the peer review process.

The RERC must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings.

The RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.

The RERC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, development, training, and dissemination activities, and in evaluating the Center.

Priorities

Under an absolute priority we consider only applications that meet one of these absolute priorities (34 CFR 75.105(c)(3)).

Priority 2: Low Vision and Blindness

Background

According to recent estimates there are more than 3 million Americans with low vision, and almost one million who are legally blind (National Eye Institute, "Vision research: A national plan 1999–2003," A report of the National Advisory Eye Council, National Institutes of Health, 1999). Approximately 7.8% of persons over 65 cannot see well enough to read newspaper print (Nelson, K.A., "Statistical brief #35: Visual impairment among elderly Americans: statistics in transition," *Journal of Visual Impairment and Blindness*, vol. 81, pgs. 331–334, 1987), and the number of persons in this age group is projected to increase twice as fast as the population as a whole (Schmeidler, E. and Halfman, D., "Statistics on visual impairment on older persons, disability in children, life expectancy," *Journal of Visual Impairment and Blindness*, vol. 91, pgs. 602–606, 1997). Blind and visually impaired individuals face major barriers in information access and handling, orientation and mobility, and access to jobsites and public facilities, resulting in very high rates of unemployment (Kirchner, C. and Schmeidler, E., "Prevalence and employment of people in the United States who are blind or visually impaired," *Journal of Visual Impairment and Blindness*, vol. 91, pgs. 508–511, 1997; Hagemoser, S.D., "The relationship of personality traits to the employment status of persons who are blind," *Journal of Visual Impairment and Blindness*, vol. 90, pgs. 134–144, 1996). There is also a growing and underserved group of individuals with a combination of multiple sensory, physical, and cognitive impairments (Malakpa, S., "Job placement of blind and visually impaired people with additional disabilities" *RE:View*, vol. 26, pgs. 69–77, 1994).

The leading causes of vision impairment in children in the U.S. are cortical visual impairment (35%), retinopathy of prematurity (ROP), optic nerve hypoplasia, and other retinal conditions (Murphy, D. and Good, W.V., "The epidemiology of blindness in children in California," *American Academy of Opthalmology*, pg. 157, 1997; *Oxford Register of Early Childhood Impairments Annual Report, The National Perinatal Epidemiology Unit, Ratcliffe Infirmary*, pgs. 32–36, 1998). As a result of improvements in medical diagnosis, treatment and technologies, more premature infants are surviving birth. However, a significant number of newborn infants experience traumatic conditions that include blindness and cognitive and motor deficits. New approaches and technologies are needed to identify and separate the sensory and cognitive deficits so that habilitation can be planned and monitored more effectively (Good, W.V., Jan, J.E., deSa, L., Barkovich, A.J., Groenveld, M. and Hoyt, C.S., "Cortical visual impairment in children: A major review," *Survey of Opthalmology*, vol. 38, pgs. 351–364, 1994). Intervention in the very young age groups offers maximum promise of cost effectiveness and independent functioning throughout life.

Wayfinding refers to the techniques used by persons who are blind or visually impaired as they move from place to place independently. Wayfinding is commonly divided into orientation and mobility skills. Orientation refers to the ability to monitor one's position in relation to the environment. Mobility refers to one's ability to move safely, from one location to the next with a limited amount of veering. Orientation and mobility are prerequisites to success at school, on the job, and in daily living. Various electronic devices and environmental modifications have been used in attempts to improve wayfinding and to reduce veering. Current technologies, including clear-path and drop-off detectors, do little to prevent veering.

Low vision or blindness frequently coexists with other disabilities including hearing loss, cognitive impairments and mobility limitations. Individuals with multiple disabilities present technological challenges and require complex adjustments to achieve functionality in and across environments (Greenbaum, M.G., Fernandes, S. and Wainapel, S.F., "Use of a motorized wheelchair in conjunction with a guide dog for the legally blind and physically disabled," *Archives of Physical Medicine and Rehabilitation*, vol. 79(2), pgs. 216–217, 1998).

The most common cause of visual impairment among the aging population is Age Related Maculopathy (ARM) (Fletcher, D.C. and Schucard, R.A.,

"Preferred retinal loci relationship to macular scotomas in a low-vision population," *Opthalmology*, vol. 104, pgs. 632–638, 1997). Visual impairments among this population impact a wide variety of activities of daily living. Further, visual impairment is often accompanied by hearing loss, cognitive deficits, and motor dysfunction. Many older individuals reside in congregate care settings (i.e., nursing homes) where the prevalence of eye disorders can be as high as 90% (Marx, M.S., Werner, P., Feldman, R. and Cohen-Mansfield, J., "The eye disorders of residents of a nursing home," *Journal of Visual Impairment and Blindness*, vol. 88(5), pgs. 462–468, 1994; Whitmore, W.G., "Eye disease in a geriatric nursing home population," *Opthalmology*, vol. 96, pgs. 393–398, 1989; Horowitz, A., "Vision impairment and functional disability among nursing home residents," *The Gerontologist*, vol. 34, pgs. 316–323, 1994). These facilities could be a platform for reaching many consumers with simple vision screening technologies that would permit non-clinical personnel to rapidly screen residents for visual impairments and make appropriate referrals. Currently, methods for assessing ARM include, but are not limited to, residual visual function and identifying optimal locations on the retina for reading and other tasks (Fletcher, D.C. and Schucard, R.A., op. cit., 1997). These methods address one eye at a time, and the advantages of binocular vision are often lost (Paul, W., "The role of computer assistive technology in rehabilitation of the visually impaired: A personal perspective," *American Journal of Opthalmology*, vol. 127(1), pgs. 75–76, 1999; Schuchard, R.A. and Kuo, K., "Retinal correspondence and binocular perception characteristics in low vision people with binocular eccentric PRLs," *Investigative Opthalmology and Vision Science*, vol. 91, pgs. 602–606, 1999).

Chapter 5 of the Plan (64 FR 68575) discusses the importance of directing research and development activities toward the problems faced by individuals who have significant visual, hearing, and communication impairments. The number of individuals with both severe hearing and visual impairments (deaf-blind) is small but increasing. The greatest challenges persons with multiple sensory impairments face are communication and access to information technology (Engelman, M.D., Griffin, H.C. and Wheeler, L., "Deaf-blindness and communication: Practical knowledge and strategies," *Journal of Visual Impairments and Blindness*, vol. 92(11), pgs. 783–798, 1999). Individuals who are deaf-blind rarely use Braille for communication purposes. To date, technologies for individuals who are deaf-blind have focused primarily on tactile interpreting for face-to-face communication.

In today's complex and multifaceted electronic world, access to graphical and spatial information is critical for persons who are blind or visually impaired to be successful in school and work (Kent, D., "Book review: Let's learn shapes with Shapely-Cal," *Journal of Visual Impairment and Blindness*, vol. 92(4), pgs. 245–247, 1998). Tactile graphical information and spatial and geometric concepts are difficult to represent for persons who are blind. Converting pictures or signs into raised tactile form has proven to be costly and time-consuming (Horsfall, B., "Photopolymers, computer-aided design, and tactile signs," *Journal of Visual Impairment and Blindness*, vol. 92(11), pgs. 823–826, 1998). Audio and audio-tactile methods of graphics presentation and spatial and geometric concepts may promote parity between individuals who are blind or visually impaired and others in a variety of environments including school, work, and recreation.

Priority 2

The Assistant Secretary will establish an RERC that will identify and develop technologies that will improve assessment of vision impairments and promote independence for individuals with low vision and blindness. The RERC must:

(1) Investigate, develop, and evaluate new assessment technologies and approaches that will identify and differentiate between vision and cognitive impairments in infants;

(2) Develop and evaluate new wayfinding technologies and approaches that can be used by persons with coexisting disabilities;

(3) Investigate, develop, and evaluate simple and practical vision screening and assessment technologies and approaches for identifying visual impairments associated with aging;

(4) Investigate, develop, and evaluate new technologies and approaches to facilitate face-to-face communication for individuals who are deaf-blind and methods that will enable individuals who are blind or deaf-blind to navigate and interpret graphical, spatial and geometric information;

(5) Investigate, develop, and evaluate new technologies and approaches that will assist individuals who are blind or visually impaired in vocational and daily living environments; and

(6) Develop and implement, in consultation with the NIDRR-funded RERC on Technology Transfer, a utilization plan for ensuring that all new and improved technologies developed by this RERC are successfully transferred to the marketplace.

In carrying out the above required activities, the RERC must:

- Develop and implement, during the first year of the grant and in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to effectively disseminate the RERC's research outcomes to all appropriate target audiences including: clinicians, engineers, manufacturers, individuals with disabilities, families, disability organizations, technology service providers, businesses, journals, organizations representing minorities and other underrepresented groups;
- In the third year of the grant, conduct a state-of-the-science conference on technologies for individuals with low vision and blindness and publish a comprehensive report in the fourth year of the grant;
- Collaborate on research projects of mutual interest with NIDRR-funded RERCs on Information Technology Access and Telecommunications Access, RRTCs on visual disabilities and appropriate professional organizations; and
- Address the needs of children with vision disabilities from minority backgrounds and cultures.

Priority 3: Technologies for Children with Orthopedic Disabilities

Background

It is estimated that 6 million children, age 18 and younger, in the United States have some type of disability. The prevalence of children with orthopedic impairments in the U.S., including paralysis and congenital anomalies, is roughly 420,000 (8.4 percent) (LaPlante, M. and Carlson, D., "Disability in the United States: Prevalence and Causes," *1992 Report of the Disability Statistics Rehabilitation Research and Training Center*, NIDRR, U.S. Department of Education, 1995). The majority of these children are unable to perform a major activity or are limited in the amount or types of major activities, including education and play, they can perform (Wenger, B.L., Kaye, H.S. and LaPlante, M.P., "Disabilities among children," *Disability Statistics Abstract* (No. 15), NIDRR, U.S. Department of Education, 1996). Children with disabilities present unique challenges for health care

professionals when compared to adults with similar disabilities. For example: children experience periods of accelerated growth affecting shape, strength and body alignment; their body sizes are disproportionate to adults, they are not scaled-down adults; they experience developmental stages that affect their fine and gross motor skills; their capabilities change as they mature and as they learn to control their bodies and their environment; and parental expectations about their child's disability can influence medical treatment and therapeutic interventions.

Chapter 5 of the Plan (64 FR 45766) discusses the importance of research and development activities that will enhance mobility and improve manipulation for individuals with orthopedic impairments. Children with orthopedic impairments present unique challenges for rehabilitation specialists. The technology to 'replace' a child's missing limb does not exist today. It is possible, however, to restore considerable function with a prosthesis. The usefulness of such a device depends largely upon its weight, how well it fits, how easy it is to control and its durability, reliability and aesthetics. Continual developmental changes, including physical, emotional, and social growth, make it difficult to fit a child with a prosthesis and to determine the most appropriate time for introducing a prosthesis to a child. For example, the importance of fitting a child early with a prosthesis is well cited. However, there continues to be discussion about which developmental milestones to consider when determining the most suitable prosthesis for a child (Patton, J.G., "Development approach to pediatric upper-limb prosthetic training," *Atlas of Limb Prosthetics: Surgical, Prosthetic, and Rehabilitation Principles*, Mosby, St. Louis, pgs. 778–793, 1992).

In addition to congenital and acquired amputations there are other conditions that can cause orthopedic impairments in children. Cerebral palsy (CP) is a motor disorder originating from a central nervous system injury that occurs before, during or shortly after birth. Children under the age of five who sustain brain injuries are also classified as having CP. The disability ranks third among childhood disabilities (LaPlante, M.P., *Disability risks of chronic illness and impairments*, Disability Statistics Program, San Francisco, CA., 1989) and is the most common cause of paralysis in children (Wenger, B.L., Kaye, H.S. and LaPlante, M.P., op. cit., 1996). The reported prevalence of CP in the U.S. is two per thousand and the incidence is approximately one per thousand live births (Turk, M.A., "Early development-related conditions," *Assessing Medical Rehabilitation Practices: The Promise of Outcomes Research*, Marcus J. Fuhrer, ed., pgs. 371–372, 1997). Individuals with CP typically have abnormal muscle tone, muscle weakness, primitive reflexes, or uncoordinated movements requiring seating and orthotic interventions for postural control and alignment (Cook, A.M. and Hussy, S.M., *Assistive Technologies: Principles and Practice*, Mosby, St. Louis, pg. 237, 1995). Spina bifida is a congenital anomaly in which the neural tube that forms the spinal cord does not fully develop, leading to a number of lower extremity problems, including muscle paralysis, hip dislocations, knee hypertension, and club feet. The reported incidence of spina bifida is between 0.5 and 1 per thousand (Turk, M.A., op. cit., pgs. 378–379, 1997).

The most common management strategy for motor impairments caused by cerebral palsy and spina bifida is developmental therapy (*i.e.*, physical, occupational, speech and language therapies). However, orthotics, specific spasticity-reducing regimens (Baclofen pumps, botulinum toxin injections), orthopedic surgery, and adaptive equipment also are used in intervention. Orthotics are used on both upper and lower extremities to improve function, to prevent or compensate for anomalies, and to control muscle weakness, spasticity and structural instability. Most orthotic devices (*e.g.*, ankle-foot orthoses) are designed to be rigid. Dynamic orthoses and splints for gait, spasticity and contracture management may have significant application.

Adaptive equipment is used to improve functional independence in mobility, self-care, communication, environmental control, and school activities. There is no definitive study on how to make the best choice among all the options or which improves function the most (Turk, M.A., op. cit., pg. 376, 1997).

Composite materials have much to offer in prosthetic and orthotic design. They are strong, lightweight, and durable. However, these materials require different and more costly manufacturing techniques than those used with traditional materials such as metal and thermoplastics. A problem associated with composite materials is that they are difficult to postform, a process whereby prosthetic or orthotic devices are adjusted slightly during final fittings (White, M., "Development of an advanced lightweight composite orthosis," Presented at ASM International—Aeromat 1992, New Trends in Advanced Composites, Anaheim, CA., May 20, 1992).

Leisure time is critical to a child's well-being and development. Play is one means for children to master developmental tasks and learn important behavioral and social skills. The ability to interact effectively with the environment through play can affect a child's self-esteem, behavior, self-awareness, confidence, and competency (Masten, A.S., "The development of competence in favorable and unfavorable environments: Lessons from research on successful children," *American Psychologist*, vol. 53, pgs. 205–220, 1998). Children with disabilities, including those with amputations, cerebral palsy and spina bifida, encounter many challenges in their attempts to engage in learning and play activities. Often sensory and motor impairments severely limit the degree to which they are able to negotiate their environment and interact with others. Facilitating play for these children involves adapting the environment and providing appropriate technologies that will enhance interactive play and social skill development. The product market is challenged to meet the demands of millions of children with disabilities and their families who need alternative strategies in order to engage in recreation and social activities.

Priority 3

The Assistant Secretary will establish a RERC on technologies for children with orthopedic disabilities to identify and develop technologies that will help children with orthopedic disabilities to overcome functional deficits and to support their ability to learn, play and interact socially. The RERC must:

(1) Develop and evaluate new, lightweight upper and lower limb prosthetic and orthotic devices for children;

(2) Investigate the use of dynamic orthoses for controlling spasticity and contractures for children with orthopedic impairments including those with cerebral palsy and spina bifida;

(3) Identify, develop, and evaluate models for determining when during children's development to introduce assistive technologies and prosthetic and orthotic devices;

(4) Investigate, develop, and evaluate technologies, and strategies for their use, that will enable young children, including children with cerebral palsy and spina bifida, to participate in interactive play and socialization activities; and

(5) Develop and implement, in consultation with the NIDRR-funded RERC on Technology Transfer, a

utilization plan for ensuring that all new and improved technologies developed by this RERC are successfully transferred to the marketplace.

In carrying out the above required activities, the RERC must:

- Develop and implement, during the first year of the grant and in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to effectively disseminate the RERC's research outcomes to all appropriate target audiences including: clinicians, engineers, manufacturers, individuals with disabilities, families, disability organizations, technology service providers, businesses, and journals;
- In the third year of the grant, conduct a state-of-the-science conference on technologies for children with orthopedic disabilities and publish a comprehensive report in the fourth year of the grant;
- Collaborate on research projects of mutual interest with the RERC on Prosthetics and Orthotics, the RERC on Wheeled Mobility, and the RRTC on Children with Special Health Care Needs; and
- Address the needs of children with orthopedic disabilities from minority backgrounds and cultures.

Final Additional Selection Criterion

The Assistant Secretary will use the selection criteria in 34 CFR 350.54 to evaluate applications under this program. The maximum score for all the criteria is 100 points; however, the Assistant Secretary also will use the following criterion so that up to an additional ten points may be earned by an applicant for a total possible score of 110 points:

Within these absolute priorities, we will give the following competitive preference to applications that are otherwise eligible for funding under these priorities:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under these absolute priorities. In determining the effectiveness of those strategies, we will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for these priorities. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

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Applicable Program Regulations: 34 CFR Part 350.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133N, Model Spinal Cord Injury Centers and 84.133E, Rehabilitation Engineering Research Centers)

Dated: March 8, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–6140 Filed 3–15–00; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133N and 84.133E]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research, Notice Inviting Applications for New Model Spinal Cord Injury Centers and New Rehabilitation Engineering Research Centers for Fiscal Year 2000

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; Disability and Rehabilitation Research Projects and Centers—34 CFR Part 350, and the Notice of Final Priority published elsewhere in this issue of the **Federal Register**.

Rehabilitation Engineering Research Centers in Subpart D; and Disability and Rehabilitation Research Special Projects and Demonstrations for Model Spinal Cord Injury—34 CFR Part 359 and the Notice of Final Priorities published elsewhere in this issue of the **Federal Register**.

Pre-Application Meetings: Interested parties are invited to participate in a pre-application meeting to discuss the funding priority for a RERC on Low Vision and Blindness and a Technologies for Children with Orthopedic Disabilities and to receive technical assistance through individual consultation and information about the funding priorities. The pre-application meeting will be held on April 4, 2000.

A pre-application meeting for the Model Spinal Cord Injury Centers will be held on April 5, 2000 at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St. SW, Washington, DC between 10:00 a.m. and 12:00 a.m. NIDRR staff will also be available at this location from 1:30 p.m. to 5:00 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priorities. NIDRR will make alternate arrangements to accommodate interested parties who are unable to attend the pre-application meeting in person. For further information contact William Peterson, Switzer Building, room 3425, 400 Maryland Avenue, SW, Washington, DC 20202. Telephone (202) 205–9192, or Joel Myklebust, Switzer Building, room 3042, 400 Maryland Avenue, SW, Washington, DC 20202. Telephone (202) 401–2071. If you use a Telecommunication Device for the Deaf (TDD), you may call (202) 205–4475.

Assistance to Individuals With Disabilities at the Public Meetings

The meeting site is accessible to individuals with disabilities, and a sign

language interpreter will be available. If you need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (e.g. other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this Notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

APPLICATION NOTICE FOR FISCAL YEAR 2000, MODEL SPINAL CORD INJURY CENTERS—CFDA NO.84–133N

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Award amount (per year)*	Project Period (months)
Model Spinal Cord Injury Centers	60 Days, May 12, 2000	15	$300,000–$375,000	60

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Program Title: Model Spinal Cord Injury Centers.

CFDA Number: 84.133N.

Purpose of Program: Model SCI Centers provide assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with SCI.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Projects will be funded at varying amounts up to the maximum allowed based on individual factors in proposals. Proposed budgets should reflect costs associated with data collection, proposed research, and administration. Funding will be determined individually for each successful applicant up to the maximum allowed based upon 6 documented workload, the peer review process, and overall budgetary limits of the program.

Final Selection Criterion

The Assistant Secretary will use these selection criteria to evaluate applications under this program. The maximum score for all the criteria is 100 points; however, the Assistant Secretary also will use the following criterion so that up to an additional ten points may be earned by an applicant for a total possible score of 110 points:

The new emphasis on research and NIDRR's Plan, plus the importance of the NSCID, require some modifications to the selection criteria for this program. The Secretary will redistribute points to reflect the increased emphasis on research, and to add references to the Plan and NSCID.

(a) *Research Project design* (30 points). The Secretary reviews each application to determine to what degree—

(1) There is a clear description of how the objectives of the project relate to the purpose of the program and the Plan;

(2) The research is likely to produce new and useful information;

(3) The need and target population are adequately defined and are sufficient for meaningful research and demonstration;

(4) The outcomes are likely to benefit the defined target population;

(5) The research hypotheses are sound; and

(6) The research methodology is sound in the sample design and selection, the data collection plan, the measurement instruments, and the data analysis plan.

(b) *Service comprehensiveness* (20 points). The Secretary reviews each application to determine to what degree—

(1) The services to be provided within the project are comprehensive in scope, and include emergency medical services, intensive and acute medical care, rehabilitation management, psychosocial and community reintegration, and follow up;

(2) A broad range of vocational and other rehabilitation services will be available to individuals with severe disabilities within the project; and

(3) Services will be coordinated with those services provided by other appropriate community resources.

(c) *Plan of operation* (10 points). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective;

(4) Participation in the National Spinal Cord Injury Database is clearly and adequately described; and

(5) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Individuals with disabilities; and

(iv) The elderly.

(d) *Quality of key personnel* (10 points). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training or experience, or both, in spinal cord injury care and rehabilitation and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature or methods, or both;

(3) All the disciplines necessary to establish the multidisciplinary system described in § 359.11(a) are effectively represented;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Individuals with disabilities; and

(iv) The elderly.

(e) *Adequacy of resources* (5 points). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative and other necessary support is evident.

(f) *Budget/cost effectiveness* (5 points). The Secretary reviews each application to determine to what degree—

(1) The budget for the project is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project; and

(3) The budget for subcontracts (if required) is detailed and appropriate.

(g) *Dissemination/utilization* (10 points). The Secretary reviews each application to determine to what degree—

(1) There is a clearly defined plan for dissemination and utilization of project findings;

(2) The research results are likely to become available to others working in the field;

(3) The means to disseminate and promote utilization by others are defined; and

(4) The utilization approach is likely to address the defined need.

(h) *Evaluation plan* (10 points). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress, and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

Final Additional Selection Criterion

Within the absolute priority (see the notice of final priority published elsewhere in this issue of the **Federal Register**), we will give the following competitive preference to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of those strategies, we will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

APPLICATION NOTICE FOR FISCAL YEAR 2000, REHABILITATION ENGINEERING RESEARCH CENTERS—CFDA NO. 84–133E

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year) *	Project period (months)
84.133E–1, Low Vision and Blindness	May 12, 2000	1	$650,000	60
84.133E–3, Technologies for Children with Orthopedic Disabilities	May 12, 2000	1	650,000	60

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Program Title: Rehabilitation Engineering Research Centers (RERCs).

CFDA Number: 84.133E.

Purpose of Program: RERCs conduct research, demonstration, and training activities regarding rehabilitation technology—including rehabilitation engineering, assistive technology devices, and assistive technology services, in order to enhance the opportunities to better meet the needs of, and address the barriers confronted by, individuals with disabilities in all aspects of their lives.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Selection Criteria: The Assistant Secretary uses the following selection criteria to evaluate applications for RERCs on Engineering for Low Vision and Blindness and Technologies for Children with Orthopedic Disabilities. (See section 350.54). The maximum score for all the criteria is 100 points.

(a) *Importance of the problem (8 points total).* (1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of rehabilitation service providers (2 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority (4 points total).* (1) The Secretary considers the responsiveness of the application to an absolute or competitive priority published in the **Federal Register**.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities (20 points total).* (1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (4 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (3 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (3 points);

(C) Each sample population is appropriate and of sufficient size (3 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (3 points); and

(E) The data analysis methods are appropriate (4 points).

(d) *Design of development activities (20 points total).* (1) The Secretary considers the extent to which the design of development activities is likely to be effective in accomplishing the objectives of the project.

(2) (i) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors—

(ii) The extent to which the plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products or techniques, including consideration of the extent to which—

(A) The proposed project will use the most effective and appropriate technology available in developing the new device or technique (3 points);

(B) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology (4 points);

(C) The new device or technique will be developed and tested in an appropriate environment (3 points);

(D) The new device or technique is likely to be cost-effective and useful (3 points);

(E) The new device or technique has the potential for commercial or private manufacture, marketing, and distribution of the product (4 points); and

(F) The proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products (3 points).

(e) *Design of training activities (4 points total).* (1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the extent to which the type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in advanced-level research, are likely to develop highly qualified researchers (4 points).

(f) *Design of dissemination activities (4 points total).* (1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(ii) The extent to which the information to be disseminated will be accessible to individuals with disabilities (2 point).

(g) *Design of utilization activities (4 points total).* (1) The Secretary considers the extent to which the design of utilization activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the extent to which the potential new users of the information or technology have a practical use for the information and are likely to adopt the practices or use the information or technology, including new devices (4 points).

(h) *Design of technical assistance activities (2 points total).* (1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (2 points).

(i) *Plan of operation (4 points total).* (1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(j) *Collaboration (4 points total).* (1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (2 points).

(ii) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities (2 points).

(k) *Adequacy and reasonableness of the budget (4 points total).* (1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(l) *Plan of evaluation (9 points total).* (1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(i) Are clearly related to the intended outcomes of the project and expected impacts on the target population (5 points); and

(ii) Are objective, and quantifiable or qualitative, as appropriate (4 points).

(m) *Project staff (9 points total).* (1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (2 points).

(n) *Adequacy and accessibility of resources (4 points total).* (1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (1 point).

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Final Additional Selection Criteria

Within this absolute priority, we will give the following competitive preference to applications that are otherwise eligible for funding under the notice of final priorities published elsewhere in this issue of the **Federal Register:**

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under these absolute priorities. In determining the effectiveness of those strategies, we will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for these priorities. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Instructions for Application Narrative

The Assistant Secretary strongly recommends the following:

(a) A one-page abstract;

(b) An Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than 125 pages double-spaced (no more than 3 lines per vertical inch) 8½″x 11″pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(c) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver or express mail the original and two copies of the application by 4:30 p.m. [Washington, DC time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Assistant Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 1/12/1999) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Certification of Eligibility for Federal Assistance in Certain Programs (ED Form 80–0016).

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue S.W., room 3317, Switzer Building, Washington, D.C., (202) 205–8207. Individuals who use a Telecommunications Device for the Deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3414, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880 or TDD (202) 205–4475. Internet: Donna__Nangle@ed.gov

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of document is the Document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Numbers: 84.133N, Special Projects and Demonstrations for Spinal Cord Injuries and 84.133E, Rehabilitation Engineering Research Centers)

Program Authority: 29 U.S.C. 760–762.

Dated: March 8, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes. You may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. An applicant for a Rehabilitation Research Project should limit indirect charges to the organizations approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out if It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out if My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____ Organizational Unit: _____

Address: _____

_____ City _____ State _____ County _____ ZIP Code + 4 _____

2. Applicant's D-U-N-S Number ☐☐☐☐☐☐☐☐☐

3. Applicant's T-I-N ☐☐-☐☐☐☐☐☐☐

4. Catalog of Federal Domestic Assistance #: 8 4 ☐☐☐☐ → Title: _____

5. Project Director: _____

Address: _____

_____ City _____ State _____ ZIP Code + 4 _____

Tel. #: ( ) _____ Fax #: ( ) _____

E-Mail Address: _____

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review)*: ___/___/_____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

11. Proposed Project Dates:

Start Date:	End Date:
___/___/_____	___/___/_____

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ Fax #: ( ) _____

d. E-Mail Address:

e. Signature of Authorized Representative — Date: ___/___/_____

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No" If research activities involving human subjects are not planned at any time during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If all the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a , **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

OMB Approval No 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." ~~Applicants requesting funding for multi-year grants should complete~~ all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

ESTIMATED PUBLIC REPORTING BURDEN

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Model Spinal Cord Injury Centers (CFDA No. 84.133N) 34 CFR Part 359.

Rehabilitation Engineering Research Center (CFDA No. 84.133E) 34 CFR Part 350.

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

OR

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ _____

(Signature) (Date)

_____

(Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

ED 80-0016 (9/92)

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

11.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

[FR Doc. 00–6141 Filed 3–15–00; 8:45 am]
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Federal Register

Thursday
March 16, 2000

Part III

Department of Defense

48 CFR Ch. 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments to Update Activity Names and Addresses; Technical Amendments; Federal Prison Industries Waiver Threshold; Cargo Preference-Subcontracts for Commercial Items; Construction and Service Contracts in Noncontiguous States; Final Rules

DEPARTMENT OF DEFENSE

48 CFR Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments to Update Activity Names and Addresses

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement to update names and addresses of DoD activities.

EFFECTIVE DATE: March 16, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–4245; telefax (703) 602–0350.

List of Subjects in 48 CFR Chapter 2

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Appendix G to Chapter 2 is amended as follows:

1. The authority citation for 48 CFR Appendix G to Chapter 2 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

Appendix G—Activity Address Numbers

2. Appendix G to Chapter 2 is amended by revising Parts 2 through 10, adding Part 11, and revising Parts 12 through 14 to read as follows:

Appendix G—Activity Address Numbers

* * * * *

Part 2—Army Activity Address Numbers

DAAA03, B1 Pine Bluff Arsenal, ATTN: SIOPB–PO, 10020 Kabrich Circle, Pine Bluff, AR 71602–9500

DAAA08, B7 Rock Island Arsenal, ATTN: SIORI–CT, Rock Island, IL 61299–5000

DAAA09, BA U.S. Army Industrial Operations Command, ATTN: AMSIO–ACS, Rock Island, IL 61299–6000

DAAA10, 9X Blue Grass Army Depot Procurement Office, Building S–14, ATTN: SIOBG–PO 2091 Kingston Highway, Richmond, KY 40475–5115

DAAA12, ZM Sierra Army Depot, Building 74, Herlong, CA 96113–5009

DAAA14, BK Tooele Army Depot, Contracting Office, ATTN: SIOTE–CD, Building S–9, Tooele, UT 84074–0839

DAAA22, BV Watervliet Arsenal, ATTN: SIOWV–PQP, Building 10, Watervliet, NY 12189–4050

DAAA31, GJ McAlester Army Ammunition Plant, ATTN: SIOMC–PC 1 C Tree Road, McAlester, OK 74501–9002

DAAA32, 0P Crane Army Ammunition Activity ATTN: SIOCN–CT 300 Highway 361, Crane, IN 47522–5099

DAAA33 U.S. Army Combat Equipment Group-Asia 103 Guidance Road, Goose Creek, SC 29445–6060

DAAA34 Seneca Army Depot Activity, ATTN: SIOSE–IR 5786 State Route 96, Building 115, Romulus, NY 14541–5001

DAAB07, BG U.S. Army Communications-Electronics Command, CECOM Acquisition Center, ATTN: AMSEL–AC–CC–D–B, Building 1208, Fort Monmouth, NJ 07703–5008

DAAB08, 2V U.S. Army Communications-Electronics Command, CECOM Acquisition Center, ATTN: AMSEL–AC–CC–RT–S, Building 1208, Fort Monmouth, NJ 07703–5008

DAAB11, D0 U.S. Army Communications-Electronics Command, CECOM Acquisition Center Washington, ATTN: AMSEL–AC–W (Vint Hill Operations), 2461 Eisenhower Avenue, Alexandria, VA 22331–0700

DAAB15, BD U.S. Army Communications-Electronics Command, CECOM Acquisition Center Washington, ATTN: AMSEL–AC–W 2461 Eisenhower Avenue, Alexandria, VA 22331–0700

DAAB17, ZS U.S. Army Communications-Electronics Command, Tobyhanna Depot Contracting Office, ATTN: AMSEL–TY–KO 11 Hap Arnold Boulevard, Tobyhanna, PA 18466–5100,

DAAB18, E4 U.S. Army Communications-Electronics Command, Technology Applications Office, ATTN: AMSEL–DSA–TA 1671 Nelson Street, Fort Detrick, MD 21702–5004

DAAB22, E7 U.S. Army Communications-Electronics Command, APM–European Switched Systems, ATTN: AMSEL–DSA–SWE, CMR 421, Box 651, APO AE 09056–3104,

DAAB32, Y6 U.S. Army Communications-Electronics Command, Southwest Operations Office, ATTN: AMSEL–AC–CC–S, Building 61801, Room 3212, Fort Huachuca, AZ 85613–6000

DAAD01, B5 U.S. Army Materiel Command Acquisition Center, Yuma Proving Ground Office, ATTN: STEAA–CD–Y, Building 2100, Ocotilla Street, Yuma, AZ 85365–9106,

DAAD05, BM U.S. Army Materiel Command Acquisition Center, APG Contracting Division, Aberdeen Branch, ATTN: STEAA–AP–A 4118 Susquehanna Avenue, Aberdeen Proving Ground, MD 21005–3013

DAAD07, BN U.S. Army Materiel Command Acquisition Center, White Sands Missile Range Contract Division, ATTN: STEAA–WS, Building 126 West, Crozier Street, White Sands Missile Range, NM 88002–5201

DAAD09, BP U.S. Army Materiel Command Acquisition Center, Dugway Proving Ground Office, ATTN: STEAA–DP, 5330 Valdez Circle, Dugway, UT 84022–5000

DAAD11, B2 U.S. Army Materiel Command Acquisition Center, Rocky Mountain Arsenal Office, ATTN: STEAA–RM, 72nd and Quebec Streets, Commerce City, CO 80022–1748

DAAD13, ZU U.S. Army Materiel Command Acquisition Center, APG Contracting Division, Edgewood Branch, ATTN: STEAA–AP–E, 5183 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5424

DAAD15, BB U.S. Army Materiel Command Acquisition Center, Natick Contracting Division, ATTN: AMSSB–ACN–M, Building 1, Kansas Street, Natick, MA 01760–5011

DAAD16, C5 U.S. Army Materiel Command Acquisition Center, Natick Contracting Division (R&D and BaseOps), ATTN: AMSSB–ACN–S, Building 1, Kansas Street, Natick, MA 01760–5011

DAAD17, 1Y U.S. Army Materiel Command Acquisition Center, Army Research Laboratory Contracting Division, ATTN: STEAA–AR, 2800 Powder Mill Road, Adelphi, MD 20783–1197

DAAD19,YU U.S. Army Materiel Command Acquisition Center, Army Research Laboratory Contracting Division, ATTN: STEAA–AO, PO Box 12211 Research Triangle Park, NC 27709–2211

DAAE07, BR TACOM—Warren, Corporate Contracting, ATTN: AMSTA–CM–C, E Eleven Mile Road, Warren, MI 48397–5000

DAAE20, DG TACOM—Rock Island, ATTN: AMSTA–CM–CR, Rock Island Arsenal, Rock Island, IL 61299–7630

DAAE24, BH TACOM—Anniston, Directorate of Contracting, ATTN: AMSTA–AN–CT, 7 Frankford Avenue, Building 221, Anniston, AL 36201–4199

DAAE30, 2T TACOM—Picatinny, Corporate Contracting Directorate, ATTN: AMST–CM–CP, Building 9, Picatinny Arsenal, NJ 07806–5000

DAAE32, D7 TACOM—Texarkana, ATTN: AMSTA–RR–P, 100 Main Drive, Building 110, Texarkana, TX 75507–5000

DAAG60, G8 United States Military Academy, Directorate of Contracting, ATTN: MADC, Building 681, West Point, NY 10996–1594

DAAG99, ZY U.S. Army Program Manager-SANG, ATTN: AMCPM–NGA, Unit 61304, APO AE 09803–1304

DAAH01, CC U.S. Army Aviation and Missile Command, ATTN: AMSAM–AC, Building 5303, Martin Road, Redstone Arsenal, AL 35898–5280

DAAH03, D8 U.S. Army Aviation and Missile Command, ATTN: AMSAM–AC, Building 5303, Martin Road, Redstone Arsenal, AL 35898–5280

DAAH10, D9 Aviation Applied Technology Directorate, AMCOM RDEC (Provisional), ATTN: AMSAM–RD–AA–C, Building 401, Lee Boulevard, Fort Eustis, VA 23604–5577

DAAH11, 0V U.S. Army Aviation and Missile Command, Charles Melvin Price Support Center, ATTN: AMSAM–AC–SS–BB, 100 First Street, Room 200, Granite City, IL 62040–1801

DAAH12, ZF IAS21WG, AMCOM RDEC (Provisional), ATTN: AMSAM–RD–AA–Z–I, Building 401, Lee Boulevard, Fort Eustis, VA 23604–5577

DAAH13, BJ Corpus Christi Army Depot, ATTN: SIOCC–RS–AQ, 308 Crecy Street, Corpus Christi, TX 78419–6170

DAAH 17, ZN Letterkenny Army Depot, ATTN: SIOLE–KO, 1 Overcash Avenue, Chambersburg, PA 17201–4152
DAAH23, BS U.S. Army Aviation and Missile Command, ATTN: AMSAM–AC, Building 5303, Martin Road, Redstone Arsenal, AL 35898–5280
DABT01, F6 U.S. Army Aviation Center, Contracting Office, ATTN: ATZQ–C, Building T–00116, Fort Rucker, AL 36362–5000
DABT02, 2A U.S. Army Chemical and Military Police, Centers and Fort McClellan, ATTN: ATZN–DOC, Building 241–C, Transportation Road, Fort McClellan, AL 36205–5000
DABT10, 2B U.S. Army Infantry Center and Fort Benning, ATTN: ATZB–KT, Building 6, Meloy Hall, Room 207, Fort Benning, GA 31905–5000
DABT11, 2C U.S. Army Signal Center and Fort Gordon, ATTN: ATZH–CT, Building 2102, Fort Gordon, GA 30905–5110
DABT19, 2D U.S. Army Combined Arms Center and Fort Leavenworth, ATTN: ATZL–GCC 600 Thomas Avenue, Fort Leavenworth, KS 66027–1389
DABT23, 2E U.S. Army Armor Center and Fort Knox, ATTN: ATZK–DC, Building 4022, Fort Knox, KY 40121–5000
DABT31, 2F U.S. Army Engineer Center and Fort Leonard Wood, ATTN: ATZT–DOC, Building 606, PO Box 140, Fort Leonard Wood, MO 65473–0140
DABT39, 2H U.S. Army Field Artillery Center and Fort Sill, ATTN: ATZR–Q, Building 1803, PO Box 3501, Fort Sill, OK 73503–0501
DABT43, 2J Carlisle Barracks, ATTN: ATZE–DOC–C, 314 Lovell Avenue, Suite 1, Carlisle Barracks, PA 17013–5072
DABT47, 2K U.S. Army Training Center and Fort Jackson, ATTN: ATZJ–DOC, Building 4340, Magruder Street, Fort Jackson, SC 29207–5491
DABT51, 2L U.S. Army Air Defense Artillery Center and Fort Bliss, ATTN: ATZC–DOC, Building 2021, 1733 Pleasonton Road, Fort Bliss, TX 79916–6816
DABT57, 2N Directorate of Peninsula Contracting, ATTN: ATZF–DPC, Building 2746, Harrison Loop, Fort Eustis, VA 23604–5293
DABT59, 2Q U.S. Army Combined Arms Support, Command and Fort Lee, ATTN: ATZM–DOC, 1830 Quartermaster Road, Fort Lee, VA 23801–1606
DABT60, 1L TRADOC Contracting Activity, ATTN: ATCA, Building 2798, Fort Eustis, VA 23604–5538
DABT61, BF The Judge Advocate General's School, U.S. Army, University of Virginia, ATTN: JAGS–SSL–B 600 Massie Road, Charlottesville, VA 22903–1781
DABT63, BL U.S. Army Intelligence Center and Fort Huachuca, ATTN: ATZS–DK, PO Box 12748, Fort Huachuca, AZ 85670–2748
DABT65, B0 Mission Contracting Activity at Fort Leavenworth, ATTN: ATOB–AL, Room 303, 600 Thomas Avenue, Fort Leavenworth, KS 66027–1389
DABT67, 0Q Commander DLIFLC & POM, ATTN: ATZP–DOC, Building 276, Plummer Street, Presidio of Monterey, CA 93944–5006
DACA01, DACW01, CK U.S. Army Engineer District, Mobile, ATTN: CESAM–CT, PO Box 2288, Mobile, AL 36628–0001
DACA02, DACW02 U.S. Army Corps of Engineers, ATTN: CEPR–ZA, 20 Massachusetts Avenue NW, Washington, DC 20314–1000
DACA03, DACW03, CL U.S. Army Engineer District, Little Rock, ATTN: CESWL–CT, PO Box 867, Little Rock, AR 72203–0867
DACA05, DACW05, CM U.S. Army Engineer District, Sacramento, ATTN: CESPK–CT, 1325 J Street, Sacramento, CA 95814–2922
DACA07, DACW07, CP U.S. Army Engineer District, San Francisco, ATTN: CESPN–CT, 333 Market Street, San Francisco, CA 94105–2195
DACA09, DACW09, CQ U.S. Army Engineer District, Los Angeles, ATTN: CESPL–CT, PO Box 532711, Los Angeles, CA 90053–2325
DACA17, DACW17, CS U.S. Army Engineer District, Jacksonville, ATTN: CESAJ–CT, PO Box 4970, Jacksonville, FL 32232–0019
DACA21, DACW21, CV U.S. Army Engineer District, Savannah, ATTN: CESAS–CT, PO Box 889, Savannah, GA 31402–0889
DACA23, DACW23, CX U.S. Army Engineer District, Chicago, ATTN: CELRC–CT, 111 North Canal Street, Chicago, IL 60606–7206
DACA25, DACW25, CD U.S. Army Engineer District, Rock Island, Clock Tower Building, ATTN: CEMVR–CT, PO Box 2004, Rock Island, IL 61204–2004
DACA27, DACW27, CY U.S. Army Engineer District, Louisville, ATTN: CELRL–CT, PO Box 59, Louisville, KY 40201–0059
DACA29, DACW29, CZ U.S. Army Engineer District, New Orleans, ATTN: CEMVN–CT, PO Box 60267, New Orleans, LA 70160–0267
DACA31, DACW31, DA U.S. Army Engineer District, Baltimore, Contracting Division, ATTN: CENAB–CT, PO Box 1715, Baltimore, MD 21203–1715
DACA33, DACW33, DB U.S. Army Engineer District, New England, ATTN: CENAE–CT, 696 Virginia Road, Concord, MA 01742–2751
DACA35, DACW35, DC U.S. Army Engineer District, Detroit, ATTN: CELRE–CT, PO Box 1027, Detroit, MI 48321–1027
DACA37, DACW37, DD U.S. Army Engineer District, St. Paul, ATTN: CEMVP–CT, 190 Fifth Street East, St. Paul, MN 55101–1638
DACA38, DACW38, DE U.S. Army Engineer District, Vicksburg, ATTN: CEMVK–CT, 4155 Clay Street, Vicksburg, MS 39183–3435
DACA41, DACW41, DH U.S. Army Engineer District, Kansas City, ATTN: CENWK–CT, 700 Federal Building 601 East 12th Street, Kansas City, MO 64106–2896
DACA42, DACW42, DF Vicksburg Consolidated Contracts Office, ATTN: ERDC, 4155 Clay Street, Vicksburg, MS 39183–3435
DACA43, DACW43, DJ U.S. Army Engineer District, St. Louis, ATTN: CEMVS–CT, 1222 Spruce Street, St. Louis, MO 63103–2833
DACA45, DACW45, DK U.S. Army Engineer District, Omaha, ATTN: CENWO–CT, 215 North 17th Street, Omaha, NE 68102–4978
DACA47, DACW47, DM U.S. Army Engineer District, Albuquerque, ATTN: CESPA–CT, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435
DACA49, DACW49, DN U.S. Army Engineer District, Buffalo, ATTN: CELRB–CT, 1776 Niagara Street, Buffalo, NY 14207–3199
DACA51, DACW51, CE U.S. Army Engineer District, New York, Contracting Division, ATTN: CENAN–CT, 26 Federal Plaza, New York, NY 10028–0090
DACA54, DACW54, DQ U.S. Army Engineer District, Wilmington, ATTN: CESAW–CT, PO Box 1890, Wilmington, NC 28402–1890
DACA56, DACW56, DS U.S. Army Engineer District, Tulsa, ATTN: CESWT–CT, 1645 South 101st East Avenue, Tulsa, OK 74128–4609
DACA57, DACW57, DT U.S. Army Engineer District, Portland, ATTN: CENWP–CT, PO Box 2946, Portland, OR 97208–2946
DACA59, DACW59, DV U.S. Army Engineer District, Pittsburgh, ATTN: CELRP–CT, 1000 Liberty Avenue, Pittsburgh, PA 15222–4186
DACA60, DACW60, DW U.S. Army Engineer District, Charleston, ATTN: CESAC–CT, PO Box 919, Charleston, SC 29402–0919
DACA61, DACW61, CF U.S. Army Engineer District, Philadelphia, Contracting Division, ATTN: CENAP–CT, 110 Penn Square East, Wanamaker Building, Philadelphia, PA 19107–3390
DACA62, DACW62, DX U.S. Army Engineer District, Nashville ATTN: CELRN–CT, PO Box 1070, Nashville, TN 37202–1070
DACA63, DACW63, DY U.S. Army Engineer District, Fort Worth, ATTN: CESWF–CT, PO Box 17300, Fort Worth, TX 76102–0300
DACA64, DACW64, DZ U.S. Army Engineer District, Galveston, ATTN: CESWG–CT, PO Box 1229, Galveston, TX 77553–1229
DACA65, DACW65, EA U.S. Army Engineer District, Norfolk, ATTN: CENAO–CT, 803 Front Street, Norfolk, VA 23510–1096
DACA66, DACW66, EB U.S. Army Engineer District, Memphis, ATTN: CEMVM–CT, 167 North Main Street, Room B–202, Memphis, TN 38103–1894
DACA67, DACW67, EC U.S. Army Engineer District, Seattle, ATTN: CENWS–CT, PO Box 3755, Seattle, WA 98124–3755
DACA68, DACW68, YW U.S. Army Engineer District, Walla Walla, ATTN: CENWW–CT, 201 North 3rd Avenue, Walla Walla, WA 99362–1876
DACA69, DACW69, CG U.S. Army Engineer District, Huntington, ATTN: CELRH–CT, 502 8th Street, Huntington, WV 25701–2070
DACA72, DACW72, ZA U.S. Army Humphreys Engineer Center Support Activity, ATTN: CEHEC–CT, Kingman Building, Alexandria, VA 22315–3860
DACA75, DACW75, ZC U.S. Army Engineer Ordnance Program Division, ATTN: CETAC–OP–C, APO AE 09803–1303
DACA78, DACW78, 9V Transatlantic Programs Center, ATTN: CETAC–CT 201

Prince Frederick Drive, Winchester, VA 22602–5000
DACA79, DACW79, 2R U.S. Army Engineer District, Japan, ATTN: CEPOJ–CT Unit 45010, APO AP 96338–5010
DACA81, DACW81, CN U.S. Army Engineer District, Far East, ATTN: CEPOF–CT, Unit 15546, APO AP 96205–0610
DACA83, DACW83, ZH U.S. Army Engineer District, Honolulu, ATTN: CEPOH–CT, Building 230, Fort Shafter, HI 96858–5540
DACA85, DACW85, ZJ U.S. Army Engineer District, Alaska, ATTN: CEPOA–CT, PO Box 898, Anchorage, AK 99506–0898
DACA87, DACW87, ZW U.S. Army Engineer and Support Center, Huntsville, ATTN: CEHNC–CT, PO Box 1600, Huntsville, AL 35807–4301
DACA90, DACW90, 2S U.S. Army Engineer District, Europe, ATTN: CENAU–CT, CMR 410, Box 7, APO AE 09096–9401
DADA03, 8W Fitzsimons U.S. Army Garrison, Directorate of Contracting, ATTN: MCHG–DC, 205 McCloskey Avenue, Aurora, CO 80045–5000
DADA08, BT Dwight David Eisenhower Medical Center, Southwest Regional Contracting Office, ATTN: MCAA–SE, 39706 40th Street, Fort Gordon, GA 30905–5650
DADA09, YY William Beaumont Army Medical Center, Great Plains Regional Contracting Office, ATTN: MCAA–GP, Building 7777, 5000 North Piedras Street, El Paso, TX 79920–5001
DADA10, ZQ U.S. Army Medical Command, Medical Contracting Center, ATTN: MCAA–C, Building 4197, 2107 17th Street, Fort Sam Houston, TX 78234–5015
DADA13, 0W Madigan Army Medical Center, Western Regional Contracting Office, ATTN: MCAA–W, 9933A West Johnson Street, Tacoma, WA 98431–1110
DADA15, 0X Walter Reed Army Medical Center, Directorate of Contracting, ATTN: MCHL–ZC, Building T–20, 6825 16th Street NW, Washington, DC 20307–5000
DADA16, 0Y Tripler Army Medical Center, Pacific Regional Contracting Office, ATTN: MCAA–P, Building 160, Krukowski Road, Honolulu, HI 96850–5000
DADW30, 0F Fort Myer Military Community, Directorate of Contracting, ATTN: ANMY–OC, 204 Lee Avenue, Fort Myer, VA 22211–1199
DADW35, 2M MDW Acquisition Center, 9410 Jackson Loop, Fort Belvoir, VA 22060–5134
DADW36, 1J Fort Meade Directorate of Contracting, ATTN: ANME–OC, Building 2234, Fort George G. Meade, MD 20755–5081
DADW39, OS Fort Hamilton Military Community, ATTN: ANFH–GC, Building 111, Brooklyn, NY 11252
DADW49, 0M National Defense University, Building 62, Room 203, 300 5th Avenue, Fort McNair, DC 20319–5066
DAHA01, 9B USPFO for Alabama, PO Box 3715, Montgomery, AL 36109–0715
DAHA02, 0G USPFO for Arizona, 5645 East McDowell Road, Phoenix, AZ 85008–3442
DAHA03, 9D USPFO for Arkansas, Camp Robinson, North Little Rock, AR 72199–9600
DAHA04, 9N USPFO for California, PO Box 8104, San Luis Obispo, CA 93403–8104
DAHA05, Z0 USPFO for Colorado, ATTN: Mail Stop 53, 660 South Aspen Street, Building 1005, Aurora, CO 80011–9511
DAHA06, 1S USPFO for Connecticut, State Armory, ATTN: Contracting Officer, 360 Broad Street, Hartford, CT 06105–3795
DAHA07, 9A USPFO for Delaware, Grier Building, 1161 River Road, New Castle, DE 19720–5199
DAHA08, 2W USPFO for Florida, PO Box 1008, St. Augustine, FL 32085–1008
DAHA09, C0 USPFO for Georgia, PO Box 17882, Atlanta, GA 30316–0882
DAHA10, CU USPFO for Idaho, 3489 West Harvard Street, Boise, ID 83705–5004
DAHA11, 9E USPFO for Illinois, ATTN: PFOIL–PC, 1301 North McArthur Boulevard, Springfield, IL 62702–2399
DAHA12, 4E USPFO for Indiana, 2002 South Holt Road, Indianapolis, IN 46241–4839
DAHA13, 9L USPFO for Iowa, Camp Dodge, 7700 NW Beaver Drive, Johnston, IA 50131–1902
DAHA14, 4Z USPFO for Kansas, 2737 South Kansas Avenue, Topeka, KS 66611–1170
DAHA15, 6P USPFO for Kentucky, Boone National Guard Center, 120 Minuteman Parkway, Frankfort, KY 40601–6192
DAHA16, 0A USPFO for Louisiana, Building 39, New Orleans, LA 70146–0330
DAHA17, 0B USPFO for Maine, Camp Keys, Augusta, ME 04333–0032
DAHA18, 0C USPFO for Maryland, State Military Reservation, 301 Old Bay Lane, Havre de Grace, MD 21078–4094
DAHA19, 0D USPFO for Massachusetts, ATTN: Contracting Officer, 50 Maple Street, Milford, MA 01757–3604
DAHA20, 9F USPFO for Michigan, 3111 West Joseph Street, Lansing, MI 48913–5102
DAHA21, 9K USPFO for Minnesota, Camp Ripley, 15000 Highway 115, Little Falls, MN 56345–4173
DAHA22, CW USPFO for Mississippi, 144 Military Drive, Jackson, MS 39208–8880
DAHA23, 9H USPFO for Missouri, 7101 Military Circle, Jefferson City, MO 65101–1200
DAHA24, 9P USPFO for Montana, PO Box 1157, Helena, MT 59624–1157
DAHA25, 9S USPFO for Nebraska, 1234 Military Road, Lincoln, NE 68508–1092
DAHA26 USPFO for Nevada, 2601 South Carson Street, Carson City, NV 89701–5596
DAHA27, 9U USPFO for New Hampshire, PO Box 2003, Concord, NH 03302–2003
DAHA28, ZK USPFO for New Jersey, 131 Eggert Crossing Road, Lawrenceville, NJ 08648–2805
DAHA29 USPFO for New Mexico, ATTN: Contracting Officer, 47 Bataan Road, Santa Fe, NM 87502–4277
DAHA30, D2 USPFO for New York, 330 Old Niskayuna Road, Latham, NY 12110–2224
DAHA31, D3 USPFO for North Carolina, 4201 Reedy Creek Road, Raleigh, NC 27607–6412
DAHA32, D6 USPFO for North Dakota, PO Box 5511, Bismarck, ND 58506–5511
DAHA33, 9M USPFO for Ohio, 2811 West Dublin-Granville Road, Columbus, OH 43235–2788
DAHA34, 9J USPFO for Oklahoma, 3535 Military Circle NE, Oklahoma City, OK 73111–4398
DAHA35, 1X USPFO for Oregon, ATTN: USPFO–P, PO Box 14840, Salem, OR 97309–5008
DAHA36, DL USPFO for Pennsylvania, Department of Military Affairs, ATTN: Contracting Officer, Annville, PA 17003–5003
DAHA37, 9W USPFO for Rhode Island, 330 Camp Street, Providence, RI 02906–1954
DAHA38, DU USPFO for South Carolina, 9 National Guard Road, Columbia, SC 29201–4766
DAHA39, VQ USPFO for South Dakota, 2823 West Main Street, Rapid City, SD 57702–8186
DAHA40, YX USPFO for Tennessee, Powell Avenue, PO Box 40748, Nashville, TN 37204–0748
DAHA41, 9C USPFO for Texas, ATTN: Contracting Officer, PO Box 5218, Austin, TX 78563–5218
DAHA42 USPFO for Utah, PO Box 2000, Draper, UT 84020–2000
DAHA43 USPFO for Vermont, Camp Johnson, Building 3, PO Box 2000, Colchester, VT 05446–3004
DAHA44, ZR USPFO for Virginia, Building 316, Fort Pickett, Blackstone, VA 23824–6316
DAHA45, ZX USPFO for Washington, Building 32, Camp Murray, Tacoma, WA 98430–5000
DAHA46 USPFO for West Virginia, 50 Armory Road, Buckhannon, WV 26201–2396
DAHA47, 9G USPFO for Wisconsin, 8 Madison Boulevard, Camp Douglas, WI 54618–5002
DAHA48 USPFO for Wyoming, 5500 Bishop Boulevard, Cheyenne, WY 82009–3320
DAHA49 USPFO for the District of Columbia, Naval District of Washington, 189 Poremba Court SW, Washington, DC 20373
DAHA50 USPFO for Hawaii, 4208 Diamond Head Road, Honolulu, HI 96816–4495
DAHA51, 2Z USPFO for Alaska, P&C Division, PO Box B, Camp Denali, Fort Richardson, AK 99505–2600
DAHA70 USPFO for Puerto Rico, PO Box 34069, Fort Buchanan, PR 00904–4068
DAHA72 USPFO for Virgin Islands, RR #2, Box 9200, Kinghill, VI 00850–9200
DAHA74 USPFO for Guam, 622 East Harmon Industrial Park Road, Tamuning, GU 96911–4422
DAHA90, 2Y National Guard Bureau, Contracting Support, 1411 Jefferson Davis Highway, Arlington, VA 22202–3231
DAJA01, 9Q RCO Vicenza, ATTN: AEUCC–I, Unit 31401, Box 33, APO AE 09630–4033
DAJA02, G5 RCO Seckenheim, ATTN: AEUCC–S, Unit 29331, APO AE 09266–0509
DAJA16, 8X RCO Grafenwoehr, ATTN: AEUCC–G, Unit 28130, APO AE 09114–8130
DAJA22, G6 Wiesbaden Regional Contracting Center, G6 ATTN: AEUCC–C, CMR 410, Box 741, APO AE 09096–0741

DAJA61, 9Z RCO Benelux, ATTN: AEUCC–B, PSC 79, Box 003, APO AE 09724–0003
DAJA77 HQ, USACCE (Contracting Cell, Deployed), ATTN: AEUCC–O, Unit 29331, APO AE 09266–0509
DAJA89, F0 RCO Wuerzburg, ATTN: AEUCC–W, Unit 26622, APO AE 09244–6622
DAJA90, 0T RCO Bad Kreuznach, ATTN: AEUCC–BK, Unit 24335, APO AE 09252–4355
DAJB03, F4 HQ, EUSA, Asst Cofs Acquisition Mgt, ATTN: EAAQ (PARC), Unit 15236, APO AP 96205–0009
DAJN01, 1B U.S. Southern Command, Base Operations Support Activity Miami, 7955 NW 12th Street, Suite 450, Miami, FL 33126–1823
DAJN02, 8V Fort Buchanan Contracting Office, ATTN: SOFB–DOC, Building 556, Fort Buchanan, PR 00934–5049
DAJN21, 1V Theater Support Brigade, Panama, Directorate of Contracting, ATTN: SOCO–CO, Unit 7155, APO AA 34004–5000
DAKF04, ZE Directorate of Contracting, Fort Irwin, ATTN: AFZJ–DC, PO Box 10039, Fort Irwin, CA 92310–0039
DAKF06, 1C Directorate of Contracting, Fort Carson, ATTN: AFZC–DOC, 1850 Mekong Street, Building 6222, Fort Carson, CO 80913–4323
DAKF10, 1D Directorate of Contracting, Fort Stewart, ATTN: AFZP–DC, 1042 William H. Wilson Avenue, Suite 219, Fort Stewart, GA 31314–3322
DAKF11, 1E Army Atlanta Contracting Center, HQ, U.S. Army Forces Command, ATTN: AFLG–PRC, 1301 Anderson Way SW, Fort McPherson, GA 30330–1096
DAKF19, 1G Directorate of Contracting, Fort Riley, ATTN: AFZN–DOC, PO Box 2248, Fort Riley, KS 66442–0248
DAKF23, 1H Directorate of Contracting, Fort Campbell, ATTN: AFZB–DOC, Building 2174, 13½ & Indiana Streets, Fort Campbell, KY 42223–1100
DAKF24, G1 Directorate of Contracting, Fort Polk, ATTN: AFZX–DOC, PO Drawer 3918, Fort Polk, LA 71459–5000
DAKF29, 2G Directorate of Contracting, Fort Dix, ATTN: AFRC–FA–DC, Building 5418, 3rd Floor, South Scott Plaza, Fort Dix, NJ 08640–6150
DAKF36, 1M Directorate of Contracting, Fort Drum, ATTN: AFZS–DOC, 45 West Street, Fort Drum, NY 13602–5220
DAKF40, 1N Installation Business Office, Fort Bragg Contracting, ATTN: AFZA–IBO–C, PO Drawer 70120, Fort Bragg, NC 28307–0120
DAKF48, 1Q Headquarters, III Corps and Fort Hood, III Corps and Fort Hood Contracting Command, ATTN: AFZF–CC, 761st Tank Batallion Avenue, Room W103, Fort Hood, TX 76544–5025
DAKF57, 1T Directorate of Contracting, Fort Lewis, ATTN: AFZH–DOC MS 19, Building 2015, Box 339500, Fort Lewis, WA 98433–9500
DAKF61, 1U Directorate of Contracting, Fort McCoy, ATTN: AFRC–FM–DC, Building 2103, 8th Avenue, Fort McCoy, WI 54656–5000
DAMD17, B3 U.S. Army Medical Research Acquisition Activity, ATTN: MCMR–AAA, 820 Chandler Street, Frederick, MD 21702–5014
DAMT01, 0E HQ, MTMC, ATTN: MTAQ–A, 5611 Columbia Pike, Falls Church, VA 22041–5050
DAMT02, G3 Deployment Support Command (East), ATTN: MTDCE–LO–C, Building 42/7, Military Ocean Terminal, Bayonne, NJ 07002–5302
DAMT03, G4 Deployment Support Command (West), ATTN: MTDCW–PAL–CO, Building 1, Alaska Street, Room 2336, Oakland, CA 94626–5000
DAPC01, 1K U.S. Army, Pacific, Office of the ACSAM, ATTN: APAM, Building T–115, B Street, Fort Shafter, HI 96858–5100
DAPC49, 8U U.S. Army Garrison, Alaska, Directorate of Contracting, ATTN: APVR–RDOC, PO Box 5–525, Fort Richardson, AK 99505–0525
DAPC50, CJ U.S. Army Garrison, Hawaii, Directorate of Contracting, ATTN: APVG–GK, Building 520, Pierce Street, Fort Shafter, HI 96858–5025
DASA01, G0 U.S. Army Central Command—Saudi Arabia, Directorate of Contracting, ATTN: ARCENT–SA, Eskan Village Riyadh, Saudi Arabia, APO AE 09852
DASA02 U.S. Army Central Command—Kuwait, ATTN: ARCENT–KU–DOC, Camp Doha, Kuwait, APO AE 09889–9900
DASA03 ARCENT Contracting Office, ATTN: AFRD–PARC, Building 363, Fort McPherson, GA 30330–7000
DASA04 U.S. Army Central Command—Qatar, ATTN: ARCENT–QA–DOC, Doha, Qatar, APO AE 09898
DASC01, YJ HQ USAINSCOM, Directorate of Contracting, ATTN: IAPC–DOC, 8825 Beulah Street, Fort Belvoir, VA 22060–5246
DASC02, YV National Ground Intelligence Center, ATTN: IANG–LOG, 220 Seventh Street NE, Charlottesville, VA 22902–5396
DASG60, CB U.S. Army Space and Strategic Defense Command, Deputy Commander, ATTN: SMDC–CM–AP, PO Box 1500, Huntsville, AL 35807–3801
DASG62, CH U.S. Army Space Command, ATTN: SMDC–AR–CM, 1670 North Newport Road, Suite 211, Colorado Springs, CO 80916–2849
DASW01, F7 Defense Supply Service—Washington, ATTN: Policy and Compliance, 5200 Army Pentagon, Room 1D245, Washington, DC 20310–5200
DASW02, 1W Joint Visual Information Activity, ATTN: JDHQS–AVIC–W, 601 North Fairfax Street, Room 334, Alexandria, VA 22314–2007
DATM01, 0R U.S. Army ATEC Contracting Activity, ATTN: CSTE–CA, PO Box Y, Fort Hood, TX 76544–0770

Part 3—Navy Activity Address Numbers

*An asterisk indicates a two-digit code of a major command that is shared with subordinate activities. Such subordinate activities will indicate the Unit Identification Code of the major command in parentheses, e.g., (MAJ00011).

N00011, LB*, LBZ Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000
N00012, HX*, V8*, V8Y Assistant for Administration, Under Secretary of the Navy, 1000 Navy Pentagon, Washington, DC 20350–1000
N00013, MR Judge Advocate General, Hoffman Building 2, Room 8N45N, 200 Stovall Street, Alexandria, VA 22332–2400
N00014, EE*, EE0–9 Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5660
N00015, L0*, L0Z Director, Office of Naval Intelligence, 4251 Suitland Road, Washington, DC 20395–5720
N00018, MC*, MD*, J5*, QA*, MCZ Chief, Bureau of Medicine and Surgery, 2300 E Street NW, Washington, DC 20372–5300
N00019, EF*, GU*, EF0–9 Commander, Naval Air Systems Command (Code T), 47123 Buse Road, Unit IPT, Patuxent River, MD 20670–1547
N00022, ML*, MQ*, NV*, MLZ Contracting Officer, Chief of Naval Personnel, 2 Navy Annex, Washington, DC 20370–2000
N00023, 4J*, L5*, 4J0–9 Commander, Naval Supply Systems Command, PO Box 2050, 5450 Carlisle Pike, Mechanicsburg, PA 17055–0791
N00024, EH*, U0*, EH0–9 Commander, Naval Sea Systems Command, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160
N00025, EJ*, FZ*, EJ0–9 Commander, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Avenue, Suite 1000, Washington, DC 20374–5362
N00030, EK*, EK0–9 Strategic Systems Programs, 1931 Jefferson Davis Highway, Arlington, VA 22241–5362
N00033, EL*, EL0–9 Commander, Military Sealift Command, Washington Navy Yard, 914 Charles Morris Court SE, Washington, DC 20398–5540
N00038, (MAJ00011), LB–5 Commander-in-Chief, U.S. Pacific Command, Box 64017, Camp H. M. Smith, HI 96861–4017
N00039, NS*, NS0–9 Commander, Space and Naval Warfare Systems Command, 4301 Pacific Highway, San Diego, CA 92110–3127
N00061, NL*, NLZ Commander-in-Chief, U.S. Naval Forces, Europe, (London, UK), FPO AE 09499–0153
N00062, 8A*, L9*, R0*, 8A0–9 Chief of Naval Education and Training, Code 013, NAS, Pensacola, FL 32508–5100
N00063, NT*, NTZ Naval Computer and Telecommunications Command, 4401 Massachusetts Avenue NW, Washington, DC 20394–5460
N00069, 8Q*, 8QZ Naval Security Group HQ, 9800 Savage Road, Suite 6585, Fort George Meade, MD 20775–6585
N00102, EN Commander, Portsmouth Naval Shipyard, Building 153, 6th Floor, Portsmouth, NH 03804–5000
N00104, EP, EQ Commander, Naval Inventory Control Point, 5450 Carlisle Pike, Box 2020, Mechanicsburg, PA 17055–0788
N00105, JT Commander, Naval Ambulatory Care Center, 1 Ayres Circle, Building H–1, Portsmouth, NH 03804–5000
N00123, ES Commanding Officer, Fleet and Industrial Supply Center, 937 North Harbor Drive, San Diego, CA 92132–0060
N00124, M5 Commanding Officer, Naval War College, 686 Cushing Road, Newport, RI 02841–1207

N00128, EU Supply Department, Naval Administrative Command, Naval Training Station, Great Lakes, IL 60088–5300
N00129, EV Commanding Officer, Submarine Base, New London, PO Box 156, Code 1150, Groton, CT 06349–5156
N00140, EX, LA Officer-in-Charge, Fleet and Industrial Supply Center, Norfolk, Detachment Philadelphia, 700 Robbins Avenue, Building 2B, Philadelphia, PA 19111–5083
N00153, N0 Governor, Naval Home, 01800 East Beach Boulevard, Gulfport, MS 39501–3111
N00158, 3V Commanding Officer, Naval Air Station, Joint Reserve Base, PO Box 21, Willow Grove, PA 19090–5021
N00161, FA Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000
N00162, (MAJ00018), MDG–H Commanding Officer, Naval Medical Clinic, 250 Wood Road, Annapolis, MD 21402–5050
N00164, FC Commander, Crane Division, Naval Surface Warfare Center, 300 Highway 361, Building 64, Crane, IN 47522–5001
N00166, (MAJ00011), LC0–1 Commanding Officer, Naval Air Facility, 1 San Diego Loop, Building 3198, Andrews Air Force Base, Washington, DC 20762–5518
N00167, FD Commander, Carderock Division, Naval Surface Warfare Center, 9500 MacArthur Boulevard, West Bethesda, MD 20817–5700
N00168, FE Commanding Officer, National Naval Medical Center, 8901 Wisconsin Avenue, Building 54, Bethesda, MD 20889–5600
N0017A Atlantic Fleet Weapons Training Facility, Roosevelt Roads, PSC 1008, Box 3023, Naval Station, FPO AA 34051–9000
N00171, N5 Commandant, Naval District Washington, Washington Navy Yard, 1014 N Street SE, Suite 200, Washington, DC 20374–5001
N00173, FF Naval Research Laboratory, 4555 Overlook Avenue SW, Washington, DC 20375–5320
N00174, FG Commander, Indian Head Division, Naval Surface Warfare Center, 101 Strauss Avenue, Building 1558, Indian Head, MD 20640–5035
N00178 Commander, Dahlgren Division, Naval Surface Warfare Center, 17320 Dahlgren Road, Dahlgren, VA 22448–5100
N00181, FJ Commander, Norfolk Naval Shipyard Facility Support, Public Works Center, PO Box 5000, Portsmouth, VA 23709–5000
N00183, JX Commanding Officer, Naval Medical Center, 54 Lewis Minors Street, Building 250, Portsmouth, VA 23708–2297
N00187, 3J Commanding Officer, Navy Public Works Center, Naval Station, 9742 Maryland Avenue, Norfolk, VA 23511–3095
N00188, H2 Commanding Officer, Naval Air Station, 9420 3rd Avenue, Norfolk, VA 23511–2197
N00189, FK, H3 Commanding Officer, Fleet and Industrial Supply Center, 1968 Gilbert Street, Suite 600, Norfolk, VA 23511–3392
N00196, 3K Commanding Officer, Naval Air Station, Atlanta, 1000 Halsey Avenue, Marietta, GA 30060–5099
N00203, (MAJ00018), MCL Commanding Officer, Naval Hospital Pensacola, 6000 West Highway 98, Building 2269, Pensacola, FL 32512–0003
N00204, FN Commanding Officer, Naval Air Station Pensacola, 395 Millington Avenue, Pensacola, FL 32508–5014
N00205, FP Commanding Officer, Naval Support Activity New Orleans, 2300 General Meyer Avenue, New Orleans, LA 70142–5000
N00206 Commanding Officer, Naval Air Station Joint Reserve Base, 400 Russel Avenue, Building 31, Belle Chasse, LA 70143–5012
N00210, (MAJ00062) Commanding Officer, Naval Training Center Great Lakes, Building 3200, Code N23, 2601A Paul Jones Street, Great Lakes, IL 60088–5127
N00211, (MAJ00018), MCQ–S Commanding Officer, Naval Hospital, Hospital Supply, Building 1H, Great Lakes, IL 60088–5230
N00213, H4 Commanding Officer, Naval Air Station Key West, PO Box 9030, Building A–314, Key West, FL 33040–9001
N00215, 3W Commanding Officer, Naval Air Station, 8100 West Jefferson Boulevard, Dallas, TX 75211–9501
N00216, FR Commanding Officer, Naval Air Station, 1001 D Street, Corpus Christi, TX 78419–5021
N0022A Commander, Afloat Training Group Atlantic, 8952 First Street, Suite 150, Norfolk, VA 23511–3799
N00231, (MAJ00018), J54 Commanding Officer, Naval Medical Clinic, 2200 Lester Street, Quantico, VA 22134–6050
N00232, (MAJ00018), MCB–F Commanding Officer, Naval Hospital Jacksonville, Building H–2091, Code 0603, Jacksonville, FL 32214–5000
N00244, NW Naval Supply Center, Naval Base, 937 North Harbor Drive, San Diego, CA 92132–0060
N00245, (MAJ00070), LPN Commanding Officer, Naval Station, 3455 Senn Road, San Diego, CA 92136–5084
N00246, H5 Naval Air Station, North Island, San Diego, CA 92135–5112
N00250 FW Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724
N00251 FX Commander, Puget Sound Naval Shipyard, 1400 Farragut Avenue, Bremerton, WA 98314–5000
N00253 FY Commanding Officer, Keyport Division, Naval Undersea Warfare Center, 614 Dowell Street, Keyport, WA 98345–7610
N00259, (MAJ00018), JE Commanding Officer, Naval Medical Center, 34800 Bob Wilson Drive, Suite 1800, San Diego, CA 92134–5001
N00262, (MAJ00027, MUG Marine Air Corps Facility, 2100 Belleau Avenue, Quantico, VA 22134–5063
N00275, 3M Commanding Officer, Naval Air Reserve Activity Chicago, 615 Barry Road, Naval Training Center, Building 190, Great Lakes, IL 60088–5707
N00281, (MAJ00062) L90–1 Commanding Officer, Fleet Combat Training Center, Atlantic Dam Neck, 1912 Regulus Avenue, Virginia Beach, VA 23461–2098
N00285, (MAJ00018) MDR Commanding Officer, Naval Hospital, 10651 E Street, Corpus Christi, TX 78419–5200
N00311, GA Commander, Pearl Harbor Naval Shipyard, PO Box 400, 401 Avenue E, Suite 124, Pearl Harbor, HI 96860–5350
N0031A, Commander, (MAJ00060), J0K-M JOY-Z Naval Special Warfare Group Two, Naval Amphibious Base, Little Creek, Norfolk, VA 23521–5340
N00318, (MAJ00027, MUK-M Contracting Office (Code LSCP), Marine Corps Base Hawaii, Supply Dept, PO Box 63063, MCBH Kaneohe Bay, HI 96744–3063
N00367, (MAJ00023), L5G Commanding Officer, Navy Fleet Support Office, 5450 Carlisle Pike, PO Box 2010, Building 409, Code 9243, Mechanicsburg, PA 17055–0787
N00383, GB, GC Commanding Officer, Naval Inventory Control Point, 700 Robbins Avenue, Philadelphia, PA 19111–5098
N00391, EP, EQ, GB, GC Commanding Officer, Naval Inventory Control Point, 700 Robbins Avenue, Philadelphia, PA 19111–5098
N00406, GE Commanding Officer, Fleet and Industrial Supply Center, Puget Sound, 467 W Street, Bremerton, WA 98314–5100
N00421, M8 Naval Air Warfare Center, Aircraft Division, 47253 Whalen Road, Building 588, Patuxent River, MD 20670–1463
N00600 GG Officer-in-Charge, Fleet and Industrial Supply Center, Norfolk, Detachment Washington, Washington Navy Yard, Building 200 901 M Street SE, Washington, DC 20374–5014
N00604 NQ Commanding Officer, Fleet and Industrial Supply Center, PO Box 300, Pearl Harbor, HI 96860–5300
N00620, H6 Commanding Officer, Naval Air Station, Whidbey Island, 1170 West Lexington Street, Oak Harbor, WA 98278–5000
N00639, H7 Commanding Officer, Naval Support Activity Memphis, 5720 Integrity Drive, Building S–242, Millington, TN 38054–5045
N00702, (MAJ00069), 8QM-N Commander, Naval Security Group Activity, 10 Fabbri Green, Suite 70, Winter Harbor, ME 04693–0900
N00743, 8N Commanding Officer, Naval Computer and Telecommunications Station Puerto Rico, PSC 1008, Box 3022, FPO AA, PR 34051–8200
N00950, 8R Commanding Officer, Naval Computer and Telecommunications Area Master Station, EASTPAC 500 Center Street, Wahiawa, HI 96786–3050
N001024, (MAJ00023) Commanding Officer, USS Constitution, Building 5, Boston National Historical Park, Charlestown, MA 02129–1797
N00308A, (MAJ00033) Commanding Officer, Military Sealift Command Office Port Canaveral, PO Box 4066, Patrick AFB, FL 32925–7468
N00434A, (N00022), MQL Officer-in-Charge, United States Navy Band, Washington Navy Yard, Building 105, 901 M Street SE, Washington, DC 20374–5054
N00463A, (MAJ00024), EHC Commanding Officer, Navy Experimental Diving Unit, 321 Bullfinch Road, Panama City, FL 32407–7015
N00534A, (MAJ00019), EFG Commanding Officer, Pacific Missile Range Facility

(Code 7040), Barking Sands, Kokaha, HI 96752–0128
N00597A, (MAJ00012), HXP-W Director, Office of Civilian Personnel Management, Southeast Region, Building A–67, Naval Base, Norfolk, VA 23511–6098
N00608A, Commanding Officer, National Naval Regional Dental Center, 8901 Wisconsin Avenue, Building 2, Bethesda, MD 20889–5602
N00610A, (MAJ00062), L98 Commanding Officer, Naval Diving and Salvage Training Center, 350 South Crag Road, Panama City, FL 32407–7016
N00618A, (MAJ00062), 8AE Commanding Officer, School of Music, 1420 Gator Boulevard, Norfolk, VA 23521–2617
N00622A Commanding Officer, Naval School of Health Sciences, 8901 Wisconsin Avenue, Building 141, Bethesda, MD 20889–5611
N00708A, (MAJ00024), U0A-B Naval Warfare Engineering Activity, Port Hueneme Division, Naval Surface Warfare Center, PO Box 10, Yorktown, VA 23691–0010
N009158 Commander, Reserve Patrol Wing Atlantic, 513 Park Crescent, Norfolk, VA 23511–4091
N30530, (MAJ00023) Commanding Officer, Naval Air Reserve Center, 2988 North Access Road, Columbus, OH 43217–1199
N30829, (MAJ00061), NL0–2 Officer-in-Charge, Naval Support Activity, Naples Detachment (Gaeta, Italy), PSC 811, ADMIN, FPO AE, NA 09609–1001
N30929, Commanding Officer, Navy Flight Demonstration Squadron (Blue Angels), 390 San Carlos Road, Suite A, Pensacola, FL 32508–5508
N31020, (MAJ00011), LBP-Y Commanding Officer, Naval Reserve Information Systems Office, 4400 Dauphine Street, New Orleans, LA 70146–0001
N31188 Commanding Officer, Naval Security Group Activity Sugar Grove, Building 324, Sugar Grove, WV 26815–5399
N31699, (MAJ00012), V8Z Office of the Under Secretary of the Navy, 1000 Navy Pentagon, Room 4E732, Washington, DC 20350–1000
N31954, (MAJ00062), R0X Submarine Training Facility, 544 White Road, San Diego, CA 92106–3550
N31980, (MAJ00033) Commander, Military Sealift Command, 140 Sylvester Road, San Diego, CA 92106–3521
N32205, (MAJ00033) Commander, Military Sealift Command, Contracts and Business Management West, 140 Sylvester Road, San Diego, CA 92106–3521
N32263 Officer-in-Charge-of-Construction, Mediterranean Contracts Office Naples, PSC 817, Box 100, FPO AE, NA 09622–0100
N32434 Commander, Fleet and Industrial Service Center (Yokosuka Det Okinawa), Purchasing and Contracting Kadena, PSC 480, FPO AP, NA 96370–0006
N32515, (MAJ00011), VSF Patrol Wing One, Detachment Kadena, Supply Department, PSC 480, Box 055, FPO AP, NA 96370–0055
N32778, (MAJ00070), 4LE Commander, Fleet Activities, Chinhae (Korea), PSC 479, FPO AP, NA 96269–1100
N32960, K2 Commanding Officer, Navy Support Activity La Maddalena, PSC 816, FPO AE, NA 09612–0006
N33191 Commanding Officer, Engineering Field Activity Mediterranean, PSC 810, Box 51, APO AE, NA 09622–0051
N35697 Director, Defense Activity for Non-Traditional Education Support, 6490 Saufley Field Road, Pensacola, FL 32509–5243
N35949, (MAJ00018), J5S Commanding Officer, Naval Hospital, Marine Corps Air Ground Combat Center, Box 788250, Twentynine Palms, CA 92278–8250
N39088, (MAJ00022), NVF Commanding Officer, Navy Recruiting Orientation Unit, 206 South Avenue, Suite C, Pensacola, FL 32508–5102
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N39539 Officer-in-Charge, U.S. Naval Air Pacific Repair Activity, Detachment Okinawa, PSC 556, Box 222, FPO AP, NA 98636–0222
N39830, (MAJ00030), EXE Directorate of Contracting (Code 52), Naval Security Station, Building 18–139, 3801 Nebraska Avenue NW, Washington, DC 20393–5440
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N42055 Commanding Officer, Beachmaster Unit Two, 1745 10th Street, Norfolk, VA 23521–2942
N42237, 7A Commanding Officer, Naval Submarine Base Public Works Department, 1063 Tennessee Avenue, Kings Bay, GA 31547–2606
N42985, LB Chief, Naval Forces Division, U.S. Military Training Mission, Kingdom of Saudi Arabia, Unit 61300, Box 5, APO AE, NA 09803–1300
N44249 Officer-in-Charge-of-Construction, Naval Facilities Engineering Command Contracts, 1005 Michael Road, Camp Lejeune, NC 28547–2521
N44250 Officer-in-Charge-of-Construction, Naval Facilities Engineering Command Contracts, Keflavik IC, PSC 1003, Box 28, FPO AE, NA 09728–0328
N44251 Officer-in-Charge-of-Construction, Naval Facilities Engineering Command Contracts (Guantanamo), Naval Base PSC 1005, Box 37,FPO AE, NA 09593–0137
N44255 Commanding Officer, Engineering Field Activity, Northwest, 19917 7th Avenue NE, Poulsbo, WA 98370–7570
N44416, (MAJ00023) Defense Printing Service Northeast Area, 700 Robbins Avenue, 4JL Philadelphia, PA 19111–5093
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N45534, (MAJ00024) EHN AEGIS Combat Flight Facility, Building V–10, Library K, Wallops Island, VA 23337–5000
N45610 Commanding Officer, Navy Consolidated Brig, 1050 Remount Road, Building 3107, Charleston, SC 29406–3515
N45806 Officer-in-Charge-of-Construction, Naval Facilities Engineering Command Contracts, 9324 Virginia Avenue, Norfolk, VA 23511–3689
N45809 Officer-in-Charge-of-Construction, Naval Facilities Engineering Command, Building 820, Naval Air Station Oceana, Virginia Beach, VA 23460–5121
N45810 Officer-in-Charge-of-Construction, Naval Facilities Engineering Command Contracts, Little Creek, 1450 Seventh Street, Norfolk, VA 23521–2443
N45854, (MAJ00011) LBE Commanding Officer, Fleet Surveillance Support Command, Chesapeake, 1298 Olympic Avenue, Chesapeake, VA 23322–5010
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N55322, (MAJ00060), LHN Explosive Ordnance Disposal Group Two, 821 Blasters Cove, Fort Story, VA 23459–5024
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N64416 Commanding Officer, U.S. Naval Forces, Marianas, PSC 489, FPO AP, GU 96536–0051
N65113, EZ Commanding Officer, Navy Public Works Center, 210 Decatur Avenue, Building 1A, Great Lakes, IL 60088–5600
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N65918, FT Commanding Officer, Shore Intermediate Maintenance Activity, 3755 Brinser Street, Suite 1, Box 368106, San Diego, CA 92136–5299
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N65966 Commanding Officer, Fitting Out & Supply Support Assistance Center, PO Box 15129, Norfolk, VA 23511–0129
N6600, 17N Space and Naval Warfare Systems Center, 53560 Hull Street, San Diego, CA 92152–5001
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N66094, (MAJ00018), QAA–B Commanding Officer, Naval Hospital, PSC Box 8023, Cherry Point, NC 28533–5008
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N68086, 7S Commanding Officer, Naval Ambulatory Care Center, 1 Riggs Road, Building 44, Newport, RI 02841–1002
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N68175, (MAJ00022), MQA Navy Recruiting District New Jersey, Parkway Towers, Building A, 485 U.S. Route 1 South, Iselin, NJ 08830–3012
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N68359, (MAJ00011), 9TB Commander, Naval Reserve Readiness Command Region 11, 1803 Doolittle Avenue, Fort Worth, TX 76127–1803
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N68546, QG Commanding Officer, Navy Environmental Health Center, 2510 Walmer Avenue, Norfolk, VA 23513–2617
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N68753, (MAJ00070), V5L Naval Air Pacific Repair Activity Det., Singapore, SAE Singapore, FPO AP, NA 96536–2700
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N68779 Military Sealift Command, Atlantic Detachment Charleston Army Depot, PO Box 5124, Charleston, SC 29406–0124
N68829, (MAJ00060), J0J Shore Intermediate Maintenance Activity (NRMF), Pier 2, Building 68 NETC, Newport, RI 02841–5001
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Part 4—Marine Corps Activity Address Numbers

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M00146, MT Marine Corps Regional Contracting Office (SUL), COMCABEAST, Marine Corps Air Station, Cherry Point, NC 28533–0018
M00243, NE Marine Corps Regional Contracting Office, 4411 Belleau Avenue, Marine Corps Recruit Depot/WRR, San Diego, CA 92140–5380
M00262, (MAJ00027), MUG Marine Air Corps Facility, 2100 Rowell Road, Quantico, VA 22134–5063
M00263, MX Marine Corps Regional Contracting Office, PO Box 5069, Marine Corps Recruit Depot/ERR, Parris Island, SC 29905–5069
M00264, (MAJ00027), MUT Marine Corps Regional Contracting Office, Northeast Region, 2010 Henderson Road, Quantico, VA 22134–5045
M00318, (MAJ00027), MUK–M Contracting Office (Code LSCP), Marine Corps Base Hawaii, Supply Dept, Box 63063, MCBH, Kaneohe Bay, HI 96744–3063
M00681, NG Marine Corps Regional Contracting Office, PO Box 1609, Oceanside, CA 92054–1609
M20002 Contracting Officer, HQ, U.S. Marine Forces South, 8420 NW 52nd Street, Miami, FL 33166
M60050, MV Marine Corps Regional Contracting Office, COMCABWEST, Marine Corps Air Station, El Toro, CA 92709–5001
M60169, W0 Contracting Office, Marine Corps Air Station, PO Box 55010, Beaufort, SC 29904–5010
M62204, NC Marine Corps Regional Contracting Office, Marine Corps Logistics Base, PO Box 110340, Barstow, CA 92311–5039
M62613, MUE Contracting Office, Marine Corps Air Station, PSC 561, Box 1872, Iwakuni, Japan, FPO AP, NA 96310–1872

M64495 Contracting Office, Marine Corps Mountain Warfare Training Center, Box 5009, Bridgeport, CA 93517–5009
M67001, NB Marine Corps Regional Contracting Office, PSC Box 20004, Marine Corps Base, Camp Lejeune, NC 28542–0004
M67004, (MAJ00027), NC COMMARCORLOGBASES, Marine Corps Regional Contracting Office, Marine Corps Logistics Base (Code 89), PO Drawer 43019, Albany, GA 31704–3019
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M67015, (MAJ00027), MSE Commanding Officer, 6th Marine Corps District, PO Box 19201, Marine Corps Recruit Depot, Eastern Recruiting Region, Parris Island, SC 29905–9201
M67016, (MAJ00027), MSG Commanding Officer, 8th Marine Corps District, Building 10, Room 121, NSA, New Orleans, LA 70142–5100
M67017, (MAJ00027), MSJ Commanding Officer, 9th Marine Corps District, 3805 155th Street, Building 710, Kansas City, MO 64147–1309
M67019, (MAJ00027), MSL Commanding Officer, 12th Marine Corps District, 3704 Hochmuth Avenue, San Diego, CA 92140–5191
M67029, (MAJ00027), MSN Contracting Office, Marine Barracks, 8th and I Street, SE, Washington, DC 20390–5000
M67351 COMMARFOREUR, Marine Corps Regional Contracting Office, HQ FMF Europe (Designate), Panzer Kaserne, Building 2901, APO AE, NA 09046–0160
M67353, (MAJ00027), MSQ Contracting Office (HQBN–1), HQBN HQMC Henderson Hall, Building 28, Battalion Supply, Arlington, VA 22214–5000
M67354 Contracting Office, Headquarters, U.S. Marine Corps (Code ARD), 2 Navy Annex, Arlington, VA 20380–1775
M67355, (MAJ00027), MUN Marine Corps Regional Contracting Office (Code N45), Expeditionary Warfare Training Group, Atlantic, 1575 Gator Boulevard, Suite 243, Norfolk, VA 23521–2740
M67385, (MAJ00027), MU0–1 COMMARFORPAC, Marine Corps Regional Contracting Office (LSCP), HQSVCBN, Building 600, Box 64131, Camp H. M. Smith, HI 96861–5010
M67386, LG Marine Corps Regional Contracting Office, (Midwest), Marine Corps Support Activity, 15430 Andrew Road, Kansas City, MO 67147–1208
M67399, NF Marine Corps Regional Contracting Office, Northwest Region, PO Box X24, Building 1525, Marine Corps Air-Ground Combat Center, Twentynine Palms, CA 92278–0124
M67400, QJ Marine Corps Regional Contracting Officer (Far East), MCB Camp Smedley D. Butler, PSC 577, Box 2000, Building 355, Okinawa, Japan, FPO AP, NA 96379–2000
M67438 Contingency Contracting Office, Unit 3880401, 3rd FSSG, FPO AP, NA 96604–8401
M67854, (MAJ00027), MU6–9 Commander, Marine Corps Systems Command, 2033 Barnett Avenue, Suite 315, Quantico, VA 22134–5010
M67861, MUC, MSU Marine Corps Regional Contracting Office, Marine Forces Reserve, 4400 Dauphine Street, New Orleans, LA 70146–5400
M68447 Contingency Contracting Office, 2nd Supply Battalion, 2nd FSSG, PSC Box 20120, Camp Lejuene, NC 28542–0128
M68450 Contingency Contracting Office, SMU, 1st Supply Battalion, 1st FSSG , PO Box 1609, Oceanside, CA 92501–1609
M68909, (MAJ00027), MU3 Commanding Officer, Marine Corps Tactical Systems Support Activity, PO Box 555171, Camp Pendleton, CA 92055–5171

Part 5—Air Force Activity Address Numbers

F01600, 5A 42 CONS/CC, 50 Lemay Plaza South, Building 804, Maxwell AFB, AL 36112–6334
F01620, 6K SSG/PK, 375 Libby Street, MAFB-Gunter Annex, AL 36114–3207
F02601, 5C 355 CONS/CC, 3180 South Craycroft Road, Davis Monthan AFB, AZ 85707–3522
F02604, 5D 56 CONS/CC, 14100 West Eagle Street, Luke AFB, AZ 85309–1217
F03602, 5F 314 CONS/CC, 642 Thomas Avenue, Little Rock AFB, AR 72099–5119
F04605, 5H 482 LSS/LGC, 820 Baucom Avenue NW, Suite 101, March AFB, CA 92518–2260
F04606 SM SM-ALC/PK, 3237 Peacekeeper Way, Suite 17, McClellan AFB, CA 95652–1060
F04611, QQ AFFTC/PK, Building 2800, 5 South Wolfe Avenue, Edwards AFB, CA 93524–1185
F04626, 5M 60 CONS/LGC, 350 Hangar Avenue, Building 549, Travis AFB, CA 94535–2632
F04666, 5N 9 CONS/CC, 6500 B Street, Suite 101, Beale AFB, CA 95903–1712
F04684, QW 30 CONS/LGC, Building 7015, Section 2c, Suite D, 806 13th Street, Vandenberg AFB, CA 93437–6025
F04689, RN 750 LSS/LGC, 1080 Lockheed Way, Box 039, Onizuka AFB, CA 94089–1234
F04693, MG SMC/PKO, 400 North Douglas Boulevard, Suite 212E, Los Angeles, CA 90245–4640
F04699, Q5 SM-ALC/PK, 3227 Peacekeeper Way, Suite 17, McClellan AFB, CA 95652–1060
F04700, Q2 AFFTC/PKA, 5 South Wolfe Avenue, Building 2800, Edwards AFB, CA 93524–1185
F04701, TB SMC/PK, 155 Discoverer Boulevard, Suite 1516, Los Angeles, CA 90245–4692
F05603 HQ AFSPC/LGC, 150 Vandenberg Street, Suite 1105, Peterson AFB, CO 80914–4350
F05604, SX 21 CONS/LGC, 700 Suffolk Street, Peterson AFB, CO 80914–1200
F05611, 5Q 10 ABW/LGC, 8110 Industrial Drive, Suite 200, USAF Academy, CO 80840–2315
F07603, 5R 436 CONS/LGC, 639 Atlantic Street, Suite 243, Dover AFB, DE 19902–5639
F08602, 5S 6 CONS/CC, 2606 Brown Pelican Avenue, MacDill AFB, FL 33621–5000
F08620, 5T 16 CONS/LGC, PO Box 9190, 350 Tully Street, Hurlburt Field, FL 32544–5825
F08630, S1 AFRL/MNK, 101 West Eglin Boulevard, Suite 337, Eglin AFB, FL 32542–6810
F08635, RH AAC/PK, 205 West D Avenue, Suite 433, Eglin AFB, FL 32542–6864
F08637, 5V 325 CONS/CC, 501 Illinois Avenue, Suite 5, Tyndall AFB, FL 32403–5526
F08650, TJ 45 CONS/LGC, 1201 Edward H. White II Street, MS7200, Patrick AFB, FL 32925–3227
F08651, Q3 AAC/PKO, 205 West D Avenue, Suite 541, Eglin AFB, FL 32542–6862
F09603, RJ, RR WR-ALC/PK, Building 300, 215 Byron Street, Robins AFB, GA 31098–1611
F09604, RU LR Directorate/PK, 750 3rd Street, Building 350, Robins AFB, GA 31098–2122
F09607, 5W 347 CONS/CC, 4380B Alabama Road, Moody AFB, GA 31699–1793
F09609, 5X 94 LG/LGC, 1538 Atlantic Avenue, Suite 141, Dobbins ARB, GA 30069–4824
F09634, 5Y HQ AFRC/LGC, 155 2nd Street, Robins AFB, GA 31098–1635
F09650, Q6 WR–ALC/PKO, 235 Byron Street, Robins AFB, GA 31098–1611
F10603, 5Z 366 CONS/CC, 366 Gunfighter Avenue, Suite 498, Mountain Home AFB, ID 83648–5296
F11623, 6C 375 CONS/LGC, 102 East Martin Street, Suite 216, Scott AFB, IL 62225–5015
F11626, RL HQ AMC/DOKR, 402 Scott Drive, Unit 3A1, Scott AFB, IL 62225–5302
F12617, 6D 434 LSS/LGC, 448 Mustang Avenue, Grissom ARB, IN 46971–5320
F14614, X4 22 CONS/LGC, 53147 Kansas Street, Suite 102, McConnell AFB, KS 67221–3606
F16602, 6G 2 CONS/CC, 841 Fairchild Avenue, Barksdale AFB, LA 71110–2271
F19617, R5 439 LSS/LGC, 250 Airlift Drive, Westover Air Reserve Base, Chicopee, MA 01022–1525
F19628, RS ESC/PK, 104 Barksdale Street, Hanscom AFB, MA 01731–1806
F19650, SH ESC/PKO, Building 1520, 104 Barksdale Street, Hanscom AFB, MA 01731–1806
F21611, 6N 934 LSS/LGC, 760 Military Highway, Minneapolis-St. Paul ARS, Minneapolis, MN 55450–2000
F22600, RC 81 CONS/CC, 200 Fifth Street, Room 104, Keesler AFB, MS 39534–2102
F22608, 6Q 14 CONS/CC, 555 Seventh Street, Suite 113, Columbus AFB, MS 39701–1006
F23606, 6R 509 CONS/CC, 850 Arnold Avenue, Suite 2, Whiteman AFB, MO 65305–5054
F24604, 6T 341 CONS/LGC, 7015 Goddard Drive, Malmstrom AFB, MT 59402–6863
F25600, 6U 55 CONS/CC, 101 Washington Square, Offutt AFB, NE 68113–2107
F26600, S4 99 CONS/CC, 5865 Swabb Boulevard, Nellis AFB, NV 89191–7063
F28609, 6V 305 CONS/LGC, 3563 Lancaster Avenue, McGuire AFB, NJ 08641–1712

F28620, M1 65 CONS/CC, Unit 7775, Building T615, Lajes AB, APO AE 09720–7775
F28620, S8 65 CONS/OL-A, PO Box 837, Wrightstown, NJ 05862–0837
F29601, RW Det 8, AFRL/PK, 2251 Maxwell Avenue SE, Kirtland AFB, NM 87117–5773
F29605, 6W 27 CONS/CC, 100 North Torch Boulevard, Cannon AFB, NM 88103–5131
F29650, R3 377 LG/LGC, 2251 Maxwell Avenue SE, Kirtland AFB, NM 87117–5773
F29651, 6X 49 CONS/CC, 1210 Fortyniner Avenue, Holloman AFB, NM 88330–5010
F30602, RX AFRL/IFK, 26 Electronic Parkway, Rome, NY 13441–4514
F30617, 6Y 914 AW/LGC, 2720 Kirkbridge Drive, Niagara Falls IAP-ARS, NY 14304–5001
F31601, BU 43 CONS/CC, 1443 Reilly Road, Suite C, Pope AFB, NC 28308–2896
F31610, BW 4 CONS/CC, 1695 Wright Brothers Avenue, Seymour Johnson AFB, NC 27531–2459
F32604, BX 5 CONS/CC, BX 211 Missile Avenue, Minot AFB, ND 58705–5027
F32605, BY 319 CONS/CC, 575 6th Avenue, Grand Forks AFB, ND 58205–6436
F33600, RZ ASC/PKW, 1940 Allbrook Drive, Suite 3, Building 1, Wright Patterson AFB, OH 45433–5309
F33601, Q7 ASC/PKWO, 1940 Allbrook Drive, Suite 3, Building 1, Wright Patterson AFB, OH 45433–5309
F33615, SG Det 1, AFRL/PK, 2530 C Street, Wright Patterson AFB, OH 45433–7607
F33630, C1 910 AW/LGC, 3976 King Graves Road, Unit 25, Youngstown Air Reserve Station, Vienna, OH 44473–5925
F33657, SC ASC/PK, Building 14, Room 107, 1865 Fourth Street, Wright Patterson AFB, OH 45433–7120
F34600, C2 71 FTW/CVC, 246 Brown Parkway, Suite 228, Vance AFB, OK 73705–5037
F34601, SD OC-ALC/PK, 3001 Staff Drive, Suite 1AG76A, Tinker AFB, OK 73145–3015
F34608, TF 38 LS/LGC, 4008 Hilltop Road, Suite 103, Tinker AFB, OK 73145–2713
F34612, C3 97 CONS/CC, 205 South 6th Street, Building 318, Altus AFB, OK 73523–5147
F34650, Q9 OC-ALC/PKO, Building 3, Suite 1, 7858 Fifth Street, Tinker AFB, OK 73145–9106
F36629, C7 911 AW/LGC, 2375 Hercules Court, Pittsburgh IAP-ARS, Corapolis, PA 15108–4495
F36700, C8 913 LG/LGC, 1051 Fairchild Street, Willow Grove ARS, PA 19090–5203
F38601, C9 20 CONS/CC, 305 Blue Jay Street, Shaw AFB, SC 29152–5004
F38604, T3 USCENTAF, 524 Shaw Drive, Shaw AFB, SC 29152–5029
F38610, CR 437 CONS/LGC, 102 Long Street, Charleston AFB, SC 29404–4829
F39601, CT 28 CONS/LGC, 1000 Ellsworth Street, Suite 1200, Ellsworth AFB, SD 57706–4910
F40600, Q4 AEDC/PK, 100 Kindel Drive, Suite A335, Arnold AFB, TN 37389–1335
F40650, D1 AEDC/PKP, 100 Kindel Drive, Suite 1332, Arnold AFB, TN 37389–1332
F41608, SA SA–ALC/PK, 485 Quentin Roosevelt Road, Suite 12, Kelly AFB, TX 78241–6419
F41612, D4 82 CONS/CC, 136 K Avenue, Suite 2, Sheppard AFB, TX 76311–2739
F41614, E2 17 CONS/CC, 210 Scherz Boulevard, Goodfellow AFB, TX 76908–4705
F41622, QY HSC/PKO, Building 625, 8005 9th Street, Brooks AFB, TX 78235–5353
F41624, TG HSC/PK, Building 626, 8005 9th Street, Brooks AFB, TX 78235–5353
F41636, ZV 37 CONS/CC, 1655 Selfridge Avenue, Lackland AFB, TX 78236–5253
F41650, YA SA-ALC/PKO, Building 1598, 1288 Growden Road, Kelly AFB, TX 78251–5318
F41652, E5 7 CONS/CC, 381 3rd Street, Dyess AFB, TX 79607–1581
F41685, E6 47 CONS/CC, 171 Alabama Avenue, Laughlin AFB, TX 78840–5102
F41689, SK AETC CONS/CC, 550 D Street, Suite 07, Randolph AFB, TX 78150–4434
F41691, Y0 12 CONS/CC, 395 B Street West, Suite 02, Randolph AFB, TX 78150–4525
F42600, QP OO–ALC/PK, Building 1289 SE, 6038 Aspen Avenue, Hill AFB, UT 84056–5805
F42610, QP OO–ALC/LMK, Building 1289 SE, 6038 Aspen Avenue, Hill AFB, UT 84056–5821
F42620, QP OO–ALC/LFK, Building 1233, 6072 Fir Avenue, Hill AFB, UT 84056–5820
F42630, QP OO–ALC/LIK, Building 1215, 6050 Gum Lane, Hill AFB, UT 84056–5825
F42650, R2 OO–ALC/PKO, Building 1289 SE, 6038 Aspen Avenue, Hill AFB, UT 84056–5805
F44600, F3 1 CONS/CC, 74 Nealy Avenue, Suite 100, Langley AFB, VA 23665–2088
F44650, Q1 ACC CONS, 130 Douglas Street, Suite 210, Langley AFB, VA 23665–2791
F45603, F5 62 CONS/LGC, 100 Main Street, Suite 1049, McChord AFB, WA 98438–1109
F45613, F8 92 CONS/LGC, 110 West Ent Street, Suite 200, Fairchild AFB, WA 99011–9403
F47606, G7 440 AW/LGC, 300 East College Avenue, Gen. Mitchell IAP, Milwaukee, WI 53207–6299
F48608, G9 90 CONS/LGC, 7505 Marne Loop, F.E. Warren AFB, WY 82005–2860
F49620, SE AFOSR/PK, 801 North Randolph Street, Room 732, Arlington, VA 22203–1977
F49642, J1 11 CONS/LGC, 500 Duncan Avenue, Room 250, Bolling AFB, DC 20332–0305
F61101, T1 Det 1, 21 CONS/CC, Copenhagen AB, APO AE 09716–5000
F61211, N9 31 FW/LGC, Unit 6102, Box 140, Aviano AB APO AE 09601–2140
F61354, W8 425 ABS/LGC, Unit 6870, Box 85, Izmir AB APO AE 09821–7085
F61358, W9 39 CONS/LGC, Unit 1045, Box 280, Incirlik AB APO AE 09824–0285
F61503, UC 469 ABG/LGC, Unit 7420, Box 115, Rhein Main AB APO AE 09050–0115
F61517, UF 52 CON FLT/LGC, Unit 3910, Building 2001, Spangdahlem AB APO AE 09137–3910
F61521, UH, UJ USAFE CONS/LGC, Unit 3115, Ramstein AB APO AE 09094–3115
F61730, UQ 423 ABS/LGC, PSC 47, Unit 5720, RAF Alconbury APO AE 09470–5720
F61775, UV 48 CONS/LGC, Unit 5070, Box 270, RAF Feltwell APO AE 09461–0270
F61815, UW 496 ABS/LGC, Unit 6585, Moron AB APO AE 09643–6585
F62032, 4D USMTM, Unit 61300, Box 2, Saudi Arabia, APO AE 09803–1300
F62321, RA 18 CONS/LGC, Unit 5199, Kadena AB APO AP 96368–5199
F62509, QZ 35 CONS, Unit 5201, Misawa AB APO AP 96319–5201
F62562, SW 374 CONS/LGC, Unit 5228, Yokota AB APO AP 96328–5228
F64133, S9 36 CONS/CC, Unit 14040, Anderson AFB APO AP 96543–4040
F64605, TN 15 CONS/LGC, 90 G Street, Hickam AFB, HI 96853–5230
F65501, WF 3 CONS/CC, 6920 12th Street, Suite 242, Elmendorf AFB, AK 99506–2570
F65503, WH 354 CONS/LGC, 3112 Broadway Avenue, Suite 3, Eielson AFB, AK 99702–1850
F66501, R7 24 CONS/CC, Unit 0550, Howard AFB APO AA 34001–5000
FA0021 HQ AFSOC/PKMZ, 100 Bartley Street, Hurlburt Field, FL 32544–5273
FA2550 50 CONS, 66 Falcon Parkway, Suite 49, Schreiver AFB, CO 80912–6649
FA4416, 5J 89 CONS/LGC, 1419 Menoher Drive, Andrews AFB, MD 20762–6500
FA4452, RL AMCCONF/LGCF, 102 East Martin Street, Room 216, Scott IL 62225–5015
FA6648, 5U 482 LSS/LGC, 29050 Coral Sea Boulevard, Box 50, Homestead ARS, FL 33039–1299
FA6675, D5 301 LSS/LGC, 1710 Burke Street, Suite 100, NAS Fort Worth, TX 76127–6200
FA8623 ASC/ENVK, Building 8, Room 201, 1801 10th Street, Wright Patterson AFB, OH 45433–7626
FA8770 MSG/PK, 4375 Childlaw Road, Room C022, Wright Patterson AFB, OH 45433–5006

Part 6—Defense Logistics Agency Activity Address Numbers

SA7003, 1P Defense Automated Printing Service, 700 Robbins Avenue, Building 4 D, Philadelphia, PA 19111–5093
SA7007, 1P Defense Automated Printing Service, 5450 Carlisle Pike, PO Box 2020, Mechanicsburg, PA 17055–0788
SA7008, 1P Defense Automated Printing Service, 2825 D Avenue, Charleston, SC 29408–1819
SA7012, 1P Defense Automated Printing Service, 80 Post Lane, Camp LeJeune, NC 28547–2527
SA7014, 1P Defense Automated Printing Service, 47 Chandler Street, Newport, RI 02841–1707
SA7019, 1P Defense Automated Printing Service, Building 655, Fort Eustis, VA 23604–5093
SA7021, 1P Defense Automated Printing Service, 1401 South Fern Street, Arlington, VA 22201–1401
SA7023, 1P Defense Automated Printing Service, 2530 Paul Jones, Building 2A, Great Lakes, IL 60088–5700
SA7026, 1P Defense Automated Printing Service, 4165 Communications Boulevard, Building 281, Suite 2, Dayton, OH 45433–5602
SA7031, 1P Defense Automated Printing Service, 1641 Morris Street, Naval Station Norfolk, VA 23511–2898

SA7033, 1P Defense Automated Printing Service, 4400 Dauphine Street, Unit 601 3–B, New Orleans, LA 70146–6300
SA7039, 1P Defense Automated Printing Service, 151 Ellyson Avenue, Naval Air Station Pensacola, FL 32508–5121
SA7042, 1P Defense Automated Printing Service, McFarland Street, Building 721, Jacksonville, FL 32212–0003
SA7049, 1P Defense Automated Printing Service, 568 Spacelift Avenue, Building 318, Patrick AFB, FL 33040–5000
SA7051, 1P Defense Automated Printing Service, PSC 1005, Box 28, Building 1842, Guantanamo Bay, Cuba, FPO AE 09593–0128
SA7053, 1P Defense Automated Printing Service, 901 South Drive, Building 700 East, Scott AFB, IL 62225–5106
SA7054, 1P Defense Automated Printing Service, PO Box 20013, Building 110, 4300 Goodfellow Boulevard, St. Louis, MO 63120–1798
SA7055, 1P Defense Automated Printing Service, 601 East 12th Street, Kansas City, MO 64106–2896
SA7057, 1P Defense Automated Printing Service, 4300 Hoover Street, San Diego, CA 92136–5595
SA7058, 1P Defense Automated Printing Service, 250 South Butler Avenue, Gunter Annex, Maxwell AFB, AL 36114–3104
SA7064, 1P Defense Automated Printing Service, Building 550 3989, Box 126, Pearl Harbor, HI 96860–3440
SA7065, 1P Defense Automated Printing Service, 1100 Hunley Road, Silverdale, WA 98315–5740
SA7069, 1P Defense Automated Printing Service, 255 Cochran Street, Robins AFB, GA 31098–1623
SA7079, 1P Defense Automated Printing Service, PSC 455, Box 200, Naval Supply Station, Guam, FPO AP 96540–1200
SA7080, 1P Defense Automated Printing Service, PSC 557, Box 1475, Okinawa, Japan, FPO AP 96379–1475
SA7081, 1P Defense Automated Printing Service, PSC 473, Box 26, Yokosuka, Japan, FPO AP 96349–1108
SP0100, TW Defense Supply Center Philadelphia, Directorate of Clothing & Textiles, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SP0103, W7 Defense Supply Center Philadelphia, Installation Support, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SP0200, TX Defense Supply Center Philadelphia, Directorate of Medical Materiel, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SP0300, UE Defense Supply Center Philadelphia, Directorate of Subsistence, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SP0302, W6 Defense Supply Center Philadelphia, Pacific, ATTN: DSCP–Pacific, 2155 Mariner Square Loop, Alameda, CA 94501–1022
SP0303, U6 Defense Supply Center Philadelphia, Europe, ATTN: DSCP–Europe, APO AE 09052–5000
SP0400, TY, XK, Z1, Z3, Z6 Defense Supply Center Richmond, Business Operations, 8000 Jefferson Davis Highway, Richmond, VA 23297–5770
SP0410, XH Defense Supply Center Richmond, Base Spt Div, Directorate of Procurement, 8000 Jefferson Davis Highway, Richmond, VA 23297–5312
SP0411, TY Defense Supply Center Richmond, Proc Br (ESOC), Customer Asst Ctr, 8000 Jefferson Davis Highway, Richmond, VA 23297–5871
SP0413, TY Defense Supply Center Richmond, Spec Purchase Br, Prod Ctr Spt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5864
SP0414, TY Defense Supply Center Richmond, SASPS Phase I Br, Prod Ctr Spt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5864
SP0430, TY Defense Supply Center Richmond, Procurement Branch, Product Center 5, 8000 Jefferson Davis Highway, Richmond, VA 23297–5813
SP0440, TY Defense Supply Center Richmond, Procurement Branch, Product Center 7, 8000 Jefferson Davis Highway, Richmond, VA 23297–5834
SP0441, TY Defense Supply Center Richmond, Procurement Branch, Product Center 6, 8000 Jefferson Davis Highway, Richmond, VA 23297–5822
SP0450, TY Defense Supply Center Richmond, Procurement Branch, Product Center 4, 8000 Jefferson Davis Highway, Richmond, VA 23297–5800
SP0451, TY Defense Supply Center Richmond, Procurement Branch, Product Center 2, 8000 Jefferson Davis Highway, Richmond, VA 23297–5772
SP0460, TY Defense Supply Center Richmond, Procurement Branch, Product Center 1, 8000 Jefferson Davis Highway, Richmond, VA 23297–5772
SP0461, TY Defense Supply Center Richmond, Special Purchase Branch (SPUR), 8000 Jefferson Davis Highway, Richmond, VA 23297–5864
SP0470 Defense Supply Center Richmond, Procurement Branch, Product Center 10, 8000 Jefferson Davis Highway, Richmond, VA 23297–5352
SP0475 Defense Supply Center Richmond, Procurement Branch, Product Center 11, 8000 Jefferson Davis Highway, Richmond, VA 23297–5361
SP0480, TY Defense Supply Center Richmond, Procurement Branch, Product Center 3, 8000 Jefferson Davis Highway, Richmond, VA 23297–5876
SP0490, TY Defense Supply Center Richmond, Procurement Branch, Product Center 1, 8000 Jefferson Davis Highway, Richmond, VA 23297–5846
SP0495 Defense Supply Center Richmond, Directorate of Business Operations, ATTN: ECAT, 8000 Jefferson Davis Highway, Richmond, VA 23297–5770
SP0499 Defense Supply Center Richmond-FCIM, 8000 Jefferson Davis Highway, Richmond, VA 23297–5770
SP0500, TZ, WU Defense Supply Center Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SP0520 Defense Supply Center Philadelphia, Product Verification Testing Acquisition, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SP0540 Defense Supply Center Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SP0560 Defense Supply Center Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SP0599 Defense Supply Center Philadelphia-FCIM, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SP0600, UA Defense Energy Support Center, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22304–6160
SP0700, UB, UZ, U3 Defense Supply Center Columbus, PO Box 3990, Columbus, OH 43216–3990
SP0701 Defense Supply Center Columbus, ATTN: DSCC–OT, Building 20, Fourth Floor, Columbus, OH 43216–5000
SP0710, YL Defense Supply Center Columbus, Base Contracting, PO Box 16704, Columbus, OH 43216–5010
SP0720, YM Defense Supply Center Columbus, Lumber Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010
SP0730, WZ Defense Supply Center Columbus, Military Interdepartmental PR MIPR Division, PO Box 3990, Columbus, OH 43216–5000
SP0740, XJ Defense Supply Center Columbus, Aerospace Solicitations/Awards, PO Box 3990, Columbus, OH 43216–5000
SP0749 Defense Supply Center Columbus, Aerospace/Public Manufacturing, PO Box 3990, Columbus, OH 43216–3990
SP0750, UB Defense Supply Center Columbus, Land Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010
SP0759 Defense Supply Center Columbus, Land Public Manufacturing, PO Box 16704, Columbus, OH 43216–5010
SP0760, UB Defense Supply Center Columbus, Maritime Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010
SP0769 Defense Supply Center Columbus, Maritime Public Manufacturing, PO Box 16704, Columbus, OH 43216–5010
SP0770, UB Defense Supply Center Columbus, Commodities Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010
SP0779 Defense Supply Center Columbus, Commodities Public Manufacturing, PO Box 16704, Columbus, OH 43216–5010
SP0780 Defense Supply Center Columbus, Government Furnished Property Account, ATTN: DSCC–PAPB GFP, Building 20 A2N, 3990 East Broad Street, Columbus, OH 43216–5000
SP0799 Defense Supply Center Columbus-FCIM, PO Box 3990, Columbus, OH 43216–5000
SP0833, VS Defense National Stockpile Center, 8725 John J. Kingman Road, Suite 3339, Fort Belvoir, VA 22060–6223
SP0900, UD Defense Supply Center Columbus, Electronics, PO Box 16704, Columbus, OH 43216–5010
SP0905 Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5010
SP0910, U7 Defense Supply Center Columbus, Base Contracting, PO Box 16704, Columbus, OH 43216–5010
SP0920, W4 Defense Supply Center Columbus, Electro Mechanical, PO Box 16704, Columbus, OH 43216–5010
SP0930 Defense Supply Center Columbus, Switches, PO Box 16704, Columbus, OH 43216–5000

SP0935 Defense Supply Center Columbus, Connectors, PO Box 16704, Columbus, OH 43216–5000
SP0960 Defense Supply Center Columbus, Active Devices, PO Box 16704, Columbus, OH 43216–5000
SP0970 Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5000
SP0999 Defense Supply Center Columbus-FCIM, PO Box 16704, Columbus, OH 43216–5000
SP3100, WX Defense Distribution Center East, Directorate of Distribution Procurement, 2001 Mission Drive, New Cumberland, PA 17070–5001
SP3200, TV Defense Distribution Center West, Directorate of Distribution Procurement, Building S–4, Lathrop, CA 95330–5000
SP4400, X1 Defense Reutilization Marketing Service, 74 Washington Avenue North, Battle Creek, MI 49017–3092
SP4410, X1 Defense Reutilization Marketing Service, Special Contracts Divison ATTN: DRMS–PO 74 Washington Avenue North, Battle Creek, MI 49017–3092
SP4420, XI Defense Reutilization Marketing Service, ATTN: DRMS–PMG, APO AE 09096–5000
SP4700, YK, X8 DLA Administrative Support Center, Office of Contracting 8725 John J. Kingman Road, Suite 0119, Fort Belvoir, VA 22060–6221
SP4800 Defense Logistics Agency, Office of Small And Disadvantaged Business Utilization, 8725 John J. Kingman Road, Suite 1127, Fort Belvoir, VA 22060–6221
SP4900 Defense Logistics Support Command, Procurement Systems, Standard Procurement System Program, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221
SP5200 Defense Logistics Support Command, Electronic Commerce Mall Operations, ATTN: DLSC–PRS, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221
SAS01A UY DCMC Pacific-Australia, Unit 11009, APO AP 96551–1000
SBL00A MJ DCMC Northern Europe-Belgium, PSC 82, Box 002, APO AE 09724–5000
SCN01A WV DCMC Americas, 275 Bank Street, Suite 200, Ottawa, Canada K2P 2L6
SGR18A DCMC Southern Europe, Box 775, ATTN: DCMDI–GGA, APO AE 09096–5000
SJP10A Y9 DCMC Pacific-Japan, PSC 477, Box 39, FPO AP 96306–2739
SKR08A R1 DCMC Pacific-Korea (Kimhae), Unit 2000, APO AE 96214–5000
SML04A XC DCMC Pacific—Kuala Lumpur, American Embassy, APO AP 96535–5000
SPR01A QF DCMC Americas—Puerto Rico, Box DLA NSGA 7, FPO AA 34053–0006
SSA20A DCMC Southern Europe—Spain, PSC 61, Box 3000, APO AE 09642–5000
SSN05A DCMC Pacific—Singapore, PSC 470, Box 2700, FPO AP 96534–2100
SSR01A YE DCMC Southern Europe—Israel, American Embassy Unit 7228, APO AE 09830–7228
SSU01A U4 DCMC Saudi Arabia—Air, DCMCI Unit 61305, APO AE 09803–1305
SSU03A US DCMC Saudi Arabia—Land, DCMCI Unit 61301, APO AE 09803–1301
STA21A DCMC Southern Europe—Italy (Brindisi), PSC 817, Box 61, FPO AE 09622–0061
STA23 DCMC Southern Europe—Italy, Unit 31401, Box 71, APO AE 09630–0071
STR02A, TQ DCMC Southern Europe—Turkey, Unit 9050, APO AE 09822–9050
SUK12A, VN DCMC Northern Europe, PSC 821, Box 55, APO AE 09421–0055
SUK14A DCMC Northern Europe—UK Bristol, Unit 4825, APO AE 09456–4825
SUK15A DCMC Northern Europe—UK Rochester, PSC 30, Box 100, APO AE 09447–0100
SZA01A DCMC Pacific—New Zealand, PSC 467, Box 298, FPO AP 96531–2000
S0101A DCMC Birmingham, 1910 Third Avenue North, Room 201, Birmingham, AL 35203–2376
S0102A, WA DCMC Pemco Aeroplex Birmingham, PO Box 12447, Birmingham, AL 35202–2447
S0302A, WY DCMC Phoenix, Two Renaissance Square, 40 North Central Avenue, Suite 400, Phoenix, AZ 85004–4424
S0305A, SR DCMC Raytheon Tucson, PO Box 11337, Building 801, M/5 D–4, Tucson, AZ 85734–1337
S0506A, WL DCMD West, 222 North Sepulveda Boulevard, El Segundo, CA 90245–4320
S0507A, XR DCMC San Francisco, 1265 Borregas Avenue, Sunnyvale, CA 94089
S0512A, YC DCMC Van Nuys, 6230 Van Nuys Boulevard, Van Nuys, CA 91401–2713
S0513A, UG DCMC Santa Ana, 34 Civic Center Plaza, PO Box C–12700, Santa Ana, CA 92712–2700
S0514A, VH DCMC San Diego, 7675 Dagget Street, Suite 200, San Diego, CA 92111–2241
S0520A, VR DCMC San Francisco—ULDP San Jose, M/SX65, PO Box 367, San Jose, CA 95103–0367
S0530A, X9 DCMC Boeing Huntington Beach, 5301 Bolsa Avenue, Huntington Beach, CA 92647–2099
S0539A, QT DCMC Hughes, Los Angeles, Kilroy Airport Building Center, 2250 East Imperial Highway, Suite 11000, El Segundo, CA 90245–4320
S0542A, RY DCMC Boeing Canoga Park, PO Box 7922, 6633 Canoga Avenue, Canoga Park, CA 91303–7922
S0543A, QX DCMC Lockheed Martin Missiles & Space, PO Box 3504, Sunnyvale, CA 94088–3504
S0544A, TC DCMC Boeing Long Beach, 2401 East Wardlow, Mail Code, 54–79, Long Beach, CA 90807–4481
S0546A, QR DCMC Northrop Grumman Hawthorne, 2301 West 120th Street, Mail Code H3–2, Hawthorne, CA 90251–5032
S0602A, VK DCMC Denver, Orchard Place 2, Suite 200, 5975 Greenwood Plaza Boulevard, Englewood, CO 80111–4715
S0605A, RE DCMC Lockheed Martin Astronautics, PO Box 179, Denver, CO 80201–0179
S0701A, WB DCMC Hartford, 130 Darlin Street, East Hartford, CT 06108–3234
S0702A, UP DCMC Hartford-Stratford, 550 Main Street, Stratford, CT 06497–7574
S0703A, XT DCMC Hartford-Hamilton Standard, 1 Hamilton Road, Windsor Locks, CT 06096–0463
S0707A LF DCMC Sikorsky, 6900 Main Street, Stratford, CT 06497–9131
S0708A, T5 DCMC Pratt & Whitney, East Hartford, 400 Main Street, Mail Stop 104–08, East Hartford, CT 06108–0969
S1002A, WW DCMC Orlando, 3555 Maguire Boulevard, Orlando, FL 32803–3726
S1005A, XL DCMC Lockheed Martin, Orlando, 5600 Sand Lake Road, MP49, Orlando, FL 32819–8907
S1009A, V1 DCMC Orlando-Harris, 1425 Troutman Boulevard NE, Palm Bay, FL 32905–4102
S1011A, T2 DCMC Pratt & Whitney West Palm Beach, 17900 Beeline Highway, West Palm Beach, FL 33410–9600
S1103A, Y1 DCMC Atlanta, 805 Walker Street, Marietta, GA 30060–2789
S1104A DCMC Atlanta-Rockwell, PO Box 1356, Duluth, GA 30136–1357
S1109A, Z4 DCMC Clearwater, Gadsen Building, Suite 200, 9549 Koger Boulevard, St. Petersburg, FL 33702–2455
S1110A, Z5 DCMC Northrop Grumman, St. Augustine, 5000 U.S. Highway 1 North, St. Augustine, FL 32085–3447
S1111A, RK DCMC Lockheed Martin Marietta, 86 South Cobb Drive, Building B–2, Marietta, GA 30063–0260
S1211A, U8 DCMC Aircraft Program Management Office, 805 Walker Street, Marietta, GA 30060–2789
S1221A, X5 DCMC Northrop Grumman Melbourne 2000 West NASA Boulevard, PO Box 9650, Melbourne, FL 32902–9650
S1403A, YP DCMC Chicago, PO Box 66911, Chicago, IL 60666–0911
S1501A, WG DCMC Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249–5701
S1505A, X2 DCMC Indianapolis-Raytheon, Communication Systems Division, 1010 Production, Mail Stop 03–07, Fort Wayne, IN 46808–4106
S1510A, Z9 DCMC Pacific-Honolulu, Box 64110, Camp H.M. Smith, Honolulu, HI 96861–4110
S1701A, YD DCMC Wichita, 271 West Third Street North, Suite 6000, Wichita, KS 67202–1212
S2101A DCMC Baltimore, 200 Towsontown Boulevard West, Towson, MD 21204–5299
S2103A, S2 DCMC Northrop Grumman Baltimore, PO Box 1693, Mail Stop 1285, Baltimore, MD 21203–1693
S2202A, UT DCMC East, 495 Summer Street, Boston, MA 02210–2184
S2203A, XX DCMC Boston—GTE, Government Systems Corp. 77 A Street, Needham, MA 02194–9123
S2205A, XF DCMC Raytheon, 2 Wayside Avenue, Burlington, MA 01803–0901
S2206A, Y3 DCMC Boston, 495 Summer Street, Boston, MA 02210–2138
S2207A, 7Q DCMC GE Lynn, 1000 Western Avenue, Lynn, MA 01910–0445
S2208A, NJ DCMC General Dynamics Defense Systems, 100 Plastics Avenue, Pittsfield, MA 01201–3677
S2209A, SQ DCMC Boston-Textron Systems Corporation, 201 Lowell Street, Wilmington, MA 01887–2941

S2303A, VW DCMC Detroit-Grand Rapids, Riverview Center Building, 678 Front Avenue NW, Grand Rapids, MI 49504–5352
S2305A, Y7 DCMC Detroit, U.S. Army Tank-Automotive Command, ATTN: DCMDE–GJD, Warren, MI 48397–5000
S2401A, WQ DCMC Twin Cities, 3001 Metro Drive, Bloomington, MN 55425–1573
S2404A, UR DCMC Baltimore, ATTN: Chesapeake 200 Towsontown, Boulevard West, Towson, MD 21204–5299
S2605A, XS DCMC St. Louis, 1222 Spruce Street, St. Louis, MO 63103–2812
S2606A, JZ DCMC Boeing St. Louis, PO Box 516, St. Louis, MO, 63166–0516
S3001A, YS DCMC Lockheed Martin Sanders, PO Box 0868, NHQ–539 Nashua, NH 03061–0868
S3101A, WT DCMC Springfield, Building 1, ARDEC, Picatinny, NJ 07806–5000
S3102A, UU DCMC Springfield-Allied Signal, Route 46, Mail Stop, 1–37, Teterboro, NJ 07608–1173
S3109A, WC DCMC Springfield-GEC/Kearfott/MIDSCO, PO Box 975, 164 Totowa Road, Wayne, NJ 07474–0975
S3110A, X7 DCMC Lockheed Martin, Delaware Valley, Mail Stop AE 2–W 1 Federal Street, Camden, NJ 08102–1013
S3305A, DCMC Syracuse-Buffalo, T.J. Dulski Federal Building, Room 1103, 111 West Huron Street, Buffalo, NY 14202–2392
S3306A, XU DCMC Syracuse, 615 Erie Boulevard West, Syracuse, NY 13402–2408
S3309A, VX DCMC Long Island, 605 Stewart Avenue, Garden City, NY 11530–4761
S3310A DCMC New York, Fort Wadsworth Building 120, 207 New York Avenue, Staten Island, NY 10305–5013
S3315A, YR DCMC Lockheed Martin, Federal Systems, Owego, 1801 State Route 17C, Owego, NY 13827–3998
S3316A, KK DCMC Northrop Grumman Bethpage, Mail Stop D23–025, South Oyster Bay Road, Bethpage, NY 11714–3593
S3319A DCMC Boston-Manchester, 2 Wall Street, Manchester, NH 03101–1621
S3619A, SB DCMC GE Aircraft Engines, Evendale, Mail Drop N–1, Cincinnati, OH 45215–6303
S3603, VB DCMC Cleveland, Admiral Kidd Building, 555 East 88th Street, Bratenahl, OH 44108–1068
S3605A, VL DCMC Dayton, Area C, Building 30, 1725 Van Patton Drive, Wright-Patterson AFB, OH 45433–5302
S3616A, X6 DCMC Cleveland—Lockheed Martin, Tactical Defense Systems, Akron, 1210 Massillon Road, Akron, OH 44315–0001
S3618A, YF DCMC Detroit—General Dynamics Lima, 1155 Buckeye Road, Lima, OH 45804–1898
S3620A, VA Defense Contract Management District International, 8725 John J. Kingman Road, Suite 3321, Fort Belvoir, VA 22060–6221
S3911A, X3 DCMC Pittsburgh, Federal Building, Room 1612, 1000 Liberty Avenue, Pittsburgh, PA 15222–4190
S3912A, XM DCMC Philadelphia-Reading, 201 Penn Street, Suite 201, Reading, PA 19601–4054
S3915A, XD DCMC Philadelphia, South 20th Street, Philadelphia, PA 19101–7699
S3916A, TU DCMC Boeing Philadelphia, PO Box 16859, Philadelphia, PA 19142–0859
S4201A, XY DCMC Philadelphia-United Defense Limited Partnership, PO Box 15512, York, PA 17405–1512
S4402A, Z7 DCMC Dallas, 1200 Main Street, Dallas, TX 75202–4399
S4404A, XN DCMC San Antonio, 615 East Houston, PO Box 1040, San Antonio, TX 78294–1040
S4407A, WN DCMC Raytheon E-Systems, Inc., PO Box 6379, Greenville, TX 75403–6379
S4408A, XZ DCMC Raytheon TI Systems, PO Box 660246, Mail Stop 256, Dallas, TX 75266–0246
S4418A, W1 DCMC Bell Helicopter Textron, PO Box 1605, Fort Worth, TX 76101–1605
S4419A, SL DCMC Lockheed Martin Tactical Aircraft Systems, PO Box 371, Fort Worth, TX 76101–0371
S4420A, WP DCMC Dallas-Lockheed Martin Vought Systems, PO Box 650003, Mail Stop PT, Dallas, TX 75265–0003
S4503A, R6 DCMC Thiokol, PO Box 524, Mail Stop Z–10, Brigham City, UT 84302–0524
S4601A DCMC General Dynamics Armament/Ord Systems, 128 Lakeside Avenue, Burlington, VT 05401–4985
S4801A, XW DCMC Seattle, Corporate Campus East III, 3009 112th Avenue NE, Suite 200, Bellevue, WA 98004–8019
S4804A, SP DCMC Boeing, Seattle, PO Box 3707, Seattle, WA 98124–2207
S4807A, WM DCMC Stewart and Stevenson, Inc., PO Box 457, Sealy, TX 77474–0457

Part 7—Defense Information Systems Agency Activity Address Numbers

DCA100, VC DITCO–NCR, ATTN: DTN 701 South Courthouse Road, Arlington, VA 22204–2109—(ZD10)
DCA200, VP Defense Information Technology Contracting Organization, Contracting Directorate, ATTN: DTS 2300 East Drive, Scott AFB, IL 62225–5406—(ZD11)
DCA300, 1F DITCO-Pacific, ATTN: DTP 1080 Vincennes Avenue, Suite 100, Pearl Harbor, HI 96860–4535—(ZD13)
DCA400, WK DITCO-Europe, ATTN: DTE, Unit 4235, Box 375, APO AE 09136–5375—(ZD14)
DCA500, KH DITCO-Alaska, ATTN: DTA 10441 Kuter Avenue, Suite 209, Elmendorf AFB, AK 99506–2615—(ZD15)

Part 8—National Imagery and Mapping Agency Activity Address Numbers

NMA100, BQ National Imagery and Mapping Agency, Support of Network and Enterprise Systems, ATTN: PCN/D–88, 4600 Sangamore Road, Bethesda, MD 20816–5003—(ZM10)
NMA201, Y2 National Imagery and Mapping Agency, Support of USIGS, ATTN: PCU/D–88, 4600 Sangamore Road, Bethesda, MD 20816–5003—(ZM21)
NMA202, Z2 National Imagery and Mapping Agency, Support of Systems Engineering, ATTN: PCE/D–88, 4600 Sangamore Road, Bethesda, MD 20816–5003—(ZM22)
NMA301, V2 National Imagery and Mapping Agency, Contracts in Support of Operations (East), ATTN: PCO–E/D–5, 4600 Sangamore Road, Bethesda, MD 20816–5003—(ZM31)
NMA302, YQ National Imagery and Mapping Agency, Contracts in Support of Operations (West), ATTN: PCO–W/L–13, 3200 South Second Street, St. Louis, MO 63118–3399—(ZM32)
NMA401, 8Y National Imagery and Mapping Agency, Contracts in Support of Corp Affairs (East), ATTN: PCC–E/D–6, 4600 Sangamore Road, Bethesda, MD 20816–5003—(ZM41)
NMA402, YZ National Imagery and Mapping Agency, Contracts in Support of Corp Affairs (West), ATTN: PCC–W/L–13, 3200 South Second Street, St. Louis, MO 63118–3399—(ZM42)

Part 9—Defense Threat Reduction Agency Activity Address Numbers

DTRA01, 8Z Defense Threat Reduction Agency/AM, 45045 Aviation Drive, Dulles, VA 20166–7517—(ZT01)
DTRA02, 0N Defense Threat Reduction Agency, Albuquerque Office, ATTN: Acquisitions Division (AOA), 1680 Texas Street SE, Kirtland AFB, NM 87115–5669—(ZT02)

Part 10—Miscellaneous Defense Activities Activity Address Numbers

MDA112, E0 T–ASA, Sacramento Contracting Office, 3116 Peacekeeper Way, McClellan AFB, CA 95652–1068—(ZP12)
MDA113, VE T–ASA, March Contracting Office, 1363 Z Street, Building 2730, March AFB, CA 92518–2717—(ZP13)
MDA210, SF Defense Finance and Accounting Service, Headquarters, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291—(ZF21)
MDA220, BC Defense Finance and Accounting Service, Integrated Contracting Office, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291—(ZF22)
MDA230, SU Defense Finance and Accounting Service, Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2055—(ZF23)
MDA240, 9R Defense Finance and Accounting Service, Columbus Center, 4280 East 5th Avenue, Columbus, OH 43219–1879—(ZF24)
MDA250, SV Defense Finance and Accounting Service, Denver Center, 6760 East Irvington Place, Denver, CO 80279–8000—(ZF25)
MDA260, ST Defense Finance and Accounting Service, Contract Support Office-Indianapolis, 8899 East 56th Street, Building 1, Indianapolis, IN 46249–0240—(ZF26)
MDA280, SY Defense Finance and Accounting Service, Kansas City Center, 1500 East 95th Street, Kansas City, MO 64131—(ZF28)
MDA410, DR DoD Education Activity, ATTN: Procurement Division, 4040 North Fairfax Drive, 4th Floor, Arlington, VA 22203–1635—(ZK10)

MDA412, 9Y DoD Education Activity, European Procurement Office, Unit 29649, Box 6000, APO AE 09096–9649—(ZK12)
MDA414, Y4 DoD Education Activity, Education Supplies Procurement Office, 101 Buford Road, Richmond, VA 23235–5292—(ZK14)
MDA416, YT DoD Education Activity, Pacific Procurement Office, PSC 557, Box 1894, FPO AP 96379–1894—(ZK16)
MDA418, E1 DoD Education Activity, Education Supplies Procurement Office, 101 Buford Road, Richmond, VA 23235–5292—(ZK18)
MDA904 Maryland Procurement Office, ATTN: N363, 9800 Savage Road, Fort George G. Meade, MD 20755–6000—(ZD04)
MDA905, B4 Uniformed Services University of the Health Sciences, ATTN: Directorate of Contracting, 4301 Jones Bridge Road, Bethesda, MD 20814–4799—(ZD05)
MDA906, U5 TRICARE Management Activity, Contract Management Directorate, 16401 East Centretech Parkway, Aurora, CO 80011–9043—(ZD06)
MDA907 Purchasing and Contracting Office, Menwith Hill Station, APO AE 09210—(ZD07)
MDA908, 2X Virginia Contracting Activity, ATTN: DAP, PO Box 46563, Washington, DC 20050–6563—(ZD50)
MDA928 Armed Forces Radiobiology Research Institute, ATTN: Directorate of Contracting, USUHS, 4301 Jones Bridge Road, Bethesda, MD 20814–4799—(ZD28)
MDA946 Washington Headquarters Services, Real Estate and Facilities Directorate, ATTN: REFCO, The Pentagon-Butler Building, 1155 Defense Pentagon, Washington, DC 20301–1155—(ZD46)
MDA947, DP Pentagon Renovation Office, 100 Boundary Channel Drive, Arlington, VA 22202–3712—(ZD47)
MDA972, WS DARPA, Contracts Management Directorate, 3701 North Fairfax Drive, Arlington, VA 22203—(ZD72)

Part 11—Defense Microelectronics Activity Address Number

DMEA90, 2P Defense Microelectronics Activity, ATTN: Contracting Office, 4234–54th Street, Building 620, McClellan Air Force Base, CA 95652–1521—(ZD90)

Part 12—Ballistic Missile Defense Organization Activity Address Numbers

HQ0006, SS Ballistic Missile Defense Organization, Contracts Directorate, ATTN: CT 1725 Jefferson Davis Highway, Suite 809, Arlington, VA 22202–4131—(ZD60)
H95001, VV Joint National Test Facility, Program Operations Acquisition, 730 Irwin Avenue, Schriever Air Force Base, CO 80912–7300—(ZD61)

Part 13—Defense Commissary Agency Activity Address Numbers

DECA01, ZG Defense Commissary Agency, Marketing Business Unit, ATTN: DeCA/MB, 5258 Oaklawn Boulevard, Hopewell, VA 23860–7336—(ZD81)
DECA02, ZT Defense Commissary Agency, Contract Management Business Unit, ATTN: DeCA/RAS, 5258 Oaklawn Boulevard, Hopewell, VA 23860–7336—(ZD82)
DECA03, 0H Defense Commissary Agency, Eastern Region/Northern Area Office, ATTN: DeCA/EA–N–AEA, 2257 Huber Road, Fort George G. Meade, MD 20755–5520—(ZD83)
DECA04, BE Defense Commissary Agency, Contract Management Business Unit, ATTN: DeCA/RAE, 1300 E Avenue, Building P–11200, Fort Lee, VA 23801–1800—(ZD84)
DECA05, 0L Defense Commissary Agency, Eastern Region/Southern Area Office, ATTN: DeCA/EA–S–AEA, 60 West Maxwell Boulevard, Maxwell AFB, AL 36112–6307—(ZD85)
DECA06, 0J Defense Commissary Agency, Midwest Region, ATTN: DeCA/MW–RDA, 300 AFCOMS Way, Building 3030, Kelly AFB, TX 78241–6132—(ZD86)
DECA07, 0Z Defense Commissary Agency, Western/Pacific Region, ATTN: DeCA/WP–RDA, 3401 Acacia Street, Building 950, McClellan AFB, CA 95692–1154—(ZD87)
DECA08, 0K Defense Commissary Agency, Contract Management Business Unit, ATTN: DeCA/RAV, 1300 E Avenue, Building P–11200, Fort Lee, VA 23801–1800—(ZD88)
DECA09, 0U Defense Commissary Agency, Contract Management Business Unit, ATTN: DeCA/EU–RDA, Unit 3060, APO AE 09094—(ZD89)

Part 14—United States Special Operations Command Activity Address Numbers

USZA20, 1R AFSOC Specialized Contracting Office, 100 Bartley Street, Suite 208–W, Hurlburt Field, FL 32544–5273—(ZA20)
USZA21 SOPAC Contracting Office, Special Operations Command Pacific, Building 31–A, Box 64046, Thompson Road, Camp H.M. Smith, HI 96861–4046—(ZA21)
USZA22, 2U USSOCOM Headquarters, Directorate of Procurement, ATTN: SOAL–KB, 7701 Tampa Point Boulevard, MacDill AFB, FL 33621–5323—(ZA22)
USZA23 Integrated Aviation Systems 21 Workgroup, ATTN: AATD, Building 401, Fort Eustis, VA 23604–5577—(ZA23)
USZA24 USSOCOM, 24th STS, ATTN: MS–Z, Building 3–1947, Room 105, Pope AFB, NC 28308–5000—(ZA24)
USZA25, B6 USSOCOM, RD&A Contracting Office, ATTN: USASOC–RDA, 4118 Susquehanna Avenue, Room 109, Aberdeen Proving Ground, MD 21005–5001—(ZA25)
USZA26, 1Z USSOCOM, Procurement Management Office, ATTN: SOAL–KMR, 7701 Tampa Point Boulevard, MacDill AFB, FL 33621–5323—(ZA26)
USZA90 USSOCOM, JSOC, PO Box 70329, Fort Bragg, NC 28307–5000—(ZA90)
USZA91 USSOCOM, SOTF, ATTN: Contracting, PO Box 70660, Fort Bragg, NC 28307–5000—(ZA91)
USZA92, 1F USSOCOM, USASOC, ATTN: AOCO, Building E–2929, Fort Bragg, NC 28307–5200—(ZA92)
USZA93 Special Boat Squadron One, 3400 Tarawa Road, San Diego, CA 92155–5176—(ZA93)
USZA94, ZL Naval Special Warfare Group One, 3632 Guadalcanal Road, San Diego, CA 92155–5583—(ZA94)
USZA95, 1A USSOCOM, TAKO, Contracting Division, ATTN: AMSAT–D–TK, Building 401, Lee Boulevard, Office 209, Fort Eustis, VA 23604–5577—(ZA95)
USZA96, 1P Special Boat Squadron Two, ATTN: NAB Little Creek, 2220 Schofield Road, Suite 100, Norfolk, VA 23521–2845—(ZA96)
USZA97, B8 Naval Special Warfare Group Two, 3854 Helicopter Road, Norfolk, VA 23521–2944—(ZA97)
USZA98 Naval Special Warfare Center, 2446 Trident Way, San Diego, CA 92155–5494—(ZA98)
USZA99, B9 Naval Special Warfare Development Group, 1636 Regulus Avenue, Building 313, Virginia Beach, VA 23461–2299—(ZA99)

[FR Doc. 00–6164 Filed 3–15–00; 8:45 am]
BILLING CODE 5000–04–P

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 207, 208, 222, and 252, and Appendices B, E, and F to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Deaprtment of Defense (DoD).
ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update activity names, addresses, and telephone numbers; delete obsolete text; update paragraph numbering and cross-references; and update certain commodity assignments under the DoD Coordinated Acquisition Program.

EFFECTIVE DATE: March 16, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; telefax (703) 602–0350.

List of Subjects in 48 CFR Parts 202, 204, 207, 208, 222, and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 202, 204, 207, 208, 222, and 252 and Appendices B, E, and F to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR Parts 202, 204, 207, 208, 222, and 252, and Appendices B, E, and F to

subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

2. Section 202.101 is amended in the definition of "*Contracting activity*", under the heading "NAVY", by removing the entry "Directorate of Procurement Policy, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition)".

PART 204—ADMINISTRATIVE MATTERS

3. Section 204.7002 is amended by revising paragraph (a)(2) to read as follows:

204.7002 Procedures.

(a) * * *

(2) Do not use the letter "I" or "O".

* * * * *

4. Section 204.7003 is amended by revising paragraph (a)(1)(i)(J) and adding paragraph (a)(1)(i)(M) to read as follows:

204.7003 Basic PII number.

(a) * * *

(1) * * *

(i) * * *

(J) Ballistic Missile Defense Organization—HQ0006 and H95001.

* * * * *

(M) Defense Microelectronics Activity—DMEA.

* * * * *

5. Section 204.7303 is amended in paragraph (a)(2) by revising the last sentence to read as follows:

204.7303 Procedures.

(a) * * *

(2) * * * The contracting officer may verify registration using the DUNS number or, if applicable, the DUNS+4 number, by calling toll-free: 1–888–227–2423, commercial: (616) 961–5757, or DSN: 932–5757; via the Internet at http://www.ccr2000.com; or as otherwise provided by agency procedures.

* * * * *

PART 207—ACQUISITION PLANNING

207.105 [Amended]

6. Section 207.105 is amended by redesignating paragraph (b)(18) as paragraph (b)(19).

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.7301 [Amended]

7. Section 208.7301 is amended in the first definition by removing "*Defense Industrial Supply Center (DISC)*" and adding in its place "*Defense Supply Center, Philadelphia (DSCP)*".

208.7305 [Amended]

8. Section 208.7305 is amended in paragraph (a)(1) by removing "DISC" and adding in its place "DSCP".

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.604–2 [Amended]

9. Section 222.604–2 is amended by redesignating paragraph (c) as paragraph (b).

222.608 and 222.608–4 [Removed]

10. Sections 222.608 and 222.608–4 are removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7004 [Amended]

11. Section 252.204–7004 is amended by revising the clause date to read "(MAR 2000)"; and in paragraph (d) by removing "http://ccr.edi.disa.mil" and adding in its place "http://www.ccr2000.com".

252.227–7030 [Amended]

12. Section 252.227–7030 is amended by revising the clause date to read "(MAR 2000)"; and in paragraph (a) in the first sentence by removing "252.227–7013(k)" and adding in its place "252.227–7013(e)(2) or 252.227–7018(e)(2)"

Appendix B—Coordinated Acquisition Assignments

13. Appendix B to Chapter 2 is amended by revising Part 5 to read as follows:

Appendix B—Coordinated Acquisition Assignments

* * * * *

PART 5—DEFENSE THREAT REDUCTION AGENCY ASSIGNMENTS

Federal supply class code	Commodity
1105	Nuclear Bombs.
1110	Nuclear Projectiles.
1115	Nuclear Warheads and Warhead Sections.
1120	Nuclear Depth Charges.
1125	Nuclear Demolition Charges.
1127	Nuclear Rockets.
1130	Conversion Kits, Nuclear Ordnance.
1135	Fuzing and Firing Devices, Nuclear Ordnance.
1140	Nuclear Components.
1145	Explosive and Pyrotechnic Components, Nuclear Ordnance.
1190	Specialized Test and Handling Equipment, Nuclear Ordnance.
1195	Miscellaneous Nuclear Ordnance.

In addition to the above, assignments to the Defense Threat Reduction Agency (DTRA) include all items for which DTRA provides logistics management or has integrated management responsibilities in accordance with the DTRA Charter.

E–202 [Amended]

14. Appendix E to Chapter 2 is amended in Part 2, Section E–202, paragraph (c), in the second sentence, by removing "Defense Logistics Service Center" and adding in its place "Defense Logistics Information Service".

15. Appendix E to Chapter 2 is amended in Part 2, Section E–204.2, as follows:

a. By revising paragraph (a) introductory text;

b. In paragraph (b) introductory text by removing "shall" and adding in its place "will";

c. In paragraphs (b)(1) and (b)(2) by removing "DLSC" and adding in its place "DLIS". The revised text reads as follows:

Appendix E—DOD Spare Parts Breakout Program

* * * * *

E–204.2 Responsibilities.

(a) The Defense Logistics Information Service (DLIS) will—

* * * * *

16. Appendix F to Chapter 2 is amended in Part 7, Section F–702, by designating the table following the text as Table 3, and by revising newly designated Table 3 to read as follows:

Appendix F—Material Inspection and Receiving Report

* * * * *

F–702 Corrected DD Form 250–1.

* * * * *

TABLE 3

Type of shipment	Recipient of DD Form 250–1	Number of copies			
		Loading (Prepared by shipper or Government representative)		Discharge (Prepared by receiving activity)	
		Tanker	Barge	Tanker	Barge
All (On overseas shipments, provide for a minimum of 4 consignees. Place 1 copy, attached to ullage report, in each of 4 envelopes. Mark the envelopes, "Consignee—First Destination," "Consignee—Second Destination," etc. Deliver via the vessel).	Each Consignee (by mail CONUS only).	2	1	As Required.	As Required
	With Shipment	1	1	As Required.	As Required
	Master of Vessel	1	1	1	1
	Tanker or Barge Agent	2	2	2	2
	Contractor	As Required.	As Required.	As Required.	As Required
	Cognizant Inspection Office	1	1	1	1
	Government Representative responsible for quality at each destination.	1	1	1	1
	Government Representative at Cargo Loading Point.	1	1	1*	1*
On all USNS tankers and all MSC chartered tankers and MSC chartered barges.	Military Sealift Command, Code N322, Washington, DC 20396–5100.	2	2	2	2
See the contract or shipping order for finance documentation and any supplemental requirements for Government-owned product shipments and receipts.	Payment Office: If this is DFAS–CO, send copies to: Defense Energy Support Center, ATTN: DESC–FII, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221 (do not send copies to DFAS–CO).	2	2	2	2
For shipments and receipts of DESC financed cargoes for which DFAS–CO is not the paying office.	Defense Energy Support Center, ATTN: DESC–FII, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221.	1	1	1	1
For shipments on all USNS tankers, MSC chartered tankers and barges, and FOB destination tankers with copy of ullage report.	Defense Energy Support Center, ATTN: DESC–BID, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221.	1	1	1**	1
On Army ILP shipments	U.S. Army International Logistics Center, New Cumberland Army Depot, New Cumberland, PA 17070–5001.	2	2	2	2
NAVY—On all shipments to Navy Operated Terminals	Defense Energy Support Center, ATTN: DESC–FII, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221.	2	1	2	1
On all shipments to AF Bases	Directorate of Energy Management, SA ALC(SFT), Kelly AFB, TX 78241–5000.	1	1	1	1
On all CONUS loadings	DESC Region(s) cognizant of shipping point.	1	1	1	1
On all shipments to CONUS Destinations	DESC Region(s) cognizant of shipping and receiving point.****.	1	1	0	0
For all discharges of cargoes originating at Defense Energy Support Points and discharging at activities not Defense Energy Support Points.	Defense Energy Support Center, ATTN: DESC–BID, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221.			1***	1***

*With copy of ullage report.
**Dry tank certificate to accompany DD Form 250–1 and ullage report.
***Copies of the DD Form 250–1, forwarded by bases, will include the following in Block 11: Shipped to: Supplementary Address, if applicable; Signed Code; and Fund Code.

**** See Table 4.

[FR Doc. 00–6168 Filed 3–15–00; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 208

[DFARS Case 2000–D005]

Defense Federal Acquisition Regulation Supplement; Federal Prison Industries Waiver Threshold

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to increase, from $25 to $250, the threshold at which DoD must request clearance from Federal Prison Industries (FPI) before purchasing FPI Schedule items from sources other than FPI, when delivery is required within 10 days.

EFFECTIVE DATE: March 16, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–4245; telefax (703) 602–0350. Please cite DFARS Case 2000–D005.

SUPPLEMENTARY INFORMATION:

A. Background

Subpart 8.6 of the Federal Acquisition Regulation (FAR) requires Federal agencies to obtain clearance from FPI before purchasing FPI Schedule items from sources other than FPI. FAR 8.606(e) provides an exception to the clearance requirement for orders of Schedule items totaling $25 or less that require delivery within 10 days. On January 24, 2000, FPI granted DoD further exception to the clearance requirement for orders totaling $250 or less that require delivery within 10 days. This final rule amends the DFARS to reflect the $250 threshold for DoD.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D005.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 208

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 208 is amended as follows:

1. The authority citation for 48 CFR Part 208 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Subpart 208.6 is added to read as follows:

Subpart 208.6—Acquisition from Federal Prison Industries, Inc.

Sec.
208.606 Exceptions.

208.606 Exceptions.

(e) DoD activities do not need an FPI clearance for orders of listed items totaling $250 or less than require delivery within 10 days.

[FR Doc. 00–6166 Filed 3–15–00; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 212, 244, 247, and 252

[DFARS Case 98–D014]

Defense Federal Acquisition Regulation Supplement; Cargo Preference—Subcontracts for Commercial Items

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending Defense Federal Acquisition Regulation Supplement (DFARS) policy regarding the applicability of statutory requirements for use of U.S. vessels in the transportation of supplies by sea. The rule clarifies requirements for use of U.S. vessels under subcontractors for the acquisition of commercial items.

EFFECTIVE DATE: March 16, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 98–D014.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2631 provides a preference for the use of U.S. vessels for ocean transportation of supplies purchased under DoD contracts. DFARS Parts 212 and 247 waive the requirements of 10 U.S.C. 2631 for subcontracts for the acquisition of commercial items. This rule amends DFARS Parts 212 and 247 and corresponding clauses to limit the types of subcontracts to which the waiver of 10 U.S.C. 2631 is applicable. The rule is intended to ensure compliance with 10 U.S.C. 2631 for ocean cargoes clearly destined for DoD use, while avoiding disruption of commercial delivery systems.

DoD published a proposed rule at 64 FR 33238 on June 22, 1999. Nine sources submitted comments in response to the proposed rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most entities that provide ocean transportation of freight are not small business concerns.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 212, 244, 247, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 212, 244, 247, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 212, 244, 247, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.504 is amended by revising paragraph (a)(xxii) to read as follows:

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(xxii) 10 U.S.C. 2631, Transportation of Supplies by Sea (except as provided in the clause at 252.247–7023, Transportation of Supplies by Sea).

* * * * *

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

3. Section 244.403 is revised to read as follows:

244.403 Contract clause.

Use the clause at 252.244–7000, Subcontracts for Commercial Items and Commercial Components (DoD contracts), in solicitations and contracts for supplies or services other than commercial items, that contain any of the following clauses: 252.225–7014 Preference for Domestic Specialty Metals, Alternate I, 252.247–7023 Transportation of Supplies by Sea, and 252.247–7024 Notification of Transportation of Supplies by Sea.

PART 247—TRANSPORTATION

247.572–1 [Amended]

4. Section 247.572–1 is amended in paragraph (a) by removing the last sentence.

5. Section 247.573 is amended by revising paragraph (b) to read as follows:

247.573 Solicitation provision and contract clauses.

* * * * *

(b)(1) Use the clause at 252.247–7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, except—

(i) Those for direct purchase of ocean transportation services; or

(ii) Those with an anticipated value at or below the simplified acquisition threshold.

(2) Use the clause with its Alternate I in other than construction contracts, if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations.

(3) Use the clause with its Alternate II in other than construction contracts, if any of the supplies to be transported are commercial items that are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.212–7001 is amended as follows:

a. By revising the clause date;

b. By removing paragraph (a);

c. By redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively;

d. In newly designated paragraph (a) by adding in numerical order the entry "_____252.247–7023 Transportation of Supplies by Sea (_____Alternate I) (_____Alternate II) (10 U.S.C. 2631).''; and

e. By revising newly designated paragraph (b) to read as follows:

252.212–7001 Contract terms and conditions required to implement statutes or Executive Orders applicable to Defense Acquisitions of Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (Mar 2000)

* * * * *

(b) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items clause of this contract (Federal Acquisition Regulation 52.212–5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225–7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

252.247–7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247–7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

7. Section 252.244–7000 is revised to read as follows:

252.244–7000 Subcontracts for commercial items and commercial components (DoD contracts).

As prescribed in 244.403, use the following clause:

Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (Mar 2000)

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items and Commercial Components clause of this contract (Federal Acquisition Regulation 52.244–6), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225–7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

252.247–7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247–7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

8. Section 252.247–7023 is amended as follows:

a. By revising the introductory text and clause date;

b. In paragraph (a)(5) by removing the last sentence;

c. By redesignating paragraphs (b) through (g) as paragraphs (c) through (h), respectively;

d. By adding a new paragraph (b);

e. In newly designated paragraph (c) by removing the first sentence of the introductory text;

f. By revising newly designated paragraph (h); and

g. By adding Alternates I and II. The revised and added text reads as follows:

252.247–7023 Transportation of supplies by sea.

As prescribed in 247.573(b)(1), use the following clause:

Transportation of Supplies by Sea (Mar. 2000)

* * * * *

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if—

(i) This contract is a construction contract; or

(ii) The supplies being transported are—

(A) Noncommercial items; or

(B) Commercial items that—

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it contracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

* * * * *

(h) The Contractor shall include this clause, including this paragraph (h), in all subcontractors under this contract that—

(1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(2) Are for a type of supplies described in paragraph (b)(3) of this clause.

(End of clause)

Alternate I (MAR 2000).

As prescribed in 247.573(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations); or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

Alternate II (MAR 2000).

As prescribed in 247.573(b)(3), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment),

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643 (Note: This contract requires transportation of commissary or exchange cargoes outside of the Defense Transportation System in accordance with 10 U.S.C. 2643).

9. Section 252.247–7024 is amended by revising the clause date and paragraph (b) to read as follows:

252.247–7024 Notification of Transportation of Supplies by Sea.

* * * * *

Notification of Transportation of Supplies by Sea (Mar 2000)

* * * * *

(b) The Contractor shall include this clause; including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties—

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(End of clause)

[FR Doc. 00–6165 Filed 3–15–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 222 and 252

[DFARS Case 99–D308]

Defense Federal Acquisition Regulation Supplement; Construction and Service Contracts in Noncontiguous States

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Acting Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8071 of the Fiscal Year 2000 Defense Appropriations Act. Section 8071 provides that DoD contracts for construction or services performed in a noncontiguous State, that has an unemployment rate in excess or the national average, must include a clause requiring the contractor to employ individuals who are residents of that State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills.

DATES: Effective date: March 16, 2000.

Comment date: Comments on the interim rule should be submitted in writing to the address shown on or before May 15, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 99–D308 in all correspondence related to this rule. E-mail comments should cite DFARS Case 99–D308 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0288.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule revisions DFARS Subpart 222.70 and the clause at 252.222–7000 to implement Section 8071 of the Fiscal Year 2000 Defense Appropriations Act (Public Law 106–79). Section 8071 provides that DoD contracts for construction or services performed in a State (as defined in 10 U.S.C. 381(d)), that is not contiguous with another State and has an unemployment rate in excess of the national average, must include a clause requiring the contractor to employ, for the purpose of performing that portion of the contract in the noncontiguous State, individuals who are residents of that State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. A similar DFARS requirement already exists for the noncontiguous States of Alaska and Hawaii. DoD knows of no economic impact on small entities that has resulted from the implementation of

this requirement in those States. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D308.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 8071 of the Fiscal Year 2000 Defense Appropriations Act (Public Law 106–79). Section 8071 provides that each DoD contract awarded during the current fiscal year, for construction or services performed in a noncontiguous State that has an unemployment rate in excess of the national average, must include a clause requiring the contractor to employee individuals who are residents of that State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills. Section 8071 became effective on October 25, 1999. DoD will consider comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 222 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 222 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 222 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Subpart 222.70 is revised to read as follows:

Subpart 222.70—Restrictions on the Employment of Personnel for Work on Construction and Service Contracts in Noncontiguous States

Sec.
222.7000 Scope of subpart.
222.7001 Definition.
222.7002 General.
222.7003 Waivers.
222.7004 Contract clause.

222.7000 Scope of subpart.

(a) This subpart implements Section 8071 of the Fiscal Year 2000 Defense Appropriations Act, Public Law 106–79, and similar sections in subsequent Defense Appropriations Acts.

(b) This subpart applies only—

(1) To construction and service contracts to be performed in whole or in part within a noncontiguous State; and

(2) When the unemployment rate in the noncontiguous State is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

222.7001 Definition.

"Noncontiguous State," as used in this subpart, means Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and any minor outlying island of the United States.

222.7002 General.

A contractor awarded a contract subject to this subpart must employ, for the purpose of performing that portion of the contract work within the noncontiguous State, individuals who are residents of that noncontiguous State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform this contract.

222.7003 Waivers.

The Secretary of Defense may waive the requirements of 222.7002 on a case-by-case basis in the interest of national security.

222.7004 Contract clause.

Use the clause at 252.222–7000, Restrictions on Employment of Personnel, in all solicitations and contracts subject to this subpart. Insert the name of the appropriate noncontiguous State in paragraph (a) of the clause.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.222–7000 is revised to read as follows:

252.222.7000 Restrictions on Employment of Personnel.

As prescribed in 222.7004, use the following clause: RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (MAR 2000)

(a) The Contractor shall employ, for the purpose of performing that portion of the contract work in _____, individuals who are residents thereof and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor shall insert the substance of this clause, including this paragraph (b), in each subcontract awarded under this contract. (End of clause)

[FR Doc. 00–6167 Filed 3–15–00; 8:45 am]
BILLING CODE 5000–04–M

Federal Register

Thursday,
March, 16, 2000

Part IV

Department of Agriculture
Department of Energy
National Aeronautics and Space Administration
Department of Commerce
Department of State
Agency for International Development
Department of Justice
Department of Labor
Department of Defense
Department of Education
National Archives and Records Administration
Environmental Protection Agency
Department of the Interior
Department of Health and Human Services
Department of Transportation

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; Final Rule

DEPARTMENT OF AGRICULTURE

7 CFR Part 3019

DEPARTMENT OF ENERGY

10 CFR Part 600

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

DEPARTMENT OF COMMERCE

15 CFR Part 14

DEPARTMENT OF STATE

22 CFR Part 145

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 226

DEPARTMENT OF JUSTICE

28 CFR Part 70

DEPARTMENT OF LABOR

29 CFR Part 95

DEPARTMENT OF DEFENSE

32 CFR Parts 22 and 32

DEPARTMENT OF EDUCATION

34 CFR Part 74

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1210

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 74

DEPARTMENT OF TRANSPORTATION

49 CFR Part 19

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

AGENCIES: Department of Agriculture, Department of Energy, National Aeronautics and Space Administration, Department of Commerce, Department of State, Agency for International Development, Department of Justice, Department of Labor, Department of Defense, Department of Education, National Archives and Records Administration, Environmental Protection Agency, Department of the Interior, Department of Health and Human Services, Department of Transportation.

ACTION: Interim final rule with request for comments.

SUMMARY: This document presents an interim final revision to the agencies' codification of Office of Management and Budget (OMB) Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." OMB issued a final revision to Circular A–110 on September 30, 1999, as required by Public Law 105–277. It was published in the **Federal Register** on October 8, 1999. The agencies' interim final rules will provide uniform administrative requirements for all grants and cooperative agreements to institutions of higher education, hospitals, and other non-profit organizations.

DATES: This interim final rule is effective April 17, 2000. Comments must be received on or before May 15, 2000.

ADDRESSES: Comments on the interim final rule should be addressed to: Charles Gale, Director, Office of Grants Management, Department of Health and Human Services, Room 517–D, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201. A copy of each communication submitted will be available for public inspection and copying during regular business hours (9:00 a.m.–5:30 p.m. eastern standard time) at the above address. The full text of Circular A–110, the text of the September 30th notice of final revision, and a chart showing where each agency has codified the Circular into regulation may be obtained by accessing OMB's home page (http://www.whitehouse.gov/omb), under the heading "Grants Management."

FOR FURTHER INFORMATION CONTACT: For general issues regarding this interim final rule, please contact Charles Gale, Director, Office of Grants Management, Department of Health and Human Services at (202) 690–6377. For agency-specific issues, please contact the individual noted in that agency's adoption below.

SUPPLEMENTARY INFORMATION:

Background

Congress included a two-sentence provision in OMB's appropriation for fiscal year 1999, contained in Public Law 105–277, directing OMB to amend Section __.36 of Circular A–110 "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act." The provision also provides for a reasonable fee to cover the costs incurred in responding to a request. Circular A–110 applies to grants and cooperative agreements to institutions of higher education, hospitals, and non-profit institutions, from all Federal agencies.

In directing OMB to revise Circular A–110, Congress entrusted OMB with the authority to resolve statutory ambiguities, the obligation to address implementation issues the statute did not address, and the discretion to balance the need for public access to research data with protections of the research process. In developing the revision, OMB sought to implement the statutory language fairly, in the context of its legislative history. This required a balanced approach that (1) furthered the interest of the public in obtaining the information needed to validate Federally-funded research findings, (2) ensured that research can continue to be conducted in accordance with the traditional scientific process, and (3) implemented a public access process that will be workable in practice.

OMB finalized the revision on September 30, 1999 (64 FR 54926, October 8, 1999). Before this, OMB published a Notice of Proposed Revision on February 4, 1999 (64 FR 5684), and a request for comments on clarifying changes to the proposed revision on August 11, 1999 (64 FR 43786). OMB received over 9,000 comments on the proposed revision and over 3,000 comments on the clarifying changes.

This interim final rule amends the agencies' codifications of Circular A–110 so they reflect OMB's recent action.

Under the provisions of section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)), any Department of Housing and Urban Development (HUD) proposed or interim final rule that is issued for

public comment is subject to prepublication Congressional review for a period of 15 days. Therefore, HUD is not joining in today's publication but is adopting the common amendments in a separate rulemaking.

Impact Analysis

Executive Order 12866

This is a significant regulatory action under Section 3(f)(4) of Executive Order 12866, "Regulatory Planning and Review."

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis must be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

The participating agencies certify that this interim final rule will not have a significant impact on a substantial number of small entities. This rule concerns the information that Federally-funded researchers must provide in response to Freedom of Information Act requests.

Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (Public Law 104–4) requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of $100 million by State, local, Indian Tribal governments or the private sector. Since this interim final rule will not result in expenditures of this magnitude, the participating agencies certify that such statements are not necessary.

Paperwork Reduction Act

The participating agencies certify that this interim final rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) agencies generally offer interested parties the opportunity to comment on proposed regulations before they become effective. However, in this case OMB previously provided the public an opportunity to comment on the revision of Circular A–110, and this regulatory action codifies that revision. Accordingly, while the participating agencies are requesting public comment on this regulatory action, they find that soliciting further public comment with respect to adopting the revised circular, prior to the adoption becoming effective, is unnecessary and contrary to public interest under 5 U.S.C. 553(b)(B). The regulatory action is therefore being issued as an interim final rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132: Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the participating agencies have determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Text of the Interim Final Rule

The text of the interim final rule appears below:

PART/SUBPART—[AMENDED]

1. Section .36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ .36 Intangible property.

* * * * *

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

* * * * *

Adoption of Interim Final Rule

The adoption of the interim final rule by the participating agencies, as modified by agency-specific text is set forth below:

DEPARTMENT OF AGRICULTURE

7 CFR Part 3019

FOR FURTHER INFORMATION CONTACT: Gerald Miske, Fiscal Policy Division, Office of the Chief Financial Officer, 202–720–1553.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Agriculture (USDA) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A–110, Section—.36 regarding the availability of data produced under an award through the Freedom of Information Act into USDA's grants administration regulation at 7 CFR Part 3019. Consistent with this Circular, this rule applies to USDA awards made to institutions of higher education, hospitals, and other non-profit organizations. It also applies to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, and other non-profit organizations.

List of Subjects in 7 CFR Part 3019

Accounting, Colleges and universities, Grant programs—agriculture, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 20, 2000.

Sally Thompson,

Chief Financial Officer.

Dated: January 21, 2000.

Dan Glickman,

Secretary of Agriculture.

For reasons stated in the preamble, the Department of Agriculture amends 7 CFR part 3019 as follows:

PART 3019—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for part 3019 continues to read as follows:

Authority: 5 U.S.C. 301.

§ 3019.36 [Amended]

2. Section 3019.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

DEPARTMENT OF ENERGY

10 CFR Part 600

FOR FURTHER INFORMATION CONTACT: Trudy Wood, Office of Procurement and Assistance Policy (MA–51), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C.20585, telephone 202–586–5625.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A–110, Section__.36 regarding the availability of data produced under an award through the Freedom of Information Act into DOE's assistance regulations at 10 CFR Part 600. Consistent with this Circular and 10 CFR Part 600, this rule applies to DOE awards made to institutions of higher education, hospitals, other non-profit organizations and commercial organizations. The OMB notices in the **Federal Register** soliciting comments on this subject did not address the potential applicability of the revisions to OMB Circular A–110 to commercial organizations. Since the application of OMB Circular A–110 to commercial organizations is optional, 10 CFR 600.136(d) will not apply to commercial organizations.

List of Subjects in 10 CFR Part 600

Accounting, Colleges and universities, Grants programs, Hospitals, Intergovernmental relations, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 21, 2000.

Edward R. Simpson,

Acting Director, Office of Procurement and Assistance Management.

For the reasons stated in the preamble, the Department of Energy amends 10 CFR part 600 as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 continues to read as follows:

Authority: 42 U.S.C. 7254, 7256, 13525; 31 U.S.C. 6301–6308, unless otherwise noted.

Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit Organizations and Commercial Organizations

§ 600.136 [Amended]

2. Section 600.136 (__.36) is amended as follows:

a. Paragraph (b) is removed.

b. Paragraph (a)(2) is redesignated as new paragraph (b) and revised.

c. Paragraph (a)(3) is redesignated as paragraph (c) and revised as set forth at the end of the common preamble.

d. Newly redesignated paragraph (c) is further amended by removing the phrase "The Federal Government" in the introductory text and adding "DOE" in its place.

e. Paragraph (a)(4) is redesignated as paragraph (e) and the first sentence is revised.

f. Paragraph (a) is revised.

g. Paragraph (d) is added as set forth in the common preamble.

h. New paragraph (d) is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "DOE" in its place and by adding paragraph (d)(3).

The revisions and addition read as follows:

§ 600.136 Intangible property.

(a) Recipients that are institutions of higher education, hospitals, and other non-profit organizations may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes and to authorize others to do so.

(b) In addition to this section, recipients must follow the requirements set forth at 10 CFR 600.27.

* * * * *

(d) * * *

(3) This paragraph (d) applies only to recipients that are institutions of higher education, hospitals, and other non-profit organizations.

(e) For recipients that are institutions of higher education, hospitals, and other non-profit organizations, title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. * * *

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

FOR FURTHER INFORMATION CONTACT: Diane Thompson, Manager, Sponsored Research Business Activity, Code HC, NASA Headquarters, Washington, DC, (202) 358–0514, e-mail: diane.thompson@hq.nasa.gov.

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration (NASA) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A–110, Section—.36 regarding the availability of data produced under an award through the Freedom of Information Act into NASA's grants

administration regulation at 14 CFR Part 1260. Consistent with this Circular, this rule applies to NASA awards made to institutions of higher education, hospitals and other non-profit organizations.

List of Subjects in 14 CFR 1260

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Recordkeeping and reporting requirements.

Anne Guenther,

Acting Associate Administrator for Procurement.

For the reasons stated in the preamble, the National Aeronautics and Space Administration amends 14 CFR Part 1260 as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

1. The authority citation for part 1260 is revised to read as follows:

Authority: 42 U.S.C. 2473(c)(1); Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*); and OMB Circular A–110 (64 FR 54926, October 8, 1999).

Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

§ 1260.136 [Amended]

2. Section 1260.136 (—.36) is amended as follows:

a. Paragraph (c) is revised as set forth at the end of the common preamble.

b. Paragraphs (d) and (e) are redesignated as paragraphs (e) and (f).

c. Paragraph (d) is added as set forth at the end of the common preamble.

d. New paragraph (d) is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "NASA" in its place.

DEPARTMENT OF COMMERCE

15 CFR Part 14

FOR FURTHER INFORMATION CONTACT: Susan L. Sutherland, Director, Office of Executive Assistance Management, Telephone Number 202–482–4115.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Commerce (DoC) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A–110, Section __.36 regarding the availability of data produced under an award through the Freedom of Information Act into DoC's grants administration regulation at 15 CFR Part 14. Consistent with this Circular, this rule applies to DoC awards made to institutions of higher education, hospitals, other non-profit, and commercial organizations. It also applies to such entities if they are recipients of subawards from States, and local and Indian Tribal governments administering programs under DoC awards.

List of Subjects in 15 CFR Part 14

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Susan L. Sutherland,

Director, Office of Executive Assistance Management.

For the reasons stated in the preamble, the Department of Commerce amends 15 CFR part 14 as follows:

PART 14—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NON-PROFIT, AND COMMERCIAL ORGANIZATIONS

1. The authority citation for part 14 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A–110 (64 FR 54926, October 8, 1999).

§ 14.36 [Amended]

2. Section 14.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

3. Section 14.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "DoC" in its place.

DEPARTMENT OF STATE

22 CFR Part 145

FOR FURTHER INFORMATION CONTACT: Georgia Hubert, Director, Federal Assistance Program, Office of the Procurement Executive, U.S. Department of State, Washington, DC 20520, (703) 812–2526.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of State (DOS) is publishing this interim final rule to incorporate the provisions of OMB Circular A–110, Section —.36, regarding the availability through the Freedom of Information Act of data produced under an award, into the DOS grants uniform administrative requirements at 22 CFR Part 145. Consistent with this Circular, this rule applies to DOS awards made to institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards from States, local and Indian Tribal governments administering programs under DOS awards. The OMB notices in the **Federal Register** soliciting comments on this subject did not address the potential applicability of the revisions to OMB Circular A–110 to commercial organizations. Since the application of OMB Circular A–110 to commercial organizations is optional, 22 CFR section 145.36(d)(1) will not apply to commercial organizations.

List of Subjects in 22 CFR Part 145

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 13, 2000.

Lloyd W. Pratsch,

Procurement Executive.

For the reasons stated in the preamble, the Department of State amends 22 CFR part 145 as follows:

PART 145—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

1. The authority citation for part 145 is revised to read as follows:

Authority: 22 U.S.C. 2658.1; OMB Circular A–110 (64 FR 54926, October 8, 1999).

2. Section 145.1 is amended by revising the first sentence to read as follows:

§ 145.1 Purpose.

This regulation establishes uniform administrative requirements for Department of State grants and cooperative agreements awarded to institutions of higher-education, hospitals, other nonprofit organizations, and commercial organizations, except that § 145.36(d)(1) shall not apply to commercial organizations. * * *

§ 145.36 [Amended]

3. Section 145.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

4. Section 145.36 is further amended by adding paragraph (d)(3) to read as follows:

§ 145.36 Intangible property.

* * * * *

(d) * * *

(3) The requirements set forth in paragraph (d)(1) of this section do not apply to commercial organizations.

* * * * *

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 226

FOR FURTHER INFORMATION CONTACT: M/OP/P, Diana Esposito, Procurement Analyst, U.S. Agency for International Development, Room 7.08–105, M/OP/P, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20523–7801, Telephone (202) 712–4163, FAX (202) 216–3395.

List of Subjects in 22 CFR Part 226

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Agency for International Development amends 22 CFR part 226 as follows:

PART 226—ADMINISTRATION OF ASSISTANCE AWARDS TO U.S. NON-GOVERNMENTAL ORGANIZATIONS

1. The authority citation for part 226 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

§ 226.36 [Amended]

2. Section 226.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

Dated: January 27, 2000.

Rodney W. Johnson,

Director, Office of Procurement.

DEPARTMENT OF JUSTICE

28 CFR Part 70

[A.G. Order No. 2289–2000]

FOR FURTHER INFORMATION CONTACT: Cynthia J. Schwimer, Comptroller & Chief Financial Officer, Office of Justice Programs, U. S. Department of Justice, (202) 307–0623.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Justice (Department) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A–110, Section—.36 regarding the availability of data produced under an award through the Freedom of Information Act into the Department's grants administration regulation at 28 CFR Part 70. Consistent with this Circular, this rule applies to awards made by the Department to institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards from States, and local and Indian Tribal governments administering programs under Departmental awards.

List of Subjects in 28 CFR Part 70

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: February 24, 2000.

Janet Reno,

Attorney General.

For the reasons stated in the preamble, the Department of Justice amends 28 CFR part 70 as follows:

PART 70—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS (INCLUDING SUBAWARDS) WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for part 70 is revised to read as follows:

Authority: 5 U.S.C. 301; the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.* (as amended); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.* (as amended); Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.* (as amended); 18 U.S.C. 4042, 4351–4353; OMB Circular A–110 (64 FR 54926, October 8, 1999).

§ 70.36 [Amended]

2. Section 70.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

3. Section 70. 36 is further amended by removing the phrase "Federal Government" in paragraph (c) introductory text and adding "Department" in its place.

4. Section 70.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "Departmental awarding agency" in its place.

DEPARTMENT OF LABOR

29 CFR Part 95

FOR FURTHER INFORMATION CONTACT: Comments specific to the Department of Labor may be directed to Phyllis R. McMeekin, Office of the Acquisition Advocate, 202–219–9174, [fax 202–219–9440]. Mailing address: U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–5425, Washington, DC 20210.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A–110, Section__.36 regarding the availability through the Freedom of Information Act of data produced under an award into DOL's grants administration regulation at 29 CFR Part 95. Consistent with this Circular, this rule applies to DOL awards made to institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards as indicated in Subpart 95.5. The OMB notices in the **Federal Register** soliciting comments on this subject did not address the potential applicability of the revisions to OMB Circular A–110 to commercial organizations. Since the application of OMB Circular A–110 to commercial organizations is optional, 29 CFR § 95.36(d)(1) will not apply to commercial organizations.

List of Subjects in 29 CFR Part 95

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 27, 2000.

Alexis M. Herman,

Secretary of Labor.

For the reasons stated in the preamble, the Department of Labor amends 29 CFR part 95 as follows:

PART 95—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS, AND WITH COMMERCIAL ORGANIZATIONS, FOREIGN GOVERNMENTS, ORGANIZATIONS UNDER THE JURISDICTION OF FOREIGN GOVERNMENTS, AND INTERNATIONAL ORGANIZATIONS

1. The authority citation for part 95 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A–110 (64 FR 54926, October 8, 1999); Secretary of Labor's Order 4–76.

§ 95.36 [Amended]

2. Section 95.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

3. Section 95.36 is further amended by removing the phrase "The Federal Government" in paragraph (c) introductory text, and adding "DOL" in its place.

4. Section 95.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears, and adding "DOL" in its place.

DEPARTMENT OF DEFENSE

32 CFR Parts 22 and 32

FOR FURTHER INFORMATION CONTACT: Mark Herbst, Office of the Deputy Under Secretary of Defense (Science and Technology), 3080 Defense Pentagon, Washington, D.C. 20301–3080.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense (DoD) adopts two interim final amendments to the DoD Grant and Agreement Regulations (DoDGARs). These amendments apply to awards made on or after the effective date of this regulatory change.

The principal amendment is to section 32.36 of Part 32 of the DoDGARs, which is the DoD's implementation of OMB Circular A–110. In adopting this amendment, the Office of the Secretary of Defense, the Military Departments and the Defense Agencies will maintain uniform policies on access to data produced under awards to universities and nonprofit organizations that are consistent with the policies of other Executive Departments and Agencies.

The other amendment is to Appendix C of Part 22 of the DoDGARs, to conform that appendix to the revised section 32.36 of Part 32. The change is to delete language advising DoD grants officers that an issue to be addressed in award terms and conditions is whether to waive the Government's access rights to data produced under awards. With the revision to section 32.36 of part 32, that no longer is an option. Two other technical corrections are made to the appendix, to correct citations to sections of the DoDGARs.

List of Subjects

32 CFR Part 22

Accounting, Grant programs—education, Reporting and recordkeeping requirements.

32 CFR Part 32

Accounting, Administrative practice and procedure, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of Defense amends Subchapter B of Chapter I of Title 32 of the Code of Federal Regulations as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

2. Appendix C to Part 22 is revised to read as follows:

BILLING CODE 3410–KS, 6450–01, 7510–01, 3510–FA, 4710–05, 6116–01, 4410–18, 4510–23, 5001–10, 4000–01, 7515–01, 6560–50, 4310–RF, 4150–24, 4910–62–P

Appendix C to Part 22—Administrative Requirements and Issues to be Addressed in Award Terms and Conditions

REQUIREMENT, IN BRIEF	SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND)			ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS
	University or other nonprofit	Governmental entity	For-profit entity	
Standards for Financial Management Systems. Recipients' systems to comply with:	32 CFR 32.21	32 CFR 33.20	32 CFR 34.11	For university, nonprofit, or for-profit entity, specify if want: • Bonding and insurance [32 CFR 32.21(c) or 32 CFR 34.11(b)]. • Fidelity bond [32 CFR 32.21(d) or 32 CFR 34.11(c)].
Payment. Recipients request payments and handle advances and interest in compliance with:	32 CFR 32.22	32 CFR 33.21, 33.41(d) and (e)	32 CFR 34.12	Specify: • Payment method (e.g., advance, reimbursement, working capital advance). NOTE: if predetermined payment schedule is used, must specify means to ensure that recipients don't develop large cash balances well in advance of needs for such funds (e.g., recipient submits SF-269 or SF-270 forms at regular intervals, for grants officer to review recipients' cash on hand). • Name/address of office to which recipient sends payment requests. • How frequently recipient may submit payment requests. • Whether recipient requests payment by SF-270, SF-271, or other form, or by electronic means (e.g., electronic data interchange). • Name/address of office that will make payments, and whether the recipient is to receive payments by electronic funds transfer (see §22.605(c) and §22.810(b)(2)). • Name/address of office to which recipient is to remit any interest earned, if advance payment method is to be used. If interest is to be remitted using electronic commerce, information should be provided on required format and data elements.
Allowable costs. Allowability of costs to be in accordance with:	32 CFR 32.27 and 32.28	32 CFR 33.22 and 33.23	32 CFR 34.17	
Fee/profit. None allowed.			32 CFR 34.18	
Cost share or match. If cost share or match is required, allowability and valuation are governed by:	32 CFR 32.23	32 CFR 33.24	32 CFR 34.13	Specify if want to allow inclusion of certain types of items as cost share or allow them to be valued in certain ways [32 CFR 32.23(b), (c), and (g); 32 CFR 33.24(b)(4), (b)(5), and (e)(2); 32 CFR 34.13(a)(7), (b)(1), and (b)(4)(ii)].

REQUIREMENT, IN BRIEF	SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND)			ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS
	University or other nonprofit	Governmental entity	For-profit entity	
Program income. Recipients account for program income in accordance with:	32 CFR 32.24	32 CFR 33.25	32 CFR 34.14	Specify: • Method for disposition [32 CFR 32.24(b), (c), and (d); 32 CFR 33.25(g); 32 CFR 34.14(d), (e), and (f)]. • If want recipient to have obligation to Government for certain types of income or for income earned after end of project period [32 CFR 32.24(e) and (h), 32 CFR 33.25(a), (d), (e), and (h), 32 CFR 34.14(b)]. • If want to allow recipient to deduct costs of generating income [32 CFR 32.24(f), 32 CFR 33.25(c), 32 CFR 34.14(c)].
Revision of budget/program plans. Recipients request prior approval for plan changes, in accordance with:	32 CFR 32.25	32 CFR 33.30	32 CFR 34.15	Specify if wish to: • Waive some prior approvals that are optional, but are in effect unless specifically waived [32 CFR 33.30(b), (c)(1), (d)(3); 32 CFR 34.15(c)(2)]. • Require some prior approvals that are optional, but are only in effect if specifically stated [32 CFR 32.25(c)(5), (d), (e), (h); 32 CFR 34.15(c)(3)]. • Waive the requirement for prior approval [32 CFR 25.25(d)(3)] for recipient to initiate one-time, no-cost extension, as long as the DoD Component judges that the recipient's doing so would not cause the DoD Component to fail to comply with DoD funding policies (e.g., the incremental programming and budgeting policy for research funding) contained in Volume 2A of the DoD Financial Management Regulation (DoD 7000.14-R).
Audit. Recipients periodically to have independent, financial and compliance audit and report to DoD, subject to provisions of:	32 CFR 32.26	32 CFR 33.26	32 CFR 34.16	Require all but for-profit entities to submit copy of OMB Circular A-133 audit reports to IG, DoD. Require for-profit entities to submit audit reports to whichever office(s) the DoD Component wishes audit reports to be sent.
Procurement. Recipients' systems for acquiring goods and services under awards are to comply with:	32 CFR 32.40 through 32.49	32 CFR 33.36	32 CFR 34.30 through 34.31	Specify if want to require recipient to make certain preaward documents available for DoD Component's review [32 CFR 32.44(e); 32 CFR 33.36(g); 32 CFR 34.31(b)].

REQUIREMENT, IN BRIEF	SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND)			ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS
	University or other nonprofit	Governmental entity	For-profit entity	
Subawards. Recipients flow down requirements to subawards in accordance with:	32 CFR 32.5, 32 CFR 33.37, and 32 CFR 34.1(b)(2)			
Property. Recipients manage in accordance with:	32 CFR 32.30 through 32.37	32 CFR 33.31 through 33.34	32 CFR 34.20 through 34.25	Specify if want: • To allow for-profit entities to acquire real property under awards [32 CFR 34.21(a)]. • University or other nonprofit to have any further obligation to Government for exempt property [32 CFR 32.33(b)]. • To retain right to transfer title [32 CFR 32.34(h). 32 CFR 33.32(g)]. • To allow recipients to use equipment for certain purposes [32 CFR 32.34(d) and (e); 32 CFR 33.32(c)(4); 32 CFR 34.21(d)]. • To waive data rights [32 CFR 34.25(b)(2)]. • To require recipients to record liens [32 CFR 32.37]. For research awards to certain recipients, include patents clause required by 37 CFR 401 [32 CFR 32.36(b); 32 CFR 34.25(a)].
Reports. Requirements are specified in:	32 CFR 32.51 and 32.52	32 CFR 33.40 and 33.41	32 CFR 34.41	Specify: • When recipients are to submit periodic and final performance reports [32 CFR 32.51(b) and (c); 32 CFR 33.40(b), (c), and (f); 32 CFR 34.41]. • Frequency of financial status/cash transaction reports [32 CFR 32.52(a)(1)(iii) and (a)(2)(iv); 32 CFR 33.41(b)(3) and (c); 32 CFR 34.41], or if wish to waive them under certain conditions [32 CFR 32.52(a)(1)(i) and (a)(2)(v); 32 CFR 33.41(a)(6); 32 CFR 34.41]. • Whether want reports on cash or accrual basis [32 CFR 32.52(a)(1)(ii); 32 CFR 33.41(b)(2); 32 CFR 34.41].
Records. Retention and access requirements specified in:	32 CFR 32.53	32 CFR 33.42	32 CFR 34.42	

REQUIREMENT, IN BRIEF	SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND)			ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS
	University or other nonprofit	Governmental entity	For-profit entity	
Termination and enforcement. Award is subject to:	32 CFR 32.61 and 32.62	32 CFR 33.43 and 33.44	32 CFR 34.51 and 34.52	
Disputes, claims, and appeals. Procedures are specified in:	32 CFR 22.815			• Include term or condition that incorporates procedures, in accordance with 32 CFR 22.815(a).
After-the-award requirements. Closeout, subsequent adjustments, continuing responsibilities, and collection of amounts due are subject to requirements in:	32 CFR 32.71 through 32.73	32 CFR 33.50 through 33.52	32 CFR 34.61 through 34.63	

BILLING CODE 3410–KS, 8450–01, 7510–01, 3510–FA, 4710–05, 6116–01, 4410–18, 4510–23, 5001–10, 4000–01, 7515–01, 6560–50, 4310–RF, 4150–24, 4910–62

PART 32—[AMENDED]

3. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 32.36 [Amended]

4. Section 32.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

5. Section 32.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears, and adding "DoD Component that made the award" in its place.

Dated: January 25, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEPARTMENT OF EDUCATION

34 CFR Part 74

FOR FURTHER INFORMATION CONTACT: Arthur Stewart. Telephone: (202) 708–9049. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Education (ED) publishes this interim final rule in order to incorporate the provisions of OMB Circular A–110, Section __.36 regarding the availability of data produced under a grant award through the Freedom of Information Act into ED's grants administration regulations at 34 CFR Part 74. Consistent with the Circular, this rule applies to ED grant awards made to institutions of higher education, hospitals and other non-profit organizations. It also applies to those entities if they are recipients of subawards from States, and local and Indian Tribal governments administering programs under ED awards.

Invitation to Comment: In addition to any comments submitted to Charles Gale at the U.S. Department of Health and Human Services, we invite you to submit comments regarding ED's specific implementation of these interim final regulations to Arthur Stewart, Department of Education, room 3652, ROB–3, Seventh and D Streets, SW., Washington, DC 20202–4248.

During and after the comment period, you may inspect public comments submitted to ED about it's specific interim final regulations in room 3652, ROB–3, Seventh and D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these interim final regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Assessment of Educational Impact: Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to this Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: http://ocfo.ed.gov.fedreg.htm, and http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

List of Subjects in 34 CFR Part 74

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 24, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons stated in the preamble, the Secretary of Education amends 34 CFR part 74 as follows:

PART 74—ADMINISTRATION OF GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for part 74 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 3474; OMB Circular A–110, unless otherwise noted.

§ 74.36 [Amended]

2. Section 74.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

3. Section 74.36 is further amended by removing the phrase "the Federal awarding agency" in paragraph (d)(1) each time it appears and adding "ED" in its place.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1210

FOR FURTHER INFORMATION CONTACT: Nancy Allard at 301–713–7360, extension 226 or by fax at 301–713–7270.

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Historical Publications and Records Commission (NHPRC) is the grant-making component of the National Archives and Records Administration (NARA). The NHPRC makes grants to state and local archives, colleges and universities, libraries, historical societies, and other nonprofit organizations in the U.S. to help identify, preserve, and provide public access to records, photographs, and other materials that document American history. We are publishing this interim final rule in order to incorporate the provisions of OMB Circular A–110, Section __.36 regarding the availability of data produced under an award through the Freedom of Information Act into our NHPRC grants administration regulation at 36 CFR Part 1210.

List of Subjects in 36 CFR Part 1210

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 11, 2000.

John W. Carlin,

Archivist of the United States.

For the reasons stated in the preamble, the National Archives and Records Administration amends 36 CFR part 1210 as follows:

PART 1210—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for part 1210 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A–110 (64 FR 54926, October 8, 1999).

§ 1210.36 [Amended]

2. Section 1210.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding new paragraph (d) as set forth at the end of the common preamble.

3. Section 1210.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "NHPRC" in its place.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

FOR FURTHER INFORMATION CONTACT: Alexandria Mincey, Grants Administration Division, Policy, Information and Training Branch, 1300 Pennsylvania Avenue, NW (3903R), Fifth Floor, Room 51288, Washington, DC 20004, (202) 564–5371.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A–110, Section __.36 regarding the availability of data produced under an award through the Freedom of Information Act into EPA's grants administration regulation at 40 CFR Part 30. Consistent with this Circular, this rule applies to EPA assistance awards made to institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards from States, local and Indian Tribal governments under EPA awards.

The Agency will implement a process for determination, assessment, collection, and reimbursement of recipients' costs.

List of Subjects in 40 CFR Part 30

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 13, 2000.

Carol M. Browner,

Administrator of the Environmental Protection Agency.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR Part 30 as follows:

PART 30—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

1. The heading for part 30 is revised to read as set forth above.

2. The authority citation for part 30 is revised to read as follows:

Authority: 7 U.S.C. 135 *et seq.*; 15 U.S.C. 2601 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 241, 242b, 243, 246, 300f, 300j–1, 300j–2, 300j–3, 1857 *et seq.*, 6901 *et seq.*, 7401 *et seq.*, 9601 *et seq.*; OMB Circular A–110 (64 FR 54926, October 8, 1999).

§ 30.36 [Amended]

3. Section 30.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

4. Section 30.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "EPA" in its place.

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

FOR FURTHER INFORMATION CONTACT: Debra E. Sonderman, (Director, Office of Acquisition and Property Management), (202) 208–6431.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of the Interior (DOI) has implemented OMB Circular A–110 at 43 CFR Part 12, Subpart F. There is also a provision at 43 CFR Part 12, Subpart A, Section 12.2(a) which confirms that grants and cooperative agreements which are awarded by DOI to institutions of higher education, hospitals and other non-profit organizations, are governed by Subpart F and OMB Circular A–110. The regulation at Subpart A documents that OMB Circular A-110 is a part of the regulation as well as any changes made to the Circular and subsequently published in the **Federal Register**. Therefore, awards made by DOI were considered covered on the effective date of the changes published in the revised Circular, November 8, 1999.

In order to amend DOI's codification of the Circular at 43 CFR Part 12, Subpart F, DOI is participating in this joint publication so that the recent revisions made by OMB can be reflected. With the publication of this interim final rule, we are incorporating the provisions of OMB Circular A–110, Section__.36 regarding the availability of data produced under an award through the Freedom of Information Act into the implementing regulation at 43 CFR Part 12, Subpart F.

Compliance With Laws, Executive Orders, and Department Policy: In addition to the certifications stated in the general preamble, DOI is including the following statements:

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. No takings of personal property will occur as a result of this rule.

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951 and 512 DM 2), we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on trust resources. This regulation concerns the information that federally-funded researchers must provide in response to Freedom of Information Act requests related to grants and cooperative agreements awarded to institutions of higher education, hospitals, and other non-profit organizations.

List of Subjects in 43 CFR Part 12

Accounting, Administrative practice and procedure, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 13, 2000.

John Berry,

Assistant Secretary-Policy, Management and Budget.

For the reasons set forth in the preamble, the Department of the Interior amends 43 CFR part 12 as follows:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. 252a, 701 *et seq;* Pub. L. 104–256, 110 Stat. 1396; sec. 501, Pub. L. 105–62, 111 Stat. 1338; sec. 503, Pub. L. 105–62, 111 Stat. 1339; sec. 303, Pub. L. 105–83, 111 Stat. 1589; sec. 307, Pub. L. 105–83, 111 Stat. 1590; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., p. 215; E.O. 12689, 3 CFR, 1989 Comp., p. 235; E.O. 12731, 3 CFR, 1990 Comp., p. 306; E.O. 13043, 62 FR 19217, 3 CFR 1997 Comp., p. 195; OMB Circular A–102; OMB Circular A–110; and OMB Circular A–133.

Subpart F—Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

§ 12.936 [Amended]

2. Section 12.936 (__.36) is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 74

FOR FURTHER INFORMATION CONTACT: Charles Gale, Director, Office of Grants Management, 202–690–6377; for the hearing impaired only: TDD 202–690–6415.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) is publishing this interim final rule to incorporate the provisions of OMB Circular A–110, Section —.36, regarding the availability through the Freedom of Information Act of data produced under an award, into the HHS grants administration regulation at 45 CFR Part 74. Consistent with this Circular, this rule applies to HHS awards made to institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards from States, and local and Indian Tribal governments administering programs under HHS awards. We recognize that OMB's notices for public comment regarding this subject did not address the potential applicability to commercial organizations. Since the applicability of OMB Circular A–110 to commercial organizations is optional and 45 CFR Part 74 includes other special provisions for commercial organizations (Subpart E), we have decided to be consistent with other Federal agencies which have decided not to apply the new provision to commercial organizations.

List of Subjects in 45 CFR Part 74

Accounting, Colleges and universities, Grant programs, Hospitals, Indians, Intergovernmental relations, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 14, 2000.

Donna E. Shalala,

Secretary.

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 74 as follows:

PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS; AND CERTAIN GRANTS AND AGREEMENTS WITH STATES, LOCAL GOVERNMENTS AND INDIAN TRIBAL GOVERNMENTS

1. The authority citation for part 74 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A–110 (64 FR 54926, October 8, 1999).

2. Section 74.1(a)(1) is revised to read as follows:

§ 74.1 Purpose and applicability.

(a) * * *

(1) Department of Health and Human Services' (HHS) grants and agreements awarded to institutions of higher education, hospitals, other nonprofit organizations and only to commercial organizations in instances other than those involving procedures to make data available under the Freedom of Information Act provision set forth in § 74.36(d)(1).

* * * * *

§ 74.36 [Amended]

3. Section 74.36 is amended:

a. By revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

b. By removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "HHS Awarding Agency" in its place.

c. By adding paragraph (d)(3) to read as follows:

§ 74.36 Intangible property.

* * * * *

(d) * * *

(3) The requirements set forth in paragraph (d)(1) of this section do not apply to commercial organizations.

* * * * *

4. Section 74.83 is added to subpart E to read as follows:

§ 74.83 Effect on intangible property.

Data sharing (FOIA) requirements as set forth in § 74.36(d)(1) do not apply to commercial organizations.

DEPARTMENT OF TRANSPORTATION

49 CFR Part 19

FOR FURTHER INFORMATION CONTACT: Robert G. Taylor, U.S. Department of Transportation, Office of the Senior Procurement Executive, M–62, 400 Seventh Street, S.W., Room 7101, Washington, D.C. 20590, phone (202) 366–4289, fax (202–366–7510, e-mail robert.g.taylor@ost.dot.gov, for grant related questions. Robert I. Ross, U.S. Department of Transportation, Office of the General Counsel, C–10, 400 Seventh Street S.W., Room 10102, Washington, DC 20590, phone (202)366–9156, fax (202)366–9170, email bob.ross@ost.dot.gov, for FOIA related questions.

ADDITIONAL SUPPLEMENTAL INFORMATION: The Department of Transportation (DOT) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A–110, Section __.36 regarding the availability of data produced under an award through the Freedom of Information Act FOIA into DOT's grants administration regulation at 49 CFR Part 19. Additional information has been added to clarify internal DOT procedures for payments made in accordance with the OMB revisions to Section __.36 of the Circular.

List of Subjects in 49 CFR Part 19

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Rodney E. Slater,

Secretary of Transportation.

For the reasons stated in the preamble, the Department of Transportation amends 49 CFR part 19 as follows:

PART 19—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 49 U.S.C. 322(a).

§ 19.36 [Amended]

2. Section 19.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

[FR Doc. 00–5674 Filed 3–15–00; 8:45 am]

BILLING CODE 3410–KS–P; 6450–01–P; 7510–01–P; 3510–FA–P; 4710–05–P; 6116–01–P; 4410–18–P; 4510–23–P; 5001–10–P; 4000–01–P; 7515–01–P; 6560–50–P; 4310–RF–P; 4150–24–P; 4910–62–P

Federal Register

Thursday,
March 16, 2000

Part V

Department of Housing and Urban Development

24 CFR Part 905

Allocation of Funds Under the Capital Fund; Capital Fund Formula; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 905

[Docket No. FR–4423–F–07]

RIN 2577–AB87

Allocation of Funds Under the Capital Fund; Capital Fund Formula; Final Rule

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements, as required by statute, a new formula system for allocation of funds to public housing agencies for their capital needs. This final rule follows publication of a proposed rule on September 14, 1999, which was developed through negotiated rulemaking, and takes into consideration, public comment received on the proposed rule.

DATES: *Effective Date:* April 17, 2000.

FOR FURTHER INFORMATION CONTACT: William Flood, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1640 ext. 4185 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 519 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, approved October 21, 1998) (referred to as the "Public Housing Reform Act") amends section 9 of the United States Housing Act of 1937 (the 1937 Act) to provide a "Capital Fund," to be established by HUD for the purpose of making assistance available to public housing agencies (PHAs) to carry out capital and management activities. Amended section 9 requires HUD to develop a formula for determining the amount of assistance provided to PHAs from the Capital Fund for a Federal fiscal year, and the formula is to include a mechanism to reward performance. The statute also requires that the Capital Fund formula is to be developed through negotiated rulemaking procedures.

On September 14, 1999 (64 FR 49924), HUD published the proposed rule developed through negotiated rulemaking. The preamble to the proposed rule provided background information on the negotiated rulemaking process, the number and dates of meetings, the members of the negotiated rulemaking committee, and the issues considered by the committee during its negotiations. This preamble does not repeat that information.

The September 14, 1999 proposed rule provided a 30-day public comment period. HUD received 10 public comments on this rule. Section III of this preamble presents the issues raised by the public commenters and HUD's responses to these comments. Section II, which follows, highlights the significant changes that are being made by HUD at this final rule stage.

II. Significant Differences Between This Final Rule and the September 14, 1999 Proposed Rule

HUD has made the following changes to the proposed rule at this final rule stage.

In § 905.10(d) (Allocation for existing modernization needs under the CFF), HUD removed paragraphs (d)(1)(i) and (d)(1)(ii) which addressed the availability of statistically reliable data, and HUD's determination of existing modernization need based on that data. The estimates of existing modernization need will be determined as provided in the methods established by paragraph (d). With the removal of paragraph (d)(1) of the proposed rule, paragraph (d)(2) of the proposed rule (determination of existing modernization need for PHAs greater than or equal to 250 or more units in FFY 1999) is redesignated paragraph (d)(1) at the final rule stage.

In § 905.10(d)(1)(i)(C) of the rule (§ 905.10(d)(2)(i)(C) at the proposed rule stage) which addresses the proportion of units in a development in building completed in 1978 or earlier, HUD revised this paragraph at the final rule stage to provide that the proportion of units in such a development are those as of Federal Fiscal Year 1998.

In § 905.10(d)(1)(i)(D) of the rule (§ 905.10(d)(2)(i)(D) at the proposed rule stage), which addresses the cost of rehabilitating property in the PHA's area, HUD removed the reference to "rolling three year average" of the cost. The cost index is simply referred to as the cost index. This change is consistent with the formula agreed upon in negotiated rulemaking, which did not rely upon a rolling three-year average of costs as a basic formula factor. HUD also revised this paragraph to provide that the applicable period is as of Federal Fiscal Year 1999.

In § 905.10(d)(1)(ii)(A) (§ 905.10(d)(2)(ii)(A) at the proposed rule stage), HUD changed the Date of Full Availability (DOFA) for newly constructed units from 1999 (the DOFA at the proposed rule stage) to 1991 (the DOFA at this final rule stage). The change in dates continues the Comprehensive Grant formula provision (that sets the date at 1991) and was part of the formula considered by the negotiated rulemaking committee.

In § 905.10(d)(1)(ii)(B) (§ 905.10(d)(2)(ii)(A) at the proposed rule stage), HUD made the same change in DOFA for acquired developments. The applicable date is now 1991, not 1999. The change in dates continues the Comprehensive Grant formula provision (that sets the date at 1991) and was part of the formula considered by the negotiated rulemaking committee.

In § 905.10(d), HUD added a new paragraph (d)(2) to address the determination of existing modernization need for the New York City and Chicago Housing Authorities.

In § 905.10(d), paragraph (3) continues to address determination of existing modernization need for PHAs with fewer than 250 units in FFY 1999. In § 905.10(d)(3)(i)(C) and (d) and in § 905.10(d)(3)(ii)(A) and (B), HUD made the same changes to these paragraphs as it did to the similar paragraphs in paragraph (d)(1).

In § 905.10(e) (Allocation for accrual needs under the CFF), HUD removed paragraphs (1)(i) and (ii) which addressed determination of accrual need on the basis of availability of statistically reliable data, for the same reasons that it removed this language from paragraph (d)(1). Paragraph (e)(2) of the proposed rule, which addressed PHAs allocation of accrual needs for PHAs greater than or equal to 250 or more units, is redesignated as paragraph (1) at this final rule stage.

In § 905.10(e)(1)(i)(E) and § 905.10(e)(3)(i)(E) which address the cost index of rehabilitating property, HUD made the same revisions to these subsections that were made to this language in paragraph (d).

In § 905.10(e), HUD added a new paragraph (2) to address the allocation of accrual needs for the New York City and Chicago Housing Authorities.

In § 905.10(f) (Calculation of number of units), HUD added a new paragraph (2) that addresses replacement units. Paragraph (2) of the proposed rule that addressed conversion of units is redesignated paragraph (3) and revised by removing paragraphs (i) and (ii). Paragraph (i) provided that increases in the number of units resulting from conversion of existing units will be added to the overall unit count so long as the units are under ACC amendments

by the reporting date. Paragraph (ii) provided that for purposes of calculating the number of converted units, HUD shall regard the converted size unit as the appropriate unit count.

HUD retained paragraph (iii) but made revisions. The revised paragraph (iii) provides that for purposes of calculating the estimated need of converted units, HUD shall treat conversion in a development so that the total estimated need (total units times need per unit) of the development is unchanged by the conversion.

In § 905.10(f)(4) (§ 905.10(f)(3) at the proposed rule stage) which addresses reduction of units, HUD removed reference to conversion. Reduction of units is now based only on demolition or disposition.

In § 905.10(h)(2), regarding retention of current formula shares for some Moving to Work communities whose agreements in that program provide for this, HUD has added the modifier "approximately" to "the formula share". This is done in recognition that the replacement housing factor would not duplicate the prior calculation, but instead would be calculated annually in the same manner as the replacement factor provided under this rule. (In addition, the prior formula's replacement housing factor was for five years.) This change must occur for purposes of efficient formula administration and should not make a significant financial difference. Under the overall formula system, the share of a PHA with an MTW grant agreement under the new formula system (including the replacement housing component) may be the PHA's share under the old formula system (including the replacement housing component) for comparable units, if the PHA's MTW agreement provided for that share.

In § 905.10(i) (Replacement housing factor), HUD revised paragraph (i) at this final rule stage to remove all reference to conversion. The replacement housing factor is only applicable to demolition and disposition.

In § 905.10(j) (Performance reward factor), HUD revised this paragraph to reflect the status of implementation of the Public Housing Assessment System (PHAS).

A new paragraph (k) was added to clarify the PHAs' authority to undertake collateralization, as provided under section 14(a) of the 1937 Act, and to address the statutorily eligible expenses in section 9(d)(1) of the U.S. Housing Act of 1937. This new paragraph is discussed in more detail in Section IV of this preamble.

In addition to these changes, HUD also made several editorial and organizational changes throughout the rule for purposes of clarity.

III. Discussion of Public Comments

This section presents HUD's responses to the significant issues raised by the individuals and entities who submitted comments on the September 14, 1999 proposed rule. The heading "Comment" states the comment made by a commenter or commenters and the heading "HUD Response" presents HUD's response to the issue or issues raised by the commenter or commenters.

General Comments

Comment. The data collected by the consultant study was flawed. The preamble to the September 14, 1999 proposed rule notes that "[a]s part of its deliberation of formula models and formula components, the committee considered at length a study conducted on capital needs in public housing by a consulting firm" (64 FR 49924). Two commenters were highly critical of the study. The concerns of the commenters included that the study did not look at true capital needs, but only at the cost of restoring items to their original condition, the study did not adequately take into account different housing types, the study only looked at observable conditions, and there were flaws in the methods by which site costs were estimated. Another commenter stated that the preamble did not properly reflect that the negotiated rulemaking committee spent considerable time debating the merits of the study and the committee, overall, was critical of the study.

HUD Response. HUD recognizes the limitations of the study used by the committee and the preamble to the proposed rule described these limitations. The study, however, was the best study available at the time, and HUD believes that the committee, cognizant of the limitations that the study presented, was able to address formula issues knowledgeably and appropriately. For example, as the preamble stated, given the limitations of the study, the committee decided to limit any reduction in funding in going from the old to the new formula to six percent of a PHA's Federal Fiscal Year 1999 formula share for comparable units.

Comment. The rule should reflect the concern of the committee to base a performance bonus solely on the PHA's PHAS score. One commenter stated that the proposed rule did not adequately convey the opposition of many committee members to a performance bonus based exclusively on a PHA's PHAS score.

HUD Response. The preamble to a negotiated rule need not (and in the majority of cases does not) relay every disagreement that committee members had during the deliberations of the rule. The minutes of the committee meetings accurately reflect all discussions, and are available for review by the public. The preamble should reflect any nonconsensus items, however. The committee reached consensus on all rule provisions, including the performance bonus.

Comment. HUD should use FY 2000 appropriation numbers to conduct a "test run" of the formula and make the results available to each PHA. Two commenters suggested that the final rule should provide a sample application of the formula using dollar figures. One of the commenters stated that PHAs cannot submit informed comments on the proposed rule without "having at least estimates of what the formula would mean to them." The commenter further recommended that HUD extend the due date for the submission of public comments until such numbers are made available to the public.

HUD Response. Provision of a sample application of the formula and an extension of the public comment period are not necessary, in view of the prior work of the negotiated rulemaking committee. The sample formula amounts that HUD provided to the committee for PHA size and geographic categories and for some representative PHAs were sufficient to guide the committee's decisions have been available through committee members (including national public housing organizations). Additionally, to safeguard against any possible dramatic changes in going from the old formula to the new, the rule limits funding reductions to six percent of a PHA's Federal Fiscal Year 1999 formula share for comparable units.

Comment. The final rule should contain a definition section. One commenter suggested that the final rule contain a definitions section in order to clarify the meaning of several terms used throughout § 905.10. The commenter recommended that the final rule provide definitions for the following terms: existing modernization needs; relative needs; accrual needs; calibration of existing modernization need; rolling three-year average; cost index; calibration of accrual need; total estimated existing modernization need; total accrual need; and "Moving to Work."

HUD Response. Many of the terms are described within the formula itself or

are terms carried over from the previous formula and, as a result, are terms that are familiar to PHAs.

Comments on the Proposed Rule Provisions

Comment. What constitutes statistically reliable data? Two commenters expressed concern about the proposed rule language that provided for a determination of existing modernization need or accrual need based on the availability or unavailability of statistically reliable data. One commenter asked how PHAs would be assured that HUD is using statistically reliable data. The other commenter stated that HUD should accept that statistically reliable data generally are not available.

HUD Response. The data used for this formula are from the consultant study referenced above. Thus, as noted earlier in this preamble, language that implied that the data relied upon for the formula might change in the future has been removed at the final rule stage.

Comment. How will HUD determine the rolling three year average cost index for each area? One commenter questioned how this index would be determined.

HUD Response. HUD has removed any reference to a three-year rolling average of the cost index. The current practice is to make annual adjustments in the formula based on annual changes in the cost index, and HUD's expectation is to continue current practice.

Comment. Determination of non-metropolitan area. One commenter asked whether, in determining the extent to which units of a development were in a non-metropolitan area, HUD will make this determination based on each development and each scattered site home.

HUD Response. The determination will be based on the location of each development. If a scattered site development has units in both metro and non-metro areas (as determined in FFY 1996), then the majority of units will decide the metro or non-metro designation of the development.

Comment. The formula must provide for capital funding after the date of full availability (DOFA). Proposed § 905.10(d)(2)(ii)(A) provided that "[d]evelopments acquired by a PHA with a DOFA date of October 1, 1999 or thereafter will be considered by HUD to have a zero existing modernization need." One commenter asked whether this date would be revised each year. The commenter stated that while it is understandable that a development with a DOFA in the current fiscal year would not need much, if any, modernization that year, the commenter thought it is unrealistic to say that this development will not require modernization in the future.

HUD Response. As noted earlier in this preamble, HUD has revised the rule to continue the current application of this provision, for which the date is October 1, 1991. The formula agreed upon in negotiated rulemaking has this basis. The agreed-upon formula is static except for changes in units and annual calibration of costs based on inflation in local areas. Thus, this provision will not change from year to year.

Comment. HUD should provide examples regarding the application of the accrual formula. One commenter stated that the accrual need formula is too complex. The commenter stated that it would be difficult, if not impossible, to determine from the formula description how this will effect an actual housing authority.

HUD Response. The accrual need formula should not be unfamiliar to PHAs. This formula is similar to the accrual need formula of the Comprehensive Grant Program.

Comment. Replacement housing factor is unclear. The proposed rule provides that the replacement housing factor "will be added for an additional 5 years if the planning, leveraging, obligation and expenditure requirements are met." The proposed rule also provides that, as "a prior condition of a PHA's receipt of additional funds for replacement housing * * * for the second 5-year period or any portion thereof, a PHA must obtain a firm commitment of substantial additional funds other than public housing funds for replacement housing, as determined by HUD." A few commenters stated that this language was vague, and that HUD should clarify this provision at the final rule stage. The commenters stated that HUD needs to explain what it means by "firm commitment," "planning," and "leveraging", among other terms used in this section.

HUD Response. This language was negotiated specifically in negotiated rulemaking, and HUD will not add to it in the regulation. HUD will provide the necessary guidance before the beginning of the second five-year term.

Comment. PHAs that receive HOPE VI or MROP funds should not be prevented from receiving funds under the replacement housing factor. One commenter requested that the Capital Fund formula not penalize PHAs that "have taken the initiative to access additional HUD funding" under programs such as the HOPE VI program or the Major Reconstruction of Obsolete Public Housing (MROP) program. The commenter recommended the removal of § 905.10(i)(5)(iv) from the final rule.

HUD Response. HUD and the committee determined it equitable to exclude under the replacement housing factor those units funded under HOPE VI, MROP, or other PIH development programs, because funding under these programs is sufficiently generous to outweigh formula funding under the Capital Fund. Thus, replacement factor funds will not be provided for public housing units fully funded from such sources. If the PHA obtains funding from HOPE VI, MROP, or other PIH development programs during the 10-year period for the replacement housing factor, future funding for the replacement housing factor covering the number of units funded under these other programs would cease. HUD also notes that, since replacement housing factor funds can be used only for replacement housing, such funding would cease if the PHA already had received funding from any source to replace all housing previously demolished or disposed of.

Comment. HUD should aggressively invoke its authority to recapture and reallocate funds; Replacement housing factor should only be made available to PHAs committing to provide replacement units. Two commenters urged HUD to strengthen the recapture and reallocation provisions of the proposed rule. The commenters stated that PHAs that do not use the money for its designated purpose should not benefit from the funds. The commenters suggested that the language in the rule that HUD "may" recapture and reallocate replacement housing funds should be changed to HUD "shall" recapture and reallocate replacement housing funds. The commenters also suggested that a PHA's failure to obligate replacement housing funds on a timely basis should not result merely in a reduction of funding to the PHA for the second 5-year period of application of the replacement housing factor, but in elimination of those funds.

Another commenter was concerned about perceived deficiencies in the proposed rule that would excuse PHAs receiving replacement factor funds from actually providing replacement housing. The commenter objected to the provision permitting a PHA to defer the obligation of replacement factor funds until the accumulation of adequate funds. The commenter stated that, since replacement factor funds will never cover all development costs, PHAs that do not diligently seek out additional resources will qualify for the 24-month

extensions provided in the rule. The commenter also expressed concern about proposed § 905.10(i)(2), which (according to the commenter) only requires "PHAs seeking the second five years of funding * * * to demonstrate * * * that they have the funds to develop the replacement housing." The commenter stated that this provision would undermine the entire concept that a PHA that qualifies for the first five years of funding is one that seriously intends to replace demolished units.

HUD Response. The requirements imposed in this regulation for obligating and expending replacement housing funds are an addition to the requirements generally applicable to obligation and expenditure of capital funds, and are designed to provide additional assurance that replacement housing factor funds are obligated and expended in a timely fashion. HUD will enforce the requirements accordingly.

Comment. PHAs designated as standard and substandard performers under PHAS should not have funding reduced as a result of a performance bonus to high performing PHAs. One commenter objected to reducing formula funding for standard and substandard PHAs as a result of the performance bonus for high performing PHAs. The commenter stated that these PHAs desperately need Capital Funds for repairs and modernization in order to meet the "stringent requirements" of the PHAS.

HUD Response. HUD does not agree that the PHAS imposes overly stringent requirements on PHAs The requirements imposed on PHAs are those imposed by statute and public housing program regulations, and are requirements directed to ensuring that PHAs use federal funds to provide decent, safe and sanitary housing to public housing residents. The PHAS assesses, among other things, whether PHAs are meeting this requirement.

The negotiated rulemaking committee recognized that providing a bonus to high performing PHAs from the Capital Fund would necessarily mean a reduction in funding to PHAs that are not designated high performing. Nevertheless, the committee agreed that it was important and consistent with the requirements of the Public Housing Reform Act to reward high performing PHAs with a monetary incentive. Although there was criticism of the PHAS and objections were voiced and the issue debated, the committee reached consensus that the performance bonus would be based on the PHA's designation of high performer under the PHAS. That final rule was published, after an extensive additional consultation process with affected entities and their representatives, on January 11, 2000. In any event, PHAS is the performance evaluation system for PHAs, and thus it is proper to base the performance bonus on PHAS.

Comment. Performance bonus should not be based on PHAS scores. Four commenters strongly objected to the use of high performing designation under PHAS for purposes of determining the performance bonus. The commenters stated that the "current state of the PHAS shows it to be inaccurate and inconsistent, and it is still questionable whether it really measures what it is intended to measure." The commenters stated that it is premature to implement PHAS at this time and, therefore, it is premature to implement a Capital Fund formula bonus based on PHAS.

HUD Response. HUD believes that much of the concern of the commenters about the PHAS was based on the PHAS advisory scores. The purpose of issuance of PHAS advisory scores during the transition period following publication of the PHAS final rule published on September 1, 1998 (63 FR 46596) was to test the PHAS, commence training on the PHAS, and solicit additional input from PHAs before the PHAS was scheduled to take effect on October 1, 1999. On October 21, 1999 HUD published a notice (64 FR 56676) that recognized the PHAS transition period needed to be extended for PHAs with fiscal years ending on September 30, 1999, or before December 31, 1999. In that notice, HUD advised that PHAs with fiscal years ending after December 31, 1999, would be the first PHAs to be issued PHAS scores. PHAs with fiscal years ending September 30, 1999 or December 31, 1999, will be issued PHAS advisory scores and be assessed (as HUD is required to do by statute) on the PHA's management operations under the criteria in 24 CFR part 902, subpart D of the PHAS regulation. The notice recognized that these PHAs needed additional time to prepare for the transition to PHAS.

In that notice, HUD also advised that it was continuing to work on the PHAS final rule and that HUD would issue a consensus-based final rule that would address the public comments and describe all changes to the PHAS regulation made as a result of the public comment and review process.

Comment. Timeframes for performance bonus should be extended due to deficiencies with the PHAS. Two commenters suggested that due to the perceived deficiencies with PHAS, the time frame for implementation of the performance bonus is unrealistic. The commenters suggested that the time frame be extended in order to permit the PHAS to be finalized.

HUD Response. As noted in Section II of the preamble and in the response to the preceding comment, HUD has revised the rule to provide that the performance bonus does not take effect until an entire year of the first PHAS scores have been issued.

Comment. Final rule should clarify relationship between performance bonus and Capital Fund cap. Section 905.10(h) of the proposed rule provides that "no PHA's [Capital Fund formula] share for units funded under the [Capital Fund formula] can be less than 94% of its formula share had the [Fiscal Year] 1999 formula system been applied to these eligible units." Section 905.10(j) provides that "no PHA will lose more than 5% of its base formula amount as a result of the redistribution of funding from non-high performers to high performers." One commenter asked whether this 5% "hold harmless" provision is inclusive or exclusive of the 94% cap provided in § 905.10(h). The commenter recommended that no PHA "should receive a cut of more than 6 percent of its formula share for any reason, including bonuses to others."

HUD Response. The final agreement of the negotiated rulemaking committee is that the performance bonus computation is separate from (or exclusive of) the funding formula computations. A PHA could lose up to six percent of its original formula amount for comparable units under the funding formula computations (again, exclusive of the performance bonus computation) and then lose up to an additional five percent under the performance bonus computations. Some PHAs that lose the full six percent under the formula computation might benefit from the performance bonus computation.

IV. Eligible Expenses

As HUD's Notice on Status of Implementation of the Public Housing Reform Act, published on December 22, 1999 (64 FR 71799), noted, upon the effective date of this final rule, PHAs may begin to undertake the eligible activities listed in section 9(d)(1) of the Act. Section 522(c)(2) of the Public Housing Reform Act states that despite the Act's repeal of section 14 of the United States Housing Act of 1937 (1937 Act), PHAs may continue to use the authority provided under section 14(q) of that Act before implementation of the formula. In addition to the eligible expenses under section 9(d)(1), section 14(q) includes authorization for drawdown of funds on a schedule commensurate with construction draws

for deposit into an interest-bearing account to serve as collateral or credit enhancement for bonds issued by a public agency, for the construction or rehabilitation of a development. New section 35 of the 1937 Act, added by the Public Housing Reform Act, provides somewhat broader authority of the same nature, to be used in accordance with regulations issued by HUD.

HUD soon will issue proposed rules on the nonformula aspects of the Capital Fund and on mixed finance, which will address these provisions. For example, in the preamble to the proposed rule published on September 14, 1999 (64 FR 49925, first column), HUD stated that measures to promote more effective resident participation will be categorized as eligible Capital Fund management improvement expenses under appropriate regulations and provided examples of such eligible expenses. These rules also will cover such topics as the timing of expenditure of funding.

To provide clarity and assure that there is no temporary lapse in PHAs' authority to undertake collateralization as they could do under section 14(q), however, HUD is adding a new paragraph (k) to this final rule that repeats the statutorily eligible expenses in section 9(d)(1) and adds a sentence identical to the collateralization authority in section 14(q)(1). This paragraph may be repealed, amended or moved once the referenced regulatory processes are completed.

V. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223), at the proposed rule stage. That Finding of No Significant Impact remains applicable and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities. The rule would implement a new system for formula allocation of funds to PHAs for their capital needs. The new system is established to provide minimum impact on all PHAs, small and large. The new formula provides that no PHA can lose more than 6% of its formula share for comparable units in going from the old to the new formula. Accordingly, the formula will not have a significant economic impact on any PHA.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

List of Subjects in 24 CFR Part 905

Grant programs—housing and community development, Modernization, Public housing, Reporting and recordkeeping requirements.

Catalog

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.850.

For the reasons discussed in the preamble, part 905 is added to title 24 of the Code of Federal Regulations as follows:

PART 905— THE PUBLIC HOUSING CAPITAL FUND PROGRAM

Authority: 42 U.S.C. 1437g and 3535(d).

§ 905.10 Capital Fund formula (CFF).

(a) *General.* This section describes the formula for allocation of capital funds to PHAs. The formula is referred to as the Capital Fund formula (CFF).

(b) *Emergency reserve and use of amounts.* (1) In each Federal fiscal year after Federal Fiscal Year (FFY) 1999, from amounts approved in the appropriation act for funding under this part, HUD:

(i) Shall reserve an amount not to exceed that authorized by 42 U.S.C. 1437g(k) for—

(A) Use for assistance in connection with emergencies and other disasters, and

(B) Housing needs resulting from any settlement of litigation; and

(ii) May reserve such other amounts for other purposes authorized by 42 U.S.C. 1437g(k).

(2) Amounts set aside under paragraph (b) of this section may be used for assistance for any eligible use under the Capital Fund, Operating Fund, or tenant-based assistance in accordance with section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f).

(3) The use of any amounts as provided under paragraph (b) of this section relating to emergencies (other than disasters and housing needs resulting from settlement of litigation) shall be announced subsequently through **Federal Register** notice.

(c) *Formula allocation based on relative needs.* After determining the amounts to be reserved under paragraph (b) of this section, HUD shall allocate the amount remaining in accordance with the CFF. The CFF measures the existing modernization needs and accrual needs of PHAs.

(d) *Allocation for existing modernization needs under the CFF.* HUD shall allocate one-half of the available Capital Fund amount based on the relative existing modernization needs of PHAs, determined in accordance with this paragraph (d) of this section.

(1) *For PHAs greater than or equal to 250 or more units in FFY 1999, except*

the New York City and Chicago Housing Authorities, estimates of the existing modernization need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 4604.7);

(B) The total number of units in a development as of FFY 1999. (Equation co-efficient: 10.17);

(C) The proportion of units, as of FFY 1998, in a development in buildings completed in 1978 or earlier. In the case of acquired developments, HUD will use the Date of Full Availability (DOFA) date unless the PHA provides HUD with the actual date of construction. When provided with the actual date of construction, HUD will use this date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: 4965.4);

(D) The cost index of rehabilitating property in the area as of FFY 1999. (Equation co-efficient: –10608);

(E) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: 2703.9);

(F) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: –269.4);

(G) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: –1709.5);

(H) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: 246.2)

(ii) An equation constant of 13851.

(A) *Newly constructed units.* Units with a DOFA date of October 1, 1991, or thereafter, will be considered to have a zero existing modernization need.

(B) *Acquired developments.* Developments acquired by a PHA with a DOFA date of October 1, 1991, or thereafter, will be considered by HUD to have a zero existing modernization need.

(2) *For New York City and Chicago Housing Authorities, based on a large sample of direct inspections.* For purposes of this formula, prior to the cost calibration in paragraph (d)(4) of this section, the number used for the existing modernization need of family developments is $16,680 in New York, and $24,286 in Chicago, and the number for elderly developments is $14,622 in New York, and $16,912 in Chicago.

(i) *Newly constructed units.* Units with a DOFA date of October 1, 1991, or thereafter, will be considered to have a zero existing modernization need.

(ii) *Acquired developments.* Developments acquired by a PHA with a DOFA date of October 1, 1991, or thereafter, will be considered by HUD to have a zero existing modernization need.

(3) *For PHAs with fewer than 250 units in FFY 1999*, estimates of the existing modernization need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 1427.1);

(B) The total number of units in a development as of FFY 1999. (Equation co-efficient: 24.3);

(C) The proportion of units, as of FFY 1998, in a development in buildings completed in 1978 or earlier. In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction, in which case HUD will use the actual date of construction (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: −1389.7);

(D) The cost index of rehabilitating property in the area, as of FFY 1999. (Equation co-efficient: −20163);

(E) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: 6157.7);

(F) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: 4379.2);

(G) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: 3747.7);

(H) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: −2073.5)

(ii) An equation constant of 24762.

(A) *Newly constructed units.* Units with a DOFA date of October 1, 1991, or thereafter, will be considered to have a zero existing modernization need.

(B) *Acquired developments.* Developments acquired by a PHA with a DOFA date of October 1, 1991, or thereafter, will be considered by HUD to have a zero existing modernization need.

(4) *Calibration of existing modernization need for cost index of rehabilitating property in the area.* The estimated existing modernization need, as determined under paragraphs (d)(1), (d)(2) or (d)(3) of this section, shall be adjusted by the values of the cost index of rehabilitating property in the area.

(e) *Allocation for accrual needs under the CFF.* HUD shall allocate the other half of the remaining Capital Fund amount based on the relative accrual needs of PHAs, determined in accordance with paragraph (e) of this section.

(1) *For PHAs greater than or equal to 250 or more units, except the New York City and Chicago Housing Authorities*, estimates of the accrual need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 324.0);

(B) The extent to which the buildings in a development average fewer than 5 units. (Equation co-efficient: 93.3);

(C) The age of a development as of FFY 1998, as determined by the DOFA date. In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction, in which case HUD will use the actual date of construction (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: −7.8);

(D) Whether the development is a family development. (Equation co-efficient: 184.5);

(E) The cost index of rehabilitating property in the area, as of FFY 1999. (Equation co-efficient: −252.8);

(F) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: −121.3);

(G) PHA size of 6600 or more units in FFY 1999. (Equation co-efficient: −150.7);

(H) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: 28.4);

(I) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: −116.9);

(J) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: 60.7)

(ii) An equation constant of 1371.9,

(2) *For New York City and Chicago Housing Authorities, based on a large sample of direct inspections.* For purposes of this formula, prior to the

cost calibration in paragraph (e)(4) of this section the number used for the accrual need of family developments is $1,395 in New York, and $1,251 in Chicago, and the number for elderly developments is $734 in New York, and $864 in Chicago.

(3) *For PHAs with fewer than 250 units,* estimates of the accrual need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 325.5);

(B) The extent to which the buildings in a development average fewer than 5 units. (Equation co-efficient: 179.8);

(C) The age of a development as of FFY 1998, as determined by the DOFA date. In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction. When provided with the actual date of construction, HUD will use this date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: −9.0);

(D) Whether the development is a family development. (Equation co-efficient: 59.3);

(E) The cost index of rehabilitating property in the area, as of FFY 1999. (Equation co-efficient: −1570.5);

(F) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: −122.9);

(G) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: −564.0);

(H) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: −29.6);

(I) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: −418.3)

(ii) An equation constant of 3193.6.

(4) *Calibration of accrual need for the cost index of rehabilitating property in the area.* The estimated accrual need, as determined under either paragraph (e)(2) or (e)(3) of this section, shall be adjusted by the values of the cost index of rehabilitation.

(f) *Calculation of number of units.* (1) *General.* For purposes of determining the number of a PHA's public housing units, and the relative modernization needs of PHAs:

(i) HUD shall count as one unit:

(A) Each public housing and section 23 bond-financed unit under the ACC, except that it shall count as one-fourth of a unit each existing unit under Turnkey III program. Units receiving operating subsidy only shall not be counted.

(B) Each existing unit under the Mutual Help program.

(ii) HUD shall add to the overall unit count units that are added to a PHA's inventory so long as the units are under ACC amendment and have reached DOFA by the date that HUD establishes for the Federal Fiscal Year in which the CFF is being run (hereafter called the "reporting date"). Any such increase in units shall result in an adjustment upwards in the number of units under the CFF. New units reaching DOFA after the reporting date will be counted for CFF purposes as of the following Federal Fiscal Year.

(2) *Replacement units.* Replacement units newly constructed as of and after October 1, 1998 that replace units in a development funded in FFY 1999 by the Comprehensive Grant formula system or the Comprehensive Improvement Assistance Program (CIAP) formula system will be given a new ACC number as a separate development and will be treated as a newly constructed development.

(3) *Conversion of units.* The total estimated need (total units times need per unit) of the development is unchanged by conversion of unit sizes within buildings.

(4) *Reduction of units.* For developments losing units as a result of demolition and disposition, the number of units on which capital funding is based will be the number of units reported as eligible for capital funding as of the reporting date. Units are eligible for funding until they are removed due to demolition and disposition in accordance with a schedule approved by HUD.

(g) *Computation of formula shares under the CFF.* (1) *Total estimated existing modernization need.* The total estimated existing modernization need of a PHA under the CFF is the result of multiplying for each development the PHA's total number of formula units by its estimated existing modernization need per unit, as determined by paragraph (d) of this section, and calculating the sum of these estimated development needs.

(2) *Total accrual need.* The total accrual need of a PHA under the CFF is the result of multiplying for each development the PHA's total number of formula units by its estimated accrual need per unit, as determined by paragraph (e) of this section, and calculating the sum of these estimated accrual needs.

(3) *PHA's formula share of existing modernization need.* A PHA's formula share of existing modernization need under the CFF is the PHA's total estimated existing modernization need divided by the total existing modernization need of all PHAs.

(4) *PHA's formula share of accrual need.* A PHA's formula share of accrual need under the CFF is the PHA's total estimated accrual need divided by the total existing accrual need of all PHAs.

(5) *PHA's formula share of capital need.* A PHA's formula share of capital need under the CFF is the average of the PHA's share of existing modernization need and its share of accrual need (by which method each share is weighted 50%).

(h) *CFF capping.* (1) For units that are eligible for funding under the CFF (including replacement housing units discussed below) a PHA's CFF share will be its share of capital need, as determined under the CFF, subject to the condition that no PHA's CFF share for units funded under CFF can be less than 94% of its formula share had the FFY 1999 formula system been applied to these CFF eligible units. The FFY 1999 formula system is based upon the FFY 1999 Comprehensive Grant formula system for PHAs with 250 or more units in FFY 1999 and upon the FFY 1999 Comprehensive Improvement Assistance Program (CIAP) formula system for PHAs with fewer than 250 units in FFY 1999.

(2) For a Moving to Work PHA whose agreement provides that its capital formula share is to be calculated in accordance with the previously existing formula, the PHA's CFF share, during the term of the agreement, may be approximately the formula share that the PHA would have received had the FFY 1999 formula funding system been applied to the CFF eligible units.

(i) *Replacement housing factor to reflect formula need for developments with demolition and disposition occurring on or after October 1, 1998—* (1) *Replacement housing factor generally.* PHAs that have a reduction in units attributable to demolition and disposition of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the CFF calculations qualify for application of a replacement housing factor, subject to satisfaction of criteria stated in paragraph (i)(5) of this section.

(2) *When applied.* The replacement housing factor will be added, where applicable:

(i) For the first 5 years after the reduction in units described in paragraph (i)(1) of this section, and

(ii) For an additional 5 years if the planning, leveraging, obligation and expenditure requirements are met. As a prior condition of a PHA's receipt of additional funds for replacement housing provided for the second 5-year period or any portion thereof, a PHA must obtain a firm commitment of substantial additional funds other than public housing funds for replacement housing, as determined by HUD.

(3) *Computation of replacement housing factor.* The replacement housing factor consists of the difference between the CFF share without the CFF share reduction of units attributable to demolition and disposition, and the CFF share that resulted after the reduction of units attributable to demolition and disposition.

(4) *Replacement housing funding in FFY 1998 and 1999.* Units that received replacement housing funding in FFY 1998 will be treated as if they had received two years of replacement housing funding by FFY 2000. Units that received replacement housing funding in FFY 1999 will be treated as if they had received one year of replacement housing funding as of FFY 2000.

(5) *PHA eligibility for replacement housing factor.* A PHA is eligible for application of this factor only if the PHA satisfies the following criteria:

(i) The PHA requests the application of the replacement factor;

(ii) The PHA will use the funding in question only for replacement housing;

(iii) The PHA will use the restored funding that results from the use of the replacement factor to provide replacement housing in accordance with the PHA's five-year PHA plan, as approved by HUD under part 903 of this chapter;

(iv) The PHA has not received funding for public housing units that will replace the lost units under the public housing development, Major Reconstruction of Obsolete Public Housing, HOPE VI programs, or programs that otherwise provide for replacement with public housing units;

(v) The PHA, if designated troubled by HUD and not already under the direction of HUD or a court-appointed receiver, in accordance with part 902 of this chapter, uses an Alternative Management Entity as defined in part 902 of this chapter for development of replacement housing and complies with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(vi) The PHA undertakes any development of replacement housing in accordance with applicable HUD requirements and regulations.

(6) *Failure to provide replacement housing in a timely fashion.* (i) A PHA will be subject to the actions described in paragraph (i)(7)(ii) of this section if the PHA does not:

(A) Use the restored funding that results from the use of the replacement housing factor to provide replacement housing in a timely fashion, as provided in paragraph (i)(7)(i) of this section and in accordance with applicable HUD requirements and regulations; and

(B) Make reasonable progress on such use of the funding, in accordance with HUD requirements and regulations.

(ii) If a PHA fails to act as described in paragraph (i)(6)(i), HUD will require appropriate corrective action under these regulations; may recapture and reallocate the funds; or may take other appropriate action.

(7) *Requirement to obligate and expend replacement housing factor funds within specified period.* (i) In addition to the requirements otherwise applicable to obligation and expenditure of funds, PHAs are required to obligate assistance received as a result of the replacement housing factor within:

(A) 24 months from the date that funds become available to the PHA; or

(B) With specific HUD approval, 24 months from the date that the PHA accumulates adequate funds to undertake replacement housing.

(ii) To the extent the PHA has not obligated any funds provided as a result of the replacement housing factor within the times required by this paragraph, or expended such funds within a reasonable time, HUD shall reduce the amount of funds to be provided to the PHA as a result of the application of the second 5 years of the replacement housing factor.

(j) *Performance reward factor.* (1) PHAs that are designated high performers under the Public Housing Assessment System (PHAS) for their most recent fiscal year can receive a performance bonus that is:

(i) 3% above their base formula amount in the first five years these awards are given (for any year in this 5-year period in which the performance reward is earned); and

(ii) 5% above their base formula amount in future years (for any year in which the performance reward is earned).

(2) The performance bonus is subject only to the condition that no PHA will lose more than 5% of its base formula amount as a result of the redistribution of funding from non-high performers to high performers.

(3) The first performance awards will be given based upon PHAS scores for PHA fiscal years ending December 31, 2000, March 31, 2001, June 30, 2001, and September 30, 2001, with PHAs typically having received those PHAS scores within approximately 3 months after the end of those fiscal years.

(k) *Eligible expenses.* (1) Eligible expenses include the following:

(i) Development, financing, and modernization of public housing projects, including the redesign, reconstruction, and reconfiguration of public housing sites and buildings (including accessibility improvements) and the development of mixed-finance projects;

(ii) Vacancy reduction;

(iii) Addressing deferred maintenance needs and the replacement of obsolete utility systems and dwelling equipment;

(iv) Planned code compliance;

(v) Management improvements;

(vi) Demolition and replacement;

(vii) Resident relocation;

(viii) Capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents and to improve resident participation;

(ix) Capital expenditures to improve the security and safety of residents; and

(x) Homeownership activities, including programs under section 32 of the 1937 Act (42 U.S.C. 1437z–4).

(2) Such assistance may involve the drawdown of funds on a schedule commensurate with construction draws for deposit into an interest earning escrow account to serve as collateral or credit enhancement for bonds issued by a public agency for the construction or rehabilitation of the development.

Dated: March 7, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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Federal Acquisition Regulation (FAR):
- Time-and-materials or labor-hours; comments due by 3-24-00; published 1-24-00

Federal property management:
- Aviation, transportation, and motor vehicles—
  - Transportation payment and audit; comments due by 3-23-00; published 2-22-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:
- Drug products discontinued from sale for reasons of safety or effectiveness; list; comments due by 3-20-00; published 1-4-00
- Over-the-counter drugs classification as generally recognized as safe and effective and not misbranded; additional criteria and procedures; comments due by 3-22-00; published 12-20-99

Medical devices:
- Premarket notification; substantially equivalent premarket notification; redacted version requirement; comments due by 3-22-00; published 12-21-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:
- Inpatient Disproportionate Share (DSH) Hospital adjustment calculation—
  - States with section 1115 expansion waivers; change in treatment of certain Medicaid patient days; comments due by 3-20-00; published 1-20-00
- Payment amount if customery charges are less than reasonable

costs; comments due by 3-23-00; published 2-22-00

HEALTH AND HUMAN SERVICES DEPARTMENT

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Substance Abuse Prevention and Treatment (SAPT) block grant program—

Application deadline; comments due by 3-20-00; published 2-4-00

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

California tiger salamander; comments due by 3-20-00; published 1-19-00

Fish and wildlife restoration; Federal aid to States:

National Boating Infrastructure Grant Program; comments due by 3-20-00; published 1-20-00

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:

Oil values for royalty due on Indian leases; establishment; comments due by 3-20-00; published 2-28-00

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Kentucky; comments due by 3-20-00; published 2-18-00

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Drug Enforcement Administration

Schedules of controlled substances:

Exempt anabolic steroid products; comments due by 3-20-00; published 1-20-00

Correction; comments due by 3-20-00; published 2-2-00

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Copyright Office, Library of Congress

Copyright office and procedures:

Litigation; public information; comments due by 3-21-00; published 1-21-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Administrative authority and policy:

Inspection of persons and personal effects on NASA property; comments due by 3-20-00; published 1-19-00

Federal Acquisition Regulation (FAR):

Time-and-materials or labor-hours; comments due by 3-24-00; published 1-24-00

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Performance-based activities; high-level guidelines; comments due by 3-24-00; published 1-24-00

Radioactive material packaging and transportation:

Nuclear waste shipment; advance notification to Native American Tribes; comments due by 3-22-00; published 12-21-99

Rulemaking proceedings:

Christie, Bob; comments due by 3-22-00; published 1-12-00

PERSONNEL MANAGEMENT OFFICE

Retirement:

Nuclear materials couriers under CSRS and FERS; eligibility; comments due by 3-20-00; published 1-18-00

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Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 3-20-00; published 2-2-00

Bombardier; comments due by 3-21-00; published 1-21-00

Eurocopter France; comments due by 3-20-00; published 1-20-00

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Class E airspace; comments due by 3-20-00; published 2-7-00

TRANSPORTATION DEPARTMENT

Federal Highway Administration

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Uniform Traffic Control Devices Manual—

Tourist oriented directional signs, recreation and cultural interest signs, and traffic controls for bicycle facilities; comments due by 3-24-00; published 6-24-99

TRANSPORTATION DEPARTMENT

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Internal Revenue Service

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Construction aid contribution; definition; comments due by 3-22-00; published 12-20-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 3557/P.L. 106–175

To authorize the President to award a gold medal on behalf of the Congress to John Cardinal O'Connor, Archbishop of New York, in recognition of his accomplishments as a priest, a chaplain, and a humanitarian. (Mar. 5, 2000; 114 Stat. 21)

H.R. 149/P.L. 106–176

Omnibus Parks Technical Corrections Act of 2000 (Mar. 10, 2000; 114 Stat. 23)

H.R. 764/P.L. 106–177

To reduce the incidence of child abuse and neglect, and for other purposes. (Mar. 10, 2000; 114 Stat. 35)

H.R. 1883/P.L. 106–178

Iran Nonproliferation Act of 2000 (Mar. 14, 2000; 114 Stat. 38)

S. 613/P.L. 106–179

Indian Tribal Economic Development and Contract Encouragement Act of 2000 (Mar. 14, 2000; 114 Stat. 46)

Last List March 16, 2000

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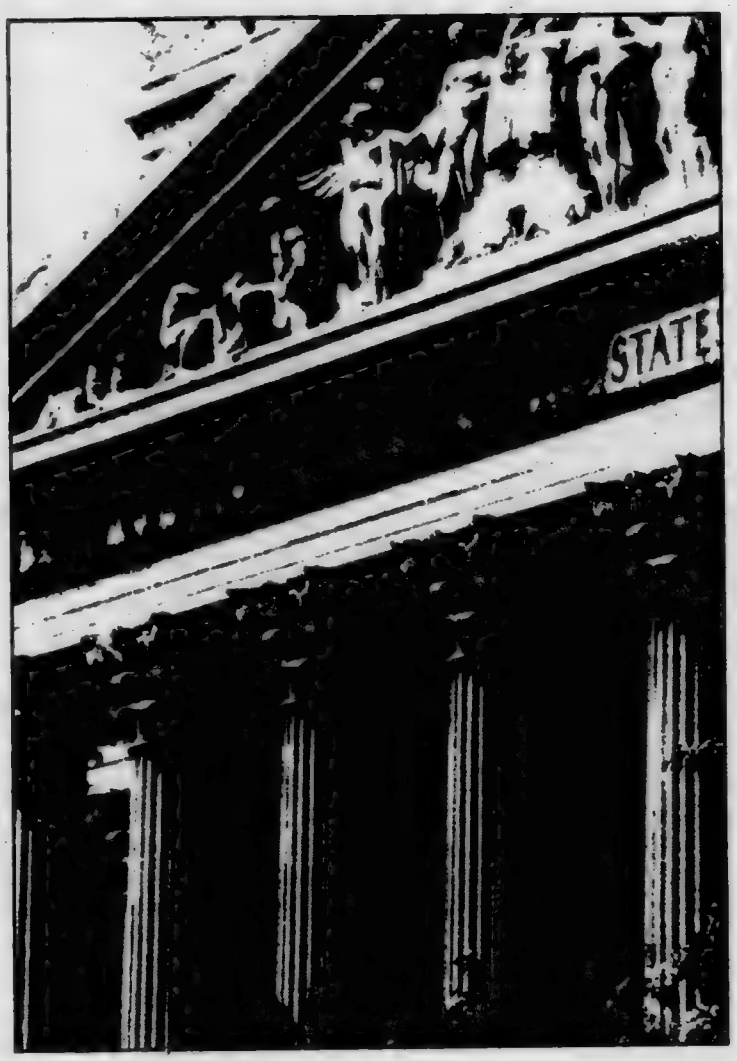

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